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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM159; Special Conditions No. 25–145–SC]

Special Conditions: Boeing Model 707–353B (USAF C–137) Airplanes; High Intensity Radiated Fields (HIRF) Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 707–353B (USAF C–137) airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include the installation of an inertial navigation system (INS) for which the current applicable airworthiness regulations do not contain adequate or appropriate safety standards with regard to protection of the system from the effects of high-intensity radiated fields. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is July 13, 1999. Comments must be received on or before August 20, 1999.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–114), Docket No. NM159, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM159. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

FAA's Determination as to Need for Public Process

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because those procedures would significantly delay issuance of the approval design and, thus, the delivery of the affected aircraft.

In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. Thus, the FAA has previously provided the public with a number of opportunities to comment on proposed special conditions that are substantively identical to those at issue; and the FAA is reasonably assured that all interested members of the public have had an opportunity to comment and that their comments have been fully considered. The FAA, therefore, finds that additional redundant notices are unnecessary, and good cause exists for making these special conditions effective upon issuance.

Comments Invited

Although this action is in the form of final special conditions and, for the reasons stated above, is not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket NM159." The postcard will be date stamped and returned to the commenter.

Background

On August 7, 1998, Boeing Commercial Airplane Group, P.O. Box 7730, Wichita, Kansas 67277, made application to the FAA for a Supplemental Type Certificate(STC) for the Boeing Model B–707–353B airplane [known as the U.S. Air Force (USAF) C–137]. The proposed configuration of this model will incorporate an upgrade of the inertial navigation system (INS) from the Litton LTN–72 model to the LTN–92 model.

The INS provides attitude, heading, and navigation data to the flight crew. Display of attitude information is considered a critical function. Critical functions must be designed and installed to ensure that their operations are not adversely affected by high intensity radiated fields (HIRF). The existing airworthiness regulations do not contain adequate or appropriate safety standards for protection from the effects of HIRF external to the airplane; therefore, a special condition is proposed.

Supplemental Type Certification Basis

Under the provisions of 14 CFR § 21.101 ("Designation of applicable regulations"), Boeing must show that the Model 707–353B (USAF C–137) airplanes meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 4A26, or the applicable regulations in effect on the date of application for the change to the Model 707–353B. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the Model 707–353B airplanes includes Civil Air Regulations (CAR) 4b, as amended by Amendments 4b-1, 4b-2, and 4b-3; and

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additional requirements identified in Type Certificate Data Sheet 4A26.

Purpose of Special Conditions

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for an airplane because of a novel or unusual design feature of that airplane, the FAA may then prescribe special conditions to establish a level of safety equivalent to that established in the regulations. Special conditions are authorized under the provisions of 14 CFR 21.16 ("Special conditions").

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49, as required by §§ 11.28 and 11.29, and become part of the airplane's type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

Novel or Unusual Design Features

The Boeing STC for the Model 707–353B (USAF C–137) airplanes includes the upgrade of the INS system from the Litton LTN–72 model to the LTN–92 model. This INS contains electronic equipment for which the current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards that address protecting this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a "novel or unusual design feature."

Discussion

As stated previously, there is no specific regulation that addresses requirements for protection of electrical and electronic systems from HIRF external to the airplane. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, the FAA has determined that special conditions are needed for the Boeing Model 707–353B (USAF C–137) modifed to include the upgraded INS. These special conditions will require that this system, which performs critical functions, must be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

Protection of Systems from High-Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid-state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by HIRF. Such HIRF can degrade electronic systems performance by damaging components or by upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There also is uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided during the design and installation of these systems.

Actions Required by Special Conditions

The accepted maximum energy levels in which airplane system installations must be capable of operating safely are based on surveys and analyses of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previously required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require that the systems installed in aircraft that perform critical functions must be qualified to the HIRF environment defined in paragraph 1., below, or (as an option to a fixed value using laboratory tests) that defined in paragraph 2, below:

1. The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the airplane is exposed to the HIRF environment defined below:

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

Or

b. The applicant may demonstrate by a system laboratory test that the electrical and electronic systems that perform critical functions withstand an electromagnetic field strength of 100 volts per meter, without the benefit of airplane structural shielding, over a frequency range of 10 kHz to 18 GHz.

Note: The field strength values for the HIRF environment and laboratory test levels are expressed in root-mean-square units measured during the peak of the modulation cycle, as many laboratory instruments indicate amplitude. These are commonly called "peak-rms" values. The true peak field strength values will be higher by a factor of the square root of two.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 707–353B (USAF C–137) airplanes modified to include the upgraded INS. Should Boeing Commercial Airplane Group apply at a later date for a design change approval to the type certificate to include any other model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well, under the provisions of 14 CFR 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Boeing 707–353B (USAF C–137) airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

Further, the substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained in this document. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. However, the FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing Model 707–353B (USAF C–137) airplanes.

1. *Protection of Electrical and Electronic Systems from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operations and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 13, 1999.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18566 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–05–AD; Amendment 39–11226; AD 99–15–07]

RIN 2120–AA64

Airworthiness Directives; deHavilland Inc. Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all deHavilland Inc. (deHavilland) Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. This AD requires repetitively inspecting the rear fuselage bulkhead at Station 228 for cracks. This AD also requires repairing any crack found or replacing any cracked rear fuselage bulkhead in accordance with a repair or replacement scheme obtained from the manufacturer through the Federal Aviation Administration (FAA). This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada. The actions specified by this AD are intended to detect and correct cracking of the rear fuselage bulkhead at Station 228, which could result in structural damage of the fuselage to the point of failure with consequent loss of airplane control.

DATES: Effective September 10, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 10, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from Bombardier Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone: (416) 633–7310. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules

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Docket No. 99–CE–05–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. James Delisio, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581–1200; telephone: (516) 256–7521; facsimile: (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all deHavilland Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 23, 1999 (64 FR 19932). The NPRM proposed to require repetitively inspecting the rear fuselage bulkhead at Station 228 for cracks. Accomplishment of the proposed repetitive inspections as specified in the NPRM would be required in accordance with deHavilland Beaver Service Bulletin 2/52, dated August 30, 1998, and deHavilland Beaver Service Bulletin TB/60, dated August 30, 1998. The NPRM also proposed to require repairing any crack found or replacing any cracked rear fuselage bulkhead. Accomplishment of the proposed repair or replacement as specified in the NPRM would be required in accordance with a repair or replacement scheme obtained from the manufacturer through the FAA.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The compliance time of this AD is presented in both calendar time and hours time-in-service (TIS). While cracks are generally a result of classic fatigue (i.e., aging and cyclic operation), the FAA believes that cracks could develop over time regardless of how often the airplane is operated. In order to assure that rear fuselage bulkhead cracking does not go undetected, a compliance time of specific hours TIS and calendar time (whichever occurs first) is utilized.

Cost Impact

The FAA estimates that 350 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the initial inspection on U.S. operators is estimated to be $21,000, or $60 per airplane.

These figures only take into the account the costs of the initial inspection and do not take into account the costs of the repetitive inspections or the cost of any repair or replacement necessary if any rear fuselage bulkhead is found cracked. The FAA has no way of determining the number of repetitive inspections each owner/operator will incur over the life of his/her affected airplane or the number of airplanes that will have a cracked rear fuselage bulkhead and need repair or replacement.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–15–07 DeHavilland Inc.: Amendment 39–11226; Docket No. 99–CE–05–AD.

Applicability: Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct cracking of the rear fuselage bulkhead at Station 228, which could result in structural damage of the fuselage to the point of failure with consequent loss of airplane control, accomplish the following:

(a) Within the next 400 hours time-in-service (TIS) after the effective date of this AD or within the next 12 calendar months after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 2,000 hours TIS or 5 years, whichever occurs first, inspect the rear fuselage bulkhead at Station 228 for cracks. Inspect in accordance with the Accomplishment Instructions section of whichever of the following service bulletins that is applicable:

(1) *For the Models DHC–2 Mk. I and DHC–2 Mk. II airplanes:* deHavilland Beaver Service Bulletin 2/52, dated August 30, 1998; or

(2) *For the Model DHC–2 Mk. III airplanes:* deHavilland Beaver Service Bulletin TB/60, dated August 30, 1998.

(b) If any crack(s) is/are found in the rear fuselage bulkhead at Station 228 during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the following:

(1) Obtain a repair or replacement scheme from the manufacturer through the FAA, New York Aircraft Certification Office (ACO), 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581–1200; facsimile: (516) 568–2716.

(2) Incorporate this repair or replacement scheme.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, New York ACO, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581–1200. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Questions or technical information related to deHavilland Beaver Service Bulletin TB/60, dated August 30, 1998, and deHavilland Beaver Service Bulletin 2/52, dated August 30, 1998, should be directed to Bombardier Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone: (416) 633–7310. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The inspections required by this AD shall be done in accordance with deHavilland Beaver Service Bulletin TB/60, dated August 30, 1998, or deHavilland Beaver Service Bulletin 2/52, dated August 30, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian AD No. CF–98–38, dated October 15, 1998.

(g) This amendment becomes effective on September 10, 1999.

Issued in Kansas City, Missouri, on July 12, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18197 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–247–AD; Amendment 39–11227; AD 99–15–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200 and –300 Series Airplanes Equipped With General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747–200 and –300 series airplanes, that currently requires various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This amendment reduces the repetitive interval for one certain functional test. This amendment is prompted by reports indicating that several center drive units (CDU) were returned to the manufacturer of the CDU's because of low holding torque of the CDU cone brake. The actions specified by this AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Effective August 25, 1999.

The incorporation by reference of Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, as listed in the regulations, is approved by the Director of the Federal Register as of August 25, 1999.

The incorporation by reference of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994, was approved previously by the Director of the Federal Register as of April 13, 1995 (60 FR 13623, March 14, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–06–01, amendment 39–9171 (60 FR 13623, March 14, 1995), which is applicable to certain Boeing Model 747–200 and –300 series airplanes, was published in the **Federal Register** on January 21, 1999 (64 FR 3226). The action proposed to continue to require various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. The action also proposed to reduce the repetitive interval for one certain functional test.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Explanation of Change to the Final Rule

In the notice of proposed rulemaking (NPRM), the FAA proposed to require repetitive functional tests of the CDU cone brake on Model 747–200 and –300 series airplanes, at intervals not to exceed 650 hours time-in-service, regardless of whether the airplane is equipped with thrust reversers modified in accordance with Boeing Service Bulletin 747–78–2144. Since the issuance of the NPRM, the FAA has determined that a repetitive interval of 1,000 hours time-in-service would adequately ensure safety on airplanes equipped with thrust reversers modified in accordance with Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996. This decision is based on the FAA's determination that frequent maintenance on such systems as the thrust reverser system could increase the risk of maintenance errors. Also, Boeing Service Bulletin 747–78–

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2144, Revision 1, recommends functional tests at intervals not to exceed 1,000 hours time-in-service for thrust reversers that have been modified to incorporate a third locking device in accordance with that service bulletin. Performing the functional test of the cone brake at the same interval as the functional test of the third locking device would allow both thrust reverser tests to be scheduled and performed at the same time. Therefore, paragraph (d) of this final rule has been revised accordingly, and new paragraphs (d)(1) and (d)(2) have been added to this final rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 9 airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD.

The actions required by this AD will not add any additional economic burden on affected operators, other than the costs that are associated with repeating the functional test of the cone brake at reduced intervals (at intervals not to exceed 650 hours time-in-service rather than at intervals not to exceed 1,000 hours time-in-service). The current costs associated with AD 95–06–01 are reiterated in their entirety (as follows) for the convenience of affected operators.

The actions that are currently required by AD 95–06–01, and retained in this AD, take approximately 33 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $3,960, or $1,980 per airplane, per inspection/test cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9171 (60 FR 13623, March 14, 1995), and by adding a new airworthiness directive (AD), amendment 39–11227, to read as follows:

99–15–08 Boeing: Amendment 39–11227. Docket 98–NM–247–AD. Supersedes AD 95–06–01, Amendment 39–9171.

Applicability: Model 747–200 and –300 series airplanes equipped with General Electric Model CF6–80C2 series engines with Power Management Control engine controls, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight, accomplish the following:

Restatement of Requirements of AD 95–06–01

(a) Within 90 days after April 13, 1995 (the effective date of AD 95–06–01, amendment 39–9171), perform tests of the position switch module and the cone brake of the center drive unit (CDU) on each thrust reverser, and perform an inspection to detect damage to the bullnose seal on the translating sleeve on each thrust reverser, in accordance with paragraphs III.A. through III.C. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat the tests and inspection thereafter at intervals not to exceed 1,000 hours time-in-service until the functional test required by paragraph (d) of this AD is accomplished.

(b) Within 9 months after April 13, 1995, perform inspections and functional tests of the thrust reverser control and indication system in accordance with paragraphs III.D. through III.F., III.H., and III.I. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat these inspections and functional tests thereafter at intervals not to exceed 18 months.

(c) If any of the inspections and/or functional tests required by paragraphs (a) and (b) of this AD cannot be successfully performed, or if any discrepancy is found during those inspections and/or functional tests, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

New Requirements of This AD

(d) Within 1,000 hours time-in-service after the most recent test of the CDU cone brake performed in accordance with paragraph (a) of this AD, or within 650 hours time-in-service after the effective date of this AD, whichever occurs first: Perform a functional test to detect discrepancies of the CDU cone brake on each thrust reverser, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, or paragraph III.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat the functional test thereafter at the interval specified in paragraph (d)(1) or (d)(2) of this AD, as applicable. Accomplishment of such functional test constitutes terminating action for the repetitive test of the CDU cone brake required by paragraph (a) of this AD.

(1) For airplanes equipped with thrust reversers NOT modified in accordance with Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996: Repeat the functional test at intervals not to exceed 650 hours time-in-service.

(2) For airplanes equipped with thrust reversers modified in accordance with Boeing Service Bulletin 747–78–2144, Revision 1, dated April 11, 1996: Repeat the functional test at intervals not to exceed 1,000 hours time-in-service.

(e) If any functional test required by paragraph (d) of this AD cannot be successfully performed, or if any discrepancy is found during any functional test required by paragraph (d) of this AD, accomplish either paragraph (e)(1) or (e)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, or paragraph III.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in the operator's FAA-approved MEL, provided that no more than one thrust reverser on the airplane is inoperative.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraphs (c)(2) and (e)(2) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994, or Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994, was approved previously by the Director of the Federal Register as of April 13, 1995 (60 FR 13623, March 14, 1995).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on August 25, 1999.

Issued in Renton, Washington, on July 12, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18198 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–113–AD; Amendment 39–11230; AD 99–15–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes. This action requires replacement of a certain engine-driven pump (EDP) supply shutoff valve, which is located in the aft strut fairing, with a new shutoff valve. This amendment is prompted by reports of failure of the shutoff valve due to corrosion in the direct current motor in the shutoff valve. The actions specified in this AD are intended to prevent failure of an EDP supply shutoff valve. Such failure, in the event of an engine fire, could result in an uncontrolled fire in the engine compartment.

DATES: Effective August 5, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 5, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 20, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–113–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S; FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2673; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports of failures of the engine-driven pump (EDP) supply shutoff valves located in the aft strut fairings. Subsequently, the airplane manufacturer investigated this failure mode and reported to the FAA that failure of the supply shutoff valves was caused by corrosion in the direct current (DC) motors in the valves. Such corrosion forms between the stator and rotor in the DC motor in the supply shutoff valve assembly. Since the DC motor drives the actuator in the motor-operated supply shutoff valve to the commanded position, corrosion in the motor prevents the motor and the actuator from operating. In the event of an engine fire, failure of an EDP supply shutoff valve, if not corrected, could result in an uncontrolled fire in the engine compartment.

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Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–29A0022, Revision 1, dated May 21, 1999, which describes procedures for replacement of a certain EDP supply shutoff valve with a new EDP supply shutoff valve. The Boeing alert service bulletin references Parker-Hannifin Service Bulletin 2910044–29–48, "Introduction of Motor Operated Shutoff Valve, Part Number (P/N) 2960034–101," as an additional source of service information to accomplish the replacement.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 777 series airplanes of the same type design, this AD is being issued to prevent failure of an EDP supply shutoff valve due to corrosion in the DC motor in the shutoff valve. In the event of an engine fire, failure of an EDP supply shutoff valve could result in an uncontrolled fire in the engine compartment. This AD requires replacement of a certain EDP supply shutoff valve, which is located in the aft strut fairing, with a new shutoff valve.

Differences Between the AD and the Alert Service Bulletin

Boeing Alert Service Bulletin 777–29A0022, Revision 1, specifies that the replacement actions required by this AD may be accomplished in accordance with the procedures specified in the alert service bulletin, or in accordance with an "operator's equivalent procedure." However, this AD requires that the actions be accomplished in accordance with the procedures specified in the Boeing alert service bulletin. An "operator's equivalent procedure" may be used only if approved as an alternative method of compliance in accordance with paragraph (c) of this AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–113–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–15–10 BOEING: Amendment 39–11230. Docket 99–NM–113–AD.

Applicability: Model 777 series airplanes, equipped with an engine-driven pump supply shutoff valve having Boeing part number S271W741–21; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of an engine-driven pump (EDP) supply shutoff valve, which, in the event of an engine fire, could result in an uncontrolled fire in the engine compartment, accomplish the following:

Replacement

(a) Except as provided by paragraph (b) of this AD, within 90 days after the effective date of this AD, replace any EDP supply shutoff valve, Boeing part number (P/N) S271W741–21, that is located in each aft strut fairing, with a new EDP supply shutoff valve, Boeing P/N S271W741–22, in accordance with Boeing Alert Service Bulletin 777–29A0022, Revision 1, dated May 21, 1999.

(b) Where Boeing Alert Service Bulletin 777–29A0022, Revision 1, dated May 21, 1999, specifies that replacements may be accomplished in accordance with an operator's "equivalent procedure," those actions must be accomplished in accordance with the applicable chapter of the Boeing 777 Airplane Maintenance Manual (AMM) specified in the alert service bulletin.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement shall be done in accordance with Boeing Alert Service Bulletin 777–29A0022, Revision 1, dated May 21, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 5, 1999.

Issued in Renton, Washington, on July 13, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18365 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–36]

Amendment to Class E Airspace; Parsons, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Tri-City Airport, Parsons, KS. A review of the Class E airspace area for Tri-City Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required-for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, a minor revision to the Airport Reference Point (ARP) coordinates is included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the ARP, and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, November 4, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 15, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–36, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Parsons, KS. A review of the Class E airspace for Tri-City Airport, KS, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is coverted to the next higher tenth of a mile. The amendment at Parsons, Tri-City Airport, KS, will provide additional controlled airspace for aircraft operating under IFR, revise the ARP, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESS**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn

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in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–36." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Parsons, KS [Revised]

Parsons, Tri-City Airport, KS
(Lat. 37°19′53″ N., long. 95°30′32″ W.)
Parsons NDB
(Lat 37°20′17″ N., long. 95°30′31″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Tri-City Airport and within 2.6 miles each side of the 009° bearing from Parsons NDB extending from the 6.6-mile radius to 7.4 miles north of the airpbrt and within 2.6 miles each side of the 17° bearing from the Parsons NDB extending from the 6.6-mile radius to 7.4 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on June 24, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–18576 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–35]

Amendment to Class E Airspace; Lawrence, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action amends the Class E airspace area at Lawrence Municipal Airport, Lawrence, KS. A review of the Class E airspace area for Lawrence Municipal Airport, indicates the extension to the southwest can be eliminated and the Lawrence Nondirectional Radio Beacon (NDB) has been relocated and the name changed. The Class E airspace does not comply with the 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace area has been enlarged to conform to the criteria of FAA Order 7400.2D. Enlarging the Class E airspace area eliminates the extension of the southeast.

The intended effect of this rule is to provide additional Class E airspace for aircraft operating under Instrument Flight Rules (IFR), eliminate the extension, remove reference to the NDB, and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, November 4, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 25, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–35, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace area at Lawrence, KS. A review of the Class E airspace area indicates the extension to the southeast can be eliminated. The review of the Class E airspace area for Lawrence Municipal Airport, KS, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Lawrence Municipal Airport, KS, will provide additional controlled airspace for aircraft operating under IFR, eliminate the extension, remove reference to the NDB, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–35." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Lawrence, KS [Revised]

Lawrence Municipal Airport, KS
(Lat. 39°00′40″ N., long. 92°13′00″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Lawrence Municipal Airport.

* * * * *

Issued in Kansas City, MO, on June 22, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–18575 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–28]

Amendment to Class E Airspace; Grain Valley, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Grain Valley, East Kansas City Airport, MO. The FAA has developed Global Positioning System (GPS) Runway (RWY) 9 and GPS RWY 27 Standard Instrument Approach Procedures (SIAPs) to serve Grain Valley, East Kansas City Airport, MO. Additional controlled airspace

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extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. Reference to the RABOD waypoint and Napoleon VORTEC have been deleted. Enlarging the Class E airspace area will eliminate the extensions to the east and northeast. The enlarged area will contain the new GPS RWY 9 and GPS RWY 27 SIAPs in controlled airspace.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 9 and GPS RWY 27 SIAPs, remove references to the RABOD waypoint, Napoleon VORTAC, eliminate extensions and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, November 4, 1999. Comments for inclusion in the Rules Docket must be received on or before August 15, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–28, 601 East 12th Street, Kansas City, Mo 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 9 and GPS RWY 27 SIAPs to serve the Grain Valley, East Kansas City Airport, MO. The amendment to Class E airspace area at Grain Valley, MO, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. References to the RABOD waypoint and Napoleon VORTAC have been removed from the text header and airspace designation.

The amendment at Grain Valley, East Kansas City Airport, MO, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and the rule may be amended or withdraw in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned wit the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–28." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 4013, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ACE MO E5 Grain Valley, MO [Revised]

Grain Valley, East Kansas City Airport, MO (Lat. 39°00'56" N., long. 94°12'48" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of East Kansas City Airport.

* * * * *

Issued in Kansas City, MO, on June 17, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–18574 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–15]

Revision of Class E Airspace; Perry, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Perry, OK. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), at Ditch Witch Airport, Perry, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Ditch Witch Airport, Perry, OK.

DATES: Effective 0901 UTC, November 4, 1999. Comments must be received on or before September 7, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–15, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 AM and 3 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Perry, OK. The development of a GPS SIAP, at Ditch Witch Airport, Perry, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Ditch Witch Airport, Perry, OK.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this section is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ASW–15." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continue to read as follows

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854; 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005—Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW OF E5 Perry, OK [Revised]

Ditch Witch Airport, Perry, OK
(Lat. 36°18′00″ N., long. 97°19′01″ W.)

Perry Municipal Airport, OK
(Lat. 36°23′08″ N., long. 97°16′38″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Perry Municipal Airport and within 2 miles each side of the 359° bearing from the airport extending from the 6.5-mile radius to 10.5 miles north of the airport and within a 6.5-mile radius of Ditch Witch Airport.

* * * * *

Issued in Fort Worth, TX, on July 12, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–18570 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–14]

Revision of Class E Airspace; Center, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Center, TX. The development of a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) at Center Municipal Airport, Center, TX has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Center Municipal Airport, Center, TX.

EFFECTIVE DATES: 0901 UTC, November 4, 1999. Comments must be received on or before September 7, 1999.

ADDRESSES: Send comments on the rule in triplicate to the Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–14, Forth Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 AM and 3 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air traffic Division, Southwest Region, Federal Aviation Administration, Forth Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Center, TX. The development of a NDB SIAP, at Center Municipal Airport, Center, TX has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Center Municipal Airport, Center, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ASW–14." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is a noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005–Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Center, TX [Revised]

Center Municipal Airport, Center, TX
(Lat. 31°49′54″ N., long. 94°09′23″ W.)

Amason NDB
(Lat. 31°49′54″ N., long. 94°09′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5–mile radius of Center Municipal Airport and within 2.5 miles each side of the 341° bearing from the Amason NDB extending from the 6.5–mile radius to 7.5 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX, on July 21, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–18569 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–10]

Revision of Class E Airspace; Shreveport, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Shreveport, LA. The development of a Nondirectional Radio Beacon (NDB) or Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), at Shreveport Regional Airport, Shreveport, LA has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument Flight Rules (IFR) operations to Shreveport Regional Airport, Shreveport, LA.

DATES: Effective 0901 UTC, September 9, 1999. Comments must be received on or before September 7, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–10, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Mechanism Boulevard, Room 663, Forth Worth, TX, between 9 AM and 3 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Forth Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Shreveport, LA. The development of an NDB or GPS SIAP, at Shreveport Regional Airport, Shreveport, LA has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Shreveport Regional Airport, Shreveport, LA.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical

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actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contract concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ASW–10." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW LA E5 Shreveport, LA [Revised]

Shreveport Regional Airport, Shreveport, LA
(Lat. 32°26′48″ N., long. 93°49′32″ W.
Shreveport, Barksdale AFB, LA
(Lat. 32°30′07″ N., long. 93°39′46″ W.)
Shreveport Downtown Airport, LA
(Lat. 32°32′24″ N., long. 93°44′41″ W.)

That airspace extending upward from 700 feet above the surface within a 9.4-mile radius of Shreveport Regional Airport and within a 8-mile radius of Barksdale AFB and within a 8.1-mile radius of Shreveport Downtown Airport.

* * * * *

Issued in Fort Worth, TX, on July 12, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–18571 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–09]

Revision of Class E Airspace; Galveston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace extending upward from the surface within a 4.1-mile radius of Scholes Field, Galveston, TX. Increased air traffic operations and instrument approaches have made this rule necessary. This action is intended to provide continuous controlled airspace for aircraft operating in the vicinity of Scholes Field, Galveston, TX.

DATES: Effective 0901 UTC, September 9, 1999 Comments must be received on or before September 7, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–09, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 63, Fort Worth, TX, between 9 AM and 3 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace extending upward from the surface within a 4.1-mile radius of Scholes Field, Galveston, TX. Increased air traffic operations and instrument approaches have made this rule necessary. This action is intended to provide continuous controlled airspace for aircraft operating in the vicinity of Scholes Field, Galveston, TX.

Class E airspace designations are published in Paragraph 6002 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comments, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions in extremely helpful in evaluating the effectiveness of this action and determination whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ASW–09." the postcard will be date stamped and return to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002 Class E airspace areas extending upward from the surface of the earth.

* * * * *

ASW TX E2 Galveston, TX [Revised]

Galveston, Scholes Field, TX
(Lat. 29°15′55″ N., long. 94°51′38″ W.)

That airspace extending upward from the surface within a 4.1-mile radius of Scholes Field

* * * * *

Issued in Fort Worth, TX, on July 12, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–18572 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–19]

Amendment to Class E Airspace; Decorah, IA

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace area at Decorah, IA. A Global

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Positioning System (GPS) COPTER 339° Point in Space, Standard Instrument Approach Procedure (SIAP) has been developed to serve Winneshiek County Memorial Hospital Heliport, Decorah, IA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate aircraft executing the SIAP. This action revises existing controlled airspace for Decorah, IA, in order to include the Point in Space SIAP serving Winneshiek County Memorial Hospital Heliport.

EFFECTIVE DATE: 0901 UTC September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On April 20, 1999, the FAA proposed to amend 14 CFR part 71 of the Federal Regulations (14 CFR part 71) by amending the Class E airspace area at Decorah, IA (64 FR 19317). The proposed action would provide additional controlled airspace to accommodate aircraft executing the Point in Space SIAP.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Rule

This amendment to 14 CFR part 71 of the Federal Regulations (14 CFR part 71) amends the Class E airspace area at Decorah, IA, by providing additional controlled airspace for aircraft executing the COPTER 339° Point in Space SIAP. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Decorah, IA [Revised]

Decorah Municipal Airport, IA
(Lat. 43°16′32″N., long. 91°44′22″W.)
Waukon VORTAC
(Lat. 43°16′48″N., long. 91°32′15″W.)
Decorah NDB
(Lat. 43°16′32″N., long. 91°44′11″W.)
Winneshiek County Memorial Hospital, IA Point in Space Coordinates
(Lat. 43°16′57″N., long. 91°45′56″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Decorah Municipal Airport and within 2.0 miles each side of the 267° radial of the Waukon VORTAC extending from the 6.4-mile radius to the VORTAC and within 2.6 miles each side of the 122° bearing from the Decorah NDB extending from the 6.4-mile radius to 7.0 miles southeast of the airport, and within a 6.0-mile radius of the Point in Space serving Winneshiek County Memorial Hospital.

* * * * *

Issued in Kansas City, MO on May 20, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–18568 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 98–ASO–11]

RIN 2120–AA66

Change Name of Using Agency for Restricted Areas R–2102A, R–2102B, and R–2102C; AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the name of the using agency for Restricted Areas R–2102A, R–2102B, and R–2102C, Fort McClellan, AL, from "Commanding Officer, Fort McClellan, AL," to "Alabama Army National Guard." This change is required due to the closure of Fort McClellan as an active duty Army installation. As a result of this change, the Army National Guard assumes "using agency" responsibilities for the restricted areas.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

Fort McClellan is being closed as an active duty Army installation as a result of the Defense Base Realignment and Closure process. As part of that effort, the Alabama Army National Guard will assume control of all of the existing restricted airspace associated with Fort McClellan and the Pelham Range (R–2102A, R–2102B, R–2102C). These restricted areas are used for training to maintain and increase the combat readiness of National Guard and Reserve forces. By this action, the Alabama Army National Guard is being designated as the using agency for the restricted areas.

The Rule

This action amends 14 CFR part 73 by changing the name of the using agency for Restricted Areas R–2102A, R–2102B, and R–2102C, from "Commanding Officer, Fort McClellan, AL," to "Alabama Army National Guard." Although Fort McClellan is closing as an active duty Army installation, there is a continuing requirement for the existing restricted airspace to accommodate ongoing National Guard and Reserve forces readiness training.

Since this administrative change will not alter the boundaries, altitudes, time of designation for the restricted areas or the activities conducted therein; I find that notice and public procedure under 5 U.S.C 553(b) are unnecessary.

Section 73.21 of part 73 was republished in FAA Order 7400.8F, dated October 27, 1998.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action involves a minor administrative change to amend the name of the using agency of existing restricted areas. There are no changes to the dimensions of the restricted areas, or to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.21 [Amended]

2. § 73.21 is amended as follows:

* * * * *

R–2102A, R–2102B, R–2102C Fort McClellan, AL [Amended]

By removing "Using agency. Commanding Officer, Fort McClellan, AL," and adding "Using agency. Alabama Army National Guard."

* * * * *

Issued in Washington, DC, on July 14, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–18567 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 600

[Docket No. 981228324–9168–02; I.D. 121697A]

RIN 0648–AJ70

Magnuson-Stevens Fishery Conservation and Management Act; Amendment of Foreign Fishing Regulations; OMB Control Numbers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the foreign fishing regulations to provide for the issuance of certain transshipment permits under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA), and to update permit application and issuance procedures applicable to all types of foreign fishing permits issued under the Magnuson-Stevens Act.

DATES: Effective August 20, 1999.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, 301–713–2276.

SUPPLEMENTARY INFORMATION: Regulations at 50 CFR part 600, subpart F, govern foreign fishing under the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Among other things, the regulations establish procedures for permit application and issuance under section 204(b) of the Magnuson-Stevens Act. Under these regulations, foreign fishing vessels may be permitted to fish in the U.S. Exclusive Economic Zone (EEZ). Until the SFA (Pub. L. 104–297) established section 204(d) of the Magnuson-Stevens Act, all foreign fishing applications were submitted under section 204(b) of the Magnuson-Stevens Act.

Section 204(d) of the Magnuson-Stevens Act authorizes the Assistant Administrator for Fisheries (AA) to issue transshipment permits authorizing foreign vessels to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the EEZ or, with the concurrence of a state, within the boundaries of that state, to a point outside the United States. Issuance of a permit to a foreign vessel to receive fish or fish products at sea within the boundaries of a state is subject to certain conditions and restrictions and contingent upon the concurrence of the involved state.

Shortly after passage of the SFA, it was necessary for NMFS to issue permits within a short timeframe to certain Canadian vessels under section 204(d) of the Magnuson-Stevens Act. It was determined at the time that NMFS had the authority to issue the permits without first amending the existing foreign fishing regulations to specifically provide the procedures for permit application and issuance under section 204(d). After obtaining an initial "worksheet" adjustment for the collection of 204(d) application information from the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), NMFS issued permits to the Canadian vessels and has subsequently issued several other permits under section 204(d) of the Magnuson-Stevens Act.

Although the determination was made that NMFS could issue 204(d) permits before amending the foreign fishing regulations to establish procedures for permit application and issuance, the SFA implementation plan anticipated the eventual amendment of the regulations to establish such procedures. To this end, NMFS published a proposed rule on April 5, 1999 (64 FR 16414). The proposed rule discussed a number of revisions to be made to the foreign fishing regulations at 50 CFR part 600, subpart F, to provide for permit application and issuance procedures under section 204(d) of the Magnuson-Stevens Act. Additionally, several revisions to the foreign fishing regulations were proposed to update provisions applicable to all types of foreign fishing permits issued under the

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Magnuson-Stevens Act. Readers should refer to the proposed rule for information on the specific revisions.

One individual submitted comments on the proposed rule. The comments are summarized as follows:

Comment 1: During 1998 certain U.S. vessels missed "the opportunity to supply fish" to foreign processor vessels during a joint venture (JV) for Atlantic mackerel because the freezers of the foreign processing vessels were filled to capacity with processed product while the vessels were "waiting for refrigerated cargo vessels to be permitted" under section 204(d) of the Magnuson-Stevens Act.

Response: All permits issued under section 204(d) of the Magnuson-Stevens Act in support of the JV in question were issued within 14 to 21 days of receipt of the applications. NMFS has always carried out its role in permit processing under the Magnuson-Stevens Act with as much expediency as possible. However, given the multi-agency review process, the vagaries of fishing, weather and trade, and the resultant inability of applicants to know precisely when they will need to transship, NMFS cannot guarantee there will not be occasions when applicants are ready to transship before NMFS has had time to properly process an application and, if appropriate, issue a permit.

Comment 2: Two weeks is usually as far in advance as it is possible to contract with cargo vessel operators for a specific vessel to transship, yet under the proposed regulations applicants will have to wait for a 90 day process to obtain a permit for a transshipment vessel.

Response: The 90 day period is not an absolute requirement, but rather a limit of time to allow for application processing in complex situations. Most transshipment applications, whether submitted under section 204(d) or 204(b) of the Magnuson-Stevens Act, are processed within 14 to 21 days of receipt of an application. While the mere submission of an application does not guarantee issuance of a permit, NMFS expects that most transshipment permits issued will be issued within a similar timeframe in the future, particularly in cases where the applicant vessels will be supporting foreign or domestic processors engaged in previously approved activities. NMFS realizes this time period is still potentially longer than the commenter reports is usually possible for advance notice. However, while NMFS is appreciative of the possible difficulties some applicants may face in locating a transport vessel far enough in advance of an anticipated transshipping date, given the time necessary for NMFS to make all the statutorily required determinations identified at section 204(d)(3) of the Magnuson-Stevens Act, NMFS cannot guarantee that issuance of permits will always be possible within an applicant's desired timeframe.

Comment 3: There are no U.S. refrigerated cargo transport vessels operating on the East Coast of the United States available to transship and transport JV product; therefore, the proposed application processing procedures, including the intention of NMFS to publish a notice of receipt of each application in the **Federal Register**, will create unnecessary delays in the permitting process.

Response: Section 204(d)(3)(D) of the Magnuson-Stevens Act provides that an application may not be approved until a determination is made that "no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated * * * an interest in performing the transportation at fair and reasonable rates." Even assuming there are no U.S. refrigerated cargo transports of the type needed to support a JV currently operating on the East Coast, this may not always be the case. Thus, NMFS believes that publishing a notice of receipt of an application in the **Federal Register** is the best means of making the determination in accordance with section 204(d)(3)(D) of the Magnuson-Stevens Act because publication in the **Federal Register** provides official notice to all interested parties. NMFS must also consult with multiple agencies during the processing of each application. NMFS believes the proposed procedures will enable it to process applications in the most expedient manner possible and in compliance with all applicable requirements of the Magnuson-Stevens Act. Accordingly, NMFS believes the proposed processing procedures are appropriate and should not be changed.

Comment 4: Clarification is requested as to whether applications under section 204(d) of the Magnuson-Stevens Act must be submitted by official representatives of nations having a Governing International Fishery Agreement (GIFA) with the United States.

Response: Applications for permits under section 204(d) of the Magnuson-Stevens Act may be submitted by any person. The applicant vessel does not have to be of a nation that has a GIFA with the United States.

In summary, NMFS does not believe any changes are necessary to the regulations as proposed on April 5, 1999 (64 FR 16414). The regulations as proposed are necessary to properly administer foreign fishing under the applicable provisions of the Magnuson-Stevens Act. Further, nothing in the revised foreign fishing regulations precludes issuance of transshipment permits submitted under section 204(d) of the Magnuson-Stevens Act within 14 to 21 days of receipt of an application. Accordingly, the regulations as proposed are adopted as final.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

As noted in the proposed rule, this action directly relates to two collection-of-information requirements subject to the PRA: application information and vessel reporting requirements. This action is also indirectly related to another collection of information under the PRA which was recently assigned a new OMB control number for administrative purposes: vessel identification requirements. Additionally, NMFS is updating a reference to a collection of information under the PRA not directly related to this action which, for administrative purposes, was recently assigned a new OMB control number: gear identification. The collections of information, all of which have been approved by OMB, are as follows:

(1) *Approved under OMB control number 0648–0089*—Application form for foreign fishing permits, including those to be issued under section 204(d) of the Magnuson-Stevens Act; estimated at 45 minutes per response.

(2) *Approved under OMB control number 0648–0075*—Reporting by vessels operating under foreign fishing permits, including those issued under section 204(d) of the Magnuson-Stevens Act; estimated at 6 minutes per response.

(3) *Approved under OMB control number 0648–0356*—Vessel identification requirements for vessels operating under foreign fishing permits, including those issued under section 204(d) of the Magnuson-Stevens Act; estimated at 45 minutes per response.

(4) *Approved under OMB control number 0648–0354*—Gear identification requirements for vessels operating under foreign fishing permits issued under section 204(b) of the Magnuson Stevens Act; estimated at 1.25 hours per response. This collection of information was recently renewed for administrative purposes only; at the present time there are no species available for foreign directed fishing.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 600

Fisheries, Fishing, Foreign relations, Intergovernmental relations.

Dated: July 15, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, in paragraph (b), in the table, under 50 CFR, the entry for § 600.503, is amended by removing the control numbers "–0305 and –0306" and adding the control numbers "–0354 and –0356" in their place to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
50 CFR	
§ 600.503	–0354 and –0356

50 CFR Chapter VI

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

3. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

4. In § 600.501, paragraph (c) introductory text, and paragraphs (d)(1), (d)(4), (e) and (k) are revised, and paragraph (c)(10) is added to read as follows:

§ 600.501 Vessel permits.

* * * * *

(c) *Activity codes.* Permits to fish under this subpart may be issued by the Assistant Administrator for the activities described in this paragraph, but the permits may be modified by regulations of this subpart and by the conditions and restrictions attached to the permit (see paragraphs (e)(1)(v) and (l) of this section). The Assistant Administrator may issue a permit, as appropriate, for one or more of the activity codes listed. Only vessels of nations having a GIFA with the United States may be issued permits for activity codes 1 through 9. A GIFA is not required for a vessel to be issued a permit for activity code 10. The activity codes are described as follows:

* * * * *

(10) *Activity Code 10.* Transshipping at sea for the purpose of transporting fish or fish products from a point within the EEZ or, with the concurrence of a state, within the boundaries of that state, to a point outside the United States.

(d) *Application.* (1) Applications for FFV permits authorizing activity codes 1 through 9 must be submitted by an official representative of a foreign nation to the DOS. Applications for permits authorizing activity codes 1 through 9 are available from, and should be submitted to, DOS, OES/OMC, Washington, DC 20520. Applications for FFV permits authorizing activity code 10 may be submitted by any person to the Assistant Administrator. Applications for permits authorizing activity code 10 are available from NMFS, Attn: International Fisheries Division, 1315 East West Highway, Silver Spring, Maryland 20910. All applicants should allow 90 days for review and comment by the public, involved governmental agencies, and appropriate Councils and for processing before the anticipated date to begin fishing. The permit application fee must be paid at the time of application according to § 600.518.

* * * * *

(4) Each applicant may request to substitute one FFV for another of the same flag by submitting a new application form and a short explanation of the reason for the substitution to the appropriate address listed at paragraph (d)(1) of this section. Each substitution is considered a new application, and a new application fee must be paid. NMFS will promptly process an application for a vessel replacing a permitted FFV that is disabled or decommissioned, once the appropriate Council(s) and governmental agencies have been notified of the substituted application.

(e) *Issuance.* (1) Permits may be issued to an FFV by the Assistant Administrator after—

(i) The Assistant Administrator determines that the fishing described in the application will meet the requirements of the Magnuson-Stevens Act and approves the permit application.

(ii) The applicant has paid the fees and provided any assurances required by the Secretary in accordance with the provisions of § 600.518.

(iii) The applicant has appointed an agent.

(iv) The applicant has identified a designated representative.

(v) The applicant has accepted the general "conditions and restrictions" of receiving permits, as required by section 204(b)(7) of the Magnuson-Stevens Act, and any "additional restrictions" attached to the permit for the conservation and management of fishery resources or for the prevention of significant impairment of the national defense or security interests.

(2) The DOS will provide permits for activity codes 1 through 9 to the official representative of the applicant foreign nation. The Assistant Administrator will provide permits for activity code 10 directly to the applicant.

(3) An approved permit will contain—

(i) The name and IRCS of the FFV and its permit number. (ii) The permitted fisheries and/or activity codes.

(iii) The date of issuance and expiration date, if other than December 31.

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(iv) All conditions and restrictions, and any additional restrictions and technical modifications appended to the permit.

(4) Permits are not issued for boats that are launched from larger vessels. Any enforcement action that results from the activities of a launched boat will be taken against the permitted vessel.

* * * * *

(k) *Change in application information.* The applicant must report, in writing, any change in the information supplied under paragraph (d) of this section to the Assistant Administrator within 15 calendar days after the date of the change. Failure to report a change in the ownership from that described in the current application within the specified time frame voids the permit, and all penalties involved will accrue to the previous owner.

* * * * *

5. In § 600.502, paragraph (a) is revised, and a new paragraph (h) is added to read as follows:

§ 600.502 Vessel reports.

(a) The operator of each FFV must report the FFV's activities to the USCG and NMFS as specified in this section.

* * * * *

(h) *Alternative reporting procedures.* As an alternative to the use of the specific procedures provided, an applicant may submit proposed reporting procedures for a general type of fishery operation (i.e., transshipments under Activity Code 10) to the appropriate Regional Administrator and the USCG commander (see tables 1 and 2 to § 600.502 of this chapter). With the agreement of the USCG commander, the Regional Administrator may authorize the use of alternative reporting procedures.

* * * * *

6. In § 600.505, paragraphs (a)(8), (a)(9), and (b)(1) are revised to read as follows:

§ 600.505 Prohibitions.

(a) * * *

(8) Engage in any fishing activity within the EEZ without a U.S. observer aboard the FFV, unless the requirement has been waived by the Assistant Administrator or appropriate Regional Administrator;

(9) Retain or attempt to retain, directly or indirectly, any U.S. harvested fish, unless the FFV has a permit for Activity Codes 4, 6, or 10;

* * * * *

(b) * * *

(1) Within the boundaries of any state, unless:

(i) The fishing is authorized by the Governor of that state as permitted by section 306(c) of the Magnuson-Stevens Act to engage in a joint venture for processing and support with U.S. fishing vessels in the internal waters of that state; or

(ii) The fishing is authorized by, and conducted in accordance with, a valid permit issued under § 600.501, and the Governor of that state has indicated concurrence to allow fishing consisting solely of transporting fish or fish products from a point within the boundaries of that state to a point outside the United States; or

* * * * *

7. In § 600.506, the last sentence in paragraph (a) and the first sentence in paragraph (b) introductory text are revised to read as follows:

§ 600.506 Observers.

(a) * * * Except as provided for in section 201(h)(2) of the Magnuson-Stevens Act, no FFV may conduct fishing operations within the EEZ unless a U.S. observer is aboard.

(b) *Effort plan.* To ensure the availability of an observer as required by this section, the owners and operators of FFV's wanting to fish within the EEZ will submit to the appropriate Regional Administrator or Science and Research Director and also to the Chief, Financial Services Division, NMFS, 1315 East West Highway, Silver Spring, MD 20910 a schedule of fishing effort 30 days prior to the beginning of each quarter. * * *

* * * * *

8. In § 600.508, paragraph (g) is added to read as follows:

§ 600.508 Fishing operations.

* * * * *

(g) *Transshipping.* Each FFV with Activity Code 1, 2, 3, 4, 5, 6, 7. 8, or 10 may transship in accordance with this subpart and the vessel's permit.

9. In § 600.518, paragraph (c) is removed, paragraphs (d) and (e) are redesignated as paragraphs (c) and (d) respectively, and paragraph (a), (b)(1) introductory text, (b)(2) heading, and (b)(2)(i) introductory text are revised to read as follows:

§ 600.518 Fee schedule for foreign fishing.

(a) *Permit application fees.* Each vessel permit application submitted under § 600.501 must be accompanied by a fee. The amount of the fee will be determined in accordance with the procedures for determining administrative costs of each special product or service contained in the NOAA Finance Handbook, which is available upon request from the International Fisheries Division (see address at § 600.501(d)(1)). The fee is specified with the application form. At the time the application is submitted, a check for the fees, drawn on a U.S. bank, payable to the order of "Department of Commerce, NOAA," must be sent to the Assistant Administrator. The permit fee payment must be accompanied by a list of the vessels for which the payment is made. In the case of applications for permits authorizing activity code 10, the permit application fee will be waived if the applicant provides satisfactory documentary proof to the Assistant Administrator that the foreign nation under which the vessel is registered does not collect a fee from a vessel of the United States engaged in similar activities in the waters of such foreign nation. The documentation presented (e.g., copy of foreign fishing regulations applicable to vessels of the United States) must clearly exempt vessels of the United States from such a fee.

(b) *Poundage fees.* (1) *Rates.* If a Nation chooses to accept an allocation, poundage fees must be paid at the rate specified in the following table:

* * * * *

(2) *Method of payment of poundage fees and observer fees.* (i) If a Nation chooses to accept an allocation, a revolving letter of credit (L/C) must be established and maintained to cover the poundage fees for at least 25 percent of the previous year's total allocation at the rate in paragraph (b)(1) of this section, or as determined by the Assistant Administrator, plus the observer fees required by paragraph (c) of this section. The L/C must—

* * * * *

[FR Doc. 99–18642 Filed 7–20–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8829]

RIN 1545–AW87

Compromises

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide additional guidance regarding the compromise of internal revenue taxes. The temporary regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998 and the Taxpayer Bill of Rights II. The text of these temporary regulations serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective date.* These temporary regulations are effective July 21, 1999.

Applicability date. For dates of applicability, see § 301.7122–1T(j) of these regulations.

FOR FURTHER INFORMATION CONTACT: Carol A. Campbell, (202) 622–3620 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 7122 of the Internal Revenue Code (Code). The regulations reflect the amendment of section 7122 by section 3462 of the Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA 1998") Public Law 105–206, (112 Stat. 685, 764) and by section 503 of the Taxpayer Bill of Rights II Public Law 104–168, (110 Stat. 1452, 1461).

As amended by RRA 1998, section 7122 provides that the Secretary will develop guidelines to determine when an offer to compromise is adequate and should be accepted to resolve a dispute. The legislative history accompanying RRA 1998 explains that Congress intended that factors such as equity, hardship, and public policy be evaluated in the compromise of individual tax liabilities, in certain circumstances, if such consideration would promote effective tax administration. H. Conf. Rep. 599, 105th Cong., 2d Sess. 289 (1998).

The current regulations under Treasury regulation § 301.7122–1 permit the compromise of cases on only the grounds of doubt as to collectibility, doubt as to liability, or both. These regulations are being removed. Like the current regulations, the temporary regulations provide for compromise based on doubt as to liability and doubt as to collectibility; however, they also provide for compromise based upon specific hardship and/or equitable criteria if such a compromise would promote effective tax administration. The inclusion in these regulations of a standard that will allow compromise on grounds other than doubt as to liability or doubt as to collectibility represents a significant change in the IRS' exercise of compromise authority.

Section 7122 of the Code provides broad authority to the Secretary to compromise any case arising under the internal revenue laws, as long as the case has not been referred to the Department of Justice for prosecution or defense. Although the statutory language of Section 7122 does not explicitly place limits on the Secretary's authority to compromise, opinions of the Attorney General and the regulations issued under section 7122 prior to RRA 1996 authorized the Secretary to compromise a liability under the revenue laws only when there was doubt as to liability (uncertainty as to the existence or amount of the tax obligation) or doubt as to collectibility (uncertainty as to the taxpayer's ability to pay). The opinion of the Attorney General most often cited as the principal source of these limitations is the 1933 opinion of Attorney General Cummings that was issued in response to an inquiry from then Acting Secretary of the Treasury Acheson.

In requesting an opinion from the Attorney General, Acting Secretary of the Treasury Acheson expressed concern that the country was trying to recover from the depression. He suggested that the public interest required compromise of tax claims where collection of the tax would "destroy a business, ruin a tax producer, throw men out of employment, or result in the impoverishment of widows or minor children of a deceased taxpayer." The Secretary expressed the belief that in ordinary times, compromise of cases on public policy grounds should be rare but that, in light of the current state of the country, public policy should play a significantly greater role. Expressing the belief that it was more important that "the business of the taxpayer be preserved and not destroyed," Acting Secretary Acheson suggested that cases should be compromised where the taxpayer is insolvent, even though the tax is fully collectible, and that penalties and certain interest charges should be "compromisable wherever justice, equity, or public policy seems to justify the compromise * * *." Letter from Treasury Department, XIII–47–7137 (July 31, 1933).

Attorney General Cummings replied that "[t]here is much to be said for the proposition that a liberal rule should exist, but my opinion is that if such a course is to be taken it should be at the instance of Congress. I conclude that where liability has been established by a valid judgment or is certain, and there is no doubt as to the ability of the Government to collect, there is no room for 'mutual concessions,' and therefore no basis for a 'compromise.'" Op. Atty. Gen. 6, XIII–47–7138 (October 24, 1933). See also Op. Atty. Gen. 7, XIII–47–7140 (October 2, 1934), wherein Attorney General Cummings stated that "[t]here appears to be no statutory authority to compromise solely upon the ground that a hard case is presented, which excites sympathy or is merely appealing from the standpoint of equity, but the power to compromise clearly authorizes the settlement of any case about which uncertainty exists as to liability or collection."

Although the 1933 opinion of Attorney General Cummings is the most often cited opinion regarding the limits of the IRS' compromise authority (prior to RRA 1998), the conclusion he reached mirrored conclusions reached by a number of his predecessors. Thus, since 1868, a number of Attorneys General opined that when liability is not at issue, the Secretary's compromise authority permitted compromise only when "the full amount of the debt" could not be collected. See, *e.g.*, 12 Op. Atty. Gen. 543 (1868); 16 Op. Atty. Gen. 617 (1879) (the Secretary's authority to compromise does not permit the "voluntary relinquishment" of any part of a lawfully assessed tax from a solvent person or corporation).

Following the issuance of Attorney General Cummings' 1933 opinion, Commissioner Helvering established a policy that IRS tax collectors should make every endeavor to secure offers that represent the taxpayer's "maximum capacity to pay." Commissioner's Statement of Policy with Respect to the Compromise of Taxes, Interest, and Penalties, July 2, 1934. Commissioner Helvering recognized that the Attorney General's opinion did not specify or quantify the amount of doubt necessary to compromise, but concluded that "* * * the Treasury Department does not propose to compromise when there is merely the possibility of doubt. The doubt as to liability or collectibility must be supported by evidence and must be substantial in character, and when such doubt exists, the amount acceptable will depend upon the degree of doubt found in the particular case." *Id.* Implementing the policy established by Commissioner Helvering, the IRS concluded that an offer premised upon doubt as to collectibility should be accepted only when the amount offered represented the maximum amount the taxpayer could pay, taking into account net equity in assets and both current and future income.

The interpretation of section 7122 adopted by Attorney General Cummings (and reflected in Treasury reg. § 301.7122–1(a)), together with the "maximum capacity to pay" policy

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established by Commissioner Helvering, have been the fundamental guiding principles for IRS offer in compromise programs for the past 65 years. From the 1930's to the early 1990's, offers to compromise were not widely used to resolve tax cases. In the early 1990s, however, the IRS determined that expanded use of offers to compromise could contribute to more effective tax administration in two important respects. First, the IRS determined that compromise could be used as a technique to enhance overall compliance by providing taxpayers with a reasonable avenue to resolve past difficulties. Second, the IRS determined that it should make more effective use of offers to compromise to help manage the inventory of delinquent tax accounts. Accordingly, while still operating within the basic legal and policy guidelines established in the 1930's, the IRS initiated two significant changes intended to enhance the compromise program.

In 1992, the IRS adopted a new compromise policy and issued revised compromise procedures. The policy provides that an offer to compromise will be accepted when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential. As set forth in the new policy statement, the goal of the compromise program is to achieve collection of what is potentially collectible at the earliest possible time and at the least cost to the government while providing taxpayers with a fresh start toward future voluntary compliance. Policy Statement, P–5–100. In administering its policies under the offer program, the threshold question of "doubt as to liability or doubt as to collectibility" set forth in the regulations constituted a legal requirement that must be followed; once that threshold was met, however, the IRS could legally accept less than the taxpayer's maximum capacity to pay. References in the offer procedures to "maximizing collection" and "maximum capacity to pay" were replaced with "reasonably reflects collection potential." Id.

In determining whether an offer reasonably reflects collection potential, the IRS takes into consideration amounts that might be collected from (1) The taxpayer's assets, (2) the taxpayer's present and projected future income, and (3) third parties (*e.g.*, persons to whom the taxpayer had transferred assets). Although most doubt as to collectibility offers only involve consideration of the taxpayer's equity in assets and future disposable income over a fixed period of time, the IRS on occasion also will consider whether the taxpayer should be expected to raise additional amounts from assets in which the taxpayer's interest is beyond the reach of enforced collection (*e.g.*, interests in property located in foreign jurisdictions or held in tenancies by the entirety). IRM 57(10)(10).1.

The compromise program was also affected by a 1995 IRS initiative designed to ensure uniform treatment of similarly situated taxpayers. In administering its collection operations, including both the installment agreement program and the compromise program, the IRS has always permitted taxpayers to retain sufficient funds to pay reasonable living expenses. Certain commentators had asserted that there were wide variances in the type and amount of such reasonable expense allowances within and between districts. In September of 1995, the IRS adopted and published national and local standards for determining allowable expenses, designed to apply to all collection actions, including offers to compromise. National expense standards derived from the Bureau of Labor Statistics Consumer Expenditure Survey were promulgated for expense categories such as food, clothing, personal care items, and housekeeping supplies. Local expense standards derived from Census Bureau data were promulgated for housing, utilities, and transportation.

The IRS allowable expense criteria play an important role in determining whether taxpayers are candidates for compromise or installment agreements. Although offers to compromise and installment agreements are separate mechanisms for resolving outstanding tax liabilities, there often is a significant interplay between the two programs, because a taxpayer's income available to satisfy the tax liability is determined after the deduction of allowable expenses. In some cases, the allowable expense criteria may be the determining factor in whether the taxpayer receives an installment agreement or a compromise. An installment agreement must provide for payment in full of the amount of the outstanding liability through regular, periodic payments (generally monthly). I.R.C. § 6159. An offer to compromise, by contrast, reflects the fact that the taxpayer has no ability to pay the liability in full. Accordingly, taxpayers entering into compromise agreements can pay an amount less than the full amount due in satisfaction of the liability.

Congress now has directed the Secretary to consider factors other than doubt as to collectibility and doubt as to liability in determining whether to accept an offer to compromise. Under § 7122(c), added by RRA 1998, factors such as equity, hardship, and public policy will be considered in certain circumstances where such consideration will promote effective tax administration. The legislative history of this provision (H. Conf. Rep. 599, 105th Cong., 2d Sess. 289 (1998)) states that—

> * * * the conferees expect that the present regulations will be expanded so as to permit the IRS, in certain circumstances, to consider additional factors (*i.e.*, factors other than doubt as to liability or collectibility) in determining whether to compromise the income tax liabilities of individual taxpayers. For example, the conferees anticipate that the IRS will take into account factors such as equity, hardship, and public policy where a compromise of an individual taxpayer's income tax liability would promote effective tax administration. The conferees anticipate that, among other situations, the IRS may utilize this new authority, to resolve longstanding cases by forgoing penalties and interest which have accumulated as a result of delay in determining the taxpayer's liability. The conferees believe that the ability to compromise tax liability and to make payments of tax liability by installment enhances taxpayer compliance. In addition, the conferees believe that the IRS should be flexible in finding ways to work with taxpayers who are sincerely trying to meet their obligations and remain in the tax system. Accordingly, the conferees believe that the IRS should make it easier for taxpayers to enter into offer-in-compromise agreements, and should do more to educate the taxpaying public about the availability of such agreements.

Another consideration for compromise cases is Chief Counsel review. Since its enactment in section 102 of the Act of July 20, 1868 (15 Stat. 166), the statute authorizing the Secretary to compromise liabilities has contained a requirement that Counsel issue opinions regarding certain of those compromises. Section 7122(b) of the Code requires that the opinion of Counsel, with the reasons therefor, be placed on file whenever a compromise is made by the IRS. Chief Counsel opinions assess both whether the offer meets the legal requirements for compromise and whether the offer conforms to IRS policy and procedure. The opinion provided by Chief Counsel, however, does not have to be in favor of compromise. Pursuant to delegated authority, district directors, service center directors, and regional directors of Appeals have the authority to accept an offer that Counsel has opined does not conform to IRS policy.

Until passage of the Taxpayer Bill of Rights II (TBOR 2), Chief Counsel review was required in all cases in which the liability compromised was $500 or more. Under TBOR 2, such an opinion is required only in cases where the compromised liability is $50,000 or more.

Explanation of Provisions

The temporary regulations continue the traditional grounds for compromise based on doubt as to liability or doubt as to collectibility. In addition, to reflect the changes made in RRA 1998, the temporary regulations allow a compromise where there is no doubt as to liability or as to collectibility, but where either: (1) Collection of the liability would create economic hardship, or (2) exceptional circumstances exist such that collection of the liability would be detrimental to voluntary compliance. Compromise based on these hardship and equity bases may not, however, be authorized if it would undermine compliance. Although the temporary regulations set forth the conditions that must be satisfied to accept an offer to compromise liabilities arising under the internal revenue laws, they do not prescribe the terms or conditions that should be contained in such offers. Thus, the amount to be paid, future compliance or other conditions precedent to satisfaction of a liability for less than the full amount due are matters left to the discretion of the Secretary.

The temporary regulations also add provisions relating to the promulgation of requirements for providing for basic living expenses, evaluating offers from low income taxpayers, and reviewing rejected offers, as required by RRA 1998. The temporary regulations also add provisions relating to staying collection, modifying the dollar criteria for requiring the opinion of Chief Counsel in accepted offers, and setting forth the requirements regarding waivers and suspensions of the statute of limitations. Except for the provision related to dollar criteria for Chief Counsel review, all of the additional provisions of § 301.7122–1T are authorized by RRA 1998. The modification of dollar criteria for Chief Counsel review is authorized by section 503(a) of the Taxpayer Bill of Rights II.

As required by § 7122(c)(2)(A) and (B), added by RRA 1998, the temporary regulations provide for the development and publication of national and local living allowances that permit taxpayers entering into offers to compromise to have an adequate means to provide for their basic living expenses. The determination whether the published standards should be applied in any particular case must be based upon an evaluation of the individual facts and circumstances presented. The Secretary will determine the appropriate means to publish these national and local living allowances.

In accordance with § 7122(c)(3)(A), the temporary regulations also require the development of supplemental guidelines for the evaluation of offers from "low income" taxpayers. The temporary regulations permit the Secretary to determine which taxpayers qualify as "low income" taxpayers based upon current dollar criteria applied by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981, or any other measure reasonably designed to identify such taxpayers.

In accordance with § 7122(d)(1), the temporary regulations provide that all proposed rejections of offers to compromise will receive independent administrative review prior to final rejection. Section 7122(d)(2) requires and the temporary regulations also provide that the taxpayer has the right to appeal any rejection of an offer to compromise to the IRS Office of Appeals. The temporary regulations provide, however, that when the IRS returns an offer to compromise because it was not processable under IRS procedures, because the offer was submitted solely to delay collection or because the taxpayer failed to provide requested information required by the IRS to evaluate the offer, such a return of the offer does not constitute a rejection and thus, does not entitle the taxpayer to appeal rights under this provision. In the event that an offer to compromise is returned under these circumstances and the IRS institutes collection action, the taxpayer may have the right to consideration of the whole of his or her collection case under other provisions of the Code.

Pursuant to section 6331(k) of the Code, as amended by section 3462 of RRA 1998, the temporary regulations also provide that for offers pending on or submitted on or after January 1, 2000, no enforced collection activity may be taken by the IRS to collect a liability while an offer to compromise is pending, or for the 30 days following any rejection of an offer to compromise, or during any period that an appeal of any rejection, when such appeal is instituted within the 30 days following rejection, is being considered. Collection activity will not, however, be precluded in any case where collection is in jeopardy or the offer to compromise was submitted solely to delay collection.

Effective through December 31, 1999, the temporary regulations continue to require the taxpayer to waive the running of the statutory period of limitations on collection as a condition of acceptance of an offer to compromise. Effective January 1, 2000, waivers of the statute of limitations on collection will no longer be required for the acceptance of an offer to compromise. Instead, the statute of limitations for collection will be suspended during the period the offer to compromise is under consideration by the IRS. This provision of the temporary regulations implements section 3461 of RRA 1998.

The temporary regulations also implement section 503(a) of the Taxpayer Bill of Rights II by specifying that Chief Counsel review of an accepted offer to compromise is required only for offers in compromise involving $50,000 or more in unpaid liabilities.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations. Please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register** for the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these temporary regulations is Carol A. Campbell of the Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

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§ 301.7122–1— [Removed]

Par. 2. Section 301.7122–1 is removed.

Par. 3. Section § 301.7122–0T and 301.7211–1T are added to read as follows:

§ 301.7122–0T–2 Table of contents.

This section list the captions that appear in the temporary regulations under § 301.7122–1T.

§ 301.7122–1T Compromises (temporary).

(a) In general.
(b) Grounds for compromise.
(c) Procedures for submission and consideration of offers.
(d) Acceptance of an offer to compromise a tax liability.
(e) Rejection of an offer to compromise.
(f) Effect of offer to compromise on collection activity
(g) Deposits.
(h) Statute of limitations.
(i) Inspection with respect to accepted offers to compromise.
(j) Effective date.

§ 301.7122–1T Compromises (temporary).

(a) *In general.* (1) The Secretary may exercise his discretion to compromise any civil or criminal liability arising under the internal revenue laws prior to reference of a case involving such a liability to the Department of Justice for prosecution or defense.

(2) An agreement to compromise may relate to a civil or criminal liability for taxes, interest, or penalties. Unless the terms of the offer and acceptance expressly provide otherwise, acceptance of an offer to compromise a civil liability does not remit a criminal liability, nor does acceptance of an offer to compromise a criminal liability remit a civil liability.

(b) *Grounds for compromise.* (1) *In general.* The Secretary may compromise a liability on any of the following three grounds.

(2) *Doubt as to liability.* Doubt as to liability exists where there is a genuine dispute as to the existence or amount of the correct tax liability under the law. Doubt as to liability does not exist where the liability has been established by a final court decision or judgment concerning the existence or amount of the liability. See § 301.7122(e)(4) for special rules applicable to rejection of offers in cases where the IRS is unable to locate the taxpayer's return or return information to verify the liability.

(3) *Doubt as to collectibility.* (i) *In general.* Doubt as to collectibility exists in any case where the taxpayer's assets and income are less than the full amount of the assessed liability.

(ii) *Allowable expenses.* A determination of doubt as to collectibility will include a determination of ability to pay. In determining ability to pay, the Secretary will permit taxpayers to retain sufficient funds to pay basic living expenses. The determination of the amount of such basic living expenses will be founded upon an evaluation of the individual facts and circumstances presented by the taxpayer's case. To guide this determination, guidelines published by the Secretary on national and local living expense standards will be taken into account.

(iii) *Nonliable spouses.* (A) *In general.* Where a taxpayer is offering to compromise a liability for which the taxpayer's spouse has no liability, the assets and income of the nonliable spouse will not be considered in determining the amount of an adequate offer, except to the extent property has been transferred by the taxpayer to the nonliable spouse under circumstances that would permit the IRS to effect collection of the taxpayer's liability from such property, *e.g.*, property that was conveyed in fraud of creditors, or as provided in paragraph (b)(3)(iii) (B) of this section. The IRS may, however, request information regarding the assets and/or income of the nonliable spouse for the sole purpose of verifying the amount of and responsibility for expenses claimed by the taxpayer.

(B) *Exception.* Where collection of the taxpayer's liability from the assets and/or income of the nonliable spouse is permitted by applicable state law (*e.g.*, under state community property laws), the assets and income of the nonliable spouse will be considered in determining the amount of an adequate offer except to the extent that the taxpayer and the nonliable spouse demonstrate that collection of such assets and income would have a material and adverse impact on the standard of living of the taxpayer, the nonliable spouse, and their dependents.

(4) *Promote effective tax administration.* If there are no grounds for compromise under paragraphs (b)(2) and (3) of this temporary regulation, a compromise may be entered into to promote effective tax administration when—

(i) Collection of the full liability will create economic hardship within the meaning of § 301.6343–1; or

(ii) Regardless of the taxpayer's financial circumstances, exceptional circumstances exist such that collection of the full liability will be detrimental to voluntary compliance by taxpayers; and

(iii) Compromise of the liability will not undermine compliance by taxpayers with the tax laws.

(iv) *Special rules for evaluating offers to promote effective tax administration.* (A) The determination to accept or reject an offer to compromise made on the ground that acceptance would promote effective tax administration within the meaning of this section will be based upon consideration of all the facts and circumstances, including the taxpayer's record of overall compliance with the tax laws.

(B) Factors supporting (but not conclusive of) a determination of economic hardship under paragraph (b)(4)(i) include—

(*1*) Taxpayer is incapable of earning a living because of a long term illness, medical condition, or disability and it is reasonably foreseeable that taxpayer's financial resources will be exhausted providing for care and support during the course of the condition;

(*2*) Although taxpayer has certain assets, liquidation of those assets to pay outstanding tax liabilities would render the taxpayer unable to meet basic living expenses; and

(*3*) Although taxpayer has certain assets, the taxpayer is unable to borrow against the equity in those assets and disposition by seizure or sale of the assets would have sufficient adverse consequences such that enforced collection is unlikely.

(C) Factors supporting (but not conclusive of) a determination that compromise would not undermine compliance by taxpayers with the tax laws include—

(*1*) Taxpayer does not have a history of noncompliance with the filing and payment requirements of the Internal Revenue Code;

(*2*) Taxpayer has not taken deliberate actions to avoid the payment of taxes; and

(*3*) Taxpayer has not encouraged others to refuse to comply with the tax laws.

(D) *Examples.* The following examples illustrate cases that may be compromised under the provisions of paragraph (b)(4)(i):

Example 1. Taxpayer has assets sufficient to satisfy the tax liability. Taxpayer provides full time care and assistance to her dependent child, who has a serious long-term illness. It is expected that the taxpayer will need to use the equity in her assets to provide for adequate basic living expenses and medical care for her child. Taxpayer's overall compliance history does not weigh against compromise.

Example 2. Taxpayer is retired and his only income is from a pension. The taxpayer's only asset is a retirement account, and the funds in the account are sufficient to satisfy the liability. Liquidation of the retirement account would leave the taxpayer without an adequate means to provide for basic living expenses. Taxpayer's overall compliance history does not weigh against compromise.

Example 3. Taxpayer is disabled and lives on a fixed income that will not, after allowance of adequate basic living expenses, permit full payment of his liability under an installment agreement. Taxpayer also owns a modest house that has been specially equipped to accommodate his disability. Taxpayer's equity in the house is sufficient to permit payment of the liability he owes. However, because of his disability and limited earning potential, taxpayer is unable to obtain a mortgage or otherwise borrow against this equity. In addition, because the taxpayer's home has been specially equipped to accommodate his disability, forced sale of the taxpayer's residence would create severe adverse consequences for the taxpayer, making such a sale unlikely. Taxpayer's overall compliance history does not weigh against compromise.

Example 4. Taxpayer is a business that despite the adoption of a wide array of precautions, including the employment of outside auditors, suffered an embezzlement loss. Although the taxpayer reviewed and signed employment tax returns and signed checks for payment of all employment tax liabilities, the embezzling employee successfully intercepted these checks and diverted the funds. At the time taxpayer discovers the diversions, taxpayer promptly contacts the IRS and begins proceedings to obtain recovery from the employee and the auditor. Taxpayer is unsuccessful in obtaining any recovery from either the employee or the auditor. While taxpayer has accounts receivable that will satisfy the tax delinquencies, taxpayer would be unable to remain in business if those receivables were seized by the IRS. Further, while taxpayer will continue to generate some profit if permitted to remain in business, those profits would not be sufficient to pay the accrued liabilities prior to the time collection of the liabilities became barred by the statute of limitations. Taxpayer's overall compliance history does not weigh against compromise.

(E) The following examples illustrate cases that may be compromised under paragraph (b)(4)(ii):

Example 1. In October of 1986, taxpayer developed a serious illness that resulted in almost continuous hospitalizations for a number of years. The taxpayer's medical condition was such that during this period the taxpayer was unable to manage any of his financial affairs. The taxpayer has not filed tax returns since that time. The taxpayer's health has now improved and he has promptly begun to attend to his tax affairs. He discovers that the IRS prepared a substitute for return for the 1986 tax year on the basis of information returns it had received and had assessed a tax deficiency. When the taxpayer discovered the liability, with penalties and interest, the tax bill is more than three times the original tax liability. Taxpayer's overall compliance history does not weigh against compromise.

Example 2. Taxpayer is a salaried sales manager at a department store who has been able to place $2,000 in a tax-deductible IRA account for each of the last two years. Taxpayer learns that he can earn a higher rate of interest on his IRA savings by moving those savings from a money management account to a certificate of deposit at a different financial institution. Prior to transferring his savings, taxpayer submits an E-Mail inquiry to the IRS at its Web Page, requesting information about the steps he must take to preserve the tax benefits he has enjoyed and to avoid penalties. The IRS responds in an answering E-Mail that the taxpayer may withdraw his IRA savings from his neighborhood bank, but he must redeposit those savings in a new IRA account within 90 days. Taxpayer withdraws the funds and redeposits them in a new IRA account 63 days later. Upon audit, taxpayer learns that he has been misinformed about the required rollover period and that he is liable for additional taxes, penalties and additions to tax for not having redeposited the amount within 60 days. Had it not been for the erroneous advice that is reflected in the taxpayer's retained copy of the IRS E-Mail response to his inquiry, taxpayer would have redeposited the amount within the required 60-day period. Taxpayer's overall compliance history does not weigh against compromise.

(c) *Procedures for submission and consideration of offers.* (1) *In general.* An offer to compromise a tax liability pursuant to section 7122 must be submitted according to the procedures, and in the form and manner, prescribed by the Secretary. An offer to compromise a tax liability must be signed by the taxpayer under penalty of perjury and must contain the information prescribed or requested by the Secretary. However, taxpayers submitting offers to compromise liabilities solely on the basis of doubt as to liability will not be required to provide financial statements.

(2) *When offers become pending and return of offers.* An offer to compromise becomes pending when it is accepted for processing. If an offer accepted for processing does not contain sufficient information to permit the IRS to evaluate whether the offer should be accepted, the IRS will request the taxpayer to provide the needed additional information. If the taxpayer does not submit the additional information that the IRS has requested within a reasonable time period after such a request, the IRS may return the offer to the taxpayer. The IRS may also return an offer to compromise a tax liability if it determines that the offer was submitted solely to delay collection or was otherwise nonprocessable. An offer returned following acceptance for processing is deemed pending only for the period between the date the offer is accepted for processing and the date the IRS returns the offer to the taxpayer. See paragraphs (e)(5)(ii) and (f)(2)(iv) of this temporary regulation for rules regarding the effect of such returns of offers.

(3) *Withdrawal.* An offer to compromise a tax liability may be withdrawn by the taxpayer or the taxpayer's representative at any time prior to the IRS' acceptance of the offer to compromise. An offer will be considered withdrawn upon the IRS' receipt of written notification of the withdrawal of the offer by personal delivery, or by certified mail, or upon issuance of a letter by the IRS confirming the taxpayer's intent to withdraw the offer.

(d) *Acceptance of an offer to compromise a tax liability.* (1) An offer to compromise has not been accepted until the IRS issues a written notification of acceptance to the taxpayer or the taxpayer's representative.

(2) As additional consideration for the acceptance of an offer to compromise, the IRS may request that taxpayer enter into any collateral agreement or post any security which is deemed necessary for the protection of the interests of the United States.

(3) Offers may be accepted when they provide for payment of compromised amounts in one or more equal or unequal installments.

(4) If the final payment on an accepted offer to compromise is contingent upon the immediate and simultaneous release of a tax lien in whole or in part, such payment must be made in accordance with the forms, instructions, or procedures prescribed by the Secretary.

(5) Acceptance of an offer to compromise will conclusively settle the liability of the taxpayer specified in the offer. Neither the taxpayer nor the Government will, following acceptance of an offer to compromise, be permitted to reopen the case except in instances where—

(i) False information or documents are supplied in conjunction with the offer;

(ii) The ability to pay and/or the assets of the taxpayer are concealed; or

(iii) A mutual mistake of material fact sufficient to cause the offer agreement to be reformed or set aside is discovered.

(6) *Opinion of Chief Counsel.* Except as otherwise provided in this paragraph (d)(6), if an offer to compromise is accepted, there will be placed on file the opinion of the Chief Counsel for the IRS with respect to such compromise, along with the reasons therefor. However, no such opinion will be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than

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$50,000. Also placed on file will be a statement of—

(i) The amount of tax assessed;

(ii) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed; and

(iii) The amount actually paid in accordance with the terms of the compromise.

(e) *Rejection of an offer to compromise.* (1) An offer to compromise has not been rejected until the IRS issues a written notice to the taxpayer or his representative, advising of the rejection, the reason(s) for rejection, and the right to an appeal.

(2) The IRS may not notify a taxpayer or taxpayer's representative of the rejection of an offer to compromise until an independent administrative review of the proposed rejection is completed.

(3) *Low income taxpayers.* No offer to compromise received from a low income taxpayer may be rejected solely on the basis of the amount of the offer without evaluating whether that offer meets the criteria in paragraph (b) of this section. For purposes of this paragraph (e)(3), a low income taxpayer is a taxpayer who falls at or below the dollar criteria established by the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981 or such other measure that is adopted by the Secretary.

(4) *Offers based upon doubt as to liability.* Offers submitted on the basis of doubt as to liability cannot be rejected solely because the IRS is unable to locate the taxpayer's return or return information for verification of the liability.

(5) *Appeal of rejection of an offer in compromise.* (i) *In general.* The taxpayer may administratively appeal a rejection of an offer to compromise to the IRS Office of Appeals (Appeals) if, within the 30-day period commencing the day after the date on the letter of rejection, the taxpayer requests such an administrative review in the manner provided by the Secretary.

(ii) *Offer to compromise returned following a determination that the offer was nonprocessable, a failure by the taxpayer to provide requested information, or a determination that the offer was submitted for purposes of delay.* Where a determination is made to return offer documents because the offer to compromise was nonprocessable, because the taxpayer failed to provide requested information, or because the IRS determined that the offer to compromise was submitted solely for purposes of delay under paragraph (c)(2) of this section, the return of the offer does not constitute a rejection of the offer for purposes of this provision and does not entitle the taxpayer to appeal the matter to Appeals under the provisions of this paragraph (e)(5). However, if the offer is returned because the taxpayer failed to provide requested financial information, the offer will not be returned until an independent administrative review of the proposed return is completed.

(f) *Effect of offer to compromise on collection activity.* (1) *Offers submitted prior to and not pending on or after December 31, 1999.* For offers to compromise submitted prior to and not pending on or after December 31, 1999, the submission of an offer to compromise will not automatically operate to stay the collection of any liability. Enforcement of collection may, however, be deferred if the interests of the United States will not be jeopardized thereby.

(2) *Offers pending on or made on or after December 31, 1999.* (i) *In general.* For offers pending on or made on or after December 31, 1999, the IRS will not make any levies to collect the liability that is the subject of the compromise during the period the IRS is evaluating whether such offer will be accepted or rejected, for 30 days immediately following the rejection of the offer, and for any period when a timely filed appeal from the rejection is being considered by Appeals.

(ii) *Revised offers submitted following rejection.* If, following the rejection of an offer to compromise pending on or made on or after December 31, 1999, the taxpayer makes a good faith revision of that offer and submits the revised offer within 30 days after the date of rejection, the IRS will not levy to collect the liability that is the subject of the revised offer to compromise while the IRS is evaluating whether to accept or reject the revised offer.

(iii) *Jeopardy.* The IRS may levy to collect the liability that is the subject of an offer to compromise during the period the IRS is evaluating whether that offer will be accepted if it determines that collection of the liability is in jeopardy.

(iv) *Offers to compromise determined by IRS to be nonprocessable or submitted solely for purposes of delay.* The IRS may levy to collect the liability that is the subject of an offer to compromise at any time after it determines, under paragraph (c)(2) of this section, that a pending offer did not contain sufficient information to permit evaluation of whether the offer should be accepted, that the offer was submitted solely to delay collection, or that the offer was otherwise nonprocessable.

(v) *Offsets under section 6402.* Notwithstanding the evaluation and processing of an offer to compromise, the IRS may, in accordance with section 6402, credit any overpayments made by the taxpayer against a liability that is the subject of an offer to compromise and may offset such overpayments against other liabilities owed by the taxpayer to the extent authorized by section 6402.

(g) *Deposits.* Sums submitted with an offer to compromise a liability or during the pendency of an offer to compromise are considered deposits and will not be applied to the liability until the offer is accepted unless the taxpayer provides written authorization for application of the payments. If an offer to compromise is withdrawn, is determined to be nonprocessable, or is submitted solely for purposes of delay and returned to the taxpayer, any amount tendered with the offer, including all installments paid on the offer, will be refunded without interest. If an offer is rejected, any amount tendered with the offer, including all installments paid on the offer, will be refunded, without interest, after the conclusion of any review sought by the taxpayer with Appeals. Refund will not be required if the taxpayer has agreed in writing that amounts tendered pursuant to the offer may be applied to the liability for which the offer was submitted.

(h) *Statute of limitations.* (1) *Offers submitted prior to and not pending on or after December 31, 1999.* For offers to compromise submitted prior to and not pending on or after December 31, 1999—

(i) If the 10-year period specified in section 6502(a) will expire prior to December 31, 2002, and

(ii) Payments due under the agreement are scheduled to be made after the date upon which the 10-year period specified in section 6502(a) will expire—

no offer will be accepted unless the taxpayer executes a consent to extend the statutory period of limitations on the collection of the liability involved until the date one year subsequent to the date of the last scheduled payment or until December 31, 2002, whichever is earlier.

(2) *Offers pending on or made on or after December 31, 1999.* For offers pending on or made on or after December 31, 1999, the statute of limitations on collection will be suspended while collection is prohibited under paragraph (f)(2) of this section.

(3) For any offer to compromise, the IRS may continue to require, where appropriate, the extension of the statute of limitations on assessment. However, in any case where waiver of the running of the statutory period of limitations on assessment is sought, the taxpayer must be notified of the right to refuse to extend the period of limitations or to limit the extension to particular issues or particular periods of time.

(i) *Inspection with respect to accepted offers to compromise.* For provisions relating to the inspection of returns and accepted offers to compromise, see section 6103(k)(1).

(j) *Effective date.* Except as otherwise provided, this section applies to offers to compromise submitted on or after July 21, 1999, through July 19, 2002.

Charles O. Rossotti,

Commissioner of Internal Revenue.

Approved: July 14, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–18456 Filed 7–19–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD11–99–007]

RIN 2115–AE46

Special Local Regulations and Safety Zone; Northern California Annual Marine Events

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing a number of outdated sections of Special Local Regulations, the marine events regulations, and replacing them with a single section containing an updated master list of recurring marine events in Northern California, for which Special Local Regulations are required. The Special Local Regulations are necessary to control vessel traffic within the immediate vicinity of these marine events to ensure the safety of life and property during each event. The Coast Guard is also adding a master list of recurring fireworks events to the Code of Federal Regulations. These comprehensive, permanent listings will enable mariners and members of the public to better anticipate major marine events and fireworks displays and will also greatly ease the administration of these events by the Coast Guard.

DATES: July 2, 1999.

ADDRESSES: U.S. Coast Guard Group San Francisco, Yerba Buena Island, San Francisco, California 94130–9309, Commander, Coast Guard Group San Francisco maintains the public docket for this rulemaking. The docket will be available for inspection and copying at Group San Francisco between 9 a.m. and 5 p.m., Monday through Friday, except holidays. Please call before visiting.

FOR FURTHER INFORMATION CONTACT: Petty Officer Doug Adams of Coast Guard Group San Francisco, telephone number (415) 399–3440.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 31, 1998, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) for this regulation in the **Federal Register** (63 FR 46206). The comment period ended October 30, 1998. The Coast Guard received no comments on the proposal. A public hearing was not requested and no hearing was held.

Good cause exists for making this rule effective prior to publication of the Final Rule because the events necessitating these Special Local Regulations will occur throughout the summer beginning with various firework displays in July. Consequently, the marine events and fireworks events would occur prior to the effective date of this regulation if the regulation did not become effective until 30 days after publication of this Final Rule in the **Federal Register**, jeopardizing the safety of lives and property of event participants and spectators.

The Coast Guard has made two minor changes to the final rule that were initiated at the request of sponsors after the publication of the NPRM (CGD11–98–007) in 63 FR 46206. The Coast Guard has changed Table 1 of 33 CFR part 100 to reflect the new name of the fireworks event sponsored annually on the last Saturday of May by KFOG Radio, San Francisco. The Coast Guard has changed the table to reflect the change in event name from "KFOG Sky Concert" to "KFOG KaBoom." The Coast Guard has also changed the location of the safety zone for San Francisco Chronicle Fireworks Display sponsored annually by the San Francisco Chronicle on July 4. The Coast Guard was notified by the San Francisco Chronicle that there was a need for safety zone around a second barge located in the vicinity of Aquatic Park. Rather than increase the size of the safety zone published in the NPRM to include the waters surrounding Aquatic Park, the Coast Guard has replaced the safety zone with two smaller safety zones. Each zone will encompass the navigable waters within 1,000 feet of each launch platform, thereby decreasing the burden on the boating public. The safety zone around the barge near Pier 39 will encompass the waters within a 1,000 foot radius of the barge, which will be located at approximately 37°48′49.0″N, 122°24′46.5″W. The safety zone near Aquatic Park will encompass the navigable waters within a 1,000 foot radius of the launch platform which will be located at the end of the San Francisco Municipal Pier at Aquatic Park at approximately: 37°48′38.5″N, 122°25′30.0″W. The Coast Guard has added these minior changes to the final rule. The Coast Guard expects that these changes will not impose any burden on the public.

The Coast Guard has also moved the regulations pertaining to fireworks events, previously listed under 33 CFR 100.1103 in the Notice of Proposed Rulemaking, to a separate listing under 33 CFR part 165. The Coast Guard has created a separate listing for the fireworks events previously listed under 33 CFR 100.1103 to ensure that the general regulations for safety zones, 33 CFR 165.23, apply to the fireworks events. No substantive change has been made in the regulatory provisions for these fireworks events. The Coast Guard is making this minor technical change from the text of the NPRM in order to incorporate the general regulations that are more closely tailored to ensuring the safety of the public during fireworks events.

Background and Purpose

In accordance with the Coast Guard's responsibility to promulgate special local regulations and safety zones to insure the safety of life and protection of property on the navigable waters where marine events are held. Commander, Eleventh Coast Guard District, is replacing the outdated text of 33 CFR 100.1103 with a complete table of the annually recurring marine events in the Northern California area and is adding a table of recurring fireworks events to 33 CFR Part 165. The regulations currently contained in 33 CFR 100.1104 and 33 CFR 100.1203, which have also become outdated, will be deleted and superseded by the new text of 33 CFR 100.1103 as part of this revision as well.

Discussion

To streamline the administration of its safety enforcement responsibilities the Coast Guard has revised 33 CFR 100.1103. The former text in 33 CFR 100.1103 is deleted and new Special

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Local Regulations will replace its content. Within this section will be a listing of recurring marine regattas and races, non-competitive marine parades, for which Special Local Regulations are required. This listing will be placed under the heading "Table 1."

Generic requirements for all Special Local Regulations will be explained in the paragraphs that precede Table 1 in 33 CFR 100.1103. Any requirements that are event-specific will accompany the individual listings in Table 1. Notification of the implementation of these Special Local Regulations for the duration of each individual event will be effectuated by announcement in the Local Notice to Marines. This list of regulated events does not necessarily reflect all recurring marine events in the Northern California area. Only those recurring events that the Coast Guard has knowledge of and that are necessary to insure the safety of life and protection of property on the navigable waters of Northern California are listed.

Commander, Coast Guard Group San Francisco, is designated Patrol Commander for the events listed in 33 CFR 100.1103; he has the authority to delegate this responsibility to any commissioned, warrant, or petty officer of the Coast Guard. Once the zone is established, authorization to remain within the zone is subject to termination by the Patrol Commander at any time. The Patrol Commander may impose other restrictions within this zone if circumstances dictate. Restrictions will be tailored to impose the least impact on maritime interests yet provide the level of security deemed necessary to safely conduct these events.

The Coast Guard is also adding a new section 33 CFR 165.1112. This section will contain a listing of recurring fireworks events that will be placed in Table 1 of 33 CFR 165.1112. The general requirements for fireworks events will be explained in the paragraphs that precede Table 1 in 33 CFR 100.1112. Notification of the implementation of these safety zones for the duration of each individual event will be effectuated by announcement in the Local Notice to Mariners. This list of regulated events does not necessarily reflect all recurring fireworks events in the Northern California area. Only those recurring events that the Coast Guard has knowledge of and that are necessary to insure the safety of life and protection of property on the navigable waters of Northern California are listed.

Commander, Coast Guard Group San Francisco, is designated Patrol Commander for the events listed under Table 1 of 33 CFR 165.1112. He has the authority to delegate this responsibility to any commissioned, warrant, or petty officer of the Coast Guard. Once the safety zone is established, no person may enter the safety zone unless authorized by the Patrol Commander. No person may remain in the safety zone or allow any vehicle, vessel or object to remain in the safety zone unless authorized by the Patrol Commander. Each person in the safety zone who has notice of a lawful order or direction shall obey the order of the Patrol Commander.

Discussion of Comments

No comments were received.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). Due to the short duration of these marine events and fireworks events and the advance notice provided to the maritime community, the Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are not dominant in their fields and governmental jurisdictions with populations less than 50,000. Because it expects the impact of this rule to be so minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a substantial impact on a significant number of small entities.

Assistance For Small Entities

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Andrew B. Cheney, U.S. Coast Guard Marine Office San Francisco Bay at (510) 437–3073.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1C, figure 2–1, paragraphs (34) (g) and (h), it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and environmental analysis checklist will be available for inspection and copying in the docket to be maintained by Group San Francisco at the address listed under **ADDRESSES**.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in its preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This Rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This Rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This Rule meets applicable standards in section 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This Rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends parts 100 and 165 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Revise 33 CFR 100.1103 to read as follows:

§ 100.1103 Northern California annual marine events.

(a) *General.* Special local regulations are established for the events listed in table 1 of this section. Further information on exact dates, times, and other details concerning the number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to each event. To be placed on the mailing list contact: Commander (oan), Eleventh Coast Guard District, Coast Guard Island, Building 50–6, Alameda, CA 94501–5100.

Note to Paragraph (a): Sponsors of events listed in Table 1 of this section must submit an application each year as required by 33 CFR Part 100, Subpart A, to Commander, Coast Guard Group San Francisco, Yerba Buerna Island, San Francisco, CA 94130–9309.

(b) *Special local regulations.* All persons and vessels not registered with the sponsor as participants or with Commander, Coast Guard Group San Francisco as official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, other Federal, state or local law enforcement, and any public or sponsor-provided vessels assigned or approved by Commander, Coast Guard Group San Francisco, to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels, in the regulated areas during all applicable effective dates and times, unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a regulated area during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander shall be designated by the Commander, Coast Guard Group San Francisco; will be a U.S. Coast Guard commissioned officer, warrant officer or petty officer to act as the Group Commander's official representative; and will be located aboard the lead official patrol vessel. As the Group Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65MHz) when required, by the call sign "PATCOM".

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

TABLE 1 TO § 100.1103

[All coordinates referenced use datum NAD 83.]

San Francisco Grand Prix	
Sponsor	Pacific Offshore Powerboat Racing Association.
Event Description	Professional High-speed powerboat race.
Date	Saturday or Sunday in April.
Location	San Francisco Waterfront to South Tower of Golden Gate Bridge.
Regulated Area	37° – 49′ – 10″N, 122° – 24′–07″W; thence to 37° – 48′ – 50″N, 122° – 24′ – 07″W; thence to 37° – 48′ – 56″N, 122° – 28′ – 48″W; thence to 37° – 48′ – 48″N, 122° – 28′ – 48″W; thence returning to the point of origin.
Blessing of the Fleet	
Sponsor	Corinthian Yacht Club.
Event Description	Boat parade during which vessels pass by a pre-designated platform or vessel.
Date	Last Sunday in April.
Location	Raccoon Strait.
Regulated Area	The area between a line drawn from Bluff Point on the southeastern side of Tiburon Peninsula to Point Campbell on the northern edge of Angel Island, and a line drawn from Peninsula Point on the southern edge of Tiburon Peninsula to Point Stuart on the western edge of Angel Island.

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TABLE 1 TO § 100.1103—Continued

[All coordinates referenced use datum NAD 83.]

Opening Day on San Francisco Bay	
Sponsor	Pacific inter-Club Yacht Association and Corinthian Yacht Club.
Event Description	Boat parade during which vessels pass by a pre-designated platform or vessel.
Date	Sunday in April.
Location	San Francisco waterfront, Crissy Field to Pier 35.
Regulated Area	The area defined by a line drawn from Fort Point (37°48.66N, 122°28.64W); thence easterly approximately 5,000 yards to a point located at 37°49.15N, 122°25.61'W; thence easterly to the Blossom Rock Bell Buoy (37°49.10N122°24.20W); thence westerly to the Northeast corner of Pier 35; thence returning along the shoreline to the point of origin. Special Requirements. All vessels entering the regulated area shall follow the parade route established by the sponsor and be capable of maintaining an approximate speed of 6 knots. Commercial Vessel Traffic Allowances. The parade will be interrupted, as necessary, to permit the passage of commercial vessel traffic. Commercial traffic must cross the parade route at a no-wake speed and perpendicular to the parade route.
Race the Straits Offshore Grand Prix Festival	
Sponsor	Pacific Offshore Powerboat Racing Association.
Event Description	Professional high-speed powerboat race.
Date	Sunday in July.
Location	Carquinez Strait and San Pablo Strait.
Reglated Area	38°02'12"N, 122°08'31"W thence to 38°02'38"N, 122°10'00"W thence to 38°03'20"N, 122°10'20"W thence to 38°03'48"N, 122°13'32"W thence to 38°03'36"N, 122°17'37"W thence to 38°03'19"N, 122°17'34"W thence to 38°03'35"N, 122°13'32"W thence to 38°03'24"N, 122°12'01"W thence to 38°02'58"N, 122°10'58"W thence to 38°01'55"N, 122°09'47"W thence to 38°01'58"N, 122°08'31"W thence returning to the point of origin.
Delta Thunder Powerboat Race	
Sponsor	Pacific Offshore Power Racing Association.
Event Description	Professional high-speed powerboat race.
Date	Sunday in September.
Location	Off Pittsburgh, CA in the waters around Winter Island and Brown Island.
Regulated Area	The water area of Suisun Bay commencing at Simmons Point on Chipps Island; thence southwesterly to Stake Point on the southern shore of Suisun Bay; thence easterly following the southern shoreline of Suisun Bay and New York Slough to New York Slough Buoy 13; thence north-northwesterly to the Northwestern corner of Fraser Shoal; thence northwesterly to the western tip of Chain Island; thence west-northwesterly to the northeast tip of Van Sickle Island; thence following the shoreline of Van Sickle Island and Chipps island and returning to the point of origin.
Festival of the Sea	
Sponsor	San Francisco Maritime National Historical Park.
Event Description	Tugboat Race.
Date	Sunday in September.
Location	From Crissy Field to Aquatic Park.
Regulated Area	San Francisco Bay approximately 500 yards offshore of Golden Gate Yacht club, Gas house Cove, and extending east to Pier 45. All mariners may proceed with caution but must keep at least 500 foot distance from the competing tugboats.

§ 100.1104 [Removed]

3. Remove 33 CFR 100.1104.

§ 100.1203 [Removed]

4. Remove 33 CFR 100.1203.

PART 165—[AMENDED]

5. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

6. A new § 165.1112 is added to read as follows:

§ 165.1112 Safety zones: Northern California annual fireworks events.

(a) *General.* Safety zones are established for the events listed in Table 1 of this section. Further information on exact dates, times, and other details concerning the exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners prior to each event.

(b) *Regulations.* "Official Patrol Vessels" consist of any Coast Guard, other Federal, state or local law enforcement, and any public or sponsor-provided vessels assigned or approved by Commander, Coast Guard Group San Francisco, to patrol each event.

(1) In accordance with the general regulations in § 165.23 of this part, entering into, transiting through, or anchoring within these zones is prohibited, unless authorized by the Patrol Commander.

(2) Each person in a safety zone who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander shall be designated by the Commander, Coast Guard Group San Francisco; will be a U.S. Coast Guard commissioned officer, warrant officer or petty officer to act as the Group Commander's official representative; and will be located aboard the lead official patrol vessel.

.(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

TABLE 1 to § 165.1112

[All coordinates referenced use datum NAD 83]

KFOG KaBoom	
Sponsor	KFOG Radio, San Francisco.
Event Description	Fireworks display.
Date	Last Saturday in May.
Location	1,000 feet off Pier 30/32.
Regulated Area	That area of navigable waters within a 1,000 foot radius of the launch platform.
Fourth of July Fireworks, City of Monterey	
Sponsor	City of Monterey, Recreation & Community Services Department.
Event Description	Fireworks Display.
Date	July 4th.
Location	Monterey Bay, East of Municipal Wharf #2.
Regulated Area	That area of navigable waters within a 1,000 foot radius of the launch platform.
Fourth of July Fireworks, City of Sausalito	
Sponsor	City of Sausalito.
Event Description	Fireworks Display.
Date	July 4th.
Location	1,000 feet off-shore from Sausalito waterfront, North of Spinnaker Rest.
Regulated Area	That area of navigable waters within a 1,000 foot radius of the launch platform.
Fourth of July Fireworks, Lake Tahoe	
Sponsor	Anchor Trust.
Event Description	Fireworks Display.
Date	July 4th.
Location	1,000 feet off Incline Village, Nevada in Crystal Bay.
Regulated Area	That area of navigable waters within a 1,000 foot radius of the launch platform.
Fourth of July Fireworks, South Lake Tahoe Gaming Alliance	
Sponsor	Harrah's Lake Tahoe.
Event Description	Fireworks Display.
Date	July 4th.
Location	Off South Lake Tahoe, California near Nevada border.
Regulated Area	That area of navigable waters within a 1,000 foot radius of the launch platform.
Independence Day Fireworks	
Sponsor	North Tahoe Fire Protection District.
Event Description	Fireworks Display.
Date	July 4th.
Location	Offshore from Kings Beach State Beach.
Regulated Area	That area of navigable waters within a 1,000 foot radius of the launch platform.
July 4th Fireworks Display	
Sponsor	North Tahoe Fire Protection District.
Event Description	Fireworks Display.
Date	July 4th.
Location	Offshore of Common Beach, Tahoe City, CA.
Regulated Area	That area of navigable waters within a 1,000 foot radius of the launch platform.
San Francisco Chronicle Fireworks Display	
Sponsor	San Francisco Chronicle.
Event Description	Fireworks Display.

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TABLE 1 to § 165.1112—Continued

[All coordinates referenced use datum NAD 83]

Date	July 4th.
Location 1	A barge located approximately 1,000 feet off of San Francisco Pier 39 at approximately: 37°48′49.0″ N, 122°24′46.5″ W.
Regulated Area	The area of navigable waters within a 1,000 foot radius of the launch platform.
Location 2	The end of the San Francisco Municipal Pier at Aquatic Park at approximately: 37°48′38.5″ N, 122°25′30.0″ W.
Regulated Area	The area of navigable waters within a 1,000 foot radius of the launch platform.
Vallejo Fourth of July Fireworks	
Sponsor	Vallejo Marina.
Event Description	Fireworks Display.
Date	July 4th.
Location	Mare Island Strait.
Regulated Area	That area of navigable waters within a 1,000 foot radius of the launch platform.

Dated: July 1, 1999.

T.H. Collins,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 99–18486 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–104]

RIN 2115–AA97

Safety Zone: Gloucester Schooner Fest, Gloucester, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Gloucester Harbor in a four hundred (400) yard radius around a fireworks launch site located at Stage Head Point in Gloucester, MA. The safety zone is in effect from 8:00 p.m. until 11:00 p.m., on Saturday, September 4, 1999. This safety zone prevents entry into or movement within this portion of Gloucester Harbor and it is needed to protect the boating public from the dangers posed by a fireworks display.

DATES: This rule is effective from 8:00 p.m. until 11:00 p.m., Saturday, September 4, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS Rebecca Montleon, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM. Conclusive information about this event was not provided to the Coast Guard until June 4, 1999, making it impossible to draft or publish an NPRM with sufficient comment period for the public. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display, which is intended for public entertainment.

Background and Purpose

One June 4, 1999 the Gloucester Fireworks Fund, Gloucester, MA, field a marine event permit with the Coast Guard to hold a fireworks program over the waters of Gloucester Harbor, Gloucester, MA. This regulation establishes a safety zone on the waters of Gloucester Harbor in a four hundred (400) yard radius around a firework launch site located at Stage Head Point in Gloucester, MA. The safety zone is in effect from 8:00 p.m. until 11:00 p.m. on Saturday, September 4, 1999. This safety zone prevents entry into or movement within this portion of Gloucester Harbor and it is needed to protect the boating public from the dangers posed by a fireworks display.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary since the safety zone will be limited in duration, marine advisories will be made in advance of the implementation of the safety zone, and the safety zone will not restrict the entire harbor, allowing traffic to continue without obstruction.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. *Small entities* may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations or less than 50,000.

For the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–104 to read as follows:

§ 165.T01–104 Safety zone; Gloucester Schoonerfest, Gloucester, MA.

(a) *Location.* The following area is a safety zone: all waters of Gloucester Harbor in a four hundred (400) yard radius around a fireworks launch site located at Stage Head Point in Gloucester, MA.

(b) *Effective date.* This section is effective from 8:00 p.m. until 11:00 p.m., Saturday, September 4, 1999.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 apply.

Dated: July 8, 1999.

J.L. Grenier,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 99–18485 Filed 7–20–99; 8:45 am]

BILLING CODE 4901–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–110]

RIN 2115–AA97

Safety Zone: Fireworks, Parade of Lights, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Boston Harbor in a four hundred (400) yard radius around a fireworks barge located off the U.S. Coast Guard Base at an approximate position of 42°22′12″ N, 071°02′53″ W (NAD 1983) Boston, MA. The safety zone is in effect from 9:00 p.m. until 11:00 p.m., Saturday, July 24, 1999. This safety zone prevents entry into or movement within this portion of Boston Harbor and it is needed to protect the boating public from the dangers posed by a fireworks display.

DATES: This rule is effective from 9:00 p.m. until 11:00 p.m., Saturday, July 24, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Saturday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS Rebecca Montleon, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Conclusive information about this event was not provided to the Coast Guard until June 14, 1999, making it impossible to draft or publish an NPRM or a final rule 30 days in advance. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display, which is intended for public entertainment.

Background and Purpose

On June 14, 1999, Conventures Inc., Boston, MA, filed a marine event permit with the Coast Guard to hold a fireworks program over the waters of Boston Harbor, Boston, MA. This regulation establishes a safety zone on the waters of Boston Harbor in a four hundred (400) yard radius around a fireworks barge located off the U.S. Coast Guard Base in approximate position 42°22′12″ N, 071°02′53″ W (NAD 1983), Boston Harbor, MA. The safety zone is in effect from 9:00 p.m. until 11:00 p.m. Saturday, July 24, 1999. This safety zone prevents entry into or movement within this portion of Boston Harbor and it is needed to protect the boating public from the dangers posed by a fireworks display.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary since the safety zone will be limited in duration, marine advisories will be made in advance of the implementation of the safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation above, the coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have

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a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For reasons set out in the preamble, the Coast Guard amends, 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

Add temporary § 165.T01–110 to read as follows:

§ 165.T01–110 Safety zone; Fireworks, Parade of Lights, Boston, MA.

(a) *Location.* The following area is a safety zone: all waters of Boston Harbor in a four hundred (400) yard radius around a fireworks barge located off of the U.S. Coast Guard Base in approximate position 42°22′12″N, 071°02′53″W (NAD 1983), Boston, MA.

(b) *Effective date.* This section is effective from 9:00 p.m. until 11:00 p.m., Saturday, July 24, 1999.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 of this part apply.

Dated: July 9, 1999.

M.A. Skordinski,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Boston, Massachusetts.

[FR Doc. 99–18484 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI69–01–7277a; FRL–6357–3]

Approval and Promulgation of State Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving several rule revisions and rescissions for incorporation into Michigan's State Implementation Plan (SIP). The Michigan Department of Environmental Quality (MDEQ) submitted these revisions on August 20, 1998 and supplemented them with a November 3, 1998, letter. They include revisions to degreasing, perchloroethylene dry cleaning, petroleum refinery, synthetic organic chemical manufacturing, and delivery vessel loading rules, and a number of rule rescissions.

DATES: This direct final rule is effective on September 20, 1999, without further notice, unless EPA receives adverse comment by August 20, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: You may send written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision and EPA's analysis are available for inspection at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION:

A. Background Information
B. Contents of State Submittal
C. EPA's Evaluation of State Submittal and Final Action

A. Background Information

On August 20, 1998, the MDEQ submitted to EPA a proposed revision to the Michigan SIP. MDEQ supplemented this revision with a November 3, 1998, letter from Robert Irvine. This submittal included revisions to degreasing, perchloroethylene dry cleaning, petroleum refinery, synthetic organic chemical, and delivery vessel loading rules, as well as a number of rule rescissions. These rule revisions and rescissions are described briefly below. This rulemaking action does not address the following rules, which were also part of Michigan's SIP submittal: R 336.1118, R 336.1122(f), R 336.1278, R 336.1283 to R 336.1287, and R 336.1290. We will address the remaining rule revisions in separate rulemaking actions.

B. Contents of State Submittal

The following is a brief description of the sections of the SIP revision that we are addressing in this rulemaking action.

R 336.1611 to R 336.1614 and R 336.1707 to R 336.1710—These rules address existing and new cold cleaner and degreaser equipment. Michigan is proposing to revise these rules to exempt sources subject to the Halogenated Solvent Cleaner National Emission Standards for Hazardous Air Pollutants from the provisions of the respective rules.

R 336.1619—The State has replaced this rule with the National Emission Standard for Hazardous Air Pollutants for Perchloroethylene Dry Cleaners, and therefore proposes to remove this rule from the SIP.

R 336.1622—The proposed revision to this rule allows sources to comply by complying with EPA's Standards of Performance for Equipment Leaks of Volatile Organic Compound in Petroleum Refineries.

R 336.1628—The proposed revision to this rule allows sources to comply by complying with EPA's Standards of Performance for Equipment Leaks of Volatile Organic Compound in Synthetic Organic Chemicals Manufacturing Industry.

R 336.1651—The State proposes to add to the SIP a rule for degreasers that incorporates the Halogenated Solvents Cleaning National Emission Standard for Hazardous Air Pollutants.

R 336.1706—The state has removed the word "new" in the text of this rule which applies to the loading of delivery vessels with VOCs.

R 336.91 to R 336.97—The State has rescinded these rules, because the State deleted the statute providing for a suspension of state enforcement and replaced it with provisions for delegating authority to a local pollution control agency. This rendered these rules obsolete.

R 336.601 to R 336.603—These Vehicle Inspection and Maintenance Rules reference a law no longer in existence. The State has rescinded these rules as obsolete.

R 336.1373—The State has rescinded this rule pertaining to fugitive dust because it has been superseded by Section 5525 of Act 451 of the Public Acts of 1994, as amended.

R 336.1501 to R 336.1507—The State has rescinded these rules pertaining to extending sulfur dioxide compliance dates for power plants. These compliance dates have now passed, and the rules to which they pertain have been fully implemented.

R 336.1603—The State has rescinded this rule, which establishes compliance dates for regulations relating to VOC emissions. These compliance dates have now passed, and the rules to which they pertain have been fully implemented.

R 336.2010—The State has rescinded this rule because it describes a test method that is not applicable to any current emission limit.

R 336.2199(c)—The State has rescinded this subsection, which refers to sources scheduled to be shut down by October 1980.

R 336.2601—The State has rescinded this rule describing the make-up of the Air Pollution Control Commission, which is no longer in existence.

R 336.2602 to R 336.2605—The State has rescinded these rules describing the organization, procedures and meeting schedule of the Air Pollution Control Commission, which is no longer in existence.

R 336.2608—The State has rescinded this rule which describes the involvement of the now defunct Air Pollution Control Commission in public and contested case hearings.

R 336.2301 to R 336.2308—These rules pertain to air pollution episodes. The rules have never been used to declare an episode as the requirements for declaration have never been reached. Further, the highest monitored concentration of the air contaminants is far below the concentrations required to declare episodes. Therefore, the State has rescinded these rules.

C. EPA's Evaluation of State Submittal and Final Action

EPA finds all of these revisions and rescissions acceptable. Therefore, we are approving the following rules for incorporation into Michigan's SIP: R 336.1611, R 336.1612, R 336.1613, R 336.1614, R 336.1619, R 336.1622, R 336.1628, R 336.1651, R 336.1706, R 336.1707, R 336.1708, R 336.1709 and R 336.1710. We are also approving the removal of the following rules from Michigan's SIP: R 336.91, R 336.92, R 336.93, R 336.94, R 336.95, R 336.96, R 336.97, R 336.601, R 336.602, R 336.603, R 336.1373, R 336.1501, R 336.1502; R 336.1503, R 336.1504, R 336.1505, R 336.1506, R 336.1507, R 336.1603, R 336.2010, R 336.2199(c), R 336.2601, R 336.2602, R 336.2603, R 336.2604, R 336.2605, R 336.2608, R 336.2301, R 336.2302, R 336.2303, R 336.2304, R 336.2305, R 336.2306, R 336.2307, and R 336.2308.

We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the State Plan if someone files adverse written comments. This action will be effective without further notice unless we receive relevant adverse written comment by August 20, 1999. Should we receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If we do not receive adverse comments, this action will be effective on September 20, 1999.

D. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elective officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." This rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a

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statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act (CAA) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 20, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon dioxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 28, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(112) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(112) The Michigan Department of Environmental Quality (MDEQ) submitted a revision to Michigan's State Implementation Plan (SIP) on August 20, 1998, and supplemented it on November 3, 1998. The revision removed from the SIP the following rules, which the State rescinded effective May 28, 1997: R 336.91 Purpose; R 336.92 Suspension of enforcement; requests by local agencies; R 336.93 Local agency requirements prior to suspension of enforcement; R 336.94 Commission public hearings on applications; R 336.95 Suspension of enforcement; procedures and public notice; R 336.96 Suspension of enforcement; conditions; R 336.97 Commission review of local agency programs; renewal of suspended enforcement; R 336.601 Affected counties and areas; R 336.602 Attainment of national ambient air quality standards; exemption from inspection and maintenance program requirements; R 336.603 Ozone and carbon monoxide attainment status determination; R 336.1373 Fugitive dust control requirements; areas listed in table 36; R 336.1501 Emission limits; extension of compliance date past January 1, 1980, generally; R 336.1502 Application; copies; R 336.1503 Application; contents; R 336.1504 Denial of request for extension past January 1, 1980; R 336.1505 Grant of extension past January 1, 1980; R 336.1506 Receipt of full and complete application; public notice; inspection; public hearing; R 336.1507 Modification or revocation of order granting extension; immediate effect; R 336.1603 Compliance program; R 336.2010 Reference test method 5A; R 336.2199(c); R 336.2601 Organization; R 336.2602 Offices and meetings; R 336.2603 Documents available for inspection and copying; R 336.2604 Document inspection and copying procedures; tape recording transcriptions; R 336.2605 Functions; R 336.2608 Hearings and informal conferences; R 336.2301 Definition of air pollution episode; R 336.2302 Definition of air pollution forecast; R 336.2303 Definition of air pollution alert; R 336.2304 Definition of air pollution warning; R 336.2305 Definition of air pollution emergency; R 336.2306 Declaration of air pollution episodes; R 336.2307 Episode emission abatement programs; and R 336.2308 Episode orders. The rules incorporated below contain revisions to degreasing, perchloroethylene dry cleaning, petroleum refinery, synthetic organic chemical manufacturing, and delivery vessel loading rules.

(i) *Incorporation by reference.* The following sections of the Michigan Administrative Code are incorporated by reference.

(A) R 336.1611 Existing cold cleaners, effective June 13, 1997.

(B) R336.1612 Existing open top vapor degreasers, effective June 13, 1997.

(C) R 336.1613 Existing conveyorized cold cleaners, effective June 13, 1997.

(D) R 336.1614 Existing conveyorized vapor degreasers, effective June 13, 1997.

(E) R 336.1619 Standards for perchloroethylene dry cleaning equipment, effective June 13, 1997.

(F) R 336.1622 Emission of volatile organic compounds from existing components of petroleum refineries; refinery monitoring program, effective June 13, 1997.

(G) R 336.1628 Emission of volatile organic compounds from components of existing process equipment used in manufacturing synthetic organic chemicals and polymers; monitoring program, effective June 13, 1997.

(H) R 336.1651 Standards for Degreasers, effective June 13, 1997.

(I) R 336.1706 Loading delivery vessels with organic compounds having a true vapor pressure of more than 1.5 psia at new loading facilities handling 5,000,000 or more gallons of such compounds per year, effective June 13, 1997.

(J) R 336.1707 New cold cleaners, effective June 13, 1997.

(K) R 336.1708 New open top vapor degreasers, effective June 13, 1997.

(L) R 336.1709 New conveyorized cold cleaners, effective June 13, 1997.

(M) R 336.1710 New conveyorized vapor degreasers, effective June 13, 1997.

[FR Doc. 99–18474 Filed 7–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 226–0159a FRL–6376–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District and Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan. The revisions concern rules from the following: South Coast Air Quality Management District (SCAQMD) and Yolo-Solano Air Quality Management District (YSAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from organic liquid loading, pharmaceutical and cosmetics manufacturing operations, and polyester resin operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on September 20, 1999 without further notice, unless EPA receives adverse comments by August 20, 1999. If EPA receives such comment, it will publish a timely withdrawal **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

Yolo-Solano Air Pollution Control District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1135.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: SCAQMD Rule 462, Organic Liquid Loading, SCAQMD rule 1103, Pharmaceuticals and Cosmetics Manufacturing Operations, and YSAQMD rule 2.30, Polyester Resin Operations. These rules were submitted by the California Air Resources Board to EPA on June 3, 1999, May 13, 1999, and June 3, 1999, respectively.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the South Coast Air Basin Area (SCABA) and Yolo County and part of Solano County (43 FR 8964, 40 CFR 81.305). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules

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pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[1] EPA's SIP–Call used that guidance to indicate the necessary corrections for specific nonattainment areas. SCABA, which includes the SCAQMD, is classified as extreme nonattainment for ozone. Yolo County and part of Solano County are classified as severe-15 nonattainment for ozone.[2] Therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline. u

The State of California submitted many revised RACT rules for incorporation into its SIP, including the rules being acted on in this document. This document addresses EPA's direct-final action for SCAQMD rule 462, Organic Liquid Loading, adopted on May 14, 1999, and found to be complete on June 24, 1999 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V [3] and is being finalized for approval into the SIP; SCAQMD rule 1103, Pharmaceuticals and Cosmetics Manufacturing Operations, adopted on March 12, 1999, and found to be complete on June 10, 1999; and YSAQMD Rule 2.30, Polyester Resin Operations, adopted on April 14, 1999, and found to be complete on June 24, 1999.

SCAQMD rule 462 is intended to control emissions of VOCs of greater than 1.5 psia (77.5 mm Hg) from loading into tank trucks, trailers, or railroad tank cars. SCAQMD Rule 1103 is intended to control VOC emissions from the manufacture of pharmaceuticals, cosmetics, antibiotics, vitamins, botanic and biological products, tablets, and capsules. EPA granted limited approval and limited disapproval to SCAQMD rules 462 and 1103 on November 13, 1997, 62 FR 60784. Today's direct final rule approves revisions to these rules, that have been amended to address the deficiencies identified in the 1997 disapprovals. Any sanctions now in effect as a result of the 1997 action will be terminated on the effective date of this direct final rule.

YSAQMD rule 2.30 is intended to control VOC emissions from fabrication operations using polyester resin. EPA proposed limited approval and limited disapproval of a version of YSAQMD rule 2.30 on December 8, 1994, 49 FR 63286. This action was never finalized. Today's direct final rule approves the rule after being corrected for the deficiencies that were identified in the proposed limited disapproval.

VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of California's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP–Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents that are applicable to certain VOC rules. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules according to section 182(a)(2)(A). The CTG applicable to SCAQMD rule 1103 is entitled, "Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products", EPA 450/2–78–029. CTGs applicable to SCAQMD rule 462 are entitled, "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals", EPA–450/2–77–026; "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems", EPA–450/2–78–051; and "Control of Volatile Organic Emissions from Bulk Gasoline Plants", EPA 450/2–77–035. There are no CTGs applicable to YSAQMD. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On November 13, 1997 (62 FR 60784), EPA granted limited approval and limited disapproval a version of SCAQMD rule 462, Organic Liquid Loading, that had been adopted by SCAQMD on June 9, 1995. Submitted SCAQMD rule 462 includes the following significant changes from the current SIP rule:

- The definition of "facility vapor leak" and other definitions were revised for clarity.
- Methods were provided for determining vapor leak and compliance to emission limits.
- Obsolete compliance dates were eliminated.

On November 13, 1997 (62 FR 60784), EPA granted limited approval and limited disapproval a version of SCAQMD rule 1103, Pharmaceuticals and Cosmetics Manufacturing Operations, that had been adopted by SCAQMD on December 7, 1990. Submitted SCAQMD rule 1103 includes the following significant changes from the current SIP rule:

- Methods were described for determination of control device efficiency and of surface condenser efficiency, instead of director's discretion.
- Operating requirements were specified and vacuum vents were required over 1.5 psia, instead of director's discretion.
- The calculation method for composite total pressure and the test method for weight of VOC were added.
- "Leak" is defined relative to the allowed time from detection to repair.

On December 8, 1994 (59 FR 63286), EPA proposed limited approval and limited disapproval a version of YSAQMD Rule 2.30, Polyester Resin Operations, that had been adopted by YSAQMD on August 25, 1993. This action was never finalized. Submitted YSAQMD Rule 2.30 includes the following significant change from the proposed rule:

- The test method for monomer content is specified as the SCAQMD Test Method 312, Percent Monomer in Polyester Resins, for restricting the monomer content to no more than 35 percent by weight.

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987): "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] SCAQMD and YSAQMD, respectively, retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD rule 462, Organic Liquid Loading; SCAQMD rule 1103, Pharmaceutical and Cosmetics Manufacturing Operations; and YSAQMD rule 2.30, Polyester Resin Operations, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective September 20, 1999 without further notice unless the Agency receives adverse comments by August 20, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule is effective on September 20, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA

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to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 20, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, and Volatile Organic Compounds. Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 29, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (263) and (264) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(263) New and amended regulations for the following APCDs were submitted on May 13, 1999, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 1103, adopted on March 12, 1999.

* * * * *

(264) New and amended regulations for the following APCDs were submitted on June 3, 1999, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 462, adopted on May 14, 1999.

(B) Yolo-Solano Air Quality Management District.

(*1*) Rule 2.30, adopted on April 14, 1999.

* * * * *

[FR Doc. 99–18472 Filed 7–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[AD–FRL–6400–9]

Technical Correction to Partial Withdrawal of Direct Final Rule, "Protection of Stratospheric Ozone: Reconsideration of Petition Criteria and Incorporation of Montreal Protocol Decisions"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, technical correction.

SUMMARY: This technical action corrects two typographical errors in the October 5, 1998, partial withdrawal of a direct final rule (63 FR 53290). The errors are in the CFR citations referring to the Part affected by that paragraph. 40 CFR 80.4 was printed instead of 40 CFR 82.4, the part of the Code which addresses stratospheric ozone protection.

EFFECTIVE DATE: July 21, 1999.

ADDRESSES: Comments and materials supporting the rulemaking are contained in Public Docket No. A–92–13. The docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling 202/260–7548 or 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Tom Land, U.S. Environmental Protection Agency, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, 6205J 401 M Street, SW, Washington, DC 20460, 202/564–9185.

SUPPLEMENTARY INFORMATION:

I. Background

On August 4, 1998, EPA promulgated a direct final rule consisting of a variety of amendments to the accelerated phaseout regulation, intended to: reflect changes in U.S. obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol); ensure compliance through the petition system for importation of used ozone-depleting substances; and change various requirements to ease the burden on affected companies. EPA received numerous comments on various sections of the rule. Where adverse comments were received, EPA withdrew those specific provisions, proposed the withdrawn provisions, and will ultimately promulgate a final rule that addresses the provisions. The **Federal Register** notice withdrawing the provisions was published on October 5, 1998, through a Partial Withdrawal of Direct Final Rule.

II. Correction to 63 FR 53290

In the October 5, 1998 withdrawal, 63 FR 53290, paragraphs (6) and (7) under the section entitled, **DATES**, the Code of Federal Regulations (CFR) cite is incorrectly published as 40 CFR 80.4. The numbers after "CFR" indicate the part of the Code of Federal Regulations where the regulation can be found. The corrected part is 82.4 in both (6) and (7).

Therefore, the corrected version should read:

"(6) The addition of paragraph (t)(3) in newly designated 40 CFR 82.4(t).

(7) The addition of paragraph (u)(3) in newly designated 40 CFR 82.4 (u)."

III. Administrative Requirements

A. Good Cause Finding

By promulgating these technical corrections directly as a final rule, the EPA is foregoing an opportunity for public comment on a notice of proposed rulemaking Section 553(b) of title 5 of the United States Code and section 307(b) of the CAA permit an agency to forego notice and comment when "the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issues) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." The EPA finds that notice and comment regarding these minor technical corrections are unnecessary due to their noncontroversial nature and because they do not substantively change the requirements of the partial withdrawal, the direct final amendment from which the provisions were withdrawn, or the accelerated phaseout regulation for which the amendments are intended, once promulgated. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b) for a determination that the issuance of a notice of proposed rulemaking is unnecessary.

B. Executive Orders 12866, 13045, 13083, 13084, Unfunded Mandates Reform Act, Regulatory Flexibility Act, and Administrative Procedure Act

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statue, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public's interest. This determination must be supported by a brief statement, 5 U.S.C. 802(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of April 26, 1999. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) That are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This regulatory action makes technical corrections to errors in citation and does not involve any technical standards that would require the Agency to consider voluntary consensus standards pursuant to section 12(d) of the NTTAA.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Ozone layer, Reporting and recordkeeping requirements.

Dated: July 10, 1999.

Robert Perciasepe,

Assistant Administrator for the Office of Air and Radiation.

[FR Doc. 99–18481 Filed 7–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300884; FRL–6088–3]

RIN 2070–AB78

Imidacloprid; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on blueberries and cranberries. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on blueberries and cranberries. This regulation establishes maximum permissible levels for residues of imidacloprid in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on June 1, 2001.

DATES: This regulation is effective July 21, 1999. Objections and requests for hearings must be received by EPA on or before September 20, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300884], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees

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accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300884], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300884]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9367, ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for combined residues of the insecticide imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, in or on blueberries at 1.0 part per million (ppm) and cranberries at 0.5 ppm. This tolerance will expire and is revoked on June 1, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Imidacloprid on Blueberries and Cranberries and FFDCA Tolerances

Cranberries. The applicant states that the cranberry rootworm is becoming a serious pest of cranberries in New Jersey. The infestations of this insect are spreading from few acres in 1995 to several hundreds of acres in 1998. Prior to 1995, cranberry rootworm was considered a minor pest rarely requiring insecticide interventions. However, in 1997 and in 1998, severe infestations were seen in approximately 500 acres around Chatsworth, Burlington County.

Most of the cranberry rootworm grubs are found in the top 6-8 inches from the ground surface area available for absorption of water and nutrients. The affected vines become weak, often produce fewer berries, and are easily rolled back as a mat. Severe infestations of cranberry rootworm can kill the vines and reduce fruit yield. The effect of cranberry rootworm feeding on roots is more severe under moisture stress during summer months as vines are unable to uptake the limited moisture available with reduced root systems. Replanting is often necessary to fill dead patches as a result of rootworm injury. Newly planted vines may take as long as 5 years to reach full yield potential. Adults also skeletonize the foliage and affect the process of photosynthesis.

Currently there are no soil insecticides registered for managing cranberry rootworm in New Jersey. Lack of effective materials for use against the grub stage has resulted in the present emergency condition which left unchecked will cause significant crop losses to growers.

Blueberries (Oriental Beetle). The applicant states that the Oriental beetle has recently become a serious pest of commercial highbush blueberries. In surveys undertaken during 1995 and 1996, the Oriental beetle was found to be the predominant grub species found in a majority of locations surveyed in Atlantic and Burlington Counties. The damage to blueberries is caused by grub stages feeding on fine fibrous root hairs. Bushes that have sustained damage to the root system by grubs show reduced vigor, are twiggy, have smaller leaves, and support fewer berries than uninfested bushes of the same age. Infested bushes can be easily pulled off and growers often replace them with newer, younger bushes. In contrast to the grubs feeding on the root system, adults do not feed and therefore are not vulnerable to insecticide applications made above the ground.

In blueberry fields in New Jersey, larvae become active and begin feeding by late March. The majority of these grubs are found in the top 8 inches of soil. Pupation occurs during the last week of May to early June with adults first appearing in the second week of June.

The most effective strategy in managing the Oriental beetle is to apply insecticides targeting early instar grubs which are closer to the soil surface. However, there are currently no soil insecticides registered for use against any insect pest in blueberries. Out of desperation, some growers have attempted the use of organophosphate and carbamate insecticides targeting the adult stage. This strategy is generally effective in killing the adults only if the adults come in direct contact with the insecticide. Applications of insecticides targeting adults have proven to be very ineffective and resulted in unwarranted applications of organophosphate and carbamate insecticides.

Lack of effective materials for use against the grub stage has resulted in the present emergency situation. Availability of effective insecticides targeting the early instar grubs will alleviate this problem and improve the management of Oriental beetle populations in blueberries.

Blueberries (Blueberry Aphid). According to the applicant, blueberry aphids, *Fimbriaphis fimbriata* and *Illinoia pepperi* are the most important pests of highbush blueberries in New Jersey. The green peach aphid *Myzus persicae* also occurs on blueberries on a regular basis, but is of less significance. All of these species feed on plant sap and reduce the vigor of the bushes. But more importantly, these three species of aphids have recently been shown to be the vectors of the Blueberry Scorch virus (BBScV), the most important viral disease of blueberries in New Jersey. This virus is transmitted in a non-persistent fashion, and in greenhouse experiments, the applicant has shown that as little as 5 minutes of feeding any of the above three species is sufficient to transmit the BBScV from an infected plant to a non-infected plant.

The Blueberry Scorch disease (also known as Sheep Pen Hill disease) was first detected in the early eighties. For several years this disease was restricted to a few areas in Burlington County, but during the past 3-4 years, there have been numerous fields that have become 100% infected with BBScV and showing visible symptoms of the disease. This disease is now firmly established in all major blueberry producing areas in Atlantic and Burlington counties. Primary symptoms of Blueberry Scorch disease are blighting of both flowers and new vegetative growth at full bloom and appearance of necrotic line patter just prior to leaf drop in autumn. The blighted blossoms are often retained throughout the summer but fail to develop into fruit and infected plants are less vigorous than healthy plants. The major problem in containing this disease is the inability to aggressively rogue out infected bushes because disease symptoms may not manifest for several years after the transmission of the causal agent (BBScV). This allows for the rapid spread of the disease if infected plants (symptom free) and aphids are present in a given location. Growers have no option but to completely destroy or kill the bushes and replant with new, clean bushes. Accurate estimates of total losses due to this disease in New Jersey are yet to be determined.

Effective management of the aphid vectors is the only viable strategy to contain the spread of the Blueberry Scorch disease; there are no other methods available at the present time. Inadequate control of aphids with the existing insecticides has resulted in the present emergency situation which could cause severe crop loss to blueberry growers if left unchecked. EPA has authorized under FIFRA section 18 the use of imidacloprid on blueberries for control of blueberry aphids and the oriental beetle and cranberries for control of the cranberry rootworm in New Jersey. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of imidacloprid in or on blueberries and cranberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemptions in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on June 1, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on blueberries and cranberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether imidacloprid meets EPA's registration requirements for use on blueberries and cranberries or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of imidacloprid by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than New Jersey to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for imidacloprid, contact the Agency's Registration Division at the address provided under the "ADDRESSES" section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of imidacloprid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent on blueberries at 1.0 ppm and cranberries at 0.5 ppm. EPA's assessment of the dietary exposures and

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risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by imidacloprid are discussed in this unit.

B. Toxicological Endpoint

Only acute and chronic dietary endpoints were defined. The 10X FQPA factor was reduced to 3X for acute and chronic exposure, and applies to all population subgroup.

1. *Acute toxicity.* The acute Reference Dose (RfD) is 0.42 mg/kg bwt/day based on a lowest observed adverse effect level (LOAEL) of 42 mg/kg body weight/day (bwt/day) based on decreased motor activity in female rats. An additional 3X FQPA factor was incorporated for all population subgroups to account for neurotoxicity, structure-activity concerns, and lack of a no observed adverse effect level (NOAEL). The acute Population Adjusted Dose (aPAD), which is the RfD/3 was calculated to be 0.14 mg/kg bwt/day. Acceptable acute dietary exposure (food plus water) of 100% or less of the aPAD is required for all population subgroups.

2. *Short- and intermediate-term toxicity.* Dermal and inhalation short- and intermediate-term risk assessments are not required for imidacloprid as dermal and inhalation exposure endpoints were not identified due to the demonstrated absence of toxicity. However, because imidacloprid is registered for use on turf, home gardens and pets, EPA has identified potential short-term oral exposures to children for these uses.

A short-term oral endpoint was not identified for imidacloprid. According to current OPP policy, if an oral endpoint is needed for short-term risk assessment (for incorporation of food, water, or oral hand-to-mouth type exposures into an aggregate risk assessment), the acute oral endpoint (LOAEL = 42 mg/kg bwt/day) will be used to incorporate the oral component into aggregate risk.

3. *Chronic toxicity.* EPA has established the RfD for imidacloprid at 0.057 milligrams/kilograms/day (mg/kg/day). This RfD is based on increased number of thyroid lesions at the LOAEL of 16.9/24.9 mg/kg bwt/day (males and females, respectively). An additional 3X FQPA factor was used for all population subgroups. The chronic Population Adjusted Dose (cPAD), which is the RfD/3 was calculated to be 0.019 mg/kg bwt/day. Acceptable chronic dietary exposure (food plus water) of 100% or less of the cPAD is required for all population subgroups.

4. *Carcinogenicity.* Imidacloprid has been classified by the Agency as a Group E chemical, no evidence of carcinogenicity for humans, thus, a cancer risk assessment is not required.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances, some time-limited, are currently established (40 CFR 180.472) for the combined residues of the insecticide imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, in or on a variety of raw agricultural and animal commodities at levels ranging from 0.02 ppm in eggs to 15 ppm in raisins, waste. Risk assessments were conducted by EPA to assess dietary exposures and risks from imidacloprid as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

In conducting the acute dietary (food) risk assessment, EPA used the Theoretical Maximum Residue Contribution (TMRC) which assumes tolerance level residues and 100% crop-treated (Tier 1). The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of dietary exposure. Resulting exposure values (at the 95th percentile) and percentage of aPAD utilized ranged from 22% for the U.S. population to 44% for children 1-6 years old.

ii. *Chronic exposure and risk.* In conducting the chronic dietary (food only) risk assessment, EPA used tolerance level residues for imidacloprid and percent crop-treated (%CT) information for some of these crops. The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. The percentages of cPAD consumed for the general population and subgroups of interest ranged from 9.2% for nursing infants <1 year old to 48.5% for children 1-6 years old.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of crop treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

As noted above, the Agency used an analysis that evaluated individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that that the percentage of the food treated is not likely to be underestimated. The regional consumption information and

consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which imidacloprid may be applied in a particular area.

2. *From drinking water.* There is no established Maximum Contaminant Level for residues of imidacloprid in drinking water. No health advisory levels for imidacloprid in drinking water have been established.

Imidacloprid is persistent, water soluble, and fairly mobile. Thus, residues of imidacloprid may be transported to both surface and ground waters. As a condition of registration, the Agency is requiring the submission of the results of two prospective ground water monitoring studies. Results from these studies are not yet available.

i. *Acute exposure and risk.* Estimated concentrations of imidacloprid in surface and ground water used for the acute exposure analysis were 4.1 and 1.1 µg/L (ppb), respectively. These estimated concentrations of imidacloprid in surface and ground water were based upon an application rate of 0.5 lbs ai/A/year.

For purposes of risk assessment, the estimated maximum concentration for imidacloprid in surface and ground waters (which is 4.1 µg/L) should be used for comparison to the back-calculated human health drinking water levels of concern (DWLOCs) for the acute endpoint. The DWLOCs ranged from 780 µg/L for children 1-6 years old to 3,900 µg/L for the U.S. population. These figures are well above the drinking water estimate concentration (DWEC) of 4.1 µg/L.

ii. *Chronic exposure and risk.* Estimated concentrations of imidacloprid in surface and ground water for chronic exposure analysis were 0.1 and 1.1 µg/L (ppb), respectively. These estimated concentrations of imidacloprid in surface and ground water were based upon an application rate of 0.5 lbs ai/A/year.

For purposes of chronic risk assessment, the estimated maximum concentration for imidacloprid in ground waters (which is 1.1 µg/L) should be used for comparison to the back-calculated human health DWLOCs for the chronic (non-cancer) endpoint. The DWLOCs ranged from 98 µg/L for children 1-6 years old to 490 µg/L for Non-hispanic males (other than black or white). These figures are well above the DWEC of 1.1 µg/L.

3. *From non-dietary exposure.* Imidacloprid is currently registered for use on the following residential non-food sites: ornamentals (e.g., flowering and foliage plants, ground covers, turf, and lawns), tobacco, golf courses, walkways, recreational areas, household or domestic dwellings (indoor/outdoor), and cats/dogs.

i. *Acute exposure and risk.* Occupational/residential exposure risk assessments (namely, short-term dermal, intermediate-term dermal, long-term dermal, and inhalation) are not required owing to the demonstrated absence of dermal and inhalation toxicity.

ii. *Chronic exposure and risk.* Occupational/residential exposure risk assessments (namely, short-term dermal, intermediate-term dermal, long-term dermal, and inhalation) are not required owing to the demonstrated absence of dermal and inhalation toxicity.

iii. *Short- and intermediate-term exposure and risk.* Short- and intermediate-term oral exposure are not expected for adult population subgroups. However, since imidacloprid is registered for use on turf, home gardens and pets, EPA has identified potential short-term oral exposures to children for these uses. Thus, a residential short-term risk assessment via the oral route is required.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether imidacloprid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, imidacloprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that imidacloprid has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* EPA has determined that the acute exposure to imidacloprid from food will utilize 22% of the aPAD (95th percentile) for the most highly exposed population subgroup (U.S. population - all seasons). Despite the potential for exposure to imidacloprid in drinking water, the Agency does not expect the aggregate exposure to exceed 100% of the aPAD. The DWLOC calculated for the U.S. population was 3,900 µg/L, which is well above the DWEC of 4.1 µg/L.

2. *Chronic risk.* In conducting the chronic dietary (food only) risk assessment, EPA used tolerance level residues for imidacloprid and percent crop-treated (%CT) information for some of these crops. The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. The percentage of cPAD consumed for the U.S. population was 22%. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to imidacloprid in drinking water, the Agency does not expect the aggregate exposure to exceed 100% of the cPAD. The DWLOC calculated for the U.S. population was well above the DWEC of 1.1 µg/L.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Dermal and inhalation short- and intermediate-term risk assessments are not required for imidacloprid as dermal and inhalation exposure endpoints were not identified due to the demonstrated absence of toxicity. Short- and intermediate-term oral exposure are not expected for adult population subgroups.

4. *Aggregate cancer risk for U.S. population.* Imidacloprid has been

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classified as a Group E chemical, no evidence of carcinogenicity for humans, thus, a cancer risk assessment is not required.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In a developmental toxicity study with Sprague-Dawley rats, groups of pregnant animals (25/group) received oral administration of imidacloprid (94.2%) at 0, 10, 30, or 100 mg/kg bwt/day during gestation days 6 through 16. Maternal toxicity was manifested as decreased body weight gain at all dose levels and reduced food consumption at 100 mg/kg bwt/day. No treatment-related effects were seen in any of the reproductive parameters (i.e., Cesarean section evaluation). At 100 mg/kg bwt/day, developmental toxicity manifested as wavy ribs (fetus =7/149 in treated vs. 2/158 in controls and litters, 4/25 vs. 1/25). For maternal toxicity, the LOAEL was 10 mg/kg bwt/day (LDT) based on decreased body weight gain; a NOAEL was not established. For developmental toxicity, the NOAEL was 30 mg/kg bwt/day and the LOAEL was 100 mg/kg bwt/day based on increased wavy ribs.

In a developmental toxicity study with Chinchilla rabbits, groups of 16 pregnant does were given oral doses of imidacloprid (94.2%) at 0, 8, 24, or 72 mg/kg bwt/day during gestation days 6 through 18. For maternal toxicity, the NOAEL was 24 mg/kg bwt/day and the LOEL was 72 mg/kg bwt/day based on mortality, decreased body weight gain, increased resorptions, and increased abortions. For developmental toxicity, the NOAEL was 24 mg/kg bwt/day and the LOEL was 72 mg/kg bwt/day based on decreased fetal body weight, increased resorptions, and increased skeletal abnormalities.

iii. *Reproductive toxicity study.* In a 2-generation reproductive toxicity study, imidacloprid (95.3%) was administered to Wistar/Han rats at dietary levels of 0, 100, 250, or 700 ppm (0, 7.3, 18.3, or 52.0 mg/kg bwt/day for males and 0, 8.0, 20.5, or 57.4 mg/kg bwt/day for females). For parental/systemic/reproductive toxicity, the NOAEL was 250 ppm (18.3 mg/kg bwt/day) and the LOEL was 750 ppm (52 mg/kg bwt/day), based on decreases in body weight in both sexes in both generations. Based on these factors, the Agency determined that the review be revised to indicate the parental/systemic/reproductive NOAEL and LOEL to be 250 and 700 ppm, respectively, based upon the body weight decrements observed in both sexes in both generations.

iv. *Pre- and postnatal sensitivity.* The developmental toxicity data demonstrated no increased sensitivity of rats or rabbits to *in utero* exposure to imidacloprid. In addition, the multi-generation reproductive toxicity study data did not identify any increased sensitivity of rats to *in utero* or postnatal exposure. Parental NOAELs were lower or equivalent to developmental or offspring NOAELs.

v. *Conclusion.* There is a need for a developmental neurotoxicity study for assessment of potential alterations of functional development. However, the Agency has determined that this data gap does not preclude the establishment/continuance of tolerances. The 10X safety factor to account for enhanced sensitivity of infants and children (as required by FQPA) was reduced to 3X and the factor applies to all population subgroups.

2. *Acute risk.* Using the conservative TMRC exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, EPA has estimated the acute exposure to imidacloprid from food for the most highly exposed population subgroup (Children 1 - 6 yrs) will utilize 44% of the aPAD. It was determined that an acceptable acute dietary exposure (food plus water) of 100% or less of the aPAD is needed to protect the safety of all population subgroups. Despite the potential for exposure to imidacloprid in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD for children 1-6 years old. The maximum concentration of imidacloprid in surface and ground water for acute exposure is very small (4.1 µg/L) compared to the DWEC of 780 µg/L.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to imidacloprid from food will utilize 48% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to imidacloprid in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD for children 1-6 years old. The maximum concentration of imidacloprid in surface and ground water for acute exposure is very small (1.1 µg/L) compared to the DWEC of 98 µg/L.

4. *Short- or intermediate-term risk.* As noted earlier in this document, dermal and inhalation short- and intermediate-term risk assessments are not required for imidacloprid as dermal and inhalation exposure endpoints were not identified due to the demonstrated absence of toxicity. Short- and intermediate-term oral exposure are not expected for adult population subgroups. However, since imidacloprid is registered for use on turf, home gardens and pets, EPA has identified potential short-term oral exposures to children for these uses.

A short-term oral endpoint was not identified for imidacloprid. According to current OPP policy, if an oral endpoint is needed for short-term risk assessment (for incorporation of food, water, or oral hand-to-mouth type exposures into an aggregate risk assessment), the acute oral endpoint (LOAEL = 42 mg/kg bwt/day) will be used to incorporate the oral component into aggregate risk.

The margin of exposure for chronic dietary exposure (food only) and residential exposure (hand-to-mouth from turf, garden, and pet uses) for children age 1-6 was calculated to be 302. The safe level for imidacloprid is 300.

Potential short-term exposure from drinking water is at a level below the Agency's level of concern with the DWLOC (10 µg/L) being greater than the DWEC of 1.1 µg/L.

The Agency concludes the short-term aggregate risk to the highest exposed population subgroup (children, 1 to 6 years old) from home garden, turf, and pet uses of imidacloprid does not exceed EPA's level of concern.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to imidacloprid residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

The nature of imidacloprid residues in plants and in animals is adequately understood. The residue of concern is imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, as specified in 40 CFR 180.472.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (example - gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

Based on data submitted by the Applicant, the Agency is establishing time-limited tolerances for residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on blueberries at 1.0 ppm and cranberries at 0.5 ppm.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican Maximum Residue Limits (MRL) for imidacloprid on cranberry and blueberries. Thus, harmonization is not an issue for these time-limited tolerances.

E. Rotational Crop Restrictions

The rotational crop restrictions follow the original section 3 labels. For the use of Provado 1.6 Flowable and Admire 2 Flowable, most vegetables can be immediately plantedback while all other crops have a 12-month plantback interval.

V. Conclusion

Therefore, the tolerance is established for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent, in or on blueberries at 1.0 ppm and cranberries at 0.5 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by September 20, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300884] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII

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file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 1, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a, 321q and 371.

2. In § 180.472, in paragraph (b), by aphabetically inserting the following commodities to the table.

§ 180.472 Imidacloprid; tolerance for residues.

* * * * *

(b)* * *

Commodity	Parts per million	Expiration/ revocation date
Blueberries	1.0	6/1/01
* *	* *	*
Cranberries	0.5	6/1/01

Commodity	Parts per million	Expiration/ revocation date
* *	* *	*

* * * * *

[FR Doc. 99–18190 Filed 7–20–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300898; FRL–6092–7]

RIN 2070–AB78

Biphenyl, Calcium cyanide, and Captafol, et al.; Final Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revokes specific tolerances and/or exemptions for residues of the herbicides chloramben, 2-chloro-*N,N*-diallylacetamide, chloroxuron, diethatyl-ethyl, terbutryn, and 2,3,6-trichlorophenylacetic acid; the fungicides biphenyl, captafol, chlorosulfamic acid, and sulfur dioxide; and the insecticides calcium cyanide, 2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate, chlorthiophos, and ethyl 4,4′-dichlorobenzilate [chlorobenzilate]; as listed in the regulatory text. The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA). By law, EPA is required to reassess 33% of the tolerances in existence on August 2, 1996, by August 1999, or about 3,200 tolerances. This document revokes 138 tolerances and/or exemptions which would be counted among reassessments made toward the August, 1999 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This final rule becomes effective October 19, 1999. Objections and requests for hearings, identified by docket control number [OPP–300898] must be received by EPA on or before September 20, 1999.

ADDRESSES: Objections and hearing requests can be submitted by mail or in person. Please follow the detailed instructions provided in Unit V of the "SUPPLEMENTARY INFORMATION" section of this document. To ensure proper identification of your objection or hearing request, you must identify the docket control number [OPP–300898] in the subject line on the first page of your request.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Joseph Nevola, Special Review Branch, (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Special Review Branch, CM#2, 6th floor, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone: (703) 308–8037; e-mail: *nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not exhaustive, but is a guide to entities likely to be regulated by this action. The North American Industrial Classification System (NAICS) codes will assist you in determining whether this action applies to you. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of this or Other Support Documents?

A. Electronically

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under "**Federal Register** - Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/homepage/fedrgstr/.

B. In Person or by Phone

If you have any questions or need additional information about this action, please contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this final rule, including the public version, has been established under docket control number [OPP–300898], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

III. What Action is being Taken?

This final rule revokes specific FFDCA tolerances and/or exemptions for residues of the herbicides chloramben, 2-chloro-*N,N*-diallylacetamide, chloroxuron, diethatyl-ethyl, terbutryn, and 2,3,6-trichlorophenylacetic acid; the fungicides biphenyl, captafol, chlorosulfamic acid, and sulfur dioxide; and the insecticides calcium cyanide, 2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate, chlorthiophos, and ethyl 4,4′-dichlorobenzilate [Chlorobenzilate] in or on certain specified commodities.

EPA is revoking these tolerances because they are not necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. These pesticides are no longer used on commodities within the United States and no person has provided comment identifying a need for EPA to retain the tolerances to cover residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person in comments on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

EPA is not issuing today a final rule to revoke those tolerances for which EPA received comments demonstrating a need for the tolerance to be retained. Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed above only if, (1)

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prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained, (2) EPA independently verifies that the tolerance is no longer needed, (3) the tolerance is not supported by data, or (4) the tolerance does not meet the requirements under FQPA. EPA had proposed these revocations since the registrations for these pesticide chemicals were canceled because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily canceled all registered uses associated with the tolerance revocations for these pesticides.

1. *Captafol and ethyl 4,4'-dichlorobenzilate [chlorobenzilate].* In the **Federal Register** on June 9, 1993 (58 FR 32320) (FRL–4183–6) (OPP–300273), EPA issued a document which proposed to revoke tolerances for captafol, ethyl 4,4'-dichlorobenzilate (chlorobenzilate) and monocrotophos. Monocrotophos was addressed in a final rule (64 FR 19489, April 21, 1999) (FRL–6074–4).

i. *Captafol.* EPA published a Registration Standard for captafol on September 30, 1984. In that document, the Agency's concerns about captafol's carcinogenic effects and hazard to fish are summarized. In the **Federal Register** of January 9, 1985 (50 FR 1103), EPA issued a notice initiating Special Review for captafol. This resulted in the voluntary cancellation of all captafol registrations, effective April 30, 1987, with the exception of one intrastate registration that was canceled in March, 1991. The sale of existing stocks of captafol by registrants was permitted until December 31, 1987. Other persons were allowed to continue to distribute, sell, and use existing stocks until exhausted. Generally, a tolerance is not necessary for a pesticide chemical which is not registered for the particular food use. Therefore, in the **Federal Register** of June 9, 1993 (58 FR 32320), EPA proposed to revoke the tolerances listed in 40 CFR 180.267 for residues of captafol. The Agency revoked the tolerance for captafol residues in or on peanuts, hulls in the **Federal Register** of December 17, 1997 (62 FR 66020) (FRL–5753–1).

Today's document revokes the tolerances in 40 CFR 180.267 for captafol residues in or on apples; apricots; blueberries; cherries, sour; cherries, sweet; citrus fruits; corn, fresh (inc sweet K+CWHR); cranberries; cucumbers; macadamia nuts; melons; nectarines; peanuts, meats (hulls removed); peaches; pineapples; plums (fresh prunes); and taro (corm).

ii. *Ethyl 4,4'-dichlorobenzilate (chlorobenzilate).* This document also revokes the tolerances in 40 CFR 180.109 for ethyl 4,4'-dichlorobenzilate (chlorobenzilate) residues in or on cattle, fat; cattle, mbyp; cattle, meat; citrus fruits; sheep, fat; sheep, mbyp; and sheep, meat; by removing § 180.109.

2. *Sulfur dioxide.* The proposal to revoke the exemptions in 40 CFR 180.1013 for sulfur dioxide was published in the **Federal Register** on June 22, 1994 (59 FR 32172) (FRL–4776–9) (OPP–300336). Today's document revokes the exemptions in 40 CFR 180.1013(a) for sulfur dioxide residues in or on barley; buckwheat; corn; oats; popcorn; rice; rye; sorghum, grain (milo); wheat; and in 40 CFR 180.1013(b) for sulfur dioxide residues in or on corn (for feed use), by removing § 180.1013.

3. *2-Chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate and terbutryn.* The proposal to revoke the tolerances for 2-Chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate and terbutryn was published in the **Federal Register** on July 20, 1994 (59 FR 37019) (FRL–4868–7) (OPP–300346).

i. *2-Chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate.* Today's document revokes the tolerances in 40 CFR 180.252 for residues 2-Chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate in or on apples; cherries; corn, field, fodder; corn, field, forage; corn, fresh (inc. sweet K+CWHR); corn, grain; corn, pop, fodder; corn, pop, forage; corn, sweet, fodder; corn, sweet, forage; cranberries; peaches; pears; and tomatoes. EPA will revise commodity terminology to conform to current practice.

ii. *Terbutryn.* This document also revokes the tolerances in 40 CFR 180.265 for terbutryn residues in or on barley, fodder; barley, grain; barley, green; barley, straw; sorghum, grain; wheat, fodder; wheat, grain; wheat, green; and wheat, straw, by removing § 180.265.

4. *Biphenyl; calcium cyanide; 2-chloro-N,N-diallylacetamide; chlorosulfamic acid; chlorthiophos; 2,3,6-trichlorophenylacetic acid; chloramben; chloroxuron; and diethatyl-ethyl.* The proposal to revoke the tolerances for the herbicides 2-chloro-*N,N*-diallylacetamide, chloramben, chloroxuron, 2,3,6-trichlorophenylacetic acid, and diethatyl-ethyl; the fungicides biphenyl and chlorosulfamic acid; and the insecticides calcium cyanide and chlorthiophos was published in the **Federal Register** on April 3, 1996 (61 FR 14694) (FRL–4971–1) (OPP–300396).

i. *Biphenyl.* In this document, EPA is revoking the tolerance in 40 CFR 180.141 for biphenyl residues in or on fruits, citrus (and hybrids thereof), by removing § 180.141.

ii. *Calcium cyanide.* In this document, EPA is revoking the tolerances in 40 CFR 180.125 for calcium cyanide residues in or on barley, grain (POST-H); buckwheat, grain (POST-H); corn, grain (POST-H); cucumbers; lettuce; oats, grain (POST-H); radishes; rice, grain (POST-H); rye, grain (POST-H); sorghum, grain (POST-H); tomatoes; and wheat, grain (POST-H), by removing § 180.125.

iii. *2-Chloro-N,N-diallylacetamide.* In this document, EPA is revoking the tolerances in 40 CFR 180.282 for 2-Chloro-*N,N*-diallylacetamide residues in or on beans, dried; beans, lima; beans, lima, forage; beans, snap; beans, snap, forage; cabbage; castor beans; celery; corn, field, fodder; corn, field, forage; corn, fresh (inc sweet K+ CWHR); corn, grain (inc popcorn); corn, pop, fodder; corn, pop, forage; corn, sweet, fodder; corn, sweet, forage; onions; peas; peas, forage; potatoes; sorghum, forage; sorghum, grain; soybeans; soybeans, forage; sugarcane; sweet potatoes; and tomatoes; by removing § 180.282.

iv. *Chlorosulfamic acid.* In this document, EPA is revoking the tolerances in 40 CFR 180.201 for chlorosulfamic acid residues in or on asparagus (POST-H); carrots (POST-H); cauliflower (POST-H); celery (POST-H); potatoes (POST-H); and radishes (POST-H); by removing § 180.201.

v. *Chlorthiophos.* In this document, EPA is revoking the tolerance in 40 CFR 180.398 for chlorthiophos residues in or on tomatoes, by removing § 180.398.

vi. *2,3,6-Trichlorophenylacetic acid.* In this document, EPA is revoking the tolerance in 40 CFR 180.283 for 2,3,6-Trichlorophenylacetic acid residues in or on sugarcane, by removing § 180.283.

vii. *Chloramben; Chloroxuron; and Diethatyl-ethyl.* Since chloramben, chloroxuron, and diethatyl-ethyl still had usages on certain crops as late as 1994 and 1995, EPA proposed to delay the revocation of chloramben, chloroxuron, and diethatyl-ethyl until March 1, 1999, to allow domestic growers, who may have had stocks, to use up their supplies and to permit any treated raw commodities and products processed from such commodities to move through marketing channels. The time-limited tolerances for chloramben, chloroxuron, and diethatyl-ethyl, which were proposed in the **Federal Register** of April 3, 1996 (61 FR 14694), are no longer needed because the proposed expiration date of March 1, 1999 has passed.

In this document, EPA is revoking the tolerances in 40 CFR 180.266 for chloramben residues in or on beans, dried; beans, lima; beans, snap; beans, vines; cantaloupes; corn, field, fodder; corn, field, forage; corn, field, grain; cucumbers; peanuts; peanuts, forage; peas, pigeon; peas, pigeon, forage; peppers; pumpkins; soybeans; soybeans, forage; squash, summer; squash, winter; sunflower seed; sweet potatoes; and tomatoes; by removing § 180.266. The Agency revokes the tolerances in 40 CFR 180.216 for chloroxuron residues in or on carrots; celery; onions (dry bulb); soybeans; soybeans, forage; and strawberries; by removing § 180.216. Also, the Agency revokes the tolerances in 40 CFR 180.402 for diethatyl-ethyl residues in or on red beet, roots; red beet, tops; spinach; sugar beets, roots; and sugar beets, tops; by removing § 180.402.

Response to comments. EPA issued proposed rules for the specific pesticides mentioned herein announcing the proposed revocation of certain tolerances and/or exemptions and invited public comment for consideration and for support of tolerance retention under FFDCA standards. With the exception of captafol, no comments were received by the Agency concerning the pesticides mentioned in this final rule.

In response to the proposed rule published in the **Federal Register** of June 9, 1993 (58 FR 32320), the following comments were received regarding captafol:

1. *Comments from Citrus Grower Groups, Citrus Growers, and the Florida Cooperative Extension Service at the University of Florida.* In general, comments requested that the revocation of the tolerance for captafol residues on citrus fruits be postponed for 1 to 2 years (until June, 1994 or June, 1995) to allow growers enough time to exhaust existing stocks of captafol for use on citrus.

2. *Comment from Maberry Enfield Maberry Berry Associates (MEMBA).* A comment was received by the Agency from MEMBA, which cited the occasional use of captafol to control Godronia canker in blueberries. MEMBA acknowledged that they have not needed captafol for several years and that little material remains in the hands of growers and pesticide brokers.

3. *Comment from Nestle Peru S.A.* A comment was received by the Agency from Nestle Peru S.A. which stated that captafol was used in combination with other active materials such as thiophanate-methyl (Cercobin-M) and triadimefon (Bayleton).

4. *Comment from Ministry of Agriculture, Republic of Indonesia.* A comment received by the Agency from the Embassy of the Republic of Indonesia mentioned that the captafol tolerances on commodities, including onions, potatoes, and tomatoes were too small in comparison with Codex Alimentarius Commission/Food and Agriculture Organization of the United Nations (CAC/FAO) MRLs. The Ministry of Agriculture of the Republic of Indonesia claimed that capatafol was being reevaluated due to its potential negative impact on man or the environment. Also, the Ministry stated there is a possibility of phasing out captafol in the future.

Agency response. EPA will not revoke the tolerances in 40 CFR 180.267 for captafol use on onions, potatoes, and tomatoes at this time. EPA will follow-up with the Republic of Indonesia to see if Indonesia has taken further actions on captafol and whether the proposed U.S. tolerance revocation for onions, potatoes, and tomatoes should be finalized. If Indonesia desires any import tolerances, then certain data requirements need to be met. EPA has developed guidance on import tolerances that is available to interested persons. The Agency will revise commodity terminology for onions; potatoes; and tomatoes; to conform to current practice; i.e., change to onion, potato, and tomato, respectively. In addition, EPA is removing the "(N)" designation to conform to current Agency administrative practice ("N" designation means negligible residues).

Regarding the comments on citrus fruits and blueberries, 6 years have passed since the proposed revocation of all captafol tolerances in the **Federal Register** of June 9, 1993 (58 FR 32320). EPA now believes that more than enough time has transpired for existing stocks to be used and/or legally treated agricultural commodities to have gone through the channels of trade. Therefore, EPA is revoking the other tolerances for captafol listed in 40 CFR 180.267 for residues on apples; apricots; blueberries; cherries, sour; cherries, sweet; citrus fruits; corn, fresh (inc sweet K+CWHR); cranberries; cucumbers; macadamia nuts; melons; nectarines; peanuts, meats (hulls removed); peaches; pineapples; plums (fresh prunes); and taro (corm).

IV. When Do these Actions Become Effective?

These actions become effective 90 days after publication in the **Federal Register**. EPA has delayed the effectiveness of these revocations for 90 days following publication to ensure that all affected parties receive notice of EPA's action. Consequently, the effective date is October 19, 1999. For this particular final rule, the actions will affect uses which have been canceled for more than a year. Therefore, commodities should have cleared the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by the FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

V. Can I Submit Objections or Hearing Requests?

Yes. Any person can file written objections to any aspect of this regulation and can also request a hearing on those objections. Objections and hearing requests are currently governed by the procedures in 40 CFR part 178, modified as needed to reflect the requirements of FFDCA section 408(g).

A. When and Where to Submit

Objections and hearing requests must be mailed or delivered to the Hearing Clerk no later than September 20, 1999. The address of the Hearing Clerk is Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St. SW, Washington, DC 20460.

B. Fees for Submission

1. Each objection must be accompanied by a fee of $3,275 or a request for waiver of fees. Fees accompanying objections and hearing requests must be labeled "Tolerance Petition Fees" and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

2. EPA may waive any fee when a waiver or refund is equitable and not contrary to the purposes of the Act. A request for a waiver of objection fees

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should be submitted to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. The request for a waiver must be accompanied by a fee of $1,650, unless the objector has no financial interest in the matter. The fee, if required, must be submitted to the address in Unit V.B.1 of this document. For additional information on tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), at the same mailing address, or by phone at 703–305–5697 or e-mail at tompkins.jim@epa.gov.

C. Information to be Submitted

Objections must specify the provisions of the regulation considered objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector. You may claim information that you submit in response to this document as confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

D. Granting a Hearing Request

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following:

1. There is a genuine and substantial issue of fact.

2. There is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary.

3. Resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

VI. How Do the Regulatory Assessment Requirements Apply to this Final Action?

A. Is this a "Significant Regulatory Action"?

No. Under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this final action is not a "significant regulatory action." The Office of Management and Budget (OMB) has determined that tolerance actions, in general, are not "significant" unless the action involves the revocation of a tolerance that may result in a substantial adverse and material affect on the economy. In addition, this final action is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because this final action is not an economically significant regulatory action as defined by Executive Order 12866. Nonetheless, environmental health and safety risks to children are considered by the Agency when determining appropriate tolerances. Under FQPA, EPA is required to apply an additional 10–fold safety factor to risk assessments, in order to ensure the protection of infants and children, unless reliable data support a different safety factor.

B. Does this Final Action Contain Any Reporting or Recordkeeping Requirements?

No. This final action does not impose any information collection requirements subject to OMB review or approval pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

C. Does this Final Action Involve Any "Unfunded Mandates"?

No. This final action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

D. Do Executive Orders 12875 and 13084 Require EPA to Consult with States and Indian Tribal Governments Prior to Taking the Final Action in this Document?

No. Under Executive Order 12875, entitled "Enhancing the Intergovernmental Partnership" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's final rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Under Executive Order 13084, entitled "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. This final rule does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Does this Final Action Involve Any Environmental Justice Issues?

No. This action does not involve special considerations of environmental-justice related issues pursuant to Executive Order 12898, entitled *"Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).*

F. Does this Final Action Have a Potentially Significant Impact on a Substantial Number of Small Entities?

No. The Agency has certified that tolerance actions, including the tolerance final actions in this document, are not likely to result in a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination, along with its generic certification under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), appears at 63 FR 55565, October 16, 1998 (FRL–6035–7). This generic certification has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

G. Does this Final Action Involve Technical Standards?

No. This tolerance final action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

H. Are there Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decisions. The U.S. EPA has developed guidance concerning submissions for import tolerance support. This guidance will be made available to interested persons.

I. Is this Final Action Subject to Review under the Congressional Review Act?

Yes. The Congressional Review Act, 5 U.S.C. Sec. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 13, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended to read as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§§ 180.109, 180.125, 180.141, 180.201, and 180.216 [Removed]

b. By removing §§ 180.109, 180.125, 180.141, 180.201, and 180.216.

c. By revising § 180.252 to read as follows:

§ 180.252 2-Chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide 2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate in or on the following food commodities:

Commodity	Parts per million
Alfalfa	110
Cattle, fat	1.5
Egg	0.1
Goat, fat	0.5
Hog, fat	1.5
Horse, fat	0.5
Milk, fat (reflecting negligible residues in whole milk)	0.5
Poultry, fat	0.75
Sheep, fat	0.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§§ 180.265 and 180.266 [Removed]

d. By removing §§ 180.265 and 180.266.

e. By revising § 180.267 to read as follows:

§ 180.267 Captafol; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide captafol (cis-*N*-[(1,1,2,2-tetrachloroethyl)thio]-4-cyclohexene-1,2-dicarboximide) in or on the following food commodities:

Commodity	Parts per million
Onion	0.1
Potato	0.5
Tomato	15

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§§ 180.282, 180.283, 180.398, 180.402, and 180.1013 [Removed]

f. By removing §§ 180.282, 180.283, 180.398, 180.402, and 180.1013.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300882; FRL–6086–7]

RIN 2070–AB78

Spinosad; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

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ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of spinosad in or on all commodities in connection with quarantine eradication programs against exotic, non-indigenous, fruit fly species, where a separate higher tolerance is not already established. In this same action, EPA is also establishing a time-limited tolerance for use of spinosad on cranberries. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide under the conditions described above. This regulation establishes a maximum permissible level for residues of spinosad on these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance in connection with the use of spinosad in quarantine eradication programs will expire and is revoked on December 1, 2002. The time-limited tolerance for spinosad on cranberries will expire and is revoked on June 1, 2001.

DATES: This regulation is effective July 21, 1999. Objections and requests for hearings must be received by EPA on or before September 20, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300882], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300882], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300882]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Daniel J. Rosenblatt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 286, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–9375; rosenblatt.dan@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the insecticide spinosad on all commodities at 0.02 parts per million (ppm) when used in connection with quarantine eradication programs against exotic, non-indigenous, fruit fly species, where a separate higher tolerance is not already established. This tolerance will expire and is revoked on December 1, 2002. EPA is also establishing a tolerance for residues of spinosad on cranberries when used under a section 18 emergency exemption. The tolerance for cranberries will expire and is revoked on June 1, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Spinosad

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (USDA/APHIS) is responsible for ensuring that new and invasive pest species do not become established in the United States. In order to engage in emergency eradication programs should an infestation of a quarantined fruit fly pest be discovered, USDA/APHIS applied for section 18 quarantine exemptions to use, among other things, the pesticide spinosad against these species in Florida.

Florida is vulnerable to outbreaks of non-indigenous fruit fly species in the Tephritidae family. USDA/APHIS, working in conjunction with the Florida Department of Agriculture and Consumer Services, has eradicated numerous incipient populations of the Mediterranean fruit fly over the past two seasons. The discovery of an outbreak of a population of a new or non-established pest species carries significant trade implications. The economic losses associated with an established population of Mediterranean fruit flies or other Tephritidae pests would be severe.

EPA concurs that an emergency situation exists in relation to these pests and has authorized a section 18 quarantine exemption for use of spinosad in quarantine programs against exotic, non-indigenous, quarantined, fruit fly species. Time-limited tolerances are also needed to support this exemption in a generic manner because outbreaks of these pest species are possible in nearly all commercial agricultural settings.

Separately, EPA also authorized an emergency exemption for the use of spinosad on cranberries in order to control the sparganothis fruit worm. Growers are experiencing loss of efficacy connected with use of the historic pesticide controls and may be faced with yield loss at 20% of the crop over previous growing seasons. On heavily fruiting, early cultivars, damage may approach 35% crop loss. EPA concurs that emergency conditions exist and has authorized spinosad's use on cranberries in Massachusetts.

As part of its assessment of these emergency exemptions, EPA assessed the potential risks presented by residues of spinosad in or on cranberries and also on all commodities where a separate higher tolerance is not already established. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under secuon 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on the dates specified elsewhere in this document, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cranberries or all commodities where a separate higher tolerance is not established after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether spinosad meets EPA's registration requirements for use on cranberries or all commodities where a separate higher tolerance is not established or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of spinosad by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any States other than those where the exemptions were issued to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption, contact the Agency's Registration Division at the address provided under the "ADDRESSES" section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of spinosad and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of spinosad on cranberries and all commodities where a separate higher tolerance is not established at 0.02 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by spinosad are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity.* No acute toxicity endpoint was selected by EPA because a single exposure dose did not produce toxicological effects.

2. *Short- and intermediate-term toxicity.* No toxicology endpoint was selected by EPA for these exposure durations.

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for spinosad at 0.0268 milligram/kilogram/day (mg/kg/day). This RfD is based on a no observed adverse effect level (NOAEL) of 2.68 mg/kg/day established in a chronic toxicity study in dogs. The lowest observed adverse effect level (LOAEL) was 8.46 mg/kg/day based on vacuolation in glandular cells and lymphatic tissues, arteritis and increases in serum enzymes such as alanine aminotransferase, and aspartate aminotransferase, and triglyceride levels in dogs fed spinosad in the diet at dose levels 1.44, 2,68, or 8.46 mg/kg/day for 52 weeks. A 100-fold uncertainty factor (UF) was applied to the NOAEL of 2.68 mg/kg/day to account for inter- and intraspecies variation.

4. *Carcinogenicity.* EPA has determined that there is no evidence of carcinogenicity in studies involving spinosad in either the mouse or rat. Therefore, a carcinogenic risk assessment is not required.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.495) for the residues of spinosad, in or on a variety of raw agricultural commodities. For example, tolerances have been established for the citrus fruits group, the fruiting vegetables group, and on meat and milk. Risk assessments were conducted by EPA to assess dietary exposures and risks from as follows:

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i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. EPA did not identify a toxicity endpoint for this exposure duration. Therefore, a risk assessment for this exposure scenario is not needed.

ii. *Chronic exposure and risk.* Based on a NOAEL of 2.68 mg/kg/day and an uncertainty factor of 100, EPA performed a dietary risk assessment which considered exposure that may result from use under this section 18 as well as all other registered uses. The highest exposed population subgroup based on a Tier 1 exposure analysis from the dietary exposure evaluation system (DEEM) was children ages 1–6 years. This risk assessment also took into account the available information on spinosad concerning the additional safety factor called for by FQPA in order to protect infants and children. This calculation builds additional safety factors, as needed, into the risk assessment by using a ratio that compares the reference dose against the FQPA safety factor that is appropriate for a particular pesticide. This ratio is known as the population adjusted dose (PAD). In this case, EPA concluded that the additional 10x safety factor for spinosad could be removed. Section E of this unit contains the rationale for reducing the 10x safety factor for spinosad. EPA calculated that chronic dietary (food only) exposure at tolerance levels will occupy 39% of the PAD. Exposure estimates for adult populations are less than 29% of the PAD.

2. *From drinking water.* No chemical-specific drinking water monitoring data are available. However, EPA used modeling data involving both ground and surface water situations to determine conservative estimated environmental concentrations (EECs). Also, EPA back-calculated drinking water levels of comparison (DWLOCs) to determine whether exposure to spinosad via drinking water is likely to be of concern given the modeled EECs. EPA has concluded that drinking water is not expected to be a significant source of exposure to spinosad.

Data suggests that spinosad is not mobile or persistent, and therefore, has little potential to leach to ground water or to be transported to surface water in high concentrations. Although spinosad has been shown to photolyze rapidly, EPA used the conservative soil photolysis value of 82 days in modeling the persistence of the chemical in surface waters.

i. *Acute exposure and risk.* The high-end EEC is based on the highest registered application rate and results in an EEC of 0.092 micrograms/liter. The highest exposed population subgroup is children 1–6 years. The calculated DWLOC for that population subgroup is 165 micrograms/liter. This EEC value is over 1,000 times less than the lowest DWLOC. Therefore, EPA concludes that drinking water is not expected to be a significant source of exposure to spinosad.

ii. *Chronic exposure and risk.* The characteristics of spinosad suggest that the exposure and risks from spinosad in drinking water are analogous for acute and chronic exposures. No separate chronic analysis is needed.

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfDs or acute dietary NOAELs) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause it to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Spinosad is currently registered for use on the following residential non-food site: turf grass. This registration creates the possibility of exposure to children involved in pica behavior with the ingestion of grass or treated dirt. EPA performed a qualitative analysis of the risks connected with this type of exposure and concluded that based on the toxicology profile of spinosad as well as a reasonable exposure situation that risk to children from the turf use does not exceed the Agency's level of concern.

i. *Acute exposure and risk.* Because no toxicological endpoint was selected for acute exposures to spinosad, it is not necessary to calculate a risk assessment to evaluate the acute non-dietary exposure scenario.

ii. *Chronic exposure and risk.* EPA's Health Effect Division (HED) performed a qualitative risk assessment to characterize the chronic risks from non-dietary exposure to spinosad. Based on the low application rate on turf (0.41 lb., AI/A.), its non-systemic nature, its short half-life (especially in sunlight), and the rapid incorporation of spinosad metabolites into the general carbon pool, EPA believes that residues of spinosad on turf grass after application would be low and decrease rapidly over time. EPA believes that a quantitative risk assessment for this exposure duration is not reasonable as it is unlikely that children would eat grass/dirt for greater than 6 months continuously. Therefore, EPA believes it is appropriate to use a qualitative assessment of this situation. EPA believes that the risk from children eating turf grass does not exceed the level of concern.

iii. *Short- and intermediate-term exposure and risk.* Because no toxicological endpoint was selected for short- and intermediate-term exposures to spinosad, it is not necessary to calculate a risk assessment to evaluate this non-dietary exposure scenario.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether spinosad has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, spinosad does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that spinosad has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* As mentioned previously, no toxicology endpoint was identified for this exposure duration. Thus, an aggregate risk assessment for this situation is not needed.

2. *Chronic risk.* Using the theoretical maximum residue contribution (TMRC) exposure assumptions described in this unit, EPA has concluded that aggregate exposure to spinosad from food will utilize 29% of the chronic PAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children ages 1–6 years. A separate risk assessment for this population subgroup is described in section E of this unit. EPA generally has no concern for exposures below 100% of the RfD or PAD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to spinosad in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD or the PAD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

No toxicology endpoint was selected for spinosad for these exposure durations. Thus, a separate risk assessment for this exposure duration for the U.S. population was not conducted by EPA.

4. *Aggregate cancer risk for U.S. population.* Toxicology data suggest that spinosad does not induce cancer. Thus, a cancer risk assessment was not performed and is not necessary.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of spinosad, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In a prenatal developmental toxicity study in rabbits, the NOAEL for maternal toxicity is ≥50 mg/kg/day. There were no developmental effects that could be attributed to administration of spinosad. The NOAEL for developmental toxicity is ≥50 mg/kg/day (highest dose tested).

In a prenatal developmental toxicity study in rats, the NOAEL for maternal toxicity is ≥200 mg/kg/day (highest dose tested). There were no developmental effects that could be attributed to administration of spinosad. The NOAEL for developmental toxicity is ≥200 mg/kg/day (highest dose tested).

iii. *Reproductive toxicity study.* In a 2–generation reproduction study, for parental systemic toxicity, the NOAEL was 10 mg/kg/day and the LOAEL was 100 mg/kg/day, based on increased heart, kidney, liver, spleen and thyroid weights. For offspring toxicity, the NOAEL was 10 mg/kg/day and the LOAEL was 100 mg/kg/day, based on decreased litter size, survival (F_2), and body weights. Reproductive effects at that dose level included increased incidence of dystocia and or vaginal bleeding after parturition with associated increase in mortality of dams.

iv. *Pre- and postnatal sensitivity.* There was no increased susceptibility to rats or rabbits following *in utero* and or postnatal exposure to spinosad.

v. *Conclusion.* Based on the existing toxicological data base, no indication of increased susceptibility of rat or rabbit fetuses to *in utero* and or postnatal exposure, and that there is no requirement for a developmental neurotoxicity study, EPA determined that the 10x safety factor for increased sensitivity of infants and children can be removed (i.e., 1x).

2. *Acute risk.* No toxicology endpoint was selected for exposure to spinosad based on acute exposure. Thus, EPA did not calculate a risk assessment for this exposure duration for infants and children.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to spinosad from food will utilize 39% of the chronic PAD for infants and children. EPA generally has no concern for exposures below 100% of the chronic PAD because the RfD or PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to spinosad in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* No toxicology endpoint was selected for exposure to spinosad based on short- or intermediate-term exposure. Thus, EPA did not calculate a risk assessment for these exposure durations for infants and children.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to spinosad residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

EPA has reviewed the results of plant and animal metabolism studies in numerous crops and animals. The metabolism of spinosad is adequately understood. EPA has concluded that the metabolism and fermentation impurities of spinosad were of no more toxicological concern than the two parent compounds (spinosyns Factor A and Factor D).

B. Analytical Enforcement Methodology

Enforcement methods have already been accepted and published to enforce tolerances for spinosad.

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C. Magnitude of Residues

No field trial data are available from the proposed use of spinosad against the exotic fruit flies. However, based on the low use rate and photodegradability of spinosad, EPA does not expect residues to be detectable. An analysis of the expected residue level was calculated based on the highest registered use rate for spinosad. Based on its rapid incorporation into the general carbon pool, EPA believes that residues will be most strongly influenced by the last application rather than the seasonal rate. The low use rate suggests that residues will be at or below 0.02 ppm, the level of quantitation.

D. International Residue Limits

No international tolerances for spinosad have been established that correspond to these actions.

E. Rotational Crop Restrictions

There are no rotational crop restrictions connected with these actions.

V. Conclusion

Therefore, the tolerances are established for residues of spinosad in or on all commodities at 0.02 ppm when its use is associated with quarantine eradication programs against exotic, non-indigenous, fruit fly species where a separate higher tolerance is not already established. Also, a tolerance of 0.02 ppm is established for spinosad on cranberries when it is used in accordance with a FIFRA section 18 exemption.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by September 20, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300882] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 30, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a), and 371.

2. Section 180.495, is amended, by adding new paragraph (b) to read as follows:

§180.495 Spinosad; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Factor A is 2-[(6-deoxy-2,3,4-tri-O-methyl-o-L-mannopyranosyl)oxy]-13-[[5-(dimethlamino)- tetrahydro-6-methyl-2H-pyran-2-yl]oxy]9-ethyl-2,3,3a,5a,6,9,10,11,12,13,14,16a,6b,tetradecahydro-14-methyl-1H-as-Indaceno[3,2d]oxacyclododecin-7,15-dione. Factor D is 2-[6-deoxy-2,3,4-tri-O-methyl-o-L-mannopyranosyl)oxy]13-[[5-(dimethylamino)-tetrahydri-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14,dimethyl-1H-as-Indaceno[3,2d]oxacyclododecin-7,15-dione.

Commodity	Parts per million	Expiration/ Revocation date
Cranberries	0.02	06/01/01
All commodities in connection with quarantine eradication programs against exotic, non-indigenous, fruit fly species, where a separate higher tolerance is not already established	0.02	12/01/02

* * * * *

[FR Doc. 99–18482 Filed 7–20–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300896; FRL–6092–1]

RIN 2070–AB78

Tebufenozide; Benzoic Acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of tebufenozide in or on pome fruit, apple pomace, cotton and cotton gin byproducts and tolerances for the combined residues of tebufenozide and the metabolites benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-((4-carboxymethyl)benzoyl)hydrazide), benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide, the stearic acid conjugate of benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide and benzoic acid, 3-hydroxymethyl-5-methyl-1-(1,1-dimethylethyl)-2-(4-(1-hydroxyethyl)benzoyl)hydrazide in or on the meat of cattle, goats, hogs, horses, and sheep; the fat of cattle, goats, hogs, horses, and sheep; meat byproducts of cattle, goats, hogs, horses, and sheep; and milk. Rohm and Haas Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective July 21, 1999. Objections and requests for hearings must be received by EPA on or before September 20, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300896], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300896], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300896]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Tavano, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 222, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6411, tavano.joseph@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 19, 1998 (63 FR 44439) (FRL–6019–6) and February 17, 1999 (64 FR 7883) (FRL–6060–1), EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106–2399. These notices included a summary of the petition prepared by Rohm and Haas Company, the registrant. There were no comments received in response to these notices of filing.

The petitions requested that 40 CFR 180.482 be amended by establishing a tolerance for residues of the insecticide tebufenozide, in or on pome fruit, apple pomace, cotton, and cotton gin byproducts at 1.25, 3.0, 1.5, and 30 part per million (ppm) respectively. Tebufenozide is a reduced risk pesticide sold under the trade names of Confirm 2F and Confirm 70 WSP. Tebufenozide controls beet armyworm, cabbage looper, fall armyworm, Southern armyworm, true armyworm, and yellowstriped armyworm on cotton. On pome fruit it controls codling moth, lesser appleworm, obliquebanded leafroller, tufted apple bud moth, eyespotted bud moth, fruitree leafroller, green fruitworm, pandemis leafroller, redbanded leafroller, and variegated leafroller.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of tebufenozide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of tebufenozide on pome fruit, apple pomace, cotton, and cotton gin byproducts at 1.5, 3.0, 1.5, and 30 ppm respectively and tolerances for the combined residues of tebufenozide and its metabolites benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-((4-carboxymethyl)benzoyl)hydrazide), benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide, the stearic acid conjugate of benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide and benzoic acid, 3-hydroxymethyl-5-methyl-1-(1,1-dimethylethyl)-2-(4-(1-hydroxyethyl)benzoyl)hydrazide in or on the meat of cattle, goats, hogs, horses, and sheep; the fat of cattle, goats, hogs, horses, and sheep; meat byproducts of cattle, goats, hogs, horses, and sheep; and milk at 0.08, 0.1, 0.08, and 0.04 ppm respectively. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by tebufenozide are discussed in this unit.

1. *Acute toxicity studies with technical grade.* Oral LD_{50} in the rat is >5 grams for males and females - Toxicity Category IV; dermal LD_{50} in the rat is = 5,000 milligrams/kilograms (mg/kg) for males and females - Toxicity Category III; inhalation LC_{50} in the rat is >4.5 mg/l - Toxicity Category III; primary eye irritation study in the rabbit is a non-irritant; primary skin irritation in the rabbit >5mg - Toxicity Category IV. Tebufenozide is not a sentizer.

2. In a 21–day dermal toxicity study, Crl:CD rats (6/sex/dose) received repeated dermal administration of either the technical (96.1%) product (RH-75,992) at 1,000 mg/kg/day (Limit-Dose) or the formulation (23.1% a.i.) product (RH-755,992 2F) at 0, 62.5, 250, or 1,000 mg/kg/day, 6 hours/day, 5 days/week for 21 days. Under conditions of this study, RH-75,992 Technical or RH-75,992 2F demonstrated no systemic toxicity or dermal irritation at the highest dose tested (HDT) (1,000 mg/kg/) during the 21-day study. Based on these results, the no observable adverse effect level (NOAEL) for systemic toxicity and dermal irritation in both sexes is 1,000 mg/kg/day HDT. A lowest observable adverse effect level (LOAEL) for systemic toxicity and dermal irritation was not established.

3. A 1–year dog feeding study with a LOAEL of 250 ppm (9 mg/kg/day for males and females dogs) based on decreases in red blood cells (RBC), hematocrit (HCT), and hemoglobin (HGB), increases in Heinz bodies, methemoglobin, mean corpuscuslar volume (MCV), mean corpuscular hematocrit (MCH), reticulocytes, platelets, plasma total bilirubin, spleen weight, and spleen/body weight ratio, and liver/body weight ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in the marrow of the femur and sternum. The liver showed an increased pigment in the Kupffer cells. The NOAEL for systemic toxicity in both sexes is 50 ppm (1.9 mg/kg/day).

4. An 18–month mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm.

5. A 2–year rat carcinogenicity with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively).

6. In a prenatal developmental toxicity study in Sprague-Dawley rats (25/group), tebufenozide was administered on gestation days 6–15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 mg/kg/day and a dose volume of 10 milliliter (ml)/kg. There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

7. In a prenatal developmental toxicity study conducted in New Zealand white rabbits (20/group), tebufenozide was administered in 5 ml/kg of aqueous methyl cellulose at gavage doses of 50, 250, or 1,000 mg/kg/day on gestation days 7–19. No evidence of maternal or developmental toxicity was observed; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

8. In a 1993 2–generation reproduction study in Sprague-Dawley rats, tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/day for males and 0, 0.9, 12.8, or 171.1 mg/kg/day for females). The parental systemic NOAEL was 10 ppm (0.8/0.9 mg/kg/day for males and females, respectively) and the LOAEL was 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively) based on decreased body weight, body weight gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOAEL was 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively) and the LOAEL was 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) with a NOAEL of 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively).

9. In a 1995 2–generation reproduction study in rats, tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 25 ppm (1.6/1.8 mg/kg/day in males and females, respectively), and the LOAEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in males and females), treatment-related findings included reduced parental body weight gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOAEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), and the LOAEL was 2,000 ppm (126.0/143.2 mg/kg/day in males and females) based on decreased body weight on postnatal days 14 and 21.

10. Several mutagenicity tests were all negative. These include an Ames assay with and without metabolic activation, an *in vivo* cytogenetic assay in rat bone marrow cells, and *in vitro* chromosome aberration assay in Chinese Hampster Ovary (CHO) cells, a CHO/Hypoxanthine guanine phophoribosyl transferase (HGPRT) assay, a reverse mutation assay with *E. Coli*, and an unscheduled DNA synthesis assay (UDS) in rat hepatocytes.

11. The pharmacokinetics and metabolism of tebufenozide were studied in females Sprague-Dawley rats (3–6/sex/group) receiving a single oral dose of 3 or 250 mg/kg of RH-5992, ^{14}C labeled in one of three positions (A-ring, B-ring, or *N*-butylcarbon). The extent of absorption was not established. The majority of the radiolabeled material was eliminated or excreted in the feces within 48 hours; small amounts (1 to 7% of the administered dose) were excreted in the urine and only traces were excreted in expired air or remained in the tissues. There was no

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tendency for bioacculmulation. Absorption and excretion were rapid.

A total of 11 metabolites, in addition to the parent compound, were identified in the feces; the parent compound accounted for 96 to 99% of the administered radioactivity in the high dose group and 35 to 43% in the low dose group. No parent compound was found in the urine; urinary metabolites were not characterized. The identity of several fecal metabolites was confirmed by mass spectral analysis and other fecal metabolites were tentatively identified by cochromatography with synthetic standards. A pathway of metabolism was proposed based on these data. Metabolism proceeded primarily by oxidation of the three benzyl carbons, two methyl groups on the B-ring and an ethyl group on the A-ring to alcohols, aldehydes or acids. The type of metabolite produced varies depending on the position oxidized and extent of oxidation. The butyl group on the quaternary nitrogen also can be leaved (minor), but there was no fragmentation of the molecule between the benzyl rings.

No qualitative differences in metabolism were observed between sexes, when high or low dose groups were compared or when different labeled versions of the molecule were compared.

12. The absorption and metabolism of tebufenozide were studied in a group of males and females bile-duct cannulated rats. Over a 72-hour period, biliary excretion accounted for 30% (females) to 34% (males) of the administered dose while urinary excretion accounted for equivulant to 5% of the administered dose and the carcass accounted for <0.5% of the administered dose for both males and females. Thus systemic absorption (percent of dose recovered in the bile, urine and carcass) was 35% (females) to 39% (males). The majority of the radioactivity in the bile (20% (females) to 24% (males) of the administered dose) was excreted within the first 6 hours postdosing indicating rapid absorption. Furthermore, urinary excretion of the metabolites was essentially complete within 24 hours postdosing. A large amount (67% (males) to 70% (females)) of the administered dose was unabsorbed and excreted in the feces by 72 hours. Total recovery of radioactivity was 105% of the administered dose.

A total of 13 metabolites were identified in the bile; the parent compound was not identified (i.e. - unabsorbed compound) nor were the primary oxidation products seen in the feces in the pharmacokinetics study. The proposed metabolic pathway proceeded primary by oxidation of the benzylic carbons to alcohols, aldehydes, or acids. Bile contained most of the other highly oxidized products found in the feces. The most significant individual bile metabolites accounted for 5% to 18% of the total radioactivity (males and/or females). Bile also contained the previously undetected (in the pharmacokinetics study) "A" ring ketone and the "B" ring diol. The other major components were characterized as high molecular weight conjugates. No individual bile metabolite accounted for >5% of the total administered dose. Total bile radioactivity accounted for equivalent to 17% of the total administered dose.

No major qualitative differences in biliary metabolites were observed between sexes. The metabolic profile in the bile was similar to the metabolic profile in the feces and urine.

B. Toxicological Endpoints

1. *Acute toxicity.* Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neuro or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000, or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. Thus, the risk from acute exposure is considered negligible.

2. *Short- and intermediate-term toxicity.* No dermal or systemic toxicity was seen in rats receiving 15 repeated dermal applications of the technical (97.2%) product at 1,000 mg/kg/day (Limit-Dose) as well as a formulated (23% active ingredient (a.i.)) product at 0, 62.5, 250, or 1,000 mg/kg/day over a 21-day period. The Agency noted that in spite of the hematological effects seen in the dog study, similar effects were not seen in the rats receiving the compound via the dermal route indicating poor dermal absorption. Also, no developmental endpoints of concern were evident due to the lack of developmental toxicity in either rat or rabbit studies. This risk is considered to be negligable.

3. *Chronic toxicity.* EPA has established the chronic population adjusted dose (cPAD) for tebufenozide at 0.018 mg/kg/day. This RfD is based on a NOAEL of 1.8 mg/kg/day and an uncertainty factor (UF) of 100. The NOAEL was established from the chronic toxicity study in dogs where the NOAEL was 1.8 mg/kg/day based on growth retardation, alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen, and liver at 8.7 mg/kg/day. EPA determined that the 10x factor to protect children and infants (as required by FQPA) should be reduced to 1x. Therefore, the cPAD is the same as the RfD: 0.018 mg/kg/day. Reducing the 10x factor to 1x is supported by the following factors.

i. Developmental toxicity studies showed no increased sensitivity in fetuses when compared to maternal animals following *in utero* exposures in rats and rabbits.

ii. Multi-generation reproduction toxicity studies in rats showed no increased sensitivity in pups as compared to adults and offspring.

iii. There are no data gaps.

4. *Carcinogenicity.* Tebufenozide has been classified as a Group E, "no evidence of carcinogenicity for humans," chemical by EPA.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on a variety of raw agricultural commodities. In today's action, tolerances will be established for the residues of tebufenozide in or on pome fruit, apple pomace, cotton, and cotton gin byproducts at 1.5, 3.0, 1.5, and 30 ppm respectively and tolerances for the combined residues of tebufenozide and its metabolites benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-((4-carboxymethyl)benzoyl)hydrazide), benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide, the stearic acid conjugate of benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide and benzoic acid, 3-hydroxymethyl-5-methyl-1-(1,1-dimethylethyl)-2-(4-(1-hydroxyethyl)benzoyl)hydrazide in or on the meat of cattle, goats, hogs, horses, and sheep; the fat of cattle, goats, hogs, horses, and sheep; meat byproducts of cattle, goats, hogs, horses, and sheep; and milk at 0.08, 0.1, 0.08, and 0.04 ppm respectively. Risk assessments were conducted by EPA to assess dietary exposures from tebufenozide as follows.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of crop treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate

exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

Estimates of PCT were used as follows. In all cases the maximum estimates were used.

Crop	Average	Maximum
Almonds	<1%	<1%
Beans/Peas, Dry	<0%	<1%
Cole Crops	<1%	<2%
Spinach, Fresh	<2%	<3%
Spinach, Processed	<20%	<29%
Sugarcane	<3%	<5%
Walnuts	<10%	<16%

The following market share data obtained from Rohm and Haas was also used:

Crop	Market Share (%)
Sugarcane	81.8
Fruiting Vegetables	9.9
Leafy Vegetables	14.2
Blueberries	25

Where market share information was available, it was used in preference over PCT, since it is the larger more conservative number and therefore more protective of human health.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates is supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which tebufenozide may be applied in a particular area.

i. *Acute exposure and risk.* Acute risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No neuro or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. This risk is considered to be negligable.

ii. *Chronic exposure and risk.* EPA used the Dietary Exposure Evaluation Model (DEEM), which incorporates data from the Continuing Survey of Food Intakes by Individuals (CSFII), 1989 to 1992. In conducting this exposure assessment, EPA has made very conservative assumptions -- 100% of pome fruit and cotton commodities and all other commodities having tebufenozide tolerances will contain tebufenozide residues and those residues would be at the level of the tolerance, and some PCT and market share data for selected commodities -- which result in an overestimate of human dietary exposure from food. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment. The resulting estimated food exposures for the U.S. population and various DEEM population subgroups are shown in the following table. Of these subgroups, the highest exposure is projected for children ages 1–6, whose chronic intake is estimated at 18% of the cPAD. Generally, in the absence of additional safety factors, EPA is not concerned with exposures less than 100% of the cPAD. Thus, for all populations, the chronic human health risk from exposure to tebufenozide in foods is below EPA's level of concern.

Population Subgroup	ARC_{food} (mg/kg/day)	%PAD
U.S. Population	0.001433	8
U.S. Population (autumn season).	0.001461	8
U.S. Population (winter season).	0.001478	8
Northeast region	0.001510	8
Pacific region	0.001624	9
Western region	0.001576	9
Non-Hispanic Blacks.	0.001469	8
Non-Hispanic/non-white/non-black).	0.001709	10
All infants (< 1 year).	0.002109	12
Nursing infants	0.000871	5
Non-nursing infants	0.002631	15
Children 1–6 yrs	0.003251	18
Children 7–12 yrs	0.001899	11
Females 13+ (nursing).	0.001552	9
Males 13–19 yrs	0.001139	6

The subgroups listed above are: (1) The U.S. population (48 contiguous States); (2) those for infants and children; (3) the other subgroups for which the percentage of the PAD occupied is greater than that occupied by the subgroup U.S. population (48 contiguous States); and, (4) other population subgroups of particular regulatory interest.

2. *From drinking water* — i. *Acute exposure and risk.* Because no acute dietary endpoint was determined, the Agency concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

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ii. *Chronic exposure and risk.* Submitted environmental fate studies suggest that tebufenozide ranges from moderately persistent to persistent and is mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. There is no established Maximum Contaminant Level (MCL) for residues of tebufenozide in drinking water. No drinking water Health Advisories have been issued for tebufenozide. There is no entry for tebufenozide in the "Pesticides in Groundwater Database."

Monitoring data are not available to assess the human exposure to tebufenozide via drinking water. In lieu of these, EPA has calculated the Tier I estimated environmental concentrations in water (EECs) for tebufenozide using GENEEC (surface water) and SCIGROW (ground water) for use in the human health risk assessment. The maximum application rate for tebufenozide is 0.25 lb a.i. 5 applications per year on pecans. This application scenario was used to calculate the EEC for the human health risk assessment. Due to the wide range of aerobic soil half-life values, GENEEC and SCIGROW were run based on aerobic half-lives of 66 (California Loam) and 729 (worst-case soil with low microbial activity) days. For surface water, the chronic (56-day) values are 13.3 parts per billion (ppb) and 16.5 ppb for the half-lives of 66 and 729 days, respectively. The ground water screening concentrations are 0.16 ppb and 1.04 ppb for the half-lives of 66 and 729 days, respectively. These values represent upper-bound estimates of the concentrations that might be found in surface and ground water due to the use of tebufenozide on pecans.

In performing this risk assessment, EPA has calculated drinking water levels of comparison (DWLOCs) for each of the Dietary Exposure Evaluation Model (DEEM) population subgroups. Within each subgroup, the population with the highest estimated exposure was used to determine the maximum concentration of tebufenozide that can occur in drinking water without causing an unacceptable human health risk. As a comparison value, EPA has used the 16.5-ppb value in this risk assessment, as this represents a worst-case scenario. The DWLOCs for tebufenozide are above the drinking water estimated concentrations (DWEC) of 16.5 ppb for all population subgroups. Therefore, the human health risk from exposure to tebufenozide through drinking water in not likely to exceed EPA's level of concern.

3. *From non-dietary exposure.* Tebufenozide is not currently registered for use on any residential non-food sites. Therefore there are no non-dietary acute, chronic, short- or intermediate-term exposure scenarios.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether tebufenozide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebufenozide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Since no acute toxicological endpoints were established, no acute aggregate risk exists.

2. *Chronic risk.* Using the anticipated residue contribution (ARC) exposure assumptions described in this unit, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 8% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children (1–6 years old) at 18% of the cPAD and is discussed below. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than EPA's DWLOC. EPA generally has no concern for exposures below 100% of the PAD because the PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. There are no registered residential uses of tebufenozide. Since there is no potential for exposure to tebufenozide from residential uses, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Since there are currently no registered indoor or outdoor residential non-dietary uses of tebufenozide and no short- or intermediate-term toxic endpoints, short- or intermediate-term aggregate risks do not exist.

4. *Aggregate cancer risk for U.S. population.* Since tebufenozide has been classified as a Group E, "no evidence of carcinogenicity for humans," this risk does not exist.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

Prenatal and postnatal sensitivity. The toxicology data base for tebufenozide included acceptable developmental toxicity studies in both rats and rabbits as well as a 2-generation reproductive toxicity study in rats. The data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to tebufenozide. No maternal or developmental findings were observed in the prenatal developmental toxicity studies at doses up to 1,000 mg/kg/day in rats and rabbits. In the 2-generation reproduction studies in rats, effects occurred at the same or lower treatment levels in the adults as in the offspring.

Conclusion. There is a complete toxicity data base for tebufenozide and exposure data are complete and reasonably accounts for potential exposures. For the reasons summarized above, EPA concluded that an additional safety factor is not needed to protect the safety of infants and children.

2. *Acute risk.* Since no acute toxicological endpoints were established, no acute aggregate risk exists.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to tebufenozide from food will utilize no more than 18% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The modeling data for tebufenozide indicate levels less than EPA's DWLOC. Despite the potential for exposure to tebufenozide in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the PAD.

4. *Short- or intermediate-term risk.* Short and intermediate-term risks are judged to be negligible due to the lack of significant toxicological effects observed.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide residues.

III. Other Considerations

A. Metabolism in Plants and Animals

The qualitative nature of the residue in plants is adequately understood based upon acceptable apple, sugar beet, and rice metabolism studies. EPA has concluded that the residue of regulatory concern is tebufenozide per se. The qualitative nature of the residues in animals is also adequately understood based on acceptable poultry and ruminant metabolism studies. For animals, EPA has concluded that the residues of regulatory concern are tebufenozide and its metabolites benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-((4-carboxymethyl)benzoyl)hydrazide), benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide, the stearic acid conjugate of benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide and benzoic acid, 3-hydroxymethyl-5-methyl-1-(1,1-dimethylethyl)-2-(4-(1-hydroxyethyl)benzoyl)hydrazide.

B. Analytical Enforcement Methodology

The high pressure liquid chromatography/ultraviolet detection (HPLC/UV) or mass spectrometry detection (MS) method, Rohm and Haas Method TR 34-96-135, and its earlier versions TR 34-95-154, TR 34-96-33, and TR 34-97-002 used for determining residues of tebufenozide in/on cotton matrices from the submitted residue field trials and processing study are adequate for collection of residue data. Adequate method validation and concurrent method recovery data have been submitted for these methods. The limit of quantitation (LOQ) for tebufenozide is 0.01 ppm in/on cottonseed, meal and hull. The LOQ for tebufenozide is 0.025 ppm in/on refined oil, and 0.10 ppm in/on cotton gin byproducts. The reported limit of detection (LOD) for tebufenozide is 0.003 ppm for cottonseed, meal and hull, 0.008 ppm for refined oil, and 0 03 ppm for cotton gin byproducts.

The proposed enforcement method (Rohm and Haas Method TR 34-96-135) has undergone an adequate Independent Laboratory Validation. As similar methods for walnuts and apples have been validated by the Agency's Analytical Chemistry Laboratory, further Agency validation of method TR-34-96-135 is not required.

The HPLC/UV methods, Rohm and Haas Methods TR 34-94-38 (the original enforcement method designation), 34-95-66, and 34-95-188, each versions of the proposed enforcement method for apples and used for determining residues of tebufenozide in/on pome fruits, are adequate for collection of residue data. Adequate method validation and concurrent method recovery data have been submitted for these methods. The validated LOQ is 0.02 ppm for residues of tebufenozide in/on pears and apples.

The HPLC/UV Method, Rohm and Haas Method TR 34-96-109 is adequate for collecting data on residues of tebufenozide in animal tissues and milk. The validated LOQ for tebufenozide in animal tissue and milk are 0.02 and 0.01 ppm, respectively. The LOQ for each of the metabolites studied are as follows: RH-9526 and RH-0282 in milk, 0.01 ppm; RH-2703 in liver, 0.02 ppm; RH-9886 and RH-0282 in meat 0.02 ppm; RH-9526 in fat, 0.02 ppm. The LODs for the analytes are 0.003 ppm in milk and 0.006 ppm in tissues.

This method has been adequately radiovalidated using samples from the goat metabolism study and has undergone a successful ILV trial. A copy of Method 34-96-109 has been forwarded to the Analytical Chemistry Branch (ACB) for evaluation as a possible enforcement method.The proposed enforcement method has not been subjected to a complete Agency method validation at this time. EPA has conducted a preliminary review of the method that indicates that it appears to be suitable for enforcement purposes pending the outcome of the actual method validation. Given that the registrant has provided concurrent fortification data to demonstrate that the method is adequate for data collection purposes and has provided the Agency with a successful Independent Laboratory Validation, coupled with EPA's preliminary review, EPA concludes that the methods are suitable as enforcement methods to support tolerances associated with a conditional registration only. As a condition of the registration, the Agency will require a successful method validation and the registrant will be required to make any necessary modifications to the method resulting from the laboratory validation.

These methods may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

The submitted data from 15 tests on cotton depicting residues of tebufenozide in/on undelinted cottonseed and cotton gin byproducts

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are adequate. Residues of tebufenozide were 0.02 to 1.43 ppm in/on 27 samples of undelinted cottonseed, and 1.23 to 30.10 ppm in/on 12 samples of cotton gin byproducts harvested 13 or 14 days following four applications totaling 1.04 lb ai/acre/season (1x proposed rate).

The available data support the proposed 1.5 ppm tolerance for residues of tebufenozide in/on undelinted cottonseed. In addition, the available data support the proposed 30.0 ppm tolerance for residues of tebufenozide in/on cotton gin byproducts.

The submitted apple and pear residue data are adequate; the petitioner submitted data from 19 tests on apples and pears, representative commodities of the pome fruits crop group. Residues of tebufenozide were 0.183 to 1.040 ppm in/on apples and pears harvested 14 or 15 days following the last of six foliar applications of tebufenozide (70% WP or 2 lb/gal) at 0.308 lb a.i./acre/application (1.85 lb a.i./acre/season; 1x the proposed seasonal rate).

EPA determined that the crop group tolerance for pome fruit should be raised to 1.5 ppm based on the field trial data.

The submitted cow feeding study is adequate.The proposed 0.05 ppm tolerances for residues in kidney, meat, and meat byproducts are not adequate. The combined residues of the parent and four metabolites are to be regulated in all livestock commodities. For tissues, the sum of the LOQs for parent and metabolites is 0.08 ppm. In milk, the combined LOQs would be 0.04 ppm. The appropriate tolerances for meat and meat byproducts (of cattle, goats, hogs, horses, and sheep) are 0.08 ppm (sum of method LOQs), based on the results of the feeding study for muscle and liver/kidney, respectively. In the case of fat, a slightly higher tolerance of 0.10 ppm is needed. In the case of milk, each residue measured in the feeding study was below its LOQ of 0.01 ppm at the 0.84x level. A milk tolerance of 0.04 ppm representing the sum of all the LOQs is appropriate. Horses need to be added to the tissue tolerances.

The current dietary burden for poultry indicates that finite residues are not expected in eggs or poultry at this time.

Tebufenozide residues do not concentrate in apple juice or cotton oil, meal and hulls.

D. International Residue Limits

Codex MRLs have been established for residues of tebufenozide in/on pome fruit (1.0 ppm), husked rice (0.1 ppm), and walnuts (0.05 ppm). Tebufenozide is registered in Canada, and a tolerance for residues in/on apples is established at 1.0 ppm. The U.S. field trial data that were submitted in support of the proposed U.S. label do not allow the U.S. tolerance of 1.5 ppm to be in harmony with the Codex and Canadian levels of 1.0 ppm.

No Codex MRLs have been established on cotton commdities.

E. Rotational Crop Restrictions

Since pome fruit crops perennial crops, rotational crop restrictions are not required for pome fruit.

In the case of cotton, EPA has determined that crops which the label allows to be treated directly can be planted at any time. The following crops can be planted 30 days after application: root/tuber/bulb vegetables, leafy/Brassica (cole) vegetables, fruiting/cucurbit vegetables. All other crops cannot be planted within 12 months of application. The latter would include legume vegetables, cereal grains, grasses and non-grass animal feeds.

IV. Conclusion

Therefore, the tolerance is established for residues of tebufenozide in pome fruit, apple pomace, cotton, and cotton gin byproducts at 1.5, 3.0, 1.5, and 30 ppm respectively and tolerances for the combined residues of tebufenozide and its metabolites benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-((4-carboxymethyl)benzoyl)hydrazide), benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide, the stearic acid conjugate of benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide and benzoic acid, 3-hydroxymethyl-5-methyl-1-(1,1-dimethylethyl)-2-(4-(1-hydroxyethyl)benzoyl)hydrazide in or on the meat of cattle, goats, hogs, horses, and sheep; the fat of cattle, goats, hogs, horses, and sheep; meat byproducts of cattle, goats, hogs, horses, and sheep; and milk at 0.08, 0.1, 0.08, and 0.04 ppm respectively.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by September 20, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300896] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

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List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 9, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. In § 180.482, paragraph (a) is amended by redesignating the introductory text to paragraph (a) as paragraph (a)(1); by adding alphabetically four commodities to the table in newly designated paragraph (a)(1); and adding paragraph (a)(2) to read as follows:

§ 180.482 Tebufenozide; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* *	* * *
Apple pomace	3.0
Cotton	1.5
Cotton, gin byproducts	30
* *	* * *
Pome Fruit	1.5
* *	* * *

(2) Tolerances are established for the combined residues of tebufenozide and its metabolites benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-((4-carboxymethyl)benzoyl)hydrazide), benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide, the stearic acid conjugate of benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide and benzoic acid, 3-hydroxymethyl-5-methyl-1-(1,1-dimethylethyl)-2-(4-(1-hydroxyethyl)benzoyl)hydrazide.

Commodity	Parts per million
Fat of cattle, goats, hogs, horses, and sheep	0.1
Meat of cattle, goats, hogs, horses and sheep	0.08
Meat byproducts of cattle, goats, hogs, horses and sheep	0.08
Milk	0.04
* *	* * *

[FR Doc. 99–18483 Filed 7–20–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 185

[OPP–300891; FRL–6089–7]

RIN 2070–AB78

Propargite; Revocation of Certain Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revokes tolerances for residues of the pesticide propargite in or on the following commodities: apples; apricots; beans, succulent; cranberries; figs; figs, dried; peaches; pears; plums (fresh prunes); and strawberries. EPA is revoking these tolerances because the uses associated with the tolerances have been canceled voluntarily from propargite labels by Uniroyal Chemical Company. Uniroyal deleted the uses to address dietary risk concerns raised by EPA. The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA). By law, EPA is required to reassess 33% of the tolerances in existence on August 2, 1996, by August 1999, or about 3,200 tolerances. This document revokes 10 tolerances which will be counted among reassessments made toward the August 1999 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This final rule becomes effective October 19, 1999. Objections and requests for hearings, identified by docket control number [OPP–300891] must be received by EPA on or before September 20, 1999.

ADDRESSES: Objections and hearing requests can be submitted by mail or in person. Please follow the detailed instructions provided in Unit V. of the SUPPLEMENTARY INFORMATION section of this document. To ensure proper identification of your objection or hearing request, you must identify the docket control number [OPP–300891] in the subject line on the first page of your request.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Joseph Nevola, Special Review Branch (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Special Review Branch, CM#2, 6th floor, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–8037; e-mail: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not exhaustive, but is a guide to entities likely to be regulated by this action. The North American Industrial Classification System (NAICS) codes will assist you in determining whether this action applies to you. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the FOR FURTHER INFORMATION CONTACT section.

II. How Can I Get Additional Information or Copies of this or Other Support Documents?

A. Electronically

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under "Federal Register Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/homepage/fedrgstr/.

B. In Person or by Phone

If you have any questions or need additional information about this action, please contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this action, including the public version, has been established under docket control number [OPP–300891], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is 703–305–5805.

III. What Action is being Taken?

A. Action in this Document

In this final rule, EPA is revoking the FFDCA tolerances in 40 CFR 180.259 for residues of propargite in or on apples; apricots; beans, succulent; cranberries; figs; peaches; pears; plums (fresh prunes); and strawberries; and in 40 CFR 185.5000 for residues of propargite in or on figs, dried, by removing 185.5000 and transferring the remaining tolerances for hops, dried; and tea, dried into section 180.259. EPA is revoking these tolerances because registered uses for propargite on these commodities have been voluntarily canceled. Thus, the tolerances for these commodities are no longer necessary to cover residues of propargite in or on domestically treated commodities or commodities treated outside but imported into the United States. Propargite is no longer used on those specified commodities within the United States and no person has provided comment identifying a need for EPA to retain the tolerances to cover residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person in comments on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

EPA is not issuing today a final rule to revoke those tolerances for which EPA received comments demonstrating a need for the tolerance to be retained. Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed above only if, 1) prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained, 2) EPA independently verifies that the tolerance is no longer needed, 3) the tolerance is not supported by data, or 4) the tolerance does not meet the requirements under FQPA.

B. Background

Propargite (trade names Comite and Omite) is a pesticide that was registered in 1969 for the control of mites on a number of agricultural commodities and ornamental plants. EPA classifies propargite as a B_2 (probable) human carcinogen.

EPA published a Registration Standard for propargite in 1986, and FIFRA reregistration is ongoing. Through the reregistration process, in 1992 EPA received from Uniroyal Chemical Company, the sole propargite registrant in the United States, a market basket survey examining residue levels in selected commodities in a nationwide cross section of grocery stores. The survey attempted to better reflect propargite residues in these commodities as purchased by consumers. Uniroyal's market basket survey, as well as other sampling data used by EPA, indicated propargite residues on certain foods such as apples and peaches that were far below tolerance levels but nevertheless resulted in dietary risks of concern for those foods. Based on this and other information, EPA conducted an intensive dietary risk assessment and concluded that long-term exposure to propargite posed an unreasonable dietary cancer risk to persons who consume propargite-treated foods.

EPA discussed its risk findings with Uniroyal, which responded in an April 5, 1996 letter by requesting, among other things, voluntary deletion of the following uses from all applicable propargite labels: apples, apricots, cranberries, figs, green beans, lima beans, peaches, pears, plums (including plums grown for prune production), and strawberries. EPA agreed to this request, and the deletions were announced in a **Federal Register** notice dated May 3, 1996 (61 FR 19936) (FRL–5367–4). EPA received comments both supporting and opposing the use deletions; those comments were considered prior to the requested use deletions taking effect on August 1, 1996. The comments are available in the public record under docket number OPP–64029. As part of its use-deletion agreement with EPA, Uniroyal also agreed not to challenge revocation of tolerances for any of the deleted uses.

In the **Federal Register** of February 13, 1997 (62 FR 6750) (FRL–5381–9), EPA issued a proposed rule for propargite announcing the proposed revocation of tolerances for canceled food uses and inviting public comment for consideration and for support of tolerance retention under FFDCA standards. The tolerance for propargite residues in or on figs, dried was among the tolerances proposed for revocation. Although food additive regulations for propargite use in or on figs, dried and tea, dried had been revoked pursuant to pre-FQPA provisions of FFDCA, (61 FR 11994, March 22, 1996) (FRL–5357–7), those revocations were stayed (61 FR 25153, May 20, 1996) (FRL–5372–2), and later withdrawn (61 FR 50684, September 26, 1996) (FRL–5397–4) subsequent to the passage of FQPA. However, not until recently were the tolerances for figs, dried and tea, dried reinstated in 40 CFR 185.5000 (64 FR 3044, January 20, 1999). Also, proposed tolerance revocations of February 13, 1997 (62 FR 6750) included a tolerance in 40 CFR 186.5000 for propargite residues in or on apple pomace, dried, which has been revoked (62 FR 66020, December 17, 1997) (FRL–5753–1).

The following comments were received by the Agency in response to the document published in the **Federal Register** of February 13, 1997:

EPA received comments from Uniroyal Chemical and several grower groups in response to the proposed rule. All comments, and EPA's response to each individual comment, are located in the OPP Docket under docket number OPP–300432. In general, the comments stated that EPA should use the pre-FQPA approach of setting an effective date (such as 3 years from publication of the final rule) for tolerance revocations in order to allow legally treated commodities to clear the channels of trade, instead of following the approach outlined in FFDCA section 408(l)(5) of revoking immediately and

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allowing legally treated foods to clear trade channels.

Comments cited EPA's statement at the time of the cancellation that EPA "will propose effective dates for the revocations that provide the time needed for appropriate and orderly movement of crops already legally treated with propargite through the channels of trade." Immediate revocation, some commenters argued, will cause confusion in the marketplace and impose a burden on growers and processors, because section 408(l)(5) would require growers and processors to provide evidence showing that propargite residues on their commodities resulted from legal application. Uniroyal Chemical was particularly concerned with the effect of the channels of trade provision on foreign growers and processors. Uniroyal contended that requiring such growers to document that pesticide applications are lawful under FIFRA is a retroactive regulatory requirement.

EPA believes that revoking the tolerances at this time is consistent with its statement at the time of the use deletions. A delayed effective date is no longer needed because the statute, as amended, provides for the orderly movement through the channels of trade of legally treated commodities. Further, EPA does not believe that this approach is unduly burdensome to growers. EPA is revoking the tolerances almost 3 years after the uses were deleted from propargite labels and over 2 years from when the Agency proposed revoking the propargite tolerances for these commodities on February 13, 1997 (62 FR 6750). EPA believes this should be more than adequate, given that very few stocks of propargite existed for use even in the 1996 growing season. EPA acknowledges that processed commodities may not have cleared the channels of trade within that timeframe. However, the provisions of FFDCA section 408(l)(5) will provide for the legal movement of those commodities through the channels of trade. Additionally, it is fairly easy to identify the date the commodity was processed. If the commodity was processed before the effective date of the tolerance revocation, the presumption will be that any residue of propargite is the result of legal application.

Uniroyal has also raised concerns that this tolerance revocation will have unfair impacts on foreign growers and processors. EPA does not believe this action will unfairly affect foreign growers and processors. When EPA published its May 3, 1996 use deletion notice for propargite, foreign and domestic growers and processors were notified that EPA intended to revoke the tolerances associated with the deleted uses and that such revocation would make unlawful distribution of any of the specified foods (including import) containing residues of propargite. Subsequent adoption of section 408(l)(5) of the FQPA assures that residues of propargite on the specified commodities are permitted if the commodities are legally treated under FIFRA, are treated prior to expiration of the tolerance, and residues are consistent with the tolerance in place at the time of treatment. The requirement that food be legally treated under FIFRA imposes no obligation on foreign growers because FIFRA does not impose requirements on application of pesticides outside the United States. Thus, such applications are, by operation of statute, lawful under FIFRA. The second requirement, that food be treated prior to expiration of the tolerance and be consistent with the tolerance, applies equally to domestic and foreign commodities, resulting from time to time in different consequences. For example, EPA anticipates that there will be no legally treated domestic fresh produce in commerce after the tolerance expires. Therefore, after the tolerance expiration date, the presence of propargite residues on the subject fresh commodities treated in the United States will be presumptively unlawful under section 408(l)(5). In contrast, for imported fresh commodities, there is no such presumption. Propargite residues on imported fresh commodities may be present on imported food after the expiration date and may be legal because there is no foreign restriction on use of propargite similar to that imposed by the United States. This is because propargite residues may be present as the result of a legal application prior to expiration of the tolerance. For purposes of processed commodities containing residues of propargite, as noted earlier, such commodities, whether domestic or imported, will be presumptively legal if processed before the expiration date of the tolerance.

IV. When Do these Actions Become Effective?

These actions become effective 90 days following publication in the **Federal Register**. EPA has delayed the effectiveness of these revocations for 90 days following publication to ensure that all affected parties receive notice of EPA's action. Consequently, the effective date is October 19, 1999. For this particular final rule, the actions will affect uses which have been canceled for almost 3 years. Therefore, commodities should have cleared the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by the FQPA. Under section 408(l)(5), any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and the residue does not exceed the level that was authorized at the time of the application, or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

V. Can I Submit Objections or Hearing Requests?

Yes. Any person can file written objections to any aspect of this regulation and can also request a hearing on those objections. Objections and hearing requests are currently governed by the procedures in 40 CFR part 178, modified as needed to reflect the requirements of FFDCA section 408(g).

A. When and Where to Submit

Objections and hearing requests must be mailed or delivered to the Hearing Clerk no later than September 20, 1999. The address of the Hearing Clerk is Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

B. Fees for Submission

1. Each objection must be accompanied by a fee of $3,275 or a request for waiver of fees. Fees accompanying objections and hearing requests must be labeled "Tolerance Petition Fees" and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

2. EPA may waive any fee when a waiver or refund is equitable and not contrary to the purposes of the Act. A request for a waiver of objection fees should be submitted to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The request for a waiver must be accompanied by a fee of $1,650, unless the objector has no financial interest in the matter. The fee, if required, must be submitted to the address in B.1 of this unit. For additional information on tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), at the same mailing address, or by phone at 703–305–5697; or e-mail: tompkins.jim@epa.gov.

C. Information to be Submitted

Objections must specify the provisions of the regulation considered objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector. You may claim information that you submit in response to this document as confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

D. Granting a Hearing Request

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following:

1. There is a genuine and substantial issue of fact.

2. There is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary.

3. Resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

VI. How Do the Regulatory Assessment Requirements Apply to this Final Action?

A. Is this a "Significant Regulatory Action"?

No. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action." The Office of Management and Budget (OMB) has determined that tolerance actions, in general, are not "significant" unless the action involves the revocation of a tolerance that may result in a substantial adverse and material affect on the economy. In addition, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this action is not an economically significant regulatory action as defined by Executive Order 12866. Nonetheless, environmental health and safety risks to children are considered by the Agency when determining appropriate tolerances. Under FQPA, EPA is required to apply an additional 10-fold safety factor to risk assessments in order to ensure the protection of infants and children unless reliable data supports a different safety factor.

B. Does this Action Contain Any Reporting or Recordkeeping Requirements?

No. This action does not impose any information collection requirements subject to OMB review or approval pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

C. Does this Action Involve Any "Unfunded Mandates"?

No. This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

D. Do Executive Orders 12875 and 13084 Require EPA to Consult with States and Indian Tribal Governments Prior to Taking the Action in this Document?

No. Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Does this Action Involve Any Environmental Justice Issues?

No. This final rule does not involve special considerations of environmental-justice related issues pursuant to Executive Order 12898, entitled "*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*" (59 FR 7629, February 16, 1994).

F. Does this Action Have a Potentially Significant Impact on a Substantial Number of Small Entities?

No. The Agency has certified that tolerance actions, including the tolerance actions in this document, are not likely to result in a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination, along with its generic certification under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), appears at 63 FR

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55565, October 16, 1998. This generic certification has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

G. Does this Action Involve Technical Standards?

No. This tolerance action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

H. Are There Any International Trade Issues Raised by this Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA has developed guidance concerning submissions for import tolerance support. This guidance will be made available to interested persons.

I. Is this Action Subject to Review under the Congressional Review Act?

Yes. The Congressional Review Act, 5 U.S.C. Sec. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

Dated: July 13, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR parts 180 and 185 are amended to read as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.259 [Amended]

b. Section 180.259, is amended as follows:

i. By adding a heading to paragraph (a).

ii. By redesignating the text after the heading as paragraph (a)(1).

iii. By removing from the table in newly designated paragraph (a)(1), the entries for Apples; Apricots; Beans, succulent; Cranberries; Figs; Peaches; Pears; Plums (fresh prunes); and Strawberries.

iv. By adding paragraph (a)(2).

v. By redesignating paragraph (b) as paragraph (c) and revising newly designated paragraph (c).

vi. By adding and reserving with headings paragraphs (b) and (d).

§180.259 Propargite; tolerances for residues.

(a) *General.* (1) * * *

(2) Tolerances are established for residues of the insecticide propargite (2-(*p*-tert-butylphenoxy)cyclohexyl 2-propynyl sulfite) in or on the following processed foods when present therein as a result of the application of this insecticide to growing crops:

Food	Parts per million
Hops, dried	30
Tea, dried	10

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in §180.1(n), are established for residues of propargite in or on the following raw agricultural commodities:

Commodity	Parts per million
Corn, sweet, kernel plus cob with husks removed	0.1

(d) *Indirect or inadvertent residues.* [Reserved]

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§185.5000 [Removed]

b. By removing §185.5000.

[FR Doc. 99–18610 Filed 7–20–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP–300841A; FRL–6093–6]

RIN 2070–AB78

Dalapon, Fluchloralin, et al.; Various Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule announces the revocation of tolerances for residues of the pesticides listed in the regulatory text for the herbicides dalapon, fluchloralin, metobromuron, paraquat, and sesone; the fungicides zinc sulfate, glyodin, and manganous dimethyldithiocarbamate (manam); the insecticides coumaphos, hydrogen cyanide and *O*-Ethyl *S*-phenyl ethylphosphonodithioate (fonofos); the plant growth regulator *N,N*-dimethylpiperidinium chloride (mepiquat chloride); and the food additive ethyl formate. Also, this rule revokes the tolerance for residues of the nematocide and insecticide ethoprop in or on mushrooms; and the food additive tolerance for residues of the fungicide paraformaldehyde in maple syrup. The regulatory actions in this rule are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA). By law, EPA is required to reassess 33% of the tolerances in existence on August 2, 1996, by August 1999, or about 3,200 tolerances. This document revokes 202 tolerances and/or exemptions. Since 18 tolerances were previously reassessed, 184 are counted as reassessments made toward the August 1999 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This final rule becomes effective October 19, 1999. Objections and requests for hearings, identified by docket control number [OPP–300841A] must be received by EPA on or before September 20, 1999.

ADDRESSES: Objections and hearing requests can be submitted by mail or in person. Please follow the detailed instructions provided in Unit V of the "SUPPLEMENTARY INFORMATION" section of this document. To ensure proper identification of your objection or hearing request, you must identify the docket control number [OPP–300841A] in the subject line on the first page of your request.

FOR FURTHER INFORMATION CONTACT: Amy Caicedo, Special Review Branch (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Special Review Branch, Crystal Mall #2, 6th floor, 1921 Jefferson Davis Highway, Arlington, Virginia. Telephone: (703) 308–9399; email: *caicedo.amy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not exhaustive, but is a guide to entities likely to be regulated by this action. The North American Industrial Classification System (NAICS) codes will assist you in determining whether this action applies to you. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of this or Other Support Documents?

A. Electronically

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/fedrgstr/.

B. In Person or by Phone

If you have any questions or need additional information about this action, please contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this final rule, including the public version, has been established under docket control number [OPP–300841A], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington VA, from 8:30 am to 4 pm, Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is 703–305–5805.

III. What Action is Being Taken?

This final rule announces the revocation of tolerances for residues of the pesticides listed in the regulatory text for the herbicides dalapon, fluchloralin, metobromuron, paraquat, and sesone; the fungicides zinc sulfate, glyodin, and manganous dimethyldithiocarbamate (manam); the insecticides coumaphos, hydrogen cyanide and *O*-Ethyl *S*-phenyl ethylphosphonodithioate (fonofos); the plant growth regulator *N,N*-dimethylpiperidinium chloride (mepiquat chloride); and the food additive ethyl formate. Also, this rule revokes the tolerance for residues of the nematocide and insecticide ethoprop in or on mushrooms; and the food additive tolerance for residues of the fungicide paraformaldehyde in maple syrup.

EPA is revoking these tolerances because they are not necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. These pesticides are no longer used on commodities within the United States and no person has provided comment identifying a need for EPA to retain the tolerances to cover residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

EPA is not issuing today a final rule to revoke those tolerances for which EPA received comments demonstrating a need for the tolerance to be retained. Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed above only if, (1) prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained, (2) EPA independently verifies that the tolerance is no longer needed, (3) the tolerance is not supported by data, or (4) the tolerance does not meet the requirements under FQPA.

In the **Federal Register** of April 7, 1999 (64 FR 16874) (FRL 6075–1), EPA issued a proposed rule for specific pesticides announcing the proposed revocation of tolerances for canceled

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food uses inviting public comment for consideration and for support of tolerance retention under FFDCA standards. The following comments were received by the Agency in response to the document published in the **Federal Register** of April 7, 1999:

A. Coumaphos

No comments were received concerning this chemical. The tolerances in 40 CFR 180.189 for residues of coumaphos on eggs; poultry, fat; poultry, mbyp; and poultry, meat are revoked because these uses were voluntarily canceled by the registrant.

B. Dalapon

Comment from Dow AgroSciences. A comment was received by the Agency from Dow AgroSciences requesting that the tolerances for dalapon in 40 CFR 180.150(a) and (b) not be revoked for the following commodities: apples; apricots; bananas; citrus pulp, dehydrated (ct feed); cottonseed; fruits, stone; fruits, pome; grain crops (exc wheat); grapefruit; grapes; lemons; limes; oranges; peaches; pears; plums; sorghum, forage; sorghum; sugarcane; tangerines; and from § 186.1500 citrus pulp, dehydrated (ct feed). The company requested that these tolerances be maintained as import tolerances because dalapon is still used in a number of countries such as Jamaica, Kazakhstan, Azerbaijan, and Zimbabwe, suggesting that the United States could potentially import products that contain residues of dalapon from these countries. DowAgro felt that the revocation of these tolerances could have a negative economic impact on these countries.

Agency response. Dow AgroSciences presented information suggesting that some countries use Dalapon on the commodities cited in Unit III.B.1. above for international trade. No information was provided which indicated any likely import of dalapon-treated commodities into the United States. Dow did not indicate any interest in supporting these tolerances for import purposes. Moreover, EPA has not received any comments from the countries cited by Dow in support of these tolerances. Thus a need for retention of the dalapon tolerances has not been demonstrated. Therefore, all of the tolerances for dalapon are revoked from §§ 180.105, 185.1500 and 186.1500.

C. Ethoprop

No comments were received concerning this chemical. The tolerance for residues in 40 CFR 180.262(a) on mushrooms is revoked for Ethoprop because this chemical is no longer registered for use on mushrooms.

D. O-Ethyl S-phenyl ethylphosphonodithioate (Fonofos)

1. *Comment from the Mint Industry Research Council.* A comment was received by the Agency from the Mint Industry Research Council requesting that the Agency retain the tolerance for residues of fonofos on the commodities: peppermint; peppermint, hay; spearmint; and spearmint, hay. The Mint Industry Research Council indicated that there is a 3–year supply of Fonofos available to growers. The Council also believes that these tolerances are necessary to cover Fonofos residues in mint oil, which can have up to a 20-year shelf life. The Mint Industry Research Council also believes the peppermint, hay and spearmint, hay tolerances are necessary for use of these commodities in tea.

2. *Comment from Zeneca.* A comment was received by the Agency from Zeneca requesting that the Agency retain the tolerance for residues of fonofos on all commodities listed in 40 CFR 180.221 for a period of 2 years in order to allow existing stocks to be used and to allow the treated commodity to clear the channels of trade.

3. *Comment from J. DeFrancesco, on behalf of the Oregon Strawberry Commission.* A comment was received by the Agency requesting that the Agency retain the tolerance for residues of fonofos on strawberries for a period of 2 to 3 years in order to control symphylans.

Agency response. Although EPA will still revoke 30 of these tolerances, the tolerances for residues of *O*-Ethyl *S*-phenyl ethylphosphonodithioate (fonofos) on the commodities in 40 CFR 180.221 will not expire until December 31, 2002, with the exception of the 4 commodities listed in the following paragraph, in order to allow for the exhaustion of the existing stocks and to allow the fresh commodity to pass through the channels of trade. EPA acknowledges that processed commodities such as mint oil may not have cleared the channels of trade within that time frame. However, the provisions of FFDCA section 408(l)(5) provide for the legal movement of those commodities through the channels of trade provided that they are treated prior to the expiration of the appropriate tolerance and that the actual residues on the commodities are within those allowed by the appropriate tolerance. It is fairly easy to identify the date the commodity was processed. If the commodity was processed before the effective date of the tolerance revocation, the presumption will be that any residue of fonofos is the result of legal application.

The tolerances for residues of fonofos on peppermint, hay; spearmint, hay; beans, forage; beans, vine hay; corn, pop, forage; and peanuts, forage, however, are revoked effective 90 days following publication of this rule because they are no longer considered significant feed items. The parts of the peppermint and spearmint used in tea are covered by the peppermint, tops and spearmint, tops tolerances.

The agency also revises commodity terminology to conform to current practice: bananas to banana; beets, sugar, tops to beet, sugar, tops; corn field fodder to corn, field, stover; corn fresh (incl sweet) (K + CWHR) to corn sweet, kernel plus cob with husks removed; corn, grain (including pop) to corn, field grain and to corn, pop, grain; corn, pop, fodder to corn, pop, stover; corn, sweet, fodder to corn sweet, stover; peas, forage to pea, field, vine; peas, vines hay to pea, field, hay; peanuts to peanut; peanuts, hay to peanut, hay; plantains to plantain; sorghum, fodder to sorghum, grain, stover; sorghum, forage to sorghum, grain, forage; sorghum, grain to sorghum, grain, grain; soybeans, forage to soybean, forage; soybeans, hay to soybean, hay; strawberries to strawberry; sugarcane to sugarcane, cane; vegetables, fruiting to vegetable, fruiting group; vegetables, root crop to vegetable, root crop; vegetables, seed and pod to vegetable, seed and pod; peppermint to peppermint, tops; and spearmint to spearmint, tops.

E. Hydrogen Cyanide

Comments from the Arizona Department of Agriculture and various growers. Comments were received by the Agency requesting that the tolerance on citrus fruits, § 180.130, be retained. This request is due to the use of sodium cyanide as a fumigant on citrus products which results in residues of hydrogen cyanide in or on citrus fruits. The pesticide is used to control California red scale *Aonidiella auranti* on citrus fruits that are imported to the state of Arizona.

Agency response. As a result of the need for retaining this tolerance, the tolerance for residues of hydrogen cyanide on citrus fruits will remain in effect. All other tolerances for residues of hydrogen cyanide are revoked from § 180.130.

F. N,N-dimethylpiperidinium chloride

Comment received from BASF Products. A comment was received by the Agency that cottonseed should not be revoked because there are still registered uses of *N,N*-dimethylpiperidinium chloride which could lead to residues on this commodity.

Agency response. Cottonseed was inadvertently listed in the **Federal Register** proposed rule, April 7, 1999 (64 FR 16874) (FRL 6075–1) in the codification section as being proposed for removal. The tolerance for cottonseed is not revoked from 40 CFR 180.384. However, the tolerance in 40 CFR 180.384 for cottonseed meal is revoked because it is now covered by the tolerance for cottonseed. This rule also revokes FFDCA tolerances in 40 CFR 180.384 for residues of the plant growth regulator *N,N*-dimethylpiperidinium chloride (mepiquat chloride) in or on cotton, forage because it is no longer considered a significant livestock feed item. Tolerances on eggs; milk; poultry, fat; poultry, mbyp; poultry, meat are revoked because EPA has determined there is no reasonable expectation of finite residues and therefore a tolerance is unnecessary (See 40 CFR 180.6(b)).

G. Paraformaldehyde

No comments were received regarding this chemical. The paraformaldehyde tolerance in 40 CFR 185.4650 for residues in maple syrup is revoked because the use was voluntarily canceled by the registrant.

H. Paraquat

No comments were received regarding this chemical. This final rule revokes FFDCA tolerances for residues of the herbicide paraquat in or on the commodities listed below under 40 CFR 180.205(a). Rye grain and oat grain are revoked because there are presently no registered uses of paraquat for these commodities. The following tolerances are revoked because data indicate that no residues are expected, and in such cases the Agency revokes the existing tolerances because they are unnecessary: bean, straw; hops, fresh; hop vines; lentil hay; peanut vines; poultry fat; poultry meat; poultry meat byproducts; and sunflower seed hulls.

I. Fluchloralin, Metobromuron, Sesone, Basic Zinc Sulfate, Glyodin, Manganous Dimethyldithiocarbamate, and Ethyl Formate

No comments were received concerning these chemicals. This final rule revokes all FFDCA tolerances for residues of the herbicides fluchloralin, § 180.363; metobromuron § 180.250; and sesone, § 180.102; the fungicides basic zinc sulfate, § 180.244; glyodin, § 180.124; and manganous dimethyldithiocarbamate, § 180.161; and the food additive ethyl formate, § 180.520, because no registered uses exist. The registrations for these pesticide chemicals were canceled because the registrant either failed to pay the required maintenance fee and/or the registrant voluntarily canceled all registered uses of the pesticide.

IV. When do These Actions Become Effective?

These actions become effective 90 days following publication in the **Federal Register**. All tolerances will expire once the rule becomes effective, with the exception of the fonofos tolerances which will not expire until December 31, 2002. EPA has delayed the effectiveness of these revocations for 90 days following publication to ensure that all affected parties receive notice of EPA's action. Consequently, the effective date is October 19, 1999. For this particular final rule, the actions will affect uses which have been canceled for more than a year. Therefore, commodities should have cleared the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by the Food Quality Protection Act (FQPA). Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

V. Can I Submit Objections or Hearing Requests?

Yes. Any person can file written objections to any aspect of this regulation and can also request a hearing on those objections. Objections and hearing requests are currently governed by the procedures in 40 CFR part 178, modified as needed to reflect the requirements of FFDCA section 408(g).

A. When and Where to Submit

Objections and hearing requests must be mailed or delivered to the Hearing Clerk no later than September 20, 1999. The address of the Hearing Clerk is Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St. SW, Washington, DC 20460.

B. Fees for Submission

1. Each objection must be accompanied by a fee of $3,275 or a request for waiver of fees. Fees accompanying objections and hearing requests must be labeled "Tolerance Petition Fees" and forwarded to EPA Headquarters Accounting, Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, Pennsylvania 15251.

2. EPA may waive any fee when a waiver or refund is equitable and not contrary to the purposes of the Act. A request for a waiver of objection fees should be submitted to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. The request for a waiver must be accompanied by a fee of $1,650 unless the objector has no financial interest in the matter. The fee, if required, must be submitted to the address in Unit B.1. For additional information on tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), at the same mailing address, or by phone at (703) 305–5697 or e-mail at tompkins.jim@epa.gov.

C. Information to be Submitted

Objections must specify the provisions of the regulation considered objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector. You may claim information that you submit in response to this document as confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

D. Granting a Hearing Request

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following:

1. There is a genuine and substantial issue of fact.

2. There is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary.

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3. Resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

VI. How do the Regulatory Assessment Requirements Apply to this Action?

A. Is this a "Significant Regulatory Action"?

No. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action." The Office of Management and Budget (OMB) has determined that tolerance actions, in general, are not "significant" unless the action involves the revocation of a tolerance that may result in a substantial adverse and material affect on the economy. In addition, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this action is not an economically significant regulatory action as defined by Executive Order 12866. Nonetheless, environmental health and safety risks to children are considered by the Agency when determining appropriate tolerances. Under FQPA, EPA is required to apply an additional 10–fold safety factor to risk assessments in order to ensure the protection of infants and children unless reliable data supports a different safety factor.

B. Does this Final Action Contain any Reporting or Recordkeeping Requirements?

No. This final action does not impose any information collection requirements subject to OMB review or approval pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

C. Does this Final Action Involve any "Unfunded Mandates"?

No. This final action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

D. Do Executive Orders 12875 and 13084 Require EPA to Consult with States and Indian Tribal Governments Prior to Taking the Action in this Document?

No. Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Does this Action Involve any Environmental Justice Issues?

No. This action is not expected to have any potential impacts on minorities and low income communities. Special consideration of environmental justice issues is not required under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

F. Does this Action have a Potentially Significant Impact on a Substantial Number of Small Entities?

No. The Agency has certified that tolerance actions, including the tolerance actions in this document, are not likely to result in a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination, along with its generic certification under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), appears at 63 FR 55565, October 16, 1998 (FRL–6035–7). This generic certification has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

G. Does this Action Involve Technical Standards?

No. This tolerance action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

H. Are there Any International Trade Issues Raised by this Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them.

MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA has developed a guidance concerning submissions for import tolerance support. This guidance will be made available to interested stakeholders.

I. Is this Action Subject to Review under the Congressional Review Act?

Yes. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental Protection, Food additives, Pesticide and pest.

40 CFR Part 186

Environmental Protection, Animal feeds, Pesticide and pest.

Dated: July 14, 1999.

Jack E. Housenger,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR parts 180, 185 and 186 are amended to read as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§§ 180.102, 180.124, 180.150, and 180.161 [Removed]

b. By removing §§ 180.102, 180.124, 180.150, and 180.161.

c. Section 180.130 is revised to read as follows:

§ 180.130 Hydrogen Cyanide; tolerances for residues.

(a) *General.* A tolerance for residues of the insecticide hydrogen cyanide from postharvest fumigation as a result of application of sodium cyanide is established as follows: 50 parts per million in or on citrus fruits.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

d. Section 180.189 is revised to read as follows:

§ 180.189 Coumaphos; tolerances for residues.

(a) *General.* Tolerances for residues of the insecticide coumaphos (*O,O*-diethyl *O*-3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl phosphorothioate and its oxygen analog (*O,O*-diethyl *O*-3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl phosphate) in or on food commodities as follows:

Commodity	Parts per million
Cattle, fat	1.0
Cattle, meat	1.0
Cattle, mbyp	1.0
Goat, fat	1.0
Goat, meat	1.0
Goat, mbyp	1.0
Hog, fat	1.0
Hog, meat	1.0
Hog, mbyp	1.0
Horse, fat	1.0
Horse, meat	1.0
Horse, mbyp	1.0
Milk, fat (=n in whole milk)	0.5
Sheep, fat	1.0
Sheep, meat	1.0
Sheep, mbyp	1.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.205 [Amended]

e. By removing from § 180.205(a), *Paraquat*, the entries for bean straw; hops, fresh; hop, vines; lentil, hay; oat grain; peanut, vines; poultry, fat; poultry, meat; poultry, mbyp; rye grain, and sunflower seed hulls.

f. Section 180.221 is revised to read as follows:

§ 180.221 O-Ethyl S-phenyl ethylphosphonodithioate; tolerances for residues.

(a) *General.* Time limited tolerances are established for residues of the insecticide *O*-Ethyl *S*-phenylethylphosphonodithioate, including its oxygen analog (*O*-ethyl *S*-phenyl ethylphosphonothioate, in or on the following food commodities:

Commodities	Parts per million	Expiration/ Revocation date
Asparagus	0.5	12/31/02
Banana	0.1	Do.
Beet, sugar, tops	0.1	Do.
Corn, field, stover	0.1	Do.
Corn, field, forage	0.1	Do.
Corn, sweet kernel plus cob with husks removed	0.1	Do.
Corn field, grain	0.1	Do.
Corn, pop, grain	0.1	Do.
Corn, pop, stover	0.1	Do.
Corn, sweet, stover	0.1	Do.
Corn, sweet, forage	0.1	Do.
Peanut	0.1	Do.
Peanut, hay	0.1	Do.
Pea, field, hay	0.1	Do.
Pea, field, vines	0.1	Do.
Peppermint, tops	0.1	Do.
Plantain	0.1	Do.
Sorghum, grain, stover	0.1	Do.
Sorghum, grain, forage	0.1	Do.
Sorghum, grain, grain	0.1	Do.
Soybean, forage	0.1	Do.
Soybean, hay	0.1	Do.
Spearmint, tops	0.1	Do.
Strawberry	0.1	Do.
Sugarcane, cane	0.1	Do.
Vegetable, leafy	0.1	Do.
Vegetable, fruiting group	0.1	Do.
Vegetable, root crop	0.1	Do.
Vegetable, seed and pod	0.1	Do.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

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§ 180.244, and § 180.250 [Removed]

g. By removing § 180.244, and § 180.250.

§ 180.262 [Amended]

h. By removing, from § 180.262(a), *Ethoprop; tolerances for residues*, the entry for mushrooms.

§ 180.363 [Removed]

i. By removing § 180.363.

§ 180.384 [Amended]

j. By removing from § 180.384, *N,N-dimethylpiperidinium chloride*, the entries for cotton forage; cottonseed meal; eggs; milk; poultry, fat; poultry, mbyp; and poultry, meat.

§ 180.520 [Removed]

k. By removing § 180.520.

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.1500 and § 185.4650 [Removed]

b. By removing § 185.1500 and § 185.4650.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348 and 371.

§ 186.1500 [Removed]

b. By removing § 186.1500.

[FR Doc. 99–18609 Filed 7–20–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP–300847A; FRL–6093–9]

RIN 2070–AB78

Bentazon, Cyanazine, Dicrotophos, Diquat, Ethephon, Oryzalin, Oxadiazon, Picloram, Prometryn, and Trifluralin; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revokes specific tolerances for the herbicides bentazon, diquat, oxadiazon, picloram, prometryn, and trifluralin; the plant growth regulator ethephon; and the insecticide dimethyl phosphate of 3-hydroxy-*N,N*-dimethyl-*cis*-crotonamide [Dicrotophos]. EPA is revoking these tolerances because EPA has canceled the food uses associated with them. In addition, EPA is revising commodity terminology for oryzalin, bentazon, diquat, ethephon, picloram, and trifluralin to conform to current Agency practice. Due to a comment, EPA will not finalize an action on 2-[[4-chloro-6-(ethylamino)-*s*-triazin-2-yl]amino]-2-methylpropionitrile [Cyanazine], at this time. The regulatory actions in this final rule are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA). By law, EPA is required to reassess 33% of the tolerances in existence on August 2, 1996, by August 1999, or about 3,200 tolerances. This document revokes 17 tolerances and/or exemptions. Since three tolerances were previously reassessed, 14 of the 17 revocations are counted here as reassessments made toward the August 1999 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This final rule becomes effective October 19, 1999. Objections and requests for hearings, identified by docket control number [OPP–300847A], must be received by EPA on or before September 20, 1999.

ADDRESSES: Objections and hearing requests can be submitted by mail or in person. Please follow the detailed instructions provided in Unit V. of the SUPPLEMENTARY INFORMATION section of this document. To ensure proper identification of your objection or hearing request, you must identify the docket control number [OPP–300847A] in the subject line on the first page of your request.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Special Review Branch (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: CM #2, 6th floor, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone: (703) 308–8037; e-mail: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not exhaustive, but is a guide to entities likely to be regulated by this action. The North American Industrial Classification System (NAICS) codes will assist you in determining whether this action applies to you. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the FOR FURTHER INFORMATION CONTACT section.

II. How Can I Get Additional Information or Copies of this or Other Support Documents?

A. Electronically

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," and then look up the entry for this document under "Federal Register--Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/fedrgstr/.

B. In Person or by Phone

If you have any questions or need additional information about this action, please contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this notice, including the public version, has been established under docket control number [OPP–300847A] including comments and data submitted electronically as described below. A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

III. What Action is being Taken?

This final rule revokes the FFDCA tolerances for residues of certain specified pesticides in or on certain specified commodities. EPA is revoking these tolerances because they are not necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. These pesticides are no longer used on commodities within the United States and no person has provided comment identifying a need for EPA to retain the tolerances to cover residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person in comments on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

EPA is not issuing today a final rule to revoke those tolerances for which EPA received comments demonstrating a need for the tolerance to be retained. Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed above only if: (1) Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained; (2) EPA independently verifies that the tolerance is no longer needed; (3) the tolerance is not supported by data; or (4) the tolerance does not meet the requirements under FQPA.

In the **Federal Register** of April 23, 1999 (64 FR 19961) (FRL–6076–4), EPA issued a document which proposed the revocation of tolerances for residues of the herbicides bentazon, 2-[[4-chloro-6-(ethylamino)-*s*-triazin-2-yl]amino]-2-methylpropionitrile [Cyanazine], diquat, oxadiazon, picloram, prometryn, and trifluralin; the plant growth regulator ethephon; and the insecticide dimethyl phosphate of 3-hydroxy-*N,N*-dimethyl-*cis*-crotonamide [Dicrotophos]. EPA also proposed to revise commodity terminology for oryzalin, bentazon, cyanazine, diquat, ethephon, picloram, and trifluralin to conform to current Agency practice. In that document, the Agency invited public comment for consideration and for support of tolerance retention under FFDCA standards.

A. Significant Comment Received

Only one significant comment was received by the Agency in response to the document published in the **Federal Register** of April 23, 1999:

1. 2-[[4-Chloro-6-(ethylamino)-*s*-triazin-2-yl]amino]-2-methylpropionitrile [Cyanazine]

Comment from Griffin L.L.C. (Griffin). Griffin Corporation commented that it produces 2-[[4-chloro-6-(ethylamino)-*s*-triazin-2-yl]amino]-2-methylpropionitrile [Cyanazine] for export to, and use in other nations. Griffin requested that EPA not revoke the existing tolerances for cyanazine, because Griffin plans maintenance of import tolerances for cyanazine. Griffin declared that it anticipates working with EPA to achieve compliance with the Agency's final guidance on import tolerances and its data requirements.

Agency response. 2-[[4-Chloro-6-(ethylamino)-*s*-triazin-2-yl]amino]-2-methylpropionitrile [Cyanazine] production for use in the United States remains terminated by December 31, 1999, with cyanazine registrations canceled on January 1, 2000, authorized sale and distribution of such products in the channels of trade in accordance with their labels is permitted through September 30, 2002, and use of cyanazine products after December 31, 2002 is prohibited (61 FR 39023) (FRL–5385–7). However, due to Griffin's interest in maintaining import tolerances, at this time, EPA will not take action on cyanazine. Instead, EPA will follow-up on this comment with Griffin and any final action that EPA takes will be published in a future **Federal Register** document.

B. No Significant Comment Received

As for the other tolerances proposed for revocation in the Federal Register of April 23, 1999, no significant comments were received. Therefore, EPA is revoking tolerances for the herbicides bentazon, diquat, oxadiazon, picloram, prometryn, and trifluralin; the plant growth regulator ethephon; and the insecticide dimethyl phosphate of 3-hydroxy-*N,N*-dimethyl-*cis*-crotonamide [Dicrotophos]. In addition, EPA is revising commodity terminology for bentazon, diquat, ethephon, oryzalin, picloram, prometryn, and trifluralin to conform to current Agency practice.

1. *Bentazon.* EPA is revoking the tolerances in 40 CFR 180.355 for bentazon residues in or on beans, lima (succulent); mint, spent hay; and peanuts, forage. In 40 CFR 180.355, the Agency is revising commodity terminology for beans (except soybeans), dried to bean, dry, seed; beans (exc. soybeans), dried, vine hays to cowpea, hay; beans (exc. soybeans), forage to cowpea, forage; beans, succulent to bean, succulent; Bohemian chili peppers to pepper, nonbell; cattle, mbyp to cattle, meat byproducts; corn, fodder to corn, field, stover; corn, forage to corn, field, forage; corn, grain to corn, field, grain and corn, pop, grain; corn, fresh (inc. sweet K+CWHR) to corn, sweet, kernel plus cob with husks removed; eggs to egg; peanuts to peanut; peanuts, hay to peanut, hay; peas (dried) to pea, dry, seed; peas (dried), vine hays to pea, field, hay; peas, forage to pea, field, vines; peas, succulent to pea, succulent; poultry, mbyp to poultry, meat byproducts; and rice to rice, grain.

2. *Dimethyl phosphate of 3-hydroxy-N,N-*dimethyl-*cis*-crotonamide [Dicrotophos]. EPA is revoking the tolerance in 40 CFR 180.299 for dimethyl phosphate of 3-hydroxy-*N,N*-dimethyl-*cis*-crotonamide residues in or on pecans.

3. *Diquat.* EPA is revoking the tolerance in 40 CFR 180.226(a) for diquat residues in or on sugarcane and the tolerance in 40 CFR 185.2500(a) and (b) for diquat residues in or on water, potable. In 180.226(a), the Agency is revising commodity terminology for potatoes to potato; and in 180.226(b), commodity terminology for avocados to avocado; cottonseed to cotton, undelinted seed; cucurbits to vegetable, cucurbit, group; fruits, citrus to fruit, citrus, group; fruits, pome to fruit, pome, group; fruits, stone to fruit, stone, group; grasses, forage to grass, forage; hops to hop, dried cones; legumes, forage to vegetable, foliage of legume, group; nuts to nut, tree, group; sugarcane to sugarcane, cane; vegetables, fruiting to vegetable, fruiting, group; and vegetables, root crop to vegetable, root and tuber, group. In 185.2500, the terminology is revised for processed potatoes (includes potato chips) to potato, granules/flakes and potato, chips.

4. *Ethephon.* EPA is revoking the tolerances in 40 CFR 180.300 for ethephon residues in or on filberts; lemons; pineapple fodder; pineapple forage; tangerines; and tangerine hybrids. In 40 CFR 180.300(a), the Agency is revising commodity terminology for figs to fig; goats, fat to goat, fat; horses, meat to horse, meat; macadamia nuts to nut, macadamia; pineapples to pineapple; pumpkins to pumpkin; and tomatoes to tomato. Also, in 40 CFR 185.2700, the terminology is revised for barley, milling fractions, except flour to barley, pearled barley

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and barley, bran; and wheat, milling fractions, except flour to wheat, bran, wheat, middlings, and wheat, shorts; and in 186.2700(a) for wheat, milling fractions, except flour to wheat, milled byproducts.

5. *Oryzalin*. In 40 CFR 180.304(a), the Agency is revising commodity terminology for figs to fig; kiwifruits to kiwifruit; nuts to nut, tree, group; and olives to olive.

6. *Oxadiazon*. EPA is revoking the tolerance in 40 CFR 180.346 for oxadiazon residues in or on rice straw.

7. *Picloram*. EPA is revoking the tolerances in 40 CFR 180.292 for picloram residues in or on flax, seed; and flax, straw. In 40 CFR 180.292, the Agency is revising commodity terminology for cattle, mbyp (exc. kidney and liver) to cattle, meat byproducts except kidney and liver; eggs to egg; goats, fat to goat, fat; goats, mbyp (exc. kidney and liver) to goat, meat byproducts except kidney and liver; goats, meat to goat, meat; grasses, forage to grass, forage; hogs, mbyp (exc. kidney and liver) to hog, meat byproducts except kidney and liver; horses, mbyp (exc. kidney and liver) to horse, meat byproducts except kidney and liver; oats, green forage to oat, forage; sheep, mbyp (exc. kidney and liver) to sheep, meat byproducts except kidney and liver; and wheat, green forage to wheat, forage.

8. *Prometryn*. EPA is revising the commodity "cotton" in 40 CFR 180.222 to "cotton, forage" because this is the more accurate description of what that tolerance should cover. However, because "cotton, forage" is no longer considered a significant livestock feed commodity according to Table I "Raw Agricultural and Processed Commodities and Feedstuffs Derived from Crops," August 1996, in the Residue Chemistry Test Guidelines: OPPTS 860.1000, EPA 721-C-96-169, the Agency is revoking the tolerance.

9. *Trifluralin*. EPA is revoking the tolerance in 40 CFR 180.207 for trifluralin residues in or on barley, fodder. In 40 CFR 180.207, EPA is removing the "(N)" designation from all entries to conform to current Agency administrative practice. The Agency is revising commodity terminology for carrots to carrot, roots; citrus fruits to fruit, citrus, group; corn, grain (exc. popcorn) to corn, field, grain; corn, grain (exc. popcorn), forage to corn, field, forage; corn, grain (exc. popcorn), fodder to corn, field, stover; cottonseed to cotton, undelinted seed; cucurbits to vegetable, cucurbit, group; grain, crops (except fresh corn and rice grain) to grain, crops, except corn, sweet and rice grain; mung bean sprouts to bean, mung, sprouts; nuts to nut, tree, group; peanuts to peanut; peppermint, hay to peppermint, tops; rape, seed to rapeseed, seed; spearmint, hay to spearmint, tops; stone fruits to fruit, stone, group; sugarcane to sugarcane, cane; sunflower seed to sunflower, seed; upland cress to cress, upland; and vegetables, fruiting to vegetable, fruiting, group.

IV. When Do These Actions Become Effective?

These actions become effective 90 days following publication of this final rule in the **Federal Register**. EPA has delayed the effectiveness of these revocations for 90 days following publication of the final rule to ensure that all affected parties receive notice of EPA's actions. Consequently, the effective date is October 19, 1999. For this particular final rule, the revocation actions will affect uses which have been canceled for more than a year. Therefore, commodities should have cleared the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

V. Can I Submit Objections or Hearing Requests?

Yes. Any person can file written objections to any aspect of this regulation and can also request a hearing on those objections. Objections and hearing requests are currently governed by the procedures in 40 CFR part 178, modified as needed to reflect the requirements of FFDCA section 408(g).

A. When and Where to Submit

Objections and hearing requests must be mailed or delivered to the Hearing Clerk no later than September 20, 1999. The address of the Hearing Clerk is Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

B. Fees for Submission

1. Each objection must be accompanied by a fee of $3,275 or a request for waiver of fees. Fees accompanying objections and hearing requests must be labeled "Tolerance Petition Fees," and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

2. EPA may waive any fee when a waiver or refund is equitable and not contrary to the purposes of the Act. A request for a waiver of objection fees should be submitted to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The request for a waiver must be accompanied by a fee of $1,650, unless the objector has no financial interest in the matter. The fee, if required, must be submitted to the address in Unit V.B.1. of this document. For additional information on tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), at the same mailing address, or by phone at (703) 305–5697, or e-mail at tompkins.jim@epa.gov.

C. Information to be Submitted

Objections must specify the provisions of the regulation considered objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector. You may claim information that you submit in response to this document as confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

D. Granting a Hearing Request

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following:

1. There is a genuine and substantial issue of fact.

2. There is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary.

3. Resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

VI. How Do the Regulatory Assessment Requirements Apply to this Final Action?

A. Is this a "Significant Regulatory Action"?

No. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action." The Office of Management and Budget (OMB) has determined that tolerance actions, in general, are not "significant" unless the action involves the revocation of a tolerance that may result in a substantial adverse and material affect on the economy. In addition, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this action is not an economically significant regulatory action as defined by Executive Order 12866. Nonetheless, environmental health and safety risks to children are considered by the Agency when determining appropriate tolerances. Under FQPA, EPA is required to apply an additional 10-fold safety factor to risk assessments, in order to ensure the protection of infants and children, unless reliable data supports a different safety factor.

B. Does this Action Contain Any Reporting or Recordkeeping Requirements?

No. This final action does not impose any information collection requirements subject to OMB review or approval pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

C. Does this Action Involve Any "Unfunded Mandates"?

No. This final action does not impose any enforceable duty, or contain any "unfunded mandates," as described in Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

D. Do Executive Orders 12875 and 13084 Require EPA to Consult with States and Indian Tribal Governments Prior to Taking the Action in this Document?

No. Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's final rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Does this Action Involve Any Environmental Justice Issues?

No. This action does not involve special considerations of environmental-justice related issues pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

F. Does this Action Have a Potentially Significant Impact on a Substantial Number of Small Entities?

No. The Agency has certified that tolerance actions, including the tolerance actions in this document, are not likely to result in a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination, along with its generic certification under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), appears at 63 FR 55565, October 16, 1998 (FRL–6035–7). This generic certification has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

G. Does this Action Involve Technical Standards?

No. This tolerance final action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

H. Are There Any International Trade Issues Raised by this Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex

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Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decisions (REDs). EPA has developed guidance concerning submissions for import tolerance support. This guidance will be made available to interested persons.

I. Is this Action Subject to Review under the Congressional Review Act?

Yes. The Congressional Review Act, 5 U.S.C. Sec. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: July 15, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR parts 180, 185, and 186 are amended to read as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.207 [Amended]

b. In § 180.207 paragraph (a), remove the "(N)" designation from all entries and remove the entry for "barley, fodder." Also, remove the terms listed in the first column below and add in their place in alphabetical order the terms listed in the second column:

Remove	Add
Carrots	Carrot, roots
Citrus fruits	Fruit, citrus, group
Corn, grain (exc. popcorn).	Corn, field, grain
Corn, grain (exc. popcorn), fodder.	Corn, field, stover
Corn, grain (exc. popcorn), forage.	Corn, field, forage
Cottonseed	Cotton, undelinted seed
Cucurbits	Vegetable, cucurbit, group
Grain, crops (except fresh corn and rice grain).	Grain, crops, except corn, sweet and rice grain
Mung bean sprouts	Bean, mung, sprouts
Nuts	Nut, tree, group
Peanuts	Peanut
Peppermint, hay	Peppermint, tops
Rape, seed	Rapeseed, seed
Spearmint, hay	Spearmint, tops
Stone fruits	Fruit, stone, group
Sugarcane	Sugarcane, cane
Sunflower seed	Sunflower, seed
Upland cress	Cress, upland
Vegetables, fruiting	Vegetable, fruiting, group

§ 180.222 [Amended]

c. In § 180.222, in paragraph (a), the table is amended by removing the entry for "cotton."

§ 180.226 [Amended]

d. Section 180.226 is amended as follows:

i. In paragraph (a), the table is amended by removing the entry for "sugarcane" and revising the term "potatoes" to read "potato".

ii. In the table to paragraph (b), remove the terms listed in the first column below and add in their place in alphabetical order the terms listed in the second column:

Remove	Add
Avocados	Avocado
Cottonseed	Cotton, undelinted seed
Cucurbits	Vegetable, cucurbit, group
Fruits, citrus	Fruit, citrus, group
Fruits, pome	Fruit, pome, group
Fruits, stone	Fruit, stone, group
Grasses, forage	Grass, forage
Hops	Hop, dried cones
Legumes, forage	Vegetable, foliage of legume, group
Nuts	Nut, tree, group
Sugarcane	Sugarcane, cane
Vegetables, fruiting	Vegetable, fruiting, group
Vegetables, root crop	Vegetable, root and tuber, group.

§ 180.292 [Amended]

e. In § 180.292, in the table to paragraph (a)(1), remove the entries for "flax, seed"; and "flax, straw" and remove the entries listed in the first column of the table below and add the entries listed in the second column in place thereof in alphabetical order.

Remove	Add
Cattle, mbyp (exc kidney and liver).	Cattle, meat byproducts except kidney and liver
Eggs	Egg
Goats, fat	Goat, fat
Goats, mbyp (exc kidney and liver).	Goat, meat byproducts except kidney and liver
Goats, meat	Goat, meat
Grasses, forage	Grass, forage
Hogs, mbyp (exc kidney and liver).	Hog, meat byproducts except kidney and liver
Horses, mbyp (exc kidney and liver).	Horse, meat byproducts except kidney and liver
Oats, green forage	Oat, forage
Sheep, mbyp (exc kidney and liver).	Sheep, meat byproducts except kidney and liver
Wheat, green forage	Wheat, forage

§ 180.299 [Amended]

f. In § 180.299, remove the entry for "pecans" from the table.

§ 180.300 [Amended]

g. In § 180.300(a), remove from the table the entries for "filberts," "lemons," "pineapple fodder," "pineapple forage," "tangerines," and "tangerine hybrids" and remove the terms listed in the first column of the table below and add the terms listed in the second column in place thereof in alphabetical order.

Remove	Add
Figs	Fig
Goats, fat	Goat, fat
Horses, meat	Horse, meat
Macadamia nuts	Nut, macadamia
Pineapples	Pineapple
Pumpkins	Pumpkin
Tomatoes	Tomato

h. Section 180.304 is amended as follows:

i. By revising paragraph (a) introductory text.

§ 180.304 Oryzalin; tolerances for residues.

(a) Tolerances are established for residues of the herbicide oryzalin (3,5-dinitro-N^4,N^4-dipropylsulfanilamide) in or on the following raw agricultural commodities:

* * * * *

ii. In the table in paragraph (a), by removing the terms listed in the first column below and adding in place thereof in alphabetical order the term listed in the second column to read as follows:

Remove	Add
Cattle, mbyp	Cattle, meat byproducts
Corn, fodder	Corn, field, stover
Corn, forage	Corn, field, forage
Corn, fresh (inc. sweet K+CWHR).	Corn, sweet, kernel plus cob with husks removed
Corn, grain	Corn, field, grain
Eggs	Egg
Peanuts	Peanut
Peanuts, hay	Peanut, hay
Peas (dried)	Pea, dry, seed
Peas (dried), vine hays.	Pea, field, hay
Peas, forage	Pea, field, vines
Peas, succulent	Pea, succulent
Poultry, mbyp	Poultry, meat byproducts
Rice	Rice, grain

ii. Section 180.355 is further amended by adding alphabetically an entry to the table in paragraph (a) for corn, pop, grain to read as follows:

§ 180.355 Bentazon; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Corn, pop, grain	0.05
* * *	* *

Remove	Add
Figs	Fig
Kiwifruits	Kiwifruit
Nuts	Nut, tree, group
Olives	Olive

§ 180.346 [Amended]

i. In § 180.346(a) by removing the entry for "rice straw."

§ 180.355 [Amended]

j. Section 180.355 is amended as follows:

i. In the table to paragraph (a), by removing the entries for "beans, lima (succulent)"; "mint, spent hay"; and "peanuts, forage"; and removing the terms listed in the first column below and adding in place thereof in alphabetical order the terms listed in the second column.

Remove	Add
Beans (except soybeans), dried.	Bean, dry, seed
Beans (exc. soybeans), dried, vine hays.	Cowpea, hay
Beans (exc. soybeans), forage.	Cowpea, forage
Beans, succulent	Bean, succulent
Bohemian chili peppers.	Pepper, nonbell

Food	Parts per million
Barley, pearled barley and barley, bran	5.0
Sugarcane, molasses	1.5
Wheat, bran, wheat, middlings, and wheat, shorts	5.0

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 371.

§ 186.2700 [Amended]

b. In § 186.2700(a) by revising the term "wheat, milling fractions, except flour" to read "wheat, milled byproducts".

[FR Doc. 99–18608 Filed 7–20–99; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–2

RIN 3090–AG83

Federal Management Regulation (FMR)

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Interim rule.

SUMMARY: This year marks the 50th anniversary of the Federal Property and Administrative Services Act of 1949 (the Act), as amended. In support of the Act's original intent of efficiently managing Government assets, GSA is improving its regulatory system by establishing the Federal Management Regulation (FMR) as the successor regulation to the Federal Property Management Regulations (FPMR). The FMR will provide Federal managers with the regulatory materials they need to efficiently manage real and personal property and administrative services. Non-regulatory FMR bulletins will provide related FMR materials.

DATES: *Effective Date:* July 21, 1999.

Comment Date: Your comments must reach us by September 20, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Send written comments to: Ms. Sharon A. Kiser, Regulatory Secretariat (MVRS), Federal Acquisition Policy Division, General Services Administration, 1800 F Street, NW, Washington, DC 20405.

Send comments by e-mail to: RIN.3090–AG83@gsa.gov.

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FOR FURTHER INFORMATION CONTACT: Ms. Sharon A. Kiser, Regulatory Secretariat, 202–208–7312.

SUPPLEMENTARY INFORMATION:

A. Background

What Content Changes Will Be Part of the Transition From the FPMR to the FMR?

GSA will update, streamline, eliminate and clarify FPMR contents before transferring them to the FMR. The FMR will then contain a refined set of policies and regulatory requirements on managing property and administrative services.

Non-regulatory materials, such as guidance, procedures, information and standards now in the FPMR, will be removed from the regulation and will be available in separate documents, such as customer service guides, handbooks, brochures, Internet websites, and FMR bulletins. The FMR will specify how to find this additional information; e.g., ordering and billing information. Content changes will bring the FMR into conformance with recommendations from the National Partnership for Reinventing Government to reduce regulations and to use plain language.

Is the FMR's Style Different From That in the FPMR?

Yes, the FMR is written in a "plain language" regulatory style. This style is directed at the reader and uses a question and answer format, active voice, shorter sentences, and, where appropriate, pronouns such as, but not limited to, we, you and I. These changes comply with the National Partnership for Reinventing Government's recommendations to make regulations more efficient and easier to understand.

Does the Deviation Policy in the FMR Differ From That in the FPMR?

Yes, there are changes in the deviation policy. The new approach consists of both informal discussions about deviating from the FMR and formal correspondence requesting deviation authority. Because the FMR consists primarily of set policies and mandatory requirements, FMR deviations should occur infrequently and under unique circumstances. Agencies should pursue deviations first by informally consulting with appropriate GSA officials about whether a deviation is needed and whether it would be in accordance with governing statutes, Executive orders, or other controlling policies. If informal consultations indicate that a formal deviation is needed and can be allowed, agencies must request it from GSA in writing. The written request must fully explain the reasons for the deviation and how it will be in the Government's best interests.

Will the Conversion From the FPMR to the FMR Occur All at Once or Incrementally?

The conversion from the FPMR to the FMR will occur incrementally as the regulations are rewritten.

Must Agencies Reference Both the FPMR and the FMR During This Conversion?

Yes. Given an incremental conversion of content from the FPMR to the FMR, both regulations will exist concurrently. Depending on the subject matter, you may need to read both documents to obtain all related material. However, except for parts 101–1 of the FPMR and 102–2 of the FMR, the same content will not appear in both regulations. These two parts will exist concurrently. The general provisions of part 101–1 of the FPMR (including the FPMR deviation procedures) will apply to any aspects of the FPMR not yet replaced by the FMR. The general provisions at 102–2 (including the rewritten deviation procedures) will apply to new material in the FMR.

B. Executive Order 12866

GSA has determined that this interim rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

Since its primary purpose is to establish the structure for a new regulation, the FMR, the interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Additionally, since this interim rule applies to matters concerning agency management and personnel, no proposed rule is required.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501–517.

E. Small Business Regulatory Enforcement Fairness Act

This interim rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

F. Determination to Issue an Interim Rule

Publication for public comment is not required under the Administrative Procedures Act because the rule relates solely to agency management and personnel, and, therefore, GSA could issue it as a final rule. However, GSA would like to receive comments about this action before publishing it as a final rule. An interim rule provides two benefits. First, it gives agencies a chance to comment on aspects of the new regulation. Second, by making the FMR's contents effective immediately, it establishes the structure for use by GSA in publishing additional parts of the regulation that have already been approved.

List of Subjects in 41 CFR Part 102

Government property management.

Dated: June 24, 1999.

David J. Barram,

Administrator of General Services.

For the reasons set forth in the preamble and under the authority of 40 U.S.C. 486(c), Title 41 of the Code of Federal Regulations is amended by establishing chapter 102 to read as follows:

CHAPTER 102—FEDERAL MANAGEMENT REGULATION

SUBCHAPTER A—GENERAL

Part
102–1 General [Reserved]
102–2 Federal management regulation system
102–3 Advisory committee management [Reserved]
102–4 Nondiscrimination in Federal financial assistance programs [Reserved]
102–5–102–30 [Reserved]

SUBCHAPTER B—PERSONAL PROPERTY

102–31 General [Reserved]
102–32 Management of personal property [Reserved]
102–33 Management of aircraft [Reserved]
102–34 Motor vehicle management [Reserved]
102–35 Disposition of personal property [Reserved]
102–36 Transfer of excess personal property [Reserved]
102–37–102–70 [Reserved]

SUBCHAPTER C—REAL PROPERTY

102–71 General [Reserved]
102–72 Delegation of authority [Reserved]
102–73 Real estate acquisition [Reserved]
102–74 Facility management [Reserved]
102–75 Disposition of real property [Reserved]
102–76 Design and construction [Reserved]
102–77 Art-in-architecture [Reserved]
102–78 Historic preservation [Reserved]
102–79 Assignment and utilization of space [Reserved]
102–80 Safety and environmental management [Reserved]

102–81 Security [Reserved]
102–82 Utility services [Reserved]
102–83 Centralized services in Federal buildings and complexes [Reserved]
102–84 Annual real property inventories [Reserved]
102–85—102–115 [Reserved]

SUBCHAPTER D—TRANSPORTATION

102–116 General [Reserved]
102–117 Transportation management [Reserved]
102–118—102–140 [Reserved]

SUBCHAPTER E—TRAVEL MANAGEMENT

102–141 General [Reserved]
102–142—102–170 [Reserved]

SUBCHAPTER F—TELECOMMUNICATIONS

102–171 General [Reserved]
102–172 Telecommunications management policy [Reserved]
102–173—102–190 [Reserved]

SUBCHAPTER G—ADMINISTRATIVE PROGRAMS

102–191 General [Reserved]
102–192 Mail management [Reserved]
102–193 Records management [Reserved]
102–194 Standard and optional forms program [Reserved]
102–195 Interagency reports management program [Reserved]
102–196 Federal facility ridesharing [Reserved]
102–197—102–220 [Reserved]

SUBCHAPTER H—SUBCHAPTER Z [RESERVED]

SUBCHAPTER A—GENERAL

PART 102–2—FEDERAL MANAGEMENT REGULATION SYSTEM

Subpart A—Regulation System

Sec.

General

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102–2.10 What is the FMR's purpose?
102–2.15 What is the authority for the FMR system?
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102–2.40 May an agency issue implementing and supplementing regulations for the FMR?

Numbering

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102–2.105 What information must agencies include in their follow-up analysis?
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Subpart B—Forms

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102–2.135 How do agencies obtain forms prescribed by the FMR?

Subpart C—Plain Language Regulatory Style

102–2.140 What elements of plain language appear in the FMR?
102–2.145 To what do pronouns refer when used in the FMR?

Authority: 40 U.S.C. 486(c).

Subpart A—Regulation System

General

§ 102–2.5 What is the Federal Management Regulation (FMR)?

The Federal Management Regulation (FMR) is the successor regulation to the Federal Property Management Regulations (FPMR). It contains updated regulatory policies originally found in the FPMR. However, it does not contain FPMR material that described how to do business with the General Services Administration (GSA). "How to" materials on this and other subjects are available in customer service guides, handbooks, brochures and Internet websites provided by GSA. (See § 102–2.125.)

§ 102–2.10 What is the FMR's purpose?

The FMR prescribes policies concerning property management and related administrative activities. GSA issues the FMR to carry out the Administrator of General Services' functional responsibilities, as established by statutes, Executive orders, Presidential memoranda, Circulars and bulletins issued by the Office of Management and Budget (OMB), and other policy directives.

§ 102–2.15 What is the authority for the FMR system?

The Administrator of General Services prescribes and issues the FMR under the authority of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 486(c), as well as other applicable Federal laws and authorities.

§ 102–2.20 Which agencies are subject to the FMR?

The FMR applies to executive agencies unless otherwise extended to Federal agencies in various parts of this chapter. The difference between the two terms is that Federal agencies include executive agencies plus establishments in the legislative or judicial branch of the Government. See paragraphs (a) and (b) of this section for the definitions of each term.

(a) *What is an executive agency?* An executive agency is any executive department or independent establishment in the executive branch of the Government, including any wholly-owned Government corporation. (See 40 U.S.C. 472(a).)

(b) *What is a Federal agency?* A Federal agency is any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under that person's direction). (See 40 U.S.C. 472(b).)

§ 102–2.25 When are other agencies involved in developing the FMR?

Normally, GSA will ask agencies to collaborate in developing parts of the FMR.

§ 102–2.30 Where and in what formats is the FMR published?

Proposed rules are published in the **Federal Register**. FMR bulletins are published in looseleaf format. FMR interim and final rules are published in the following formats—

(a) **Federal Register** under the "Rules and Regulations" section.

(b) Loose-leaf. (See § 102–2.35.)

(c) Code of Federal Regulations (CFR), which is an annual codification of the general and permanent rules published in the **Federal Register**. The CFR is available on line and in a bound-volume format.

(d) Electronically on the Internet.

§ 102–2.35 How is the FMR distributed?

(a) A liaison appointed by each agency provides GSA with their

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agency's distribution requirements of the looseleaf version of the FMR. Agencies must submit GSA Form 2053, Agency Consolidated Requirements for GSA Regulations and Other External Issuances, to—General Services Administration, Office of Communications (X), 1800 F Street, NW, Washington, DC 20405.

(b) Order **Federal Register** and Code of Federal Regulations copies of FMR material through your agency's authorizing officer.

§ 102–2.40 May an agency issue implementing and supplementing regulations for the FMR?

Yes, an agency may issue implementing regulations (see § 102–2.50) to expand upon related FMR material and supplementing regulations (see § 102–2.55) to address subject material not covered in the FMR. The Office of the Federal Register assigns chapters in Title 41 of the Code of Federal Regulations for agency publication of implementing and supplementing regulations.

Numbering

§ 102–2.45 How is the FMR numbered?

(a) All FMR sections are designated by three numbers. The following example illustrates the chapter (it's always 102), part, and section designations:

BILLING CODE 6820–34–P

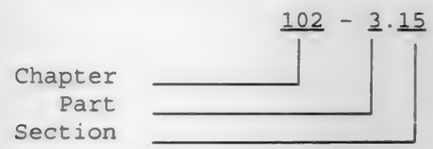

BILLING CODE 6820–34–C

(b) In the looseleaf version, the month, year, and number of FMR amendments appear at the bottom of each page.

§ 102–2.50 How do I number my agency's implementing regulations?

The first three-digit number represents the chapter number assigned to your agency in Title 41 of the CFR. The part and section numbers correspond to FMR material. For example, if your agency is assigned Chapter 130 in Title 41 of the CFR and you are implementing § 102–2.60 of the FMR, your implementing section would be numbered § 130–2.60.

§ 102–2.55 How do I number my agency's supplementing regulations?

Since there is no corresponding FMR material, number the supplementing material "601" or higher. For example, your agency's supplementing regulations governing special services to states might start with § 130–601.5.

Deviations

§ 102–2.60 What is a deviation from the FMR?

A deviation from the FMR is an agency action or policy that is inconsistent with the regulation. (The deviation policy for the FPMR is in 41 CFR part 101–1.)

§ 102–2.65 When may agencies deviate from the FMR?

Because, it consists primarily of set policies and mandatory requirements, deviation from the FMR should occur infrequently. However, to address unique circumstances or to test the effectiveness of potential policy changes, agencies may be able to deviate from the FMR after following the steps described in § 102–2.80.

§ 102–2.70 What are individual and class deviations?

An individual deviation is intended to affect only one action. A class deviation is intended to affect more than one action (e.g., multiple actions, the actions of more than one agency, or individual agency actions that are expected to recur).

§ 102–2.75 What timeframes apply to deviations?

Timeframes vary based on the nature of the deviation. However, deviations cannot be open-ended. When consulting with GSA about using an individual or class deviation, you must set a timeframe for the deviation's duration.

§ 102–2.80 What steps must an agency take to deviate from the FMR?

(a) Consult informally with appropriate GSA program personnel to learn more about how your agency can work within the FMR's requirements instead of deviating from them. The consultation process may also highlight reasons why an agency would not be permitted to deviate from the FMR; e.g., statutory constraints.

(b) Formally request a deviation, if consultations indicate that your agency needs one. The head of your agency or a designated official should write to GSA's Regulatory Secretariat to the attention of a GSA official in the program office that is likely to consider the deviation. (See the FMR bulletin that lists contacts in GSA's program offices and § 102–2.90.) The written request must fully explain the reasons for the deviation, including the benefits that the agency expects to achieve.

§ 102–2.85 What are the reasons for writing to GSA about FMR deviations?

The reasons for writing are to:

(a) Explain your agency's rationale for the deviation. Before it can adequately comment on a potential deviation from the FMR, GSA must know why it is needed. GSA will compare your need against the applicable policies and regulations.

(b) Obtain clarification from GSA as to whether statutes, Executive orders, or other controlling policies, which may not be evident in the regulation, preclude deviating from the FMR for the reasons stated.

(c) Establish a timeframe for using a deviation.

(d) Identify potential changes to the FMR.

(e) Identify the benefits and other results that the agency expects to achieve.

§ 102–2.90 Where should my agency send its correspondence on an FMR deviation?

Send correspondence to: General Services Administration, Regulatory Secretariat (MVRS), Office of Governmentwide Policy, 1800 F Street, NW, Washington, DC 20405.

§ 102–2.95 What information must agencies include in their deviation letters to GSA?

Agencies must include:

(a) The title and citation of the FMR provision from which the agency wishes to deviate;

(b) The name and telephone number of an agency contact who can discuss the reason for the deviation;

(c) The reason for the deviation;

(d) A statement about the expected benefits of using the deviation (to the extent possible, expected benefits should be stated in measurable terms);

(e) A statement about possible use of the deviation in other agencies or Governmentwide; and

(f) The duration of the deviation.

§ 102–2.100 Must agencies provide GSA with a follow-up analysis of their experience in deviating from the FMR?

Yes, agencies that deviate from the FMR must also write to the relevant GSA program office at the Regulatory Secretariat's address (see § 102–2.90) to describe their experiences in using a deviation.

§ 102–2.105 What information must agencies include in their follow-up analysis?

In your follow-up analysis, provide information that may include, but should not be limited to, specific actions taken or not taken as a result of the deviation, outcomes, impacts, anticipated versus actual results, and the advantages and disadvantages of taking an alternative course of action.

§ 102–2.110 When must agencies provide their follow-up letters?

(a) For an individual deviation, once the action is complete.

(b) For a class deviation, at the end of each twelve-month period from the time you first took the deviation and at the end of the deviation period.

Non-Regulatory Material

§ 102–2.115 What kinds of non-regulatory material does GSA publish outside of the FMR?

As GSA converts the FPMR to the FMR, non-regulatory materials in the FPMR, such as guidance, procedures, standards, and information, that describe how to do business with GSA, will become available in separate documents. These documents may include customer service guides, handbooks, brochures, Internet websites, and FMR bulletins. GSA will eliminate non-regulatory material that is no longer needed.

§ 102–2.120 How do I know whom to contact to discuss the regulatory requirements of programs addressed in the FMR?

Periodically, GSA will issue for your reference an FMR bulletin that lists program contacts with whom agencies can discuss regulatory requirements. At a minimum, the list will contain organization names and telephone numbers for each program addressed in the FMR.

§ 102–2.125 What source of information can my agency use to identify materials that describe how to do business with GSA?

The FMR establishes policy; it does not specify procedures for the acquisition of GSA services. However, as a service to users during the transition from the FPMR to the FMR and as needed thereafter, GSA will issue FMR bulletins to identify where to find information on how to do business with GSA. References include customer service guides, handbooks, brochures, Internet websites, etc.

Subpart B—Forms

§ 102–2.130 Where are FMR forms prescribed?

In any of its parts, the FMR may prescribe forms and the requirements for using them.

§ 102–2.135 How do agencies obtain forms prescribed by the FMR?

For copies of the forms prescribed by in the FMR, do any of the following:

(a) Write to us at: General Services Administration, National Forms and Publications Center (7CPN), Warehouse 4, Dock No. 1, 501 West Felix Street, Fort Worth, TX 76115.

(b) Send e-mail messages to: NFPC@gsa-7FDepot.

(c) Visit our web site at: www.gsa.gov/forms/forms.htm.

Subpart C—Plain Language Regulatory Style

§ 102–2.140 What elements of plain language appear in the FMR?

The FMR is written in a "plain language" regulatory style. This style is easy to read and uses a question and answer format directed at the reader, active voice, shorter sentences, and, where appropriate, personal pronouns.

§ 102–2.145 To what do pronouns refer when used in the FMR?

Throughout its text, the FMR may contain pronouns such as, but not limited to, we, you, and I. When pronouns are used, each subchapter of the FMR will indicate whether they refer to the reader, an agency, GSA, or some other entity. In general, pronouns refer to who or what must perform a required action.

[FR Doc. 99–18556 Filed 7–20–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990115017–9193–02; I.D. 011199A]

RIN 0648–AM08

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Pollock Fisheries off Alaska; Extension of an Expiration Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension and revision of emergency interim rule; revision to 1999 final harvest specifications; request for comments.

SUMMARY: On January 22, 1999, NMFS published an emergency rule, effective through July 19, 1999, that implemented reasonable and prudent alternatives (RPAs) identified by NMFS to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions, or adversely modify its critical habitat. This action revises and extends the emergency rule through December 31, 1999. This action also revises the 1999 final harvest specifications for the pollock fisheries off Alaska. This emergency rule extension is necessary to prevent the pollock fisheries from jeopardizing the western population of Steller sea lions or adversely modifying its critical habitat until permanent protection measures can be implemented.

DATES: The expiration date of the emergency interim rule published January 22, 1999 (64 FR 3437) is extended from July 19, 1999, to December 31, 1999. The amendments in this action are effective from January 20, 1999, to December 31, 1999. Comments must be received by August 16, 1999.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Biological Opinion (BO) on the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA) pollock fisheries, the Atka mackerel fishery of the Aleutian Islands Subarea (AIS), and the revised Environmental Assessment

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prepared for the emergency rule extension may be obtained from the same address. The BO is also available on the Alaska Region home page at http://www.fakr.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Shane Capron, 907–586–7228 or shane.capron@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS issued a BO dated December 3, 1998, and revised RPAs dated December 16, 1998, on the pollock fisheries of the BSAI and GOA, and the Atka mackerel fishery of the AIS. The BO concluded that the BSAI and GOA pollock trawl fisheries, as projected for 1999 through 2002, were likely to jeopardize the continued existence of the western population of Steller sea lions and adversely modify its critical habitat. The BO also determined that the Atka mackerel fishery, as modified by recent regulatory changes, was not likely to jeopardize the continued existence of Steller sea lions or adversely modify their critical habitat.

To avoid the likelihood of jeopardizing the continued existence of the western population of Steller sea lions or adversely modifying its critical habitat, the BO established principles for RPAs to the existing pollock trawl fisheries in the BSAI and GOA, that adhere to three basic principles: (1) Temporal dispersion of fishing effort, (2) spatial dispersion of fishing effort, and (3) pollock trawl exclusion zones around Steller sea lion rookeries and haulouts.

NMFS published an emergency interim rule implementing RPAs in the **Federal Register** on January 22, 1999 (64 FR 3437), corrected on February 17, 1999 (64 FR 7814), and February 25, 1999 (64 FR 9375), and effective through July 19, 1999. The preamble to the original emergency interim rule provides a detailed description of the purpose and need for the action. This action extends the original emergency rule through December 31, 1999. This action also makes two changes to the original emergency rule that (1) correct the mothership B and C season dates, and (2) add spatial dispersion measures to limit critical habitat/catcher vessel operation area (CH/CVOA) catch. These revisions and associated changes to the 1999 BSAI final harvest specifications are described here.

Revisions to the Original Emergency Rule

Correction to Mothership Sector Seasonal Dates

The original emergency rule (64 FR 3437, January 22, 1999), contained incorrect B and C season harvest dates for the mothership sector. The North Pacific Fishery Management Council's (Council) December 1998 emergency rule recommendation contained a combined B/C season from September 1 through November 1 for the mothership sector. However, the original emergency rule inadvertently applied inshore sector B and C season dates to the mothership sector. This error is corrected in this emergency rule extension. The mothership sector now has a combined B/C season from September 1 through November 1, rather than separate B and C seasons as printed in the original emergency rule.

B and C season CH/CVOA Catch Limits and Technical Amendment to the 1999 BSAI Final Harvest Specifications

The original emergency rule did not contain spatial dispersion measures for the BSAI pollock B and C seasons as required by the BO. These provisions were reserved in the original emergency rule pending further consideration by the Council which occurred at its June 1999 meeting. This emergency rule extension revises the original rule to include overall CH/CVOA catch limits of 25 percent in the B season and 35 percent in the C season. These catch percentages are achieved using an allocation formula recommended by the Council that would exclude the catcher/processor and mothership sectors from the CH/CVOA during the B and C seasons, and would proportionally reduce the CH/CVOA catch percentages for the inshore and Community Development Quota (CDQ) sectors to achieve the overall B and C season catch objectives. Under the revised emergency rule, the inshore sector will have a CH/CVOA limit of 45 percent during the B season and 63 percent during the C season. The CDQ sector will have a CH/CVOA limit of 56 percent for its combined B/C season.

The specification of CH/CVOA catch limits in the B and C seasons in the extension of this emergency rule require revision of the 1999 final harvest specifications of pollock TAC for the Bering Sea Subarea. Table 3 of the 1999 BSAI final harvest specifications (64 FR 12103, March 11, 1999) listed CH/CVOA catch limits for the A1 and A2 seasons. However, CH/CVOA catch limits were not specified for the B and C seasons. To accommodate these new CH/CVOA limits for Bering Sea Subarea pollock under the revised emergency rule, the 1999 BSAI final harvest specifications are amended by adding the following table 3A.

TABLE 3A.—FINAL 1999 TAC AMOUNTS FOR B AND C SEASON POLLOCK IN THE BERING SEA SUBAREA

Sector	B Season		C Season	
	Total	CH/CVOA limit	Total	CH/CVOA limit
Bering Sea Subarea:				
Inshore	125,885	56,648	125,885	79,307
Offshore C/Ps	100,708	0	100,708	0
Catch by C/Ps	92,148	0	92,148	0
Catch by C/Vs	8,560	0	8,560	0
Sec. 208(e)(21) vessels	504	0	504	0
Mothership [1]	50,354	0	n/a	n/a
Incidental Catch	n/a	n/a	n/a	n/a
CDQ [1]	54,560	30,554	n/a	n/a

[1] The mothership and CDQ sectors have a combined B/C season and CH/CVOA catch limit.

NMFS intends to initiate rulemaking later in 1999 to propose and implement permanent Steller sea lion conservation measures for 2000. This extension of the emergency interim rule is necessary to protect the western population of Steller sea lions and its critical habitat while allowing the continued prosecution of the 1999 pollock fishery.

Details concerning the basis for this action are contained in the preamble to the original emergency rule and are not repeated here.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that an extension of this emergency interim rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The extension of this emergency interim rule is exempt from review under E.O. 12866.

Failure to have the measures contained in this rule in place by July 19, 1999, would result in a lapse of necessary Steller sea lion protective measures in the Alaska pollock fisheries. The measures must be in place because of the likelihood that without the measures, the pollock fisheries would jeopardize the Western population of Steller sea lions and adversely modify its critical habitat. Without these measures, the December 3, 1998 BO would require that to protect Steller sea lions, no pollock fishing occur.

Delay of the pollock season openings to provide for prior notice and public comment would impose significant economic cost on the fishing industry for two reasons. First, by regulation, the ending date for pollock fishing is November 1 of each year to prevent pollock fishing during a winter time period that is critical to Steller sea lions. If the August 1 pollock openings are delayed for a significant period of time, the fleet may have insufficient time to harvest the remaining TAC prior to November 1 and a significant portion of the TAC could go unharvested. Second, any delay in the season opening will impose significant operational costs on vessels, processors, employees, and other support industries that must plan for and deploy equipment and crews to remote parts of Alaska well in advance of the season opening date.

Accordingly, the AA finds that the need not to delay the pollock season openings constitutes good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be impracticable and contrary to the public interest. For the same reasons, the AA finds good cause pursuant to the authority set forth at in 5 U.S.C. 553(d)(3) to waive the requirement for a 30-day delay in effective date.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: July 16, 1999.

Andrew A. Rosenberg,

Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

50 CFR CHAPTER VI

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.22(a)(11)(iv)(C)(*1*), the table is revised to read as follows:

§ 679.22 Closures.

(a) * * *
(11) * * *
(iv) * * *
(C) * * *
(*1*) * * *

Fishing Season	Industry Sector (in percent)			
	Inshore	Catcher/ processor	Mothership	CDQ
A1 Season	70	40	50	100
A2 Season	70	40	50	100
B Season	45	0	0	56
C Season	63	0	0	56

3. Section 679.23(e)(5)(ii)(B) is revised and § 679.23(e)(5)(ii)(C) is removed to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * *
(5) * * *
(ii) * * *

(B) *Combined B/C season.* From 1200 hours, A.l.t., September 1, through 1200 hours, A.l.t., November 1.

* * * * *

[FR Doc. 99–18612 Filed 7–16–99; 4:32pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 071699C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1999 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 20, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing

fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1999 TAC of Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) as 1,850 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 TAC for Pacific ocean perch will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,650 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC of Pacific ocean perch for the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 16, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–18615 Filed 7–16–99; 4:10 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 071699B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1999 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 19, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1999 TAC of Pacific ocean perch in the West Yakutat District of the Gulf of Alaska was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) as 820 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 TAC for Pacific ocean perch has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 670 mt, and is setting aside the remaining 150 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the West Yakutat District.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC of Pacific ocean perch for the West Yakutat District of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

16 U.S.C. 1801 *et seq.*

Dated: July 16, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–18614 Filed 7–16–99; 4:10 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 071699A]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1999 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 19, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1999 TAC of northern rockfish in the Central Regulatory Area of the Gulf of Alaska was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) as 4,150 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 TAC of northern rockfish will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,650 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC of northern rockfish for the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 16, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–18613 Filed 7–16–99; 4:10 pm]

BILLING CODE 3510–22–F

VOL 64 ISS 139 JL 21 1999 UMI

VOL 64 ISS 139 JL 21 1999 UMI

Proposed Rules

Federal Register
Vol. 64, No. 139
Wednesday, July 21, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138, and 1139

[DA–97–12]

Milk in the New England and Other Marketing Areas; Notice of Referenda; Determination of Representative Periods and Designation of Referendum Agents

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referenda.

7 CFR part	Marketing area
1000	General Provisions of Federal Milk Marketing Orders.
1001	New England.
1002	New York-New Jersey.
1004	Middle Atlantic.
1005	Carolina.
1006	Upper Florida.
1007	Southeast.
1012	Tampa Bay.
1013	Southeastern Florida.
1030	Chicago Regional.
1032	Southern Illinois-Eastern Missouri.
1033	Ohio Valley.
1036	Eastern Ohio-Western Pennsylvania.
1040	Southern Michigan.
1044	Michigan Upper Peninsula.
1046	Louisville-Lexington-Evansville.
1049	Indiana.
1050	Central Illinois.
1064	Greater Kansas City.
1065	Nebraska-Western Iowa.
1068	Upper Midwest.
1076	Eastern South Dakota.
1079	Iowa.
1106	Southwest Plains.
1124	Pacific Northwest.
1126	Texas.
1131	Central Arizona.
1134	Western Colorado.
1135	Southwestern Idaho-Eastern Oregon.
1137	Eastern Colorado.
1138	New Mexico-West Texas.
1139	Great Basin.

SUMMARY: This document announces that referenda will be conducted to determine whether producers favor issuance of the orders regulating the handling of milk in the 11 consolidated marketing areas formed from the current 31 Federal milk marketing orders pursuant to Section 143 of the Federal Agriculture Improvement and Reform Act of 1996 (Farm Bill), 7 U.S.C. 7253. The 31 current Federal milk order marketing areas are merged and, in some cases, expanded and/or divided, to create 11 order areas, and the provisions of the Federal milk marketing orders regulating the handling of milk in the merged areas are set forth in the final decision issued by the Under Secretary on March 12, 1999 (64 FR 16026), as corrected by a document issued by the Administrator, Agricultural Marketing Service, on July 8, 1999 (64 FR 37892).

DATES: Each referendum is to be completed on or before 60 days after the issuance of this order.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Branch Chief, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968 South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274, e-mail address John.Borovies@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Proposed Rule: Issued January 21, 1998; published January 30, 1998 (63 FR 4802).

Correction: Issued February 19, 1998; published February 25, 1998 (63 FR 9686).

Extension of Time: Issued March 10, 1998; published March 13, 1998 (63 FR 12417).

Final Decision on Proposed Amendments: Issued March 12, 1999; published April 2, 1999 (64 FR 16026).

Correction: issued July 8, 1999; published July 14, 1999 (64 FR 37892).

On March 12, 1999, the Under Secretary, Marketing and Regulatory Programs, issued a final decision on the proposed consolidation of Federal milk marketing areas and amendments to the consolidated Federal milk orders, as required by Section 143 of the Federal Agriculture Improvement and Reform Act of 1996 (Farm Bill), 7 U.S.C. 7253. Each of the consolidated orders, as corrected by a document issued July 8, 1999 (64 FR 37892), must be approved by the producers whose milk would be pooled under the order.

In addition to announcing that referenda will be conducted to determine producer approval of the consolidated orders, this notice contains a referendum order for each of the consolidated milk marketing orders, as merged and amended, pursuant to the requirements of the Agricultural Marketing Agreement Act of 1937. For each of the consolidated orders, at least two-thirds of the producers defined under the order, or such producers who produced at least two-thirds of the total milk produced under the order, during the representative period must approve the order before it becomes effective.

Referendum Orders To Determine Producer Approval; Determination of Representative Period(s); and Designation of Referendum Agents

Northeast

It is hereby directed that a referendum be conducted to determine whether the issuance of the order regulating the handling of milk in the Northeast marketing area, which amends and merges the orders, as amended, regulating the handling of milk in the New England, New York-New Jersey and Middle Atlantic marketing areas, and adds contiguous unregulated areas of Massachusetts, New Hampshire, and northern New York and Vermont, is approved or favored by producers as defined under the terms of the Northeast order as contained in the decision issued on March 12, 1999 (64 FR 16016), who during the representative period were engaged in the production of milk for sale within the marketing area defined in the merged Northeast order.

The month of March 1999 is hereby determined to be the representative period for the conduct of such referendum.

Erik F. Rasmussen is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*)

Appalachian

It is hereby directed that a referendum be conducted to determine whether the issuance of the order regulating the handling of milk in the Appalachian marketing area, which amends and merges the orders, as amended, regulating the handling of milk in the Carolina and Louisville-Lexington-Evansville marketing areas, and adds the marketing area of the former Tennessee Valley order and 21 currently-unregulated counties in Indiana and Kentucky, is approved or favored by producers as defined under the terms of the Appalachian order as contained in the decision issued on March 12, 1999 (64 FR 16016), who during the representative period were engaged in the production of milk for sale within the marketing area defined in the merged Appalachian order.

The month of March 1999 is hereby determined to be the representative period for the conduct of such referendum.

Arnold M. Stallings is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*).

Florida

It is hereby directed that a referendum be conducted to determine whether the issuance of the order regulating the handling of milk in the Florida marketing area, which amends and merges the orders, as amended, regulating the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas, is approved or favored by producers as defined under the terms of the Florida order as contained in the decision issued on March 12, 1999 (64 FR 16016), who during the representative period were engaged in the production of milk for sale within the marketing area defined in the merged Florida order.

The month of March 1999 is hereby determined to be the representative period for the conduct of such referendum.

Sue L. Mosley is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*).

Southeast

It is hereby directed that a referendum be conducted to determine whether the issuance of the order regulating the handling of milk in the consolidated Southeast marketing area is approved or favored by producers, as defined under the terms of the Southeast order as contained in the decision issued on March 12, 1999 (64 FR 16016), who during the representative period were engaged in the production of milk for sale within the marketing area defined in the consolidated Southeast order. The proposed Southeast order amends and combines the order, as amended, regulating the handling of milk in the current Southeast marketing area with 1 county from the current Louisville-Lexington-Evansville order area, 11 northwest Arkansas counties and 22 southern Missouri counties that currently are part of the Southwest Plains order area, and 6 Missouri counties that currently are part of the Southern Illinois-Eastern Missouri order area. In addition, 36 currently-unregulated Missouri and Kentucky counties are included in the proposed Southeast order area.

The month of March 1999 is hereby determined to be the representative period for the conduct of such referendum.

Sue L. Mosley is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*).

Mideast

It is hereby directed that a referendum be conducted to determine whether the issuance of the order regulating the handling of milk in the Mideast marketing area, which amends and merges the orders, as amended, regulating the handling of milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan and Indiana Federal milk marketing areas, and adds the area designated as Zone 2 of the current Michigan Upper Peninsula milk order and most currently-unregulated counties in Michigan, Indiana and Ohio, is approved or favored by producers as defined under the terms of the Mideast order as contained in the decision issued on March 12, 1999 (64 FR 16016), who during the representative period were engaged in the production of milk for sale within the marketing area defined in the merged Mideast order.

The month of March 1999 is hereby determined to be the representative period for the conduct of such referendum.

Marvin A. Baumer is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*).

Upper Midwest

It is hereby directed that a referendum be conducted to determine whether the issuance of the order regulating the handling of milk in the Upper Midwest marketing area, which amends and merges the orders, as amended, regulating the handling of milk in the current Upper Midwest and Chicago Regional Federal milk marketing areas, and adds the areas designated as Zones I and I(a) of the Michigan Upper Peninsula Federal order area and unregulated portions of Wisconsin, is approved or favored by producers as defined under the terms of the Upper Midwest order as contained in the decision issued on March 12, 1999 (64 FR 16016), who during the representative period were engaged in the production of milk for sale within the marketing area defined in the merged Upper Midwest order.

The month of March 1999 is hereby determined to be the representative period for the conduct of such referendum.

H. Paul Kyburz is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*).

Central

It is hereby directed that a referendum be conducted to determine whether the issuance of the order regulating the handling of milk in the Central marketing area, which amends and merges the orders, as amended, regulating the handling of milk in the current Southern Illinois-Eastern Missouri, Central Illinois, Greater Kansas City, Southwest Plains (except for the portions included in the consolidated Southeast order area), Western Colorado, Eastern Colorado, Nebraska-Western Iowa, Eastern South Dakota, and Iowa Federal milk order marketing areas, with the addition of 69 currently-unregulated counties in Kansas, Missouri, Illinois, Iowa, Nebraska and Colorado, is approved or favored by producers as defined under the terms of the Central order as contained in the decision issued on March 12, 1999 (64 FR 16016), who during the representative period were engaged in the production of milk for sale within the marketing area defined in the merged Central order.

The month of March 1999 is hereby determined to be the representative period for the conduct of such referendum.

Donald R. Nicholson is hereby designated agent of the Secretary to conduct such referendum in accordance

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with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*).

Southwest

It is hereby directed that a referendum be conducted to determine whether the issuance of the order regulating the handling of milk in the Southwest marketing area, which amends and merges the orders, as amended, regulating the handling of milk in the current Texas and New Mexico-West Texas Federal milk order marketing areas, with the addition of 49 currently-unregulated Texas counties, is approved or favored by producers as defined under the terms of the Southwest order as contained in the decision issued on March 12, 1999 (64 FR 16016), who during the representative period were engaged in the production of milk for sale within the marketing area defined in the merged Southwest order.

The month of March 1999 is hereby determined to be the representative period for the conduct of such referendum.

J. Richard Fleming is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*).

Arizona-Las Vegas

It is hereby directed that a referendum be conducted to determine whether the issuance of the order regulating the handling of milk in the Arizona-Las Vegas marketing area, which amends and merges the current Central Arizona order, as amended, regulating the handling of milk in that marketing area, with the Clark County, Nevada, portion of the current Great Basin marketing area and adds 8 currently-unregulated Arizona counties, is approved or favored by producers as defined under the terms of the Arizona-Las Vegas order as contained in the decision issued on March 12, 1999 (64 FR 16016), who during the representative period were engaged in the production of milk for sale within the marketing area defined in the Arizona-Las Vegas order.

The month of March 1999 is hereby determined to be the representative period for the conduct of such referendum.

James R. Daugherty is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*).

Western

It is hereby directed that a referendum be conducted to determine whether the issuance of the order regulating the handling of milk in the Western marketing area, which amends and merges the current Great Basin and Southwestern Idaho-Eastern Oregon orders, as amended, minus the Clark County, Nevada, portion of the current Great Basin marketing area, is approved or favored by producers as defined under the terms of the Western order as contained in the decision issued on March 12, 1999 (64 FR 16016), who during the representative period were engaged in the production of milk for sale within the marketing area defined in the Western order.

The month of March 1999 is hereby determined to be the representative period for the conduct of such referendum.

James R. Daugherty is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*).

Pacific Northwest

It is hereby directed that a referendum be conducted to determine whether the issuance of the order regulating the handling of milk in the Pacific Northwest marketing area, as amended, with the addition of one currently-unregulated Oregon county, is approved or favored by producers as defined under the terms of the Pacific Northwest order as contained in the decision issued on March 12, 1999 (64 FR 16016), who during the representative period were engaged in the production of milk for sale within the marketing area defined in the Pacific Northwest order.

The month of March 1999 is hereby determined to be the representative period for the conduct of such referendum.

James R. Daugherty is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda (7 CFR 900.300 *et seq.*).

Marketing Agreement and Order

Annexed hereto and made a part hereof is a Marketing Agreement regulating the handling of milk in the aforesaid marketing areas, which has been decided upon as the detailed and appropriate means of effectuating the conclusions reached in the final decision issued March 12, 1999 (64 FR 16026), as corrected in the document issued July 8, 1999 (64 FR 37892). It is hereby ordered that the Marketing Agreement annexed hereto be published in the **Federal Register**.

The Order amending the orders regulating the handling of milk in the 11 consolidated marketing areas was proposed as the detailed and appropriate means by which the conclusions of the final decision may be carried out, and was published in the final decision issued March 12, 1999 (64 FR 16026), as corrected in the document issued July 8, 1999 (64 FR 37892). This referendum order provides for producer approval of the provisions of the marketing orders for the 11 consolidated areas.

List of Subjects in 7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138, and 1139

Milk marketing orders.

Authority: 7 U.S.C. 601–674.

Dated: July 14, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

Marketing Agreement Regulating the Handling of Milk in Certain Specified Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ _____[1] to _____, all inclusive, of the order regulating the handling of milk in the said marketing areas (7 CFR PART _____[2]) which was issued March 12, 1999 (64 FR 16026) and corrected in a document issued June ___, 1999 (64 FR _____); and

II. The following provisions:

§ _____[3]. Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of March 1999, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ _____[3]. Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

[1] First and last sections of order.

[2] Appropriate Part number.

[3] Next consecutive section number.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature
By (Name) _____
(Title) _____
(Address) _____
(Seal)
Attest

[FR Doc. 99–18435 Filed 7–19–99; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

[Notice 1999–11]

11 CFR Part 110

Candidate Debates

AGENCY: Federal Election Commission.

ACTION: Extension of comment period.

SUMMARY: On June 10, 1999, (64 FR 31159) the Commission published a Notice of Availability inviting comments on a Petition for Rulemaking that urges the Commission to amend its rules regarding Presidential and Vice Presidential debates. The Commission has extended the deadline for submitting comments until July 26, 1999.

DATES: Statements in support of or in opposition to the petition must be filed on or before July 26, 1999.

ADDRESS: All comments should be addressed to Rosemary C. Smith, Acting Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW, Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow up. Electronic mail comments should be sent to debates@fec.gov, and should include the full name, electronic mail address and postal service address of the commenter. Additional information on electronic submission is provided below.

FOR FURTHER INFORMATION CONTACT: Rosemary C. Smith, Acting Assistant General Counsel, or Paul Sanford, Staff Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On May 25, 1999, the Commission received a Petition for Rulemaking regarding its candidate debate regulations at 11 CFR 110.13. The petition urges the Commission to revise these rules to establish mandatory objective criteria to be used by debate staging organizations to determine who may participate in Presidential and Vice Presidential Debates.

The Commission published a Notice of Availability in the **Federal Register** on June 10, 1999, inviting the public to submit comments on the petition by July 12, 1999. The Commission has decided to extend this comment period until July 26, 1999.

As indicated in the June 10 notice, copies of the petitions are available for public inspection in the Commission's Public Records Office, 999 E Street, NW, Washington, DC 20463, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. Copies of the petitions can also be obtained at any time of the day and week from the Commission's home page at www.fec.gov, or from the Commission's FlashFAX service. To obtain copies of the petitions from FlashFAX, dial (202) 501–3413 and follow the FlashFAX service instructions. Request document #239 to receive the petition.

All statements in support of or in opposition to the petitions should be addressed to Rosemary C. Smith, Acting Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Commission's postal service address: Federal Election Commission, 999 E Street, NW, Washington, DC 20463. Faxed comments should be sent to (202) 219–3923. Commenters submitting faxed comments should also submit a printed copy to the Commission's postal service address to ensure legibility. Comments may also be sent by electronic mail to debates@fec.gov. Commenters sending comments by electronic mail should include their full name, electronic mail address and postal service address within the text of their comments. All comments, regardless of form, must be submitted by July 26, 1999.

Consideration of the merits of the petition will be deferred until the close of the comment period. If the Commission decides that the petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–18554 Filed 7–20–99; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM158; Notice No. 25–99–06–SC]

Special Conditions: Boeing Model 767–400ER; High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Boeing Model 767–400ER airplane. This airplane will utilize new avionics/electronic systems that provide critical data to the flightcrew. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before September 7, 1999.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–114), Docket No. NM158, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM158. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Massoud Sadeghi, FAA, Transport Airplane Directorate, Aircraft Certification Service, Airplane and Flight Crew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, Washington, 98055–4056, telephone (425) 227–2117 or facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the Rules

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Docket address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action on this proposal is taken. The proposals contained in this action may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM158." The postcard will be date stamped and returned to the commenter.

Background

On January 14, 1997, the Boeing Commercial Airplane Group applied for an amendment to Type Certificate No. A1NM to include the new Model 767–400ER, a derivative of the Model 767–200/300 series airplanes. The Model 767–400ER is a swept-wing, conventional-tail, twin-engine, turbofan-powered transport airplane. The airframe has been strengthened to accommodate the increased design loads and weights. The airplane has a seating capacity of up to 375, and a maximum takeoff weight of 450,000 pounds (204,120 kg). Each engine will be capable of delivering 62,000 pounds of thrust. The flight controls are unchanged beyond those changes deemed necessary to accommodate the stretched configuration.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing must show that the Model 767–400ER airplane meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A1NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A1NM include 14 CFR part 25, as amended by Amendments 25–1 through 25–45 with a few exceptions, and certain other later amended sections of part 25 that are not relevant to these proposed special conditions. Except for certain earlier amended sections of part 25 that are not relevant to these proposed special conditions, Boeing has chosen to comply with part 25 as amended by Amendments 25–1 through 25–89, the applicable regulations in effect on the date of application.

In addition to the applicable airworthiness regulations and special conditions, the Model 767–400ER must comply with the fuel vent and exhaust emission requirements of part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and the noise certification requirements of part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification. The special conditions that may be developed as a result of this notice will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model 767–400ER because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model 767–400ER airplane will utilize electrical and electronic systems that perform critical functions, including the following: primary electronic flight displays and full authority digital engine controls (FADEC). These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters, and the growing use of sensitive electrical and electronic systems to command and control airplanes, have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Model 767–400ER. The Model 767–400 requires that new technology electrical and electronic systems be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane and the use of composite material in the airplane structure, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

The threat levels identified above differ from those used in previous special conditions and are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee. In general, these standards are less critical than the threat level that was previously used as the basis for earlier special conditions

Applicability

As discussed above, these special conditions would be applicable initially to the Model 767–400ER airplane. Should Boeing apply at a later date for change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects certain design features only on the Model 767–400ER. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA For Approval of these features on the airplane.

List of Subjects In 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing 767–400ER series airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

For the purpose of this special condition, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued In Renton, Washington, on July 13, 1999.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 99–18564 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–267–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81, –82, –83, and –87 Series Airplanes (MD–81, –82, –83, and –87), and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–9–81, –82, –83, and –87 series airplanes (MD–81, –82, –83, and –87), and Model MD–88 airplanes, that currently requires visual or eddy current inspections to detect cracks of the actuator cylinder support brackets of the slat drive mechanism assembly, and replacement of any cracked brackets. This action would continue to require repetitive eddy current inspections, would add an inspection requirement, and would expand the area of inspection. This action also would provide terminating action for the repetitive inspections. This proposal is prompted by reports indicating that additional cracking was found outside the original inspection area. The actions specified by the proposed AD are intended to prevent inadvertent slat retraction in flight.

DATES: Comments must be received by September 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–267–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5237; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communicat ons shall identify the Rules Docket nur iber and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–267–AD." The

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postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–267–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 27, 1991, the FAA issued AD 91–21–11, amendment 39–8058 (56 FR 51645, October 15, 1991), applicable to all McDonnell Douglas Model DC–9–81, –82, –83, and –87 series airplanes (MD–81, –82, –83, and –87), and Model MD–88 airplanes, to require visual or eddy current inspections to detect cracks of the actuator cylinder support brackets of the slat drive mechanism assembly, and replacement of any cracked brackets. That action was prompted by reports of failures of the slat drive mechanism. The requirements of that AD are intended to prevent inadvertent slat retraction in flight.

Actions Since Issuance of Previous Rule

In the preamble to AD 91–21–11, the FAA specified that the actions required by that AD were considered to be interim action. The FAA indicated that it may consider further rulemaking action to require only repetitive eddy current inspections for airplanes that have accumulated 10,000 or more landings. The FAA has determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

Since the issuance of AD 91–21–11, the FAA has received a report indicating that additional cracking was found outside the original inspection area. The cracking was found on a McDonnell Douglas Model MD–83 series airplane that had accumulated 32,478 total flight hours. The repetitive inspections in AD 91–21–11 were required to be performed on the top of the clevis lug (a U-shaped fitting that has matching holes in the arms of the U) of the actuator cylinder support brackets. The additional cracking was found within the clevis lug in the transition radius between the body of the actuator cylinder support bracket and the clevis lug.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin

MD80–27–A322, Revision 03, dated August 4, 1998, which, among other things, describes procedures for a one-time, visual inspection and repetitive eddy current inspections to detect cracks of the actuator cylinder support brackets of the slat drive mechanism assembly. For certain airplanes, this would involve a one-time, visual and eddy current inspections, followed by repetitive eddy current inspections. For certain other airplanes this would involve repetitive eddy current inspections.

The FAA also has reviewed and approved McDonnell Douglas Service Bulletin MD80–27–322, Revision 02, dated February 11, 1998, which, among other things, describes procedures for modification of the actuator cylinder support bracket of the slat drive mechanism assembly. This modification involves replacing the actuator cylinder support bracket with a new, improved bracket and installing new associated components.

The specific modification of the actuator cylinder support bracket is predicated on whether a previous modification has been installed in accordance with a prior issue of McDonnell Douglas Service Bulletin MD80–27–322. For those airplanes on which a previous modification has been installed, operators would have the option of choosing one of the following:

- Option 1: Replacement and reidentification of the actuator cylinder support bracket assemblies, hydraulic pipe assemblies, and clamp assemblies with new components; or replacement of the hydraulic pipe clamp assemblies with new clamp assemblies; or
- Option 2: Removal and return of the slat drive mechanism to the manufacturer for modification and reidentification; installation of the modified and reidentified slat drive mechanism assembly, replacement of the hydraulic pipe assemblies with new pipe assemblies; or replacement of the hydraulic pipe clamp assemblies with new clamp assemblies.

For those airplanes on which no previous modification has been installed, operators would have the option of the choosing one of the following:

- Option 1: Replacement of the actuator cylinder support bracket assemblies, and hydraulic pipe assemblies and clamp assemblies with new components; and reidentification of the slat drive mechanism.
- Option 2: Removal and return of the slat drive mechanism to the manufacturer for modification and reidentification; installation of the modified and reidentified slat drive mechanism, and replacement of the hydraulic pipe clamp assemblies with new clamp assemblies.

Accomplishment of the modification for both actuator cylinder support brackets would eliminate the need for the repetitive inspections. Accomplishment of the action specified in the service bulletins is intended to adequately address the identified unsafe condition.

FAA's Determination

The FAA has examined the circumstances and reviewed all the available information related to the additional cracking that was reported. Additionally, the FAA reviewed the requirements of AD 91–21–11, which required that either a visual or an eddy current inspection be performed to detect cracking of the slat drive mechanism. In light of the criticality of the unsafe condition (inadvertent retraction of the slats during flight), the FAA has determined that visual inspection methods may not be as effective in detecting the types of cracks associated the slat drive mechanism. This proposed AD would require a one-time visual inspection and an eddy current inspection be performed on all airplanes on which no previous inspection has been performed in accordance with AD 91–21–11. For airplanes on which the last inspection performed in accordance with AD 91–21–11 was a visual inspection, this proposed AD would require a visual inspection within 1,000 landings and an eddy current inspection within 6 months. All airplanes would be required to repeat the eddy current inspection at intervals not exceeding 3,000 landings, or until the terminating modification is accomplished, which would eliminate the need for the repetitive inspections.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91–21–11 to continue to require eddy current inspections for cracks of the actuator cylinder support brackets of the slat drive mechanism assembly, and replacement of any cracked brackets. This action also would add an inspection requirement and expand the area of inspection. This action also would provide terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Information

Operators should note that, although McDonnell Douglas Service Bulletin MD80–27–322, Revision 02, provides service information for performing repetitive visual and eddy current inspections, this proposed AD would require an initial visual inspection and repetitive eddy current inspections be performed in accordance with Revision 03 of the McDonnell Douglas Alert Service Bulletin MD80–27–A322. The FAA has determined that Revision 03 of the McDonnell Douglas alert service bulletin provides complete inspection instructions for the expanded inspection area that would be required by this proposed AD.

Additionally, operators should note that, although the McDonnell Douglas alert service bulletin (previously described), recommends that the initial visual inspection be performed within 60 days and that the eddy current inspection be performed within 6 months after receipt of the service bulletin, this proposed AD would require that the initial inspection be performed as described below, as applicable:

- For airplanes on which no inspection has been performed in accordance with AD 91–21–11: Perform visual and eddy current inspections prior to the accumulation of 10,000 total landings or within 30 days after the effective date of this AD, whichever occurs later.
- For airplanes on which the last inspection that was performed in accordance with AD 91–21–11 was a visual inspection: Perform visual inspection within 1,000 landings after the last visual inspection, followed by an eddy current inspection within 6 months.
- For airplanes on which the last inspection that was performed in accordance with AD 91–21–11 was an eddy current inspection: Perform eddy current inspection within 3,000 landings after the last eddy current inspection.

In developing the appropriate compliance time, the FAA considered the manufacturer's recommendation and the degree of urgency associated with addressing the subject unsafe condition. In light of these factors, the FAA finds that the compliance time specified by this proposed AD to be appropriate.

Cost Impact

There are approximately 1,180 airplanes of the affected design in the worldwide fleet. The FAA estimates that 787 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 91–21–11 take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $141,660, or $180 per airplane, per inspection cycle.

The one-time visual inspection that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of the AD on U.S. operators is estimated to be $47,220, or $60 per airplane.

The inspections of the expanded area that are proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $94,440, or $120 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required or elect to accomplish the terminating modification that is provided by this AD action, it would take between 130 and 162 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost $22,574 per airplane. Based on these figures, the cost impact of the optional terminating modification, is estimated to be between $30,374 and $32,294 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8058 (56 FR 51645, October 15, 1991), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 98–NM–267–AD. Supersedes AD 91–21–11, Amendment 39–8058.

Applicability: All Model DC–9–81, –82, –83, and –87 series airplanes (MD–81, –82, –83, and –87); and Model MD–88 airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent slat retraction in flight, accomplish the following:

Restatement of Certain Requirements of AD 91–21–11, Amendment 39–8058

(a) Prior to the accumulation of 10,000 total landings or within 30 days after October 30, 1991 (the effective date of AD 91–21–11), whichever occurs later, perform a visual or eddy current inspection to detect cracks of

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the actuator cylinder support brackets of the slat drive mechanism assembly, part numbers 5938886—(any configuration) and 5938887—(any configuration), in accordance with the instructions in McDonnell Douglas MD–80 Alert Service Bulletin A27–322, dated August 22, 1991 (hereinafter referred to as "A27–322").

(b) If no crack is found during the inspection required by paragraph (a) of this AD, repeat the inspection at the following intervals:

(1) If the immediately preceding inspection was accomplished using visual means, conduct the next inspection within 1,000 landings.

(2) If the immediately preceding inspection was accomplished using eddy current means, conduct the next inspection within 3,000 landings.

(c) If any crack is found during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, remove and replace the slat drive mechanism with a new part, part numbers 5938887—(any configuration) and 5938886—(any configuration), in accordance with A27–322.

New Requirements of This AD

Initial and Repetitive Inspections

(d) Perform visual and/or eddy current inspections, as applicable, to detect cracks of the actuator cylinder support brackets of the slat drive mechanism assembly, in accordance with McDonnell Douglas Alert Service Bulletin MD80–27–A322, Revision 03, dated August 4, 1998, at the time specified in paragraph (d)(1), (d)(2), or (d)(3), as applicable, of this AD.

(1) For airplanes on which no inspection has been performed in accordance with AD 91–21–11: Perform both visual and eddy current inspections prior to the accumulation of 10,000 total landings or within 30 days after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the immediately preceding inspection was performed using visual means in accordance with AD 91–21–11, accomplish the requirements of paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Within 1,000 landings after the immediately preceding visual inspection, perform a visual inspection; and

(ii) Within 6 months after the last visual inspection required by paragraph (d)(2)(i) of this AD, perform an eddy current inspection.

(3) For airplanes on which the immediately preceding inspection was performed using eddy current means in accordance with AD 91–21–11: Perform an eddy current inspection within 3,000 landings after the last eddy current inspection.

(e) If no crack is found during any inspection required by paragraph (d) of this AD, repeat the eddy current inspection thereafter at intervals not to exceed 3,000 landings until the actions specified in paragraph (g) of this AD are accomplished for both actuator cylinder support brackets of the slat drive mechanism assembly.

Corrective/Terminating Action

(f) If any cracking is found during any inspection required by paragraph (d) or (e) of this AD, prior to further flight, modify the actuator cylinder support bracket of the slat drive mechanism assembly (Option 1 or 2 for Group 1 or 2 airplanes, as applicable) in accordance with McDonnell Douglas Service Bulletin MD80–27–322, Revision 02, dated February 11, 1998, as specified in paragraph (f)(1) or (f)(2), as applicable, of this AD.

(1) For airplanes identified as Group 1 in the service bulletin: Accomplish the actions as identified in the service bulletin as Group 1 Option 1 or Group 1 Option 2.

(2) For airplanes identified as Group 2 in the service bulletin: Accomplish the actions as identified in the service bulletin as Group 2 Option 1 or Group 2 Option 2.

(g) Accomplishment of the modification of the actuator cylinder support bracket specified in paragraph (f) of this AD constitutes terminating action for the repetitive inspections required by this AD, provided that both actuator cylinder support brackets are modified.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 91–21–11, amendment 39–8058, are approved as alternative methods of compliance for this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 15, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18626 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–25–AD]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Models S10–V and S10–VT Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Stemme GmbH & Co. KG (Stemme) Models S10–V and S10–VT sailplanes that incorporate a certain propeller blade suspension fork. The proposed AD would require repetitively exchanging (through the manufacturer) the propeller blade suspension fork for a propeller blade suspension fork that has passed X-ray crack testing requirements. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to detect and correct fractured propeller blade suspension forks, which could result in the loss of a propeller blade during flight with possible lateral imbalance and loss of thrust.

DATES: Comments must be received on or before August 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–25–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may

be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–CE–25–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–25–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on all Stemme Models S10–V and S10–VT sailplanes. The LBA reports the loss of the propeller blade on one of the affected sailplanes during flight. Analysis of this propeller blade reveals a fracture located at the end of the threaded fastening pin.

This condition, if not detected and corrected, could result in lateral imbalance and loss of thrust.

Relevant Service Information

Stemme has issued Service Bulletin No. A31–10–051, Amendment 01.a, pages 3 and 4, dated March 6, 1999, which specifies repetitively exchanging (through the manufacturer) the propeller blade suspension fork for a propeller blade suspension fork that has passed X-ray crack testing requirements.

The LBA classified this service bulletin as mandatory and issued German AD 1999–224, dated June 4, 1999, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Stemme Models S10–V and S10–VT sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require repetitively exchanging (through the manufacturer) the part number (P/N) A09–10AP–V08 (or FAA-approved equivalent part number) propeller blade suspension fork for one of these P/N forks that has passed X-ray crack testing requirements.

Relationship of the Proposed AD With AD 98–15–24

AD 98–15–24, Amendment 39–10674 (63 FR 39484), requires replacing the P/N 10AP–V08 propeller blade suspension fork with a P/N A09–10AP–V08 propeller blade suspension fork on Stemme Model S10–V sailplanes. The proposed AD is only written against those sailplanes with a P/N A09–10AP–V08 fork installed because the compliance time of the proposed AD is such that all affected sailplanes would have to comply with AD 98–15–24 before the proposed AD (if followed with a final rule) would become effective. With this in mind, none of the affected sailplanes would have a P/N 10AP–V08 propeller blade suspension fork installed at the time the proposed AD would need to be complied with.

Both the P/N A09–10AP–V08 and the P/N 10AP–V08 propeller blade suspension forks are part of the P/N 10AP–V08 propeller system configuration.

Cost Impact

The FAA estimates that 9 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 12 workhours to remove and re-install the propeller blade suspension forks, and that the average labor rate is approximately $60 an hour. There is no cost to the operator to exchange the propeller blade suspension forks other than the labor costs. Based on these figures, the total cost impact of the proposed initial propeller blade suspension fork exchange on U.S. operators is estimated to be $6,480, or $720 per sailplane.

These figures only take into the account the costs of the initial propeller blade suspension fork exchange and do not take into account the costs of any repetitive propeller blade suspension fork exchanges. The FAA has no way of determining the number of repetitive propeller blade exchanges each owner/operator would incur over the life of his/her affected sailplane or until a terminating action is developed.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Stemme GMBH & Co. KG: Docket No. 99–CE–25–AD.

Applicability: Models S10–V and S10–VT sailplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as presented below:

—*Initial Compliance:* Upon accumulating 100 hours time-in-service (TIS) on a part number (P/N) A09–10AP–V08 (or FAA-approved equivalent part number) propeller blade suspension fork or within the next 10 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished; and

—*Repetitive Compliance:* Within 50 hours TIS after the initial compliance time and thereafter at intervals not to exceed 50 hours TIS.

Note 2: AD 98–15–24, Amendment 39–10674 (63 FR 39484), requires replacing the P/N 10AP–V08 (or FAA-approved equivalent part number) propeller blade suspension fork with a P/N A09–10AP–V08 fork on Stemme Model S10–V sailplanes. This AD is only applies to those sailplanes with a P/N A09–10AP–V08 fork installed because the compliance time of this AD is such that all the Stemme Model S10–V sailplanes would have to comply with AD 98–15–24 before this AD becomes effective. Both the P/N A09–10AP–V08 and the P/N 10AP–V08 propeller blade suspension forks are part of the P/N 10AP–V08 propeller system configuration.

To detect and correct fractured propeller blade suspension forks, which could result in the loss of a propeller blade during flight with possible lateral imbalance and loss of thrust, accomplish the following:

(a) At the initial and repetitive compliance times, exchange (through the manufacturer) the propeller blade suspension fork for a P/N A09–10AP–V08 propeller blade suspension fork that has passed X-ray crack testing requirements; and install the propeller blade suspension fork received from the manufacturer.

Note 3: Stemme Service Bulletin No. A31–10–051, Amendment 01.a, pages 3 and 4, dated March 6, 1999, pertains to the subject matter of this AD.

(b) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Stemme Service Bulletin No. A31–10–051, Amendment 01.a, dated March 6, 1999, should be directed to Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 5: The subject of this AD is addressed in German AD 1999–224, dated June 4, 1999.

Issued in Kansas City, Missouri, on July 14, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18630 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–367–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–100 and –100C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727–100 and –100C series airplanes. This proposal would require replacement of certain skin panels of the lower fuselage with non-bonded skin panels. This proposal is prompted by reports of corrosion of the skin panels of the lower fuselage on airplanes with hot-bonded doublers. The actions specified by the proposed AD are intended to prevent degradation of the structural integrity of certain skin panels of the lower fuselage, which could result in loss of airplane pressurization.

DATES: Comments must be received by September 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–367–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walt Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–367–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–367–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1990, the FAA issued AD 90–06–09, amendment 39–6488 (55 FR 8370, March 7, 1990), which required incorporation of certain structural modifications on certain Boeing Model 727 series airplanes, in accordance with Boeing Document No. D6–54860, Revision C, dated December 11, 1989, "Aging Airplane Service Bulletin Structural Modification Program—Model 727." One of those modifications was replacement of cold-bonded skin panels of the lower fuselage between body station (BS) 950 and BS 1183 with non-bonded skin panels. That AD was prompted in part by reports of corrosion of the skin panels of the lower fuselage on airplanes with cold-bonded doublers and triplers.

Since the issuance of AD 90–06–09, the FAA has received reports of corrosion of the skin panels of the lower-fuselage on airplanes with hot-bonded doublers. Such corrosion causes degradation of the structural integrity of certain skin panels of the lower fuselage, which could result in loss of airplane pressurization.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 727–53–0085, Revision 4, dated July 11, 1991, which describes procedures for repetitive inspections of the skin panels of the lower fuselage between BS 950 and BS 1183, and repair, if necessary. The service bulletin also describes procedures for a modification that involves replacement of the skin panels with non-bonded skin panels. Such replacement would eliminate the need for the repetitive inspections in that area. Accomplishment of the modification specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin also describes procedures for repetitive inspections of certain skin panels of the lower fuselage, and repair, if necessary, this AD proposes to mandate only the replacement of certain skin panels of the lower fuselage with non-bonded skin panels. The repetitive inspections are mandated by AD 92–19–10, amendment 39–8368 (57 FR 47404, October 16, 1992), and the replacement of the skin panels is allowed in that AD as an optional terminating action. The FAA has determined that long-term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with these considerations.

Operators should also note that this proposed AD would be applicable to only some of the airplanes included in the effectivity listing of the service bulletin. AD 90–06–09 mandated the modification of certain skin panels of the lower fuselage for airplanes listed in Boeing Document No. D6–54860, Revision C, dated December 11, 1989, "Aging Airplane Service Bulletin Structural Modification Program—Model 727." The airplanes to which this proposed AD would be applicable are included in the effectivity listing of Revision H, dated May 9, 1996, of that document.

Cost Impact

There are approximately 67 airplanes of the affected design in the worldwide fleet. Based on a records review, the FAA estimates that only 38 of those airplanes are still in service. The FAA estimates that 23 airplanes of U.S. registry still in service would be affected by this proposed AD, that it would take approximately 1,216 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $12,993 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,976,919, or $85,953 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98–NM–367–AD.

Applicability: Model 727–100 and –100C series airplanes; line numbers 126, 130, 146, 153, 221, 287, 331, 339, 345, 355, 416, 516, 532, 540, 551, 555, 559, 575, 592, 594, 596, 599, 600, 604, 605, 615, 619, 625, 626, 628, 630, 631, 632, 635, 640, 641, 643, 645, 647, 658, 660, 686, 695, 700, 711, 712, 735, 748, 766, 768, 784, 797, 803, 806, 810, 812, 817, 821, 822, 824, 829, 854, 856, 857, 858, 861, and 869; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the structural integrity of certain skin panels of the lower fuselage, which could result in loss of airplane pressurization, accomplish the following:

(a) Within 20 years since original installation, or within 4 years after the effective date of this AD, whichever occurs later, replace the skin panels of the lower fuselage between body station (BS) 950 and BS 1183 with non-bonded skin panels, in accordance with Part VI of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0085, Revision 4, dated July 11, 1991.

Note 2: Accomplishment of the modification specified in Boeing Service Bulletin 727–53–0085, Revision 2, dated July 3, 1975, or Revision 3, dated September 28, 1989, is acceptable for compliance with the replacement required by paragraph (a) of this AD.

Note 3: Accomplishment of the modification specified in paragraph (a) of this AD constitutes terminating action for the inspection requirements of AD 92–19–10, amendment 39–8368 (57 FR 47404, October 16, 1992) for those panels.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 15, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18628 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–14–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, and –30 Airplanes, and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –15, and –30 airplanes and KC–10A (military) airplanes, that currently requires inspections to determine the condition of the lockwires on the forward engine mount bolts and correction of any discrepancies found. That action also provides for termination of the inspections for some airplanes by installing retainers on the bolts. That AD was prompted by reports of stretched or broken lockwires on the forward engine mount bolts. The actions specified by that AD are intended to prevent broken lockwires, which could result in loosening of the engine mount bolts, and subsequent separation of the engine from the airplane. This new action would provide an additional optional terminating modification, clarification of the requirements of the previous optional terminating modification, and would remove the reporting requirements for the repetitive inspections.

DATES: Comments must be received by September 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–14–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3936 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–14–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–14–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 16, 1995, the FAA issued AD 95–04–07, amendment 39–9159 (60 FR 11617, March 2, 1995), applicable to certain McDonnell Douglas Model DC–10–10, –15, and –30 series airplanes and KC–10A (military) airplanes. That AD required inspections to determine the condition of the lockwires on the forward engine mount bolts and correction of any discrepancies found. That action also provided for termination of the inspections for some airplanes by installing retainers on the bolts. That AD was prompted by reports of stretched or broken lockwires on the forward engine mount bolts. The actions specified by that AD are intended to prevent broken lockwires, which could result in loosening of the engine mount bolts, and subsequent separation of the engine from the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 95–04–07, the FAA issued AD 95–04–07 R1, amendment 39–9317 (60 FR 38477, July 27, 1995), that clarifies the procedures for accomplishing the optional terminating action on engines 1, 2, and 3.

Additionally, since the issuance of that AD, the FAA has received reports indicating that the lockwires of the forward engine mount bolts have failed since the incorporation of McDonnell Douglas DC–10 Service Bulletin 71–133, Revision 6, dated June 30, 1992 (which is referenced in the existing AD as the appropriate source of information for accomplishment of installation of retainers on the engine mount bolts of the engine 1, 2, or 3). The exact cause of the failures has not yet been determined.

That service bulletin segregates the affected airplanes into three groups and provides each group (two of which are relatively similar) with an option for accomplishing the modification of the forward engine mount bolts of engines 1, 2, and 3, as listed below:

- For airplanes listed as Groups I and III, the service bulletin describes procedures for replacing the bolts on pylons 1 and 3; the washers with tabs on pylon 2 (for Group III—include bolts); and the H–11 steel material bolt, washers, and nuts on the engine 1, 2, and 3 forward and aft mounts with improved material.
- For airplanes listed as Group II, the service bulletin describes procedures for replacing the bolts on pylons 1 and 3; the washers with tabs on pylon 2; and the H–11 steel material bolt, washers, and nuts on the engine 1, 2, and 3 forward and aft mounts with improved material. Additionally, the modification includes installing four retention brackets (retainers) on the aft engine mounts on engines 1, 2, and 3.

As mentioned previously, failed lockwires have been reported. The failed lockwires occurred on airplanes that had incorporated the requirements for Groups I and III of the service bulletin. No reports of failed lockwires have been reported on airplanes that have incorporated the retainers in accordance with the service bulletin. In light of this, the FAA has determined that the installation of the retainers in accordance with the McDonnell Douglas service bulletin (previously described) should be incorporated in order to terminate the repetitive inspections required by this proposed AD. This clarification of the previous optional terminating action is specified in paragraph (b) of this proposed AD.

The FAA has reviewed and approved McDonnell Douglas Service Bulletins DC10–71–159, dated September 6, 1995, and Revision 01, dated July 28, 1997, as additional sources of service information for accomplishment of an optional terminating action. These service bulletins describe procedures for modification of the forward engine mount bolts of engines 1, 2, and 3. This involves removal of the existing lockwires from the forward engine mount bolts, modification and reidentification of the anti-ice duct, and installation of retainers on the forward engine mount bolts.

Accomplishment of this optional terminating modification would eliminate the need for the repetitive inspections.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 95–04–07 R1 to continue to require inspections to determine the condition of the lockwires on the forward engine mount bolts and correction of any discrepancies found. It also would continue to provide for termination of the inspections for some airplanes by installing retainers on the bolts. This proposed AD would provide an additional optional terminating modification, clarification of the requirements of the previous optional terminating action, and would remove the reporting requirements for the repetitive inspections.

Differences Between Proposed Rule and Service Information

Operators should note that McDonnell Douglas Service Bulletins DC10–71–159, and Revision 01, recommend accomplishment of the modification of the forward engine mount bolts at the earliest practical maintenance period, but not to exceed 18 months from the issue date of the service bulletin. However, this proposed AD would allow operators the option of accomplishing the modification at their discretion.

The FAA has determined that, for this proposed AD, repetitive inspections of the lockwires of the forward engine mount bolts safely addresses the unsafe condition. The FAA has determined that repetitive inspections of an area may be permitted to continue indefinitely, although a positive fix to the problem exists, for the following reasons:

1. The inspection area of the forward engine mount bolts is easily accessible; and
2. In the event of a broken lockwire, it is easily detected; and
3. Since a single broken lockwire would not result in loss of an engine, the consequences of a single broken lockwire are not likely to be catastrophic.

In light of these reasons, the FAA has determined that the circumstances warranting continual repetitive inspections meet these three criteria.

Cost Impact

There are approximately 389 airplanes of the affected design in the worldwide fleet. The FAA estimates that 229 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 95–04–07 R1 and retained in this proposed AD, would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be approximately $27,480, or $120 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would

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accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating modification as specified in AD 95–04–07 R1, and the requirements clarified in this proposed AD, it would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per hour. Required parts would cost between $2,744 and $2,822 per airplane. Based on these figures, the cost impact of the optional terminating modification specified by AD 95–04–07 R1 on U.S. operators is estimated to be between $2,984 and $3,062 per airplane.

Should an operator elect to accomplish the optional terminating modification specified in McDonnell Douglas Service Bulletin DC10–71–159 that would be provided by this AD, it would take approximately 16 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would cost between $2,744 and $2,822 per airplane. Based on these figures, the cost impact of the optional terminating modification proposed by this AD on U.S. operators is estimated to be between $3,704 and $3,782 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9317 (60 FR 38477, July 27, 1995), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 99–NM–14–AD. Revises AD 95–04–07 R1, Amendment 39–9317.

Applicability: Model DC–10–30 and KC–10A (military) airplanes on which bolt retainers have not been installed on the engine mount in accordance with McDonnell Douglas DC–10 Service Bulletin 71–133, Revision 6, dated June 30, 1992; and all Model DC–10–10 and –15 airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent broken lockwires, which could result in loosening of the engine mount bolts, and subsequent separation of the engine from the airplane, accomplish the following:

Restatement of Requirements of AD 95–04–07 R1, Amendment 39–9317

(a) Within 120 days after March 17, 1995 (the effective date of AD 95–04–07 R1, amendment 39–9317), unless accomplished previously within the last 750 flight hours prior to March 17, 1995, perform a visual inspection to detect broken lockwires on the forward engine mount bolts on engines 1, 2, and 3, in accordance with McDonnell Douglas Alert Service Bulletin DC10–71A159, Revision 1, dated January 31, 1995.

(1) If no lockwire is found broken, repeat the inspection thereafter at intervals not to exceed 750 flight hours.

(2) If any lockwire is found broken, prior to further flight: Check the torque of the bolt, install a new lockwire, and install a torque stripe on the bolt, in accordance with the alert service bulletin. Thereafter at intervals not to exceed 750 flight hours, perform a visual inspection to detect misalignment of the torque stripes, and repeat the inspection to detect broken lockwires, in accordance with the alert service bulletin.

Optional Terminating Actions

(b) For Model DC–10–30 airplanes and KC–10A (military) airplanes only: Installation of retainers on the engine mount bolts of engines 1, 2, or 3 in accordance with the precedures depicted in Figure 6 of Revision 6 of McDonnell Douglas DC–10 Service Bulletin 71–133, dated June 30, 1992, constitutes terminating action for the requirements of this AD for that engine.

(c) For Model DC–10–10, –15, and –30 airplanes and KC–10A (military) airplanes: Modification of the forward engine mount bolts for engine 1, 2, or 3 in accordance with McDonnell Douglas Service Bulletin DC10–71–159, dated September 6, 1995, or Revision 01, dated July 28, 1997, constitutes terminating action for the requirements of this AD for that engine.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 15, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18629 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–116991–98]

RIN 1545–AW88

Compromises

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the compromise of tax liabilities. These regulations provide additional guidance regarding the compromise of internal revenue taxes. The temporary regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998 and the Taxpayer bill of Rights II. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronically generated comments and requests for a public hearing must be received by October 19, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–116991–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington. DC 20044.

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–116991–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Carol A. Campbell, (202) 622–3620 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Procedure and Administration Regulations (26 CFR part 301) under section 7122 of the Internal Revenue Code. The temporary regulations reflect the amendment of section 7122 by section 3462 of the Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA 1998") Public Law, 105–206, (112 Stat. 685, 764) and by section 503(a) of Taxpayer Bill of Rights II Public Law 104–168, (110 Stat. 1452, 1461).

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS generally requests any comments on the clarity of the proposed rule and how it may be made easier to understand.

Section 3462 of RRA 1998 and its legislative history provide for the consideration of factors such as equity, hardship, and public policy in the compromise of tax cases, if such consideration would promote effective tax administration. The legislative history also states that the IRS should use this new compromise authority "to resolve longstanding cases by forgoing penalties and interest which have accumulated as a result of delay in determining the taxpayer's liability." H. Conf. Rep. 599, 105th Cong., 2d Sess. 289 (1998). The text of the temporary regulation provides the authority to compromise cases involving issues of equity, hardship, and public policy, if such a compromise would promote effective tax administration. The temporary regulation provides factors to be considered and examples of cases that could be compromised under this authority when collection of the full amount of the tax liability would create economic hardship. The temporary regulation also provides limited examples of cases that could be compromised when the facts and circumstances presented indicate that collection of the full tax liability would be detrimental to voluntary compliance. The temporary regulation does not contain examples of longstanding cases that could be compromised to promote effective tax administration when penalties and interest have accumulated as the result of delay by the Service in determining the tax liability.

The public is specifically encouraged to make comments or provide examples regarding the particular types of cases or situations in which the Secretary's authority to compromise should be used because: (1) collection of the full amount of tax liability would be detrimental to voluntary compliance or (2) IRS delay in determining the tax liability has resulted in the accumulation of significant interest and penalties. In formulating comments regarding delay in interest and penalty cases, consideration should be given to the possible interplay between cases compromised under this provision and the relief accorded taxpayers under I.R.C. section 6404(e).

All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information: The principal author of these regulations is Carol A. Campbell, Office of the Assistant Chief Counsel (General Litigation) CC:EL:GL, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Paragraph 2. Section 301.7122–1 is added to read as follows:

§ 301.7122–1 Compromises.

[The text of this proposed section is the same as the text of § 301.7122–IT published elsewhere in this issue of the **Federal Register**.]

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 99–18457 Filed 7–19–99; 8:45 am]

BILLING CODE 4830–01–U

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Western Alaska 99–002]

RIN 2115–AA97

Safety Zone; Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, AK

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. The zone is needed to protect the safety of persons and vessels operating in the vicinity of the safety zone during a rocket launch from the Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island facility. Entry of vessels or persons into this zone would be prohibited unless specifically authorized by the Coast Guard Captain of the Port, Western Alaska, or his on-scene representative. The intended affect of the proposed safety zone is to ensure the safety of human life and property during the rocket launch.

DATES: Comments must be received on or before August 20, 1996. The proposed safety zone would become effective at 6 a.m. on September 15, 1999, and terminate at 10 p.m. on November 15, 1999.

ADDRESSES: Address all comments concerning this proposed rule to LCDR Byron Black, Planning Officer, Coast Guard Captain of the Port Western Alaska, 510 L Street, Suite 100, Anchorage, Alaska 99501.

FOR FURTHER INFORMATION CONTACT: LCDR Byron Black at (907) 271–6723.

SUPPLEMENTARY INFORMATION: .

Background and Purpose

The Alaska Aerospace Development Corporation (AADC), in conjunction with the United States Air Force, will launch an unmanned rocket from their facility at Narrow Cape, Kodiak Island Alaska, some time between September 15, 1999, and November 15, 1999. The safety zone would be necessary to protect spectators and transiting vessels from the potential hazards associated with the launch.

The launch is scheduled to take place sometime between September 15, 1999, and November 15, 1999. The Coast Guard would announce by Broadcast Notice to Mariners the anticipated date and time of the launch and would grant general permission to enter the safety zone during those times in which the launch did not pose a hazard to mariners. Because the hazardous condition should last for about 4 hours of one day, and because general permission to enter the safety zone would be given during non-hazardous times, the impact of this rule on commercial and recreation traffic would be minimal.

Discussion of the Regulation

The proposed safety zone would encompass an area of about 72 square nautical miles in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. Specifically the proposed zone would encompass the waters of the Gulf of Alaska within the area bounded by a line drawn from a point located at 57°30.5′ North, 152°23.5′, West, thence southeast to a point located at 57°21.0′ North, 151°53.0′ West these southwest to a point located at 57°15.5′ North, 151°58.5′ West, thence northwest to a point located at 57°25.0′ North, 152°29.5′ West, and thence northeast to the point located at 57°30.5′ North, 152°23.5′ West. All coordinates refer to Datum: NAD 1983.

This proposed safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch of the Alaskan Aerospace rocket. The safety zone would become effective at 6 a.m. on September 15, 1999, and terminate at 10 p.m. on November 15, 1999.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under subsection 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under paragraph 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)]. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C., 601 et seq.], the Coast Guard considers whether the proposed rule would have significant economic impacts on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, an governmental jurisdiction with populations less than 50,000. Because the hazardous condition should last for around four hours of one day, and because general permission to enter the safety zone would be given during non-hazardous times, the impact of this rule on commercial and recreational traffic should be minimal. The Coast Guard believes there would be minimal impact on small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposed rule contains no information-collection requirements under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*].

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water). Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T17–002 to read as follows:

§ 165.T17–002 Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island: safety zones.

(a) *Description.* This safety zone encompasses an area of about 72 square nautical miles in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. Specifically, it encompasse the waters of the Gulf of Alaska within the area bounded by a line drawn from a point located at 57°30.5′ North, 152°23.5′ West, thence southeast to a point located at 57°21.0′ North, 151°53.0′ West thence southwest to a point located at 57°15.5′ North, 151°58.5′ West, thence notherwest to a point located at 57°25.0′ North, 152°29.5′ West, and thence northeast to the point located at 57°30.5′ North, 152°23.5′ West. All coordinates refer to Datum: NAD 1983.

(b) *Effective dates.* This section becomes effective at 6 a.m. on September 15, 1999, and terminates at 10 p.m. on November 15, 1999.

(c) *Regulations.* (1) The Captain of the Port Western Alaska, and the Duty Officer at Marine Safety Office, Anchorage, Alaska are available at telephone number (907) 271–6700 or on VHF marine channel 16.

(2) The Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on this behalf in enforcing the safety zone.

(3) The general regulations governing safety zones contained in 33 CFR § 165.23 of this part apply. No person or vessel may enter or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port, or his on-scene representative is available onboard the U.S. Coast Guard cutter in the vicinity of Narrow Cape on VHF marine channel 16.

Dated: June 2, 1999.

W.J. Hutmacher,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 99–18496 Filed 7–20–99 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

34 CFR Part 694

Notice of Negotiated Rulemaking Process for GEAR UP

AGENCY: Department of Education.

ACTION: Notice of negotiated rulemaking process for GEAR UP.

SUMMARY: We are announcing the formation of the negotiated rulemaking committee that will develop proposed regulations to implement chapter 2 of subpart 2 of part A of Title IV of the Higher Education Act of 1965 (HEA), "Gaining Early Awareness and Readiness for Undergraduate Programs" (GEAR UP). We also announce the schedule for the negotiating sessions.

DATES: The dates for the negotiation sessions are announced in the supplementary information section of this document.

FOR FURTHER INFORMATION CONTACT: Philip Schulz, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4020, ROB–3, Washington, DC 20202–5243. Telephone: (202) 708–8429. If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On June 30, 1999, we published in the **Federal Register** (64 FR 35105) a notice announcing that we would be establishing a negotiated rulemaking committee to develop proposed regulations to implement chapter 2 of subpart 2 of part A of Title IV of the Higher Education Act of 1965 (HEA), "Gaining Early Awareness and Readiness for Undergraduate Programs" (GEAR UP). In that notice, we also solicited nominations from anyone who believed that his or her organization or group should participate in the GEAR UP negotiated rulemaking process.

We list the organizations that we have selected to participate in the GEAR UP negotiated rulemaking process. We have identified the organizations listed as effective representatives of the interests that are significantly affected by the subject matter of the negotiated rulemaking. Organizations not listed that have expressed an interest in participating in the process are encouraged to work with the listed organizations to ensure that their views are known. Please note that participation in the rulemaking process is not limited to members of the committee. Following the negotiated rulemaking process, the Department will publish proposed rules in the **Federal Register** for public comment. The target date of publication of proposed rules developed by the committee is October, 1999.

GEAR UP Negotiated Rulemaking Committee

California State University System
The College Board
Council for Opportunity in Education
Council of the Great City Schools
Ford Foundation
High School Equivalency Program and the College Assistance Migrant Program Association and the National Association for Migrant Education, Inc. (a coalition)
Hispanic Association of Colleges and Universities
"I Have a Dream" Foundation
National Alliance of Black School Educators
National Association for College Admission Counseling
National Association of Independent Colleges and Universities
National Association of Secondary School Principals and the National Forum on Middle-Grades Reform (a coalition)
National Association of State Student Grant and Aid Programs
National Coalition of Title I/Chapter I Parents
National Collaboration for Youth
National Council of Higher Education Loan Programs
National Education Association
U.S. Chamber of Commerce
United States Student Association

Schedule for Negotiations

We expect that there will be a total of up to 3 meetings of the committee, and we have scheduled the meetings to take place at the Department of Education (FB–6). All meetings will be open to the public. The following is the schedule for negotiations for the committee.

Session 1: July 29–30
Session 2: August 30–31
Session 3: September 22–23

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C. area, at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number does not apply)

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Program Authority: 20 U.S.C. 1090a.

Claudio R. Prieto,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 99–18727 Filed 7–20–99; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI69–01–7277b; FRL–6357–4]

Approval and Promulgation of State Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve several rule revisions and rescissions for incorporation into Michigan's State Implementation Plan (SIP). The Michigan Department of Environmental Quality (MDEQ) submitted these revisions on August 20, 1998 and supplemented them with a November 3, 1998, letter. They include revisions to degreasing, perchloroethylene dry cleaning, petroleum refinery, synthetic organic chemical manufacturing, and delivery vessel loading rules, and a number of rule rescissions.

In the final rules section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipate no adverse comments. EPA has set forth a detailed rationale for approving the State's request in the direct final rule. The direct final rule will become effective without further notice unless we receive relevant adverse written comment. Should we receive adverse comment, EPA will publish a timely withdrawal informing the public that this direct final rule will not take effect; and that we will address the public comment received in a subsequent final rule based on the proposed rule. If EPA does not receive adverse written comments, the direct final rule will take effect on the date stated in that document, and there will be no further action on this rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received by August 20, 1999.

ADDRESSES: You may send written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the above address. (Please telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino at (312) 886–1767.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: May 28, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–18475 Filed 7–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 226–0159b FRL–6376–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District and Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from organic liquid loading, pharmaceutical and cosmetics manufacturing operations, and polyester resin operations.

The intended effect of this action is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by August 20, 1999.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

Yolo-Solano Air Pollution Control District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1135.

SUPPLEMENTARY INFORMATION: This document concerns SCAQMD Rule 462, Organic Liquid Loading, SCAQMD Rule 1103, Pharmaceuticals and Cosmetics Manufacturing Operations, and YSAQMD Rule 2.30, Polyester Resin Operations. These rules were submitted by the California Air Resources Board to EPA on June 3, 1999, May 13, 1999, and June 3, 1999, respectively. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: June 29, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–18473 Filed 7–20–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

49 CFR Part 1420

[Docket No. BTS–98–4659]

RIN 2139–AA05

Revision to Reporting Requirements for Motor Carriers of Property and Household Goods

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Bureau of Transportation Statistics (BTS) published a Supplemental Notice of Proposed Rulemaking on March 23, 1999, regarding its motor carrier financial and operating data collection program. The proposal would have restricted access to individual carrier data for some of the operating statistics, revenue equipment, and employment data items. Access to these data items would have been limited to the Department of Transportation and to such persons and in such circumstances as DOT determined to be in the public interest or consistent with the Department's regulatory functions and responsibilities. Most of the comments strongly opposed adopting the proposed rule. After considering the issues raised by the comments, BTS is withdrawing the Supplemental Notice of Proposed Rulemaking.

DATES: The proposed amendment to § 1420.10, published on March 23, 1999 (64 FR 13948), is withdrawn on July 21, 1999.

FOR FURTHER INFORMATION CONTACT: David Mednick, K–1, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–8871; fax: (202) 366–3640; e-mail: david.mednick@bts.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You can examine all comments that were submitted to the Rules Docket concerning this rulemaking at: Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Internet users can access the comments at the address: http://dms.dot.gov. Search for Docket Number 4659. Please follow the instructions online for more information and help.

You can download an electronic copy of this document using a modem and suitable communications software from the Federal Register Electronic Bulletin Board Service at (202) 512–1661. If you have access to the Internet, you can obtain an electronic copy at http://www.bts.gov/mcs/rulemaking.htm.

II. Background

Under 49 U.S.C. 14123 and its implementing regulations at 49 CFR 1420, BTS collects financial and operating information from for-hire motor carriers of property and household goods. The data are collected on annual Form M, filed by Class I and Class II carriers, and quarterly Form QFR, filed only by Class I carriers. The data are used by the Department of Transportation, other federal agencies, motor carriers, shippers, industry analysts, labor unions, segments of the insurance industry, investment analysts, and the consultants and data vendors that support these users. Among the uses of the data are: (1) Developing the U.S. national accounts and preparing the quarterly estimates of the Gross Domestic Product; (2) measuring the performance of the for-hire motor carrier industry and segments within it; (3) monitoring carrier safety; (4) benchmarking carrier performance; and (5) analyzing motor carrier safety, productivity, and its role in the economy.

On November 3, 1998, BTS initiated a rulemaking to consider what data items BTS should collect and how BTS should implement a system whereby carriers could, in order to avoid competitive harm, request that their reported information be kept confidential or that they be excused from filing (63 FR 59263). The final rule was published on March 23, 1999 (64 FR 13916). On the same day, BTS published a Supplemental Notice of Proposed Rulemaking (SNPRM) concerning access to motor carrier financial and operating information reported to BTS (64 FR 13948). Under current policy, all reported data are made available at the carrier level. The only exception is when a carrier is granted confidentiality under 49 CFR 1420.9 based on competitive harm, in which case its report is withheld from public release for three years. BTS reviewed this policy in light of comments received during the rulemaking and the governing legislation. Under the legislation, in designing the data collection program BTS must consider: (1) Safety needs; (2) the need to preserve confidential business information and trade secrets and prevent competitive harm; (3) private sector, academic, and public use of information in the reports; and (4) the public interest. In other words, BTS has to consider both confidentiality issues and data access issues.

The proposed regulation was therefore intended to strike a balance between the interests of respondents, many of whom do not want data they believe are proprietary and sensitive made available to competitors, shippers, and the public, and the interests of data users, who often need access to individual carrier data. While most data would be fully available, BTS sought to withhold the most sensitive data items from general release. Those data items receiving protection would be available only for key uses and this limitation would apply to data reported by all carriers. For these data items, access would be allowed only as follows: (1) Aggregate statistics that do not identify a particular carrier would be available to the public; (2) individual carrier data would be available only to Department of Transportation users and those users whose access is "in the public interest or consistent with the Department's regulatory functions and responsibilities;" and (3) individual carrier data previously kept confidential would be available to the public after three years.

III. General Summary of the Comments

BTS received 10 comments on the proposal, from the American Moving and Storage Association, the Central Analysis Bureau, the Inland Marine Underwriters Association, the International Brotherhood of Teamsters, Landstar System, Jack A. Nickerson, Transportation Technical Services, the Transportation Trades Department of the AFL–CIO, University of Michigan Trucking Industry Program, and Klaas T van't Veld. Nine of the commenters were opposed to the proposal and wanted it withdrawn; one supported the proposal as written.

Landstar System supported the proposal, stating that it would withhold certain sensitive information and struck a reasonable balance. The comments opposing the proposal were generally based on three arguments: (1) BTS does not have the authority to restrict access to data, except case-by-case based on carrier requests; (2) public availability of the data does not and will not cause competitive harm to the reporting carrier; and (3) the proposed system would impair important uses of the data.

IV. Withdrawal of the Proposed Rule

BTS appreciates both the concern that sensitive information be protected to the extent possible and the concern that the insurance industry, safety analysts, other researchers, and other data users

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have timely access to information about the motor carrier industry and individual motor carriers. BTS has carefully reviewed the comments received. After considering the concerns raised on both sides of the issue, we are convinced that the proposal as written would not accomplish the goal of striking an appropriate balance and that BTS does not have enough experience with respect to the recent changes made to the program to make adequate adjustments. BTS is therefore withdrawing the supplemental proposal.

The SNPRM requested comments on whether and why public availability of the identified data items, or other data items, would be likely to cause substantial competitive harm. BTS received comments from only one carrier, which said the information was sensitive and release would cause competitive harm. Additionally, in the initial rulemaking, BTS received several similar generalized assertions. However, BTS received no explanation or examples of how public access would cause competitive harm for carriers generally, leaving the assertions unsupported.

BTS is also concerned that the changes it proposed were premature. The possibility of competitive harm resulting from public release of data is inextricably intertwined with what data items are collected. The types of data collected, the level of detail they are collected at, and how those data can be put together with other available data must all be considered. In the final rule published the same day as the SNPRM, BTS made many changes to the report forms, eliminating some categories of data items and either reducing detail or changing what is collected in others. The amount of information reported by Class I carriers was reduced by 64 percent. For Class II carriers, the burden was not reduced, but the report form was significantly changed. The feedback BTS received regarding confidentiality was based largely on the old forms. Therefore, BTS does not know how the changes in the forms impact the confidentiality issue. Also, before the final rule was published, carriers did not have a mechanism for requesting confidentiality. Now individual carriers can request confidentiality protection based on a competitive harm standard. If a carrier meets the standard, BTS must withhold its report from public release. Carriers can also request an exemption from filing based on a similar standard. In order to know what further protections are needed, if any, BTS must review how effective these new mechanisms are. In sum, in order for BTS to accomplish its goal of striking an appropriate balance, it needs to gain more experience with the major changes it recently made.

Gaining experience and additional information will also be critical in solving several problems pointed out in the comments. For instance, while it may sound reasonable to limit access to certain classes of users—those classes where access would be least likely to cause competitive harm—this presents several practical problems. For instance, researchers would be able to conduct safety and policy-relevant studies with carrier-level data, but the researchers would not be able to publish their results at the carrier level. Not only would this preclude the presentation of many of the meaningful findings, but others would not be able to examine and critique their work. Similarly, it is not clear whether safety researchers outside of academia would have access, although safety is certainly a concern to many others. For instance, how would access work with organizations such as trucking associations or labor unions, which are likely to have broad interests including safety? Thus, the proposal would not achieve its goal of not impeding access for safety and other key uses. While these problems have been raised, no solutions—other than withdrawing the proposal—were suggested.

While we will continue to monitor the issue and seek feedback from respondents and data users, BTS believes it would be unwise to proceed at this time. Any changes would have to come after the benefit of more experience regarding the recent changes and a deeper understanding of the issues. BTS can then determine whether and how to make further adjustments regarding access to reported data.

V. Effect on the Availability of Reported Data

While the SNPRM was pending, BTS did not release any reported data from the 1998 annual report and the 1999 quarterly reports. By withdrawing this proposal, BTS will make that information available, except as otherwise prohibited by law. For instance, pursuant to 49 CFR 1420.10, BTS will not release data where a carrier's report has been granted confidential treatment or is covered by a pending confidentiality request.

Ashish Sen,

Director.

[FR Doc. 99–18643 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–FE–P

Notices

Federal Register

Vol. 64, No. 139

Wednesday, July 21, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Supplemental Information Concerning Quota Periods Applicable to Quantity Trigger Levels for Safeguard Measures Provided for in the Uruguay Round Agreement on Agriculture

AGENCY: Forign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice supplements the 64 FR 11435 (March 9, 1999), and 63 FR 13387 (March 19, 1998), notices by clarifying the applicable period (quota year) for the trigger levels on products subject to the safeguard provisions.

EFFECTIVE DATE: July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Cathy S. Mckinnell, Multilateral Trade Negotiations Division, Foreign Agricultural Service, room 5530—South Building, U.S. Department of Agriculture, Washington, DC 20250–1022, telephone at (202) 720–6064, or e-mail at mckinell@usda.gov.

SUPPLEMENTARY INFORMATION: Article 5 of the Uruguay Round Agreement on Agriculture provides that additional import duties may be imposed on imports of products subject to tariffication during the Uruguay Round if certain conditions are met. One circumstance under which the agreement permits additional duties to be imposed is if the volume of imports of a product exceeds by a specified percentage, depending on the product, the average of the most recent 3 years for which data are available. These additional duties may not be imposed on quantities for which minimum or current access commitments were made during the Uruguay Round negotiations.

Section 405 of the Uruguay Round Agreements Act requires that the President cause to be published in the **Federal Register** the annual quantity trigger levels based on import levels during the most recent 3 years, and the relevant period for the quantity-based safeguard for each product. The President delegated this duty to the Secretary of Agriculture in Presidential Proclamation No. 6763, dated December 23, 1994. The Secretary of Agriculture further delegated the duty to the Administrator, Foreign Agriculture Service (7 CFR 2.43(a)(2)).

In the March 1989 and 1999 notices, applicable periods for those trigger levels were inadvertently omitted. This notice is to clarify the applicable periods consistent with earlier notices and the Harmonized Trariff Schedule of the United States (HTS).

Notice

The relevant periods for the respective quantity trigger levels currently in effect or to become effective in calendar year 1999 are set forth in the Annex to this notice.

Issued at Washington, DC this 15th day of July 1999.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service.

Annex

The definitions of these products were provided in the Notice of Safeguard Action published in the **Federal Register**, 60 FR 427, January 4, 1995.

QUANTITY BASED SAFEGUARD TRIGGER

Product	Trigger level	Period
Beef	891,203 mt	January 1, 1999 to December 31, 1999.
Mutton	12,051 mt	January 1, 1999 to December 31, 1999.
Cream	5,729,263 liters	January 1, 1999 to December 31, 1999.
Evaporated or Condensed Milk	2,956,168 kilograms	January 1, 1999 to December 31, 1999.
Nonfat Dry Milk	3,313,542 kilograms	January 1, 1999 to December 31, 1999.
Dried Whole Milk	1,864,488 kilograms	January 1, 1999 to December 31, 1999.
Dried Cream	650 kilograms	January 1, 1999 to December 31, 1999.
Dried Whey/Buttermilk	222,488 kilograms	January 1, 1999 to December 31, 1999.
Butter	6,193,405 kilograms	January 1, 1999 to December 31, 1999.
Butter Oil and Butter Substitutes	5,812,414 kilograms	January 1, 1999 to December 31, 1999.
Dairy Mixtures	2,224,071 kilograms	January 1, 1999 to December 31, 1999.
Blue Cheese	3,183,782 kilograms	January 1, 1999 to December 31, 1999.
Cheddar Cheese	11,139,531 kilograms	January 1, 1999 to December 31, 1999.
American Type Cheese	3,939,843 kilograms	January 1, 1999 to December 31, 1999.
Edam/Gouda Cheese	6,621,244 kilograms	January 1, 1999 to December 31, 1999.
Italian-Type Cheese	15,148,033 kilograms	January 1, 1999 to December 31, 1999.
Swiss Cheese with Eye Formation	33,559,160 kilograms	January 1, 1999 to December 31, 1999.
Gruyere Process Cheese	7,687,097 kilograms	January 1, 1999 to December 31, 1999.
Lowfat Cheese	3,874,332 kilograms	January 1, 1999 to December 31, 1999.
NSPF Cheese	49,366,596 kilograms	January 1, 1999 to December 31, 1999.
Peanuts	49,248 mt	April 1, 1999 to March 31, 2000.
Peanut Butter/Paste	23,084 mt	January 1, 1999 to December 31, 1999.
Raw Cane Sugar	2,263,717 mt	October 1, 1998 to September 30, 1999.
	2,366,204 mt	October 1, 1999 to September 30, 2000.
Refined Sugar and Syrups	22,660 mt	October 1, 1998 to September 30, 1999.
	25,484 mt	October 1, 1999 to September 30, 2000.
Blended Syrups	0 mt	October 1, 1998 to September 30, 1999.

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QUANTITY BASED SAFEGUARD TRIGGER—Continued

Product	Trigger level	Period
	0 mt	October 1, 1999 to September 30, 2000.
Articles Over 65% Sugar	0 mt	October 1, 1998 to September 30, 1999.
	0 mt	October 1, 1999 to September 30, 2000.
Articles Over 10% Sugar	80,309 mt	October 1, 1998 to September 30, 1999.
	80,282 mt	October 1, 1999 to September 30, 2000.
Sweetened Cocoa Powder	2,364 mt	October 1, 1998 to September 30, 1999.
	2,445 mt	October 1, 1999 to September 30, 2000.
Chocolate Crumb	15,324,776 kilograms	January 1, 1999 to December 31, 1999.
Lowfat Chocolate Crumb	78 kilograms	January 1, 1999 to December 31, 1999.
Infant Formula Containing Oligosaccharides	45,383 kilograms	January 1, 1999 to December 31, 1999.
Mixes and Doughs	1,274 mt	October 1, 1998 to September 30, 1999.
	5,424 mt	October 1, 1999 to September 30, 2000.
Mixed Condiments and	231 mt	October 1, 1998 to September 30, 1999.
Seasonings	253 mt	October 1, 1999 to September 30, 2000.
Ice Cream	49,353 liters	January 1, 1999 to December 31, 1999.
Animal Feed Containing Milk	1,622,296 kilograms	January 1, 1999 to December 31, 1999.
Short Staple Cotton	17,592,104 kilograms	September 20, 1998 to September 19, 1999.
	17,211,112 kilograms	September 20, 1999 to September 19, 2000.
Harsh or Rough Cotton	0 mt	August 1, 1998 to July 31, 1999.
	0 mt	August 1, 1999 to July 31, 2000.
Medium Staple Cotton	19,898 kilograms	August 1, 1998 to July 31, 1999.
	9,664 kilograms	August 1, 1999 to July 31, 2000.
Extra Long Staple Cotton	234,089 kilograms	August 1, 1998 to July 31, 1999.
	32,995 kilograms	August 1, 1999 to July 31, 2000.
Cotton Waste	39,828 kilograms	September 20, 1998 to September 19, 1999.
	13,378 kilograms	September 20, 1999 to September 19, 2000.
Cotton, Processed, Not Spun	383 kilograms	September 11, 1998 to September 10, 1999.
	383 kilograms	September 11, 1999 to September 10, 2000.

[FR Doc. 99–18622 Filed 7–20–99; 8:45 am]
BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Interim Flat Fee Policy for Outfitting and Guiding Activities; Alaska National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice of availability; request for comments.

SUMMARY: The Regional Forester, Alaska Region, is seeking comments on a proposed interim flat fee policy for all outfitting and guiding activities on National Forest System land in the Alaska Region. Developed in response to an order from the federal district court in Alaska arising from a lawsuit filed by The Tongass Conservancy, the proposed interim flat fee policy is designed to charge fees that are fair and equitable to the federal government and the Alaska outfitter and guide industry. Copies of the proposed interim flat fee schedule and policy are being sent with a request for comments to all holders of National Forest outfitting and guiding permits in Alaska and other potentially interested parties. In addition, notice of and request to comment on the proposal is being published in local newspapers of record, and the policy and fee schedule is being posted on the World Wide Web. The purpose of this notice is to advise others who may have an interest in this interim fee policy of the availability of the proposal and to invite their comments as well.

DATES: Comments must be received in writing by September 7, 1999.

ADDRESSES: For copies of the proposed interim flat fee policy, write to the Regional Forester, Attention: Public Services, Alaska Region, P.O. Box 21628, Juneau, AK 99802–1628 or access the document online at http://www.fs.fed.us/r10/what's__hot/hot.htm.

Send written comments to the post office listed under this heading or to webmaster/r10@fs.fed.us or by facsimile to (907) 586–7843. All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this proposed interim policy in the Office of the Public Services Staff, Room 501D, Federal Office Building, 709 West 9th Street, Juneau, AK, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: The local Forest Service Ranger District, Supervisor's Office, or Arn Albrecht, (907) 586–7886, or Don Fishers, (907) 586–7861, in the Alaska Regional Office.

Dated: July 14, 1999.

Rick D. Cables,

Regional Forester.

[FR Doc. 99–18551 Filed 7–20–99; 8:45 am]
BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Amendment of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission on August 24, 1998, which was to have convened at 10:00 a.m. and adjourned at 12:00 p.m., has a time change. The new time will be from 3:00 p.m. to 5:00 p.m.

The original notice for the meeting was announced in the **Federal Register** on Thursday, July 15, 1999, FR Doc. 98–18071, 64 FR, No. 135, p. 38181.

Persons desiring additional information should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414).

Dated at Washington, DC, July 15, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–18507 Filed 7–16–99; 10:03 am]
BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m. on August 13, 1999, at the Delaware River Port Authority, Board Room, One Port Center, 2 River Drive, Camden, New Jersey 08103. The Committee will receive a preliminary briefing as part of its project, "An Evaluation of State Civil Rights Enforcement in New Jersey," covering policy, practices, and obstacles facing the State Division of Civil Rights. Speakers will represent the division, the National Association of Human Rights Officials, and community interests. There will also be followup discussion on racial profiling in New Jersey. The topic for discussion will be the State Attorney General's "Final Report of the State Police Review Team," with comments by State officials and civil rights advocates.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 15, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–18508 Filed 7–20–99; 8:45 am]
BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–331–602]

Certain Fresh Cut Flowers From Ecuador: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

EFFECTIVE DATE: July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Suzanne Flood, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0665.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

Extension of Time Limits for Final Results

The Department of Commerce (the Department) received a request to conduct an administrative review of the antidumping duty order on certain fresh cut flowers from Ecuador for the period March 1, 1997 through February 28, 1998. On April 16, 1999, the Department published preliminary results of this administrative review (64 FR 18878).

Because of the complexity of certain issues in this case, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with that section, the Department is extending the time limits for the final results to October 13, 1999 (*see* Memorandum from Richard W. Moreland to Robert S. LaRussa, Extension of Final Results), which is 180 days after the publication of the preliminary results.

This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act.

Dated: July 15, 1999.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–18645 Filed 7–20–99; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the petitioner, the Fresh Garlic Producers Association and its individual members, the Department of Commerce is conducting an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 1997, through October 31, 1998. The petitioner requested a review of Comercial Peregrin, S.A., Rizhao Hanxi Fisheries & Comprehensive Development Co., Ltd., and Fook Huat Tong Kee PTE. Ltd. Initially, Fook Huat Tong Kee PTE. Ltd. also requested a review of its own sales on November 13, 1998, but withdrew its request for review on May 7, 1999. Because we have determined that Fook Huat Tong Kee PTE. Ltd. has failed to submit a complete response to our questionnaires and the remaining named respondents did not respond at all to our questionnaire, we have preliminarily determined to use facts otherwise available for cash deposit and assessment purposes for all producers/exporters of the subject merchandise.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi or Farah Naim, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5760 or (202) 482–3174, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as

amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

On November 12, 1998, the Department published in the **Federal Register** (63 FR 63287) a notice of "Opportunity to Request Administrative Review" with respect to the antidumping duty order on fresh garlic from the People's Republic of China (PRC) (59 FR 59209, November 16, 1994). On November 30, 1998, the petitioner requested an administrative review of three producers/exporters of this merchandise to the United States. One of those three companies, Fook Huat Tong Kee PTE. Ltd. (FHTK), an exporter of garlic from the PRC, also requested a review of its own sales on November 13, 1998, but withdrew its request on May 7, 1999. In response to the petitioner's request, the Department published a notice of initiation of an administrative review on December 23, 1998 (63 FR 71091), in accordance with 19 CFR 351.213(b). On December 29, 1998, we sent questionnaires to the three respondent firms named in the initiation notice.

Scope of Review

The products subject to this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.[1]

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.00000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

Use of Facts Otherwise Available

On December 29, 1998, we issued questionnaires to Comercial Peregrin, S.A. (Comercial), Rizhao Hanxi Fisheries & Comprehensive Development Co., Ltd. (Rizhao), and FHTK. Neither Comercial nor Rizhao responded. Although FHTK responded to our original questionnaire, it did not respond to our supplemental questionnaire, issued April 14, 1999. Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, thereby precluding it from conducting an analysis of its sales made during the instant POR, the Department may make its determination on the basis of the facts available. Accordingly, because Comercial and Rizhao did not respond to our original questionnaire and because FHTK did not respond to our supplemental request for information, we must resort to the facts available to determine the dumping margin for each of these respondents.

Section 776(b) of the Act permits us to draw an adverse inference where a party has not cooperated to the best of its ability in a proceeding. This section of the Act deems a respondent uncooperative where the party "* * * has not acted to the best of its ability to comply with requests for necessary information." See the Statement of Administrative Action accompanying the URAA, H.R. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA) at 870. We find that, in not responding to our requests for information, these respondents were not cooperative. Since these respondents did not act to the best of their ability to comply with our requests for information, we have used an inference that is adverse to the interests of these respondents in selecting from among the facts otherwise available. The statute provides that an adverse inference may include reliance on information derived from (1) the petition, (2) the final determination in the investigation segment of the proceeding, (3) a previous review under section 751 of the Act or a determination under section 753 of the Act, or (4) any other information placed on the record. In addition, the SAA establishes that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." SAA at 870. In employing adverse inferences, the Department is instructed to consider "the extent to which a party may benefit from its own lack of cooperation." *Id.* As none of the named respondents cooperated by complying with our requests for information and to ensure that they do not benefit from their lack of cooperation, we are employing an adverse inference in selecting from the facts available.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department also considers the extent to which a party may benefit from its own lack of cooperation in selecting a rate. See *Roller Chain, Other than Bicycle, from Japan; Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review*, 62 FR 60472, 60477 (November 10, 1997).

Accordingly, in order to ensure that the rate is sufficiently adverse so as to induce cooperation by the named respondents, we have assigned each of these companies the petition rate of 376.67 percent, the highest dumping margin used in any segment of this proceeding. Although that rate constitutes secondary information, the information has already been corroborated in a prior review. See *Final Results of Administrative Review: Fresh Garlic from the People's Republic of China*, 61 FR 68229 (December 27, 1996). We have determined that there is no evidence on the administrative record that would warrant revisiting that issue in this review.

Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. Any hearing, if requested, will be held three days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Furthermore, the following deposit rate will be effective upon publication of the final results of this administrative review for all shipments of fresh garlic from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: for all PRC exporters and for all non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the PRC-wide rate established in the final results of this review. This deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 13, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–18646 Filed 7–20–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] Fresh Garlic from the People's Republic of China, Inv. No. 731–TA–683 (Final), USITC Pub. 2825 (November 1994).

DEPARTMENT OF COMMERCE

International Trade Administration

Energy Trade Mission; Notice

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the following overseas trade mission: Energy Trade Mission. Location: Czech Republic, Hungary and Poland. Date: December 2–9, 1999.

The Assistant Secretary for Trade Development, Michael Copps, will lead an energy and environment trade mission to the Czech Republic, Hungary and Poland, December 2–9, 1999. Focusing on the energy sector, the mission will include representatives from 8–12 U.S. services and equipment firms interested in gaining access to the Eastern and Central European energy and environmental markets.

Time frame for applications: Applications may be submitted immediately to Andy Collier, Office of Energy, Infrastructure and Machineries, U.S. Department of Commerce, Room H4056 Washington, DC 20230; Telephone: (202) 482–0680; facsimile: (202) 482–3954; Internet: andrew__collier@ita.doc.gov.

All applications must be received by October 8, 1999. Applications received after the date will be considered only if space and scheduling constraints permit.

FOR FURTHER INFORMATION CONTACT: Andy Collier, Department of Commerce Tel: 202–482–0680 Fax: 202–482–3954.

Dated: July 15, 1999.

Tom Nisbet,

Director, Promotion Planning and Support Division, Office of Export Promotion Coordination.

[FR Doc. 99–18647 Filed 7–20–99; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071299B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Scientific and Statistical Committee Groundfish Subcommittee (subcommittee) will hold a working meeting which is open to the public.

DATES: The meeting will begin Monday, August 2, 1999 at 8 a.m. and may go into the evening until business for the day is completed. The meeting will reconvene at 8 a.m. on Tuesday, August 3 and continue throughout the day until business for the day is completed.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council Conference Room, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: (503) 326-6352.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Julie Walker, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to review rebuilding projections for lingcod, bocaccio, and Pacific ocean perch. The subcommittee plans to work with the stock assessment authors to develop consistent methods for arriving at rebuilding projections for the three species. As time allows, the subcommittee may also discuss a framework for future rebuilding projections.

Although other issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 15, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–18640 Filed 7–20–99; 8:45 am]

BILLING CODE 3510–22–F

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070999C]

Marine Mammals; File No. 638–1519–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Thomas R. Kieckhefer, Pacific Cetacean Group, UC Monterey Bay Education, Science & Technology Center, 3239 Imjin Road, #122, Marina, California 93933, has submitted an application for scientific research on humpback whales.

DATES: Written or telefaxed comments must be received on or before August 21, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4027).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The applicant is requesting to harass up to 300 humpback whales (*Megaptera novaeangliae*) annually in Monterey Bay National Marine Sanctuary, California during photo-identification and prey identification studies. The research will be carried out over a 5-year period. The research will investigate the feeding ecology of humpback whales in Monterey Bay.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 13, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–18641 Filed 7–20–99; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed applications entitled: The 2000 Application Guidelines for AmeriCorps National, State, and Indian Tribes and U.S. Territories. Copies of the information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by September 20, 1999.

ADDRESSES: Send comments to the Corporation for National and Community Service, Nancy Talbot, Director, Planning and Program Development, 1201 New York Avenue, NW, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Nancy Talbot (202) 606–5000, ext. 470.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Background

The 2000 Application Guidelines for AmeriCorps National, State, and Indian Tribes and U.S. Territories provide the background, requirements and instructions that potential applicants need to complete an application to the Corporation for funds to operate AmeriCorps programs.

Current Action

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application guidelines. The application forms and instructions are being revised to reflect the evaluation criteria approved by the Corporation board last year. In some instances this means that questions appear under different categories than previously. In an effort to streamline and consolidate this application package, there is one title page all AmeriCorps National, State, and Indian Tribes and U.S. Territories can use. The budget form and title page have been revised so that information is asked for one place and does not need to be copied to some other part of the form as in the past. Form instructions are clearer and are written in plain language.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: The 2000 Application Guidelines for AmeriCorps National, State and Indian Tribes and U.S. Territories.

OMB Number: 3045–0047.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 2000.

Frequency: Once per year.

Average Time Per Response: Ten (10) hours.

Estimated Total Burden Hours: 20,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 16, 1999.

Thomas L. Bryant,

Associate General Counsel.

[FR Doc. 99–18624 Filed 7–20–99; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Services (STS) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advice interested parties that the VA Palo Alto Health Care System (VAPAHCS) and the San Francisco VA Medical Center (SFVAMC), located in TRICARE Region Ten, have been designated as Regional Specialized Treatment Services Facilities (STSFs) for Cardiac Surgery. Both of these facilities are members of the Veterans Integrated Service Network 21 (VISN 21) of the Veterans Health Administration (VHA). The application for the STSF designation was submitted by VISN 21 and approved by the Assistant Secretary of Defense (Health Affairs). The Lead Agent for Region Ten will ensure the STSFs maintain the quality and standards required for specialized treatment services. The designation covers the following Related Groups:

104—Cardiac valve procedure with cardiac catheterization
105—Cardiac valve procedure without PTCA
106—Coronary bypass with PTCA
107—Coronary bypass with cardiac catheterization
108—Other cardiothoracic procedures
109—Coronary bypass without cardiac catheterization

Travel and lodging for the patient and, if stated to be medically necessary by a referring physician, for one non-medical attendant, will be reimbursed by the VAPAHCS or SFVAMC in accordance with the provisions of the Joint Federal Travel Regulation. Patients will be referred to the STSFs based on patient/provider preference and, if no preference is indicated, the referrals will occur on a one-for-one rotational basis between the VAPAHCS and the SFVAMC. DoD beneficiaries who reside in the Regional STSF Catchment Area for VAPAHCS and SFVAMC in TRICARE Region Ten must receive cardiac surgery services for the above DRGs from these facilities unless a Nonavailability Statement (NAS) or an authorization is issued. Evaluation by VAPAHCS or SFVAMC in person is preferred, and travel and lodging expenses for the evaluation will be reimbursed as stated above. It is possible to conduct the evaluation telephonically if the patient is unable to travel to VAPAHCS or SFVAMC. If the procedure cannot be performed at the VAPAHCS and SFVAMC, these facilities will provide a medical necessity review prior to issuance of a NAS or authorization.

The Regional STSF Catchment Area for VAPAHCS and SFVAMC covering Region Ten will be defined by zip codes in the Defense Medical Information System STSF Catchment Area Directory. The Catchment Area includes zip codes within TRICARE Region Ten that fall within a 200-mile radius of the midpoint of a line between the VAPAHCS and SFVAMC.

EFFECTIVE DATE: On or after October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Raffin, CHE, VAPAHCS, at (650) 849–0113; or Lieutenant Colonel Pam Cygan, TRICARE Region Ten Lead Agent Office, at (707) 424–6533; or Lieutenant Colonel Teresa Sommese, TRICARE Management Activity, (703) 681–3628, extension 5029; or Mr. Tariq Shahid, TRICARE Management Activity, (303) 676–3801.

SUPPLEMENTARY INFORMATION: In FR DOC 93–27050, appearing in the **Federal Register** on November 5, 1993 (Vol. 58, FR 58955–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities be published in the **Federal Register** annually. This notice is issued under the authority of 10 U.S.C. 1105 and 32 CFR 199.4(a)(10).

Dated: July 14, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–18514 Filed 7–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF ENERGY

Office of Science

Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, August 10, 1999, 8:15 a.m. to 5:30 p.m.; Wednesday, August 11, 1999, 8:30 a.m. to 12:00 p.m.

ADDRESSES: Washingtonian Marriott, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: Sharon Long; Office of Basic Energy Sciences; U. S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: (301) 903–5565

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda

Tuesday, August 10, 1999

- Welcome and Introduction of New BESAC Members
- Remarks from Dr. Martha Krebs, Director, Office of Science

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- News and Views from Basic Energy Sciences
- Report on the Complex Systems Workshop
- Report from the Advanced Light Source
- Security at DOE Laboratories

Wednesday, August 11, 1999

- Scientific User Facilities Updates
- Update on Review of Electron Beam Microcharacterization Centers

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Sharon Long at 301–903–6594 (fax) or sharon.long@science.doe.gov (e-mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW; Washington, DC 20585; between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on July 15, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–18580 Filed 7–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2932–000]

Alcoa Inc., Tapoco, Inc., Yadkin, Inc., Alcoa Generating Corporation, Long Sault, Inc., and Colockum Transmission Company, Inc.; Issuance of Order

July 15, 1999.

Alcoa Inc., Tapoco, Inc., Yadkin, Inc., Alcoa Generating Corporation, Long Sault, Inc., and Colockum Transmission Company, Inc. (hereafter, "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On July 13, 1999, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's July 13, 1999 Order grants, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraph (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object with the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will a adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 12, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–18521 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2792–000]

Archer Daniels Midland; Issuance of Order

July 15, 1999.

Archer Daniels Midland (ADM), a Delaware corporation engaged in procuring, transporting, storing, processing, and selling agricultural commodities and products, submitted for filing a Purchase Power Agreement (PPA) for sales of energy to Central Illinois Light Company (CILCO). ADM's application states that under the PPA, the parties can enter into either firm or non-firm transactions and the rate for each sale will be negotiated based on the market price of other available sources of supply. ADM's PPA also requested certain waivers and authorizations. In particular, ADM requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by ADM. On July 14, 1999, the Commission issued an Order Accepting Proposed Rate Market-Based Rates For Filing (Order), in the above-docketed proceeding.

The Commission's July 14, 1999 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by ADM should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, ADM is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of ADM, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of ADM's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 13, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–18519 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–15–000]

Arkansas Western Pipeline, L.L.C.; Compliance Filing

July 15, 1999.

Take notice that on July 13, 1999, Arkansas Western Pipeline, L.L.C. (AWP L.L.C) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of July 13, 1999:

First Revised Sheet No. 110
First Revised Sheet No. 111

AWP L.L.C. asserts that the purpose of this filing is to comply with the Commission's July 6, 1999, order in Docket No. MG99–17–000, and the requirements of CFR 250.16(b)(1) and 250.16(b)(2).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18518 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–398–001]

Caprock Pipeline Co.; Tariff Filing

July 15, 1999.

Take notice that on July 13, 1999, Caprock Pipeline Co. (Caprock) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 1999:

First Revised Volume No. 1
Substitute Sixth Revised Sheet No. 29A

Caprock is submitting this filing to correct an inadvertent omission of the various GISB Standards from the previously effective "by reference" tariff sheet.

Caprock states that copies of this filing have been served upon all affected firm customers of Caprock and applicable state agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18535 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–61–000]

Equitrans, L.P.; Refund Report

July 15, 1999.

Take notice that on July 12, 1999, Equitrans, L.P. (Equitrans) filed a Report summarizing the refunds of GRI overcollections which were credited to the June billing invoices of Equitrans' customers.

Equitrans states that on, May 28, 1999 it received a refund from GRI of $488,325 for collections in excess of 105% of Equitrans 1998 GRI funding level. Equitrans states that it credited this amount to its eligible firm customers in billing invoices which were mailed out on July 15, 1999. The credits were allocated to Equitrans' eligible firm customers pro-rata based on GRI rate collections during the 1998 billing year.

Equitrans states that a copy of its report has been served on its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 22, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18517 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–346–025]

Equitrans, L.P.; Proposed Changes in FERC Gas Tariff

July 15, 1999.

Take notice that on July 12, 1999, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following

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revised tariff sheet to become effective August 1, 1999:

Second Revised Sheet No. 11

Equitrans states that the purpose of this filing is to reflect the retainage factors from Article V, Section 1 of Equitrans' Stipulation and Agreement in Docket No. RP97–346 which was approved by the Commission on April 29, 1999. The revised retainage factors reflected in this filing are 3.00% for transmission and .59% for storage.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18531 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–346–026]

Equitrans, L.P., Refund Report

July 15, 1999.

Take notice that on July 12, 1999, Equitrans, L. P. (Equitrans) tendered for filing its report refunds attributable to the resolution of the captioned proceedings. Equitrans states that the reported refunds reflect Equitrans' implementation of the rates contained in the Commission approved Stipulation and Agreement filed on January 22, 1999 and amended on March 31, 1999.

Equitrans states that the purpose of this filing is to report refunds and applicable interest made to its jurisdictional customers on June 21, 1999 and June 22, 1999 for all amounts collected in excess of the settlement rates which were subject to refund for the period from August 1, 1997 through March 31, 1999.

Equitrans states that it refunded to its jurisdictional customers the principal amount of $7,509,252.46, plus interest thereon to the date of distribution computed in accordance with Section 154.501 of the Commission's Regulations of $436,402.88, less the agreed-upon capped adjustment pursuant Article X, Section 3 of the Stipulation and Agreement of $316,452.98 for a total of $7,629,202,36.

Equitrans states that a copy of its report has been served on its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 22, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18532 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–2879–000, ER99–2968–000, ER99–2984–000, ER99–2992–000, ER99–3005–000, ER99–3050–000, ER99–3077–000, ER99–3086–000 and ER99–3098–000 (Not Consolidated)]

Front Range Associates, LLC, NRG Northeast Power Marketing, LLC, Green County Energy, LLC, Tenaska Gateway Partners, Ltd., Coast Energy Group, Little Bay Power Corporation, Colorado Power Partners, American Atlas #1, Ltd., LLLP., and EGC 1999 Holding Company, LP; Notice of Issuance of Order

July 15, 1999.

Front Range Associates, LLC, NRG Northeast Power Marketing, LLC, Green County Energy, LLC, Tenaska Gateway Partners, Ltd. Coast Energy Group, Little Bay Power Corporation, Colorado Power Partners, American Atlas #1, LLLP., and EGC 1999 Holding Company, LP (hereafter, "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On July 14, 1999, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's July 14, 1999 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this Order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety of otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 13, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–18520 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–407–001]

KN Wattenberg Transmission LLC; Tariff Filing

July 15, 1999.

Take notice that on July 13, 1999, KN Wattenberg Transmission LLC (KNW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 tariff sheets, with an effective date of August 1, 1999:

First Revised Volume No. 1
Substitute Third Revised Sheet No. 67

KNW is submitting this filing to correct an inadvertent ommission of the various GIBS Standards from the previously effective "by reference" tariff sheet.

KNW states that copies of this filing has been served upon all affected firm customers of KNW and applicable state agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by Commission in determining the appropriate action to be taken, but will no serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at htt://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18537 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–390–001]

Northern Border Pipeline Company; Compliance Filing

July 15, 1999.

Take notice that on July 12, 1999, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following compliance tariff sheet to become effective August 1, 1999:

Third Revised Sheet Number 258

Northern Border states that this filing is to correct a pagination error made in Northern Border's June 30, 1999 filing with the Commission at Docket No. RP99–390–000 which filing was being made in response to the Commission's letter order dated April 2, 1999.

Northern Border states that a copy of the instant filing is being served on all affected customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18534 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3025–000]

Public Service Company of Colorado; Issuance of Order

July 15, 1999.

Public Service Company of Colorado (PSColorado) filed a rate schedule under which it may purchase electricity from certain of its retail customers with on-site generation. PSColorado filed the rate schedule on behalf of the customer-sellers, rather than having numerous small sellers separately request authorization to sell power for the few times needed by PSColorado. The customers-sellers will become, by virtue of submitting service agreements under this rate schedule, subject to the Commission's jurisdiction. Consequently, PSColorado is requesting waiver of various requirements of the Commission on behalf of the participating entities (PSColorado's customer-sellers). In particular, PSColorado requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by PSColorado's customer-sellers. On July 14, 1999, the Commission issued an Order Accepting For Filing Proposed Rate Schedule And Granting Waivers (Order), in the above-docketed proceeding.

The Commission's July 14, 1999 Order granted the request for blanket approval under Part 35, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by PSColorado's customer-sellers should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, PSColorado's customer-sellers is hereby authorized to issued securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of PSColorado's customer-sellers, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of PSColorado's customer-sellers' issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 13, 1999.

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Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–18522 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 309–PA]

Sithe Piney LLC; Notice of Pennsylvania Electric Company's Request to Use Alternative Procedures in Filing a License Application

July 15, 1999.

On June 24, 1999, the existing licensee, Pennsylvania Electric Company (Penelec), filed a request to use alternative procedures for submitting an application for new license for the existing Sithe Piney Hydroelectric Project No. 309. The project is located on the Clarion River, in Clarion County, Pennsylvania.

The project consists of: (1) the 427-foot-long and 139-foot-high concrete arch dam with crest elevation of 1,075 ft. msl, an 84-foot-long left non-overflow wall, and a 200-foot-long right non overflow wall; (2) an 800-acre surface area reservoir; (3) an 84-foot-wide integral intake; (4) three 230-foot-long; 14-foot-diameter penstocks; (5) a powerhouse with 3 generating units totaling 28,300 kilowatts; (6) a 250-foot-long tailrace; (7) 700-foot-long and 900-foot-long transmission lines; and (8) appurtuenant facilities.

Penelec states that it has discussed the applicant prepared environmental assessment process with the Pennsylvania Fish and Boat Commission, Pennsylvania Department of Environmental Protection, and U.S. Fish and Wildlife Service, and that those agencies have expressed support for the use of alternative procedures. Penelec is developing a draft communications protocol that will be distributed to the other participants in the relicensing process.

The purpose of this notice is to invite any additional comments on Penelec's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations.[1] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedures being requested here combine the prefiling consultation process with the environmental review process, allowing Penelec to complete and file an Environmental Assessment (EA) in lieu of Exhibit E of the license application. This process differs from the traditional way the applicant prepares a license application because the prefiling consultation with agencies, Indian tribes, and nongovernmental organizations (NGOs) is done concurrently with the environmental review process rather than waiting for the Commission staff to conduct its environmental review of the application after it is filed with the Commission. The alternative procedures are intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Applicant Prepared EA Process and Piney Project Schedule

Penelec has distributed an Information Package for the proposed project to state and federal resource agencies, and NGOs. Penelec has held an initial consultation meeting to discuss potential issues by the participants, and is currently conducting studies. Penelec has submitted a proposed schedule for the alternative licensing process that leads to the filing of a license application by October 2000.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on Penelec's proposal to use the alternative procedures to file an application for the Piney Hydroelectric Project.

Filing Requirements

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comment filing must bear the heading "Comments on the Alternative Procedures," and include the project name and number (Piney Hydroelectric Project No. 309).

For further information on this process, please contact William Guey-Lee of the Federal Energy Regulatory Commission at 202–219–2808 or E-mail at william.gueylee@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 99–18523 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 596, Regulations for the Licensing of Hydroelectric Projects, 81 FERC ¶61,103 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–405–001]

TCP Gathering Co.; Tariff Filing

July 15, 1999.

Take notice that on July 13, 1999, TCP Gathering Co. (TCP) tendered for filing of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet with an effective date of August 1, 1999:

Substitute Fourth Revised Sheet No. 103A

TCP is submitting this filing to correct an inadvertent omission of the various GISB Standards from the previously effective "by reference" tariff sheet.

TCP states that copies of this filing have been served upon all affected firm customers of TCP and applicable state agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18536 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–328–000]

Tennessee Gas Pipeline Company; Technical Conference

July 15, 1999.

In the Commission's order issued on July 1, 1999, the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Wednesday, August 4, 1999, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 99–18533 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–436–000]

Texas Gas Transmission Corporation; Filing of Tariff Sheets

July 15, 1999.

Take notice that on July 12, 1999, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

Fourth Revised Sheet No. 147
Third Revised Sheet No. 148
Tenth Revised Sheet No. 207
Third Revised Sheet No. 207A

Texas Gas states that the purpose of this filing is to comply with Order No. 587–K, Final Rule issued on April 2, 1999, in Docket No. RM96–1–011. The revised tariff sheets reflect certain Version 1.3 standards promulgated by the Gas Industry Standards Board (GISB), which were adopted by the Commission and incorporated by reference in the Commission's Regulations.

Texas Gas states that copies of the tariff sheets are being served upon Texas Gas's jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boegers,

Secretary.

[FR Doc. 99–18538 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–187–000, et al.]

Entergy Nuclear Generation Holding Company No. 1, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 14, 1999.

Take notice that the following filings have been made with the Commission:

1. Entergy Nuclear Generation Holding Company No. 1, Inc.

[Docket No. EG99–187–000]

Take notice that on July 9, 1999, Entergy Nuclear Holding Company No. 1, Inc. (ENHC), with its principle office at 1340 Echelon Parkway, Jackson, Mississippi 39213, filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

ENHC states that it is a Delaware corporation. ENHC is engaged directly and exclusively in the business of owning the stock of Entergy Nuclear Generation Company, an EWG, and possibly, in the future, the stock of other EWGs.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange & Rockland Utilities, Inc., Rochester Gas & Electric Corp., Power Authority of the State of New York, and New York Power Pool

[Docket No. EL99–77–000]

Take notice that on July 9, 1999, the New York Independent System Operator, Inc. (New York ISO) submitted a Request for Limited Waiver of OASIS Requirements. The New York ISO requests as an effective date the date that the New York ISO OATT becomes effective

A copy of this filing was served upon all persons on the Commission's official service lists in Docket Nos. ER97–1523–000, OA97–470–000 and ER97–4234–000 (not consolidated), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Power Authority of the State of New York, and New York Power Pool

[Docket Nos. ER97–1523–008, OA97–470–007, and ER97–4234–005 (not consolidated)]

Take notice that on July 9, 1999, the Member Systems of the New York Power pool (Member Systems) tendered for filing under section 205 and 206 of the Federal Power Act, amendments to the transmission agreements in effect among and between them in accordance with the Federal Energy Regulatory Commission's order issued on January 27, 1999, in the above-referenced dockets.

The Member Systems request all waivers necessary to make the amendments effective upon implementation of the ISO OATT, September 1, 1999.

A copy of this filing was served upon all persons on the Commission's official service list(s) in the captioned proceeding(s), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

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Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Complete Energy Services, Inc.

[Docket No. ER99–3033–000]

Take notice that on July 6, 1999, Complete Energy Services, Inc. (Complete) tendered for filing with the Federal Energy Regulatory Commission (Commission) additional information requested by the Commission on the ownership of Complete.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket No. ER99–3250–000]

Take notice that on July 9, 1999, the California Independent System Operator Corporation (ISO), tendered for filing an amendment to Schedule 1 of the Meter Service Agreement for ISO Metered Entities between the ISO and Green Power Partners I LLC—WECS 98 (WECS 98). The ISO states that the amendment revises Schedule 1 to incorporate meter information about WECS 98's facility.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Baltimore Gas and Electric Company

[Docket No. ER99–3523–000]

Take notice that on July 9, 1999, Baltimore Gas and Electric Company (BGE) filed Service Agreements with Merchant Energy Group of the Americas, Inc., and with GPU Advanced Resources, Inc., under BGE's FERC Electric Tariff Original Volume No. 3 (Tariff). Under the tendered Service Agreement, BGE agrees to provide services pursuant to the provisions of the Tariff.

BGE requests an effective date of July 1, 1999 for the Service Agreements.

BGE states that a copy of the filing was served upon the Public Service Commission of Maryland.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER99–3524–000]

Take notice that on July 9, 1999, Commonwealth Edison Company (ComEd) tendered for filing a service agreement establishing PP&L, Inc. (PP&L), as a customer under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of June 7, 1999 for the Service Agreement to coincide with the first day of service to PP&L under this Service Agreement.

Copies of the filing were served on PP&L.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Energy, Inc.

[Docket No. ER99–3525–000]

Take notice that on July 9, 1999, Puget Sound Energy, Inc. (PSE) tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with American Electric Power Service Corporation (AEP).

A copy of the filing was served upon AEP.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Ameren Services Company

[Docket No. ER99–3526–000]

Take notice that on July 9, 1999, Ameren Services Company (ASC) tendered for filing a Service Agreement for Market Based Rate Power Sales between ASC and Southern Indiana Gas and Electric Company (SIG&E). ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to SIG&E pursuant to ASC's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

ASC requests that the Service Agreement become effective April 6, 1999, the date for said agreement.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Ameren Services Company

[Docket No. ER99–3527–000]

Take notice that on July 9, 1999, Ameren Services Company (Ameren) tendered for filing Service Agreements for Market Based Rate Power Sales between Ameren and Allegheny Power Service Corporation and Minnesota Municipal Power Agency (the parties). Ameren asserts that the purpose of the Agreements is to permit Ameren to make sales of capacity and energy at market based rates to the parties pursuant to Ameren's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Ameren Services Company

[Docket No. ER99–3528–000]

Take notice that on July 9, 1999, Union Electric Company (UE) tendered for filing a Service Agreement for Market Based Rate Power Sales between UE and Northern Indiana Public Service Company (NI). UE asserts that the purpose of the Agreement is to permit UE to make sales of capacity and energy at market based rates to NI pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

UE requests that the Service Agreement become effective June 19, 1999.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Ameren Services Company

[Docket No. ER99–3529–000]

Take notice that on July 9, 1999, Ameren Services Company (ASC) tendered for filing a Service Agreement for Market Based Rate Power Sales between ASC and Kansas City Power & Light Company (KCPL). ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to KCPL pursuant to ASC's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

ASC requests that the Service Agreement become effective August 1, 1998.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER99–3530–000]

Take notice that on July 9, 1999, the Midwest ISO Participants tendered for filing executed signature pages to the "Agreement of the Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation," and the "Agency Agreement for Open Access Transmission Service Offered by the Midwest ISO for Nontransferred Transmission Facilities' executed by Southern Illinois Power Cooperative (Southern Illinois), in order to allow Southern Illinois to become a transmission-owning member of the Midwest ISO.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Orange and Rockland Utilities, Inc.

[Docket No. ES99–45–000]

Take notice that on July 2, 1999, Orange and Rockland Utilities, Inc. submitted an application under Section 204 of the Federal Power Act seeking authorization to issue not more than $150 million of unsecured obligations through December 31, 2001, which have a maturity of less than one year after the date of issuance.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Texas-New Mexico Power Company

[Docket No. ES99–47–000]

Take notice that on July 9, 1999, Texas-New Mexico Power Company (TNMP) filed an Application pursuant to section 204 of the Federal Power Act and Part 34 of the Commission's Regulations seeking authorization to issue from time to time, in an aggregate principal amount not to exceed $428 million at any one time outstanding, short-term debt securities and promissory notes bearing final maturities not to exceed one year. TNMP also requests an exemption from the Commission's competitive bidding and negotiated placement provisions.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18577 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 15, 1999.

Taken notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2060–005.

c. *Date filed:* January 28, 1999.

d. *Applicant:* Nigara Mohawk Power Corporation.

e. *Name of Project:* Carry Falls.

f. *Location:* On the Raquette River, at river mile 68 from its confluence with the St. Lawrence River, in the town of Colton, St. Lawrence County, New York. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jerry L. Sabattis, Licensing Coordinator, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–5561.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time. The Commission will prepare a multiple project Environmental Assessment (EA) including the Carry Falls Project (FERC No. 2060–005), the Upper Raquette River Project (FERC No. 2084–020), the Middle Raquette River Project (FERC No. 2320–005), and the Lower Raquette River Project (FERC No. 2330–007). As part of the multiple project EA, the Commission will also consider the merits of an application of amendment to exemption for the Potsdam Project (FERC No. 2869–007), which is located between the Middle and Lower Raquette River Projects.

l. *Description of the Project:* the existing, operating project consists of: (1) An 826-foot-long dam consisting of: (a) A 568-foot-long and 76-foot-high concrete gravity spillway with a crest elevation of 1,386 feet; and (b) a 258-foot-long and 63-foot-high concrete gated non-overflow spillway with two 14.5-foot by 27-foot taintor regulation gates two 10-foot-square low-level sluice gates, and an intake structure with two 15-foot-square openings for future power installation; (2) five earth dikes totaling 2,500 feet in length, with lengths varying from 320 feet to 1,015 feet, maximum heights varying from 12 feet to 31 feet, each with a crest width of 12 feet at elevation 1,392 feet; and (3) a 7-mile-long reservoir having a 3,000-acre surface area and a 104,463-acre-foot usable storage capacity of normal pool elevation 1,385 feet USGS. the project has no installed generating capacity.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding, Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting

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comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause of extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regualtory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 99–18524 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protest; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2084–020.

c. *Date filed:* January 28, 1999.

d. *Applicant:* Niagara Mohawk Power Corporation.

e. *Name of Project:* Upper Raquette River.

f. *Location:* On the Raquette River, between river miles 52 and 68 from its confluence with the St. Lawrence River, in the towns of Colton and Parishville, St. Lawrence County, New York. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jerry L. Sabattis, Licensing Coordinator, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–5561.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the date of issuance of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time. The Commission will prepare a multiple project Environmental Assessment (EA) including the Carry Falls Project (FERC No. 2060–005), the Upper Raquette River Project (FERC No. 2084–020), the Middle Raquette River Project (FERC No. 2330–007). As part of the multiple project EA, the Commission will also consider the merits of an application for amendment to exemption for the Potsdam Project (FERC No. 2869–007) which is located between the Middle and Lower Raquette River Projects.

l. *Description of the Project:* The existing, operating project consists of: (1) The Stark Falls Development comprising: (a) A 35-foot-high concrete gravity-type dam with a concrete overflow section and a control gate section flanked by earth dikes; (b) six earth saddle dikes; (c) a 1.5-mile-long reservoir at normal pool elevation 1,355.0 feet USGS; (d) an intake; (e) a penstock; (f) a powerhouse containing a 23,872-kW generating unit; and (g) appurtenant facilities; (2) the Blake Falls Development comprising: (a) A 75-foot-high concrete gravity-type dam with a concrete overflow section; (b) an earth dike; (c) a 5.5-mile-long reservoir at normal pool elevation 1,250.5 feet USGS; (d) an intake; (e) a penstock; (f) a powerhouse containing a 13,913-kW generating unit; and (g) appurtenant facilities; (e) the Rainbow Falls Development comprising: (a) A 75-foot-high concrete gravity-type dam with a concrete overflow section flanked by a 1,630-foot-long earth dike; (b) an earth saddle dike; (c) a 3.5-mile-long reservoir at normal pool elevation 1,181.5 feet USGS; (d) an intake; (e) a penstock; (f) a powerhouse containing a 22,828-kW generating unit; and (g) appurtentant facilities; (4) the Five Falls Development comprising: (a) A 50-foot-high concrete gravity-type dam with a concrete overflow section flanked at each end by an earth dike; (b) a 1.0-mile-long reservoir at normal pool elevation 1,077.0 feet USGS; (c) an intake; (d) a 1,200-foot-long penstock; (e) a powerhouse containing a 22,828-kW generating unit; and (f) appurtenant facilities; and (5) the South Colton Development comprising: (a) A 45-foot-high concrete gravity-type dam with a concrete overflow section and earth abutments; (b) a 1.5-mile-long reservoir at normal pool elevation 973.5 feet USGS; (c) an intake; (d) a 1,300-foot-long penstock; (e) a powerhouse containing an 18,948-kW generating unit; and (f) appurtenant facilities. The Upper Raquette River Project has a total installed capacity of 102,389-kW.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 99–18525 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment to License and Soliciting Comments, Motions To Intervene, and Protests

July 15, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No:* 2114–077.

c. *Date Filed:* June 11, 1999.

d. *Applicant:* Public Utility District No. 2 of Grant County.

e. *Name of Project:* Priest Rapids Hydroelectric Project.

f. *Location:* On the Columbia River in Grant County, Washington. The project utilizes federal lands managed by the U.S. Department of Energy, U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service, and the U.S. Department of the Army.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Douglas A. Ancona, Manager, Natural Resources and Regulatory Affairs, Public Utility District No. 2 of Grant County, P.O. Box 878, Ephrata, WA 98823, (509) 754–3451.

i. *FERC Contact:* Any questions on this notice should be addressed to Timothy Welch at (202) 219–2666, or e-mail addresses: timonthy.welch@ferc.fed.us.

j. *Deadline for filing comments and or motions:* August 23, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the project number (2114–077) on any comments or motion filed.

k. *Description of Proposal:* The applicant proposes to construct and test a prototype flow deflector at Wanapum Dam. Flow deflectors are structures installed on a dam spillway that dissipate spilled water to reduce the extent to which the spill will increase downstream total dissolved gas levels. The prototype flow deflector would consist of two parts, a sloping toe radius and a triangular concrete section located at elevation 483.0 msl. The toe radius would be 15 feet in length, the deflector's horizontal surface would be 7 feet in length. The deflector would run the full width of the spillway slot, approximately 50 feet. The applicant has scheduled construction of the prototype for September 1999, followed by a biological performance evaluation in October 1999.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title

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"COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Poject Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–18526 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2330–007.

c. *Date filed:* December 24, 1991.

d. *Applicant:* Niagara Mohawk Power Corporation.

e. *Name of Project:* Lower Raquette River.

f. *Location:* On the Raquette River, between river miles 19 and 27 from its confluence with the St. Lawrence River, in the towns of Potsdam and Norwood, St. Lawrence County, New York. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jerry L. Sabattis, Licensing Coordinator, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–5561.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the date of issuance of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time. The Commission will prepare a multiple project Environmental Assessment (EA) including the Carry Falls Project (FERC No. 2060–005), the Upper Raquette River Project (FERC No. 2084–020), the Middle Raquette River Project (FERC No. 2320–005, and the Lower Raquette River Project (FERC No. 2330–007). As part of the multiple project EA, the Commission will also consider the merits of an application for amendment to exemption for the Potsdam Project (FERC No. 2869–007) which is located between the Middle and Lower Raquette River Projects.

l. *Description of the Project:* The existing, operating project consists of: (1) The Norwood Development comprising: (a) A 23-foot-high concrete gravity-type dam having 1-foot-high wooden flashboards; (b) a 350-acre reservoir at normal pool elevation 327.1 feet USGS; (c) a gated concrete intake structure having trashracks and a log chute; (d) a powerhouse containing a 2,000-kW generating unit; (e) a 3-mile-long transmission line; and (f) appurtenant facilities; (2) the East Norfolk Development comprising: (a) A concrete gravity-type dam having sluice gates; (b) a 135-acre reservoir at normal pool elevation 287.9 feet USGS; (c) a concrete intake structure; (d) a 1,408-foot-long flume; (e) a powerhouse containing a 3,500-kW generating unit; (f) a 0.86-mile-long transmission line; and (g) appurtenant facilities; (3) the Norfolk Development comprising: (a) A 20-foot-high concrete dam having 10-inch-high flashboards, headworks gates, and sluice gates; (b) a 10-acre reservoir at normal pool elevation 254.9 feet USGS; (c) a 1,275-foot-long canal; (d) a 700-foot-long wood stave pipeline; (e) a 103-foot-long steel penstock; (f) a powerhouse containing a 4,500-kW generating unit; and (g) appurtenant facilities; and (4) the Raymondville Development comprising: (a) A 17-foot-high concrete gravity-type dam having two-foot-high flashboards; (b) a 50-acre reservoir at normal pool elevation 211.6 feet USGS; (c) a 447-foot-long concrete flume having trashracks, an ice chute, and gates; (d) a powerhouse containing a 2,000-kW generating unit; (e) a 2.32-mile-long transmission line; and (f) appurtenant facilities. The project has a total installed capacity of 12,000-kW.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 99–18527 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

July 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2320–005.

c. *Date filed:* December 24, 1991.

d. *Applicant:* Niagara Mohawk Power Corporation.

e. *Name of Project:* Middle Raquette River.

f. *Location:* On the Raquette River, between river miles 38 and 47 from its confluence with the St. Lawrence River, in the towns of Colton, Pierrepont, and Potsdam, St. Lawrence County, New York. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jerry L. Sabattis, Licensing Coordinator, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–5561.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the date of issuance of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource energy, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time. The Commission will prepare a multiple project Environmental Assessment (EA) including the Carry Falls Project (FERC No. 2060–005), The Upper Raquette River Project (FERC No. 2084–020), the Middle Raquette River Project (FERC No. 2320–005), and the Lower Raquette River Project (FERC No. 2330–007). As part of the multiple project EA, the Commission will also consider the merits of an application for amendment to exemption for the Potsdam Project (FERC No. 2869–007) which is located between the Middle and Lower Raquette River Projects.

l. *Description of the Project:* The existing, operating project consists of: (1) The Higley Development comprising: (a) A 34-foot-high concrete gravity-type dam having 3-foot-high wooden flashboards, two flood gates, a trashrack, and two waste gates; (b) a 742-acre reservoir at normal pool elevation 883.6 feet USGS; (c) a 160-foot-long, 50-foot-wide flume; (d) a powerhouse containing three generating units having a total capacity of 4,480-kW; (e) a proposed intake structure, a proposed 13-foot-diameter, 225-foot-long steel pipeline, and a proposed powerhouse containing a 7,300-kW generating unit; and (f) appurtenant facilities; (2) The Colton Development comprising: (a) A 27-foot-high concrete gravity-type dam having 2-foot-high flashboards, a log flume, a trash gate, and a gated spillway; (b) a 195-acre reservoir at normal pool elevation 837.0 feet USGS; (c) an intake structure; (d) an 11,090-foot-long steel pipeline; (e) an 80-foot-high surge tank; (f) three penstocks; (g) a powerhouse containing three generating units having a total capacity of 33,605-kW; and (h) appurtenant facilities; (3) The Hannawa Development comprising: (a) A 38-foot-high stone and concrete dam having 3.5-foot-high wooden flashboards, a log chute, a taintor gate, and a sluice gate; (b) a 204-acre reservoir at normal pool elevation 552.0 feet USGS; (c) a headworks structure; (d) a 2,700-foot-long canal; (e) two penstocks; (f) a powerhouse containing two generating units having a total capacity of 8,124-kW; and (g) appurtenant facilities; and (4) The Sugar Island Development comprising: (a) A 37-foot-high concrete gravity-type dam having two taintor gates; (b) a 29-acre reservoir at normal pool elevation 470.0 feet USGS; (c) an intake structure with trashracks and a headgate; (d) a 4,700-foot-long steel pipeline; (e) a 71-foot-high surge tank; (f) two penstocks; (g) a powerhouse containing two generating units having a total capacity of 5,138-kW; and (f) appurtenant facilities. The project has a total installed capacity of 51,347-kW.

m. *Locations of the applications:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

Filing and Service of Responsive Documents—The application is ready for an environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the Regulations (see order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone

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number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 99–18528 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Amendment of Exemption and Soliciting Comments, Motion To Intervene, and Protests

July 15, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Exemption.

b. *Project No:* 9543–008.

c. *Date Filed:* May 18, 1999.

d. *Applicant:* Rim View Trout Company, Inc. (Rim View).

e. *Name of Project:* Rim View Hydroelectric Project.

f. *Location:* At Rim View's fish hatchery in Gooding County, Idaho. The project does not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory Kaslo, Rim View Trout Company, 1301 Vista Avenue, Boise, ID 83705, (208) 344–7321.

i. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839, or e-mail address: james.hunter@ferc.fed.us.

j. *Deadline for filing comments and or motions:* August 23, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the project number (P–9543–008) on any comments or motions filed.

k. *Description of Proposal:* Rim View requests amendment of its exemption to delete the proposed lower powerhouse that was to use outflow from the hatchery, because the site does not have the necessary elevation to allow construction of a powerhouse.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http//www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.*

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rule of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–18529 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11758–000.

c. *Date Filed:* June 11, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi L&D #25.

f. *Location:* On the Mississippi River, in Lincoln County, Missouri, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Mississippi L&D #25 and would consist of : (1) 18 new 80-foot-long, 114-inch-diameter steel penstocks; (2) a new 604-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 9 generating units having a total installed capacity of 50,000-kW; (3) a new exhaust apron; (4) a new 500-foot-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 307 GWh and that the cost of the studies to be performed under the terms of the permit would be $5.000.000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a portest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Reviews, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file coments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of any agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–18530 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 15, 1999.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11738–000.

c. *Dated filed:* May 7, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Grenada Dam Project.

f. *Location:* At the Corps of Engineer's Grenada Dam, on the Yalobusha River, near than Town of Grenada, Grenada County, Mississippi.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Ronald Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301 (330) 535–7115.

i. *FERC Contact:* Michael Spencer, Michael.Spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

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k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Grenada dam and consist of the following: (1) Two 96-inch-diameter, 80-foot-long steel penstocks, constructed in the existing outlet works; (2) a powerhouse containing five generating units with a total capacity of 12.75 MW and an estimated average annual generation of 78.0 GWh; and (3) a 4-mile-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–18578 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 15, 1999.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11730–000.

c. *Date filed:* May 7, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Sardis Dam Project.

f. *Location:* At the Corps of Engineer's Sardis Dam, on the Little Tallahatchie River, near the Town of Batesville, Panola County, Mississippi.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301 (330) 535–7115.

i. *FERC Contact:* Michael Spencer, Michael.Spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Sardis dam and consist of the following: (1) Two 96-inch-diameter, 80-foot-long steel penstocks, constructed in the existing outlet works; (2) a powerhouse containing six generating units with a total capacity of 15.75 MW and an estimated average annual generation of 97.0 GWh; and (3) a 0.5-mile-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

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Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing any Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–18579 Filed 7–20–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6401–1]

Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of time for request for comment.

SUMMARY: On June 18, 1999, the Environmental Protection Agency ("EPA") published a document in the **Federal Register** (64 FR 32948–32972) responding to comments on how it calculates the economic benefit obtained by regulated entities as a result of violating environmental requirements. The document also proposed certain changes to the Agency's benefit recapture approach, and requested further comment on those proposed changes. By this document, EPA is extending the deadline for comment from July 30, 1999, to September 30, 1999.

DATES: Comments must be received by EPA at the address below by September 30, 1999.

ADDRESSES: Written comments should be submitted in triplicate to: U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Economic Benefit Docket Clerk, Mail Code 2248–A, 401 M Street, SW, Washington, D.C. 20460.

EPA will maintain a record of all written comments submitted pursuant to this notice. Copies of the comments may be reviewed at the Ariel Rios Federal Building, 1200 Pennsylvania Avenue, Washington, DC 20004. Persons interested in reviewing the comments must make advance arrangements to do so by calling (202) 564–2235.

FOR FURTHER INFORMATION CONTACT: Copies of the BEN computer model and the BEN Users Manual may be obtained from the National Technological Information Service by calling (800) 553–6847. Callers should request order number PB99–501587. Electronic copies of these items are also downloadable through the Office of Enforcement and Compliance Assurance's World Wide Web page on the Internet at: http://www.epa.gov/oeca/datasys/dsm2.html. For further information, contact Jonathan Libber, Office of Regulatory Enforcement, Multimedia Enforcement Division, at (202) 564–6102.

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Dated: July 15, 1999.

Melissa P. Marshall,

Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 99–18605 Filed 7–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6400–8]

Draft Modification of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft modification of the NPDES general permit reissuance for storm water discharges from construction activities.

SUMMARY: The EPA, Region 4, general permit for the discharge of storm water from construction activities, issued on March 31, 1998, is being modified. This modification will include monitoring and reporting requirements for facilities discharging storm water from construction activities to waters of the U.S. that are on the 303(d) list for impairment due to sediment and/or silt. In addition, several typographical errors will be corrected, and, the eligibility requirements of part I.B.3. will be renumbered to be consistent with the National general permit for the discharge of storm water from construction activities, which was issued on February 17, 1998, and the Notice of Intent (NOI, form 3510–9).

The following provides notice for a draft modification of the NPDES general permit and fact sheets for storm water discharges from construction activities in the following areas of, EPA, Region 4:

Indian Country Lands within the State of Alabama
The State of Florida
Indian Country Lands within the State of Florida
Indian Country Lands within the State of Mississippi
Indian Country Lands within the State of North Carolina

DATES: This general permit became effective on April 3, 1998. Deadlines for submittal of NOIs which are provided in Part II.A. of the permit are not changed. Comments on the proposed modifications must be received or postmarked by midnight no later than February 28, 1999. This modification will be effective 60 days from its final publication in the **Federal Register**.

ADDRESSES: Notices of Intent (NOIs) submitted in accordance with this permit to receive coverage under this permit must be sent to Storm Water Notice of Intent (4203), 401 M Street, SW, Washington, DC 20460. The complete administrative record is available from the U.S. Environmental Protection Agency, Region 4, Freedom of Information Officer, 61 Forsyth St. S.W., Atlanta, GA 30303. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Floyd Wellborn, telephone number (404) 562–9296, or Mr. Mike Mitchell, telephone number (404) 562–9303, or at the following address: United States Environmental Protection Agency, Region 4, Water Management Division, Surface Water Permits Section, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, GA 30303.

PUBLIC COMMENT PERIOD: Public comments are being invited only for those specific modifications discussed within the proposal for the general permit for storm water discharges from construction activities issued by EPA, Region 4, on March 31, 1998. The public should send their comments to the Surface Water Permits Section, Water Management Division, U.S. EPA, 61 Forsyth Street, SW, Atlanta, GA 30303. To ensure that EPA can read, understand , and therefore properly respond to comments, the Agency requests commenters to type or print in ink any comments. Each comment should cite the page number and, where possible, the section(s) and/or paragraph(s) in the proposed permitting actions to which the comment relates. Commenters should use a separate paragraph for each issue discussed.

State Certification

EPA is providing copies of the proposed permit modification to the State of Florida and Indian Tribes where the proposed actions would be effective. The State of Florida and Tribes will review the proposed actions to ensure that they will not result in violations of water quality criteria. EPA will work with The State and Tribes to obtain their certification in accordance with section 401 of the Clean Water Act. EPA will prepare certifications for Indian lands where there is no approved Tribe or any Tribes which have not established water quality standards.

The Coastal Zone Management Act (CZMA) requires that all Federal licensing and permitting actions be reviewed for consistency with each approved State coastal zone management plan. The Federal Consistency Act requires that all NPDES permit be reviewed for consistency with the Endangered Species Act and the National Historic Preservation Act. EPA has also initiated these reviews.

SUPPLEMENTARY INFORMATION:

Table of Contents

The following is an outline of the organization of the proposed modification actions:

I. Introduction
II. Coverage of General Permit
III. Proposed Modification Summary and Justification
IV. Cost Estimates
V. Economic Impact
VI. Unfunded Mandates Reform Act
VII. Paperwork Reduction Act
VIII Regulatory Flexibility Act
IX. Official Signatures

I. Introduction

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act (CWA)) was amended to provide that the discharge of any pollutants to waters of the United States from any point source is unlawful, except if the discharge is in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. In 1987, section 402(p) was added to the CWA to establish a comprehensive framework for addressing storm water discharges under the NPDES program. Section 402(p)(4) of the CWA clarifies the requirements for EPA to issue NPDES permits for storm water discharges associated with industrial activity. On November 16, 1990 (55 FR 47990), EPA published final regulations which define the term "storm water discharge associated with industrial activity."

In 1992, EPA issued a general permit for discharges of storm water from construction activities "associated with industrial activity" to reduce the administrative burden of issuing an individual NPDES permit to each construction activity. On March 31, 1998 EPA, Region 4, issued a renewal of the 1992 permit.

Section 303(d) of the CWA requires States to identify waters for which technology based effluent limitations are not stringent enough to implement any applicable water quality standard. The statue also requires the States to establish a priority ranking for such waters, taking into account the severity of pollution and the uses to be made of the waters. Title 40 of the Code of Federal Regulation (CFR) section 130.7 defines the section 303(d) waters to be those waters in each State which are water quality limited segments which still require total maximum daily loads.

40 CFR 122.4(d) and (i) prohibit EPA from authorizing discharges which will cause or contribute to the impaired use of waters of the U.S. Currently, facilities discharging to 303(d) listed waters would most likely be required to apply for individual permit coverage which is resource intensive for both the applicant and the issuing authority. Therefore, EPA Region 4 has concluded that additional permitting measures in the existing storm water general permit are necessary to assure that storm water discharges from construction activities to 303(d) waters, listed for silt or sediment, do not cause or contribute to the impaired designated use of a water body.

II. Coverage of General Permit

Section 402(p) of the Clean Water Act (CWA) clarifies that storm water discharges associated with industrial activity to waters of the United States must be authorized by an NPDES permit. On November 16, 1990, EPA published regulations under the NPDES program which defined the term "storm water discharge associated with industrial activity" to include storm water discharges from construction activities (including clearing, grading, and excavation activities) that result in the disturbance of five or more acres of total land area, including areas that are part of a larger common plan of development or sale (40 CFR 122.26(b)(14)(x)).[1] The term "storm water discharge from construction activities" will be used in this document to refer to storm water discharges from construction sites that meet the definition of a storm water discharge associated with industrial activity.

The proposed permit modification does not change the March 31, 1998, issued permit's coverage area. The modification only adds monitoring requirement in part III of the permit for dischargers to 303(d) listed waters, listed for silt or sediment, and it renumbers the eligibility requirements of part I.B.3.

III. Proposed Modification Summary and Justification

Monthly monitoring only requirements for Settleable Solids (ml/l), Total Suspended Solids (TSS), Turbidity (NTUs) and Volume of Flow will be added to the general permit to provide data to more reasonably evaluate if the discharge is contributing to the impairment of the water body. The permit language will require monitoring of a qualifying storm event or discharges of a previously collected qualifying storm event(s), by grab sample within the first 30 minutes of the event or the discharge of a previously collected event. EPA defines the discharge of a previously collected event as the discharge from any impoundment which would detain or retain the storm water runoff from a site such that the runoff does not flow directly off the surface of the area under construction to a receiving water. A qualifying event will be 0.5 inch rain event over a 24 hour period. In addition to the effluent monitoring, upstream monitoring, where there is flow, will be required. These monitoring requirements are based on section 308(a) of the Clean Water Act and are intended to demonstrate that the BMPs on site are preventing the discharges of storm water from the construction activities from causing or contributing to the impairment in the receiving water. This demonstration will be accomplished by comparing the upstream data and the downstream data. Also, in accordance with section 308(a) of the CWA, the permittee will be required to report, monthly, the results of the monitoring for Settleable Solids, Turbidity and Volume of Flow. The permittee will be required to report the soil type and average slope of the drainage area of each outfall and the name of the receiving water.

The final version of this fact sheet for the General Permit modification will include lists of the 303(d) waters in the coverage areas of the permit that are impaired because of silt/sediment. The fact sheet will include instructions directing the applicant to determine if their facility will be discharging to these waters on the 303(d) lists. The instructions will direct the applicant to make this determination by referencing the lists and contacting the State agency which generated the list, since the lists may change from time to time. An internet site is being considered for accessing these lists for the coverage areas. The permit will reference this list and require the permittee, in addition to the above referenced monitoring and reporting requirements, to notify EPA-Region 4 if they discharge to waters that are on the 303(d) list. The permit will also require a discussion within the pollution prevention plan, by all potential permittees, to explain how the determination was made of whether or not the facility discharges to 303(d) listed waters.

Finally, a typographical error in appendix C will be corrected to delete the reference to addendum H and replace it with a reference to appendix C. Part I.B.3.e.(1) in the permit is being renumbered to part I.B.3.e.(2); and part I.B.3.g. in the permit is being renumbered to part I.B.3.f. These two changes make the permit consistent with the Notice of Intent (NOI) used to apply for coverage under the general permit and with the national NPDES general permit for discharges of storm water from construction activity, issued on February 17, 1998.

IV. Cost Estimates

The two major costs associated with pollution prevention plans for construction activities include the costs of sediment and erosion controls and the costs of storm water management measures. The proposed modification does not change from the costs described in the permit issued in the **Federal Register** on March 31, 1998 (63 FR 15621). Typically, most construction sites will employ several types of sediment and erosion controls and storm water management controls.

Costs are presented in 1992 dollars and were reviewed by the Office of Management and Budget during the September 25, 1992 issuance of the general permit. Annualized costs are based on a 10 year period and 10 percent discount rate. Estimates include a contingency cost of 25 percent of the construction cost and operation and maintenance costs of 5 percent of the construction cost. Land costs are not included.

V. Economic Impact

Under Executive Order 1286 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action " as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants user fees, or loan programs or the rights and obligations recipients thereof; or raise novel legal or

[1] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exemption for construction sites of less than five acres to the EPA for further rulemaking (*Natural Resources Defense Council* v. *EPA*, Nos. 90–70671 and 91–70200, slip op. at 6217 (9th Cir. June 4, 1992).

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policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this modified general permit is not a "significant regulatory action" under the terms Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

VI. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes an explanation with the final rule why the alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under UMRA section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating and advising small governments on compliance with the regulatory requirements.

A. UMRA Section 202 and the Construction General Permit

UMRA section 202 requires a written statement containing certain assessments, estimates and analyses prior to the promulgation of certain general notices of proposed rulemaking (2 U.S.C. 1532). UMRA section 421(10) defines "rule" based on the definition of rule in the Regulatory Flexibility Act. Section 601 of the Regulatory Flexibility Act defines "rule" to mean any rule for which an agency publishes a general notice of proposed rulemaking pursuant to section 553 of the Administrative Procedure Act. EPA does not propose to issue NPDES general permits based on APA section 553. Instead, EPA relies on publication of general permits in the **Federal Register** in order to provide "an opportunity for a hearing" under CWA section 402(a), 33 U.S.C. 1342(a). Nonetheless, EPA has evaluated permitting alternatives for regulation of storm water discharges associated with construction activity. The general permit modification that EPA proposes to issue would be virtually the same NPDES general permit for construction that many construction operators have used over the past five years. Furthermore, general permits provide a more cost and time efficient alternative for the regulated community to obtain NPDES permit coverage than that provided through individually drafted permits.

B. UMRA Section 203 and the Construction General Permit

Agencies are required to prepare small government agency plans under UMRA section 203 prior to establishing any regulatory requirement that might significantly or uniquely affect small governments. "Regulatory requirements" might, for example, include the requirements of these NPDES general permits for discharges associated with construction activity, especially if a municipality sought coverage under one of the general permits. EPA envisions that some municipalities—those with municipal separate storm sewer systems serving a population over 100,000—may elect to seek coverage under these proposed general permits. For many municipalities, however, a permit application is not required until August 7, 2001, for a storm water discharge associated with construction activity where the construction site is owned or operated by a municipality with a population of less than 100,000. (See 40 CFR 122.26(e)(1)(ii) and (g)).

In any event, any such permit requirements would not significantly affect small governments because most State laws already provide for the control of sedimentation and erosion in a similar manner as the general permit. Permit requirements also would not uniquely affect small governments because compliance with the permit's conditions affects small governments in the same manner as any other entity seeking coverage under the permit. Thus, UMRA section 203 would not apply.

VII. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in these final general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.* EPA did not prepare an Information Collection Request (ICR) document for the proposed permit modification because the information collection requirements in this permit have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The proposed permit modification does not nullify the permit condition which provides small entities with an application option that is less burdensome than individual applications or participating in a group application. The other requirements have been designed to minimize significant economic impacts of the rule on small entities and does not have a significant impact on industry. In addition, the permit reduces significant administrative burdens on regulated sources. Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

IX. Official Signatures

Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: July 7, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Draft NPDES General Permit Modification for Storm Water Discharges From Construction Activities

Proposed Modification of National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities

For reasons set forth in the preamble, Part III of the NPDES General Permit for Storm Water Discharges From Construction Activities is proposed to be modified as described below. A new appendix D is proposed to be added to the general permit. These proposed modifications and additional requirements will become effective on the date of **Federal Register** publication of the final modifications.

Appendix C

I. Instructions

* * * * *

• Certify pursuant to Section I.B.3.e. of the construction general permit that their storm water discharges, and BMPs constructed to control storm water runoff, are not likely, and will not be likely to adversely affect species identified in Appendix C of this permit.

* * * * *

Appendix D

Discharging to Impaired Waters Guidance

I. Instructions

For facilities in Florida:

In order to get construction general permit coverage, applicants must determine if the facility discharges to waters listed on the 303(d) list for impairment due to either Total Suspended Solids, Turbidity, Silt or Sediment. The 303(d) list is updated periodically; therefore, it is incumbent upon the applicant to contact the Florida Department of Environmental Protection (FDEP) in Tallahassee for the most current list if you are unsure whether or not the facility will be discharging to a 303(d) listed water for either of the above referenced parameters. An current 303(d) list is maintained at the following web site: www2.dep.state.fl.us/water/

Please refer to this site if you have internet access before contacting FDEP.

For facilities in Indian Country Lands:

In order to get construction general permit coverage, applicants must determine if the facility discharges to waters impaired for either Total Suspended Solids, Turbidity, Silt or Sediment. It is incumbent upon the applicant to contact the Environmental Coordinator of the Tribe on whose lands the discharge occurs if you are unsure whether or not the facility will be discharging to impaired waters for either of the above referenced parameters.

What to do next:

For all facilities, if the determination is made that you will be discharging waters impaired because of either Total Suspended Solids, Turbidity, Silt or Sediment; then, the facility must comply with the terms and conditions of Part III.C. of the permit.

Part I. Coverage Under This Permit

* * * * *

3. *Limitations on Coverage.* The following storm water discharges from construction sites are not authorized by this permit:

* * * * *

e. storm water discharges from construction sites if the discharges may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat;

(1) All applicants must follow the procedures provided at Appendix C of this permit when applying for permit coverage.

(2) A discharge of storm water associated with construction activity may be covered under this permit only if the applicant certifies that they meet at least one of the following criteria. Failure to continue to meet one of these criteria during the term of the permit will result in the storm water discharges associated with construction ineligible for coverage under this permit.

(a) The storm water discharge(s), and the construction and implementation of Best Management Practices (BMPs) to control storm water runoff, are not likely to adversely affect species identified in Appendix C of this permit or critical habitat for a listed species; or

(b) The applicant's activity has received previous authorization under Section 7 or Section 10 of the Endangered Species Act and that authorization addressed storm water discharges and/or BMPs to control storm water runoff (e.g., developer included impact of entire project in consultation over a wetlands dredge and fill permit under Section 7 of the Endangered Species Act); or

(c) The applicant's activity was considered as part of a larger, more comprehensive assessment of impacts on endangered species under Section 7 or Section 10 of the Endangered Species Act that which accounts for storm water discharges and BMPs to control storm water runoff (e.g., where an area-wide habitat conservation plan and Section 10 permit is issued which addresses impacts from construction activities including those from storm water, or a National Environmental Policy Act (NEPA) review is conducted which incorporates ESA Section 7 procedures); or

(d) Consultation under Section 7 of the Endangered Species Act is conducted for the applicant's activity which results in either a no jeopardy opinion or a written concurrence on a finding of not likely to adversely affect; or

(e) The applicant's activity was considered as part of a larger, more comprehensive site-specific assessment of impacts on endangered species by the owner or other operator of the site and that permittee certified eligibility under item (a), (b), (c), or (d) above (e.g. owner was able to certify no adverse impacts for the project as a whole under item (a), so the contractor can then certify under item (e)).

* * * * *

f. Storm water discharges that would affect a property that is listed or is eligible for listing in the National Historic Register maintained by the Secretary of Interior may be in violation of the National Historic Preservation Act. A discharge of storm water associated with construction activity may be covered under this permit only if the applicant certifies that either:

(1) The storm water discharge(s), and the construction and implementation of BMPs to control storm water runoff, do not affect a property that is listed or is eligible for listing in the National Historic Register maintained by the Secretary of Interior; or,

(2) The applicant consults with the State Historic Preservation Officer (SHPO) or the Tribal Historic Preservation Officer (THPO) on the potential for adverse effects which results in a no effect finding; or

(3) The applicant has obtained and is in compliance with a written agreement between the applicant and the SHPO or THPO that outlines all measures to be undertaken by the applicant to mitigate or prevent adverse effects to the historic property; or

(4) The applicant agrees to implement and comply with the terms of a written agreement between another owner/operator (e.g., subdivision developer, property owner, etc.) and the SHPO or THPO that outlines all measures to be undertaken by operators on the site to mitigate or prevent adverse effects to the historic property; or

(5) The applicant's activity was considered as part of a larger, more comprehensive site-specific assessment of effects on historic properties by the owner or other operator of the site and that permittee certified eligibility under item (1), (2), (3), or (4) above.

g. discharges of storm water associated with industrial activity from construction sites not specifically identified in the pollution prevention plan in accordance with Part V of this permit. Such discharges not identified in the plan are subject to the upset and bypass rules in Part VII of this permit.

* * * * *

C. Authorization

* * * * *

9. Under which section(s) of Part I.B.3.e.(2) (Endangered Species) and Part I.B.3.f. (Historical Preservation) the applicant is certifying eligibility.

* * * * *

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

* * * * *

C. Discharges to Waters Impaired Due to Sedimentation or Siltation

Facilities that have coverage under this general permit prior to its modification on [insert the effective date of the final modification] shall be in compliance with Parts III.C.1. through 5. within 30 days of the effective date of this modification.

Facilities that apply for coverage under the general permit after [insert the effective date of the final modification] which discharge storm water from construction activities directly to waters of the United States which are listed on the 303(d) list for sedimentation or siltation, see Appendix D, shall comply with the following:

1. The permittee shall monitor, during regular working hours, once per month within the first 30 minutes of a qualifying event or within the first 30 minutes of the beginning of the discharge of a previously collected qualifying event for Settleable Solids (ml/l), Total Suspended Solids (mg/l), Turbidity (NTUs) and Flow (MGD).

2. Where the receiving water has flow upstream from the discharge, a background sample for Settleable Solids, Total Suspended Solids and Turbidity shall be taken instream at middepth and immediately upstream from the influence of the discharge of storm water from the site.

3. The soil type and average slope of the drainage area for each outfall shall be reported with the Discharge Monitoring Report submitted in accordance with Part III.C.5. of the permit.

4. A qualifying event for the purpose of this section is a rain event of 0.5 inches or greater in a 24 hour period.

5. Data collected in accordance with Part III.C. of the permit shall be submitted to EPA once per month.

This permit does not authorize the discharge of storm water, from construction activities, which causes or contributes to the impairment of the designated use of waters of the United States.

* * * * *

[FR Doc. 99–18607 Filed 7–20–99; 8:45 am]

BILLING CODE 0560–50–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection under review; Employer information report (EEO–1).

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) announces that it intends to submit to the Office of Management and Budget (OMB) a request for an extension of the existing information collection listed below.

DATES: Written comments on this notice must be submitted on or before September 20, 1999.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW, Washington, DC 20507. As a convenience to commentators, the Executive Secretarial will accept comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4078 (voice) or (202) 663–4074 (TDD). (These are not toll-free telephone numbers.) Copies of comments submitted by the public will be available to review at the Commission's library, Room 6502, 1801 L Street, NW, Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street, NW, Room 9222, Washington, DC 20507, (202) 663–4958 (voice) or (202) 663–7063 (TTD).

SUPPLEMENTARY INFORMATION: The Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

Collection Title: Employer Information Report (EEO–1).
OMB Number: 3046–0007.
Frequency of Report: Annual.
Type of Respondent: Private employer with 100 or more employees and some federal government contractors and first-tier subcontractors with 50 or more employees.
Description of Affected Public: Private industry employers and business, private institutions, organizations and farms.
Responses: 126,700.
Reporting Hours: 463,700.
Number of Forms: 1.
Federal Cost: $813,175.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations which set forth the reporting requirement for various kinds of employers. Employers in the private sector with 100 or more employees and some federal contractors with 50 or more employees have been required to submit EEO–1 reports annually since 1966. The individual reports are confidential.

EEO–1 data are used by the EEOC to investigate charges of discrimination against employers in private industry. In addition, the data are used to support EEOC decisions and conciliations, and for research. The data are shared with the Office of Federal Contract Compliance Programs (OFCCP) in the U.S. Department of Labor, and several other federal agencies. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–1 data re also shared with 86 State and Local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the annual EEO–1 survey is 45,000 private employers. The estimated number of responses per respondent averages between 2 and 3 EEO–1 reports. The number of annual responses is approximately 126,700, and the total annual burden is estimated to be 463,700 hours. In order to help reduce burden, respondents are encouraged to report data on electronic media such as magnetic tapes and interactive diskettes.

Dated: July 14, 1999.
For the Commission.

Ida L. Castro,
Chairwoman.

[FR Doc. 99–18557 Filed 7–20–99; 8:45 am]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 12, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 20, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 Twelfth Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0394.
Title: Section 1.420 Additional procedures in proceedings for amendment of FM, TV or Air-Ground Table of Allotments.
Form Number: None.
Type of Review: Extension of currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 30.
Estimated Time Per Response: 20 minutes—2 hours (20 minutes consultation—1–2 hours contract attorney).
Frequency of Response: On occasion.
Total Annual Burden: 10 hours.
Total Annual Cost: $9,000.

Needs and Uses: Section 1.420 requires a petitioner seeking to withdraw or dismiss its expression of interest in allotment proceedings to file a request for approval. This request would include a copy of any related written agreement and an affidavit certifying that neither the party withdrawing its interest nor its principals has received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition, an itemization of the expenses for which it is seeking reimbursement, and the terms of any oral agreement. Each remaining party to any written or oral agreement must submit an affidavit within 5 days of petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The data is used by FCC staff to ensure that an expression of interest in applying for, constructing, and operating a station was filed under appropriate circumstances and not to extract payment in excess of legitimate and prudent expenses.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 99–18543 Filed 7–20–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, July 27, 1999 at 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, July 29, 1999 at 10 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1999–17
Governor George W. Bush for President Exploratory Committee, by Benjamin Ginsberg, counsel.
Advisory Opinion 1999–18
San Diego County Republican Central Committee by C. April Boling, CPA.
Title 26 Final Rules and Explanation and Justification on Documentation Required for Matching of Credit and Debit Card Contributions.
Title 26 Final Rules and Explanation and Justification on Coordinated Expenditures, Audit Procedures and Media Travel.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,
Acting Secretary.

[FR Doc. 99–18772 Filed 7–19–99; 3:28 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 4, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Paul H. and Neva M. Johnson, Algona, Iowa; to acquire additional voting shares of Mid-Iowa Bancshares Co., Algona, Iowa, and thereby indirectly acquire additional voting shares of Iowa State Bank, Algona, Iowa.

Board of Governors of the Federal Reserve System, July 15, 1999.

Robert deV. Frierson,
Associate Secretary of the Board.

[FR Doc. 99–18540 Filed 7–20–99; 8:45 am]

BILLING CODE 6210–01–F

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FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 13, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Somerset Bancorp, Inc., Somerset, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Somerset National Bank, Somerset, Kentucky.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Wewahitchka State Bank Employee Stock Ownership Plan, Wewahitchka, Florida; to become a bank holding company by retaining 43 percent of the voting shares of Wewahitchka State Bank, Wewahitchka, Florida.

Board of Governors of the Federal Reserve System, July 15, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18541 Filed 7–20–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Modification of Procedures for the September 1999 Changes in Deposit Reporting Frequency

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board is amending its procedures for shifting depository institutions among deposit reporting categories for September 1999. The adjustments to the usual category shift procedures are intended to help reduce the number and extent of modifications needed in the data processing systems of depository institutions close to the time of the century date change. The adjustments to the usual procedures are temporary; in September 2000, the normal category shift procedures will be employed.

EFFECTIVE DATE: August 1, 1999.

FOR FURTHER INFORMATION CONTACT: Gretchen Weinbach, Economist, Division of Monetary Affairs (202/452–2841). For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION: The Board has established five categories of deposit reporting for administering Regulation D, Reserve Requirements of Depository Institutions (12 CFR part 204), and for constructing and analyzing the monetary and reserve aggregates. Every institution is placed into one of these five categories for deposit reporting purposes.[1]

In general, the larger the institution, the more detailed or more frequent is its reporting. Two "detailed reporting" categories apply to institutions that are not exempt from reserve requirements.[2] Institutions subject to detailed reporting requirements file the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900) and, if applicable, the Report of Certain Eurocurrency Transactions (FR 2950 or FR 2951). Institutions file the reports either weekly or quarterly, depending on the level of the institution's deposits. Three reduced reporting categories apply to institutions that are exempt from reserve requirements. Institutions subject to reduced reporting file either the Quarterly Report of Selected Deposits, Vault Cash and Reservable Liabilities (FR 2910q), the Annual Report of Total Deposits and Reservable Liabilities (FR 2910a), or no report at all, depending on their deposit levels. Federal Reserve staff reviews the deposit levels and reservable liabilities of depository institutions each year and assigns institutions to new reporting categories effective in September of each year.

Table 1 shows the four categories of institutions that file deposit reports with the Federal Reserve (the fifth category, non-filing institutions, is not shown). The table shows the cutoff levels that would normally be in effect in September 1999.

TABLE 1.—DEPOSIT REPORT CATEGORIES

[With cutoff levels that would normally apply for September 1999]

Institutions exempt from reserve requirements (Reservable liabilities ≥ $4.9 million)		Institutions not exempt from reserve requirements (Reservable liabilities > $4.9 million)	
Annual Reporters	Quarterly Reporters	Quarterly Reporters	Weekly Reporters
• Have deposits < $52.6 million but ≥$4.9 million	• Have deposits ≥$52.6 million	• Have deposits < $81.9 million	• Have deposits ≥ $81.9 million.
• File a 2-item report (FR 2910a)	• File a 6-item report (FR 2910q)	• File a 14-item report (FR 2900)	• File a 14-item report (FR 2900).

[1] Depository institutions that are required to maintain reserves are defined in § 204.1(c) of Regulation D. Classes of institutions subject to deposit reporting include commercial banks, industrial banks and similar institutions, mutual or stock banks, building or savings and loan associations, homestead associations, credit unions, Edge and Agreement corporations and their branches, and U.S. branches and agencies of foreign banks.

[2] Institutions are exempt from reserve requirements if their total reservable liabilities are equal to or less than the exemption amount, which is indexed annually by 80 percent of the percentage increase in total reservable liabilities of all depository institutions measured on an annual basis as of June 30. No adjustment is made for a decrease in total reservable liabilities. The exemption amount effective for 1999 is $4.9 million.

The Board and other supervisory agencies required depository institutions to have their data processing systems ready for the century date change by June 30 and to manage any subsequent changes in their systems with great care. For some institutions, changes in reporting requirements due to a report category reclassification would necessitate system changes between August and September, 1999.

Under normal circumstances, there are six types of reporting category shifts that are compulsory: non-exempt quarterly reporters that shift to non-exempt weekly reporters, exempt quarterly reporters that shift to non-exempt weekly or quarterly reporters, and exempt annual reporters that shift to exempt quarterly reporters or non-exempt weekly or quarterly reporters. (Other reclassifications represent downward shifts to less burdensome reporting categories, which are permissible but not compulsory.)

TABLE 2.—CHANGES IN COMPULSORY REPORTING CATEGORY SHIFTS IN 1999 NORMAL CATEGORY SHIFTS IN 1999

From	To	STATUS IN 1999
Non-exempt quarterly (FR 2900)	Non-exempt weekly (FR 2900)	No shift required. (Continue to report quarterly on FR 2900.)
Exempt quarterly (FR 2910q)	Non-exempt weekly (FR 2900)	Shift to non-exempt quarterly. (Report quarterly on FR 2900.)
Exempt quarterly (FR 2910q)	Non-exempt quarterly (FR 2900)	Shift as usual. (Report quarterly on FR 2900.)
Exempt annual (FR 2910a)	Non-exempt weekly (FR 2900)	Shift to non-exempt quarterly. (Report quarterly on FR 2900.)
Exempt annual (FR 2910a)	Non-exempt quarterly (FR 2900)	Shift as usual. (Report quarterly on FR 2900.)
Exempt annual (FR 2910a)	Exempt quarterly (FR 2910q)	No shift required. (Continue to report annually on FR 2910a.)

The Board believes that two of the six compulsory reporting category shifts can be deferred until September 2000 without material adverse consequences to the enforcement of reserve requirements. As shown in Table 2, the Board has determined that any non-exempt institution that otherwise would be required to begin filing the FR 2900 on a weekly basis will instead be allowed to continue to file the same report on quarterly basis. In addition, institutions that have been and remain exempt from reserve requirements (that is, have reservable liabilities of $4.9 million or less) and that are currently reporting annually on form FR 2910a may continue to report annually on that form, even if their deposits have grown to a size that otherwise would require shifting to the quarterly exempt report (FR 2910q).

Given the Board's responsibility for enforcing reserve requirements, the deferral will not apply to any previously exempt institution that becomes non-exempt (that is, has reservable liabilities exceeding $4.9 million in 1999). In order to reduce the burden on such an institution, however, it will only be required to file the FR 2900 on a quarterly basis, even if it otherwise would have been required to report weekly. Of the four remaining compulsory category shifts, therefore, two will shift as usual (exempt quarterly and annual reporters that shift to non-exempt quarterly reporters) and two will shift to a less burdensome category than would normally apply (exempt quarterly and annual reporters that would normally shift to non-exempt weekly reporters will shift instead to non-exempt quarterly reporters).

In other respects, the reporting category shift procedures will remain unchanged. Existing weekly reporters that continue to meet the criteria for weekly reporting would not be allowed to shift to quarterly reporting. As usual, institutions that are allowed to shift to a less burdensome reporting category would not be compelled to do so. Normal category shift procedures will resume in September 2000.

By order of the Board of Governors of the Federal Reserve System, July 15, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–18542 Filed 7–20–99; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, July 26, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 16, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18668 Filed 7–16–99; 4:21 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Office of Communications; Ordering Stocked Standard and Optional Forms

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: To order all Standard and Optional forms that have national stock numbers, contact the following office within the Federal Supply Service: General Products Commodity Center, General Services Administration (7FXM), 819 Taylor Street, Fort Worth, TX 76102, (817) 978–2508.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams (202) 501–0581. This

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contact is for explanation for this notice only, not for ordering forms.

DATES: Effective July 21, 1999.

Dated: July 16, 1999.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 99–18638 Filed 7–20–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Implementation of the National Occupational Research Agenda (NORA), RFA OH–99–002, Program Area #8, Organization of Work: Demanding Work Schedules, Sleep Disorders, and Risk of Occupational Illness and Injury

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Implementation of the National Occupational Research Agenda (NORA), RFA OH–99–002, Program Area #8, Organization of Work: Demanding Work Schedules, Sleep Disorders, and Risk of Occupational Illness and Injury, meeting.

Times and Dates:

8 a.m.–8:30 a.m., August 2, 1999 (Open)
8:30 a.m.–Noon, August 2, 1999 (Closed)

Place: Embassy Suites Hotel, 1900 Diagonal Rd., Alexandria, Va. 22134.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to the NORA RFA OH–99–002.

Contact Person for More Information: Michael J. Galvin, Jr., Ph.D., Health Scientist Administrator, Office of Extramural Coordination and Special Projects, NIOSH, CDC, 1600 Clifton Rd., Atlanta, Ga. 30333. Telephone 404/639–3525, e-mail mtg3@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 15, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–18545 Filed 7–16–99; 1:49 pm]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Implementation of the National Occupational Research Agenda (NORA), RFA OH–99–002, Program Area #4, Exposure Assessment

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Implementation of the National Occupational Research Agenda (NORA), RFA OH–99–002, Program Area #4, Exposure Assessment, meeting.

Times and Dates:

8 a.m.–8:30 a.m., August 3, 1999 (Open)
8:30 a.m.–6 p.m., August 3, 1999 (Closed)

Place: Embassy Suites Hotel, 1900 Diagonal Rd., Alexandria, Va. 22134.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to the NORA RFA OH–99–002.

Contact Person For More Information: Michael J. Galvin, Jr., Ph.D., Health Scientist Administrator, Office of Extramural Coordination and Special Projects, NIOSH, CDC, 1600 Clifton Rd., Atlanta, Ga. 30333. Telephone 404/639–3525, e-mail mtg3@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 15, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–18544 Filed 7–16–99; 1:49 pm]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Implementation of the National Occupational Research Agenda (NORA), RFA OH–99–002, Program Area #5, Surveillance Research Methodology

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Implementation of the National Occupational Research Agenda (NORA), RFA OH–99–002, Program Area #5, Surveillance Research Methodology, meeting.

Times and Dates:

10 a.m.–10:30 a.m., August 2, 1999 (Open)
10:30 a.m.–6 p.m., August 2, 1999 (Closed)

Place: Embassy Suites Hotel, 1900 Diagonal Rd., Alexandria, Va. 22134.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to the NORA RFA OH–99–002.

Contact Person for More Information: Michael J. Galvin, Jr., Ph.D., Health Scientist Administrator, Office of Extramural Coordination and Special Projects, NIOSH, CDC, 1600 Clifton Rd., Atlanta, Ga. 30333. Telephone 404/639–3525, e-mail mtg3@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 16, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–18546 Filed 7–16–99; 1:49 pm]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: African American Community-Based Human Immunodeficiency Virus (HIV) Prevention Special Emphasis Panel (SEP): Cooperative Agreements for African American Community-Based Human Immunodeficiency Virus (HIV) Prevention

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: African American Community-Based Human Immunodeficiency Virus (HIV) Prevention Special Emphasis Panel (SEP): Cooperative Agreements for African American Community-Based Human Immunodeficiency Virus (HIV) Prevention, Program Announcement #99092, meeting.

Times and Dates:

8:30 a.m.–9:00 a.m., July 26, 1999 (Open)
9:00 a.m.–4:30 p.m., July 26, 1999 (Closed)
8:30 a.m.–4:30 p.m., July 27, 1999 (Closed)
8:30 a.m.–4:30 p.m., July 28, 1999 (Closed)
8:30 a.m.–4:30 p.m., July 29, 1999 (Closed)
8:30 a.m.–4:30 p.m., July 30, 1999 (Closed)

Place: Professional and Scientific Associates (PSA), 2635 Century Parkway, Suite 990, Atlanta, Georgia, 30345.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99092.

Contact Person for More Information: Megan Foley, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail MZF3@cdc.gov or Beth Wolfe at the same address and telephone, e-mail EOW1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 15, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–18547 Filed 7–16–99; 1:49 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Implementation of the National Occupational Research Agenda (NORA), RFA OH–99–002, Program Area #1, Intervention Effectiveness

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Implementation of the National Occupational Research Agenda (NORA), RFA OH–99–002, Program Area #1, Intervention Effectiveness.

Times and Dates:

8 a.m.–8:30 a.m., August 5, 1999 (Open)
8:30 a.m.–6 p.m., August 5, 1999 (Closed)
8 a.m.–6 p.m., August 6, 1999 (Closed)

Place: Embassy Suites Hotel, 1900 Diagonal Rd., Alexandria, Va. 22134.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to the NORA RFA OH–99–002.

Contact Person for More Information: Michael J. Galvin, Jr., Ph.D., Health Scientist Administrator, Office of Extramural Coordination and Special Projects, NIOSH, CDC, 1600 Clifton Rd., Atlanta, Ga. 30333. Telephone 404/639–3525, e-mail mtg3@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 15, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–18548 Filed 7–16–99; 1:49 pm]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Implementation of the National Occupational Research Agenda (NORA), RFA OH–99–002, Program Area #3, Hearing Loss

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Implementation of the National Occupational Research Agenda (NORA), RFA OH–99–002, Program Area #3, Hearing Loss.

Times and Dates:

8 a.m.–8:30 a.m., August 4, 1999 (Open)
8:30 a.m.–Noon, August 4, 1999 (Closed)

Place: Embassy Suites Hotel, 1900 Diagonal Rd., Alexandria, Va. 22134

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to the NORA RFA OH–99–002.

Contact Person For More Information: Michael J. Galvin, Jr., Ph.D., Health Scientist Administrator, Office of Extramural Coordination and Special Projects, NIOSH, CDC, 1600 Clifton Rd., Atlanta, Ga. 30333. Telephone 404/639–3525, e-mail mtg3@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 15, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–18549 Filed 7–16–99; 1:49 pm]

BILLING CODE 4163–19–P

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Implementation of the National Occupational Research Agenda (NORA), RFA OH–99–002, Program Area #6 Special Populations at Risk/Aging Workforce

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Implementation of the National Occupational Research Agenda (NORA), RFA OH–99–002, Program Area #6 Special Populations at Risk/Aging Workforce.

Times and Dates:

1 p.m.–1:30 p.m., August 4, 1999 (Open)
1:30 p.m.–6 p.m., August 4, 1999 (Closed)

Place: Embassy Suites Hotel, 1900 Diagonal Rd., Alexandria, Va. 22134.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to the NORA RFA OH–99–002.

Contact Person For More Information: Michael J. Galvin, Jr., Ph.D., Health Scientist Administrator, Office of Extramural Coordination and Special Projects, NIOSH, CDC, 1600 Clifton Rd., Atlanta, Ga. 30333. Telephone 404/639–3525, e-mail mtg3@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 15, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–18550 Filed 7–16–99; 1:49 pm]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2336]

Holliday Pigments, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Holliday Pigments, Ltd. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of manganese ammonium pyrophosphate (C.I. Pigment Violet 16) as a colorant for all polymers intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by August 20, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4670) has been filed by Holliday Pigments, Ltd., Morley St., Kingston upon Hull, HU8 8DN ENGLAND. The petition proposes to amend the food additive regulations in §178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of manganese ammonium pyrophosphate (C.I. Pigment Violet 16) as a colorant for all polymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 20, 1999, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 25, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–18582 Filed 7–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1458]

Enforcement Policy: Electronic Records; Electronic Signatures—Compliance Policy Guide; Guidance for FDA Personnel

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a new Compliance Policy Guide (CPG) section 160.850 entitled "Enforcement Policy: 21 CFR Part 11; Electronic Records; Electronic Signatures." This CPG is intended to represent the agency's current thinking on how to comply with the regulations for electronic records and electronic signatures. It also provides that agency decisions on whether or not to pursue regulatory actions will be based on a case-by-case evaluation. The text of the CPG is included in this document.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of CPG section 160.850 entitled "Enforcement Policy: 21 CFR Part 11; Electronic Records; Electronic Signatures" to the Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852. Send two self-addressed adhesive labels to assist that office in processing your requests. Written comments should be identified with the docket number found in brackets in the heading of this document and should be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A copy of the CPG is available on FDA's website at "http://www.fda.gov/ora/compliance_ref/cpg/cpggenl/default.htm". Scroll down the CPG page to locate section 160.850.

FOR FURTHER INFORMATION CONTACT: James F. McCormack, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852, 301–827–0425.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a new CPG section 160.850 entitled "Enforcement Policy: 21 CFR Part 11; Electronic Records; Electronic Signatures." The CPG is an update to the Compliance Policy Guides Manual (August 1996 ed.). It is a new CPG and will be included in the next printing of the Compliance Policy Guides Manual. The CPG is intended for FDA personnel and is available electronically to the public. See the **ADDRESSES** section for electronic access to the CPG. The CPG is a level 2 guidance which is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulation, or both.

The text of the CPG follows:

Section 160.850

Title: Enforcement Policy: 21 CFR Part 11; Electronic Records; Electronic Signatures (CPG 7153.17)

Background:

This compliance guidance document is an update to the Compliance Policy Guides Manual (August 1996 edition). This is a new Compliance Policy Guidance (CPG) and will be included in the next printing of the Compliance Policy Guidances Manual. The CPG is intended for Food and Drug Administration (FDA) personnel and is available electronically to the public. This guidance document represents the agency's current thinking on how to comply with 21 CFR Part 11, "Electronic Records; Electronic Signatures" and provides that agency decisions on whether or not to pursue regulatory actions will be based on a case by case evaluation. The CPG does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulation, or both.

In the **Federal Register** of March 20, 1997 at 62 FR 13430, FDA issued a notice of final rulemaking for 21 CFR, Part 11, Electronic Records; Electronic Signatures. The rule went into effect on August 20, 1997. Part 11 is intended to create criteria for electronic recordkeeping technologies while preserving the agency's ability to protect and promote the public health (e.g., by facilitating timely review and approval of safe and effective new medical products, conducting efficient audits of required records, and when necessary pursuing regulatory actions). Part 11 applies to all FDA program areas, but does not mandate electronic recordkeeping. Part 11 describes the technical and procedural requirements that must be met if a person chooses to maintain records electronically and use electronic signatures. Part 11 applies to those records required by an FDA predicate rule and to signatures required by an FDA predicate rule, as well as signatures that are not required, but appear in required records.

Part 11 was developed in concert with industry over a period of six years. Virtually all of the rule's requirements had been suggested by industry comments to a July 21, 1992 Advance Notice of Proposed Rulemaking (at 57 FR 32185). In response to comments to an August 31, 1994 Proposed Rule (at 59 FR 45160), the agency refined and reduced many of the proposed requirements in order to minimize the burden of compliance. The final rule's provisions are consistent with an emerging body of federal and state law as well as commercial standards and practices. Certain older electronic systems may not have been in full compliance with Part 11 by August 20, 1997, and modification to these so called "legacy systems" may take more time. As explained in the preamble to the final 1rule, Part 11 does not grandfather legacy systems and FDA expects that firms using legacy systems will begin taking steps to achieve full compliance.

Policy:

When persons are not fully compliant with Part 11, decisions on whether or not to pursue regulatory actions will be based on a case by case evaluation, which may include the following:

Nature and extent of Part 11 deviation(s). FDA will consider Part 11 deviations to be more significant if those deviations are numerous, if the deviations make it difficult for the agency to audit or interpret data, or if the deviations undermine the integrity of the data or the electronic system. For example, FDA expects that firms will use file formats that permit the agency to make accurate and complete copies in both human readable and electronic form of audited electronic records. Similarly, FDA would have little confidence in data from firms that do not hold their employees accountable and responsible for actions taken under their electronic signatures.

Effect on product quality and data integrity. For example, FDA would consider the absence of an audit trail to be highly significant when there are data discrepancies and when individuals deny responsibility for record entries. Similarly, lack of operational system checks to enforce event sequencing would be significant if an operator's ability to deviate from the prescribed order of manufacturing steps results in an adulterated or misbranded product.

Adequacy and timeliness of planned corrective measures. Firms should have a reasonable timetable for promptly modifying any systems not in compliance (including legacy systems) to make them Part 11 compliant, and should be able to demonstrate progress in implementing their timetable. FDA expects that Part 11 requirements for procedural controls will already be in place. FDA recognizes that technology based controls may take longer to install in older systems.

Compliance history of the establishment, especially with respect to data integrity. FDA will consider Part 11 deviations to be more significant if a firm has a history of Part 11 violations or of inadequate or unreliable recordkeeping. Until firms attain full compliance with Part 11, FDA investigators will exercise greater vigilance to detect inconsistencies, unauthorized modifications, poor attributability, and any other problems associated with failure to comply with Part 11.

Regulatory Action Guidance:

Program monitors and center compliance offices should be consulted prior to recommending regulatory action. FDA will consider regulatory action with respect to Part 11 when the electronic records or electronic signatures are unacceptable substitutes for paper records or handwritten signatures, and that therefore, requirements of the applicable regulations (e.g., CGMP and GLP regulations) are not met. Regulatory citations should reference such predicate regulations in addition to Part 11. The following is an example of a regulatory citation for a violation of the device quality system regulations.

Failure to establish and maintain procedures to control all documents that are required by 21 CFR 820.40, and failure to use authority checks to ensure that only authorized individuals can use the system and alter records, as required by 21 CFR 11.10(g). For example, engineering drawings for manufacturing equipment and devices are stored in AutoCAD form on a desktop computer. The storage device was not protected from unauthorized access and modification of the drawings.

Dated: July 1, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–18581 Filed 7–20–99; 8:45 am]

BILLING CODE 4160–01–F

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Year 2000 Community Health Center and National Health Service Corps User/Visit Survey (OMB No. 0915–0185)

The purpose of this study is to conduct a sample survey which has three components: (1) A pilot study, including an evaluation of both retrospective and prospective sampling methodologies; (2) a personal interview survey of Community Health Center (CHC) and National Health Service Corps (NHSC) site users; and (3) a record-based study of visits to CHCs and NHSC sites. CHCs and NHSC sites serve predominantly poor minority medically underserved populations. The proposed user and visit survey will collect in-depth information about CHC and NHSC site users, their health status, the reasons they seek care, their diagnoses, and the services utilized in a medical encounter.

The Year 2000 User/Visit Survey builds on a 1995 User/Visit Survey which was conducted to learn about the process and outcomes of care in CHC users. The 1995 User/Visit Survey included a personal interview of approximately 2000 users of 48 selected CHCs as well as medical record abstractions for about 3000 visits to these same health centers. The interview questionnaire was derived from the National Health Interview Survey (NHIS) conducted by the National Center for Health Statistics (NCHS) and the visit survey was an adaptation of the NCHS National Hospital Ambulatory Medical Care Survey (NHAMCS). Conformance with the NHIS and NHAMCS allowed comparisons between these NCHS surveys and the User/Visit Survey.

The Year 2000 User/Visit Survey was developed using similar questionnaire methodology in conjunction with a contractor and will allow longitudinal comparisons for CHCs with the 1995 version of the survey data, including monitoring of process outcomes over time. The Year 2000 User/Visit Survey is the first year that NHSC non-grantee, freestanding sites will be surveyed.

The estimated response burden for the pilot test is as follows:

Pilot survey	Number of respondents	Responses per respondent	Total respondents	Hours per response	Total burden hours
CHCs	350	1	350	1.3	455
NHSC	150	1	150	1.3	195
Total			500		650

The estimated response burden for the main survey is as follows:

Main survey	Number of respondents	Responses per respondent	Total respondents	Hours per response	Total burden hours
CHCs	2300	1	2300	1.3	2990
NHSC	1000	1	1000	1.3	1300
Total			3300		4290

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 14, 1999.

James J. Corrigan,

Associate Administrator for Management and Program Support.

[FR Doc. 99–18584 Filed 7–20–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Annual Administrative Reporting System for the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act (RWCA) of 1990 for Titles I and II (OMB No. 0915–0166)

OMB approval is requested for the Annual Administrative Reporting System (AAR) established in 1994 to collect information from grantees and their subcontracted service providers. The AARs collect aggregate information from grantees about the disbursal of funds, number of clients served and services provided, demographic information about clients served, and cost of providing services funded under Title I and II of the Ryan White CARE Act.

The primary purposes of the AARs are to: (1) Document the use of Title I and Title II funds and the providers who received them, (2) assess the effects of these funds on the number and diversity of individuals served, (3) evaluate the quantity of services received, and (4) help examine the effectiveness of coordinated systems of care in meeting the needs of individuals living with HIV. In addition to meeting the goal of accountability to Congress, clients, advocacy groups, and the general public, the AAR supports critical efforts by HRSA, State and local grantees, and providers to assess the status of existing HIV-related service delivery systems.

Separate reports were developed to collect aggregate data from the three program types that receive funds under Title I and/or Title II: (1) Title I programs, Title II Consortia, and Title II Home- and Community-Based programs; (2) centrally administered State programs for the continuation of health insurance; and (3) State programs providing HIV prescription drug assistance.

The following changes to the AAR are proposed to improve the accuracy of the data collected, reduce respondent burden, and facilitate local analysis of primary medical care outcome measures: Certain funding questions will be eliminated, all questions will require numerical responses, not percentages; some questions will be restricted to certain providers; an optional set of questions has been added to help evaluate primary medical services for local planning and evaluation needs.

The estimated response burden is as follows:

Form name	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Standard Annual Administrative Report (SAAR)					
Providers	2,600	1	2,600	14	36,400
Grantees	107	1	107	25	2,675
AIDS Pharmaceutical Assistance Annual Administrative Report (includes State ADAP and local APA pharmaceutical programs)					
Administrator/Grantee	158	1	158	25	3,950
Health Insurance Continuation Program (HICP) Annual Administrative Report					
Administrator/Grantee	35	1	35	15	525
Total	2,900	1	2,900		43,550

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 14, 1999.

James J. Corrigan,

Associate Administrator for Management and Program Support.

[FR Doc. 99–18585 Filed 7–20–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

AIDS Education and Training Centers Program Grants

AGENCY: Health Resources and Services Administration, Department of Health and Human Services.

ACTION: Notice of limited competition.

SUMMARY: The Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau (HAB) announces a limited competition to support regional AIDS Education and Training Centers in the following regional areas: Delta Region (serving Arkansas, Louisiana, Mississippi), Mid Atlantic Region serving Delaware, Maryland, Virginia, West Virginia, Washington, DC and Texas/Oklahoma Region to provide state-of-the-art treatment education, training consultation and support to health care professionals treating HIV seropositive patients for HRSA's AIDS Education Training Centers Program under section 2692(a) of the Public Health Service Act as amended by Pub. L. 104–146, the Ryan White Comprehensive Aids Resources Emergency Act Amendments of 1996. Assistance will be provided only to these there regional areas. No other applications are solicited, nor will they be accepted.

Approximately $2,500,000 is available in fiscal year 1999. The first budget period will be for 9 months with a start date of October 1, 1999. The total project period will be for 2 years 9 months. Continuation awards within the project period will have a July 1 start date with a 12 month budget period and

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will be made on the basis of satisfactory progress and the availability of funds.

HRSA is limiting competition to the three regional areas because during the previously announced competitive cycle, applications submitted for the three regional areas did not successfully compete for funds. It is HRSA's intent to fund AETC Programs in all regions of the United States. This limited competition will focus on supporting a regional AETC Program in each of the three regions to provide state-of-the-art treatment education, training, consultation, and support to health care professionals treating HIV seropositive patients for the Health Resources and Services Administration's AETC Programs during the period of support.

DATES: Applications for these announced grants must be received in the Grants HRSA Application Center by the close of business September 1, 1999 to be considered for competition. Applications will meet the deadline if they are either (1) received on or before the deadline date or (2) postmarked on or before the deadline date, and received in time for submission to the objective review panel. A legibly dated receipt from a commercial carrier of U.S. Postal Service will be accepted as proof of timely mailing. Applications received after the deadline will be returned to the applicant.

ADDRESSES: All applications should be mailed or delivered to: Grants Management Officer, HRSA Grants Application Center, Parklawn Building, 5600 Fishers Lane, Room 4–91, Rockville, Maryland 20857. Grant applications sent to any address other than that above are subject to being returned. **Federal Register** notices and application guidance for the HIV/AIDS Bureau program are available on the World Wide Web via the Internet. The web site for the HIV/AIDS Bureau is: *http://www.hrsa.gov/hab/*. Federal grant application kits are available at the following Internet address: http://forms.psc.gov/phsforms.htm. For those applicants who are unable to access application materials electronically, a hard copy of the official grant application kit (PHS Form 6025–1) must be obtained from the HRSA Grants Application Center. The Center may be contacted by (telephone, 1–888–300–4772) FAX: 301–309–0579, or 3 e-mail, HRSA.GAC@ix.netcom.com.

FOR FURTHER INFORMATION CONTACT: Additional Information may be obtained from Mrs. Juanita Koziol, Deputy Branch Director, HIV Education Branch, Division of Training and Technical Assistance, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 9A–39, Rockville, Maryland 20857. Telephone number (301) 443–6364 and the FAX: (301) 443–9887.

Dated: July 14, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–18583 Filed 7–20–99; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Draft OIG Compliance Program Guidance for Hospices

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice and comment period.

SUMMARY: This **Federal Register** notice seeks the comments of interested parties on draft compliance guidance developed by the Office of Inspector General (OIG) for the hospice industry. Through this notice, the OIG is setting forth its general views on the value and fundamental principles of hospice compliance programs, and the specific elements that the hospice industry should consider when developing and implementing an effective compliance program.

DATES: To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on August 20, 1999.

ADDRESSES: Please mail or deliver written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–6P–CPG, Room 5246, Cohen Building, 330 Independence Avenue, SW, Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–6P–CPG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 2 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, SW, Washington, DC 20201 on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Michael Shaw, Office of Counsel to the Inspector General, (202) 619–2078.

SUPPLEMENTARY INFORMATION:

Background

The creation of compliance program guidance is a major initiative of the OIG in its effort to engage the private health care community in addressing and fighting fraud and abuse. In the last several years, the OIG has developed and issued compliance program guidance directed at the following segments of the health care industry:

- Clinical Laboratories (62 FR 9435; March 3, 1997, as amended in 63 FR 45076; August 24, 1998),
- Hospitals (63 FR 8987; February 23, 1998),
- Home Health Agencies (63 FR 42410; August 7, 1998),
- Third-Party Medical Billing Companies (63 FR 70138; December 18, 1998), and
- Durable Medical Equipment, Prosthetics, Orthotics and Supply Industry (64 FR 36368; July 6, 1999).

Copies of these compliance program guidances can also be found on the OIG web site at http://www.os.dhhs.gov/oig.

Developing Draft Compliance Program Guidance for the Hospice Industry

On January 13, 1999, the OIG published a solicitation notice seeking information and recommendations for developing formal guidance for the hospice industry (64 FR 2228). In response to that solicitation notice, the OIG received 11 comments from various outside sources. In developing this notice for formal public comment, we have considered those comments, as well as previous OIG publications, such as other compliance program guidances and Special Fraud Alerts. We have also taken into account past and recent fraud investigations conducted by the OIG's Office of Investigations and the Department of Justice, and have consulted with the Health Care Financing Administration.

This draft guidance for the hospice industry contains seven elements that the OIG has determined are fundamental to an effective compliance program:

- Implementing written policies;
- Designating a compliance officer and compliance committee;
- Conducting effective training and education;
- Developing effective lines of communication;
- Conducting internal monitoring and auditing;
- Enforcing standards through well-publicized disciplinary guidelines; and
- Responding promptly to detected offenses and developing corrective action.

These elements are contained in the other guidance issued by the OIG, indicated above. As with the previously-issued guidances, this draft compliance program guidance represents the OIG's suggestions on how the hospice industry can best establish internal controls and prevent fraudulent activities. The contents of this guidance should not be viewed as mandatory or as an exclusive discussion of the advisable elements of a compliance program; the guidance is intended to present voluntary guidance to the industry and not represent binding standards for hospices.

Public Input and Comment in Developing Final Guidance

In an effort to ensure that all parties have an opportunity to provide input into the OIG's guidance, we are publishing this guidance in draft form. We welcome any comments from interested parties regarding this guidance. We will consider all comments that are received within the above-cited time frame, incorporate any specific recommendations as appropriate, and prepare a final version of the guidance thereafter for publication in the **Federal Register**.

Draft Compliance Program Guidance for the Hospice Industry (July 1999)

I. Introduction

The Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) continues to promote voluntarily developed and implemented compliance programs for the health care industry. The following compliance program guidance is intended to assist hospices [1] and their agents and subproviders (referred to collectively in this document as "hospices") develop effective internal controls that promote adherence to applicable Federal and State law, and the program requirements of Federal, State, and private health plans. The adoption and implementation of voluntary compliance programs significantly advance the prevention of fraud, abuse, and waste in these health care plans while at the same time further the fundamental mission of all hospices, which is to provide palliative care [2] to patients.

Within this document, the OIG first provides its general views on the value and fundamental principles of hospice compliance programs, and then provides the specific elements that each hospice should consider when developing and implementing an effective compliance program. While this document presents basic procedural and structural guidance for designing a compliance program, it is not in itself a compliance program. Rather, it is a set of guidelines to be considered by a hospice interested in implementing a compliance program.

The OIG recognizes the size-differential that exists between operations of the different hospices and organizations that compose the hospice industry. Appropriately, this guidance is pertinent for all hospices, whether for-profit or non-profit, hospital-based or free-standing, community-based or volunteer-based, large or small, urban or rural. The applicability of the recommendations and guidelines provided in this document depends on the circumstances of each particular hospice. However, regardless of a hospice's size and structure, the OIG believes that every hospice can and should strive to accomplish the objectives and principles underlying all of the compliance policies and procedures recommended within this guidance.

Fundamentally, compliance efforts are designed to establish a culture within a hospice that promotes prevention, detection, and resolution of instances of conduct that do not conform to Federal and State law, and Federal, State, and private payor health care program requirements, as well as the hospice's business policies. In practice, the compliance program should effectively articulate and demonstrate the organization's commitment to ethical conduct. Compliance programs guide a hospice's governing body (*e.g.*, board of directors or trustees), chief executive officer (CEO), managers, physicians, clinicians, billing personnel, and other employees in the efficient management and operation of a hospice. Eventually, a compliance program should become part of the fabric of routine hospice operations.

It is incumbent upon a hospice's corporate officers and managers to provide ethical leadership to the organization and to assure that adequate systems are in place to facilitate ethical and legal conduct. Employees, managers, and the Government will focus on the words and actions of a hospice's leadership as a measure of the organization's commitment to compliance. Indeed, many hospices have adopted mission statements articulating their commitment to high ethical standards. A formal compliance program, as an additional element in this process, offers a hospice a further concrete method that may improve the appropriateness and quality of care and reduce waste. Compliance programs also provide a central coordinating mechanism for furnishing and disseminating information and guidance on applicable Federal and State statutes, regulations, and other requirements.

Implementing an effective compliance program requires a substantial commitment of time, energy, and resources by senior management and the hospice's governing body.[3] Superficial programs that simply purport to comply with the elements discussed and described in this guidance or programs that are hastily constructed and implemented without appropriate ongoing monitoring will likely be ineffective and could expose the hospice to greater liability than no program at all. While it may require significant additional resources or reallocation of existing resources to implement an effective compliance program, the OIG believes that the long term benefits of implementing the program outweigh the costs.[4]

A. Benefits of a Compliance Program

The OIG believes an effective compliance program provides a mechanism that brings the public and private sectors together to reach mutual goals of reducing fraud and abuse, strengthening operational quality, improving the quality of health care services, and reducing the cost of health care. Attaining these goals provides positive results to hospices, the Government, and individual citizens alike. In addition to fulfilling its legal duty to ensure that it is not submitting false or inaccurate claims to Government and private payors, a hospice may gain numerous additional benefits by voluntarily implementing an effective compliance program. These benefits may include the ability to:

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[1] The term "hospice" is applied in this document as the term "hospice program" is defined in 42 U.S.C. 1395x(dd).

[2] Palliative care is an intensive program of care that focuses on the relief of pain and suffering associated with a terminal illness. Through this emphasis on palliative rather than curative services, individuals have a choice whenever conventional approaches for medical treatment may no longer be appropriate. Hospice addresses the needs of terminally ill individuals by including the patient and family, specially trained volunteers, caregivers from the community, and representatives from medicine, nursing, social work, and spiritual counseling in the caregiving team.

[3] Recent case law suggests that the failure of a corporate director to attempt in good faith to institute a compliance program in certain situations may be a breach of a director's fiduciary obligation. *See, e.g., In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959 (Ct. Chanc. Del. 1996).

[4] The conclusion of a recent report by the United States General Accounting Office (GAO) to Congress stated that "despite the investment of time and resources that compliance programs entail, many hosptials believe the benefits of these programs * * * outweigh their costs * * * and providers themselves believe that compliance programs can reduce improper Medicare payments." *See* GAO report GAO/HEHS–99–59 (April 1999).

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- Formulate effective controls to assure compliance with Federal and State statutes, rules, and regulations, and Federal, State and private payor health care program requirements, and internal guidelines;
- Concretely demonstrate to employees and the community at large the hospice's strong commitment to honest and responsible provider and corporate conduct;
- Identify and prevent illegal and unethical conduct;
- Improve internal communication;
- More quickly and accurately react to employees' operational compliance concerns and target resources to address those concerns;
- Improve the quality, efficiency, and consistency of patient care;
- Create a centralized source for distributing information on health care statutes, regulations, and other program directives regarding fraud, waste, and abuse, and related issues;
- Formulate a methodology that encourages employees to report potential problems;
- Develop procedures that allow the prompt, thorough investigation of alleged misconduct by corporate officers, managers, employees, independent contractors, consultants, volunteers, physicians, nurses, and other health care professionals;
- Initiate immediate, appropriate, and decisive corrective action; and
- Minimize, through early detection and reporting, the loss to the Government from false claims, and thereby reduce the hospice's exposure to civil damages and penalties, criminal sanctions, and administrative remedies, such as program exclusion.[5]

Overall, the OIG believes that an effective compliance program is a sound investment on the part of a hospice.

The OIG recognizes that the implementation of a compliance program may not entirely eliminate fraud, abuse, and waste from the hospice system. However, a sincere effort by hospices to comply with applicable Federal and State standards, as well as the requirements of private health care programs, through the establishment of an effective compliance program, significantly reduces the risk of unlawful or improper conduct.

B. Application of Compliance Program Guidance

Given the diversity within the industry, there is no single "best" hospice compliance program. The OIG understands the variances and complexities within the hospice industry and is sensitive to the differences among large national and regional multi-hospice organizations, small independent hospices, and other types of hospice organizations and systems. However, elements of this guidance can be used by all hospices, regardless of size, location, or corporate structure, to establish an effective compliance program. Similarly, a hospital or corporation that owns a hospice or provides hospice services may incorporate these elements into its system-wide compliance or managerial structure. We recognize that some hospices may not be able to adopt certain elements to the same comprehensive degree that others with more extensive resources may achieve. This guidance represents the OIG's suggestions on how a hospice can best establish internal controls and monitoring to correct and prevent fraudulent activities. By no means should the contents of this guidance be viewed as an exclusive discussion of the advisable elements of a compliance program. On the contrary, the OIG strongly encourages a hospice to develop and implement compliance elements that uniquely address its own particular risk areas.

The OIG believes that input and support by the individuals and organizations that will use the tools set forth in this document are critical to the development and success of this compliance program guidance. In a continuing effort to collaborate closely with the private sector, the OIG placed a notice in the **Federal Register** soliciting recommendations and suggestions on what should be included in this Compliance Program Guidance.[6] Further, we took into consideration previous OIG publications, such as Special Fraud Alerts, the recent findings and recommendations in reports issued by OIG's Office of Audit Services and Office of Evaluation and Inspections, as well as the experience of past and recent fraud investigations related to hospices conducted by OIG's Office of Investigations and the Department of Justice. As appropriate, this guidance may be modified and expanded as more information and knowledge is obtained by the OIG, and as changes in the law, rules, policies, and procedures of the Federal, State, and private health plans occur.

The OIG recognizes that the development and implementation of compliance programs in hospices often raise sensitive and complex legal and managerial issues.[7] However, the OIG wishes to offer what it believes is critical guidance for providers who are sincerely attempting to comply with the relevant health care statutes and regulations.

II. Compliance Program Elements

The elements proposed by these guidelines are similar to those of other compliance program guidances[8] and the OIG's corporate integrity agreements.[9] The elements represent a guide that can be tailored to fit the needs and financial realities of a particular hospice. The OIG is cognizant that, with regard to compliance programs, one model is not suitable to every hospice.

The OIG believes that every effective compliance program must begin with a formal commitment[10] by the hospice's governing body to include all of the applicable elements listed below. These elements are based on the seven steps of the Federal Sentencing Guidelines.[11] Further, we believe that every hospice can implement most of our recommended elements that expand upon these seven steps. We recognize that full implementation of all elements may not be immediately feasible for all hospices. However, as a first step, a good faith and meaningful commitment on the part of the hospice administration, especially the governing body and the CEO, will substantially contribute to a program's successful implementation. As the compliance program is implemented, that commitment should cascade down through the management of the hospice to every employee at all levels in the organization.

At a minimum, comprehensive compliance programs should include the following seven elements:

(1) The development and distribution of written standards of conduct, as well as written policies and procedures, which promote the hospice's commitment to compliance and address specific areas of potential fraud, such as assessment of Medicare eligibility, quality assurance, and financial relationships with nursing facilities and other health care professionals and entities.

(2) The designation of a compliance officer and other appropriate bodies, *e.g.*, a corporate compliance committee, charged with the responsibility for operating and monitoring the compliance program, and who report directly to the CEO and the governing body.[12]

(3) The development and implementation of regular, effective education and training programs for all affected employees.

(4) The creation and maintenance of a process, such as a hotline or other reporting system, to receive complaints and ensure effective lines of communication between the compliance officer and all employees, and the adoption of procedures to protect the anonymity of complainants and to protect whistleblowers from retaliation.

(5) The use of audits and/or other evaluation techniques to monitor compliance, identify problem areas, and assist in the reduction of identified problem areas.

(6) The development of appropriate disciplinary mechanisms to enforce standards and the development of policies to address (i) employees who have violated internal compliance policies, applicable statutes, regulations, or Federal health care program requirements[13] and (ii) the employment of sanctioned and other specified individuals.

(7) The development of policies that direct prompt and proper responses to detected offenses, including the initiation of appropriate corrective action and preventative measures.

A. Written Policies and Procedures

Every compliance program should require the development and distribution of written compliance policies, standards, and practices that identify specific areas of risk and vulnerability to the hospice. These policies, standards, and practices should be developed under the direction and supervision of, or subject to review by, the compliance officer and compliance committee and, at a minimum, should be provided to all individuals who are affected by the particular policy at issue, including the hospice's agents and independent contractors.[14]

1. Standards of Conduct

Hospices should develop standards of conduct for all affected employees that include a clearly delineated commitment to compliance by the hospice's senior management[15] and its divisions, including affiliated providers operating under the hospice's control[16] and other health care professionals (*e.g.*, hospice physicians,[17] nurses, physical therapists, occupational therapists, social workers, spiritual counselors, bereavement counselors, and volunteers). Standards should articulate the hospice's commitment to comply with all Federal, State, and private insurer standards, with an emphasis on preventing fraud and abuse. They should explicitly state the organization's mission, goals, and ethical requirements of compliance and reflect a carefully crafted, clear expression of expectations for all hospice governing body members, officers, managers, employees, physicians, clinicians, and, where appropriate, volunteers, contractors and other agents. These standards should promote integrity, support objectivity, and foster trust. Standards should not only address compliance with statutes and regulations, but should also set forth broad principles that guide employees in conducting business professionally and properly.

The standards should be distributed to, and comprehensible by, all affected employees (*e.g.*, translated into other languages when necessary and written at appropriate reading levels). Standards should not only address compliance with statutes and regulations, but should also set forth broad principles that guide employees in conducting business professionally and properly. Further, to assist in ensuring that employees continuously meet the expected high standards set forth in the code of conduct, any employee handbook delineating or expanding upon these standards of conduct should be regularly updated as applicable statutes, regulations, and Federal health care program requirements are modified and/or clarified.[18]

Continued

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[5] The OIG, for example, will consider the existence of an *effective* compliance program that pre-dated any governmental investigation when addressing the appropriateness of administrative sanctions. *See* 62 FR 67392 (December 24, 1997). The burden is on the provider to demonstrate the operational effectiveness of a compliance program. Further, the False Claims Act, 31 U.S.C. 3729–3733, provides that a person who has violated the Act, but who voluntarily discloses the violation to the Government, in certain circumstances will be subject to not less than double, as opposed to treble, damages. *See* 31 U.S.C. 3729(a).

[6] *See* 64 FR 2228 (January 13, 1999), Notice for Solicitation of Information Recommendations for Developing OIG Compliance Program Guidance for the Hospice Industry.

[7] Nothing stated within this document should be substituted for, or used in lieu of, competent legal advice from counsel.

[8] *See* 63 FR 70138 (December 18, 1998) for the Compliance Program Guidance for Third Party Medical Billing Companies; 63 FR 42410 (August 7, 1998) for the Compliance Program Guidance for Home Health Agencies; 63 FR 45076 (August 24, 1998) for the Compliance Program Guidance for Clinical Laboratories, as revised; 63 FR 8987 (1998) for the Compliance Program Guidance for Hospitals. These documents are also located on the Internet at http://www.dhhs.gov/progorg/oig.

[9] Corporate integrity agreements are executed as part of a civil settlement between the health care provider and the Government to resolve a case based on allegations of health care fraud or abuse. These OIG-imposed programs are in effect for a period of three to five years and require many of the elements included in this compliance program guidance.

[10] *E.g.*, a resolution by the board of directors, owner(s) or president, where applicable, and the allocation of adequate resources to ensure that each of the elements is addressed.

[11] *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(k). The Federal Sentencing Guidelines are detailed policies and practices for the Federal criminal justice system that prescribe the appropriate sanctions for offenders convicted of Federal crimes.

[12] The integral functions of a compliance officer and a corporate compliance committee in implementing an effective compliance program are discussed throughout this compliance program guidance. However, the OIG recognizes that a hospice may tailor the structure of those positions in consideration of the size and design of the hospice, while endeavoring to address and accomplish all of the underlying objectives of a compliance officer and a corporate compliance committee. *See* section II.B. and accompanying notes.

[13] The term "Federal health care programs" is applied in this document as defined in 42 U.S.C. 1320a–7b(f), which includes any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government *i.e.*, via programs such as Medicare, Federal Employees' Compensation Act, Black Lung, or the Longshore and Harbor Worker's Compensation Act) or any State health plan (*e.g.*, Medicaid, or a program receiving funds from block grants for social services or child health services). Also, for the purpose of this document, the term "Federal health care program requirements" refers to the statutes, regulations, rules, requirements, directives, and instructions governing Medicare, Medicaid, and all other Federal health care programs.

[14] According to the Federal Sentencing Guidelines, an organization must have established compliance standards and procedures to be followed by its employees and other agents in order to receive sentencing credit for an "effective" compliance program. The Federal Sentencing Guidelines define "agent" as "any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization." *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3.

[15] The OIG strongly encourages high-level involvement by the hospice's governing body, CEO, chief operating officer, general counsel, and chief financial officer, as well as other medical or clinical personnel, as appropriate, in the development of standards of conduct. Such involvement should help communicate a strong and explicit statement of compliance goals and standards.

[16] *E.g.*, attending physicians, pharmacies, durable medical equipment suppliers, hospitals, nursing homes, home health agencies, and supplemental staffing entities.

[17] When the term "hospice physician" is applied in this document, it refers to the hospice's medical director or the physician member of a hospice's Interdisciplinary Group. The "Interdisciplinary Group," which is composed of at least a doctor of medicine or osteopathy, registered nurse, medical social worker, and pastoral or other counselor, is responsible for: (1) participation in the establishment of the plan of care; (2) provision of supervision of hospice care and services; (3) periodic review and updating of the plan of care for each individual receiving hospice care; (4) establishment of policies governing the day-to-day provision of hospice care and services. *See* 42 CFR 418.68.

[18] The OIG recognizes that not all standards, policies, and procedures need to be communicated to all employees. However, the OIG believes that the bulk of the standards that relate to complying with fraud and abuse laws and other ethical areas

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When they first begin working for the hospice, and each time new standards of conduct are issued, employees should be asked to sign a statement certifying that they have received, read, and understood the standards of conduct. An employee's certification should be retained by the hospice in the employee's personnel file, and available for review by the compliance officer.

2. Risk Areas

The OIG believes that a hospice's written policies and procedures should take into consideration the particular statutes, rules, and program instructions that apply to each function or department of the hospice.[19] In contrast to the standards of conduct, which are designed to be a clear and concise collection of fundamental standards, the written policies should articulate specific procedures that hospice staff should follow.

Consequently, we recommend that these policies and procedures be coordinated with the appropriate training and educational programs, with an emphasis on areas of special concern that have been identified by the OIG through its investigative and audit functions.[20] Some of the special areas of OIG concern include:[21]

- Uninformed consent to elect the Medicare Hospice Benefit;[22]
- Discriminatory admission;[23]
- Admitting patients to hospice care who are not terminally ill;[24]
- Arrangement with another health care provider who a hospice knows is submitting claims for services already covered by the Medicare Hospice Benefit;[25]
- Under-utilization;[26]
- Falsified medical records or plans of care;[27]
- Untimely and/or forged physician certifications on plans of care;
- Inadequate or incomplete services rendered by the Interdisciplinary Group;[28]
- Insufficient oversight of patients receiving more than six consecutive months of hospice care;[29]
- Hospice incentives to actual or potential referral sources (*e.g.*, physicians, nursing homes, hospitals, patients, etc.) that may violate the anti-kickback statute or other similar Federal or State statute or regulation,[30]

should be addressed and made part of all affected employees' training. The hospice must decide which additional educational programs should be limited to the different levels of employees, based on job functions and areas of responsibility.

[19] A hospice can conduct focus groups composed of managers from various departments to solicit their concerns and ideas about compliance risks that may be then addresses by the hospice's policies and procedures. Such employee participation in the development of the hospice's compliance program can promote its credibility and foster employee acceptance of the program.

[20] The OIG periodically issues Special Fraud Alerts setting forth activities believed to raise legal and enforcement issues. For example, *see* OIG Special Fraud Alert—"Fraud and Abuse in Nursing Home Arrangements with Hospices" (March 1998); *see also* OIG Medicare Advisory Bulletin on Hospice Benefits (November 1995). Hospice compliance programs should require that the legal staff, compliance officer, or other appropriate personnel carefully consider any and all Special Fraud Alerts issued by the OIG that relate to hospices. Moreover, the compliance programs should address the ramifications of failing to cease and correct any conduct criticized in a Special Fraud Alert, if applicable to hospices, or to take reasonable action to prevent such conduct from reoccurring in the future. If appropriate, a hospice should take the steps described in section II.G. regarding investigations, reporting, and correction of identified problems.

[21] Hospices may also want to consult the OIG's Work Plan when conducting the risk assessment. The OIG Work Plan details the various projects the OIG intends to address in the applicable fiscal year. It should be noted that the priorities in the Work Plan are subject to modification and revision as the year progresses and it does not represent a complete or final list of areas of concern to the OIG. The Work Plan is currently available on the Internet at http://www.os.dhhs.gov/oig.

[22] A hospice must ensure that an individual (or authorized representative) is informed about the palliative nature of the care and services that may be provided if the individual desires to elect the Medicare Hospice Benefit. 42 CFR 418.62. The decision to elect the Medicare Hospice Benefit has significant consequences because the patient waives the right to receive standard Medicare benefits related to the terminal illness, including all treatment for the purposes of curing the terminal illness. *See* 42 U.S.C. 1395d(d). A patient's hospice election statement must include the following items of information: (1) identification of the particular hospice that will provide care to the individual; (2) the individual's or representative's acknowledgment that he or she has been given a full understanding of hospice care; (3) the individual's or representative's acknowledgment that he or she understands that certain Medicare services are waived by the election; (4) the effective date of the election; and (5) the signature of the individual or representative. *See Medicare Hospice Manual* § 210.

[23] Hospices should offer palliative care to all terminally ill individuals and their families who are eligible, regardless of age, gender, nationality, race, creed, sexual orientation, or disability.

[24] For a hospice patient to receive reimbursement for hospice services under Medicare, the patient must be "terminally ill." *See* 42 U.S.C. 1395d(a). An individual is considered to be "terminally ill" if the individual has a medical prognosis that the individual's life expectancy is six months or less if the illness runs its normal course. 42 CFR 418.3. In March 1995, Operation Restore Trust (ORT), a joint initiative, was established between the OIG, HCFA, and Administration on Aging. Among its projects, ORT assessed the medical eligibility for hospice services in the five largest States in terms of Medicare spending (New York, Florida, Illinois, Texas, and California). Through ORT activities, it was discovered that many beneficiaries receiving Medicare hospice benefits did not have a terminal illness as defined by Medicare. *See* OIG report A–05–96–00023—"Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments." In addition, OIG investigators have encountered hospices that asked nurse employees to alter notes in patients' records or to otherwise misrepresent patients' medical conditions, in order to falsify the existence of a terminal condition. *See also* section II.A.3.a. and accompanying notes.

[25] When an individual makes an election to receive services covered by the Medicare Hospice Benefit, that individual waives the right to receive Medicare reimbursement for any treatment related to his or her terminal illness. Accordingly, a hospice should ensure it is not involved with a health care provider who the hospice knows submits claims for the following services that are unallowable for reimbursement under the Medicare Hospice Benefit: (1) standard Medicare benefits for treatment of the terminal illness; (2) treatment by another hospice not arranged for by the patient's hospice; and (3) care from another provider that duplicates care the hospice is required to furnish. *See* 42 U.S.C. 1395d(d). It is expected that the hospice provider will work with other providers to coordinate care and ensure appropriate billing if these situations occur.

[26] In other words, knowing denial of needed care in order to keep costs low. A hospice is accountable for the appropriate allocation and utilization of its resources in order to provide optimal care consistent with the needs of a patient, family, and/or lawful representative. When a patient is receiving hospice care, the hospice is paid a predetermined fee for a each day during the length of care, no matter how much care the hospice actually provides. This means that a hospice may have a financial incentive to reduce the number of services provided to each patient, because the hospice will get paid the same amount regardless of the number of services provided. The OIG has received complaints about hospices neglecting patient needs and ignoring reasonable requests for treatment, including complaints about limited availability of durable medical equipment for patients as their medical condition decreases and failure to provide continuous care for periods of crisis due to staff shortages. The OIG has also been alerted to improper utilization of services that occurs when a hospice encourages a patient to revoke the Medicare Hospice Benefit for the purpose of obtaining expensive care under the standard Medicare benefits, only to re-elect the Medicare Hospice Benefit when expensive care is no longer necessary.

[27] OIG investigations have revealed that certain hospices have falsified or "re-created" patient medical records and plans of care to exaggerate the negative aspects regarding a hospice patient's condition to justify reimbursement. *See* section II.A.3.b. and accompanying notes.

[28] Each hospice is required to have an "Interdisciplinary Group" of personnel. *See* 42 U.S.C. 1395x(dd)(2)(B). *See* note 17. Failure of the Interdisciplinary Group to meet its responsibilities may result in substandard care. In addition, inadequate review of a hospice patient may result in improper reimbursement for services provided to a patient who fails to continue to be eligible for the Medicare Hospice Benefit.

[29] Since the enactment of the Balanced Budget Act of 1997, the Medicare Hospice Benefit is divided into the following benefit periods: (1) initial 90-day; (2) subsequent 90-day; and (3) unlimited number of 60-day benefit periods as long as the patient continues to meet program eligibility requirements. *See* 42 U.S.C. 1395d. At the beginning of each subsequent 60-day benefit period, either the attending physician or hospice physician must recertify that the patient is terminally ill. *See* 42 U.S.C. 1395f(a)(7). If the necessary oversight is not performed during the unlimited periods of care, a hospice may receive improper reimbursement for services provided to a patient who fails to continue to be eligible for the Medicare Hospice Benefit.

[30] Examples of arrangements that may run afoul of the anti-kickback statute include practices in which a hospice pays a fee to a physician for each plan of care certified, and provides nursing or

including improper arrangements with nursing homes;[31]

- Overlap in the services that a nursing home provides, which results in insufficient care provided by a hospice to a nursing home resident;[32]
- Improper relinquishment of core services and professional management responsibilities to nursing homes, volunteers, and privately-paid professionals;[33]
- Providing hospice services in a nursing home before a written agreement has been finalized, if required;[34]
- Billing for a higher level of services than was necessary;[35]
- Knowingly billing for inadequate or substandard care;
- Inadequate justification in the medical record when a patient revokes the Medicare Hospice Benefit;[36]
- Billing for hospice care provided by unqualified or unlicensed clinical personnel;[37]
- False dating of amendments to medical records;[38]
- High-pressure marketing of hospice care to ineligible beneficiaries;[39]
- Improper patient solicitation activities, such as "patient charting;"[40]
- Inadequate management and oversight of subcontracted services, which results in improper billing;[41]
- Sales commissions based upon length of stay in hospice;[42]
- Deficient coordination of volunteers;[43]
- Improper indication of the location where hospice services were delivered;[44]

administrative services for free or below fair market value to physicians, nursing homes, hospitals and other potential referral sources. *See* 42 U.S.C. 1320a–7b; 60 FR 40847 (1995). *See also* discussion in section II.A.4. and accompanying notes. In addition, a hospice that offers an incentive to an individual that such hospice knows or should know is likely to influence the individual to use a particular hospice may be subject to civil monetary penalties. *See* 42 U.S.C. 1320a–7a(a)(5).

[31] The OIG has observed instances of potential kickbacks between hospices and nursing homes to unlawfully influence the referral of patients. In general, payments by a hospice to a nursing home for "room and board" provided to a Medicaid hospice patient should not exceed what the nursing home otherwise would have received if the patient had not been enrolled in hospice. (If a patient receiving Medicare hospice benefits in a nursing home is also eligible for Medicaid, Medicaid will pay the hospice at least 95 percent of the State's daily nursing home rate, and the hospice is then responsible for paying the nursing home for the patient's room and board.) Any additional payment must represent the fair market value of additional services actually provided to that patient that are not included in the Medicaid daily rate. *See Hospice Medicare Manual* § 204.2. *See also* section II.A.4. and accompanying notes.

[32] There may be some overlap in the services that the nursing homes and hospices provide, thereby providing one or the other the opportunity to reduce services and costs. Recent OIG reports found that residents of certain nursing homes receive fewer services from their hospice than patients who receive hospice services in their own homes. Upon review, it was found that many nursing home hospice patients were receiving only basic nursing and aide visits that were provided by nursing home staff as part of room and board when hospice staff were not present. Other additional treatments provided by hospice staff, such as nursing and aide visits, were often clearly within the professional skills possessed by nursing home staff. The reports found that the nature of services provided by hospice staff, while appropriate and efficacious, appeared to differ little from services a nursing home would have provided if the patient was not enrolled in hospice. *See* OEI report OEI–05–95–00250—"Hospice Patients in Nursing Homes;" *see also* OIG report A–05–96–00023—"Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments." Since hospices receive a fixed daily payment regardless of the number of services provided or the location of the patient, fewer services may result in higher profits per patient. *See also* section II.A.3.e. and accompanying notes.

[33] Certain of the hospice services, (*i.e.*, "core services" such as nursing, medical, social, and counseling services) must be provided directly to the patient by employees of the hospice, while other non-core hospice services may be provided in accordance with contracts with other providers. However, the hospice must retain professional management for all contacted services. *See* 42 CFR 418.80.

[34] A patient who resides in a skilled nursing facility or nursing facility may elect the Medicare Hospice Benefit if: (1) the residential care is paid for by (a) the beneficiary or private insurance, or (b) Medicaid (if the beneficiary is dual eligible); *and* (2) the hospice and facility have a written agreement under which the hospice takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board. *Hospice Medicare Manual* § 204.2.

[35] Billing for unnecessary services involves knowingly seeking reimbursement for services that "are not reasonable and necessary for the palliation or management of terminal illness." *See* 42 U.S.C. 1395y(a)(1)(C). Because HCFA establishes different payment amounts for specific categories of covered hospice care, a hospice must ensure that it provides services to hospice patients that are reasonable and necessary. Otherwise, the hospice may be reimbursed for a higher level of services than was necessary, *e.g.*, a hospice that provides and bills for continuous care where only routine home care is necessary. *See also* section II.A.3.d. and accompanying notes.

[36] Fiscal intermediaries have informed the OIG that hospices rarely offer the reasons supporting the revocation of a patient's Medicare Hospice Benefit. Although a hospice may discharge a patient if it discovers that the patient is not terminally ill, hospices should not encourage a patient to revoke the benefit merely to avoid the obligation to pay for hospice services that have become too costly. *See Hospice Medicare Manual* § 210.

[37] Medicare conditions of participation require that hospices and all hospice employees must be licensed in accordance with applicable Federal, State, and local laws and regulations. 42 CFR 418.72.

[38] If additions or corrections need to be made to medical records, hospices should make such entries appropriately. For example, hospices might correct a medical record by drawing a single line through the erroneous entry, writing "error" next to the entry, initialing and dating the correction, and writing the correct information near the entry or writing where the correct information could be found.

[39] Hospices should not utilize prohibited or inappropriate conduct (*e.g.*, offer free gifts or services to patients), designed to maximize business growth and patient retention, to carry out their initiatives and activities. Also, any marketing information offered by hospices should be clear, correct, non-deceptive, and fully informative. Through ORT, it was discovered that hospice marketing materials had placed considerable emphasis on the availability of hospice benefits for long term care patients, while downplaying or ignoring the terminal illness eligibility requirement. *See* OIG report A–05–96–00023—"Enhanced Controls Needed To Assure Validity of Medicare Hospice Enrollments." Hospices should not engage in marketing and sales strategies that offer incomplete or inadequate information about Medicare entitlement under the Medicare Hospice Benefit to induce beneficiaries to elect hospice and thereby waive aggressive treatment options that Medicare would otherwise cover. Marketing statements should not create the perception that the initial terminal prognosis is of limited importance and that hospice benefits may almost routinely be provided over an indefinite time period. Marketing materials should prominently feature the eligibility requirements for the Medicare Hospice Benefit.

[40] Hospices should not review medical records of nursing home patients in an attempt to recruit patients for hospice services based on their diagnoses. For instance, *see* OIG report A–05–96–00023—"Enhanced Controls Needed To Assure Validity of Medicare Hospice Enrollments."

[41] The Balanced Budget Act of 1997, Pub. L. No. 105–33, amended the Social Security Act so that hospices will no longer be required to routinely provide all physician services directly by employing a physician. *See* 42 U.S.C. 1395x(dd)(2). Because the OIG has received reports of limited involvement displayed by contracted physicians, as opposed to hospice-employed physicians, hospices should consider having oversight mechanisms in place to ensure that hospice physicians are thoroughly reviewing re-certification documentation.

[42] Through ORT activities, it was discovered that hospice sales staff often were paid on commission based on the length of a patient's stay in hospice. For example, commission amounts were determined by multiplying the total number of days of hospice patient care (patient days) within a sales representative's territory by a factor that reflected the level of achievement of assigned sales performance objectives. Such marketing tactics are encouraged the recruitment of long-term patients, many of whom the review found ineligible for the Medicare Hospice Benefit. The OIG recommends that hospices monitor sales commissions for potential vulnerabilities associated with improper patient recruiting. *See* OIG report A–05–96–00023—"Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments."

[43] Hospices rely heavily on volunteer support. In fact, the Medicare Hospice Benefit is the only federally funded program that mandates the provision of volunteer services. Appropriately, hospices need to recognize and attend to compliance issues associated with volunteers (*i.e.*, screening, training, disciplining, monitoring, etc.).

[44] Medicare payments for hospice services are made on a prospective basis and adjusted by an area wage index. Hospices must submit claims based on the geographic location at which the service is furnished and not the location of the hospice. Incorrect designation of the place of service for revenue codes 651 and 652 of the hospice claim may significantly alter reimbursement and result in overpayment for services performed (*e.g.*, hospice office in a metropolitan area may be reimbursed more than a rural home where the services were performed).

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- Failure to comply with applicable requirements for verbal orders for hospice services;[45]
- Non-response to late hospice referrals by physicians;[46]
- Knowing misuse of provider certification numbers, which results in improper billing;[47]
- Failure to adhere to hospice licensing requirements and Medicare conditions of participation;[48] and
- Knowing failure to return overpayments made by Federal health care programs.[49]

A hospice's prior history of noncompliance with applicable statutes, regulations, and Federal health care program requirements may indicate additional types of risk areas where the hospice may be vulnerable and that may require policies and procedures to prevent recurrence.[50] Additional risk areas should be assessed by hospices as well and incorporated into the written policies and procedures and training elements developed as part of their compliance programs.

3. Eligibility Requirements

Of the risk areas identified above, those pertaining to the Medicare eligibility requirements have been the frequent subject of investigations and audits. With respect to the reimbursement process, a hospice's written policies and procedures should reflect and reinforce current Federal health care requirements regarding the eligibility for Medicare reimbursement. The policies must create a mechanism for the billing or reimbursement staff to communicate effectively and accurately with the clinical staff. Policies and procedures should:

- Provide for complete and timely documentation of the specific clinical factors that qualify a patient for the Medicare Hospice Benefit;[51]
- Delineate who has authority to make entries in the patient record;
- Emphasize that patients should be admitted to hospice care only when appropriate documentation supports the applicable reimbursement eligibility criteria and only when such documentation is maintained, appropriately organized in a legible form, and available for audit and review. The documentation should record the activity leading to the record entry and the identity of the individual providing the service. Documentation should be consistent and any discrepancies discussed and reconciled. The hospice should consult with its physicians, clinical staff, and/or governing body to establish other appropriate documentation guidelines;
- Indicate that the diagnosis and procedure codes for hospice services reported on the reimbursement claim should be based on the patient's clinical condition as reflected in the medical record and other documentation, and should comply with all applicable official coding rules and guidelines. Any Health Care Financing Administration Common Procedure Coding System (HCPCS), International Classification of Disease (ICD), or revenue code (or successor codes) used by the billing staff should accurately describe the service that was ordered by the physician and performed by the hospice. The documentation necessary for accurate billing should be available to billing staff; and
- Provide that the compensation for hospice admission personnel, billing department personnel and billing consultants should not offer any financial incentive to bill for hospice care regardless of whether applicable eligibility criteria for reimbursement is met.

The written policies and procedures concerning proper billing should reflect the current reimbursement principles set forth in applicable regulations and should be developed in tandem with private payor and organizational standards. Particular attention should be paid to issues associated with patient election of the Medicare Hospice Benefit, certification of terminal illness of a patient, development and certification of a patient's interdisciplinary plan of care, and reasonableness and necessity of the level of hospice care provided.[52]

a. Terminal Illness as an Eligibility Requirement

For a hospice patient to receive reimbursement for hospice services under Medicare,[53] the patient must be "terminally ill."[54] Hospices should create oversight mechanisms to ensure that the terminal illness of a Medicare beneficiary is verified[55] and the specific factors qualifying the patient as terminally ill are properly documented.[56] Any determinative assessment of the terminal illness of a Medicare beneficiary should be completed prior to billing Medicare for hospice care. Physicians must certify that the beneficiary was terminally ill at the time when a patient was admitted for hospice services as well as at the beginning of subsequent hospice benefit periods.[57]

The hospice's written policies and procedures should require, at a minimum, that:

- Before a patient is admitted for hospice services, the hospice physician and attending physician thoroughly review and certify the admitting diagnosis and prognosis;
- A patient's medical record contain complete and measurable documentation to support the certification made by the hospice physician or attending physician;[58]
- The patient or lawful representative is informed of the determination of the patient's life limiting condition;
- The patient or lawful representative is aware that the goal of hospice is directed toward relief of symptoms, rather than the cure of the underlying disease;
- A patient's medical condition and status is completely reviewed during Interdisciplinary Group meetings; and
- The clinical progression/status of a patient's disease and medical condition are properly documented.

Hospices can further ensure compliance with the terminal illness requirement through discussions with Medicare beneficiaries and their families, reminding them that they must satisfy the regulatory requirements for terminal illness status to be eligible for Medicare coverage. These discussions can take place at the beginning of hospice election and during appropriate times throughout a patient's hospice care, *e.g.*, at time of recertification. Because the Medicare conditions of participation require hospices to give all beneficiaries an informed consent form that outlines their legal rights before furnishing them with hospice care,[59] providers can include reminders of terminal illness requirements in these forms.

The OIG recognizes that decisions to admit patients to hospices are often not based on medical factors alone. Such decisions are routinely influenced by non-medical factors that would generally be reflected in the plan of care. However, it is important to make a distinction between admitting a patient to a hospice program and certifying a patient for the Medicare Hospice Benefit. Based on an individual hospice's admission criteria, some patients may be admitted to hospice care prior to an estimated six months before death, as long as the hospice is paid fair market value for its services. Regardless, patients can be certified for the Medicare Hospice Benefit *only* when it is reasonable to conclude that a patient's life expectancy is six months or less if the illness runs its normal course. In other cases, alternative modes of reimbursement, often provided through community support, should be sought outside the Medicare Hospice Benefit.

b. Plan of Care

A hospice should take all reasonable steps to ensure that a written plan of care is established and maintained for each individual who receives hospice services, and that the care provided to that individual is in accordance with the plan.[60] The plan must be established by the patient's attending physician, the hospice physician, and the Interdisciplinary Group.[61] Each patient's needs should be continuously assessed and all treatment options explored and evaluated in the context of the patient's symptoms.[62] The hospice's written policies and procedures should require, at a minimum, that:

- Before the hospice bills for hospice care provided to a patient, the plan of care must be established by the hospice patient's attending physician,[63] the hospice physician, and the Interdisciplinary Group;
- The plan of care includes (i) An assessment of the hospice patient's needs and identification of services, including the management of discomfort and symptom relief, and (ii) the scope and frequency of services, in detail, needed to meet the patient's and family's needs;[64]
- The plan of care must be reviewed and updated, at intervals specified in the plan, by the attending physician, hospice physician, and the Interdisciplinary Group;[65]
- The hospice properly documents any review or update of a hospice patient's plan of care by the attending physician, the hospice physician and Interdisciplinary Group; and[66]
- The hospice regularly reviews the appropriateness of Interdisciplinary Group services and level of services being provided, patient admission to hospice, patient length of stay, delays, and specific treatment modalities.

c. Utilization of Hospice Services

A hospice is accountable for the appropriate allocation and utilization of its resources in order to provide optimal care consistent with patient and family needs.[67] Accordingly, a hospice should monitor and evaluate its resource allocation regularly to identify and

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[45] Hospice staff must make an appropriate entry in the patient's medical record as soon as they receive a verbal certification of terminal illness and file written certifications in the medical record. *See* 42 CFR 418.22(d). State regulations may require that verbal and telephone orders from physicians should only be accepted by individuals authorized by State law to accept such orders. The OIG recommends that those authorized individuals accepting verbal and telephone orders should record, date, and sign these orders and the physician(s) who ordered the service or treatment should countersign them no later than the time period required by State regulations.

[46] We have received comments expressing concern over late hospice referrals by physicians. While the onus of a timely hospice referral may be on a physician, a hospice should not allow untimely referrals to go unrecognized with inadequate follow-up to the physicians. When hospice referrals are late, terminally ill patients may be unnecessarily denied access to the Medicare Hospice Benefit, hospices may have to admit a patient at the costliest stage of terminal illness, and quality of care may be affected because of patients being too far along to receive the optimum benefits of hospice care. Hospices need to work closely with physicians to educate and remind them as to the sensitivities and risks associated with untimely referrals.

[47] *E.g.*, transfer of a patient from one hospice to another hospice owned by the same company to circumvent applicable reimbursement caps.

[48] *See* 42 CFR 418.50–418.100 for the Medicare conditions of participation that apply to hospices.

[49] An overpayment is the amount of money a hospice may have received in excess of the amount due and payable under a health care program. Examples of overpayments include, but are not limited to, instances where a hospice is: (1) paid twice for the same service either by Medicare or by Medicare and another insurer; or (2) paid for care rendered to patients who are not terminally ill or are otherwise ineligible for the Medicare Hospice Benefit. For instance, *see Hospice Medicare Manual* § 307. The OIG strongly recommends that the hospice institute procedures to detect overpayments and to promptly remit such overpayments to the affected payor. *See* 42 U.S.C. 1320a–7b(a)(3), which provides criminal penalties for failure to disclose an overpayment. *See also* 18 U.S.C. 669.

[50] Recurrence of misconduct similar to that which an organization has previously committed casts doubt on whether it took all reasonable steps to prevent such misconduct" and is a significant factor in the assessment of whether a compliance program is effective. *See* United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(k)(iii).

[51] Each patient's clinical record must contain: (1) the initial and subsequent assessments (including hospice admission history, certification, and recertification); (2) the plan of care; (3) identification data; (4) consent and authorization and election forms; (5) pertinent medical history; and (6) complete documentation of all services and events (including evaluations, treatments, progress notes, etc.) *See* 42 CFR 418.74.

[52] The OIG has undertaken numerous audits, investigations, inspections, and national enforcement initiatives aimed at reducing potential and actual fraud, abuse, and waste. For example, *see* OIG report A–05–96–00023—"Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments;" *see also* OIG Special Fraud Alert—"Fraud and Abuse in Nursing Home Arrangements with Hospices" (March 1998); OIG Medicare Advisory Bulletin on Hospice Benefits (November 1995).

[53] 42 U.S.C. 1395d(a) authorizes the reimbursement of hospice care.

[54] An individual is considered to be "terminally ill" if the individual has a medical prognosis that the individual's life expectancy is six months or less if the illness runs its normal course. 42 CFR 418.3. However, the fact that a hospice patient lives beyond this six month period, in and of itself, does not constitute grounds for a determination that the patient was never eligible for hospice care, or that the services provided to the patient were not reimbursable by Medicare.

[55] Medical reviews, audits, inspections, and investigations of hospices have concluded that hospices have billed Medicare for hospice services provided to patients who are not terminally ill, with diagnoses including arthritis, anorexia, debility, and failure to thrive. For instance, *see* OIG report OEI–04–93–00270—"Medicare Hospice Beneficiaries: Services and Eligibility." Through Operation Restore Trust activities and the increased program integrity actions by the Regional Home Health Intermediaries (RHHIs), it was discovered that many beneficiaries receiving Medicare hospice benefits did not have a terminal illness. In the review of hospice cases between 1992 and 1996, patients did not demonstrate significant clinical symptoms of their disease nor notable functional limitations one would expect to see in a person who has a terminal illness as defined by Medicare. See OIG report A–05–96–00023—"Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments." Findings such as these have prompted a concern that some hospices may intentionally misrepresent a condition as terminal in order to secure Medicare reimbursement. *See also* note 24.

[56] *See* 42 CFR 418.22(d). If a question is raised as to whether a patient is terminally ill, the hospice will be requested to furnish its Medicare fiscal intermediary with the information necessary to establish that the patient is terminally ill.

[57] *See* 42 U.S.C. 1395f(a)(7). *See also* note 29.

[58] In order to verify a patient's terminal illness, Medicare fiscal intermediaries need to review physician input and rationale beyond a signature on the certification form (*e.g.*, a recent medical history and physical if the physician does not actually examine the patient prior to admission to hospice; summary of physician review of the history and physical taken by hospice personnel; or physician documentation of his or her contribution to the Interdisciplinary Group meetings).

[59] *See* 42 CFR 418.62.

[60] *See* 42 U.S.C. 1395f(a)(7); 42 CFR 418.58.

[61] *Id.*

[62] Some ORT audits found that hospice physicians, at times, rely partly on referring, attending physicians. Although the referring physician's opinion can and should be considered as part of the decision making process, the final determination of hospice eligibility is the responsibility of the hospice physician. For instance, *see* OIG report A–04–95–02111. If employees of a hospice believe that services ordered by a physician are excessive or otherwise inappropriate, the hospice cannot avoid liability for filing improper claims simply because a physician has certified the need for hospice care.

[63] For Medicare reimbursement purposes, a plan for furnishing hospice services must be certified by a physician who is a doctor of medicine, osteopathy, or podiatric medicine. *See* 42 CFR 410.20. The services of the hospice medical director(s) or the physician member of the Hospice Interdisciplinary Group must be performed by a doctor of medicine or osteopathy. *See* 42 CFR 418.202. The hospice should employ reasonable measures to verify that physicians who certify hospice services are appropriately licensed and no adverse actions, such as criminal conviction, debarment, or an exclusion, have been taken against them.

[64] 42 CFR 418.58(c).

[65] *See* 42 U.S.C. 1395f(a)(7)(B); 42 U.S.C. 1395x(dd)(2)(B).

[66] 42 CFR 418.58(b).

[67] Once a Medicare beneficiary elects hospice care, the hospice is responsible for furnishing directly, or arranging for, all supplies and services that relate to the beneficiary's terminal condition, except the services of an attending physician. Hospice beneficiaries have the right to receive covered medical, social, and emotional support services from the hospice directly, or through arrangements made by the hospice, and should not be forced to seek or pay for such care from non-hospice providers.

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resolve problems with the utilization of services, facilities, and personnel. To achieve such monitoring, a hospice should schedule Interdisciplinary Group case reviews and conferences,[68] review specific problems that may arise with services provided, and use objective written criteria or treatment protocols to guide decisions about the utilization of hospice services provided. Utilization concerns may be an indication of a problem with the quality or quantity of services provided to a hospice patient or demonstrate a more fundamental concern as to the patient's eligibility for the Medicare Hospice Benefit in the first place. Therefore, a hospice should implement policies and procedures to identify, assess, and rectify any problems associated with:

- Appropriateness of Interdisciplinary Group services and level of services being provided;
- Appropriateness of patient admission to hospice;
- Regular review of patient length of stay;
- Delays in admission or in the provision of Interdisciplinary Group services; and
- Specific treatment modalities.

When utilization problems are identified, a hospice should implement corrective actions and preventative measures that may include ongoing monitoring, changes in the provision of services, and revisions of policies and procedures.

d. Levels of Hospice Care

A hospice's compliance program should provide that it should only seek reimbursement for services that the hospice has reason to believe are reasonable and necessary[69] for the palliation or management of terminal illness and were ordered by a physician or other appropriately licensed individual. The OIG recommends the hospice's compliance program communicate to physicians authorized to certify patients for hospice care and hospice personnel authorized to admit patients for hospice care that services will only be paid if ordered, certified, covered, reasonable, and necessary for the patient, given his or her clinical condition.

Although hospice services are reimbursed on a per diem basis and not per individual component of the services performed, the payment is based upon the level of care provided.[70] Because HCFA establishes different payment amounts for specific categories of covered hospice care, a hospice must ensure that it provides for services to hospice patients that are reasonable and necessary. Otherwise, the hospice may be reimbursed for a higher level of services than was necessary, *e.g.*, a hospice that provides and bills for continuous care where only routine home care is necessary.

As a preliminary matter, the OIG recognizes that licensed health care professionals must be able to order any services that are appropriate for the care of their patients. However, Medicare and other Government and private health care plans will only pay for those services otherwise covered that meet appropriate standards (*i.e.*, in the case of Medicare, "reasonable and necessary" services). Providers may not bill for services that do not meet the applicable standards.[71] The hospice is in a unique position to deliver this information to the health care professionals on its staff and to the physicians who certify hospice services. Upon request, a hospice must be able to provide documentation, such as physician orders and other patient medical records, to support the level of services provided to a hospice patient.[72] The compliance officer should ensure that a clear, comprehensive summary of the definitions for the different levels of hospice care[73] and applicable rules of the various Government and private plans is prepared, disseminated, and explained to appropriate hospice personnel.

We recommend that hospices formulate policies and procedures that include periodic clinical reviews, both prior and subsequent to billing for services, as a means of verifying that patients are receiving only reasonable and necessary services. As part of such reviews, hospices should examine the level, frequency, and duration of the services they perform to determine, in consultation with a physician, whether patients' medical conditions justify the level of services provided and billed. A hospice may choose to incorporate this clinical review function into pre-existing quality assurance mechanisms or any other quality assurance processes that are part of its conditions of participation.[74]

e. Services Provided to Hospice Patients in Nursing Homes

Hospice services may be appropriate and beneficial to terminally ill nursing home residents who wish to receive palliative care.[75] However, the OIG has found hospices that enroll nursing home patients in hospice care are particularly vulnerable to fraud and abuse.[76] Appropriately, a hospice should set sufficient oversight controls in place to ensure that care it provides to nursing home residents is appropriate, complete, and in accordance with applicable laws and Federal health care program requirements.

When a resident of a nursing home elects the Medicare Hospice Benefit, the hospice and the nursing home should jointly establish a coordinated plan of care that reflects the hospice philosophy, and is based on an assessment of the individual's needs and unique living situation in the nursing home. The coordinated plan should identify the care and services that the nursing home will provide to be responsive to the unique needs of the patient/resident and his or her expressed desire for hospice care.

In general, a hospice should involve nursing home personnel in assisting with the administration of a patient's prescribed therapies included in the plan of care only to the extent that the hospice would routinely utilize the services of a hospice patient's family/caregiver in implementing the plan of care.[77] To satisfy the applicable Medicare conditions of participation in the nursing home context, hospices should implement policies and procedures to ensure that:

- The hospice makes all covered services available to meet the needs of a patient and does not routinely discharge patients in need of costly inpatient care; [78]
- The hospice retains professional responsibility for services (*e.g.*, personal care, nursing, medication for relieving pain control) furnished by nursing home staff; [79]
- All the care furnished by a nursing home is in accordance with the plan of care; [80]
- The hospice and the nursing home must communicate with each other when any changes are indicated to the plan of care, and each provider must be aware of the other's responsibilities in implementing the plan of care and complete those respective functions; [81]
- Evidence of the coordinated plan of care must be present in the clinical records of both providers; [82]
- Substantially all the core services are routinely provided directly by hospice employees [83] and the hospice does not rely on employees of the inpatient facility to furnish needed nursing, physician, counseling, or medical social services; [84] and
- The hospice keeps its forms and documentation of services separate from the nursing home's forms and documentation.[85]

4. Anti-Kickback and Self-Referral Concerns

The hospice should have policies and procedures in place with respect to compliance with Federal and State anti-kickback statutes.[86] Such policies should provide that:

- All of the hospices's contracts and arrangements with actual or potential referral sources are reviewed by counsel and comply with all applicable statutes and regulations; [87]
- The hospice does not submit or cause to be submitted to the Federal health care programs claims for patients who were referred to the hospice pursuant to contracts or financial arrangements that were designed to induce such referrals in violation of the anti-kickback statute or similar Federal or State statute or regulation; and
- The hospice does not offer or provide gifts, free services, or other incentives to patients, relatives of patients, physicians, nursing facilities, hospitals, contractors, or other potential referral sources for the purpose of inducing referrals in violation of the anti-kickback statute or similar Federal or State statute or regulation.[88]

In particular, arrangements between nursing homes and hospices are vulnerable to fraud and abuse because nursing home operators have control over the specific hospice or hospices they will permit to provide hospice services to their residents.[89] Moreover, hospice patients residing in nursing homes may be particularly desirable from a hospice's financial standpoint.[90] Therefore, with respect to arrangements with nursing homes, a hospice should develop policies and procedures to prevent the following practices from occurring, which may constitute potential kickbacks:

- Hospice offering free or below fair market value goods to induce a nursing home to refer patients to the hospice;
- Hospice paying "room and board" payments to the nursing home in amounts in excess of what the nursing home would have received directly from Medicaid had the patient not been enrolled in hospice; [91]
- Hospice referring its patients to a nursing home to induce the nursing home to refer its patients to the hospice;
- Hospice providing free (or below fair market value) care to nursing home patients, for whom the nursing home is receiving Medicare payment under the Medicare Skilled Nursing Facility Benefit, with the expectation that after the patient exhausts the skilled nursing facility benefit, the patient will receive hospice services from that hospice; and
- Hospice providing staff at its expense to the nursing home to perform duties that otherwise would be performed by the nursing home.

Further, the policies and procedures should specifically reference and take into account the OIG's safe harbor regulations, which clarify those payment practices that would be immune from prosecution under the anti-kickback statute, as well as the OIG's civil monetary penalty and exclusion authorities.[92]

5. Retention of Records

Hospice compliance programs should provide for the implementation of a records system. This system should establish policies and procedures regarding the creation, distribution, retention, storage, retrieval, and destruction of documents.[93] The two categories of documents developed under this system should include: (1) All records and documentation (*e.g.*, medical records, and billing and claims documentation) required either by Federal or State law for participation in Federal health care programs [94] or any other applicable Federal and State laws and regulations (*e.g.*, document retention requirements to maintain State licensure); and (2) all records necessary to protect the integrity of the hospice's compliance process and confirm the effectiveness of the program. The second category includes: (a) Documentation that employees were adequately trained; (b) reports from the hospice's hotline, including the nature and results of any investigation that was conducted; (c) documentation of

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[68] Interdisciplinary Group conferences are regularly scheduled periodic meetings of the Interdisciplinary Group to review the most current patient/family assessment, evaluate needs, and update the plan of care.

[69] *See* note 35.

[70] Payment amounts are determined within each of the following categories: (1) Routine home care day; (2) continuous home care day (patient who receives hospice care that consists predominantly of nursing care on a continuous basis at home, is furnished only during brief periods of crisis and only as necessary to maintain the terminally ill patient at home); (3) inpatient respite care day (hospice patient receives care in an approved facility on a short-term basis for respite—not more than five consecutive days at a time); and (4) general inpatient care day (hospice patient receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management that cannot be managed in other settings). *See* 42 CFR 418.302.

[71] Administrative civil monetary penalties, assessments, and exclusion, as well as remedies available under criminal and civil law, including the civil False Claims Act, may be imposed against any person who submits a claim for services "that [the] person knows or should know are not medically necessary." *See, e.g.*, 42 U.S.C. 1320a–7a(a).

[72] Medicare fiscal intermediaries have the authority to require hospices that furnish items or services under the program to submit documentation that substantiates services were actually provided and medically necessary. *See Medicare Intermediary Manual* § 3116.1.B.

[73] *See* note 70.

[74] *See* 42 CFR 418.66.

[75] *See* note 34.

[76] In some cases reviewed in nursing homes, records have shown that patients did have a terminal condition, but were stable with little sign of deterioration or decline. OIG medical reviewers have found that while the hospice benefit may eventually have been appropriate, at the time of election, patients were stable and the election of hospice was premature. *See* OEI report OEI–05–95–00250: "Hospice Patients in Nursing Homes;" *see also* OIG report A–05–96–00023—"Enhanced Controls Needed to Assure Validity of Medicare Hospice Enrollments." For other examples of potential fraud and abuse in the hospice/nursing home context, *see* notes 31–34.

[77] *Hospice Certification Manual* § 2082.B.

[78] *See* 42 CFR 418.50.

[79] *See* 42 CFR 418.56.

[80] *See* 42 CFR 418.58.

[81] *Hospice Certification Manual* § 2082.A.

[82] *Hospice Certification Manual* § 2082.A.

[83] *See* 42 CFR 418.80.

[84] In limited circumstances, HCFA may approve a waiver of the requirement for core nursing services to be provided by a hospice that is located in a non-urbanized area. *See* 42 CFR 418.83.

[85] A hospice may consider creating some type of payroll tracking or time study in an effort to properly differentiate services between the hospice and the nursing home.

[86] The hospice's in-house counsel or compliance officer should, among other things, obtain copies of all relevant OIG regulations, Special Fraud Alerts, and advisory opinions (these documents are located on the Internet at http://www.os.dhhs.gov/oig), and ensure that the hospice's policies reflect the guidance provided by the OIG.

[87] Although hospices may contract with physicians, *see* note 41, hospices and physicians must still tailor such agreements to avoid violation of the anti-kickback statute or similar Federal or State statute or regulation and to comply with applicable Medicare conditions of participation. *See* 42 CFR 418.56 and 418.86.

[88] *See* 42 U.S.C. 1320a–7b(b); 60 FR 40847 (1995).

[89] While an exclusive or semi-exclusive arrangement with a nursing home to provide hospice services to residents can promote efficiency and safety by permitting the nursing home operator to coordinate care, screen hospice caregivers, and maintain control of the premises, such an arrangement may have substantial monetary value to a hospice. In these circumstances, some nursing home operators and/or hospices may request or offer illegal remuneration to influence a nursing home's decision to do business with a particular hospice.

[90] First, a nursing home's population represents a sizable pool of potential hospice patients. Second, nursing home hospice patients may generate higher gross revenues per patient than patients residing in their own homes, because nursing home residents receiving hospice care have, on average, longer lengths of stay than hospice patients residing in their own homes.

[91] *See* note 31.

[92] *See* 42 CFR 1001.952.

[93] This records system should be tailored to fit the individual needs and financial resources of the hospice.

[94] For example, Medicare requires that hospices must establish and maintain a clinical record for every individual receiving care and services. The record must be complete, promptly and accurately documented, readily accessible and systematically organized to facilitate retrieval. Any entries are to be made and signed by the person providing the services. *See* 42 CFR 418.74.

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corrective action, including disciplinary action taken and policy improvements introduced, in response to any internal investigation or audit; (d) modifications to the compliance program; (e) self-disclosures; and (f) the results of the hospice's auditing and monitoring efforts.[95]

6. Compliance as an Element of a Performance Plan

Compliance programs should require that the promotion of, and adherence to, the elements of the compliance program be a factor in evaluating the performance of all employees, who should be periodically trained in new compliance policies and procedures. In addition, all managers and supervisors should:

- Discuss with all supervised employees and relevant contractors the compliance policies and legal requirements pertinent to their function;
- Inform all supervised personnel that strict compliance with these policies and requirements is a condition of employment; and
- Disclose to all supervised personnel that the hospice will take disciplinary action up to and including termination for violation of these policies or requirements.

In addition to making performance of these duties an element in evaluations, a compliance program should include a policy for sanctioning managers and supervisors who fail to adequately instruct their subordinates or fail to detect noncompliance with applicable policies and legal requirements, where reasonable diligence on the part of the manager or supervisor would have led to the discovery of any problems or violations and given the hospice the opportunity to correct them earlier.

The OIG believes all hospices should ensure that its employees understand the importance of compliance. If a small hospice does not have a formal performance evaluation structure, it should informally convey the employee's compliance responsibilities and the importance of these responsibilities in a written job description or orientation checklist. The applicable documentation should include a dated signature, with an indication that the employee has received it and will be responsible for adherence to the responsibilities expressed.

[95] The creation and retention of such documents and reports may raise a variety of legal issues, such as patient privacy and confidentiality. These issues are best discussed with legal counsel.

B. Designation of a Compliance Officer and a Compliance Committee

1. Compliance Officer

Every hospice should designate a compliance officer to serve as the focal point for compliance activities. This responsibility may be the individual's sole duty or added to other management responsibilities, depending upon the size and resources of the hospice and the complexity of the task. Designating a compliance officer with the appropriate authority is critical to the success of the program, necessitating the appointment of a high-level official in the hospice with direct access to the hospice's president or CEO, governing body, all other senior management, and legal counsel.[96] The officer should have sufficient funding and staff to perform his or her responsibilities fully. Coordination and communication are the key functions of the compliance officer with regard to planning, implementing, and monitoring the compliance program.

The compliance officer's primary responsibilities should include:

- Overseeing and monitoring the implementation of the compliance program;[97]
- Reporting on a regular basis to the hospice's governing body, CEO, and compliance committee (if applicable) on the progress of implementation, and assisting these components in establishing methods to improve the hospice's efficiency and quality of services, and to reduce the hospice's vulnerability to fraud, abuse, and waste;
- Periodically revising the program in light of changes in the organization's needs, and in the law and policies and procedures of Government and private payor health plans;
- Reviewing employees' certifications that they have received, read, and understood the standards of conduct;
- Developing, coordinating, and participating in a multifaceted educational and training program that focuses on the elements of the compliance program, and seeks to ensure that all relevant employees and management are knowledgeable of, and comply with, pertinent Federal and State standards;
- Ensuring that independent contractors and agents who furnish physician, nursing, or other health care services to the clients of the hospice, or billing services to the hospice, are aware of the requirements of the hospice's compliance program with respect to eligibility, billing, and marketing, among other things;
- Coordinating personnel issues with the hospice's Human Resources/Personnel office (or its equivalent) to ensure that (i) the National Practitioner Data Bank[98] has been checked with respect to all medical staff and independent contractors (as appropriate) and (ii) the List of Excluded Individuals/Entities[99] has been checked with respect to all employees, medical staff, and independent contractors (as appropriate);[100]
- Assisting the hospice's financial management in coordinating internal compliance review and monitoring activities, including annual or periodic reviews of departments;
- Independently investigating and acting on matters related to compliance, including the flexibility to design and coordinate internal investigations (*e.g.*, responding to reports of problems or suspected violations) and any resulting corrective action (*e.g.*, making necessary improvements to hospice policies and practices, taking appropriate disciplinary action, etc.) with all hospice departments, subcontracted providers, and health care professionals

[96] The OIG believes that it is not advisable for the compliance function to be subordinate to the hospice's general counsel, or comptroller or similar hospice financial officer. Free standing compliance functions help to ensure independent and objective legal reviews and financial analyses of the institution's compliance efforts and activities. By separating the compliance function from the key management positions of general counsel or chief financial officer (where the size and structure of the hospice make this a feasible option), a system of checks and balances is established to more effectively achieve the goals of the compliance program.

[97] For multi-hospice organizations or hospital-owned hospices, the OIG encourages coordination with each hospice owned by the corporation or hospital through the use of a headquarter's compliance officer, communicating with parallel positions in each facility, regional office, or business line, as appropriate.

[98] The National Practitioner Data Bank is a data base that contains information about medical malpractice payments, sanctions by boards of medical examiners or State licensing boards, adverse clinical privilege actions, and adverse professional society membership actions. Health care entities can have access to this data base to seek information about their own medical or clinical staff, as well as prospective employees or physician contractors.

[99] The List of Excluded Individuals/Entities is an OIG-produced report available on the Internet at http://www.os.dhhs.gov/oig. It is updated on a regular basis to reflect the status of health care providers who have been excluded from participation in the Medicare and Medicaid programs. In addition, the General Services Administration maintains a monthly listing of debarred contractors on the Internet at http://www.arnet.gov/epls.

[100] The compliance officer may also have to ensure that the criminal backgrounds of employees have been checked depending upon State requirements or hospice policy. *See* note 132.

under the hospice's control,[101] and any other agents if appropriate; and

- Continuing the momentum of the compliance program and the accomplishment of its objectives long after the initial years of implementation.[102]

The compliance officer must have the authority to review all documents and other information that are relevant to compliance activities, including, but not limited to, patient medical records, billing records, and records concerning the marketing efforts of the facility and the hospice's arrangements with other parties, including employees, physicians, professionals on staff, relevant independent contractors, suppliers, agents, and supplemental staffing entities. This policy enables the compliance officer to review contracts and obligations (seeking the advice of legal counsel, where appropriate) that may contain referral and payment provisions that could violate the anti-kickback statute and other legal or regulatory requirements.

A small hospice may not have the need or the resources to hire or appoint a full time compliance officer. However, each hospice should have a person in its organization (this person may have other functional responsibilities) who can oversee the hospice's compliance with applicable statutes, rules, regulations, and policies. The structure and comprehensiveness of the hospice's compliance program will help determine the responsibilities of each individual compliance officer.

2. Compliance Committee

The OIG recommends that a compliance committee be established to advise the compliance officer and assist in the implementation of the compliance program.[103] When developing an appropriate team of people to serve as the hospice's compliance committee, including the compliance officer, a hospice should consider a variety of skills and personality traits that are expected from those in such positions.[104] Once a hospice chooses the people that will accept the responsibilities vested in members of the compliance committee, the hospice needs to train these individuals on the policies and procedures of the compliance program, as well as how to discharge their duties.

The committee's functions should include:

- Analyzing the legal requirements with which it must comply, and specific risk areas;
- Assessing existing policies and procedures that address these risk areas for possible incorporation into the compliance program;
- Working with appropriate hospice departments to develop standards of conduct and policies and procedures to promote compliance with legal and ethical requirements;
- Recommending and monitoring, in conjunction with the relevant departments, the development of internal systems and controls to carry out the organization's standards, policies, and procedures as part of its daily operations;
- Determining the appropriate strategy/approach to promote compliance with the program and detection of any potential violations, such as through hotlines and other fraud reporting mechanisms;
- Developing a system to solicit, evaluate, and respond to complaints and problems; and
- Monitoring internal and external audits and investigations for the purpose of identifying troublesome issues and deficient areas experienced by the hospice, and implementing corrective and preventive action.

The committee may also address other functions as the compliance concept becomes part of the overall hospice operating structure and daily routine.

C. Conducting Effective Training and Education

The proper education and training of corporate officers, managers, employees, volunteers, nurses, physicians, and other health care professionals, and the continual retraining of current personnel at all levels, are significant elements of an effective compliance program. As part of their compliance programs, hospices should require personnel to attend specific training on a periodic basis, including appropriate training in Federal and State statutes, regulations, and guidelines, and the policies of private payors, and training in corporate ethics, which emphasizes the organization's commitment to compliance with these legal requirements and policies.[105]

These training programs should include sessions highlighting the organization's compliance program, summarizing fraud and abuse laws, Federal health care program requirements, claim development and submission processes, patient rights, and marketing practices that reflect current legal and program standards. The organization must take steps to communicate effectively its standards and procedures to all affected employees, physicians, independent contractors, and other significant agents, *e.g.*, by requiring participation in training programs and disseminating publications that explain specific requirements in a practical manner.[106] Managers of specific departments or groups can assist in identifying areas that require training and in carrying out such training.[107] Training instructors may come from outside or inside the organization, but must be qualified to present the subject matter involved and experienced enough in the issues presented to adequately field questions and coordinate discussions among those being trained. New employees should be trained early in their employment.[108] Training programs and materials should be designed to take into account the skills, experience, and knowledge of the individual trainees. The compliance

[101] *E.g.*, attending physicians, pharmacies, durable medical equipment suppliers, hospitals, nursing homes, home health agencies, and supplemental staffing entities.

[102] Periodic on-site visits of hospice operations, bulletins with compliance updates and reminders, distribution of audiotapes or videotapes on different risk areas, lectures at management and employee meetings, circulation of recent health care articles covering fraud and abuse, and innovative changes to compliance training are various examples of approaches and techniques the compliance officer can employ for the purpose of ensuring continued interest in the compliance program and the hospice's commitment to its policies and principles.

[103] The compliance committee benefits from having the perspectives of individuals with varying responsibilities in the organization, such as operations, finance, audit, human resources, and clinical management (*e.g.*, hospice physician), as well as employees and managers of key operating units. These individuals should have the requisite seniority and comprehensive experience within their respective departments to implement any necessary changes to hospice policies and procedures as recommended by the committee.

[104] A health care provider should expect its compliance committee members and compliance officer to demonstrate high integrity, good judgment, assertiveness, and an approachable demeanor, while eliciting the respect and trust of employees of the hospice and having significant professional experience working with billing, clinical records, documentation, and auditing principles.

[105] Specific compliance training should complement any "inservice" training sessions that a hospice may regularly schedule to provide an ongoing program for the training of employees as required by its conditions of participation. 42 CFR 418.64.

[106] Some publications, such as OIG's Special Fraud Alerts, audit and inspection reports, and advisory opinions, as well as the annual OIG work plan, are readily available from the OIG and could be the basis for standards, educational courses, and programs for appropriate hospice employees.

[107] Significant variations in the functions and responsibilities of different departments or groups may create the need for training materials that are tailored to compliance concerns associated with particular operations and duties.

[108] Certain positions, such as those that involve the billing of hospice services or patient admission to hospice care, create a greater organizational legal exposure, and therefore require specialized training.

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officer should document any formal training undertaken by the hospice as part of the compliance program.

A variety of teaching methods, such as interactive training, and training in several different languages, particularly where a hospice has a culturally diverse staff, should be implemented so that all affected employees are knowledgeable of the institution's standards of conduct and procedures for alerting senior management to problems and concerns.[109] In addition to specific training in the risk areas identified in section II.A.2, above, primary training for appropriate corporate officers, managers, and other hospice staff should include such topics as:

- Government and private payor reimbursement principles;
- General prohibitions on paying or receiving remuneration to induce referrals;
- Improper alterations to clinical records;[110]
- Providing hospice services with proper authorization;
- Patient rights and patient education;
- Compliance with Medicare conditions of participation; and
- Duty to report misconduct.

Clarifying and emphasizing these areas of concern through training and educational programs are particularly relevant to a hospice's marketing and financial personnel, in that the pressure to meet business goals may render these employees vulnerable to engaging in prohibited practices.

The OIG suggests that all relevant levels of personnel be made part of various educational and training programs of the hospice.[111] Employees should be required to have a minimum number of educational hours per year, as appropriate, as part of their employment responsibilities.[112] For example, for certain employees involved in the hospice admission functions, periodic training in applicable reimbursement coverage and eligibility requirements should be required. In hospices with high employee turnover, periodic training updates are critical.

The OIG recognizes that the format of the training program will vary depending upon the resources of the hospice. For example, a small hospice may want to create a video for each type of training session so new employees can receive training in a timely manner.[113]

The OIG recommends that attendance and participation in training programs be made a condition of continued employment and that failure to comply with training requirements should result in disciplinary action, including possible termination, when such failure is serious. Adherence to the provisions of the compliance program, such as training requirements, should be a factor in the annual evaluation of each employee. The hospice should retain adequate records of its training of employees, including attendance logs and material distributed at training sessions.

D. Developing Effective Lines of Communication

1. Access to the Compliance Officer

An open line of communication between the compliance officer and hospice employees is equally important to the successful implementation of a compliance program and the reduction of any potential for fraud, abuse, and waste. Written confidentiality and non-retaliation policies should be developed and distributed to all employees to encourage communication and the reporting of incidents of potential fraud.[114] The compliance committee should also develop independent reporting paths for an employee to report fraud, waste, or abuse so that employees can feel comfortable reporting outside the normal chain of command and supervisors or other personnel cannot divert such reports.[115]

The OIG encourages the establishment of a procedure so that hospice personnel may seek clarification from the compliance officer or members of the compliance committee in the event of any confusion or question with regard to a hospice policy, practice, or procedure. Questions and responses should be documented and dated and, if appropriate, shared with other staff so that standards, policies, practices, and procedures can be updated and improved to reflect any necessary changes or clarifications. The compliance officer may want to solicit employee input in developing these communication and reporting systems.

2. Hotlines and Other Forms of Communication

The OIG encourages the use of hotlines,[116] e-mails, written memoranda, newsletters, suggestion boxes, and other forms of information exchange to maintain these open lines of communication.[117] If the hospice establishes a hotline, the telephone number should be made readily available to all employees and independent contractors, possibly by circulating the number on wallet cards or conspicuously posting the telephone number in common work areas.[118] Employees should be permitted to report matters on an anonymous basis. Matters reported through the hotline or other communication sources that suggest substantial violations of compliance policies, Federal health care program requirements, regulations, or statutes should be documented and investigated promptly to determine their veracity. A log should be maintained by the compliance officer that records such calls, including the nature of any investigation and its results.[119] Such

[109] Post-training tests can be used to assess the success of training provided and employee comprehension of the hospice's policies and procedures.

[110] This practice involves the hospice altering the attending physician's or other authorized physician's diagnosis in order to receive reimbursement for hospice care. A hospice should not claim the patient has a particular medical condition in order to qualify for reimbursement for which it would not otherwise qualify.

[111] In addition, where feasible, the OIG recommends that a hospice afford outside contractors the opportunity to participate in the hospice's compliance training and educational programs, or develop their own programs that complement the hospice's standards of conduct, compliance requirements, and other rules and practices.

[112] Currently, the OIG is monitoring a significant number of corporate integrity agreements that require many of these training elements. The OIG usually requires a minimum of one to three hours annually for basic training in compliance areas. Additional training is required for specialty fields such as billing and marketing.

[113] If videos are utilized for compliance training, the OIG suggests that a hospice make an individual available to field questions from video trainees. In addition, those hospices that use video training should strongly consider requiring trainees to complete post training comprehension tests to ensure that trainees actively paid attention to the video.

[114] The OIG believes that whistleblowers should be protected against retaliation, a concept embodied in the provisions of the False Claims Act. *See* 31 U.S.C. 3730(h). In many cases, employees sue their employers under the False Claims Act's *qui tam* provisions out of frustration because of the company's failure to take action when a questionable, fraudulent, or abusive situation was brought to the attention of senior corporate officials.

[115] Hospices can also consider rewarding employees for appropriate use of established reporting systems.

[116] The OIG recognizes that it may not be financially feasible for a smaller hospice to maintain a telephone hotline dedicated to receiving calls about compliance issues. These companies may want to explore alternative methods, *e.g.*, outsourcing the hotline or establishing a written method of confidential disclosure.

[117] In addition to methods of communication used by current employees, an effective employee exit interview program could be designed to solicit information from departing employees regarding potential misconduct and suspected violations of hospice policy and procedures.

[118] Hospices should also post in a prominent, available area the HHS–OIG Hotline telephone number, 1–800–447–8477 (1–800–HHS–TIPS), in addition to any company hotline number that may be posted.

[119] To efficiently and accurately fulfill such an obligation, the hospice should create an intake form for all compliance issues identified through

information should be included in reports to the governing body, the CEO, and compliance committee.[120] Further, while the hospice should always strive to maintain the confidentiality of an employee's identity, it should also explicitly communicate that there may be a point where the individual's identity may become known or may have to be revealed in certain instances.

The OIG recognizes that assertions of fraud and abuse by employees who may have participated in illegal conduct or committed other malfeasance raise numerous complex legal and management issues that should be examined on a case-by-case basis. The compliance officer should work closely with legal counsel, who can provide guidance regarding such issues.

The OIG recognizes that protecting anonymity may be infeasible for small hospices. However, the OIG believes all hospice employees, when seeking answers to questions or reporting potential instances of fraud and abuse, should know to whom to turn to for attention and should be able to do so without fear of retribution.

E. Auditing and Monitoring

An ongoing evaluation process is critical to a successful compliance program. The OIG believes that an effective program should incorporate thorough monitoring of its implementation and regular reporting to senior hospice or corporate officers.[121] Compliance reports created by this ongoing monitoring, including reports of suspected noncompliance, should be maintained by the compliance officer and shared with the hospice's senior management and the compliance committee. The extent and frequency of the audit function may vary depending on factors such as the size and available resources, prior history of noncompliance, and the risk factors that a particular hospice confronts.

Although many monitoring techniques are available, one effective tool to promote and ensure compliance is the performance of regular, periodic compliance audits by internal or external auditors who have expertise in Federal and State health care statutes, regulations, and Federal health care program requirements. The audits should focus on the hospice's programs or divisions, including external relationships with third-party contractors, specifically those with substantive exposure to Government enforcement actions. At a minimum, these audits should be designed to address the hospice's compliance with laws governing kickback arrangements, claim development and submission, reimbursement, eligibility, and marketing. The audits and reviews should inquire into the hospice's compliance with the Medicare conditions of participation and the specific rules and policies that have been the focus of particular attention on the part of the Medicare fiscal intermediaries or carriers, and law enforcement, as evidenced by educational and other communications from OIG Special Fraud Alerts, OIG audits and evaluations, and law enforcement's initiatives.[122] In addition, the hospice should focus on any areas of concern that are specific to the individual hospice and have been identified by any entity, whether Federal, State, or internal.

Monitoring techniques may include sampling protocols that permit the compliance officer to identify and review variations from an established baseline.[123] Significant variations from the baseline should trigger a reasonable inquiry to determine the cause of the deviation. If the inquiry determines that the deviation occurred for legitimate, explainable reasons, the compliance officer and hospice management may want to limit any corrective action or take no action. If it is determined that the deviation was caused by improper procedures, misunderstanding of rules, including fraud and systemic problems, the hospice should take prompt steps to correct the problem. Any overpayments discovered as a result of such deviations should be returned promptly to the affected payor, with appropriate documentation and a sufficiently detailed explanation of the reason for the refund.[124]

An effective compliance program should also incorporate periodic (at least annual) reviews of whether the program's compliance elements have been satisfied, *e.g.*, whether there has been appropriate dissemination of the program's standards, training, ongoing educational programs, and disciplinary actions, among other elements.[125] This process will verify actual conformance by all departments with the compliance program and may identify the necessity for improvements to be made to the compliance program, as well as the hospice's operations. Such reviews could support a determination that appropriate records have been created and maintained to document the implementation of an effective program.[126] However, when monitoring discloses that deviations were not detected in a timely manner due to program deficiencies, proper modifications must be implemented. Such evaluations, when developed with the support of management, can help ensure compliance with the hospice's policies and procedures.

As part of the review process, the compliance officer or reviewers should consider techniques such as:

- Visits and interviews of patients at their residences;
- Analysis of utilization patterns;
- Testing clinical and hospice admission staff on their knowledge of reimbursement coverage criteria (*e.g.*, present hypothetical scenarios of situations experienced in daily practice and assess responses);
- Assessment of existing relationships with physicians, nursing homes,[127] hospitals, and other potential referral sources;
- Unannounced mock audits and investigations;
- Reevaluation of deficiencies cited in past surveys for Medicare conditions of participation;
- Examination of hospice complaint logs;

reporting mechanisms. The form could include information concerning the date that the potential problem was reported, the internal investigative methods utilized, the results of the investigation, the corrective action implemented, the disciplinary measures imposed, and any identified overpayments and monies returned.

[120] Information obtained over the hotline may provide valuable insight into management practices and operations, whether reported problems are actual or perceived.

[121] Even when a hospice or group of hospices is owned by a larger corporate entity, the regular auditing and monitoring of the compliance activities of an individual hospice must be a key feature in any annual review. Appropriate reports on audit findings should be periodically provided and explained to a parent organization's senior staff and officers.

[122] *See also* section II.A.2.

[123] The OIG recommends that when a compliance program is established in a hospice, the compliance officer, with the assistance of department managers, should take a "snapshot" of their operations from a compliance perspective. This assessment can be undertaken by outside consultants, law or accounting firms, or internal staff, with authoritative knowledge of health care compliance requirements. This "snapshot," often used as part of benchmarking analyses, becomes a baseline for the compliance officer and other managers to judge the hospice's progress in reducing or eliminating potential areas of vulnerability.

[124] In addition, when appropriate, as referenced in section G.2, below, reports of fraud or systemic problems should also be made to the appropriate governmental authority.

[125] One way to assess the knowledge, awareness, and perceptions of the hospice's employees is through the use of a validated survey instrument (*e.g.*, employees questionnaires, interviews, of focus groups).

[126] Such records should include, but not be limited to, logs of hotline calls, logs of training attendees, training agenda materials, and summaries of corrective action taken and improvements made to hospice policies as a result of compliance activities.

[127] *See* section II.A.3.e.

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- Checking personnel records to determine whether any individuals who have been reprimanded for compliance issues in the past are among those currently engaged in improper conduct;
- Questionnaires developed to solicit impressions of a broad cross-section of the hospice's employees and staff;
- Evaluation of the timeliness of physician referrals and physician signatures for hospice certifications;
- Reviews of clinical documentation (*e.g.*, terminal illness certification, plan of care, nursing notes, etc.), financial records, and other source documents that support claims for reimbursement;
- Validation of qualifications of hospice physicians and other hospice staff, including verification of applicable state license renewals;
- Evaluation of written materials and documentation outlining the hospice's policies and procedures; and
- Trend analyses, or longitudinal studies, that uncover deviations, positive or negative, in specific areas over a given period.

The reviewers should:

- Have the qualifications and experience necessary to adequately identify potential issues with the subject matter that is reviewed;
- Be objective and independent of line management to the extent reasonably possible; [128]
- Have access to existing audit and health care resources, relevant personnel, and all relevant areas of operation;
- Present written evaluative reports on compliance activities to the CEO, governing body, and members of the compliance committee on a regular basis, but no less often than annually; and
- Specifically identify areas where corrective actions are needed.

Just as a hospice is required by its conditions of participation to conduct "an ongoing, comprehensive, integrated, self-assessment of the quality and appropriateness of care provided," [129] the OIG believes that a hospice should monitor its compliance with the Federal health care program requirements in the same fashion. Furthermore, just as a hospice is required by its conditions of participation to use its quality assurance findings to correct identified problems and revise hospice policies if necessary to improve patient care, [130] the OIG believes that a hospice's management should take whatever steps are necessary to correct identified compliance problems and prevent them from recurring. In certain cases, subsequent reviews or studies would be advisable to ensure that the recommended corrective actions have been implemented successfully.

While conducting its monitoring and auditing efforts, as well as its daily operations, a hospice should document its efforts to comply with applicable statutes, regulations, and Federal health care program requirements. For example, where a hospice, in its efforts to comply with a particular statute, regulation or program requirement, requests advice from a Government agency (including a Medicare fiscal intermediary or carrier) charged with administering a Federal health care program, the hospice should document and retain a record of the request and any written or oral response. This step is extremely important if the hospice intends to rely on that response to guide it in future decisions, actions, or claim reimbursement requests or appeals. A log of oral inquiries between the hospice and third parties will help the organization document its attempts at compliance. In addition, the hospice agency should maintain records relevant to the issue of whether its reliance was "reasonable" and whether it exercised due diligence in developing procedures and practices to implement the advice.

The extent of a hospice's audit should depend on the hospice's identified risk areas and resources. If the hospice comes under Government scrutiny in the future, the Government will assess whether or not the hospice developed a comprehensive audit based upon identified risk areas and resources. If the Government determines the hospice failed to develop an adequate audit program, given its resources, the Government will be less likely to afford the hospice favorable treatment under the Federal Sentencing Guidelines.

F. Enforcing Standards Through Well-Publicized Disciplinary Guidelines

1. Discipline Policy and Actions

An effective compliance program should include guidance regarding disciplinary action for corporate officers, managers, employees, and other health care professionals who have failed to comply with the hospice's standards of conduct, policies and procedures, Federal health care program requirements, or Federal and State laws, or those who have otherwise engaged in wrongdoing, which have the potential to impair the hospice's status as a reliable, honest, and trustworthy health care provider.

The OIG believes that the compliance program should include a written policy statement setting forth the degrees of disciplinary actions that may be imposed upon corporate officers, managers, employees, physicians, and other health care professionals for failing to comply with the hospice's standards and policies and applicable statutes and regulations. Intentional or reckless noncompliance should subject transgressors to significant sanctions. Such sanctions could range from oral warnings to suspension, termination, or financial penalties, as appropriate. Each situation must be considered on a case-by-case basis to determine the appropriate sanction. The written standards of conduct should elaborate on the procedures for handling disciplinary problems and those who will be responsible for taking appropriate action. Some disciplinary actions can be handled by department or agency managers, while others may have to be resolved by a senior hospice administrator. Disciplinary action may be appropriate where a responsible employee's failure to detect a violation is attributable to his or her negligence or reckless conduct. Personnel should be advised by the hospice that disciplinary action will be taken on a fair and equitable basis. Managers and supervisors should be made aware that they have a responsibility to discipline employees in an appropriate and consistent manner.

It is vital to publish and disseminate the range of disciplinary standards for improper conduct and to educate officers and other hospice employees regarding these standards. The consequences of noncompliance should be consistently applied and enforced, in order for the disciplinary policy to have the required deterrent effect. All levels of employees should be potentially subject to the same types of disciplinary action for the commission of similar offenses. The commitment to compliance applies to all personnel levels within a hospice. The OIG believes that corporate officers, managers, supervisors, clinical staff, and other health care professionals should be held accountable for failing to comply with, or for the foreseeable failure of their subordinates to adhere to, the applicable standards, laws, and procedures.

2. New Employee Policy

For all new employees who have discretionary authority to make decisions that may involve compliance with the law or compliance oversight, hospices should conduct a reasonable and prudent background investigation, including a reference check, [131] as part of every such employment application. The application should specifically require the applicant to disclose any criminal conviction, [132] as defined by 42 U.S.C. 1320a–7(i), or exclusion action. Pursuant to the compliance program, hospice policies should prohibit the employment of individuals who have been recently convicted of a criminal offense related to health care [133] or who are listed as debarred, excluded, or otherwise ineligible for participation in Federal health care programs. [134] In addition, pending the resolution of any criminal charges or proposed debarment or exclusion, the OIG recommends that an individual who is the subject of such actions should be removed from direct responsibility for or involvement in any Federal health care program. That individual's salary should not be paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds. [135] With regard to current employees or independent contractors, if resolution of the matter results in conviction, debarment, or exclusion, the hospice should terminate its employment or other contract arrangement with the individual or contractor.

G. Responding to Detected Offenses and Developing Corrective Action Initiatives

1. Violations and Investigations

Violations of a hospice's compliance program, failures to comply with applicable Federal or State law, and other types of misconduct threaten a hospice's status as a reliable, honest and trustworthy provider capable of participating in Federal health care programs. Detected but uncorrected misconduct can seriously endanger the mission, reputation, and legal status of the hospice. Consequently, upon reports or reasonable indications of suspected noncompliance, it is important that the compliance officer or other management officials immediately investigate the conduct in question to determine whether a material violation of applicable law or the requirements of the compliance program has occurred, and if so, take decisive steps to correct the problem. [136] As appropriate, such steps may include an immediate referral to criminal and/or civil law enforcement authorities, a corrective action plan, [137] a report to the Government, [138] and the return of any overpayments, if applicable.

Where potential fraud or False Claims Act liability is not involved, the OIG recommends that normal repayment channels should be used for returning overpayments to the Government as they are discovered. However, even if the overpayment detection and return process is working and is being monitored by the hospice's audit or billing divisions, the OIG still believes that the compliance officer needs to be made aware of these overpayments, violations, or deviations that may reveal trends or patterns indicative of a systemic problem.

Depending upon the nature of the alleged violations, an internal investigation will probably include interviews and a review of relevant documents. Some hospices should consider engaging outside counsel, auditors, or health care experts to assist in an investigation. Records of the investigation should contain documentation of the alleged violation, a description of the investigative process (including the objectivity of the investigators and methodologies utilized), copies of interview notes and key documents, a log of the witnesses interviewed and the documents reviewed, the results of the investigation, *e.g.*, any disciplinary action taken, and the corrective action implemented. While any action taken as the result of an investigation will necessarily vary depending upon the hospice and the situation, hospices should strive for some consistency by utilizing sound practices and disciplinary protocols. [139] Further, after a reasonable period, the compliance officer should review the circumstances that formed the basis for the investigation to determine whether similar problems have been uncovered or modifications of the compliance program are necessary to prevent and detect other inappropriate conduct or violations.

If an investigation of an alleged violation is undertaken and the compliance officer believes the integrity of the investigation may be at stake because of the presence of employees under investigation, those subjects should be removed from their current work activity until the investigation is completed (unless an internal or Government-led undercover operation known to the hospice is in effect). In addition, the compliance officer should take appropriate steps to secure or prevent the destruction of documents or other evidence relevant to the investigation. If the hospice determines that disciplinary action is warranted, it should be prompt and imposed in accordance with the hospice's written standards of disciplinary action.

2. Reporting

If the compliance officer, compliance committee, or management official discovers credible evidence of misconduct from any source and, after a reasonable inquiry, has reason to believe that the misconduct may violate criminal, civil, or administrative law, then the hospice should promptly report the existence of misconduct to the appropriate Federal and State authorities [140] within a reasonable

[128] The OIG recognizes the hospices that ar small in size and have limited resources may not be able to use internal reviewers who are not part of line management or hire outside reviewers.

[129] 42 CFR 418.66.

[130] *Id.*

[131] *See* note 99.

[132] States may mandate, and many hospices voluntarily conduct, criminal background checks for prospective employees of hospices. Identification of a criminal background of an applicant, who may have been recently convicted of serious crimes that relate to the proposed employment duties, could be grounds for denying employment. Further, criminal background screening may deter those individuals with criminal intent from entering the field of hospice.

[133] Because providers of hospice care have frequent, relatively unsupervised access to potentially vulnerable people and their property, a hospice should also strictly scrutinize whether it should employ individuals who have been convicted of crimes of neglect, violence, or financial misconduct.

[134] Likewise, hospice compliance programs should establish standards prohibiting the execution of contracts with companies that have been recently convicted of a criminal offense related to health care or that are listed by a Federal agency as debarred, excluded, or otherwise ineligible for participation in Federal health care programs. *See* note 99.

[135] Prospective employees who have been officially reinstated into the Medicare and Medicaid programs by the OIG may be considered for employment upon proof of such reinstatement.

[136] Instances of noncompliance must be determined on a case-by-case basis. The existence, or amount, of a *monetary* loss to a health care program is not solely determinative of whether or not the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no readily identifiable monetary loss at all, but corrective action and reporting are still necessary to protect the integrity of the applicable program and its beneficiaries, *e.g.*, where services required by a plan of care were not provided.

[137] Advice from the hospice's in-house counsel or an outside law firm may be sought to determine the extent of the hospice's liability and to plan the appropriate course of action.

[138] The OIG currently maintains a provider self-disclosure protocol that encourages providers to report suspected fraud. The concept of voluntary self-disclosure is premised on a recognition that the Government alone cannot protect the integrity of the Medicare and other Federal health care programs. Health care providers must be willing to police themselves, correct underlying problems, and work with the Government to resolve these matters. The self-disclosure protocol can be located on the OIG's website at: http://www.os.dhhs.gov/oig.

[139] The parameters of a claim review subject to an internal investigation will depend on the circumstances surrounding the issues(s) identified. By limiting the scope of an internal audit to current billing, a hospice may fail to discover major problems and deficiencies in operations, as well as be subject to certain liability.

[140] Appropriate Federal and State authorities include the Office of Inspector General of the Department of Health and Human Services, the Criminal and Civil Divisions of the Department of

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period, but not more than sixty (60) days [141] after determining that there is credible evidence of a violation. [142] Prompt reporting will demonstrate the hospice's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct will be considered a mitigating factor by the OIG in determining administrative sanctions (*e.g.*, penalties, assessments, and exclusion), if the reporting provider becomes the target of an OIG investigation.[143]

When reporting misconduct to the Government, a hospice should provide all evidence relevant to the alleged violation of applicable Federal or State law(s) and potential cost impact. The compliance officer, under advice of counsel, and with guidance from the governmental authorities, could be requested to continue to investigate the reported violation. Once the investigation is completed, the compliance officer should be required to notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the operation of the applicable health care programs or their beneficiaries. If the investigation ultimately reveals that criminal, civil, or administrative violations have occurred, the appropriate Federal and State authorities [144] should be notified immediately.

As previously stated, the hospice should take appropriate corrective action, including prompt identification of any overpayment to the affected payor and the imposition of proper disciplinary action. If potential fraud or violations of the False Claims Act are involved, any repayment of the overpayment should be made as part of the discussion with the Government following a report of the matter to law enforcement authorities. Otherwise, normal repayment channels should be used for repaying identified overpayments. [145] Failure to disclose overpayments within a reasonable period of time could be interpreted as an intentional attempt to conceal the overpayment from the Government, thereby establishing an independent basis for a criminal violation with respect to the hospice, as well as any individuals who may have been involved. [146] For this reason, hospice compliance programs should emphasize that overpayments obtained from Medicare or other Federal health care programs should be promptly disclosed and returned to the payor that made the erroneous payment.

The OIG believes all hospices, regardless of size, should ensure they are reporting the results of any overpayments or violations to the appropriate entity and taking the appropriate corrective action to remedy the identified deficiency.

III. Assessing the Effectiveness of a Compliance Program

Because the Government views the existence of a compliance program as a mitigating factor when determining culpability regarding allegations of fraud and abuse only if the compliance program is "effective," how a hospice may assess its compliance program becomes quite significant. A hospice, as well as any other type of health care provider, should consider the attributes of each individual element of its compliance program to assess the program's "effectiveness" as a whole. Examining the comprehensiveness of policies and procedures implemented to satisfy these elements is merely the first step. Evaluating how a compliance program performs during a provider's day-to-day operations becomes the critical indicator. [147]

As previously stated, a compliance program should require the development and distribution of written compliance policies, standards, and practices that identify specific areas of risk and vulnerability to a hospice. One way to judge whether these policies, standards, and practices measure up is to observe how an organization's employees react to them. Do employees consistently experience recurring pitfalls because they lack guidance on certain issues not adequately covered in company policies? Are employees flagrantly disobeying an organization's standards of conduct because they observe no sincere buy-in from senior management? Do employees have trouble understanding policies and procedures because they are written in legalese or at difficult reading levels? Does an organization routinely experience systematic billing failures because employees are ill-instructed how to implement written policies and practices? Written compliance policies, standards, and practices are only as good as an organization's commitment to apply them in practice.

Every hospice should designate a compliance officer or contact to serve as the focal point of compliance activities, and, if appropriate, a compliance committee to advise and assist the compliance officer. An organization needs to seriously consider whoever fills such integral roles and periodically monitor how the individuals chosen satisfy their responsibilities. Does a compliance officer have sufficient professional experience working with billing, clinical records, documentation, and auditing principles to perform assigned responsibilities fully? Has a compliance officer or compliance committee been negligent in ensuring an organization's compliance due to inadequate funding, staff, and authority necessary to carry out their jobs? Did adding the compliance officer function to a key management position with other significant duties compromise the goals of the compliance program (*e.g.*, chief financial officer who discounts certain overpayments identified to improve the company's bottom line profits)? Since a compliance officer and a compliance committee can potentially have a significant impact on how effectively a compliance program is implemented, those functions should not be taken for granted.

As evidenced throughout this guidance, the proper education and training of corporate officers, managers, health care professionals, and other applicable employees of a provider, and the continual retraining of current personnel at all levels, are significant elements of an effective compliance program. Accordingly, such efforts should be routinely evaluated. Are employees trained frequently enough? Do employees fail post-training tests that evaluate knowledge of compliance? Do training sessions and materials adequately summarize important aspects of the organization's compliance program, such as fraud and abuse laws, Federal health care program requirements, and claim development and submission processes? Are training instructors qualified to present the subject matter and experienced enough to duly field questions? When thorough compliance training is periodically conducted, employees receive the reinforcement they need to ensure an effective compliance program.

An open line of communication between the compliance officer and a provider's employees is equally important to the success of a compliance program. In today's intensive regulatory environment, the OIG believes that a provider cannot possibly have an effective compliance program if it receives minimal or no feedback from its employees regarding compliance matters. For instance, if a compliance officer does not receive appropriate inquiries from employees: Do policies and procedures fail to adequately guide employees to whom and when they should be communicating compliance matters? Do employees fear retaliation if they report misconduct? Are employees reporting issues not related to compliance through the wrong channels? Do employees have bad-faith, ulterior motives for reporting? Regardless of the means that a provider employs, whether it be telephone hotline, email, or suggestion boxes, employees should seek clarification from compliance staff in the event of any confusion or question dealing with compliance policies, practices, or procedures.

An effective compliance program should include guidance regarding disciplinary action for corporate officers, managers, health care professionals, and other employees who have failed to adhere to an organization's standards of conduct, Federal health care program requirements, or Federal or State laws. The number and caliber of disciplinary actions taken by an organization can be insightful. Have appropriate sanctions been applied to compliance misconduct? Are sanctions applied to all employees consistently, regardless of an employee's level in the corporate hierarchy? Have double-standards in discipline bred cynicism among employees? When disciplinary action is not taken seriously or applied haphazardly, such practices reflect poorly on senior management's commitment to foster compliance as well as the effectiveness of an organization's compliance program in general.

Another critical component of a successful compliance program is an ongoing monitoring and auditing process. The extent and frequency of the audit function may vary depending on factors such as the size and available resources, prior history of noncompliance, and risk factors of a particular hospice. The hallmark of effective monitoring and auditing efforts is how an organization determines the parameters of its reviews. Do audits focus on all pertinent departments of an organization? Does an audit cover compliance with all applicable laws and Federal health care program requirements? Are results of past audits, pre-established baselines, or prior deficiencies reevaluated? Are the elements of the compliance program monitored? Are auditing techniques valid and conducted by objective reviewers? The extent and sincerity of an organization's efforts to confirm its compliance often proves to be a revealing determinant of a compliance program's effectiveness.

As was expressed in the last section of this guidance, it is essential that the compliance officer or other management officials immediately investigate reports or reasonable indications of suspected noncompliance. If a material violation of applicable law or compliance program requirements has occurred, a provider must take decisive steps to correct the problem. Providers who do not thoroughly investigate misconduct leave themselves open to undiscovered fraud, waste, and abuse. When a provider learns of certain issues, does it knowingly disregard associated legal exposure? Is there a consistent and methodical approach to the correlation between compliance issues identified and the corrective action necessary to remedy? Are isolated overpayment matters properly resolved through normal repayment channels? Is credible evidence of misconduct that may violate criminal, civil, or administrative law promptly reported to the appropriate Federal and State authorities? If any step in this process of responding to detected offenses is circumvented or improperly handled, such conduct would most likely demonstrate an ineffective compliance program, as well as potentially result in criminal, civil, or administrative liability.

Documentation is the key to demonstrating the effectiveness of a provider's compliance program. For example, documentation of the following should be maintained: audit results; logs of hotline calls and their resolution; corrective actions plans; due diligence efforts regarding business transactions; records of employee training, including the number of training hours; disciplinary action; and modification and distribution of policies and procedures. Given that the OIG is encouraging self-disclosure of overpayments and billing irregularities, maintaining a record of disclosures and refunds to the health care programs is strongly endorsed. A documented practice of refunding of overpayments and self-disclosing incidents of non-compliance with Federal health care program requirements can serve as evidence of a meaningful compliance effort by a hospice.

Hospices, as well as all health care providers, should acknowledge that it is their responsibility to formulate policies, procedures, and practices that are tailored to their own operations, and that are comprehensive enough to ensure compliance with all applicable Federal health care program requirements. An organization is in the best position to validate the suitability of its compliance efforts based upon its own particular circumstances.

IV. Conclusion

Through this document, the OIG has attempted to provide a foundation to the process necessary to develop an effective and cost-efficient hospice compliance program. As previously stated, however, each program must be tailored to fit the needs and resources of an individual hospice, depending upon its particular corporate structure, mission, and employee composition. The statutes, regulations, and guidelines of the Federal and State health insurance programs, as well as the policies and procedures of the private health plans, should be integrated into every hospice's compliance program.

The OIG recognizes that the health care industry in this country, which reaches millions of beneficiaries and expends about a trillion dollars annually, is constantly evolving. The

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Justice, the U.S. Attorney in relevant districts, and the other investigative arms for the agencies administering the affected Federal or State health care programs, such as the State Medicaid Fraud Control Unit, the Defense Criminal Investigative Service, the Department of Veterans Affairs, and the Office of Personnel Management (which administers the Federal Employee Health Benefits Program).

[141] In contrast, to qualify for the "not less than double damages" provision of the False Claims Act, the report must be provided to the Government within thirty (30) days after the date when the hospice first obtained the information. 31 U.S.C. 3729(a).

[142] The OIG believes that some violations may be so serious that they warrant immediate notification to governmental authorities, prior to, or simultaneous with, commencing an internal investigation, *e.g.*, if the conduct: (1) is a clear violation of criminal law; (2) has a significant adverse effect on the quality of care provided to program beneficiaries (in addition to any other legal obligations regarding quality of care); or (3) indicates evidence of a systemic failure to comply with applicable laws or an existing corporate integrity agreement, regardless of the financial impact on Federal health care programs.

[143] The OIG has published criteria setting forth those factors that the OIG takes into consideration in determining whether it is appropriate to exclude a health care provider from program participation pursuant to 42 U.S.C. 1320a–7(b)(7) for violations of various fraud and abuse laws. *See* 62 FR 67392 (December 24, 1997).

[144] *See* note 140.

[145] A hospice should consult with its Medicare fiscal intermediary or HCFA for any further guidance regarding normal repayment channels. The hospice's Medicare fiscal intermediary or HCFA may require certain information (*e.g.*, alleged violation or issue causing overpayment, description of the internal investigative process with methodologies used to determine any overpayments, disciplinary actions taken, and corrective actions taken, etc.) to be submitted with return of any overpayments, and that such repayment information be submitted to a specific department or individual. Interest will be assessed, when appropriate. *See* 42 CFR 405.376.

[146] *See* 42 U.S.C. 1320a–7b(a)(3).

[147] Evaluation may be accomplished through techniques such as employee surveys, management assessments, and periodic review of benchmarks established for audits, investigations, disciplinary action, overpayments, and employee feedback. All elements of an organization's compliance program can be evaluated, including policies, training, practices, and compliance personnel.

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time is right for hospices to implement a strong voluntary health care compliance program. As stated throughout this guidance, compliance is a dynamic process that helps to ensure that hospices and other health care providers are better able to fulfill their commitment to ethical behavior, as well as meet the changes and challenges being imposed upon them by Congress and private insurers. Ultimately, it is OIG's hope that a voluntarily created compliance program will enable hospices to meet their goals, improve the quality of patient care, and substantially reduce fraud, waste, and abuse, as well as the cost of health care to Federal, State, and private health insurers.

Dated: July 14, 1999.

June Gibbs Brown,

Inspector General.

[FR Doc. 99–18590 Filed 7–20–99; 8:45 am]

BILLING CODE: 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–34]

Notice of Submission of Proposed Information Collection to OMB: Emergency Comment Request; HUD's Year 2000 Status Survey—A Special Year Data Gathering Request

AGENCY: Office of the Assistance Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 28, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to the OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to Year 2000 (Y2K) compliancy efforts for HUD properties operated by Public Housing Authorities and Multi-Family owner/agents. The survey specifically addresses the status of embedded chips in HUD facilities.

Emergency processing of this request is necessary due to the imminent nature of Y2K issues and the potential vulnerability of HUD facilities to experience Y2K-induced failures.

This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD's Year 2000 Status Survey—A Special Year Data Gathering Request on Embedded Microchips.

OMB Control Number, if applicable: 2507–__.

Description of the need for the information and proposed use: The House Committee on Banking and Financial Services has requested that HUD—Real Estate Assessment Center (REAC) provide information on the status of Y2K compliancy efforts for HUD properties operated by Public Housing Authorities and Multi-Family owner/agents. The Committee is specifically interested in the status of embedded chips in HUD facilities. The Y2K Embedded Chip survey will enable HUD—REAC to respond to the House Committee's request for information.

Agency form numbers, if applicable: form HUD–95000 (6/23/99).

Members of affected public: Public Housing Authorities and Multi-Family owner/agents.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

It is estimated that the survey will take approximately 60 minutes to complete. Approximately 33,200 Public Housing Authorities and Multi-Family owner/agents will be requested to complete the survey.

Status of the proposed information collection: Awaiting OMB approval.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 15, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 99–18512 Filed 7–20–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–33]

Submission for OMB Review: Repayment Agreement

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: Information on the HUD–56146 is being collected under Public Law 479 which empowers the Secretary for HUD to collect or compromise all obligations assigned to or held by the Secretary and all legal or equitable rights accruing to HUD in connection with the payment of a HUD-insured loan until such time as such obligations may be referred to the Attorney General of the United States for suit or collections.

DATES: *Comments Due Date:* August 20, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0483) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 14, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Repayment Agreement.

Office: Housing.

OMB Approval Number: 2502–0483.

Description of the Need for the Information and its Proposed Use: Once a Debt Servicing Representative has a clear understanding of the debtor's attitude about repayment of the debt and the debtor's ability to repay the debt, attempts should be made to secure a signed repayment agreement.

Form Number: HUD–56146.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–56146, 5000	1,258		1		1		1,258

Total Estimated Burden Hours: 1,258.

Status: Reinstatement without changes.

Contact: Lester J. West, HUD, (518) 464–4200 ext. 4257, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–18513 Filed 7–20–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. No. FR–4441–N–35]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request Resident Opportunities and Self-Sufficiency Program (ROSS) Notice of Proposed Information Collection for Public Comment

AGENCY: Office of Public and Indian Housing—HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 28, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development (HUD), 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–5221, extension 121. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB an information collection package with respect to a Notice announcing the Resident Opportunities and Self Sufficiency Program and a Notice of Funding Availability for Resident Opportunities and Self Sufficiency Grants. This information collection package submission to OMB for review is required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Department has submitted the proposal for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Department has requested emergency clearance of the collection of information, as described below, with approval being sought by July 27, 1999.

Title of Proposals: Notice of Resident Opportunities and Self Sufficiency Program; Notice of Funding Availability for Resident Opportunities and Self Sufficiency (ROSS) Program.

Description of the need for the information and proposed use:

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998), (FY 1999 Appropriations Act) provided approximately $40 million and $12.7 million of carryover funds from the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies

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Appropriations Act 1998 (Pub. L. 105–65, 111 Stat. 1344, approved October 27, 1997) to fund ROSS, an economic self sufficiency program. ROSS will provide linkages to public housing residents by providing supportive services, resident empowerment activities and assisting residents in becoming economically self-sufficient. Under the ROSS program HUD is seeking to fund successful models which will link services and public housing residents to enhance their quality of life while promoting self sufficiency and personal responsibility in communities. HUD believes that it is imperative that housing authorities and residents work together to meet the challenge of welfare reform. Eligible applicants, (public housing authorities (PHAs), resident management corporations, resident councils or resident organizations, non profit entities supported by residents, Intermediary Resident Organizations) are encouraged to form partnerships and submit applications to be evaluated in accordance with the criteria contained in the Notice.

The FY 1999 Appropriations also includes $15 million for the employment and support of Service Coordinators (SC) to serve the elderly and persons with disabilities in public housing. These Service Coordinators will help elderly and disabled public housing residents obtain essential supportive services that are needed to enable independent living and aging in place. Under this NOFA only renewals of prior Service Coordinator grants will be accepted. SC Grant award amounts cannot be higher than the applicant's funding and staffing level that was approved for their last funded Service Coordinator Grant. An increase of 2 percent will be allowed if supported by a narrative justification.

Members of affected public: Approximately 850 applications are expected from eligible recipients such as resident management organizations, resident organizations, nonprofit entities supported by residents, public housing agencies, Intermediary Resident Organizations, Tribes, Tribally designated housing entities (THDEs) are expected under the Notice and the NOFA.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Applicants will be able to apply for ROSS grants in respective categories from the first day after the NOFA is published until the due date. Since this is the first year of operation for the ROSS program, it is essential that the technical assistance to be provided under the NOFA be in place as the ROSS applications are being developed to ensure that the new program is successful. The average amount of time to put together a ROSS application is likely to be, on an average, 40 hours. We anticipate that not more than 850 applicants will apply under the NOFA. In total, the Department expects this request will have an annual reporting burden of 33,200 hours.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 15, 1999.

David S. Cristy,

Director, Office of Investment Strategies, Policy and Management, Office of the Chief Information Officer.

[FR Doc. 99–18623 Filed 7–20–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Geological Survey

United States Geological Survey Government Performance and Results Act Strategic Plan; Comment Solicitation

AGENCY: United States Geological Survey (USGS), Interior.

The U.S. Geological Survey is the Nation's largest water, earth, and biological science and civilian mapping agency. The USGS works in cooperation with more than 2,000 organizations across the country to provide reliable, impartial scientific information to resource managers, planners, and other customers. This information is gathered in every State by USGS scientists to minimize the loss of life and property from natural disasters; contribute to the sound conservation, as well as the economic and physical development of the Nation's natural resources; and enhance the quality of life by monitoring water, biological energy, and mineral resources.

ACTION: Notice.

SUMMARY: The Government Performance and Results Act (GPRA) of 1993 requires that agencies update and revise their strategic plans at least every 3 years, with the first revision due in 2000. The GPRA also states that agencies must consult with the Congress and solicit and consider the views and suggestions of other parties that could be affected by or be interested in the agency's plan during the plan's development. USGS has refocused its strategic plan over the past year and would welcome comments from interested parties before finalizing the revisions.

USGS is continuing to consult with customers and stakeholders and will provide several public forums for interested parties to provide input during the revision of the strategic plan, including:

- Electronic input: Comments may be provided through the USGS web site, at the URL provided in the Supplementary Information section.
- Paper input: Comments may be provided with written correspondence to the address cited in the Address section.
- Public meetings: USGS may hold public consultation sessions as described in the Supplementary Information section.

DATES: Please provide comments electronically or on paper no later than August 31, 1999, and any expressions of interest in USGS holding public consultation sessions by August 16, 1999.

ADDRESSES: Send written comments to Ms. Anne Kinsinger, Chief, Office of Program Planning and Coordination, U.S. Geological Survey, 107 National Center, Reston, VA 20192. Send E-mail comments to StratPlan@usgs.gov. Contact Ms. Anne Kinsinger at (703) 648–4451.

SUPPLEMENTARY INFORMATION:

Strategic Plan Availability: See the USGS web site at http:/www.usgs.gov/stratplan to access pdf files of the USGS GPRA Strategic Plan, as well as Annual Performance Plans for Fiscal Years 1999 and 2000. If you do not have electronic access, please request a copy of the plan from Ms. Kinsinger (see the **ADDRESSES** section).

Public Consultation Sessions: USGS will hold public consultation sessions in early September if there is sufficient interest. Interested parties should reply to the addresses in the Addresses section on later than August 16, 1999. Session participants should be familiar with the plan. The intent of the sessions will be to have free-flowing discussions about the direction and goals established in the strategic plan and to hear suggestions and expectations for the final revision. USGS will establish logistics after expressions of interests have been received, and will notify respondents of dates, locations, and times no later than August 31, 1999.

Dated: July 14, 1999.

Charles G. Groat,

Director, U.S. Geological Survey.

[FR Doc. 99–18555 Filed 7–20–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are new, modified, discontinued, or completed since the last publication of this notice on April 27, 1999. The January 22, 1999, notice should be used as a reference point to identify changes. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Alonzo Knapp, Manager, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2889.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 1999. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BON) Basis of Negotiation
(BCP) Boulder Canyon Project
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(CRSP) Colorado River Storage Project
(D&MC) Drainage and Minor Construction
(FR) Federal Register
(IDD) Irrigation and Drainage District
(ID) Irrigation District
(M&I) Municipal and Industrial
(NEPA) National Environmental Policy Act
(O&M) Operation and Maintenance
(P-SMBP) Pick-Sloan Missouri Basin Program
(PPR) Present Perfected Right
(RRA) Reclamation Reform Act
(R&B) Rehabilitation and Betterment
(SOD) Safety of Dams
(SRPA) Small Reclamation Projects Act
(WCUA) Water Conservation and Utilization Act
(WD) Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5346.

The Pacific Northwest Region has no updates to report for this quarter. Please refer to the January 22, 1999, publication of this notice for current contract actions.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New contract actions:

40. Byron-Bethany ID, CVP, California: Long-term Warren Act contract for conveyance of non-project water in the Delta-Mendota Canal.

Modified contract actions:

6. El Dorado County Water Agency, CVP, California: M&I water service contract for 15,000 acre-feet to supplement existing water supply, authorized by Public Law 101–514.

14. Mercy Springs WD, CVP, California: Assignment of Mercy Springs Water District's water service contract to Pajaro Valley Water Management Agency. The assignment will provide for delivery of up to 13,300 acre-feet annually of water to the Agency from the CVP for agricultural purposes.

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Completed contract actions:

6. El Dorado County Water Agency, San Juan WD, and Sacramento County Water Agency, CVP, California: M&I water service contracts to supplement existing water supply: 15,000 acre-feet for El Dorado County Water Agency, 13,000 acre-feet for San Juan WD, and 22,000 acre-feet for Sacramento County Water Agency authorized by Public Law 101–514. Completed contract actions with Sacramento County Water Agency (contract No. 6–07–20–W1372) executed April 8, 1999, and San Juan WD (contract No. 6–07–20–W1373) executed April 8, 1999.

14. Mercy Springs WD, CVP, California: Assignment of District's water service contract to Pajaro Valley Water Management Agency. The assignment will provide for delivery of up to 13,300 acre-feet annually of water to the Agency from the CVP for agricultural purposes. Interim assignment of up to 6,260 acre-feet of water annually to Westlands WD and Santa Clara Valley WD until Pajaro Water Management Agency completes their water project. Interim assignment agreement executed May 14, 1999.

20. Napa County Flood Control and Water Conservation District, Solano Project, California: Renewal of water service contract No. 14–06–200–1290A, which expired February 28, 1999. Contract executed March 18, 1999, with effective date of March 1, 1999.

21. Solano County Water Agency, Solano Project, California: Renewal of water service contract No. 14–06–200–4090, which expired February 28, 1999. Contract executed February 28, 1999, with effective date of March 1, 1999.

31. Solano County Water Agency and Solano ID, Solano Project, California: Contract to transfer responsibility for O&M of Monticello Dam, Putah Diversion Dam, Putah South Canal, Headworks of Putah South Canal, and Parshall Flume at Milepost 0.18 of Putah South Canal to Solano ID and provide that the Solano County Water Agency shall provide the funds necessary for O&M of the facilities. Contract No. 9–07–20–X0358 executed June 2, 1999.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

New contract actions:

56. Southern Nevada Water Authority, Robert B. Griffith Water Project, BCP, Nevada: Title transfer of physical facilities with interest in acquired lands, grant or assignment of perpetual rights or easements over Federal-owned lands.

57. Hohokam IDD, CAP, Arizona: Amend distribution system repayment contract to reflect final project costs.

58. Sun City Water Co., CAP, Arizona: Partial assignment of 2,372 acre-feet of CAP M&I water to Sun City West Utilities Co.

59. Sun City Water Co., CAP, Arizona: Amendment to M&I water service subcontract with Citizens Utilities Co., Agua Fria Division.

60. Gila River Indian Community, CAP, Arizona: Amend CAP water delivery contact and distribution system repayment, and OM&R contract pursuant to proposed Gila River Indian Community Water Rights Settlement Agreement.

61. Cortaro Marana ID, CAP, Arizona: Assignment of 47 acre-feet of CAP M&I water to the Town of Marana.

62. Basic Management, Inc., Salinity Project, Nevada: Title transfer of the Pitman Wash Bypass Demonstration Project facilities and all interests in acquired lands and easements with an obligation to continue bypassing the water in Pitman Wash.

63. BHP Copper, Inc., CAP, Arizona: Proposed agreement and amendments to CAP water delivery subcontracts to transfer BHP Copper's CAP water allocation to the City of Scottsdale, Town of Carefree, and Tonto Hills Utility Company.

Discontinued contract actions:

28. McMicken ID/Town of Goodyear, CAP, Arizona: Amend McMicken's CAP water service subcontract to reduce its entitlement by 507 acre-feet and Goodyears' water service subcontract to increase its entitlement by 507 acre-feet. This action is included in No. 53.

54. McMicken ID, CAP, Arizona: Amendment No.1 to terminate CAP water service subcontract.

Completed contract actions:

2. Arizona State Land Department, State of Arizona, BCP, Arizona: Contract for 6,607 acre-feet per year of Colorado River water for agricultural use and related purposes on State-owned land.

37. Arizona State Land Department, BCP, Arizona: Water delivery contract for delivery of up to 9,000 acre-feet per year of unused apportionment and surplus Colorado River water for irrigation.

45. ASARCO Inc., CAP, Arizona: Amendment to extend deadline for giving notice of termination on exchange subcontract.

46. BHP Copper, Inc., CAP, Arizona: Amendment to extend deadline for giving notice of termination on exchange subcontract.

47. Cyprus Miami Mining Corporation, CAP, Arizona: Amendment to extend deadline for giving notice of termination on exchange subcontract.

59. Sun City Water Co., CAP, Arizona: Amendment to M&I water service subcontract with Citizens Utilities Co., Agua Fria Division.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

New contract actions:

1(g) Whetstone Vista L.L.C., Aspinall Unit, CRSP, Colorado: Contract for 1 acre-foot to support augmentation plans, Water Division Court No. 4, State of Colorado (Case No. 96CW298), to provide for single-family residential use, irrigation, and livestock watering.

19. Individual irrigators, Carlsbad Project, New Mexico: The United States proposes to enter into long-term forbearance lease agreements with individuals who have privately held water rights to divert non-project water either directly from the Pecos River or from shallow/artesian wells in the Pecos River Watershed. This action will result in additional water in the Pecos River to make up for the water depletions caused by changes in operations at Sumner Dam which were made to improve conditions for a threatened species, the Pecos Bluntnose Shiner.

Completed contract actions:

1(e) Frank M. Colman, Karen Edstrom, William and Lorena Gunn, Emily Vernon, and William E. Williams; Aspinall Unit; CRSP; Colorado: Contract for 3 acre-feet to support augmentation plans, Water Division Court No. 4, State of Colorado, to provide for single-family residential use, irrigation, fire protection, and livestock watering.

15. Emery County Water Conservancy District, Emery County Project, Utah: Warren Act contract to allow temporary storage of non-project water in Joes Valley Reservoir and/or Huntington North Reservoir.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

New contract actions:

39. Fryingpan-Arkansas Project, Colorado: Pueblo Board of Water Works, long-term storage and conveyance contract.

40. Keith Bower (Individual), Boysen Unit, Wyoming, P–SMBP: Contract for up to 500 acre-feet of irrigation water to service 144 acres.

41. Canyon Lam. Liability (Individual), Boysen Unit, Wyoming, P–SMBP: Contract for up to 16 acre-feet of supplemental irrigation water to service 4 acres.

42. L. Sheep Company (Individual), Boysen Unit, Wyoming, P–SMBP: Contract for up to 60 acre-feet of irrigation water to service 180 acres.

Modified contract actions:

9. Northern Cheyenne Indian Reservation, Montana: In accordance with section 9 of the Northern Cheyenne Reserved Water Rights Settlement Act of 1992, the United States and the Northern Cheyenne Indian Tribe are proposing to contract for 30,000 acre-feet per year of stored water from Bighorn Reservoir, Yellowtail Unit, Lower Bighorn Division, P–SMBP, Montana. The Tribe will pay the United States both capital and O&M costs associated with each acre-foot of water the Tribe sells from this storage for M&I purposes. Agreement undergoing final review by Reclamation. A date for execution has not been scheduled.

15. Fort Shaw and Greenfields IDs, Sun River Project, Montana: Contract for SOD costs for repairs to Willow Creek Dam. Have received the revised/approved BON from the Commissioner. The contract has been sent to the Fort Shaw ID for signature.

24. Lower Marias Unit, P–SMBP, Montana: Water service contract expired June 1997. Initiating renewal of existing contract for 25 years for up to 480 acre-feet of storage from Tiber Reservoir to irrigate 160 acres. Received approved BON from the Commissioner. Currently developing the contract and consulting with the Tribes regarding the Water Rights Compact. A 1-year interim contract has been issued to continue delivery of water until the necessary actions can be completed to renew a long-term contract.

32. Savage ID, P–SMBP, Montana: A 1-year interim contract has been entered into with the District. The District is currently seeking title transfer.

36. Fryingpan-Arkansas Project, Colorado: Proposed contract amendment to contract No. 9–07–70–W099 with Busk-Ivanhoe, Inc.

37. Fort Shaw and Greenfields IDs, Sun River Project, Montana: Contract for additional SOD costs for repairs to Willow Creek Dam. Approved BON has been received for the Greenfields ID. Contract will be executed upon approval of the MOD report by Congress. Awaiting approval of the BON for the Fort Shaw ID.

Discontinued contract actions:

6. Lakeview ID, Shoshone Project, Wyoming: New long-term water service contract for up to 3,200 acre-feet of firm water supply annually and up to 11,800 acre-feet of interim water from Buffalo Bill Reservoir. Pursuant to section 9(e) of the Reclamation Project Act of 1939 and Public Law 100–516. Category undetermined, removed due to District not receiving Federal water.

Completed contract actions:

5. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Pursuant to section 501 of Public Law 101–434, negotiate amendatory contract to increase irrigable acreage within the project.

21. Canadian River Project, Texas: Recalculate existing contract repayment schedule to conform with the provisions of the Emergency Drought Relief Act of 1996. The revised schedule is to reflect a consideration for project land transferred to the National Park Service, and a 3-year deferment of payments.

27. Glendo Unit, P–SMBP, Wyoming: Initiate amendments to extend the current contracts until December 31, 2000, in accordance with the "Irrigation Project Contract Extension Act of 1998" for Burbank Ditch, New Grattan Ditch Company, Torrington ID, Lucerne Canal and Power Company, and Wright and Murphy Ditch Company.

28. Glendo Unit, P–SMBP, Nebraska: Initiate amendments to extend the current contracts until December 31, 2000, in accordance with the "Irrigation Project Contract Extension Act of 1998" for Bridgeport, Enterprise, and Mitchell IDs, and Central Nebraska Public Power and ID.

31. Canadian River Project, Texas: Amend repayment contract No. 14–06–500–485 to allow for prepayment of construction charge obligation as authorized by Public Law 105–316, signed October 30, 1998.

33. San Angelo Project, Texas: San Angelo Water Supply Corporation, amend contract to reflect increase in irrigable acreage as authorized pursuant to section 501 of Public Law 101–434.

Dated: July 14, 1999.

Wayne O. Deason,

Deputy Director, Office of Policy.

[FR Doc. 99–18553 Filed 7–20–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF LABOR

Office of the Secretary; Bureau of International Labor Affairs; Notice for Public Submissions of Information on Labor Practices in Burma

The Department of Labor (DOL) is currently undertaking a Congressionally-mandated report addressing labor practices in Burma (pursuant to the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 § 564, Pub. L. 105–277, 112 Stat 2681, 2681–193). House Conference Report No. 105–825 requests that DOL provide comprehensive details on child labor practices, workers' rights, forced relocation of laborers, forced labor performed to support the tourism industry, and forced labor performed in conjunction with, and in support of, the Yadonna gas pipeline. In addition, the report should address whether the Government of Burma is in compliance with international labor standards and should provide details regarding the U.S. Government's efforts to address and correct practices of forced labor in Burma. This report will update the findings of the Congressionally-mandated report, "Report on Labor Practices in Burma," which was published by DOL in September 1998, pursuant to the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1998 § 568, Pub. L. 105–118, 111 Stat 2386, 2429).

This document is a notice for public submissions for the purpose of gathering information regarding labor practices in Burma. DOL is now accepting written submissions on this subject matter from all interested parties. The Department is not able to provide financial assistance to those preparing written submissions.

Information provided through written submissions will be considered by the Department of Labor in preparing its report to Congress. Materials submitted should be confined to the specific topic of the study. Copies of the 1998 report can be obtained from the DOL website at *http://www.dol.gov/dol/ilab* or by calling DOL's Bureau of International Labor Affairs, Office of Foreign Relations at (202) 219–7616.

This Notice is a general solicitation of comments from the public. The Department is seeking facts or opinions in response to this Notice and is not requiring commenters to supply specific information about themselves.

DATES: Individuals submitting information will be required to provide two (2) copies of their written submissions to the Bureau of International Affairs by 5:00 p.m., Friday, August 20, 1999 at the address noted below.

ADDRESSES: Written submissions should be addressed to the Bureau of International Affairs, U.S. Department of Labor, Attention: Sue Hahn, Room S–5006, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals may also submit their information via fax at the following FAX number: (202) 219–5613.

FOR FURTHER INFORMATION CONTACT: Sue Hahn, Bureau of International Labor Affairs, U.S. Department of Labor, Room

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S–5006, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 219–9403, ext. 161; fax: (202) 219–5613. All written comments submitted pursuant to this notice will be made part of the record of review and will be available for public inspection.

Signed at Washington, DC, this 15th day of July, 1999.

Andrew J. Samet,

Deputy Under Secretary, Bureau of International Labor Affairs.

[FR Doc. 99–18596 Filed 7–20–99; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 99–9]

Crawler, Locomotive, and Truck Cranes; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed reduction, and extension of, the information collection requirements contained in the standard on Crawler, Locomotive, and Truck Cranes (29 CFR 1926.550(b)(2)).

The Agency is particularly interested in comments on the following:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before September 20, 1999.

ADDRESSES: Submit comments to the Docket Office, Docket No. ICR–99–9, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. You may transmit written comments 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen Martinez, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements in the Crawler, Locomotive, and Truck Cranes Standard is available for inspection and copying in the Docket Office, or mailed on request by telephoning Kathleen Martinez at (202) 693–2444 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR on the Crawler, Locomotive, and Truck Cranes Standard, contact OSHA on the Internet at http://www.osha-slc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and information collection OSHA's estimate of the burden is correct. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 657) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

II. Proposed Actions

The certification record required in 29 CFR 1926.550(b)(2) is necessary to assure that employers conduct inspections of cranes and that they retain a certification record on file until a new record is prepared. OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Crawler, Locomotive, and Truck Cranes Standard (29 CFR 1926.550(b)(2)).

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: Crawler, Truck and Locomotive Cranes (29 CFR 1926.550(b)(2)).

OMB Number: 1218–0232.

Affected Public: Business or other for-profit; Federal government; state, local, or tribal government.

Number of Respondents: 94,000.

Frequency: Monthly.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 564,000.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 14th day of July 1999.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 99–18598 Filed 7–20–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Medical Child Support Working Group

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is given of the fourth meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998. The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address these impediments.

DATES: The meeting of the MCSWG will be held on Thursday, August 12, 1999, from approximately 12:00 p.m. to approximately 6:00 p.m., and on Friday, August 13, 1999, from 8:30 a.m. to approximately 4:00 p.m.

ADDRESSES: The meeting will be held in Parlor H, on the sixth floor of the Palmer House Hilton and Towers, 17 East Monroe Street, Chicago, IL 60603. All interested parties are invited to attend this public meeting. Seating may be limited and will be available on a first-come, first-serve basis. Persons needing special assistance, such as sign language interpretation or other special accommodation, should contact the Executive Director of the Medical Child Support Working Group, Office of Child Support Enforcement at the address listed below.

FOR FURTHER INFORMATION CONTACT: Ms. Samara Weinstein, Executive Director, Medical Child Support Working Group, Office of Child Support Enforcement, Fourth Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447 (telephone (202) 401–6953; fax (202) 401–5559; e-mail: sweinstein@acf.dhhs.gov). These are not toll-free numbers. The date, location and time for subsequent MCSWG meetings will be announced in advance in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) (FACA), notice is given of a meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998 (Pub.L. 105–200).

The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments. This report will include: (1) Recommendations based on assessments of the form and content of the National Medical Support Notice, as issued under interim regulations; (2) appropriate measures that establish the priority of withholding of child support obligations, medical support obligations, arrearages in such obligations, and in the case of a medical support obligation, the employee's portion of any health care coverage premium, by such State agencies in light of the restrictions on garnishment provided under title III of the Consumer Credit Protection Act (15 U.S.C. 1671–1677); (3) appropriate procedures for coordinating the provision, enforcement, and transition of health care coverage under the State programs for child support, Medicaid and the Child Health Insurance Program; (4) appropriate measures to improve the availability of alternate types of medical support that are aside from health care coverage offered through the noncustodial parent's health plan, and unrelated to the noncustodial parent's employer, including measures that establish a noncustodial parent's responsibility to share the cost of premiums, co-payments, deductibles, or payments for services not covered under a child's existing health coverage; (5) recommendations on whether reasonable cost should remain a consideration under section 452(f) of the Social Security Act ; and (6) appropriate measures for eliminating any other impediments to the effective enforcement of medical support orders that the MCSWG deems necessary.

The membership of the MCSWG was jointly appointed by the Secretaries of DOL and DHHS, and includes representatives of: (1) DOL; (2) DHHS; (3) State Child Support Enforcement Directors; (4) State Medicaid Directors; (5) employers, including owners of small businesses and their trade and industry representatives and certified human resource and payroll professionals; (6) plan administrators and plan sponsors of group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1)); (7) children potentially eligible for medical support, such as child advocacy organizations; (8) State medical child support organizations; and (9) organizations representing State child support programs.

Agenda

The agenda for this meeting includes a discussion of the issues to be included in the MCSWG's report to the Secretaries containing recommendations for appropriate measures to address the impediments to the effective enforcement of medical child support as listed above. At the May, 1999, meeting the MCSWG formed four (4) subcommittees to discuss barriers, issues, options, and recommendations in the interim between full MCSWG meetings. At this August, 1999, meeting the four subcommittees will present their initial issues and recommendations to the full MCSWG for further discussion and consideration.

Public Participation

Members of the public wishing to present oral statements to the MCSWG should forward their requests to Samara Weinstein, MCSWG Executive Director, as soon as possible and at least four days before the meeting. Such request should be made by telephone, fax machine, or mail, as shown above. Time permitting, the Chairs of the MCSWG will attempt to accommodate all such requests by reserving time for presentations. The order of persons making such presentations will be assigned in the order in which the requests are received. Members of the public are encouraged to limit oral statements to five minutes, but extended written statements may be submitted for the record. Members of the public also may submit written statements for distribution to the MCSWG membership and inclusion in the public record without presenting oral statements. Such written statements should be sent to the MCSWG Executive Director, as shown above, by mail or fax at least five business days before the meeting.

Minutes of all public meetings and other documents made available to the MCSWG will be available for public inspection and copying at both the DOL and DHHS. At DOL, these documents will be available at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 5:30 p.m. Questions regarding the availability of documents from DOL should be directed to Ms. Ellen Goodwin, Plan Benefits Security Division, Office of the Solicitor, Department of Labor (telephone (202) 219–4600, ext. 119). This is not a toll-free number. Any written comments on the minutes should be directed to Ms. Samara Weinstein, Executive Director of the Working Group, as shown above.

Signed at Washington, DC, this 15th day of July, 1999.

Richard McGahey,

Assistant Secretary for Pension and Welfare Benefits.

[FR Doc. 99–18597 Filed 7–20–99; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME: July 29, 1999—1:30 p.m., Closed Session; July 29, 1999—2:00

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p.m., Closed Session; July 29, 1999—3:30 p.m., Open Session.

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Closed Session (12:30 p.m.–12:45 p.m.)

Closed Session Minutes
Board Member Proposals
Personnel

Closed Session (2 p.m.–3:30 p.m.)

Awards and Agreements
FY 2001 Budget

Open Session (3:30 p.m.–5:30 p.m.)

Minutes, May 1999
Closed Session Items for November 1999
Chair's Report
Director's Report
Committee Reports
NSB 2000 Meeting Calendar
Criteria for NSB Delegation of Authority
NSF Strategic Plan
Report of the CPP Task Force on the Environment
NSF Commendation to Navy Personnel for Antarctic Support

[FR Doc. 99–18776 Filed 7–19–99; 3:50 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 40–8794–MLA and 40–8778–MLA ASLBP No. 99–769–08–MLA]

Molycorp, Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and Sections 2.1201 and 2.1207 of Part 2 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

Molycorp, Inc. (Request for Materials License Amendment)

The hearing, if granted, will be conducted pursuant to 10 C.F.R. Part 2, Subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a request for hearing submitted by the City of Washington, Pennsylvania, and Canton Township, Pennsylvania. The requests were filed in response to a notice of receipt by the Nuclear Regulatory Commission of a license amendment request of Molycorp, Inc., for temporary storage at its Washington, Pennsylvania facility of decommissioning waste now located at its facility in York, Pennsylvania. The notice of the proposed amendment request was published in the **Federal Register** at 64 Fed. Reg. 31,021 (June 9, 1999).

The Presiding Officer in this proceeding is Administrative Judge Peter B. Bloch. Pursuant to the provisions of 10 C.F.R. 2.722, 2.1209, Administrative Judge Richard F. Cole has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judge Bloch and Judge Cole in accordance with 10 C.F.R. 2.1203. Their addresses are:

Administrative Judge Peter B. Bloch, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Richard F. Cole, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Issued at Rockville, Maryland, this 15th day of July, 1999.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 99–18631 Filed 7–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397]

In the Matter of Washington Public Power Supply System, WPPSS Nuclear Project No. 2 (WNP–2), Exemption

I

Washington Public Power Supply System (the Supply System or the licensee) is the holder of Facility Operating License No. NPF–21, which authorizes operation of the Washington Public Power Supply System Nuclear Project 2 (WNP–2). The facility consists of a boiling water reactor at the licensee's site in Benton County, Washington. The operating license provides, among other things, that WNP–2 is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

Pursuant to 10 CFR 55.59(a)(1), each licensed operator is required to successfully complete a requalification program developed by the licensee that has been approved by the Commission. This program is to be conducted for a continuous period not to exceed 24 months in duration. In addition, pursuant to 10 CFR 55.59(a)(2), each licensed operator must also pass a comprehensive requalification written examination and an annual operating test.

By letter dated May 7, 1999, the Supply System requested an exemption under 10 CFR 55.11 from the requirements of 10 CFR 55.59(a)(2). The schedular exemption requested would extend the completion date for the administration of the annual operating test for the WNP–2 requalification program from October 23, 1999, to February 12, 2000, because the scheduled examination time coincides with the plant refueling outage. The requested exemption would constitute a one-time extension of the annual operating test requirement of the requalification program.

The Code of Federal Regulations at 10 CFR 55.11 states that, "The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest."

III

In support of its request for exemption, the Supply System indicated that the licensed operators at WNP–2 will continue to participate in the ongoing requalification training program. The Supply System further indicated that due to the two extended shutdowns, the annual operating test would have to be conducted on overtime. The exemption would eliminate the need to conduct the annual operating tests on overtime.

The NRC staff finds the one-time exemption will allow additional licensed operator support during the current refueling outage, which will provide a safety enhancement during plant shutdown operations, and post-maintenance testing and eliminate the need to conduct annual operating tests on overtime. The affected licensed operators will continue to demonstrate and possess the required levels of knowledge, skills, and abilities needed to safely operate the plant throughout the extension period via continuation of the current satisfactory licensed operator requalification program. In meeting the requirement for the administration of an annual operating test, the current plant refueling outage could be prolonged without a net benefit to safety, and would otherwise have a detrimental effect on the public interest.

IV

The Commission has determined that pursuant to 10 CFR 55.11, granting an exemption to the Washington Public Power Supply System from the requirements in 10 CFR 55.59(a)(2) is authorized by law and will not endanger life or property and is otherwise in the public interest.

Therefore, the Commission hereby grants Washington Public Power Supply System an exemption on a one-time only basis from the schedular requirements of 10 CFR 55.59(a)(2), to allow the Washington Public Power Supply System Nuclear Project 2 current annual operating examination to be extended until February 12, 2000.

Pursuant to 10 CFR 51.32, the Commission has also determined that the issuance of the exemption will have no significant impact on the environment. An Environmental Assessment and Finding of No Significant Impact was noticed in the **Federal Register** on July 9, 1999 (64 FR 37173).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 14th day of July, 1999.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Inspection Program Management Office of Nuclear Reactor Regulation.

[FR Doc. 99–18635 Filed 7–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–456, STN 50–457, STN 50–454, STN 50–455, 50–237, 50–249, 50–373, 50–374, 50–254 and 50–265]

Commonwealth Edison Company: Braidwood Station, Unit Nos. 1 and 2, Byron Station, Unit Nos. 1 and 2, Dresden Station, Unit Nos. 2 and 3, LaSalle County Station, Unit Nos. 1 and 2, Quad Cities Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from certain requirements of its regulations to Facility Operating License Nos. NPF–72, NPF–77, NPF–37, NPF–66, DPR–19, DPR–25, NPF–11, NPF–18, DPR–29 and DPR–30 issued to the Commonwealth Edison Company (ComEd, the licensee), for operation of Braidwood Station, located in Will County, Illinois; Byron Station located in Ogle County, Illinois; Dresden Station located in Grundy County, Illinois; LaSalle County Station located in LaSalle County, Illinois; and Quad Cities Station located in Rock Island County, Illinois, respectively.

Environmental Assessment

Identification of Proposed Action

The proposed actions would exempt the licensee from the requirements of 10 CFR 50.71(e)(4) regarding submission of revisions to the Updated Final Safety Analysis Report (UFSAR). Under the proposed exemptions, the licensee would submit updates to the UFSARs within 24 calendar months of the previous UFSAR revision submittal. Braidwood and Byron share a common FSAR and the Dresden, Quad Cities, and LaSalle Stations maintain their own FSARs that are common to both units at each station.

The proposed actions are in accordance with the licensee's application dated May 4, 1993.

The Need for the Proposed Action

The *Code of Federal Regulations*, 10 CFR 50.71(e)(4), requires licensees to submit updates to their FSARs annually or within 6 months after each refueling outage provided that the interval between successive updates does not exceed 24 months. Since the units for each station, and the Braidwood and Byron stations, share a common FSAR, the licensee must update the same document annually or within 6 months after a refueling outage for each unit. The underlying purpose of the rule was to relieve licensees of the burden of filing annual FSAR revisions while assuring that such revisions are made at least every 24 months. The Commission reduced the burden, in part, by permitting a licensee to submit its FSAR revisions 6 months after refueling outages for its facility, but did not provide for multiple unit facilities sharing a common FSAR in the rule. Rather, the Commission stated: "with respect to the concern about multiple facilities sharing a common FSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis' (57 FR 39355) (1992). Allowing the exemption would maintain the updated FSAR current within 24 months of the last revision.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed actions and concludes that they involve administrative activities unrelated to plant operation.

The proposed actions will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed actions.

With regard to potential non-radiological impacts, the proposed actions do not involve any historic sites. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed actions.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with these actions.

Alternative to the Proposed Actions

As an alternative to the proposed actions, the staff considered denial of the proposed actions (i.e., the "no-action" alternative). Denial of the exemptions would result in no change in current environmental impacts. The environmental impacts of the proposed actions and the alternative action are similar.

Alternative Use of Resources

These actions do not involve the use of any resources not previously considered in the Final Environmental Statements for Braidwood, Byron, Dresden, LaSalle, or Quad Cities.

Agencies and Persons Consulted

In accordance with its stated policy, on May 14, 1999, the staff consulted with the Illinois official, Mr. Frank Nizeolik of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed actions. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed actions will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to

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prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letter dated May 4, 1993, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington DC.

Dated at Rockville, Maryland, this 15th day of July, 1999.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Acting Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–18634 Filed 7–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–320]

GPU Nuclear, Inc. Three Mile Island Nuclear Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50 for Facility Operating License No. DPR–73, issued to GPU Nuclear, Inc. (GPUN or the licensee), for operation of the Three Mile Island Nuclear Station, Unit 2 (TMI–2), located in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would reduce the amount of onsite property insurance as required by 10 CFR 50.54(w), based on the permanently shutdown status of TMI–2 and that the plant is in a safe, inherently stable condition suitable for long-term management and any threat to the health and safety of the public has been eliminated. The requested action would allow GPUN to reduce onsite insurance coverage from $1.6 billion to $50 million.

The proposed action is in accordance with the licensee's application for exemption dated March 9, 1999.

Need for the Proposed Action

The proposed action is needed because the licensee's required insurance coverage significantly exceeds the potential cost consequences of radiological incidents possible at a permanently shutdown and defueled reactor with over 99 percent of the fuel removed.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the issuance of the proposed exemption is an administrative action and will not have any environmental impact. TMI–2 permanently ceased operations following the March 28, 1979, accident. The licensee maintains the facility in a safe, stable configuration to comply with the facility operating license and the Commission's rules and regulations.

No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no increase in occupational or public radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

The principal alternative to the action would be to deny the request thereby requiring the licensee to maintain insurance coverage required of an operating plant (i.e., the "no action" alternative); such an action would not enhance the protection of the environment. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Programmatic Final Environmental Statement Related to Decontamination and Disposal of Radioactive Wastes Resulting from the March 28, 1979, Accident—Three Mile Island Nuclear Station, Unit 2, Supplement No. 3, issued in August 1989.

Agencies and Persons Contacted

In accordance with its stated policy, on June 3, 1999, the NRC staff consulted with Pennsylvania State official, Stan Miangi of the Pennsylvania Department of Environmental Protection regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant impact on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 9, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Strect NW., Washington DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Harrisburg, Pennsylvania.

Dated at Rockville, Maryland, this 15th day of July, 1999.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–18633 Filed 7–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Salem Nuclear Generating Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–70 and DPR–75, issued to the Public Service Electric and Gas Company (the licensee), for operation of the Salem Nuclear Generating Station, Unit Nos. 1 and 2, located in Salem County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The proposed action is in response to the licensee's application dated February 2, 1999, as supplemented on April 26, 1999, for proposed amendments to the Technical Specifications (TS) to change the maximum unirradiated fuel assembly enrichment value for new fuel storage from 4.5 to 5.0 weight percent Uranium-235 and to allow the use of equivalent criticality control to that provided by the current TS requirement of 2.35 milligrams of Boron-10 per linear inch loading in the Integral Fuel Burnable Absorber pins.

The Need for the Proposed Action

The licensee intends, in the future, to use the more highly enriched fuel to achieve higher energy core reloads which can contribute substantially to improved capacity factors for the spent fuel pool by decreasing the cumulative amount of fuel stored during the lifetime of the plant. Currently, TS 5.6, "Fuel Storage, Criticality," limits the storage of fuel to an enrichment of 4.3 weight percent U–235. Thus, the proposed change to the TS was requested.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the storage and use of fuel enriched with U–235 up to 5.0 weight percent at Salem Units 1 and 2 is acceptable. The safety considerations associated with higher enrichments have been evaluated by the staff, and the staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. There will be no change to the authorized power level. There is no change to the allowable fuel burnup (60,000 MWD/MTU) already approved for Salem Units 1 and 2. As a result, there is no significant increase in individual or cumulative radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation are discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation." This assessment was published in the **Federal Register** on August 11, 1988 (53 FR 30355), as corrected on August 24, 1988 (53 FR 32322), in connection with the Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of an increase in fuel enrichment of up to 5.0 weight percent U–235 and irradiation limits up to 60,000 MWD/MTU are either unchanged, or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). These findings are applicable to the proposed amendments for Salem Units 1 and 2. Therefore, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed changes involve systems located within the restricted area as defined in 10 CFR Part 20. The proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with this action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the Salem Nuclear Generating Station dated April 1973.

Agencies and Persons Contacted

In accordance with its stated policy, on June 22, 1999, the staff consulted with the New Jersey State official, Mr. Dennis Zannoni, Chief, Bureau of Nuclear Engineering, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendments.

For further details with respect to this action, see the licensee's request for the amendments dated February 2, 1999, as supplemented on April 26, 1999, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Dated at Rockville, Maryland, this 14th day of July, 1999.

For the Nuclear Regulatory Commission.

Singh S. Bajwa,

Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–18632 Filed 7–20–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Science and Technology Reinvention Laboratory Personnel Demonstration Project at the Naval Sea Systems Command Warfare Centers

AGENCY: Office of Personnel Management.

ACTION: Notice of amendment to expand coverage of all provisions of the Naval Sea Systems Command, Naval Surface Warfare Center and Naval Undersea Warfare Center personnel demonstration project to include employees of the Naval Warfare Assessment Station (NWAS).

SUMMARY: Public Law 103–337, October 5, 1994, permits the Department of Defense (DOD), with the approval of the Office of Personnel Management (OPM), to carry out personnel demonstration projects at DOD Science and Technology (S&T) Reinvention Laboratories. This notice identifies the expanded coverage of the Naval Sea Systems Command, Naval Surface Warfare Center and Naval Undersea Warfare Center personnel demonstration project to include employees of the Naval Warfare Assessment Station (NWAS). This notice also serves to clarify provisions of the Warfare Centers' final demonstration project plan published in the December 3, 1997, **Federal Register** Notice.

DATES: This notice may be implemented July 21, 1999.

FOR FURTHER INFORMATION CONTACT:

Warfare Centers: Shirley Scott, NSWC/NUWC Deputy Demonstration Project Manager, NSWCDD, HR Department, 17320 Dahlgren Road, Dahlgren, VA 22448, 540–653–4623.

OPM: John André, U.S. Office of Personnel Management, 1900 E Street, NW, Room 7460, Washington, DC 20415, 202–606–1255.

SUPPLEMENTARY INFORMATION: OPM has approved "Science and Technology Laboratory Personnel Management Demonstration Projects" and published

the Naval Sea Systems Command, Naval Surface Warfare Center and Naval Undersea Warfare Center final plan in the **Federal Register** on Wednesday, December 3, 1997, Volume 62, Number 232, Part II. The Warfare Centers' demonstration project involved a simplified broad banded position classification system, performance management and development system, performance-based incentive pay system, competitive examining and appointment provisions, and modified reduction-in-force procedures. The final plan provided for a staggered implementation strategy across the Warfare Centers' divisions which began March 15, 1999.

On February 15, 1998, the Naval Warfare Assessment Station (NWAS) was established as an organizational component reporting directly to the Naval Surface Warfare Center (NSWC). NSWC plans to expand coverage of the personnel demonstration project to include employees of NWAS.

Dated: July 9, 1999.

Office of Personnel Management.

Janice R. Lachance,

Director.

I. Executive Summary

The Naval Sea Systems Command established the Naval Surface Warfare Center and the Naval Undersea Warfare Center Personnel Demonstration Project to be generally similar to the system in use at the Naval Personnel Demonstration Project known as China Lake. The project was built upon the concepts of linking performance to pay, simplifying the position classification system, emphasizing performance development, and delegating other authorities to line managers.

II. Introduction

A. Purpose

The Warfare Centers' personnel demonstration project attempts to provide managers, at the lowest practical level, the authority, control and flexibility needed to recruit, retain, develop, recognize and motivate its workforce. Expanding the demonstration project to include employees of the newly established NWAS activity will allow the Naval Surface Warfare Center to implement the provisions of the project throughout all of its organizational activities, and to compete more effectively for high-quality personnel while strengthening the manager's role in personnel management. All provisions of the approved Warfare Centers' personnel demonstration project will apply.

Employee notification will be made by delivery of a copy of the December 3, 1997, final plan, any subsequent amendments, and this notice. Training for supervisors and employees will be accomplished by information briefings and training sessions prior to implementation.

B. Participating Employees

This demonstration project will be expanded to cover all NWAS civilian employees, with the exception of members of the Senior Executive Service, located in Corona, California and remote locations. Table 1 reflects the duty locations and a projected number of employees to be covered.

TABLE 1.—NWAS EMPLOYEES

Location	Projected number of employees
Corona, CA	653
Arlington, VA	2
Beaufort, SC	4
Cairo, Egypt	1
Ceiba, Puerto Rico.	
Cherry Point, NC	7
El Centro, CA	1
Fallon, NV	12
Key West NAV Air Station, FL.	
MCAS Miramar, CA	1
Moorestown, NJ	2

C. Other Changes

(1) Section III.B.1h.3: Pay Protection Provision

The intent of this provision was to offer maximum protection of the employee's salary upon movement to a different geographic location. Upon conversion to the demonstration project, many employees who were previously covered by special salary rates had their total adjusted salary reallocated between basic pay and locality pay. These reallocations were necessary to convert the employees to a broad-banded classification and pay system and it was not intended to lower the employees' total adjusted salary. Concurrent with the conversion, some of these same employees received an increase in basic pay under the demonstration project buy-in provisions outlined in Section III.D.1.: Initial Conversion of Current Workforce. Increases to basic pay under this section were granted as a buy-in into the demonstration project to compensate employees for time earned creditable toward their next within-grade-increase under the General Schedule system. Despite seemingly clear language, the pay protection provision addressed in Section III.B.1h3. appears to disregard consideration of the employee's adjusted salary granted under this buy-in provision. This notice corrects this oversight by clarifying that the salary under protection includes the employee's pre-conversion special rate plus any increase in salary granted under the buy-in provisions. The second sentence of this section is amended to read: "For these employees, the new adjusted rate following a geographic move may not be less than the dollar amount of the employee's pre-conversion special rate plus any increase in salary granted under Section III.D.1. of this plan."

(2) Section III.B.5. Competitive Examining and Distinguished Scholastic Appointments

The Warfare Centers' demonstration project restructures the competitive examining process and provides for an authority to appoint candidates meeting prescribed distinguished scholastic achievements. The final plan includes language that may be interpreted as authority to extend changes in the examining process to positions outside the demonstration project activities. To eliminate confusion, the following sentence is deleted: "To further minimize resource requirements and the complexities inherent in administering two different sets of examining and hiring processes, this component may be applied to GS and FWS positions in activities for which the Warfare Center Divisions provide human resource services."

Also, the third sentence of that paragraph is changed from: "When a Division implements the Demonstration Project for some portion of their workforce, this component may be available for all occupations."

to:

"When a Division implements the Demonstration Project for some portion of their workforce, this provision may be available for all occupations, GS and FWS, within that Warfare Center Division."

This change further clarifies that this provision is used only for occupations covered by the Demonstration Project.

(3) Section III.D.3. Exit From the Demonstration Project

To clarify that conversion-out procedures also apply in the event the project ends, the following sentence is added at the end of the first paragraph under this section: "These procedures will also be followed for those employees who exit the project because of project termination."

(4) Section V.A.: Waivers to title 5, United States Code

The Warfare Centers' personnel demonstration project includes an enhanced performance management system requiring a waiver of existing laws and regulations governing performance management systems. Waivers of specific provisions of title 5 and the Code of Federal Regulations (CFR) were included under section V of the Warfare Centers' final plan. However, waivers of 5 U.S.C. 4304(b)(1) and (3) were inadvertently not included in this section. These title 5 provisions require OPM's review and approval of performance appraisal systems developed by agencies under 5 U.S.C. chapter 43. Simultaneously, Public Law 103–337 (Section 342 of the National Defense Authorization Act for FY95), October 5, 1994, requires OPM's approval of personnel demonstration projects. This approval was obtained and the Warfare Centers' final plan was published in the 3 December 1997 **Federal Register**. OPM's approval of the Warfare Centers' final plan removes the need to have separate review and approval of the revised performance appraisal system as required under chapter 43 of title 5 U.S.C. Part V of the final plan is therefore amended to add the following waivers:

5 U.S.C. 4304(b)(1)
5 U.S.C. 4304(b)(3)

[FR Doc. 99–18558 Filed 7–20–99; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41618; File No. SR–EMCC–99–04]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Approval on an Accelerated Basis of a Proposed Rule Change Regarding Expansion of Eligible Instruments

July 14, 1999.

On March 26, 1999, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–EMCC–99–04) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change was published in the **Federal Register** on June 23, 1999, to solicit comments from interested persons.[2] No comments have been received by the Commission. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description

The rule change expands the types of instruments eligible for processing by EMCC by amending the definition of "eligible sovereign debt," which is set forth in EMCC's Rule 1, to mean any instruments which either:

(1) Are issued by or on behalf of an emerging markets sovereign issuer or an agency or instrumentality thereof (including, without limitation, any central bank thereof); provided that, in the case of any instrument issued by an agency or instrumentality, the credit quality of those instruments is judged by one or more NRSROs or by market participants generally on the basis of the credit quality of the related sovereign issuer; or

(2) Have the timely payment of principal and interest guaranteed by an issuer who meets the criteria set forth in (1).

Initially, EMCC was established to facilitate the clearance and settlement of transactions in Brady Bonds but has always contemplated extending its services to include other emerging market debt instruments. In August 1998, EMCC amended its rules to expand the list of eligible EMCC instruments to include highly rated, liquid sovereign debt.[3] As a result of that rule change, the sovereign debt of Brazil, Argentina, and Mexico became eligible for clearance and settlement at EMCC.

As with all instruments that are EMCC eligible, eligible sovereign debt instruments must also meet the existing criteria set forth in Rule 3, Section 1. That section requires that only instruments which are eligible for settlement at a qualified securities depository and that are U.S. dollar denominated may be eligible for clearance and settlement through EMCC.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to facilitate the development of a national system for the prompt and accurate clearance and settlement of securities transactions.[4] The Commission finds that the rule change is consistent with this obligation because by making more emerging market securities eligible at EMCC, which will subject trades in these securities to EMCC's risk management systems and standardized processing, market participants' clearance and settlement of these instruments should be less risky and more efficient.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of the filing because accelerated approval will permit EMCC to provide clearance and settlement services for the sovereign debt of other emerging market countries immediately.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[5] that the above-mentioned proposed rule change (File No. SR–EMCC–99–04) be, and hereby is, approved, on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–18516 Filed 7–20–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before September 20, 1999.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst,Small Business Administration, 409 3rd Street, SW, Suite 5000, Washington, DC.20416. Phone Number: 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Size Status Declaration."

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41534 (June 16, 1999), 64 FR 33540.

[3] Securities Exchange Act Release No. 40363 (August 25, 1998), 63 FR 46263.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

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Form No: 480.
Description of Respondents: Small Businesses Requesting Size Determinations.
Annual Responses: 4,200.
Annual Burden: 700.

Title: "Stockholders confirmation."
Form No: 1405.
Description of Respondents: New Licensees.
Annual Responses: 300.
Annual Burden: 50.

Form No's: 415, 415A.
Description of Respondents: Applicants for Small Business Investment Company Licenses.
Annual Responses: 3,260.
Annual Burden: 2,320.

Comments: Send all comments regarding these information collections to Cathy Fields, Program Analyst, Office of SBIC Examinations, Small Business Administration, 409 3rd Street SW, Suite 6300, Washington, DC 20416. Phone No: 202–205–6512. Send comments regarding whether these information collections are necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize these estimates, and ways to enhance the quality.

Title: "Application for Small Business Size Determination."
Form No: 355.
Description of Respondents: Small Businesses requesting an SBA size status determination.
Annual Responses: 4,125.
Annual Burden: 16,500.

Title: "Application for Certificate of Competency."
Form No: 1531.
Description of Respondents: Small Business Owners.
Annual Responses: 1,000.
Annual Burden: 8,000.

Comments: Send all comments regarding these information collections to Susan Monge, Procurement Analyst, Office of Government Contracting, Small Business Administration, 409 3rd Street SW, Suite 8800, Washington, DC 20416. Phone No:202–205–6460. Send comments regarding whether these information collections are necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize these estimates, and ways to enhance the quality.

Title: "Disaster Loan Authorization and Agreement (Including Borrower's Progress Certification)."
Form No's: 1366, 1391.
Description of Respondents: Recipients of SBA Disaster Loans.
Annual Responses: 74,142.
Annual Burden: 181,873.

Comments: Send all comments regarding this information collection to Bridget Dusenbury, Administrative Officer, Office of Disaster Assistance, Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416. Phone No: 202–205–6734. Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Management Training Report."
Form No: 888.
Description of Respondents: Attendees at SBA sponsored training.
Annual Responses: 22,700.
Annual Burden: 3,768.

Comments: Send all comments regarding this information collection to Janet Moorman, Business Development Specialist, Office of Business Initiatives, Small Business Administration, 409 3rd Street SW, Suite 6100, Washington, DC 20416. Phone No: 202–205–6419.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Lender Field Visit Report."
Form No: 1183.
Description of Respondents: Small Businesses.
Annual Responses: 10,000.
Annual Burden: 10,000.

Comments: Send all comments regarding this information collection to Sandra Lee Johnston, Program Assistant, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Suite 8300, Washington, DC 20416. Phone No: 202–205–7528.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "SBDC Program and Financial Reports."
Form No: N/A.
Description of Respondents: SBDC Director's.
Annual Responses: 348.
Annual Burden: 9,000.

Comments: Send all comments regarding this information collection to Joan Bready, Business Development Specialist, Office of Small Business Development Centers, Small Business Administration, 409 3rd Street SW, Suite 4600, Washington, DC 20416. Phone No: 202–205–7384.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Surety Guarantee Graduation Questionnaire."
Form No: 1972.
Description of Respondents: Surety Companies participating in SBA's Surety Bond Guarantee Program.
Annual Responses: 29.
Annual Burden: 3.

Title: "Survey of Loss and Recovery Information."
Form No: 1973.
Description of Respondents: Surety Companies participating in SBA's Surety Bond Guarantee Program.
Annual Responses: 29.
Annual Burden: 3.

Comments: Send all comments regarding these information collections to Dillar Barnes, Surety Bond Specialist, Office of Surety Guarantees, Small Business Administration, 409 3rd Street SW, Suite 8600, Washington, DC 20416. Phone No: 202–205–7610.

Send comments regarding whether these information collections are necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize these estimate, and ways to enhance the quality.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 99–18636 Filed 7–20–99; 8:45 am]
BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.
ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before August 20, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Nomination for the Small Business Prime Contract & Contractor & Nomination for the Small Business Subcontractor of the year award.
Form No's: 883 and 1375.
Frequency: On Occasion.
Description of Respondents: Prime Contractor, Subcontractor.
Annual Responses: 469.
Annual Burden: 1,876.

Title: PRO–NET.
Form No: 1167.
Frequency: On Occasion.
Description of Respondents: Small Disadvantaged Businesses.
Annual Responses: 200,000.
Annual Burden: 50,000.

Dated: July 14, 1999.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 99–18637 Filed 7–20–99; 8:45 am]
BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3097]

FY 1999 Funding Under the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983

On April 27, 1999, Secretary of State Madeleine Albright approved the recommendations of the Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union. The Title VIII program, administered by the Department of State, seeks to build expertise among Americans on Russia, Eurasia, and Eastern Europe through support for advanced research, language training, and other activities both in the U.S. and in the region. FY 1999 grant recipients are listed below.

1. American Council of Learned Societies

Grant: $390,000 (EE).
Purpose: To support language programs, dissertation fellowships, advanced graduate fellowships, the Junior Scholars Training Seminar, post-doctoral fellowships, and pre-dissertation travel grants.
Contact: Jason Parker, Executive Associate, American Council of Learned Societies, 228 East 45th Street, New York, NY 10017–3398, (212) 697–1505 (ext. 134/135), Fax (212) 949–8058 e-mail: Jason@ACLS.Org.

2. American Council of Teachers of Russian/American Council for Collaboration in Education and Language Studies

Grant: $430,000 ($355,000–NIS, $75,000–EE).
Purpose: To support advanced Russian Language and Area Studies, Languages of the NIS program, Central and East European languages and research, the Special Research Initiative, the Combined Language and Research Program, Junior Faculty Research Program, and Policy Forums.
Contact: Mary Petrusewicz, ACTR, 1776 Massachusetts Avenue, NW, Suite 700, Washington, DC 20036, (202) 833–7522, Fax (202) 833–7523, e-mail: Petrusewicz@ACTR.Org.

3. University of Illinois at Urbana-Champaign

Grant: $125,000 ($95,000–NIS; $30,000–EE).
Purpose: To support the Summer Research Laboratory, which provides dormitory housing and access to the University's library for advanced research, and the Slavic Reference Service, which locates materials unavailable through regular interlibrary loan.
Contact: Dianne Merridith, Program Administrator, Russian and East European Center, University of Illinois at Urbana-Champaign, 104 International Studies Building, 910 South Fifth Street, Champaign, IL 61820, (217) 333–1244, Fax (217) 333–1582, e-mail: DianneM@UIUC.EDU

4. Institute of International Education

Grant: $120,000 ($70,000–NIS, $50,000–EE)
Purpose: To support Professional Development Fellowships for young professionals in fields related to public service and civil policy in the NIS and Eastern Europe.
Contact: Andrew Small, Institute of International Education, U.S. Student Program Division, 809 United Nations Plaza, New York, NY 10017–3580, (212) 883–8200, Fax (212) 984–5325, e-mail: ASmall@IIE.Org

5. International Research and Exchanges Board

Grant: $840,000 ($530,000–NIS; $310,000–EE).
Purpose: To support its programs for Individual Advanced Research Opportunities; Short-term Travel Grants; Dissemination, and Policy Forums.
Contact: McKinney Russell, IREX, 1616 H Street, NW. Washington, DC 20006, (202) 628–8188, Fax (202) 628–8189, e-mail: MRussell@IREX.Org

6. National Academy of Sciences

Grant: $70,000 ($40,000–NIS, $30,000–EE).
Purpose: To support a Governance Program with a strong focus on "Technology and Industrial Economics."
Contact: Steven Deets, Office for Central Europe and Eurasia, National Academy of Sciences/National Research Council, 2101 Constitution Avenue, NW, (FO 2014), Washington, DC 20418, (202) 334–2644, Fax (202) 334–2614, e-mail: SDeets@NAS.EDU

7. National Council for Eurasian and East European Research

Grant: $1,300,000 ($990,000–NIS; $310,000–EE).
Purpose: To support the Research Contract and Fellowship Grant Programs for postdoctoral research, Policy Research Fellowships in the NIS and East Europe, and the Ed. A. Hewitt Fellowship Program to allow a scholar to work on a research project for a year while serving in a USG agency.
Contact: Robert Huber, President, NCEEER, 1755 Massachusetts Avenue, NW, Suite 304, Washington, DC 20036, (202) 822–6950, Fax (202) 822–6955, e-mail: NCEEER@IX.Netcom.Com

8. Social Science Research Council

Grant: $765,000 ($745,000–NIS, $20,000–EE).
Purpose: To support dissertation fellowships, advanced graduate fellowships, US-based language training, and postdoctoral fellowships.
Contact: Judith Sedaitis, Staff Associate, Social Science Research Council, 810 7th Avenue, New York, NY 10019, (212) 377–2700, Fax (212) 377–2727, e-mail: Sedaitis@SSRC.Org

9. The Woodrow Wilson Center for International Scholars

Grant: $735,000 ($470,000–NIS; $265,000–EE).
Purpose: To support research and short-term scholar programs,

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internships, meetings, outreach publications, and the East European Junior Scholars Training Program.

Contact: Nancy Popson, Program Associate, Kennan Institute, (202) 691–4243, Fax (202) 691–4247, e-mail: Popsonna@WWIC.SI.Edu
or
Martin Sletzinger, Program Associate, East European Studies, East and West European Program, The Wilson Center, One Woodrow Wilson Plaza, 1300 Pennsylvania Ave., NW, Washington, DC 20004–3027, (202) 691–4263, Fax (202) 691–4247, e-mail: EES–WWC@erols.com

Dated: July 16, 1999.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union.

[FR Doc. 99–18620 Filed 7–20–99; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF STATE

[Public Notice No. 3080]

Shipping Coordinating Committee, Subcommittee for the Facilitation of International Maritime Traffic; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 AM on Wednesday, August 18, 1999, in room 6319 at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 27th session of the Facilitation Committee of the International Maritime Organization (IMO), which is scheduled for 6–10 September, 1999, at the IMO Headquarters in London. Discussions will focus on papers received and draft U.S. positions.

Among other things, the items of particular interest are:

—Convention on Facilitation of International Maritime Traffic
—Consideration and Adoption of Proposed Amendments to the Annex to the Convention
—EDI Messages for the Clearance of Ships
—Application of the Committee's Guidelines
—General Review of the Convention
—Formalities Connected with the Arrival, Stay and Departure of Ships
—Formalities Related to Cargo—Facilitation Aspects of the Multimodal Transport of Dangerous Goods
—Formalities Connected with the Arrival, Stay and Departure of Persons—Stowaways
—Facilitation Aspects of Other IMO Forms and Certificates-Harmonized Reporting Format
—Ship-Port Interface
—Technical Co-Operation Sub-Programme for Facilitation

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Chief, Office of Standards Evaluation and Development, U.S. Coast Guard Headquarters, Commandant (G–MSR), Room 1400, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling Mr. David A. Du Pont at: (202) 267–0971.

Dated: July 14, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–18618 Filed 7–20–99; 8:45 am]

BILLING CODE 4710–7–P

DEPARTMENT OF STATE

[Public Notice No. 3081]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Safety of Navigation; Notice of Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Thursday, August 12, 1999, in room 6103 U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC.

The purpose of the meeting is to prepare for the 45th session of the Subcommittee on Safety of Navigation (NAV) of the International Maritime Organization (IMO) which is scheduled for September 20–24, 1999, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

—Routing of ships, ship reporting, and related matters
—Amendments to the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS)
—Revision of SOLAS chapter V
—Ergonomic criteria for bridge equipment and layout
—Navigational aids and related matters
—International Telecommunication Union (ITU) matters including Radiocommunication ITU–R Study Group 8
—Training and certification of maritime pilots and revision of resolution A.485(XII)
—Safety of passenger submersible craft

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–MOV–3), Room 1407, 2100 Second Street SW, Washington, DC 20593–0001 or by calling: (202) 267–0416.

Dated: July 14, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–18619 Filed 7–20–99; 8:45 am]

BILLING CODE 4710–7–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Safety Performance Standards Program Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of NHTSA Rulemaking Status Meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program.

DATES: The Agency's regular, quarterly public meeting relating to its vehicle regulatory program will be held on Thursday, September 16, 1999, beginning at 9:45 a.m. and ending at approximately 12:00 p.m., at the Tysons Westpark Hotel, McLean, VA. Questions relating to the vehicle regulatory program must be submitted in writing with a diskette (Wordperfect) by Thursday, August 19, 1999, to the address shown below or by e-mail. If sufficient time is available, questions received after August 19 may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by August 19, 1999, and the issues to be discussed, will be posted on NHTSA's web site (www.nhtsa.dot.gov) by Monday, September 13, 1999, and also eill be available at the meeting. The regulatory program meeting will take place on Thursday, December 16, 1999 at the Clarion Hotel, Romulus, MI.

ADDRESSES: Questions for the September 16, NHTSA Rulemaking Status Meeting, relating to the agency's vehicle regulatory program, should be submitted to Delia Lopez, NPS–01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, Fax Number 202–366–4329, e-mail dlopez@nhtsa.dot.gov. The meeting will be held at the Tysons Westpark Hotel, 8401 Westpark Drive, McLean, VA.

FOR FURTHER INFORMATION CONTACT: Delia Lopez, (202) 366–1810.

SUPPLEMENTARY INFORMATION: NHTSA holds a regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that relate directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standards Office. The purpose of this meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the DOT Docket in Washington, DC, within four weeks after the meeting. Copies of the transcripts will then be available at ten cents a page, (length has varied from 80 to 150 pages) upon request to DOT Docket, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The DOT Docket is open to the public room 10:00 a.m. to 5:00 p.m. The transcript may be also accessed electronically at *http://dms.dot.gov.at* docket NHTSA–1999–5087. Questions to be answered at the quarterly meeting should be organized by categories to help us process the questions into an agenda form more efficiently. Sample format:

I. Rulemaking
  A. Crash avoidance
  B. Crashworthiness
  C. Other Rulemakings
II. Consumer Information
III. Miscellaneous

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Lopez on (202) 366–1810, by COB September 13, 1999.

Issued: July 15, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–18644 Filed 7–20–99; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33781]

The Indiana & Ohio Rail Passenger Corp.—Trackage Rights Exemption—Indiana & Ohio Rail Corp. and The Central Railroad Company of Indiana

Indiana & Ohio Rail Corp. (I&O) and The Central Railroad Company of Indiana (CIND) have agreed to grant local trackage rights [1] to The Indiana & Ohio Rail Passenger Corp. (IORP) for the operation of rail passenger service from Cincinnati, OH, at M.P. 0.0, to M.P. 81.0, near Shelbyville, IN, a distance of 81.0 miles. This transaction is expected to be consummated on or after July 23, 1999.

The purpose of the trackage rights is to permit IORP to conduct rail passenger operations over the lines of CIND and I&O.

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33781, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert L. Calhoun, Esq., Redmon, Boykin & Braswell, L.L.P. 510 King Street, Suite 301, Alexandria, VA 22314.

[1] The trackage rights agreement filed in STB Finance Docket No. 33781 is a confirmation of and an amendment to an earlier trackage rights agreement, dated June 4, 1996, between the IORP and certain other Class III carriers. *See The Indiana & Ohio Rail Passenger Corporation—Acquisition by Trackage Rights and Operation Exemption—Cincinnati Terminal Railway Corp., Indiana and Ohio Railroad Company, Indiana & Ohio Railway Company, Inc., and Indiana & Ohio Central Railroad Company, Inc.*, STB Finance Docket No. 32976 (STB served June 21, 1996).

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 13, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–18331 Filed 7–20–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33778]

Louisville & Indiana Railroad Company—Trackage Rights Exemption—New York Central Lines, LLC and CSX Transportation, Inc.[1]

New York Central Lines, LLC (NYC), as owner, and CSX Transportation, Inc. (CSXT), as operator, have agreed to grant overhead trackage rights to Louisville & Indiana Railroad Company (L&I) as follows: (1) Approximately 5.5 miles over NYC main line, former Consolidated Rail Corporation (CRC) Louisville Secondary, (a) from the connection between NYC and L&I milepost 4.0 +/ – at Indianapolis, IN, and the connection in the southeast quadrant of the former Indianapolis Union Belt running track (former Indiana Union Belt Railroad) milepost 6.0 +/ – known as Dale, a distance of approximately 2.7 miles; and (b) from this connection in the southeast quadrant of running track in the vicinity of the former Indianapolis Union Belt Railroad milepost 6.0 +/ – and the entrance to Hawthorne Yard at or near milepost 8.8 +/ –, a distance of approximately 2.8 miles; and (2) approximately 7.8 miles over NYC main line, former CRC Louisville Secondary, (a) from the connection between NYC

[1] By decision served July 23, 1998, the Board approved, subject to certain conditions, the acquisition of control of Conrail, and the division of the assets thereof, by CSX Corporation and CSX Transportation, Inc. (referred to collectively as CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (referred to collectively as NS). *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998). Acquisition of control of Conrail was effected by CSX and NS on August 22, 1998. The division of the assets of Conrail was effected by CSX and NS on June 1, 1999. *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 127 (STB served May 20, 1999).

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and L&I milepost 4.0 +/− at Indianapolis, IN, and the connection in the northeast quadrant of former CRC Indianapolis Line milepost 283.7 +/−, a distance of approximately 4 miles; (b) from this connection milepost 283.7 +/− of the former Indianapolis Line and milepost 283.1 +/− of the former CRC Indianapolis Line, a distance of approximately 0.6 miles; (c) from CRC Indianapolis Line milepost 283.1 +/− connection to milepost 109.3 +/− of the former CRC Shelbyville Secondary and from this connection in the former CRC Shelbyville Secondary milepost 109.3 +/− and CRC Shelbyville Secondary milepost 106.9 +/−, a distance of approximately 2.4 miles; and (d) from CRC Shelbyville Secondary milepost 106.9 +/− connection to former Indianapolis Union Belt running track milepost 8 +/− in the southeast quadrant and from this connection to former Indianapolis Union Belt running track milepost 8 +/− and the entrance to Hawthorne Yard in the northeast quadrant at or near milepost 8.8 +/− of the Indianapolis Union Belt running track, a distance of approximately 0.8 miles.[2]

The transaction was scheduled to be consummated on or after July 8, 1999, the effective date of the exemption.

The purpose of the trackage rights is to permit L&I to interchange certain traffic with the Norfolk Southern Railway Company at Hawthorne Yard, thereby promoting operating efficiencies.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33778, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Rose-Michele Weinryb, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, NW, Suite 800, Washington, DC 20005–4797.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–18330 Filed 7–20–99; 8:45 am]

BILLING CODE 4915–00–P

[2] A redacted version of the Trackage Rights Agreement among L&I, NYC, and CSXT was filed with the notice of exemption. The full version of the agreement was concurrently filed under seal, along with a motion for a protective order which was granted in a separate decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33776]

Delaware and Hudson Railway Company, Inc.—Trackage Rights Exemption—New York State Department of Transportation

New York State Department of Transportation has agreed to grant full service trackage rights to Delaware and Hudson Railway Company, Inc. (D&H), over the South Bronx Oak Point Link, which is approximately 10,000 feet of railroad track from 800 feet north of the north end of the track support structure south to Harlem River Yard, then east 6,000 feet along an easement through the Harlem River Yard to the northeastern end of the easement at the Harlem River Yard property line at East 132nd Street between Walnut and Willow Streets.[1] According to applicants, the notice of exemption in STB Finance Docket No. 33776 is filed in connection with Surface Transportation Board Decision Nos. 109 and 123 in STB Finance Docket No. 33388 (Sub-No. 69).[2]

The transaction was scheduled to be consummated on or after July 8, 1999, the effective date of the exemption.

The purpose of the trackage rights is to enhance rail competition for movements of traffic on the east side of the Hudson River.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33776, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Eric von Salzen, Hogan & Hartson L.L.P., 555 Thirteenth Street, NW, Washington, DC 20004–1109.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: July 14, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–18504 Filed 7–20–99; 8:45 am]

BILLING CODE 4915–00–P

[1] In *Delaware and Hudson Railway Company, Inc.—Trackage Rights Exemption—CSX Transportation, Inc. and New York Central Lines LLC*, STB Finance Docket No. 33771 (STB served July 8, 1999), D&H acquired overhead trackage rights from CSX Transportation, Inc. and New York Central Lines LLC, over lines generally between Schenectady, NY, and Fresh Pond Junction, NY. The scope of these rights and their terms were established by the Board in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision Nos. 89, 109, and 123 (STB served July 23, 1998, December 18, 1998, and May 20, 1999, respectively).

[2] The responsive application filed jointly by the State of New York, acting by and through its Department of Transportation, and the New York City Economic Development Corporation, acting on behalf of the City of New York, in connection with the railroad control application in STB Finance Docket No. 33388, was docketed as STB Finance Docket No. 33388 (Sub-No. 69).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–227 (Sub–No. 9X)]

Wheeling and Lake Erie Railway Company—Abandonment Exemption—in Harrison and Jefferson Counties, OH

On July 1, 1999, Wheeling & Lake Erie Railway Company (W&LE) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its line of railroad known as the Valley Line extending from milepost 188.5 near Unionvale to milepost 205.54 near Warrenton, a distance of approximately 18 miles in Jefferson and Harrison Counties, OH. The line traverses U.S. Postal Service ZIP Codes 43901, 43907, 43917, and 43943, and includes the stations of East Cadiz (milepost 185), Kenwood (milepost 189), Adena (milepost 192), Dillonvale (milepost 199.9), and Warrenton (milepost 204).

The line does not contain federally granted rights-of-way. Any documentation in W&LE's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 19, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 10, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–227 (Sub-No. 9X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Christopher E.V. Quinn, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601. Replies to the W&LE petition are due on or before August 10, 1999.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: July 14, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–18505 Filed 7–20–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Modification of National Customs Automation Program Test Regarding Reconciliation

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: On February 6, 1998 and August 18, 1998, general notice documents were published in the **Federal Register** regarding the Customs Automated Commercial System (ACS) Reconciliation Prototype test. These documents announced, explained, and modified the prototype test. This notice serves to notify interested parties of two additional modifications to the prototype. The first allows downward adjustments on Aggregate Reconciliations, subject to certain conditions, and the second authorizes the use of a midpoint interest calculation method for Aggregate Reconciliations. All other aspects of the prototype remain the same.

EFFECTIVE DATES: The prototype testing period started on October 1, 1998. It will run for approximately two years from that date and may be extended. Applications to participate in the prototype will be accepted throughout the duration of the prototype. The effective date for use of the downward adjustment reporting option for Aggregate Reconciliations is July 21, 1999. Prototype participants may use that option for Aggregate Reconciliations filed on or after that date. The effective date for use of the midpoint interest calculation method is July 25, 1999. Prototype participants will use that method for Aggregate Reconciliations filed on or after that date.

ADDRESSES: Written inquiries regarding participation in the prototype test should be addressed to Ms. Shari McCann, Reconciliation Team, U.S. Customs Service, 1300 Pennsylvania Ave. NW, Mailstop 5.2A, Washington, DC, 20229–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Don Luther at (202) 927–0915 or Ms. Shari McCann at (202) 927–1106.

SUPPLEMENTARY INFORMATION:

Background

Reconciliation is the process which allows an importer, at the time of entry summary, to identify undeterminable information (other than that affecting admissibility) to Customs and provide that outstanding information at a later date. Reconciliation, a planned component of the National Customs Automation Program (NCAP), as provided for in Title VI (Subtitle B) of the North American Free Trade Agreement Implementation Act (the NAFTA Implementation Act; Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993)), is currently being tested by Customs under the Customs Automated Commercial System (ACS) Prototype test.

Customs announced and explained the ACS Prototype test of reconciliation in a general notice document published in the **Federal Register** (63 FR 6257) on February 6, 1998. A notice published in the **Federal Register** (63 FR 44303) on August 18, 1998, announced clarifications and operational changes. This notice modifies the test by providing a downward adjustment option and a midpoint interest calculation method for Aggregate Reconciliations. Except for these particular modifications, all other aspects of the test remain the same.

The downward adjustment modification is an enhancement to the prototype test. The midpoint interest modification is authorized under the Miscellaneous Trade and Technical Corrections Act of 1999 (Pub. L. 106–36 (June 25, 1999)), which amended 19 U.S.C. 1505(c) (see section further below pertaining to the midpoint interest calculation method). Prototype participants should note that these modifications have different effective dates (see "Effective Dates" section) and both apply only to Aggregate Reconciliations. The Entry-by-Entry Reconciliation aspect of the prototype remains unchanged.

Aggregate Reconciliation for Decrease in Duties, Taxes, and Fees

As set forth in the **Federal Register** notice published on February 6, 1998

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(63 FR 6257), there are two types of Reconciliations that may be filed:

(1) Entry-by-Entry Reconciliations, where adjustments for duties, taxes, and fees are shown for every entry being reconciled. Such Reconciliations may be used to report increases, decreases, or no change to the duties, taxes, and fees determined on the underlying entry summary (ies); and

(2) Aggregate Reconciliations for reporting absolute increases in duties, taxes, and fees, where reconciled adjustments are shown on an aggregate basis, rather than on an entry-by-entry basis.

The same **Federal Register** notice (63 FR 6257) described the term "absolute increase" to encompass only entry summaries that result in either an increase or no change in duties, taxes, and fees. Thus, prior to publication of this notice, only increases and no changes have been eligible for Aggregate Reconciliations.

In this notice, Customs announces an enhancement to the Aggregate Reconciliation option that has the effect of altering this limitation. Upon publication of this notice, participants in the prototype may now also use the Aggregate Reconciliation to report changes resulting in a decrease in duties, taxes, and fees (referred to as downward adjustments), provided that the participant waives any claim for a refund (of duties, taxes, and fees) and releases Customs from any such liability.

While upward and downward adjustments will be allowed on a single Aggregate Reconciliation, they will be reported in separate sections of the line item data spreadsheet. Importers and other interested parties must be aware that the prohibition against netting remains in effect: decreases may NOT be netted against increases. For example, if a given product has two value issues, one resulting in an increase in value (and corresponding duties) and one resulting in a decrease in value (and corresponding duties), these two adjustments may not be offset against each other and reported as one line on the spreadsheet. They must be reported in separate sections of the spreadsheet, the increase adjustment as an increase for which additional duties will be tendered upon filing the Reconciliation and the downward adjustment as a decrease for which a refund is waived.

Downward adjustments, while reported on the spreadsheet, will not be reported on the Aggregate Reconciliation Header File in ACS. The Header File will be prepared without regard to decrease items, reflecting only increases in duties, taxes, and fees. In the event there are only decreases on the Aggregate Reconciliation, the Header File will be prepared as if the Reconciliation resulted in no change in duties, taxes, and fees.

Aggregate Reconciliations showing a decrease in duties, taxes, and fees will be liquidated as appropriate but without refund or reduction in duties, taxes, and fees otherwise due, since participants waive all claims for refunds due to downward adjustments.

The following certification must be included in the line item data spreadsheet of all Aggregate Reconciliations that report decreases. It contains the waiver, the release from liability, and a pledge that the changes reported do not reflect netting:

> The tariff items shown below are items for which the reconciliation adjustment resulted in a decrease in duties, taxes, and/or fees. On this Aggregate Reconciliation, we hereby declare these changes and acknowledge that we waive any claims for a refund of any monies due us as a result of these changes, release Customs of any liability for the refund, and certify that the changes shown below are not included elsewhere in the Reconciliation or netted against increases.

This certification must appear immediately before the listing of tariff items for which decreases are reported. It will separate the sections of the data spreadsheet, with absolute increases listed above and decreases listed below (see sample spreadsheet further below, showing increases, decreases, and the required certification).

The downward adjustment modification described above serves only to add another voluntary option for importers participating in the prototype test. It does not remove any other options. Importers wishing to obtain refunds for monies due them pursuant to reconciled information (downward adjustments that result in monies owed to the importer) may still do so via the Entry-by-Entry Reconciliation method.

Sample Spreadsheet

Below is an example of an Aggregate Reconciliation spreadsheet where increases and decreases are reported in separate sections. The downward adjustments are reported but not calculated in the Reconciliation Adjustment.

BILLING CODE 4820–02–P

DURANT MOTOR CORP. – RECONCILIATION DETAILS
PERIOD: 10/1/1999 THRU 3/31/2000

Rec Line	Cal Year	Reason	Port	Origin	Original SPI	Rec SPI	HTS	Original Quant	Rec Quant	Original Value	Reconciled Value	Change in Value	Duty	Duty Change*	MPF	HMT
1	1999	Value		JP			4011101000			$16,300,451	$16,544,958	$244,507	4.00%	$9,780.26	$513.46	$305.63
2	2000	Value		JP			4011101000			$5,751,916	$5,838,195	$86,279	4.00%	$3,451.16	$181.19	$107.85
3	1999	Value		MX	MX	MX	5704900090			$686,231	$721,548	$36,317	2.60%	$944.24	$61.74	$0.00
4	2000	Value		MX	MX	MX	5704900090			$623,966	$657,036	$33,070	2.60%	$859.82	$56.22	$0.00
5	1999	Value		KR			7007110010			$3,201,101	$4,601,298	$1,400,197	5.60%	$78,411.03	$2,940.41	$1,750.25
6	2000	Value		KR			7007110010			$2,604,538	$3,015,562	$411,024	5.60%	$23,017.34	$863.15	$513.78
											RECONCILIATION ADJUSTMENT			$116,463.86	$4,616.17	$2,677.51
		The tariff items shown below are items for which the reconciliation adjustment resulted in a decrease in duties, taxes and/or fees. On this Aggregate Reconciliation, we hereby declare these changes, and acknowledge that we waive any claims for a refund of any monies due us as a result of these changes, release Customs of any liability for the refund, and certify that the changes shown below are not included elsewhere in the Reconciliation or netted against increases.														
7	1999	Value		IT			8421905050			$382,904	$365,109	($17,795)				
8	2000	Value		TH			9018651021			$104,926	$99,423	($5,503)				

BILLING CODE 4820–02–C

Midpoint Interest Calculation for Aggregate Reconciliations

Section 1505(c) of Title 19, United States Code, provides for the accrual of interest on underpayments and excess deposits applicable to ordinary entries and Reconciliations (19 U.S.C. 1505(c)). Under the statute, interest accrues for underpayments of duties, fees, and interest from the date the importer of record is required to deposit estimated duties, fees, and interest to the date of liquidation or reliquidation of the entry or Reconciliation. Interest accrues on excess deposits from the date the importer of record deposits estimated duties, fees, and interest to the date of liquidation or reliquidation of the entry or Reconciliation. Thus, under the prototype test, interest accrues on all Reconciliations where monetary adjustments take place, whether the adjustments are increases (Entry-by-Entry or Aggregate Reconciliations) or decreases (Entry-by-Entry Reconciliations) in duties, taxes, and fees. If interest is due to Customs, the filer will pay the interest, along with duties, taxes, and fees, upon filing the Reconciliation.

The previously mentioned **Federal Register** notice of August 18, 1998 (63 FR 44303) indicated that Customs was seeking a statutory amendment to 19 U.S.C. 1505(c) to authorize use of an alternative midpoint interest calculation method, an alternative to the entry-by-entry interest calculation method described in the previous paragraph. On June 25, 1999, the Miscellaneous Trade and Technical Corrections Act of 1999 was signed into law (the Act) (Pub. L. 106–36, 113 Stat. 127 (June 25, 1999)). Under section 2418(e) of the Act (Title II, Subtitle B), section 1505(c) was amended to authorize, for purposes of the prototype test, an alternative midpoint interest calculation method based upon aggregate data. This amendment predicates this modification of the prototype test.

Under the midpoint interest calculation method, interest is calculated on the entire amount of adjusted duties, taxes, and fees as if they had been due on the midpoint date of the period covered by the Reconciliation. For example, if an Aggregate Reconciliation covers January 1, 1999, through December 31, 1999, and results in $20,000 in increased revenue due to Customs, the interest would be calculated on that amount from the midpoint date of July 1, 1999. Interest would accrue from the midpoint date until the date the Reconciliation is filed with payment. The midpoint interest method will be used for Aggregate Reconciliations filed on or after July 25, 1999. Such Aggregate Reconciliations may cover underlying entries filed during the period from October 1, 1998, through October 1, 2000, or the end of the prototype, whichever occurs first.

Prototype participants are reminded that they have the option of filing either an Aggregate Reconciliation or an Entry-by-Entry Reconciliation. As above, the midpoint interest calculation method will be used for Aggregate Reconciliations, and the entry-by-entry interest calculation method will be used for Entry-by-Entry Reconciliations. Under the entry-by-entry method, interest is calculated based on the monetary changes and dates associated with each underlying entry summary.

Prototype participants also are reminded that where a refund is claimed (on Entry-by-Entry Reconciliations), no interest calculations are required of the filer. Customs will calculate the interest due on the refund using the entry-by-entry method of calculation. For NAFTA Reconciliations, interest runs from the date the Reconciliation is filed until the date the Reconciliation is liquidated by Customs.

Conclusion

Regarding the prototype test generally, interested parties should

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consult the **Federal Register** notices of February 6, 1998 (63 FR 6257) and August 18, 1998 (63 FR 44303). All terms and conditions set forth in those notices remain in effect, except as specifically modified by this notice.

Dated: July 16, 1999.

Charles W. Winwood,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 99–18560 Filed 7–20–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. Due to recent legislation, the interest rate applicable to overpayments by corporations is now different than the interest rate for overpayments by non-corporations. For the quarter beginning July 1, 1999, the interest rates for overpayments will be 7 percent for corporations and 8 percent for non-corporations, and the interest rate for underpayments will be 8 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was recently amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub.L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations. The interest rate applicable to underpayments is not so bifurcated.

The interest rates are based on the short-term Federal rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 99–27 (*see*, 1999–25 IRB 7, dated June 21, 1999), the IRS determined the rates of interest for the fourth quarter of fiscal year (FY) 1999 (the period of July 1—September 30, 1999). The interest rate paid to the Treasury for underpayments will be the short-term Federal rate (5%) plus three percentage points (3%) for a total of eight percent (8%). For corporate overpayments, the rate is the Federal short-term rate (5%) plus two percentage points (2%) for a total of seven percent (7%). For overpayments made by non-corporations, the rate is the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). These interest rates are subject to change for the first quarter of FY–2000 (the period of October 1—December 31, 1999).

For the convenience of the importing public and Customs personnel the following list of Internal Revenue Service interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate Overpayments (Eff. 1–1–99) (pecent)
Prior to 070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	2	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate Overpayments (Eff. 1–1–99) (pecent)
040198	123198	8	7	
010199	033199	7	7	6
040199	093099	8	8	7

Dated: July 16, 1999.

Raymond W. Kelly,

Commissioner of Customs

[FR Doc. 99–18559 Filed 7–20–99; 8:45 am]

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Federal Register

Wednesday
July 21, 1999

Part II

Department of Commerce

Bureau of Export Administration

Department of State

Bureau of Arms Control

15 CFR Parts 710 Through 721 and 22 CFR Part 103

Regulations Implementing Provisions of the Chemical Weapons Convention and the Chemical Weapons Convention Implementation Act of 1998 on the Taking of Samples and on Enforcement of Requirements Concerning Record Keeping and Inspections; Proposed Rules

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 710 Through 721

[Docket No. 990611158–9158–01]

RIN 0694–AB06

Chemical Weapons Convention Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: On April 25, 1997, the United States ratified the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention). The Bureau of Export Administration is proposing to establish the Chemical Weapons Convention Regulations (CWCR) to implement provisions of the Convention affecting U.S. industry and other U.S. persons. The proposed CWCR include requirements to report certain activities involving Scheduled chemicals and Unscheduled Discrete Organic Chemicals, and to provide access for on-site verification by international inspectors of certain facilities and locations in the United States.

DATES: Comments must be received by August 20, 1999.

ADDRESSES: Written comments should be sent to Nancy Crowe, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Room 2705, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: For questions of a general or regulatory nature, contact Nancy Crowe , Regulatory Policy Division, telephone: (202) 482–2440 or e-mail: Ncrowe@BXA.DOC.GOV. For program information, contact Charles Guernieri, Director, Treaty Compliance Division, Office of Chemical and Biological Controls and Treaty Compliance, telephone: (202) 501–7876; for legal questions, contact Cecil Hunt, Deputy Chief Counsel, Office of the Chief Counsel for Export Administration, telephone (202) 482–5301.

SUPPLEMENTARY INFORMATION:

Background

Chemical Weapons Convention

On April 25, 1997, the United States ratified the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention). The Convention, which entered into force on April 29, 1997, is an arms control treaty with significant non-proliferation aspects. As such, the Convention bans the development, production, stockpiling or use of chemical weapons and prohibits States Parties from assisting or encouraging anyone to engage in a prohibited activity. The Convention provides for declaration and inspection of all States Parties' chemical weapons and chemical weapon production facilities and oversees the destruction of such weapons and facilities.

To fulfill its arms control and non-proliferation objectives, the Convention also establishes a comprehensive verification scheme and requires the declaration and inspection of facilities that produce, process or consume certain listed or "Scheduled" chemicals, many of which have significant commercial applications. The Convention also requires States Parties to report imports and exports and to impose import and export restrictions on certain chemicals. These requirements apply to all entities under the jurisdiction and control of States Parties, including commercial entities and individuals. States Parties to the Convention, including the United States, have agreed to this verification scheme to provide transparency and to ensure that no State Party to the Convention is engaging in prohibited activities.

Specifically, the Convention requires States Parties to declare all facilities that produce Schedule 1 or Schedule 3 chemicals in quantities exceeding specified declaration thresholds, or that produce, process or consume Schedule 2 chemicals in quantities exceeding specified declaration thresholds. Schedule 1, 2 and 3 chemicals are set forth in the Convention's Schedules of Chemicals and have been selected for these Schedules based on degree of toxicity, history of use in chemical warfare and commercial utility. The Convention also requires States Parties to declare facilities that produce "Unscheduled Discrete Organic Chemicals" ("UDOCs") in quantities exceeding specified thresholds. The requirement to declare UDOC facilities is intended to identify facilities capable of producing chemical warfare agents or precursors.

Certain "declared" facilities will also be subject to routine on-site inspections by international inspectors from the Convention's implementing body, the Organization for the Prohibition of Chemical Weapons (OPCW). All declared Schedule 1 facilities are subject to routine inspection. Declared Schedule 2 facilities are subject to inspection if they produce, process or consume Schedule 2 chemicals in quantities exceeding specified inspection thresholds. Declared Schedule 3 facilities are subject to inspection if they produce Schedule 3 chemicals in quantities exceeding a specified inspection threshold. Facilities producing UDOCs in quantities exceeding a specified threshold will be subject to inspection, beginning in 2001, unless the Conference of States Parties decides otherwise. With a few exceptions, inspection thresholds are higher than declaration thresholds.

The Convention also provides for challenge inspections of any facility or location under the jurisdiction of any State Party. Challenge inspections are intended to resolve questions of possible non-compliance with the Convention.

Finally, the Convention requires States Parties to provide data on imports and exports of Scheduled chemicals. States Parties must also, among other things, prohibit exports of Schedule 1 chemicals to non-States Parties, require advance notification of imports and exports of Schedule 1 chemicals, require End-Use Certificates for exports of Schedule 2 and 3 chemicals to non-States Parties, and ban the import from or export to non-States Parties of Schedule 2 chemicals after April 28, 2000.

Application of CWC Requirements to U.S. Commercial Entities and Individuals

The Chemical Weapons Convention Implementation Act of 1998 ("Act") (Pub. L. 105–277, Division I), enacted on October 21, 1998, authorizes the United States to require the U.S. chemical industry and other private entities to submit declarations, notifications and other reports and also to provide access for on-site inspections. Executive Order No. 13128, among other things, delegates authority to the Department of Commerce to promulgate regulations, obtain and execute warrants, provide assistance to certain facilities, and carry out appropriate functions to implement the Convention, consistent with the Act. The Department of Commerce will carry out CWC import restrictions under the authority of the International Emergency Economic Powers Act, the National Emergencies Act and Executive Order 12938, as revised by E.O. No. 13128.

The Departments of State and Commerce are implementing CWC export restrictions under their respective export control authorities.

Other State and Commerce Department Regulations Implementing Requirements of the Chemical Weapons Convention

In addition to these proposed Chemical Weapons Convention Regulations, the Department of State is publishing a separate proposed rule on the taking of samples during on-site inspections in the United States and the enforcement provisions for violations of the reporting and inspection requirements set forth in the Act, and also maintains the International Traffic in Arms Regulations (22 CFR 120–130).

Further, on May 18, 1999, BXA published an interim rule (64 FR 27138) that implemented the following export control provisions of the CWC:

—Annual reporting of all exports of Schedule 1 chemicals;
—Advance notification of all exports of Schedule 1 chemicals;
—Prohibition on exports of Schedule 1 chemicals subject to Commerce Department jurisdiction to non-States Parties;
—Prohibition on all reexports of Schedule 1 chemicals subject to Commerce Department jurisdiction;
—Prohibition on exports of Schedule 2 chemicals subject to Commerce Department jurisdiction to non-States Parties after April 28, 2000;
—Requirement that exporters obtain an End-Use Certificate prior to exporting any Schedule 2 or 3 chemicals to a non-State Party; and
—License requirements for the export of Schedule 1 chemicals under Commerce Department jurisdiction to all destinations, including Canada.

Note that all existing export license requirements that apply to CWC Scheduled chemicals and UDOCs subject to Commerce Department jurisdiction continue in effect. Further, the new CWC reporting requirements, such as the End-Use Certificate and prior notification requirements, are in addition to existing export license and supporting documentation requirements for exports of chemicals subject to Commerce Department or State Department export licensing jurisdiction.

The Chemical Weapons Convention Regulations (CWCR)

This proposed rule implements reporting and inspection requirements and import restrictions. The CWCR:

—Apply to all U.S. persons and facilities in the United States, except for Department of Defense and Department of Energy facilities and other U.S. Government agencies that notify the United States National Authority of their decision to be excluded from the CWCR (Such entities are referred to as "persons and facilities subject to the CWCR"). United States Government facilities are those owned by or leased to the U.S. Government, including facilities that are contractor-operated.
—Set forth the declaration and other reporting requirements that affect persons and facilities subject to the CWCR. The reporting requirements of this proposed rule are consistent with the procedural provisions of section 401(a) of the Act. Section 401(a) of the Act requires submission to the Director of the USNA such reports as the USNA may reasonably require to provide to the OPCW, pursuant to subparagraph 1(a) of the Convention's Annex on Confidentiality. Subparagraph 1(a) of the Confidentiality Annex provides that the OPCW shall require only the minimum amount of information and data necessary for the timely and efficient conduct by the OPCW of its responsibilities under the Convention. As required by Section 401(a) of the Act, the USNA, in coordination with the CWC interagency group, has determined that the reports required by the CWCR are those reasonably required to be provided to the OPCW. Declarations, notifications and other reports required under the CWCR will be due to the Department of Commerce at specified dates or within specified time frames for verification, aggregation and submission to the Director of the USNA. The USNA will transmit United States declarations, reports and notifications to the OPCW located in the Hague, Netherlands.
—Require access for on-site inspections.
—Prohibit imports of Schedule 2 chemicals from non-States Parties after April 28, 2000.
—Contain recordkeeping requirements and administrative procedures and penalties related to violations of reporting and inspection requirements and importation restrictions.
—Implement section 211 of the Act, which authorizes revocation of the export privileges of any person determined to have violated the chemical weapons provisions of 18 U.S.C. § 229.

Reporting Requirements

Declaration Requirements

Facilities required to submit "declarations" are those that produce, process or consume certain chemicals in quantities that exceed specified thresholds. Four types of declarations are due to BXA when required by parts 712 through 715 of the CWCR: initial declarations, annual declarations on past activities, annual declarations on anticipated activities, and a one-time declaration of facilities that produced Schedule 2 or 3 chemicals for chemical weapons purposes at any time since January 1, 1946. Declared Schedule 1, 2 and 3 facilities will provide import and export data on declared chemicals as part of their annual declarations. The United States will transmit data on declared facilities to the OPCW. Such data will also be compiled to establish the U.S. national aggregate on production, processing and consumption of relevant chemicals. Import and export data contained in declarations will also be compiled and added to import and export information obtained from other reports to establish the U.S. national aggregate declaration on imports and exports of certain chemicals.

Initial declarations. Initial declarations are one-time declarations that will be due to BXA within 90 days after the date of publication of the CWCR as a final rule. Facilities that produced more than 100 grams aggregate of Schedule 1 chemicals in calendar year 1997 must provide a technical description of their facilities. Facilities that produced, processed or consumed more than specified quantities of a Schedule 2 chemical in any of calendar years 1994, 1995 or 1996 must provide data on activities involving this Schedule 2 chemical that occurred in each of calendar years 1994, 1995, and 1996. Facilities that produced more than 30 metric tons of a Schedule 3 chemical in calendar year 1996 must provide data on activities involving this Schedule 3 chemical that occurred in 1996. Facilities that produced more than specified quantities of UDOCs in calendar year 1996 must provide ranges of production for 1996.

Annual declarations on past activities. Facilities that produced more than 100 grams aggregate of Schedule 1 chemicals, more than 30 metric tons of a Schedule 3 chemical, or more than specified quantities of UDOCs in the previous calendar year, must submit an annual declaration on past activities. Facilities that produced, processed or consumed more than specified quantities of a Schedule 2 chemical in any of the three previous calendar years must submit an annual declaration on past activities for activities during the previous year. Annual declarations on past activities for calendar years 1997

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and 1998 will be due to the Department of Commerce within 90 days of the publication of the CWCR as a final rule.

Annual declarations on anticipated activities. Facilities that anticipate engaging in production of Schedule 1 or Schedule 3 chemicals or production, processing or consumption of Schedule 2 chemicals above specified thresholds during the next calendar year must submit an annual declaration on anticipated activities. The due date for annual declarations on anticipated activities will be determined when the CWCR is published as a final rule.

One time declaration of past production for chemical weapons purposes. Facilities that have produced Schedule 2 or Schedule 3 chemicals anytime since January 1, 1946, for chemical weapons purposes must submit a declaration within 90 days after publication of the CWCR as a final rule.

Amended declarations. The CWCR also provide for submission of "amended declarations" to correct errors and to declare additionally planned activities after the submission of the annual declarations of anticipated activities.

Notification Requirements. Facilities that intend to import or export Schedule 1 chemicals to States Parties or to begin production of Schedule 1 chemicals in excess of 100 grams aggregate per year must submit prior notifications of these activities. These notifications will be forwarded to the OPCW.

Other Reporting Requirements

U.S. persons and facilities subject to the CWCR that have imported or exported a Scheduled chemical but have not produced, processed, or consumed declarable quantities of that chemical may nevertheless have an import or export reporting requirement. The United States National Authority will NOT forward facility-specific information contained in these reports to the OPCW. BXA will include the import and export data in the compilation of the U.S. national aggregate declaration on imports and exports of relevant chemicals.

Initial reports on imports and exports. Initial reports for imports and exports are required for imports and exports of Schedule 2 and Schedule 3 chemicals above certain threshold quantities • during calendar year 1996.

Annual reports on imports and exports. Annual reports for imports and exports are required for all imports and exports of Schedule 1 chemicals during the previous calendar year, and for imports and exports of Schedule 2 and 3 chemicals above certain threshold quantities during the previous calendar year, beginning with 1997.

The first declaration and report package due to the Department of Commerce will include the initial declaration plus the annual declarations for calendar years 1997 and 1998 activities, and may also include the annual declaration on activities anticipated for calendar year 2000. Certain facilities may also need to submit the one-time declaration on past production of Schedule 2 or Schedule 3 chemicals for chemical weapons purposes. Handbooks containing necessary multipurpose forms for declarations and reports will be available by mail and through the Internet. If there are discrepancies between the CWCR and the handbook (including instructions and forms), the CWCR prevail.

On-Site Inspection Requirements

This proposed rule also sets forth the requirements and procedures for on-site inspections of U.S. facilities subject to the CWCR, consistent with sections 301 to 309 of the Act. On-site inspections will be conducted by inspectors from the OPCW's Technical Secretariat. The Department of Commerce will lead the U.S. host team accompanying and escorting the inspectors during inspections.

Types of inspections. There are two major kinds of inspections: (1) initial and subsequent ("routine," under the Act) inspections of declared facilities whose level of production, processing or consumption of specified chemicals makes them subject to such verification as a routine matter; and (2) "challenge" inspections of any facility or location in the United States based on a request made by another State Party to clarify and resolve any questions concerning possible non-compliance with the Convention.

Notification and consent procedures. Pursuant to section 304 of the Act, before an inspection may take place, the USNA must authorize each inspection of a facility or location in the United States and provide actual written notification of each inspection to the owner and operator or other person in charge of the facility. For routine or challenge inspections of declared facilities, the USNA will provide such written notification within 6 hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. The Department of Commerce will provide preliminary notice to facilities to be inspected. The Department of Commerce will also obtain an administrative warrant, as provided for by section 305 of the Act and in Executive Order No. 13128, if the owner or person in charge of the facility does not consent to the inspection.

Part-by-Part Analysis

The Chemical Weapons Convention Regulations will include 21 parts, as follows:

Part 710—General Information and Overview of the CWCR

This part includes general information about the Convention, definitions of terms used in the CWCR, an overview of Scheduled chemicals and examples of affected industries. States Parties to the Convention are listed in Supplement No. 1 to part 710 of the CWCR. This part also briefly describes the declaration and inspection provisions of the Convention.

Part 711—General Information Regarding Reporting Requirements

This part provides an overview of declaration and other reporting requirements, who is responsible for declarations and reports, and where to get assistance, forms and handbooks. The Convention requires an initial declaration and report and subsequent annual declarations and reports for activities involving specified amounts of certain chemicals. If, after reviewing parts 712 through 715, you determine that you have declaration and/or reporting requirements, you may obtain the appropriate forms by contacting the Bureau of Export Administration (BXA). Note that in instances where a declaration or report is required, the operator of a facility required to declare or report under the CWCR is responsible for the submission of all required forms in accordance with all applicable provisions of the CWCR. Also note that the Act defines and provides for the protection of confidential business information obtained pursuant to the CWCR. A supplement to this part includes information on protection of confidential business information.

Part 712—Activities Involving Schedule 1 Chemicals

This part prohibits imports of Schedule 1 chemicals from non-States Parties and imports from States Parties for purposes other than research, medical, pharmaceutical, or protective purposes. (Part 712 also cross-references similar export restrictions on Schedule 1 chemicals set forth in the Export Administration Regulations.) This part also describes declaration and other reporting requirements for activities involving Schedule 1 chemicals, including production, use (consumption), imports, exports, domestic transfers and storage of any quantity of Schedule 1 chemicals. This part provides that facilities that produce more than 100 grams of Schedule 1 chemicals in a calendar year are considered Schedule 1 "declared" facilities. Facility-specific information on "declared facilities" will be forwarded to the Organization for the Prohibition of Chemical Weapons (OPCW) and all Schedule 1 "declared" facilities will be subject to routine on-site inspection by the OPCW. Finally, this part requires advance notification of all exports and imports of Schedule 1 chemicals to or from other States Parties and changes in production of Schedule 1 chemicals. Note that BXA published an interim rule in the **Federal Register** on May 18, 1999 (64 FR 27138), amending the Export Administration Regulations (EAR) to implement the export control provisions of the CWC that are subject to Department of Commerce jurisdiction. The EAR also requires prior notification of all exports of Schedule 1 chemicals and annual reports of exports of such chemicals. Upon publication of the CWCR as a final rule, the EAR will be amended to remove the duplicate advance notification and other reporting provisions for exports of Schedule 1 chemicals. The export license requirements pertaining to Schedule 1 chemicals, and other scheduled chemicals, will continue to be set forth in the EAR. Schedule 1 chemicals are included in Supplement No. 1 to this part.

Part 713—Activities Involving Schedule 2 Chemicals

This part prohibits imports of any Schedule 2 chemical on or after April 29, 2000, from any country that is not a party to the Convention. (Part 713 cross-references similar export restrictions on Schedule 2 chemicals in the EAR.) This part also describes declaration and other reporting requirements for activities involving Schedule 2 chemicals, including production of any amount of a Schedule 2 chemical at any time since January 1, 1946, for chemical weapons purposes; production, processing, or consumption of Schedule 2 chemicals in excess of specified quantities; and imports and exports of a Schedule 2 chemical in excess of specified quantities. Further, this part requires declarations on anticipated production, processing, or consumption in the next calendar year of a Schedule 2 chemical in excess of specified quantities as well as any changes to the declarations on anticipated activities that results in an increase of anticipated production, processing or consumption by 20% or more. Declaration requirements apply also to Schedule 2 chemicals contained in mixtures. Note, however, that the quantity of a Schedule 2 chemical contained in a mixture must be counted for declaration purposes only if the concentration of the Schedule 2 chemical in the mixture is:

—10% or more by volume or by weight, whichever yields the lesser percent, for activities involving either production or consumption of a mixture containing a Schedule 2 chemical; or

—30% or more by volume or by weight, whichever yields the lesser percent, for activities involving the processing of a mixture containing a Schedule 2 chemical.

If the mixture contains more than the stated percentage concentration for the activity (*i.e.*, more than 10% for production or consumption activities or more than 30% for processing activities), you must count only the amount (weight) of the Schedule 2 chemical in the mixture, not the total weight of the mixture. Schedule 2 chemicals are included in Supplement No. 1 to this part.

Part 714—Activities Involving Schedule 3 Chemicals

This part describes declaration and other reporting requirements for activities involving Schedule 3 chemicals, including production of any amount of a Schedule 3 chemical at any time since January 1, 1946, for chemical weapons purposes; production of Schedule 3 chemical in excess of specified quantities; and imports and exports of a Schedule 3 chemical in excess of specified quantities. Further, this part requires declaration of anticipated production in the next calendar year of a Schedule 3 chemical in excess of specified quantities as well as any changes to the declaration of anticipated activities that result in an increase of anticipated production by 20% or more. Declaration requirements apply also to Schedule 3 chemicals contained in mixtures. Note, however, that the quantity of a Schedule 3 chemical contained in a mixture must be counted for declaration purposes only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent. Schedule 3 chemicals are included in Supplement No. 1 to this part.

Part 715—Activities Involving Unscheduled Discrete Organic Chemicals (UDOCs)

This part describes declaration requirements for the production of UDOCs in excess of specified quantities. However, note that declarations are not required for chemicals and chemical mixtures produced through a biological or bio-mediated process; polymers and oligomers; certain synthetic mixtures of organic chemicals; unscheduled discrete organic chemicals produced coincidentally as byproducts of a manufacturing or production process that are not isolated or captured for use or sale during the process and are routed to, or escape from, the waste stream of a stack, incinerator, or wastewater treatment system or any other waste stream; hydrocarbons; or explosives.

Part 716—Inspections

This part implements the inspection provisions of the Convention, consistent with the Act. It describes notification procedures, the responsibilities of the Department of Commerce as host and escort for inspections, types of inspections, and scope and conduct of inspections. The USNA will provide written notification to the owner and operator, occupant or agent in charge of the premises to be inspected. The Department of Commerce will provide preliminary notice to the point of contact identified in declaration forms submitted by the facility. This part also describes the duration and frequency of inspections, and the role of a facility agreement. A facility agreement is a site-specific agreement between the U.S. Government and the Organization for the Prohibition of Chemical Weapons. The purpose for a facility agreement is to define the inspection scope and procedures for a given facility under the Convention and to facilitate future inspections of the facility by enhancing efficiency and predictability and reducing preparation costs for the facility. The U.S. Government and the OPCW will begin negotiating such facility agreements during the initial inspections of facilities that require facility agreements pursuant to the Convention. Supplement Nos. 2 and 3 include model facility agreements for Schedule 1 and Schedule 2 facilities, respectively.

Part 717—Clarification and Challenge Inspection Procedures

This part describes clarification procedures under the Convention and the scope and purpose of on-site challenge inspections. On-site challenge

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inspections may be conducted at any facility or location in the United States for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the provisions of the CWC. The USNA will provide written notification of a challenge inspection to the owner and operator, occupant or agent in charge of the premises. The Department of Commerce will provide preliminary notification to the point of contact of a declared facility, or to the owner or occupant of an facility that has not been declared under the declaration requirements of the Convention.

Part 718—Interpretations

This part is reserved for future use. It will provide explanations and examples for declaration requirements and other interpretations to guide industry and other U.S. persons in determining obligations under the CWCR.

Part 719—Enforcement

This part sets forth the civil and criminal penalties and enforcement procedures that apply to violations of the reporting and inspections requirements and provisions relating to the importation of Schedule 1 and 2 chemicals.

Part 720—Denial of Export Privileges

This part sets forth the penalties and enforcement procedures that apply to violations of 18 U.S.C. 229.

Part 721—Recordkeeping Requirements

This part includes the recordkeeping requirements of the CWCR, including retention and reproduction requirements.

Comments on this proposed rule must be submitted to BXA by August 20, 1999. To aid in discussions between interested persons and the U.S. Government on the requirements of this proposed rule, BXA will conduct a seminar in Washington, D.C. prior to the expiration of the comment period. Interested persons should contact the Office of Chemical and Biological Controls and Treaty Compliance on (202) 501–7876 for information concerning the seminar.

Rulemaking Requirements

1. This proposed rule has been determined to be significant for purposes of E.O. 12866. BXA invites the public to comment on the extent to which this rule complies with the principle stated in section (1)(b)(12) of E.O. 12866 that agencies draft regulations that are simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty. Comments should be submitted to BXA by August 20, 1999, and sent to Nancy Crowe, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Room 2705, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule revises an existing collection of information requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), which we have submitted for approval to the Office of Management and Budget. The public reporting burdens for the new collections of information are estimated to average 9 hours for Schedule 1 Chemicals, 7.2 hours for Schedule 2 chemicals, 2.5 hours for Schedule 3 chemicals, 5.3 for Unscheduled Discrete Organic Chemicals, and .17 hours for Schedule 1 notifications. These estimates include the time required to complete the required forms.

Comments are invited on (a) whether the collection of information is necessary for the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarify of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments regarding these or any other aspects of the collection of information to: Nancy Crowe, Regulatory Policy Division, Bureau of Export Administration , U.S. Department of Commerce Room 2705, 14th Street and Pennsylvania Ave., NW, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. BXA has completed a Cost Benefit Analysis (CBA) pursuant to Executive Order 12866 and an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603 for this proposed rule. A summary of this IRFA follows. Copies of the CBA and the complete IRFA may be obtained from Henry Gaston, Bureau of Export Administration Freedom of Information Officer, Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 6883, Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230 or by calling (202) 482–0500. BXA invites the public to comment on the CBA and the IRFA. Send comments to Nancy Crowe, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Room 2705, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

The IRFA identifies the Small Business Administration's (SBA) small business size standards, in terms of number of employees, for "Chemicals and Allied Products" by four-digit Standard Industrial Classification (SIC) codes. These SBA standards indicate that a "small business" in the chemical industry can cover a range of sizes, from up to 500 employees to up to 1,000 employees. The IRFA states that BXA does not have information on which SIC code categories will include companies that will be subject to the reporting, declaration or inspection requirements of this proposed rule, and therefore, BXA is unable to estimate with certainty the number of small businesses that will be affected by the proposed rule. BXA anticipates some 2,000 firms will be affected by the CWCR, and many of them may have no more than 500 employees, thus falling under the SBA generic definition of "small business". However, BXA invites and encourages affected companies commenting on this proposed rule to inform BXA of their size and their SIC codes.

The IRFA reports BXA's estimate that compliance with the requirements of this proposed rule will total approximately $377,654 to gather and maintain relevant data and to fill out declarations, and approximately $2,166,880 for inspections. The average cost of an inspection, based on the assumption that 40 facilities will undergo inpsections each year, is $54,150. The IRFA describes the expected benefits to the United States of implementing the requirements of the Convention, including increased national and economic security.

The IRFA explains that BXA's discretion in drafting the declaration forms and formulating the reporting requirements is limited by the Convention requirements. The OPCW has issued forms for States Parties to use in submitting declarations. In drafting the declaration forms for U.S. persons to use in drafting the CWCR, BXA has consistently made the reporting requirements as narrow as possible to ensure that only information required to be "declared" to the OPCW set forth in the Convention is to be reported to BXA. Other States Parties, such as Canada, have imposed much broader reporting requirements on their industries, with the government taking on the responsibility of determining which information must be forwarded to the OPCW. In addition, there are certain declaration requirements of the Convention that are subject to interpretation. Until the Conference of States Parties establishes clear rules for these requirements, States Parties may use their "national discretion" to implement them. "National discretion" generally means a reasonable interpretation of the requirement. For such reporting requirements currently subject to "national discretion", BXA has adopted the minimum requirements consistent with a reasonable reading of the Convention, keeping in mind its purposes and objectives.

5. Comments will be considered on provisions included in the regulations as well as provisions or guidance which commenters believe should be included in the regulations. The Department encourages interested persons who wish to comment to do so at the earliest possible time.

The period for submission of comments will close August 20, 1999. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 6883, Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Henry Gaston, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–0500.

List of Subjects

Part 710

Chemicals, Exports, Foreign Trade, Imports, Treaties.

Part 711

Chemicals, Confidential business information, Reporting and recordkeeping requirements.

Part 712

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

Part 713

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

Part 714

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

Part 715

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

Part 716

Chemicals, Confidential business information, Reporting and recordkeeping requirements, Search warrant, Treaties.

Part 717

Chemicals, Confidential business information, Reporting and recordkeeping requirements, Search warrant, Treaties.

Part 719

Administrative proceedings, Exports, Imports, Penalties, Violations.

Part 720

Penalties, violations.

Part 721

Reporting and recordkeeping requirements.

1. In 15 CFR, Chapter VII, Subchapter B is designated as Chemical Weapons Convention Regulations.

2. In 15 CFR, Subchapter B, Parts 710 through 721 are added to read as follows:

PART 710—GENERAL INFORMATION AND OVERVIEW OF THE CHEMICAL WEAPONS CONVENTION REGULATIONS (CWCR)

Sec.

710.1 Definitions of terms used in the Chemical Weapons Convention Regulations (CWCR).
710.2 Scope of the CWCR.
710.3 Purposes of the Convention and CWCR.
710.4 Overview of Scheduled chemicals and examples of affected industries.
710.5 Authority.
710.6 Relationship between the Chemical Weapons Convention Regulations and the Export Administration Regulations.

Supplement No. 1 To Part 710—States Parties To The Convention On The Prohibition of The Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction

Authority: Pub. L. 105–277, 112 Stat. 2681; E.O. 13128, 64 FR 36703.

§ 710.1 Definitions of terms used in the Chemical Weapons Convention Regulations (CWCR).

The following are definitions of terms used in the CWCR (parts 710 through 721 of this subchapter):

Bureau of Export Administration (BXA). Means the Bureau of Export Administration of the United States Department of Commerce, including the Office of Export Administration and the Office of Export Enforcement.

Chemical Weapon. Means the following, together or separately:

(a) A toxic chemical and its precursors, except where intended for purposes not prohibited under the Chemical Weapons Convention (CWC), provided that the type and quantity are consistent with such purposes;

(b) A munition or device, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in paragraph (a) of this definition, which would be released as a result of the employment of such munition or device; or (c) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in paragraph (b) of this definition.

Chemical Weapons Convention (CWC or Convention). Means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their

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Destruction, and its annexes opened for signature on January 13, 1993, and entered into force on April 29, 1997.

Chemical Weapons Convention Regulations (CWCR). Means the regulations contained in 15 CFR parts 710 through 721.

Consumption. Consumption of a chemical means its conversion into another chemical via a chemical reaction.

Declaration form. Means a multi-purpose form due to BXA regarding activities involving Schedule 1, Schedule 2, Schedule 3, or unscheduled discrete organic chemicals. Declaration forms will be used by facilities that have data declaration obligations under the CWCR and are "declared" facilities whose facility-specific information will be transmitted to the OPCW. Certain declaration forms will also be used by entities that are not "declared" facilities, but that have limited reporting requirements under the CWCR. Information from such facilities will be used to compile U.S. national aggregate figures on the production, processing, consumption, import and export of specific chemicals. See also definition of "declared facility."

Declared facility or plant site. Means a facility or plant site required to complete data declarations of activities involving Schedule 1, Schedule 2, Schedule 3, or unscheduled discrete organic chemicals above specified threshold quantities. Only certain declared facilities and plant sites are subject to routine inspections under the CWCR. Plant sites that produced either Schedule 2 or Schedule 3 chemicals for CW purposes at any time since January 1, 1946, are also "declared" plant sites. However, such plant sites are not subject to routine inspection if they are not subject to declaration requirements because of past production, processing or consumption of Scheduled or unscheduled discrete organic chemicals above specified threshold quantities.

Discrete organic chemical. Means any chemical belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides, metal carbonates and metal carbides identifiable by chemical name, by structural formula, if known, and by Chemical Abstract Service registry number, if assigned.

Domestic transfer (of Schedule 1 chemicals). Means, with regard to reporting requirements for Schedule 1 chemicals under the CWCR, any movement of any amount of Schedule 1 chemical outside the geographical boundary of a facility in the U.S. to another destination in the U.S. for any purpose. Domestic transfer includes movement between two divisions of one company or a sale from one company to another. Note that any movement to or from a facility outside the United States is considered an import or export for reporting purposes, not a domestic transfer.

EAR. Means the Export Administration Regulations (15 CFR parts 730 through 799).

Facility. Means any plant site, plant or unit.

Facility agreement. Means an agreement or arrangement between a State Party and the Organization relating to a specific facility subject to on-site verification pursuant to Article IV, V, and VI of the Convention.

Host Team. The United States Government team that accompanies the inspection team from the Organization for the Prohibition of Chemical Weapons during a CWC inspection for which the regulations in this subchapter apply.

Host Team Leader. Means the representative from the Department of Commerce who heads the U.S. Government team that accompanies the inspection team during a CWC inspection for which the regulations in this subchapter apply.

ITAR. Means the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

Organization for the Prohibition of Chemical Weapons (OPCW). Means the international organization, located in The Hague, Netherlands, that administers the CWC.

Person. Means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

Plant. Means a relatively self-contained area, structure or building containing one or more units with auxiliary and associated infrastructure, such as:

(a) Small administrative area;

(b) Storage/handling areas for feedstock and products;

(c) Effluent/waste handling/treatment area;

(d) Control/analytical laboratory;

(e) First aid service/related medical section; and

(f) Records associated with the movement into, around, and from the site, of declared chemicals and their feedstock or product chemicals formed from them, as appropriate.

Plant site. Means the local integration of one or more plants, with any intermediate administrative levels, which are under one operational control, and includes common infrastructure, such as:

(a) Administration and other offices;

(b) Repair and maintenance shops;

(c) Medical center;

(d) Utilities;

(e) Central analytical laboratory;

(f) Research and development laboratories;

(g) Central effluent and waste treatment area; and

(h) Warehouse storage.

Processing. Means a physical process such as formulation, extraction and purification in which a chemical is not converted into another chemical.

Purposes not prohibited by the CWC. Means the following:

(a) Any peaceful purpose related to an industrial, agricultural, research, medical or pharmaceutical activity or other activity;

(b) Any purpose directly related to protection against toxic chemicals and to protection against chemical weapons;

(c) Any military purpose of the United States that is not connected with the use of a chemical weapon and that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm; or

(d) Any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment.

Report. Means information due to BXA on imports and exports of Schedule 1, Schedule 2 or Schedule 3 chemicals. Such information is included in the national aggregate prior to transmittal to the OPCW.

Schedules of Chemicals. Means specific lists of toxic chemicals, groups of chemicals, and precursors contained in the CWC. See Supplements No. 1 to parts 712, 713 and 714 of this subchapter.

State Party. Means a country for which the CWC is in force. See Supplement No. 1 to this part.

Storage. For purposes of Schedule 1 chemical reporting, means any quantity that is not accounted for under the categories of production, import, export, consumption or domestic transfer.

Synthesis. Means production of a chemical from its reactants.

Technical Secretariat. Means the organ of the OPCW charged with carrying out administrative and technical support functions for the OPCW, including carrying out the verification measures delineated in the CWC.

Trading company. Means any entity involved in the export or import of chemicals in amounts greater that specified thresholds, but not in the production, processing or consumption of chemicals in amounts greater than threshold amounts requiring declaration. Such companies are not subject to routine inspections.

Transfer. See domestic transfer.

Undeclared facility. Means a facility that is not subject to declaration requirements because of past or anticipated production, processing or consumption involving Scheduled or unscheduled discrete organic chemicals above specified threshold quantities. However, such facilities may have a reporting requirement for imports or exports of such chemicals.

Unit. Means the combination of those items of equipment, including vessels and vessel set up, necessary for the production, processing or consumption of a chemical.

United States. Means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States, and includes all places under the jurisdiction or control of the United States, including any of the places within the provisions of paragraph (41) of section 40102 of Title 49 of the United States Code, any civil aircraft of the United States or public aircraft, as such terms are defined in paragraphs (1) and (37), respectively, of section 40102 of Title 49 of the United States Code, and any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Enforcement Act, as amended (section 1903(b) of Title 46 App. of the United States Code).

United States National Authority (USNA). Means the State Department serving as the national focal point for the effective liaison with the Organization for the Prohibition of Chemical Weapons and other States Parties to the Convention and implementing the provisions of the Chemical Weapons Convention Implementation Act of 1998 in coordination with an interagency group designated by the President consisting of the Secretary of Commerce, Secretary of Defense, Secretary of Energy, the Attorney General, and the heads of other agencies considered necessary or advisable by the President, or their designees. The Secretary of State is the Director of the USNA.

Unscheduled chemical. Means a chemical that is not contained in Schedule 1, Schedule 2, or Schedule 3 (see Supplement No. 1 to parts 712, 713 and 714 of this subchapter).

Unsheduled Discrete Organic Chemical (UDOC). Means any chemical:

(a) Belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides, metal carbonates and metal carbides identifiable by chemical name, by structural formula, if known, and by Chemical Abstract Service registry number, is assigned, and

(b) That is not contained in the Schedules of Chemicals (see Supplements No. 1 to parts 712, 713 and 714 of this subchapter). Unscheduled discrete organic chemicals subject to declaration under this subchapter are those produced by synthesis that were isolated for use or sale as a specific end-product.

You. The term "you" or "your" means any person (See also definition of "person"). With regard to the declaration and reporting requirements of the CWCR, "you" refers to persons that have an obligation to report certain activities under the provisions of the CWCR.

§ 710.2 Scope of the CWCR.

The Chemical Weapons Convention Regulations (parts 710 through 721 of this subchapter), or CWCR, implement certain obligations of the United States under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, known as the CWC or Convention.

(a) *Persons and facilities subject to the CWCR.* The CWCR reporting and inspection requirements apply to all facilities in the United States, except for Department of Defense and Department of Energy facilities and other United States Government agencies that notify the USNA of their decision to be excluded from the CWCR. The CWCR also apply to all U.S. persons and facilities, wherever located, for imports of Scheduled chemicals and activities involving Schedule 1 chemicals, except for Department of Defense and Department of Energy facilities and other United States Government facilities that notify the USNA of their decision to be excluded from the CWCR. United States Government facilities are those owned by or leased to the U.S. Government, including facilities that are contractor-operated.

(b) *Activities subject to the CWCR.* The CWCR compel data declarations and reports from facilities subject to the CWCR (parts 710 through 721 of this subchapter) on activities including production, processing, consumption, imports and exports, involving organic chemicals further described in parts 712 through 715 of this subchapter. Those regulations do not apply to activities involving inorganic chemicals other than those listed in the Schedule of Chemicals or to other specifically exempted organic chemicals. In addition, those regulations set forth procedures for routine inspections of "declared" facilities by teams of international inspectors in part 716 of this subchapter, and set forth clarification procedures and procedures for challenge inspections that could be requested at any facility or location in the United States. Finally, the CWCR restrict imports of Schedule 1 and 2 chemicals, limit production of Schedule 1 chemicals to specified annual amounts and prohibit other activities involving Schedule 1 chemicals except for research, medical, pharmaceutical or protective purposes.

§ 710.3 Purposes of the Convention and CWCR.

(a) *Purposes of the Convention.* (1) The Convention imposes upon the United States Government (USG), as a State Party, certain declaration, inspection, and other obligations. In addition, the USG and each other State Party to the Convention undertake never under any circumstances to:

(i) Develop, produce, otherwise acquire, stockpile, or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;

(ii) Use chemical weapons;

(iii) Engage in any military preparations to use chemical weapons; or

(iv) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited by the Convention.

(2) One objective of the Convention is to assure State Parties that lawful activities of the chemical producers and users are not converted to unlawful activities related to chemical weapons. To achieve this objective and to give States Parties a mechanism to verify compliance, the Convention requires the United States and all other States Parties to submit declarations concerning chemical production, consumption, processing and other activities, and to permit international inspections within their borders.

(b) *Purposes of the Chemical Weapons Convention Regulations.* To fulfill the United States obligations under the Convention, the CWCR (parts 710 through 721 of this subchapter) prohibit certain activities, and compel the submission of information from all facilities in the United States, except for Department of Defense and Department of Energy facilities and other United States Government agencies that notify the USNA of their decision to be excluded from the CWCR on activities,

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including imports and exports, involving Scheduled chemicals and unscheduled Discrete Organic Chemicals as described in parts 712 through 715 of this subchapter. United States Government facilities are those owned by or leased to the U.S. Government, including facilities that are contractor-operated. The CWCR also require access for on-site inspections and monitoring by the OPCW, as described in parts 716 and 717 of this subchapter.

§ 710.4 Overview of Scheduled chemicals and examples of affected industries.

The following provides examples of the types of industries that may be affected by the CWCR (parts 710 through 721 of this subchapter). These examples are not exhaustive, and you should refer to parts 712 through 715 of this subchapter to determine your obligations.

(a) Schedule 1 chemicals are listed in Supplement No. 1 to part 712 of this subchapter. Schedule 1 chemicals have little or no use in industrial and agricultural industries, but may have limited use in the pharmaceutical or medical industries.

(b) Schedule 2 chemicals are listed in Supplement No. 1 to part 713 of this subchapter. Although Schedule 2 chemicals may be useful in the production of chemical weapons, they also have legitimate uses in areas such as:

(1) Flame retardant additives and research;

(2) Dye and photographic industries (e.g., printing ink, ball point pen fluids, copy mediums, paints, etc.);

(3) Medical and pharmaceutical preparation (e.g., anticholinergics, arsenicals, tranquillizer preparations);

(4) Metal plating preparations;

(5) Epoxy resins; and

(6) Insecticides, herbicides, fungicides, defoliants, and rodenticides.

(c) Schedule 3 chemicals are listed in Supplement No. 1 to part 714 of this subchapter. Although Schedule 3 chemicals may be useful in the production of chemical weapons, they also have legitimate uses in areas such as:

(1) The production of:

(i) Resins;

(ii) Plastics;

(iii) Pharmaceuticals;

(iv) Pesticides;

(v) Batteries;

(vi) Cyanic acid;

(vii) Toiletries, including perfumes and scents;

(viii) Organic phosphate esters (e.g., hydraulic fluids, flame retardants, surfactants, and sequestering agents); and

(2) Leather tannery and finishing supplies.

(d) Unscheduled discrete organic chemicals are used in a wide variety of commercial industries, and include acetone, benzoyl peroxide and propylene glycol.

§ 710.5 Authority.

The CWCR (parts 710 through 721 of this subchapter) implement certain provisions of the Chemical Weapons Convention under the authority of the Chemical Weapons Convention Implementation Act of 1998 (CWCIA), the National Emergencies Act, the International Emergency Economic Powers Act of 1997 (IEEPA), as amended, and the Export Administration Act of 1979, as amended, by extending verification and trade restriction requirements under Article VI and related parts of the Verification Annex of the Convention to U.S. persons. In Executive Order 13128 of June 25, 1999, the President delegated authority to the Department of Commerce to promulgate regulations to implement the CWCIA, and consistent with the CWCIA, to carry out appropriate functions not otherwise assigned in the CWCIA but necessary to implement certain reporting, monitoring and inspection requirements of the Convention and the CWCIA.

§ 710.6 Relationship between the Chemical Weapons Convention Regulations and the Export Administration Regulations.

Certain obligations of the U.S. Government under the CWC pertain to exports, including the transfer of technology during an on-site inspection. These obligations are implemented in the Export Administration Regulations (EAR) (15 CFR parts 730 through 799) and the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). See in particular §§ 740.11 and 742.18 and part 745 of the EAR, and Export Control Classification Numbers 1C350, 1C351 and 1C355 of the Commerce Control List (Supplement No. 1 to part 774 of the EAR).

Supplement No. 1 To Part 710—States Parties to the convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction

List of States Parties as of [EFFECTIVE DATE OF THE FINAL RULE].

Albania
Algeria
Argentina
Armenia
Australia
Austria
Bahrain
Bangladesh
Belarus
Belgium
Benin
Bolivia
Bosnia-Herzegovina
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Burundi
Cameroon
Canada
Chile
China*
Cook Islands
Costa Rica
Cote d'Ivoire (Ivory Coast)
Croatia
Cuba
Cyprus
Czech Republic
Denmark
Ecuador
El Salvador
Equatorial Guinea
Ethiopia
Estonia
Fiji
Finland
France
Gambia
Georgia
Germany
Ghana
Greece
Guinea
Guyana
Holy See
Hungary
Iceland
India
Indonesia
Iran
Ireland
Italy
Japan
Jordan
Kenya
Korea (Republic of)
Kuwait
Laos (P.D.R.)
Latvia
Lesotho
Lithuania
Luxembourg
Macedonia
Malawi
Maldives
Mali
Malta
Mauritius
Mauritania
Mexico

*For CWC States Parties purposes, China includes Hong Kong.

Moldova (Republic of)
Monaco
Mongolia
Morocco
Namibia
Nepal
Netherlands
New Zealand
Niger
Nigeria
Norway
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Russian Federation
Saint Lucia
Saudi Arabia
Senegal
Seychelles
Singapore
Slovak Republic
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Suriname
Swaziland
Sweden
Switzerland
Tajikistan
Tanzania, United
Republic of Togo
Trinidad and Tobago
Tunisia
Turkey
Turkmenistan
Ukraine
United Kingdom
United States
Uruguay
Uzbekistan
Venezuela
Vietnam
Zimbabwe

PART 711—GENERAL INFORMATION REGARDING DECLARATION REQUIREMENTS

Sec.

711.1 Overview of declaration, notification and reporting requirements.
711.2 Confidential business information.
711.3 Who submits declarations, notifications and reports.
711.4 Assistance in determining your obligations and classifications.
711.5 Where to obtain forms.

Supplement No. 1 to Part 711—Confidential Business Information To Be Declared or Reported

Authority: Pub. L. 105–277, 112 Stat. 2681; E.O. 13128, 64 FR 36703.

§ 711.1 Overview of declaration, notification and reporting requirements.

Parts 712 through 715 of the CWCR (parts 710 through 721 of this subchapter) describe the declaration, notification and reporting requirements for Schedule 1, 2 and 3 chemicals and for unscheduled discrete organic chemicals (UDOCs). For each type of chemical, the Convention requires an initial declaration and subsequent annual declarations. If, after reviewing parts 712 through 715 of this subchapter, you determine that you have declaration, notification or reporting requirements, you may obtain the appropriate forms by contacting the Bureau of Export Administration (see § 711.4).

§ 711.2 Confidential business information.

(a) *Provisions of the Act relating to confidential business information.* (1) The Act provides a statutory exemption from disclosure in response to a Freedom of Information Act request for information submitted to the U.S. National Authority by private entities in declarations and reports for:

(i) Information included in categories specifically enumerated in sections 103(g)(1) and 304(e)(2) of the Act:

(A) Financial data;

(B) Sales and marketing data (other than shipment data);

(C) Pricing data;

(D) Personnel data;

(E) Research data;

(F) Patent data;

(G) Data maintained for compliance with environmental or occupational health and safety regulations;

(H) Data on personnel and vehicles entering and personnel passenger vehicles exiting the facility;

(I) Any chemical structure;

(J) Any plant design, process, technology or operating method;

(K) Any operating requirement, input, or result that identifies any type or quantity of chemicals used, processed or produced; or

(L) Any commercial sale, shipment or use of a chemical, or

(ii) Information that qualifies as a trade secret under 5 U.S.C. 552(b)(4) (Freedom of Information Act), provided such trade secret is obtained from a U.S. person or through the U.S. Government.

Note to paragraph (a)(1): See §§ 716.4(e) and 717.2(e)(5) of this subchapter for related provisions dealing with information obtained through the conduct of inspections in the United States under the Convention.

(2) The Act provides for disclosure of confidential business information to the OPCW, to federal law enforcement agencies, and, upon written request, to Congressional committees of appropriate jurisdiction.

(3) The United States Government must also disclose confidential business information when such disclosure is deemed to be in the national interest. The USNA, in coordination with the CWC interagency group shall determine if disclosure of such confidential business information is in the national interest. The Act provides for notification to the affected person of intent to disclose confidential business information, unless such notification of intent to disclose is contrary to national security or law enforcement needs. If, after coordination with the agencies that constitute the CWC interagency group, the USNA determines that such notification of intent to disclose is not contrary to national security or law enforcement needs, the USNA will notify the person that submitted the information or the person to whom the information pertains of the intent to disclose the information.

(b) *Provisions of the Convention relating to confidential business information.* The Convention provides that States Parties may designate information submitted to the Organization for the Prohibition of Chemical Weapons (OPCW) as confidential, and requires the OPCW to limit access to, and prevent disclosure of, information so designated, except that the OPCW may disclose certain confidential information submitted in declarations to other States Parties if requested. The OPCW has developed a classification system whereby States Parties may designate the information they submit in their declarations as "restricted," "protected," or "highly protected," depending on the sensitivity of the information. Other States Parties are obligated, under the Convention, to store and allow access to information which it receives from the OPCW in accordance with the level of confidentiality established for that information.

§ 711.3 Who submits declarations, notifications and reports.

The operator of a facility required to submit declarations, notifications or reports under the CWCR (parts 710 through 721 of this subchapter) is responsible for the submission of all required documents in accordance with all applicable provisions of the CWCR.

§ 711.4 Assistance in determining your obligations and classifications.

(a) If you need assistance in determining your obligations under the CWCR (parts 710 through 721 of this subchapter), including whether a chemical is classified as a Schedule 1, Schedule 2, or Schedule 3 chemical, or

is an unscheduled discrete organic chemical, submit your request to the Bureau of Export Administration. BXA will only review properly submitted requests, which must include the following information:

(1) Date of request;

(2) Company name and complete street address;

(3) Point of contact;

(4) Phone and fax number of contact;

(5) Chemical name;

(6) Structural formula;

(7) Chemical abstract registry number, if assigned.

(b) Requests for chemical determinations may be faxed to (703) 235–1481 or mailed to the following address: Information Technology Team, Bureau of Export Administration,U.S. Department of Commerce, 1555 Wilson Boulevard, Suite 710, Arlington, Virginia 22209–2405.

(c) BXA will respond to properly submitted requests within 10 calendar days of receipt.

§ 711.5 Where to obtain forms.

U.S. Department of Commerce, Information Technology Team, 1555 Wilson Blvd., Suite 710 Arlington, VA 22209–2405, Telephone: (703) 235–1335.

SUPPLEMENT NO. 1 TO PART 711.—CONFIDENTIAL BUSINESS INFORMATION TO BE DECLARED OR REPORTED [1]

	Fields containing confidential business information
Schedule 1 Forms:	
Certification Form ..	None.
Form 1–1	None.
Form 1–2	All fields.
Form 1–2A	All fields.
Form 1–2B	All fields.
Form 1–3	All fields.
Schedule 2 Forms:	
Certification	None.
Form 2–1	None.
Form 2–2	Question 2–2.9.
Form 2–3	All fields.
Form 2–3A	All fields.
Form 2–3B	All fields.
Form 2–3C	All fields.
Form 2–4	All fields.
Schedule 3 Forms:	
Certification Form ..	None.
Form 3–1	None.
Form 3–2	None.
Form 3–3	All fields.
Form 3–4	All fields.
Unscheduled Discrete Organic Chemicals Forms:	
Certification Form ..	None.

SUPPLEMENT NO. 1 TO PART 711.—CONFIDENTIAL BUSINESS INFORMATION TO BE DECLARED OR REPORTED [1]—Continued

	Fields containing confidential business information
Form UDOC	None.

Note: Information contained in Form A attachments will be evaluated on a case-by-case basis, except that Schedule 1 facility technical descriptions submitted with initial declarations are confidential business information.

[1] This table lists those data fields on the Declaration and Report forms that request "confidential business information" (CBI) as defined by the CWCIA (sections 103(g) and 304(e)(2)). As provided by section 404(a) of the CWCIA, CBI is exempt from disclosure in response to a Freedom of Information Act (FOIA) request under sections 552(b)(3) and 552(b)(4) (5 U.S.C.A. 552(b)(3)–(4)), unless a determination is made, pursuant to section 404(c) of the CWCIA, that such disclosure is in the national interest. Other FOIA exemptions to disclosure may also apply. CBI may be disclosed to the Technical Secretariat of the OPCW, and certain CBI may be disclosed to other States Parties to the Convention.

PART 712—ACTIVITIES INVOLVING SCHEDULE 1 CHEMICALS

Sec.

712.1 Prohibitions involving imports of Schedule 1 chemicals.
712.2 Initial and annual declaration requirements for facilities engaged in the production of Schedule 1 chemicals.
712.3 New Schedule 1 production facility.
712.4 Advance notification and annual report of all exports and imports of Schedule 1 chemicals to, or from, other States Parties.
712.5 Frequency and timing of declarations, reports and notifications.
712.6 Amended declaration or report.
Supplement No. 1 To Part 712—Schedule 1 Chemicals

Authority: Pub. L. 105–277, 112 Stat. 2681; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938 (59 FR 59099; 3 CFR, 1994 Comp., p. 950), as amended by E.O. 13094 (63 FR 40803; 3 CFR, 1998 Comp., p. 200); E.O. 13128, 64 FR 36703.

§ 712.1 Prohibitions involving imports of Schedule 1 chemicals.

See § 711.5 of this subchapter for information on obtaining the forms you will need to declare and report activities involving Schedule 1 chemicals. See § 711.2 and Supplement No. 1 to part 711 of this subchapter for information pertaining to the protection of confidential business information.

(a) You may not import any Schedule 1 chemical unless:

(1) The import is from a State Party;

(2) The import is for research, medical, pharmaceutical, or protective purposes;

(3) The import is in types and quantities strictly limited to those that can be justified for such purposes; and

(4) You have notified the Department of Commerce 45 calendar days prior to the import pursuant to § 712.4.

(b) The provisions of paragraph (a) of this section do not apply to:

(1) The retention, ownership, possession, transfer, or receipt of a Schedule 1 chemical by a department, agency, or other entity of the United States, or by a person described in paragraph (b)(2) of this section, pending destruction of the Schedule 1 chemical;

(2) A person referred to in paragraph (b)(1) of this section means:

(i) Any person, including a member of the Armed Forces of the United States, who is authorized by law or by an appropriate officer of the United States to retain, own, possess, transfer, or receive the Schedule 1 chemical; or

(ii) In an emergency situation, any otherwise non-culpable person if the person is attempting to seize or destroy the Schedule 1 chemical.

Note to § 712.1: For specific provisions relating to the prior notification of exports of all Schedule 1 chemicals, see § 742.18 of the Export Administration Regulations (EAR) (15 CFR parts 730 through 799). For specific provisions relating to license requirements for exports of Schedule 1 chemicals, see §§ 742.2 and 742.18 of the EAR for Schedule 1 chemicals subject to the jurisdiction of the Department of Commerce and of the International Traffic in Arms Regulations (22 CFR parts 120 through 130) for Schedule 1 chemicals subject to the jurisdiction of the Department of State.

§ 712.2 Initial and annual declaration requirements for facilities engaged in the production of Schedule 1 chemicals.

(a) *Declaration requirements.* (1) *Initial declaration.* You must complete the forms specified in paragraph (b)(1) of this section, providing a current technical description of your facility or its relevant parts, if you produced Schedule 1 chemicals at your facility in excess of 100 grams aggregate in calendar year 1997, 1998 or 1999.

(2) *Annual declaration on past activities.* You must complete the forms specified in paragraph (b)(2) of this section if you produced at your facility in excess of 100 grams aggregate of Schedule l chemicals in the previous calendar year, beginning with calendar year 1997. Note that as part of this declaration, in addition to declaring the production of each Schedule 1 chemical that comprises your aggregate production of Schedule 1 chemicals, you must also declare the total amount of each Schedule 1 chemical used (consumed) and stored at your facility, and domestically transferred from your facility during the previous calendar year, whether or not you produced that Schedule 1 chemical at your facility.

(3) *Annual declaration on anticipated activities.* You must complete the forms specified in paragraph (b)(3) of this section if you anticipate that you will produce at your facility more than 100 grams aggregate of Schedule 1 chemicals in the next calendar year. If you are not already a declared facility, you must complete an initial declaration (see paragraph (a)(1) of this section), and wait 200 calendar days before commencing operations or increasing production that will result in production of more than 100 grams aggregate of Schedule 1 chemicals (see § 712.4).

(b) *Declaration forms to be used.* (1) *Initial declaration.* (i) You must complete the Certification Form, Form 1–1 and Form A if you produced at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in calendar year 1997, 1998 or 1999. You must provide a detailed current technical description of your facility or its relevant parts including a narrative statement, a detailed diagram of the declared areas in the facility, and an inventory of equipment in the declared area.

(ii) If you plan to change the technical description of your facility from your initial declaration completed and submitted pursuant to paragraph (a)(1) of this section and § 712.5, you must notify BXA 200 calendar days prior to the change. Such notifications must be made through an amended declaration by completing a Certification Form, Form 1–1 and Form A, including the new description of the facility. See § 712.7 for additional instructions on amending Schedule 1 declarations.

(2) *Annual declaration on past activities.* If you are subject to the declaration requirement of paragraph (a)(2) of this section, you must complete the Certification Form and Forms 1–1, 1–2, 1–2A, 1–2B, and Form A if your facility was involved in the production of Schedule 1 chemicals in the previous calendar year, beginning with calendar year 1997. Form B is optional.

(3) *Annual declaration on anticipated activities.* If you anticipate that you will produce at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in the next calendar year you must complete the Certification Form and Forms 1–1, 1–4, and Form A. Form B is optional.

(c) *Quantities to be declared or reported.* If you produced in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year, you must declare the entire quantity of such production, rounded to the nearest gram. You must also declare for each Schedule 1 chemical produced the quantity consumed and stored, and the quantity of any Schedule 1, Schedule 2 or Schedule 3 chemical precursor used to produce the declared Schedule 1 chemicals, rounded to the nearest gram.

(d) *"Declared" Schedule 1 facilities and routine inspections.* Only facilities that produced in excess of 100 grams aggregate of Schedule 1 chemicals during the previous calendar year, or that anticipate producing in excess of 100 grams aggregate of Schedule 1 chemicals during the next calendar year are considered Schedule 1 "declared" facilities. A "declared" Schedule 1 facility is subject to routine inspection by the OPCW (see part 716 of this subchapter).

(e) *Approval of declared Schedule 1 production facilities.* Facilities that submit declarations pursuant to this section are considered approved Schedule 1 production facilities for purposes of the CWC, unless otherwise notified by BXA within 30 days of receipt by BXA of an annual declaration on past activities (see paragraph (a)(2) of this section). If your facility does not produce more than 100 grams aggregate of Schedule 1 chemicals, no approval by BXA is required.

§ 712.3 New Schedule 1 production facility.

(a) *Establishment of a new Schedule 1 production facility.* If your facility was not declared under § 712.2 in the previous calendar year, but you intend to begin production of Schedule 1 chemicals at your facility in quantities greater than 100 grams aggregate per year for research, medical, or pharmaceutical purposes, you must notify BXA at least 200 calendar days in advance of commencing such production. Such facilities are considered "new Schedule 1 production facilities" and cannot begin operation or be used until the United States and the OPCW have concluded a facility agreement for the new facility.

(b) *Types of declaration forms required.* If your new Schedule 1 production facility will produce in excess of 100 grams aggregate of Schedule 1 chemicals, you must complete the Certification Form, Form 1–1 and Form A. You must also provide a detailed technical description of the new facility or its relevant parts, including a detailed diagram of the declared areas in the facility, and an inventory of equipment in the declared area.

§ 712.4 Advance notification and annual report of all exports [1] and imports of Schedule 1 chemicals to, or from, other States Parties.

Pursuant to the Convention, the United States is required to notify the OPCW not less than 30 days in advance of every export or import of a Schedule 1 chemical, in any quantity, to or from another State Party. In addition, the United States is required to provide a report of all exports and imports of Schedule 1 chemicals to or from other States Parties during each calendar year. If you plan to export or import any quantity of a Schedule 1 chemical from or to your declared facility, undeclared facility or trading company, you must notify BXA in advance of the export or import, and complete an annual report of exports and imports that actually occurred during the previous calendar year. The United States will transmit the advance notifications and a detailed annual declaration of each actual export or import of a Schedule 1 chemical from/to the United States. Note that company-specific information relating to export and import transactions, including the names and addresses of all declared facilities, undeclared facilities and trading companies, is submitted to the OPCW as part of the U.S. annual declaration on exports and imports. Also note that the notification and annual report requirements of this section do not relieve you of any requirement to obtain a license from the Department of Commerce for the export of Schedule 1 chemicals subject to the Export Administration Regulations (15 CFR parts 730 through 799) or from the Department of State for the export of Schedule 1 chemicals subject to the International Traffic in Arms Regulations (22 CFR parts 120 through 130). Only facilities that produce in excess of 100 grams aggregate of Schedule 1 chemicals annually are "declared" facilities and are subject to routine inspections pursuant to part 716 of this subchapter.

(a) *Advance notification of exports and imports.* (1) You must notify BXA at least 45 calendar days prior to exporting or importing any quantity of a Schedule 1 chemical listed in Supplement No. 1 to this part to or from another State Party. Note that notifications for exports may be sent to BXA prior to or after submission of a

[1] Effective May 18, 1999, these advance notification and annual report requirements for exports are set forth in parts 742 and 745 of the Export Administration Regulations (EAR) (15 CFR parts 742 and 745).

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license application to BXA for Schedule 1 chemicals subject to the EAR and controlled under ECCNs 1C350 or 1C351 or to the Department of State for Schedule 1 chemicals controlled on the ITAR. Such notices must be submitted separately from license applications.

(i) Notifications should be on company letterhead or must clearly identify the reporting entity by name of company, complete address, name of contact person and telephone and fax numbers, along with the following information:

(A) Chemical name;

(B) Structural formula of the chemical;

(C) Chemical Abstract Service (CAS) Registry Number;

(D) Quantity involved in grams;

(E) Planned date of export or import;

(F) Purpose (end-use) of export or import (i.e., research, medical, pharmaceutical, or protective purpose)

(G) Name(s) of recipient and exporter;

(H) Complete street address(es) of recipient and exporter;

(I) Export license or control number, if known; and

(J) Company identification number, once assigned by BXA.

(ii) Send the notification by fax to (703) 235–1481 or to the following address:

For mail and courier deliveries: Information Technology Team, Bureau of Export Administration, Department of Commerce, 1555 Wilson Boulevard, Suite 710, Arlington, VA 22209–2405, Attn: "Advance Notification of Schedule 1 Chemical [Export][Import]".

(iii) Upon receipt of the notification, BXA will inform the exporter of the earliest date the shipment may occur under the notification procedure. To export the Schedule 1 chemical, the exporter must have applied for and been granted a license (see §§ 742.2 and 742.18 of the EAR, or the ITAR at 22 CFR parts 120 through 130).

(b) *Annual declaration or report on exports and imports.* (1) *Declaration or report requirements.* You must complete the forms specified in paragraph (b)(2) of this section if you exported to or imported from another State Party any quantity of a Schedule 1 chemical during the previous calendar year.

(2) *Forms to be used.* (i) *Facilities declared pursuant to § 712.2(d).* If you are a Schedule 1 declared facility because you produced in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year, you must complete Form 1–3 as part of the annual declaration on past activities. (See § 712.2(b)(2)).

(ii) *Undeclared facilities and trading companies.* If your facility is not a "declared" facility because it did not produce over 100 grams aggregate of Schedule 1 chemicals, and you exported or imported any quantity of a Schedule 1 chemical to or from another State Party, you must complete the Certification Form, Form 1–1, and Form 1–3. Form B is optional.

(c) Paragraph (a) of this section does not apply to the activities and persons set forth in paragraph 712.1(c).

§ 712.5 Frequency and timing of declarations, reports and notifications.

Declarations, reports and notifications required under this part are due to BXA according to the dates identified in Table 1 of this section. Required declarations, reports and notifications include:

(a) Initial declarations;

(b) Annual declarations or reports on activities, including exports and imports, during the previous calendar year, beginning with activities in calendar year 1997;

(c) Annual declarations on anticipated production in the next calendar year, beginning in calendar year 1999 for production anticipated for calendar year 2000;

(d) Advance notification of any export to or import from another State Party; and

(e) Advance notification of new Schedule 1 production facility.

TABLE 1 TO § 712.5.—DEADLINES FOR SUBMISSION OF SCHEDULE 1 DECLARATIONS

Declarations and notifications	Applicable forms	Due dates
Initial Declaration:		
Declared facility (technical description)	Certification, 1–1, A	See Note to Table 1.
Annual Declaration on Past Activities (previous calendar year):		
Declared facility (past production, exports and imports).	Certification, 1–1, 1–2, 1–2A, 1–2B, 1–3 (if also exported or imported), A, and B (optional).	See Note to Table 1.
Annual report of exports and imports (undeclared facility, trading company).	Certification, 1–1, 1–3, B (optional)	See Note to Table 1.
Annual Declaration on Anticipated Production for a Facility (next calendar year).	Certification, 1–1, 1–4, A, B (optional)	August 3 of each year prior to the calendar year in which anticipated activities will take place.
Advance Notification of any export to or import from another State Party.	Notify on letterhead. See § 712.4 of this subchapter.	45 calendar days prior to the import or export.
Advance Notification of new Schedule 1 production facility.	Certification, 1–1, A	200 calendar days before commencing such production.

Note to Table 1: Initial declarations and annual reports of past production, exports and imports pursuant to the provisions of this part are due [90 days after the publication of a final rule]. Declared facilities must provide annual declarations on past production of Schedule 1 chemicals in aggregate quantities exceeding 100 grams for both calendar years 1997 and 1998. Thereafter, annual declarations and reports of past Schedule 1 activities will be due to the Department of Commerce by February 13th of each year.

§ 712.6 Amended declaration or report.

If, after submitting the original declaration or report, you discover that the previously submitted information is not accurate (e.g., change of quantity, addition of a new chemical, relocation of facility, etc.), you must complete a new Certification Form and the specific form being amended (e.g. annual declaration on past activities, annual declaration on anticipated activities). Only complete that portion of each form that corrects the previously submitted information that changed.

SUPPLEMENT NO. 1 TO PART 712—SCHEDULE 1 CHEMICALS

	(CAS registry No.)
A. Toxic chemicals:	
(1) O-Alkyl (≤C_{10}, incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates	
e.g. Sarin: O-Isopropyl methylphosphonofluoridate	(107–44–8)
Soman: O-Pinacolyl methylphosphonofluoridate	(96–64–0)
(2) O-Alkyl (≤C_{10}, incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidocyanidates	
e.g. Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate	(77–81–6)
(3) O-Alkyl (H or ≤C_{10}, incl. cycloalkyl) S-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonothiolates and corresponding alkylated or protonated salts	
e.g. VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate	(50782–69–9)
(4) Sulfur mustards:	
2-Chloroethylchloromethylsulfide	(2625–76–5)
Mustard gas: Bis(2-chloroethyl)sulfide	(505–60–2)
Bis(2-chloroethylthio)methane	(63869–13–6)
Sesquimustard: 1,2-Bis(2-chloroethylthio)ethane	(3563–36–8)
1,3-Bis(2-chloroethylthio)-n-propane	(63905–10–2)
1,4-Bis(2-chloroethylthio)-n-butane	(142868–93–7)
1,5-Bis(2-chloroethylthio)-n-pentane	(142868–94–8)
Bis(2-chloroethylthiomethyl)ether	(63918–90–1)
O–Mustard: Bis(2-chloroethylthioethyl)ether	(63918–89–8)
(5) Lewisites:	
Lewisite 1: 2-Chlorovinyldichloroarsine	(541–25–3)
Lewisite 2: Bis(2-chlorovinyl)chloroarsine	(40334–69–8)
Lewisite 3: Tris(2-chlorovinyl)arsine	(40334–70–1)
(6) Nitrogen mustards:	
HN1: Bis(2-chloroethyl)ethylamine	(538–07–8)
HN2: Bis(2-chloroethyl)methylamine	(51–75–2)
HN3: Tris(2-chloroethyl)amine	(555–77–1)
(7) Saxitoxin	(35523–89–8)
(8) Ricin	(9009–86–3)
B. Precursors:	
(9) Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides.	
e.g. DF: Methylphosphonyldifluoride	(676–99–3)
(10) O-Alkyl (H or ≤C_{10}, incl. cycloalkyl) O-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, N-Pr or i-Pr) phosphonites and corresponding alkylated or protonated salts	
e.g. QL: O-Ethyl O-2-diisopropylaminoethyl methylphosphonite	(57856–11–8)
(11) Chlorosarin: O-Isopropyl methylphosphonochloridate	(1445–76–7)
(12) Chlorosoman: O-Pinacolyl methylphosphonochloridate	(7040–57–5)

Notes to Supplement No. 1:

Note 1: Note that the following Schedule 1 chemicals are controlled for export purposes under the Export Administration Regulations (see part 774 of the EAR, the Commerce Control List): 0-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856–11–8), Ethylphosphonyl difluoride (C.A.S. #753–98–0), Methylphosphonyl difluoride (C.A.S. #676–99–3), Saxitoxin (35523–89–8), Ricin (9009–86–3).

Note 2: All Schedule 1 chemicals not listed in Note 1 to this Supplement are controlled for export purposes by the Office of Defense Trade Control of the Department of State under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

PART 713—ACTIVITIES INVOLVING SCHEDULE 2 CHEMICALS

Sec.

713.1 Prohibition on imports of Schedule 2 chemicals from non-States Parties.

713.2 Declaration of past production of Schedule 2 chemicals for chemical weapons purposes.

713.3 Initial and annual declaration and reporting requirements for plant sites that produce, process or consume Schedule 2 chemicals in excess of specified thresholds.

713.4 Initial and annual declaration and reporting requirements for exports and imports of Schedule 2 chemicals.

713.5 Advance declaration requirements for additionally planned production, processing or consumption of a Schedule 2 chemical.

713.6 Frequency and timing of declarations and reports.

713.7 Amended declaration or report.

Supplement No. 1 to Part 713—Schedule 2 Chemicals

Authority: Pub. L. 105–277, 112 Stat. 2681; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938 (59 FR 59099; 3 CFR, 1994 Comp., p. 950), as amended by E.O. 13094 (63 FR 40803; 3 CFR, 1998 Comp., p. 200); E.O. 13128, 64 FR 36703.

§ 713.1 Prohibition on imports of Schedule 2 chemicals from non-States Parties.

See § 711.4 of this subchapter for information on obtaining the forms you will need to declare and report activities involving Schedule 2 chemicals.

(a) You may not import any Schedule 2 chemical (see Supplement No. 1 to this part) on or after April 29, 2000, from any country other than a State Party to the Convention. See Supplement No. 1 to part 710 of this subchapter for a list of States that are party to the Convention.

Note to paragraph (a). See § 742.18 of the EAR for prohibitions that apply to exports of Schedule 2 chemicals on or after April 29, 2000 to non-States Parties and for End-Use Certificate requirements for exports of Schedule 2 chemicals prior to April 29, 2000 to such destinations.

(b) Paragraph (a) of this section does not apply to the activities and persons set forth in paragraph 712.1(c) of this subchapter.

§ 713.2 Declaration of past production of Schedule 2 chemicals for chemical weapons purposes.

You must complete the Certification Form and Forms 2–1, 2–2, 2–4, Form A and Form B (which is optional), if you produced at your plant site any quantity of a Schedule 2 chemical at any time since January 1, 1946, for chemical weapons purposes. You must declare the total quantity of such a chemical produced, rounded to the nearest

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kilogram. Note that you are not subject to routine inspection unless you are a declared facility pursuant to § 713.3.

§ 713.3 Initial and annual declaration and reporting requirements for plant sites that produce, process or consume Schedule 2 chemicals in excess of specified thresholds.

See Supplement No. 1 to part 711 of this subchapter for information pertaining to the protection of confidential business information.

(a) *Production, processing or consumption of Schedule 2 chemicals for purposes not prohibited by the CWC.*

(1) *Quantities of production, processing or consumption that trigger declaration requirements.* You must complete the forms specified in paragraph (c) of this section if you have been or will be involved in the following activities:

(i) *Initial declaration.* You produced, processed or consumed at one or more plants on your plant site during any of the calendar years 1994, 1995 or 1996, a Schedule 2 chemical in excess of the following declaration threshold quantities:

(A) 1 kilogram of chemical BZ: 3-Quinuclidinyl benzilate (see Schedule 2, paragraph A.3 included in Supplement No. 1 to this part);

(B) 100 kilograms of chemical PFIB: 1,1,3,3,3-Pentafluoro-2(trifluoromethyl)-1-propene or any chemical belonging to Amiton and corresponding alkylated or protonated salts (see Schedule 2, paragraph A.1 and A.2 A.3 included in Supplement No. 1 to this part); or

(C) 1 metric ton of any chemical listed in Schedule 2, Part B (see Supplement No. 1 to this part).

Note to paragraph (a)(1)(i). To determine whether you have an initial declaration requirement for Schedule 2 activities, you must determine whether you produced, processed or consumed a Schedule 2 chemical above the applicable threshold at one or more plants on your plant site in calendar years 1994, 1995 or 1996. For example, if you are preparing your initial declaration, and you determine that one plant on your plant site produced greater than 1 kilogram of the chemical BZ: 3-Quinuclidinyl benzilate in calendar year 1995, and no plants on your plant site produced, processed or consumed any Schedule 2 chemical above the declaration threshold in calendar years 1994 or 1996, you still have a declaration requirement under this paragraph, and you must declare on the required forms production, processing and consumption data for calendar years 1994, 1995 and 1996.

(ii) *Annual declaration on past activities.* You produced, processed or consumed at one or more plants on your plant site during any of the previous three calendar years, a Schedule 2 chemical in excess of the applicable declaration threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section; or

Note to paragraph (a)(1)(ii). To determine whether you have an annual declaration requirement of Schedule 2 activities, you must determine whether you produced, processed or consumed a Schedule 2 chemical above the applicable threshold at one or more plants on your plant site in any one of the previous three calendar years. For example, if you are preparing your annual declaration on past activities for 1997, and you determine that one plant on your plant site produced greater than 1 kilogram of the chemical BZ: 3-Quinuclidinyl benzilate in calendar year 1995, and no plants on your plant site produced, processed or consumed any Schedule 2 chemical above the declaration threshold in calendar years 1996 or 1997, you still have a declaration requirement under this paragraph. However, you must only declare on the required forms production, processing and consumption data for calendar year 1997.

(iii) *Annual declaration on anticipated activities.* You anticipate you will produce, process or consume at one or more plants on your plant site during the next calendar year, starting with activities anticipated for calendar year 2000, a Schedule 2 chemical in excess of the applicable declaration threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section.

(2) *Mixtures containing Schedule 2 chemicals.* (i) The quantity of a Schedule 2 chemical contained in a mixture must be counted for declaration purposes only if the concentration of the Schedule 2 chemical in the mixture is:

(A) 10% or more by volume or by weight, whichever yields the lesser percent, for activities involving either production or consumption of a mixture containing a Schedule 2 chemical; or

(B) 30% or more by volume or by weight, whichever yields the lesser percent, for activities involving the processing of a mixture containing a Schedule 2 chemical.

(ii) *Counting the amount of the Schedule 2 chemical in a mixture.* If your mixture contains more than the stated percentage concentration of a Schedule 2 chemical for the activity (i.e., more than 10% for production or consumption activities or more than 30% for processing activities), you must count only the amount (weight) of the Schedule 2 chemical in the mixture, not the total weight of the mixture. Only count amounts for activities for which you meet the applicable percentage threshold. For example, if a plant at your plant site produces and/or consumes a Schedule 2 chemical at a concentration over 10% but does not process that chemical at a concentration over 30%, only count the amount of the Schedule 2 chemical involved in the production and/or consumption activity or activities. Likewise, if a plant on your plant site processes a Schedule 2 chemical at a concentration in excess of 30% but does not produce or consume that chemical at a concentration in excess of 10%, only count the amount of that Schedule 2 chemical involved in the processing activity.

(iii) *Determining declaration requirements for production, processing and consumption.* You must include the amount (weight) of a Schedule 2 chemical in a produced, processed or consumed mixture when determining the total production, total processing, or total consumption of that Schedule 2 chemical at a plant on your plant site. If the total amount of the produced, processed or consumed Schedule 2 chemical exceeds the applicable declaration threshold set forth in paragraphs (a)(1)(i)(A) through (C) of this section, you have a declaration requirement. For example, if during calendar year 1997, a plant on your plant site produced a mixture containing 300 kilograms of thiodiglycol in a concentration of 12% and also produced 800 kilograms of thiodiglycol, that plant produced 1100 kilograms and, exceeded the declaration threshold of 1 metric ton for that Schedule 2 chemical. You must declare past production of thiodiglycol at that plant site for calendar year 1997. If, on the other hand, a plant on your plant site processed a mixture containing 300 kilograms of thiodiglycol in a concentration of 25% and also processed 800 kilograms of thiodiglycol in other than mixture form, the total amount of thiodiglycol processed at that plant for CWC purposes would be 800 kilograms and would not trigger a declaration requirement. This is because the concentration of thiodiglycol in the mixture did not exceed 30% and therefore did not have to be "counted" and added to the other 800 kilograms of processed thiodiglycol at that plant.

(b) *Types of declaration forms to be used.* (1) *Initial declaration.* You must complete the Certification Form and Forms 2–1, 2–2, 2–3, 2–3A, and Form A if you produced, processed or consumed at one or more plants on your plant site a Schedule 2 chemical in excess of the applicable declaration threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section during any of the three calendar years 1994, 1995 or 1996. Form B is optional. If you are subject to initial declaration requirements, you must included data for each of the calendar years 1994, 1995 and 1996.

(2) *Annual declaration on past activities.* You must complete the Certification Form and Forms 2–1, 2–2, 2–3, 2–3A, and Form A if one or more plants on your plant site produced, processed or consumed more than the applicable threshold quantity of a Schedule 2 chemical described in paragraphs (a)(1)(i)(A) through (C) of this section in any of the three previous calendar years. Form B is optional. If you are subject to annual declaration requirements, you must include data for the previous calendar year only.

(3) *Annual declaration on anticipated activities.* You must complete the Certification Form and Forms 2–1, 2–2, 2–3, 2–3A, 2–3C, and Form A if you plan to produce, process, or consume at any plant on your plant site a Schedule 2 chemical above the applicable threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section during the following calendar year, beginning with activities planned for calendar year 2000. Form B is optional.

(c) *Quantities to be declared.*

(1) *Production, processing and consumption of a Schedule 2 chemical above the declaration threshold.*

(i) *Initial declaration.* If you are required to complete forms pursuant to paragraph (a)(1)(i) of this section, you must declare the aggregate quantity resulting from each type of activity (production, processing or consumption) from each plant on your plant site that exceeds the applicable threshold quantity for that Schedule 2 chemical for each of the calendar years 1994, 1995 and 1996. Do not aggregate amounts of production, processing or consumption from plants on the plant site that did not individually produce, process or consume Schedule 2 chemicals in amounts greater than the applicable threshold levels.

(ii) *Annual declaration on past activities.* If you are required to complete forms pursuant to paragraph (a)(1)(ii) of this section, you must declare the aggregate quantity resulting from each type of activity (production, processing or consumption) from each plant on your plant site that exceeds the applicable threshold quantity for that Schedule 2 chemical. Do not aggregate amounts of production, processing or consumption from plants on the plant site that did not individually produce, process or consume Schedule 2 chemicals in amounts greater than the applicable threshold levels.

(2) *Rounding.* For the chemical BZ, report quantities to the nearest hundredth of a kilogram. For PFIB and the Amiton family, report quantities to the nearest 1 kg. For all other Schedule 2 chemicals, report quantities to the nearest 10 kg.

(d) *"Declared" Schedule 2 plant sites.* A plant site that comprises one or more plants that produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section during any of the previous three calendar years or is anticipated to produce, process or consume a Schedule 2 chemical above the applicable threshold quantity in the next calendar year is a "declared plant site."

(e) *Declared Schedule 2 plant sites subject to routine inspections.* A "declared" Schedule 2 plant site is subject to routine inspection by the OPCW if it produced, processed or consumed in any of the three previous calendar years or is anticipated to produce, process or consume in the next calendar year in excess of ten times the applicable declaration threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section (see part 716 of this subchapter).

§ 713.4 Initial and annual declaration and reporting requirements for exports and imports of Schedule 2 chemicals.

(a) *Quantities of exports and imports that must be declared or reported.* You must complete the forms specified in paragraph (c) of this section if you have been or will be involved in any of the following activities.

(1) *Initial declaration or report.* (i) *Initial declaration from a declared plant site.* Your plant site is declared pursuant to § 713.3 and you exported from and/or imported to your plant site during any of calendar years 1994, 1995 or 1996, a Schedule 2 chemical in excess of the following declaration threshold quantities:

(A) 1 kilogram of chemical BZ: 3-Quinuclidinyl benzilate (see Schedule 2, paragraph A.3);

(B) 100 kilograms of chemical PFIB: 1,1,3,3,3-Pentafluoro-2(trifluoromethyl)-1-propene or any chemical belonging to Amiton and corresponding alkylated or protonated salts (see Schedule 2, paragraph A.1 and A.2);

(C) 1 metric ton of any chemical listed in Schedule 2, Part B.

(ii) *Initial report on exports and imports from undeclared plant site or trading company.* You exported from and/or imported to your undeclared plant site or trading company during calendar year 1996 a Schedule 2 chemical in excess of the threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section.

(2) *Annual declaration or report on past activities.* (i) *Declared plant site.* You exported from and/or imported to your plant site during the previous calendar year a Schedule 2 chemical in excess of the applicable declaration threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section; or

(ii) *Annual report of exports and imports from undeclared plant site or trading company.* You exported from and/or imported to your undeclared plant site trading company during the previous calendar year a Schedule 2 chemical in excess of the threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section. (See part 710 of this subchapter for a definition of trading company.)

Notes to paragraph (a): Note 1: You must obtain an End-Use Certificate to export any Schedule 2 chemical to a non-State Party prior to April 29, 2000. (See §§ 742.18, 745.2 and 748.8 of the EAR.) Exports of Schedule 2 chemicals to non-States Parties are prohibited beginning April 29, 2000.

Note 2: You may need a license to export a Schedule 2 chemical. (See §§ 742.2 and 742.18 of the EAR for chemicals under the jurisdiction of the Department of Commerce and the ITAR, 22 CFR parts 120 through 130) for chemicals under the jurisdiction of the Department of State.)

(b) *Mixtures.* Note that the quantity of a Schedule 2 chemical contained in a mixture must be counted for declaration purposes only if the concentration of the Schedule 2 chemical in the mixture is:

(1) 10% or more by volume or by weight, whichever yields the lesser percent, for activities involving either production or consumption of a mixture containing a Schedule 2 chemical, or

(2) 30% or more by volume or by weight, whichever yields the lesser percent, for activities involving the processing of a mixture containing a Schedule 2 chemical.

Note to paragraph (b): See § 713.3(a)(2) for information on counting amounts of Schedule 2 chemicals contained in mixtures and determining declaration requirements.

(c) *Types of declarations and declaration forms to be used.* (1) *Initial declaration.* (i) *Declared plant sites.* If your plant site is subject to the declaration requirements of § 713.3 for a specific Schedule 2 chemical, and if your plant site also exported or imported that Schedule 2 chemical in excess of the applicable threshold quantity set forth in paragraph (a) of this section in calendar years 1994, 1995 or 1996, you must also complete Form 2–3B in addition to the forms required by § 713.3(b)(1). You must declare exports from or imports to your plant site of that Schedule 2 chemical for each of

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calendar years 1994, 1995, and 1996 during which the imports or exports exceeded the applicable threshold quantity.

(ii) *Undeclared plant sites and trading companies.* If your plant site is not subject to the declaration requirements of § 713.2 for a specific Schedule 2 chemical and if your plant site exported or imported more than the applicable threshold quantity of that Schedule 2 chemical during calendar year 1996, or if your trading company as that term in defined in part 710 of this subchapter exported or imported more than the applicable threshold quantity of a Schedule 2 chemical during calendar year 1996, you must complete the Certification Form, Forms 2–1 and 2–3B, and Form A. Form B is optional.

Note to paragraph (c)(1)(ii): Under the Convention, the United States is obligated to provide the OPCW an aggregate annual report of the quantities of each Schedule 2 chemical exported and imported. The U.S. Government will not submit your company-specific information relating to the export or import of a Schedule 2 chemical reported under this paragraph (c)(1)(ii). The U.S. Government will add all export and import information submitted by various undeclared plant sites and trading companies under this paragraph (c)(1)(ii) to export and import information submitted by declared plant sites under paragraph (c)(1)(i) of this section to produce a national aggregate initial declaration of country-by-country trade for each Schedule 2 chemical.

(2) *Annual declaration or report on past activities exports and imports.* (i) *Declared plant sites.* If your plant site is subject to the declaration requirements of § 713.3 for a specific Schedule 2 chemical and your plant site also exported or imported more than the applicable threshold quantity of that Schedule 2 chemical in the previous calendar year, you must also complete Form 2–3B in addition to the forms required by § 713.3(b)(2).

(ii) *Undeclared plant sites and trading companies.* If your plant site is not subject to the declaration requirements of § 713.3 for a specific Schedule 2 chemical and your plant site exported or imported more than the applicable threshold quantity of that chemical in the previous calendar year, or if you are a trading company as that term is defined in part 710 of this subchapter and your trading company imported or exported more than the applicable threshold quantity of a Schedule 2 chemical in the previous calendar year, you must complete the Certification Form, Forms 2–1 and 2–3B. Form B is optional.

Note to (c)(2)(ii): Under the Convention, the United States is obligated to provide the OPCW an aggregate annual report of the quantities of each Schedule 2 chemical exported and imported. The U.S. Government will *not* submit your company-specific information relating to the export or import of a Schedule 2 chemical reported under this paragraph (c)(2)(ii). The U.S. Government will add all export and import information submitted by various undeclared plant sites and trading companies under this paragraph (c)(2)(ii) to export and import information submitted by declared plant sites under paragraph (c)(2)(i) of this section to produce a national aggregate annual declaration of country-by-country trade for each Schedule 2 chemical.

(d) *Quantities to be declared.* (1) *Country-by-country reporting.* If you exported from or imported to your plant site or trading company more than the applicable threshold quantity of a Schedule 2 chemical, you must report all exports and imports by country, and indicate the total amount exported to or imported from each country. Only indicate the total annual quantity exported to or imported from a specific country if the total annual quantity to or from that country is more than 1% of the applicable threshold (i.e., more than 10 grams of BZ, 1 kilogram of PFIB and Amiton and corresponding alkylated or protonated salts, or 10 kilograms of all other Schedule 2 chemicals). However, in determining whether your total exports and imports worldwide for the year in question trigger declaration or reporting requirements, you must include all exports and imports, including exports and imports falling within the 1% exemption in your calculation.

(2) *Rounding.* For purposes of reporting exports and imports of a Schedule 2 chemical, you must total all exports and imports per calendar year per recipient or source country and then round as follows: for the chemical BZ, the total quantity for each country should be reported to the nearest hundreth of a kilogram (10 grams); for PFIB and Amiton and corresponding alkylated or protonated salts, the total quantity for each country should be reported to the nearest 1 kg; for all other Schedule 2 chemicals, the total quantity for each country should be reported to the nearest 10 kg.

§ 713.5 Advance declaration requirements for additionally planned production, processing or consumption of a Schedule 2 chemical.

(a) *Declaration requirements.* You must declare additionally planned production, processing or consumption of a Schedule 2 chemical after the annual declaration on anticipated activities has been delivered to BXA if:

(1) You plan to increase production, processing or consumption of a previously declared Schedule 2 chemical at any plant on your plant site by 20% or more of the originally declared amount; or

(2) You plan to begin new production, processing or consumption of an additional Schedule 2 chemical in amounts greater than the applicable threshold quantities set forth in § 713.3(a)(1)(i)(A) through (C).

(b) *Declaration forms to be used.* If you are required to declare additionally planned activities pursuant to paragraph (a) of this section, you must complete the Certification Form and Form 2–1 and 2–3C. Such forms are due to BXA at least 21 days in advance of the beginning of the additional or new production, processing or consumption.

§ 713.6 Frequency and timing of declarations and reports.

Declarations and reports required under this part are due to BXA according to the dates identified in Table 1 of this section. Required declarations and reports include:

(a) Declaration on past production of Schedule 2 chemicals for CW purposes since January 1, 1946;

(b) Initial declaration on past production, processing, consumption, import or export of Schedule 2 chemicals (activities in calendar years 1994, 1995 and 1996);

(c) Annual declaration on past production, processing, consumption, export or import of Schedule 2 chemicals (activities during the previous calendar year);

(d) Annual declaration on anticipated activities (production, processing or consumption) beginning in calendar year 1999 for activities anticipated for calendar year 2000; and

(e) Annual reports on exports and imports from trading companies and plant sites that do not have declaration requirements for a specific Schedule 2 chemical (exports and imports during the previous calendar year).

TABLE 1 TO § 713.6.—DEADLINES FOR SUBMISSION OF SCHEDULE 2 DECLARATIONS

Declarations	Applicable forms	Due dates
Initial Declaration:		

TABLE 1 TO § 713.6.—DEADLINES FOR SUBMISSION OF SCHEDULE 2 DECLARATIONS—Continued

Declarations	Applicable forms	Due dates
Declared Plant Site (1994, 1995 and 1996 for production, processing and consumption; and exports and imports for 1996).	Certification, 2–1, 2–2, 2–3, 2–3A, 2–3B (if also exported or imported), A, B (optional).	See note to Table 1.
Initial Report on Exports and Imports:		
Undeclared Plant Site and Trading Company (previous year exports and imports).	Certification, 2–1, 2–3B, B (optional)	See note to Table 1.
Annual Declaration on Past Activities:		
Declared Plant Site production, processing, consumption, exports and imports (previous calendar year only).	Certification , 2–1, 2–2, 2–3 2–3A, 2–3B (if also exported or imported), A, B (optional).	See note to Table 1.
Annual Report of Exports and Imports:		
Undeclared Plant Site and Trading Company (exports and imports).	Certification, 2–1, 2–3B, B (optional)	See note to Table 1.
Annual Declaration on Anticipated Activities (next calendar year).	Certification, 2–1, 2–2, 2–3, 2–3A, 2–3C, A, B (optional).	September 3 of each year prior to the calendar year in which anticipated activities will take place.
Declaration of additionally planned production, processing and consumption.	Certification, 2–1, 2–3C	21 calendar days before the additionally planned activity begins.
Declaration on Past Production of Schedule 2 Chemicals for CW Purposes.	Certification, 2–1, 2–2, 2–4 A, B (optional)	See note to Table 1.

Note to Table 1: The declaration of past production for CW purposes, initial declaration of production, processing and consumption, export and imports and annual declarations for calendar years 1997 and 1998 of past production, processing, consumption, exports and imports pursuant to the provisions of this part will be due [90 days after the effective date of the final rule]. Thereafter, annual declarations of past Schedule 2 activities will be due to BXA by February 13th of each year.

§ 713.7 Amended declaration or report.

If, after submitting the original declaration or report, you discover that the previously submitted information is not accurate (e.g., change of quantity, addition of a new chemical, relocation of facility, etc.), you must complete a new Certification Form and the specific form being amended (e.g. annual declaration on past activities, annual declaration on anticipated activities). Only complete that portion of each form that corrects the previously submitted information that changed.

SUPPLEMENT NO. 1 TO PART 713—SCHEDULE 2 CHEMICALS

A. Toxic chemicals:	
(1) Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts	(78–53–5)
(2) PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene	(382–21–8)
(3) BZ: 3-Quinuclidinyl benzilate	(6581–06–2)
B. Precursors:	
(4) Chemicals, except for those listed in Schedule 1, containing a phosphorus atom to which is bonded one methyl, ethyl or propyl (normal or iso) group but not further carbon atoms,	
e.g. Methylphosphonyl dichloride	(676–97–1)
Dimethyl methylphosphonate	(756–79–6)
Exemption: Fonofos: O-Ethyl S-phenyl ethylphosphono-thiolothionate	(944–22–9)
(5) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides	
(6) Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr or i-Pr)-phosphoramidates	
(7) Arsenic trichloride	(7784–34–1)
(8) 2,2-Diphenyl-2-hydroxyacetic acid	(76–93–7)
(9) Quinuclidine-3-ol	(1619–34–7)
(10) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-chlorides and corresponding protonated salts	
(11) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-ols and corresponding protonated salts	
Exemptions: N,N-Dimethylaminoethanol and corresponding protonated salts	(108–01–0)
N,N-Diethylaminoethanol and corresponding protonated salts	(100–37–8)
(12) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and corresponding protonated salts	
(13) Thiodiglycol: Bis(2-hydroxyethyl)sulfide	(111–48–8)
(14) Pinacolyl alcohol: 3,3-Dimethylbutane-2-ol	(464–07–3)

PART 714—ACTIVITIES INVOLVING SCHEDULE 3 CHEMICALS

Sec.

714.1 Declaration of past production of Schedule 3 chemicals for chemical weapons purposes.
714.2 Initial and annual declaration requirements for production of Schedule 3 chemicals.
714.3 Initial and annual declaration and reporting requirements for exports and imports of Schedule 3 chemicals.
714.4 Advance declaration requirements for additionally planned production of a Schedule 3 chemical.
714.5 Frequency and timing of declarations.
714.6 Amended declaration or report.
Supplement No. 1 to Part 714—Schedule 3 Chemicals

Authority: Pub. L. 105–277, 112 Stat. 2681; E.O. 13128, 64 FR 36703.

§ 714.1 Declaration of past production of Schedule 3 chemicals for chemical weapons purposes.

See § 711.5 of this subchapter for information on obtaining the forms you will need to declare and report activities

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involving Schedule 3 chemicals. You must complete the Certification Form, Forms 3–1, 3–2, 3–4, Form A and Form B (which is optional) if you produced at one or more plants on your plant site any quantity of a Schedule 3 chemical at any time since January 1, 1946, for chemical weapons purposes. You must declare the total quantity of such chemical produced, rounded to the nearest tenth of a metric ton (or 100 kg). Note that you are not subject to routine inspection unless you are a declared facility pursuant to § 714.2.

§ 714.2 Initial and annual declaration requirements for production of Schedule 3 chemicals.

(a) *Declaration of production of Schedule 3 chemicals for purposes not prohibited by the CWC.* (1) *Production quantities that trigger the declaration requirement.* You must complete the appropriate forms specified in paragraph (c) of this section if you have been or anticipate being involved in the following activities:

(i) *Initial declaration.* You produced at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical during calendar year 1996; or

(ii) *Annual declaration on past activities.* You produced at your plant site in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year, beginning with figures for calendar year 1997.

(iii) *Annual declaration on anticipated activities.* You anticipate that you will produce at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical in the next calendar year.

(2) *Mixtures.* The quantity of a Schedule 3 chemical contained in a mixture must be counted for declaration purposes only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent.

(b) *Types of declarations and declaration forms to be used.* (1) *Initial declaration.* You must complete the Certification Form and Forms 3–1, 3–2, 3–3, and Form A if you produced at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical during calendar year 1996. Form B is optional.

(2) *Annual declaration on past activities.* You must complete the Certification Form and Forms 3–1, 3–2, 3–3, and Form A if one or more plants on your plant site produced in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year, beginning with production during calendar year 1997. Form B is optional.

(3) *Annual declaration on anticipated activities.* You must complete the Certification Form, and Forms 3–1 and 3–3 if you anticipate that you will produce at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical in the next calendar year.

(c) *Quantities to be declared.* (1) *Production of a Schedule 3 chemical in excess of 30 metric tons.* If your plant site is subject to the declaration requirements of paragraph (a) of this section, you must declare the range within which the production at your plant site falls (30 to 200 metric tons, 200 to 1,000 metric tons, etc.) as specified on Form 3–3. When specifying the range of production for your plant site, you must aggregate the production quantities of all plants on the plant site that produced the Schedule 3 chemical in amounts greater than 30 metric tons. You must complete a separate Form 3–3 for each Schedule 3 chemical for which production at your plant site exceeds 30 metric tons.

(2) *Rounding.* To determine the production range into which your plant site falls, add all the production of the declared Schedule 3 chemical during the calendar year from all plants on your plant site and round to the nearest ten metric tons.

(3) *Mixtures.* The quantity of a Schedule 3 chemical contained in a mixture must be counted when determining the total quantity of a Schedule 3 chemical produced at your plant site only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent.

(d) *"Declared" Schedule 3 plant sites.* A plant site that comprises one or more plants that produced in excess of 30 metric tons of a single Schedule 3 chemical during the previous calendar year, or that you anticipate will produce more than 30 metric tons of a single Schedule 3 chemical in the next calendar year, is a Schedule 3 "declared" plant site.

(e) *Routine inspections of declared Schedule 3 plant sites.* A "declared" Schedule 3 plant site is subject to routine inspection by the OPCW (see part 716 of this subchapter) if it produced during the previous calendar year or you anticipate it will produce during the next calendar year in excess of 200 metric tons aggregate of any Schedule 3 chemical.

§ 714.3 Initial and annual declaration and reporting requirements for exports and imports of Schedule 3 chemicals.

(a) *Quantities of exports and imports that must be declared or reported.* You must complete the forms specified in paragraph (c) of this section if you have been or will be involved in any of the following activities:

(1) You exported from or imported to your declared plant site, during calendar year 1996 (for the initial declaration) or the previous calendar year (for all annual declarations starting with calendar year 1997) a Schedule 3 chemical in excess of 30 metric tons; or

(2) You exported from or imported to your undeclared plant site or trading company (see part 710 of this subchapter for a definition of a trading company) a Schedule 3 chemical in excess of 30 metric tons.

Notes to paragraph (a): Note 1: You must obtain an End-Use Certificate before exporting a Schedule 3 chemical to a non-State Party. See §§ 742.18, 745.2 and 748.8 of the EAR.

Note 2: You may need a license to export a Schedule 2 chemical. See §§ 742.2 and 742.18 of the EAR for Schedule 3 chemicals under the jurisdiction of the Department of Commerce and the ITAR (22 CFR parts 120 through 130) for chemicals under the jurisdiction of the Department of State.

(b) *Mixtures.* Note that the quantity of a Schedule 3 chemical contained in a mixture must be counted for declaration purposes only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent. This requirement applies to each Schedule 3 chemical imported or exported in a previous calendar year.

(c) *Types of declarations and declaration forms to be used.*

(1) *Initial declaration.* (i) *Declared plant sites.* If you are subject to the declaration requirements of § 714.2 because one or more plants at your plant site produced more than 30 metric tons of a specific Schedule 3 chemical, and you also exported from or imported to your plant site that Schedule 3 chemical in excess of 30 metric tons in 1996, you must also report the total quantity of exports or imports of that Schedule 3 chemical, specifying the quantity associated with each country, by completing additional parts of Form 3–3.

(ii) *Undeclared plant sites and trading companies.* If your plant site is not subject to the declaration requirements of § 714.2 for a specific Schedule 3 chemical, and if you exported from or imported to your plant site more than 30 metric tons of that Schedule 3 chemical during calendar year 1996, or if you are a trading company and you exported or imported more than 30 metric tons of a Schedule 3 chemical during calendar year 1996, you must complete the

Certification Form, Forms 3–1, 3–3.3 and/or 3–3.4.

(2) *Annual declaration for a specific chemical.* (i) *Declared plant sites.* If you are subject to the declaration requirements of § 714.2 because one or more plants at your plant site produced more than 30 metric tons of a specific Schedule 3 chemical, and you also exported from or imported to any plant on your plant site that Schedule 3 chemical in excess of 30 metric tons in the previous calendar year beginning with exports and imports during calendar year 1997, you must also declare the total quantity of such exports or imports, specifying the quantity associated with each country, by completing additional parts of Form 3–3.

(ii) *Undeclared plant sites and trading companies.* If your plant site is not subject to the declaration requirements of § 714.2 for a specific Schedule 3 chemical and if you exported from or imported to your plant site more than 30 metric tons of that Schedule 3 chemical during the previous calendar year starting with calendar year 1997, or if you are a trading company and you exported or imported more than 30 metric tons of a Schedule 3 chemical during the previous calendar year starting with exports and imports during calendar year 1997, you must complete the Certification Form, Form 3–1 and relevant parts of Form 3–3.

(d) *Quantities to be declared or reported.*

(1) *Country-by-country reporting.* If you exported or imported more than 30 metric tons of any one Schedule 3 chemical in the previous calendar year, you must report all exports and imports of that Schedule 3 chemical by country, and indicate the total amount exported to or imported from that country. Only indicate the total annual quantity exported to or imported from a specific country if the total annual quantity to or from that country is more than 1% of the applicable threshold (i.e., more than 0.3 metric tons) of all other Schedule 3 chemicals). However, in determining whether your total exports and imports worldwide for the year in question trigger declaration or reporting requirements, you must include all exports and imports, including exports and imports falling within the 1% exemption in your calculation.

(2) *Rounding.* For purposes of reporting exports and imports of a Schedule 3 chemical, you must total all exports or imports per calendar year per recipient country or source country, and round to the nearest 10 metric tons.

Note to § 714.3: Under the Convention, the United States is obligated to provide the OPCW an aggregate annual report of the quantities of each Schedule 3 chemical imported and exported. The U.S. Government will not submit your company-specific information relating to the export or import of a Schedule 3 chemical declared under this § 714.3. The U.S. Government will add all import and export information submitted by various facilities under this section to produce a national aggregate annual report of country-by-country trade for each Schedule 3 chemical.

§ 714.4 Advance declaration requirements for additionally planned production of a Schedule 3 chemical.

You must notify BXA of any additional Schedule 3 production planned after the annual declaration on anticipated activities has been delivered to BXA. Only anticipated increases in production that will increase production by an amount that changes the production range originally declared in Block 3–3.1 on Form 3–3 must be declared. For example, if you submitted a declaration on planned production that indicated you anticipate producing between 200 and 1,000 metric tons of a Schedule 3 chemical, and you now plan to produce between 1,000 and 10,000 metric tons of that same Schedule 3 chemical, you must notify BXA of the additional planned production. You must notify BXA by completing the Certification Form and Forms 3–1 and 3–3, and submitting them to BXA no later than 21 days before the additional activity begins.

§ 714.5 Frequency and timing of declarations.

Declarations and reports required under this part are due to BXA according to the dates identified in Table 1 of this section. Required declarations and reports include:

(a) Initial declarations on past production of any amount of Schedule 3 chemicals for CW purposes since January 1, 1946;

(b) Initial declarations and reports on past production, imports and exports during calendar year 1996;

(c) Annual declarations and reports on production, imports and exports during the previous calendar year, beginning with declarations for calendar year 1997; and

(d) Annual declarations on anticipated production during the next calendar year beginning in calendar year 1999 for activities anticipated for calendar year 2000.

TABLE 1 TO § 714.5.—DEADLINES FOR SUBMISSION OF SCHEDULE 3 DECLARATIONS

Declarations	Applicable forms	Due dates
Initial Declaration (for calendar year 1996):		
Declared Plant Site (production)	Certification, 3–1, 3–2, 3–3 (if also exported or imported), A, B (optional).	See note to this table.
Initial Report on Exports and Imports:		
Undeclared Plant Site, Trading Company	Certification, 3–1, 3–3.3 and 3–3.4	See note to this table.
Annual Declaration on Past Activities (previous calendar year, starting with 1997):		
Declared plant site (production)	Certification, 3–1, 3–2, 3–3 (if also exported or imported), A, B (optional).	See note to this table.
Annual Report on Exports and Imports:		
Undeclared Plant Site and Trading Company.	Certification, 3–1, 3–3.3 and 3–3.4	See note to this table.
Annual Declaration on Anticipated Production (next calendar year).	Certification, 3–1, 3–3.1 and 3–3.2	September 3 of each year prior to the calendar year in which anticipated activities will take place.
Declaration of Additionally Planned Activities	Certification, 3–1, 3–3.1 and 3–3.2	21 calendar days before the additionally planned activity begins.

TABLE 1 TO § 714.5.—DEADLINES FOR SUBMISSION OF SCHEDULE 3 DECLARATIONS—Continued

Declarations	Applicable forms	Due dates
Initial Declaration on Past Production of Schedule 3 Chemicals for CW Purposes.	Certification, 3–1, 3–2, 3–4, A, B (optional)	See note to this table.

Note to Table 1: The declaration of past production for CW purposes, the initial declaration of past production, exports and imports during calendar year 1996 and annual declarations and reports for production, exports and imports during calendar years 1997 and 1998 pursuant to the provisions of this part will be due [90 days after the effective date of the final rule]. Thereafter, annual declarations and reports of past Schedule 3 activities will be due to BXA by February 13th of each year.

§ 714.6 Amended declaration or report.

If, after submitting the original declaration or report, you discover that the previously submitted information is not accurate (e.g., change of quantity, addition of a new chemical, relocation of facility, etc.), you must complete a new Certification Form and the specific form being amended (e.g., annual declaration on past activities, annual declaration on anticipated activities). Only complete that portion of each form that corrects the previously submitted information.

SUPPLEMENT NO. 1 TO PART 714—SCHEDULE 3 CHEMICALS

A. Toxic chemicals:	
(1) Phosgene: Carbonyl dichloride	(75–44–5)
(2) Cyanogen chloride	(506–77–4)
(3) Hydrogen cyanide	(74–90–8)
(4) Chloropicrin: Trichloronitromethane	(76–06–2)
B. Precursors:	
(5) Phosphorus oxychloride	(10025–87–3)
(6) Phosphorus trichloride	(7719–12–2)
(7) Phosphorus pentachloride	(10026–13–8)
(8) Trimethyl	(121–45–9)
(9) Triethyl phosphite	(122–52–1)
(10) Dimethyl phosphite	(868–85–9)
(11) Diethyl phosphite	(762–04–9)
(12) Sulfur monochloride	(10025–67–9)
(13) Sulfur dichloride	(10545–99–0)
(14) Thionyl chloride	(7719–09–7)
(15) Ethyldiethanolamine	(139–87–7)
(16) Methyldiethanolamine	(105–59–9)
(17) Triethanolamine	(102–71–6)

Note to Supplement No. 1: Refer to Supplement No. 1 to part 774 of the Export Administration Regulations (the Commerce Control List), ECCN 1C355, Related Controls for chemicals controlled under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

PART 715—ACTIVITIES INVOLVING UNSCHEDULED DISCRETE ORGANIC CHEMICALS

Sec.

715.1 Declaration requirements for the production of unscheduled discrete organic chemicals (i.e. discrete organic chemicals not declared under parts 712 through 714 of this subchapter).
715.2 Amended declaration.
715.3 Frequency and timing of declarations.
Supplement No. 1 to Part 715—Examples of Unscheduled Discrete Organic Chemicals and Production Processes

Authority: Pub. L. 105–277, 112 Stat. 2681; E.O. 13128, 64 FR 36703.

§ 715.1 Declaration requirements for the production of unscheduled discrete organic chemicals (i.e., discrete organic chemicals not declared under parts 712 through 714 of this subchapter).

See § 711.6 of this subchapter for information on obtaining the forms you will need to declare production of unscheduled discrete organic chemicals. See Supplement No. 1 to part 711 of this subchapter for information pertaining to the protection of certain confidential business information.

(a) *Unscheduled discrete organic chemicals (UDOCs) subject to declaration requirements under this part.* Unscheduled discrete organic chemicals (UDOCs) subject to declaration requirements under this part are all chemicals containing carbon, except for the following:

(1) Those listed in Schedule 1, Schedule 2 or Schedule 3 (Supplement No. 1 to part 712, Supplement No. 1 to part 713 or Supplement No. 1 to part 714 of this subchapter);

(2) Inorganic chemicals (e.g., carbon oxides, carbon sulfides, metal carbonates, metal carbides or compounds of only a metal and carbon);

Note to paragraph (a): Carbon oxides consist of chemical compounds that contain only the elements carbon and oxygen and have the chemical formula C_xO_y, where x and y denote integers. The two most common carbon oxides are carbon monoxide (CO) and carbon dioxide (CO_2). Carbon sulfides consist of chemical compounds that contain only the elements carbon and sulfur, and have the chemical formula C_aS_b, where a and b denote integers. The most common carbon sulfide is carbon disulfide (CS_2). Metal carbonates consist of chemical compounds that contain a metal (i.e., the Group I Alkalis, Groups II Alkaline Earths, the Transition Metals, or the elements aluminum, gallium, indium, thallium, tin, lead, bismuth or polonium), and the elements carbon and oxygen. Metal carbonates have the chemical formula $M_d(CO_3)_e$, where d and e denote integers and M represents a metal. Common metal carbonates are sodium carbonate (Na_2CO_3) and calcium carbonate ($CaCO_3$). Metal carbides or other compounds consisting of only a metal as described above, and carbon, (e.g., calcium carbide (CaC_2)).

(3) Chemicals and chemical mixtures produced through a biological or bio-mediated process;

(4) Polymer substances and oligomers consisting of two or more repeating units, and formed by the chemical reaction of monomeric or polymeric substances;

(b) *Declaration of production of unscheduled discrete organic chemicals.* (1)(i) *Production quantities that trigger declaration requirements.* You must complete the Certification Form, Form UDOC (consisting of 2 pages), and Form A if:

(A) One or more plants at your plant site produced by synthesis in calendar year 1996 (for the initial declaration) or in the previous calendar year (for an annual declaration) in excess of 30 metric tons of an individual unscheduled discrete organic chemical containing phosphorus, sulfur or fluorine ("PSF-chemicals") that was, isolated for:

(*1*) Use; or

(*2*) sale as a specific end product; or

(B) Your plant site produced by synthesis in calendar year 1996 (for the initial declaration) or the previous calendar year (for an annual declaration) in excess of 200 metric tons aggregate of all unscheduled discrete organic chemicals (including PSF-chemicals) that were, isolated or captured for:

(*1*) Use; or

(*2*) Sale as a specific end product.

(ii) Completion of Form B is optional.

(2) *Exception.* You are not required to complete declarations under this paragraph if your plant site exclusively produced hydrocarbons or explosives.

(3) *Examples.* See Supplement No. 1 to this part for examples of UDOCs subject to the declaration requirements of this part, examples of chemicals not produced by synthesis and therefore not subject to declaration requirements of this part, and for examples of processes that are not considered production by synthesis.

(c) If you are exempt from declaration requirements under the provisions of paragraph (a)(1) through (a)(4) of this section, you need not complete and submit forms. If you need assistance on chemical determinations or other CWC-related matters, contact the Office of Chemical & Biological Controls and Treaty Compliance, Treaty Compliance Division at (703) 235–1335.

§ 715.2 Amended declaration.

If, after submitting the original declaration, you discover that the previously submitted information is not accurate (e.g., change of quantity, addition of a new chemical, relocation of facility, etc.), you must complete a new Certification Form and the specific form being amended. Only complete that portion of each form that corrects the previously submitted information.

§ 715.3 Frequency and timing of declarations.

Declarations required under this part are due to BXA according to the dates identified in Table 1 of this section. Required declarations include:

(a) Initial declarations for production of unscheduled discrete organic chemicals during calendar year 1996.

(b) Annual declarations on past production of unscheduled discrete organic chemicals beginning with production figures for calendar year 1997.

TABLE 1 TO § 715.3.—DEADLINES FOR SUBMISSION OF DECLARATIONS FOR UNSCHEDULED DISCRETE ORGANIC CHEMICALS FACILITIES

Declarations	Applicable forms	Due dates
Initial Declaration (calendar year 1996): Plant Site	Certification, UDOC, A, B (optional)	See note to this table.
Annual Declaration on Past Activities (previous calendar year, starting with 1997): Plant Site	Certification, UDOC, A, B (optional)	See note to this table. February 13 of each year following past activities requiring declaration.

Note to Table 1: The initial declaration and annual declaration of past production for calendar years 1997 and 1998 pursuant to the provisions of this part will be due [90 days after the effective date of the final rule]. Thereafter, annual reports of past unscheduled discrete organic chemical activities will be due to BXA by February 13th of each year.

Supplement No. 1 to Part 715—Examples of Unscheduled Discrete Organic Chemicals (UDOCs) and Production Processes

(1) Examples of UDOCs that you must report under the provisions of this part include, but are not limited to, the following, unless they are involved in processes other than "production" (i.e. chemical synthesis), or were not isolated for:

(i) Use; or

(ii) Sale as a specific end product:

(A) Acetophenone (CAS #98–86–2);

(B) 6-Chloro-2-Methyl Aniline (CAS #87–63–8);

(C) 2-Amino-3-Hydroxy benzoic Acid (CAS #548–93–6); and

(D) Acetone (CAS #67–64–1).

(2) The following examples illustrate those chemicals not produced by synthesis and therefore not subject to declaration requirements:

(i) UDOCs produced coincidentally as byproducts of a manufacturing, production or waste treatment process that are not isolated or captured for:

(A) Use; or

(B) Sale as a specific end product during the process and are routed to, or escape from, the waste stream of a stack, incinerator, or waste treatment system or any other waste stream;

(ii) Mixtures of UDOCs produced coincidentally and not isolated for:

(A) Use; or

(B) Sale as a specific end-product;

(iii) UDOCs produced by recycling (i.e. involving one of the processes listed in paragraph (3) of this supplement) of previously reported unscheduled DOCs.;

(iv) UDOCs produced by the mixing (i.e. the process of combining or blending into one mass) of previously reported UDOCs; and

(v) Intermediate UDOCs in transient form completely converted to another reportable UDOC in the same process, whether batch or continuous, and not isolated for:

(A) Use; or

(B) Sale as a specific end product.

(3) Following are examples of processes that involve chemicals or mixtures of chemicals that are not considered production by synthesis, and, thus, the end products would not be reported under the provisions of this part:

(i) Fermentation;

(ii) Extraction;

(iii) Purification;

(iv) Distillation; and

(v) Filtration.

PART 716—INITIAL AND ROUTINE INSPECTIONS OF DECLARED FACILITIES

Sec.

716.1 General information on the conduct of initial and routine inspections.
716.2 Purposes and types of inspections of declared facilities.
716.3 Warrants for inspections.
716.4 Scope and conduct of inspections.
716.5 Notification, duration and frequency of inspections.
716.6 Facility agreements.
716.7 Requirements for provisions of samples.
716.8 Report of inspection-related costs.

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Supplement No. 1 To Part 716—Notification, Duration, and Frequency of Inspections

Supplement No. 2 To Part 716—Schedule 1 Model Facility Agreement

Supplement No. 3 To Part 716—Schedule 2 Model Facility Agreement

Authority: Pub. L. 105–277, 112 Stat. 2681; E.O. 13128, 64 FR 36703.

§ 716.1 General information on the conduct of initial and routine inspections.

This part provides general information about the conduct of initial and routine inspections of declared facilities subject to inspection under CWC Verification Annex Part VI (E), Part VII(B), Part VIII(B) and Part IX(B).

(a) *Overview.* Each State Party to the CWC, including the United States Government, has agreed to allow certain inspections of declared facilities by inspectors employed by the Organization for the Prohibition of Chemical Weapons (OPCW) to ensure that activities are consistent with obligations under the CWC. The Department of Commerce is responsible for leading, hosting and escorting inspections of all facilities in the United States, except Department of Defense and Department of Energy facilities and other United States Government facilities that notify the USNA of their decision to be excluded from the CWCR. United States Government facilities are those owned by or leased to the U.S. Government, including facilities that are contractor-operated.

(b) *Declared facilities subject to initial and routine inspections.* (1) *Schedule 1 facilities.* Your declared facility is subject to inspection if it produced in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year.

(2) *Schedule 2 facilities.* Your declared plant site is subject to inspection if one or more plants on your plant site produced, processed or consumed, in any of the three previous calendar years, or you anticipate it will produce, process or consume in the next calendar year, any Schedule 2 chemical in excess of the following:

(i) 10 kg of chemical BZ: 3-Quinuclidinyl benzilate (see Schedule 2, Part A, paragraph 3 in Supplement No. 1 to part 713 of this subchapter);

(ii) 1 metric ton of chemical PFIB: 1,1,3,3,3-Pentafluoro-2(trifluoromethyl)-1-propene or any chemical belonging to the Amiton family (see Schedule 2, Part A, paragraphs 1 and 2 in Supplement No. 1 to part 713 of this subchapter); or

(iii) 10 metric tons of any chemical listed in Schedule 2, Part B in Supplement No. 1 to part 713 of this subchapter.

(3) *Schedule 3 facilities.* Your declared plant site is subject to inspection if one or more plants on your plant site produced during the previous calendar year, or you anticipate it will produce in the next calendar year, in excess of 200 metric tons aggregate of any Schedule 3 chemical (see Supplement No. 1 to part 714 of this subchapter).

(4) *Unscheduled discrete organic chemical facilities.* Your declared plant site is subject to inspection if your plant site produced by synthesis during the previous calendar year:

(i) More than 200 metric tons of unscheduled discrete organic chemicals; or

(ii) More than 200 tons of an unscheduled discrete organic chemical containing the elements phosphorus, sulfur or fluorine.

(c) *Responsibilities of the Department of Commerce.* As the host and escort for the international inspector team for all industry inspections, the Department of Commerce will lead on-site inspections, provide preliminary notification to the operator of the industry site of an impending inspection, dispatch an advance team to the site to assist with inspection preparation, secure an appropriate warrant in the event the facility does not consent to the inspection, escort the inspection team on-site throughout the inspection process, assist the inspection team with verification activities, during the initial inspection, negotiate the development of a site-specific facility agreement, if appropriate (see § 716.6), and ensure that a routine inspection adheres to the Convention, the Act, and any site-specific facility agreement.

§ 716.2 Purposes and types of inspections of declared facilities.

(a) *Schedule 1 facilities.* (1) *Purposes of inspections.* The aim of inspections of Schedule 1 facilities is to verify that:

(i) The facility is not used to produce any Schedule 1 chemical, except for the declared Schedule 1 chemicals;

(ii) The quantities of Schedule 1 chemicals produced, processed or consumed are correctly declared and consistent with needs for the declared purpose; and

(iii) The Schedule 1 chemical is not diverted or used for purposes other than those declared.

(2) *Types of inspections.* (i) *Initial inspections.* During initial inspections of declared Schedule 1 facilities, in addition to the verification activities listed in paragraph (a)(1) of this section, the U. S. Government team, led by the Department of Commerce, and the OPCW Technical Secretariat inspection team will develop draft site-specific facility agreements (see § 716.6) for the conduct of subsequent, routine inspections.

(ii) *Routine inspections.* During routine inspections of declared Schedule 1 facilities, the verification activities listed in paragraph (a)(1) of this section will be carried out pursuant to site-specific facility agreements (§ 716.6) developed during the initial inspections and concluded between the United States Government and the OPCW pursuant to the Convention.

(3) *On-site monitoring.* Declared Schedule 1 facilities are subject to monitoring by on-site instruments.

(b) *Schedule 2 facilities.* (1) *Purposes of inspections.*

(i) The general aim of inspections of declared Schedule 2 plant sites is to verify that activities are in accordance with obligations under the Convention and consistent with the information provided in declarations. Particular aims of inspections of declared Schedule 2 facilities are to verify:

(A) The absence of any Schedule 1 chemical, especially its production, except if in accordance with the provisions of the Convention;

(B) Consistency with declarations of levels of production, processing or consumption of Schedule 2 chemicals; and

(C) That Schedule 2 chemicals are not diverted to activities prohibited under the Convention.

(ii) During initial inspections, inspectors shall collect data to determine the frequency and intensity of subsequent inspections by assessing the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site and the nature of the activities carried out there, taking into account, *inter alia*, the following criteria:

(A) The toxicity of the scheduled chemicals and of the end-products produced with it, if any;

(B) The quantity of the scheduled chemicals typically stored at the inspected site;

(C) The quantity of feedstock chemicals for the scheduled chemicals typically stored at the inspected site;

(D) The production capacity of the Schedule 2 plants; and

(E) The capability and convertibility for initiating production, storage and filling of toxic chemicals at the inspected site.

(2) *Types of inspections.* (i) *Initial inspections.* During initial inspections of declared Schedule 2 facilities, in addition to the verification activities listed in paragraph (b)(1) of this section, the U.S. Government team, led by the Department of Commerce, and the OPCW Technical Secretariat inspection team will develop draft site-specific facility agreements for the conduct of subsequent, routine inspections (see § 716.6).

(ii) *Routine inspections.* During routine inspections of declared Schedule 2 facilities, the verification activities listed in paragraph (b)(1) of this section will be carried out pursuant to site-specific facility agreements developed during the initial inspections (see § 716.6), and concluded between the United States Government and the OPCW pursuant to the Convention and the Act.

(c) *Schedule 3 facilities.* (1) *Purposes of inspections.* The general aim of inspections of declared Schedule 3 facilities is to verify that activities are consistent with the information provided in declarations. The particular aim of inspections is to verify the absence of any Schedule 1 chemical, especially its production, except in accordance with the Convention.

(2) *Types of inspections.* (i) *Initial inspections.* During initial inspections of declared Schedule 3 facilities, in addition to the verification activities listed in paragraph (c)(1) of this section, the U.S. Government team, led by the Department of Commerce, and the OPCW Technical Secretariat inspection team may develop draft site-specific facility agreements for the conduct of subsequent, routine inspections (see § 716.6). Although the Convention does not require facility agreements for declared Schedule 3 facilities, the owner, operator, occupant or agent in charge of a facility or plant site may request one.

(ii) *Routine inspections.* During routine inspections of declared Schedule 3 facilities, the verification activities listed in paragraph (c)(1) of this section will be carried out pursuant to site-specific facility agreements developed during the initial inspections, if applicable (see § 716.6) and concluded between the United States Government and the OPCW pursuant to the Convention and the Act.

(d) *Unscheduled Discrete Organic Chemicals Facilities.* Unscheduled discrete organic chemical (UDOC) facilities will be subject to inspection beginning April 29, 2000, (i.e., the fourth year after entry into force of the Convention), unless the OPCW decides otherwise.

(1) *Purposes of inspections.* The general aim of inspections of declared UDOC facilities is to verify that activities are consistent with the information provided in declarations. The particular aim of inspections is to verify the absence of any Schedule 1 chemical, especially its production, except in accordance with the Convention.

(2) *Types of inspections.* (i) *Initial inspections.* During initial inspections of declared UDOC facilities, in addition to the verification activities listed in paragraph (d)(1) of this section, the U.S. Government team, led by the Department of Commerce, and the OPCW Technical Secretariat inspection team may develop draft site-specific facility agreements for the conduct of subsequent, routine inspections (see § 716.6). Although the Convention does not require facility agreements for declared UDOC facilities, the owner, operator, occupant or agent in charge of a facility or plant site may request one.

(ii) *Routine inspections.* During routine inspections of declared UDOC facilities, the verification activities listed in paragraph (d)(1) of this section will be carried out pursuant to site-specific facility agreements developed during the initial inspections, if applicable (see § 716.6), and concluded between the United States Government and the OPCW pursuant to the Convention and the Act.

§ 716.3 Warrants for inspections.

In instances where consent is not provided by the owner, operator, occupant or agent in charge for an initial or routine inspection, the Department of Commerce will obtain administrative warrants as provided by the Act.

§ 716.4 Scope and conduct of inspections.

(a) *General.* Each inspection shall be limited to the purposes described in § 716.2 and conducted in the least intrusive manner, consistent with the effective and timely accomplishment of its purpose as provided in the Convention. During inspections, inspectors will: tour the plants producing scheduled chemicals, including storage areas, feed lines, reaction vessels and ancillary equipment, control equipment, and waste and effluent handling areas; will examine relevant records; and may take samples as provided by the Convention and the Act, and the facility agreement, if applicable.

(b) *Effect of Facility Agreements.* Routine inspections at facilities or plant sites for which the United States has concluded a facility agreement with the OPCW will be conducted in accordance with the facility agreement. The existence of a facility agreement does not in any way limit the right of the operator of the facility to withhold consent to an inspection request.

(c) *Hours of inspections.* Consistent with the provisions of the Convention, the Department of Commerce will ensure, to the extent possible, that each inspection is commenced, conducted, and concluded during ordinary working hours, but no inspection shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(d) *Health and safety regulations.* In carrying out their activities, inspectors and U.S. Government representatives accompanying the inspectors shall observe health and safety regulations established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety. Such health and safety regulations will be set forth in the facility agreement for Schedule 1 and Schedule 2 facilities, and for Schedule 3 and UDOC facilities, if applicable.

(e) *Confidential business information.* (1) *Provisions of the Act relating to confidential business information.* The Act provides a statutory exemption from disclosure in response to a Freedom of Information Act request for certain information related to initial and routine inspections reported to, or otherwise acquired by, the U. S. Government as follows:

(i) Information included in categories specifically enumerated in sections 103(g)(1) and 304(e)(2) of the Act:

(A) Financial data;

(B) Sales and marketing data (other than shipment data);

(C) Pricing data;

(D) Personnel data;

(E) Research data;

(F) Patent data;

(G) Data maintained for compliance with environmental or occupational health and safety regulations;

(H) Data on personnel and vehicles entering and personnel passenger vehicles exiting the facility.

(I) Any chemical structure;

(J) Any plant design, process, technology or operating method.

(K) Any operating requirement, input, or result that identifies any type or quantity of chemicals used, processed or produced;

(L) Any commercial sale, shipment or use of a chemical; or

(ii) Information that qualifies as a trade secret under 5 U.S.C. 552(b)(4) (Freedom of Information Act) that is obtained:

(A) From a U.S. person; or

(B) Through the U.S. Government or the conduct of an inspection on U.S. territory under the Convention.

(2) *Exceptions to the Freedom of Information Act exemption.* The Act

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provides that the United States Government may disclose confidential business information to the OPCW, to federal law enforcement agencies, and, upon written request, to Congressional committees of appropriate jurisdiction.

(3) *Provisions of the Convention relating to confidential business information.* The Convention provides that States Parties may designate information submitted to the Organization for the Prohibition of Chemical Weapons (OPCW) as confidential, and requires the OPCW to limit access to and to prevent disclosure of information so designated, including specific information on inspections. The OPCW has developed a classification system whereby States Parties may designate the information they submit in their declarations as "restricted," "protected," or "highly protected," depending on the sensitivity of the information.

(4) *Disclosure of confidential business information during inspections.* During inspections, certain confidential business information, as defined by the Act, may be disclosed to OPCW inspectors and U.S. Government representatives hosting and escorting the inspectors. Facilities being inspected are responsible for identifying confidential business information to the U.S. Government before it is disclosed to inspectors, so that appropriate marking and handling can be arranged, in accordance with the provisions of the Convention, to prevent further, unauthorized disclosure. Confidential business information not related to the purpose of an inspection or not necessary to the accomplishment of an inspection, as agreed by the U.S. Government, may be removed from sight, shrouded, or otherwise not disclosed.

(5) *Disclosure of confidential business information following inspections.*

(i) Inspection-related confidential business information, as defined by the Act, contained in inspection reports or otherwise in the possession of the U.S. Government, is exempt from disclosure in response to a Freedom of Information Act request.

(ii) The U.S. Government must disclose confidential business information when such disclosure is deemed to be in the national interest. The USNA, in coordination with the CWC interagency group, will determine if disclosure of the confidential business information is in the national interest. The Act provides for notification to the affected person of intent to disclose confidential business information, unless such notification of intent to disclose is contrary to national security or law enforcement needs. If, after coordination with the agencies that comprise the CWC interagency group, the USNA determines that such disclosure is not contrary to national security or law enforcement needs, the USNA will notify the person that submitted the information or the person to whom the information pertains of the intent to disclose the information.

(iii) OPCW inspectors are prohibited, under the terms of their employment contracts and pursuant to the Confidentiality Annex of the Convention, from disclosing to any unauthorized persons any confidential information coming to their knowledge in the performance of their official duties, even after termination of their employment.

§ 716.5 Notification, duration and frequency of inspections.

(a) *Notification.* (1)(i) *Content of notice.* Inspections of facilities or plant sites may be made only upon issuance of written notice by the U.S. National Authority to the owner and to the operator, occupant or agent in charge of the premises to be inspected. The Department of Commerce will provide preliminary notification to the point of contact identified in declarations submitted by the facility. If the United States is unable to provide actual written notice to the inspection point of contact, the Department of Commerce, or if the Department of Commerce is unable, the Federal Bureau of Investigation may post notice prominently at the plant, plant site or other facility or location to be inspected. The notice shall include all appropriate information provided by the OPCW to the United States National Authority concerning:

(i) The type of inspection;

(ii) the basis for the selection of the facility or locations for the type of inspection sought;

(iii) the time and date that the inspection will begin and the period covered by the inspection; and

(iv) the names and titles of the inspectors.

(ii) In addition to appropriate information provided by the OPCW in its notification to the United States National Authority, the Department of Commerce's preliminary notification will state whether an advance team is available to assist the site in preparation for the inspection.

(2) *Timing of notice.* (i) *Schedule 1 facilities.* For declared Schedule 1 facilities, the Technical Secretariat will notify the USNA of an initial inspection not less than 72 hours prior to arrival of the inspection team in the United States, and will notify the U.S. National Authority of a subsequent ("routine") inspection not less than 24 hours prior to arrival of the inspection team in the United States. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. The Department of Commerce will provide preliminary notice to the inspection point of contact of the facility as soon as possible after the OPCW notifies the United States of the inspection.

(ii) *Schedule 2 facilities.* For declared Schedule 2 facilities, the Technical Secretariat will notify the USNA of an initial or routine inspection not less than 48 hours prior to arrival of the inspection team at the plant site to be inspected. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter and the Department of Commerce will provide preliminary notice to the inspection point of contact of the facility as soon as possible after the OPCW notifies the United States of the inspection.

(iii) *Schedule 3 and unscheduled discrete organic chemical facilities.* For declared Schedule 3 and discrete organic chemical facilities, the Technical Secretariat will notify the USNA of an initial or routine inspection not less than 120 hours prior to arrival of the inspection team at the plant site to be inspected. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. The Department of Commerce will provide preliminary notice to the inspection point of contact of the facility as soon as possible after the OPCW notifies the United States of the inspection.

(b) *Duration of inspections.* (1) *Schedule 1 facilities.* For a declared Schedule 1 facility, the Convention does not specify a maximum duration for an initial inspection. The maximum duration of routine inspections will be as stated in the facility agreement, unless extended by agreement between the inspection team and the Department of Commerce.

(2) *Schedule 2 facilities.* For declared Schedule 2 facilities, the maximum duration of initial and routine inspections shall be 96 hours, unless extended by agreement between the inspection team and the Department of Commerce.

(3) *Schedule 3 and discrete organic chemical facilities.* For declared Schedule 3 or discrete organic chemical facilities, the maximum duration of initial and routine inspections shall be 24 hours, unless extended by agreement between the inspection team and the Department of Commerce.

(c) *Frequency of inspections.* The frequency of initial and routine inspections are as follows:

(1) *Schedule 1 facilities.* As provided by the Convention, the frequency of routine inspections at declared Schedule 1 facilities is determined by the OPCW based on the risk to the object and purpose of the Convention posed by the quantities of chemicals produced, the characteristics of the facility and the nature of the activities carried out at the facility. The frequency of inspections will be stated in the facility agreement.

(2) *Schedule 2 facilities.* As provided by the Convention and the Act, the maximum number of routine inspections at Schedule 2 plant sites is 2 per calendar year per plant site. The OPCW will determine the frequency of routine inspections for each declared Schedule 2 plant site based on the inspectors' assessment of the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site, and the nature of the activities carried out there. The frequency of inspections will be stated in the facility agreement.

(3) *Schedule 3 facilities.* As provided by the Convention, no plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and unscheduled discrete organic chemical facilities in the United State may not exceed 20 per calendar year. If a facility agreement is developed for a declared Schedule 3 plant site, the frequency of inspections will be stated in any facility agreement.

(4) *Unscheduled Discrete Organic Chemicals.* As provided by the Convention, no plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and unscheduled discrete organic chemical facilities in the United State may not exceed 20 per calendar year. If a facility agreement is developed for a declared unscheduled discrete organic chemical plant site, the frequency of inspections will be stated in any facility agreement.

§ 716.6 Facility agreements.

(a) *Description and requirements.* A facility agreement is a site-specific agreement between the U.S. Government and the OPCW. Its purpose is to define procedures for inspections of a specific declared facility that is subject to inspection because of the type or amount of chemicals it produces, processes or consumes.

(1) *Schedule 1 facilities.* The Convention requires that facility agreements be concluded between the United States and the OPCW for all declared Schedule 1 facilities. For Schedule 1 facilities required to complete an initial declaration pursuant to part 713 of this subchapter, the USNA will ensure that facility agreements between the United States and the OPCW will be concluded within 180 days after submission of data declarations to the OPCW. However, for any new Schedule 1 facility, a facility agreement must be concluded before the new Schedule 1 facility begins operations.

(2) *Schedule 2 facilities.* The Convention requires that a facility agreement be concluded by the United States and the OPCW not later than 90 days after completion of the initial inspection of a Schedule 2 facility that is subject to on-site inspection. The USNA will ensure that such facility agreements are concluded with the OPCW unless the owner, operator, occupant or agent in charge of the facility and the OPCW Technical Secretariat agree that such a facility agreement is not necessary.

(3) *Schedule 3 and unscheduled discrete organic chemical facilities.* If the owner, operator, occupant or agent in charge of a Schedule 3 or unscheduled discrete organic chemical facility that is subject to inspection requests a facility agreement prior to the first routine inspection, the USNA will ensure that a facility agreement for such a facility is concluded with the OPCW.

(b) *Notification; negotiation of draft and final facility agreements; and conclusion of facility agreements.* Prior to the development of a facility agreement, the Department of Commerce shall notify the owner, operator, occupant, or agent in charge of the facility, and if the owner, operator, occupant or agent in charge so requests, the notified person may participate in preparations with Department of Commerce representatives for the negotiation of such an agreement. During the initial inspection of a declared facility, inspectors from the OPCW Technical Secretariat and the United States Government team, led by the Department of Commerce accompanying such inspectors, will negotiate a draft facility agreement. The Department of Commerce will participate in the negotiation of, and approve, all final facility agreements with the OPCW. The United States National Authority shall ensure that facility agreements for Schedule 1, Schedule 2, Schedule 3 and unscheduled discrete organic chemical plant sites are concluded with the OPCW in coordination with the Department of Commerce.

(c) *Format and content.* Schedule 1 and Schedule 2 model facility agreements are included in Supplement No. 2 and Supplement No. 3 to this part. These model facility agreements implement the general provisions of the Convention pertaining to inspections, including health and safety procedures, confidentiality of information, media and public relations, information about the plant site, inspection equipment, pre-inspection activities, conduct of the inspection (including access to and inspection of areas, buildings and structures, access to and inspection of records and documentation, arrangements for interviews of facility personnel, photographs, sampling, and measurements), and logistical arrangements for the inspectors, such as communications and lodging. Attachments to the facility agreements will provide site-specific information such as working hours, special safety and health procedures, as well as site-specific agreement as to documents and records to be provided, specific areas of a facility to be inspected, site diagrams, sampling, photography, and interview procedures, use of inspection equipment, procedures for protection of confidential business information, and administrative arrangements.

(d) *Further information.* For further information about facility agreements, please write or call: U.S. Department of Commerce, Bureau of Export Administration, Treaty Compliance Division, 14th Street and Pennsylvania Avenue, N.W., Room 2705, Washington, D.C. 20230–0001, Telephone: (202) 501–7876.

§ 716.7 Requirements for provisions of samples.

The owner, operator, occupant or agent in charge of a facility must provide a sample, as provided for in the Convention and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103, if the leader from the U.S. Department of Commerce of the U.S. host team accompanying the OPCW Inspection Team notifies the owner, operator, occupant or agent of charge of the inspected facility that a sample is required. The owner, operator, occupant or agent in charge of the premises shall

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determine whether the sample shall be taken by representatives of the premises or the inspection team or other individuals present during the inspection.

§ 716.8 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to this subchapter during a given calendar year must report to BXA within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or processing during inspections. This information should be reported to BXA on company letterhead at the address given in § 716.6(c), with the following notation: "ATTN: Report of Inspection-related Costs."

SUPPLEMENT NO. 1 TO PART 716.—NOTIFICATION, DURATION AND FREQUENCY OF INSPECTIONS

Agents	Schedule 1	Schedule 2	Schedule 3	Other (Unscheduled discrete organic chemicals)
Notice of routine inspection to USG.	24 hours prior to arrival at the point of entry.	48 hours prior to arrival at the plant site.	120 hours prior to arrival at the plant site.	120 hours prior to arrival at the plant site.
Duration of routine inspection.	As specified in facility agreement.	96 hours	24 hours	24 hours.
Maximum number of routine inspections.	Determined by OPCW based on characteristics of facility and the nature of the activities carried out at the facility.	2 per year per plant site	2 per calendar year per plant site.	2 per calendar year per plant site.
Notification of challenge inspection to USG*.	12 hours prior to arrival of inspection team at the point of entry			
Duration of Challenge inspection*.	84 hours			

*See part 717 of this subchapter.

Supplement No. 2 to Part 716—Schedule 1 Model Facility Agreement

Draft Model Agreement Specifying the General Form and Content for Facility Agreements to be Concluded Pursuant to Verification Annex, Part VI, Paragraph 31 (Other Facilities)

Facility Agreement Between the Organization for the Prohibition of Chemical Weapons and the Government of the United States of America Regarding On-Site Inspections at the _____ Facility Located at the _____

The Organization for the Prohibition of Chemical Weapons, hereinafter referred to as "Organization", and the Government of the United States of America, hereinafter referred to as "inspected State Party", both constituting the Parties to this Agreement, have agreed on the following arrangements in relation to the conduct of inspections pursuant to paragraph 3 of Article VI of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, hereinafter referred to as "Convention", at _____ (insert name of the facility, its precise location, including the address), declared under paragraphs 7 and ■ of Article VI, hereinafter referred to as "facility".

Section 1. General Provisions

1. The purpose of this Agreement is to facilitate the implementation of the provisions of the Convention in relation to inspections conducted at the facility pursuant to paragraph 3 of Article VI of the Convention and in accordance with the obligations of the inspected State Party and the Organization under the Convention.

2. Nothing in this Agreement shall be applied or interpreted in a way that is contradictory to the provisions of the Convention, including paragraph 1 of Article VII.[1] In case of inconsistency between this Agreement and the Convention, the Convention shall prevail.

3. The Parties have agreed to apply for planning purposes the general factors contained in Attachment 1.

4. The frequency and intensity of inspections at the facility are given in Part B of Attachment 1 and reflect the risk assessment of the Organization conducted pursuant to paragraphs 23 or 30 of Part VI of the Verification Annex, whichever applies.

5. The inspection team shall consist of no more than ____ persons.

6. The language for communication between the inspection team and the inspected State Party during inspections shall be English.

7. In case of any development due to circumstances brought about by unforeseen events or acts of nature, which could affect inspection activities at the facility, the inspected State Party shall notify the Organization and the inspection team as soon as practically possible.

8. In case of need for the urgent departure, emergency evacuation or urgent travel of inspector(s) from the territory of the inspected State Party, the inspection team leader shall inform the inspected State Party of such a need. The inspected State Party shall arrange without undue delay such departure, evacuation or travel. In all cases, the inspected State Party shall determine the means of transportation and routes to be taken. The costs of such departure, evacuation or travel of inspectors shall be borne by the Organization.

9. Inspectors shall wear identification badges at all times when on the premises of the facility.

Section 2. Health and Safety

1. Health and safety matters during inspections are governed by the Convention, the Organization's Health and Safety Policy and Regulations, and applicable national, local and facility safety and environmental regulations. The specific arrangements for implementing the relevant provisions of the Convention and the Organization's Health and Safety Policy in relation to inspections at the facility are contained in Attachment 2.

2. Pursuant to paragraph 1 of this section, all applicable health and safety regulations relevant to the conduct of the inspection at the facility are listed in Attachment 2 and shall be made available for use by the inspection team at the facility.

3. In case of the need to modify any health- and safety-related arrangements at the facility contained in Attachment 2 to this Agreement bearing on the conduct of inspections, the inspected State Party shall notify the Organization. Any such modification shall apply provisionally until the inspected State Party and the Organization have reached agreement on this issue. In case no agreement has been reached by the time of the completion of the inspection, the relevant information may be included in the preliminary factual findings. Any agreed modification shall be recorded in Attachment 2 to this Agreement in accordance with paragraph 2 of Section 13 of this Agreement.

4. In the course of the pre-inspection briefing the inspection team shall be briefed by the representatives of the facility on all health and safety matters which, in the view

[1] Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention.

of those representatives, are relevant to the conduct of the inspection at the facility, including:

(a) the health and safety measures at the Schedule 1 facilities to be inspected and the likely risks that may be encountered during the inspection;

(b) any additional health and safety or regulations that need to be observed at the facility;

(c) procedures to be followed in case of an accident or in case of other emergencies, including a briefing on emergency signals, routes and exits, and the location of emergency meeting points and medical facilities; and

(d) specific inspection activities which must be limited within particular areas at the facility, and in particular within those Schedule 1 facilities to be inspected under the inspection mandate, for reasons of health and safety.

Upon request, the inspection team shall certify receipt of any such information if it is provided in written form.

5. During the course of an inspection, the inspection team shall refrain from any action which by its nature could endanger the safety of the team, the facility, or its personnel or could cause harm to the environment. Should the inspected State Party refuse certain inspection activities, it may explain the circumstances and safety considerations involved, and shall provide alternative means for accomplishing the inspection activities.

6. In the case of emergency situations or accidents involving inspection team members while at the facility, the inspection team shall comply with the facility's emergency procedures and the inspected State Party shall to the extent possible provide medical and other assistance in a timely and effective manner with due regard to the rules of medical ethics if medical assistance is requested. Information on medical services and facilities to be used for this purpose is contained in Part D of Attachment 2. If the Organization undertakes other measures for medical support in regard to inspection team members involved in emergency situations or accidents, the inspected State Party will render assistance to such measures to the extent possible. The Organization will be responsible for the consequences of such measures.

7. The inspected State party shall, to the extent possible, assist the Organization in carrying out any inquiry into an accident or incident involving a member of the inspection team.

8. If, for health and safety reasons given by the inspected State Party, health and safety equipment of the inspected State Party is required to be used by the inspection team, the cost so incurred shall be borne by the inspected State Party.

9. The inspection team may use its own approved health and safety equipment. If the inspected State Party determines it to be necessary, the inspected State Party shall conduct a fit test on masks brought with the inspection team. If the inspected State Party so requests on the basis of confirmed contamination or hazardous waste requirements or regulations, any such piece of equipment involved in the inspection activities will be left at the facility at the end of the inspection. The inspection team reserves the right to destroy equipment left at the facility or witness its destruction by agreed procedures. The inspected State Party will reimburse the Organization for the loss of the inspection team's equipment.

10. In accordance with the Organization's Health and Safety Policy, the inspected State Party may provide available data based on detection and monitoring, to the agreed extent necessary to satisfy concerns that may exist regarding the health and safety of the inspection team.

Section 3. Confidentiality

1. Matters related to confidentiality are governed by the Convention, including its Confidentiality Annex and paragraph 1 of Article VII, and the Organization's Policy on Confidentiality. The specific arrangements for implementing the provisions of the Convention and the Organization's Policy on Confidentiality in relation to the protection of confidential information at the facility are contained in Attachment 3.

2. Upon request, the inspected State Party will procure a container to be placed under joint seal to maintain documents that the inspection team, inspected State Party, or the facility representative decides to keep as reference for future inspections. The inspected State Party shall be reimbursed by the Organization for the purchase of such container.

3. All documents, including photographs, provided to the inspection team will be controlled as follows:

(a) *Information to be taken off-site.* Information relevant to the finalization of the preliminary factual findings that the inspected State Party permits the inspection team to take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly state that the inspection team may take it off-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team.

(b) *Information restricted for use on-site.* Information that the inspected State Party permits the inspection team to use on-site during inspections but not take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team. Upon conclusion of the inspection, the inspection team shall return the information to the inspected State Party, and the facility representative shall acknowledge receipt in writing. If so requested by the inspection team, the information can be placed in the joint sealed container for future reference.

(c) *Information restricted for use on-site and requiring direct supervision.* Information that the inspected State Party permits the inspection team to use on-site only under direct supervision of the inspected State Party or the representative of the inspected facility will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site under direct supervision and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team. The inspection team shall return the information to the inspected State Party immediately upon completion of review and the facility representative shall acknowledge receipt in writing. If so requested by the inspection team, the information can be placed in the joint sealed container for future reference.

Section 4. Media and Public Relations

1. Inspection team media and public relations are governed by the Organization's Media and Public Relations Policy. The specific arrangements for the inspection team's contacts with the media or the public, if any, in relation to inspections of the facility are contained in Attachment 4.

Section 5. Inspection Equipment

1. As agreed between the inspected State Party and the Organization, the approved equipment listed in Part A of Attachment 5 and with which the inspected State Party has been given the opportunity to familiarize itself will, at the discretion of the Organization and on a routine basis, be used specifically for the Schedule 1 inspection. The equipment will be used in accordance with the Convention, the relevant decisions taken by the Conference of States Parties, and any agreed procedures contained in Attachment 5.

2. The provisions of paragraph 1 above are without prejudice to paragraphs 27 to 29 of Part II of the Verification Annex.

3. The items of equipment available on-site, not belonging to the Organization, which the inspected State Party has volunteered to provide to the inspection team upon its request for use on-site during the conduct of inspections, together with any procedures for the use of such equipment, if required, any requested support which can be provided, and conditions for the provision of equipment are listed in Part B of Attachment 5. Prior to any use of such equipment, the inspection team may confirm that the performance characteristics of such equipment are consistent with those for similar Organization-approved equipment, or, with respect to items of equipment which are not on the list of Organization-approved equipment , are consistent with the intended purpose for using such equipment.[2]

[2] *I.e.* The inspection team may confirm that the performance characteristics of such equipment meet

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4. Requests from the inspection team for the inspected State Party during the inspection to provide equipment mentioned in paragraph 3 above shall be made in writing by an authorized member of the inspection team using the form contained in Attachment 5. The same procedure will also apply to other requests of the inspection team in accordance with paragraph 30 of Part II of the Verification Annex.

5. Agreed procedures for the decontamination of any equipment are contained in Part C of Attachment 5.

6. For the purpose of verification, the list of agreed on-site monitoring instruments, if any, as well as agreed conditions, procedures for use, maintenance, repair, modification, replacement and provisions for the inspected State Party's support, if required, installation points, and security measures to prevent tampering with such on-site monitoring instruments are contained in Part D of Attachment 5.

Section 6. Pre-Inspection Activities

1. The inspection team shall be given a pre-inspection briefing by the representatives of the facility in accordance with paragraph 37 of Part II of the Verification Annex. The pre-inspection briefing shall include:

(a) information on the facility as described in Attachment 6;

(b) health and safety specifications described in Section 2 above and detailed in Attachment 2;

(c) any changes to the above-mentioned information since the last inspection; and

(d) information on administrative and logistical arrangements additional to those contained in Attachment 10, if any, that shall apply during the inspection, as contained in Section 10.

2. Any information about the facility that the inspected State Party has volunteered to provide to the inspection team during the pre-inspection briefing with indications as to which information may be transferred off-site is referenced in Part B of Attachment 6.

Section 7. Conduct of the Inspection

7.1 Standing Arrangements

1. The inspection period shall begin immediately upon completion of the pre-inspection briefing unless agreed otherwise. Upon completion of the pre-inspection briefing, the inspected State Party may, on a voluntary basis, provide a site tour at the request of the inspection team. Arrangements for the conduct of a site tour, if any, are contained in Attachment 7.

2. Upon conclusion of the pre-inspection briefing, the inspection team leader shall provide to the designated representative of the inspected State Party a preliminary inspection plan to facilitate the conduct of the inspection.

3. Before commencement of inspection activities, the inspection team leader shall inform the representative of the inspected State Party about the initial steps to be taken in implementing the inspection plan. The plan will be adjusted by the inspection team as circumstances warrant throughout the inspection process in consultation with the inspected State Party as to its implementability in regard to paragraph 40 of Part II of the Verification Annex.

4. The activities of the inspection team shall be so arranged as to ensure the timely and effective discharge of its functions and the least possible inconvenience to the inspected State Party and disturbance to the facility inspected. The inspection team shall avoid unnecessarily hampering or delaying the operation of a facility and avoid affecting safety. In particular, the inspection team shall not operate the facility. If the inspection team considers that, to fulfil the mandate, particular operations should be carried out in the facility, it shall request the designated representative of the facility to have them performed.

5. At the beginning of the inspection, the inspection team shall have the right to confirm the precise location of the facility utilizing visual and map reconnaissance, a site diagram, or other suitable techniques.

6. The inspection team shall, upon request of the inspected State Party, communicate with the personnel of the facility only in the presence of or through a representative of the inspected State Party.

7. The inspected State Party shall, upon request, provide a securable work space for the inspection team, including adequate space for the storage of equipment. The inspection team shall have the right to seal its work space.

7.2 Access to the Declared Facility

1. The object of the inspection shall be the declared Schedule 1 facility as referenced in Attachment 6.

2. Pursuant to paragraph 45 of Part II of the Verification Annex, the inspection team shall have unimpeded access to the declared facility in accordance with the relevant Articles and Annexes of the Convention and Attachments 6, 8, and 9.

7.3 Access to and Inspection of Documentation and Records

1. The agreed list of the documentation and records to be routinely made available for inspection purposes to the inspection team by the inspected State Party during an inspection, as well as arrangements with regard to access to such records for the purpose of protecting confidential information, are contained in Attachment 8. Such documentation and records will be provided to the inspection team upon request.

2. Only those records placed in the custody of the inspection team that are attached to the preliminary factual findings in accordance with Section 3 may leave the premises. Those records placed in the custody of the inspection team that are not attached to the preliminary factual findings must be retained in the inspection team's on-site container or returned to the inspected State Party.

7.4 Sampling and Analysis

1. Without prejudice to paragraphs 52 to 58 of Part II of the Verification Annex, procedures for sampling and analysis for verification purposes are contained in Attachment 9.

2. Sampling and analysis, for inspection purposes, may be carried out to fulfill the inspection mandate. Each such sample will be split into a minimum of four parts at the request of the inspection team in accordance with Part C of Attachment 9. One part shall be analyzed in a timely manner on-site. The second part of the split sample may be held for the inspection team for future reference and, if necessary, analysis off-site at laboratories designated by the Organization. That part of the sample may be destroyed at any time in the future upon the decision of the inspection team but in any case no later than 60 days after it was taken. The third part may be retained by the inspected State Party. The fourth part may be retained by the facility.

3. Pursuant to paragraph 52 of the Part II of the Verification Annex, representatives of the inspected State Party or facility shall take samples at the request of the inspection team in the presence of inspectors. The inspected State Party will inform the inspection team of the authorized facility representative's[3] determination of whether the sample shall be taken by representatives of the facility or the inspection team or other individuals present. If inspectors are granted the right to take samples themselves in accordance with paragraph 52 of Part II of the Verification Annex, the relevant advance agreement between the inspection team and the inspected State Party shall be in writing. The representatives of the inspected State Party or of the inspected facility shall have the right to be present during sampling. Agreed conditions and procedures for such sample collection are contained in Part B of Attachment 9 to this Agreement.

4. Facility sampling equipment shall as a rule be used for taking samples required for the purposes of the inspection. This is without prejudice to the right of the inspection team pursuant to paragraph 27 of Part II of the Verification Annex to use its own approved sampling equipment in accordance with paragraph 1 of Section 5 and Parts A and B of Attachment 5 to this Agreement.

5. Should the inspection team request that a sample be taken and the inspected State Party be unable to accede or agree to the request, the inspected State Party will make every reasonable effort to satisfy the inspection team's concerns by other means to enable the inspection team to fulfil its mandate. The inspected State Party will provide a written explanation for its inability to accede or agree to the request. Any such response shall be supported by relevant document(s). The explanation of the inspected State Party shall be included in the preliminary factual findings.

6. In accordance with paragraph 53 of Part II of the Verification Annex, where possible, the analysis of samples shall be performed on-site and the inspection team shall have the right to perform on-site analysis of samples using approved equipment brought by it for the splitting, preparation, handling, analysis, integrity and transport of samples. The assistance that will be provided by the inspected State Party and the analysis

the technical requirements necessary to support the inspection task intended to be accomplished.

[3] The authorized facility representative is the owner or the operator, occupant or agent in charge of the premises being inspected.

procedures to be followed are contained in Part D of Attachment 9 to this Agreement.

7. The inspection team may request the inspected State Party to perform the analysis in the inspection team's presence. The inspection team shall have the right to be present during any sampling and analysis conducted by the inspected State Party.

8. The results of such analysis shall be reported in writing as soon as possible after the sample is taken.

9. The inspection team shall have the right to request repeat analysis or clarification in connection with ambiguities.

10. If at any time, and for any reason, on-site analysis is not possible, the inspection team has the right to have sample(s) analyzed off-site at Organization-designated laboratories. In selecting such designated laboratories for the off-site analysis, the Organization will give due regard to requirements of the inspected State Party.

11. Transportation of samples will be in accordance with the procedures outlined in Part E of Attachment 9.

12. If at any time, the inspected State Party or facility representative determines that inspection team on-site analysis activities are not in accordance with the facility agreement or agreed analysis procedures, or otherwise pose a threat to safety or environmental regulations or laws, all analysis activities will immediately cease at the direction of the facility representative. If both parties cannot agree to proceed with the analysis, the inspection team will document this in its preliminary factual findings.

13. Conditions and procedures for the disposal of hazardous materials generated during sampling and on-site analysis during the inspection are contained in Part F of Attachment 9 to this Agreement.

7.5 Arrangements for Interviews

1. The inspection team shall have the right, subject to applicable United States legal protections for individuals, to interview any facility personnel in the presence of representatives of the inspected State Party with the purpose of establishing relevant facts in accordance with paragraph 46 of Part II of the Verification Annex and inspected State Party's policy and procedures. Agreed procedures for conducting interviews are contained in Attachment 11.

2. The inspection team will submit to the inspected State Party names and/or positions of those desired for interviews. The requested individual(s) will be made available to the inspection team no later than 24 hours after submission of the formal request, unless agreed otherwise. The inspection team may also be requested to submit questions in writing prior to conducting interviews. The specific timing and location of interviews will be determined with the facility in coordination with the inspected State Party and consistent with adequate notification of the interviewees, and minimizing the operation impacts on the facility and individuals to be interviewed.

3. The inspected State Party may recommend to the inspection team that interviews be conducted in either "panel" or individual formats. At a minimum, interviews will be conducted with a member of the facility staff and an inspected State Party representative. Legal counsel may also be required to be present by the inspected State Party. The interview may be interrupted for consultation between the interviewee, the facility representative, and the inspected State Party representative.

4. The inspected State Party will have the right to restrict the content of interviews to information directly related to the mandate or purpose of the inspection.

5. Outside the interview process and in discharging their functions, inspectors shall communicate with personnel of the facility only through the representative(s) of the inspected State Party.

7.6 Communications

1. In accordance with paragraph 44 of Part II of the Verification Annex, the inspection team shall have the right to communicate with the headquarters of the Technical Secretariat. For this purpose they may use their own, duly certified approved equipment, in accordance with paragraph 1 of Section 5.

2. In case the inspection team and the inspected State Party agree to use any of the inspected State Party's communications equipment, the list of such equipment and the provisions for its use are contained in Part B of Attachment 5 to this Agreement.

3. The agreed means of communication between inspection team sub-teams in accordance with paragraph 44 of Part II of the Verification Annex are contained in Part E of Attachment 5.

7.7 Photographs

1. In accordance with the provisions of paragraph 48 of Part II of the Verification Annex, the Confidentiality Annex and inspected State Party's policy and procedures, the inspection team shall have the right to have photographs taken at their request by the representatives of the inspected State Party or the inspected facility. One camera of the instant development type furnished by the inspection team or the inspected State Party shall be used for taking identical photographs in sequence. Cameras furnished by the inspection team will remain either in their work space or equipment storage area except when carried by inspection team members for a specific inspection activity. Cameras will only be used for specified inspection purposes. Personal cameras are not allowed to be taken to the facility unless otherwise agreed by the inspected State Party.

2. Pursuant to the Confidentiality Annex, the inspected State Party shall have the right to determine that contents of the photographs conform to the stated purpose of the photographs. The inspection team shall determine whether photographs conform to those requested and, if not, repeat photographs shall be taken. Photographs that do not meet the satisfaction of both sides will be destroyed by the inspected State Party in the presence of the inspection team. The inspection team, the inspected State Party and the facility, if so requested, shall each retain one copy of every photograph. The copies shall be signed, dated, and classified, in accordance with Section 3, and note the location and subject of the photograph and carry the same identification number. Agreed procedures for photography are contained in Attachment 12.

3. The representative of the inspected facility has the right to object to the use of photographic equipment in specific areas, buildings or structures if such use would be incompatible with safety or fire regulations given the characteristics of the chemicals stored in the area in question. Restrictions for use are contained in Parts A and/or B of Attachment 5 to this Agreement. If the objection is raised due to safety concerns, the inspected State Party will, if possible, furnish photographic equipment that meets the regulations. If the use of photographic equipment is not permissible at all in specific areas, buildings or structures for the reasons stated above, the inspected State Party shall provide a written explanation of its objection to the inspection team leader. The explanation, along with the inspection team leader's comments will be included in the inspection team's preliminary factual findings.

Section 8. Visits

1. This section applies to visits conducted pursuant to paragraphs 15 and 16 of Part III of the Verification Annex.

2. The size of a team on such a visit shall be kept to the minimum number of personnel necessary to perform the specific tasks for which the visit is being conducted and shall in any case not exceed the size of inspection team referenced in paragraph 5 of Section 1.

3. The duration of the visit pursuant to this Section shall be limited to the minimum time required to perform the specific tasks relating to monitoring systems for which the visit is being conducted and in any case shall not exceed the estimated period of inspection referenced in Part B of Attachment 1 of this Agreement.

4. Access provided to the monitoring systems during the visit shall be limited to that required to perform the specific tasks for which the visit is being conducted, unless otherwise agreed to with the inspected State Party.

5. General arrangements and notifications for a visit shall be the same as for the conduct of an inspection.

Section 9. Debriefing and Preliminary Findings

1. In accordance with paragraph 60 of Part II of the Verification Annex, upon completion of an inspection the inspection team shall meet with representatives of the inspected State Party and the personnel responsible for the inspection site to review the preliminary findings of the inspection team and to clarify any ambiguities. The inspection team shall provide to the representatives of the inspected State Party its preliminary findings in written form according to a standardized format, together with a list of any samples and copies of written information and data gathered and other material to be taken off-site. The document shall be signed by the head of the inspection team. In order to indicate that he has taken notice of the contents of the document, the representative of the inspected State Party shall countersign the document. The meeting shall be completed not later than 24 hours after the completion of the inspection.

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2. The document on preliminary findings shall also include, inter alia, the list of results of analysis, if conducted on-site, records of seals, results of inventories, copies of photographs to be retained by the inspection team, and results of specified measurements. It will be prepared in accordance with the preliminary findings format referenced in Annex 5. Any substantive changes to this format will be made only after consultation with the inspected State Party.

3. Before the conclusion of the debriefing, the inspected State Party may provide comments and clarifications to the inspection team on any issue related to the conduct of the inspection. The inspection team shall provide to the representative of the inspected State Party its preliminary findings in written form sufficiently prior to the conclusion of the debriefing to permit the inspected State Party to prepare any comments and clarifications. The inspected State Party's written comments and clarifications shall be attached to the document on preliminary findings.

4. The inspection team shall depart from the site upon the conclusion of the meeting on preliminary findings.

Section 10. Administrative Arrangements

1. The inspected State Party shall provide or arrange for the provision of the amenities listed in detail in Attachment 10 to the inspection team throughout the duration of the inspection. The inspected State Party shall be reimbursed by the Organization for such costs incurred by the inspection team, unless agreed otherwise.

2. Requests from the inspection team for the inspected State Party to provide or arrange amenities shall be made in writing by an authorized member of the inspection team [4] using the form contained in Attachment 10. Requests shall be made as soon as the need for amenities has been identified. The provision of such requested amenities shall be certified in writing by the authorized member of the inspection team. Copies of all such certified requests shall be kept by both parties.

3. The inspection team has the right to refuse extra amenities that in its view are not needed for the conduct of the inspection.

Section 11. Liabilities

1. Any claim by the inspected State Party against the Organization or by the Organization against the inspected State Party in respect of any alleged damage or injury resulting from inspections at the facility in accordance with this Agreement, without prejudice to paragraph 22 of the Confidentiality Annex, shall be settled in accordance with international law and, as appropriate, with the provisions of Article XIV of the Convention.

Section 12. Status of Attachments

1. The Attachments form an integral part of this Agreement. Any reference to the Agreement includes the Attachments. However, in case of any inconsistency between this Agreement and any Attachment, the sections of the Agreement shall prevail.

Section 13. Amendments, Modifications and Updates

1. Amendments to the sections of this Agreement may be proposed by either Party and shall be agreed to and enter into force under the same conditions as provided for under paragraph 1 of Section 15.

2. Modifications to the Attachments of this Agreement, other than Attachment 1 and Part B of Attachment 5, may be agreed upon at any time between the representative of the Organization and the representative of the inspected State Party, each being specifically authorized to do so. The Director-General shall inform the Executive Council about any such modifications. Each Party to this Agreement may revoke its consent to a modification not later than four weeks after it had been agreed upon. After this time period the modification shall take effect.

3. The inspected State Party will update Part A of Attachment 1 and Part B of Attachment 5 and Attachment 6 as necessary for the effective conduct of inspections. The Organization will update Part B of Attachment 1 and Annex 5, subject to paragraph 2 of Section 9, as necessary for the effective conduct of inspections.

Section 14. Settlement of Disputes

1. Any dispute between the Parties that may arise out of the application or interpretation of this Agreement shall be settled in accordance with Article XIV of the Convention.

Section 15. Entry Into Force

1. This Agreement shall enter into force after approval by the Executive Council and signature by the two Parties. If the inspected State Party has additional internal requirements, it shall so notify the Organization in writing by the date of signature. In such cases, this Agreement shall enter into force on the date that the inspected State Party gives the Organization written notification that its internal requirements for entry into force have been met.

Section 16. Duration and Termination.

1. This Agreement shall cease to be in force when, as determined by the Executive Council, the provisions of paragraphs 3 and 8 of Article VI and Part VI of the Verification Annex no longer apply to this facility.

Done at _____ in _____ copies, in English, each being equally authentic.[5]

ATTACHMENTS

The following attachments shall be completed where applicable.

Attachment 1: General Factors for the Conduct of Inspections
Attachment 2: Health and Safety Requirements and Procedures
Attachment 3: Specific Arrangements in Relation to the Protection of Confidential Information at the Facility
Attachment 4: Arrangements for the Inspection Team's Contacts with the Media or the Public
Attachment 5: Inspection Equipment
Attachment 6: Information on the Facility Provided in Accordance with Section 6
Attachment 7: Arrangements for Site Tour
Attachment 8: Records Routinely Made Available to the Inspection Team at the Facility
Attachment 9: Sampling and Analysis for Verification Purposes
Attachment 10: Administrative Arrangements
Attachment 11: Agreed Procedures for Conducting Interviews
Attachment 12: Agreed Procedures for Photography

ATTACHMENT 1

General Factors for the Conduct of Inspections

Part A. To Be Provided and Updated by the inspected State Party:

1. Schedule 1 facility(s) working hours, if applicable:[6] ____ hrs to ____ hrs (local time) (days)
2. Working days: _____
3. Holidays or other non-working days:

_____

4. Inspection activities which could/could not [7] be supported during non-working hours with notation of times and activities:

_____

5. Any other factors that could adversely affect the effective conduct of inspections:
(a) inspection requests:
Should the facility withhold consent to an inspection, the inspected State Party shall obtain a search warrant from a United States magistrate judge. Upon receipt of a warrant, the inspected State Party will accede to the Organization's request to conduct an inspection. Such inspection will be carried out in accordance with the terms and conditions of the warrant.
(b) other:

_____

6. Other: notification procedures are contained in Annex 6.

Part B. To Be Provided and Updated by the Organization:

1. Inspection frequency: _____
2. Inspection intensity:
(a) maximum estimated period of inspection (for panning purposes): _____
(b) approximate inspection team size:

_____

(c) estimated volume and weight of equipment to be brought on-site: _____

ATTACHMENT 2

Health and Safety Requirements and Procedures

Part A. Basic Principles

1. Applicable health and safety regulations of the Organization, with agreed variations from strict implementation, if any:

_____

2. Health and safety regulations applicable at the facility:

_____

[4] The name of the authorized member(s) of the inspection team should be communicated to the inspected State Party no later than at the Point of Entry.

[5] The language(s) to be chosen by the inspected State Party from the languages of the Convention shall be the same as the language(s) referred to in paragraph 6 of Section 1 of this Agreement.

[6] All references to time use a 24 hour clock.

[7] Choose one option.

(a) federal regulations:

_____

(b) state regulations:

_____

(c) local regulations:

_____

(d) facility regulations:

_____

3. Health and safety requirements and regulations agreed between the inspected State Party and the Organization:

Part B. Detection and Monitoring

_____

1. Applicable specific safety standards for workplace chemical exposure limits and/or concentrations which should be observed during the inspection, if any:

_____

2. Procedures for detection and monitoring in accordance with the Organization's Health and Safety Policy, including data to be collected by, or provided to, the inspection team:

Part C. Protection

1. Protective equipment to be provided by the Organization and agreed procedures for equipment certification and use, if required:

_____

2. Protective equipment to be provided by the inspected State Party, and agreed procedures, personnel training, and personnel qualification tests and certification required; and agreed procedures for use of the equipment:

_____

Part D. Medical Requirements

1. Applicable medical standards of the inspected State Party and, in particular, the inspected facility:

_____

2. Medical screening procedures for members of the inspection team:

_____

3. Agreed medical assistance to be provided by the inspected State Party:

_____

4. Emergency medical evacuation procedures:

_____

5. Agreed additional medical measures to be taken by the inspection team:

_____

6. Procedures for emergency response to chemical casualties of the inspection team:

_____

Part E. Modification of Inspection Activities

1. Modification of inspection activities due to health and safety reasons, and agreed alternatives to accomplish the inspection goals:

_____

ATTACHMENT 3

Specific Arrangements in Relation to the Protection of Confidential Information at the Facility

Part A. Inspected State Party's Procedures for Designating and Classifying Documents Provided to the Inspection Team

See Annex 3 for the Organization's Policy on Confidentiality and Annex 7 for the inspected State Party's Procedures for Information Control.

Part B. Specific Procedures for Access by the Inspection Team to Confidential Areas or Materials

_____

Procedures in Relation to the Certification by the Inspection Team of the Receipt of Any Documents Provided by the Inspected Facility:

_____

Part D. Storage of Confidential Documents at the Inspected Facility

1. Procedures in relation to the storage of confidential documents or use of a dual control container on-site, if applicable:

Information under restrictions provided for in the Confidentiality Annex and as such to be kept in the dual control container under joint seal shall be available to the inspection team leader and/or an inspector designated by him from the beginning of the pre-inspection briefing until the end of the debriefing upon completion of the inspection. If copies of information under dual control are permitted to be attached to the preliminary factual findings by the inspected State Party, they shall be made by the inspected State Party and retained under dual control until the debriefing. Should the medium on which such information is recorded become unusable, it shall be replaced without delay by the representative of the inspected State Party.

_____

2. The dual control container will be placed

_____

3. Information meeting the strict requirements for restriction pursuant to the Confidentiality Annex, and to be maintained in the dual control container located at the inspected facility between inspections is listed below:

Reference	Type of data	Recorded media	Volume	Reasons for restrictions/remarks

Part E. Procedures for the Removal Off-Site of Any Written Information, Data, and Other Material Gathered by the Inspection Team

_____

Part F. Procedures for Providing the Representatives of the inspected State Party with Copies of Written Information, Inspector's Notebooks, Data and Other Material Gathered by the Inspection Team

_____

Part G. Other Arrangements, If Any

1. Unless specified otherwise, all facility information shall be returned to the inspected State Party at the completion of the inspection. No copies of facility information shall be made in any manner by the inspection team or the Organization.

2. Facility information shall not be released to the public, other States Parties, or the media without the specific permission of the inspected State Party, after consultation with the facility.

3. Facility information shall not be transmitted, copied or retained electronically without the specific permission of the inspected State Party after consultation with the facility. All transmissions of information off-site shall be done in the presence of the inspected State Party.

4. Information not relevant to the purpose of the inspection will be purged from documents, photographs, etc. prior to release to the inspection team.

ATTACHMENT 4

Arrangements for the Inspection Team's Contacts with the Media or the Public

_____

ATTACHMENT 5

Inspection Equipment

Part A: List of Equipment

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Item of approved inspection equipment	Agreed procedures for use			
	Nature of restriction(s) (location, time, periods, etc.), if any	Indication of reason(s) (safety, confidentiality, etc.)	Special handling or storage requirements	Alternative for meeting inspection requirement(s), if so required by the inspection team

Part B. Equipment which the inspected State Party Has Volunteered to Provide

Item of equipment	Procedures for use	Support to be provided, if required	Conditions (timing, costs, if any)

Part C. Procedures for the Decontamination of Equipment

Item of equipment	Procedures for use

Part D. Agreed On-Site Monitoring Instruments

Part E. Means of Communication between Inspection Team Sub-Teams

REQUEST FOR AND CERTIFICATION OF EQUIPMENT AVAILABLE ON SITE TO BE PROVIDED IN ACCORDANCE WITH PARAGRAPH 3 OF SECTION 5

Date: _____
Facility: _____
Inspection number: _____
Name of the authorized member of the inspection team: _____
Type and number of item(s) of equipment requested: _____

Approval of the request by inspected State Party:

Comments on the request by the inspected State Party:

Indication of the costs, if any, for the use of the equipment requested/volunteered:

Certification of the authorized member of the inspection team that the requested item(s) of equipment have been provided:

Comments, if any, by the authorized member of the inspection team in regard to the equipment provided:

Name and signature of the authorized member of the inspection team:

Name and signature of the representative of the inspected State Party:

ATTACHMENT 6

Information on the Facility Provided in Accordance with Section 6

Part A. Topics of Information for the Pre-Inspection Briefing

1. Specification of the elements constituting the declared facility, including their physical location(s) (i.e., detail the areas, equipment, and computers), with indications as to which information may be transferred off-site:

2. Procedures for unimpeded access within the declared facility:[8]

3. Other:

Part B. Any Information about the Facility that the inspected State Party Volunteers to Provide to the Inspection Team during the Pre-Inspection Briefing with Indications as to which May Be Transferred Off-Site

ATTACHMENT 7

Arrangements for Site Tour

The inspected State Party may provide a site tour at the request of the inspection team. The inspected State Party may provide explanations to the inspection team during the site tour.

[8] List the areas, equipment, and computers, if any, that are not relevant to the inspection mandate or that contain confidential business information that does not need to be divulged in order to comply with the inspection mandate.

Attachment 8

Records Routinely Made Available to the Inspection Team at the Facility (i.e., Identify Records and Data):

Attachment 9

Sampling and Analysis for Verification Purposes

Part A. Agreed Sampling Points Chosen With Due Consideration to Existing Sampling Points Used by the Facility(s) Operator(s)

Part B. Procedures for Taking Samples

Part C. Procedures for Sample Handling and Sample Splitting

Part D. Procedures for On-Site Sample Analysis, If Any

Part E. Procedures for Off-Site Analysis, If Any

Part F. Procedures for Transporting Samples

Part G. Arrangements in Regard to the Payment of Costs Associated with the Disposal or Removal by the inspected State Party of Hazardous Waste Generated during Sampling and On-Site Analysis during the Inspection

Attachment 10

Administrative Arrangements

Part A. The Amenities Detailed Below Shall Be Provided to the Inspection Team by the inspected State Party, Subject to Payment as Indicated in Part B Below

1. International and local official communication (telephone, fax), including calls/faxes between site and headquarters:

2. Vehicles: _____
3. Working room, including adequate space for the storage of equipment: _____
4. Lodging: _____
5. Meals: _____
6. Medical care: _____
7. Interpretation Services:
(a) number of interpreters: _____
(b) estimated interpretation time: _____
(c) languages: _____
8. Other:

Part B. Distribution of Costs for Provision of Amenities by the inspected State Party (check one option for each amenity provided as appropriate):

Paragraphs 1–8 in part A above	To be paid directly by the organization after the inspection	To be paid by the inspection team on behalf of the organization during the in-country period	To be paid by the inspected state party and subsequently reimbursed by the organization	To be paid by the inspected state party
1				
2				
3				
4				
5				
6				
7				
8				

Part C. Other Arrangements.

1. Number of sub-teams (consisting of no less than two inspectors per sub-team) to be accommodated:

REQUEST FOR AND CERTIFICATION OF AMENITIES TO BE PROVIDED OR ARRANGED

Date: _____
Facility: _____
Inspection number: _____
Category of amenities requested:

Description of amenities requested:

Approval of the request by the inspected State Party:

Comments on the request by the inspected State Party:

Indication of the costs for the amenities requested:

Certification of the authorized member of the inspection team that the requested amenities have been provided:

Comments by the authorized member of the inspection team in regard to the quality of the amenities provided:

Name and signature of the authorized member of the inspection team:

Name and signature of the representative of the inspected State Party:

ATTACHMENT 11

Agreed Procedures for Conducting Interviews

ATTACHMENT 12

Agreed Procedures for Photography

ANNEXES

Note: These annexes, inter alia, can be attached if requested by the inspected State Party.

Annex 1: Organization's Media and Public Relations Policy
Annex 2: Organization's Health and Safety Policy and Regulations
Annex 3: Organization's Policy on Confidentiality
Annex 4: Facility Declaration
Annex 5: Preliminary and Final Inspection Report Formats
Annex 6: Inspected State Party's Procedures for Inspection Notification
Annex 7: Inspected State Party's Procedures for Information Control

Supplement No. 3 to Part 716—Schedule 2 Model Facility Agreement

Draft Facility Agreement Between the Organization for the Prohibition of Chemical Weapons and the Government of the United States of America Regarding On-Site Inspections at the _____ Schedule 2 Plant Site Located at _____

The Organization for the Prohibition of Chemical Weapons, hereinafter referred to as "Organization," and the Government of the United States of America, hereinafter referred to as "inspected State Party," both constituting the Parties to this Agreement, have agreed on the following arrangements in relation to the conduct of inspections pursuant to paragraph 4 of Article VI of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, hereinafter referred to as "the Convention," at (insert name of the plant site, its precise location, including the address), declared under paragraphs 7 and 8 of Article VI, hereinafter referred to as "plant site":

Section 1. General Provisions

1. The purpose of this Agreement is to facilitate the implementation of the provisions of the Convention in relation to inspections conducted at the plant site pursuant to paragraph 4 of Article VI of the Convention, and in accordance with the obligations of the inspected State Party and the Organization under the Convention.

2. Nothing in this Agreement shall be applied or interpreted in a way that is contradictory to the provisions of the Convention, including paragraph 1 of Article VII.[1] In case of inconsistency between this Agreement and the Convention, the Convention shall prevail.

3. The Parties have agreed to apply for planning purposes the general factors contained in Attachment 1.

4. The frequency and intensity of inspections at the plant site are given in Part B of Attachment 1 and reflect the risk assessment of the Organization conducted pursuant to paragraphs 18, 20 and 24 of Part VII of the Verification Annex.

5. The inspection team shall consist of no more than ____ persons.

6. The language for communication between the inspection team and the inspected State Party during inspections shall be English.

7. The period of inspection shall not last more than ninety-six (96) hours, unless an extension has been agreed to by the inspected State Party and the inspection team.

8. In case of any development due to circumstances brought about by unforeseen events or acts of nature, which could affect inspection activities at the plant site, the inspected State Party shall notify the Organization and the inspection team as soon as practically possible.

9. In case of need for the urgent departure, emergency evacuation or urgent travel of inspector(s) from the territory of the inspected State Party, the inspection team leader shall inform the inspected State Party of such a need. The inspected State Party shall arrange without undue delay such departure, evacuation or travel. In all cases, the inspected State Party shall determine the means of transportation and routes to be taken. The costs of such departure, evacuation or travel of inspectors shall be borne by the Organization.

[1] Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention.

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10. Inspectors shall wear identification badges at all times when on the premises of the plant site.

Section 2. Health and Safety

1. Health and safety matters during inspections are governed by the Convention, the Organization's Health and Safety Policy and Regulations, and applicable national, local and plant site safety and environmental regulations. The specific arrangements for implementing the relevant provisions of the Convention and the Organization's Health and Safety Policy in relation to inspections at the plant site are contained in Attachment 2.

2. Pursuant to paragraph 1 of this section, all applicable health and safety regulations relevant to the conduct of the inspection at the plant site are listed in Attachment 2 and shall be made available for use by the inspection team at the plant site.

3. In case of the need to modify any health- and safety-related arrangements at the plant site contained in Attachment 2 to this Agreement bearing on the conduct of inspections, the inspected State Party shall notify the Organization. Any such modification shall apply provisionally until the inspected State Party and the Organization have reached agreement on this issue. In case no agreement has been reached by the time of the completion of the inspection, the relevant information may be included in the preliminary factual findings. Any agreed modification shall be recorded in Attachment 2 to this Agreement in accordance with paragraph 2 of Section 12 of this Agreement.

4. In the course of the pre-inspection briefing the inspection team shall be briefed by the representatives of the plant site on all health and safety matters which, in the view of those representatives, are relevant to the conduct of the inspection at the plant site, including:

(a) the health and safety measures at the Schedule 2 plant(s) to be inspected and the likely risks that may be encountered during the inspection;

(b) any additional health and safety or regulations that need to be observed at the plant site;

(c) procedures to be followed in case of an accident or in case of other emergencies, including a briefing on emergency signals, routes and exits, and the location of emergency meeting points and medical facilities; and

(d) specific inspection activities which must be limited within particular areas at the plant site, and in particular within those Schedule 2 plant(s) to be inspected under the inspection mandate, for reasons of health and safety.

Upon request, the inspection team shall certify receipt of any such information if it is provided in written form.

5. During the course of an inspection, the inspection team shall refrain from any action which by its nature could endanger the safety of the team, the plant site, or its personnel or could cause harm to the environment. Should the inspected State Party refuse certain inspection activities, it may explain the circumstances and safety considerations involved, and shall provide alternative means for accomplishing the inspection activities.

6. In the case of emergency situations or accidents involving inspection team members while at the plant site, the inspection team shall comply with the plant site's emergency procedures and the inspected State Party shall to the extent possible provide medical and other assistance in a timely and effective manner with due regard to the rules of medical ethics if medical assistance is requested. Information on medical services and facilities to be used for this purpose is contained in Part D of Attachment 2. If the Organization undertakes other measures for medical support in regard to inspection team members involved in emergency situations or accidents, the inspected State Party will render assistance to such measures to the extent possible. The Organization will be responsible for the consequences of such measures.

7. The inspected State party shall, to the extent possible, assist the Organization in carrying out any inquiry into an accident or incident involving a member of the inspection team.

8. If, for health and safety reasons given by the inspected State Party, health and safety equipment of the inspected State Party is required to be used by the inspection team, the cost so incurred shall be borne by the inspected State Party.

9. The inspection team may use its own approved health and safety equipment. If the inspected State Party determines it to be necessary, the inspected State Party shall conduct a fit test on masks brought with the inspection team. If the inspected State Party so requests on the basis of confirmed contamination or hazardous waste requirements or regulations, any such piece of equipment involved in the inspection activities will be left at the plant site at the end of the inspection. The inspection team reserves the right to destroy equipment left at the plant site or witness its destruction by agreed procedures. The inspected State Party will reimburse the Organization for the loss of the inspection team's equipment.

10. In accordance with the Organization's Health and Safety Policy, the inspected State Party may provide available data based on detection and monitoring, to the agreed extent necessary to satisfy concerns that may exist regarding the health and safety of the inspection team.

Section 3. Confidentiality

1. Matters related to confidentiality are governed by the Convention, including its Confidentiality Annex and paragraph 1 of Article VII, and the Organization's Policy on Confidentiality. The specific arrangements for implementing the provisions of the Convention and the Organization's Policy on Confidentiality in relation to the protection of confidential information at the plant site are contained in Attachment 3.

2. Upon request, the inspected State Party will procure a container to be placed under joint seal to maintain documents that the inspection team, inspected State Party, or the plant site representative decides to keep as reference for future inspections. The inspected State Party shall be reimbursed by the Organization for the purchase of such container.

3. All documents, including photographs, provided to the inspection team will be controlled as follows:

(a) *Information to be taken off-site.* Information relevant to the finalization of the preliminary factual findings that the inspected State Party permits the inspection team to take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly state that the inspection team may take it off-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team.

(b) *Information restricted for use on-site.* Information that the inspected State Party permits the inspection team to use on-site during inspections but not take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team. Upon conclusion of the inspection, the inspection team shall return the information to the inspected State Party, and the facility representative shall acknowledge receipt in writing. If so requested by the inspection team, the information can be placed in the joint sealed container for future reference.

(c) *Information restricted for use on-site and requiring direct supervision.* Information that the inspected State Party permits the inspection team to use on-site only under direct supervision of the inspected State Party or the representative of the inspected facility will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site under direct supervision and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team. The inspection team shall return the information to the inspected State Party immediately upon completion of review and the facility representative shall acknowledge receipt in writing. If so requested by the inspection team, the information can be placed in the joint sealed container for future reference.

Section 4. Media and Public Relations

1. Inspection team media and public relations are governed by the Organization's Media and Public Relations Policy. The specific arrangements for the inspection team's contacts with the media or the public, if any, in relation to inspections of the plant site are contained in Attachment 4.

Section 5. Inspection Equipment

1. As agreed between the inspected State Party and the Organization, the approved equipment listed in Part A of Attachment 5 and with which the inspected State Party has been given the opportunity to familiarize itself will, at the discretion of the Organization and on a routine basis, be used specifically for the Schedule 2 inspection. The equipment will be used in accordance with the Convention, the relevant decisions taken by the Conference of States Parties, and any agreed procedures contained in Attachment 5.

2. The provisions of paragraph 1 above are without prejudice to paragraphs 27 to 29 of Part II of the Verification Annex.

3. The items of equipment available on-site and not belonging to the Organization which the inspected State Party has volunteered to provide to the inspection team upon its request for use on-site during the conduct of inspections, together with any procedures for the use of such equipment, if required, any requested support which can be provided, and conditions for the provision of equipment are listed in Part B of Attachment 5. Prior to any use of such equipment, the inspection team may confirm that the performance characteristics of such equipment are consistent with those for similar Organization-approved equipment, or—with respect to items of equipment which are not on the list of Organization-approved equipment—are consistent with the intended purpose for using such equipment.[2]

4. Requests from the inspection team for the inspected State Party during the inspection to provide equipment mentioned in paragraph 3 above shall be made in writing by an authorized member of the inspection team using the form contained in Attachment 5. The same procedure will also apply to other requests of the inspection team in accordance with paragraph 30 of Part II of the Verification Annex.

5. Agreed procedures for the decontamination of any equipment are contained in Part C of Attachment 5.

Section 6. Pre-Inspection Activities

1. The inspection team shall be given a pre-inspection briefing by the representatives of the plant site in accordance with paragraph 37 of Part II of the Verification Annex. The pre-inspection briefing shall include:

(a) information on the plant site as described in Attachment 6;

(b) health and safety specifications described in Section 2 above and detailed in Attachment 2;

(c) any changes to the above-mentioned information since the last inspection; and

(d) information on administrative and logistical arrangements additional to those contained in Attachment 11, if any, that shall apply during the inspection, as contained in Section 9.

2. Any information about the plant site that the inspected State Party has volunteered to provide to the inspection team during the pre-inspection briefing with indications as to which information may be transferred off-site is referenced in Part B of Attachment 6.

Section 7. Conduct of the Inspection

7.1 Standing Arrangements

1. The inspection period shall begin immediately upon completion of the pre-inspection briefing unless agreed otherwise.

2. Upon conclusion of the pre-inspection briefing, the inspection team leader shall provide to the designated representative of the inspected State Party a preliminary inspection plan to facilitate the conduct of the inspection.

3. Arrangements for the conduct of a site tour, if any, are contained in Attachment 7 to this Agreement.

4. Before commencement of inspection activities, the inspection team leader shall inform the representative of the inspected State Party about the initial steps to be taken in implementing the inspection plan. The plan will be adjusted by the inspection team as circumstances warrant throughout the inspection process in consultation with the inspected State Party as to its implementability in regard to paragraph 40 of Part II of the Verification Annex.[3]

5. The inspection team leader shall inform the representative of the inspected State Party during the inspection in a timely manner about each subsequent step to be taken by the inspection team in implementing the inspection plan. Without prejudice to paragraph 40 of Part II of the Verification Annex, this shall be done in time to allow the inspected State Party to arrange for the necessary measures to be taken to provide access and support to the inspection team as appropriate without causing unnecessary delay in the conduct of inspection activities.

6. At the beginning of the inspection, the inspection team shall have the right to confirm the precise location of the plant site utilizing visual and map reconnaissance, a site diagram, or other suitable techniques.

7. The inspection team shall, upon request of the inspected State Party, communicate with the personnel of the plant site only in the presence of or through a representative of the inspected State Party.

8. The inspected State Party shall, upon request, provide a securable work space for the inspection team, including adequate space for the storage of equipment. The inspection team shall have the right to seal its work space.

7.2 Access to and Inspection of Areas, Buildings and Structures

1. The focus of the inspection shall be the declared Schedule 2 plant(s) within the declared plant site as referenced in Attachment 8. If the inspection team requests access to other parts of the plant site, access to these areas shall be granted in accordance with the obligation to provide clarification pursuant to paragraph 51 of Part II and paragraph 25 of Part VII of the Verification Annex, and in accordance with Attachment 8.

2. Pursuant to paragraph 45 of Part II of the Verification Annex, the inspection team shall have unimpeded access to the declared Schedule 2 plant(s) in accordance with the relevant Articles and Annexes of the Convention and Attachments 8, 9, and 10. Areas of the declared plant(s) likely to be inspected are mentioned in paragraph 28 of Part VII of the Verification Annex. Pursuant to Section C of Part X of the Verification Annex, the inspection team shall have managed access to the other areas of the plant site. Procedures for access to these areas are contained in Attachment 8.

7.3 Access to and Inspection of Documentation and Records

1. The agreed list of the documentation and records to be routinely made available for inspection purposes, mentioned in paragraph 26 of Part VII of the Verification Annex, to the inspection team by the inspected State Party during an inspection, as well as arrangements with regard to access to such records for the purpose of protecting confidential information, are contained in Attachment 9. Such documentation and records will be provided upon request.

2. Only those records placed in the custody of the inspection team that are attached to the preliminary factual findings in accordance with Section 3 may leave the premises. Those records placed in the custody of the inspection team that are not attached to the preliminary factual findings must be retained in the on-site container or returned to the inspected State Party.

7.4 Sampling and Analysis

1. Without prejudice to paragraphs 52 to 58 of Part II of the Verification Annex, procedures for sampling and analysis for verification purposes as mentioned in paragraph 27 of Part VII of the Verification Annex are contained in Attachment 10 of this Agreement.

2. Sampling and analysis, for inspection purposes, may be carried out to check for the absence of undeclared scheduled chemicals. Each such sample will be split into a minimum of four parts at the request of the inspection team in accordance with Part C of Attachment 10. One part shall be analyzed in a timely manner on-site. The second part of the split sample may be held for the inspection team for future reference and, if necessary, analysis off-site at laboratories designated by the Organization. That part of the sample may be destroyed at any time in the future upon the decision of the inspection team but in any case no later than 60 days after it was taken. The third part may be retained by the inspected State Party. The fourth part may be retained by the plant site.

[2] i.e., The inspection team may confirm that the performance characteristics of such equipment meet the technical requirements necessary to support the inspection task intended to be accomplished.

[3] The activities of the inspection team shall be so arranged as to ensure the timely and effective discharge of its functions and the least possible inconvenience to the inspected State Party and disturbance to the plant site inspected. The inspection team shall avoid unnecessarily hampering or delaying the operation of the plant site and avoid affecting its safety. In particular, the inspection team shall not operate the plant site. If the inspection team considers that, to fulfil the mandate, particular operations should be carried out at the plant site, it shall request the designated representative of the plant site to have them performed.

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3. Pursuant to paragraph 52 of the Part II of the Verification Annex, representatives of the inspected State Party or plant site shall take samples at the request of the inspection team in the presence of inspectors. The inspected State Party will inform the inspection team of the authorized plant site representative's[4] determination of whether the sample shall be taken by representatives of the plant site or the inspection team or other individuals present. If inspectors are granted the right to take samples themselves in accordance with paragraph 52 of Part II of the Verification Annex, the relevant advance agreement between the inspection team and the inspected State Party shall be in writing. The representatives of the inspected State Party or of the inspected plant site shall have the right to be present during sampling. Agreed conditions and procedures for such sample collection are contained in Part B of Attachment 10 to this Agreement.

4. Plant site sampling equipment shall as a rule be used for taking samples required for the purposes of the inspection. This is without prejudice to the right of the inspection team pursuant to paragraph 27 of Part II of the Verification Annex to use its own approved sampling equipment in accordance with paragraph 1 of Section 5 and Parts A and B of Attachment 5 to this Agreement.

5. Should the inspection team request that a sample be taken and the inspected State Party be unable to accede or agree to the request, the inspected State Party will make every reasonable effort to satisfy the inspection team's concerns by other means to enable the inspection team to fulfil its mandate. The inspected State Party will provide a written explanation for its inability to accede or agree to the request. Any such response shall be supported by relevant document(s). The explanation of the inspected State Party shall be included in the preliminary factual findings.

6. In accordance with paragraph 53 of Part II of the Verification Annex, where possible, the analysis of samples shall be performed on-site and the inspection team shall have the right to perform on-site analysis of samples using approved equipment brought by it for the splitting, preparation, handling, analysis, integrity and transport of samples. The assistance that will be provided by the inspected State Party and the analysis procedures to be followed are contained in Part D of Attachment 10 to this Agreement.

7. The inspection team may request the inspected State Party to perform the analysis in the inspection team's presence. The inspection team shall have the right to be present during any sampling and analysis conducted by the inspected State Party.

8. The results of such analysis shall be reported in writing as soon as possible after the sample is taken.

9. The inspection team shall have the right to request repeat analysis or clarification in connection with ambiguities.

10. If at any time, and for any reason, on-site analysis is not possible, the inspection team has the right to have sample(s) analyzed off-site at Organization-designated laboratories. In selecting such designated laboratories for the off-site analysis, the Organization will give due regard to requirements of the inspected State Party.

11. Transportation of samples will be in accordance with the procedures outlined in Part E of Attachment 10.

12. If at any time, the inspected State Party or plant site representative determines that inspection team on-site analysis activities are not in accordance with the facility agreement or agreed analysis procedures, or otherwise pose a threat to safety or environmental regulations or laws, all analysis activities will immediately cease at the direction of the plant site representative. If both parties cannot agree to proceed with the analysis, the inspection team will document this in its preliminary factual findings.

13. Conditions and procedures for the disposal of hazardous materials generated during sampling and on-site analysis during the inspection are contained in Part F of Attachment 10 to this Agreement.

7.5 Arrangements for Interviews

1. The inspection team shall have the right, subject to applicable United States legal protections for individuals, to interview any plant site personnel in the presence of representatives of the inspected State Party with the purpose of establishing relevant facts in accordance with paragraph 46 of Part II of the Verification Annex and inspected State Party's policy and procedures. Agreed procedures for conducting interviews are contained in Attachment 12.

2. The inspection team will submit to the inspected State Party names and/or positions of those desired for interviews. The requested individual(s) will be made available to the inspection team no later than 24 hours after submission of the formal request, unless agreed otherwise. The inspection team may also be requested to submit questions in writing prior to conducting interviews. The specific timing and location of interviews will be determined with the plant site in coordination with the inspected State Party and consistent with adequate notification of the interviewees, and minimizing the operation impacts on the plant site and individuals to be interviewed.

3. The inspected State Party may recommend to the inspection team that interviews be conducted in either "panel" or individual formats. At a minimum, interviews will be conducted with a member of the plant site staff and an inspected State Party representative. Legal counsel may also be required to be present by the inspected State Party. The interview may be interrupted for consultation between the interviewee, the plant site representative, and the inspected State Party representative.

4. The inspected State Party will have the right to restrict the content of interviews to information directly related to the mandate or purpose of the inspection.

5. Outside the interview process and in discharging their functions, inspectors shall communicate with personnel of the plant site only through the representative(s) of the inspected State Party.

7.6 Communications

1. In accordance with paragraph 44 of Part II of the Verification Annex, the inspection team shall have the right to communicate with the headquarters of the Technical Secretariat. For this purpose they may use their own, duly certified approved equipment, in accordance with paragraph 1 of Section 5.

2. In case the inspection team and the inspected State Party agree to use any of the inspected State Party's communications equipment, the list of such equipment and the provisions for its use are contained in Part B of Attachment 5 to this Agreement.

3. The agreed means of communication between inspection team sub-teams in accordance with paragraph 44 of Part II of the Verification Annex are contained in Part D of Attachment 5.

7.7 Photographs

1. In accordance with the provisions of paragraph 48 of Part II of the Verification Annex, the Confidentiality Annex and inspected State Party's policy and procedures, the inspection team shall have the right to have photographs taken at their request by the representatives of the inspected State Party or the inspected plant site. One camera of the instant development type furnished by the inspection team or the inspected State Party shall be used for taking identical photographs in sequence. Cameras furnished by the inspection team will remain either in their work space or equipment storage area except when carried by inspection team members for a specific inspection activity. Cameras will only be used for specified inspection purposes. Personal cameras are not allowed to be taken to the plant site unless otherwise agreed by the inspected State Party.

2. Pursuant to the Confidentiality Annex, the inspected State Party shall have the right to determine that contents of the photographs conform to the stated purpose of the photographs. The inspection team shall determine whether photographs conform to those requested and, if not, repeat photographs shall be taken. Photographs that do not meet the satisfaction of both sides will be destroyed by the inspected State Party in the presence of the inspection team. The inspection team, the inspected State Party and the plant site, if so requested, shall each retain one copy of every photograph. The copies shall be signed, dated, and classified, in accordance with Section 3, and note the location and subject of the photograph and carry the same identification number. Agreed procedures for photography are contained in Attachment 13.

3. The representative of the inspected plant site has the right to object to the use of photographic equipment in specific areas, buildings or structures if such use would be incompatible with safety or fire regulations given the characteristics of the chemicals stored in the area in question. Restrictions for use are contained in Parts A and/or B of Attachment 5 to this Agreement. If the objection is raised due to safety concerns, the inspected State Party will, if possible, furnish photographic equipment that meets the regulations. If the use of photographic equipment is not permissible at all in specific areas, buildings or structures for the reasons stated above, the inspected State Party shall provide a written explanation of its objection to the inspection team leader. The explanation, along with the inspection team leader's comments will be included in the inspection team's preliminary factual findings.

[4] The authorized plant site representative is the owner or the operator, occupant or agent in charge of the premises being inspected.

Section 8. Debriefing and Preliminary Findings

1. In accordance with paragraph 60 of Part II of the Verification Annex, upon completion of an inspection the inspection team shall meet with representatives of the inspected State Party and the personnel responsible for the inspection site to review the preliminary findings of the inspection team and to clarify any ambiguities. The inspection team shall provide to the representatives of the inspected State Party its preliminary findings in written form according to a standardized format, together with a list of any samples and copies of written information and data gathered and other material to be taken off-site. The document shall be signed by the head of the inspection team. In order to indicate that he has taken notice of the content of this document, the representative of the inspected State Party shall countersign the document. The meeting shall be completed not later than 24 hours after the completion of the inspection.

2. The document on preliminary findings shall also include, inter alia, the list of results of analysis, if conducted on-site, records of seals, and copies of photographs to be retained by the inspection team. It will be prepared in accordance with the preliminary findings format referenced in Annex 5. Any substantive changes to this format will be made only after consultation with the inspected State Party.

3. Before the conclusion of the debriefing, the inspected State Party may provide comments and clarifications to the inspection team on any issue related to the conduct of the inspection. The inspection team shall provide to the representative of the inspected State Party its preliminary findings in written form sufficiently prior to the conclusion of the debriefing to permit the inspected State Party to prepare any comments and clarifications. The inspected State Party's written comments and clarifications shall be attached to the document on preliminary findings.

4. The inspection team shall depart from the site upon the conclusion of the meeting on preliminary findings.

Section 9. Administrative Arrangements

1. The inspected State Party shall provide or arrange for the provision of the amenities listed in detail in Attachment 11 to the inspection team in a timely manner throughout the duration of the inspection. The inspected State Party shall be reimbursed by the Organization for such costs incurred by the inspection team, unless agreed otherwise.

2. Requests from the inspection team for the inspected State Party to provide or arrange amenities shall be made in writing by an authorized member of the inspection team[5] using the form contained in Attachment 11. Requests shall be made as soon as the need for amenities has been identified. The provision of such requested amenities shall be certified in writing by the authorized member of the inspection team. Copies of all such certified requests shall be kept by both parties.

3. The inspection team has the right to refuse extra amenities that in its view are not needed for the conduct of the inspection.

Section 10. Liabilities

1. Any claim by the inspected State Party against the Organization or by the Organization against the inspected State Party in respect of any alleged damage or injury resulting from inspections at the plant site in accordance with this Agreement, without prejudice to paragraph 22 of the Confidentiality Annex, shall be settled in accordance with international law and, as appropriate, with the provisions of Article XIV of the Convention.

Section 11. Status of Attachments

1. The Attachments form an integral part of this Agreement. Any reference to the Agreement includes the Attachments. However, in case of any inconsistency between this Agreement and any Attachment, the sections of the Agreement shall prevail.

Section 12. Amendments, Modifications and Updates

1. Amendments to the sections of this Agreement may be proposed by either Party and shall be agreed to and enter into force under the same conditions as provided for under paragraph 1 of Section 14.

2. Modifications to the Attachments of this Agreement, other than Attachment 1 and Part B of Attachment 5, may be agreed upon at any time between the representative of the Organization and the representative of the inspected State Party, each being specifically authorized to do so. The Director-General shall inform the Executive Council about any such modifications. Each Party to this Agreement may revoke its consent to a modification not later than four weeks after it had been agreed upon. After this time period the modification shall take effect.

3. The inspected State Party will update Part A of Attachment 1 and Part B of Attachment 5, and Attachment 6 as necessary for the effective conduct of inspections. The Organization will update Part B of Attachment 1 and Annex 5, subject to paragraph 2 of Section 8, as necessary for the effective conduct of inspections.

Section 13. Settlement of Disputes

1. Any dispute between the Parties that may arise out of the application or interpretation of this Agreement shall be settled in accordance with Article XIV of the Convention.

Section 14. Entry into Force

1. This Agreement shall enter into force after approval by the Executive Council and signature by the two Parties. If the inspected State Party has additional internal requirements, it shall so notify the Organization in writing by the date of signature. In such cases, this Agreement shall enter into force on the date that the inspected State Party gives the Organization written notification that its internal requirements for entry into force have been met.

Section 15. Duration and Termination

1. This Agreement shall cease to be in force when the provisions of paragraph 12 of Part VII of the Verification Annex no longer apply to this plant site, except if the continuation of the Agreement is agreed by mutual consent of the Parties.

Done at _____ in _____ copies, in English, each being equally authentic.[6]

ATTACHMENTS

The following attachments shall be completed where applicable.

Attachment 1: General Factors for the Conduct of Inspections
Attachment 2: Health and Safety Requirements and Procedures
Attachment 3: Specific Arrangements in Relation to the Protection of Confidential Information at the Plant Site
Attachment 4: Arrangements for the Inspection Team's Contacts with the Media or the Public
Attachment 5: Inspection Equipment
Attachment 6: Information on the Plant Site Provided in Accordance with Section 6
Attachment 7: Arrangements for Site Tour
Attachment 8: Access to the Plant Site in Accordance with Section 7.2
Attachment 9: Records Routinely Made Available to the Inspection Team at the Plant Site
Attachment 10: Sampling and Analysis for Verification Purposes
Attachment 11: Administrative Arrangements
Attachment 12: Agreed Procedures for Conducting Interviews
Attachment 13: Agreed Procedures for Photography

ATTACHMENT 1

General Factors for the Conduct of Inspections

Part A. To Be Provided and Updated by the inspected State Party

1. Plant site:
(a) working hours:[7] ____ hrs to ____ hrs (local time) (days)
(b) working days: _____
(c) holidays or other non-working days: _____

2. Schedule 2 plant(s):
(a) working hours, if applicable: ____ hrs to ____ hrs (days)
(b) working days: _____
(c) holidays or other non-working days: _____

[5] The name of the authorized member(s) of the inspection team should be communicated to the inspected State Party no later than at the Point of Entry.

[6] The language(s) to be chosen by the inspected State Party from the languages of the Convention shall be the same as the language(s) referred to in paragraph 6 of Section 1 of this Agreement.

[7] All references to time use a 24 hour clock.

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3. Inspection activities which could/could not[8] be supported during non-working hours with notation of times and activities:

4. Any other factors that could adversely affect the effective conduct of inspections:

(a) inspection requests:

Should the plant site withhold consent to an inspection, the inspected State Party shall obtain a search warrant from a United States magistrate judge. Upon receipt of a warrant, the inspected State Party will accede to the Organization's request to conduct an inspection. Such inspection will be carried out in accordance with the terms and conditions of the warrant.

(b) other:

5. Other: Notification procedures are contained in Annex 6.

Part B. To Be Provided and Updated by the Organization

1. Inspection frequency: _____

2. Inspection intensity:

(a) maximum estimated period of inspection (for planning purposes): _____[9]

(b) approximate inspection team size: _____

(c) estimated volume and weight of equipment to be brought on-site: _____

ATTACHMENT 2

Health and Safety Requirements and Procedures

Part A. Basic Principles

1. Applicable health and safety regulations of the Organization, with agreed variations from strict implementation, if any:

2. Health and safety regulations applicable at the plant site:

(a) federal regulations:

(b) state regulations:

(c) local regulations:

(d) plant site regulations:

3. Health and safety requirements and regulations agreed between the inspected State Party and the Organization:

Part B. Detection and Monitoring

1. Applicable specific safety standards for workplace chemical exposure limits and/or concentrations which should be observed during the inspection, if any:

2. Procedures, if any, for detection and monitoring in accordance with the Organization's Health and Safety Policy, including data to be collected by, or provided to, the inspection team:

Part C. Protection

1. Protective equipment to be provided by the Organization and agreed procedures for equipment certification and use, if required:

2. Protective equipment to be provided by the inspected State Party, and agreed procedures, personnel training, and personnel qualification tests and certification required; and agreed procedures for use of the equipment:

Part D. Medical Requirements

1. Applicable medical standards of the inspected State Party and, in particular, the inspected plant site:

2. Medical screening procedures for members of the inspection team:

3. Agreed medical assistance to be provided by the inspected State Party:

4. Emergency medical evacuation procedures:

5. Agreed additional medical measures to be taken by the inspection team:

6. Procedures for emergency response to chemical casualties of the inspection team:

Part E. Modification of Inspection Activities

1. Modification of inspection activities due to health and safety reasons, and agreed alternatives to accomplish the inspection goals:

ATTACHMENT 3

Specific Arrangements in Relation to the Protection of Confidential Information at the Plant Site

Part A. Inspected State Party's Procedures for Designating and Classifying Documents Provided to the Inspection Team

See Annex 3 for the Organization's Policy on Confidentiality and Annex 7 for the inspected State Party's Procedures for Information Control.

Part B. Specific Procedures for Access by the Inspection Team to Confidential Areas or Materials

Part C. Procedures in Relation to the Certification by the Inspection Team of the Receipt of Any Documents Provided by the Inspected Plant Site

Part D. Storage of Confidential Documents at the Inspected Plant Site

1. Procedures in relation to the storage of confidential documents or use of a dual control container on-site, if applicable:

Information under restrictions provided for in the Confidentiality Annex and as such to be kept in the dual control container under joint seal shall be available to the inspection team leader and/or an inspector designated by him from the beginning of the pre-inspection briefing until the end of the debriefing upon completion of the inspection in accordance with Section 3. If copies of information under dual control are permitted to be attached to the preliminary factual findings by the inspected State Party, they shall be made by the inspected State Party and retained under dual control until the debriefing. Should the medium on which such information is recorded become unusable, it shall be replaced without delay by the representative of the inspected State Party.

2. The dual control container will be placed _____

3. Information meeting the strict requirements for restriction pursuant to the Confidentiality Annex, and to be maintained in the dual control container located at the inspected plant site between inspections is listed below:

Reference	Type of data	Recorded media	Volume	Reasons for restrictions/remark S

Part E. Procedures for the Removal Off-Site of Any Written Information, Data, and Other Materials Gathered by the Inspection Team

Part F. Procedures for Providing the Representatives of the inspected State Party with Copies of Written Information, Inspector's Notebooks, Data and Other Material Gathered by the Inspection Team

Part G. Other Arrangements, If Any

1. Unless specified otherwise, all plant site information shall be returned to the inspected State Party at the completion of the inspection. No copies of plant site information shall be made in any manner by the inspection team or the Organization.

2. Plant site information shall not be released to the public, other States Parties, or the media without the specific permission of the inspected State Party, after consultation with the plant site.

3. Plant site information shall not be transmitted, copied or retained electronically without the specific permission of the inspected State Party after consultation with the plant site. All transmissions of information off-site shall be done in the presence of the inspected State Party.

4. Information not relevant to the purpose of the inspection will be purged from documents, photographs, etc. prior to release to the inspection team.

[8] Choose one option.

[9] Any figure indicated is without prejudice to paragraph 29 of Part VII of the Verification Annex.

ATTACHMENT 4

Arrangements for the Inspection Team's Contacts with the Media or the Public

ATTACHMENT 5

Inspection Equipment

Part A: List of Equipment

Item of approved inspection equipment	Agreed procedures for use			
	Nature of restrictions(s) (location, time, periods, etc.), if any	Indication of reason(s) (safety, confidentiality, etc.)	Special handling or storage requirements	Alternative for meeting inspection requirement(s), if so required by the inspection team

Part B. Equipment which the inspected State Party Has Volunteered to Provide

Item of equipment	Procedures for use	Support to be provided, if required	Conditions (timing, costs, if any)

Part C. Procedures for the Decontamination of Equipment

Item of equipment	Procedures for use

Part D. Means of Communication between Inspection Team Sub-Teams:

REQUEST FOR AND CERTIFICATION OF EQUIPMENT AVAILABLE ON SITE TO BE PROVIDED IN ACCORDANCE WITH PARAGRAPH 3 OF SECTION 5

Date: _____

Plant Site: _____

Inspection number: _____

Name of the authorized member of the inspection team: _____

Type and number of item(s) of equipment requested: _____

Approval of the request by inspected State Party: _____

Comments on the request by the inspected State Party: _____

Indication of the costs, if any, for the use of the equipment requested/volunteered:

Certification of the authorized member of the inspection team that the requested item(s) of equipment have been provided:

Comments, if any, by the authorized member of the inspection team in regard to the equipment provided:

Name and signature of the authorized member of the inspection team:

Name and signature of the representative of the inspected State Party:

ATTACHMENT 6

Information on the Plant Site Provided in Accordance with Section 6

Part A. Topics of Information for the Pre-Inspection Briefing

Part B. Any Information about the Plant Site that the inspected State Party Volunteers to Provide to the Inspection Team during the Pre-Inspection Briefing and which May Be Transferred Off-Site

ATTACHMENT 7

Arrangements for Site Tour

The inspected State Party may provide a site tour at the request of the inspection team. Such tour shall take no more than 2 hours. The inspected State Party may provide explanations to the inspection team during the site tour.

ATTACHMENT 8

Access to the Plant Site in Accordance with Section 7.2

Part A. Areas of the Declared Plant Site to which Inspectors Are Granted Access (i.e., detail the areas, equipment, and computers)

1. Declared Plant: [10] [11]

[10] Plant means a relatively self-contained area, structure or building containing one or more units with auxiliary and associated infrastructure, such as:

(a) small administrative section;

(b) storage/handling areas for feedstock and products;

(c) effluent/waste handling/treatment area;

(d) control/analytical laboratory;

(e) first aid service/related medical section;

(f) records associated with the movement into, around and from the site, of declared chemicals and their feedstock or product chemicals formed from them, as appropriate

[11] Areas to be inspected may include:

(a) areas where feed chemicals (reactants) are delivered or stored;

(b) areas where manipulative processes are performed upon the reactants prior to addition to the reaction vessels;

(c) feed lines as appropriate from the areas referred to in subparagraph (a) or subparagraph (b) to the reaction vessels together with any associated valves, flow meters, etc.;

(d) the external aspect of the reaction vessels and ancillary equipment;

(e) lines from the reaction vessels leading to long- or short-term storage or to equipment further processing the declared Schedule 2 chemicals;

(f) control equipment associated with any of the items under subparagraphs (a) to (e);

Continued

2. Declared Plant Site: [12]

Part B. Arrangements with Regard to the Scope of the Inspection Effort in Agreed Areas Referenced in Part A [13]

ATTACHMENT 9

Records Routinely Made Available to the Inspection Team at the Plant Site: [14]

ATTACHMENT 10

Sampling and Analysis for Verification Purposes

Part A. Agreed Sampling Points Chosen with Due Consideration to Existing Sampling Points Used by the Plant(s) Operator(s)

Part B. Procedures for Taking Samples

Part C. Procedures for Sample Handling and Sample Splitting

Part D. Procedures for Sample Analysis

Part E. Procedures for Transporting Samples

Part F. Arrangements in Regard to the Payment of Costs Associated with the Disposal or Removal by the inspected State Party of Hazardous Waste Generated during Sampling and On-Site Analysis during the Inspection

ATTACHMENT 11

Administrative Arrangements

Part A. The Amenities Detailed Below Shall Be Provided to the Inspection Team by the inspected State Party. Subject to Payment as Indicated in Part B Below

1. International and local official communication (telephone, fax), including calls/faxes between site and headquarters:
2. Vehicles:
3. Working room, including adequate space for the storage of equipment:
4. Lodging:
5. Meals:
6. Medical care:
7. Interpretation Services:
(a) number of interpreters:
(b) estimated interpretation time:
(c) languages:
8. Other:

Part B. Distribution of Costs for Provision of Amenities by the inspected State Party (check one option for each amenity provided as appropriate)

Paragraphs 1–8 in Part A above	To be paid directly by the organization after the inspection	To be paid by the inspection team on behalf of the organization during the in-country period	To be paid by the inspected state party and subsequently reimbursed by the organization	To be paid by the inspected State Party
1				
2				
3				
4				
5				
6				
7				
8				

Part C. Other Arrangements

1. Number of sub-teams (consisting of no less than two inspectors per sub-team) to be accommodated:
Z

REQUEST FOR AND CERTIFICATION OF AMENITIES TO BE PROVIDED OR ARRANGED

Date:
Plant site:
Inspection number:
Category of amenities requested:
Description of amenities requested:

Approval of the request by the inspected State Party:

Comments on the request by the inspected State Party:

Indication of the costs for the amenities requested:

Certification of the authorized member of the inspection team that the requested amenities have been provided:

Comments by the authorized member of the inspection team in regard to the quality of the amenities provided:

Name and signature of the authorized member of the inspection team:

Name and signature of the representative of the inspected State Party:

ATTACHMENT 12

Agreed Procedures for Conducting Interviews

(g) equipment and areas for waste and effluent handling;
(h) equipment and areas for disposition of chemicals not up to specification.

[12] Plant Site means the local integration of one or more plants, with any intermediate administrative levels, which are under one operational control, and includes common infrastructure, such as:
(a) administration and other offices;
(b) repair and maintenance shops;
(c) medical center;
(d) utilities;
(e) central analytical laboratory;
(f) research and development laboratories;
(g) central effluent and waste treatment area; and
(h) warehouse storage.

[13] List the areas, equipment, and computers, if any, that are not relevant to the inspection mandate or that contain confidential business information that does not need to be divulged in order to comply with the inspection mandate.

[14] Some illustrative examples of records and data to be detailed are given below. The actual list will be dependent on the specifics of the inspection site. Information about the format and language in which records are kept at the plant site should be mentioned. It is understood that confidential information not related to the implementation of the Convention, such as prices, will be excluded by the State Party from scrutiny.
(a) inventory and accountancy records in relation to the production, processing or consumption of the declared Schedule 2 chemicals and their storage or transportation on to or off the site;
(b) operational records for the unit(s) producing, processing or consuming Schedule 2 chemicals (units) (batch cards, log books);
(c) Schedule 2 plant(s) dispatch records within the plant site and off-site dispatches;
(d) Schedule 2 plant(s) maintenance schedule records;
(e) Schedule 2 plant(s) waste disposal records;
(f) Schedule 2 plant(s) (unit) calibration records;
(g) Schedule 2 plant(s) sales reports, as appropriate;
(h) sales or transfers, whether to another industry, trader, or other destination, and if possible, of final product types;
(i) data on direct exports/imports and to/from which States;
(j) other shipments, including specification of these other purposes; and
(k) other.

Attachment 13

Agreed Procedures for Photography

ANNEXES

Note: These annexes, inter alia, can be attached if requested by the inspected State Party

Annex 1: Organization's Media and Public Relations Policy
Annex 2: Organization's Health and Safety Policy and Regulations
Annex 3: Organization's Policy on Confidentiality
Annex 4: Plant Site Declaration
Annex 5: Preliminary and Final Inspection Report Formats
Annex 6: Inspected State Party's Procedures for Inspection Notification
Annex 7: Inspected State Party's Procedures for Information Control

PART 717—CLARIFICATION OF POSSIBLE NON-COMPLIANCE WITH THE CONVENTION; CHALLENGE INSPECTION PROCEDURES

Sec.
717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.
717.2 Challenge inspections.
717.3 Requirements for provisions of samples.
717.4 Report of inspection-related costs.

Authority: Pub. L. 105–277, 112 Stat. 2681; E.O. 13128, 64 FR 36703.

§ 717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.

(a) Article IX of the Convention sets forth procedures for clarification, between States Parties, of issues about compliance with the Convention. If States Parties are unable, through consultation between themselves or through the OPCW, to resolve such issues, a State Party may request the OPCW to conduct an on-site challenge inspection of any facility or location in the territory or in any other place under the jurisdiction or control of any other State Party. Such an on-site challenge inspection request shall be for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the Convention.

(b) Any person or facility subject to the CWCR (parts 710 through 721 of this subchapter) must provide information required by the Commerce Department pursuant to an Article IX clarification request from another State Party or the OPCW concerning possible non-compliance with the reporting, declaration, notification, or inspection requirements set forth in parts 712 through 716 of this subchapter.

§ 717.2 Challenge inspections.

(a) *Facilities subject to challenge inspection.* Any person or facility in the United States is subject to a challenge inspection by the OPCW concerning possible non-compliance with the requirements of the Convention. Any person or facility subject to the CWCR (parts 710 through 721 of this subchapter) (i.e., not owned by the Department of Defense, Department of Energy or other United States government agency that notifies the USNA of their decision to be excluded from the CWCR), whether a declared facility or not, may be subject to a challenge inspection by the OPCW concerning possible non-compliance with the requirements set forth in parts 712 through 716 of this subchapter. The Department of Commerce will host and escort the international inspector team for all challenge inspections of persons or facilities subject to CWCR, will assist the inspection team in fulfilling its mandate, and will ensure that a challenge inspection adheres to the Convention, the Act, and any site-specific facility agreement.

(b) *Warrants.* In instances where consent is not provided by the owner, operator, occupant or agent in charge of the facility or location, the Department of Commerce will seek criminal warrants as provided by the Act.

(c) *Notification of challenge inspection.* Challenge inspections may be made only upon issuance of written notice by the U.S. National Authority to the owner and to the operator, occupant or agent in charge of the premises. The Department of Commerce will provide preliminary notification to the owner and the operator, occupant or agent in charge of the premises selected for a challenge inspection. If the United States is unable to provide actual written notice to the inspection point of contact, the Department of Commerce, or if the Department of Commerce is unable, the Federal Bureau of Investigation may post notice prominently at the plant, plant site or other facility or location to be inspected.

(1) *Timing.* The OPCW will notify the USNA of a challenge inspection not less than 12 hours before the planned arrival of the inspection team at the U.S. point of entry. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter.

(2)(i) *Content of notice.* The notice shall include all appropriate information provided by the OPCW to the United States National Authority concerning:
(A) The type of inspection;
(B) The basis for the selection of the facility or locations for the type of inspection sought;
(C) The time and date that the inspection will begin and the period covered by the inspection;
(D) The names and titles of the inspectors; and
(E) The evidence or reasons provided by the requesting State Party to the Convention for seeking the inspection.
(ii) In addition to appropriate information provided by the OPCW in its notification to the United States National Authority, the Department of Commerce's preliminary notification at the facility or plant site will state whether an advance team is available to assist the site in preparation for the inspection.

(d) *Duration of challenge inspections.* Challenge inspections will not exceed 84 hours, unless extended by agreement between the inspection team and the Department of Commerce.

(e) *Scope and conduct of inspections.* (1) *General.* Each inspection shall be limited to the purposes described in § 717.2 and conducted in the least intrusive manner, consistent with the effective and timely accomplishment of its purpose as provided in the Convention.

(2) *Hours of inspections.* Consistent with the provisions of the Convention, the Department of Commerce will ensure, to the extent possible, that each inspection is commenced, conducted, and concluded during ordinary working hours, but no inspection shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(3) *Effect of facility agreements.* For facilities with facility agreements, access and activities within the final perimeter shall be unimpeded within the boundaries established by the agreements. Challenge inspections will be conducted in accordance with facility agreements concluded between the U.S. Government and the OPCW, as applicable. The existence of a facility agreement does not in any way limit the right of the operator of the facility to withhold consent to a challenge inspection request. For facilities without facility agreements or in areas outside the boundaries established by facility agreements, challenge inspections will be conducted on a managed access basis.

(4) *Health and safety regulations.* In carrying out their activities, inspectors and U.S. Government representatives accompanying the inspectors shall

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observe health and safety regulations established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety.

(5) *Confidential business information.* (i) *Provisions of the Act relating to confidential business information.* The Act provides a statutory exemption from disclosure in response to a Freedom of Information Act request for certain information related to initial and routine inspections reported to, or otherwise acquired by, the U. S. Government as follows:

(A) Information included in categories specifically enumerated in sections 103(g)(1) and 304(e)(2) of the Act:

(*1*) Financial data;

(*2*) Sales and marketing data (other than shipment data);

(*3*) Pricing data;

(*4*) Personnel data;

(*5*) Research data;

(*6*) Patent data;

(*7*) Data maintained for compliance with environmental or occupational health and safety regulations;

(*8*) Data on personnel and vehicles entering and personnel passenger vehicles exiting the facility;

(*9*) Any chemical structure;

(*10*) Any plant design, process, technology or operating method;

(*11*) Any operating requirement, input, or result that identifies any type or quantity of chemicals used, processed or produced;

(*12*) Any commercial sale, shipment or use of a chemical; or

(B) Information that qualifies as a trade secret under 5 U.S.C. 552(b)(4) (Freedom of Information Act) that is obtained:

(*1*) From a U.S. person; or

(*2*) Through the U.S. Government or the conduct of an inspection on U.S. territory under the Convention.

(ii) *Exception to Freedom of Information Act exemption.* The Act provides that the United States Government may disclose confidential business information to the OPCW, to federal law enforcement agencies, and, upon written request, to Congressional committees of appropriate jurisdiction.

(iii) *Provisions of the Convention relating to confidential business information.* The Convention provides that States Parties may designate information submitted to the Organization for the Prohibition of Chemical Weapons (OPCW) as confidential, and requires the OPCW to limit access to and to prevent disclosure of information so designated, including specific information on inspections. The OPCW has developed a classification system whereby States Parties may designate the information they submit in their declarations as "restricted," "protected," or "highly protected," depending on the sensitivity of the information.

(iv) *Disclosure of confidential business information during inspections.* During inspections, certain confidential business information, as defined by the Act, may be disclosed to OPCW inspectors and U.S. Government representatives hosting and escorting the inspectors. Facilities being inspected are responsible for identifying confidential business information to the U.S. Government before it is disclosed to inspectors, so that appropriate marking and handling can be arranged, in accordance with the provisions of the Convention, to prevent further, unauthorized disclosure. Confidential business information not related to the purpose of an inspection or not necessary to the accomplishment of an inspection, as agreed by the United States Government team accompanying the OPCW Inspection Team, may be removed from sight, shrouded, or otherwise not disclosed.

(v) *Disclosure of confidential business information following inspections.* (A) Inspection-related confidential business information, as defined by the Act, contained in inspection reports or otherwise in the possession of the U.S. Government, is exempt from disclosure in response to a Freedom of Information Act request.

(B) The United States Government must disclose confidential business information when such disclosure is deemed to be in the national interest. The USNA, in coordination with the CWC interagency group, shall determine whether disclosure of the confidential business information is in the national interest and not contrary to national security or law enforcement needs. The Act provides for notification to the affected person of intent to disclose confidential business information, unless such notification of intent to disclose is contrary to national security or law enforcement needs. If, after coordination with the agencies that constitute the CWC interagency group, the USNA determines that such disclosure is not contrary to national security or law enforcement needs, the USNA will notify the person that submitted the information or the person to whom the information pertains of the intent to disclose the information.

(C) OPCW inspectors are prohibited, under the terms of their employment contracts and pursuant to the Confidentiality Annex of the Convention, from disclosing to any unauthorized persons any confidential information coming to their knowledge in the performance of their official duties, even after termination of their employment.

§ 717.3 Requirements for provisions of samples.

The owner, operator, occupant or agent in charge of a facility must provide a sample, as provided for in the Convention and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103, if the leader from the U.S. Department of Commerce of the U.S. host team accompanying the OPCW Inspection Team notifies the owner, operator, occupant or agent in charge of the inspected facility that a sample is required. The owner, operator, occupant or agent in charge of the premises shall determine whether the sample shall be taken by representatives of the premises or the inspection team or other individuals present during the inspection.

§ 717.4 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to this subchapter during a given calendar year must report to BXA within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or processing during inspections. This information should be reported to BXA on company letterhead at the address given in § 716.6(c) of this subchapter, with the following notation: "ATTN: Report of Inspection-related Costs."

PART 718—INTERPRETATIONS

[RESERVED]

Note: This part is reserved for interpretations of the CWCR (parts 710 through 721 of this subchapter) and also for applicability of OPCW decisions.

PART 719—ENFORCEMENT

Sec.

719.1 Scope and definitions.
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Authority: Pub. L. 105–277, 112 Stat. 2681; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938 (59 FR 59099; 3 CFR, 1994 Comp., p. 950), as amended by E.O. 13094 (63 FR 40803; 3 CFR, 1998 Comp., p. 200); E.O. 13128, 64 FR 36703.

§ 719.1 Scope and definitions.

(a) *Scope.* This part 719 covers administrative enforcement proceedings for two categories of violations:

(1) *Violations of the CWCR (parts 710 through 721 of this subchapter) that are subject to the imposition of civil penalties by BXA ("§ 719.1(a)(1) cases").* BXA will investigate possible violations, prepare charges, initiate administrative proceedings, negotiate settlements, and issue orders that resolve the cases. BXA will be represented in these proceedings by the Office of Chief Counsel; and

(2) *Violations of Section 306 or 405 of the CWCIA, which are subject to the imposition of civil penalties by the Department of State pursuant to section 501(a) of the CWCIA and 22 CFR Part 103 ("§ 719.1(a)(2) cases").* The Department of Commerce will investigate possible violations, prepare charges, provide legal representation, negotiate settlements, and make requests and recommendations to State Department officials with respect to the initiation and resolution of administrative proceedings. Notice will be given and orders will be issued by State Department officials under 22 CFR part 103, but, in all other respects, this part 719 shall apply.

Note to paragraph (a): This part 719 does not apply to violations of the export requirements imposed pursuant to the Chemical Weapons Convention and set forth in the Export Administration Regulations (EAR) (15 CFR parts 730 through 799) and in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130).

(b) *Definitions.* The following are definitions of terms as used in this part 719 only. For definitions of terms applicable to the whole CWCR, see part 710 of this subchapter.

Administrative law judge (ALJ). The person authorized to conduct hearings in administrative enforcement proceedings.

Assistant Secretary for Export Enforcement. The Assistant Secretary for Export Enforcement, Bureau of Export Administration, United States Department of Commerce,.

CWCIA. The Chemical Weapons Convention Implementation Act of 1998 (Pub. L. 105–277, Division I).

Final decision. A decision or order assessing a civil penalty, or otherwise disposing of or dismissing a case, which is not subject to further administrative review, but which may be subject to collection proceedings or judicial review in an appropriate Federal court as authorized by law.

Office of Chief Counsel. The Office of Chief Counsel for Export Administration, United States Department of Commerce.

Party. For purposes of a § 719.1(a)(1) case, BXA and any person named as a respondent under this part are parties. For purposes of a § 719.1(a)(2) case, the Department of State and any person named as a respondent under this part are parties.

Respondent. Any person named as the subject of a letter of intent to charge, or a Notice of Violation and Assessment (NOVA) and proposed order.

Under Secretary for Export Administration. The Under Secretary for Export Administration, Bureau of Export Administration, United States Department of Commerce.

§ 719.2 Violations and civil penalties.

(a) *Violations subject to civil penalties under the CWCR (parts 710 through 721 of this subchapter).* (1) *Violations.* (i) *Import restrictions involving Schedule 1 chemicals.* Except as otherwise provided in § 712.1 of this subchapter, no person may import any Schedule 1 chemical (See Supplement No. 1 to part 712 of this subchapter) *unless:*

(A) The import is from a State Party;

(B) The import is for research, medical, pharmaceutical, or protective purposes;

(C) The import is in types and quantities strictly limited to those that can be justified for such purposes; and

(D) The importing person has notified the Department of Commerce 45 calendar days prior to the import pursuant to § 712.4 of this subchapter.

(ii) *Import restrictions involving Schedule 2 chemicals.* Except as otherwise provided in § 713.1 of this subchapter, no person may, on or after April 29, 2000, import any Schedule 2 chemical (see Supplement No. 1 to part 713) from any country other than a State Party.

(2) *Civil penalty.* A civil penalty not to exceed $11,000 may be imposed by the Assistant Secretary for Export Enforcement in accordance with this part on any person for each violation of paragraph (a)(1)(i) or (ii) of this section.[1]

(b) *Violations subject to civil penalties under section 501(a) of the CWCIA.* (1) *Violations.* (i) *Refusal to permit entry or inspection.* No person may willfully fail or refuse to permit entry or inspection, or to disrupt, delay or otherwise impede an inspection, authorized by the CWCIA.

(ii) *Failure to establish or maintain records.* No person may willfully fail or refuse:

(A) To establish or maintain any record required by the CWCIA or the CWCR; or

(B) To submit any report, notice, or other information to the United States Government in accordance with the CWCIA or the CWCR; or

(C) To permit access to or copying of any record required by the CWCIA or regulations issued thereunder, including information that is exempt from disclosure under the Freedom of Information Act pursuant to section 103(g) of the CWCIA or § 711.2 or Supplement No. 1 to part 711 of this subchapter.

(2) *Civil penalties.* (i) *Civil penalty for refusal to permit entry or inspection.* Any person that is determined to have willfully failed or refused to permit entry or inspection, or to have disrupted, delayed or otherwise impeded an authorized inspection, as set forth in paragraph (b)(1)(i) of this section, shall pay a civil penalty in an amount not to exceed $25,000 for each violation. Each day the violation continues constitutes a separate violation.

(ii) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain records or submit reports, notices or other information required by the CWCIA or CWCR, or to permit access to or copying of records exempt from disclosure under the CWCIA or CWCR, as set forth in paragraph (b)(1)(ii) of this section, shall pay a civil penalty in an amount not to exceed $5,000 for each violation.

§ 719.3 Denial of export privileges.

Any person in the United States or any U.S. national may be subject to a denial of export privileges after notice and opportunity for hearing pursuant to part 720 of this subchapter if that person has been convicted under Title 18, Section 229 of the United States Code, of knowingly:

[1] The maximum civil penalty allowed under the International Emergency Economic Powers Act is $11,000 for any violation committed on or after October 23, 1996 (15 CFR 6.4(a)(3)).

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(a) Developing, producing, otherwise acquiring, transferring directly or indirectly, receiving, stockpiling, retaining, owning, possessing, or using, or threatening to use, a chemical weapon; or

(b) Assisting or inducing, in any way, any person in, or attempting or conspiring to develop, produce, otherwise acquire, transfer directly or indirectly, receive, stockpile, retain, own, possess, or use, or threaten to use, a chemical weapon. See part 720 of this subchapter for administrative provisions relating to violations of 18 U.S.C. 229.

§ 719.4 Additional sanctions and other remedial action available.

(a) *Criminal penalties for § 719.1(a)(1) cases.* Whoever willfully violates § 719.2(a)(1)(i) or (ii) shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by like fine, imprisonment, or both.

(b) *Criminal penalties for § 719.1(a)(2) cases.* Any person that knowingly violates the CWCIA by willfully failing or refusing to permit entry or inspection; or by willfully disrupting, delaying or otherwise impeding an inspection authorized by the CWCIA; or by willfully failing or refusing to establish or maintain any required record, or to submit any required report, notice or other information; or by willfully failing or refusing to permit access to or copying of any record exempt from disclosure under the CWCIA or CWCR (parts 710 through 721 of this subchapter), shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, be imprisoned for not more than one year, or both.

(c) *Criminal penalties for development or use of a chemical weapon.* Any person that violates the CWCIA by knowingly:

(1) Developing, producing, otherwise acquiring, transferring directly or indirectly, receiving, stockpiling, retaining, owning, possessing, or using, or threatening to use, any chemical weapon; or

(2) Assisting or inducing, in any way, any person to violate the activities specified in paragraph (c)(1) of this section, or attempting or conspiring to violate the activities specified in paragraph (c)(1) of this section, shall be fined or imprisoned for a term of years, or both, or, if the death of another person results, shall be punished by death or imprisoned for life, in accordance with Section 229A of Title 18 of the United States Code.

(d) *Civil penalty for development or use of a chemical weapon.* Any person that violates the CWCIA as set forth in paragraph (c) of this section, may also, upon proof of such violation by preponderance of the evidence, be subject to a civil penalty in an amount not to exceed $100,000 for each violation.

(e) *Criminal forfeiture.* Any person convicted under Section 229A(a) of Title 18 of the United States Code shall forfeit to the United States irrespective of any provision of State law:

(1) Any property, real or personal, owned, possessed, or used by a person involved in the offense;

(2) Any property constituting, or derived from, and proceeds the person obtained, directly or indirectly, as the result of such violation; and

(3) Any of the property used in any manner or part, to commit, or to facilitate the commission of, such violation. In lieu of a fine otherwise authorized by section 229A(a) of Title 18 of the United States Code, a defendant who derived profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(f) *Injunction.* (1) The United States may, in a civil action, obtain an injunction against:

(i) The conduct prohibited under section 229 or 229C of Title 18 of the United States Code; or

(i) The preparation or solicitation to engage in conduct prohibited under section 229 or 229D of Title 18 of the United States Code.

(2) In addition, the United States may, in a civil action, restrain any violation of section 306 or 405 of the CWCIA, or compel the taking of any action required by or under the CWCIA or the Convention.

§ 719.5 Initiation of administrative proceedings.

(a) *Initiation of a § 719.1(a)(1) case.* (1) *Notice of Violation and Assessment (NOVA).* The Director of the Office of Export Enforcement, Bureau of Export Administration, may initiate an administrative enforcement proceeding in a § 719.1(a)(1) case by issuing a NOVA and a proposed order.

(2) *Letter of intent to charge.* The Director of the Office of Export Enforcement, Bureau of Export Administration, may notify a respondent by letter of the intent to charge, attaching a draft NOVA and proposed order, and giving the respondent a specified period of time in which to contact BXA to discuss settlement of the proposed allegations. An administrative enforcement proceeding is not initiated by a letter of intent to charge. If the respondent does not contact BXA within the specified time, or if the respondent requests it, BXA will initiate an administrative enforcement proceeding as set forth in paragraphs (a)(1) and (c) of this section.

(b) *Initiation of § 719.1(a)(2) case.* (1) *Request for Notice of Violations and Assessment (NOVA).* The Director of the Office of Export Enforcement, Bureau of Export Administration, may request that the Secretary of State initiate an administrative enforcement proceeding in a § 719.1(a)(2) case under this § 719.5(b)(1) and 22 CFR 103.4. If the request is in accordance with applicable law, the Assistant Secretary for Arms Control will provide notice of the initiation of proceedings through issuance of a NOVA. The Office of Chief Counsel shall serve the NOVA as directed by the Secretary of State.

(2) *Letter of intent to charge.* The Director of the Office of Export Enforcement, Bureau of Export Administration may notify a respondent by letter of the intent to charge. This letter of intent to charge will advise a respondent that the Department of Commerce has conducted an investigation and intends to recommend that the Secretary of State issue a NOVA. The letter of intent to charge will be accompanied by a draft NOVA and proposed order, and will give the respondent a specified period of time to contact BXA to discuss settlement of the allegations set forth in the draft NOVA. An administrative enforcement proceeding is not initiated by a letter of intent to charge. If the respondent does not contact BXA within the specified time, or if the respondent requests it, BXA will make its request for initiation of an administrative enforcement proceeding to the Secretary of State in accordance with paragraph (b)(1) of this part.

(c) *Provisions applicable to all proceedings.* (1) *Content of NOVA.* The NOVA shall constitute a formal complaint, and will set forth the basis for the issuance of the proposed order. It will set forth the alleged violation(s) and the essential facts with respect to the alleged violation(s), reference the relevant statutory, regulatory or other provisions, and state the amount of the civil penalty to be assessed. The NOVA will inform the respondent of the right to request a hearing pursuant to § 719.6, inform the respondent that failure to request such a hearing shall result in the proposed order becoming final and, in a § 719.2(a)(1) case, unappealable on signature of the Assistant Secretary for Export Enforcement, or, in a § 719.2(a)(2) case, unappealable on signature of the Secretary of State, and provide payment instructions. A copy of the regulations that govern the administrative proceedings will accompany the NOVA.

(2) *Proposed order.* A proposed order shall accompany every NOVA, letter of intent to charge, and draft NOVA. It will briefly set forth the substance of the alleged violation(s) and the statutory, regulatory or other provisions violated. It will state the amount of the civil penalty to be assessed.

(3) *Notice.* Notice of the intent to charge or of the initiation of formal proceedings, shall be given to the respondent by sending, via first class mail, facsimile, or by personal delivery, the relevant documents to the respondent (or respondent's agent for service of process or attorney).

§ 719.6 Demand for hearing and answer.

(a) *Section 719.1(a)(1) case.* (1) *Time to answer.* If the respondent wishes to contest the NOVA and proposed order, the respondent must answer the NOVA within 30 days from the date of service of the NOVA. The answer must be filed with the ALJ and served on the Office of Chief Counsel, and any other address(es) specified in the NOVA, in accordance with § 719.8.

(2) *Demand for hearing.* If the respondent wishes to have a hearing, a written demand for hearing must be submitted with the respondent's answer. If BXA wishes to have a hearing, it must file a written demand for hearing with the ALJ within 30 days after service of the respondent's answer. The failure of BXA or the respondent to make a timely written demand for hearing shall be deemed a waiver of the party's right to a hearing, except for good cause shown.

(b) *Section 719.1(a)(2) case.* If the respondent wishes to contest the NOVA and proposed order issued by the Secretary of State, the respondent must demand a hearing in writing within 15 days from the date of the NOVA. If the respondent demands a hearing, the respondent must answer the NOVA within 30 days from the date of the demand for hearing. The request for hearing and answer must be filed with the Administrative Law Judge, along with a copy of the NOVA and proposed order, and served on the Office of Chief Counsel, and any other address(es) specified in the NOVA, in accordance with § 719.8.

(c) *Provisions applicable to all proceedings.* (1) *Content of answer.* The respondent's answer must be responsive to the NOVA and proposed order, and must fully set forth the nature of the respondent's defense(s). The answer must specifically admit or deny each separate allegation in the NOVA; if the respondent is without knowledge, the answer will so state and will operate as a denial. Failure to deny or controvert a particular allegation will be deemed an admission of that allegation. The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(2) *English required.* The request for hearing, answer, and all other papers and documentary evidence must be submitted in English.

(3) *Waiver.* The failure of the respondent to file a request for a hearing and an answer within the times provided constitutes a waiver of the respondent's right to appear and contest the allegations set forth in the NOVA and proposed order. If no hearing is requested and no answer is provided, the proposed order will be signed and become final and unappealable.

§ 719.7 Representation.

A respondent individual may appear and participate in person, a corporation by a duly authorized officer or employee, and a partnership by a partner. If a respondent is represented by counsel, counsel shall be a member in good standing of the bar of any State, Commonwealth or Territory of the United States, or of the District of Columbia, or be licensed to practice law in the country in which counsel resides, if not the United States. The United States Government will be represented by the Office of Chief Counsel. A respondent personally, or through counsel or other representative who has the power of attorney to represent the respondent, shall file a notice of appearance with the Administrative Law Judge, or, in cases where settlement negotiations occur before any filing with the Administrative Law Judge, with the Office of Chief Counsel.

§ 719.8 Filing and service of papers other than the NOVA.

(a) *Filing.* All papers to be filed with the Administrative Law Judge (ALJ) shall be addressed to "CWC Administrative Enforcement Proceedings" at the address set forth in the NOVA, or such other place as the ALJ may designate. Filing by United States mail (first class postage prepaid), by express or equivalent parcel delivery service, via facsimile, or by hand delivery, is acceptable. Filing from a foreign country shall be by airmail or via facsimile. A copy of each paper filed shall be simultaneously served on all parties.

(b) *Service.* Service shall be made by personal delivery, by facsimile, or by mailing (first class mail or express mail, postage prepaid) one copy of each paper to each party in the proceeding. The Department of State is a party to § 719.1(a)(2) cases under this subchapter, but will be represented by the Office of Chief Counsel. Therefore, service on the government party in all proceedings shall be addressed to Chief Counsel for Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–3839, Washington, D.C. 20230, or faxed to (202) 482–0085. Service on a respondent shall be to the address to which the NOVA and proposed order was sent, or to such other address as the respondent may provide. When a party has appeared by counsel or other representative, service on counsel or other representative shall constitute service on that party.

(c) *Date.* The date of filing or service is the day when the papers are deposited in the mail or are delivered in person, by delivery service, or by facsimile. Refusal by the person to be served, or by the person's agent or attorney, of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal.

(d) *Certificate of service.* A certificate of service signed by the party making service, stating the date and manner of service, shall accompany every paper, other than the NOVA and proposed order, filed and served on the parties.

(e) *Computation of time.* In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday (as defined in Rule 6(a) of the Federal Rules of Civil Procedure), in which case the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of time prescribed or allowed is 7 days or less.

§ 719.9 Summary decision.

The ALJ may render a summary decision disposing of all or part of a proceeding on the motion of any party to the proceeding, provided that there is no genuine issue as to any material fact

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and the party is entitled to summary decision as a matter of law.

§ 719.10 Discovery.

(a) *General.* The parties are encouraged to engage in voluntary discovery regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding. The provisions of the Federal Rules of Civil Procedure relating to discovery apply to the extent consistent with this part and except as otherwise provided by the ALJ or by waiver or agreement of the parties. The ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. These orders may include limitations on the scope, method, time and place of discovery, and provisions for protecting the confidentiality of classified or otherwise sensitive information, including confidential business information as defined by the CWCIA.

(b) *Interrogatories and requests for admission or production of documents.* A party may serve on any party interrogatories, requests for admission, or requests for production of documents for inspection and copying, and a party concerned may apply to the ALJ for such enforcement or protective order as that party deems warranted with respect to such discovery. The service of a discovery request shall be made at least 20 days before the scheduled date of the hearing unless the ALJ specifies a shorter time period. Copies of interrogatories, requests for admission and requests for production of documents and responses thereto shall be served on all parties and a copy of the certificate of service shall be filed with the ALJ. Matters of fact or law of which admission is requested shall be deemed admitted unless, within a period designated in the request (at least 10 days after service, or within such additional time as the ALJ may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party to whom the request is directed cannot truthfully either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the ALJ may order the taking of the testimony of any person by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and set forth the facts sought to be established through the deposition.

(d) *Enforcement.* The ALJ may order a party to answer designated questions, to produce specified documents or things or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the ALJ may make a determination or enter any order in the proceeding as the ALJ deems reasonable and appropriate. The ALJ may strike related charges or defenses in whole or in part or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in accordance with the contentions of the party seeking discovery. In addition, enforcement by any district court of the United States in which venue is proper may be sought as appropriate.

§ 719.11 Subpoenas.

(a) *Issuance.* Upon the application of any party, supported by a satisfactory showing that there is substantial reason to believe that the evidence would not otherwise be available, the ALJ may issue subpoenas requiring the attendance and testimony of witnesses and the production of such books, records or other documentary or physical evidence for the purpose of the hearing, as the ALJ deems relevant and material to the proceedings, and reasonable in scope. Witnesses shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt, challenge or refusal to obey a subpoena served upon any person pursuant to this paragraph, any district court of the United States, in which venue is proper, has jurisdiction to issue an order requiring any such person to comply with such subpoena. Any failure to obey such order of the court is punishable by the court as a contempt thereof.

(b) *Service.* Subpoenas issued by the ALJ shall be to the address to which the NOVA was sent or to such other address as respondent may provide. When a party has appeared by counsel or other representative, service on counsel or other representative shall constitute service on that party.

(c) *Timing.* Applications for subpoenas must be submitted at least 10 days before the scheduled hearing or deposition, unless the ALJ determines, for good cause shown, that extraordinary circumstances warrant a shorter time.

§ 719.12 Matters protected against disclosure.

(a) *Protective measures.* The ALJ may limit discovery or introduction of evidence or issue such protective or other orders as in the ALJ's judgment may be needed to prevent undue disclosure of classified or sensitive documents or information, including confidential business information as defined by the CWCIA. Where the ALJ determines that documents containing classified or sensitive matter must be made available to a respondent in order to avoid prejudice, the ALJ may direct the government party to prepare an unclassified and nonsensitive summary or extract of the documents. The ALJ may compare the extract or summary with the original to ensure that it is supported by the source document and that it omits only so much as must remain undisclosed. The summary or extract may be admitted as evidence in the record.

(b) *Arrangements for access.* If the ALJ determines that the summary procedure outlined in paragraph (a) of this section is unsatisfactory, and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to a party, the ALJ may provide the parties opportunity to make arrangements that permit a party or a representative to have access to such matter without compromising sensitive information. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure, including a protective order, if necessary.

§ 719.13 Prehearing conference.

(a) On the ALJ's own motion, or on request of a party, the ALJ may direct the parties to participate in a prehearing conference, either in person or by telephone, to consider:

(1) Simplification of issues;

(2) The necessity or desirability of amendments to pleadings;

(3) Obtaining stipulations of fact and of documents to avoid unnecessary proof; or

(4) Such other matters as may expedite the disposition of the proceedings.

(b) The ALJ may order the conference proceedings to be recorded electronically or taken by a reporter, transcribed and filed with the ALJ.

(c) If a prehearing conference is impracticable, the ALJ may direct the parties to correspond with the ALJ to achieve the purposes of such a conference.

(d) The ALJ will prepare a summary of any actions agreed on or taken pursuant to this section. The summary will include any written stipulations or agreements made by the parties.

§ 719.14 Hearings.

(a) *Scheduling.* Upon receipt of a written and dated request for a hearing, the ALJ shall, by agreement with all the parties or upon notice to all parties of at least 30 days, schedule a hearing. All hearings will be held in Washington, D.C., unless the ALJ determines, for good cause shown, that another location would better serve the interests of justice.

(b) *Hearing procedure.* Hearings will be conducted in a fair and impartial manner by the ALJ. The ALJ may limit attendance at any hearing or portion thereof to the parties, their representatives and witnesses if the ALJ deems this necessary or advisable in order to protect sensitive matters from improper disclosure. The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the ALJ to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight.

(c) *Testimony and record.* (1) Witnesses will testify under oath or affirmation. A verbatim record of the hearing and of any other oral proceedings will be taken by reporter or by electronic recording, transcribed and filed with the ALJ. A respondent may examine the transcript and may obtain a copy by paying any applicable costs.

(2) Upon such terms as the ALJ deems just, the ALJ may direct that the testimony of any person be taken by deposition and may admit an affidavit or declaration as evidence, provided that any affidavits or declarations have been filed and served on the parties sufficiently in advance of the hearing to permit a party to file and serve an objection thereto on the grounds that it is necessary that the affiant or declarant testify at the hearing and be subject to cross-examination.

(d) *Failure to appear.* If a party fails to appear in person or by counsel at a scheduled hearing, the hearing may nevertheless proceed. The party's failure to appear will not affect the validity of the hearing or any proceeding or action taken thereafter.

§ 719.15 Procedural stipulations.

Unless otherwise ordered and subject to § 719.16, a written stipulation agreed to by all parties and filed with the ALJ will modify the procedures established by this part.

§ 719.16 Extension of time.

The parties may extend any applicable time limitation by stipulation filed with the ALJ before the time limitation expires, or the ALJ may, on the ALJ's own initiative or upon application by any party, either before or after the expiration of any applicable time limitation, extend the time within which to file and serve an answer to a NOVA and proposed order, except that for § 719.1(a)(2) cases, the requirement that a hearing be demanded within 15 days, and the requirement that a final agency decision be made within 30 days, may not be modified.

§ 719.17 Post-hearing submissions.

All parties shall have the opportunity to file post-hearing submissions that may include findings of fact and conclusions of law, supporting evidence and legal arguments, exceptions to the ALJ's rulings or to the admissibility of evidence, and proposed orders and settlements.

§ 719.18 Decisions.

(a) *Decisions in § 719.1(a)(1) cases.* (1) *Initial decision.* After considering the entire record in a § 719.1(a)(1) case, the ALJ will issue an initial decision based on a preponderance of the evidence. The decision will include findings of fact, conclusions of law, and a decision based thereon as to whether the respondent has violated the CWCR (parts 710 through 721 of this subchapter). If the ALJ finds that the evidence of record is insufficient to sustain a finding that a violation has occurred with respect to one or more allegations, the ALJ shall order dismissal of the allegations in whole or in part, as appropriate. If the ALJ finds that one or more violations have been committed, the ALJ shall issue an order imposing administrative sanctions, as provided in this part. The decision and order shall be served on each party, and shall become effective as the final decision of the Department 30 days after service, unless an appeal is filed in accordance with paragraph (a)(2) of this section.

(2) *Grounds for appeal.* (i) A party may, within 30 days of the ALJ's initial decision, petition the Under Secretary for Export Administration for review of the initial decision and order. A petition for review must be filed with the Office of Under Secretary for Export Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, and shall be served on the Chief Counsel for Export Administration and all other parties. Petitions for review may be filed only on one or more of the following grounds:

(A) That a necessary finding of fact is omitted, erroneous or unsupported by substantial evidence of record;

(B) That a necessary legal conclusion or finding is contrary to law;

(C) That prejudicial procedural error occurred; or

(D) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion.

(ii) The appeal must specify the grounds on which the appeal is based and the provisions of the order from which the appeal was taken.

(3) *Effect of appeal.* The filing of an appeal shall not stay the operation of any order, unless the order by its express terms so provides or unless the Under Secretary for Export Administration, upon application by a party and with opportunity for response, grants a stay.

(4) *Appeal procedure.* The Under Secretary for Export Administration normally will not hold hearings or entertain oral arguments on appeals. A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on all parties, who shall have 30 days from service to file a reply. At his/her discretion, the Under Secretary may accept new submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of the reply to the appellant's first submission.

(5) *Decisions.* The decision will be in writing and will be accompanied by an order signed by the Under Secretary for Export Administration giving effect to the decision. The order may either dispose of the case by affirming, modifying or reversing the order of the ALJ, or may refer the case back to the ALJ for further proceedings.

(b) *Decisions in § 719.1(a)(2) cases.* (1) *Initial decision.* After considering the entire record in § 719.1(a)(2) cases, the ALJ will issue an initial decision based on a preponderance of the evidence. The decision will include findings of fact, conclusions of law, and a decision based thereon as to whether the respondent has violated the CWCIA or 22 CFR part 103. If the ALJ finds that the evidence of record is insufficient to sustain a finding that a violation has occurred with respect to one or more allegations, the ALJ shall order dismissal of the allegations in whole or in part, as appropriate. If the ALJ finds that one or more violations have been committed, the ALJ shall issue an order imposing administrative sanctions.

(2) *Factors considered in assessing penalties.* In determining the amount of

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a civil penalty, the ALJ shall take into account the nature, circumstances, extent and gravity of the violation(s), and, with respect to the respondent, the respondent's ability to pay the penalty, the effect on the respondent's ability to continue to do business, the respondent's history of prior violations, the respondent's degree of culpability, the existence of an internal compliance program, and such other matters as justice may require.

(3) *Certification of initial decision.* The ALJ shall immediately certify the initial decision and order to the Executive Director of the Office of Legal Adviser, U.S. Department of State, 2201 C Street, NW, Room 5519, Washington, DC 20520, and to the Office of Chief Counsel at the address in § 719.8, by personal delivery or overnight mail.

(4) *Review of initial decision.* The initial decision shall become the final agency decision and order unless, within 30 days, the Director of the USNA and International Security modifies or vacates it, with or without conditions, in accordance with 22 CFR 103.8.

§ 719.19 Settlement.

(a) *Section 719.1(a)(1) cases.* (1) *Settlements based on letter of intent to charge.* In § 719.1(a)(1) cases in which settlement is reached on the basis of a letter of intent to charge, the draft NOVA, proposed order, and a recommended settlement agreement will be submitted to the Assistant Secretary for Export Enforcement for approval and signature. If the Assistant Secretary for Export Enforcement refuses to approve the settlement, the Assistant Secretary for Export Enforcement will notify the parties and the case will proceed as though no settlement proposal had been made. If the Assistant Secretary for Export Enforcement does approve the settlement, the Assistant Secretary for Export Enforcement will issue an appropriate order, and no action will be required of the ALJ.

(2) *Settlements following demand for hearing.* The parties may enter into settlement negotiations at any time during the time a case is pending before the ALJ. If necessary, the parties may extend applicable time limitations or otherwise request that the ALJ stay the proceedings while settlement negotiations continue. If settlement is reached, a draft NOVA, proposed order, and recommended settlement agreement will be submitted to the Assistant Secretary for Export Enforcement for approval and signature. If the Assistant Secretary for Export Enforcement approves the proposal, he/she will issue an appropriate order, and notify the ALJ that the case is withdrawn from adjudication. If the Assistant Secretary for Export Enforcement does not approve the proposal, then he/she will notify the parties of the disapproval, and settlement negotiations will resume or the case will proceed to adjudication by the ALJ as though no settlement proposal had been made.

(b) *Section 719.1(a)(2) cases.* (1) *Settlements before demand for hearing.* When the parties have agreed to a settlement of the case, the Director of the Office of Export Enforcement will recommend the settlement to the Secretary of State, forwarding a proposed settlement agreement and order, which, in accordance with 22 CFR 103.9(a), the Secretary of State will sign if the recommended settlement is in accordance with applicable law.

(2) *Settlements following demand for hearing.* The parties may enter into settlement negotiations at any time during the time a case is pending before the ALJ. If necessary, the parties may extend applicable time limitations or otherwise request that the ALJ stay the proceedings while settlement negotiations continue. When the parties have agreed to a settlement of the case, the Office of Chief Counsel will recommend the settlement to the Secretary of State, forwarding a proposed settlement agreement and order, which, in accordance with 22 CFR 103.9(b), the Assistant Secretary will sign if the recommended settlement is in accordance with applicable law.

(c) *Provisions applicable to all proceedings.* (1) *Settlement scope.* Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought under this part. This reflects the fact that the government officials involved have neither the authority nor the responsibility for initiating, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and the Department of Justice.

(2) *Finality.* Cases that are settled may not be reopened or appealed.

§ 719.20 Record for decision.

(a) *The record.* The transcript of hearings, exhibits, rulings, orders, all papers and requests filed in the proceedings, and, for purposes of any appeal under § 719.18 or under 22 CFR 103.8, the decision of the ALJ and such submissions as are provided for under § 719.18 or 22 CFR 103.8 will constitute the record and the exclusive basis for decision. When a case is settled, the record will consist of any and all of the foregoing, as well as the NOVA or draft NOVA, settlement agreement, and order.

(b) *Restricted access.* On the ALJ's own motion, or on the motion of any party, the ALJ may direct that there be a restricted access portion of the record for any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. A party seeking to restrict access to any portion of the record is responsible for submitting a version of the document(s) proposed for public availability that reflects the requested deletion. The restricted access portion of the record will be placed in a separate file and the file will be clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings. The ALJ may act at any time to permit material that becomes declassified or unrestricted through passage of time to be transferred to the unrestricted access portion of the record.

(c) *Availability of documents.*

(1) *Scope.* All NOVAs and draft NOVAs, answers, settlement agreements, decisions and orders disposing of a case will be made available for public inspection in the BXA Freedom of Information Records Inspection Facility, U.S. Department of Commerce, Room H–6624, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. The complete record for decision, as defined in paragraphs (a) and (b) of this section will be made available on request.

(2) *Timing.* Documents filed with the ALJ are available immediately upon filing, except for any portion of the record for which a request for segregation is made. Parties that seek to restrict access to any portion of the record under paragraph (b) of this section must make such a request, together with the reasons supporting the claim of confidentiality, simultaneously with the submission of material for the record.

§ 719.21 Payment of final assessment.

(a) *Time for payment.* Full payment of the civil penalty must be made within 30 days of the date upon which the final order becomes effective, or within the time specified in the order. Payment shall be made in the manner specified in the NOVA.

(b) *Enforcement of order.* The government party may, through the Attorney General, file suit in an appropriate district court if necessary to enforce compliance with a final order issued under these CWCR (parts 710 through 721 of this subchapter). This suit will include a claim for interest at current prevailing rates from the date payment was due or ordered.

(c) *Offsets.* The amount of any civil penalty imposed by a final order may be deducted from any sum(s) owed by the United States to a respondent.

§ 719.22 Reporting a violation.

If a person learns that a violation of the Convention, the CWCIA, or the CWCR (parts 710 through 721 of this subchapter) has occurred or may occur, that person may notify: Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–4520, Washington, D.C. 20230, Telephone: (202) 482–1208, Facsimile: (202) 482–0964.

PART 720—DENIAL OF EXPORT PRIVILEGES

Sec.

720.1 Penalties for violations of 18 U.S.C. 229.
720.2 Administration action denying export privileges.

Authority: Pub. L. 105–277, 112 Stat. 2681; E.O. 13128, 64 FR 36703.

§ 720.1 Penalties for violations of 18 U.S.C. 229.

(a) *Denial of export privileges for violations of 18 U.S.C. 229.* Any person in the United States or any U.S. national may be subject to a denial of export privileges after notice and opportunity for hearing pursuant to § 719.21 of this subchapter if that person has been convicted under Title 18, Section 229 of the United States Code of knowingly:

(1) Developing, producing, otherwise acquiring, transferring directly or indirectly, receiving, stockpiling, retaining, owning, possessing, or using, or threatening to use, a chemical weapon; or

(2) Assisting or inducing, in any way, any person to violate paragraph (a)(1) of this section, or attempting or conspiring to violate paragraph (a)(1).

(b) [Reserved]

§ 720.2 Administrative action denying export privileges.

(a) *Denial of export privileges.* The Assistant Secretary for Export Enforcement may deny the export privileges, including permission to apply for or use any export license or license exception, of any person who has been convicted of violating Section 229 of Title 18, United States Code.

(b) *Notice.* The Office of Chief Counsel for Export Administration shall notify any person convicted of Section 229, Title 18, United States Code, of any intent by BXA to deny that person's export privileges pursuant to paragraph (a) of this section. The notification letter shall reference the person's conviction, specify the number of years for which BXA intends to deny export privileges, set forth the statutory and regulatory authority for the action, and provide that the person may request a hearing before the Administrative Law Judge within 30 days on the issue of the proposed length of the denial of export privileges.

(c) *Waiver.* The failure of the convicted person to file a request for a hearing within the time provided constitutes a waiver of the person's right to appear and contest the denial of export privileges that BXA intends to impose. If no hearing is requested, the Assistant Secretary for Export Enforcement will order that export privileges be denied as provided in the notification letter.

(d) *Hearing.* Any hearing that is granted by the ALJ shall be conducted in accordance with the procedures set forth in part 719 of this subchapter. The only issue that is a proper subject of a hearing is the length of the denial of export privileges.

(e) *Initial decision and order.* After considering the entire record in the proceeding, the ALJ will issue a initial decision, based on a preponderance of the evidence, as to whether or for what length of time the convicted person will be denied export privileges. The ALJ may consider factors such as the seriousness of the criminal offense that is the basis for conviction, the nature and duration of the criminal sanctions imposed, and whether the person has undertaken any corrective measures. The ALJ may dismiss the proceeding if the evidence is insufficient to sustain a denial of export privileges, or may issue an order imposing the denial. The ALJ shall immediately certify any initial decision and order to the Under Secretary for Export Administration, and shall also immediately serve the initial decision and order on all parties by personal delivery or overnight mail.

(f) *Appeal from initial decision or order.* The initial decision of the ALJ, imposed after a requested hearing, may be appealed to the Under Secretary in accordance with the procedures set forth in § 719.16(b) of this subchapter. The order of the Assistant Secretary, imposed when no hearing was requested, may be appealed to the ALJ through a motion to show cause why the order should be set aside and a hearing granted. The ALJ has discretion to set aside the Assistant Secretary's order and schedule a hearing on the issue of the length of denial of export privileges.

(g) *Final decision.* Unless the Under Secretary, within 30 days of the date of the initial decision, modifies or vacates the initial decision and order, the ALJ's decision and order shall become effective as the final decision of the Department of Commerce. If the Under Secretary does modify or vacate the initial decision and order, the order of the Under Secretary becomes the final order of the Department of Commerce and the United States. The final decision and order shall be served on the parties and will be publicly available.

(h) *Effect of denial.* Any person denied export privileges pursuant to this part shall be considered a "person denied export privileges" for purposes of the Export Administration Act. The name and address of the denied person will be published on the Denied Persons List found in Supplement 2 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 799).

PART 721—RECORDKEEPING

Sec.

721.1 Records to be retained.
721.2 Original records required.
721.3 Reproduction of original records.
721.4 Retention of records.
721.5 Inspection of records.

Authority: Pub. L. 105–277, 112 Stat. 2681; E.O. 13128, 64 FR 36703.

§ 721.1 Records to be retained.

(a) You must maintain records relating to your activities that are regulated by the CWCR (parts 710 through 721 of this subchapter), including the following:

(1) Forms, reports, chemical determinations (classifications) and notifications submitted to BXA pursuant to parts 712 through 715 of this subchapter; and

(2) Notes, memoranda, correspondence or other records pertaining to documentation listed in paragraph (a)(1) of this section, including records pertaining to production, processing, consumption, export or import of chemicals subject to declaration under parts 712 through 715 of this subchapter, including records of your acquisition or disposition of any products or chemicals that are subject to the provisions of the CWCR.

(b) [Reserved]

§ 721.2 Original records required.

You must maintain the original records in the form in which you receive or create them unless you meet all of the conditions of § 721.3 relating to reproduction of records. If the original record does not meet the

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standards of legibility and readability described in § 721.3 and you intend to rely on that record to meet the recordkeeping requirements of the EAR, you must retain the original record.

§ 721.3 Reproduction of original records.

(a) You may maintain reproductions instead of the original records provided all of the requirements of paragraph (b) of this section are met.

(b) If you must maintain records under this part, you may use any photostatic, miniature photographic, micrographic, automated archival storage, or other process that completely, accurately, legibly and durably reproduces the original records (whether on paper, microfilm, or through electronic digital storage techniques). The process must meet all of the following requirements, which are applicable to all systems:

(1) The system must be capable of reproducing all records on paper.

(2) The system must record and be able to reproduce all marks, information, and other characteristics of the original record, including both obverse and reverse sides of paper documents in legible form.

(3) When displayed on a viewer, monitor, or reproduced on paper, the records must exhibit a high degree of legibility and readability. (For purposes of this section, legible and legibility mean the quality of a letter or numeral that enable the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readable and readability mean the quality of a group of letters or numerals being recognized as complete words or numbers.)

(4) The system must preserve the initial image (including both obverse and reverse sides of paper documents) and record all changes, who made them and when they were made. This information must be stored in such a manner that none of it may be altered once it is initially recorded.

(5) You must establish written procedures to identify the individuals who are responsible for the operation, use and maintenance of the system.

(6) You must establish written procedures for inspection and quality assurance of records in the system and document the implementation of those procedures.

(7) The system must be complete and contain all records required to be kept by this part or the regulated person must provide a method for correlating, identifying and locating records relating to the same transaction(s) that are kept in other record keeping systems.

(8) You must keep a record of where, when, by whom, and on what equipment the records and other information were entered into the system.

(c) *Requirements applicable to a system based on digital images.* For systems based on the storage of digital images, the system must provide accessibility to any digital image in the system. The system must be able to locate and reproduce all records relating to a particular transaction based on any one of the following criteria:

(1) The name(s) of the parties to the transaction;

(2) Any country(ies) connected with the transaction;

(3) Chemical Abstract Service Registry number; or

(4) A document reference number that was on any original document.

(d) *Requirements applicable to a system based on photographic processes.* For systems based on photographic, photostatic, or miniature photographic processes, the regulated person must maintain a detailed index of all records in the system that is arranged in such a manner as to allow immediate location of any particular record in the system.

§ 721.4 Retention of records.

(a) *Five year retention period.* All records required to be kept by this part must be retained for five years from the due date of forms, notifications, chemical determinations (classifications) or reports required by parts 712 through 715, 716 and 717 of this subchapter.

(b) *Destruction or disposal of records.* If the Department of Commerce or other authorized U.S. government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the requesting entity.

§ 721.5 Inspection of records.

Upon request by the Department of Commerce or any other agency of competent jurisdiction, you must permit access to and copying of any record in accordance with section 405(3) of the Act. This requires that you make available the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record in the system.

Dated: July 7, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–18230 Filed 7–20–99; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Part 103

[Public Notice 3057]

RIN 1400–ZA01

Chemical Weapons Convention and the Chemical Weapons Convention Implementation Act of 1998; Taking of Samples; Record Keeping and Inspections

AGENCY: Bureau of Arms Control, Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of State is proposing to establish regulations to implement the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention) and the Chemical Weapons Convention Implementation Act of 1998 (Act) on the taking of samples and on the enforcement of the requirements concerning record keeping and inspections. The Act authorizes the United States Government to implement provisions of the Convention. These regulations will enable the United States Government to execute the relevant provisions of the Convention and the Act.

DATES: Comments must be received on or before August 20, 1999.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Michael Coffee, Office of the Legal Adviser (L/ACN), 2201 C Street, N.W., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Michael Coffee, Office of the Legal Adviser (L/ACN), 2201 C Street, N.W., Washington, DC 20520.

SUPPLEMENTARY INFORMATION: On April 25, 1997, the United States ratified the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention). The Convention is both an arms control and nonproliferation treaty. As such, the Convention bans the development, production, stockpiling, and use of chemical weapons, and prohibits States Parties from assisting or encouraging anyone to engage in an activity prohibited by the Convention. States Parties to the Convention, including the United States, have agreed to a comprehensive verification regime that provides transparency and ensures that no State Party to the Convention is engaging in activity prohibited by the Convention. The verification regime includes declaration and on-site inspection of facilities engaged in activities involving certain chemicals. To further its nonproliferation objectives, the Convention requires restrictions on the import and export of chemicals.

Implementation of the CWC requirements will occur pursuant to the authority of the Chemical Weapons Convention Implementation Act of 1998 (Pub. L. 105–277, Div. I) and the International Emergency Economic Powers Act. Export control related provisions will be enforced by the Departments of State and Commerce under relevant export control authorities. While most of the regulatory provisions will be contained in the Chemical Weapons Convention Regulations (15 CFR Parts 710–721), other State and Commerce Department regulations will contain additional or related provisions. The following outline summarizes the scope of these implementing and related regulations:

Chemical Weapons Convention Regulations (CWCR) (15 CFR Parts 710–721) (Department of Commerce). In accordance with the Chemical Weapons Convention Implementation Act of 1998, the Department of Commerce is proposing to promulgate regulations that set forth, among other things, reporting and inspection requirements and trade restrictions that affect U.S. private entities. The CWCR will contain recordkeeping requirements and administrative procedures and penalties related to violations of reporting and inspection requirements and importation restrictions. Finally, the CWCR will implement section 211 of the Chemical Weapons Convention Implementation Act, which authorizes the revocation of the export privileges of any person determined to have violated the chemical weapons provision of 18 U.S.C. 229.

Regulations Implementing Provisions of the Chemical Weapons Convention and the Chemical Weapons Convention Implementation Act of 1998 on the Taking of Samples and on Enforcement of Requirements Concerning Reporting and Inspections (22 CFR Part 103) (Department of State). These regulations will implement the provisions of the Convention and the Chemical Weapons Convention Implementation Act of 1998 concerning the taking of samples during on-site inspections in the United States. These regulations will contain the enforcement provisions for violations of the provisions of the Chemical Weapons Convention Implementation Act of 1998 concerning reporting and inspection requirements.

Export Administration Regulations (EAR) (15 CFR Parts 730–774) (Department of Commerce). The EAR implement the Convention's requirements on annual reporting on exports of schedule 1 chemicals, advance notification of exports of schedule 1 chemicals, and end-use certificate requirements for exports of schedule 2 and 3 chemicals to States not Party to the Convention. The EAR include a license requirement for all exports of schedule 1 chemicals subject to Commerce Department jurisdiction to all destinations, including Canada. The EAR also bans the export, after April 28, 2000, of schedule 2 chemicals subject to Commerce Department jurisdiction to States not Party to the Convention.

International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120–130) (Department of State).

This proposed rule is intended to implement sections 304(f)(1) and 501 of the Chemical Weapons Convention Implementation Act of 1998, Pub. L. 105–277, Div. I. These regulations will provide the guidelines under which the taking of a sample may be required during an on-site inspection conducted pursuant to the Convention. These regulations will also establish the civil enforcement regime for a violation of §§ 306 or 405 of the Act.

Administrative Procedure Act Requirements

Because this proposed rule involves a foreign affairs function of the United States, it is not subject to 5 U.S.C. 553 and 554. However, the Department is issuing this rule in proposed form and comments are encouraged for the development of a final rule.

Form of Comments

The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially for any reason. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. Comments will be available for inspection between 8:15 a.m. and 5:00 p.m. at the address listed above. In the interest of accuracy and completeness, the Department requires comments in written form. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

Initial Regulatory Flexibility Analysis

Because this proposed rule involves a foreign affairs function of the United States, the Department of State is not required to prepare and make available for public comment an initial regulatory flexibility analysis.

Executive Order 12866 Determination

This proposed rule is exempt from Executive Order 12866, but has been reviewed internally by the Department to ensure consistency with the purposes thereof.

Paperwork Reduction Act Statement

Section 103.5(b) of this rule states that no person may willfully fail or refuse: (1) to establish or maintain any record required under the Chemical Weapons Convention Implementation Act or 15 CFR Parts 710 through 721; (2) to submit any report, notice or other information prescribed by the Act or 15 CFR Parts 710 through 721; or (3) to permit access to or copying of any record that is exempt from disclosure under the Act or 15 CFR Parts 710 through 721.

Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. In promulgating 15 CFR Parts 710 through 721, the Department of Commerce revised an existing collection of information requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), which has been submitted for approval to the Office of Management and Budget. Accordingly, the Department of State will not seek the approval of the Office of Management and Budget. The public reporting burdens for the new collections of information are estimated to average 9 hours for Schedule 1 chemicals, 7.2 hours for Schedule 2 chemicals, 2.5 hours for Schedule 3 chemicals, 5.3 hours for Unscheduled Discrete Organic Chemicals, and .17 hours for Schedule 1 notifications. These estimates include the time required to complete the required forms.

Comments are invited on (a) whether the collection of information is necessary for the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarify the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through use of automated collection techniques or other forms of information technology. Send comments regarding these or any other aspects of the collection of information to: Nancy Crowe, Regulatory Policy Division, Bureau of Export Administration, U.S. Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20230.

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Unfunded Mandates Reform Act Requirements

No actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Federalism Assessment

Because this proposed rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, a Federalism Assessment is not warranted.

List of Subjects in 22 CFR Part 103

Administrative practice and procedures, Chemicals, Foreign relations, Freedom of information, International organizations, Investigations, National security information, Penalties, Reporting and recordkeeping requirements, Treaties.

For the reasons set forth in the preamble, the Department proposes to add to subchapter K the following part 103 to Title 22 of the Code of Federal Regulations:

PART 103—REGULATIONS FOR IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION AND THE CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT OF 1998 ON THE TAKING OF SAMPLES AND ON ENFORCEMENT OF REQUIREMENTS CONCERNING RECORD KEEPING AND INSPECTIONS

Subpart A—General

Sec.
103.1 Purpose.
103.2 Definitions.

Subpart B—Samples

103.3 Requirement to provide a sample.

Subpart C—Record Keeping and Inspection Requirements

103.4 General.
103.5 Violations.
103.6 Penalties.
103.7 Initiation of administrative enforcement procedures.
103.8 Final agency decisions after administrative proceedings.
103.9 Final agency decision after settlement negotiations.
103.10 Appeals.
103.11 Payment of final assessment.
103.12 Reporting a violation.

Authority: Pub. L. 105–277, 112 Stat. 2681, Div. I.

Subpart A—General

§ 103.1 Purpose.

This part is intended to implement sections 304(f)(1) and 501 of the Chemical Weapons Convention Implementation Act of 1998, Public Law 105–277, Div. I. The Chemical Weapons Convention Regulations promulgated by the Department of Commerce, 15 CFR Parts 710 through 721, also implement sections of the Act.

§ 103.2 Definitions.

The following are definitions of terms as used in this part only.

Administrative law judge (ALJ). The person authorized to conduct hearings in administrative enforcement proceedings brought under this part.

Bureau of Export Administration (BXA). The Bureau of Export Administration of the United States Department of Commerce, including the Office of Export Administration and the Office of Export Enforcement.

Chemical Weapons Convention (CWC or Convention). The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, and its annexes opened for signature on January 13, 1993, and entered into force on April 29, 1997.

CWCIA. The Chemical Weapons Convention Implementation Act of 1998. (Pub. L. 105–277, Div. I.)

CWCR. The Chemical Weapons Convention Regulations promulgated by the Department of Commerce. (15 CFR parts 710 through 721.)

Executive Director. The Executive Director, Office of the Legal Adviser, U.S. Department of State.

Facility agreement. An agreement or arrangement between a State Party to the Convention and the Organization for the Prohibition of Chemical Weapons relating to a specific facility subject to on-site verification pursuant to Articles IV, V, and VI of the Convention.

Final decision. A decision or order assessing a civil penalty, or otherwise disposing of or dismissing a case, which is not subject to further review under this part, but which may be subject to collection proceedings or judicial review in an appropriate federal court as authorized by law.

Host team. The U.S. Government team that accompanies the inspection team during a CWC inspection to which this part applies.

Host team leader. The head of the U.S. Government team that accompanies the inspection team during a CWC inspection to which this part applies.

Inspection team. The group of inspectors and inspection assistant assigned by the Director-General of the Technical Secretariat to conduct a particular inspection.

Lead agency. The executive department or agency responsible for implementation of the CWC declaration and inspection requirements for specified facilities. The lead agencies are the Department of Defense (DOD) for facilities owned or leased by DOD, whether DOD-operated or contractor-operated; the Department of Energy (DOE) for facilities owned or leased by DOE, whether DOE-operated or contractor-operated, including the National Laboratories and components of the nuclear weapons complex; and the Department of Commerce (DOC) for all facilities that are not owned or leased by DOD or DOE or other U.S. Government agencies. Other departments and agencies that have notified the United States National Authority of their decision to be excluded from the CWCR shall also have lead agency responsibilities for facilities that they own or lease.

Office of Chemical and Biological Weapons Conventions. The office in the Bureau of Arms Control of the United States Department of State that includes the United States National Authority Coordinating Staff.

Party. The United States Department of State and any person named as a respondent under this part.

Person. Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

Respondent. Any person named as the subject of a Notice of Violation and Assessment (NOVA) proposed order.

Secretary. The Secretary of State.

Technical Secretariat. The Technical Secretariat of the Organization for the Prohibition of Chemical Weapons established by the Chemical Weapons Convention.

United States National Authority. The Department of State serving as the national focal point for effective liaison with the Organization for the Prohibition of Chemical Weapons and States Parties to the Convention and implementing the provisions of the CWCIA in coordination with an interagency group designated by the President consisting of the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Energy, and the heads of agencies considered necessary or advisable by the President, or their designees. The Secretary of State is the Director of the United States National Authority.

Subpart B—Samples

§ 103.3 Requirement to provide a sample.

(a) *Notification of requirement to provide a sample.* The host team leader will notify the owner or operator, occupant or agent in charge of an inspected premises of any requirement to provide a sample pursuant to a request, in accordance with paragraph (j) of this section, of an inspection team of the Technical Secretariat under paragraph (b) or (d) of this section.

(b) *Requirement to provide a sample.* Pursuant to section 304(f)(1) of the CWCIA, unless a consultation occurs pursuant to paragraph (c) of this section, the owner or operator, occupant or agent in charge of the premises to be inspected is hereby required to provide a sample pursuant to a request, in accordance with paragraph (j) of this section, of an inspection team of the Technical Secretariat that a sample be taken in accordance with the applicable provisions contained in the Chemical Weapons Convention and the CWCIA.

(c) *Consultations with the United States National Authority.* After consulting with the host team leader, a lead agency that finds that the following conditions, unless they have been modified pursuant to paragraph (i) of this section, may not have been satisfied shall promptly advise the United States National Authority, which, in coordination with the interagency group designated by the President in section 2 of Executive Order 13128, shall make a decision.

(1) The taking of a sample is consistent with the inspection aims under the Convention and with its Confidentiality Annex;

(2) The taking of a sample does not unnecessarily hamper or delay the operation of a facility or affect its safety, and is arranged so as to ensure the timely and effective discharge of inspection team's functions with the least possible inconvenience and disturbance to the facility;

(3) The taking of samples is consistent with the applicable facility agreement. In particular:

(i) Samples will be taken at sampling points agreed to in the relevant facility agreement; and

(ii) Samples will be taken according to procedures agreed to in the relevant facility agreement;

(4) In the absence of a facility agreement, due consideration is given to existing sampling points used by the owner or operator, occupant or agent in charge of the premises, consistent with any procedures developed pursuant to the CWCR (15 CFR parts 710 through 721);

(5) The taking of samples does not affect the safety of the premises and will be consistent with safety regulations established at the premises, including those for protection of controlled environments within a facility and for personal safety;

(6) The taking of the sample does not pose a threat to the national security interests of the United States; and

(7) The taking of the sample is consistent with any conditions negotiated pursuant to paragraph (i) of this section.

(d) *Determination by United States National Authority.* If, after consulting with the lead agency pursuant to paragraph (c) of this section, the United States National Authority, in coordination with the interagency group designated by the President to implement the provisions of the CWCIA, determines that the conditions of paragraph (c) are satisfied and that a sample shall be required, then the owner or operator, occupant or agent in charge of the premises shall provide a sample pursuant to a request of the inspection team of the Technical Secretariat.

(e) *Person to take a sample.* If a sample is required, the owner or the operator, occupant or agent in charge of the inspected premises will determine whether the sample will be taken by a representative of the premises, the inspection team, or any other individual present.

(f) *Requirement that samples remain in the United States.* No sample collected in the United States pursuant to an inspection permitted by the CWCIA may be transferred for analysis to any laboratory outside the territory of the United States.

(g) *Handling of samples.* Samples will be handled in accordance with the Convention, the CWCIA, other applicable law, and the provisions of any applicable facility agreement.

(h) *Failure to comply with this section.* Failure by any person to comply with this section may be treated as a violation of section 306 of the Act and § 103.5(a).

(i) *Conditions that restrict sampling activities during challenge inspections.* During challenge inspections within the inspected premises the host team may negotiate conditions that restrict activities regarding sampling, e.g., conditions that restrict where, when, and how samples are taken, whether samples are removed from the site, and how samples are analyzed. Samples taken during challenge inspections within the inspected premises will be analyzed only for substances relevant to the inspection mandate.

(j) *Format of inspection team request.* It is the policy of the United States Government that inspection team requests for samples should be in written form from the head of the inspection team. When necessary, before a sample is required to be provided, the host team leader should seek a written request from the head of the inspection team.

Subpart C—Record Keeping and Inspection Requirements

§ 103.4 General.

This subpart implements the enforcement of the civil penalty provisions of section 501 of the Chemical Weapons Convention Implementation Act of 1998 (CWCIA), and sets forth relevant administrative proceedings by which such violations are adjudicated. Both the Department of State (in this subpart), and the Department of Commerce (in part 719 of the CWCR at 15 CFR parts 710 through 721) are involved in the implementation and enforcement of section 501.

§ 103.5 Violations.

(a) *Refusal to permit entry or inspection.* No person may willfully fail or refuse to permit entry or inspection, or to disrupt, delay or otherwise impede an inspection, authorized by the CWCIA.

(b) *Failure to establish or maintain records.* No person may willfully fail or refuse:

(1) To establish or maintain any record required by the CWCIA or the Chemical Weapons Convention Regulations (CWCR, 15 CFR parts 710 through 721) of the Department of Commerce; or

(2) To submit any report, notice, or other information to the United States Government in accordance with the CWCIA or CWCR; or

(3) To permit access to or copying of any record required by the CWCIA or regulations thereunder, including information that is exempt from disclosure under the Freedom of Information Act pursuant to section 103(g) or section 404 of the CWCIA or § 711.2 or Supplement 1 of Part 711 of the CWCR.

§ 103.6 Penalties.

(a) *Civil penalties—*(1) *Civil penalty for refusal to permit entry or inspection.* Any person that is determined to have willfully failed or refused to permit entry or inspection, or to have disrupted, delayed or otherwise impeded an inspection authorized by the CWCIA, in violation of § 103.5 (a) of this part, shall pay a civil penalty in an

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amount not to exceed 9$25,000 for each violation. Each day the violation continues constitutes a separate violation.

(2) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain any record required by the CWCIA or CWCR (15 CFR parts 710 through 721), or to submit any report, notice, or other information, required by the CWCIA or the CWCR, or to permit access to or copying of any record exempt from disclosure under the CWCIA or CWCR, in violation of § 103.5 (b) of this part, shall pay a civil penalty in an amount not to exceed $5,000 for each violation.

(h) *Criminal penalties—Fine or imprisonment for refusal to permit entry or inspection.* Any person that knowingly violates the CWCIA by willfully failing or refusing to permit entry or inspection, or by disrupting, delaying or otherwise impeding an inspection authorized by the CWCIA, or that knowingly violates the CWCIA by willfully failing or refusing to establish or maintain any required record, or to submit any required report, notice, or other information, or by willfully failing or refusing to permit access to or copying of any record exempt from disclosure under the CWCIA or CWCR, shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, or be imprisoned for not more than one year, or both.

(c) *Other remedial action*—(1) *Injunction.* The United States may, in a civil action, obtain an injunction against:

(i) The conduct prohibited under 18 U.S.C. 229 or 229C; or

(ii) The preparation or solicitation to engage in conduct prohibited under 18 U.S.C. 229 or 229D.

(2) In addition, the United States may, in a civil action, restrain any violation of section 306 or section 405 of the CWCIA, or compel the taking of any action required by or under the CWCIA or the Convention.

§ 103.7 Initiation of administrative enforcement proceedings.

(a) *Issuance of Notice of Violation and Assessment (NOVA).* The Director of the Office of Export Enforcement, Bureau of Export Administration, Department of Commerce, may request that the Secretary initiate an administrative enforcement proceeding. If the request is in accordance with applicable law, the Secretary of State shall initiate an administrative enforcement proceeding under 15 CFR 719.1(a)(2) by providing notice of the initiation of proceedings through issuance of a Notice of Violation and Assessment (NOVA), so long as the initiation of such a proceeding is in accordance with applicable law. The Office of Chief Counsel for Export Administration, Department of Commerce shall serve the NOVA as directed by the Secretary.

(b) *Content of NOVA.* The NOVA shall constitute a formal complaint, and will set forth the basis for the issuance of the proposed order. It will set forth the alleged violation(s) and the essential facts with respect to the alleged violation(s), reference the relevant statutory, regulatory or other provisions, and state the amount of the civil penalty to be assessed. The NOVA will inform the respondent of the right to request a hearing pursuant to the CWCR (15 CFR parts 710 through 721) at 15 CFR 719.6, inform the respondent that failure to request such a hearing shall result in the proposed order becoming final and unappealable on signature of the Secretary of State and provide payment instructions. A copy of this section, and the Department of Commerce regulations that govern the administrative proceedings, will accompany the NOVA.

(c) *Proposed order.* A proposed order shall accompany every NOVA. It will briefly set forth the substance of the alleged violation(s) and the statutory, regulatory or other provisions violated. It will state the amount of the civil penalty to be assessed.

(d) *Notice of initiation of proceedings.* The Secretary shall notify, via the Department of Commerce, the respondent (or respondent's agent for service of process, or attorney) of the initiation of administrative proceedings by sending, via overnight mail, facsimile, or by personal delivery, the NOVA and proposed order to the respondent (or respondent's agent for service of process or attorney).

(e) *Demand for hearing and answer.* If the respondent wishes to contest the NOVA and proposed order, the respondent must demand a hearing in writing within 15 days from the date of the NOVA, and must answer the NOVA within 30 days from the date of the demand for hearing.

(f) *Waiver.* The failure of the respondent to file a request for a hearing and an answer within the times provided constitutes a waiver of the respondent's right to appear and contest the allegations set forth in the NOVA and proposed order. If no hearing is requested or no answer is provided, the Secretary will sign the proposed order, which shall, upon signature, become a final and unappealable order.

(g) *Administrative procedures.* The regulations that govern the administrative procedures that apply when a hearing is requested are set forth in the CWCR at 15 CFR part 719.

§ 103.8 Final agency decisions after administrative proceedings.

(a) *Review of initial decision*—(1) *Petition for review.* Any party may, within 3 days of the Administrative Law Judge's (ALJ) certification of the initial decision, petition the Secretary for review of the initial decision. A petition for review shall be addressed to and served on Executive Director of the Office of the Legal Adviser, U.S. Department of State, 2201 C Street, N.W., Room 5519, Washington D.C. 20520, and shall also be served on the Chief Counsel for Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–3839, Washington, D.C. 20230, and all other parties. Petitions for review may be based only on one or more of the following grounds:

(i) A finding of material fact is clearly erroneous based on the evidence in the record;

(ii) A necessary legal conclusion is contrary to law or precedent;

(iii) A substantial and important question of law, policy, or discretion is involved (including the amount of the civil penalty); or

(iv) A prejudicial procedural error has occurred.

(2) *Content of petition for review.* The petition must specifically set forth the reason that review is requested and be supported by citations to the record, statutes, regulations, and principal authorities. Issues of fact or law not argued before the Administrative Law Judge may not be raised on review unless they were raised for the first time in the initial decision and could not reasonably have been foreseen and raised by the parties during the hearing. New or additional evidence that is not a part of the record before the ALJ will not be considered.

(3) *Decision to review.* Review of the initial decision by the Secretary is discretionary, and is not a matter of right. The Secretary shall accept or decline review of the initial decision within 3 days after a petition for review is filed. If no such petition is filed, the Secretary may, on his or her own initiative, notify the parties within 6 days after the ALJ's certification of the initial decision that he or she intends to exercise his or her discretion to review the initial decision.

(4) *Effect of decision to review.* The initial decision is stayed until further order of the Secretary upon a timely petition for review, or upon action to review taken by the Secretary on his or her own initiative.

(5) *Review declined.* If the Secretary declines to exercise discretionary review, such order will be served on all parties personally, by overnight mail, or by registered or certified mail, return receipt requested. The Secretary need not give reasons for declining review.

(6) *Review accepted.* If the Secretary grants a petition for review or decides to review the initial decision on his or her own initiative, he or she will issue an order confirming that acceptance and specifying any issues to be briefed by all parties within 12 days after the order. Briefing shall be limited to the issues specified in the order. Only those issues specified in the order will be considered by the Secretary. The parties may, within 5 days after the filing of any brief of the issues, file and serve a reply to that brief. No oral argument will be permitted. The Department of Commerce shall review all written submissions, and, based on the record, make a recommendation to the Secretary as to whether the ALJ's initial decision should be modified or vacated. The Secretary will make a final decision within 30 days after the initial decision.

(b) *Factors considered in assessing penalties.* In reviewing the amount of the civil penalty determined by the ALJ, the Secretary shall take into account the nature, circumstances, extent and gravity of the violation(s), and, with respect to the respondent, the respondent's ability to pay the penalty, the effect on the respondent's ability to continue to do business, the respondent's history of prior violations, the respondent's degree of culpability, the existence of an internal compliance program, and such other matters as justice may require.

(c) *Final decision.* Unless the Secretary, within 30 days after the date of the initial decision and order, modifies or vacates the decision and order, with or without conditions, the ALJ's initial decision and order shall become effective as the final decision and order of the United States Government. If the Secretary does modify or vacate the initial decision and order, that decision and order of the Secretary shall become the final decision and order of the United States Government. The final decision and order shall be served on the parties and will be made available to the public.

§ 103.9 Final agency decision after settlement negotiations.

(a) *Settlements based on letter of intent to charge*—(1) *Approval of settlement.* Pursuant to § 719.5(b)(2) of the CWCR (15 CFR parts 710 through 721), the Department of Commerce may notify a respondent by letter of the intent to charge. If, following the issuance of such a letter of intent to charge, the Department of Commerce and respondent reach an agreement to settle a case, the Department of Commerce will submit the draft NOVA, proposed order and a recommended settlement agreement signed by a representative of the Department of Commerce and respondent to the Secretary for approval and signature, if the recommended settlement agreement is in accordance with applicable law. No action is required by the ALJ in cases where the Secretary issues such an order.

(2) *Refusal to approve settlement.* If the Secretary refuses to approve the settlement, the Secretary will notify the parties and the case will proceed as though no settlement proposal had been made.

(b) *Settlements reached during administrative proceedings*—(1) *Approval of settlement.* When the Department of Commerce and respondent reach an agreement to settle the allegations after administrative proceedings have been initiated before an ALJ, the Department of Commerce will submit the NOVA, the proposed order, and the recommended settlement agreement signed by a representative of the Department of Commerce and respondent to the Secretary of State for approval and signature, if the recommended settlement agreement is in accordance with applicable law. If the Secretary approves the settlement, the Secretary shall notify the ALJ that the case is withdrawn from adjudication.

(2) *Refusal to approve settlement.* If the Secretary of State refuses to approve the settlement, the Secretary of State will notify the parties of the disapproval, and settlement negotiations will resume or the case will proceed to adjudication by the ALJ as though no settlement proposal had been made. *See* CWCR at 15 CFR 719.19.

(c) *Scope of settlement.* Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought pursuant to this part. This reflects the fact that the Government officials involved have neither the authority nor the responsibility for initiating, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility is vested in the Attorney General and the Department of Justice.

(d) *Finality.* Cases that are settled may not be reopened or appealed.

§ 103.10 Appeals.

Any person adversely affected by a final order respecting an assessment may, within 30 days after the order is issued, file a petition in the Court of Appeals for the District of Columbia Circuit, or in any other circuit in which the person resides or transacts business, to appeal the order. No other reopening or appeal is permitted.

§ 103.11 Payment of final assessment.

(a) *Time for payment.* Full payment of the civil penalty must be made within 30 days of the date upon which the final order becomes effective, or within the time specified in the order. Payment shall be made in the manner specified in the NOVA.

(b) *Enforcement of order.* The Secretary, through the Attorney General, may file suit in an appropriate district court if necessary to enforce compliance with a final order issued pursuant to this part. This suit will include a claim for interest at current prevailing rates from 30 days after a final order was issued or, if an appeal was filed pursuant to § 103.10 of this part, from the date of final judgment of the court of appeals pursuant to § 103.10 of this part.

(c) *Offsets.* The amount of any civil penalty imposed by a final order may be deducted from any sum(s) owed by the United States to a respondent.

§ 103.12 Reporting a violation.

If a person learns that a violation of the Convention, the CWCIA, or the CWCR (15 CFR parts 710 through 721) has occurred or may occur, that person may notify: United States National Authority, Office of Chemical and Biological Weapons Conventions, Bureau of Arms Control, U.S. Department of State, Washington, DC 20520, Telephone: (703) 235–1204, Facsimile: (703) 235–1065.

J. Michael Lekson,

Deputy Assistant Secretary of State for Multilateral Conventional Arms Control, Bureau of Arms Control.

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Part III

Department of Defense

Department of the Army, Corps of Engineers

Proposal To Issue and Modify Nationwide Permits; Notice

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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Proposal To Issue and Modify Nationwide Permits; Notice

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of intent and request for comments.

SUMMARY: To improve protection of the aquatic environment, the Corps of Engineers is proposing to issue 5 new Nationwide Permits (NWPs) and modify 6 existing NWPs to replace NWP 26 when it expires. The Corps is also proposing to modify 9 NWP general conditions and add three new general conditions. These general conditions will apply to the proposed new and modified NWPs, as well as the NWPs issued on December 13, 1996, when the new and modified NWPs become effective. The proposed new NWPs are activity-specific and authorize activities in all non-tidal waters of the United States, except for non-tidal wetlands adjacent to tidal waters. These proposed new and modified NWPs will allow Corps districts to enhance protection of the aquatic environment, by utilizing the Corps limited resources to review proposed projects, based on the degree of adverse effects on the aquatic environment. The Corps will spend more time on projects with the potential for more environmental damage and less time on projects with minimal adverse effects on the aquatic environment. The Corps has developed, with public and Federal, Tribal, and State agency comments, terms and conditions to ensure that the adverse effects of authorized activities are minimal. A key element of this process by the Corps to develop NWPs with minimal adverse effects on the aquatic environment is regional conditioning developed by district and division engineers. Regional conditioning of NWPs is critical to ensure that the NWPs help the Corps achieve these goals. Regional conditioning of NWPs is necessary to account for differences in aquatic resource functions and values across the country. Regional conditions will be added to the proposed new and modified NWPs by division engineers to ensure that the NWPs authorize only those activities that have minimal adverse effects on the aquatic environment, individually or cumulatively. Concurrent with this **Federal Register** notice, each Corps district will issue a public notice to solicit comments on their final draft regional conditions for the proposed new and modified NWPs.

The purpose of this **Federal Register** notice is to solicit comments on the final draft of the proposed new and modified NWPs that will replace NWP 26, as well as the NWP general conditions and definitions. Concurrent with this **Federal Register** notice, each Corps district will publish a public notice to solicit comments on their final draft regional conditions for the new and modified NWPs. The comment period for these district public notices will be 45 days. After reviewing the comments received in response to this **Federal Register** notice, the Corps will issue another **Federal Register** notice announcing the issuance of the new and modified NWPs to start the final 60 days for the State and Tribal Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination decisions. After this 60-day period, the new and modified NWPs will become effective as NWP 26 expires.

To improve the implementation of the NWP program, the Corps has combined the NWP general conditions and Section 404 Only conditions into one set of general conditions. The Corps will issue a set of definitions for use with all of the NWPs to provide more consistency in the application of terms commonly used in the NWP program.

Although NWP 26 was scheduled to expire on September 15, 1999, the Corps has extended the expiration date of NWP 26 to December 30, 1999, or until the effective date of the new and modified NWPs, whichever comes first.

DATES: Comments on the proposed new and modified NWPs must be received by September 7, 1999.

ADDRESSES: HQUSACE, ATTN: CECW–OR, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000. Submit electronic comments to cecwor@hq02.usace.army.mil. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing of comments.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson or Mr. Sam Collinson at (202) 761–0199 or access the Corps of Engineers Regulatory Home Page at: http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1996, the Corps of Engineers (Corps) reissued NWP 26 for a period of two years and announced its intention to replace NWP 26 with activity-specific NWPs prior to the expiration date of NWP 26. In the July 1, 1998, issue of the **Federal Register** (63 FR 36040—36078), the Corps published its proposal to replace NWP 26 by issuing 6 new NWPs, modifying 6 existing NWPs, modifying 6 NWP general conditions, and adding one new NWP general condition. NWP 26 authorizes discharges of dredged or fill material into headwaters and isolated waters, provided the discharge does not result in the loss of greater than 3 acres of waters of the United States or 500 linear feet of stream bed. Isolated waters are non-tidal waters of the United States that are not part of a surface tributary system to interstate or navigable waters of the United States and are not adjacent to interstate or navigable waters. Headwaters are non-tidal streams, lakes, and impoundments that are part of a surface tributary system to interstate or navigable waters of the United States with an average annual flow of less than 5 cubic feet per second.

The new and modified NWPs proposed in the July 1, 1998, **Federal Register** notice could authorize many of the same activities with minimal adverse effects on the aquatic environment that are currently authorized by NWP 26. Most of the proposed new and modified NWPs authorize activities in all non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters. These proposed NWPs will ensure that the NWP program is based on the types of authorized activities. Regional conditioning of these proposed NWPs will limit or prohibit their use in high quality waters.

The terms and limits of the proposed new and modified NWPs are intended to authorize activities that typically result in minimal adverse effects on the aquatic environment. For these proposed NWPs, the Corps has also established preconstruction notification (PCN) thresholds to ensure that any activity that may potentially have more than minimal adverse effects will be reviewed by district engineers on a case-by-case basis. Most of the proposed NWPs require submission of a PCN for losses of greater than ¼ acre of waters of the United States. Most of the proposed NWPs require PCNs for filling open waters, including streams, and for certain proposed NWPs a PCN may be required for filling more than 500 linear feet of stream bed. The PCN requirements for filling stream beds may differ, depending on whether a perennial, intermittent, or ephemeral stream bed is filled. For most of these NWPs, there is no PCN requirement for filling ephemeral stream beds. Excavation of stream beds may require a PCN if the excavation activity results

in a discharge of dredged material, including redeposit other than incidental fallback, into waters of the United States. Regional conditions may be added to NWPs by district or division engineers to lower notification thresholds or require notification for all activities authorized by an NWP in order to ensure no more than minimal adverse effects on the aquatic environment.

The 5 new NWPs proposed in this **Federal Register** notice will expire 5 years from their effective date. The proposed 6 modified NWPs (i.e., NWPs 3, 7, 12, 14, 27, and 40) will expire on February 11, 2002, with the other NWPs that were issued, reissued, or modified in the December 13, 1996, **Federal Register** notice (61 FR 65874–65922). The proposed new and modified NWPs are scheduled to become effective on December 21, 1999, and we have extended the expiration date of NWP 26 to December 30, 1999, or the effective date of the new and modified NWPs, whichever occurs first. The extension of the expiration date for NWP 26 is discussed in more detail below.

Compensatory mitigation will be required when the District Engineer determines such mitigation is necessary to ensure that the activities authorized by NWPs will result only in minimal adverse effects on the aquatic environment. For a particular project, the District Engineer may determine that compensatory mitigation is not necessary, because the activity will result in no more than minimal adverse effects on the aquatic environment without compensatory mitigation. Some of the NWPs contain requirements for compensatory mitigation for certain activities, particularly for activities that require notification to the District Engineer. Compensatory mitigation will be used to support the goal of no net loss of aquatic resource functions and values by offsetting impacts to the aquatic environment. Compensatory mitigation can be accomplished through the restoration, creation, enhancement, and/or in exceptional circumstances, preservation of aquatic resources either by individual projects constructed by the permittee or the use of mitigation banks, in lieu fee programs, or other consolidated mitigation efforts. For the new and modified NWPs, an important component of compensatory mitigation is the establishment and maintenance of vegetated buffers adjacent to open and flowing waters. Vegetated buffers adjacent to open waters or streams may consist of either uplands or wetlands and help protect and enhance local water quality and aquatic habitat features in the waterbody. Vegetated buffers can be established by maintaining an existing vegetated area adjacent to open or flowing waters or by planting native trees, shrubs, and herbaceous perennials in areas with little existing perennial native vegetation. The benefits and requirements for vegetated buffers are discussed in further detail below.

During the review of PCNs, district and division engineers can exercise discretionary authority and require an individual permit for those activities that result in more than minimal adverse effects on the aquatic environment. District engineers can also place conditions, including compensatory mitigation requirements, on NWP authorizations on a case-by-case basis to ensure that the activity authorized by the NWP results only in minimal adverse effects on the aquatic environment.

For these NWPs, we are placing greater emphasis on regional conditioning to ensure that the NWPs authorize only activities with minimal adverse effects on the aquatic environment. Regional conditions allow the NWP program to take into account regional differences in aquatic resource functions and values across the country. Each district will identify areas of high value waters that require lower PCN thresholds or notification for all activities in those waterbodies to ensure that the NWPs authorize only activities with minimal adverse effects on the aquatic environment. Division engineers can also suspend or revoke certain NWPs in high value waters if the use of those NWPs would result in more than minimal adverse effects on the aquatic environment, individually or cumulatively. The regional conditioning process is discussed in more detail below.

The Corps believes that the new and modified NWPs, with regional conditions, will increase the overall protection of the aquatic environment when compared to the existing NWP program. However, the scope of applicable waters for the proposed NWPs and the proposed NWP General Condition 27, which prohibits the use of certain NWPs to authorize permanent, above-grade fills in waters of the United States within the 100-year floodplain, will substantially increase the Corps individual permit workload. The proposed new and modified NWPs, in addition to the existing NWPs, will allow the Corps to efficiently authorize activities with minimal adverse effects on the aquatic environment and focus its efforts on protecting high value aquatic resources. NWPs will be used to authorize most activities in low value waters. Higher value waters, including wetlands, will receive additional protection through regional conditioning of the NWPs, special conditions on specific NWP authorizations, and case-specific discretionary authority to require an individual permit when necessary. Regional conditions will be required by each district to restrict or prohibit the use of NWPs in high value waters. The Corps will require compensatory mitigation, where appropriate, to ensure that the individual or cumulative adverse effects on the aquatic environment authorized by these NWPs are no more than minimal. NWPs may also be suspended or revoked in some high value waters if the use of those NWPs would result in more than minimal adverse effects on the aquatic environment.

The proposed new and modified NWPs also reflect the Corps increased focus on open or flowing waters. One of the goals of the proposed new and modified NWPs is to improve protection of open waters and streams, especially water quality and aquatic habitat, while continuing to fully protect wetlands. District engineers will not place less consideration on adverse effects to other types of waters for the sake of wetlands, especially low value wetlands. The establishment and maintenance of vegetated buffers adjacent to open waters and streams will protect, restore, and enhance water quality and aquatic habitat. Vegetated buffers can be used to provide out-of-kind compensatory mitigation for wetland impacts where the District Engineer determines that such mitigation for wetland impacts is the best, ecologically, for the aquatic environment.

In addition to regional conditioning of the proposed new and modified NWPs, additional substantial protection of the aquatic environment will result from the modification of two NWP general conditions. We are proposing to modify General Condition 9, Water Quality, to require that postconstruction conditions do not result in more than minimal degradation of downstream water quality. An important component of this general condition is the requirement that, for certain NWPs, the permittee implement a water quality management plan to protect water quality. The water quality management plan may consist of stormwater management facilities or vegetated buffers adjacent to open or flowing waters or wetlands. It is not our intent to replace existing State or local water quality safeguards if those current safeguards are adequate. However, where the State or local program does not ensure that an authorized activity

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results in no more than minimal impacts on downstream water quality, the Corps will condition its NWP authorization to contain a water quality management plan. We are also proposing to modify former Section 404 Only condition 6 (now designated as General Condition 21) to require that neither upstream nor downstream areas are subject to more than minimal flooding or dewatering after the project has been constructed and while the authorized activity is operated. General Condition 21 will help ensure that postconstruction effects on local surface water flows are minimal.

On October 14, 1998, the Corps published a supplemental notice in the **Federal Register** (63 FR 55095–55098) requesting comments on additional proposed limitations for the NWP program, including the proposed new and modified NWPs. This **Federal Register** notice also announced the withdrawal of NWP B for master planned development activities from the July 1, 1998, proposal. The additional NWP limitations proposed in the October 14, 1998, **Federal Register** notice, include prohibiting the use of NWPs in certain designated critical resource waters, limiting the use of NWPs in impaired waters, and prohibiting the use of the new NWPs to authorize permanent, above-grade wetland fills in waters of the United States within the 100-year floodplain as mapped by the Federal Emergency Management Agency.

As a result of the proposal published on October 14, 1998, we are proposing to add 3 new NWP general conditions. General Condition 25, Designated Critical Resource Waters, prohibits the use of certain NWPs to authorize discharges of dredged or fill material into designated critical resource waters, including wetlands adjacent to those waters. General Condition 25 also requires notification to the District Engineer for activities authorized by certain other NWPs in Designated Critical Resource Waters. General Condition 26, Impaired Waters, restricts the use of NWPs to authorize discharges of dredged or fill material into waters of the United States designated through the Clean Water Act Section 303(d) process as impaired due to nutrients, organic enrichment resulting in low dissolved oxygen concentration in the water column, sedimentation and siltation, habitat alteration, suspended solids, flow alteration, turbidity, or the loss of wetlands. General Condition 26 prohibits the use of NWPs to authorize discharges of dredged material resulting in the loss of greater than 1 acre of impaired waters of the United States, including wetlands adjacent to those impaired waters. For discharges of dredged material resulting in the loss of 1 acre or less of impaired waters of the United States, including adjacent wetlands, General Condition 26 requires the prospective permittee to notify the District Engineer and clearly demonstrate that the project will not result in further impairment of the listed water. General Condition 27, Fills Within the 100-year Floodplain, prohibits or restricts the use of certain NWPs to authorize permanent, above-grade fills in waters of the United States within the 100-year floodplain.

The October 14, 1998, **Federal Register** notice also announced the extension of the expiration date for NWP 26 to September 15, 1999. As a result of the additional time needed to finalize the proposed new and modified NWPs, the Corps has decided to extend the expiration date of NWP 26 to December 30, 1999, or the effective date of the new and modified NWPs, whichever comes first, to ensure that there is no gap between the effective date of the new and modified NWPs and the expiration date of NWP 26. Extending the expiration date of NWP 26 is necessary to ensure fairness to the regulated public by continuing to provide an NWP for activities in headwaters and isolated waters that have minimal adverse effects on the aquatic environment until the new and modified NWPs proposed in this **Federal Register** notice become effective. In response to the July 1, 1998, **Federal Register** notice, many commenters recommended that the Corps extend the expiration date of NWP 26 until the proposed new and modified NWPs are issued and become effective. NWP 26 can continue to be used to authorize activities in headwaters and isolated waters until its expiration date. A permittee who receives an NWP 26 authorization prior to the expiration date will have up to 12 months to complete the authorized activity, provided the permittee commences construction, or is under contract to commence construction, prior to the date NWP 26 expires (see 33 CFR Part 330.6(b)). This provision applies to all NWP authorizations unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the NWP authorization in accordance with 33 CFR Part 330.4(e) and 33 CFR Part 330.5 (c) or (d).

The existing NWPs, with the exception of NWP 26, will remain in effect until they expire on February 11, 2002, unless otherwise modified, reissued, or revoked. Some of the proposed new and modified NWPs can be used with existing NWPs to authorize activities with minimal adverse effects on the aquatic environment. The use of more than one NWP to authorize a single and complete project is addressed in the proposed modification of General Condition 15, Use of Multiple Nationwide Permits.

The October 14, 1998, **Federal Register** notice also discussed the need for additional opportunities for public comment on the new and modified NWPs and regional conditions. We have modified the process for additional opportunities for public comment to allow for more effective implementation of the proposed new and modified NWPs.

The revised process for issuing the proposed new and modified NWPs is illustrated in Figure 1. Figure 1 does not contain the previous steps in the development of the proposed new and modified NWPs. The revised process starts with today's publication of the draft new and modified NWPs in the **Federal Register** for a 45-day comment period, with concurrent public notices issued by Corps district offices to solicit comments on draft Corps regional conditions for these NWPs. Comments addressing the draft new and modified NWPs, general conditions, and definitions should be sent to HQUSACE, at the address cited in the **ADDRESSES** section of this **Federal Register** notice. Comments addressing draft Corps regional conditions should be sent to the appropriate Corps district office. After this 45-day comment period, we will review the comments concerning the proposed NWPs that were received in response to this **Federal Register** notice, each district will review the comments concerning their final draft regional conditions that were received in response to their public notices, and Corps divisions will complete the supplemental decision documents for the Corps regional conditions. On October 22, 1999, the Corps will announce the issuance of the final new and modified NWPs in the **Federal Register** to begin the final 60-day State and Tribal Section 401 water quality certification and Coastal Zone Management Act (CZMA) consistency determination processes. Concurrent with the publication of the final new and modified NWPs in the **Federal Register**, each Corps district will publish a public notice announcing their final Corps regional conditions for the new and modified NWPs, so that the 401 and CZMA agencies can make their decisions based on the new and modified NWPs and the Corps regional conditions. After this 60-day 401/CZMA

period, the new and modified NWPs and Corps regional conditions will become effective.

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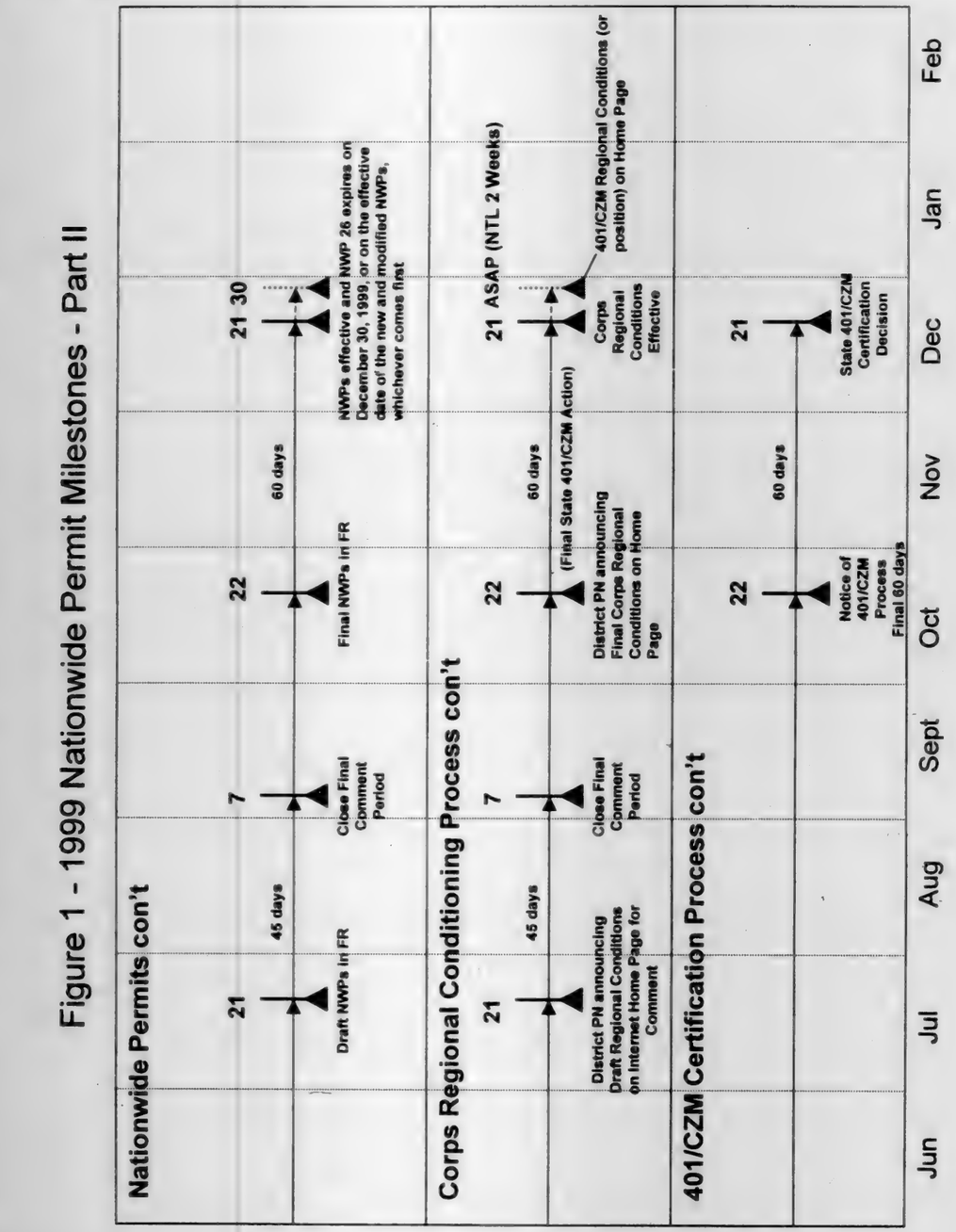

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The proposed new and modified NWPs will help implement the President's Wetlands Plan, which was issued by the White House Office on Environmental Policy on August 23, 1993. A major goal of this plan is that Federal wetlands protection programs be fair, flexible, and effective. To achieve this goal, the Corps regulatory program must continue to provide effective protection of wetlands and other aquatic resources and avoid unnecessary impacts to private property, the regulated public, and the aquatic environment. The proposed new and modified NWPs will more clearly address individual and cumulative adverse effects on the aquatic environment, ensure that those adverse effects are minimal, address specific applicant group needs, and provide more predictability and consistency to the regulated public. Throughout the development of these NWPs, the Corps recognized the concerns of the natural resource agencies and environmental groups for the potential adverse effects on the aquatic environment resulting from activities authorized by these NWPs and the regulated public's need for certainty and flexibility in the NWP program.

Electronic Access and Filing Addresses

You may submit comments by sending electronic mail (e-mail) to: cecwor@hq02.usace.army.mil

Submit electronic comments as an ASCII file and avoid the use of any special characters and any form of encryption. Identify all electronic comments by including the phrase "Draft 1999 NWPs" in the subject line of electronic mail messages. Comments sent as attachments to electronic mail messages should be in ASCII format to ensure that those attachments can be read by HQUSACE.

Discussion of Public Comments

I. Overview

Approximately 10,000 comments were received in response to the July 1, 1998 **Federal Register** notice, district public notices, and national and regional public hearings. The Corps reviewed and fully considered all comments received in response to the July 1, 1998, **Federal Register** notice. Most of these comments were in opposition to the proposed NWPs. Less than 300 commenters were in favor of the proposed new and modified NWPs. A number of commenters stated that NWP 26 is currently working well and does not need to be replaced. Of the 10,000 comments, approximately 8,000 were form letters and postcards that provided no substantive or constructive comments. Members of environmental groups and development groups were typically in opposition to the proposed new and modified NWPs. The environmental community opposed the proposed NWPs, asserting they would allow too much impact on the aquatic environment. The development community opposed the proposed NWPs, asserting they are too restrictive on the regulated public. Many commenters provided specific comments, recommending changes to the NWPs, general conditions, and definitions. A few commenters provided comments relating to 33 CFR Part 330, the regulations for the implementation of the NWP program. It should be noted that the proposal published in the July 1, 1998, **Federal Register** was a proposal to issue new and modified NWPs and modify some NWP general conditions. We did not propose any changes to 33 CFR Part 330. We have reviewed these comments, but will not modify 33 CFR Part 330 at this time. Some commenters suggested additional issues for the Corps to consider for the NWP program. These new issues are discussed elsewhere in this **Federal Register** notice.

On August 19, 1998, the Corps held a public hearing in Washington, D.C. on the proposed NWPs. In addition to the national public hearing, Corps division offices held 12 regional public hearings in other parts of the country. The purpose of these public hearings was to provide interested parties with another forum to comment on the proposed new and modified NWPs. Transcripts from these public hearings were also reviewed and considered for changes to the NWPs and general conditions.

The Corps received nearly 1,000 comments in response to the October 14, 1998, **Federal Register** notice. Many commenters objected to the proposed additional restrictions to the NWP and some favored the proposed changes. The comments received in response to the October 14, 1998, **Federal Register** notice are also discussed below.

II. General Comments

Most commenters opposed the new and modified NWPs, but many commenters expressed support for the activity-based nature of the NWPs and the balanced approach of the general conditions and preconstruction notification (PCN) requirements. Some commenters stated that the NWPs should be based on impacts, not activities. Some commenters considered the proposed NWPs to be too restrictive, but the majority of commenters believe that the proposed NWPs are too broad in scope. Many commenters objected to the new and modified NWPs, because they authorize the loss of up to 3 acres of wetlands without the opportunity for public comment. A large number of commenters remarked that the proposed NWPs and general conditions are too complex. Some of these commenters stated that the complexity of the new and modified NWPs is contrary to the goal of streamlining the Corps regulatory program. One commenter stated that the Corps should revise NWP 26 to make it specific to the needs of each state, instead of developing broad NWPs with national applicability. Many commenters requested that the Corps extend the comment period, due to the complexity of the proposal.

Commenters opposed to the issuance of the proposed NWPs stated that the NWPs should be more restrictive. These commenters cited the fact that the new NWPs apply to virtually all non-tidal waters of the United States, which they believe results in less protection of the aquatic environment. Many of these commenters stated that the Corps intent to replace NWP 26 with NWPs that are more protective of the aquatic environment is not accomplished by the proposed NWPs. These commenters requested that the Corps withdraw the proposed new and modified NWPs and develop NWPs that are more protective of aquatic resources. Some commenters said that the environmental protection provided by the NWPs will be reduced by the absence of review by the Corps and the absence of site visits. Many commenters requested that the Corps modify the proposed new NWPs to provide more protection for wetlands and small streams. Several commenters stated that the proposed NWPs help promote sprawl development by making it easier to fill wetlands.

We disagree with the assertion that the proposed new and modified NWPs reduce protection of the aquatic environment. The terms and conditions of these NWPs contain provisions that provide more protection of aquatic resources. For example, NWPs 39 and 43 require that prospective permittees submit a statement with the PCN describing how impacts to waters of the United States have been avoided and minimized and explaining why additional avoidance and minimization cannot be achieved on the project site. In addition, some of the proposed NWPs require compensatory mitigation to ensure that the adverse effects of the authorized work on the aquatic environment are minimal, a water quality management plan to protect the local aquatic environment, especially downstream water quality, and

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management of water flows to ensure that downstream flow conditions are maintained and that the authorized work can withstand expected high flows.

For the proposed new and modified NWPs, we have directed our district offices to regionally condition these NWPs to provide additional protection for high value waters. Most of these NWPs do not authorize activities in non-tidal wetlands adjacent to tidal waters.

The proposed new and modified NWPs require submittal of a PCN to the Corps for many activities authorized by those NWPs. We believe that we have established PCN thresholds that will require Corps review of any activity that has the potential to result in more than minimal adverse effects on the aquatic environment, individually or cumulatively. District engineers will review these activities to ensure that they comply with the terms and conditions of the NWPs and result in minimal adverse effects on the aquatic environment. District and division engineers can lower PCN thresholds when necessary to review additional projects. Through the PCN process, district engineers can add case-specific conditions and require compensatory mitigation to further protect the aquatic environment and replace aquatic resource functions and values that are lost as a result of the authorized work. The PCNs will also allow district engineers to monitor the cumulative adverse effects of activities authorized by NWPs. The new NWPs do not promote sprawl development. Zoning and land use are the responsibilities of State, Tribal, and local governments. If the construction of a new development involves the discharge of dredged or fill material into waters of the United States, the NWPs can be used to satisfy Section 404 permit requirements, provided the activity complies with the terms and conditions of the NWPs and results in minimal adverse effects on the aquatic environment. If the proposed work does not comply with the NWPs, then a regional general permit, if applicable, or an individual permit will be required.

Many commenters objected to the proposed NWPs, stating that these NWPs are contrary to the Administration's Clean Water Action Plan (CWAP). These commenters cited one of the goals of the CWAP, which is to achieve a net gain of 100,000 acres of wetlands per year by 2005.

This goal of the CWAP will be achieved primarily through other Federal programs, including the Wetland Reserve Program and the Conservation Reserve Program of the U.S. Department of Agriculture (USDA), the Corps environmental restoration programs, the Department of Interior's Partners for Fish and Wildlife program, and the North American Wetlands Conservation Act. Non-federal programs will also contribute to this goal. USDA's programs are estimated to provide 125,000 to 150,000 acres of wetlands per year and the other Federal programs are expected to provide an additional 40,000 to 60,000 acres of wetlands per year toward this goal. The Corps regulatory program is not expected to contribute substantial additional wetland acreage to this CWAP goal, but the District Engineer may require compensatory mitigation for activities authorized by NWPs to offset losses of waters of the United States and ensure that the net adverse effects on the aquatic environment are minimal. The Corps does expect to continue its documented programmatic no net loss of wetlands approach to the Regulatory Program.

A number of commenters stated that the proposed NWPs increase the complexity of the NWP program, thereby decreasing efficiency and flexibility. Many commenters assert that the proposed NWPs are too restrictive and will increase the burden on the regulated public because of the notification requirements and the difficulty in interpreting these NWPs. A number of commenters stated that the proposed NWPs will increase the processing time and workload for permit applicants and the Corps.

We recognize that the proposed new and modified NWPs increase the complexity of the NWP program, but we believe that this increase in complexity is necessary to protect the aquatic environment while authorizing activities with minimal adverse effects on the aquatic environment in an efficient and effective manner. The proposed new and modified NWPs will be used to prioritize workload in non-tidal waters. In high value waters, additional protection will be provided by regional conditioning or suspending or revoking certain NWPs if the use of those NWPs would result in more than minimal adverse effects on the aquatic environment. The NWPs will be used to efficiently authorize activities in low value waters. It is likely that most project proponents will design their projects to comply with the new and modified NWPs rather than applying for authorization through the individual permit process. The proposed new and modified NWPs, with the three proposed NWP general conditions, will substantially increase processing times and the Corps workload. Prohibiting the use of NWPs 21, 29, 39, 40, 42, 43, and 44 to authorize permanent, above-grade fills in waters of the United States within the 100-year floodplain will result in large increases in the number of individual permit applications processed by the Corps.

Some commenters remarked that the proposed NWPs have taken on elements of the individual permit review process, such as Section 404(b)(1) analysis, mitigation sequencing, and no net loss. One of these commenters recommended replacing the proposed NWPs with NWPs that authorize activities on a generic basis with specific limits but no reporting requirements. One commenter recommended retaining NWP 26, but modifying it to authorize activities below headwaters, because it would be simpler than the proposed NWPs.

While there are some similarities between the individual permit review process and the NWPs, there are also important differences. General Condition 19 requires that permittees avoid and minimize losses of waters of the United States on the project site to the maximum extent practicable and states that the District Engineer can require compensatory mitigation to offset losses of waters of the United States that result from the authorized work to ensure that the adverse effects on the aquatic environment are minimal. This general condition is similar, but not identical to the Section 404(b)(1) analysis required for Section 404 individual permits. It is important to note that an off-site alternatives analysis is not required for activities authorized by NWPs, or any other general permit. The Section 404(b)(1) analysis required for individual permits requires analysis of off-site alternatives to determine if a practicable, less environmentally damaging, alternative exists to the proposed work on the original site.

To replace NWP 26 with NWPs that authorize activities on a generic basis would be contrary to Section 404(e) of the Clean Water Act. Activities authorized by general permits, including NWPs, must be similar in nature and result only in minimal adverse effects on the aquatic environment, individually or cumulatively. Each of the proposed new and modified NWPs is activity-specific, authorizing activities that are similar in nature. Removing the reporting requirements from the new and modified NWPs would increase the probability that the NWPs would be used to authorize activities that result in more than minimal adverse effects on the aquatic environment. District engineers utilize the PCN process to review proposed activities to determine if they comply with the terms and conditions of the NWPs, including the statutory requirements of Section 404(e). The only way the Corps can issue an NWP without PCN requirements would be to lower the acreage limit to an extremely low level to ensure that all activities authorized by the NWP would result in minimal adverse effects on the aquatic environment. This would substantially reduce the utility of the NWPs, result in unacceptable increases in the number of individual permits for minor activities processed by the Corps, and severely limit the effectiveness and utility of the NWP program.

Modifying NWP 26 to authorize activities below headwaters would not accomplish the intent of the new and modified NWPs because such a modification of NWP 26 may not satisfy the statutory requirements of Section 404(e). One of the criticisms of NWP 26 is that many people believe that it does not satisfy the "similar in nature" requirement of Section 404(e) of the Clean Water Act. We believe that the activity-specific new and modified NWPs clearly satisfy all of the requirements of Section 404(e).

One commenter stated that the proposed NWPs change a goal of the Section 404 program from one of "no net loss" of wetlands to one of "no net loss of aquatic resource functions and values." This commenter also said that focusing on the effects of non-point source discharges on water quality is the responsibility of the states, not the Corps. A couple of commenters stated that, in the July 1, 1998, **Federal Register** notice, the Corps is inappropriately expanding the Administration's "no net loss" goal for wetlands to other types of waters of the United States. These commenters believe that this expansion should be subject to public comment instead of including it with the proposed new and modified NWPs. One of these commenters objected to requiring compensatory mitigation for losses of non-wetland waters of the United States and that the Corps should focus only on achieving the goal of "no net loss" of wetland acreage. This commenter also objected to applying the "no net loss" goal to a watershed basis instead of to the nation as a whole. Some commenters recommended that the final NWPs contain a statement that the "no net loss" principle is applicable only for wetlands and that compensatory mitigation for losses of other types of waters of the United States should only be required to ensure that the authorized work, with compensatory mitigation, results in minimal adverse effects on the aquatic environment. Another commenter recommended that "no net loss" should be required for the NWP program.

Although one of the Administration's five principles for Federal wetlands policy is the goal of no net loss of wetlands, it is important to consider the functions and values of wetlands, as well as other aquatic resources. The Section 404 program has always regulated activities in all waters of the United States, not just wetlands. Streams and other open water habitats are extremely important components of the aquatic environment, and are as important as wetlands. The proposed new and modified NWPs place a greater emphasis on open waters to provide those areas with the additional protection that we believe is warranted. It is also important to remember the goals of the Clean Water Act and the importance of Section 404 in meeting those goals. Indeed, the Corps authority to regulate and protect open waters is clearer within the statutory framework than our authority to regulate wetlands. For instance, as a condition of a Section 404 permit, the Corps can require vegetated buffers adjacent to streams to offset adverse effects of the authorized activity on water quality.

Although certain statements in the July 1, 1998, **Federal Register** notice appear to expand the Administration's goal of no overall net loss of the Nation's remaining wetlands to other waters of the United States, such as streams, it is important to note that wetlands are only one component of the overall aquatic environment. By requiring compensatory mitigation for activities in other aquatic areas, such as streams, we are providing better overall protection for the aquatic environment. For the NWP program, the purpose of compensatory mitigation is to ensure that the authorized activities result in minimal adverse effects on the aquatic environment, individually or cumulatively, not to achieve "no net loss" of wetland acreage. Compensatory mitigation may be required by district engineers for losses of any type of water of the United States, not just wetlands. Such compensatory mitigation requirements do help contribute to the "no net loss" of wetlands goal, but in some cases district engineers may determine that compensatory mitigation is unnecessary because the adverse effects of the authorized work are minimal, without compensatory mitigation. It is important to note that NWP compensatory mitigation requirements are not driven by the "no net loss" goal, but will help support that goal. For the NWP program, the need for compensatory mitigation is assessed on a case-by-case basis and a watershed basis, not a national basis, to ensure that the NWPs authorize only those activities that have minimal adverse effects on the aquatic environment, individually or cumulatively. The programmatic goal of no net loss of wetlands is embodied in several Corps guidance documents, including former NWP issuance documents. The underlying principle is that the Corps will require compensatory mitigation to offset functions and values of aquatic resources, including wetlands, that are lost as a result of permit actions. Within the NWP program, the Corps will require compensatory mitigation to offset losses of functions and values of aquatic resources, including wetlands, to the extent that the NWPs authorize activities with no more than minimal adverse effects on the aquatic environment. On a watershed basis, this will normally result in no net loss of any important aquatic functions, not just wetlands.

One commenter requested that the Corps regulations should be consolidated as part of the proposed changes to the NWPs, because the Corps and the regulated public must consult multiple **Federal Register** notices for changes that have occurred over the past 12 years since the last consolidated rule was published. Another commenter stated that the Wetland Delineator Certification Program (WDCP) should be finalized to increase efficiency of the Corps regulatory program. Several commenters objected to the proposed NWPs because they authorize activities that are not water dependent.

The proposal to issue new and modified NWPs and general conditions does not constitute rulemaking. The current NWP regulations were issued on November 22, 1991, and the purpose of the proposal published in the **Federal Register** on July 1, 1998, is merely to issue and modify NWPs in accordance with the regulations at 33 CFR Part 330. The public can obtain a copy of the consolidated Corps regulations at 33 CFR Parts 320 to 330 by purchasing a copy of the appropriate Code of Federal Regulations published annually by the U.S. Government Printing Office or obtain a copy through the Internet at http://www.access.gpo.gov/nara/index.html#cfr. The Corps has not finalized the WDCP and has not determined when the program will be implemented.

On a case-by-case basis, NWP activities are not subject to the requirements for a Section 404(b)(1) alternatives analysis, including the

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water dependency test. General Condition 19 of the NWPs requires permittees to avoid impacts to the aquatic environment on-site to the extent practicable. However, no off-site alternatives test is ever conducted for any general permit activity, including NWPs. In addition, the water dependency test in the Section 404(b)(1) Guidelines does not require that all activities in waters of the United States must be water dependent to fulfill its basic project purpose (see 40 CFR Part 230.10(a)(3)). The vast majority of all activities permitted by the Corps are not water dependent. NWPs can authorize activities in special aquatic sites, provided they result in minimal adverse effects on the aquatic environment, individually or cumulatively, and impacts to the aquatic environment have been avoided on-site to the extent practicable.

One commenter stated that the acreage limits and PCN thresholds for the NWPs should be more consistent. Another commenter recommended that the acreage limits for the NWPs should be ½ or 1 acre and 200 linear feet of stream bed. A third commenter suggested an acreage limit of ¼ acre for all NWPs. One commenter recommended that the Corps decrease the acreage limits of the new NWPs because permittees will reduce the scope of work to comply with those lower acreage limits, resulting in better protection of the environment and reducing wetland losses.

We disagree that the acreage limits for the NWPs should be the same, but we have made the PCN thresholds more consistent by changing the PCN threshold to ¼ acre for most of the new and modified NWPs. For open and flowing waters, the PCN requirements will still vary among these NWPs. We also disagree with imposing an upper limit for linear feet of stream impacts. We have changed the prohibition against filling greater than 500 linear feet of stream under NWP 26 to a PCN requirement. NWP 39 has a PCN requirement for any discharges into open waters, including streams. The PCN requirement for impacts to stream beds will allow district engineers to review those projects to ensure that they result only in minimal adverse effects on the aquatic environment. Division engineers can also regionally condition NWPs to lower the acreage limits and PCN thresholds. Although many project proponents will design their projects to comply with the terms and conditions of the NWPs, there is a lower limit where such incentives no longer work and it would be more cost effective for the regulated public to pursue individual permits, which may result in even greater adverse effects on the aquatic environment. With the proposed new and modified NWPs, we believe that we have developed NWPs that balance environmental protection with development activities by providing the districts with the ability to use NWPs to authorize most activities with minimal individual or cumulative adverse effects on the aquatic environment while protecting high value areas with regional conditions.

Expiration of Nationwide Permit 26

In the July 1, 1998, **Federal Register** notice, we proposed to change the expiration date of NWP 26 from December 13, 1998, to March 28, 1999. Many commenters objected to the proposed extension of the expiration date for NWP 26. A number of commenters requested that the Corps retain NWP 26 until the proposed new and modified NWPs become effective. Other commenters suggested that the Corps change the expiration date of NWP 26 to February 11, 2002, to continue to authorize projects that will not be authorized by the new and modified NWPs. One commenter expressed concern about confusion resulting from different expiration dates for the NWPs.

Due to changes in the schedule and process for developing and implementing the new and modified NWPs to replace NWP 26, the Corps announced in the October 14, 1998, issue of the **Federal Register** the extension of the expiration date of NWP 26 to September 15, 1999, to allow for additional public comment on the new and modified NWPs, general conditions, and regional conditions. Since the proposed new and modified NWPs and regional conditions will not become effective before September 15, 1999, we have decided to extend the expiration date of NWP 26 to December 30, 1999, or the effective date of the new and modified NWPs, whichever occurs first, to allow the continued use of NWP 26 until the new and modified NWPs become effective. Extending the expiration date of NWP 26 until the effective date of the new and modified NWPs is necessary to ensure fairness to the regulated public by continuing to provide an NWP for activities with minimal adverse effects in headwaters and isolated waters until the new activity-specific NWPs become effective. If the expiration date of NWP 26 is not extended, most project proponents would have to apply for individual permits, although some activities may be authorized by other NWPs or regional general permits. For those activities with minimal adverse effects on the aquatic environment, it would be unfair and unnecessarily burdensome on the regulated public to require an individual permit.

We will not extend the expiration date of NWP 26 to February 11, 2002, to authorize those activities that do not qualify for the new and modified NWPs. Such action would be contrary to our intent, which is to replace NWP 26 with activity-specific NWPs. However, the Corps does not intend to allow a lapse in time to occur between the effective date of the new and modified NWPs and the expiration date of NWP 26. Activities that were previously authorized by NWP 26, but could not be authorized by the proposed new and modified NWPs may be authorized by individual permits, other NWPs, or regional general permits.

In response to the October 14, 1998, **Federal Register** notice, a large number of commenters supported the extension of the expiration date of NWP 26, but a few commenters objected to the time extension. Several commenters stated that the Corps should not set a specific expiration date for NWP 26, to ensure that it is available until the new and modified NWPs become effective. A number of commenters said that the October 14, 1998, **Federal Register** notice was unclear as to whether the expiration date for NWP 26 is extended to September 15, 1999; it appeared to these commenters that the new expiration date was published for public comment. One of these commenters requested that the Corps clearly state in this **Federal Register** notice the new expiration date for NWP 26. Two commenters expressed concern about the expiration of NWP 26 authorizations for projects which already have been authorized by this NWP.

The expiration date for NWP 26 was changed to September 15, 1999, as announced in the October 14, 1998, **Federal Register** notice. The new expiration date was not subject to public comment in that notice. It is necessary to set a firm expiration date for NWP 26 to minimize confusion for the regulated public during the process of developing and implementing the new and modified NWPs.

In accordance with 33 CFR Part 330.6(b), permittees with a valid NWP 26 authorization have up to one year to complete the authorized work, provided they start the work or are under contract to do the work prior to the expiration of the NWP. This provision of the NWP regulations is not affected by the proposed new and modified NWPs. Any activities authorized by NWP 26 that have not commenced or are not under contract prior to the expiration of NWP 26 must be reauthorized by another NWP, a regional general permit, or an individual permit. Some of these projects may be authorized by the proposed new and modified NWPs, provided those projects meet the terms and conditions of those NWPs.

State, Tribal, and EPA Section 401 Certification of the NWPs

One commenter stated that the Corps denial of an NWP authorization based on the denial of the Section 401 water quality certification (WQC) by States, Tribes, or EPA prevents applicants from pursuing an individual permit. According to the commenter, applicants are required to obtain an individual, project-specific WQC. A number of commenters objected to the Corps practice of issuing provisional NWP verifications where WQC has been denied by the State, Tribe, or EPA. One commenter stated that NWPs should not be used in states where WQC has been denied or the NWP activity is determined to be inconsistent with the State's Coastal Zone Management Act (CZMA) plan. These commenters believe that individual permits should be required instead.

Denial of WQC for an NWP should not be the sole reason for requiring individual permit review for activities that would otherwise comply with the terms and conditions of the NWP. A denial of WQC by a State, Tribe, or EPA for an NWP does not mean that the activities authorized by that NWP will result in more than minimal adverse effects on the aquatic environment. The WQC denial only indicates that the NWP activity may not meet the water quality standards for that State or Tribal land in all situations. For specific projects that meet the water quality standards, the 401 agency can issue an individual WQC or waive the WQC requirement. If a specific project does not meet the water quality standards and the 401 agency denies WQC for that project, then that particular project cannot be authorized by an NWP or an individual permit unless the WQC is later issued or waived.

Although the Corps makes every effort to work closely with States, Tribes, or EPA to facilitate Section 401 water quality certification for activities authorized by NWPs, we have an obligation to the regulated public to provide timely NWP authorizations for projects that meet the terms and conditions of the NWPs and result in minimal adverse effects on the aquatic environment, individually and cumulatively. Therefore, if a project qualifies for NWP authorization, we should issue a provisional NWP verification that is not valid until the permittee obtains an individual WQC or CZMA consistency determination or waiver and a copy is sent to the Corps. These provisional NWP verifications indicate that the permittee cannot commence work until the WQC or CZMA determination is obtained or waived.

The final WQC and CZMA determination processes for the new and modified NWPs will begin with the publication of the **Federal Register** notice announcing the issuance of the NWPs. This **Federal Register** notice is scheduled to be published on October 22, 1999. Concurrent with that **Federal Register** notice, Corps districts will publish public notices announcing their final Corps regional conditions for the new and modified NWPs. The 401 and CZMA agencies will have 60 days from the date of that **Federal Register** notice to make their WQC or CZMA consistency determinations for those NWPs.

Regional Conditioning of the Nationwide Permits

For the proposed new and modified NWPs, the Corps is placing greater emphasis on regional conditioning. Regional conditioning is necessary to ensure that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment, individually and cumulatively.

A number of commenters supported the increased emphasis on regional conditioning for the new and modified NWPs. Some of these commenters recognize the importance of evaluating wetland impacts on a regional and watershed basis. One commenter stated that since hydrologic, geologic, and other environmental characteristics vary across the country, regional conditions are necessary because an inflexible regulatory approach to managing waters of the United States is ineffective. This commenter said that regional conditions provide the flexibility to effectively manage waters of the United States, based on their particular environmental characteristics.

Many commenters expressed opposition to the increased emphasis on regional conditions for the proposed new and modified NWPs. Some commenters recommended that the Corps eliminate regional conditioning from the NWP program. Two commenters said that regional conditions are unnecessary because the NWPs can only authorize activities with minimal adverse effects on the aquatic environment. Another commenter stated that regional conditions are unnecessary because district engineers can place special conditions on NWP authorizations on a case-by-case basis. One commenter stated that regional conditions are unnecessary because Federal regulations require that general permits must be based on activities, not types of waters. A couple of commenters objected to the approach presented in the July 1, 1998, **Federal Register** notice, because it treats regional conditioning as the rule, not the exception. One commenter stated that regional conditioning should not be required of all districts, because some districts may not need them.

Regional conditioning of the proposed new and modified NWPs is necessary to ensure that these NWPs authorize only those activities that result in no more than minimal adverse effects on the aquatic environment, a requirement of Section 404(e) of the Clean Water Act. Regional conditions are necessary because the national terms and conditions of the NWPs are established to authorize most activities that result in no more than minimal adverse effects on the aquatic environment, individually or cumulatively. For particular regions of the country or specific waterbodies where additional safeguards are necessary to ensure that the NWPs satisfy the statutory requirements for general permits, regional conditions are the appropriate mechanism. Case-specific discretionary authority or special conditions cannot act as surrogates for regional conditions in many cases, especially for those NWP activities that do not require notification to the District Engineer. For example, regional conditions can restrict the use of NWPs in high value waters for those activities that do not require submission of a PCN. Although the proposed NWPs are activity-specific, regional conditions are necessary to protect high value waters to ensure that the NWPs do not authorize activities that result in more than minimal adverse effects on the aquatic environment. We believe that all districts have high value waters that should be subject to regional conditioning.

A substantial number of commenters asserted that regional conditioning of the NWPs greatly reduces the flexibility of the NWPs, making them more complicated, less useful, and too restrictive. Many of these commenters stated that regional conditioning of the NWPs undermines the intent of Section 404(e) of the Clean Water Act, by making the NWPs more like individual permits. They also said that regional conditions would unnecessarily and substantially increase burdens on the regulated public. A number of

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commenters stated that regional conditioning of the NWPs offsets any benefits in regulatory streamlining the NWPs are intended to provide. Several commenters stated that regional conditioning of the NWPs will increase the Corps workload, because there will be more projects that cannot qualify for NWP authorization.

Although regional conditions may increase the complexity of the NWPs and reduce their applicability, it is important to remember that NWPs are optional permits, and if the project proponent does not want to comply with all of the terms and conditions of an NWP, including regional conditions, then he or she can apply for authorization through the individual permit process. Regional conditioning of the NWPs is likely to increase the Corps workload, but we believe that such increases are manageable. Division engineers will review the regional conditions proposed by Corps districts and ensure that any regional conditions that are adopted will ensure that the Corps workload will be prioritized to increase protection of the aquatic environment.

A number of commenters objected to the regional conditioning process and wanted to reserve their comments on the proposed new and modified NWPs until they have had the opportunity to review the proposed regional conditions. Many commenters requested that the Corps provide the regulated community an opportunity to comment on the regional conditions after the new and modified NWPs are issued. Several commenters suggested that the Corps allow an additional 60 days to complete the regional conditions to allow full public participation and comment. Some commenters recommended that the Corps publish the regional conditions in the **Federal Register** and provide the public with an additional opportunity to comment on the regional conditions. A number of commenters stated that the process for developing regional conditions is vague and confusing and that clear guidance is needed to assist districts in developing regional conditions. One commenter stated that the national NWP terms and conditions should be established after regional conditioning is completed.

We agree that the public should have another opportunity to comment on the complete NWP package, including the NWPs, general conditions, definitions, and Corps regional conditions. The process for issuing the proposed new and modified NWPs and Corps regional conditions has been changed from the process announced in the October 14, 1998, **Federal Register** notice. Concurrent with today's **Federal Register** notice, each Corps district will issue a public notice announcing draft regional conditions for a 45-day comment period. Therefore, the public will have 45 days to provide comments on both the draft new and modified NWPs and the draft Corps regional conditions. We have provided Corps divisions and districts with guidance concerning the regional conditioning process to facilitate the development and implementation of regional conditions. We do not agree that the national terms and limits for the NWPs should be established after the Corps regional conditions are finalized because the terms and limits of the NWPs must be first established nationally, so that division engineers can issue Corps regional conditions that account for regional differences in aquatic resource functions and values and provide additional protection for the aquatic environment. Regional conditions make the NWPs more restrictive where necessary to ensure that those NWPs authorize only activities with minimal adverse effects on the aquatic environment.

Several commenters said that division and district engineers should be able to use regional conditioning to make the NWPs less restrictive, as well as more restrictive. Two commenters asserted that the Corps regulations at 33 CFR Part 330.1(d) specifically state that division and district engineers can condition or further restrict NWPs only when they have concerns for the aquatic environment under the Section 404(b)(1) Guidelines or for any other factor of the public interest. Another commenter recommended that the Corps institute a procedure whereby a permit applicant could request Corps headquarters review of a specific regional condition for consistency with general Corps regulatory policy. This commenter expressed concern that the regional conditioning process would create arbitrary inconsistencies in the implementation of the Corps regulatory program between Corps districts. Two commenters stated that Corps regional conditions for the NWPs should not duplicate the states' authority under Sections 401 and 402 of the Clean Water Act. Another commenter expressed concern that the regional conditions would not completely protect waters that need special protection and recommended that the Corps conduct advanced identification of those high value areas. One commenter opposed the principle that regional conditions can restrict the use of NWPs in areas covered by Special Area Management Plans (SAMPs).

Division and district engineers cannot use regional conditioning to make the NWPs less restrictive. Only the Chief of Engineers can modify an NWP to make it less restrictive, if it is in the national public interest to do so. Such a modification must go through a public notice and comment process. However, if a Corps district believes that regional general permits are necessary for activities not authorized by NWPs, then that district can develop and implement regional general permits to authorize those activities, as long as those regional general permits comply with Section 404(e) of the Clean Water Act. We do not believe that it is necessary to establish a procedure for headquarters review of regional conditions. Division engineers will review proposed regional conditions and approve only those regional conditions that are necessary to ensure that the NWPs authorize only activities with minimal adverse effects on the aquatic environment. We have provided division and district offices with guidance addressing regional conditioning of NWPs. In general, Corps regional conditions should not duplicate State Clean Water Act Section 401 or 402 authorities, but regional conditions can address concerns for the aquatic environment that may also be related to water quality or non-point sources of pollution. The public notice process for regional conditions, especially the process used for the new and modified NWPs, can help the Corps identify specific waterbodies that should be subject to regional conditions. The public had the opportunity, through district public notices, to recommend specific high value waterbodies that should receive additional protection. In some cases, it is appropriate to restrict or prohibit the use of NWPs in areas subject to SAMPs. In areas where SAMPs are conducted, general permits are often developed and issued to provide Section 404 and Section 10 authorization for activities within the area covered by the SAMP. Restricting or prohibiting the use of NWPs within the SAMP area is often necessary to ensure that the SAMP is properly implemented.

Numerous commenters suggested that regional conditions must be consistent between Corps districts within the same state. Another commenter recommended that regional conditions should be consistent between all Corps districts. One commenter observed that regional conditions being developed by districts in initial public notices for the new and modified NWPs are highly variable and emphasized the need for stronger national terms and conditions. This commenter believes that inconsistencies between Corps districts with regard to regional conditions will be severe and unacceptable. One commenter requested that for companies operating throughout the country, regional conditions must be consistent between districts.

There may be certain regions within a particular state, such as specific high value waterbodies, that warrant regional conditions that are not necessary in other areas of that state. Consistency in regional conditions across the country is contrary to the purpose of the regional conditioning process, which is to consider local differences in aquatic resource functions and values to ensure that the NWPs do not authorize activities with more than minimal adverse effects on the aquatic environment. Companies that work in more than one district will have to comply with the regional conditions established in each district.

The draft regional conditions are currently available for public review on the Internet at the following home pages:

North Atlantic Division

Baltimore District: http://www.nab.usace.army.mil/permits/regionalconditions.htm
New England District: http://www.nae.usace.army.mil/environm/regl.htm
New York District: http://www.nan.usace.army.mil/business/buslinks/regulat/index.htm#PNotices
Norfolk District: http://www.nao.usace.army.mil/Regulatory/PN/PN.html
Philadelphia District: http://www.nap.usace.army.mil/cenap-op/regulatory/regulatory.htm

South Atlantic Division

Charleston District: http://www.sac.usace.army.mil/permits
Jacksonville District: http://www.saj.usace.army.mil/permit/index.html
Mobile District: http://www.sam.usace.army.mil/sam/op/reg/almscat.htm
Savannah District: http://www.sas.usace.army.mil/regcond.htm
Wilmington District: http://www.saw.usace.army.mil/wetlands/regtour.htm

Great Lakes and Ohio River Division

Buffalo District: http://www.lrb.usace.army.mil/orgs/offices/form.htm
Chicago District: http://www.usace.army.mil/lrc/co-r/index.htm
Detroit District: http://huron.lre.usace.army.mil/regu/dtwhome.html
Huntington District: http://www.lrh-opr-nt.orh.usace.army.mil/permits/Nationwide/nation.html
Louisville District: http://www.lrl.usace.army.mil/orf/nw/nw.html
Nashville District: http://www.orn.usace.army.mil/cof/notices.htm
Pittsburgh District: http://www.LRP.usace.army.mil/OR-F/permits.html

Mississippi Valley Division

Memphis District: http://www.mvm.usace.army.mil/regulatory/public-notices/public_notices.htm
New Orleans District: http://www.mvn.usace.army.mil/ops/regulatory/ Rock Island District: http://www.mvr.usace.army.mil/regulatory/nationwidepermits.htm
St. Louis District: http://www.mvs.usace.army.mil/permits/pn.htm
St. Paul District: http://www.mvp.usace.army.mil/regulatory/regulatory.html
Vicksburg District: http://www.mvk.usace.army.mil/odf/regs/nwpconditions.htm

Southwestern Division

Fort Worth District: http://155.84.60.1/current/current.htm
Galveston District: http://www.swg.usace.army.mil/news.htm
Little Rock District: http://www.swl.usace.army.mil/regulatory/ceal.html
Tulsa District: http://www.swt.usace.army.mil/whatishot/whatishot.htm

Northwestern Division

Kansas City District: http://www.nwk.usace.army.mil/conops/regulatory.htm
Omaha District: http://www.nwo.usace.army.mil/html/op-r/webpg.htm
Portland District: http://www.nwp.usace.army.mil/op/g/regulatory.htm
Seattle District: http://www.nws.usace.army.mil/reg/reg.htm
Walla Walla District: http://www.nww.usace.army.mil/html/offices/op/rf/cond2.htm

South Pacific Division

Albuquerque District: http://www.spa.usace.army.mil/reg/localnot.htm
Los Angeles District: http://www.spl.usace.army.mil/co/co5.html#reg
Sacramento District: http://www.spk.usace.army.mil/cespk-co/regulatory/
San Francisco District: http://www.spn.usace.army.mil/regulatory/

Pacific Ocean Division

Alaska District: http://www.usace.army.mil/alaska/co/conops1.htm
Honolulu District: http://www.pod.usace.army.mil/news/newsrel.html

Please note that the regional conditions posted on these Internet home pages are the current draft Corps regional conditions, and that there are likely to be changes to the Corps regional conditions based on the comments received in response to district public notices.

Compliance With Section 404(e) of the Clean Water Act

A large number of commenters stated that the proposed NWPs are in violation of Section 404(e) of the Clean Water Act because they believe that the proposed NWPs do not authorize activities that are similar in nature. Section 404(e) stipulates two statutory criteria for general permits, including the NWPs: (1) the activities authorized by a general permit must be similar in nature, and (2) those activities must result in minimal adverse environmental effects, individually or cumulatively. Many of these commenters asserted that the proposed NWPs 39, 42, and 44, as well as additional activities authorized by the proposed modifications of NWPs 12 and 40, violate the provisions of Section 404(e) because they lack precise descriptions of authorized activities and the descriptions for these NWPs included in the July 1, 1998, **Federal Register** notice were too broad to be similar in nature and environmental impact. Many commenters stated that the proposed new and modified NWPs authorize activities with more than minimal adverse effects on the aquatic environment. Some commenters stated that the Corps has not adequately assessed the individual and cumulative adverse environmental effects of the new and modified NWPs in accordance with 33 CFR Part 320 and 40 CFR Part 230.

When considering whether or not an NWP complies with the "similar in nature" criterion of Section 404(e), it is important not to constrain this criterion to a level that makes the NWP program too complex to implement or makes a particular NWP useless because it

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would authorize only a small proportion of activities that result in minimal adverse effects on the aquatic environment. Developing NWPs with extremely precise and restrictive language to satisfy the environmental community's definition of the term "similar in nature" would result in a large number of NWPs that would make the NWP program excessively complex and burdensome, without any added protection to the aquatic environment. It appears that most critics of the NWPs believe that activities authorized by an NWP must be identical to each other to satisfy Section 404(e). We believe that the term "similar in nature" is intended to have a more practical definition. The word "similar" does not have the same meaning as the word "identical." We believe that the proposed new and modified NWPs, which are activity-specific, authorize only activities that are similar in nature in the broader, and the more practical, definition of the word "similar." We agree that proposed NWP A may not have satisfied the "similar in nature" requirement of Section 404(e) because of the wide range of authorized activities listed in the text of the proposed NWP. Therefore, we have proposed to modify the description of activities authorized by this NWP (designated as NWP 39) to limit the NWP to the construction of building pads or foundations and attendant features necessary for the operation and use of the building constructed on the pad or foundation. We believe that NWP 39 authorizes only activities that are similar in nature (i.e., the construction of buildings and features necessary for their operation and use) and have minimal adverse effects on the aquatic environment. We believe that each of the other new and modified NWPs proposed in this **Federal Register** notice authorize only activities that are similar in nature.

During the development of these NWPs, the Corps has complied with all applicable laws and regulations, especially 33 CFR Parts 320 through 330 and 40 CFR Part 230. For those new and modified NWPs that are issued, the Corps will prepare Environmental Assessments, Statements of Finding, and, where applicable, Section 404(b)(1) Compliance reviews. These documents will address how these NWPs comply with the public interest review criteria in 33 CFR part 320 and the Section 404(b)(1) impact analysis criteria in 40 CFR part 230. To further ensure that the NWPs authorize only activities with minimal adverse effects on the aquatic environment, the NWP general conditions address specific concerns relating to the NWP program, such as compliance with the Endangered Species Act and the National Historic Preservation Act. Most NWPs require a Section 401 water quality certification to ensure that the authorized activities meet State or Tribal water quality standards. In coastal areas, most NWPs require a coastal zone consistency determination to comply with Section 307 of the Coastal Zone Management Act. Activities that require a permit pursuant to Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 are not authorized by NWPs.

In accordance with Section 404(e) of the Clean Water Act, the NWPs cannot authorize activities that result in more than minimal adverse effects on the aquatic environment, individually or cumulatively. For those activities that may result in more than minimal adverse effects on the aquatic environment, division or district engineers will assert discretionary authority (see 33 CFR 330.4(e) and 33 CFR 330.5(c) and (d)), and notify the applicant that the proposed activity is not authorized by NWP. Therefore, the NWPs comply with 40 CFR 230.1(c) and 230.7(a)(3). The factual determination requirements of 40 CFR 230.11 will also be addressed in the decision document for each NWP. These decision documents will include estimates of the discharges anticipated to be authorized by the NWP that are required pursuant to 40 CFR 230.7(b)(3).

General Condition 19 of the NWPs satisfies the requirements of 40 CFR 230.10(d). This general condition requires that permittees avoid and minimize adverse effects on the aquatic environment on-site to the maximum extent practicable. If the adverse effects of the proposed work on the aquatic environment are more than minimal, then the District Engineer will exercise discretionary authority and the project cannot be authorized by NWP, unless it is modified to reduce the adverse effects and comply with all of the requirements of the NWP.

One commenter stated that the Corps increased emphasis on regional conditioning of the NWPs is an acknowledgment that activities authorized by NWP have the potential of resulting in more than minimal adverse effects on the aquatic environment. This commenter objected to the Finding of No Significant Impact (FONSI) issued on June 23, 1998, stating that the FONSI is based on regional conditions which have not yet been proposed. Several commenters objected to the position that the adverse effects on the aquatic environment authorized by the NWPs will be minimal because they authorize only relatively small losses of waters of the United States and in many cases require compensatory mitigation for those losses. These commenters state that small wetlands often have significant values (e.g., prairie potholes provide waterfowl habitat) and that compensatory mitigation is often ineffective in replacing those values. They also stated that there is insufficient qualitative or quantitative analysis concerning environmental consequences of the new and modified NWPs.

The NWPs authorize activities that, under most circumstances, result in minimal adverse effects on the aquatic environment. The Corps has always acknowledged that some activities that could potentially be authorized by NWPs may have more than minimal adverse effects on the aquatic environment. The notification requirements for NWPs allow district engineers the opportunity to review proposed activities that have the potential for exceeding the minimal adverse effect threshold. The provisions in the NWP regulations, specifically 33 CFR 330.4(e) and 33 CFR 330.5(c) and (d), allow district and division engineers to exercise discretionary authority when specific activities result in more than minimal adverse effects on the aquatic environment and require an individual permit for those activities. Discretionary authority also allows division and district engineers to place conditions on NWPs to ensure that the NWPs authorize only those activities that have minimal adverse effects on the aquatic environment. Division engineers can also place regional conditions on the NWPs. In specific high value waterbodies or wetland types, regional conditions can restrict the use of NWPs in those waters by lowering acreage limits or notification thresholds. Regional conditions can also prohibit the use of NWPs in high value waters. District engineers can place case-specific special conditions on NWP authorizations. The FONSI issued on June 23, 1998, merely reiterates the fact that the regional conditioning process helps ensure that the NWPs authorize only those activities that result in minimal adverse effects on the aquatic environment.

We recognize that there has been, and continues to be, substantial interest among the public regarding the potential environmental effects associated with the implementation of the NWP program. With the last reissuance of the NWPs in December 1996, we reemphasized our commitment to improve data collection and monitoring efforts associated with the NWP program, and NWP 26 in particular. In many instances, these efforts have already provided critical information on the use of the NWPs, overall acreage impacts, affected resource types, the geographic location of the activities, and the type of mitigation provided. This information is critical in our efforts to make well-informed permitting and policy decisions regarding the continued role of the NWP program and to ensure that the program continues to authorize only those activities with minimal individual and cumulative effects.

Compliance With the National Environmental Policy Act

Many commenters believe that the proposed new and modified NWPs do not comply with the National Environmental Policy Act (NEPA). They disagree with the Corps determination that the NWPs do not constitute a major Federal action that significantly affects the quality of the human environment. These commenters assert that the new and modified NWPs will expand the direct, indirect, and cumulative adverse effects of the NWPs, because these NWPs are applicable in a broader geographic range of waters of the United States than NWP 26.

Many commenters addressed the preliminary environmental assessments (EAs) for the new and modified NWPs and the FONSI issued on June 23, 1998. Several commenters believe that the Corps is making a circular argument when it states that the NWPs do not constitute a major Federal action because, by definition, the NWPs authorize only activities with minimal individual or cumulative adverse effects on the aquatic environment. They believe this conclusion is based on the definition of a general permit, not on data from authorized impacts. They suggest that the Corps consider the loss of wetlands over an extended time period to evaluate the actual adverse effects on the aquatic environment in specific terms, not generalities. One commenter concurred with the Corps determination that the NWPs do not require an Environmental Impact Statement (EIS). One commenter stated that an EIS should be required prior to implementing the new and modified NWPs and the EIS must include an economic analysis of the economic effects of the NWPs. Another commenter said that to comply with NEPA, the Corps must evaluate both wetlands and upland impacts for activities authorized by NWPs.

NEPA requires Federal agencies to prepare an EIS only for major Federal actions that have a significant impact on the quality of the human environment. Even though we have committed to prepare a Programmatic Environmental Impact Statement (PEIS) for the NWP program, we continue to maintain our position that the NWP program does not constitute a major Federal action significantly affecting the human environment. Therefore, the preparation of an EIS is not required by NEPA. The NWPs authorize only those activities that have minimal adverse environmental effects on the aquatic environment, individually or cumulatively, which is a much lower threshold than the threshold for requiring an EIS. This is not a circular argument. To ensure that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment, individually or cumulatively, there are several safeguards in the NWP program: (1) PCN requirements to allow district engineers to review certain proposed NWP activities on a case-by-case basis; (2) compensatory mitigation requirements for most activities that require a PCN; (3) the ability to impose case-specific conditions on an NWP authorization to protect the aquatic environment; (4) the ability to impose regional conditions on an NWP to protect high value waters; (5) the requirement for water quality certification for activities involving a discharge of dredged or fill material into waters of the United States; (6) the requirement for Coastal Zone Management Act consistency determination in coastal areas; and (7) provisions for discretionary authority to require an individual permit review if the proposed impacts are more than minimal.

The FONSI was issued on June 23, 1998. Copies of the FONSI are available at the office of the Chief of Engineers, at each District office, and on the Corps regulatory home page at http://www.usace.army.mil/inet/functions/cw/cecwo/reg/. The EAs for each of the new and modified NWPs will be available on the Corps regulatory home page when the issuance of these NWPs is announced in a future **Federal Register** notice. When regional conditions are added to an NWP, a supplemental decision document containing local analyses will be issued by the Division Engineer. The supplemental decision documents for a district's regional conditions will be available at that district.

For the Corps regulatory program, including the NWP program, the procedures for complying with NEPA are contained in 33 CFR Part 325, Appendix B. The scope of analysis for NEPA compliance is thoroughly discussed in Appendix B, including the factors to be considered when determining the extent of Federal control and responsibility for a particular project. In most cases, upland impacts are not part of Federal control and responsibility, and should not be included in a general analysis of NEPA compliance for the NWP program.

Many commenters stated that, while they support the Corps intent to prepare a PEIS for the NWP program, the PEIS should be completed prior to the issuance of the new and modified NWPs. Several commenters remarked that the PEIS should have been completed prior to this reissuance of the NWPs in 1996. Some commenters stated that the PEIS should include a comprehensive and accurate accounting of the cumulative impacts authorized by the NWPs in the past. One commenter recommended that the Corps allow full public participation in the preparation of the PEIS through regional meetings. This commenter also suggested that the PEIS address the following alternatives: no action, reduction in scope of authorized activities, reduction in acreage impact limits, and alternative programmatic approaches. One commenter agreed that a PEIS is not required and stated that while the Corps is not legally prevented from producing a PEIS, even if it is not required, the PEIS could have significant effects on the Corps workload and the Corps should not devote resources to the preparation of the PEIS at the expense of its other activities.

We have committed to demonstrating that the NWP program authorizes only those activities with minimal individual and cumulative environmental effects. Consistent with this commitment, the Corps will prepare, through the Institute for Water Resources, a PEIS for the entire NWP program. While a PEIS is not required for the same reasons that an EIS is not required, the PEIS will provide the Corps with a comprehensive mechanism to review the effects of the NWP program on the human environment. The PEIS will be conducted with the participation of other Federal agencies, States, Tribes, and the public. The Corps is scheduled to initiate the PEIS by mid-1999 and complete the PEIS by December 2000. Therefore, the PEIS should be completed prior to the next scheduled reissuance of the NWPs in December 2001. Since the PEIS is not required, we will not delay the issuance of the new and modified NWPs. The PEIS will fully comply with NEPA requirements, including alternatives analyses. There have been meetings to provide other

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Federal agencies, states, Tribes, and the public with opportunities to participate in the scoping of the PEIS. These scoping meetings were announced in a **Federal Register** notice published on March 22, 1999 (64 FR 13782).

Some commenters said that the preliminary EAs do not comply with NEPA because they do not adequately address alternatives that are necessary to support the final decision. They believe that failure to consider a "no action" alternative is inconsistent with NEPA and that an alternatives analysis in the EA cannot be replaced with a discussion of the case-specific flexibility provided by the NWP program. Another commenter stated that if the EAs are properly prepared, they would not support the FONSI determination.

In compliance with NEPA, environmental documentation will be prepared for each new and modified NWP. Each document will include an EA, a FONSI, and, where relevant, a preliminary Section 404(b)(1) Guidelines compliance review. Each EA will contain an alternatives analysis for the NWP, including a discussion of the "no action" alternative. The alternatives analysis will also consider national modification alternatives, regional modification alternatives, and case-specific on-site alternatives for the NWP. After the issuance of the new and modified NWPs, copies of these documents will be available for inspection at the office of the Chief of Engineers, at each Corps district office, and at the Corps regulatory home page at the Internet address cited at the beginning of this **Federal Register** notice.

Several commenters stated that the preliminary EAs for the proposed new and modified NWPs are inadequate because they fail to provide an ecological rationale for the proposed acreage limits. These commenters believe that the assessment of individual and cumulative adverse effects relies entirely on conditions that address secondary impacts, future regional conditions, and the discretion of the District Engineer in the PCN process. Another commenter recommended that the Corps revise the EAs once the regional conditions are developed and suggested that the Corps place the revised EAs, with the regional conditions, on public notice in the **Federal Register** to provide an opportunity for public comment.

Where appropriate, each EA will generally consider different acreage limits for each NWP. Acreage limits for each NWP are established to allow the NWPs to authorize most activities that result in minimal adverse effects on the aquatic environment, individually or cumulatively. The minimal adverse effects determination is based on general consideration of the effects of the authorized activities on the physical, chemical, and biological characteristics of the aquatic environment, as well as human use characteristics. Division engineers can regionally condition an NWP to decrease the acreage limit established nationally for that NWP, if such a regional condition is necessary to ensure that the NWP authorizes only activities with minimal adverse effects on the aquatic environment. When division engineers approve regional conditions for an NWP, they will issue a decision document that will supplement the national EA for that NWP. On a case-by-case basis, it is the responsibility of district engineers to assess and monitor the adverse effects on the aquatic environment that result from activities authorized by NWPs. District engineers review PCNs to assess the foreseeable adverse effects caused by the authorized work. The final EAs for the new and modified NWPs will not be subject to public comment, since they are final decision documents.

Scope of the New Nationwide Permits

In the July 1, 1998, **Federal Register** notice, we requested comments on the scope of applicable waters for the new and modified NWPs. In that **Federal Register** notice, we listed five categories of applicable waters for the proposed NWPs. The categories of waters included: (1) all waters of the United States; (2) non-tidal waters; (3) non-tidal waters, excluding non-tidal wetlands contiguous to tidal waters; (4) non-Section 10 waters; and (5) non-Section 10 waters, excluding wetlands contiguous to Section 10 waters.

Most of the commenters objected to the proposed NWPs because they authorize activities in most non-tidal waters of the United States, including non-tidal wetlands adjacent, but not contiguous, to tidal waters. On the other hand, some commenters supported the proposed NWPs because the distinction between non-tidal waters and headwaters and isolated waters was dropped from the NWP program. NWP 26 authorizes activities only in isolated waters and headwaters. A number of commenters expressed concern that the increased scope of applicable waters for the new NWPs provides less protection to the aquatic environment because many of the waters subject to the new NWPs are important for a variety of fish and wildlife and provide important functions and values such as flood control and improvement of water quality. One of these commenters stated that the increased scope of waters would harm the ecological integrity of watersheds. One commenter remarked that the scope of waters for the new NWPs implies that non-tidal waters are less important than tidal waters.

To increase protection of the aquatic environment, we have modified the applicable waters for the some of the proposed new and modified NWPs (i.e., NWPs 39, 40, 41, 42, and 43) to prohibit the use of these NWPs in non-tidal wetlands adjacent to tidal waters. With the proposed NWPs, the Corps is increasing protection of open and flowing waters, and not focusing only on wetlands, especially low-value wetlands. This approach will enhance protection of the aquatic environment. The proposed NWPs were developed and conditioned to better control and limit adverse effects on the aquatic environment. We are proposing to modify two NWP general conditions to provide greater protection for water quality and maintenance of water flows (General Conditions 9 and 21, respectively). We are also proposing three new NWP general conditions to protect the aquatic environment (General Conditions 25, 26, and 27) by restricting the use of NWPs in designated critical resource waters, impaired waters, and waters of the United States within 100-year floodplains. The proposed general conditions are discussed elsewhere in this **Federal Register** notice. In addition, Corps districts and divisions will regionally condition these NWPs to ensure that they authorize only activities with minimal adverse effects on the aquatic environment.

NWPs 39, 41, 42, and 43 do not authorize activities in non-tidal wetlands adjacent to tidal waters. High value isolated waters identified by districts will be protected through the regional conditioning of the NWPs. Case-specific special conditions and discretionary authority will also be used to protect high value waters when district engineers review PCNs.

Many commenters stated that the five categories of waters of the United States applicable to the new NWPs make the NWP program too complex. One commenter remarked that identifying these waters would not result in a workload savings to the Corps because it will require additional field review. One commenter recommended that the Corps reduce the number of applicable waters from five to three, specifically "all waters," "Section 10 waters," and "non-tidal waters." Another commenter believes that these categories are arbitrary and requested that the Corps provide justification for these categories of waters. A few commenters asked why "adjacent waters," as used in the context of NWP 26, was dropped from the NWP program. One commenter suggested that NWPs 39, 41, 42, 43, and 44 should be modified to authorize activities only in isolated waters and headwaters.

We recognize that the five categories of waters discussed in the July 1, 1998, **Federal Register** notice can be considered by some members of the regulated public as unnecessarily complex, so we have simplified the applicable waters for the new NWPs. Most of the new NWPs authorize discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters. The applicable waters for each proposed new and modified NWP are discussed in detail in the preamble discussions of those NWPs.

One commenter objected to the focus on contiguous waters and stated that subsurface connections between waters of the United States are as important as surface connections. Two commenters requested that the Corps specify that for non-contiguous, isolated waters, an interstate or foreign commerce connection must be established for these areas to be considered waters of the United States. One commenter objected to portions of the July 1, 1998, **Federal Register** notice that stated that district engineers can exercise discretionary authority when areas with "significant social or ecological functions and values" may be adversely affected by the work, because the commenter believes that the Clean Water Act does not provide regulatory authority for areas with significant social values. Another commenter objected to the use of the term "ecological functions," stating that it is not a term used to define the scope of authority.

We recognize that subsurface connections between waters of the United States are important, but the Section 404 program focuses on surface waters. It is not necessary for the Corps to specify that isolated waters require an interstate or foreign commerce connection for these waters to be considered waters of the United States, because that requirement can be found in 33 CFR Part 328. Discretionary authority can be exercised by division and district engineers where there are sufficient concerns for the aquatic environment under the Section 404(b)(1) guidelines or any other factor of the public interest. Public interest factors include consideration of waters with "significant social or ecological functions and values."

A couple of commenters stated that the classification of perennial, intermittent, and ephemeral streams will establish a ranking system, implying that perennial streams are more valuable than ephemeral streams. These commenters believe that the majority of streams in the northwestern, northeastern, and southern United States will receive more protection than those in the western and southwestern United States.

We are classifying streams as perennial, intermittent, and ephemeral for the purposes of the NWPs to evaluate or restrict adverse effects to flowing waters more effectively. For example, in NWP 43 we are proposing to prohibit the construction of new stormwater management facilities in perennial streams. Damming perennial streams to construct stormwater management ponds often has more than minimal adverse effects on the aquatic environment, particularly for aquatic organisms such as fish and invertebrates. Dams in perennial streams may block fish passage to spawning areas and disrupt food webs in streams, reducing the productivity of streams. In many areas, it is more effective to construct stormwater management ponds in ephemeral and low-value intermittent streams, because these facilities, if properly designed, constructed, and maintained, will substantially reduce adverse effects of nearby development on local water quality and water flows. In areas where ephemeral streams are valuable aquatic resources, division and district engineers can regionally condition the NWPs to restrict their use in ephemeral streams or require PCNs for activities in ephemeral streams.

Indexing of the Nationwide Permits To Determine Acreage Limits

In the July 1, 1998, **Federal Register** notice, we requested comments on the use of indexing to determine acreage limits for NWPs 39 and 40, as well as the proposed NWP B for master planned developments. Most of the commenters who addressed the use of indexing to determine acreage limits for certain NWPs were opposed to the indexing schemes proposed in the July 1, 1998, **Federal Register** notice. A majority of commenters stated that the proposed indexes were too confusing, not scientifically based, burdensome on the regulated public, and would result in a significant workload increase for the Corps. These commenters believe that indexing acreage limits makes the NWPs less efficient and increases the amount of time spent reviewing activities that have minimal adverse effects on the aquatic environment. Most of these commenters requested that the Corps continue to use simple acreage limits for the NWPs. Some commenters recommended basing the indexed acreage limit on a percentage of parcel size, whereas other commenters suggested basing the indexed acreage limit on a percentage of the total wetland acreage within the parcel, not the total size of the parcel.

Some commenters believe the proposed indexes for these NWPs were too restrictive and that both the maximum acreage loss and PCN thresholds under the NWP should be higher. Other commenters said that the proposed indexes and PCN thresholds would authorize activities with more than minimal adverse effects on the aquatic environment and recommended reducing the acreage limits and PCN thresholds. Several commenters believe that using indexing to determine acreage limits will allow NWPs to authorize activities that result in more than minimal cumulative adverse effects by not addressing avoidance and minimization. A number of commenters were confused as to how the proposed indexes would be interpreted or utilized, particularly where there was overlap between parcel size ranges and acreage limits. For example, the proposed acreage limit index for NWP A had an acreage limit of ½ acre for parcel sizes of 5 to 10 acres and an acreage limit of 1 acre for parcel sizes of 10 to 15 acres. These commenters were uncertain as to whether the acreage limit for a project constructed on a 10-acre parcel would be ½ acre or 1 acre.

We believe that indexing acreage limits based on project size or project area is necessary for certain NWPs (*i.e.*, NWPs 39 and 40) to ensure that those NWPs authorize only activities that have minimal adverse effects on the aquatic environment. Instead of using the indexing schemes proposed in the July 1, 1998, **Federal Register** notice, we are proposing indexes based on simple algebraic formulas, using a percentage of project area or farm tract size. The proposed indexed acreage limit for NWP 39 has a minimum acreage limit of ¼ acre for a single and complete project, with the indexed acreage limit increasing by 2% of the project area to a maximum acreage limit of 3 acres. For NWP 40 activities in playas, prairie potholes, and vernal pools, we are proposing a similar indexing formula, with a base acreage limit of $^{1}/_{10}$ acre and a different percentage of farm tract size (*i.e.*, 1% of farm tract size). For NWP 40 activities in other types of non-tidal

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wetlands to increase agricultural production, we are proposing a simple acreage limit of 2 acres, since the average farm tract size in the United States is 275 acres, which means that most agricultural producers would qualify for the maximum acreage limit even if an indexed acreage limit would be used.

The algebraic indexing scheme will be easier to use and less confusing than the indexes proposed in July 1, 1998, **Federal Register** notice. Indexing based on the percentage of project size will avoid the confusion resulting from overlap of parcel size ranges. For example, in the indexing scheme proposed for NWP A in the July 1, 1998, **Federal Register** notice (see 63 FR 36067), a 15-acre parcel would be subject to either a 1 or 2 acre limit. The algebraic index avoids this overlap in acreage limits. We believe that the indexes used for NWPs 39 and 40 will allow the authorization of most activities that result in minimal adverse effects on the aquatic environment, individually or cumulatively. Division engineers can regionally condition NWP 39 to make the indexed acreage limit more restrictive, either by reducing the minimum acreage limit, percentage of project area or farm tract size, or maximum acreage limit. For example, NWP 39 can be regionally conditioned to reduce the minimum acreage limit from ¼ acre to ⅒ acre or the percentage of project area from 2% to 1%. However, paragraph (a) of NWP 40 cannot be regionally conditioned by division engineers, to ensure consistent implementation of this part of NWP 40 in cooperation with NRCS throughout the country. An activity that exceeds the indexed acreage limit will require authorization by another NWP, a regional general permit, or an individual permit. The use of an indexed acreage limit does not preclude project proponents from complying with General Condition 19, which requires on-site avoidance and minimization of activities in waters of the United States to the maximum extent practicable. If the District Engineer determines that the proposed work will result in more than minimal adverse effects on the aquatic environment, then discretionary authority will be exercised and the applicant will be notified that another form of Corps authorization, such as an individual permit or regional general permit, is required.

Another source of confusion for NWP applicants cited by commenters was the application of PCN thresholds with an indexed acreage limit. For example, the proposed index for NWP 39 had an acreage limit of ¼ acre for activities on parcels less than five acres in size. The proposed PCN threshold for this NWP was ⅓ acre. Some commenters thought that this implied that losses of greater than ¼ acre of waters of the United States would require notification to the Corps, but this requirement was not specifically stated in the NWP.

For NWP 39, the PCN threshold has been changed to ¼ acre. Since this threshold is the same as the minimum acreage limit of ¼ acre in the indexed acreage limit, the PCN requirements for these NWPs should not be confusing. District engineers will not receive PCNs for agricultural activities authorized only by paragraph (a) of NWP 40. Instead, they will receive postconstruction reports from landowners that describe the authorized work.

Workload Implications of the New NWPs

A number of commenters stated that the complexity of the proposed NWPs will increase the Corps workload for the NWP program. Some of these commenters said that the current staffing level of the Corps is inadequate to implement the proposed new and modified NWPs. One commenter stated that utilization of the NWPs as a tool to prioritize workload is an abdication of the Corps responsibility. This commenter said that the Corps regulatory program can be made more efficient through other means, such as improved technology, the use of private delineators, permit fees, and increased coordination.

For many years, general permits, including NWPs, have been used by the Corps to manage its workload by authorizing activities with minimal adverse effects on the aquatic environment that would otherwise be subject to the more resource-intensive individual permit process. The Corps does not have the resources to review each activity that requires a Section 404 and/or Section 10 permit through the individual permit process. Requiring individual permits for all these activities would also create unnecessary burdens on the regulated public. Most activities authorized by the Corps regulatory program are authorized by general permits. General permits, including NWPs, authorize activities that would usually be authorized through the individual permit process with little or no change in the scope of work. It is inefficient to require an individual permit for activities that have minimal adverse effects on the aquatic environment that the Corps could authorize more effectively through the general permit process. General permits also benefit the aquatic environment because they provide incentives for landowners and developers to design their projects to reduce adverse effects on the aquatic environment to qualify for the expedited permit process provided by general permits.

The scope of applicable waters for the proposed NWPs and the proposed new NWP general conditions, especially General Condition 27, will cause substantial increases in the Corps workload by requiring individual permits for many activities in designated critical resource waters, impaired waters, and waters of the United States within the 100-year floodplain. The proposed prohibition against using NWPs to authorize certain activities resulting in permanent, above-grade fills in waters of the United States within the 100-year floodplain is expected to result in two to three thousand more individual permits per year added to the Corps workload.

The increase in the Corps workload caused by the proposed NWP general and regional conditions will require that most Corps districts reprioritize their activities. Corps districts will focus their efforts on those actions that provide the most value added to the environment and the public. Inevitably, the substantial increase in workload will result in an increase in permit evaluation time for most permit reviews. At this point, we cannot quantify these impacts.

Preconstruction Notification

A few commenters recommended that the Corps extend the review period for preconstruction notifications (PCNs) from 30 days to 45 or 60 days, due to the increased complexity of the new and modified NWPs. One commenter expressed support for the 30-day review period for PCNs. Several commenters believe that the PCN thresholds and information requirements are confusing and that the PCN thresholds should be lower for all activities, such as ¼ acre of waters or 100 linear feet of stream bed.

We recognize that the proposed NWPs are more complex than NWP 26 and that a longer PCN period is necessary to effectively review notifications. We are proposing to modify the preconstruction notification process for the NWPs to provide more time for district engineers to review PCNs. District engineers will have 30 days from the date of receipt of a PCN to determine if it is complete. If the PCN is not complete, the District Engineer can make only one request for additional information from the applicant. This request must be made during the initial 30-day period. District engineers cannot make additional requests for more information to evaluate the PCN. If the applicant has not provided all of the requested information to the District Engineer, then the PCN is not considered complete and the PCN review process will not start until the applicant has provided all of the requested information to the District Engineer. Upon receipt of a complete PCN, the District Engineer has 45 days to determine if the proposed work qualifies for NWP authorization, with or without special conditions, or exercise discretionary authority to require an individual permit. If the District Engineer does not notify the applicant of the outcome of the PCN review prior to the end of the 45-day period, then the proposed work is authorized by NWP and the permittee can begin work provided all of the requisite State and local authorizations, such as WQC, have been obtained. We are proposing to modify General Condition 13 in accordance with the proposed changes to the notification process discussed above.

The Corps has limited the amount of information required to be submitted with a PCN to the minimum necessary to effectively evaluate the potential adverse effects of the proposed work on the aquatic environment and determine if the project complies with the terms and conditions of the NWPs. By providing the required information when the PCN is first submitted to the Corps, the applicant will minimize delays in processing. The Corps has also changed the PCN threshold for many of the proposed NWPs from ⅓ acre to ¼ acre to provide more consistency. The proposed PCN thresholds for stream bed impacts are similar to the PCN thresholds proposed in the July 1, 1998, **Federal Register** notice.

Two commenters recommended that PCNs should be required for all activities authorized by the new NWPs. These commenters stated that 15 days is an inadequate length of time for agency technical review of site conditions, mitigation plans, and monitoring plans for activities authorized by these NWPs. These commenters also believe that the lack of agency coordination for PCNs violates the Endangered Species Act (ESA), National Environmental Policy Act (NEPA), and the Fish and Wildlife Coordination Act (FWCA). Another commenter stated that the PCN process is illegal.

Requiring PCNs for all activities authorized by NWPs is unnecessary and would substantially reduce the effectiveness of the NWPs. PCN thresholds are established so that only activities that could potentially result in more than minimal adverse effects on the aquatic environment require notification to the Corps. In addition, the Corps does not have the resources to review PCNs for every activity authorized by NWPs. We are proposing to modify General Condition 13 to provide more time for Federal and State resource agencies to review PCNs. These agencies will have 10 calendar days to notify the District Engineer that they intend to provide substantive, site-specific comments. If these agencies provide such notification, the District Engineer will wait an additional 15 calendar days before making a decision on the PCN. Twenty-five days is an adequate period of time for the Federal and State resource agencies to review PCNs. The intent of agency coordination is to obtain site-specific, substantive comments from these agencies within their area of expertise. Detailed mitigation and monitoring plans are not required for the PCN. The applicant need only propose compensatory mitigation that will offset losses of waters of the United States. The Federal and State resource agencies can comment on the appropriateness of the proposed compensatory mitigation. The District Engineer will determine if the proposed compensatory mitigation is appropriate and incorporate the requirements for compensatory mitigation, including detailed plans and monitoring requirements, into the NWP authorization as special conditions.

The PCN process does not violate ESA, NEPA, or FWCA. General Condition 11 ensures that activities authorized by NWPs comply with ESA. There is no provision in NEPA requiring the Corps to coordinate activities authorized by general permits with other Federal, State, or local agencies. The NWP issuance process satisfies the coordination requirements of FWCA. The PCN process is not illegal; it is merely a mechanism to ensure that the NWPs do not authorize activities with more than minimal adverse effects on the aquatic environment, individually or cumulatively.

Two commenters suggested that the avoidance and minimization statement required for NWPs 39 and 43 should be required for all NWP activities that require a PCN. Another commenter recommended that the minimization and avoidance statement should be limited to one page.

We disagree that the avoidance and minimization statement is necessary for all NWP activities that require a PCN. General condition 19 requires that permittees avoid and minimize impacts to waters of the United States on-site to the maximum extent practicable. In addition, many activities authorized by NWP must occur in a certain location. For example, repair and maintenance activities authorized by NWP 3 must be in the same location as the existing structure or fill. Bank stabilization activities authorized by NWP 13 must occur at the location of the bank. The statement required for NWPs 39 and 43 is intended to encourage the applicant to consider ways to avoid and minimize impacts to waters of the United States during project planning. It also provides avoidance and minimization information to Corps personnel with the PCN, instead of requiring the District Engineer to ask the applicant if additional avoidance and minimization can be achieved. The avoidance and minimization statement will allow more expeditious review of the PCN.

One commenter stated that a delineation of special aquatic sites should be required for every activity that requires a PCN. Another commenter recommended establishing a notification process for projects that include development on floodplains, so that State and local floodplain management agencies can review the proposed work.

We disagree that a delineation of special aquatic sites is necessary for every activity requiring a PCN. General condition 13, paragraph (b)(4), lists the NWPs that require submission of a delineation of special aquatic sites with the PCN. It is not practical for the Corps to establish a notification process for projects that occur in floodplains. In many parts of the country, there are floodplains that are not waters of the United States. Development activities in floodplains that do not involve discharges of dredged or fill material into jurisdictional wetlands or other waters of the United States do not require a Section 404 permit, even though a Corps permit may be required to cross waters of the United States to provide access to the upland development. Many State and/or local governments currently have programs that address construction in floodplains. Issuance of an NWP authorization for an activity within a floodplain does not preclude the State or local floodplain management agency from denying its authorization. If the State or local regulatory agency does not authorize the proposed work, then the project proponent cannot do the work even though the Corps may have determined that it qualifies for authorization under the NWP program.

In response to the July 1, 1998, **Federal Register** notice, the National Park Service (NPS) requested that they

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receive full opportunity to comment on all proposed NWP activities that may impact NPS resources. NPS also requested that they be able to request elevation of specific projects to require review under the individual permit process. Although the Department of the Interior, through the U.S. Fish and Wildlife Service (FWS), has the opportunity to review PCNs that require agency coordination, NPS believes that the 5 day comment period does not provide enough time to allow FWS to consult with NPS.

We do not agree that it is necessary to consult with NPS on every NWP activity. If NPS has specific concerns, they should be addressed at the district level, either through coordination agreements between the District Engineer and the local NPS office or through the regional conditioning process. The proposed modification of the PCN process would allow district engineers to provide up to 25 calendar days for agency comment on a specific NWP activity that requires agency coordination. We believe that this is ample time for FWS to coordinate with NPS.

One commenter recommended that the Corps post PCNs on district Internet home pages to allow the public to provide comments and better track cumulative adverse effects. Another commenter requested that the Corps coordinate with the appropriate agency prior to issuing NWP authorizations in Tribal trust lands to determine if treaty reserved resources would be adversely affected by the work.

The purpose of the PCN process is to provide the Corps with an opportunity to determine if a proposed activity complies with the terms and conditions of the NWPs and results in minimal adverse effects on the aquatic environment, individually or cumulatively. Posting PCNs on the Internet would add no value to the Corps review of the PCN. Cumulative adverse effects on the aquatic environment will continue to be tracked by Corps districts. Corps districts can regionally condition the NWPs to require coordination for activities that may adversely affect treaty reserved resources in Tribal trust lands.

Compensatory Mitigation

A large number of commenters specifically addressed the compensatory mitigation requirements of the proposed new and modified NWPs. A few commenters stated that the proposed provisions discourage compensatory mitigation, because the requirements are too complex and burdensome. Other commenters assert that the compensatory mitigation requirements discussed in the July 1, 1998, **Federal Register** notice are not specific enough. Many commenters provided recommendations concerning the size and types of losses authorized by the NWPs for which compensatory mitigation is appropriate. These recommendations included requiring compensatory for: (1) All activities authorized NWPs, (2) activities that require submittal of a PCN, (3) losses of greater than ⅓ acre of waters of the United States, or (4) losses of greater than 1 acre of waters of the United States. One commenter suggested that compensatory mitigation should also be required for all impacts to non-wetland aquatic resources. Several commenters stated that the Corps should not require compensatory mitigation for wetlands losses because other State and local regulatory agencies already have such requirements.

We acknowledge that the discussions of compensatory mitigation requirements in the July 1, 1998, **Federal Register** notice contained some inconsistencies. Therefore, we will clarify these requirements in general terms, but permittees must recognize that specific compensatory mitigation requirements for particular projects are established by the District Engineer. Compensatory mitigation will normally be required for NWP activities that require submission of a PCN (e.g., losses of greater than ¼ acre of waters of the United States), and in all cases where compensatory mitigation is necessary to ensure that the authorized work results in minimal adverse effects on the aquatic environment. The District Engineer may determine that compensatory mitigation is not necessary for a particular project because the proposed work will result in only minimal adverse effects on the aquatic environment. Activities that do not require notification are presumed to result in minimal adverse effects and would not require compensatory mitigation to bring the adverse effects to the minimal level. District and division engineers can regionally condition an NWP to lower the notification threshold and determine, on case-by-case basis, if compensatory mitigation is necessary to ensure that the authorized work results in minimal adverse effects on the aquatic environment.

Although many State and local agencies may require compensatory mitigation for losses of wetlands, we can require compensatory mitigation for losses of other waters of the United States. If the compensatory mitigation requirements of a State or local agency for a particular project adequately address the Corps concerns or requirements, then that compensatory mitigation can be used to satisfy the Corps compensatory mitigation requirements. However, some State and local governments may not have adequate compensatory mitigation provisions to ensure that activities authorized by NWPs will result in minimal adverse effects on the aquatic environment. Therefore, the Corps can impose its own compensatory mitigation requirements.

Many commenters expressed opposition to the use of compensatory mitigation to offset losses of waters of the United States that result from activities authorized by NWPs. They believe that compensatory mitigation encourages off site, out-of-kind compensation for losses of waters of the United States. Another objection raised by these commenters is that some wetland types are not easily created. A number of commenters cited studies that evaluated compensatory mitigation projects and found them to be unsuccessful or only partially successful. One commenter stated that only restoration and creation should be used to calculate net gains in wetlands. One commenter recommended limiting preservation only to exceptional quality or unique wetlands.

Compensatory mitigation is often necessary to offset the loss of waters of the United States and ensure that an activity authorized by NWP will result in minimal adverse effects on the aquatic environment. The NWP regulations at 33 CFR Part 330.1(e)(3) allow permittees to provide compensatory mitigation to reduce the adverse effects of the proposed work to the minimal level. The functions and values provided by waters of the United States that are lost due to authorized activities can be replaced by carefully planned and constructed restoration, enhancement, and creation of aquatic habitats. Compensatory mitigation can also protect and enhance important aquatic resource functions and values through the establishment and maintenance of vegetated buffers adjacent to waters of the United States and, in exceptional circumstances, the preservation of high value aquatic habitats. Without compensatory mitigation, the Corps regulatory program would not be able to satisfy a principal goal of the Clean Water Act, which is the restoration and maintenance of the physical, chemical, and biological integrity of the Nation's waters.

Compensatory mitigation requirements should be based on what is best for the aquatic environment, not inflexible requirements for in-kind and on-site compensatory mitigation that may not successfully replace lost functions and values of aquatic habitats. The primary goal of compensatory mitigation is to replace the functions and values of waters of the United States that are lost due to activities authorized by NWPs. It is essential that compensatory mitigation projects that restore, enhance, or create aquatic habitats have a high probability of success. Much of the failure of past compensatory mitigation projects is due to poor site selection, planning, and implementation. On-site compensatory mitigation projects may fail because site conditions, such as local hydrology, are usually substantially changed by the authorized activity. For example, once a residential subdivision is constructed, the on-site hydrology may be altered to the extent that the site cannot support a restored or created wetland. In such cases, it may be better for the aquatic environment to conduct the compensatory mitigation project off-site, in a location with better chances for success within the watershed of the authorized work.

When reviewing compensatory mitigation proposals, district engineers will consider what is best for the aquatic environment, including requiring vegetated buffers to open waters, streams, and wetlands. Wetland restoration, enhancement, creation, and in exceptional circumstances, preservation are not the only compensatory mitigation activities that can be required for an NWP authorization. Stream restoration and enhancement can also provide compensatory mitigation for losses resulting from activities authorized by NWPs. Upland buffers can be considered as out-of-kind compensatory mitigation because they protect local water quality and aquatic habitat. Vegetated buffers reduce adverse effects to water quality caused by adjacent land use. For example, forested riparian buffers provide shade to streams, supporting cold water fisheries. We cannot require compensatory mitigation for upland impacts, but we can require, as compensatory mitigation, upland vegetated buffers that protect water quality and aquatic habitat. It is important to note that the NWPs are optional permits, and if the project proponent does not want to establish and maintain vegetated buffers adjacent to waters of the United States to qualify for an NWP authorization, then he or she can apply for authorization through the individual permit process. The establishment or maintenance of a vegetated buffer adjacent to waters of the United States can be an important part of the compensatory mitigation required for a Corps permit. District engineers should adjust the amount of "replacement acreage" required for compensatory mitigation by an amount that recognizes the value of the vegetated buffer to the aquatic environment.

We recognize that certain wetland types are not easily restored or created. Past failures to replace certain types of wetlands are not sufficient justification to stop all efforts to replace wetlands lost through the Section 404 program. Some types of wetlands are easily restored or created, although they may take several years to achieve functional equivalence compared to natural wetlands. Preservation is also an important mechanism to protect remaining high value wetland types, particularly those that cannot be easily restored or created. Careful site selection, planning, and construction are essential to achieve greater success for compensatory mitigation projects.

The ability of the Corps to review and monitor compensatory mitigation projects required for NWP authorizations is dependent upon workload and available resources. Increased use of mitigation banks and appropriate in lieu fee programs may make monitoring efforts more manageable, because those efforts can be focused on a smaller number of large sites instead of a large number of small individual mitigation projects. Mitigation banks and appropriate in lieu fee programs may provide better compensatory mitigation because they are often better planned, constructed, and maintained. The goal of compensatory mitigation is to offset losses of waters of the United States authorized by the Corps regulatory program. Because the Corps program causes the avoidance of most high value wetlands, most permitted impacts are to moderate or low value wetlands.

We also received numerous comments concerning the location and types of compensatory mitigation that should be acceptable for the NWP program. Most commenters expressed a preference for restoration, and some commenters oppose the use of enhancement or preservation of aquatic resources to provide compensatory mitigation. Some commenters oppose the use of out-of-kind compensatory mitigation to offset losses of waters of the United States. Several commenters recommended that the Corps require compensatory mitigation at specific ratios, ranging from 1:1 to 5:1. Many commenters stated that compensatory mitigation projects should be confined to the watershed where the losses resulting from the authorized activity occurred. Most commenters recommended that the NWPs should not express a sequencing preference for on-site mitigation, mitigation banks, or in lieu fee programs. One commenter stated that the NWPs should have a general condition establishing compensatory mitigation performance criteria, to specify basic requirements.

We recognize that restoration is the type of compensatory mitigation with the greatest probability of success and encourage its use wherever possible. Enhancement of aquatic resources improves the functions and values of low-quality waterbodies, but should not be used in high value waters. As stated in the July 1, 1998, **Federal Register** notice, preservation of aquatic resources is estimated to comprise less than 5% of the compensatory mitigation required by the Corps, but it is an important mechanism for protecting high value wetlands and waterbodies.

Out-of-kind compensatory mitigation should not be prohibited because it can provide substantial benefits for the aquatic environment. An important form of out-of-kind compensatory mitigation is the establishment and maintenance of upland vegetated buffers adjacent to open or flowing waters or wetlands. Upland vegetated buffers help protect and enhance the water quality and aquatic habitat features of waters of the United States.

Specific compensatory mitigation requirements, such as replacement ratios, are determined by district engineers on a case-by-case basis. For the NWPs, district engineers determine what compensatory mitigation is necessary to ensure that the adverse effects of the proposed work on the aquatic environment are minimal. The Corps can require compensatory mitigation in excess of a 1:1 ratio of impact acreage to compensatory mitigation acreage in order to adequately replace the lost aquatic resource functions and values. The Corps can also accept out-of-kind compensatory mitigation, if it provides benefits to the aquatic environment. We believe that it is inappropriate, due to the differences in aquatic resource functions and values across the country, to establish national requirements for compensatory mitigation.

One commenter stated that the compensatory mitigation data cited by the Corps in the July 1, 1998, **Federal Register** notice was misleading because many NWP activities do not require reporting to the Corps. Several commenters requested that the Corps

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provide accurate data on losses of waters of the United States to allow the public to consider compensatory mitigation requirements and that this data should specify the proportion of compensatory mitigation that is achieved through enhancement of aquatic resources. A number of commenters requested that the Corps modify its data collection efforts to monitor the amount of compensatory mitigation that is accomplished through restoration, enhancement, creation, and preservation, as well as the effectiveness of these activities. Two commenters recommended that the Corps furnish this data to the States on an annual basis.

The compensatory mitigation data cited in the July 1, 1998, **Federal Register** notice is based on the acreage of reported wetland impacts and wetland compensatory mitigation. This data does not include compensatory mitigation for impacts to streams and other types of non-wetland aquatic habitats. Many of the non-reporting NWP activities do not result in filling of wetlands and would not normally require compensatory mitigation to ensure that the adverse effects to the aquatic environment are minimal. For NWP activities that do not require notification to the Corps, many permittees request a written determination from the Corps to ensure that their projects qualify for NWP authorization. The wetland impact acreage for these activities is included in the data compiled by the Corps. District engineers can require compensatory mitigation for these projects to ensure that they result in only minimal adverse effects on the aquatic environment.

The data collection systems for most Corps districts do not currently differentiate between the amounts of compensatory mitigation provided through restoration, enhancement, creation, or preservation. Instead, most districts track only the total amount of compensatory mitigation required for Corps permits. The effectiveness of compensatory mitigation efforts is monitored by district engineers on a case-by-case basis, to the extent allowed by workload and personnel resources. Therefore, we cannot collect this type of information. The data the Corps collects on impacts to waters of the United States and compensatory mitigation is public information.

Support and opposition for the use of mitigation banks and in lieu fee programs to compensate for NWP impacts was equivocal. Many commenters asserted that mitigation banks cannot replace the functions and values of smaller, scattered wetlands and that the increased use of mitigation banks and in lieu fee programs will not replace local wetland functions and values. A couple of commenters were concerned that consolidation of wetland habitats in a single place could increase the vulnerability of that single ecological wetland unit, and would not allow for a mosaic of wetlands. Others argued that mitigation banks would better compensate for scattered wetland losses by providing consolidated locations for compensatory mitigation, with greater chances of success. Some commenters expressed concern that mitigation banking would disrupt the mitigation sequence process and one commenter specifically requested that the Corps place stronger emphasis upon avoidance and minimization of impacts. Many commenters recommended streamlining the process for establishing mitigation banks, and some commenters requested modification of the NWP terms and conditions to encourage the use of mitigation banks. These commenters also requested that the Corps more clearly establish the policy that on-site compensatory mitigation may not always be the preferred choice. Several commenters suggested that mitigation banks should be established in each watershed. Some commenters expressed concern that mitigation banks, in some cases, utilize preservation of aquatic resources, which does not replace lost wetland functions and values, and does not comply with the goal of "no net loss" of wetlands.

We cannot require the establishment of mitigation banks in a particular watershed or geographic area. Mitigation banks are usually constructed and maintained by entrepreneurs, who locate mitigation banks in areas where they believe the established credits will sell quickly. In the December 13, 1996, **Federal Register** notice (61 FR 65874–65922), we did not direct Corps districts to require permittees to use mitigation banks for offsetting wetland losses due to NWP 26, but suggested that mitigation banks could be used, in addition to in lieu fee programs, to provide compensatory mitigation for impacts below 1 acre.

Consolidated mitigation methods, including mitigation banks and in lieu fee programs, are often an efficient means of compensating for losses of waters of the United States, particularly for multiple small projects, and may confer benefits to the aquatic environment as well (see 61 FR 65892). We recognize that mitigation banks and in lieu fee programs are often more practicable and successful because of the planning and implementation efforts typically expended on these projects by their proponents. In contrast, individual efforts to create, restore, or enhance wetlands to replace small wetland losses may be unsuccessful because of poor planning and/or construction. Furthermore, consolidated mitigation efforts are often better monitored and maintained and often result in the establishment of a larger contiguous wetland area that benefits the overall local aquatic environment and many of the species that utilize larger aquatic habitats. Although smaller, scattered wetland areas that exist in the landscape as a mosaic provide essential habitat for certain species, the local changes in land use usually makes it impossible to maintain those mosaics in any ecologically functional capacity. Recreating those wetland mosaics is often impractical and it is better to provide compensatory mitigation through consolidated mitigation methods.

As with all other compensatory mitigation, the use of mitigation banks and in lieu fee programs does not eliminate the need to avoid impacts on-site. General Condition 19 of the NWPs requires that permittees avoid and minimize losses of waters of the United States on-site to the maximum extent practicable. If the District Engineer determines that compensatory mitigation is necessary to ensure that the particular NWP activity results only in minimal adverse effects on the aquatic environment, individually or cumulatively, then the District Engineer can require compensatory mitigation to offset the loss of waters of the United States. Mitigation banks and appropriate in lieu fee programs can be used to provide the required compensatory mitigation. The preferred form of compensatory mitigation should be based on what is best for the aquatic environment, whether the compensatory mitigation is on-site, off-site, in-kind, or out-of-kind.

Many of the commenters that were opposed to in lieu fee programs were strongly in favor of mitigation banks. Several of these commenters stated that mitigation banks have distinct advantages over in lieu fee programs, since mitigation banks have specific processes to establish goals, credits, and monitoring. Some commenters believe that in lieu fee programs compete unfairly with mitigation banks, since they are easier to establish and are often less costly than mitigation banks. One commenter requested that in lieu fee programs be prohibited in areas with established and functional mitigation banks with available credits.

Mitigation banks and in lieu fee programs are not common throughout the country. Therefore, it would be impractical to require their use as a preferred or sole means of providing compensatory mitigation for impacts authorized by NWPs. While in lieu fee programs are used in several Corps districts, efforts continue to ensure that in lieu fee programs provide adequate compensatory mitigation. District engineers have the authority to approve or disapprove the use of specific mitigation banks or in lieu fee programs as compensatory mitigation for losses of waters of the United States authorized by NWPs. Permittees should have the flexibility to utilize compensatory mitigation methods that are within their means to accomplish and meet the requirements to offset unavoidable losses of waters of the United States. To the extent practicable, permittees should consider use of approved mitigation banks and other forms of consolidated compensatory mitigation. District engineers will evaluate compensatory mitigation proposals for appropriateness and practicability as indicated in the NWP general conditions.

A number of commenters expressed concern about the effectiveness of in lieu fee programs in providing compensatory mitigation. Many commenters requested the establishment of specific requirements for in lieu fee programs. Two commenters suggested that the Corps establish a data collection system for in lieu fee programs, including payments and program credits, and report this data on an annual basis. Several commenters noted that in lieu fee programs typically do not require completion in advance of utilizing credits, as is the case with mitigation banks. Many commenters stated that payments to in lieu fee programs do not result in replacement of lost wetland functions and values. One commenter suggested limiting the use of in lieu fee programs to compensate for losses of small, low value wetlands and farmed wetlands.

In lieu fee mitigation programs have been effective in some parts of the country. Typically these programs are operated by well-established entities such as State and local government organizations or conservation groups. District engineers review in lieu fee programs to determine if they are appropriate for providing compensatory mitigation for losses of waters of the United States that result from activities authorized by the Corps regulatory program. The District Engineer should have a reasonable amount of confidence in the operator prior to utilizing such areas for compensatory mitigation. Especially with the NWPs, in lieu fee programs should provide applicants with a compensatory mitigation option that is efficient and appropriate for the authorized work. District engineers use their own methods to track the use of in lieu fee programs. We do not agree that in lieu fee areas should be limited to small areas and farmed wetlands. When evaluating a compensatory mitigation proposal, the Corps should consider the action that is best for the aquatic environment. In some cases, on-site compensatory mitigation may not be a practicable option because there may be a low probability of success or adjacent land uses make any type of on-site compensatory mitigation infeasible. In some locations, an appropriate in lieu fee program may be most appropriate, while in another district or watershed, a mitigation bank would be the best option.

Vegetated Buffers

Some commenters supported the Corps increased emphasis on vegetated buffers adjacent to waters of the United States, including the use of vegetated buffers as compensatory mitigation for impacts to waters of the United States. A number of commenters objected to the requirements for vegetated buffers, stating that requirements for vegetated buffers, particularly upland buffers, adjacent to open and flowing waters are illegal because the Corps would be expanding its jurisdiction to upland areas. Two commenters said that the vegetated buffers can be used as a form of compensatory mitigation, but could not be required for an NWP authorization. One commenter stated that vegetated buffers should not be considered compensatory mitigation because they do not replace lost wetland acreage, including functions and values. Many commenters requested that the Corps provide a more specific definition and minimum size standards for vegetated buffers. A couple of commenters recommended specific minimum widths for vegetated buffers. One commenter suggested a buffer width of 1 or 2 kilometers from the edge of the wetland to preserve maximum biodiversity. Another commenter recommended a minimum buffer width of 100 feet from the edge of the wetland.

We disagree with the assertion that requiring a vegetated buffer as a condition of an NWP authorization is illegal and an attempt to expand the Corps jurisdictional authority. The Corps currently has regulatory authority through the Clean Water Act to require vegetated buffers as a condition of an NWP authorization because vegetated buffers, including upland buffers, help prevent degradation of water quality and aquatic habitat. The establishment and maintenance of wetland or upland vegetated buffers adjacent to open waters, streams, or other waters of the United States can be considered compensatory mitigation for losses of waters of the United States authorized by Corps permits. One of the goals of the Clean Water Act is the maintenance and restoration of the chemical, physical, and biological integrity of the Nation's waters. Regulatory agencies can place any conditions on a permit or authorization as long as those conditions are related to the activities regulated by that agency. The Section 404 activities regulated by the Corps usually cause adverse effects on the aquatic environment. To offset these adverse effects, we can require measures, such as vegetated upland buffers adjacent to streams, that prevent or reduce adverse effects on the aquatic environment. Vegetated buffers, including uplands, adjacent to open waters of the United States provide many of the same functions and values of wetlands, such as flood mitigation, erosion reduction, the removal of pollutants and nutrients from water, and support aquatic habitat values. In summary, since vegetated buffers adjacent to open waters, even if they are uplands, help maintain the physical, biological, and chemical integrity of the aquatic environment, the Corps can require these buffers as a condition of a Clean Water Act Section 404 permit. Permit applicants must recognize that NWPs are optional permits and if the applicant believes that the NWPs are too restrictive, then he or she can apply for authorization through the individual permit process.

For the purposes of the Corps regulatory program, vegetated buffers are areas inhabited by woody or herbaceous plants that are adjacent to streams, lakes, ponds, wetlands, or other waters of the United States. Vegetated buffers can be either wetlands or uplands. Mowed lawns are not considered vegetated buffers, because these areas do not provide the same functions as areas inhabited by fully grown woody or herbaceous vegetation. Upland vegetated buffers are generally as effective at protecting open water quality as wetland buffers, and are often the only choice where there are no wetlands adjacent to a stream. Vegetated buffers, including uplands, adjacent to open waters, streams, and wetlands, should be an integral part of the compensatory mitigation requirements

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for a particular project. Vegetated buffers can be used as out-of-kind mitigation to offset part of the wetland loss because they provide substantial benefits for the local aquatic environment. Vegetated buffers provide the following functions and benefits to the aquatic environment: (1) Reducing adverse effects to water quality by trapping and removing sediments, pollutants, and nutrients from surface runoff; (2) enhancing infiltration of water into the soil, which allows plants and microbes to remove nutrients and pollutants from water; (3) decreasing storm flows to streams, thereby reducing downstream flooding and degradation of aquatic habitat; (4) decreasing erosion of stream beds and surrounding land by slowing stormwater runoff velocities and increasing infiltration; (5) reducing soil erosion by keeping the soil in place with plant roots; (6) maintaining fish habitat by reducing water temperature changes; (7) providing detritus from riparian vegetation that contributes to the aquatic food web; (8) providing aquatic habitat features such as snags and shade; (9) providing habitat to a wide variety of aquatic and terrestrial species; and (10) providing corridors for movement of many species of wildlife.

For the purposes of the NWPs, vegetated buffers should consist mostly of native trees and shrubs. In drier areas of the United States, vegetated buffers can consist of herbaceous vegetation, provided the vegetation is not mowed or removed. Native trees and shrubs should be planted, where possible, to establish a vegetated buffer where one does not exist. If the buffer area is degraded or inhabited by invasive or exotic plant species, then these species should be removed and the area planted with appropriate native species to the extent practicable.

Districts should normally require vegetated buffers that are between 50 and 125 feet wide. For streams, the width of the buffer is measured out from the bank of the stream, not the width across the stream (*i.e.*, the buffer will be 50 to 125 feet wide on each side of the stream channel). For other open waters, the width of the buffer is measured from the bank; if no bank is present, the ordinary high water mark should be used instead. District engineers will use their discretion and judgement to determine appropriate vegetated buffer widths for particular projects. If adequate State or local buffer width requirements already exist, district engineers should utilize the same requirements. The width of the vegetated buffer required as part of the NWP authorization must balance the benefits provided to the aquatic environment with the uses of the property resulting from the authorized work. Buffer widths should not be excessive, with little additional benefits for the aquatic environment. Buffer width requirements can also depend on the condition of the local watershed. The Corps will determine what is best for the watershed involved, and what is practicable to the applicant.

Conservation easements, deed restrictions, or similar restrictions should be imposed on the vegetated buffer to ensure that the buffer is maintained. Developers should be encouraged to place vegetated buffers in community open space areas, especially when such areas are required by State or local statutes or regulations. Recreational (*e.g.*, hiking, nature, etc.) trails should generally be constructed outside of the vegetated buffer area, but these trails may be constructed within the buffer, provided the buffer is wide enough to accommodate the trail and the trail is constructed in such a manner so that it does not adversely affect the functions of the buffer.

Assessing Cumulative Impacts on a Watershed Basis

A number of commenters stated that it is difficult to determine when an adverse effect on the aquatic environment is minimal on an individual or cumulative scale. These commenters said that the Corps needs to utilize technological improvements, such as geographic information systems, to make these determinations because they believe the Corps current data collection efforts are inadequate to assess cumulative adverse effects on the aquatic environment. One commenter suggested that permit applicants should be required to identify past and future impacts for projects and that the remaining wetlands on the site should be deed restricted.

In the July 1, 1998, **Federal Register** notice, we discussed our current data collection efforts for NWPs, regional general permits, and standard permits. We are continuously modifying our methods of data collection to improve our ability to assess cumulative adverse effects on the aquatic environment that result from activities authorized by the Corps regulatory program. For each authorized activity, the United States Geological Survey (U.S.G.S.) hydrological unit code is entered in the database to record which watershed the activity is located. This data, along with other data collected for each authorized activity, will be used to assess the cumulative adverse effects on that watershed that result from activities authorized by the Corps.

Since the Corps resources are limited, the amounts and types of data that can be collected must strike a balance between the amount of work required to evaluate permit applications and the usefulness of the data to monitor the cumulative adverse effects of those permitted activities on the aquatic environment. The data collected by the Corps regulatory program is limited to the data necessary to assess cumulative adverse effects so that the Corps can effectively evaluate permit applications and conduct enforcement and compliance activities. The Corps recognizes that there are gaps in the data collection effort because many of the activities authorized by NWPs do not require preconstruction notification to the Corps. However, in many cases where the NWP activity does not require notification to the Corps, permit applicants request that the Corps verify that the proposed work qualifies for authorization under the non-reporting NWP. The impacts from these projects are included in the data collected by the Corps, so the data collection gap is not as great as some critics of the NWP program believe. We do not have the resources to provide field verification of the adverse effects of all activities authorized by NWPs. We also cannot fully monitor all of the compensatory mitigation that is required as special conditions to many NWP authorizations.

For the proposed new and modified NWPs, we will continue to collect data on a watershed basis to ensure that the use of the NWPs does not result in more than minimal adverse effects on the aquatic environment. The Corps will continue to improve its data collection efforts for all types of permits, not just NWPs, to better assess the adverse effects of the Corps regulatory program on the aquatic environment.

When assessing cumulative adverse effects on the aquatic environment, particularly on a watershed basis, it is important to note that we can only assess those adverse effects that result from activities authorized by the Corps pursuant to Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act. The aquatic environment is also adversely affected by activities that do not require a Corps permit. For example, construction of an upland residential development can result in adverse effects on water quality and aquatic habitat due to the removal of woody vegetation in upland riparian zones and surface runoff. Development and landclearing activities in adjacent or nearby uplands can substantially alter the watershed, adversely affecting the local aquatic environment, but such activities are not regulated under Section 404 of the Clean Water Act.

Compliance With the Endangered Species Act

A number of commenters indicated that the NWPs do not satisfy the requirements of the Endangered Species Act (ESA), especially for those activities that do not require submission of a PCN to the Corps. These commenters expressed concern that NWPs do not provide the necessary coordination required by ESA where proposed activities may adversely affect endangered or threatened species. One commenter stated that an individual permit should be required for activities within critical habitat for Federally-listed endangered and threatened species. Several commenters remarked that the Corps should condition the NWPs to prohibit activities that adversely affect State-listed endangered or threatened species. One of these commenters cited the reference to State-listed endangered or threatened species in the regulations for the Section 404(b)(1) guidelines (40 CFR part 230). A few commenters indicated that the NWPs focus too much on wetlands with little consideration of other aquatic habitats, such as streams and rivers inhabited by salmon and trout. Several commenters stated that the Corps is in compliance with the ESA because the NWPs are conditioned so that no activity authorized by NWPs may jeopardize the continued existence of a listed species or its critical habitat. These commenters assert that the Corps should not conduct programmatic formal consultation for activities that have already been determined not to result in adverse effects on endangered or threatened species.

The NWP program contains provisions to ensure that activities authorized by NWPs comply with the ESA. General Condition 11 ensures that the NWPs do not authorize any activity that is likely to jeopardize the continued existence of a Federally-listed threatened or endangered species or a species proposed for designation as a threatened or endangered species or which is likely to modify the critical habitat or such species. In addition, an NWP authorization does not authorize the "take" of any Federally-listed threatened or endangered species. If any listed species or designated critical habitat may be affected by an activity authorized by NWP, the permittee is not authorized to begin work until the requirements of the ESA have been satisfied. The Corps will conduct the coordination necessary to ensure that activities authorized by NWPs comply with the ESA.

For activities that occur in the vicinity of endangered or threatened species or their designated critical habitat, division and district engineers can regionally condition the NWPs to require notification to the Corps to allow case-by-case review of these activities and ensure compliance with the ESA. It is unnecessary to require an individual permit for NWP activities that may affect endangered or threatened species or designated critical habitat. If the Corps determines that an NWP activity may affect a Federally-listed endangered or threatened species, then the Corps will request formal consultation unless it is not required by 50 CFR Part 402.14(b). After completion of consultation with the U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS), the Corps will determine whether or not the proposed work will be in compliance with Section 7(a) of the ESA. After the Corps makes this determination, the project can be authorized by NWP or the Corps will notify the applicant that no permit can be issued.

In the proposed General Condition 25, entitled Designated Critical Resource Waters, we are proposing to prohibit the use of NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 in NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally-listed threatened or endangered species, coral reefs, State natural heritage sites, or outstanding national resource waters officially designated by the state where those waters area located. General Condition 25 also states that discharges are not authorized by NWPs in designated critical habitat for Federally-listed endangered or threatened species, unless the activity complies with General Condition 11 and the FWS or NMFS has concurred in a determination of compliance with this condition. General Condition 25 is discussed in more detail elsewhere in this **Federal Register** notice.

The Corps does consider the effects of NWP activities on State-listed endangered or threatened species within the overall evaluation of the proposed activity. The provisions relating to endangered or threatened species in the Section 404(b)(1) guidelines apply only to species listed under the Federal Endangered Species Act (see 40 CFR 230.10(b)(3)), although there is some discussion of potential impacts to State-listed endangered and threatened species in 40 CFR Part 230.30. To address local concerns for the aquatic environment, division engineers can regionally condition the NWPs to restrict their use for activities that may adversely affect State-listed species or their designated critical habitat.

Some commenters questioned the Corps ability to issue any NWPs prior to completion of programmatic consultation with the FWS and NMFS. Another commenter recommended that, instead of programmatic ESA consultation for the NWP, the Corps should conduct consultation at a district or regional level to establish programmatic or categorical mechanisms to comply with the ESA. This commenter believes that programmatic consultation will not adequately address specific ESA concerns. One commenter noted that the request for formal ESA consultation cited in the July 1, 1998, **Federal Register** notice is inconsistent with the Corps finding that the NWP program complies with the ESA. Several commenters requested that the Corps conduct an analysis of the cumulative effects of the NWP program on endangered and threatened species and their critical habitat. A commenter stated that the Standard Local Operating Procedures for Endangered Species (SLOPES) established by some districts are inadequate for complying with ESA. Two commenters requested clarification as to whether or not the incidental take provisions under ESA apply to obligate wetland endangered or threatened species.

We believe that the NWP program complies with the ESA and adequately addresses concerns for endangered and threatened species and their designated critical habitat. In spite of the provisions of General Condition 11 and the ESA Section 7(d) determination issued on June 10, 1997, which states that the NWPs do not adversely affect listed species or critical habitat, formal programmatic ESA consultation for the NWP program was initiated with the FWS and NMFS on June 4, 1999. The programmatic consultation will provide additional assurance that the existing NWPs, as well as the proposed new and modified NWPs, have a formal process to develop any necessary additional procedures at the district level. The programmatic consultation will provide further assurance that the NWP program does not jeopardize the existence of any Federally-listed threatened or endangered species. Both the programmatic ESA consultation and the Programmatic Environmental Impact Statement that will be prepared for the NWP program will address potential cumulative effects on endangered and

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threatened species and their designated critical habitat. We believe that the SLOPES help ensure compliance with the ESA at the district level. Districts can meet with local offices of the FWS and NMFS to modify or improve their SLOPES.

In addition to NWP General Condition 11, division and district engineers can impose regional conditions on the NWPs and case-specific conditions to address endangered or threatened species or their critical habitat. For example, Corps regional conditions can prohibit the use of NWPs in designated critical habitat for endangered or threatened species or require notification for activities in areas known to be inhabited by threatened or endangered species. Some Corps districts have conducted programmatic consultation on geographic areas. These efforts usually consider the NWP program in that particular area. In summary, General Condition 11, Corps regional conditions, case-specific special conditions, and SLOPES will ensure that the NWP program complies with the ESA. General Condition 11 states that the NWPs do not authorize the "take" of any Federally-listed endangered or threatened species. It does not matter if the species is an "obligate" wetland endangered or threatened species.

Additional Issues

In response to the July 1, 1998, **Federal Register** notice, some commenters raised several new issues relating to the NWPs. A large number of commenters believe that the Corps is attempting to expand its jurisdictional authority by requiring upland vegetated buffers adjacent to waters of the United States as a condition of the NWPs. Some commenters stated that the Corps is also trying to expand its jurisdictional authority by applying the NWPs to activities that involve excavation of waters of the United States. Several commenters suggested additional restrictions for the NWPs. Other issues include: the use of multiple NWPs to authorize a single and complete project (often referred to as "stacking" of NWPs), the Corps data collection efforts, the use of NWPs on Tribal lands, compliance with Section 106 of the National Historic Preservation Act, enforcement of the NWPs, property rights issues, and State and local authorities.

Expansion of Jurisdictional Authority: Many commenters questioned the Corps authority to require upland vegetated buffers adjacent to open waters, streams, and wetlands, since uplands are not waters of the United States. Some commenters believe that if vegetated buffers are necessary to protect water quality, then only the appropriate water quality certification agency can require the vegetated buffer. Other commenters stated that the Corps is exceeding its regulatory authority by including excavation activities in the new NWPs.

We have the legal authority to require vegetated buffers adjacent to streams and other waters through the Clean Water Act. The goals of the Clean Water Act include the maintenance of the biological, chemical, and physical integrity of the aquatic environment. The activities regulated by the Corps pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act usually cause adverse effects on the aquatic environment. As compensatory mitigation for losses of waters of the United States, we can require measures, such as vegetated upland buffers adjacent to waters, that offset such adverse effects. Since vegetated buffers adjacent to waters, even if they are uplands, help maintain the physical, biological, and chemical integrity of the aquatic environment, the Corps can require these buffers as a condition of a Clean Water Act Section 404 permit.

Another activity that many commenters believe to be an attempt to expand the Corps regulatory authority is the inclusion of excavation activities in the NWPs, particularly in the definition of "loss of waters of the United States." These commenters cited the recent decision by the United States Court of Appeals for the District of Columbia which upheld the United States District Court for the District of Columbia's decision in the *American Mining Congress* v. *Corps of Engineers* lawsuit. This lawsuit challenged the Corps and EPA's revised definition of "discharge of dredged material" that was promulgated on August 25, 1993 (58 FR 45008). The revised definition of "discharge of dredged material" was overturned because the District Court held that the rule was outside of the agencies' statutory authority and contrary to the intent of Congress by asserting Clean Water Act jurisdiction over activities where the only discharge associated with the activity is "incidental fallback." These commenters requested that the Corps remove all references to excavation activities from the new and modified NWPs.

Although the revised definition of "discharge of dredged material" published on August 25, 1993, was overturned by these recent court decisions, certain excavation activities are still regulated under Section 404 of the Clean Water Act and require a Corps permit. Excavation activities that result in redeposits of dredged material into waters of the United States other than incidental fallback require a Section 404 permit. All other excavation activities, if they result in the replacement of an aquatic area with dry land or changing the bottom elevation of a waterbody require a Section 404 permit, and may be authorized by NWPs if they comply with the terms and limits of the NWPs. Excavation activities that result only in discharges classified as "incidental fallback" do not require a Section 404 permit. We have retained the excavation language in the proposed new and modified NWPs and the definition of "loss of waters of the United States" to make it clear that some excavation activities still require a Section 404 permit, and if so, may be authorized by NWPs. A final rule was published in the May 10, 1999, issue of the **Federal Register** (64 FR 25119–25123) with revisions to the Clean Water Act regulatory definition of "discharge of dredged material." The revision clarifies the definition of "discharge of dredged material" by deleting language from the regulatory definition at 33 CFR Part 323.2(d) that was held by the Court to exceed the Clean Water Act statutory authority.

Proposed Additional Restrictions for NWPs: In spite of the increased emphasis on regional conditioning for the new and modified NWPs proposed in the July 1, 1998, **Federal Register** notice, many commenters recommended additional restrictions that they believe should be applied to all NWPs. Several commenters recommended prohibiting the use of NWPs to authorize activities in wetlands that cannot be replaced though wetland restoration or creation, such as bogs, fens, forested wetlands, and vernal pools. One commenter advocated prohibiting the use of NWPs to authorize activities in endangered ecosystems, as identified by the National Biological Service. Two commenters recommended excluding NWPs from areas subject to watershed restoration plans, since many of these projects are funded by Federal agencies. One commenter recommended allowing the NWPs to be used only in states that have developed conservation plans that protect water quality, with no net loss of wetland function and acreage as a goal. This commenter described the State conservation plan as requiring a fee system to achieve the no net loss goal through restoration, preservation, and management of wetlands, with the funds from fees being spent only on projects, not overhead. Several commenters recommended prohibiting the use of NWPs in watersheds that have lost more than 50% of their wetlands. A number of commenters recommended excluding NWPs in watersheds upstream or within Outstanding National Resources Waters and within critical resource waters. One of these commenters suggested that the Corps solicit public comments to identify critical resource waters. Regional conditions can be used to prohibit or restrict the use of NWPs from high value waters, especially if those waters are difficult to restore or create. We do not agree that NWPs should be excluded from use in areas under watershed restoration plans. Some activities authorized by NWPs may comply with the watershed restoration plan, and some compensatory mitigation required by NWP authorizations for work within that watershed may provide net benefits for the watershed. Prohibiting the use of NWPs in watersheds that have lost greater than 50% of their wetlands would be impossible to implement, because we cannot identify with a defensible degree of certainty the extent of jurisdictional wetlands that existed in that watershed. These commenters did not provide any suggestions to determine the historic extent of wetlands in a watershed or recommend a date to determine the historic baseline for wetlands. In the October 14, 1998, **Federal Register** notice, we proposed to exclude the NWPs from critical resource waters and requested comments on how to identify those waters for a national NWP general condition. This proposal is discussed elsewhere in this **Federal Register** notice.

Many commenters, notably the Federal Emergency Management Agency (FEMA), recommended restricting the use of NWPs within floodplains. FEMA stated that the use of NWPs in the 100-year floodplain is contrary to the Administration's goal of reducing natural hazard impacts on citizens because the NWPs provide Federal authorization for activities in floodplains. FEMA believes that the Corps should only authorize activities within designated Special Flood Hazard Areas through the individual permit process and that the NWPs should contain a provision stating that the NWP program does not usurp State and local floodplain management programs and regulations governing activities within floodplains. A few commenters stated that the NWPs should not authorize activities that result in a net loss of flood storage capacity within the 100-year floodplain. Several commenters recommended excluding the NWPs from watersheds or areas upstream of communities that have been designated as flood disaster areas in the past 10 years.

In the October 14, 1998, **Federal Register** notice, we proposed to prohibit the new NWPs from authorizing permanent above-grade wetland fills in waters of the United States within the 100-year floodplain, as mapped by FEMA on their Flood Insurance Rate Maps. This proposal is discussed elsewhere in this **Federal Register** notice.

A number of commenters recommended excluding the use of NWPs in tributaries identified as impaired through Section 303(d) of the Clean Water Act due to the loss of wetlands. Several commenters suggested restricting the use of NWPs in impaired waters and requested that the Corps solicit public comments on how to identify impaired waters. Other commenters recommended suspending the use of NWPs in areas designated as source water zones under the Safe Drinking Water Act or prohibiting the use of NWPs in drinking supply watersheds.

In the October 14, 1998, **Federal Register** notice, we proposed to limit the use of NWPs in waterbodies and aquifers identified by States as impaired due to the loss of wetlands. This proposal is discussed elsewhere in this **Federal Register** notice. Division and district engineers can regionally condition any of the NWPs to prohibit or restrict their use in designated source water zones under the Safe Drinking Water Act or drinking water supply watersheds. District engineers can also exercise discretionary authority for activities that may result in more than minimal adverse effects on these areas.

Some commenters requested that the Corps prohibit the use of NWPs in waters or watersheds with designated critical habitat for Federally-listed endangered or threatened species. One commenter recommended excluding the use of NWPs in habitats designated by the FWS or NMFS as crucial for endangered or threatened species, unless the work is for habitat restoration.

General Condition 11 and SLOPES that are developed by Corps districts adequately address the use of NWPs in designated critical habitat for Federally-listed endangered or threatened species. Please also see the discussion of General Condition 25 elsewhere in this **Federal Register** notice.

Use of Multiple Nationwide Permits: A number of commenters objected to the use of more than one NWP for a single and complete project, believing that this practice results in more than minimal adverse effects on the aquatic environment. Several commenters objected to adding any restrictions against the use of more than one NWP to authorize a single and complete project, stating that it does not necessarily result in more than minimal adverse effects on the aquatic environment. One of these commenters believes that the notification process is sufficient to determine when specific projects requiring the use of more than one NWP will result in more than minimal adverse effects on the aquatic environment.

We are proposing to modify General Condition 15 to address concerns for the use of multiple NWPs to authorize a single and complete project. The proposed modification of this general condition does not allow more than one NWP to authorize a single and complete project if the acreage loss of waters of the United States exceeds the highest specified acreage limit of the NWPs used to authorize that project. In the proposed NWPs we have removed the conditions that address the use of specific NWPs with those NWPs. The proposed modification of General Condition 15 is discussed in further detail below.

Data Collection: Several commenters believe that the Corps current data collection efforts fail to effectively monitor both the individual and cumulative adverse effects on the aquatic environment resulting from the use of the NWPs. These commenters stated that the Corps does not know how many NWP activities that do not require submission of a PCN occur, the acreage of impact authorized by these non-reporting NWPs, and what types of compensatory mitigation, if any, are provided to offset losses of waters of the United States authorized by these NWPs. A number of commenters requested that the Corps track losses of waters of the United States authorized by non-reporting NWPs. One commenter stated that the Corps should not limit the use of NWPs until it knows for certain how many wetlands are lost each year.

For those activities that are reported to the Corps, including activities authorized by NWPs, regional general permits, and individual permits, the Corps monitors the individual and cumulative adverse effects on the aquatic environment. The individual adverse effects are evaluated on a case-by-case basis when the Corps reviews the PCN or conducts the public interest review. It should also be noted that many NWP permittees request that the

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Corps provide written confirmation that the proposed work is authorized by NWP, even though submission of a PCN to the Corps is not required. This allows the Corps to track many of the activities that are authorized by non-reporting NWPs and include the adverse effects of those activities in its analysis of individual and cumulative adverse effects, plus any compensatory mitigation provided to offset those impacts.

Cumulative adverse effects on the aquatic environment that result from activities authorized by the Corps regulatory program are assessed by district engineers on a watershed or regional basis. District engineers utilize data collected on authorized activities for which the Corps issues general permit authorizations or standard permits, as well as estimates of the number of activities authorized by non-reporting general permits. Based on the actual and estimated impacts to aquatic resources, district engineers determine if the cumulative adverse effects on the aquatic environment resulting from the use of general permits, including NWPs, are more than minimal. Activities authorized by individual permits are not required to result in minimal adverse effects on the aquatic environment because that statutory requirement applies only to general permits. To prohibit the use of general permits in a watershed or other geographic area, the District Engineer must demonstrate that more than minimal cumulative adverse effects on the aquatic environment are caused by the Corps permit decisions. This demonstration must include clear, extensive, and unequivocal evidence that activities regulated pursuant to Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act are causing the cumulative adverse effects on the aquatic environment, not unregulated activities. Activities that are not regulated by the Corps program are not factored into this analysis because they are outside of the purview of the Corps.

Other commenters stated that inconsistencies in data collection efforts exist between Corps districts and that the data collected by the Corps is inaccurate. They said that some districts do not collect the same types of data that other districts collect. These commenters assert that these inconsistencies result in inaccurate data reported at a national level. One commenter stated that the Corps should make all NWP information, such as the number of PCNs, NWP verifications, authorized losses, mitigation, and enforcement actions available on the Internet.

There are standard data collection requirements for the Corps regulatory program. The data collected by each district for both general and individual permits was discussed in the July 1, 1998, **Federal Register** notice. As stated in the July 1, 1998, **Federal Register** notice, data collection requires a balance between the amount of work required to evaluate applications for Corps permits and the usefulness of the collected data to assess adverse effects of those activities on the aquatic environment. The specific types of data collected are limited to data that is necessary to evaluate the cumulative adverse effects on the aquatic environment that result from activities authorized by the Corps, while allowing the district the time and personnel to effectively evaluate permit applications and conduct enforcement activities. There are minimum standards for data collection for the Corps regulatory program, but some districts may collect additional data for their own use, if it is needed to satisfy other requirements. In the future, the Corps may modify its data collection standards to improve its assessment of the adverse effects of regulated activities on the aquatic environment and to provide more information to the public concerning the regulatory program. To make NWP program data, such as the number of PCNs, NWP verifications, authorized losses, mitigation, and enforcement actions, available for public access on the Internet is impractical, since each district maintains its own regulatory database.

Tribal Issues: Several comments were received from Native American organizations regarding tribal issues relating to the NWPs. Some of these commenters expressed concern that use of the NWPs would result in adverse effects on water quality and fish habitat, and that the tribes would not receive notification for projects on tribal land. One commenter requested that the Corps add the following sentence at the end of General Condition 8, Tribal Rights: "Nothing in this permit shall be construed to be authority or permission to conduct development, construction, or any other activity in waters of the United States with the exterior boundaries of a Federally-recognized Indian tribe in the absence of prior authority or permission being granted by such Tribal government." According to this commenter, some people believe that an NWP authorization constitutes permission to do work on Tribal lands without prior permission of the Tribe. Another commenter opposes issuance of NWP authorizations for activities within the boundaries of Tribal lands without the opportunity for public notice and comment. One commenter stated that reservation watersheds should be considered high value waters and receive additional protection and that the Corps should consult with the appropriate Tribal governing authority prior to issuing NWP authorizations for activities in a reservation watershed. One commenter said that the procedures of the Corps Native American Policy must be followed prior to the issuance of the NWPs.

Division engineers can regionally condition the NWPs to prohibit or limit their use in high value waters, including high value waters on Tribal lands. We have provided opportunities to discuss potential regional conditions with Tribes, through district public notices for the new and modified NWPs. Tribes with Section 401 authority can deny water quality certification for the NWPs and require individual 401 certifications, which would allow those Tribes to review all proposed NWP activities and determine if those activities meet their water quality standards.

As with all Corps permits, the NWPs do not convey any property rights or any exclusive privileges (see 33 CFR Part 320.4(g) and the "Further Information" section of the NWPs). Issuance of an NWP authorization does not preclude the permittee from obtaining permission from the appropriate Tribal government, if such permission is necessary. Therefore, it is unnecessary to add the requested language to General Condition 8. Concerns for high value waters that occur on Tribal lands are more appropriately addressed through the regional conditioning process, but we disagree with the assertion that all reservation watersheds are high value waters.

Compliance with Section 106 of the National Historic Preservation Act: Several commenters expressed concern regarding how the new and modified NWPs will comply with Section 106 of the National Historic Preservation Act (NHPA) and how the permittee will know if the proposed work will affect a historic resource. Another commenter stated that the NWP program is not in compliance with the NHPA and its implementing regulations at 36 CFR Part 800, because the 5-day agency coordination period for PCNs is too short, since a 30-day comment period is required by 36 CFR Part 800.2.

NWP General Condition 12 addresses compliance with Section 106 of the NHPA. This general condition states that any activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is not authorized, unless the District Engineer has complied with the provisions of 33 CFR Part 325, Appendix C. For activities authorized by non-reporting NWPs, permittees concerned about compliance with General Condition 12 should contact the State Historic Preservation Officer (SHPO) to determine if the proposed work will affect historic properties. For NWP activities that require submission of a PCN to the Corps, the Corps will evaluate the PCN to determine if coordination with the SHPO is necessary to ensure compliance with the NHPA. In areas such as designated historic districts, division engineers can regionally condition the NWPs to require coordination with the SHPO to ensure compliance with the NHPA. The Corps regulations for ensuring compliance with the NHPA are found at 33 CFR Part 325, Appendix C, not 36 CFR Part 800.

Enforcement: Several commenters stated that the proposed new and modified NWPs did not mention enforcement. These commenters are concerned that the terms and limits of the NWPs may be largely ignored unless enforcement is specifically addressed in the text of the NWPs. Another commenter said that the discussion of the Corps data collection procedures did not address how many enforcement actions were taken on projects that violated NWP terms and conditions. A number of commenters expressed concern that the requirements for on-site avoidance and minimization are not enforced. Several commenters believe there is a lack of monitoring and enforcement of general permits, including NWPs.

Enforcement of Corps permits, including NWPs, is addressed in 33 CFR Part 326. District engineers use discretion to enforce non-compliance with the terms and conditions of the NWPs, including any regional conditions or case-specific conditions. Although the discussion of the Corps data collection procedures did not specifically address enforcement activities, these activities are included in our data collection systems. We conduct compliance reviews to determine if permittees do the work in accordance with NWP authorizations, including any requirements for avoidance and minimization. Although Corps districts cannot conduct compliance reviews for every activity authorized by NWPs, they will conduct compliance reviews to the extent that their district resources allow. Enforcement activities will be prioritized by first investigating suspected violations that are reported by citizens and then performing compliance checks on other projects.

Other Issues: Two commenters believe that the proposed new and modified NWPs infringe upon individual property rights and that the Corps does not have the authority to require compensatory mitigation that is not directly proportional to the adverse effects of the authorized work. Several other commenters requested that the Corps adopt a separate appeals process for the NWP program, similar to the process currently being developed for individual permits. Several commenters requested that the Corps implement an appeals process for jurisdictional determinations. One commenter requested that all of the NWPs include a condition requiring deed restrictions for all remaining wetlands on the property. One commenter stated that the proposed NWPs are contrary to the Fair Housing Act because the NWPs make it more difficult to build affordable housing.

For certain types of activities, the proposed new and modified NWPs provide property owners and project proponents with an efficient means of obtaining the authorizations necessary to comply with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, provided those activities result in minimal adverse effects on the aquatic environment, individually or cumulatively. The NWPs allow property owners to use their land in compliance with these Federal laws. District engineers can require compensatory mitigation that is necessary to offset the losses of waters of the United States and ensure that the authorized work, with compensatory mitigation, results in minimal adverse effects on the aquatic environment.

We believe that it is unnecessary to develop a separate appeals process for the NWP program. It is important to recognize that the NWPs are optional permits. If a permittee does not want to comply with the terms and conditions of the NWP authorization, he or she can request authorization through the individual permit process. If the prospective permittee objects to the terms and conditions of the individual permit or is denied an individual permit, then he or she could use the regulatory appeals process, once it is implemented. We are not certain when an appeals process for jurisdictional determinations will become effective.

We cannot condition the NWPs to require deed restrictions on all remaining wetlands on the property for a particular project, unless the deed restriction is for a compensatory mitigation requirement that is fulfilled through the preservation of wetlands on the property. If there are remaining wetlands on the property after the completion of the authorized work, the landowner must obtain another Section 404 permit to do any further work on the property that involves discharges of dredged material into waters of the United States. Requiring a deed restriction for all remaining waters of the United States on the property may be considered as a taking of private property, unless the waters to be protected by the deed restriction are used to satisfy a compensatory mitigation requirement.

We do not agree that the proposed new and modified NWPs violate the Fair Housing Act. The proposed NWPs will provide developers with an expedited permit process that authorizes activities in waters of the United States that have minimal adverse effects on the aquatic environment. Although the proposed new and modified NWPs contain conditions that provide additional protection for the aquatic environment, which may increase costs for some builders, we still believe that the NWPs are a cost-effective means of complying with the Clean Water Act. It is important to remember that NWPs and other general permits are optional permits, and if the project proponent does not want to comply with all terms and conditions of the NWP, then he or she can apply for an individual permit.

One commenter requested that the new NWPs authorize water impoundments and other water development activities that have minimal adverse effects. Another commenter stated that the NWPs should authorize the construction of water diversion, storage, and reuse facilities. Another commenter suggested that NWP 16 requires revision because the quality of return water from the contained upland disposal site should be addressed through Section 402, not Section 401, of the Clean Water Act.

During the development of the new NWPs to replace NWP 26, we found that the use of NWP 26 to authorize discharges of dredged material into waters of the United States for the construction of water impoundments and water diversion, storage, and reuse facilities was not widespread across the country. We believe that it is more appropriate for Corps districts to develop regional general permits for these activities, where the construction of impoundments occurs regularly with minimal adverse effects on the aquatic environment. The citation in NWP 16 to

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Section 401 of the Clean Water Act is correct, because the runoff or overflow from a contained land or water disposal area has been defined as a "discharge of dredged material," which requires a Section 401 water quality certification (see 33 CFR Part 323.2(d)).

General Comments on October 14, 1998, Federal Register Notice

Many commenters were generally in favor of the proposed restrictions on NWP activities within the 100-year floodplain, designated critical resource waters, and impaired waters published in the October 14, 1998, **Federal Register** notice, but stated that the proposed changes still do not provide enough environmental protection and further restrictions on the NWPs are needed. A large number of commenters objected to the proposed additional restrictions, stating that the proposal contained little factual basis, the proposal was too vague to allow meaningful comment, or the proposal was unsupported because it did not contain an analysis of the potential effects it would have on the regulated public. Several commenters said that this proposal was based on an inadequate administrative record and that there is little or no documentation supporting the need for these additional restrictions. These commenters requested that the Corps demonstrate that the relevant factors have been considered when it makes its final decision concerning these restrictions and supplement its record to justify the need for these limitations if they are adopted. A few commenters requested that the Corps conduct an analysis of the effects of the proposed additional restrictions including: (1) The land area affected by the proposal; (2) the environmental benefits; (3) the costs to the regulated public, including the cost of compliance and potential delays; and (4) the workload implications to the Corps and other agencies. Many of these commenters stated that the proposed restrictions would be too burdensome to the regulated public, with few tangible added environmental benefits. Other objections expressed by many commenters are that the proposed restrictions would result in more activities requiring individual permits, they would remove any streamlining from the permit process provided by the NWPs, and they would result in increased costs and delays to the regulated public.

The NWP restrictions proposed in the October 14, 1998, **Federal Register** notice were intended to solicit comments from the public to provide the Corps with information regarding their effects on the regulated public, problems with implementation of the proposed restrictions, how to identify the areas that should be subject to the restrictions, and to which NWPs the restrictions should apply. As discussed below, we have thoroughly evaluated all of the comments received in response to the October 14, 1998, **Federal Register** notice and have made some changes to the proposed restrictions based on those comments. These additional NWP restrictions could create substantial burdens for the regulated public, because many project proponents will be required to apply for an individual permit or provide additional information to demonstrate compliance with these new NWP conditions. We believe that the proposed new restrictions will result in better protection of the aquatic environment and are necessary to address certain public interest factors, such as flood hazards, floodplain values, and high value waters.

A couple of commenters requested that the Corps provide the public with another opportunity to comment on the proposed restrictions, based on information provided by comments received in response to the October 14, 1998, **Federal Register** notice. One commenter stated that the proposal violates the Unfunded Mandates Reform Act by not conducting a regulatory assessment for each proposed restriction. Another commenter believes that the proposal is contrary to Section 404(e)(2) of the Clean Water Act, which requires a public hearing before revoking or modifying general permits.

Because of the modified public participation process the public has, with this **Federal Register** notice, another opportunity to comment on the proposed restrictions, with more complete information to evaluate those restrictions. Since the proposed restrictions may be implemented as NWP general conditions and are not new regulations, we are not required to conduct a regulatory assessment pursuant to the Unfunded Mandates Reform Act. The proposed restrictions do not substantially change the NWPs themselves, so we are not required to conduct a public hearing in accordance with Section 404(e)(2) of the Clean Water Act.

A number of commenters stated that the goals of the proposed additional NWP restrictions can be achieved through other means, instead of establishing national conditions for the NWP program. These commenters believe that the use of existing NWP general conditions, regional conditions, revocation of NWPs in certain geographic regions, preconstruction notifications, avoidance and minimization requirements, and discretionary authority are adequate to ensure that the NWPs do not authorize activities with more than minimal adverse effects to designated critical resource waters and impaired waters. Examples of general NWP requirements cited by some of these commenters include the establishment and maintenance of vegetated buffers adjacent to open waters and streams, water quality management plans, stormwater management, maintenance of water flows, and compensatory mitigation. Some commenters said that the proposed restrictions are more appropriately handled by State and/or local governments. Several commenters stated that the proposed limitations should be done through regional conditions instead of the NWP general conditions.

We agree that some of the goals of proposed restrictions can also be achieved through some of these means, but to ensure that concerns for floodplains, impaired waters, and designated critical resource waters are addressed consistently across the country, we believe that these restrictions should be implemented as NWP general conditions.

Many commenters objected to the proposal because terms such as "critical resource waters" and "impaired waters" were not defined. Other commenters based their objections on estimates that the proposed restrictions would exclude the use of NWPs from the approximately 40% of the Nation's waters that are considered impaired and the 8% of the land area of the continental United States that is within the 100-year floodplain. One commenter believes that the proposed restrictions are unlikely to result in a net increase in wetlands or improve water quality.

One of the objectives of the October 14, 1998, **Federal Register** notice was to solicit public comment on definitions for these terms and criteria to identify critical resource waters and impaired waters. We received many recommendations to help us identify those waters nationally. Each of the proposed restrictions on the NWP program are discussed below in separate sections. The intent of the proposed restrictions is to better protect the aquatic environment, not to produce a net increase in wetlands.

A large number of commenters supported the Corps decision to allow public comment on the final NWPs and final Corps regional conditions. A couple of commenters requested a 60-day comment period instead of a 45-day comment period. Two commenters asked if the Section 401 agency will have another opportunity to evaluate any changes to the NWPs that may occur as a result of comments received in response to that **Federal Register** notice. These commenters stated that the 401 agency should have another period of review to make new Section 401 determinations. Another commenter stated that 60 days is insufficient for Tribes to make Section 401 or CZM determinations on the new NWPs because EPA must approve the Tribes' application to administer Section 401 water quality standards and approve those standards.

We believe that 45 days is an adequate amount of time for the public to comment on the draft new and modified NWPs and Corps regional conditions because of the previous opportunities for public comment. Because of the changes to the issuance process for the proposed new and modified NWPs, the 401 and CZMA agencies will make their determinations based on final NWPs and Corps regional conditions, since those NWPs and regional conditions will be issued before the final 60-day WQC/CZMA determination period begins. If a Tribal agency does not currently have EPA approval to administer Section 401 water quality standards or EPA has not yet approved their water quality standards, then the agency that currently has Section 401 authority must make the determination.

Withdrawal of NWP B

In response to the October 14, 1998, **Federal Register** notice announcing the Corps withdrawal of the proposed NWP B for master planned development activities, a large number of commenters expressed their support for the withdrawal of that proposed NWP. On the other hand, many commenters objected to the withdrawal of NWP B. A number of commenters believe that the Corps did not consider all comments received in response to the July 1, 1998, **Federal Register** notice and that the decision to withdraw NWP B was premature. These commenters stated that the Corps should have announced its decision to withdraw NWP B when the other proposed NWPs are issued. Several of these commenters requested that the Corps provide documentation explaining this decision. Several commenters recommended that the Corps repropose NWP B.

We fully considered all comments received in response to the proposal to issue NWP B for master planned development activities. The decision to withdraw NWP B from the proposed new and modified NWPs was discussed in the October 14, 1998, **Federal Register** notice, but we will provide further detail below.

One of the most important factors in the decision to withdraw NWP B is the difficulty in providing a clear, easy to understand, definition for the term "Master Planned Development," to be used in the context of the NWP. Without a clear definition of this term, there will be much confusion for the Corps and the regulated public concerning which developments could be authorized by this NWP. The comments received in response to the July 1, 1998, **Federal Register** notice provide ample evidence of the potential problems with implementing this NWP, because of the difficulty in producing a definition that is easily understood. Many commenters believe that any type of master planned development, particularly those approved by State or local agencies, would qualify for NWP B. This is simply an incorrect assumption which emphasized the difficulties in implementing this NWP. The intent of NWP B was to authorize developments that are designed, constructed, and managed to conserve the functions and values of waters of the United States on the project site. For these developments, the aquatic environment receives equal consideration to the development, and the development is designed to protect the local aquatic environment. We may repropose NWP B when we have formulated a definition that better supports the intent of the NWP and have resolved other concerns associated with the proposed NWP.

Limiting the Use of NWPs Within the 100-Year Floodplain

In the October 14, 1998, **Federal Register**, we proposed to prohibit the use of the new and modified NWPs to authorize permanent, above-grade wetland fills in the 100-year floodplain as mapped by the Federal Emergency Management Agency (FEMA) on its Flood Insurance Rate Maps. We also requested comments regarding the applicability of this restriction to existing NWPs, as well as the proposed new and modified NWPs.

Nearly all of the correspondence received in response to the October 14, 1998, **Federal Register** notice commented on this proposed restriction. Most of the proponents stated that the restriction should be expanded to apply to all 100-year floodplains, not just the 100-year floodplains mapped by FEMA, because further restriction is necessary to safeguard wetlands for protection against floods. One commenter said that the condition should be expanded to include riparian buffers of 300 feet from all rivers and streams and should address any uses of NWPs in these areas, not merely above-grade fills in waters of the United States. A few of the commenters recommended specific NWPs to be included in this condition. Collectively, every NWP was recommended for inclusion. Many commenters objecting to the proposed restriction included State and local flood control agencies that voiced their concern that essential public facilities may need to be sited within the floodplain in order to properly function. They stated that all municipalities need the ability to build and maintain their urban drainage infrastructure without undue delay and expense so that it operates as originally designed for flood control and/or water quality enhancement purposes. Specifically, they said that the use of NWPs 3 and 31 to maintain these facilities should be exempt from this condition.

We are proposing to add General Condition 27 to the NWPs to restrict or prohibit the use of NWPs 12, 14, 21, 29, 39, 40, 42, 43, and 44 to authorize permanent, above-grade fills in waters of the United States within the 100-year floodplain. For these NWPs, prospective permittees must notify the District Engineer in accordance with General Condition 13. For NWPs 21, 29, 39, 40, 42, 43, and 44, the notification must include documentation that the proposed project will not involve discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills in waters of the United States within the FEMA-mapped 100-year floodplain. If the FEMA map is out of date or the 100-year floodplain is not mapped, the documentation should be from the local floodplain authority. This general condition is not restricted to 100-year floodplains mapped by FEMA on its Flood Insurance Rate Maps. Instead, this general condition would apply to all 100-year floodplains, except in 100-year floodplains at the point in the watershed where the drainage area is less than 1 square mile. In those areas where no FEMA maps exist, or the FEMA maps are out-of-date, the prospective permittee must submit documentation to the District Engineer from the local official with authority to issue development permits for activities in the 100-year floodplain that the proposed work is outside of the 100-year floodplain.

Proposed General Condition 27 also contains a presumption that NWP 12 and 14 activities resulting in permanent, above-grade fills in waters of the United States within the 100-year floodplain

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will cause more than minimal adverse effects. However, this presumption is rebuttable and the proposed work can be authorized by NWPs 12 or 14 if the prospective permittee clearly demonstrates to the District Engineer that the proposed work and associated mitigation will not decrease the flood-holding capacity of the waterbody and will not cause more than minimal changes to the hydrology, flow regime, or volume of waters associated with the 100-year floodplain. The documentation rebutting this presumption must include proof that FEMA, or a state or local floodplain authority through a licensed professional engineer, has approved the proposed project and provided a statement that the project does not increase flooding or more than minimally alter floodplain hydrology or flow regimes.

Expanding proposed General Condition 27 to prohibit the use of all NWPs within the 100-year floodplain, regardless of whether or not the authorized activity would result in above-grade wetland fills, would unnecessarily prohibit NWP activities that have little or no effect on floodplain functions or values. While a 300-foot buffer may be within the 100-year floodplain of some waterbodies, this would be an excessive requirement for waterbodies with narrow floodplains. We believe that certain NWP activities which result in permanent, above-grade fills in waters of the United States within the 100-year floodplain have the potential to impact water quality, especially during flood events, and therefore should be subject to the restrictions of this condition. We concur with the flood control agencies contentions that municipalities need the ability to build and maintain their urban drainage infrastructure without undue delay and expense so that those facilities operate as originally designed for flood control and/or water quality enhancement purposes. Lacking general support for including the existing NWPs in this proposed condition, and acknowledging that not all activities authorized by the existing NWPs will result in more than minimal adverse effects to 100-year floodplains, we are proposing to include NWPs 12, 14, 21, 29, and 40 in General Condition 27, as well as NWPs 39, 42, 43, and 44. Furthermore, we have determined that the proposed NWP 41, which authorizes reshaping existing drainage ditches, would not result in any appreciable adverse impacts to the floodplain and are proposing to exclude this NWP from General Condition 27.

Many commenters stated that FEMA maps are inaccurate and incomplete, mapping mostly urban areas and leaving rural areas unprotected. Others were concerned about what information will be used to determine whether a project is within the 100-year floodplain. Many commenters also stated that the condition will result in greatly increased numbers of individual permits and that the area of land encompassed by the 100-year floodplain prohibition is so extensive as to make use of NWPs with this condition extremely prohibitive. Additionally, the Corps has provided no evidence to support their notion that use of any particular NWP to authorize fills in floodplains has contributed to, or threatens to contribute to, the frequency or severity of flood events. They state the burden is on the Corps to develop a factual record to justify its proposed regulatory actions.

FEMA maps are available for review at local FEMA or Corps offices for determining the applicability of this condition to the applicant's proposed project. We agree that applying General Condition 27 to NWPs 12, 14, 21, 29, 39, 40, 42, 43, and 44, will significantly increase the number of individual permit applications processed by the Corps. Additionally, we have determined that this condition covers approximately 55 million acres of wetlands which fall within the 100-year floodplain, a large amount of wetlands regulated under Section 404 of the Clean Water Act.

In response to the July 1, 1998, **Federal Register** notice, FEMA provided the following comments: (1) the replacement NWPs cover a much greater geographical area than the existing NWP 26 and therefore need to consider project impacts within the 100-year floodplain; (2) when flood capacity within the floodplain is diminished due to authorized or unauthorized construction in wetland areas, flooding in other areas is likely to increase; and (3) it is the responsibility of the Corps under Executive Order 11988, entitled Floodplain Management, to evaluate all activities in or affecting floodplains. Based upon these premises, the Corps feels it is necessary to impose this condition on those specific NWPs, which could potentially impact the flood capacity of the floodplains.

Most of those opposed to the proposed general condition stated that it does not fulfill the congressional intent to implement a streamlined permitting process for activities resulting in minimal adverse environmental effects on the aquatic environment. They also state that the Corps is not authorized by Congress to become a regulatory authority with regards to controlling floodplain activities. A large number of commenters stated that the condition provides for dual regulation of the 100-year floodplains, through the Corps and FEMA. These commenters said that floodplain management, which FEMA administers, and water quality management, administered by the Corps under Section 404 of the Clean Water Act, should be regulated separately. A couple of commenters stated that if FEMA wants to restrict construction in floodplains to reduce flood damage then they should do so under their own authority.

We believe that the proposed condition does fulfill the congressional intent inasmuch as the NWP process provides for a less rigorous review of proposed projects with decisions being rendered in a much more timely manner than the individual permit process. Also, conditioning the NWP fulfills the requirement to minimize adverse impacts to the aquatic environment. Additionally, in accordance with Executive Order 11988, the district engineers are directed to avoid authorizing floodplain developments whenever practicable alternatives exist outside of the floodplain. We believe that we are authorized to regulate waters of the United States for water quality management and many wetlands within the 100-year floodplain fall within the "adjacency clause." Therefore, wetlands in the 100-year floodplain are within the Corps regulatory jurisdiction. To reiterate, the Corps recognizes that it does not regulate any activity in the 100-year floodplain that does not occur within a water of the United States; these upland areas would be regulated by FEMA. It is not the intent of the Corps to duplicate FEMA and State and local flood control agencies, but rather to rely on these agencies to assert their jurisdiction to minimize impacts to aquatic resources within the 100-year floodplain.

Most of the commenters indicated that the proposed condition is overly restrictive, unnecessary, and causes the process to be burdensome to both Corps regulators and the taxpayers. These commenters also indicated that it is both expensive and time-consuming without providing commensurate benefits for wetlands. Many said the proposal is not warranted and obviated by the many environmentally protective conditions already in place, including State and local regulations. Many of the opponents included state and local transportation departments who indicated that this condition would prevent them from fulfilling their mandate of ensuring public safety and that widening roadways, some within wetlands within the 100-year floodplain, is often required and the condition would put an unnecessary burden on their departments while delaying their projects. They recommended exempting NWP 14 from this condition. Few of the objectors recommended which specific NWPs, existing or proposed replacements, should be excluded from this condition. Collectively, every NWP was recommended for exclusion.

To reiterate, in accordance with Executive Order 11988, district engineers should avoid authorizing floodplain developments whenever practicable alternatives exist outside of the floodplain. The proposed General Condition 27 prohibits the use of certain NWP activities that could result in more than minimal adverse impacts to the aquatic environment, as well as the 100-year floodplain. We believe that, with proper planning, transportation departments will have ample time to attain a permit through the individual permit process without undue delays and excessive risks to public safety. In the event of a "wash-out" due to a storm event, NWP 3 can be used to repair public and private roadways.

Limiting the Use of the NWPs in Designated Critical Resource Waters

We proposed in the October 14, 1998, **Federal Register** notice, to limit the use of NWPs in critical resource waters designated by State or Federal agencies. Many of the comments we received addressed proposed restrictions on the applicability of the NWPs in critical resource waters. Most of those comments generally supported the adoption of such restrictions, and they focused on suggestions for defining critical resource waters. These suggestions advocated the inclusion of the following waters as critical resource waters: waters that have any kind of special value designation by Federal, State, or local governments; sensitive and specially valuable waters; habitat of endangered, threatened, or sensitive species; source waters for drinking water; groundwater recharge zones; rare and irreplaceable wetlands that cannot be mitigated with current technologies; and waters declared as impaired under Section 303(d) of the Clean Water Act. We have considered each of these recommendations, as discussed below.

Waters that have any kind of special value designation by Federal, State, or local governments: For waters that have received a Federal designation of special value, we agree that the use of NWPs should be restricted to the extent that their applicability is reasonably certain to jeopardize any essential functions which confer the recognized special value to these waters. We are proposing to add a new NWP general condition (General Condition 25) to address the use of NWPs in designated critical resource waters. Proposed General Condition 25, entitled Designated Critical Resource Waters, prohibits the use of NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity in the following critical resource waters including wetlands adjacent to these waters: NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally-listed threatened and endangered species, coral reefs, State natural heritage areas, or outstanding national resource waters officially designated by the State where those waters are located. Outstanding national resource waters and other waters having particular environmental or ecological significance must be officially designated through an official State process (e.g., adopted through regulatory or statutory processes, approved through State legislation, or designated by the Governor). In those circumstances where a waterbody has been designated by the State, the District Engineer will publish a public notice advising the public that such waters will be added to the list of designated critical resource waters. The District Engineer may, on his own, designate critical resource waters after notice and opportunity for public comment. For activities authorized by NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, proposed General Condition 25 requires the prospective permittee to notify the District Engineer in accordance with General Condition 13 for any activity proposed in these designated critical resource waters, including adjacent wetlands. This general condition also prohibits discharges in designated critical habitat for Federally-listed endangered or threatened species unless the activity complies with General Condition 11 and the U.S. FWS or the NMFS has concurred in a determination of compliance with this condition.

We believe that special value designations promulgated solely by State or local agencies without the approval of the governor or State legislature are not appropriate bases for the imposition of restrictions on the use of these Federal permits. We believe that restrictions which are necessary to support the other State and local special value designations should be effected through relevant State and local processes.

Several commenters suggested that Wild and Scenic Rivers, blue-ribbon trout fisheries, and American Heritage Rivers were all examples of waters that have been designated as having special value, and that these particular categories of waters should be categorically excluded from NWP eligibility. Since there is no official Federal designation of any waters as blue-ribbon trout fisheries, we do not agree that these waters should be excluded from this Federal program. The NWP general conditions already impose restrictions on NWP eligibility in waters that are components of Wild and Scenic River Systems, and on any river officially designated by Congress as a "study river" for possible inclusion in such systems. Since this general condition imposes restrictions that achieve the goals of adequately protecting special values, and of maximizing NWP utility, we do not believe that further restriction is appropriate or necessary. American Heritage Rivers may be likely candidates for inclusion as critical resource waters but it is difficult to identify any possible adverse effect that would result from NWP eligibility in these waters. It is particularly difficult to identify such effects from a national perspective.

We believe that the imposition of any restriction imposed to protect Critical Resource Waters must be precise in its scope, in order to provide all reasonable and necessary protection of the factors conferring special value, without unnecessarily limiting the utility of the NWPs. Since we believe that these two goals are equally important, we have concluded that it would be too broad a restriction to eliminate the applicability of any NWP in special value waters without a prior Corps determination that the NWP in question posed some reasonable likelihood of adverse effect on the recognized special value. Our consideration of the comments received and our concern about undue restrictions on the NWPs, lead us to conclude that we are unable to make additional determinations from a national perspective. As a result, we believe that any such determination of other types of waters would most appropriately be made at the district or, in some cases, at the division level, and that as a practical matter, the necessity of further restriction to protect waters that have a Federal special value designation must be determined by the Corps district or division and implemented as regional conditions on the NWPs, as necessary.

Sensitive and specially valuable waters: There is no official Federal designation of any waters as sensitive or

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specially valuable waters, therefore there is no Federal definition of such waters. We believe that the inclusion of such arbitrary terms in the definition of Critical Resource Waters would be counterproductive, and we do not agree that introduction of additional ambiguity is appropriate. We further believe that the use of any NWP in waters identified by the Corps, on a case-by-case basis, as having some particular sensitivity or special value that is susceptible to degradation by the activity authorized by the NWP, can be adequately protected by the Corps use of its discretionary authority to require an individual permit review, as necessary.

Habitat of endangered, threatened, or sensitive species: Federal protection for the critical habitat of Federally-listed threatened and endangered species is provided in all Corps permit actions through compliance with the requirements of the Endangered Species Act, with the regulations promulgated pursuant to that Act, and through NWP General Condition 11. General Condition 25 contains a provision stating that discharges are not authorized in designated critical habitat for Federally listed threatened or endangered species unless the activity complies with General Condition 11 and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service has concurred in a determination of compliance with this condition. Since "sensitive species" is a term that is not defined in the Endangered Species Act or in any other applicable Federal law, we believe that including the habitat of such "sensitive species" would promote confusion rather than provide clarity in the definition of critical resource waters, and we do not believe that such inclusion is appropriate.

Source waters for drinking water: We do not believe that any of the activities authorized by the NWPs pose any inherent threat to drinking water or to the source waters for drinking water, but it may be possible for such adverse effects to occur in certain circumstances. However, we believe that the specification of all such source waters as critical resource waters would impose a restriction on the utility of the NWPs that is not warranted by the limited extent of potential adverse effects. In light of this, we believe it is more appropriate to rely on the Corps use of its discretionary authority, on a case-by-case basis, to ensure against adverse effects on drinking water.

Groundwater recharge zones: We agree that any activity that significantly impairs groundwater recharge functions of wetlands must be avoided. However, such significant impairment does not inherently result from the kinds of activities authorized by the NWPs. As such, we believe that any restriction on the authorization of an activity should be based on the effects that are expected to occur as a result of a specifically proposed activity. Since we do not expect the majority of activities authorized by the NWPs to adversely affect groundwater recharge, we believe that our ability to assert discretionary authority to require an individual permit in lieu of any NWP, for cause, provides ample protection for groundwater recharge zones.

Rare and irreplaceable wetlands that cannot be mitigated with current technologies.

As with many of the other types of wetlands suggested for inclusion as critical resource waters, the term "rare and irreplaceable wetlands that cannot be mitigated with current technologies" is undefined, and the general nationwide specification of such wetlands as critical resource waters would be a continuing source of debate and, therefore, impractical. However, we acknowledge that many wetlands systems may qualify as "rare and irreplaceable" because of their location in the landscape of a particular region. We believe that such locally rare and irreplaceable wetlands are critical resource waters because of their local importance. We believe that as such wetlands are recognized by Corps district and division offices, the revocation of any NWP that poses a threat to these systems, or the imposition of regional conditions to avert such threats, should be considered.

Waters declared as impaired under Section 303(d) of the Clean Water Act: "Impaired waters," as defined in Section 303(d) of the Clean Water Act, are addressed as a separate issue in the next section of this **Federal Register** notice, and as such, we do not believe it is appropriate to include these waters in the definition of critical resource waters.

Proposed General Condition 25 prohibits the use of NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity in certain Federally- and State-designated critical resource waters, including wetlands adjacent to those waters, with the exceptions discussed above. For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required for activities in designated critical resource waters and adjacent wetlands, to allow the district engineer to determine if the proposed work will result in more than minimal adverse effects on those waters. Activities authorized by the NWPs not listed in General Condition 25 would not be subject to these requirements. Corps districts may also consider the use of regional general permits for those activities prohibited by General Condition 25, if the District Engineer determines after public notice and opportunity for public comment that on a regional basis, such activities will not result in more than minimal adverse effects on the aquatic environment, individually or cumulatively.

Limiting the Use of the NWPs in Impaired Waters

In the **Federal Register** notice published on October 14, 1998, we requested comments on restricting or prohibiting the use of the NWPs in impaired waters, including how to identify impaired waters for the purposes of the NWPs, and which NWPs should be subject to this limitation. We received a large number of comments supporting the proposed limitation and a large number of comments objecting to the proposed limitation.

Some commenters stated that the proposed exclusion should apply to the use of NWPs in all wetlands and other waters within the watersheds of impaired waters. Other commenters recommended that the use of NWPs should be excluded from wetlands or waters upstream or adjacent to impaired waters. Two commenters stated that NWPs should be excluded from use in wetlands in impaired waters, even if the historic loss of wetlands within the watershed is not the cause of impairment, because those wetlands are of high value in that watershed. In contrast, several other commenters agreed with the Corps proposal to restrict the use of NWPs only in those watersheds that are considered impaired as a result of historic wetland losses. These commenters recommended that the exclusion apply only to "State-designated impaired waters which are determined to be impaired as a result of the historic loss of wetlands." Several commenters supported the proposed exclusion, provided the restriction applies only to those projects that will result in further degradation of the waterbody based on the applicable 303(d) parameter; if the proposed work will have no effect on the 303(d) parameter, then the project could be authorized by NWP.

In the October 14, 1998, **Federal Register** notice, we stated that the impairment of certain open waters such as lakes, rivers, and streams is directly related to the historic loss of wetlands in the watershed. Although not explicitly stated in the October 14, 1998, **Federal Register** notice, the intent of the proposal was to restrict the use of NWPs in waterbodies that are impaired due to the loss of wetlands. This remains our intent, but we are also proposing to add several other causes of impairment that will be considered as part of the restriction. The additional causes of impairment include: nutrients, organic enrichment resulting in low dissolved oxygen concentration in the water column, sedimentation and siltation, habitat alteration, suspended solids, flow alteration, and turbidity. These additional sources of impairment may be related to activities regulated under Section 404 of the Clean Water Act. We are proposing to incorporate this restriction into the NWP program as General Condition 26, entitled Impaired Waters.

We believe that discharges of dredged or fill material into impaired waters of the United States and adjacent wetlands may cause further impairment of those waters. Proposed General Condition 26 prohibits the use of NWPs to authorize discharges resulting in the loss of greater than 1 acre of impaired waters of the United States, including wetlands adjacent to those waters, except for activities authorized by NWP 3. Activities authorized by NWP 3 that occur in impaired waters and adjacent wetlands require notification to the District Engineer in accordance with General Condition 13, who will determine if the proposed work will result in further impairment of the waterbody. For activities resulting in the loss of 1 acre or less of impaired waters of the United States, including adjacent wetlands, the prospective permittee must notify the District Engineer in accordance with General Condition 13 and the work authorized by NWP must not result in further impairment of the waterbody. The notification must include a statement from the permittee that clearly explains how the proposed work, excluding mitigation, will not further impair the waterbody. The District Engineer will determine if the prospective permittee has clearly demonstrated that the proposed work will not result in further impairment of the waterbody. For discharges resulting in the loss of greater than ¼ acre of impaired waters, including adjacent wetlands, the District Engineer will coordinate with the State 401 agency in accordance with the procedures in paragraph (e) of General Condition 13. The District Engineer will consider any comments received from the State 401 agency to determine if the proposed work will not result in further impairment of the listed waterbody. If the District Engineer determines that the proposed activity will not result in further impairment of the waterbody by providing additional inputs of the listed pollutant (i.e., nutrients, organic enrichment resulting in low dissolved oxygen concentration in the water column, sedimentation and siltation, habitat alteration, suspended solids, flow alteration, turbidity, and loss of wetlands), then the project can be authorized by NWP if it meets all of the other terms and conditions of the NWPs. If the District Engineer determines that the proposed activity will result in further impairment of the waterbody by contributing more of the listed pollutant to the impaired waterbody, then the project cannot be authorized by NWP and the project proponent must apply for authorization either through the individual permit process or obtain authorization through an appropriate regional general permit, if available.

For the purposes of this proposed general condition, impaired waters are those waters of the United States that have been identified by States or Tribes through the Clean Water Act Section 303(d) process as impaired due to nutrients, organic enrichment resulting in low dissolved oxygen concentration in the water column, sedimentation and siltation, habitat alteration, suspended solids, flow alteration, turbidity, and the historic losses of wetlands. The Corps will defer to states to identify these waters under the Section 303(d) process, because states are responsible for implementing Section 303 of the Clean Water Act, specifically the Total Maximum Daily Load (TMDL) program overseen by EPA. TMDL standards must be approved by EPA after a formal public notice and comment period. States must submit lists of impaired waters to EPA every two years. The authorized activity itself can result in net improvement of the aquatic ecosystem. For example, NWP 13 can be used to authorize bank stabilization activities in a waterbody that has been identified as impaired due to sedimentation, because the bank stabilization activity reduces the amount of sediment entering the waterbody, thereby improving water quality. Compensatory mitigation can be used to offset losses of waters of the United States authorized by NWPs and reduce the sources of pollution causing impairment of the local aquatic environment. The establishment and maintenance of vegetated buffers adjacent to open and flowing waters is a type of compensatory mitigation than can help improve the impaired waterbody by restoring aquatic habitat, removing nutrients from surface runoff and groundwater flowing into waterbodies, trapping sediments, and moderating changes in water temperatures.

Several commenters believe that the use of NWPs in impaired waters is a violation of the Clean Water Act and that individual permits must be used instead to authorize Section 404 activities. A number of commenters objected to the proposed exclusion because they believe that concerns for impaired waters should be addressed by states or Tribes under Sections 101(b) and 401 of the Clean Water Act. Several of these commenters stated that the proposed exclusion duplicates State efforts and is unnecessary for the NWP program, because states currently consider the effects of development projects on impaired rivers. A number of commenters expressed concern that excluding the use of NWPs from impaired waters will result in additional pressures on average quality waters.

The use of NWPs in impaired waters is not a violation of the Clean Water Act, particularly when a State, Tribe, or EPA issues a Section 401 water quality certification either for the NWP itself or for a case-specific NWP authorization. If the 401 agency determines that a project does not meet the water quality standards of the State or Tribe, resulting in further impairment of the waterbody, they can deny water quality certification for that particular activity. The requirements of proposed General Condition 26 will not place additional pressures on impaired waters, because most project proponents are unlikely to relocate their projects to areas adjacent to or in unimpaired waters. It is important to remember that NWPs are optional permits, and the project proponent can apply for authorization through the individual permit process if he or she cannot meet the terms and conditions of an NWP. They are much more likely to request an individual permit for a project rather than relocating the project to try to obtain an NWP authorization.

Many commenters objected to restricting or eliminating the use of NWPs in impaired waters. Reasons for their objections include: (1) Eliminating the use of NWPs in impaired waters is illogical and will not provide any environmental benefits; (2) the Corps does not explain how eliminating the use of NWPs in impaired waters will repair or fix the impairment; (3) no information is provided in the October 14, 1998, **Federal Register** notice to support that impairment is due to historic losses of wetlands in the

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watershed, since few states have identified waters where the impairment is due to loss of wetlands; (4) historic wetland loss is an insignificant source of impairment for most waterbodies; (5) no clear definition of "impaired waters" was provided in the October 14, 1998, **Federal Register** notice; (6) many State Section 303(d) lists have not been approved by EPA; and (7) the Corps provided no justification for making this a Federal exclusion.

Restricting the use of NWPs in waters that are impaired because of nutrients, organic enrichment resulting in low dissolved oxygen concentration in the water column, sedimentation and siltation, habitat alteration, suspended solids, flow alteration, turbidity, and historic losses of wetlands in the watershed will benefit the local aquatic environment by preventing additional impairment of the waterbody and improving the waterbody through compensatory mitigation and best management practices. It is important to note that impaired waters are identified by evaluating open waters and segments of streams and rivers, not the entire watershed. Proposed General Condition 26 will apply only to those waterbodies, or segments of waterbodies, that have been assessed by states under the TMDL program. In addition, proposed General Condition 26 will apply only to wetlands adjacent to those waterbodies or segments of waterbodies. The Corps will not identify impaired waterbodies. As more waterbodies are surveyed by states under the TMDL program, there may be additional waters subject to General Condition 26. In the October 14, 1998, **Federal Register** notice, we requested suggestions for identifying impaired waters, and cited the Section 303(d) process as an example. Based on the comments received in response to the October 14, 1998, **Federal Register** notice, we have determined that the Section 303(d) program is the most appropriate way to identify impaired waters. We can add the requirements of proposed General Condition 26 to the NWP program because those requirements are directly related to the goals of the Clean Water Act.

A couple of commenters questioned how the Corps will define the phrase "identified with waters and aquifers that have been identified by states as impaired," and asked if stream flow data, hydrologic data, or geographic proximity will be used as criteria.

Some commenters said there is no indication as to the number of waters that are impaired due to activities authorized by NWPs. Many commenters objected to the proposed exclusion, stating that it would substantially reduce the amount of geographic area where NWPs could be used. Several of these commenters stated that the proposed exclusion would prohibit the use of NWPs in 36% of the rivers and 39% of the lakes in the United States. Because of the large amount of waters that are considered impaired through the Section 303(d) process, a number of commenters stated that prohibiting the use of NWPs in impaired waters will result in a substantial increase in the number of individual permits processed by the Corps, increasing its workload.

Since proposed General Condition 26 will apply only to activities in waterbodies (and wetlands adjacent to those waterbodies) that are identified by State Section 303(d) programs as impaired due to nutrients, organic enrichment resulting in low dissolved oxygen concentration in the water column, sedimentation and siltation, habitat alteration, suspended solids, flow alteration, turbidity, and historic losses of wetlands in the watershed, and the proposed general condition requires that the NWP activity cannot further impair the waterbody, the number of activities for which the NWPs cannot be used is not likely to be substantial. Therefore, we anticipate only a relatively minor increase in the number of activities requiring individual permits as a result of proposed General Condition 26. According to EPA's "National Summary of Water Quality Conditions" for 1996, only 19% of the river and stream miles in the United States have been surveyed for TMDLs. For other waterbodies, 40% of the lakes, ponds and reservoirs and 72% of the square miles of estuaries have been surveyed for TMDLs. Of the river miles surveyed, 18% are impaired due to siltation, 14% are impaired due to nutrients, 10% are impaired due to oxygen depleting substances, 7% are impaired due to habitat alteration, and 7% are impaired due to suspended solids. Of the pond, lake, and reservoir acres surveyed, 20% are impaired due to nutrients, 10% are impaired due to siltation, 8% are impaired due to oxygen-depleting substances, and 5% are impaired due to suspended solids. For ponds, lakes, and reservoirs, habitat alteration was not listed as a source of impairment in the 1996 EPA report cited above. Of the square miles of estuaries surveyed, 22% are impaired due to nutrients, 12% are impaired due to oxygen-depleting substances, and 6% are impaired due to habitat alterations. There may be some overlap in these percentages, because more than one pollutant may impair a particular waterbody or river segment. If, in the future, states identify, through the Section 303(d) process, additional waters as impaired due to the causes listed in proposed General Condition 26, then those waters and any adjacent wetlands will be subject to this general condition.

A few commenters objected to the reference to aquifers in the October 14, 1998, **Federal Register** notice. Some of these commenters stated that Section 404 of the Clean Water Act does not provide the Corps with the authority to regulate groundwater. They said that regulation of groundwater should be left to the states, who have the legal authority. Other commenters requested guidance or definitions to identify impaired aquifers.

We agree that Section 404 of the Clean Water Act does not provide us with the authority to directly regulate activities that affect groundwater, but since the quality of groundwater is often affected by activities in surface waters, we can consider the adverse effects of work authorized under Section 404 on water supplies.

Many commenters discussed potential problems with the proposed limitation, especially if the Section 303(d) process is used to identify impaired waters for the purposes of the proposed exclusion. A large number of commenters stated that waters included on the Section 303(d) lists for specific water quality criteria are not necessarily affected by activities regulated under Section 404 of the Clean Water Act. Many commenters recommended that the proposed exclusion should not apply to waters that are considered impaired due to toxic discharges, nutrient runoff, organic pollutants, fecal coliform, and sediment loads. Another commenter objected to the proposed exclusion because impairment of waters may be due to activities outside of the watershed and not directly in the impaired waterbody. A couple of commenters objected to using the Section 303(d) process to identify impaired waters because EPA is currently attempting to refine the entire Section 303(d) program and is planning to issue proposed rules and guidance with specific requirements for developing Section 303(d) lists. Another objection is that the Section 303(d) lists are subject to review every two years, which may result in uncertainty for the regulated public. Some commenters oppose the use of Section 303(d) lists because a state often uses only one data point to make a Section 303(d) determination and the criteria are often applied inconsistently between states. Some State lists are better developed than others, resulting in inconsistent standards between states.

The impairment of waterbodies due to nutrients, organic enrichment resulting in low dissolved oxygen concentration in the water column, sedimentation and siltation, habitat alteration, suspended solids, flow alteration, turbidity, and the historic loss of wetlands, may be related to activities regulated under Section 404 of the Clean Water Act. The requirements of General Condition 26 will ensure that the activities authorized by NWPs will not result in further impairment of the waterbody, so that the NWPs will authorize only activities with minimal adverse effects on the aquatic environment. Impairment due to other causes, such as metals, toxic discharges, organic pollutants, and fecal coliform, will not be subject to this general condition. We recognize that the Section 303(d) lists are subject to change every 2 years and that many waters have not been surveyed to determine if they comply with State TMDL criteria. If additional waters are identified as impaired due to the causes listed in General Condition 26, then they will be subject to that general condition. We also recognize that there may be some inconsistencies between states, but these inconsistencies should be resolved by EPA, which provides Federal oversight for the Section 303(d) program and its implementation by states.

A number of commenters proposed alternatives to prohibiting the use of NWPs in impaired waters. Several commenters stated that concerns for impaired waters should be addressed through either regional conditions, case-specific discretionary authority, or revocation of certain NWPs in specific geographic areas. Other commenters suggested addressing concerns for impaired waters in the same way that the Corps addresses endangered species and historic property issues, by adding a general condition to the NWPs requiring notification to the District Engineer for activities that affect impaired waters and allowing the District Engineer to determine if the proposed activity will result in further impairment of the waterbody. If the proposed work would result in no further impairment of the waterbody, then the activity could be authorized by NWP. Another commenter suggested that compensatory mitigation could be required for NWP activities to replace lost wetlands and increase the acreage of wetlands in the vicinity of the impaired waterbody. A few commenters recommended allowing the use of NWPs in impaired waters where the authorized activity does not result in a permanent loss of pollution control features or does not cause permanent adverse effects to water quality, citing as examples stream restoration projects, utility line backfills, and temporary impacts to waters of the United States. Another commenter stated that the use of NWPs in impaired waters should not be restricted or prohibited when the objective of the proposed work is to restore wetlands, aquatic habitat, or water quality, or to conduct activities that will remove the waterbody from the Section 303(d) list.

We agree that an NWP general condition addressing the use of NWPs in waterbodies designated, through the Section 303(d) process, as impaired due to nutrients, organic enrichment resulting in low dissolved oxygen concentration in the water column, sedimentation and siltation, habitat alteration, suspended solids, flow alteration, turbidity, and the historic loss of wetlands is appropriate. Proposed General Condition 26 requires that activities authorized by NWPs in impaired waterbodies and adjacent wetlands will not result in further impairment of the waterbody. Compensatory mitigation, if required to ensure that the authorized work results in minimal adverse effects on the aquatic environment, should also help reduce inputs of the pollutants that are causing the impairment. Such compensatory mitigation may include: offsetting the authorized loss of wetlands, establishing and maintaining a vegetated buffer that reduces the input of nutrients, organic matter, and sediments into the waterbody, and reestablishing aquatic habitat adjacent to the waterbody. NWP activities that restore or enhance impaired waters are not prohibited by proposed General Condition 26.

In response to the October 14, 1998, **Federal Register** notice, we received many suggestions for NWPs that should not be subject to the proposed exclusion. Some commenters cited specific types of activities that should not be prohibited from NWP authorization in impaired waters. One commenter suggested that the exclusion should not apply to the maintenance of transportation projects. Other commenters suggested that flood control activities and the maintenance of flood control projects should be exempt from this exclusion. Some commenters said that the exclusion should apply only to those NWP activities that have a direct effect on a Section 303(d) parameter.

We believe that proposed General Condition 26 should apply to all NWPs that authorize discharges of dredged or fill material into waters of the United States identified as impaired due to the causes listed in the general condition. Proposed activities that result in further impairment of the listed waterbody or result in the loss of greater than 1 acre of impaired waters and adjacent wetlands (except for activities authorized by NWP 3 as discussed above) are not authorized by NWPs. Prospective permittees are required to notify the District Engineer in accordance with General Condition 13, and the District Engineer will determine whether or not proposed work will result in further impairment of the waterbody. For proposed activities resulting in the loss of greater than 1/4 acre of impaired waters and adjacent wetlands, the District Engineer will coordinate with the State 401 agency in accordance with paragraph (e) of General Condition 13. Proposed General Condition 26 does not apply to activities in impaired waters that are subject only to Section 10 of the Rivers and Harbors Act, if there is no related Section 404 activity. Maintenance activities for transportation projects and flood control projects that do not result in discharges of dredged or fill material are not subject to the requirements of proposed General Condition 26.

III. Comments and Responses on Specific Nationwide Permits

3. Maintenance

In the July 1, 1998, **Federal Register** notice, the Corps proposed to modify this NWP to authorize the removal of accumulated sediments in the vicinity of existing structures. We also proposed to authorize activities in waters of the United States associated with the restoration of uplands lost as a result of a storm, flood, or other specific event. These additional activities are authorized by paragraphs (ii) and (iii) of the NWP.

General Comments on this NWP: The original terms and conditions of NWP 3 are in paragraph (i) of this NWP. In the July 1, 1998, **Federal Register** notice, we proposed minor changes to the original text of NWP 3. In the July 1, 1998, **Federal Register** notice, we proposed to add a notification requirement for all work authorized by paragraph (i) of the proposed modification of NWP 3 except for the replacement of the structure. We also inserted the phrase "or damaged" after the word "destroyed." We also received some comments concerning the provisions of NWP 3 as published in the December 13, 1996, issue of the **Federal Register** (61 FR 65874–65922).

Some commenters recommended removing the PCN requirement from paragraph (i) whereas other commenters suggested modifying the NWP to require

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PCNs for all activities authorized by NWP 3. Many commenters stated that a replacement project generally results in greater impacts than repair and rehabilitation activities, but notification should be required only if the repair and rehabilitation activity exceeds the "minor deviations in the structure's configuration or filled area" provision of the NWP. One commenter stated that it was unclear whether repair and rehabilitation activities require notification. We have removed the PCN requirement from paragraph (i) of this NWP, since we do not believe it is necessary to require notification for the repair, replacement, or rehabilitation of a previously authorized structure or fill.

Two commenters suggested that the definition of the phrase "minor deviations in the structure's configuration" should be made more compatible with modern design standards and another suggested that the definition of "currently serviceable" should be expanded to cover all structures which have been destroyed in a catastrophic event, such as a hurricane.

This NWP authorizes repair, rehabilitation, and replacement activities with minor deviations necessary to comply with modern design standards. Previously authorized structures or fills that have been damaged by catastrophic events can also be repaired, rehabilitated, or replaced under this NWP. We do not need to change the definition of the term "currently serviceable."

General comments addressing this NWP include: (1) Prohibiting its use in watersheds with substantial historic aquatic resource losses; (2) prohibiting its use in regionally identified tidal waters to ensure effective protection of their unique and difficult to replace functions; (3) prohibiting its use in certain stream segments to ensure minimal cumulative adverse effects; (4) prohibiting its use in watersheds identified as having water quality problems; and (5) requiring the permittee to perform the work during low flow conditions.

We believe that these restrictions are unnecessary since NWP 3 authorizes maintenance activities, which are unlikely to result in more than minimal adverse effects on the aquatic environment. However, division engineers can regionally condition NWP 3 to restrict or prohibit its use in high value waters. Division engineers can also regionally condition NWP 3 to reduce the distance from the existing structure that accumulated sediment can be removed or reduce the amount of fill that can be discharged into waters of the United States for activities associated with the repair of uplands damaged as a result of storms or other discrete events.

Many commenters suggested additional conditions, which would allow minor deviations necessary to incorporate best management practices. Again, this is the intent of the phrase "minor deviations in the structure's configuration or filled area" in paragraph (i). It was also suggested that the repair and installation of scour and bank protection should be included in the NWP, as long as the applicant provides documentation of the original construction, including but not limited to, "as-built" plans. Another suggested activity to be added to NWP 3 was the removal of beaver dams and associated debris to restore the "natural" hydrology or functions of an area.

Paragraph (ii) of the proposed modification of NWP 3 authorizes the installation of scour protection necessary to protect or ensure the safety of the structure. If bank protection is necessary, it may be authorized by NWP 13, a regional general permit, or an individual permit. The removal of a beaver dam may or may not require a Section 404 permit, depending on whether the removal of the beaver dam results in a discharge of dredged or fill material into waters of the United States. If the beaver dam can be removed without any discharges into waters of the United States or the discharge consists only of incidental fallback, no Section 404 permit is required. If the removal of the beaver dam involves discharges into waters of the United States, then a Section 404 permit is required. If a Section 404 permit is required, the removal of a beaver dam may be authorized by another NWP such as NWP 18, a regional general permit, or an individual permit.

Removal of Accumulated Sediments in the Vicinity of Existing Structures: A large number of commenters recommended limits for paragraph (ii) of NWP 3. Recommended limits ranged from 20 to 300 cubic yards of excavated material and 25 to 500 linear feet of direct impacts upstream and/or downstream of the structure. The commenters recommending lower limits believe that higher limits for this NWP would cause more than minimal adverse effects on the aquatic environment. The commenters suggesting higher limits contend that higher limits are necessary to authorize sediment removal when accumulation of sediments occurs for greater distances (e.g., in flat terrain or alluvial out-wash areas). Another commenter recommended imposing 1/3-acre and 200 linear foot limits in paragraph (ii) if the project is in woodlands or special aquatic sites. Several commenters believe that there should be no restrictions because review of the PCN allows the District Engineer to limit the work to the minimum necessary to maintain the function of the structure. One commenter stated that the NWP should be conditioned to prohibit stream bed "clean-outs." Another commenter requested a narrower definition of the term "vicinity."

We believe that the 200 linear foot limit authorizes removal of accumulated sediments from the vicinity of an existing structure that, under most circumstances, results only in minimal adverse effects on the aquatic environment, individually or cumulatively. Division engineers can regionally condition this NWP to decrease the 200-foot limit or impose limits on the quantity of excavated material that can be removed. Since paragraph (ii) of the proposed modification of NWP 3 requires notification to the District Engineer for every activity, district engineers can exercise discretionary authority and require an individual permit for those activities that result in more than minimal adverse effects on the aquatic environment. Paragraph (ii) of the proposed modification does not authorize stream "clean out" activities, unless sediments have accumulated in the vicinity of an existing structure, such as a bridge or culvert. Sediment removal to deepen a stream channel is not authorized by this NWP. District engineers will determine what constitutes the "vicinity" for the purposes of paragraph (ii) of this NWP.

One commenter recommended that the NWP prohibit the removal of accumulated sediments in special aquatic sites. Another commenter stated that compensatory mitigation should be required if aquatic habitat is removed. Some commenters suggested modifying paragraph (ii) to authorize the removal of sediment deposits and associated vegetation from the structures themselves and require testing of sediments in areas of suspected contamination to ensure that the adverse effects of the work are minimal.

We do not believe that it is necessary to exclude special aquatic sites from paragraph (ii) of the proposed modification of NWP 3. Sediment accumulation can occur in riffle and pool complexes and can also result in vegetated bars which may be considered wetlands. However, these areas are constantly changing due to sediment transport within the waterbody. Under these circumstances, the removal of accumulated sediments, even if they are vegetated, typically results in minimal adverse effects on the aquatic environment. District engineers can require compensatory mitigation, if they believe it is necessary to ensure that the authorized work results only in minimal adverse effects, but in most situations compensatory mitigation is unnecessary due to the dynamic nature of the affected area and the minor impacts to the aquatic environment. In fact, removal of accumulated sediments in the vicinity of structures may improve the aquatic environment by removing barriers to fish passage. It is likely that sediments will repeatedly accumulate in the area and will have to be removed on a regular basis. The phrase "in the vicinity of existing structures" includes removal of accumulated sediments, including any vegetation that may be growing on those accumulated sediments, in and near the structures. However, we will clarify the phrase to read "* * * in the vicinity of, and within, existing structures * * *" In areas where accumulated sediments may be contaminated, district engineers can exercise discretionary authority to require an individual permit and require testing to determine if special techniques are required for the excavation and disposal of the accumulated sediment.

Some commenters objected to modifying this NWP to authorize sediment removal in the vicinity of existing structures, especially in docking areas. One commenter requested that the NWP include a definition of the term "structure" to clarify whether or not maintenance dredging of marina basins and boat slips is authorized by this NWP. One commenter suggested that the provision for removing accumulated sediment in front of existing structures appears to conflict with the prohibition against maintenance dredging in paragraph (i) of the proposed modification to this NWP. Several commenters also recommended that the Corps limit the number of times this permit could be used to prevent the cumulative impacts of multiple sediment removal projects. One commenter stated that removal of sediment from a drainage ditch in the vicinity of an existing structure would be considered maintenance of an existing drainage ditch and would be exempt from Section 404 permit requirements in accordance with 33 CFR Part 323.4(a)(3).

We have changed the text of the proposed modification of NWP 3 to clarify that maintenance dredging for the primary purpose of navigation is not authorized by this NWP, unless it is specifically authorized by paragraphs (ii) and (iii) of the NWP for other purposes. For example, this NWP can authorize the removal of accumulated sediment from a water intake structure in a marina basin. Maintenance dredging of existing marina basins or boat slips may be authorized by NWP 35, NWP 19, regional general permits, or individual permits. We believe that it is unnecessary to limit the number of times this NWP can be used to remove accumulated sediments in the vicinity of existing structures. The removal of accumulated sediments in the vicinity of existing structures is unlikely to result in more than minimal cumulative adverse effects on the aquatic environment. District engineers can determine, through their review of notifications, if repeated removal of accumulated sediments at a particular site results in more than minimal cumulative adverse effects on the aquatic environment. For the purposes of this NWP, the term "structure" does not include unconfined waterways and channelized streams, except where the channelized stream consists of a concrete-lined channel. Although the maintenance of existing drainage ditches is exempt under Section 404(f), paragraph (ii) of NWP 3 authorizes the removal of accumulated sediments in the vicinity of existing structures that does not qualify for a Section 404(f) exemption. Maintenance activities that are eligible for Section 404(f) exemptions do not require the use of this NWP.

Some commenters stated that the placement of rip rap to protect the structure should be removed from this NWP because this activity can be authorized by other NWPs. One commenter believes that the placement of rip rap should not be authorized by this NWP except in areas where it is clearly necessary to protect public structures. Other commenters recommended prohibiting the placement of rip rap in areas inhabited by submerged aquatic vegetation.

It is our intent to authorize under paragraph (ii) all related activities for a single and complete project that have minimal adverse effects on the aquatic environment, rather than require the use of multiple NWPs to authorize those activities. The placement of rip rap at the foot of the structure is often necessary to protect the structure from scour. If sediments are accumulating in the vicinity of the structure, it is likely that the structure is subject to scouring by the sediment load of the waterbody. In areas with substantial movement of sediment, it is unlikely that large populations of submerged aquatic vegetation will become established, because the movement of sediments in the bed of the waterbody often will not allow submerged aquatic vegetation to take root and grow in the waterbody. Furthermore, the PCN requirement in paragraph (ii) allows district engineers to review all proposed removal of accumulated sediments to ensure that the adverse effects on the aquatic environment are minimal. If a substantial population of submerged aquatic vegetation inhabits the vicinity of the structure, district engineers can exercise discretionary authority if the adverse effects of sediment removal and the placement of rip rap will be more than minimal.

Some commenters stated that the removal of accumulated sediments from publicly-owned transportation facilities should be exempt from notification requirements, and no PCN should be required for sediment removal after heavy storms or floods, because it is too time consuming to obtain the required cultural and biological clearances.

We believe that the adverse effects on the aquatic environment are the same, regardless of whether or not a transportation crossing is privately or publicly owned. The PCN requirement is necessary to allow district engineers to determine if the adverse effects of the proposed work on the aquatic environment will be minimal and ensure that prospective permittees will not remove more sediment than necessary. In the event of a heavy storm, flood, or other natural disaster, the Corps has emergency procedures in place for expediting permit issuance for activities related to repairing storm or disaster damage.

Some commenters recommended authorizing the use of minor cofferdam systems in the NWP, without a PCN requirement, when removing accumulated sediments and debris in accordance with paragraph (ii) and for activities in waters of the United States associated with restoring damaged uplands in paragraph (iii).

We disagree that this NWP should include the use of cofferdams, because NWP 33 can be used to authorize temporary construction, access, and dewatering activities that may be associated with the activities authorized by this NWP. Combining NWP 3 with NWP 33 for a single and complete project is not contrary to General Condition 15, provided the adverse effects on the aquatic environment are minimal.

Activities Associated with Restoration of Uplands: Paragraph (iii) of the proposed modification of NWP 3

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authorizes discharges of dredged or fill material into all waters of the United States for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event. Many commenters stated that the restoration of uplands should be removed entirely from this NWP because it has nothing to do with the maintenance of currently serviceable structures and the Corps does not have jurisdiction over any activity in uplands. Many of these commenters believe that the Corps is asserting jurisdiction over uplands and requested the removal of paragraph (iii) from NWP 3. One commenter suggested that instead of authorizing the project proponent to rebuild an upland area to "pre-event" conditions, the permittee should only be authorized to stabilize the remaining uplands. Another commenter objected to modifying NWP 3 to authorize the restoration of eroded banks because bank erosion is a natural process and there are no limits in the NWP. This commenter believes that an individual permit should be required, with conditions requiring the use of coarse woody debris or other bioengineering methods to prevent further erosion of the bank.

The purpose of paragraph (iii) of this NWP is to authorize those activities in waters of the United States that are associated with the restoration of uplands damaged by a storm or other discrete event. The restoration of uplands lost as a result of a discrete natural event does not require a Section 404 permit, because that activity is subject to the Clean Water Act Section 404(f) exemptions. However, some work in waters of the United States may be necessary to complete the restoration work. It is this associated work in waters of the United States that is authorized by this NWP. For example, the permittee may want to install structures to protect the restored uplands or remove obstructions in waters of the United States in the vicinity of the affected uplands. Through paragraph (iii) of this NWP, we are not attempting to regulate activities in uplands. We agree that paragraph (iii) requires clarification as to the extent of the Corps jurisdiction for upland restoration activities and we have rewritten paragraph (iii) to state that NWP 3 authorizes discharges "* * * into all waters of the United States for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event * * *" Paragraph (iii) of the proposed modification does not authorize activities in waters of the United States associated with the replacement of uplands lost through gradual erosion processes; the loss of uplands must be due to a specific event, such as a hurricane or flood. Permittees are encouraged, but not required, to utilize bioengineering methods to stabilize the restored bank.

One commenter objected to the proposed paragraph (iii) of the NWP, stating that previous conditions of the site are too difficult to document. Some commenters recommended that the Corps require the use of field evidence to estimate the prior extent of uplands, such as contours adjacent to the damaged areas, or as-built plans for the waterway to determine the extent of activities authorized by this NWP. Two commenters suggested that paragraph (iii) of NWP 3 should be applicable for smaller events over a specific time period (e.g., one year) rather than one catastrophic event.

We have made the requirement for the prospective permittee to provide evidence to the District Engineer to justify the extent of the proposed restoration less stringent, to allow the District Engineer more flexibility to determine if a proposed activity can be authorized by paragraph (iii) of this NWP. Evidence of the pre-event extent of uplands can be provided by a recent topographic survey or photographic evidence. District engineers may also assess the surrounding landscape, including field evidence, to evaluate the extent of the proposed restoration and determine if it complies with the NWP. The location of the ordinary high water mark that existed prior to the storm event may be obvious when visiting the site. We realize that most property owners will not have a recent topographic survey showing the extent of the uplands on their property.

Paragraph (iii) of the proposed modification of NWP 3 specifically does not authorize the reclamation of lands lost over an extended period of time due to normal erosion processes. If the land is subject to normal erosion processes, the landowner can prevent or reduce further erosion through bank stabilization measures, many of which are authorized by NWP 13. If the proposed bank stabilization measure does not qualify for authorization under NWP 13, then the landowner can apply for authorization by another NWP, a regional general permit, or an individual permit. We will retain the provision of the NWP to authorize only activities in waters of the United States for restoration of uplands lost due to specific events, such as storms and floods, and specifically exclude lands lost through normal erosion processes.

For paragraph (iii) of the NWP, PCN thresholds of 1/4 acre, 10 cubic yards, and up to 200 linear feet of stream bed were suggested by commenters and some commenters recommended requiring notification only for activities in special aquatic sites. One commenter recommended notification and agency coordination for all activities authorized under paragraph (iii).

In the July 1, 1998, proposal to modify NWP 3, there was an inconsistency in the notification requirements. In subparagraph (c) of the proposed modification, notification was required for activities affecting greater than 1/3 acre of waters of the United States. Subparagraph (e) of the proposed modification stated that notification is required for all activities associated with the restoration of uplands. We have determined that notification should be required for all activities authorized under paragraph (iii) of this NWP, and have modified the NWP to state that notification is required for all activities authorized by paragraph (iii) of NWP 3.

One commenter suggested that the Corps reduce the amount of time required to submit a PCN from one year after the date of the damage to two or three months. They believe that two or three months is sufficient time for the landowner to realize that damage to uplands has occurred due to a discrete event and determine if restoration of the uplands will be done by the property owner. Another commenter suggested that while a 12-month time limit after the damage event may be enough time to plan restoration, it does not provide enough time to obtain financing for the restoration effort. Some commenters recommended requiring compensatory mitigation at a 1:1 ratio for activities authorized by paragraph (iii) of this NWP.

Although landowners are usually immediately aware that they have lost uplands due to a storm, flood, or other discrete event, we believe that they should be allowed one year to determine if they want to restore the lost uplands and submit a notification to the District Engineer. After a catastrophic event, many landowners require time to recover from the event and conduct repairs to their homes and other structures. Restoration of their land is often less urgent and the landowners should be allowed adequate time to carefully plan their upland restoration efforts. It should also be noted that the one year deadline in paragraph (iii) of the NWP applies only to the notification requirement and that the permittee has two years to start the restoration work or execute a construction contract. Two years should be an adequate amount of time to conduct the upland restoration activity.

Since the purpose of paragraph (iii) is to authorize activities in waters of the United States associated with the restoration of uplands lost due to a storm event, in most cases compensatory mitigation should not be required because the purpose of the work is to return the area to approximately the same conditions that existed prior to the storm event. Activities in waters of the United States associated with the restoration of uplands typically do not result in more than minimal adverse effects on the aquatic environment and should not require compensatory mitigation. Carefully planned and implemented restoration efforts may benefit the overall aquatic environment by repairing the damaged areas and reducing sediment loads to the waterbody, thereby improving water quality. As with all NWPs, district engineers may require compensatory mitigation to ensure that the adverse effects of the work on the aquatic environment are minimal, but we believe that compensatory mitigation should not be required in most cases.

To make NWP 3 easier to understand, we are proposing to combine all of the conditions in subparagraphs (a) through (e) and subparagraph (h) of paragraph (iii) to form a single paragraph. We have also added a note at the end of this NWP to clarify that NWP 3 authorizes repair, rehabilitation, or replacement activities that do not qualify for the Section 404(f) exemption for maintenance.

This NWP is subject to the requirements of proposed General Conditions 25 and 26. General Condition 25 requires the prospective permittee to notify the District Engineer in accordance with General Condition 13 for activities in designated critical resource waters, including wetlands adjacent to those waters. The District Engineer may authorize NWP 3 activities in designated critical resource waters and adjacent wetlands if the adverse effects on the aquatic environment are no more than minimal. General Condition 26 does not prohibit the use of this NWP to authorize discharges resulting in the loss of greater than 1 acre of impaired waters, including adjacent wetlands. However, NWP 3 activities in impaired waters and adjacent wetlands require notification to the District Engineer in accordance with General Condition 13. The proposed work can be authorized by NWP 3 if the permittee demonstrates to the District Engineer that the work will not result in further impairment of the waterbody.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. This NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities.

7. Outfall Structures and Maintenance

In the July 1, 1998, **Federal Register** notice, the Corps proposed to modify this NWP to authorize the removal of accumulated sediments from outfall and intake structures and associated canals. All of the original terms and limitations of NWP 7 have been retained. Numerous commenters expressed their support for the proposed modifications to NWP 7. A number of commenters objected to the inclusion of excavation activities in associated canals and impoundments and questioned whether such activities are related and similar in nature. A couple of commenters questioned the need for the proposed modification. Some commenters requested acreage and cubic yardage limits for the additional activities authorized by the proposed modification of NWP 7. Several commenters recommended restricting excavation in wetlands.

Outfalls, intakes, and associated canals accumulate sediment and require periodic excavation or maintenance dredging to restore flow capacities to the facility. Most of the dredging is required in the vicinity of intake structures and their canals because circulation patterns result in the deposition of sediment in these areas. This sediment must be removed to ensure that the facility has an adequate supply of water for its operations. Water discharged from outfall structures usually has little or no sediment load and maintenance dredging is not often required in these areas. In situations where a utility company's intake or outfall canal is also used by barges to travel to the utility facility, part (ii) of the proposed modification of NWP 7 will allow continued access by those barges because the removal of accumulated sediments will return the intake or outfall canal to its originally designed dimensions and restore its navigable capacity.

We believe that authorizing some dredging or excavation to maintain the effectiveness of the outfall or intake structure is necessary and an integral part of this NWP. This NWP is conditioned to authorize only the minimum work necessary to maintain the facility, and requires the prospective permittee to provide the District Engineer with information on the design capacities and configuration of the intake or outfall structure, impoundment, or canal. The prospective permittee will also be required to submit a delineation of affected special aquatic sites with the PCN to allow district engineers to better assess potential adverse effects on the aquatic environment, especially in vegetated shallows that may occur in the canal or in the vicinity of the intake or outfall structure. No acreage limits have been placed upon this NWP. Most activities authorized by this NWP will take place in existing canals, which have been repeatedly dredged and maintained and often support some kind of industrial or commercial activity for public benefit. Furthermore, existing deposit areas for the dredged or excavated sediment will typically be present and available for use. Where maintenance dredging or excavation is proposed, notification is required and the District Engineer can exercise discretionary authority if the adverse effects on the aquatic environment will be more than minimal. Compensatory mitigation will also be required where appropriate, but in most cases we believe that compensatory mitigation should not be required for activities authorized by part (ii), since it is a maintenance activity. Division engineers can also impose regional conditions on this NWP to add limits to the NWP or restrict or prohibit its use in certain waterbodies.

Several commenters supported the proposed notification requirements. Several commenters recommended requiring notification for all activities whereas other commenters suggested specific distance and acreage thresholds for notification.

We are proposing to retain the notification requirement to allow district engineers to review all activities authorized by this NWP. Evidence of the original design capacity and configuration of the facility must be submitted with the notification. This information allows district engineers to review the proposed work to ensure that the removal of sediment is for maintenance, not new dredging or excavation.

Two commenters stated that irrigation and farm ponds should be removed from the proposal as they are not related to outfalls, while many commenters objected to the inclusion of excavation in small impoundments under this NWP. Another commenter stated that the maintenance of water treatment facilities, irrigation ponds, and farm

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ponds, is exempt from Section 404 permit requirements.

In the July 1, 1998, **Federal Register** notice, we stated that the proposed modifications to NWP 7 could be used to authorize the removal of accumulated sediments from intake and outfall structures in small impoundments, such as irrigation ponds and farm ponds. This statement is in error, since the construction and maintenance of farm, stock, and irrigation ponds does not require a Section 404 permit (see 33 CFR Part 323.4(a)(3)), provided the work does not trigger the recapture provision of Section 404(f)(2) of the Clean Water Act (see 33 CFR Part 323.4(c)). The removal of sediments from small impoundments is limited to the excavation of sediment around the intake or outfall structure, if that activity is not exempt under Section 404(f). Water treatment facilities may be constructed waters of the United States, and possibly Section 10 waters. The proposed modification of NWP 7 authorizes removal of accumulated sediments in the vicinity of intake and outfall structures constructed in waters of the United States for water treatment facilities.

One commenter opposed modifying NWP 7 to authorize activities in non-tidal waters, believing that this would open up thousands of acres of wetlands and streams to destruction. One commenter stated that since the proposed modification had no quantitative limits for impacts, this NWP could cause significant and unmitigated individual and cumulative adverse impacts. Two commenters stated that no activities in tidal areas or areas adjacent to, or contiguous with, tidal waters should be authorized by this NWP. Two commenters further requested that outfall structures associated with large facilities, such as aquaculture facilities or power plants, should be reviewed under an individual permit.

NWP 7 is applicable in all waters of the United States, including navigable waters. The proposed modification of NWP 7 authorizes only the construction of outfall structures and associated intake structures and maintenance dredging or excavation of accumulated sediments in the vicinity of outfall and intake structures and associated canals. These activities will not result in the destruction of thousands of acres of wetlands and streams, because most outfall structures are fairly small and the authorized excavation or dredging activities are only for maintenance. The removal of accumulated sediments from an existing intake or outfall structure or canal will not open up thousands of wetlands and streams to destruction. Furthermore, since the authorized removal of accumulated sediment will be limited to the minimum necessary to restore the facility to its original design capacity, the adverse effects on the aquatic environment will usually be minimal. The District Engineer will have the opportunity to review all proposed NWP 7 activities on a case-by-case basis and will be able to add any necessary conditions, including compensatory mitigation requirements, to ensure that this NWP authorizes only those activities with minimal adverse effects on the aquatic environment, individually or cumulatively. For those activities that may result in more than minimal adverse effects on the aquatic environment, district engineers will exercise discretionary authority. This NWP can be utilized for outfalls associated with aquaculture or power plants. All outfalls proposed under this NWP must be authorized, exempted, or otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System program.

Several commenters suggested adding restrictions during fish spawning and nesting periods. One commenter recommended adding two additional conditions because of potential impacts to manatees. Another commenter recommended that this permit contain a condition requiring that shorelines affected by activities authorized under this permit should be revegetated.

General Condition 20 states that activities including structures and work in navigable waters of the United States or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. This condition further states that activities that physically destroy important spawning areas are not authorized. In addition, limitations in specific waters for certain species are more appropriately addressed as regional conditions or case-specific special conditions. Activities that may affect Federally-listed endangered or threatened species or designated critical habitat must comply with General Condition 11. Districts are encouraged establish local operating procedures to provide better protection for these species and their critical habitat.

General Condition 3, Soil Erosion and Sediment Control, requires the permittee to utilize appropriate soil erosion and sediment controls during construction and permanently stabilize the site at the earliest practicable date. This requirement may be fulfilled through vegetative stabilization methods. In addition, following project completion, some areas may naturally revegetate. We do not believe that it is necessary to incorporate an additional requirement into the NWP. Where necessary, revegetation can be required by district engineers on a case-by-case basis through special conditions or regional conditions. In some cases, mitigation requirements may also address this issue, particularly where the permittee is required to establish and maintain a vegetated buffer.

One commenter stated that NWP 7 should clearly state that it authorizes removal of accumulated sediment in and around intake pipes and not just around intake pipes. Several commenters requested that this NWP authorize removal of accumulated sediment in the vicinity of intake and outfall structures for engineered flood control facilities, including dams, flood control facilities, and large reservoirs. One commenter asked why NWP 7 does not authorize the construction of intake structures only, because they result in similar adverse effects on the aquatic environment as outfalls.

The proposed modification of this NWP authorizes the removal of sediments blocking or restricting outfall or intake structures. This includes sediment removal from inside of the intake structure. This NWP does not authorize the construction of new canals or the removal of sediment from the head works of large dams, flood control facilities, or large reservoirs. Individual permits, regional general permits, or other NWPs such as NWPs 19 or 31, may authorize these activities. NWP 7 does not authorize the construction of intake structures without associated outfall structures because of the potential for more than minimal adverse effects on the aquatic environment where an intake structure may be constructed in a waterbody to withdraw water. If the water is not returned to the waterbody through an outfall structure, there may be more than minimal adverse effects to aquatic organisms and local water supplies, especially in arid regions of the country.

This NWP is subject to proposed General Conditions 25 and 26, which will reduce its applicability. General Condition 25 prohibits the use of this NWP to authorize discharges into designated critical resource waters and wetlands adjacent to those waters. General Condition 26 prohibits the use of this NWP to authorize discharges resulting in the loss of greater than 1 acre of impaired waters, including adjacent wetlands. NWP 7 activities resulting in the loss of 1 acre or less of impaired waters, including adjacent wetlands, are prohibited unless prospective permittee demonstrates to the District Engineer that the activity will not result in further impairment of the waterbody.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities.

12. Utility Line Activities

In the July 1, 1998, **Federal Register** notice, we proposed to modify this NWP to authorize activities commonly associated with utility lines, such as the construction of electric or pumping substations, foundations for overhead utility line towers, poles, and anchors, and access roads. Many of these activities may have been authorized by NWP 26.

General comments: We received many comments addressing the proposed changes to NWP 12. Some commenters suggested leaving NWP 12 unchanged. Other comments ranged from supporting the issuance of the proposed modifications of NWP 12 to recommending the revocation of NWP 12. Many commenters concurred with the proposed acreage limits and PCN thresholds for the additional activities included in this NWP. Some commenters proposed higher acreage limits and PCN thresholds. Other commenters recommended lower acreage limits and PCN thresholds for the additional activities. Many commenters stated that the proposed changes would improve the efficiency of the NWP program and prevent the increase of regulatory burdens, without causing more than minimal adverse effects on the aquatic environment.

Many commenters expressed opposition to the expansion of NWP 12 to authorize utility line substations, foundations for utility towers, and permanent access roads. These commenters stated that this proposal would be a major expansion of the limits of NWP 12, resulting in significant losses of wetlands and other waters of the United States. Several commenters stated that there would no longer be any incentive to locate these facilities in uplands because the proposed modification would authorize their construction in wetlands. Some commenters believe that concerns regarding individual and cumulative adverse effects on the aquatic environment resulting from the modification of NWP 12 could be addressed through the regional conditioning process.

We believe the NWP terms, limits, and notification requirements, will help to ensure that the proposed modification of NWP 12 authorizes only those utility activities with minimal adverse effects on the aquatic environment. The review of PCNs by district engineers and the regional conditioning process will ensure that the NWP authorizes only those activities with minimal adverse effects on the aquatic environment and will address regional and watershed concerns. The notification provisions of NWP 12 will allow district engineers to exercise discretionary authority for those utility line activities that may result in more than minimal adverse effects on the aquatic environment.

One commenter recommended combining utility lines with roads and other linear projects into one NWP permit and authorizing other utility line activities that are not linear in nature, such as substations and foundations for overhead utility lines, by another NWP because they are more similar in nature.

We believe that utility line substations, foundations for utility line towers, and permanent access roads for utility line maintenance are more appropriately authorized by NWP 12, instead of a separate NWP for these activities, because these activities are integral to single and complete utility line projects and the adverse effects for these activities should be considered under one NWP. All of the activities identified in NWP 12 are associated with typical utility projects and are similar in nature to other utility projects. We have changed the title of this NWP from "Utility Activities" to "Utility Line Activities" to better reflect the related nature of these activities for utility line construction, maintenance, and operation. We also believe that most of these projects, when conducted within the specified limits of the NWP, will have no more than minimal adverse impact on the aquatic environment. Finally, in those cases where proposed activities may have more than minimal adverse effects on the aquatic environment, we believe that the notification and regional conditioning processes will serve to ensure that the NWP authorizes only utility line activities with minimal adverse effects on the aquatic environment.

One commenter made the following recommendations concerning NWP 12: (1) The NWP should apply only to previously developed areas and well-established utility corridors; (2) the clearing of forested wetlands should be excluded from this NWP; (3) the NWP should be excluded from wetlands in migratory corridors or near wetlands heavily used by migratory birds; and (4) the NWP should contain a provision requiring the planting of native species in disturbed areas and the removal of noxious and invasive plant species. Another commenter recommended excluding the use of NWP 12 in special aquatic sites and endangered species habitat.

We do not agree with the recommendations in the previous paragraph. NWP 12 authorizes only those utility activities that result in minimal adverse effects on the aquatic environment, individually or cumulatively. It is unnecessary and impractical to limit NWP 12 only to activities in existing utility corridors. If the proposed utility line will result in more than minimal adverse effects on the aquatic environment, district engineers can exercise discretionary authority and require an individual permit. Regional conditioning or case-by-case discretionary authority is the best mechanism to address potential adverse effects to wetland habitat. Regional conditions can also address concerns for revegetating areas temporarily affected by the authorized work. District engineers can add special conditions to NWP 12 authorizations to specify certain plant species to be planted in disturbed areas. General Condition 11 adequately addresses potential effects of the use of NWP 12 on Federally-listed endangered or threatened species or designated critical habitat.

Utility lines: One commenter recommended limiting NWP 12 to utility lines that are less than 10 miles in length and six inches in diameter, with an acreage limit of 2 acres. Other recommended acreage limits included 1 acre and 1/3 acre. One commenter expressed concern about allowing sidecast material to remain in waters of the United States for up to six months, particularly in tidally influenced waters. To minimize adverse effects to marine fisheries, this commenter recommended conditioning NWP 12 to require the permittee to leave gaps in sidecast material at minimum intervals of 500 feet and prohibiting the placement of sidecast material in a manner that blocks natural surface water flows. Another commenter recommended prohibiting sidecasting of material during utility line maintenance activities to protect unique wetland functions. Some commenters questioned the requirement that excess material

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must be removed to upland areas immediately upon completion of construction and one recommended that, in light of the recent Fifth Circuit Court of Appeals ruling in *American Mining Congress, et al.* v. *Corps of Engineers*, the Corps move the sentence concerning excess material to paragraph (i) of NWP 12. This commenter also stated that they assume that this requirement is intended to apply only to soil or other material that is dredged or excavated in significant quantities and redeposited at another location within a water of the United States, and not to clearing vegetation above ground.

Regional conditioning is the best mechanism for placing acreage limits on utility line construction, if division engineers believe that the cumulative adverse effects of utility line construction may result in more than minimal adverse effects on the aquatic environment within a particular region. Regional conditions are also the best way to address concerns regarding the maximum amount of time sidecast material should remain in waters of the United States and whether or not gaps or culverts should be placed in the temporary piles of excavated material to maintain surface water flows. In addition, General Condition 21, Management of Water Flows, requires that the permittee conduct the work so that preconstruction water flow patterns are maintained to the maximum extent practicable after completion of the authorized work.

The requirement for removing excess fill materials upon completion of construction will be retained in this NWP. This NWP authorizes temporary fills to install the utility line, such as sidecasting into waters of the United States during installation, provided the permittee backfills the trench. Any excavated material placed in waters of the United States that is not used to backfill the trench must be removed upon completion of the work or it will be considered a permanent fill requiring a separate Section 404 permit. An important requirement to ensure that activities authorized by NWP 12 will have no more than minimal adverse effects on the aquatic environment is the requirement to maintain preconstruction contours and elevations as close as possible after completion of the authorized work. Clearing vegetation by cutting it above the soil surface does not require a Section 404 permit, as long as there is no discharge of dredged or fill material into waters of the United States. In addition, if the proposed work is in a forested wetland, any mechanized landclearing which results in a discharge of dredged or fill material will require a PCN. The Corps believes it is necessary to retain this provision to ensure that this NWP authorizes activities with only minimal adverse effects on the aquatic environment.

One commenter recommended that the NWP contain a requirement that all wastewater lines have no-seam pipes beneath perennial or intermittent streams to reduce the potential for untreated wastewater leaking into these streams. Another commenter recommended conditioning NWP 12 to require the installation of anti-seep collars at the downstream wetland boundary and every 150 feet up the gradient until the utility line exits the wetland at the upstream or up-slope end to prevent the lateral draining of the wetland caused by the gravel bed beneath the utility line. One commenter recommended requiring perpendicular (between 75 and 105 degrees) stream crossings.

General Condition 2, Proper Maintenance, requires that permittees maintain all authorized structures or fills to ensure public safety. Permittees must also comply with Section 402 of the Clean Water Act, which requires a permit for the discharge of effluent into waters of the United States. Wastewater lines must be designed and maintained so that they do not leak untreated wastewater into waters of the United States. NWP 12 also includes a requirement that a utility line may not be constructed in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, which may create a french drain effect, and failing to take appropriate measures to prevent the lateral draining of a wetland).

We believe that perpendicular stream crossings are environmentally preferable in many situations. However, these types of crossings are not always feasible and we have determined that it is better to require notification where a utility line is proposed to be placed within a water of the United States and runs parallel to a stream bed within that jurisdictional area. These projects will be reviewed on a case-by-case basis to determine if the activities would have more than minimal adverse effects on the aquatic environment. In addition, regional conditions can address concerns about certain activities and/or impacts to certain waters of the United States.

Many commenters concurred with the statement in the preamble that the installation of subaqueous utility lines in waters of the United States should not be considered as resulting in a loss of waters of the United States if the area impacted by installation of the utility line is the minimum necessary and preconstruction contours and elevations are restored after construction. A number of commenters expressed concern about adverse effects associated with utility projects and believe that compensatory mitigation should be required to offset those adverse effects. Some commenters also questioned why the term "loss" only applies to permanently affected waters of the United States. One commenter stated that the term "loss" should apply to the clearing of forested wetlands for the construction of overhead power transmission lines where the forest will not be allowed to grow back.

We believe that the installation of utility lines that results only in temporary adverse effects on waters of the United States should not be considered a loss if preconstruction contours and elevations are restored after construction and there are no permanent adverse effects to the aquatic environment resulting from the activity. While temporary adverse effects to water quality, fish and wildlife habitat, and other components of the aquatic environment may result, the areas typically return to preconstruction conditions if the terms and conditions of the NWP are met. In these cases, compensatory mitigation should not be required. However, should the installation of a utility line result in the permanent conversion of a forested wetland to another wetland type in a permanently maintained right-of-way, compensatory mitigation may be required by the District Engineer if it is necessary to ensure that the authorized work will result in minimal adverse effects on the aquatic environment. Finally, in those cases where the proposed work may result in more than minimal adverse impact on the aquatic environment, we believe the notification and regional conditioning processes will ensure that the NWP authorizes only activities with minimal adverse effects on the aquatic environment. In addition, compensatory mitigation can be required for any NWP 12 activity requiring a PCN to ensure that the adverse effects of the authorized work on the aquatic environment are minimal, individually or cumulatively. The NWP already contains provisions addressing the clearing of forested wetlands. District engineers will determine if compensatory mitigation should be required for the conversion of a forested wetland to an emergent or scrub-shrub wetland in a maintained utility line corridor.

In the first sentence of paragraph (i), we have stated that NWP 12 authorizes the maintenance and repair of utility lines in addition to their construction. Since NWP 12 can be used to authorize the construction of utility lines in both Section 10 and Section 404 waters, we have added the phrase "in all waters of the United States" to the text of paragraph (i).

Utility line substations: Some commenters recommended that the Corps withdraw this part of the proposed modification of NWP 12. Many commenters recommended higher acreage limits, ranging from 2 to 3 acres. A number of commenters recommended lower acreage limits. One commenter requested that the Corps clarify what is meant by the term "pumping substations" and suggested using the term "compressor station" instead.

We believe that the 1 acre limit for the construction of utility line substations is appropriate to authorize the construction of most utility line substations with minimal adverse effects on the aquatic environment. However, we have lowered the PCN threshold for the construction of utility line substations to ¼ acre, to make it more consistent with the other proposed new and modified NWPs. We also agree that some clarification is appropriate to specify the types of utility line substations are authorized by paragraph (ii). The term "utility line substations" includes power line substations, lift stations, pumping stations, meter stations, compressor stations, valve stations, small pipeline platforms, and other facilities integral to the operation of a utility line.

For the proposed modification of NWP 12, the construction or expansion of utility line substations in waters of the United States is limited to non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters. We have added this language to paragraph (ii) to clarify the applicable waters for utility line substations authorized by NWP 12, and to make those applicable waters consistent with most of the other proposed NWPs.

Foundations for overhead utility line towers, poles, and anchors: One commenter recommended eliminating the requirement to use separate footings for utility line towers where feasible. Another commenter noted that in certain situations where hurricanes, high winds, and lightning occasionally cause damage to power line structures and conductors, it is better to construct a single pad beneath the footings. The commenter requested modification of the NWP to allow single pad fills as long as they result in the loss of less than ⅓ acre of waters of the United States.

We have decided to retain the proposed language because it provides flexibility. The phrase "where feasible" does not prohibit the construction of a single pad to support the utility line tower; it merely encourages the construction of separate footings. This phrase provides district engineers with the flexibility to use NWP 12 to authorize the construction of single pads where there are concerns due to hurricanes, high winds, and other dangerous conditions. District engineers can require the permittee to provide justification as to why a single pad should be constructed instead of separate footings. The only requirement is that the pads result in minimal adverse effects on the aquatic environment. District engineers can require compensatory mitigation for the losses of waters of the United States resulting from the construction of single pads for overhead utility line towers.

Since the proposed modification of NWP 12 can be used to authorize the construction of foundations for overhead utility line towers, poles, and anchors in both Section 10 and Section 404 waters, we have added the phrase "in all waters of the United States" to the text of paragraph (iii).

Access roads: Many commenters recommended increasing the acreage limit for permanent access roads to 2 or 5 acres. One commenter recommended limiting permanent access roads to ⅓ acre of loss of waters of the United States and a maximum width of 15 feet. Several commenters recommended excluding permanent access roads from this NWP. One of these commenters objected to the inclusion of permanent utility access roads because access roads fragment the landscape, which can adversely affect fish and wildlife habitat and the water quality functions of many wetland ecosystems. Another commenter requested that the NWP contain a provision requiring the permittee to submit justification explaining why permanent access roads are needed. One commenter suggested that the PCN contain a requirement for the submission of an engineering analysis demonstrating that the culvert size for the permanent access road is adequate, based on watershed acreage and the appropriate rainfall coefficient. One commenter expressed concern about inconsistent statements in paragraph (iv) and the preamble discussion relating to the effects of the access roads on subsurface flows. This commenter questioned whether the Corps had the authority to regulate subsurface waters. A commenter asked the Corps to clarify the meaning of "minimum width necessary" as well as the acceptable length of road, and questioned who would make such determinations. Further, this commenter asked who decides whether preconstruction contours are maintained as near as possible. One commenter recommended adding a term to the NWP requiring that access roads be constructed with pervious surfaces.

We believe that the 1 acre limit for permanent access roads is appropriate to ensure that the NWP authorizes only those permanent access roads that result in minimal adverse effects on the aquatic environment. The PCN threshold remains the same as proposed in the July 1, 1998, **Federal Register** notice. The construction of permanent access roads for utility line maintenance has the same effects on landscapes as the construction of utility line right-of-ways because the access roads are usually constructed within the right-of-way. We do not believe that it is necessary for the applicant to provide justification for the construction of permanent access roads or an engineering analysis demonstrating the appropriateness of the culvert size. For those activities that require notification, district engineers will review the PCN and determine if the construction of permanent access roads will result in more than minimal adverse effects on the aquatic environment. Division engineers can also regionally condition NWP 12 to ensure that the construction of permanent access roads will result in minimal adverse effects.

We agree that we do not have the authority under Section 404 of the Clean Water Act to regulate groundwater flows. Therefore, we have deleted the reference to subsurface flows in paragraph (iv). The District Engineer determines if the access road is the minimum width necessary, as well as the appropriate length of access road, and if the access road will result in minimal adverse effects on the aquatic environment. Division engineers can regionally condition NWP 12 to specify maximum widths and lengths of permanent access roads that can be authorized by this NWP. In cases where a PCN is required, the Corps will review the proposed work for compliance with the terms and conditions of the NWP. If a certain activity does not meet the terms and conditions of the NWP, another form of authorization must be obtained.

For the proposed modification of NWP 12, the construction of permanent access roads for the construction or maintenance of utility lines in waters of the United States is limited to non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters. We have added this language to paragraph (iv) to clarify the applicable

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waters for utility line access roads authorized by NWP 12. We have also added a provision stating that permanent access roads must be constructed with pervious surfaces.

Notification Requirements: Many commenters recommended eliminating the PCN requirement for mechanized landclearing in forested wetlands. One commenter questioned the requirement for notification in forested wetlands and requested an explanation for that requirement. Several commenters said that the PCN requirements for access roads should be consistent with the PCN requirements for roads under NWP 14. One commenter recommended decreasing the PCN threshold for utility lines installed in waters of the United States from 500 linear feet to 300 linear feet. Several commenters supported a minimum notification threshold of ⅓ acre. Several commenters requested reduced thresholds for notification to ensure minimal impacts.

The PCN requirement for mechanized landclearing in a forested wetland has not been changed. This requirement was originally incorporated into NWP 12 for the December 13, 1996, reissuance of this NWP. The purpose of this notification requirement is to ensure that only minimal adverse effects on the aquatic environment will occur when the installation of a utility line occurs in forested wetlands. In the proposed modification of NWP 12 published in the July 1, 1998, **Federal Register**, we proposed to modify this notification requirement by limiting the circumstances requiring notification only to the establishment of the utility line right of way in a forested wetland, so that PCNs would not be required for any utility activity that involves mechanized landclearing of a forested wetland, such as the construction of a utility line substation. We are proposing to retain this requirement.

We disagree that the notification requirements for permanent access roads authorized by NWP 12 and linear transportation crossings authorized by NWP 14 should be the same. NWP 12 and NWP 14 authorize different types of roads utilized for different purposes. Permanent access roads authorized by NWP 12 must be constructed as close to preconstruction contours as possible and at the minimum width necessary. We expect most permanent access roads for utility lines to be a maximum of 15 feet wide. Because of construction and safety standards, many roads authorized by NWP 14 are likely to be wider than 15 feet, resulting in greater impacts to waters of the United States. We are proposing to retain the PCN thresholds for the construction of utility lines in waters of the United States and the construction of access roads as proposed in the July 1, 1998, **Federal Register** notice.

Two commenters requested that the District Engineer, instead of the prospective permittee, notify the National Ocean Service (NOS) in cases where the utility line is to be constructed or installed in navigable waters of the United States.

We agree that it is more appropriate for the District Engineer to provide NOS with a copy of the PCN and NWP authorization, since the requirement at 33 CFR Part 325.2(a)(9)(iii) is to provide NOS with a copy of the permit for utility lines in navigable waters of the United States. We are proposing to add a note (Note 3) to the end of the text of NWP 12, reminding the District Engineer to send copies of the PCN and the NWP 12 authorization to NOS if the utility line is constructed in navigable waters of the United States.

Some commenters stated that the Corps should not require a delineation of special aquatic sites, including wetlands, as part of the NWP 12 PCN, or at least apply that requirement only to those projects that are subject to an acreage limitation. Some commenters recommended using simpler methods to delineate special aquatic sites. Other commenters suggested that the Corps adopt a procedure requiring Corps approval of a delineation of special aquatic sites within a reasonable period of time.

We disagree with the first comment in the previous paragraph because it is important to identify the limits and amounts of special aquatic sites that might be lost as a result of the proposed work to determine if additional on-site avoidance and minimization is possible and if the proposed project would have more than minimal adverse effects on the aquatic environment. The only approved method of determining the extent of wetlands is by the procedures in the 1987 *Corps of Engineers Wetlands Delineation Manual* (Technical Report Y–87–1). Other special aquatic sites are identified through other methods. For activities requiring notification, district engineers have 45 days from the date of receipt of a complete PCN to determine if the proposed work qualifies for NWP authorization. During the 45-day period, the District Engineer must determine if the delineation is accurate. District engineers cannot consider a PCN incomplete solely because they have not verified the delineation of special aquatic sites.

Other issues: One commenter recommended that the Corps add language to NWP 12 to waive the PCN requirement for cases where a prospective permittee is working under a valid NPDES stormwater management permit.

We disagree, since the NPDES permit does not satisfy the permit requirements of Section 404 of the Clean Water Act. Review by the District Engineer is necessary to ensure that the authorized work complies with the terms and conditions of NWP 12 and results in minimal adverse effects on the aquatic environment.

Some commenters objected to compensatory mitigation requirements for public utility projects and others suggested that mitigation should only be required to the extent necessary to ensure that an activity has minimal adverse effects on the aquatic environment. Other commenters recommended requiring complete or partial restoration of areas altered by mechanized landclearing.

Public projects may have more adverse effects on the aquatic environment than private projects since they may be larger in size. Project proponents will be required to provide compensatory mitigation, if necessary, to ensure that the authorized work results in minimal adverse effects on the aquatic environment regardless of whether the project is for public or private purposes. For activities that require notification, compensatory mitigation may be required by district engineers to ensure that the net adverse effects to the aquatic environment are minimal, individually and cumulatively. Utility line right-of-ways in waters of the United States can be cleared for the construction, maintenance, or repair of utility lines, but the cleared area must be the minimum necessary and preconstruction contours must be maintained as close as possible. Wetland vegetation will grow back if the right-of-way is constructed in wetlands and preconstruction contours and elevations are restored after construction. However, the plant community may be maintained as shrubs or herbaceous plants, to prevent damage to the utility line and facilitate repairs. We believe that the conditions of NWP 12 adequately address temporary impacts to waters of the United States and that additional restoration requirements are not necessary.

Some commenters emphasized the importance of the regional conditioning process to address regionally significant resources such as vernal pools, headwater springs, prairie potholes, certain coastal wetlands to ensure protection of unique wetland functions.

Many commenters made recommendations for regional conditions.

We recognize that the regional conditioning process is a very important element in the implementation of the new and modified NWPs but that specific recommendations for regional conditions must be addressed by division and district engineers.

This NWP is subject to proposed General Conditions 25, 26, and 27, which will substantially reduce its applicability. General Condition 25 prohibits the use of this NWP to authorize discharges into designated critical resource waters and wetlands adjacent to those waters. General Condition 26 prohibits the use of this NWP to authorize discharges resulting in the loss of greater than 1 acre of impaired waters, including adjacent wetlands. NWP 12 activities resulting in the loss of 1 acre or less of impaired waters, including adjacent wetlands, are prohibited unless prospective permittee demonstrates to the District Engineer that the activity will not result in further impairment of the waterbody. General Condition 27 prohibits the use of NWP 12 to authorize permanent, above-grade wetland fills in waters of the United States within the 100-year floodplain, unless the prospective permittee clearly demonstrates that the project and associated mitigation will not decrease the flood-holding capacity and no more than minimally alter the hydrology, flow regime, or volume of waters associated with the 100-year floodplain.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities.

14. Linear Transportation Crossings

In the July 1, 1998, **Federal Register** notice, we proposed several changes to this NWP. We proposed to modify this NWP to have a larger acreage limit for public transportation crossings, such as roads, railroads, and airport runways, in non-tidal waters of the United States, excluding non-tidal wetlands contiguous to tidal waters. We also requested comments on whether the acreage limit for public transportation crossings in non-tidal waters should be 1 or 2 acres. For private crossings and public linear transportation crossings in tidal waters, or non-tidal wetlands contiguous to tidal waters, we did not propose to change the original acreage limits of NWP 14.

One commenter stated that the NWP should not authorize public transportation crossings. A number of commenters said that the distinction between public and private transportation crossings is unnecessary. Many commenters requested that the Corps clarify what is meant by private and public transportation crossings. Several commenters asked whether roads to residential developments would be considered public or private.

NWP 14 previously authorized both public and private road crossings. Due to public interest factors, we proposed to increase the acreage limit for public transportation crossings for this NWP, with acreage limits based on the types of waters affected by the work. For the purposes of this NWP, a private crossing is restricted to the use of a particular person or group, and is not freely available to the public. An example is a driveway crossing a stream to provide access to a single family residence. A public crossing is a crossing which is intended to serve all citizens, rather than a specific limited group. As further clarification, if the responsibility for the highway or road maintenance and repair is a county, state, or government entity, the road will be considered public. To increase protection of the aquatic environment, we are proposing to change the applicable waters for linear transportation crossings as follows: (1) Public linear transportation crossings constructed in non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, (2) public linear transportation crossings constructed in tidal waters and non-tidal wetlands adjacent to tidal waters, and (3) private linear transportation crossings constructed in all waters of the United States.

Many commenters requested that NWP 14 remain unchanged. Several commenters suggested that the acreage limit for public projects should be limited to 1 acre and the length of the crossing to no more than 200 feet. Other commenters stated that the proposed 2 acre limit for public transportation crossings is too low and would prefer the original 10 acre limit that NWP 26 had prior to December 1996. Many commenters said that 2 acres is sufficient for public highways, which often have 2 to 4 lanes. Several commenters stated that public linear transportation crossings should have no acreage limit while others said the limit is too high and that the proposed modification should be withdrawn. Another commenter recommended removing the 200 linear foot limit for private crossings and replacing it with a 500 linear foot limit.

We have carefully considered all comments on the proposed acreage limits. The existing limit for private crossings is retained at ⅓ acre and 200 linear feet. For public projects in non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, we have decided the proposed 1 acre limit for public linear transportation crossings is appropriate to authorize most public linear transportation crossings that have minimal adverse effects on the aquatic environment in non-tidal waters. It is important to note that each crossing of a separate waterbody is a single and complete project (see 33 CFR Part 330.2(i)). The ⅓ acre and 200 linear foot limits will be retained for private linear transportation crossings and public linear transportation crossings in tidal waters and non-tidal wetlands adjacent to tidal waters.

Some commenters asked why the acreage limit for public projects was higher than the acreage limit for private projects. Many objected to the differences in acreage limits. Several commenters were concerned that the proposed modification establishes different thresholds based upon whether a project is private or public.

During our review of transportation projects authorized by NWP 26, we found that there were a substantial number of public linear transportation crossings with minimal adverse effects on the aquatic environment. Approximately 90% of the transportation projects authorized by NWP 26 during 1997 resulted in the loss of less than 1 acre of non-tidal waters. The proposed modification of NWP 14 is intended to authorize these types of projects, since NWP 26 will be replaced by the proposed new and modified NWPs announced in this **Federal Register** notice. Public linear transportation crossings need to be larger, because they must have larger capacities. Private crossings, on the other hand, are typically small. Public linear transportation crossings also fulfill a greater proportion of public interest factors, and the government entities that typically sponsor or build these projects have the resources and experience necessary to design these projects and provide necessary compensatory mitigation to ensure that these projects have minimal adverse effects on the aquatic environment. Consequently, these projects are less likely to be contrary to the public interest. Public transportation projects often require detailed planning

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processes to document compliance with NEPA, Section 404 of the Clean Water Act, and many other applicable laws. As a result, we have decided that it is appropriate to impose a higher acreage limit for public linear transportation projects in non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters.

Public roads serve the general public and allow access for entire communities. Other transportation facilities, such as municipal airport runways or railroads are constructed for public transportation needs, and are considered public if they are accessible to the public as a whole. Railroad crossings may be constructed by private entities, but may be used by public transportation agencies for mass transit, such as commuter rail services. As long as these transportation facilities are used by the general public, providing a means of transportation for an entire community, these linear transportation crossings will be considered public for the purposes of this NWP.

Many comments were received regarding PCN thresholds. Several commenters suggested that notification should be required for all projects authorized by this NWP. Some commenters stated that the proposed notification requirements were too stringent and some wetland impacts should be authorized without any PCN requirements. These commenters stated that the PCN requirement should be consistent with the notification requirements of NWP 12, and recommended that notification should be required if the activity results in the loss of more than ⅓ acre of non-tidal wetlands or the impact exceeds 500 linear feet in waters of the United States. Another commenter said that the PCN threshold should be raised to ½ acre. One commenter stated the notification requirements for public and private linear transportation projects should be the same. Another commenter wanted to know how Corps Districts would identify areas of high value that could trigger lower PCN thresholds.

To make the PCN thresholds of NWP 14 more consistent with the new NWPs, the proposed notification threshold has been modified. The proposed PCN thresholds for public and private linear transportation crossings are the same. Notification will be required for activities that result in the loss of greater than ¼ acre of waters of the United States. Notification will also be required for all activities that result in a discharge into special aquatic sites, including wetlands. We do not agree that the PCN thresholds of NWP 14 should be the same as the PCN thresholds of NWP 12 because the activities authorized by these NWPs have different adverse effects on the aquatic environment. High value waters will be identified through the regional conditioning process. Division engineers can regionally condition this NWP to lower the PCN threshold or require notification for all activities in specific high value waters.

Numerous commenters requested clarification concerning what constitutes a single and complete linear project. Several commenters recommended that the Corps eliminate the practice of piecemealing road projects so that NWP 14 authorizes each separate wetland or stream impact along the construction corridor. Another commenter suggested that the Corps consider allowing the use of this NWP for multiple crossings provided the "no net loss" goal is met.

Our NWP regulations already address linear projects and what constitutes a single and complete linear project (see 33 CFR Part 320.2(i)). In paragraph (h) of the proposed modification of this NWP, we have provided additional clarification concerning when discretionary authority may be exercised for road segments with multiple crossings of streams.

Many commenters believe that airports and runways should not be authorized by this NWP. Several commenters suggested that the secondary impacts of airport runway construction, such as chemicals and pollutants, are a serious concern. Several commenters questioned whether railroads are considered public entities.

The construction, improvement, and expansion of airport runways can be authorized by this proposed modification of this NWP, provided the adverse effects on the aquatic environment are minimal. These facilities are often subject to additional rigorous regulation by other State and Federal agencies. Airports will have existing stormwater and water quality management plans, and are likely to be closely regulated with regard to air quality, noise pollution, point and non-point source pollution, and hazardous and toxic substances. Since this NWP requires a PCN for most projects, district engineers will have the opportunity to review the impacts of the proposed activity. If a project will have more than minimal adverse effects on the aquatic environment, the District Engineer will assert discretionary authority and require an individual permit. Railroads will typically be considered public transportation because, as previously discussed, a railroad may be constructed by a private entity, but the tracks are often utilized by the general public for public transportation. As long as these facilities are generally accessible to the public, by providing a means of mass transit or services for a community, railway crossings will be considered public.

One commenter stated that regional conditions should prohibit the disruption of water flows by requiring culverts, bridges, etc. Another commenter asked for clarification of the terms in paragraph (g) of the proposed NWP 14 modification. Another commenter requested that applicants provide detailed engineering information on the crossings to ensure that they are designed properly.

General Condition 21, Management of Water Flows, requires NWP activities to be designed and constructed to maintain preconstruction downstream flow conditions, to the maximum extent practicable. Activities authorized by this NWP should not result in more than minor changes to the hydraulic flow of a stream and should not result in an increase in flooding upstream or downstream of the crossing. Proposed General Condition 27 also applies to activities authorized by this NWP. To construct the crossing, some work in the stream channel is necessary. Examples include bank stabilization, the placement of fill and culverts, depressing the culvert into the stream bed, etc. All of this work should take place only in the immediate vicinity of the crossing. The construction of the crossing should result in only minor impacts to the hydraulic characteristics of the stream. General Condition 9, Water Quality, requires the permittee to implement a water quality management plan to ensure the work does not cause more than minimal adverse effects to the downstream aquatic system. In general, where a state or tribal entity requires such a plan, this requirement will be considered fulfilled. If a water quality management plan is not required by the state, the District Engineer must decide if one is needed for the proposed activity. We do not agree that applicants should be required to provide detailed engineering information concerning the crossing. It is incumbent upon the permittee to ensure that the crossing is designed so that it complies with all of the conditions of the NWP, especially General Condition 21.

One commenter questioned why a mitigation plan was required for public linear transportation projects but not for private crossings. Several commenters asked whether compensatory mitigation would be required for all crossings.

We have modified this provision of NWP to require a mitigation proposal for both public and private linear transportation crossings. Paragraph (c) of the proposed modification of NWP 14 requires the prospective permittee to submit a mitigation proposal to offset permanent losses of waters of the United States and a statement describing how temporary losses will be minimized to the extent practicable.

Many commenters objected to the inclusion of attendant features to the linear transportation project, such as interchanges, stormwater detention basins, rail spurs, or water quality enhancement measures in the NWP. Many commenters approved the inclusion of such features, and a couple of commenters requested that the NWP authorize non-linear features such as vehicle maintenance or storage buildings, parking lots, train stations, and hangars. One commenter said that this NWP should not authorize new transportation facilities, which typically result in significant indirect and cumulative impacts.

Features integral to the crossing, such as interchanges, rail spurs, stormwater detention basins, and water quality enhancement measures are authorized by this NWP. This requirement will help ensure that the adverse effects of the entire single and complete project are considered. The attendant features must be integral to the crossing, however, and the combined loss of waters of the United States for a single and complete project cannot exceed the acreage limit of this NWP. We are not proposing to modify NWP 14 to authorize non-linear transportation activities, because these activities have greater potential to result in more than minimal adverse effects on the aquatic environment.

The proposed modification of this NWP can authorize the construction of new linear transportation crossings, provided the proposed work results in minimal adverse effects on the aquatic environment. The notification requirements, the District Engineer's ability to impose special conditions on a particular activity, and the District Engineer's ability to exercise discretionary authority and require an individual permit will ensure that the activities authorized by this NWP result in minimal adverse effects on the aquatic environment.

Several commenters recommended adding conditions that appear to apply to specific regions. One commenter requested that: this NWP should be prohibited in watersheds with substantial aquatic resource losses and in watersheds which have impervious surfaces over a substantial percentage of the landscape; the acreage limits be modified to protect regionally significant resources; linear foot limitations should be imposed on activities in streams with regionally important resources; kick-out provisions should be provided for Federal agencies; and compensatory mitigation should be required to fully offset all impacts to ensure no net loss of aquatic resources. Another commenter requested that this NWP: prohibit activities below the existing water level of the stream, limit work affecting water quality between March 15 and June 15, prohibit the use of stream bed material for erosion control, limit the use of rip rap, limit clearing of forested stream corridors to the minimum necessary, require revegetation of disturbed areas to reduce erosion, require culverts for temporary rock stream crossings higher than 18 inches, maintain stream bed gradient during construction, and size and place culverts to avoid creating a drop between the downstream end of the culvert and the downstream water surface elevation.

All of the recommendations cited in the previous paragraph are best addressed as regional conditions and case-specific special conditions for an NWP authorization.

A couple of commenters requested that this NWP authorize some stream channelization. Several commenters requested that this NWP prohibit stream channelization.

Paragraph (f) of the proposed modification of NWP 14 states that this NWP cannot be used to channelize a stream, but some channel modification in the immediate vicinity of the crossing can be conducted to ensure that water flow through the crossing does not result in additional flooding, erosion, or other adverse impacts that may compromise public safety.

One commenter was confused about the manner in which the authorized activities and applicable waters were described. We have clarified this section, with the acreage limits for each category of activities and applicable waters.

This NWP is subject to proposed General Conditions 25, 26, and 27, which will substantially reduce its applicability. General Condition 25 prohibits the use of this NWP to authorize discharges into designated critical resource waters and wetlands adjacent to those waters. Due to the requirements of General Condition 26, NWP 14 activities resulting in the loss of impaired waters, including adjacent wetlands, are prohibited unless prospective permittee demonstrates to the District Engineer that the activity will not result in further impairment of the waterbody. General Condition 27 prohibits the use of NWP 14 to authorize permanent, above-grade wetland fills in waters of the United States within the 100-year floodplain, unless the prospective permittee clearly demonstrates that the project and associated mitigation will not decrease the flood-holding capacity and no more than minimally alter the hydrology, flow regime, or volume of waters associated with the 100-year floodplain.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities.

27. Stream and Wetland Restoration Activities

In the July 1, 1998, **Federal Register** notice, we proposed to modify NWP 27 to authorize the restoration of non-Section 10 streams, in addition to the wetland and riparian restoration and enhancement activities already authorized by this NWP.

Some commenters supported the proposed modifications. Other commenters said that no restrictions should be placed on the NWP. Several commenters stated that the NWP meets the criteria for minimal effects. One commenter supported modification of NWP 27 to authorize activities on private property. Several commenters opposed the proposed modifications to NWP 27 because they believe that wetlands and streams would be adversely affected by the proposed changes.

The purpose of the proposed modification of NWP 27 is to authorize the restoration of non-tidal streams. NWP 27 previously authorized only the restoration former non-tidal wetlands and riparian areas, the enhancement of degraded wetlands and riparian areas, and the creation of wetlands and riparian areas. We are also proposing to modify NWP 27 to authorize the restoration of tidal waters. Currently, NWP 27 only authorizes the restoration of non-tidal wetlands and riparian areas. The enhancement of degraded wetlands and riparian areas and the creation of wetlands and riparian areas is authorized in all waters of the United States, including tidal waters. We believe, that by adding stream and tidal wetland restoration activities to this NWP, that the overall aquatic

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environment will benefit by providing an efficient means of authorizing the restoration and enhancement of these areas.

One commenter recommended eliminating wetland restoration activities from this NWP and limiting it only to enhancement activities. This commenter believes that restoration activities do not require a Section 404 permit because the project area is not currently a wetland. Another commenter asked if NWP 27 applies to the restoration of riparian zones outside of wetlands and other waters of the United States.

Many wetland restoration activities require a Section 404 permit because there are discharges into waters of the United States that are necessary to conduct the restoration activity, such as connecting the restored wetland to other waters of the United States. The same principle applies to wetland creation activities. NWP 27 authorizes the restoration of riparian zones that are waters of the United States (e.g., wetlands adjacent to a stream) and activities in waters of the United States associated with the restoration of upland riparian zones. For example, to establish a vegetated upland riparian zone, some bank stabilization activities in waters of the United States may be necessary, such as the planting of willows along the bank. If the proposed riparian zone restoration activity is conducted entirely outside of waters of the United States, then no Corps permit is required.

One commenter requested the inclusion of more examples of stream restoration and enhancement activities, such as the addition of spawning gravel and the removal of accumulated sediment from ponds to prevent sediments from being washed downstream. Another commenter stated that the list of examples of authorized activities in the NWP is too inclusive and vague. Other commenters expressed concern that activities not directly related to the restoration of ecological values or aquatic functions could be authorized by this NWP. Several commenters recommended excluding the placement rip rap from NWP 27 and that the appropriate use of biological materials should be encouraged.

The list of activities in the paragraph following paragraph (c) of the proposed modification of NWP 27 is intended only to provide examples and is not a complete list of activities authorized by this NWP. The next paragraph in NWP 27 lists activities that are not authorized by the NWP. If the prospective permittee has questions about a particular stream and wetland restoration or enhancement activity, then he or she should contact the District Engineer to determine if the proposed work can be authorized by NWP 27. For those projects requiring notification, the District Engineer will determine if the proposed work satisfies the terms and conditions of NWP 27 and will exercise discretionary authority if the proposed work will result in more than minimal adverse effects on the aquatic environment. Division engineers can also regionally condition this NWP to exclude certain activities or prohibit its use in specific waterbodies or geographic regions. We do not agree that the use of rip rap should be excluded from this NWP, because rip rap provides habitat for many aquatic organisms and can help reduce adverse effects to water quality resulting from soil erosion on the project site.

A number of commenters were confused about the scope of this NWP and asked which types of waters are subject to this NWP. Several commenters recommended expanding the applicable waters for this NWP to include Section 10 waters. Other commenters suggested excluding tidal wetlands from this NWP. One commenter stated that the NWP should be used only in small lengths of streams or small wetland areas.

We have modified the first paragraph of the proposed modification of this NWP to clarify the scope of applicable waters for this NWP. Since its issuance in 1991, NWP 27 has authorized wetland and riparian restoration, enhancement, and creation activities in Section 10 waters, although certain activities were restricted to non-tidal Section 10 waters. This NWP authorizes activities that restore former waters, including tidal and non-tidal wetlands, enhance degraded tidal and non-tidal wetlands and riparian areas, create tidal and non-tidal wetlands and riparian areas, and restore and enhance non-tidal streams and non-tidal open waters. This NWP can be used to restore and enhance Section 10 streams and open waters, as long as they are non-tidal. Other Section 10 activities authorized by this NWP include the restoration of former non-tidal wetlands in Section 10 waters, the enhancement of degraded wetlands in navigable waters, and the creation of wetlands in navigable waters.

Restricting the use of this NWP to small segments of streams and small wetlands is unnecessary because this NWP authorizes only those activities that improve the aquatic environment. Adding such a restriction is also likely to discourage larger stream and wetland restoration and enhancement projects by requiring prospective permittees to go through a more complicated and expensive permit process.

Many commenters recommended conditioning this NWP to prohibit conversion and alteration of habitat. One of these commenters recommended prohibiting the conversion of one aquatic habitat type to another type unless the intent of the conversion is to restore the area to an aquatic habitat type that historically existed on that site. One commenter recommended including a provision in the NWP to allow the construction of small impoundments in ephemeral and/or intermittent reaches of streams to benefit water quality and waterfowl.

The proposed modification of this NWP prohibits the conversion of natural streams or wetlands to another aquatic use, unless the permittee recreates similar aquatic habitat types in a different location on the project site and the project results in aquatic resource functional gains. However, only non-tidal waters can be converted to other types of aquatic habitat. We are proposing to modify the text of the NWP to specify that any relocated non-tidal aquatic habitat type must be created on the project site, so that the relocation is not limited to creating the aquatic habitat type in adjacent uplands. We have added a prohibition against converting tidal waters, including tidal wetlands, to other aquatic uses or relocating tidal waters. We do not believe that is necessary to limit the conversion to aquatic habitat types that historically existed on the project site, because the permittee may want to conduct activities that provide more benefits to the aquatic environment than the historic aquatic habitat type provided. This NWP can authorize small impoundments in ephemeral and/or intermittent streams, provided those aquatic habitat types are recreated on the project site, the adverse effects on the aquatic environment are minimal, and there are net functional gains.

Several commenters expressed concern with the use of this NWP with other permits. Other commenters were uncertain as to whether General Condition 15 applies to NWP 27.

NWP 27 may be used with other NWPs to authorize a single and complete project, provided the authorized work results in minimal adverse effects on the aquatic environment, individually or cumulatively. For example, NWP 33 may be used to provide temporary access to the construction site for activities authorized by NWP 27. The proposed modification of General Condition 15 applies to NWP 27 and all other NWPs.

We have also been made aware of situations where participants in wetland restoration programs, such as the U.S. Department of Agriculture's Wetlands Reserve Program, want to revert their land back to its prior condition. If the land was prior converted cropland before the implementation of the wetland restoration activity, and no associated discharge of dredged or fill material into waters of the United States was required to conduct the wetland restoration activity, the landowner did not require a Section 404 permit. If the landowner wants to revert the land back to its prior condition, he or she could not utilize the reversion provision of NWP 27, because NWP 27 was not needed to restore wetlands on the prior converted wetland. To address this issue, we are proposing to add a provision to NWP 27 that allows the landowner to revert the land back to its prior condition using NWP 27, even though no Section 404 permit was needed to conduct the wetland restoration activity, provided the prior-converted cropland has not been abandoned. We believe this provision is necessary to provide equity for landowners. This provision may encourage more landowners to restore wetlands on prior converted cropland because they will not have to apply for an individual permit at a later date to revert the land back to its prior condition.

Several commenters stated that notification to the resource agencies should be required for all activities authorized by this NWP. One commenter recommended requiring agency coordination for all activities authorized under part (iv) of this NWP. This commenter also recommended that project proponents for stream restoration activities should be required to coordinate with the Corps and Federal and State fish and wildlife agencies prior to submitting a PCN under part (iv). Many commenters suggested PCN thresholds, ranging from 1/10 acre to 1 acre. One commenter stated that downstream landowners should be notified of proposed stream restoration projects.

To clarify the notification requirements of this NWP, we are proposing to restructure NWP 27 to make it easier to understand which activities require notification to the District Engineer. Notification is not required for: (1) activities on public or private land where the landowner has an agreement with the FWS or NRCS, (2) activities on Federal land, or (3) activities on reclaimed surface coal mined land in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining or the applicable state agency. Notification is also required if a permittee wants to use NWP 27 to authorize the construction of a compensatory mitigation site (see the Note at the end of NWP 27). We disagree that agency coordination should be conducted for all activities authorized by this NWP, because this NWP authorizes activities that benefit the aquatic environment. Corps district personnel possess the knowledge and experience to assess the environmental effects, both beneficial and adverse, of those activities requiring notification. If the proposed work will result in more than minimal adverse effects on the aquatic environment, the District Engineer will exercise discretionary authority and require an individual permit. Requiring project proponents to coordinate with the Corps and fish and wildlife agencies prior to submitting a PCN is unlikely to provide any benefits for the aquatic environment, and will serve only to discourage stream restoration projects because the authorization process will become too burdensome for many landowners. For many of the reasons cited above, we do not believe it is necessary to place a PCN threshold based on acreage on this NWP, or to notify downstream landowners of proposed stream restoration projects.

Several commenters stated that the NWP is too vague and is vulnerable to abuse. A number of commenters requested the inclusion of narrow definitions of authorized activities in the NWP. Two commenters asked how the Corps will assess functional gains. One commenter stated that NWP 27 should authorize only ecological-based stream restoration. One commenter asked if NWP 27 was intended to apply to the compensatory mitigation requirements of other Corps permits. Another commenter recommended that the NWP require the planting of native species at the site.

No activities or discharges not directly related to the restoration of ecological values or aquatic functions are authorized by this NWP. This NWP can be used to authorize wetland and stream restoration activities required by other Corps permits. The intent of the proposed modification of this permit is to facilitate the restoration of degraded or altered streams and wetlands. The goals of the proposed activities must be based upon the enhancement, restoration, or creation of the ecological conditions that existed, or may have existed, in the stream or wetland prior to disturbance, or to otherwise improve the aquatic functions and values of such areas. The activities may include, but are not limited to, the modification of the hydrology, vegetation, or physical structure of the altered or degraded stream or wetland. If additional protection is necessary, division engineers can add regional conditions to this NWP. We have added a provision to the proposed modification of NWP 27 that requires the permittee to utilize native plant species if he or she is vegetating the project site. We are limiting this requirement to plant species installed by the permittee, because non-native plant species may naturally colonize the project site and we cannot require the permittee to remove those plants.

Some commenters recommended requiring binding agreements for activities authorized by this NWP. One commenter stated that management plans were needed in all cases. One commenter recommended requiring detailed restoration plans. One commenter recommended prohibiting future fills in areas that have reverted to prior condition under parts (ii) and (iii). Another commenter stated that wetland and stream restoration and enhancement activities by State resource management agencies should be included in NWP.

We do not believe that binding agreements or detailed restoration plans are necessary in all cases. Where the NWP authorizes reversion of the created or restored wetlands to its non-wetland state (*i.e.*, in those cases involving private parties entering into contracts or agreements with, or documentation of prior condition by, the NRCS or FWS under special wetland programs or an Office of Surface Mining (OSM) or applicable state program permit), then a binding agreement, documentation, or permit by NRCS, FWS, or OSM or applicable state agency which clearly documents the prior condition is required. This reversion can only occur when these instruments clearly document the prior condition. In all other cases where the reversion opportunity is not included, a Corps permit would be required for alteration of the site. Therefore, no binding agreement, detailed restoration plan, or documentation of the prior conditions will be required. Because the permit is limited to restoration, enhancement, and creation activities and because authorizations for those projects do not provide the opportunity for reversion, except as noted above, without a permit from the Corps, we believe that a management plan would be unnecessarily burdensome without

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additional environmental benefits. Activities by State natural resource management agencies are already authorized by this NWP, but may require notification to the Corps unless those activities are in the categories described by paragraphs (a)(1), (a)(2), or (a)(3).

One commenter stated that evaluation of upstream and downstream impacts should be conducted. Another commenter stated that NWP 27 should not authorize activities that impede fish passage. A couple of commenters requested that the NWP should not be allowed in exceptional use waters and wild and scenic rivers.

All activities authorized by this NWP must comply with General Condition 21, Management of Water Flows. Compliance with this condition will ensure that the authorized activity results in minimal adverse effects on hydrology upstream and downstream of the project site. Similarly, all activities authorized by this NWP must comply with General Condition 4, Aquatic Life Movements, to ensure that the authorized work results in no more than minimal adverse effects on aquatic life movements. The requirement to comply with General Condition 7 will ensure the proper coordination to prevent adverse impacts to Federally-designated wild and scenic rivers. In addition, districts have coordinated with Federal and State natural resource agencies to discuss appropriate regional conditioning for the NWPs. Proposed General Condition 25 requires notification to the District Engineer if the proposed activity will occur in NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally-listed threatened or endangered species, coral reefs, State natural heritage sites, and outstanding national resource waters or other waters officially designated by a State. Restricting the use of NWP 27 in exceptional use waters will also be considered at the district level.

This NWP is subject to the requirements of proposed General Conditions 25 and 26. General Condition 25 requires the prospective permittee to notify the District Engineer in accordance with General Condition 13 for activities in designated critical resource waters, including wetlands adjacent to those waters. The District Engineer may authorize NWP 27 activities in these waters if the adverse effects are no more than minimal. General Condition 26 prohibits the use of this NWP to authorize discharges resulting in the loss of greater than 1 acre of impaired waters, including adjacent wetlands. NWP 27 activities resulting in the loss of 1 acre or less of impaired waters, including adjacent wetlands, are prohibited unless prospective permittee demonstrates to the District Engineer that the activity will not result in further impairment of the waterbody.

In the proposed modification of NWP 27, we are proposing to add a note to the NWP to clarify the compensatory mitigation is not required for activities authorized by this NWP, provided the work results in a net increase in aquatic resource functions and values in the area. The note also states that NWP 27 can be used to authorize compensatory mitigation projects, including mitigation banks, as long as the project includes compensatory mitigation for any losses of waters of the United States that may occur as a result of constructing the compensatory mitigation project. The proposed note also states that NWP 27 does not authorize reversion of sites used as compensatory mitigation projects to prior conditions.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities.

39. Residential, Commercial, and Institutional Developments

This NWP was proposed as NWP A in the July 1, 1998, **Federal Register** notice. NWP 26 has been used extensively to authorize discharges of dredged or fill material into waters of the United States for residential, commercial, industrial, and institutional development activities. Based on the comments received in response to the July 1, 1998, **Federal Register** notice, we have made changes to the proposed NWP, which are discussed in further detail below. We are proposing to use an index to determine the acreage limit for this NWP. The index will be based on a percentage of the project area, with a ¼ acre base limit. The maximum acreage loss that can be authorized by this NWP is 3 acres. We are also proposing to restrict the list of activities authorized by this NWP to building pads, building foundations, and attendant features for residential, commercial, and institutional development activities. We have reduced the PCN threshold from ⅓ acre to ¼ acre. A PCN will be required for all activities that involve discharges of dredged or fill material into open waters. We believe that these changes will ensure that this NWP authorizes only those development activities that are similar in nature and have minimal adverse effects on the aquatic environment, individually or cumulatively. In addition, to further ensure that the NWP authorizes activities with only minimal adverse effects on the aquatic environment, most, if not all, Corps districts will impose regional conditions on this NWP.

General: Nearly 350 comments were received that specifically addressed this NWP. Many commenters opposed the issuance of this NWP, but a few favored its issuance. Many of the commenters who objected to the issuance of this NWP believe that it authorizes activities with more than minimal impacts, resulting in excessive cumulative adverse effects on the aquatic environment. Several commenters stated that the types of activities authorized by this NWP should be subject to the individual permit process and public comment. Another commenter stated that this NWP is essentially the same as NWP 26, with an expanded scope of waters where it can be used.

NWPs can only authorize activities that have minimal adverse effects on the aquatic environment, individually or cumulatively. We have established PCN thresholds to allow district engineers to review all activities authorized by this NWP that could potentially result in more than minimal adverse effects on the aquatic environment. We believe that, in most cases, residential, commercial, and institutional development activities that result in the loss of less than ¼ acre of wetlands have minimal adverse effects on the aquatic environment. In watersheds or waterbodies where losses of less than ¼ acre of waters of the United States may result in more than minimal adverse effects, division engineers can regionally condition this NWP to lower the notification threshold or require notification for all activities. This NWP can also be revoked by division engineers in those watersheds or geographic regions where use of the NWP will cause more than minimal cumulative adverse effects on the aquatic environment. By restricting the proposed NWP to the construction of building pads, building foundations, and attendant features, we are limiting the use of this NWP to the development activity, which is much narrower than the scope of activities that could be authorized by NWP 26.

Types of Waters Affected: Several commenters objected to this NWP because it authorizes residential, commercial, and institutional development activities in all non-tidal waters of the United States, excluding non-tidal wetlands contiguous to tidal waters. They believe that the scope of applicable waters for this NWP will increase wetland destruction. In contrast, two commenters stated that this NWP should be applicable in all non-tidal waters, including non-tidal wetlands contiguous to tidal waters. Another commenter recommended that wetlands and waters adjacent to tidal waters should be excluded from the use of this NWP as are contiguous wetlands. Two commenters stated that this NWP should authorize only activities in isolated wetlands less than 1 acre in size.

To increase protection of the aquatic environment, we are proposing to change the applicable waters of this NWP to: non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters. This change in applicable waters will reduce the geographic extent in which NWP 39 can be used. High value isolated waters can receive additional protection through regional conditions to restrict or prohibit the use of this NWP in those waters.

Another commenter stated that the expansion of applicable waters from headwaters and isolated wetlands will result in degradation of water quality by destroying wetlands which trap sediments and take up pollutants. This commenter also stated that the NWP does not specify stormwater management requirements needed to prevent water quality degradation.

We are proposing to modify General Condition 9, Water Quality, to require a water quality management plan for activities authorized by this NWP. The purpose of the water quality management plan is to ensure that the activities authorized by this NWP result in only minimal degradation of downstream water quality. The permittee must utilize stormwater management techniques and vegetated buffers to ensure that the project complies with this condition and does not result in substantial degradation of downstream water quality. The requirements of proposed General Condition 26 will also prevent further degradation of impaired waters by limiting the use of this NWP to authorize discharges in impaired waterbodies and adjacent wetlands.

Types of Activities Authorized: Many commenters stated that this NWP does not comply with Section 404(e) of the Clean Water Act, which requires activities authorized by general permits to be "similar in nature." They believe that this NWP authorizes a wide variety of activities and does not comply with this requirement. One commenter recommended that the Corps develop a more limited list of activities authorized by this NWP. Another commenter suggested that a separate NWP should be developed for each category of activities. Several other commenters objected to this NWP because they believe that it authorizes activities that are not water dependent and that these activities should not be authorized in wetlands. One commenter suggested that the NWP should authorize only the construction of buildings and attendant features and should not authorize ball fields and golf courses.

In response to these comments, we have restricted the list of activities authorized by the proposed NWP to building pads, foundations, and attendant features constructed for residential, commercial, and institutional purposes. A structure must be built on the building pad or foundation to quality for authorization under this NWP. Attendant features, as defined for the purposes of this NWP, are those features necessary for the use, operation, and maintenance of the residential, commercial, or institutional building. District engineers will determine whether or not a particular attendant feature can be authorized by this NWP. Attendant features can include, but are not limited to: roads constructed within the development project area, parking lots, storage buildings, garages, physical plant, sidewalks, stormwater management facilities, utilities, lawns and landscaped features, and recreational facilities such as playgrounds for schools and day care centers. We do not believe that it is necessary to develop a separate NWP for each category of activity because limiting the proposed NWP to building pads and attendant features necessary for the operation and use of those buildings complies with the similar in nature requirement of Section 404(e) of the Clean Water Act. The purpose of the building and attendant features (i.e., whether it is for residential, commercial, industrial, or institutional purposes) is usually irrelevant in terms of adverse effects on the aquatic environment. The construction of a building pad or foundation for a residential, commercial, or institutional building has the same effects on aquatic habitat because it replaces an aquatic area with a building. Issuing a separate NWP for each type of development activity would also result in a much more complex NWP program with a substantially larger number of NWPs. Authorization of the necessary attendant features with the building pad or foundation will help ensure that the NWP authorizes all activities associated with a single and complete project and avoid piecemealing of projects. In addition, by authorizing the entire development project with one NWP, we will be better able to assess the adverse effects of the entire development on the aquatic environment.

Residential developments include single and multiple unit developments. A residential subdivision may be authorized by this NWP as a single and complete project. This NWP also authorizes the construction of apartment complexes. Developers and speculative builders can use this NWP to construct single family residences. We have removed the language from the proposed NWP A published in the July 1, 1998, **Federal Register** notice that prohibited the use of this NWP to authorize the construction of a single family residence and attendant features for personal residence for the permittee. Although this change results in some overlap between this NWP and NWP 29 because they both can authorize single family residences, we believe that this overlap does not result in less protection of the aquatic environment. The construction of a single family residence, whether it is constructed by the property owner who will live in the residence or by a contractor or speculative builder who will later sell the completed residence, has the same adverse effects on the aquatic environment. Although NWP 39 may have a higher indexed acreage limit than NWP 29, the geographic scope of applicable waters for NWP 39 is much less than the scope of applicable waters for NWP 29. NWP 39 cannot be used to authorize discharges into non-tidal wetlands adjacent to tidal waters, but NWP 29 can authorize discharges in those non-tidal wetlands. NWP 39 has a more stringent avoidance and minimization requirement than NWP 29 because it requires the permittee explain, in the notification submitted to the District Engineer, how avoidance and minimization was achieved on the project site. District engineers will receive PCNs for activities that result in the loss of greater than 1/4 acre of waters of the United States or involve discharges into open waters, such as streams. Based on the review of the PCN, the District Engineer will determine if the proposed work results in minimal adverse effects on the

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aquatic environment and qualifies for authorization under NWP 39. We also believe that prohibiting the use of NWP 39 to authorize the construction of a single family home for the property owner, but allowing a contractor or speculative builder to use NWP 39 to construct a single family residence, is unfair to the regulated public because it places different restrictions based solely on who the applicant is (i.e., whether the applicant will be the resident of the home or if the applicant is a contractor or a speculative builder will sell the completed home at a later time to a future occupant). Such inequities are likely to lead to selective use of these two NWPs. A property owner can ask a contractor to apply for NWP 39 authorization for a higher acreage limit, instead of applying for an NWP 29 authorization. Since NWPs can authorize only those activities that result in more than minimal adverse effects on the aquatic environment, individually or cumulatively, we believe this overlap between NWPs 29 and 39 is not contrary to Section 404(e) of the Clean Water Act.

Commercial developments authorized by this NWP include, but are not limited to, retail and wholesale stores, shopping centers, industrial facilities, malls, restaurants, hotels, business parks, and other buildings for the production, distribution, and selling of goods and services, as well as attendant features for those buildings. Institutional developments include, but are not limited to, schools, police stations, fire stations, government office buildings, libraries, courthouses, public works buildings, college or university buildings, hospitals, and places of worship. This NWP does not authorize the construction of new ski areas or the installation of oil or gas wells.

One commenter stated that the term "infrastructure" is poorly defined in the NWP. Another commenter suggested that infrastructure should be authorized by a separate NWP. Three commenters recommended that this NWP authorize the roads constructed by State or local governments to the development, not just the roads within the development.

For the purposes of the proposed NWP, infrastructure includes attendant features necessary for the operation of the residential, commercial, or institutional development or building, such as utilities, roads, and stormwater management facilities. Utilities that are not an integral part of the development, but are shared with other developments, may be authorized by other NWPs, such as NWP 12, regional general permits, or individual permits. The proposed NWP authorizes only those roads within the project area (e.g., the subdivision). Roads leading to the project area, including those roads constructed by State or local governments, may be authorized by NWP 14, another NWP, regional general permit, or individual permit. These roads typically serve other areas and may be considered as separate single and complete projects.

The proposed NWP does not authorize discharges of dredged or fill material into waters of the United States for the construction or expansion of golf courses unless the golf course is an integral part of a residential subdivision. However, this NWP may be used to authorize the clubhouse, storage buildings, or garage for a golf course. A golf course that is not an integral part of a residential subdivision may be authorized by proposed NWP 42, Recreational Facilities, provided the golf course is designed and constructed in a manner that complies with the terms of that NWP. Golf courses as primary projects are not authorized by this NWP because they do not require building pads or foundations to fulfill their primary purpose. Rather, the clubhouse, storage building, or garage is an attendant feature of the golf course, not vice versa. Golf courses can also be authorized by other NWPs, regional general permits, or individual permits.

One commenter requested that the Corps develop a separate NWP for shopping centers because shopping centers differ from residential, commercial, and institutional developments. Another commenter stated that institutional facilities should include reuse plants, wastewater treatment facilities, and water treatment plants. One commenter stated that community recreation activities should not be authorized by this NWP.

We do not believe it is necessary to issue a separate NWP for shopping centers because shopping centers are a specific type of commercial development. The adverse effects on the aquatic environment resulting from the construction and use of shopping centers are similar to the impacts of other types of commercial developments. Reuse plants, wastewater treatment facilities, and water treatment plants may be authorized by this NWP, at the discretion of the District Engineer. We cannot list every type of residential, commercial, or institutional development that is authorized by the proposed NWP because such a list would be impractical and unnecessarily restrict the use of this NWP for other development activities that have minimal adverse effects on the aquatic environment. For those discharges that require notification the District Engineer will determine if the proposed activity qualifies for authorization under this NWP. For discharges that do not require notification, a permittee can contact the appropriate Corps district office to determine if his or her development activity is eligible for this NWP.

A commenter requested that the NWP explicitly authorize all commercial and industrial activities because this NWP could be interpreted as not authorizing general industry construction. This commenter stated that there is no difference between commercial developments and general industrial developments. Another commenter requested clarification as to whether the term "institutional developments" includes government facilities.

We agree with these commenters and have stated in the text of the proposed NWP that industrial facilities and government office building pads, foundations, and attendant features may be authorized by this NWP.

We do not agree that community recreation activities should not be authorized by this NWP, because NWP 39 authorizes attendant features associated with a residential, commercial, or institutional development. These attendant features may include playgrounds and playing fields, provided those facilities are constructed in conjunction with a residential subdivision or school building. Excluding these features would be contrary to the purpose of the proposed NWP, which is to authorize all necessary attendant features associated with the buildings as part of a single and complete project. This NWP does not authorize discharges of dredged or fill material into waters of the United States for the construction of recreational facilities unless those recreational facilities are attendant features for residential, commercial, or institutional buildings. However, the building need not be constructed in waters of the United States for the attendant features to be authorized by NWP 39. Recreational facilities not constructed with residential, commercial, or institutional buildings may be authorized by proposed NWP 42, other NWPs, regional general permits, or individual permits.

Several commenters stated that rechannelization of streams should not be authorized by this NWP. One commenter said that stream rechannelization would not comply with the proposed modifications to General Conditions 21 and 9 because rechannelization causes more than minor changes in flow characteristics and could measurably degrade water quality. Another commenter stated that the list of authorized activities should include drainage facilities, culverts, and drainage ditches.

To address concerns regarding stream channelization associated with residential, commercial, and institutional development projects, we have added paragraph (j) to proposed NWP 39. Paragraph (j) prohibits the channelization or relocation of stream beds downstream of the point on the stream where the average annual flow is 1 cubic foot per second. Therefore, only small streams can be channelized or relocated by this NWP. We believe that this restriction will help ensure that residential, commercial, and institutional development activities will result in minimal adverse effects on the aquatic environment. It should also be noted that notification is required for all discharges resulting in the loss of open waters, which allows district engineers to review all proposed activities in streams and other open waters. Division engineers can also regionally condition this NWP to prohibit the channelization or relocation of high value streams with average annual flows of 1 cubic foot per second or less. Channelization or relocation of stream segments with average annual discharges of greater than 1 cubic foot per second may be authorized by regional general permits or individual permits. The construction or maintenance of drainage facilities, culverts, and drainage ditches may be authorized by this NWP only if they are attendant features necessary for the residential, commercial, or institutional building. Drainage facilities and ditches may be part of a stormwater management facility or road. Culverts may be used to construct road crossings in the residential, commercial, or institutional development.

Acreage Limit: In the July 1, 1998, **Federal Register** notice, we requested comments on whether a simple acreage limit should be used for this NWP or whether the acreage limit should be indexed or based on a sliding scale. We proposed options for a simple limit of 3 acres and an indexed acreage limit based on parcel size. Many commenters said that a simple acreage limit should be used instead of indexing or a sliding scale. A few commenters stated that the 3 acre limit is adequate. Many commenters believe that the proposed acreage limit is too high. A number of commenters recommended an acreage limit of 1 acre. Other commenters proposed limits of ½ acre and 2 acres. One commenter recommended acreage limits of 2 acres of isolated wetlands and ⅓ acre of headwater wetlands. Numerous commenters said that the 3 acre limit is too low and that the acreage limit should be 5 acres. They believe that the NWPs should be more flexible and should authorize all activities that result in minimal adverse effects. They recommended that PCNs should be used to determine whether or not a particular project would result in more than minimal adverse effects. Two commenters recommended a 10-acre limit and another commenter suggested a 25-acre limit for this NWP. Some commenters remarked that the acreage limit should be higher because the Corps has not demonstrated that higher acreage limits will result in significant direct or cumulative adverse effects.

Many of the commenters who stated that the 3 acre limit is too high referred to the recent United States District Court decision in the District of Alaska on NWP 29. They cited this court decision as evidence that the acreage limit for NWP 39 is too high because the Corps was enjoined from accepting NWP 29 preconstruction notifications after June 30, 1998. Two commenters stated that the acreage limits and PCN thresholds of this NWP and NWPs 29 and 40 should be similar.

In its decision, the District Court did not rule that the acreage limit for NWP 29 (i.e., ½ acre of non-tidal waters) was too high. The District Court merely required the Corps to consider lower acreage limits and the exclusion of high value waters in its environmental assessment.

For activities in non-tidal wetlands, NWPs 39 and 40 have different acreage limits. NWP 39 utilizes an indexed acreage limit, as does NWP 40 for discharges into playas, prairie potholes, and vernal pools. NWP 40 utilizes a simple acreage limit of 2 acres for discharges into other types of non-tidal wetlands. We are not proposing an indexed acreage limit for discharges authorized by NWP 40 into non-tidal wetlands because the national average for farm tract size is approximately 275 acres, which means that most agricultural producers would qualify for the maximum acreage limit of 2 acres. However, we are proposing to utilize an indexed acreage limit for discharges into playas, prairie potholes, and vernal pools. Most residential, commercial, and institutional developments, on the other hand, would be subject to the indexed acreage limit since most of these developments occur on relatively small parcels of land and the indexed acreage limit would encourage avoidance and minimization of impacts to waters of the United States. It would be impractical for this NWP to have the same acreage limit as NWP 29 because these NWPs fulfill different purposes. NWP 29 applies solely to the construction of a single family residence whereas NWP 39 may be used to authorize the construction of a large residential subdivision, a commercial development, or an institutional development. The PCN requirements of NWPs 29 and 39 are different. NWP 29 requires notification for all activities authorized by that NWP. NWP 39 requires notification for activities resulting in the loss of greater than ¼ acre of non-tidal waters and any discharges resulting in the loss of open waters.

Several commenters favored the use of a sliding scale or indexing to determine the acreage limit for this NWP. A few commenters noted that the sliding scale is too complex to implement. Some of the commenters endorsing the use of a sliding scale recommend basing the indexing on a percentage of the development size. One commenter suggested that the acreage limit should be based on 10% of the parcel size, another commenter suggested that the maximum acreage should be 5% of the parcel size, several commenters recommended an acreage limit 2% of the parcel size, and two commenters recommended using 1% of the parcel size as the acreage limit. Another commenter recommended a minimum acreage limit of ⅓ acre plus 10% of the wetlands on the parcel for this NWP.

One commenter stated that a percentage of parcel size should be used as the basis for the index because if the indexing scheme proposed in the July 1, 1998, **Federal Register** is used, a small increase in parcel size could allow a much larger loss of wetlands. For example, a parcel size of 14.4 acres would have an acreage limit of 1 acre whereas a 15.1 acre parcel would have an acreage limit of 2 acres. In contrast, an index based on the percentage of parcel size or project area would result in a small increase in the acreage limit with a small increase in parcel size or project area.

Other commenters remarked that the indexing scheme proposed in the July 1, 1998, **Federal Register** notice has acreage limits so low for each size category that it is useless. If indexing is used to determine the acreage limit, these commenters requested that the Corps base the index on higher acreage limits. In contrast, some commenters stated that the indexing should be based on lower acreage limits. One commenter recommended an indexed acreage limit of ¼ acre for every 5 acres of parcel size.

In response to these comments, we have decided to utilize an indexed acreage limit for this NWP. The

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proposed index begins with a base acreage limit of ¼ acre and increases as 2% of the project area, in acres. The maximum acreage limit for this NWP is 3 acres of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters. The acreage limit for this NWP is calculated as follows:

Acreage limit = ¼ acre + 2% of the project area (in acres) For example if the project area is 5 acres, the acreage limit would be 0.35 acres. If the project area is 80 acres, the acreage limit would be 1.85 acres. With this indexed acreage limit, the maximum limit of 3 acres is reached at a project area of 137.5 acres. If the project area is greater than 137.5 acres, the acreage limit is 3 acres.

Two commenters said that indexing should be based on the quality or values of the aquatic resource lost due to the authorized work. They stated that such a basis for indexing would ensure that only projects with minimal adverse effects are authorized.

We believe that using functions and values of aquatic resources to determine the maximum acreage limit for an NWP is impractical because we do not currently have a standard method for measuring or assessing aquatic resource functions and values.

One commenter stated that indexing duplicates requirements for avoidance and minimization, including the statement required in paragraph (f) of the proposed NWP A. Two commenters believe that indexing is counter to the requirements for avoidance and minimization and provides incentives for developers to build larger projects.

We disagree with these comments, because the purpose of using an indexed acreage limit for this NWP is to have a proportionally smaller acreage limit for smaller projects, which reduces the potential for losses of waters of the United States. An indexed acreage limit encourages avoidance and minimization because it imposes smaller acreage limits on smaller projects rather than a single larger acreage limit. With an indexed acreage limit, NWP applicants are still required to avoid and minimize impacts to waters of the United States on-site to the maximum extent practicable (see General Condition 19).

Another commenter asserted that project proponents will attempt to get around indexing requirements by artificially defining the parcel as larger than it really is to avoid going through the individual permit process. Two commenters remarked that developers may phase projects so that they can build projects with higher impact acreage limits using the indexing scheme proposed in the July 1, 1998, **Federal Register** notice. In this case, the Corps would have to determine if phasing meets the criteria for a single and complete project. They believe that the use of a sliding scale will encourage piecemealing of projects. One commenter recommended that the term "parcel size" used in the proposed indexing scheme should be replaced with the term "single and complete project," as defined by subdivision criteria.

We are proposing to base the indexed acreage limit on a percentage of project area, not parcel size, to ensure that the NWP authorizes only single and complete projects. Basing the indexed acreage limit on project area will result in an acreage limit that reflects the actual size of the proposed activity, which cannot be artificially inflated in an attempt to get a higher acreage limit. Using the project area to determine the acreage limit, a particular parcel could have separate projects built upon it, with acreage limits based on the size of each project, as long as each separate project has independent utility. If the separate projects do not have independent utility, then the acreage limit would be determined by the sum of the project areas for each dependent component of the entire single and complete project.

Two commenters said that the proposed acreage limit will allow long segments of streams to be impacted. Some commenters recommended limits for the amount of linear feet of stream bed that may be filled or excavated under this NWP. Commenters recommended limits of 50, 100, or 150 linear feet of stream bed.

It should be noted that the proposed NWP has a PCN requirement for any loss of open waters, including streams. By reviewing the PCN, district engineers will be able to determine if the loss of stream bed will result in more than minimal adverse effects. If the stream bed impacts are more than minimal, discretionary authority will be exercised by the District Engineer, and the applicant will have to apply for authorization through another permit process or modify the project to comply with the NWP. Therefore, we do not believe that it is necessary to impose a limit on the quantity of stream bed that can be filled or excavated under this NWP.

Preconstruction Notification: We received a variety of comments concerning the notification requirements for this NWP. A couple of commenters supported the proposed PCN threshold of ⅓ acre. Several commenters stated that the PCN threshold should be ¼ acre. Two commenters recommended a ½ acre PCN threshold. Two commenters believe that the PCN threshold should be 1 acre and a few commenters stated that a PCN should be required for all activities authorized by this NWP.

We believe that the PCN threshold should be ¼ acre, to be consistent with the other new NWPs.

For this NWP, we also proposed to require notification for all activities that involve filling or excavating open waters, such as perennial or intermittent streams and lakes. One commenter stated that this PCN requirement is excessive and would mean that a PCN will be required for virtually all projects. This commenter also stated that this PCN requirement implies that open waters are more important than special aquatic sites and is contrary to the Section 404(b)(1) guidelines. The commenter recommended that the Corps establish other PCN thresholds for open water impacts instead, such as a 500 linear foot PCN threshold for intermittent stream impacts, and require a PCN for all perennial stream impacts. Another commenter recommended using the size of the drainage area to determine when a PCN is required for open water impacts. This commenter recommended requiring a PCN when the drainage area is 1 square mile or greater. Another commenter believes that the PCN requirement for open waters demonstrates a lack of understanding that not all significant wetlands have open waters and that this PCN requirement redefines wetlands.

We disagree with the assertion that this PCN requirement is excessive and would result in PCNs for nearly all projects authorized by this NWP. Many development projects authorized by this NWP would only impact wetlands and would require notification only for those activities that result in the loss of greater than ¼ acre of wetlands. In addition, most residential, commercial, or institutional development projects can be designed to avoid impacts to open waters. Road crossings of streams that are constructed with culverts would require submittal of a PCN. The purpose of this PCN requirement is to allow district engineers to review residential, commercial, and institutional development activities that result in a loss of open waters, such as streams, and ensure that activities in these waters will result only in minimal adverse effects on the aquatic environment. We are proposing to add Note 2 to the text of this NWP to help the regulated public identify those areas that require submission of a PCN for discharges into open waters.

We are proposing to add the PCN requirement for discharges into open waters to provide district engineers with the opportunity to review activities in open waters and ensure that the authorized work results in minimal adverse effects on the aquatic environment. One intent of the proposed new and modified NWPs is to provide equal consideration for open and flowing waters and wetlands. The proposed NWPs focus on the aquatic environment as a whole, not just wetlands. Streams and other open waters are extremely important components of the overall aquatic environment. The proposed PCN requirement does not redefine wetlands; it merely places additional emphasis on other types of waters of the United States, such as lakes and streams. High value wetlands and other waters will receive additional protection through regional conditions and the use of discretionary authority where discharges into high value waters may result in more than minimal adverse effects on the aquatic environment.

Several commenters stated that the PCN process for this NWP does not provide the Federal and State resource agencies the opportunity to comment on projects that adversely affect less than 1 acre of waters of the United States. These commenters believe that these agencies should be allowed the opportunity to comment on these projects. One commenter supported Corps-only review of projects that adversely affect between ⅓ acre and 1 acre of waters of the United States. One commenter recommended agency coordination for activities resulting in the loss of greater than ½ acre of waters of the United States.

We are proposing to modify General Condition 13 to require agency coordination for NWP 39 activities that result in the loss of greater than 1 acre of waters of the United States. PCNs for activities that result in the loss of ¼ acre to 1 acre of waters of the United States will be reviewed solely by the Corps. Agency coordination for smaller projects is costly to the Corps and provides little value added in determining whether or not the work will result in minimal adverse effects on the aquatic environment. Corps district personnel are highly experienced in reviewing PCNs to assess the environmental effects of the proposed work and recommending special conditions or requiring compensatory mitigation to ensure that the adverse effects on the aquatic environment are minimal. If the District Engineer determines that the adverse effects are more than minimal, discretionary authority will be exercised and the applicant will be notified that another form of Corps authorization, such as an individual permit, is required for the proposed work.

A few commenters stated that the PCN should include detailed plans and schedules for compensatory mitigation. Another commenter recommended that the PCN should include baseline data for stream flows and a detailed analysis of stormwater standards to ensure compliance with paragraph (g) (formerly paragraph (i) of NWP A) of the proposed NWP.

We believe that it is unnecessary to require detailed plans and schedules for compensatory mitigation with the PCN to ensure that the adverse effects of the authorized work on the aquatic environment are minimal. Requiring the submission of detailed compensatory mitigation plans with the PCN will increase the amount of time required to review the PCN. For the PCN, the applicant need only provide a conceptual proposal for compensatory mitigation that will offset the loss of aquatic resource functions and values. However, a detailed mitigation plan may be submitted with the PCN if the applicant chooses to submit such a plan. The District Engineer will evaluate the compensatory mitigation proposal to determine if it is adequate to ensure that the adverse environmental effects of the proposed work are minimal. Detailed plans for project-specific compensatory mitigation projects are usually required as special conditions of the NWP authorization. If the proposed compensatory mitigation is provided through payment to an approved mitigation bank or in lieu fee program, detailed plans are not required because the Corps may have previously reviewed the plans for the mitigation bank or in lieu fee site. It should be noted that Corps must finish its review of the PCN within 45 days of receipt of a complete PCN; such a time limit makes it difficult to thoroughly review and approve detailed compensatory mitigation plans and schedules.

District engineers will determine compliance with paragraph (g) of NWP 39 through qualitative methods or defer to State or local regulatory agencies, who may require quantitative analyses to ensure that the project does not result in more than minimal adverse effects to water quality or surface water flows.

Statement of Avoidance: Paragraph (f) of the proposed NWP requires the applicant to submit a statement with the PCN which demonstrates that discharges into waters of the United States were avoided and minimized to the maximum extent practicable and that additional avoidance and minimization cannot be achieved. One commenter favored this requirement, but a few commenters remarked that the requirement is unnecessary and recommended that it be removed. One commenter stated that the NWP regulations already require on-site avoidance and minimization and that this requirement increases the burden on the landowner and provides no environmental benefit. This commenter went on to say that the **Federal Register** notice does not provide any guidance as to what information is necessary to fulfill this requirement. Another commenter stated that this requirement will be impossible to implement. Several commenters stated that this requirement is insufficient, and that projects should be subject to more comprehensive alternatives analysis.

This requirement (now in paragraph (e) of NWP 39) is similar to the requirements of General Condition 19, Mitigation. It merely requires that the applicant provide a statement explaining how he or she is complying with this general condition. We disagree that it will create an additional burden on the project proponent because it will provide the Corps with the relevant avoidance and minimization details early in the PCN review process. In fact, submission of such a statement with the PCN is likely to benefit project proponents because the Corps personnel evaluating the PCN will not have to ask during the PCN review period if additional avoidance and minimization can be achieved. We believe that this requirement will save time and make the PCN process more effective. This requirement will also encourage project proponents to think more carefully about how to further avoid and minimize adverse effects to waters of the United States on the project site.

To require a more comprehensive alternatives analysis is contrary to the NWPs. NWPs authorize activities with minimal adverse effects on the aquatic environment, and if the proposed work meets the terms and limits of the NWP, the applicant cannot be required to consider off-site alternatives. If the adverse effects of a particular project are more than minimal the District Engineer will exercise discretionary authority and require an individual permit for the proposed work. The individual permit process requires a full alternatives analysis, including the consideration of off-site alternatives.

Since the avoidance and minimization requirement and the compensatory mitigation requirement of the NWP are related, we have combined paragraphs (f) and (g) of proposed NWP

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A into paragraph (e) of NWP 39. Compensatory mitigation requirements for this NWP are discussed below.

Compensatory Mitigation: Paragraph (g) of the proposed NWP A stated that the permittee must submit a mitigation proposal to offset the loss of waters of the United States for activities that require notification. One commenter recommended changing this requirement to specify that the losses of wetland functions and values should be offset, not just the acreage loss. This commenter stated that the proposed wording is unclear and subject to various interpretations and should be consistent with the mitigation memorandum of agreement (MOA) signed in 1990.

This requirement has been incorporated into paragraph (e) of NWP 39. The purpose of compensatory mitigation is to offset losses of functions and values of waters of the United States and ensure that the net adverse effects on the aquatic environment are minimal. However, it is important to allow district engineers the flexibility to require compensatory mitigation that provides more benefits to the aquatic environment. Out-of-kind compensatory mitigation, such as the establishment and maintenance of vegetated buffers adjacent to streams, may provide more benefits to the local aquatic environment than replacing the wetland filled by the authorized work. It is also important to note that compensatory mitigation may be required for losses of other types of waters of the United States, not only wetlands. District engineers can require a greater acreage of compensatory mitigation to replace the aquatic resource functions and values lost due the authorized work if the compensatory mitigation cannot readily replace the lost functions and values. On the other hand, if the waters of the United States lost as a result of the authorized work are low value, providing few functions and values, a smaller acreage of compensatory mitigation may be appropriate to offset the lost functions and values of that area.

The mitigation process, as defined in the Council on Environmental Quality's regulations at 40 CFR Part 1508.20, includes avoidance, minimization, and compensation. Therefore, we are providing further clarification for this requirement by inserting the word "compensatory" in front of the word "mitigation" to state that the type of mitigation required by the District Engineer is compensation to replace losses of functions and values of waters of the United States.

Two commenters support the requirement for compensatory mitigation for losses that require a PCN. Several commenters objected to this NWP because this condition does not specifically require compensatory mitigation for losses of less than ⅓ acre, which they believe will result in substantial cumulative adverse effects on the aquatic environment. Another commenter suggested that compensatory mitigation should be required for impacts to perennial streams. One commenter stated that mitigation proposals should be subject to agency review. A commenter recommended modifying this paragraph to allow the permittee the opportunity to justify why compensatory mitigation should not be required for a particular project.

It should be noted that paragraph (e) only requires the submission of a compensatory mitigation proposal to the District Engineer with the notification, and is not a requirement for compensatory mitigation. The prospective permittee may submit either a conceptual or detailed compensatory mitigation proposal. District engineers will determine on a case-by-case basis if compensatory mitigation is necessary to ensure that the proposed activity will result in minimal adverse effects on the aquatic environment, individually or cumulatively. However, in most cases, compensatory mitigation will be required for activities that require notification to ensure that those activities result only in minimal adverse effects on the aquatic environment. In paragraph (e), we have stated that compensatory mitigation will normally be required to offset losses of waters of the United States, but if the applicant believes that the adverse effects of the project on the aquatic environment are minimal without compensatory mitigation, then the applicant can provide justification with the PCN for the District Engineer's consideration.

Compensatory mitigation is not required for activities that do not require preconstruction notification, because the adverse effects on the aquatic environment caused by those activities are minimal. In watersheds where small losses of waters of the United States have greater potential for more than minimal adverse effects, division engineers can regionally condition the NWP to lower the notification threshold, which will allow district engineers to require compensatory mitigation for losses of less than 1/4 acre of waters of the United States. For activities that require Corps-only review of the PCN, agency review is not required to review the compensatory mitigation proposal because the District Engineer will determine whether or not the proposed mitigation is appropriate. For PCNs subject to agency coordination, Federal and State resource agencies will have the opportunity to review the compensatory mitigation proposal submitted with the notification.

One commenter stated that buffers adjacent to any waters of the United States, not just open water, should be part of any required compensatory mitigation.

We concur with this comment and have stated elsewhere in this notice that district engineers can consider the establishment and maintenance of vegetated buffers adjacent to waters of the United States, including wetlands, as compensatory mitigation for losses of waters of the United States. Vegetated buffers adjacent to waters of the United States, including open waters and wetlands, can be considered as out-of-kind compensatory mitigation because vegetated buffers are important components of the aquatic environment due to the functions they provide, especially for maintaining water quality and habitat for aquatic organisms. Vegetated buffers reduce adverse effects to local water quality caused by adjacent land use. Forested riparian buffers provide shade to streams, supporting cool water fisheries. When determining the appropriate amount of compensatory mitigation required for particular projects, district engineers should reduce the amount of "replacement acreage" required as compensatory mitigation by an amount that recognizes the value of the vegetated buffer to the aquatic environment.

One commenter recommended that on-site mitigation should be considered before off-site mitigation and that off-site mitigation should be accepted only if on-site mitigation is not environmentally beneficial. Two commenters oppose the use of mitigation banks and in lieu fee programs to provide compensatory mitigation for activities authorized by this NWP. Another commenter recommended that where compensatory mitigation is required, it should be done in a State-sponsored mitigation bank within the same drainage basin.

The sequencing requirements for compensatory mitigation recommended in the previous paragraph have limitations. Compensatory mitigation projects, whether they are individual projects that restore, enhance, or create aquatic areas or are payments to mitigation banks or in lieu fee programs, should be selected on the basis of their chance for success and their effectiveness at offsetting authorized losses of waters of the United States. In-kind and on-site requirements for compensatory mitigation should be considered, but not to the exclusion of what is best for the aquatic environment. If off-site compensatory mitigation will provide more benefits to the local aquatic environment, then that form of compensatory mitigation should be selected. On-site wetland creation projects are often unsuccessful because of changes to local hydrology caused by the authorized activity, which may prevent the development of a functional replacement wetland. On-site restoration may have a better chance of success, but success may not be achieved because of changes in land use in the vicinity of the authorized work. It is often better to utilize off-site wetland creation, restoration, and enhancement projects, including mitigation banks and in lieu fee programs, if they are appropriate and available. The use of mitigation banks to provide compensatory mitigation for losses of waters of the United States authorized by NWPs should not be limited to State-sponsored mitigation banks. Permittees should be allowed to use any mitigation bank in the area that replaces functions and values of waters of the United States, including wetlands, lost due to the authorized work. When reviewing compensatory mitigation proposals, district engineers will consider what is best for the aquatic environment, including requiring vegetated buffers to open and flowing waters and wetlands.

One commenter recommended that the NWP contain a provision requiring all remaining wetlands on the parcel to be protected by a conservation easement to prohibit any future development on the property.

We disagree, because such a requirement can be considered a taking of private property, unless the applicant agrees to preserve the remaining wetlands on the property as compensatory mitigation for authorized losses of waters of the United States. If there are any streams or other open waters on the project site, the District Engineer can require the permittee to establish and maintain vegetated buffers adjacent to those waters as compensatory mitigation. The vegetated buffers should be protected by a conservation easement, deed restriction, or other legal means.

Use of This NWP With Other NWPs: Paragraph (h) of the proposed NWP A addressed the use of this NWP with other NWPs. This paragraph has been changed to paragraph (f), and only addresses the PCN threshold when this NWP is used with other NWPs. The use of NWP 39 with other NWPs is addressed in the proposed modification of General Condition 15. Paragraph (f) has been modified to reflect the changes in the PCN threshold discussed above.

One commenter supported this requirement of paragraph (h) of the proposed NWP A. Another commenter stated that this NWP should not be stacked with other NWPs because this NWP authorizes all activities associated with the single and complete project. One commenter said that this NWP should not be combined with other NWPs to authorize permanent, above-grade fills. One commenter stated that this NWP should not be combined with other NWPs.

Although the proposed NWP 39 authorizes the construction of building pads, foundations, and attendant features for a single and complete residential, commercial, or institutional development, there may be circumstances where other NWPs are necessary to authorize discharges of dredged or fill material into waters of the United States for related activities that occur in types of waters not covered by this NWP. It is important to consider these additional activities as part of the single and complete project. For example, a community boat ramp that can be authorized by NWP 36 may be constructed in tidal waters for a new residential subdivision that is authorized by NWP 39. In this situation, when NWP 39 is combined with NWP 36, the total loss of waters of the United States cannot exceed the indexed acreage limit for NWP 39. The use of more than one NWP to authorize a single and complete project is addressed in the proposed modification of General Condition 15.

One commenter stated that the stacking limitation assumes that projects with greater than 3 acres of impact to waters of the United States exceed the minimal adverse effects threshold and that it is illogical for the Corps to assume that each NWP, if used alone, will result in minimal impacts, but if used with other NWPs will result in more than minimal adverse effects. This commenter asserted that the Corps has no evidence to support its contention that NWP stacking in excess of 3 acres will result in more than minimal impacts and recommended that the Corps eliminate this condition of the NWP because the PCN requirement is sufficient to ensure that the NWP authorizes only those activities with minimal adverse effects. This commenter also stated that the stacking restriction is contrary to 33 CFR Part 330.6(c).

For the NWPs, we establish acreage limits that will ensure that the authorized activities will not result in more than minimal adverse effects on the aquatic environment, individually or cumulatively. There may be some circumstances (e.g., projects in low value waters of the United States) where larger impacts result in minimal adverse effects. If a particular district has a large number of these types of projects, then that district can develop a regional general permit to authorize those activities. When more than one NWP is used to authorize a single and complete project, the District Engineer must consider the additive adverse effects on the aquatic environment. Each NWP has an acreage limit based on a minimal adverse effects determination made only for that NWP. By combining NWPs, the sum of the acreage losses and the sum of the adverse effects of those losses on the aquatic environment increases the probability that the minimal adverse effects threshold will be exceeded. Since the NWPs can authorize only those activities that result in minimal adverse effects on the aquatic environment, individually or cumulatively, a prohibition against stacking NWPs to exceed a specified acreage limit is necessary. General Condition 15 is not contrary to 33 CFR Part 330.6(c) because this regulation does not eliminate the need to comply with Section 404(e) of the Clean Water Act and 33 CFR Part 323.2(h).

Two commenters stated that any stacking that occurs with this NWP should have an acreage limit equal to the lower acreage limit for any of the NWPs involved. Another commenter suggested that any stacking that occurs with this NWP should have an acreage limit equal to the higher acreage limit for any of the NWPs involved. Two other commenters stated that paragraph (h) of the proposed NWP A should be revised to specify that total acreage cannot exceed 3 acres or the indexed acreage limit of the NWP, whichever is less. One commenter recommended that this NWP should not be stacked with NWP 29.

We disagree with the first comment in the previous paragraph because it would render this NWP useless in most situations. For example, NWP 36 limits the construction of boat ramps to a maximum width of 20 feet and a maximum discharge of 50 cubic yards. By requiring a combination of this NWP and NWP 36 to be subject to the lesser acreage limit of NWP 36, NWP 39 would essentially authorize no residential, commercial, or institutional development activities when combined with NWP 36. We are proposing to

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modify General Condition 15 to allow the use of more than one NWP to authorize a single and complete project, as long as the acreage loss does not exceed the highest specified acreage limit of the NWPs used to authorize that activity. The statement in paragraph (f) regarding the PCN threshold has been changed to include the PCN threshold of ¼ acre.

We believe that prohibiting the use of NWP 29 with NWP 39 is unnecessary and have not added it to the NWP. NWPs 29 and 39 are used by different groups of landowners. NWP 29 can be used only by the present or future occupants of the single family residence. NWP 39, on the other hand, can be used by others, such as contract builders and developers, to construct single family residences. Paragraph (d) states that only single and complete projects can be authorized by NWP 39. If the District Engineer establishes an exemption to the subdivision provision of this NWP, NWP 29 may be used by an owner of a subdivided parcel to construct a single family residence. If the construction of another single family residence on the property has independent utility and is not part of the previously authorized single and complete project, then either NWP 29 or NWP 39 may be used to authorize that single family residence, provided the authorized work results in minimal adverse effects on the aquatic environment.

Other comments: A few commenters recommended that the Corps add a definition of the term "single and complete project" to the NWP.

The Corps has defined the term "single and complete project" in the regulations governing the NWP program (see 33 CFR 330.2(i)). This definition applies to all of the NWPs, including the new NWPs proposed today. This definition is repeated in the "Definitions" section of the NWPs. For NWP 39, the acreage limit is based on the size of the single and complete project (i.e., the footprint or areal extent of the project). For the purposes of this NWP, a definition of "project area" is included in the "Definitions" section. The concepts of "single and complete project" and "project area" must also be considered in the context of the subdivision provision of this NWP. In the July 1, 1998, **Federal Register** notice, we proposed General Condition 16, entitled "Subdivisions." The purpose of proposed General Condition 16 was to define, for proposed NWPs A and B, the single and complete project in terms of land parcels. Since proposed NWP B was withdrawn, we have determined that a separate general condition addressing subdivision of land is unnecessary since it would only apply to NWP 39. Therefore, we have incorporated the text of proposed General Condition 16 into the text of NWP 39, with some minor changes. The term "parcel" is used in the subdivision provision of NWP 39 to determine the aggregate total loss authorized by the NWP and the appropriate NWP acreage limit. The project area may be the same as the size of the parcel, but more than one single and complete project may be built on a single parcel.

Multi-phase projects may be considered as separate single and complete projects depending on whether or not one phase has independent utility from another phase. If a phase of a multi-phase project has independent utility from the other phases, then that independent phase can be considered as a separate single and complete project and may be eligible for the maximum acreage limit as determined by the project area. Each phase of a project can be authorized with the maximum acreage, provided each phase has independent utility from the other phases and the work results only in minimal adverse effects on the aquatic environment. Multiple parcels can also be combined for a larger single project. The acreage limit for a combined larger project is based on the indexed acreage limit for the project area.

Two commenters suggested that authorizing the expansion of projects with this NWP is contradictory since this NWP is applicable only for single and complete projects.

We disagree, since a project proponent can expand an existing single and complete project provided the terms and limits of the NWP are not exceeded and the adverse effects on the aquatic environment are minimal. When evaluating such requests for NWP authorization, we add the previously authorized impacts to the proposed impacts to determine if the proposed expansion exceeds the acreage limit. If the PCN threshold is exceeded, the applicant is required to notify the District Engineer. The District Engineer reviews the PCN and determines if the proposed work is authorized by NWP.

One commenter expressed concern that a subdivision developer could construct the project, sell the lots, and the new owners would be eligible for NWP authorization to do further work on their lots. Another commenter stated that after a project is authorized by this NWP, further development on the property should be prohibited.

We are proposing to add a subdivision provision to this NWP to prevent piecemealing of projects that exceed the acreage limit. For real estate subdivisions created or subdivided after October 5, 1984, the aggregate loss of waters of the United States authorized by this NWP cannot exceed the acreage limit based on the index in paragraph (a). If the owners of the property want to do additional work that would exceed the indexed acreage limit under paragraph (a), then they must obtain another type of Corps permit, such as an individual permit or a regional general permit, unless the additional work has independent utility. We cannot prohibit additional activities on the project site unless it is in the public interest to do so.

Three commenters believe that this NWP would authorize considerable impacts to floodplains and riparian zones and should not authorize activities in these areas, or should be limited to those activities with unavoidable impacts that provide essential public services. One commenter stated that a net gain in wetlands cannot be achieved if residential, commercial, and institutional development activities are authorized in wetlands.

In the October 14, 1998, **Federal Register** notice we requested comments on limiting the use of the NWPs to authorize activities in the 100-year floodplain as mapped by the Federal Emergency Management Agency (FEMA) on its Flood Insurance Rate Maps. In response to the October 14, 1998, **Federal Register** notice, proposed General Condition 27 has been added to the NWPs. General Condition 27 prohibits the use of NWP 39 to authorize permanent, above-grade fills in waters of the United States within the 100-year floodplain.

Property owners are entitled to reasonable use of their property, the Corps cannot prohibit all of these activities in wetlands. However, NWP applicants are required to avoid and minimize adverse effects to waters of the United States on-site to the maximum extent practicable (see General Condition 19). For those unavoidable impacts, we can require compensatory mitigation to ensure that the adverse effects on the aquatic environment are minimal. In the July 1, 1998, **Federal Register** notice, we cited data from the past use of NWP 26, which demonstrates that during the period of May 1, 1997, through December 31, 1997, more than 3 acres of compensatory mitigation was required for every acre of wetland lost as a result of residential, commercial, and institutional development activities.

One commenter stated that the term "measurably degrade" in paragraph (i) of the proposed NWP A needs to be defined. Another commenter said that this term is unnecessary because any measurable degradation of water quality would occur after the work is completed. This commenter went on to say that this condition implies that if the degradation is not measurable, then it is authorized by the NWP.

We have rewritten this condition (now in paragraph (g)) to replace the term "measurably degrade" with language that is more consistent with General Condition 9. The intent of this condition is to ensure that the authorized work does not result in more than minimal degradation of local water quality. Vegetated buffers adjacent to open or flowing waters and wetlands and adequate stormwater management facilities can minimize the adverse effects of the development on local water quality.

One commenter stated that the preamble for this NWP in the July 1, 1998, **Federal Register** notice contains several conditions that are not included in the text of the NWP and that these conditions should be consistent with the final NWP.

In the preamble discussion of the proposed NWP, we did not include conditions that were not incorporated into the text of the NWP itself. In the preamble for the NWP, we reiterated some of the terms and conditions of this NWP, with discussions of the intent and meaning of those conditions.

A commenter stated that the eight months of data presented by the Corps in the July 1, 1998, **Federal Register** notice is inadequate to assess the adverse effects that may result from the use of this NWP. The commenter recommended that at least one and a half years of data should be used.

We have collected additional data since the July 1, 1998, **Federal Register** notice for the use of NWP 26 for activities that could be authorized by this NWP. We have collected this data for over a year and will consider this data in our Environmental Assessment for NWP 39. This data will be used to estimate the potential losses of waters of the United States that will result from the use of this NWP. This data will include the losses of waters of the United States authorized by NWP 26, as well as the gains provided by compensatory mitigation.

One commenter requested that this NWP require the establishment and maintenance of vegetated buffers adjacent to open waters and streams, and that these vegetated buffers should be protected by deed restrictions, conservation easements, or other legal means.

We concur with this comment, and have added a new paragraph (i) to NWP 39 to require, to the maximum extent practicable, the establishment and maintenance of vegetated buffers adjacent to open waters and streams, if those types of waters of the United States are present on the project site. Paragraph (i) also requires the protection of these vegetated buffers by deed restrictions, conservation easements, or other legal methods. For activities requiring notification, the composition of the vegetated buffer, in terms of plant species, and the appropriate width of the vegetated buffer, are determined by the District Engineer. For activities authorized by this NWP that do not require notification, the permittee should establish and maintain vegetated buffers that are wide enough to protect water quality and are comprised of native plant species. Division engineers can also regionally condition this NWP to prescribe vegetated buffer requirements for activities that do not require notification.

One commenter stated that this NWP would be overly burdensome to builders. Another commenter believes that authorizing residential, commercial, and institutional development activities in all non-tidal waters of the United States will result in too much workload for Corps districts.

The purpose of the proposed NWP is to efficiently authorize residential, commercial, and institutional development activities that result in minimal adverse effects on the aquatic environment. NWP 26 authorized many of these same activities in isolated waters and headwaters. The proposed NWP authorizes these activities in all non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters. Proposed General Condition 27 prohibits the use of NWP 39 to authorize permanent, above-grade fills in waters of the United States within the 100-year floodplain, which will further limit the use of NWP 39 in non-tidal waters. It is our experience that many builders design their projects to comply with the NWPs, rather than construct larger projects that require individual permits. Although the proposed NWP has additional conditions that were not previously included with NWP 26, these conditions are intended to reduce adverse effects on the aquatic environment. Developers should be able to design their projects to comply with these conditions and qualify for NWP authorization. Another important point to consider is that NWPs are optional permits. If the permittee does not want to comply with all of the terms and conditions of an NWP, then he or she may request authorization through the individual permit process or apply for authorization by a regional general permit, if such a general permit is available.

This NWP is subject to proposed General Conditions 25, 26, and 27, which will substantially reduce its applicability. General Condition 25 prohibits the use of this NWP to authorize discharges into designated critical resource waters and wetlands adjacent to those waters. General Condition 26 prohibits the use of this NWP to authorize discharges resulting in the loss of greater than 1 acre of impaired waters, including adjacent wetlands. NWP 39 activities resulting in the loss of 1 acre or less of impaired waters, including adjacent wetlands, are prohibited unless prospective permittee demonstrates to the District Engineer that the activity will not result in further impairment of the waterbody. Notification to the District Engineer is required for all discharges into impaired waters and their adjacent wetlands. General Condition 27 prohibits the use of NWP 39 to authorize permanent, above-grade fills in waters of the United States within the 100-year floodplain.

We believe that the terms and conditions of the proposed new and modified NWPs, especially the requirements of the three new NWP general conditions, will result in a substantial increase in the number of individual permits processed by our district offices. Districts will use the proposed new and modified NWPs, with regional conditions, to prioritize their workload in non-tidal waters. In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. Proposed NWP A is designated as NWP 39, with the modifications discussed above.

40. Agricultural Activities

In the July 1, 1998, **Federal Register** notice, we proposed to modify this NWP, which originally authorized only the construction of foundations or building pads for farm buildings in farmed wetlands, to authorize discharges into non-tidal wetlands for the purposes of increasing agricultural

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production. As a result of the comments we received concerning this NWP, we have substantially changed the proposed modification of NWP 40 to authorize the following activities: (1) Discharges into non-tidal wetlands, excluding other waters of the United States (*e.g.*, open or flowing waters) and non-tidal wetlands adjacent to tidal waters, conducted by participants in U.S. Department of Agriculture (USDA) programs to increase agricultural production, (2) discharges into non-tidal wetlands, excluding other waters of the United States (*e.g.*, open or flowing waters) and non-tidal wetlands adjacent to tidal waters, conducted by agricultural producers that are not participants in USDA programs to increase agricultural production; (3) discharges into farmed wetlands for the construction of building pads for farm buildings, and (4) the relocation of existing serviceable drainage ditches constructed in non-tidal streams. For activities authorized by paragraph (a) of this NWP, the Natural Resources Conservation Service (NRCS) will determine if the proposed work meets the terms and conditions of NWP 40, unless the permittee also proposes to construct building pads for farm buildings or relocate greater than 500 linear feet of existing serviceable drainage ditches constructed in non-tidal streams. For discharges resulting in the loss of greater than ¼ acre of non-tidal wetlands by non-participants in USDA programs to increase agricultural production, the construction of building pads for farm buildings, and/or the relocation of greater than 500 linear feet of existing serviceable drainage ditches constructed in non-tidal streams, the Corps will determine if the proposed work is authorized by NWP 40. Division engineers will not regionally condition paragraph (a) of this NWP, to ensure that this NWP is consistently applied by NRCS and agricultural producers across the country. These proposed changes are discussed in more detail below.

General Comments: Many commenters objected to the proposed modification and only a few supported the proposed modification of NWP 40. Of those who objected to the proposed modification, the reasons for their objections include: (1) The NWP would authorize substantial cumulative losses of wetlands, especially in the prairie pothole region; (2) the use of the NWP would result in substantial degradation of water quality; (3) the NWP does not comply with Section 404(e) of the Clean Water Act; (4) the NWP delegates some of the Corps responsibilities to NRCS, which lacks the resources to implement the statutory requirements of the Clean Water Act; (5) the NWP is contrary to Swampbuster; and (6) the proposed modification is contrary to the goals of programs that restore and enhance wetlands, such as the Conservation Reserve Program (CRP) and the Wetlands Reserve Program (WRP).

This NWP complies with the requirements of Section 404(e) of the Clean Water Act because it authorizes activities that are similar in nature and will result in minimal adverse effects on the aquatic environment. As with all other NWPs, district engineers will monitor the use of NWP 40 on a watershed basis to determine if the use of NWP 40 and other NWPs results in more than minimal cumulative adverse effects on the aquatic environment, including degradation of local water quality. States, Tribes, and EPA will also make local determinations for compliance with Section 401 of the Clean Water Act and determine if activities authorized by NWP 40 will violate local or State water quality standards. If the cumulative adverse effects within a particular watershed are more than minimal, then the District Engineer will suspend or revoke the use of the NWPs in accordance with 33 CFR Part 330.5. For activities in non-tidal wetlands by USDA program participants to increase agricultural production, NRCS will review the proposed work and determine if it is authorized by NWP 40. In these cases, each landowner must submit a report to the District Engineer so that the use of NWP 40, the losses of waters of the United States, and compensatory mitigation can be monitored. For activities that require notification to the District Engineer (i.e., discharges resulting in the loss of greater than ¼ acre of non-tidal wetlands by non-participants in USDA programs to increase agricultural production, discharges into farmed wetlands for the construction of pads for farm buildings, or the relocation of greater than 500 linear feet of drainage ditches constructed in non-tidal streams), the District Engineer will review the PCN and determine if the adverse effects on the aquatic environment resulting from the proposed work will be minimal. If the proposed work involves both activities in non-tidal wetlands to increase agricultural production and either the relocation of greater than 500 linear feet of drainage ditches constructed in non-tidal streams or the construction of pads for farm buildings, the landowner must submit a PCN to the Corps, and the District Engineer will determine if the proposed work is authorized by NWP 40. For those activities that require notification, the District Engineer will determine if the proposed work will result in minimal adverse effects on the aquatic environment. If the proposed work will result in more than minimal adverse effects on the aquatic environment, discretionary authority will be exercised and an individual permit will be required.

One of the goals of the proposed modification of this NWP is to reduce duplication between the Corps and NRCS, reduce confusion, and provide some regulatory relief to agricultural producers. This is one of the goals of the Administration's wetlands plan, which is to make the wetlands regulatory program fair, flexible, and effective. This NWP does not delegate the Corps responsibilities under Section 404 of the Clean Water Act to NRCS, but allows activities with minimal adverse effects on the aquatic environment to proceed without duplicate review by two Federal agencies. This NWP does not require NRCS to implement the Clean Water Act. It merely addresses certain situations where the Clean Water Act and Swampbuster have duplicate requirements. District engineers will monitor the use of NWP 40 to assess the cumulative adverse effects on the aquatic environment, through reports submitted by landowners and those activities reviewed by the Corps on a case-by-case basis.

This proposed modification of NWP 40 is not contrary to the CRP and the WRP, which are voluntary programs. Participation in these programs by agricultural producers is not mandatory. Although the CRP and WRP are important conservation programs, it is important to note that agricultural producers may need to alter their land to increase production and remain competitive with other agricultural producers. NWP 40 authorizes activities in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to allow agricultural producers to increase production, as long as those activities have minimal adverse effects on the aquatic environment, individually or cumulatively. Both the Corps and NRCS can require compensatory mitigation to offset losses of waters of the United States authorized by this NWP to ensure that the adverse effects on the aquatic environment are minimal. It is important to note that draining and filling wetlands to increase agricultural production is often reversible. Agricultural lands that were previously wetlands are often the easiest to restore because they require less effort and expense to restore than wetlands that were filled to create residential subdivisions or commercial facilities. Although this NWP may be used to fill a particular area to increase agricultural production, that area may be restored at a later time.

A commenter stated that the proposed modification is too restrictive and should be equitable with other NWPs, because agricultural activities and other more potentially destructive activities, such as the construction of residential, commercial, and institutional developments, should be held to the same standard. One commenter requested that the preamble to the NWP state that the use of the NWP will help achieve the goal of the Clean Water Action Plan of "no net loss" and ensure consistency with the Federal Agriculture Improvement and Reform Act of 1996, which exempts wetland conversions from the Swampbuster provisions of the Food Security Act as long as wetland functions, values, and acreage are fully offset. One commenter recommended modifying the NWP to be consistent with the limits associated with the minimal effects criteria regionally established under the Farm Bill. A number of commenters believe that the proposed modification of NWP 40 is unnecessary because ongoing farm operations in farmed wetlands are exempt under Section 404(f) of the Clean Water Act.

We agree that the modifications to NWP 40 proposed in the July 1, 1998, **Federal Register** notice placed greater restrictions on agricultural producers than proposed NWP A (now designated as NWP 39) did on residential, commercial, and institutional developers. We have attempted to make NWPs 39 and 40 more equitable in terms of applicable waters and determining what constitutes a single and complete project for these NWPs. Both NWPs 39 and 40 authorize activities in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters. We have retained the separate provisions for playas, prairie potholes, and vernal pools from NWP 40, with an indexed acreage limit and a maximum limit of 1 acre, which is achieved for farm tracts 90 acres or greater in size. For proposed NWP 39, the single and complete project will be based on project area. For the proposed modification of NWP 40, a single and complete project will be based on farm tract size. Farm tracts will be identified by the Farm Service Agency. The definition of the term "farm" based on reporting to the Internal Revenue Service has been removed. In the "Definitions" section of the NWPs, the term "farm" has been replaced with "farm tract." The definition of the term "farm tract" has been taken from the Farm Service Agency regulations at 7 CFR Part 718.2.

In accordance with the provisions of the Food Security Act, compensatory mitigation will be required for activities authorized by paragraph (a) of this NWP to fully offset losses of non-tidal wetlands. District engineers will determine on a case-by-case basis if compensatory mitigation is necessary to offset losses of waters of the United States resulting from activities authorized by paragraphs (b), (c), and (d) of this NWP to ensure that those activities result in minimal adverse effects on the aquatic environment. NRCS and the Corps, in cooperation with EPA, FWS, and NMFS, will develop joint compensatory mitigation guidance to provide consistency in compensatory mitigation requirements necessary for the implementation of NWP 40. Since the proposed modification of NWP 40 is intended to have national applicability, it is impractical to modify the NWP to be consistent with local minimal effects criteria established regionally under the Farm Bill. This NWP is applicable in all non-tidal wetlands, not just farmed wetlands. The conversion of waters of the United States to another use is not exempt under Section 404(f) of the Clean Water Act, which makes these modifications to NWP 40 necessary to satisfy the requirements of Section 404.

Activities Authorized by NWP 40: One commenter supported the intent of the proposed modification, but stated that the additional activities should be authorized by another NWP, not by modifying the existing NWP 40. Another commenter stated that a separate NWP should be issued to authorize the installation of drainage tiles and drainage ditches, and that the structure of this new NWP should be more like the proposed NWP for residential, commercial, and institutional activities. A commenter suggested that NWP 39 should be used instead of NWP 40 to authorize discharges in waters of the United States to increase agricultural production. One commenter recommended limiting the NWP to maintaining farm acreage, not expanding productive farm area. Two commenters requested the removal of mechanized landclearing from the list of activities authorized by the NWP, stating that only activities in cropland should be authorized by the NWP. Two commenters stated that mechanized landclearing should be considered exempt under Section 404(f)(1) of the Clean Water Act and not included in the NWP. One commenter stated that the proposed modification to NWP 40 illegally brings two Farm Bill exemptions into the Federal wetlands program, namely "categorical minimal effects" and "minimal effects mitigation."

We disagree that there should be a separate NWP for activities that increase agricultural production. We believe that it is more appropriate to modify NWP 40, which previously authorized only the construction of building pads and foundations for farm buildings in farmed wetlands. The purpose of the proposed modification of NWP 40 is to authorize all activities for increasing agricultural production and constructing farm buildings. By including all of these activities in a single NWP, there will be less confusion for the regulated public and district engineers will be better able to assess the adverse effects on the aquatic environment for single and complete projects. We are proposing to make the modifications to NWP 40 similar to the proposed NWP 39 by utilizing indexed acreage limits and by making both NWPs applicable to non-tidal wetlands, excluding non-tidal wetlands adjacent to tidal waters. The indexed acreage limit for NWP is applicable only for discharges resulting in the loss of playas, prairie potholes, and vernal pools, with a maximum acreage limit of 1 acre. We are proposing to utilize a simple 2 acre limit for discharges into other types of non-tidal wetlands to increase agricultural production. The proposed modification of NWP 40 has a smaller maximum acreage limit (*i.e.*, 2 acres) than NWP 39 (*i.e.*, 3 acres). The lower maximum acreage limit for NWP 40 is necessary to ensure that the NWP authorizes only activities with minimal adverse effects on the aquatic environment, because district engineers will not receive notifications for many activities authorized by this NWP. Division and district engineers cannot impose regional or case-specific conditions on paragraph (a) of this NWP, so that NRCS can implement this part of NWP 40 consistently throughout the country. In addition, district engineers cannot revoke authorizations for activities authorized by paragraph (a) of NWP 40 on a case-by-case basis, but division engineers can revoke the provisions of paragraph (a) of NWP 40 within a state, geographic region, or a particular waterbody. However, regional conditions can be added to paragraphs (b), (c), and (d) of NWP 40, since the Corps is responsible for reviewing these activities. We have changed the applicable waters for the proposed modification of NWP 40 to be consistent

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with most of the new NWPs. Proposed NWP 39 cannot be used to increase agricultural production instead of NWP 40, because NWP 39 specifically authorizes only building pads and attendant features for residential, commercial, and institutional developments. Activities that increase agricultural production are not included in NWP 39, although the construction of a farm house used as a residence on a farm may be authorized by NWP 39.

Mechanized landclearing may result in a discharge of dredged or fill material into waters of the United States and require a Section 404 permit. We disagree that the NWP should be limited to areas currently used as cropland. It would be inequitable to agricultural producers to limit use of the NWP only to those areas currently used for agricultural production. Mechanized landclearing is not exempt under Section 404(f)(1) if it converts a water of the United States into a use to which it was not previously subject, such as the mechanized landclearing of a forested wetland to convert it into cropland (see Section 404(f)(2) of the Clean Water Act).

Categorical minimal effect determinations and minimal effects mitigation are provisions of the 1996 Farm Bill and 1985 Food Security Act. The categorical minimal effects determination is not an exemption from the permit requirements of Section 404 of the Clean Water Act. It merely allows the landowner to maintain USDA farm program eligibility for activities that convert a wetland to increase agricultural production, provided the activity has minimal effects on the hydrological and biological functions of the wetlands in the vicinity.

One commenter requested clarification of the NWP to state that it authorizes activities for the purposes of improving production on existing agricultural land, because the commenter believes that the proposed wording of the NWP allows conversion of land not previously used for agricultural purposes. Another commenter recommended that, in addition to activities regulated under the National Food Security Act Manual (NFSAM), those activities considered exempt under NFSAM (*i.e.*, where the land is not currently in agricultural production) such as the construction of grassed waterways, storage facilities, and impoundments should be authorized by the NWP. One commenter recommended that the NWP authorize the construction of farm ponds, when they are subject to the recapture provision of Section 404(f)(2) and are not exempt from the Clean Water Act.

The proposed modification of NWP 40 authorizes discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the purpose of increasing agricultural production, including areas not currently used for agricultural production. This NWP authorizes the construction of grassed waterways, storage facilities, and impoundments in non-tidal wetlands, provided their purpose is to increase agricultural production. In certain circumstances, the construction of farm ponds is exempt from Section 404 permit requirements. The proposed modification of this NWP authorizes the construction or expansion of farm ponds used for agricultural purposes (*e.g.*, irrigation ponds) that are not eligible for the Section 404(f) exemption, if the farm ponds are constructed in non-tidal wetlands, excluding non-tidal wetlands adjacent to tidal waters, and do not involve discharges of dredged or fill material into stream beds or other open waters. The only activity authorized by this NWP in open waters is the relocation of non-tidal streams that have been channelized as drainage ditches. The construction of farm ponds in stream beds or the construction of ponds for purposes other than increasing agricultural production may be authorized by other NWPs, a regional general permit, or an individual permit.

Scope of the NWP: A number of commenters recommended limiting the NWP only to wetlands that are currently frequently cropped. Two commenters suggested that the NWP should authorize discharges only in isolated wetlands and should not authorize draining of wetlands. Several commenters stated that agricultural activities in naturally vegetated playas, prairie potholes, and vernal pools should not be included in the NWP.

Limiting the scope of applicable waters of the proposed modification of this NWP only to frequently cropped or farmed wetlands would be inequitable to farmers, when compared to the applicable waters for NWP 39. District engineers will monitor the use of this NWP to ensure that it authorizes only those agricultural activities in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, that result in minimal cumulative adverse effects on the aquatic environment. District engineers will receive notification for discharges into non-tidal wetlands by non-participants in USDA programs if the discharge results in the loss of greater than 1/4 acre of non-tidal wetlands, the construction of building pads for farm buildings, and/or the relocation of greater than 500 linear feet of existing serviceable drainage ditches constructed in non-tidal streams. These notifications will be reviewed by District Engineers to ensure that the proposed work will result in minimal adverse effects on the aquatic environment. We have not removed the specific provisions relating to playas, prairie potholes, and vernal pools to ensure that discharges into those types of non-tidal wetlands do not result in more than minimal adverse effects on the aquatic environment. To ensure that the provisions for playas, prairie potholes, and vernal pools are implemented accurately for those wetland types, we are proposing definitions for these terms in the "Definitions" section of the NWPs. The proposed definitions are based on geographic, hydrological, and vegetation characteristics. The proposed definitions were derived from information from technical sources on identifying and delineating wetlands. We are proposing to modify the applicable scope of waters for NWP 40 from all non-tidal waters of the United States, as proposed in the July 1, 1998, **Federal Register** notice, to non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, to make it consistent with most of the new NWPs.

Acreage limits: Comments on acreage limits for the proposed modification of this NWP are divided into two categories. One category addresses the basis for determining acreage limits for a single and complete project (i.e., whether NWP 40 should apply to one entire farm or to a single farm tract). The other category of comments addresses the maximum acreage loss authorized by this NWP.

Two commenters favored the use of the term "farm" to define the single and complete project for the NWP. One commenter objected to the use of "farm" in the NWP, stating that a person who owns more than one farm could use the NWP at each farm for the maximum acreage limit. One commenter stated that the proposed definition of "farm" is confusing and would unfairly restrict the use of NWP 40. A few commenters stated that acreage limits should not be linked to farm size. One of these commenters objected to basing the acreage limit on the Internal Revenue Service's definition of a "farm" because NRCS personnel would have to review copies of the landowner's tax returns to verify the number of tracts with the farm. This commenter recommended that the Corps determine single and complete projects for NWP 40 based on "farm tracts" as identified by the Farm Service Agency. Other commenters

suggested applying the acreage limit to the individual USDA field number or the individual parcel. One commenter requested that the aggregate acreage limit apply only to the property, not the farmer. One commenter advocated the use of "farm tracts" for this NWP because the farm tract, not the farm, is the basic unit of land ownership. This commenter stated that many farms consist of different tracts geographically separated from each other. Farm tracts remain constant in size and configuration, but may be sold, leased, or traded between farms. A couple of commenters opposed the use of "farm tracts" to determine the acreage limit of NWP 40. One of these commenters reasoned that the use of farm tracts would result in substantial losses of wetlands because of multiple use of the NWP by a large farm operation that owns many farm tracts. One commenter stated that impacts to waters of the United States are not dependent on farm size.

One of the objectives of the Administration is to make the Federal wetlands programs fair, flexible, and effective. Basing the single and complete project on Internal Revenue Service reporting of farms for the proposed modification of NWP 40 results in unfair restrictions on agricultural producers compared to residential, commercial, and institutional developers. Developers often own more than one parcel of land and may have several development projects occurring at the same time. The Corps considers each development a single and complete project, as long as each development has independent utility. Each development can qualify for separate NWP authorization even though the land may be owned by the same developer, if the proposed work meets the terms and conditions of the NWP and if the individual or cumulative adverse effects on the aquatic environment are minimal. We are proposing to base the single and complete project and indexed acreage limit of NWP 40 on farm tract size, instead of farms. The use of farm tracts for NWP 40 provides equitable treatment to agricultural producers, and each farm tract would be considered a single and complete project for the purposes of the NWPs.

Several commenters stated that the proposed acreage limits are too high. Suggested acreage limits were 1, 1/3, 1/4, and 1/10 acre. A few commenters suggested higher acreage limits. Several commenters stated that the proposed 3 acre limit is adequate. In the July 1, 1998, **Federal Register** notice, we requested comments on the use of a simple acreage limit versus a sliding scale for this NWP. Most commenters opposed the use of a sliding scale or indexing to determine the acreage limit for this NWP. One of these commenters stated that the indexing scheme proposed in the July 1, 1998, **Federal Register** notice is too burdensome, confusing, and without ecological justification. Two commenters favored the use of a sliding scale, but recommended basing the sliding scale on a percentage, either as 5% of the wetlands on a farm regardless of farm size or 2% of the project size, if the project is greater than 5 acres in size.

A number of commenters stated that the acreage limit for NWP 40 should be the same as for the NWP for residential, commercial, and institutional development activities (*i.e.*, NWP 39). One of these commenters stated that the acreage limits proposed in the July 1, 1998, **Federal Register** notice are inequitable compared to the acreage limits developers are subject to in NWP 39, particularly to farmers who own smaller farms. This commenter also said that using acreage limits and farm size as a substitute to determine minimal adverse effects has not been applied in a consistent manner between similar activities, such as development or agricultural projects.

Based on our review of comments received in response to the July 1, 1998, **Federal Register** notice, and to provide agricultural producers and residential, commercial, and institutional developers with equitable NWPs, we are proposing to utilize a simple 2-acre limit for discharges into non-tidal wetlands and an indexed acreage limit for discharges into playas, prairie potholes, and vernal pools that are authorized by paragraphs (a) (for USDA program participants) or (b) (for non-participants in USDA programs) of NWP 40. The indexed acreage limit for playas, prairie potholes, and vernal pools has a maximum limit of 1 acre per farm tract. A lower maximum acreage limit (*i.e.*, 2 acres per farm tract) was selected to ensure that the NWP authorizes activities only with minimal adverse effects on the aquatic environment because preconstruction notification to the District Engineer is not required for activities authorized by paragraph (a) of this NWP (unless the project proponent is also requesting authorization for the construction of foundations for farm buildings or the relocation of greater than 500 linear feet of drainage ditches constructed in non-tidal streams). We are proposing a 2-acre limit for discharges into non-tidal wetlands (except for playas, prairie potholes, and vernal pools) to increase production. For the proposed modification of NWP 40, the indexed acreage limit for discharges into playas, prairie potholes, and vernal pools is based upon 1% percent of the farm tract size, with a base limit of 1/10 acre. The maximum acreage limit of 1 acre is achieved for farm tracts 90 acres or greater in size. We believe that the formula for the indexed acreage limit will be easy to use. An indexed acreage limit helps encourage avoidance and minimization of losses of waters of the United States.

One commenter opposed the use of an aggregate acreage limit for NWP 40, stating that the requirement for mitigation replaces the need for an acreage limit for activities authorized by the NWP. A couple of commenters said that the Corps cannot enforce the acreage limits of this NWP because land is reapportioned among farm tracts on an annual basis and the Corps does not have access to the farm tract history necessary to ensure compliance with the acreage limits.

The acreage limit for NWP 40, as for all other NWPs, is based on a national determination that the NWP will authorize most activities that have minimal adverse effects on the aquatic environment, individually or cumulatively. For certain activities, preconstruction notification is required to allow district engineers to review these activities on a case-by-case basis and determine if they will result in minimal adverse effects on the aquatic environment, individually or cumulatively. Compensatory mitigation cannot be used to increase the acreage limit for an NWP, but discharges of dredged or fill material into waters of the United States to construct compensatory mitigation are not included in the calculation of acreage loss of waters of the United States to determine if the single and complete project exceeds the acreage limit of NWP 40. It is our understanding that farm tract designations change only when the land is subject to a real estate transaction, such as when a farmer subdivides a farm tract to sell a part of that farm tract to another person.

Paragraph (a) of the proposed NWP 40 modification published in the July 1, 1998, **Federal Register** notice authorized activities that qualify for a minimal effects exemption under the Food Security Act and National Food Security Act Manual, provided the discharge does not cause the loss of greater than 1 acre of non-tidal wetlands or greater than 1/3 acre of playas, prairie potholes, and vernal pools. One commenter supported the inclusion of minimal effects determinations in NWP 40. Two commenters opposed this

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provision of the NWP. One commenter stated that the farm owner should not have to obtain an authorization from both the Corps and NRCS for work in wetlands. This commenter believes that the Corps should make the minimal effects determination and that USDA program participants should get an NWP authorization before they can get a minimal effects determination. Another commenter requested that the minimal effects determination should include non-participants in USDA programs. One commenter stated that it is inappropriate for the Corps to apply acreage limits under this part of the NWP to activities that receive minimal effects determinations. Another commenter recommended that this portion of the NWP should be removed and replaced with regional conditions. One commenter believes that NRCS does not currently monitor the indirect or cumulative adverse effects of projects that are eligible for minimal effects determinations, and that this is contrary to the Clean Water Act's general permit criteria. This commenter stated that the minimal effects determination does not assess the value for a watershed. Three commenters recommended that NRCS should receive concurrence from the FWS and/or NMFS prior to issuing a minimal effects determination.

We are proposing to modify this NWP to authorize discharges in non-tidal wetlands, excluding non-tidal wetlands adjacent to tidal waters, by USDA program participants and non-participants in USDA programs to increase agricultural production on a farm tract. For USDA program participants, the permittee must obtain an exemption or minimal effects with mitigation determination from NRCS and implement an NRCS-approved compensatory mitigation plan that fully offsets wetland losses. For non-participants in USDA programs, notification to the District Engineer is required for discharges resulting in the loss of greater than ¼ acre of non-tidal wetlands to increase agricultural production. The District Engineer will determine on a case-by-case basis if the activities authorized by paragraph (b) will result in minimal adverse effects on the aquatic environment. Compensatory mitigation will normally be required for activities that require notification to ensure that they result in minimal adverse effects on the aquatic environment. The 2 acre limit for discharges into non-tidal wetlands and the indexed acreage limit for discharges into playas, prairie potholes, and vernal pools will ensure that the NWP authorizes only activities with minimal adverse effects on the aquatic environment. District engineers will monitor the use of this NWP through postconstruction reports and preconstruction notifications submitted to the District Engineer. If the activities authorized by NWP 40 result in more than minimal cumulative adverse effects on the aquatic environment, division engineers can suspend the use of this NWP in the watershed or Corps district.

Paragraph (b) of the proposed modification of NWP 40 published in the July 1, 1998, **Federal Register** authorized activities in non-tidal wetlands, except for naturally vegetated playas, prairie potholes, and vernal pools for the purposes of increasing agricultural production. Two commenters recommended using a simple acreage limit, but two other commenters favored using a sliding scale. Two commenters opposed the proposed 3 acre limit, because they believe it is too high. One commenter stated that the proposed indexed acreage limit was too low, especially if mitigation is required. One commenter recommended a 1 acre limit and another commenter recommended a ⅓ acre limit. One commenter recommended basing the acreage limit on a sliding scale of 2% of the entire property, with a maximum of 3 acres. One commenter stated that this part of the NWP should apply to all non-tidal wetlands, with no exclusions for playas, prairie potholes, and vernal pools.

We are proposing to modify NWP 40 to authorize agricultural activities in all non-tidal wetlands, excluding non-tidal wetlands adjacent to tidal waters. For discharges into non-tidal wetlands to increase production, we are proposing a simple acreage limit of 2 acres and an indexed acreage limit for discharges into playas, prairie potholes, and vernal pools. The indexed acreage limit for discharges into playas, prairie potholes, and vernal pools will have a maximum acreage limit of 1 acre. The acreage limit for the proposed modification of this NWP will be based on farm tracts.

Paragraph (c) of the proposed modification of NWP 40 published in the July 1, 1998, **Federal Register** authorized activities in naturally vegetated playas, prairie potholes, and vernal pools for the purposes of increasing agricultural production. Two commenters concurred with the proposed acreage limit of 1 acre. One commenter objected to the lower acreage limit for activities in playas, prairie potholes, and vernal pools. One commenter stated that this portion of the NWP should apply only to frequently cropped playas, prairie potholes, and vernal pools and that naturally-vegetated wetlands should not be included in the NWP. Another commenter recommended including pocosins in this paragraph of the NWP. A commenter stated that the proposed 1 acre limit is too high. One commenter believes that a higher acreage limit should be used because the permittee is required to provide mitigation. Two commenters recommended using a simple acreage limit instead of a sliding scale acreage limit.

As previously discussed, we are proposing to modify NWP 40 to include playas, prairie potholes, and vernal pools with an indexed acreage limit.

Construction of Farm Buildings: Paragraph (d) of the proposed modification of NWP 40 contained the original provisions of NWP 40 and authorized discharges into wetlands, excluding playas, prairie potholes, and vernal pools, that were in agricultural production prior to December 23, 1985, for the construction of building pads for farm buildings, with an acreage limit of 1 acre.

One commenter recommended increasing the acreage limit to 2 acres. Another commenter recommended an acreage limit of 1/4 acre, to be consistent with the acreage limit proposed for NWP 29 in the July 1, 1998, **Federal Register** notice. One commenter stated that non-agricultural buildings such as houses should not be authorized by this NWP. Three commenters stated that the December 23, 1985, date should be removed from this part of the NWP, based on the rationale that any area under agricultural production prior to that date should not be considered a jurisdictional wetland and subject to the limitations of the NWP.

We are proposing to remove the exclusion for playas, prairie potholes, and vernal pools from this part of NWP 40. This provision is now in paragraph (c) of the proposed modification of this NWP, with a requirement that the permittee notify the District Engineer in accordance with General Condition 13. We are proposing to maintain the 1 acre limit for this activity. One acre is adequate for the construction of most farm buildings. This acreage limit need not be consistent with the acreage limit of NWP 29, since farm buildings are constructed for the operation of the farm, not for residences. Farm buildings, such as barns, usually must be larger than houses to fulfill their purposes. In addition, this paragraph of NWP 40 encompasses a much smaller geographic scope than the other provisions of NWP 40, since it is limited to farmed wetlands. Paragraph (c) of NWP 40 authorizes discharges only in farmed wetlands for the construction of building pads for farm buildings, whereas NWP 29 authorizes discharges of dredged or fill material into all non-tidal wetlands. This NWP does not authorize the construction of non-agricultural buildings, such as residences. We do not agree that the December 23, 1985, date should be removed from the NWP because there are jurisdictional wetlands that have been used for agricultural production since that date. Although they are considered farmed wetlands, they are still waters of the United States and subject to Clean Water Act Section 404 permit requirements.

Drainage Ditch Relocations: Paragraph (e) of the proposed NWP 40 modification published in the July 1, 1998, **Federal Register** notice authorized the relocation of existing serviceable drainage ditches and previously substantially manipulated intermittent and small perennial streams. Two commenters supported the proposed provision of the NWP. Several commenters opposed this provision. Two commenters stated that the relocation of streams or drainage ditches may result in substantial adverse effects on the aquatic environment. One commenter recommended modification of this provision to limit the work only to the relocation of currently serviceable drainage ditches or manipulated streams that are not so degraded as to require reconstruction. Another commenter stated that it is unclear which other waters of the United States are included in this paragraph of the NWP. Two commenters suggested that this condition should not apply to perennial streams. Two commenters requested that the Corps define the term "substantially manipulated stream."

The purpose of this provision of the proposed modification of NWP 40 is to authorize relocation of drainage ditches constructed in waters of the United States to increase agricultural production. Based on comments received in response to our proposed definition of the term "drainage ditch," and in an effort to clarify this provision of NWP 40, we are changing the language of this paragraph and designating it paragraph (d). Paragraph (d) of the proposed modification of NWP 40 authorizes discharges of dredged or fill material to relocate existing serviceable drainage ditches constructed in non-tidal streams. The relocation of existing serviceable drainage ditches constructed in non-tidal wetlands can be authorized by paragraphs (a) or (b) of this NWP. Notification to the District Engineer is required for the relocation of greater than 500 linear feet of drainage ditches constructed in non-tidal streams. Since drainage ditches can be constructed in wetlands or by channelizing perennial, intermittent, or ephemeral stream beds to improve drainage, we have removed the phrase "* * * and previously substantially manipulated intermittent and perennial streams" and replaced it with "* * * constructed in non-tidal streams" to reflect the fact that drainage ditches may have been constructed in streams. As a result of this change, it is unnecessary to provide a definition for the term "substantially manipulated stream." Relocation of drainage ditches constructed in uplands does not require a Section 404 permit because these ditches are not waters of the United States, except in certain circumstances.

We do not believe that the relocation of existing serviceable drainage ditches constructed in waters of the United States will result in more than minimal adverse effects on the aquatic environment. The term "existing serviceable drainage ditches" adequately describes the limitation of paragraph (d) to only those drainage ditches that do not require reconstruction due to abandonment and neglect.

One commenter asked why this provision was included in the NWP, since ditch maintenance is exempt under Section 404(f) of the Clean Water Act. One commenter stated that other NWPs should be used to authorize work in rivers and streams on agricultural lands. One commenter said that a provision should be added to this paragraph requiring the land to remain in agricultural use if the ditches are maintained. Another commenter recommended adding a 500 linear foot limit to this part of the NWP.

The Section 404(f) exemption for drainage ditch maintenance does not apply to the relocation of drainage ditches. To qualify for the exemption, the landowner cannot change the location of the drainage ditch or modify it beyond the original design dimensions and configuration. Since the relocation of drainage ditches constructed in non-tidal streams can increase agricultural production, it would be inappropriate to require the use of other NWPs to authorize this activity. Other activities in waters of the United States on agricultural lands, such as bank stabilization, may be authorized by other NWPs, regional general permits, or individual permits. We cannot add a provision to paragraph (d) requiring the landowner to keep the land in agricultural use if the ditches are relocated because such a provision is beyond the Corps regulatory authority and unenforceable. We do not believe that is necessary to impose a 500 linear foot limit on relocating drainage ditches constructed in waters of the United States because district engineers will receive a PCN for the relocation of greater than 500 linear feet of drainage ditches constructed in non-tidal streams to determine if the proposed work will result in minimal adverse effects on the aquatic environment and can qualify for authorization under this NWP.

Notification: We proposed requiring notification for activities that cause the loss of greater than ⅓ acre of non-tidal wetlands or the relocation of greater than 500 linear feet of drainage ditches and previously substantially manipulated intermittent and small perennial streams. One commenter recommended a 1 acre PCN threshold. Another commenter recommended a ¼ acre PCN threshold, with agency coordination. One commenter requested that PCNs should be required for all activities authorized by this NWP. Another commenter stated that the PCN requirements for NWP 40 should be the same as for NWP 39. For ditch and stream relocations, recommended PCN thresholds included 150, 200, and 3,000 linear feet. One commenter requested agency coordination for all wetland losses of greater than ⅓ acre and all ditch and stream relocations.

Notification to the District Engineer is required for discharges by non-participants in USDA programs to increase agricultural production that result in the loss of greater than ¼ acre of non-tidal wetlands, the construction of building pads for farm buildings, and for the relocation of greater than 500 linear feet of drainage ditches constructed in non-tidal streams. For USDA program participants, notification to the District Engineer is required if the proposed work involves activities in non-tidal wetlands and the relocation of greater than 500 linear feet of drainage ditches constructed in non-tidal streams or the construction of building pads for farm buildings, agency coordination will be conducted for activities requiring notification to the District Engineer if the proposed work results in the loss of greater than 1 acre of waters of the United States.

Mitigation: Paragraphs (b) and (c) of the proposed modification of NWP 40 published in the July 1, 1998, **Federal Register** notice required submission of a mitigation plan to fully offset wetland losses. One commenter stated that the Corps should not require avoidance and minimization for potential losses of frequently cropped, previously altered farmed wetlands, because mitigation sequencing is not required under the

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Farm Bill. In other words, the 404(b)(1) guidelines are not applicable to farmed wetland conversions and compensatory mitigation will be required by NRCS. A few commenters recommended that both the Corps and NRCS approve the required compensatory mitigation. Two commenters stated that the required compensatory mitigation should be reviewed by all agencies, not just NRCS. One commenter requested that any compensatory mitigation requirements for this NWP be the same as for all Corps permits.

Although mitigation sequencing may not be required under the 1996 Farm Bill, discharges of dredged or fill material into waters of the United States, including farmed wetlands, require a Section 404 permit, which may be authorized by NWPs. General Condition 19 of the NWPs requires the permittee to avoid and minimize impacts to waters of the United States on-site to the maximum extent practicable. Compensatory mitigation is required for all activities authorized by paragraph (a) of this NWP. For activities requiring notification to the District Engineer, compensatory mitigation may be required to ensure that activities authorized by this NWP result in minimal adverse effects on the aquatic environment. For the purposes of this NWP, compensatory mitigation used to satisfy the requirements of NRCS will be accepted by the Corps. To provide consistency for compensatory mitigation requirements and reduce confusion, NRCS and the Corps will develop, in cooperation with EPA, FWS and NMFS, joint mitigation guidance for this NWP.

One commenter expressed concern that compensatory mitigation requirements will decrease the available amount of farm land and requested that the Corps annually report the amount of farm land used as compensatory mitigation. Two commenters supported the requirement to fully offset losses of waters, but stated that the NWP should require a minimum 1:1 replacement ratio. Another commenter said that compensatory mitigation should be limited to the enhancement, restoration, and creation of aquatic resources and exclude preservation, because the Farm Bill does not authorize preservation and NRCS policy does not allow preservation for Swampbuster purposes.

We do not believe that the compensatory mitigation requirements of this NWP will substantially decrease the amount of available farm land because landowners have the option of avoiding impacts to waters of the United States, which would decrease the amount of land needed for wetland restoration and creation. In addition, compensatory mitigation is often conducted on farm land with marginal productivity, due to soil characteristics or wetness, that has the highest potential for wetland restoration. We disagree that preservation should be prohibited as a means of providing compensatory mitigation for activities that require notification to the Corps. Preservation is an extremely important method for protecting rare and high value waters of the United States from future losses.

Use of NWP 40 with Other NWPs: One commenter stated that the portion of the preamble to the proposed modification of NWP 40 published in the July 1, 1998, **Federal Register** that prohibits the future use of NWP A (*i.e.*, NWP 39) if the farm is developed by the farmer or sold, should be included in the text of NWP 40. However, this commenter questions the Corps ability to monitor compliance with this provision. Another commenter suggested that NWP 40 should not be used with NWPs 39 or 44. One commenter recommended a 3 acre stacking limit. Another commenter suggested that any use of this NWP with other NWPs should be subject to the lowest acreage limit allowed for any of the NWPs.

We have incorporated into NWPs 39 and 40 the provision addressing the future use of NWP 39 on the farm if that farm or portions of the farm are converted to residential, commercial, or institutional developments by the farmer or sold to a developer. The indexed acreage limit of paragraph (a) of NWP 39 cannot be exceeded, based on the project area and the subdivision provision of NWP 39. The Corps will rely on its records to track the use of NWPs 39 and 40 for a particular parcel of land. The use of more than one NWP for a single and complete project is addressed in the proposed modification of General Condition 15.

Other Comments: A number of commenters objected to allowing the use of NWP 40 on a farm every 5 years, because it would result in substantial cumulative losses of waters. One commenter recommended that the NWP should be used only once per project and if the land is no longer used for agricultural production the fill should be removed and the new use repermitted. Several commenters believe that NWP 40 should be subject to the same conditions as the NWP for residential, commercial, and institutional development activities and the NWP for mining activities. One commenter recommended including a reference to the Memorandum of Agreement between the Corps and NRCS concerning wetland delineations. One commenter objected to this NWP, stating that it does not address indirect impacts to waters caused by converting wetlands to agricultural use and cited water quality problems that can be caused by ditching activities. Another commenter recommended that the NWP include a requirement for vegetated buffers around streams on farm land, to filter out pollutants and nutrients and prevent erosion.

We have removed the provision allowing the use of NWP 40 on a farm every five years, to make it more consistent with other NWPs. Restricting the use of NWP 40 to a single and complete farm operation will avoid substantial losses that could occur due to repeated use of this NWP every 5 years. We disagree with the recommendation that land no longer in agricultural use should be restored and any new uses repermitted. Such a requirement is impractical, places unnecessary burdens on the regulated public and the Corps, and provides no benefits to the aquatic environment. Former wetlands on agricultural lands may be used for aquatic habitat restoration, including mitigation banks and in lieu fee programs.

We have attempted to provide consistency between proposed NWPs 39, 40, and 44, but due to the differences in the types of activities authorized by these NWPs and their potential adverse effects on the aquatic environment, it is impractical to make the conditions for these NWPs identical. We do not believe that it is necessary to cite the Memorandum of Agreement between the Corps and NRCS concerning wetland delineations in this NWP, partly because it is currently undergoing revisions and it is not essential to the implementation of NWP 40. In accordance with the proposed modification of General Condition 9, district engineers can require a water quality management plan for activities authorized by this NWP, if the 401 certification does not require such a plan or address potential adverse effects to water quality. Both the water quality management plan and General Condition 19 allow the District Engineer to require, as compensatory mitigation, the establishment and maintenance of vegetated buffers adjacent to streams.

This NWP is subject to proposed General Conditions 25, 26, and 27, which will reduce its applicability. General Condition 25 prohibits the use of this NWP to authorize discharges into designated critical resource waters and wetlands adjacent to those waters. General Condition 26 prohibits the use of this NWP to authorize discharges resulting in the loss of greater than 1 acre of impaired waters, including adjacent wetlands. NWP 40 activities resulting in the loss of 1 acre or less of impaired waters, including adjacent wetlands, are prohibited unless prospective permittee demonstrates that the activity will not result in further impairment of the waterbody. General Condition 27 prohibits the use of NWP 40 to authorize permanent, above-grade fills in waters of the United States within the 100-year floodplain.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. To allow NRCS to implement paragraph (a) of this NWP consistently throughout the country, division engineers cannot add regional conditions to paragraph (a) of NWP 40. However, division engineers can add regional conditions to paragraphs (b), (c), and (d) of NWP 40, since the Corps is responsible for reviewing these activities.

41. Reshaping Existing Drainage Ditches

In the July 1, 1998, **Federal Register** notice, we proposed a new NWP (designated as NWP F) to authorize discharges of dredged or fill material into non-Section 10 waters of the United States for reshaping existing drainage ditches constructed in waters of the United States by altering the cross-section of the ditch to benefit the aquatic environment.

Comments both in support and in opposition of this NWP were received, but most commenters recommended conditions to minimize potential impacts. Those in support of the NWP believe that it would be acceptable with regional conditions or Section 401 water quality certification conditions and that it will provide oversight or enforcement in order to reduce abuse in rural areas. Comments opposing the NWP ranged from no permit should be required at all, as this is an activity which is exempt from Section 404 regulation, to all activities in all ditch types should be prohibited in order to prevent degradation of aquatic resources. One commenter stated that Corps regulation of wet weather conveyances would be a huge paperwork burden contributing little to environmental quality. Several commenters stated that it is not always in the overall best interest of the aquatic resource to attempt to achieve improvements in water quality by simply reshaping the banks of the drainage ditch. Many commenters who expressed opposition to the proposed new and modified NWPs in general stated that this NWP was an exception because it would meet the minimal effect requirement.

Many comments regarding jurisdiction were received. One commenter requested a discussion on jurisdiction as some Corps personnel take jurisdiction over upland ditches based on wetland parameters. Some commenters requested the Corps further clarify the distinction between maintenance work and work that would be authorized by this permit. Some commenters recommending modifying the text of the NWP to exclude ditch maintenance projects while others recommended the new NWP include all ditches that are man-made, regardless of whether or not maintenance has been performed. One commenter suggested that permits should never be required for minor drainage activities on agricultural land and for the maintenance of drainage ditches. Several commenters stated that roadside ditches are not waters of the United States even if they contain wetland vegetation. Many believe this permit authorizes work that is actually exempt from regulation. Other commenters proposed that the NWP should be applicable in Section 10, including tidal waters, as well. One commenter suggested that all natural perennial streams, channelized perennial streams, and/or rechannelized perennial streams should be excluded from this permit. Some commenters said that the permit should authorize the reconversion of abandoned ditches, while others stated that the Corps should stress that abandoned ditches may not be reconverted. Several commenters stated that this permit should provide authorization for reshaping obstructed channels. One commenter said that the permit should be rewritten to clarify that open drainage ditches, including channelized streams, cannot be considered abandoned as long as the maintenance authority exists and as long as all cropland draining to the ditch has not been abandoned. Another stated that this permit should not be used for streams that are called "ditches" or in channelized portions of streams that convey surface runoff and/or groundwater.

Several commenters believe the NWP should be more inclusive and should allow some realignment of the waterway if it is beneficial to the aquatic environment. One group recommended that ditch relocation should be allowed because when shopping centers are renovated or expanded, because the relocation of ditches is often the only activity regulated by the Corps. Several commenters recommended the permit should allow for a change in centerline location when the activity pertains to roadside ditches where transportation agencies are flattening the side slopes for safety purposes. Additionally, minor relocation of the ditch could have as much or more of a benefit on improving water quality and should be allowed under this permit. Some commenters requested that deepening of ditches should be included because some ditches were originally dug without enough grade to keep them from accumulating excess sediment. Other commenters stated that deepening of drainage ditches should not be allowed beyond the original configurations due to the resultant additional wetland drainage. One commenter suggested that this permit should not be used to authorize diversion or drainage of wetlands or the expansion of the drainage ditch size. And lastly, one commenter recommended that this permit be broadened to include all reshaping that might not be exempt as maintenance.

Discharges associated with the maintenance of drainage ditches constructed in waters of the United States are exempt from regulation under Section 404, provided the drainage ditch is returned to its original dimensions and configuration (see 33 CFR Part 323.4(a)(3)). However, the modification or new construction of drainage ditches in waters of the United States requires a Section 404 permit. Since the maintenance of drainage ditches to their original dimensions and configurations is exempt from Section 404 permit requirements, the purpose of the proposed NWP is to encourage reshaping of ditches in a manner that provides benefits to the aquatic environment. This NWP is limited to reshaping currently serviceable drainage ditches constructed in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, provided the activity does not change the capacity or location of the drainage ditch. We have changed the applicable waters for this NWP to make it more consistent with most of the proposed NWPs. The centerline of the reshaped drainage ditch must be in essentially the same location as the centerline of the existing ditch. The proposed NWP does not authorize reconstruction of drainage ditches that have become ineffective through abandonment or lack of regular maintenance. This NWP authorizes discharges to grade the banks of ditches at a gentler slope than they were originally constructed for the purpose of reducing erosion and decreasing sediment transport down the ditch by

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trapping sediments. Shallower slopes may increase the amount of vegetation along the bank of the ditch, which can decrease erosion, increase nutrient and pollutant uptake by plants, and increase the amount of habitat for wildlife. We believe that the deepening and/or widening of a ditch, allowing the centerline to be relocated, and allowing abandoned ditches to be reconverted could result in more than minimal adverse effects on the aquatic environment.

Several commenters suggested this permit should be removed from consideration until questions concerning the Tulloch Rule are resolved, because a landowner does not know if he or she is required to obtain a permit for excavation activities or reshaping existing ditches in wetlands that involve only "incidental fallback." The intent of this NWP is to authorize a certain activity that does not qualify for the maintenance exemption and is not for the purpose of increasing drainage capacity. We believe that this NWP should not be made more inclusive. The intent of this NWP is to authorize those ditch reshaping activities that involve more than "incidental fallback."

The proposed NWP may not be used to relocate drainage ditches or to modify drainage ditches to increase the area drained by the ditch (e.g., by widening or deepening the ditch beyond its original design dimensions or configuration) or to construct new drainage ditches if the previous drainage ditches have been neglected long enough to require reconstruction. This NWP does not authorize the channelization or relocation of streams to improve capacity of the streams to convey water. An individual permit, another NWP, or a regional general permit may authorize the construction of new drainage ditches or the reconstruction of drainage ditches. The proposed NWP does not authorize the maintenance or reshaping of drainage ditches constructed in navigable waters of the United States (non-tidal wetlands that are adjacent to tidal waters are also excluded). A Section 10 permit is required for the maintenance or modification of drainage ditches constructed in navigable waters of the United States. We believe that modifying this permit to authorize work in Section 10 waters could result in the authorization of activities that have more than minimal adverse effects on the aquatic environment.

One commenter recommended that NWP 27 should be expanded to include this activity while another suggested that it should be authorized under NWP 3. We do not agree that this activity is similar enough to the activities authorized by NWP 27 to warrant its inclusion in NWP 27. The purpose of NWP 27 is to restore, enhance, and create wetland and riparian areas and restore and enhance non-tidal streams and open waters. The purpose of proposed NWP 41 is to improve water quality. NWP 3 does not currently authorize reshaping of drainage ditches constructed in waters of the United States because this activity is not maintenance or repair. NWP 3 authorizes only maintenance activities with minor deviations from the previously authorized configuration; reshaping drainage ditches typically involves more than minor deviations in ditch cross sectional shape.

Many commenters believe that this NWP will result in the destruction of riparian habitat, specifically adjacent plant communities, and degrade water quality through the sidecasting of excavated material into wetlands. One commenter stated that the permit would prevent the natural process that increases wetland acreage through natural deposition of detritus and sediment in natural cycles that create wetlands. Other commenters believe that this NWP would cause the degradation of salmon and other fisheries habitat through the removal of woody debris and that this permit would authorize activities that reduce the geomorphic "complexity" of a stream causing it to become more uniform and adversely affect some fisheries. One commenter said that activities authorized by this NWP will have a detrimental effect on water quality due to a decrease in the velocity of the stream and it is possible that the stability of the stream could be compromised due to an unbalanced width/depth ratio. Several commenters stated that the permit would result in more rapidly draining farm files in the Midwest, which would increase scouring of banks and waterways and degrade water quality. One commenter said that the permit should be modified to state that channel reshaping cannot change the discharge rate or volume of the ditch.

To address concerns for vegetation adjacent to drainage ditches that may be removed as a result of the authorized activity, we have added a second notification requirement to the proposed NWP. The prospective permittee must notify the District Engineer if more than 500 linear feet of drainage ditch is to be reshaped. District engineers can review the proposed work and determine if the clearing of adjacent vegetation will result in more than minimal adverse effects on the aquatic environment. We do not agree that the activities authorized by this NWP will disrupt the natural creation of wetlands or result in substantial degradation of aquatic habitat in streams. It is important to note that drainage ditch maintenance is exempt under Section 404(f). If a stream was channelized to improve drainage, the maintenance of the drainage ditch constructed in the stream is an exempt activity. The purpose of this NWP is to encourage landowners to maintain the drainage ditches constructed in waters of the United States in a manner that benefits the aquatic environment in most cases. Reshaping the drainage ditch with flatter side slopes will improve water quality and decrease the velocity of water flowing through the ditch. This NWP does not authorize modifications to the configuration of the drainage ditch to increase the area drained by the ditch. We believe that the proposed NWP adequately states this requirement. For those activities that require notification, district engineers can impose special conditions on the NWP authorization to ensure that the work results in minimal adverse effects or exercise discretionary authority and require an individual permit.

Some commenters noted that over time, through natural processes, the side slopes of ditches often become flatter than they wee originally. In those cases, they say, it would not make sense to require a permit to maintain existing slopes, even if they are not the original slopes. This NWP does not require the landowner to maintain existing slopes, if they have eroded naturally.

Many commenters stated that this NWP contains vague language and that many terms require clear definition in the context of this permit, especially "maintenance," "modification," "reconstruction," "regular maintenance," "abandonment," and "loss of serviceability." One commenter stated the phrase "reshaping to benefit the aquatic environment" means significantly different things in different parts of the country.

We do not agree that definitions of the terms "maintenance," "modification," "reconstruction," and "regular maintenance," need to be provided with the proposed NWP. For the purposes of this NWP, the definitions of these terms are the same as the definitions in common usage today. District engineers will determine which ditch reshaping activities constitute maintenance and which activities constitute reconstruction. District engineers will determine when a particular drainage ditch is considered abandoned. Loss of serviceability is considered to be the point at which a ditch no longer functions as a drainage ditch, and reconstruction is needed.

Several commenters asked how the original ditch conditions would be determined and how the Corps would distinguish between "reconstruction" and "maintenance to original dimensions." Some asked on what basis it would be determined that the proposed project would improve water quality and how the area of wetland drained by the original ditch would be determined. Also, some commenters questioned how one would determine that the proposed channel shape would not change discharge rate or volume. These commenters also asked who would be responsible for making these determinations.

District engineers will determine which activities constitute maintenance, reshaping, or reconstruction. They will use any available information to make these determinations, including field evidence. In general, changing the configuration of the drainage ditch to slow water flow and increase vegetation in the ditch will help improve water quality because the plants and microbes in the ditch will have more contact with the water and remove more nutrients and other compounds from the water. Slower water flow rates will also decrease the sediment load of the water. The area drained by the ditch can be determined by using available models, which consider factors such as soil type, ditch depth, ditch width, etc. The permittee may be required by the District Engineer to demonstrate that the proposed ditch reshaping activity will not increase the area drained by the ditch.

Another subject that generated many comments is the definition of a drainage ditch. One commenter stated that while some drainage ditches were clearly excavated, either though uplands or wetlands, for the purpose of creating a drainage channel where one did not exist previously, in many other cases, natural streams or drainageways were excavated to increase drainage capacity. In many instances, this took place decades ago and the waterway has been considered a "ditch" by adjacent landowners since that time. Some commenters believe that channelized streams should not be considered ditches and that this NWP should apply only to ditches constructed in uplands and wetlands. Others, however, noted that in some parts of the country, most functioning ditches were once natural waterways.

Understanding the differences in definitions of a ditch across the county, we have included a definition of the term "drainage ditch" in the "Definitions" section of the NWPs. This definition recognizes that drainage ditches may be constructed in uplands or waters of the United States, including wetlands and streams. A stream which has been channelized to improve surface drainage is considered a drainage ditch, for the purposes of the NWP program. District engineers will use judgement to determine whether a stream is a drainage ditch and eligible for the Section 404(f) exemption.

Some commenters stated that, to meet minimal adverse effect criteria, this NWP should have acreage and/or stream length limits. The recommended acreage limits ranged from 1/10 to 1 acre. Stream length limits ranged from zero to one mile. There were recommendations for compensatory mitigation requirements, such as requiring compensatory mitigation for impacts greater than 1 acre. Some commenters suggested PCN thresholds. Some commenters cautioned that when a PCN is not required, conditions are often ignored and that a PCN should always be required for work in drainage ditches. Other commenters stated that the NWP should not authorize discharges of excavated material into waters of the United States. One commenter believes the NWP should be conditioned to allow its use only once per watershed and should not be used in any area identified as having water quality problems or in any outstanding resource waters. At least one commenter stated that public review should be required for all work on public storm drain systems because they directly affect the public and are paid for with public funds.

We have determined that no acreage limit is necessary for the proposed NWP, because the authorized work is intended to benefit the aquatic environment, by changing the shape of the drainage ditch to improve water quality and other aspects of the aquatic environment. Notification will be required when excavated material is sidecast into waters of the United States or greater than 500 linear feet of drainage ditch is reshaped. The latter PCN requirement was added to address concerns for adverse effects to riparian areas adjacent to ditches constructed in waters of the United States. District engineers will review the PCNs to determine if the proposed work will result in minimal adverse effects on the aquatic environment. Prohibiting the sidecasting of excavated material into waters of the United States would discourage ditch reshaping activities because the Section 404(f) exemption for ditch maintenance allows sidecasting. Such a prohibition would cause many landowners to maintain the ditch at its originally designed configuration to qualify for the exemption. Since the purpose of the proposed NWP is to encourage ditch maintenance activities that improve the aquatic environment, it would be counterproductive to limit its use to only once per watershed or require public review.

Some commenters recommended that compensatory mitigation be required for all activities authorized by this NWP. Other commenters asked for clarification that compensatory mitigation is not required. One commenter believes that the applicants should be required to provide documentation regarding the scope and effect of the existing drainage ditch before and after the reshaping activity. Another commenter stated that the applicant should be required to obtain a minimal effect determination and certification from NRCS stating that best management practices have been employed. One commenter suggested that the Corps should require the submittal and review of an erosion and sediment control plan prior to authorizing use of this NWP because these conditions are generally ignored when placed on the permit itself. Another commenter suggested that a minimum riparian buffer should be established or maintained as part of the authorization. Several commenters believe that revegetation of ditch banks with tree or shrub species should be required after construction to minimize loss of riparian habitat and reduce the potential for increasing water temperatures within the ditch. Another commenter recommended: (1) Conditioning the NWP to prohibit alteration or replacement of one type of stream substrate with another type; (2) the NWP should not authorize more than minimal adverse effects to riparian corridors during construction activities; (3) the NWP should require the replacement of riparian corridors when they are destroyed during construction; and (4) the NWP should not authorize the sidecasting of material in such a manner that the material would block or impede overland surface flows into any jurisdiction water of the United States, including wetlands.

We have determined that compensatory mitigation will normally not be required for the work authorized by this NWP because the purpose of the proposed NWP is to authorize ditch reshaping activities that improve water quality and aquatic habitat. If the project proponent did the work to qualify for the Section 404(f) exemption,

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compensatory mitigation would not be required since the activity is exempt. Requiring compensatory mitigation for modifying the cross-sectional configuration of the ditch may encourage maintenance to the original dimensions and configuration and discourage reshaping the ditch to benefit the aquatic environment. We do not agree that permittees should be required to provide a statement discussing the effects of ditch reshaping or that they should be required to obtain a certification from NRCS. Compliance with any required sediment and erosion control plan is the responsibility of the permittee. Permittees are encouraged to maintain a vegetated buffer along one side of the ditch, but regular maintenance activities will prevent the development of a woody vegetated buffer along the side of the ditch used by equipment to perform the excavation.

Several commenters presented a variety of potential problems and concerns about this NWP. Some commenters believe that this permit will be very difficult to implement and will require substantial coordination with the Corps that previously was not required and will delay implementation of projects. Many commenters requested assurance that it would be used strictly and successfully for water quality improvement. They believe the existing drainage ditch exemption is often abused, resulting in the reditching of long-abandoned ditches, the excavation of natural streams, and the expansion of ditches beyond their original dimensions. They envision abuse of this NWP by applicants stating a water quality improvement purpose, but really intending to remove woody vegetation from the stream bank or increase channel capacity to drain a new area. This group of commenters was concerned that adverse effects on the aquatic environment resulting from activities authorized by this NWP would be more than minimal and could result in loss of important riparian habitat bordering naturalized drainage ditches. They were also concerned about filling and permanent loss of wetlands as a result of sidecasting. Several of these commenters pointed out that many of the conditions of this NWP are very difficult to measure, such as determining if the drainage area has been increased and determining the changes in ditch configuration without altering capacity. They caution that some channel reshaping projects might not be beneficial or would involve a complex trade-off between various environmental values including habitat, flood control, and water quality. One commenter said the permit should have language which encourages retaining the structure and functions of the wetland and stream habitats.

In response to the comments in the previous paragraph, we must reiterate that the proposed NWP is intended to encourage ditch maintenance activities that benefit the aquatic environment. This NWP authorizes activities that are exempt from Section 404 permit requirements if those activities were done strictly as maintenance to the original ditch design configuration. Although the ditch may be a channelized stream, excavation activities to maintain the drainage ditch do not require a Section 404 permit. We believe that a drainage ditch can be reconfigured to provide water quality benefits without increasing the area drained by the ditch. The removal of riparian vegetation from uplands adjacent to a channelized stream is not regulated by the Corps under Section 404. Sidecasting of excavated material into waters of the United States is exempt from Section 404 permit requirements if the activity is associated with ditch maintenance. We believe that conditioning this NWP to prohibit the sidecasting of excavated material into waters of the United States would severely limit the use of this NWP and encourage exempt maintenance activities. Likewise, conditioning this NWP to require the permittee to maintain the wetlands and stream habitat in the project area would encourage exempt maintenance activities that have more adverse effects on the aquatic environment.

This NWP is subject to proposed General Condition 26, which will reduce its applicability. General Condition 26 prohibits the use of this NWP to authorize discharges resulting in the loss of greater than 1 acre of impaired waters, including adjacent wetlands. NWP 41 activities resulting in the loss of 1 acre or less of impaired waters, including adjacent wetlands, are prohibited unless prospective permittee demonstrates to the District Engineer that the activity will not result in further impairment of the waterbody. Notification to the District Engineer is required for all activities authorized by this NWP in impaired waters and wetlands adjacent to those impaired waters.

Division engineers can regionally condition this NWP to exclude certain waterbodies or require notification when waters or unique areas that provide significant social or ecological functions and values may be adversely affected by the work. Activities authorized by this NWP will have minimal adverse effects on the aquatic environment, since it is limited to existing drainage ditches and activities that improve water quality. District engineers can exercise discretionary authority when very sensitive or unique areas, such as salmonid habitat mentioned by several commenters, may be adversely affected by these activities. The PCN requirement allows Corps districts, on a case-by-case basis, to add appropriate special conditions to ensure that the adverse effects are minimal. The District Engineer can also assert discretionary authority to require an individual permit for any activity that may have more than minimal adverse effects. Proposed NWP F is designated as NWP 41, with the proposed modifications discussed above.

42. Recreational Facilities

In the July 1, 1998, **Federal Register** notice, we proposed an NWP to authorize discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands contiguous to tidal waters, for the construction or expansion of passive recreational facilities.

Several commenters were concerned about the title of this NWP. Some commenters expressed confusion at the definition of passive recreational facilities. Other commenters were interested in exactly what activities were authorized. One commenter suggested that the Corps clarify what is meant by the term "open space" and when a recreational facility is considered to have a substantial amount of buildings and other impervious surfaces. Several commenters suggested defining the wording "substantially" when considering the amount of grading necessary for a particular activity.

To help reduce confusion, we have eliminated the word "passive" from this NWP and changed the title of the proposed NWP to "Recreational Facilities." The definition of the term "recreational facilities," as used for this NWP, and the types of activities authorized by this NWP have not been modified. For the purposes of this NWP, recreational facilities are defined as low-impact recreational facilities that are constructed so that they do not substantially change preconstruction grades or deviate from natural landscape contours. Low-impact recreational facilities include, but are not limited to, bike paths, hiking trails, campgrounds, and running paths. The construction of golf courses or the expansion of golf courses and ski areas, can be authorized by this NWP, provided these facilities are integrated into the existing landscape, do not require substantial amounts of grading or filling, and adverse effects to wetlands and riparian areas are minimized to the extent practicable.

The term "open space" refers to areas not disturbed by the construction or expansion of the recreational facility, such as forests, fields, riparian areas, etc. Open spaces do not contain any buildings. District engineers will determine when a proposed activity involves a substantial amount of buildings, concrete, asphalt, or other impervious surfaces. The land area for the recreational facility authorized by the proposed NWP should consist only of a small proportion of impervious surface. District engineers will also determine when the amount of grading is substantial.

One commenter stated that facilities for walking, biking, and running require substantial filling and grading if they are located in hydric soils. One commenter suggested that gravel paths are pervious and should qualify for authorization under this NWP. A couple of commenters suggested that roads are not pervious features and should be excluded from authorization by this permit. Several commenters recommended expanding this permit to include other activities that are beneficial to the community, such as playgrounds, pools, and ball fields, suggesting that these activities are no more harmful to the environment than ski areas or golf courses. Many commenters objected to the inclusion of golf courses, campgrounds, and ski areas in this NWP, stating that these activities are not consistent with the concept of passive recreational facilities and do not have low impacts on aquatic resources.

Walking, running, and biking trails do not necessarily require substantial grading or filling of hydric soils. These trails can be constructed by placing a layer of gravel or crushed stone on the trail or placing a thin layer of asphalt on the soil surface. In some situations, a footer may be excavated to construct a base for the gravel or asphalt trail. District engineers will determine when the construction of a trail involves substantial grading or filling. Timber decks and walkways should be used where possible to minimize losses of waters of the United States. Gravel paths and roads are considered pervious. The proposed NWP can authorize the construction of roads to provide access to the recreational facility, including support buildings. However, the roads must be constructed at grade with pervious materials. Other types of roads to provide access to the recreational facility can be authorized by other NWPs, such as NWP 14, as long as the permittee complies with General Condition 15. The construction of substantial amounts of roads within the recreational facility is not authorized, since this NWP does not authorize recreational facilities for use by motor vehicles.

Pools, playing fields, and arenas are not authorized by this NWP. These activities typically involve substantial grading and filling and the use of impervious materials for construction. Recreational facilities can be either public or private and will not have a substantial amount of buildings and other impervious surfaces, such as concrete or asphalt. The proposed NWP also authorizes the construction or expansion of small support facilities such as office buildings, maintenance buildings, storage sheds, and stables, but does not authorize the construction of associated hotels or restaurants. The construction or expansion of campgrounds can be authorized by this NWP, provided they are integrated into the existing landscape. These campgrounds should have few impervious surfaces (e.g., concrete or asphalt) and should consist of small cleared areas for tents and picnic tables connected by dirt or gravel trails or roads.

The proposed NWP does not authorize the construction or expansion of campgrounds for mobile homes, trailers, or recreational vehicles. This NWP does not authorize the construction of playing fields, basketball or tennis courts, racetracks, stadiums, or arenas. Recreational facilities not authorized by this NWP may be authorized by another NWP, a regional general permit, or an individual permit. Playing fields, playgrounds, and other golf courses may be authorized by NWP 39 if they are attendant features of residential, commercial, or institutional developments. For example, NWP 39 can authorize the construction of a golf course, provided the golf course is an attendant feature of a residential subdivision. The construction of hotels and conference centers that are sometimes associated with recreational facilities are not authorized by this NWP, but may be authorized by NWP 39, a regional general permit, or an individual permit.

Many commenters objected to the inclusion of support facilities or buildings in this permit. Several commenters wanted clarification on how much and what type of support buildings are authorized.

This NWP authorizes only small support facilities that are essential to the operation of the recreational facility. District engineers will determine what constitutes a "small" support facility. Support facilities typically include maintenance buildings, storage buildings, and stables, but may also include buildings that store equipment (e.g., bicycles and canoes) that can be rented by users of the recreational facilities, and small offices. We anticipate that these structures will be small and typically have minimal adverse effects on the aquatic environment. Therefore, it is appropriate to include these structures in the NWP. We have modified the text of this NWP to specify that the NWP only authorizes small support facilities. The fact that these buildings must be directly related to the recreational activity, along with the acreage limit and PCN thresholds, will ensure that such support facilities are carefully considered and will have only minimal adverse effects on the aquatic environment.

A couple of commenters objected to the inclusion of golf courses and ski areas in this NWP because these facilities also require intensive maintenance activities, including the application of fertilizers and pesticides, as well as utility and road maintenance. Additionally, some ski areas may hydrologically alter certain areas as artificial snow is created, affecting water flow and adversely impacting trout streams. One commenter suggested that this permit should only allow limited size play throughs, and filling of only small isolated wetlands. This commenter and others further stated that this permit should focus on preserving natural systems and landscape features, and incorporating them into the design for the course. Several commenters objected to the authorization of these types of activities due to their impacts on the environment, suggesting that such activities do not have to be located in wetlands.

The proposed NWP authorizes the construction and expansion of golf courses and the expansion of ski areas, provided they are integrated into the existing landscape. The construction of new ski areas is not authorized by this NWP. These facilities may also require some support buildings with some minor grading and filling for building pads and foundations. Golf courses may require the placement of crushed stone or gravel for cart paths or some minor fill for greens and associated construction activities. We believe it is appropriate to include these activities in this NWP.

Golf courses and expanded ski areas authorized by this NWP should be

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subject to careful environmental design and planning. For example, features to control surface runoff, buffers established and maintained adjacent to open waters, integrated pest management, and careful fertilizer and pesticide application, are examples of maintenance and operation activities which reduce the impacts of these facilities on the aquatic environment. These types of features and practices may be part of the water quality management plan required by the proposed modification of General Condition 9. A well-designed golf course authorized by this NWP will have avoided most of the wetlands on the site, incorporated stormwater management facilities into the course to protect local water quality, and established and maintained vegetated buffers adjacent to open or flowing waters.

One commenter asked why a project proponent would request authorization under this NWP when a larger golf course could be authorized by NWP 39. Another commenter questioned the statement in the proposed NWP suggesting that commercial recreational facilities may be authorized by NWP 39. Several commenters stated that the Corps will subject golf courses to more restrictions and that those restrictions should be stated in the NWP.

Proposed NWP 39 authorizes the construction of building pads, foundations, and attendant features for residential, commercial, and institutional developments. NWP 39 does not authorize the construction of golf courses on its own, unless those golf courses are attendant features of developments. However, NWP 39 can be used to authorize support buildings for a golf course, such as equipment storage buildings and clubhouses. Other recreational facilities can be authorized by NWP 39, such as playgrounds or playing fields associated with schools, provided those recreational facilities are attendant features of the school buildings. We have adequately discussed the restrictions on golf courses in the text of NWP 42. Division engineers can regionally condition this NWP to impose additional restrictions on this NWP and ensure that it authorizes only activities with minimal adverse effects on the aquatic environment. District engineers can exercise discretionary authority if the proposed work may result in more than minimal adverse effects or place case-specific special conditions on an NWP authorization to ensure that the authorized work results in minimal adverse effects on the aquatic environment.

Several commenters supported the proposed 1 acre limit for this NWP. One commenter suggested that the NWP should authorize the loss of no more than ¼ acre of waters of the United States or 20 linear feet of stream. Another commenter suggested that the NWP should have an acreage limit of 1 acre or 20 percent of the total wetland area on the site, with a prohibition against filling fens, seeps, springs, sand ponds, or bogs. One commenter suggested that this permit should not authorize activities within 200 feet of streams or rivers that contain habitat for salmon. One commenter requested that this permit authorize only up to ⅓ of an acre of impacts for linear impact recreational facilities such as hiking, and biking trails. One commenter recommended that stream bed impacts should not be authorized by this permit since a passive recreational facility "does not substantially change preconstruction grades or deviate from natural landscape contours."

We believe that a 1 acre limit for recreational facilities is appropriate. This limit, with the notification requirements, will ensure that only activities with minimal adverse effects on the aquatic environment are authorized by this NWP. With regard to limiting the use of the proposed NWP in certain aquatic habitat types, we believe that these issues are more appropriately addressed at the regional level where division engineers can impose regional conditions to restrict the use of this NWP in high value waters, or prohibit its use in certain waterbodies. To make this NWP consistent with most of the other proposed NWPs, we are proposing to change the applicable waters for this NWP to "non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters." We disagree that the NWP should not include impacts to stream beds. The recreational facility may require crossings over streams or bank stabilization activities.

One commenter suggested significantly reducing the proposed PCN thresholds of ⅓ acre and 500 linear feet of stream bed. A couple of commenters suggested that a PCN should be required for all activities authorized by this NWP, because passive recreational facilities are usually built in areas that are recognized as environmentally sensitive. One commenter requested that Federal agencies should be provided the authority to reject an activity for consideration under this permit.

To make the PCN thresholds of the proposed NWP consistent with the PCN thresholds of the other new NWPs, we have reduced the PCN threshold to ¼ acre. The PCN requirement for activities causing the loss of greater than 500 linear feet of perennial and intermittent stream bed will be retained. These PCN requirements will help ensure that the activities authorized by this NWP result in minimal adverse effects on the aquatic environment. Since this NWP has a 1 acre limit, there will be no agency coordination for PCNs. In addition, we do not believe that agency coordination is necessary, since this NWP authorizes only those recreational facilities that are integrated into the natural landscape and consist primarily of open space.

A commenter suggested that trails resulting in the loss of less than one acre of non-tidal waters of the United States should be exempt from the requirements of General Condition 9, especially the requirement for a water quality management plan.

The District Engineer will determine if the proposed recreational facility requires a water quality management plan to comply with General Condition 9. Small trails may not require such a plan. However, where there are water quality concerns due to the construction and use of the facility, vegetated buffers may be required. Stormwater management facilities may also be required.

One commenter said that features such as roads, buildings, and golf courses result in significant indirect and cumulative impacts in watersheds by inducing growth in surrounding areas and increasing runoff and hydrologic modifications. This commenter further suggested that regionally significant resources should be excluded from this NWP or impacts to such resources limited. Many commenters focused on the requirement that this permit should preserve natural systems and that the authorized facilities must be integrated into the natural landscape. One commenter stated that this permit is not consistent with sound watershed management. One commenter stated that the NWP encourages the removal of trees and other vegetation adjacent to waters of the United States, which would increase stream bank erosion, and that the Corps should establish explicit general conditions which prohibit activities that result in removal of stream bank vegetation within riparian areas.

The potential for activities authorized by this NWP to induce growth in surrounding areas is outside of the Corps scope of analysis, unless the induced growth involves activities regulated by the Corps. These low-impact recreational facilities may also be constructed in areas already subject

to increasing populations. The recreational facilities authorized by the proposed NWP are low-impact, and will not cause significant hydrological modifications because the facilities authorized by this NWP consist mostly of open space, with a small proportion of impervious surface. The requirements of General Conditions 9 and 21 will also ensure that the authorized activities do not cause substantial hydrological modifications. The recreational facilities authorized by this NWP will help preserve open space if they are constructed in the vicinity of urbanizing areas. The construction of low-impact recreational facilities is consistent with sound watershed management practices. The NWP does not encourage the removal of riparian vegetation. This NWP, like the other new NWPs, require the establishment and maintenance of vegetated buffers adjacent to waters of the United States to the maximum extent practicable (see General Condition 9).

Many commenters requested that mitigation should be required for activities authorized by this NWP. One commenter opposed the use of in lieu fee or mitigation banking programs to serve as mitigation for losses of waters of the United States authorized by this permit. Another commenter recommended that mitigation should be required for losses of less than ⅓ acre, either through mitigation banks or in lieu fee programs. One commenter stated that preservation of adjacent green space is not acceptable as mitigation. This commenter further stated that the NWP indicates that buffer zones may be required, but there is not an explicit requirement for vegetated buffers and the benefit of such buffers is questionable. One commenter said that the remaining wetlands on the site should be protected from further development through deed restrictions. Another commenter requested that the Corps require monitoring and evaluation standards for mitigation plans.

District engineers may require compensatory mitigation for activities authorized by this NWP to ensure that the net adverse effects to the aquatic environment are minimal. Mitigation banks and in lieu fee programs can be appropriate methods to provide compensatory mitigation for activities authorized by this NWP. The preservation of wetlands or vegetated buffers on the site can satisfy compensatory mitigation requirements, especially if there are high value waters on the project site that should be protected. The establishment and maintenance of vegetated buffers adjacent to waters of the United States can be an important part of the compensatory mitigation required by district engineers. We cannot require the permittee to preserve the remaining waters on the site, unless the preservation satisfies a compensatory mitigation requirement. Otherwise, such a preservation requirement could be considered a taking of private property. Through special conditions, district engineers can require compensatory mitigation, including monitoring plans and evaluation standards.

Several commenters were concerned with the use of this NWP with other NWPs to authorize activities with larger impacts to the aquatic environment.

We are proposing to modify General Condition 15 to address the use of more than one NWP to authorize a single and complete project. In accordance with the proposed modification of General Condition 15, this NWP can be used with other NWPs to authorize a single and complete project, as long as the activity does not cause the loss of waters of the United States in excess of the highest specified acreage limit of the NWPs used to authorize that project. Although this NWP is intended to authorize all activities associated with a single and complete recreational facility, there may be some related activities, such as bank stabilization in tidal waters, that cannot be authorized by NWP 42 but can be authorized by other NWPs.

This NWP is subject to proposed General Conditions 25, 26, and 27, which will reduce its applicability. General Condition 25 prohibits the use of this NWP to authorize discharges into designated critical resource waters and wetlands adjacent to those waters. In accordance with General Condition 26, recreational activities resulting in the loss of 1 acre or less of impaired waters, including adjacent wetlands, cannot be authorized by NWP 42 unless prospective permittee demonstrates to the District Engineer that the activity will not result in further impairment of the waterbody. General Condition 27 prohibits the use of NWP 42 to authorize permanent, above-grade fills in waters of the United States within the 100-year floodplain.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. Proposed NWP D is designated as NWP 42, with the proposed modifications discussed above.

43. Stormwater Management Facilities

This NWP was proposed in the July 1, 1998, **Federal Register** as NWP C to authorize the discharges of dredged or fill material into non-Section 10 waters of the United States, including wetlands, for the construction and maintenance of stormwater management (SWM) facilities.

A large number of comments were received in response to the proposed NWP, many commenters supporting the NWP and other commenters opposing the issuance of this NWP. Those commenters supporting the NWP stated that it would greatly enhance low-value wetland areas and attenuate the effects of flood waters. Some commenters requested the withdrawal of this NWP. Commenters opposing the issuance of this NWP stated that its use will result in more than minimal adverse effects on the aquatic environment. A number of commenters stated that the NWP would be difficult for the Corps to implement. One commenter said that there is no need for this NWP, because SWM facilities can be authorized by NWP 39 as a part of the residential, commercial, and institutional development. Several commenters were concerned about the possible use of this NWP with other NWPs, if SWM facilities are required as part of the development. One commenter stated that the NWP will reduce incentives to locate SWM facilities in uplands. Many of those opposing this NWP believe that the permit only benefits developers who want to develop the entire upland parcel and locate the SWM facility in wetlands and that mitigation sequencing (*i.e.*, avoidance, minimization, and compensatory mitigation) would not take place.

The proposed NWP and the NWP general conditions contain provisions to help ensure that the NWP does not authorize activities in waters of the United States with more than minimal adverse effects on the aquatic environment, individually or cumulatively. The notification requirements will allow district engineers to review certain stormwater management activities on a case-by-case basis and exercise discretionary authority in those cases where the adverse effects on the aquatic environment are more than minimal. Division and district engineers can add regional or case-specific conditions to this NWP to ensure that the NWP authorizes only activities with minimal

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adverse effects on the aquatic environment. An important provision of the proposed NWP is that it does not authorize the construction of new SWM facilities in perennial streams, which will protect habitat for fish and other aquatic organisms.

Although an SWM facility can be authorized by NWP 39 as an attendant feature of a single and complete development project, there are circumstances that warrant a separate NWP for SWM facilities. For example, some SWM facilities may be constructed by a local government as part of a watershed plan, not for a particular development. SWM facilities may also be required for transportation projects or upland development activities. This NWP will not reduce incentives to locate SWM facilities in uplands, because the permittee is still required to comply with General Condition 19 and provide with the notification, a written statement to the District Engineer explaining why the SWM facility must be constructed in waters of the United States and why additional minimization cannot be achieved (see paragraph (d) of the proposed NWP). General condition 19 requires that the permittee avoid and minimize work in waters of the United States on-site to the maximum extent practicable.

A number of commenters stated that SWM facilities should not be constructed in waters of the United States. One commenter said that SWM facilities should not be constructed in waters of the United States adjacent to perennial streams. Many commenters indicated that stormwater should be treated in uplands before it is discharged into waters of the United States. One commenter stated that SWM facilities can only increase wetland functions and values when they are constructed in non-wetland areas. A commenter recommended modifying the NWP to allow the use of wetland systems for passive treatment of stormwater runoff. Many state agencies said that they do not allow the treatment of stormwater in wetlands. One commenter stated that the use of the NWP in waters of the United States should be limited only to receiving stormwater runoff, which will not permanently change the waters of the United States, and proposed a ⅓-acre limit for structures, such as outfalls. Another commenter stated that the NWP should not authorize SWM facilities in waters of the United States, unless the project results in enlargement and enhancement of existing wetlands. One commenter stated that an NWP authorizing SWM facilities in wetlands is contrary to EPA's 1990 guidance on wetlands and non-point source pollution control programs and requested clarification regarding what constitutes "in certain circumstances," as cited in the preamble discussion concerning the placement of SWM facilities in waters of the United States in the July 1, 1998, **Federal Register** notice. This commenter also objected to the proposed NWP because it authorizes SWM facilities in streams and said that these activities will result in the destruction of stream morphology and destabilize the stream bed, reducing water and habitat quality. One commenter stated that stormwater management ponds constructed in wetlands actually encourage a slower decomposition of toxins, and locating an SWM facility in wetlands creates greater potential for toxic pollution if the pond containment structure or fill fails or the pond is overfilled. A commenter recommended prohibiting the construction of stormwater detention facilities in waters of the United States within 150 feet of the ordinary high water mark.

The construction of SWM facilities in waters of the United States is often necessary, and may provide more protection to the aquatic environment. SWM facilities located in waters of the United States are often more effective than SWM facilities constructed in uplands, because storm runoff flows to streams and wetlands, making these areas better able to trap sediments and pollutants than upland areas. The local aquatic environment benefits from more efficient SWM facilities. Low value wetlands and low value ephemeral and intermittent streams may be the best places to locate SWM facilities, to reduce adverse effects to higher value waters by attenuating storm flows and preventing pollutants from further degrading those areas. The proposed NWP authorizes the construction of SWM facilities in waters of the United States, particularly low value waters, provided that adverse effects on the aquatic environment are minimal. Division engineers can regionally condition this NWP to prohibit its use in high value waters. For those activities that require notification, discretionary authority will be exercised by district engineers on a case-by-case basis where the adverse effects on the aquatic environment are more than minimal. We do not agree that the NWP should be limited only to those projects that enlarge or enhance existing wetlands. In addition, we do not agree that the construction of stormwater management facilities should be prohibited in waters of the United States within 150 feet of the ordinary high water mark because this requirement would prevent district engineers from using this NWP to authorize many effective SWM facilities with minimal adverse effects on the aquatic environment.

Through the notification process, district engineers will determine which SWM facilities can be authorized by this NWP. Locating SWM facilities in ephemeral and intermittent streams will help reduce degradation of perennial stream morphology by reducing the velocity of surface water flows during storm events. Adequately designed stormwater detention and retention ponds, particularly those ponds constructed in locations where they most effectively capture runoff (*i.e.*, in ephemeral and intermittent stream beds), will help prevent stormwater flows from entering perennial streams with velocities high enough to erode the stream banks and downcut the stream bed. These ponds will also trap sediments, which will help maintain the substrate of the stream bed and reduce water quality degradation. Permittees are required to maintain authorized SWM facilities to prevent the entry of pollutants in the waterway if the pond fills with sediment or the pond containment structure deteriorates. Paragraph (c)(1) of the proposed NWP requires prospective permittees to submit a maintenance plan, if required, with the PCN. The maintenance plan will ensure that the SWM facility will retain its effectiveness at trapping sediments and pollutants and attenuating flood waters.

Many commenters expressed concern for adverse effects to wetlands that may result from changing from one wetland type to another or from adverse effects caused by secondary impacts due to flooding, excavation, or drainage. One commenter stated that this NWP allows the replacement of a natural SWM facility with a concrete facility, thereby increasing the possibility of downstream flooding. A commenter advocated the preservation of natural landscapes for flood control purposes by promoting the use of non-structural alternatives for SWM. Some commenters said that this NWP should not authorize stream relocation or the construction of ponds in wetlands and that the Corps should not encourage other changes to natural drainage systems or diversions of watercourses.

The proposed NWP authorizes the construction of SWM facilities, which may result in wetland conversion and the flooding, excavation, or draining of wetlands. Some relocation of intermittent or ephemeral streams may be necessary to construct the SWM facility. For those activities that require notification, district engineers will review the proposed work to determine if the proposed work will result in more than minimal adverse effects on the aquatic environment. Division engineers can regionally condition this NWP lower the notification thresholds or restrict the use of the NWP to ensure that it authorizes only those SWM activities with minimal adverse effects on the aquatic environment. Although we encourage the use of non-structural methods for SWM, structural practices are often the only practicable methods, and should be authorized by NWP if they result only in minimal adverse effects on the aquatic environment.

Many of the commenters supporting the proposed NWP requested that the Corps expand the scope of the NWP to include perennial streams and Section 10 waters, including tidal waters. One commenter requested that the NWP authorize sediment basins in perennial streams if sedimentation is a problem in the area. One commenter stated that outfall structures may need to be constructed in Section 10 waters, especially rivers. Another commenter requested that the Corps clarify whether the NWP authorizes discharges into wetlands adjacent to perennial streams. One commenter stated that design criteria should be included in the NWP.

In the July 1, 1998, **Federal Register** notice, we proposed to limit this NWP to non-Section 10 waters, including wetlands. To simplify the scope of applicable waters for the proposed NWPs, we are proposing to limit this NWP to activities in non-tidal wetlands, excluding non-tidal wetlands adjacent to tidal waters. However, this NWP is still limited to Section 404 waters and does not authorize SWM activities in non-tidal Section 10 waters. The construction of new SWM facilities in perennial streams is not authorized by this NWP. We believe that expanding the scope of applicable waters for this NWP to tidal waters and perennial streams would be contrary to the minimal adverse effects requirement of the NWPs, because such an expansion of scope would substantially increase the potential for more than minimal adverse effects on the aquatic environment, individually or cumulatively. Project proponents who need to construct SWM facilities in perennial streams, tidal waters, or Section 10 waters can request authorization through the individual permit process or utilize regional general permits, if available. This NWP authorizes discharges into wetlands adjacent to perennial streams, but does not authorize discharges into the perennial stream bed. Outfall structures associated with an SWM facility that must be constructed in Section 10 waters may be authorized by NWP 7, provided the single and complete project complies with General Condition 15. We do not agree that design criteria should be included in the NWP. Specific design criteria vary across the country and are more appropriately evaluated by district engineers on a case-by-case basis. Regional conditions can prohibit certain stormwater management activities from authorization by this NWP.

Several commenters addressed jurisdictional issues related to this NWP. One commenter said that no permit is required for these activities. Several commenters stated that all references to excavation and other activities that do not result in a discharge of material into waters of the United States in accordance with the Tulloch Rule decision should be deleted from the NWP. A few commenters emphasized the need to clearly identify the Corps jurisdiction as it relates to stormwater retention and detention facilities. Other commenters questioned the need for a permit to maintain SWM facilities which were constructed entirely in uplands.

The construction and maintenance of SWM facilities require a Section 404 permit if the activity results in a discharge of dredged or fill material into waters of the United States. SWM facilities require a Section 10 permit if they involve any work in navigable waters of the United States. Excavation activities in waters of the United States require a Section 404 permit, if those excavation activities result in more than incidental fallback of excavated material. District engineers will determine, on a case-by-case basis, if a specific SWM facility contains waters of the United States. If the SWM facility was constructed entirely in uplands, and does not expand the reach of waters of the United States, then that SWM facility is not a water of the United States (see 33 CFR Part 328.5). Maintenance of SWM facilities constructed entirely in uplands does not require a Section 404 permit, provided the construction of that SWM facility did not expand the reach of waters of the United States.

Proposed NWP C had a 2 acre limit for the construction of new SWM facilities, but no acreage limit for maintenance activities. In response to the July 1, 1998, **Federal Register** notice, commenters recommended acreage limits for the construction of new SWM facilities, which ranged from 1 to 5 acres. Several commenters supported no acreage limit for the maintenance of existing SWM facilities. Commenters recommended acreage limits of ⅓ acre and 1 acre for maintenance activities. One commenter stated that the proposed 2 acre limit for construction was too high. One commenter asked the Corps to clarify whether the 2 acre limit applies to each individual facility, or whether it applies to the watershed. A number of commenters recommended limits for impacts to stream beds, ranging from no impacts to stream beds to a 500 linear foot limit. One commenter supported the PCN threshold for stream bed impacts, rather than a linear foot limitation. A couple of commenters stated that the 2 acre limit is too low and the acreage limit should be based site-specific criteria, such as the quality of affected waters. Another commenter recommended basing the acreage limit on regional conditions, with a national PCN threshold of ⅓ acre. One commenter suggested that temporary impacts could result in adverse effects, depending on the duration of flooding, and that impacts due to flooding should be considered in the acreage limit of the NWP.

Based on our review of these comments, we are proposing to retain the 2 acre limit for the construction of new SWM facilities, with no limit on maintenance activities provided the maintenance activity is conducted in accordance with an approved maintenance plan. The 2 acre limit applies to each single and complete project, not the watershed. We believe that the proposed NWP should not have a limit for activities resulting in the loss of intermittent stream bed; the PCN threshold of 500 linear feet is adequate to allow district engineers to determine if the proposed work will result in more than minimal adverse effects on the aquatic environment. For activities resulting in the loss of ephemeral stream bed, there is no PCN threshold. Division engineers can regionally condition this NWP to establish limits for stream bed impacts or lower PCN thresholds. Division engineers can also regionally condition this NWP to add PCN thresholds for activities resulting in the loss of ephemeral stream bed.

A simple 2 acre limit is much easier to implement than an acreage limit based on the quality of affected waters. A simple acreage limit is less confusing to the regulated public, because there are no standard, widely accepted methods available to establish acreage limits for stormwater management facilities based on the quality of affected waters. In areas where the 2 acre limit is too low, the Corps district can

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develop regional general permits to authorize these activities. District engineers will determine when adverse effects due to flooding result in permanent, not temporary, losses of waters of the United States and should be counted toward the 2 acre limit for this NWP.

Numerous comments were received regarding the PCN thresholds for the proposed NWP. Some commenters believe that PCNs should not be required for any activity authorized by this NWP. Other commenters recommended requiring PCNs for all activities authorized by this NWP because SWM facilities are public facilities built with public funds. Suggested PCN thresholds included ¼, ⅓, and ½ acre. One commenter recommended requiring agency coordination for all activities authorized by this NWP to provide an opportunity to assist in the planning of the facility. Recommended PCN thresholds for stream bed impacts ranged from 150 to 1,000 linear feet.

The notification process is necessary to ensure that the proposed NWP authorizes only those activities that result in minimal adverse effects on the aquatic environment, individually or cumulatively. It is unnecessary to require PCNs for all activities authorized by this NWP, unless the division engineer has specific concerns for the aquatic environment in a particular geographic area and regionally conditions the NWP to lower the notification thresholds. Stormwater management activities resulting in the loss of less than ¼ acre of non-tidal waters of the United States, the loss of less than 500 linear feet of intermittent stream bed, or the loss of ephemeral stream bed are unlikely to result in more than minimal adverse effects on the aquatic environment. To be consistent in the PCN thresholds for the other proposed NWPs, we have lowered the PCN threshold from ⅓ acre to ¼ acre. Agency notification will be conducted for activities that result in the loss of greater than 1 acre of waters of the United States.

We received many comments regarding maintenance requirements and maintenance limits for the proposed NWP. Some commenters stated that a permit should not be required for maintenance as long as there are no impacts beyond the originally approved facility. Other commenters said that this NWP is unnecessary because the maintenance can be authorized by NWP 3. Some commenters stated that maintenance is poorly defined and should not be authorized by this NWP. They state that maintenance activities can be just as destructive of wetlands as the initial construction of the facility. Several commenters requested a limit on the maintenance of SWM facilities, while some commenters recommended no limit to ensure that the design capacity is maintained. One commenter stated that a second review for maintenance of the facility is unnecessary because wetland impacts at the time of the original construction have already been considered.

Some commenters were concerned with the requirement for submitting a maintenance plan as part of the notification package. A number of commenters asked how a prospective permittee would comply with this requirement for the maintenance of an SWM facility that does not have a maintenance plan. Other commenters asked who would approve the maintenance plan if State and local entities did not require such a plan. Many commenters requested guidance as to what information would be required for the maintenance plan.

We are proposing to adopt a tiered approach when assessing the need for, and the amount of, maintenance at the facility. First, if a State or locally approved plan currently exists, that plan must be submitted as part of the notification package. If a plan does not exist, drawings of the original design capacities and design configurations should be submitted. Finally, if no plan and/or drawings exist, the best professional judgment of the Corps, with input from the manager of the facility, will be used to determine if the maintenance activity is authorized by this NWP. As for the content of the maintenance plan, if existing State or local requirements are in place regarding the development of such a plan, their standards will normally be accepted. If there are no such requirements, the plan should generally discuss the frequency and amount of maintenance which is required to ensure the facility functions as designed. If no plan currently exits, a new plan should be submitted for any requests for maintenance under this NWP.

A number of commenters requested that the Corps add a condition to this NWP requiring a statement from the applicant that explains how losses of waters of the United States were avoided and minimized on-site and why additional minimization cannot be achieved. Some commenters stated that compensatory mitigation should be required for all SWM facilities and some suggested that the mitigation proposal should be part of the PCN. One commenter said that compensatory mitigation should not be allowed in designated facility maintenance areas. Several commenters urged the Corps to reiterate that no compensatory mitigation is required for losses resulting only from maintenance excavation. Other commenters stated that compensatory mitigation should not be required for SWM facilities in areas that may provide more environmentally sensitive planning and benefits to the aquatic environment than placing those facilities in uplands. Other commenters asked whether mitigation credits can be gained through the use of bioengineering techniques and aquatic benches.

We have added a provision to the proposed NWP (paragraph (d)), requiring the prospective permittee to submit a written statement explaining how avoidance and minimization, to the maximum extent practicable, was achieved on the project site. Paragraph (c)(3) requires the prospective permittee to submit, with the notification, a compensatory mitigation proposal to offset losses of waters of the United States resulting from activities authorized by this NWP. Maintenance activities typically do not result in losses of waters of the United States if they are conducted in designated maintenance areas. Therefore, compensatory mitigation for maintenance activities within a currently serviceable SWM facility will not be required in most circumstances. Compensatory mitigation areas within an SWM facility should be designated as non-maintenance areas. If maintenance is required in a designated non-maintenance area used for compensatory mitigation, then the permittee may be required to provide compensatory mitigation for that maintenance activity. District engineers will determine if compensatory mitigation is necessary to ensure that the authorized work results only in minimal adverse effects on the aquatic environment. If the SWM facility is not currently serviceable and requires reconstruction, compensatory mitigation may be required if the District Engineer determines that it is necessary to ensure that the adverse effects on the aquatic environment are minimal.

Compensatory mitigation can be located within an SWM facility, provided it is not located in designated maintenance areas. It is at the discretion of the District Engineer to determine if it is appropriate to include compensatory mitigation (*i.e.*, wetland restoration, creation, or enhancement) within a particular SWM facility. Designated maintenance areas include sediment forebays designed to capture the sediment in a specific area of the SWM facility. Where the SWM facility provides substantial environmental benefits and/or improves the aquatic environment, compensatory mitigation may not be required. Any future maintenance of the SWM facility conducted in designated maintenance areas identified in the maintenance plan will not require additional compensatory mitigation. It is at the discretion of district engineers whether to allow mitigation credits to become established at a SWM facility constructed with bioengineering techniques and aquatic benches. However, since SWM facilities must be regularly maintained to retain their effectiveness, they should not be used to establish mitigation credits for permanent losses of waters of the United States.

Many commenters recommended conditions to be added to the proposed NWP. One commenter suggested prohibiting discharges into fish habitat and requiring riparian buffers. Another commenter recommended prohibiting use of the NWP within 200 feet of streams or rivers that contain habitat for salmon. One commenter stated that intermittent streams provide valuable salmon habitat and should receive the same protection as perennial streams. One commenter requested that the NWP contain a condition prohibiting construction and maintenance during the spring and summer nesting periods of birds protected under the Migratory Bird Treaty Act and prohibiting work in streams during anadromous fish migration periods. A commenter requested a condition to require maintenance of base flows of streams during low flow periods to protect aquatic species. One commenter recommended adding a condition requiring the project proponent to demonstrate that environmental enhancement throughout the life of the project will result from the SWM project.

Conditions for specific fisheries and migratory bird concerns are best addressed through the regional and case-specific special conditions. This NWP can be regionally conditioned to prohibit the construction of SWM facilities in intermittent streams that support important fisheries. General Condition 21 requires the permittee to maintain, to the maximum extent practicable, preconstruction downstream flow rates, including stream base flows. It is unnecessary to require the permittee to demonstrate that the SWM facility will enhance the aquatic environment throughout the life of the project. The purpose of SWM is to prevent or reduce further degradation of the aquatic environment, especially water quality. District engineers will review PCNs for certain SWM activities to determine if the proposed work will result in minimal adverse effects on the aquatic environment. If the adverse effects are more than minimal, discretionary authority will be exercised and an individual permit will be required.

One commenter stated that the NWP should specifically authorize sediment control structures. Another commenter requested clarification as to whether or not this NWP authorizes in-stream sediment retention and detention basins. One commenter suggested prohibiting construction of concrete or rip rap-lined channels. A commenter asked for a definition for water control structures and emergency spillways and to delete the word "emergency" in the introductory paragraph of the NWP. One commenter recommended requiring best management practices to prevent downstream impacts of stormwater ponds, including retention facilities, such as holding and treating "first flush" from impervious surfaces.

The proposed NWP does not authorize sediment control structures (*e.g.*, silt fences and check dams) unless they are a part of an SWM facility. The intent of the opening paragraph of this NWP is to provide examples of authorized activities, not an inclusive list. For activities that require notification, district engineers will determine which SWM facilities are authorized under this NWP. Water control structures control the flow of water and may impound a certain volume of water. It is unnecessary to delete the word "emergency" as a modifier of the word "spillways," because the purpose of emergency spillways is to provide an outlet for larger volumes of water and prevent an emergency situation from developing due to a large amount of water placing pressure on the dam, which may cause the dam to fail. Best management practices to prevent downstream adverse water quality effects of SWM ponds are best addressed through the 401 water quality certification.

A few commenters requested that the Corps expand the NWP to authorize the construction of flood control facilities. One commenter requested that the NWP authorize the construction of drainage conveyances such as culverts, canals, and ditches, as well as dam and/or weir construction. One commenter stated that the Corps needs to distinguish between SWM facilities authorized by this NWP and the flood control facilities authorized by NWP 31.

SWM facilities are constructed to control stormwater quantity and quality. SWM facilities provide some flood control for certain storm events. NWP 43 can authorize the construction of certain SWM facilities that also control flooding during small storm events, but larger flood control facilities constructed in waters of the United States must be authorized by other NWPs, regional general permits, or individual permits. Drainage facilities are not authorized by this NWP, unless they are part of an SWM facility. NWP 31 authorizes the maintenance of flood control facilities, not the construction of new flood control facilities.

This NWP is subject to proposed General Conditions 25, 26, and 27, which will substantially reduce its applicability. General Condition 25 prohibits the use of this NWP to authorize discharges into designated critical resource waters and wetlands adjacent to those waters. General Condition 26 prohibits the use of this NWP to authorize discharges resulting in the loss of greater than 1 acre of impaired waters, including adjacent wetlands. NWP 43 activities resulting in the loss of 1 acre or less of impaired waters, including adjacent wetlands, are prohibited unless prospective permittee demonstrates to the District Engineer that the activity will not result in further impairment of the waterbody. Notification to the District Engineer is required for all discharges into impaired waters and their adjacent wetlands. General Condition 27 prohibits the use of NWP 43 to authorize permanent, above-grade fills in waters of the United States within the 100-year floodplain.

In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. This NWP, proposed as NWP C in the July 1, 1998, **Federal Register** notice, is designated as NWP 43, with the proposed modifications discussed above.

44. Mining Activities

During the 1996 NWP reissuance process, we proposed an NWP for Mining Operations. Based upon comments and information gathered during this process, we decided to encourage the development of regional general permits, rather than develop specific limits to meet the minimal

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adverse effects requirement of Section 404(e). As a part of the initiative to replace NWP 26, the aggregate and hard rock/mineral mining industries provided information and proposed draft NWPs that they believed would satisfy the minimal adverse effect criterion. We evaluated that information and in the July 1, 1998, **Federal Register** notice, proposed NWP E for aggregate and hard rock/mineral mining activities. As a result of the comments we received in response to the July 1, 1998, **Federal Register** notice, this NWP has been substantially modified. Many commenters stated that the proposed NWP E was too complex, difficult to understand, and too confusing. A number of commenters expressed uncertainty about the applicable waters for the NWP, the limits of work, and which activities could be conducted under the NWP.

General Comments: Many commenters expressed opposition to the proposed NWP. Numerous commenters objected to the proposed NWP because they believe that it authorizes activities with more than minimal adverse effects on the aquatic environment, especially water quality, aquatic habitat, fish and shellfish populations, and hydrology, as well as adjacent landowners. A large number of commenters stated that aggregate and hard rock/mineral mining activities should be subject to the individual permit process and public interest review. Other commenters said that the NWP should not be issued because it authorizes activities that are not similar in nature. Two commenters recommended that regional general permits should be developed in each state instead of an NWP. Several commenters objected to the proposed NWP because they believe it is too complex. A commenter objected to the proposed NWP because the commenter believes that the preamble fails to explain why a mining NWP is needed. A number of commenters recommended that the Corps issue a separate NWP for aggregate mining activities. One commenter suggested that the Corps issue a separate NWP for crushed stone operations.

We believe that certain aggregate and hard rock/mineral mining activities can be authorized by NWP if that NWP is properly conditioned to protect the aquatic environment. The scope of this NWP has been reduced from the proposed NWP E published in the July 1, 1998, **Federal Register**. We have also substantially restructured the proposed NWP to make it easier to understand. The activities authorized by this NWP are similar in nature, and focus on the mining activity and support activities. This NWP may be suspended or revoked in certain areas, particularly those areas inhabited by economically important fish, such as salmonids. Division engineers can regionally condition this NWP to protect locally important aquatic resources. It is unnecessary and impractical to withdraw this NWP and direct our districts to develop regional general permits. A large number of regional general permits for mining activities would create confusion for the regulated public, especially for those companies that have mining operations across the country. This NWP is necessary because aggregate mining and hard rock/mineral mining have been authorized by NWP 26 in the past. We do not believe it is necessary to develop separate NWPs for aggregate mining and crushed stone mining activities.

Scope of waters: In the July 1, 1998, **Federal Register** notice, we structured the proposed NWP E based on the types of waters impacted by either aggregate or hard rock/mineral mining activities. There were several categories of waters in the proposed NWP. Those categories of waters included: lower perennial riverine systems, intermittent and ephemeral streams, intermittent and small perennial stream relocations, isolated wetlands, wetlands above the ordinary high water mark in non-Section 10 waters, and dry washes and arroyos. Many commenters supported the expanded scope of waters, compared to the applicable waters for NWP 26. Two commenters objected to this NWP because it was applicable to all non-tidal waters, instead of only headwaters and isolated waters. One commenter stated that the July 1, 1998, **Federal Register** notice did not clearly explain why sand and gravel mining, crushed and broken stone mining, and hard rock/mineral mining were authorized in different types of waters. One commenter recommended that this NWP authorize mining activities only in large river systems to protect small streams and creeks. One commenter suggested that all of the types of applicable waters for NWP E should be based on a standard classification system, such as the Cowardin classification system, so that there will be more consistent implementation of the NWP. One commenter stated that this NWP should not authorize work in streams, especially those streams that support fish spawning areas.

As a result of our review of the comments received in response to the July 1, 1998, **Federal Register** notice, we have reduced the applicable waters for the proposed NWP by excluding certain waters from this NWP. The reduced scope of waters will help ensure that the authorized activities will result in minimal adverse effects on the aquatic environment and simplify the NWP to make it easier to understand. We have limited the types of waters where mining activities can occur under this NWP to: lower perennial streams (*i.e.*, lower perennial riverine subsystems as defined by the Cowardin classification system for wetlands and deep water habitats), isolated waters, streams where the average annual flow is 1 cubic foot per second or less, and non-tidal wetlands adjacent to headwater streams. Aggregate mining is not authorized in waters of the United States within 100 feet of the ordinary high water mark of streams where the average annual flow is greater than 1 cubic foot per second. This NWP does not authorize hard rock/mineral mining activities in streams, or in waters of the United States within 100 feet of the ordinary high water mark of headwater streams. Aggregate and hard rock/mineral mining are not authorized in non-tidal wetlands adjacent to streams where the average annual flow is greater than 5 cubic feet per second.

There are different applicable waters for different types of mining activities because not all types of materials are found in the same waters. For example, the substrate of lower perennial riverine subsystems, by definition, contains mostly mud and sand. To obtain larger aggregates, the mining operation must go upstream to upper perennial streams, as well as intermittent and ephemeral streams. We do not believe that it is practical or necessary to restrict the proposed NWP only to large riverine systems. We have reduced the applicability of this NWP in smaller streams to ensure that the adverse effects of these mining activities will be minimal. Notification is required for all activities authorized by this NWP. If a district engineer reviews a PCN and determines that the proposed work will result in more than minimal adverse effects on the aquatic environment, then discretionary authority will be exercised and an individual permit will be required. We are not aware of a classification system that will allow district engineers to better control adverse effects on the aquatic environment and make the NWP easier to implement. For example, the Cowardin classification system is based on a scale that is too large for the purposes of this NWP. The scale of the upper perennial riverine subsystem is too broad to provide district engineers with the type of control that is necessary for this NWP. We believe that our approach is better because the smaller scale allows us to better control impacts to the aquatic environment.

We have reduced the applicability of the proposed NWP in streams, to better protect those streams that support fish spawning areas. The proposed NWP E authorized discharges into intermittent and ephemeral streams, and authorized the relocation or diversion of intermittent and small perennial streams. In the proposed NWP 44, aggregate mining activities can occur in lower perennial streams or streams where the average annual flow is 1 cubic foot per second or less. Intermittent streams with average annual flows of greater than 1 cubic foot per second cannot be mined for aggregates under this NWP. Hard rock/mineral mining is not authorized in streams.

One commenter stated that the NWP should authorize hard rock mining activities in other waters of the United States, in addition to dry washes and arroyos. Three commenters requested that definitions of the terms "dry washes" and "arroyos" should be included in the NWPs. One commenter said that ephemeral streams, dry washes, and arroyos should not be included in the NWP because of the recent *United States* v. *James J. Wilson*, 133 F. 3d 251 (4th Cir. 1997) decision.

We do not agree that hard rock/mineral mining activities should be authorized in streams because the potential for more than minimal adverse effects on the aquatic environment is too great. To further protect streams from the adverse effects of hard rock/mineral mining activities, we are proposing to add a condition to this NWP requiring that beneficiation and mineral processing cannot occur within 200 feet of the ordinary high water mark of any open waterbody. Since we have removed the terms "dry washes" and "arroyos" from the NWP, we do not need to include definitions of these terms. It is important to note that the *United States* v. *James J. Wilson* decision applies only to the states in the 4th Circuit (*i.e.*, Maryland, West Virginia, Virginia, North Carolina, and South Carolina). Other areas of the country are not subject to this decision.

Authorized Activities: One commenter stated that several paragraphs of NWP E appear to duplicate each other and should be combined to simplify the NWP. Another commenter said that the types of mining authorized by this NWP generally result in similar impacts and do not need to be distinguished between each other in the NWP. A large number of commenters stated that the term "filling" should be used where appropriate when describing the authorized activities and the acreage limits for those activities. One commenter recommended that the NWP clearly define what types of activities are considered to be mining activities, because many mining sites are managed for multiple land uses. This commenter stated that the NWP should not allow use of this NWP for the mining activity and another NWP for another activity on that parcel of land. One commenter recommended that the NWP include a condition addressing mechanized landclearing when that activity results in a deepening of waters of the United States instead of replacing those areas with dry land. One commenter stated that this NWP should be limited to authorizing access corridors for mining drag lines and prospecting activities, not the actual mining activity.

We have removed the duplication within the proposed NWP to make it simpler and easier to understand. In this NWP, we use the term "discharges of dredged or fill material" instead of "filling" because it is the standard terminology for the Section 404 program. "Filling" is not the only activity that can result in a discharge into waters of the United States. In certain circumstances, excavating, draining, or flooding waters of the United States can be considered as discharges regulated under Section 404 of the Clean Water Act. On a case-by-case basis, district engineers will determine what constitutes "mining" for the purposes of this NWP. If a tract of land is managed for multiple uses, district engineers must determine if each land use constitutes a separate single and complete project (*i.e.*, each activity has independent utility from the other activities on the parcel). If an activity on the land tract has independent utility and constitutes a separate single and complete project, another NWP can be used to authorize that activity, if it meets the terms and conditions of that NWP. Mechanized landclearing that changes the use of a water of the United States must be calculated in the acreage loss for the mining activity, but we do not believe that it is necessary to add a condition to this NWP to address this specific situation. Limiting this NWP to the construction of access corridors for mining draglines and prospecting activities rather than the mining activity is illogical, because Section 404 authorization is still likely to be required for the mining activity itself. If an individual permit is required for the mining activity, that permit would authorize the construction of the access corridor, if it is constructed in waters of the United States.

One commenter suggested that aggregate mining activities authorized by this NWP should include the mining of fill dirt, shell, and clay, including Fuller's earth and kaolin. Another commenter recommended that NWP E should be modified to authorize the mining of fill material for levee and embankment construction, reconstruction, and repair.

We do not agree that clay mining should be included in the NWP, because it is a mining activity that is best addressed at a district level through regional general permits. The excavation of fill dirt from waters of the United States, particularly wetlands, is likely to result in more than minimal adverse effects on the aquatic environment, because fill dirt for construction, including the construction and repair of levees, can be easily obtained from upland areas, and authorizing the extraction of soil from wetlands to construct levees and embankments by an NWP is unwarranted. If fill material cannot be obtained from upland areas, then the removal of soil from waters of the United States to provide fill material can be authorized by another NWP, such as NWP 18, a regional general permit, or an individual permit.

The mining of shell is also inappropriate for authorization by this NWP, because the potential impacts of this type of mining activity may be more than minimal, especially in estuarine waters where areas of fossil shell provide valuable habitat for fish. Proponents of shell mining can obtain authorization through the individual permit process or other available general permits.

Two commenters objected to the exclusion of hard rock/mineral mining from intermittent and ephemeral streams. Two commenters objected to prohibiting hard rock/mineral mining activities in lower perennial riverine systems. Another commenter requested clarification as to which types of hard rock/mineral mining activities are authorized by this NWP and the categories of waters in which those activities can take place. One commenter suggested that the NWP prohibit beneficiation and mineral processing in waters of the United States, to minimize potential spills and releases of toxic substances.

Hard rock/mineral mining activities have greater potential for more than minimal adverse effects on the aquatic environment than aggregate mining activities. There are considerable differences in the impacts associated with extracting and processing these

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materials. Hard rock/mineral mining activities require processing that may result in discharges of chemical compounds in the water column, which can substantially alter water quality. Hard rock/mineral mining activities often require a Section 402 National Pollution Discharge Elimination System permit for effluent discharges associated with ore processing techniques. Hard rock/mineral mining is authorized only in isolated waters and non-tidal wetlands adjacent to headwater streams (*i.e.*, streams where the average annual flow is less than 5 cubic feet per second). No hard rock/mineral mining is authorized in waters of the United States within 100 feet of ordinary high water mark of streams. The proposed NWP does not authorize hard rock/mineral mining, including place mining, in any streams, including lower perennial riverine systems. To protect streams and other open waters, we are proposing to condition this NWP to prohibit beneficiation and mineral processing within 200 feet of the ordinary high water mark of any open waterbody.

One commenter stated that the NWP should not authorize discharges of fill material into waters of the United States for support features such as haul roads, crushers or other ore processors, and berms. Two commenters requested clarification concerning which stormwater management facilities can be authorized as mining support activities and which stormwater management facilities can be authorized under the new NWP for stormwater management facilities.

Support facilities are essential components of a mining operation and should be authorized as part of the single and complete mining project. Support facilities authorized by this NWP include berms, access and haul roads, rail lines, dikes, road crossings, settling ponds and settling basins, ditches, stormwater and surface water management facilities, head cut prevention, sediment and erosion controls, and mechanized landclearing. District engineers will review preconstruction notifications for mining activities authorized by this NWP to determine if the mining activity, and any associated support activities in waters of the United States, will result in more than minimal adverse effects on the aquatic environment. Stormwater management facilities that are required for a mining activity can be authorized by this NWP as a support activity. District engineers will determine on a case-by-case basis which types of stormwater management facilities may be authorized by this NWP. Due to the proposed modification of General Condition 15, this NWP usually would not be combined with NWP 43 for stormwater management facilities, since the maximum acreage loss cannot exceed the acreage limit of the NWP with the highest specified acreage limit. Since NWP 44 has a limit of 1 acre for support activities, including stormwater management facilities, NWP 43 cannot be used with NWP 44 to authorize a stormwater management facility that results in the loss of greater than 1 acre of waters of the United States.

Several commenters objected to the provision in this NWP that requires measures to prevent adverse effects to groundwater resources, stating that protection of groundwater is the responsibility of the states. We agree with this comment, and have removed this provision from the proposed NWP.

A large number of commenters stated that stream relocation and diversion activities for aggregate mining activities should be authorized in ephemeral and intermittent streams and small perennial streams. One commenter requested that the Corps clarify whether the phrase "small perennial stream relocations" refers to the size of the stream to be relocated or the amount of stream to be relocated. One commenter stated that channel relocation should not include decreasing the length of the stream channel. Another commenter requested that the Corps explain why other mining activities cannot be conducted in intermittent and small perennial streams, other than relocation and diversion. One commenter suggested that the Corps specify whether or not the discharge of dredged or fill material into ephemeral or intermittent streams is authorized by the stream relocation/diversion provisions of the NWP. One commenter recommended prohibiting stream relocation and diversion activities, as well as the construction of berms, from this NWP.

Due to the potential for more than minimal adverse effects on the aquatic environment, especially fish habitat, we have removed stream relocation and diversion as a specific activity authorized by this NWP. For the proposed NWP, in-stream aggregate mining activities are limited to lower perennial streams (*i.e.*, lower perennial riverine subsystems described in the Cowardin classification system) and streams where the average annual flow is 1 cubic foot per second or less. This NWP does not authorize hard rock/mineral mining activities in streams, including stream diversion or relocation. In stream segments where the average annual flow is 1 cubic foot per second or less, the stream channel may be excavated by the aggregate mining activity.

Acreage Limits: In the July 1, 1998, **Federal Register** notice, we requested comments on the proposed acreage limit for this NWP. We proposed 2 acre and 3 acre limits for the NWP. Two commenters supported the 3 acre limit. Many commenters recommended the 2 acre limit. Several commenters stated that a 3 acre limit is too high. Two commenters suggested a limit of ¼ acre. Many commenters said that the 3 acre limit is too low. One commenter suggested an acreage limit of 5 acres, stating that mine operators are proficient at site reclamation and wetland construction. Several commenters recommended a 10 acre limit for this NWP. A large number of commenters advocated the use of a sliding scale to determine the acreage limit for this NWP. Many commenters recommended the use of a sliding scale similar to the one proposed for NWP B for master planned development activities.

To ensure that this NWP authorizes only those mining activities that result in minimal adverse effects on the aquatic environment, we are proposing a 2 acre limit for a single and complete mining project. We do not believe that it would be practical to utilize a sliding scale to determine the acreage limit for this NWP, because a primary purpose of a sliding scale is to encourage the prospective permittee to further avoid and minimize losses of waters of the United States. For aggregate and hard rock/mineral mining activities, on-site avoidance and minimization is more difficult to accomplish because the miners need to extract materials from specific areas (*i.e.*, where sufficient aggregates have accumulated or where the densest deposits of ore are located) and in quantities sufficient to make the mining activity economically feasible.

One commenter stated that different acreage limits for different types of waters is too confusing and suggested a single acreage limit for the NWP. One commenter recommended that impacts to lower perennial riverine systems, isolated wetlands, and dry washes and arroyos should be limited to 1 acre. Another commenter suggested an average 1 acre limit for each type of water listed in the NWP. One commenter asked why the acreage limits for losses of open waters and wetlands was 2 acres but the loss of intermittent and ephemeral stream bed was limited to 1 acre. Several commenters supported a higher acreage limit for activities in ephemeral streams. One commenter stated that the 1 acre limit for support activities is too low for the permit to be useful.

We are proposing a single acreage limit for this NWP (*i.e.*, 2 acres for a single and complete project, including a maximum of 1 acre for support activities). We have also simplified the applicable waters for the proposed NWP. The acreage limit applies to all of the activities authorized by this NWP, for a single and complete project. We believe that the 1 acre limit for support activities is adequate. If the project proponent requires additional impacts for support activities, the mining activity may be authorized by another NWP, a regional general permit, or an individual permit.

A commenter stated that the NWP should have similar acreage limits to the other new NWPs, because there is no justification for more restrictive limits. A number of commenters suggested imposing linear limits on stream impacts. One commenter recommended a 250 linear foot limit whereas another commenter recommended a 500 linear foot limit. A few commenters supported the lack of a linear limit for stream impacts.

We believe that an acreage limit is more appropriate for mining activities because the proposed NWP substantially limits the amount of in-stream mining that can be authorized by this NWP. For aggregate mining activities in streams where the average annual flow is 1 cubic foot per second or less, the adjacent land will usually be mined with the stream bed. This is another reason to use an acreage limit instead of a linear foot limit. In addition, the use of acres instead of linear feet to determine the limit for this NWP allows consistent application of the NWP limits across the different categories of applicable waters. Aggregate mining activities in lower perennial streams are adequately assessed on a acreage basis since lower perennial streams tend to have large channels.

One commenter stated that acreage limit calculations should be based solely on the direct effects of the dredging or filling activities, not indirect effects. One commenter said that a relocated stream channel which duplicates the functions and values of the original stream channel should not be considered a loss and should not be counted towards the acreage limit of the NWP.

The acreage loss of waters of the United States that results from filling, excavating, draining, or flooding is used to determine whether the proposed work exceeds the terms and limits of the NWP (see the definition of "loss of waters of the United States" in the "Definitions" section of the NWPs). This is the standard definition used in the NWP program. Although stream relocation and diversion activities no longer constitute a specific part of the proposed NWP, these activities may occur in aggregate mining operations in streams where the average annual flow is 1 cubic foot per second or less, because the adjacent land will usually be mined with the stream bed. The stream channel may be reestablished in a different location after the mining activity is completed. Stream relocation and diversion activities that fill and excavate the stream bed cause the loss of waters of the United States. It may take years before the relocated or diverted stream channel achieves similar aquatic functions to the original stream channel. Any stream relocation and diversion activities are included in the acreage loss measurement for this NWP.

Notification Thresholds: In the proposed NWP, preconstruction notification (PCN) was required for all authorized activities. One commenter concurred with this notification threshold. Several commenters recommended imposing notification thresholds similar to the other proposed NWPs. Two commenters suggested that PCNs should be required for activities impacting 150 linear feet or more of stream bed or ⅓ acre or greater of wetlands. One commenter proposed that PCNs should be required only for activities impacting 1 acre or more of waters of the United States. A number of commenters suggested that the PCN threshold for activities in dry washes and arroyos should be higher than for activities in other types of waters. One of these commenters recommended a 5 acre PCN threshold for activities in ephemeral streams, with agency coordination for the loss of 10 acres or greater of ephemeral stream bed. One commenter suggested agency notification for mining activities impacting greater than ⅓ acre. Another commenter suggested extending the agency coordination period to 30 days to allow those agencies to conduct a more thorough review of potential water quality impacts.

We are proposing to retain the original PCN threshold for this NWP, which requires preconstruction notification for all activities authorized by this NWP. District engineers will review proposed mining activities, including measures to minimize or avoid adverse effects to waters of the United States and reclamation plans. This PCN requirement is necessary to ensure that the NWP authorizes only those activities with minimal adverse effects on the aquatic environment, individually or cumulatively. Agency coordination will be conducted for mining activities resulting in the loss of greater than 1 acre of waters of the United States. Compliance with General Condition 9, including the proposed requirement for a water quality management plan, will help ensure that the authorized work will not result in more than minimal adverse effects on local water quality.

Notification Requirements: In the proposed NWP E, the notification was required to include a description of all waters of the United States impacted by the project, a discussion of measures taken to minimize or prevent adverse effects to waters of the United States, a description of measures taken to comply with the conditions of the NWP, and a reclamation plan.

One commenter supported the requirement that the applicant must submit a reclamation plan with the PCN. A couple of commenters recommended that the applicant should submit a statement from the agency approving the reclamation plan. One commenter requested that the Corps define the term "reclamation plan" and several commenters asked the Corps to specify what should be included in the plan. One commenter asked if the requirement for a reclamation plan refers to the complete plan for the entire mining site that may be required by law or a plan for restoring affected waters of the United States and providing compensatory mitigation for the losses authorized by the NWP. Several commenters stated that the requirement for a reclamation plan should be eliminated. A number of commenters said that the reclamation plan requirement is redundant with other Federal and state laws and should not be included in the NWP.

The requirement for submission of a reclamation plan with the PCN is not intended to supersede other Federal or State requirements. The District Engineer will not require reclamation *per se*, but will review the reclamation plan to determine if compensatory mitigation is required to offset losses of waters of the United States and ensure that the individual or cumulative adverse effects of the mining activity on the aquatic environment are minimal. The prospective permittee may submit a statement from the Federal or State agency that approves the reclamation plan, with a brief description of reclamation plan, especially the type and quantity of aquatic habitats such as wetlands and streams that will be restored, enhanced, created, and/or

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preserved for the mined land reclamation. If there are no Federal or State requirements for a reclamation plan for a particular mining activity, the applicant should state that fact in the PCN. The District Engineer may require compensatory mitigation for that project, to ensure that the adverse effects on the aquatic environment are minimal. If the reclamation plan required by Federal or State law adequately addresses compensation for losses of waters of the United States, then the District Engineer will not require additional compensatory mitigation, unless there are additional concerns for the aquatic environment.

A large number of commenters stated that the reclamation plan requirement needs to be changed because some mining activities, such as in-stream dredging, do not require reclamation. In addition, these commenters were unsure if this requirement applies to mining activities outside of the Corps jurisdiction. For land-based aggregate mining, reclamation may be required at the end of the mining activity, but the mining activity may occur for many years. These commenters expressed concern that when a prospective permittee applies for authorization under NWP E, reclamation for previously authorized mining activities may not be completed. One commenter said that the NWP should contain more specific reclamation requirements. This commenter believes that the mining company should be required to submit a reclamation plan for each phase of a large mining operation, as each phase proceeds. This commenter also recommended that the mining site should be restored within a year after operations cease, if possible. One commenter stated that the Corps ability to deny NWP authorization based on failure to complete reclamation for previously authorized activities exceeds the Corps authority because it is not reasonably related to water quality or the discharge of dredged or fill material. One commenter said that a mining activity that may be eligible for authorization by NWP may not have done any reclamation, but is still in compliance with its reclamation plan. This commenter said that it is unreasonable to require the submission of a separate reclamation plan because of the regulatory oversight by other agencies.

For those mining activities that do not require reclamation, the applicant should include a statement in the PCN that neither State nor Federal regulations require reclamation for the proposed mining activity. If there are portions of a mining activity outside of the Corps jurisdiction (*e.g.*, mining of upland areas), it is unnecessary for the prospective permittee to submit a reclamation plan for those activities. Long-term single and complete mining projects may be authorized by this NWP, provided terms and conditions of the NWP are met. The applicant can submit a conceptual reclamation plan with the PCN or a statement describing the reclamation plan and intended schedule, if the reclamation will not take place until after the long-term mining activity. The Corps can deny NWP authorization if the prospective permittee has not complied with the terms and conditions of previous Corps permits, such as requirements to restore affected waters of the United States.

Conditions of the NWP: One commenter stated that the measures to minimize stream impacts are too vague and inadequate to protect stream stability and integrity. A commenter objected to this NWP, stating that the authorized work results in significant changes in stream morphology and the NWP should require specific measures to prevent those significant changes. Another commenter recommended modifying the prohibition against excavating fish spawning areas or shellfish beds to require avoidance of activities causing degradation of these habitats through excavation, filling, sedimentation caused by upstream work, or other harmful activities. One commenter recommended adding the phrase "where practicable" in the requirement for necessary measures to prevent increases in stream gradient for mining activities in dry washes and arroyos. Another commenter stated that the conditions of this NWP are unenforceable, because field verification of spawning areas must be done by agency personnel with expertise in that area. One commenter stated that the use of NWP E would result in non-compliance with Section 402 of the Clean Water Act.

The conditions of the proposed NWP that require measures to minimize stream impacts will help ensure that the aggregate mining activities authorized by this NWP will result in minimal adverse effects on the aquatic environment. The size of streams in which this NWP can be used has been substantially reduced, which will also protect the stability and integrity of streams. For example, paragraph (e) of the proposed NWP requires the permittee to implement measures to prevent increases in stream gradient and water velocities to prevent adverse effects to channel morphology. This requirement allows the aggregate miner to remove only the upper surface of the stream bed to extract the sand, gravel, and crushed and broken stone. Aggregate mining is authorized only in lower perennial streams or those stream segments where the average annual flow is 1 cubic foot per second or less. In lower perennial streams, larger amounts of sand can be removed without substantially altering stream gradient and water velocities because these streams tend to occur on land with gentler slopes. Paragraph (e) requires the permittee to conduct the mining activity so that the authorized work does not have more than minimal adverse effects on channel morphology downstream of the site of the in-stream mining activity.

Paragraph (d) of the proposed NWP states that the authorized activity must not substantially alter the sediment characteristics of concentrated shellfish beds or fish spawning areas, either through discharges of dredged or fill material or sediment that was suspended in the water column by work upstream of the shellfish bed or fish spawning area. We are proposing to modify General Condition 20, Spawning Areas, to require that activities authorized by NWP cannot physically destroy important spawning areas by smothering those areas with suspended sediment generated upstream. In other words, an in-stream mining activity authorized by this NWP must be conducted so that it does not generate a cloud of suspended sediment that will move downstream and smother important spawning areas.

District engineers will rely on local knowledge, including any available documented locations of important spawning habitat and concentrated shellfish beds to ensure compliance with paragraph (d) and General Conditions 17 and 20. Federal and State natural resource agencies may have maps of these areas that district engineers can use during their review of PCNs for these activities. Division engineers can also regionally condition this NWP to restrict or prohibit its use in designated waterbodies that contain important fish spawning areas or shellfish beds. Authorization of mining activities by this NWP does not preclude the permittee from complying with the requirements of Section 402 of the Clean Water Act.

Use of this NWP with other NWPs: Many commenters supported the use of this NWP with other NWPs because of the acreage limits of NWP 44. One commenter recommended that the use of NWP E with other NWPs should be allowed without imposing an acreage limit.

NWP 44 can be used with other NWPs, such as NWP 33, provided the NWPs authorize a single and complete project and comply with the proposed modification of General Condition 15, Use of Multiple Nationwide Permits.

Mitigation Requirements: Some commenters said that the compensatory mitigation requirements for this NWP were unclear in the July 1, 1998, **Federal Register** notice. A number of commenters suggested the NWP should require restoration when the mining activity is complete. A couple of commenters said that on-site mitigation should be preferred since the mining industry has demonstrated its ability to perform successful mitigation. A few commenters stated that requiring compensatory mitigation for these activities replicates State law and exceeds the mitigation requirements for other activities. A couple of commenters stated that the NWP should include a requirement that the permittee avoid or minimize impacts. A commenter suggested that mitigation plans should include monitoring and evaluation standards to assist agencies in evaluating the effectiveness of the mitigation. Three commenters stated that lands which were not previously waters of the United States and which develop wetland characteristics as a result of mining reclamation should be eligible for compensatory mitigation credit.

The July 1, 1998, **Federal Register** notice contained a general statement that compensatory mitigation would normally be required for NWP activities that require notification to the District Engineer. For this NWP, compensatory mitigation may be provided through the reclamation of the mined site, if reclamation is required by other Federal or State laws. If reclamation is not required, the District Engineer can require compensatory mitigation to offset losses of waters of the United States resulting from the authorized work and ensure that the adverse effects on the aquatic environment are minimal. Compensatory mitigation can be provided through the establishment and maintenance of vegetated buffers adjacent to streams and other open waters, especially in the 100-foot wide zone where no aggregate or hard rock/mineral mining activities can occur (see paragraph (k) and the last paragraph of proposed NWP 44).

We are proposing to add a condition to this NWP requiring the permittee to avoid and minimize discharges into waters of the United States to the maximum extent practicable and to include a statement detailing compliance with this condition with the PCN (see paragraph (c)). Compensatory mitigation requirements, including monitoring and evaluation standards, are at the discretion of district engineers. Mine operators that create wetlands in uplands as part of a reclamation plan can use those created wetlands as compensatory mitigation for other activities that result in the loss of wetlands, if those created wetlands are self-sustaining and the land will not be reverted to uplands in the future. However, it is at the discretion of the District Engineer to determine, on a case-by-case basis, if those areas can be used as compensatory mitigation.

A couple of commenters said that mitigation requirements for activities in ephemeral streams should be less because these areas provide minimal aquatic resources. Another commenter stated that compensatory mitigation requirements should specify in-kind stream replacement. One commenter said that compensatory mitigation in excess of a 1:1 ratio is unfair. Another commenter stated that mitigation requirements should be the same as for proposed NWPs A and B. One commenter expressed concern that mining activities will result in substantial cumulative impacts, and recommended that the Corps encourage mining companies to create on-site mitigation banks to compensate for losses of waters of the United States before they occur as a result of the mining activity. A couple of commenters believe that mine reclamation results in waters with higher value than the impacted waters and that it is counterproductive to place restrictive conditions on this NWP. Two commenters suggested that the creation of vegetated littoral shelves should count towards satisfying mitigation requirements.

Specific compensatory mitigation requirements will be determined on a case-by-case basis by district engineers. We do not believe that it is practical to require mining companies to create on-site mitigation banks to compensate for losses of waters of the United States before the mining activity is conducted. Mined land reclamation, if required, can address compensation for losses of waters of the United States, if the District Engineer determines that the reclamation adequately offsets losses of waters of the United States.

Clarification of Jurisdiction: In the July 1, 1998, **Federal Register** notice, we requested comments on a position intended to clarify a long-standing jurisdictional debate as to what areas should be considered waters of the United States as a result of mining, processing, and reclamation activities. In the July 1, 1998, **Federal Register** notice, we proposed the following position:

"Water-filled depressions and pits, ponds, etc., created in any area not a "water of the United States," as a result of mining, processing, and reclamation activities, shall not be considered "waters of the United States" until one of the following occurs:

(1) All construction, mining, or excavation activities, processing activities and reclamation activities have ceased and the affected site has been fully reclaimed pursuant to an approved plan of reclamation; or

(2) All construction, mining, or excavation activities, processing activities and reclamation activities have ceased for a period of fifteen (15) consecutive years or the property is no longer zoned for mineral extraction, the same or successive operators are not actively mining on contiguous properties, or reclamation bonding, if required, is no longer in place; and the resulting body of water and adjacent wetlands meet the definition of "waters of the United States" (33 CFR 328.3 (a))."

We received many comments concerning the proposed position. Many commenters supported the proposed position, including the 15-year term. One commenter recommended incorporating that text into NWP E. Another commenter supported the proposed position, but suggested that the text include a provision stating that water-filled depressions will not be considered waters of the United States as long as the area is actively mined, including reclamation activities.

We do not believe it is necessary to incorporate the text of this position into the text of NWP 44. The position clearly requires that the mining activity must have stopped, and the reclamation completed, before the area can be considered a water of the United States.

Several commenters opposed this clarification, because borrow pits can be idle for many years before they are used again for mining activities. One commenter objected to the proposed position, stating that it is a constitutional taking of property, especially since the Corps has taken the position that water-filled depressions on landfill caps are not waters of the United States. One commenter believes that the proposed position is too restrictive. Another commenter objected to the proposed position, stating that these water-filled depressions become valuable habitats and help compensate for mining damages. A commenter opposed this position because it contradicts the national goal of net wetland gains advocated in the Clean Water Action Plan. One commenter stated that the Corps should assert jurisdiction over areas subject to voluntary abandoned mine land

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reclamation only when they are accepted by the Corps as compensatory mitigation for unavoidable impacts and losses caused by mining activities.

The purpose of imposing a specific time period in the text of this position is to ensure that it is consistently applied throughout the country and provide certainty for the regulated public. This position is not contrary to the Clean Water Action Plan. It is intended to comply with the Administration's wetlands plan by providing fairness to the regulated public. By stating a specific time period, mining companies can anticipate when the water-filled depressions they have created can be considered waters of the United States, if the area meets the definition of "waters of the United States" at 33 CFR Part 328. The development of water-filled depressions on landfill caps and the creation of water-filled depressions as a result of mining activities are completely different situations, and have substantially different public interest and health implications. Water-filled depressions on landfill caps are not waters of the United States, as stated elsewhere in this **Federal Register** notice. The repair of the landfill cap is necessary to reduce air and groundwater pollution. In contrast, water-filled depressions created by mining activities can develop into waters of the United States, and provide valuable functions, such as waterfowl habitat. Activities that create aquatic habitats from upland areas are not limited to compensatory mitigation activities.

Two commenters said that the water-filled depressions should be considered waters of the United States 2 years after the mining operation ceases. A number of commenters recommended a 5 year period before those areas are considered waters of the United States. Two of these commenters said that a 5 year period is consistent with the current regulatory interpretations of "normal circumstances." One commenter expressed concern that the 15 year period is too long, and would set an inappropriate precedent for the rest of the regulatory program. One commenter suggested that there should be no time limit.

For the purpose of consistency in the regulatory program, we are proposing to change the time period from 15 years to 5 years. The 5-year time period was chosen because a 5-year period is used by the Natural Resources Conservation Service to determine if an area has been abandoned for the purposes of making a wetland determination. If prior converted cropland has not been maintained for a 5 year period and wetland characteristics have developed, then that site is no longer considered prior converted cropland. Therefore, for both agricultural and mining activities, if the area has not been used for any of those purposes for 5 years or longer, it can be considered abandoned, and if the area has developed characteristics of waters of the United States, including wetlands, during that period of abandonment, the area will be subject to Section 404.

One commenter was uncertain whether the proposed position is intended to be prospective, retroactive, or both. A commenter suggested modifying the definition of "waters of the United States" to include water-filled depressions created as a result of any extraction activities. A commenter stated that the zoning of the land, the mine operator, and reclamation bonding are irrelevant to the status of the mining pits as waters of the United States. One commenter requested that paragraph (1) contain the phrase "* * * reclamation bond release has been obtained, if such bond exists * * *" after the phrase "* * * site has been fully reclaimed * * *." This commenter also recommended adding a definition of the word "cease" to the text, because there may be different interpretations as to when the 15-year period started. This commenter also stated that not all property is zoned for mining and this requirement may cause confusion if zoning is necessary to determine if an area is a water of the United States. Another commenter stated that paragraph (2) is difficult to understand and should be rewritten to make it clearer. One commenter recommended that the 15-year time period should apply to mining sites requiring reclamation as well as those mining sites that do not require reclamation.

This proposed position will take effect on the effective date of this NWP. If a jurisdictional determination is conducted on an area that was previously mined, then this position will be used to help determine if the area can be considered a water of the United States or is part of an on-going mining operation and not a water of the United States. This position is applicable only to mining activities, not other types of extraction activities. The preamble to 33 CFR Part 328.3 in the November 13, 1986, **Federal Register** notice (51 FR 41206–41260) adequately addresses water-filled depressions created by other extraction activities. We do not believe it is necessary to add language addressing the release of the bond, because the important criterion is whether the site has been fully reclaimed. A definition of the term "cease" is not needed, because it is the same definition in common usage. The 5-year period will start when all construction, mining, extraction, processing, and reclamation activities have stopped. The zoning of the land is only one criterion that may be used to determine if a site will continue to be mined. The zoning classification is not necessary to determine if an area is a water of the United States. If a tract of land was previously zoned for mining, and that zoning classification was changed to residential, then the District Engineer would use that information to determine that the mining activity has ceased. This position applies to all mining sites, whether or not reclamation is required.

One commenter stated that voluntary abandoned mined land reclamation and remining can facilitate abandoned mined land reclamation and result in water quality improvements in the watershed. This commenter believes that if the Corps considers artificial waters constructed for voluntary abandoned mined land reclamation and remining to be waters of the United States, it would deter voluntary reclamation and/or remining because of permit burdens and mitigation costs. Two commenters suggested that the Corps assert jurisdiction over water-filled depressions only when they have been accepted as compensatory mitigation. One commenter recommended that NWP 21 contain this position statement.

We do not believe that the proposed position will discourage voluntary abandoned mined land reclamation, especially if such reclamation can be used as a mitigation bank. NWP 27 can be used to authorize wetland enhancement, restoration, and creation activities in waters of the United States in areas that may have been previously mined. We do not agree that only areas accepted as compensatory mitigation should be considered waters of the United States. District engineers can use this position to determine if an area is a water of the United States in conjunction with mining activities authorized by NWP 21.

Based on the comments discussed above, we are proposing to modify the position to make it easier to read, as follows:

"Water-filled depressions (*e.g.*, pits, ponds, etc.) created in any area not previously considered a "water of the United States," as a result of mining, processing, and reclamation activities, shall not be considered "water a of the United States" until one of the following situations occurs:

(1) All construction, mining, excavation, processing, and reclamation activities have ceased and the affected site has been fully reclaimed pursuant to an approved reclamation plan; or

(2) The resulting body of water and adjacent wetlands meet the definition of "waters of the United States" (see 33 CFR Part 328.3 (a)), and any one of the following criteria are met:

(a) all construction, mining, excavation, processing, and reclamation activities have ceased for a period of five (5) consecutive years; or

(b) the property is no longer zoned for mineral extraction; or

(c) the same or successive operators are not actively mining on contiguous properties; or

(d) reclamation bonding, if required, is no longer in place."

The only substantive change in the position is changing the time period from 15 years to 5 years, as discussed above.

Recommended Additional Conditions: Several commenters suggested additional conditions to incorporate into this NWP. Many of these suggestions are best addressed through the regional conditioning process, so we will only address those recommendations that have national applicability in this section.

One commenter suggested that the NWP should not be used in watersheds with substantial historic aquatic resource losses. Another commenter recommended that the NWP should contain a condition addressing the disposal of dredged or excavated material, wastes from washing minerals, and resuspension of stream bed materials that may be contaminated. One commenter suggested prohibiting the NWP in areas inhabited by State-listed endangered or threatened species, species of special concern, or wild trout. A commenter recommended that the NWP contain a provision requiring zero pollutant runoff or groundwater contamination from the site, as well as a bond to cover expenses incurred by surrounding communities if the mine is abandoned. One commenter recommended adding a condition to the NWP requiring that the current mine site must be successfully reclaimed prior to receiving another Section 404 permit for another mining activity in the same stream reach, and limiting the losses within that stream reach to 2 acres.

Division and district engineers can condition this NWP to prohibit or restrict its use in areas where the individual and cumulative adverse effects of Section 404 activities on the aquatic environment may be more than minimal. A Section 402 permit, if required, should address discharges of wastes from washing materials and runoff from processing areas. District engineers can exercise discretionary authority to restrict or prohibit the use of this NWP to conduct mining activities that will result in the suspension of contaminated sediments in the water column. This issue can also be addressed in the water quality management plan required for activities authorized by this NWP (see General Condition 9). District engineers will review PCNs for proposed mining activities to determine which mining activities constitute separate single and complete projects with independent utility.

Additional Issues: A number of commenters recommended removing all references to excavation from the NWP. Another commenter stated that the proposed NWP appears to violate the invalidation of the Tulloch rule. One commenter suggested that the final NWP clarify that proposed mining activities will be reviewed on a case-by-case basis to determine if there is a discharge regulated under Section 404 of the Clean Water Act.

Excavation activities can result in discharges of dredged or fill material into waters of the United States. Many of these activities were regulated under Section 404 of the Clean Water Act prior to the implementation of the Tulloch rule in 1993. Therefore, we have not removed references to excavation from this NWP. District engineers will review PCNs to determine if the proposed mining activity requires a Section 404 permit.

A number of commenters said that this NWP should contain a provision requiring the prospective permittee to demonstrate that the work complies with the National Historic Preservation Act. One of these commenters objected to the proposed NWP, stating that mining activities have resulted in the destruction of numerous archeological sites eligible for listing in the National Register of Historic Places.

General Condition 12 already addresses this issue. This general condition requires compliance with the requirements of the National Historic Preservation Act prior to commencing the authorized activity.

A number of commenters stated that the NWP 26 data collected by the Corps for mining activities is misleading because the data has been collected for only a short time, the 500 linear foot limit for filling or excavating stream beds in NWP 26 made many mining activities ineligible for NWP 26 authorization, and the Tulloch decision and enforcement policy has been inconsistently implemented.

Although data concerning mining activities authorized by NWP 26 has been collected for only a short period of time, we believe that this data can be used to provide estimates of the potential losses of waters of the United States that may be authorized by this NWP, since the scope of applicable waters is more restrictive than for NWP 26 (with the exception of aggregate mining activities in lower perennial streams). In our environmental assessment for this NWP, we will consider additional sources of information to estimate future impacts.

One commenter recommended that this NWP should include a definition of a single and complete project. Another commenter suggested that the term "mining" should be clarified, since mining in Florida refers to the excavated material leaving the mining site; under Florida's definition the extraction of material for on-site grading and filling would not be considered mining. One commenter recommended that the Corps develop a separate NWP for reclamation projects authorized under Title IV Abandoned Mine Land Program of the Surface Mining Control and Reclamation Act of 1977 or equivalent State laws.

The term "single and complete project" is already defined at 33 CFR Part 330.2(i). The District Engineer will determine if the proposed activity constitutes mining for the purposes of this NWP. This NWP authorizes reclamation activities in waters of the United States associated with the mining activity.

This NWP is subject to proposed General Conditions 25, 26, and 27, which will substantially reduce its applicability. General Condition 25 prohibits the use of this NWP to authorize discharges into designated critical resource waters and wetlands adjacent to those waters. General Condition 26 prohibits the use of this NWP to authorize discharges resulting in the loss of greater than 1 acre of impaired waters, including adjacent wetlands. NWP 44 activities resulting in the loss of 1 acre or less of impaired waters, including adjacent wetlands, are prohibited unless prospective permittee demonstrates to the District Engineer that the activity will not result in further impairment of the waterbody. Notification to the District Engineer is required for all discharges into impaired waters and their adjacent wetlands. General Condition 27 prohibits the use of NWP 44 to authorize permanent, above-grade fills in waters of the United States within the 100-year floodplain.

The proposed NWP will be used to authorize aggregate and hard rock/mineral mining activities in certain waters of the United States, including

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wetlands. In response to a PCN, district engineers can require special conditions on a case-by-case basis to ensure that the adverse effects on the aquatic environment are minimal or exercise discretionary authority to require an individual permit for the work. The issuance of this NWP, as with any NWP, provides for the use of discretionary authority when valuable or unique aquatic areas may be affected by these activities. Proposed NWP E is designated as NWP 44, with the modifications discussed above.

IV. Comments and Responses on Nationwide Permit Conditions

A. Consolidation of General Conditions and Section 404 Only Conditions

In an effort to ensure consistent application of the conditions for the NWPs, we proposed in the July 1, 1998, **Federal Register** notice to consolidate the "General Conditions" and "Section 404 Only" conditions into one set of general conditions for the NWPs. This consolidation is practical because most of the Section 404 Only conditions apply to activities in Section 10 waters. This consolidation does not increase the scope of analysis for determining if a particular project qualifies for authorization under the NWP program. As a result of the number of comments we received in favor of this consolidation, all of the NWP conditions will be combined into one "General Conditions" section in the NWPs. The opening language of former Section 404 Only conditions 1, 2, 3, 4, 5, 7, and 8 (now designated as General Conditions 16, 17, 18, 19, 20, 22, and 23, respectively) has been modified to read "activity (or activities), including structures and work in navigable waters of the United States and discharges of dredged or fill material," to reflect their application in Section 10 waters. Due to the changes in the NWP general conditions discussed below, the numbers of some general conditions differ from the numbering scheme in the July 1, 1998, **Federal Register** notice.

B. Comments on Specific General Conditions

In response to the July 1, 1998, **Federal Register** notice we received many comments on specific NWP general conditions. As a result of our review of those comments, we are proposing some changes to the NWP general conditions, as discussed below. Any changes made to the NWP general conditions will apply to all of the NWPs, including the existing NWPs issued in the December 13, 1996, **Federal Register** notice (61 FR 65874–65922), when the proposed new and modified NWPs become effective.

4. Aquatic Life Movements: One commenter requested that we eliminate the word "substantially" from Condition 4. Another commenter recommended replacing the phrase "substantially disrupt" with "more than minimally disrupt."

We recognize that most work in waters of the United States will result in some disruption of movement of those aquatic species that are indigenous to, or pass through, those waters. District engineers will determine if an NWP activity results in substantial disruption of the movement of aquatic organisms. The word "substantially" has been retained in this general condition. We are also proposing to add a sentence to this general condition to require that if culverts are placed in a stream as part of the authorized work, they must be installed so that low stream flows will continue to flow through the culverts.

9. Water Quality: In the July 1, 1998, **Federal Register** notice, we proposed to modify General Condition 9 by changing its title from "Water Quality Certification" to "Water Quality" and changing the text of the general condition to require a water quality management plan for activities authorized by existing NWPs 12, 14, 17, 18, 21, 32, and 40 and the new NWPs 39, 42, 43, and 44 (proposed as NWPs A, D, C, and E, respectively; NWP B was later withdrawn from the new and modified NWPs) if such a plan is not required by the State or Tribal 401 water quality certification. The purpose of the water quality management plan is to ensure that the project will have minimal adverse effects on the aquatic environment, especially by preventing or reducing adverse effects to downstream water quality and aquatic habitat. An important part of a water quality management plan can be the establishment and maintenance of vegetated buffers adjacent to waters of the United States.

The majority of the commenters asserted that the Corps had no statutory authority to impose Section 401 and Section 402 requirements for water quality and storm water management plans and stated that these requirements overlap or duplicate, and often conflict with, State water quality certification and National Pollutant Discharge Elimination System (NPDES) programs. One commenter stated that the Section 401 water quality certification must be issued prior to initiating the work under the NWP, which makes the Corps imposition of these additional requirements under this general condition redundant and unnecessary. Another commenter stated that these requirements would significantly add to the regulatory burden of permit applicants and increase the Corps workload. Several commenters stated that requiring a water quality management plan would increase the scope of the NWP program beyond the expertise of Corps regulatory personnel.

A goal of the Clean Water Act, which provides the Corps with its authority to regulate discharges of dredged or fill material into waters of the United States, is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. We believe that the requirement for a water quality management plan to prevent or reduce adverse effects to water quality as a result of work authorized under Section 404 of the Clean Water Act is within our statutory authority. However, the terms of the proposed modification of this general condition are not intended to replace existing State or Tribal Section 401 requirements, if those programs adequately address water quality concerns. Instead, the requirements of the general conditions provide the Corps the opportunity to protect or improve local open water quality. In states with strong water quality programs, district engineers will defer to State and local requirements and will not require water quality management plans as special conditions of NWP authorizations. If the 401 agency does not require adequate measures to protect downstream water quality, we have the authority to require measures, including the construction of stormwater management facilities or the establishment or maintenance of vegetated buffers adjacent to waters of the United States, that will minimize adverse effects to downstream water quality. If the adverse effects to local water quality resulting from the proposed work are minimal without the need for the implementation of a water quality management plan, then such a plan is not required. This general condition is not an absolute requirement because the criterion is minimal degradation, not no degradation. If a project proponent does not want to implement a water quality management plan, and the plan is necessary to ensure that the NWP authorizes only minimal adverse effects on the aquatic environment, then he or she can apply for an individual permit.

The language of the proposed modification of this general condition is intended to allow flexibility and minimize the amount of information necessary to determine compliance with its requirements. District engineers will use their discretion to qualitatively determine if a particular project complies with this general condition and will not require extensive analysis or review. Detailed studies will not be required. If a water quality management plan is unnecessary due to the nature of the work and the surrounding area, then the plan is not required. For example, the District Engineer may determine that a water quality management plan is not required for an activity in a watershed that is not substantially developed. If a water quality management plan is required by the District Engineer for a particular NWP authorization, it does not increase the Corps scope of analysis. For example, if the permit area includes an entire subdivision, the District Engineer will determine if a water quality management plan is necessary to address impacts to water quality resulting from the construction and use of the subdivision. However, if a Corps permit is required only for a small portion of the development, such as a single road crossing to provide access to an upland development, the water quality management plan will not apply to the entire project site. District engineers cannot require a water quality management plan for a poorly designed upland development. By limiting our analysis to the qualitative assessment of compliance with this general condition, the increase to the Corps workload will be minor and compliance will be easily assessed by Corps regulatory personnel.

Many commenters recognized the importance of vegetated buffers and agreed that they should be required. One commenter stated that the general condition should not require the establishment of vegetated buffers. Another commenter stated that this general condition would needlessly take private property without compensation. One commenter stated that this condition would cause unreasonable financial burdens on NWP applicants and that future landowners cannot be expected to know if areas adjacent to waters of the United States are upland mitigation areas required for the NWP authorization or the proper width of the buffers. One commenter asked if drainage districts would be allowed to clear the buffer areas and to place excavated material on these areas during future ditch maintenance activities.

We are proposing to modify the general condition to provide district engineers with the flexibility to determine whether or not the establishment or maintenance of a vegetated buffer adjacent to open waters is necessary. The requirement for a water quality management plan does not constitute a taking of private property. It is merely an NWP condition that will help ensure that the authorized activity causes only minimal adverse effects to water quality. This requirement still allows the landowner viable economic use of his or her property. If the District Engineer determines that a water quality management plan is necessary to ensure that the activities authorized by NWPs result only in minimal adverse effects on water quality, and the landowner or developer does not want to implement the water quality management plan, then he or she can request authorization through the individual permit process. NWPs are optional permits, and anyone who does not want to comply with the terms and limits of the NWPs can request authorization through either a regional general permit, if available for the proposed activity, or an individual permit. We disagree that the requirement for a water quality management plan will result in unnecessary financial burdens on the regulated public.

Project-specific requirements for vegetated buffers adjacent to waters of the United States should be incorporated into NWP authorizations as special conditions, based on site conditions. Vegetated buffer requirements may also be regional conditions of the NWPs. The vegetated buffer requirements will be included in the NWP authorization issued to the project proponent, either as special or regional conditions. The NWP authorization will include a description of the width and composition of the vegetated buffer and may contain a plan of the project site showing the location and extent of those buffers. These documents will ensure that the permittee knows the location and extent of those buffers. Since the establishment and maintenance of vegetated buffers adjacent to waters of the United States can be considered as a form of out-of-kind compensatory mitigation for authorized losses of waters of the United States, district engineers may require the protection of vegetated buffers by conservation easements, deed restrictions, or other forms of legal protection.

If a drainage district needs to periodically remove sediments from a waterway where vegetated buffers were established as a condition of an NWP authorization, and those vegetated buffers are protected by a conservation easement or other legal means, the drainage district must notify the District Engineer of its intent to remove the vegetated buffer to conduct the maintenance activity. The drainage district may be required to reestablish of the vegetated buffer upon completion of the maintenance work.

One commenter recommended modifying the general condition to require vegetated buffers adjacent to all waters of the United States, not just open waters, because of the scientific support for buffers adjacent to wetlands and open water as essential for maintaining aquatic functions. One commenter requested a definition of the term "vegetated buffer" and that the Corps specifically state the width required for the buffer zone. Two commenters suggested changing the term "vegetated buffer" to "permanently vegetated buffer." Some commenters recommended requiring vegetated buffers to be composed of native species. Another commenter recommended making this general condition applicable to NWPs 19, 25, 33, 34, and 36. One commenter stated that the concept of a wetland buffer is better suited for large open space projects than it would be for linear road projects and recommended eliminating buffer requirements from road projects within existing right-of-ways. A commenter requested a definition of the term "to the maximum extent practicable" for the vegetated buffer requirement. This commenter also stated that the vegetated buffer requirement is inconsistent with channel relocation authorized by NWP 40 and the removal of undesirable species in NWP 27.

The purpose of the vegetated buffer requirement in this general condition is to prevent more than minimal degradation of the water quality of streams and other open waters. For that reason, we have not included a requirement for vegetated buffers adjacent to wetlands. This does not prevent district engineers from requiring the establishment and maintenance of vegetated buffers adjacent to wetlands as conditions of NWP authorizations. The width and species composition of the required vegetated buffer is at the discretion of the District Engineer. In a previous section of this **Federal Register** notice, we recommend minimum widths for vegetated buffers, as well as the plant sizes and species that should be used. These recommendations are merely guidance; it is the District Engineer's decision as to what constitutes an adequate vegetated buffer for the purposes of a specific NWP authorization. Vegetated buffers should be as wide as possible. The phrase "to the maximum extent practicable" provides district engineers with flexibility. The vegetated buffer requirement is not inconsistent with NWPs 40 and 27, because vegetated buffers can be established by planting

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appropriate species after drainage ditch or channel relocation activities and the removal of undesirable plant species, such as noxious weeds or invasive species. We have removed NWP 21 from the list of NWPs that may require a water quality management plan, because Title V of the Surface Mining Control and Reclamation Act already has a similar requirement.

11. Endangered Species: In the July 1, 1998, **Federal Register** notice, we did not propose any changes to this general condition. In response to this **Federal Register** notice, one commenter requested that the Corps define the phrase "in the vicinity" and another commenter recommended deleting this phrase from the general condition.

The definition of this term is at the discretion of the District Engineer for a particular Federally-listed endangered or threatened species. The area defined as the "vicinity" varies from species to species. For example, the "vicinity" of an endangered bird species will be different from the "vicinity" of an endangered species of orchid. The Standard Local Operating Procedures for Endangered Species established between most Corps districts and the FWS and NMFS will provide more effective protection of endangered and threatened species and their critical habitat, and can provide local definitions of the term "vicinity." General Condition 11 contains provisions requiring notification for activities in designated critical habitat. We are proposing to modify General Condition 11 to clarify that the notification is required for any NWP activity proposed in designated critical habitat. We are proposing to add a provision to General Condition 13, Notification, to require the prospective permittee to provide the name(s) of the Federally-listed endangered or threatened species that may be adversely affected by the proposed work.

12. Historic Properties: In the July 1, 1998, **Federal Register** notice, the Corps did not propose any changes to this general condition. Several commenters believe that General Condition 12 adequately address the Corps responsibilities under Section 106 of the National Historic Preservation Act (NHPA). One commenter recommended that the Corps require that prospective permittees submit with the PCN either an inventory of historic properties prepared by a qualified individual, a letter from the State Historic Preservation Officer (SHPO) concerning potential impacts to historic properties, or some other evidence that demonstrates that the requirements of NHPA have been satisfied. One commenter requested that the notification contain a statement concerning potential effects to historic property. Another commenter stated that General Condition 12 should include a requirement that the permittee notify the District Engineer of the discovery of any artifacts or deposits that may constitute an eligible property while the authorized work is in progress and take steps to protect those potentially eligible properties until the requirements of NHPA are fulfilled. One commenter suggested that if the permittee avoids adverse effects to historic properties by incorporating those properties into "open space" or greenbelts on the project site, then those historic properties must be protected by deed restrictions, protective covenants, or other legal means as a condition of the NWP authorization. Another commenter expressed concern as to how Tribal coordination is conducted for potential effects to Tribal cultural or historic resources.

We believe that the current wording of General Condition 12 adequately addresses compliance of the NWP program with NHPA. In 33 CFR Part 325, Appendix C, the Corps has established the procedures necessary to ensure compliance with Section 106 of the NHPA. This general condition already requires that the prospective permittee notify the District Engineer if the proposed work may affect historic properties listed in, or may be eligible for listing in, the National Register of Historic Places. The District Engineer will review the notification and conduct any necessary coordination with the SHPO to ensure compliance with NHPA. The prospective permittee cannot commence work until the requirements of NHPA have been fulfilled. If the permittee discovers previously unknown historic properties during the course of conducting the authorized work, he or she must stop work and notify the District Engineer of the presence of previously unknown historic properties. Work cannot continue under the NWP until the requirements of NHPA have been fulfilled.

If the permittee avoids adverse effects to historic properties, we cannot require the permittee to preserve those properties in open space with a conservation easement or deed restriction. Tribal cultural resources are subject to the same requirements as other cultural and historic resources. The original wording of General Condition 12 will be retained as published in the December 13, 1996, **Federal Register** (61 FR 68574–65922).

We are proposing to add a provision to General Condition 13, Notification, to require the prospective permittee to state, in the PCN, which historic property may be affected by the proposed work or to include a vicinity map indicating the location of the historic property.

13. Notification: In the July 1, 1998, **Federal Register** notice, we proposed to require notification for all of the new and modified NWPs, with various notification thresholds, but in general most of these NWPs had a PCN threshold of ⅓ acre. We also proposed to conduct agency coordination for discharges authorized by proposed NWPs A, B, C, E, and 40 that result in the loss of greater than 1 acre of waters of the United States. Notifications for activities that result in the loss of 1 acre of waters of the United States or less would be subject to Corps-only review. In this section, we will address only those comments relating to the notification process; comments concerning PCN thresholds for specific NWPs are addressed in the preamble discussions for each NWP.

Several commenters stated that one PCN threshold should be applied to all of the NWPs. We disagree, because one of the purposes of the PCN process is to provide district engineers the opportunity to review specific NWP activities to ensure that they will result only in minimal adverse effects on the aquatic environment. There is a wide range of activities that are authorized by the existing NWPs and the proposed NWPs. Each of these activities may require different PCN thresholds because they can have different adverse effects on the aquatic environment. We have attempted to make the PCN thresholds for the proposed NWPs as consistent as possible. Most of the proposed NWPs require submission of a PCN for losses of greater than ¼ acre of waters of the United States, but PCN thresholds for steam impacts vary for these NWPs.

One commenter believes that notification should not be required for projects where the Corps accepts compensatory mitigation plans for less than 1 acre of wetland impact, for activities exempt under Section 404(f)(1) of the Clean Water Act, or for the removal of accumulated sediments at stream crossings. Another commenter recommended that notification should be required for all NWP activities where the State has not issued an unconditional WQC. One commenter suggested that all activities impacting stream beds or riparian zones should require a PCN with agency coordination.

We disagree with these recommendations. We require notification for NWP activities that may result in more than minimal adverse effects on the aquatic environment. Activities that are exempt under Section 404(f)(1) of the Clean Water Act do not require a Section 404 permit and are not subject to PCN requirements. For the proposed modification of NWP 3, we are proposing to require notification for all removal of accumulated sediments in the vicinity of existing structures (see the preamble discussion for NWP 3). If an unconditional WQC has not been issued for the NWP by the Section 401 agency, the State or Tribe will have the opportunity to review each activity and determine if it complies with State or Tribal water quality standards. Notification to the Corps is unnecessary unless the Division Engineer regionally conditions the NWP to require notification. The District Engineer will review the PCN to determine if the proposed work complies with the terms of the NWP and if any compensatory mitigation is necessary to ensure that the authorized work results in minimal adverse effects on the aquatic environment.

Several commenters addressed the 30-day PCN time period in paragraph (a)(3) of General Condition 13. Two commenters supported the 30-day PCN time period for the new NWPs. One commenter recommended deleting the 30-day time period because the project proponent should not have to wait 30 days to receive an NWP authorization. One commenter stated that the 30-day time period is unjustified and is contrary to the intent of the NWP program. One commenter said that PCN time period should be reduced from 30 days to 15 days. Three commenters stated that the 30-day PCN time period is too short to conduct an adequate review of the proposed work. One of these commenters recommended a 60-day time period and another commenter suggested a 45-day time period.

The PCN time period provides fairness to the regulated public by requiring the Corps to respond to PCNs in a timely manner. Due to the higher workloads that are expected to result from the proposed new and modified NWPs, we are proposing to change paragraph (a) of General Condition 13 by increasing the PCN review period to 45 days for a complete notification. The District Engineer will have 30 days from the PCN receipt date to request additional information that is necessary to make the PCN complete and begin the PCN review process. If the PCN is incomplete, the District Engineer can make only one request for additional information necessary to make the PCN complete. If the applicant does not supply the requested information, the District Engineer will not proceed with the PCN review and the applicant cannot assume that the project is authorized by the NWP 45 days later. If the applicant does not provide all of the requested information, the District Engineer may notify the applicant, either by letter or telephone, that the PCN is not complete and that the PCN review process will not begin until all of the requested information is furnished to the Corps. Upon receipt of a complete PCN, the District Engineer has 45 days to determine if the proposed work qualifies for authorization under the NWP or exercise discretionary authority to require a standard permit. If the District Engineer does not respond to the PCN within 45 days of receipt of a complete application, then the proposed activity is authorized by NWP unless the District Engineer modifies, suspends, or revokes the default NWP authorization in accordance with 33 CFR Part 330.5(d)(2).

Many commenters believe that the information requirements for PCNs are too extensive and confusing. They requested that the Corps provide a checklist to simplify the notification process. Three commenters requested that the requirement for submission of a delineation of special aquatic sites for certain NWPs be deleted from General Condition 13. One of these commenters specifically recommended excluding NWP 12 activities that are not subject to an acreage limit from the delineation requirement. Another commenter stated that wetland delineations are too costly to be required for PCNs.

The format of General Condition 13 clearly outlines the information required for the notification process. Corps districts can, if they choose to do so, provide a checklist with their permit applications to help prospective permittees ensure that they have provided all the required information. The proposed modifications to NWP 12 require the submission of a delineation of special aquatic sites. We are proposing to add NWP 7 to the list of NWPs that require submission of delineations of special aquatic sites with the PCN. NWP 7 was added because there may be some intake or outfall maintenance activities that could adversely affect submerged aquatic vegetation beds.

A few commenters believe that the prospective permittee should not be required to notify the National Ocean Service (NOS) for the construction or installation of utility lines in navigable waters and that this provision should be removed from General Condition 13. We concur with this comment and are proposing to modify NWP 12 to require the Corps to provide NOS with a copy of the PCN and NWP authorization, so that NOS can chart the utility line to protect navigation.

We received many comments concerning interagency coordination of PCNs. Some commenters stated that the Corps should not consider agency comments for NWP activities. Other commenters suggested that agencies should have the opportunity to comment on every PCN. One commenter recommended that agency coordination should be conducted for all activities authorized by NWPs. Several commenters pointed out discrepancies between different discussions of the agency coordination process in the July 1, 1998, **Federal Register** notice. In the preamble discussion for the proposed modifications of General Condition 13, we proposed to conduct agency coordination for NWPs authorizing discharges resulting in the loss of greater than 1 acre of waters of the United States. However, in the proposed revisions General Condition 13, we specifically stated that agency coordination would be conducted only for NWPs A, B, C, E, and 40, where the loss of waters of the United States is greater than 1 acre and for NWPs 12, 21, 29, 33, 37, and 38, regardless of the acreage loss. Many commenters stated that the agency coordination period should be greater than 5 calendar days and some of these commenters said that the Corps should provide responses to agency comments. One commenter recommended that Tribes implementing the Section 401 program should be included in the agency coordination process. Two commenters requested that the Corps put the optional agency coordination process back into General Condition 13, to allow the Regional Administrator of EPA or the Regional Directors of FWS or NMFS to request agency coordination for activities authorized by certain NWPs.

We are proposing to modify the agency coordination thresholds in paragraph (e) to require agency coordination for any NWP activity requiring notification to the District Engineer that results in the loss of greater than 1 acre of waters of the United States. Because of the proposed modification of NWP 40, we have removed the provision for coordination with the FWS for NWP 40 activities resulting in the loss of greater than ⅓ acre of playas, prairie potholes, and vernal pools. We have not put the optional agency notification process

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back into General Condition 13. We believe that agency coordination is unnecessary for NWP activities resulting in the loss of 1 acre or less of waters of the United States. Due to the increase complexity of the NWPs, we have modified the time periods for agency coordination. With the exception of NWP 37, these agencies will have 10 calendar days from receipt of the PCN to notify the District Engineer that they intend to provide substantive, site-specific comments within their area of expertise. If so notified, the District Engineer will wait an additional 15 calendar days before making a decision on the PCN. Therefore, these agencies have up to 25 days to provide comments on a PCN. Districts will involve any Tribes with Section 401 programs in the agency notification process, if the proposed activity occurs in an area subject to a Tribal Section 401 program.

One commenter recommended that the mitigation requirements in paragraph (g) should explicitly state that compensatory mitigation must fully offset permanent, temporary, and secondary losses of functions, values, and acreage of aquatic resources to satisfy the "no net loss" goal of the Section 404 program. One commenter asked which functional assessment method would be required for mitigation to determine compliance with paragraph (g) of General Condition 13. A commenter requested that the Corps provide compensatory mitigation guidelines for permit applicants to help them better understand and comply with compensatory mitigation requirements. One commenter suggested that the Corps provide guidance for appropriate mitigation ratios. Another commenter asked how the requirements of paragraph (g) of this general condition differ from the analysis required by the Section 404(b)(1) Guidelines. One commenter stated that vegetated buffers should not be considered as compensatory mitigation. This commenter also said that in lieu fee programs should not be used as compensatory mitigation.

For those NWP activities that require notification, district engineers will determine if the proposed compensatory mitigation adequately offsets losses of waters of the United States. To determine if the proposed compensatory mitigation is appropriate, district engineers will consider what is best for the local aquatic environment. The District Engineer is not required to utilize a formal assessment method. It would be inappropriate to issue national standards for compensatory mitigation, because of the regional differences in aquatic resource functions and values across the country. Nationwide permittees are not required to fully offset losses of aquatic resource functions, values, and acreage resulting from permanent, temporary, or secondary impacts. For the NWP program, compensatory mitigation is necessary only to ensure that the adverse effects of the authorized work on the aquatic environment are minimal, individually or cumulatively. The "no net loss" goal is not a statutory requirement of the Section 404 program. Other Federal wetlands programs, such as the Wetland Reserve Program, help increase the quantity of the Nation's wetlands and achieve the "no net loss" goal. Compensatory mitigation requirements are established by district engineers on a case-by-case or district-wide basis. Therefore, we will not establish national compensatory mitigation guidelines. Compensatory mitigation requirements are addressed in more detail elsewhere in this **Federal Register** notice. Vegetated buffers are an important type of out-of-kind compensatory mitigation that helps protect the quality of the local aquatic environment, especially water quality. District engineers will consider vegetated buffers as part of the compensatory mitigation required for activities authorized by Section 404 permits. In paragraph (g) of General Condition 13, we have specified that in lieu fee programs, mitigation banks, and other consolidated mitigation approaches are preferred methods of providing compensatory mitigation. In lieu fee programs are an important means of providing consolidated compensatory mitigation projects, especially in areas where mitigation banks are uncommon.

For the NWP program, permittees are only required to avoid and minimize impacts on-site to the maximum extent practicable. Off-site alternatives analyses cannot be required for activities authorized by NWPs because the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. If the adverse effects on the aquatic environment are more than minimal, then the District Engineer will exercise discretionary authority and require an individual permit for the proposed work. In accordance with 40 CFR Part 230.7, each NWP is subjected to a Section 404(b)(1) Guidelines analysis before it is issued, but that analysis is not conducted for each activity authorized by the NWP.

One commenter recommended modification of General Condition 13 to require, in addition to preconstruction notification, postconstruction notification for all NWPs. Another commenter requested modification of General Condition 13 to include requirements for the prospective permittee to apply for water quality certification (WQC), in those instances where WQC has been denied, once the notification process has been completed.

We do not agree that postconstruction notification should be required for all activities authorized by NWPs. We believe that General Condition 9, Water Quality, adequately addresses the WQC requirements for the NWPs.

14. Compliance Certification: We did not propose any changes to this general condition, but one commenter recommended that this general condition specify that the Corps will verify the certification by a site visit within 90 days of receipt of the certification from the permittee.

We disagree with this recommendation and will not incorporate it into this general condition. Corps districts will review compliance certifications at their discretion.

15. Use of Multiple Nationwide Permits: Although we did not propose any changes to this general condition, we received many general comments opposing the use of more than one NWP to authorize a single and complete project. We also received comments opposing the provisions of this general condition. One commenter recommended a prohibition against the use of more than one NWP to authorize a single and complete project that results in above-grade wetland fills. Another commenter stated that the use of multiple NWPs for a project should be unrestricted because of the low acreage limits of the NWPs and the unlikely probability that projects authorized by more than one NWP would result in significant adverse effects on the aquatic environment.

We are proposing to modify General Condition 15 to prohibit the use of more than one NWP to authorize a single and complete project, except when the acreage loss of waters of the United States is less than the highest specified acreage limit for the NWPs used to authorize the activity. For example, NWP 13 may be used with NWP 39 to authorize bank stabilization in unvegetated tidal waters at the project site for the construction of a 100-acre residential subdivision that will result in the filling of non-tidal wetlands. In this case, the acreage loss of waters of the United States cannot exceed the indexed acreage limit under NWP 39. Since the project area is 100 acres, the maximum acreage loss for this particular project is 2.25 acres, and includes the subdivision, attendant features, and bank stabilization.

We are also proposing to modify the title of this general condition to more accurately describe its purpose. The previous title, "Multiple Use of Nationwide Permits" implied that the general condition addresses the use of an NWP more than once for a single and complete project. By changing the title to "Use of Multiple Nationwide Permits," we believe that the title more accurately reflects its purpose, which is controlling the use of more than one NWP to authorize a single and complete project.

17. Shellfish Beds: We did not propose any changes to this general condition, except to change it from a "Section 404 Only" condition to a general condition and include activities in Section 10 waters, as discussed above. During our review of the comments received in response to the July 1, 1998, and October 14, 1998, **Federal Register** notices, we determined that this general condition requires clarification to ensure that the NWPs do not authorize activities that may result in more than minimal adverse effects on shellfish. In the text of the general condition we are proposing to change the word "production" to "populations" because the word "production" is too limiting and the condition should apply to all areas of concentrated shellfish populations, not just where shellfish are harvested commercially. This general condition was previously entitled "Shellfish Production." We are proposing to modify the title of this general condition to "Shellfish Beds" to reflect the proposed change in the general condition.

18. Suitable Materials: We did not propose any changes to this general condition, except to include activities in Section 10 waters of the United States, as discussed above. One commenter requested that the general condition prohibit the use of asphalt, tires, and construction and demolition debris. Another commenter supported the current wording of the general condition, provided it does not authorize the use of fill that contains deleterious materials, such as trash. One commenter recommended modifying this general condition to state that materials used in construction must not be cumulatively toxic, even though they may not be toxic in the amounts discharged for the project.

This NWP condition already contains examples of material that are considered unsuitable, such as trash, debris, car bodies, and asphalt. It is impractical to provide a comprehensive list of unsuitable materials. District engineers will determine on a case-by-case basis which materials are unsuitable. Division engineers can regionally condition the NWPs to prohibit the use of certain materials, if those materials are commonly used in a particular geographic region and are considered toxic. We do not believe that it is necessary to specify that discharged materials must not be cumulatively toxic, because the discharge of toxic pollutants is addressed under Section 307 of the Clean Water Act. We are proposing to retain this general condition as published in the July 1, 1998, **Federal Register** notice.

19. Mitigation: In the July 1, 1998, **Federal Register** notice, we proposed to modify this former Section 404 Only condition by deleting the words "* * * unless the District Engineer approves a compensation plan that the District Engineer determines is more beneficial to the environment than on-site minimization and avoidance measures." We also proposed to modify this general condition to require restoration, creation, enhancement, or preservation of aquatic resources to offset losses of functions and values of waters of the United States due to authorized impacts and to include the establishment of vegetated buffers as part of a compensatory mitigation plan.

A few commenters stated that mitigation is defined too narrowly in the general condition, and should include avoidance and minimization. Some commenters stated that compensatory mitigation should not be required for activities authorized by NWPs because the adverse effects of those activities on the aquatic environment can only be minimal. Other commenters stated that compensatory mitigation should be required for all NWP activities that require a PCN. Some commenters said that compensatory mitigation should be required for all impacts to the aquatic environment. A few commenters stated that compensatory mitigation should not be used to "buy down" losses of waters of the United States authorized by NWPs to ensure that the adverse effects on the aquatic environment are minimal.

The text of General Condition 19 includes all three steps of the mitigation process (*i.e.*, avoidance, minimization, and compensation). Permittees are required to avoid and minimize impacts to the aquatic environment on-site to the maximum extent practicable. The consideration of off-site alternatives cannot be required for activities authorized by NWPs. For NWP activities that require notification to the District Engineer, compensatory mitigation may be required to ensure that the net adverse effects on the aquatic environment are minimal, individually or cumulatively. However, if the adverse effects on the aquatic environment are minimal, without compensatory mitigation, the District Engineer may determine that compensatory mitigation is unnecessary and authorize the activity with the NWP. The use of compensatory mitigation to reduce the adverse effects of the authorized work to the minimal level is an essential component of the NWP program, and included in the NWP regulations at 33 CFR Part 330.1(e)(3).

One commenter stated that the NWP program has become a way to avoid an alternatives analysis, but another commenter views the NWPs as similar to the individual permit process because it requires an on-site alternatives analysis. One commenter said that the avoidance requirement of this general condition is meaningless because the resource agencies do not have enough time to review the applicant's avoidance analysis in the PCN. One commenter recommended removing the avoidance requirement from this general condition because there are currently no standards for determining if the requirement has been met.

General Condition 19 requires the consideration of on-site alternatives, including changes to the proposed work to avoid and minimize adverse effects to waters of the United States. District engineers will review the PCN to determine if additional avoidance and minimization is practicable and necessary. If the proposed work meets the terms and conditions of the NWP and results in minimal adverse effects on the aquatic environment (with or without any compensatory mitigation required by the District Engineer) it is not necessary to require additional avoidance and minimization.

Two commenters believe that the requirement for restoration, creation, enhancement, or preservation of aquatic resources to offset authorized impacts to ensure that the adverse effects of the work are minimal is a major change to the NWP program and does not accurately reflect the concept of using compensatory mitigation to ensure that the adverse effects on the aquatic environment caused by activities authorized by NWPs are minimal. Another commenter stated that this requirement is problematic because it requires compensatory mitigation for any activity that requires a PCN even if the adverse effects of the activity on the aquatic environment are minimal. This commenter recommended changing this part of the general condition to read

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"* * * of other aquatic resources only as necessary to offset authorized impacts to the extent that adverse environmental effects to the aquatic environment otherwise would be minimal." Two commenters objected to the inclusion of preservation as a form of compensatory mitigation.

We believe that this part of the general condition accurately reflects 33 CFR Part 330.1(e)(3), which is the section of the NWP regulations that allows the District Engineer to require compensatory mitigation to offset losses of waters of the United States authorized by NWPs, to ensure that the adverse effects on the aquatic environment are minimal. The phrase "at least to the extent that adverse environmental effects to the aquatic environment are minimal" provides district engineers with the flexibility to determine that compensatory mitigation is unnecessary if the authorized adverse effects on the aquatic environment are already minimal. If no compensatory mitigation is necessary to reduce the adverse effects on the aquatic environment to the minimal level, then the District Engineer does not need to require compensatory mitigation. Preservation of aquatic resources is an important type of compensatory mitigation, because it can be used to augment the restoration, creation, and enhancement of aquatic habitats. Preservation can also be used to protect rare or high-value aquatic resources.

Several commenters requested that the Corps not delete the language from the original version of Section 404 Only condition 4 published in the December 13, 1996, issue of the **Federal Register**. This language allowed the District Engineer to determine that off-site compensatory mitigation is more beneficial to the aquatic environment, because of the flexibility allowed by this wording. One commenter objected to the use of the term "aquatic environment" in the general condition and stated that the 1990 Memorandum of Agreement (MOA) between the Corps and EPA on mitigation only refers to wetlands. Two commenters recommended that the Corps emphasize that compensatory mitigation may be required for impacts to other aquatic resources, not just wetlands. Other commenters stated that the Corps needs to provide guidelines for replacement ratios, functional assessment methods, and monitoring requirements.

The proposed changes to this general condition do not prohibit the District Engineer from considering and approving off-site compensatory mitigation to offset the adverse effects of the authorized work on the aquatic environment. Off-site and out-of-kind compensatory mitigation can be used to offset losses of waters of the United States, if such compensation is beneficial to the aquatic environment. Mitigation banks, in lieu fee programs, and other consolidated mitigation approaches are also important sources of compensatory mitigation. The 1990 mitigation MOA applies only to the evaluation of standard Corps permits, not general permits such as the NWPs. With the proposed new and modified NWPs, we are placing more emphasis on other types of aquatic resources, such as streams. Vegetated buffers adjacent to open or flowing waters are an excellent form of compensatory mitigation to offset adverse effects on the aquatic environment caused by the activities authorized by the NWPs. Restoration of degraded streams can be used as compensatory mitigation for stream impacts. It is important to note that compensatory mitigation is not necessary for all activities authorized by NWPs. The District Engineer will determine, on a case-by-case basis, if compensatory mitigation is necessary to ensure that the adverse effects on the aquatic environment are minimal for activities authorized by NWPs. We disagree that the NWPs should contain guidance for replacement ratios, functional assessment methods, and monitoring requirements for compensatory mitigation. District engineers will decide the appropriateness of compensatory mitigation on a case-by-case basis, using any replacement ratios, functional assessment methods, or monitoring requirements they believe are appropriate.

Several commenters addressed the use of vegetated buffers as compensatory mitigation. Some commenters stated that the Corps lacks the legal authority to require vegetated buffers, particularly upland buffers, and recommended that the Corps delete the reference to vegetated buffers from the general condition. A commenter objected to use of vegetated buffers as compensatory mitigation for impacts to waters of the United States, particularly as a substitute for the restoration and creation of aquatic habitats. Another commenter recommended using upland vegetated buffers as compensatory mitigation only after the permittee has conducted a one-to-one replacement of aquatic habitats. One commenter recommended modifying the general condition to require planting the vegetated buffer with native vegetation. One commenter said that vegetated buffers should be required adjacent to all open waters. Two commenters recommended including specific width requirements for vegetated buffers in the general condition.

Our legal authority to require vegetated buffers adjacent to waters of the United States is discussed in a previous section of this **Federal Register** notice. Vegetated buffers adjacent to open waters or streams can provide more benefits to the local aquatic environment than wetland creation efforts. District engineers will determine how much the vegetated buffer will count towards any compensatory mitigation requirements. We are proposing to add text to this general condition stating that the vegetated buffer should consist of native species. However, if the vegetated buffer is already inhabited by trees and shrubs, it should be maintained, even if some of the plant species are not native to the region. If the vegetated buffer is inhabited by woody non-native species that do not provide habitat for locally important aquatic species, district engineers can condition the NWP authorization to require the removal of those non-native species and the planting of beneficial native species.

Since two general conditions address mitigation requirements for the NWPs, we are proposing to add a sentence General Condition 19, referring to the additional information concerning mitigation requirements in paragraph (g) of General Condition 13. We are also proposing to add a similar sentence to paragraph (g) of General Condition 13, referring to the mitigation requirements of General Condition 19.

20. Spawning Areas: One commenter suggested that we remove the word "important" from General Condition 20 to prohibit activities in any fish spawning area. Two other commenters objected to the addition of this word to the general condition because it does not define what an "important" spawning area is and would result in subjective determinations by Corps personnel. Another commenter recommended that the word "structures" be added to the examples of activities that can physically destroy a spawning area.

We added the word "important" to this general condition to limit the prohibition to spawning areas used by species that are harvested commercially for human consumption. Spawning areas used exclusively by other aquatic species are not subject to this general condition. We are proposing to retain the word "important" in this general condition. Division engineers can add regional conditions to the NWPs to prohibit the use of NWPs (or require notification for NWP activities) in known locations of important spawning habitat. We do not believe it is necessary to include the placement of structures in this general condition as an example of an activity that physically destroys a spawning area because the general condition already clearly states that authorized activities, including structures in navigable waters, cannot result in the physical destruction of important spawning areas.

21. Management of Water Flows: In the July 1, 1998, **Federal Register** notice, we proposed to modify this former Section 404 Only general condition and change the title of the condition from "Obstruction of High Flows" to "Management of High Flows." We proposed to modify this NWP to require permittees to design their projects to maintain, to the maximum extent practicable, preconstruction downstream flow conditions and reduce impacts such as flooding or draining, unless the primary purpose of the project is to impound water or reestablish drainage.

Several commenters fully supported the proposed modification to this general condition. Another commenter stated that the general condition should also include water quality control. A number of commenters requested clarification of the proposed general condition. One commenter stated that the condition should be modified to include functionally related components, such as outfalls and developed flows, with the project. Another commenter stated that the condition should be clarified to allow impoundment of water for beneficial use if that is the primary purpose of the project. Many commenters requested clarification of terms used in the preamble discussion relating to this general condition, including "as close as feasible" and "more than minimally flooded or dewatered." Other commenters asked if the Corps is relating the preconstruction flows to particular events, such as 50- or 100-year storm flows, or all flows. A commenter requested clarification as to whether the general condition requires on-site detention, if watershed detention is a better solution.

The NWPs are already conditioned to address water quality concerns resulting from activities authorized by NWPs. General Condition 9 requires that the permittee obtain a water quality certification and, for certain NWP activities, develop and implement a water quality management plan to prevent more than minimal degradation of downstream water quality. We do not agree that General Condition 21 requires modification to include outfalls and developed flows with the project because this condition applies to general flow patterns of waters of the United States in the vicinity of the project, not to any specific part of the project. The proposed modification of this condition already contains language allowing the impoundment of water, if that is the primary purpose of the authorized activity. The phrase "as close as feasible" as used in the preamble is synonymous with the phrase "to the maximum extent practicable," which is used throughout the text of the general condition. The phrase "more than minimally flooded or dewatered" used in the preamble relates to the requirement that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. District engineers will determine if any changes to surface water flows resulting from the authorized work exceeds the requirements of this general condition.

This general condition applies to the general flow patterns of surface waters over the course of a year, not to any specific storm event. For example, a project authorized by NWP may not cause more than minimal increases in downstream water flows that result in downcutting of the stream bed and substantial increases in stream bed and bank erosion. This general condition does not require any particular method to achieve compliance with the requirements of the general condition. We are proposing to modify the text of the general condition to require the permittee to maintain, to the maximum extent practicable, surface water flow conditions from the site that are similar to preconstruction flow conditions. The text in the July 1, 1998, **Federal Register** notice required the establishment of flow rates similar to preconstruction conditions.

Some commenters stated that the management of water flows is the responsibility of State or local agencies that regulate stormwater management. A number of commenters asked if the Corps or the permittee will be responsible for ensuring compliance with this condition, and what will be required in terms of design and documentation. A couple of commenters asked what type of hydraulic analysis will be required to verify compliance with this condition. Some commenters believe that the Corps should develop consistent standards, guidance, and training programs for the practicable measures that should be incorporated into project plans to comply with this general condition. One commenter requested that the Corps modify the language of the condition to state that project modifications that decrease water supply yield or substantially increase the cost of the water supply yield are not considered practicable for the purposes of the general condition. A commenter recommended modifying the condition to state that practicability determinations will include consideration of costs, benefits, and technical feasibility.

The purpose of the proposed modification of this general condition is to improve protection of the aquatic environment and private property by preventing substantial changes to local surface water flow patterns, as a result of activities authorized by NWPs. If State or local agencies have adequate requirements to manage water flows that accomplish the goals of this general condition, district engineers will normally defer this issue to those agencies. To determine compliance with General Condition 21, district engineers will use discretion, based on general knowledge of local water flow patterns, and will not require a detailed hydrologic analysis or engineering study. The language of this general condition provides district engineers with flexibility to determine if a particular project complies with the general condition. This general condition is not an absolute requirement for maintaining identical preconstruction and postconstruction water flow patterns. In addition, it does not require that the project be designed or constructed to have no effect on water flows. The general condition requires that postconstruction water flow patterns are not more than minimally different from preconstruction water flow patterns.

One commenter stated that the general condition should be modified to allow additional runoff where it can be demonstrated that the increased runoff can be collected by the receiving waterbody and the permittee has received permission from the local flood control agency to add this runoff to the waterbody. For the maintenance of ditches and channelized streams, another commenter recommended modifying this general condition to specify that the flow patterns in the restored ditch will be used to define the preconstruction flow pattern. This commenter said that the deteriorated ditch should not be used to establish the preconstruction flow pattern. A commenter requested modification of this general condition so that it would apply only to off-site areas, not the project site.

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If the primary purpose of the proposed work does not include impounding water, and the activity will increase flooding, then the proposed work does not comply with General Condition 21. The project proponent can apply for authorization through the individual permit process or request a regional general permit authorization, if applicable. The maintenance of ditches, including the maintenance of channelized streams used as drainage ditches, may be exempt under Section 404(f) and not require a Section 404 permit. General Condition 21 does not apply to activities exempt from Section 404 permit requirements. Modifying this general condition to allow increases in downstream flows on-site, but prohibiting increases in downstream flows off-site, is impractical. Unless the project site is extremely large, it is likely that any increases in downstream water flows on the project site will extend to off-site areas.

A number of commenters objected to the proposed modifications to this condition. Some commenters stated that the Corps failed to demonstrate the need for the proposed modification. A few commenters said that the Corps does not have the authority to require this condition under the Clean Water Act. Several commenters stated that the Corps does not possess the expertise to enforce this condition and should not regulate activities within floodplains. A commenter believes that the proposed changes to this general condition are contrary to the Corps goal of streamlining the regulatory process. A number of commenters stated that the proposed changes to this general condition would make most projects ineligible for NWP authorization.

Some activities in waters of the United States result in adverse effects on local surface water flow patterns, including increased flooding upstream and downstream of the project site. The purpose of the proposed modifications to General Condition 21 is to require permittees to design and construct their projects to maintain preconstruction downstream flow conditions, unless the primary purpose of the fill is to impound water. Large changes to surface water flow patterns can result in substantial adverse effects on the aquatic environment, by destroying aquatic habitat and impairing water quality. Higher rates of surface runoff caused by increases in the amount of impervious surface in a watershed can create substantial changes in stream morphology, affecting the quality of aquatic habitat and species inhabiting the stream. Water quality will be degraded by increasing the amount of suspended sediment in the water column. For example, the construction of a commercial development, including buildings and parking lots, near a stream can increase storm flows to local streams, which can result in downcutting of the stream bed and increases in bank erosion, destroying aquatic habitat. The proposed modification of this general condition is intended to address these types of changes to surface water flows.

The Clean Water Act provides the Corps with the authority to require this condition, because it is related to the activities regulated under Section 404 of the Clean Water Act. Corps personnel will qualitatively evaluate proposed NWP activities to determine if they comply with this condition. This condition does not expand the Corps regulatory authority to include activities in floodplains; it merely addresses adverse effects to surface water flows that may result from activities in waters of the United States. The proposed modification of General Condition 21 is not contrary to the Corps goal of streamlining the regulatory process, because it requires only a qualitative analysis, not a detailed hydraulic or engineering study, to determine compliance. The phrase "to the maximum extent practicable" is used throughout the general condition, and provides district engineers with the flexibility to determine if a particular project complies with this condition. Since this general condition is not an absolute requirement to maintain preconstruction flows, we do not agree that the requirements of this general condition will result in a substantial number of projects becoming ineligible for NWP authorization. We are proposing to modify the last sentence of this general condition to clarify its requirements.

23. Waterfowl Breeding Areas: Although we did not propose any changes to this general condition in the July 1, 1998, **Federal Register** notice, except to consolidate it with the other general conditions, one commenter recommended changing the title of this condition to "Migratory Bird Breeding Areas" and adding the phrase "other migratory birds" after the phrase "migratory waterfowl."

We do not agree with this recommendation, because the inclusion of other migratory birds is outside the scope of the Corps regulatory authority. A goal of the Corps regulatory program is to maintain the quality of the aquatic environment. Including other migratory birds in this general condition would result in an inappropriate increase in the Corps scope of analysis because many migratory bird species are not dependent on wetlands and other waters of the United States. We are not proposing any changes to this general condition.

Proposed General Condition 16, Subdivisions: In the July 1, 1998, **Federal Register** notice, we proposed a new general condition, General Condition 16, entitled "Subdivisions" to ensure that only single and complete projects are authorized by the proposed NWPs for residential, commercial, and institutional activities and master planned development activities (*i.e.*, proposed NWPs A and B). A few comments were received in response to this proposed general condition. A commenter remarked that the subdivision date is arbitrary and could allow the NWPs affected by the proposed general condition to authorize activities with more than minimal adverse effects on the aquatic environment. Another commenter stated that subdivisions created after October 5, 1984, should be allowed to use proposed NWP A only once. One commenter recommended that single and complete projects should be determined by the subdivision date, not any phasing schedule for the development. Another commenter stated that the acreage limits for subdivisions should be consistent with regional EPA requirements.

Since the proposed NWP for master planned developments was withdrawn in the October 14, 1998, **Federal Register** notice, we are withdrawing the proposed general condition and placing a modified version of the text in proposed NWP 39, since NWP 39 is the only NWP for which this subdivision provision is currently applicable. NWP 29 has its own subdivision provision. The October 4, 1984, subdivision date is not arbitrary, but this date was chosen to be consistent with the subdivision provision for NWP 26. The reasons for adding a subdivision provision to NWP 26 were addressed in the November 22, 1991, **Federal Register** notice for the reissuance of NWP 26 (see 56 FR 59114). The October 5, 1984, date was selected because it was the date the 1-acre and 10-acre limits were added to NWP 26. A subdivision date was incorporated into NWP 26 to address the issue of single and complete projects, recognizing that most subdivisions are actually individual projects with interrelated components. To provide fairness to the regulated public, we will utilize the same subdivision date for NWP 39.

25. Designated Critical Resource Waters: In response to the comments received in response to the October 14, 1998, **Federal Register** notice concerning the use of NWPs in designated critical resource waters, we are proposing a new NWP general condition that addresses this issue. The proposed general condition prohibits the use of NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity in the following critical resource waters, including wetlands adjacent to these waters. Activities authorized by NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38 can be conducted in these designated critical resources, including adjacent wetlands, provided the permittee notifies the District Engineer in accordance with General Condition 13 and the proposed work will result in minimal adverse effects on the aquatic environment. For the purposes of proposed General Condition 25, no additional notification is required for activities in designated critical resource waters and adjacent wetlands that are authorized by NWPs not listed in the text of this general condition, although notification may be required by other conditions.

For the purposes of the proposed general condition, designated critical resource waters include: NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally-listed threatened or endangered species, coral reefs, State natural heritage sites, or outstanding national resource waters officially designated by the state where those waters are located. Outstanding national resource waters and other waters having particular environmental or ecological significance must be officially designated through an official State process (*e.g.*, adopted through regulatory or statutory processes, approved through State legislation, or designated by the Governor). In those circumstances where a waterbody has been designated by the State, the District Engineer will publish a notice advising the public that such waters will be added to the list of designated critical resource waters. The District Engineer may designate additional critical resource waters after notice and opportunity for public comment.

Paragraph (a) of General Condition 25 refers to General Condition 7 for activities in National Wild and Scenic Rivers. General Condition 25 also states that the NWPs cannot authorize discharges in designated critical habitat for Federally-listed threatened or endangered species unless the activity complies with General Condition 11 and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service has concurred in a determination of compliance with that general condition.

The comments received in response to the October 14, 1998, **Federal Register** notice related to this new general condition are discussed in detail in a previous section of this **Federal Register** notice.

26. Impaired Waters: As a result of the comments received in response to the October 14, 1998, **Federal Register** notice concerning the use of NWPs in impaired waters, we have proposed a new NWP general condition that restricts the use of NWPs in waterbodies that have been designated as impaired through the Clean Water Act Section 303(d) process. This proposed general condition also applies to wetlands adjacent to those impaired waterbodies. For the purposes of this general condition, "impaired waters" are defined as those waters of the United States that have been identified by States or Tribes through the Clean Water Act Section 303(d) process as impaired due to nutrients, organic enrichment resulting in low dissolved oxygen concentration in the water column, sedimentation and siltation, habitat alteration, suspended solids, flow alteration, turbidity, or the loss of wetlands.

General Condition 26 is based on a presumption that discharges into an impaired waterbody, or wetlands adjacent to that impaired waterbody, will result in further impairment of the waterbody. NWPs cannot be used to authorize discharges of dredged or fill material that result in the loss of greater than 1 acre of impaired waters of the United States and wetlands adjacent to those impaired waters. For activities authorized by NWP 3, this prohibition does not apply, provided the prospective permittee notifies the District Engineer in accordance with General Condition 13 and demonstrates that the work will not result in further impairment of the waterbody. For discharges of dredged or fill material resulting in the loss of 1 acre or less of impaired waters of the United States, including adjacent wetlands, this presumption can be refuted by clear evidence that the proposed project will not further impair the waterbody. To refute this presumption and qualify for NWP authorization, the prospective permittee must submit a notification to the District Engineer in accordance with General Condition 13. The notification must contain a statement explaining how the proposed work will not result in further impairment of the waterbody. Any compensatory mitigation required to offset the losses of impaired waters of the United States, including adjacent wetlands, and ensure that the work results in minimal adverse effects on the aquatic environment should be should be designed to contribute to the reduction of sources of pollution contributing to the impairment. For example, the establishment and maintenance of a vegetated buffer adjacent to a stream impaired due to nutrients will reduce nutrient inputs to that stream (the functions and values of vegetated buffers are discussed in a previous section of this **Federal Register** notice). That vegetated buffer would be considered as compensatory mitigation for a loss of wetlands adjacent to that impaired stream.

If the proposed discharge will result in the loss of greater than ¼ acre of impaired waters and adjacent wetlands, then the District Engineer will coordinate with the State 401 agency in accordance with the procedures in paragraph (e) of General Condition 13. The District Engineer will consider any comments provided by the 401 agency to determine if the proposed work, excluding mitigation, will result in further impairment of the waterbody.

The comments received in response to the October 14, 1998, **Federal Register** notice are discussed in detail in an earlier section of this **Federal Register** notice.

27. Fills Within the 100-year Floodplain: In response to the comments received in response to the October 14, 1998, **Federal Register** notice concerning the use of NWPs to authorize permanent, above-grade fills in waters of the United States within 100-year floodplains, we have proposed NWP General Condition 27. The comments received in response to the 100-year floodplain restriction proposed in the October 14, 1998, **Federal Register** notice are discussed in detail in a previous section of this **Federal Register** notice.

General Condition 27 is based on a presumption that certain NWP activities resulting in permanent, above-grade fills in waters of the United States within 100-year floodplains will cause more than minimal adverse effects on surface hydrology and the functions and values of 100-year floodplains. General Condition 27 prohibits the use of NWPs 21, 29, 39, 40, 42, 43, and 44 to authorize permanent, above-grade fills in waters of the United States within 100-year floodplains. For NWPs 12 and 14, this presumption can be refuted if the prospective permittee clearly demonstrates to the District Engineer that the proposed work and associated mitigation, not decrease the flood-holding capacity of the waterbody and its 100-year floodplain and the proposed

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work will not result in more than minimal adverse effects on hydrology, flow regimes, or volumes of water associated with the 100-year floodplain. This demonstration must include proof that the Federal Emergency Management Agency (FEMA) or a state or local flood control authority through a licensed professional engineer, has approved the proposed project and provided a statement that the activity will not increase flooding or result in more than minimal adverse effects to floodplain hydrology or flow regimes. The other NWPs are not subject to the requirements of General Condition 27.

To implement General Condition 27, FEMA's Flood Insurance Rate Maps (FIRMs) will be used to identify 100-year floodplains, provided those maps reflect the current extent of 100-year floodplains. If there are no FIRMs published for the project area, or if the latest FIRM does not represent the current 100-year floodplain, information from the appropriate local floodplain authority will be used to determine the boundaries of the 100-year floodplain. Projects located in a 100-year floodplain at the point in the watershed that has a drainage area of less than 1 square mile are not subject to General Condition 27.

General Condition 27 prohibits the use of NWPs 21, 29, 39, 42, 43, and 44 to authorize permanent, above-grade fills in waters of the United States within 100-year floodplains. For activities authorized by these NWPs, the prospective permittee must notify the District Engineer in accordance with General Condition 13. The notification must include documentation that the proposed work will not be located in the 100-year floodplain or will not result in permanent, above-grade fills in waters of the United States within the 100-year floodplain. Activities authorized by NWPs 21, 29, 39, 42, 43, and 44 that occur within 100-year floodplains but do not result in permanent, above-grade fills in waters of the United States within the 100-year floodplain are not subject to General Condition 27. The term "permanent above-grade fill" is defined in the "Definitions" section of the NWPs. The District Engineer will make the final determination as to whether a project is actually located in the 100-year floodplain or whether the project results in permanent, above-grade fills in waters of the United States.

General Condition 27 does not prohibit the use of NWPs 12 and 14 to authorize discharges into waters of the United States resulting in permanent, above-grade wetland fills in waters of the United States within 100-year floodplains, provided the prospective permittee clearly demonstrates to the District Engineer that the activity will not decrease flood-holding capacity and will not result in more than minimal modifications of hydrology, flow regime, or volume of waters associated with the 100-year floodplain. The prospective permittee must notify the District Engineer in accordance with General Condition 13 if the proposed work will result in permanent, above-grade wetland fills in waters of the United States within the 100-year floodplains. The notification must include documentation that clearly demonstrates that the project will not increase flooding or result in more than minimal changes to floodplain hydrology or flow regimes. This documentation must include proof that FEMA, or a state or local flood control authority through a licensed professional engineer, has approved the proposed project and provided a statement that the project does not increase flooding or cause more than minimal alterations to floodplain hydrology or flow regimes. Activities authorized by NWPs 12 and 14 that occur within 100-year floodplains but do not result in permanent, above-grade fills in waters of the United States within the 100-year floodplain are not subject to General Condition 27.

V. Comments and Responses on Nationwide Permit Definitions

General

In the July 1, 1998, **Federal Register** notice, we proposed to add a definition section to the NWPs to promote consistency in the implementation of the NWPs. We requested comments on the definitions presented in the **Federal Register** notice. Approximately 45 commenters addressed the proposed definitions.

One commenter stated that the Corps has replaced a simple measurement of 5 cubic feet per second for headwaters determinations for the purposes of NWP 26 with confusing terms and conditions for the new and modified NWPs. This commenter believes that requiring permit applicants to distinguish between perennial, intermittent, and ephemeral streams, contiguous and noncontiguous wetlands, non-tidal wetlands and tidal wetlands, and Section 10 and non-Section 10 waters is too confusing and will undermine the NWP program. One commenter asked if it is the intent of the Corps to expand the applicability of the new NWPs to non-contiguous but adjacent waters.

We believe that the terms used with the proposed new and modified NWPs will promote consistency in the NWP program, make the NWP program easier to implement, and provide District personnel with the means to better assess impacts to the aquatic environment. These terms help Corps personnel to classify some types of aquatic resources and make determinations of minimal adverse effects. The three types of streams cited in the **Federal Register** notice are generally accepted stream types, based on the duration of water flow in the stream channel. We have modified the applicable waters for most of the proposed new NWPs to prohibit their use in non-tidal wetlands adjacent to tidal waters. Non-tidal and tidal wetlands have some different functions and values. For years, Corps personnel have had to distinguish between tidal and non-tidal wetlands and between Section 10 and non-Section 10 waters. Corps personnel have had to identify these types of waters to determine which type of authorization a particular project may require.

In the July 1, 1998, **Federal Register** notice, we proposed definitions for the three different types of streams. One commenter suggested that the Corps provide clarification or a definition to help determine when a stream has sufficient flow to be considered a "water of the United States." This commenter recommended that a stream should be considered a water of the United States only if it is shown as a perennial or intermittent stream on a United States Geological Survey (U.S.G.S.) quadrangle map. Two commenters stated that many perennial, intermittent, and ephemeral streams are perched above the water table and that the definitions of these stream types should be based on flow hydrographs measured over the course of a year, not the relationship between the stream bed and the water table. One commenter said that the different stream types cannot be differentiated in the field and asked whether perennial, intermittent, and ephemeral streams have identifiable beds and banks.

The Corps regulations state that non-tidal waters of the United States, including perennial, intermittent, and ephemeral streams, are waters of the United States up to the ordinary high water mark (see 33 CFR Part 328.4(c)). These three stream types typically have a bed and bank, but the presence of a bed and bank should not be used to identify streams; a gully created by erosion can also be considered to have a bed and bank. If a landscape feature with a bed and bank does not have an ordinary high water mark, it is not a water of the United States unless it contains jurisdictional wetlands. We do not agree that U.S.G.S. maps should be used to determine the limits of

intermittent and perennial streams. The upper reaches of streams are often inaccurately mapped on U.S.G.S. quadrangles. These maps typically do not accurately depict the location and extent of intermittent or ephemeral streams. They are useful for identifying perennial streams, but they should be used with caution. Distinguishing between these three stream types will often require field observations.

Stream beds can be located above or below the water table. Influent streams contribute water to the groundwater because their beds are usually located above the water table. Groundwater provides flowing water to effluent streams because the beds of effluent streams are located below the water table. The interaction between groundwater and stream flows also depends on local geologic features. Perennial streams are mostly effluent streams, flowing even during dry periods. Intermittent streams can be either effluent or influent, depending on the time of year and local precipitation patterns. During wetter months, when the water table is high or at normal elevations, intermittent streams are usually effluent. Intermittent streams are also effluent during short dry periods. During substantial dry periods, intermittent streams are usually influent. Ephemeral streams are always influent, because their beds are located above the water table year round.

Although the focus of the definitions of these stream types is the duration of flowing water over the course of a year, it is important to consider the source of the water flowing in the channel. We believe that it is appropriate to consider the source of water when classifying streams as ephemeral, intermittent, or perennial. However, as with any classification scheme for natural systems, there are exceptions. For example, in some mountain ranges there may be streams with flowing water almost year round due to snow melt. Some of these stream channels may receive no water from groundwater; the only source of water is melting snow. In these areas, stream channels with flowing water year round due to snow melt should be considered perennial. If flowing water is present in the channel for long periods of time due to snow melt, but water flow is not year round, those streams should be considered intermittent.

Artificial sources of water should not affect determinations of stream types. For example, pumping water into an ephemeral stream channel for a long period of time should not cause that stream to be classified as an intermittent stream. We recognize that the definitions proposed in the July 1, 1998, **Federal Register** notice do not completely address all possible factors that can influence the classification of stream types based on duration of flow, but by basing the definitions of perennial, intermittent, and ephemeral streams on the contribution of groundwater to flow patterns, Corps district personnel can consistently apply these definitions in a simple and effective manner in most parts of the country, without the need to do extensive hydrology studies. District engineers will use their discretion to distinguish between ephemeral, intermittent, and perennial streams. These determinations should be based on their general knowledge of flow patterns in the area. District engineers can consider any additional information the permit applicant provides, based on actual measurements or modeling.

It is also important to note that, with the exception of proposed NWP 43, classifying streams as perennial, intermittent, or ephemeral is used only to determine whether or not a PCN is required. For example, proposed NWP 42 requires a PCN for discharges causing the loss of greater than 500 linear feet of perennial or intermittent stream bed. NWP 43 does not authorize the construction of stormwater management facilities in perennial streams. District engineers can regionally condition the NWPs to require notification for certain stream types and exercise discretionary authority when a particular activity may result in more than minimal adverse effects on the aquatic environment.

A commenter stated that the boundary between tidal waters and non-tidal wetlands is not well-defined or readily discernible in some parts of the country and that it will be difficult to determine the precise landward limits of tidal influence and which NWP is applicable. Another commenter said that the proposed definitions of tidal and non-tidal wetlands appear to exclude freshwater wetlands.

The boundary between tidal wetlands and non-tidal wetlands can be estimated by identifying the species of plants inhabiting the area. Tidal wetlands often have a different plant species composition than non-tidal wetlands, which may be used as an indicator of the extent of tidal waters. In most cases, judgement will be required to estimate the location of the high tide line. Wrack lines can be used to locate the high tide line. However, it is not our intent to require permit applicants to conduct land surveys or utilize tide gages to determine the limit of tidal waters. The definitions of tidal and non-tidal wetlands do not exclude freshwater wetlands. Tidal wetlands can be inundated by saline (*i.e.*, marine or estuarine) water or freshwater. Non-tidal wetlands are mostly freshwater wetlands, but there are non-tidal saline marshes in some parts of the country.

Specific Definitions

The following paragraphs discuss the comments received in response to the July 1, 1998, **Federal Register** notice concerning the proposed definitions for the NWPs.

Aquatic Bench: Two commenters stated that the definition of this term should not be limited to stormwater management facilities. They said that these areas are found in natural waterbodies, such as ponds or lakes.

This term is defined for the purposes of NWP 43, Stormwater Management Facilities. It refers to a specific type of area within a stormwater management facility that is constructed for the purpose of providing a substrate in water depths shallow enough to support populations of emergent aquatic vegetation that may enhance the functions of the stormwater management facility. Although these types of areas can be found naturally in ponds and lakes, we would simply consider them to be wetlands. Aquatic benches constructed in stormwater management facilities may or may not be considered waters of the United States for the purposes of Section 404, depending on the circumstances in which they are found. If they are constructed wetlands intended to improve the quality of water retained in the stormwater management facility, they are not considered jurisdictional wetlands. We are proposing to retain this definition as originally proposed.

Best Management Practices: No comments were received concerning this term. We are proposing to retain this definition as originally proposed.

Channelized stream: We received several comments concerning the proposed definition of this term. One commenter said that not all stream channelization results in increases in flow rate or water capacity. Another commenter stated that a channelized stream has been manipulated to fix the channel location, not to increase conveyance, and that the definition should focus on the fixed nature of stream channels, not water flow rates. One commenter asked whether the proposed definition includes transportation activities that change the channel cross-section or other aspects of channel geometry of a stream. This commenter stated that construction of a road embankment may require filling some stream bed and moving the stream

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channel to protect the embankment. According to this commenter, this work does not increase conveyance of water, but changes the channel geometry. This commenter wanted assurance that these types of activities are exempt from Section 404 permit requirements. Another commenter recommended that the Corps add a statement to the definition to clarify that stream channelization requires a Section 404 and/or Section 10 permit from the Corps.

Changing the morphology of the stream channel to increase the rate of flow through the stream channel constitutes stream channelization. Relocating the stream channel is not necessarily "stream channelization" unless the relocation is intended to increase the rate of water flow through the stream channel. Streams can be relocated, with natural morphology such as meanders, with little or no changes in water flow rates. Stabilizing stream banks near a road crossing (either a bridge or culvert) is not considered stream channelization, unless the stream bed is armored and/or excavated for a substantial distance from the road crossing to increase the rate of water flow. Stream bank stabilization does not necessarily result in channelization, even though it may fix the position of the stream bed in the landscape. If only one bank is covered with rip rap to reduce or prevent bank erosion, then we do not consider that activity as stream channelization. However, lining the stream bed and banks with concrete to increase the rate of water flow through the stream channel is a method of stream channelization that does not necessarily change the location of the stream bed. For the purposes of NWP 14 and other NWPs that can be used to authorize road crossings, stabilizing stream banks near culverts or bridge abutments to prevent erosion near the road crossings, is not considered stream channelization. The construction of a road embankment by filling some of the stream and/or relocating the stream bed is not exempt from Section 404 permit requirements, because these activities are not included in Section 404(f) of the Clean Water Act and they involve discharges of dredged or fill material into waters of the United States. We do not believe it is necessary to include a sentence in the definition stating that a Section 404 or Section 10 permit is required for stream channelization activities.

One commenter requested clarification as to whether stream channelization, when done in conjunction with the construction of a road crossing, is part of the road crossing or requires separate authorization. Another commenter requested that the definition clarify whether the use of culverts to construct a road crossing results in a channelized stream. This commenter stated that some Corps districts consider culverts as channel modifications, while others do not.

Channel modifications in the immediate vicinity of a stream crossing that are conducted to allow the water to flow more efficiently through the crossing or prevent erosion of the soil near the crossing are not considered stream channelization and are part of the single and complete road crossing project. Channel modifications outside of the immediate vicinity of the crossing may constitute stream channelization, and may require a separate authorization at the discretion of the District Engineer. When stream channelization is performed with the construction of a road crossing, both activities should be considered as a single and complete project, which may be authorized by NWPs or another form of authorization, such as a regional general permit or an individual permit. The installation of a culvert in a stream bed does not channelize the stream, provided the length and width of the culvert is limited to the minimum necessary to construct the road crossing and the amount of rip rap placed to protect the culvert is the minimum necessary.

One commenter objected to the last sentence of the proposed definition, stating that this sentence is contrary to the Section 404(f) exemption for drainage ditches. We concur with this comment and have removed the last sentence from this definition.

In the proposed new and modified NWPs, we used different terms relating to stream channelization. For consistency, we will use the term "stream channelization" throughout the proposed new and modified NWPs. Stream channelization results from modifications to increase the rate of water flow through the stream channel. Placing rip rap along a stream bank to stabilize the bank and reduce erosion does not necessarily constitute stream channelization, but lining the stream bed and bank with concrete or rip rap to increase the rate of water flow through the stream channel is stream channelization.

We are proposing to replace the term "channelized stream" with "stream channelization" and modify the definition as discussed above.

Contiguous wetland: We received many comments concerning the proposed definition of this term. Some commenters stated that the definition is unclear. Another commenter stated that the geographic scope of new NWPs is confusing and that the definition appears to provide inconsistent guidance describing when a non-tidal wetland is contiguous to tidal waters. Two commenters requested that the Corps utilize the term "adjacent" instead of "contiguous" to limit the use of the new NWPs. One commenter expressed concern that the term "surface waters" would exclude wetlands that are inundated or saturated primarily by groundwater. This commenter recommended the inclusion of groundwater to establish the contiguous connection.

One commenter requested that the Corps clarify the phrase "normally contiguous to the nearest open water," as contained in the proposed definition. Another commenter questioned why a wetland can act as a surface water connection for a contiguous wetland but a channel cannot, even though a stream channel contains a surface water. One commenter recommended that this definition should state that culverts and tide gates constitute a surface water connection and that the definition is confusing and should be field tested in different areas of the country. This commenter also stated that it is difficult enough to distinguish between tidal and non-tidal areas of a channel without having to worry about small tributaries or sloughs draining into the larger waterbody. The commenter requested that the Corps clarify the definition to state whether the required surface water connection has to be present at low, normal, or high flows or associated with a certain size flood event. Another commenter asked if tide gates break up the contiguous connection. One commenter stated that the proposed definition appears to be a significant change for the purpose of circumventing the decision in the United States Court of Appeals for the Fourth Circuit decision in the *United States* v. *Wilson*, 133 F. 3d 251 (4th Cir. 1997). This commenter believes that the proposed definition will result in the regulation of all isolated waters and wetlands, regardless of the type of connection, and that the definition must be clarified to recognize the different connections between waters of the United States to determine if a particular wetland is isolated. The commenter also believes that the proposed definition eliminates the distinction between natural streams and man-made connections to waters of the United States.

To increase protection of the aquatic environment, we are proposing to prohibit the use of most of the new NWPs in non-tidal wetlands adjacent to tidal waters instead of prohibiting the use of those NWPs in non-tidal wetlands contiguous to tidal waters. Therefore, the definition of the term "contiguous wetland" has been removed from the "Definitions" section of the NWPs.

Drainage ditch: We received a variety of comments concerning the proposed definition of this term. One commenter supported the proposed definition. Another commenter agreed that drainage ditches constructed in uplands are not waters of the United States. A commenter stated that a drainage ditch is not a stream and that all activities associated with drainage ditches should be exempt from all permits. A number of commenters stated that channelized streams are not drainage ditches and that the Corps should retain that part of the proposed definition. A commenter requested that the Corps identify methods that will be used to distinguish between a drainage ditch constructed in wetlands and a channelized stream. Two commenters opposed the exclusion of channelized streams in the definition and stated that the proposed definition is contrary to the 404(f)(1) exemption, which considers streams that are channelized to improve drainage to be drainage ditches. Another commenter stated that some drainage ditches are constructed in intermittent and ephemeral streams.

We concur with the last two comments in the previous paragraph, and have removed the last two sentences from the proposed definition. Channelized streams that are maintained as drainage ditches are waters of the United States, but maintenance of these drainage ditches is exempt from Section 404 permit requirements as long as the maintenance activity does not exceed the original drainage ditch design and configuration.

One commenter stated that the portion of the proposed definition that includes the phrase "otherwise extends the ordinary high water line of existing waters" is not clear and that this part of the proposed definition could expand the Corps jurisdiction into waters that have always been thought of as man-made extensions which were not considered by some Corps districts as jurisdictional.

This part of the proposed definition is consistent with 33 CFR 328.5, which states that man-made changes may affect the limits of waters of the United States, but "permanent changes should not be presumed until the particular circumstances have been examined and verified by the district engineer." Therefore, activities that extend the ordinary high water mark may, at the discretion of the District Engineer, expand waters of the United States.

We are proposing to modify the definition of the term "drainage ditch" as discussed above.

Ephemeral stream: Two commenters stated that the proposed definition is too broad and subject to various interpretations. One of these commenters recommended that the Corps develop a more specific definition of the limits of jurisdiction, such as drainage area. One commenter suggested that the definition should be changed to exclude drainage ditches.

Using drainage area to differentiate between stream types is not practical because there are many factors, in addition to drainage area, that influence the duration of water flow in streams channels. It is not appropriate to change the definition to specifically exclude drainage ditches, because some drainage ditches may be channelized streams, which are waters of the United States.

A number of commenters disagreed that ephemeral streams are waters of the United States. One of these commenters requested that the Corps specify the circumstances under which ephemeral streams are, or are not, waters of the United States. One commenter requested that the Corps issue guidance to its districts to identify ephemeral streams and provide prospective permittees with maps of streams that require PCNs under the NWP program.

Ephemeral streams are waters of the United States as long as an ordinary high water mark is present and the waterbody meets the criteria in 33 CFR Part 328. If there is no ordinary high water mark, and there are no adjacent wetlands, the area is not a water of the United States. The limit of non-tidal waters of the United States is discussed at 33 CFR Part 328.4(c). It would be too resource intensive to provide maps of streams that require a PCN for the purposes of the NWPs. Instead, districts will determine on a case-by-case basis whether or not a particular stream is ephemeral, intermittent, or perennial. We are proposing to retain the definition.

Farm: For the purposes of the proposed modification of NWP 40, we proposed a definition of the term "farm" to help determine what constitutes a single and complete project. Two commenters stated that the proposed definition is too narrow and will add unnecessary complexity for farmers, because using Internal Revenue Service (IRS) tax criteria to identify farms is too complicated.

Because of the changes to the modification of NWP 40, we will use the term "farm tract" instead of "farm" to determine what constitutes a single and complete project for the purposes of NWP 40. Farm tract determinations are not based on IRS criteria. The Farm Service Agency of the U.S. Department of Agriculture identifies farm tracts. The rationale for basing the single and complete project on farm tracts for NWP 40 is discussed in more detail in the preamble for NWP 40. In the "Definitions" section of the NWPs, we are proposing to use the Farm Service Agency's definition of the term "farm tract," as found at 7 CFR Part 718.2, to replace the proposed definition for "farm."

Intermittent stream: We received similar comments to those received for the proposed definition of "ephemeral stream," which were discussed above. A number of commenters stated that it is difficult for permit applicants to distinguish between intermittent and ephemeral streams and requested further clarification. One of these commenters recommended that the Corps utilize the ordinary high water mark to distinguish between intermittent and ephemeral streams: if an ordinary high water mark (OHWM) is present, the stream is intermittent; if an OHWM is absent, the stream is ephemeral. Two commenters recommended that the definition distinguish between intermittent streams and man-made ditches. Another commenter stated that intermittent streams should be excluded from the NWPs because under the proposed definition, a swale in a pasture would qualify as a stream.

The proposed definition is adequate to differentiate between intermittent and ephemeral streams. Determinations as to whether a particular stream is perennial, intermittent, or ephemeral will be made by district engineers on a case-by-case basis. These determinations should be based on their general knowledge of flow patterns in the area. District engineers will consider any additional information the permit applicant provides based on actual measurements or modeling. Using the OHWM to distinguish between ephemeral and intermittent streams would be contrary to 33 CFR Part 328. The limit of jurisdiction for intermittent and ephemeral streams is the OHWM. If no OHWM is present, then that channel is not a water of the United States. We do not agree that it is necessary to distinguish between intermittent streams and man-made ditches. An intermittent stream may have been channelized to improve local drainage. Man-made ditches can be constructed in wetlands and other waters of the United

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States, such as perennial and intermittent streams, as well as uplands. Man-made ditches constructed in waters of the United States are still considered waters of the United States. If a swale possess an OHWM, it would be considered a water of the United States, if it meets the criteria in 33 CFR Part 328. If a swale lacks an OHWM, but possess wetland hydrology, hydric soils, and a hydrophytic plant community, it may be considered a jurisdictional wetland, unless the swale was constructed in uplands and has not been abandoned. A swale that lacks an OHWM or does not exhibit wetland characteristics is not a water of the United States.

Another commenter requested further clarification to address situations where there is extensive groundwater pumping for crop irrigation. Except in extremely wet years, this activity causes some streams to dry up entirely; without groundwater pumping for irrigation, many of these streams would have flowing water during most of the year or year round.

Adjacent land use changes can affect water flow patterns of streams. Removal of large amounts of groundwater can decrease the duration of water flow through the stream channel over the course of a year. District engineers should base their stream classification determinations on normal circumstances and whether or not the region is experiencing normal rainfall patterns. For example, if the stream has flowing water for only part of a typical year due to normal pumping of groundwater for irrigation or domestic uses, then that stream should be classified as "intermittent," even though it may have been a perennial stream prior to the introduction of the activities that changed the flow pattern. We are proposing to retain this definition.

Loss of waters of the United States: A number of commenters objected to the proposed definition because it includes excavation. These commenters cited the recent decisions by the United States District Court for the District of Columbia in *American Mining Congress* v. *United States Army Corps of Engineers* and the United States Court of Appeals for the District of Columbia Circuit in *National Mining Association et al.* v. *U.S. Army Corps of Engineers*. In these decisions, the District Court overturned the Corps and EPA's revisions to the definition of "discharge of dredged material," which were promulgated on August 25, 1993 (see 58 FR 45008) and the Court of Appeals affirmed the District Court's decision. These commenters said that the definition should not include excavation. Three commenters asserted that the definition should not include, in addition to excavation activities, flooding and draining activities. A number of commenters stated that the definition does not contain any discussion concerning what constitutes an adverse effect.

These recent court decisions do not affect the definition of the term "loss of waters of the United States." Because of these decisions, the Corps does not regulate excavation of waters of the United States under Section 404 of the Clean Water Act if the excavation activity results only in incidental fallback of excavated material. Excavation activities that result in more than incidental fallback of dredged material into waters of the United States require a Section 404 permit and may be authorized by NWP. District engineers will determine whether or not a particular excavation activity requires a Section 404 permit based on the degree of the discharge associated with the excavation activity. In summary, if the discharge resulting from the excavation activity is only incidental fallback, then no Section 404 permit is required. We believe that retaining excavation activities in this definition will reduce confusion for the regulated public because some excavation activities in waters of the United States are still regulated under Section 404 and to exclude excavation activities from this definition would be misleading.

Since the Corps and EPA's revisions to the definition of "discharge of dredged material" promulgated on August 25, 1993, were overturned, the criteria concerning what constitutes an adverse effect for the purposes of Section 404 of the Clean Water Act has become narrower in scope. Regulatory Guidance Letters 90–5 and 88–06 were issued prior to the August 25, 1993, rule and provide guidance relevant to this issue. An activity that converts a wetland to another use can be considered a loss of waters of the United States and regulated under Section 404 if that activity causes the loss of, or substantially modifies, waters of the United States by eliminating or greatly reducing the principal valuable functions of those waters. Losses of waters of the United States can occur either by direct impacts (*e.g.*, covering by fill) or by closely-related indirect impacts (*e.g.*, the changes in vegetation that occur after a swamp is flooded by constructing a dam, killing all of the trees in the flooded area). Any indirect adverse effects factored into the acreage measurement of "loss of waters of the United States" must eliminate or substantially impair the principal valuable functions that the waterbody provided prior to conducting the activity. Indirect adverse effects such as backwater flooding and dewatering are more strongly related to the discharge and should be included in the loss of waters of the United States if they result in substantial, long-term adverse effects on the aquatic environment. Excavation activities that result only in incidental fallback and waters affected by that excavation activity should not be calculated into the acreage loss unless the permittee cannot conduct the excavation activity without the associated discharge that is regulated under Section 404.

For the purposes of the proposed NWP notification thresholds, we have modified the sentence addressing the loss of stream bed by adding the phrase "perennial and intermittent" before the word stream, because the proposed NWPs require notification only for those activities that result in the discharge of dredged or fill material into waters of the United States due to filling or excavating perennial or intermittent stream beds.

One commenter requested that the definition of "loss of waters of the United States" include the effects of habitat fragmentation, which could adversely affects some functions and values of waters of the United States.

We disagree, because this effect is beyond the Corps scope of analysis for Section 404 activities. Many activities that result in habitat fragmentation do not result in a discharge of dredged or fill material into waters of the United States, and are not regulated under Section 404 of the Clean Water Act.

We have added sentences to this definition to differentiate between permanent and temporary losses of waters of the United States. Temporary losses of waters of the United States are not included in the measurement of loss of waters of the United States. We are proposing to modify the definition of the term "loss of waters of the United States" as discussed above.

Noncontiguous wetland: In response to the proposed definition, we received comments that were similar to the comments received for the proposed definition of "contiguous wetland," which were discussed above. Several commenters stated that the proposed definition is unclear. A commenter stated that noncontiguous wetlands are isolated wetlands. Another commenter recommended that the break between contiguous and non-contiguous waters should be based on topography or hydrologic influence, not the type of channel between the wetland and the waterbody. Another commenter stated

that the part of the definition referring to "a linear aquatic system with a defined channel to the otherwise contiguous wetland" needs to be clarified and that the term "linear aquatic system" needs to be defined. This commenter also recommended that the Corps include examples and explanatory statements to describe how contiguous and noncontiguous wetlands differ from each other. One commenter recommended that the definition should state that noncontiguous wetlands do not share a common groundwater connection with other waters of the United States.

To increase protection of the aquatic environment, we are proposing to prohibit the use of most of the new NWPs in non-tidal wetlands adjacent to tidal waters instead of prohibiting the use of these NWPs in non-tidal wetlands contiguous to tidal waters. Therefore, the definition of the term "noncontiguous wetland" has been removed from the "Definitions" section of the NWPs.

Non-tidal wetland: No comments were received on the proposed definition. We are proposing to retain this definition.

Perennial stream: One commenter requested that the Corps, in the definition of this term, distinguish between perennial streams and drainage ditches. Another commenter stated that the definition should be based on the duration of flow, not on the position of stream bed relative to the water table.

The definition of this term should not distinguish between perennial streams and drainage ditches because some streams have been channelized to improve local drainage. These streams, which are still waters of the United States, are considered drainage ditches for the purposes of Section 404(f). The maintenance of these channelized streams as drainage ditches is exempt from Section 404 permit requirements. As previously discussed in this section, we believe that it is appropriate to consider the source of water when classifying streams as ephemeral, intermittent, or perennial. The definitions for these stream types focus on how long flows in the channel over the course of a year, but the source of the flowing water is also important. It is important to distinguish between natural and artificial sources of water when classifying stream types for the purposes of the NWPs. We have modified the second sentence of the definition, to make it clearer that the water in the stream channel is due to the relative position of the water table (*i.e.*, groundwater flows into the stream channel, because the water table is above the stream bed). We are proposing to modify the definition of this term as discussed above.

Riffle and pool complexes: One commenter questioned whether or not riffle and pool complexes are limited to perennial streams. Another commenter stated that the definition should include a reference to 40 CFR Part 230.45. One commenter remarked that the word "of" should be removed from before the word "movement." Two commenters stated that riffle and pool complexes are not limited to perennial streams but may occur in intermittent and ephemeral streams. One commenter agreed that the definition should be limited to perennial streams and suggested that the definition should recognize that riffle and pool complexes are often important spawning habitats. A commenter requested that the definition provide a minimum threshold for the ratio of riffles, pools, and flats that would be considered as riffle and pool complexes because some Corps districts consider all ratios except 100% flat as riffle and pool complexes.

We agree that the definition should be the same as the definition in 40 CFR Part 230.45 and have replaced the proposed definition with the definition found at 40 CFR Part 230.45. We cannot provide a minimum threshold for the ratio of riffles, pools, and flats to be considered as a riffle and pool complex. District engineers will determine which segments of streams contain riffle and pool complexes. We are proposing to modify the definition of this term as discussed above.

Stormwater management: One commenter recommended that the definition should include replenishment of groundwater as one of the purposes of stormwater management. Another commenter stated that the definition should specifically refer to changes in water turbidity. Two commenters said that the definition should not be limited to the mitigation of negative impacts resulting from urbanization, but should recognize that stormwater management is used to mitigate land modification, such as the construction of roads in rural areas. One commenter suggested that the definition state that stormwater management reduces adverse impacts on aquatic resources.

The primary purposes of stormwater management are to reduce degradation of water quality and aquatic habitat quality and reduce flooding. Although certain stormwater management techniques are used to increase infiltration of stormwater into the soil, it is not our intent to list every function provided by stormwater management in the definition. Stormwater infiltration techniques are often used to offset losses of local infiltration due to increases in the amount of impervious surface in the project area, so that increases in stormwater runoff do not increase downstream erosion, water quality degradation, and flooding.

We disagree that the definition should specifically reference changes in water turbidity. Turbidity is simply one measure of water quality, and is already adequately addressed in the definition. We concur that the definition should not be limited to urbanization, and will replace this word with the phrase "changes in land use." We will add the phase "on the aquatic environment" to the end of the definition to provide further clarification of the purpose of stormwater management. We are proposing to modify the definition of this term as discussed above.

Stormwater management facilities: One commenter stated that the proposed definition is far more limited and does not include the full description provided in text of the NWP for stormwater management facilities. This commenter recommended that the definition include the following stormwater management activities: water control structures, outfall structures, emergency spillways, constructed wetland basins, wetland bottom channels, filter basins, infiltration basins, channels, and ditches. Another commenter recommended that the definition should also include debris basins and dams, storm drains, levees, and channels. A third commenter suggested that the definition include retarding basins.

It is not our intent to include a comprehensive list of stormwater management techniques, practices, or structures in the definition. The inclusion of stormwater retention and detention ponds and best management practices in the definition is intended only to provide examples. We are proposing to retain this definition.

Tidal wetland: One commenter stated that the definition at 33 CFR Part 328.3(d) does not include the qualification that the high tide line must be inundated by tidal waters at least 2 times per month and recommended that this part of the proposed definition should be eliminated from the definition because of the great differences in daily tide heights. Two commenters said that tidal waters occur only below the mean high water line and that the Corps is attempting to extend its jurisdictional authority by defining tidal waters to include spring high tides. One of these commenters stated that the proposed definition is

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contrary to Section 10 of the Rivers and Harbors Act.

The definition proposed in the July 1, 1998, **Federal Register** notice is not contrary to current Corps regulations and definitions. All waters subject to the ebb and flow of the tide are waters of the United States, including spring high tides. Spring high tides occur two times per lunar month when the sun, moon, and earth are aligned with each other and exert the greatest gravitational influence on tidal waters, resulting in the highest and lowest tides that occur during the tidal cycle. It is important to recognize that spring high tides occur only two times per lunar month to differentiate between high tides regularly caused by gravitational interactions of the sun, moon, and earth and storm surges of tidal waters caused by atmospheric phenomena. To provide further clarification, we will insert the word "lunar" before the word "month" in the last sentence of this definition.

Tidal waters extend landward of the mean high tide line. The "mean high tide line" is an average of tidal heights over the course of a complete monthly tidal cycle. Therefore, half of the monthly tides will be landward of the mean high tide line and half of the monthly tides will be channelward of the mean high tide line. Tidal waters landward of the mean high tide line are waters of the United States, but they are not navigable waters of the United States. Therefore, tidal waters landward of the mean high tide line are subject to Section 404 of the Clean Water Act, but not Section 10 of the Rivers and Harbors Act. See 33 CFR 329.12 for a discussion of the geographic and jurisdictional limit of oceanic and tidal waters relative to Section 10 of the Rivers and Harbors Act. The definition of this term has been modified as discussed above.

Vegetated shallows: No comments were received concerning the proposed definition of this term. We are proposing to retain this definition.

Waterbody: One commenter is unsure why a definition is required for this term because, according to the commenter, the definition does not appear anywhere else in the Corps regulatory program. This commenter also stated that wetlands are waterbodies, but often do not have discernible high water marks. This commenter recommended the elimination of this term from the "Definitions" section of the NWPs. Another commenter stated that the proposed definition does not have a frequency threshold for the establishment of an ordinary high water mark (OHWM) and recommended that the definition include such a threshold. One commenter stated that the Corps should clarify how the definition relates to open waters and that the definition should clarify that waterbodies may or may not be regulated under Section 404 of the Clean Water Act. Another commenter recommended that the definition exclude farm ponds.

The word "waterbody" was used throughout the July 1, 1998, **Federal Register** notice for the proposed new and modified NWPs. It is also used in the NWP regulations issued on November 22, 1991 (56 FR 59110–59147), particularly for the definition of the term "single and complete project" at 33 CFR Part 330.2(i). This word is also used in NWP 29 and General Condition 4. The intent of the definition is to ensure consistent application of the term for the NWPs.

Waterbodies consist of open and flowing waters, as well as contiguous wetlands. We will modify this definition to include contiguous wetlands, which may not have an OHWM. For example, a lake may be surrounded by a wetland fringe inhabited by emergent wetland vegetation. The OHWM may or may not be the same as the wetland boundary, which may extend beyond the OHWM. Wetlands contiguous to open or flowing waters should be considered as part of the same waterbody. A wetland can be considered a waterbody if it is inundated with flowing or standing water.

To provide further clarification to distinguish between wetlands and open and flowing waters, we have added a definition for the term "open water," which is often used in these NWPs. We are proposing to modify this definition as discussed above.

Additional Definitions: In response to the July 1, 1998, **Federal Register** notice, we received several comments requesting definitions of additional terms used in the NWP program. Some of these terms will be added to the definition section of the NWPs, as discussed below.

For the purposes of NWP 27 and the NWP conditions addressing compensatory mitigation, we are proposing to add definitions of the terms "compensatory mitigation," "restoration," "creation," "enhancement," and "preservation." The definitions for these terms that were developed for the "Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks," published in the November 28, 1995, issue of the **Federal Register** (60 FR 58605–58614) will be used in the "Definitions" section of the NWPs.

Two commenters requested that the Corps include a definition of the word "aquatic" in the NWPs. They believe that the Corps should include a definition of this word that reflects the limits of its regulatory authority or replace this word with the phrase "waters of the United States" or "navigable waters."

We believe that is not necessary to include a definition of this word for the NWP program. If an aquatic area is not a water of the United States, then it is not subject to either Section 404 or Section 10.

In response to comments received in response to our proposed definition of the term "waterbody," we are proposing to add a definition of the term "open water" because this term is used in NWPs 27 and 39 and General Conditions 9 and 19.

One commenter requested a definition of the phrase "projects that may have more than minimal adverse effects on the aquatic environment." This commenter believes that a definition is necessary to provide clarification to district engineers and regulated public.

We disagree with this comment. For every request for NWP authorization, district engineers must determine whether or not that particular project will result in more than minimal adverse effects. This determination is made on a case-by-case basis, and depends on many factors which cannot be captured in a simple definition. Therefore, we will not include a definition of this phrase.

Another commenter suggested including a definition of "region," because division and district engineers should utilize this term consistently.

We do not agree that it is necessary to define the term "region" for the NWPs, because no specific definition is required. A region is simply a geographic area. For the purposes of regional conditioning or revocation of the NWPs, a region may be a waterbody, watershed, sub-watershed, county, state, or Corps district. Corps districts review cumulative adverse effects on the aquatic environment on a watershed basis. Division or district engineers can determine which scale of region is appropriate. If cumulative adverse effects are more than minimal in a single sub-watershed, then it would be appropriate to suspend or revoke NWP only in that sub-watershed. If the cumulative adverse effects on the aquatic environment due to an NWP are more than minimal in an entire state, then the appropriate region would be the state. For these reasons, we will not add a definition of the term "region" to the NWPs.

One commenter requested that we add a definition of the term "restored channel" to the NWPs.

We disagree that such a definition is necessary because "restoration," as presently used for wetland compensatory mitigation projects, can apply to streams as well. The restoration of a stream channel reestablishes the stream channel where it previously existed.

Two commenters recommended that we include a definition of the term "single and complete project" with the NWPs. One commenter stated that the definition in 33 CFR Part 330.2(i) is confusing and difficult to implement, especially with respect to the cumulative adverse effects that occur when a linear project crosses single waterbody several times. Another commenter requested a definition of this term that would include all current and future phases of development of land under a single common ownership which has been subdivided or transferred to facilitate development.

We believe that this term does not need to be redefined. For convenience, we are proposing to add a definition of the term "single and complete project" to the "Definitions" section of the NWPs, which paraphrases the definition at 33 CFR Part 330.2(i). For linear projects, district engineers will continue to assess cumulative adverse effects on the aquatic environment to determine if the project can be authorized by NWPs. If the adverse effects on the aquatic environment are more than minimal, individually or cumulatively, the District Engineer will exercise discretionary authority and require an individual permit for the project. For subdivisions, the subdivision provision of proposed NWP 39 as well as 33 CFR Part 330.2(i) will be used to determine acreage limits for particular subdivisions. In addition, district engineers will consider whether or not each phase of a multi-phase project can be considered as a separate single and complete project. If each phase has independent utility, then each phase can be considered a separate single and complete project.

One commenter requested that the definition of the term "small perennial stream," which was used in NWPs 40 and 44, should be included in the "Definitions" section of the NWPs.

We have deleted the reference to small perennial streams from NWPs 40 and 44. Therefore, no definition of this term is needed.

One commenter recommended that the Corps include a definition of the term "stream" in the NWPs. Another commenter requested the inclusion of a definition of "stream bed" because the definition on page 36042 of the July 1, 1998, **Federal Register** notice is a definition of "stream," not "stream bed." The term "stream bed" is also used throughout the NWPs.

We agree that the definition on page 36042 of the July 1, 1998, **Federal Register** notice is actually a definition of the term "stream" and believe that it is unnecessary to include a definition of "stream" in the NWPs since the term "stream bed" is used throughout the NWPs, particularly in the context of the 500 linear foot notification requirement. Therefore, we are proposing to add a definition of the term "stream bed" to the "Definitions" section of the NWPs. The limits of the stream bed are identified by the location of the ordinary high water marks on either side of the stream bed. Any wetlands contiguous to the stream bed, but outside of the ordinary high water mark, are not part of the stream bed.

Due to changes in the NWPs made in response to the comments received in reply to the July 1, 1998, **Federal Register** notice, we are proposing to add definitions for several more terms used in the NWPs. These terms include: "project area" and "independent utility." We are also proposing to add a definition of the term "permanent above-grade fill" to the "Definitions" section since this term is used in proposed General Condition 27.

One commenter requested that the Corps include definitions of "important spawning areas" and "water quality management plan" in this section.

We disagree that definitions of these terms are necessary. District engineers will determine which areas are important spawning areas. The content of the water quality management plan, if required by General Condition 9, is also at the discretion of the District Engineer.

VI. Comments on Other Issues in July 1, 1998, Federal Register Notice

Other Suggested NWPs

In response to the December 13, 1996, **Federal Register** notice, several commenters recommended additional replacement NWPs. We do not believe that development of more new NWPs is warranted at this time. Some of the recommended NWPs are for activities in areas that are not considered waters of the United States and others are for activities that are exempt from permit requirements of Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

Maintenance of Landfill Surfaces: Most commenters agreed with the statement that routine maintenance of landfill surfaces does not require a Section 404 permit. Several commenters requested that we reiterate such language in the final **Federal Register** notice for the NWPs, and further requested that the Corps also include a discussion of the 9th Circuit decision in the *Resource Investment Incorporated (RII)* v. *Corps of Engineers* case. One commenter disagreed with the statement that most landfills are constructed in uplands, stating that there are a number of landfills constructed on wetlands.

Ponded areas that develop on landfill surfaces are not waters of the United States. Although a landfill may be constructed in wetlands, the landfill replaces the waterbody with dry land. Therefore, that area is no longer a water of the United States. The landfill cap may develop ponded areas that may be inhabited by wetland vegetation, but these areas must be repaired to prevent additional air and water pollution. These maintenance activities do not require a Section 404 permit because these ponded areas are not waters of the United States. The preamble to 33 CFR Part 328 in the November 13, 1986, **Federal Register** (51 FR 41217, Section 328.3) states that "water filled depressions created in dry land incidental to construction activity * * *" are not considered waters of the United States "* * * until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States." The landfill is not abandoned because of the routine maintenance required by law to keep the landfill surface at the designed grade. Since routine maintenance of landfill surfaces does not require a Section 404 permit, we will not be developing an NWP for this activity. With regard to requests to include a discussion of the RII case, this matter is still in litigation and such a discussion is inappropriate at this time.

Maintenance and Filling of Ditches Adjacent to Roads and Railways

Although a few commenters requested a new NWP authorizing the maintenance and filling of ditches adjacent to roads and railways, such a NWP is not necessary. In response to the July 1, 1998, **Federal Register** notice, most commenters stated that this activity is exempt from regulation or is outside of the Corps jurisdiction. One commenter stated that wet weather conveyances should not be regulated because it would greatly increase the Corps workload. Another commenter noted that, to meet safety design standards, transportation agencies often

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widen and flatten side slopes of the embankment by adding fill to one side of the ditch.

The maintenance of roadside or railroad ditches constructed in uplands does not require a Section 404 permit since these ditches are not waters of the United States, even though they may support wetland vegetation. The preamble to 33 CFR Part 328.3, as published in the November 13, 1986, issue of the **Federal Register** (51 FR 41217), states that "non-tidal drainage or irrigation ditches excavated on dry land" are generally not considered to be waters of the United States. Filling these ditches to widen the road or railroad bed does not require a Section 404 permit.

If these roadside or railroad ditches are constructed in waters of the United States, the maintenance of these ditches is exempt from Section 404 permit requirements (see CFR Part 323.4(a)(3)), provided the ditch is restored to its original dimensions and configuration. However, the construction of these ditches in waters of the United States requires a Section 404 permit and may be authorized by an NWP, an individual permit, or a regional general permit. A Corps permit is required to widen the road or railroad bed if the ditches adjacent to the existing road or railroad bed were constructed in waters of the United States. The construction or maintenance of roadside and railroad ditches in navigable waters of the United States requires a Section 10 permit. Furthermore, if the maintenance of a roadside ditch includes reconfiguring that ditch, the activity does not qualify for the exemption at 33 CFR Part 323.4(a)(3).

Maintenance of Water Treatment Facilities

A commenter requested that the Corps consider a new NWP for the maintenance of water treatment facilities, such as the removal of material from constructed settling lagoons and associated constructed wetlands, maintenance and de-watering of stock ponds for livestock, and maintenance of recharge ponds for water supplies. One commenter said that the Corps description on page 36063 of the July 1, 1998, **Federal Register** notice characterizing exempt activities related to stock ponds contained errors (*e.g.*, water quality benefits "test").

Water treatment facilities constructed in uplands do not require a Section 404 permit for maintenance activities. We do not generally consider "[a]rtificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing" to be waters of the United States. (Refer to the preamble for 33 CFR Part 328.3, as published in the November 13, 1986, issue of the **Federal Register** (51 FR 41217).)

The proposed modifications to NWP 3 and NWP 7, which authorize the removal of accumulated sediment in the vicinity of existing structures, should address some of these issues. Removal of sediments from detention and settling basins constructed with a Section 404 permit may be authorized by NWP 7 as long as the maintenance activity is associated with an intake or outfall structure. Maintenance of recharge ponds constructed in uplands does not require a Section 404 permit, but the maintenance of these ponds constructed in waters of the United States may be authorized by existing NWPs, such as NWPs 3, 13, or 18. Therefore, these activities have not been specifically included in the proposed NWPs.

With regard to comments relating to stock pond exemptions, we provide the following clarification: The construction of stock ponds is an exempt activity; thus, activities necessary for the construction and maintenance of stock ponds are exempt from Section 404 permit requirements. Maintenance activities, such as the deepening of a stock pond, do not require a Section 404 permit provided the activity does not increase in the lateral extent of the pond. Additionally, the construction or maintenance activity may not bring a water into a use to which it was not previously subject and it may not impair the flow or circulation or reduce the reach of such waters.

NWP 31: In the July 1, 1998, **Federal Register** notice, we responded to a request to expand the scope of NWP 31 to authorize other maintenance activities associated with flood control and maintenance of water supply facilities. In response to this part of the July 1, 1998, **Federal Register** notice, several commenters addressed issues related to NWP 31. Two commenters suggested that routine maintenance activities should be omitted from the requirements of the Corps regulatory program. Another requested that the Corps explain why a single activity may be authorized by three different NWPs, in this case NWP 3, 7, or 18 to authorize removal of accumulated sediments.

Any maintenance activity that involves a discharge of dredged or fill material into waters of the United States requires a Section 404 permit, unless that activity qualifies for the exemption under Section 404(f). We cannot expand the exemptions in Section 404(f); adding other maintenance activities to Section 404(f) requires modification of the Clean Water Act through the legislative process. Therefore, routine maintenance activities cannot be omitted from the Corps Regulatory Program.

NWPs 3, 7, and 18 were developed to authorize specific activities. Although we are proposing to modify both NWPs 3 and 7 to authorize the removal of accumulated sediments, this activity is subject to different terms in these NWPs, based on the nature of the work. The removal of accumulated sediments in the vicinity of existing structures authorized by paragraph (ii) of NWP 3 will allow permittees to restore the waterway in the immediate vicinity of structure and protect that structure with rip rap. The purpose of part (ii) of NWP 7 is to restore outfalls, intakes, small impoundments, and canals to original design capacities design configurations. NWP 7 authorizes maintenance dredging or maintenance excavation of canals associated with intakes and outfalls; paragraph (ii) of NWP 3 does not authorize that activity. NWP 18 authorizes minor discharges, which is not the same as the activities authorized by NWPs 3 and 7.

We continue to believe that NWP 31 does not require further modification at this time, for the same reasons discussed in the July 1, 1998, **Federal Register** notice.

Regional Conditioning of Nationwide Permits: Concurrent with this **Federal Register** notice, District Engineers are issuing local public notices. Division and district engineers have proposed regional conditions or revocation of some or all of the NWPs contained in this **Federal Register** notice. Regional conditions may also be required by State Section 401 water quality certification or Coastal Zone Management Act consistency determinations. District engineers will announce regional conditions or revocations by issuing local public notices. Information on regional conditions and revocation can be obtained from the appropriate District Engineer, as indicated below or at the District's Internet home page. Furthermore, this and additional information can be obtained on the Internet at the Corps Regulatory Home Page at http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.

ALABAMA
Mobile District Engineer, ATTN: CESAM–OP–S, 109 St. Joseph Street, Mobile, AL 36602–3630

ALASKA
Alaska District Engineer, ATTN: CEPOA–CO–R, P.O. Box 898, Anchorage, AK 99506–0898
ARIZONA
Los Angeles District Engineer, ATTN: CESPL–CO–R, P.O. Box 2711, Los Angeles, CA 90053–2325
ARKANSAS
Little Rock District Engineer, ATTN: CESWL–CO–P, P.O. Box 867, Little Rock, AR 72203–0867
CALIFORNIA
Sacramento District Engineer, ATTN: CESPK–CO–Q, 1325 J Street, Sacramento, CA 95814–4794
COLORADO
Albuquerque District Engineer, ATTN: CESPA–CO–R, 4101 Jefferson Plaza NE, Room 313, Albuquerque, NM 87109
CONNECTICUT
New England District Engineer, ATTN: CENAE–OD–R, 696 Virginia Road, Concord, MA 01742–2751
DELAWARE
Philadelphia District Engineer, ATTN: CENAP–OP–R, Wannamaker Building, 100 Penn Square East Philadelphia, PA 19107–3390
FLORIDA
Jacksonville District Engineer, ATTN: CESAJ–CO–R, P.O. Box 4970, Jacksonville, FL 32202–4412
GEORGIA
Savannah District Engineer, ATTN: CESAS–OP–F, P.O. Box 889, Savannah, GA 31402–0889
HAWAII
Honolulu District Engineer, ATTN: CEPOH–ET–PO, Building 230, Fort Shafter, Honolulu, HI 96858–5440
IDAHO
Walla Walla District Engineer, ATTN: CENWW–OP–RF, 210 N. Third Street, City-County Airport, Walla Walla, WA 99362–1876
ILLINOIS
Rock Island District Engineer, ATTN: CEMVR–RD, P.O. Box 004, Rock Island, IL 61204–2004
INDIANA
Louisville District Engineer, ATTN: CELRL–OR–F, P.O. Box 59, Louisville, KY 40201–0059
IOWA
Rock Island District Engineer, ATTN: CEMVR–RD, P.O. Box 2004, Rock Island, IL 61204–2004
KANSAS
Kansas City District Engineer, ATTN: CENWK–OD–P, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896
KENTUCKY
Louisville District Engineer, ATTN: CELRL–OR–F, P.O. Box 59, Louisville, KY 40201–0059
LOUISIANA
New Orleans District Engineer, ATTN: CEMVN–OD–S, P.O. Box 60267, New Orleans, LA 70160–0267
MAINE
New England District Engineer, ATTN: CENAE–OD–R, 696 Virginia Road, Concord, MA 01742–2751
MARYLAND
Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715
MASSACHUSETTS
New England District Engineer, ATTN: CENAE–OD–R, 696 Virginia Road, Concord, MA 01742–2751
MICHIGAN
Detroit District Engineer, ATTN: CELRE–CO–L, P.O. Box 1027, Detroit, MI 48231–1027
MINNESOTA
St. Paul District Engineer, ATTN: CEMVP–CO–R, 190 Fifth Street East, St. Paul, MN 55101–1638
MISSISSIPPI
Vicksburg District Engineer, ATTN: CEMVK–OD–F, 4155 Clay Street, Vicksburg, MS 39183–3435
MISSOURI
Kansas City District Engineer, ATTN: CENWK–OD–P, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106–2896
MONTANA
Omaha District Engineer, ATTN: CENWO–OP–R, 215 N. 17th Street, Omaha, NE 68102–4978
NEBRASKA
Omaha District Engineer, ATTN: CENWO–OP–R, 215 N. 17th Street, Omaha, NE 68102–4978
NEVADA
Sacramento District Engineer, ATTN: CESPK–CO–O, 1325 J Street, Sacramento, CA 95814–2922
NEW HAMPSHIRE
New England District Engineer, ATTN: CENAE–OD–R, 696 Virginia Road, Concord, MA 01742–2751
NEW JERSEY
Philadelphia District Engineer, ATTN: CENAP–OP–R, Wannamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3390
NEW MEXICO
Albuquerque District Engineer, ATTN: CESWA–CO–R, 4101 Jefferson Plaza NE, Room 313, Albuquerque, NM 87109
NEW YORK
New York District Engineer, ATTN: CENAN–OP–R, 26 Federal Plaza, New York, NY 10278–9998
NORTH CAROLINA
Wilmington District Engineer, ATTN: CESAW–CO–R, P.O. Box 1890, Wilmington, NC 28402–1890
NORTH DAKOTA
Omaha District Engineer, ATTN: CENWO–OP–R, 215 North 17th Street, Omaha, NE 68102–4978
OHIO
Huntington District Engineer, ATTN: CELRH–OR–F, 502 8th Street, Huntington, WV 25701–2070
OKLAHOMA
Tulsa District Engineer, ATTN: CESWT–OD–R, P.O. Box 61, Tulsa, OK 74121–0061
OREGON
Portland District Engineer, ATTN: CENWP–PE–G, P.O. Box 2946, Portland, OR 97208–2946
PENNSYLVANIA
Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715
RHODE ISLAND
New England District Engineer, ATTN: CENAE–OD–R, 696 Virginia Road, Concord, MA 01742–2751
SOUTH CAROLINA
Charleston District Engineer, ATTN: CESAC–CO–P, P.O. Box 919, Charleston, SC 29402–0919
SOUTH DAKOTA
Omaha District Engineer, ATTN: CENWO–OP–R, 215 North 17th Street, Omaha, NE 68102–4978
TENNESSEE
Nashville District Engineer, ATTN: CELRN–OR–F, P.O. Box 1070, Nashville, TN 37202–1070
TEXAS
Ft. Worth District Engineer, ATTN: CESWF–OD–R, P.O. Box 17300, Ft. Worth, TX 76102–0300
UTAH
Sacramento District Engineer, ATTN: CESPK–CO–O, 1325 J Street, CA 95814–2922
VERMONT
New England District Engineer, ATTN: CENAE–OD–R, 696 Virginia Road, Concord, MA 01742–2751
VIRGINIA
Norfolk District Engineer, ATTN: CENAO–OP–R, 803 Front Street, Norfolk, VA 23510–1096
WASHINGTON
Seattle District Engineer, ATTN: CENWS–OP–RG, P.O. Box 3755, Seattle, WA 98124–2255
WEST VIRGINIA
Huntington District Engineer, ATTN: CELRH–ORF, 502 8th Street, Huntington, WV 25701–2070
WISCONSIN
St. Paul District Engineer, ATTN: CEMVP–CO–R, 190 Fifth Street East, St. Paul, MN 55101–1638
WYOMING
Omaha District Engineer, ATTN: CENWO–OP–R, 215 North 17th Street, NE 68102–4978
DISTRICT OF COLUMBIA
Baltimore District Engineer, ATTN: CENAB–OP–R, P.O. Box 1715, Baltimore, MD 21203–1715
PACIFIC TERRITORIES
Honolulu District Engineer, ATTN: CEPOH–ET–PO, Building 230, Fort Shafter, Honolulu, HI 96858–5440
PUERTO RICO & VIRGIN ISLANDS
Jacksonville District Engineer, ATTN: CESAJ–CO–R, P.O. Box 4970, Jacksonville, FL 32202–4412

Dated: July 13, 1999.

Approved:

Hans A. Van Winkle,

Brigadier General, U.S. Army, Deputy Commander for Civil Works.

Authority

Accordingly, we are proposing to issue new NWPs, modify existing NWPs, and add conditions and to add NWP definitions under the authority of Section 404(e) of the Clean Water Act

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(33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act (33 U.S.C. 403).

Nationwide Permits, Conditions, Further Information, and Definitions

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B. Nationwide Permits and Conditions

3. *Maintenance.* Activities related to: (i) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. This nationwide permit authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the District Engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(ii) Discharges of dredged or fill material, including excavation, into all waters of the United States to remove accumulated sediments and debris in the vicinity of, and within, existing structures (*e.g.*, bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional rip rap to protect the structure, provided the permittee notifies the District Engineer in accordance with General Condition 13. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. The placement of rip rap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the District Engineer under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the District Engineer.

(iii) Discharges of dredged or fill material, including excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event, including the construction, placement, or installation of upland protection structures and minor dredging to remove obstructions in a water of the United States. (Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a Section 404 permit provided the uplands are restored to their original pre-event location. This NWP is for the activities in waters of the United States associated with the replacement of the uplands.) The permittee must notify the District Engineer, in accordance with General Condition 13, within 12 months of the date of the damage and the work must commence, or be under contract to commence, within two years of the date of the damage. The permittee should provide evidence, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. The restoration of the damaged areas cannot exceed the contours, or ordinary high water mark, that existed prior to the damage. The District Engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this permit. Minor dredging to remove obstructions from the adjacent waterbody is limited to 50 cubic yards below the plane of the ordinary high water mark, and is limited to the amount necessary to restore the pre-existing bottom contours of the waterbody. The dredging may not be done primarily to obtain fill for any restoration activities. The discharge of dredged or fill material and all related work needed to restore the upland must be part of a single and complete project. This permit cannot be used in conjunction with NWP 18 or NWP 19 to restore damaged upland areas. This permit cannot be used to reclaim historic lands lost, over an extended period of time, to normal erosion processes.

Maintenance dredging for the primary purpose of navigation and beach restoration are not authorized by this permit. This permit does not authorize new stream channelization or stream relocation projects. Any work authorized by this permit must not cause more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increase flooding (See General Conditions 9 and 21).

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Section 404(f) exemption for maintenance. For example, the repair and maintenance of concrete-lined channels are exempt from Section 404 permit requirements. (Sections 10 and 404)

7. *Outfall Structures and Maintenance.* Activities related to: (i) Construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act), and (ii) maintenance excavation, including dredging, to remove accumulated sediments blocking or restricting outfall and intake structures, accumulated sediments from small impoundments associated with outfall and intake structures, and accumulated sediments from canals associated with outfall and intake structures, provided that the activity meets all of the following criteria:

a. The permittee notifies the District Engineer in accordance with General Condition 13;

b. The amount of excavated or dredged material must be the minimum necessary to restore the outfalls, intakes, small impoundments, and canals to original design capacities and design configurations (*i.e.*, depth and width);

c. The excavated or dredged material is deposited and retained at an upland site, unless otherwise approved by the District Engineer under separate authorization; and

d. Proper soil erosion and sediment control measures are used to minimize reentry of sediments into waters of the United States.

The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure. For maintenance excavation and dredging to remove accumulated sediments, the notification must include information regarding the original design capacities and configurations of the facility and the presence of special aquatic sites (*e.g.*, vegetated shallows) in the vicinity of the proposed work. (Sections 10 and 404)

12. *Utility Line Activities.* Activities required for the construction, maintenance and repair of utility lines and associated facilities in waters of the United States as follows:

(i) *Utility lines:* The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in preconstruction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication (see Note 1, below). Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the United States, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary side casting not to exceed a total of 180 days, where appropriate. In wetlands, the top 6" to 12" of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the United States (*e.g.*, backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the United States through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

(ii) *Utility line substations:* The construction, maintenance, or expansion of a substation facility associated with a power line or utility line in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, provided the activity does not result in the loss of greater than 1 acre of non-tidal waters of the United States.

(iii) *Foundations for overhead utility line towers, poles, and anchors:* The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(iv) *Access roads:* The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than 1 acre of non-tidal waters of the United States. Access roads shall be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the United States and as near as possible to preconstruction contours and elevations (*e.g.*, at grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows. All access roads will be constructed with pervious surfaces.

The term "utility line" does not include activities which drain a water of the United States, such as drainage tile, or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this NWP, the loss of waters of the United States includes the filled area plus waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. Waters of the United States temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevations, are not included in the calculation of permanent loss of waters of the United States. This includes temporary construction mats (*e.g.*, timber, steel, geotextile) used during construction and removed upon completion of the work. Where certain functions and values of waters of the United States are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level.

Mechanized landclearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance and expansion of utility line substations, foundations for overhead utility lines,

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and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of waters of the United States that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. This NWP may authorize utility lines in or affecting navigable waters of the United States, even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322).

Notification: The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(a) Mechanized land clearing in a forested wetland for the utility line right-of-way;

(b) A Section 10 permit is required;

(c) The utility line in waters of the United States, excluding overhead lines, exceeds 500 feet;

(d) The utility line is placed within a jurisdictional area (*i.e.*, a water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area;

(e) Discharges associated with the construction of utility line substations that result in the loss of greater than ¼ acre of waters of the United States; or

(f) Permanent access roads constructed above grade in waters of the United States for a distance of more than 500 feet.

Note 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquefiable, or slurry substances over navigable waters of the United States, which are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions. Temporary access roads for construction may be authorized by NWP 33.

Note 3: Where the proposed utility line is constructed or installed in navigable waters of the United States (*i.e.*, Section 10 waters), copies of the PCN and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration, National Ocean Service, for charting the utility line to protect navigation. (Sections 10 and 404)

14. *Linear Transportation Crossings.* Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, airport runways, and taxiways) in waters of the United States, including wetlands, provided that the activity meets the following criteria:

a. This NWP is subject to the following acreage and linear limits:

(1) For *public linear transportation projects* in non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than 1 acre of waters of the United States;

(2) For *public linear transportation projects* in tidal waters or non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than ⅓ acre of waters of the United States and the length of fill for the crossing in waters of the United States does not exceed 200 linear feet, or;

(3) For *private linear transportation projects* in all waters of the United States, provided the discharge does not cause the loss of greater than ⅓ acre of waters of the United States and the length of fill for the crossing in waters of the United States does not exceed 200 linear feet;

b. The permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:

(1) The discharge causes the loss of greater than ¼ acre of waters of the United States; or

(2) There is a discharge in a special aquatic site, including wetlands;

c. The notification must include a mitigation proposal to offset permanent losses of waters of the United States to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses will be minimized to the maximum extent practicable;

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of the affected special aquatic sites;

e. The width of the fill is limited to the minimum necessary for the crossing;

f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream (see General Conditions 9 and 21);

g. This permit cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars; and

h. The crossing is a single and complete project for crossing a water of the United States. Where a road segment (*i.e.*, the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use its discretionary authority to require an individual permit.

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4). (Sections 10 and 404)

27. *Stream and Wetland Restoration Activities.* Activities in waters of the United States associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, and the restoration and enhancement of non-tidal streams and non-tidal open water areas as follows:

(a) The activity is conducted on:

(1) Non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural Resources Conservation Service (NRCS) or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or

(2) Any Federal land; or

(3) Reclaimed surface coal mined lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining or the applicable state agency (the future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or

(4) Any private or public land;

(b) *Notification:* For activities on any private or public land that are not described by paragraphs (a)(1), (a)(2), or (a)(3) above, the permittee must notify the District Engineer in accordance with General Condition 13; and

(c) Only native plant species should be planted at the site, if permittee is vegetating the project site.

Activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation; mechanized landclearing to remove undesirable vegetation; and other related activities.

This NWP does not authorize the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This NWP does not authorize stream channelization. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and values. For example, this NWP may authorize the creation of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by creating that wetland type on the project site. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and creation projects conducted under paragraphs (a)(2) and (a)(4), this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. For restoration, enhancement, and creation projects conducted under paragraphs (a)(1) and (a)(3), this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (*i.e.*, prior to the restoration, enhancement, or creation activities) within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. This NWP also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require a Section 404 permit). The five-year reversion limit does not apply to agreements without time limits reached under paragraph (a)(1). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate State agency executing the agreement or permit. Prior to any reversion activity the permittee or the appropriate Federal or State agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted back to its prior physical condition, it will be subject to whatever the Corps regulatory requirements will be at that future date. (Sections 10 and 404)

Note: Compensatory mitigation is not required for activities authorized by this NWP, provided the authorized work results in a net increase in aquatic resource functions and values in the project area. This NWP can be used to authorize compensatory mitigation projects, including mitigation banks, provided the permittee notifies the District Engineer in accordance with General Condition 13, and the project includes compensatory mitigation for impacts to waters of the United States caused by the authorized work. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition.

39. *Residential, Commercial, and Institutional Developments.* Discharges into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). The construction of new ski areas or oil and gas wells is not authorized by this NWP. Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The activities listed above are authorized, provided that the activities meet all of the following criteria:

a. The acreage limit for this NWP is determined by using the following index (see Note 1, below):

Acreage limit = ¼ acre + 2% of the project area (in acres)

The maximum acreage limit for this NWP is 3 acres of non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters. This acreage limit is achieved for a project area of 137.5 acres or more.

b. The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(1) The discharge causes the loss of greater than ¼ acre of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters; or

(2) The discharge causes the loss of any open waters, including perennial or intermittent streams, below the ordinary high water mark (see Note 2, below).

c. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands;

d. The discharge is part of a single and complete project;

e. The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the notification, when required, must include a written statement explaining how avoidance and minimization of losses of waters of the United States were achieved on the project site. Compensatory mitigation will normally be required to offset the losses of waters of the United States. The notification, when required, must also include a compensatory mitigation proposal for offsetting unavoidable losses of waters of the United States. If an applicant believes that the project impacts are minimal without mitigation, then the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration;

f. When this NWP is used in conjunction with any other NWP, any

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combined total permanent loss of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, exceeding ¼ acre requires that the permittee notify the District Engineer in accordance with General Condition 13;

g. Any work authorized by this NWP must not cause more than minimal degradation of water quality or more than minimal changes to the flow characteristics of any stream (see General Conditions 9 and 21);

h. For discharges causing the loss of ¼ acre or less of waters of the United States, the permittee must submit a report, within 30 days of completion of the work, to the District Engineer that contains the following information: (1) The name, address, and telephone number of the permittee; (2) The location of the work; (3) A description of the work; (4) The type and acreage (or linear feet) of the loss of waters of the United States (*e.g.*, ⅒ acre of emergent wetlands and 50 linear feet of stream bed); and (5) The type and acreage (or linear feet) of any compensatory mitigation used to offset the loss of waters of the United States (*e.g.*, ⅒ acre of emergent wetlands created on-site);

i. If there are any open waters or streams within the project area, the permittee will establish and maintain, to the maximum extent practicable, wetland or upland vegetated buffers adjacent to those open waters or streams consistent with General Condition 19. Deed restrictions, conservation easements, protective covenants, or other means of land conservation and preservation are required to protect and maintain the vegetated buffers established on the project site; and

j. Stream channelization or stream relocation downstream of the point on the stream where the annual average flow is 1 cubic foot per second is not authorized by this NWP.

Only residential, commercial, and institutional activities with structures on the foundation(s) or building pad(s), as well as the attendant features, are authorized by this NWP. For the purposes of this NWP, the term "project area" is defined in the definition section of the NWPs. The compensatory mitigation proposal required in paragraph (e) of this NWP may be either conceptual or detailed. The wetland or upland vegetated buffer required in paragraph (i) of this NWP will normally be 50 to 125 feet wide, but the District Engineer will determine the appropriate width of the vegetated buffer. The required wetland or upland vegetated buffer is part of the overall compensatory mitigation requirement for this NWP. If the project site was previously used for agricultural purposes and the farm owner/operator used NWP 40 to authorize activities in waters of the United States to increase production or construct farm buildings, NWP 39 cannot be used by the developer to authorize additional activities in waters of the United States on the project site in excess of the indexed acreage limit for NWP 39 (i.e., the combined acreage loss authorized under NWPs 39 and 40 cannot exceed the indexed acreage limit based on project area in paragraph (a), above).

Subdivisions: For any real estate subdivision created or subdivided after October 5, 1984, a notification pursuant to paragraph (b) of this NWP is required for any discharge which would cause the aggregate total loss of waters of the United States for the entire subdivision to exceed ¼ acre. Any discharge in any real estate subdivision which would cause the aggregate total loss of waters of the United States in the subdivision to exceed the indexed acreage limit based on project area as determined by paragraph (a) is not authorized by this NWP; unless the District Engineer exempts a particular subdivision or parcel by making a written determination that: (1) The individual and cumulative adverse environmental effects would be minimal and the property owner had, after October 5, 1984, but prior to July 21, 1999, committed substantial resources in reliance on NWP 26 with regard to a subdivision, in circumstances where it would be inequitable to frustrate the property owner's investment-backed expectations, or (2) that the individual and cumulative adverse environmental effects would be minimal, high quality wetlands would not be adversely affected, and there would be an overall benefit to the aquatic environment. Once the exemption is established for a subdivision, subsequent lot development by individual property owners may proceed using NWP 39. For the purposes of NWP 39, the term "real estate subdivision" shall be interpreted to include circumstances where a landowner or developer divides a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. This would include the entire area of a residential, commercial, or other real estate subdivision, including all parcels and parts thereof. (Sections 10 and 404)

Note 1: For example, if the project area is 15 acres, the acreage limit for a single and complete project under this NWP is 0.55 acres. For any project area of 137.5 acres or more, the acreage limit under this NWP is 3 acres of non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters.

Note 2: Areas where there is no wetland vegetation are determined by the presence or absence of an ordinary high water mark or bed and bank. Areas that are waters of the United States based on this criteria would require a PCN even though water is infrequently present in the stream channel.

40. *Agricultural Activities.* Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the purpose of improving agricultural production and the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized landclearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities, provided the permittee complies with the following terms and conditions:

a. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is a USDA program participant:

(1) The permittee must obtain an exemption or a minimal effects with mitigation determination from NRCS in accordance with the provisions of the Food Security Act (16 U.S.C. 3801 *et seq.*) and the National Food Security Act Manual (NFSAM);

(2) The discharge into non-tidal wetlands does not result in the loss of greater than 2 acres of non-tidal wetlands on a farm tract;

(3) The discharge into playas, prairie potholes, and vernal pools does not exceed the acreage limit as determined by the following index (see Note, below):

Acreage limit = ⅒ acre + 1% of farm tract size (in acres)

The maximum acreage loss of playas, prairie potholes, and vernal pools authorized by this NWP is 1 acre;

(4) The permittee must have an NRCS-certified wetland delineation;

(5) The permittee must implement an NRCS-approved compensatory mitigation plan that fully offsets wetland losses; and

(6) The permittee must submit a report, within 30 days of completion of the authorized work, to the District Engineer that contains the following information: (a) The name, address, and telephone number of the permittee; (b) The location of the work; (c) A description of the work; (d) The type and acreage (or square feet) of the loss of wetlands (*e.g.*, ½ acre of emergent wetlands); and (e) The type, acreage (or square feet), and location of compensatory mitigation (*e.g.*, ¾ acre of emergent wetlands on the farm tract); or

b. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is not a USDA program participant:

(1) The discharge into non-tidal wetlands does not result in the loss of greater than 2 acres of non-tidal wetlands on a farm tract;

(2) The discharge into playas, prairie potholes, and vernal pools does not exceed the acreage limit as determined by the following index (see Note, below):

Acreage limit = ⅒ acre + 1% of farm tract size (in acres)

The maximum acreage loss of playas, prairie potholes, and vernal pools authorized by this NWP is 1 acre;

(3) The permittee must notify the District Engineer in accordance with General Condition 13, if the discharge results in the loss of greater than ¼ acre of non-tidal wetlands, including playas, prairie potholes, and vernal pools;

(4) The notification must include a delineation of affected wetlands; and

(5) The notification must include a compensatory mitigation proposal to offset losses of waters of the United States; or

c. For the construction of building pads for farm buildings, the discharge does not cause the loss of greater than 1 acre of non-tidal wetlands that were in agricultural production prior to December 23, 1985, (*i.e.*, farmed wetlands) and the permittee must notify the District Engineer in accordance with General Condition 13; or

d. Any activity in other waters of the United States is limited to the relocation of existing serviceable drainage ditches constructed in non-tidal streams. For the relocation of greater than 500 linear feet of drainage ditches constructed in non-tidal streams, the permittee must notify the District Engineer in accordance with General Condition 13.

The term "farm tract" refers to a parcel of land identified by the Farm Service Agency. The Corps will identify other waters of the United States on the farm tract. For the purposes of this NWP, the terms "playas," "prairie potholes," and "vernal pools" are defined in the "Definitions" section. NRCS will determine if a proposed agricultural activity meets the terms and conditions of paragraph (a) of this NWP, except as provided below. For those activities that require notification, the District Engineer will determine if a proposed agricultural activity is authorized by paragraphs (b), (c), and/or (d) of this NWP. USDA program participants requesting authorization for discharges of dredged or fill material into waters of the United States authorized by paragraphs (c) or (d) of this NWP, in addition to paragraph (a), must notify the District Engineer in accordance with General Condition 13 and the District Engineer will determine if the entire single and complete project is authorized by this NWP. Discharges of dredged or fill material into waters of the United States associated with the construction of the compensatory mitigation are authorized by this NWP, but are not calculated in the acreage loss of waters of the United States. This NWP does not affect, or otherwise regulate, discharges associated with agricultural activities when the discharge qualifies for an exemption under Section 404(f) of the Clean Water Act, even though a minimal effect/mitigation determination by NRCS pursuant to the Food and Security Act may be required. Activities authorized by paragraphs (c) and (d) are not included in the indexed acreage limit for the farm tract. If the site was used for agricultural purposes and the farm owner/operator used either paragraphs (a), (b), or (c) of this NWP to authorize activities in waters of the United States to increase agricultural production or construct farm buildings, and the current landowner wants to use NWP 39 to authorize residential, commercial, or industrial development activities in waters of the United States on the site, the combined acreage loss authorized by NWPs 39 and 40 cannot exceed the indexed acreage limit based on project area for a single and complete project in paragraph (a) of NWP 39. (Section 404)

Note: For example, under paragraphs (a)(3) or (b)(2) above, for a 20-acre farm tract, the maximum acreage loss authorized for playas, prairie potholes, and vernal pools on the farm tract under this NWP is 0.3 acre. For any farm tract 90 acres or more in size, the acreage limit of this NWP is 1 acre of playas, prairie potholes, and vernal pools.

41. *Reshaping Existing Drainage Ditches.* Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of existing serviceable drainage ditches constructed in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters. The reshaping of the ditch cannot increase drainage capacity beyond the original design capacity or expand the area drained by the ditch as originally designed (*i.e.*, the capacity of the ditch must be the same as originally designed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality (*e.g.*, by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, increase uptake of nutrients and other substances by vegetation, etc.). The permittee must notify the District Engineer in accordance with General Condition 13, if material excavated during ditch reshaping is proposed to be sidecast into waters of the United States or if greater than 500 linear feet of drainage ditch is to be reshaped. This NWP does not apply to reshaping drainage ditches constructed in uplands, since these areas are not waters of the United States, and thus no permit from the Corps is required, or to the maintenance of existing drainage ditches to their original dimensions and configuration, which does not require a Section 404 permit (see 33 CFR 323.4(a)(3)). This NWP does not authorize the relocation of drainage ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects. (Section 404)

42. *Recreational Facilities.* Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction of expansion of recreational facilities, provided the activity meets all of the following criteria:

a. The discharge does not cause the loss of greater than 1 acre of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters;

b. For discharges causing the loss of greater than ¼ acre of non-tidal waters of the United States, or the loss of greater than 500 linear feet of perennial or intermittent stream bed, the permittee notifies the District Engineer in accordance with General Condition 13;

c. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites, including wetlands; and

d. The discharge is part of a single and complete project.

For the purposes of this NWP, the term "recreational facility" is defined as a recreational activity that has low-impact on the aquatic environment, is integrated into the natural landscape, and consists primarily of open space that does not substantially change

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preconstruction grades or deviate from natural landscape contours. For the purpose of this permit, the primary function of recreational facilities does not include the use of motor vehicles, buildings, or impervious surfaces. Examples of recreational facilities that may be authorized by this NWP include: hiking trails, bike paths, horse paths, nature centers, and campgrounds (excluding trailer parks). The construction or expansion of golf courses and the expansion of ski areas may be authorized by this NWP, provided the golf course or ski area does not substantially deviate from natural landscape contours and is designed to minimize adverse effects to waters of the United States and riparian areas through the use of such practices as integrated pest management, adequate stormwater management facilities, vegetated buffers, reduced fertilizer use, etc. The facility must have an adequate water quality management plan in accordance with General Condition 9, such as a stormwater management facility to ensure that the recreational facility results in no substantial adverse effects to water quality. This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity. This NWP does not authorize other buildings, such as hotels, restaurants, etc. The construction or expansion of playing fields (*e.g.*, baseball, soccer, or football fields), basketball and tennis courts, racetracks, stadiums, arenas, and the construction of new ski areas are not authorized by this NWP. (Section 404)

43. *Stormwater Management Facilities.* Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, for the construction and maintenance of stormwater management facilities, including activities for the excavation of stormwater ponds/facilities, detention basins, and retention basins; installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins provided that the activity meets all of the following criteria:

a. The discharge or excavation for the construction of new stormwater management facilities does not cause the loss of greater than 2 acres of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge of dredged or fill material for the construction of new stormwater management facilities in perennial streams is not authorized;

c. For discharges or excavation for the construction of new stormwater management facilities or for the maintenance of existing stormwater management facilities causing the loss of greater than ¼ acre of non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, or causing the loss of greater than 500 linear feet of intermittent stream bed, the permittee notifies the District Engineer in accordance with General Condition 13. In addition, the notification must include:

(1) A maintenance plan. The maintenance plan should be in accordance with State and local requirements, if any such requirements exist;

(2) For discharges in special aquatic sites, including wetlands and submerged aquatic vegetation, the notification must include a delineation of affected areas; and

(3) A compensatory mitigation proposal that offsets the loss of waters of the United States. Maintenance in constructed areas will not require mitigation provided such maintenance is accomplished in designated maintenance areas and not within compensatory mitigation areas (*i.e.*, district engineers may designate non-maintenance areas, normally at the downstream end of the stormwater management facility, in existing stormwater management facilities). (No mitigation will be required for activities which are exempt from Section 404 permit requirements);

d. The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the notification must include a written statement to the District Engineer detailing compliance with this condition (*i.e.*, why the discharge must occur in waters of the United States and why additional minimization cannot be achieved);

e. The stormwater management facility must comply with General Condition 21 and be designed using best management practices (BMPs) and watershed protection techniques. Examples may include forbays (deeper areas at the upstream end of the stormwater management facility that would be maintained through excavation), vegetated buffers, and siting considerations to minimize adverse effects to aquatic resources. Another example of a BMP would be bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources from storm flows, especially downstream of the facility, that provide, to the maximum extent practicable, for long term aquatic resource protection and enhancement;

f. Maintenance excavation will be in accordance with an approved maintenance plan and will not exceed the original contours of the facility as approved and constructed; and

g. The discharge is part of a single and complete project. (Section 404)

44. *Mining Activities.* Discharges of dredged or fill material into: (i) Isolated waters, streams where the annual average flow is 1 cubic foot per second (cfs) or less, and non-tidal wetlands adjacent to headwater streams, for aggregate mining (*i.e.*, sand, gravel, and crushed and broken stone) and associated support activities; (ii) lower perennial streams, excluding wetlands adjacent to lower perennial streams, for aggregate mining activities (support activities in lower perennial streams or adjacent wetlands are not authorized by this NWP); and (iii) isolated waters and non-tidal wetlands adjacent to headwater streams, for hard rock/mineral mining activities (*i.e.*, extraction of metalliferous ores from subsurface locations) and associated support activities, provided the discharge meets the following criteria:

a. The mined area within waters of the United States, plus the acreage loss of waters of the United States resulting from support activities, cannot exceed 2 acres;

b. The acreage loss of waters of the United States resulting from support activities cannot exceed one acre;

c. The permittee must avoid and minimize discharges into waters of the United States at the project site to the maximum extent practicable, and the notification must include a written statement to the District Engineer detailing compliance with this condition (*i.e.*, why the discharge must occur in waters of the United States and why additional minimization cannot be achieved);

d. In addition to General Conditions 17 and 20, activities authorized by this permit must not substantially alter the sediment characteristics of areas of concentrated shellfish beds or fish spawning areas. Normally, the mandated water quality management plan should address these impacts;

e. The permittee must implement necessary measures to prevent increases in stream gradient and water velocities, to prevent adverse effects (*e.g.*, head cutting, bank erosion) on upstream and downstream channel conditions;

f. Activities authorized by this permit must not result in adverse effects on the course, capacity, or condition of navigable waters of the United States;

g. The permittee must utilize measures to minimize downstream turbidity;

h. Wetland impacts must be compensated through mitigation approved by the Corps;

i. Beneficiation and mineral processing may not occur within 200 feet of the ordinary high water mark of any open waterbody. Although the Corps does not regulate discharges from these activities, a Clean Water Act Section 402 permit may be required;

j. All activities authorized by this NWP must carefully adhere to General Conditions 9 and 21. Further, if determined necessary by the District Engineer, the Corps may require modifications to the required water quality management plan;

k. No aggregate mining can occur within stream beds where the average annual flow is greater than 1 cubic foot per second or in waters of the United States within 100 feet of the ordinary high water mark of headwater stream segments where the average annual flow of the stream is greater than 1 cubic foot per second (aggregate mining can occur in areas immediately adjacent to the ordinary high water mark of a stream where the average annual flow is 1 cubic foot per second or less), except for aggregate mining in lower perennial streams;

l. *Single and complete project:* The discharges must be for a single and complete project, including support activities. Multiple mining activity discharges into several designated parcels of a mining project may be included together as long as the 2 acre limit is not exceeded; and

m. *Notification:* The permittee must notify the District Engineer in accordance with General Condition 13. The notification must include: (1) A description of measures proposed to minimize or prevent adverse effects (*e.g.*, head cutting, bank erosion, turbidity, water quality) to waters of the United States; (2) A written statement to the District Engineer detailing compliance with paragraph (c), above (*i.e.*, why the discharge must occur in waters of the United States and why additional minimization cannot be achieved); (3) A description of measures taken to meet the criteria associated with the discharge being permitted (*i.e.*, how the proposed work complies with paragraphs (d) through (g), above); and (4) A reclamation plan (for aggregate mining in isolated waters and non-tidal wetlands adjacent to headwaters and hard rock/mineral mining only).

This NWP does not authorize hard rock/mineral mining, including placer mining, in streams. No hard rock/mineral mining can occur in waters of the United States within 100 feet of the ordinary high water mark of headwater streams. The terms "headwaters" and "isolated waters" are defined in 33 CFR Parts 330.2(d) and (e), respectively. For the purposes of this NWP, the term "lower perennial streams" is the same as the lower perennial riverine subsystem described in the Cowardin classification system of wetlands and deepwater habitats of the United States. (Sections 10 and 404)

C. Nationwide Permit General Conditions

The following general conditions must be followed in order for any authorization by an NWP to be valid:

1. Navigation. No activity may cause more than a minimal adverse effect on navigation.

2. Proper Maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.

4. Aquatic Life Movements. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

6. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions which may have been added by the division engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the State or tribe in its Section 401 water quality certification and Coastal Zone Management Act consistency determination.

7. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (*e.g.*, National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

8. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. Water Quality. In certain States and tribal lands an individual 401 water quality certification must be obtained or waived (See 33 CFR 330.4(c)). For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44 where the State or tribal 401 certification (either generically or individually) does not require/approve a water quality management plan, the permittee must include design criteria and techniques that provide for protection of aquatic resources. The project must include a method for stormwater management (whether required by the State or not) that minimizes degradation of the downstream aquatic system, including water quality. To the maximum extent practicable, a vegetated buffer zone (including wetlands, uplands, or both) adjacent to open waters of the river, stream, or other open waterbody will be established and maintained, if the project occurs in the vicinity of such an open waterbody. The District Engineer will determine the proper width of the buffer and in which cases it will be required. Normally, the vegetated buffer will be 50 to 125 feet wide.

10. Coastal Zone Management. In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)).

11. Endangered Species. (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall

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not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work.

(b) Authorization of an activity by a nationwide permit does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (*e.g.*, an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world wide web pages at http://www.fws.gov/r9endspp/endspp.html and http://www.nfms.gov/prot_res/esahome.html, respectively.

12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. Notification. (a) Timing: Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the notification is complete within 30 days of the date of receipt and can request additional information necessary for the evaluation of the PCN only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the notification is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an individual permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Notification: The notification must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity; and

(4) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (*e.g.*, submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7, Outfall Structures and Maintenance, the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed.

(6) For NWP 21, Surface Coal Mining Activities, the PCN must include an Office of Surface Mining (OSM) or State-approved mitigation plan.

(7) For NWP 29, Single-Family Housing, the PCN must also include:

(i) Any past use of this NWP by the individual permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring ½ acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than ½ acre in size, a formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(8) For NWP 31, Maintenance of Existing Flood Control Projects, the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information so as to identify the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site.

(9) For NWP 33, Temporary Construction, Access, and Dewatering, the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources.

(10) For NWPs 39, 43, and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization of losses of waters of the United States were achieved on the project site and either a compensatory mitigation proposal that offsets unavoidable losses of waters of the United States or justification explaining why compensatory mitigation should not be required.

(11) For NWP 40, Agricultural Activities, the PCN must include information regarding the past use of this NWP on the farm.

(12) For NWP 43, Stormwater Management Facilities, the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with State and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the United States.

(13) For NWP 44, Mining Activities, the PCN must include a description of all waters of the United States adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the United States, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for all aggregate mining activities except for aggregate mining activities in lower perennial streams and any hard rock/mineral mining activities).

(c) Form of Notification: The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b)(1)–(7) of General Condition 13. A letter containing the requisite information may also be used.

(d) District Engineer's Decision: In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may, optionally, submit a proposed mitigation plan with the PCN to expedite the process and the District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary.

Any compensatory mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant stating that the project can proceed under the terms and conditions of the nationwide permit.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required in order to ensure no more than minimal adverse effects on the aquatic environment, the activity will be authorized within the 45-day PCN period, including the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the United States will occur until the District Engineer has approved a specific mitigation plan.

(e) Agency Coordination: The District Engineer will consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than 1 acre of waters of the United States, the District Engineer will, upon receipt of a notification, provide immediately (*e.g.*, via facsimile transmission, overnight mail, or other expeditious manner), a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the National Marine Fisheries Service. With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) Wetlands Delineations: Wetland delineations must be prepared in accordance with the current method required by the Corps. For NWP 29 see paragraph (b)(6)(iii) for parcels less than ½ acre in size. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

(g) Mitigation: Factors that the District Engineer will consider when determining the acceptability of appropriate and practicable mitigation necessary to offset impacts on the aquatic environment that are more than minimal include, but are not limited to:

(i) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or

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upland vegetated buffer zones to protect aquatic resource values; and replacing the loss of aquatic resource values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed;

(ii) To the extent appropriate, permittees should consider mitigation banking and other appropriate forms of compensatory mitigation. If the District Engineer determines that compensatory mitigation is necessary to offset the losses of waters of the United States and ensure that the net adverse effects of the authorized work on the aquatic environment are minimal, mitigation banks, in lieu fee programs, and other consolidated mitigation approaches will be the preferred method of providing compensatory mitigation, unless the District Engineer determines that activity-specific compensatory mitigation is more appropriate, based on what is best for the aquatic environment. These types of mitigation are preferred because they involve larger blocks of protected aquatic environment, are more likely to meet the mitigation goals, and are more easily checked for compliance. If a mitigation bank, in lieu fee program, or other consolidated mitigation approach is not available in the watershed, the District Engineer will consider other appropriate forms of compensatory mitigation to offset the losses of waters of the United States to ensure that the net adverse effects of the authorized work on the aquatic environment are minimal. In addition, compensatory mitigation must address wetland impacts, such as functions and values, and cannot be used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the NWPs (*e.g.*, for NWP 14, ½ acre of wetlands cannot be created to change a ¾acre loss of wetlands to a ¼ acre loss; however, ½-acre of created wetlands can be used to reduce the impacts of a ⅓-acre loss of wetlands). If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. (Refer to General Condition 19 for additional information concerning mitigation requirements for the NWPs.)

14. Compliance Certification. Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include: (a) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions; (b) A statement that any required mitigation was completed in accordance with the permit conditions; and (c) The signature of the permittee certifying the completion of the work and mitigation.

15. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed ⅓ acre.

16. Water Supply Intakes. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. Shellfish Beds. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. Suitable Material. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may consist of unsuitable material (*e.g.*, trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

19. Mitigation. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material into waters of the United States, must be minimized or avoided to the maximum extent practicable at the project site (*i.e.*, on-site). Furthermore, the District Engineer will require restoration, creation, enhancement, or preservation of other aquatic resources in order to offset the authorized impacts, at least to the extent that adverse environmental effects to the aquatic environment are minimal. An important element of any mitigation plan for projects in or near streams or other open waters is the requirement of vegetated buffers (wetland, upland, or both) adjacent to the open water areas. The vegetated buffer should consist of native species and will constitute a portion, as determined by the District Engineer, of the required compensatory mitigation. The District Engineer will determine the proper width of the vegetated buffer and in which cases it will be required. Normally, the vegetated buffer will be 50 to 125 feet wide. (Refer to paragraph (g) of General Condition 13 for additional information concerning mitigation requirements for the NWPs.)

20. Spawning Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (*e.g.*, excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. Management of Water Flows: To the maximum extent practicable, the project must be designed to maintain preconstruction downstream flow conditions (*e.g.*, location, capacity, and flow rates). Furthermore, the project must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The project must provide, to the maximum extent practicable, for retaining excess flows from the site and for maintaining surface flow rates from the site similar to preconstruction conditions. To the maximum extent practicable, the authorized work must not increase water flows from the project site, relocate water, or redirect water flow beyond preconstruction conditions, to reduce adverse effects such as flooding or erosion downstream and upstream of the project site.

22. Adverse Effects From Impoundments. If the activity, including structures and work in navigable waters of the United States or discharge of dredged or fill material, creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, State natural heritage sites, and outstanding national resource waters or other waters officially designated by a State as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment.

(a) Except as noted below, discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the United States may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service has concurred in a determination of compliance with this condition.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWPs only after he determines that the impacts to the critical resource waters will be no more than minimal.

26. Impaired Waters. Impaired waters are those waters of the United States that have been identified by States or Tribes through the Clean Water Act Section 303(d) process as impaired due to nutrients, organic enrichment resulting in low dissolved oxygen concentration in the water column, sedimentation and siltation, habitat alteration, suspended solids, flow alteration, turbidity, or the loss of wetlands. For the purposes of this general condition, the impaired waterbody includes any adjacent wetlands.

(a) Discharges of dredged or fill material causing the loss of more than one acre of impaired waters of the United States, including adjacent wetlands to such impaired waters, except for activities authorized by NWP 3 in such waters, are not authorized by nationwide permit.

(b) For discharges of dredged or fill material causing the loss of less than one acre of impaired waters of the United States, including adjacent wetlands to such impaired waters, or any activity authorized by NWP 3 in such waters, it is presumed that the project will, unless clearly demonstrated otherwise, directly or indirectly result in the further impairment of the listed water. Such activities in an impaired water or adjacent wetlands will be not be authorized by nationwide permit, unless the District Engineer determines that the prospective permittee has clearly demonstrated that the authorized project will not result in the further impairment of the listed water. For such discharges, the prospective permittee must notify the District Engineer in accordance with General Condition 13. In the notification to the District Engineer, the prospective permittee must submit a statement explaining how the proposed project, excluding mitigation, will not result in further impairment. Also, in accordance with the procedures in paragraph (e) of General Condition 13, the District Engineer will coordinate with the State 401 agency for NWP activities resulting in the loss of greater than ¼ acre of impaired waters of the United States. In addition, mitigation for any permitted discharges in impaired waters or their adjacent wetlands should be designed to offset impacts to aquatic functions and values being impacted by the project, as well as contribute to the reduction of sources of pollution contributing to the impairment (*e.g.*, by restoring wetlands that intercept non-point sources of sediment or nutrient laden runoff).

27. Fills Within the 100-year Floodplain. The 100-year floodplain will be defined by an up to date Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map, or in the absence of such map, the appropriate local floodplain authority through a licensed professional engineer.

(a) Except as provided below, discharges of dredged or fill material into waters of the United States resulting in permanent above-grade fills in the 100-year floodplain are not authorized by NWPs 21, 29, 39, 40, 42, 43, and 44. Prospective permittees must notify the District Engineer in accordance with General Condition 13, of any discharge of dredged or fill material in 100-year floodplains as defined above. The notification must include documentation that the proposed project will not involve discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills in waters of the United States within the FEMA mapped 100-year floodplain. For those areas where no FEMA map exists or the map is out of date (*e.g.*, the map no longer reflects current flooding conditions), the documentation should be from the local floodplain authority (or local official with authority to issue development permits within the floodplain). Based on such documentation, the District Engineer will make the final determination as to whether the proposed project is actually located within the 100-year floodplain.

(b) For NWPs 12 and 14, where there are discharges of dredged or fill material resulting in permanent, above-grade wetland fills in waters of the United States within the 100-year floodplain, it is presumed that such discharges will result in more than minimal adverse effects. Such discharges are not authorized by NWPs 12, and 14, unless the District Engineer determines that the prospective permittee has clearly demonstrated that the project, and associated mitigation, will not decrease the flood-holding capacity and no more than minimally alter the hydrology, flow regime, or volume of waters associated with the floodplain. Prospective permittees attempting to rebut this presumption must notify the District Engineer in accordance with General Condition 13. The notification must include documentation, which demonstrates that the project will not result in increased flooding or more than minimally alter floodplain hydrology or flow regimes. This documentation must include proof that FEMA, or a state or local floodplain authority through a licensed professional engineer, has approved the proposed project and provided a statement that the project does not increase flooding or more than minimally alter floodplain hydrology or flow regimes.

(c) Notwithstanding (a) and (b) above, projects located in the 100-year floodplain at a point in a watershed which drains less than one square mile are not subject to this condition.

D. Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other Federal, State, or local permits, approvals, or authorizations required by law.

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3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project.

E. Definitions

Aquatic bench: Aquatic benches are those shallow areas around the edge of a permanent pool stormwater management facility that support aquatic vegetation, both submerged and emergent.

Best management practices: Best Management Practices (BMPs) are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. A BMP policy may affect the limits on a development.

Compensatory mitigation: For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Creation: The establishment of a wetland or other aquatic resource where one did not formerly exist.

Drainage ditch: A linear excavation or depression constructed for the purpose of conveying surface runoff or groundwater from one area to another. An "upland drainage ditch" is a drainage ditch constructed entirely in uplands (*i.e.*, not waters of the United States) and is not a water of the United States, unless it becomes tidal or otherwise extends the ordinary high water line of existing waters of the United States. Drainage ditches constructed in waters of the United States (*e.g.*, by excavating wetlands or stream channelization) remain waters of the United States even though they are heavily manipulated to increase drainage. A drainage ditch may be constructed in uplands or wetlands or other waters of the United States.

Enhancement: Activities conducted in existing wetlands or other aquatic resources which increase one or more aquatic functions.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Farm tract: A unit of contiguous land under one ownership which is operated as a farm or part of a farm.

Independent utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage as a result of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is the threshold measurement of the impact to existing waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of perennial or intermittent stream that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland (*i.e.*, a water of the United States) that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (*i.e.*, spring high tide line).

Open water: An area that, during a year with normal patterns of precipitation, has standing or flowing water for sufficient duration to establish an ordinary high water mark. Aquatic vegetation within the area of standing or flowing water is non-emergent, vegetated shallows, sparse, or absent. This term includes rivers, streams, lakes, and ponds.

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Permanent above-grade fill: A discharge of dredged or fill material into waters of the United States, including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the waterbody to dry land. Structural fills authorized by NWPs 3, 25, 36, etc. are not included.

Playa: A type of marsh found on the high plain of northern Texas and eastern New Mexico that is characterized by small, seasonally flooded basins with clay or fine sandy loam hydric soils and emergent hydrophytic vegetation.

Prairie pothole: A type of marsh found on glacial till in Minnesota, Iowa, North Dakota, South Dakota, and Montana that is characterized by small seasonally or permanently flooded depressions and emergent hydrophytic vegetation.

Preservation: The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the overall aquatic ecosystem.

Project area: The acreage of land, including waters of the United States and uplands, utilized for the single and complete project. The acreage is determined by the amount of land cleared, graded, and/or filled to construct the single and complete project, including any buildings, utilities, stormwater management facilities, roads, yards, and other attendant features. The project area also includes any other land that is used in conjunction with the single and complete project, such as open space. Roads constructed by State or local governments for general public use are not included in the project area.

Restoration: Re-establishment of wetland and/or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Steep gradient sections of streams are sometimes characterized by riffle and pool complexes. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. Pools are characterized by a slower stream velocity, a streaming flow, a smooth surface, and a finer substrate.

Single and complete project: The term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). For linear projects, the "single and complete project" (*i.e.*, a single and complete crossing) will apply to each crossing of a separate water of the United States (*i.e.*, a single waterbody) at that location. An exception is for linear projects crossing a single waterbody several times at separate and distant locations: Each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland or lake, etc., are not separate waterbodies.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and BMPs, which retain water for a period of time to control runoff and/or improve the quality (*i.e.*, by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream channel to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, or other activities that change the stream cross-section or other aspects of stream channel geometry to increase the rate of water flow through the stream channel. A channelized stream remains a water of the United States, despite the modifications to increase the rate of water flow.

Tidal wetland: A tidal wetland is a wetland (*i.e.*, a water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (*i.e.*, spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Vernal pool: A type of marsh found in Mediterranean-type climates (*i.e.*, wet winters and dry summers), especially on coastal terraces in southwestern California, the central valley of California, and areas west of the Sierra Mountains, that is characterized by shallow, seasonally flooded wet meadows with emergent hydrophytic vegetation.

Waterbody: A waterbody is any area that in a normal year has water flowing or standing above ground to the extent that evidence of an ordinary high water mark is established. Wetlands contiguous to the waterbody are considered part of the waterbody.

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Centers for Disease Control and Prevention

Implementation of the Fertility Clinic Success Rate and Certification Act of 1992—A Model Program for the Certification of Embryo Laboratories; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Implementation of the Fertility Clinic Success Rate and Certification Act of 1992—A Model Program for the Certification of Embryo Laboratories

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Final notice.

SUMMARY: The Fertility Clinic Success Rate and Certification Act of 1992 (Pub. L. 102–493, 42 U.S.C. 263a–1 et seq.) requires that the Secretary, HHS, through the CDC, develop a model program for the certification of embryo laboratories, to be carried out voluntarily by interested States.

This notice sets forth the model certification program requirements, including definitions, administrative requirements, and embryo laboratory standards. The model program incorporates comments received by CDC on the proposed model certification program that was published in the **Federal Register** on November 6, 1998 (63 FR 60178).

FOR FURTHER INFORMATION CONTACT: Robert Martin, Dr.P.H., Division of Laboratory Systems, CDC, telephone (770) 488–8295

SUPPLEMENTARY INFORMATION:

Introduction

The Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA), Public Law 102–493 (42 U.S.C. 263a–1 *et seq.*), was intended to provide the public with comparable information concerning the effectiveness of infertility services and to assure the quality of such services by providing for the certification of embryo laboratories.

Section 2 of the statute requires that the Secretary, HHS, through the CDC, define pregnancy success rates, and seek public comment on the proposed definitions. In addition, Section 2 requires each assisted reproductive technology (ART) program to annually report its pregnancy success rates to the CDC, along with the identity of each embryo laboratory used by the program, and whether the laboratory is certified under Section 3 or has applied for such certification. Section 2 was addressed in a **Federal Register** notice published on August 26, 1997 (62 FR 45259).

Section 3(a) of the FCSRCA requires that the CDC "develop a model program for the certification of embryo laboratories * * * to be carried out by the States." In developing the model certification program, CDC is to consult with "appropriate consumer and professional organizations with expertise in using, providing, and evaluating professional services and embryo laboratories associated with assisted reproductive technology programs."

Section 3(b) lists State officials who are to receive a description of the model certification program, and requires that the Secretary encourage States to adopt such a program.

Section 3(c) includes the requirements for administration of the certification program by the States, with provisions for the inspection and certification of embryo laboratories by States or approved accreditation organizations, and the requirement for application to the State by an embryo laboratory that seeks certification.

Section 3(d) specifies the embryo laboratory standards that are to be in the model certification program. These include a standard to assure consistent performance of laboratory procedures; a standard for a quality assurance and quality control program; standards for the maintenance of all laboratory records (including laboratory tests and procedures performed, as well as personnel and equipment records); and a standard for personnel qualifications.

Section 3(e) includes provisions for a State to adopt the model certification program if it applies to the Secretary, and is approved, and Section 3(f) allows for the use of accreditation organizations, approved under the requirements described in Section 4, to inspect and certify embryo laboratories in States that have adopted the program.

Section 3(g) requires that States which qualify to adopt the model certification program conduct embryo laboratory inspections to determine if the laboratories meet the requirements of the program. Inspections are to be unannounced or be announced in circumstances in which the likelihood of discovering deficiencies in the operations of an embryo laboratory is not diminished. Section 3(g) also requires the Secretary to seek public comment on the circumstances under which announced inspections may be conducted. In addition, inspection results (including deficiencies and any subsequent corrections to those deficiencies) are to be reported and made available to the public.

Section 3(h) provides for the Secretary to conduct validation inspections of embryo laboratories certified by a State or an approved accreditation organization to determine if the laboratories are being operated in accordance with the standards in the model certification program. If a validation survey demonstrates that an embryo laboratory is not in compliance with such standards, the statute specifies requirements for notification of the State, or as applicable, the accreditation organization. A subsequent investigation and inspection of additional certified embryo laboratories are to be conducted to determine if the State or accreditation organization is reliably identifying laboratory deficiencies. The Secretary may revoke the approval of the State certification program or accreditation organization if requirements applicable to the program are not being met.

Section 3(i) limits the Secretary in developing the model certification program, and the States in adopting such program, from establishing any regulation, standard, or requirement that has the effect of exercising supervision or control over the practice of medicine in ART programs.

Section 3(j) states that the Secretary may define the term of the certification issued by a State or an accreditation organization in a State, through the public comment process, and provides for application for recertification to be submitted when there is a change in ownership or administration of a certified embryo laboratory.

Section 4 calls for the Secretary, through the CDC, to promulgate criteria and procedures for the approval and use of accreditation organizations to inspect and certify embryo laboratories in States which have adopted the model certification program, as well as in States which have not adopted the program. The section also includes provisions for annual evaluation of approved accreditation organizations by the Secretary, through the inspection of a representative sample of accredited embryo laboratories and other such appropriate means.

Section 5 specifies the conditions under which a certification issued by a State or an accreditation organization shall be revoked or suspended, and the effect that such revocation or suspension would impose on the certification and application for recertification of the laboratory.

Section 6 mandates that the Secretary, through the CDC, annually publish pregnancy success rates as reported by ART programs (Section 2); the names of ART programs that fail to report pregnancy success rates; the identity and certification status of each embryo laboratory located in a State which has adopted the model certification program; the identity of each embryo laboratory in a State which has not adopted the certification program and which has been certified by an approved accreditation organization; and in the case of an embryo laboratory which is not certified, whether the laboratory has applied for certification. The annual publication is to be distributed to States and the public. This section was also addressed in the previously mentioned **Federal Register** notice published on August 26, 1997 (62 FR 45259). The first report, 1995 Assisted Reproductive Technology Success Rates: National Summary and Fertility Clinic Reports, was published in December 1997. The second report, 1996 Assisted Reproductive Technology Success Rates: National Summary and Fertility Clinic Reports, was published in February 1999. Copies of these reports may be obtained by contacting CDC by calling 1–770–488–5372 or via the Internet at www.cdc.gov/nccdphp/drh/art96/.

Section 7 authorizes the Secretary to charge sufficient fees to cover the cost of administering the FCSRCA and authorizes States adopting the certification program to charge sufficient fees to cover the cost of administering their program.

Section 8 includes a definition of assisted reproductive technology and provides for seeking public comment on any proposed expansion of the definition.

Background

In accordance with the FCSRCA, in developing the model certification program, the CDC consulted with individuals, professional organizations and consumer groups with expertise and interest in ART. The organizations represented reproductive medicine—the American Society for Reproductive Medicine (ASRM) and the Society for Assisted Reproductive Technology, laboratory professionals—the College of American Pathologists (CAP) and the American Association of Bioanalysts, and a consumer group that serves to educate the public on infertility diagnosis and treatment—RESOLVE. The CDC also sought input from State programs and Federal agencies with regulatory responsibilities related to laboratory practice, tissue banking and ART.

A useful example in developing the model certification program was the voluntary Reproductive Laboratory Accreditation Program (RLAP) developed jointly by the CAP and the ASRM, and administered by the CAP. The CAP/ASRM RLAP currently provides oversight of at least one third of embryo laboratories affiliated with ART programs and clinics in the United States and served as the basis for many of the standards in the proposed model program. Standards and guidelines from other professional organizations, State, Federal, and international programs were also used as resources, and the CDC made a number of site visits to embryo laboratories to observe the daily operation of these facilities. In addition, between November 1996 and August 1997, the CDC held several work sessions with technical consultants to obtain individual expert input on specific issues related to the embryo laboratory and the model certification program, including personnel qualifications and responsibilities, quality assurance and quality control (quality management), recordkeeping, specific definitions as they would apply to the model certification program, and State administration of the program.

Subsequently, on November 6, 1998, the CDC published in the **Federal Register** (63 FR 60178) a notice soliciting public comment on a proposed model program for the certification of embryo laboratories. As mentioned above, the FCSRCA required the Secretary to facilitate public comment on specific aspects of the model certification program and the definitions as they relate to the model. To ensure appropriate consideration during the public comment period, the CDC highlighted the following issues in the preamble to the proposed model program:

- Based on the comments received during the previously mentioned work sessions with technical consultants (63 FR 60170), the proposed model's definitions for "assisted reproductive technology" and "embryo laboratory", have been elaborated from the definitions specified in the FCSRCA. The issue is whether the revised definitions are appropriate and accurate for use in the model certification program.
- The proposed model permits announced initial and routine inspections and unannounced inspections for complaint investigations. The issues are under what circumstances should announced inspections be permitted so as not to diminish the likelihood of discovering deficiencies in the operation of an embryo laboratory, and whether there are circumstances that should require unannounced inspections.
- The proposed model specifies a 2-year term for embryo laboratory certification. The issue is whether this is an appropriate period of time for the term of certification of a laboratory (*i.e.*, renew biennially).

In addition, we were interested in receiving comments on the following issue which was not specifically addressed in the proposed model certification program but could have been considered for inclusion in the finalized model:

- Proficiency testing (PT) currently available for the embryo laboratory is limited to determining whether culture media samples provided by the PT program are suitable for in vitro mouse embryo culture. While the performance of PT is not required in the proposed model, the model's standards do require a laboratory to perform quality control procedures to monitor the reliability of the ART procedures performed (including culture media checks). Equipment and instrument maintenance and function checks are also required to ensure their adequate performance. In addition, the laboratory must track and evaluate procedural outcomes such as fertilization rates, cleavage rates and embryo quality as a means of monitoring the quality of the procedures and services provided by the laboratory. The issue is whether these standards provide a sufficient means for monitoring laboratory performance or if a standard requiring PT should be included in the model.

During the 60-day comment period the public had the opportunity to submit concerns and recommendations in response to the issues highlighted above, as well as any other aspect of the proposed model program. The letters we received provided helpful information for finalizing the model certification program. A summary of the comments and our responses to them are included below.

Other information that was useful in finalizing this model certification program for embryo laboratories was data provided in a Survey of Assisted Reproductive Technology Embryo Laboratory Procedures and Practices, conducted under a CDC Task Order Contract with Research Triangle Institute and performed by Analytical Sciences, Inc. The purpose of this survey was to provide the CDC with an enumeration of those ART embryo laboratory procedures and practices that are currently in use. The final report of the survey was completed on January 29, 1999, and can be accessed via the Internet at www.phppo.cdc.gov/dls/pdf/art/ARTsurvey.pdf. A copy of the report may also be obtained by calling the CDC at (770) 488–8295.

Responses to Comments

In response to our request for comments to the proposed model certification program, we received a total of 15 letters, four of which were from professional organizations, one from a consumer advocacy group, one from a manufacturer, and the rest from individuals employed in embryo laboratories or affiliated with infertility clinics/programs. The letters contained approximately 60 comments. 14 of which were in response to the issues highlighted for consideration in the proposed model program. Six of the commenters, which included two

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professional organizations, expressed support for and/or complimented our efforts to develop a model certification program. There was no opposition to the model in its entirety, but rather the respondents provided comments on specific aspects of the proposed model. Comments to the highlighted issues and additional comments are addressed below.

1. Are the revised definitions for "assisted reproductive technology" and "embryo laboratory" appropriate and accurate for use in the model certification program?

One commenter believed that the definition for "assisted reproductive technology" was overly broad and could be interpreted as including intra uterine insemination (IUI) and intra vaginal culture (IVC), procedures which do not require the same level of quality control, quality assurance, etc., as do other ART procedures. The commenter suggested that the model be revised to contain new categories for IUI and IVC with requirements consistent with the complexity level of the procedures. Another commenter stated that while the term "embryo laboratory" is technically correct, these laboratories would be more appropriately named "embryology laboratories" to reflect the science of the work performed in them.

Response: The proposed definition for assisted reproductive technology (ART) was based on the definition of ART provided in the FCSRCA, which was modified for clarity based on the comments received during our work sessions with technical consultants. We do not agree with the comment that the ART definition is overly broad for use in the model certification program. The definition appropriately and accurately specifies ART as "all clinical and laboratory treatments which involve the handling of human oocyte and sperm, or embryos, with the intent of establishing a pregnancy." The commenter's interpretation is incorrect; IUI is not covered by this definition of ART, as IUI is a procedure that involves the manipulation of sperm only rather than oocytes and sperm. However, IVC is covered by the ART definition, since it is a procedure in which oocytes and sperm are mixed and incubated together. In addition, we disagree with this commenter's viewpoint that IVC does not require the same level of quality control or quality assurance as other ART laboratory procedures. In performing IVC, oocytes and embryos must be accurately identified just as they are for other ART laboratory procedures, requiring qualified personnel with appropriate training and expertise, written procedures and policies outlining criteria for the identification of oocytes and embryos, etc., to ensure quality patient care.

In response to the comment suggesting that the term "embryology laboratory" be used in place of "embryo laboratory", we are retaining "embryo laboratory" because it is the term used throughout the statute (FCSRCA). Although embryology refers to the science of studying the origin and development of an individual organism, in using the term embryo, we are specifically referring to the intended goal of the procedures performed in these laboratories—the manipulation of human gametes to produce viable human embryos.

2. Under what circumstances should announced inspections be permitted so as not to diminish the likelihood of discovering deficiencies in the operation of an embryo laboratory, and are there circumstances that should require unannounced inspections?

Five commenters, two of which were professional organizations, expressed concern with the proposed model's option to permit unannounced inspections for complaint investigations. The commenters cited the potential for disrupting embryo laboratory procedures and interfering with patient treatment. Maintaining patient confidentiality during an inspection was also of concern. Three commenters suggested providing the laboratory 48 hours notice to allow rescheduling of patient procedures or other alternative measures to reduce the risk to eggs, sperm and embryos. The consumer advocacy group supported unannounced inspections if precautions are taken to prevent interference with patient treatment and safeguard patient confidentiality.

Response: We understand the commenters' concerns, and agree that the nature of the work performed in embryo laboratories is delicate and time sensitive, and that disruptions or delays in the process could have deleterious effects. We also agree that maintaining patient confidentiality during a laboratory inspection is of utmost importance. When performing inspections, it is not the intent to disrupt the laboratory's operations or divulge confidential patient information. In general, Federal, State and professional accreditation organization laboratory inspectors are health professionals with pertinent education, qualifications, and experience. They receive special training and are instructed to make every effort to avoid interrupting the routine workflow when conducting an inspection. They are also aware of the importance of safeguarding confidential patient information.

The proposed model program did not mandate that unannounced inspections *must* be performed for complaint investigations, but it did provide the State that chooses to adopt the model the option to do so. We included this option so that investigations of complaints of truly egregious behavior could be conducted immediately and unannounced. In addition, this option would allow the State to incorporate embryo laboratory inspections into an already existing laboratory or health care facility regulatory program that may require unannounced complaint inspections. Based on the comments we received, and because of the unique nature of the procedures performed in embryo laboratories, we agree that in some cases there may be a need to allow 48 hours notice prior to conducting a complaint inspection. This could be done to give the laboratory time to reschedule ART procedures, if necessary, and to ensure that adequate staffing and the appropriate individuals are available on the day of inspection. In addition, we do not believe that a 48 hour notice would significantly diminish the likelihood of discovering systemic deficiencies in a laboratory's operation. Therefore, if a State determines that it is appropriate to provide some advance notice of a complaint inspection, the model certification program as written allows the State to provide the laboratory a 48 hour notice.

3. Is two years an appropriate period of time for the term of certification of a laboratory (i.e., renew biennially)?

Two individuals provided comments on the time period for the term of certification. One of the commenters viewed a two year term as reasonable. The other commenter suggested that three to five years would be more appropriate as long as there was no significant change in the laboratory's personnel, no change in the laboratory's location, or no complaints registered against the laboratory.

Response: A two year term of laboratory certification is consistent with other similar laboratory licensure or accreditation programs currently in existence. Maintaining this consistency among programs may allow for easier coordination of inspections if a laboratory participates in more than one program offered by the same organization or agency. For example, a facility that has both a clinical laboratory and a reproductive laboratory accredited by the CAP may be able to have a joint inspection for both of the programs. For this reason, we agree with the commenter who stated that a two year term is reasonable, and have not revised this requirement in the model certification program.

4. Do the proposed embryo laboratory standards provide a sufficient means for monitoring laboratory performance or should a standard requiring PT be included in the model?

Each of the four professional organizations commenting on the proposed model addressed the issue of PT. Three of the organizations did not support the inclusion of a PT requirement in the model certification program. They did not believe appropriate PT was available or could be developed and standardized due to the specimens (human gametes and embryos) used in the embryo laboratory. They stated this is especially true if the purpose of PT is to measure a laboratory's performance by replicating ART laboratory procedures. One organization strongly believed PT must be applied to embryo laboratories as it is applied to laboratories performing clinical laboratory testing; not doing so would undermine any potential effectiveness of the model program.

Response: We agree that, at this time, the inclusion of PT in the model certification program for embryo laboratories is not appropriate. Proficiency testing monitors laboratory performance by comparing the laboratory's evaluation or measurement of external samples that mimic patient samples to known test results, or results obtained by standardized methods. Proficiency testing results should be comparable to results that would be obtained when testing similar patient samples. Definitive PT programs are available for andrology procedures (sperm counts and microscopic semen evaluations), however, the one program currently available for embryo laboratories evaluates whether a laboratory's bioassay system can detect toxicity in culture media samples sent to the laboratory by the program. It does not test a laboratory's ability to examine oocytes and embryos, or successfully perform other embryo laboratory procedures. Standardized methods for monitoring these laboratory procedures have not yet been developed, in part due to the fact that the ultimate measure of the performance of most embryo laboratory procedures is a viable human embryo.

Proficiency testing is only one measure of a laboratory's quality. Other measures such as quality control, personnel standards, and monitoring laboratory practices must also be considered in determining the overall quality of laboratory performance. As mentioned in the preamble to the proposed model, these measures are all included in the model certification program. Since appropriate, standardized PT is not available at this time for embryo laboratory procedures, we have not included it in the model certification program. At such time as definitive PT becomes available for embryo laboratory procedures, States that adopt the model certification program or develop an equivalent program should consider including it in their program as an additional indicator of laboratory performance.

5. Additional comments.

Comment: One commenter requested clarification of what regulations take priority, or must be met, when there is a conflict/difference between Federal and State laboratory requirements.

Response: A laboratory must meet all applicable Federal, State and local requirements, and when differences exist among regulations, the laboratory must meet the most stringent requirement. By doing this, the laboratory should meet corresponding regulations that are less stringent.

Comment: One professional organization strongly urged the CDC to approve accreditation organizations for embryo laboratory certification purposes. The organization believes that CDC approval of the CAP/ASRM Reproductive Laboratory Accreditation Program (RLAP) and others that could be developed would be the best means to protect the public health without creating overly burdensome and redundant regulation. An additional commenter endorsed the existing CAP/ASRM RLAP as the means to assure constructive assessment of embryologic methods and improvement in the quality of ART programs.

Response: The CDC recognizes there are existing voluntary accreditation programs currently available that provide oversight of ART embryo laboratories and have had a positive impact on laboratory quality without Federal oversight. These programs were reviewed and served as examples in developing the model certification program for embryo laboratories, and could provide an excellent resource for States that wish to develop their own certification program. One such program is the CAP/ASRM RLAP, mentioned above.

While we agree that Federal approval of an accreditation organization(s) could be beneficial to laboratories in States which do not adopt the model or have an equivalent certification program, as explained below, this would go beyond the proposed model's implementation plan which permits States to approve accreditation organizations to certify laboratories within their respective State. As stated earlier in the preamble, the FCSRCA authorizes the Secretary and States to charge fees to cover the costs of the model certification program. Since this is a voluntary program, and laboratories have not indicated they would opt into such a self-supporting program, at this time, the CDC is deferring the implementation of the approval and subsequent monitoring of accreditation organizations to States that choose to adopt the model certification program and wish to use an accreditation organization for State certification purposes.

Although we have not officially approved any accreditation programs or determined their equivalency to the model certification program, as data become available, the CDC will publish the certification/accreditation status of embryo laboratories affiliated with ART programs or clinics in conjunction with future annual publications of the ART Success Rates reports.

Comment: One commenter asserted that any fees charged for certification must not be unduly excessive or burdensome to the laboratory. The commenter suggested the cost of certification be adjusted with respect to the laboratory's level of activity, *i.e.*, higher volume laboratories should be charged more than smaller volume laboratories. A professional organization commented that the Federal government should share the costs of the certification and accreditation programs.

Response: It will be up to each State that adopts the model program to develop fee schedules and the methodology for determining fees charged to the laboratory for certification. Many existing licensing/certification programs do establish fees based on volume of testing or number of procedures performed. The requirement that addresses fees at Part II., B., 8. of the model certification program was included to reiterate the FCSRCA's provision (Pub. L. 102–493, sec. 7) that allows charging such fees necessary to recoup the cost of administering a certification program.

To date, the Federal government has assumed the cost of implementing the FCSRCA, in development of the laboratory standards and administrative process for the model certification program for embryo laboratories and publication of both the proposed and finalized model programs. In addition, the CDC will distribute this model program to State officials and health authorities as outlined in the statute and will provide the certification/accreditation status of embryo

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laboratories affiliated with infertility clinics and ART programs in its annual publication of ART Success Rates.

Comment: Two commenters expressed concern over the model's administrative requirement for the State, or as applicable, accreditation organization to make available to the public, upon request, the laboratory's specific inspection findings, including deficiencies identified and any subsequent corrections to those deficiencies. One of the commenters believed this would discourage a laboratory's participation in the voluntary certification program and that the public would be unable to interpret the published inspection findings.

Response: The requirement to make a laboratory's inspection findings available to the public upon request was mandated by the FCSRCA. This requirement is part of the overall effort in the legislation to provide the public with consistently reliable and comparable information about the effectiveness of infertility services provided by ART clinics. It is one piece of the information that may be used by consumers in choosing a clinic for ART services. We disagree that this requirement would discourage laboratories that are maintaining good laboratory practices from participation in the voluntary model certification program. In fact, successful participation in a voluntary program such as the model certification program could be viewed as an asset for a laboratory or ART program seeking new clients. We also disagree with the commenter that the public would not be able to interpret inspection findings. The model certification program requires States and accreditation organizations to include the necessary explanatory informa..on for the public to interpret the findings.

Comment: Two professional organizations were concerned the model did not sufficiently address due process procedures for laboratories found to be out of compliance with the certification program's standards.

Response: Due process procedures for laboratories that are not in compliance with certification program requirements are not described in the model program because such a process would be developed and performed at the State level and may vary from State to State. The reference to State development of due process procedures is found at Part II., B., 7., a. of the model certification program.

Comment: One commenter disagreed with the model's proposed guideline at Part III., A., that the laboratory employ one individual for every 90–150 ART cycles performed by the laboratory annually. The commenter suggested one individual for every 100 ART cycles is more appropriate.

Response: We disagree. We included the recommended range as a guideline for adequate staffing of a laboratory, recognizing that some embryo laboratories do not provide as extensive service as others and may not need as many employees. In addition, a laboratory's workload may vary over time, and it may not be possible to keep the staffing level at an exact number. By giving an appropriate range as a guideline for staffing, we are providing some guidance for laboratories while maintaining flexibility for the reasons stated above.

Comment: A few commenters promoted requiring board certification for laboratory directors with a doctoral degree, with one of the commenters stating, "Board examinations are the only comprehensive measure available of a candidate's command of a unified fund of laboratory specific knowledge and are crucial in establishing a minimum competence level for laboratory directorship in our field." One of the commenters misinterpreted the requirements of the model, thinking it would allow an individual with a doctoral degree in English (or other non-science major) to qualify as a laboratory director.

Response: We agree it is beneficial for the director of the embryo laboratory to be board certified, especially if that certification is specific to reproductive laboratory science. However, we do not believe it is the only way to ensure that a laboratory director is qualified for this position. Therefore, while not making board certification a requirement, we are adding language at Part III., A., 1., b., recommending board certification in embryology for doctoral scientist laboratory directors.

In response to the commenter who misread the model certification program requirements for a doctoral degree, Part I., Definitions, specifies the earned doctoral degree must be in a chemical, physical, biological or medical laboratory science. This would preclude an individual with a doctoral degree in English or other nonscience from fulfilling the qualification requirements for an embryo laboratory director.

Comment: Several commenters, which included three professional organizations provided their opinions on the use of documented hours of training and numbers of ART cycles in an embryo laboratory as an appropriate qualification requirement for laboratory personnel, in particular the laboratory director. Reasons given by commenters for not requiring a specific number of hours and/or cycles of training/experience included the following:

Training should bear a logical relationship to the complexity of procedures performed. Some ART laboratory procedures may require fewer or greater number of repetitions to ensure competency, *i.e.*, intracytoplasmic sperm injection (ICSI) requires more manipulation and skill than *in vitro* fertilization (IVF) and should have a higher hour/cycle requirement assigned;

The laboratory director should determine the adequacy of each employee's training/experience and not be locked into requiring an exact number of hours and/or cycles;

Consideration must be given to the laboratory director, who may not always perform bench work;

The number of hours/cycles may be impossible to document if a current laboratory director was trained several years in the past; and

Requiring the laboratory director to have 60 cycles of experience in ART procedures including IUI, IVC, conventional IVF, gamete intrafallopian transfer (GIFT), zygote intrafallopian transfer (ZIFT), ICSI, and assisted hatching, etc., if these procedures are not offered by a facility is unreasonable.

On the other hand, one professional organization stated that, for laboratory directors, the number of ART laboratory cycles performed is a better measure of training and experience than a specific number of hours of training. This organization suggested 60 ART cycles and six months full time in an IVF laboratory is sufficient training for reproductive endocrinologists. Another professional organization agreed if the laboratory director was performing bench work, a requisite number of hours and cycles correlating with the skill level for a specific procedure should be met. Both organizations stated the model program should be flexible and accommodate future changes in embryo laboratory procedures.

Response: Professional guidelines such as the ASRM's revised minimum standards for IVF, GIFT, and related procedures (see References) were a valuable resource in developing the model certification program. The ASRM guidelines recommend the embryo laboratory director or supervisor should have had at least six months training and completed at least 60 ART procedures in a program that performs at least 100 IVF procedures per year with a minimum annual 10% IVF live birth rate per retrieval cycle. The ASRM defines an ART procedure as "a combination of the examination of follicular aspirates, insemination, documentation of fertilization and preparation for embryo transfer." These guidelines also recommend that embryo laboratory technologists have evidence of completion of 30 complete IVF procedures under continuous supervision of the laboratory director or supervisor.

The ASRM recommendations for personnel training are similar to those proposed in the model certification program. The model's proposed training requirement for the laboratory director and supervisor of one thousand hours of laboratory training is approximately equal to the ASRM's requirement of six months of full-time (40 hour week) training. The ASRM's recommendation for completion of 60 ART laboratory procedures is synonymous with the model's requirement for "performing, at a minimum, each laboratory component of the human ART cycle 60 times". For the reproductive biologist, the model program proposed to require training that included performing the ART laboratory procedure(s) to be performed in the laboratory, at a minimum, 30 times under direct and constant supervision.

We do not agree with the commenters who recommended we not require a specific number of hours of documented training, and/or performance of a certain number ART laboratory procedures for laboratory director, laboratory supervisor, or reproductive biologist. Although we recognize it can be difficult to impose a blanket training requirement for the skill level needed for a diverse group of laboratory procedures, we believe the requirements in the model certification program are consistent with the ASRM guidelines and appropriate (with minor revisions) as *minimum* training requirements for the majority of ART laboratory procedures and job duties to be performed by each respective personnel category. We agree with the commenters who suggested some ART laboratory procedures require more extensive technical skill and manipulation (*e.g.*, ICSI) and may need additional repetitions prior to assuring competence of an individual. As stated in the model, it is the responsibility of the laboratory director to ensure all personnel receive appropriate training, and can demonstrate reliable performance of procedures prior to working on patient specimens (Part III., A., 2., k.). If the director determines it is necessary to increase the number of repetitions for some ART laboratory procedures, he or she should require such for adequate personnel training.

For clarification of the requirements in the model certification program and for consistency with the ASRM guidelines, we have replaced the laboratory director requirement at Part III., A., 1., b., ii., and c., ii., for at least "1000 hours" of documented training with "six months." In this same section, and at Part III., A., 3., b., ii., and c., ii., we have substituted "each ART laboratory procedure 60 times" for "each laboratory component of the human assisted reproductive technology cycle 60 times." Although we have deleted the word "human" from this requirement, the model's definition for ART laboratory procedures specifies these are "all laboratory procedures for the handling and processing of human oocytes and sperm, or embryos, with the intent of establishing a pregnancy."

In response to the comments regarding the role of the laboratory director, as outlined in the model program, the laboratory director is responsible for the overall operation, administration, and *technical* and scientific oversight of the embryo laboratory. Although in some laboratories this may not include day-to-day performance of ART laboratory procedures, it does require the director to have knowledge and technical skills pertaining to the ART laboratory procedures selected/developed and performed in the facility. He or she must also ensure all personnel receive appropriate training for the ART laboratory procedures to be performed, and the laboratory supervisor is technically qualified for that position. Based on these responsibilities, we believe it is necessary for the laboratory director to have at least six months training in an embryo laboratory, and have performed each ART laboratory procedure at least 60 times as part of the training process.

Since the laboratory supervisor is responsible for day-to-day supervision and oversight of the embryo laboratory and may perform the laboratory director responsibilities if authorized in writing by the director, the model program also requires the supervisor to have training which includes performing each ART laboratory procedure at least 60 times. We note that in finalizing the model program, we have clarified at Part III., A., 2., that the laboratory director may delegate performance of his or her responsibilities to an individual qualified as a laboratory supervisor or laboratory director.

In response to the commenter who was concerned about documentation of an individual's training if that person had been working for a number of years, the part of the training that may be difficult to document would be the number of ART laboratory procedures performed by that individual. In such cases, laboratory worksheets or logbooks, or other forms of laboratory documentation showing completion of ART laboratory procedures by a specific individual may be used as the documentation that adequate training has been completed.

The commenter who interpreted the qualification requirements for laboratory director as being 60 cycles of IUI, IVC, * * * etc., misinterpreted the model program. As explained above, the model requires the laboratory director to perform at least 60 ART *laboratory* procedures as part of his or her training. Performing medical procedures that may be part of an ART cycle, such as IUI, GIFT, and ZIFT is not required. ART laboratory procedures do include, but are not limited to, "the examination of follicular aspirates, oocyte classification, sperm preparation, oocyte insemination, assessment of fertilization, assessment of embryo development, preparation of embryos for embryo transfer, and cryopreservation of specimens." We believe it is appropriate for both the laboratory director and laboratory supervisor to be trained in the performance of all of these procedures to adequately carry out their duties and provide oversight of reproductive biologists who are performing any of these procedures. Although procedures such as ICSI, assisted hatching or other micromanipulative techniques are laboratory procedures, they are specific techniques for oocyte insemination and assessment of embryo development. We would not expect the laboratory director and supervisor to be trained in these specialized techniques, unless they perform them in their laboratory.

Comment: One individual stated there should be a requirement for the laboratory director and supervisor to each perform at least 25 ART cycles per year.

Response: We agree with the commenter that, to maintain their skills and expertise, embryo laboratory personnel performing ART laboratory procedures should perform a minimum number of these procedures on an annual basis. The ASRM guidelines, described in the previous response, recommend each staff embryologist (including the laboratory director *or* supervisor) perform at least 20 ART procedures a year, in contrast to the 25 ART cycles suggested by the commenter. We believe performance of a minimum of 20 ART laboratory procedures per year is a reasonable number to recommend if an individual

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performs ART laboratory procedures as part of his or her responsibilities. Since it is consistent with what is recommended by the ASRM professional guidelines, we are recommending at Parts III., 1., d., ii. and 3., d., ii., for the laboratory director and laboratory supervisor, that if the individual serving in either position performs ART laboratory procedures in the laboratory, he or she should perform each of these laboratory procedures at least 20 times annually. We have also added a recommendation at Part III., 5., d., ii. that each reproductive biologist perform each of the ART laboratory procedures he or she performs in the laboratory at least 20 times annually.

Comment: One commenter was concerned the proposed model's personnel qualification requirements fail to address formal and specific education in reproductive medicine and promotes on-the-job training as the only option to fulfill the educational requirement because the model program would "grandfather" currently employed individuals who do not have an appropriate college degree. The commenter asked that we consider adding provisions that would allow formal education in reproductive laboratory science as an option to on-the-job training. A professional organization also suggested the proposed "grandfather" clauses at Part III., A., 3, c., and 5., c., include a minimum educational standard, specifically a bachelor's degree for the laboratory supervisor and an associate's degree for the reproductive biologist.

Response: We agree with the commenter that it is appropriate to include reproductive laboratory science in the list of acceptable academic degrees for all categories of embryo laboratory personnel. However, we do not agree that having this degree is sufficient to delete the training or experience requirements for any of the personnel categories. In this rapidly changing field, where accurate performance of laboratory procedures is dependent on the skill and expertise of the individual performing the procedures, we believe in addition to an academic degree, it is critical to obtain adequate hands-on training and experience prior to working with human gametes and embryos. This is especially true for procedures that may differ significantly from one laboratory to another.

We do not agree with the comment made by the professional organization that minimum educational standards should be included in the "grandfather" clauses at Part III., A., 3, c., and 5., c. of the model certification program. In developing standards for this relatively new area of laboratory technology, we do not wish to create a situation where individuals who have been working in the field would not meet the qualifications specified for their positions. In the model certification program, we have specified educational requirements which must be met by individuals who first become employed in an embryo laboratory after the date of this **Federal Register** notice. For the reason stated above, individuals serving in these positions on or before July 20, 1999 who have the specified experience and/or training requirements for their respective positions will be considered qualified.

Comment: A professional organization and two individuals commented on the proposed requirements for the laboratory director, supervisor and reproductive biologist to obtain 12 contact hours of continuing education per year in ART or clinical laboratory practice. While the professional organization expressed the view that continuing education for non-supervisory personnel as specified in the proposed model program is acceptable, one of the individual commenters felt that 12 contact hours was excessive for non-supervisory personnel as well as costly for the ART program. This commenter suggested reducing the requirement to 12 contact hours every *two* years. The other individual commenter noted the proposed requirement at Part III., A., 2., l., made the laboratory director responsible for ensuring each employee obtain the required continuing education. The commenter felt this should also be the reproductive biologist's responsibility and that reading appropriate literature should count as continuing education.

Response: We agree with the professional organization that in this rapidly evolving field of science and technology, it is appropriate and necessary for all levels of laboratory personnel to maintain current knowledge and skills relevant to ART embryo laboratory procedures. We do not believe requiring 12 contact hours of continuing education (CE) on an annual basis is excessive. At the same time, we recognize there may be some cost to the laboratory or individual to obtain the continuing education. However, we believe the benefits outweigh the costs, especially when there are a number of ways in which CE may be provided, including video or audioconferencing seminars or self-study educational materials. As the one commenter suggested, reading relevant journal articles is another cost-effective way to obtain CE. However, we note that to meet the model's CE requirement, the specific vehicle used for earning CE contact hours must have been approved by an approved continuing education provider such as the International Association of Continuing Education and Training or other provider specified by the State implementing the model certification program.

We agree that each reproductive biologist, as well as laboratory supervisor, should be pro-active in obtaining appropriate CE. However, as stated previously, it is the laboratory director who is ultimately responsible for the overall operation, administration and technical and scientific oversight of the laboratory. This includes employing qualified personnel and ensuring they receive appropriate training and continuing education to maintain and update their knowledge and skills in ART and laboratory practice.

Comment: One commenter requested clarification of the proposed requirements at Part III., B., 1., and C., 2., which require the laboratory to have "adequate" space and "sufficient" equipment for the type and volume of ART laboratory procedures performed. Specifically, the commenter would like guidelines that address the number of procedures per square foot of space and the number of procedures per cell freezer, etc.

Response: Although we appreciate the commenter's suggestion to more specifically define adequate space and sufficient equipment for an embryo laboratory, we have not specified exact laboratory measurements or numbers of required equipment in the model certification program in an effort to allow flexibility in the configuration and arrangement of laboratory facilities and equipment contained therein. Requirements may differ depending on the number and types of procedures performed, and the number of individuals that are employed by or using each laboratory. As noted in the proposed model standards, the physical space, utilities, and laboratory equipment must be able to accommodate the volume of ART laboratory procedures performed at its busiest time, in a manner that will reduce the potential for spilled, lost or misplaced patient specimens while they are being handled or stored. The laboratory must be secure and have limited access, and must include an isolated area for performing sterile techniques under aseptic conditions. The laboratory and administrative space must be conveniently located, but separate from patient areas, and immediate communication must be possible with the oocyte retrieval and transfer room. As long as these requirements can reasonably be met, the space and equipment are considered adequate and sufficient.

Comment: Four individuals pointed out the proposed requirement at Part III., B., 3., b., for animal specimens to be incubated separately from human specimens would disallow the use of an incubator containing human specimens when performing the mouse embryo bioassay for quality control purposes.

Response: We agree with the commenters that the proposed requirement noted above could be interpreted to prohibit quality control procedures that require mouse embryos to be held in the same incubator as human specimens. However, there are acceptable alternative procedures (i.e., human sperm survival) that may be used for quality control if a laboratory does not have access to a separate incubator for checking media, glassware, pipettes, etc. The quality control for an incubator itself includes monitoring temperature, humidity and gas concentration, and does not require a bioassay to be performed.

Although not mentioned by commenters, the use of live cells, tissues, organs from a nonhuman animal source transplanted or implanted into a human, or used for ex vivo contact with human body fluids, cells, tissues, organs that are subsequently given to a human recipient (xenotransplantation), raises a major public health dilemma. In its Guidance For Industry, Public Health Issues Posed by the Use of Nonhuman Primate Xenografts in Humans (April 1999), The Food and Drug Administration, in consultation with other Federal agencies, concluded that further scientific research, evaluation and public discussion is needed in order to obtain sufficient information to adequately assess and potentially reduce the risks (particularly the transmission of infectious agents) posed by the use of nonhuman primate cells, tissues and organs. A Federal Advisory Committee on Xenotransplantation is currently under development within the Department of Health and Human Services to address these issues, conduct discussions, and make recommendations regarding the use of nonhuman primate xenografts.

To assure consistency with applicable Federal, State or local requirements as they are developed, we are revising the requirement at Part III., B., 3. , to state, "If live nonhuman animal cells, tissues, and/or organs are used, all applicable Federal, State and local regulations regarding their handling, storage and use must be met." We believe this revision is appropriate and necessary in light of the serious public health issues that need to be addressed with their use in humans.

Comment: One commenter expressed concern with the proposed requirement at Part III., C., 4., c., that states for oral requests for changes to the original written or electronic request for an ART laboratory procedure, the laboratory must receive written or electronic documentation within 24 hours from the authorized person requesting the change. The commenter states particularly in programs where the physicians and/or laboratory staff have multiple work sites, it is sometimes difficult to receive written confirmations within a 24-hour time frame.

Response: It is critical for embryo laboratories to obtain written or electronic orders for procedures to be performed and that these orders are communicated clearly in a timely manner. This enables the laboratory to ensure adequate and appropriate staffing for scheduled procedures and, more importantly, it ensures that the patient's specimens used in the ART embryo laboratory procedures are handled appropriately. Some of the procedures are of a sensitive nature, and the laboratory could be subject to liability if an unauthorized laboratory procedure is accidentally performed due to miscommunication or lack of communication. The model certification program requires a written or electronic request by an authorized person *prior* to performing any procedure. It is only when there is a change to the original request that the model allows 24 hours for written or electronic verification of the change. We do not agree with the commenter that this time frame should be extended to 48 hours. In most cases, it is desirable to have written or electronic verification of revised orders at the time the decision is made to change the patient's treatment protocol. Allowing 24 hours provides a minimal amount of leeway for extenuating circumstances.

Comment: One commenter was confused by the proposed requirement at Part III., C., 4., i., which states that clinical laboratory testing on specimens obtained by the embryo laboratory must be performed in accordance with the Clinical Laboratory Improvement Amendments of 1988 (CLIA) regulations.

Response: Examinations of materials derived from the human body to provide information for the diagnosis, prevention, or treatment of disease, or assessment of the health of human beings must be performed in accordance with the regulations (42 CFR Part 493) implementing CLIA. Examples of specimens that may be obtained by the embryo laboratory that would be subject to the CLIA regulations include blood or serum samples for endocrinology or hematology testing or microbiology culture samples. If the embryo laboratory performs this testing it must have a valid CLIA certificate for the testing to be performed, or if the laboratory is in a CLIA-exempt State it must be licensed by the State in which it is located. If the embryo laboratory refers specimens for clinical laboratory testing, the testing must be performed by a laboratory that meets the CLIA requirements. To clarify the requirement at Part III., C., 4., i., we are specifying the purpose of clinical laboratory testing is to "provide information for the diagnosis, prevention or treatment of disease, or assessment of the health of human beings."

Comment: One professional organization suggested the quality control standards include an additional statement at Part III., C., 6., e., iv., that "The use of blood-based media prepared in-house is not recommended. However, if such products are used then * * *" This statement is to preface the proposed quality management requirement that the laboratory test blood-based media supplements prepared in-house for several communicable diseases.

Response: We agree with the commenter that it is not a recommended practice for the laboratory to prepare blood-based media or a blood-based media supplement that could potentially contain and transmit communicable diseases. However, if blood-based media or supplements are prepared in-house, blood from the donor(s) used to make the media/supplement must be tested to ensure the donor(s) is negative/nonreactive for significant disease agents. We have added language to the requirement at Part III., C., 6., e., iv., to state that the in-house preparation of blood-based media or a blood-based media supplement is not recommended. In addition, we have clarified that the blood donor(s) must be tested for the communicable diseases listed using FDA licensed, approved or cleared tests for markers of these diseases. Also, to maintain consistency with the FDA's requirements for the testing of blood and tissue product donors, we have added human T-cell lymphotrophic virus, Type II, to the communicable diseases listed in this requirement.

Comment: One commenter recommended that the proposed quality assurance requirement at Part III., C., 7.,

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b., for the laboratory to track and evaluate procedural outcomes (*e.g.*, fertilization rates and embryo quality) should be incorporated into the current Society for Assisted Reproductive Technology (SART) reporting computer program. The commenter believes capturing the data in the SART program would help to reduce the amount of additional paperwork for the laboratory.

Response: We recognize that for some laboratories, it may be possible to maintain the data listed at Part III., C., 7., b. in a database similar to that used by SART to collect data on ART programs and clinics. However, we do not agree this should be required by the model certification program for several reasons. First, the data collected by SART is not specific to embryo laboratory activities, but their data relates to clinical ART practices and pregnancy success rates reported by ART programs/clinics. In addition, there are many instances in which there is not a direct, one-to-one relationship between ART programs/clinics and the embryo laboratories used by these facilities, and not all ART programs report to SART. To meet the standards in the model certification program, laboratories must record and track the data described in the model. These data are part of the laboratory's internal system to monitor the ongoing quality of its activities.

Comment: One professional organization commented that the proposed ten year period for record retention is excessive and should be reduced to a five year period, while a consumer advocacy group felt indefinite record-keeping should be considered since consumers of ART procedures need to know if they, or their children, have ever had exposure to contaminants through laboratory procedures.

Response: While we appreciate the consumer advocacy group's concerns, requiring indefinite retention of all laboratory records could be extremely burdensome for some laboratories. We proposed the ten year period for record retention because it was consistent with similar requirements mandated by the Food and Drug Administration for human tissue intended for transplantation. We continue to believe this time period is reasonable and have not changed the requirement in the model certification program. However, we note that the 1998 Survey of Assisted Reproductive Technology Embryo Laboratory Procedures and Practices conducted by the CDC indicated the majority of embryo laboratories are retaining most of their records indefinitely. If consumers are concerned they may not have indefinite access to pertinent laboratory records, it may be possible for them to request the laboratory provide them with all relevant information at the time of an ART procedure. The consumer could then maintain this information for as long as desired.

Additional Revisions to the Proposed Model Certification Program

Although written comment was not received on the following, we are making a few additional revisions to the administrative requirements proposed in the model certification program for the reasons stated below.

- At Part II., B., 2., d., vi., we are extending the time frame in which the approved accreditation organization must provide the State advanced written notice of the effective date of any proposed changes in the organization's requirements from "at least 30 days" to "at least 60 days." We believe that this revision will provide the State a more reasonable period of time to review the organization's proposed changes for continued equivalency to the State's certification program.
- At Part II., B., 4., a., we are revising the language that states "Initial inspections are performed when the laboratory applies for certification and may be performed for recertification after the laboratory has had a change in ownership or administration," to include a change in the laboratory's location. We believe a change in the laboratory's location may require an onsite inspection to ensure that the laboratory continues to meet the certification program's requirements for adequate space and appropriate environmental conditions. A conforming change is also being made at Part II., B., 3., ii., which requires the embryo laboratory to submit changes in its ownership or administration to the State within 30 days of the change.

A Model Program for the Certification of Embryo Laboratories

With this publication, CDC has provided a model program for the certification of embryo laboratories which incorporates the definitions and laboratory standards called for in the FCSRCA and has included administrative requirements for States which choose to adopt the model program. CDC will distribute the model certification program to State officials and health authorities as outlined in the statute, and encourage their assistance in the State adopting the program.

As stated in the preamble to the proposed model certification program, CDC will defer implementation of the approval of State certification programs or accreditation organizations, as well as Federal validation inspections of embryo laboratories certified by States adopting the model or accredited by an accreditation program for embryo laboratories. While Congress anticipated that the cost of Federal and State monitoring and oversight of embryo laboratories would be covered by the fees paid by participating laboratories, participation by embryo laboratories is voluntary and laboratories not willing to pay these fees would not be limited in their ability to operate. To date, embryo laboratories have not indicated they would opt into such a voluntary oversight program.

While the model certification program for embryo laboratories does not provide for a Federal oversight role, we believe that this model provides an excellent resource for States that wish to develop their own programs and professional organizations with an interest in establishing or adopting standards for the embryo laboratory. In addition, as mentioned previously in this preamble, as the data become available, the CDC will publish the certification/accreditation status of embryo laboratories affiliated with ART programs or clinics in conjunction with future annual publications of the ART Success Rates reports.

Organization of the Model Certification Program

This notice describes a model certification program for embryo laboratories and includes definitions (Part I), administrative requirements (Part II), and embryo laboratory standards (Part III). References are also provided as an addendum to this notice for background and educational purposes.

Dated: July 14, 1999.

Thena M. Durham,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention.

A Model Certification Program for Embryo Laboratories

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Part I. Definitions

Accredited institution. A school or program which—

(a) Admits as a regular student only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(b) Is legally authorized within the State to provide a program of education beyond secondary education;

(c) Provides an educational program for which it awards a bachelor's degree or provides not less than a 2-year program which is acceptable toward such a degree, or provides an educational program for which it awards a master's or doctoral degree; and

(d) Is accredited by a nationally recognized accrediting agency or association.

This definition includes any foreign institution of higher education that HHS or its designee determines meets substantially equivalent requirements.

Approved accreditation organization. An accreditation organization that has formally applied for and received the State's approval based on the organization's compliance with this model certification program and other requirements as specified by the State.

ART. Assisted reproductive technology.

Assisted hatching. A micromanipulation technique which involves making a small opening in the zona wall of the embryo to enhance implantation.

Assisted reproductive technology. All clinical treatments and laboratory procedures which include the handling of human oocytes and sperm, or embryos, with the intent of establishing a pregnancy. This includes, but is not limited to, in vitro fertilization, gamete intrafallopian transfer, zygote intrafallopian transfer, embryo cryopreservation, oocyte or embryo donation, and gestational surrogacy.

Assisted reproductive technology cycle. Any cycle in which (1) ART has been used, (2) in which the woman has undergone ovarian stimulation or monitoring with the intent of undergoing ART, (3) a woman has donated oocytes, or (4) in the case of cryopreserved embryos, in which embryos have been thawed with the intent of transfer. ART cycles can be stimulated (use of ovulation induction) or unstimulated (natural cycle).

Assisted reproductive technology laboratory procedures. All laboratory procedures for handling and processing of human oocytes and sperm, or embryos, with the intent of establishing a pregnancy. These procedures include, but are not limited to, the examination of follicular aspirates, oocyte classification, sperm preparation, oocyte insemination, assessment of fertilization, assessment of embryo development, preparation of embryos for embryo transfer, and cryopreservation of specimens.

Assisted reproductive technology program or clinic. A legal entity practicing under State law, recognizable to the consumer, that provides ART to couples who have experienced infertility or are undergoing ART for other reasons. This can be an individual physician or a group of physicians who practice together, and share resources and liability.

Authorized person. An individual authorized under State law to order ART procedures.

CDC. The Centers for Disease Control and Prevention.

CLIA. The Clinical Laboratory Improvement Amendments of 1988.

Certification. The certification of an embryo laboratory by a State certification program or through accreditation by an approved accreditation organization.

Certification program. The model certification program for embryo laboratories described in this notice or a State certification program for embryo laboratories which meets or exceeds the requirements of the model certification program.

Cryopreservation. A technique to preserve biologic material through freezing.

Doctoral scientist. An individual holding an earned doctoral degree in a chemical, physical, biological, medical or reproductive laboratory science from an accredited institution. As defined here, doctoral scientist also includes individuals holding an earned doctoral degree in veterinary medicine.

Embryo. The normal (2 pronuclei) fertilized egg that has undergone one or more divisions.

Embryo laboratory. A facility in which human oocytes and sperm, or embryos, are subject to ART laboratory procedures.

Embryo transfer. Introduction of an embryo(s) into a woman's uterus after in vitro fertilization.

Fertilization. The penetration of the egg by the sperm and fusion of genetic materials to result in the development of a fertilized egg (or zygote).

Gamete intrafallopian transfer. An ART procedure that involves removing eggs from the woman's ovary, combining them with sperm, and immediately injecting the eggs and sperm into the fallopian tube. Fertilization takes place inside the fallopian tube.

HHS. The U.S. Department of Health and Human Services, or its designee.

Intracytoplasmic sperm injection. The placement of a single sperm into the ooplasm of an oocyte by micro-operative techniques.

In vitro fertilization. A method of assisted reproduction that involves removing eggs from a woman's ovaries, combining them with sperm in the laboratory and, if fertilized, replacing the resulting embryo(s) into the woman's uterus.

Laboratory. Unless otherwise specified in this notice, means embryo laboratory.

Micromanipulation. Microtechniques such as intracytoplasmic sperm injection and assisted hatching commonly used to overcome fertilization disorders.

Oocyte. The female reproductive cell, also called an egg.

Physician. An individual with a doctor of medicine or doctor of osteopathy degree who is licensed by the State to practice medicine or osteopathy within the State in which the embryo laboratory is located.

Procedural outcome. The outcome of the ART laboratory procedure performed *e.g.*, fertilization assessment-the presence of two pronuclei in the ooplasm.

Specimen. Human biologic material (includes human reproductive tissue such as oocytes, sperm, zygotes and embryos).

Sperm. The male reproductive cell that has completed the process of meiosis and morphological differentiation.

State. Includes, for purposes of this model certification program, each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and other territories of the United States, and a political subdivision of a State where the State, acting pursuant to State law, has expressly delegated powers to the political subdivision sufficient to authorize the political subdivision to act for the State in enforcing requirements equal to or more stringent than the model certification program.

Zygote. A normal (2 pronuclei) fertilized egg before cell division begins.

Zygote intrafallopian transfer. Eggs are collected and fertilized, and the resulting zygote is then transferred to the fallopian tube.

Part II. Administrative Requirements

A. Overview

The certification program for embryo laboratories is a model program developed by the Centers for Disease Control and Prevention (CDC) in accordance with Pub. L. 102–493 (42 U.S.C. 263a–1 *et seq.*) and is to be administered by interested States.

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B. Requirements for State Administration of the Model Certification Program for Embryo Laboratories

The State may adopt and administer the model certification program for embryo laboratories described in this notice or administer a State certification program for embryo laboratories that meets or exceeds the requirements of the model certification program, and must, at a minimum, meet the following provisions—

1. Certification Under State Programs. A State may qualify to adopt and administer the model certification program if the State submits an attestation to the CDC, Public Health Practice Program Office, Division of Laboratory Systems, 1600 Clifton Rd., Atlanta, GA 30333, providing—

a. Assurances that the certification program for embryo laboratories administered by the State meets or exceeds the requirements of the model certification program specified in this notice.

b. An agreement that in administering the certification program, a State will not establish any regulation, standard, or requirement which has the effect of exercising supervision or control over the practice of medicine in ART programs or clinics.

c. An agreement that the term of State certification/recertification issued to an embryo laboratory is for a period of not more than two years.

d. An agreement to investigate, when appropriate and to the extent necessary, complaints received about an embryo laboratory certified under the State's program.

e. An agreement to annually report to the CDC, Public Health Practice Program Office, Division of Laboratory Systems, 1600 Clifton Rd., Atlanta, GA 30333, the identity and certification status of each embryo laboratory in the State as well as any such laboratory which has applied for certification, and the ART programs or clinics with which each embryo laboratory is associated, for annual publication by the CDC.

f. Information about any proposed use and approval and revocation of approval of accreditation organizations in accordance with paragraphs 2. and 5. of this section.

g. An agreement to make such reports as the Secretary of the Department of Health and Human Services (through the CDC) may require.

2. Use and Approval of Accreditation Organizations. Accreditation organizations approved by the State may be used to inspect and accredit embryo laboratories for the purpose of State certification and such accreditation shall constitute certification. The criteria and procedures used by the State to approve accreditation organizations must include, at a minimum, the following:

a. The accreditation organization must provide assurances satisfactory to the State that its standards and requirements for accreditation of embryo laboratories meet or exceed the requirements of the certification program;

b. The accreditation organization must, at a minimum, conduct inspections of embryo laboratories in accordance with the requirements under paragraph 4. of this section which includes making available to the public, upon request, the specific findings (with any explanatory information required to interpret the findings), including deficiencies identified in an inspection, and any subsequent corrections to those deficiencies, no later than 60 days after the date of the inspection;

c. The accreditation organization must agree to revoke or suspend a laboratory's accreditation for one year, if the accreditation organization finds, on the basis of inspections, that the owner or operator of the laboratory, or any employee of the laboratory—

i. Has been guilty of misrepresentation in obtaining the accreditation.

ii. Has failed to comply with any standards of the accreditation program.

iii. Has refused a request of the accreditation organization or State for permission to inspect the laboratory, its operations, and records; and

d. The accreditation organization must agree to submit such reports and maintain such records as the State, or HHS, may require, to include, but not be limited to, the following:

i. Notification to the State of each newly accredited embryo laboratory within the State within 30 days of the laboratory obtaining accreditation;

ii. Notification to the State of any embryo laboratory within the State that has its accreditation denied, suspended, withdrawn or revoked, or that has had any other adverse action taken against it by the accreditation organization within 30 days of the action taken;

iii. Notification to the State within 10 days of a deficiency identified in any accredited embryo laboratory within the State where the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public;

iv. Notification to the State if the accreditation organization finds, on the basis of inspections, that the owner or operator of the laboratory, or any employee of the laboratory—

A. Has been guilty of misrepresentation in obtaining the accreditation.

B. Has failed to comply with any standards of the accreditation program.

C. Has refused a request of the accreditation organization for permission to inspect the laboratory, its operations, and records;

v. Provide inspection schedules as requested by the State for the purpose of conducting onsite validation inspections of laboratories; and

vi. Provide the State written notification at least 60 days in advance of the effective date of any proposed changes in its requirements.

3. Embryo Laboratory Application Requirements. The State must provide for the submission of an application to the State by an embryo laboratory requesting certification, in such form as may be specified by the State. Such an application must include the following:

a. Assurances satisfactory to the State that the embryo laboratory will be operated in accordance with the standards of the certification program;

b. An agreement by the embryo laboratory to—

i. Annually report to the State the ART programs or clinics with which the laboratory is associated.

ii. Submit changes in the ownership, administration, or location of the laboratory to the State within 30 days of the change.

iii. Permit the State to conduct onsite inspections including, as applicable, initial, routine, validation and complaint inspections, upon presentation of identification to the owner, operator, or agent in charge of the laboratory, during the laboratory's regular hours of operation to determine compliance with the certification program.

iv. Permit the State to have access to all facilities, equipment, materials, records, and information which the State requires to determine if the laboratory is being operated in accordance with the standards of the certification program.

v. Permit the State to copy any material, record, or information inspected, or submit such, upon request by the State.

vi. Permit the State to make available, upon request, to the public, the laboratory's specific inspection findings (with any explanatory information required to interpret the findings), including deficiencies identified in an inspection, and any subsequent corrections to those deficiencies;

c. If the State allows certification of an embryo laboratory on the basis of the laboratory's accreditation by an approved accreditation organization (e.g., issues a certificate of accreditation), the laboratory must, in addition to the requirements of subparagraphs 3.a. and 3.b. of this section—

i. Submit proof of current accreditation.

ii. Permit the accreditation organization to have access to all facilities, equipment, materials, records, and information which the accreditation organization requires to determine if the laboratory is being operated in accordance with the standards of the accreditation organization program.

iii. Permit the accreditation organization to copy any material, record, or information inspected, or submit such, upon request by the accreditation organization.

iv. Permit the accreditation organization to make available, upon request, to the public, the laboratory's specific inspection findings (with any explanatory information required to interpret the findings), including deficiencies identified in an inspection, and any subsequent corrections to those deficiencies.

v. Agree to authorize the accreditation organization to submit to the State or HHS such laboratory-specific information or reports as the State or HHS may require; and

d. Such other information, agreements and assurances as the State finds necessary.

4. Initial, Routine and Complaint Inspections. Inspections must be conducted to determine if embryo laboratories applying for or renewing their certification meet the requirements of the certification program. In addition, inspections may be performed as part of the State's investigation of complaints received about a certified embryo laboratory. The inspections may be carried out by the State or, as applicable, by an accreditation organization approved by the State in accordance with paragraph 2. of this section.

a. Initial inspections for embryo laboratory certification must be performed during the laboratory's regular hours of operation and may be announced. Initial inspections are performed when the laboratory applies for certification and may be performed for recertification after the laboratory has had a change in ownership, administration, or location.

b. Routine inspections for renewal of the laboratory's certification must be performed biennially, during the laboratory's regular hours of operation and may be announced.

c. Inspections to investigate complaints received by the State about a laboratory may be performed unannounced, during the laboratory's regular hours of operation.

d. Inspection of a laboratory may be made only upon the presentation of identification to the owner, operator, or agent in charge of the laboratory being inspected.

e. In conducting an inspection, the State or approved accreditation organization must have access to all facilities, equipment, materials, records, and information which the State or approved accreditation organization requires to determine if the laboratory is being operated in accordance with the standards of the certification program.

f. The State or approved accreditation organization may copy any material, record, or information inspected or require it to be submitted to the State or, as applicable, to the approved accreditation organization.

g. The specific findings (with any explanatory information required to interpret the findings), including deficiencies identified in an inspection, and any subsequent corrections to those deficiencies must be made available to the public upon request beginning no later than 60 days after the date of the inspection.

5. Validation Inspections. The State must annually evaluate the performance of each approved accreditation organization by performing validation inspections of a sufficient number of embryo laboratories within the State accredited by the organization, to allow a reasonable estimate of the performance of such organization.

a. The State may enter and inspect, during regular hours of operation, embryo laboratories which have been accredited by an approved accreditation organization for the purpose of determining whether the laboratory is being operated in accordance with the standards of the certification program.

b. A validation inspection of a laboratory may be announced and be made only upon the presentation of identification to the owner, operator, or agent in charge of the laboratory being inspected.

c. In conducting a validation inspection, the State must have access to all facilities, equipment, materials, records, and information which the State requires to determine if the laboratory is being operated in accordance with the standards of the certification program.

d. The State may copy any material, record, or information inspected or require it to be submitted to the State.

e. If the State determines as a result of a validation inspection that the embryo laboratory is not in compliance with the standards of the certification program, the State must—

i. Notify the accreditation organization which accredited the laboratory.

ii. Make available to the public the inspection findings (with any explanatory information required to interpret the findings), including deficiencies identified in the inspection, and any subsequent corrections to those deficiencies.

iii. Conduct additional inspections of other embryo laboratories accredited by the accreditation organization to determine if the accreditation organization is reliably identifying the deficiencies of the laboratories.

f. If the State determines that the accreditation organization has not met the requirements of paragraph 2. of this section, the State may (under such notice and hearing standards to be developed by the State) revoke the approval of the accreditation program.

6. Revocation of an Accreditation Organization's State Approval. If the State revokes approval of an accreditation organization under subparagraph 5.f., of this section—

a. The State must notify each laboratory, accredited by the organization under the State certification program, that it has revoked its approval of the organization within 10 days of the revocation.

b. The certification of any embryo laboratory accredited by the organization will continue in effect for 60 days after the laboratory is notified by the State of the withdrawal of approval, except that the State may extend the period during which the certification may remain in effect if the State determines that the laboratory submitted an application to another approved accreditation organization for accreditation or to the State, as applicable, in a timely manner after receipt of such notice.

7. Embryo Laboratory Certification Revocation and Suspension.

a. A certification issued by a State for an embryo laboratory must be revoked or suspended if the State or, as applicable, approved accreditation organization finds, on the basis of inspections and after reasonable notice and opportunity for hearing (under such notice and hearing standards to be developed by the State) to the owner or operator of the laboratory, that the

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owner or operator or any employee of the laboratory—

i. Has been guilty of misrepresentation in obtaining the certification.

ii. Has failed to comply with any standards of the certification program.

iii. Has refused a request of the State or approved accreditation organization for permission to inspect the laboratory, its operations, and records.

b. If the certification of an embryo laboratory is revoked or suspended, the certification of the laboratory shall continue in effect for 60 days after the laboratory receives notice of the revocation or suspension, unless there is a finding that the laboratory's continued operation may constitute a public health threat, in which case the certification shall be immediately revoked or suspended.

c. If the certification of an embryo laboratory is revoked or suspended, the laboratory may apply for recertification after one year after the date of the revocation or suspension.

8. Fees. The State may require the payment of fees for the purpose of, and in an amount sufficient to cover the costs of, administering the certification program.

Part III. Embryo Laboratory Standards

A. Personnel Qualifications and Responsibilities

The embryo laboratory must have a sufficient number of individuals, who meet the qualification requirements, to perform the functions necessary to provide timely services appropriate for the size and volume of the ART program(s) or clinic(s) served by the laboratory. As a guideline, for every 90–150 ART cycles performed annually, the laboratory should employ one individual who is capable of performing all ART laboratory procedures provided by the embryo laboratory. Regardless of workload, at a minimum, two qualified individuals should be available to provide the appropriate laboratory services.

1. Laboratory Director Qualifications. The laboratory director must be qualified to manage and direct the laboratory personnel and the performance of ART laboratory procedures. The laboratory director must—

a. Possess a current license as an embryo laboratory director issued by the State in which the laboratory is located, if such licensing is required.

b. Be a physician or a doctoral scientist with a broad knowledge of the biochemistry, biology, and physiology of reproduction, and laboratory operations including experimental design, statistics, and problem solving. It is recommended that a doctoral scientist serving as a laboratory director be board certified in embryology. In addition, the laboratory director must meet the following:

i. Have two years documented pertinent experience in a laboratory performing ART procedures. This experience should include familiarity with laboratory quality control, sterile technique and cell culture; and

ii. Have documented training of at least six months in an embryo laboratory which includes performing, at a minimum, each ART laboratory procedure 60 times.

Note: Documented experience and training may be acquired concurrently.

c. If not qualified under paragraph 1.b. of this section, be the director of an embryo laboratory on or before July 20, 1999 and meet the following:

i. Have two years documented pertinent experience in a laboratory performing ART procedures. This experience should include familiarity with laboratory quality control, sterile technique and cell culture; and

ii. Have documented training of at least six months in an embryo laboratory which includes performing, at a minimum, each ART laboratory procedure 60 times.

Note: Documented experience and training may be acquired concurrently.

d. In addition to meeting the qualification requirements above—

i. Obtain at least 12 contact hours of continuing education annually in assisted reproductive technology or clinical laboratory practice; and

ii. If the individual serving as the laboratory director performs ART laboratory procedures in the laboratory, it is recommended that he or she performs each of these procedures at least 20 times annually.

2. Laboratory Director Responsibilities. The laboratory director is responsible for the overall operation, administration, and technical and scientific oversight of the embryo laboratory, including the employment of personnel who are qualified to perform ART laboratory procedures, and record and report procedural outcomes promptly, accurately and proficiently. If the laboratory director delegates performance of his or her responsibilities to an individual qualified as an embryo laboratory director or laboratory supervisor, he or she must do so in writing. The laboratory director remains responsible for ensuring that all delegated duties are properly performed. The laboratory director must—

a. Be accessible to the laboratory to provide on-site, telephone or electronic consultation as needed.

b. Ensure that the physical plant (space, facilities and equipment) and environmental conditions of the laboratory are appropriate for the laboratory procedures performed and provide a safe environment in which employees and other occupants are protected from physical, chemical, electrical and biological hazards.

c. Establish and monitor a program to ensure that aseptic conditions are maintained in the laboratory, as appropriate, for the ART laboratory procedures to be performed.

d. Ensure that ART laboratory procedures selected or developed by the laboratory are appropriate to provide quality patient care.

e. Ensure that adequate systems are in place to maintain patient confidentiality throughout those parts of the ART process under the laboratory's control.

f. Ensure that an approved procedure manual is available to all personnel responsible for performing ART laboratory procedures.

g. Establish and monitor a quality management program to assure the quality of laboratory services provided and to identify failures in quality as they occur.

h. Ensure that all necessary corrective actions are taken, documented and reviewed for effectiveness whenever failures in quality are identified.

i. Provide consultation to physicians and others, as appropriate, regarding the clinical significance of laboratory findings.

j. Employ a sufficient number of qualified personnel with the appropriate education and documented experience or training to supervise and perform the work of the laboratory. Written records of the qualifications of all personnel must be maintained.

k. Ensure that all personnel receive appropriate training for the ART laboratory procedures to be performed, and have demonstrated that they can perform the procedures reliably prior to working on patients' specimens. All training activities must be documented.

l. Ensure that all personnel acquire, on an annual basis, the required number of continuing education contact hours. A record of each employee's continuing education participation must be maintained.

m. Specify, in writing, the responsibilities and duties of each person who performs ART laboratory procedures, identifying which procedures each individual is

authorized to perform and whether supervision is required.

n. Ensure that policies and procedures are established for monitoring each employee's continued competence to perform ART laboratory procedures, and whenever necessary, provide remedial training or additional continuing education to improve skills.

o. Ensure that performance evaluations for each employee are performed and documented, at a minimum, annually.

3. Laboratory Supervisor Qualifications. The embryo laboratory must have one or more qualified supervisors who, under the direction of the laboratory director, provide day-to-day supervision of laboratory personnel performing ART laboratory procedures. In the absence of the director, the laboratory supervisor must be responsible for the proper performance of all ART laboratory procedures. The laboratory supervisor must—

a. Possess a current license issued by the State in which the laboratory is located, if such licensing is required.

b. Meet the qualification requirements for an embryo laboratory director under paragraph 1. of this section, or meet the following:

i. Have an earned master's or bachelor's degree in a chemical, physical, biological, medical technology, clinical or reproductive laboratory science from an accredited institution; and

ii. Have documented training which includes performing, at a minimum, each ART laboratory procedure 60 times.

c. If not qualified under subparagraph 3.b. of this section, be the supervisor of an embryo laboratory on or before July 20, 1999 and have documented training which includes performing, at a minimum, each ART laboratory procedure 60 times.

d. In addition to meeting the qualification requirements above—

i. Obtain at least 12 contact hours of continuing education annually in assisted reproductive technology or clinical laboratory practice. If also serving as the laboratory director, continuing education obtained to meet the laboratory director qualification requirements may be used to meet this requirement; and

ii. If the individual serving as the laboratory supervisor performs ART laboratory procedures in the laboratory, it is recommended that he or she performs each of these procedures at least 20 times annually.

4. Laboratory Supervisor Responsibilities. The laboratory supervisor is responsible for day-to-day supervision or oversight of the embryo laboratory operation and personnel performing ART laboratory procedures. The laboratory supervisor must—

a. Be accessible to laboratory personnel at all times when ART laboratory procedures are performed to provide on-site, telephone or electronic consultation to resolve technical problems in accordance with policies and procedures established by the laboratory director.

b. Provide day-to-day supervision of laboratory personnel performing ART laboratory procedures.

c. Ensure direct and constant supervision of personnel undergoing training in ART laboratory procedures to fulfill the qualification requirements for a reproductive biologist.

d. Perform laboratory director responsibilities as authorized in writing by the laboratory director.

5. Reproductive Biologist Qualifications. Each individual performing ART laboratory procedures must—

a. Possess a current license issued by the State in which the laboratory is located, if such licensing is required.

b. Meet the qualification requirements for an embryo laboratory director under paragraph 1. of this section, laboratory supervisor requirements under paragraph 3. of this section, or meet the following:

i. Have an earned bachelor's degree in a chemical, physical, biological, medical technology, clinical or reproductive laboratory science from an accredited institution; and

ii. Have documentation of training appropriate for the ART laboratory procedure(s) to be performed before performing the procedure(s) without direct and constant supervision on patient specimens. Training must include performing the ART laboratory procedure(s), at a minimum, 30 times under direct and constant supervision.

c. If not qualified under subparagraph 5.b. of this section, be performing ART laboratory procedures in an embryo laboratory on or before July 20, 1999 and have documentation of training appropriate for the ART laboratory procedure(s) to be performed before performing the procedure(s) without direct and constant supervision on patient specimens. Training must include performing the ART laboratory procedure(s), at a minimum, 30 times under direct and constant supervision.

d. In addition to meeting the qualification requirements above—

i. Obtain at least 12 contact hours of continuing education annually in ART or clinical laboratory practice. If also serving as the laboratory director or laboratory supervisor, continuing education obtained to meet the laboratory director or laboratory supervisor qualification requirements may be used to meet this requirement; and

ii. It is recommended that each reproductive biologist perform each of the ART laboratory procedures he or she performs in the laboratory at least 20 times annually.

6. Reproductive Biologist Responsibilities. The reproductive biologist is responsible for performing ART laboratory procedures, and recording and reporting procedural outcomes promptly, accurately and proficiently. The reproductive biologist must—

a. Perform only those ART laboratory procedures that are authorized by the laboratory director, and for which training has been documented. If appropriate training has not been documented, perform ART laboratory procedures only under direct and constant supervision.

b. Follow the laboratory's established policies and procedures for performing ART laboratory procedures, and recording and reporting procedural outcomes.

c. Adhere to the laboratory's quality management policies, document all specimen and procedure management, quality control and quality assurance activities, and equipment and instrument calibration, function verification and maintenance performed.

d. Identify problems that may adversely affect the performance of ART laboratory procedures and either immediately notify the laboratory supervisor or director, or correct the problem(s) in accordance with the laboratory's established policies and procedures and notify the laboratory supervisor or director of the problem(s) and the corrective action(s) taken.

e. Document all corrective actions taken when failures in quality are identified.

B. Facilities and Safety

The embryo laboratory must provide adequate space and the appropriate environmental conditions to ensure safe working conditions and quality performance of ART laboratory procedures.

1. Requirements for Physical Space and Utilities. The laboratory must be constructed and arranged so that—

a. The laboratory space, ventilation, and utilities are adequate for the volume of ART laboratory procedures performed during peak periods of activity.

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b. ART laboratory procedures are carried out in a secure area with access limited to authorized personnel.

c. Movement of patient specimens and traffic around sensitive work areas is limited in order to reduce the potential for spilled or lost specimens.

d. Incubator and storage space are configured to ensure positive specimen identification and minimize the potential for errors due to misplaced specimens or retrieval of the wrong specimen.

e. Activities requiring sterile technique such as the handling, assessment and culturing of human oocytes and embryos, are performed under aseptic conditions in an area that is physically isolated from other laboratory activities.

f. All laboratory work areas (does not include administrative areas) are easily washed and disinfected.

g. The laboratory and administrative space are conveniently located, but are separate from patient areas.

h. Immediate communication can occur with the oocyte retrieval and transfer room(s).

2. Safety Requirements. Safety precautions, policies, and procedures must be established and posted, or readily available to all personnel, to ensure protection from physical, chemical, electrical and biological hazards.

a. All personnel must be knowledgeable about and abide by applicable Federal, State and local regulations regarding protection from physical, chemical, electrical and biological hazards.

b. Disposable materials should be used wherever possible for all procedures that involve exposure to tissue and body fluids.

c. The laboratory must store and dispose of tissue, body fluids, or other potentially biohazardous materials as outlined in Federal, State and local regulations.

d. Toxic chemicals, including toxic cleaning materials, must be used in a manner that is not harmful to patient specimens.

e. Radioisotopes must not be used in a laboratory that performs ART procedures.

f. The laboratory must have an emergency plan appropriate for its geographical location which specifies the actions to be taken to protect employees, patients, visitors and specimens in case of a natural disaster or other potentially devastating event.

3. Laboratory Animals/Nonhuman Animal Cells, Tissues, Organs.

a. If laboratory animals are used, all applicable Federal, State and local regulations regarding animal care and use must be met.

b. If live nonhuman animal cells, tissues, and/or organs are used, all applicable Federal, State and local regulations regarding their handling, storage and use must be met.

C. Quality Management

The embryo laboratory must establish and follow written policies and procedures for a comprehensive quality management program that is designed to monitor and evaluate the ongoing and overall quality of the ART laboratory procedures performed and services provided. All quality management activities must be documented.

1. Procedure Manual. A written procedure manual including instructions for all ART laboratory procedures performed must be available in the embryo laboratory and followed by all laboratory personnel. The written procedures must be in sufficient detail to assure reproducibility and competence in the performance of the laboratory procedures.

a. The procedure manual must include the following, when applicable to the ART laboratory procedure performed:

i. Principle (scientific basis) of the ART laboratory procedure;

ii. Clinical significance of the ART laboratory procedure;

iii. Requirements for specimen collection and handling;

iv. Step-by-step instructions for performance of the ART laboratory procedure;

v. Preparation of required reagents, culture media, solutions, or other special supplies;

vi. Equipment and instrumentation required for the performance of the procedure, including necessary function checks and calibration protocols;

vii. Quality control procedures to be performed, including frequency of control testing, and criteria for acceptability;

viii. Remedial action to be taken when function checks, calibration or control results do not meet the laboratory's criteria for acceptability;

ix. Calculations and interpretation of procedural outcomes, including criteria for acceptable and unacceptable outcomes, and procedural outcomes requiring special notification;

x. The laboratory's system for recording and reporting procedural outcomes;

xi. Limitations in methodologies, including interfering substances and precautions;

xii. Pertinent literature references;

xiii. Description of the course of action to be taken if required equipment or instrumentation malfunctions or is inoperable;

xiv. Criteria for the referral or transfer of specimens to another embryo laboratory for the performance of an ART laboratory procedure, including procedures for specimen submission and handling; and

xv. Procedure for safe and appropriate specimen disposal.

b. Manufacturers' instrument/equipment manuals and package inserts may be used, when applicable, to meet the requirements of this section.

i. Any of the items listed under subparagraph 1.a. of this section, not provided by the manufacturer must be provided by the laboratory.

ii. Any modifications to, or deviations from, the manufacturer's instructions, must be clearly documented and provided in the procedure manual.

c. Appropriate reference materials (e.g., slides, pictures, textbooks, etc.) should be available in the laboratory to allow, as needed, comparison with patient specimens.

d. Procedures must initially be approved, signed and dated by the laboratory director, and must thereafter, be reviewed by the laboratory director on an annual basis.

e. Procedures must be re-approved, signed and dated if the directorship of the laboratory changes.

f. Each change in a procedure must be approved, signed and dated by the current laboratory director.

g. The laboratory must retain a copy of each procedure with the dates of initial use and discontinuance in accordance with the requirements of section D., Maintenance of Records, of this part.

2. Equipment and Instrument Maintenance/Calibration. The embryo laboratory must perform and document equipment and instrument maintenance and, as applicable, calibration, and function verification that include(s) electronic, mechanical and operational checks necessary for the proper performance of ART laboratory procedures. The laboratory must—

a. Have sufficient equipment for the type and volume of ART laboratory procedures performed, which may include but is not limited to, incubators, freezers, refrigerators, hoods, thermometers, centrifuges, microscopes, pipettes, and warming devices.

b. Establish and follow written policies and procedures for equipment and instrument maintenance and, as applicable, calibration, and function checks, that ensure proper performance of the equipment and instruments used in ART laboratory procedures. The laboratory must—

i. Define acceptable limits for equipment and instrument maintenance and, as applicable, calibration, and function checks prior to their use in ART laboratory procedures.

ii. Perform maintenance and, as applicable, calibration, and function checks in accordance with the equipment/instrument manufacturer's instructions and at the frequency required to ensure adequate performance of the equipment and instruments used in ART laboratory procedures.

iii. Monitor environmental conditions, using an independent measuring device, in critical equipment, including but not limited to, incubators, controlled-rate freezers and liquid nitrogen storage tanks, at a frequency that ensures timely detection of conditions that are deleterious to specimens. These conditions include, if applicable:

A. Temperature;

B. Humidity;

C. Gas concentration; and

D. Liquid nitrogen levels.

iv. Maintain an alarm system on critical equipment that will immediately detect when pre-established limits for the environmental conditions listed in subparagraph 2.b.iii. (excluding humidity), of this section, are exceeded. The alarm system must be:

A. Checked periodically to ensure that it will be triggered when preestablished limits for environmental conditions are exceeded; and

B. Monitored 24 hours a day in the laboratory or at a remote site.

v. Protect critical equipment and instrumentation from fluctuations and interruptions in electrical current.

vi. Have available emergency back-up capability for critical equipment, including but not limited to, incubators, refrigerators and controlled-rate freezers.

vii. Document all maintenance, calibration, and function checks performed.

c. Identify, investigate, and correct problems with equipment or instrumentation that may adversely affect the performance of ART laboratory procedures.

d. Document all corrective actions taken when problems with equipment or instrumentation are identified.

3. Labeling, Handling, and Storage of Chemicals, Reagents, Solutions, Culture Media, Materials and Supplies. The embryo laboratory must label, handle and store chemicals, reagents, solutions, culture media, materials and supplies in a manner that ensures their positive identification, optimum integrity and appropriate reactivity in ART laboratory procedures. The laboratory must—

a. Have a mechanism for ensuring sufficient chemicals, reagents, solutions, culture media, materials and supplies for the type and volume of ART laboratory procedures performed (e.g., inventory maintenance program).

b. Define criteria that are essential for proper storage of chemicals, reagents, solutions, and culture media, including the following, as applicable:

i. Temperature;

ii. Humidity; and

iii. Other conditions necessary for proper storage.

c. Label all chemicals, reagents, solutions, and culture media to indicate the following, as applicable:

i. Identity, and when significant, batch or lot number, titer, strength, or concentration;

ii. Recommended storage conditions;

iii. Expiration date; and

iv. Other pertinent information required for proper use.

d. Verify that materials which come in contact with sperm, oocytes, and embryos have been tested and found to be non-toxic to sperm, oocytes, and embryos. Documentation supplied by the manufacturer may be used to meet this requirement.

e. Maintain records documenting the batch or lot number, date of receipt or preparation, and date placed in use, for all chemicals, reagents, solutions, and culture media.

f. Prepare, store, and handle chemicals, reagents, solutions, and culture media in a manner to ensure that they are not used when they have exceeded their expiration date, have deteriorated, or are of substandard quality.

4. Specimen and Procedure Management. The embryo laboratory must have written protocols and criteria for the laboratory procedures performed and employ and maintain a system that provides for proper patient identification and preparation; specimen collection, identification, and handling (transportation, processing, storage, preservation); and accurate recording and reporting of laboratory procedural outcomes.

a. The laboratory must have available and follow written policies and procedures for each of the following:

i. Instructions for patient preparation, if applicable;

ii. Methods used for the positive identification of patients;

iii. Specimen collection;

iv. The labeling of patient specimens to ensure positive identification from the time of specimen collection through final disposition or disposal;

v. Criteria for maintaining specimen integrity and viability during transport, storage and the performance of ART laboratory procedures including, as applicable, requirements for:

A. Temperature;

B. Humidity; and

C. Gas concentration; and

vi. Criteria for specimen acceptability and, as appropriate, instructions for special handling of suboptimal specimens.

b. The laboratory must have adequate systems in place to ensure patient confidentiality throughout those parts of the ART process that are under the laboratory's control.

c. The laboratory may perform ART laboratory procedures only at the written or electronic request of an authorized person. Oral requests for changes to the original written or electronic request must be documented by the laboratory and followed by receipt of written or electronic documentation from an authorized person within 24 hours of the oral request. The patient's chart or medical record may be used for written authorization, but must be available to the laboratory at the time of the laboratory procedure. Written or electronic authorization must include the following:

i. The patient's name and an unique identifier;

ii. When applicable, the partner's or donor's name or other unique identifier;

iii. The name and address or other suitable identifiers of the authorized person requesting the procedure, and the name of the individual communicating the request;

iv. The procedure(s) to be performed;

v. The date(s) and time(s) the procedure(s) is to be performed; and

vi. Any additional information relevant and necessary to the performance of the procedure(s) including verification of informed patient consent, and as applicable, special handling instructions and any instructions stipulated by the patient.

d. As applicable, the laboratory must establish and follow written protocols, including documented criteria, for—

i. Evaluation and assessment of oocyte morphology and maturity, fertilization, and embryo quality.

ii. Insemination schedule relative to oocyte maturity.

iii. Volume, numbers, and quality of sperm used for insemination of each oocyte.

iv. Disposition of oocytes with an abnormal number of pronuclei.

v. Disposition of excess oocytes.

vi. The time period following insemination for examination of oocytes to determine fertilization.

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vii. Micromanipulation of oocytes and embryos.
viii. Re-insemination of oocytes.
ix. Cryopreservation of specimens.
x. Embryo transfer procedures, which include the following:
A. The length of time embryos are cultured prior to transfer;
B. The medium and protein supplementation used for transfer, as applicable;
C. Disposition of excess embryos;
D. Types of catheters available, with circumstances for use of each;
E. Method of transfer; and
F. Technique for post transfer catheter check.

e. The laboratory must maintain a record system, for each patient's ART cycle, to ensure reliable identification and control of the patient's specimens as they are received and the laboratory procedure(s) performed. The record system must include documentation of the information specified in subparagraph 4.c. of this section, and—
i. The laboratory accession number, or other unique identification of the specimen.
ii. The date and time of specimen receipt into the laboratory and, as applicable, the number of oocytes retrieved and assessment of each oocyte or cumulus corona complex.
iii. The condition and disposition of all specimens including those that do not meet the laboratory's criteria for acceptability.
iv. The records and dates of all laboratory handling and procedures, including the following, as applicable:
A. Semen assessment before and after washing and concentration for insemination;
B. Outcome of insemination or micromanipulation procedures (e.g., fertilization);
C. Outcome of any culture (e.g., cleavage);
D. Relative timing of protocol events (incubation hours, etc.);
E. Assessment of the developmental status and quality of all embryos at transfer;
F. Verification that no embryos remain in the catheter following completion of transfer;
G. The identity and lot numbers of the media and media supplements used in each phase of the procedure; and
H. The identity of the laboratory personnel who handled the specimens and performed the procedures.

f. The laboratory must have a mechanism in place for promptly providing the authorized person who ordered the procedure a complete summary of all procedural outcomes and the occurrence of any unusual or abnormal events, including the condition and disposition of specimens that do not meet the laboratory's criteria for acceptability.

g. The laboratory must have an accurate and reliable method of tracking cryopreserved specimens ensuring positive identification of each cryopreservation container. In addition, the cryopreservation container must be labeled with the patient's name or unique identifier, and the date the specimen(s) was frozen. All labeling must be of a permanent nature. Documentation must be maintained in duplicate log books or files for each liquid nitrogen storage tank and include the following:
i. The patient's name or other unique identifier;
ii. A description of each cryopreservation container's contents;
iii. The freezing protocol used;
iv. Date frozen;
v. Type and location of cryopreservation container (e.g., straw, vial); and
vi. Final disposition/disposal of the cryopreserved specimen(s).

h. If cryopreserved specimens are received from or transferred to other facilities, the laboratory must have written policies and procedures for the receipt/transfer of cryopreserved specimens. Policies and procedures must include appropriate methods of transportation and the method for verifying the identification and number of cryopreservation containers received/transferred. In addition, documentation of the freezing protocol used, and copies of patient release forms and applicable log sheets must accompany the cryopreserved specimens.
i. Clinical laboratory testing on specimens obtained by the embryo laboratory to provide information for the diagnosis, prevention or treatment of disease, or assessment of the health of human beings must be performed in accordance with the regulations implementing CLIA at 42 CFR Part 493. In addition—
i. The referring embryo laboratory must not revise results or information directly related to the interpretation of results provided by the testing laboratory.
ii. The referring embryo laboratory may permit the testing laboratory to send the test result(s) directly to the authorized person who initially requested the testing. The embryo laboratory must retain or be able to produce an exact duplicate of the testing laboratory's report.
iii. The authorized person who orders a clinical laboratory test must be notified by the referring embryo laboratory of the name and address of the testing laboratory.

5. Method Validation. All ART procedures selected or established by the embryo laboratory must be validated by the laboratory prior to routine patient use. The laboratory must determine appropriate performance measures and demonstrate that the procedure, when performed by the laboratory's staff, meets or exceeds acceptable levels of performance as defined by the laboratory. In addition, the laboratory must periodically verify, through its quality management activities (as specified in this part), each procedure's continued acceptable level of performance. All validations must be documented.

6. Quality Control. The embryo laboratory must establish and follow written quality control procedures at a frequency appropriate to monitor the reliability of the ART laboratory procedures performed. All quality control activities must be documented. The laboratory must—
a. Establish acceptability criteria for all quality control procedures.
b. Perform and document the remedial action(s) taken when problems are identified or quality control procedures do not meet the laboratory's criteria for acceptability.
c. For each laboratory procedure performed and, as applicable, culture media preparation—
i. Define and use the appropriate grade of water required.
ii. Periodically monitor water quality to ensure that its quality continues to meet the laboratory's specifications for its intended use. As applicable, adherence to manufacturers' storage and handling requirements, and expiration dates may meet this requirement.
d. As applicable, have and follow a written procedure for the preparation, washing and sterilization of glassware used in the laboratory's procedures that includes the following:
i. Rinsing all washable glassware with distilled or deionized water prior to drying; and
ii. If detergent is used, testing washed items for detergent removal.
e. Have and follow a written procedure for the quality control of culture media which includes a visual check for physical damage to the media container and evidence of media contamination prior to its use and—
i. For each batch of culture media prepared in-house, document the quality of the media by testing—
A. pH.
B. Osmolality.
C. Culture suitability using an appropriate bioassay system.

ii. For each batch of commercially prepared culture media—
A. Verify and document the quality of the media with an appropriate bioassay system. Documentation of quality control performed by the manufacturer may meet this requirement.
B. Follow the manufacturer's specifications for using the media.
iii. Test and document the quality of any media supplementation (*e.g.*, protein), when appropriate, using a bioassay system.
iv. While the use of blood-based media or a blood-based media supplement (*e.g.*, human fetal cord serum) prepared in-house is not recommended, if such media or supplements are prepared, the laboratory must test blood from the donor(s) used to make the media/supplement with a FDA licensed, approved, or cleared test and show the donor(s) to be negative/nonreactive for the following communicable diseases prior to use of the media/supplement:
A. Human immunodeficiency virus, Type 1 (*e.g.*, anti-HIV–1);
B. Human immunodeficiency virus, Type 2 (*e.g.*, anti-HIV–2);
C. Hepatitis B virus (*e.g.*, HbsAg);
D. Hepatitis C virus (*e.g.*, anti-HCV);
E. Human T-cell lymphotrophic virus, Types I and II (*e.g.*, anti-HTLV I/II); and
F. Such other diseases that may be later added to this list.

Note: A batch of media (solid, semi-solid, or liquid) consists of all tubes, plates, or containers of the same medium prepared at the same time in the laboratory; or, if received from an outside source or commercial supplier, consists of all of the plates, tubes or containers of the same medium that have the same lot numbers and are received in a single shipment.

7. Quality Assurance. The embryo laboratory must establish and follow written policies and procedures for a quality assurance program to monitor the quality of services provided by the laboratory, and resolve problems that are identified. The laboratory must have a mechanism to evaluate the effectiveness of its policies and procedures; identify and correct problems; and assure the adequacy and competency of the staff. As necessary, the laboratory must revise its policies and procedures based on the results of those evaluations. All quality assurance activities must be documented.
a. The laboratory must have an ongoing mechanism for monitoring, evaluating and revising, if necessary, based on the results of its evaluations, the following:
i. The criteria established for patient identification and specimen collection, identification, and handling;
ii. The information requested and maintained on each patient and for each laboratory procedure performed for its completeness, relevance and necessity;
iii. The timeliness and accuracy of recording and reporting procedural outcomes;
iv. The accuracy and reliability of tracking cryopreserved specimens;
v. The appropriate storage and retrieval of laboratory records such as procedural outcomes, and other data recorded and maintained; and
vi. The corrective actions taken for—
A. Problems identified during the evaluation of equipment and instrument maintenance, calibration, and function check data.
B. Problems identified during the evaluation of quality control data.
C. Errors detected in patient or specimen identification and handling.
D. Clerical or analytical errors detected in laboratory records.
b. The embryo laboratory must have an ongoing mechanism to—
i. Identify and evaluate laboratory procedural outcomes that appear inconsistent with the patient or donor history.
ii. Track and evaluate laboratory procedural outcomes including, but not limited to, fertilization rates, cleavage rates and embryo quality.
iii. Maintain a file of adverse reactions occurring as a result of errors made during the performance of ART laboratory procedures.
iv. Evaluate the effectiveness of its policies and procedures for assuring employee competence in performing ART laboratory procedures.
v. Document problems that occur as a result of a breakdown in communication between the laboratory and referring physicians or others involved in the ART procedures, and take corrective actions to resolve the problems and minimize future communications breakdowns.
vi. Assure that all complaints and problems reported to the laboratory are documented. Investigations of complaints must be made, when appropriate, and as necessary, corrective actions must be instituted.
vii. Document and assess problems identified during quality assurance reviews, and discuss them with the laboratory staff and, as appropriate, referring physicians and others involved in the ART procedures. The laboratory must take the necessary corrective actions to prevent recurrences.

D. Maintenance of Records

The embryo laboratory must retain records of all of its policies and procedures; personnel employment, training, evaluations and continuing education activities; and quality management activities specified in this part.

1. Record Format. Laboratory records must be accurate, indelible, and legible. Records may be retained electronically, or as original paper records, or as true copies such as photocopies, microfiche, or microfilm.

2. Retention Period. Laboratory records must be retained in accordance with time frames specified by applicable Federal, State and local laws or for ten years beyond the date of final disposition or disposal of all specimens obtained during each patient's ART cycle, whichever is later. Records must be retained on site for two years. Note: Transfer of cryopreserved specimens to another facility constitutes final disposition for the transferring facility.

3. Record Retrieval. Laboratory records must be maintained in a manner which ensures timely, accurate and reliable retrieval.

4. Laboratory Closure. In the event that the laboratory ceases operation, the laboratory must make provisions for these records to be maintained for the time frame required above.

Addendum

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Rules and Regulations

Federal Register
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Thursday, July 22, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150–AB94

Government in the Sunshine Act Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Notice of intent to implement currently effective rule; response to comments.

SUMMARY: The Nuclear Regulatory Commission, having considered the comments received on the May 10, 1999, document declaring its intent to begin implementing a final rule published and made effective in 1985, has decided to proceed with implementation of the rule, 30 days from the date of publication of this document.

DATES: The May 21, 1985, interim rule became effective May 21, 1985. The Commission will begin holding non-Sunshine Act discussions no sooner than August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Peter Crane, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–1622.

SUPPLEMENTARY INFORMATION: On May 10, 1999 (64 FR 24936), the Nuclear Regulatory Commission noticed in the **Federal Register** of its intention to begin implementing its regulations, promulgated in 1985, applying the Government in the Sunshine Act. The Commission provided a period for public comment, ending June 9, 1999, and stated that no non-Sunshine Act discussions would be held before July 1, 1999, to give the Commission an opportunity to consider the comments. The Commission stated that non-Sunshine Act discussions could begin on July 1, unless it took further action. Finding that the comments do in fact warrant discussion, the Commission provides this additional document that responds to the issues raised by the commenters. During the period of its review of the comments, the Commission has not held any non-Sunshine Act discussions and has decided not to hold any such discussions until, at the earliest, 30 days from the date of publication of this document.

Nine comments were received on the May 10 notice, all but one of which expressed disapproval of the NRC's action. (The lone exception was a comment from a nuclear industry group, the Nuclear Energy Institute, which said that it endorsed the NRC's action for the reasons stated in the May 10, 1999, document.) Of the critical comments received, the most detailed came from a Member of the United States House of Representatives, Edward J. Markey, and from two public interest organizations, the Natural Resources Defense Council and Public Citizen. The negative comments were mostly (but as will be seen, not exclusively) along the lines that the Commission had tried to anticipate in its detailed document of May 10.

The comments were both on legal and policy grounds. The primarily legal arguments included the following:

(a) The legislative history of the Sunshine Act makes clear Congress's intent that there should be openness to the maximum extent practicable;

(b) The Commission's action is thus antithetical to the letter and spirit of the Act;

(c) The Supreme Court's decision in *FCC* v. *ITT World Communications*, 466 U.S. 463 (1984), involved unique circumstances and is not relevant to the issue before the NRC;

(d) The Commission disregarded such court decisions as that of the U.S. Court of Appeals for the D.C. Circuit in *Philadelphia Newspapers* v. *NRC*, 727 F.2d 1195 (1984);

(e) The criteria adopted by the Commission are too vague to be workable, inasmuch as they require the Commission to predict the course that discussions will take; and

(f) The Commission's action, by providing for minimal recordkeeping, possibly to be discontinued after six months, will preclude meaningful judicial review.

Policy arguments included these:

(a) Even if the rule can be justified legally, it represents a retreat from openness and will diminish public confidence in the Commission;

(b) The NRC has failed to show that collegiality has been impaired by the Sunshine Act;

(c) The examples of topics that the Commission has cited as examples of possible non-Sunshine Act discussions are too trivial to warrant changing a rule that has served well for 20 years;

(d) The Commission failed to follow the recommendations of the American Bar Association with respect to record keeping;

(e) No harm could come to the Commission's processes if general background briefings were held in open session;

(f) The NRC's role as regulator of a technically complex industry calls for maximum openness; and

(g) Nothing in the rule prevents the Commission from holding off-the-record discussions with representatives of the regulated industry.

In the interest of clarity, we will address the comments in a comment-and-response format. Some comments were dealt with in sufficient detail in the May 10, 1999, document that it would serve no useful purpose to repeat here the Commission's position with regard to them.

A. *Comment:* One of the critical commenters quoted at length from the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Philadelphia Newspapers* v. *NRC*, 727 F.2d 1195 (1984), in which the court declared that "Government should conduct the public's business in public." The commenter opined that Congress undoubtedly intended that the Government in the Sunshine Act "would guarantee public accountability" on the safety of nuclear power.

Response: Undeniably, the *Philadelphia Newspapers* decision represented an expansive view of the Sunshine Act on the part of that panel of the D.C. Circuit. Only a few months later, however, the Supreme Court provided sharply different guidance in the first (and to date only) Government in the Sunshine Act case to reach the Court: *FCC* v. *ITT World*

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Communications, 466 U.S. 463 (1984). *ITT World Communications* resembled *Philadelphia Newspapers* in that it also involved an expansive interpretation of the Sunshine Act by the D.C. Circuit. Resoundingly, in a unanimous decision, the Supreme Court overturned the D.C. Circuit's ruling, and it used the opportunity to give guidance on the proper interpretation of the Sunshine Act. It said, among other things:

> Congress in drafting the Act's definition of "meeting" recognized that the administrative process cannot be conducted entirely in the public eye. "(I)nformal background discussions (that) clarify issues and expose varying views" are a necessary part of an agency's work. (Citation omitted.) The Act's procedural requirements effectively would prevent such discussions and thereby impair normal agency operations without achieving significant public benefit. Section 552b(a)(2) therefore limits the Act's application. * * *

Id. at 469–70.

The Commission's rulemaking has been grounded from the start in this definitive Supreme Court guidance. The rule itself includes a definition of "meeting" taken verbatim from the Court's opinion. The American Bar Association confirmed that the NRC's approach was consistent with Congressional intent and the Supreme Court's interpretation. To the extent that the commenter was urging the NRC to follow the approach of the Court of Appeals and disregard the contrary guidance of the Supreme Court, the NRC cannot agree. Even if the Commission believed as a matter of policy that such a course was desirable, the NRC is not at liberty to ignore Supreme Court decisions interpreting the statutes that govern its operations.[1]

[1] It is worth noting that on the precise legal point in dispute here—the definition of a "meeting" under the Sunshine Act—one D.C. Circuit decision held that an agency is legally prohibited from interpreting the law more restrictively than Congress provided. In *WATCH* v. *FCC*, 665 F.2d 1264 (D.C. Cir. 1981), the court sharply chastised an agency which had adopted a definition of "meeting" that included types of discussions that Congress had not included within the statutory scope. The court declared that the agency was "supposed to track" the statutory definition when it defined a "meeting" in its regulations. Because it had failed to do so, and instead included types of discussions not intended by Congress to fall within the statutory scope, the agency had written an "impermissibly broad" definition which could not legally be sustained. The court said:

> Indeed, we are unable to discern any reason for the breadth of the agency's definition of "meeting"—apart from shoddy draftsmanship, perhaps. While we recognize that an agency generally is free to shoulder burdens more onerous than those specifically imposed by statute, the regulation at issue here is in excess of the Commission's rulemaking discretion under 47 U.S.C. 154(1) (1976). Consequently, we set it aside to the extent that its definition of "meeting" is more inclusive than the one contained in the Sunshine Act. 665 F.2d 1264, 1272.

B. *Comment:* The NRC's action, even if some legal arguments could be made for it, is contrary to the Congress's intent, documented in the legislative history, that Federal agencies were intended to practice openness to the maximum extent possible.

Response: Congress made a deliberate decision to limit the applicability of the Sunshine Act to "meetings." As the Supreme Court explained in detail, the definition of "meeting" was an issue to which Congress paid extremely close attention, with changes introduced late in the process. The bill in its final form therefore differed significantly from what some of its supporters (including its chief sponsor, the late Senator Lawton Chiles) desired. As a result, Committee reports describing earlier, more expansive versions of the legislation bills are of slight significance compared to the Supreme Court's parsing of the statute that Congress actually passed. Some commenters are in effect asking the NRC to join in rewriting history so that the narrowing of the scope of "meetings"—proposed by then-Representative Pete McCloskey, enacted over the opposition of Senator Chiles and others, and elucidated by the Supreme Court—is made to disappear from the record. The reality, contrary to the views of some commenters, is that the Sunshine Act did not decree openness to the maximum extent practicable. Instead, it struck a balance between the public's right to know and the agencies' need to function efficiently in order to get the public's business done.

C. *Comment:* A commenter asserted that the NRC had failed to offer examples of the types of "non-Sunshine Act discussions" that it contemplated holding.

Response: The commenter is in error, as may be seen from the section of the NRC's May 10, 1999, document on page 24942 that begins, "Some specific examples of the kinds of topics that might be the subject of non-Sunshine Act discussions would include. * * *" Nor was this the first time that the NRC had offered such examples. It has done so repeatedly, beginning in 1985. Indeed, the American Bar Association task force that studied the Sunshine Act quoted, with approval and at considerable length, the examples of possible non-Sunshine Act discussions included in a memorandum to the Commission from the NRC General Counsel.

D. *Comment:* A commenter asserted that "no detailed analysis or specific example has been provided of problems with the current rule or of the need for changes."

Response: The Commission disagrees with this comment. As long ago as 1984, the Administrative Conference of the United States, in Recommendation 84–3, was commenting that the Sunshine Act had had the unintended effect of diminishing collegiality at multi-member agencies and shifting power from the collegium to the Chairman and staff. Analyses by the NRC, the American Bar Association, and the Administrative Conference all provide factual support for the proposition that there are problems associated with the Act. Again, this topic was covered in detail in the Commission's May 10, 1999, document.

E. *Comment:* One commenter observed that "[t]here is no apparent requirement to keep any tape or transcript of non-Sunshine Act discussions."

Response: This comment is correct, for that is the way that Congress enacted the statute. (The May 10, 1999, document quoted the legal judgment reflected in the ABA report that if a discussion "is not a 'meeting,' no announcement or procedures are required because the Act has no application.") As a matter of policy discretion, however, the NRC has decided to maintain a record of the date and subject of, and participants in, any scheduled non-Sunshine Act discussions that three or more Commissioners attend, for *at least* the initial six-month period of implementing the rule. This will assist the Commission in determining whether thereafter, recordkeeping should be maintained, increased, or eliminated. No final decision has been made at this time. The Commission will not discontinue its practice of keeping such records without advance notice to the public.

F. *Comment:* The NRC should make clear whether or not it intends that discussions now held as "meetings" can henceforth be held as non-Sunshine Act discussions. The Commissioners whose proposal initiated the Commission's action seem to have contemplated transforming current "meetings" into non-Sunshine Act discussions, but the Commission's May 10, 1999, document denies this intent.

Response: The May 10, 1999, document made clear that the objective is not to turn discussions now held as "meetings" into non-Sunshine Act discussions, but rather to enable the Commission to hold, as non-Sunshine Act discussions, the kind of informal, preliminary, and "big picture" discussions that currently are not held at all. As is sometimes the case, the final Commission action differed in this instance from the proposal that set the action in motion.

G. *Comment:* The memorandum from two Commissioners that initiated the Commission's action said that one reason to act was that the primary opponent of the Commission's 1985 action was no longer in Congress. This suggests that the Commission's action was motivated by political considerations, rather than actual need.

Response: The cited memorandum did indeed include an allusion to a former Representative. Read fairly and in its totality, it makes clear that the two Commissioners' proposal was motivated by concerns of good government and legal correctness, not politics. At the same time, they offered their candid view that concern about the proposal might be less intense than it had been in 1985. There was nothing inappropriate about making this observation. The Commission's decision to take action with regard to the Sunshine Act was a reflection of its longstanding efforts to increase the collegiality of the Commission process, to ensure that its procedures and practices are in conformity with current law, and to reach closure on outstanding items.

H. *Comment:* The May 10, 1999, document is not clear as to whether there is anything in the rule that would prevent the full Commission from meeting off-the-record with representatives of a licensee or the Nuclear Energy Institute in non-Sunshine Act discussions.

Response: The commenter's point is well taken; the notice did not address this question. The Commission's intent is that non-Sunshine Act discussions would be limited to NRC or other federal agency personnel, with limited exceptions for persons (e.g. representatives of the regulatory body of a foreign nation, or a state regulator) who would not be regulated entities or who could not be considered interested parties to Commission adjudicatory or rulemaking proceedings. The Commission is committed to implementing this intent; the non-Sunshine Act discussions will not include discussions with representatives of licensees or of organizations who could be considered interested parties to NRC adjudications, rulemakings, or development of guidance.

I. *Comment:* The NRC's standards for determining when a discussion can be held as a non-Sunshine Act discussion is impermissibly vague, requiring "divination" on the part of the participants.

Response: The standards for determining what is a non-Sunshine Act discussion were taken verbatim from the decision of a unanimous Supreme Court. Moreover, it is not correct to say that the standard requires "divination" of what will happen in a discussion. Rather, what the rule envisions is that if a discussion begins to evolve from the preliminary exchange of views that the Commission contemplated into something so particularized that it may "effectively predetermine" agency action if it continues, the Commission will cease the discussion.[2]

J. *Comment:* Because of the special sensitivity and public interest in issues of nuclear safety, the NRC should continue to apply the law more stringently than is required.

Response: That argument may have some force, but it cuts both ways. By the same token, it can be argued that the special sensitivity and public interest in issues of nuclear safety make it essential that the Commission remove barriers to efficiency and collegiality, so as to maximize the quality of Commission decision-making, and that the Congressional balance between openness and efficiency should therefore be adhered to strictly. The NRC believes that the latter interest should predominate.

K. *Comment:* Whether or not legally justifiable, the NRC's action will diminish public confidence in the Commission.

Response: The Commission was aware of this possibility at the time it issued the May 10, 1999, document, but it believes that the legal and policy reasons for its action—compliance with the Supreme Court's guidance, and the expected benefits in collegiality and efficiency, make this a desirable course of action, even if—despite the Commission's best efforts to explain its reasoning—some persons misunderstand or disapprove of the Commission's action. It is also possible that the potential enhancement of collegiality and the potential improvement in Commission decision-making that may result from non-Sunshine Act discussions will ultimately increase the public's confidence in the Commission's actions.

[2] Every Commissioner who meets one-on-one with an interested party to a matter before the Commission has to be prepared to cut off discussions that threaten to stray into impermissible areas, as provided, for example, by the NRC's *ex parte* rules. There seems no reason why Commissioners could not equally well halt discussions among themselves that seem likely to cross the line separating non-Sunshine Act discussions from "meetings."

L. *Comment:* The NRC did not follow the recordkeeping recommendations of the American Bar Association.

Response: It is true that the Commission did not follow the American Bar Association's recommendations with respect to recordkeeping. However, those recommendations were prudential, not based on legal requirements. The ABA recognized that as a legal matter, if a discussion is not a "meeting," no procedural requirements apply at all. The Commission's May 10, 1999, document reflected a judgment that Congress would not have given agencies latitude to hold this type of discussion free of elaborate and burdensome procedures if it had not viewed such procedures as undesirable. Nonetheless, as described in the response to Comment E above, the Commission has decided to maintain a record of the date, participants in, and subject matter of all non-Sunshine Act discussions for at least the first six months in which the rule is implemented, and it will not discontinue the practice thereafter without advance notice to the public.

M. *Comment:* No harm could result from holding briefings in public session, and doing so would benefit public understanding.

Response: On this point, arguments can go either way. At the time that the Commission first put its Sunshine Act rules into place, it acknowledged that briefings might be exempt from the Sunshine Act's scope, but said that the Commission did so much of its important work in briefings that as a policy matter, it believed these should be open to the public. This argument is not insubstantial. In part for that reason, the Commission affirms once again what it said in its May 10, 1999, document and earlier in this present document, namely, that its objective is not to turn discussions now held as "meetings" into non-Sunshine Act discussions. Rather, the intent is to ensure that the Commission is not categorically required to apply the Sunshine Act's procedural requirements to *every* briefing, including such things as routine status updates, where the benefit to the public would be small compared to the administrative burden and loss of efficiency in doing day-to-day business.

In sum, the NRC believes, based on its review of the comments received on the May 10, 1999, document, that the general approach taken by the Commission in that notice remains a desirable course of action. Accordingly, the NRC intends to implement its 1985 Sunshine Act rules and to begin holding non-Sunshine Act discussions, subject

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to the conditions outlined in the May 10, 1999, document, and as further clarified in the present document, 30 days from the date of this notice.

Dated at Rockville, Md., this 16th day of July, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–18724 Filed 7–21–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–350–AD; Amendment 39–11232; AD 99–15–12]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes. This action requires repetitive detailed inspections to detect looseness or gap of the press fit bushing installation of the actuator fittings of the aileron trim tabs, and eventual replacement of the bushings with new, staked bushings. Accomplishment of such replacement terminates the repetitive inspections. This action also provides for an optional temporary preventive action, which, if accomplished, would terminate the repetitive inspections until the terminating action is accomplished. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent looseness or gap of the bushings. In the event of failure of the redundant trim tab actuator, such looseness or gap of the bushings could lead to trim tab flutter and consequent structural failure of the trim tab and reduced controllability of the airplane.

DATES: Effective August 6, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of August 6, 1999.

Comments for inclusion in the Rules Docket must be received on or before August 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–350–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that a failure of a bushing of the flap support fitting occurred during a fatigue test. The bushing installation of the flap support fitting is similar to the bushing installation of the actuator fittings of the aileron trim tabs. In the event of failure of the redundant trim tab actuator, such a failure of the bushing could lead to trim tab flutter and consequent structural failure of the trim tab and reduced controllability of the airplane.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 2000–57–011, dated October 1, 1998, which describes procedures for repetitive visual inspections to detect looseness or gap of the press fit bushing installation of the actuation fittings of the aileron trim tabs. In addition, the service bulletin describes procedures for eventual replacement of existing bushings with new, staked bushings in the fittings. Such replacement when accomplished, eliminates the need for the repetitive inspections. The service bulletin also describes procedures for an optional temporary preventive action that involves the installation of washers on the bushings of the actuator fittings of the aileron trim tabs. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive (SAD) No. 1–132, dated October 8, 1998, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent looseness or gap of the press fit bushing installation of the actuator fittings of the aileron trim tabs. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between this AD and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of a certain repair condition, this AD requires the repair of that condition to be accomplished in accordance with a method approved by the FAA, or the LFV (or its delegated agent).

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 3 work hours to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection would be $180 per airplane, per inspection cycle.

It would require approximately 12 work hours for the bushing replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the installation would be $720 per airplane.

Should an operator elect to accomplish the optional temporary preventive action, it would take approximately 8 work hours to accomplish it, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the optional temporary preventive action would be $480 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–350–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–15–12 Saab Aircraft AB: Amendment 39–11232. Docket 98–NM–350–AD.

Applicability: Model SAAB 2000 series airplanes having serial numbers –004 through –011 inclusive and –013 through –016 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect looseness or gap of the press fit bushing installation of the actuation fittings of the aileron trim tabs, which, in the event of failure of the redundant trim tab actuator, could lead to trim tab flutter and consequent structural failure of the trim tab, accomplish the following:

Inspection

(a) Within 400 flight hours after the effective date of this AD, perform a detailed inspection of the bushing installation of the actuator fittings of the aileron trim tabs to detect looseness or gap, in accordance with Saab Service Bulletin 2000–57–011, dated October 1, 1998.

(1) If no looseness or gap is found, repeat the inspection thereafter at intervals not to exceed 800 flight hours until the requirements of paragraph (b) of this AD have been accomplished. Accomplishment of the temporary preventive action specified in paragraph 2.C. of the Accomplishment Instructions of the service bulletin terminates the repetitive inspections until the requirements of paragraph (b) of this AD have been accomplished.

(2) Except as specified in paragraph (c) of this AD, if any looseness or gap is found, prior to further flight, accomplish the corrective actions specified in paragraph 2.G. of the Accomplishment Instructions of the service bulletin. Repeat the inspection thereafter at intervals not to exceed 800 flight hours until the requirements of paragraph (b) of this AD have been accomplished. Accomplishment of the temporary preventive action specified in paragraph 2.C. of the Accomplishment Instructions of the service bulletin terminates the repetitive inspections of paragraph (a) of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or

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assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Terminating Action

(b) Except as specified in paragraph (c) of this AD, within 6,000 flight hours after the effective date of this AD, replace the existing bushings with new, staked bushings in the actuator fittings of the aileron trim tabs in accordance with Saab Service Bulletin 2000–57–011, dated October 1, 1998. Accomplishment of this replacement terminates the requirements of this AD.

Conditional Corrective Action

(c) If, during the accomplishment of the bushing installation inspection required by paragraph (a)(2) or the bushing replacement required by paragraph (b) of this AD, any radial play is detected between the small diameter flanged bushing and the fitting lug hole, and the radial play is 0.006 inch or less, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Luftfartsverket (LFV) (or its delegated agent).

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided in paragraph (c) of this AD, the actions shall be done in accordance with Saab Service Bulletin 2000–57–011, dated October 1, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Swedish airworthiness directive (SAD) 1–132, dated October 8, 1998.

(g) This amendment becomes effective on August 6, 1999.

Issued in Renton, Washington, on July 14, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18409 Filed 7–21–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–59–AD; Amendment 39–11235; AD 99–15–14]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft-Manufactured Model CH–54B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Sikorsky Aircraft-manufactured Model CH–54B helicopters, that requires initial and recurring inspections and rework or replacement, if necessary, of the second stage lower planetary plate (plate). This amendment is prompted by two reports of cracked plates that have been found during overhaul and inspections. The actions specified by this AD are intended to prevent failure of the main gearbox plate due to fatigue cracking, which could lead to failure of the main gearbox and subsequent loss of control of the helicopter.

EFFECTIVE DATE: August 26, 1999.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5157, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Sikorsky Aircraft-manufactured Model CH–54B helicopters was published in the **Federal Register** on April 16, 1999 (64 FR 18835). That action proposed to require initial and recurring inspections, and rework or replacement, if necessary, of the plate.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 4 helicopters of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per helicopter to accomplish the borescope inspection, 1 work hour to inspect the main gearbox oil filter pack, 140 work hours to remove and replace the main gearbox assembly, if necessary, and 20 work hours to rework the plate, and that the average labor rate is $60 per work hour. Required parts will cost approximately $8,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $67,760; $2,160 to accomplish the initial inspections and $65,600 to replace the plate in the main gearbox assembly in all 4 helicopters, if necessary. Daily preflight inspections of the main gearbox oil filter pack will cost $60 per helicopter for each day flight is conducted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–15–14 Blue Bird Helicopters: Amendment 39–11235. Docket No. 97–SW–59–AD.

Applicability: CH–54B helicopters with main gearbox second stage lower planetary plate (plate), part number (P/N) 6435–20516–101, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the plate due to fatigue cracking, which could lead to failure of the main gearbox and subsequent loss of control of the helicopter, accomplish the following:

(a) For main gearbox assemblies containing plate, part number (P/N) 6435–20516–101, with 1,600 or more hours time-in-service (TIS):

Note 2: If the TIS hours of the plate is not known, use the main gearbox assembly's total operating time.

(1) Prior to the first flight of each day, inspect the main oil filter for magnesium contamination. If magnesium contamination is discovered, replace the main gearbox assembly.

(2) Within the next 100 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 200 hours TIS, conduct a borescope inspection of the plate for cracks in the area of the nine lightening holes (see Figure 1). If a crack is found, replace the plate with an airworthy plate. The plate, P/N 6435–20516–101, is part of the main gearbox second stage planetary set (P/N 6435–20514–041), which is a serialized matched set, and must be replaced as a set.

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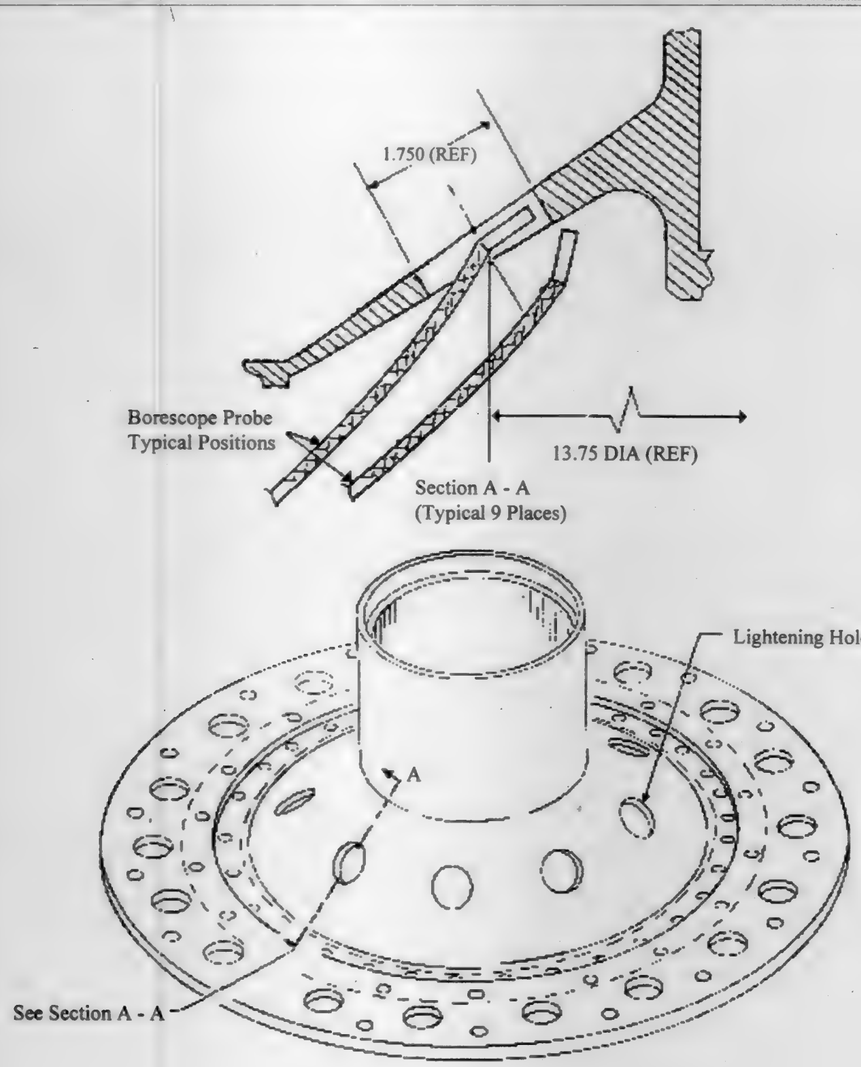

Borescope Inspection of Second Stage
Lower Planetary Plate Lightening Holes
Figure 1

BILLING CODE 4910–13–C

(b) At the next overhaul of the main gearbox assembly, inspect and rework the plate, P/N 6435–20516–101, as follows:

(1) Fluorescent magnetic particle inspect the plate per ASTM E1444 in circumferential and longitudinal directions using a wet continuous method. Pay particular attention to the area around the nine 1.750-inch diameter lightening holes.

(2) If a crack is found, the plate is unairworthy. Replace it with an airworthy plate.

(3) If no crack is found, rework the plate as follows, ensuring that all plate surfaces are free of any crack, scratch, dent, or corrosion.

(i) Measuring from the center of each 1.750-inch diameter lightening hole, machine 0.015/0.020 inch from the radius of the hole (see Figure 2). Machined surface roughness shall not exceed 63 microinches AA rating.

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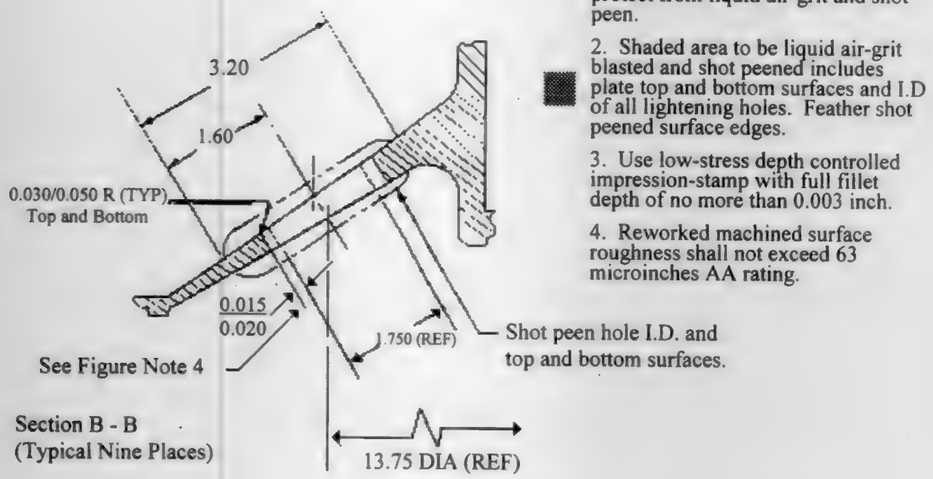

Figure Notes

1. Mask top and bottom areas to protect from liquid air-grit and shot peen.

2. Shaded area to be liquid air-grit blasted and shot peened includes plate top and bottom surfaces and I.D of all lightening holes. Feather shot peened surface edges.

3. Use low-stress depth controlled impression-stamp with full fillet depth of no more than 0.003 inch.

4. Reworked machined surface roughness shall not exceed 63 microinches AA rating.

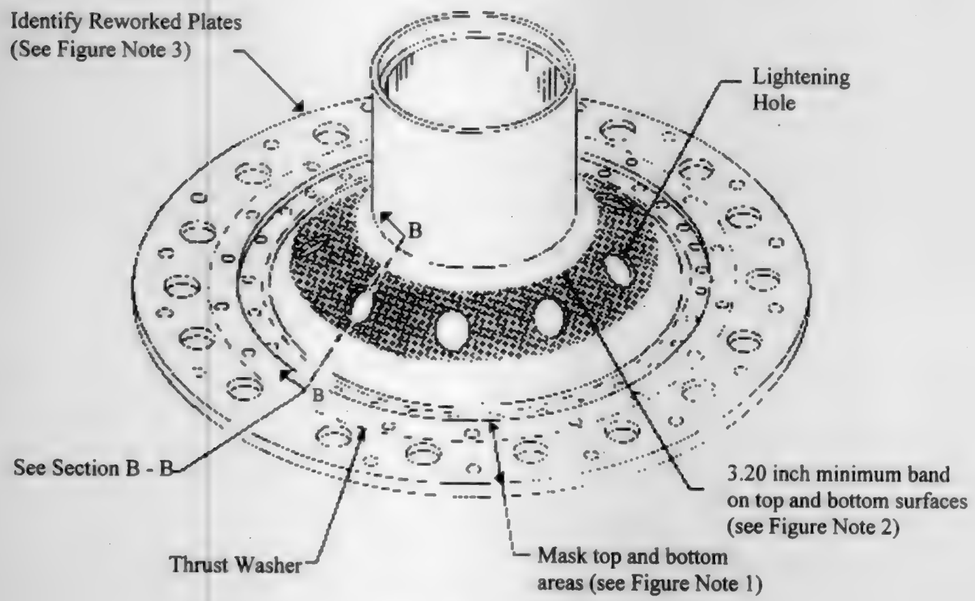

Rework of Second Stage Lower Planetary Plate
Figure 2

BILLING CODE 4910–13–C

(ii) Apply a 0.030/0.050-inch radius on the top and bottom edge of each hole.

(4) Fluorescent magnetic particle inspect the reworked areas per ASTM E1444 in circumferential and longitudinal directions using a wet continuous method.

(5) If a crack is found, the plate is unairworthy. Replace it with an airworthy plate.

(6) If no crack is found, rework the plate as follows:

(i) Remove the protective finish from the specified areas on the top and bottom of the plate as follows:

(A) Mask the top and bottom of the pl. te leaving exposed a 3.20-inch minimum circumferential band centered on 13.75-inch diameter of plate (see Figure 2). Mask the area to protect the thrust washer and the surrounding areas from vapor blast.

(B) Using a vapor blast machine, remove the protective finish from the exposed circumferential band on the top and bottom of the plate. Use No. 220 aluminum oxide grit at a pressure of 80–90 pounds per square inch.

(ii) Shot peen the specified areas on the plate by remasking the top and bottom of the plate leaving exposed the 3.20-inch minimum circumferential band centered on 13.75-inch diameter of the plate. Mask the area to protect the thrust washer and the surrounding areas from the shot peening process.

(iii) Shot peen the inside diameter of the lightening holes and the upper and lower surfaces of the plate in the 3.20-inch minimum circumferential band to 0.008 to 0.012A intensity, ensuring 200% coverage per MIL–S–13165C or latest revision. Use cast steel shot, size 170. Use a tracer dye inspection method.

Note 3: Overspray is permitted to allow a feathering application during the peening process from the peened surface to the non-peened surface.

(iv) Finish the reworked surfaces as follows:

(A) Clean the surfaces thoroughly with acetone (Fed. Spec O–A–51, or equivalent).

(B) Apply Presto black or blueing touchup solution to the reworked surfaces with cotton swabs. The solution temperature must be between 21° C and 49° C (70° F to 120° F). Keep the surfaces wet for about three minutes to get a uniform dark color.

(C) Rinse the surface in cold running water and dry with forced air.

Note 4: A hot water rinse may be used after the cold water rinse to speed up drying time.

(D) Using steel wool, Grade 00 or finer, rub the surfaces lightly. Polish with a soft cloth and then coat with a preservative oil (MIL–C–15074).

(v) Identify the reworked plate by stamping the number of this AD after the part number. Use a low-stress depth-controlled impression-stamp with full fillet depth of no more than 0.003 inch (see Figure 2). Marking must be such that it cannot be construed as part of the part number.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on August 26, 1999.

Issued in Fort Worth, Texas, on July 15, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–18683 Filed 7–21–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWS–08]

Revocation of Class D Airspace; Dallas NAS, Dallas, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class D airspace area at Dallas Naval Air Station (NAS), Dallas, TX. This action is prompted by the closure of Dallas NAS. The United States Navy no longer requires use of the airspace. The intended effect of this action is to revoke the Class D airspace at Dallas NAS since it is no longer needed.

EFFECTIVE DATES: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION:

History

On April 1, 1999, a proposal to amend 14 CFR Part 71 to revoke the Class D airspace at Dallas NAD, Dallas, TX, was published in the **Federal Register** (64 FR 15709). The proposal was to revoke the Class D airspace area at Dallas NAS, Dallas, TX. This action is prompted by the closure of Dallas NAS. The United States Navy no longer requires use of the airspace. The intended effect of this proposed is to revoke the Class D airspace at Dallas NAS since it is no longer needed.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class D airspace areas are published in paragraph 5000 of FAA Order 74000F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR Part 71 revokes the Class D airspace at Dallas NAD, Dallas, TX.

The FAA has determined that this regulation only involves an established body of technical regulations that requires frequent and routine amendments to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565. 3 CFR, 1959–1963 Comp., p. 389.

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§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.0F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace areas.

* * * * *

ASW TX D Dallas NAS Dallas, TX [Removed]

* * * * *

Issued in Fort Worth, TX on July 12, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–18573 Filed 7–21–99; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1206

RIN 2700–AC36

Availability of Agency Records to Members of the Public

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule

SUMMARY: This action amends 14 CFR Part 1206, "Availability of Agency Records to Members of the Public," by making administrative changes to conform with requirements made by the Electronic Freedom of Information Act of 1996 as amended.

EFFECTIVE DATE: July 22, 1999.

ADDRESSES: Freedom of Information Act Officer, Code PO, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Patricia M. Riep-Dice, 202/358–1764, or Sharon Smith, 202/358–2465.

SUPPLEMENTARY INFORMATION: The National Aeronautics and Space Administration last published a Final Rule to revise its Freedom of Information Act (FOIA) regulations on October 29, 1987, 52 FR 41406–41416, Title 14 CFR Chapter V, Part 1206. This new amendment to NASA's regulation implementing the FOIA is required by the EFOIA of 1996 as amended by Pub. L. 104–231. The amendments made include changing the processing time from 10 working days to 20 working days; to include electronic searches as well as manual searches; the addition of FOIA e-mail addresses for all of the NASA FOIA Offices; the establishment of an electronic FOIA reading room on all of NASA's FOIA Homepages on the Internet; an increase in the schedule of fees and to address and explain how records of NASA will be reviewed and released when the records are maintained in electronic format. However, documentation not previously subject to the FOIA when maintained in nonelectronic format is not made subject to FOIA by this new amendment. It has been determined that this addition is not a significant regulatory action and it will not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof;

(4) Have a significant economic impact on a substantial number of small entities; or

(5) Impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

For the reasons set forth in the preamble, NASA amends 14 CFR chapter V by revising part 1206 to read as follows:

PART 1206—AVAILABILITY OF AGENCY RECORDS TO MEMBERS OF THE PUBLIC

Sec.

Subpart 1— Basic Policy

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1206.101 Definitions.
1206.102 General policy.

Subpart 2—Records Available

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Subpart 8—Failure to Release Records to the Public

1206.800 Failure to release records to the public.

Subpart 9—Annual Report

1206.900 Requirements for annual report.

Authority: 5 U.S.C. 552, 552a; 42 U.S.C. 2473.

Subpart 1—Basic Policy

§ 1206.100 Scope of Part.

This Part 1206 establishes the policies, responsibilities, and procedures for the release of Agency records which are under the jurisdiction of the National Aeronautics and Space Administration, hereinafter NASA, to members of the public. This part applies to information and Agency records located at NASA Headquarters, at NASA Centers, and at NASA Component, as defined in Part 1201 of this chapter.

§ 1206.101 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) The term *Agency records* or *records* means any information that would be an Agency record subject to the requirements of the Freedom of Information Act (FOIA) when maintained by NASA in any format, including an electronic format. Such information includes all books, papers, maps, photographs, or other documentary materials made or received by NASA in pursuance of Federal law or in connection with the transaction of public business and preserved by NASA as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities or because of the informational value of data contained therein. It does not include tangible objects or articles, such as structures, furniture, paintings, sculptures, exhibits, models, vehicles or equipment; library or museum material made or acquired and preserved solely for reference or exhibition purposes; or records of another agency, a copy of which may be in NASA's possession.

(b) The term *initial determination* means a decision by a NASA official, in response to a request by a member of the public for an Agency record, on whether the record described in the request can be identified and located after a reasonable search and, if so, whether the record (or portions thereof) will be made available under this part or will be withheld from disclosure under Subpart 3 of this part.

(c) The term *appeal* means a request by a member of the public, hereinafter requester, to the Administrator or designee, or, in the case of records as specified in § 1206.504, to the Inspector General or designee for reversal of any adverse initial determination the requester has received in response to a request for an Agency record.

(d) The term *final determination* means a decision by the Administrator or designee, or, in the case of records as specified in § 1206.504, by the Inspector General or designee on an appeal.

(e) The term *working days* means all days except Saturdays, Sundays, and Federal holidays.

(f) As used in § 1206.608, the term *unusual circumstance* means, but only to the extent reasonably necessary to the proper processing of a particular request for Agency records—

(1) The need to search for and collect the requested records from NASA Centers or other establishments that are separate from the NASA Information Center processing the request (see Subpart 6 of this part for procedures for processing a request for Agency records);

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of NASA having substantial subject-matter interest therein.

(g) A *statute specifically providing for setting the level of fees for particular types of records* (5 U.S.C. 552(a)(4)(A)(vi)) means any statute that specifically requires a government agency to set the level of fees for particular types of records in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that both groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate, to the maximum extent possible an information dissemination activity on a self-sustaining basis (to the maximum extent possible); or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

(h) The term *direct costs* means those expenditures that NASA actually incurs in searching for, duplicating, and downloading computer files and documents in response to a FOIA request. Direct costs include, for example, the salary of the employee who would ordinarily perform the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Direct costs do not include overhead expenses such as costs of space, heating, or lighting in the records storage facility.

(i) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. A search for Agency records that are responsive to the request may be accomplished by manual or automated means. NASA will make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of NASA's automated information systems. NASA will ensure that searching for material is done in the most efficient, least expensive manner so as to minimize costs for both the Agency and the requester and will only utilize line-by-line, page-by-page search when consistent with this policy.

Search should be distinguished, however, from *review* of material in order to determine whether the material is exempt from disclosure (see paragraph (k) of this section).

(j) The term *duplication* means the process of making a copy of a document in order to respond to a FOIA request. Such copies can take the form of paper copy, electronic forms, microfilm, audio-visual materials, or machine-readable documentation (e.g., magnetic tape on disk), among others.

(k) The term *review* means the process of examining documents located in response to a request (see paragraph (l) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(l) The term *commercial use request* means a request from or on behalf of one whom seeks information for a use or purpose that furthers the commercial, trade, or profit interests of either the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, NASA will look first to the use to which a requester will put the documents requested. When NASA has reasonable cause to doubt the use to which a requester will put the records sought or when the use is not clear from the request itself, NASA will ask the requester to further clarify the immediate use for the requested records. A request from a corporation (not a *news media* corporation) may be presumed to be for commercial use unless the requester demonstrates that it qualifies for a different fee category.

(m) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, operating a program or programs of scholarly research.

(n) The term *noncommercial scientific institution* refers to an institution that is not operated on a *commercial* basis as that term is referenced in paragraph (l) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(o) The term *representative of the news media* means any person actively

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gathering news for an entity that publishes, broadcasts, or makes news available to the public. The term *news* means information about events that would be of interest to the public. Examples of news media include, but are not limited to, television or radio stations broadcasting to the public at large, publishers of periodicals who make their products available for purchase or subscription by the general public (but only in those instances when they can qualify as disseminators of *news*), and entities that disseminate news to the general public through telephone, computer or other telecommunications methods. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of *freelance* journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but NASA may also look to the past publication record of a requester in making this determination.

(p) The term *commercial information* means, for the purpose of applying the notice requirements of § 1206.610, information provided by a submitter and in the possession of NASA, that may arguably be exempt from disclosure under the provisions of Exemption 4 of the FOIA (5 U.S.C. 552(b)(4)). The meaning ascribed to this term for the purpose of this notice requirement is separate and should not be confused with use of this or similar terms in determining whether information satisfies one of the elements of Exemption 4.

(q) The term *submitter* means a person or entity that is the source of commercial information in the possession of NASA. The term *submitter* includes, but is not limited to, corporations, state governments, and foreign governments. It does not include other Federal Government agencies or departments.

(r) The term *compelling need* means:

(1) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal government activity.

(s) The term *electronic reading room* means a World Wide Web site from which members of the public can access information regarding activities, missions, organizations, publications, or other material related to NASA's congressional mandate.

§ 1206.102 General policy.

(a) In accordance with section 203(a)(3) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(a)(3)), it has been and continues to be NASA policy to provide for the "widest practicable and appropriate dissemination of information concerning its activities and the results thereof."

(b) In compliance with the Freedom of Information Act, as amended (5 U.S.C. 552), a positive and continuing obligation exists for NASA to make available to the fullest extent practicable upon request by members of the public all Agency records under its jurisdiction, as described in Subpart 2 of this part, except to the extent that they may be exempt from disclosure under Subpart 3 of this part.

Subpart 2—Records Available

§ 1206.200 Types of records to be made available.

(a) Records required to be published in the **Federal Register**. The following records are required to be published in the **Federal Register**, for codification in Title 14, Chapter V, of the CFR.

(1) Description of NASA Headquarters and NASA Centers and the established places at which, the employees from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which NASA's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions regarding the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by NASA;

(5) Each amendment, revision, or repeal of the foregoing.

(b) Agency opinions, orders, statements, and manuals.

(1) Unless they are exempt from disclosure under Subpart 3 of this part, or unless they are promptly published and copies offered for sale, NASA shall make available the following records for public inspection and copying or purchase:

(i) All final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases;

(ii) Those statements of NASA policy and interpretations which have been adopted by NASA and are not published in the **Federal Register**;

(iii) Administrative staff manuals (or similar issuances) and instructions to staff that affect a member of the public;

(iv) Copies of all records, regardless of form or format, which have been released to any person under subpart 6 herein and which, because of the nature of their subject matter, the Agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(v) A general index of records referred to under paragraph (b)(1)(iv) of this section.

(2) (i) For records created after November 1, 1997, which are covered by paragraph (b)(l)(i) through (b)(l)(v) of this section, such records shall be available electronically, through an electronic reading room and in electronic forms or formats.

(ii) In connection with all records required to be made available or published under this paragraph (b), identifying details shall be deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. However, in each case the justification for the deletion shall be explained fully in writing. The extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by an exemption in Subpart 3. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion is made.

(c) Other Agency records.

(1) In addition to the records made available or published under paragraphs (a) and (b) of this section, NASA shall, upon request for other records made in accordance with this part, make such records promptly available to any person, unless they are exempt from disclosure under Subpart 3 of this part, or unless they may be purchased from other readily available sources, as provided in § 1206.201.

(2) Furthermore, at a minimum, NASA will maintain in its electronic reading room records created after November 1, 1997, under paragraphs (b)(1)(iv) and (v) and a guide for requesting records or information from NASA. Such guide shall include all NASA major information systems, a description of major information and record locator systems, and a handbook for obtaining various types and categories of NASA public information through the FOIA.

§ 1206.201 Records which have been published.

Publication in the **Federal Register** is a means of making certain Agency records are available to the public. NASA has a FOIA Electronic Reading Room at NASA Headquarters and each of its Centers. Also, the Commerce Business Daily, Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards (Department of Commerce) is a source of information concerning Agency records or actions. Various other NASA publications and documents, and indexes thereto, are available from other sources, such as the U.S. Superintendent of Documents, the National Technical Information Service (Department of Commerce), and the Earth Resources Observation Systems Data Center (Department of the Interior). Such publications and documents are not required to be made available or reproduced in response to a request unless they cannot be purchased readily from available sources. If a publication or document is readily available from a source other than NASA, the requester shall be informed of the procedures to follow to obtain the publication or document.

§ 1206.202 Deletion of segregable portions of a record.

If a record requested by a member of the public contains both information required to be made available and that which is exempt from disclosure under Subpart 3 of this part, and the portion of the records that is required to be made available is reasonably segregable from the portion that is exempt, the portion that is exempt from disclosure shall be deleted and the balance of the record shall be made available to the requester. If the nonexempt portion of the record appears to be unintelligible or uninformative, the requester shall be informed of that fact, and such nonexempt portion shall not be sent to the requester unless thereafter specifically requested. If technically feasible, the amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in Subpart 3 under which the deletion is made.

§ 1206.203 Creation of records.

Records will not be created by compiling selected items from the files at the request of a member of the public, nor will records be created to provide the requester with such data as ratios, proportions, percentages, frequency distributions, trends, correlations, or comparisons.

§ 1206.204 Records of interest to other agencies.

If a NASA record is requested and another agency has a substantial interest in the record, such an agency shall be consulted on whether the record shall be made available under this part (see § 1206.101(f)(3)). If a record is requested that is a record of another agency, the request shall be returned to the requester, as provided in § 1206.604(c) unless NASA has possession and control of the record requested.

§ 1206.205 Incorporation by reference.

Records reasonably available to the members of the public affected thereby, shall be deemed published in the **Federal Register** when incorporated by reference in material published in the **Federal Register** (pursuant to the **Federal Register** regulation on incorporation by reference, 1 CFR Part 51).

§ 1206.206 Availability for copying.

Except as provided in § 1206.201, the availability of a record for inspection shall include the opportunity to extract information therefrom or to purchase copies.

§ 1206.207 Copies.

The furnishing of a single copy of the requested record will constitute compliance with this part.

§ 1206.208 Release of exempt records.

If a record which has been requested is exempt from disclosure under Subpart 3 of this part, the record may nevertheless be made available under the procedures of Subpart 6 of this part if it is determined by an official authorized to make either an initial determination or a final determination that such action would not be inconsistent with a purpose of the exemptions set forth in Subpart 3 of this part.

Subpart 3—Exemptions

§ 1206.300 Exemptions.

(a) Under 5 U.S.C. 552(b) Agency records falling within the exemptions of paragraph (b) of this section are not required to be made available under this part. Such records may nevertheless be made available if it is determined that such actions would not be inconsistent with a purpose of the exemption (see § 1206.208).

(b) The requirements of this part to make Agency records available do not apply to matters that are—

(1)(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and

(ii) Are in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of NASA;

(3) Specifically exempted from disclosure by statute (other than [redacted] U.S.C. 552), provided that such statute:

(i) Requires that the matters be withheld from the public in such [redacted] manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person which is privileged or confidential;

(5) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with NASA;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings,

(A) Whenever a request is made which involves access to these records and—

(*1*) The investigation or proceeding involves a possible violation of criminal law; and

(*2*) There is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552.

(B) [Reserved]

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or

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foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source. Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the Agency may treat the records as not subject to the requirements of 5 U.S.C. 552 unless the informant's status as an informant has been officially confirmed.

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

§ 1206.301 Limitation of exemptions.

(a) This Part 1206 does not authorize the withholding of information or the availability of records to the public, except as specifically stated in this part.

(b) Nothing in this part shall be construed as authority to withhold information from Congress.

Subpart 4—Location for Inspection and Request of Agency Records

§ 1206.400 Information Centers.

NASA will maintain Information Centers as set forth in this subpart.

§ 1206.401 Location of NASA Information Centers.

(a) NASA will maintain the following Information Centers, at which Agency records may be inspected, from which copies of Agency records may be requested and at which copies of Agency forms may be obtained:

(1) NASA Headquarters (HQ) Information Center, National Aeronautics and Space Administration, Washington, DC 20546.

(2) NASA Information Center, Ames Research Center (ARC), Moffett Field, CA 94035.

(3) NASA Information Center, Hugh L. Dryden Flight Research Center, (DFRC), Post Office Box 273, Edwards, CA 93523.

(4) NASA Information Center, Glenn Research Center (GRC), 21000 Brookpark Road, Cleveland, OH 44135.

(5) NASA Information Center, Goddard Space Flight Center (GSFC), Greenbelt, MD 20771.

(6) NASA Information Center, John F. Kennedy Space Center (KSC), Kennedy Space Center, FL 32899.

(7) NASA Information Center, Langley Research Center (LaRC), Langley Station, Hampton, VA 23665.

(8) NASA Information Center, Lyndon B. Johnson Space Center (JSC), 2101 NASA Road 1, Houston, TX 77058.

(9) NASA Information Center, George C. Marshall Space Flight Center (MSFC), Huntsville, AL 35812.

(10) NASA Information Center, John C. Stennis Space Center (SSC), MS 39529.

(11) NASA Information Center, NASA Management Office Jet Propulsion Laboratory (JPL), 4800 Oak Grove Drive, Pasadena, CA 91109.

(12) NASA Information Center, Wallops Flight Facility (WFF), Wallops Island, VA 23337.

(b) NASA Headquarters and each NASA Center also has a FOIA Electronic Reading Room on the Internet. The Uniform Resource Locator (URL) addresses are as follows:

(1) (HQ) http://www.hq.nasa.gov/office/pao/FOIA/;

(2) (ARC) http://george.arc.nasa.gov/dx/FOIA/elec.html;

(3) (DFRC) http://www.dfrc.nasa.gov/FOIA/readroom.html;

(4) (GRC) http://www.grc.nasa.gov/WWW/FOIA/ReadingRm.htm;

(5) (GSFC) http://genesis.gsfc.nasa.gov//foia/read-rm.htm;

(6) (JSC) http://www.jsc.nasa.gov/pao/public/foia/edocs.html;

(7) (KSC) http://www-foia.ksc.nasa.gov/foia/READROOM.HTM;

(8) (LaRC) http://foia.larc.nasa.gov/readroom.html;

(9) (MSFC) http://www1.msfc.nasa.gov/FOIA/docs/docs.html and

(10) (SSC) http://www.ssc.nasa.gov/~foia/reading/

(c) In addition a requester may submit a FOIA request electronically. The addresses are as follows: (HQ) foia@hq.nasa.gov; (ARC) foia@arc.nasa.gov; (DFRC) foia@dfrc.nasa.gov; (GRC) foia@grc.nasa.gov; (GSFC) foia@gsfc.nasa.gov; (JSC) foia@ems.jsc.nasa.gov; (KSC)FOIA@ksc.nasa.gov; (LaRC) foia@larc.nasa.gov; (MSFC) foia@msfc.nasa.gov and (SSC) foia@ssc.nasa.gov; and for Inspector General records, foiaoig@hq.nasa.gov.

§ 1206.402 Documents available for inspection at NASA Information Centers.

(a) Each NASA Information Center will have available for inspection, as a minimum, a current version of the following documents:

(1) 5 U.S.C. 552;

(2) Title 14 CFR Chapter V, and Title 41 CFR Chapter 18, and material published in the **Federal Register** for codification but not yet included in the Code of Federal Regulations;

(3) A master list and index of NASA Issuances, and a copy of all such issuances;

(4) A list and index of the management issuances of the NASA Center at which the Information Center is located, and a copy of such issuances;

(5) NASA's Scientific and Technical AeroSpace Reports and current indexes thereto;

(6) Cumulative Index to Selected Speeches and News Releases issued by NASA Headquarters;

(7) Index/Digest of Decisions, NASA Board of Contract Appeals;

(8) Decisions of the NASA Contract Adjustment Board and a current index thereto;

(9) Copies of Environmental Impact Statements filed by NASA under the National Environmental Policy Act of 1969;

(10) Collection of all issues of "NASA Activities";

(11) List of licenses granted under NASA-owned patents; and

(12) A master list and an index of NASA Policy Directives, Guidelines, and Charters, and a copy of all such Directives, Guidelines, and Charters.

(b) Because the indexes listed in paragraph (a) of this section are voluminous and because current versions thereof will be available for inspection at NASA Information Centers, from which copies of the indexes may be requested under § 1206.603, it is determined and so ordered that publication of the indexes quarterly in the **Federal Register** would be unnecessary and impractical.

§ 1206.403 Duty hours.

The NASA Information Centers listed in § 1206.401 shall be open to the public during all regular workdays, from 9 a.m. to 4 p.m.

Subpart 5—Responsibilities

§ 1206.500 Associate Deputy Administrator.

Except as otherwise provided in § 1206.504, the Associate Deputy Administrator or designee is responsible for the following:

(a) Providing overall supervision and coordination of the implementation of the policies and procedures set forth in this Part 1206;

(b) After consultation with the General Counsel, making final determinations under § 1206.607, within the time limits specified in Subpart 6 of this part;

(c) Determining whether unusual circumstances exist under § 1206.608 as would justify the extension of the time limit for a final determination.

§ 1206.501 General Counsel.

The General Counsel is responsible for the interpretation of 5 U.S.C. 552 and of this part, and for the handling of litigation in connection with a request for an Agency record under this part.

§ 1206.502 Centers and Components.

(a) Except as otherwise provided in § 1206.504, the Director of each NASA Center or the Official-in-Charge of each Component, is responsible for the following:

(1) After consultation with the Chief Counsel or the Counsel charged with providing legal advice to a Center or a Component Facility, making initial determinations under § 1206.603 and § 1206.604;

(2) Determining whether unusual circumstances exist under § 1206.608 as would justify the extension of the time limit for an initial determination; and

(3) In coordination with the Associate Deputy Administrator, ensuring that requests for records under the cognizance of his/her respective Center are processed and initial determinations made within the time limits specified in Subpart 6 of this part.

(b) If so designated by the Director or Officials-in-Charge of the respective Center, the principal Public Affairs Officer at the Center may perform the functions set forth in paragraphs (a)(1) and (2) of this section.

§ 1206.503 NASA Headquarters.

(a) Except as otherwise provided in § 1206.504, the Associate Administrator for Public Affairs, is responsible for the following:

(1) Preparing the annual reports required by § 1206.900, including establishing reporting procedures throughout NASA to facilitate the preparation of such reports;

(2) After consultation with the Office of General Counsel, making initial determinations under § 1206.603 and § 1206.604;

(3) Determining whether unusual circumstances exist under § 1206.608 as would justify the extension of the time limit for an initial determination; and

(4) In coordination with the Associate Deputy Administrator, ensuring that requests for Agency records under the cognizance of Headquarters are processed and initial determinations made within the time limits specified in Subpart 6 of this part.

(b) The functions set forth in paragraphs (a)(1), (2) and (3) of this section may be delegated by the Associate Administrator for Public Affairs to a Public Affairs Officer or Specialist and to the Manager or his/her designee, NASA Management Office—JPL.

§ 1206.504 Inspector General.

(a) The Inspector General or designee is responsible for making final determinations under § 1206.607, within the time limits specified in Subpart 6 of this part, concerning audit inspection and investigative records originating in the Office of the Inspector General records from outside the Government related to an audit inspection or investigation, records prepared in response to a request from or addressed to the Office of the Inspector General, or other records originating within the Office of the Inspector General, after consultation with the General Counsel or designee on an appeal of an initial determination to the Inspector General.

(b) The Assistant Inspectors General or their designees are responsible for making initial determinations under § 1206.603 and § 1206.604 concerning audit inspection and investigative records originating in the Office of the Inspector General, records from outside the Government related to an audit inspection or investigation, records prepared in response to a request from or addressed to the Office of the Inspector General, or other records originating with the Office of the Inspector General, after consultation with the Attorney-Advisor to the Inspector General or designee.

(c) The Inspector General or designee is responsible for ensuring that requests for Agency records as specified in paragraphs (a) and (b) of this section are processed and initial determinations are made within the time limits specified in Subpart 6 of this part.

(d) The Inspector General or designee is responsible for determining whether unusual circumstances exist under § 1206.608 that would justify extending the time limit for an initial or final determination, for records as specified in paragraphs (a) and (b) of this section.

(e) Records as specified in paragraphs (a) and (b) of this section include any records located at Regional and field Inspector General Offices, as well as records located at the Headquarters Office of the Inspector General.

§ 1206.505 Delegation of authority.

Authority necessary to carry out the responsibilities specified in this subpart is delegated from the Administrator to the officials named in this subpart.

Subpart 6—Procedures

§ 1206.600 Requests for Records.

A member of the public may request an Agency record by mail, facsimile (FAX), electronic-mail (e-mail), or in person from the FOIA Office having cognizance over the record requested or from the NASA Headquarters FOIA Office.

§ 1206.601 Mail, fax and e-mail requests.

In view of the time limits under 5 U.S.C. 552(a)(6) for an initial determination on a request for an Agency record (see § 1206.603), a request must meet the following requirements:

(a) The request must be addressed to an appropriate NASA FOIA Office or otherwise be clearly identified in the letter as a request for an Agency record under the "Freedom of Information Act."

(b) The request must identify the record requested or reasonably describe it in a manner that enables a professional NASA employee who is familiar with the subject area of the request to identify and locate the record with a reasonable amount of effort. NASA need not comply with a blanket or categorical request (such as "all matters relating to" a general subject) where it is not reasonably feasible to determine what is sought. NASA will in good faith endeavor to identify and locate the record sought and will consult with the requester when necessary and appropriate for that purpose. However, as provided in § 1206.203, NASA will undertake no obligation to compile or create information or records not already in existence at the time of the request.

(c) If a fee is chargeable under Subpart 7 of this part for search or duplication costs incurred in connection with a request for an Agency record, and the requester knows the amount of the fee at the time of the request, the request should be accompanied by a check or

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money order payable in that amount to the "National Aeronautics and Space Administration." NASA cannot be responsible for cash sent by mail; stamps will not be accepted. If the amount of the fee chargeable is not known at the time of the request, the requester will be notified in the initial determination (or in a final determination in the case of an appeal) of the amount of the fee chargeable (see § 1206.608(c)). For circumstances in which advance payment of fees is required, see § 1206.704.

§ 1206.602 Requests in person.

(a) A member of the public may request an Agency record in person at a NASA FOIA Office (see § 1206.401) during the duty hours of NASA Headquarters or the Center.

(b) A request at a FOIA Office must identify the record requested or reasonably describe it as provided in § 1206.601(b).

(c) If the record requested is located at the FOIA Office or otherwise readily obtainable, it shall be made available to the requester upon the payment of any fees that are chargeable (see Subpart 7 of this part), which fees may be paid by a check or money order payable to the "National Aeronautics and Space Administration." If the record requested is not located at the FOIA Office or otherwise readily obtainable, the request will be docketed at the FOIA Office and processed in accordance with the procedures in § 1206.603 and § 1206.604, with any fee chargeable being handled in accordance with § 1206.601(c).

§ 1206.603 Procedures and time limits for initial determinations.

(a) Except as provided in § 1206.608, an initial determination on a request for an Agency record, addressed in accordance with § 1206.601(a) or made in person at a NASA FOIA Office shall be made, and the requester shall be sent notification thereof, within 20-working days after receipt of the request, as required by 5 U.S.C. 552(a)(6).

(b) An initial determination on a request for an Agency record by mail not addressed in accordance with § 1206.601(a) shall be made, and the requester shall be sent notification thereof, within 20-working days after the correspondence is recognized as a request for an Agency record under the "Freedom of Information Act" and received by the appropriate NASA FOIA Office. With respect to such a request, unless an initial determination can reasonably be made within 20-working days of the original receipt, the request will be promptly acknowledged and the requester notified of the date the request was received at that FOIA Office and that an initial determination on the request will be made within 20-working days of that date.

(c) If it is determined that the requested record (or portion thereof) will be made available, and if the charges are under $250, NASA will either send a copy of the releasable record and a bill for the fee or send the initial determination and a bill for the fee to the requester. In the latter case, the documents will be released when the fee is received. If the fee chargeable is over $250, a request for payment of the fee will always be sent with the initial determination, and the records will be mailed only upon receipt of payment. When records are sent before payment is received, the fact that interest will be charged from the 31st day after the day of the response shall be stated in the response. The date of the mailing of an initial determination, with or without the records(s), shall be deemed to satisfy the time limit for initial determinations.

(d) Any notification of an initial determination that does not comply fully with the request for an Agency record, including those searches that produce no documents, shall include a statement of the reasons for the adverse determination, include the name and title of the person making the initial determination, and notify the requester of the right to appeal to the Administrator, or the Inspector General, as appropriate, under § 1206.605.

(e) If the requester demonstrates a "compelling need" as defined in § 1206.101(r) for records, NASA shall provide expedited processing of the request. NASA will inform the requester as to whether the request for expedited processing has been granted within 10 working days after the date of the request.

§ 1206.604 Request for records that exist elsewhere.

(a) If a request for an Agency record is received by a FOIA Office not having cognizance of the record (for example, when a request is submitted to one NASA Center or Headquarters and the requested record exists only at another NASA Center), the FOIA Office receiving the request shall promptly forward it to the NASA FOIA Office having cognizance of the record requested. That Center shall acknowledge the request and inform the requester that an initial determination on the request will be sent within 20 working days from the date of receipt by such Center.

(b) If a request is received for Agency records which exist at two or more Centers, the FOIA Office receiving the request shall undertake to comply with the request, if feasible, or to forward the request (or portions thereof) promptly to a more appropriate Center for processing. The requester shall be kept informed of the actions taken to respond to the request.

(c) If a request is received by a NASA FOIA Office for a record of another agency, the requester shall promptly be informed of that fact, and the request shall be returned to the requester, with advice as to where the request should be directed.

§ 1206.605 Appeals.

(a) A member of the public who has requested an Agency record in accordance with § 1206.601 or § 1206.602, and who has received an initial determination which does not comply fully with the request, may appeal such an adverse initial determination to the Administrator, or, for records as specified in § 1206.504, to the Inspector General under the procedures of this section.

(b) The Appeal must:

(1) Be in writing;

(2) Be addressed to the Administrator, NASA Headquarters, Washington, DC 20546, or, for records as specified in § 1206.504, to the Inspector General, NASA Headquarters, Washington, DC 20546;

(3) Be identified clearly on the envelope and in the letter as an "Appeal under the Freedom of Information Act";

(4) Include a copy of the request for the Agency record and a copy of the adverse initial determination;

(5) To the extent possible, state the reasons why the requester believes the adverse initial determination should be reversed; and

(6) Be sent to the Administrator or the Inspector General, as appropriate, within 30 calendar days of the date of receipt of the initial determination.

(c) An official authorized to make a final determination may waive any of the requirements of paragraph (b) of this section, in which case the time limit for the final determination (see § 1206.607(a)) shall run from the date of such waiver.

§ 1206.606 Request for additional records.

If, upon receipt of a record (or portions thereof) following an initial determination to comply with a request, the requester believes that the materials received do not comply with the request, the requester may elect either to request additional records under the procedures of § 1206.601 or § 1206.602,

or to file an appeal under the procedures of § 1206.605, in which case the appeal must be sent to the Administrator, or to the Inspector General, in the case of records as specified in § 1206.504, within 30 days of receipt of the record (or portions thereof), unless good cause is shown for any additional delay.

§ 1206.607 Actions on appeals.

(a) Except as provided in § 1206.608, the Administrator or designee, or in the case of records as specified in § 1206.504, the Inspector General or designee, shall make a final determination on an appeal and notify the requester thereof, within 20 working days after the receipt of the appeal.

(b) If the final determination reverses in whole or in part the initial determination, the record requested (or portions thereof) shall be made available promptly to the requester, as provided in the final determination.

(c) If the final determination sustains in whole or in part an adverse initial determination, the notification of the final determination shall:

(1) Explain the basis on which the record (or portions thereof) will not be made available;

(2) Include the name and title of the person making the final determination;

(3) Include a statement that the final determination is subject to judicial review under 5 U.S.C. 552(a)(4); and

(4) Enclose a copy of 5 U.S.C. 552(a)(4).

§ 1206.608 Time extensions in unusual circumstances.

(a) In "unusual circumstances" as that term is defined in § 1206.101(f), the time limits for an initial determination (see § 1206.603 and § 1206.604) and for a final determination (see § 1206.607) may be extended, but not to exceed a total of 10-working days in the aggregate in the processing of any specific request for an Agency record.

(b) If an extension of time under this section would be required, the requester shall be promptly notified of the reasons therefor and the date when a determination will be sent.

(c) If a record described in a request cannot be located within the 20-working-day time limit for an initial determination, after consultation with a professional NASA employee who is familiar with the subject area of the request, that fact normally will justify an initial determination that the record requested cannot be identified or located, rather than a decision that an extension of time under this section would be appropriate.

(d) In exceptional circumstances, if it would be impossible to complete a search for or review of Agency records within the 20-working-day period for an initial determination, an official authorized to make an initial determination or the designee may seek an extension of time from the requester. If such an extension of time can be agreed upon, that fact should be clearly documented and the initial determination made within the extended time period; if not, an initial determination that the record cannot be identified or located, or reviewed, within the 20-working-day time limit shall be made under § 1206.603. "Exceptional circumstances" do not include a delay that results from a predictable Agency workload of requests unless the Agency demonstrates reasonable progress in reducing its backlog of pending requests. Refusal by the requester to reasonably modify the scope of a request or arrange an alternative time frame for processing the request shall be considered as a factor in determining whether exceptional circumstances exist.

§ 1206.609 Litigation.

In any instance in which a requester brings suit concerning a request for an Agency record under this part, the matter shall promptly be referred to the General Counsel together with a report on the details and status of the request. In such a case, if a final determination with respect to the request has not been made, such a determination shall be made as soon as possible, under procedures prescribed by the General Counsel in each case.

§ 1206.610 Notice to submitters of commercial information.

(a) General policy. Upon receipt of a request for commercial information pursuant to the Freedom of Information Act, NASA shall provide the submitter with notice of the request in accordance with the requirements of this section.

(b) Notice to submitters. Except as provided in paragraph (g) or (h) of this section, the Agency shall make a good faith effort to provide a submitter with prompt notice of a request appearing to encompass its commercial information whenever required under paragraph (c) of this section. Such notice shall identify the commercial information requested and shall inform the submitter of the opportunity to object to its disclosure in accordance with paragraph (d) of this section. If the submitter would not otherwise have access to the document that contains the information, upon the request of the submitter, the Agency shall provide access to, or copies of, the records or portions thereof containing the commercial information. This notice shall be provided in writing upon the request of the submitter. Whenever the Agency provides notice pursuant to this section, the Agency shall advise the requester that notice and opportunity to comment are being provided to the submitter.

(c) When notice is required. Notice shall be given to a submitter whenever the information has been designated by the submitter as information deemed protected from disclosure under Exemption 4 of the Act, or the Agency otherwise has reason to believe that the information may be protected from disclosure under Exemption 4.

(d) Opportunity to object to disclosure. Through the notice described in paragraph (b) of this section, the Agency shall afford a submitter a reasonable period within which to provide the Agency with a detailed statement of any objection to disclosure. This period shall not exceed 10 working days from the date after which the Agency can reasonably assume receipt of notice by the submitter, unless the submitter provides a reasonable explanation justifying additional time to respond. If the Agency does not receive a response from the submitter within this period, the Agency shall proceed with its review of the information and initial determination. The submitter's response shall include all bases, factual or legal, for withholding any of the information pursuant to Exemption 4. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA. Submitters will not be provided additional opportunities to object to disclosure, and, therefore, should provide a complete explanation of any and all bases for withholding any information from disclosure.

(e) Notice of intent to disclose. The Agency shall carefully consider any objections of the submitter in the course of determining whether to disclose commercial information. Whenever the Agency decides to disclose commercial information over the objection of a submitter, the Agency shall forward to the submitter a written statement which shall include the following:

(1) A brief explanation as to why the Agency did not agree with any objections;

(2) A description of the commercial information to be disclosed, sufficient to identify the information to the submitter; and

(3) A date after which disclosure is expected. Such notice of intent to disclose shall be forwarded to the

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submitter in a reasonable number of working days prior to the expected disclosure date.

(4) If no comments are received by the Agency by the date described in paragraph (e)(3) of this section, the information in question will be released.

(f) Notice of FOIA lawsuit. Whenever a requester brings suit seeking to compel disclosure of commercial information covered by paragraph (c) of this section, the Agency shall promptly notify the submitter. Whenever a submitter brings suit against the Agency in order to prevent disclosure of commercial information, the Agency shall promptly notify the requester.

(g) Exceptions to notice requirements. The notice requirements of this section do not apply if—

(1) The information has been published or otherwise made available to the public.

(2) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(3) The submitter has received notice of a previous FOIA request which encompassed information requested in the later request, and the Agency intends to withhold and/or release information in the same manner as in the previous FOIA request;

(4) Upon submitting the information or within a reasonable period thereafter,

(i) The submitter reviewed its information in anticipation of future requests pursuant to the FOIA,

(ii) Provided the Agency a statement of its objections to disclosure consistent with that described in paragraph (e) of this section, and

(iii) The Agency intends to release information consistent with the submitter's objections;

(5) Notice to the submitter may disclose information exempt from disclosure pursuant to 5 U.S.C. 552(b)(7).

(h)(1) An additional limited exception to the notice requirements of this section, to be used only when all of the following exceptional circumstances are found to be present, authorizes the Agency to withhold information which is the subject of a FOIA request, based on Exemption 4 (5 U.S.C. 552(b)(4)), without providing the submitter individual notice:

(i) The Agency would be required to provide notice to over 10 submitters, in which case, notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(ii) Absent any response to the published notice, the Agency determines that if it provided notice as is otherwise required by paragraph (c) of this section, it is reasonable to assume that the submitter would object to disclosure of the information based on Exemption 4; and,

(iii) If the submitter expressed the anticipated objections, the Agency would uphold those objections.

(2) This exemption shall be used only with the approval of the Chief Counsel of the Center, the Attorney-Advisor to the Inspector General, or the Associate General Counsel responsible for providing advice on the request. This exception shall not be used for a class of documents or requests, but only as warranted by an individual FOIA request.

Subpart 7—Search, Review, and Duplication Fees

§ 1206.700 Schedule of fees.

The fees specified in this section shall be charged for searching for, reviewing, and/or duplicating Agency records made available in response to a request under this part.

(a) Copies. For copies of documents such as letters, memoranda, statements, reports, contracts, etc., $0.10 per copy of each page. For copies of oversize documents, such as maps, charts, etc., $0.15 for each reproduced copy per square foot. These charges for copies include the time spent in duplicating the documents. For copies of computer disks, still photographs, blueprints, videotapes, engineering drawings, hard copies of aperture cards, etc., the fee charged will reflect the full direct cost to NASA of reproducing or copying the record.

(b) Clerical searches. For each one-quarter hour spent by clerical personnel in searching for an Agency record in response to a request under this part, $3.75.

(c) Nonroutine, nonclerical searches. When a search cannot be performed by clerical personnel; for example, when the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel, and when the amount of time that must be expended in the search and collection of the requested records by such higher level personnel is substantial, charges for the search may be made at a rate in excess of the clerical rate, namely for each one-quarter hour spent by such higher level personnel in searching for a requested record, $7.50.

(d) Review of records. For commercial use requests only, when time is spent reviewing to determine whether they are exempt from mandatory disclosure, a charge may be made at the rate for each one-quarter hour spent by an attorney, $11.25. No charge shall be made for the time spent in resolving general legal or policy issues regarding the application of exemptions. This charge will only be assessed the first time NASA reviews a record and not at the administrative appeal level.

(e) Computerized records. Because of the diversity in the types and configurations of computers which may be required in responding to requests for Agency records maintained in whole or in part in computerized form, it is not feasible to establish a uniform schedule of fees for search and printout of such records. In most instances, records maintained in computer data banks are available also in printed form and the standard fees specified in paragraph (a) of this section shall apply. If the request for an Agency record required to be made available under this part requires a computerized search or printout, the charge for the time of personnel involved shall be at the rates specified in paragraphs (b) and (c) of this section. The charge for the computer time involved and for any special supplies or materials used shall not exceed the direct cost to NASA. This charge may be as high as $125.00 per quarter hour. Before any computer search or printout is undertaken in response to a request for an Agency record, the requester shall be notified of the applicable unit costs involved and the total estimated cost of the search and/or printout.

(f) Other search and duplication costs. Reasonable standard fees, other than as specified in paragraphs (a) through (e) of this section, may be charged for additional direct costs incurred in searching for or duplicating an Agency record in response to a request under this part. Charges which may be made under this paragraph include, but are not limited to, the transportation of NASA personnel to places of record storage for search purposes or freight charges for transporting records to the personnel searching for or duplicating a requested record.

(g) Charges for special services. Complying with requests for special services such as those listed in (g)(1), (2), and (3) of this section is entirely at the discretion of NASA. Neither the FOIA nor its fee structure cover these kinds of services. To the extent that NASA elects to provide the following services, it will levy a charge equivalent to the full cost of the service provided:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail.

(3) Packaging and mailing bulky records that will not fit into the largest envelope carried in the supply inventory.

(h) Unsuccessful or unproductive searches. Search charges, as set forth in paragraphs (b) and (c) of this section, may be made even when an Agency record which has been requested cannot be identified or located after a diligent search and consultation with a professional NASA employee familiar with the subject area of the request, or if located, cannot be made available under Subpart 3 of this part. Ordinarily, however, fees will not be charged in such instances unless they are substantial (over $50.00) and the requester has consented to the search after having been advised that it cannot be determined in advance whether any records exist which can be made available (see § 1201206.704) and that search fees will be charged even if no record can be located and made available.

(i) Fees not chargeable.

(1) NASA will not charge for the first 100 pages of duplication and the first 2 hours of search time either manual or electronic except to requesters seeking documents for commercial use.

(2) If the cost to be billed to the requester is equal to or less than $15.00, no charges will be billed.

(j) Records will be provided in a form or format specified by the requester if they are readily reproducible in such format with reasonable efforts. If the records are not readily reproducible in the requested form or format, the Agency will so inform the requester. The requester may specify an alternative form or format that is available. If the requester refuses to specify an alternative form or format, the Agency will not process the request further.

§ 1206.701 Categories of requesters.

There are four categories of FOIA requesters: Commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories:

(a) Commercial use requesters. When NASA receives a request for documents appearing to be for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Moreover, in the case of such a request, NASA will not consider a request for waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. Commercial use requesters are not entitled to 2 hours of free search time or to 100 free pages of reproduction of documents.

(b) Education and noncommercial scientific institution requesters. NASA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use, but are being sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research. Requesters must reasonably describe the records sought.

(c) Requesters who are representatives of the news media. NASA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must demonstrate that he/she meets the criteria in § 1206.101(o) of this part, and his/her request must not be made for a commercial use. Requesters must reasonably describe the records sought.

(d) All other requesters. NASA shall charge requesters who do not fit into any of the categories mentioned in this section, fees which recover the full direct reasonable cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first 2 hours of search time shall be furnished without charge. Moreover, requests from individuals for records about themselves located in NASA's systems of records will continue to be processed under the fee provisions of the Privacy Act of 1974, which permits fees only for reproduction. Requesters must reasonably describe the records sought.

§ 1206.702 Waiver or reduction of fees.

The burden is always on the requester to provide the evidence to qualify him/her for a fee waiver or reduction.

(a) NASA shall furnish documents without charge or at reduced charges in accordance with 5 U.S.C. 552(a)(4)(A)(iii), provided that:

(1) Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and

(2) It is not primarily in the commercial interest of the requester.

(b) Where these two statutory requirements are satisfied, based upon information supplied by the requester or otherwise made known to NASA, the FOIA fee shall be waived or reduced. Where one or both of these requirements is not satisfied, a fee waiver or reduction is not warranted under the statute.

(c) In determining whether disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, the following considerations shall be applied:

(1) Whether the subject of the requested records concerns "the operations or activities of the government";

(2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(3) Whether disclosure of the requested information will contribute to "public understanding"; and

(4) Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(d) In determining whether disclosure of the information "is not primarily in the commercial interest of the requester," the following consideration shall be applied:

(1) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so,

(2) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

§ 1206.703 Aggregation of requests.

A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When NASA has reason to believe that a requester or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, NASA will aggregate any such requests and charge accordingly. NASA will consider that multiple requests made within a 30-day period were so intended, unless there is evidence to the contrary. Where the relevant time period exceeds 30 days, NASA will not assume such a motive unless there is evidence to the contrary. In no case will NASA aggregate multiple requests on unrelated subjects from one requester.

§ 1206.704 Advance payments.

(a) NASA will not require a requester to make an advance payment, i.e.,

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payment before work is commenced or continued on a request, unless:

(1) NASA estimates or determines that the allowable charges are likely to exceed $250. NASA will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee in a timely fashion (within 30 days of billing), then NASA may require the requester to pay the full amount owed plus any applicable interest as provided below (see § 1206.706(a)), or demonstrate that he/she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the Agency begins to process a new request or a pending request from that requester.

(b) When NASA acts under paragraphs (a)(1) and (2) of this section, the administrative time limits will begin only after NASA has received the fee payments described in paragraph (a) of this section.

§ 1206.705 Form of payment.

Payment shall be made by check or money order payable to the "National Aeronautics and Space Administration" and sent per instructions in the initial determination.

§ 1206.706 Nonpayment of fees.

(a) Interest to be charged. Requesters are advised that should they fail to pay the fees assessed, they may be charged interest on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.

(b) Applicability of Debt Collection Act of 1982 (Pub. L. 97–365). Requesters are advised that if full payment is not received within 60 days after the billing was sent, the procedures of the Debt Collection Act may be invoked (14 CFR 1261.407–1261.409). These procedures include three written demand letters at not more than 30-day intervals, disclosure to a consumer reporting agency, and the use of a collection agency, where appropriate.

Subpart 8—Failure to Release Records to the Public

§ 1206.800 Failure to release records to the public.

(a) Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the **Federal Register** under § 1206.200(a) and not so published.

(b) A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied upon, used, or cited as precedent by NASA against any member of the public only if it has been indexed and either made available or published as provided by § 1206.200(b) or if the member of the public has actual and timely notice of the terms thereof.

(c) Failure to make available an Agency record required to be made available under this part could provide the jurisdictional basis for a suit against NASA under 5 U.S.C. 552(a)(4) (B) through (G), which provides as follows:

(B) On complaint, the District Court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the Agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the Agency from withholding Agency records and to order the production of any Agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such Agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the Agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within 30 days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

[(D) Repealed. Pub. L. 98–620, Title IV, 402(2), Nov. 8, 1984, 98 Stat. 3335, 3375.]

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any Agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether Agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the Agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

Subpart 9—Annual Report

§ 1206.900 Requirements for annual report.

On or before February 1 of each year, NASA shall submit a report covering the preceding fiscal year to the Department of Justice.

Dated: July 2, 1999.

Daniel S. Goldin,

Administrator.

[FR Doc. 99–17966 Filed 7–21–99; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 98C–0041]

Listing of Color Additives for Coloring Sutures; [Phthalocyaninato(2-)] Copper; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of June 2, 1999, for the final rule that appeared in the **Federal Register** of April 30, 1999 (64 FR 23185), and amended the color additive regulations to provide for the safe use of [phthalocyaninato(2-)] copper in coloring nonabsorbable sutures for general and opthalmic surgery made from a blend of poly(vinylidene fluoride) and poly(vinylidene fluoride-co-hexafluoropropylene).

DATES: Effective date confirmed: June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 30, 1999 (64 FR 23185), FDA amended the color additive regulations in § 74.3045 *[Phthalocyaninato(2-)] copper* (21 CFR 74.3045) to provide for the safe use of [phthalocyaninato(2-)] copper in coloring nonabsorbable sutures for general and opthalmic surgery made from a blend of poly(vinylidene fluoride) and poly(vinylidene fluoride-co-hexafluoropropylene).

FDA gave interested persons until June 1, 1999, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of April 30, 1999, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the April 30, 1999, final rule. Accordingly, the amendments issued thereby became effective June 2, 1999.

Dated: July 15, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–18693 Filed 7–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–064]

RIN 2115–AE46

Special Local Regulations for Marine Events; Chesapeake Challenge, Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the Chesapeake Challenge powerboat race to be held on the waters of the Patapsco River near Baltimore, Maryland. These regulations are needed to protect boaters, spectators and participants from the dangers associated with the event. This action is intended to enhance the safety of life and property during the event.

DATES: This temporary final rule is effective from 1 p.m. EDT (Eastern Daylight Time) to 4 p.m. EDT on July 24 and 25, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9:30 a.m. and 2 p.m., Monday trough Friday, except Federal holidays. The telephone number is (757) 398–6204.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. Houck, Marine Events Coordinator Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore Maryland, 21226–1791, telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NRPM) was not published for this regulation. In keeping with 5 U.S.C. 553(B), the Coast Guard finds that good cause exists for not publishing a NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. The Coast Guard received confirmation of this request for special local regulations on June 8, 1999. There was not sufficient time to publish a proposed rule in advance of the event. Publishing a NPRM and delaying the effective date of the regulation would be contrary to the public interest, because immediate action is necessary to protect vessel traffic from the potential hazards associated with this event.

Background and Purpose

On July 24 and 25, 1999, the Chesapeake Bay Power Boat Association will sponsor the Chesapeake Challenge, a marine event to be held on the waters of the Patapsco River near Baltimore, Maryland. The event will consist of 65 to 80 offshore power boats racing in heats around an oval race course. A large fleet of spectator vessels is anticipated. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of spectators, participants and transiting vessels.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Patapsco River. The temporary special local regulations will be in effect from 1 p.m. EDT (Eastern Daylight Time) to 4 p.m. EDT on July 24 and 25, 1999 and will restrict general navigation in the regulated areas during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Special anchorage areas will also be established for spectator vessels to view the event. These regulations are needed to control vessel traffic during the marine event to enhance the safety of participants, spectators, and transiting vessels.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the regulated areas will only be in effect for a limited amount of time, extensive advisories have been and will be made to the affected maritime community so that they may adjust their schedules accordingly, and the event schedule will allow commercial interests to coordinate their activities to allow for minimal disruption to their enterprise.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this temporary final rule will have a significant economic impact on a substantial number of small entities. "Small Entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Because this temporary final rule will only be in effect for a short period of time and extensive advisories will be made to the affected maritime community so that they may adjust their schedules accordingly, the Coast Guard expects the impact of this temporary final rule to be minimal.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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Federalism

The Coast Guard has analyzed this temporary final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that, under figure 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a marine event are excluded under that authority.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, § 100.35–T05–064 is added to read as follows:

§ 100.35–T05–064 Chesapeake Challenge, Patapsco River, Baltimore, Maryland.

(a) *Definitions:*

(1) *Regulated Area.* The waters of the Patapsco River enclosed by:

Latitude	*Longitude*
39° 15′ 27.5″ N	076° 33′ 10.0″ W, to
39° 13′ 23.0″ N	076° 31′ 14.0″ W, to
39° 12′ 06.0″ N	076° 29′ 43.5″ W, to
39° 12′ 00.0″ N	076° 29′ 08.0″ W, to
39° 11′ 24.0″ N	076° 29′ 27.5″ W, to
39° 11′ 48.0″ N	076° 30′ 58.0″ W, to
39° 14′ 53.5″ N	076° 34′ 15.0″ W, to
39° 15′ 24.0″ N	076° 33′ 53.0″ W, to
39° 15′ 27.5″ N	076° 33′ 10.0″ W

(2) *Curtis Bay South Spectator Anchorage Area.* The waters south of Curtis Bay Channel bounded by a line connecting the following points:

Latitude	*Longitude*
39° 13′ 16.0″ N	076° 32′ 31.5″ W, to
39° 13′ 00.0″ N	076° 32′ 16.0″ W, to
39° 12′ 49.5″ N	076° 32′ 31.5″ W, to
39° 13′ 06.0″ N	076° 32′ 48.5″ W, to
39° 13′ 16.0″ N	076° 32′ 31.5″ W

(3) *Curtis Bay North Spectator Anchorage Area.* The waters north of Curtis Bay Channel bounded by a line connecting the following points:

Latitude	*Longitude*
39° 14′ 00.0″ N	076° 33′ 18.5″ W, to
39° 13′ 33.0″ N	076° 32′ 50.0″ W, to
39° 13′ 20.5″ N	076° 33′ 13.5″ W, to
39° 13′ 37.0″ N	076° 33′ 40.0″ W, to
39° 14′ 00.0″ N	076° 33′ 18.5″ W

(4) *Fort McHenry Spectator Anchorage Area.* The waters south of Hawkins Point bounded by a line connecting the following points:

Latitude	*Longitude*
39° 12′ 26.5″ N	076° 31′ 39.0″ W, to
39° 11′ 48.0″ N	076° 30′ 58.0″ W, to
39° 11′ 40.0″ N	076° 30′ 33.0″ W, to
39° 11′ 16.5″ N	076° 30′ 46.5″ W, to
39° 12′ 19.5″ N	076° 31′ 50.5″ W, to
39° 12′ 26.5″ N	076° 31′ 39.0″ W

All coordinates reference Datum NAD 1983.

(5) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(b) *Special Local Regulations:*

(1) All persons and/or vessels not authorized as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Activities Baltimore.

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated areas.

(3) The operator of any vessel in these areas shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(4) Spectator vessels may enter and anchor in the special spectator anchorage areas described in paragraph (a) of this section without the permission of the Patrol Commander. They shall use caution not to enter the regulated area. No vessel shall anchor within a tunnel, cable or pipeline area shown on a Government chart.

(c) *Effective Dates.* The regulated area described in paragraph (a)(1) of this section and the spectator anchorage areas described in paragraphs (a)(2) through (a)(4) of this section are effective from 1 p.m. EDT (Eastern Daylight Time) to 4 p.m., EDT on July 24 and 25, 1999.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 99–18702 Filed 7–21–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–010–0002, FRL–6401–6]

Classification of the San Francisco Bay Area Ozone Nonattainment Area for Congestion Mitigation and Air Quality (CMAQ) Improvement Program Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 10, 1998 (63 FR 37258), EPA redesignated the San Francisco Bay Area from maintenance to nonattainment, without a classification, for the federal one-hour ozone standard. By not assigning a classification, EPA inadvertently affected the Bay Area's funding appropriation under the Transportation Equity Act for the 21st Century (TEA 21), Congestion Mitigation and Air Quality Improvement Program (CMAQ). On March 18, 1999, EPA proposed to assign the Bay Area a nonattainment classification for the federal one-hour ozone standard for CMAQ purposes only so that the Bay Area would be able to receive CMAQ funding commensurate with the severity of its air pollution problem (65 FR 13383). After providing a 30-day extension to the public comment period (64 FR 24123, May 5, 1999), EPA is today finalizing the classification.

EFFECTIVE DATE: This action is effective on August 23, 1999.

ADDRESSES: A copy of this document is available in the air programs section of EPA Region 9's website, http://www.epa.gov/region09/air. The docket for this rulemaking is available for inspection during normal business hours at EPA Region 9, Planning Office, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105. A reasonable fee may be charged for copying parts of the docket. Please call (415) 744–1249 for assistance.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield, (415) 744–1249, Planning Office (AIR–2), Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background

The San Francisco Bay Area is the only area in the country that was initially designated nonattainment for the federal one-hour ozone standard, redesignated to attainment, and then redesignated back to nonattainment (40 CFR 81.305, March 3, 1978; 60 FR 27028, May 22, 1995; 63 FR 3725, July 10, 1998). The final redesignation to nonattainment was made without assigning the Bay Area a nonattainment classification. By not assigning a classification, EPA inadvertently affected the Bay Area's funding appropriation under TEA 21's CMAQ program. According to the apportionment formula for CMAQ funding (section 104(b)(2) of Title 23, United States Code), areas with nonattainment classifications receive a weighting factor based on the severity of air pollution, while areas without a classification do not. The result was that, while the Bay Area has a design value equivalent to a moderate nonattainment area, it was not receiving the level of CMAQ funding appropriate to address its air quality problem. On March 18, 1999 (65 FR 13383), EPA proposed to remedy this situation by assigning the Bay Area a classification of "moderate" for CMAQ purposes only.

II. Summary of Public Comments and EPA Response

EPA received numerous letters supporting the classification and one adverse comment. The Santa Barbara County Association of Governments expressed concern that EPA's action would set a precedent enabling nonattainment areas to benefit financially from a nonattainment classification without having to comply with the planning requirements associated with that classification.

Today's action will not set such a precedent, as the Bay Area is in a unique situation. The Bay Area is the only area in the country to attain the ozone standard, be redesignated to attainment, fall out of attainment, and be redesignated back to nonattainment. The Bay Area is also the only area in the country to be redesignated nonattainment without a classification. Finally, the Bay Area is the only nonattainment area in the country that is receiving CMAQ funding at a level below what was intended for areas with similar air quality problems.

Further, while EPA acknowledges that the plan submittal elements associated with the Bay Area redesignation have been streamlined, EPA is not enabling the Bay Area to evade planning requirements. The Bay Area is required to adopt and implement control measures sufficient to attain the federal one-hour ozone standard; the Bay Area must adopt and implement contingency measures if the standard is not attained; and the Bay Area is required to use the moderate area offset thresholds for new source review. Furthermore, having been classified moderate nonattainment previously, the Bay Area is already complying with Inspection and Maintenance requirements for moderate areas.

III. Final EPA Action

EPA is today classifying the Bay Area pursuant to section 172(a) as moderate for the federal one-hour ozone standard for CMAQ purposes only, and the classification is intended only in relation to the area's treatment under CMAQ. This classification is authorized by section 172(a)(1)(A) of subpart 1 of the Act, which states that "the Administrator may classify the area for the purpose of applying an attainment date pursuant to paragraph (2), and for other purposes." EPA is assigning a classification of moderate because it reflects the severity of the Bay Area's nonattainment problem.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, representatives of Indian tribal governments are "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This classification action under subpart 1, section 172(a)(1)(A) of the Clean Air Act does not create any new requirements. Therefore, the Administrator certifies that it does not have a significant impact on any small entities affected.

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995

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("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this final action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

G. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 20, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 15, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.305, the table for California—Ozone, is amended by revising the entry for the San Francisco Bay Area to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
San Francisco—Bay Area	August 10, 1998	Nonattainment	August 10, 1998/ August 23, 1999	Not classified/Moderate under 23 U.S.C. § 104(b)(2).
Alameda County	do	do	do	Do.
Contra Costa County	do	do	do	Do.
Marin County	do	do	do	Do.
Napa County	do	do	do	Do.
San Francisco County	do	do	do	Do.
Santa Clara County	do	do	do	Do.
San Mateo County	do	do	do	Do.
Solano County (part)	do	do	do	Do.
Sonoma County (part)	do	do	do	Do.

[1]This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 99–18721 Filed 7–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62130B; FRL–6053–9]

Lead; Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint hazards in Housing; Correction to Reflect OMB Approval of the Information Collection Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is confirming that the Office of Management and Budget approved information collection requirements contained in 40 CFR part 745, subpart F. An "Effective Date Note," which indicates that the information collection requirements contained in each section will not become effective until approved by the Office of Management and Budget (OMB), was automatically added by the Office of the Federal Register (OFR). The OFR added this statement to the CFR because the preamble to the final rule entitled "Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing" (61 FR 9064, March 6, 1996)(FRL–5347–9), which was jointly issued by EPA and the Department of Housing and Urban Development (HUD), indicated that the information collection requirements contained in the final rule had not yet been approved by OMB pursuant to the Paperwork Reduction Act (PRA), and that the sections would not be effective until approved by OMB. OMB approved the information collection requirements contained in these regulations on April 22, 1996, but this statement remained in the CFR. Since OMB has approved the information collection requirements contained in these regulations, this statement is not appropriate and must be removed by OFR to avoid further confusion.

DATES: 40 CFR 745.107, 745.110, 745.113, 745.115 became effective on April 22, 1996, when OMB approved the information collection requirements.

FOR FURTHER INFORMATION CONTACT: For general information contact: Christine Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov. For technical information contact: Dayton Eckerson, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (202) 260–1591; Fax number: (202) 260–0770; e-mail address: eckerson.dayton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are a seller, purchaser, lessor, or lessee of a non-exempt residential dwelling built before 1978, or a real estate agent representing such parties. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	SIC	Examples of potentially affected entities
Real Estate Operators/Lessors	53111	651	Lessors of residential buildings Lessors of residential dwellings
Offices of Real Estate Agents	53121	653	Real estate agents Real estate brokers
Property Managers	531311		Property managers
Private Parties--Sales Transactions	None	None	Sellers and buyers of houses, townhouses, and cooperatives/condominiums
Private Parties--Rental Transactions	None	None	Lessors and lessees of residential dwellings

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The four-digit Standard Industrial Classification (SIC) codes and the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR 745.100. If you have any questions regarding the applicability of this action to a particular entity, you may also consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" at the beginning of this document.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register** - Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

2. *In person.* This information will be added to the official record that was established for the March 6, 1996 final rule, identified by docket control number OPPTS–62130B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

II. What Does this Correction Do?

Under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9, and any related collection instrument.

As required by section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, EPA and the Department of Housing and Urban Development (HUD) jointly issued regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phaseout of residential lead-based paint use in 1978. In the preamble to the final rule, EPA and HUD indicated that the information collection requirements contained in the final rule had not yet been approved by OMB pursuant to the PRA, and that the requirements would not be effective until approved by OMB (61 FR 9064, March 6, 1996).

On May 31, 1996, EPA issued a notice in the **Federal Register** (61 FR 27348) (FRL–5512–5) to announce that OMB had approved the information collection requirements contained in these final rules on April 22, 1996, and that OMB

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control number 2070–0151 had been assigned to these collection activities. In the July 1, 1996 issue of the **Federal Register** (61 FR 33851) (FRL–5379–8), EPA amended the table in 40 CFR part 9 to add this OMB control number to the listing of OMB control numbers for EPA's regulations that appears in § 9.1.

Since there wasn't a formal connection between these subsequent notices and 40 CFR part 745, subpart F, [or 24 CFR part 35, subpart H], the OFR did not make the connection to the information collection requirements contained in these sections. As a result, OFR added the following clause to the Effective Date Note that appears at the end of §§ 745.107, 745.110, 745.113, and 745.115: "This section contains information collection requirements and will not become effective until approval has been given by the Office of Management and Budget."

III. Why Is this Correction Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary and would be contrary to the public interest. As explained above, this action will simply allow OFR to correct the CFR to properly reflect OMB's approval of the information collection requirements contained in 40 CFR part 745, subpart F. EPA therefore finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to make this amendment without prior notice and comment.

IV. Do Any of the Regulatory Assessment Requirements Apply to this Action?

No. This final rule does not impose any new requirements. It only implements a correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act (APA) or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

V. Will EPA Submit this Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). EPA has made such a good cause finding for this final rule, therefore, the removal of the Effective Date Notes can be made to the CFR by OFR after July 22, 1999. Pursuant to 5 U.S.C 808(2), this determination is supported by the brief statement in Unit IV. of this preamble. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead, Lead-based Paint, Reporting and recordkeeping requirements.

Dated: June 29, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–17212 Filed 7–21–99; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Parts 1001, 1002 and 1003

RIN 0991–AA95

Health Care Programs: Fraud and Abuse; Revised OIG Sanction Authorities Resulting From Public Law 105–33

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This rulemaking revises the OIG's exclusion and civil money penalty authorities set forth in 42 CFR parts 1001, 1002 and 1003, as a result of the Balanced Budget Act of 1997, Public Law 105–33. These revisions are intended to protect Medicare and other Federal health care programs by enhancing the OIG's administrative sanction authority through new or revised exclusion and civil money penalty provisions.

EFFECTIVE DATE: This rule is effective on July 22, 1999.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Health Insurance Portability and Accountability Act

The Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104–191, was enacted on August 21, 1996, and set forth a number of significant amendments to the OIG's exclusion and civil money penalty (CMP) authorities. Among the various provisions related to the program exclusion authority, HIPAA: (1) Expanded the OIG's minimum 5-year mandatory exclusion authority to cover any felony conviction under Federal, State or local law relating to health care fraud, even if governmental programs were not involved; (2) established minimum periods of exclusion from 1 to 3 years for certain permissive exclusions; and (3) established a new permissive exclusion authority applicable to individuals who have a

majority ownership in, or have significant control over the operations of an entity that has been convicted of a program-related offense. Proposed regulations addressing these revised or expanded OIG exclusion authorities were published in the **Federal Register** on September 8, 1997 (62 FR 47182) and final regulations were issued on September 2, 1998 (63 FR 46676).

In addition, HIPAA revised and strengthened the OIG's existing CMP authorities, and extended the application of the CMP provisions beyond those programs funded by the Department to include all Federal health care programs. Separate OIG proposed rulemaking addressing the revised or expanded CMP provisions resulting from HIPAA were published in the **Federal Register** on March 25, 1998 (63 FR 14393).

B. The Balanced Budget Act of 1997

In conjunction with many of the HIPAA fraud and abuse authorities, the Balanced Budget Act (BBA) of 1997, enacted on August 5, 1997, contained a number of provisions designed to further protect the integrity of Medicare, Medicaid and all other Federal health care programs for current and future beneficiaries, and combat fraudulent and abusive program activities. Specifically, the fraud and abuse provisions of BBA serve to strengthen the OIG's exclusion and CMP authorities with respect to Federal health care programs.

While the new exclusion and CMP authorities under BBA were effective for violations occurring on or after August 5, 1997, since the statutory provisions allowed the Department some policy discretion in their implementation, the OIG developed and issued a proposed rulemaking on September 2, 1998, that solicited public comments on proposed exclusion and CMP regulatory revisions resulting from BBA (63 FR 46736).

II. Summary of the Proposed Rule

In accordance with the Department's expanded and revised exclusion and CMP authorities resulting from BBA, the proposed regulations were designed to codify in 42 CFR parts 1001, 1002 and 1003 as follows:

A. Revised Exclusion Authorities Resulting From BBA

1. *OIG authority to direct exclusions from State health care programs, and to extend application of OIG exclusions to all Federal health care programs*—Prior to BBA, the OIG was authorized under section 1128 of the Act to impose exclusions from participation in Medicare under its own authority, but could not impose other health care program exclusions directly. Instead, the OIG directed *State* health care programs (such as Medicaid) to impose parallel exclusions, but had *no* authority with respect to the exclusion from State health care programs, as listed in section 1128(i) of the Act. Section 4331(c) of BBA specifically amended sections 1128(a) and (b) of the Act to extend the scope of an OIG exclusion beyond the Medicare and State health care programs to all Federal health care programs (as defined in section 1128B(f) of the Act), and to enable the OIG to impose exclusions from all Federal health care programs *directly*. We proposed amending various sections of 42 CFR part 1001 to reflect this expanded authority.

The proposed regulations also addressed the effect of this expanded exclusion authority on the employment of excluded individuals, and program reimbursement for items and services they may provide to other Federal health care programs. Prior to BBA, with limited exceptions, no payment could be made under Medicare and the State health care programs for any health care item or service furnished, ordered or prescribed by an excluded individual. However, an individual excluded from Medicare and the State health care programs could still be employed or receive payment from other Federal health care programs, such as Tricare or the Department of Veterans Affairs. With the expanded scope of the exclusion authority, the proposed rule stated that Federal health care agencies may neither reimburse for items and services which excluded individuals provide, order or prescribe, nor pay the salaries or expenses of such persons using Federal funds. As indicated in the proposed rule, in accordance with the BBA provision, with limited exceptions, an exclusion would effectively preclude the employment of an excluded individual in any capacity by a Federal or State agency, or other entity, where payment is made by any Federal health care program.

2. *Permanent exclusions for individuals convicted of 3 or more health care-related crimes, and 10 year exclusions for individuals convicted of 2 health care-related crimes*—Most excluded health care providers become eligible for reinstatement in the Federal and State health care programs after a specified exclusion period. Section 4301 of BBA established a mandatory exclusion period of not less than 10 years for individuals who have been twice convicted of mandatory exclusion offenses under section 1128(a) of the Act. In addition, a permanent program exclusion must be imposed against those individuals who have been convicted on 3 or more occasions of such mandatory exclusion offenses. Accordingly, we proposed to amend § 1001.102 to reflect these new mandatory exclusion periods.

3. *Exclusion of entities controlled by family or household members of sanctioned individuals*—The OIG is authorized to exclude entities owned or controlled by an individual who has been convicted of a health care related offense, or who has been sanctioned by the OIG. However, some excluded individuals have been able to circumvent the impact of an exclusion and retain silent control of operating health care entities by engaging in paper transfers of their ownership and control interests to family or household members. To address the problem of excluded individuals retaining "silent" control of participating entities, section 4303 of BBA allowed for the exclusion of entities owned or controlled by the family or household members of excluded individuals when the transfer of ownership or control interest in the entity was made in anticipation of, or following, a conviction, CMP or exclusion. We proposed to amend § 1001.1001(a) to reflect this new authority.

B. Revised CMP Authorities Resulting From BBA

1. *CMPs against institutional health care providers that employ or enter into contracts for medical services with excluded individuals*—In some instances, individuals who have been excluded from Medicare or the State health care programs have been able to obtain (or retain) employment, staff privileges or other affiliations with various health care entities that then bill the programs for their services. CMP authority has existed for health maintenance organizations that submit claims for items or services furnished by excluded employees or other excluded individuals with whom they contract, but no parallel sanction authority existed with respect to a group medical practice, hospital, nursing home, home health agency, hospice or other provider that failed to check the credentials of individuals whose services they utilize and bill to Medicare or State health care programs. In accordance with new authority set forth in section 4304(a) of BBA, we proposed amending §§ 1003.102(a) and 1003.103(a) to allow the OIG to impose a CMP of up to $10,000 against any entity that submits, or causes to be submitted, claims for items or services rendered by employees or other individuals with whom they

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contract, and whom they know, or should know, have been excluded from participation in the Federal health care programs.

2. *CMP for failure to report information to the Healthcare Integrity and Protection Data Bank*—Section 221 of HIPAA established a national health care fraud and abuse data collection program, the Healthcare Integrity and Protection Data Bank (HIPDB), for the reporting of final adverse actions (such as convictions, exclusions and licensing restrictions) against health care providers, suppliers and practitioners.[1] While this authority mandated that private health plans, as well as certain State and Federal entities, report adverse actions to the HIPDB, no penalty provision was included to address failure by a health care plan to comply with the reporting requirements. In accordance with section 4331(d) of BBA, § 1003.102(b) of the proposed regulations set forth a new CMP of not more than $25,000 against any health plan that fails to report a final adverse action to HIPDB as required by the statute and regulations.

3. *CMPs for health care providers who violate the anti-kickback statute*—Prior to BBA, criminal penalties or program exclusions were the only remedies available against those who offered or received remuneration in return for the referral of business paid for by Federal health care programs, in violation of the anti-kickback statute. Since both remedies are potentially quite severe, section 4304 of BBA set forth an alternative remedy, *i.e.*, a new CMP for violations of the anti-kickback statute. In accordance with this new statutory provision, we proposed to amend §§ 1003.102(b), 1003.103(h) and 1003.104 to implement a CMP of not more than $50,000 for each kickback violation, and an assessment of up to 3 times the total amount of remuneration offered, paid, solicited or received without regard to whether a portion of such remuneration was offered, paid, solicited or received for a lawful purpose.

C. Additional Technical and Other Revisions to 42 CFR Parts 1001 and 1003

1. *Technical revisions*—A number of proposed technical revisions consistent with the policy provisions resulting from BBA and the proposed regulatory amendments were also indicated in the notice of proposed rulemaking.

[1] Proposed regulations setting forth the policies and procedures for implementing the new HIPDB were published in the **Federal Register** on October 29, 1998 (63 FR 58341).

Specifically, we proposed to amend the authority citation cites for parts 1001 and 1003, §§ 1001.302 (Basis for reinstatement), 1003.100 (Basis and purpose), and 1003.114 (Collateral estoppel) to reflect the revisions being proposed in accordance with the revised BBA exclusion and CMP authorities. In addition, we proposed a revision to § 1003.109(a)(3), to delete the phrase "the amount of the proposed penalty, assessment and the period of proposed exclusion (where applicable)." This language appears in paragraph (a)(4) of this section, and appears inadvertently in paragraph (a)(3).

2. *Proposed revision to OIG reinstatement considerations*—We also proposed to add two new elements to § 1001.3002(b), pertaining to the OIG's review of an individual's or entity's request for reinstatement in the Federal health care programs after the individual's or entity's exclusion period. The first new proposed element was designed to address the OIG's expectation that excluded parties adequately and promptly inform all their clients or patients of the exclusion so that the clients or patients will have a clear understanding that items and services provided, directed or ordered by that individual or entity will not be paid for under any Federal health care program. Under § 1001.1901(b) of the proposed regulations, Medicare reimbursement is authorized to a beneficiary for the first claim submitted for an item or service provided by the excluded party, at which time the beneficiary is notified that future claims will be denied due to the provider's excluded status. (We did not believe that notification only *after* the submission of a claim provides adequate protection for program beneficiaries.) By stating in the proposed regulations that the OIG, in making its reinstatement decisions, would consider whether a provider has adequately and promptly informed clients or patients of an exclusion, we hoped to offer an incentive for providers to give the earliest possible notification to beneficiaries of their exclusion.

A second proposed reinstatement element was designed to codify existing OIG policy which, in making reinstatement decisions, considers whether the individual or entity has, during the period of exclusion, submitted claims or caused claims to be submitted, or payments to be made by any Federal health care program for items or services the excluded party furnished, ordered or prescribed, including health care administrative services during the period of exclusion. By setting forth this regulatory clarification, we hoped to make clear that the submission of claims for payment to any Federal health care program during a provider's period of exclusion will jeopardize the provider's reinstatement into the programs.

III. Responses to Comments and Summary of Revisions

In response to the notice of proposed rulemaking, the OIG received a total of five timely-filed public comments from various health care associations and other interested parties. Set forth below is a synopsis of the various comments and recommendations received, our response to those concerns, and a summary of the specific revisions and clarifications being made to the regulations.

Section 1001.102 Factors in Length of Exclusion

Comment: Two commenters raised concern over the language in proposed § 1001.102(b)(6), one of the possible aggravating factors which would provide a basis for lengthening the period of exclusion. The provision would consider whether the "individual or entity has at any time been overpaid a total of $1,500 or more by Medicare, Medicaid or any Federal health care program as a result of improper billings." The commenters indicated that this language was too general and gives no clear indication of what constitutes "improper billings." The commenters stated that any overpayments of $1,500 or more, whether part of the same circumstance that led to the exclusion in the first place, or ones that are billing error mistakes or simple negligence, could be deemed an aggravating circumstance. The commenters indicated that aggravating factors should serve as valid predictors of future violations of Medicare and other Federal program statutes and regulations and, therefore, urged that the OIG delete the $1,500 threshold.

Response: It is not our intention to consider overpayment of $1,500 or more based on inadvertent billing errors as an aggravating circumstance. We agree with the commenters that the $1,500 threshold for overpayments needs to be related to improper conduct, such as the submission of false, fraudulent or otherwise improper claims for payment. This criterion with respect to determining aggravating circumstances has been included in the OIG's regulations since 1992 and has not been identified as a problem by either providers or the OIG. Therefore, this provision, which was not proposed for any revision in our proposed rule, will not be revised at this time.

Section 1001.3002(b)(5) Basis for Reinstatement

Comment: Two commenters raised concern over the proposed language in § 1001.3002(b)(5) that would add a new factor in determining whether an individual or entity can be reinstated to participate in Federally-funded health care programs. Specifically, we indicated that the OIG would consider "whether the individual or entity, during the period of exclusion, has adequately and promptly informed its clients or patients that any items or services provided will not be reimbursable under any Federal health care program." One commenter requested that the OIG clarify both the terms "adequate" and "prompt" so that an excluded individual can be aware of whether they have met the criteria for reinstatement. The commenter also asked for additional clarification what is meant by a physician's or entity's "clients and patients."

A second commenter recommended that the language in this paragraph be deleted entirely, stating that an excluded party's unwillingness to notify those affected should not have a bearing on his or her fitness to be readmitted to the health care programs.

Response: We have considered the comments regarding this proposed factor for reviewing reinstatement requests, and agree that this factor may impose an additional burden on excluded individuals and entities with respect to notification of patients and clients and that this notification obligation is not mandated by law. In addition, we are persuaded by the fact that beneficiaries are adequately protected, since the current procedures provide for payment of the first claim submitted by or on behalf of a beneficiary for services furnished, ordered or prescribed by an excluded provider or practitioner, and simultaneous notification regarding the exclusion. Moreover, we believe that it would be very difficult to monitor such notifications by excluded individuals and entities in order to assess their trustworthiness for purposes of future participation in Federal health care programs. Based on these reasons, we are deleting this proposed factor from those to be evaluated in assessing a reinstatement request.

Section 1003.102(a) CMP for Relationships With Excluded Individuals

Comment: A commenter was concerned that the OIG misinterpreted the statute (42 U.S.C. 1320a–7a(a)(6)) and congressional intent with regard to the basis for CMPs arising from relationships with excluded individuals. They indicated that the proposed regulations imply the existence of an affirmative duty on providers to monitor, on an ongoing basis, the eligibility of employees and others with whom they enter into contracts to participate in the Federal health care programs. The commenter believed that the conditional phrase "or should have known" in proposed § 1003.102(a)(2) would effectively impose a duty upon contracting providers to monitor the list of excluded individuals and entities on a regular basis or risk imposition of a CMP. The commenter raised questions regarding (1) how often should they check on employees and contracting parties, e.g., when employees are hired and when contracting parties enter into a contract, or rechecked at regular intervals), and (2) which persons should be checked, e.g., ongoing contracts, subcontractors or employees of a corporation with whom they are contracting. The commenter believed the appropriate burden should be on the OIG or the excluded individual or entity to notify contracting providers with whom they have employment or other contractual relationships of their exclusion from the Federal health care programs.

Response: Providers and contracting parties have a duty to check the sanction report on the OIG web site prior to entering into employment or contractual arrangements with new hires or run the risk of CMP liability if they fail to do so. All exclusion information is maintained on the OIG web site (www.dhhs.gov/progorg/oig) and updated on a regular basis. While it is not possible for the OIG to be aware of every employment arrangement being entered into by providers and excluded individuals or entities, the OIG does notify and inform employers of excluded individuals and entities when such pending employment arrangements are specifically known to the OIG. In addition, hospitals are under an affirmative obligation to query the National Practitioner Data Bank (NPDB) when they grant privileges, and subsequently at 2-year intervals, to determine whether any actions have been taken against physicians that they employ. Information on exclusions is contained in the NPDB.

Comment: Another commenter contended that use of the OIG's Sanction Report posted on the Internet is confusing and inadequate. The commenter stated that the current information contained on the OIG web site is not easily accessible, requiring providers to create their own "cumulative list" and to manually input data which could leave providers open to fraud and abuse claims because of simple mistakes or errors. In light of the new CMP authority under BBA for providers contracting with or employing an individual or entity that is excluded from the Federal health care programs, the commenter requested that the OIG reevaluate the current Sanction Report to create a "cumulative list" of excluded individuals and entities that providers can easily access and use.

Response: We believe that the current OIG web site containing the Cumulative Sanction Report is accessible, with large numbers of users of this web site having no problems in obtaining the information needed. However, we have also been aware that some users want to be able to do an on-line search for a single individual or entity, and agree that the sanction report on the web site needs to be modified to be more user-friendly in order to permit parties to look for one name at a time. Early in 1999, the OIG web site was modified so that parties can search by either name or location in order to ascertain an individual's or entity's exclusion status, as well as being able to download the entire file.

It should also be pointed out that the OIG's web site is not the sole source of information regarding sanctioned individuals and entities. The NPDB, which hospitals are required to query, contains information on our sanctioned providers. In addition, the exclusion information is also available on the GSA list of "Parties Excluded from Federal Procurement and Nonprocurement Programs" and is on-line searchable.[2] Furthermore, the new HIPDB will contain the OIG exclusion information. With the various avenues of information on excluded individuals and entities available, we believe parties will be able to readily obtain the necessary information on current Federal health care program exclusions.

Comment: The preamble discussion of the proposed rule stated the OIG's concern that "individuals who have been excluded from Medicare or State health care program participation have, nonetheless, been able to obtain (or retain) employment, staff privileges or other affiliation with various health care entities * * *." A commenter emphasized that it is both possible and common for a physician to have medical staff privileges at a hospital without having either an employment or a contractual relationship with the

[2] See http://anet.gov/epls/.

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hospital, particularly in States that prohibit the corporate practice of medicine. The commenter further stated that a physician's medical staff privileges at a hospital and his or her provision of items and services covered by Medicare mean that the hospital and the physician are "arranging" for the provision of such services.

Response: We agree with the commenter's point regarding the reference to staff privileges. A medical staff relationship, in the absence of any employment or contractual relationship or arrangement, in and of itself, remains outside the scope of these regulations. However, when claims are generated by physicians having privileges in the hospital for services they furnish, order or prescribe, the hospital must be held accountable if the items or services are provided by excluded physicians. Clearly, an excluded physician cannot have any Federal or State health care program payments made for items and services that they furnish, order or prescribe; not to hold a hospital or other organization accountable for allowing such a person to generate bills to the programs would be inappropriate.

Section 1003.102(b) CMP for Failure To Report Information to the HIPDB

Comment: One commenter believed that the OIG should not proceed with regulations relating to the new CMP for failure to report information to the HIPDB until the implementing regulations for the new data bank have been finalized.

Response: The OIG published proposed regulations in the **Federal Register** on October 30, 1998 (63 FR 58341) addressing policies and procedures for implementing the new HIPDB. Those proposed regulations are designed to address, among other things, how and when specific information is to be reported to the data bank; the requirements for the disclosure and confidentiality of information received by the HIPDB; applicable fees when requesting data bank information; and the process for disputing the accuracy of HIPDB information. The HIPDB is not expected to be operational until final regulations are in place some time later this year. The OIG will take no CMP action for failure to report information to the HIPDB until the issuance of final implementing regulations regarding reporting to he HIPDB.

Section 1003.103 Amount of Penalty

Comment: One commenter indicated that the proposed regulatory language in § 1003.103(h)(1), that indicates that the OIG may impose "a penalty of $50,000" against persons who commit an act in violation of the anti-kickback statute, is not consistent with the statutory language set forth in BBA. The statutory language (42 U.S.C. 1320a–7a(a)) indicates that a person may be subject to a civil money penalty of not more than * * * $50,000 for each such act." The commenter recommended that the rule be modified to comport with the statutory language.

Response: We agree that the proposed language was inconsistent, and are amending paragraph (h)(1) of this section to indicate that the OIG may not impose "a penalty of *not more than* $50,000" (emphasis added).

Section 1003.106 Factors in Calculating CMPs

Comment: One commenter cited an ambiguity in the preamble and proposed regulations text at § 1003.106(a)(1)(vii) with regard to determinations on the amount of a penalty. The commenter states that the preamble discussion indicates one of the criteria for determining the appropriate amount of penalty would be "whether the contracting provider knew or should have known of the exclusion." Also, the commenter indicates that the proposed language in § 1003.106(a)(1)(vii) describes this factor as "whether the contracting provider knew of the exclusion when employing or otherwise contracting with an excluded individual or entity." The commenter recommended adding the word "actually" before the word "knew" in this paragraph.

The commenter also believed a number of additional factors relating to the overall culpability of a contracting party should be considered. They included (i) the volume or value of items or services provided by an excluded individual or entity with which the contracting provider has an employment or contractual relationship; (ii) whether the contracting provider has in place an effective compliance program; and (iii) the length of time between when the provider knew or should have known of the exclusion, and when the provider terminated the employment or other contractual relationship with the excluded individual or entity.

Response: In making any determinations regarding the amount of penalty, the OIG intends to draw clear distinctions between cases where there was actual versus constructive knowledge. As a result, we are amending the language in § 1003.106(a)(1)(vii) to indicate that in determining the amount of any penalty in accordance with this provision, we will take into account whether "the contracting provider *actually* knew of the exclusion when employing or otherwise contracting with an excluded individual or entity * * *" (emphasis added).

Comment: Two commenters raised objection to the existing factor, being redesignated as paragraph (a)(1)(ix) in this section, which allows the OIG to assess penalties in accordance with "[S]uch other matters as justice may require." The commenters believe that this language is unacceptably vague wide-ranging.

Response: The language in § 1003.106(a)(1)(ix), among other places in part 1003, is not new, and is intended to encompass other mitigating and aggravating factors that may arise on a case-by-case basis. It was included in the CMP statutory authority when initially enacted in 1981. This phrase allows for the consideration of individual factors, both aggravating and mitigating, that may be meaningful to one distinct case. For example, the additional factors cited by a commenter and referenced above, relating to the overall culpability of a contracting party, may be considered under this factor.

IV. Provisions of the Final Rule

For the most part, this final rule incorporates the provisions of the September 2, 1998 proposed rule. A brief description of the provisions of this final rule follow.

- In § 1001.2, we are adding a definition for the term "Federal health care program," and are making conforming changes to include the term "and other Federal health care programs" in §§ 1001.1(a), 1001.201(b)(3)(iii)(A), 1001.301(b)(2)(ii), 1001.401(c)((2)(ii), 1001.1301(b)(2)(iii), 1001.1401.(b)(1) and (b)(4), 1001.1501(a)(3), 1001.1901(b)(1), 1001.3003, 1001.303 and 1002.2(a). Similar proposed revisions to §§ 1001.301(b)(3)(ii)(A) and 1001.401(c)(3)(i)(A) have already been addressed in the OIG final regulations published on September 2, 1998 (63 FR 46676) addressing revised OIG exclusion authorities resulting from Public Law 104–191.
- In the proposed rule, we set forth in § 1001.2, Definitions, a revised definition for the term "exclusion." A revised definition of the term was promulgated in the OIG final regulations published on September 2, 1998 (63 FR 46676) addressing revised OIG exclusion authorities resulting from Public Law 104–191. We are retaining that definition of the term "exclusion," set forth in the September 2, 1998 final rule, in these final regulations as well. We are also adding a definition in § 1001.2 for the term "Federal health care program."
- The proposed rule indicated our intention to amend § 1001.102(b) by revising paragraphs (b)(5) and (b)(6), and by adding a new paragraph (b)(7). However, in the proposed rule, we inadvertently deleted existing paragraph (b)(5). In addition, final OIG regulations published on September 2, 1998 (63 FR 46676) added a new paragraph (b)(8). As a result, in these final regulations we are revising current paragraphs (b)(6) and (b)(7) (and not (b)(5) and (b)(6) as the proposed rule indicated); redesignating the recently-added paragraph (b)(8) as new paragraph (b)(9); and adding a new paragraph (b)(8) (designated as new (b)(7) in the proposed rule). We are also adding a new § 1001.102(d) to reflect the new mandatory lengths of exclusion.
- We are amending § 1001.1001(a) to reflect the statutory authority that allows for the exclusion of entities controlled by family or household members of sanctioned individuals. In § 1001.1001(a)(2), we are also adding definitions for the terms "immediate family member" and "member of household," consistent with the statute.
- To reflect the revised scope of exclusions under title XI of the Act, that allows the Secretary, through the OIG, to direct the imposition of exclusions from all Federal health care programs and to directly impose exclusions from all Federal health care programs, we are revising § 1001.1901(a), (b)(1), introductory paragraph (c)(3) and (c)(5)(i). While the proposed rule indicated our intention of revising paragraph (c)(4)(i) (and not (c)(5)(i)) of this section, the OIG final regulations published on September 2, 1998 (63 FR 46676) amended paragraph (b)(1), and redesignated paragraph (c)(4) as (c)(5) and added a new paragraph (c)(4) in its place. The changes being made in § 1001.1901 in this rule reflect the revisions and redesignation made in the September 2, 1998 final rule.
- With respect to considerations in the OIG's review of an individual's or entity's request for reinstatement in the Federal health care programs after the individual's or entity's exclusion period, we are not including the language proposed for a new § 1001.3002(b)(5) as indicated in the proposed rule. However, we are adopting the language proposed for new paragraph (b)(6) of this section, and are now designating this as new paragraph (b)(5). Technical revisions to § 1001.3002(b)(3) and (b)(4) are also being made.
- Sections 1003.102(a)(2) and 1003.103(a) are being revised to reflect the new CMP authority against entities that submit, or cause to be submitted, claims for health care services rendered by employees or other individuals under contract whom they know, or should know, have been excluded from participation in the Federal health care programs. We are also revising § 1003.106(a)(1) to set forth five criteria to be considered in determining the penalty amount.
- We are amending § 1003.102(b)(5) to address CMPs imposed against any health plan that fails to report information on an adverse action required to be reported to the new HIPDB. Section 1003.103(g) is being added to set forth the penalty amount for such violations.
- A new § 1003.102(b)(11)—to codify the CMP authority for health care providers who violate the anti-kickback statute, and a new § 1003.103(h), as revised in accordance with the discussion above, to address the maximum penalty amount—are being added. Section 1003.104 is also being revised to address assessments of not more than three times the amount of remuneration offered, paid, solicited or received with regard to this violation.
- Technical amendments are also being made in §§ 1001.302, 1003.100 and 1003.114 to reflect the regulatory changes set forth in the OIG's revised exclusion and CMP authorities revisions in accordance with BBA.

V. Regulatory Impact Statement

Executive Order 12866 and Regulatory Flexibility Act

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and has determined that it does not meet the criteria for a significant regulatory action. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

The provisions set forth in this final rulemaking implement new or revised OIG statutory requirements set forth in Public Law 105–33. These provisions are designed both to broaden the scope of the OIG's authority to exclude individuals and entities from Medicare, Medicaid and all other Federal health care programs, and strengthen current legal authorities pertaining to the imposition of CMPs against individuals and entities engaged in prohibited actions and activities. These regulations implement the new statutory requirements by (1) expanding the application of the OIG's exclusions to all Federal health care programs; (2) implementing permanent exclusions for individuals convicted of three or more offenses for which an exclusion can be imposed under section 1128(a) of the Act, and 10 year exclusions for individuals convicted of two or more such offenses; (3) allowing for the exclusion of entities controlled by family or household members of sanctioned individuals; and (4) establishing new CMPs in three specific areas.

With regard to the OIG's new exclusion authorities, the process for excluding individuals and entities who are convicted in accordance with these new provisions remains essentially the same, even though the types of convictions requiring mandatory exclusions have been broadened. While there may be a resulting increase in the number of mandatory and permissive exclusions imposed as a result of the expanded scope of the OIG's exclusion authority, we do not believe these increases will be significant. The clarification of exclusion authority in § 1001.1001 regarding a sanctioned individual's transfer of ownership or control interest to a family or household member, for example, should not result in a significant increase in exclusion actions in accordance with section 1128(b)(8) of the Act since the provision is likely to act as an effective deterrent against the occurrence of such transfer arrangements. In addition, we do not foresee significant increases resulting from the implementation of section 4301 of BBA and § 1001.102, regarding the permanent exclusion of individuals convicted of three or more health care related crimes. The authority for promulgating this exclusion is clear cut, and should limit the total number of repeat exclusions effectuated by the OIG against such fraudulent providers.

The final regulations addressing the new OIG CMPs also remain consistent with the congressional intent of BBA and with the OIG's existing CMP authority which allows for imposition of

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civil money penalties against individuals and entities who commit fraud. These CMPs are targeted to a limited group of individuals and entities; that is, those institutional health care providers that employ or enter into medical service contracts with excluded individuals, health care plans that fail to report information to the HIPDB, and health care providers who violate the anti-kickback statute.

As indicated, these final regulations are narrow in scope and effect, comport with congressional and statutory intent, and strengthen the Department's legal authorities against those who defraud or otherwise act improperly against the Federal and State health care programs. Since the vast majority of individuals, organizations and entities involved in delivering health care do not engage in the prohibited activities and practices described in this rulemaking, we believe that the aggregate economic impact of these regulations will not be economically significant. Since there is minimal economic effect on the industry as a whole, there would be little likelihood of effect on Federal or State expenditures to implement these regulations.

With regard to the effect of these regulations on a substantial number of small entities, the provisions are targeted specifically to those individuals and entities who would defraud or abuse the health care programs, rather than to the health care industry as a whole. While some of the perpetrators of fraud effected by this rule may be small entities, it is the nature of the violation and not the size of the entity that will induce action on the part of the OIG.

In summary, we have concluded, and the Secretary certifies, that since this final rule will not have a significant economic impact on Federal, State or local economies and expenditures, nor have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of these final regulations impose no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects

42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

42 CFR Part 1002

Fraud, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping.

42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

Accordingly, 42 Parts 1001, 1002 and 1003 is amended as set forth below:

PART 1001—[AMENDED]

1. The authority citation for part 1001 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(h), 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh; and sec. 2455, Pub.L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. Section 1001.1 is amended by revising paragraph (a) to read as follows:

§ 1001.1 Scope and purpose.

(a) The regulations in this part specify certain bases upon which individuals and entities may, or in some cases must, be excluded from participation in Medicare, Medicaid and all other Federal health care programs. They also state the effect of exclusion, the factors that will be considered in determining the length of any exclusion, the provisions governing notices of exclusions, and the process by which an excluded individual or entity may seek reinstatement into the programs.

* * * * *

3. Section 1001.2 is amended by adding a definition for the term *Federal health care program* to read as follows:

§ 1001.2 Definitions.

* * * * *

Federal health care program means any plan or program providing health care benefits, whether directly through insurance or otherwise, that is funded directly, in whole or part, by the United States Government (other than the Federal Employees Health Benefits Program), or any State health care program as defined in this section.

* * * * *

4. Section 1001.102 is amended by revising paragraphs (b)(6) and (b)(7); redesignating existing paragraph (b)(8) as (b)(9); and by adding new paragraphs (b)(8) and (9) to read as follows:

§ 1001.102 Length of exclusion.

* * * * *

(b) * * *

(6) The convicted individual or entity has a prior criminal, civil or administrative sanction record;

(7) The individual or entity has at any time been overpaid a total of $1,500 or more by Medicare, Medicaid or any other Federal health care programs as a result of *intentional* improper billings;

(8) The individual or entity has previously been convicted of a criminal offense involving the same or similar circumstances; or

(9) * * *

* * * * * *

(d) In the case of an exclusion under this subpart, based on a conviction occurring on or after August 5, 1997, an exclusion will be—

(1) For not less than 10 years if the individual has been convicted on one other occasion of one or more offenses for which an exclusion may be effected under section 1128(a) of the Act (The aggravating and mitigating factors in paragraphs (b) and (c) of this section can be used to impose a period of time in excess of the 10-year mandatory exclusion); or

(2) Permanent if the individual has been convicted on two or more other occasions of one or more offenses for which an exclusion may be effected under section 1128(a) of the Act.

5. Section 1001.201 is amended by revising the heading and paragraph (b)(3)(iii)(A) to read as follows:

§ 1001.201 Conviction relating to program or health care fraud.

* * * * *

(b) *Length of exclusion.* * * *

(3) * * *

(iii) * * *

(A) Others being convicted or excluded from Medicare, Medicaid or any of the other Federal health care programs, or

* * * * *

6. Section 1001.301 is amended by revising paragraphs (b)(2)(ii) to read as follows:

§ 1001.301 Conviction relating to obstruction of an investigation.

* * * * *

(b) * * *

(2) * * *

(ii) The interference or obstruction had a significant adverse mental, physical or financial impact on program beneficiaries or other individuals or on the Medicare, Medicaid or other Federal health care programs;

* * * * *

7. Section 1001.401 is amended by revising the heading and paragraph (c)(2)(ii) to read as follows:

§ 1001.401 Conviction relating to controlled substances.

* * * * *

(c) * * *

(2) * * *

(ii) The acts that resulted in the conviction or similar acts had a significant adverse mental, physical or financial impact on program beneficiaries or other individuals or the Medicare, Medicaid or other Federal health care programs;

* * * * *

8. Section 1001.1001 is amended by revising paragraph (a)(1)(ii); and by amending paragraph (a)(2) by adding definitions for the terms *Immediate family member and Member of household* to read as follows:

§ 1001.1001 Exclusion of entities owned or controlled by a sanctioned person.

(a) * * *

(1) * * *

(ii) Such a person—

(A)(*1*) Has a direct or indirect ownership interest (or any combination thereof) of 5 percent or more in the entity;

(*2*) Is the owner of a whole or part interest in any mortgage, deed of trust, note or other obligation secured (in whole or in part) by the entity or any of the property assets thereof, in which whole or part interest is equal to or exceeds 5 percent of the total property and assets of the entity;

(*3*) Is an officer or director of the entity, if the entity is organized as a corporation;

(*4*) Is partner in the entity, if the entity is organized as a partnership;

(*5*) Is an agent of the entity; or

(*6*) Is a managing employee, that is, an individual (including a general manager, business manager, administrator or director) who exercises operational or managerial control over the entity or part thereof, or directly or indirectly conducts the day-to-day operations of the entity or part thereof, or

(B) Was formerly described in paragraph (a)(1)(ii)(A) of this section, but is no longer so described because of a transfer of ownership or control interest to an immediate family member or a member of the person's household as defined in paragraph (a)(2) of this section, in anticipation of or following a conviction, assessment of a CMP, or imposition of an exclusion.

(2) * * *

Immediate family member means, a person's husband or wife; natural or adoptive parent; child or sibling; stepparent, stepchild, stepbrother or stepsister; father-, mother-, daughter-, son-, brother- or sister-in-law; grandparent or grandchild; or spouse of a grandparent or grandchild. * * *

Member of household means, with respect to a person, any individual with whom they are sharing a common abode as part of a single family unit, including domestic employees and others who live together as a family unit. A roomer or boarder is not considered a member of household.

* * * * *

9. Section 1001.1301 is amended by revising paragraph (b)(2)(iii) to read as follows:

§ 1001.1301 Failure to grant immediate access.

* * * * *

(b) * * *

(2) * * *

(iii) The impact of the exclusion on Medicare, Medicaid or any of the other Federal health care programs, beneficiaries or the public; and

* * * * *

10. Section 1001.1401 is amended by revising paragraphs (b)(1) and (b)(4) to read as follows:

§ 1001.1401 Violations of PPS corrective action.

* * * * *

(b) * * *

(1) The impact of the hospital's failure to comply on Medicare, Medicaid or any of the other Federal health care programs, program beneficiaries or other individuals;

* * * * *

(4) The impact of the exclusion on Medicare, Medicaid or any of the other Federal health care programs, beneficiaries or the public; and

* * * * *

11. Section 1001.1501 is amended by revising paragraph (a)(3) to read as follows:

§ 1001.1501 Default of health education loan or scholarship obligations.

(a) * * *

(3) The OIG will take into account access of beneficiaries to physicians' services for which payment may be made under Medicare, Medicaid or other Federal health care programs in determining whether to impose an exclusion.

* * * * *

12. Section 1001.1901 is amended by revising paragraphs (a), (b)(1), (c)(3) introductory text and (c)(5)(i) to read as follows:

§ 1001.1901 Scope and effect of exclusion.

(a) *Scope of exclusion.* Exclusions of individuals and entities under this title will be from Medicare, Medicaid and any of the other Federal health care programs, as defined in § 1001.2.

(b) *Effect of exclusion on excluded individuals and entities.* (1) Unless and until an individual or entity is reinstated into the Medicare, Medicaid and other Federal health care programs in accordance with subpart F of this part, no payment will be made by Medicare, Medicaid or any of the other Federal health care programs for any item or service furnished, on or after the effective date specified in the notice period, by an excluded individual or entity, or at the medical direction or on the prescription of a physician or other authorized individual who is excluded when the person furnishing such item or service knew or had reason to know of the exclusion. This section applies regardless of whether an individual or entity has obtained a program provider number or equivalent, either as an individual or as a member of a group, prior to being reinstated.

* * * * *

(c) * * *

(3) Unless the Secretary determines that the health and safety of beneficiaries receiving services under Medicare, Medicaid or any of the other Federal health care programs warrants the exclusion taking effect earlier, payment may be made under such program for up to 30 days after the effective date of the exclusion for—

* * * * *

(5)(i) Notwithstanding the other provisions of this section, payment may be made under Medicare, Medicaid or other Federal health care programs for certain emergency items or services furnished by an excluded individual or entity, or at the medical direction or on the prescription of an excluded physician or other authorized individual during the period of exclusion. To be payable, a claim for such emergency items or services must be accompanied by a sworn statement of the person furnishing the items or services specifying the nature of the emergency and why the items or services could not have been furnished by an individual or entity eligible to furnish or order such items or services.

* * * * *

13. Section 1001.3002 is amended by republishing introductory paragraph (b) introductory text, revising paragraphs (b)3) and (b)(4); adding new paragraph (b)(6); and by revising paragraph (c)(1) to read as follows:

§ 1001.3002 Basis for reinstatement.

* * * * *

(b) In making the reinstatement determination, the OIG will consider—

* * * * *

(3) Whether all fines, and all debts due and owing (including overpayments) to any Federal, State or local government that relate to

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Medicare, Medicaid and all other Federal health care programs, have been paid or satisfactory arrangements have been made to fulfill obligations;

(4) Whether HCFA has determined that the individual or entity complies with, or has made satisfactory arrangements to fulfill, all of the applicable conditions of participation or supplier conditions for coverage under the statutes and regulations; and

* * * * *

(6) Whether the individual or entity has, during the period of exclusion, submitted claims, or caused claims to be submitted or payment to be made by any Federal health care program, for items or services the excluded party furnished, ordered or prescribed, including health care administrative services.

(c) * * *

(1) Has properly reduced his or her ownership or control interest in the entity below 5 percent;

* * * * *

14. Section 1001.3003 is revised to read as follows:

§ 1001.3003 Approval of request for reinstatement.

(a) If the OIG grants a request for reinstatement, the OIG will—

(1) Give written notice to the excluded individual or entity specifying the date of reinstatement;

(2) Notify HCFA of the date of the individual's or entity's reinstatement;

(3) Notify appropriate Federal and State agencies that administer health care programs that the individual or entity has been reinstated into all Federal health care programs; and

(4) To the extent applicable, give notice to others that were originally notified of the exclusion.

(b) A determination by the OIG to reinstate an individual or entity has no effect if a Federal health care program has imposed a longer period of exclusion under its own authorities.

15. Section 1001.3005 is amended by revising paragraphs (a) introductory text, (b) and (d) to read as follows:

§ 1001.3005 Reversed or vacated decisions.

(a) An individual or entity will be reinstated into Medicare, Medicaid and other Federal health care programs retroactive to the effective date of the exclusion when such exclusion is based on—

* * * * *

(b) If an individual or entity is reinstated in accordance with paragraph (a) of this section, HCFA and other Federal health care programs will make payment for services covered under such program that were furnished or performed during the period of exclusion.

* * * * *

(d) An action taken by the OIG under this section will not require any other Federal health care program to reinstate the individual or entity if such program has imposed an exclusion under its own authority.

PART 1002—[AMENDED]

1. The authority citation for part 1002 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–3, 1320a–5, 1320a–7, 1396(a)(4)(A), 1396(p)(1), 1396a(30), 1396a(39), 1396b(a)(6), 1396b(b)(3), 1396b(i)(2) and 1396b(q).

2. Section 1002.2 is amended by revising paragraph (a) to read as follows:

§ 1002.2 General authority.

(a) In addition to any other authority it may have, a State may exclude an individual or entity from participation in the Medicaid program for any reason for which the Secretary could exclude that individual or entity from participation in the Medicare, Medicaid and other Federal health care programs under sections 1128, 1128A or 1866(b)(2) of the Social Security Act.

* * * * *

PART 1003—[AMENDED]

1. The authority citation for part 1003 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1320–7, 1320a–7a, 1320a–7e, 1320b–10, 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c) and 11137(b)(2).

2. Section 1003.100 is amended by revising paragraphs (a) and (b)(1)(iv), (viii), (x) and (xi) and adding paragraph (b)(1)(xii) to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, 1128E, 1140, 1876(i)(6), 1877(g), 1882(d) and 1903(m)(5) of the Social Security Act, and sections 421(c) and 427(b)(2) of Public Law 99–660 (42 U.S.C. 1320a–7, 1320a–7a, 1320a–7e, 1320a–7(c), 1320b(10), 1395mm, 1395ss(d), 1396(m), 11131(c) and 11137(b)(2)).

(b) * * *

(1) * * *

(iv)(A) Fail to report information concerning medical malpractice payments or who improperly disclose, use or permit access to information reported under part B of title IV of Public Law 99–660, and regulations specified in 45 CFR part 60, or

(B) Are health plans and fail to report information concerning sanctions or other adverse actions imposed on providers as required to be reported to the Healthcare Integrity and Protection Data Bank (HIPDB) in accordance with section 1128E of the Act:

* * * * *

(viii) Have submitted, or caused to be submitted, certain prohibited claims, including claims for services rendered by excluded individuals employed by or otherwise under contract with such person, under one or more Federal health care programs;

* * * * *

(x) Have collected amounts that they know or should know were billed in violation of § 411.353 of this title and have not refunded the amounts collected on a timely basis;

(xi) Are physicians or entities that enter into an arrangement or scheme that they know or should know has as a principal purpose the assuring of referrals by the physician to a particular entity which, if made directly, would violate the provisions of § 411.353 of this title; or

(xii) Violate the Federal health care programs' anti-kickback statute as set forth in section 1128B of the Act.

* * * * *

3. Section 1003.102 is amended by revising paragraphs (a)(2) and (b)(5); and by adding a new paragraph (b)(11) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

(a) * * *

(2) An item or service for which the person knew, or should have known, that the claim was false or fraudulent, including a claim for any item or service furnished by an excluded individual employed by or otherwise under contract with that person;

* * * * *

(b) * * *

(5) Fails to report information concerning—

(i) A payment made under an insurance policy, self-insurance or otherwise, for the benefit of a physician, dentist or other health care practitioner in settlement of, or in satisfaction in whole or in part of, a medical malpractice claim or action or a judgment against such a physician, dentist or other practitioner in accordance with section 421 of Public Law 99–660 (42 U.S.C. 11131) and as required by regulations at 45 CFR part 60; or

(ii) An adverse action required to be reported to the Healthcare Integrity and Protection Data Bank as established by section 221 of Public Law 104–191 and set forth in section 1128E of the Act.

* * * * *

(11) Has violated section 1128B of the Act by unlawfully offering, paying, soliciting or receiving remuneration in return for the referral of business paid for by Medicare, Medicaid or other Federal health care programs.

* * * * *

4. Section 1003.103 is amended by revising paragraph (a); and by adding new paragraphs (g) and (h) to read as follows:

§ 1003.103 Amount of penalty.

(a) Except as provided in paragraphs (b) and (d) through (h) of this section, the OIG may impose a penalty of not more than $10,000 for each item or service that is subject to a determination under § 1003.102.

* * * * *

(g) The OIG may impose a penalty of not more than $25,000 against a health plan for failing to report information on an adverse action required to be reported to the Healthcare Integrity and Protection Data Bank in accordance with section 1128E of the Act and § 1003.102(b)(5)(ii).

(h) For each violation of § 1003.102(b)(11), the OIG may impose—

(1) A penalty of not more than $50,000, and

(2) An assessment of up to three times the total amount of remuneration offered, paid, solicited or received, as specified in § 1003.104(b).

5. Section 1003.104 is revised to read as follows:

§ 1003.104 Amount of assessment.

(a) The OIG may impose an assessment, where authorized, in accordance with § 1003.102 (except for § 1003.102(b)(11)), of not more than three times the amount claimed for each item or service which was a basis for the penalty. The assessment is in lieu of damages sustained by the Department or a State because of that claim.

(b) In accordance with § 1003.102(b)(11), the OIG may impose an assessment of not more than three times the total amount of remuneration offered, paid, solicited or received, without regard to whether a portion of such remuneration was offered, paid, solicited or received for a lawful purpose.

6. Section 1003.105 is amended by revising the section heading, paragraph (a)(1) introductory text and paragraph (b)(1) to read as follows:

§ 1003.105 Exclusion from participation in Medicare, Medicaid and other Federal health care programs.

(a)(1) Except as set forth in paragraph (b) of this section, in lieu of or in addition to any penalty or assessment, the OIG may exclude from participation in Medicare, Medicaid and other Federal health care programs the following persons for a period of time determined under § 1003.107—

* * * * *

(b)(1)(i) With respect to determinations under § 1003.102(b)(2) or (b)(3), a physician may not be excluded if the OIG determines that he or she is the sole community physician or the sole source of essential specialized services in a community.

(ii) With respect to determinations under § 1003.102(b)(5)(ii), no exclusion shall be imposed.

* * * * *

7. Section 1003.106 is amended by redesignating paragraph (a)(1)(vii) as paragraph (a)(1)(ix); by adding new paragraphs (a)(1)(vii) and (a)(1)(viii); and by revising paragraphs (a)(1)(ii), (a)(1)(iii), (a)(1)(vi), (a)(2)(i), (a)(2)(ii) and (a)(2)(iii) to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) * * *

(1) * * *

(ii) The degree of culpability of the contracting provider, or the person submitting the claim or request for payment, or giving the information;

(iii) The history of prior offenses of the contracting provider (or principals of the contracting provider), or the person submitting the claim or request for payment, or giving the information;

* * * * *

(vi) The amount of financial interest involved with respect to § 1003.102(b)(10);

(vii) Whether the contracting provider actually knew of the exclusion when employing or otherwise contracting with an excluded individual or entity in accordance with § 1003.102(a)(2);

(viii) The harm to patients or any Federal or State health care program which resulted or could have resulted from the provision of care by a person or entity with which the contracting provider is expressly prohibited from contracting under section 1128A(a)(6) of the Act; and

(ix) * * *

(2) * * *

(i) The nature and circumstances of the failure to properly report information, or the improper disclosure of information, as required;

(ii) The degree of culpability of the person in failing to provide timely and complete data or in improperly disclosing, using or permitting access to information, as appropriate;

(iii) The materiality, or significance of omission, of the information to be reported, or the materiality of the improper disclosure of, or use of, or access to information, as appropriate;

* * * * *

8. Section 1003.109 is amended by revising paragraph (a) introductory text and paragraph (a)(3) to read as follows:

§ 1003.109 Notice of proposed determination.

(a) If the Inspector General proposes a penalty and, when applicable, an assessment, or proposes to exclude a respondent from participation in Medicare, Medicaid and any other Federal health care program, as applicable, in accordance with this part, he or she must deliver or send by certified mail, return receipt requested, to the respondent, written notice of his or her intent to impose a penalty, assessment and exclusion, as applicable. The notice includes—

* * * * *

(3) The reason why such claims, requests for payments or incidents subject the respondent to a penalty, assessment and exclusion;

* * * * *

9. Section 1003.114 is amended by revising paragraph (a) to read as follows:

§ 1003.114 Collateral estoppel.

(a) Where a final determination pertaining to the respondent's liability under § 1003.102 has been rendered in any proceeding in which the respondent was a party and had an opportunity to be heard, the respondent shall be bound by such determination in any proceeding under this part.

* * * * *

Dated: February 4, 1999.

June Gibbs Brown,

Inspector General.

Approved: April 8, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–18515 Filed 7–21–99; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF DEFENSE

48 CFR Part 201

[DFARS Case 98–D024]

Defense Federal Acquisition Regulation Supplement; Electronic Publication of DFARS

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal

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Acquisition Regulation Supplement (DFARS) to update guidance addressing the issuance and maintenance of the DFARS. The Director of Defense Procurement now publishes the DFARS, and changes thereto, in electronic format.

EFFECTIVE DATE: July 22, 1999.

FOR FURTHER INFORMATION CONTACT:

Mr. Michael Pelkey or Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D024.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS Part 201 to reflect the current procedures for publication of the DFARS. The DFARS is now available electronically via the World Wide Web at

http://wwwacq.osd.mil/dp/dars/dfars.html/

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98–D024.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 201

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 201 is amended as follows:

1. The authority citation for 48 CFR Part 201 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

201.103 and 201.104 [Redesignated as sections 201.104 and 201.105]

2. Sections 201.103 and 201.104 are redesignated as sections 201.104 and 201.105, respectively.

201.104–3 [Removed]

3. Section 201.104–3 is removed.

4. Section 201.105–3 is added to read as follows:

201.105–3 Copies

The DFARS is available electronically via the World Wide Web at http://www.acq.osd.mil/dp/dars/dfars.html.

5. Section 201.304 is amended by revising paragraph (6) to read as follows:

201.304 Agency control and compliance procedures.

* * * * *

(6) The Director of Defense Procurement publishes changes to the DFARS in the **Federal Register** and electronically via the World Wide Web. Each change includes an effective date. Unless guidance accompanying a change states otherwise, contracting officers must include any new or revised clauses, provisions, or forms in solicitations issued on or after the effective date of the change.

[FR Doc. 99–18587 Filed 7–21–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 237

[DFARS Case 98–D312]

Defense Federal Acquisition Regulation Supplement; Improved Accounting for Defense Contract Services

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the definition of "advisory and assistance services." The new definition conforms to the definition in Section 911 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999.

EFFECTIVE DATE: July 22, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D312.

SUPPLEMENTARY INFORMATION:

A. Background

Section 911 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261) added provisions at 10 U.S.C. 2212 pertaining to DoD reporting of financial obligations for contract services. This final rule amends DFARS Subpart 237.2 to reflect the definition of the reporting categories for advisory and assistance services included in 10 U.S.C. 2212.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98–D312.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 237 is amended as follows:

1. The authority citation for 48 CFR Part 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 237—SERVICE CONTRACTING

§ 237.201 Definitions.

"Advisory and assistance services" means, instead of the definition at FAR 37.201, services in the following three major categories when provided by nongovernmental sources (10 U.S.C. 2212):

(1) *Management and professional support services.* This category consists of services that—

(i) Provide engineering or technical support, assistance, advice, or training for the efficient and effective management and operation of organizations, activities, or systems;

(ii) Are closely related to the basic responsibilities and mission of the using organization; and

(iii) Include efforts that support or contribute to improved organization or program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, auditing, and administrative or technical support for conferences and training programs.

(2) *Studies, analyses, and evaluations.* This category consists of services that—

(i) Provide organized, analytic assessments to understand or evaluate complex issues to improve policy development, decision-making, management, or administration;

(ii) Result in documents containing data or leading to conclusions or recommendations; and

(iii) May include databases, models, methodologies, and related software created in support of a study, analysis, or evaluation.

(3) *Engineering and technical services.* This category consists of services that take the form of advice, assistance, training, or hands-on training necessary to maintain and operate fielded weapon systems, equipment, and components (including software when applicable) at design or required levels of effectiveness.

3. Section 237.203 is amended by revising paragraph (2) to read as follows:

§ 237.203 Policy.

* * * * *

(2) Agency heads may authorize personal service contracts for engineering and technical services provided on site at Defense locations to meet an unusual essential mission need. The authorization will be for an interim period only.

4. Section 237.271 is revised to read as follows:

§ 237.271 Management controls.

DoD procedures are in DoDD 4205.2, Acquiring and Managing Contracted Advisory and Assistance Services (CAAS).

[FR Doc. 99–18588 Filed 7–21–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 99–D014]

Defense Federal Acquisition Regulation Supplement; Short Form Research Contract Clauses

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove obsolete clauses pertaining to short form research contracts. The guidance prescribing use of these clauses previously was removed from the DFARS.

EFFECTIVE DATE: July 22, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Fenk, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 99–D014.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule removes obsolete clauses that DoD previously used in short form research contracts. The prescriptive guidance pertaining to short form research contracts was removed from the DFARS on December 15, 1998 (63 FR 69007).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 99–D014.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Acquisition Regulations Council.

Therefore, 48 CFR Part 252 is amended as follows:

1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.235–7004 through 252.235–7009 [Removed and Reserved]

2. Sections 252.235–7004 through 252.235–7009 are removed and reserved.

[FR Doc. 99–18586 Filed 7–21–99; 8:45 am]

BILLING CODE 5000–04–M

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Proposed Rules

Federal Register
Vol. 64, No. 140
Thursday, July 22, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–99–02]

Tobacco Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is withdrawing its proposed rule published in the **Federal Register** on May 12, 1999. The rule proposed to revise the regulations for flue-cured tobacco to: add a special factor to the grademark to identify any lots of baled flue-cured tobacco not opened for inspection; add bale dimensions and spacing requirements for uniform marketing display in auction warehouses; and adjust the poundage tolerance for a warehouse selling baled tobacco in excess of the sales schedule.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456. Telephone (202) 205–0567.

SUPPLEMENTARY INFORMATION: This notice announces that AMS is withdrawing the proposal to amend regulations under Subpart B, Regulations; Subpart C, Standards, and Subpart G, Policy Statement and Regulations Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (7 U.S.C. 511 *et seq.*). The proposal was published in the **Federal Register** on May 12, 1999 (64 FR 25462). The proposal would add a special factor "B" to the grademark to identify lots of baled flue-cured tobacco not opened for inspection. Proposed provisions also would add bale dimensions and spacing requirements for uniform marketing display in auction warehouses and adjust the poundage tolerance for a warehouse selling baled tobacco in excess of the sales schedule.

In response to the request for comments on the proposed rule, seven comments were received. These comments were from a national and state growers association, a leaf tobacco exporters association, a state farm bureau, a flue-cured tobacco cooperative stabilization corporation, a tobacco product manufacturer, and a member of congress. All of the comments opposed the addition of the special factor "B" to the grademark to identify lots of baled flue-cured tobacco not opened for inspection. The commenters' concerns included that special factors have traditionally been used to identify quality rather than packaging, the proposed special factor would add confusion to the marketplace, and that the special factor could be detrimental to sales. With regard to the other proposals concerning bale dimensions and spacing requirements and adjusting the poundage tolerance for a warehouse selling baled tobacco in excess of the sales schedule, one comment noted that farmers who had contacted the commenter were not opposed to those proposed provisions.

After considering the comments, we have concluded that we should not proceed with a proposed rule based on the proposal because the revisions that would be necessary to reconcile the proposed regulations with the views expressed in the comments would be so significant that the final rule would be substantially different from the proposed rule on which the public had the opportunity to comment and which had been endorsed by the Flue-Cured Tobacco Advisory Committee. Therefore, we are withdrawing the May 12, 1999, proposed rule. We will continue the research project for the marketing of flue-cured tobacco in bales for the upcoming season beginning in July and we plan to develop new proposed regulations to address this alternative package method. The concerns and recommendations of all those who commented on the proposed rule that we are withdrawing will be considered during the development of any new proposed regulations. Further, we intend to publish an advance notice of proposed rulemaking in the **Federal Register** after the close of the next marketing season to solicit additional input from interested persons and to present opportunities for additional public participation in discussions of the scope, rationale, and basis of any new proposed regulation.

Dated: July 15, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–18666 Filed 7–21–99; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 253 and 254

RIN 0584–AC65

Food Distribution Program on Indian Reservations: Disqualification Penalties for Intentional Program Violations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service is proposing amendments to the Food Distribution Program on Indian Reservations (FDPIR) regulations at 7 CFR Parts 253 and 254 in response to an audit recommendation by the Department of Agriculture's Office of Inspector General (OIG). The proposed changes are intended to improve program integrity and promote consistency with the Food Stamp Program. The rule would define intentional program violations, establish penalties for them, and require Indian Tribal Organizations and State agencies that administer FDPIR to take appropriate action on suspected cases of intentional program violations. It would also address the establishment and collection of claims against households for overissuances under FDPIR, and make technical changes to Part 253 to correct erroneous regulatory references.

DATES: Send your comments to reach us on or before September 20, 1999. Comments received after the above date will not be considered in making our decision on the proposed rule.

ADDRESSES: You can mail or hand-deliver comments to Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 510, 3101 Park Center Drive, Alexandria, Virginia 22302–1594.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan at the above address or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Procedural Matters
III. Background and Discussion of Proposed Rule

I. Public Comment Procedures

Your written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any change you recommend. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. Comments receive after the close of the comment period (see DATES) will not be considered or included in the Administrative Record for the final rule.

Comments, including names, street addressees, and other contact information of respondents, will be available for public review at the address above during regular business hours (8:30 a.m. to 5 p.m.), Mondays through Fridays, except Federal holidays.

II. Procedural Matters

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. President Clinton's Presidential memorandum of June 1, 1998, requires us to write new regulations in plain language. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed regulations clearly stated?

(2) Do the proposed regulations contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed regulations (grouping and order of sections, use of heading, paragraphing, etc.) aid or reduce their clarity?

(4) Would the regulations be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed regulation in the preamble section entitled "Background and Discussion of the Proposed Rule" helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866. Therefore, it has not been reviewed by the Office of Management and Budget.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 12372

The programs addressed in this action are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550 and 10.570, and for the reasons set forth in the final rule in 7 CFR 3015, Subpart V, and related Notice (48 FR 29115), are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant impact on a substantial number of small entities. Indian Tribal Organizations and State agencies that administer FDPIR, and program participants will be affected by this rulemaking, but the economic effect will not be significant.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions, or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

This rule does not contain information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

II. Background and Discussion of the Proposed Rule

The Food and Nutrition Service (FNS) is proposing amendments to the regulations for the Food Distribution Program on Indian Reservations (FDPIR). These changes would define intentional program violations (IPV), establish penalties for them, and require Indian Tribal Organizations (ITOs) and State agencies that administer FDPIR to take appropriate action on suspected cases of IPV. This proposed rule was prompted, in part, by an audit recommendation by the Department of Agriculture's Office of Inspector General (OIG). In its audit of FDPIR, OIG randomly sampled participating households on 30 reservations and found that a number of the sample households had income that exceeded the eligibility guidelines. In many cases, the households failed to report earned income at certification, or changes in income during the certification period. OIG also found that a number of households were participating in FDPIR and the Food Stamp Program (FSP) at the same time, which is prohibited by FDPIR and FSP regulations. OIG's findings and recommendations are found in Audit Report No. 27601–6–KC, which was released on June 18, 1997.

OIG recommended to FNS that it change FDPIR regulations to require ITOs and State agencies to take appropriate action on suspected cases of IPV. OIG further recommended that FNS pattern this requirement on FSP regulations at 7 CFR 273.16.

FNS agrees with OIG's recommendation. The FDPIR operations

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manual currently used by ITOs and State agencies. FNS Handbook 501, requires the disqualification of individuals or households for specific violations. Section 5662 of the handbook requires the disqualification of households that have willfully misrepresented their circumstances to obtain more benefits than they were eligible to receive, while Section 5663 requires the disqualification of individuals or households that have been convicted of fraud by a court. However, these disqualification provisions are not found in the FDPIR regulations. Therefore, FNS is proposing changes to the FDPIR regulations that would incorporate these provisions, with some modification to promote conformance with FSP. As proposed, the definition of "intentional program violation" would incorporate the basic concept of "willful misrepresentation of household circumstances" contained in Section 5662. The definition, which is discussed in more detail below, also borrows a FSP provision that would include as an IPV any violation of a Federal statute or regulation relating to the acquisition or use of commodities.

In regard to Section 5663 of the handbook, the proposed rule instructs State agencies to apply the disqualification penalties imposed by a court of appropriate jurisdiction instead of the penalties specified in the proposed rule. This requirement is discussed below in the section of the preamble entitled "Disqualification Penalties." Upon finalization of this rulemaking, FNS Handbook 501 will be revised to be consistent with regulatory provisions.

In addition to defining IPV, the proposed rule would require ITOs/State agencies to take action on suspected cases of IPV, impose standardized disqualification penalties, conduct appeal hearings, and issue claims against households, as appropriate. The specific provisions are discussed in detail below. To make these changes, we are proposing the redesignation of 7 CFR 253.8 and 253.9 as Sections 253.10 and 253.11, respectively, and the addition of two new sections—Section 253.8, Administrative disqualification procedures for intentional program violation, and Section 253.9, Claims against households.

In response to OIG's recommendation, we developed the provisions of this proposed rule to be generally consistent with FSP IPV provisions at 7 CFR 273.16. However, FDPIR and FSP differ significantly in regard to program size, administrative complexity, and both administrative and benefit cost. This rulemaking reflects these differences. The proposed amendments would create an administrative disqualification system under FDPIR that is less complex and labor-intensive than the system used under FSP. For additional information on FSP provisions, please refer to the preambles of the following rulemakings: proposed rule of June 22, 1982 (47 FR 27038), final rule of February 15, 1983 (48 FR 6836), proposed rule of August 29, 1994 (59 FR 44343), and final rule of August 22, 1995 (60 FR 43513).

In the discussion and regulatory text below, we have used the term "State agency," as defined at 7 CFR 253.2, to include ITOs authorized to administer FDPIR.

1. Treatment of Disqualified Household Members

Current FDPIR regulations at 7 CFR 253.7(e)(3) specify that individuals who are disqualified from participation in FSP for fraud are ineligible to participate in FDPIR until the period of disqualification expires. This section also addresses the treatment of their resources and income and how benefits are determined for the remaining members of their household. To be consistent with FSP regulations, FNS is proposing a revision to Section 253.7(e)(3)(i) to change "fraud" to "IPV."

FNS is also proposing to redesignate Section 253.7(e)(3) as Section 253.7(f) and add a provision specifying that individuals who are determined by the State agency to have committed an IPV under FDPIR are also ineligible to participate in FDPIR until the period of disqualification expires. This section will also incorporate a provision from FNS Handbook 501 that allows ITOs to disqualify households, under certain circumstances, for failure to pay an overissuance claim. Section 5660 of the handbook specifies the circumstances under which a disqualification may be imposed for this reason.

The proposed rule would also redesignate Section 253.7(e)(3)(ii) as Section 253.7(f)(2). This provision, which concerns the treatment of income and resources of the disqualified household member, would also apply to individuals disqualified for an IPV under FDPIR.

2. Definition of Intentional Program Violation

FNS is proposing to establish a definition of "intentional program violation" at newly added Section 253.8(a). This definition is consistent with the definition used under FSP. As proposed, an intentional program violation occurs whenever an individual intentionally makes a false or misleading statement, or misrepresents, conceals, or withholds facts in order to obtain commodities under FDPIR which the households is not entitled to receive. An intentional program violation is also any act that violates any Federal statute or regulation relating to the acquisition or use of commodities. A program violation is considered "intentional" if the individual committed the act knowingly, willfully, and with deceitful intent.

3. Initiating Administrative Disqualification Procedures

We are proposing at newly added Section 253.8(e)(3) that the State agency must attempt to substantiate all suspected cases of IPV. An IPV is considered to be substantiated when the State agency has clear and convincing evidence that demonstrates that an individual has intentionally committed one or more acts of IPV, as defined above. The State agency would be required to initiate the administrative disqualification procedures (i.e., issue a notice of disqualification) within 10 days of substantiating that an IPV had occurred, even if the individual is not currently participating in, or eligible for, FDPIR (newly added Section 253.8(e)(4)). The disqualification must begin with the next scheduled distribution of commodities that allows an advance notice period of at least 10 days, unless the individual requests a fair hearing (newly added Section 253.8(f)(1)).

The proposed rule, at newly added Section 253.8(e)(6), would also require State agencies to refer substantiated cases of IPV to Federal, State, or local authorities for prosecution under applicable statutes. We recognize that prosecutors may reject certain cases for prosecution, e.g., cases in which the dollar value of the overissuance resulting from the IPV is below a specific amount. Therefore, we propose to allow State agencies to refer only those IPV cases that meet the prosecutors' criteria, when the State agencies have conferred with their legal counsel and prosecutors and determined the criteria for acceptance for possible prosecution.

4. Disqualification Penalties

FNS is proposing the following disqualification penalties at newly added Section 253.8(b):

- 12 months for the first violation;
- 24 months for the second violation; and
- Permanent disqualification for the third violation.

These penalties are consistent with those imposed by Section 6(b) of the Food Stamp Act of 1977, 7 U.S.C. 2015(b), as amended by Section 813 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193). In addition, we are proposing the adoption of FSP policy whereby only the individual found to have committed the IPV, and not the entire household, is disqualified (newly added Section 253.8(c)).

In instances where an IPV case is prosecuted and a court of appropriate jurisdiction imposes a disqualification period, we are proposing that the State agency must apply the court-ordered penalty instead of the proposed penalties above (newly added Section 253.8(h)(5)).

5. Notification Requirements

The State agency must take several actions simultaneously when it discovers that a household willfully misrepresented its circumstances or intentionally failed to report a change, as required by 7 CFR 253.7(c), and, as is often the case, an overissuance occurred. It must begin the adverse action process to decrease or terminate benefits so that the benefit level accurately reflects the household's current circumstances. It must also issue a demand letter for repayment of the overissuance. Finally, the State agency must initiate the administrative disqualification process. To assist the reader in understanding the required time frames for these actions, we have included the following chart.

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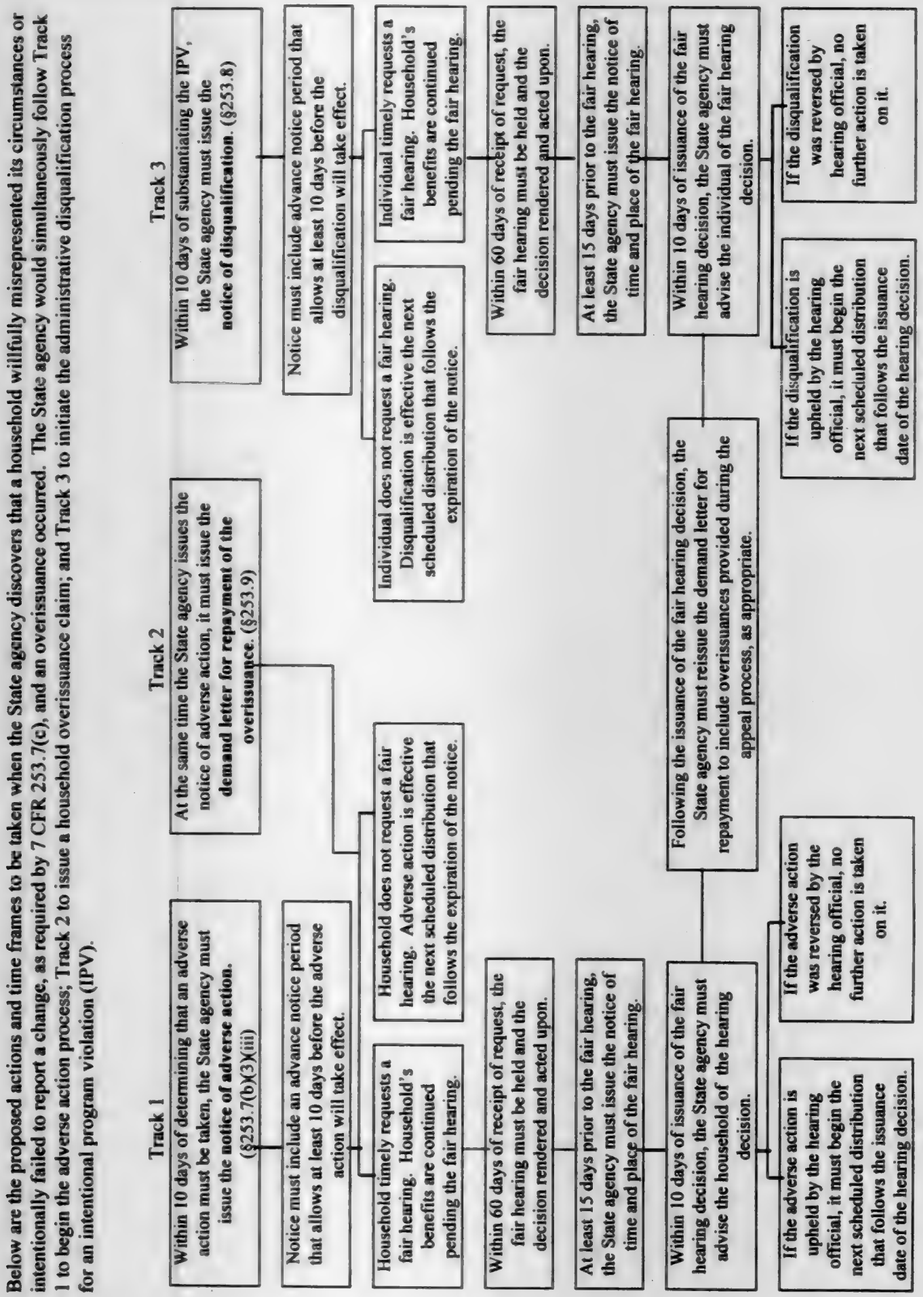

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Where possible, the State agency may combine the various notices addressed above. Theses notices often may be addressed to different household members since the notice of disqualification is addressed to an individual, while the notice of adverse action and the demand letter for repayment of the overissuance is addressed to the household. However, in some cases the addressee may be the same. This is the case when the individual to be disqualified is the head of household—the same addressee for the notice of adverse action and the demand letter for the repayment of the overissuance.

FNS is proposing, at newly added Section 253.8(e)(2), that the State agency must inform the household in writing of the disqualification penalties for IPV each time it applies for benefits, including recertifications.

Newly added Section 253.8(e)(4) would also require the State agency to provide a notice of disqualification to an individual determined to have committed an IPV. The State agency must provide this notice within 10 days of substantiating the IPV, as indicated above in Section 3 of this preamble. The requirements for the notice are specified at newly added Section 253.8(f). The notification must be mailed, or otherwise provided to the individual, so as to allow an advance notice period of at least 10 days before the date the disqualification is to take effect. The notice must conform to the requirements at Section 253.7(b)(3)(iii)(C) for notices of adverse action, including a statement advising the individual of his right to appeal the disqualification through a fair hearing and to continue to receive commodities during the appeal process.

The notice of disqualification only addresses the action to disqualify the individual for the substantiated IPV. It is still necessary for the State agency to issue a notice of adverse action, in accordance with Section 253.7(b)(3)(iii), prior to any action to reduce or terminate a household's benefits so that the benefit level accurately reflects the household's current circumstances.

FNS is proposing several changes to the provisions for notices of adverse action at Section 253.7(b)(3)(iii). These changes would conform the adverse action requirements to those proposed for the notice of disqualification. The first change, at Section 253.7(b)(3)(iii)(A), would require that the State agency issue a notice of adverse action within 10 days of determining that the adverse action is warranted. We believe that State agencies should act timely in instances where it is determined that a household is ineligible or receiving an incorrect level of commodities. The requirement to issue an adverse action notice within 10 days will ensure that adverse action determinations are acted upon in a timely manner. The proposed rule would also require that the adverse action take effect with the next scheduled distribution of commodities that follows the expiration of the advance notice period, unless the household requests a fair hearing. This provision is consistent with the handling of disqualifications and would ensure that adverse actions are implemented in a timely manner.

Section 253.7(b)(3)(iii)(B) addresses the required time frames for the advance notice period for the notice of adverse action. It specifies the requirements for cases that involve joint applications, as well as regular application processing cases. Section 253.7(f) discusses the State agency option to jointly process applications for FDPIR and public assistance or general assistance. The provisions under Section 253.7(b)(3)(iii)(B) for the advance notice period for joint application processing cases would not change. However, we are proposing a revision to the advance notice period for regular application processing cases. Currently, the notice for these cases must include an advance notice period that allows at least 10 and no more than 20 days to elapse before the adverse action takes effect. The proposed rule would require a minimum advance notice period of 10 days, but no maximum time frames would be imposed. An advance notice period of at least 10 days affords the individual sufficient time to respond to the adverse action notice and conforms to the advance notice period time frames used under the Food Stamp Program. Upon the expiration of the 10-day advance notice period, the adverse action will take effect unless an appeal is requested. The proposed rule would also substitute the word "issued" for the word "mailed," since State agencies are not limited to using the mail system for the issuance of notices.

We are also proposing several changes at Section 253.7(b)(3)(iii)(C) relating to the requirements of the notice of adverse action. First, this rule would require that the notices include a statement advising the household that it will be liable for any overissuances received while awaiting a fair hearing, if the hearing official's decision is adverse to the household. We believe households should be aware that, although they have a right to continue to receive benefits pending the fair hearing, they will be held responsible for repaying those benefits if the fair hearing decision is not in their favor. Another requirement is a statement specifying the expiration date of the advance notice period. This date must allow at least 10 days from the issuance date of the notice of adverse action notice to the date upon which the action becomes effective. Households need to clearly understand the specific date by which they must act in order to appeal an adverse action. We have also revised Section 253.7(b)(3)(iii)(C) to conform to the concepts of plain language by creating a codified list of the notice requirements.

FNS is also proposing that State agencies must provide households with a demand letter for repayment of overissuances, including those that resulted from an IPV. The demand letter must be issued at the same time the notice of adverse action is issued to the household (newly added Section 253.7(b)(3)(iii)(E)). It may be combined with the notice of adverse action.

6. Appeal of the Disqualification

The proposed rule would require, at newly added Section 253.8(g)(1), that an individual subject to a disqualification must be given the opportunity to appeal the disqualification through a fair hearing. The fair hearing provisions at 7 CFR 253.7(g) (to be redesignated as Section 253.7(h)) would be revised to include appeals of disqualifications, but the basic provisions of this section would not change. FNS believes that these fair hearing provisions provide adequate protection to the individual in regard to time frames for action by the State agency, the household's request for a delay of the hearing, requirements for requesting and denying a hearing, requirements for hearing officials, and the household's rights prior to and during the hearing.

To ensure that the individual fully understands the implications of the fair hearing, FNS is proposing that specific information be added to the notification of time and place of the hearing required under 7 CFR 253.7(g)(7) (to be redesignated as Section 253.7(h)(7)). The additional notice requirements, which can be found at newly added Section 253.8(g)(2), are: 1) a warning that if the individual fails to appear at the hearing, the hearing decision will be based solely on the information provided by the State agency; and 2) a statement that the hearing does not prevent the Tribal, State, or Federal Government from prosecuting the individual in a civil or criminal court action, or from collecting any overissuance(s).

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FNS is also proposing a change to the provisions at 7 CFR 253.7(g)(11) (to be redesignated as Section 253.7(h)(11)) to improve the notice requirements for fair hearing decisions. First, the rule would establish a time frame for issuing the decision notice. State agencies would be required to inform the individual in writing of the decision within 10 days of the date the fair hearing decision is issued. The rule would also specify the requirements for hearing decision notices that relate to disqualifications. The notice must include the reason for the decision, the date the disqualification will take effect, and the length of the disqualification (i.e., 12 months; 24 months; or permanent). Finally, if the individual is no longer participating, the notice must inform the individual that the period of disqualification will be delayed until the individual reapplies for and is determined eligible for FDPIR benefits.

The State agency would also be required to notify (in writing) the remaining household members if the household was no longer eligible or the household's benefits changed as a result of the disqualification. Procedures for the treatment of income and resources of the disqualified member are discussed at 7 CFR 253.7(e)(3)(ii) (to be redesignated as Section 253.7(f)(2)).

As proposed at newly added Section 253.8(h)(2), the State agency would be required to follow the decision of the fair hearing official. No additional appeal procedure exists within FDPIR if a disqualification is upheld by the fair hearing official. The individual, however, has the right to appeal to a court having appropriate jurisdiction. The court of appropriate jurisdiction could stay the period of disqualification or provide other injunctive remedy.

As discussed earlier, the household is liable for the value of any overissued commodities received while awaiting the outcome of the fair hearing. Therefore, following the issuance of the fair hearing decision, the State agency must revise the demand letter to include the amount of overissued commodities provided to the household during the appeal process, unless the fair hearing decision specifically requires the cancellation of the claim (new paragraph (11)(iv) at redesignated Section 253.7(h)). The State agency must also advise the household that collection action on the claim will continue, in accordance with FNS Handbook 501, unless suspension is warranted.

7. Applying the Disqualification Penalty

FNS is proposing at newly added Section 253.8(h)(1) that, if the individual does not request a fair hearing, the disqualification period must begin with the next scheduled distribution of commodities which follows the expiration of the advance notice period of the notice of adverse action. If the commodities are normally made available to the household within a specific period of time, e.g., from the first day of the month through the tenth day of the month, the effective date of the disqualification will be the first day of that period. The effective date for the disqualification must be specified in the notice of disqualification (newly added Section 253.8(f)(2)).

In instances where the individual requested a fair hearing and the hearing official upheld the disqualification, newly added Section 253.8(h)(2) of the proposed rule would require that the disqualification period begin the next scheduled distribution which follows the date the hearing decision is issued. If the commodities are normally made available to the household within a specific period of time, e.g., from the first day of the month through the tenth day of the month, the effective date of the disqualification will be the first day of that period.

The individual's current eligibility status for FDPIR is not a factor in imposing the disqualification penalty. The State agency must proceed with imposition of the disqualification penalty even if the individual is not certified to participate in FDPIR at the time the disqualification penalty is to begin. Once a disqualification penalty has begun, it continues without interruption for the duration of the penalty period, i.e., 12 months, 24 months, or permanent (newly added Section 253.8(h)(3)). The disqualification period cannot be interrupted or shortened by a change in the eligibility of the disqualified member's household.

As proposed at newly added Section 253.8(h)(4), the same act of intentional program violation continued over a period of time cannot be separated so that more than one penalty can be imposed. For example, a household intentionally fails to report that a household member left the household, resulting in an overissuance of benefits for 5 months. Although the violation occurred over a period of 5 months, only one penalty will apply to this single act of intentional program violation.

8. Claims Against Households

The regulations at Parts 253 and 254 do not address the establishment of claims against households for overissuances. However, claims procedures are addressed in FNS Handbook 501 in Chapter V, Certification Procedures, Section 6, State Agency Claims Procedure Against Households. FNS is proposing the addition of new Section 253.9, Claims against households, which would require State agencies to establish and collect claims against households as specified in FNS Handbook 501. FNS Handbook 501 includes the criteria for establishing claims, the method for calculating claims, procedures for collecting claims, and provisions for the disqualification of households for failure to pay a claim.

Newly added Section 253.9 would also stipulate that all adult household members are jointly and separately liable for any overissuance of program benefits to the household, even if they are not currently eligible for, or participating in, FDPIR. Therefore, in the case of an IPV disqualification, the disqualified member's household would remain responsible for repayment of the amount of the overissuance resulting from the IPV.

The proposed rulemaking would also add the definition of "overissuance" to Sections 253.2 and 254.2, respectively. "Overissuance" would mean the dollar value of commodities issued to a household that exceeds the dollar value it was eligible to receive.

9. Technical Changes

FNS is also proposing technical changes to Part 253 to correct erroneous regulatory references. On April 2, 1982, the Department published a final rule (47 FR 14135) that redesignated the contents of Part 283, Subchapter C (Food Stamp Program), in its entirety, as Subchapter B (Food Distribution Program) and renumbered it as Part 253. Some of the regulatory references to Part 283 that were contained in the newly designated Part 253 were never changed. This rulemaking would amend Part 253 to revise these and other incorrect regulatory references wherever they appear.

List of Subjects

7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 254

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 253 and 254 are proposed to be amended as follows:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

1. The authority citation for Part 253 is revised to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2032).

2. In § 253.2, redesignate paragraphs (f) through (i) as paragraphs (g) through (j), respectively, and add new paragraph (f) as follows:

§ 253.2 Definitions.

* * * * *

(f) *Overissuance* means the dollar value of commodities issued to a household that exceeds the dollar value of commodities it was eligible to receive.

* * * * *

§ 253.5 [Amended]

3. In § 253.5:

a. Amend paragraph (a)(1) by removing the reference "§ 253.9" and adding, in its place, the reference "part 250 of this chapter";

b. Amend paragraph (a)(2)(vii) by removing the reference "part 283 of this subchapter" and adding, in its place, the words "this part";

c. Amend paragraph (d)(1) by removing the references "§ 283.7(a)(2) and (b)(3)" and adding, in its place, the references "§ 253.7(a)(2) and (b)(3)", and by removing the reference "§ 283.7(c)" and adding, in its place, the reference "§ 253.7(c)";

d. Amend paragraph (k)(1) by removing the reference "§ 283.9(g) of this part" and adding, in its place, the reference "§ 253.11(g)";

e. Amend paragraph (k)(2) by removing the reference "§ 283.4" and adding, in its place, the reference "§ 253.4";

f. Amend paragraph (l)(1)(iii) by removing the reference "§ 283.5(k) or § 283.9(g)" and adding, in its place, the reference "paragraph (k) of this section or § 253.11(g)"; and

g. Amend paragraph (l)(3)(i) by removing the reference "§ 283.4(d)(2)" and adding, in its place, the reference "paragraph (m) of this section", and removing the reference "§ 283.5" and adding, in its place, the reference "§ 253.4(e)(2)".

§ 253.6 [Amended]

4. In § 253.6:

a. Amend paragraph (a)(3) by removing the reference "§ 283.7(a)(10)(i) and § 283.7(a)(10)(ii)" and adding, in its place, the reference "§ 253.7(a)(10)(i) and § 253.7(a)(10)(ii)";

b. Amend paragraph (b)(2) by removing the reference "§ 283.6(a)(3)(iv)" and adding, in its place, the reference "paragraph (a)(2)(iv) of this section";

c. Amend paragraph (c)(1) by removing the reference "§ 283.6(a)(2)(ii)" and adding, in its place, the reference "paragraph (a)(2)(ii) of this section";

d. Amend paragraph (d)(2)(iii) by removing the reference "§ 283.7(b)(1)(iii)" and adding, in its place, the reference "§ 253.7(b)(1)(iii)";

e. Amend paragraph (e)(1)(i) by removing the reference "§ 283.6(a)(2)(ii)" and adding, in its place, the reference "paragraph (a)(2)(ii) of this section", and removing the reference "§ 283.6(c)" and adding, in its place, the reference "paragraph (c) of this section";

f. Amend paragraph (e)(2)(ii)(F) by removing the reference "§ 283.7" and adding, in its place, the reference "§ 253.7"; and

g. Amend paragraph (e)(3)(ix) by removing the reference "§ 283.7(b)(1)(iii)" and adding, in its place, the reference "§ 253.7(b)(1)(iii)".

5. In § 253.7:

a. Amend paragraph (a)(2) by removing the reference "§ 283.7(f)" and adding, in its place, the words "paragraph (g) of this section";

b. Amend paragraph (a)(5) by removing the reference "§ 283.7(a)(7) or § 283.7(a)(9)" and adding, in its place, the reference "paragraphs (a)(7) and (a)(9) of this section";

c. Add two new sentences to the end of paragraph (b)(3)(iii)(A);

d. Amend the second sentence of paragraph (b)(3)(iii)(B) by removing the words "and no more than 20", and by removing the word "mailed" and adding, in its place, the word "issued";

e. Revise paragraph (b)(3)(iii)(C);

f. Add new paragraph (b)(3)(iii)(E);

g. Amend paragraph (c)(1) by removing the reference "§ 283.6(e)(1)" and adding, in its place, the reference "§ 253.6(e)(1)";

h. Remove paragraph (e)(3);

i. Redesignate paragraphs (f) and (g) as paragraphs (g) and (h), respectively, and add a new paragraph (f);

j. Amend newly redesignated paragraph (g)(1) by removing the reference "§ 283.6(c)(2)" and adding, in its place, the reference "§ 253.6(c)(2)";

k. Amend newly redesignated paragraph (g)(2) by removing the reference "§ 283.7(a)(7) and § 283.7(a)(9)" and adding, in its place, the reference "paragraphs (a)(7) and (a)(9) of this section";

l. Revise newly redesignated paragraph (h)(2)(i);

m. Revise newly redesignated paragraph (h)(11)(iii); and

n. Add new paragraph (h)(11)(iv).

The revisions and additions read as follows:

§ 253.7 Certification of households.

* * * * *

(b) *Eligibility determinations.* * * *

(3) *Certification notices.* * * *

(iii) *Notice of adverse action.*

(A) * * * The notice must be issued within 10 days of determining that an adverse action is warranted. The adverse action must take effect with the next scheduled distribution of commodities that follows the expiration of the advance notice period, unless the household requests a fair hearing.

* * * * *

(C) The notice of adverse action must include the following in easily understandable language:

(*1*) The reason for the adverse action;

(*2*) The date the adverse action will take effect;

(*3*) The household's right to request a fair hearing and continue to receive benefits pending the outcome of the fair hearing;

(*4*) The date by which the household must request the fair hearing;

(*5*) The liability of the household for any overissuances received while awaiting the outcome of the fair hearing, if the fair hearing official's decision is adverse to the household;

(*6*) The telephone number and address of someone to contact for additional information; and

(*7*) The telephone number and address of an individual or organization that provides free legal representation, if available.

* * * * *

(E) If the State agency determines that a household received more USDA commodities than it was entitled to receive, it must establish a claim against the household in accordance with § 253.9. The initial demand letter for repayment must be provided to the household at the same time the notice of adverse action is issued. It may be combined with the notice of adverse action.

* * * * *

(f) *Treatment of disqualified household members.*

(1) The following are not eligible to participate in the Food Distribution Program:

(i) Individuals disqualified from the Food Distribution Program for an intentional program violation under § 253.8. These individuals may

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participate, if otherwise eligible, in the Food Distribution Program once the period of disqualification has ended.

(ii) Individuals disqualified from the Food Stamp Program for an intentional program violation under § 273.16 of this chapter. These individuals may participate, if otherwise eligible, in the Food Distribution Program once the period of disqualification under the Food Stamp Program has ended. The State agency must, in cooperation with the appropriate food stamp agency, develop a procedure which ensures that these individuals are identified.

(iii) Households disqualified from the Food Distribution Program for failure to pay an overissuance claim. The circumstances under which a disqualification is allowed for such failure are specified in FNS Handbook 501.

(2) During the time a household member is disqualified, the eligibility and food distribution benefits of any remaining household members will be determined as follows:

(i) *Resources.* The resources of the disqualified member will continue to count in their entirety to the remaining household members.

(ii) *Income.* A pro rata share of the income of the disqualified member will be counted as income to the remaining members. This pro rata share is calculated by dividing the disqualified member's earned (less the 20 percent earned income deduction) and unearned income evenly among all household members, including the disqualified member. All but the disqualified member's share is counted as income to the remaining household members.

(iii) *Eligibility and benefits.* The disqualified member will not be included when determining the household's size for purposes of assigning food distribution benefits to the household or for purposes of comparing the household's net monthly income with the income eligibility standards.

* * * * *

(h) *Fair hearing.* * * *

(2) *Timely action on hearings.*

(i) *Time frames for the State agency.* The State agency must conduct the hearing, arrive at a decision, and notify the household of the decision within 60 days of receipt of a request for a fair hearing. If a fair hearing decision changes a household's eligibility or the amount of commodities to be provided, as determined by household size, the State agency must implement that change so that it is effective for the next scheduled distribution of commodities following the date of the fair hearing decision. If the commodities are normally made available to the household within a specific period of time, e.g., from the first day of the month through the tenth day of the month, the effective date of the disqualification will be the first day of that period.

* * * * *

(11) *Hearing decisions.* * * *

(iii) Within 10 days of the date the fair hearing decision is issued, the State agency must issue a notice to the household advising it of the decision.

(A) If the decision upheld the adverse action by the State agency, the notice must advise the household of the right to pursue judicial review.

(B) If the decision upheld a disqualification, the notice must also include the reason for the decision, the date the disqualification will take effect, and the duration of the disqualification (i.e., 12 months; 24 months; or permanent). The State agency must also advise any remaining household members, if the household's benefits will change or if the household is no longer eligible as a result of the disqualification.

(iv) The State agency must revise the demand letter for repayment issued previously to the household to include the value of all overissued commodities provided to the household during the appeal process, unless the fair hearing decision specifically requires the cancellation of the claim. The State agency must also advise the household that collection action on the claim will continue, in accordance with FNS Handbook 501, unless suspension is warranted.

* * * * *

§ 253.8 [Redesignated as § 253.10 and Amended]

6. § 253.8 is redesignated as § 253.10 and amended as follows:

a. Amend paragraph (c)(12) by removing the reference "§ 283.7(b)(9)" and adding, in its place, the reference "§ 253.7(a)(9)";

b. Amend paragraph (e) by removing the words "the State agency's agreement with the Department under § 250.6(b) of part 250 of this chapter and the requirements of § 250.6(l) of this same chapter" and adding, in its place, the reference "§ 250.13 and § 250.15 of this chapter"; and

c. Amend paragraph (f) by removing the reference "§ 250.7 of part 250" and adding, in its place, the reference "§ 250.13(f)".

7. Add new § 253.8 to read as follows:

§ 253.8 Administrative disqualification procedures for intentional program violation.

(a) *What is an intentional program violation?* An intentional program violation is considered to have occurred when an individual knowingly, willingly, and with deceitful intent:

(1) Makes a false or misleading statement, or misrepresents, conceals, or withholds facts in order to obtain Food Distribution Program benefits which the household is not entitled to receive; or

(2) Commits any act that violates a Federal statute or regulation relating to the acquisition or use of Food Distribution Program commodities.

(b) *What are the disqualification penalties for an intentional program violation?* Individuals determined by the State agency to have committed an intentional program violation will be ineligible to participate in the program:

(1) For a period of 12 months for the first violation;

(2) For a period of 24 months for the second violation; and

(3) Permanently for the third violation.

(c) *Who can be disqualified?* Only the individual determined to have committed the intentional program violation can be disqualified. However, the disqualification of a household member may affect the eligibility of the household as a whole, as addressed under paragraphs (e)(5) and (h) of this section.

(d) *Can the disqualification be appealed?* Individuals determined by the State agency to have committed an intentional program violation may appeal the disqualification, as provided under § 253.7(h)(1).

(e) *What are the State agency's responsibilities?*

(1) Each State agency must implement administrative disqualification procedures for intentional program violations that conform to this section.

(2) The State agency must inform households in writing of the disqualification penalties for intentional program violation each time they apply for benefits, including recertifications.

(3) The State agency must attempt to substantiate all suspected cases of intentional program violation. An intentional program violation is considered to be substantiated when the State agency has clear and convincing evidence that demonstrates that an individual has committed one or more acts of intentional program violation, as defined in paragraph (a) of this section.

(4) Within 10 days of substantiating that an individual has committed an intentional program violation, the State agency must provide the individual with a notice of disqualification, as described in paragraph (f) of this section. A notice is required even when the individual is currently neither eligible nor participating in the program.

(5) The State agency must advise any remaining household members if the household's benefits will change or if the household will no longer be eligible as a result of the disqualification.

(6) The State agency must provide the individual to be disqualified with an opportunity to appeal the disqualification through a fair hearing, as required by § 253.7(h).

(7) The State agency must refer all substantiated cases of intentional program violations to Federal, State, or local authorities for prosecution under applicable statutes. However, a State agency that has conferred with its legal counsel and prosecutors to determine the criteria for acceptance for possible prosecution is not required to refer cases that do not meet the prosecutors' criteria.

(8) The State agency must establish claims, and pursue collection as appropriate, on all substantiated cases of intentional program violation in accordance with § 253.9.

(f) *What are the requirements for the notice of disqualification?*

(1) Within 10 days of substantiating the intentional program violation, the State agency must mail, or otherwise provide, to the individual a notice of disqualification. The notice must allow an advance notice period of at least 10 days. The disqualification must begin with the next scheduled distribution of commodities that follows the expiration of the advance notice period, unless the individual requests a fair hearing. A notice is required even when the individual is currently neither eligible nor participating in the program.

(2) The notice must conform to the requirements of § 253.7(b)(3)(iii)(C) for notices of adverse action.

(g) *What are the appeal procedures for administrative disqualifications?*

(1) *Appeal rights.* The individual has the right to request a fair hearing to appeal the disqualification in accordance with the procedures at § 253.7(h).

(2) *Notification of hearing.* The State agency must provide the individual with a notification of the time and place of the fair hearing as described in § 253.7(h)(7). The notice must also include:

(i) A warning that if the individual fails to appear at the hearing, the hearing decision will be based solely on the information provided by the State agency; and

(ii) A statement that the hearing does not prevent the Tribal, State, or Federal Government from prosecuting the individual in a civil or criminal court action, or from collecting any overissuance(s).

(h) *What are the procedures for applying disqualification penalties?*

(1) If the individual did not request a fair hearing, the disqualification must begin with the next scheduled distribution of commodities which follows the expiration of the advance notice period of the notice of adverse action. If the commodities are normally made available to the household within a specific period of time (e.g., from the first day of the month through the tenth day of the month), the effective date of the disqualification will be the first day of that period. The State agency must apply the disqualification period (i.e., 12 months, 24 months, or permanent) specified in the notice of disqualification. The State agency must advise any remaining household members if the household's benefits will change or if the household is no longer eligible as a result of the disqualification.

(2) If the individual requested a fair hearing and the disqualification was upheld by the fair hearing official, the disqualification must begin with the next scheduled distribution of commodities which follows the date the hearing decision is issued. If the commodities are normally made available to the household within a specific period of time (e.g., from the first day of the month through the tenth day of the month), the effective date of the disqualification will be the first day of that period. The State agency must apply the disqualification period (i.e., 12 months, 24 months, or permanent) specified in the notice of disqualification. No further administrative appeal procedure exists after an adverse fair hearing decision. The decision by a fair hearing official is binding on the State agency. The household member, however, may seek relief in a court having appropriate jurisdiction. As provided under § 253.7(h)(11)(iii)(B), the State agency must advise any remaining household members, if the household's benefits will change or if the household is no longer eligible as a result of the disqualification.

(3) Once a disqualification has begun, it must continue uninterrupted for the duration of the penalty period (i.e., 12 months; 24 months; or permanent). Changes in the eligibility of the disqualified individual's household will not interrupt or shorten the disqualification period.

(4) The same act of intentional program violation continued over a period of time will not be separated so that more than one penalty can be imposed. For example, a household intentionally fails to report that a household member left the household, resulting in an overissuance of benefits for 5 months. Although the violation occurred over a period of 5 months, only one penalty will apply to this single act of intentional program violation.

(5) If the case was referred for Federal, State, or local prosecution and the court of appropriate jurisdiction imposed a disqualification penalty, the State agency must follow the court order.

§ 253.9 [Redesignated as § 253.11]

8. Redesignate § 253.9 as § 253.11.

9. Add new § 253.9 to read as follows:

§ 253.9 Claims against households.

(a) *What are the procedures for establishing a claim against a household for an overissuance?*

(1) The State agency must establish a claim against any household that has received more Food Distribution Program commodities than it was entitled to receive.

(2) The procedures for establishing and collecting claims against households are specified in FNS Handbook 501, The Food Distribution Program on Indian Reservations.

(b) *Who is responsible for repaying a household overissuance claim?*

(1) All adult household members are jointly and separately liable for the repayment of the value of any overissuance of Food Distribution Program benefits to the household.

(2) Responsibility for repayment continues even in instances where the household becomes ineligible or is not participating in the program.

PART 254—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR INDIAN HOUSEHOLDS IN OKLAHOMA

1. The authority citation for Part 254 continues to read as follows:

Authority: Pub. L. 97–98, sec. 1338; Pub. L. 95–113.

2. In § 254.2, redesignate paragraphs (f) and (g) as paragraphs (g) and (h), respectively, and add new paragraph (f) to read as follows:

§ 254.2 Definitions.

* * * * *

(f) *Overissuance* means the dollar value of commodities issued to a household that exceeds the dollar value of commodities it was eligible to receive.

* * * * *

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Dated: June 29, 1999.
Samuel Chambers, Jr.,
Administrator, Food and Nutrition Service.
[FR Doc. 99–18621 Filed 7–21–99; 8:45 am]
BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560–AF41

Dairy Recourse Loan Program for Commercial Dairy Processors

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: Beginning on January 1, 2000, the Commodity Credit Corporation (CCC) will make recourse loans to commercial processors of dairy products. The regulations currently in effect for this program are being revised and the public is invited to comment on the regulations as revised. The proposed rule includes changes that would make recourse loans available to dairy processors through a central location, as opposed to in-person applications taken at Farm Service Agency (FSA) State or county offices, allow the loan collateral to be based on a rolling, commingled inventory, versus an identity preserved inventory, and miscellaneous other changes which would provide for a more customer-friendly program. These changes are based on suggestions from the dairy processing industry through informal discussions held since the publication of the interim rule on July 18, 1996 at 61 FR 37616.

DATES: Comments on this rule must be received on or before September 7, 1999 to be assured of consideration. Comments regarding the information collection requirements of the Paperwork Reduction Act must be received on or before September 20, 1999 to be assured of consideration.

ADDRESSES: Comments should be sent to Steve P. Gill, Warehouse and Inventory Division, United States Department of Agriculture (USDA), FSA, STOP 0553, 1400 Independence Avenue, SW, Washington, DC 20250–0553 or E-mail: DAIRY@wdc.fsa.usda.gov. Persons with disabilities who require alternative means for communication (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Barry Klein at (202) 720–4647.

SUPPLEMENTARY INFORMATION:

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among various levels of Government.

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed the proposed rule and determined the rule to be significant for the purposes of Executive Order 12866.

Cost-Benefit Assessment

The Commodity Credit Corporation (CCC) of the United States Department of Agriculture (USDA) proposes to revise the regulations governing the dairy recourse loan program (7 CFR 1430). This proposed rule would provide recourse loans to commercial processors of cheddar cheese, butter, and nonfat dry milk. The borrower would be fully liable to repay the amount of the loan, not withstanding the value of the collateral in the event of default. The loan would mature no later than September 30 of the fiscal year in which the loan is made, but the collateral may be repledged for a new loan that matures before the end of the next fiscal year. The program would be primarily conducted electronically through a central location based on rolling, commingled collateral and be operated using CCC funds, facilities, and authorities.

There are currently about 180 plants in 32 States approved for USDA grading and producing at least one of the products eligible for loans. Consultations with current lenders suggest that the interest rates under the program would be attractive to all but the very best customers that they service. About 170 participants would be expected to participate with an average loan value of $1.3 million.

The incremental costs have been calculated as initial costs and annual costs. Initial costs are those one-time costs that would occur in the first year only. Annual costs are those costs that occur periodically. The initial incremental cost savings associated with this rulemaking would be $1.37 million realized by USDA in training and nonrecurring start-up costs. No incremental capital/start-up costs would be incurred by participants. The incremental annual costs to dairy processors would be $3,060, because of increased paperwork that would be required to become an Approved Dairy Processor (ADP). However, this would be more than offset by a $1.17-million incremental annual cost savings because the proposal would allow for the collateralization of commingled inventory. USDA would realize incremental annual cost savings of approximately $473,000 due primarily to administrative savings of centralized processing.

In summary, under the proposed rule, total initial cost savings in the first year would be $1.37 million. Total recurring annual cost savings would be $1.65 million.

The benefits of this proposed rule, in addition to the quantifiable cost savings discussed above, are associated with efficiency and effectiveness. Streamlining the participatory process, would likely increase program participation. That is, loan program participants would benefit from a less burdensome loan application and administration process. In addition, the commingling of inventory would allow processors to only have to show in inventory an amount and type of product equal to that pledged as loan collateral without uniquely having to identify specific product. USDA would benefit by administering the loan in a more efficient and effective manner.

USDA, however, is concerned that this program could have a significant impact on current lenders. More specifically, some banks that lend to dairy processors may be significantly affected. USDA requests documented quantifiable cost data on the extent to which their businesses would be affected.

Copies of the cost benefit assessment may be obtained from Barry Klein, Inventory Management Branch, Warehouse and Inventory Division, FSA, USDA, STOP 0553, 1400 Independence Avenue, SW, Washington DC 20250–0553, telephone (202)720–2121.

Executive Order 12988

The rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rule making with respect to the matter of this rule.

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Program

The title and number of the Federal assistance program, as found in the Catalogue of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart v, published at 48 FR 29115 (June 24, 1983).

Environmental Evaluation

An Environmental Evaluation has been completed. It has been determined that this action will not have significant adverse effects on environmental factors such as wildlife habitat, water quality, air quality, land use, and appearance. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Paperwork Reduction Act

Title: 7 CFR 1430, Dairy Products
OMB Number: 0560—NEW
Type of Request: Request for approval of a new information collection.

Abstract: USDA will collect information from loan applicants as the Secretary may require to ensure the borrower's ability to repay the loan and to secure the quantity and quality of loan collateral. The Recourse Loan Program for Commercial Dairy Processors will make recourse loans available to eligible dairy processors of eligible dairy products. Once approved, the dairy processor will pledge the commodity as collateral, and repay the loan principal, plus interest, by the maturity date. Dairy processors seeking participation in the program will have to meet minimum requirements by providing information concerning the organizational, operational, and financial aspects of the operation, including information that the commodities being pledged are free and clear of liens, security interests, and other encumbrances. Applicants must provide a statement indicating that they will abide by the nondiscrimination and other provisions of the recourse loan program. Burden calculations have been rounded up to nearest quarter hour.

Estimate of Respondent Burden: Public reporting burden for the collection of information is estimated to average .75 hours per response.

Respondents: Domestic processors of cheese, butter and nonfat dry milk, who apply for a loan under this program.

Estimated Number of Respondents: 170.

Estimated Number of Responses per Respondent: 2 responses per year.

Estimated Total Annual Burden Hours on Respondents: 255 hours.

In addition to commenting on the substance of the regulation, the public is invited to comment on the information collection. Proposed topics include the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; or (c) ways to enhance the quality, utility, and clarity of the information technology. Comments may be sent to the Desk Officer for Agriculture; Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Barry Klein, Inventory Management Branch, Warehouse and Inventory Division, FSA, USDA, STOP 0553, 1400 Independence Avenue, SW, Washington DC 20250–0553, (202)720–2121.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB regarding the information collection is most likely to be considered if OMB receives it within 30 days of the publication. This does not affect the deadline for the public to comment to the USDA on the substance of the proposed rule.

All comments to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Background

The Federal Agriculture Improvement and Reform Act of 1996, terminates the Milk Price Support Program as of December 31, 1999, and institutes a Dairy Recourse Loan Program to begin on January 1, 2000, to assist processors to manage inventories of eligible dairy products and ensure a greater degree of price stability for the dairy industry. The current regulations, found at 7 CFR Part 1430, are being revised prior to implementation of the program on January 1, 2000, to facilitate suggestions from several potential users of this program. The suggestions received centered around the dairy industry's desire for a program most closely reflecting their traditional way of receiving financial services. Processors with multi-plant locations were most concerned with having a centralized location to do business. All parties were concerned with our requirement to identity-preserve (IP) the loan collateral, and the problems with re-qualifying for multiple loans throughout the year. This proposed rule therefore includes changes that will make recourse loans available to dairy processors through a central location, as opposed to in-person applications taken at FSA State or county offices, allow the loan collateral to be based on a rolling, commingled inventory, versus an identity preserved inventory, establish a system for pre-approval as an ADP, and make miscellaneous other changes which would provide for a more customer-friendly program that reflects common lending practices.

The provisions of 7 U.S.C. 1308c limit the ability of certain foreign persons to obtain loans on commodities they produce. That provision applies to this program, but as a practical matter its scope would appear to be limited to cases where the processor obtaining the loan is also the party that produced the milk. Rules for the application of 1308-c appear in 7 CFR part 1400. Further, as provided for in 31 U.S.C. 3720B the proposed rules provide that persons who are delinquent on other federal debts will be ineligible for loans under this program. Also, dairy products, to be eligible for this program, will have to meet certain quality standards set out in the regulations and the regulations provide that the loan applicants will have to provide security for the loans in the form of encumbrances on the eligible product, future inventories, and proceeds.

The objectives of the Dairy Recourse Loan program are to assist processors with the management of eligible dairy product inventories and to assure a

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greater degree of price stability for the dairy industry during the year. Because of the interest rate at 1 percent above CCC's cost of borrowing, the number of dairy recourse loan program participants is estimated to range around 170, a relatively high proportion of those potentially eligible. There are 180 plants in 32 States approved for USDA grading and producing at least one of the products eligible for loans. Only 45 days have been set for comment as that period should provide sufficient time for comments and will help assure that the program is implemented in a timely manner. Accordingly, it has been determined that a longer comment period is unnecessary and contrary to the public interest.

List of Subjects in 7 CFR Part 1430

Dairy products, Loan programs, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Department of Agriculture proposes to amend 7 CFR part 1430 as follows:

PART 1430—DAIRY PRODUCTS

1. The authority citation for part 1430 continues to read as follows:

Authority: 7 U.S.C. 7252; and 15 U.S.C. 714b and 714c.

2. Subpart C is revised to read as follows:

Subpart C—Dairy Recourse Loan Program for Commercial Processors of Dairy Products

Sec.

1430.400 Applicability.
1430.401 Administration.
1430.402 Definitions.
1430.403 General eligibility rules.
1430.404 Application and recertification process.
1430.405 Approval process.
1460.406 Withdrawal and termination of approval.
1430.407 Interest and loan rates.
1430.408 Product eligibility requirements.
1430.409 Storage facility requirements.
1430.410 Availability, disbursement, priority and maturity of loans.
1430.411 Loan maintenance.
1430.412 Loan maturity.
1430.413 Loan liquidation.
1430.414 Maintenance and inspection of records.
1430.415 False certification.
1430.416 Reconsideration and appeal.
1430.417 OMB Control Numbers.

§ 1430.400 Applicability.

As provided in § 142 of the Federal Agriculture Improvement and Reform Act of 1996, (7 U.S.C. 7252), this part sets forth the terms and conditions an Approved Dairy Processor (ADP) must meet to obtain dairy recourse loans from the Commodity Credit Corporation (CCC) for eligible dairy products produced after September 30, 1998. An ADP meeting these terms and conditions may obtain recourse loans for any eligible dairy product. Additional terms and conditions are set forth in the loan application and the note and security agreement which an ADP must execute to receive a loan.

§ 1430.401 Administration.

(a) On behalf of CCC, the Farm Service Agency, (FSA) will administer the provisions of this part under the general direction and supervision of the FSA Deputy Administrator for Commodity Operations (DACO).

(b) The DACO or a designee may authorize a waiver or modification of deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the loan program.

§ 1430.402 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration under this subpart.

Appeal means a written request by an ADP asking the next level reviewing authority to review a decision.

Approved Dairy Processor (ADP) means a dairy processor of eligible dairy products that is approved by CCC to participate in the dairy recourse loan program.

Approved storage means storage structure of sound construction, in good state of repair, not subject to greater than normal risk of fire, flood or other hazards and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity.

Beneficial interest means that the dairy processor retains control, title, and risk of loss in the eligible dairy products, including the right to make all decisions regarding the tender of such eligible dairy product to CCC for loan.

CCC means the Commodity Credit Corporation.

Eligible dairy products means Cheddar cheese of acceptable quality, U.S. Grade A, or higher, not to exceed 38.5 percent moisture; butter of acceptable quality, U.S. Grade A, or higher, and nonfat dry milk of acceptable quality, U.S. Extra Grade, not to exceed 3.5 percent moisture. Only dairy products processed exclusively from milk produced in the United States shall be eligible for loan.

Final decision means the program decision rendered by the DACO upon written request of the ADP. A decision that is otherwise final shall remain final unless the decision is timely appealed to the National Appeals Division.

Fiscal year means the 12-month period from October 1 through September 30.

FSA means the Farm Service Agency, USDA.

Inventory means a rolling, commingled inventory of the same quantity and quality as those dairy products originally put up as collateral to acquire the recourse loan.

Loan maturity date means September 30 of the fiscal year in which the loan was granted.

Loan process means the method by which application is made by a dairy processor requesting ADP status; ADP requests a dairy recourse loan; and CCC administers the loan program.

Loan rate means the applicable rate announced by the Secretary, prior to January 1, 2000, and prior to October 1 in each of the following years, at which loans will be offered for Cheddar cheese, butter, and nonfat dry milk, which shall, as determined by the Secretary, reflect a milk equivalent value of $9.90 per hundredweight of milk containing 3.67 percent butterfat.

Note and security agreement means a promissory note and financing statement setting forth the specific terms and conditions of an approved loan.

Recourse loan means a loan that requires repayment of the full amount of principal and interest.

USDA means the United States Department of Agriculture.

§ 1430.403 General eligibility rules.

For a dairy processor to obtain ADP status to participate in a dairy recourse loan program, a dairy processor must do all of the following:

(a) Submit a completed application indicating commodities for which it seeks approval;

(b) Have beneficial interest in the commodity that is tendered to CCC for a loan and for the duration of the loan;

(c) Furnish CCC such certification as CCC considers necessary to verify compliance with quantitative limitations;

(d) Provide eligible dairy products to CCC free and clear of liens or encumbrances, or, if approved by CCC, waivers of those liens and encumbrances; and

(e) Provide documentation to CCC, as requested, that the dairy processor is a:

(1) Citizen of, or legal resident alien in, the United States; or

(2) Farm cooperative, private domestic corporation, partnership, or joint operation in which a majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens, in the United States.

§ 1430.404 Application and recertification process.

(a) A dairy processor must submit an application package for approval to CCC in order to gain ADP status to participate in the dairy recourse loan program. An application package must include, unless otherwise approved by CCC:

(1) A completed application for status as an ADP; and

(2) A balance sheet and any supporting notes and schedules requested by CCC , dated within the last year, prepared for the dairy processor that:

(i) is accompanied by a letter from an independent Certified Public Accountant, certifying that the balance sheet was prepared in accordance with generally accepted accounting principles;

(ii) shows satisfactory levels of solvency and liquidity, as determined by CCC;

(iii) is evidence of resolutions made by the dairy processor stating that it will abide by provisions of this part and other related CCC policies; and

(iv) includes other information as requested by CCC concerning the organizational, operational, financial or any other aspect of the dairy processor requested by CCC related to the dairy processor's proposed methods of conducting CCC loan business.

(b) An ADP must fulfill all requirements of § 1430.404(a) each fiscal year.

(c) An ADP shall furnish information to CCC within 30 calendar days relating to any:

(1) Change to the ADP's name, address, phone number, or related data shown on the Application for Approval of Approved Dairy Processor; and

(2) Additional information CCC may request related to the ADP's continued approval.

§ 1430.405 Approval process.

(a) CCC shall, in accordance with the provisions of this subpart, determine the eligibility of a dairy processor seeking to participate in the dairy recourse loan program.

(b) Once approved, an ADP is eligible to participate in the program unless and until approval is suspended or terminated by CCC so long as all eligibility criteria continue to be met. There shall be an affirmative duty to notify CCC of all material changes in the ADP's circumstances or operations.

§ 1430.406 Withdrawal and termination of approval.

(a) CCC may withdraw its approval of an ADP and preclude an ADP from obtaining loans when CCC determines the ADP has not:

(1) Operated according to the ADP's application for approval or its last recertification submission;

(2) Complied with applicable regulations;

(3) Corrected deficiencies of the ADP's operation as noted by CCC; or

(4) Complied with any of its agreements with CCC.

(b) An ADP whose approval has been withdrawn may be reinstated when CCC determines the ADP has complied with all requirements for approval.

(c) CCC may terminate an ADP's approval at any time by giving the ADP written notice of the termination.

(d) An ADP may make a written request for CCC to voluntarily terminate its participation in the loan program when ADP does not have any dairy recourse loans outstanding.

§ 1430.407 Interest and loan rates.

(a) Interest that accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter.

(b) In the event of default by an ADP, interest shall continue to accrue with additional penalties as provided by statute being assessed.

(c) The Secretary will announce before January 1, 2000, and thereafter, before October 1 of each fiscal year, the loan rates for Cheddar cheese, butter, and nonfat dry milk based on a milk equivalent value of $9.90 per hundredweight of milk containing 3.67 percent butterfat or based on other such prices as may be required by law.

§ 1430.408 Product eligibility requirements.

(a) An eligible ADP is eligible for a recourse loan on eligible dairy products it owns subject to the following additional requirements:

(1) The total quantity of eligible dairy product which an ADP may pledge for loan is the amount in inventory not to exceed the quantity processed by the ADP during the previous or current fiscal year in which the loan request is made; and

(2) The eligible dairy products must be processed exclusively from domestically-produced milk and milk products;

(b) Eligible dairy products pledged as collateral must be free of any contamination by either natural or manmade substances, must not contain chemicals or other substances which are poisonous or harmful to humans or animals and must meet such other quality standards as may be set by CCC.

§ 1430.409 Storage facility requirements.

(a) Eligible dairy products will be stored in approved storage facility as defined in § 1430.402.

(b) CCC shall at any time, have the right to inspect loan collateral and the storage facilities in which the loan collateral is stored.

§ 1430.410 Availability, disbursement, priority and maturity of loans.

(a) No loan proceeds may be disbursed for dairy products until they have actually been produced and are determined by CCC to be eligible to be pledged as loan collateral.

(b) To obtain a recourse loan on eligible dairy products, an ADP must:

(1) File such loan application request as CCC prescribes;

(2) Execute a note and security agreement as CCC prescribes;

(3) Be responsible for all costs incurred in moving eligible dairy products to an approved storage facility, if moving is necessary; and

(c) Delinquent Federal debtors shall be ineligible for dairy recourse loans under this part.

(d) The security interests obtained by the CCC as a result of the execution of a security agreement by an ADP shall be superior to all statutory and common law liens on the collateral.

(e) The regulations the Secretary issues governing offsets and withholding set forth as part 3 of this title and part 1403 of this chapter are applicable to the program set forth in this subpart. Likewise, the provisions of part 1400 of this chapter relating to the eligibility of foreign persons for certain benefits apply to this program and can affect an ADP's eligibility for loans.

(f) CCC shall file a security interest in the loan collateral, and the dairy processor shall grant CCC a security interest in the loan collateral, future inventory and any proceeds obtained from the sale of the dairy products.

(g) Loans will mature on, and must be satisfied by September 30, unless the loan is extended by the Secretary for an additional period.

§ 1430.411 Loan maintenance.

(a) The ADP shall:

(1) Abide by the terms and conditions of the loan application and the note and security agreement;

(2) Be responsible for storage costs through loan maturity; and

(3) Be responsible for maintaining the quality and quantity of the loan collateral through date of repayment

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and reimburse CCC for loss in quantity or quality of the loan collateral.

(b) If CCC determines that the actual eligible quantity serving as collateral for a recourse loan is less than the loan quantity because of incorrect certification by the ADP or unauthorized removal, CCC may charge liquidated damages and/or call all loans of the ADP. In such cases, the approval of an ADP for future loans shall be withdrawn and current loan shall be considered due and owing.

(c) ADP may, at any time before maturity of the loan, redeem all or any part of the loan collateral by paying CCC the loan principal plus interest applicable to the quantity of dairy product redeemed.

§ 1430.412 Loan maturity.

(a) ADP must pay CCC the principal plus interest due and redeem his collateral no later than the loan maturity date.

(b) CCC may, on demand, call all outstanding CCC loans made to an ADP whose approval has been withdrawn or terminated. When loans are called, CCC will provide at least 10 calendar days written notice to the ADP. Dairy recourse loans must be repaid by the date specified by CCC. If redemption is not made by the date specified, title to the encumbered commodity shall vest in CCC and CCC shall have no obligation to pay the commodity's market value above the principal amount of such loans. Any deficiency that remains after the disposition of the collateral shall continue to be a debt of the ADP and may be collected in any manner allowed by law.

(c) CCC may at any time accelerate the date of repayment of the loan indebtedness, including interest. CCC will give the ADP notice of such acceleration at least 15 days in advance of the accelerated loan maturity date.

§ 1430.413 Loan liquidation.

(a) If an ADP does not pay to CCC the total amount due in accordance with the terms of the loan, late payment charges in addition to interest on the ADP's indebtedness shall accrue at the rate specified in part 1403 of this chapter and shall accrue until the debt is paid.

(b) Upon notice:

(1) CCC may, with or without removing the collateral from storage, sell such collateral at either a public or private sale; or

(2) the ADP must deliver loan collateral in or to a CCC-approved storage facility at the expense of the ADP, provided further that for these purposes:

(i) CCC-approved storage will include only those storage facilities which:

(A) Meet CCC standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils (part 1423 of this chapter); and

(B) Have entered into a storage contract with CCC.

(ii) If the eligible dairy product is delivered in or to an ineligible storage facility, the ADP shall be responsible for all costs incurred in moving the eligible dairy products to a CCC-approved storage facility.

(c) If the proceeds from CCC sale of collateral are:

(1) Less than the amount of principal, interest, and any other expenses incurred by the CCC then the ADP is liable for the deficiency; or

(2) Greater than the amount of principal, interest, and any other expenses incurred by the CCC then the amount in excess shall be paid to the processor or, if applicable, to any secured creditor of the processor.

(d) CCC shall at all times, have the right to inspect CCC-owned eligible dairy products and the storage facilities in which the eligible dairy product is stored.

(e) Regardless of whether CCC inspected the eligible dairy product or storage facility, the ADP is liable to CCC for any damages or loss CCC suffers if CCC does not recover the full value of the principal and interest on the loan, plus any incidental expenses incurred.

§ 1430.414 Maintenance and inspection of records.

CCC, as well as any other U.S. Government agency, shall have the right of access to the premises of the ADP in order to inspect, examine, and make copies of the books, records, accounts, and other written data as the examining agency deems necessary to verify compliance with the requirements of this subpart. Such books, records, accounts, and other written data shall be retained by the ADP for not less than 3 years from the loan disbursement date. Destruction of records after such time shall be at the ADP's own risk.

§ 1430.415 False certification.

Any ADP making a false certification will subject the ADP and the principal making such certification, to liability or prosecution under any applicable federal civil and criminal statutes. This remedy shall be in addition to all others that may apply.

§ 1430.416 Reconsideration and appeal.

(a) An ADP may seek reconsideration of a decision made under this subpart by filing a written request for reconsideration with USDA, FSA, Deputy Administrator for Commodity Operations, STOP 0550, 1400 Independence Avenue, SW, Washington, DC, 20250–0550. The request should state the basis upon which the ADP relies to show that:

(1) The decision was not proper and not made in accordance with applicable program regulations; or

(2) All material facts were not properly considered in such decision.

(b) A request for reconsideration of a decision shall be filed within 30 days after written notice of the decision which is the subject of the request is mailed or otherwise made available to the ADP. A request for reconsideration shall be considered to have been timely filed if postmarked or privately mailed within 30 days of the decision. A party seeking review of a decision may, at the discretion of the Deputy Administrator, be granted an additional 30 days in which to file a request for reconsideration if requested within 30 days of the decision. A decision shall become final and nonreviewable unless reconsideration is timely sought.

(c) A request for reconsideration may be accepted and acted upon even though it is not filed within the time prescribed in paragraph (b) of this section if, in the judgment of the Deputy Administrator, the circumstances warrant such action.

(d) Subject to the remedies provided above and the provisions of part 11 of this chapter, an ADP may appeal a final decision and request review of determinations made under this subpart by filing a written request for appeal with USDA, National Appeals Division, STOP 7000, 1400 Independence Avenue, SW, Washington, DC 20250–7000. See part 780 of this title.

§ 1430.417 OMB control numbers.

The information collection requirements for these regulations have been submitted to OMB for approval.

Signed at Washington, DC, on July 13, 1999.

Parks Shackleford,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–18434 Filed 7–21–99; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Reporting Requirements for Nuclear Power Reactors; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing a public meeting to discuss a proposed rule that would modify power reactor reporting requirements.

DATES: Tuesday, August 3, 1999 and Wednesday, August 4, 1999.

ADDRESSES: The public meeting will be held in the auditorium of NRC's headquarters at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Dennis P. Allison, Office of Nuclear Reactor Regulation, Washington DC 20555–0001, telephone (301) 415–1178, e-mail dpa@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 1999 (64 FR 36291) the NRC published in the **Federal Register** a proposed rule that would modify reporting requirements for nuclear power reactors contained in 10 CFR 50.72, "Immediate notification requirements for operating nuclear power reactors," and 10 CFR 50.73, "Licensee event report system." In addition, that **Federal Register** notice indicated that a draft report, NUREG–1022, Revision 2, "Event Reporting Guidelines, 10 CFR 50.72 and 50.73," is being made available for public comment concurrently with the proposed amendments to 10 CFR 50.72 and 50.73. Furthermore, it indicated that a draft regulatory analysis on the proposed rule is being made available for public comment concurrently with the proposed rule.

The proposed rule, the draft event reporting guidelines, and the draft regulatory analysis may be viewed and downloaded electronically via the interactive rulemaking web site established by NRC for this rulemaking. The interactive rulemaking site may be accessed from the NRC home page (http://www.nrc.gov) as follows. Select "Rulemaking" from the tool bar at the bottom of the home page. Then select "Rulemaking Forum" near the top of the rulemaking page. (For further information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.)

In addition, these documents are available for inspection in the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC. Single copies may be obtained from the contact listed above under the heading FOR FURTHER INFORMATION CONTACT.

Purpose

The purpose of the meeting is to discuss the proposed amendments to 10 CFR 50.72 and 50.73, including the draft event reporting guidelines and the draft regulatory analysis.

Participation

To facilitate orderly conduct of the meeting, members of the public who wish to speak should contact the cognizant NRC staff member listed above under the heading "For Further Information Contact" to register in advance of the meeting. Indicate as specifically as possible the topic(s) of your comment(s) and the length of time you wish to speak. Provide your name and a telephone number where you can be contacted, if necessary, before the meeting. Registration to speak will also be available at the meeting on a first come basis to the extent that time is available.

Agenda for August 3, 1999

9:00 a.m.–9:30 a.m.
Introductory Remarks
9:30 a.m.–11:00 a.m.
Discussion of Proposed Amendments by the NRC Staff
11:00 a.m.–12:30 p.m.
Public Comments and Statements
12:30 p.m.–1:30 p.m.
Lunch Break
1:30 p.m.–4:45 p.m.
Public Comments and Statements (Continued)
4:45 p.m.–5:00 p.m.
Concluding Remarks

It is expected that public comments and statements can be concluded on the first day. However, if that is not the case, the meeting will be continued into a second day. If so, the agenda for the second day will be as follows.

Agenda for August 4, 1999

9:00 a.m.–9:15 a.m.
Introductory Remarks
9:15 a.m.–12:15 p.m.
Public Comments and Statements (Continued)
12:15 p.m.–12:30 p.m.
Concluding remarks

Input Solicited

Questions and comments on any aspect of the proposed rule are solicited. In addition, as discussed in the proposed rule, the NRC specifically solicits input the following areas:

(1) In the interest of simplicity, the proposed amendments would maintain just three basic levels of required reporting times in 10 CFR 50.72 and 50.73 (1 hour, 8 hours, and 60 days). However, public comment is specifically invited on the question of whether additional levels should be introduced to better correspond or particular types of events. For example, 10 CFR 50.72 currently requires reporting within 4 hours for events that involve low levels of radioactive releases, and events related to safety or environmental protection that involve a press release or notification of another government agency. These types of events could be maintained at 4 hours so that information is available on a more timely basis to respond to heightened public concern about such events. In another example, events related to environmental protection are sometimes reportable to another agency, which is the lead agency for the matter, with a different time limit, such as 12 hours. These types of events could be reported to the NRC at approximately the same time as they are reported to the other agency.

(2) In the proposed amendments the term "any engineered safety feature (ESF), including the reactor protection system (RPS)," which currently defines the systems for which actuation must be reported in § 50.72(b)(2)(iv) and § 50.73(a)(2)(iv), would be replaced by a specific list of systems. This proposal to list the systems in the rule is controversial and public comment is specifically invited in this area. In particular, three principal alternatives to the proposed rule have been identified for comment:

(a) Maintain the status quo. Under this alternative, the rule would continue to require reporting for actuation of "any ESF." The event reporting guidelines in NUREG–1022 would continue to indicate that reporting should include, as a minimum, the systems on a specific list.

(b) Require use of a plant-specific, risk-informed list. Under this alternative, the list of systems would be risk-informed, and plant-specific. Licensees would develop the list based on existing probabilistic risk assessments, judgment, and specific plant design. No specific list would be provided in the rule.

(c) Return to the pre-1998 situation (i.e., before publication of the event reporting guidelines in NUREG–1022, Revision 1). Under this alternative, the rule would continue to require reporting

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for actuation of "any ESF." The event reporting guidelines would, once again, indicate that reporting should include those systems identified as ESF's for each particular plant (e.g., in the Final Safety Analysis Report).

(3) The NRC is developing revisions to the process for oversight of operating reactors, including inspection, assessment and enforcement processes. In connection with this effort, the NRC has considered the kinds of event reports that would be eliminated by the proposed rules and believes that the changes would not have a deleterious effect on the oversight process. Public comment is invited on whether or not this is the case. In particular, it is requested that if any examples to the contrary are known they be identified.

(4) The proposed amendments would add provisions to sections 50.73(a)(2)(i)(B) and 50.73(a)(2)(v) to eliminate reporting of a condition or event that did not occur within three years of the date of discovery. Public comment is invited on whether such historical events and conditions should be reported (rather than being excluded from reporting, as proposed). Public comment is also invited on whether the three year exclusion of such historical events and conditions should be extended to all written reports required by section 50.73(a) (rather than being limited to these two specific reporting criteria, as proposed).

(5) The proposed amendments would add a new reporting criterion to require reporting if a component is in a degraded or non-conforming condition such that: (a) The ability of the component to perform its specified safety function is significantly degraded; and (b) the condition could reasonably be expected to apply to other similar components in the plant. Public comment is invited on whether this proposed new criterion would accomplish its stated purpose—to ensure that design basis or other discrepancies would continue to be reported if the capability to perform a specified safety function is significantly degraded and the condition has generic implications. Public comment is also invited on whether the proposed new criterion would be subject to varying interpretations by licensees and inspectors.

(6) Many States (Agreement States and Non-Agreement States) have agreements with power reactors to inform the States of plant issues. State reporting requirements are frequently triggered by NRC reporting requirements. Accordingly, the NRC seeks State comment on issues related to the proposed amendments to power reactor reporting requirements.

(7) The President's Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used.

(8) The Commission has prepared a draft regulatory analysis on this proposed rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. It is available as discussed above under the heading "Background." The Commission requests public comment on this draft analysis.

Dated at Rockville, Maryland, this 16th day of July, 1999.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Chief, Generic Issues, Environmental, Financial and Rulemaking Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 99–18722 Filed 7–21–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–325–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 10 and Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Falcon 10 and Model Mystere-Falcon 50 series airplanes. For certain airplanes, this proposal would require modification of the aircraft wiring to illuminate the "T/O CONFIG" red warning light on the cockpit warning panel. For certain other airplanes, this proposal would require installation of a "NO TAKEOFF" red light on each pilot's instrument panel; modification of the associated aircraft wiring to activate the lights whenever the aircraft is not in the proper configuration for take-off; and a revision to the Airplane Flight Manual to check that the "NO TAKEOFF" lights are out prior to take-off. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent take-off with the parking brake engaged, which could result in an extended take-off roll or a rejected take-off, and consequent runway overrun.

DATES: Comments must be received by August 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–325–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–325–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–325–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Falcon 10 and Model Mystere-Falcon 50 series airplanes. The DGAC advises that, during take-off of a Model Mystere-Falcon 50 airplane, the pilot reported that the engine parameters were correct, but longitudinal acceleration displayed on the electronic flight instrumentation system (EFIS) was lower than usual. The pilot chose to reject the take-off attempt. The DGAC also advises that several similar occurrences have been reported on Model Falcon 10 series airplanes. The slow acceleration is thought to have been caused by the pilot attempting to take-off with the parking brake engaged. The existing design for both models provides appropriate indication to the crew when the parking brake handle is not released during the takeoff; however, the indication is not readily visible. Due to its location in the lower part of the pilot's instrument panel, it is outside of the pilot's direct line of sight and the indication may be unnoticed. This condition, if not corrected, could result in an extended take-off roll or a rejected take-off, and consequent runway overrun.

Explanation of Relevant Service Information

Dassault has issued Service Bulletin F50–240, Revision 1, dated October 7, 1998 for Model Mystere-Falcon 50 series airplanes), which describes procedures for modification of the aircraft wiring to add the "park brake handle not pushed forward" condition in the illumination conditions of the "T/O CONFIG" red warning light on the cockpit warning panel.

Dassault also has issued Service Bulletin F10–280, Revision 1, dated February 10, 1999 (for Model Falcon 10 series airplanes), which describes procedures for installation of a "NO TAKEOFF" red light on each pilot's instrument panel. The service bulletin also describes procedures for modification of the associated aircraft wiring to activate the lights whenever the aircraft is not in the proper configuration for take-off; and a revision to the Normal Procedures Section of the Falcon 10 Airplane Flight Manual to check that the "NO TAKEOFF" lights are out prior to take-off.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 98–300–022(B), dated July 29, 1998, and 98–547–022(B), dated December 30, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 36 Dassault Model Falcon 10 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 50 work hours per airplane to accomplish the proposed installation, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,280 per airplane. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be $190,080, or $5,280 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed revision to the AFM, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision proposed by this AD on U.S. operators is estimated to be $2,160, or $60 per airplane.

The FAA estimates that 115 Dassault Model Mystere-Falcon 50 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $6,000 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $745,200, or $6,480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

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The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 98–NM–325–AD.

Applicability: Model Falcon 10 series airplanes, serial numbers 1 through 152 inclusive, on which Dassault Modification M801 (reference Dassault Service Bulletin F10–280, Revision 1, dated February 10, 1999) has not been accomplished; and Model Mystere-Falcon 50 series airplanes, serial numbers 2 through 250 inclusive and 252, on which Dassault Modification M1850 (reference Dassault Service Bulletin F50–240, Revision 1, dated October 7, 1998) has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent take-off with the parking brake engaged, which could result in an extended take-off roll or a rejected take-off, and consequent runway overrun, accomplish the following:

Model Mystere-Falcon 50 Series Airplanes: Modification

(a) For Model Mystere-Falcon 50 series airplanes, within 9 months after the effective date of this AD, modify the aircraft wiring to add the "park brake handle not pushed forward" condition in the illumination conditions of the "T/O CONFIG" red warning light on the cockpit warning panel in accordance with Dassault Service Bulletin F50–240, Revision 1, dated October 7, 1998.

Model Falcon 10 Series Airplanes: Modification and AFM Revision

(b) For Dassault Falcon 10 series airplanes, within 9 months after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD in accordance with Dassault Service Bulletin F10–280, Revision 1, dated February 10, 1999.

(1) Install a "NO TAKEOFF" red light on each pilot's instrument panel and modify the associated aircraft wiring to activate the lights whenever the aircraft is not in the proper configuration for take-off.

(2) Revise the Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the information specified in Falcon 10 AFM DTM722 Temporary Change No. 17, dated March 31, 1995, which introduces procedures for checking that the "NO TAKEOFF" lights are out prior to take-off; and operate the airplane in accordance with those limitations and procedures.

Note 2: This may be accomplished by inserting a copy of Falcon 10 AFM DTM722 Temporary Change No. 17 in the AFM. When these temporary revisions have been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revision is identical to that specified in Temporary Change No. 17.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directives 98–300–022(B), dated July 29, 1998, and 98–547–022(B), dated December 30, 1998.

Issued in Renton, Washington, on July 16, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18734 Filed 7–21–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–131–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF–340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF–340 series airplanes. This proposal would require operators to replace the existing pneumatic de-icing boot pressure indicator switch with a newly designed switch. This proposal is prompted by an occurrence on a similar model airplane in which the pneumatic de-icing boot indication light may have provided the flightcrew with misleading information as to the proper functioning of the de-icing boots. The actions specified by the proposed AD are intended to prevent ice accumulation on the airplane leading edges, which could reduce controllability of the airplane.

DATES: Comments must be received by August 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–131–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

Information concerning this proposal may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–131–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–131–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 26, 1989, a British Aerospace Jetstream Model BA–3101 series airplane impacted the ground approximately 400 feet short of the runway while executing an instrument landing system (ILS) approach. The accident occurred at the Tri-Cities Airport, Pasco, Washington. The National Transportation Safety Board (NTSB) determined that the probable cause of the accident was the flightcrew's decision to continue an unstabilized ILS approach that led to a stall, most likely of the horizontal stabilizer, and loss of control at low altitude. Contributing to the stall and loss of control was the accumulation of leading edge ice, which degraded the aerodynamic performance of the airplane.

One result of the NTSB investigation was the determination that the flight deck wing de-icing light illuminated at a lower pressure than the pressure required to fully inflate the de-icing boots. The premature illumination of the wing de-icing light was due to a failure within the wing de-icing boot system, which allowed sufficient air pressure to give the appearance of normal operation based on the de-icing light, without actually inflating the boots sufficiently to remove ice.

Based on an NTSB Safety Recommendation, the FAA reviewed the pneumatic de-icing boot system designs for airplanes operated under parts 121 and 135 of the Federal Aviation Regulations to ensure that the pneumatic pressure threshold at which each de-icing boot indication light is designed to illuminate is sufficient pressure for effective operation of the pneumatic de-icing boots. The FAA has determined that the flight deck pneumatic de-icing boot pressure indicator switch on certain Model SAAB SF–340 series airplanes may allow the flight deck indication light to illuminate at a lower pressure [10 pounds per square inch gage (psig)] than the pressure required to fully inflate the de-icing boots (15 psig). This condition, if not corrected, could result in ice accumulation on the airplane leading edges, which could reduce controllability of the airplane.

U.S. Type Certification of the Airplane

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. The FAA has determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require that the existing pneumatic de-icing boot pressure indicator switch be replaced with a switch that activates the indicator light at 15 psig. The action would be required in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 117 airplanes of U.S. registry would be affected by this proposed AD. Since the manufacturer has not yet developed one specific modification commensurate with the requirements of this proposal, the FAA is unable at this time to provide specific information as to the number of work hours or cost of parts that would be required to accomplish the proposed modification. As indicated earlier in this preamble, the FAA specifically invites the submission of comments and other data regarding the economic aspect of this proposal.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB Aircraft AB: Docket 99–NM–131–AD.

Applicability: Model SAAB SF–340 series airplanes, serial numbers 004 through 239 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

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owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice accumulation on the airplane leading edges, which could result in reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 1 year after the effective date of this AD, replace the flight deck pneumatic de-icing boot pressure indicator switch with a switch that activates the flight deck indicator light at 15 pounds per square inch gage, in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 15, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18733 Filed 7–21–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 333

[Docket No. 99N–1819]

RIN 0910–AA01

Topical Antifungal Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that would amend the final monograph for over-the-counter (OTC) topical antifungal drug products. The amendment makes a minor change in the indications for these drug products. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Submit written comments by October 20, 1999; written comments on the agency's economic impact determination by October 20, 1999. See section IV of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 23, 1993 (58 FR 49890), FDA published a final monograph for OTC topical antifungal drug products in part 333 (21 CFR part 333), subpart C. That monograph includes labeling in § 333.250. Section 333.250(b)(1) contains the following introductory language for the indications statement: (Select one of the following: "Treats," "For the treatment of," "For effective treatment of," "Cures," "For the cure of," "Clears up," or "Proven clinically effective in the treatment of"). Section 333.250(b)(2) contains similar language for products labeled for the prevention of athlete's foot.

II. The Panel's Recommendations

The Advisory Review Panel on OTC Antimicrobial (II) Drug Products (the Panel) recommended the above labeling in its report on OTC topical antifungal drug products (47 FR 12480 at 12511, March 23, 1982). The Panel mentioned that there are several less common skin conditions that may affect the feet and the groin, cause symptoms that mimic athlete's foot and jock itch, and may be misdiagnosed as athlete's foot or jock itch. The Panel discussed common examples of such conditions: Candidiasis (a yeast infection), allergic contact dermatitis, bacterial infection of the feet (e.g., erythrasma), psoriasis, and hyperhidrosis (excessive perspiring) that may be associated with maceration of the skin and an inflammatory eruption known as dyshidrotic eczema (47 FR 12480 at 12487). While the Panel discussed these conditions, it did not address appropriate treatment or consequences of misdiagnosis of any of these conditions.

III. The Agency's Tentative Conclusions and Proposal

The agency recognizes that topical antifungal drug products will not cure or treat all conditions commonly thought by consumers to be athlete's foot or jock itch. Also, some of these conditions may have other etiologies. In addition to the conditions discussed by the Panel, consumers may erroneously consider a number of other conditions to be athlete's foot or jock itch. These include: Atopic dermatitis, irritant dermatitis, inverse pityriasis, scabies, and pediculosis pubis. All of these misdiagnosed conditions cannot be treated or cured by a topical antifungal drug product.

Because consumers self select OTC topical antifungal drug products and do not diagnose, the agency believes that the labeling should be revised to more accurately inform them what they can expect from using these products. Therefore, the agency is proposing that the word "most" be inserted in the allowed indications statements between the introductory phrase and the name of the condition(s) for which the product is to be used. This approach is consistent with the current labeling approved for OTC vaginal antifungal drug products under new drug applications (Ref. 1). That labeling states that the product "cures most vaginal yeast infections."

Accordingly, the agency is proposing to revise the indications in § 333.250(b)(1)(i) and (b)(2)(i) to add the word "most" after the introductory parenthetical "Select one of the following" choices and to add the word "most" in § 333.250(b)(2)(ii) after the word "up." The agency points out that this concept of "treats most" or "cures most" also needs to be used whenever a manufacturer uses the alternative labeling approaches allowed by 21 CFR 330.1(c)(2)(ii) or (c)(2)(iii) or whenever a general statement containing this information appears in the labeling of the product (e.g., on the principal display panel).

IV. Proposed Effective Date

The agency is proposing that any final rule that may issue based on this proposal become effective 12 months after its date of publication in the **Federal Register**. The agency considers this new labeling an improvement to the current labeling, but recognizes that OTC topical antifungal drug products have used the current monograph labeling for almost 6 years. Therefore, to reduce relabeling costs for manufacturers of these products, the agency will consider an 18-month effective date for any final rule that may issue based on this proposal. This longer effective date would enable manufacturers to use up existing labeling and implement the new labeling in the normal course of reordering labeling for these products. The agency invites specific comment on this extended effective date.

V. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this proposed rule is to make a minor revision in the indications for OTC topical antifungal drug products. This revision should improve consumers' self use of these drug products by better informing them about what they can expect from using the products.

Manufacturers of these products will incur minor costs to relabel their products to revise the indications statement and, in some cases, other statements that appear in product labeling. The agency has been informed that relabeling costs of the type required by this proposed rule generally average about $2,000 to $3,000 per stock keeping unit (SKU) (individual products, packages, and sizes). The agency is aware of approximately 50 manufacturers that together produce about 200 SKU's of OTC topical antifungal drug products marketed under the monograph. There may be a few additional small manufacturers or products in the marketplace that are not identified in the sources FDA reviewed. Assuming that there are about 200 affected OTC SKU's in the marketplace, total one-time costs of relabeling would be $400,000 to $600,000. The agency believes the actual cost could be lower for several reasons. Most of the label changes will be made by private label manufacturers that tend to use simpler and less expensive labeling. In addition, the agency is considering and inviting public comment on an 18-month effective date for the final rule, rather than the standard 12-month effective date. This extended effective date may allow the new labeling to be implemented concurrently with the general labeling changes required by the new OTC drug labeling format (64 FR 13254, March 17, 1999). The agency believes that these actions provide substantial flexibility and reductions in cost for small entities.

The agency considered but rejected several labeling alternatives: (1) A shorter implementation period, and (2) an exemption from coverage for small entities. While the agency would like to have this new labeling in place as soon as possible, it considers a period less than 1 year difficult for manufacturers to implement and not critical in this situation. The agency does not consider an exemption for small entities appropriate because consumers who use those manufacturers' products would not have the most recent information about these products.

This analysis shows that this proposed rule is not economically significant under Executive Order 12866 and that the agency has undertaken important steps to reduce the burden to small entities. Nevertheless, some entities may incur some impacts, especially private label manufacturers that provide labeling for a number of the affected products. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's initial regulatory flexibility analysis, as required under the Regulatory Flexibility Act. Finally, this analysis shows that the Unfunded Mandates Reform Act does not apply to the proposed rule because it would not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the proposed indications statements are a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that is categorically excluded from the preparation of an environmental assessment because these actions, as a class, will not result in the production or distribution of any substance and therefore will not result in the production of any substance into the environment.

VIII. Request for Comments

Interested persons may, on or before October 20, 1999, submit to the Dockets Management Branch (address above) written comments on the proposed regulation. Written comments on the agency's economic impact determination may be submitted on or before October 20, 1999. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

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IX. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Approved labeling from new drug applications for OTC vaginal antifungal drug products.

List of Subjects in 21 CFR Part 333

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 333 be amended as follows:

PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 333 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 333.250 is amended by revising paragraphs (b)(1)(i), (b)(2)(i), and (b)(2)(ii) to read as follows:

§ 333.250 Labeling of antifungal drug products.

* * * * *

(b) * * *

(1) * * * (i) (Select one of the following: "Treats," "For the treatment of," "For effective treatment of," "Cures," "For the cure of," "Clears up," or "Proven clinically effective in the treatment of") "most" (select one condition from any one or more of the following groups of conditions:

* * * * *

(2) * * * (i) (Select one of the following: "Clinically proven to prevent," "Prevents," "Proven effective in the prevention of," "Helps prevent," "For the prevention of," "For the prophylaxis (prevention) of," "Guards against," or "Prevents the recurrence of") "most" (select one of the following: "Athlete's foot," "athlete's foot (dermatophytosis)," "athlete's foot (tinea pedis)," or "tinea pedis (athlete's foot)") "with daily use."

(ii) In addition to the information identified in paragraph (b)(2)(i) of this section, the labeling of the product may contain the following statement: "Clears up most athlete's foot infection and with daily use helps keep it from coming back."

* * * * *

Dated: July 14, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–18699 Filed 7–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–060]

RIN 2115–AA97

Safety Zone: Perth Amboy Fireworks, Raritan River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Coast Guard is withdrawing its notice of proposed rulemaking to establish a temporary safety zone in the Raritan River for the Perth Amboy, NJ fireworks display. The event has been cancelled by the sponsor. Therefore, the rule is no longer needed and the Coast Guard is terminating further rulemaking under docket number 99–060.

DATES: The notice of proposed rulemaking is withdrawn effective July 22, 1999.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION: On June 7, 1999, the Coast Guard published a notice of proposed rulemaking entitled "Safety Zone: Perth Amboy Fireworks, Raritan River, NJ" in the **Federal Register** (64 FR 30274). The Perth Amboy Chamber of Commerce has cancelled the event, therefore the rulemaking for this event is no longer necessary. The Coast Guard is withdrawing the NPRM and terminating further rulemaking under docket number 99–060.

Dated: July 14, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–18703 Filed 7–21–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–99–031]

RIN 2115–AE47

Drawbridge Operating Regulations; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a temporary change to the regulation governing the Rock Island Railroad and Highway Drawbridge, Mile 482.9, Upper Mississippi River. Under the proposed rule the drawbridge need not open for vessel traffic and may remain in the closed-to-navigation position from 7:30 a.m. to 11:30 a.m. on September 26, 1999. This temporary rule would allow the scheduled running of the Quad City Marathon as part of a local community event.

DATES: Comments must be received on or before August 23, 1999.

ADDRESSES: Comments can be mailed to Commander, Eighth Coast Guard District (obr), 1222 Spruce Street, St. Louis, Missouri 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday except Federal holidays. Comments will become part of the public docket and will be available for copying and inspection in room 2.107f at the same address.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator; Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, Missouri 63103–2832, telephone 314–539–3900 extension 378.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested parties to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 08–99–031) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing in writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a notice in the **Federal Register**.

Background and Purpose

On May 8, 1999, the Department of Army Rock Island Arsenal requested a temporary change to the operation of the Rock Island Railroad and Highway Drawbridge across the Upper Mississippi River, Mile 482.9 at Davenport, Iowa. The Rock Island Arsenal requested that the drawbridge be permitted to remain closed to navigation from 7:30 a.m. to 11:30 a.m. on September 26, 1999. During this time participants in the Quad City Marathon will cross the bridge.

The Rock Island Railroad Drawbridge navigation span has a vertical clearance of 23.8 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. Presently, the draw opens on signal for passage of river traffic.

A short comment period of thirty days is being provided for interested parties to express their views. The comment period will allow affected individuals in the local areas to participate in the rulemaking and will allow the Coast Guard to publish a final rule prior to the event. If comments are received, the Coast Guard may change this proposed rule.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because river traffic is not likely to be delayed more than four hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. Sec. 601 *et seq.*), the Coast Guard must consider whether this temporary rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

Because it expects the impact of this action to be minimal, the Coast Guard certifies under 5 U.S.C. Sec. 605(b), that this action will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary rule does not provide for a collection-of-information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary rule under the principles and criteria contained in Executive Order 12612, and has determined that this temporary rule does not raise sufficient implications of federalism to warrant the preparation of a Federalism Assessment. The authority to regulate the permits of bridges over the navigable waters of the U.S. belongs to the Coast Guard by Federal statutes.

Environmental

The Coast Guard considered the environmental impact of this temporary rule and concluded that under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this temporary rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subject in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. Sec. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Effective 7:30 a.m. to 11:30 a.m. on September 26, 1999, § 117.T388 is added to read as follows:

§ 117.T388 Upper Mississippi River.

The Rock Island Railroad and Highway Drawbridge, at mile 482.9, Upper Mississippi River, opens on signal, except that from 7:30 a.m. to 11:30 a.m. on September 26, 1999, the drawspan need not open for vessel traffic and may be maintained in the closed-to-navigation position.

Dated: July 2, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 99–18748 Filed 7–21–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10, 15, 90, 98, 125–134, 170, 174, and 175

[USCG–1999–5951]

Offshore Supply Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard announces a public meeting to discuss potential revisions to its Offshore Supply Vessel (OSV) regulations. The meeting will focus on the possible establishment of International Tonnage Convention (ITC) tonnage values for OSVs; additional standards for larger OSV including licensing and manning; and standards for crewboats as a new category of OSVs. The Coast Guard encourages interested persons to participate by providing oral or written comments.

DATES: The meeting will be held on August 26, 1999 from 9 a.m. to 1 p.m. The meeting may close early if all business is finished. Written comments and related material must reach the Docket Management Facility on or before September 21, 1999.

ADDRESSES: The meeting will be held in 12th Floor Conference Room, Room 1242, Eight Coast Guard District Office, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396.

You may submit your written comments and related material by one of the following methods:

(1) By mail to the Docket Management Facility, (USCG–1999–4974), U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand to Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

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The Docket Management Facility maintains the public docket for this notice. Comments and documents, as indicated in this notice, will become part of this docket and will be available for inspection or copying at Room PL–401 on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket for this notice on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice or public meeting, contact Mr. Jim Magill, Project Manager, Office of Operating and Environmental Standards, U.S. Coast Guard Headquarters, telephone 202–267–1082 or LT Charles Srioudom, Office of Operating and Environmental Standards, U.S. Coast Guard Headquarters, telephone 202–267–2498. For questions on viewing, or submitting material to the docket, contact Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate by submitting comments and related material, and by attending the public meeting. If you submit written comments, please include your name and address, identify the docket number for this notice (USCG–1999–XXXX), indicate the specific section of the **Federal Register** notice announcing this meeting to which each comment applies, and give the reason for each comment. You may submit your written comments and material by mail, hand, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please do not submit the same comment or material by more than one means. If you submit them by mail or hand, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they were received, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Information on Service for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LT Charles Srioudom at the address or phone number under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Background and Purpose

The Coast Guard published a final rule entitled "Offshore Supply Vessels" on September 19, 1997 (62 FR 49308). Since the publication of this rule, industry identified a need to determine a tonnage breakpoint, appropriate additional standards for larger OSV including licensing and manning, and to bring crew boats under the regulations as OSV. The purpose of this notice is to receive public comments pertaining to OSVs of 500 gross tons (U.S. Regulatory Tonnage) but less than 6,000 gross tons (ITC).

Areas of Concern

The Coast Guard invites comments pertaining to OSV regulations from interested persons. To help facilitate a productive public meeting, we offer the following subjects for consideration; interested persons may address meeting attendants with additional comments:

(1) What ITC tonnage value should be considered as equivalent to the present 500 gross tons (U.S. Regulatory Tonnage) value as the breakpoint between large and small OSVs? Does the figure of 3,000 gross tons (ITC) make good logic as it ties in with the STCW threshold value?

(2) Is there a need to establish regulations for conventional OSVs to carry more than 36 offshore workers, given the fact that the revised regulations will bring crew boats carrying up to 150 offshore workers under subchapter L? The new revision could also establish regulations for liftboats allowing more than 36 offshore workers onboard while jacked up.

(3) Would the establishment of dual certification to meet OSV and crewboat regulations make sense? This could, for example, allow dual certificated OSVs to carry unlimited fuel, maximum 36 offshore workers on one leg of a voyage, and carry more than 36 offshore workers under the crewboat regulations on the return leg of the voyage.

(4) Should OSVs of 500 gross tons (U.S. Regulatory Tonnage) but less than 6,000 gross tons (ITC) meet the requirements of 46 CFR Subchapter L and additional requirements from Subchapter I (Industrial Vessels) that are applicable to OSVs carrying less than 36 offshore workers?

(5) If OSVs of 500 gross tons (U.S. Regulatory Tonnage) but less than 6,000 gross tons (ITC) abide by both Subchapter L and Subchapter I requirements, what structural fire protection, fire detection, and lifesaving equipment should be required to maintain vessel safety?

(6) If OSVs of 500 gross tons (U.S. Regulatory Tonnage) but less than 6,000 gross tons (ITC) abide by both Subchapter L and Subchapter I requirements, what accommodations should be provided for offshore workers assigned to the vessel for more than 24 hours? and

(7) Discussion is invited as to whether we should retain the current regulatory licensing structure for Masters and Mates up to 3,000 gross tons (ITC) and add a new licensing structure for over 3,000 gross tons (ITC) OSVs, requiring more training and experience?

Dated: July 15, 1999.

Howard L. Hime,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–18701 Filed 7–21–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

48 CFR Parts 245 and 252

[DFARS Case 99–D019]

Defense Federal Acquisition Regulation Supplement; General Property, Plant, and Equipment

AGENCY: Department of Defense (DoD).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Director of Defense Procurement is soliciting comments from Government and industry personnel on contemplated revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) to obtain data that will enable DoD to comply with the financial reporting requirements of the Chief Financial Officer's Act. The DFARS revisions would require contractors to furnish information on other real property, industrial plant equipment, other plant equipment, and software acquired or produced for performance of a cost-reimbursement or time-and-material contract. The reporting requirement is limited to reportable items or systems having an acquisition cost of $100,000 or more.

DATES: Interested parties should submit written comments to the address shown below no later than September 7, 1999. Electronically submitted comments are preferred.

ADDRESSES: Interested parties should submit written comments to: Deputy Director, Major Policy Initiatives, Room 3E144, the Pentagon, Washington, DC 20301–3060, ATTN: Ms. Angelena Moy, OUSD (A&T)/DDP. Submit electronic comments to moyac@acq.osd.mil. Please cite DFARS Case 99–D019 on all related correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, (703), 695–1097/1098 or moyac@acq.osd.mil.

SUPPLEMENTARY INFORMATION:

A. Background

DoD must improve the reliability of agency-level financial reports to comply with the requirements of the Chief Financial Officer's Act (Pub. L. 101–576). The proposed DFARS revisions will enable DoD to more accurately determine the current value of Government property that was originally acquired or produced by a contractor under a cost-reimbursement or time-and-materials contract.

B. DD Form 1662–S, General Property, Plant, and Equipment in the Possession of Contractors

The proposed DFARS revisions contain a new clause that specifies requirements for contractors to furnish information using the following form. DoD will seek Office of Management and Budget approval for use of the new form in accordance with the Paperwork Reduction Act (44 U.S.C. 3501, et seq.).

BILLING CODE 5000–04–M

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General Property, Plant, and Equipment in the Possession of Contractors

(See instructions on reverse before completing this form.)

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1. Contractor:	3. Report - Initial ____, Follow on _____, Final ____
2. Contract No:	4. Payment Office:
5. Reporting Period: October 1, _____ through September 30, _____ or Other Date (if Final Report) _____	

General Property, Plant, and Equipment Reporting Categories	(b) Fiscal Year Acquired/ Produced/ Disposed	(c) Beginning Balance by Column (c) Fiscal Year	(d) Acquired/ Produced	(e) Disposed/ Transferred	(f) Ending Balance by Column (c) Fiscal Year
			Cost in Dollars		
6. Other Real Property					
6.a. Buildings					
6.b. Improvements to Buildings					
6.c. All Other Real Property					
6.d. Improvements to All Other Real Property					
7. Other Plant Equipment (OPE)					
8. Industrial Plant Equipment (IPE)					
9. Software					

DD Form 1662-S, (DATE) Authorized for local reproduction

Instructions for The DD Form 1662-S
General Property, Plant, and Equipment in the Possession of Contractors

APPLICABILITY

This Supplement is required only for property acquired or produced by, or property improvements made by, the Contractor or a subcontractor to which the Government has title under a cost-reimbursement or time-and-materials contract. Do not report the costs of equipment or software (items 7, 8, and 9) that were delivered to the Government, or delivered to the Government and subsequently furnished to you, during the reporting period as Government-furnished property for the performance of a contract.

SPECIAL REQUIREMENTS FOR THE 10/01/1999 THROUGH 09/30/2000 REPORTING PERIOD AND INITIAL REPORTS.

Do not complete columns (c), (d), and (e).

SPECIAL REQUIREMENTS FOR FINAL REPORTS.

Do not report an ending balance (column (f)).

GENERAL REQUIREMENTS.

Submit a separate supplemental report for each cost-reimbursement or time-and-materials contract under which the Government obtains title to property that is in the possession of the contractor or its subcontractors. Reports are required for contracts that are not complete as of the end of the reporting period and contracts completed or terminated in their entirety prior to the end of the reporting period.

Report only property or property improvements that have an acquisition cost of $100,000 or more.

Use another copy of the form if additional space is needed for one or more reporting categories. Number each form consecutively on the top right corner of each copy (e.g., 1 of 3, 2 of 3 and 3 of 3).

Submit reports to the paying office identified in block 4 of the form within 30 days following the end of reporting period, contract completion, or contract termination.

INSTRUCTIONS

Item 1. Enter the Contractor's name.
Item 2. Enter the applicable contract, delivery order, or task order number.
Item 3. Indicate with an 'X' whether this is report is the initial, a follow on, or the final report for this contract or order.
Item 4. Enter the name and address of the payment office specified in the contract.
Item 5. Enter the reporting year or final report date (see the GENERAL INSTRUCTIONS).

Item 6. Other Real Property (ORP).
6.a. The term "buildings" includes warehouses, storage facilities, hangars, and other structures. Report each building acquired or produced for the performance of this contract that had an acquisition cost of $100,000 or more.
6.b. Report each improvement to buildings, including Government-furnished buildings, regardless of the building's acquisition cost or present value if the cost of the improvement was $100,000 or more except improvements made more than 20 years prior to commencement of the reporting period.
6.c. Report all ORP not reported in block 6.a. that had an acquisition cost of $100,000 or more except ORP that was acquired or produced more than 20 years prior to commencement of the reporting period.
6.d. Report improvements made to ORP, including Government-furnished ORP, regardless of the building's acquisition cost or present value if the cost of the improvement was $100,000 or more except improvements made more than 10 years prior to commencement of the reporting period.

Item 7. Other Plant Equipment (OPE). Report all OPE that has an acquisition cost of $100,000 or more per item. Do not report the individual components of a system as separate items if the contractor customarily, collectively reports the items as a system. Report the system's acquisition cost only if the aggregate acquisition costs of the system's components is $100,000 or more. Do not report any equipment items or systems that were acquired or produced more than 5 years prior to commencement of the reporting period.

Item 8 Industrial Plant Equipment (IPE). Report all Industrial Plant Equipment (IPE) that has an acquisition cost of $100,000 or more per item except IPE items that are customarily used as a system (Do not report the individual components of a system as separate item if the contractor customarily collectively reports the item as a system.) Report the system's acquisition cost only if the aggregate acquisition costs of the system's components is $100,000 or more. Do not report any equipment or systems that were acquired or produced more than 10 years prior to commencement of the reporting period.

Item 9 Software. Report only software acquired or produced for the Government if the software developer has transferred ownership (not a license) to the Government. Do not report Government-owned software that was acquired or produced to operate special tooling or special test equipment and is useable for that purpose only. Do not report otherwise reportable software if the software was acquired or produced more than 5 years prior to commencement of the reporting period.

Column (a). The types of property to be reported.

Column (b). Identify the fiscal years (e.g., 1996, 1998) in which the property identified in column (c) was acquired or produced.

Column (c). Report the beginning balances, by the year in which the property was acquired or produced (Column (b)), for each property category (*Items 6 - 9*). The amounts reported must be the same amounts reported in Column (e), Ending Balance, of the previous year's report. Do not report any amounts in column (c) if this is the first report for this contract.

Column (d). For each property category, enter the acquisition cost of improvements made or property acquired or produced during the current reporting period.

Column (e). For each property category, enter the acquisition cost of property disposed of during the current reporting period (including transfers to other contracts with the reporting agency or other agencies) by the fiscal year in which the property was acquired or produced.

Column (f). For each property category, report the ending balances for the current reporting period (column (c) plus column (d) minus column (e)).

BILLING CODE 5000-04-C

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List of Subjects in 48 CFR Parts 245 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Parts 245 and 252 as follows:

1. The authority citation for 48 CFR Parts 245 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 245—GOVERNMENT PROPERTY

2. Amend section 245.505–14 by adding paragraph (b) to read as follows:

245.505–14 Reports of Government property.

* * * * *

(b) Use the clause at 252.245–XXX, Supplemental Property Report-Cost-Reimbursement and Time-and-Materials Contracts, in cost-reimbursement and time-and-materials contracts that include the clause at 252.245–7001, Reports of Government Property.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 252.245–XXX to read as follows:

252.245–7XXX Supplemental Property Report-Cost-Reimbursement and Time-and-Material Contracts.

As prescribed in 245.505–14(b), use the following clause:

Supplemental Property Report-Cost-Reimbursement and Time-and-Materials Contracts (XXX 1999)

(a) *Definition.* As used in this clause—

Agency-peculiar property means military property and includes end items and integral components of military weapons systems, along with the related peculiar support equipment that is not readily available as a commercial item.

Commercial computer software means software developed or regularly used for nongovernmental purposes that—

(1) Has been sold, leased, or licensed to the public;

(2) Has been offered for sale, lease, or license to the public;

(3) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(4) Satisfies a criterion expressed in paragraph (1), (2), or (3) of this definition and would require only minor modification to meet the requirements of this contract.

General property, plant, and equipment means land, other real property, industrial plant equipment, other plant equipment, and software. The term does not include special tooling, special test equipment, agency-peculiar property, or material.

Industrial plant equipment (IPE) means plant equipment in Federal stock group 34 with an acquisition cost of $15,000 or more used for cutting, abrading, grinding, shaping, forming, joining, heating, treating, or otherwise altering the physical properties of materials, components, or end items entailed in manufacturing, maintenance, supply, processing, assembly, or research and development operations. IPE is further identified in AR 700–43/NAVSUP PUB 5009/AFM 78–9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment.

Other plant equipment (OPE) means plant equipment regardless of dollar value, used in or in conjunction with the manufacture of components or end items relative to maintenance, supply, processing, assembly, or research and development operations. OPE excludes equipment categorized as IPE.

Software means computer software, including commercial computer software.

(b) *Supplemental information-general property, plant, and equipment (GPP&E).* The Contractor shall furnish the information required by DD Form 1662-S, General Property, Plant, and Equipment in the Possession of Contractors, for each GPP&E item or system to which the Government has title under a cost-reimbursement or time-and-materials contract that—

(1) Was acquired or produced by the Contractor for performance of this contract;

(2) Has an estimated useful life of 2 or more years;

(3) Has an acquisition cost of $100,000 or more that was allocated to this contract as a direct cost; and

(4) Is in the Contractor's or a subcontractor's possession as of September 30 of the current year or, for contracts completed or terminated prior to or during the current fiscal year, on the date the contract was completed or terminated.

(c) *Source data.* The Contractor shall extract acquisition cost information from the Contractor's financial or cost accounting systems.

(d) *Reporting and submission requirements.* The Contractor shall—

(1) Prepare a separate DD Form 1662–S for each contract under which GPP&E items or systems are accountable;

(2) Submit the DD Form 1662–S to the cognizant Government property administrator within 30 days following completion of the reporting year; and

(3) For contracts completed or terminated in their entirety prior to September 30 of the reporting year, complete a DD Form 1662–S to report property in the Contractor's or a subcontractor,s possession as of the date of contract completion or termination. The Contractor shall submit the form to the cognizant Government property administrator within 30 days following contract completion or termination.

(End of clause)

[FR Doc. 99–18589 Filed 7–21–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF24

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations and Regulatory Alternatives for the 1999–2000 Duck Hunting Season; Notice of Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 1999–2000 early-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in early seasons. Early seasons generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions. This supplement to the proposed rule also provides the regulatory alternatives for the 1999–2000 duck hunting season.

DATES: To comment on the proposed early-season frameworks, you must do so by August 2, 1999.

ADDRESSES: Send your comments on these proposals to the Chief, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, room 634-Arlington Square, Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jonathan Andrew, Chief, or Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1999

On May 3, 1999, we published in the **Federal Register** (64 FR 23742) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under § 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 17, we published in the **Federal Register** (64 FR 32758) a second document providing supplemental proposals for early-and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 1999–2000 duck hunting season. The June 17 supplement also provided detailed information on the 1999–2000 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings.

This document is the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations and deals specifically with proposed frameworks for early-season regulations and the final regulatory alternatives for the 1999–2000 duck hunting season. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 1999–2000 season. We have considered all pertinent comments received through July 2, 1999, in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES**. We will publish final regulatory frameworks for early seasons in the **Federal Register** on or about August 20, 1999.

Service Migratory Bird Regulations Committee Meetings

The June 22–23 meetings reviewed information on the current status of migratory shore and upland game birds and developed 1999–2000 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 1999–2000 regular waterfowl seasons. The previously announced August 3–4 meetings will review information on the current status of waterfowl and develop 1999–2000 migratory game bird regulations recommendations for regular waterfowl seasons and other species and seasons not previously discussed at the early season meetings. In accordance with Departmental policy, these meetings are open to public observation and you may submit written comments to the Director on the matters discussed.

Population Status and Harvest

May Breeding Waterfowl and Habitat Survey

In the Western or Traditional survey area, breeding habitat conditions were generally good to excellent, and overall better than conditions in 1998. An early warm spring and plenty of precipitation resulted in abundant ponds and excellent nesting cover in most of the Dakotas, northern Saskatchewan, the Northwest Territories, and western Ontario. The exceptions to these good conditions were southern and central Alberta, central Saskatchewan, and western Montana, where a dry early spring limited nesting habitat; and Alaska, where spring was as much as 2 weeks late. The estimated number of May ponds in the traditional survey area (6.7 ± 0.3 million) was 46% greater (P<0.01) than that of 1998, and 37% greater than the 1974–98 average (P<0.01). Overall, the traditional survey area was in good to excellent condition this spring and good to excellent waterfowl production is expected this year.

An expanded area of Eastern habitat conditions was included this year in the East. Although these additional areas have been surveyed since 1996, information from them is included this year for the first time. Unlike the Western survey area, habitat conditions in the east were generally poorer this year than last year. Much of the eastern survey area was relatively dry, especially Maine, the Maritimes, southern Quebec, and southern Ontario. Conditions resulted in few temporary ponds and low water levels in permanent water bodies. The northern portions of the east were in good to excellent condition, but lack of brood rearing habitat is expected to also limit production from this area. Overall, the eastern survey area was in fair to good condition, with fair to good production expected this year.

The 1999 total duck population estimate for the traditional survey area was 44.4 ± 0.8 million birds, an increase (P<0.01) of 14% over that of 1998, and 35% higher (P<0.01) than the 1955–98 average. Mallard abundance was 11.3 (± 0.4) million, an increase of 17% (P<0.01) over last year and 53% (P<0.01) greater than the long term average. Blue-winged teal abundance was 7.2 (± 0.4) million, similar (P=0.10) to 1998, but 66% greater than the long term average (P<0.01). Northern pintail (3.1 ± 0.2 million, +21%), scaup (4.4 ± 0.2 million, +27%), green-winged teal (2.8 ± 0.2 million, +36%), and northern shoveler (3.9 ± 0.2 million, +22%) increased from 1998 estimates (P<0.04). Gadwall (3.2 ± 0.2 million, +110%), green-winged teal (+61%), northern shoveler (+95%), redheads (1.0 ± 0.1 million, +60%), and canvasbacks (0.7 ± 0.1 million, +34%) were above their respective long term averages (P<0.03), while pintails (−30%) and scaup (−18%) were below their long term averages (P<0.01). In the eastern areas of Canada and the U.S., the total number of ducks (1.3 ± 0.1 million) remained unchanged from last year and the 1995–98 average. Abundances of individual species in the east were similar (P≥0.11) to those of last year, except for increased estimates of goldeneye (+197%) (P<0.09). Goldeneye was above it's long term average (+288%), while blue-winged teal (−95%) and scaup (−90%) were below theirs (P<0.03).

Sandhill Cranes

The Mid-Continent Population of Sandhill Cranes appears to have stabilized following dramatic increases in the early 1980's. The Central Platte River Valley 1999 preliminary spring index, uncorrected for visibility, was 222,500. The photo-corrected 3-year average for the 1996–98 period was 477,911, which was 3% above the established population-objective range of 343,000–465,000 cranes. All Central Flyway States, except Nebraska, elected to allow crane hunting in portions of their respective States in 1998–99. About 8,700 hunters participated in these seasons, which was 8% higher than the previous year's seasons. About 21,849 cranes were harvested in 1998–99 in the Central Flyway, a 5% increase from the previous year's high estimate. Harvests from Pacific Flyway, Canada and Mexico are estimated to be about 13,700 for 1998–99 sport-hunting seasons. The total North American sport harvest, including crippling losses, was estimated to be about 41,414 for the Mid-Continent Population.

The fall 1998 pre-migration survey estimate for the Rocky Mountain Population was 18,202, which is similar to the 1997 estimate. Limited special seasons were held during 1998 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulting in an estimated harvest of 538 cranes.

Woodcock

Wing-collection and Singing-ground surveys were conducted to assess the population status of the American woodcock (Scolopax minor). The 1998 recruitment index for the Eastern Region (1.7 immatures per adult female)

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equaled the long-term regional average; the recruitment index for the Central Region (1.6 immatures per adult female) was 6% below the long-term regional average. The index of daily hunting success in the Eastern Region increased from 1.8 woodcock per successful hunt in 1997 to 1.9 woodcock per successful hunt in 1998, but seasonal hunting success declined 4%, from 6.9 to 6.6 woodcock per successful hunter in 1997 and 1998, respectively. In the Central Region, the daily success index in 1998 was unchanged from the 1997 index (2.1 woodcock per successful hunt) but the seasonal success index increased from 10.0 to 11.0 (10%) woodcock per successful hunter. Singing-ground Survey data indicated that the number of displaying woodcock in the Eastern Region was unchanged (P>0.1) from 1998 levels. In the Central Region, there was a 13.4% decrease in the number of woodcock heard displaying (P<0.01) compared to 1998 levels. Trends from the Singing-ground Survey during 1989–99 were negative (−3.3 and −3.7% per year for the Eastern and Central regions, respectively; P<0.01). There were long-term (1968–99) declines (P<0.01) of 2.4% per year in the Eastern Region and 1.6% per year in the Central Region.

Doves and Band-Tailed Pigeons

Analyses of Mourning Dove Call-count Survey data indicated significant declines in doves heard over the most recent 10 years and the entire 34 years of the survey in all 3 management units. White-winged doves in Arizona are maintaining a fairly stable population since the late 1970's. A low harvest is being maintained compared with birds taken several decades ago. In Texas, the phenomenon of the white-winged dove range expansion continues. Birds are now seen in most large cities in north and central Texas. White-tipped doves in Texas are maintaining their population with a relatively low harvest level. For band-tailed pigeons, the Coastal population continues to show a significant decline as indicated by the Breeding Bird Survey (BBS) for the 10 and 32-year periods. In contrast, mineral spring counts at 10 selected sites in Oregon indicate an overall stable population in the state with an increasing trend since 1986. Call-count survey results in Washington show no significant trends in the bandtail population between 1975–98. Washington has not opted to select a hunting season for band-tail pigeons since 1991. The harvest of coastal pigeons is estimated to be less than 20,000 birds out of a population of about 3 million. The Interior band-tailed pigeon population is stable with no trend indicated by the BBS over the short or long-term time periods. Harvest is less than 1,000 birds.

Review of Public Comments

The preliminary proposed rulemaking, which appeared in the May 3 **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 17 **Federal Register**, defined the public comment period for the proposed regulatory alternatives for the 1999–2000 duck hunting season. The public comment period for the proposed regulatory alternatives ended July 2, 1999. Early-season comments and comments pertaining to the proposed alternatives are summarized below and numbered in the order used in the May 3 **Federal Register**. Only the numbered items pertaining to early seasons issues and the proposed regulatory alternatives for which written comments were received are included.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the May 3, 1999, **Federal Register**.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. The categories correspond to previous published issues/discussion and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic Flyway Council recommended continued use of the 1998–99 duck hunting packages for the 1999–2000 season. They further recommended the Service not allow framework date extensions in any States during the 1999–2000 season.

The Upper-Regulations Committee of the Mississippi Flyway Council recommended the Service use the 1997–98 regulations packages for the 1999–2000 duck season, including frameworks dates from the Saturday nearest October 1 to the Sunday nearest January 20. The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended the Service continue use of the 1998–99 regulatory packages for the 1999–2000 season and further recommended deletion of the "very restrictive" alternative and modification of the framework opening and closing dates to the Saturday nearest to September 23 to January 31 for all alternatives with no offsets.

The Central Flyway Council recommended the Service continue use of the 1998–99 regulatory packages for the 1999–2000 season with several modifications. The Council recommended framework opening dates of the Saturday nearest to September 24 in the "liberal" and "moderate" regulatory alternatives with no offsets. The framework closing date would remain the Sunday nearest to January 20. Additionally, the Council recommended that no additional changes be allowed to the packages for a five-year period.

The Pacific Flyway Council recommended framework dates of the Saturday nearest to September 23 to January 31 without offsets in the "liberal" alternative and with offsets in the "moderate" alternative (as long as the offset does not exceed 7 days with a season of not less than 79 days in the Pacific Flyway). For the "restrictive" and "very restrictive" alternatives, the Council recommended maintaining current framework dates. The Council also recommended maintaining the current mallard bag limits and preserving the traditional differences in harvest opportunity both within and between Flyways.

Written Comments: The Alabama Division of Game and Fish believed the "very restrictive" alternative should be deleted.

Service Response: For the 1999–2000 regular duck hunting season, we will use the four regulatory alternatives detailed in the accompanying table (see further discussion in B. Framework Dates). Alternatives are specified for each Flyway and are designated as "VERY RES" for the very restrictive, "RES" for the restrictive, "MOD" for the moderate, and "LIB" for the liberal alternative. We will propose a specific

regulatory alternative in early August when survey data on waterfowl population and habitat status are available in late July.

B. Framework Dates

Council Recommendations: The Atlantic Flyway Council recommended that the Service not allow framework date extensions in any States during the 1999–2000 season.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended no change in the framework dates from the 1997–98 regulatory alternatives. The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended modification of the framework opening and closing dates to the Saturday nearest to September 23 to January 31 for all regulatory alternatives with no offsets.

The Central Flyway Council recommended a framework opening date of the Saturday nearest to September 24 in the "liberal" and "moderate" regulatory alternatives with no offsets. The framework closing date would remain the Sunday nearest to January 20.

The Pacific Flyway Council recommended framework dates of the Saturday nearest to September 23 to January 31 with no offsets in the "liberal" alternative and with offsets in the "moderate" alternative (as long as the offset does not exceed 7 days with a season of not less than 79 days in the Pacific Flyway). For the "restrictive" and "very restrictive" alternatives, the Council recommended maintaining current framework dates.

Written Comments: The Alabama Division of Game and Fish believe that the January 31 framework extension should occur in all alternatives with no associated offset in season length.

The Minnesota Department of Natural Resources continues to support the 1998–99 regulatory alternatives, as published in the August 5 **Federal Register**. However, given the current situation facing the Service, they believe this year's proposal minimizes the damage caused by the frameworks issue and allows movement forward to more important waterfowl management issues. Furthermore, they are concerned about the changing distribution and continued shift in Flyway harvest over the past few years to the southern States and requested us to examine the contribution of the current "liberal" alternative to this harvest shift.

The Mississippi Department of Wildlife, Fisheries and Parks (Mississippi) supported frameworks dates of the Saturday closest to September 23 to January 31 in the "liberal", "moderate", and "restrictive" alternatives. They further requested that all States taking the framework extension be allowed to offset potential harvest increases with appropriate season length reductions and believed that framework dates should not be used as a regulatory tool. In a separate letter, Mississippi questioned the proposed 9-day offset. More specifically, they believe that the offset should be proportional to the extension. Last season, the normal framework closing date for the rest of the Mississippi Flyway was January 17 (the Sunday closest to January 20), resulting in a realized 14-day extension to January 31 for Alabama, Mississippi, and Tennessee. This season, the framework closing date for the rest of the Mississippi Flyway is January 23 (again, the Sunday closest to January 20), resulting in only a realized 8-day extension to January 31. Thus, Mississippi believes the offset for this season should be 5 days.

The Missouri Department of Conservation supported the proposals for the 1999–2000 regulatory alternatives and agreed with maintaining the framework date specifications through the 2002–03 season. While Missouri continued to believe that the 1998–99 alternatives offered the most acceptable regulations package, they believed that the next best solution was the Service's proposal of framework extensions limited to Alabama, Mississippi, and Tennessee. They believed that this alternative would have the least biological impact and the least effect on continuing AHM progress.

The South Dakota Department of Game, Fish, and Parks (South Dakota) generally agreed with the proposed regulatory alternatives, including bag limits and season lengths. However, they believed that there was room to provide increased hunting opportunity for northern production States by extending the framework opening date, with or without offsets, to the Saturday nearest to September 24 in the "liberal" and "moderate" alternatives. South Dakota further believed that the impact of any framework extension would be minimal and that the effects of such an extension should be evaluated in an adaptive manner after the fact rather than assuming worst-case scenario impacts.

The Tennessee Wildlife Resources Agency requested the Service allow additional time to review harvest data from last year and solicit public comments before committing to an additional 4-year January 31 framework closing date alternative. They requested that this decision be part of the normal late-season selection process.

The California Waterfowl Association recommended the Service offer Pacific Flyway States a January 31 framework closing date in both the "moderate" and "liberal" alternatives. More specifically, they recommended frameworks of the Saturday nearest September 23 to January 31 in the "moderate" and "liberal" alternatives, with associated offsets. They believe that continuing the use of the 1998–99 frameworks will effectively inhibit the gathering of data critical to developing a predictive AHM model for California and other Pacific Flyway States.

The Mississippi Fish and Wildlife Foundation and the Mississippi Outfitters Association supported a January 31 framework closing date in the "liberal", "moderate", and "restrictive" alternatives.

Individuals in Alabama and Tennessee supported a January 31 framework closing date, while an individual in Minnesota supported a framework opening date of the Saturday nearest October 1. Another individual in Minnesota requested a later closing date for northern States citing concerns over global warming. An individual in Texas requested that seasons be shifted 2–3 weeks later to account for changes in waterfowl migration patterns.

Service Response: As indicated in the June 17 **Federal Register**, there remains a diversity of opinions: (1) about the desirability of framework-date extensions at this time; (2) about the need for corresponding reductions in season length; (3) about whether extensions should be applied to opening dates, closing dates, or both; and (4) about the inclusion of framework-date extensions in some or all of the regulatory alternatives. In light of the lack of consensus among the Flyways and States, and because of a pressing need for stable regulatory alternatives, we are continuing the use of the 1998–99 regulatory alternatives published in the August 5, 1998, **Federal Register**, for the 1999–2000 hunting season with one exception. For the States of Alabama, Mississippi, and Tennessee, we will offer the use of a 51-day season in the "liberal" alternative and a 38-day season in the "moderate" alternative with a January 31 framework closing date in both alternatives. Of the six States that were offered the framework extension in the 1998–99 season, only these three States availed themselves of this option. We believe that a reduction in season length is needed to offset the expected increase in duck harvest (about 18% for mallards), and that 9

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days in the "liberal" alternative and 7 days in the "moderate" alternative are commensurate offsets for this region of the country. These season-length offsets are based on the average increase in harvest associated with extending the framework beyond the traditional date of the Sunday nearest January 20. Although we recognize that the length of the framework extension will vary with calender changes, it currently is technically impossible to reliably assess year-specific offsets of season-length. The framework-date extension is limited to the "liberal" and "moderate" regulatory alternatives to avoid the introduction of additional uncertainty about harvest impacts at other regulatory levels, and to avoid the potential for late-season physiological or behavioral impacts on ducks when population levels are insufficient to support more liberal seasons. Framework opening and closing dates for all other States would remain unchanged from those published in the August 5, 1998, **Federal Register**. Further, Alabama, Mississippi, and Tennessee should base their decision on the clear understanding that we intend to maintain these framework-date specifications through the 2002–03 hunting season, or until such time that the Flyway Councils can develop an approach that adequately addresses the concerns of the Service and a majority of States. Thus, Alabama, Mississippi, and Tennessee must decide on whether they want to enter into a 4-year commitment on frameworks. Following their decision this year, we do not intend to annually revisit this issue. This stability is necessary to assess the appropriateness of the offset for the extended framework closing date in the southern Mississippi Flyway, and to ensure that the AHM process can continue to increase our understanding of the effects of hunting on waterfowl populations. This understanding is essential to providing maximum levels of biologically sustainable hunting opportunity. Finally, in making this offer to Alabama, Mississippi, and Tennessee, we believe that it is important to reiterate one of our guidelines from last year (63 FR 63580) that if a season closing date after the Sunday nearest January 20 is selected for any portion of the State, the season-length offset applies throughout the State.

F. Zones and Split Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service add "3 zones with 2-way splits permitted in one or more zones" as an additional option beginning in 2001. Further, because of the public input process many States undertake, the Committee recommended that States have up to one year to choose this option prior to the 2001 regular duck season regulations process. The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service consider offering all States the option of choosing 3 zones with a split season in each zone in the year 2001.

The Pacific Flyway Council recommended the Service engage the Flyway Councils in an evaluation of the guidelines for zoning and split seasons, prior to the 2001 "open season" on regulation changes.

Written Comments: The Mississippi Department of Wildlife, Fisheries and Parks, the Mississippi Fish and Wildlife Foundation and the Mississippi Outfitters Association requested that all States participating in a framework extension be allowed 1 split.

Service Response: We acknowledge the recommendations from the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council and the Pacific Flyway Council pertaining to revision of guidelines for selecting zone and split options for duck hunting. Accordingly, we will work with all the Flyway Councils in the next year to review the existing guidelines, and plan to finalize these guidelines during next year's (2000–01) late season regulations process. The final guidance will then be available for use by all States in the ensuing year as they solicit public input for zone and split configurations for use during 2001–05.

Regarding the comments from Mississippi, we will continue to utilize the existing zone/split guidelines published in the July 22, 1996, **Federal Register** (61 FR 37994) until the next open season in 2001. These guidelines apply to all States, regardless of whether a State chooses to participate in an experimental framework extension.

G. Special Seasons/Species Management

i. Scaup

In the past year, we have continued to indicate our growing concern for the status and trends of North American scaup. We have distributed a status report on scaup and provided some initial guidelines concerning a scaup harvest strategy to the Flyway Councils and others for consideration in the development of recommendations for the 1999–2000 hunting season. In response to this information, all four Flyways discussed the issue at their winter meetings.

Council Recommendations: The Atlantic Flyway Council recommended that the Service monitor and manage the harvest of greater and lesser scaup populations separately. They recommended that differences in harvest management, when required, be achieved through different daily bag limits applied on a regional basis. In the Atlantic Flyway, they recommended that in those regions harvesting primarily greater scaup, 1999–2000 scaup harvest regulations be based on the status of greater scaup, while the remaining portions of the Flyway be based on the status of lesser scaup. They further recommended that population objectives and regulatory triggering levels be finalized this summer.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the scaup daily bag limit be reduced from 6 to 3 for 1999.

The Central Flyway Council believes that the North American Waterfowl Management Plan's scaup population objective (6.3 million) is too high and that a more appropriate objective is 5.4 million (1955–1998 average). This new objective would consist of 4.9 million lesser scaup and 462,000 greater scaup. The Council recommended a prescription for scaup bag limits based on the status of lesser scaup as follows: <2 million, bag limit of 1; 2–4.2 million, bag limit of 2; and >4.2, the bag limit for scaup should equal the regular daily duck limit as determined by the AHM process.

Service Response: We remain concerned about the long-term status and trends in North American scaup populations. Further, we appreciate the efforts of all four Flyway Councils to constructively address the issue of a harvest strategy for scaup and will continue to work with the Councils to finalize a harvest strategy for scaup for the 1999–2000 season.

iv. September Teal/Wood Duck Seasons

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that the Service clarify the linkage between the Flyway-wide wood duck harvest strategy, September teal seasons, and regional (reference area) September wood duck seasons. They further recommended the continuation of the experimental September teal/wood duck seasons in Kentucky and Tennessee in 1999 with no changes from the 1998 season.

Service Response: In the July 17, 1998, **Federal Register** (63 FR 38707) we indicated that September wood duck seasons would be allowed to continue for a maximum of 3 years. Results from the Wood Duck Population Monitoring Initiative indicate that sufficient monitoring capabilities currently do not exist at the sub-Flyway level to support continuation of September wood duck seasons. Therefore, the seasons in Florida, Kentucky, and Tennessee will be discontinued after September 2000. Flyway harvest strategies that address regular-season wood duck regulations will then be implemented for the 2001–2002 season. We see no linkage between the Flyway-wide wood duck strategy, September teal seasons, and regional September wood duck seasons.

v. Youth Hunt

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council and the Central Flyway Council recommended expansion of the special youth waterfowl hunt to 2 days.

Written Comments: The Alabama Division of Game and Fish recommended expansion of the special youth hunt to 2 consecutive days.

Service Response: We appreciate the Flyway Councils' support of the youth waterfowl hunting day, but do not support the recommendation of the Mississippi Flyway Council's Lower-Region Regulations Committee and the Central Flyway Council to expand the youth hunt to two consecutive days. Our intent in establishing this special day of opportunity was to introduce youth to the concepts of ethical utilization and stewardship of waterfowl and other natural resources, encourage youngsters and adults to experience the outdoors together, and to contribute to the long-term conservation of the migratory bird resource. We view the special youth hunting day as a unique educational opportunity, above and beyond the regular season, which helps ensure high-quality learning experiences for those youth indicating interest in hunting. We believe that the youth hunting day will help develop a conservation ethic in our youth and is consistent with the Service's responsibility to foster an appreciation for our nation's valuable wildlife resources. We do not believe an extensive evaluation of the effects of youth hunting day is cost effective but believe waterfowl populations can support this limited additional opportunity. Increases in the duration of this unique opportunity would increase the pressure to conduct additional evaluations. With the above objectives and potential costs in mind, there is not a compelling reason to extend the opportunity beyond the 1-day period.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council made several recommendations concerning September goose seasons. They recommended the approval of operational status for a September 1 to 25 framework in Crawford County, Pennsylvania, and a September 1 to 30 framework in New Jersey. They further recommended the expansion of the September goose season framework closing date around Montezuma National Wildlife Refuge, New York from September 15 to 20.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that Minnesota be allowed to have an experimental extension of their September special season from September 16 to 22, except in the Northwest Goose Zone, for the 1999–2001 hunting seasons. The Lower-Region Regulations Committee of the Mississippi Flyway Council urged the Service to use caution in changing or expanding special goose seasons.

The Pacific Flyway Council recommended the addition of the Bridger Valley hunt unit to the existing September RMP Canada goose seasons in western Wyoming, with frameworks of September 1 to 7.

Written Comments: The Alabama Division expressed appreciation for the caution demonstrated by the Service in changing or expanding special Canada goose seasons.

The Pennsylvania Farm Bureau recommended lengthening hunting seasons for resident geese to provide relief from excessive crop damage. An individual in Pennsylvania also supported increasing hunting seasons to help farmers control excessive goose damage.

Service Response: We concur with the recommendations regarding the change in status for the New Jersey and Pennsylvania special seasons. Additionally, we concur with the recommendations for experimental extensions of the special September Canada goose seasons in New York and Minnesota, with the provisions and evaluation outlined in their proposals. We also concur with the proposal to add the Bridger Valley Hunt Unit in Wyoming.

B. Regular Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the 1999 regular goose season opening date be as early as September 18 in Michigan and Wisconsin.

Service Response: We concur with the recommendations for a September 18 opening date in Wisconsin and the North Zone (Upper Peninsula) of Michigan. For the Lower Peninsula (Middle and South Zones) of Michigan, we concur with the recommendation for a September 18 opening under the conditions for Canada geese identified in the following frameworks. Continuation of an opening date earlier than the Saturday nearest October 1 in the Lower Peninsula beyond the 1999–2000 hunting season will be contingent upon the State's developing a proposal for evaluating the population composition of the Canada goose harvest during the earlier regular seasons in comparison to seasons with a traditional opening date. In addition to identifying the kinds of data to be collected and analyzed during the next few years, the proposal should include a summary of data collected during the earlier regular seasons in 1998–99 and 1999–2000. Michigan should submit the proposal to us and the Mississippi Flyway Council prior to the Council's March 2000 meeting.

Regarding the Lower-Region Regulation Committee's concern for cumulative impacts of special-season harvests on migrant Canada goose populations of concern, we are aware of the Committee's concern and are monitoring the harvests occurring during these seasons.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommended removal of the "float" portion (10% of the total allowable harvest) of the Rocky Mountain Population (RMP) greater sandhill crane annual harvest allocation for the 1999–2000 and 2000–2001 seasons. The Council recommended removal of this harvest portion to allow a research study.

The Pacific Flyway Council recommended several changes in sandhill crane seasons. For greater sandhill cranes, the Council recommended the establishment of a new experimental crane hunt in Box Elder County, Utah, between September 1 and September 30. For RMP cranes, the Council recommended that the frameworks be modified to include Bear Lake and Fremont Counties in Idaho, and that the current requirement for hunter check stations in these counties be waived. The Council further recommended that the annual check station requirement for the Arizona

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RMP Greater Sandhill Crane hunt be modified to a required check station every 3 years.

Service Response: We concur with the various proposals from the Central and Pacific Flyway Councils regrading RMP Cranes. We note that several of the proposals received from the Pacific Flyway Council were requests for exemptions from specific provisions of the management plan for this population. We believe the biological information was clearly in support of the recommended exemptions, however, it would also note that it is our strong preference to see the Councils address these types of issues through management plan revisions rather than through exemptions to procedures placed in Federal regulations. Therefore, we have approved these recommendations but require that the management plan for this population be revised to reflect these changes in procedures by July, 2001. Further, we request that the Pacific Flyway Council give consideration to changing management plans rather than requesting federal regulatory changes if similar situations should develop with this or other populations of migratory game birds in the future.

18. Alaska

Council Recommendations: The Pacific Flyway Council made several recommendations concerning Alaska. For sea ducks, the Council recommended reducing the separate sea duck bag and possession limits from 15/30 to 10/20 king and common eiders, scoters, and mergansers in the aggregate. Long-tailed ducks (oldsquaws) and harlequins would be included in general duck limits and seasons would remain closed for spectacled and Steller's eiders. For Canada geese, the Council recommended removal of Canada goose bag limit restrictions within dark goose bag limits (4/8) in Alaska Game Management Subunit 9E (Alaska Peninsula) and Unit 18 (Y–K Delta). Further, for tundra swans, the Council recommended that tundra swan permits issued for swan hunts in Alaska allow the take of up to 3 swans per permit, with no change in reporting requirements or other framework conditions.

Written comments: A constituent from Alaska wrote regarding the need for greater reductions in sea duck harvest regulations than had been proposed by the Pacific Flyway Council.

Service Response: We concur with the recommendations of the Pacific Flyway Council regarding Alaska's migratory game birds regulations for the 1999–2000 hunting season. We have carefully reviewed the recommendation regarding changes in sea duck regulations for Alaska from both the Council and from a concerned constituent from Alaska. The population status of sea ducks remains a concern to us. We believe that the changes proposed by the Council constitute a good first step in developing a more comprehensive strategy for the long-term harvest management of sea ducks in Alaska. We are convinced that the long-term solution will involve both sport and subsistence harvest as well as meeting many of the pressing information needs for this important group of waterfowl. We look forward to working with our partners in the newly formed Sea Duck Joint Venture to meet these challenges.

Additionally, we note that the tundra swan permit request for Alaska is another instance where the Council is requesting an exemption from procedures outlined in approved management plans. While we recognize the special circumstances that have lead to this recommendation and have approved the change in procedures as recommended by the Council, we strongly prefer that future deviations from procedures in the management plan be addressed through management plan revisions rather than Federal regulation. Further, it is our belief that changes in total harvest allocation were not intended to result from the proposed changes in the permit procedure. Therefore, we have not changed the total swan harvest allocated to Alaska. We strongly recommend that the western tundra swan management and hunt plans be revised in a timely fashion and prior to any further requests for exceptions to the procedures outlined in the management and hunt plans. We suggest that July of 2001 would seem a reasonable target date for completion of such a revision and will work with the Council to achieve this goal.

Public Comment Invited

We intend that adopted final rules be as responsive as possible to all concerned interests, and therefore desire to obtain the comments and suggestions of the public, other governmental agencies, non-governmental organizations, and other private interests on these proposals. However, special circumstances are involved in the establishment of these regulations which limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified is contrary to the public interest.

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES.** You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

Prior to issuance of the 1999–2000 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemakings.

Executive Order (E.O.) 12866

While this individual supplemental rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866. E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 9/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 9/30/2000). The information from this survey is used to estimate the magnitude, the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform-Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards found in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1999–2000 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742a–j.

Dated: July 13, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 1999–2000 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposed frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates

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within which States may select for certain migratory game birds between September 1, 1999, and March 10, 2000.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, and West Virginia. All seasons are experimental.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, New Mexico (part), Oklahoma, and Texas.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days in the Atlantic Flyway and 16 consecutive days in the Mississippi and Central Flyways. The daily bag limit is 4 teal.

Shooting Hours

Atlantic Flyway—One-half hour before sunrise to sunset, if evaluated; otherwise sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida: A 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate.

Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks which are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 18). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Day

Outside Dates: States may select 1 day per duck-hunting zone, designated as "Youth Waterfowl Hunting Day," in addition to their regular duck seasons. The day must be held outside any regular duck season on a weekend, holiday, or other non-school day when youth hunters would have the maximum opportunity to participate. The day may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limit may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as that allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult could not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 20.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Montezuma Region of New York, the Lake Champlain Region of New York and Vermont, the Eastern Unit of Maryland, and Delaware. Seasons not to exceed 20 days during September 1–20 may be selected for the Northeast Hunt Unit of North Carolina. Seasons not to exceed 30 days during September 1–30 may be selected by New Jersey. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway, except Georgia and Florida, where the season is closed. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Experimental Seasons

Experimental Canada goose seasons of up to 20 days during September 1–20 may be selected by New York (Montezuma Region). Experimental seasons of up to 30 days during September 1–30 may be selected by New York (Long Island Zone), North Carolina (except in the Northeast Hunt Unit), and South Carolina. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in the Michigan Counties of Huron, Saginaw and Tuscola, where no special season may be held. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Experimental Seasons

An experimental Canada goose season of up to 7 consecutive days during September 16–22 may be selected by Minnesota, except in the Northwest Goose Zone. The daily bag limit may not exceed 5 Canada geese.

Central Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Pacific Flyway

General Seasons

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.
2. All participants must have a valid State permit for the special season.
3. A daily bag limit of 2, with season and possession limits of 4 will apply to the special season.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW goose management zone, a 15-day season may be selected during the period September 1–20. Any portion of the season selected between September 16 and 20 will be considered experimental. Daily bag limits may not exceed 5 Canada geese. In the NW goose zone, at a minimum, Oregon must provide an annual evaluation of the number of dusky Canada geese present in the hunt zone during the period September 16–20 and agree to adjust seasons as necessary to avoid any potential harvest of dusky Canada geese.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 3 Canada geese.

Idaho may select a 15-day season in the special East Canada Goose Zone, as described in State regulations, during the period September 1–15. All participants must have a valid State permit and the total number of permits issued is not to exceed 110 for this zone. The daily bag limit is 2.

Idaho may select a 7-day Canada Goose Season during the period September 1–15 in Nez Perce County, with a bag limit of 4.

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 18 in Wisconsin and Michigan. In Wisconsin, and in Michigan for all geese except Canada geese, season lengths and bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. In the Middle and South Zones of Michigan, for Canada goose seasons opening September 18, the season may not exceed 23 days. The daily bag limit will be 2 Canada geese, except that in the South Zone, during that portion of the season that overlaps the duck season, the daily bag limit will be one Canada goose. Provision for seasons opening October 2 or later will be contained in the late-season frameworks.

Sandhill Cranes

Regular Seasons in the Central Flyway

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes.

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting, in their possession while hunting.

Special Seasons in the Central and Pacific Flyways

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may

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select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils with the following exceptions:

(1) In Utah, the requirement for monitoring the racial composition of the harvest in the experimental season is waived and 100% of the harvest will be assigned to the RMP quota;

(2) In Arizona, the annual requirement for monitoring the racial composition of the harvest is changed to once every 3 years; and

(3) In Idaho, seasons are experimental and the requirement for monitoring the racial composition of the harvest is waived, 100% of the harvest will be assigned to the RMP quota.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic Flyway, and between September 1 and the Sunday nearest January 20 (January 23) in the Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 6 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 25) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Atlantic Flyway and 45 days in the Central and Mississippi Flyways. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with bag and possession limits of 2 and 2 band-tailed pigeons, respectively.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 4.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, Louisiana, and Mississippi may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15..

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 2 of which may be white-tipped doves, except that during the special white-winged dove season, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

Hunting Seasons and Daily Bag Limits: Idaho, Nevada, Oregon, Utah, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves (in Nevada, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate).

Arizona and California—Not more than 60 days which may be split between two periods, September 1–15 and November 1-January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is restricted to 10 mourning doves. In California, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-Winged and White-Tipped Doves

Hunting Seasons and Daily Bag Limits

Except as shown below, seasons in Arizona, California, Florida, Nevada, New Mexico, and Texas must be concurrent with mourning dove seasons.

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In New Mexico, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate.

In Texas, the daily bag limit may not exceed 12 doves (15 under the alternative) in the aggregate, of which not more than 2 may be white-tipped doves.

In addition, Texas may also select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. The basic limits may include no more than 1 canvasback daily and 3 in possession.

In addition to the basic duck limits, there is a sea duck daily bag limit of 10, with a possession limit of 20, scoter, common and king eiders, and common and red-breasted mergansers, singly or in the aggregate. Alaska may choose to allow these sea duck limits in addition to regular duck bag limits. However, the total daily bag limit for any duck species may not exceed 10.

Light Geese—A basic daily bag limit of 3 and a possession limit of 6.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16. A special, permit only Canada goose season may be offered on Middleton Island. No more than 10 permits can be issued. A mandatory goose identification class is required . Hunters must check-in and check-out. Bag limit of 1 daily and 1 in possession. Season to close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

2. In Unit 10 (except Unimak Island), the taking of Canada geese is prohibited.

3. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—A daily bag limit of 3.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1–October 31.

3. In GMU 18, no more than 500 swans may be harvested during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

4. In GMU 22, no more than 300 swans may be harvested during the operational season. Each permittee may be authorized to take up to 3 tundra swan per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 23, no more than 300 swans may be harvested during the experimental season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season. The experimental season evaluation must adhere to the guidelines for experimental seasons as described in the Pacific Flyway Management Plan for the Western Population of (Tundra) Swans.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida, mourning, and white-winged doves in the aggregate. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde

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Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits

Ducks—Not to exceed 6.
Common moorhens—Not to exceed 6.
Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Mourning and White-Winged Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Conecuh, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Georgia

Northern Zone—That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County; thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of the Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County, to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence west along the southern border of Candler County to the Ohoopee River; thence north along the western border of Candler County to Bulloch County; thence north along the western border of Bulloch County to U.S. Highway 301; thence northeast along U.S. Highway 301 to the South Carolina line.

South Zone—Remainder of the State.

Louisiana

North Zone—That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone—The remainder of the State.

Mississippi

South Zone—The Counties of Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, Perry, Pike, Stone, and Walthall.

North Zone—The remainder of the State.

Nevada

White-winged Dove Open Areas—Clark and Nye Counties.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-Tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

Maryland

Eastern Unit—Anne Arundel, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Queen Annes, St. Marys, Somerset, Talbot, Wicomico, and Worcester Counties, and those portions of Baltimore, Howard, and Prince George's Counties east of I–95.

Western Unit—Allegany, Carroll, Frederick, Garrett, Montgomery, and Washington Counties, and those portions of Baltimore, Howard, and Prince George's Counties east of I–95.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone—Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Counties of Bertie, Camden, Chovan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

South Carolina

Early-season Hunt Unit—Clarendon County and those portions of Orangeburg County north of SC Highway 6 and Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S–8–31 and west of the Santee Dam.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

Mississippi Flyway

Illinois

Northeast Canada Goose Zone—Cook, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

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Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Minnesota

Twin Cities Metropolitan Canada Goose Zone.

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities or Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the State.

Northwest Goose Zone (included for reference only, not a special September Goose Season Zone)—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Two Goose Zone—That portion of the state lying east of Interstate Highway 35 and south of the Twin Cities Metropolitan Canada Goose Zone.

Five Goose Zone—That portion of the state not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Two Goose Zone.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, Dekalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the Lake Michigan shore in Sheboygan, then west along State Highway 23 to State 67, southerly along State 67 to County Highway E in Sheboygan County, southerly along County E to State 28, south and west along State 28 to U.S. Highway 41, southerly along U.S. 41 to State 33, westerly along State 33 to County Highway U in Washington County, southerly along County U to County N, southeasterly along County N to State 60, westerly along State 60 to County Highway P in Dodge County, southerly along County P to County O, westerly along County O to State 109, south and west along State 109 to State 26, southerly along State 26 to U.S. 12, southerly along U.S. 12 to State 89, southerly along State 89 to U.S. 14, southerly along U.S. 14 to the Illinois border, east along the Illinois border to the Michigan border in Lake Michigan, north along the Michigan border in Lake Michigan to a point directly east of State 23 in Sheboygan, then west along that line to the point of beginning on the Lake Michigan shore in Sheboygan.

Early-Season Subzone B—That portion of the State between Early-Season Subzone A and a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Central Flyway

Kansas

September Canada Goose Unit—That part of Kansas bounded by a line from the Kansas-Missouri state line west on KS–68 to its junction with KS–33, then north on KS–33 to its junction with US–56, then west on US–56 to its junction with KS–31, then west-northwest on KS–31 to its junction with KS-99, then north on KS–99 to its junction with US–24, then east on US–24 to its junction with KS–63, then north on KS–63 to its junction with KS–16, then east on KS–16 to its junction with KS–116, then east on KS–116 to its junction with US–59, then northeast on US–59 to its junction with the Kansas-Missouri line, then south on the Kansas-Missouri line to its junction with KS–68.

South Dakota

September Canada Goose Unit—Brookings, Clark, Codington, Day, Deuel, Grant, Hamlin, Kingsbury, Lake, McCook, Moody Counties, and Miner County east of SD 25, and that portion of Minnehaha County north and west of a line beginning at the junction of County 130 (Renner Road) and the Minnesota border, then west on County 130 to I–29 and along I–29 to the Lincoln County line.

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union and Wasco Counties.

Washington

Southwest Zone—Clark, Cowlitz, Pacific, and Wahkiakum Counties.

East Zone—Asotin, Benton, Columbia, Garfield, Klickitat, and Whitman Counties.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Edon Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Teton Area—Those portions of Teton County described in State regulations.

Bridger Valley Area—The area described as the Bridger Valley Hunt Unit in State regulations.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Mississippi Flyway

Indiana

North Zone: That portion of the State north of a line exiending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Central Flyway

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S. 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S. 183, south along U.S. 183 to KS 4, east along KS 4 to I–135, south along I–135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I–5 at the town of Weed; south along I–5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line

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extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Sandhill Cranes

Central Flyway

Colorado

Regular-Season Open Area—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

Regular Season Open Area—That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Southwest Zone—Sierra, Luna, and Dona Ana Counties.

Oklahoma

Regular-Season Open Area—That portion of the State west of I–35.

Texas

Regular-Season Open Area—That portion of the State west of a line from the International Toll Bridge at Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Austin; I–35 to the Texas-Oklahoma border.

North Dakota

Regular-Season Open Area—That portion of the State west of U.S. 281.

South Dakota

Regular-Season Open Area—That portion of the State west of U.S. 281.

Montana

Regular-Season Open Area—The Central Flyway portion of the State except that area south of I–90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Bighorn County Unit—Portions of Park and Bighorn Counties.

Pacific Flyway

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area—See State regulations.

Utah

Special-Season Area—Rich, Cache, and Box Elder Counties.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Eden-Farson Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10—Unimak Island only.

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10—except Unimak Island.

Kodiak Zone—State Game Management Unit 8.

All Migratory Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to

Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas, Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of beginning.

BILLING CODE 4310–55–P

FINAL REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 1999-2000 SEASON

	ATLANTIC FLYWAY				CENTRAL FLYWAY (b)				MISSISSIPPI FLYWAY (a)				PACIFIC FLYWAY (c)(d)			
	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Oct. 1
Closing Date	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20	Sun. nearest Jan. 20
Season Length	20	30	45	60	25	39	60	74	20	30	45	60	38	60	86	107
Daily Bag/ Possession	3/ 6	3/ 6	6/ 12	6/ 12	3/ 6	3/ 6	6/ 12	6/ 12	3/ 6	3/ 6	6/ 12	6/ 12	4/ 8	4/ 8	7/ 14	7/ 14
Species/Sex Limits within the Overall Daily Bag Limit																
Mallard (Total/Female)	3/1	3/1	4/2	4/2	3/1	3/1	5/1	5/2	2/1	2/1	4/1	4/2	3/1	3/1	5/2	7/2
Pintail	<-----ACCORDING TO THE PINTAIL INTERIM HARVEST STRATEGY----->															
Black Duck	1	1	1	1	1	-	-	-	0 or 1	1	1	1	-	-	-	-
Scaup	<-----ACCORDING TO THE SCAUP HARVEST STRATEGY----->															
Canvasback	<-----0 OR 1, ACCORDING TO THE CANVASBACK HARVEST STRATEGY----->															
Redhead	2	2	2	2	2	1	2	2	1	1	2	2	2	2	2	2
Wood Duck	2	2	2	2	2	2	2	2	2	2	2	2	-	-	-	-
Whistling Ducks	1	1	1	1	-	-	-	-	-	-	-	-	-	-	-	-
Harlequin	Closed	Closed	Closed	Closed	-	-	-	-	-	-	-	-	-	-	-	-
Mottled Duck	1	1	1	1	1	1	1	1	3	3	3	3	-	-	-	-

(a) In the States of Alabama, Mississippi, and Tennessee, the season length may be 51 days in the liberal alternative and 36 days in the moderate alternative with a framework closing date in both alternatives of January 31.
(b) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway with the exception of season length. Additional days would be allowed under the various alternatives as follows: very restrictive - 8, restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.
(c) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.
(d) In Alaska, framework dates, bag limits, and season length would be different than the remainder of the Pacific Flyway. The bag limit would be 5-7 under the very restrictive and restrictive alternatives, and 8-10 under the moderate and liberal alternatives. There would be no restrictions on pintails, and canvasback limits would follow those for the remainder of the Pacific Flyway. Under all alternatives, season length would be 107 days and framework dates would be Sep 1 - Jan 26.

[FR Doc. 99–18672 Filed 7–21–99; 8:45 am]
BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 071299A]

Environmental Impact Statement (EIS) for the Proposed Coral Reef Ecosystem Fishery Management Plan (Coral Reef Ecosystem FMP) of the Western Pacific Region; for the Fishery Management Plan for the Bottomfish and Seamount Groundfish of the Western Pacific Region; (Bottomfish and Seamount Groundfish FMP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare EISs; request for comments.

SUMMARY: NOAA announces its intention to prepare an EIS in accordance with the National Environmental Policy Act of 1969 for the proposed Coral Reef Ecosystem FMP, and an EIS for the Bottomfish and Seamount Groundfish Fisheries FMP. The Western Pacific Fishery Management Council (Council) will hold public scoping hearings in Guam and the Northern Mariana Islands (Saipan) on management alternatives to be analyzed under both EISs.

DATES: Written comments on the intent to prepare the two EISs will be accepted on or before July 29, 1999. Public scoping meetings are scheduled for July 28 and 29, 1999.

ADDRESSES: Written comments on suggested alternatives and potential impacts should be sent to Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, and to Charles Karnella, Administrator, NMFS, Pacific Islands Area Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu HI 96814.

The following locations and times have been set for scoping meetings:

1. Guam, scoping meeting/public hearing, July 28, 1999, 6 - 8 p.m., Asan Community Center, Asan Village, GU. Phone contact c/o Guam Dept. of Commerce, 671–475–0321.

2. Saipan, scoping meeting/public hearing, July 29, 1999, 6 - 9 p.m., Carolinian Utt Pavilion (across from Bank of Guam and Ocean View Hotel), Garapan, Saipan CNMI, Phone Division of Fish and Wildlife Resources, 670–322–9627 for information.

3. Additional field hearings for public scoping are tentatively planned for August in American Samoa and Hawaii (details regarding times and locations will follow in a separate **Federal Register** announcement).

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, at 808–522–8220.

SUPPLEMENTARY INFORMATION: A summary of the Coral Reef Ecosystem FMP will be presented, including initial recommendations for management action, as described here. Comments will be solicited from the public on these and any other management alternatives the public cares to offer.

Management measures that might be adopted in the Coral Reef Ecosystem FMP include permit and reporting requirements for non-subsistence harvest of coral reef resources, marine protected areas to ensure greater conservation and management to special locations, allowable gear types to harvest coral reef resources in the U.S. exclusive economic zone (EEZ), prohibition on use of gear in ways destructive to habitat and a framework management process to add future new measures. It would also include essential fish habitat and habitat areas of particular concern, including fishing and non-fishing threats, as well as other components of FMPs required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). An additional measure, still under consideration for possible inclusion, is a ban on the possession or collection for commercial purposes of wild "live rock" and coral (other than coral covered by the Fishery Management Plan for the Precious Corals Fisheries of the Western Pacific Region). The collection of live rock or coral for scientific and research purposes and the collection of small amounts of live coral as brood-stock for captive breeding/aquaculture would be allowed by permit.

The Coral Reef Ecosystem FMP, and its associated EIS, would be the Council's fifth FMP for the EEZ for all U.S. Pacific Islands. This area includes nearly 11,000 km² (4,000 square miles) of coral reefs. Development of the FMP is timely, considering such new mandates and initiatives as the April 1999 report to Congress by the Ecosystem Principles Advisory Panel on Ecosystem-Based Fishery Management, the President's 1998 Executive Order on Coral Reefs (E.O. 13089), and priorities of the U.S. Coral Reef Task Force and the U.S. Coral Reef Initiative, as well as the provisions of the Magnuson-Stevens Act, including provisions of the Sustainable Fisheries Act. The draft Coral Reef Ecosystem FMP describes the importance of coral reef resources to the region and current and potential threats that warrant a management plan at this time. Information regarding the harvest of these resources in the EEZ is largely unknown. Potential for unregulated harvest and bio-prospecting for reef fish, live grouper, live rock and coral exists throughout the region. Marine debris, largely from fishing gear, is impacting reefs in the Northwestern Hawaiian Islands.

The public is also invited to assist the Council to develop the scope of alternatives and impacts that should be analyzed in an EIS for the Bottomfish and Seamount Groundfish FMP. An EIS has not been prepared for the FMP. Since the FMP was implemented in 1986, many changes have occurred in the fishery, stocks and management regimes. As part of the scoping process for the EIS on the bottomfish fisheries, the public is also invited to comment on an alternative being considered for the addition of bottomfish species in the EEZ around CNMI and the U.S. Pacific Island possessions to the management unit of the Bottomfish and Seamount Groundfish FMP. Federal regulations for the EEZ off the CNMI and U.S. Island possessions that would provide basic protection and conservation measures are already established in the EEZ for other parts of the Western Pacific Region, and include no taking with explosives, poisons, trawl nets or bottom-set gillnets. A framework would also be included to implement future management measures in the bottomfish fishery. A definition of overfishing for a list of identified management unit species would be established and evaluated annually, with required action if violated.

Public Information Meetings

Additional public information meetings and public hearings on the proposed EISs will be held in various locations around the region later in the year. These meetings will be advertised in the **Federal Register** and the local newspapers.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (see **ADDRESSES**), 808–522–8220 (voice) or 808–522–8226 (fax), at least five days prior to the meeting date.

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Dated: July 16, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–18737 Filed 7–19–99; 4:06 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 140

Thursday, July 22, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99–037N]

Technical Conference on HACCP Implementation

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comment.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a public meeting on August 17–18, 1999, to discuss technical issues related to the implementation of the Pathogen Reduction/Hazard Analysis and Critical Control Point Systems, Final Rule. The focus of the meeting will be to address how a hazard analysis is to be conducted and documented, and what constitutes validation of HACCP plans. In conjunction with addressing what constitutes the validation of HACCP plans, the topics of Listeria and performance standards related to lethality and stabilization will be addressed. A steering committee made up of people from industry, trade associations, consumer groups, and academia assisted in identifying sub-topics to be addressed at the conference. The FSIS Technical Service Center staff, which is the Agency's primary resource for addressing technical questions, will host the meeting.

DATES: The public meeting will be held August 17–18, 1999, from 8 a.m. until 4:30 p.m. each day.

ADDRESSES: The public meeting will be held at the Embassy Suites Omaha Downtown/Old Market, 555 South 10th Street, Omaha, Nebraska 68102, Telephone (402) 346–9000, FAX (402) 345–6156. The meeting is open to the public on a space-available basis. To register for the meeting, contact Ms. Deborah Arthur of the Food Safety and Inspection Service's Technical Service Center on or before August 10, 1999, by TELEPHONE (402) 221–7400, FAX (402) 221–7438, or e-mail deborah.arthur@usda.gov Attendees who require a sign language interpreter or other special accommodation should contact Ms. Arthur at the above numbers. Send an original and two copies of comments to: FSIS Docket Clerk, Docket #99–037N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW. Washington, DC 20250–3700. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday. Transcripts from the meeting will be on file for viewing in the FSIS Docket Clerk's Office.

FOR FURTHER INFORMATION CONTACT: Ms. Karlease Kelly, Technical Service Center, Office of Field Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Suite 300 Landmark Center, 1299 Farnam Street, Omaha, Nebraska 68102, TELEPHONE 402–221–7400, FAX 402–221–7421 or e-mail karlease.kelly@usda.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to address technical issues that have emerged during the implementation of the Agency's Pathogen Reduction/Hazard Analysis and Critical Control Point (PR/HACCP) Systems Final Rule, which published on July 25, 1996. The PR/HACCP rule calls for federally inspected establishments to develop a HACCP-based food safety system to reduce the risk of foodborne illnesses from livestock and poultry products. The PR/HACCP Systems Final Rule has been implemented in large and small establishments with a high degree of success. The final phase of implementation will take place in January 2000, with the implementation by very small establishments.

It is envisioned that the meeting will be useful for the establishments that have already implemented HACCP as well as for those establishments that will be implementing HACCP.

Done at Washington, DC on: July 13, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–18661 Filed 7–21–99; 8:45 am]

BILLING CODE 3410–DM–U

DEPARTMENT OF AGRICULTURE

Forest Service

Mill-Key-Wey Timber Sales; Superior Ranger District, Lolo National Forest; Mineral County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for timber harvesting, prescribed burning, road access changes, and watershed rehabilitation in a 25,000-acre area near Superior, Montana. Lands affected are within the Mill, Fourmile, Slowey Gulch, Keystone and Pardee Creek drainages, tributary to the Clark Fork River, between Superior and St. Regis, Montana. The project area is bounded by Interstate 90 to the south and west and the Ninemile divide between Plains/Thompson Falls and Superior Ranger Districts to the north.

DATES: Initial comments concerning the scope of the analysis should be received in writing no later than August 23, 1999. Comments received during the previous scoping will be considered in the analysis and do not need to be resubmitted during this comment time period.

ADDRESSES: Send written comments to Cindy Champman Enstrom, District Ranger, Superior Ranger District, Box 460, Superior, MT 59872.

FOR FURTHER INFORMATION CONTACT: Tom Martin, Mill-Key-Wey Interdisciplinary Team Leader, Superior Ranger District, as above, or phone: (406) 822–4233.

SUPPLEMENTARY INFORMATION: Public involvement was initiated in September 1996 on the Mill-Key-Wey proposal. Additional public involvement was conducted in November of that year during alternative development. An open house hosted by the Superior Ranger District was held on January 1997, where additional comments were solicited. A follow-up letter was sent in April 1997 to the open house attendees notifying them of the project status and projected timelines.

The environmental analysis has indicated that significant effects may occur. Accordingly, we are now in the process of developing a draft Environmental Impact Statement (DEIS). The DEIS proposes the following:

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The Proposed Action would harvest about 25.2 million board feet of timber from about 5812 acres (about 5180 of those acres to be burned after harvest), to underburn an additional 1348 acres, to construct 10.6 miles of new road (5.1 miles of this total will be temporary or short term access roads, reclaimed after use), to reconstruct or recondition about 13.1 miles of road and rehabilitate about 7.7 miles of existing road (primarily to mitigate existing water quality and fish habitat impacts), and to change travel management on 10.5 miles of existing roads, including 2.7 miles from open yearlong to closed yearlong, 3.6 miles from seasonal to year long closure and 4.2 miles open yearlong to a seasonal closure.

The purpose of this proposal is to carry out the goals and direction given in the Lolo National Forest Land and Resource Management Plan with ecosystem management principles. Key elements of the purpose and need are:

(1) Maintain and restore ecosystem health through timber harvesting and prescribe burning that would develop sustainable plant communities;

(2) Improve and maintain big game winter range and elk security conditions which are declining due to current plant successional trends and existing open road access;

(3) Reduce existing sediment impacts to water and fish resources caused by existing roads;

(4) Provide a more favorable and safe access to an existing electronic site;

(5) Improve the visual quality of several old harvest units and create scenic vistas to improve viewing opportunities, and

(6) Provide a sustained yield of timber to help support the economic structure of the local communities.

The decision to be made is to what extent, if at all, the Forest Service should conduct timber harvest, prescribed burning, road construction or reconstruction, road reclamation, and road closures in the Mill, Fourmile, Slowey Gulch, Keystone and Pardee Creek drainages, given the above purpose and need. This is a site-specific project decision, not a general management plan nor a programmatic analysis.

While quite a number of issues have been identified for environmental effects analysis during scoping, the following issues have been found significant enough to guide alternative development and provide focus for the EIS:

(1) Wildlife habitat effects (including hunting season bull elk security) resulting from timber harvest and road construction and rehabilitation activities; and

(2) Visual quality effects due to proposed harvesting and road building;

(3) Road management changes that affect accessibility to national forest lands;

(4) Water quality and fish habitat which are affected by existing roads;

(5) Forest Health effects in fire dependent ecosystems.

The proposed action could have both beneficial and adverse effects on these resources. In addition to the proposed action, a range of alternatives has been developed in response to issues identified during scoping that meet or partially fulfill the purpose and need. Other alternatives that have been given detailed study are:

(1) No action;

(2) Harvest only from existing roads (no new roads or temporary roads), reconstruct 13.1 miles of existing road, rehabilitate 5.9 miles of road, add year-round road closures to one mile of existing road and change access from seasonal restrictions to open yearlong on 3.6 miles; and

(3) Use prescribed burning only (no timber harvest), rehabilitate 5.9 miles of existing road and change access on 2.7 miles of road from open yearlong to closed yearlong and 3.6 miles from seasonal closure to open yearlong; and,

(4) Harvest timber similar to the proposed action, construct 10 miles of new road (6.1 miles of this total would be temporary or short term roads, reclaimed after use), reconstruct 13.1 miles of existing road with no new road restrictions.

Public participation is important to the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision. No additional formal scoping meetings are planned. Another formal opportunity for response will be provided following completion of a draft EIS.

The draft EIS should be available for review in August, 1999. The final EIS is scheduled for completion in December, 1999.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The responsible official who will make decisions based on this EIS is, Forest Supervisor, Lolo National Forest, Building 24, Fort Missoula, Missoula, MT 59804. She will decide on this proposal after considering comments and responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

The Forest Service believes it is important, at this early stage, to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Lolo National Forest, Building 24, Fort Missoula, Missoula MT 59804.

Authority: 40 CFR 1508.22.

Dated: July 12, 1999.

Deborah L.R. Austin,

Forest Supervisor.

[FR Doc. 99–18759 Filed 7–21–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on August 5, 1999, at the LaSells Stewart Center (Agriculture Production Room), 875 SW 26th St., Corvallis, OR. The meeting will begin at 9:00 a.m. and continue until 3:30 p.m. Agenda items to be covered include: (1) Information sharing among PAC Members, and (2) Strategic Thinking Workshop for PAC Members. Committee meetings are open to the public. One 30-minute open public forum in scheduled for 3 p.m. Interested citizens are encouraged to attend. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regrading this meeting to Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest (541–750–7075), or write to the Acting Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: July 15, 1999.

Jose L. Linares,

Acting Forest Supervisor.

[FR Doc. 99–18761 Filed 7–21–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 36–99]

Proposed Foreign-Trade Zone—Decatur, IL, Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Board of Park Commissioners, Decatur Park District, to establish a general-purpose foreign-trade zone in Decatur, Illinois, adjacent to the Peoria Customs port of entry. In addition, the Decatur Airport is a U.S. Customs Service user fee airport facility. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 14, 1999. The applicant is authorized to make the proposal under Illinois Public Act 85–471.

The proposed zone would be the second general-purpose zone in the Peoria Customs port of entry area. The existing zone is FTZ 114 at sites in the Peoria, Illinois, area (Grantee: Economic Development Council, Inc., Board Order 288, 50 FR 1606, January 11, 1985).

The proposed new zone would be located at the Decatur Airport complex, including the airport terminal facility and adjacent airport property (1,822 acres) located at 910 Airport Road, 4 miles east of downtown Decatur. The airport is owned and operated by the applicant. The site consists of a passenger terminal, a private aircraft storage facility and an airfreight facility being utilized by UPS. The site also has 6,000 square feet of space which is to be utilized by the U.S. Customs Service for passenger processing of international passenger arrivals of corporate aircraft under the auspices of a Customs user fee airport.

The application indicates a need for zone services in the Decatur, Illinois, area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activity. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on August 25, 1999, 2 p.m., at the Decatur Airport, 910 Airport Road, Decatur, Illinois 62521.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 20, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 5, 1999).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Decatur Airport, 910 Airport Road, Decatur, IL 62521

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW, Washington, DC 20230

Dated: July 15, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–18751 Filed 7–21–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Chevron U.S.A. From an Objection by the State of Florida

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of Appeal and Public Hearing and Request for Comments.

Chevron U.S.A. Production Company (Appellant), filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307(c)(3)(B) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations, 15 CFR. Part 930, Subpart H. The appeal is taken from an objection by the State of Florida (State) to the Appellant's consistency certification for a Development and Production Plan to produce up to 21 natural gas wells in the Destin Dome 56 Unit, some 15 miles from Florida waters and approximately 25 miles from Pensacola. The Appellant has certified that the project is consistent with the State's coastal management program.

The CZMA provides that a timely objection by a state precludes any federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on Ground I and Ground II. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) the proposed activity furthers one or more of the national objectives or purposes contained in §§ 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water

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Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is "necessary in the interest of national security," the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122.

A public hearing has been scheduled to address the findings the Secretary must make for each appeal as set forth in the regulations at 15 CFR 930.121 and 930.122. The public hearing will be held on September 27, 1999, from 6:00 p.m. until 10:00 p.m. at the New World Landing, 600 South Palafox Street, Pensacola, FL. Persons interested in speaking at the hearing regarding any of the above criteria are required to register on the day of the hearing at New World Landing. Registration of speakers will begin at 5:00 p.m. Oral comments from public interest/lobbyist groups will be recognized on a first-come-first serve basis and will be limited to five minutes. Oral comments from the general public will be recognized on a first-come-first-serve basis and will be limited to three minutes. Written comments will be accepted at the public hearing.

In addition, written comments on the findings the Secretary must make for each appeal may be sent to Karl Gleaves, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Copies comments will also be forewarded to the Appellant and the State. Comments are due by October 27, 1999.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the State and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Karl Gleaves, Assistant Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, (301) 713–2967.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: July 8, 1999.

Monica Medina,

General Counsel.

[FR Doc. 99–18758 Filed 7–21–99; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071699D]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting and public scoping hearing.

SUMMARY: The Western Pacific Fishery Council (Council) will hold a public meeting of its Ecosystem and Habitat Panel (EHAP). The Council also will hold a public scoping hearing.

DATES: The meeting and hearing will be held on August 4–5, 1999, from 8:30 a.m. to 5:00 p.m. each day. See **SUPPLEMENTARY INFORMATION** for the meeting and hearing agenda.

ADDRESSES: The meeting and hearing will be held at the Council office's conference room, 1164 Bishop Street, Suite 1400, Honolulu, Hawaii; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; Western Pacific Fishery Management Council; telephone (808) 522–8220.

SUPPLEMENTARY INFORMATION: The EHAP will discuss and may make recommendations to the Council on the agenda items below. The order in which agenda items will be addressed may change. The meeting also will serve as a public scoping hearing on management alternatives to be analyzed in a Draft Environmental Impact Statement (DEIS) for the Coral Reef Ecosystem Fishery Management Plan (CRE-FMP).

Agenda

Wednesday, August 4, 8:30 a.m.

I. Summary of progress to date on the CRE-FMP.

II. Implementation of plan/timetable for completion of the CRE-FMP.

III. Review of a draft CRE-FMP:

(A) Review of fishery management units (fish, invertebrates, other); (B) Review of initial proposed measures/alternatives/ impacts: (1) permit and reporting requirements: (2) designation of marine protected areas (criteria, specific candidate sites); (3) allowable harvest gear/prohibited practices; (4) framework regulatory process: (i) aquaculture/possession permit for live rock/coral; (ii) prohibition of anchoring by fishing vessels on Guam's offshore banks; (iii) designation of zones for mooring buoy installation and anchoring requirement and (iv) requirement for permanent marking of passive fishing gear; (C) Proposed non-regulatory management measures: (1) facilitation of local management; (2) creation of incentives for sustainable use; and (3) public education outreach.

Thursday, August 5, 8:30 a.m.

A public scoping hearing will be convened regarding proposed preparation of an EIS for the CRE-FMP under the National Environmental Policy Act (NEPA) process. Additional matters are as follows:

(A) Suggestions for addressing existing laws and policies:

(1) Endangered Species Act; (2) Marine Mammal Protection Act;

(3) Administrative Procedure Act; (4) Coastal Zone Management Act; (5) Regulatory Flexibility Act; (6) Paperwork Reduction Act; (7) Executive Orders; (8) Magnuson-Stevens Fishery Conservation and Management Act, Sustainable Fisheries Act, and Essential Fish Habitat; B. Preliminary draft regulations; C. Additional concerns regarding CRE-FMP development; D. Review of draft report from the Coral Reef Ecosystem Plan Team meeting; E. Review of public comments received; F. Public comment; and G. Scheduling of next Coral Reef Ecosystem Plan Team meeting.

Although other issues not contained in this agenda may come before the EHAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this agenda.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Dated: July 16, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–18738 Filed 7–21–99; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps Information Technology Initiative

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds to support the AmeriCorps Information Technology Initiative Through Grants to AmeriCorps National Programs.

SUMMARY: The Corporation for National Service (Corporation) announces the availability of approximately $2,225,000 in grant funds to support information technology activities in selected cities in AmeriCorps programs operating on a national or multi-state basis.

DATES: Applications must be received by September 9, 1999.

ADDRESSES: Applications must be submitted to Box ACDR, Corporation for National Service, 1201 New York Avenue, N.W., Washington, DC 20525. Applications may not be submitted by facsimile or electronic mail.

FOR FURTHER INFORMATION CONTACT: For an application or further information, contact Adin C. Miller, Corporation for National Service, 1201 New York Avenue, N.W., Washington, DC, 20525, (202) 606–5000, extension 428, acmiller@cns.gov. TDD (202) 565–2799. To request a copy of this Notice in an alternative format for persons with disabilities, contact Adin C. Miller at the contact information listed above.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that encourages Americans of all ages and backgrounds to engage in community-based service. This service addresses the nation's educational, public safety, environmental and other human needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. Each year, the Corporation supports approximately 40,000 AmeriCorps members who perform substantial service in communities across the country. For more information about national service activities supported by the Corporation, go to *http://www.nationalservice.org.*

This Notice concerns funds that have been earmarked by Congress to support AmeriCorps National programs funded directly by the Corporation and operated by national nonprofit organizations in at least two states. Under the AmeriCorps National program, each national organization that serves as a parent organization provides subgrants to local chapters or affiliates, referred to as operating sites. For general information about applying for Corporation grants, you may obtain the *1999 Guide to Programs and Grants* at the Corporation's Website listed above.

This Notice concerns programs to be carried out over a period not to exceed three years. Applications must include a detailed proposed budget and proposed activities for the first year of operation, estimated funds required in the second and third years of operation, and program objectives for the entire award period. If the Corporation approves an application and enters into a multi-year award agreement, it will provide funding at the onset only for the first year of the program. The Corporation has no obligation to provide additional funding in connection with the award in subsequent years. Funding for the second and third years of an approved program is contingent upon satisfactory progress in relation to the approved objectives, submission of a detailed budget and budget narrative for the applicable program year, the availability of funds, and any other criteria established in the award agreement. Up to $2,225,000 is available for the initial one-year budget period. The Corporation anticipates awarding between one and seven grants in this competition.

Existing Parent Organizations that receive funding under the AmeriCorps Information Technology Initiative may submit future continuation proposals along the same timeline of the already approved AmeriCorps National grant. A successful Parent Organization should plan to include the AmeriCorps Information Technology Initiative in its next AmeriCorps National continuation submission through the end of the three-year funding cycle, at which point the AmeriCorps Information Technology Initiative should be included in its re-competition submission.

Eligible Applicants

Nonprofit organizations whose mission, membership, activities, or constituencies are national in scope and whose proposal involves AmeriCorps activities in more than one state may apply for funds under this Notice. An organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), that engages in lobbying activities, is not eligible for these funds.

Program Overview and Requirements

The funds will support AmeriCorps National programs that propose to increase access to information technologies in K–12 school clusters located in federally-designated Round 1 Empowerment Zones, in conjunction with NextDay, a program of NetDay, a grassroots school wiring initiative.

The goal of NextDay—a coalition of Empowerment-Zone leaders, education and technology specialists, and national partners—is to develop K–12 high-tech school clusters in sixteen communities (10 urban Empowerment Zones, 3 rural Empowerment Zones, and 3 Enhanced Enterprise Zones). Each school cluster consists of an elementary and middle or junior high school feeding into a high school. Successful applicants under this Notice will aim to provide AmeriCorps activities designed to place these targeted school clusters among the top 15% of public American schools in classroom use of information technologies and digital resources. These model schools will acquire and install current-generation technologies, integrate digital information technologies into school curricula, and prepare teachers to use and teach technology. Additionally, successful applicants under this Notice will reinforce school technology training at students' homes and assist in the placement of government surplus computers in family homes. For more information about NextDay, please contact Michael Kaufman, NetDay, 240 Tamal Vista, Suite 200, Corte Madera, California, 94925, (415) 927–6850, extension 200, michael@netday.org.

At each targeted Empowerment Zone, NextDay places a Local Coordinator charged with ensuring that the goals and benchmarks for the targeted community are met and partners each school cluster with a Higher Education Institution. In addition, NextDay and its coalition of local partners plan to provide each cluster with an Education Integration Specialist and a Technology Support Specialist. The Corporation envisions an arrangement in which AmeriCorps members serve at each school throughout the implementation phases of the project. The Stanford Research Institute will evaluate the overall NextDay project with a specific focus on the educational outcome impact of the

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project and how information technology affects teaching.

National partners for the NextDay project include:

- Cisco Systems, which will provide access to its Networking Academy/ Network Administrator School;
- The 3M Corporation, which will provide $1,800,000 in fiber optic cables along with technical support;
- AT&T, which will provide on-line teacher training via its Virtual Academy; and
- The University of California at Berkeley, which will serve as the lead institution of Higher Education partners. Additional Higher Education partners include Michigan State University, University of California at Los Angeles, Delta State University, Howard University, and Texas A & M.

Through an existing arrangement with the Corporation, up to thirty-two AmeriCorps VISTA members will assist the school clusters and local NextDay partners. The AmeriCorps VISTA members will implement strategies to ensure that the school clusters sustain programmatic efforts, while working with school systems and local partners to find existing and develop new local resources. The AmeriCorps VISTA members will also engage in local community relations and outreach.

The Corporation expects that successful applicants under this Notice will work in cooperation with the NextDay AmeriCorps VISTA projects. Additionally, as part of the preparation for submission of the AmeriCorps Information Technology Initiative application and as outlined on page 59 of the *1999 Guide to Programs and Grants*, Parent Organizations are required to communicate and coordinate with the State Commission in each state where Operating Sites will be located.

By design, NextDay and its AmeriCorps Information Technology Initiative will initiate activities in the Empowerment Zones in the following order:

1. Mississippi Delta (1 Cluster)
2. Oakland (1 Cluster)
3. Washington, DC (2 Clusters)
4. Detroit (2 Clusters)
5. Los Angeles (3 Clusters)
6. Rio Grande Valley (1 Cluster)
7. New York (2 Clusters)
8. Chicago (3 Clusters)
9. Baltimore (2 Clusters)
10. Atlanta (2 Clusters)
11. Cleveland (2 Clusters)
12. Philadelphia/Camden (2 Clusters)
13. Kentucky Highlands (1 Cluster)
14. Houston (2 Clusters)
15. Kansas City (2 Clusters)
16. Boston (2 Clusters)

In the first year of the AmeriCorps Information Technology Initiative, AmeriCorps activities will target only the first six Empowerment Zones listed above. NextDay has already selected the specific cluster schools in the Mississippi Delta, Oakland, Washington, DC, Detroit, and Los Angeles to participate in the project. The pre-selected cluster schools include:

1. Mississippi Delta:
   - Cluster 1: West Bolivar Elementary, Middle and High schools
2. Oakland:
   - Cluster 1: Garfield Elementary, Roosevelt Middle, Fremont High
3. Washington, DC
   - Cluster 1: Walker-Jones Elementary, Terrell Middle, Dunbar High
4. Detroit:
   - Cluster 1: Edmonson Elementary, Pelham Middle, Murray Wright High
   - Cluster 2: Webster Elementary, Earhart Middle, Western International High
5. Los Angeles:
   - Cluster 1: Barrett Elementary, Gompers Middle, Locke High

Additional cluster schools for the second and third cluster in Los Angeles and the cluster in the Rio Grande Valley will be identified by August 31, 1999. Successful applicants for funding under the AmeriCorps Information Technology Initiative must support activities at these pre-selected schools.

Applicants must propose to operate in more than one state in order to qualify for funding under this AmeriCorps National grant competition. As such, applications must propose AmeriCorps activities that serve all targeted schools in at least *one* cluster in at least two states. Applicants also must demonstrate experience in an educational setting or with technology information based curriculum. In addition, applications submitted must provide a programmatic design detailing how the AmeriCorps program will:

- Integrate digital information technologies and resources in the academic curricula at K–12 school clusters located in Empowerment Zones;
- Prepare teachers at K–12 school clusters located in Empowerment Zones to use digital resources in classroom lesson plans;
- Assist teachers and students at K–12 school clusters located in Empowerment Zones in the implementation of digital lessons;
- Assist in the implementation of digital information technology training programs for teachers at K–12 school clusters located in Empowerment Zones;
- Assist the NextDay Education Integration Specialist and Technology Support Specialist, which includes locating resources, such as teaching modules, to assist teachers in creating digital lessons;
- Provide project assessment support; and
- Integrate digital technologies into the homes of students at K–12 school clusters located in Empowerment Zones.

Because this initiative requires concentrated service, applicants may only request either full-time members who serve at least 1700 hours in a nine to twelve month period or part-time members who serve at least 900 hours in one year or less.

Review Process

The Corporation expects to receive fewer than ten applications for funding under this Notice. Applications received for this competition will be evaluated through a multi-stage process that includes reviews by peers and Corporation staff, and approval by the Corporation's Board of Directors. During the peer review process, a panel of community service practitioners and policy experts will evaluate the quality of the proposals. During the staff review, the quality of proposals is evaluated along with other Corporation preferences, statutory requirements, and additional considerations. The Corporation may also conduct interviews with semi-finalists, in person or through teleconference. The Corporation anticipates awarding between one and seven grants in this competition. The grant award size may vary by circumstance, need and program model.

Evaluation Criteria

As outlined on page 15 of the *1999 Guide to Programs and Grants*, the following three categories constitute the criteria by which the AmeriCorps Information Technology Initiative applications will be evaluated and selected:

Program Design (60%)
  Getting Things Done
  Participant Development
  Strengthening Communities
Organizational Capacity (25%)
Budget/Cost-Effectiveness (15%).

The three subcategories under Program Design constitute the criteria by which the Corporation will evaluate Operating Sites narratives. The Organization Capacity and Budget/Cost-Effectiveness categories constitute the criteria by with the Corporation will evaluate the Parent Organization narrative. The Operating Site narratives are averaged and account collectively for 60% of the total score while the Parent Organization narrative accounts for the remaining 40% of the total score.

Additional information about the selection criteria may be found on page 15 in the *1999 Guide to Programs and Grants*.

Application Overview

To assist in planning the peer review process, the Corporation requests that potential applicants submit a one-page letter indicating intent to apply. The letter does not constitute a commitment to apply. Please submit letters of intent by facsimile to the attention of Milinda Jefferson at 202–565–2787 by August 17, 1999.

Applicants must submit one unbound single-sided original and two copies of the application. Submissions must arrive no later than 3:30 p.m., Eastern Daylight Time, September 9, 1999, and should be sent to Box ACDR, Corporation for National Service, 1201 New York Avenue, N.W., Washington, DC, 20525. Applications submitted by facsimiles or electronic mail will not be accepted.

The entire request must be typed and double-spaced in not less than 12-point font size, with one-inch margins. Page limits, as specified below, must be followed. No appendices will be reviewed. Except under extenuating circumstances as determined by the Corporation, any submission that does not comply with the above requirements will not be reviewed.

The AmeriCorps Information Technology Initiative application consists of three major components: the Parent Organization application (8 pages maximum), the budget forms and budget narratives (no page limits), and the Operating Site application(s) (3 pages maximum per site). If a Parent Organization intends to also serve as an Operating Site then, in addition to the Parent Organization narrative and budget, it must submit an Operating Site narrative and include this Operating Site in the aggregate Operating Site budget.

The Parent Organization narrative must describe:

- The number of AmeriCorps members requested;
- The program concept and design;
- The Parent Organization's capacity to plan, implement, and manage the program including staff roles and fiscal oversight;
- For current Corporation grantees, how the proposed program relates to the organization's existing program (e.g., how the Parent Organization will integrate AmeriCorps Information Technology Initiative members into an already existing site, how the Parent Organization will integrate the proposed new activities into current monitoring and supervision systems, etc.);
- Experience in an educational setting and/or with information-based technology curricula;
- Cost-effectiveness plans and resources leveraged in support of the program;
- Rationale for selection of proposed Operating Sites; and
- The process for monitoring progress and assuring quality at the Parent Organization and across Operating Sites, including a plan for evaluation.

The budget forms and budget narratives must include:

- A proposed Parent Organization operating budget and a proposed aggregate Operating Site operating budget for the entire award period with detailed operating budgets for the first year of the program, as described in the AmeriCorps*National Application Forms and Instructions; and
- A Parent Organization budget narrative and aggregate Operating Site budget narrative. The AmeriCorps*National Application Forms and Instructions describes the structure of these narratives, which should also identify projected operating costs for the second and third years of the proposed program and identify any deviation from the operating budget for the first year of the program.

Each Operating Site narrative must describe:

- AmeriCorps member activities with measurable goals and objectives;
- The process for community input and support;
- Plans for recruitment, development, and training of AmeriCorps members;
- Supervision of AmeriCorps members including a qualifications of the individual responsible, frequency of contact with members, and previous supervisory experience;
- Anticipated community challenges and proposed continuous improvement strategies; and
- The plan for coordinating efforts with the State Commission, the State Corporation Office, and other Corporation programs in the area.

Applications must abide by the Corporation's cost per full-time equivalent AmeriCorps member guideline of $11,250 as outlined on page 47 the *1999 Guide to Programs and Grants*.

The application must conform to the following format:

Parent Organization

1. Parent Organization Title Page;
2. Copies of Each Operating Site Title Page (included behind the Parent Organization Title Page in the original document only);
3. Funding Request Chart;
4. Parent Organization Narrative (maximum 8 pages); and
5. Parent Organization Budget and Budget Narrative, which includes aggregate Operating Site budget information related to the AmeriCorps Information Technology Initiative expenses and projected expenses for the second and third year of program implementation.

Operating Sites

(Each Operating Site submission should follow the same format.)

1. Operating Site Title Page; and
2. Operating Site Narrative describing site, service activities, supervision (maximum 3 pages).

Technical Assistance

Prospective applicants with questions related to this initiative may contact Adin Miller at 202–606–5000, extension 428. In addition, the Corporation will hold a conference call of up to 90 minutes on Tuesday, August 24, 1999, at 1:30 p.m. Eastern Daylight Time for those organizations that intend to apply for funding under this Notice. If you wish to register for the call, please contact Milinda Jefferson at 202–606–5000, extension 483.

Authority: 42 U.S.C. 12571–12585. CFDA No. 94.006 AmeriCorps.

Dated: July 16, 1999.

Deborah Jospin,

Director, AmeriCorps, Corporation for National and Community Service.

[FR Doc. 99–18654 Filed 7–21–99; 8:45 am]

BILLING CODE 6050–28–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for Grants To Support the Martin Luther King, Jr. Service Day Initiative

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (the Corporation), in consultation with the King Center on Nonviolent Social Change, Inc. in Atlanta, invites applications for grants to pay for the federal share of the cost of planning and carrying out service opportunities in conjunction with the federal legal

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holiday honoring the birthday of Martin Luther King, Jr. on January 17, 2000.

The grants are intended to mobilize more Americans to observe the Martin Luther King, Jr. federal holiday as a day of service in communities and to bring people together around the common focus of service to others. To achieve this, the Corporation will make approximately $500,000 in grant funds available to support approved service opportunities. Eligible organizations may apply for a grant in one of the following two categories. The first category of grants, in amounts of up to $3,500, will support national service and community volunteering projects of a relatively smaller scale and limited geographical scope. The second category of grants, in amounts of up to $10,000, will support large-scale (e.g., state-wide, city-wide, county-wide, or regional) service projects. By large-scale, we mean that the service involves a large number of participants in a geographic area. The Corporation expects that it will make more smaller scale grants than larger scale grants.

DATES: The deadline for submission of applications is August 26, 1999, no later than 5:00 p.m. local time.

ADDRESSES: Applications should be obtained from and returned to the Corporation state office in the applicant's state unless otherwise noted. See Supplementary Information section for Corporation state office addresses. The application should be addressed to: Martin Luther King, Jr. Day of Service, Corporation for National Service (Appropriate State Address).

FOR FURTHER INFORMATION CONTACT: For further information, contact the person listed for the Corporation office in your state, unless otherwise noted. This notice may be requested in an alternative format for the visually impaired by calling (202) 606–5000, ext. 262. The Corporation's T.D.D. number is (202) 565–2799 and is operational between the hours of 9 a.m. and 5 p.m. Eastern Daylight Time.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation, established by Congress in 1993 amendments to the National and Community Service Act of 1990 (the Act) that engages Americans of all ages and backgrounds in community-based service. This service addresses the nation's education, public safety, environmental, or other human needs to achieve direct and demonstrable results with special consideration to service that affects the needs of children. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. The Corporation supports a range of national service programs including AmeriCorps, Learn and Serve America, and the National Senior Service Corps. In providing grants to support service in connection with the Martin Luther King, Jr. federal holiday, the Corporation acts in consultation with the King Center on Nonviolent Social Change, Inc. For more information about the Corporation and the programs it supports, go to http://www.nationalservice.org. For more information about the King Center, go to http://www.thekingcenter.com.

Section 12653(s) of the Act, as amended in 1994, authorizes the Corporation to make grants to share the cost of planning and carrying out service opportunities in conjunction with the federal legal holiday honoring the birthday of Martin Luther King, Jr. The Corporation intends that the activities supported by these grants will: (1) Get necessary things done in communities, (2) strengthen the communities engaged in the service activity, (3) reflect the life and teaching of Martin Luther King, Jr., (4) respond to one or more of the goals set forth at the President's Summit for America's Future and include young people as service providers, not just recipients of service, and (5) begin or occur in significant part on the federal legal holiday (January 17, 2000).

Getting things done means that projects funded under the Martin Luther King Jr. holiday grant will help communities meet education, public safety, environmental, or other human needs through direct service and effective citizen action. Accordingly, the Corporation expects well designed activities that meet compelling community needs and lead to measurable outcomes and impact.

Strengthening communities means bringing people together in pursuit of a common objective that is of value to the community. On Martin Luther King, Jr. Day in 1998, President Clinton said "* * * to achieve one America, we must go beyond words to deeds. Serving together on the King holiday—and everyday—will bring our nation closer together and help meet some of our toughest challenges." Projects should seek to engage a wide range of local partners in the communities served. Projects should be designed, implemented, and evaluated with these partners, including local and state King Holiday Commissions, national service programs (AmeriCorps, Learn and Serve America, and the National Senior Service Corps), state and local organizations affiliated with the campaign for children and youth launched at the President's Summit for America's Future and carried forward by America's Promise—the Alliance for Youth, community-based agencies, schools and school districts, Volunteer Centers of the Points of Light Foundation and other volunteer organizations, local United Ways, communities of faith, businesses, foundations, state and local governments, labor organizations, and colleges and universities.

Reflecting the life and teaching of Martin Luther King means demonstrating his proposition that, "Everybody can be great because anybody can serve." Service opportunities to be considered for this program should foster cooperation and understanding among racial and ethnic groups, nonviolent conflict resolution, equal economic and educational opportunities, and social justice.

Respond to one or more of the goals of the President's Summit and include young people as service providers, not just recipients of service means that service projects should be designed to help achieve five basic goals necessary for all children and youth declared at the President's Summit for America's Future and carried forward by America's Promise—the Alliance for Youth, the organization set up to pursue the Summit's goals. Those five "fundamental resources" are: an ongoing relationship with a caring adult—mentor, tutor, coach; safe spaces and structured activities during non-school hours; a healthy start; an effective education that provides marketable skills; and an opportunity to give back to their communities through their own service. Particularly important is the fifth goal: to challenge and inspire young people to give at least one hundred hours of service a year. All young people must see themselves—and be seen by others—as resources and leaders, not just as problems or victims. Therefore, young people should be included as service providers and resources in project planning, not just as the recipients of service, realizing Dr. King's assertion that, "Everybody can be great because anybody can serve."

Begin or occur in significant part on the federal legal holiday means that a significant portion of the community service activities supported by the grant should occur on the holiday itself to strengthen the link between the observance of Martin Luther King, Jr.'s birthday, the federal legal holiday (January 17, 2000), and service that reflects his life and teaching.

The direct service to be done on and in connection with the King holiday may include, but is not limited to, the following types of activities: tutoring children or adults, feeding the hungry, packing lunches, delivering meals, stocking a food or clothing pantry, repairing a school and adding to its resources, translating books and documents into other languages, recording books for the visually impaired, restoring a public space, organizing a blood drive, registering bone marrow and organ donors, renovating low-income or senior housing, building a playground, removing graffiti and painting a mural, arranging safe spaces for children who are out of school and whose parents are working, collecting oral histories of elders, running health fairs, gleaning and distributing fruits and vegetables, etc.

Although celebrations, parades, and recognition ceremonies may be a part of the activities planned on the holiday and lead to or celebrate a commitment to service, for the purposes of this grant those activities themselves do not constitute direct service and may not be supported by this grant.

Other service outcomes for which grant applications will be considered include, but are not limited to, the following: a day-of-service that is designed to produce a sustained long-term service commitment; community-wide servathons that bring a broad cross-section together in a burst of energy on one day of service, including schools or school districts that seek to involve all students and teachers in joint service; service-learning projects that link student service in schools and universities with community-based organizations; faith-based service collaborations that bring together communities of faith and secular human service programs (subject to the limitations listed below); and service projects that include a pledge or commitment for continued service throughout the year.

Grant funding will be available on a one-time, non-renewable basis for a budget period not to exceed seven months, beginning not sooner than November 1, 1999 and ending not later than June 30, 2000. By statute, grants provided for this program, together with all other federal funds used to plan or carry out the service opportunity, may not exceed 30 percent of the cost of planning and carrying out the service opportunity.

For example, if you request $3,500 in federal dollars you must have a non-federal match of at least $8,167 (cash and/or in-kind contributions) and a total projected cost of at least $11,667. If you request $10,000 in federal dollars you must have a non-federal match of at least $23,333 (cash and/or in-kind contributions) and a total projected cost of at least $33,333. In other words the total dollars requested from the federal government should be divided by .30 to determine the total cost of the project (and total project cost minus federal dollars requested equals the required match). It may assist in the calculation to apply the formula as follows:

Federal Dollars Requested +.30 = Total Project Cost

Total Project Cost − Federal Dollars Requested = Non-Federal Match.

The non-federal match may include cash and in-kind contributions (including, but not limited to, supplies, staff time, trainers, food, transportation, facilities, equipment, and services) necessary to plan and carry out the service opportunity. Grants under this program constitute federal assistance and therefore may not be used primarily to inhibit or advance religion in a material way. No part of an award from the Corporation may be used to fund religious instruction, worship or proselytization. No part of an award may be used to pay honoraria or fees for speakers. Federal funds should not be requested to support a celebration banquet or other activity not connected to the actual service.

The total amount of grant funds provided under this Notice will depend on the quality of applications and the availability of appropriated funds for this purpose.

Eligible Applicants

By law, any entity otherwise eligible for assistance under the national service laws shall be eligible to receive a grant under this announcement. The applicable laws include the National and Community Service Act of 1990, as amended, and the Domestic Volunteer Service Act of 1973, as amended.

Eligible applicants include, but are not limited to: nonprofit organizations, State Commissions, volunteer centers, institutions of higher education, local education agencies, educational institutions, local or state governments, and private organizations that intend to utilize volunteers in carrying out the purposes of this program.

The Corporation especially invites applications from organizations with experience in—and commitment to—fostering service on Martin Luther King, Jr. Day, including state and local Martin Luther King, Jr. Commissions, local education agencies, faith-based partnerships, Volunteer Centers of the Points of Light Foundation, and United Ways and other community-based agencies.

Any grant recipient from the 1997, 1998, and 1999 Martin Luther King, Jr., Day of Service Initiatives will be ineligible if it has been determined to be noncompliant with the terms of those grant awards.

Pursuant to the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), which engages in lobbying activities, is not eligible.

Overview of Application Requirements

To be considered for funding applicants should submit the following standard components for federal grants:

1. An Application for Federal Assistance, Standard Form 424.

2. A Project Narrative describing:

a. Clearly-defined service activities (that lead to measurable outcomes) being planned in observance of Martin Luther King, Jr. Day, which must take place significantly on the legal federal holiday (January 17, 2000), but which may extend for the budget period (November 1, 1999 through June 30, 2000).

b. The partnerships in the local community, city, state or region that are being engaged in support of the service activities.

c. The organization's background and capacity to carry out this program.

d. The proposed staffing of the activity.

The project narrative portion of the application may be no longer than 7 single sided pages for applications not to exceed $3,500 and 15 single-sided pages for applications not to exceed $10,000 and must be typed double-spaced in a font no smaller than 12 point, with each page numbered.

3. A Budget Narrative (specific instructions will be provided in the application materials).

4. The Budget Form supplied with the application package.

5. A signed Certification and Assurances form incorporating conditions attendant to the receipt of federal funding.

6. Three complete copies (one original and two copies) of the application.

All applications must be received by 5:00 p.m. local time, August 26, 1999 at the Corporation office in the applicant's state, unless otherwise noted, addressed as follows: Martin Luther King, Jr. Day of Service, Corporation for National Service, (appropriate state office address; see list of addresses provided

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below). Applications may not be submitted by facsimile.

To ensure fairness to all applicants, the Corporation reserves the right to take action, up to and including disqualification, in the event an application fails to comply with the requirements relating to page limits, line-spacing, font size, and application deadlines.

Budget

Detailed instructions about the budget information required will be provided in the application materials.

Selection Process and Criteria

The applications will be reviewed initially to confirm that the applicant is an eligible recipient and to ensure that the application contains the information required and otherwise complies with the requirements of this notice. The Corporation will assess the quality of the applications based on their responsiveness to the objectives included in this announcement based on the following criteria listed below (in descending order of importance):

1. Program Design. The proposal must demonstrate the applicant's ability to get necessary things done, strengthen communities, reflect the life and teaching of Martin Luther King Jr., respond to one or more of the goals set forth at the Presidents' Summit for America's Future and include young people as service providers, not just recipients of service, and begin or occur in significant part on the federal legal holiday, January 17, 2000.

2. Organizational Capacity. The application must demonstrate the organization's ability to carry out the activities described in the proposal, including the use of highly qualified staff.

3. Cost. The applicant must demonstrate how this grant will be used effectively, including the sources and uses of matching support.

Awards

The Corporation anticipates making selections under this announcement no later than November 1, 1999.

Corporation for National Service State Offices

Alabama

Roktabija Abdul-Azeez, Acting Director/CNS, Medical Forum, 950 22nd St., N., Suite 428, Birmingham, AL 35203; Phone: (205) 731–0027, FAX: (205) 731–0031

Alaska

Billie Caldwell, Director/CNS, Jackson Federal Building, 915 Second Avenue, Suite 3190, Seattle, WA 98174–1103; Phone: (206) 220–7736, FAX: (206) 553–4415

Arkansas

Opal Sims, Director/CNS, Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201; Phone: (501) 324–5234, FAX: (501) 324–6949

Arizona

Richard Persely, Director/CNS, 522 North Central, Room 205A, Phoenix, AZ 85004–2190; Phone: (602) 379–4825, FAX: (602) 379–4030

California

Javier LaFianza, Director/CNS, Federal Building, Room 11221, 11000 Wilshire Boulevard, Los Angeles, CA 90024–3671; Phone: (310) 235–7421, FAX: (310) 235–7422

Colorado

James Byrnes, Director/CNS, 999 Eighteenth Street, Suite 1440 South, Denver, CO 80202; Phone: (303) 312–7952, FAX: (303) 312–7954

Connecticut

Romero Cherry, Director/CNS, 1 Commercial Plaza, 21st Floor, Hartford, CT 06103–3510; Phone: (860) 240–3237, FAX: (860) 240–3238

Delaware/Maryland

Jerry Yates, Director/CNS, One Market Center, Suite 703, Box 5300, W. Lexington St., Baltimore, MD 21201–3418; Phone: (410) 962–4443, FAX: (410) 962–3201

District of Columbia/Virginia

Thomas Harmon, Director/CNS, 400 North 8th Street, Suite 446, P. O. Box 10066, Richmond, VA 23240–1832; Phone: (804) 771–2197, FAX: (804) 771–2157

Florida

Warren Smith, Director/CNS, 3165 McCrory Street, Suite 115, Orlando, FL 32803–3750; Phone: (407) 648–6117, FAX: (407) 648–6116

Georgia

David Dammann, Director/CNS, 75 Piedmont Avenue, N.E., Room 902, Atlanta, GA 30303–2587; Phone: (404) 331–4646, FAX: (404) 331–2898

Hawaii

Lynn Dunn, Director/CNS, 300 Ala Moana Blvd., Room 6326, Honolulu, HI 96850–0001; Phone: (808) 541–2832, FAX: (808) 541–3603

Iowa

Joel Weinstein, Director/CNS, Federal Building, Room 917 210 Walnut Street, DeMoines, IA 50309–2195; Phone: (515) 284–4816, FAX: (515) 284–6640

Idaho

V. Kent Griffitts, Director/CNS, 304 North 8th Street, Room 344, Boise, ID 83702–5835; Phone: (208) 334–1707, FAX: (208) 334–1421

Illinois

Timothy Krieger, Director/CNS, 77 West Jackson Boulevard, Suite 442, Chicago, IL 60604–3511; Phone: (312) 353–3622, FAX: (312) 353–5343

Indiana

Thomas Haskett, Director/CNS, 46 East Ohio Street, Room 457, Indianapolis, IN 46204–1922; Phone: (317) 226–6724, FAX: (317) 226–5437

Kentucky

Betsy Wells, Director/CNS, 600 Martin L. King Place, Room 372-D, Louisville, KY 40202–2230; Phone: (502) 582–6384, FAX: (502) 582–6386

Louisiana

Willard Labrie, Director/CNS, 707 Florida Street, Suite 316, Baton Rouge, LA 70801; Phone: (504) 389–0471, FAX: (504) 389–0510

Maine/New Hampshire

Kathleen Ferguson, Director/CNS, 1 Pillsbury Street, Suite 201, Concord, NH 03301–3556; Phone: (603) 225–1450, FAX: (603) 225–1459

Massachusetts/Vermont

Malcolm Coles, Director/CNS, 10 Causeway Street, Room 473, Boston, MA 02222–1038; Phone: (617) 565–7001, FAX: (617) 565–7011

Maryland/Delaware

Jerry Yates, Director/CNS, One Market Center, Suite 703, Box 5300, W. Lexington St., Baltimore, MD 21201–3418; Phone: (410) 962–4443, FAX: (410) 962–3201

Michigan

Mary Pfeiler, Director/CNS, 211 West Fort Street, Suite 1408, Detroit, MI 48226–2799; Phone: (313) 226–7848, FAX: (313) 226–2557

Minnesota

Robert Jackson, Director/CNS, 431 South 7th Street, Room 2480, Minneapolis, MN 55415–1854; Phone: (612) 334–4083, FAX: (612) 334–4084

Missouri

John McDonald, Director/CNS, 801 Walnut Street, Suite 504, Kansas City, MO 64106–2009; Phone: (816) 374–6300, FAX: (816) 374–6305

Mississippi

R. Abdul-Azeez, Director/CNS, 100 West Capitol Street, Room 1005A, Jackson, MS 39269–1092; Phone: (601) 965–5664, FAX: (601) 965–4671

Montana

John Allen, Director/CNS, 208 North Montana Avenue, Suite 206, Helena, MT 59601–3837; Phone: (406) 449–5404, FAX: (406) 449–5412

North Dakota/South Dakota

John Pohlman, Director/CNS, 225 S. Pierre Street, Room 225, Pierre, SD 57501–2452; Phone: (605) 224–5996, FAX: (605) 224–9201

North Carolina

Robert Winston, Director/CNS, 300 Fayetteville Street Mall, Room 131, Raleigh, NC 27601–1739; Phone: (919) 856–4731, FAX: (919) 856–4738

Nebraska

Anne Johnson, Director/CNS, Federal Building, Room 156, 100 Centennial Mall North, Lincoln, NE 68508–3896, Phone: (402) 437–5493, FAX: (402) 437–5495

Nevada

Craig Warner, Director/CNS, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502–5033, Phone: (775) 784–5314, FAX: (775) 784–5026

New Hampshire/Maine

Kathleen Ferguson, Director/CNS, 1 Pillsbury Street, Suite 201, Concord, NH 03301–3556, Phone: (603) 225–1450, FAX: (603) 225–1459

New Jersey

Stanley Gorland, Director/CNS, 44 South Clinton Ave., Room 702, Trenton, NJ 08609–1507, Phone: (609) 989–2243, FAX: (609) 989–2304

New York

Donna Smith, Director/CNS, Clinton Ave. & Pearl St., Room 818, Albany, NY 12207, Phone: (518) 431–4150, FAX: (518) 431–4154

Ohio

Paul Schrader, Director/CNS, 51 North High Street, Suite 451, Columbus, OH 43215, Phone: (614) 469–7441, FAX: (614) 469–2125

Oklahoma

Zeke Rodriguez, Director/CNS, 215 Dean A. McGee, Suite 324, Oklahoma City, OK 73102, Phone: (405) 231–5201, FAX: (405) 231–4329

Oregon

Robin Sutherland, Director/CNS, 2010 Lloyd Center, Portland, OR 97232, Phone: (503) 231–2103, FAX: (503) 231–2106

Pennsylvania

Jorina Ahmed, Director/CNS, Robert N.C. Nix Federal Bldg., 900 Market St., Suite 229, Philadelphia, PA 19107, Phone: (215) 597–2806, FAX: (215) 597–2807

Puerto Rico/Virgin Islands

Loretta Cordova, Director/CNS, 150 Carlos Chardon Ave., Suite 662, San Juan, PR 00918–1737, Phone: (787) 766–5314, FAX: (787) 766–5189

Rhode Island

Vincent Marzullo, Director/CNS, 400 Westminster Street, Room 203, Providence, RI 02903, Phone: (401) 528–5426, FAX: (401) 528–5220

South Carolina

Jerome Davis, Director/CNS, 1835 Assembly Street, Suite 872, Columbia, SC 29201–2430, Phone: (803) 765–5771, FAX: (803) 765–5777

South Dakota/North Dakota

John Pohlman, Director/CNS, 225 S. Pierre Street, Room 225, Pierre, SD 57501–2452, Phone: (605) 224–5996, FAX: (605) 224–9201

Tennessee

Jerry Herman, Director/CNS, 265 Cumberland Bend Drive, Nashville, TN 37228; Phone: (615) 736–5561, FAX: (615) 736–7937

Texas

Jerry Thompson, Director/CNS, 903 San Jacinto, Suite 130, Austin, TX 78701–3747; Phone: (512) 916–5671, FAX: (512) 916–5806

Utah

Rick Crawford, Director/CNS, 350 S. Main Street, Room 504, Salt Lake City, UT 84101–2198; Phone: (801) 524–5411, FAX: (801) 524–3599

Vermont/Massachusetts

Malcolm Coles, Director/CNS, 10 Causeway Street, Room 473, Boston, MA 02222–1038; Phone: (617) 565–7001, FAX: (617) 565–7011

Virginia/District of Columbia

Thomas Harmon, Director/CNS, 400 North 8th Street, Suite 446, P. O. Box 10066, Richmond, VA 23240–1832; Phone: (804) 771–2197, FAX: (804) 771–2157

Virgin Islands/Puerto Rico

Loretta Cordova, Director/CNS, 150 Carlos Chardon Ave., Suite 662, San Juan, PR 00918–1737; Phone: (787) 766–5314, FAX: (787) 766–5189

Washington

John Miller, Director/CNS, Jackson Federal Bldg., Suite 3190, 915 Second Ave., Seattle, WA 98174–1103; Phone: (206) 220–7745, FAX: (206) 553–4415

West Virginia

Judith Russell, Director/CNS, 10 Hale Street, Suite 203, Charleston, WV 25301–1409; Phone: (304) 347–5246, FAX: (304) 347–5464

Wyoming

Patrick Gallizzi, Director/CNS, Federal Building, Room 1110, 2120 Capitol Avenue, Cheyenne, WY 82001–3649; Phone: (307) 772–2385, FAX: (307) 772–2389

Authority: 42 U.S.C. 12653(s).

Dated: July 14, 1999.

Gary Kowalczyk,

Coordinator of National Service Programs, Corporation for National and Community Service.

[FR Doc. 99–18756 Filed 7–21–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0144]

Submission for OMB Review; Comment Request Entitled Payment by Electronic Fund Transfer

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Payment by Electronic Fund Transfer. A request for public comments was published at 64 FR 26367, May 14, 1999. No comments were received.

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DATES: Comments may be submitted on or before August 23, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR requires certain information to be provided by contractors which would enable the Government to make payments under the contract by electronic fund transfer (EFT). The information necessary to make the EFT transaction is specified in clause 52.232–33, Payment by Electronic Fund Transfer-Central Contractor Registration, which the contractor is required to provide prior to award, and clause 52.232–34, Payment by Electronic Fund Transfer-Other Than Central Contractor Registration, which requires EFT information to be provided as specified by the agency to enable payment by EFT.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *14,000;* responses per respondent, *10;* total annual responses, *140,000;* preparation hours per response, *.5;* and total response burden hours, *70,000.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0144, Payment by Electronic Fund Transfer, in all correspondence.

Dated: July 16, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–18662 Filed 7–21–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0010]

Submission for OMB Review; Comment Request Entitled Progress Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Progress Payments. A request for public comments was published at 64 FR 26368, May 14, 1999. No comments were received.

DATES: Comments may be submitted on or before August 23, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Certain Federal contracts provide for progress payments to be made to the contractor during performance of the contract. The requirement for certification and supporting information are necessary for the administration of statutory and regulatory limitation on the amount of progress payments under a contract. The submission of supporting cost schedules is an optional procedure that, when the contractor elects to have a group of individual orders treated as a single contract for progress payments purposes, is necessary for the administration of statutory and regulatory requirements concerning progress payments.

B. Annual Reporting Burden

The annual reporting burden estimates in the May 14, 1999, **Federal Register** notice were based on a proposed rule published in the **Federal Register** on February 10, 1999 (64 FR 6759) (FAR Case 98–400). The estimates in this notice are currently approved by OMB and will be reduced at the final rule stage of FAR Case 98–400.

Public reporting burden for this collection of information is estimated to average *.55* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *27,000;* responses per respondent, *32;* total annual responses, *864,000;* preparation hours per response, *.55;* and total response burden hours, *475,200.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0010, Progress Payment, in all correspondence.

Dated: July 16, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–18663 Filed 7–21–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0082]

Submission for OMB Review; Comment Request Entitled Economic Purchase Quantities—Supplies

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Economic Purchase Quantities—Supplies. A request for public comments was published at 64 FR 26367, May 14, 1999. No comments were received.

DATES: Comments may be submitted on or before August 23, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

The provisions at 52.207–4, Economic Purchase Quantities—Supplies, invites offerors to state an opinion on whether the quantity of supplies on which bids, proposals, or quotes are requested in solicitations is economically advantageous to the Government. Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to (1) recommend an economic purchase quantity, showing a recommended unit and total price, and (2) identify the different quantity points where significant price breaks occur. This information is required by Public Law 98–577 and Public Law 98–525.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *50* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *1,524;* responses per respondent, *25;* total annual responses, *38,100;* preparation hours per response, *.83;* and total response burden hours, *31,623.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0082, Economic Purchase Quantities— Supplies, in all correspondence.

Dated: July 16, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–18664 Filed 7–21–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0080]

Submission for OMB Review; Comment Request Entitled Integrity of Unit Prices

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Integrity of Unit Prices. A request for public comments was published at 64 FR 26366, May 14, 1999. No comments were received.

DATES: Comments may be submitted on or before August 23, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 15.408(f) and the clause at FAR 52.215–14, Integrity of Unit Prices, require offerors and contractors under Federal contracts that are awarded without adequate price competition to identify in their proposals those supplies which they will not manufacture or to which they will not contribute significant value. The policies included in the FAR are required by section 501 of Public Law 98–577 (for the civilian agencies) and section 927 of Public Law 99–500 (for DOD and NASA). The rule eliminates reporting requirements on contracts with civilian agencies for commercial items.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *5* minutes per line item, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *1,000;* responses per respondent, *10;* total annual responses, *10,000;* preparation hours per response, *1* hour; and total response burden hours, *10,000.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0080, Integrity of Unit Prices, in all correspondence.

Dated: July 16, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–18665 Filed 7–21–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Army

ARMS Initiative Implementation; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC). The EAC charters the development of new and innovative methods to optimize the asset value of the Government-Owned, Contractor-Operated ammunition industrial base for peacetime and national emergency requirements, while ensuring—economical and efficient processes at minimal operating costs, matching critical skills, balancing community

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economic benefits, and becoming a "model" for defense conversion. This meeting will update the EAC and public on the status of ongoing actions, new items of interests, and suggested future direction/actions. Topics for this meeting will include—percentage of sales minimum requirement for consideration of third party work; lessons learned from excess plant process; stronger community involvement; ARMS Strategic Plan revised from input stemming from the last EAC meeting; program metrics; Industrial Operations Command's proposed "Future State Briefing; and various related topics. This meeting is open to the public.

DATE OF MEETING: August 10–11, 1999.

PLACE OF MEETING: Doubletree Hotel, 1150 Ninth Street, Modesto, California 95354.

TIME OF MEETING: 8 AM–5 PM on August 10 and 11.

FOR FURTHER INFORMATION CONTACT: Mr. Elwood H. Weber, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower H. Weber, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria Virginia 22333; Phone (703) 617–9788.

SUPPLEMENTARY INFORMATION: Reservations must be made directly by calling the Doubletree Hotel (209) 526–6000. To assist in the EAC Meeting administrative support requirements, request that *all* attendees contact the ARMS Team via telephone (309) 782–3360/4090 or email to perezm@ioc.army.mil. Previously registered EAC attendees will confirm database information and new attendees will register at the door. Meeting dress will be corporate casual.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–18741 Filed 7–21–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board (AFEB); Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of Pub. L. 92–463, The Federal Advisory Committee Act, this announces the forthcoming AFEB subcommittee meeting. This Board will meet form 0730–1600 on Wednesday, August 18, 1999. The purpose of the meeting is to review the Rand Report on Pyridostigmine Bromide. The meeting location will be at the Uniformed Services University of Health Services (USUHS), Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: COL Benedict Diniega, AFEB Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, Virginia 22041–3258, (703) 681–8012/4.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–18744 Filed 7–21–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Committee Meeting Notice

AGENCY: Department of Army, DOD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: USARSA Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: 9–11 August 1999.

Place: USARSA, Building 35, Fort Benning, Georgia.

Time: 0900–1700 on 9 and 10 August, 0900–1200 on 11 August 1999.

FOR FURTHER INFORMATION CONTACT: All communications regarding this subcommittee should be addressed to Lieutenant Colonel Jerardo Reyes, Designated Federal Office, U.S. Army School of the Americas, ATTN: ATZB–SAZ–CS, Fort Benning, Georgia, 31905–6245.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: Presentation by the Commanding General, Training and Doctrine Command on the Subcommittee's report of the previous meeting and issues requested from that meeting.

1. *Purpose of Meeting:* This is the Sixth USARSA Subcommittee meeting. The subcommittee will receive a report from the Commander, Training and Doctrine Command, and briefings they requested as a result of the fifth subcommittee meeting.

2. Meeting of Advisory Committee is open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Committee Management Office in writing at least 5 days prior to the meeting date of their intent to attend.

3. Any member of the public may file a written statement with the committee before, during or after the meeting. To the extent that time permits, the subcommittee chairman may allow public presentations of oral statements at the meeting.

Gregory D. Showalter,

Army Federal Reigster Liaison Officer.

[FR Doc. 99–18740 Filed 7–21–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive or Partially Exclusive License to BONTEX

AGENCY: U.S. Army Research Laboratory, Department of the Army, DoD.

ACTION: Notice of Intent.

SUMMARY: In compliance with 37 CFR Part 404 *et seq.*, the Department of the Army hereby gives notice of its intent to grant to BONTEX, a corporation having its principle place of business at One BONTEX Drive, Buena Vista, VA 24416–0751, an exclusive or partially exclusive license relative to an ARL patented elastomeric compound (U.S. patent no. 4, 848,114). Anyone wishing to object to the granting of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 433, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–18739 Filed 7–21–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Prospective Grant of Exclusive Patent License

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with the provisions of 15 U.S.C. 209 (c)(1) and 37 CFR 404.7 (a)(1)(i), SBCCOM hereby gives notice that it is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Provisional Patent Application Number 60/102,144 filed 9/29/98, entitled, "Environmental Material Ticket Reader (EMTR) and Environmental Material Ticket (EMT)" to Dycor, U.S.A., Inc. having a place of business in Harve de Grace, Maryland .

FOR FURTHER INFORMATION CONTACT: Mr. Roy Albert, Technology, Transfer Office, U.S. Army SBCOM, ATTN: SCBRD–ASC, 5183 Blackhawk Road (Bldg E3330/245), APG, MD 21010–5423, Phone: (410) 436–4438 or E-mail: recalbert@cbdcom.apgea.army.mil.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted, unless within sixty days from the date of this published Notice, SBCCOM receives written evidence and argument to establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Provisional Patent Application 60/102,144 pertains to the detection of chemical agents in the vapor phase with an improved operational knowledge base and by applying envolving technological advances in chemistry, engineered materials, and engineering production.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–18742 Filed 7–21–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive, or Partially Exclusive Licensing of a U.S. Provisional Patent Application Concerning the Detection of Chemical Agents

AGENCY: Department of the Army.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 announcement is made of the availability for licensing of U.S. Pending Provisional Patent Application 60/102,144, entitled: Environmental Material Ticket Reader (EMTR) and Environmental Material Ticket (EMT)" filed September 29, 1998 and assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Albert, Technology Transfer Office, U.S. Army SBCCOM, ATTN: SCBRD–ASC, 5183 Blackhawk Road (Bldg. E3330/245), APG, MD 21010–5423, Phone: (410) 436–4438 or E-mail: rcalbert@cbdcom.apgea.army.mil.

SUPPLEMENTARY INFORMATION: The present invention pertains to the detection of chemical agents in the vapor phase with an improved operation knowledge base and by applying evolving technological advances in chemistry, engineered materials, and engineering production.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–18743 Filed 7–21–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 20, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 16, 1999.

Hazel Fiers,

Director, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: Revision.

Title: 21st Century Community Learning Centers Annual Performance Report.

Frequency: Recordkeeping.

Reporting and Recordkeeping Hour Burden:

Responses: 233,877

Burden Hours: 71,963

Abstract: 21st Century Community Learning Centers grantees must annually submit the report so the Department can evaluate the performance of grantees prior to awarding continuation grants and to assess a grantee's prior experience at the end of each budget period. The Department will aggregate the data to provide descriptive information and analyze program impact. These data will also be used for annual GPRA-required reports.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Vivian Reese@ed.gov*, or should be faxed to 202–708-9346.

For questions regarding burden and/or the collection activity requirements, contact, Kathy Axt at 703–426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–18674 Filed 7–21–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Student Financial Assistance; William D. Ford Federal Direct Loan Program and Federal Family Education Loan Program

AGENCY: Department of Education.

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ACTION: Notice of interest rates for the period October 1, 1998, through June 30, 1999, for new loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program and the Federal Family Education Loan (FFEL) Program; Correction.

SUMMARY: The Chief Operating Officer for the Office of Student Financial Assistance Programs announces the interest rates for the period October 1, 1998, through June 30, 1999, for loans first disbursed on or after October 1, 1998, under the William D. Ford Federal Direct Loan (Direct Loan) Program and the Federal Family Education Loan (FFEL) Program. This notice corrects the notice published in the **Federal Register** on April 30, 1999 (64 FR 23287).

FOR FURTHER INFORMATION CONTACT: For the Federal Family Education Loan Program: Brian Smith, Program Specialist. For the William D. Ford Federal Direct Loan Program: Barbara F. Grayson, Program Specialist. Mailing address: Policy Development Division, Office of Student Financial Assistance, U.S. Department of Education, Room 3045, ROB–3, 400 Maryland Avenue, SW, Washington, DC 20202–5345. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person.

SUPPLEMENTARY INFORMATION:

General

The formulas for determining the interest rates for Direct Loan and FFEL Program loans are provided in sections 455(b), 427A, and 428C of the Higher Education Act of 1965, as amended (HEA). These provisions are amended by sections 452 and 416 of the Higher Education Amendments of 1998 (Pub. L.105–244), which were enacted on October 7, 1998. The 1998 Amendments extend to July 1, 2003, the interest rate formulas for student and parent loans that have been in effect since July 1, 1998.

The interest rate calculations for all student and parent loans in the Direct Loan and FFEL programs for which the first disbursement is made on or after October 1, 1998, are based on the bond equivalent rate of the 91-day Treasury bills auctioned at the final auction held before June 1.

The Amendments change the formulas for setting interest rates on Consolidation loans under both the Direct Loan and the FFEL programs. However, the bill sets different effective dates for each program. The interest rate for new Consolidation loans is calculated by taking the weighted average of the loans being consolidated, and rounding up to the nearest higher ⅛th of 1 percent. Except as noted below under Federal Family Education Loan Program, it is a fixed rate and may not exceed 8.25 percent. This interest rate formula applies to FFEL Consolidation loans for which the application is received by an eligible lender on or after October 1, 1998, and before July 1, 2003. The same formula applies to Direct Loan Consolidation loans for which the application is received on or after February 1, 1999, and before July 1, 2003. The 1998 Amendments establish temporary rules for calculating the interest rate for Direct Loan Consolidation loans (both student and parent) for which the application is received on or after October 1, 1998, and before February 1, 1999. For these loans, the interest rate is determined annually and equals the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held before June 1st plus 2.3 percent. The interest rate is capped at 8.25 percent.

The bond equivalent rate of 91-day Treasury bills auctioned on May 26, 1998, is 5.155 percent, which rounds to 5.16 percent.

William D. Ford Federal Direct Loan Program

1. Direct Subsidized and Direct Unsubsidized loans, first disbursed on or after October 1, 1998:

(a) During the in-school, grace, and deferment periods:

The interest rate for the period October 1, 1998, through June 30, 1999, is 6.86 percent (5.16 percent plus 1.7 percent equals 6.86 percent).

(b) During all other periods:

The interest rate for the period October 1, 1998, through June 30, 1999, is 7.46 percent (5.16 percent plus 2.3 percent equals 7.46 percent).

2. Direct PLUS loans first disbursed on or after October 1, 1998:

The interest rate for the period October 1, 1998, through June 30, 1999, is 8.26 percent (5.16 percent plus 3.1 percent equals 8.26 percent).

3. Direct Consolidation loans for which the application is received on or after October 1, 1998, and before February 1, 1999:

The interest rate for the period October 1, 1998, through June 30, 1999, is 7.46 percent (5.16 percent plus 2.3 percent equals 7.46 percent).

4. Direct Consolidation loans for which the application is received on or after February 1, 1999:

The interest rate is the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher ⅛th of 1 percent, but may not exceed 8.25 percent. The rate does not vary annually; it is established for the life of the loan.

Federal Family Education Loan Program

1. FFEL Stafford loans, first disbursed on or after October 1, 1998:

(a) During the in-school, grace, and deferment periods:

The interest rate for the period October 1, 1998, through June 30, 1999, is 6.86 percent (5.16 percent plus 1.7 percent equals 6.86 percent).

(b) During all other periods:

The interest rate for the period October 1, 1998, through June 30, 1999, is 7.46 percent (5.16 percent plus 2.3 percent equals 7.46 percent).

2. FFEL PLUS loans first disbursed on or after October 1, 1998:

The interest rate for the period October 1, 1998, through June 30, 1999, is 8.26 percent (5.16 percent plus 3.1 percent equals 8.26 percent).

3. FFEL Consolidation loans for which the consolidation loan application was received by the lender on or after October 1, 1998:

The interest rate is the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher ⅛th of one percent, but may not exceed 8.25 percent. This rate does not vary annually. It is established for the life of the loan, unless a portion of the Consolidation loan is attributable to a loan made under subpart I of part A of title VII of the Public Health Service Act. The interest rate on that portion of a Consolidation loan is determined annually, and equals the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the quarter prior to July 1st plus 3 percent. For the period October 1, 1998, through June 30, 1998, the interest rate for that portion of a Consolidation loan is 8.13 percent (5.13 percent plus 3.0 percent equals 8.13 percent)

Electronic Access to This Document

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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1077a, 20 U.S.C. 1087e, and Pub. L. 105–244.

Dated: July 16, 1999.

Candace M. Kane,

Acting Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 99–18726 Filed 7–21–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–420–000]

Iroquois Gas Transmission System, L.P.; Notice of Fuel Calculations

July 16, 1999.

Take notice that on July 1, 1999, pursuant to Section 2.27 of the General Terms and Conditions of its FERC Gas Tariff, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing its schedules which reflect calculations supporting the Measurement Variance/Fuel Use Factors utilized by Iroquois during the period January 1, 1999 through June 30, 1999.

Iroquois states that data from the data base during this period has to be verified to ensure accurate and complete information. Iroquois states that the schedules attached to the filing include calculations supporting each of the following three components of Iroquois' composite Measurement Variance/Fuel Use Factor:

(1) Lost and unaccounted-for gas (Measurement Variance Factor);

(2) Fuel use associated with the transportation of gas by others on behalf of Iroquois (Account 858 Fuel Use Factor); and

(3) Fuel use associated with the transportation of gas on Iroquois' pipeline system (Account 854 Fuel Use Factor).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 23, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18710 Filed 7–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–431–000]

Koch Gateway Pipeline Company; Notice of Tariff Filing

July 16, 1999.

Take notice that on July 1, 1999, Koch Gateway Pipeline Company (Koch) tendered for filing a request to implement Version 1.4 of the Gas Industry Standards Board (GISB) Standard 4.3.29 on August 1, 1999.

Koch states that the Notice Task Force has revised GISB Standard 4.3.29, Version 1.3 by separating the "Press Release, Company News or Phone List" category into two categories—"Press Release, Company News" and "Phone List." The Task Force also added a new category of notice type, "Intraday Bump."

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations All such motions or protests must be filed on or before July 23, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18711 Filed 7–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 201–000 AK]

Petersburg Municipal Power and Light; Notice of Petersburg Municipal Power and Light's Request To Use Alternative Procedures in Filing a License Application

July 16, 1999.

On July 7, 1999, the existing licensee, Petersburg Municipal Power and Light Petersburg), filed a request to use alternative procedures in submitting an application for a new license for the existing Blind Slough Hydroelectric Project No. 201. The 2.0-megawatt project is located on Crystal Creek, and Mitkof Island, about 16 miles from the City of Petersburg, Alaska. Petersburg has demonstrated that it has made an effort to contact all resource agencies, Indian Tribes, nongovernmental organizations (NGOs), and others affected by the proposal, and that a consensus exists that the use of alternative procedures is appropriate in this case. Petersburg has also submitted a communications protocol that is supported by most interested entities.

The purpose of this notice is to invite comments on Petersburg's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations.[1] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedures being requested here combine the prefiling consultation process with the environmental review process, allowing the applicant to complete and file an Environmental Assessment (EA) in lieu of Exhibit E of the license application. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simply and

[1] Order No. 596, Regulations for the Licensing of Hydroelectric Projects, 81 FERC ¶ 61,103 (1997).

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expedite the licensing process combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Applicant Prepared EA Process and Blind Slough Project Schedule

Petersburg has submitted a proposed schedule for the APEA process that leads to the filing of a new license application by August 2002. Study plans would be developed this summer, with National Environmental Policy Act scoping being conducted in the fall. Field-work would be conducted over two seasons, summer 2000 and 2001 (if needed), with a draft application and draft APEA to be issued for comment in the fall of 2001.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on Petersburg's proposal to use the alternative procedures to file an application for the Blind Slough Hydroelectric Project.

Filing Requirements

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20416.

All comments filings must bear the heading "Comments on the Alternative Procedures," and include the project name and number (Blind Slough Hydroelectric Project No. 201).

For further information on this process, please contact Vince Yearick of the Federal Energy Regulatory Commission at 202–219–2938 or E-mail vince-yearick@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 99–18713 Filed 7–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–576–000]

Williams Gas Pipelines Central, Inc.; Notice of Application

July 16, 1999.

Take notice that on July 12, 1999, Williams Gas Pipelines Central, Inc. (Williams), Post Office Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–576–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA), for authorization to uprate the Blackwell-Cotton Valley 16-inch pipeline, to construct approximately 36.8 miles of 20–inch loop pipeline and additional measurement facilities. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Williams proposes to uprate the Blackwell-Cotton Valley 16-inch pipeline from 500 psig to 690 psig, to extend the Southern Trunk 20-inch pipeline loop by constructing an additional 36.8 miles of pipeline loop, and to construct additional measurement facilities to serve new turbines at the Empire District Electric Company State Line plant in Jasper County, Missouri. The total project cost is estimated to be approximately $19,717,524.

Any questions regarding the application should be directed to either Bart Wherritt at (918) 573–4369 or John Cary (918) 573–4212, Williams Gas Pipelines Central, Inc., P.O. Box 3288, Tulsa, Oklahoma 74101.

Any persons desiring to be heard to protest said filing should on or before August 6, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Docket No. CP99–576–000 Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williams to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–18712 Filed 7–21–99; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC96–19–047, et al.]

California Independent System Operator Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 15, 1999.

Take notice that the following filings have been made with the Commission:

1. California Independent System Operator Corporation

[Docket Nos. EC96–19–047 and ER96–1663–049]

Take notice that on July 8, 1999, the California Independent System Operator Corporation (ISO) tendered for filing a supplemental compliance filing in the above-identified dockets. The filing consists of an amendment to the ISO's Bylaws that would extend the initial term of the ISO's Board of governors to March 31, 2000.

The ISO states that this filing has been served upon all persons on the official service list in the above-identified dockets.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Texas-New Mexico Power Company and SW Acquisition, L.P.

[Docket No. EC99–92–000]

Take notice that on July 9, 1999, Texas-New Mexico Power Company (TNMP) and SW Acquisition, L.P. (together, Joint Applicants) tendered for filing a request that the Commission approve a disposition of facilities and/or grant any other authorization the Commission may deem to be needed under section 203 of the Federal Power Act as a result of the forthcoming merger between TNP Enterprises, Inc. (TNP), TNMP's parent, and SW Acquisition, L.P. Joint Applicants submit that the planned merger of TNP with SW Acquisition, L.P., will have no effect on the jurisdictional facilities, rates or services of TNMP and will be consistent with the public interest.

Joint Applicants request expeditious action on the application in order that there be no delay in the merger of TNP and SW Acquisition, L.P.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Long Island Lighting Company; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation; Orange and Rockland Utilities, Inc.; Rochester Gas and Electric Corporation; Power Authority of the State of New York; New York Power Pool

[Docket Nos. ER97–1523–004, OA97–470–005 and ER97–4234–003 (not consolidated)]

Take notice that on July 12, 1999, the Member Systems of the New York Power Pool (Member Systems), tendered for filing an errata to the Member Systems' compliance filing on April 30, 1999 (April 30 Filing).

A copy of this filing was served upon all persons on the Commission's official service list(s) in the captioned proceeding(s), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: July 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER99–3236–000]

Take notice that on July 12, 1999, Cinergy Services, Inc. (Cinergy), on behalf of its operating affiliates PSI Energy, Inc. and The Cincinnati Gas & Electric Company, filed an executed Service Agreement between Cinergy and the Blue Ridge Power Agency (BRPA) as a supplement to its filing in the above-captioned docket.

Copies of this filing have been served upon all parties on the official service list, the public utility commissions of Indiana, Ohio, Kentucky, and Virginia, the BRPA and the American Electric Power Company.

Comment date: July 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket No. ER99–3531–000]

Take notice that on July 9, 1999, Southern Company Services, Inc. (SCS) filed with the Federal Energy Regulatory Commission a Generator Backup Service Agreement between Mobile Energy Services Company L.L.C. and Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company and Southern Company Services, Inc. SCS states that pursuant to the Agreement it will provide regulation service, spinning reserve service, supplemental reserve service and generator backup capacity and energy service for the generating facility of Mobile Energy Services Company L.L.C., located near Mobile, Alabama.

Pursuant to the Agreement, SCS seeks an effective date of July 7, 1999.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Sierra Pacific Power Company

[Docket No. ER99–3532–000]

Take notice that on July 9, 1999, Sierra Pacific Power Company (Sierra) tendered for filing Service Agreements (Service Agreements) with The Los Angeles Department of Water and Power Wholesale Marketing Group and TransAlta Energy Marketing (U.S.) Inc. for both Short-Term Firm and Non-Firm Point-to-Point Transmission Service under Sierra's Open Access Transmission Tariff (Tariff):

Sierra filed the executed Service Agreements with the Commission in compliance with sections 13.4 and 14.4 of the Tariff and applicable Commission regulations. Sierra also submitted revised Sheet No. 148B (Attachment E) to the Tariff, which is an updated list of all current subscribers.

Sierra requests waiver of the Commission's notice requirements to permit and effective date of July 10, 1999 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Service Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company (Minnesota Company)

[Docket No. ER99–3533–000]

Take notice that on July 9, 1999, Northern States Power Company (Minnesota) (NSP) tendered for filing an Agreement dated June 24, 1999, between NSP and the City of Shakopee (City). In a previous agreement dated June 15, 1998, between the two parties, City agreed to continue paying NSP the current wholesale distribution substation rate of $0.47/kW-month until June 30, 1999. Since the June 15, 1998, agreement has terminated, this new Agreement has been executed to continue the current wholesale distribution substation rate of $0.47/kW-month until December 31, 1999.

NSP requests the Agreement be accepted for filing effective July 1, 1999, and requests waiver of the Commission's notice requirements.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. PP&L, Inc.

[Docket No. ER99–3534–000]

Take notice that on July 9, 1999, PP&L, Inc. (PP&L) filed a Service Agreement dated June 7, 1999, with Energetix (Energetix) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds Energetix as an eligible customer under the Tariff.

PP&L requests an effective date of July 9, 1999 for the Service Agreement.

PP&L states that copies of this filing have been supplied to Energetix and to the Pennsylvania Public Utility Commission.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Dunkirk Power LLC

[Docket No. ER99–3535–000]

Take notice that on July 9, 1999, Dunkirk Power LLC tendered for filing under its market-based rate tariff two long-term service agreements with Niagara Mohawk Power Corporation and one long-term service agreement with NRG Power Marketing, Inc.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Electric Clearinghouse, Inc.

[Docket No. ER99–3536–000]

Take notice that on July 9, 1999, Electric Clearinghouse, Inc. (ECI), tendered for filing pursuant to rule 205, 18 CFR 385.205, revisions to its rate schedule related to sales of ancillary services and replacement reserves in California.

ECI requests waiver of the Commission's 60-day prior notice requirement in order to permit their respective revisions to become effective on July 10, 1999.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

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11. Niagara Mohawk Power Corporation and New York State Electric & Gas Corporation

[Docket No. ER99–3537–000]

Take notice that on July 9, 1999, Niagara Mohawk Power Corporation and New York State Electric & Gas Corporation tendered for filing, under sections 205 and 206 of the Federal Power Act, amendments to New York State Electric & Gas Rate Schedule No. 115 and Niagara Mohawk Power Corporation Rate Schedule No. 165. These amendments reflect the proposed implementation of the New York State Independent System Operator, as well as the transfer by NYSEG of one of its generating stations.

A copy of this filing has been served upon the Public Service Commission of the State of New York.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Huntley Power LLC

[Docket No. ER99–3538–000]

Take notice that on July 9, 1999, Huntley Power LLC tendered for filing under its market-based rate tariff four long-term service agreements with Niagara Mohawk Power Corporation and one long-term service agreement with NRG Power Marketing, Inc.

The effective date of each agreement is June 11, 1999.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation and Rochester Gas and Electric Corporation

[Docket No. ER99–3539–000]

Take notice that on July 9, 1999, Niagara Mohawk Power Corporation and Rochester Gas and Electric Corporation tendered for filing, under sections 205 and 206 of the Federal Power Act, amendments to Niagara Mohawk Power Corporation rate Schedule No. 176. These amendments reflect the proposed implementation of the New York State Independent System Operator, as well as the transfer by the parties of a jointly owned generating station.

A copy of this filing has been served upon the Public Service Commission of the State of New York.

Comment date: July 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Otter Tail Power Company

[Docket No. ER99–3543–000]

Take notice that Otter Tail Power Company (OTP) on July 12, 1999, tendered for filing a transmission service agreement between itself and Ameren Energy. The agreement establishes Ameren Energy as a customer under OTP's transmission service tariff (FERC Electric Tariff, Original Volume No. 7).

OTP respectfully requests an effective date sixty days after filing. OTP is authorized to state that Ameren Energy joins in the requested effective date.

Copies of the filing have been served on the Ameren Energy, Missouri Public Service Commission, Minnesota Public Utilities Commission, North Dakota Public Service Commission, and the South Dakota Public Utilities Commission.

Comment Date: July 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Calpine Power Services Company

[Docket No. ER99–3544–000]

Take notice that on July 12, 1999, Calpine Power Services Company (Calpine Power Services), petitioned the Commission to amend its Revised Rate Schedule No. 1 to provide authority to sell certain ancillary services within the California Independent System Operator control area and replacement reserves at market-based rates, to waive Commission policy to make the amendments to the rate schedule to be effective as of May 7, 1999, to waive application of the Central Maine Policy to Calpine Power Services to waive the sixty-day prior notice requirement in section 35.11 of the Commission's regulations, 18 CFR 35.11, to permit those rates to become effective as of May 7, 1999, and to conform that the waivers and blanket authorizations previously granted to Calpine Power Services for market-based rate authority for wholesale sales of energy and capacity also apply to the market-based sales of ancillary services and replacement reserves. Calpine Power Services is an indirect wholly owned subsidiary of Calpine Corporation.

Comment date: July 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Company Services, Inc.

[Docket No. ER99–3545–000]

Take notice that on July 12, 1999, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APC), filed the Interconnection Agreement (Agreement) between Mobile Energy Services, L.L.C. and APC. The Agreement allows Mobile Energy to interconnect to and operate in parallel with the Southern Company electric system. The Agreement was executed on July 7, 1999 and terminates on September 30, 1999.

Comment date: July 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Delmarva Power & Light Company and Atlantic City Electric Company

[Docket No. ER99–3546–000]

Take notice that on July 12, 1999, Delmarva Power & Light Company (Delmarva) and Atlantic City Electric Company (Atlantic), filed their 1st and 2nd quarterly reports for 1999 for transactions under the Agreement Between Atlantic and Delmarva for Sales of Capacity Credits, under Atlantic's Rate Schedule FERC No. 73 and Delmarva's Rate Schedule FERC No. 121. Delmarva Power & Light Co., et al. 87 FERC ¶ 61,289 (1999).

Comment date: July 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. PP&L, Inc.

[Docket No. ER99–3547–000]

Take notice that on July 12, 1999, PP&L, Inc. (PP&L), filed a Service Agreement dated June 28, 1999, with Tractebel Energy Marketing, Inc. (Tractebel), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreements adds Tractebel as an eligible customer under the Tariff.

PP&L requests an effective date of July 12, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Tractebel and to the Pennsylvania Public Utility Commission.

Comment date: July 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. PP&L, Inc.

[Docket No. ER99–3548–000]

Take Notice that on July 12, 1999, PP&L, Inc. (PP&L), filed a Service Agreement dated June 29, 1999, with New Energy Partners, L.L.C. (New Energy), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds New Energy as an eligible customer under the Tariff.

PP&L requests an effective date of July 12, 1999 for the Service Agreement.

PP&L states that copies of this filing have been supplied to New Energy and to the Pennsylvania Public Utility Commission.

Comment date: July 30, 1999, in accordance Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER99–3549–000]

Take notice that on July 12, 1999, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Firm Point-To-Point Transmission Service between LG&E/KU and The Dayton Power and Light Company under LG&E/KU's Open Access Transmission Tariff.

Comment date: July 30, 1999, in accordance Standard Paragraph E at the end of this notice.

21. The United Illuminating Company

[Docket No. ER99–3550–000]

Take notice that on July 12, 1999, The United Illuminating Company (UI), tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement between UI and Connecticut Light and Power Company executed pursuant to UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended.

Comment date: July 30, 1999, in accordance Standard Paragraph E at the end of this notice.

22. Delmarva Power & Light Company

[Docket No. ER99–3551–000]

Take notice that on July 12, 1999, Delmarva Power & Light Company (Delmarva) for filing an executed umbrella service agreement with Ameren Services Company, as agent for Union Electric Company and Central Illinois Public Service Company, under Delmarva's market rate sales tariff. Delmarva requests an effective date of July 12, 1999.

Comment date: July 30, 1999, in accordance Standard Paragraph E at the end of this notice.

23. Rockland Electric Company

[Docket No. ES99–46–000]

Take notice that on July 2, 1999, Rockland Electric Company submitted an application under section 204 of the Federal Power Act seeking authorization to issue not more than $15 million of unsecured obligations through December 31, 2001, which have a maturity of less than one year after the date of issuance.

Comment date: August 4, 1999, in accordance Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18704 Filed 7–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11757–000.

c. *Date Filed:* June 11, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi L&D #8.

f. *Location:* On the Mississippi River, near the city of Genoa, Vernon County, Wisconsin, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Mississippi L&D #8 and would consist of: (1) 10 new 80-foot-long, 108-inch-diameter steel penstocks; (2) a new 500-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 10 generating units having a total installed capacity of 10,500-kW; (3) a new exhaust apron; (4) a new 400-foot-long, 14.7-kv transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 64 GWh and that the cost of the studies to be performed under the terms of the permit would be $2,000,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, or or before a specified comment date for the

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particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to the file a development application no later than than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of Intent—A notice of intent must specify the exact time, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) names in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–18705 Filed 7–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted For Filing and Soliciting Motions To Intervene, Protests, and Comments

July 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11762–000.

c. *Dated filed:* June 14, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi Lock and Dam #12 Hydroelectric Project.

f. *Location:* On Mississippi River in Jackson County, Iowa. The project would utilize the Corps of Engineers' Mississippi Lock and Dam # 12.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector.perez@ferc.fed.us, (202) 219–2843, or Robert Bell, *robert.bell@ferc.fed.us.* (202) 219–2806.

j. *Deadline for filing motions to intervene, protest and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would consist of: (1) ten 80-foot-long and 114-inch-diameter steel penstocks at the outlet works; (2) a powerhouse with ten turbine generator units with a total installed capacity of 19.25 megawatts; (3) a tailrace consisting of an exhaust apron; (4) 14.7-kV, 1.5-mile-long transmission lines; and (5) other appurtenances.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license

application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) names in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions To Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–18706 Filed 7–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 1171–000

c. *Date Filed:* June 14, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi Lock and Dam #17 Hydroelectric Project.

f. *Location:* On the Mississippi River, Mercer County, Illinois and Louisa County, Iowa. The project would utilize the existing U.S. Army Corps of Engineers' Mississippi Lock and Dam #17.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(e).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for Filing Motions to Intervene, Protest and Comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would consist of the following facilities: (1) five 80-foot-long, 114-inch-diameter penstocks at the outlet works; (2) a powerhouse containing 5 generating units having a total installed capacity of 10.5–MW; (3) a tailrace; (4) 200-foot-long, 14.7–KV transmission lines; and (5) other appurtenances.

The project would have an annual generation of 64,000 MWh and the project power would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202)208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for a preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

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Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–18707 Filed 7–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

July 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11777–000.

c. *Date filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Dillon Dam Hydroelectric Project.

f. *Location:* On Licking River, Muskingham County, Ohio. The project would utilize the U.S. Army Corps of Engineer's Dillon Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Georgory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for filing motions to intervene, protest and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would use the U.S. Army Corps of Engineer's Dillon Dam and would consist of the following facilities: (1) A new 50-foot-long, 96-inch-diameter penstock at the outlet works; (2) a new powerhouse containing one generating unit with an installed capacity of 1.59 MW; (3) a new tailrace; (4) a new 300-foot-long, 14.7–KV transmission line; and (5) other appurtenances.

The project would have an annual generation of 9,700 MWh and project power would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify and the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application(specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Prmit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–18708 Filed 7–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

July 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11776–000.

c. *Date filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Rankin Lock and Dam Hydroelectric Project.

f. *Location:* On Tombigbee River, Itawamba County, Mississippi. The project would utilize the U.S. Army Corps of Engineer's Rankin Lock and Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for filing motions to intervene, protest and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would use the U.S. Army Corps of Engineer's Rankin Lock and Dam and would consist of the following facilities: (1) a new 200-foot-long, 72-inch-diameter penstock at the outlet works; (2) a new powerhouse containing one generating unit with an installed capacity of 900 kW; (3) a new tailrace; (4) a new 200-foot-long, 14.7–KV transmission line; and (5) other appurtenances.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be

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served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–18709 Filed 7–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

July 16, 1999.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11740–000.

c. *Date filed:* May 7, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Enid Dam Project.

f. *Location:* At the Corps of Engineer's Enid Dam, on the Yocona River, near the Town of Crowder, Yolobusha County, Mississippi.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Michael Spencer, Michael.Spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Enid Dam and consist of the following: (1) a 114-inch-diameter, 80-foot-long steel penstock, constructed in the existing outlet works; (2) a powerhouse containing four generating units with a total capacity of 7.8 MW and an estimated average annual generation of 48.0 GWh; and (3) a 3.0-mile-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for a particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–18714 Filed 7–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 16, 1999.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11741–000.

c. *Date filed:* May 7, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Arkabutla Dam Project.

f. *Location:* At the Corps of Engineer's Arkabutla Dam, on the Coldwater River, near the Town of Tunica, Desoto County, Mississippi.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301 (330) 535–7115.

i. *FERC Contact:* Michael Spencer, Michael.Spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules and Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Arkabutla dam and consist of the following: (1) a 122-inch-diameter, 60-foot-long steel penstock, constructed in the existing outlet works; (2) a powerhouse containing five generating units with a total capacity of 7.5 MW and an estimated average annual generation of 46.0 GWh; and (3) a 300-foot-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be field by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–18715 Filed 7–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: P–11756–000.

c. Date Filed: June 11, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Morgantown L&D.

f. Location: On the Monongahela River, near the city of Morgantown, Monongalia County, West Virginia, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. FERC Contact: Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. Deadline Date: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Morgantown L&D and would consist of: (1) 5 new 50-foot-long, 96-inch-diameter steel penstocks; (2) a new 342-foot-long, 30-foot-wide, 30-foot-high powerhouse containing 5 generating units having a total installed capacity of 5,500–kW; (3) a new exhaust apron; (4) a new 200-yard-long, 14.7–kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 34 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,500,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comments date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–18716 Filed 7–21–99; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 224–201081

Title: San Francisco-Columbus Line Marine Terminal Agreement

Parties:

San Francisco Port Commission

Columbus Line USA, Inc.

Synopsis: The proposed agreement provides for the non-exclusive use of certain facilities at San Francisco's Pier 80. The agreement runs through July 31, 2004.

Dated: July 16, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–18652 Filed 7–21–99; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: National Immunization Program Cooperative Agreements for Competitive Immunization Prevention Research

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: National Immunization Program Cooperative Agreements for Competitive Immunization Prevention Research, Program Announcements #99116 (Applied Research on New Vaccines) and #99118 (Applied Research on Surveillance of Vaccine Preventable Diseases in Managed Care Settings), meeting.

Times and Dates: 5 p.m.—7 p.m., August 3, 1999 (Open). 7 p.m.—9 p.m., August 3, 1999 (Closed). 9 a.m.—4:30 p.m., August 4, 1999 (Closed). 9 a.m.—3:30 p.m., August 5, 1999 (Closed).

Place: Westin Atlanta North at Perimeter, 7 Concourse Parkway, Atlanta, Ga 30328.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b (c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcements #99116 and #99118.

Contact Person for More Information: Kimberly Lane, Deputy Associate Director for Management and Operations, National Immunization Program, CDC, 1600 Clifton Rd, m/s E05, Atlanta, Ga 30333. Telephone 404/639–8201, e-mail ksb1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 16, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–18685 Filed 7–19–99; 4:06 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Implementation of the National Occupational Research Agenda (NORA), RFA OH–99–002, Program Area #7, Asthma and Chronic Obstructive Pulmonary Disease

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Implementation of the National Occupational Research Agenda (NORA), RFA OH–99–002, Program Area #7, Asthma and Chronic Obstructive Pulmonary Disease.

Times and Dates: 8 a.m.–8:30 a.m., August 5, 1999 (Open). 8:30 a.m.–1 p.m., August 5, 1999 (Closed).

Place: Embassy Suites Hotel, 1900 Diagonal Rd., Alexandria, Va. 22134.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

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Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to the NORA RFA OH–99–002.

Contact Person for More Information: Michael J. Galvin, Jr., Ph.D., Health Scientist Administrator, Office of Extramural Coordination and Special Projects, NIOSH, CDC, 1600 Clifton Rd., Atlanta, Ga. 30333. Telephone 404/639-3525, e-mail mtg3@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 16, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–18686 Filed 7–19–99; 4:06 pm]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: citizens Advisory Committee on PHS Activities and Research at DOE Sites: Savannah River Site Health Effects Subcommittee.

Times and Dates: 8:30 a.m.–5 p.m., August 12, 1999. 8:30 a.m.–12 noon, August 13, 1999.

Place: Sheraton Buckhead Hotel, 3405 Lenox Road, Atlanta, Georgia 30326, telephone 404/261–9250, fax 404/848–7391.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for communities, American Indian Tribes, and labor to express concerns and provide advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health, and ATSDR, on updates regarding progress of current studies. Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Paul G. Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724, telephone 770/488–7040, fax 770/488–7040.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: July 14, 1999,

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–18552 Filed 7–21–99; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grant to Welfare Information Network

AGENCY: Office of Family Assistance, ACF, DHHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that an award is being made to the Welfare Information Network of Washington, DC in the amount of $75,000 for information dissemination activities on Welfare Reform. After the appropriate reviews, it has been determined that this proposal qualifies as a sole source award. Over the past three years, the Welfare Information Network (WIN) has been one of the leading nonprofit organizations in disseminating information and materials on Welfare Reform. The WIN network is a very unique organization in the Welfare Reform community. It has created a database on the cutting edge of Welfare to Work promising strategies through a synthesis of the latest research, site visits, and surveys of practitioners and service providers. The WIN organization has been an extremely valuable partner with the Office of Family Assistance in several clearinghouse and networking activities. This partnership with the WIN Organization has proven to be invaluable to States and communities in obtaining the information, policy analysis, and technical assistance they need to develop and implement changes that have helped to reduce dependency and promote the well-being of children and families. The period of this funding will extend through May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Maiers, Office of Family Assistance, Administration for Children and Families, 370 L'Enfant Promenade, SW, Washington, DC 20447, Telephone: 202–401–5438.

Dated: July 13, 1999.

Alvin C. Collins,

Director, Office of Family Assistance.

[FR Doc. 99–18650 Filed 7–21–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration For Children and Families

Grant to Welfare to Work Partnership

AGENCY: Office of Family Assistance, ACF, DHHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that an award is being to made to the Welfare to Work Partnership of Washington, DC in the amount of $50,000 to partner with DHHS/ACF/OFA on a Welfare to Work Conference. The conference will be held in Chicago, IL, August 2–4, 1999. After the appropriate reviews, it has been determined that this proposal qualifies as a sole source award. The Welfare to Work Partnership is the only organization like it in the country in the Welfare to Work community and this conference is the first of its kind forum. The Welfare to Work Partnership concentrates on energizing the business community to hire and retain welfare recipients and has recruited more than 10,000 business partners located in all States in the country. The conference in Chicago will have in attendance over 1,000 employers. The conference will serve those already involved in welfare reform and welfare to work as well as those who are interested in learning how to become involved. The period of this funding will extend through May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Maiers, Office of Family Assistance, Administration for Children and Families, 370 L'Enfant Promenade, SW, Washington, DC 20447, Telephone: 202–401–5438.

Dated: July 13, 1999.

Alvin C. Collins,

Director, Office of Family Assistance.

[FR Doc. 99–18651 Filed 7–24–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1392]

Agency Information Collection Activities: Proposed Collection; Comment Request; State Enforcement Notification; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of June 8, 1999 (64 FR 30525). The document announced an opportunity for public comment on a proposed collection of information: specifically, comments on reporting requirements contained in existing FDA regulations governing State enforcement notifications.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In FR Doc. 99 14458, beginning on page 30525 in the **Federal Register** of Tuesday, June 8, 1999, the following correction is made:

1. On page 30526, in the first column, in the second paragraph, beginning in the fifth line, "potential future need of a State or local government to petition for an exemption from preemption under the provisions of section 310(b) of the act." is corrected to read "potential future obligation of a State to notify FDA of an enforcement action under the provisions of section 310(b) of the act."

Dated: July 15, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–18695 Filed 7–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0123]

Agency Information Collection Activities; Announcement of OMB Approval; Food Labeling: Notification Procedures for Statements on Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Food Labeling: Notification Procedures for Statements on Dietary Supplements" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 7, 1999 (64 FR 24659), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0331. The approval expires on July 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at "http://www.fda.gov/ohrms/dockets".

Dated: July 15, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–18694 Filed 7–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0124]

Agency Information Collection Activities; Announcement of OMB Approval; Premarket Notification for a New Dietary Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Premarket Notification for a New Dietary Ingredient" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 7, 1999 (64 FR 24660), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the

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information collection and has assigned OMB control number 0910–0330. The approval expires on July 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at "http://www.fda.gov/ohrms/dockets".

Dated: July 15, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–18696 Filed 7–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cooperative Agreement to Support a National Center for Food Safety and Technology; Notice of Intent to Renew a Cooperative Agreement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to accept and consider a single source application for the award of a cooperative agreement in fiscal year 1999. An estimated amount of $2 million per year, with an additional 4 years of support, is available to the Illinois Institute of Technology (IIT) to support the National Center for Food Safety and Technology (NCFST), which is located on IIT's Moffett Campus in Summit-Argo, IL. Competition is limited to IIT because IIT has the unique capability to bring together diverse perspectives on food safety; IIT has access to the exceptional combination of scientific expertise, pilot plants, and research facilities necessary to focus those perspectives on cooperative food safety programs; and IIT has underway a cooperative food safety research program and an academic degree program in food safety. This is the first American effort to join the resources of government, academia, and industry in a consortium to study issues of food safety.

DATES: Submit applications by August 23, 1999. If this date falls on a weekend, it will be extended to Monday; if this date falls on a holiday, it will be extended to the following workday.

ADDRESSES: An application is available from and should be submitted to: Maura C. Stephanos (address below). Applications hand carried or commercially delivered should be addressed to Maura C. Stephanos, 5630 Fishers Lane, rm. 2129, Rockville, MD 20852, FAX 301–827–7106, e-mail address: mstepha1@oc.fda.gov.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice contact: Maura C. Stephanos, Senior Grants Management Specialist, Office of Regulatory Affairs Support and Assistance Management Branch (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7183.

Regarding the programmatic aspects contact: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFS–22), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5140, FAX 202–205–4525, e-mail address: kcarson@bangate.fda.gov.

SUPPLEMENTARY INFORMATION: FDA is announcing its intention to accept and consider a single source application from IIT for a cooperative agreement to support the NCFST. FDA's authority to enter into grants and cooperative agreements is set out in section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance No. 93.103. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will provide to the public.

IIT's application for this award will undergo dual peer review. An external review committee of experts in food science research will review and evaluate the application based on its scientific merit. A second level review will be conducted by the National Advisory Environmental Health Science Council.

I. Background

In the **Federal Register** of May 3, 1988 (53 FR 15736), FDA published a request for applications for a cooperative agreement to establish a National Center for Food Safety which would join the resources of government, academia, and industry in a consortium to study questions of food safety. FDA awarded the cooperative agreement to IIT in September 1988. Applications received were competitively reviewed by a panel of non-FDA food scientists, and the award approved by the National Advisory Environmental Health Science Council in September 1988.

In the **Federal Register** of September 10, 1991 (56 FR 46189) and in the **Federal Register** of May 12, 1994 (59 FR 24703), FDA published notice of its intention to limit consideration for the award of a cooperative agreement to IIT to support the NCFST. FDA awarded the cooperative agreement to IIT on September 30, 1991, and September 26, 1994, respectively, following competitive review of the application by a panel of non-FDA food scientists. The award was approved by the National Advisory Environmental Health Science Council in September 1991 and in September 1994, respectively.

Under the cooperative agreement, IIT has established and staffed the NCFST at IIT's Moffett Campus in Summit-Argo, IL. Other participants in this effort are the IIT Research Institute; the Food Science Department of the University of Illinois, Urbana-Champaign; FDA; and industry. The NCFST is structured so that representatives of participating organizations play a role in establishing policy and administrative procedures, as well as identifying long- and short-term research needs. With this organizational structure, the NCFST is able to build cooperative food safety programs on a foundation of knowledge about current industrial trends in food processing and packaging technologies, regulatory perspectives from public health organizations, and fundamental scientific expertise from academia. The structure and programs at the NCFST positioned the Center as a focal point of FDA's participation in research and risk assessment associated with the President's Food Safety Initiative (FSI). Specifically, the work at NCFST focuses on development of preventive technologies targeted to reduce or eliminate microbial contamination of foods that results in foodborne illness. The work at the NCFST complements and feeds into FSI risk assessment and other activities at the Joint Institute for Food Safety and Applied Nutrition at the University of Maryland.

II. Mechanism of Support

A. Award Instrument

Support for this program, if granted, will be in the form of a cooperative agreement. In 1999, FDA is providing $2 million for this award. The award will be subject to all policies and requirements that govern the research grant programs of the Public Health Service (PHS), including the provisions of 42 CFR part 52, 45 CFR part 74, and the PHS Grants Policy Statement.

B. Length of Support

The length of support will be 1 year with the possibility of an additional 4 years of noncompetitive support. Continuation, beyond the first year, will be based upon performance during the preceding year and the availability of Federal fiscal year appropriations.

III. Reasons for Single Source Selection

FDA believes that there is compelling evidence that IIT is uniquely qualified to fulfill the objectives of the proposed cooperative agreement. IIT's Moffett Campus, where the NCFST is located, is a unique research facility which includes an industrial-size pilot plant and smaller pilot plants for food processing and packaging equipment, a pathogen containment pilot plant, a biotechnology laboratory, a packaging laboratory, analytical laboratories, offices, containment facilities, classrooms, and support facilities which permit research from benchtop to industrial-scale. The industrial-size pilot plant is built to accommodate routine food processing and packaging research in a commercial atmosphere. The physical layout of the facility provides maximum versatility in the use and arrangement of equipment of both commercial and pilot size, and in the capability to operate simultaneously several different pieces of equipment without interference with each other. In addition to facilities to conduct routine processing research, there are facilities suitable for more complex research, notably a pathogen containment pilot plant research facility, funded by the State of Illinois, which can also accommodate biotechnology scaleup and downstream processing and purification research. Other facilities include smaller containment facilities in which research involving use of components that may be potentially hazardous, such as pathogens in pasteurization or modified atmosphere packaging research, may be conducted.

Since 1988, IIT has provided an environment in which scientists from diverse backgrounds—academia, government, and industry—have brought their unique perspectives to focus on contemporary issues of food safety. The NCFST functions as a neutral ground where scientific exchange about generic food safety issues occurs freely and is channeled into the design of cooperative food safety programs. The NCFST recently convened a meeting of national experts in aseptic processing of foods containing small particles to identify research required to establish the safety of the process and gain its approval in the United States. This process is used in other countries and has the advantages of providing consumers with shelf-stable, fresher tasting products. As a result of the research conducted by industry in response to the plan developed at NCFST, an aseptic process was approved by FDA. The NCFST has become a center of cutting edge technologies, such as high pressure processing, pulsed electric field processing, electrical resistance processing, and ultra violet processing. Ongoing research on packaging materials is focused on providing more alternatives for use with irradiation. A workshop, with participation by representatives of government, academia, and industry, was held to discuss the use of irradiation as an intervention to prevent microbial contamination of foods and the need for alternative packaging materials for use with this technology. This led to the development of cooperative research on the safety of polymeric packaging materials for in-package irradiation. This type of research fills existing gaps in knowledge and expertise associated with improving the safety of foods at a time when concern about food contamination and resultant illnesses is high.

This cooperative research will provide fundamental food safety information, in the public domain, for use by all segments of the food science community in product and process development, regulatory activities, academic programs, and consumer programs. A particular use of this type of data by both industry and public health agencies is in Hazard Analysis Critical Control Point (HACCP) programs. Food manufacturers will use the information in the design of HACCP programs, for use in their plants, which prevent food safety hazards before they occur and enhance the safety of the final product. Public health agencies can design specific investigational techniques to be applied to the HACCP systems used in manufacturing plants.

An academic degree program (which is not part of the cooperative agreement) in food safety science has been underway for 8 years at IIT. The program will produce graduates with a foundation in food science and technology with specialization in food safety. Graduates from this program will manage quality control, safety assurance, and HACCP programs in industry. They will design equipment and processes for use in the production and packaging of safe food products. In the public sector, regulatory and other public health organizations, these graduates will evaluate the adequacy of processing and packaging parameters to produce safe endproducts, and they will manage regulatory and information programs enhancing the safety of the food supply and consumer knowledge about the food supply. Graduate students from IIT and University of Illinois are gaining hands-on experience in food safety by participating in the cooperative food safety research program. Several Masters of Science degrees, which included research conducted on cooperative projects, have been granted in disciplines such as engineering by IIT since the inception of the NCFST.

Collaboration between the public and the private sector is an efficient means for both to remain current with scientific and technical accomplishments from a food safety perspective. These collaborative programs will produce generic knowledge and expertise to be used by all segments of the food processing and packaging industry, as well as by public health organizations, regulatory agencies, and academic institutions in the performance of their roles in the food science community. The trend toward use of HACCP in both the domestic and international food industry as a means of assuring safety of products and as a basis for harmonizing regulatory activities is but one example of the need for and use of this food safety knowledge and expertise. Technology transfer mechanisms, which are developing out of the cooperative food safety programs, will facilitate the movement of advanced food processing and packaging technologies into the marketplace, while assuring the safety of those products.

IV. Reporting Requirements

Program progress reports and financial status reports will be required annually, based on date of award. These reports will be due within 30 days after the end of the budget period. A final program progress report and financial status report will be due 90 days after expiration of the project period of the cooperative agreement.

V. Delineation of Substantive Involvement

Substantive involvement by the awarding agency is inherent in the cooperative agreement award. Accordingly, FDA will have substantial involvement in the program activities of the project funded by the cooperative agreement. Substantive involvement includes, but is not limited to, the following:

1. FDA will appoint a project officer or co-project officers who will actively monitor the FDA-supported program under this award.

2. FDA shall have prior approval on the appointment of all key administrative and scientific personnel proposed by the grantee.

3. FDA will be directly involved in the guidance and development of the

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program and of the personnel management structure for the program.

4. FDA scientists will participate, with the grantee, in determining and carrying out the methodological approaches to be used. Collaboration will also include data analysis, interpretation of findings, and, where appropriate, coauthorship of publications.

Dated: July 15, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–18689 Filed 7–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2145]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); VICH GL11 Draft Guidance on Impurities in New Veterinary Medicinal Products; Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment of a draft guidance developed by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This VICH GL11 draft guidance for industry entitled "Impurities in New Veterinary Medicinal Products" provides guidance recommendations for applications for marketing authorizations on the content and qualification of impurities in new veterinary medicinal products produced from chemically synthesized new active substances not previously registered in a member state.

DATES: Submit written comments by August 23, 1999; FDA must receive comments before the deadline in order to ensure their consideration at the next VICH committee meeting, but the agency will accept comments after the deadline.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document.

Copies of the draft guidance entitled "Impurities in New Veterinary Medicinal Products" may be obtained on the Internet from the CVM home page at "http://www.fda.gov/cvm/fda/TOCs/guideline.html". Persons without Internet access may submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT:

Regarding the VICH: Sharon R. Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e-mail "sthompso@cvm.fda.gov".

Regarding the draft guidance: Kevin J. Greenlees, Center for Veterinary Medicine (HFV–150), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6977, e-mail "kgreenle@cvm.fda.gov".

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seeking scientifically based harmonized technical requirements for the development of pharmaceutical products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) for several years to develop harmonized technical requirements for the registration of human pharmaceutical products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the registration of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Epizooties. The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/ New Zealand, one representative from the industry in Australia/ New Zealand, one representative from MERCOSUR (Argentina, Brazil, Uruguay, and Paraguay), and one representative from Federacion Latino-Americana de la Industria para la Salud Animal. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative participates in the VICH Steering Committee meetings.

At a meeting held on October 20 through 22, 1998, the VICH Steering Committee agreed that the draft guidance entitled "Impurities in New Veterinary Medicinal Products" should be made available for public comment. Comments will be considered by FDA and the VICH Quality Working Group. Ultimately, FDA intends to adopt the VICH Steering Committee's final guidance and publish it as a future guidance.

This draft guidance, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulations (62 FR 8961, February 27, 1997) . For example, the document has been designated as a draft "guidance" rather than a draft "guideline." Since guidance documents are not binding, mandatory words such as "must," "shall," and "will" in the original VICH document have been substituted with "should," unless the reference is to a statutory or regulatory requirement. Additionally, the term(s) "veterinary medicinal products" and "veterinary pharmaceutical products" may require revision to be consistent with product terms used in other VICH guidance documents.

This draft guidance represents the agency's current thinking on impurities in new veterinary medicinal products. The document does not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternate approaches may be used if they satisfy the requirements of applicable statutes, regulations, or both.

II. Comments

Interested persons should submit written comments on or before August 23, 1999, to the Dockets Management Branch (address above) regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 15, 1999

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–18688 Filed 7–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2249]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Guidance on Stability Testing for Medicated Premixes; Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment on the following draft guidance for industry document entitled "Stability Testing for Medicated Premixes." This draft guidance document has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft guidance document is an annex to the parent guidance VICH GL3 entitled "Stability Testing of New Drug Substances and Products in the Veterinary Field." This draft guidance document is the annex and addresses the recommendations for stability testing of veterinary medicinal Type A medicated articles (referred to as medicated premix drug products in the draft guidance) intended for submission for approval to the European Union, Japan, and the United States.

DATES: Written comments should be submitted by August 23, 1999. NOTE: FDA will accept comments after the deadline, but to assure consideration, we must receive them by August 23, 1999.

ADDRESSES: Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the full title of the draft guidance document and the docket number found in the heading of this document. Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section of this document for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT:

Regarding VICH: Sharon Thompson (HFV–3), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e-mail "sthompso@cvm.fda.gov".

Regarding the guidance document: William G. Marnane (HFV–140), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6966, e-mail "wmarnane@cvm.fda.gov".

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seeking scientifically based harmonized technical requirements for the development of pharmaceutical products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) for several years to develop harmonized technical requirements for the registration of human pharmaceutical products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the registration of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Epizooties (OIE). The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the U.S. Food and Drug Administration; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from MERCOSUR (Argentina, Brazil, Uruguay, and Paraguay), and one representative from Federacion Latino-Americana de la Industria para la Salud Animal. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative participates in the VICH Steering Committee meetings.

At a meeting held on October 20–22, 1998, the VICH Steering Committee agreed that the draft guidance document entitled "Stability Testing for Medicated Premixes" should be made available for public comment.

This draft guidance addresses the generation of acceptable stability information for submission in new animal drug applications (referred to as registration applications in the draft guidance) for Type A medicated articles containing new molecular entities. Comments about this draft guidance document will be considered by the FDA and the VICH Quality Working Group. Ultimately, FDA intends to adopt the VICH Steering Committee's final guidance and publish it as future guidance.

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This draft guidance has been revised to conform to FDA's good guidance practices (62 FR 8961, February 27, 1997) . For example, the documents have been designated "guidance" rather than "guideline." Because guidance documents are not binding, mandatory words such as "must" and "shall," and "will" in the original VICH documents have been substituted with "should." Additionally, the term(s) "veterinary medicinal products" and "veterinary pharmaceutical products" may require revision to be consistent with product terms used in other VICH guidance documents.

This draft guidance document represents the FDA's current thinking on acceptable stability testing of Type A medicated articles. The document does not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternate approaches may be used if they satisfy the requirements of applicable statutes, regulations, or both.

II. Comments

Interested persons may, on or before August 23, 1999, submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of the draft guidance document entitled "Stability Testing for Medicated Premixes" may be obtained on the internet within the CVM home page at "http://www.fda.gov/cvm/fda/TOCs/guideline.html".

Dated: July 15, 1999

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–18692 Filed 7–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2215]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); VICH GL10 Draft Guidance on "Impurities in New Veterinary Drug Substances;" Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment of a draft guidance developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This VICH GL10 draft guidance for industry entitled "Impurities in New Veterinary Drug Substances" is intended to assist in developing registration applications for approval of veterinary medicinal products submitted to the European Union, Japan, and the United States.

DATES: Submit written comments August 23, 1999; FDA must receive comments before the deadline in order to ensure their consideration at the next VICH committee meeting, but the agency will accept comments after the deadline.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm 1061, Rockville, MD 20852. Comments should be identified with the full title of the draft guidance and the docket number found in the heading of this document.

Copies of the draft guidance entitled "Impurities in New Veterinary Drug Substances" may be obtained on the Internet from the CVM home page at "http://www.fda.gov/cvm/fda/TOCs/guideline.html". Persons without Internet access may submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT:

Regarding VICH: Sharon Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, E-mail "sthompso@cvm.fda.gov".

Regarding the guidance document: Kevin Greenlees, Center for Veterinary Medicine (HFV–150), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6977, E-mail "kgreenle@cvm.fda.gov".

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seeking scientifically based harmonized technical requirements for the development of pharmaceutical products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) for several years to develop harmonized technical requirements for the registration of human pharmaceutical products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the registration of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Épizooties. The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association, and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/ New Zealand, one representative from the industry in Australia/ New Zealand, one representative from MERCOSUR (Argentina, Brazil, Uruguay and Paraguay), and one representative from Federacion Latino-Americana de la Industria para la Salud Animal. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative participates in the VICH Steering Committee meetings.

At a meeting held on October 20 through 22, 1998, the VICH Steering Committee agreed that the draft guidance document entitled "Impurities in New Drug Substances" should be made available for public comment.

This draft guidance is intended to provide guidance for registration applications on the content and qualification of impurities in new drug substances intended to be used for new veterinary medicinal products produced by chemical syntheses and not previously registered in a region or member state. Comments about this draft guidance will be considered by the FDA and the VICH Quality Working Group. Ultimately, FDA intends to adopt the VICH Steering Committee's final guidance and publish it as future guidance.

This draft guidance, developed under the VICH process, has been revised to conform to FDA's good guidance practice regulations (62 FR 8961, February 27, 1997). For example, the document has been designated "guidance" rather than "guideline." Since guidance documents are not binding, mandatory words such as "must," and "shall," and "will" in the original VICH document have been substituted with "should" unless the reference is to a statutory or regulatory requirement. Additionally, the term(s) "veterinary medicinal products" and "veterinary pharmaceutical products" may require revision to be consistent with product terms used in other VICH guidance documents.

This draft guidance represents the agency's current thinking on the regulation of impurities in new animal drug substances. The document does not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternate approaches may be used if they satisfy the requirements of applicable statutes, regulations, or both.

II. Comments

Interested persons should submit written comments on or before August 23, 1999, to the Dockets Management Branch (address above) regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 15, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–18697 Filed 7–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–460]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Medicare Participating Physician or Supplier Agreement, HCFA–460;

Form No.: HCFA–460 (OMB # 0938–0373);

Use: The HCFA–460 is completed by nonparticipating physicians and supplier if they choose to participate in Medicare Part B. By signing the agreement, the physician or supplier agrees to take assignment on all Medicare claims. To take assignment means to accept the Medicare allowed amount as payment in full for the services they furnish and to charge the beneficiary no more than the deductible and coinsurance for the covered service. In exchange for signing the agreement, the physician or supplier receives a significant number of program benefits not available to nonparticipating physicians and suppliers. The information is needed to know to whom to provide these benefits.

Frequency: Once, unless re-enrolled;

Affected Public: business or other for-profit, and Individuals or Households;

Number of Respondents: 45,000;

Total Annual Responses: 45,000;

Total Annual Hours: 11,250.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: June 15, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–18752 Filed 7–21–99; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in June.

A summary of the meeting may be obtained from: Ms. Coral M. Sweeney, SAMHSA, Division of Extramural Activities Policy and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–2998.

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Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.
Meeting Date: August 2, 1999.
Place: Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.
Closed: August 2, 1999, 8:30 a.m.–adjournment.
Contact: Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: (301) 443–9919 and FAX (301) 443–1587.

Committee Name: SAMHSA Special Emphasis Panel II.
Meeting Date: August 12–13, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Closed: August 12, 1999, 8:30 a.m.–5:00 p.m., August 13, 1999, 8:30 a.m.—adjournment.
Contact: Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: (301) 443–9919 and FAX (301) 443–1587.

Committee Name: SAMHSA Special Emphasis Panel II.
Meeting Date: August 4–5, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Closed: August 4, 1999, 8:30 a.m.–5:00 p.m., August 5, 1999, 8:30 a.m.–adjournment.
Contact: Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: (301) 443–9919 and FAX (301) 443–1587.

Committee Name: SAMHSA Special Emphasis Panel II.
Meeting Date: August 9, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Closed: August 9, 1999, 8:30 a.m.–adjournment.
Contact: Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: (301) 443–9919 and FAX (301) 443–1587.

Dated: July 15, 1999.

Coral Sweeney,

Lead Grants Technical Assistant, Extramural Activities Team, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–18698 Filed 7–21–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–009–1030–241A]

Proposed Information Collection—Form 5450–5, Vegetative or Mineral Material, Negotiated Cash Sale Contract

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request approval to collect information from applicants who apply to purchase limited values of vegetative and/or mineral materials from public lands under existing authority and forest products regulations. Respondents supply the information so that BLM can determine applicant qualifications, the product type and amount to be purchased, product location, and terms and conditions for the removal of material.

DATES: BLM must receive comments on the proposed information collection by September 20, 1999, to assure its consideration of them.

ADDRESSES: Mail comments to: Director (630), Bureau of Land Management, 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240. Send comments by means of the intent to: WoComment@blm.gov. Please include "ATTN: 1004–NEW" and your name and return address in your internet message.

You may hand deliver comments to the BLM Administrative Record, Room 401 L Street, N.W., Washington, D.C. BLM will make comments available for public review and comment at the L Street during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John C. Stewart—Fish, Wildlife and Forests Group, Washington Office (WO230), (202) 452–7759, or John S. Styduhar—Biological Sciences, Oregon State Office (OR931), (503) 952–6454.

SUPPLEMENTARY INFORMATION: The regulations at 5 CFR 1320.8(d) require BLM to provide a 60-day notice in the **Federal Register** concerning the collection of information contained in Form 5450–5, to seek comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will review and analyze any comments sent in response to this notice and include them with its request for approval from the OMB under the Paperwork Reduction Act.

The Act of August 28, 1937 (43 U.S.C. 1181a) authorizes the sale of timber and other forest products from the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands. The Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*) provides for the disposal of vegetative and mineral materials from public lands of the United States by sale or free use. Authority for small sales of timber for use in Alaska is contained in the Act of May 14, 1898, as amended (16 U.S.C. 615a). The Secretary disposes of such materials at his discretion, consistent with the regulations at 43 CFR Part 5400 and 43 CFR Part 3600. Federal regulations require that, other than for incidental use, the severance and/or removal of any vegetative or mineral resource for personal or commercial use requires a written contract or permit issued by the authorized officer or other person authorized by the United States. Form 5450–5 is the contract form approved by the BLM Director for the negotiated cash sale of vegetative or mineral material. Procedures for preparation of contracts for the sale of forest products are set forth in Timber Sale Procedures Handbook Manual Section 5420–1 and Special Forest Products Procedure Series Handbook 5400–2.

Form 5450–5 is the contract form most commonly used by BLM for the sale of vegetative and mineral materials. It is designed for over-the-counter use by field offices for the cash sale of vegetative and mineral materials with a value of $2,499 or less for vegetative material and $999 or less for mineral material. Typical products sold using Form 5450–5 include such items as grasses, seeds roots, bark, berries, mosses, ferns, edible mushrooms, tree seedling, transplants, poles, and firewood. Form 5450–5 is also used for the sale of small volumes of mineral materials including petrified wood and common varieties of sand, stone, or gravel. Each contract form is prenumbered for accountability and cash payment, in full, is required before BLM signs the contract.

Form 5450–5 requires the following information from the respondent: (1) The name of the purchaser or his/her authorized representative with complete mailing address; (2) the specific type of vegetative or mineral materials to be purchased and their respective quantities; (3) the specific location from which the materials are to be removed, and (4) the signature of the purchaser or authorized representative. BLM reviews the information collected from the respondent to: (1) Determine the qualifications of the purchaser, (2) determine fair market value for the materials sold, (3) identify potential environmental impacts, and (4) prevent trespass removal of the materials. BLM uses this information to establish the parties to the contract, the total purchase price including road maintenance and site reclamation fees, the period for which the contract is valid, and terms and conditions and other stipulations which are required by BLM for removal of the materials. Without this information, the federal government would not be able to enter into a biding contract with the purchaser or property account for and report sales of mineral and vegetative materials from the public lands.

The information collection on Form 5450–5 is required by the respondent in order to obtain a benefit. The majority of respondents are individuals purchasing small quantities of vegetative and mineral materials for personal use. According to the 1998 summary report of special forest and range products, BLM entered into 15,627 contracts for the negotiated cash sale of vegetative and mineral materials using Form 5450–5. Based on BLM's experience in administering these activities, the public reporting burden for the information described is estimated to average 15 minutes per response. Actual time varies from 5 minutes to 30 minutes depending on the type and variety of materials being purchased. The frequency of response by the respondent is once per contract. Using an average of 15,000 requests per year, the total annual burden is 3,750 hours.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will become part of the public record.

Dated: July 14, 1999.

Carole Smith,

Information Clearance Officer.

[FR Doc. 99–18660 Filed 7–21–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–01]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. On April 16, 1999, BLM published a notice in the **Federal Register** (64 FR 18931) requesting comments on this proposed collection. The comment period closed on June 15, 1999. BLM received no comments for the public in response to that notice. Copies of the proposed collection of information and related documents and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below. OMB is required to respond to this request within 60 days but may respond within 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Desk Office (1004–0153), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of BLM, including whether or not the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

Title: Conveyance of Federally Owned Mineral Interests, 43 CFR part 2720.
OMB Approval Number: 1004–0153.
Abstract: Respondents supply identifying information to be used by the agency to process applications to determine an applicant's eligibility for benefits and whether all statutory requirements have been met.
Bureau Form Number: None.
Frequency: Once.
Description of Respondents: Individuals whose land surface ownership overlies federally owned mineral interest.
Estimated Completion Time: 10 hours.
Annual Responses: 13.
Annual Burden Hours: 130.
Bureau Clearance Office: Carole Smith, (202) 452–0367.

Carole J. Smith,

Bureau of Land Management Clearance Officer.

[FR Doc. 99–18754 Filed 7–21–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–00, WYW 0333794]

Availability of Preliminary Public Interest Determination, Draft Environmental Assessment and Notice of Public Hearing

AGENCY: Department of Interior, Bureau of Land Management, Wyoming.

ACTION: Notice of availability of a preliminary public interest determination, a draft environmental assessment and notice of a public hearing on the proposed Belco/Enron I–90 coal lease exchange.

SUMMARY: In accordance with 43 CFR 3435.3–5, the Bureau of Land Management (BLM) is giving notice that the lands to be leased in the proposed exchange are acceptable for further consideration for exchange. The lease rights offered by BLM are equal to the estimated fair market value of the lease exchange rights to be relinquished by Enron, as required by 43 CFR 3435.3–4.

BLM is also giving notice that an environmental assessment (EA) has been developed to document conformance with the Buffalo Resource Management Plan, which determined that these lands are suitable for further

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coal leasing consideration; to disclose the environmental consequences of the proposed exchange action and reasonable alternatives; and to determine if the proposed exchange is in the public interest. The BLM's preliminary public interest determination is that the proposed exchange is in the public interest, and these findings are documented within the EA.

This exchange notice follows the January 20, 1999, notice which was required under 43 CFR 3435.3–1, and which initiated BLM's consideration of a coal lease for coal lease exchange. A copy of the notice was sent to the Governor of WY as required by 43 CFR 3435.3–6. Since the initial notice, Enron has expressed their willingness to proceed with consideration of the exchange as proposed by BLM (43 CFR 3435.3–2;. Consistent with 43 CFR 3435.3–3, the Powder River Regional Coal Team (RCT) has been informed of exchange negotiations, and the RCT will be consulted prior to finalizing any exchange.

BLM is requesting comments on the preliminary public interest determination, and the draft environmental assessment.

DATES: BLM is accepting written comments on the preliminary public interest determination and the draft environmental assessment until September 1, 1999, at the address below. A public hearing is scheduled to accept oral and written testimony and comment on the preliminary public interest determination, and the draft environmental assessment. The public hearing will be at 7 p.m. MDT, August 17, 1999 at the Best Western Tower West Lodge, 109 North U.S. Highway 14–16, Gillette, WY 82716.

ADDRESSES: Request copies of the draft EA, including the preliminary public interest determination by either calling the Casper Field Office at 307–261–7600, or by writing to the Field Manager, Casper Field Office, Attn: Mike Karbs, 1701 East "E'Street, Casper, Wyoming 82601. This is also where written comments should be sent.

FOR FURTHER INFORMATION CONTACT: For more information or to obtain a copy of the document contact Mike Karbs at the address above or by calling 307–261–7600.

SUPPLEMENTARY INFORMATION: Enron (formerly Belco Petroleum Corp.), has offered to exchange all coal lease rights retained from coal lease WYW 0322794 to BLM for a Federal coal lease in the Hay Creek coal tract. Coal lease WYW 0322794 (in Johnson County, WY, east of the Town of Buffalo), was relinquished on December 31, 1986, but Enron retained the right to pursue an I–90 lease exchange. A legal description of the lands contained in terminated coal lease WYW 0322794 is at the end of this notice. Consideration of a lease exchange is appropriate as authorized under the Act of October 30, 1978, Pub. L. 95–554, commonly referred to as the I–90 Exchange Act.

The Interior Board of Land Appeals (IBLA), in a December 5, 1997, decision (IBLA 94–684), stated,

> Because we conclude that the public interest favors completing a coal exchange, we remand the case to BLM in order that it may complete, as expeditiously as possible, an exchange of the Belco (Enron) tract for a redelineated Hay Creek tract or for all or part of one of the other two tracts listed in the Agreement. (IBLA 94–684; 141 IBLA 367).

Enron identified the possibility of exchanging 100 million tons of coal in sections 20 and 21, in the southeastern portion of the Hay Creek tract as the selected Federal coal lease in exchange for offered coal lease rights. This exchange proposal was also made by Belco (Enron) in a letter to BLM dated August 22, 1983, and again in a letter dated November 22, 1989; that is, an exchange of 170 million tons of coal in the Buffalo area for a tract containing approximately 100 million tons of coal to be delineated from acreage in the extreme southeast portion of the Hay Creek Tract (141 IBLA 368).

After evaluating Hay Creek's coal geology and reserves in response to Enron's proposal, BLM proposes to exchange a coal lease on the following coal lands for Enron's offered coal lease rights:

T. 52 N., R. 72 W., 6th P.M., Wyoming
Sec. 17: Lot 16;
Sec. 20: Lots 1, 2 (E2E2), 7 (E2E2), 8, 9, 10 (E2E2), 15 (E2E2), 16;
Sec. 21: Lots 3 (W2), 4, 5, 6 (W2), 10 (W2), 11–15.

This 599.172 acre tract contains approximately 106 million tons of minable coal. The tract boundaries provide straight boundaries to promote maximum economic coal recovery and follow no less than 10-acre subdivisions.

The regulations at 43 CFR 3435.3–4 require that the land to be leased shall, to the satisfaction of the lessee and the Secretary, be equal to the estimated fair value of the lease to be relinquished. The two tracts under consideration here are not similar. At the old Belco lease, the coal averaged 7100 BTUs/lb. Eight thousand BTUs/lb is considered minable to a coal/overburden ratio of 5:1.

BLM and Belco have independently determined that the old Belco lease had between 137–185 million tons of minable coal to a 5:1 stripping limit. Enron proposed an exchange based on an estimated average of 170 million tons of minable coal at the old Belco lease for 100 million tons of coal in sections 20 and 21 in the southeastern portion of the Hay Creek tract. This exchange proposal was also made by Belco in a letter to BLM dated August 22, 1983, and again in a letter dated November 22, 1989; that is, an exchange of 170 million tons of coal in the Buffalo area for a tract containing approximately 100 million tons of coal to be delineated from acreage in the extreme southeastern portion of the Hay Creek tract.

After evaluating Hay Creek's coal geology and reserves in response to Enron's proposal, BLM proposed a 599.112 acre tract delineated from acreage in the southeast portion of the Hay Creek tract containing approximately 106 million tons of minable coal. The tract boundaries provide straight boundaries to promote maximum economic coal recovery and follow no less than 10-acre subdivisions. The coal at Hay Creek, as delineated by BLM, generally has a coal/overburden ratio of 2:1 or less and averages 8000 BTUs. The lesser tonnage offered at Hay Creek is due to the fact that the Hay Creek coal is of higher heat content and is shallower, resulting in lower mining cost.

BLM did an economic evaluation of the Belco and Hay Creek tracts which concluded that neither tract would have attracted a bonus bid in 1994. The Belco lease would not attract a bonus bid in the foreseeable future, while the Hay Creek tract could potentially attract a competitive bid in 2014. At present, under BLM's bonus bid evaluation, neither tract would attract a bonus bid, and for lease exchange purposes are considered of equal value.

Based on information submitted by Belco (Enron), on the prior economic evaluation, and on a geologic evaluation of lands offered in the Hay Creek tract, and IBLA 94–684, BLM has made a preliminary determination that the proposed coal lease exchange with Enron is in the public interest.

An environmental assessment (EA) has been developed by BLM to document conformance with the Buffalo Resource Management Plan, which determined that these lands are suitable for further coal leasing consideration; to disclose the environmental consequences of the proposed exchange action and reasonable alternatives; and to determine if the proposed exchange is in the public interest. The BLM's preliminary public interest determination is that the proposed exchange is in the public interest and these findings are documented within the EA. This EA is now available to the public and written comments will be accepted through the public comment period as specified in DATES above. A public hearing to accept oral testimony has also been scheduled during the public comment period.

The legal description of Federal coal lease WYW 0322794 originally held by Belco, and relinquished in 1986, with Belco retaining exchange rights is:

T. 50 N., R. 80 W, 6th P.M., Wyoming
Sec. 30: Lots 3, 4, SESW;
Sec. 31: Lots 1, 2, W2NE, SENE, E2NW;
T. 50 N., R. 81 W, 6th P.M., Wyoming
Sec. 2: Lot 4, S2NW;
Sec. 3: Lots 1–4, S2N2, S2;
Sec. 4: Lots 1–3, S2NE, SENW, E2SW, S2SE, NESE;
Sec. 10: E2, E2W2, NWNW;
Sec. 11: W2SW;
Sec. 14: SWNE, W2, N2SE, SWSE;
Sec. 15: E2, E2NW;
Sec. 22: E2NE;
Sec. 23: W2E2, NW, E2SW;
Sec. 25: S2NW, S2;
Sec. 26: NE, E2NW, N2SE;
T. 51 N., R. 81 W, 6th P.M., Wyoming
Sec. 34: SE;
Sec. 35: W2SW, SESW.

Comments, including names and street addreses of respondents, will be available for public review at the addressess listed above during regular business hours (7:45 a.m.–4:30 p.m.), Monday through Friday, except holidays, and may be published as part of the final EA. Individual respondents may request confidentially. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: July 16, 1999.

Alan R. Pierson,

State Director.

[FR Doc. 99–18684 Filed 7–21–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1220–00]

Off Highway Vehicle (OHV) Designation Decisions for the Royal Gorge Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Off Highway Vehicle (OHV) designation decisions for the Royal Gorge Field Office.

SUMMARY: Notice is hereby given that effective July 15, 1999 the use of OHVs on public lands will be in accordance with the "Open", "Limited" or "Closed" designations outlined in the Royal Gorge Resource Management Plan, record of decision signed on May 13, 1996. OHV use and designations are with the authority and requirements of 43 CFR part 8340, including subparts and Federal Land Policy Management Act of 1976.

These OHV use designations will involve all the BLM-administered lands in the Royal Gorge Field Office located within Baca, Bent, Crowley, Chaffee, Custer, El Paso, Fremont, Huerfano, Kiowa, Lake, Las Animas, Otero, Park, Powers, Pueblo, and Teller Counties. The designations are a result of resource management decisions made in the Royal Gorge Resource Management Plan. Public comments concerning OHV designations and other resource issues were accepted during a 90 day comment period.

EFFECTIVE DATES: This order is in effect July 15, 1999, and is permanent until canceled, amended or replaced by the Authorized Officer.

ADDRESSES: Royal Gorge Field Office Manager, 3170 East Main Street, Canon City, Co 81212; Telephone (719) 269–8500; TDD (719) 269–8597.

FOR FURTHER INFORMATION CONTACT: Levi Deike, Area Manager or Diana Kossnar, Outdoor Recreation Planner.

SUPPLEMENTARY INFORMATION: Notice of these OHV designations and a map will be posted at the Royal Gorge Field Office. OHV area designations are as follows:

A. Approximately 16,355 acres are Open—OHV use will be allowed in the following areas: Grand Canyon Hills (2,012 acres, 4 miles west of Canon City, CO), Texas Creek Gulch (9,720 acres, immediately north of Texas Creek, CO), Sand Gulch (1,449 acres, immediately east of Howard, CO, and Penrose Chaining Area (3,174 acres, 4 miles north of Penrose, CO).

B. Approximately 560,595 acres are Limited—OHV use will be limited to existing roads and trails (existing as of April 1, 1999) until future planning identifies designated roads and trails and/or seasonal limitations on 560,595 acres within the Royal Gorge Resource Area.

C. Approximately 79,863 acres are Closed—OHV use will be prohibited year-round in the following areas: Browns Canyon Wilderness Study Area (WSA) (6,614 acres, 10 miles north of Salida, CO), McIntyre Hills WSA (16,800 acres 10 miles west of Canon City, CO), Beaver Creek WSA (26,150 acres, 10 miles north of Penrose,CO), Upper Grape Creek WSA (10,200 acres, 10 miles northeast of Westcliffe, CO), Lower Grape Creek WSA (11,220 acres, 7 miles southwest of Canon City, CO), 31-Mile Ranch (1,971 acres, 4 miles southwest of Guffey, CO) and Deer Haven Ranch (6909 acres, 12 miles northwest of Canon City, CO).

Specific roads within the Royal Gorge Field Office may be temporarily closed due to wet weather conditions according to **Federal Register** Notice dated December 30, 1997, Volume 62, Number 249, Page 67889. Area designations do not apply to military, fire, emergency, or law enforcement vehicles while being used for emergency purposes; any vehicle whose use is expressly approved by the authorized officer, or otherwise officially approved; and vehicles in official use. Any person who violates or fails to comply with these regulations is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000, imprisonment for not longer than 12 months, or both.

Adrian Neisius,

Associate Field Office Manager.

[FR Doc. 99–18753 Filed 7–21–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–055–1210–00; IDI–32075]

Notice of Realty Action (NORA), Direct Sale of Public Land in Lincoln County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action (NORA), direct sale of public land in Lincoln County, Idaho.

Notice

The following-described public land has been examined and through the public-supported land use planning

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process has been determined to be suitable for disposal by direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 at no less than the appraised fair market value of $21,000. The land will not be offered for sale until at least 60 days after the publication date of this notice in the **Federal Register**.

Boise Meridian

T. 04 S., R. 19 E., B.M
Section 25: Lot 1;
Section 26: Lot 1;

The area described contains 34.43 acres, more or less

The Quitclaim Deed, when issued, will contain a reservation to the United States for rights-of-way for ditches and canals. Additionally, any and all water rights appurtenant to subject Page 1 of 3 will be reserved to the United States.

DATES: Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the Federal Land Policy and Management Act. The segregative effect ends upon issuance of the Quitclaim Deed or 270 days from the date of publication, whichever occurs first.

ADDRESSES: Shoshone Resource Area Office, P.O. Box 2–B, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Debbie Kovar, Realty Specialist, at the address shown above or telephone (208) 886–7201.

SUPPLEMENTARY INFORMATION: This land is being offered by direct sale to the City of Richfield, P.O. Box 97, 180 W. Lincoln, Richfield, Idaho 83349, based on the need for expansion of the community and economic development which cannot be achieved prudently or feasibly on land other than public land and which outweighs other public objectives and values. Failure or refusal of the City of Richfield to submit the required amount by December 1, 1999 will result in cancellation of the sale.

It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests will be conveyed simultaneously. A separate non-refundable filing fee of $50 is required from the purchasers for conveyance of the mineral interests.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Shoshone Resource Area, at the above address. Any adverse comments will be reviewed by the Area Manager, who may vacate or modify this realty action to accommodate the protest. If the protest is not accommodated, the comments are subject to review of the State Director who may sustain, vacate, or modify this realty action. This realty action will become the final determination of the Department of the Interior.

Dated: July 13, 1999.

Bill Baker,

Area Manager.

[FR Doc. 99–18755 Filed 7–21–99; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities; Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of new information collection (1010–XXXX).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501, *et seq.*), we are notifying you that we have submitted the information collection request (ICR) discussed below to the Office of Management and Budget (OMB) for review and approval. We are also inviting your comments on this ICR.

DATE: Submit written comments by August 23, 1999.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–XXXX), 725 17th Street, NW, Washington, DC 20503. Mail or handcarry a copy of your comments to the Department of the Interior; Minerals Management Service; attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: Weekly Activity Report, Form MMS–133. (This is a change in the title for this form which we announced in the previous notice as "Drilling Activity Report.")

OMB Control Number: 1010–XXXX.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition.

To carry out these responsibilities, we issued rules governing oil and gas and sulphur operations in the OCS. Regulations requiring the information collection that is the subject of this ICR are 30 CFR 250, subpart D, "Drilling Operations." Specifically, § 250.416(c)(3) requires respondents to submit copies of the daily driller's report at a frequency determined by the MMS District Supervisor, but in no prescribed format. Current practice in the Gulf of Mexico Region (GOMR) allows respondents to submit these data on a weekly basis during drilling operations.

We published a **Federal Register** notice with the required 60-day comment period soliciting comments on this ICR on March 18, 1999 (64 FR 13442). The notice announced that a new form MMS–133 would be used in all Regions and would be titled "Drilling Activity Report." However, during the comment period, we determined that this form would be used only in the GOMR and it would retain the same title as the unofficial GOMR form ("Weekly Activity Report"). Current reporting procedures for the information required by § 250.416(c)(3) will remain unchanged in the Pacific and Alaska OCS Regions.

We use this information to monitor the conditions of a well and status of drilling operations. Specifically, the District Office drilling engineers review the information to beware of the well conditions and current drilling activity (i.e., well depth, drilling fluid weight, casing types and setting depths, completed well logs, and recent safety equipment tests and drills). The engineers use this information to determine how accurately the lessee anticipated well conditions and if the lessee is following the approved application for permit to drill (APD). The information is also used by the engineers and District Supervisor to approve revisions to an APD. With this information at hand, they can analyze the proposed revision (i.e., revised grade of casing or deeper casing setting depth) and make a quick and informed decision on the request.

We will protect proprietary information submitted with the plans according to the Freedom of Information Act and 30 CFR 250.118, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS sulphur or oil and gas lessees.

Frequency: The frequency of reporting is weekly.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: Average burden is one-half hour per form, including the time to gather the information. The total annual estimated burden is 2,275 hours.

Estimated Annual Reporting and Recordkeeping "Cost" Burden: We have identified no information collection cost burdens for this collection of information.

Comments: All comments are made a part of the public record. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 23, 1999.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: July 1, 1999.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 99–18728 Filed 7–21–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities; Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (1010–0044).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501, *et seq.*), we are notifying you that we have submitted the information collection request (ICR) discussed below to the Office of Management and Budget (OMB) for review and approval. We are also inviting your comments on this ICR.

DATES: Submit written comments by August 23, 1999.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0044), 725 17th Street, NW, Washington, D.C. 20503. Mail or handcarry a copy of your comments to the Department of the Interior; Minerals Management Service; attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: Application for Permit to Drill (APD), Form MMS–123.

OMB Control Number: 1010–0044.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition.

To carry out these responsibilities, we issued rules governing oil and gas and sulphur operations in the OCS. Regulations requiring submission of form MMS–123 and supplemental information are 30 CFR 250.414, 250.513, and 250.1617.

We published a **Federal Register** notice with the required 60-day comment period soliciting comments on this ICR on March 18, 1999 (64 FR 13443). The notice announced that form MMS–123 would be revised into a two-page form to adopt a standard reporting format for supplemental information that is currently submitted with APDs. However, during the comment period, we determined that instead we would not change the form MMS–123 and we would make the proposed second page a separate form (MMS–123S, Supplemental APD Information Sheet) that can be submitted with the APD or with a Sundry Notice and Report on Well (form MMS–124) to request side tracking a well. Therefore, we are submitting form MMS–123 to OMB and requesting the current approval be extended without change.

We use the information collected on form MMS–123 to determine the conditions of a drilling site to avoid hazards inherent in drilling operations; to evaluate the adequacy of respondents' drilling, well-completion, well-workover, and well-abandonment plans and equipment; and to detemine if the proposed operations will be conducted in an operationally safe manner that provides adequate environmental protection. Except for proprietary data, we are required to make the information available to the public.

We will protect proprietary information submitted with the plans according to the Freedom of Information Act and 30 CFR 250.118, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS sulphur or oil and gas lessees.

Frequency: The frequency of reporting is on occasion.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: Average burden is 3.5 hours per form, including the time to gather the information. The total annual estimated burden is 4,078 hours. This represents an increase to the

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currently approved burden for form MMS–123 to more accurately reflect the time required to submit supplemental information and data, not only the time to complete the form MMS–123.

Estimated Annual Reporting and Recordkeeping "Cost" Burden: We have identified no information collection cost burdens for this collection of information.

Comments: All comments are made a part of the public record. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 23, 1999.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: June 30, 1999.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 99–18729 Filed 7–21–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities; Submissions for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of four currently approved information collections.

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501, *et seq.*), we are notifying you that we have submitted the four information collection requests (ICR) discussed below to the Office of Management and Budget (OMB) for review and approval. We are also inviting your comments on these ICRs.

DATE: Submit written comments by August 23, 1999.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0017, 1010–0039, 1010–0045, or 1010–0046), 725 17th Street NW, Washington, DC 20503. Mail or handcarry a copy of your comments to the Department of the Interior; Minerals Management Service; attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collections of information at no cost.

SUPPLEMENTARY INFORMATION:

Titles (OMB Control Numbers):

Form MMS–124, Sundry Notices and Reports on Wells (1010–0045)

Form MMS–125, Well Summary Report (1010–0046)

Form MMS–126, Well Potential Test Report (1010–0039)

Form MMS–128, Semiannual Well Test Report (1010–0017)

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; preserve and maintain free enterprise competition, and ensure that the extent of oil and natural gas resources of the OCS is assessed at the earliest practicable time. To carry out these responsibilities, we issue rules governing oil and gas and sulphur operations in the OCS. The regulations requiring the information collection forms that are the subject of this notice are 30 CFR part 250, subpart D, Drilling Operations; Subpart E, Well-Completion Operations; subpart F, Well-Workover Operations; Subpart G, Abandonment of Wells; subpart K, Production Rates; and subpart P, Sulphur Operations.

Failure to collect this information would prevent the Director from carrying out the mandate of the OCS Lands Act. The following explains how we use the information collected and the consequences if we did not collect the information.

a. Form MMS–124. MMS District Supervisors use the information to evaluate the adequacy of the equipment, materials, and/or procedures that the lessee plans to use for drilling, production, well-completion, well-workover, and well-abandonment operations. If we did not collect this information, we could not review lessee plans to require changes to drilling procedures or equipment to ensure that levels of safety and environmental protection are maintained. Nor could we review information concerning requests for approval or subsequent reporting of well-completion or well-workover operations to ensure that procedures and equipment are appropriate for the anticipated conditions.

b. Form MMS–125. District Supervisors use the information to ensure that they have accurate data on the wells under their jurisdiction and to ensure compliance with approved plans. It is also used to evaluate remedial action in well-equipment failure or well-control loss situations.

c. Form MMS–126. MMS Regional Supervisors use the information for various environmental, reservoir, reserves, and conservation analyses, including the determination of the maximum production rate for an oil or gas well. The form contains information concerning the conditions and results of a well potential test. This requirement carries out the conservation provisions of the OCS Lands Act. Failure to collect this information could result in waste of energy resources in the OCS by production at imprudent rates, jeopardizing the ultimate full recovery of hydrocarbons. Please note that we have shortened the name of this form, but have made no other changes to the form. Its previous name was "Well Potential Test Report and Request for Maximum Production Rate (MPR)."

d. Form MMS–128. Regional Supervisors use this information to evaluate the results of well tests to find out if reservoirs are being depleted in a way that will lead to the greatest ultimate recovery of hydrocarbons. We designed the form to present current well data on a semiannual basis to allow the updating of permissible producing rates and to provide the basis for estimates of currently remaining recoverable gas reserves.

We will protect proprietary information submitted with the plans according to the Freedom of Information Act and 30 CFR 250.118, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Frequency: Forms MMS–124, MMS–125, and MMS–126, are on occasion; Form MMS–128 is semiannual.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: We estimate the following burdens for these forms:

Form MMS–124 9,500 responses @ 1¼ hours per response=11,875 hours

Form MMS–125 2,275 responses @ 1 hour per response=2,275 hours

Form MMS–126 1,250 responses @ 1 hour per response=1,250 hours

Form MMS–128 1,660 responses @ 1½ hours per response=2,490 hours

Estimated Annual Reporting and Recordkeeping "Cost" Burden: We have identified no information collection cost burdens for this collection of information.

Comments: All comments are made a part of the public record. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 23, 1999.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: June 30, 1999.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 99–18730 Filed 7–21–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities; Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a new information collection (1010–XXXX).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501, *et seq.*), we are notifying you that we have submitted the information collection request (ICR) discussed below to the Office of Management and Budget (OMB) for review and approval. We are also inviting your comments on this ICR.

DATE: Submit written comments by August 23, 1999.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–XXXX), 725 17th Street, NW, Washington, DC 20503. Mail or handcarry a copy of your comments to the Department of the Interior; Minerals Management Service; attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: Supplemental APD Information Sheet, Form MMS–123S.

OMB Control Number: 1010–NEW.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition.

To carry out these responsibilities, we issued rules governing oil and gas and sulphur operations in the OCS. Regulations requiring submission of information to be included on form MMS–123S are 30 CFR 250.414, 250.513, and 250.1617.

We published a **Federal Register** notice with the required 60-day comment period soliciting comments on this ICR on March 18, 1999 (64 FR 13443). The notice announced that we were revising form MMS–123, Application for Permit to Drill (APD), into a two-page form to adopt a standard reporting format for supplemental information that is currently submitted with the APD. However, during the comment period, we determined that instead we would not change the form MMS–123. Instead, we would make the proposed second page a separate form (MMS–123S, Supplemental ADP Information Sheet) that can be submitted with either an ADP or a Sundry Notice and Report on Well (form MMS–124) to request side tracking a well. The new form MMS–123S does not require respondents to report any new information. It allows information required in current regulations to be reported in a uniform, consistent format. Respondents in the Gulf of Mexico Region have been using a similar unofficial format for several years, which will be replaced by the approved new form. This is also another step in our goal to institute electronic reporting of information.

We use this information to determine the conditions of a drilling site to avoid hazards inherent in drilling operations; to evaluate the adequacy of respondents' drilling, well-completion, well-workover, and well-abandonment plans and equipment; and to detemine if the proposed operations will be conducted in an operationally safe manner that provides adequate environmental protection. Except for proprietary data, we are required to make the information available to the public for information.

We will protect proprietary information submitted with the plans according to the Freedom of Information Act and 30 CFR 250.118, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS sulphur or oil and gas lessees.

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Frequency: The frequency of reporting is on occasion.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: Average burden is one-half hour per form, including the time to gather the information. The total annual estimated burden is 683 hours.

Estimated Annual Reporting and Recordkeeping "Cost" Burden: We have identified no information collection cost burdens for this collection of information.

Comments: All comments are made a part of the public record. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 23, 1999.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: July 1, 1999.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 99–18731 Filed 7–21–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities; Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of currently approved information collection (1010–0068).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501, *et seq.*), this notice announces that the Information Collection Request (ICR) discussed below has been forwarded to the OMB for review and approval. The ICR describes the nature of the information collection and its expected cost and burden. The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by August 23, 1999.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0079), 725 17th Street, NW, Washington, DC 20503. Mail or handcarry a copy of your comments to the Department of the Interior; Minerals Management Service; attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart M, Unitization.

OMB Control Number: 1010–0068.

Abstract: The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331 *et seq.*), gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. Section 1334(a) specifies that the Secretary will establish rules and regulations to provide for the "prevention of waste and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein" and include provisions "for unitization, pooling, and drilling agreements." To carry out these responsibilities, we have established regulations at 30 CFR 250, subpart M, "Unitization."

The MMS OCS Regions use the information to determine whether to approve a proposal to enter into an agreement to unitize operations under two or more leases or to approve modifications when circumstances change. The information is necessary to ensure that operations will result in preventing waste, conserving natural resources, and protecting correlative rights, including the Government's interests. We also use information submitted to determine competitiveness of a reservoir or to decide that compelling unitization will achieve these results.

We will protect proprietary information submitted with the plans according to the Freedom of Information Act and 30 CFR 250.118, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are required to obtain or retain a benefit or are mandatory.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS sulphur or oil and gas lessees.

Frequency: The frequency of reporting is on occasion.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 2,742 burden hours, averaging approximately 102 hours per response. See following chart.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart M	Requirement	Average number per year	Burden	Annual burdens hours
1301	General description of requirements	Burden included in following sections.		0
1301(f)(3), (g)(1)	Request suspension of production or operations	Burden covered under 1010–0030.		0
1302(b)	Request preliminary determination on competitive reservoir.	2 requests	24 hours	48

BURDEN BREAKDOWN—Continued

Citation 30 CFR 250 subpart M	Requirement	Average number per year	Burden	Annual burdens hours
1302(b)	Submit concurrence or objection on competitiveness with supporting evidence.	2 requests	24 hours	48
1302(c), (d)	Submit joint plan of operations or separate plan if agreement cannot be reached.	2 plans	24 hours	48
1303	Apply for voluntary unitization, including submitting unit agreement, unit operating agreement, joint plan of operation, and supporting data; request for variance from model agreement.	17 applications/plans	144 hours	2,448
1304(b)	Request compulsory unitization, including submitting unit agreement, unit operating agreement, initial plan of operation, and supporting data; serving nonconsenting lessees with documents.	1 request	144 hours	144
1304(d)	Request hearing on required unitization	1 request	1 hour	1
1304(e)	Submit statement at hearing on compulsory unitization.	1 statement	4 hours	4
130(e)	Submit three copies of verbatim transcript of hearing.	1 submission	1 hour	1
1304(f)	Appeal final order of compulsory unitization	Burden covered under 1010–0121		0
Total Reporting		27 responses		2,742

Estimated Annual Reporting and Recordkeeping "Cost" Burden: Section 250.1304(d) provides an opportunity for parties notified of compulsory unitization to request a hearing. Section 250.1304(e) requires the party seeking compulsory unitization to obtain the court reporter and submit to MMS three copies of the verbatim transcript of the hearing. There have been no such hearings in the recent past and none are expected in the near future. We estimate the burden would be less than $100 to reproduce the copies.

Comments: All comments are made a part of the public record. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 23, 1999.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: July 7, 1999.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 99–18732 Filed 7–21–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Announcement of Posting of Invitation for Bids on Crude Oil From Federal Leases and State of Wyoming Properties in Wyoming

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Invitation for Bids on Federal and State of Wyoming crude oil in the State of Wyoming.

SUMMARY: The Minerals Management Service (MMS) will post on MMS's Internet Home Page, and make available in hard copy, a public competitive offering of approximately 3,250 barrels per day (bpd) of crude oil, to be taken as royalty-in-kind (RIK) from a combination of Federal properties and State of Wyoming (State) properties in Wyoming's Bighorn and Powder River Basins through an Invitation for Bids (IFB), Number 31010.

DATES: The IFB will be posted on MMS's Internet Home Page on or about July 19, 1999. Bids will be due to MMS and State of Wyoming, at the posted receipt location for both, on or about August 9, 1999. MMS and the State of Wyoming will notify successful bidders on or about August 16, 1999. The Federal Government and the State will begin actual taking of awarded royalty oil volumes for delivery to successful bidders for a 6-month period beginning on or about October 1, 1999.

ADDRESSES: The IFB will be posted on MMS's Home page at http://www.mms.gov under the icon "What's New." The IFB may also be obtained by contacting Ms. Betty Estey at the address in the **FURTHER INFORMATION** section. Bids should be submitted to the address provided in the IFB.

FOR FURTHER INFORMATION CONTACT: For additional information on MMS's RIK pilots, contact Mr. Bonn J. Macy, Minerals Management Service, 1849 C Street, NW, MS 4230, Washington DC 20240; telephone number (202)208–3827; fax (202)208–3918; e-mail Bonn.Macy@mms.gov. For additional information concerning the IFB document, terms, and process for Federal leases, contact Ms. Betty Estey, Minerals Management Service, MS 2510, 381 Elden Street, Herndon, VA 20170–4817; telephone number (703)787–1352; fax (703) 787–1009; e-mail Betty.Estey@mms.gov. For additional information concerning the IFB document, terms, and process for State of Wyoming properties, contact Mr. Harold Kemp, Office of State Lands and Investments, Herschler Building, 3rd Floor West, 122 West 25th Street, Cheyenne, WY 82002–0600; telephone number (307) 777–6643; Fax: (307) 777–5400; Email: hkemp@missc.state.wy.us.

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SUPPLEMENTARY INFORMATION: The offering of crude oil in the IFB is a continuation of the first of MMS's three planned RIK pilots. The other two RIK pilots are in the Gulf of Mexico. The State's objective in this pilot and MMS's objective in all its pilots is to identify the circumstances in which taking oil and gas royalties as a share of production (RIK) is a viable alternative to the agencies' usual practice of collecting oil and gas royalties as a share of the value received by the lessee for sale of the production. The Wyoming pilot is a joint project with the State of Wyoming expected to last 2 to 3 years.

The sale will involve approximately 3,250 bpd of crude oil from 66 Federal and State properties located in Wyoming's Bighorn and Powder River Basins. RIK oil from these Federal properties was previously offered under IFB No. 3984 for delivery to purchasers for production months April through September 1999. The main difference from the last sale is that only pipeline connected properties are being offered in this IFB.

Purchasers may bid on specific pipeline subgroups and/or on the entire packages of Wyoming sweet crude oil (1,020 bpd), Wyoming general sour crude oil (526 bpd), or Wyoming asphaltic sour crude oil (1,704 bpd). Bids will be due as specified in the IFB on or about August 9, 1999; successful bidders will be notified on or about August 16, 1999.

The following are some of the additional details regarding the offerings that will be posted in the IFB on or about July 19, 1999.

- List of specific properties;
- For each property—tract allocations, royalty rate(s), average daily royalty volume, quality, current transporter, and operator;
- Bid basis;
- Reporting requirements;
- Terms and conditions; and
- Contract format.

The internet posting and availability of the IFB in hard copy are being announced in oil and gas trade journals as well as in this **Federal Register** notice.

Dated: July 16, 1999.

Walter Cruickshank,

Associate Director for Policy and Management Improvement.

[FR Doc. 99–18653 Filed 7–21–99; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2001–99]

Announcement of a Change of Address for the Arlington Asylum Office

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of a change of address for the Arlington Asylum Office.

SUMMARY: This notice announces a change of address for the Arlington Asylum Office. On June 7, 1999, both the physical office location and mailing address for correspondence and delivery of packages changed. The public telephone and facsimile (FAX) numbers remain the same. The new address, telephone, and FAX numbers are listed in the supplementary information section of this notice. Asylum applicants are to continue to appear for interviews at the address shown on the interview appointment notice. This notice is necessary to ensure that correspondence and packages are properly routed to the correct address. Since June 7, 1999, the Immigration and Naturalization Service has continued to accept correspondence sent to the former address and will continue to accept and forward correspondence to the correct address until November 19, 1999.

FOR FURTHER INFORMATION CONTACT: Christine Davidson, Supervisory Asylum Office, or Marta Rothwarf, Asylum Officer, Office of International Affairs, Immigration and Naturalization Service, 425 I Street, NW., Third Floor, ULLICO Bldg., Washington, DC 20536; Telephone (202) 305–2663.

SUPPLEMENTARY INFORMATION: The Arlington Asylum Office moved to a new location effective June 7, 1999. All parties are to use the following addresses and telephone numbers when sending correspondence or packages, or to contact the asylum office. Asylum applicants are to continue to appear for interviews at the address shown on the interview appointment notice.

What Is the New Mailing and Actual Physical Address for the Arlington Asylum Office?

Correspondence must be mailed to the Arlington Asylum Office at the following address: U.S. Immigration and Naturalization Service, Arlington Asylum Office; 1525 Wilson Boulevard; Suite 300, Arlington, VA 22209; Telephone: (703) 525–8141, FAX: (703) 812–8455. The office is open Monday through Friday, from 7:45 a.m. to 4 p.m.

What Happens If Correspondence Is Sent to the Former Address?

Correspondence that is sent to the former address will be accepted and forwarded to the correct address by the Service until November 19, 1999. After November 19, 1999 correspondence will be returned to the sender as undeliverable.

Dated: July 15, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–18735 Filed 7–21–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,063]

Cobre Mining Company, Hanover, New Mexico; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of July 2, 1999, petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, petition number TA–W–36,063, for workers of the subject firm. The denial notice was signed on June 11, 1999, and published in the **Federal Register** on June 30, 1999 (64 FR 35183).

The petitioners present new evidence regarding worker layoffs at the subject facility.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 7th of July, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–18677 Filed 7–27–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,267]

Delta Apparel Company, Inc and Duck Head Apparel Outlet, Decatur, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 18, 1999 applicable to all workers of Delta Apparel Company, Decatur, Tennessee. The notice was published in the **Federal Register** on April 27, 1999 (64 FR 22648).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that all workers were separated at Duck Head Apparel Outlet, Decatur, Tennessee when it closed in December 1998. The workers provided retail selling of T-shirts, placket shirts, shorts and pants that were produced by its sister firm, Delta Apparel Company, which also closed in December, 1998.

The intent of the Department's certification is to include all workers Delta Apparel Company adversely affected by increased imports.

The amended notice applicable to TA–W–35,267 is hereby issued as follows:

All workers of Delta Apparel Company, Inc., and Duck Head Apparel Outlet, Decatur, Tennessee who became totally or partially separated from employment on or after October 28, 1997 through February 18, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–18680 Filed 7–21–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,983, and TA–W–35,938A]

Good Lad Company, Philadelphia, PA and New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 12, 1999, applicable to workers of Good Lad Company located in Philadelphia, Pennsylvania. The notice will be published soon in the **Federal Register**.

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of children's clothes. New information provided by the company shows that worker separations occurred at Good Lad's New York, New York location. The New York, New York location is a showroom, sales and design for the Philadelphia, Pennsylvania location.

The intent of the Department's certification is to include all workers of Good Lad Company who were adversely affected by increased imports of children's clothes. Accordingly, the Department is amending the certification to cover the workers of Good Lad Company, New York, New York.

The amended notice applicable to TA–W–35,983 is hereby issued as follows:

All workers of Good Lad Company, Philadelphia, Pennsylvania (TA–W–35,983), and New York, New York (TA–W–35,983A) who became totally or partially separated from employment on or after March 19, 1998 through May 12, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of July 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment.

[FR Doc. 99–18681 Filed 7–21–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,641]

Green Garden Company, Somerset, Pennsylvania; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Green Garden Company, Somerset, Pennsylvania. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,641; Green Garden Company Somerset, Pennsylvania (July 12, 1999)

Signed at Washington, D.C. this 15th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–18678 Filed 7–21–99; 8:45 am]

BILLING CODE 4570–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,968]

Mark Steel Jewelry, Spring City, Utah; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice of Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance applicable to TA–W–35,968 which was published in the **Federal Register** on May 6, 1999 (64 FR 24420–24421) FR Document 98–11370.

This revises the subject firm location for TA–W–35,968 on the second line in the appendix table on page 24421. On the second line in the third column, the subject firm (location) should read Spring City, Utah.

Signed in Washington, D.C., this 6th day of July, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–18682 Filed 7–21–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations

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will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than August 2, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 2, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 21st day of June, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 6/21/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,412	Style Sportswear (UNITE)	Paterson, NJ	05/26/1999	Women's Coats and Suits.
36,413	Jantzen, Inc (Co.)	Portland, OR	06/02/1999	Swimwear and Backpacks.
36,414	Harrison Alloys (USWA)	Harrison, NJ	05/21/1999	Steel Rods.
36,415	Zenith Electronic (NEWAI)	Chicago, IL	06/04/1999	Wafers for Printed Circuit Boards.
36,416	Baldwin Piano (Wkrs)	Conway, AR	06/13/1999	Piano Components.
36,417	General Electric (IUE)	Ft. Wayne, IN	05/24/1999	Magnetic & AC Motors.
36,418	Enpro Systems (Wkrs)	Channelview, TX	05/21/1999	Mfg & repair of Oilfield Equipment.
36,419	Inter American Oil Works (Wkrs)	Odessa, TX	06/08/1999	Refurbish Oilfield Equipment.
36,420	Miller Group (The) (Co.)	Sch'll Haven, PA	06/10/1999	T-shirts & Sweatshirts.
36,421	Jones Apparel Group (Wkrs)	Bristol, PA	06/11/1999	Cut Pants, Shirts, Jackets.
36,422	Warners (Wkrs)	Stratford, CT	06/02/1999	Ladies Apparel.
36,423	Ovalstrapping (Wkrs)	Hoquiam, WA	06/03/1999	Strapping Machines.
36,424	Regiana Fashions (Wkrs)	West New York, NJ	06/04/1999	Women's Blazers.
36,425	B.P. Chemical—Amoco (Wkrs)	Port Lavaca, TX	06/09/1999	Oil and Gas.
36,426	Technifoan Mirror Craft (Co.)	Ferrum, VA	06/03/1999	Furniture Components, Mirrors.
36,427	Brady T-Shirt (Co.)	East Brady, PA	06/02/1999	Sportswear Tops.
36,428	Skinner Engine Co. (UAW)	Erie, PA	06/03/1999	Intensive Mixers.
36,429	Dyersburg Corp. (Co.)	Hamilton, NC	06/02/1999	Knit & Finish Fabric.
36,430	Gemini Fashions (Wkrs)	Union City, NJ	05/26/1999	Ladies' Coats.
36,431	Fort James Corp. (AWPPW)	Portland, OR	06/09/1999	Paper Bags.
36,432	Cross Creek Apparel (Co.)	Wytheville, VA	06/07/1999	Tublar Placket Golf Shirts.
36,433	Meadow River Coal Co. (Co.)	Lookout, WV	06/07/1999	Metalurgical Coal.
36,434	Damascus Steel (GMP)	New Brighton, PA	06/07/1999	Hammers, Liners & Tooling.
36,435	May Tag and Label Corp (Co.)	Hillside, NJ	05/13/1999	Printed Labels and Tags.
36,436	Lockheed Martin (Wkrs)	Ft. Worth, TX	05/14/1999	Harnesses.
36,437	Buffalo Jeans (Wkrs)	Secaucus, NJ	06/04/1999	Jeans and Shirts.
36,438	Maine Envelope Co. (Wkrs)	Belgrade, ME	05/27/1999	Envelopes.
36,439	GE Medical System (IAMAW)	Milwaukee, WI	06/08/1999	Detectors.
36,440	Pilkington Libbey Owens (Wkrs)	Sherman, TX	06/08/1999	Automobile Windshields.
36,441	Acme United Corp. (Co.)	Goldsboro, NC	05/21/1999	Medical Disposable Scissors.
36,442	North American Philips (IUE)	Fairmont, WV	06/11/1999	Home & Auto Lighting Products.
36,443	Penn Transfer LTD (Wkrs)	West Hazleton, PA	06/11/1999	Textile Printing & Finishing Fabric.
36,444	Quitman Knitting Mills (Co.)	Quitman, MS	06/14/1999	Tank Tops & Pocket Tees.
36,445	Perfect Jacket Mfg. Co. (Wkrs)	Trevose, PA	06/10/1999	Men's Shirts, Pants & Coveralls.
36,446	Smurfit Stone (PACE)	Fulton, NY	06/07/1999	Corrugated Boxes.
36,447	Federal Mogul (Co.)	St. Louis, MS	06/10/1999	Automobile Brake Drums & Rotors.
36,448	Wales Fabrics Knitting (Co.)	Gastonia, NC	06/08/1999	Knitted Fabric.
36,449	International Mill Serv. (Co.)	Beaumont, TX	06/01/1999	Slag & Provide Scrap & Metal Reclamation.
36,450	AMP, Inc. (Wkrs)	Harrisburg, PA	05/23/1999	Recalibration Serv. on Inspection Equip.
36,451	AMP, Inc. (Wkrs)	Winston Salem, NC	06/03/1999	Electrical Components.
36,452	Triton Energy (Co.)	Dallas, TX	05/12/1999	Administrative Serv. for Oil & Gas.
36,453	Diamond Offshore Drilling (Co.)	Houston, TX	06/09/1999	Offshore Drilling.
36,454	Sonat Exploration (Co.)	Houston, TX	06/03/1999	Oil and Natural Gas.
36,455	Energy Group, Inc. (Co.)	Hobbs, NM	06/07/1999	Rental of Oilfield Tools.
36,456	Dart Energy Corp. (Wkrs)	Mason, MI	06/01/1999	Oil and Gas.
36,457	Bohner Oil Co. (Co.)	Wichita Falls, TX	06/09/1999	Oil and Gas.
36,458	R.L. Bolin (Co.)	Wichita Falls, TX	06/04/1999	Oil and Gas.
36,459	Medders Oil Co. (Co.)	Wichita Falls, TX	06/03/1999	Oil and Gas Exploration.

[FR Doc. 99–18676 Filed 7–21–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Planning Guidance and Instructions for the Submission of the Strategic Five-Year Plan for Title I of the Workforce Investment Act of 1998 (Workforce Investment Systems) and Wagner-Peyser Act Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the Workforce Investment Act requirements that the Governor submit a five-year strategic plan for Title I of the Workforce Investment Act of 1998 and for the Wagner-Peyser Act to the Secretary of Labor. The State Boards, in partnership with the Local Boards, will help the Governor develop the strategic vision and the statewide plan. Among other things, the plan will describe statewide workforce investment activities, explain how the requirements of the Act will be implemented, and outline how special population groups will be served.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before August 23, 1999.

ADDRESSES: Mr. Eric Johnson, Workforce Investment Implementation Task Force Office, US Department of Labor, 200 Constitution Avenue, NW, Room S–5513, Washington, D.C. 20210, Telephone: (202) 219–0316 (voice) (This is not a toll-free number), or 1–800–326–2577 (TDD). Information may also be found at the website-http://usworkforce.org.

SUPPLEMENTARY INFORMATION:

I. Background

The Workforce Investment Act (WIA or Act), Pub. L.105–220 (August 7, 1998) provides the framework for a reformed national workforce preparation and employment system designed to meet the needs of the nation's employers, job seekers and those who want to further their careers. Titles I, III, and V of the Act encourage States to reform existing employment and training programs to reach two important goals: (1) To think broadly about how Federal, state, local resources and the private sector can be brought together to increase the employment, retention, and earnings of participants, and (2) to increase occupational skill levels of customers. This will result in a more qualified workforce, a reduction in welfare dependency, and enhanced productivity and competitiveness for the Nation. The new law makes changes to the current workforce development system in many areas, including: funding streams; target populations; delivery systems; performance accountability; long-term planning; and governance structure.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Submission of State Plans

States are encouraged to take advantage of the option to submit their plans electronically as indicated below. Pursuant to instructions issued by the Secretary, States are required to submit their State Plan (with an original signature) along with two copies to the US Department of Labor, WIA Task Force as follows: Mr. Raymond L. Bramucci, Assistant Secretary Employment and Training Administration, US Department of Labor, 200 Constitution Avenue, NW, Room S–5513, Washington, DC 20210, ATTN: Eric Johnson, Director, WIA Task Force, (wia98tf@doleta.gov). One copy of the Plan (with an original signature) must also be sent simultaneously to the appropriate ETA Regional Administrator.

States may also submit State Plans via diskette or e-mail. In order to transmit electronically, States must have WordPerfect or Microsoft Word format. (Macintosh versions cannot be accepted.) States submitting State Plans electronically should transmit one copy of the Plan to the U.S. Department of Labor, WIA Task Force at the address or e-mail address identified above, and one copy to the appropriate ETA Regional Administrator. States that submit State Plans electronically will not have to submit additional copies, but must submit signature pages with an original signature to both the national and regional offices. States wishing to implement WIA between July 1, 1999 and July 1, 2000 may submit their Plans anytime before April 1, 2000. All States must submit their full Plans no later than April 1, 2000.

Whenever a State submits its Plan, section 404 of WIA (which amends Title I of the Rehabilitation Act of 1973) requires the State to submit its Vocational Rehabilitation State Plan on the same date.

IV. Current Actions

States will not be able to receive funds if the Strategic Five Year State Plan for Title I of the Workforce Investment Act of 1998 (Workforce Investment Systems) is not submitted. Without an extension, the existing collection would be in use without an OMB control number. Section 112(a) of the Workforce Investment Act (Pub. L. 105–220, August 7, 1998), requires the Governor of the State to submit to the Secretary a Strategic Five-Year State Plan for Title I of WIA and the Wagner-Peyser Act, in order to be eligible to receive an allocation under section 127 or 132 or to receive financial assistance.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Planning Guidance and Instructions for Submission of the Strategic Five-Year State Plan for Title

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I of the Workforce Investment Act of 1998 and the Wagner-Peyser Act

OMB Number: 1205–0398.

Affected Public: The State Plan will be submitted by 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, and Unites States Virgin Islands. There are no special circumstances that require the collection of information to be conducted in a manner inconsistent with 5 CFR 1320.8.

Total Respondents: 54 respondents are expected to submit State Plans by April 1, 2000.

Frequency: Once every five years.

Total Expected Responses: 54 Responses.

Average Time per Response: It is estimated that 50 hour burden per response will be required. There is no experience under WIA to determine estimated burden of 2700 Burden Hours.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 15, 1999.

Raymond J. Uhalde,

Deputy Assistant Secretary, Employment and Training Administration.

[FR Doc. 99–18675 Filed 7–21–99; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03192A]

Perfection Pad Co., Inc. a/k/a Consolidated Contractors ak/a New York Pad Co., Buffalo, New York and Bronx, New York; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on June 3, 1999, applicable to workers of Perfection Pad Co., Inc., a/k/a Consolidated Contractors, a/k/a New York Pad Co., located in Buffalo, New York. The notice was published in the **Federal Register** on June 30, 1999 (64 FR 35186).

At the request of the company, the Department reviewed the certification of workers of the subject firm. New information received from the company shows that worker separations occurred at the Bronx New York facility of Perfection Pad Co., Inc. when it closed in December, 1998. The workers were engaged in the production of shoulder pads and sleeveheads used by clothing manufacturers.

The intent of the Department's certification is to include all workers of Perfection Pad Co., Inc. who were adversely affected by increased imports of shoulder pads and sleeveheads.

Accordingly, the Department is amending the certification to cover the workers of Perfection Pad Co., Inc., also known as Consolidated Contractors, also known as New York Pad Co., Bronx, New York.

The amended notice applicable to NAFTA–03191 is hereby issued as follows:

All workers of Perfection Pad Co., Inc., also known as Consolidated Contractors, also known as New York Pad Co., Buffalo, New York (NAFTA–3192) and Bronx, New York (NAFTA–3192A) who became totally or partially separated from employment on or after May 17, 1998 through June 3, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 14th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–18679 Filed 7–21–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10257, et al.]

Proposed Exemptions; Pacific Life Corporation (Pacific Life)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Pacific Life Corporation (Pacific Life), Located in Newport Beach, California

[Exemption Application No. D–10257]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

(a) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply:

(1) For the period from January 22, 1993 until August 12, 1998, to the sale by Pacific Life of an "actively-managed synthetic" guaranteed investment contract (Actively-Managed Synthetic GIC) to an employee benefit plan for which Pacific Life was a party in interest with respect to such plan (Plan) in instances where Pacific Life or an Affiliate manages the Plan's assets relating to the Synthetic GIC (an Affiliated-Manager GIC); and

(2) As of January 22, 1993, to the purchase or retention of the Affiliated-Manager GICs, described in section (a)(1) above, by the Plans and the payments made by Pacific Life to the Plans pursuant to the terms and conditions of the Affiliated-Manager GICs, provided that the general conditions set forth in section II, the specific conditions set forth in section III, the retroactive conditions set forth in section IV, and the recordkeeping requirements set forth in section V below are met.

(b) If the exemption is granted, the restrictions of sections 406(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply:

(1) As of January 22, 1993, to the sale by Pacific Life of an Actively-Managed Synthetic GIC to a Plan in instances where the Plan's assets relating to the Actively-Managed Synthetic GIC are managed by an investment manager who is unaffiliated with Pacific Life and its Affiliates (an Unaffiliated-Manager GIC); and

(2) As of January 22, 1993, to the purchase or retention of the Unaffiliated-Manager GICs, described in section (b)(1) above, by the Plans and the payments made by Pacific Life to the Plans pursuant to the terms and conditions of the Unaffiliated-Manager GICs, provided that the general conditions set forth in section II and the recordkeeping requirements set forth in section V below are met.

Section II—General Conditions

(a) Prior to the sale of an Actively-Managed Synthetic GIC, an independent fiduciary of each Plan receives a full and detailed written disclosure of all material features of the Actively-Managed Synthetic GIC, including all applicable fees and charges;

(b) Following receipt of such disclosure, the Plan's independent fiduciary approves in writing the purchase of the Actively-Managed Synthetic GIC on behalf of the Plan;

(c) All fees and charges imposed under any such Actively-Managed Synthetic GIC are not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act;

(d) Each Actively-Managed Synthetic GIC will specifically provide an objective means of determining the fair market value of the securities owned by the Plan pursuant to the Actively-Managed Synthetic GIC;

(e) Each Actively-Managed Synthetic GIC will specifically provide an objective formula for determining the interest rates to be credited periodically under the Actively-Managed Synthetic GIC;

(f) Pacific Life does not maintain custody of the assets which are the subject of the Actively-Managed Synthetic GIC or commingle those assets with any other funds under its management;

(g) The assets subject to the Actively-Managed Synthetic GIC are invested only in high quality fixed income investments specified in the investment guidelines agreed to, or provided by, the independent fiduciary;

(h) The Plan may, at any time, terminate the Actively-Managed Synthetic GIC;

(i) The fee charged under the arrangement is negotiated between Pacific Life and a Plan fiduciary independent of Pacific Life;

(j) At all times during the term of each Actively-Managed Synthetic GIC, a Plan may elect to receive such lump sum amount equal to the Contract Value Record and shall be entitled to receive a lump sum payment no more than 3 (three) years after making an election which will establish a maturity date;

(k) The Plan may establish a maturity date by notifying Pacific Life in writing of an intent to establish a maturity date. Each Actively-Managed Synthetic GIC will mature within three (3) years after the Plan notifies Pacific Life of its intent to establish a maturity date; and

(l) Actively-Managed Synthetic GICs are sold only to Plans which have at least $25 million in assets.

Section III—Specific Conditions

(a) With respect to any Affiliated-Manager GIC described in section I (a), Pacific Life will notify a Plan's independent fiduciary, in writing no later than 30 days prior to the date on which the Credited Rate is to be reset, advising such fiduciary that the Plan may replace Pacific Life or its affiliate as investment manager,[1] at no expense to the Plan, when the Credited Rate with respect to any Affiliated-Manager GIC described in section I(a) is expected to be less than three (3) percent at the next reset of the Credited Rate.

Section IV—Retroactive Conditions

(a) At no time between January 22, 1993 and August 12, 1998, was the Credited Rate with respect to any Affiliated-Manager GIC described in section I (a) less than 3% (three percent) per annum; and

(b) At no time between January 22, 1993 and August 12, 1998, did a Plan elect to receive an amount equal to the Contract Value Record pursuant to an Affiliated-Manager GIC described in section I (a).

Section V—Recordkeeping

(a) The Applicant maintains or causes to be maintained for a period of six years from the date of the transaction such records as are necessary to enable the persons described in paragraph (b) of this section V of this proposed exemption, to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the Applicant or its affiliates, such records are lost or destroyed prior to the end of such six year period; and (2) no party in interest, other than the Applicant or an affiliate, shall be subject to the civil penalty that may be accessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (b) below.

(b)(1) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records

[1] Although Pacific Life must approve the new investment manager selected by the Plan, Pacific Life represents that it will not unreasonably withhold such approval.

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referred to in paragraph (a) of this section V are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service; (ii) any fiduciary of the plan or any duly authorized employee or representative of such fiduciary; (iii) any participant or beneficiary of the plan or duly authorized representative of such participant or beneficiary; (iv) any employer of plan participants and beneficiaries; and (v) any employee organization any of whose members are covered by such plan; and

(2) None of the persons described in paragraph (b)(1)(ii) through (v) shall be authorized to examine trade secrets of the applicant, or commercial or financial information which is privileged or confidential.

Section VI—Definitions

For purposes of this proposed exemption:

(A) "Actively-Managed Synthetic GIC" means: a synthetic guaranteed investment contact, which under certain circumstances provides a guarantee that a pool of underlying plan assets which may be managed by Pacific Life, an affiliate of Pacific Life, or an unrelated investment manager, will perform at a specified rate of return.

(B) "Affiliated-Manager GIC" means: an Actively-Managed Synthetic GIC under which Pacific Life guarantees the performance of an related investment manager.

(C) "Unaffiliated-Manager GIC" means: an Actively-Managed Synthetic GIC under which Pacific Life guarantees the performance of an unrelated investment manager.

(D) "Contract Value Record" means: a bookkeeping account maintained by Pacific Life, pursuant to each Actively-Managed Synthetic GIC. Initially, the Contract Value Record will be credited with the value of the Investment Assets (defined in (F) below), and subsequently with a credited rate of interest (Credited Rate, defined in (E) below), which shall be reset periodically as agreed to at the inception of the Actively-Managed Synthetic GIC.

(E) "Credited Rate" means: the interest rate credited to the Contract Value Record. The Credited Rate is reset periodically, in accordance with an objective formula established under the terms of the Actively-Managed Synthetic GIC.

(F) "Investment Assets" means: the underlying portfolio of investment assets, title to which remains with the Plan.

(G) "Managed Portfolio" means: the total of all Investment Assets which comprise the portfolio which is managed by either an Affiliated-Manager or an Unaffiliated-Manager.

(H) "Withdrawals" means: a participant initiated payment or transfer to other investment options available under the Plan.

Effective Date: This proposed exemption, if granted, will be effective for the period from January 22, 1993, until August 12, 1998, for the transactions described in section I (a)(1). Section I (a)(2) of the proposed exemption, if granted, will be effective for the retention by the Plan of the Affiliated-Manager GICs until the maturity date of such GICs. Lastly, the proposal will be effective as of January 22, 1993, for the transactions described in section I (b) (including the continuing retention of any Unaffiliated-Manager GICs).

Summary of Facts and Representations

1. Pacific Life is a life insurance company incorporated under the laws of the State of California.[2] Pacific Life is also registered as an investment adviser under the Investment Advisers Act of 1940. Pacific Life is currently rated as follows: AM Best A+; Standard & Poor's AA+; Duff & Phelps AA+; and Moody's Aa3. As of December 31, 1998, Pacific Life had statutory assets of approximately $37.8 billion and net policy reserves of approximately $18 billion. A significant portion of Pacific Life's business consists of writing insurance and annuity contracts, guaranteed investments contracts, and funding agreements for numerous plans subject to the Act.

2. Pacific Life has requested an exemption with respect to two different Actively-Managed Synthetic GIC products, each of which is a form of traditional guaranteed investment contract (GIC). The first form of Actively-Managed Synthetic GIC, for which relief is proposed in section I(a) of this notice of proposed exemption, is an arrangement under which Pacific Life, or an affiliate, acts as the investment manager, and Pacific Life guarantees the performance of the assets which it, or an affiliate, manages (Affiliated-Manager GIC). In some cases, Pacific Life will appoint an independent sub-advisor to carry out the investment management functions but Pacific Life will remain fully responsible as investment manager of the assets comprising the Actively-Managed Synthetic GIC. The second form of Actively-Managed Synthetic GIC, for which relief is proposed in section I(b) of this proposed exemption, is an arrangement under which Pacific Life guarantees the performance of an unrelated investment manager (Unaffiliated-Manager GIC). Pacific Life represents that it has not sold Affiliated-Manager GICs to Plans after August 12, 1998. Since January 23, 1993, Pacific Life sold both forms of the Actively-Managed Synthetic GICs to defined contribution plans. Pacific Life represents that it will continue selling the Unaffiliated-Manager GIC to defined contribution plans.

3. Pacific Life's duties and obligations with respect to each Actively-Managed Synthetic GIC are governed by terms of an insurance contract or investment management agreement (the Contract) between the Plan and Pacific Life. The principal difference between the two forms of the Actively-Managed Synthetic GIC products is the nature of the Contract. Under the Unaffiliated-Manager GIC, where Pacific Life is guaranteeing the performance of an unrelated investment manager, Pacific Life's obligations and the Plan's rights will be embodied in a single contract of insurance. Under the Affiliated-Manager GIC, where Pacific Life, or a related or unrelated sub-adviser appointed by Pacific Life, is responsible for the investment management of the Managed Portfolio, the rights and obligations of the parties will derive primarily from the investment management agreement between Pacific Life and the Plan. Secondarily, the rights and obligations of the parties pursuant to the Affiliated-Manager GIC will be established in a contract of insurance guaranteeing the performance of Pacific Life, or the sub-adviser, in its capacity as Investment Manager.

4. Both forms of Pacific Life's Actively-Managed Synthetic GICs provide that all employee initiated benefit payments and transfers to other investment options (collectively, Withdrawals) will be paid at an amount equal to the Contract Value Record (see paragraph 10 below for a description of the Contract Value Record). Since such Withdrawals are paid at the Contract Value Record, participants will not recognize a loss when they initiate a Withdrawal at a time when the fair market value of the Investment Assets comprising the Plan's Managed Portfolio has declined to a level below the Contract Value Record. Pacific Life represents that Plans will typically purchase the Actively-Managed Synthetic GIC because it will allow the Plans to use book value accounting and, thus, account for the value of the accounts of participants without regard to fluctuations in the fair market value of the Investment Assets which result from changes in interest rates.

5. Pacific Life represents that each Actively-Managed Synthetic GIC provides purchasers with the advantages of a traditional GIC, while providing greater security than a traditional GIC. Unlike a traditional GIC, the title to the Investment Assets at all times remains with the Plan. For this reason, it is represented that Synthetic GICs provide greater security to Plans because the assets held in the Managed Portfolio are not subject to the claims of an insurance company's general creditors in the event that the insurance company fails.

Pacific Life represents that it will negotiate the terms of each Actively-Managed Synthetic GIC with an independent fiduciary of a Plan, which is generally expected to be the Plan's named fiduciary and not an independent investment professional.

6. Both the Affiliated-Manager GIC and Unaffiliated-Manager GIC provide the same economic benefits to a Plan. The mechanical operation of Pacific Life's obligations (other than as an investment manager), under each form of the Actively-Managed Synthetic GIC is the same. In each case, the Contract is issued pursuant to applicable state law and is subject to the jurisdiction of the appropriate State Department of Insurance. The representations made by Pacific Life in respect of the Actively-Managed Synthetic GIC herein apply equally to both the Affiliated-Manager GIC and Unaffiliated-Manager GIC.

7. While certain terms and conditions of each Contract will be negotiable by the Plan and Pacific Life, once the Contract has been executed, Pacific Life will have no discretion over any of the terms. Each Actively-Managed Synthetic GIC is issued by Pacific Life in the ordinary course of its business. Pacific Life represents that it will not sell Actively-Managed Synthetic GICs to Plans which do not have at least $25 million in assets.

8. Each Actively-Managed Synthetic GIC will consist of two components. One component is the underlying portfolio of Investment Assets, title to which will remain with the Plan. The underlying Investment Assets will be securities issued or guaranteed by the Federal government or an instrumentality thereof, or other investment grade debt securities whose value is readily determinable and which can thus be objectively valued. The Investment Assets will not come under Pacific Life's administration or control, unless the Plan chooses Pacific Life as the investment manager of the Managed Portfolio by purchasing an Affiliated-Manager GIC. Even where Pacific Life is the investment manager, legal title to the Managed Portfolio, including all principal, interest, dividends and distributions on the Investment Assets in the Managed Portfolio, at all times remains with the Plan. The performance of such Investment Assets will affect the second component of each Contract.

The second component under each Actively-Managed Synthetic GIC will be an accounting record established by Pacific Life to record the Plan's interest under the Actively-Managed Synthetic GIC. This accounting record is called the Contract Value Record and it is the amount available to Plan participants in the event they elect to withdraw funds pursuant to the provisions of the Plan.

9. Under the Actively-Managed Synthetic GIC, a named fiduciary independent of Pacific Life will select an investment manager with respect to that portion of the Managed Portfolio as is agreed upon by that independent fiduciary and Pacific Life. On or before August 12, 1998, the named fiduciary independent of Pacific Life may have selected Pacific Life or one of its affiliates as investment manager. The investment manager will manage the Managed Portfolio in accordance with investment objectives and guidelines established at the inception of the Contract and described therein. It is represented that, among other things, these guidelines are intended to assure that the Managed Portfolio is invested prudently and requires that the Managed Portfolio be adequately diversified among the class of investments available.

10. As discussed in paragraph 9 above, under each Contract, Pacific Life will maintain a Contract Value Record for the Investment Assets in the Managed Portfolio. The Contract Value Record will be initially credited with an amount equal to the value of the Investment Assets at the inception of the Contract. Thereafter, the Contract Value Record will be credited with a rate of interest (i.e., the "Credited Rate") that will be reset periodically, [*e.g.*, quarterly, semi-annually, or annually], in accordance with a formula established under the Contract and agreed upon by an independent plan fiduciary. Once the Contract is executed, no element of the formula which sets the Credited Rate, or the intervals at which the Credited Rate is reset, is within Pacific Life's discretion. All principal and interest payments from the Investment Assets will be reinvested back into the Managed Portfolio and stay within the Contract. The Credited Rate will take into account these additional accruals. Also, the Credited Rate applied to the Contract Value Record will be responsive to fluctuations in the Market Value of the Managed Portfolio (see paragraph 21 for an explanation as to the determination of Market Value).

11. Pacific Life represents that one of the attractive features of the Actively-Managed Synthetic GIC to a Plan is that Pacific Life assumes certain obligations with respect to the availability of funds for benefit Withdrawals and the return on the Managed Portfolio. Mechanically, this is accomplished through the establishment of, and adjustments to, the Contract Value Record.

As discussed in paragraph 10 above, the Contract Value Record reflects a guarantee of principal and the crediting of interest at periodically determined Credited Rates, pursuant to the formula established in the Contract. The Credited Rate of interest will equal the rate necessary to assure that, if the Managed Portfolio earns the rate of return anticipated, the value of the Managed Portfolio will equal the Contract Value Record after a pre-determined amortization period. The length of the amortization period will be negotiated at arms length between Pacific Life and the Plan's independent fiduciary. Thus, for any Actively-Managed Synthetic GIC, the initial Credited Rate is equal to the expected rate of return on the Managed Portfolio. For all purposes under the Contract, the expected return on the Managed Portfolio is calculated by the Plan's trustee or another fiduciary acting on behalf of the Plan with the concurrence of Pacific Life.

It is represented that a party independent of Pacific Life, which will be the investment manager in circumstances where Pacific Life or an affiliate is not the Manager, or the trustee of the Plan in circumstances where Pacific Life is the investment manager, will determine the expected future rate of return on the Investment Assets assuming that those assets were held until maturity. Pacific Life represents that it will accept the expected rate of return calculations of the independent party, absent a mathematical error. It is represented that Pacific Life will calculate the

[2] Pacific Life was formerly known as Pacific Mutual Life Insurance (Pacific Mutual) and sold some Actively Managed Synthetic GICs under the name of Pacific Mutual. Pacific Life represents that Pacific Mutual was converted from a mutual company to a stock company and became a majority owned subsidiary of Pacific Mutual Life Holding Company, a mutual company owned by the former policyholders of Pacific Mutual. After the conversion, Pacific Mutual was renamed Pacific Life.

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Credited Rate pursuant to the formula agreed upon in the Contract, and that the calculations will be based on the data received from the independent party as to the expected rate of return and the actual rate of return.

12. To achieve the intended effect of causing the Contract Value Record balance and the value of the Managed Portfolio to be equal at maturity, the formula for determining the Contract Value Credited Rate of interest under each Contract resets periodically pursuant to the terms of the Contract (see paragraph 10 above for the description of the Credited Rate). At each reset period, the Credited Rate will be adjusted, up or down, to reflect the difference between the actual investment experience of the Managed Portfolio and the expected investment experience of such assets. The Credited Rate, following the reset, will equal the rate necessary to assure that, at the end of the amortization period, the Contract Value Record will equal the value of the Managed Portfolio, based on the assumed return for the Managed Portfolio for the amortization period.[3] In the event that the Credited Rate for any period, as calculated by Pacific Life pursuant to the fixed formula established under the Contract, would be less than zero, the Contract Value Record's Credited Rate following such reset will be zero.

13. Under each Actively-Managed Synthetic GIC, Pacific Life guarantees the availability of funds for participant initiated benefit Withdrawals up to the amount of the Contract Value Record balance as of any date. After certain other specified sources of funds (such as net contributions to the Actively-Managed Synthetic GIC, maturing proceeds, and cash equivalents) have been exhausted, a Plan will have the right to withdraw funds from the following sources in the order listed until depleted:

(1) Available cash attributable to the Investment Assets in the Managed Portfolio; and

(2) Cash realized from the sale of Investment Assets in the Managed Portfolio.

All participant initiated benefit Withdrawals are guaranteed to be paid at the Contract Value Record.

14. A Plan's fiduciary will have the option of purchasing an Actively-Managed Synthetic GIC which is issued on either an experience-rated or a non-experience rated basis.[4] Under both the experience-rated contract (Experience-Rated Contract) and the non-experience rated contract (Non-Experience Rated Contract), all participant initiated benefit Withdrawals will be paid at Contract Value. However, under an Experience-Rated Contract, Pacific Life will not compensate the Plan for any loss resulting from a benefit responsive Withdrawal which is effected at a time when the Market Value of the Investment Assets is less than the Contract Value. Pursuant to a Non-Experience Rated Contract, if benefit responsive Withdrawals are made when the Contract Value of the Investment Assets is greater than the Market Value of the Investment Assets, a reserve account is established (as discussed in paragraph 15 below) and Pacific Life will compensate the Plan in the event that, at maturity, the Contract Value plus the Reserve Account exceeds the Market Value of the Investment Assets.

Pacific Life represents that, when investing in synthetic GICs, some Plans are less concerned about protection against market losses due to benefit responsive Withdrawals, primarily because such Plans will have sufficient cash flow, in the form of new additional cash investments by participants on an ordinary basis to avoid the need to liquidate Investment Assets to meet benefit responsive Withdrawals. Pursuant to an Experience-Rated Contract, Withdrawals are paid from the inflow of new contributions and other amounts received by the Plan (Cash Resources). Pacific Life represents that typically very large Plans, with more than sufficient Cash Resources to cover Withdrawals without a need to sell any of the Investment Assets, are potential purchasers of an Experience-Rated Contract. Since Pacific Life's risk exposure is lower in the context of an Experienced-Rated Contract because it will have no exposure related to benefit responsive Withdrawals, the charges associated with such a contract will be less. Accordingly, to reduce expenses for a Plan that has sufficient Cash Resources, a Plan's fiduciary may select an Experience Rated Contract.[5]

Plans fiduciaries that do not believe they have sufficient Cash Resources to cover participant Withdrawals may anticipate the need to liquidate Investment Assets and, for this reason, such Plans would be expected to purchase a Non-Experience Rated Contract. The Non-Experience Rated Contract has higher charges associated with it, because Pacific Life assumes a greater obligation to the Plan.

15. Plans purchasing the Contracts are advised that the calculation of the future Credited Rates, and the benefit risk charge payable by the Plan to Pacific Life, will differ between Experience and Non-Experience Rated Contracts.

Under a Non-Experience Rated Contract, any benefit responsive Withdrawal made under the Actively-Managed Synthetic GIC will have no impact on the Credited Rate. After each Withdrawal, Pacific Life will add to or subtract from the Managed Portfolio's market value record a notional amount (the Reserve Account) to maintain, solely for bookkeeping purposes, the percentage difference between the Market Value and Contract Value Record at their pre-withdrawal levels. The Reserve Account is ongoing and will be in effect until the Contract terminates. Additions to the Reserve Account will be made when benefit Withdrawals occur and the Market Value of the Managed Portfolio is less than Contract Value Record. Alternatively, subtractions from the Reserve Account will be made when benefit Withdrawals are made and the Managed Portfolio's Market Value is greater than the Contract Value Record.

If a Plan elects to receive a payment of the Contract Value Record at contract maturity, any balance in the Reserve Account will earn the market rate of return earned on the Managed Portfolio. A positive balance credited to the Reserve Account when the Contract is terminated will be paid to the Plan. (See paragraph 16 below for a more detailed explanation). The Plan will not be obligated to pay Pacific Life any debit in the Reserve Account. This is the benefit Withdrawal risk that Pacific Life will be assuming under a Non-Experience Rated Contract.

However, the benefit Withdrawal activity of an Experience-Rated Contract will affect the future Credited Rate calculation and no Reserve Account will be maintained for such Contracts. If a benefit Withdrawal is made from the Contract at a time when the Market Value of the Managed Portfolio is less than the Contract Value Record, the Credited Rate at its next reset date will be lower to reflect the effect of the Withdrawal. On the other hand, at the next following reset date, the Credited Rate will be increased in the event that a Withdrawal is made at a time at which the Market Value of the Managed Portfolio exceeds the Contract Value Record. In this regard, in an Experience-Rated Contract, the Credited Rate of interest from and after such benefit responsive Withdrawals will be reset taking into account the positive or negative effect of such Withdrawal on the value of the Investment Assets. Thus, the Plan will assume the risk of loss on the benefit responsive Withdrawals (and be benefitted by any gains related thereto) by receiving a lower (or higher) Credited Rate on the Contract Value Record on a going forward basis. This enables the Plan to still receive the benefit of book value accounting, as all Withdrawals are still effected at book value, but enables it to avoid the cost of having Pacific Life assume the additional risk associated with such Withdrawals.

16. A Plan's fiduciary may at any time elect to terminate the arrangements pertaining to the Actively-Managed Synthetic GIC and thereby cause the investment of the Managed Portfolio to be transferred to the Plan's trustee or another investment manager, without restriction. This election is called a market value payment (Market Value Payment).[6] The Plan would generally be expected to elect such a Market Value Payment only in circumstances where the Market Value of the Managed Portfolio exceeds the balance then credited to the Contract Value Record. If a Plan were to elect a Market Value Payment, Pacific Life will be relieved of any potential obligation to make a payment in an amount equal to the amount of the Contract Value Record. Such payment of the Contract Value Record is referred to as a "Contract Value Payment," as described below. A Market Value Payment, if elected, consists in essence of the total return of the Investment Assets of the Managed Portfolio to the Plan. Any excess of the Market Value of the Managed Portfolio over the balance in the Contract Value Record belongs exclusively to the Plan. The only cost to a Plan electing to receive a Market Value Payment would be an early termination fee, which would be payable only if the Plan makes such election prior to the end of the minimum term for which it agrees to keep the agreement in effect. This termination fee and minimum term will be negotiated by the Plan and Pacific Life at the inception of the Contract. Pacific Life represents that the minimum term is typically one (1) year and the termination fee generally equals Pacific Life's cost of establishing the Actively-Managed GIC Contract. It is further represented that for Contracts involving the investment of $50 million or more, it will waive any such early termination fee. The purpose of the early termination fee is to assure that Pacific Life recovers the costs it will incur in implementing the Actively-Managed Synthetic GIC for a Plan which elects the Market Value Payment.

Alternatively, the Plan's fiduciary may at any time elect to receive a Contract Value Payment, if it thinks such an election would provide the Plan a better return. A Contract Value Payment takes the form of a single payment to be made at a date at which the Contract will mature following such an election (the Maturity Date), which date will have been agreed to by Pacific Life and the Plan at the commencement of the Contract. The time between the date the fiduciary gives notice of its intent to terminate the Contract and the Maturity Date is generally equal to the time of the amortization period assumed in the Credited Rate calculation (see paragraph 12 above). It is represented that the amortization period will not be more than three years. As a result, following the provision of notice of an election to terminate the contract and receive a Contract Value Payment, the maximum period a Plan would have to wait for the Contract Value Payment is three years. Any payment that Pacific Life will have to make to support the Contract Value Payment will be in an amount equal to the excess on the Maturity Date of (*i*) the balance in the Contract Value Record plus the balance in the Reserve Account over (*ii*) the Market Value of the Managed Portfolio.

17. If a Plan elects to receive a Contract Value Payment, new restricted investment guidelines and objectives will be set, to be effective for the remainder of the Contract term, under which either (*i*) the average duration of the assets in the Managed Portfolio will generally be six months less than the scheduled payment date until one year prior to the payment date, and thereafter generally one-half of the remaining period until the scheduled payment date, or (*ii*) the Managed Portfolio will be required to be invested in Treasury Bonds maturing on or before the scheduled payment date. To effect a Contract Value Payment, Pacific Life must receive written notice, signed by the Plan's independent fiduciary, of their acceptance of the revised investment objectives and guidelines.

18. In making the choice as to which form of termination distribution it wants upon the maturity of an Actively-Managed Synthetic GIC, a Plan's fiduciary will compare the Market Value of the Investment Assets as determined by its duly appointed custodian to the dollar amount credited to the Contract Value Record. Pacific Life, as issuer of the Contract, will have no involvement in valuing the Managed Portfolio. Moreover, at any time after having given Pacific Life notice of an election to receive a Contract Value Payment, the Plan may elect to receive a Market Value Payment instead. Thus, if the Market Value of the Managed Portfolio increases to the advantage of the Plan after the Plan has made a Contract Value Payment election, the Plan has the right to reverse such election and immediately terminate the Contract.[7] As with any election of a Market Value Payment, Pacific Life will thereafter have no further obligation with respect to any Contract Value Payment.

19. Pacific Life represents that it believes that each Actively-Managed Synthetic GIC is superior to traditional GICs in that each Actively-Managed Synthetic GIC serves the dual functions of: (*a*) Affording a Plan substantially greater protection against the risk that it will lose its principal investment; and (*b*) providing the Plan with an opportunity for a greater rate of return than a traditional GIC.

In the case of an Actively-Managed Synthetic GIC, an investment manager will invest the Managed Portfolio within the parameters of the pre-established investment guidelines. The Plan's trustee holds title to assets in the Managed Portfolio. Any appreciation in the value of the Managed Portfolio

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[3] Pacific Life represents that the amortization period for Contracts does not exceed three (3) years.

[4] The Department notes that the fiduciary responsibility provisions of the Act will apply to any decision made by a plan fiduciary to purchase an Actively-Managed Synthetic GIC as a part of its investment program for a plan's participants and beneficiaries. In this regard, section 404(a) of the Act requires that a fiduciary discharges his or her duties with respect to a plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Accordingly, the fiduciaries of a plan must act "prudently" with respect to the selection of investment products. This proposed exemption, if granted, should not be viewed as an endorsement by the Department of the plan's use of an Actively-Managed Synthetic GIC which is issued on either an experience-rated or non-experience rated basis. Finally, the Department notes that plan fiduciaries would be liable for any losses to a plan resulting from a decision to select an experience-rated or non-experience rated synthetic GIC, if such selection was not prudent at the time the decision was made.

[5] The Department expects that plan fiduciaries, consistent with their responsibilities under section 404(a) of the Act, will determine that a plan has sufficient liquidity to meet benefit responsive Withdrawals prior to investing in an Experience-Rated Contract.

[6] However, a Market Value Payment will not be deemed to have been requested if a Plan fiduciary, pursuant to the condition of the exemption proposed herein for Affiliated-Manager GICs, elects to replace Pacific Life or an affiliate of Pacific Life as investment manager, when the Credited Rate under such Contract falls below three (3) percent.

[7] Pacific Life acknowledges that circumstances which would cause the recovery of the Market Value to the extent that it would exceed the Contract Value Record, after a request for a Contract Value Payment is made, would be unlikely to occur given the short amortization period and the implementation of the restrictive investment guidelines provided for under the Contract.

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belongs to the Plan. The only risk in regard to the Managed Portfolio arising from the financial condition of Pacific Life relates to the amount representing the excess, if any, of the balance in the Contract Value Record over the Market Value of the Managed Portfolio. Pacific Life represents that the Actively-Managed Synthetic GIC provides greater security to an investing Plan than a traditional GIC, while also providing a guaranteed rate of return not generally available in respect to a managed portfolio under a separate investment advisory agreement.

20. Pacific Life will maintain full and complete records and books reflecting the various accounts maintained in accordance with the Actively-Managed Synthetic GICs. Pacific Life will furnish a Plan's representatives with periodic statements regarding distributions, Withdrawals and any other transaction pertaining to the Contract. Upon written request from a Plan, Pacific Life will also make its records pertaining to the Actively-Managed Synthetic GICs available during normal business hours for audit by independent certified public accountants hired by the Plan's fiduciary.

21. The applicant makes the following representation with respect to the valuation of assets under the Actively-Managed Synthetic GIC. The time at which the value of the Investment Assets is relevant to Pacific Life's obligations is at the time of any Withdrawal, including upon termination of the entire arrangement. At such time, the Market Value of the Investment Assets will be based on the last quoted sales price on the valuation date on a national securities exchange. With regard to any other security or asset which is not listed on a national securities exchange, its value will be determined by the Plan's independent investment manager or another fiduciary acting on behalf of the Plan, such as the Plan's trustee.

22. Pacific Life and the Plan's fiduciary will agree to an expense charge, determined at the inception of the Contract, payable to Pacific Life with respect to each Actively-Managed Synthetic GIC that will be stated as a fixed percentage of the market value of the Managed Portfolio. This charge covers four elements: (*a*) A benefit risk charge, (*b*) a maturity risk charge, (*c*) an expense charge and (*d*) a profit charge.

The benefit risk charge is the component of the fee attributable to Pacific Life's risk of loss associated with payments Pacific Life will be obligated to make as a result of the benefit responsive Withdrawal feature provided for under the Contract. The benefit risk charge will be developed on a Plan specific basis after a review of the Plan's benefit payment cash flow history and the structure of the Plan itself—that is, the frequency at which Withdrawals and investment transfers are permitted, and the structure of alternate investment opportunities. Since the Credited Rate for Non-Experience Rated Synthetic GICs is not responsive to benefit Withdrawal activity, the benefit risk that Pacific Life assumes from Non-Experience Rated Contracts is higher than for Experience Rated Contracts. Consequently, the benefit risk charge will be higher for Non-Experience Rated Contracts based on an evaluation of the Plan's Withdrawal and transfer possibilities.

The maturity risk charge component of the fee will be based on a review of the potential volatility of the Managed Portfolio. This assessment of the potential volatility will be based on a thorough review of the investment guidelines which will be applied to the Managed Portfolio. If Pacific Life feels that the potential volatility is too high to properly manage the maturity risk, the portfolio will not be approved for a Actively-Managed Synthetic GIC.

The expense and profit charges components of the fee will be assessed based on the expected expenses related to the arrangement and the payment to Pacific Life of a reasonable profit. The expense charge will be based on an annual rate to be determined by negotiations between Pacific Life and the Plan's fiduciary at the inception of the Contract and stated as a fixed percentage and multiplied by the value of the Managed Portfolio, determined pursuant to a fixed formula under the Contract. Such negotiated charge would remain in effect for the initial period until maturity agreed to by the Plan and Pacific Life, subject to Pacific Life's ability to make changes to such charge upon 30 day's advance written notice if and solely to the extent that there has been a material change to the provisions or administration of the Plan which adversely affects deposits to or Withdrawals from the Contract, or another action by the Plan's sponsor which results in significant Withdrawals from the Contract, such as, but not limited to, plant closing, divestitures, a partial plan termination, bankruptcy, or early retirement incentive programs. Based on its review of competitive practices, Pacific Life represents that the aggregate charges with respect to each of the Actively-Managed Synthetic GICs are, and are expected to continue to be, comparable to the charges made by other Actively-Managed Synthetic GIC providers.

23. Pacific Life represents that to date, Actively-Managed Synthetic GICs have been purchased by numerous Plans, with the first such purchase occurring on January 22, 1993. Pacific Life has accordingly requested that the exemption proposed herein be made retroactive to that date. Pacific Life represents that it entered into the previously issued Actively-Managed Synthetic GICs with the good faith belief that the transactions involved therein were, to the extent they constituted prohibited transactions, exempted by Prohibited Transaction Exemption 84–24 (PTE 84–24, 49 FR13208, April 3, 1984).[8] However, because Pacific Life is unable to conclude affirmatively that the Actively-Managed Synthetic GICs constituted insurance contracts within the meaning of PTE 84–24, Pacific Life has requested the exemption proposed herein.

24. In summary, the applicant represents that the subject transactions satisfy the criteria contained in section 408(a) of the Act because: (a) The decision to enter into an Actively-Managed Synthetic GIC will be made on behalf of the Plan by a fiduciary of the Plan who is independent of Pacific Life, after receipt of full and detailed disclosure of all material features of the Contact, including all applicable fees and charges; (b) following receipt of such disclosure, the Plan's independent fiduciary approves in writing the execution of the Actively-Managed Synthetic GIC on behalf of the Plan; (c) all fees and charges under the Actively-Managed Synthetic GICs are reasonable; (d) each Actively-Managed Synthetic GIC will specifically provide for an objective means for determining the fair market value of the securities owned by the Plan pursuant to the Actively-Managed Synthetic GIC; (e) each Actively-Managed Synthetic GIC will specifically provide for an objective means for determining the Credited Rate under the Actively-Managed Synthetic GIC; (f) Pacific Life does not take possession of the assets which are the subject of the Actively-Managed Synthetic GIC or commingle those assets with any other funds under its management; (g) the assets subject to the Actively-Managed Synthetic GIC are invested only in high quality fixed income instruments specified in the investment guidelines provided to the independent fiduciary; (h) the Plan may choose at any time to terminate the Actively-Managed Synthetic GIC and receive the Market Value of the Managed Portfolio; (i) An Affiliate-Manager GIC Contract provides that a Plan may replace an Affiliated-Manager GIC with an Unaffiliated-Manager GIC if the Credited Rate for the next reset will be three (3) percent or less; (j) the Plan may receive a Contract Value Payment no more than three (3) years after electing a Maturity Date; (k) the fee charged for the combination of services is negotiated between Pacific Life and a Plan fiduciary independent of Pacific Life; (l) Pacific Life will maintain books and records of all transaction which will be the subject to annual audit by independent certified public accountants selected and responsible solely to the Plan; and (m) Affiliated-Manager GICs were not sold to Plans by Pacific Life after August 12, 1998; and (n) the Actively-Managed Synthetic GICs will only be marketed to Plans which have at least $25 million in assets.

[8] In this proposed exemption, the Department expresses no opinion as to whether the subject transaction would be exempt under PTE 84–24.

For Further Information Contact: Janet Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

The Manufacturers Life Insurance Company (Manulife), Located in Toronto, Canada

[Application No. D–10738]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[9]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, to (1) the receipt of common stock (the Common Shares) of Manulife Financial Corporation, a newly-formed company that will be the holding company (the Holding Company) for Manulife; or (2) the receipt of cash or policy credits, by any plan policyholder (the Eligible Policyholder that is an employee benefit plan (the Plan), other than a policyholder which is a plan established by Manulife or an affiliate for its own employees (the Manulife Plan), in exchange for such Eligible Policyholder's membership interest in Manulife, in accordance with a plan of reorganization (the Plan of Demutualization) adopted by Manulife and implemented under the insurance laws of Canada and the State of Michigan.

This proposed exemption is subject to the conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Demutualization is implemented in accordance with procedural and substantive safeguards that are imposed under the insurance laws of Canada and the State of Michigan and is subject to review and/or approval in Canada by the Office of the Superintendent of Financial Institutions (OSFI) and the Minister of Finance (the Canadian Finance Minister) and, in the State of Michigan, by the Commissioner of Insurance (the Michigan Insurance Commissioner).

(b) OSFI, the Canadian Finance Minister and the Michigan Insurance Commissioner review the terms of the options that are provided to Eligible Policyholders of Manulife as part of their separate reviews of the Plan of Demutualization. In this regard,

(1) OSFI (i) authorizes the release of the Plan of Demutualization and all information to be sent to Eligible Policyholders; (ii) oversees each step of the demutualization process; and (iii) makes a final recommendation to the Canadian Finance Minister on the Plan of Demutualization.

(2) The Canadian Finance Minister considers such factors as whether (i) the Plan of Demutualization is fair and equitable to Eligible Policyholders; (ii) the Plan of Demutualization is in the best interests of the financial system in Canada; and (iii) sufficient steps had been taken to inform Eligible Policyholders of the Plan of Demutualization and of the special meeting on demutualization.

(3) The Michigan Insurance Commissioner makes a determination that the Plan of Demutualization is (i) fair and equitable to all Eligible Policyholders and (ii) consistent with the requirements of Michigan law.

(4) Both the Canadian Finance Minister and the Michigan Insurance Commissioner concur on the terms of the Plan of Demutualization.

(c) Each Eligible Policyholder has an opportunity to vote to approve the Plan of Demutualization after full written disclosure is given to the Eligible Policyholder by Manulife.

(d) One or more independent fiduciaries of a Plan that is an Eligible Policyholder receives Holding Company Common Shares, cash or policy credits pursuant to the terms of the Plan of Demutualization and neither Manulife nor any of its affiliates exercises any discretion or provides investment advice with respect to such acquisition.

(e) After each Eligible Policyholder entitled to receive stock is allocated at least 184 Common Shares, additional consideration is allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of Manulife which formulas have been reviewed by the Canadian Finance Minister and the Michigan Insurance Commissioner.

(f) All Eligible Policyholders that are Plans participate in the transactions on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(g) No Eligible Policyholder pays any brokerage commissions or fees in connection with the receipt of Common Shares.

(h) All of Manulife's policyholder obligations remain in force and are not affected by the Plan of Demutualization.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term "Manulife" means "The Manufacturers Life Insurance Company" and any affiliate of Manulife as defined in paragraph (b) of this Section III.

(b) An "affiliate" of Manulife includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Manulife. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term "Eligible Policyholder" means a policyholder who is eligible to vote at annual meetings of the mutual insurer and to receive consideration under Manulife's Plan of Demutualization. More specifically, an Eligible Policyholder is a policyholder of the mutual insurer that had a voting policy before Manulife announced its intention to demutualize or any policyholder that applied for a voting policy prior to that day. Policyholders will also be deemed Eligible Policyholders if they are holders of a

[9] For purposes of this proposed exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

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voting policy that lapsed before the insurer's announcement date but was reinstated on or before 90 days prior to the special meeting to consider demutualization. These policyholders will be eligible to receive benefits upon demutualization.

(d) The term "policy credit" means whichever of the following is applicable: (1) With respect to an individual life insurance policy, an increase in the dividend accumulation amount; (2) with respect to an individual deferred annuity policy where the owner has elected a dividend accumulation option, an increase in the dividend accumulation amount; (3) with respect to all other individual deferred annuity policies, an increase in the dividend addition value; and (4) with respect to a settlement annuity, an increase in the contract reserve which shall provide for an increase in the monthly income payment equal to the ratio of the reserve increase to the then current contract reserve.

Summary of Facts and Representations

1. Manulife, which maintains its principal place of business at 200 Bloor Street East, Toronto, Ontario, Canada, is a mutual insurance company originally incorporated on June 23, 1887 by a Special Act of Parliament of the Dominion of Canada. Manulife currently has letters patent (*i.e.*, a corporate charter) issued under the Insurance Companies Act of Canada (the ICA). Its port of entry into the United States is the State of Michigan which is responsible for regulating its United States operations.

Manulife provides a wide range of financial products and services, including individual life insurance, group life and health insurance, pensions, annuities and mutual funds to individuals and group customers, including employers in Canada and other countries. Either directly or through its subsidiaries, Manulife is authorized to conduct business in 50 states of the United States as well as in the District of Columbia. As of December 31, 1997, Manulife had total assets under administration of Cdn$79.5 billion and it had more than Cdn$400 billion of life insurance in force. In addition, during 1998, Manulife was rated as follows by Duff & Phelps, A.M Best, Standard & Poor's and Moody's:

Rating agency	Valuation date	Rating
Duff & Phelps Claims Paying Ability	8/24/98	AAA (Highest).
A.M. Best Financial Strength	1998	A++ (Superior).
Standard & Poor's Financial Strength	11/4/98	AA+ (Very Strong).
Moody's Financial Strength	3/98	Aa2 (Excellent).

As a mutual insurance company, Manulife has no shareholders. Instead, its participating policyholders, which are members of the company, are entitled to vote to elect all directors of Manulife. If Manulife is liquidated, such policyholders would also be entitled to share in the insurer's assets.

Manulife is the sole indirect shareholder of three United States-domiciled stock insurance companies. The three companies are Manulife Reinsurance Corporation (U.S.A.) (Reinsurance), a Michigan-domiciled insurer incorporated in 1983; ManUSA, a Michigan-domiciled insurer incorporated in 1955; and The Manufacturers Life Insurance Company of America, a Michigan-domiciled insurer incorporated in 1977. Additionally, Manulife indirectly owns approximately 85 percent of The Manufacturers Life Insurance Company of North America, a Delaware-domiciled insurer incorporated in 1979, which, in turn, owns The Manufacturers Life Insurance Company of New York, a New York-domiciled insurer incorporated in 1992.

Formerly, Manulife operated in the United States through a branch. However, since 1997, its businesses in the United States have been conducted through its subsidiaries. Prior to 1997, Manulife provided a variety of insurance products to Plans covered under applicable provisions of the Act and the Code.

2. ManUSA is a Michigan corporation which was incorporated in 1955 as a stock life insurance company. It is a wholly owned subsidiary of Reinsurance and is located at 500 N. Woodward Ave., Bloomfield Hills, Michigan. ManUSA is authorized to issue and reissue various forms of life insurance, annuities and other insurance products to Plans and to other policyholders. As of December 31, 1997, ManUSA had approximately 16,000 policies in force that were held on behalf of Plan policyholders located in the United States.

3. Between December 31, 1993 and December 31, 1996, Manulife began the process of transferring its operations from its U.S. branch to its wholly owned U.S. subsidiaries. Thus, on December 31, 1993, under the terms of an assumption reinsurance agreement, Manulife transferred to ManUSA (a) certain nonparticipating life insurance policies and annuity contracts written by Manulife in the United States through its U.S. branch; and (b) investment assets with a value and tax basis equal to or in excess of the tax reserves and other liabilities associated with the transferred policies and contracts. At the time of the transfer, Reinsurance was a wholly owned subsidiary of Manulife and ManUSA was a wholly owned subsidiary of Reinsurance.

On December 31, 1996, under the terms of an assumption reinsurance agreement, Manulife transferred to ManUSA (either directly or through Reinsurance) (a) all of its life insurance policies, annuity contracts, and other insurance contracts remaining in its U.S. branch (the U.S. Policies), other than Manulife's obligations under certain reinsurance contracts that it had previously written in its U.S. branch as the assuming company; and (b) other assets and liabilities of its U.S. branch (the 1996 Assumption Transaction).[10] The transferred assets had a value and tax basis equal to or in excess of the tax reserves and other liabilities assumed by ManUSA or associated with the transferred U.S. policies and assets. The U.S. Policies were primarily participating policies and included policies that qualified as tax-sheltered annuities described in section 403(b) of the Code, policies that qualified as individual retirement annuities within the meaning of section 408(b) of the Code, and individual and group policies issued in connection with Plans intending to qualify under section 401(a) or 403(a) of the Code (the Qualified Plan Contracts). Certain Qualified Plan Contracts were held in trust or custodial accounts; others were not.

[10] As an accommodation to Canadian tax law, a portion of the assets were transferred from Manulife to Reinsurance and then from Reinsurance to ManUSA. The remainder of the assets and all the liabilities were transferred directly from Manulife to ManUSA.

At the time of the 1996 Assumption Transaction, it is represented that Manulife assured the holders of the U.S. Policies that were participating policies (the Transferred U.S. Policies) that they would retain their membership interests in Manulife and would not be disadvantaged in a future demutualization of Manulife as a result of their policies being transferred to ManUSA. Therefore, in accordance with the approval granted by the Canadian regulatory authorities, Manulife agreed that holders of the Transferred U.S. Policies would retain their "equity" rights or membership interests in Manulife. In addition, the membership interests retained by the holders of the Transferred U.S. Policies were nontransferable and could be extinguished at the time any related insurance or annuity contract was canceled, matured, lapsed without reinstatement, or ceased to be a ManUSA participating policy.

Second, ManUSA agreed to pay cash dividends on the Transferred U.S. Policies by adopting a dividend policy consistent with its dividend policy for participating policies. In addition, ManUSA agreed that in no event would it pay dividends on the Transferred U.S. Policies on a less favorable basis than the basis on which it paid dividends on its own participating policies (assuming that ManUSA maintained a single participating fund for all participating policies).

Third, Manulife agreed to satisfy any claims on the U.S. Policies in the event of ManUSA's insolvency.

4. On January 20, 1998, Manulife's Board of Directors authorized management to develop a plan of demutualization whereby Manulife would be converted, in accordance with the provisions of the ICA, from a mutual life insurance company into an insurance company with common shares. The principal purposes of the demutualization are to (a) enhance Manulife's strategic and financial flexibility by creating a corporate structure that will make it potentially possible for the insurer to obtain additional capital sources that are unavailable to Manulife as a mutual insurer; (b) enable Manulife to use stock options or other equity-based compensation arrangements in order to attract and retain talented employees; and (c) provide Eligible Policyholders with marketable securities, cash or policy credits. Moreover, the ultimate result of the transaction will be a structure in which all of Manulife's shares will be held by a holding company, which has applied to be organized as an insurance company under the ICA for this purpose. Eligible Policyholders, which will generally include holders of the Transferred U.S. Policies will receive Common Shares of the Holding Company, a publicly-traded company whose Common Shares will be listed on the Montreal, Toronto or New York Stock Exchanges, or, in certain cases (for legal or tax reasons), cash or policy credits, in exchange for (and in extinguishment of) their membership interests and rights in the surplus of Manulife. The demutualization will not, in any way, change premiums or reduce policy benefits, values, guarantees or other policy obligations of Manulife to its policyholders.

5. Therefore, Manulife requests an administrative exemption from the Department that would cover the receipt of Common Shares of the Holding Company, cash or policy credits by Eligible Policyholders that are Plans in exchange for their existing membership interests in Manulife. Neither Manulife nor ManUSA is a "party in interest," with respect to any of its Plan policyholders merely because such entity has issued an insurance policy to the Plan. As noted above, ManUSA does (and, prior to 1997, Manulife did), however, provide certain services to Plan policyholders which would cause ManUSA and Manulife to be considered parties in interest with respect to such Plans under section 3(14)(A) and (B) of the Act.[11]

Manulife is not requesting that the exemption apply to distributions of Common Shares to the Manulife Plans because it believes the Common Shares received by such Plans would constitute qualifying employer securities within the meaning of section 407(d)(5) of the Act and that section 408(e) of the Act would apply to such distributions.[12]

The proposed exemption includes a requirement that distributions to Plans pursuant to the exemption must be on terms no less favorable to the Plans than in an arm's length transaction between unrelated parties would be. In this regard, Plans for which Manulife and/or ManUSA are parties in interest will not by reason of that relationship be treated any differently from other Eligible Policyholders that are not Plans.

6. On May 19, 1999, Manulife's Board of Directors formally adopted the Plan of Demutualization. On the effective date of the demutualization, which is scheduled to occur during September 1999, several steps will be deemed to occur simultaneously. In this regard, Manulife will issue shares (Manulife Shares) to the Holding Company. Then, all of the Holding Company's Common Shares held by Manulife immediately prior to the effective date will be canceled. Finally, the Holding Company will issue its Common Shares in book-entry form to Eligible Policyholders who are entitled to receive Common Shares under the Plan of Demutualization.

7. An initial public offering (the IPO) in which the Holding Company's Common Shares will be sold for cash is expected to close 5 business days after the effective date of the demutualization. The Holding Company intends to contribute a portion of the proceeds of the IPO to Manulife in an amount at least equal to the amount required to fund the mandatory cash payments and the mandatory crediting of policy credits to Eligible Policyholders who are to receive such consideration. As soon as reasonably practicable after the effective date of the IPO, the Holding Company will pay, or cause Manulife to pay, cash to Eligible Policyholders required under the Plan of Demutualization to receive such consideration, and will transfer cash to ManUSA to fund all policy credits due under the Plan of Demutualization.

A portion of the proceeds from the IPO will also help to satisfy, to the extent possible, elections by Canadian resident policyholders to receive cash instead of Common Shares. If the proceeds from the IPO are sufficient to satisfy cash elections in full, Canadian resident policyholders will receive the full amount of their cash election as promptly as possible after the closing of the IPO. If the proceeds from the IPO are not sufficient to satisfy cash elections in full, Canadian resident policyholders will receive Common Shares in book-entry form as part of their compensation.

To avoid the potentiality of a double-tax that might otherwise be imposed on non-Canadian policyholders who express a desire to receive cash through a cash election, the Common Shares for which such cash elections are made by non-Canadian policyholders will be sold in a secondary offering by the Holding Company's underwriters as part of (or simultaneously with) the IPO and subject to the approval of the Board of Directors of the Holding Company.

[11] Manulife notes that even though the Holding Company may not be subject to the provisions of the Act, there is no clear provision that would except a non-U.S. person from the general definition of the term "party in interest" with respect to a plan under section 3(14) of the Act. Thus, to remove any uncertainty that Manulife's proposed demutualization will not constitute a prohibited transaction, Manulife has requested an administrative exemption.

[12] The Department expresses no opinion herein on whether the Holding Company Common Shares will constitute qualifying employer securities and whether such distributions will satisfy the terms and conditions of section 408(e) of the Act.

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Assuming the IPO generates sufficient cash to fund all cash elections, an amount equal to the IPO price per share will be remitted to all policyholders making such elections.[13]

8. Section 237 of the ICA and the regulations promulgated thereunder (the Demutualization Law) establish an approval process for the demutualization of a life insurance company organized under Canadian law. The Demutualization Law prescribes the contents of the Plan of Demutualization and also prescribes the information that must be sent to Eligible Policyholders with the notice of the special meeting which must be convened to vote on the Plan of Demutualization. The information will be contained in an information circular which, together with the notice of special meeting and the Plan of Demutualization, must be sent to Eligible Policyholders at least 45 days prior to the special meeting. Manulife must first submit these materials to OSFI, a Canadian agency established to supervise Canadian financial institutions in order to determine whether they are in sound financial condition and are complying with their governing statutory law and supervisory requirements under that law. OSFI will oversee each step of the demutualization process. Manulife must obtain the authorization from OSFI's Superintendent to deliver the materials to Eligible Policyholders.[14] Before granting such authorization, OSFI may require that the notice or the information circular contain such additional information as it may determine.

The Plan of Demutualization must be approved by two-thirds of the Eligible Policyholders voting in person or by proxy at the special meeting. Within 3 months of the approval of the Plan of Demutualization by Eligible Policyholders, Manulife must apply to the Canadian Finance Minister for approval of the Plan of Demutualization and for the issuance of the Letters Patent of Conversion.[15] In deciding whether to approve the Plan of Demutualization, the Canadian Finance Minister may consider such factors as (a) whether the proposal is fair and equitable to policyholders; (b) whether the proposal is in the best interests of the financial system in Canada; and (c) whether sufficient steps had been undertaken to inform policyholders of the Plan of Demutualization and of the special meeting on demutualization.[16] The demutualization will be effective upon the issuance of the Letters Patent of Conversion by the Canadian Finance Minister.

9. The Plan of Demutualization must also be approved by the Michigan Insurance Commissioner.[17] To approve the Plan of Demutualization, the Michigan Insurance Commissioner must determine after a public hearing that the Plan of Demutualization does not prejudice the interests of Eligible Policyholders, and is consistent with the requirements of Michigan law. Manulife's directors, officers, employees and policyholders have the right to appear and to be heard at the public hearing.[18]

The Michigan Insurance Commissioner is required to give public notice of the hearing not less than 10 days before the hearing. The notice identifies the statutory authority under which the determination is made, the time and place of the hearing, a statement of the manner in which data, views and arguments may be submitted to the Michigan Insurance Commissioner at time other than at the hearing, and a description of the subjects and issues involved.

Any person who makes a written request to the Michigan Insurance Commissioner for advanced notice of the proposed action that may affect that person will receive copies of the notice. The notice also will be published as a display advertisement in newspapers of general circulation within Michigan.

The Michigan Insurance Commissioner may elect to conduct the hearing in person or may designate this assignment to another person. During the hearing, persons may give oral presentations to the hearing officer. At the conclusion of the hearing, a report on the hearing will be prepared for the Michigan Insurance Commissioner's use in reaching the determinations required by law.

Under Section 5925 of the Michigan Insurance Code, any action challenging the validity of the Michigan Insurance Commissioner's decision approving or disapproving the Plan of Demutualization must be commenced within 30 days after the Commissioner's decision.

10. Manulife's Plan of Demutualization provides for Eligible Policyholders to receive Common Shares, cash or policy credits in exchange for, and in extinguishment of, their membership interests.[19] For this purpose, an Eligible Policyholder generally is any owner of one or more voting policies in force (including the Transferred U.S. Policies assumed by ManUSA) on January 20, 1998 (or in lapse status on that date and reinstated at least 90 days prior to the special meeting of the policyholders to vote on the Plan of Demutualization). It is anticipated that 675,000 Eligible Policyholders will be entitled to vote on the Plan of Demutualization following the receipt of full and complete written disclosure of such Plan. Of these Eligible Policyholders, approximately 2,100 are Plan policyholders. Each Eligible Policyholder will be entitled to one vote regardless of the number of policies held with Manulife and/or its affiliates.

To determine the amount of consideration to which each Eligible Policyholder is entitled, each Eligible Policyholder will be allocated (but not necessarily issued) a number of Common Shares equal to the sum of (a) a fixed component consisting of 184 Common Shares; [20] and (b) an additional number of Common Shares based on actuarial formulas that take into account each participating policy's death benefit, account value and time-in-force. For those Eligible Policyholders who receive cash or policy credits due to legal or tax reasons, the amount of cash or policy credits will be determined by reference to the price per share at which the Common Shares are offered to the public in the IPO.

Although an Eligible Policyholder may receive Common Shares as a result of Manulife's demutualization, another Eligible Policyholder (a) whose jurisdiction of residence on the records of Manulife as of a specified date is other than Canada, the United States, Hong Kong or the Philippines; or (b) which is a government or government agency; or (c) who holds a Canadian Pension Policy, will receive cash in lieu of Common Shares in an amount equal to the number of shares such policyholder would otherwise have received multiplied by the price at which the Common Shares are offered to the public in the IPO.

In addition, an Eligible Policyholder who is entitled to receive Common Shares will be permitted to make a cash election in accordance with the terms of the Plan of Demutualization and will receive the value of his or her Common Shares in cash in accordance with the same formula. The cash election may be reduced if the Board of Directors of the Holding Company determines that such a reduction is in Manulife's best interests. In the event that the IPO fails to close, the Eligible Policyholder will receive the number of Common Shares he or she was originally allocated.

Other Eligible Policyholders, namely owners of individual retirement annuities, tax sheltered annuities, certain other policies issued directly to plan participants in qualified pension or profit sharing plans, or group policies issued in connection with plans intending to qualify under section 403(a) of the Code that are not held in trust, will receive policy credits equal in value to the shares allocated to such Eligible Policyholders.

In no event will Manulife nor ManUSA exercise any discretion with respect to voting on the Plan of Demutualization or with respect to any election made by any Eligible Policyholder which is a Plan, nor will Manulife and ManUSA provide "investment advice" as that term is defined in 29 CFR 2510.3–2(c) with respect to any election made by such Plan policyholder. In addition, no Plan will be required to pay any fees or commissions in connection with the receipt of Common Shares.

As stated above, under both Canadian and Michigan law, a plan of conversion must specify the consideration given to policyholders and it must be approved by the Canadian Finance Minister and the Michigan Insurance Commissioner. The Michigan Insurance Commissioner must find that the plan is fair and equitable to the U.S. policyholders. Moreover, the Canadian Finance Minister and the Michigan Insurance Commissioner must approve all forms of consideration.

11. It is anticipated that Manulife will establish a Share Sales Program to provide a convenient way for those Eligible Policyholders who choose to sell their Common Shares subsequent to the demutualization without having to establish an independent relationship with an investment dealer, stock broker or other qualified professional. The Share Sales Program will involve Common Shares being sold through one or more of the stock exchanges on which the Common Shares are listed for market prices that prevail at the time of the sale. Although Manulife will not subsidize the costs of the Common Shares, it is expected that participants in the Share Sales Program will benefit from the bulk commission rates which Manulife has negotiated with the participating brokers.

12. In the event the exemption has not been granted before the effective date of the demutualization, Manulife may delay payment of the consideration to Eligible Policyholders that are Plans and place such consideration in an escrow or similar arrangement subject to terms and conditions approved by the Superintendent of OSFI. Any such escrow or arrangement will provide for the payment to Eligible Policyholders of the consideration not later than the third anniversary date of the demutualization. All costs and expenses associated with the escrow arrangement will be borne by Manulife.

13. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan of Demutualization, which is being implemented pursuant to stringent procedural and substantive safeguards imposed under Canadian and Michigan law, will not require any ongoing supervision by the Department.

(b) One or more independent Plan fiduciaries will have an opportunity to determine whether to vote to approve the Plan of Demutualization and will be responsible for all such decisions.

(c) The proposed exemption will allow Eligible Policyholders that are Plans to acquire Common Shares, cash or policy credits in exchange for, and in extinguishment of, their membership interests in Manulife and neither Manulife nor its affiliates will be paid any brokerage commissions or fees in connection with the receipt of Common Shares.

(d) Neither Manulife nor ManUSA will exercise any discretion with respect to voting on the Plan of Demutualization or with respect to any election to be made by any Eligible Policyholder which is a Plan, nor will they provide "investment advice" as that term is defined in 29 CFR 2510.3–2(c) with respect to any election made by such Plan policyholder.

(e) The Plan of Demutualization will not change premiums or reduce policy benefits, values, guarantees or other policy obligations of Manulife to its policyholders and contractholders.

Notice to Interested Persons

Manulife will provide a copy of the proposed exemption to Eligible Policyholders that are Plans, within 14 days following the publication of the notice of pendency in the **Federal Register**. Such notice will be provided to interested persons by first class mail and will include a copy of the notice of

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[13] In this regard, Manulife has agreed that it or the Holding Company will pay the underwriters' discount on the sale of such shares. Because the payment of the underwriters' discount is treated as dividend in Canada, a withholding tax of 15 percent of the amount of the dividend will be imposed on Manulife and not on the Plans. It is represented that Manulife will not seek reimbursement from any Plan policyholder under such circumstances.

[14] The Superintendent determined on May 21, 1999 that the documentation submitted by Manulife's Board of Directors was appropriate for mailing to Eligible Policyholders.

[15] The Letters Patent of Conversion give legal effect to the Plan of Demutualization and convert a mutual company into a company with common shares.

[16] The policyholder notice was mailed on or before May 31, 1999. It is anticipated that the policyholder meeting will take place in Toronto on or about July 29, 1999. It is also expected that the approval of the Demutualization Plan by the Canadian Finance Minister will be obtained in late September 1999.

[17] Manulife does not believe that the demutualization can proceed unless both the Michigan Insurance Commissioner and the Canadian Finance Minister both approve the Demutualization Plan. Therefore, the insurer is having simultaneous discussions with both regulatory authorities and has been consulting with both regulators on requested changes. The Michigan Insurance Commissioner's statutory authority is limited to the approval or disapproval of the Plan of Demutualization presented by Manulife and is precluded from passing on the findings of the Canadian regulators.

[18] It is anticipated that the Michigan Insurance Commissioner's hearing will be conducted in Lansing, Michigan during the month of July 1999. The hearing will be open to anyone who wishes to participate, including Eligible Policyholders, regardless of domicile.

[19] Consistent with sections 1 and 4(1)(e)(i) of the Mutual Company (Life Insurance) Conversion Regulations (Canada), the Plan of Demutualization generally provides that the policyholder eligible to participate in the distribution of Common Shares, cash or policy credits resulting from the Plan of Demutualization is the "owner" of the policy, and that the "owner" of any policy shall generally be determined on the basis of the records of Manulife. Manulife further represents that an insurance or annuity policy that provides benefits under an employee benefit plan, typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the owner of the policy. In regard to insurance or annuity policies that designate the employer or trustee as owner of the policy, Manulife represents that it is required under the foregoing provisions of Canadian Law and the Demutualization Plan to make distributions resulting from such Plan to the employer or trustee as owner of the policy, except as provided below.

Notwithstanding the foregoing, Manulife's Plan of Demutualization provides a special rule applicable to an insurance policy issued to a trust established by Manulife. This rule applies whether or not the trust, or any arrangement established by any employer participating in the trust, constitutes an employee benefit plan subject to the Act. Under this special rule, the holder of each individual "certificate" issued in connection with the insurance policy is treated as the policyholder and owner for all purposes under the Plan of Demutualization, including voting rights and the distribution of consideration. The trustee of any such trust established by Manulife for the benefit of Eligible Policyholders that are Plans will be considered a policyholder or owner and will be eligible to vote or receive consideration.

In general, it is the Department's view that, if an insurance policy (including an annuity contract) is purchased with assets of an employee benefit plan, including participant contributions, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3–3) at the time when Manulife incurs the obligation to distribute Common Shares, cash or policy credits, then such consideration would constitute an asset of such plan. Under these circumstances, the appropriate plan fiduciaries must take all necessary steps to safeguard the assets of the plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

[20] Approximately 125 million Common Shares, representing 25 percent of the aggregate demutualization benefit, are expected to be allocated to Eligible Policyholders as the fixed allocation. On this basis, each Eligible Policyholder will be allocated a fixed component of 184 Common Shares.

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proposed exemption as published in the **Federal Register** as well as a supplemental statement, as required pursuant to 20 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on the proposed exemption. Comments with respect to the notice of proposed exemption are due within 44 days of the publication of this pendency notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 16th day of July, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–18616 Filed 7–21–99; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–98]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: Tuesday, August 3, 1999, 8 a.m. to 3:45 p.m.; and Wednesday, August 4,1999, 8 a.m. to 2 p.m.

ADDRESSES: Ohio Aerospace Institute, 22800 Cedar Point Road, Room, Library, Glenn Research Center at Lewis Field, Cleveland, OH 44142.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0732.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Tuesday, August 3, 1999, from 2:15 p.m. to 3:45 p.m. in accordance with 5 U.S.C. 552b(c)(4), to hear a proprietary briefing on the Space Transportation Architecture Studies analysis by the Independent Evaluation Team. Wednesday, August 4, 1999, will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aeronautics Technology Update
—High Speed Research Lessons
—Commercialization Update
—ISS PRA
—Independent Assessment Team Report
—NASA Advisory Council and Performance Plan Evaluation
—Committee/TaskForce/Working Group Reports
—Discussion of Findings and Recommendations

A detailed agenda and further information about the NASA Advisory Council is available on the world wide web at: http://www.hq.nasa.gov/office/codez/nac.htm.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–18749 Filed 7–21–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–099]

Performance Review Board, Senior Executive Service (SES)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of membership of SES performance review board.

SUMMARY: The Civil Service Reform Act of 1978, Pub. L. 95–454 (Section 405) requires that appointments of individual members to a Performance Review Board be published in the **Federal Register**.

The performance review function for the SES in the National Aeronautics and Space Administration is being performed by the NASA Performance Review Board (PRB) and the NASA Senior Executive Committee. The latter performs this function for senior executives who report directly to the Administrator or the Deputy Administrator and members of the PRB. The following individuals are serving on the Board and the Committee:

Performance Review Board

Spence M. Armstrong, Chairperson, Associate Administrator for Aero-Space Technology, NASA Headquarters
John T. Pennington, Executive Secretary, Chief, Agency Executive Personnel Branch, NASA Headquarters
Joan S. Peterson, Director, Personnel Division, NASA Headquarters
Robert M. Stephens, Deputy General Counsel, NASA Headquarters
Oceola S. Hall, Deputy Associate Administrator for Equal Opportunity Programs, NASA Headquarters
Michael A. Greenfield, Deputy Associate Administrator for Safety and Mission Assurance, NASA Headquarters
Susan H. Garman, Associate Director, NASA Johnson Space Center
William F. Townsend, Deputy Director, NASA Goddard Space Flight Center
Kathie L. Olsen, Chief Scientist, Office of the Administrator, NASA Headquarters
Paula M. Cleggett, Deputy Associate Administrator for Public Affairs, NASA Headquarters
Vacant, Deputy Director, NASA Glenn Research Center
James L. Jennings, Deputy Director for Business Operations, NASA Kennedy Space Center
Wallace C. Sawyer, Deputy Director, NASA Langley Research Center
Mark Craig, Deputy Director, NASA Stennis Space Center

Senior Executive Committee

J. R. Dailey, Chairperson, Associate Deputy Administrator, NASA Headquarters
Joan S. Peterson, Executive Secretary, Director, Personnel Division, NASA Headquarters
Ghassem Asrar, Associate Administrator for Earth Science, NASA Headquarters
Spence M. Armstrong, Associate Administrator for Aero-Space Technology, NASA Headquarters
Vicki A. Novak, Associate Administrator for Human Resources and Education, NASA Headquarters

Daniel S. Goldin,

Administrator.

[FR Doc. 99–18750 Filed 7–21–99; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Company; Notice of Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Baltimore Gas and Electric Company (licensee) for an amendment to Facility Operating License Nos. DPR No. 53 and DPR No. 69 issued to the licensee for operation of the Calvert Cliffs Nuclear Power Plants, Unit Nos. 1 and 2, located in Calvert County, Maryland. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on December 16, 1998 (63 FR 69334).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to delete requirements for tendon surveillance and reporting because the TS requirements were a duplication of the requirements of 10 CFR 50.55a.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated July 15, 1999.

By August 23, 1999, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay E. Silberg, Esquire, 2300 N Street, NW, Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 20, 1998, and (2) the Commission's letter to the licensee dated July 15, 1999.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, MD 20678.

Dated at Rockville, Maryland, this 15th day of July 1999.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Acting Director, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–18723 Filed 7–21–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400–LA; ASLBP No. 99–762–02–LA]

Atomic Safety and Licensing Board; Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Frederick J. Shon and Dr. Peter S. Lam; In the Matter of Carolina Power & Light Company (Shearon Harris Nuclear Power Plant); Notice of Hearing (License Amendment Application to Expand Spent Fuel Pool Capacity)

July 16, 1999.

In this proceeding, Carolina Power & Light Company (CP&L) has applied under 10 CFR 50.90 for a license amendment to increase the spent fuel storage capacity at its Shearon Harris Nuclear Power Plant (Harris), located in Wake and Chatham Counties, North Carolina. In its December 23, 1998 amendment request, CP&L seeks authorization to add rack modules to spent fuel pools "C" and "D" and place the pools in service. On January 7, 1999, the NRC staff issued a notice that the agency is (1) considering this license amendment application; (2) considering making a no significant hazards determination under 10 CFR 50.92 that would permit issuance of the amendment; and (3) affording the opportunity for a formal adjudicatory hearing on the CP&L application. The notice was published in the **Federal Register** on January 13, 1999. (64 FR 2237 (1999).)

By filing dated February 12, 1999, petitioner Board of Commissioners of Orange County, North Carolina (BCOC), made a timely request for a hearing relative to the CP&L license amendment application. On February 18, 1999, the Secretary of the Commission referred the CP&L application to the Atomic Safety and Licensing Board Panel to conduct any subsequent adjudication. On February 24, 1999, this Licensing Board was appointed to preside over this proceeding. (64 FR 10165 (1999).) The Board consists of Frederick J. Shon, Dr. Peter S. Lam, and G. Paul Bollwerk, III, who serves as Chairman of the Board.

On May 13, 1999, the Board conducted a one-day prehearing conference in Chapel Hill, North Carolina, to hear oral argument on the issues of BCOC's standing and the admissibility of its eight proffered contentions. The Board ruled on those matters in a July 12, 1999 issuance in which it concluded (1) BCOC did have standing to intervene as of right; and (2) two of its eight contentions were admissible. Accordingly, BCOC's hearing request was granted and it was admitted as a party to this proceeding. (*Carolina Power & Light Co.* (Sharon Harris Nuclear Power Plant), LBP–99–25, 50 NRC _____ (July 12, 1999).)[1]

In light of the foregoing, please take notice that a hearing will be conducted in this proceeding. This hearing will be governed by the formal hearing procedures set forth in 10 CFR Part 2, Subpart G (10 CFR 2.700–.790), subject to any election by the parties to utilize the hybrid hearing procedures in 10 CFR Part 2, Subpart K (10 CFR 2.1101–.1117).

During the course of the proceeding, the Board may conduct an oral

[1] A copy of the Board's July 12, 1999 decision can be found on the Internet at www.nrc.gov/OPA/reports/lbp9925.htm.

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argument, as provided in 10 CFR 2.755, 2.1113, may hold additional prehearing conferences pursuant to 10 CFR 2.752, and may conduct evidentiary hearings in accordance with 10 CFR 2.750–.751, 2.1115. The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing. Notices of those sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Rooms.

Additionally, as provided in 10 CFR 2.715(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issues in this proceeding. These statements do not constitute evidence, but may assist the Board and/or parties in defining the issues being considered. Persons wishing to submit a written limited appearance statement should send it to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. A copy of the statement also should be served on the Chairman of the Atomic Safety and Licensing Board. At a later date, the Board may entertain oral limited appearance statements at a location or locations in the vicinity of the Harris facility. Notice of any oral limited appearance sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Rooms.

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555; and at the NRC Local Public Document Room at the Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Dated: July 16, 1999, Rockville, Maryland.

For the Atomic Safety and Licensing Board.[2]

G. Paul Bollwerk, III,

Administrative Judge.

[FR Doc. 99–18725 Filed 7–21–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Continuing Disability Report.

(2) *Form(s) submitted:* G–254, G–254a.

(3) *OMB Number:* 3220–0187.

(4) *Expiration date of current OMB clearance:* 10/31/1999.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households, Business or other-for-profit.

(7) *Estimated annual number of respondents:* 2,000.

(8) *Total annual responses:* 3,500.

(9) *Total annual reporting hours:* 790.

(10) *Collection description:* Under the Railroad Retirement Act, a disability annuity can be reduced or not paid, depending on the amount of earnings and type of work performed. The collection obtains information about a disabled annuitant's employment and earnings.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Laurie Schack (202)–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuch Mierzwa,

Clearance Officer.

[FR Doc. 99–18757 Filed 7–21–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41621; File No. SR–CBOE–99–29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Allow RAES Orders To Trade Against Orders in the Exchange's Limit Order Book

July 14, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rule governing the operation of its Retail Automatic Execution System ("RAES") to provide for orders entered on RAES to trade against orders in the Exchange's customer limit order book. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at he Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is developing a system, the Automated Book Priority system, that will allow an order entered into RAES to trade directly with an order on the Exchange's customer limit order book in those cases where the prevailing market bid or offer is equal to the best bid or offer on the Exchange's book.[3] Currently, when a RAES order is entered into the Exchange's Order Routing System at a time when the prevailing market bid or offer is equal to the best bid or offer on the Exchange's book, the order is routed electronically to a Floor Broker's terminal or work station in the crowd subject to the volume parameters of each firm. In the event that the firm routing the order is not routing orders to the crowd, the order would be routed to the firm's own booth.[4] The orders are routed to the Floor Brokers instead of being automatically executed at the market price, because CBOE Rule 6.45 provides that bids or offers displayed on the customer limit order book are entitled to priority over other bids or offers at the same price. Until the Automated Book Priority system was developed, the Exchange did not have a method to maintain the priority of orders on the customer limit order book other than to reject the order from RAES in those circumstances.

To implement the Automated Book Priority system, the CBOE proposes to amend paragraphs (b) and (c) of CBOE Rule 6.8, "*RAES Operations in Equity Options,*" to provide for RAES orders to trade directly against orders entered in the Exchange's customer limit order book. The Exchange also proposes to delete Interpretation .04 of CBOE Rule 6.8 which concerns how orders that have been "kicked out" pursuant to paragraph (c) should be handled. Of course, once a RAES order is "kicked out" or rerouted to a Floor Broker, that order becomes subject to market risk as there may be some delay between the time the order is rerouted and the time the order is actually filled by the Floor Broker in open outcry. In times of extreme market volatility, even a short period of time between the rerouting and the execution of the order could have a significant effect on the price at which the order is executed.

The Automated Book Priority system will both prevent the RAES order from becoming subject to market risk and preserve the priority of the booked order. Thus, the proposed rule change will benefit customers using the RAES system as well as those whose orders are in the Exchange's book because both categories of orders will be executed more quickly than they would have been executed otherwise.

Because the Exchange does not believe the Automated Book Priority system will be ready to be implemented until at least August 1999, the Exchange does not plan to actually implement this rule change until the system is ready to be implemented. The Exchange will provide its membership with prior notice by means of a Regulatory Circular informing them of the date the system will be implemented and the rule will be changed.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)[5] of the Act in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–29 and should be submitted by August 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–18658 Filed 7–21–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41623; File No. SR–NYSE–99–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Amend Rule 123A.40

July 16, 1999.

Pursuant to Section 19(b)(1) of the Security Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend NYSE Rule 123A.40 to allow specialists to elect stop orders at a bid or offer that *betters* the market and would eliminate the requirement for specialists to obtain Floor Official approval, unless the price of the specialist's electing transaction is *more than* 4/16 point away from the previous sale.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

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[2] Copies of this notice of hearing were sent this date by Internet e-mail transmission to counsel for (1) applicant CP&L; (2) intervenor BCOC; and (3) the NRC staff.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In the event that the order in the book is for a smaller number of contracts than the RAES order, the balance of the RAES order will be assigned to participating market-makers at the same price at which the rest of the order was executed.

[4] Currently, RAES orders in options on IBM, the Dow Jones Industrial Average (DJX) and the Standard & Poor's 100 Stock Index (OEX) may be executed on RAES even where the prevailing market bid or offer equals the best bid or offer on the Exchange's book. Upon the implementation of the Automated Book Priority system, RAES orders in these option classes, like all other option classes, will trade against orders in the book in these circumstances.

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 C.F.R. 240.19b–4.

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concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rule 123A.40 generally prohibits a specialist from making a transaction for his or her own account that would result in electing stop orders.[3] However, the Rule permits a specialist to be party to the election of a stop order under two sets of circumstances: (i) when the specialist's bid or offer is made with the prior approval of a Floor Official, has the effect of *bettering* the market, and the specialist guarantees that the stop order will be executed at the same price as the electing sale; and (ii) when the specialist purchases or sells stock *at the current bid or offer* in order to facilitate completion of a member's order at a single price, where the depth of the current bid or offer is not sufficient.

The Exchange proposes to amend part (i) of the Rule to allow the specialist to make a bid or offer that *betters* the market at a price that would elect stop orders and eliminate the requirement to obtain Floor Official approval, unless the price of the specialist's electing transactions is *more than* 4/16 point away from the previous sale. The Rule would retain the requirement that the specialist guarantee that stop orders be executed at the same price as the electing sale.

A review of specialists' stop order electing transactions shows that a significant percent of trades occur at little or no change in price. For example, a study of the difference between the electing stop price and last sale price for September through November 1998 shows that 86% of the electing sales took place at 4/16 point change or less from the last sale price. The proposed change follows the philosophy that smaller variation trades do not require immediate scrutiny by a Floor Official. The Exchange's program for surveying stop order elections would not be affected by the proposed change to NYSE Rule 123A.40.

Based on these statistics, therefore, the proposal would eliminate approximately 86% of required Floor Official approvals in this area. A comparison of Stop Election Forms (Floor Official approval slips) submitted during July and August 1997 versus the same weeks in 1998 shows that the number of such forms (and therefore requests for Floor Official approval) doubled in 1998. In 1998, on average, more than 800 Stop Election Forms a day were submitted during this period. The proposed change would significantly reduce the administrative burden on Floor Official and specialists without compromising the Exchange's ability to survey stop order elections.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–99–10 and should be submitted by August 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–18656 Filed 7–21–99; 8:45 am]

BILLING CODE 8010–01–M

[3] A stop order is an order that becomes an executable market order, or limit order, once the specified price ("stop price") is reached. A stop order is elected when the stock trades at or beyond the stop price and, thus, may not necessarily be executed at that price. *See* NYSE Rule 13.

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41611; File No. SR–PCX–99–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to an Increase in the Maximum Size of Option Orders That May Be Executed Automatically

July 9, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On February 25, 1999 the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On May 25, 1999 the Exchange submitted Amendment No. 2 to the proposed rule change.[4] On July 2, 1999 the Exchange submitted Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 sets the maximum order size for execution through Auto-Ex for equity options and for index options on the PSE Technology Index, the Wilshire Small Cap Index, and the Morgan Stanley Emerging Growth Index at fifty contracts. Additionally, in Amendment No. 1 the PCX withdrew SR–PCX–99–05, which was filed with the Commission on February 22, 1999. *See* letter from Robert P. Pacileo, Staff Attorney, PCX, to Michael A. Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated February 24, 1999.

[4] In Amendment No. 2 the Exchange proposed to add a subsection to PCX Rule 6.87 to address the unbundling of Auto-Ex orders *See letter from Robert P. Pacileo, Staff Attorney, PCX, to Michael A. Walinskas, Associate Director, Division of Market Regulation, Commission, dated May 24, 1999.*

[5] In Amendment No. 3 the Exchange replaced the proposal in its entirety to restate and clarify the purpose of the proposal, to address technical modifications to PCX Rule 6.87 made in a separate filing with the Commission (SR–PCX–99–23), and to add a proposal to amend PCX Rule 6.86. *See* letter from Robert P. Pacileo, Staff Attorney, PCX, to Michael A. Walinskas, Associate Director, Division of Market Regulation, Commission, dated July 1, 1999.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to modify its rules on the automatic execution of option orders by expanding the maximum number of contracts that may be designated for automatic execution on an issue-by-issue basis. Specifically, the Exchange proposes to change the maximum order size for execution of equity options orders that are eligible to be executed electronically on the Exchange's Automatic Execution System ("Auto-Ex") from twenty contracts to fifty contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

First, the Exchange proposes to amend its Rule 6.86, governing Trading Crowd Firm Disseminated Market Quotes. The Exchange proposes to add subsection 6.86(g) and to make technical changes to Rule 6.86 to make it consistent with proposed Rule 6.87(b).[6]

Specifically, the Exchange proposes to add subsection 6.86(g) to require that, if the Options Floor Trading Committee ("OFTC") determines, pursuant to Rule 6.87(b), the size of orders in an issue that are eligible to be executed on Auto-Ex will be greater than twenty contracts, then the trading crowd will be required to provide a market depth in that greater amount. The Exchange proposes this rule change to update, clarify and keep consistent PCX rules governing size of market orders and market depth.

Second, the Exchange proposes to modify its rules on the automatic execution of Equity and Index Option orders by expanding the maximum number of contracts that may be designated for automatic execution, on an issue-by-issue basis, to fifty contracts.[7] Currently, the PCX Rule 6.87(b) provides that the Exchange's OFTC shall determine the size of orders that are eligible to be executed electronically on the Exchange's Auto-Ex system.[8] The rule provides that the OFTC may change the order size parameter of orders that may be executed on Auto-Ex on an issue-by-issue basis. The rule further provides that the maximum order size that the OFTC may designate for execution on Auto-Ex is twenty contracts.[9]

The Exchange proposes to distinguish between Equity and Index Options for matters relating to expansion of the maximum number of contracts that may be designated for automatic execution. The PCX proposes to increase the maximum size of Equity Option orders that the OFTC may designate for automatic execution in an issue from twenty contracts to fifty contracts. The PCX also proposes to allow the OFTC the ability to determine the size of Index Options orders that are eligible to be executed on Auto-Ex on an issue-by-issue basis for the following Index Options, with a maximum order size of fifty contracts: (1) the PSE Technology Index; (2) the Wilshire Small Cap Index; and (3) the Morgan Stanley Emerging Growth Index. The Exchange proposes these changes in an effort to meet the changing needs of customers in the market place and to give the Exchange better means of competing with other options exchanges for order flow, particularly in multiply traded issues. The Exchange also believes that the proposal will allow the Exchange to enhance its operational efficiency, particularly during times when large influxes of manual orders crate undue congestion in particular trading crowds.

Third, the Exchange proposes to add subsection 6.87(k) to address the unbundling of Auto-Ex orders. Specifically, the Exchange proposes that the OFTC will determine, on an issue-by-issue basis, the manner in which orders entered through the Auto-Ex system will be assigned to individual Market Makers for execution. Each Marker Maker who is participating on the Auto-Ex system will be required to execute a maximum of ten option contracts per Auto-Ex trade, except that, the OFTC may permit individual Market Makers and Lead Market Makers ("LMM") to be allocated a number of contracts greater than ten and no more than fifty, upon the request of the individual Market Maker or LMM.

Fourth, the Exchange proposes that, in accordance with the provision on

[6] PCX Rule 6.87 has been renumbered and reorganized under SR–PCS–99–23, filed with the Commission on June 14, 1999. *See* Securities Exchange Act Release No. 41582 (June 30, 1999).

[7] The PCX Technology Department has confirmed that Pacific Options Exchange Trading System ("POETS") is capable of, and has the capacity to, execute trades at 50-up on an issue-by-issue basis, which can equate to floor-wide 50-up if done for all issues.

[8] The Commission approved the POETS and its Auto-Ex features as a pilot program in January 1990. *See* Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (order approving File No. SR–PSE–89–26). On July 30, 1993, the Commission approved the program on a permanent basis. *See* Securities Exchange Act Release No. 32703 (July 30 ,1993), 58 FR 42117 (August 6, 1993). The Auto-Ex system permits eligible market or marketable limit orders sent from member firms to be executed automatically at the displayed bid or offering price. Participating market makers are designated as the contra side to each Auto-Ex order. Participating market makers are assigned by Auto-Ex on a rotating basis, with the first market maker selected at random from the list of signed-on market makers. Auto-Ex preserves Book priority in all options. Automatic executions through Auto-Ex are currently available for public customer orders of ten contracts or less (or in certain issues, for twenty contracts or less) in all series of options traded on the Options Floor of the Exchange.

[9] Currently, however, PCX Rule 6.87(c) provides: "The Options Floor Trading Committee may increase the size of Auto-Ex-eligible orders in one or more classes of multiply traded equity options to the extent that other options exchanges permit such larger size orders in multiply traded equity options of the same class or classes to be entered into their own automated execution systems. If the Options Floor Trading Committee intends to increase the Auto-Ex order size eligibility pursuant to this subsection, the Exchange will notify the Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Exchange Act."

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LMMs' guaranteed participation in Rule 6.82(d)(2), the LMM in an issue will be required to either (i) participate in every other trade executed on Auto-Ex in that issue or (ii) participate in a percentage of every trade consistent with the amount of the LMM's guaranteed participation. The Exchange also proposes that the OFTC may require Market Makers or an LMM who is participating on Auto-Ex in a particular issue to execute a number of contracts greater than ten. However, before doing so, the OFTC must take into account whether doing so would place a Market Maker at undue risk based on that Market Maker's capitalization.

Finally, the Exchange proposes that the OFTC seek to assure that each Market Maker participating on Auto-Ex in a particular issue will be assigned up to the same maximum number of option contracts per Auto-Ex trade. The OFTC may permit exceptions to this procedure only in unusual situations where the OFTC finds good cause for permitting differences in the maximum number of contracts executed by individual Market Makers.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[10] of the Act, in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to facilitate transactions in securities, to protect investors and the public interest and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–04 and should be submitted by August 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–18657 Filed 7–22–99; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions And Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority that covers the Social Security Administration (SSA). Notice is given that Chapter S1 for the Office of the Deputy Commissioner for Finance, Assessment and Management (DCFAM) is being amended to reflect the abolishment of the Office of Field Facilities Management (S1RK) in the Office of Facilities Management (S1R), DCFAM. Further notice is given that Chapter S1 is being amended to reflect functional realignments within the Office of Facilities Management (OFM). The changes are as follows:

Section S1R.10 The Office Facilities Management—(Organization): Delete

H. The Office of Field Facilities Management (S1RK). Re-letter "I" to "H".

Section S1R.20 The Office of Facilities Management—(Functions): Delete in its entirety

H. The Office of Field Facilities Management (S1RK). Re-letter paragraph "I" to "H".

D. The Office of Realty Management (S1RE).

Delete the first sentence and replace with "The Office of Realty Management (S1RE) directs SSA's national real property program, including long- and short-range planning, design, construction, and leasing of central office and prospectus level field facilities, renovation projects, energy management, project management, acquisition management and utilization of space, installation of IWS/LAN and other automation projects, modular furniture installations, and the development and implementation of policies, procedures, and technical assistance to support these programs."

Amend as follows:

G. The Office of Outlying Buildings Management (S1RJ).

"The Office of Outlying Buildings Management (S1RJ) directs operations at the Metro West, Security West, National Computer Center, Hollings Ferry, and Techwood Buildings and leased offices in the Washington, D.C. area that house Headquarters Staff, including long- and short-range planning, construction, and lease management, maintenance, repair, ongoing preventive maintenance, space planning, execution of safety, environmental health, and physical security policies, and the development of appropriate policies, procedures, and technical assistance to support these programs."

Dated: July 6, 1999.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 99–18659 Filed 7–21–99; 8:45 am]

BILLING CODE 4190–29–U

[12] 17 CFR 200.30–3(a)(12).

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement—Tims Ford Reservoir Land Management Plan, Franklin and Moore Counties, Tennessee

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of intent.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. TVA and the Tennessee Department of Environment and Conservation (TDEC), in partnership, will prepare an Environmental Impact Statement (EIS) on alternatives for management and disposition of Tims Ford Reservoir project lands in Franklin and Moore Counties, Tennessee.

DATES: Comments on the scope of the EIS must be received on or before August 31, 1999.

ADDRESSES: Written comments should be sent to Jon M. Loney, Manager, Environmental Management, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: Harold M. Draper, NEPA Specialist, Environmental Management, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (423) 632–6889 or e-mail hmdraper@tva.gov

SUPPLEMENTARY INFORMATION:

Background

Tims Ford Reservoir has a surface area of 10,600-acres (4,290-hectare) on the Elk River in Franklin and Moore Counties, Tennessee. It was completed in 1970 by TVA for the purposes of flood control, hydroelectric generation, recreation, and economic development. The reservoir is 34 miles (54.7 kilometers) long at full pool. There are approximately 250 miles (400 km) of shoreline and 10,000 acres (4050 ha) of project lands around the impoundment. TVA and TDEC are considering new allocations for approximately 6,200 acres (2510 ha) of this land. The remainder is already committed to project operations and long-term easements.

The Tennessee Elk River Development Agency (TERDA) was created by the Tennessee General Assembly in 1963. The enabling legislation (TCA 64–1–301) that created TERDA states:

The agency is created for the purpose of developing and effectuating plans and programs for comprehensive development including the control and development of the water resources of those portions of the Elk River watershed and integrating plans, programs, and development activities with the overall economic development of the area described.

On May 17, 1966, TVA and TERDA entered into Contract No.TV–27333A to "engage in a cooperative program of comprehensive, unified resource development for the purpose of fostering the orderly physical, economic, and social development of the Elk River area," which included the construction of the Tims Ford Dam and Reservoir. Under that agreement, properties that were voluntarily sold were purchased by the Federal Government for this project in the name of TERDA. Later, those properties below the 895-foot contour were transferred to TVA for reservoir project operations. Those tracts acquired under the power of eminent domain were purchased in the name of the United States Government and remain in the custody of TVA. In September 1980, Contract No. TV–27333A was replaced by Contract No. TV–50000A, which further defined the roles and responsibilities of each party in managing the overall Tims Ford project. In April 1996, the Tennessee General Assembly passed Public Chapter 816 of the Public Acts of 1996, which terminated TERDA and transferred all powers, duties, contractual obligations, functions, and remaining land interests of the agency to TDEC. TDEC was charged with the responsibility of disposing of the remaining land interests.

In February 1998, Contract No. TV–50000A was replaced by Contract No. 98RE2–229151, which redefined the obligations and responsibilities of each party to cooperatively develop a comprehensive Land Management and Disposition Plan. The EIS will evaluate the environmental impacts of implementing this Plan. Under this contract, all portions of project lands must be allocated to specific uses, including TVA project operations, resource protection, resource management, industrial/commercial, recreational, residential, and any other uses deemed desirable by the parties. In addition, the Plan will also determine which portions of such lands should be transferred to or retained by the State; transferred to or retained by TVA or other governmental entities for public purposes; or sold, leased, or otherwise disposed.

The Plan will seek to integrate land and water benefits, provide for optimum public benefit, and balance competing and sometimes conflicting resource use goals. By providing a clear statement of how TVA and TDEC intend to manage land and by identifying land for specific uses, TVA and TDEC hope to balance conflicting uses and facilitate decision making for use of its land. This Plan will be submitted for approval by the TVA Board of Directors and the Tennessee State Building Commission and adopted as policy to provide for long-term land stewardship and accomplishment of TVA responsibilities under the 1933 TVA Act, carry forth the purposes for which Congress approved funding for the Tims Ford project, and fulfill the intent of Public Chapter 816 of the 1996 Tennessee General Assembly.

In developing the plan, it is anticipated that lands currently committed to a specific use would be allocated to that current use unless there is an overriding need to change. Commitments include transfers, easements, leases, licenses, contracts, utilities, outstanding land rights, or developed recreation areas. All lands under TVA and TDEC control would be allocated in the planning process. At this time, TVA anticipates that four alternatives would be analyzed in the EIS. The No Action alternative would be chosen if either or both agencies decline to adopt a jointly-prepared land management and disposition plan. In the absence of a joint plan, TVA and TDEC would proceed with disposition or management of properties on a case-by-case basis, using the scope of the Tims Ford Project as originally set forth and subject to existing laws and policies. TDEC would be guided by Public Chapter 816.

A second alternative would seek to provide a balance of sensitive resource management, natural resource conservation, and development. A third alternative would allocate lands into categories that emphasize maximum development on suitable and capable tracts of land. The fourth alternative would prohibit any new development excluding existing uses. This alternative would deem all lands unsuitable for development and would allocate them for natural resource conservation.

Scoping

TVA and TDEC formally began the environmental review process with a press release on October 2, 1998, announcing a public comment period extending through December 1, 1998 to solicit input and to conduct public scoping meetings. Public meetings were held on November 9, 1998 at Winchester, Tennessee and on

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November 10, 1998 at Fayetteville, Tennessee and attended by 181 people. TDEC also requested comments through a website (http://www.state.tn.us/environment/elk/) and requested written comments.

Subsequent to the scoping meetings, the agencies determined that an EIS would allow a better understanding of the impacts of the alternatives. Accordingly, this notice publishes the intent of the agencies to prepare an EIS. Based on the results of the previous scoping, the agencies anticipate that the EIS will include discussion of the potential effects of alternatives on the following resources and issue areas: visual resources, cultural resources, threatened and endangered species, terrestrial ecology, wetlands, recreation, water quality, aquatic ecology, and socioeconomics. Other issues which may be discussed, depending on the potential impacts of the alternatives, include floodplains, prime farmland, and air quality.

TVA is interested in receiving additional comments on the scope of issues to be addressed in the EIS. Written comments on the scope of the EIS should be received on or before August 31, 1999. TVA and TDEC anticipate completing the Draft EIS in the Fall of 1999. An opportunity to review and comment on the draft EIS will be provided at that time.

Dated: July 14, 1999.

Kathryn J. Jackson

Executive Vice President, River System Operations & Environment.

[FR Doc. 99–18760 Filed 7–21–99; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–170]

WTO Dispute Settlement Proceeding Regarding Canada—Patent Term

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USRT") is providing notice of the request for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization ("WTO"), by the United States, to examine the Canadian Patent Act. In this dispute, the United States alleges that the patent term granted by the Canadian patent Act is inconsistent with obligations of Canada under the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"). The USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by September 1, 1999, to be assured of timely consideration by the USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: Canada Patent Term Dispute, Office of the United States Trade Representative, 700 17th Street NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Geralyn Ritter, Assistant General Counsel, (202) 395–6800.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements (URAA)(19 U.S.C. 3537(b)(1), USTR is providing notice that on July 15, 1999, the United States submitted a request for the establishment of a WTO dispute settlement panel to examine whether the patent term as provided by the Canadian Patent Act is inconsistent with certain provisions of the TRIPS Agreement. The WTO Dispute Settlement Body ("DSB") will consider the United States' request for the establishment of a panel for the first time on July 26, 1999.

Major Issues Raised and Legal Basis of the Complaint

The TRIPS Agreement obligates all Members of the WTO to grant a term of protection for patents that runs at least until twenty years after the filing date of the underlying application. The TRIPS Agreement also requires each Member to grant this minimum term to all patents existing as of the date of the application of the Agreement to that Member. Canada has been obligated to apply the provisions of the TRIPS Agreement in full since January 1, 1996. However, the Canadian Patent Act provides that the term granted to patents issued on the basis of applications filed before October 1, 1989, is 17 years from the date on which the patent is issued. The United States considers this to be inconsistent with Canada's obligations under Articles 33 and 70 of the TRIPS Agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Informaiton or advice contained in a comment submitted, other than business confidential information, may be determined by the USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), the USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington DC 20508.The public file will include a listing of any comments received by the USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–170, Canada Patent Term) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 99–18736 Filed 7–21–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Dorenda Baker, Transport Standards Staff (ANM–110) Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056; phone (425) 227–2109; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is Transport Airplane and Engine Issues. These issues involve the airworthiness standards for transport category airplanes and engines in 14 CFR parts 25, 33, and 35 and parallel provisions in 14 CFR parts 121 and 135.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

Task: Flight Crew Error/Flight Crew Performance Considerations in the Flight Deck Certification Process

Step 1. Review relevant existing material (FAR/JAR 25 regulations, advisory material, policy, and related references) and make recommendations about what regulatory standards and/or advisory material should be updated or developed to consistently address design-related flight crew performance vulnerabilities, and prevention and management (detection, tolerance, and recovery) of flight crew error. This review should be accomplished in the context of both the Type Certification and Supplemental type Certification processes.

Step 2. Based on results of the Step 1 review, recommend new advisory material to address design-related vulnerabilities of flight crew performance and the management of flight crew error.

Step 3. Recommend (or plan for the development of) new regulatory material to address design-related vulnerabilities of flight crew performance and the management of flight crew error. If rulemaking is not recommended, provide reasons and propose non-rulemaking alternatives.

Step 4. Recommend an implementation plan for products of Steps 1–3, and develop Terms of Reference for fulfilling the plan.

Step 5. During accomplishment of these steps, identify implications for qualification and operaticns for communication to appropriate groups.

The FAA requests that ARAC draft appropriate regulatory documents with supporting economic and other required analyses, and any other related guidance material or collateral documents to support its recommendations. If the resulting recommendation is one or more notices of proposed rulemaking (NPRM) published by the FAA, the FAA may ask ARAC to recommend disposition of any substantive comments the FAA receives.

An interim report responding to the first three steps would be required from the ARAC working group within 18 months. The entire project shall be completed within 36 months of tasking.

ARAC Acceptance of Task

ARAC has accepted the task and has chosen to establish a new Human Factors Harmonization Working Group. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The Human Factors Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider transport airplane and engine issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. Draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations. If the resulting recommendation is one or more notices of proposed rulemaking (NPRM) published by the FAA, the FAA may ask ARAC to recommend disposition of any substantive comments the FAA receives.

4. Provide a status report at each meeting of ARAC held to consider transport airplane and engine issues.

Participation in the Working Group

The Human Factors Harmonization Working Group will be composed of technical experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than *Sept. 17, 1999.* The requests will be reviewed by the assistant chair and the assistant executive director, and the individuals will be advised whether or not the request can be accommodated.

Individuals chosen for membership on the working group will be expected to represent their aviation community segment and participate actively in the working group (e.g., attend all meetings, provide written comments when requested to do so, etc.). They also will be expected to devote the resources necessary to ensure the ability of the working group to meet any assigned deadline(s). Members are expected to keep their management chain advised of working group activities and decisions to ensure that the agreed technical solutions do not conflict with their sponsoring organization's position when the subject being negotiated is presented to ARAC for a vote.

Once the working group has begun deliberations, members will not be

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added or substituted without the approval of the assistant chair, the assistant executive director, and the working group chair.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the Human Factors Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on July 14, 1999.

Ida M. Klepper,

Acting Executive Director Aviation Rulemaking Advisory Committee.

[FR Doc. 99–18718 Filed 7–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Government/Industry Free Flight Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Government/Industry Free Flight Steering Committee meeting to be held August 12, 1999, starting at 1:00 p.m. The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, in the Bessie Coleman Conference Center, Room 2AB (second floor).

The agenda will include: (1) Welcome and Opening Remarks; (2) Review of Summary of the Previous Meeting; (3) Report from FAA Office of Communications, Navigation, Surveillance on: (a) CPDLC Build I Program Risks and Mitigation Strategies and (b) Safe Flight 21, Ohio Valley Demonstration Update; (4) Report and Recommendations from the Free Flight Select Committee; (5) Other Business; (6) Date and Location of Next Meeting; (7) Closing Remarks.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA, Inc., at (202) 833–9339 (phone), (202) 833–9434 (facsimile), or dclarke@rtca.org (e-mail).

Members of the public may present a written statement at any time.

Issued in Washington, DC, on July 16, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–18717 Filed 7–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5930]

RIN 2127–AE95

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Review: Passenger Car Back Seat Occupant Protection; Evaluation Report

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

SUMMARY: This notice announces the publication by NHTSA of a Technical Report concerning Safety Standard 208, Occupant Crash Protection, specifically the back seat lap/shoulder belt requirement. The report's title is the Effectiveness of Lap/Shoulder Belts in the Back Outboard Seating Positions. The primary objective of this report is to evaluate the effectiveness of lap/shoulder belts for back seat outboard occupants and whether they are more effective than lap belts for these occupants. Other objectives are to determine whether lap belts are effective, whether lap belts are harmful to back seat belt users in specific crash modes, and whether lap/shoulder belts correct the problems found with lap belts.

DATES: Comments must be received no later than November 19, 1999.

ADDRESSES:

Report: Interested people may obtain copies of the reports free of charge by sending a self-addressed mailing label to Publications Ordering and Distribution Services (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

Comments: All comments should refer to the docket number of this notice and be submitted to: U. S. Department of Transportation Dockets, Room PL–401, Nassif Building, 400 Seventh Street, SW, Washington DC 20590. [Docket hours, 10:00 a.m.–5:00 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Charles J. Kahane, Chief, Evaluation Division, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590 (202–366–2560).

SUPPLEMENTARY INFORMATION: Back seat outboard lap/shoulder belts were first required in passenger cars after December 11, 1989 and in convertible passenger cars, light trucks, vans, and sport utility vehicle after September 1, 1991. Before this, passenger vehicles were required to have at least lap belts at all forward-facing rear outboard seating positions, lap/shoulder belts were optional.

Pursuant to the Government Performance and Results Act of 1993 and Executive Order 12866 (58 FR 51735), NHTSA reviews existing regulations to determine if they are achieving policy goals. Most of the analyses in this report are based on Fatality Analysis Reporting System (FARS) data from 1988 through the first six months of 1997. The primary analysis compares the fatality risk for back seat outboard belted occupants (lap or lap/shoulder belted) to the corresponding risk for unbelted occupants, as well as the fatality risk for lap/shoulder belted occupants to the risk for lap belted occupants. Fatality risk is the ratio of fatalities in the back seat to fatalities in the front seat (a control group). This procedure of comparing a subject group to a control group is called "double pair comparison."

The principal conclusions are: back seat lap belts are 32 percent effective in reducing fatalities and lap/shoulder belts are 44 percent effective in reducing fatalities when compared to unrestrained back seat occupants in passenger cars. In passenger vans and sport utility vehicles, lap belts are 63 percent effective and lap/shoulder belts are 73 percent effective. The change from lap to lap/shoulder belts has significantly enhanced occupant protection, especially in frontal crashes. In all crashes, lap/shoulder belts are 15 percent more effective than lap belts alone. In frontal crashes, lap/shoulder belts are 25 percent more effective than lap belts alone. Back seat lap belts reduce the risk of head injuries while increasing the risk of abdominal injuries in potentially fatal frontal crashes. Lap/shoulder belts reduce the risk of both head and abdominal injuries in potentially fatal frontal crashes relative to lap belts only: head injuries by 47 percent and abdominal injuries by 52 percent.

NHTSA welcomes public review of the technical report and invites the reviewers to submit comments about the data and the statistical methods used in the report. The agency is interested in learning of any additional data or information that could be used to expand or improve the analyses.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and 2 copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR Part 512).

All comments received before the close of business on the comment closing date will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested people continue to examine the docket for new material.

People desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

William H. Walsh,

Associate Administrator for Plans and Policy.

[FR Doc. 99–18671 Filed 7–21–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20948]

Stagecoach Holdings plc—Control—Coach USA, Inc., et al.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance application.

SUMMARY: Stagecoach Holdings plc (Stagecoach), a noncarrier that does not control any U.S. carriers, filed an application under 49 U.S.C. 14303 to acquire control of Coach USA, Inc. (Coach), a noncarrier; its 7 noncarrier regional management subsidiaries (the management companies);[1] and the 79 motor passenger subsidiaries (the operating carriers) controlled by Coach through the management companies. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8.[2] The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by September 7, 1999. Applicants may file a reply by September 20, 1999. If no comments are filed by September 7, 1999, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20948 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representatives: William C. Sippel, Oppenheimer Wolff & Donnelly (Illinois), Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601–6710; and Betty Jo Christian, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Stagecoach is a public limited company organized under the laws of Scotland with no bus or other transportation interests in the United States. With operations in eight other countries, however, Stagecoach is one of the world's largest providers of passenger transportation services.[3] It had annual revenues for the fiscal year ending April 30, 1999, of $2.475 billion.

Coach is a Delaware corporation that controls the operating carriers[4] through the management companies. Coach also controls several non-federally regulated bus, van, and taxicab companies.[5]

Stagecoach has formed two wholly owned subsidiaries for the purpose of

[1] The management companies are: Coach USA North Central, Inc.; Coach USA Northeast, Inc.; Coach USA South Central, Inc.; Coach USA Southeast, Inc.; Coach USA West, Inc.; Coach Canada, Inc.; and Yellow Cab Service Corporation.

[2] Revised procedures governing finance applications filed under 49 U.S.C. 14303 were adopted in *Revisions to Regulations Governing Finance Applications Involving Motor Passenger Carriers*, STB Ex Parte No. 559 (STB served Sept. 1, 1998).

[3] Stagecoach's principal business consists of divisions that provide significant bus and rail passenger services in the United Kingdom, and an overseas division that operates buses in Scandinavia, Hong Kong, New Zealand, Portugal, Australia, and China.

[4] Air Travel Transportation, Inc. (MC–166420); Airlines Acquisition Co., Inc. (MC–223575); Airport Bus of Bakersfield (MC–163191); Airport Limousine Service, Inc. (MC–315702); America Charters, Ltd. (MC–153814); ASTI, Inc. (MC–252353); Americoach Tours, Ltd. (MC–212649); Antelope Valley Bus, Inc. (MC–125057); Arrow Line, Inc. (MC–1934); Arrow Stage Lines, Inc. (MC–29592); Autocar Connaisseur, Inc. (MC–166643); Bayou City Coaches, Inc. (MC–245246); Black Hawk-Central City Ace Express, Inc. (MC–273611); Blue Bird Coach Lines, Inc. (MC–108531); Bonanza Bus Lines, Inc. (MC–13028); Browder Tours, Inc. (MC–236290); Brunswick Transportation Company d/b/a The Maine Line (MC–109495); Butler Motor Transit, Inc. (MC–126876); California Charters, Inc. (MC–241211); Cape Transit Corp. (MC–161678); Central Cab Company (MC–133058); Chenango Valley Bus Lines, Inc. (MC–141324); Clinton Avenue Bus Company (MC–223062); Colonial Coach Corp. (MC–39491); Community Coach, Inc. (MC–76022); Community Transit Lines, Inc. (MC–145548); Desert Stage Lines, Inc. (MC–140919); El Expreso, Inc. (MC–244195); Erie Coach Lines Company (MC–127027); Gad-About Tours, Inc. (MC–198451); GL Bus Lines, Inc. (MC–180074); Gray Line Air Shuttle, Inc. (MC–218255); Gray Line New York Tours, Inc. (MC–180229); Gray Line Tours of Southern Nevada (MC–127564); Grosvenor Bus Lines, Inc. (MC–157317); Gulf Coast Transportation, Inc. (MC–201397); H.A.M.L. Corp. (MC–195792); Hudson Transit Corporation (MC–133403); Hudson Transit Lines, Inc. (MC–228); International Bus Services, Inc. (MC–155937); Kansas City Executive Coach, Inc. (MC–203805); Keeshin Charter Services, Inc. (MC–118044); Keeshin Transportation, LP (MC–263222); Kerrville Bus Company, Inc. (MC–27530); K-T Contract Services, Inc. (MC–218583); Leisure Time Tours, Inc. (MC–142011); Metro Cars, Inc. (MC–276823); Mini Coach of Boston (MC–231090); Mountaineer Coach, Inc. (MC–229627); Niagara Scenic Bus Lines, Inc. (MC–30787); Olympia Trails Bus Co., Inc. (MC–138146); Orange, Newark, Elizabeth Bus, Inc. (MC–206227); P&S Transportation, Inc. (MC–255382); Pawtuxet Valley Bus Lines (MC–115432); PCSTC, Inc. (MC–184852); Pittsburgh Transportation Charter Services, Inc. (MC–319195); Powder River Transportation Services, Inc. (MC–161531); Progressive Transportation Services, Inc. (MC–247074); Red & Tan Charter, Inc. (MC–204842); Red & Tan Tours (MC–162174); Rockland Coaches, Inc. (MC–29890); Ross Tours, Inc. (MC–175674); Salt Lake Coaches, Inc. (MC–347528); Stardust Tours, Inc. d/b/a Gray Line Tours of Memphis (MC–318341); Suburban Management Corp. (MC–264527); Suburban Trails, Inc. (MC–149081); Suburban Transit Corp. (MC–115116); Syracuse and Oswego Coach Lines, Inc. (MC–117805); Texas Bus Lines, Inc. (MC–37640); Tippett Travel, Inc. d/b/a Marie's Charter Bus Lines (MC–174043); Transportation Management Services, Inc. (MC–237433); Trentway-Wagar, Inc. (MC–126430); Tucker Transportation Co., Inc. (MC–223424); Utica-Rome Bus Co., Inc. (MC–7914); Valen Transportation, Inc. (MC–212398); Van Nortwick Bros., Inc. (MC–149025); Wisconsin Coach Lines, Inc. (MC–123432); Worthen Van Service, Inc. (MC–142573); and 2948–7238 Quebec, Inc. d/b/a Visite Touristique de Quebec (MC–302514).

[5] The appropriate filing has been made under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, with respect to that portion of the transaction that involves Stagecoach's control of non-federally regulated entities.

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effectuating the proposed transaction: SCH Holdings Corp. (Holdings); and SCH Acquisition Corp. (Acquisition), a wholly owned subsidiary of Holdings. Both of these companies are Delaware corporations, with no interest in any regulated carrier. Pursuant to an agreement among Stagecoach, Holdings, Acquisition, and Coach, Holdings has undertaken a cash tender offer for up to all of the outstanding shares of Coach. Upon satisfaction of certain conditions and completion of the tender offer, Acquisition will be merged with and into Coach, with Coach as the surviving entity. Coach will then be merged with and into Holdings, with Holdings as the surviving entity, and, upon completion of that merger, the name of Holdings will be changed to Coach USA, Inc. If more than 80% of the stock of Coach is tendered in response to the tender offer, the first of these mergers may be unnecessary.[6] After completion of these mergers, Coach will be a subsidiary of Stagecoach.[7] The transaction will not result in any transfer of operating authority held by any of the operating carriers or in any change in the essential nature of the services provided by those carriers. The management of Coach is expected to remain largely in place, and Stagecoach does not currently plan to change the manner in which Coach is operated.

Applicants submit that granting the application will be consistent with the public interest and will have no adverse effects on the adequacy of transportation to the public, fixed charges, or the interests of employees. Applicants also submit that the proposed transaction will have no adverse effect on competition, because it will not result in the consolidation of any currently independent motor passenger carriers. On the contrary, applicants believe that the transaction will significantly benefit the traveling public and employees through efficiency savings and innovations that will result from the combination of the financial and management resources of Stagecoach and Coach. Specifically, it is anticipated that by providing Coach access to Stagecoach's significant resources and global transportation management expertise, the transaction will enable Coach to expand its carrier acquisition program and to improve the level and amount of services already offered to the operating carriers. Further, it is anticipated that fixed charges may be reduced as a result of Stagecoach's ability to refinance Coach's existing debt on more favorable terms. Each of these benefits, applicants contend, will translate into benefits for the traveling public in the form of improved and more competitive bus services.

Applicants state that Coach and its subsidiaries will continue to observe current collectively bargained agreements and that no layoffs are anticipated as a consequence of the transaction.

Applicants certify that: (1) The aggregate gross operating revenues from interstate operations of the operating companies exceeded $2 million during the 12-month period ending December 31, 1998; (2) none of the operating carriers holds an unsatisfactory safety rating from the U.S. Department of Transportation; (3) each has sufficient liability insurance; (4) none of the parties is domiciled in Mexico nor owned or controlled by persons of that country; and (5) approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from the applicants' representatives.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed to be vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application.[8] If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV."

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on September 7, 1999, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530; and (2) the US Department of Transportation, Office of Motor Carriers-HIA 30, 400 Virginia Avenue, SW, Suite 600, Washington, DC 20004.

Decided: July 15, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–18745 Filed 7–21–99; 8:45 am]

BILLING CODE 4915–00–P

[6] Applicants have indicated that the structure of the transaction may be altered as future circumstances warrant. For example, an additional holding company or U.S. limited partnership may be placed in the corporate chain between Stagecoach and Coach. Applicants have requested that the control authority granted herein include any such intermediate entities. Applicants have represented that any such change will not affect the material terms of the transaction, and that they will inform the Board of any changes in the present arrangement.

[7] Pending Board action on this application, the stock will be held in independent voting trusts.

[8] Under revised 49 CFR 1182.6(c), a procedural schedule will not be issued if we are able to dispose of opposition to the application on the basis of comments and the reply.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33775]

Delaware and Hudson Railway Company, Inc.—Trackage Rights Exemption—Metro North Commuter Railroad Company

Metro-North Commuter Railroad Company (Metro-North) has agreed to grant full service trackage rights to Delaware and Hudson Railway Company, Inc. (D&H), over Metro-North's rail line between CP7 near High Bridge, NY, at approximately milepost 6.6 in Bronx County, NY, and CP75 north of Poughkeepsie, NY, at approximately milepost 75.8 in Dutchess County, NY, a distance of 69.2 miles.[1] The scope of these rights and their terms were established by the Board in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388 *et al.*,

[1] A redacted version of the trackage rights agreement between Metro-North and D&H was filed with the notice of exemption. The full version of the agreement, as required by CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for a protective order, which is being addressed in a separate decision.

Decision Nos. 109 and 123 (STB served December 18, 1998 and May 20, 1999).

The transaction was scheduled to be consummated on or after July 6, 1999, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the trackage rights is to enhance rail competition for movements of traffic on the east side of the Hudson River.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33775, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Eric Von Salzen, Hogan & Hartson L.L.P., 555 Thirteenth Street, NW, Washington, DC 20004–1109.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 16, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–18746 Filed 7–21–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 15, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 23, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1398.
Form Number: IRS Form 9620.
Type of Review: Extension.
Title: Race and National Origin Identification.
Description: Form 9620 is an optically scannable form that is used to collect race and national origin data on all IRS employees and new hires. The form is a valuable tool in allowing the IRS to meet its diversity/EEO goals and as a component of its referral and tracking system and recruitment program.
Respondents: Individuals or households, Federal Government.
Estimated Number of Respondents: 50,000.
Estimated Burden Hours Per Respondent: 3 minutes.
Frequency of Response: Semi-annually, Annually.
Estimated Total Reporting Burden: 2,500 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 99–18669 Filed 7–21–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 15, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 23, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1501.
Form Number: IRS Form W–4V.
Type of Review: Extension.
Title: Voluntary Withholding Request.
Description: If an individual receives any of the following government payments, he/she may voluntarily complete Form W–4V to request that the payer withhold Federal Income tax. Those payments are unemployment compensation, social security benefits, tier I railroad retirement benefits, Commodity Credit Corporation loans or certain crop disaster payments under the Agricultural Act of 1949 or title II of the Disaster Assistance Act of 1988.
Respondents: Individuals or households, Farms
Estimated Number of Respondents/Recordkeepers: 19,700,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 min.
Learning about the law or the form—5 min.
Preparing the form—7 min.
Copying, assembling, and sending the form to the Payer—10 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 9,653,000 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 99–18670 Filed 7–21–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Folksamerica Reinsurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 1 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6779.

SUPPLEMENTARY INFORMATION: The above mentioned company was listed in 64 FR

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35895, July 1, 1999, as an acceptable reinsuring company on Federal bonds. Federal bond-approving officers are hereby notified that FOLKSAMERICA REINSURANCE COMPANY is now an acceptable surety on Federal bonds. Please annotate your reference copy of the Treasury Circular 570, 1999 revision, on page 35875 to reflect the following information:

FOLKSAMERICA REINSURANCE COMPANY. BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 312–2500. UNDERWRITING LIMITATION [b]: $32,850,000. SURETY LICENSES [c]: AL, AZ, AR, DC, IL, IN, IA, MS, MT, NE, NM, NY, OH, OK, OR, PA, TX, UT, WI. INCORPORATED IN: New York.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html or a hard copy may be purchased from the Government Printing Office (GPO), Subscription Service Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00527–6.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting & Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: July 15, 1999.

Michael C. Salapka,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–18747 Filed 7–21–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Exempt Advisory Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of intent to establish committee; request for nominations and comments.

SUMMARY: The Internal Revenue Service (IRS) proposes to establish the Tax Exempt Advisory Committee (TEAC). The purpose of TEAC is to provide an organized public forum for discussion of relevant employee plans, exempt organizations, tax-exempt bonds, and state, local and tribal government issues between officials of the IRS and representatives of the above communities; to enable the IRS to receive regular input with respect to the development and implementation of IRS policy concerning employee plans, exempt organizations, tax-exempt bonds, and state, local, and tribal government issues, and to enable the IRS to receive suggestions and constructive criticism with respect to the transformation of the IRS' existing Employee Plans/Exempt Organizations entity into the new Tax Exempt and Government Entities Division. This document seeks nominations of individuals to be considered for selection as TEAC members. Comments are requested on categories of membership and duties of the committee.

DATES: Written nominations must be received on or before September 20, 1999.

ADDRESSES: Nominations should be sent to Mr. Steven T. Miller, Acting Assistant Commissioner (EP/EO), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224–0001, Attn: TEAC Nominations.

FOR FURTHER INFORMATION CONTACT: Ms. Toni Moore, (202) 622–6700 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770, notice is hereby given that the Secretary of the Treasury intends to establish the Tax Exempt Advisory Committee, hereafter referred to as TEAC. The purpose of TEAC is to provide an organized public forum for discussion of relevant employee plans, exempt organizations, tax-exempt bonds, and state, local and tribal government issues between officials of the IRS and representatives of the above communities; to enable the IRS to receive regular input with respect to the development and implementation of IRS policy concerning these communities; and to enable the IRS to receive suggestions and constructive criticism with respect to the transformation of the IRS' existing Employee Plans/Exempt Organizations entity into the new Tax Exempt and Government Entities Division. TEAC members will present in an organized and constructive fashion the interested public's observations about current or proposed IRS policies, programs, and procedures, and will suggest improvements.

The Secretary of the Treasury has determined that the work of TEAC is in the public interest in view of the size and importance of the tax-exempt and governmental sectors of the economy. The Assistant Commissioner (EP/EO), or her functional successor, the Commissioner, Tax Exempt and Government Entities Division, will be the Sponsoring Official and Chairperson of TEAC. Staff support essential to the execution of TEAC's responsibilities will be provided by the Office of the Assistant Commissioner (EP/EO), or its functional successor, the Office of the Commissioner, Tax Exempt and Government Entities Division.

TEAC members shall be appointed by the Secretary of the Treasury and shall serve for two-year terms. Committee members may serve not more than two consecutive terms. TEAC shall be comprised of not to exceed twenty-one (21) members. It is anticipated that working groups will be established to address such issues as employee plans, exempt organizations, tax exempt bonds, and issues relating to state, local and tribal governments. TEAC members will not be paid for their time or services. TEAC members will be reimbursed for their travel-related expenses to attend at least one public meeting per year, in accordance with 5 U.S.C. § 5703. TEAC members, their employers, or their sponsoring organizations will be responsible for travel-related expenses related to any scheduled working sessions.

The Secretary of the Treasury invites those individuals, organizations, and groups affiliated with employee plans, exempt organizations, tax-exempt bonds, and state, local or tribal governments, to nominate individuals for membership on TEAC. Nominations should describe and document the proposed member's qualifications for membership on TEAC. The Secretary seeks a diverse group of members representing a broad spectrum of persons interested in employee plans, exempt organizations, tax-exempt bonds, and state, local and tribal governments.

The IRS will not acknowledge receipt of nominations. However, individuals who are nominated will be contacted. Thereafter, biographical information must be completed and returned to the Acting Assistant Commissioner (EP/EO) within fifteen (15) working days of its receipt, to expedite the clearance process that is required before selection by the Secretary of the Treasury. The clearance process includes, among other things, pre-appointment and annual tax checks, and a Federal Bureau of Investigation criminal and subversive name check and a security clearance.

Equal opportunity practices will be followed in all appointments to TEAC in accordance with Treasury and IRS policies. To ensure that the recommendations of TEAC have taken into account the needs of the diverse groups served by the Department of the Treasury and the Employee Plans/Exempt Organizations entity, or its functional successor, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: July 15, 1999.

Steven T. Miller,

Acting Assistant Commissioner, (Employee Plans and Exempt Organizations).

[FR Doc. 99–18667 Filed 7–21–99; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Contemporary Egyptian Art"

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit "Contemporary Egyptian Art," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed objects at the Metropolitan Museum of Art from September 13, 1999 to January 23, 2000 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or other information, please contact Jacqueline Caldwell, Assistant General Counsel, Office of the General Counsel, 202/619–6982. The address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

Dated: July 16, 1999.

R. Wallace Stuart,

Deputy General Counsel.

[FR Doc. 99–18673 Filed 7–21–99; 8:45 am]

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Corrections

Federal Register
Vol. 64, No. 140
Thursday, July 22, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Rio Grande Silvery Minnow

Correction

In rule document 99–16985, beginning on page 36274, in the issue of Tuesday, July 6, 1999, make the following correction(s):

1. On page 36275, in the first column, in the first full paragraph, in the 11th line, "ensured" should read "ensued".

2. On the same page, in the second column, in the second full paragraph, in the fourth line from the bottom, "one" should read "once"; and in the last line, "Elephant Butt Reservoir" should read "Elephant Butte Reservoir".

3. On the same page, in the third column, in the second paragraph, in the fourth line, "elephant butte" should read "Elephant Butte"; and in the last line, "Riverbed" should read "riverbed".

4. On the same page, in the same column, under the heading **Previous Federal Action**, in the first paragraph, in the third line from the bottom, "Theratened" should read "Threatened".

5. On page 36276, in the first column, in the second full paragraph, in the 13th line, "New" should read "new".

6. On page 36278, in the third column, in the second full paragraph, in the seventh line, "must" should read "might"; and in the tenth line, "ion" should read "in".

7. On page 36281, in the first column, in the second full paragraph, in the first line, "constrains" should read "constraints"; and in the 13th line, "Rio Grand" should read "Rio Grande".

8. On the same page, in the second column, in the paragraph designated *Issue 1:*, in the 24th line, after "Acacia" add "to".

9. On page 36282, in the first column, in the paragraph designated *Service Response:*, in the 11th line, "alternation" should read "alteration".

10. On the same page, in the second column, in the paragraph designated *Issue 4:*, in the ninth line, "silivery" should read "silvery".

11. On the same page, in the third column, in the seventh line from the bottom, "U.S. Fish and Wildlife Service" should read "*U.S. Fish and Wildlife Service*".

12. On page 36283, in the first column, in the paragraph designated *Issue 8:*, in the fifth line, "Elephant Butte. Reservoir" should read "Elephant Butte Reservoir".

13. On the same page, in the same column, in the first paragraph designated *Service Response:*, in the second line, "alternations" should read "alterations".

14. On the same page, in the same column, in the paragraph designated *Issue 9:*, in the second line, "wasterwater" should read "wastewater".

15. On the same page, in the same column, in the second paragraph designated *Service Response:*, in the 11th line, after "would" add "also".

16. On the same page, in the same column, in the paragraph designated *Issue 10:*, in the third line, "working" should read "wording".

17. On page 36284, in the first column, in the fourth line from the bottom, "San Acadia Dam" should read "San Acacia Dam".

18. On the same page, in the second column, in the paragraph designated *Issue 19:*, in the eighth line, "what" should read "then".

19. On the same page, in the third column, in the second paragraph designated *Service Response:*, in the third line, "members" should read "numbers".

20. On page 36286, in the first column, in the paragraph designated *Issue 31:*, in the sixth line, "San Juan-China Project" should read "San Juan-Chama Project".

21. On the same page, in the third column, under the heading **Required Determinations**, in the second line from the bottom, after "will" add "not".

§ 17.95 [Corrected]

22. On page 36288, in the second column, in amendatory instruction 3, in the first line, "19.95(e)" should read "17.95(e)".

23. On the same page, in the third column, in § 17.95(e), in the second paragraph, in the ninth line, "Santa Fee Railroad" should read "Santa Fe Railroad".

[FR Doc. C9–16985 Filed 7–21–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–183F]

Schedules of Controlled Substances: Placement of Ketamine into Schedule III

Correction

In rule document 99–17803 beginning on page 37673 in the issue of Tuesday, July 13, 1999, make the following corrections:

On page 37674, in the third column, in paragraph 4., in the fifth and sixth lines from the bottom "May 15, 2000" should read "April 13, 2000".

[FR Doc. C9–17803 Filed 7–21–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 241

[INS No. 1848–97]

RIN 1115–AE83]

Early Release for Removal of Criminal Aliens in State Custody Convicted of Nonviolent Offenses

Correction

In proposed rule document 99–17563, beginning on page 37461, in the issue of Monday, July 12, 1999, make the following corrections:

1. On page 37462, in the third column, in the 23rd line, after " alien" add "breach any of the conditions of his/her release."

2. On the same page, in the same column, in the 23rd line, before "must" add "The alien".

[FR Doc. C9–17563 Filed 7–21–99; 8:45 am]
BILLING CODE 1505–01–D

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federal register

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Part II

Environmental Protection Agency

40 CFR Part 403
Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 403

[FRL–6377–6]

RIN 2040–AC58

Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today, EPA is proposing to revise several provisions of the General Pretreatment Regulations that address restrictions on and oversight of industrial users who introduce pollutants into publicly owned treatment works (POTWs). EPA is also proposing changes to certain program requirements to be consistent with National Pollutant Discharge Elimination System (NPDES) requirements. The proposals would reduce the regulatory burden on both industrial users and State and POTW Control Authorities without affecting environmental protection.

DATES: Written comments on this proposed rule must be submitted on or before September 20, 1999. Comments provided electronically will be considered timely if they are submitted by 11:59 P.M. (Eastern time) September 20, 1999.

ADDRESSES: Commenters are requested to submit an original and two copies of their comments and enclosures (including references) to the Comments Clerk for Pretreatment Program Streamlining, Water Docket (MC–4101), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Commenters who would like acknowledgment of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: ow-docket@epamail.epa.gov". Electronic comments must be submitted as an ASCII or WordPerfect file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–97–09, and may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

This document has also been placed on the Internet for public review and downloading from the Office of Wastewater Management home page at the following location: "www.epa.gov/owm."

The public may inspect the administrative record for the proposed rulemaking at EPA's Water Docket, Room EB–57 (East Tower Basement), 401 M Street, S.W., Washington, D.C. 20460. The record for this rulemaking has been established under docket number W–97–09, and includes supporting documentation. The public may inspect the administrative record between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. For access to these docket materials, please call (202) 260–3027 to schedule an appointment. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying any material in the docket.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Smith, U. S. EPA, Office of Wastewater Management (OWM), Permits Division (4203), 401 M Street, S.W., Washington, D.C. 20460, (202) 260–5586.

SUPPLEMENTARY INFORMATION:

Affected Entities

Entities potentially affected by this action are governmental entities responsible for implementation of the National Pretreatment Program and industrial facilities subject to Pretreatment Standards and requirements. These entities include:

Category	Examples of regulated entities
Local government	Publicly Owned Treatment Works.
State government	States and Tribes acting as Pretreatment Program Control Authorities or as Approval Authorities.
Industry	Industrial Users of POTWs

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization or facility is regulated by this action, you should carefully examine the applicability criteria in §§ 403.3, 403.5, 403.6, 403.7, 403.8, 403.12, and 403.15 of Part 403 of Title 40 of the Code of Federal Regulations. If you have questions about the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Information in this preamble is organized as follows:

I. Background
A. What Is the National Pretreatment Program?
B. What Regulation Is EPA Proposing To Revise?
C. Why Is EPA Proposing To Revise the Regulation?
D. How Were Stakeholders Consulted in Developing Today's Proposal?
E. What Role Did WEF and AMSA Play in the Development of This Proposal?
II. Description of Proposed Changes
A. Specific Prohibition Regarding pH (40 CFR 403.5(b)(2))
B. Equivalent Mass Limits for Concentration Limits (40 CFR 403.6(c))
C. Equivalent Concentration Limits for Flow-Based Standards (40 CFR 403.6(c))
D. Oversight of Categorical Industrial Users (40 CFR 403.3(u), 403.8(f) and 403.10(f))
E. Categorical Industrial User Monitoring (40 CFR 403.12)
F. Slug Control Plans (40 CFR 403.8(f)(2)(v))
G. Sampling for Pollutants Not Present (40 CFR 403.12(e))
H. Use of Grab and Composite Samples (40 CFR 403.12(b), (d), (e), (g) & (h))
I. Removal Credits (40 CFR 403.7)
J. Electronic Filing and Storage of Reports
K. General Permits (40 CFR 403.8(f)(1)(iii))
L. Best Management Practices (40 CFR 403.5, 403.8(f) and 403.12(b),(e) & (h))
M. Significant Noncompliance Criteria (40 CFR 403.8(f)(2)(vii))
N. Miscellaneous Changes
III. Regulatory Requirements
A. Executive Order 12866
B. Executive Order 12875
C. Executive Order 13045
D. Executive Order 13084
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility Act
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act—Voluntary Standards

I. Background

A. What Is the National Pretreatment Program?

The National Pretreatment Program is part of the Clean Water Act (CWA)'s water pollution control program. The program is a joint regulatory effort by local, State, and federal authorities that requires the control of industrial and commercial sources of pollutants discharged to municipal wastewater plants (called "publicly owned treatment works" or "POTWs"). Control of pollutants prior to discharge of wastewater to the sewer minimizes the possibility of pollutants interfering with the operation of the POTW and reduces the levels of toxic pollutants in wastewater discharges from the POTW and in the sludge resulting from municipal wastewater treatment.

B. What Regulation Is EPA Proposing To Revise?

EPA is today proposing to streamline various provisions of the General Pretreatment Regulations for Existing and New Sources of Pollution codified at 40 CFR Part 403. The Clean Water Act directs EPA to develop regulations in order to control pollutants which may pass through or interfere with POTW treatment processes or contaminate sewage sludge. On June 26, 1978, EPA promulgated the General Pretreatment Regulations, which established standards and procedures for controlling the introduction of wastes into POTWs (43 FR 27736). There have been a number of revisions to the General Pretreatment Regulations. The last major revisions were to implement the Domestic Sewage Study (55 FR 30082, July 24, 1990).

The General Pretreatment Regulations require POTWs that meet certain criteria to develop pretreatment programs to control industrial discharges into their sewage collection systems. These programs must be approved by either EPA or the State acting as the pretreatment "Approval Authority." More than 1,500 POTWs have developed Approved Pretreatment Programs pursuant to the regulations in 40 CFR 403.8. These POTWs act as the pretreatment "Control Authority" with respect to the industrial users that discharge to their systems. In the absence of an approved POTW pretreatment program, the State or EPA Approval Authority serves as the Control Authority.

Industrial users of POTWs must comply with Pretreatment Standards prior to introducing pollutants into a POTW. POTWs are required to impose "local limits" to prevent pass through and interference from the pollutants discharged into their systems. The General Pretreatment Regulations also include general prohibitions that forbid industrial users from causing pass through and interference, and specific prohibitions against the discharge of pollutants that cause problems at the POTW such as corrosion, fire or explosion, and danger to worker health and safety.

EPA has also developed national categorical Pretreatment Standards that apply numeric pollutant limits to industrial users in specific industrial categories. The General Pretreatment Regulations include reporting and other requirements necessary to implement these categorical standards (40 CFR 403.12 (b)).

C. Why Is EPA Proposing To Revise The Regulation?

EPA is working to improve the regulatory programs to protect public health and the environment, while maintaining or improving the programs' effectiveness. While adoption of the General Pretreatment Regulations has resulted in more consistent implementation of the pretreatment program on a national basis, many individual POTWs and industrial users have experienced problems implementing various requirements.

The President's Report on "Reinventing Environmental Regulations" (March 1995) pledged to provide "more common sense and fairness in our regulations." The goal of this initiative is to provide greater flexibility, reduce burden, and achieve greater environmental results at less cost. To this end, EPA is committed to streamlining the National Pretreatment Program to reduce the burden of technical and administrative requirements that affect industrial users and POTW and State Control Authorities.

D. How Were Stakeholders Consulted in Developing Today's Proposal?

Through various outreach efforts, EPA has identified a number of provisions of the General Pretreatment Regulations that could be revised in order to reduce regulatory burden without affecting environmental protection. These provisions are the subject of today's proposal.

In 1995, EPA's Office of Wastewater Management initiated an evaluation of all of the General Pretreatment Regulations in 40 CFR Part 403 in order to identify streamlining opportunities. Based on input from various stakeholders, EPA developed issue papers that summarized 11 areas in which the Pretreatment Regulations might be streamlined.

In May 1996, the issue papers were distributed to a broad base of external stakeholders (States, cities, trade associations, professional organizations, and environmental interest groups). The issue papers were also publicly available on an EPA electronic bulletin board (Point Source Information Provision Exchange System or "PIPES") that was accessible through the Agency's Internet website at "http://www.epa.gov/owm." Synopses of the outreach effort were published in several trade association newsletters.

Thirty-five outside stakeholders provided written comments on the proposed issues. The Agency also considered the recommendations of the joint Water Environment Federation and Association of Metropolitan Sewerage Agencies Workshop (the WEF/AMSA Workshop) discussed below.

The Agency next prepared a draft of today's proposal and preamble, which discussed 13 issues or changes to the regulations. This draft "letter to stakeholders" was circulated to outside stakeholders in May 1997. After reviewing comments received from 70 outside stakeholders, the Agency then prepared today's notice.

Significant comments received during the preliminary outreach effort are discussed in this preamble to the proposed rule. EPA continues to solicit comment on all of the proposals and alternative options discussed below. The Agency plans to have additional discussions with interested parties during the comment period to help ensure that the Agency has the views of such parties and the best possible data upon which to base decisions for the final rule.

E. What role Did WEF and AMSA Play in the Development of This Proposal?

In the summer of 1996, the Water Environment Federation (WEF) and the Association of Metropolitan Sewerage Agencies (AMSA) sponsored an independent, parallel effort to provide recommendations for streamlining the National Pretreatment Program. WEF and AMSA convened a four-day workshop to explore pretreatment program streamlining and reinvention opportunities. The sponsors invited a group of pretreatment experts that was intended to represent a broad range of stakeholder interests, including environmental organizations, industry, large and small POTWs, States, EPA, and technical consultants.

The workshop participants developed a series of recommendations that were included in a final report. The WEF/AMSA Workshop Final Report addresses the issues that EPA had sent out for stakeholder review in May 1996 as well as additional issues recommended by the workshop participants.

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The WEF/AMSA Workshop Final Report was presented to EPA's Assistant Administrator for Water in September 1996. Where appropriate, the comments and recommendations in the report are discussed below.

The WEF/AMSA Workshop Final Report also discusses ideas for broad-based reinvention options that emphasize fundamentally new and different approaches to achieving the environmental objectives of the National Pretreatment Program. EPA is addressing these options through pilot program proposals submitted by POTWs in response to a June 23, 1998 Project XL program **Federal Register** solicitation.

II. Description of Proposed Changes

Today's proposal addresses thirteen specific issues and a few miscellaneous changes pertaining to the General Pretreatment Regulations. The proposal, in places, prints portions of existing regulatory text without change. This is done to better describe the proposed revisions. For example, 40 CFR 403.6(b) is reprinted in its entirety with the only amendment being a revision to the cited location of the definition of New Source in 40 CFR 403.3 from (k) to (l). However, EPA does not solicit, and will not respond to, comments on existing regulatory provisions not proposed to be amended, nor will such provisions be subject to judicial review upon promulgation of the final rule. EPA is soliciting comment only on the revisions described in this preamble.

A. Specific Prohibition Regarding pH (40 CFR 403.5(b)(2))

a. Existing Rule

What pH limits are addressed in this section?

Acidic wastes can corrode sewer pipes, for example those made of concrete, and allow the release of pollutants to the environment. To address this concern, the General Pretreatment Regulations include a minimum pH limit as part of the specific prohibitions at 40 CFR 403.5(b) that apply to all nondomestic dischargers to POTWs. Section 403.5(b)(2) prohibits the discharge of "Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such Discharges."

EPA is proposing to also allow POTWs with Approved Pretreatment Programs to accept temporary discharges with a pH below 5.0 to the extent that the POTWs can document that the discharges will not damage their systems. The proposal would authorize POTWs to allow nondomestic dischargers that continuously monitor the pH of their discharge to briefly discharge wastes with a pH below 5.0.

Is 5.0 the appropriate pH limit for all POTWs?

Although acidic wastewater can damage a POTW's collection system, such as one constructed of concrete sewer pipes, some POTWs have collection systems, or portions of collection systems, that are constructed with acid-resistant materials such as clay pipe. Such collection systems that are generally tolerant of acidic wastewater may be used to convey acidic wastewater without damage to the collection system. In these cases, it may not be necessary to require a nondomestic discharger to maintain the pH of its discharge at or above 5.0. In considering whether a collection system may be acid tolerant, the POTW is cautioned to inspect the construction materials of all collection system joints. Highly acidic wastes could adversely react with metal, concrete and mortar sealing joints in the sewers, resulting in infiltration of water during high water table or rainy seasons and exfiltration of wastes during other times.

The existing regulation at 40 CFR 403.5(b)(2) provides that the 5.0 limit does not apply if the treatment works "is specifically designed to accommodate such discharges." This language suggests that the ability to accept low pH wastes must have been intended for the entire POTW, including the collection system, at the time of the construction of the POTW. In fact, as part of a 1984 EPA survey ("Hydrogen Sulfide Corrosion in Wastewater Collection and Treatment Systems, Report to Congress;" September 1991 (430/09–91–009)), half of the jurisdictions with severe corrosion problems in the collection systems were found to have minor or no corrosion problems at the wastewater treatment plants. However, the current rule does not clearly allow a POTW to document that all or part of its system can safely accept temporary excursions below pH 5.0 if it is not specifically designed to do so.

Are industrial users that continuously monitor for pH currently allowed brief excursions from the 5.0 limit?

Many industrial users use monitoring instrumentation that measures and displays the pH of the discharge and continuously records the pH of the discharge. These records indicate whether the pH of the effluent remained within limits and the length of time, if any, it was outside of the limits.

For various reasons, some nondomestic dischargers that continuously monitor pH experience drops in their effluent pH below the 5.0 limit for short periods of time, sometimes only a few minutes. These low pH excursions might not harm the collection systems or cause interference or pass-through at the wastewater treatment plants. The current pH prohibition does not provide for these occurrences and, because the Clean Water Act is a strict liability statute, these events are violations of the Act. POTWs frequently must devote substantial administrative resources to responding to these minor short-term violations.

b. Stakeholder Comments

What changes did EPA suggest in its stakeholder outreach efforts?

EPA recommended that industrial users that continuously monitor pH be allowed to have periodic excursions below 5.0 if the Control Authority establishes that the excursions will not harm its system and authorizes the excursion in the industrial users' permits. EPA also recommended allowing POTWs to establish alternate pH limits if the POTW can demonstrate that it can handle such wastes. Finally, EPA solicited comments regarding whether Approval Authority concurrence should be required.

How did stakeholders respond?

Most commenters either supported the recommendation as written or gave qualified support with various suggestions for implementing the recommendation. Several commenters stated that the pH provisions at 40 CFR 401.17 (discussed below) could serve as a basis for alternative pH requirements, and several Control Authorities stated that they were already applying such methods when selecting the enforcement action in response to such pH violations. The September 30, 1996, final report from the WEF/AMSA Pretreatment Streamlining Workshop recommended that EPA retain the national standard and provide new flexibility by allowing POTWs to establish alternative pH requirements based upon site-specific conditions.

Other commenters disagreed that such revision to the rule is needed as long as flexibility is written into the POTW's Enforcement Response Plan. Eight commenters did not favor the change to the rule because they believed it would add to Control Authorities' workload and be too burdensome to implement.

Four commenters did not favor the change, having experienced corrosion damage to the POTW collection system at the current 5.0 pH limit. Instead, they favored raising the minimum pH limit. One of these commenters cautioned that systems constructed of acid-resistant materials often included manhole inverts constructed of concrete and similar materials that are susceptible to corrosion, thus rarely being entirely resistant.

In response to EPA's request for comments regarding whether Approval Authority concurrence should be required to implement a revised pH prohibition, some commenters considered pH to be primarily a local issue and did not favor Approval Authority concurrence. They believed that, in most cases, the Approval Authority has limited direct knowledge of the details of individual users or the circumstances that would allow for periodic pH excursions. In addition, these commenters believed that requiring Approval Authority concurrence would generate significant delays, additional program costs, and increased administrative burden without substantial benefit. Other commenters stated that Approval Authority concurrence would be necessary as an important safeguard to protecting a POTW's system, particularly for POTWs without Approved Pretreatment Programs.

Although most commenters believed that the proposed flexibility in pH should be available to all POTWs, one commenter suggested expansion of the record keeping or reporting requirements for POTWs with unapproved pretreatment programs to ensure adequate technical oversight for POTWs with limited staff expertise. A second commenter recommended that such POTWs be required to develop legal authority, but not necessarily a full pretreatment program, to properly enforce the General Pretreatment Regulations as prerequisite to being allowed to implement an alternative pH limit. EPA believes that the expertise, resources, and administrative functions needed to support the alternative requirements can only be sustained by POTWs with Approved Pretreatment Programs.

c. Today's Proposal

What is EPA proposing?

EPA is today proposing to allow POTWs with Approved Pretreatment Programs to authorize temporary excursions below pH 5.0 provided that the POTW maintains a written technical evaluation that supports the finding that the alternative pH requirements do not have the potential to cause corrosive structural damage to the POTW or other violations of 40 CFR 403.5(a) and (b). For industrial users that continuously monitor the pH of their discharges, POTWs could generally allow discharges below 5.0, or they could allow such temporary excursions by a limited group of industrial users.

Any alternative pH requirements developed by a POTW would be enforceable as Pretreatment Standards under the Clean Water Act. (The general narrative prohibition against pollutants that will cause corrosive structural damage at 40 CFR 403.5(b)(2) would still apply.)

In developing today's proposal, EPA attempted to address both the concern that corrosive structural damage to POTWs be prevented and the desire to provide the regulated community and the public with a more efficient and flexible industrial pretreatment program. In the September 1991 EPA Report to Congress (430/09–91–009), EPA concluded that some municipalities are not aware of sewer corrosion problems until catastrophic failure occurs. However, significant advances have occurred during the past twenty years in the areas of sewer corrosion detection and measurement, and sewer design and rehabilitation. EPA is interested in comment on whether the requirement for a site-specific technical study would adequately protect the significant public investment in wastewater collection infrastructure.

What would a POTW include in its technical evaluation?

A POTW desiring to implement alternative pH requirements would be required to prepare a written technical evaluation explaining its site-specific investigation and findings regarding the corrosion safety of the alternative pH requirements and their effect on compliance with the other general and specific Pretreatment Standards. The technical evaluation may be broad and cover a POTW's entire service area. Alternatively, the technical evaluation may be narrow and cover only a portion of the POTW's service area or specific nondomestic dischargers.

Corrosion is dependent upon a number of site-specific conditions including, but not limited to, the pH and other characteristics of an industrial discharge including its chemical composition, temperature, volume, velocity, turbulence, the buffering capacity and other characteristics of the wastewater in the collection system, the characteristics of the sewer pipe used in the collection system including its size, age, material of construction, formation of hydrogen sulfide gas, and time since last cleaning, and other design parameters of the POTW.

In developing alternative pH limitations, POTWs must consider the effect pH may have on other wastewater constituents, potential worker safety issues, and interference, and should be mindful of the pH limitations under State and federal hazardous waste laws. For example, an extremely low pH may cause toxic gases to form in the collection system in violation of the worker health and safety provision at 40 CFR 403.5(b)(7).

Could POTWs rely on the variance allowed direct dischargers under 40 CFR 401.17?

The effluent guideline regulations list certain conditions at 40 CFR 401.17 under which excursions from pH limits are allowed for direct dischargers. However, POTWs would not be able to rely on 40 CFR 401.17 as the basis for alternative pH requirements under today's proposal. EPA developed 40 CFR 401.17 based upon the technological ability of direct dischargers to continuously meet a pH limit between 6.0 and 9.0. The pretreatment requirements, by comparison, are based on preventing corrosion in the sewer system and are much less restrictive. Under today's proposal, a Control Authority may establish a temporary lower limit less than 5.0, and the existing Pretreatment Regulations do not impose a specific upper limit. The recommendations from the WEF/AMSA Pretreatment Streamlining Workshop noted the inappropriateness of attempting to use 40 CFR 401.17 as a basis for alternative pH requirements because the reason for the pH requirement is different. The alternative pH requirements a POTW develops under today's proposal must prevent corrosive structural damage to the POTW, prevent violations of 40 CFR 403.5(a) and (b), and be based upon the POTW's site-specific conditions.

How will POTWs implement the new, flexible requirements?

A POTW may conduct the pH technical evaluation as part of a broad local limits evaluation, or as a specific evaluation that addresses only pH. The proposed revisions and evaluation would be submitted as a nonsubstantial program modification in accordance with 40 CFR 403.18. The required technical support documents must be available upon request to the public, regulated community, regulatory agencies, and other interested parties.

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A POTW would authorize the use of the alternative pH requirements in the industrial user control mechanism and the local ordinance or other legal authority under 40 CFR 403.8(f)(1). The authorization should specify the technical circumstances and/or conditions under which such discharges are allowed, in support of the findings within the technical evaluation. Once applied, the POTW would be required to oversee the alternative pH requirements to confirm that corrosive structural damage and other violations of 40 CFR 403.5(a) and (b) are not occurring. A POTW with an Approved Pretreatment Program under 40 CFR Part 403 would report its ongoing oversight actions and findings in its annual pretreatment report under 40 CFR 403.12(i). EPA is requesting comment on what measures should be considered adequate oversight to ensure corrosive structural damage of the sewer system does not occur.

What are the benefits of today's proposal?

EPA expects today's proposal to significantly reduce the POTW's administrative burden of responding to minimal, short-term pH violations. One commenter submitted data that 30.9 administrative hours were expended during a two-year time period in response to 53 pH-only violations from industries with continuous pH monitoring. The commenter reported that 34 of those violations had pH values greater than 4.0 and lasted less than 15 minutes, and that none had any impact on the collection and treatment system. A second commenter reported that approximately 21 administrative hours were spent in one year in response to 21 pH-only violations from an industry with continuous pH monitoring. Ten excursions lasted 10 minutes or less, eight excursions lasted 15–35 minutes, one excursion lasted 60 minutes, one excursion lasted 180 minutes, and one excursion lasted 240 minutes. The lowest pH excursion was 4.5, and the commenter reported that none of the excursions adversely affected the treatment works. Today's proposal would allow Control Authorities to redirect enforcement and remediation resources to those cases where substantial pH control problems exist.

In addition, EPA is requesting comment on a provision to expand the flexibility regarding pH limitations in today's proposal by allowing POTWs that can safely accept continuous discharges with a pH below 5.0 to accept those wastes. This provision, if adopted, would remove the "specifically designed" criterion for such discharges in the existing pH prohibition. EPA specifically requests examples, supported by data if available, of situations in which a POTW could safely accept continuous discharges with a pH below 5.0, but where it cannot make use of the "specifically designed" criterion to authorize such discharge under current regulations. Were EPA to adopt such a provision in the final rule, it would be subject to the same documentation and oversight requirements as the proposed authorization of short term pH excursions.

More generally, EPA is interested in comments regarding all aspects of today's proposal for alternative pH requirements. Whenever possible, such comments should be supported by data.

B. Equivalent Mass Limits for Concentration Limits (40 CFR 403.6(c))

a. Existing Rule

How are categorical standards expressed?

National categorical Pretreatment Standards establish limits on pollutants discharged to POTWs by facilities in specific industrial categories. The standards establish pollutant limitations in different ways for different categories. EPA has established categorical Pretreatment Standards that are: (1) concentration-based standards that are implemented directly as concentration limits; (2) mass limits based on production rates; (3) both concentration-based and production-based limits; and (4) mass limits based on a concentration standard multiplied by a facility's process wastewater flow. This section will focus only on concentration standards that are implemented directly as concentration limits.

May a mass limit be imposed in lieu of a concentration limit under the current regulations?

The current regulations do not allow an alternative mass limit to be developed where a concentration-based standard requires a concentration limit. Section 40 CFR 403.6(d) allows the Control Authority to develop equivalent mass limits for concentration-based standards in order to prevent dilution. However, both the mass limit and concentration limit are then enforceable, so the mass limit would not be an alternative limit.

Alternative equivalent limits are currently allowed only for production-based mass limits. Section 40 CFR 403.6(c)(2) allows standards expressed in terms of mass of pollutant per unit of production to be expressed as either a concentration or mass limit.

How do mass limits promote water conservation?

The lack of flexibility in concentration limitations can cause problems for industrial users that are attempting to minimize water use. Throughout the country, water conservation practices have been instituted by industries and municipalities due to drought conditions and environmental considerations as well as the rising cost of water. As reported in the New York Times, November 10, 1998, pp A1, A16, "the United States Geological Survey has reported that the nation's use of water has declined significantly over the past 2 decades, even though the population has been growing. * * * Americans used 9% less water in 1995 than they did in 1980, even though the population grew by 16% within that same time frame. * * * The use of water in industry has fallen to 29 billion gallons a day, the lowest amount since records were first kept in 1950 * * *. The Northeast, Midwest and Middle Atlantic regions showed the largest decrease of water usage, at about 17% between 1980 and 1995."

Although water conservation usually reduces the variability in pollutant and hydraulic loadings and will often facilitate treatment, reduced water use can increase the concentration of pollutants in the reduced volume of water, even though the total mass of the discharged pollutants may have been decreased. A facility that significantly reduces water use might exceed its concentration limit despite having reduced the pollutants in its discharge. If the facility could comply with a mass limit that is equivalent to the total pollutant load from the concentration limit, then the total pollutant loading to the POTW would be unchanged or reduced, even though the effluent concentration might be increased.

For example, the metal finishing industry employs a number of industrial processes that are heavily dependent upon use of water. Of the more than 40 processes regulated under the categorical standard for metal finishing, rinse water is generally the largest component of the total process water used. By combining different rinse techniques, a plant can greatly reduce water consumption. In some cases facilities can use a "closed loop" rinsing arrangement that continually recirculates rinse water, thereby greatly reducing the discharge volume.

The use of different rinse techniques will result in wide variations in water use. For example, "alkaline cleaning," a common metal finishing operation, requires dramatically different amounts of rinse water, depending upon the rinsing techniques used. Using a single-stage water rinse may require 1,500 liters per square meter (l/m^2) of treated surface whereas a three-stage countercurrent rinsing technique reduces water use to 29 l/m^2 ("Development Document for Effluent Limitations Guidelines and Standards for the Metal Finishing Point Source Category," EPA 440/1–83/091, June 1983). Retrofitting a metal finishing line by installing a countercurrent rinsing system in conjunction with other water reduction practices could result in concentrations that exceed applicable categorical Pretreatment Standards. Some other examples of water conservation techniques include: (1) Timed rinses; (2) conductivity probes in the rinse tanks; (3) flow restrictors which limit the amount of water which can be added to a rinse tank; and (4) valves to allow operators to turn off incoming water to the rinse tanks when no parts are being processed.

b. Stakeholder Comments

What changes did EPA suggest in its stakeholder outreach efforts?

EPA's letter to stakeholders solicited comment on revising the current requirements to allow equivalent mass limits as an alternative to concentration limits developed from concentration-based standards where the industrial user has instituted water conservation practices. The draft language would have explicitly tied the determination of reduced water use to the model technology assumed by EPA in the development of the applicable national categorical Pretreatment Standard.

How did stakeholders respond?

Sixty-nine commenters responded to the draft issue paper on this subject. A substantial majority (66 of the 69) of the commenters were in favor of the proposed regulatory changes. Various commenters, however, suggested specific requirements that they believe EPA should impose on industrial users or Control Authorities as a condition to granting a mass limit equivalent to the applicable concentration-based categorical Pretreatment Standard. Others asked for clarification of the condition suggested by EPA.

Many commenters questioned how a Control Authority could ascertain whether the industrial user failed to meet a concentration-based limit solely due to reduced water use and attendant higher concentration levels in the discharged wastewater. Some questioned whether EPA's model technology was an appropriate benchmark for determining normal water use. Several commenters suggested that the industrial user be required to demonstrate that it has installed best available technology economically achievable (BAT) for wastewater treatment or instituted pollution prevention measures and is still unable to meet the assigned concentration limit. Other commenters recommended that the industrial user show that it has historically been in compliance with all of its permit conditions, is capable of accurate flow measurement, and has detailed, long-term records on its wastestream discharges before it could be considered for an equivalent mass limit. Several commenters suggested that the industrial user be required to install accurate flow measurement equipment in order to qualify for a mass limit. One commenter suggested that mass limits be considered only for those small categorical industrial users (CIUs) that discharge less than 1,000 gallons per day (gpd).

EPA believes that it is not necessary to impose only one technical criterion as a prerequisite to granting an industrial user an alternative mass limit. Each criterion that might be imposed has its shortcomings. Historical water use is not necessarily an indication of appropriate water use. Because many effluent guideline development documents were published over a decade ago, the model treatment technologies considered by EPA in developing a categorical Pretreatment Standard may not be the most commonly used or state-of-the art treatment option currently available. To qualify for a mass limit, the industrial user would demonstrate that the installed BAT, including in-plant controls, produces removal efficiencies equivalent to those treatment technologies outlined in the Development Document.

Specific criteria would deprive Control Authorities of flexibility. EPA prefers to let the Control Authority evaluate the information presented and judge whether a mass limit is more appropriate than a concentration limit. Because mass limits are frequently more difficult to implement than concentration limits, EPA does not expect that they will be imposed where concentration limits are more appropriate.

Several commenters felt that EPA should clarify that the imposition of a mass limit in lieu of a concentration limit for a particular categorical Pretreatment Standard should not be a unilateral decision by the Control Authority. For most situations, EPA agrees that this is a reasonable approach. However, there may be circumstances where a Control Authority (*i.e.*, POTW) may wish to design its Pretreatment program based upon a mass limits approach. In this instance, the POTW would derive mass limits from the applicable concentration standards for each individual categorical industrial user. These mass limits would then be applied in lieu of the concentration limits. Under the current regulations, if the POTW wishes to apply mass limits derived from a concentration standard, the categorical industrial user covered by a concentration standard would still need to comply with the categorical concentration limits and the equivalent mass limits. In both scenarios, the technically-based local limits established by the POTW also apply.

Two commenters requested that the regulatory language require that the Approval Authority review and approve all conversions of concentration-based limits to mass limits. One commenter suggested that the regulatory language in 40 CFR 403.6(c)(7) be modified to specifically require the Control Authority to document how the mass limit is derived. Today's proposal would not require prior approval by the Approval Authority. Like other instances in which Control Authorities apply categorical standards to their industrial users, the application of the standards will be reviewed as part of the ongoing oversight process. The Control Authority is required to maintain sufficient documentation to support the established limits.

c. Today's Proposal

What is EPA proposing?

The Agency is proposing to allow Control Authorities to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards in cases where an industrial user has installed BAT treatment or a treatment technology that yields removal efficiencies that are equivalent to BAT, and the Industrial User is employing water conservation methods and technologies that substantially reduce water use. Specifically, EPA is proposing that § 403.6(c) be revised to clarify that equivalent mass limits may be authorized by the Control Authority in lieu of promulgated concentration-based limits for industrial users. The Control Authority would be required to

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document how the mass limits were derived and make this information publicly available.

EPA has received a Project XLC (eXcellence in Leadership Community) proposal from an organization in Steele County, Minnesota. This project proposal includes the use of mass limits in lieu of concentration limits for categorical industrial discharges to the POTW. The Steele County XLC Project is currently at the Final Project Agreement development stage. Where implementation of an XLC project requires regulatory relief, EPA may draft a site-specific rule to allow the project to be undertaken. If this XLC project is ready to proceed before EPA finalizes the complete Pretreatment streamlining proposal, EPA may promulgate, based on today's proposal and the comments received, a separate site-specific rule to allow the industries involved in the Steele County XLC project to use, at the discretion of the Control Authority, the change at 40 CFR 403.6(c) of today's proposal.

Who determines whether an alternative mass-based limit will be applied?

As specified under 40 CFR 403.6(d), the strict prohibition that the industrial user not use dilution as a substitute for treatment remains in effect. No user introducing wastewater pollutants into a POTW may augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with a Pretreatment Standard. Currently, Control Authorities may impose mass limits in addition to the concentration limits where the facility is suspected of diluting its effluent to meet a concentration standard or in other cases where mass limits are deemed appropriate (40 CFR 403.6(d)). In this case, the facility would be required to comply with both the concentration limit and the mass limit.

Today's proposal would provide Control Authorities with the ability to establish equivalent mass limits for concentration-based categorical Pretreatment Standards similar to the authority available under 40 CFR 403.6(c)(2) for situations involving production-based categorical Pretreatment Standards. Under today's proposal, the equivalent mass limits would be applied in lieu of the concentration limits. A categorical industrial user may request a mass limit. The industrial user should determine if it meets the criteria for such a limit, that is, that it is utilizing control measures at least as effective as the model treatment technologies on which the applicable categorical standard was based, and is employing water conservation methods and technologies that substantially reduce water use. However, the Control Authority would decide whether the use of alternate equivalent mass limits is appropriate.

How will the Control Authority determine whether an alternative mass limit is appropriate?

The Control Authority will need to judge whether the application of a mass limit in lieu of a concentration limit is appropriate. This judgement should include a finding that the industrial user is utilizing control measures at least as effective as the model treatment technologies on which the categorical standard was based, and is employing water conservation methods and technologies that substantially reduce water use. The industry must be able to provide documentation that clearly explains the water conservation practices it has employed and how the water conservation methods have led to the waste being concentrated in the wastewater discharge to the point that it cannot meet the concentration limit even though its control measures are as effective as the model treatment technologies. In making this judgement, the Control Authority may review the corresponding categorical standard Development Document for potential control options. The Control Authority might also review current trade association literature for other control options that have become available since the Development Document was produced. The categorical standards do not dictate what treatment technologies must be used; however, they do set standards to be achieved and these standards are based on certain model technologies. The Control Authority should understand these technologies and consider their effectiveness when determining whether an alternate mass limit is appropriate.

How will equivalent mass limits be calculated?

In order to establish a mass limit, the Control Authority will need to determine an appropriate flow from the industrial user's facility. Again, the determination should be based upon the Control Authority's judgment and supported by the above sources of information. The appropriate flow should be based upon a reasonable estimate of the flow required to achieve the facility's production goals using BAT and in the absence of the water saving technology. The flow would then be multiplied by the concentration standard to determine the alternative mass limit that would be applied to the facility.

These equivalent standards will be modified pretreatment standards. As with any modified standard, in order for the Approval Authority and the public to be able to verify compliance by the CIUs with these equivalent standards, the Control Authority will need to document how the mass limit calculations were derived and make the documents publicly available (i.e., to the Approval Authority, EPA, the general public or any third party requesting this information).

What additional information is EPA requesting?

EPA is requesting comment on the need for and appropriateness of this proposed addition to the existing regulations. Further, EPA is interested in data related to processes and technologies that result in reduced discharges to the point where compliance with concentration limits is problematic. Situation-specific examples of processes and technologies with data would be helpful. EPA is also interested in commenters views on whether this option should be limited to situations in which the industrial user is employing water conservation methods. Are there other situations in which substitution of mass limits for concentration limits would be appropriate? The Agency is also requesting comment on whether it is appropriate to require public and/or Approval Authority review of an industrial user's proposed mass limit prior to Control Authority approval.

C. Equivalent Concentration Limits for Flow-Based Standards (40 CFR 403.6(c))

a. Existing Rule

What is a flow-based mass limit?

National categorical Pretreatment Standards establish limits on pollutants discharged to POTWs by members of specific industries. The standards establish limitations on the amount of pollutants to be discharged by individual dischargers in different ways for different categories. Some Pretreatment Standards currently require the limits to be expressed in terms of mass, based on the facility's flow. For such "flow-based standards," the national guideline contains pollutant concentrations that relate to the discharges from specified categories of industry. For an individual facility, the Control Authority develops a mass limit by multiplying the applicable pollutant concentration (expressed in terms of mass of pollutant per volume of discharge) by the average daily flow from the facility (expressed in terms of volume per day). The result is a limit on the mass of pollutants per day.

Why was the mass limit approach developed?

EPA has used mass limits to encourage flow reduction and to prevent dischargers from meeting concentration limits by diluting their wastewater. The first categorical standards to require mass limits established an allowable quantity of mass of pollutant per unit of production at the facility. Individual limits required knowledge of a facility's production rates. In order to develop a national production-based standard, production rates must correlate to achievable wastewater flows.

EPA uses concentration-based standards if production and achievable wastewater flow cannot be correlated nationally. EPA explained this approach in the preamble to the proposed Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) regulation (48 FR 11828, March 21, 1983). The concentration-based standard is applied as a mass limit by multiplying the concentration by the process wastewater flow at the specific facility. This approach minimizes the potential for dilution of process wastewaters by non-process wastewater.

What are the problems with mass limits based on flaw?

Flow-based mass limits can, however, be difficult for the Control Authority to implement. To develop a flow-based mass limit, the Control Authority must determine an appropriate process wastewater flow for the facility and then multiply that by the appropriate concentration standard. This is difficult in cases where the facility has highly variable production that leads to flows that often vary week-to-week or day-to-day. This is especially true for smaller facilities where production tends to be more variable and installation of equipment to provide flow equalization may not be practical.

Testing for compliance with the flow-based mass limit requires having accurate information on the flow from all regulated processes at the time the sample is taken. Testing for compliance with a concentration limit only requires taking the wastewater sample and comparing the sampled concentration to the limit.

May alternative limits be developed for flow-based categorical standards?

Currently, 40 CFR 403.6(c) allows Control Authorities to apply an equivalent concentration limit to implement a Pretreatment Standard expressed in terms of mass of pollutant per unit of production. The regulations do not allow equivalent concentration limits in cases where the Pretreatment Standard requires a mass limit to be calculated based on the facility's process wastewater flow.

b. Stakeholder Comments

What changes did EPA suggest in its stakeholder outreach efforts?

EPA recommended allowing Control Authorities to set equivalent concentration limits in cases where Pretreatment Standards currently require the limits to be expressed in terms of mass, based on the facility's flow (e.g., the Organic Chemicals Plastics and Synthetic Fibers [OCPSF] standard). EPA also requested comment on restricting this to situations where the facility had highly variable flows.

How did stakeholders respond?

The majority of respondents expressed varying degrees of support for the recommendation put forth by the Agency for equivalent limits. There were a few opposed to the recommendation, and others that provided additional issues for consideration without indicating approval or disapproval. The commenters who endorsed the recommendation to allow equivalent concentration limits stated that this would be helpful to POTWs and industries because it would make determining compliance much easier.

Those who opposed the recommendation indicated they felt it was more appropriate to revise the individual categorical standards than the General Pretreatment Regulations. The Agency considered revising the individual standards, but believes revisions of the General Pretreatment Regulations are appropriate because the issue being addressed is an implementation issue rather than a standards development issue. The issue here is how these standards are to be applied rather than whether the development of these standards was appropriate. This is explained in more detail throughout the following sections.

Some commenters felt the equivalent limits should be available to all dischargers regulated by mass limits. The Agency considered this, but determined it would not be appropriate given the way the concentration-based standards were designed to be implemented based on process wastewater flow. This is further explained in Section c, "Today's Proposal."

c. Today's Proposal

What is EPA proposing?

Today, EPA is proposing to allow Control Authorities to set limits on industrial users by applying the concentration numbers in a flow-based standard directly as equivalent concentration limits. The Control Authority would be allowed to apply such equivalent concentration limits only if the flow from the facility is so variable that the development of mass limits is impractical. Section 40 CFR 403.6(d) will continue to prohibit facilities from increasing flow in order to meet their concentration limits through dilution.

As with other concentration limits, the Control Authority should be certain that dilution is not occurring and that the discharge represents regulated process wastewater flows. The concentration may need to be adjusted using the combined wastestream formula in 40 CFR 403.6(e) if the wastestream is mixed with non-process wastewater or wastewater from other processes.

Note that flow-based standards, like all national categorical Pretreatment Standards, are self-implementing. Facilities to which these standards are applicable must comply with the standards even if the control authority has not issued a permit or other control mechanism that establishes facility-specific limits. If the control authority issues a permit or other control mechanism that correctly implements the flow-based standard as a concentration limit, then compliance with the standard would be measured through compliance with the concentration limit. However, if the control authority issues a permit or other control mechanism that applies an incorrectly calculated equivalent limitation, the industrial user would still be responsible for complying with the correct standard, i.e. the mass limit or the correctly calculated equivalent concentration limit.

Would the equivalent concentration limit replace the mass limit?

Yes, provided it is calculated correctly, as discussed above. Today's proposal would be implemented in the same manner as Control Authority's setting of equivalent limits for production-based standards under the existing regulations. As with other equivalent concentration limits under 40 CFR 403.6(c), under today's proposal the equivalent limits will be deemed Pretreatment Standards for the purposes of § 307(d) of the Clean Water Act and will be enforceable as such.

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Why is the proposal limited to facilities with highly variable flows?

Under today's proposal, the Control Authority would be allowed to directly apply the concentration listed in the standard to those facilities with highly variable flow because calculating a mass limit based on a reasonable long-term average flow would be impractical only for these facilities. In this situation, application of the concentration standard would be equivalent to a mass limit derived from flow.

In the case of a concentration standard expressed as a mass limit based on the process wastewater flow, the Control Authority currently derives a mass limit by multiplying the industrial user's average daily flow rate of process wastewater regulated under the standard by the concentration set out in the standard. Using the OCPSF category as an example, the flow rate must be based on a reasonable measure of the actual long-term average daily flow of the regulated process wastewater (52 FR 42522, November 5, 1987; Memorandum dated February 8, 1988, from James Elder, Director of the Office of Water Enforcement and Permits to Regional Water Management Division Directors and NPDES State Directors).

If the flow of the discharge from a facility is so highly variable that determining a reasonable long-term average flow is impractical, then calculating a mass limit may also be impractical. If the Control Authority finds that determining a reasonable long-term average flow is impractical, the actual flow must be used. Since the actual flow value would then be used both for setting the mass limit and for determining the mass in the discharge when sampled for compliance, the flows would cancel out and the result would be the same as comparing the sampled concentrations directly to the concentration in the flow-based standard in order to determine compliance. In other words, the total mass discharged to the POTW based on the concentration limit would be the same as if the mass limit were used.

How would EPA define "highly variable flow"?

EPA recognizes that the Control Authority must have some discretion to determine when, under site-specific conditions, flow is "highly variable." In each case where a Control Authority allows equivalent limits, the Control Authority should document why the equivalent limits were necessary. The justification should not be based on one instance of substantial increase or decrease in flow. The Control Authority should also be sure that dilution is not taking place (40 CFR 403.6(d)). In the Stakeholder Review Draft of this proposal, the Agency recommended a demonstration that average flows regularly differ from the long term average by ± 20 percent. The use of 20 percent is consistent with EPA's "Guidance Manual for the Use of Production-based Pretreatment Standards and the Combined Wastestream Formula" (EPA 833–B–85–201, September 1985). EPA received a number of comments concerning the use of 20 percent as a measure. Many commenters felt 20 percent was appropriate, while others felt 30 or 40 percent would be more appropriate. A few commenters pointed out that the definition of "highly variable" should include both percent change and duration, such that the total flow (not the flow rate) in a fixed period of time has changed by 20 percent. Today EPA is requesting further comment on numerically defining the term "highly variable flow." EPA is also requesting comment on whether this alternative should be limited to facilities with highly variable flow. Are commenters aware of other situations where the implementation of a flow-based standard is impractical (e.g., obtaining accurate measurements of flow is costly)" Alternatively, are there situations where substituting concentration limits for flow-based limits would be desirable even though implementing the flow-based limits is not "impractical" The Agency is also requesting comment on whether it is appropriate to require public and/or Approval Authority review of an industrial user's proposed concentration limit prior to Control Authority approval.

D. Oversight of Categorical Industrial Users (40 CFR 403.3(u), 403.8(f) and 403.10(f))

a. Existing Rule

Should all categorical industrial users be considered significant?

POTWs with Approved Pretreatment Programs and States acting as Pretreatment Control Authorities are required to provide certain minimum oversight of significant industrial users (SIUs). The required minimum oversight includes inspection and sampling of each SIU annually, reviewing the need for a slug control plan every two years, and issuing a permit or equivalent control mechanism every five years (40 CFR 403.8(f)(1)(iii) and (2)(v) and 403.10(f)(2)(i)). Industrial users that are not SIUs are not necessarily subject to this oversight.

Control Authorities have expressed concern with the rigidity of the oversight requirements, especially with respect to smaller facilities that are subject to categorical Pretreatment Standards and facilities that they believe have no potential to cause pass through or interference. If these facilities were excluded from the definition of SIU, Control Authorities could, on a case-by-case basis, determine adequate sampling and inspection frequencies and whether individual permits are necessary for the facilities.

What facilities are currently defined as significant industrial users?

"Significant industrial user" is defined in existing 40 CFR 403.3(t) to include two types of facilities. The first includes all industrial users that are subject to a Pretreatment Standard for New or Existing Sources. These standards are often referred to as national categorical Pretreatment Standards, and facilities subject to the standards are referred to as categorical industrial users (CIUs). Today's proposal would exclude certain "non-significant" CIUs from the definition of SIU.

The second category of facilities included in the definition of SIU includes certain facilities that are not CIUs. All non-categorical facilities that discharge 25,000 gallons per day or more of process wastewater are considered SIUs, as are facilities that contribute a process wastestream constituting 5 percent or more of the average dry weather or organic capacity of the POTW. The control authority may exclude such a facility from the SIU definition based upon a finding that it does not have a reasonable potential to adversely affect the operation of the plant or to cause a violation of any Pretreatment Standard or requirement. Control Authorities may also consider smaller facilities to be SIUs if the facilities have the potential to cause problems with a POTW's operations or violate Pretreatment Standards or requirements.

Since Control Authorities already have flexibility with regard to oversight of non-categorical facilities, they are not the focus of today's proposal.

What is the history of the definition of SIU?

The definition of SIU and related requirements were established in July 1990 by the rule to implement the Domestic Sewage Study ("the DSS Rule") (55 FR 30082, July 24, 1990). Before this regulatory revision, sampling and inspection frequency were only

recommended in EPA guidance ("Pretreatment Compliance Monitoring and Enforcement Guidance," September 1986). The proposed DSS Rule (53 FR 47649, November 23, 1988) would have required Control Authorities to inspect and sample SIUs at least once every two years. The proposal requested comment on whether to require annual inspections and sampling. The preambles to the proposed and final rule did not specifically address whether to adopt a different requirement for oversight of smaller SIUs.

The proposed Metal Products and Machinery rule (60 FR 28269, May 21, 1995) solicited comment on whether, as an alternative to exempting low-discharge industrial users from the rule, EPA should revise Part 403 to reduce monitoring, reporting, and inspection requirements applicable to small-flow facilities. Today's proposal elaborates on that issue.

Can CIUs that do not discharge regulated pollutants be considered SIUs?

Some categorical standards only require a certification statement that an industrial user does not use a pollutant of concern. See, e.g., 40 CFR 439.16, Pretreatment Standard for Existing Sources, Pharmaceutical Manufacturing. Other standards may require that there be no discharge of process wastewater. See, e.g., 40 CFR 455.46, Pretreatment Standard for Existing Sources, Pesticide Formulating, Packaging, and Repackaging. An industrial user is considered to be subject to the categorical standard if it meets the applicability requirements of the standard. It should be noted that in the applicability section of the various categorical standards, the term "discharge" includes the potential to discharge. For example, a pharmaceutical manufacturer may comply with monitoring requirements in 40 CFR 439.16(a)(2) by filing a semi-annual certification that it does not use or generate cyanide, while a pesticide formulator may comply with the monitoring requirements of 40 CFR 455.46 by filing a semi-annual certification of no discharge. Under current regulations, Control Authorities must regulate these facilities as SIUs. Under today's proposal, the facility would still be subject to the categorical standard, but at the discretion of the Control Authority, might not be considered an SIU.

If the only wastestream that an industrial user discharges (or could potentially discharge) to the POTW is not subject to the requirements of any Pretreatment Standard for New or Existing Sources, the facility would not be considered a categorical industrial user for the purposes of 40 CFR Part 403. For example, if an industrial user that employs a 100 percent recycle of process wastewater at no time has or will discharge regulated process wastewater to the POTW and does not have the potential to discharge regulated process wastewater to the POTW, the industrial user would not be considered to be subject to the categorical standard for the process and, therefore, would not be required to be regulated as an SIU. Under the existing regulations, Control Authorities should consider issuing "no discharge" permits to such facilities with provisions such as a requirement to provide notice of changes in operation and to allow inspections. Control Authorities should also consider whether the facility presents a reasonable potential for discharging pollutants of concern and warrants regulation as an SIU.

Commenters have pointed to confusion regarding whether POTWs are required to sample facilities that have no discharge from any regulated process. EPA notes that POTWs are not currently required to sample facilities that do not discharge, and no revision to the regulations is necessary.

b. Stakeholder Comments

What changes did EPA suggest in its 1997 letter to stakeholders?

EPA's 1997 letter to stakeholders solicited comment on revising the current definition of significant industrial user to exclude certain non-significant facilities that are subject to national categorical Pretreatment Standards. The draft suggested a definition of "non-significant" that included (1) facilities that never discharge concentrated wastes such as solvents, spent plating baths, filter backwash, and sludges, or more than 100 gallons per day (gpd) of other process wastewater, and (2) facilities subject only to certification requirements after having met baseline monitoring report requirements (e.g., pharmaceutical manufacturers).

The 1996 WEF/AMSA Pretreatment Streamlining Workshop had recommended excluding facilities under 100 gpd from the definition of significant industrial user. The Workshop also presented recommendations for additional streamlining. One of the Workshop's recommendations was that Control Authorities be able to exempt from the definition of SIU any categorical industrial user that has no reasonable potential to adversely affect the POTW's operation.

The Workshop also recommended that EPA allow Control Authorities more flexibility in the oversight of facilities that would continue to be defined as SIUs. Specifically, the Workshop recommended that EPA allow Control Authorities more flexibility in sampling SIUs, while perhaps keeping the annual inspection requirement. EPA's draft sought comment on these recommendations and also on whether to allow POTWs more flexibility in sampling SIUs that had been in consistent compliance.

How did Stakeholders Respond?

Most commenters supported allowing POTWs to reduce oversight at least of non-significant categorical industrial users that discharge up to 100 gpd. Most municipal commenters not only supported exempting facilities that discharge 100 gpd but would have raised the limit to anywhere from 300 gpd to 4,000 gpd.

Several commenters, however, thought that the definition of SIU should not be changed. A slight majority of State commenters opposed deleting even 100 gpd facilities from the definition of SIU because it would result in the elimination of minimum oversight requirements. A few commenters stated that requirements should be reduced by amending the national categorical standards, not the definition of SIU.

Some commenters opposed a definition based on flow and preferred one based on total mass or on potential to impact the POTW. One made a specific recommendation that SIU status be determined by considering both the flow and its toxicity using the toxic weighting factors used by EPA in guideline development.

A few commenters addressed whether facilities that are in consistent compliance should be allowed to be excluded from oversight as SIUs. They generally supported the idea but opposed as arbitrary the suggestion that only 50 percent of SIUs could be excluded under the exception. One commented that, regardless of its compliance history, any SIU with the potential to adversely impact the POTW should be an SIU.

Approval Authority commenters generally opposed and POTW commenters generally supported not requiring Control Authorities to regulate as an SIU any industrial user that did not present a potential to adversely impact the POTW. One supporter of the concept suggested that a facility should not be required to be an SIU if it could

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discharge all of its process chemicals to the POTW without treatment and without impacting the POTW.

c. Today's Proposal

What changes to the SIU definition is EPA proposing?

EPA is proposing to allow Control Authorities to exempt non-significant categorical industrial users from the definition of significant industrial user. Today's proposal would define non-significant categorical industrial users as (1) facilities that never discharge untreated concentrated wastes that are subject to the categorical Pretreatment Standard as identified in the development document for the standard, and never discharge more than 100 gallons per day (gpd) of other process wastewater, and (2) industrial users subject only to certification requirements after having met baseline monitoring report requirements (e.g., pharmaceutical manufacturers).

Regardless of whether they are considered SIUs, all categorical industrial users would still be required to comply with applicable categorical Pretreatment Standards and the related reporting requirements in 40 CFR 403.12. Control Authorities would still be required to perform the same oversight of non-significant categorical industrial users that is required for other facilities that are not SIUs, including notifying the categorical industrial user of its status and requirements (40 CFR 403.8(f)(2)(iii)); receiving and reviewing required reports (40 CFR 403.8(f)(2)(iv) and 40 CFR 403.12(b), (d), & (e)); random sampling and inspection (40 CFR 403.8(f)(2)(v)); and investigating noncompliance as necessary (40 CFR 403.8(f)(2)(vi)).

The POTW's annual report would provide a list of the facilities that are being regulated as non-significant facilities. After an initial list is provided, deletions and additions may be keyed to the previously submitted list.

Will EPA consider criteria other than a 100 gpd flow-cutoff for non-significant CIUs?

EPA recognizes that any numeric flow cutoff would have both advantages and disadvantages. The 100 gpd criterion was supported by the stakeholders at the WEF/AMSA meeting, and EPA is including this criterion in today's proposal. It is clear from comments on drafts of this proposal that there is no consensus on an appropriate higher number. The 100 gpd flow is a conservative number that most commenters could support. EPA estimates that about 2 percent of current CIUs might be eligible for non-significant status using this criterion.

In today's proposal EPA is again requesting comment on alternative criteria for determining non-significant status. Such alternative criteria might include a higher flow cutoff or a numeric cutoff based on some alternative criteria such as the estimated mass of pollutant loadings or the percentage of a POTW's total flow discharged by a particular CIU. Alternatively, the criteria might be narrative and include a qualitative description of what constitutes a significant industrial user. Commenters are encouraged to provide data on the likely effects of alternate criteria, including the number of CIUs that would be eligible for non-significant status and any adverse impacts on POTWs or the environment that might result.

EPA is also requesting comment on what consideration should be given to the compliance record of the non-significant CIU. That is, prior to designating a CIU as non-significant, should POTWs examine the compliance record of the CIU and its potential to maintain a high level of consistent compliance with pretreatment standards and requirements? EPA is interested in other possible ways of providing flexibility related to the compliance record of the industry. If EPA promulgates a relatively narrow exclusion, such as the 100 gpd cutoff in today's proposal, it might be appropriate to offer greater flexibility to POTWs to target oversight resources to SIUs with the greatest potential to cause harm to the POTW or the environment. One such alternative would be to relax the minimum monitoring requirements for facilities with a consistent record of superior environmental performance, as was recently done for direct dischargers ("Interim Guidance for Performance-based Reduction of NPDES Permit Monitoring Frequencies," April 1996). This would not only reduce administrative burden, but would provide an incentive for facilities to reduce pollutant loadings still further. EPA requests comment on this or similar alternatives to allow better targeting of POTW oversight resources.

How would the flow from non-daily batch dischargers be counted?

Under the proposal, the 100 gpd criterion is a daily maximum and cannot be aggregated for the purpose of periodic batch dischargers. EPA is interested in comments, however, on whether to allow the non-significant definition to include facilities that discharge up to 500 gallons of process wastewater once per week. One commenter suggested that not allowing aggregation would discourage efficient treatment of these wastes. EPA, however, does not believe that the benefits to the industrial user of being defined as non-significant are sufficient to pressure facilities into inefficient practices, because that definition affects requirements applicable to the Control Authority.

E. Categorical Industrial User Monitoring (40 CFR 403.12)

a. Existing Rule

What are the current minimum sampling requirements for categorical industrial users?

The Pretreatment Regulations have required since 1978 that all facilities subject to national categorical Pretreatment Standards submit to their Control Authority twice per year a report on the pollutants in their effluent stream that are limited by the applicable categorical Pretreatment Standards (40 CFR 403.12(e)(1)). The report must include the results of sampling and analysis of the effluent which is representative of conditions occurring during the reporting period at a frequency necessary to assess and assure compliance with applicable standards (40 CFR 403.12(g)). The regulations make clear that these are minimum requirements and Control Authorities have the flexibility to increase sampling and reporting requirements. The regulations also require the Control Authority to sample all SIUs at least once per year (40 CFR 403.8(f)(2)(v)).

The regulations allow the Control Authority to perform the sampling required of the categorical industrial users (40 CFR 403.12(g)(1)). Commenters stated that it is not clear whether, when Control Authority sampling detects a violation, it is the Control Authority or the user that must resample within 30 days. Resampling is required by 40 CFR 403.12 when the sampling by the user detects a violation.

b. Stakeholder Comments

What changes did EPA suggest in its 1997 letter to stakeholders?

EPA discussed two options in its 1997 letter to stakeholders. The first option was tied to the proposal to allow Control Authorities to reduce oversight of non-significant facilities (Proposal D). For those non-significant facilities that a Control Authority would not be required to sample, because they are no longer SIUs, but which would still be required to self-monitor because they

are categorical industrial users, the Control Authority could elect to sample the facility and only require the facility to self-monitor once per year.

EPA also solicited comment on whether to allow Control Authorities to waive all self-monitoring of non-significant facilities. The facility's minimum monitoring requirements would be determined by the Control Authority.

Under both approaches, the facilities would still be required to file Baseline Monitoring Reports and 90-day compliance reports, and to comply with the categorical standard.

How did stakeholders respond?

Almost all commenters supported streamlining at least to the extent of allowing one annual sample by a POTW and one by a non-significant categorical industrial user. There was concern that the proposal did not provide much streamlining and would create a category that would have to be tracked separately. Many argued that EPA should go further and allow Control Authorities complete discretion to set minimum monitoring requirements for non-significant facilities. Some commenters thought these facilities should not be subject to categorical standards at all. Others said that there should be no minimum requirements for facilities that are not SIUs, even if they are subject to a national categorical standard. There was little support, however, for an alternative approach that would have waived all industrial user monitoring only if a Control Authority conducted unannounced monitoring annually.

One trade association said that it would actively oppose this proposal because it favors small facilities. EPA does not believe that the proposal inappropriately favors small industrial users. POTWs are already allowed to perform the sampling that users are otherwise required to perform. This proposal merely authorizes a different allocation of that sampling. Control Authorities could provide this relief only if they find the sampling to be adequate to assure compliance by the facility.

One stakeholder commented that 40 CFR 403.12(g) already allows one annual sample to be taken by the Control Authority and one to be taken by the categorical industrial user. EPA does not agree with this interpretation. This particular part of the regulation was established on October 17, 1988, in response to the findings of the Pretreatment Implementation Review Task Force (PIRT) ("Pretreatment Implementation Review Task Force Final Report to the Administrator," January 30, 1985). The Pretreatment Implementation Review Task Force recommended changing the language in 40 CFR 403.12 to allow for POTW monitoring in lieu of self-monitoring. This change was to address concerns by POTWs that some industrial user monitoring was not reliable and the fact that some users would prefer that the POTW conduct the monitoring. Individual samples taken by the Control Authority and the CIU at different times during the year would not address the reliability issue.

Other commenters noted that three samples are required annually when the POTW samples for the industrial user, with additional samples required if violations are detected. At the time the PIRT regulatory changes were made, the regulations required that CIUs report their compliance status twice per year; this in turn required sampling a minimum of two times per year. At this time there was no minimum sampling frequency required to be performed by the POTW. Since the PIRT regulatory changes clearly established that the POTW could assume the responsibility for the CIUs' sampling, only two samples were required. In the 1990 regulatory changes resulting from the Domestic Sewage Study (DSS), the Agency required that POTWs sample effluent from each SIU at least once per year (40 CFR 403.8(f)(2)(v)). The preamble supporting this regulatory change did not discuss a need for POTWs to sample three times per year in cases where the POTW had assumed responsibility for the categorical industrial user's monitoring. The discussion in the preamble focused on the need for a minimum frequency of independent sampling by the POTW to check the industrial user's monitoring data. If the POTW is already doing the twice per year sampling in lieu of the categorical industrial user, then the independent check is achieved. This is also explained in the "Industrial User Inspection and Sampling Manual for POTWs" (p. 102; EPA 831-B-94-001, April 1994).

c. Today's Proposal

What is EPA proposing?

This proposal is tied directly to the definition of non-significant categorical industrial user proposed today to be included in 40 CFR 403.3(u)(1)(i). EPA is proposing elsewhere today to allow Control Authorities to exempt "non-significant" categorical industrial users from the definition of Significant Industrial Users. In conjunction with that proposal, EPA is also proposing to not establish any minimum inspection and sampling requirements for non-significant categorical industrial users. Instead, the new requirements would allow the Control Authority to establish the appropriate level of inspection and industry and Control Authority sampling for these facilities. In addition, EPA is proposing to establish new minimum reporting requirements for non-significant categorical industrial users. EPA is proposing that at a minimum, a non-significant facility would be required to annually report and certify its status as a non-significant facility, and certify that it is in compliance with the applicable Pretreatment Standards. A Control Authority may require more frequent sampling, inspections, or reporting as it finds necessary to ensure compliance with the categorical standards.

Today's proposal would not require each compliance certification from a non-significant facility to be supported by sampling data. Such facilities, however, must have a reasonable basis for their compliance certifications. When sampling is not performed, the non-significant facility must describe the basis for its compliance certification, such as no changes in any processes that generate process wastewaters or no change in raw chemicals used. EPA recommends that sampling by the industry or Control Authority be performed from time to time to confirm compliance with the categorical standards.

Who must resample when POTW sampling indicates a violation?

The current regulations specify that an industrial user must repeat sampling within 30 days whenever its sampling indicates a violation, unless the Control Authority is sampling monthly or performed sampling at the industrial user in the interim between the industrial user's initial sampling and the receipt of the results of its sampling (40 CFR 403.12(g)(2)). Although the regulations state that a Control Authority may perform the industrial user's sampling and analysis (40 CFR 403.12(g)(1) and (h)), they do not state that resampling is required when the Control Authority's sampling indicates a violation.

EPA is also proposing today that if the POTW has performed the sampling for the industrial user, the POTW must resample when a violation is detected unless it requires the user to perform the repeat sampling. EPA believes that the current requirement that the user resample when a violation is detected should also apply when the POTW samples for the user in order to

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determine when the user has returned to compliance. The POTW currently may elect to perform the resampling for the user. If it does not, however, the user should still be required to perform the required resampling. EPA notes that it is in the user's interest to assure that resampling occurs as soon as possible because it will be assumed that the user continues to be in noncompliance until sampling indicates that the user has returned to compliance. Further, today's proposal requires the POTW, in cases where the POTW has performed the sampling, to notify the industrial user as soon as possible after it becomes aware of a violation based upon the sampling results.

Should minimum monitoring be the same as required of NPDES permittees?

EPA is also interested in comment on whether to require one annual sample to be taken by either a non-significant categorical industrial user or its Control Authority. This approach would be consistent with the minimum monitoring requirement for NPDES permittees, which is only once per year (40 CFR 122.44(i)(2)).

EPA notes, however, that there are differences between the Pretreatment program and the NPDES permitting program that suggest that additional minimum monitoring is appropriate in the Pretreatment program. All dischargers to waters of the United States are required to have an NPDES permit and thus are subject to the NPDES minimum monitoring requirements. The minimum monitoring requirements of the Pretreatment program only apply to those users that have been defined as significant industrial users. Approximately 85 percent of the industrial dischargers to POTWs are not considered significant and have no minimum monitoring requirements ("National Pretreatment Program, Report to Congress:" pp. ES–4, ES–5, 3–2 and 3–11; July 1991 (21W–004)). Also, the Pretreatment program primarily controls toxic pollutants and pollutants in quantities that could cause pass through or interference at the POTW, while an NPDES permit is required for the addition of any pollutants to waters of the United States from a point source.

Should EPA revise guidelines to exempt non-significant facilities?

The WEF/AMSA Workshop Report recommended that EPA consider exempting non-significant facilities as it develops new and revises existing categorical Pretreatment Standards. The proposed Metal Products and Machinery rule (60 FR 28209, May 30, 1995) is an example of EPA having considered the appropriateness of including small facilities within the scope of an effluent guideline.

As noted in its recent "Effluent Guidelines Plan Update" (62 FR 8726, February 26, 1997), EPA is committed to promulgating regulations for several industries under court ordered schedules. In order to determine whether small facilities should be excluded from existing guidelines, EPA could have to collect and analyze data and information currently not in the administrative record. Any decisions would have to be based on current data for each industry under examination and would be collected with OMB approval under the Paperwork Reduction Act. Since there are currently more than 30 different industries subject to categorical standards, data collection would create a heavy burden on industry and would represent a substantial effort on the part of EPA which would adversely impact the current court ordered schedules. For these reasons, EPA does not believe existing guidelines and categorical standards should be reopened to consider exempting "non-significant" facilities. EPA does agree, however, there should be an examination as to whether small facilities should be regulated as it develops new categorical Pretreatment Standards.

F. Slug Control Plans (40 CFR 403.8(f)(2)(v))

a. Existing Rule

What is a slug discharge and how are they regulated?

Two separate provisions in Part 403 define and address slug discharges. A slug discharge is "* * * any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or non-customary batch discharge" (40 CFR 403.8 (f)(2)(v). Section 40 CFR 403.5(b)(4) prohibits industrial users from introducing "* * * any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW." Because slug discharges can cause Interference with a POTW operation, they are regulated by this specific prohibition and the more general prohibition against introducing into a POTW pollutants that can cause Pass Through or Interference (40 CFR 403.5(a)(1)). Today's proposal does not alter these prohibitions.

Current regulations also require Control Authorities to ensure that industrial users have policies and procedures in place to prevent or mitigate the effects of slug discharges. Control Authorities must "* * * evaluate, at least once every two years, whether each such Significant Industrial User needs a plan to control slug discharges" (40 CFR 403.8(f)(2)(v)). Today's proposal addresses the requirement that Control Authorities review the need for a slug control plan every two years.

What is a slug control plan?

The primary function of a "slug control plan" is to ensure that an SIU has a planning and implementation tool to prevent Interference at a POTW treatment facility by a non-routine or accidental discharge. The minimum elements required in a slug control plan are (1) a description of discharge practices, (2) a description of all stored chemicals at the facility, (3) procedures for immediately notifying the POTW of the slug discharge and providing written follow-up notification, and (4) a variety of procedures (e.g., inspection and maintenance of chemical storage areas) for preventing adverse impacts from any accidental spills (40 CFR 403.8(f)(2)(v)(A) to (D)).

Why should the regulation be changed?

Many POTWs believe the requirement to review the need for a SIU's slug control plan every two years is unproductive administrative paperwork. One large metropolitan POTW required only two of its 150 designated SIUs to prepare slug control plans. The WEF/AMSA report characterizes a slug control plan as "a token piece of paper which gives little added protection to the significant industrial user or the POTW." Although the slug control plan requirement is designed to protect POTWs, periodic evaluation of the continuing need for and/or development of a slug control plan, alone, does not necessarily provide for any greater environmental protection.

b. Stakeholder Comments

What changes did EPA suggest in the 1997 draft sent to stakeholders for review?

In the 1997 draft sent to stakeholders for review, EPA proposed eliminating the requirement that POTWs evaluate the need for a slug control plan for each SIU every two years. POTWs would be given the flexibility to review the need for slug control plans or other actions as part of their ongoing oversight of industrial users. Where a slug control plan is found to be necessary, appropriate requirements would be placed in the SIU's permit.

How did stakeholders respond?

A substantial majority of the 70 commenters supported the draft recommendations as being reasonable, appropriate, and in keeping with EPA's proposed streamlining efforts. Fifty-one of the commenters essentially agreed with the discussion and language as written. Fourteen reviewers had no comments on the proposal. Of the remaining commenters, most were either neutral or wanted additional language that would clarify the type of slug discharge that would trigger a Control Authority to require the development of a slug control plan. One commenter stated that their organization would not change anything relating to their practice with regard to slug control plans and that they would retain their very stringent local ordinances requiring a two-year evaluation of the plans.

Several commenters noted that most industrial users already have spill plans in place and that it would be more practical and eliminate confusion for the industrial user to prepare one slug and spill prevention plan that satisfies the various requirements of the Pretreatment program, the Spill Prevention Control and Countermeasures Plan required by the Clean Water Act (CWA) and various hazardous waste laws. EPA agrees with this suggestion and encourages industrial users, POTWs, and other entities to explore ways of having one document satisfy all of the spill planning requirements.

The WEF/AMSA report suggested that EPA substitute the phrase "uncontrolled releases" for "slug discharge." Slug discharges, however, are not limited to uncontrolled releases but may include any nonroutine discharge. In subsequent comments, WEF suggested that the definition of "slug discharge" be expanded to clarify that it is a nonroutine discharge that has the potential to cause interference or pass through or in any other way violate the Control Authority's regulations, local limits or permit conditions. EPA has incorporated this suggestion into today's rule.

Will oversight be adequate without a two-year review requirement?

Two commenters opposed the draft proposal because they believe that the Approval Authorities would no longer be able to hold the Control Authorities accountable for continuing to conduct slug load evaluations. The proposed regulatory changes, however, do not absolve Control Authorities from the requirement to prevent disruptions caused by slug discharges.

In many instances, operating conditions at an SIU will not have changed significantly since the issuance of its individual control mechanism and the facility will be in compliance with all of its permit conditions. Under these circumstances, the requirement to review and evaluate the need for a slug control plan could be an unproductive use of resources by the Control Authority. Control Authorities are required to periodically inspect industrial users and should be aware of changes at an SIU that may necessitate a reconsideration of the SIU's slug control plan.

The existing regulations also require that industrial users "* * * promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge' (40 CFR 403.12(j)). Upon receiving this notice, the POTW could determine whether revision of the industrial user's slug control plan is necessary.

Do the proposed changes impose any additional burden upon the industrial user?

EPA does not intend that today's proposal impose any new requirements on IUs, but it does formalize the requirement for SIUs to control slug discharges (where determined to be necessary by the Control Authority) by adding incorporation of the requirement into SIUs' permits (40 CFR 403.8(f)(1)(iii)(F)). The focus of today's proposal is to address the frequency with which POTWs must consider the adequacy of an SIU's slug control plan or other measures to control slug discharges. One commenter strongly opposed any changes to the current regulation by arguing that the changes in EPA's draft proposal to stakeholders would add to the regulatory burden. This commenter feels that the draft regulatory language would require Control Authorities to force the industrial user to undertake physical improvements deemed desirable by the Control Authority. The commenter also stated that the CWA confers no authority upon a Control Authority to directly regulate a user's physical plant or production practices.

EPA promulgated the requirement for a two-year review cycle of the need for a "slug control plan" in the Domestic Sewage Study rulemaking (55 FR 30082, July 24, 1990). In the preamble discussion to that rulemaking, EPA explained the need for POTWs to implement slug control programs. As part of the discussion, EPA referenced the guidance manual, "Control of Slug Loadings to POTWs" (EPA 21W–4001, February 1991), which was then under preparation. This manual provides detailed guidance for POTWs to evaluate whether significant industrial users need to develop slug control plans. It also provides guidance for significant industrial users to then develop those slug control plans. This recognizes that POTWs will need to determine whether existing situations may impact their treatment works, while industries are in the best position to solve problems relative to their physical plants or production processes. Part 403 only requires that, where found to be necessary, a POTW must require a significant industrial user to develop a plan to prevent slug discharges. As indicated by the discussion above, this has always been EPA's interpretation of the requirement in 40 CFR 403.8(f)(2)(v) although today's proposal clarifies the regulatory language.

c. Today's Proposal

What is EPA proposing?

Today's proposal would eliminate the requirement that POTWs evaluate the need for a slug control plan for each SIU every two years. The Agency proposes to amend the language in 40 CFR 403.8(f)(2)(v) to give POTWs the flexibility to review the need for slug control plans or other actions as part of their ongoing oversight of industrial users. To encourage some minimum review, today's proposal would also add 40 CFR 403.8(f)(1)(iii)(F) to require that, where a slug control plan is found to be necessary, appropriate requirements would be placed in the industrial user's individual control mechanism.

What would industrial users be required to do to comply with these proposed changes?

Today's proposal would not impose new burdens on SIUs. All SIUs still should take positive action to eliminate or mitigate the effects of a slug discharge. These actions may include constructing physical containment facilities as well as implementing sound management practices to prevent slug discharges.

What actions must the POTW take to ensure that adequate slug control mechanisms are implemented by the significant industrial user?

EPA expects that, as an integral part of its ongoing oversight of all SIU facilities, the POTW will consider whether adequate measures are in place to avoid slug discharges. The POTW is authorized to use its own discretion in determining the timing, level of detail, and commitment of resources necessary

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to ensure the facility has adequate measures in place to prevent slug discharges. POTWs still may require that the SIU develop a slug control plan or similar management tool whenever that facility's slug prevention measures are judged to be inadequate.

The proposed changes to the regulations should reduce the paperwork burden imposed upon the SIU and POTW while maintaining environmental protection. Both parties should take tangible, protective measures to eliminate the risk of slug discharges.

G. Sampling for Pollutants Not Present (40 CFR 403.12(e))

a. Existing Rule

Generally, what are the current periodic sampling and reporting requirements?

Currently, 40 CFR 403.12(e)(1) requires industrial users subject to categorical Pretreatment Standards to submit reports to the Control Authority at least twice a year indicating the nature and concentration of all pollutants in their effluent that are limited by the standards. Section 40 CFR 403.8(f)(2)(v) requires Control Authorities to sample these industrial users at least annually.

Is monitoring required for regulated pollutants that are not expected to be present in a categorical industrial user's waste stream?

Sampling is currently required for all pollutants limited by the categorical Pretreatment Standard even if certain pollutants regulated by the standard are not reasonably expected to be present. For example, the pollutants might be expected to not be present based upon prior sampling and analysis, knowledge of process chemistry, raw materials use, and potential byproducts.

b. Stakeholder Comments

What changes did EPA suggest in its 1997 letter to stakeholders?

EPA suggested revising its regulations to allow industrial users to forego sampling of a pollutant regulated by a categorical standard if the user demonstrated through sampling and other technical data that the pollutant is not present and certified on each report that the pollutant is only present at background levels with no increase due to the industrial user's activities. The Control Authority would still be required to sample all SIUs for all regulated pollutants at least once per year. In addition, EPA specifically requested comments on:

- How to define what is meant by "not present";
- Determining an adequate technical basis to support a decision that sampling be waived or reduced; and
- Whether reduced monitoring should apply to organic chemicals given their relative variability in production and as contaminants in raw materials.

The comments received on specific issues are discussed below with EPA's proposal on each issue.

How did the stakeholders respond?

EPA received comments on the draft issue paper from 60 stakeholders. Virtually all of the respondents stated that EPA should either reduce or eliminate sampling of pollutants not expected to be present in effluent. One commenter would support the concept only if a prohibition of subsequent discharge is included, similar to that which is proposed for NPDES requirements (see discussion below). Another commenter believed that the current requirement to sample for all pollutants provides the best evidence to support determinations regarding the presence or absence of pollutants.

c. Today's Proposal

How is EPA proposing to define "not expected to be present"?

Today's proposal would authorize a Control Authority to allow an industrial user subject to categorical Pretreatment Standards to not sample for a pollutant if the pollutant is not expected to be present in its wastestream in a quantity greater than the background level present in its water supply, with no increase in the pollutant due to the regulated process. This flexibility is already available for noncategorical industrial users, via the local limits allocation method implemented by the Control Authority. There would also be a reduced sampling requirement for the Control Authority once it had determined that a pollutant was not expected to be present. Most commenters agreed that EPA should not propose an absolute definition of "not present" because limitations on analytical detection capabilities would preclude an industrial user from being able to certify that any pollutant is "not expected to be present" in its wastewater. Some commenters preferred the term "not regulated." EPA notes, however, that the pollutants will continue to be regulated even if the industrial user has been authorized not to sample for them. The requirement to comply with each pollutant limit in a standard can be ended only through modification of the categorical Pretreatment Standard. If sampling indicates that an industrial user has exceeded a limit, the user will be in violation of that limit and must resume sampling immediately.

Other commenters suggested that the standard for not sampling should be "not detectable" or Below Detection Limit ("BDL") rather than not expected to be present. EPA is not proposing a standard that refers to the detectability of a pollutant. In light of the increasingly low detection limits that result from modern analytical methods, the pollutant may in fact be detectable but only at background levels that are not of regulatory concern. If EPA established the absence or the non-detectability of a pollutant as the threshold criterion for reduced sampling frequency, EPA anticipates that few if any industrial users would be able to avail themselves of the option.

Stakeholders did not generally support the approach in which sampling could be waived if the pollutant is expected to be 50 percent below the regulated permit limit. Some commenters specifically disagreed with the percentage approach, as it suggested the possibility that the pollutant was added during the industrial process and could be higher under upset or abnormal circumstances. This suggests that compliance could not adequately be demonstrated without regular monitoring.

What information would be required to support a conclusion that a pollutant is not expected to be present?

Today's proposal would require the Control Authority's decision to waive sampling to be based upon both sampling and other technical data, such as the raw materials, industrial processes, and potential by-products. EPA is not proposing that a specific amount of sampling data be required but is interested in comment.

Influent and effluent sampling may be necessary for the initial determination to support the technical factors. After the Control Authority notifies an industrial user that a pollutant is "not expected to be present," subsequent periodic compliance reports may be limited to the submission of the certification statement. Three commenters thought that EPA should establish a regulatory minimum amount of sampling to be conducted for the determination of "not expected to be present." For example, the regulation might require three years of sampling data to document that the pollutant is not expected to be present. Existing sampling data could be used to support requests for reduced sampling. For new facilities or processes, a shorter time might be appropriate if technical data supported it. Dischargers subject to Metal Finishing Guidelines (40 CFR Part 433), for example, submit Total Toxic Organics (TTO) analytical results for the organics that are reasonably expected to be present as part of the baseline monitoring report; after submission and approval of a Toxic Organic Management Plan, subsequent compliance reports contain a certification statement in lieu of the TTO self-monitoring. On the other hand, the appropriate amount of sampling may be site-specific and better determined by the Control Authority. The Control Authority would be able to consider the specific processes and pollutants involved and other circumstances that would support the reliability of the industrial user's certification that there has been no increase of the pollutant in its wastewaters due to its activities.

EPA is also soliciting comment on whether sampling of influent should be required. Although not favored by eight commenters, most commenters agreed with the concept of either sampling influent water to the industrial processes or using the public water system quality reports to characterize "background" quality during the initial determination of "not expected to be present."

The Safe Drinking Water Act and its Amendments (SDWA) prescribe specific monitoring and quality assurance requirements on public water systems, data which the industrial user and Control Authority could obtain via the public record to characterize the background quality. However, an industrial user that uses make-up water from a non-public water system could conduct a similar monitoring program to generate a representative data set for its process influent.

Today's proposal would require that, in addition to sampling data, the decision to waive sampling be based on technical factors. Such factors include knowledge of the raw materials used by the industrial user and knowledge of the facility's processes and potential by-products, but do not include pretreatment process capability and efficiency. All factors considered should be documented in the industrial user's individual control mechanism file.

Would any ongoing sampling be required for pollutants not expected to be present?

EPA is proposing that, after a determination has been made that a pollutant is not expected to be present, the Control Authority may waive sampling of that pollutant by the industrial user or reduce the required frequency of sampling to less than twice per year. The Control Authority would only be required to perform the sampling and analysis required by 40 CFR 403.8(f)(2)(v) for all regulated pollutants once during the term of the industrial user's individual control mechanism.

Commenters were split on whether EPA should continue to require ongoing sampling at some reduced frequency to verify that the pollutant is not expected to be present. Several recommended annual monitoring for all regulated pollutants by either the industrial user or the Control Authority, and a few recommended less frequent verification at times such as permit renewal. Eight commenters stated that the Control Authority should not be required to sample the industrial user if the Control Authority had already determined that the pollutants were not expected to be present. EPA believes that, if the Control Authority has determined, based on both sampling data and a technical evaluation that a pollutant is not expected to be present at levels above background, and if the industrial user continues to certify that there is no increase of the pollutant in its effluent due to the activities of the industrial user, then it is appropriate to allow the Control Authority to determine whether to sample the facility more frequently than once during the term of the permit and how often to require sampling by the industrial user. However, EPA is requesting comment on what the rule should specify regarding Control Authority oversight.

Who would authorize industrial users to reduce the sampling frequency?

Today's proposal would allow the Control Authority to authorize reduced sampling. One commenter suggested that further approval procedures (e.g., requiring Approval Authority concurrence) would likely result in delays and administrative costs that would subvert the streamlining benefits sought by EPA. EPA agrees that prior approval from Approval Authorities should not be necessary. Approval Authorities would review the implementation of this provision as part of their regular oversight activities.

Would industrial users be required to certify that a pollutant is not expected to be present and that processes have not changed?

EPA is proposing that an industrial user submit, as part of its regular semi-annual monitoring reports, certifications that there has been no increase in the pollutant in its wastewater due to activities of the industrial user. The willingness of an industrial user to so certify will provide assurance that the pollutant is in fact not present above background levels because a false statement is criminally punishable under 40 CFR 403.12(n).

Most of the commenters responding to this issue were in favor of some type of industrial user certification process. Comment varied as to whether the certification should be submitted semi-annually, annually, or biennially. A few commenters noted that the certification process was consistent with the existing procedures for certifying in lieu of sampling for TTOs. One commenter thought a certification process is not needed because industrial users are already required to notify POTWs if their discharges change substantially. An application form, signed and certified by the industrial user prior to issuance of the user permit, was suggested by a commenter as a possible implementation tool to document and aid enforcement of any change in the other technical factors (industrial process, raw materials, etc.) used in the determination of "not expected to be present."

Would relief be allowed for pollutants that are regulated as indicators of other pollutants?

Today's proposal would allow Control Authorities to waive sampling of indicator pollutants to the same extent as other pollutants. One commenter said that the technical information documenting that a pollutant is not expected to be present should be provided for all pollutants of concern and not just the indicator pollutant. The Agency disagrees. Even if the pollutant is regulated as an indicator for other pollutants, the Agency believes that periodic sampling for the indicator can be waived if technical information and past sampling support the conclusion that the indicator pollutant will not be present.

Would EPA apply reduced monitoring for organic chemicals?

Today's proposal would not allow reduced monitoring for discharges subject to the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) guidelines. However, EPA is requesting comment on whether Control Authorities should be able to waive sampling at OCPSF facilities of organic chemicals that are not expected to be present. Because the constituents in the effluent from organic chemical manufacturers may vary significantly over time, past information may not be reliable as evidence of whether the pollutant will be present in the future.

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The preamble to the OCPSF guidelines discussed the need for minimum monitoring of all regulated organic chemicals (52 FR 42522, November 5, 1987). EPA imposed on OCPSF facilities standards for a wide range of pollutants because of the diversity of sources that could introduce pollutants into the wastewater, such as raw materials, contaminants in raw materials, process changes, and byproducts. Many of the organic toxic pollutants are directly manufactured by OCPSF facilities as well as used as raw materials or generated as byproducts in industry processes. It would be difficult to guarantee that a plant will not discharge any of the regulated pollutants.

EPA is interested in comment on whether Control Authorities should be able to waive sampling for organic chemicals at OCPSF facilities if a facility establishes that a pollutant is not expected to be present and certifies to that effect. EPA is also interested in comments on whether any restriction on relief from sampling for organic chemicals not expected to be present should apply to sources of organic chemicals other than OCPSF facilities.

How does the proposal compare with NPDES requirements?

Direct discharging facilities subject to NPDES permits are similarly required to sample for all regulated pollutants. Proposed changes (61 FR 65268, December 11, 1996) to the NPDES regulations in 40 CFR 122.44(a)(2) would give the Regional Administrator or State Program Director the authority to allow dischargers subject to technology-based effluent limitation guidelines and standards to forego sampling of a pollutant found in 40 CFR subchapter N if the discharger has demonstrated through sampling and other technical factors that the pollutant is not expected to be present in quantities greater than the background level and the discharger certifies on each discharge monitoring report submitted to the Permitting Authority that the pollutant is present in its wastestream only at background levels with no increase in the pollutant due to activities of the discharger. This exclusion would apply only for the term of the permit and would not be available to new sources/new dischargers for the dischargers' first permit term.

Similarly, under the Pretreatment Regulations, an industrial user that is allowed to not sample for a pollutant is still subject to the pollutant limits in the applicable national categorical Pretreatment Standard.

Under today's proposal, such limits would continue to be placed in the CIU's permit or other control mechanism, but the Control Authority would be allowed to eliminate the user's self-monitoring requirements. The Control Authority would be required to sample all pollutants regulated by the applicable categorical standard at least once during the term of the CIU's permit. If any new information indicated that the CIU was in fact discharging the pollutant at greater than background concentrations, the industrial user could not certify that there has been no increase in the pollutant due to its activities and would be required to resume monitoring. If the level of the pollutant exceeds the standard, the industrial user would be liable for violating the categorical standard. If the industrial user fails to provide notice of the change in discharge, it is also liable for violating 40 CFR 403.12(j).

H. Use of Grab and Composite Samples (40 CFR 403.12(b), (d), (e), (g) and (h))

a. Existing Rule

Which sampling requirements are addressed in this section?

Part 403 is very specific regarding when grab and composite samples must be used for baseline monitoring reports and 90-day compliance reports. See 40 CFR 403.12(b)(5)(iii) and (d). For those reports, the industrial user generally must collect (1) a minimum of four grab samples for determination of pH, cyanide, total phenols, oil and grease, sulfides, and volatile organic compounds and (2) 24-hour composite samples for all other pollutants. Those regulations also specify that composite samples must be flow-proportional unless the industrial user demonstrates that this is infeasible. For periodic compliance reports under 40 CFR 403.12(e) and (h), however, there is no regulatory language that specifically addresses the use of grab and composite samples.

This section of today's proposal addresses (1) the application of 40 CFR 403.5(b)(5)(iii) provisions to the periodic compliance reports; (2) when a time-proportional sample may be used instead of a flow-proportional sample; (3) when multiple grab samples may be composited prior to analysis; (4) whether four grab samples are required whenever grab sampling is appropriate; and (5) the sampling of facilities that discharge less than 24 hours per day. Other issues raised by commenters are also addressed.

What are "grab samples" and when are they required?

A grab sample is "* * * a sample which is taken from a wastestream without regard to the flow of the wastestream and over a period of time not to exceed 15 minutes" ("Industrial User Inspection and Sampling Manual for POTWs," EPA 831/B–94–001, April 1994). However, grab samples of volatile organic compounds (VOCs) must be collected almost instantaneously (i.e., less than 30 seconds of elapsed time) and properly preserved ("Comparison of Volatile Organic Analysis Compositing Procedures," EPA 821/R–95–035, September 1995). An analysis of an individual grab sample provides a measurement of pollutant concentrations in the wastewater at a particular point in time. Grab samples are usually collected manually, but can be obtained with a mechanical sampler.

Grab samples are required in order to accurately analyze those pollutant parameters that may be affected by biological, chemical, or physical interactions and/or exhibit marked physical and compositional changes within a short time after collection. Grab samples should be used when (1) wastewater characteristics are relatively constant; (2) parameters to be analyzed are likely to be affected by the compositing process, such as the procedures used for oil and grease; (3) composite sampling is infeasible or the compositing process is liable to introduce artifacts of sampling; and (4) the parameters to be analyzed are likely to change with storage. In particular, accurate determination of pH, temperature, total phenols, oil and grease, sulfide, volatile organic compounds, and cyanide requires properly collecting and carefully preserving grab samples.

What are composite samples and when are they required?

A composite sample is formed by mixing discrete samples or "aliquots." For a "flow-proportional" composite sample, each individual aliquot is collected after the passage of a defined volume of discharge (e.g., every 2,000 gallons). For a "time-proportional" composite sample, the aliquots are collected after the passage of a defined period of time (e.g., once every two hours), regardless of the volume or variability of the rate of flow during that period. Flow-proportional compositing is usually preferred when effluent flow volume varies appreciably over time. The number of discrete samples necessary for a composite sample to be representative of the discharge depends upon the variability of the pollutant concentration and the flow.

Automatically collected composite samples are usually preferred to collecting grab samples and then manually compositing the grabs into a single sample. Possible handling errors made during the compositing process could yield a sample that is not truly representative of the discharge. However, composite samples can be prepared from manually collected grab samples if each grab contains a fixed volume that is retrieved at intervals that correspond to the periods of wastewater discharge or time of the facility's operation.

When may the requirement for flow-proportional composite samples be waived?

The current regulations allow Control Authorities to waive the requirement for flow-proportional compositing of samples for baseline monitoring reports and 90-day compliance reports in limited circumstances. The Control Authority may accept sample data that are obtained from time-proportional composite sampling or a minimum of four grab samples if flow-proportional sampling is infeasible (e.g., the facility cannot accurately measure flow) and the industrial user demonstrates that these alternative sampling techniques will provide a representative sample of the effluent (40 CFR 403.12(b)(5)(iii)).

b. Stakeholder Comments

What changes did EPA suggest in the May 1997 letter to stakeholders?

In the 1997 draft sent out for stakeholder review, EPA requested comment on whether to allow manual collection and compositing of grab samples for cyanide, volatile organic compounds, and other pollutants not affected by the compositing process.

The draft also discussed the applicability of time-proportional versus flow-proportional sampling methodologies for stakeholder review and comment. EPA attempted to clarify the meaning of "infeasible" in the current regulatory language that allows the use of time-proportional composite sampling where flow-proportional sampling is determined to be "infeasible" (40 CFR 403.12(b)(5)(iii)).

The Agency also proposed that the same sampling and analytical procedures that are required for baseline monitoring reports and 90-day compliance reports be applicable to the periodic compliance reports required under 40 CFR 403.12(e) and (h). The draft recommended, however, that Control Authorities retain the flexibility to determine the number of grab samples needed for periodic compliance reports, while four grabs would continue to be required for the other reports.

EPA also requested comment on the WEF/AMSA Workshop's proposal to eliminate the sampling protocols and requirements specified in the current regulations and instead define what would constitute a "representative sample."

How did stakeholders respond?

There was no clear consensus on the regulatory changes proposed in the draft document. Thirteen commenters had no comment on the proposal. Nineteen commenters essentially agreed with the draft as written. However, the remaining 45 reviewers had fairly divergent opinions as to how the pretreatment sampling requirements could be streamlined. A significant number of respondents (28 out of the 70 commenters) supported the WEF/AMSA proposal to develop a definition and criteria for a "representative sample" that would eliminate much of the regulatory language describing sampling requirements in 40 CFR 403.12 (b), (d), (e), (g) and (h).

What are EPA's responses to specific stakeholder comments?

Several commenters did not support manually compositing cyanide and volatile organic compounds because they believed the sample integrity and accuracy would be compromised. In response, EPA notes that reliable procedures for collecting and compositing cyanide and volatile organics have been developed and EPA has published guidance manuals describing the applicable sampling and analysis methodologies. See "Industrial User Inspection and Sampling Manual for POTWs," EPA 831/B–94–001, April 1994, and "Comparison of Volatile Organic Analysis Compositing Procedures," EPA 821/R–95–035, September 1995.

Another commenter stated that the sampling procedures outlined in 40 CFR Part 136 adequately discuss the relationship between grab and composite samples and that no changes to the regulations are necessary. EPA notes, however, that it continues to receive questions relating to sampling issues and believes that clarification of sampling procedures is necessary.

Other commenters requested that EPA clarify when a composite sample is generated for the purpose of determining compliance with prescribed sample holding times (i.e., does the "clock" start running when the first or last sample aliquot is collected?). EPA notes that for most circumstances sampling procedures specify that the time the last sample aliquot is collected should be the starting time for calculating sample holding times. Also, this requirement is consistent with sampling procedures used in developing individual effluent limitation guidelines for specific categorical industries in 40 CFR 405–471. However, the holding time can commence at the beginning of the compositing period if it is known that beginning the holding time at the end of the compositing period would result in degradation of the sample. See 40 CFR 136.3, Table II notes.

Another commenter proposed that EPA accept continuous recording pH meter records in lieu of discrete grab samples as a demonstration of compliance with pH limits. In response, EPA notes that, as long as the facility uses EPA-approved methods, continuous recording pH meter records are acceptable to demonstrate compliance with pH limits. The industrial user must provide documentation (recording charts and meter calibration records) to verify adherence to the pH range specified in the permit and accuracy of the metering system.

Several commenters believe the proposed regulatory changes will actually increase the workload if manually composited samples are required. In their opinion, compositing samples would be technically more difficult to collect and their inspectors would need additional training to acquire the necessary technical expertise to implement these programmatic changes. One commenter believes POTWs should not be given any authority to prescribe manual compositing of grab samples merely because the POTW determined that the sample quality would not be affected by the compositing process. In response, EPA notes that today's proposal does not require the compositing of individual samples prior to analysis, but rather provides that option in circumstances where it is not now clearly allowed. The only reason to composite the individual grab samples prior to analysis is to save resources; this technique should not be required if compositing the samples results in added expense.

Did commenters support allowing time-proportional sampling when flow-proportional sampling is infeasible?

The merits and inadequacies of using flow-proportional versus time-proportional sampling methodologies generated many comments. A majority

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of the commenters believe that time-proportional sampling is as accurate and far less complicated than flow-proportional sampling. Several commenters stated their belief that time-proportional sampling provides data representative of most waste streams and should always be an acceptable sampling technique. A number of commenters stated that flow-proportional sampling should only be required when flow metering equipment has already been installed at a facility. One commenter pointed out the fact that the magnitude of the flow has little effect on the representativeness of time-proportional versus the flow-proportional sampling techniques; the variability of the flow is the critical factor.

Several other commenters stated that the effluent limitation guidelines for various categorical standards were developed using time-proportional sample data. In their opinion, EPA's insistence upon using flow-proportional sampling techniques to demonstrate compliance with categorical standards is inconsistent and unsupportable. However, if the facility flow rates are so variable that time-proportional sampling would give inaccurate, unrepresentative results, then other, accurate sampling protocols, such as flow-proportional sampling, should be used. In other words, the industrial user bears the responsibility for providing representative sampling data at all times.

Other stakeholders stated that batch dischargers and minimal flow facilities cannot effectively or accurately measure effluent flow and, therefore, cannot use flow-proportional sampling techniques. Many of these facilities have space and right-of-way limitations that make installation of conventional flow measurement systems (e.g., weirs or flumes) difficult. Several commenters stated that installing and maintaining accurate flow measurement devices for small dischargers may add a significant cost burden and have no beneficial impact upon the representativeness of the data obtained. In most cases, commenters stated that time-proportional sampling saves both time and money without compromising accuracy.

Under today's proposal, the Control Authority would be able to authorize the use of time-proportional composite sampling in lieu of flow-proportional sampling upon determining that time-proportional sampling will produce a representative sample.

Did commenters support extending the sampling provisions in 40 CFR 403.12(b)(5)(iii) to periodic compliance reports?

Numerous commenters (mainly POTWs) felt that the Control Authorities should have complete authority to select whatever sampling protocols they believe provide accurate results. Many interpreted the existing regulatory language in 40 CFR 403.12(g)(3) as providing them with the authority to unilaterally set sampling protocols for all periodic compliance reports. EPA recognizes the confusion surrounding this issue. EPA believes that the regulations need to be revised to clarify the applicability of the sampling provisions in existing 40 CFR 403.12(b)(5)(iii) to periodic compliance reports. At the same time, EPA is proposing to revise those provisions to give the Control Authority more flexibility to determine what procedures are necessary for an industrial user to obtain a representative sample.

Could EPA require sampling to be "representative" and not specify the sample type?

The WEF/AMSA Workshop Report recommended that all references to sample "types" (e.g., grab versus composite, flow-proportional versus time-proportional) be dropped and that the regulatory language require only that the sample be a "representative sample." EPA would then define the term "representative sample" to provide the POTW with the flexibility to specify the appropriate sampling protocols. The Report highlighted issues that would have to be addressed in order to define a "representative" sample. These issues include (1) the appropriate sampling period (e.g., 24-hours or during the period of discharge); (2) use of flow-proportional versus time-proportional methods; (3) use of grab samples versus composite samples; (4) use of grab samples for pH monitoring; (5) use of grab samples for degradable and volatile parameters; (6) allowing manual compositing of samples when the methodology is approved by the Administrator; and (7) applying the criteria to instantaneous, daily maximum and monthly average limits.

A significant number of stakeholders were in favor of this proposal and requested that EPA both develop a definition and provide guidance outlining specific criteria necessary to define what constitutes a "representative sample" for specific industrial process scenarios. Several commenters asked that EPA provide a definition of "representative sample" in 40 CFR 403.3 and outline more specific guidelines in 40 CFR 403.12(g).

One dissenting commenter pointed out that the demonstration of a sample's "representativeness" is an additional element in making a determination of "infeasibility." This commenter argued that if the Agency does not provide concrete guidance to define all cases of "infeasibility," then the issue of what type of sample is truly representative cannot be resolved.

EPA is not prepared to offer a comprehensive definition of what constitutes a "representative sample" or specific guidance at this time. Given all of the physical parameters (type of pollutant, volume, concentration, viscosity, chemical reactivity) and different techniques for preserving, compositing (if appropriate), and analyzing the sample(s), a single, all-encompassing definition of a "representative sample" may not be achievable. EPA solicited comments on how to define a "representative sample" in the May 1997 pre-proposal draft; however, no commenter provided specific suggestions. EPA believes that it would be difficult to develop appropriate criteria that could be applied to all types of "representative samples."

EPA believes that the current regulations, as proposed to be modified today, set minimum guidelines for what would constitute a representative sample. EPA solicits input on how any or all of the factors discussed above could be used to define a "representative sample." Stakeholders are encouraged to provide comment and supporting data describing which current requirements are not necessary to obtain a representative sample, or how a representative sample could be more specifically defined. EPA will assess the comments and develop an appropriate response for inclusion in the final regulation.

c. Today's Proposal

What is EPA proposing?

EPA is proposing to clarify the sampling requirements in 40 CFR 403.12. The requirements of 40 CFR 403.12(b)(5)(iii), which currently are explicitly applicable to the baseline monitoring reports and 90-day reports required by 40 CFR 403.12(b) and (d), would be extended to the periodic reports required in 40 CFR 403.12(e) and (h). These changes will be accomplished by consolidating the new requirements for all of the reports in 40 CFR 403.12(g). Redundant sections would be removed.

The proposed regulatory changes would eliminate the requirement that a minimum of four grab samples be taken in all instances to measure pH, cyanide, total phenols, oil and grease, sulfides and volatile organic compounds. Control Authorities will have the flexibility to determine the appropriate number of grab samples required for periodic compliance reports. For new facilities, the industrial user would still be required to take a minimum of four grab samples to measure pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds to meet baseline monitoring and 90-day compliance report requirements. For existing facilities where historical sampling data are available, the Control Authority may authorize a lower minimum. EPA is interested in comment on whether the Control Authorities should be allowed the flexibility to determine the appropriate number of grab samples required to meet baseline monitoring and 90-day compliance report requirements for facilities without historical sampling data as well.

EPA is also proposing to clarify the language currently in 40 CFR 403.12(b)(5)(iii) in two ways. First, EPA is proposing to specifically allow compositing of certain types of grab samples prior to their analysis. The pollutants that could be composited include cyanide, volatile organic compounds, and any other parameters that the Control Authority finds are unaffected by the compositing process as documented in approved EPA methods.

EPA is also proposing that Control Authorities may authorize time-proportional or grab sampling in lieu of flow-proportional sampling as long as the samples are representative of the discharge.

When and what type of grab samples could be manually composited?

Today's proposal would allow multiple grab samples for cyanide and volatile organic compounds collected during a 24-hour period or an operating day to be manually composited in the laboratory prior to analysis. Control Authorities also would be allowed to authorize manually composited grab samples for other parameters that are unaffected by compositing procedures. The main concern is that a composite sample provide an accurate representation of the pollutant in the wastewater. The composite sample should provide analytical results that are comparable to averaged results of the individual grab samples taken over a specific time interval. Generally, a sample can be composited if the analytical method does not require rinsing of the sample vessel as a part of the process and the individual aliquots were properly preserved. In all cases where a series of grab samples is manually composited, those parameters that have preservation requirements in 40 CFR Part 136 must be properly preserved and/or stored at the time of collection as required by the specific analytical method employed prior to compositing. In addition, EPA wishes to reaffirm that some pollutants are not amenable to the compositing process. Total residual chlorine, pH, and temperature samples can not be "composited" under any circumstances because the results would be changed by the compositing process. Therefore, today's proposal would not allow Control Authorities to authorize manually composited samples for these parameters.

Although analytical procedures for compositing oil and grease samples have been developed, the general consensus among laboratory experts is that current techniques do not provide consistently reliable results. However, continuing advances in analytical technology may provide methodologies that will make accurate compositing of oil and grease samples technically less cumbersome and more cost effective in the near future. Therefore, the Control Authority should have the flexibility of allowing industrial users to submit data from composited oil and grease samples as long as the sampling and analytical procedures used are sanctioned by EPA in 40 CFR Part 136 or outlined in technical guidance documents.

EPA guidance ("Industrial User Inspection and Sampling Manual for POTWs," EPA 831/B–94–001, April 1994) describes procedures for manually compositing individual grab samples that will provide accurate results. The reader should also consult the regulations in 40 CFR Part 136 to identify the accepted analytical protocols for specific classes of compounds or individual parameters. A separate guidance manual ("Comparison of Volatile Organic Analysis Compositing Procedures," EPA 821/R–95–035, 1995) describes procedures for accurate compositing of volatile organic compounds.

When could flow-proportional sampling be waived?

Today's proposal would allow Control Authorities to waive the requirement that industrial users collect flow-proportional samples. The regulation would no longer require Control Authorities to require the industrial user to demonstrate that flow-proportional samples are "infeasible."

If the Control Authority doubts the equivalency of the two sampling methodologies (time-proportional versus flow-proportional samples), because of highly variable flow or other complicating factors, it still may require the industrial user to demonstrate that the time-proportional or grab samples are representative of the discharge prior to allowing the industrial user to submit such samples. Today's proposal, however, would delete the requirement that the demonstration be made in all cases.

As always, the Control Authority should prescribe a sampling protocol that produces representative results. The selected protocol should take into consideration all of the operation conditions and the physical configuration of the industrial user facility.

What are the sampling requirements for those facilities that do not discharge continuously?

Today's proposal would clarify that, although a "24-hour composite sample" must be taken within a 24-hour period, the sample should only be collected during that portion of the 24-hour period that the industrial user is discharging from the regulated process and/or from the treatment unit. Continuous sampling over a 24-hour period for a facility that discharges its process wastewater for less than 24 hours (*e.g.*, an 8-hour shift or a 20–30 minute batch discharge) could cause the sample to be diluted in the sampler. Since flows of non-industrial wastewater routinely occur after the shift is over, use of an automatic sampler programmed for a 24-hour sampling protocol would yield unrepresentative results. The proposed 40 CFR 403.12(g)(3) would clarify that industrial users must collect samples that are commensurate with the time period during which the industrial wastewater is actually being discharged. However, the industrial user and Control Authority should be careful to ensure that if wastewater is discharged other than at the time of composite sample collection, that wastewater is not a regulated wastestream.

I. Removal Credits (40 CFR 403.7)

a. Existing Rule

Generally, what aspects of the removal credit regulation is EPA addressing today?

Removal credits are a regulatory mechanism by which industrial users may discharge a pollutant in quantities

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that exceed what would otherwise be allowed under an applicable categorical pretreatment standard because it has been determined that the POTW to which the industrial user discharges consistently treats the pollutant. Today, EPA is proposing to revise one aspect of the removal credit regulations in 40 CFR 403.7.

EPA is clarifying that existing restrictions on removal credit authority for POTWs subject to Overflows apply to Combined Sewer Overflows (CSOs) and Sanitary Sewer Overflows (SSOs). In addition, those restrictions are being revised based on suggestions from several representatives of the SSO subcommittee of EPA's Urban Wet Weather Flows Federal Advisory Committee to further restrict removal credits upstream of SSOs and CSOs and to be consistent with a judicial decision allowing removal credits only to the extent that a pollutant is consistently treated.

Although discussed in previous stakeholder drafts, EPA is not proposing to amend Part 403 to make removal credits available for those pollutants that are not now listed in Part 403, Appendix G as eligible for removal credits. Instead, EPA expects that POTWs that desire removal credits for pollutants not listed in Appendix G will petition the Agency either for promulgation of Part 503 standards for the pollutants for which removal credits are desired or for an amendment to Table II of Part 403, Appendix G. In order for a petition to be considered by EPA, it must contain documentation consistent with the records of decision underlying current Appendix G listings. (Petitioners are referred to "Technical Support Document for the Round Two Sewage Sludge Pollutants" (EPA–882–R–96–003, August 1996).) Data must be included on the toxicity, fate, effects, and environmental transport properties of individual pollutants adequate to allow EPA to construct a Part 503 numerical standard, or to allow EPA to make a finding that the concentration of the pollutant in sewage sludge is not sufficient to create a reasonable probability of negative human health or environmental impacts from that pollutant contained in the sewage sludge considering the specific sewage sludge use or disposal practice being employed by the POTW.

b. Background on Sewage Sludge Issue

When are removal credits authorized?

Section 307(b) of the Clean Water Act directed EPA to establish national Pretreatment Standards for categories of sources to prevent interference with POTW operation and pass-through of inadequately treated pollutants. Because, in certain instances, POTWs could provide some or all of the treatment of an industrial user's wastewater that would be required pursuant to the Pretreatment Standard, the Act also established a discretionary program for POTWs to grant "removal credits" to their industrial users. The credit, in the form of a less stringent categorical Pretreatment Standard, allows an increased concentration of a pollutant in the flow from the industrial user's facility to the POTW provided certain requirements are met.

Section 307(b) establishes a three-part test a POTW must meet in order to obtain removal credit authority for a given pollutant. Removal credits may be authorized only if (1) the POTW "removes all or any part of such toxic pollutant," (2) the POTW's ultimate discharge would "not violate that effluent limitation, or standard which would be applicable to that toxic pollutant if it were discharged" directly rather than through a POTW, and (3) the POTW's discharge would "not prevent sludge use and disposal by such [POTW] in accordance with section [405] * * *" (§ 307(b)). Through several rulemakings, EPA promulgated and revised its removal credit regulations, which are codified at 40 CFR 403.7.

Why are sludge standards a prerequisite to removal credit authority?

The United States Court of Appeals for the Third Circuit interpreted the Clean Water Act as requiring EPA to promulgate the comprehensive sewage sludge regulations required by CWA § 405(d)(2)(A)(ii) before any removal credits could be authorized. See *NRDC v. EPA*, 790 F.2d 289, 292 (3rd Cir., 1986); *cert. denied*. 479 U.S. 1084 (1987). Congress made this explicit in the Water Quality Act of 1987, which provided that EPA could not authorize any removal credits until it issued the sewage sludge use and disposal regulations. On February 19, 1993, EPA promulgated Standards for the Use or Disposal of Sewage Sludge, which are codified at 40 CFR Part 503 (58 FR 9248).

At the same time EPA promulgated the Part 503 regulations, EPA also amended its General Pretreatment Regulations to make removal credits available for the pollutants controlled by those sewage sludge use or disposal standards. EPA also added a new Appendix G to Part 403 that includes two tables of pollutants which would be eligible for removal credits so long as the other procedural and substantive requirements of 40 CFR Part 503 and 40 CFR 403.7 are met. The first table (Appendix G—Table I) lists, by use or disposal practice, the pollutants that are regulated in Part 503 and eligible for removal credit authorization. The second table (Appendix G—Table II) lists, by use or disposal practice, additional pollutants that are eligible for removal credits if the concentration of the pollutant in the sewage sludge does not exceed a prescribed concentration. The pollutants in Appendix G—Table II are the pollutants that EPA evaluated and decided not to regulate during development of the Part 503 regulations. See 58 FR 9381–9385. Minor revisions to Appendix G were made on October 25, 1995 (60 FR 54763).

Will EPA be issuing standards for additional pollutants in sewage sludge?

EPA is now in the second stage of development of sewage sludge standards. The Agency has completed the process of identifying a second set of pollutants that may cause adverse effects on public health or the environment in sewage sludge that is used or disposed ("Round Two Sewage Sludge Pollutants"). The final list of pollutants was submitted to the District Court in Oregon in November 1995 as part of litigation to compel the Agency to develop sewage sludge standards (*Gearhart v. Browner*, Civ. No. 89–6266-HO, D. Oregon.) EPA has identified only two additional pollutant categories for which limits may be developed in Round Two: dioxins/dibenzofurans and coplanar polychlorinated biphenyls (PCBs).

How did EPA determine which pollutants to consider for Round Two sewage sludge standards?

The analysis supporting the selection of these pollutants, and the exclusion of others, is presented in "Technical Support Document for the Round Two Sewage Sludge Pollutants" (EPA–882-R-96–003, August 1996). The pollutants analyzed in that document can be divided into three groups. The first group consists of pollutants that were detected in more than 10 percent of the samples in EPA's 1988 National Sewage Sludge Survey and that had not already been regulated in Round One. For these pollutants EPA performed a thorough review of the scientific literature for human health and toxicity data. To the extent data were available, they were reviewed to determine whether the presence of the pollutants in sewage sludge would present an unreasonable risk to public health and the environment when sewage sludge is used or disposed.

The second group of pollutants consists of pollutants that were detected at least once but in less than 10 percent of the total samples. EPA examined these pollutants only to determine whether they were highly toxic.

The third group consisted of pollutants not detected in any sample during the National Sewage Sludge Survey. EPA did not consider these pollutants for inclusion in Round Two.

EPA decided not to consider further for regulation those pollutants that are either not frequently detected, or are not known to present an unreasonable risk. Pollutants were either not analyzed or not fully analyzed by EPA because they were not detected, were detected infrequently in samples from the National Sewage Sludge Survey, or sufficient data and information on the pollutants' toxicity, fate, effects and environmental transport properties were not available for EPA to make a finding for further regulation.

Would pollutants that EPA is not considering for sewage sludge standards be eligible for removal credits?

When promulgating the initial regulations under Part 503, EPA interpreted the Court's decision in *NRDC v. EPA* as only allowing removal credits for a pollutant if EPA had either regulated the pollutant or established a concentration of the pollutant in sewage sludge below which public health and the environment are protected when sewage sludge is used or disposed. Today's proposal does not change this situation.

What changes did EPA suggest in its 1997 letter to stakeholders?

EPA's letter to stakeholders would have removed the current prohibition against removal credits for pollutants for which EPA has not established a safe level in sewage sludge for the POTW's use or disposal practice. Specifically, if EPA were no longer considering developing a standard for a pollutant for the POTW's sewage sludge use or disposal practice, the POTW could receive removal credit authority for the pollutant (assuming the other regulatory requirements are met) if the POTW submitted with its removal credit application a study that supported the conclusion that the granting of removal credits would not increase the level of pollutants in the POTW's sewage sludge to a level that would have an adverse impact on public health and the environment.

How did stakeholders respond?

State representatives were divided on this proposal, with a majority opposing the proposal or the concept of removal credits generally. Commenters representing industry either supported the proposal or had no comment. Commenters representing POTWs were evenly split. Commenters representing an environmental group opposed EPA's proposal to allow granting of removal credits for those pollutants not controlled by a sewage sludge standard. A few commenters asked EPA to clarify the extent of the study that the POTW would have to perform and the standard that the sewage sludge would have to meet.

A variety of reasons were given for opposing the proposal. One commenter thought that categorical Pretreatment Standards should apply across the board. Others thought that removal credits are difficult to implement or would negatively impact the reuse of sewage sludge. EPA notes that removal credits are specifically allowed by § 307(b) of the Clean Water Act if certain conditions are met, and the Agency has no authority to abolish removal credits altogether.

Some commenters expressed concerns that sludge risk assessment analysis is very complicated. One noted that POTWs with multiple sludge use or disposal options would have to perform separate studies for each option.

Two commenters that favor the availability of removal credits argued that EPA has no authority to require POTWs to perform a health risk assessment in order to obtain removal credit authority because once the Round Two sludge regulations are promulgated, the requirement that removal credits not prevent sludge use and disposal would be satisfied for all remaining pollutants that EPA has decided not to regulate in sewage sludge. An opponent of the proposal argued that EPA could not allow the POTW to perform the study and that removal credits cannot be authorized unless EPA has established the allowable pollutant level in sewage sludge for the POTW's use or disposal practice.

c. Decision on Sewage Sludge Issue

What is EPA's decision regarding sewage sludge and removal credits?

Today's proposal would not provide for POTWs to apply for removal credit authority for pollutants not eligible for removal credits under Part 403. Instead, a POTW or industrial user can currently petition the Agency to establish a Part 503 standard or an amendment to Part 403, Appendix G—Table II for a pollutant along with an analysis of the impact of the pollutant on the use or disposal of its sewage sludge. Upon promulgation of the Part 503 standard or listing of the pollutant in Part 403, Appendix G—Table II, the pollutant would be eligible for inclusion in an application for a removal credit.

What would be the scope of the petitioner's analysis of the risk related to its sewage sludge?

The petitioner's analysis would have to provide sufficient information on toxicity, persistence, concentration, mobility, and potential for exposure for EPA to consider in establishing concentrations of the pollutant in sludge that would not have an adverse effect on public health or the environment when sewage sludge is used or disposed. If a reference dose (RfD) upon which a human health endpoint is based and an ambient water quality criterion (AWQC) that protects aquatic life from the pollutant's effects are not available, the petitioner must provide information on the toxicity of the pollutant and its environmental properties consistent with existing methologies cited in the 40 CFR Part 503 Technical Support Documents. This information must be sufficient for EPA to be able to create an RfD and AWQC and then to establish appropriate concentrations of the pollutant in sewage sludge to protect public health and the environment prior to promulgation of a new Part 503 numerical standard or listing in Part 403, Appendix G—Table II. In addition, sufficient toxicity information relating to the effects on other terrestrial animals and plant species would have to be provided for EPA to consider exposures of these species to the pollutant in order to craft protective numerical criteria for those exposure pathways. Sufficient data on the pollutant's fate effects and environmental transport properties are required to evaluate all relevant exposure pathways and to prepare appropriate numerical standards for each pathway. These data requirements are described in the preamble and the Technical Support Documents to the final Part 503 regulations published on February 19, 1993 (58 FR 9248). The preamble fully describes EPA's approach, which included an analysis of 14 pathways that could result in a pollutant in sewage sludge having an adverse effect on human health or the environment. All 14 pathways may not be applicable to the petitioner's specific situation, but the database submitted by the petitioner must establish both human health and environmental effects with respect to all pertinent pathways for the use or disposal practice employed by the POTW granting the removal credit. This information must

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be sufficient for EPA to promulgate Part 503 numerical standards for those individual pollutants for which removal credits are being sought or findings by EPA that the concentration of these pollutants in sewage sludge after issuance of the removal credits will not create a significant human health or environmental impact.

The petitioner's submitted database can be limited to its particular circumstances, provided the promulgated Part 503 standard is made contingent on those circumstances. For example if the pollutant at issue is in sewage sludge that will be disposed in a surface disposal site, the petitioner need only submit sufficient data on the pollutant's properties relevant to surface disposal. The revision to the POTW's NPDES permit to incorporate the removal credit authority would also require the POTW not to exceed the determined sewage sludge concentration and would specify the associated management practices and reporting requirements.

The study need not be prepared by the petitioner itself, but may be performed by any party. Ultimately, however, it is the POTW that must submit the request for and be given the authority to grant the removal credit.

One commenter asked if the study would have to address the fate of the pollutant for incinerated sludge. As described in the preamble to the final Part 503 regulations, the study would have to determine the dose received by individuals living near the incinerator and would have to compare that dose to available human health criteria (58 FR 9303, February 19, 1993).

Why is EPA not proposing to change the rule?

First, very few POTWs expressed interest in removal credits since they became available in 1993 or in response to the May 1997 letter to stakeholders. And as discussed above, there was substantial opposition among some commenters to allowing POTWs to perform studies as conditions for granting removal credits for pollutants not regulated under either round one or two of the § 405(d) regulations. One commenter argued that allowing POTWs to perform the study would not adequately protect public health and the environment from chemicals that are discharged. The same commenter thought that POTW studies would be more likely to be biased. In response, EPA has decided not to amend Part 403 to include this proposal and notes that data provided in support of petitions to establish Part 503 standards would be peer reviewed and used in conjunction with any risk assessment or other data collected by EPA.

It should be noted that a POTW or an industrial user can currently petition EPA to establish a standard for a particular pollutant, so that removal credits could then be available. EPA believes that this mechanism is the soundest way to develop additional opportunities for removal credit authority.

d. Background on Overflow Issue

How do overflows affect a POTW's eligibility for removal credit authority?

The Court of Appeals in *NRDC* v. *EPA* ruled that removal credits could only be available if the POTW removes a pollutant with a consistency that approximates the consistency with which an industry using the best available technology can remove the pollutant (790 F.2d at p. 292). EPA's 1984 revisions to the Part 403 regulations allowed removal credits to be based on the average removal by the POTW, a rate that the POTW would achieve only 50 percent of the time. The Court ruled that this was not sufficiently consistent removal to support the granting of removal credits.

The Court also ruled that the regulation's determination of consistent removal also failed to take into account the existence of Combined Sewer Overflows (CSOs). In response to the Court's decision, EPA reinstated the provision from its previous regulations regarding CSOs. Under those regulations, a removal credit is reduced by a percentage equal to the percentage of the hours in a year that the POTW's collection system is subject to CSOs. The preamble to the notice reinstating the former regulation did not discuss whether the reinstated regulation satisfied the Court's definition of consistency.

EPA issued its Combined Sewer Overflow (CSO) Control Policy on April 19, 1994 (59 FR 18688). The policy was developed in close consultation with and supported by representatives of POTWs, environmental groups and other stakeholders. An earlier CSO guidance memorandum contained in Appendix A to Part 403 is now obsolete, and EPA is proposing to remove it from the removal credit regulations.

EPA has convened a Federal Advisory Subcommittee to advise the Agency on its policy toward Sanitary Sewer Overflows (SSOs). The presence of SSOs and CSOs results in sewage being discharged to surface waters instead of receiving treatment at the POTW. Some members of the SSO Federal Advisory Subcommittee have suggested that removal credits should not be available if the industrial user discharges upstream from an SSO.

There has been some confusion whether the references in 40 CFR 403.7(h) to "Overflows" apply to SSOs or only to CSOs. Although the definition of Overflow appears to encompass both CSOs and SSOs, a reference in the regulation to EPA's CSO guidance memorandum could suggest that the section applies only to CSOs.

e. Proposal Relating to Overflow Issue

What did EPA propose in its 1997 letter to stakeholders regarding overflows and removal credits?

EPA's 1997 letter contained the same proposal and options outlined below. Most commenters supported the draft proposal. A couple of commenters opposed restricting removal credits if the discharge could exit an overflow point untreated or if it did so more than one percent of the time, especially if the POTW is implementing EPA's CSO policy and any future SSO policy. Currently, removal credits can be granted in such situations if adjusted to account for the percentage of time during which overflows occur. EPA, however, questions whether removal credits should ever be available for pollutants that are not consistently treated, and is proposing that their availability be restricted if a POTW's collection system is subject to overflows.

What is EPA proposing regarding overflows and removal credits?

Today's proposal clarifies that the restrictions on the availability of removal credit authority for POTWs with overflows applies to POTWs with collection systems subject to either CSOs or SSOs. References in the regulation to obsolete guidance on the use of construction grants for CSO control would be removed by deleting Appendix A as well as deleting other references due to the changes in 40 CFR 403.7(h)(2) described below. EPA is proposing to make industrial users that are upstream of CSO or SSO outfalls ineligible for removal credits unless it can be established that their discharges will be consistently treated.

One way to ensure that an industrial user's waste will be consistently treated by the POTW is for it to cease discharging its waste when necessary to prevent its escaping during an overflow event. This option may be practical only for industrial users that need to introduce batch discharges to the POTW only periodically. This option is in the current regulations; today's proposal clarifies that it applies to both CSOs and SSOs.

EPA is proposing to restrict removal credit authority where discharges exit CSO or SSO outfalls untreated. If any overflow point receives treatment (e.g., primary clarification at the outfall) that is demonstrated to consistently treat a percentage of a pollutant, then the POTW responsible for that outfall may apply for removal credit authority for that percentage using the procedures in 40 CFR 403.7(b) for determining consistent removal. If no treatment occurs at any overflow points downstream from an industrial user, that industrial user would not be eligible for a removal credit and would have to comply with the national categorical pretreatment standard. Consistent with this approach, today's proposal would delete the existing provision in 403.7(h)(2) which allows removal credits for discharges that are subject to overflows but reduces the credit by a percentage equal to the percentage of time in a year that the POTW is subject to overflows.

Will EPA consider other options for removal credits if POTWs have overflows?

EPA is soliciting comment on whether to continue to allow removal credits for industrial users upstream of SSO and CSO outfalls regardless of whether any treatment occurs at the outfalls. Under the existing rule, the allowable credit is reduced by the percentage of time a POTW's collection system is subject to overflows. The percentage is calculated based on the number of hours that overflows occur during a year, and there is no limit on what that percentage may be. By authorizing removal credits for POTWs subject to overflows, the current rule reduces the possibility that the industrial user will be required to pretreat its discharge during periods when overflows are not occurring and the POTW would be able to treat it. Because the credit is reduced by the percentage of time the system overflows, the total authorized discharge would be the same as would be authorized in the absence of an overflow. On the other hand, an industrial user's discharge might receive no treatment during periods of overflow. To the extent that these untreated discharges occur during rain events, water quality impacts might be reduced by high flow conditions in the receiving water body.

EPA is soliciting comment on other approaches such as allowing removal credits for industrial users whose discharges would be expected to exit the collection system via SSOs or CSOs no more than one percent of the time. Many categorical pretreatment standards are developed assuming that an industrial user will be in compliance with them 99% of the time if it employs the best available technology. Allowing removal credits where overflows are infrequent enough that the POTW will treat the industrial users 99% of the time is consistent with the methodology for developing the national standards. This approach, however, also could result in wastes receiving no treatment during the infrequent overflow events. On the other hand, it would also eliminate the need for redundant pretreatment by the industrial user of wastes that are eventually treated by the POTW, but only for those industrial users whose discharges are subject to overflows less than one percent of the time.

J. Electronic Filing and Storage of Reports

a. Background

What are the current reporting and record keeping requirements?

The Table below identifies the specific Pretreatment Regulations for reporting, signature, and records retention applicable to industrial users and Control Authorities.

TABLE A

CFR cite	Topic
403.6(a)	Category Determination Request.
403.12(b)	Baseline Monitoring Report.
403.12(d)	Report on compliance with categorical pretreatment standard deadline.
403.12(e) and (h).	Periodic reports on continued compliance.
403.12(f)	Slug Loading notification.
403.12(g)(2)	24-hour noncompliance reporting.
403.12(i)	Annual POTW reports.
403.12(l)	Signatory requirement for Industrial Users.
403.12(m)	Signatory requirement for POTWs.
403.12(o)	Record keeping requirements.
403.12(p)(1)	Notification of discharge of hazardous waste.
403.13(g)	Variance request.
403.16(c)(3)	Upset Provision.
403.17(c)(1–2)	Bypass notification.

When EPA promulgated these regulations, the Agency did not anticipate technologies for electronic reporting and electronic record storage. Consequently, the regulations do not specifically address use of electronic reporting technologies.

Why should the regulations allow for an "electronic option"?

EPA is evaluating all of its programs for regulatory and procedural barriers to allowing electronic reporting and storage of records in place of paper copies. The Agency believes electronic reporting will help reduce the paperwork burden associated with reporting and produce more cost-effective transactions. The Agency intends to promote the adoption of electronic reporting in environmental control programs and to ensure implementation in a manner that is both consistent across the Agency and compatible with the current electronic reporting practices in the private sector.

What is EPA's current policy on electronic reporting?

On September 4, 1996, EPA published a "Notice of Agency's General Policy for Accepting Filing of Environmental Reports via Electronic Data Interchange (EDI)" (61 FR 46684). The purpose of the notice was to announce the Agency's general approach for accepting electronic filing of environmental reports via EDI. As described in that notice, regulated facilities would be able to submit required reports electronically using EDI under certain conditions. First, the facility would enter into a terms and conditions agreement (TCA) with the Agency (as the recipient of the reports). Second, the individual responsible for submitting the report would use a Personal Identification Number (PIN) that would function as a signature on the reports. Finally, under the TCA, the facility would be required to adhere to security and audit/control requirements as described in the notice.

In the September 4 notice, the Agency noted that no specific reporting requirement could be satisfied via EDI until after EPA developed program-specific implementation guidelines. EPA also noted that additional security procedures might be necessary on a program-by-program basis.

What is EDI?

EDI is the transmission, in a standard syntax, of unambiguous information between computers of organizations that may be external to each other. EDI is the most common form of electronic commerce currently used in the private sector to transfer information and products. EDI functions by using a translator to send data from the sender's system through a third party's value added network (VAN) and the receiver's translator to the receiver's system. EPA is determining whether additional security measures, beyond those

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required in the September 4 policy, are needed for the electronic submission of compliance reports using EDI. Today EPA invites comment on the use of EDI, and/or other appropriate forms of electronic reporting, under the pretreatment program regulations to satisfy any or all of the requirements listed in Table A.

What about using the Internet?

In addition to EDI, the Agency is exploring the electronic submission of compliance data via the Internet. Under the auspices of the Common Sense Initiative for Metal Finishing, the Regulatory Information Inventory and Team Evaluation (RIITE) program in cooperation with the Office of Solid Waste (OSW) and the Office of Wastewater Management (OWM) is conducting several pilot projects to test the feasibility of Internet-based reporting and forms. The RIITE Program is developing Internet forms for OSW requirements, as well as for the periodic reporting of continued compliance by industrial users, as required at 40 CFR 403.12(e). Several POTWs and Industrial Users in the RIITE group are engaged in a series of technical, security, and human factors tests using the 40 CFR 403.12(e) Internet form.

The RIITE project is exploring security and operational issues by allowing participants to sign forms electronically using digital signature/encryption standards. They may also test EDI-Internet scenarios. The results of the pilots will be used to identify legal and implementation issues associated with the Internet and, where appropriate, to expand the September 4 policy to incorporate procedures that address the Internet as an avenue for submission of environmental reports.

What has the Agency done to address electronic storage of records?

On November 12, 1996, the Agency recognized the acceptability of electronic record storage in the context of hazardous waste manifests required under the Resource Conservation and Recovery Act (RCRA). In a memorandum to the Safety-Kleen Corporation, the Office of Solid Waste noted that "Safety-Kleen Corp.'s automated manifest record keeping system, which uses a scanner and personal computer to generate and store electronic image files of completed and signed manifests, complies with both the current regulatory requirements addressing the retention of signed manifest copies by waste handlers and the RCRA statutory requirement that hazardous waste facilities provide RCRA inspectors with access to their records for inspection and copying."

b. Stakeholder Comments

What was the Stakeholder response regarding electronic reporting and record keeping?

In response to EPA outreach, forty-six stakeholders commented on the feasibility of some form of electronic reporting and electronic storage of pretreatment records. While most commenters agreed with the concept of electronic reporting, they felt implementation would be a major hurdle due to availability and use of different software and hardware by permitting agencies and permittees. Two commenters cautioned EPA not to make electronic reporting mandatory, and several commenters raised concerns about signatory requirements.

With regard to electronic storage of data, several commenters expressed concerns over preservation of electronic records. One commenter stated that "storage may be adequate for three years, but magnetic records are not permanent and changes in hardware and software have made it impossible to retrieve digital data after more than about five years." This same commenter also discussed how over the years we have learned to preserve paper documents, but we have not yet learned to preserve "electronic files."

c. Electronic Reporting Proposal

How does EPA plan to address electronic reporting and recordkeeping?

EPA is not proposing to amend the regulations to provide for electronic reporting and recordkeeping at this time. Instead, EPA plans to separately propose changes to Parts 122, 123,and 403 to establish criteria or requirements to achieve reliable and secure transmission and storage of electronic data in the NPDES and pretreatment programs. EPA does not currently plan to require any entity to either submit or receive any reports electronically. The Agency merely wants to ensure that the option is available where there is a consensus to do so. Although EPA would not require electronic reporting, State and local authorities would retain discretion under applicable State and local law to require it, and EPA may consider some mandatory electronic reporting in the future.

One commenter suggested that a more complete database of Pretreatment Program information should be required to go along with the additional flexibility provided by this proposal. EPA is considering whether, in order to provide full public access to key information relating to the Pretreatment Program impacts from larger POTWs (e.g., those having dry weather hydraulic flow rates in excess of 5 MGD), to require some mandatory electronic reporting of required annual report information. The timing of this requirement would be dependent upon the development of software and reporting protocols as well as provision of space in an EPA database. Other options for making annual report information publicly available would include mechanisms for posting to a web site by EPA, States, or POTWs.

For purposes of this rulemaking, EPA is soliciting comment on both the proposed voluntary reporting initiative, as well as the possible future mandatory reporting requirement of pretreatment-related information for larger POTWs. Commenters are encouraged to provide both technical opinions and data to support their position with regard to these initiatives. However, EPA would not promulgate a requirement for mandatory electronic reporting of pretreatment-related information without first proposing a more detailed set of protocols and requirements and receiving public comment on these. EPA also invites commenters to discuss any other viable options that would provide more ready access to POTW Pretreatment Program information for the public and Approval Authorities. Discussion of the appropriate size or other criteria that could be used to define POTWs subject to mandatory electronic reporting is specifically desirable.

EPA does not currently plan to propose particular information technology for electronic reporting of pretreatment information. Instead, EPA will propose regulatory revisions to recognize electronic reporting and to establish performance standards for its implementation. This will include requirements to ensure appropriate levels of data integrity, information security, and personal (individual) accountability for the person submitting an electronic report.

Some pretreatment reports may have greater potential for electronic reporting than others. The periodic submission of POTW annual reports (40 CFR 403.12(i)) and industrial user compliance reports (40 CFR 403.12(e)) presents electronic reporting opportunities that could result in significant savings in time and resources for the regulated community and oversight authorities. Other reports that may be particularly well suited to electronic reporting include slug loading reports, 24-hour noncompliance reports, and bypass and upset notifications. For these types of intermittent reports, the speed of electronic reporting may improve use of the information. Other types of reports, such as the written authorization of representatives to sign reports (40 CFR 403.12(l)(3)), provide less opportunity for electronic reporting.

EPA is interested in comment on the appropriateness of electronic reporting and record storage to satisfy the various requirements identified in Table A. To ensure the continuing viability of self-monitoring and self-reporting under the CWA, EPA is particularly interested in and seeks comment on how to ensure personal responsibility and accountability in the individual submitting an electronic report. This concern is especially important in light of the regulatory provisions of 40 CFR 403.12(n) regarding fraud and false statements. In the upcoming NPDES rule, EPA plans to propose general electronic reporting criteria to address necessary security and accountability. Prior to promulgation of final regulations authorizing electronic reporting, the Agency will attempt to integrate the "lessons learned" from the ongoing projects described above, particularly, with respect to these issues. EPA is soliciting comments on electronic filing of reports and requests information on any forms of electronic commerce that can be utilized for environmental reporting and records storage. The Agency is also soliciting comment on the costs associated with the implementation of electronic reporting.

K. General Permits

a. Existing Rule

Are POTWs allowed to issue general permits to control industrial users?

Currently, the Pretreatment Regulations do not prohibit the use of general permits to control the discharge of wastes from industrial users (IUs) to POTWs. POTWs may use general permits to control non-significant industrial users. Section 40 CFR 403.8(f)(1)(iii) requires POTWs to "Control through permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance. * * * In the case of Industrial Users identified as significant * * *, this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user." The preamble to the regulation at 55 FR 30082 (July 24, 1990) emphasizes the importance of POTWs evaluating SIUs on an individual basis to determine the need for individual requirements as necessary. This directive for site specific requirements makes impractical the use of general permits to control SIUs.

What benefits do general permits provide?

Comments received in response to EPA's outreach efforts indicated that most POTWs believed it would be beneficial to be able to issue general permits to similar industries. As explained in the "USEPA NPDES Permit Writers' Manual" (EPA 833–B–96–003, December 1996), the use of general permits allows the permitting authority to allocate resources in a more efficient manner and to provide more timely permit coverage. For example, direct dischargers with common characteristics may be covered under a general permit without expending time and money to issue individual permits to each of these facilities. The use of a general permit also ensures consistency of permit conditions for similar facilities. In the pretreatment context, Control Authorities might benefit from the use of controls for discharges from SIUs to POTWs which are similar to the general permits used in the NPDES permit program (40 CFR 122.28).

b. Stakeholder Comments

What changes did EPA suggest during its stakeholder outreach efforts?

EPA suggested providing Control Authorities the ability to issue general permits. These general permits would be available to members of industrial user groups with substantially the same processes being used and the same wastewaters being discharged. General permits would not be able to be used in complex permitting situations where there are production-based standards, the combined wastestream formula is necessary, or where mass limits are necessary.

How did stakeholders respond?

The majority of commenters supported the proposal to allow Control Authorities to use general permits. One commenter pointed out that granting general permitting authority within the industrial Pretreatment Program has the potential to allow large scale paperwork and other personnel efficiencies to take place.

c. Today's Proposal

What is EPA proposing?

EPA is proposing to allow the use of general permits to regulate significant industrial users (SIUs) in certain circumstances. General permits could only be issued for SIUs that are covered by concentration-based standards or best management practices. All of the facilities to be covered by a general permit must employ the same or substantially similar types of industrial processes; discharge the same types of wastes; require the same effluent limitations; and require the same or similar monitoring.

Because the development of mass limits involves calculations unique to each facility, general permits could not be used for SIUs subject to mass limits. For the same reason, general permits would not be available for industrial users whose limits are based on the Combined Wastestream Formula or Net/Gross calculations or other calculated categorical Pretreatment Standard equivalents (40 CFR 403.6(e) and 40 CFR 403.15).

EPA is requesting comment on whether there are situations where the preceding restrictions might limit the use of general permits inappropriately. Commenters are encouraged to provide specific examples of industries or groups of facilities for which relaxation of one of these restrictions, in order to allow the use of a general permit, would be appropriate, and to discuss how the problem of adequately specifying requirements in a general permit for dissimilar facilities or those requiring site-specific calculations would be addressed.

For an individual SIU to be covered by a general permit, it must file a Notice of Intent to be covered by the general permit unless the POTW has established another mechanism that serves this function. Under such a mechanism, the industrial user should identify its production processes, types of waste generated and the monitoring location or locations at which all regulated wastewaters will be monitored.

This proposal would not relieve the SIU that is subject to the general permit from any reporting or compliance obligations under Part 403.

How would POTWs implement general permits?

A POTW would have to have the necessary legal authority if it wanted to issue general permits. General permits would have to be enforceable to the same extent as an individual permit. The POTW should also have enforcement authority against industrial users that fail to file the required Notice of Intent or other designated mechanism (e.g., an IU that fails to file is subject to enforcement for discharging without a permit as prescribed in the POTW's enforcement response plan).

The POTW would need to develop the general permit and provide notice that the permit is available. The general permit would need to specify exactly

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what characteristics or conditions render an industrial user eligible for coverage under the general permit. The general permit would have to impose all of the conditions of individual permits listed in 40 CFR 403.8(f)(1)(iii)(A) to (E), except that the monitoring location may be identified as that listed in a facility's Notice of Intent or other mechanism designated by the POTW.

A POTW could make coverage by the general permit mandatory or optional. In either case, if an industrial user is to be covered by the general permit, it must file the Notice of Intent or meet other requirements established by the POTW to be covered by the general permit.

This modification should help POTWs by providing a cost-effective method to cover large numbers of similar facilities under a single permit. This is expected to reduce the administrative burden of issuing separate permits to similar facilities.

Today's proposal would not preclude Control Authorities from issuing individual permits where necessary. Today's proposal also would not restrict Control Authorities' existing authority to use general permits to regulate facilities that are not considered significant industrial users.

It is important to note that in the case where a Control Authority does not have the authority or procedures for issuing general permits in its approved program, a shift by the POTW to a general permit system for a given group of significant industrial users would be considered a substantial modification under 40 CFR 403.18(b)(3). The annual report would indicate which SIUs are covered by each general permit.

EPA is requesting comment concerning the mechanism POTWs should use for industrial users to request coverage under a general permit. The NPDES permit program requires facilities to file a notice of intent to be covered by a general permit. However, since NPDES permit issuance and processing procedures are very different from those used for the pretreatment program's control mechanisms, a mechanism other than a notice of intent may be appropriate for pretreatment general permits.

L. Best Management Practices (40 CFR 403.5; 403.8(f); and 403.12(b),(e), and (h))

a. Existing Rule

What are best management practices?

Best management practices (BMPs) may be generally defined as practices that are intended to keep pollutants out of a facility's wastestream or from reaching a discharge point and may be contrasted with numeric effluent limits that regulate the pollutants in a wastestream. Although the Pretreatment Regulations do not define BMPs, the NPDES regulations at 40 CFR 122.2 define BMPs as schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce pollution. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

There are two distinct uses of BMPs as pretreatment limitations. These are local limits established by the POTW and categorical Pretreatment Standards established by EPA.

What regulations address the use of BMPs as local limits?

Currently, the Pretreatment Regulations do not address the use of BMPs as local limits. For example, 40 CFR 403.5(c) requires POTWs to develop "specific limits" and "specific effluent limits." It is not clear whether POTWs could satisfy this requirement by developing BMPs rather than numeric limits.

The question of whether a BMP falls within the meaning of "limit" or "local limit" arises throughout the regulations. For example, it is not clear whether the word "limit" includes BMPs for the purpose of the local permitting requirements under 40 CFR 403.8(f)(1)(iii)(C).

The "Guidance Manual on the Development and Implementation of Local Discharge Limitations Under the Pretreatment Program" (EPA 833/B–87/202, December 1987) provides general information on the use of BMPs as local limits. Specifically, the guidance explains, "The development and implementation of numeric local limits is not always the only appropriate or practical method for preventing pollutant pass through and interference, or for protecting POTW worker health and safety. Control of chemical spills and slug discharges to the POTW through formal chemical or waste management plans can go a long way toward preventing problems. A local requirement for an IU to develop and submit such a plan can be considered as a type of narrative local limit and can be a useful supplement to numeric limits." The guidance then provides more detailed information on the different ways management plans can be applied.

What regulations address the use of BMPs as categorical standards?

Certain categorical Pretreatment Standards allow the use of BMPs in place of the established numeric effluent limit. For example, facilities may develop toxic organic management plans in lieu of sampling to demonstrate compliance with the total toxic organic limit in 40 CFR Part 433 (Metal Finishing category). The Pesticides Formulating, Packaging, and Repackaging (PFPR) regulation provides a pollution prevention alternative as an option that may be chosen rather than complying with the "zero discharge" limitations. See 40 CFR Part 455 (61 FR 57518, November 6, 1996).

Although the PFPR and some other categorical standard regulations provide for reporting compliance data related to BMPs, the current Part 403 Pretreatment Regulations do not. See 40 CFR 403.12(b), (d) & (e). The existing requirements focus on sampling data to demonstrate compliance with numeric limits rather than documentation to determine compliance with a BMP.

b. Stakeholder Comments

What changes did EPA suggest during its stakeholder outreach efforts?

EPA suggested that POTWs be allowed to use best management practices (BMPs) as local limits. This would provide POTWs the option currently available to NPDES permit writers under 40 CFR 122.44(k), which allows the use of BMPs in lieu of numeric effluent limits. EPA also suggested revising the reporting requirements for numeric limits so that they would encompass BMPs.

How did the stakeholders respond?

Most stakeholders indicated they supported the proposal. Some of the commenters provided examples of how they are already using BMPs to control certain wastewater discharges where they found it impractical to apply a numeric effluent limit. Some stakeholders, however, did not feel it was appropriate to provide this authority to POTWs. These comments will be addressed in the following section devoted to "Today's proposal."

c. Today's Proposal

What is EPA proposing?

EPA is proposing to clarify that best management practices developed by POTWs may serve as local limits required by 40 CFR 403.5(c)(3). The BMPs would be enforceable under 40 CFR 403.5(d). They would be included as local permit requirements under 40 CFR 403.8(f)(1)(iii)(C).

EPA is also proposing to modify 40 CFR 403.12(b), (e) & (h) to clarify the reporting requirements that apply when BMPs are used as Pretreatment Standards. This would include any documentation required by the Control Authority or the standards themselves to demonstrate compliance with BMPs that are included in national categorical standards, as well as any documentation required by the Control Authority to demonstrate compliance with BMPs that serve as local limits.

When could POTWs develop BMPs?

EPA anticipates that POTWs will elect to use BMPs instead of numeric local limits in circumstances similar to their use in the NPDES permits program. NPDES permits may require compliance with BMPs in cases where calculation of numeric effluent limitations is not feasible or as a supplement to numeric limits set in a guideline or as otherwise appropriate to meet the requirements of the Clean Water Act (40 CFR 122.44(k)). BMPs may be appropriate for regulating releases when the types of pollutants vary greatly over time, when chemical analyses are inappropriate or impossible, and when other discharge control options are inappropriate.

One commenter felt that BMPs should not be allowed "in lieu of" numeric limits; rather, BMPs should only be allowed in addition to numeric limits because BMPs could not be set for specific pollutants. Another commenter felt that BMPs could not be allowed as local limits because the Clean Water Act did not provide authority for them as local limits.

For the BMPs to be considered local limits under 40 CFR 403.5(c), they must protect against pass through and/or interference. This will require the POTW to evaluate the BMPs during the technical evaluation of its local limits. During the technical evaluation for local limits, the POTW will determine the maximum allowable headworks loadings (MAHL) for pollutants of concern. This MAHL will then be allocated to the different contributing sectors of the service area, such as domestic loadings, commercial loadings, industrial loadings and a safety factor. Based on these considerations, the POTW will decide how to control the different contributing sectors in order to protect against pass through and interference. Often the POTW simply allocates a portion of the loading to control industrial contributions; this is considered to be the maximum allowable industrial load (MAIL). The MAIL is then converted into the local limit which is often expressed as an across-the-board concentration applicable to all industrial sources or all "users of the POTW." This is not the only way local limits can be developed. Another option available to the POTW is to apply the MAIL to all industrial and commercial sources and to use a mixture of BMPs and numeric limits to control industrial and commercial sources of pollutants. Whatever the allocation scenario, the BMPs are developed by the POTW to protect against pass through and interference, and are local limits.

What input does EPA need on this proposal?

EPA is requesting comment on the appropriateness of the use of best management practices as 40 CFR 403.5(c) limits. EPA is requesting examples of instances where BMPs may be more appropriate or may provide better environmental protection than numeric effluent limitations.

M. Significant Noncompliance Criteria (40 CFR 403.8(f)(2)(vii))

a. Existing Rule

How is significant noncompliance currently defined?

"Significant Noncompliance" (SNC) is defined in 40 CFR 403.8(f)(2)(vii) to include violations that meet one or more of eight criteria. The criteria are: (1) Chronic violations of discharge limits (where 66 percent of all measurements taken during a six-month period exceed the daily maximum limit or the average limit for the same pollutant parameter); (2) technical review criteria (TRC) violations (where 33 percent or more of all measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC equals 1.4 for BOD, TSS, fats, oil and grease and 1.2 for all other pollutants except pH)); (3) any other violation of a pretreatment effluent limit that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through; (4) any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge; (5) failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for certain activities; (6) failure to provide required reports within 30 days after the due date; (7) failure to accurately report noncompliance; and (8) any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local Pretreatment Program.

What are the background and purpose of the SNC criteria?

On July 24, 1990, EPA modified 40 CFR 403.8(f)(2)(vii) to include the existing definition of SNC (55 FR 30082). The purpose of this modification was to provide some certainty and consistency among POTWs for publishing their lists of industrial users in noncompliance. The modification was modeled after the criteria under the NPDES program used in determining SNC violations for direct dischargers. By making the modifications, EPA also established more parity in tracking violations by direct and indirect dischargers.

What happens when an industrial user facility is in SNC?

POTWs are required to annually publish a list of industrial users in SNC at any time during the previous twelve months. The POTW must publish this list in the largest daily newspaper published in the municipality in which the POTW is located. The Agency emphasizes that industrial users are liable for any violation of applicable Pretreatment Standards and requirements and strongly encourages Control Authorities to take some type of enforcement response for each such instance of noncompliance. In fact, the very underlying premise of the Enforcement Response Plan is that there will be some type of response for all instances of noncompliance. Whether an industrial user is identified as being in SNC does not determine the type of enforcement action that should be taken. Appropriate types of enforcement responses are addressed in the POTW's Enforcement Response Plan, although EPA guidance recommends that violations rising to the level of SNC be met with some type of formal enforcement action like an enforceable order ("Guidance For Developing Control Authority Enforcement Response Plans," EPA 832-B–89–102, September 1989).

b. Stakeholder Comments

On what parts of the SNC criteria is EPA seeking comment?

EPA is not proposing to amend the entire provision on SNC, nor is the Agency seeking comment on all of it. Instead, EPA is proposing limited changes and seeking comment on a number of options for a few specific

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provisions. EPA considered the recommendations and issues related to SNC suggested by a number of commenters, including the WEF/AMSA workgroup. These issues are discussed below.

1. Publication

Currently, POTWs are required to annually publish a list of industrial users which, at any time during the previous twelve months, were in significant noncompliance. This list must be published in the largest daily newspaper published in the municipality in which the POTW is located (40 CFR 403.8(f)(2)(vii)). The purpose of this provision is to notify the public of violations. The provision also offers a disincentive for violating because of the resulting "bad press."

Commenters have suggested a number of possible revisions to this provision. One would allow publication in any daily newspaper published in the municipality instead of the "largest daily newspaper." Such a modification may result in lower costs to the municipality but it may not be as effective in providing (1) notice to the public or (2) a deterrent effect on the industrial user. One commenter suggested requiring a press release to all daily papers discussing the publication and leaving the actual choice of where to publish up to the POTW. Another commenter suggested requiring the industrial users to pay for the publication.

Another option for amending this provision is focusing on the circulation of the newspaper. For example, the Agency could require publication in the newspaper with the largest circulation in the municipality in which the POTW is located. This could be a daily or weekly (or other frequency) paper. A number of commenters supported this approach, although one noted how difficult it would be to find out what a paper's circulation was. After considering these various suggestions, EPA is today proposing to modify this requirement to be consistent with the July 17, 1997, amendments to Part 403 regarding modifying POTW Pretreatment Programs (62 FR 38406). Under the newly amended 40 CFR 403.11(b)(1)(i)(B), publication can be in any paper of general circulation within the jurisdiction served by the POTW that provides meaningful public notice. EPA believes that such a performance standard for the Control Authority appropriately balances the need to allow flexibility to select choices available in a particular community, with the need to ensure effective public notice and deterrence of "bad actors."

EPA is also seeking comment on an appropriate definition for "meaningful public notice" to ensure some level of consistency across the pretreatment programs. One option for defining the phrase is to tie it to the circulation of the paper. For example, circulation of the chosen paper must be to at least some specified percent of the POTW's service population.

A number of commenters expressed concern about where in a paper the notice could be found. One commenter suggested EPA should specify where the notice should be placed (e.g., somewhere more prominent than the Public Notice section). Because there is no existing requirement on where to publish the notice, POTWs are currently free to publish the notice in whatever section they feel is most appropriate.

EPA is seeking comment on this and any other appropriate modification to the publication requirements.

2. Applicability

Under the existing regulations, SNC can apply to any industrial user. The WEF/AMSA workgroup recommended that SNC should only be applied to significant industrial users (SIUs). EPA supports this recommendation and is proposing to modify the regulations to apply SNC only to SIUs. This approach is consistent with the NPDES SNC policy which only applies to major dischargers. See "Revision of NPDES Significant Noncompliance (SNC) Criteria to Address Violations of Non-Monthly Average Limits," memorandum from Steven A. Herman, Assistant Administrator for the Office of Enforcement and Compliance Assurance, September 21, 1995. Additionally, this modification should cut down on administrative burdens and allow better resource targeting. POTWs have authority to designate industrial users as SIUs. This ensures the POTW's ability to address all potentially problematic users adequately. The Agency wants to make it clear that this change is focused on the POTW's publication and reporting requirements. EPA fully expects POTWs to take appropriate enforcement actions against any industrial user that violates a pretreatment standard or requirement. POTWs would, of course, have the option of publishing non-significant industrial users along with their SIUs in SNC.

One commenter was opposed to having SNC apply only to SIUs, noting that such an approach would appear to force larger users to shoulder the regulatory burden for all users. They were concerned that smaller users, who may in the aggregate have the potential to harm the system, would go unaddressed. The distinction EPA is making today is not focused on the size of the facility; rather, we focus on those dischargers with the largest potential to impact the system. EPA continues to strongly encourage POTWs to use their authority under existing 40 CFR 403.3(t) to designate any industrial users as significant if they have the reasonable potential to adversely affect the POTW's operation or to violate any Pretreatment Standard or requirement. This includes considering smaller facilities that have the potential (either individually or collectively) to impact the system. Furthermore, all industrial users are required to comply with Pretreatment Standards and requirements, regardless of whether they are designated as SIUs. As noted previously, EPA expects appropriate enforcement to be taken for each violation by any industrial user.

EPA is seeking comment on whether parts of the SNC criteria should still apply to any industrial user. For example, the regulations could continue to require that any industrial user whose discharge (1) causes, alone or in combination with other discharges, pass through or interference (40 CFR 403.8(f)(2)(vii)(C)), (2) causes imminent endangerment to human health, welfare or the environment, or (3) has resulted in the POTW's exercise of its emergency authority (40 CFR 403.8(f)(2)(vii)(D)) be considered in SNC. Some commenters felt that this was not necessary since these industrial users should already be designated as SIUs and, therefore, subject to SNC. One commenter noted that POTWs should be able to use the provision under 40 CFR 403.8(f)(2)(vii)(H) ("any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program") to address these non-significant industrial users. Other commenters expressed concern that POTWs were not designating these types of dischargers as SIUs, and that if today's proposal were adopted, information on the compliance status of many industrial users with a reasonable potential for causing violations would be unavailable and the disincentive resulting from SNC designation would be lost. One option for addressing this issue is to add a specific note that in addition to all SIUs that meet the criteria, POTWs must include any non-significant industrial users who meet a subset of the criteria. One commenter proposed that POTWs be given a reviewable option of not including an industrial user as being in SNC even though it meets the criteria. When the Control Authority exercises this option, it must explain its reasoning in its annual report and the Approval Authority may veto that decision.

Another commenter raised the issue of applying SNC to all categorical industrial users even if they are not SIUs. As noted earlier in the preamble, EPA is proposing to allow Control Authorities to exempt certain "non-significant" categorical industrial users from the definition of SIU.

EPA is seeking comment on these issues and on today's proposed language.

3. Daily Maximum or Average Limit Violations

Currently 40 CFR 403.8(f)(2)(vii)(A), (B), and (C) address violations of daily maximum or longer-term average limits.

Commenters have recommended revising these subparagraphs to address a broader range of violations, not just daily maximum or monthly average limits. EPA is proposing to modify the provisions to address Pretreatment Standards (defined under 40 CFR 403.3(j)). (EPA has included language addressing both Pretreatment Standards and Pretreatment Requirements under subsection (C) where the provision is not specifically tied to a numeric limitation.) This is important since some local limits may be expressed as instantaneous limits or narrative limits. Furthermore, the revised language addresses other types of requirements like operational standards. This is generally consistent with EPA's recent revision to its NPDES SNC policy where EPA broadened the criteria to address non-monthly average limit violations. EPA supports this approach and is proposing to modify the regulation accordingly. EPA notes, however, that the WEF workgroup recommended against applying this to instantaneous limits. EPA is seeking comment on this issue and on today's proposed language.

Under the NPDES SNC policy, when a parameter has both a monthly average and a non-monthly average limit, a facility is only considered in SNC for the non-monthly average if the monthly average is also violated to some degree (but less than SNC). EPA is seeking comment on whether such a caveat is also appropriate for the pretreatment program.

4. Technical Review Criteria

Under the existing regulations, technical review criteria (TRC) are numeric thresholds used to define a subcategory of SNC based on the magnitude of an effluent violation. A TRC violation occurs where 33 percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC. TRC equals 1.4 for BOD, TSS, fats, oil, and grease and 1.2 for all other pollutants except pH (40 CFR 403.8(f)(2)(vii)(B)).

The WEF/AMSA workgroup recommended revising the use of TRC to consider the impact of analytical variability and "method detection limit" methodologies. Members raised questions about the technical and scientific basis for the TRC with respect to pretreatment violations. They also recommended that TRC violations be assessed only when the criteria are exceeded by a magnitude greater than the precision of the test. For example, if the methodology is 0.01 mg/l and the TRC level is 0.13, a reading of 0.14 would not be considered an exceedance of the criteria.

The existing provision is consistent with the NPDES approach which has generally been accepted over the years as an indicator of a "significant" level of exceedance which should be reviewed for enforcement purposes. Because the TRC is derived from the Quarterly Noncompliance Report (QNCR) language under the NPDES program, EPA looked at the record for the QNCR for information on its basis. The NPDES criteria were developed by the Regions and reviewed by the States and the Compliance Task Force of the Association of State and Interstate Water Pollution Control Administrators. EPA chose the TRC to provide simple criteria that could be applied to effluent data without requiring additional information on production levels, monitoring frequencies, analytical methods, or the basis for a limit. Such criteria are easy to apply to all violations and are easy for the public and permittee to understand. Furthermore, EPA made it clear that it did not intend the TRC to be related to the notion that a well-operated treatment plant varies somewhat in performance and may exceed its permit limit some percent of the time.

The TRC is merely a criterion that defines effluent violations which must be reported on the QNCR. EPA used the concept of a "well-operated treatment plant" to establish some regulatory limits for the Best Available Technology Economically Achievable (BAT) (see examples 48 FR 32469 and 48 FR 11839) that ensure that the plant operates and maintains the proper technology. Variations in measurements due to analytical methods, treatment system operation, and other sources inherent in this data set, are already considered in the development of the BAT limitation for national categorical standards. In fact, EPA noted that "sound regulatory policy dictates that (BAT) levels be chosen that lessen the necessity for analytical disputes without setting the limits so high that inadequate treatment is allowed" (48 FR 11839). Similar considerations may be made for water quality based effluent limits in NPDES permits to deal with limits below detection levels and the statistical basis for permit limits. See EPA's "Technical Support Document for Water Quality-based Toxics Control," 1991. The TRC is not intended to be an additional allowance for variability in treatment or effluent monitoring; rather, it represents one characteristic (magnitude) of effluent violations which EPA considers to be of concern and serves as a threshold for mandatory reporting of effluent violations (50 FR 34652).

The same considerations apply to the TRC as it is applied to categorical standards in the pretreatment program and may be relevant for local limits. EPA believes the magnitude of an effluent violation is a significant factor and needs to be addressed under the pretreatment program. At the same time, EPA recognizes that there may be significant, site-specific variability in the development and implementation of local limits, so that a single multiplicative factor may not be appropriate for applying TRC in every case.

EPA is not proposing to amend the TRC (other than as discussed above under section 3 "Daily maximum or average limit violations") today. However, EPA is seeking comment on this issue, particularly as it relates to local limits. EPA is interested in suggestions for workable alternatives to the current TRC provisions that would ensure that the magnitude of a violation continues to be incorporated in the definition of significant noncompliance, and that would not unduly increase the workload on either the Control Authority or the Approval Authority.

5. Late Reports

The existing regulations require that dischargers who submit reports 30 days late be considered in SNC. This is consistent with the NPDES SNC approach for late reports.

SNC for late reports is a very contentious issue. Some commenters stated that reporting is important in and of itself and it serves a vital role in ensuring adequate implementation and oversight of the pretreatment program. Some commenters thought reporting was critical, but Control Authorities need more flexibility in determining

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when a late report resulted in SNC. Other commenters stated reporting was important but it should not be equated with effluent violations. The WEF/AMSA workgroup recommended that EPA provide Control Authorities with greater flexibility but did not offer specific recommendations.

Many commenters did offer specific suggestions for amending this provision. One option would be to tie SNC to a pattern of late reporting, rather than requiring a single late report to trigger SNC status. The regulation could leave it to the Control Authority to determine what constitutes a "pattern of late reporting" warranting SNC, or, alternatively, the regulation could specify a numeric criterion, such as when 33 percent or more of the required reports in a specified reporting period are more than 30 days late. This would be consistent with the current provisions regarding when TRC violations trigger SNC.

Another approach would be to tie SNC to whether the late reports indicated that a monitoring or numeric limitation violation had occurred. For example, the regulation could allow the Control Authority to waive SNC when a late report showed no violations. This might also be tied to a requirement that the Control Authority receive and document a satisfactory response from the SIU in accordance with its Enforcement Response Plan. Such waiver authority might also be limited in its frequency of use (e.g., to no more than once in a two or five year period) or in the degree of lateness for which it could be used (e.g., only for reports received within six months).

Another option might be to limit the types of late reports that may be considered SNC (e.g., only those specifically required under 40 CFR 403.12). Still another option would be to extend the time period. This could be done by allowing 45 or 60 days before a late report becomes SNC. Another alternative would be to retain the 30 day period before a late report becomes SNC, but to require newspaper publication only for reports that are more than 45 days late.

Another approach would be to provide the Control Authority with total discretion in determining whether reporting violations constituted SNC. A variation on this approach would be to allow Control Authorities a reviewable option of not including an SIU as being in SNC for a late report. Under this approach, when Control Authorities exercised this option, they would have to explain their reasoning in their annual report and the Approval Authority could challenge that decision. Some combination of these options may also be considered.

In considering revisions to the late reporting criterion for SNC, EPA notes that implementation of the Pretreatment Program relies heavily on a self-policing and self-reporting system. This self-reporting is important to enforcement. If a failure to report becomes routine, the entire program can be weakened. At the same time, EPA appreciates the concerns of commenters who believe that an occasional late report does not rise to the level of significance of most of the other SNC criteria, especially if it shows no substantive violations.

Consequently, EPA is seriously considering revising the late reporting criterion for SNC. However, because of the wide variety of suggestions that have been offered, EPA is not proposing a specific change at this time. EPA believes it needs more time to consider all of these options before making a final decision. EPA is thus soliciting comment on all of the options discussed here, or combination of these options, that stakeholders would recommend. Based on its further considerations and comments received, EPA may include a revision, consistent with the options discussed here, to the late reporting criterion for SNC in the final rule.

EPA wishes to emphasize that the discussion in this section and the changes being considered relate solely to late reporting as a criterion for SNC status. EPA reminds commenters that all late reports, even those that are only one day late, are a violation of pretreatment regulations.

6. Rolling Quarters

Section 40 CFR 403.8(f)(2)(vii)(A) and (B) concern violations evaluated over a six-month period. EPA's policy is that these criteria should be evaluated on a rolling quarter basis (i.e., a POTW should evaluate an industrial user's performance at the end of a quarter using data from the previous six months). EPA does not necessarily need to amend the regulations to change its policy.

The WEF/AMSA workgroup suggested using a static six-month period. Some commenters have suggested using a static six-month calendar period (e.g., January–June and July–December). Others have suggested using a rolling six-month period that begins with a violation.

Sampling once every six months is only a minimal requirement and industrial users are free to sample more often. Several commenters expressed concern over SNC determinations based on only one data point and others expressed concern over resampling. However, if a violation is detected, 40 CFR 403.12(g)(2) already requires the industrial user to resample and submit the results within 30 days of becoming aware of the violation. It would seem prudent for SIUs to sample early in any quarter so that, if there is a violation, they can take action to correct any problem and have enough time to resample and demonstrate compliance. EPA expects SNC determinations based on one data point will be rare.

Some commenters expressed concern over being published in the newspaper for being in SNC for two years where violations were shown in October, November, and/or December. Again, EPA believes that additional sampling can often balance the initial violation during the next quarter (January through March) if the user has returned to compliance, therefore, there would be no SNC violation and no requirement to publish. A September 9, 1991, memorandum from Michael B. Cook, Director of EPA's Office of Wastewater Enforcement and Compliance, also discusses this issue. "If a facility has been determined to be in SNC based solely on violations which occurred in the first quarter of the 15-month evaluation period (i.e., the last quarter of the previous pretreatment year) and the facility has demonstrated consistent compliance in the subsequent four quarters, then the POTW is not required to republish the industrial user (IU) in the newspaper if the IU was published in the previous year for the same violations' ("Application and Use of the Regulatory Definition of Significant Noncompliance for Industrial Users," EPA memorandum to Water Management Division Directors, Regions I–X and Approved Pretreatment State Coordinators, September 9, 1991). In other words, where the pretreatment year is a calendar year, and an IU had a violation in December 1996 causing it to be in SNC, it would have to be published in the newspaper in 1997. If that same IU did not violate any Pretreatment Standard or requirement from January through December 1997, it would not need to be published in 1998. If there were any violations of any Pretreatment Standards or requirements in 1997 (regardless of the nature or magnitude), the IU would be required to be published in the newspaper in 1998.

EPA is seeking comment on whether it should go further in allowing Control Authorities to waive the second publication where that second publication is based solely on the violations occurring in the last quarter of the previous pretreatment year. Such a waiver would not be available where an SNC determination is based on

violations in the first quarter. For example, (assuming the POTW uses a calendar year) where an IU does monthly sampling and has one daily maximum violation for zinc in September, October, November, and December (1996) and January (1997), the IU would have to be published in 1996 for the violations from September through December, and would be published in 1997 for violations from October through January. The second publication is not based solely on violations of the last quarter of the previous year because SNC has been determined using data from the first quarter of the pretreatment year. The pretreatment year is based on the annual report. Again, note that EPA fully expects POTWs to take appropriate enforcement for all the violations in these examples. The only issue being discussed is whether the POTW should publish the user twice for the same violation. This waiver authority could also be subject to Approval Authority approval. Another option would be to base SNC determinations for violations occurring in the first quarter on only three months of data. Thus, if the SNC criteria were exceeded based on either the first three months or the first six months of data, the facility would be placed in SNC that year. This would eliminate any possibility of a facility being placed in SNC twice for the same violations.

EPA uses the rolling quarter approach in the NPDES program. Some commenters said this approach is too complicated while others said that once the policy is explained, it is quite easy to use. Several commenters expressed concern that the rolling quarter policy was not being used consistently across the country. One option that would alleviate this problem is to amend the regulations to codify the rolling quarter approach making it mandatory for all programs.

EPA is proposing no specific change but is considering the options discussed above. EPA is seeking comment on this issue.

c. Today's Proposal and Request for Comments

What modifications to 40 CFR 403.8(f)(2)(vii) is EPA proposing?

EPA is proposing three modifications to the SNC provision today. First, EPA is proposing to amend 40 CFR 403.8(f)(2)(vii) to allow publication of the SNC list in any paper of general circulation within the jurisdiction served by the POTW that provides meaningful public notice. Second, EPA is proposing to amend the SNC criteria so that they must only be applied to significant industrial users. Third, EPA is proposing to amend 40 CFR 403.8(f)(2)(vii)(A), (B), and (C) to address more than just daily maximum and monthly average limits.

N. Miscellaneous Changes

1. Signatory Requirements for Industrial User Reports and POTW Reports (40 CFR 403.12(l) and (m))

a. Existing Rule

Sections 40 CFR 403.12(l)(1)(ii) and 40 CFR 122.22(a)(1)(ii) contain identical requirements for when a plant manager may sign a report required for the Pretreatment and NPDES permitting programs as a responsible corporate officer. Currently, in order to sign on behalf of a company, the manager must manage a facility with more than 250 employees or $25 million in sales or expenditures. On December 11, 1996, EPA proposed to revise 40 CFR 122.22(a)(1)(ii) to replace the numeric criteria for designating an appropriate signer with more flexible narrative criteria (61 FR 65270). Rather than specify the resource levels the signer must manage, the revised criteria would specify the authority and responsibilities a manager must have in order to sign the report. The revision would require the manager to have the authority to make capital investment decisions and assure long term environmental compliance. In the preamble to the proposal, EPA noted that those who are eligible under the current numeric criteria would remain eligible under the proposed rule. In response to comments received on the proposal, EPA intends to require that the manager have the responsibility for making major capital investment recommendations rather than the unilateral authority to make such decisions.

Section 403.12(i) also requires reporting; however, in this case the report concerns the status of Pretreatment Program activities and it is submitted annually by the POTW to the Approval Authority. Section 403.12(m) requires this report to be signed by "a principal executive officer, ranking elected official or other duly authorized employee if such employee is responsible for overall operation of the POTW."

b. Today's Proposal

EPA is proposing to revise the signatory requirements for industrial users at 40 CFR 403.12(l)(1)(ii) to adopt the same language that EPA plans for requirements for direct dischargers at 40 CFR 122.22(a)(1)(ii).

EPA is also proposing to revise the signatory requirements for POTW reports at 40 CFR 403.12(m) so the requirement will be more consistent with signatory requirements in the current 40 CFR 122.22(a). EPA is proposing to modify the existing regulatory language to allow the duly authorized employee to be an individual or position having responsibility for the overall operation of the facility or activity such as the position of POTW Director, Plant Manager, or Pretreatment Program Manager. This authorization must be made in writing by the principal executive officer or ranking elected official, and submitted to the Approval Authority prior to the report being submitted.

2. Net/Gross Calculation (40 CFR 403.15)

a. Existing Rule

Net/gross calculation allows consideration of pollutants in intake water in development of technology-based limitations. EPA modified 40 CFR 403.15, Net/Gross calculation, in 1988 so that this provision would be consistent with the NPDES provision for net/gross which had been revised earlier. See discussion at 53 FR 40602–40605. The NPDES provision (40 CFR 122.45 (g)) is an "or" test regarding application of effluent standards on a net basis versus control systems meeting standards in the absence of pollutants in the intake water; that is, meeting either condition allows consideration of adjustment. However, the actual language EPA used to modify 40 CFR 403.15 in 1988 resulted in an "and" test in which both conditions would have to be met. As there are no categorical guidelines which specify application on a net basis, in effect this was a prohibition on the use of the net/gross provision in the Pretreatment Program.

b. Today's Proposal

EPA is proposing to revise the language in section 40 CFR 403.15 to be consistent with the NPDES regulations and with the intent of the 1988 modification package. Categorical Pretreatment Standards can be adjusted on a "net" basis if either the applicable Pretreatment Standards allow for this calculation *or* the industrial user demonstrates its control system meets those Pretreatment Standards.

3. Requirement To Report All Monitoring Data (40 CFR 403.12(g))

a. Existing Rule

EPA changed 40 CFR 403.12(g) in 1988 to require all monitoring by industrial users to be reported. This was

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done to prevent an industrial user that performs extra sampling from selecting the most favorable monitoring result to report to the Control Authority. At the time of this change (1988), only categorical industrial users (CIUs) were required by the regulations to report on a regular basis, and therefore, this requirement was limited to CIUs. In 1990, 40 CFR 403.12(h) was added to the regulations, and required all significant noncategorical industrial users to also sample and report. However, at the time this change was made, the regulations at 40 CFR 403.12(g) were not updated to require all significant industrial users (SIUs), categorical and noncategorical, to report all monitoring results to the Control Authority.

b. Today's Proposal

Today, EPA is proposing to change 40 CFR 403.12(g)(5) to require all SIUs to report all monitoring results for regulated parameters at the point of compliance, obtained using procedures specified in 40 CFR Part 136, to the Control Authority.

4. Notification by Industrial Users of Changed Discharge (40 CFR 403.12(j))

a. Existing Rule

In 1988, the regulations were changed to add 40 CFR 403.12 (j) requiring all industrial users to promptly notify the POTW of any substantial change in volume or character of pollutants in the user's discharge to the POTW. This notification requirement did not include the Control Authority, which, in some cases, is not the POTW.

b. Today's Proposal

Today, EPA is proposing to expand this requirement so the industrial user must notify the Control Authority of any substantial change in volume or character of pollutants in the user's discharge to the POTW, and in cases where the Control Authority and the POTW are different organizations, the industrial user would notify both the Control Authority and the POTW of any substantial change in volume or character of pollutants in the user's discharge to the POTW.

III. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4,1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is a "significant regulatory action" under the terms of Executive Order 12866. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not covered by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The rule provides options for streamlining procedures to provide Approval Authorities, Control Authorities and industrial users with additional flexibility to run their pretreatment programs in a more cost-effective and independent manner. Accordingly, the requirements of section 1(a) Executive Order 12875 do not apply to this rule. Nevertheless, to ensure that the proposed regulatory changes would meet the needs of the regulated community, EPA sought the involvement of those persons who are intended to benefit from or expected to be burdened by this proposal before issuing a notice of proposed rulemaking. These outreach efforts are described in detail in the introduction to this preamble.

C. Executive Order 13045

Executive Order 13045, "Protection of Children From Environmental Health Risks and Safety Risks," (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule under the guidelines provided by E.O. 12866 and it does not establish an environmental standard intended to mitigate health or safety risks. The proposed amendments to 40 CFR Part 403 would reduce the technical and administrative burden for Approval Authorities, Control Authorities and industrial users. As such, the proposed rule does not impose any new or amended standards for discharged wastewater or the sludge resulting from treatment by a POTW. With respect to the effects on children, the collection, treatment and disposal of wastewater occurs in a restricted system (e.g., buried sewer lines and fenced wastewater treatment plants) that children are unlikely to come in contact with on a routine basis. The proposed rule has no identifiable direct impact upon the health and/or safety risks to children and adoption of the proposed regulatory changes would not disproportionately affect children. The proposed rulemaking is thus in compliance with the intent and requirements of the Executive Order.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on these communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." There are no pretreatment programs administered by Indian tribal governments. The proposed rule will neither "significantly or uniquely" affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The proposed rulemaking is basically "deregulatory" in nature and reduces burden on the affected State, local, and tribal governments and the private sector. EPA further believes that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Additional flexibility is granted to all POTWs which will provide opportunities for reducing the burden of administering their pretreatment programs. Thus, this rule is not subject to the requirements of section 203 of UMRA. Nevertheless, EPA conducted a wide outreach effort and actively sought the input of representatives of State, local and tribal governments in the process of developing the proposed regulation. Agency personnel have communicated with State and local representatives in a number of different forums.

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA generally is required to prepare a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if the Administrator for the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis. EPA has concluded that today's proposal would not, if promulgated as proposed, have a significant economic impact on a substantial number of small entities for the reasons explained below.

As previously explained, the modifications to the pretreatment regulations EPA is proposing today would reduce the regulatory costs to POTWs and industrial users of complying with pretreatment requirements. The proposed changes provide certain POTWs and industrial users with less costly alternatives to the current requirements.

For example, EPA is proposing to amend the requirements that apply to all POTW pretreatment programs. Among these are a modification that would allow a POTW, in specified circumstances, to control contributions from industrial users through general permits rather than more costly individual permits or control mechanisms. Another change would allow the POTW to sample and analyze wastewater from Significant Industrial Users once during the User's permit term rather than annually as now required in cases where the pollutant is not reasonably expected to be present.

The proposal would also authorize a POTW to relieve an industrial user of its sampling and analyzing requirements if the user demonstrated and certified that the pollutant was not expected to be present in quantities greater than present in background influent concentration to the industrial process.

In addition, the cost of the three, new one-time requirements imposed upon those POTWs or industrial users that elect to exercise the flexibility provided in the proposed regulatory changes does not represent a significant increase over current costs. These new requirements include an evaluation of impacts of proposed alternative pH requirements and documentation of the derivation of equivalent limits in cases where categorical industrial users receive mass limits in lieu of concentration limits or receive equivalent concentration limits for flow-based standards.

EPA calculates that, if exercised, these new, one-time requirements would impose a total annual burden and cost to the POTWs of 1,224 person-hours and $22,000. These costs do not reflect the savings that would be realized as a result of providing this flexibility in setting limits for industrial users. EPA estimates that 138 POTWs will elect to exercise these options in any given calendar year and that the pro rata cost will be $159 per POTW, which represents less than nine additional person-hours per year per POTW. In any event, EPA does not believe that any POTW or industrial user would choose a proposed regulatory alternative over current requirements if the cost of the alternative were greater than the cost of complying with the present regulations.

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Therefore, the Administrator certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document (EPA ICR No. 0002.10) has been prepared by EPA and will amend the current ICR (EPA ICR No. 0002.08). A copy may be obtained from Sandy Farmer, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260–2740.

The information collection requirements pertaining to the existing Pretreatment program regulations in 40 CFR Part 403 were approved by the Office of Management and Budget (OMB) under control number 2040–0009 on October 18, 1996. These requirements will remain in effect until October 31, 1999 or until OMB provides new ICR authority. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR chapter 15.

The proposed regulatory changes in today's rulemaking are designed to reduce the overall burden from technical and administrative requirements that affect industrial users, local Control Authorities and Approval Authorities. The estimated savings in annual burden hours and costs to the affected respondents (i.e., industrial users and POTWs) and governmental entities is 15,199 hours and $3,530,000.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Although the proposed regulatory changes provide greater flexibility to regulated entities, it is necessary to collect certain types of information to assure that Pretreatment program requirements continue to be met and that the final benefit meets EPA's stated goal of providing better environmental results at less cost.

The proposed regulatory changes cover a variety of technical and administrative changes. Several of the proposed changes are voluntary, but, if adopted, would impose an additional one-time increase in burden on the affected entity. Other changes will result in reduced annual cost and burdens on a continuing basis. Other proposed changes would have no measurable effect on either cost or burden, but provide procedural clarifications and provide greater flexibility with respect to complying with the regulations. While impossible to quantify, the benefits to be derived by respondents as a result of this flexibility can be significant. The following table provides summary information on the current estimated changes in burden that would accrue if the proposed regulations are adopted as a final rule:

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OVERALL BURDEN CHANGE								
A	B	C	D	E = C*D	F	G = E*F	H	I = E*H
	Impact [1]	Total Respondents	% Affected	Number of Respondents Affected	Burden per Response	Change in Burden	Recordkeeping per Response	Change in Recordkeeping Burden
Proposed Regulatory Change								
Specific Prohibition Regarding pH [2]	I	1535	1.00%	15	16	240	2	30
Equivalent Mass Limits for Concentration Limits [2]	I	10561	1.00%	106	8	848	2	212
Equivalent Concentration Limits for Flow Based Standards [2]	I	420	4.00%	17	8	136	2	34
POTW Oversight of Significant Industrial Users	D	14928	1.00%	149	-22	-3278	-4	-596
Slug Control Plans	D	31962	50.00%	15981	-0.5	-7990.5	0	0
Sampling for Pollutants Not Present	NC	14928	25.00%	3732	0	0	0	0
Non-significant Categorical Industrial Users	D	14928	1.00%	149	-9	-1341	-2	-298
Use of Grab and Composite Samples	NC	n/a	n/a	n/a				
Removal Credits	NC	n/a	n/a	n/a				
Electronic Filing and Storage of Reports	NC	n/a	n/a	n/a				
General Permits	D	31962	2.00%	639	-4	-2556	-1	-639
Best Management Practices	NC	n/a	n/a	n/a				
SNC Definition	NC							
TOTAL BURDEN CHANGE						-13941.5 hrs		-1257 hrs
TOTAL BURDEN AND RECORDKEEPING CHANGE	-15198.5 hrs							

[1] Impact: I = increase in burden; D = decrease in burden; NC = no change in burden.

[2] These requirements are a one-time additional burden that would be imposed upon those POTWs or industrial users that elect to exercise the flexibility provided in the proposed regulatory changes. The reported number of respondents is the total number of facilities in the National Pretreatment Program that EPA estimates would be affected.

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With the exception of those facilities described in the above footnote, all other burden changes reported are *annual* figures. All calculations are derived from historical data obtained from EPA's Permit Compliance System or statistical data on affected industrial facilities published at the time the various effluent guidelines regulating those facilities were promulgated in the **Federal Register**.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number (EPA ICR No. 0002.10) in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 22, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by August 23, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. National Technology Transfer and Advancement Act—Voluntary Standards

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

The proposed rulemaking does not involve developing any technical standard based upon performance or design-specific technical specifications and related management systems practices. EPA is not aware of any voluntary consensus standards organizations (e.g., American Society for Testing and Materials) that would be involved in any activities that affect the proposed streamlining procedures outlined in this proposed rulemaking. All of the proposed changes are administrative or procedural changes that do not involve application of voluntary consensus standards. The Agency does not believe that this proposed rule addresses any technical standards subject to the NTTAA. A commenter who disagrees with this conclusion should indicate how the Notice is subject to the Act and identify any potentially applicable voluntary consensus standards.

List of Subjects in 40 CFR Part 403

Environmental protection, Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: July 7, 1999.

Carol Browner,

Administrator.

For the reasons set out in the preamble, part 403, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority for Part 403 continues to read as follows:

Authority: 33 USC 1251 *et seq.*

2. Section 403.3 is amended by redesignating paragraphs (e) through (u) as paragraphs (f) through (v); by revising newly designated paragraphs (u) and (l)(2); and by adding a new paragraph (e) to read as follows:

§ 403.3. Definitions.

* * * * *

(e) *Control Authority.* The term "Control Authority" refers to: (1) The POTW if the POTW's pretreatment program submission has been approved in accordance with the requirements of 40 CFR 403.11; or (2) the Approval Authority if the submission has not been approved.

* * * * *

(l) * * *

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (l)(1)(ii) or (l)(1)(iii) of this section, but otherwise alters, replaces, or adds to existing process or production equipment.

* * * * *

(u) *Significant Industrial User.*

(1) Except as provided in paragraph (u)(2) of this section, the term Significant Industrial User means:

(i) All industrial users subject to Categorical Pretreatment Standards under § 403.6 and 40 CFR chapter I, subchapter N; except that a Control Authority may determine that the following facilities are not significant:

(A) facilities that never discharge untreated concentrated wastes that are subject to the Categorical Pretreatment Standard as identified in the Development Document for the standard, and never discharge more than 100 gallons per day (gpd) of other process wastewater, and

(B) industrial users subject only to certification requirements after having met Baseline Monitoring Report requirements.

(ii) Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with § 403.8(f)(6)).

(2) Upon a finding that an industrial user meeting the criteria in paragraph (u)(1)(ii) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with § 403.8(f)(6), determine that such industrial user is not a Significant Industrial User.

* * * * *

3. Section 403.5 is amended by revising paragraph (b)(2) and adding a new paragraph (c)(4) to read as follows:

§ 403.5 National Pretreatment Standards: Prohibited Discharges.

* * * * *

(b) * * *

(2)(i) Pollutants which will cause corrosive structural damage to the POTW; and

(ii) Discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such Discharge; except that a POTW with an Approved Pretreatment Program may allow temporary excursions below 5.0 for dischargers that continuously monitor pH provided it:

(A) Maintains a publicly available, written technical evaluation that supports the POTW's finding that the temporary pH excursions do not have the potential to cause corrosive structural damage to the POTW or other violations of paragraphs (a) and (b) of this section. The evaluation shall address the site-specific factors concerning pH and structural corrosion, including the characteristics of nondomestic wastewater and receiving flow, the design and materials of construction of the POTW, and the fate of pH in the discharge;

(B) Performs adequate oversight of the temporary pH excursions to prevent corrosive structural damage to the POTW and other violations of paragraphs (a) and (b) of this section; and

(C) Reports in its annual report under § 403.12(i) its oversight actions and findings regarding nondomestic dischargers with temporary pH excursions.

(D) Has legal authority to grant such temporary excursions in accordance with § 403.8(f)(1) and makes them effective through an Industrial User control mechanism.

* * * * *

(c) * * *

(4) POTWs may develop and enforce best management practices (BMPs) that accomplish the environmental protection goals required by paragraphs (c)(1) and (c)(2) of this section. Such BMPs shall be considered local limits and Pretreatment Standards for the purposes of this Part and section 307(d) of the Act.

* * * * *

4. Section 403.6 is amended by redesignating paragraphs (c)(5) through (c)(7) as paragraphs (c)(7) through (c)(9); by revising paragraph (b), newly designated paragraph (c)(7), paragraph (d) and the first sentence of paragraph (e) introductory text; and by adding paragraphs (c)(5) and (c)(6) to read as follows:

§ 403.6 National pretreatment standards: Categorical standards.

* * * * *

(b) *Deadline for Compliance with Categorical Standards.* Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR chapter I, subchapter N. Direct dischargers with NPDES permits modified or reissued to provide a variance pursuant to section 301(i)(2) of the Act shall be required to meet compliance dates set in any applicable categorical Pretreatment Standard. Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in § 403.3(l). New Sources shall install and have in operating condition, and shall "start up" all pollution control equipment required to meet applicable Pretreatment Standards before beginning to Discharge. Within the shortest feasible time (not to exceed 90 days), New Sources must meet all applicable Pretreatment Standards.

(c) * * *

* * * * *

(5) When a categorical Pretreatment Standard is expressed in terms of pollutant concentrations that are directly applicable as limits on the Industrial User, the Control Authority may convert the limits to mass limits if the Industrial User is utilizing control measures at least as effective as the model treatment technologies that serve as the basis for that particular Standard and the Industrial User is employing water conservation methods and technologies that substantially reduce water use.

(6) When the limits in a categorical Pretreatment Standard are concentration-based and are required to be expressed only in terms of mass based on the facility's process wastewater flow, the Control Authority may apply the promulgated concentration standard set in the applicable categorical standard in cases where the Industrial User's effluent flow is so variable as to make mass limits impractical.

(7) Equivalent limitations calculated in accordance with paragraphs (c)(3), (c)(4), (c)(5), and (c)(6) of this section are deemed Pretreatment Standards for the purposes of section 307(d) of the Act and this part. The Control Authority must document how the equivalent limits were derived and make this information publicly available. Once incorporated into its individual control mechanism, the Industrial User must comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

* * * * *

(d) *Dilution Prohibited as Substitute for Treatment.* Except where expressly authorized to do so by an applicable Pretreatment Standard or Requirement, no Industrial User shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard or Requirement. The Control Authority may impose mass limitations on Industrial Users which are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases where the imposition of mass limitations is appropriate.

(e) *Combined wastestream formula.* Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the Control Authority or by the Industrial User with the written concurrence of the Control Authority. * * *

* * * * *

5. Section 403.7 is amended by revising paragraph (h) to read as follows:

§ 403.7 Removal Credits.

* * * * *

(h) *Compensation for overflow.* "Overflow" means the intentional or unintentional discharge of flow from the collection system before the POTW Treatment Plant. POTWs which Overflow untreated wastewater to receiving waters may claim Consistent Removal of a pollutant only by complying with either paragraph (h)(1) or (h)(2) of this section. However, this paragraph (h) shall not apply where Industrial User(s) can demonstrate that Overflow does not occur between the Industrial User(s) and the POTW Treatment Plant:

(1) The Industrial User provides containment or otherwise ceases or reduces Discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an Overflow event can reasonably be expected to occur in the collection system to which the Industrial User is connected. Discharges must cease or be reduced, or pretreatment must be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision will only be granted where the POTW submits to the Approval Authority evidence that:

(i) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during

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circumstances in which an Overflow event can reasonably be expected to occur, Discharges from the regulated processes which contain pollutants for which an allowance is requested;

(ii) The POTW has identified circumstances in which an Overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that Industrial Users will learn of an impending Overflow in sufficient time to contain, cease or reduce Discharging to prevent untreated Overflows from occurring. The POTW must also demonstrate that it will monitor and verify the data required in paragraph (h)(1)(iii) of this section, to insure that Industrial Users are containing, ceasing or reducing operations during an Overflow event; and

(iii) All Industrial Users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available, upon request by the POTW, State Director or EPA Regional Administrator, daily flow reports or other data sufficient to demonstrate that all Discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an Overflow event was reasonably expected to occur; or

(2) The Consistent Removal claimed is limited to the percentage of the pollutant consistently removed at the applicable Overflow point.

* * * * *

6. Section 403.8 is amended by redesignating paragraphs (f)(2)(vi) and (f)(2)(vii) as paragraphs (f)(2)(vii) and (f)(2)(viii); by revising paragraphs (f)(1)(iii) introductory text, (f)(1)(iii)(C), (f)(2)(v), newly designated paragraphs (f)(2)(vii), (f)(2)(viii) introductor text, (f)(2)(viii)(A), (f)(2)(viii)(B) and (f)(2)(viii)(C), and by revising paragraph (f)(6); by adding paragraphs (f)(1)(iii)(F) and (f)(2)(vi); and by removing the period at the end of paragraph (f)(1)(iii)(E) and adding a semi-colon in its place. The added and revised text reads as follows:

§ 403.8 POTW pretreatment programs: Development and implementation by the POTW.

* * * * *

(f) * * *

(1) * * *

(iii) Control through permit, order, or similar means, the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment Standards and Requirements. In the case of Industrial Users identified as significant under § 403.3(u), this control shall be achieved through permits or equivalent individual control mechanisms issued to each such user except as follows. At the discretion of the Control Authority, for facilities covered by concentration-based standards or best management practices, this control may include use of general permits if all of the facilities to be covered involve the same or substantially similar types of operations, discharge the same types of wastes, require the same effluent limitations, and require the same or similar monitoring. Unless the POTW provides otherwise, to be covered by the general permit the Industrial User must file a Notice of Intent that identifies its production processes, the types of wastes generated, and the location for monitoring all wastes covered by the general permit. General permits may not be used for facilities subject to mass limits or for industrial users whose limits are based on the Combined Wastestream Formula or Net/Gross calculations (§§ 403.6(e) and 403.15). Both individual control mechanisms and general permits must be enforceable and contain, at a minimum, the following conditions:

* * * * *

(C) Effluent limits, including best management practices, based on applicable general Pretreatment Standards in Part 403 of this chapter, categorical Pretreatment Standards, local limits, and State and local law;

* * * * *

(F) Requirements to control slug discharges, if determined by the POTW to be necessary.

* * * * *

(2) * * *

(v) Randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample effluent from each Significant Industrial User at least once a year except under the following circumstances. Where a Categorical Industrial User has demonstrated through sampling and other technical factors that pollutants regulated through categorical standards are not expected to be present in quantities greater than the background influent concentration to the industrial process, the Control Authority may reduce its sampling frequency to once during the term of the Categorical Industrial User's permit.

(vi) Evaluate, as necessary, whether each such Significant Industrial User needs a plan or other action to control slug discharges. For purposes of this subsection, a slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the Control Authority's regulations, local limits or permit conditions. The results of such activities shall be available to the Approval Authority upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

(A) Description of discharge practices, including non-routine batch discharges;

(B) Description of stored chemicals;

(C) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under 40 CFR 403.5(b), with procedures for follow-up written notification within five days;

(D) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment necessary for emergency response.

(vii) Investigate instances of noncompliance with Pretreatment Standards and Requirements, as indicated in the reports and notices required under 40 CFR 403.12, or indicated by analysis, inspection, and surveillance activities described in paragraph (f)(2)(v) of this section. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and

(viii) Comply with the public participation requirements of 40 CFR Part 25 in the enforcement of national Pretreatment Standards. These procedures shall include provision for at least annual public notification, in a newspaper of general circulation within the jurisdiction served by the POTW that provides meaningful public notice, of Significant Industrial Users which, at any time during the previous twelve months were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, a Significant Industrial User is in significant noncompliance if its violation meets one or more of the following criteria:

(A) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the Pretreatment Standard for the same pollutant parameter;

(B) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the numerical Pretreatment Standard multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH).

(C) Any other violation of a Pretreatment Standard or Pretreatment Requirement that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

* * * * *

(6) The POTW shall prepare and maintain a list of its industrial users meeting the criteria in 40 CFR 403.3(u)(1). The list shall identify the criteria in 40 CFR 403.3(u)(1) applicable to each industrial user and, where applicable, shall also indicate whether the POTW has made a determination pursuant to 40 CFR 403.3(u)(1)(i) (A) and (B) or (u)(2) that such industrial user should not be considered a significant industrial user. The initial list shall be submitted to the Approval Authority pursuant to 40 CFR 403.9 or as a non-substantial modification pursuant to 40 CFR 403.18(d). Modifications to the list shall be submitted to the Approval Authority pursuant to 40 CFR 403.12(i)(1).

7. Section 403.12 is amended by removing and reserving paragraph (a); by removing paragraph (b)(5)(iii); by redesignating paragraphs (b)(5)(iv) through (b)(5)(viii) as paragraphs (b)(5)(iii) through (b)(5)(vii); by redesignating paragraphs (g)(4) and (g)(5) as paragraphs (g)(5) and (g)(6); by revising paragraphs (b)(5)(ii), (b)(6), (e)(1), (g)(1), (g)(2), (g)(3), (h), (j), (l)(1)(ii) and (m) and newly designated paragraph (g)(6); and by adding paragraphs (g)(4) and (q) to read as follows:

§ 403.12 Reporting requirements for POTWs and industrial users.

(a) [Reserved]

(b) * * *

(5) * * *

(ii) In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the Standard or Control Authority) of regulated pollutants in the Discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the standard requires compliance with a best management practice or pollution prevention alternative, the User shall submit documentation as required by the Control Authority or the standards themselves to determine compliance with the standard.

* * * * *

(6) *Certification.* A statement, reviewed by an authorized representative of the Industrial User (as defined in paragraph (l) of this section) and certified to by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) and/or additional pretreatment is required for the Industrial User to meet the Pretreatment Standards and Requirements; and

* * * * *

(e) * * *

(1) Any Industrial User subject to a categorical Pretreatment Standard, after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Approval Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in paragraph (b)(4) of this section except that the Control Authority may require more detailed reporting of flows. In cases where the standard requires compliance with a best management practice or pollution prevention alternative, the User shall submit documentation required by the Control Authority or the standard to determine the compliance status of the User. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may agree to alter the months during which the above reports are to be submitted. The Control Authority may also authorize the Industrial User subject to a categorical Pretreatment Standard, with the exception of 40 CFR Part 414, to forego sampling of a pollutant if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is not expected to be present in quantities greater than the background influent concentration to the industrial process, and the Industrial User certifies on each report, with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User:

Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for 40 CFR _____, I certify that, to the best of my knowledge and belief, the raw materials, industrial processes, and potential by-products have not contributed this pollutant to the wastewaters since filing of the last periodic report under 40 CFR 403.12(e).

* * * * * *

(g) *Monitoring and analysis to demonstrate continued compliance.* (1) The reports required in paragraphs (b), (d), (e) and (h) of this section shall contain the results of sampling and analysis of the Discharge, including the flow and the nature and concentration, or production and mass where requested by the Control Authority, of pollutants contained therein which are limited by the applicable Pretreatment Standards. This sampling and analysis may be performed by the Control Authority in lieu of the Industrial User. Where the POTW performs the required sampling and analysis in lieu of the Industrial User, the User will not be required to submit the compliance certification required under paragraphs (b)(6) and (d) of this section. In addition, where the POTW itself collects all the information required for the report, including flow data, the Industrial User will not be required to submit the report.

(2) If sampling performed by an Industrial User indicates a violation, the user shall notify the Control Authority within 24 hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation. Where the Control Authority has performed the sampling and analysis in lieu of the Industrial User, the Control Authority must perform the repeat sampling and analysis unless it notifies the User of the violation and requires the User to perform the repeat analysis. Resampling is not required if:

(i) The Control Authority performs sampling at the Industrial User at a

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frequency of at least once per month, or (ii) The Control Authority performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the Control Authority receives the results of this sampling.

(3) The reports required in paragraphs (b), (d), (e) and (h) of this section must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Control Authority. Where time-proportional composite sampling or grab sampling is authorized by the Control Authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the individual control mechanism file for that facility or facilities. For those industrial users that do not operate on a 24-hour per day schedule, the samples must be collected at equally spaced intervals during the period that process wastewater is being discharged. Multiple grab samples for cyanide and volatile organic compounds that are collected during a 24-hour period may be composited in the laboratory prior to analysis using protocols specified in 40 CFR Part 136 and appropriate EPA guidance. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Control Authority, as appropriate.

(4) For sampling required in support of baseline monitoring and 90-day compliance reports required in paragraphs (b) and (d) of this section, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for new facilities; for existing facilities where historical sampling data are available, the Control Authority may authorize a lower minimum. For the reports required by (e) and (h), the Control Authority shall require the number of grab samples necessary to assess and assure compliance by Industrial Users with Applicable Pretreatment Standards and Requirements.

* * * * *

(6) If an Industrial User subject to the reporting requirement in paragraph (e) or (h) of this section monitors any regulated pollutant at the point of compliance more frequently than required by the Control Authority, using the procedures prescribed in paragraph (g)(5) of this section, the results of this monitoring shall be included in the report.

* * * * *

(h) *Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards.* The Control Authority must require appropriate reporting from those Industrial Users with discharges that are not subject to categorical Pretreatment Standards. Significant Non-categorical Industrial Users must submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. In cases where the local standard requires compliance with a best management practice or pollution prevention alternative, the User must submit documentation required by the Control Authority to determine the compliance status of the User. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in 40 CFR Part 136 and amendments thereto. This sampling and analysis may be performed by the Control Authority in lieu of the significant non-categorical industrial user.

* * * * *

(j) *Notification of changed discharge.* All Industrial Users shall promptly notify the Control Authority (and the POTW if the POTW is not the Control Authority) in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under paragraph (p) of this section.

* * * * *

(l) * * *

(1) * * *

(ii) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit position-related duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

* * * * *

(m) *Signatory requirements for POTW reports.* Reports submitted to the Approval Authority by the POTW in accordance with paragraph (i) of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee. The duly authorized employee must be an individual or position having responsibility for the overall operation of the facility or activity such as the position of POTW Director, Plant Manager, or Pretreatment Program Manager. This authorization must be made in writing by the principal executive officer or ranking elected official, and submitted to the Approval Authority prior to the report being submitted.

* * * * *

(q) *Sampling of non-significant categorical industrial users.* For a facility described in 40 CFR 403.3(u)(1)(i)(A) or (B), the Control Authority may establish alternative reporting requirements that would take the place of the reporting requirements in 40 CFR 403.12(e). This alternative report must be submitted at least once per year, and must contain the following certification:

> Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards under 40 CFR ____, I certify that, to the best of my knowledge and belief that during the period from _____ ____, _____ to _____ ____, _____: (1) The facility described as _____ met the definition of a non-significant facility as described in 40 CFR 403.3(u)(1)(i)(A) or (B), and (2) the facility complied with all applicable pretreatment standards. This compliance certification is based upon the following information:
>
> _____
>
> _____
>
> _____

8. Section 403.15 is revised to read as follows:

§ 403.15 Net/Gross calculation.

(a) *Application.* Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water in accordance with this section. Any Industrial User wishing to obtain credit for intake pollutants must make application to the Control Authority. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of paragraph (b) of this section are met.

(b) *Criteria.* (1) Either (i) The applicable categorical Pretreatment Standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis; or

(ii) The Industrial User demonstrates that the control system it proposes or uses to meet applicable categorical Pretreatment Standards would, if properly installed and operated, meet the Standards in the absence of pollutants in the intake waters.

(2) Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the User's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(3) Credit shall be granted only to the extent necessary to meet the applicable categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with Standard(s) adjusted under this section.

(4) Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The Control Authority may waive this requirement if it finds that no environmental degradation will result.

* * * * *

Appendix A to Part 403 [Removed and Reserved]

9. Appendix A to Part 403—Program Guidance Memorandum is removed and reserved.

[FR Doc. 99–17773 Filed 7–21–99; 8:45 am]

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Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 410, 411, 414, and 415

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2000; Proposed Rule

VOL 64 ISS 140 JL 22 1999 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410, 411, 414, and 415

[HCFA–1065–P]

RIN 0938–AJ61

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would make several changes affecting Medicare Part B payment. The changes include: implementation of resource-based malpractice insurance relative value units (RVUs); refinement of resource-based practice expense RVUs; payment for physician pathology and independent laboratory services, RVUs related to ventricular assist devices, percutaneous thrombectomy of an arteriovenous fistula, pulse oximetry, temperature gradient studies, venous pressure determinations, and pulmonary stress testing; discontinuous anesthesia time; optometrist services; prostate screening; diagnostic tests; the use of an operating microscope; use of CPT modifier –25; qualifications for nurse practitioners; an increase in the work RVUs for pediatric services; removal of the x-ray as a prerequisite for chiropractic manipulation; the exclusion of payment for assisted suicide; adjustments to the practice expense RVUs for physician interpretation of Pap smears; and revisions to the work RVUs for new and revised CPT codes for calendar year 1999. In addition, since we established the physician fee schedule on January 1, 1992, our experience indicates that some of our Part B payment policies need to be reconsidered. This proposed rule would correct inequities in physician payment and solicits public comments on specific proposed policy changes.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 20, 1999.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1065–P, P.O. Box, 9013 Baltimore, MD 21244–9013.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1065–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7061).

FOR FURTHER INFORMATION CONTACT:

Bob Ulikowski, (410) 786–5721 (for issues related to the resource-based malpractice relative value units).

Carolyn Mullen, (410) 786–4589 (for issues related to resource-based practice expense relative value units).

Jim Menas, (410) 786–4507 (for issues related to physician pathology services and independent labs and discontinuous anesthesia time).

Ken Marsalek, (410) 786–4502 (for issues related to optometrist services).

Bill Larson, (410) 786–4639 (for issues related to the coverage of prostate screening).

Regina Walker-Wren, (410) 786–9160 (for issues related to nurse practitioner qualifications).

Dorothy Honemann, (410) 786–5702 (for issues related to x-ray requirement for chiropractic services).

Bill Morse, (410) 786–4520 (for issues related to diagnostic tests).

Diane Milstead, (410) 786–3355 (for all other issues).

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this preamble, we are providing the following table of contents. Some of the issues discussed in this preamble affect the payment policies but do not require changes to the regulations in the Code of Federal Regulations.

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Addendum A—Explanation and Use of Addenda B
Addendum B—2000 Relative Value Units and Related Information Used in Determining Medicare Payments for 2000

In addition, because of the many organizations and terms to which we refer by acronym in this proposed rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

AANA American Association of Nurse Anesthetists
AMA American Medical Association
ASA American Society of Anesthesiologists
BBA Balanced Budget Act of 1997
CF Conversion factor
CFR Code of Federal Regulations
CPT [Physicians'] Current Procedural Terminology [4th Edition, 1997, copyrighted by the American Medical Association]
CRNA Certified Registered Nurse Anesthetist
E/M Evaluation and management
GAF Geographic adjustment factor
GPCI Geographic practice cost index
HCFA Health Care Financing Administration
HCPCS HCFA Common Procedure Coding System
HHS [Department of] Health and Human Services
HMO Health maintenance organization
IDTFs Independent Diagnostic Testing Facilities
JUAs Joint Underwriting Associations
MEDPAC Medicare Payment Advisory Commission
MEI Medicare Economic Index
MGMA Medical Group Management Association
NPI National provider identifier
OBRA Omnibus Budget Reconciliation Act
PC Professional component
PCF Patient Compensation Fund
RUC [AMA's Specialty Society] Relative [Value] Update Committee
RVU Relative value unit
TC Technical component

I. Background

A. Legislative History

Since January 1, 1992, Medicare has paid for physician services under section 1848 of the Social Security Act (the Act), "Payment for Physicians" Services." This section contains three major elements: (1) A fee schedule for the payment of physician services; (2) a sustainable growth rate for the rates of increase in Medicare expenditures for physician services; and (3) limits on the amounts that nonparticipating physicians can charge beneficiaries. The Act requires that payments under the fee schedule be based on national uniform relative value units (RVUs) based on the resources used in furnishing a service. Section 1848(c) of the Act requires that national RVUs be established for physician work, practice expense, and malpractice expense.

Section 1848(c)(2)(B)(ii)(II) of the Act provides that adjustments in RVUs because of changes resulting from a review of those RVUs may not cause total physician fee schedule payments to differ by more than $20 million from what they would have been had the adjustments not been made. If this tolerance is exceeded, we must make adjustments to the conversion factors (CFs) to preserve budget neutrality.

B. Published Changes to the Fee Schedule

We published a final rule on November 25, 1991 (56 FR 59502) to implement section 1848 of the Act by establishing a fee schedule for physician services furnished on or after January 1, 1992. In the November 1991 final rule (56 FR 59511), we stated our intention to update RVUs for new and revised codes in the American Medical Association's (AMA's) Physicians' Current Procedural Terminology (CPT) through an "interim RVU" process every year. The updates to the RVUs and fee schedule policies are as follows:

- November 25, 1992, a final notice with comment period on new and revised RVUs only (57 FR 55914).
- December 2, 1993, a final rule with comment period (58 FR 63626) to revise the refinement process used to establish physician work RVUs and to revise payment policies for specific physician services and supplies. (We solicited comments on new and revised RVUs only.)
- December 8, 1994, a final rule with comment period (59 FR 63410) to revise the geographic adjustment factor (GAF) values, fee schedule payment areas, and payment policies for specific physician services. The final rule also discussed the process for periodic review and adjustment of RVUs not less frequently than every 5 years as required by section 1848(c)(2)(B)(i) of the Act.
- December 8, 1995, a final rule with comment period (60 FR 63124) to revise various policies affecting payment for physician services including Medicare payment for physician services in teaching settings, the RVUs for certain existing procedure codes, and to establish interim RVUs for new and revised procedure codes. The rule also included the final revised 1996 geographic practice cost indices (GPCIs).
- November 22, 1996, a final rule with comment period (61 FR 59490) to revise the policy for payment for diagnostic services, transportation in connection with furnishing diagnostic tests, changes in geographic payment areas (localities), and changes in the procedure status codes for a variety of services.
- October 31, 1997, a final rule with comment period (62 FR 59048) to revise the geographic practice cost index (GPCI), physician supervision of diagnostic tests, establishment of independent diagnostic testing facilities, the methodology used to develop reasonable compensation equivalent limits, payment to participating and nonparticipating suppliers, global surgical services, caloric vestibular testing, and clinical consultations. The final rule also implemented certain provisions of the Balanced Budget Act of 1997 (the BBA) (Public Law 105–33), enacted on August 5, 1997, and implemented the RVUs for certain existing procedure codes and established interim RVUs for new and revised procedure codes.
- November 25, 1998, a final rule with comment period (63 FR 58814) to revise the policy for resource-based practice expense RVUs, medical direction rules for anesthesia services, and payment for abnormal Pap smears. Also, we rebased the Medicare Economic Index from a 1989 base year to a 1996 base year. Under the law, we are required to develop a resource-based system for determining practice expense RVUs. The BBA delayed, for 1 year, implementation of the resource-based practice expense RVUs until January 1, 1999. Also, the BBA revised our payment policy for nonphysician practitioners, for outpatient rehabilitation services, and for drugs and biologicals not paid on a cost or prospective payment basis. In addition, the BBA permits certain physicians and practitioners to opt out of Medicare and furnish covered services to Medicare beneficiaries through private contracts and permits payment for professional consultations via interactive telecommunication systems. Furthermore, we finalized the 1998 interim RVUs and issued interim RVUs for new and revised codes for 1999. This final rule also announced the calendar year 1999 Medicare physician fee schedule conversion factor under the Medicare Supplementary Medical Insurance (Part B) program as required by section 1848(d) of the Act. The 1999 Medicare physician fee schedule conversion factor was $34.7315.

This proposed rule would affect the regulations set forth at—

- Part 410, Supplementary medical insurance benefits;
- Part 411, Exclusions from Medicare and limitations on Medicare payment;
- Part 414, Payment for Part B medical and other services; and

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• Part 415, Part B carrier payments for physicians' services to beneficiaries in providers.

II. Specific Proposals for Calendar Year 1999

A. Resource-Based Malpractice Relative Value Units

1. Current Relative Value Unit System

Section 1848(c)(2)(C) of the Act requires each service paid under the physician fee schedule be comprised of three components: work, practice expense, and malpractice. The practice expense and malpractice expense RVUs equal the product of the base allowed charges and the practice expense and malpractice percentages for the service. Base allowed charges are defined as the national average allowed charges for the service furnished during 1991, as estimated using the most recent data available. For most services, we used 1989 charge data "aged" to reflect the 1991 payment rules, since those were the most recent data available for the 1992 fee schedule. The work RVUs have been resource-based since the inception of the fee schedule in 1992. They are primarily based on a study of physician work conducted by researchers at the Harvard School of Public Health. The work values for new and revised codes added since 1992 are primarily based on the recommendations of the American Medical Association's Relative Value Update Committee (RUC). For detailed descriptions of the establishment of resource-based work RVUs, see the June 5, 1991 proposed rule (56 FR 25792) and the November 25, 1991 final rule (56 FR 59502) on the original fee schedule and the May 3, 1996 proposed rule (61 FR 19992) on the five-year refinement of resource-based work RVUs.

The practice expense RVUs were not resource-based but were rather charge-based from 1992 to 1998. In most cases, the practice expense RVUs were calculated on a statutory formula. They were derived from the product of "base allowed charges" and service-specific practice expense percentages. The base allowed charge is the national average allowed charge for the service furnished in 1991. The service-specific practice expense percentage is a weighted average of the practice expense percentages of the specialties performing the service. For new codes after 1991, the practice expense RVUs were extrapolated from the values for existing similar codes or from the work RVUs.

Section 121 of the Social Security Act Amendments of 1994 (Public Law 103–432), enacted on October 31, 1994 and amended by the BBA, required us to develop a methodology and implement resource-based practice expense RVUs effective for services furnished in 1998. Section 4505 of the BBA postponed implementation of resource-based practice expense RVUs until 1999 and provided for a gradual four-year transition, with resource-based practice expense RVUs becoming fully effective in 2002. For a detailed explanation of resource-based practice expense RVUs see the June 5, 1998 proposed rule (63 FR 30818) and the November 2, 1998 final rule (63 FR 58814) on the fee schedule.

Malpractice RVUs are currently charge-based, using the same statutory formula discussed above for practice expense RVUs but using weighted specialty-specific malpractice expense percentages and 1991 average allowed charges. As with practice expense RVUs, malpractice RVUs for new codes after 1991 were extrapolated from similar existing codes or from work RVUs. Section 4505(f) of the BBA requires us to implement resource-based malpractice RVUs for services furnished beginning in 2000. With the implementation of resource-based malpractice RVUs and full implementation of resource-based practice expense RVUs in 2002, all physician fee schedule RVUs will be resource-based, thus eliminating the last vestiges of payment inequities that resulted from charges that did not accurately reflect the relative resources involved in providing a service.

2. Proposed Methodology for Developing Resource-Based Malpractice RVUs

The resource-based malpractice RVUs are based on actual malpractice premium data and current Medicare payment data on allowed services and charges, RVUs, and specialty payment percentages. Subjective judgment is primarily limited to the mapping of Medicare specialties to the various insurer premium risk groups.

We decided to use malpractice premium data because they represent the actual malpractice expense to the physician. In addition, malpractice premium data are widely available. We also considered using procedure-specific actual malpractice claims paid data as recommended by the Medicare Payment Advisory Committee (MEDPAC). However, we do not believe that such an approach is viable because inquiries to malpractice insurance experts revealed that the data are not available in sufficient quantity and breadth to be useful. Consultation with insurers informed us that they do not track malpractice payments on an individual CPT procedure code basis. If any such data did exist, we believe that they would likely be limited to a few very high-risk procedures and not be widely and consistently available on a national basis. Constructing national RVUs requires consistent national data for all procedures.

Moreover, even if such data existed on a consistent national basis, it is virtually impossible to determine which specific procedure performed in treating an illness produced the adverse outcome leading to the settlement or award or to accurately apportion the settlement or award among the procedures. For example, in the case of cancer, a symptom missed during a visit or a faulty x-ray or MRI could all contribute to a late diagnosis. Similarly, the cause of the claim could be the chemotherapy, the radiation therapy, the surgery, or any combination thereof.

Discussions with the industry lead us to conclude that the primary determinants of malpractice liability costs are physician specialty, level of surgical involvement, and the individual physician's malpractice history.

Actual malpractice premium data were collected for the top 20 Medicare physician specialties measured by dollars of reimbursement. Premiums were for a $1 million/$3 million mature claims-made-policy (a policy covering claims made rather than services provided during the policy term). Data were collected from all 50 States, Washington, D.C., and Puerto Rico. Data were collected from commercial and physician-owned insurers and from joint underwriting associations or JUAs, typically, State government administered risk pooling insurance arrangements in areas where commercial insurers have left the market. Adjustments were made to reflect mandatory patient compensation fund or PCF (a fund to pay for any claim beyond the statutory amount thereby limiting an individual physician's liability in cases of a large suit) surcharges in States where PCF participation is mandatory. The premium data collected represent at least 50 percent of physician malpractice premiums paid in each State, with the average being 77 percent.

Malpractice insurers generally use five-digit codes developed by the Insurance Services Office (ISO), an advisory body serving property and casualty insurers, to classify physician specialties into different risk classes for premium rating purposes. ISO codes classify physicians not only by specialty, but in many cases also by whether or not the specialty performs surgical procedures. A given specialty could thus have two ISO codes, one for use in rating a member of that specialty who performs surgical procedures and another for rating a member of that specialty who does not perform surgery. Medicare uses its own system of specialty classification for payment and data purposes. It was therefore necessary to map Medicare specialties to ISO codes and insurer risk classes. Different insurers, while using ISO codes, have their own risk class categories. To assure consistency, we used the risk classes of St. Paul Companies, one of the oldest and largest malpractice insurers. Table 1 crosswalks Medicare specialties to ISO codes and St. Paul risk classes used.

TABLE 1.—CROSSWALK OF MEDICARE SPECIALTY CODE TO MALPRACTICE ISO CODE AND ST. PAUL'S RISK CLASS

Medicare code	Medicare description	ISO code		Risk class		St. Paul's description
		Surgery	Other	Surgery	Other	
01	General practice	80117	80420	4	1	Family/Gen. Practitioners—No Obstetrical.
02	General surgery	80143	80143	5	5	Surgery-General.
03	Allergy/Immunology	80254	80254	1A	1A	Allergy.
04	Otolaryngology	80159	80265	3	1	Otarhinolaryngology.
05	Anesthesiology	80151	80151	5A	5A	Anesthesiology.
06	Cardiology	80150	80255	6	1	Cardiovascular Disease.
07	Dermatology	80282	80256	2	1A	Dermatology.
08	Family practice	80117	80420	4	1	Family/Gen. Practitioners—No Obstetrical.
10	Thoracic surgery	80104	80241	3	1	Gastroenterology.
11	Internal medicine	80284	80257	2	1	Internal medicine.
13	Neurology	80152	80261	8	2	Neurology.
14	Neurosurgery	80152	80261	8	2	Neurology.
16	Obstetrics/Gynecology	80167	80244	2	1	Gynecology.
18	Ophthalmology	80114	80263	2	1	Ophthalmology.
20	Orthopedic surgery	80501	80501	5	5	Surgery Orthopedic—excluding Spinal Surgery.
22	Pathology	80292	80266	2	1A	Pathology.
24	Plastic and reconstructive surgery.	80156	80156	5	5	Surgery Plastic.
25	Physical medicine and rehab.	80235	80235	1	1	Physical medicine and rehab.
26	Psychiatry	80249	80249	1A	1A	Psychiatry.
29	Pulmonary disease	80269	80269	1	1	Pulmonary Disease.
30	Diagnostic radiology	80280	80253	2	2	Radiology.
33	Thoracic surgery	80144	80144	6	6	Surgery Thoracic.
34	Urology	80145	80145	3	3	Urological Surgery.
36	Nuclear medicine	80262	80262	1	1	Nuclear medicine.
37	Pediatric medicine	80293	80267	2	1	Pediatrics.
38	Geriatric medicine	80105	80243	1	1	Geriatrics.
39	Nephrology	80108	80260	3	3	Nephrology.
40	Hand surgery	80169	80169	5	5	Hand Surgery.
44	Infectious disease	80279	80246	1	1	Infectious disease.
46	Endocrinology	80103	80238	3	1	Endocrinology.
65	Physical therapist (independently practice.	80235	80235	1	1	Physical medicine and rehab.
66	Rheumatology	80252	80252	1	1	Rheumatology.
67	Occupational therapist (independently practice.	80233	80233	1A	1A	Occupational Med.
77	Vascular surgery	80146	80146	6	6	Vascular Surgery.
78	Cardiac surgery	80141	80141	6	6	Cardiac Surgery.
82	Hematology	80278	80245	2	1	Hematology.
83	Hematology/oncology	80278	80245	2	1	Hematology.
84	Preventive medicine	80231	80231	1	1	General Preventive Medicine.
93	Emergency medicine	80157	80102	5	4	ER Physician.
98	Gynecologist/oncologist	80167	80244	4	1	Gynecology.

Some physician specialties, nonphysician practitioners, and other entities (for example, independent diagnostic testing facilities) paid under the physician fee schedule could not be assigned an ISO code. We crosswalked these specialties to physician specialties assigned an ISO code and a risk class. The unassigned specialties and the specialty to which they were assigned are shown in Table 2.

TABLE 2.—CROSSWALK FOR UNASSIGNED SPECIALTIES

Unassigned speciality	Cross walk speciality
Addiction Medicine	Psychiatry.
Chiropractor, Licensed.	Internal Medicine.
Clinical Nurse Practitioner.	Internal Medicine.
Clinic or Other Group	All Physicians.
Clinical Psychologist	Psychiatry.
Clinical Social Worker	Psychiatry.
Colorectal Surgery	General Surgery.

TABLE 2.—CROSSWALK FOR UNASSIGNED SPECIALTIES—Continued

Unassigned speciality	Cross walk speciality
Critical Care (intensivists).	All Physicians.
CRNA/AA	Family Practice.
Independent Lab	All Physicians.
Independent Physiological Lab.	All Physicians
Interventional Radiology.	Radiology.
Manipulative Therapy	All Physicians.

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TABLE 2.—CROSSWALK FOR UNASSIGNED SPECIALTIES—Continued

Unassigned speciality	Cross walk speciality
Maxillofacial Surgery	Plastic Surgery.
Medical Oncolgy	Gynecology.
Neuropsychiatry	Psychiatry.
Nurse Practitioners	Internal Medicine.
Optometrist	All Physicians.
Oral Surgery	All Physicians.
Peripheral Vascular Disease.	All Physicians.
Physician Assistants	Family Practice.
Podiatry	All Physicians.
Psychologist (Billing Indep.).	Psychiatry.
Radiation Oncology	Radiology.
Surgical Oncology	All Physicians.

We originally considered two malpractice premium-based alternatives for resource-based malpractice RVUs. One was based solely on specialty premium differences and did not reflect differences in risk-of-service among procedures provided by the specialty. Risk-of-service reflects how services differ in their contributions to professional malpractice liability. For example, if a physician often performs a complex, difficult surgical procedure, this would have a larger effect on the physician's premium risk classification than a simple office visit. We realized that if we did not account for risk-of-service differences all procedures that might be performed exclusively by a given specialty would have the same resource-based malpractice RVUs, even though they might vary considerably in effort, difficulty, total payment, and their contribution to that specialty's malpractice liability.

The alternative which we are proposing, uses the same basic methodology with one added computation. In order to reflect differences in risk-of-service, in step (3) below we propose to multiply the specialty premium-based malpractice RVUs by the procedure's work RVUs. We believe that time, intensity, and difficulty of services are correlated with malpractice risk. Since the work RVUs reflect differences in time, intensity, and difficulty among procedures and are generally accepted as accurate, we believe that they are the best available proxy for determining risk-of-service.

Our proposed methodology is as follows:

(1) *Compute a national average premium for each specialty.* Insurance rating area malpractice premiums for each specialty were mapped to the county level. The specialty premium for each county was then multiplied by the county total RVUs, which had been divided by the county malpractice geographic practice cost index (GPCI) to normalize the data for geographical differences. (Since malpractice RVUs are multiplied by locality malpractice GPCIs in calculating fee schedule payments, if the locality RVUs are not "deflated" by the malpractice GPCIs, the locality cost differences as reflected by the GPCIs would be counted twice.) The product of premiums and RVUs was then summed for all counties by specialty. This number was divided by the total RVUs for all counties for each specialty. This yields a national average premium for each specialty.

Table 3 shows the national average premiums for the years 1990–95 for the 20 specialties on which we collected premium data. We used an average of the 3 most recent years, 1993–95, in our calculation. We plan to collect more recent data (1996–1998) to use in future refinement of malpractice RVUs, but do not expect that these more recent data will result in any significant changes since Table 3 shows that on a national average basis malpractice premiums have been remarkably stable in recent years.

TABLE 3.—NATIONAL AVERAGE PREMIUMS (1990–1995) CALCULATED USING 1997 RVU WEIGHTS

ISO	Specialy	1990 avg	1991 avg	1992 avg	1993 avg	1994 avg	1995 avg	Annual trend
80114	Ophthalmology	11,538	11,098	10,637	10,747	10,773	11,359	−0.3
80143	General surgery	28,231	26,683	25,405	25,896	26,876	28,286	0.0
80144	Thoracic surgery	37,740	37,123	35,439	37,045	38,320	41,001	1.7
80145	Urology	16,798	16,285	15,432	15,161	15,669	16,620	−0.2
80151	Anesthesiology	23,437	20,986	19,536	17,406	17,409	16,877	−6.4
80152	Neurosurgery	50,743	45,248	48,788	52,124	54,027	57,679	2.6
80154	Orthopedic surgery	40,312	39,145	36,734	37,455	38,607	40,569	0.1
80156	Plastic and reconstructive surgery.	32,951	31,062	30,087	29,193	30,056	32,594	−0.2
80159	Ootolaryngology	23,697	21,369	20,146	18,926	19,661	20,657	−2.7
80244*	OB/GYN	46,724	44,726	43,300	12,676	13,264	N/A	N/A
80249	Psychiatry	5,662	5,597	5,574	6,748	7,204	7,766	6.5
80269	Pulmonary disease	7,807	7,675	7,202	8,068	8,517	9,198	3.3
80274	Gastroenterology	9,985	9,754	9,709	10,468	10,944	11,612	3.1
80280	Diagnostic radiology	9,748	9,496	9,404	10,280	10,675	11,394	3.2
80281	Cardiology	10,437	10,225	10,187	11,895	12,360	13,138	4.7
80282	Dermatology	9,004	8,768	8,750	10,392	10,905	11,541	5.1
80284	Internal medicine	10,349	10,093	9,905	10,931	11,421	12,122	3.2
80288	Neurology	10,613	10,479	10,789	11,721	12,289	13,179	4.4
80292	Pathology	8,332	7,868	7,482	8,554	8,818	9,369	2.4
80423	General practice	10,081	9,777	9,662	10,006	10,399	10,989	1.7

* 1990-92 data reflects Obsterical malpractice premium. 93–94 is for Geneologist. 95 premium not available.

(2) *Calculate a risk factor for each specialty.* Differences among specialties in malpractice premiums reflect differences in their malpractice exposure or risk. Relative differences among specialties in national average malpractice premiums can be expressed as specialty risk factors. These risk factors are an index calculated by dividing the national average premium for each specialty by the national average premium for the specialty with the lowest average premium, psychiatry. Table 4 shows the risk factors, surgical and non-surgical, by specialty.

TABLE 4.—MEDICARE SPECIALTIES AND RISK FACTOR ASSIGNMENT

Non-Surgical Risk Factors			Surgical Risk Factors		
Code	Medicare description	Risk factor	Code	Medicare description	Risk factor
0	All Physicians	1.50	0	All Physicians	2.53
01	General practice	1.21	01	General practice	3.10
02	General surgery	3.99	02	General surgery	3.99
03	Allergy/Immunology	1.00	03	Allergy/Immunology	1.00
04	Otolaryngology	1.21	04	Otolaryngology	2.83
05	Anesthesiology	2.34	05	Anesthesiology	2.34
06	Cardiology	1.21	06	Cardiology	5.84
07	Dermatology	1.00	07	Dermatology	1.51
08	Family practice	1.21	08	Family practice	3.10
10	Gastroenterology	1.21	10	Gastroenterology	2.64
11	Internal medicine	1.21	11	Internal medicine	1.58
12	Osteopathic manipulative therapy	1.50	12	Osteopathic manipulative therapy	2.53
13	Neurology	1.61	13	Neurology	8.16
14	Neurosurgery	1.61	14	Neurosurgery	8.16
16	Obstetrics/Gynecology	1.21	16	Obstetrics/Gynecology	3.10
18	Ophthalmology	1.21	18	Ophthalmology	1.54
19	Oral surgery (dentists only)	1.50	19	Oral surgery (dentists only)	2.53
20	Orthopedic surgery	4.28	20	Orthopedic surgery	4.28
22	Pathology	1.00	22	Pathology	1.28
24	Plastic and reconstructive surgery	4.35	24	Plastic and reconstructive surgery	4.35
25	Physical medicine and rehab	1.21	25	Physical medicine and rehab	1.21
26	Psychiatry	1.00	26	Psychiatry	1.00
28	Colorectal surgery (formerly proctology)	4.28	28	Colorectal surgery (formerly proctology)	4.28
29	Pulmonary disease	1.21	29	Pulmonary disease	1.21
30	Diagnostic radiology	1.54	30	Diagnostic radiology	1.54
31	Roentgenology, radiology (osteopaths only).	1.54	31	Roentgenology, radiology (osteopaths only).	1.54
33	Thoracic surgery	5.54	33	Thoracic surgery	5.54
34	Urology	2.26	34	Urology	2.26
35	Chiropractic	1.21	35	Chiropractic	1.61
36	Nuclear medicine	1.21	36	Nuclear medicine	1.21
37	Pediatric medicine	1.21	37	Pediatric medicine	1.61
38	Geriataric medicine	1.21	38	Geriataric medicine	1.21
39	Nephrology	2.64	39	Nephrology	2.64
40	Hand surgery	4.28	40	Hand surgery	4.28
44	Infectious disease	1.21	44	Infectious disease	1.21
46	Endocrinology	1.21	46	Endocrinology	2.64
48	Podiatry	1.50	48	Podiatry	2.53
62	Psychologist (billing independently)	1.00	62	Psychologist (billing independently)	1.00
65	Physical therapist (independently practicing).	1.21	65	Physical therapist (independently practicing).	1.21
66	Rheumatology	1.21	66	Rheumatology	1.21
67	Occupational therapist (independently practicing).	1.00	67	Occupational therapist (independently practicing).	1.00
68	Clinical psychologist	1.00	68	Clinical psychologist	1.00
70	Multispecialty clinic or group practice	1.50	70	Multispecialty clinic or group practice	2.53
71	Diagnostic x-ray	1.54	71	Diagnostic x-ray	1.54
76	Peripheral vascular disease	1.50	76	Peripheral vascular disease	2.53
77	Vascular surgery	5.84	77	Vascular surgery	5.84
78	Cardiac surgery	5.84	78	Cardiac surgery	5.84
79	Addiction medicine	1.00	79	Addiction medicine	1.00
81	Critical care	1.50	81	Critical care	2.53
82	Hematology	1.21	82	Hematology	1.61
83	Hematology/oncology	1.21	83	Hematology/oncology	1.61
84	Preventive medicine	1.21	84	Preventive medicine	1.21
85	Maxillofacial surgery	4.28	85	Maxillofacial surgery	4.28
86	Neuropsychiatry	1.00	86	Neuropsychiatry	1.00
90	Medical oncology	1.21	90	Medical oncology	3.10
91	Surgical oncology	1.50	91	Surgical oncology	2.53
92	Radiation oncology	1.54	92	Radiation oncology	1.54
93	Emergency medicine	3.10	93	Emergency medicine	4.28
94	Interventional Radiology	1.54	94	Interventional Radiology	1.54
98	Gynecologist/oncologist	1.21	98	Gynecologist/oncologist	3.10

(3) *Calculate malpractice RVUs for each code.* Resource-based malpractice RVUs were calculated for each procedure. First, the percentage of a specific service provided by each specialty was determined from payment records. This percentage was then multiplied by the specialty's risk factor. The products for all specialties for the

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procedure are then summed, yielding a specialty-weighted malpractice RVU reflecting the weighted malpractice costs across all specialties for that procedure. This number was then multiplied by the procedure's work RVUs to account for differences in risk-of-service. We realize that adjusting for risk-of-service using work RVUs may not exactly reflect risk-of-service differences because certain procedures with relatively high work RVUs may have low malpractice claim frequencies while certain procedures with relatively low work RVUs may have high malpractice claim frequencies. We were unable to find an acceptable alternative to work RVUs for determining risk-of-service and would welcome any suggestions.

As mentioned above, certain specialties may have more than one IOS rating class and risk factor. The surgical risk factor for a specialty was used for surgical services and the non-surgical risk factor for evaluation and management services. Also, for obstetrics/gynecology, the lower gynecology risk factor was used for all codes except those obviously surgical services, in which case the higher surgical risk factor was used.

Certain codes have no physician work RVUs. The overwhelming majority of these codes are the technical components (TCs) of diagnostic tests, such as x-rays and cardiac catheterization, that have a distinctly separate technical component (the taking of an x-ray by a technician) and professional component (the interpretation of the x-ray by a physician). Examples of other codes with no work RVUs are audiology tests and injections and infusions. These codes are usually done by nonphysicians, for example, audiologists and nurses, respectively. In many cases, the non-physician or entity furnishing the TC is distinct and separate from the physician ordering and interpreting the test. We believe it appropriate for the malpractice RVUs assigned to TCs to be based on the malpractice costs of the non-physician or entity, not the professional liability of the physician.

Our proposed methodology, however, would result in zero malpractice RVUs for codes with no physician work since we propose the use of physician work RVUs to adjust for risk-of-service, as explained earlier. We believe that zero malpractice RVUs may be inappropriate because nonphysician health practitioners and entities such as IDTFs also have malpractice liability and carry malpractice insurance. Therefore, we are proposing to retain the current malpractice RVUs for all services with zero work RVUs. We are open to comments and suggestions for constructing malpractice RVUs for codes with no physician work.

(4) *Rescale for budget neutrality.* The law requires that changes to fee schedule RVUs be budget neutral. The current malpractice RVUs and the proposed resource-based malpractice RVUs were constructed using entirely different methodologies and data and are not directly related to each other. Thus, the last step is to adjust for budget neutrality by rescaling the proposed malpractice RVUs so that the total proposed resource-based malpractice RVUs equals the total current malpractice RVUs. The new resource-based malpractice RVUs for each procedure were multiplied by the frequency count for that procedure to determine the total resource-based malpractice RVUs for each procedure. This was summed for all procedures to determine the total fee schedule resource-based malpractice based RVUs. This was compared to the total current charge-based malpractice RVUs, and the appropriate adjustment was made to attain budget neutrality. The raw unadjusted resource-based malpractice RVUs were multiplied by 0.0291 so that the conversion to resource-based malpractice RVUs maintains the same level of expenditures for the malpractice component.

The proposed resource-based malpractice RVUs are shown in Addendum B. These values have been adjusted for budget neutrality on the basis of the most recent available data. They do not reflect the final budget neutrality adjustment, which we will make for the final rule on the basis of more recent data. We do not believe, however, that the values will change significantly as a result of the final budget-neutrality adjustment.

Because of the differences in the sizes of the three fee schedule components, implementation of the resource-based malpractice RVUs will have much smaller payment effects than the previous implementations of resource-based work RVUs and resource-based practice expense RVUs. On average, work represents about 54.5 percent of payment for a procedure under the fee schedule, practice expense about 42.3 percent, and malpractice about 3.2 percent. Thus, a 20 percent change in practice expense or work RVUs would yield a change in payment of about 8 to 11 percent. In contrast, a corresponding 20 percent change in malpractice values would yield a change in payment of only about 0.6 percent. The mean frequency-weighted current malpractice RVU is about 0.08 which equates to about $2.78 in 1999. Estimates of the effects on payment by specialty and selected high-volume procedures can be found in the impact section of this rule.

We are requesting comments on our proposed methodology and resource-based malpractice RVUs.

We are proposing to add a new § 414.22(c)(3) (Relative value units (RVUs)) to specify that, for services furnished in the year 2000 and subsequent years, the malpractice RVUs are based on the relative malpractice insurance resources for each service.

B. Resource-Based Practice Expense Relative Value Units

1. Resource-Based Practice Expense Legislation

Section 121 of the Social Security Act Amendments of 1994 (Public Law 103–432), enacted on October 31, 1994, requires us to develop a methodology for a resource-based system for determining practice expense RVUs for each physician's service beginning in 1998. In developing the methodology, we must consider the staff, equipment, and supplies used in providing medical and surgical services in various settings.

The legislation specifically requires that, in implementing the new system of practice expense RVUs, we must apply the same budget-neutrality provisions that we apply to other adjustments under the physician fee schedule.

The BBA was enacted on August 5, 1997, before publication of the October 1997 (62 FR 59103) final rule. Section 4505(a) of the BBA delayed the effective date of the resource-based practice expense RVUs until January 1, 1999. In addition, the BBA provided for the following revisions in the requirements to change from charge-based practice expense RVUs to resource-based RVUs.

Instead of paying for all services entirely under a resource-based RVU system in 1999, section 4505(b) of the BBA provided for a 4-year transition period. The practice expense RVUs for the year 1999 will be the sum of 75 percent of charge-based RVUs and 25 percent of the resource-based RVUs. For the year 2000, the percentages will be 50 percent charge-based RVUs and 50 percent resource-based RVUs. For the year 2001, the percentages will be 25 percent charge-based RVUs and 75 percent resource-based RVUs. For subsequent years, the RVUs will be totally resource-based.

Section 4505(e) of the BBA provided that, in 1998, the practice expense RVUs would be adjusted for certain services in anticipation of the implementation of resource-based practice expenses beginning in 1999. Thus, practice expense RVUs for office visits were increased. For other services whose practice expense RVUs exceeded 110 percent of the work RVUs and which were furnished less than 75 percent of the time in an office setting, the 1998 practice expense RVUs were reduced to a number equal to 110 percent of the work RVUs. This limitation did not apply to services that had proposed resource-based practice expense RVUs in the June 18, 1997 proposed rule (62 FR 33196) that increased from their 1997 practice expense RVUs. The procedure codes affected and the final RVUs for 1998 were published in the October 31, 1997 final rule (62 FR 59103).

Section 4505(d)(3) also required that a proposed rule be published by May 1, 1998, with a 90-day comment period. A final rule was published on November 2, 1998 and the transition began on January 1, 1999.

The BBA also required that we develop new resource-based practice expense RVUs. In developing these new practice expense RVUs, section 4505(d)(1) required us to—(1) use, to the maximum extent practicable, generally accepted accounting principles that recognize all staff, equipment, supplies, and expenses, not just those that can be tied to specific procedures, and use actual data on equipment use and other key assumptions; (2) consult with organizations representing physicians regarding the methodology and data to be used; and (3) develop a refinement process to be used during each of the four years of the transition period.

2. Current Methodology for Computing Practice Expense Relative Value Units

Effective with services furnished after January 1, 1999, we established a new methodology for computing resource-based practice expense RVUs that uses the two significant sources of actual practice expense data we have available—the Clinical Practice Expert Panel (CPEP) data and the American Medical Association's (AMA's) Socioeconomic Monitoring System (SMS) data. This methodology is based on an assumption that current aggregate specialty practice costs are a reasonable basis for establishing initial estimates of relative resource costs of physicians' services across specialties. It then allocates these aggregate specialty practice costs to specific procedures and, thus, can be seen as a "top-down" approach. The following summarizes the general methodology used. (For more specific information refer to the June 5, 1998 proposed rule (63 FR 30826) and the November 2, 1998 final rule with comment (63 FR 58816).)

Practice Expense Cost Pools

We used actual practice expense data by specialty, derived from the 1995 through 1997 SMS survey data, to create six cost pools: administrative labor, clinical labor, medical supplies, medical equipment, office supplies, and all other expenses. There were three steps in the creation of the cost pools. They are as follows:

Step (1) We used the AMA's SMS survey of actual cost data to determine practice expenses per hour by cost category. The practice expense per hour for each physician respondent's practice was calculated as the practice expenses for the practice divided by the total number of hours spent in patient care activities by the physicians in the practice. The practice expenses per hour for the specialty are an average of the practice expenses per hour for the respondent physicians in that specialty.

Step (2) We determined the total number of physician hours, by specialty, spent treating Medicare patients. This was calculated from physician time data for each procedure code and the Medicare claims data. The primary sources for the physician time data were surveys submitted to the AMA's RUC and surveys performed and developed by a research team at the Harvard School of Public Health in a cooperative agreement with us for the initial establishment of the work RVUs.

Step (3) We then calculated the practice expense pools by specialty and by cost category by multiplying the practice expenses per hour for each category by the total physician hours.

For services with work RVUs equal to zero (including the TC of services with PC and TC), we created a separate practice expense pool using the average clinical staff time from the CPEP data (since these codes by definition do not have physician time), and the "all physicians" practice expense per hour.

Cost Allocation Methodology

For each specialty, we separated the six practice expense pools into two groups, direct costs and indirect costs, and used a different allocation basis for each group.

- For direct costs, which include clinical labor, medical supplies, and medical equipment, we used the CPEP data as the allocation basis. The CPEP data for clinical labor, medical supplies, and medical equipment were used to allocate the clinical labor, medical supplies, and medical equipment cost pools, respectively.

For the separate practice expense pool for services with work RVUs equal to zero, we are using, as an interim measure, 1998 practice expense RVUs to allocate the direct cost pools (clinical labor, medical supplies and medical equipment).

Also, for all radiology services that are assigned work RVUS, we used the 1998 practice expense RVUs as an interim measure to allocate the direct practice expense cost pool for the specialty of radiology. For all other specialties that perform radiology services that are assigned work RVUs, we used the CPEP data for radiology services in the allocation of that specialty's direct practice expense cost pools.

- For indirect costs, which include administrative labor, office expenses, and all other expenses, we used the total direct costs or the 1998 practice expense RVUs, as described above, in combination with the physician fee schedule work RVUs, to allocate the cost pools. We converted the work RVUs to dollars using the Medicare CF (expressed in 1995 dollars for consistency with the SMS survey years).
- For procedures performed by more than one specialty, the final procedure code allocation was a weighted average of allocations for the specialties that perform the procedure, with the weights being the frequency with which each specialty performs the procedure on Medicare patients.

Other Methodological Issues

- Global Practice Expense Relative Value Units.

For services with the PC and TC paid under the physician fee schedule, the global practice expense RVUs are set equal to the sum of the PC and TC.

- Practice Expenses per Hour Adjustments and Specialty Crosswalks

Since many specialties identified in our claims data did not correspond exactly to the specialties included in the practice expenses tables from the SMS survey data, it was necessary to crosswalk these specialties to the most appropriate SMS specialty category. We also made the following adjustments to the practice expense per hour data (For the rationale for these adjustments, see the November 2, 1998 proposed rule):

+ We set the medical materials and supplies practice expenses per hour for the specialty of "oncology" equal to the "all physician" medical materials and supplies practice expenses per hour.
+ We based the administrative payroll, office, and other practice expenses per hour for the specialties of "physical therapy" and "occupational therapy" on data used to develop the salary equivalency guidelines for these

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specialties. We set the practice expense per hour for the direct cost categories equal to the "all physicians" practice expense per hour from the SMS survey data.

+ Due to uncertainty concerning the appropriate crosswalk and time data for the nonphysician specialty "audiologist," we derived the resource-based practice expense RVUs for codes performed by audiologists from the practice expenses per hour of the other specialties that perform these codes.

+ For the specialty "emergency medicine" we used the "all physician" practice expense per hour to create practice expense cost pools for the categories "clerical payroll" and "other expenses."

+ For the specialty "podiatry" we used the "all physician" practice expenses per hour to create the practice expense pool.

+ For the specialty "pathology" we removed the supervision and autopsy hours reimbursed through Part A of the Medicare program from the practice expense per hour calculation.

+ For the specialty "maxillofacial prosthetics" we used the "all physician" practice expenses per hour to create practice expense cost pools and, as an interim measure, allocated these pools using the 1998 practice expense RVUs.

+ We split the specialty "radiology" practice expense per hour into "radiation oncology" practice expense per hour and "radiology other than radiation oncology" practice expense per hour and used this split practice expense per hour to create practice expense cost pools for these specialties.

+ Time Associated with the Work Relative Value Units.

The time data resulting from the refinement of the work RVUs have been, on the average, 25 percent greater than the time data obtained by the Harvard research team for the same services. We increased the Harvard research team's time data to ensure consistency between these data sources.

For services with no assigned physician times, such as dialysis, physical therapy, psychology and many radiology and other diagnostic services, we calculated estimated total physician times based on work RVUs, maximum clinical staff time for each service as shown in the CPEP data, or the judgment of our clinical staff.

We calculated the time for the anesthesia CPT codes 00100 through 01996 using the base and time units from the anesthesia fee schedule and the Medicare allowed claims data.

3. Refinement

Background

Section 4505(d)(1)(C) of the BBA requires us to develop a refinement process to be used during each of the four years of the transition period. In the June 1998 proposed rule, (63 FR 30823), we did not propose a specific long-term refinement process. Rather, we set out the parameters for an acceptable refinement process for practice expense RVUs and solicited comments on our proposed process. Most of the approximately 14,000 comments we received on the proposed rule approved of our general "top down" approach to the calculation of practice expense RVUs. However, many concerns were raised regarding the specific steps in our methodology, the practice expense per hour data, and detailed code level data. In response to these comments, we made adjustments for those situations in which we were convinced an adjustment was appropriate without the need for further data or input (see the November 2, 1998 (63 FR 58818) final rule). We also indicated that we would consider other comments for possible future refinement and that RVUs for all codes would be considered interim for 1999 and for future years during the transition period.

As part of the initial refinement process, in the November 2, 1998 final rule, page 58818, we outlined the steps we are undertaking to resolve the outstanding general methodological issues. These steps include—the establishment of a mechanism to receive additional technical advice for dealing with these broad practice expense RVU methodological issues; evaluation of any additional recommendations from the GAO, MEDPAC, and the Practicing Physicians Advisory Council; and consultation with physicians' and other groups about these issues. In addition, we solicited comments and suggestions about methodology from organizations that have a broad range of interest and expertise in practice expense and survey issues. We especially encouraged organizations that represent a broad range of physician, practitioner, and provider groups (for example, groups that represent both specialties receiving increases and those receiving decreases in Medicare payments) with expertise in practice cost issues to make specific recommendations regarding such issues as criteria for using alternative survey data, methods for validating data collected in the future, and possible alternatives for the allocation of indirect expenses.

We also discussed a proposal submitted by the RUC, which was supported by almost every medical specialty society, for the establishment of a Practice Expense Advisory Committee (PEAC), to review comments and make recommendations on the code-specific CPEP data (that is, the clinical staff types and times, medical supplies, and medical equipment needed for each procedure) during this refinement period. This committee would report to the RUC, which would make final recommendations to us.

Current Status of Refinement Activities

As stated above, one of our main strategies for resolving the outstanding practice expense methodological issues was to seek a mechanism for obtaining expert advice and technical support. To this end we have awarded a contract beginning in May 1999 to obtain this assistance in evaluating various aspects of our practice expense methodology. As also discussed above, the RUC, through the PEAC, will give us recommendations on the refinement of procedure-specific inputs. The PEAC held its organizing meeting in February 1999 and met again in April to begin the task of refining the code-specific CPEP data.

We believe that the awarding of the methodological support contract and the establishment of the PEAC represent important steps in our refinement process. However, at this time, our contractor has just begun the task of assisting us with the major methodological issues that we face in refining the resource-based practice expense RVUs. In addition, the PEAC's recommendations on changes to the code-level inputs have not yet been forwarded by the RUC. Therefore, we are able to propose only a few changes in our practice expense methodology or in the code-specific inputs in this proposed rule. However, we will consider additional changes for the final rule, based on any recommendations we receive from the RUC or PEAC or other commenters. These changes, if accepted, would be established as interim values and would be effective January 1, 2000. The following discusses more specifically the status of refinement activities and the specific changes we are proposing for the various aspects of our practice expense methodology.

Top-Down Methodology

As we have already discussed, we now have a contractor to assist us in refining our practice expense methodology. This support will help us to pinpoint weaknesses in our top-down methodology and will also aid us in generating alternative solutions to the identified problems. Among the activities we have requested the contractor to undertake are:

- The evaluation of the validity and reliability of SMS data for the specialty and subspecialty groups.
- The identification and evaluation of alternative and supplementary data sources from specialty and multi-specialty societies.
- The development of options for validating the Harvard and RUC physician procedure time data.
- The evaluation of the indirect cost allocation methodology.
- The development of options for the five-year review of practice expense RVUs.

We intend to keep the medical community informed about all of these activities and to seek their input.

SMS Data

Background

We received comments from a large number of medical specialty societies, both on our June 1998 proposed rule and our November 2, 1998 final rule, which expressed concern that their specialty or subspecialty was not adequately represented in the SMS survey data used to compute their practice expense per hour. In addition, several specialties, primarily nonphysician groups, were not included in the SMS data, making it necessary for us to crosswalk their practice expense per hour to an included specialty. A large number of these specialties either have submitted supplementary data or have expressed a desire to collect new data that they believe would more accurately reflect the practice expense per hour for their specialty.

While we appreciate the effort that these organizations have expended or are willing to expend, we are not yet in a position to use this supplementary or new data in our practice expense calculations. It is important to understand that, given the budget neutrality restrictions under which we are working, any increase in one specialty's practice expense pool will lead to a decrease for other specialties. Therefore, until we have developed reliable and standardized criteria for accepting and validating additional specialty-specific data, it would be inequitable to make any significant changes based on these data.

We recognize that this delay in indicating what additional data would be acceptable might be frustrating to those groups that believe that the SMS data does not accurately account for all of their costs. For that reason, we are ensuring that a priority of the technical contractor discussed above is to determine (1) the circumstances, if any, under which we should consider use of survey data other than the SMS data; (2) the appropriate form of these surveys; and (3) how these surveys or future SMS surveys can be appropriately validated for our use. We hope to be in a position to discuss this in more detail in the final rule to be published this fall.

Adjustment to Direct Patient Care Hours for Pathology

In the November 1998 final rule, we made adjustments to the direct patient care hours for pathologists to account for the fact that the time spent performing autopsies and supervising technicians are Part A services. The pathologists, supported by the AMA, also requested that we eliminate some of the time for "personally performing nonsurgical laboratory procedures including reports" because this time also includes some Part A services. We did not make this latter adjustment in the final rule because we did not have the data on what precise adjustment to make. We now have information to propose this adjustment as well. The SMS survey shows that pathologists reported 6.77 hours per week in personally performing nonsurgical laboratory procedures including time writing reports. The College of American Pathologists recommended that 45 percent of the 6.77 hours, which represents three hours, be removed from total patient care hours. The pathologists argue that they are providing specific services to attending physicians, but we will not allow separate payment because the attending physician does not request a consultation. This problem is unique to this specialty and, as this change will have no discernible negative impact on any other specialty, we are proposing to remove these three hours from the total patient care hours for pathologists.

CPEP Data

RUC Recommendations

As we stated above, the PEAC is beginning to review the procedure-specific CPEP inputs. Because most major physician specialties are represented on the PEAC and they will determine which codes are discussed at each meeting, we plan to wait until we receive recommendations from the RUC before making significant changes to most code-specific inputs. However, there are a number of egregious errors or anomalies that were pointed out in the public comments we received on the June 1998 proposed rule and the November 1998 final rule that we intend to address in the final rule this fall.

Physicians' Clinical Staff in the Facility Setting

In some of the original CPEP panels and in subsequent meetings, various specialties have argued that the physician's own clinical staff performs certain services for a hospital patient. In our initial "bottom-up" practice expense proposal in the June 1997 proposed rule, we edited out all of the clinical staff time in the facility setting. It was our contention then, and still is now, that Medicare already pays for services performed for a facility patient through some other mechanism, that these services are not typically performed by a physician's own staff and that recognizing these inputs is arguably inconsistent with the law and with our regulations. However, in our 1998 "top-down" proposal we used the raw CPEP inputs without applying edits to any of the data, and the clinical staff time in the facility setting was therefore included.

We are proposing to exclude from the raw CPEP data all staff time allotted to the use of clinical staff in the facility setting. This CPEP data is used in our methodology solely to allocate the specialty-specific practice expense pools to the individual codes. We would not make an adjustment to the SMS data because we cannot separately identify the costs related to physicians' clinical staff time in hospitals and we do not believe that these costs are typically incurred. We propose to make this adjustment now before extensive refinement efforts are undertaken. We are also soliciting comments, information and data regarding situations where the recognition of costs associated with the use of a physician's clinical staff in a facility would be appropriate. We will consider these responses for the final rule.

There are several arguments to be made for excluding the costs of clinical staff in the facility setting from the raw CPEP data used in calculating the practice expense payment for any service:

1. Medicare should not pay twice for the same service.

Many specialties argue that their clinical staff performs various duties for the hospital patient, examples of which are presented below; all these and other facility clinical staff services are already paid for by Medicare through a mechanism other than physician practice expense.

—Assistant at Surgery—Medicare will make a separate payment for a physician assistant, nurse practitioner or clinical nurse specialist acting as assistant at surgery. Therefore, their

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time cannot also be counted as a practice expense input in the CPEP data.

—Scrub Nurse—Medicare already pays the hospital for all nursing services provided to a hospital patient, including scrub nurse services, either through the DRG payment or on a cost basis.

—Monitoring Patients Undergoing Conscious Sedation—In order to meet accreditation standards, all hospitals must already have staff available to monitor these patients. Medicare pays the hospital for this service or makes separate payment for a certified registered nurse anesthetist. To include staff time in the CPEP data for this service would result in a duplicate payment.

—Reviewing Charts, Making Patient Rounds, Pulling Chest Tubes—These activities are physicians' services that are paid for through the physician work RVUs. Physicians may choose to delegate some of their work to their clinical staff. However, unless the work RVUs are commensurately reduced, it would be inappropriate to also include this staff time in the practice expense calculations.

—Making Phone Calls from the Physician's Office—Phone calls concerning the patient made to the family or the facility are considered an administrative cost. The staff time for these services is paid for under our indirect practice expense allocation.

Unless we were to reduce the DRG payment made to hospitals or the work RVUs used to determine physician payment, the inclusion of the costs of any of this clinical staff time in the calculation of procedure-specific practice expenses would essentially lead to a duplication of Medicare payment. We welcome comments from hospitals, physicians, and others on this issue.

2. It is not a typical practice for most specialties to use their own staff in the facility setting.

While physician practice patterns may vary by specialty, by practice size and configuration and by individual practitioner, we pay only one rate, with the exception of a geographic adjuster, for a given site for any specific service. Therefore, the CPEP inputs for each service cannot reflect all variations in practice patterns, but are rather meant to represent the clinical staff times, supplies, and equipment that are used for the typical patient receiving that service. We have not seen sufficient data to convince us that the use of the physician's clinical staff in the facility setting is a typical practice. The American Hospital Association performed a survey of a sample of their members which indicated that this practice occurred only occasionally. Because we do not believe that physicians typically incur costs for bringing their staff into the facility setting, the aggregate SMS data should contain few costs for such services. Therefore, we are not proposing to eliminate any clinical staff expenses from the surgical specialties' aggregate SMS practice expense data.

3. Inclusion of these costs is arguably inconsistent with both the law and Medicare regulations.

—Section 1862(a)(14) of the Act, which discusses exclusions from coverage, states that,

"Notwithstanding any other provision of this title, no payment may be made under part A or part B * * * for any expenses incurred for items or services which are other than physicians' services (as defined in regulations promulgated specifically for purposes of this paragraph) * * * and which are furnished to an individual who is a patient of a hospital * * * by an entity other than the hospital * * * unless the services are furnished under arrangements. * * *"

(This section also exempts services of physician assistants, nurse practitioners, clinical nurse specialists, certified nurse-midwife services, qualified psychologist services, and services of certified registered nurse anesthetists from the above exclusion.)

—In § 411.15, (Particular Services Excluded from Coverage) subparagraph (m)(1), we paraphrase the above provision for hospital inpatients and add that "services subject to exclusion under this paragraph include * * * services incident to physicians' services." Section 411.15(m)(2) implements the exceptions to this exclusion, among them "physician services that meet the criteria of § 415.102(a) of this chapter for payment on a reasonable charge or fee schedule basis."

—Section 415.102(a) contains the definition of physicians' services required by section 1862(a)(14) of the Act and the criteria referred to in § 411.15(m) above: "If the physician furnishes services to beneficiaries in providers, the carrier pays on a fee schedule basis provided the following requirements are met: (1) The services are personally furnished for an individual beneficiary by a physician. (2) The services contribute directly to the diagnosis or treatment of an individual beneficiary. (3) The services ordinarily require performance by a physician."

—On September 8, 1998, we published a proposed rule on a prospective payment system for hospital outpatient services (63 FR 47552). This rule proposes to add § 410.39 which embodies in regulation for the hospital outpatient setting the exclusion in § 411.15 described above. Section 410.39(c) would exempt from the exclusion physicians' services that meet the requirements of § 415.102(a) as described above, physician assistant, nurse practitioner, clinical nurse specialist, certified nurse midwife, and qualified psychologist services, as well as services of an anesthetist.

A reading of all of the above suggests that no payment should be made under the physician fee schedule for the costs of physicians' clinical staff used in the hospital setting. Services performed by non-physician clinical staff do not fulfill the definition of services personally furnished by a physician, and, therefore, the exception to the exclusion created by section 1862(a)(14) of the Act does not apply. In addition, nursing services, such as those performed by a scrub nurse working for a physician, do not ordinarily require performance by a physician and, thus, are not physicians' services for the purpose of section 1862(a)(14) of the Act. Finally, services "incident to a physician's service" are explicitly excluded from coverage in the hospital setting by § 411.15(m)(1).

Table 5, "Impact on Total Allowed Charges by Specialty of Excluding the Cost of Clinical Staff in the Facility Setting," shows the impact of the proposed changes on each major specialty's total allowed charges. As can be seen from this table, anesthesia and cardiac surgery face a decrease of 8 percent over the transition period, while thoracic surgery has a decrease of 6 percent over the same period. No other specialty has a decrease of more than 2 percent. The increases are spread throughout the specialties, with rheumatology standing to gain the most with a 5 percent increase, followed by orthopedic surgery, obstetrics and gynecology and podiatry each with a 3 percent increase.

It is not surprising that the practice expenses for cardiac and thoracic surgery and anesthesiology would decrease if clinical staff in the facility is excluded given the clinical staff time in the CPEP data. The raw CPEP data for the cardiac and thoracic codes contain up to 57 hours of clinical staff time in the hospital for a given procedure. For example, the total facility clinical staff time of 24 hours for CPT code 33771 (repair of great vessels defect) includes nearly seven hours for a physician assistant to act as assistant at surgery, which can be billed separately, and over six hours for a scrub nurse that we pay the hospital to provide.

The anesthesia CPEP panel also added inputs of up to 195 minutes clinical staff time per procedure in the facility setting, which is particularly inexplicable for such a hospital-based specialty. This time is divided between a registered nurse, physician assistant, and an anesthesia technician. It is in no way clear for what purposes an anesthesiologist would employ a nurse or a physician assistant, but in any case we pay the hospital for all nursing care and we make separate payment for a physician assistant.

We welcome comments on this entire issue and particularly solicit information about any possible appropriate use of physicians' clinical staff in the facility setting that we should consider for our final rule.

TABLE 5.—IMPACT ON TOTAL ALLOWED CHARGES BY SPECIALTY OF EXCLUDING THE COST OF CLINICAL STAFF IN THE FACILITY SETTING

Specialty	Impact on total payments (percent)
ANESTHESIOLOGY	−8
CARDIAC SURGERY	−8
CARDIOLOGY	−2
CLINICS	−1
DERMATOLOGY	2
EMERGENCY MEDICINE	−1
FAMILY PRACTICE	2
GASTROENEROLOGY	−2
GENERAL PRACTICE	2
GENERAL SURGERY	0
HEMATOLOGY ONCOLOGY	1
INTERNAL MEDICINE	0
NEPHROLOGY	0
NEUROLOGY	1
NEUROSURGERY	1
OBSTETRICS/GYNECOLOGY	3
OPHTHALMOLOGY	1
ORTHOPEDIC SURGERY	3
OTHER PHYSICIAN	0
OTOLARYNGOLOGY	2
PATHOLOGY	0
PLASTIC SURGERY	1
PSYCHIATRY	−1
PULMONARY	−2
RADIATION ONCOLOGY	0
RADIOLOGY	0
RHEUMATOLOGY	5
THORACIC SURGERY	−6
UROLOGY	2
VASCULAR SURGERY	0
OTHERS	
CHIROPRACTOR	0
NONPHYSICIAN PRACTITIONER	0
OPTOMETRIST	2
PODIATRY	3
SUPPLIERS	0

Physician Time

Background

Under the "top down" methodology we are using to calculate the resource-based practice expense for physicians' services, the physician time attributed to each service has now become a significant factor in determining the RVUs assigned to that service. Therefore, it is vital that there is confidence in the accuracy of these times. As we discussed above, we have a contract to assist us in resolving many of the outstanding methodological issues we face in refining our "top down" approach. One of the tasks this contractor will undertake is to develop options for validating the 1992 Harvard research team study and the AMA/RUC physician time data.

Pediatric Surgery Physician Time Data

In its comments on the June 1998 proposed rule, the American College of Surgeons stated that the physician time assigned to pediatric surgery codes was based on erroneously low physician time data from the original Harvard study, rather than on later data from the study of pediatric services performed by the same Harvard study team for the American Pediatric Surgical Association in 1992. The comment further stated that the latter data were used as the basis for the work RVUs assigned to these 48 pediatric surgical services. We responded in the final rule that such inaccuracies in the physician time data would be considered during the refinement process. We are currently analyzing the data needed to make the appropriate corrections and will update the physician times for these 48 pediatric surgical services in the final rule.

Physical Therapy and Occupational Therapy Times

In the November 1998 final rule we did not use the RUC physician time data for the physical therapy codes (CPT 97001 through 97770) as we believed these times to be inaccurate. Instead, we set the time for these procedures using the judgment of our clinical staff. In its comments on the final rule, the American Physical Therapy Association (APTA) stated that the times that we used were too low because it appeared that we used only intra-service time. The American Occupational Therapy Association, in its comments on the proposed rule, also objected to our reduction in times for outpatient rehabilitation codes. While APTA conceded that the RUC survey data on the times for these services could cause confusion, APTA also argued that we should recognize some preservice and postservice times for physical therapy services. APTA made specific recommendations that included such preservice and postservice times, while acknowledging that, because multiple procedures are often performed at the same session, there could be overlap in these times. We agree that it is appropriate to include some preservice and postservice times for these procedures and have adjusted the total code-specific times used to create the practice expense pools as shown in Table 6, "Revised Times for CPT codes 97001 through 97770."

TABLE 6.—REVISED TIMES FOR CPT CODES 97001 THROUGH 97770

HCPCS	Total time used for HCFA 11/2/98 final rule (minutes)	Revised time (minutes)
97001	30	42
97002	20	25
97003	45	57
97004	30	35
97010	5	5
97012	15	15
97014	13	13
97016	18	18
97018	13	13
97020	14	14
97022	15	15
97024	15	15
97026	10	10
97028	9	9
97032	18	18
97033	14	14
97034	16	16
97035	12	12
97036	15	15
97110	15	18
97112	15	18
97113	15	18
97122	15	18
97124	15	18
97250	15	18
97261	15	18
97265	15	18
97504	15	18
97520	15	18
97530	15	18
97535	15	18
97537	15	18
97542	15	18

TABLE 6.—REVISED TIMES FOR CPT CODES 97001 THROUGH 97770—Continued

HCPCS	Total time used for HCFA 11/2/98 final rule (minutes)	Revised time (minutes)
97750	15	18
97703	15	18
97770	15	18

RUC Time Database

The primary sources for the physician time data used in creating the specialty-specific practice expense pools are the surveys done for the initial establishment of the work RVUs and the surveys submitted to the AMA's RUC. We have been informed by the AMA that some of the RUC times we used for the November 1998 final rule differed from the times found in the official RUC database. The AMA also conveyed to us that the RUC is currently verifying their database with the relevant specialties and plans to send it to us in time for its use in the final rule.

Crosswalk Issues

Physical and Occupational Therapy Indirect Costs

We currently crosswalk physical and occupational therapy services to the "all physician" practice expense per hour for direct costs. However, for indirect costs we believed that the crosswalk to "all physicians" would overstate the actual practice expense for therapy services. Instead we used the data used to develop the therapy salary equivalency guidelines to create the practice expense per hour for these costs. These guidelines, which were developed for therapists working under contract for a facility, assume a required space of 250 square feet per therapist. Organizations representing both physical and occupational therapists objected that this estimate of 250 square feet was insufficient to reflect expenses for therapists in private practice. After further consideration of these comments and after consultation with industry representatives, we agree that these space requirements may not be representative of the actual space needed by independent therapists. Based on our analysis of the available data, we have increased the space requirements to 500 square feet.

Vascular Surgery

The SMS survey sample of 10 vascular surgeons is too small for us to calculate accurately a practice expense per hour for this specialty. In the 1998 proposed and final rules, we combined their data with that of the cardiac and thoracic surgeons to create a combined practice expense pool for all three specialties. The Society for Vascular Surgery commented that this crosswalk understated the actual practice expense for their specialty because vascular surgery services generally involved patients with more co-morbidities, included more evaluation and management services and thus were more office-based. We agree that the current crosswalk might not appropriately approximate the specialty's costs, and we are proposing to change vascular surgery's crosswalk to the "all physician" practice expense per hour.

Calculation of Practice Expense Pools—Other Issues

In the November 2, 1998 final rule, in response to the many commenters that objected to the reductions published in the June 5, 1998 proposed rule for services with no work RVUS, we created, as an interim solution, a separate practice expense pool for all services with zero work RVUs. We used the "all physicians" category for the practice expense per hour for this pool and, instead of allocating this pool by the CPEP data, we used the 1998 RVUs as the allocator.

This was of benefit to most of the services included in this expense pool, but some specialties, such as sleep medicine, neurology, ophthalmology, and pathology that had not commented on problems with their services with no work RVUs were negatively affected by this methodological change relative to the June 5, 1998 proposal. We have subsequently received comments from societies for these specialties requesting that these services be taken out of this special pool and be treated like the vast majority of codes. As many of these services are provided by other specialties as well and such a change could have an impact across specialties, we are seeking comments both on such an adjustment in general and on specific services that should either be included or excluded from the adjustment. However, if we do remove codes from the zero work RVU pool in our final rule, we plan to do it in a uniform manner across families or categories of codes, instead of allowing individual services to be placed in or out of the "zero work RVU" practice expense pool depending on which method yields the highest RVUs.

Table 7, "Approximate Additional Changes in the Practice Expense RVUs for Codes That Might Be Removed from the Zero Work Pool," shows the list of codes that we are considering removing from the "zero work RVU" pool, and Table 8, "Additional Impact on Total Allowed Charges by Specialty of Removing Selected Codes from the Zero Work Pool," shows the impact of this change by specialty.

TABLE 7.—APPROXIMATE ADDITIONAL CHANGES IN PRACTICE EXPENSE RVUS FOR CODES THAT MIGHT BE REMOVED FROM THE "ZERO-WORK" POOL

HCPCS	MOD	Description	Approx. change in non-facility practice expense RVUs	Approx. change in facility practice expense RVUs
88104	TC	Cytopathology, fluids	0.52	0.52
88106	TC	Cytopathology, fluids	0.28	0.28
88107	TC	Cytopathology, fluids	0.09	0.09
88108	TC	Cytopath, concentrate tech	0.42	0.42
88125	TC	Forensic cytopathology	0.08	0.08
88160	TC	Cytopath smear, other source	0.92	0.92
88161	TC	Cytopath smear, other source	0.25	0.25
88162	TC	Cytopath smear, other source	0.21	0.21
88170	TC	Fine needle aspiration	−0.11	−0.11
88171	TC	Fine needle aspiration	−0.44	−0.44
88172	TC	Evaluation of smear	0.44	0.44
88173	TC	Interpretation of smear	0.57	0.57
88180	TC	Cell market study	0.41	0.41
88182	TC	Cell market study	0.86	0.86

TABLE 7.—APPROXIMATE ADDITIONAL CHANGES IN PRACTICE EXPENSE RVUS FOR CODES THAT MIGHT BE REMOVED FROM THE "ZERO-WORK" POOL—Continued

HCPCS	MOD	Description	Approx. change in non-facility practice expense RVUs	Approx. change in facility practice expense RVUs
88300	TC	Surg path, gross	0.3	0.3
88302	TC	Tissue exam by pathologist	0.71	0.71
88304	TC	Tissue exam by pathologist	0.5	0.5
88305	TC	Tissue exam by pathologist	0.69	0.69
88307	TC	Tissue exam by pathologist	1.2	1.2
88309	TC	Tissue exam by pathologist	1.85	1.85
88311	TC	Decalcify tissue	−0.01	−0.01
88312	TC	Special stains	1.3	1.3
88313	TC	Special stains	1	1
88314	TC	Histochemical stain	0.5	0.5
88318	TC	Chemical histochemistry	0.43	0.43
88319	TC	Enzyme histochemistry	0.93	0.93
88323	TC	Microslide consultation	0.58	0.58
88331	TC	Pathology consult in surgery	−0.18	−0.18
88332	TC	Pathology consult in surgery	−0.15	−0.15
88342	TC	Immunocytochemistry	0.98	0.98
88346	TC	Immunofluorescent study	1.09	1.09
88347	TC	Immunofluorescent study	1.06	1.06
88348	TC	Electron microscopy	3.87	3.87
88349	TC	Scanning electron microscopy	4.43	4.43
88355	TC	Analysis, skeletal muscle	1.46	1.46
88356	TC	Analysis, nerve	0.46	0.46
88358	TC	Analysis, tumor	0.67	0.67
88362	TC	Nerve teasing preparations	0.3	0.3
88365	TC	Tissue hybridization	1.21	1.21
92060	TC	Special eye evaluation	1.13	1.13
92065	TC	Orthoptic/pleoptic training	0.67	0.67
92081	TC	Visual field examination(s)	0.6	0.6
92082	TC	Visual field examination(s)	0.74	0.74
92083	TC	Visual field examination(s)	0.96	0.96
92135	TC	Opthalmic dx imagining	0.96	0.96
92235	TC	Eye exam with photos	1.44	1.44
92240	TC	Icg angiography	1.44	1.44
92250	TC	Eye exam with photos	1.17	1.17
92265	TC	Eye muscle evaluation	0.29	0.29
92270	TC	Electro-oculography	0.61	0.61
92275	TC	Electroretinography	−0.23	−0.23
92283	TC	Color vision examination	0.05	0.05
92284	TC	Dark adaptation eye exam	0.57	0.57
92285	TC	Eye photography	1.41	1.41
92286	TC	Internal eye photography	1.02	1.02
92325		Modification of contact lens	−0.08	−0.28
92326		Replacement of contact lens	−1.4	−1.58
92354		Special spectacles fitting	−8.78	−9.09
92355		Special spectacles fitting	−4.05	−4.36
92358		Eye prosthesis serive	−0.72	−0.91
92371		Repair & adjust spectacles	−0.36	−0.54
92392		Supply of low vision aids	−3.94	−4.13
92393		Supply of artificial eye	−12.84	−13.02
92395		Supply of spectacles	−1.16	−1.34
92396		Supply of contact lenses	−2.12	−2.3
93307	TC	Echo exam of heart	−2.9	−2.9
93350	TC	Echo transthoracic	4.55	4.55
95805	TC	Multiple sleep latency test	−0.56	−0.56
95806	TC	Sleep study, unattended	−3.07	−3.07
95807	TC	Sleep study, attended	−0.04	−0.04
95808	TC	Polysomnograph, 1–3	5.62	5.62
95810	TC	Polysomnography, 4 or more	5.9	5.9
95811	TC	Polysomnography w/cpap	5.54	5.54
95812	TC	Electroencephalogram (EEG)	0.84	0.84
95813	TC	Electroencephalogram (EEG)	0.55	0.55
95816	TC	Electroencephalogram (EEG)	0.85	0.85
95819	TC	Electroencephalogram (EEG)	1.04	1.04
95822	TC	Sleep electroencephalogram	−0.62	−0.62
95824	TC	Electroencephalography	−0.38	−0.38
95829	TC	Surgery electrocorticogram	3.41	3.41
95875	TC	Limb exercise test	−0.02	−0.02
95923	TC	Autonomic nervous func test	0.93	0.93
95930	TC	Visual evoked potential test	0.21	0.21

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TABLE 7.—APPROXIMATE ADDITIONAL CHANGES IN PRACTICE EXPENSE RVUS FOR CODES THAT MIGHT BE REMOVED FROM THE "ZERO-WORK" POOL—Continued

HCPCS	MOD	Description	Approx. change in non-facility practice expense RVUs	Approx. change in facility practice expense RVUs
95950	TC	Ambulatory eeg monitoring	−3.35	−3.35
95951	TC	EEG monitoring/videorecord	22.62	22.62
95954	TC	EEG monitoring/giving drugs	1.7	1.7
95956	TC	EEG monitoring/cable/radio	13.85	13.85

TABLE 8.—ADDITIONAL IMPACT ON TOTAL ALLOWED CHARGES BY SPECIALTY OF REMOVING SELECTED CODES FROM THE "ZERO WORK" POOL

Specialty	Impact on total payments (percent)
ANESTHESIOLOGY	0
CARDIAC SURGERY	0
CARDIOLOGY	−2
CLINICS	0
DERMATOLOGY	2
EMERGENCY MEDICINE	0
FAMILY PRACTICE	0
GASTROENTEROLOGY	0
GENERAL PRACTICE	−1
GENERAL SURGERY	0
HEMATOLOGY ONCOLOGY	−1
INTERNAL MEDICINE	−1
NEPHROLOGY	0
NEUROLOGY	0
NEUROSURGERY	0
OBSTETRICS/GYNECOLOGY	0
OPHTHALMOLOGY	3
ORTHOPEDIC SURGERY	0
OTHER PHYSICIAN	0
OTOLARYNGOLOGY	−1
PATHOLOGY	8
PLASTIC SURGERY	0
PSYCHIATRY	0
PULMONARY	0
RADIATION ONCOLOGY	−2
RADIOLOGY	−1
RHEUMATOLOGY	−1
THORACIC SURGERY	0
UROLOGY	0
VASCULAR SURGERY	−1
OTHERS:	
CHIROPRACTOR	0
NONPHYSICIAN PRACTITIONER	0
OPTOMETRIST	3
PODIATRY	0
SUPPLIERS	16

Site-of-Service Differential

Clarification of Site-of-Service Policy

We wish to clarify the circumstances under which either the non-facility or facility RVUs are used to calculate payment for a service. In the November 2, 1998 final rule, we defined hospitals, skilled nursing facilities (SNFs), and ambulatory surgical centers (ASCs) as facilities for practice expense purposes. For the purposes of the physician practice expense calculation, all other sites-of-service are considered non-facility. The distinction between the non-facility and facility setting takes into account the higher expenses of the practitioner in the non-facility setting, where the practitioner typically bears the cost of the resources—clinical staff, supplies, and equipment—associated with the service.

The major purpose of the site-of-service distinction is to ensure that Medicare does not make a duplicate payment for any of the practice expenses incurred in performing a service for a Medicare patient. When the beneficiary is a hospital, SNF, or ASC patient, the facility itself is paid for the clinical staff, supplies, and equipment needed to take care of that patient, and the lower facility rate should be paid to the practitioner. Therefore, if the patient is a facility patient or a facility will bill for the service, the practitioner must bill using the facility site-of-service designation. We are modifying the language in § 414.22(b)(5)(i) in order to clarify this policy. There are also three further clarifications that need to be made with respect to this policy.

(1) When a procedure is performed in an ASC that is not on the Medicare approved list of ASC procedures, we do not make a facility payment to the ASC. In this situation, the ASC is considered a physician's office and the non-facility RVUs would be used.

(2) Because of the hospital bundling requirement, only the hospital can bill for therapy services provided to hospital patients. In addition, through PM–AB–98–63, "Prospective Payment System for Outpatient Rehabilitation Services and Application of Financial Limitations," dated October 1998 and our final rule of November 2, 1998, we advised our fiscal intermediaries to require SNFs to bill Medicare directly for all outpatient therapy services provided to their SNF residents in a noncovered Part A stay and to their nonresidents covered under Part B. Because only the facility can bill for therapy services provided to hospital and SNF patients, the payment for the full practice expense must be reflected in the facility payment. Therefore, the higher non-facility RVUs are used to pay for therapy services even in the facility setting.

(3) While a SNF is considered a facility, a nursing home is not. Many are mixed facilities with a combination of nursing home and SNF patients. Practitioners, such as podiatrists, have commented that it is not always easy to determine into which category the patient falls. We are clarifying our policy to state that practitioners, such as podiatrists, should designate their service as a facility service, unless they verify that no Part A claim will be made for the service, in which case the "non-facility" designation can be used. However, we note that there might be lower per patient costs in a mixed facility or a nursing home setting, where multiple patients can be seen in a single visit to the site, than in the office setting. We welcome comments on ways to examine the relative costs of treating patients in these different settings, so that we can determine whether an adjustment to certain non-facility practice expense payments is appropriate.

Limitation on Facility RVUs

The non-facility RVUs would be expected to be higher than the facility RVUs for a given service, because the practitioner bears the costs of the necessary clinical staff, supplies, and equipment. Because of anomalies in our calculations, generally due to the different mix of specialties delivering the service in the two settings, for some codes the facility RVUs are higher than the non-facility RVUs. We are proposing to limit the facility rate so that it cannot be higher than the non-facility rate for any given code. Because of budget neutrality, any decrease in the facility RVUs will be offset by a corresponding increase in RVUs spread throughout the physician fee schedule. This change has negligible impact on any specialty.

C. Practice Expense Relative Value Units for a Physician's Interpretation of Abnormal Papanicolaou Smears

In the November 1998 final rule (63 FR 58814), we revised the codes for a physician's interpretation of an abnormal Papanicolaou (Pap) smear to include three HCPCS level II codes (P3001, G0124, and G0141) in addition to the CPT code 88141. We included the HCPCS level II codes to accommodate differences in Pap smear technology. We evaluated the practice expense RVUs for each of these three codes in a slightly different manner for the 1999 physician fee schedule. We now believe that it would be more appropriate to evaluate the work, practice expense, and malpractice RVUs for these codes identically and comparable to the values for CPT code 88141. We are proposing to make the practice expense RVUs identical for these codes since there are no significant differences between them.

D. Physician Pathology Services and Independent Laboratories

Physician pathology services consist of a technical component and a professional component. The technical component refers to the slide preparation, staining, and other duties performed by the laboratory technologist. The professional component refers to the physician's interpretation.

A hospital laboratory may furnish the technical component of the physician pathology service directly to its patients or it may have an independent laboratory furnish the service. Before the implementation of the hospital inpatient prospective payment system (PPS), the independent laboratory had two payment options:

- It could make an arrangement with the hospital and have the hospital bill the intermediary, and the hospital could be paid on a reasonable cost basis for the service.
- It could bill the carrier directly for the service and be paid on a reasonable charge basis.

In most cases, the independent laboratory furnished a service that combined the technical and professional components and billed the carrier for the complete physician pathology service.

When developing PPS, we considered requiring the hospital to include in its costs the technical component of the physician pathology service to a patient by an independent laboratory. This would have been consistent with our general policy of including the cost of hospital services to hospital inpatients by outside suppliers in the diagnosis-related group (DRG) payment. Instead, we decided to allow the independent laboratory to continue to bill the carrier for the complete service. The rationale, based on discussions with the College of American Pathologists, was that the technical component was an incidental service to the physician pathology service. At that time it was not treated as a service in and of itself, and the independent laboratory usually billed for the complete service. It was believed that requiring the separation and identification of the technical component service would have been disruptive to traditional billing practices for independent laboratories.

When PPS began, hospitals that furnished the technical component of the physician pathology service directly included that cost in their base period cost report. This cost was used to calculate the standardized amounts that are the basis for payment under PPS. Therefore, hospitals are paid for providing the technical component of the service through the standardized amounts. It was our understanding that most hospital laboratories furnished the technical component service directly to its patients. Even though the hospital that contracted out its physician pathology services did not include any of the cost of technical component services in its base period cost, when PPS was fully implemented, this hospital would have been paid the same PPS rate as that paid to other hospitals that had included technical component costs.

Currently, under the physician fee schedule, an independent laboratory can bill and receive payment for the technical component of physician pathology services for a hospital inpatient. We believe this is in conflict with the hospital rebundling provision in section 1862(a)(14) of the Act and has created a perverse incentive for the type of activity that the bundling provision was intended to prevent. Based on the way PPS rates are constructed, we believe that we are paying for the technical component twice; once to the hospital through the PPS payment and again to the independent laboratory through the physician fee schedule.

Generally, historically larger hospitals used independent laboratories on an "as needed" basis and smaller hospitals contracted with independent laboratories for their physician pathology service. Recently, though, we have become aware that more hospitals are considering contracting their in-

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house technical component physician pathology services to an outside laboratory if our policy remained unchanged. The hospital could continue to be paid for the technical component service under the PPS, and the independent laboratory could bill its carrier for the same TC under the physician fee schedule.

Because we believe that a hospital patient's technical component is already included in payment under PPS, we are proposing to revise our regulations to end payments to independent laboratories under the physician fee schedule for technical component services furnished to hospital inpatients. Specifically, we propose to revise § 415.130(c) to state that, after December 31, 1999, we would only pay hospitals for their inpatients' technical component services.

Section 4104(c) of OBRA 1990 (Public Law 101–508) instructed HCFA, in establishing ancillary policies under the physician fee schedule, to "consider an appropriate adjustment to reflect the technical component of furnishing physician pathology services through a laboratory that is independent of a hospital and separate from an attending or consulting physician's office." We considered this issue when we implemented the physician fee schedule and established a separate payment for the technical component of physician pathology services furnished both to hospital patients and non-hospital patients.

However, we have now reconsidered this policy with respect to hospital inpatients because it seems inconsistent with the hospital rebundling provision and we believe it creates an incentive to shift the location where the services are provided, thereby conflicting with the purpose of the hospital rebundling provision. We have anecdotal information that hospitals are having a pathologist establish an "independent" laboratory near the hospital, intending that the new laboratory perform the technical components of physician pathology services and bill for those technical components and that there would be no reduction in PPS payment to the hospital. We believe our proposal is necessary in order for Medicare to avoid making double payment in such circumstances. We believe that the language of section 4104(c) of OBRA 1990 provides sufficient authority for us to determine that, in the case of hospital patients, it is not appropriate for us to provide for independent laboratories to bill the TC of pathology services directly.

Under our proposal, independent laboratories would still be able to bill and receive payment from their Medicare carrier for the technical component of a physician pathology service furnished to beneficiaries who are not hospital inpatients. For the technical component of physician pathology services provided by an independent laboratory to a hospital inpatient, the independent laboratory would have to make arrangements with a hospital to receive payment.

The physician fee schedule regulations would continue to allow the independent laboratory to bill and receive payment under the physician fee schedule for the technical component of physician pathology services to hospital outpatients. Of course, the hospital could, if it chose instead, make an arrangement with the independent laboratory and be paid on a reasonable cost basis for this service. However, payment is made under only one method and only to one of these entities.

Since we will be publishing final regulations to implement the outpatient prospective payment system and have received comments and concerns about the outpatient technical component of physician pathology services, we will address that issue in context of those regulations.

E. Discontinuous Anesthesia Time

Payment for anesthesia services is based on the sum of base units plus time units multiplied by a locality-specific anesthesia conversion factor. Under the current regulations at § 414.46(a)(1) (Additional rules for payment of anesthesia services), the base unit is the value for each anesthesia code reflecting all activities other than anesthesia time. These activities include preoperative and postoperative visits, the administration of fluids or blood incident to anesthesia care, and monitoring services.

Anesthesia time, as defined under § 414.46(a)(2), starts when the anesthesiologist or certified register nurse anesthetist (CRNA) begins to prepare the patient for anesthesia care and ends when the anesthesiologist or CRNA is no longer in personal attendance; that is, when the patient may be placed safely under postoperative care. Time units are computed by the carrier based on the reported anesthesia time. (For purposes of this section and as described in section 1861(bb) of the Act, the term CRNA includes an anesthesiologist assistant (AA)).

In the normal course of the administration of an anesthetic, the following events occur:

- Establishment of venous access.
- Acquisition of initial monitoring information (blood pressure, oximetry, electrocardiogram).
- Induction of anesthesia (general, regional, block, monitored anesthesia care).
- Maintenance of anesthesia during the surgical procedure.
- Conclusion of anesthesia attendance.

In many situations, once the anesthesiologist or CRNA is in attendance he or she remains continuously with the patient for all five events. This represents continuous anesthesia time.

There may be instances, however, when there is a break in the continuous presence of the anesthesiologist or CRNA in the events listed above. Discontinuous anesthesia time could occur when a regional or block technique is used, resulting in a break between the induction of the anesthesia and the maintenance of the anesthesia. For example, a patient may receive an upper extremity block for hand or arm surgery in a location other than the operating room, and there may be a time period following the start of the anesthetic and prior to moving the patient to the operating room during which the patient can be safely observed by non-anesthesia personnel.

A break in anesthesia time could also occur between the periods when the anesthesiologist or CRNA obtains initial monitoring information and induces anesthesia. This usually occurs when a patient is being prepared in the operating room for induction of anesthesia and, for some reason, the surgeon is delayed or unavailable. In this instance, the anesthesiologist or CRNA may leave the patient under the observation of the operating room nurse until it is appropriate to proceed with the induction of the anesthesia.

Discontinuous anesthesia time could also occur in facilities that use anesthesia "induction" rooms where anesthesiologists or CRNAs may start IVs, thereby increasing efficiency in the use of operating room time. In these cases, there could be breaks at any point in the time periods between the establishment of the venous access, acquisition of the initial monitoring information, and induction of the anesthesia.

We are proposing to revise our regulations to allow anesthesiologists and CRNAs to sum up blocks of time around a break in continuous anesthesia care as long as there is continuous monitoring of the patient within the blocks of time. We propose to revise our regulations in § 414.46 to include this exception to the general requirement.

The current regulations on anesthesia time units refer to anesthesiologists and medically-directed CRNAs. However, the calculation of anesthesia time units also applies to claims for services submitted by CRNAs who are not medically-directed. Thus, we are proposing to revise the regulation text at § 414.60 (Payment for the services of CRNAs) to clarify this issue. These revisions are necessary to link the payment methodology for CRNA services to the payment methodology for physician anesthesia services.

These revisions would not alter the fundamental principle that anesthesia time represents a continuous block of time when a patient is under the care of an anesthesiologist or CRNA. Nor would this proposal alter our policy that an anesthesiologist or CRNA may not bill time units for the pre-anesthesia examination and evaluation; these services will continue to be included as part of the base unit component.

F. Optometrist Services

Before 1987, the services of optometrists were covered only if related to the condition of aphakia. Effective April 1, 1987, section 9336 of the Omnibus Budget Reconciliation Act of 1986 (OBRA 1986) (Public Law 99–509), enacted on October 21, 1986, amended section 1861(r)(4) of the Act to expand coverage of optometrists services. Thus, coverage has been expanded to include services otherwise covered by Medicare that an optometrist is legally authorized to perform as a doctor of optometry by the State in which the optometrist performs them.

We are conforming § 410.23 (Limitations on services of an optometrist) of the regulations to be consistent with the statutory provision that has been implemented through manual provisions. The regulations would specify that Medicare Part B pays for the services of a doctor of optometry, acting within the scope of his or her license, if the services would be covered as physicians' services when performed by a doctor of medicine or osteopathy.

G. Assisted Suicide

Section 9 of Public Law 105–12 (The Assisted Suicide Funding Restriction Act of 1997) added section 1862(a)(16) of the Act. Public Law 105–12 prohibits the use of Federal funds to furnish or pay for any health care service or health benefit coverage for the purpose of causing, or assisting to cause, the death of any individual. The prohibition does not apply to withholding or withdrawing medical treatment, nutrition, or hydration. In addition, the prohibition does not apply to furnishing a service to alleviate pain, even if doing so may increase the risk of death, as long as the purpose is not to cause or assist in causing death. The list of programs to which the prohibition applies includes the Medicare program.

We are conforming the regulations to the Medicare law amendment contained in "The Assisted Suicide Funding Restriction Act of 1997" by adding a new paragraph (q) to § 411.15 (Particular services excluded from coverage) to exclude from coverage any health care service for the specific purpose of causing, or assisting to cause, the death of an individual.

H. CPT Modifier –25

Payment under the Medicare physician fee schedule is based on the relative resources or work involved in providing a service. Under current policy, if a patient visits a physician for a minor procedure (for example, a minor surgery or an office based endoscopy) and receives no other services, the physician may only bill for the procedure and may not also bill for an office visit since no other services were provided.

If, however, in addition to the procedure the physician also provides significant, separately identifiable evaluation and management (E/M) services beyond the usual preoperative and postoperative services associated with the procedure, these services should be billed with modifier -25 and are separately payable. The E/M service does not have to be unrelated to the procedure and the same diagnosis is not sufficient reason to deny payment for the E/M service. This policy is described in section 15501.1 of the Medicare Carriers Manual and is consistent with CPT coding definitions.

To avoid any confusion on this point, we are proposing that for procedures where the global surgery rules do not apply (for example, the global code is "XXX" in the database), a provider may only bill for a separately identifiable E/M service by using the CPT modifier –25. Since every procedure has an inherent E/M component, in order for an E/M service to be billed, there must be a significant, separately identifiable service documented in the medical record. While there has been concern raised that physicians and others may be billing separately for E/M services that are part of the underlying procedure, we understand that there are times that such E/M services are provided and billed because they truly are separate and significant.

Example 1: A woman visits her rheumatologist for a follow-up visit. The visit is to monitor the status of her rheumatoid arthritis and the medication regime she has been following (methotrexate and non-steroidal anti-inflammatory drugs). During the few days prior to her visit she has experienced increased pain in her left knee. At the visit the rheumatologist notes the knee is markedly swollen and aspirates it. The rheumatologist should appropriately bill an E/M visit code with a modifier –25 in addition to the procedure code for the knee aspiration. (The knee aspiration is a significant, separately identifiable procedure which occurs during a routine visit.)

Example 2: A cardiac patient visits the physician specifically for a previously scheduled echography test. An E/M service should not be billed. (The assumption is the E/M service is built into the procedure and, therefore, should not be billed.)

Requiring the use of modifier –25 will assist carriers in claims adjudication and eliminate unnecessary denials when providers appropriately attach modifier –25 to E/M services that are significant and separately identifiable from the procedure. A separate diagnosis is not necessary. Additionally, using this modifier will alert physicians to the need for documentation in the medical record to support proper payment.

I. Nurse Practitioner Qualifications

In the November 2, 1998, final rule (63 FR 58814), we specified the qualifications for a nurse practitioner (NP). On May 12, 1999 we published a correction notice to the final rule (64 FR 25456). The final NP qualifications in § 410.75 (Nurse practitioner's services) require that, after December 31, 1999, for Medicare Part B coverage of his or her services, an NP must—

- Possess a master's degree in nursing;
- Be a registered professional nurse who is authorized by the State in which the services are furnished to practice as a nurse practitioner in accordance with State law; and,
- Be certified as a nurse practitioner by the American Nurses Credentialing Center or other recognized national certifying bodies that have established standards for nurse practitioners as defined in paragraphs (b)(1) and (b)(2) of § 410.75.

Subsequent to the publication of the NP qualifications, we gave additional consideration to the qualifications because we realized that the qualifications would exclude many experienced NPs from continuing to qualify as NPs under the Medicare program.

We gave particular consideration to the qualification criteria that require an NP to have a master's degree and national certification for the following reasons—

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- Many NPs who had been practicing for 10 to 20 years or more did not graduate from master's level programs;
- Several States still do not require a master's degree for NPs to practice;
- Numerous NPs without master's degrees who have been practicing for 10 to 20 years or more in rural underserved areas and serving indigent populations were grandfathered by States for licensure and insurance payment purposes;
- Experienced women's health NPs will not be required to have a master's degree as a condition for national certification until 2007;
- We did not allow the NP population a transition time to enable NPs to achieve national certification or earn a master's degree; and
- The requirements for NPs were never implemented by regulations but are contained in section 2158 of the Medicare Carriers Manual. Nevertheless, it was under these qualifications, which did not require NPs to have a master's degree, that many individuals have been issued NP billing numbers, and no problems in practice have been reported.

Prior to the publication of the NP qualifications, an advanced nurse could qualify under section 2158 of the Medicare Carriers Manual (HCFA Pub 14–3) as a NP if he or she—

- Was a registered professional nurse currently licensed to practice in the State in which the services are furnished;
- Satisfied the applicable requirements for qualification of NPs of the State in which the services are furnished; and,
- Met at least one of the following requirements:
- Was currently certified as a primary care nurse practitioner by the American Nurses' Association or by the National Board of Pediatric Nurse Practitioners and Associates; or,
- Had satisfactorily completed a formal educational program of at least one academic year that prepares registered nurses to perform an expanded role in the delivery of primary care and that includes at least four months (in the aggregate) of classroom instruction, and that awards a degree, diploma, or certification for successful completion of the program; or,
- Had successfully completed a formal education program (that does not qualify under the immediately preceding requirement) that prepares registered nurses to perform an expanded role in the delivery of primary care and have been performing that expanded role for at least 12 months during the 18 month period immediately preceding February 8, 1978, the effective date for provision of the services of nurse practitioners as reflected in the conditions of certification for health clinics.

Thus, NPs could have obtained Medicare billing numbers as NPs without a master's degree or national certification if the State did not require such certification. NPs who currently have billing numbers can continue to bill the Medicare program for their services until the end of this year without a master's degree or national certification. NPs can apply to the Medicare program for a billing number until the end of this year if they meet the NP qualifications at section 2158 of the Medicare Carriers Manual (as set out above).

It was not our intention to establish qualifications in the 1998 final rule that would cause experienced NPs who have been furnishing services to Medicare patients to be barred from billing under the Medicare program because they do not posses a master's degree or national certification. Also, it was not our intention to inadvertently preclude NPs, solely on the basis of their not having a master's degree, from billing under the Medicare program and providing services to Medicare patients located in rural underserved areas and indigent populations where access to care is extremely limited.

We are proposing to revise § 410.75 to specify NP qualifications that are less restrictive, but that still ensure that quality services are furnished to Medicare patients. We propose to require progressively enhanced qualifications, providing lead time for NPs to obtain a Medicare billing number under section 2158 criteria or national certification. The requirement that a NP applying for a Medicare billing number for the first time must have a master's degree in nursing as of January 1, 2003 will provide these NPs with enough time to earn such a degree. We believe it is reasonable to require, ultimately, a master's degree as the minimum educational level for new practitioners independently treating beneficiaries and directly billing the Medicare program.

The proposed NP qualifications require that for Medicare Part B coverage of his or her services, a nurse practitioner must meet the qualifications of either (1) or (2) below—

(1)(i) Be a registered professional nurse who is authorized by the State in which the services are furnished to practice as a nurse practitioner in accordance with State law; *and*

(ii) Be certified as a nurse practitioner by a recognized national certifying body that has established standards for nurse practitioners; *or*

(2) Be a registered professional nurse who is authorized by the State in which the services are furnished to practice as a nurse practitioner in accordance with State law and have been granted a Medicare billing number as a nurse practitioner by December 31, 2000. Nurse practitioners having and maintaining valid Medicare billing numbers will not lose these numbers or the ability to bill the Medicare program for covered services solely on the basis of education and credentialing.

(3) On or after January 1, 2001, nurse practitioners applying for a Medicare billing number for the first time must meet the standards for nurse practitioners as defined in paragraphs (1)(i) and (1)(ii).

(4) On or after January 1, 2003, nurse practitioners applying for a Medicare billing number for the first time must possess a master's degree in nursing and meet the standards for nurse practitioners as defined in paragraphs (1)(i) and (1)(ii) above.

J. Relative Value Units for Pediatric Services

It has come to our attention that the work RVUs for approximately 48 pediatric surgical services are inappropriate. The present values reflect the evaluation and management (E/M) services of the postoperative period as determined in the original Harvard study and not the subsequent Harvard study of 1992. Thus, when we readjusted the work RVUs for global surgical services to account for increases in the work RVUs for E/M services during the 5-year review, we did not adjust the work RVUs for these pediatric services appropriately. We are proposing to change the RVUs for the E/M services during the global surgical period for pediatric surgical services to reflect the findings of the 1992 Harvard study and are in the process of analyzing the data to determine the specific changes to be made. Changing the RVUs for E/M services during the global surgical period would result in increases in the work RVUs for these codes. The actual increases would be reflected in the final rule.

K. Percutaneous Thrombectomy of an Arteriovenous Fistula

One editorial revision made by the AMA for the (Physicians') Current Procedural Terminology (CPT) (4th Edition, 1999) was the addition of the word "external" to CPT codes 36860 and 36861, which describe declotting a cannula. Previously some professional organizations had recommended using these codes to describe the percutaneous declotting of a dialysis graft or arteriovenous fistula. The editorial revision, however, makes it clear that using CPT codes 36860 and 36861 for percutaneous declotting is inappropriate. There are currently no CPT codes for the percutaneous thrombectomy or revision of an arteriovenous fistula.

We have received a recommendation from the Society of Cardiovascular and Interventional Radiology to create a temporary HCFA Common Procedure Coding System (HCPCS) code, bundling several activities regarding percutaneous thrombectomy of a dialysis graft or fistula. The HCPCS code would be used until the AMA creates a permanent CPT code. We are proposing to implement a HCPCS code, defined as "percutaneous thrombectomy and/or revision, arteriovenous fistula, autogenous or nonautogenous dialysis graft." We are defining it analogously to open surgical procedures, CPT codes 36831 to 36833. We are proposing a 90-day global period for this service to be consistent with the open surgical procedure codes and to facilitate comparisons with them. More than one CPT code may be required to describe them. Moreover, we do not have an independent evaluation of the work RVUs involved, such as a RUC recommendation. Therefore, we are proposing individual local carrier pricing for the new HCPCS code.

L. Pulse Oximetry, Temperature Gradient Studies, and Venous Pressure Determinations

There are certain simple diagnostic procedures, that is, CPT codes 94760, 94761, 94762, 93740, and 93770 (pulse oximetry and venous pressure determinations), that have separate CPT codes. However, the technical work involved in these procedures is small, while the physician work involved in interpreting them is included in an E/M service or a more complex procedure. Moreover, in the inpatient hospital setting, the technical expense of performing these procedures is included in the DRG payment. In the physician office setting, the practice expenses associated with the procedures are included in the staff and equipment costs reported in the AMA's Socioeconomic Monitoring Survey that we have used to establish the resource-based practice expenses in 1999. We believe that continuing to pay separately for these codes duplicates amounts included in both facility payments and PERVUs. In order to avoid duplicate payments, we are proposing to discontinue separate payment for CPT codes 94760, 94761, 94762, and 93770 and to list them in the physician fee schedule with a status code of "B" for "payment always bundled into payment for other services."

M. Removal of Requirement for X-Ray Before Chiropractic Manipulation

Section 1861(r)(5) of the Act defines a doctor of chiropractic as a physician only for purpose of manual manipulation of the spine to correct a subluxation demonstrated by x-ray to exist. Section 4513(a) of the BBA eliminates the statutory provision that a spinal subluxation be demonstrated by an x-ray. Thus, section 1861(r)(5) of the Act was amended to allow Medicare payment for a chiropractor's manual manipulation of the spine to correct subluxation without that subluxation being demonstrated by an x-ray. This provision is effective for services furnished on or after January 1, 2000.

In § 410.22 (Limitations on services of a chiropractor), paragraph (b)(1) states that Medicare Part B pays only for a chiropractor's manual manipulation of the spine to correct a subluxation if an x-ray demonstrates that a subluxation exists and if the subluxation has resulted in a neuromusculoskeletal condition for which manipulation is appropriate treatment.

In accordance with the BBA, we are deleting the x-ray requirement from § 410.22(b)(1). Thus, effective January 1, 2000, § 410.22(b)(1) will state that Medicare Part B pays only for a chiropractor's manual manipulation of the spine to correct a subluxation if the subluxation has resulted in a neuromusculoskeletal condition for which manipulation is appropriate treatment.

N. Coverage of Prostate Cancer Screening Tests

Section 4103 of the BBA provides for Medicare coverage of certain prostate cancer screening tests for all male beneficiaries, effective January 1, 2000, subject to certain frequency and other limitations. Effective January 1, 2000, the law provides for coverage for screening digital rectal examinations (DRE) and screening prostate-specific antigen blood tests. In addition, the law provides for coverage for years beginning after 2002 of other procedures as we find appropriate for the purpose of early detection of prostate cancer, taking into account changes in technology and standards of medical practice, availability, effectiveness, costs, and other factors as we consider appropriate.

Current Medicare coverage policy allows payment for tests to diagnose prostate cancer and related medically necessary services that are furnished to beneficiaries. Under the policy, diagnostic prostate cancer tests are covered if they are medically necessary to evaluate a specific complaint or symptom that might indicate prostate cancer, or to monitor an existing medical condition of an individual who has had a history of prostate cancer. This coverage is based, in part, on section 1861(s)(3) of the Act, that provides for general Medicare coverage for diagnostic x-ray, clinical laboratory, and other diagnostic tests. Before the enactment of the BBA, prostate cancer screening tests have been excluded from coverage based on section 1862(a)(7) of the Act, that states that routine physical checkups are excluded services. This exclusion is described in § 411.15(a) (Particular services excluded from services). In addition, prostate cancer screening tests have been excluded from coverage based on section 1862(a)(1)(A) of the Act. This section provides that items and services must be reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member as stated in § 411.15(k).

To conform the regulations to the statutory requirements of the BBA, we are specifying an exception to the list of examples of routine physical checkups excluded from coverage in §§ 411.15(a)(1) and 411.15(k)(9) for prostate cancer screening tests that meet the frequency limitations and the conditions for coverage that we are specifying under § 410.39 (Prostate cancer screening tests). Coverage of prostate cancer screening is provided under Medicare Part B only.

As provided in the law, this new coverage allows payment for one screening DRE and one screening prostate-specific antigen blood test every year.

We are proposing to add § 410.39 (Prostate cancer screening tests: Conditions for and limitations on coverage) to provide for coverage of two types of prostate cancer screening tests. We are proposing several definitions of terms that would be included to implement the statutory provisions and to help the reader in understanding the provisions of the regulation. These include definitions of the terms—(1) prostate cancer screening tests, (2) a screening DRE, (3) a screening prostate-specific antigen blood test, (4) an attending physician, and (5) an attending physician assistant, nurse practitioner, clinical nurse specialist or certified nurse midwife. We are also proposing conditions of coverage for the two prostate cancer screening tests

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identified in the law for coverage effective January 1, 2000.

Section 4103(a) of the BBA defines the term "prostate cancer screening test" to mean a test (among other things) that is "provided for the purpose of early detection of prostate cancer to a man over 50 years of age who has not had such a test during the preceding year." We have interpreted this language to mean that payment may be made for a male beneficiary over 50 years of age or older (that is, starting at least one day after he has attained age 50) for both an annual screening DRE and an annual screening prostate-specific antigen test. We have also interpreted the law to mean that payment may not be made for such screening tests for an individual male beneficiary who is age 50 or younger.

Under our authority under the "reasonable and necessary" clause of the Act, section 1862(a)(1)(A) of the Act, we are establishing conditions under which we would cover prostate cancer screening tests. To ensure that the screening digital rectal examinations are performed as safely and accurately as possible, we are proposing to require, in § 410.39(b), that the examination must be performed by the beneficiary's attending physician who is either a doctor of medicine or osteopathy (as defined in section 1861(r)(1) of the Act), or by the beneficiary's attending physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse midwife (as defined in section 1861(aa) and section 1861(gg) of the Act) who is authorized under State law to perform the examinations. In § 410.39(c), we are proposing that payment may not be made for screening DRE performed for a man age 50 or younger. For an individual over 50 years of age, payment may be made for a screening DRE only if the man has not had such an examination paid for by Medicare during the preceding 11 months following the month in which his last Medicare-covered screening DRE was performed. In § 410.39(d) (Conditions for coverage of screening prostate-specific antigen blood tests), we are specifying that coverage is available for screening prostate-specific antigen blood tests only if they are ordered by the beneficiary's attending physician, or by the beneficiary's attending physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse midwife who is authorized to order this test under State law. We are including this coverage requirement to make certain that beneficiaries receive appropriate information about the implications and possible results of having these examinations performed.

In § 410.39(e) (Limitation on coverage of screening prostate-specific antigen blood test), we are proposing that payment may not be made for a screening prostate-specific antigen blood test performed for a man age 50 or younger. For an individual over 50 years of age, payment may be made for a screening prostate-specific antigen blood test only if the man has not had such an examination paid for by Medicare during the preceding 11 months following the month in which his last Medicare-covered screening prostate-specific antigen blood test was performed.

We have created a new HCPCS code, G0102, prostate cancer screening DRE, to be used for the screening DRE. A DRE is a relatively quick and simple procedure and we have assigned it the same value as CPT code 99211, the lowest level E/M service. A DRE is usually provided as part of an E/M service. We believe that it would be extremely rare for a DRE to be the only service provided during a patient encounter. For this reason, we are proposing to bundle the DRE into the payment for an E/M service when a covered E/M service is provided on the same day as a DRE. If the DRE is the only service provided or is provided as part of an otherwise noncovered service, such as CPT code 99397, preventive services visit, HCPCS code G0102 would be separately payable if all the aforementioned coverage requirements are met.

We have created a new HCPCS code, G0103, prostate screening; prostate specific antigen (PSA) to be used for the screening PSA test. The PSA screening test is priced at the same payment rate as CPT code 85153, PSA; total and would be paid under the clinical diagnostic laboratory fee schedule.

O. Diagnostic Tests

1. Supervision of Diagnostic Tests

On October 31, 1997, we published a final rule with comment period (62 FR 59048) in the **Federal Register** that required that diagnostic tests covered under section 1861(s)(3) of the Act and payable under the physician fee schedule must be furnished under the appropriate level of supervision by a physician as defined in section 1861(r) of the Act in order to be considered reasonable and necessary and, therefore, covered under Medicare. Medicare requires that physicians supervise diagnostic testing to ensure the safety and effectiveness of the diagnostic testing furnished to beneficiaries. The October 31, 1997 final rule designated the level of physician supervision for most diagnostic tests payable under the physician fee schedule. The physician supervision requirement applied to tests performed by physician assistants (PAs), nurse practitioners (NPs), clinical nurse specialists (CNSs), and other nonphysician personnel.

Sections 4511 and 4512 of the BBA removed the restrictions on the areas and settings in which NPs, CNSs, and PAs may be paid under the physician fee schedule for services that would be physician services if furnished by a physician.

Therefore, we are proposing to revise § 410.32(b)(2), which concerns diagnostic x-ray and other diagnostic tests. We are proposing to add an exception that would specify that no physician supervision is required for diagnostic tests performed by NPs and CNSs when they are authorized by the State to perform these tests. In addition, we are proposing to modify § 410.32(b)(3) by means of a parenthetical stating that diagnostic tests that a PA is legally authorized to perform under State law require only a general level of physician supervision.

This distinction is based on the fact that PAs are licensed to practice with physician supervision. Also, for purposes of Medicare, they must be either employees or contractors of physicians, and their services may be billed only by the physicians (see section 1861(b)(6) as modified by section 4512(b) of the BBA). For these reasons, we believe it is appropriate to require that PAs furnish diagnostic tests under the general supervision of those physicians.

We are also proposing to add an exception criterion at § 410.32(b)(2) so that the physician supervision rules would not apply to pathology and laboratory codes in the 80000 series of the CPT payable under the physician fee schedule. This family of codes is within the ambit of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) regulations (Part 493), and we have decided that it would be unnecessarily confusing to apply another, separate set of supervision rules to the performance of these procedures. We now believe that the appropriate level of supervision of these pathology and laboratory procedures (including the determination that there should be no physician supervision at all) should be determined under the CLIA regulations, and we would consider these matters beyond the scope of § 410.32.

2. Independent Diagnostic Testing Facilities (IDTFs)

Section 410.33, as adopted in the October 1997 final rule (62 FR 59099), establishes criteria for the operation of IDTFs. We are proposing to modify the implementation date from July 1, 1998 to March 15, 1999 to reflect the actual implementation date.

Section 410.33(a) lists the types of entities the carrier may pay for diagnostic tests under the physician fee schedule. We are proposing to modify § 410.33(a) to include NPs and CNSs who perform diagnostic tests that the State authorizes them to perform in the list of entities that may be paid directly by the carrier for diagnostic tests under the physician fee schedule. This amendment would not authorize an NP or a CNS to serve as the supervising physician for an IDTF under the requirements set forth in § 410.33(b).

P. New and Revised Relative Value Units for Calendar Year 1999

The AMA's RUC evaluated 16 new and revised 1999 CPT codes at its September 1998 meeting. We received the RUC's recommendations for these codes too late to incorporate them into our November 2, 1998, final rule (63 FR 58814) on the 1999 physician fee schedule. We have completed our evaluations of the codes, and we have included them below for comment.

For twelve of the codes we propose accepting the RUC evaluations of work. For two of the codes, 94620 and 94621 (pulmonary stress testing), that represent revisions of existing codes, we revised the work RVUs recommended by the RUC to achieve budget neutrality of work RVUs within the family of codes. That is, we adjusted the work RVUs so that the sum of the new or revised work RVUs (weighted by projected frequency of use) for a family of codes would be the same as the sum of the current work RVUs (weighted by their current frequency of use). We also confirmed that the RUC's recommended changes to work RVUs were neutral for two other sets of codes: (1) 31622, 31623, and 31624 (bronchoscopy); and (2) 69990 (use of operating microscope).

Finally, we are proposing specific payment policies apart from the RUC recommendations. We summarize our adjustments for codes 33975, 33976, 69990, 94620, and 94621 below:

1. Ventricular Assist Device Implantations (CPT Codes 33975 and 33976)

In 1998, we requested that the AMA's RUC re-examine the work RVUs for CPT codes 33975, 33976, 33977, and 33978 regarding implantation and removal of ventricular assist devices. We made this request based on information provided by the Society of Thoracic Surgeons (the Society) that patients receiving these devices are now being maintained on them for longer periods than in 1993, when the work was originally surveyed. One suggestion of the Society was to decrease the global period from 90 days to 10 days. In September 1998, the RUC re-evaluated the work for the implantation CPT codes 33975 and 33976 based on 10-day global periods. The RUC recommended increasing the work RVUs despite the reduction in the global period based on survey results that intraservice work had increased and postoperative work had also increased. The survey reported substantial time spent by the surgeon attending the patient in the critical care unit post-operatively. We did not incorporate the recommendations from the September 1998 RUC meeting into the 1999 Medicare Physician Fee Schedule because we received them too late to incorporate them into our 1998 final rule (63 FR 58814). We did reduce the global period for the implantation codes to 10 days.

We note that the technology and indications for these devices are evolving rapidly. Device and technique modifications are being introduced and new, miniaturized devices have been developed and are being tested in Europe that will decrease the time required for implantation. Trials are being conducted or planned to extend the indications from limited use as a short-term bridge to cardiac transplant to maintenance of patients with end-stage heart failure. With these changing indications, the patient population and the procedure work will evolve.

Because of the evolving technology and indications and because much critical care today is provided by critical care specialists rather than by surgeons, we are proposing that there be no global period for these codes until we have further evaluated the procedures. We have estimated RVUs for these codes based on the RUC survey results for the intraservice work, and we propose implementing them on an interim basis. To enable evaluation of work trends, patient acuity, and medical effectiveness and development of final work RVUs covering a global period, we will require submission of the operative report, the anesthesia record, and the hospital discharge summary along with the claim for the implantation procedure. On an interim basis, we will allow separate billing for all preoperative and postoperative work performed by the surgeon or by other physicians subject to the existing requirements for medical necessity, reasonableness, and documentation.

We estimated the work RVU values for these codes as intraservice work only. We considered other alternatives such as using the average work intensity for all physician time from the RUC survey, (that is, total work RVUs divided by total physician time), but we rejected this intensity as being too low and not adequately representing the greater average intensity of the intraservice work compared to the pre- and post-procedures work. We used the median intraservice times from the RUC survey and the work intensity for a cardiac surgical procedure code that does not include any pre or post service work, CPT code 33530, reoperation for a coronary artery bypass procedure or a valve procedure. We are proposing to assign work RVUs of 21 for CPT code 33975 and 23 for CPT code 33976. These values are slightly more than half of the RUC recommendations for the codes including a 10-day global period. We also note that the proposed value for CPT code 33975, which represents only intraservice work, is approximately the same as the value in 1999 when the code included a global period of 10 days and prior to 1999 when the code included a global period of 90 days. We will be examining the operative reports and anesthesia records in the future to update the RUC survey estimates.

2. Use of Operating Microscope (CPT Code 69990)

CPT code 69990 replaced two previous codes, 61712 and 64830. These previous codes were add-on codes that could be used only with certain primary procedure codes. The RUC evaluated the work RVUs for code 69990 as a budget-neutral, weighted average of the RVUs for codes 61712 and 64830. However, code 69990 also replaces the use of a "−20" microsurgery modifier. The CPT modifier −20 could be used with a wide range of primary procedure codes, but we have not paid additional amounts when the CPT modifier −20 is submitted. No evidence was presented at the RUC that the work has changed for those procedures formerly qualified by the CPT microsurgery modifier −20 and now associated with the code 69990. Therefore, we would pay separately for code 69990 only if it is submitted as an add-on code to a primary procedure for which the use of code 61712 or 64830 was acceptable. The primary procedure codes for which we would pay separately for code 69990 are 61304 through 61711, 62010 through 62100, 63081 through 63308, 63704 through 63710, 64831, 64834 through

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64836, 64840 through 64858, 64861 through 64870, 64885 through 64898, and 64905 through 64907 (nervous system).

3. Pulmonary Stress Testing (CPT Codes 94620 and 94621)

CPT code 94620 previously included both simple and complex pulmonary stress testing. For CPT 1999, complex testing was removed from CPT code 94620 and assigned to a new CPT code 94621. We are proposing to adjust the RUC recommendations to maintain budget neutrality for work RVUs for these codes. Based on estimated frequencies of 70 percent for CPT code 94620 and 30 percent for CPT code 94621, the adjusted work RVUs are 0.64 for CPT code 94620 and 1.42 for CPT code 94621.

Our estimates for work neutrality in work values are based on the frequencies with which we estimate the specific procedures will be done and the codes billed. Typically, these estimates have been furnished by the specialty society that proposed the new codes. If these estimates are in error, our adjustments to maintain neutrality in work values will also be erroneous. We are planning to examine the actual frequencies with which the procedures are billed after the codes are introduced for any codes for which we have made adjustments to achieve neutrality in work values. If the reported frequencies confirm that the original estimates were incorrect, we may propose an adjustment of the work RVUs accordingly in a future year. This adjustment could either increase or decrease the work RVUs.

Table 9 lists the 16 codes, the RUC recommendations, and the results of our evaluation. This table includes the following information:

- A "#" identifies a new code for 1999.
- *CPT code.* This is the CPT code for a service.
- *Modifier.* A "26" in this column indicates that the work RVUs are for the professional component of the code.
- *Description.* This is an abbreviated version of the narrative description of the code.
- *RUC recommendations.* This column identifies the work RVUs recommended by the RUC.
- *HCPAC recommendations.* This column identifies work RVUs recommended by the HCPAC.
- *HCFA decision.* This column indicates whether we agreed with the RUC recommendation ("agree"); we established work RVUs that are higher than the RUC recommendation ("increase"); or we established work RVUs that were less than the RUC recommendation ("decrease"). Codes for which we did not accept the RUC recommendation are discussed in greater detail above. An "(a)" indicates that no RUC recommendation was provided. A discussion follows the table.
- *HCFA work RVUs.* This column contains the RVUs for physician work based on our reviews of the RUC recommendations.
- *1999 work RVUs.* This column establishes the 1999 RVUs for physician work.

Note: Because we did not receive these recommendations in time for the November 2, 1998 final rule, they were not implemented for CY 1999. We will implement these RUC recommendations in the CY 2000 physician fee schedule to be published later this year.

TABLE 9.—AMA RUC AND HCPAC RECOMMENDATIONS AND HCFA DECISIONS FOR NEW AND REVISED 1999 CPT CODES

CPT* code	MOD	Description	RUC recommendation	HCPAC recommendation	HCFA decision	HCFA work RVU	1999 work RVU
31622		Dx bronchoscope/wash	2.78		Agree	2.67	2.78
31623		Dx bronchoscope/brush	2.88		Agree	3.07	2.88
31624		Dx bronchoscope/lavage	2.88		Agree	3.11	2.88
32001		Total lung lavage	6.00		Agree	5.71	6.00
33975		Inplant ventricular device	39.00		Agree	21.00	21.00
33976		Inplant ventricular device	43.00		Agree	23.00	23.00
35500		Harvest vein for bypass	6.45		Agree	Carrier	6.45
36823		Insert cannula(s)	21.00		Agree	Carrier	21.00
38792		Identify sentinel node	0.52		Agree	Carrier	0.52
56321		Laparoscopy adrenalectomy	20.00		Agree	Carrier	20.00
56345		Laparoscopic splenectomy	17.00		Agree	Carrier	17.00
56347		Laparoscopic jejunostomy	9.78		Agree	Carrier	9.78
69990		Microsurgery add-on	3.47		Agree	3.46	3.47
76977	26	Us bone density measure	0.05		Agree	0.22	0.05
94620		Pulmonary stress test/simple	0.67		Agree	0.64	0.64
94621		Pulm stress test/complex	1.48		Agree	1.42	1.42

*All numeric HCPCS CPT Copyright 1997 American Medical Association.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

We have examined the impacts of this proposed rule as required by Executive Order of 1993 (EO) 12866, the Unfunded Mandates Act of 1995 (EO) 12875, and the Regulatory Flexibility Act of 1980 (RFA) (Public Law 96–354).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). While proposed changes in the Medicare physician fee schedule are budget neutral for the most part, they may involve redistribution of Medicare spending among procedures and physician specialties that exceeds $100 million, so this proposed rule is considered to be a major rule.

The Unfunded Mandates Reform Act of 1995 also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more. This proposed rule will have no consequential effect on State, local, or tribal governments. We believe the private sector cost of this rule falls below these thresholds as well.

The Regulatory Flexibility requires that we analyze regulatory options for small businesses and other small entities. We prepare a Regulatory Flexibility Analysis (RFA) unless we certify that a rule would not have a significant economic impact on a substantial number of small entities. The RFA is to include a justification of why action is being taken, the kinds and number of small entities the proposed rule would affect, and an explanation of any considered meaningful options that achieve the objectives and would lessen any significant adverse economic impact on the small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

For purposes of the RFA, all physicians are considered to be small entities. There are about 700,000 physicians and other practitioners who receive Medicare payment under the physician fee schedule. We have prepared the following analysis, which, together with the rest of this preamble, meets all three assessment requirements. It explains the rationale for and purposes of the rule, details the costs and benefits of the rule, analyzes alternatives, and presents the measures we propose to minimize the burden on small entities.

A. Resource-Based Malpractice Relative Value Units

As explained earlier in this preamble, the resource-based malpractice RVUs must be implemented in a budget-neutral manner. That is, the total fee schedule malpractice RVUs must be the same under the resource-based method as would have existed had the prior charge-based malpractice RVUs been retained. This means that increases in RVUs for some services will necessarily be offset by corresponding decreases in values for other services. Table 10 shows, by specialty, the estimated percentage changes in allowed charges for our proposed resource-based malpractice RVUs.

TABLE 10.—IMPACT ON TOTAL ALLOWED CHARGES BY SPECIALTY OF THE RESOURCE-BASED MALPRACTICE EXPENSE RELATIVE VALUE UNITS

[Percent change]

Specialty	Allowed charges (in billions)	Impact by specialty (percent)
ANESTHESIOLOGY	0.3	−0.1
CARDIAC SURGERY	0.4	−1.0
CARDIOLOGY	3.7	−0.6
CLINICS	1.6	0.3
DERMATOLOGY	1.3	0.1
EMERGENCY MEDICINE	0.8	2.7
FAMILY PRACTICE	3.0	0.5
GASTROENTEROLOGY	1.1	−0.1
GENERAL PRACTICE	1.1	0.6
GENERAL SURGERY	2.2	−0.1
HEMATOLOGY ONCOLOGY	0.6	0.3
INTERNAL MEDICINE	6.4	0.4
NEPHROLOGY	0.9	1.3
NEUROLOGY	0.8	0.5
NEUROSURGERY	0.4	0.7
OBSTETRICS/GYNECOLOGY	0.4	−0.6
OPHTHALMOLOGY	3.8	−0.4
ORTHOPEDIC SURGERY	2.3	−1.0
OTHER PHYSICIAN	1.2	0.2
OTOLARYNGOLOGY	0.6	−0.2
PATHOLOGY	0.5	−0.6
PLASTIC SURGERY	0.2	−0.1
PSYCHIATRY	1.1	−0.1
PULMONARY	1.0	0.4
RADIATION ONCOLOGY	0.6	−0.4
RADIOLOGY	2.8	−0.5
RHEUMATOLOGY	0.3	0.5
THORACIC SURGERY	0.7	−0.8
UROLOGY	1.3	0.1
VASCULAR SURGERY	0.3	−0.2

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TABLE 10.—IMPACT ON TOTAL ALLOWED CHARGES BY SPECIALTY OF THE RESOURCE-BASED MALPRACTICE EXPENSE RELATIVE VALUE UNITS—Continued

[Percent change]

Specialty	Allowed charges (in billions)	Impact by specialty (percent)
OTHERS:		
CHIROPRACTOR	0.4	0.6
NONPHYSICIAN PRACTITIONER	0.9	−0.5
OPTOMETRIST	0.6	0.1
PODIATRY	1.1	0.5
SUPPLIERS	0.4	−0.3

Table 11 shows the percentage change in total payment (in 1999 fee schedule dollars) for selected high-volume procedures which would result from the proposed change to resource-based malpractice RVUs.

As Tables 10 and 11 show, the effects on payments are very modest and, in most cases, negligible. Of the 35 major payment specialties shown in Table 10, 17 are estimated to experience payment increases and 18 are estimated to experience payment decreases. Only two specialties are estimated to experience increases of more than 1 percent, emergency medicine (2.7 percent) and nephrology (1.3 percent), with an estimated median payment increase of 0.5 percent among the specialties which receive an increase. No specialties are estimated to experience payment decreases greater than 1 percent, with an estimated median payment decrease of 0.4 percent among the specialties which receive a decrease.

The impact of the changes on the total revenue (Medicare and non-Medicare) for a given specialty is less than the impact displayed in Table 10 since physicians furnish services to both Medicare and non-Medicare patients. The magnitude of the impact on Medicare payment for a specialty depends generally on the mix of services a physician in the specialty furnishes.

TABLE 11.—TOTAL PAYMENT FOR SELECTED PROCEDURES BASED UPON RESOURCE BASED MALPRACTICE EXPENSE

Code	Mod	Description	Current facility	Resource based MP facility	Facility percent change	Current non-facility	Resource based MP non-facility	Non-facility percent change
11721		Debride nail, 6 or more	$32.65	$32.65	0	$37.16	$37.16	0
17000		Destroy benign/premal lesion	30.56	30.91	1	46.89	47.23	1
27130		Total hip replacement	1,360.78	1,312.50	−4	1,360.78	1,312.50	−4
27236		Repair of thigh fracture	1,060.70	1,046.11	−1	1,060.70	1,046.11	−1
27244		Repair of thigh fracture	1,074.59	1,063.83	−1	1,074.59	1,063.83	−1
27447		Total knee replacement	1,422.60	1,369.12	−4	1,422.60	1,369.12	−4
33533		CABG, arterial, single	1,839.38	1,814.03	−1	1,839.38	1,814.03	−1
35301		Rechanneling of artery	1,065.91	1,073.20	1	1,065.91	1,073.20	1
43239		Upper GI endoscopy, biopsy	139.97	137.19	−2	258.40	255.62	−1
45385		Colonscopy, lesion removal	277.50	275.07	−1	391.77	389.34	−1
66821		After cataract laser surgery	181.65	175.05	−4	191.37	184.77	−4
66984		Remove cataract, insert lens	663.72	653.65	−2	663.72	653.65	−2
67210		Treatment of retinal lesion	516.80	516.46	0	563.34	563.00	0
71010	26	Chest x-ray	8.34	8.34	0	8.34	8.34	0
71020		Chest x-ray	33.34	33.34	0	33.34	33.34	0
71020	26	Chest x-ray	10.07	10.07	0	10.07	10.07	0
77430		Weekly radiation therapy	170.88	169.49	−1	170.88	169.49	−1
78465		Heart image (3D) multiple	514.37	513.33	0	514.37	513.33	0
88305		Tissue exam by pathologist	58.35	58.00	−1	58.35	58.00	−1
88305	26	Tissue exam by pathologist	38.20	37.86	−1	38.20	37.86	−1
90801		Psy dx interview	135.45	135.80	0	136.15	136.49	0
90806		Psytx, office (45–50)	91.00	90.65	0	92.73	92.39	0
90807		Psytx, office (45–50) w/e&m	97.60	97.25	0	96.55	96.21	0
90862		Medication management	46.54	46.19	−1	47.23	46.89	−1
90921		ESRD related services	232.70	238.61	2	232.70	238.61	2
90935		Hemodialysis, one evaluation	66.34	66.34	0	66.34	66.34	0
92004		Eye exam, new patient	82.31	83.70	2	114.61	116.00	1
92012		Eye exam established pt	34.38	34.38	0	71.89	71.89	0
92014		Eye exam & treatment	55.92	56.61	1	83.36	84.05	1
92980		Insert intracoronary stent	899.89	883.57	−2	899.89	883.57	−2
92982		Coronary artery dilation	679.00	658.51	−3	679.00	658.51	−3
93000		Electrocardiogram, complete	25.01	24.31	−3	25.01	24.31	−3
93010		Electrocardiogram report	8.34	8.34	0	8.34	8.34	0
93015		Cardiovascular stress test	101.07	97.25	−4	101.07	97.25	−4
93307		Echo exam of heart	193.80	192.41	−1	193.80	192.41	−1
93307	26	Echo exam of heart	47.23	45.85	−3	47.23	45.85	−3
93510	26	Left heart catheterization	219.16	217.77	−1	219.16	217.77	−1
98941		Chiropractic manipulation	28.83	29.17	1	32.99	33.34	1
99202		Office/outpatient visit, new	50.71	50.71	0	64.95	64.95	0

TABLE 11.—TOTAL PAYMENT FOR SELECTED PROCEDURES BASED UPON RESOURCE BASED MALPRACTICE EXPENSE—Continued

Code	Mod	Description	Current facility	Resource based MP facility	Facility percent change	Current non-facility	Resource based MP non-facility	non-facility percent change
99203		Office/outpatient visit, new	73.98	74.67	1	92.04	92.73	1
99204		Office/outpatient visit, new	106.28	107.32	1	129.90	130.94	1
99205		Office/outpatient visit, new	137.88	139.27	1	161.15	162.54	1
99211		Office/outpatient visit, est	13.55	13.20	−3	21.88	21.53	−2
99212		Office/outpatient visit, est	26.74	26.74	0	34.73	34.73	0
99213		Office/outpatient visit, est	36.47	36.82	1	45.85	46.19	1
99214		Office/outpatient visit, est	59.04	59.39	1	72.24	72.59	0
99215		Office/outpatient visit, est	91.69	92.39	1	105.24	105.93	1
99221		Initial hospital care	68.77	68.77	0	68.77	68.77	0
99222		Initial hospital care	109.06	109.40	0	109.06	109.40	0
99223		Initial hospital care	149.35	151.08	1	149.35	151.08	1
99231		Subsequent hospital care	32.30	32.30	0	32.30	32.30	0
99232		Subsequent hospital care	52.10	52.44	1	52.10	54.22	1
99233		Subsequent hospital care	74.33	74.67	0	74.33	74.67	0
99236		Observ/hosp same date	209.08	212.21	1	209.08	212.21	1
99238		Hospital discharge day	65.30	65.99	1	65.30	65.99	1
99239		Hospital discharge day	86.83	87.87	1	86.83	87.87	1
99241		Office consultation	38.55	37.86	−2	54.18	53.49	−1
99242		Office consultation	70.50	70.85	0	91.00	91.34	0
99243		Office consultation	93.43	93.78	0	115.66	116.00	0
99244		Office consultation	134.76	135.80	1	159.42	160.46	1
99245		Office consultation	176.44	177.48	1	202.14	203.18	1
99251		Initial inpatient consult	39.94	39.25	−2	39.94	39.25	−2
99252		Initial inpatient consult	73.28	73.63	0	73.28	73.63	0
99253		Initial inpatient consult	98.98	99.33	0	98.98	99.33	0
99254		Initial inpatient consult	138.58	139.62	1	138.58	139.62	1
99255		Initial inpatient consult	187.90	189.63	1	187.90	189.63	1
99261		Follow-up inpatient consult	26.74	26.74	0	26.74	26.74	0
99262		Follow-up inpatient consult	48.28	48.28	0	48.28	48.28	0
99263		Follow-up inpatient conult	68.42	69.12	1	68.42	69.12	1
99282		Emergency dept visit	26.40	26.74	1	26.40	26.74	1
99283		Emergency dept visit	56.27	58.00	3	56.27	58.00	3
99284		Emergency dept visit	87.52	89.95	3	87.52	89.95	3
99285		Emergency dept visit	135.11	139.97	3	135.11	139.97	3
99291		Critical care, first hour	189.98	192.41	1	191.37	193.80	1
99292		Critical care, addl 30 min	95.51	97.25	2	96.55	98.29	2
99301		Nursing facility care	62.17	62.86	1	62.17	62.86	1
99302		Nursing facility care	82.31	83.36	1	82.31	83.36	1
99303		Nursing facility care	102.11	102.81	1	102.11	102.81	1
99311		Nursing facility care, subseq	31.95	31.95	0	31.95	31.95	0
99312		Nursing facility care, subseq	50.36	50.71	1	50.36	50.71	1
99313		Nursing facility care, subseq	70.85	71.55	1	70.85	71.55	1
99348		Home visit, estab patient	67.03	67.38	1	66.68	67.03	1
99350		Home visit, estab patient	146.91	148.65	1	150.04	151.78	1

B. Resource-Based Practice Expense

Revisions in resource-based practice expense RVUs for physicians' services are also calculated to be budget neutral, that is, the total practice expense RVUs for calendar year 2000 are calculated to be the same as the total practice expense RVUs that we estimate would have occurred without the changes proposed in this regulation. This also means that increases in practice expense RVUs for some services will necessarily be offset by corresponding decreases in values for other services.

Table 12, "Impact on Total Allowed Charges by Specialty of the Fully Implemented Resource-Based Practice Expense Relative Value Units" shows, by specialty, the estimated percent changes in allowed charges resulting from the practice expense proposals discussed earlier in this proposed rule. This table shows the impact of proposed changes on the fully implemented practice expense RVUs. That is, the table compares payments using the fully implemented RVUs published in the November 2, 1998 final rule (63 FR 58816) to the fully implemented RVUs reflecting changes proposed in this rule.

TABLE 12.—IMPACT ON TOTAL ALLOWED CHARGES BY SPECIALTY OF THE FULLY-IMPLEMENTED RESOURCE-BASED PRACTICE EXPENSE RELATIVE VALUE UNITS

Specialty	Allowed charges (in billions)	Impact on total payments (percent)
ANESTHESIOLOGY	1.7	−8

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TABLE 12.—IMPACT ON TOTAL ALLOWED CHARGES BY SPECIALTY OF THE FULLY-IMPLEMENTED RESOURCE-BASED PRACTICE EXPENSE RELATIVE VALUE UNITS—Continued

Specialty	Allowed charges (in billions)	Impact on total payments (percent)
CARDIAC SURGERY	0.3	−8
CARDIOLOGY	3.8	−2
CLINICS	1.7	−1
DERMATOLOGY	1.3	2
EMERGENCY MEDICINE	0.8	−1
FAMILY PRACTICE	3.2	2
GASTROENTEROLOGY	1.1	−2
GENERAL PRACTICE	1.1	2
GENERAL SURGERY	2.0	0
HEMATOLOGY ONCOLOGY	0.6	1
INTERNAL MEDICINE	6.7	0
NEPHROLOGY	0.9	0
NEUROLOGY	0.8	1
NEUROSURGERY	0.3	1
OBSTETRICS/GYNECOLOGY	0.4	3
OPHTHALMOLOGY	3.8	1
ORTHOPEDIC SURGERY	2.2	3
OTHER PHYSICIAN	1.2	0
OTOLARYNGOLOGY	0.6	2
PATHOLOGY	0.5	2
PLASTIC SURGERY	0.2	1
PSYCHIATRY	1.2	−1
PULMONARY	1.0	−2
RADIATION ONCOLOGY	0.6	0
RADIOLOGY	2.9	0
RHEUMATOLOGY	0.3	5
THORACIC SURGERY	0.6	−6
UROLOGY	1.3	2
VASCULAR SURGERY	0.3	0
OTHERS:		
CHIROPRACTOR	0.4	0
NONPHYSICIAN PRACTITIONER	0.8	2
OPTOMETRIST	0.5	2
PODIATRY	1.1	2
SUPPLIERS	0.5	1

Table 13 shows the percentage change in total payment (in 1999 physician fee schedule dollars) for selected high-volume procedures which would result from the change in payment related to the proposed changes in practice expense RVUs.

TABLE 13.—TOTAL PAYMENT FOR SELECTED PROCEDURES

Code	Mod	Description	Current non-faculity	Proposed non-facility	Non-facility percent change	Current facility	Proposed facility	Facility percent change
11721		Debride nail, 6 or more	$37.16	$37.51	1	$32.65	$27.44	−16
17000		Destroy benign/premal lesion	46.89	47.93	2	30.56	30.56	0
27130		Total hip replacement	NA	NA	NA	1,360.78	1,383.36	2
27236		Repair of thigh fracture	NA	NA	NA	1,060.70	1,061.39	0
27244		Repair of thigh fracture	NA	NA	NA	1,074.59	1,045.42	−3
27447		Total knee replacement	NA	NA	NA	1,422.60	1,443.44	1
33533		CABG, arterial, single	NA	NA	NA	1,839.38	1,699.06	−8
35301		Rechanneling of artery	NA	NA	NA	1,065.91	1,058.27	−1
43239		Upper GI endoscopy, biopsy	258.40	280.28	8	139.97	134.76	−4
45385		Colonscopy, lesion removal	391.77	431.02	10	277.50	264.31	−5
66821		After cataract laser surgery	191.37	196.23	3	181.65	171.57	−6
66984		Remove cataract, insert lens	NA	NA	NA	663.72	645.66	−3
67210		Treatment of retinal lesion	563.34	571.33	1	516.80	522.71	1
71010	26	Chest x-ray	8.34	8.34	0	8.34	8.34	0
71020		Chest x-ray	33.34	33.34	0	33.34	33.34	0
71020	26	Chest x-ray	10.07	10.07	0	10.07	10.07	0
77430		Weeekly radiation therapy	170.88	171.57	0	170.88	171.57	0
78465		Heat image (3D) multiple	514.37	517.50	1	514.37	517.50	1
88305		Tissue exam by pathologist	58.35	59.04	1	58.35	59.04	1
88305	26	Tissue exam by pathologist	38.20	38.90	2	38.20	38.90	2

TABLE 13.—TOTAL PAYMENT FOR SELECTED PROCEDURES—Continued

Code	Mod	Description	Current non-faculity	Proposed non-facility	Non-facility percent change	Current facility	Proposed facility	Facility percent change
90801		Psy dx interview	136.15	138.93	2	135.45	131.29	−3
90806		Psytx, office (45–50)	92.73	94.12	1	91.00	88.91	−2
90807		Psytx, office (45–50) w/e&m	96.55	98.64	2	97.60	94.82	−3
90862		Midication management	47.23	48.97	4	46.54	44.46	−4
90921		ESRD related services, month	232.70	243.12	4	232.70	218.46	−6
90935		Hemodialysis, one evaluation	NA	NA	NA	6634	58.35	−12
92004		Eye exam, new patient	114.61	116.70	2	82.31	82.66	0
92012		Eye exam established pt	71.89	73.63	2	34.38	34.73	1
92104		Eye exam & treatment	83.36	85.09	2	55.92	55.92	0
92980		Insert intracoronary stent	NA	NA	NA	899.89	766.18	−15
92982		Coronary artery dilation	NA	NA	NA	679.00	575.85	−15
93000		Electrocardiogram, complete	25.01	25.70	3	25.01	25.70	3
93010		Electrocardiogram report	8.34	8.34	0	8.34	8.34	0
93015		Cardiovascular stress test	101.07	101.76	1	101.07	101.76	1
93307		Echo exam of heart	193.80	194.84	1	193.80	194.84	1
93307	26	Echo exam of heart	47.23	47.23	0	47.23	47.23	0
93510	26	Left heart catheterization	219.16	219.50	0	219.16	219.50	0
90941		Chiropractic manipulation	32.99	32.99	0	28.83	28.83	0
99202		Office/outpatient visit, new	64.73	67.73	4	50.71	43.07	−15
99203		Office/outpatient visit, new	92.04	95.86	4	73.98	65.30	−12
99204		Office/outpatient visit, new	129.90	136.15	5	106.28	96.55	−9
99205		Office/outpatient visit, new	161.15	169.14	5	137.88	127.46	−8
99211		Office/outpatient visit, est	21.88	24.66	13	13.55	8.68	−36
99212		Office/outpatient visit, est	34.73	36.82	6	26.74	21.88	−18
99213		Office/outpatient visit, est	45.85	48.97	7	36.47	31.95	−12
99214		Office/outpatient visit, est	72.24	76.06	5	59.04	52.79	−11
99215		Office/outpatient visit, est	105.24	109.40	4	91.69	84.74	−8
99221		Initial hospital care	NA	NA	NA	68.77	61.82	−10
99222		Initial hospital care	NA	NA	NA	109.06	102.11	−6
99223		Initial hosptial care	NA	NA	NA	149.35	141.36	−5
99231		Subsequent hosptial care	NA	NA	NA	32.30	30.91	−4
99232		Subsequent hospital care	NA	NA	NA	52.10	50.36	−3
99233		Subsequent hospital care	NA	NA	NA	74.33	71.55	−4
99236		Observ/hosp same date	NA	NA	NA	209.08	201.44	−4
99238		Hospital discharge day	NA	NA	NA	65.30	60.43	−7
99239		Hospital discharge day	NA	NA	NA	86.83	82.66	−5
99241		Office consultation	54.18	59.39	10	38.55	31.26	−19
99242		Office consultation	91.00	96.90	6	70.50	62.86	−11
99243		Office consultation	115.66	123.30	7	93.43	84.05	−10
99244		Office consultation	159.42	168.80	6	134.76	123.64	−8
99245		Office consultation	202.14	213.60	6	176.44	164.63	−7
00251		Initial inpatient consult	NA	NA	NA	39.94	35.08	−12
99252		Initial impatient consult	NA	NA	NA	73.28	67.38	−8
99253		Initial inpatient consult	NA	NA	NA	98.98	91.69	−7
99254		Initial inpatient consult	NA	NA	NA	138.58	130.59	−6
99255		Initial inpatient consult	NA	NA	NA	187.90	178.87	−5
99261		Follow-up inpatient consult	NA	NA	NA	26.74	22.23	−17
99262		Follow-up inpatient consult	NA	NA	NA	48.28	43.07	−11
99263		Follow-up inpatient consult	NA	NA	NA	68.42	62.86	−8
99282		Emergency dept visit	NA	NA	NA	26.40	25.01	−5
99283		Emergency dept visit	NA	NA	NA	56.27	54.88	−2
99284		Emergency dept visit	NA	NA	NA	87.52	86.13	−2
99285		Emergency dept visit	NA	NA	NA	135.11	134.41	−1
99291		Critical care, first hour	191.37	193.45	1	189.98	186.16	−2
99292		Critical care, addl 30 min	96.55	98.29	2	95.51	92.73	−3
99301		Nursing facility care	NA	NA	NA	62.17	56.61	−9
99302		Nursing facility care	NA	NA	NA	82.31	75.71	−8
99303		Nursing facility care	NA	NA	NA	102.11	94.47	−7
99311		Nursing facility care, subseq	NA	NA	NA	31.95	28.48	−11
99312		Nursing facility care, subseq	NA	NA	NA	50.36	46.89	−7
99313		Nursing facility care, subseq	NA	NA	NA	70.85	66.68	−6
99348		Home visit, estab patient	66.68	68.07	2	67.03	62.86	−6
99350		Home visit, establ patient	150.04	152.12	1	146.91	141.70	−4

Table 14 shows the impact of using the 1999 resource-based practice expense RVUs, updated to reflect the year 2000 transitions, compared to the transitioned RVUs for the year 2000 which would result from provisions in this proposed rule.

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TABLE 14.—IMPACT ON TOTAL ALLOWED CHARGES BY SPECIALTY OF THE TRANSITIONED RESOURCE-BASED PRACTICE EXPENSE RELATIVE VALUE UNITS

Specialty	Allowed charges (in billions)	Impact on total payments (percent)
ANESTHESIOLOGY	1.7	−4
CARDIAC SURGERY	0.3	−4
CARDIOLOGY	3.8	−1
CLINICS	1.6	0
DERMATOLOGY	1.1	1
EMERGENCY MEDICINE	0.8	−1
FAMILY PRACTICE	2.9	1
GASTROENTEROLOGY	1.1	−1
GENERAL PRACTICE	1.0	1
GENERAL SURGERY	2.0	0
HEMATOLOGY ONCOLOGY	0.5	1
INTERNAL MEDICINE	6.3	0
NEPHROLOGY	0.9	0
NEUROLOGY	0.8	0
NEUROSURGERY	0.3	0
OBSTETRICS/GYNECOLOGY	0.4	1
OPHTHHALMOLOGY	3.5	0
ORTHOPEDIC SURGERY	2.0	1
OTHER PHYSICIAN	1.2	0
OTOLARYNGOLOGY	0.6	1
PATHOLOGY	0.5	1
PLASTIC SURGERY	0.2	1
PSYCHIATRY	1.1	0
PULMONARY	1.0	−1
RADIATION ONCOLOGY	0.6	0
RADIOLOGY	2.9	0
RHEUMATOLOGY	0.3	3
THORACIC SURGERY	0.6	−3
UROLOGY	1.2	1
VASCULAR SURGERY	0.3	0
OTHERS:		
CHIROPRACTOR	0.4	1
NONPHYSICIAN PRACTITIONER	0.8	1
OPTOMETRIST	0.4	1
PODIATRY	1.0	1
SUPPLIERS	0.5	0

Table 15 shows the combined impact of the proposed changes in the malpractice RVUs and the fully implemented practice expense RVUs. The impact of the changes on the total revenue (Medicare and non-Medicare) for a given specialty is less than the impact displayed in these tables since physicians furnish services to both Medicare and non-Medicare patients. The magnitude of the impact that Medicare payment has on a specialty depends generally on the mix of services a physician in the specialty provides and the sites in which the services are performed.

TABLE 15.—IMPACT ON TOTAL ALLOWED CHARGES BY SPECIALTY OF PROPOSED FULLY IMPLEMENTED PRACTICE EXPENSE AND MALPRACTICE RELATIVE VALUE UNITS

Specialty	Allowed charges (in billions)	Impact on total payments (percent)
ANESTHESIOLOGY	1.6	−8
CARDIAC SURGERY	0.3	−9
CARDIOLOGY	3.6	−3
CLINICS	1.6	0
DERMATOLOGY	1.2	2
EMERGENCY MEDICINE	0.8	1
FAMILY PRACTICE	3.0	2
GASTROENTEROLOGY	1.0	−2
GENERAL PRACTICE	1.1	2
GENERAL SURGERY	1.9	0
HEMATOLOGY ONCOLOGY	0.6	1
INTERNAL MEDICINE	6.4	1
NEPHROLOGY	0.9	1
NEUROLOGY	0.8	1
NEUROSURGERY	0.3	1
OBSTETRICS/GYNECOLOGY	0.4	2
OPHTHALMOLOGY	3.6	0

TABLE 15.—IMPACT ON TOTAL ALLOWED CHARGES BY SPECIALTY OF PROPOSED FULLY IMPLEMENTED PRACTICE EXPENSE AND MALPRACTICE RELATIVE VALUE UNITS—Continued

Specialty	Allowed charges (in billions)	Impact on total payments (percent)
ORTHOPEDIC SURGERY	2.0	2
OTHER PHYSICIAN	1.2	0
OTOLARYNGOLOGY	0.6	2
PATHOLOGY	0.5	1
PLASTIC SURGERY	0.2	1
PSYCHIATRY	1.1	−1
PULMONARY	1.0	−1
RADIATION ONCOLOGY	0.6	0
RADIOLOGY	2.7	−1
RHEUMATOLOGY	0.3	6
THORACIC SURGERY	0.5	−7
UROLOGY	1.2	2
VASCULAR SURGERY	0.3	0
OTHERS:		
CHIROPRACTOR	0.4	1
NONPHYSICIAN PRACTITIONER	0.8	1
OPTOMETRIST	0.5	3
PODIATRY	1.0	3
SUPPLIERS	0.4	0

C. Practice Expense for Physician Interpretation of Abnormal Papanicolaou Smears

Currently, there are several codes for a physician's interpretation of an abnormal pap smear (three HCFA Common Procedure Coding System (HCPCS) codes and one CPT code). We evaluated the practice expense RVUs for each of these codes in a slightly different manner, and the practice expense RVUs assigned to HCPCS code G0141 were much lower than those for the other codes. We believe it is more appropriate to have the RVUs for all of these codes identical to those for CPT code 88141. Any impact of this provision would be incorporated into the physician fee schedule budget-neutrality calculation.

D. Technical Component of Physician Pathology Services and Independent Laboratories

Independent laboratories usually bill for a combined service which is the sum of the PC and TC services. These services can be furnished to both hospital and nonhospital patients.

The claims processing instructions require the independent laboratory to use the hospital as the place of service (POS) for TC billing of hospital patients. However, our analysis of national claims data indicates that independent laboratories are likely to use the independent laboratory as the POS. Thus, we cannot directly calculate the independent laboratory's billings for the combined service to hospital inpatients.

Based on our knowledge of laboratory practice arrangements, we have assumed that 60 percent of the allowed charges for independent laboratories represent billings for hospital inpatients. We adjusted this amount to remove PC billings because they would be billable whether or not this proposal is finalized. We estimated the PC amount by multiplying the total allowed charges for each code by the ratio of the PC RVUs to total RVUs for that code. The remaining amount represents the total allowed charges for TC services for hospital inpatients.

We estimated that payment under the physician fee schedule for TC billings by independent laboratories will decrease by $18 million.

The hospital is paid under the prospective payment system for the technical component of a physician pathology service to hospital inpatients. If the independent laboratory furnishes the technical component service, it must enter into an arrangement with a hospital to be paid appropriately for this service.

E. Discontinuous Anesthesia Time

If an anesthesia practitioner has not been billing for a block of time before an interruption in services, under our proposal he or she would be able to bill for that block of time and receive payment. It is our understanding that, in most instances, a block of time before an interruption is generally about fifteen minutes, or one time unit. On the other hand, some anesthesia practitioners may have interpreted our regulations as allowing them to bill for the block of time before an interruption. If an anesthesia practitioner has billed in this manner, then our proposed revision to the regulations would not have any economic effect. We estimate that overall there would be no cost or savings to Medicare.

F. Optometrist Services

The provision for optometrists' services would conform the regulations to a provision of OBRA 1986 that expanded coverage for services furnished by optometrists to include services otherwise covered by Medicare that an optometrist is legally authorized to perform as a doctor of optometry by the State in which the services are performed. This provision has been implemented through program instructions; therefore, this change in the regulations will have no impact on the program.

G. Assisted Suicide

This rule would conform the regulations to a provision in the Assisted Suicide Funding Act of 1997. This Act prohibits the use of Federal funds to furnish or pay for any health care service or health benefit coverage for the purpose of causing, or assisting to cause, the death of any individual. We believe that this regulation change would have no program costs or savings given the limited occurrence of assisted suicide and the exclusion from Medicare payment of expenses for these services under section 1862(a)(1)(A) of the Act. This section of the Act states that no payment may be made under Part A or Part B for any expenses incurred for items or services that are not reasonable or necessary for the

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diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

H. CPT Modifier – 25

Under our proposed policy for procedures when the global surgery rules do not apply (for example, the global code is "XXX" in the database), a physician may bill only for a separately identifiable E/M service with the use of the CPT modifier – 25. This proposal would assist carriers in claims adjudication and eliminate unnecessary denials when physicians appropriately attach modifier – 25 to E/M services if they are significant and separately identifiable from the procedure. We estimate a savings of $10 million due to this proposal.

I. Nurse Practioner Qualifications

The proposed NP qualifications provide a mechanism that would grandfather those individuals who have Medicare NP billing numbers before January 1, 2001; they could continue to bill as NPs. Therefore, an individual who may not have been nationally certified as an NP or who does not have a master's degree in nursing would be permitted to continue to bill under the Medicare program. However, after January 1, 2003, to obtain a Medicare NP billing number, a new applicant would be required to possess a master's degree in nursing, State authorization to practice as an NP, and national certification as an NP. By this time, the advanced nursing profession would have been furnished ample notification and time to acquire these credentials. There are no Medicare program costs or savings associated with this provision. Further, these requirements are consistent with our understanding of certification and training requirements being implemented by NP groups.

J. Relative Value Units for Pediatric Services

This proposal would correct our use of the wrong data in establishing the work RVUs for certain pediatric surgical services. Since pediatric services are a small portion of services under Medicare, this change would have a negligible impact on the Medicare program.

K. Percutaneous Thrombectomy of an Arteriovenous Fistula

We are proposing to establish payment for a new HCPCS code that more accurately describes the activities regarding percutaneous thrombectomy of a dialysis graft or fistula. Since this is basically a coding change we do not anticipate any costs or savings.

L. Pulse Oximetry, Temperature Gradient Studies, and Venous Pressure Determinations

We are proposing to discontinue separate payment for CPT codes 94760 (noninvasive ear or pulse oximetry for oxygen saturation; single determination); 94761 (non-invasive ear or pulse oximetry for oxygen saturation; multiple determinations); 94762 (noninvasive ear or pulse oximetry for oxygen saturation; by continuous overnight monitoring); 93740 (temperature gradient studies); and 93770 (determination of venous pressure). Payment for these codes would be bundled into payment for other services. Any savings from this provision would be incorporated into the physician fee schedule budget-neutrality calculation.

M. Removal of Requirement for X-ray Before Chiropractic Manipulation

This rule will conform the regulations to section 4513(a) of the BBA. We expect that removal of the requirement will encourage increased billing for chiropractic manipulation. The impact of this BBA provision is shown in the table below.

ESTIMATED COSTS
[$ millions]

FY 2000	$20
FY 2001	40
FY 2002	50
Total	110

N. Coverage of Prostate Cancer Screening Tests

Section 4103 of the BBA authorizes coverage of certain prostate cancer screening tests, effective January 1, 2000, subject to certain frequency and payment limitations. The new tests include: (1) Screening DREs, and (2) screening prostate-specific antigen tests. Based on the projected utilization of these screening services and related medically necessary follow-up tests and treatment that may be required for the beneficiaries screened, we estimate that this BBA provision will result in an increase in Medicare payments as described in the table below for fiscal years 2000 through 2002. These payments will be made to many urologists, primary care physicians, and other practitioners (involved in screening DREs), and to clinical laboratories (involved in screening prostate-specific antigen tests) nationally.

ESTIMATED MEDICARE COSTS
[$ million]

	Part A	Part B
FY 2000	$170	$590
FY 2001	300	1,100
FY 2002	400	1,270
Total	870	2,960

We believe that the effect of the rule will be positive. Prostate cancer is the most commonly diagnosed cancer in men and the second leading cause of cancer death for American men. The American Cancer Society estimates that in 1999 about 179,000 new cases of prostate cancer will be diagnosed in the United States, and about 37,000 will die directly from the disease. According to the American Urological Association, the use of a screening prostate-specific antigen blood test in combination with a screening DRE is the best method for detecting prostate cancer when the disease is localized and potentially curable. Although coverage of prostate cancer screening should improve access to this service for Medicare beneficiaries, the benefits of such screening, based on the available medical literature, are not entirely clear. The literature on the benefits of cancer detection especially among men over 70 indicates that screening for prostate cancer does not necessarily lead to the prolongation of life or improvement in the quality of life. However, when prostate cancer is found early, there is evidence that it can often be treated successfully. Through early detection of prostate cancer made possible under the new benefit and the use of appropriate treatment measures, our expectation is that the harmful effects of this serious disease among the Medicare population will be reduced in the future.

O. Diagnostic Tests

1. Supervision of Diagnostic Test

This proposal would conform the requirements of the physician supervision policy in § 410.32(b) with BBA provisions relating to PAs, NPs, and CNSs. We would clarify that the level of physician supervision for diagnostic tests performed by PAs, when they are authorized by the State to perform these tests, is general. This means that we would not require that the supervising physician for the diagnostic test be on the premises when the test is performed. It will mean that no level of physician supervision is required for diagnostic tests performed by NPs and CNSs when they are authorized by the State to perform these tests. The proposal would not affect the scope of services for which PAs, NPs or CNs could bill; therefore, we do not expect any significant costs or savings.

2. Independent Diagnostic Testing Facilities (IDTF)

The IDTF proposal would clarify § 410.33 to the effect that NPs and CNSs are included among the entities that may bill carriers directly for diagnostic tests. This proposal is a technical one and would not have a significant effect on costs or savings.

P. New and Revised Relative Value Units for Calender Year 1999

1. Ventricular Assist Device Implantations

This proposal would suspend the global period and allow the surgeon to bill all postoperative E/M visits. Although, we anticipate an increase in billing for these codes, the anticipated economic impact on the Medicare program is negligible because of the minimal use of these services.

2. Use of Operating Microscope

CPT code 69990 replaced two previous codes that were add-on codes (61712 and 64830) and also replaced use of a "– 20" microsurgery modifier. For clarification purposes, we are identifying the primary procedure codes for which we would pay separately for code 69990 since this is limited to those primary procedures for which the use of previous codes 61712 or 64830 was acceptable. There are no costs or savings associated with this proposal because it is a clarification in coding rather than a change in value.

3. Pulmonary Stress Testing

For 1999, the work RVUs established for CPT 94620 (simple pulmonary stress testing) were 0.88; the same work RVUs were assigned to the newly created code 94621, complex pulmonary stress testing. We are proposing to establish the work RVUs at 0.64 for CPT code 94620 and at 1.42 for CPT code 94621 based on the estimated frequencies. This proposal would not impact costs or savings to the Medicare program but would maintain budget neutrality for work RVUs for these codes.

Q. Budget-Neutrality

Each year since the fee schedule has been implemented, our actuaries have determined any adjustments needed to meet the budget-neutrality requirement of the statute. A component of the actuarial determination of budget-neutrality involves estimating the impact of changes in the volume-and-intensity of physicians' services provided to Medicare beneficiaries as a result of the proposed changes. Consistent with the provision in the November 2, 1999 final rule, the actuaries would use a model that assumes a 30 percent volume-and-intensity response to price reductions.

R. Impact on Beneficiaries

Although changes in physicians' payments when the physician fee schedule was implemented in 1992 were large, we detected no problems with beneficiary access to care. Furthermore, because there is a four-year transition of the resource-based practice expense system, we expect minimal impact on beneficiaries.

We are currently conducting substantial research to evaluate beneficiary access to physicians. This research includes, but is not limited to, augmenting the beneficiary survey questionnaire to further clarify access problems, conducting a survey of Medicare physicians to identify physician specialties and procedures by geographic areas, and tracking claims data in "vulnerable populations".

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 415

Health facilities, Health professions, Medicare and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV would be amended as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. Part 410 is amended as set forth below:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 410.22, paragraph (b)(1) is revised to read as follows:

§ 410.22. Limitations on services of a chiropractor.

* * * * *

(b) *Limitations on services.* (1) Medicare Part B pays only for a chiropractor's manual manipulation of the spine to correct a subluxation if the subluxation has resulted in a neuromusculoskeletal condition for which manual manipulation is appropriate treatment.

* * * * *

3. Section 410.23 is revised to read as follows:

§ 410.23 Limitations on services of an optometrist.

Medicare Part B pays for the services of a doctor of optometry, acting within the scope of his or her license, if the services would be covered as physicians' services when performed by a doctor of medicine or osteopathy.

4. In § 410.32, the introductory text to paragraph (b)(2) is republished for the convenience of the reader, paragraph (b)(2) is amended by adding new paragraphs (b)(2)(v) and (b)(2)(vi), and the introductory text to paragraph (b)(3) is revised to read as follows:

§ 410.32 Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions.

* * * * *

(b) *Diagnostic x-ray and other diagnostic tests.* * * *

(2) *Exceptions.* The following diagnostic tests payable under the physician fee schedule are excluded from the basic rule set forth in paragraph (b)(1) of this section:

* * * * *

(v) Diagnostic tests performed by a nurse practitioner or clinical nurse specialist authorized to perform the tests under applicable State laws.

(vi) Pathology and laboratory procedures listed in the 80000 series of the Current Procedural Terminology published by the American Medical Association.

(3) *Levels of supervision.* Except where otherwise indicated, all diagnostic x-ray and other diagnostic tests subject to this provision and payable under the physician fee schedule must be furnished under at least a general level of physician supervision as defined in paragraph (b)(3)(i) of this section. In addition, some of these tests also require either direct or personal supervision as defined in paragraphs (b)(3)(ii) or (b)(3)(iii) of this section, respectively. (However, diagnostic tests a physician

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assistant is legally authorized to perform under State law require only a general level of physician supervision.) When direct or personal supervision is required, physician supervision at the specified level is required throughout the performance of the test.

* * * * *

5. In § 410.33, paragraph (a)(1) is revised to read as follows:

§ 410.33 Independent diagnostic testing facility.

(a) *General rule.* (1) Effective for diagnostic procedures performed on or after March 15, 1999, carriers will pay for diagnostic procedures under the physician fee schedule only when performed by a physician, a group practice of physicians, an approved supplier of portable x-ray services, a nurse practitioner or a clinical nurse specialist when he or she performs a test he or she is authorized by the State to perform, or an independent diagnostic testing facility (IDTF). An IDTF may be a fixed location, a mobile entity, or an individual nonphysician practitioner. It is independent of a physician's office or hospital; however, these rules apply when an IDTF furnishes diagnostic procedures in a physician's office.

* * * * *

6. A new § 410.39 is added to read as follows:

§ 410.39 Prostate cancer screening tests: Conditions for and limitations on coverage.

(a) *Definitions.* As used in this section, the following definitions apply:

(1) *Prostate cancer screening tests* means any of the following procedures furnished to an individual for the purpose of early detection of prostate cancer:

(i) A screening digital rectal examination.

(ii) A screening prostate-specific antigen blood test.

(iii) For years beginning after 2002, other procedures HCFA finds appropriate for the purpose of early detection of prostate cancer, taking into account changes in technology and standards of medical practice, availability, effectiveness, costs, and other factors HCFA considers appropriate.

(2) *A screening digital rectal examination* means a clinical examination of an individual's prostate for nodules or other abnormalities of the prostate.

(3) *A screening prostate-specific antigen blood test* means a test that measures the level of prostate-specific antigen in an individual's blood.

(4) *An attending physician* for purposes of this provision means a doctor of medicine or osteopathy (as defined in section 1861(r)(1) of the Act) who is fully knowledgeable about the beneficiary's medical condition, and who would be responsible for using the results of any examination performed in the overall management of the beneficiary's specific medical problem.

(5) *An attending physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse midwife,* for purposes of this provision means a physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse midwife (as defined in sections 1861(aa) and 1861(gg) of the Act) who is fully knowledgeable about the beneficiary's medical condition, and who would be responsible for using the results of any examination performed in the overall management of the beneficiary's specific medical problem.

(b) *Condition for coverage of screening digital rectal examinations.* Medicare Part B pays for a screening digital rectal examination if it is performed by the beneficiary's attending physician, or by the beneficiary's attending physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse midwife as defined in paragraphs (a)(4) or (a)(5) of this section who is authorized to perform this service under State law.

(c) *Limitation on coverage of screening digital rectal examinations.* (1) Payment may not be made for a screening digital rectal examination performed for a man age 50 or younger.

(2) For an individual over 50 years of age, payment may be made for a screening digital rectal examination only if the man has not had such an examination paid for by Medicare during the preceding 11 months following the month in which his last Medicare-covered screening digital rectal examination was performed.

(d) *Condition for coverage of screening prostate-specific antigen blood tests.* Medicare Part B pays for a screening prostate-specific antigen blood test if it is ordered by the beneficiary's attending physician, or by the beneficiary's attending physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse midwife as defined in paragraphs (a)(4) or (a)(5) of this section who is authorized to order this test under State law.

(e) *Limitation on coverage of screening prostate-specific antigen blood test.* (1) Payment may not be made for a screening prostate-specific antigen blood test performed for a man under age 50.

(2) For an individual over 50 years of age, payment may be made for a screening prostate-specific antigen blood test only if the man has not had such an examination paid for by Medicare during the preceding 11 months following the month in which his last Medicare-covered screening prostate-specific antigen blood test was performed.

7. In § 410.75, paragraph (b) is revised to read as follows:

§ 410.75 Nurse practitioner's services.

* * * * *

(b) *Qualifications.* For Medicare Part B coverage of his or her services, a nurse practitioner must—

(1)(i) Be a registered professional nurse who is authorized by the State in which the services are furnished to practice as a nurse practitioner in accordance with State law; *and*

(ii) Be certified as a nurse practitioner by a recognized national certifying body that has established standards for nurse practitioners; *or*

(2) Be a registered professional nurse who is authorized by the State in which the services are furnished to practice as a nurse practitioner in accordance with State law and have been granted a Medicare billing number as a nurse practitioner by December 31, 2000.

(3) On or after January 1, 2001, nurse practitioners applying for a Medicare billing number for the first time must meet the standards for nurse practitioners in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(4) On or after January 1, 2003, nurse practitioners applying for a Medicare billing number for the first time must possess a master's degree in nursing and meet the standards for nurse practitioners in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

* * * * *

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

B. Part 411 is amended as set forth below:

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 411.15, the introductory text to the section is revised, the introductory text to paragraph (a) is republished, paragraph (a)(1) is revised, the introductory text to paragraph (k) is republished, and new paragraphs (k)(9) and (q) are added to read as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage:

(a) Routine physical checkups such as:

(1) Examinations performed for a purpose other than treatment or diagnosis of a specific illness, symptoms, complaint, or injury, except for screening mammography, colorectal cancer screening tests, screening pelvic examinations, or prostate cancer screening tests that meet the criteria specified in paragraphs (k)(6) through (k)(9) of this section.

* * * * *

(k) Any services that are not reasonable and necessary for one of the following purposes:

* * * * *

(9) In the case of prostate cancer screening tests, for the purpose of early detection of prostate cancer, subject to the conditions and limitations specified in § 410.39 of this chapter.

* * * * *

(q) *Assisted suicide.* Any health care service used for the purpose of causing, or assisting to cause, the death of any individual. This does not pertain to the withholding or withdrawing of medical treatment or care, nutrition or hydration or to the provision of a service for the purpose of alleviating pain or discomfort, even if the use may increase the risk of death, so long as the service is not furnished for the specific purpose of causing death.

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

C. Part 414 is amended as set forth below:

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395(hh), and 1395rr(b)(1).

2. In § 414.22, the introductory text is republished, paragraph (b)(5)(i) is revised, and a new paragraph (c)(3) is added to read as follows:

§ 414.22 Relative value units (RVUs).

HCFA establishes RVUs for physicians' work, practice expense, and malpractice insurance.

* * * * *

(b) *Practice expense RVUs.* * * *

(5) * * *

(i) Usually one of two levels of practice expense RVUs can be applied to each code. The lower facility practice expense RVUs apply to services furnished to hospital, skilled nursing facility, or ambulatory surgical center patients. The higher non-facility practice expense RVUs apply to services performed in a physician's office, services furnished to patients in a nursing facility, in a facility or institution other than a hospital, skilled nursing facility, or ambulatory surgical center, or in the home. The facility practice expense RVUs for a particular code may not be greater than the non-facility RVUs for that code.

* * * * *

(c) *Malpractice insurance RVUs.*

* * *

(3) For services furnished in the year 2000 and subsequent years, the malpractice RVUs are based on the relative malpractice insurance resources.

3. In § 414.46, the introductory texts to paragraphs (a) and (b) are republished, paragraphs (a)(1) and (a)(2) are revised, paragraph (a)(3) is added, and paragraphs (b)(1) and (b)(2) are revised to read as follows:

§ 414.46 Additional rules for payment of anesthesia services.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Base unit* means the value for each anesthesia code that reflects all activities other than anesthesia time. These activities include usual preoperative and postoperative visits, the administration of fluids and blood incident to anesthesia care, and monitoring services.

(2) *Anesthesia practitioner,* for the purpose of anesthesia time, means a physician who performs the anesthesia service alone, a CRNA who is not medically directed who performs the anesthesia service alone, or a medically directed CRNA.

(3) *Anesthesia time* means the time during which an anesthesia practitioner is present with the patient. It starts when the anesthesia practitioner begins to prepare the patient for anesthesia services and ends when the anesthesia practitioner is no longer furnishing anesthesia services to the beneficiary, that is, when the beneficiary may be placed safely under postoperative care. Anesthesia time is a continuous time period from the start of anesthesia to the end of an anesthesia service. In counting anesthesia time, the anesthesia practitioner can add blocks of anesthesia time around an interruption in anesthesia time as long as the anesthesia practitioner is furnishing continuous anesthesia care within the time periods around the interruption.

(b) *Determinations of payment amount—Basic rule.* For anesthesia services performed, medically directed, or medically supervised by a physician, the carrier pays the lesser of the actual charge or the anesthesia fee schedule amount.

(1) The carrier bases the physician fee schedule amount for an anesthesia service on the product of the sum of allowable base and time units and an anesthesia-specific CF. The carrier calculates the time units from the anesthesia time reported by the anesthesia practitioner for the anesthesia procedure. The physician who fulfills the conditions for medical direction in § 415.110 (Conditions for payment: Anesthesiology services) reports the same anesthesia time as the medically-directed CRNA.

(2) HCFA furnishes the carrier with the base units for each anesthesia procedure code. The base units are derived from the 1988 American Society of Anesthesiologists' Relative Value Guide except that the number of base units recognized for anesthesia services furnished during cataract or iridectomy surgery is four units.

* * * * *

4. In § 414.60, the introductory text of paragraph (a) is revised to read as follows:

§ 414.60 Payment for the services of CRNAs.

(a) *Basis for payment.* The allowance for the anesthesia service furnished by a CRNA, medically directed or not medically directed, is based on allowable base and time units as defined in § 414.46(a). Beginning with CY 1994—

* * * * *

PART 415—SERVICES FURNISHED BY PHYSICIANS IN PROVIDERS, SUPERVISING PHYSICIANS IN TEACHING SETTINGS, AND RESIDENTS IN CERTAIN SETTINGS

D. Part 415 is amended as set forth below:

1. The authority citation for part 415 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 415.130(c) is revised to read as follows:

§ 415.130 Conditions for payment; Physician pathology services.

* * * * *

(c) *Physician pathology services furnished by an independent laboratory.* The technical component of physician pathology services, as described in paragraph (a) of this section, furnished to a hospital inpatient before January 1, 2000, or to an outpatient can be paid on a fee schedule basis under this subpart. On or after January 1, 2000, payment is made only to the hospital for the technical component of physician

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pathology services furnished to a hospital inpatient.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 27, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: June 29, 1999.

Donna E. Shalala,

Secretary.

Note: These addenda will not appear in the Code of Federal Regulations.

Addendum A—Explanation and Use of Addenda B

The addenda on the following pages provide various data pertaining to the Medicare fee schedule for physicians' services furnished in 2000. Addendum B contains the RVUs for work, non-facility practice expense, facility practice expense, and malpractice expense, and other information for all services included in the physician fee schedule.

Addendum B—2000 Relative Value Units and Related Information Used in Determining Medicare Payments for 2000

This addendum contains the following information for each CPT code and alphanumeric HCPCS code, except for alphanumeric codes beginning with B (enteral and parenteral therapy), E (durable medical equipment), K (temporary codes for nonphysicians' services or items), or L (orthotics), and codes for anesthesiology.

1. *CPT/HCPCS code.* This is the CPT or alphanumeric HCPCS number for the service. Alphanumeric HCPCS codes are included at the end of this addendum.

2. *Modifier.* A modifier is shown if there is a technical component (modifier TC) and a professional component (PC) (modifier −26) for the service. If there is a PC and a TC for the service, Addendum B contains three entries for the code: One for the global values (both professional and technical); one for modifier −26 (PC); and one for modifier TC. The global service is not designated by a modifier, and physicians must bill using the code without a modifier if the physician furnishes both the PC and the TC of the service.

Modifier −53 is shown for a discontinued procedure. There will be RVUs for the code (CPT code 45378) with this modifier.

3. *Status indicator.* This indicator shows whether the CPT/HCPCS code is in the physician fee schedule and whether it is separately payable if the service is covered.

A = Active code. These codes are separately payable under the fee schedule if covered. There will be RVUs for codes with this status. The presence of an "A" indicator does not mean that Medicare has made a national decision regarding the coverage of the service. Carriers remain responsible for coverage decisions in the absence of a national Medicare policy.

B = Bundled code. Payment for covered services is always bundled into payment for other services not specified. If RVUs are shown, they are not used for Medicare payment. If these services are covered, payment for them is subsumed by the payment for the services to which they are incident. (An example is a telephone call from a hospital nurse regarding care of a patient.)

C = Carrier-priced code. Carriers will establish RVUs and payment amounts for these services, generally on a case-by-case basis following review of documentation, such as an operative report.

D = Deleted code. These codes are deleted effective with the beginning of the calendar year.

E = Excluded from physician fee schedule by regulation. These codes are for items or services that we chose to exclude from the physician fee schedule payment by regulation. No RVUs are shown, and no payment may be made under the physician fee schedule for these codes. Payment for them, if they are covered, continues under reasonable charge or other payment procedures.

G = Code not valid for Medicare purposes. Medicare does not recognize codes assigned this status. Medicare uses another code for reporting of, and payment for, these services.

N = Noncovered service. These codes are noncovered services. Medicare payment may not be made for these codes. If RVUs are shown, they are not used for Medicare payment.

P = Bundled or excluded code. There are no RVUs for these services. No separate payment should be made for them under the physician fee schedule.

—If the item or service is covered as incident to a physician's service and is furnished on the same day as a physician's service, payment for it is bundled into the payment for the physician's service to which it is incident (an example is an elastic bandage furnished by a physician incident to a physician's service).

—If the item or service is covered as other than incident to a physician's service, it is excluded from the physician fee schedule (for example, colostomy supplies) and is paid under the other payment provisions of the Act.

R = Restricted coverage. Special coverage instructions apply. If the service is covered and no RVUs are shown, it is carrier-priced.

T = Injections. There are RVUs for these services, but they are only paid if there are no other services payable under the physician fee schedule billed on the same date by the same provider. If any other services payable under the physician fee schedule are billed on the same date by the same provider, these services are bundled into the service(s) for which payment is made.

X = Exclusion by law. These codes represent an item or service that is not within the definition of "physicians' services" for physician fee schedule payment purposes. No RVUs are shown for these codes, and no payment may be made under the physician fee schedule. (Examples are ambulance services and clinical diagnostic laboratory services.)

4. *Description of code.* This is an abbreviated version of the narrative description of the code.

5. *Physician work RVUs.* These are the RVUs for the physician work for this service in 2000. Codes that are not used for Medicare payment are identified with a "+."

6. *Fully implemented non-facility practice expense RVUs.* These are the fully implemented resource-based practice expense RVUs for non-facility settings.

7. *Year 2000 Transition non-facility practice expense RVUs.* Blended non-facility practice expense RVUs for use in 2000.

8. *Fully implemented facility practice expense RVUs.* These are the fully implemented resource-based practice expense RVUs for facility settings.

9. *Year 2000 transition facility practice expense RVUs.* Blended facility practice expense RVUs for use in 2000.

10. *Malpractice expense RVUs.* These are the RVUs for the malpractice expense for the service for 2000.

11. *Fully implemented non-facility total.* This is the sum of the work, fully implemented non-facility practice expense, and malpractice expense RVUs.

12. *Year 2000 transition non-facility total.* This is the sum of the work, transition non-facility practice expense, and malpractice expense RVUs for use in 2000.

13. *Fully implemented facility total.* This is the sum of the work, fully implemented facility practice expense, and malpractice expense RVUs.

14. *Year 2000 transition facility total.* This is the sum of the work, transition facility practice expense, and malpractice expense RVUs for use in 2000.

15. *Global period.* This indicator shows the number of days in the global period for the code (0, 10, or 90 days). An explanation of the alpha codes follows:

MMM = The code describes a service furnished in uncomplicated maternity cases including antepartum care, delivery, and postpartum care. The usual global surgical concept does not apply. See the 1999 Physicians' Current Procedural Terminology for specific definitions.

XXX = The global concept does not apply.

YYY = The global period is to be set by the carrier (for example, unlisted surgery codes).

ZZZ = The code is part of another service and falls within the global period for the other service.

Addendum B—2000 Relative Value Units and Related Information Used in Determining Medicare Payments for 2000

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
10040		A	Acne surgery of skin abscess	1.18	1.31	0.83	0.54	0.36	0.05	2.54	2.06	1.77	1.59	010
10060		A	Drainage of skin abscess	1.17	1.20	0.84	0.60	0.42	0.08	2.45	2.09	1.85	1.67	010
10061		A	Drainage of skin abscess	2.40	1.84	1.27	1.11	0.73	0.17	4.41	3.84	3.68	3.30	010
10080		A	Drainage of pilonidal cyst	1.17	1.83	1.19	0.66	0.47	0.09	3.09	2.45	1.92	1.73	010
10081		A	Drainage of pilonidal cyst	2.45	2.47	1.84	1.43	1.02	0.21	5.13	4.50	4.09	3.68	010
10120		A	Remove foreign body	1.22	1.65	1.08	0.66	0.46	0.10	2.97	2.40	1.98	1.78	010
10121		A	Remove foreign body	2.69	2.62	1.86	1.70	1.13	0.25	5.56	4.80	4.64	4.07	010
10140		A	Drainage of hematoma/fluid	1.53	1.27	0.90	0.81	0.54	0.11	2.91	2.54	2.45	2.18	010
10160		A	Puncture drainage of lesion	1.20	1.43	0.92	0.70	0.46	0.10	2.73	2.22	2.00	1.76	010
10180		A	Complex drainage, wound	2.25	1.31	1.23	1.24	1.19	0.24	3.80	3.72	3.73	3.68	010
11000		A	Debride infected skin	0.60	0.51	0.47	0.23	0.23	0.04	1.15	1.11	0.87	0.87	000
11001		A	Debride infect skin add-on	0.30	0.28	0.28	0.12	0.13	0.02	0.60	0.60	0.44	0.45	ZZZ
11010		A	Debride skin, fx	4.20	2.14	3.22	1.88	3.09	0.38	6.72	7.80	6.46	7.67	010
11011		A	Debride skin/muscle, fx	4.95	3.48	4.30	2.56	3.84	0.51	8.94	9.76	8.02	9.30	000
11012		A	Debride skin/muscle/bone, fx	6.88	4.88	6.00	3.98	5.55	0.74	12.50	13.62	11.60	13.17	000
11040		A	Debride skin partial	0.50	0.46	0.45	0.19	0.21	0.03	0.99	0.98	0.72	0.74	000
11041		A	Debride skin full	0.82	0.61	0.61	0.32	0.32	0.06	1.49	1.49	1.20	1.20	000
11042		A	Debride skin/tissue	1.12	0.86	0.79	0.44	0.40	0.09	2.07	2.00	1.65	1.61	000
11043		A	Debride tissue/muscle	2.38	2.25	2.11	1.34	1.65	0.23	4.86	4.72	3.95	4.26	010
11044		A	Debride tissue/muscle/bone	3.06	2.95	3.01	1.78	2.42	0.31	6.32	6.38	5.15	5.79	010
11055		R	Trim skin lesion	0.27	0.34	0.31	0.11	0.13	0.02	0.63	0.60	0.40	0.42	000
11056		R	Trim 2 to 4 skin lesions	0.39	0.38	0.38	0.15	0.17	0.03	0.80	0.80	0.57	0.59	000
11057		R	Trim over 4 skin lesions	0.50	0.42	0.36	0.20	0.18	0.03	0.95	0.89	0.73	0.71	000
11100		A	Biopsy of skin lesion	0.81	1.27	0.91	0.37	0.33	0.04	2.12	1.76	1.22	1.18	000
11101		A	Biopsy, skin add-on	0.41	0.56	0.44	0.19	0.18	0.02	0.99	0.87	0.62	0.61	ZZZ
11200		A	Removal of skin tags	0.77	0.97	0.72	0.32	0.28	0.04	1.78	1.53	1.13	1.09	010
11201		A	Remove skin tags add-on	0.29	0.37	0.28	0.13	0.11	0.02	0.68	0.59	0.44	0.42	ZZZ
11300		A	Shave skin lesion	0.51	0.88	0.73	0.22	0.26	0.03	1.42	1.27	0.76	0.80	000
11301		A	Shave skin lesion	0.85	0.96	0.85	0.40	0.39	0.04	1.85	1.74	1.29	1.28	000
11302		A	Shave skin lesion	1.05	1.06	1.02	0.49	0.49	0.05	2.16	2.12	1.59	1.59	000
11303		A	Shave skin lesion	1.24	1.17	1.33	0.55	0.65	0.06	2.47	2.63	1.85	1.95	000
11305		A	Shave skin lesion	0.67	0.77	0.67	0.28	0.28	0.04	1.48	1.38	0.99	0.99	000
11306		A	Shave skin lesion	0.99	0.97	0.87	0.44	0.42	0.05	2.01	1.91	1.48	1.46	000
11307		A	Shave skin lesion	1.14	1.05	1.04	0.51	0.51	0.06	2.25	2.24	1.71	1.71	000
11308		A	Shave skin lesion	1.41	1.17	1.35	0.62	0.69	0.08	2.66	2.84	2.11	2.18	000
11310		A	Shave skin lesion	0.73	0.97	0.86	0.34	0.36	0.04	1.74	1.63	1.11	1.13	000
11311		A	Shave skin lesion	1.05	1.07	1.00	0.51	0.49	0.05	2.17	2.10	1.61	1.59	000
11312		A	Shave skin lesion	1.20	1.13	1.18	0.58	0.60	0.06	2.39	2.44	1.84	1.86	000
11313		A	Shave skin lesion	1.62	1.39	1.51	0.78	0.80	0.08	3.09	3.21	2.48	2.50	000
11400		A	Removal of skin lesion	0.91	2.11	1.35	0.68	0.49	0.07	3.09	2.33	1.66	1.47	010
11401		A	Removal of skin lesion	1.32	2.14	1.44	0.92	0.65	0.10	3.56	2.86	2.34	2.07	010
11402		A	Removal of skin lesion	1.61	2.24	1.61	0.92	0.71	0.12	3.97	3.34	2.65	2.44	010
11403		A	Removal of skin lesion	1.92	2.05	1.66	1.06	0.85	0.16	4.13	3.74	3.14	2.93	010
11404		A	Removal of skin lesion	2.20	2.20	1.85	1.15	0.95	0.19	4.59	4.24	3.54	3.34	010
11406		A	Removal of skin lesion	2.76	2.96	2.50	1.38	1.71	0.26	5.98	5.52	4.40	4.73	010
11420		A	Removal of skin lesion	1.06	1.80	1.18	0.73	0.51	0.08	2.94	2.32	1.87	1.65	010
11421		A	Removal of skin lesion	1.53	2.10	1.44	0.93	0.66	0.11	3.74	3.08	2.57	2.30	010
11422		A	Removal of skin lesion	1.76	2.23	1.63	1.00	0.76	0.13	4.12	3.52	2.89	2.65	010
11423		A	Removal of skin lesion	2.17	2.17	1.80	1.20	0.96	0.18	4.52	4.15	3.55	3.31	010
11424		A	Removal of skin lesion	2.62	2.33	1.92	1.37	1.07	0.21	5.16	4.75	4.20	3.90	010
11426		A	Removal of skin lesion	3.78	3.39	2.69	1.84	1.92	0.34	7.51	6.81	5.96	6.04	010
11440		A	Removal of skin lesion	1.15	2.20	1.48	0.88	0.63	0.08	3.43	2.71	2.11	1.86	010
11441		A	Removal of skin lesion	1.61	2.34	1.63	1.08	0.77	0.11	4.06	3.35	2.80	2.49	010
11442		A	Removal of skin lesion	1.87	2.43	1.83	1.18	0.90	0.14	4.44	3.84	3.19	2.91	010
11443		A	Removal of skin lesion	2.49	2.90	2.24	1.50	1.15	0.19	5.58	4.92	4.18	3.83	010
11444		A	Removal of skin lesion	3.42	2.93	2.27	1.94	1.37	0.26	6.61	5.95	5.62	5.05	010
11446		A	Removal of skin lesion	4.49	3.92	2.93	2.41	1.69	0.34	8.75	7.76	7.24	6.52	010
11450		A	Removal, sweat gland lesion	2.73	3.71	3.31	0.90	1.91	0.24	6.68	6.28	3.87	4.88	090
11451		A	Removal, sweat gland lesion	3.95	4.26	3.71	1.63	2.39	0.39	8.60	8.05	5.97	6.73	090
11462		A	Removal, sweat gland lesion	2.51	3.48	3.05	0.99	1.81	0.24	6.23	5.80	3.74	4.56	090
11463		A	Removal, sweat gland lesion	3.95	4.91	3.54	1.62	1.90	0.41	9.27	7.90	5.98	6.26	090
11470		A	Removal, sweat gland lesion	3.25	4.43	3.73	1.30	2.16	0.32	8.00	7.30	4.87	5.73	090
11471		A	Removal, sweat gland lesion	4.41	5.24	3.96	1.81	2.24	0.44	10.09	8.81	6.66	7.09	090
11600		A	Removal of skin lesion	1.41	2.28	1.76	1.07	0.85	0.10	3.79	3.27	2.58	2.36	010
11601		A	Removal of skin lesion	1.93	2.19	1.85	0.83	0.80	0.12	4.24	3.90	2.88	2.85	010
11602		A	Removal of skin lesion	2.09	2.35	2.17	1.23	1.11	0.13	4.57	4.39	3.45	3.33	010
11603		A	Removal of skin lesion	2.35	2.19	2.32	1.31	1.27	0.16	4.70	4.83	3.82	3.78	010
11604		A	Removal of skin lesion	2.58	2.33	2.57	1.40	1.41	0.19	5.10	5.34	4.17	4.18	010
11606		A	Removal of skin lesion	3.43	3.20	3.29	1.72	2.55	0.30	6.93	7.02	5.45	6.28	010
11620		A	Removal of skin lesion	1.34	2.22	1.84	0.97	0.85	0.09	3.65	3.27	2.40	2.28	010
11621		A	Removal of skin lesion	1.97	2.33	2.12	1.23	1.09	0.12	4.42	4.21	3.32	3.18	010
11622		A	Removal of skin lesion	2.34	2.49	2.44	1.39	1.30	0.15	4.98	4.93	3.88	3.79	010
11623		A	Removal of skin lesion	2.93	2.48	2.64	1.65	1.53	0.21	5.62	5.78	4.79	4.67	010
11624		A	Removal of skin lesion	3.43	2.79	3.14	1.87	1.81	0.26	6.48	6.83	5.56	5.50	010
11626		A	Removal of skin lesion	4.30	3.65	3.68	2.27	2.99	0.36	8.31	8.34	6.93	7.65	010
11640		A	Removal of skin lesion	1.53	2.28	2.04	1.10	1.00	0.10	3.91	3.67	2.73	2.63	010
11641		A	Removal of skin lesion	2.44	2.59	2.43	1.54	1.34	0.15	5.18	5.02	4.13	3.93	010
11642		A	Removal of skin lesion	2.93	2.56	2.68	1.78	1.59	0.19	5.68	5.80	4.90	4.71	010
11643		A	Removal of skin lesion	3.50	2.89	3.08	2.05	1.85	0.25	6.64	6.83	5.80	5.60	010
11644		A	Removal of skin lesion	4.55	3.51	3.66	2.58	2.25	0.34	8.40	8.55	7.47	7.14	010
11646		A	Removal of skin lesion	5.95	4.67	4.68	3.30	4.00	0.48	11.10	11.11	9.73	10.43	010
11719		#	Trim nail(s)	0.11	0.43	0.35	0.04	0.09	0.01	0.55	0.47	0.16	0.21	000
11720		A	Debride nail, 1-5	0.32	0.40	0.38	0.13	0.16	0.02	0.74	0.72	0.47	0.50	000
11721		A	Debride nail, 6 or more	0.54	0.50	0.55	0.21	0.26	0.04	1.08	1.13	0.79	0.84	000

[1] CPT codes and descriptions only are copyright 1998 American Medical Association. All Rights Reserved. Applicable FARS/DFARS Apply.
[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
11730		A	Removal of nail plate	1.13	0.71	0.60	0.44	0.35	0.08	1.92	1.81	1.65	1.56	000
11732		A	Remove additional nail plate	0.57	0.27	0.27	0.23	0.19	0.04	0.88	0.88	0.84	0.80	ZZZ
11740		A	Drain blood from under nail	0.37	0.61	0.52	0.13	0.17	0.03	1.01	0.92	0.53	0.57	000
11750		A	Removal of nail bed	1.86	1.44	1.86	0.77	0.96	0.13	3.43	3.85	2.76	2.95	010
11752		A	Remove nail bed/finger tip	2.67	1.79	2.43	1.61	1.57	0.22	4.68	5.32	4.50	4.46	010
11755		A	Biopsy, nail unit	1.31	1.01	1.04	0.54	0.81	0.08	2.40	2.43	1.93	2.20	000
11760		A	Reconstruction of nail bed	1.58	1.42	1.22	1.08	0.80	0.14	3.14	2.94	2.80	2.52	010
11762		A	Reconstruction of nail bed	2.89	1.87	2.33	1.68	1.54	0.21	4.97	5.43	4.78	4.64	010
11765		A	Excision of nail fold, toe	0.69	0.89	0.72	0.41	0.35	0.05	1.63	1.46	1.15	1.09	010
11770		A	Removal of pilonidal lesion	2.61	2.52	2.71	1.26	2.08	0.25	5.38	5.57	4.12	4.94	010
11771		A	Removal of pilonidal lesion	5.74	5.00	4.96	3.80	4.36	0.58	11.32	11.28	10.12	10.68	090
11772		A	Removal of pilonidal lesion	6.98	5.93	5.58	4.24	4.74	0.73	13.64	13.29	11.95	12.45	090
11900		A	Injection into skin lesions	0.52	0.62	0.45	0.21	0.18	0.02	1.16	0.99	0.75	0.72	000
11901		A	Added skin lesions injection	0.80	0.74	0.59	0.34	0.28	0.03	1.57	1.42	1.17	1.11	000
11920		R	Correct skin color defects	1.61	1.91	1.60	0.85	1.07	0.18	3.70	3.39	2.64	2.86	000
11921		R	Correct skin color defects	1.93	2.12	1.82	1.02	1.27	0.22	4.27	3.97	3.17	3.42	000
11922		R	Correct skin color defects	0.40	0.34	0.37	0.26	0.33	0.06	0.80	0.92	0.81	0.88	ZZZ
11950		R	Therapy for contour defects	0.84	1.01	1.15	0.41	0.85	0.06	1.91	2.05	1.31	1.75	000
11951		R	Therapy for contour defects	1.19	1.45	1.37	0.50	0.90	0.10	2.74	2.66	1.79	2.19	000
11952		R	Therapy for contour defects	1.69	1.02	1.16	1.01	1.15	0.12	2.83	2.97	2.82	2.96	000
11954		R	Therapy for contour defects	1.85	1.61	1.45	0.98	1.14	0.21	3.67	3.51	3.04	3.20	000
11960		A	Insert tissue expander(s)	9.08	NA	NA	9.43	8.91	0.93	NA	NA	19.44	18.92	090
11970		A	Replace tissue expander	7.06	NA	NA	4.63	6.53	0.79	NA	NA	12.48	14.38	090
11971		A	Remove tissue expander(s)	2.13	5.06	3.78	3.13	2.82	0.23	7.42	6.14	5.49	5.18	090
11975		N	Insert contraceptive cap	+1.48	1.39	1.27	0.57	0.86	0.12	2.99	2.87	2.17	2.46	XXX
11976		R	Removal of contraceptive cap	1.78	1.52	1.46	0.68	1.04	0.15	3.45	3.39	2.61	2.97	XXX
11977		N	Removal/reinsert contra cap	+3.30	2.09	2.33	1.26	1.91	0.27	5.66	5.90	4.83	5.48	XXX
12001		A	Repair superficial wound(s)	1.70	2.17	1.40	0.78	0.70	0.15	4.02	3.25	2.63	2.55	010
12002		A	Repair superficial wound(s)	1.86	2.25	1.56	0.82	0.84	0.17	4.28	3.59	2.85	2.87	010
12004		A	Repair superficial wound(s)	2.24	2.42	1.83	0.94	1.09	0.21	4.87	4.28	3.39	3.54	010
12005		A	Repair superficial wound(s)	2.86	2.85	2.23	1.19	1.40	0.27	5.98	5.36	4.32	4.53	010
12006		A	Repair superficial wound(s)	3.67	3.80	2.87	1.86	1.90	0.35	7.82	6.89	5.88	5.92	010
12007		A	Repair superficial wound(s)	4.12	4.26	3.11	2.16	2.06	0.40	8.78	7.63	6.68	6.58	010
12011		A	Repair superficial wound(s)	1.76	2.24	1.52	0.79	0.80	0.16	4.16	3.44	2.71	2.72	010
12013		A	Repair superficial wound(s)	1.99	2.38	1.75	0.84	0.98	0.19	4.56	3.93	3.02	3.16	010
12014		A	Repair superficial wound(s)	2.46	2.69	1.99	1.03	1.16	0.23	5.38	4.68	3.72	3.85	010
12015		A	Repair superficial wound(s)	3.19	3.11	2.44	1.23	1.50	0.30	6.60	5.93	4.72	4.99	010
12016		A	Repair superficial wound(s)	3.93	3.34	2.90	1.46	1.96	0.38	7.65	7.21	5.77	6.27	010
12017		A	Repair superficial wound(s)	4.71	4.96	4.31	2.16	2.91	0.46	10.13	9.48	7.33	8.08	010
12018		A	Repair superficial wound(s)	5.53	5.66	5.63	2.73	4.16	0.48	11.67	11.64	8.74	10.17	010
12020		A	Closure of split wound	2.62	2.42	1.86	1.42	1.36	0.24	5.28	4.72	4.28	4.22	010
12021		A	Closure of split wound	1.84	1.93	1.30	1.06	0.70	0.16	3.93	3.30	3.06	2.70	010
12031		A	Layer closure of wound(s)	2.15	2.45	1.62	1.11	0.75	0.16	4.76	3.93	3.42	3.06	010
12032		A	Layer closure of wound(s)	2.47	2.46	1.80	1.19	0.88	0.17	5.10	4.44	3.83	3.52	010
12034		A	Layer closure of wound(s)	2.92	2.71	2.16	1.35	1.48	0.25	5.88	5.33	4.52	4.65	010
12035		A	Layer closure of wound(s)	3.43	2.80	2.44	1.63	1.86	0.33	6.56	6.20	5.39	5.62	010
12036		A	Layer closure of wound(s)	4.05	4.60	3.56	2.32	2.42	0.42	9.07	8.03	6.79	6.89	010
12037		A	Layer closure of wound(s)	4.67	4.96	4.16	2.85	3.10	0.46	10.09	9.29	7.98	8.23	010
12041		A	Layer closure of wound(s)	2.37	2.75	1.83	1.16	0.81	0.18	5.30	4.38	3.71	3.36	010
12042		A	Layer closure of wound(s)	2.74	2.68	1.98	1.33	0.99	0.19	5.61	4.91	4.26	3.92	010
12044		A	Layer closure of wound(s)	3.14	2.83	2.30	1.48	1.62	0.27	6.24	5.71	4.89	5.03	010
12045		A	Layer closure of wound(s)	3.64	3.28	2.80	1.77	2.04	0.34	7.26	6.78	5.75	6.02	010
12046		A	Layer closure of wound(s)	4.25	4.89	3.98	2.40	2.73	0.38	9.52	8.61	7.03	7.36	010
12047		A	Layer closure of wound(s)	4.65	5.38	4.87	2.79	3.58	0.46	10.49	9.96	7.90	8.69	010
12051		A	Layer closure of wound(s)	2.47	2.66	1.88	1.27	0.91	0.18	5.31	4.53	3.92	3.56	010
12052		A	Layer closure of wound(s)	2.77	2.58	2.09	1.25	1.03	0.19	5.54	5.05	4.21	3.99	010
12053		A	Layer closure of wound(s)	3.12	2.73	2.32	1.40	1.66	0.24	6.09	5.68	4.76	5.02	010
12054		A	Layer closure of wound(s)	3.46	3.05	2.94	1.53	2.18	0.30	6.81	6.70	5.29	5.94	010
12055		A	Layer closure of wound(s)	4.43	4.00	3.76	2.11	2.82	0.41	8.84	8.60	6.95	7.66	010
12056		A	Layer closure of wound(s)	5.24	5.41	5.28	2.94	4.04	0.45	11.10	10.97	8.63	9.73	010
12057		A	Layer closure of wound(s)	5.96	4.93	5.49	3.90	4.97	0.52	11.41	11.97	10.38	11.45	010
13100		A	Repair of wound or lesion	3.12	3.02	2.13	1.73	1.18	0.23	6.37	5.48	5.08	4.53	010
13101		A	Repair of wound or lesion	3.92	3.20	2.73	2.17	1.65	0.25	7.37	6.90	6.34	5.82	010
13120		A	Repair of wound or lesion	3.30	3.10	2.29	1.75	1.25	0.26	6.66	5.85	5.31	4.81	010
13121		A	Repair of wound or lesion	4.33	3.41	3.15	2.24	1.84	0.28	8.02	7.76	6.85	6.45	010
13131		A	Repair of wound or lesion	3.79	3.37	2.76	2.10	1.59	0.28	7.44	6.83	6.17	5.66	010
13132		A	Repair of wound or lesion	5.95	4.15	4.56	3.12	2.80	0.36	10.46	10.87	9.43	9.11	010
13150		A	Repair of wound or lesion	3.81	4.50	3.21	2.48	2.20	0.31	8.62	7.33	6.60	6.32	010
13151		A	Repair of wound or lesion	4.45	4.47	3.57	2.85	2.09	0.31	9.23	8.33	7.61	6.85	010
13152		A	Repair of wound or lesion	6.33	5.22	5.40	3.77	3.28	0.43	11.98	12.16	10.53	10.04	010
13160		A	Late closure of wound	10.48	NA	NA	6.18	4.90	1.14	NA	NA	17.80	16.52	090
13300		A	Repair of wound or lesion	5.27	3.95	5.08	2.89	4.55	0.46	9.68	10.81	8.62	10.28	010
14000		A	Skin tissue rearrangement	5.89	6.28	4.99	4.20	3.03	0.48	12.65	11.36	10.57	9.40	090
14001		A	Skin tissue rearrangement	8.47	7.56	6.36	5.52	5.34	0.70	16.73	15.53	14.69	14.51	090
14020		A	Skin tissue rearrangement	6.59	6.66	5.99	4.82	5.07	0.53	13.78	13.11	11.94	12.19	090
14021		A	Skin tissue rearrangement	10.06	8.07	7.41	6.60	6.67	0.76	18.89	18.23	17.42	17.49	090
14040		A	Skin tissue rearrangement	7.87	7.07	7.21	5.55	4.62	0.57	15.51	15.65	13.99	13.06	090
14041		A	Skin tissue rearrangement	11.49	8.72	8.64	7.45	5.87	0.73	20.94	20.86	19.67	18.09	090
14060		A	Skin tissue rearrangement	8.50	7.58	8.00	6.32	7.37	0.63	16.71	17.13	15.45	16.50	090
14061		A	Skin tissue rearrangement	12.29	9.64	10.51	8.36	7.03	0.79	22.72	23.59	21.44	20.11	090
14300		A	Skin tissue rearrangement	11.76	8.89	10.58	7.78	10.03	0.97	21.62	23.31	20.51	22.76	090
14350		A	Skin tissue rearrangement	9.61	NA	NA	5.97	6.28	0.96	NA	NA	16.54	16.85	090
15000		A	Skin graft	4.00	2.30	2.32	1.95	2.14	0.38	6.68	6.70	6.33	6.52	000
15001		A	Skin graft add-on	1.00	0.49	0.49	0.48	0.48	0.10	1.59	1.59	1.58	1.58	ZZZ

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
15050		A	Skin pinch graft	4.30	4.52	3.23	3.52	2.73	0.43	9.25	7.96	8.25	7.46	090
15100		A	Skin split graft	9.05	5.83	5.38	5.79	5.36	0.98	15.86	15.41	15.82	15.39	090
15101		A	Skin split graft add-on	1.72	1.17	1.45	0.78	1.26	0.18	3.07	3.35	2.68	3.16	ZZZ
15120		A	Skin split graft	9.83	7.34	6.96	6.50	6.54	0.84	18.01	17.63	17.17	17.21	090
15121		A	Skin split graft add-on	2.67	1.67	2.42	1.28	2.22	0.27	4.61	5.36	4.22	5.16	ZZZ
15200		A	Skin full graft	8.03	7.96	6.22	5.25	4.87	0.75	16.74	15.00	14.03	13.65	090
15201		A	Skin full graft add-on	1.32	0.94	1.38	0.63	1.10	0.14	2.40	2.84	2.09	2.56	ZZZ
15220		A	Skin full graft	7.87	8.03	6.64	5.71	5.48	0.71	16.61	15.22	14.29	14.06	090
15221		A	Skin full graft add-on	1.19	0.81	1.27	0.61	1.02	0.13	2.13	2.59	1.93	2.34	ZZZ
15240		A	Skin full graft	9.04	7.82	7.22	6.44	6.53	0.82	17.68	17.08	16.30	16.39	090
15241		A	Skin full graft add-on	1.86	1.29	1.94	0.96	1.59	0.18	3.33	3.98	3.00	3.63	ZZZ
15260		A	Skin full graft	10.06	7.97	8.04	7.05	7.58	0.68	18.71	18.78	17.79	18.32	090
15261		A	Skin full graft add-on	2.23	1.42	2.26	1.17	1.92	0.18	3.83	4.67	3.58	4.33	ZZZ
15350		A	Skin homograft	4.00	6.92	4.63	3.96	3.15	0.42	11.34	9.05	8.38	7.57	090
15351		A	Skin homograft add-on	1.00	0.42	0.42	0.42	0.42	0.09	1.51	1.51	1.51	1.51	ZZZ
15400		A	Skin heterograft	4.00	3.84	2.50	3.84	2.50	0.36	8.20	6.86	8.20	6.86	090
15401		A	Skin heterograft add-on	1.00	0.42	0.42	0.42	0.42	0.09	1.51	1.51	1.51	1.51	ZZZ
15570		A	Form skin pedicle flap	9.21	7.18	6.58	5.72	5.85	0.95	17.34	16.74	15.88	16.01	090
15572		A	Form skin pedicle flap	9.27	7.05	6.45	6.08	5.96	0.92	17.24	16.64	16.27	16.15	090
15574		A	Form skin pedicle flap	9.88	7.34	6.60	6.42	6.14	0.91	18.13	17.39	17.21	16.93	090
15576		A	Form skin pedicle flap	8.69	7.79	5.59	5.92	4.66	0.75	17.23	15.03	15.36	14.10	090
15580		A	Attach skin pedicle graft	9.46	NA	NA	6.64	5.66	1.05	NA	NA	17.15	16.17	090
15600		A	Skin graft	1.91	4.83	3.78	1.96	2.12	0.20	6.94	5.89	4.07	4.23	090
15610		A	Skin graft	2.42	4.28	3.67	2.24	2.57	0.26	6.96	6.35	4.92	5.25	090
15620		A	Skin graft	2.94	5.23	4.48	2.95	3.23	0.28	8.45	7.70	6.17	6.45	090
15625		A	Skin graft	1.91	NA	NA	2.20	2.24	0.21	NA	NA	4.32	4.36	090
15630		A	Skin graft	3.27	5.03	4.47	3.13	3.52	0.30	8.60	8.04	6.70	7.09	090
15650		A	Transfer skin pedicle flap	3.97	5.05	4.90	3.22	3.98	0.36	9.38	9.23	7.55	8.31	090
15732		A	Muscle-skin graft, head/neck	17.84	NA	NA	11.10	13.95	1.55	NA	NA	30.49	33.34	090
15734		A	Muscle-skin graft, trunk	17.79	NA	NA	10.72	15.68	1.96	NA	NA	30.47	35.43	090
15736		A	Muscle-skin graft, arm	16.27	NA	NA	10.09	13.84	1.82	NA	NA	28.18	31.93	090
15738		A	Muscle-skin graft, leg	17.92	NA	NA	10.70	12.35	2.01	NA	NA	30.63	32.28	090
15740		A	Island pedicle flap graft	10.25	7.62	9.45	6.64	8.96	0.68	18.55	20.38	17.57	19.89	090
15750		A	Neurovascular pedicle graft	11.41	NA	NA	7.87	10.43	1.24	NA	NA	20.52	23.08	090
15756		A	Free muscle flap, microvasc	35.23	NA	NA	21.01	26.84	3.77	NA	NA	60.01	65.84	090
15757		A	Free skin flap, microvasc	35.23	NA	NA	21.51	27.09	3.53	NA	NA	60.27	65.85	090
15758		A	Free fascial flap, microvasc	35.10	NA	NA	21.67	27.17	3.58	NA	NA	60.35	65.85	090
15760		A	Composite skin graft	8.74	7.82	7.87	6.34	7.13	0.76	17.32	17.37	15.84	16.63	090
15770		A	Derma-fat-fascia graft	7.52	NA	NA	5.80	6.95	0.85	NA	NA	14.17	15.32	090
15775		R	Hair transplant punch grafts	3.96	2.83	2.98	1.51	2.32	0.45	7.24	7.39	5.92	6.73	000
15776		R	Hair transplant punch grafts	5.54	3.63	4.00	2.93	3.65	0.63	9.80	10.17	9.10	9.82	000
15780		A	Abrasion treatment of skin	7.29	6.41	4.04	6.22	3.53	0.58	14.28	11.91	14.09	11.40	090
15781		A	Abrasion treatment of skin	4.85	4.30	4.20	4.30	3.18	0.30	9.45	9.35	9.45	8.33	090
15782		A	Abrasion treatment of skin	4.32	3.72	2.51	3.30	1.98	0.29	8.33	7.12	7.91	6.59	090
15783		A	Abrasion treatment of skin	4.29	3.89	2.95	3.76	2.39	0.28	8.46	7.52	8.33	6.96	090
15786		A	Abrasion, lesion, single	2.03	1.54	1.11	1.23	0.79	0.12	3.69	3.26	3.38	2.94	010
15787		A	Abrasion, lesions, add-on	0.33	0.24	0.25	0.15	0.14	0.02	0.59	0.60	0.50	0.49	ZZZ
15788		R	Chemical peel, face, epiderm	2.09	2.44	2.03	1.00	1.31	0.10	4.63	4.22	3.19	3.50	090
15789		R	Chemical peel, face, dermal	4.92	5.15	3.38	3.25	2.43	0.32	10.39	8.62	8.49	7.67	090
15792		R	Chemical peel, nonfacial	1.86	2.39	1.47	2.39	1.47	0.12	4.37	3.45	4.37	3.45	090
15793		A	Chemical peel, nonfacial	3.74	NA	NA	2.80	1.67	0.17	NA	NA	6.71	5.58	090
15810		A	Salabrasion	4.74	2.82	3.47	2.82	3.47	0.41	7.97	8.62	7.97	8.62	090
15811		A	Salabrasion	5.39	5.55	4.81	4.36	4.21	0.62	11.56	10.82	10.37	10.22	090
15819		A	Plastic surgery, neck	9.38	NA	NA	6.51	7.60	0.87	NA	NA	16.76	17.85	090
15820		A	Revision of lower eyelid	5.15	9.06	7.61	6.11	6.13	0.31	14.52	13.07	11.57	11.59	090
15821		A	Revision of lower eyelid	5.72	9.41	8.12	6.38	6.61	0.31	15.44	14.15	12.41	12.64	090
15822		A	Revision of upper eyelid	4.45	8.22	6.77	5.71	5.52	0.24	12.91	11.46	10.40	10.21	090
15823		A	Revision of upper eyelid	7.05	9.52	8.95	6.96	7.67	0.35	16.92	16.35	14.36	15.07	090
15824		R	Removal of forehead wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15825		R	Removal of neck wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15826		R	Removal of brow wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15828		R	Removal of face wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15829		R	Removal of skin wrinkles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15831		A	Excise excessive skin tissue	12.40	NA	NA	7.33	9.01	1.30	NA	NA	21.03	22.71	090
15832		A	Excise excessive skin tissue	11.59	NA	NA	6.88	7.94	1.24	NA	NA	19.71	20.77	090
15833		A	Excise excessive skin tissue	10.64	NA	NA	6.98	6.87	1.36	NA	NA	18.98	18.87	090
15834		A	Excise excessive skin tissue	10.85	NA	NA	7.20	7.50	1.31	NA	NA	19.36	19.66	090
15835		A	Excise excessive skin tissue	11.67	NA	NA	6.64	7.12	1.43	NA	NA	19.74	20.22	090
15836		A	Excise excessive skin tissue	9.34	NA	NA	5.63	5.96	1.00	NA	NA	15.97	16.30	090
15837		A	Excise excessive skin tissue	8.43	6.54	6.51	5.84	6.16	0.88	15.85	15.82	15.15	15.47	090
15838		A	Excise excessive skin tissue	7.13	NA	NA	5.52	5.95	0.55	NA	NA	13.20	13.63	090
15839		A	Excise excessive skin tissue	9.38	6.99	4.82	5.73	4.19	0.84	17.21	15.04	15.95	14.41	090
15840		A	Graft for face nerve palsy	13.26	NA	NA	9.33	12.58	1.11	NA	NA	23.70	26.95	090
15841		A	Graft for face nerve palsy	23.26	NA	NA	14.41	16.36	2.66	NA	NA	40.33	42.28	090
15842		A	Graft for face nerve palsy	37.96	NA	NA	20.67	26.07	4.74	NA	NA	63.37	68.77	090
15845		A	Skin and muscle repair, face	12.57	NA	NA	8.45	11.73	0.91	NA	NA	21.93	25.21	090
15850		B	Removal of sutures	0.78	1.26	0.83	0.30	0.35	0.05	2.09	1.66	1.13	1.18	XXX
15851		A	Removal of sutures	0.86	1.51	0.92	0.32	0.25	0.06	2.43	1.84	1.24	1.17	000
15852		A	Dressing change,not for burn	0.86	1.61	1.05	0.37	0.31	0.08	2.55	1.99	1.31	1.25	000
15860		A	Test for blood flow in graft	1.95	1.04	1.26	0.80	1.14	0.20	3.19	3.41	2.95	3.29	000
15876		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15877		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15878		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
15879		R	Suction assisted lipectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
15920		A	Removal of tail bone ulcer	7.95	NA	NA	5.17	4.19	0.80	NA	NA	13.92	12.94	090
15922		A	Removal of tail bone ulcer	9.90	NA	NA	6.77	6.63	1.07	NA	NA	17.74	17.60	090
15931		A	Remove sacrum pressure sore	9.24	NA	NA	5.29	4.24	0.99	NA	NA	15.52	14.47	090
15933		A	Remove sacrum pressure sore	10.85	NA	NA	7.57	7.54	1.18	NA	NA	19.60	19.57	090
15934		A	Remove sacrum pressure sore	12.69	NA	NA	7.94	8.02	1.40	NA	NA	22.03	22.11	090
15935		A	Remove sacrum pressure sore	14.57	NA	NA	9.24	10.72	1.62	NA	NA	25.43	26.91	090
15936		A	Remove sacrum pressure sore	12.38	NA	NA	8.29	9.72	1.33	NA	NA	22.00	23.43	090
15937		A	Remove sacrum pressure sore	14.21	NA	NA	9.43	12.03	1.58	NA	NA	25.22	27.82	090
15940		A	Removal of pressure sore	9.34	NA	NA	5.65	4.75	1.02	NA	NA	16.01	15.11	090
15941		A	Removal of pressure sore	11.43	NA	NA	8.81	8.23	1.26	NA	NA	21.50	20.92	090
15944		A	Removal of pressure sore	11.46	NA	NA	7.92	8.99	1.24	NA	NA	20.62	21.69	090
15945		A	Removal of pressure sore	12.69	NA	NA	8.58	10.34	1.38	NA	NA	22.65	24.41	090
15946		A	Removal of pressure sore	21.57	NA	NA	13.41	15.72	2.25	NA	NA	37.23	39.54	090
15950		A	Remove thigh pressure sore	7.54	NA	NA	4.66	3.97	0.81	NA	NA	13.01	12.32	090
15951		A	Remove thigh pressure sore	10.72	NA	NA	7.60	7.95	1.15	NA	NA	19.47	19.82	090
15952		A	Remove thigh pressure sore	11.39	NA	NA	7.05	7.40	1.25	NA	NA	19.69	20.04	090
15953		A	Remove thigh pressure sore	12.63	NA	NA	7.94	8.90	1.38	NA	NA	21.95	22.91	090
15956		A	Remove thigh pressure sore	15.52	NA	NA	9.81	14.17	1.67	NA	NA	27.00	31.36	090
15958		A	Remove thigh pressure sore	15.48	NA	NA	9.84	14.16	1.69	NA	NA	27.01	31.33	090
15999		C	Removal of pressure sore	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
16000		A	Initial treatment of burn(s)	0.89	0.95	0.67	0.23	0.21	0.07	1.91	1.63	1.19	1.17	000
16010		A	Treatment of burn(s)	0.87	1.04	0.70	0.32	0.25	0.07	1.98	1.64	1.26	1.19	000
16015		A	Treatment of burn(s)	2.35	2.82	2.52	0.88	1.55	0.22	5.39	5.09	3.45	4.12	000
16020		A	Treatment of burn(s)	0.80	1.10	0.74	0.24	0.22	0.06	1.96	1.60	1.10	1.08	000
16025		A	Treatment of burn(s)	1.85	1.62	1.06	0.67	0.46	0.17	3.64	3.08	2.69	2.48	000
16030		A	Treatment of burn(s)	2.08	2.66	1.61	0.86	0.71	0.20	4.94	3.89	3.14	2.99	000
16035		A	Incision of burn scab	4.82	2.84	2.44	1.99	2.02	0.50	8.16	7.76	7.31	7.34	090
17000		A	Destroy benign/premal lesion	0.60	0.76	0.61	0.26	0.25	0.03	1.39	1.24	0.89	0.88	010
17003		A	Destroy 2-14 lesions	0.15	0.56	0.35	0.07	0.07	0.01	0.72	0.51	0.23	0.23	ZZZ
17004		A	Destroy 15 & more lesions	2.79	1.86	2.15	1.31	1.27	0.12	4.77	5.06	4.22	4.18	010
17106		A	Destruction of skin lesions	4.59	3.49	2.79	2.67	1.86	0.28	8.36	7.66	7.54	6.73	090
17107		A	Destruction of skin lesions	9.16	5.93	4.98	4.96	3.49	0.54	15.63	14.68	14.66	13.19	090
17108		A	Destruction of skin lesions	13.20	8.29	9.20	7.17	8.64	0.81	22.30	23.21	21.18	22.65	090
17110		A	Destruct lesion, 1-14	0.65	0.92	0.68	0.26	0.24	0.04	1.61	1.37	0.95	0.93	010
17111		A	Destruct lesion, 15 or more	0.92	1.13	0.89	0.37	0.35	0.06	2.11	1.87	1.35	1.33	010
17250		A	Chemical cautery, tissue	0.50	0.63	0.50	0.19	0.19	0.04	1.17	1.04	0.73	0.73	000
17260		A	Destruction of skin lesions	0.91	1.07	1.15	0.42	0.52	0.04	2.02	2.10	1.37	1.47	010
17261		A	Destruction of skin lesions	1.17	1.17	1.34	0.55	0.66	0.05	2.39	2.56	1.77	1.88	010
17262		A	Destruction of skin lesions	1.58	1.37	1.68	0.74	0.87	0.06	3.01	3.32	2.38	2.51	010
17263		A	Destruction of skin lesions	1.79	1.47	1.96	0.82	1.02	0.07	3.33	3.82	2.68	2.88	010
17264		A	Destruction of skin lesions	1.94	1.55	2.18	0.88	1.15	0.08	3.57	4.20	2.90	3.17	010
17266		A	Destruction of skin lesions	2.34	1.75	2.57	0.98	1.34	0.11	4.20	5.02	3.43	3.79	010
17270		A	Destruction of skin lesions	1.32	1.27	1.36	0.61	0.67	0.06	2.65	2.74	1.99	2.05	010
17271		A	Destruction of skin lesions	1.49	1.33	1.62	0.70	0.83	0.06	2.88	3.17	2.25	2.38	010
17272		A	Destruction of skin lesions	1.77	1.46	1.93	0.84	1.02	0.07	3.30	3.77	2.68	2.86	010
17273		A	Destruction of skin lesions	2.05	1.60	2.20	0.95	1.18	0.09	3.74	4.34	3.09	3.32	010
17274		A	Destruction of skin lesions	2.59	1.87	2.68	1.18	1.46	0.11	4.57	5.38	3.88	4.16	010
17276		A	Destruction of skin lesions	3.20	2.19	2.95	1.63	1.74	0.16	5.55	6.31	4.99	5.10	010
17280		A	Destruction of skin lesions	1.17	1.19	1.49	0.52	0.71	0.05	2.41	2.71	1.74	1.93	010
17281		A	Destruction of skin lesions	1.72	1.44	1.86	0.82	0.98	0.07	3.23	3.65	2.61	2.77	010
17282		A	Destruction of skin lesions	2.04	1.60	2.20	0.97	1.19	0.08	3.72	4.32	3.09	3.31	010
17283		A	Destruction of skin lesions	2.64	1.89	2.58	1.27	1.46	0.11	4.64	5.33	4.02	4.21	010
17284		A	Destruction of skin lesions	3.21	2.17	2.99	1.55	1.73	0.14	5.52	6.34	4.90	5.08	010
17286		A	Destruction of skin lesions	4.44	2.83	3.76	2.41	2.38	0.23	7.50	8.43	7.08	7.05	010
17304		A	Chemosurgery of skin lesion	7.60	6.84	5.60	3.65	2.92	0.33	14.77	13.53	11.58	10.85	000
17305		A	2nd stage chemosurgery	2.85	2.61	2.53	1.37	1.30	0.12	5.58	5.50	4.34	4.27	000
17306		A	3rd stage chemosurgery	2.85	2.62	2.07	1.38	1.07	0.12	5.59	5.04	4.35	4.04	000
17307		A	Followup skin lesion therapy	2.85	2.61	2.11	1.39	1.10	0.12	5.58	5.08	4.36	4.07	000
17310		A	Extensive skin chemosurgery	0.95	1.05	0.60	0.47	0.27	0.05	2.05	1.60	1.47	1.27	000
17340		A	Cryotherapy of skin	0.76	1.19	0.75	0.25	0.20	0.05	2.00	1.56	1.06	1.01	010
17360		A	Skin peel therapy	1.43	1.30	0.80	0.71	0.43	0.07	2.80	2.30	2.21	1.93	010
17380		R	Hair removal by electrolysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
17999		C	Skin tissue procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
19000		A	Drainage of breast lesion	0.84	1.47	0.94	0.24	0.23	0.07	2.38	1.85	1.15	1.14	000
19001		A	Drain breast lesion add-on	0.42	1.11	0.69	0.12	0.13	0.03	1.56	1.14	0.57	0.58	ZZZ
19020		A	Incision of breast lesion	3.57	6.19	3.86	3.14	2.33	0.36	10.12	7.79	7.07	6.26	090
19030		A	Injection for breast x-ray	1.53	10.96	5.75	0.42	0.48	0.07	12.56	7.35	2.02	2.08	000
19100		A	Biopsy of breast	1.27	3.46	2.08	0.39	0.37	0.09	4.82	3.44	1.75	1.73	000
19101		A	Biopsy of breast	3.18	8.71	5.63	3.78	3.16	0.24	12.13	9.05	7.20	6.58	010
19110		A	Nipple exploration	4.30	7.68	5.18	4.10	3.39	0.43	12.41	9.91	8.83	8.12	090
19112		A	Excise breast duct fistula	3.67	7.87	5.21	2.92	2.73	0.37	11.91	9.25	6.96	6.77	090
19120		A	Removal of breast lesion	5.56	4.16	3.66	3.45	3.30	0.57	10.29	9.79	9.58	9.43	090
19125		A	Excision, breast lesion	6.06	4.70	3.93	3.65	3.40	0.63	11.39	10.62	10.34	10.09	090
19126		A	Excision,addl breast lesion	2.93	NA	NA	1.11	1.34	0.30	NA	NA	4.34	4.57	ZZZ
19140		A	Removal of breast tissue	5.14	8.33	6.50	3.49	4.08	0.54	14.01	12.18	9.17	9.76	090
19160		A	Removal of breast tissue	5.99	NA	NA	4.25	4.37	0.61	NA	NA	10.85	10.97	090
19162		A	Remove breast tissue, nodes	13.53	NA	NA	7.91	9.05	1.38	NA	NA	22.82	23.96	090
19180		A	Removal of breast	8.80	NA	NA	5.84	5.97	0.90	NA	NA	15.54	15.67	090
19182		A	Removal of breast	7.73	NA	NA	4.91	5.75	0.80	NA	NA	13.44	14.28	090
19200		A	Removal of breast	15.49	NA	NA	8.96	10.03	1.57	NA	NA	26.02	27.09	090
19220		A	Removal of breast	15.72	NA	NA	8.74	10.19	1.57	NA	NA	26.03	27.48	090
19240		A	Removal of breast	16.00	NA	NA	8.79	9.52	1.64	NA	NA	26.43	27.16	090
19260		A	Removal of chest wall lesion	15.44	NA	NA	9.89	7.69	1.76	NA	NA	27.09	24.89	090
19271		A	Revision of chest wall	18.90	NA	NA	12.43	13.79	2.23	NA	NA	33.56	34.92	090

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
19272		A	Extensive chest wall surgery	21.55	NA	NA	12.76	13.22	2.46	NA	NA	36.77	37.23	090
19290		A	Place needle wire, breast	1.27	5.50	2.99	0.35	0.42	0.06	6.83	4.32	1.68	1.75	000
19291		A	Place needle wire, breast	0.63	1.52	0.90	0.17	0.22	0.03	2.18	1.56	0.83	0.88	ZZZ
19316		A	Suspension of breast	10.69	NA	NA	7.10	9.93	1.19	NA	NA	18.98	21.81	090
19318		A	Reduction of large breast	15.62	NA	NA	9.66	12.53	1.75	NA	NA	27.03	29.90	090
19324		A	Enlarge breast	5.85	NA	NA	3.77	3.67	0.65	NA	NA	10.27	10.17	090
19325		A	Enlarge breast with implant	8.45	NA	NA	5.95	6.16	0.96	NA	NA	15.36	15.57	090
19328		A	Removal of breast implant	5.68	NA	NA	4.09	4.09	0.64	NA	NA	10.41	10.41	090
19330		A	Removal of implant material	7.59	NA	NA	4.82	4.52	0.85	NA	NA	13.26	12.96	090
19340		A	Immediate breast prosthesis	6.33	NA	NA	3.24	5.40	0.71	NA	NA	10.28	12.44	ZZZ
19342		A	Delayed breast prosthesis	11.20	NA	NA	7.26	9.50	1.26	NA	NA	19.72	21.96	090
19350		A	Breast reconstruction	8.92	11.28	9.48	6.18	6.93	1.00	21.20	19.40	16.10	16.85	090
19355		A	Correct inverted nipple(s)	7.57	13.04	9.20	4.74	5.05	0.78	21.39	17.55	13.09	13.40	090
19357		A	Breast reconstruction	18.16	NA	NA	12.72	12.96	2.04	NA	NA	32.92	33.16	090
19361		A	Breast reconstruction	19.26	NA	NA	11.41	16.63	2.16	NA	NA	32.83	38.05	090
19364		A	Breast reconstruction	41.00	NA	NA	23.94	21.02	4.44	NA	NA	69.38	66.46	090
19366		A	Breast reconstruction	21.28	NA	NA	11.21	14.51	2.26	NA	NA	34.75	38.05	090
19367		A	Breast reconstruction	25.73	NA	NA	14.59	18.22	2.88	NA	NA	43.17	46.80	090
19368		A	Breast reconstruction	32.42	NA	NA	18.57	20.21	3.68	NA	NA	54.67	56.31	090
19369		A	Breast reconstruction	29.82	NA	NA	17.58	19.72	3.33	NA	NA	50.73	52.87	090
19370		A	Surgery of breast capsule	8.05	NA	NA	5.52	6.11	0.91	NA	NA	14.48	15.07	090
19371		A	Removal of breast capsule	9.35	NA	NA	6.51	7.55	1.05	NA	NA	16.91	17.95	090
19380		A	Revise breast reconstruction	9.14	NA	NA	6.41	7.61	1.02	NA	NA	16.57	17.77	090
19396		A	Design custom breast implant	2.17	4.23	2.97	0.83	1.27	0.25	6.65	5.39	3.25	3.69	000
19499		C	Breast surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
20000		A	Incision of abscess	2.12	1.86	1.39	1.06	0.76	0.16	4.14	3.67	3.34	3.04	010
20005		A	Incision of deep abscess	3.42	2.65	2.32	2.07	2.03	0.32	6.39	6.06	5.81	5.77	010
20100		A	Explore wound, neck	10.08	5.35	5.37	4.85	5.12	0.98	16.41	16.43	15.91	16.18	010
20101		A	Explore wound, chest	3.22	2.29	2.00	1.74	1.72	0.31	5.82	5.53	5.27	5.25	010
20102		A	Explore wound, abdomen	3.94	3.05	2.57	1.90	1.99	0.41	7.40	6.92	6.25	6.34	010
20103		A	Explore wound, extremity	5.30	3.96	3.39	2.99	2.90	0.55	9.81	9.24	8.64	8.75	010
20150		A	Excise epiphyseal bar	13.69	NA	NA	7.51	10.49	1.11	NA	NA	22.31	25.29	090
20200		A	Muscle biopsy	1.46	1.60	1.41	0.61	0.92	0.17	3.23	3.04	2.24	2.55	000
20205		A	Deep muscle biopsy	2.35	3.82	2.93	0.97	1.51	0.29	6.46	5.57	3.61	4.15	000
20206		A	Needle biopsy, muscle	0.99	2.99	2.02	0.31	0.68	0.06	4.04	3.07	1.36	1.73	000
20220		A	Bone biopsy, trocar/needle	1.27	3.45	2.44	2.01	1.72	0.06	4.78	3.77	3.34	3.05	000
20225		A	Bone biopsy, trocar/needle	1.87	0.65	1.62	0.65	1.45	0.10	2.62	3.59	2.62	3.42	000
20240		A	Bone biopsy, excisional	3.23	NA	NA	3.52	2.78	0.29	NA	NA	7.04	6.30	010
20245		A	Bone biopsy, excisional	3.95	NA	NA	4.15	4.02	0.38	NA	NA	8.48	8.35	010
20250		A	Open bone biopsy	5.03	NA	NA	3.73	4.62	0.49	NA	NA	9.25	10.14	010
20251		A	Open bone biopsy	5.56	NA	NA	4.47	5.41	0.71	NA	NA	10.74	11.68	010
20500		A	Injection of sinus tract	1.23	4.94	2.67	4.39	2.30	0.09	6.26	3.99	5.71	3.62	010
20501		A	Inject sinus tract for x-ray	0.76	12.94	6.64	0.20	0.27	0.03	13.73	7.43	0.99	1.06	000
20520		A	Removal of foreign body	1.85	4.30	2.54	2.85	1.62	0.16	6.31	4.55	4.86	3.63	010
20525		A	Removal of foreign body	3.50	5.46	3.94	3.64	3.03	0.36	9.32	7.80	7.50	6.89	010
20550		A	Inj tendon/ligament/cyst	0.86	2.17	1.29	0.18	0.20	0.06	3.09	2.21	1.10	1.12	000
20600		A	Drain/inject joint/bursa	0.66	1.15	0.83	0.26	0.26	0.05	1.86	1.54	0.97	0.97	000
20605		A	Drain/inject joint/bursa	0.68	1.44	0.97	0.27	0.26	0.05	2.17	1.70	1.00	0.99	000
20610		A	Drain/inject joint/bursa	0.79	1.79	1.14	0.31	0.28	0.07	2.65	2.00	1.17	1.14	000
20615		A	Treatment of bone cyst	2.28	3.52	2.03	2.33	1.30	0.18	5.98	4.49	4.79	3.76	010
20650		A	Insert and remove bone pin	2.23	4.07	2.62	2.78	1.98	0.18	6.48	5.03	5.19	4.39	010
20660		A	Apply,remove fixation device	2.51	NA	NA	1.32	1.51	0.47	NA	NA	4.30	4.49	000
20661		A	Application of head brace	4.89	NA	NA	6.08	5.12	0.85	NA	NA	11.82	10.86	090
20662		A	Application of pelvis brace	6.07	NA	NA	4.76	5.93	0.59	NA	NA	11.42	12.59	090
20663		A	Application of thigh brace	5.43	NA	NA	3.82	4.43	0.51	NA	NA	9.76	10.37	090
20664		A	Halo brace application	8.06	NA	NA	7.76	5.96	1.42	NA	NA	17.24	15.44	090
20665		A	Removal of fixation device	1.31	2.23	1.39	1.16	0.85	0.18	3.72	2.88	2.65	2.34	010
20670		A	Removal of support implant	1.74	4.73	2.77	3.31	1.86	0.18	6.65	4.69	5.23	3.78	010
20680		A	Removal of support implant	3.35	4.12	3.87	4.12	3.87	0.36	7.83	7.58	7.83	7.58	090
20690		A	Apply bone fixation device	3.52	NA	NA	1.67	2.82	0.35	NA	NA	5.54	6.69	090
20692		A	Apply bone fixation device	6.41	NA	NA	3.36	4.67	0.68	NA	NA	10.45	11.76	090
20693		A	Adjust bone fixation device	5.86	NA	NA	12.71	7.71	0.70	NA	NA	19.27	14.27	090
20694		A	Remove bone fixation device	4.16	7.20	5.01	5.65	4.24	0.46	11.82	9.63	10.27	8.86	090
20802		A	Replantation, arm, complete	41.15	NA	NA	24.95	32.95	3.68	NA	NA	69.78	77.78	090
20805		A	Replant forearm, complete	50.00	NA	NA	41.90	46.01	3.83	NA	NA	95.73	99.84	090
20808		A	Replantation, hand, complete	61.65	NA	NA	39.11	50.70	5.83	NA	NA	106.59	118.18	090
20816		A	Replantation digit, complete	30.94	NA	NA	41.00	35.86	3.26	NA	NA	75.20	70.06	090
20822		A	Replantation digit, complete	25.59	NA	NA	37.88	31.63	2.69	NA	NA	66.16	59.91	090
20824		A	Replantation thumb, complete	30.94	NA	NA	36.32	33.52	3.48	NA	NA	70.74	67.94	090
20827		A	Replantation thumb, complete	26.41	NA	NA	37.45	31.78	2.90	NA	NA	66.76	61.09	090
20838		A	Replantation, foot, complete	41.41	NA	NA	31.69	36.32	5.27	NA	NA	78.37	83.00	090
20900		A	Removal of bone for graft	5.58	5.21	4.13	5.21	4.13	0.58	11.37	10.29	11.37	10.29	090
20902		A	Removal of bone for graft	7.55	NA	NA	7.90	6.64	0.83	NA	NA	16.28	15.02	090
20910		A	Remove cartilage for graft	5.34	6.70	3.78	5.69	3.28	0.46	12.50	9.58	11.49	9.08	090
20912		A	Remove cartilage for graft	6.35	NA	NA	6.13	5.57	0.59	NA	NA	13.07	12.51	090
20920		A	Removal of fascia for graft	5.31	NA	NA	4.71	4.49	0.54	NA	NA	10.56	10.34	090
20922		A	Removal of fascia for graft	6.61	7.58	6.17	6.03	5.40	0.88	15.07	13.66	13.52	12.89	090
20924		A	Removal of tendon for graft	6.48	NA	NA	6.12	6.02	0.72	NA	NA	13.32	13.22	090
20926		A	Removal of tissue for graft	5.53	NA	NA	5.44	4.13	0.76	NA	NA	11.73	10.42	090
20930		■	Spinal bone allograft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
20931		A	Spinal bone allograft	1.81	NA	NA	0.97	1.43	0.32	NA	NA	3.10	3.56	ZZZ
20936		B	Spinal bone autograft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
20937		A	Spinal bone autograft	2.79	NA	NA	1.49	2.19	0.36	NA	NA	4.64	5.34	ZZZ
20938		A	Spinal bone autograft	3.02	NA	NA	1.61	2.37	0.47	NA	NA	5.10	5.86	ZZZ

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
20950		A	Record fluid pressure,muscle	1.26	NA	NA	1.65	1.42	0.14	NA	NA	3.05	2.82	000
20955		A	Fibula bone graft, microvasc	39.21	NA	NA	26.94	32.92	4.10	NA	NA	70.25	76.23	090
20956		A	Iliac bone graft, microvasc	39.27	NA	NA	26.85	28.02	4.97	NA	NA	71.09	72.26	090
20957		A	Mt bone graft, microvasc	40.65	NA	NA	20.91	25.58	5.14	NA	NA	66.70	71.37	090
20962		A	Other bone graft, microvasc	39.27	NA	NA	26.13	27.66	4.54	NA	NA	69.94	71.47	090
20969		A	Bone/skin graft, microvasc	43.92	NA	NA	29.05	36.30	4.30	NA	NA	77.27	84.52	090
20970		A	Bone/skin graft, iliac crest	43.06	NA	NA	27.33	35.00	4.46	NA	NA	74.85	82.52	090
20972		A	Bone-skin graft, metatarsal	42.99	NA	NA	20.08	31.54	4.18	NA	NA	67.25	78.71	090
20973		A	Bone-skin graft, great toe	45.76	NA	NA	26.92	36.39	5.06	NA	NA	77.74	87.21	090
20974		A	Electrical bone stimulation	0.62	0.34	2.03	0.32	1.09	0.05	1.01	2.70	0.99	1.76	000
20975		A	Electrical bone stimulation	2.60	NA	NA	1.38	2.24	0.32	NA	NA	4.30	5.16	000
20999		C	Musculoskeletal surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
21010		A	Incision of jaw joint	10.14	NA	NA	6.10	8.61	0.53	NA	NA	16.77	19.28	090
21015		A	Resection of facial tumor	5.29	NA	NA	5.73	6.03	0.55	NA	NA	11.57	11.87	090
21025		A	Excision of bone, lower jaw	10.06	7.44	5.97	6.34	4.30	0.82	18.32	16.85	17.22	15.18	090
21026		A	Excision of facial bone(s)	4.85	5.43	4.42	4.34	3.03	0.41	10.69	9.68	9.60	8.29	090
21029		A	Contour of face bone lesion	7.71	7.28	8.24	5.25	4.93	0.66	15.65	16.61	13.62	13.30	090
21030		A	Removal of face bone lesion	6.46	5.54	4.59	4.27	3.05	0.50	12.50	11.55	11.23	10.01	090
21031		A	Remove exostosis, mandible	3.24	3.66	3.83	1.96	1.98	0.26	7.16	7.33	5.46	5.48	090
21032		A	Remove exostosis, maxilla	3.24	3.66	3.94	3.65	2.88	0.26	7.16	7.44	7.15	6.38	090
21034		A	Removal of face bone lesion	16.17	10.17	8.88	9.89	8.74	1.40	27.74	26.45	27.46	26.31	090
21040		A	Removal of jaw bone lesion	2.11	3.36	3.18	1.57	1.54	0.17	5.64	5.46	3.85	3.82	090
21041		A	Removal of jaw bone lesion	6.71	5.77	6.01	3.99	3.56	0.52	13.00	13.24	11.22	10.79	090
21044		A	Removal of jaw bone lesion	11.86	NA	NA	7.54	8.95	0.94	NA	NA	20.34	21.75	090
21045		A	Extensive jaw surgery	16.17	NA	NA	9.78	12.40	1.31	NA	NA	27.26	29.88	090
21050		A	Removal of jaw joint	10.77	NA	NA	10.91	11.89	0.79	NA	NA	22.47	23.45	090
21060		A	Remove jaw joint cartilage	10.23	NA	NA	8.61	10.41	0.83	NA	NA	19.67	21.47	090
21070		A	Remove coronoid process	8.20	NA	NA	5.22	6.31	0.76	NA	NA	14.18	15.27	090
21076		A	Prepare face/oral prosthesis	13.42	9.45	12.74	7.11	7.56	1.01	23.88	27.17	21.54	21.99	010
21077		A	Prepare face/oral prosthesis	33.75	23.77	32.04	17.88	19.02	2.63	60.15	68.42	54.26	55.40	090
21079		A	Prepare face/oral prosthesis	22.34	16.80	23.56	12.37	13.77	1.62	40.76	47.52	36.33	37.73	090
21080		A	Prepare face/oral prosthesis	25.10	18.88	26.47	13.89	15.46	1.87	45.85	53.44	40.86	42.43	090
21081		A	Prepare face/oral prosthesis	22.88	17.20	24.12	12.66	14.09	1.72	41.80	48.72	37.26	38.69	090
21082		A	Prepare face/oral prosthesis	20.87	14.70	19.81	11.05	11.76	1.58	37.15	42.26	33.50	34.21	090
21083		A	Prepare face/oral prosthesis	19.30	14.52	20.36	10.68	11.89	1.41	35.23	41.07	31.39	32.60	090
21084		A	Prepare face/oral prosthesis	22.51	16.93	23.74	12.46	13.87	1.71	41.15	47.96	36.68	38.09	090
21085		A	Prepare face/oral prosthesis	9.00	6.34	8.54	4.77	5.07	0.71	16.05	18.25	14.48	14.78	010
21086		A	Prepare face/oral prosthesis	24.92	18.74	26.28	13.79	15.35	1.98	45.64	53.18	40.69	42.25	090
21087		A	Prepare face/oral prosthesis	24.92	17.55	23.65	13.20	14.04	1.95	44.42	50.52	40.07	40.91	090
21088		C	Prepare face/oral prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
21089		C	Prepare face/oral prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
21100		A	Maxillofacial fixation	4.22	6.34	3.75	3.49	2.32	0.26	10.82	8.23	7.97	6.80	090
21110		A	Interdental fixation	5.21	5.31	5.66	3.64	3.32	0.37	10.89	11.24	9.22	8.90	090
21116		A	Injection, jaw joint x-ray	0.81	7.68	4.24	0.25	0.52	0.05	8.54	5.10	1.11	1.38	000
21120		A	Reconstruction of chin	4.93	9.30	6.60	6.37	5.14	0.42	14.65	11.95	11.72	10.49	090
21121		A	Reconstruction of chin	7.64	7.46	6.80	5.46	5.80	0.64	15.74	15.08	13.74	14.08	090
21122		A	Reconstruction of chin	8.52	NA	NA	6.61	6.69	0.76	NA	NA	15.89	15.97	090
21123		A	Reconstruction of chin	11.16	NA	NA	6.75	7.79	0.96	NA	NA	18.87	19.91	090
21125		A	Augmentation lower jaw bone	10.62	10.13	7.63	7.17	6.15	0.86	21.61	19.11	18.65	17.63	090
21127		A	Augmentation lower jaw bone	11.12	9.12	8.85	7.58	8.08	0.98	21.22	20.95	19.68	20.18	090
21137		A	Reduction of forehead	9.82	NA	NA	6.83	7.28	0.90	NA	NA	17.55	18.00	090
21138		A	Reduction of forehead	12.19	NA	NA	7.96	8.79	1.12	NA	NA	21.27	22.10	090
21139		A	Reduction of forehead	14.61	NA	NA	7.49	9.52	1.35	NA	NA	23.45	25.48	090
21141		A	Reconstruct midface, lefort	18.10	NA	NA	9.52	12.54	1.53	NA	NA	29.15	32.17	090
21142		A	Reconstruct midface, lefort	18.81	NA	NA	10.63	13.37	1.86	NA	NA	31.30	34.04	090
21143		A	Reconstruct midface, lefort	19.58	NA	NA	10.53	13.62	1.30	NA	NA	31.41	34.50	090
21145		A	Reconstruct midface, lefort	19.94	NA	NA	10.52	13.04	1.57	NA	NA	32.03	34.55	090
21146		A	Reconstruct midface, lefort	20.71	NA	NA	11.41	13.76	1.73	NA	NA	33.85	36.20	090
21147		A	Reconstruct midface, lefort	21.77	NA	NA	11.31	14.01	1.63	NA	NA	34.71	37.41	090
21150		A	Reconstruct midface, lefort	25.24	NA	NA	16.00	18.02	1.97	NA	NA	43.21	45.23	090
21151		A	Reconstruct midface, lefort	28.30	NA	NA	16.74	19.59	3.44	NA	NA	48.48	51.33	090
21154		A	Reconstruct midface, lefort	30.52	NA	NA	18.04	21.04	3.35	NA	NA	51.91	54.91	090
21155		A	Reconstruct midface, lefort	34.45	NA	NA	17.04	22.15	3.78	NA	NA	55.27	60.38	090
21159		A	Reconstruct midface, lefort	42.38	NA	NA	22.97	28.32	4.04	NA	NA	69.39	74.74	090
21160		A	Reconstruct midface, lefort	46.44	NA	NA	20.19	28.53	3.78	NA	NA	70.41	78.75	090
21172		A	Reconstruct orbit/forehead	27.80	NA	NA	14.71	18.37	2.05	NA	NA	44.56	48.22	090
21175		A	Reconstruct orbit/forehead	33.17	NA	NA	20.13	23.29	4.00	NA	NA	57.30	60.46	090
21179		A	Reconstruct entire forehead	22.25	NA	NA	15.57	16.60	2.60	NA	NA	40.42	41.45	090
21180		A	Reconstruct entire forehead	25.19	NA	NA	15.04	17.54	2.26	NA	NA	42.49	44.99	090
21181		A	Contour cranial bone lesion	9.90	NA	NA	7.13	7.43	1.04	NA	NA	18.07	18.37	090
21182		A	Reconstruct cranial bone	32.19	NA	NA	20.93	23.29	2.86	NA	NA	55.98	58.34	090
21183		A	Reconstruct cranial bone	35.31	NA	NA	21.61	24.83	3.33	NA	NA	60.25	63.47	090
21184		A	Reconstruct cranial bone	38.24	NA	NA	23.02	26.74	6.92	NA	NA	68.18	71.90	090
21188		A	Reconstruction of midface	22.46	NA	NA	14.45	16.04	2.00	NA	NA	38.91	40.50	090
21193		A	Reconstruct lower jaw bone	17.15	NA	NA	9.82	11.59	1.52	NA	NA	28.49	30.26	090
21194		A	Reconstruct lower jaw bone	19.84	NA	NA	12.40	13.94	1.72	NA	NA	33.96	35.50	090
21195		A	Reconstruct lower jaw bone	17.24	NA	NA	11.11	12.25	1.42	NA	NA	29.77	30.91	090
21196		A	Reconstruct lower jaw bone	18.91	NA	NA	11.96	13.37	1.58	NA	NA	32.45	33.86	090
21198		A	Reconstruct lower jaw bone	14.16	NA	NA	9.86	12.97	1.09	NA	NA	25.11	28.22	090
21206		A	Reconstruct upper jaw bone	14.10	NA	NA	8.87	9.94	1.08	NA	NA	24.05	25.12	090
21208		A	Augmentation of facial bones	10.23	8.54	10.38	7.40	9.81	0.85	19.62	21.46	18.48	20.89	090
21209		A	Reduction of facial bones	6.72	7.24	6.11	5.22	5.10	0.59	14.55	13.42	12.53	12.41	090
21210		A	Face bone graft	10.23	8.49	10.35	7.19	6.65	0.80	19.52	21.38	18.22	17.68	090
21215		A	Lower jaw bone graft	10.77	8.49	10.68	6.51	6.47	0.84	20.10	22.29	18.12	18.08	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
21230		A	Rib cartilage graft	10.77	NA	NA	8.58	9.92	0.99	NA	NA	20.34	21.68	090
21235		A	Ear cartilage graft	6.72	10.70	9.36	7.09	7.56	0.56	17.98	16.64	14.37	14.84	090
21240		A	Reconstruction of jaw joint	14.05	NA	NA	10.14	13.46	1.16	NA	NA	25.35	28.67	090
21242		A	Reconstruction of jaw joint	12.95	NA	NA	9.55	12.51	1.16	NA	NA	23.66	26.62	090
21243		A	Reconstruction of jaw joint	20.79	NA	NA	12.49	14.06	1.64	NA	NA	34.92	36.49	090
21244		A	Reconstruction of lower jaw	11.86	NA	NA	8.31	11.24	1.00	NA	NA	21.17	24.10	090
21245		A	Reconstruction of jaw	11.86	12.05	12.25	8.96	10.71	0.95	24.86	25.06	21.77	23.52	090
21246		A	Reconstruction of jaw	12.47	9.55	9.57	9.55	9.57	1.02	23.04	23.06	23.04	23.06	090
21247		A	Reconstruct lower jaw bone	22.63	NA	NA	13.95	20.48	1.74	NA	NA	38.32	44.85	090
21248		A	Reconstruction of jaw	11.48	8.73	11.22	7.14	7.00	0.91	21.12	23.61	19.53	19.39	090
21249		A	Reconstruction of jaw	17.52	11.16	16.04	9.66	10.06	1.43	30.11	34.99	28.61	29.01	090
21255		A	Reconstruct lower jaw bone	16.72	NA	NA	10.84	15.40	1.76	NA	NA	29.32	33.88	090
21256		A	Reconstruction of orbit	16.19	NA	NA	11.85	15.59	1.45	NA	NA	29.49	33.23	090
21260		A	Revise eye sockets	16.52	NA	NA	8.69	14.21	0.71	NA	NA	25.92	31.44	090
21261		A	Revise eye sockets	31.49	NA	NA	14.10	16.70	2.56	NA	NA	48.15	50.75	090
21263		A	Revise eye sockets	28.42	NA	NA	12.67	23.30	1.18	NA	NA	42.27	52.90	090
21267		A	Revise eye sockets	18.90	NA	NA	13.78	14.82	1.18	NA	NA	33.86	34.90	090
21268		A	Revise eye sockets	24.48	NA	NA	15.76	16.21	4.10	NA	NA	44.34	44.79	090
21270		A	Augmentation cheek bone	10.23	9.59	10.01	8.19	9.31	0.95	20.77	21.19	19.37	20.49	090
21275		A	Revision orbitofacial bones	11.24	NA	NA	9.79	9.75	1.09	NA	NA	22.12	22.08	090
21280		A	Revision of eyelid	6.03	NA	NA	5.84	6.52	0.30	NA	NA	12.17	12.85	090
21282		A	Revision of eyelid	3.49	NA	NA	4.60	4.39	0.21	NA	NA	8.30	8.09	090
21295		A	Revision of jaw muscle/bone	1.53	NA	NA	3.29	2.17	0.12	NA	NA	4.94	3.82	090
21296		A	Revision of jaw muscle/bone	4.25	NA	NA	3.81	3.87	0.38	NA	NA	8.44	8.50	090
21299		C	Cranio/maxillofacial surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
21300		A	Treatment of skull fracture	0.72	4.45	2.73	0.24	0.55	0.08	5.25	3.53	1.04	1.35	000
21310		A	Treatment of nose fracture	0.58	3.59	2.20	0.15	0.42	0.05	4.22	2.83	0.78	1.05	000
21315		A	Treatment of nose fracture	1.51	4.04	3.00	1.16	1.48	0.13	5.68	4.64	2.80	3.12	010
21320		A	Treatment of nose fracture	1.85	4.10	3.32	1.80	2.01	0.15	6.10	5.32	3.80	4.01	010
21325		A	Repair of nose fracture	3.77	NA	NA	3.15	3.80	0.32	NA	NA	7.24	7.89	090
21330		A	Repair of nose fracture	5.38	NA	NA	4.79	5.61	0.49	NA	NA	10.66	11.48	090
21335		A	Repair of nose fracture	8.61	NA	NA	6.69	8.49	0.68	NA	NA	15.98	17.78	090
21336		A	Repair nasal septal fracture	5.72	NA	NA	5.11	4.78	0.49	NA	NA	11.32	10.99	090
21337		A	Repair nasal septal fracture	2.70	5.38	4.22	2.75	2.91	0.24	8.32	7.16	5.69	5.85	090
21338		A	Repair nasoethmoid fracture	6.46	NA	NA	5.22	5.33	0.57	NA	NA	12.25	12.36	090
21339		A	Repair nasoethmoid fracture	8.09	NA	NA	5.70	6.70	0.69	NA	NA	14.48	15.48	090
21340		A	Repair of nose fracture	10.77	NA	NA	7.75	8.71	0.73	NA	NA	19.25	20.21	090
21343		A	Repair of sinus fracture	12.95	NA	NA	9.02	9.49	1.26	NA	NA	23.23	23.70	090
21344		A	Repair of sinus fracture	19.72	NA	NA	12.67	11.31	1.89	NA	NA	34.28	32.92	090
21345		A	Repair of nose/jaw fracture	8.16	10.69	9.63	6.95	7.76	0.68	19.53	18.47	15.79	16.60	090
21346		A	Repair of nose/jaw fracture	10.61	NA	NA	8.81	9.51	0.88	NA	NA	20.30	21.00	090
21347		A	Repair of nose/jaw fracture	12.69	NA	NA	9.04	10.14	1.14	NA	NA	22.87	23.97	090
21348		A	Repair of nose/jaw fracture	16.69	NA	NA	10.63	11.47	1.54	NA	NA	28.86	29.70	090
21355		A	Repair cheek bone fracture	3.77	5.57	3.63	1.96	1.83	0.33	9.67	7.73	6.06	5.93	010
21356		A	Repair cheek bone fracture	4.15	NA	NA	3.07	4.02	0.36	NA	NA	7.58	8.53	010
21360		A	Repair cheek bone fracture	6.46	NA	NA	4.94	6.33	0.55	NA	NA	11.95	13.34	090
21365		A	Repair cheek bone fracture	14.95	NA	NA	10.41	11.91	1.35	NA	NA	26.71	28.21	090
21366		A	Repair cheek bone fracture	17.77	NA	NA	12.23	12.67	1.59	NA	NA	31.59	32.03	090
21385		A	Repair eye socket fracture	9.16	NA	NA	7.42	8.92	0.70	NA	NA	17.28	18.78	090
21386		A	Repair eye socket fracture	9.16	NA	NA	7.19	8.52	0.80	NA	NA	17.15	18.48	090
21387		A	Repair eye socket fracture	9.70	NA	NA	7.27	7.68	0.83	NA	NA	17.80	18.21	090
21390		A	Repair eye socket fracture	10.13	NA	NA	7.85	9.97	0.79	NA	NA	18.77	20.89	090
21395		A	Repair eye socket fracture	12.68	NA	NA	9.08	9.77	1.20	NA	NA	22.96	23.65	090
21400		A	Treat eye socket fracture	1.40	4.63	3.22	0.92	1.30	0.13	6.16	4.75	2.45	2.83	090
21401		A	Repair eye socket fracture	3.26	4.41	3.61	2.41	2.61	0.26	7.93	7.13	5.93	6.13	090
21406		A	Repair eye socket fracture	7.01	NA	NA	5.99	5.82	0.64	NA	NA	13.64	13.47	090
21407		A	Repair eye socket fracture	8.61	NA	NA	7.06	7.38	0.73	NA	NA	16.40	16.72	090
21408		A	Repair eye socket fracture	12.38	NA	NA	8.51	8.86	1.27	NA	NA	22.16	22.51	090
21421		A	Treat mouth roof fracture	5.14	7.10	6.88	4.73	5.43	0.41	12.65	12.43	10.28	10.98	090
21422		A	Repair mouth roof fracture	8.32	NA	NA	6.50	8.22	0.73	NA	NA	15.55	17.27	090
21423		A	Repair mouth roof fracture	10.40	NA	NA	6.83	8.74	0.87	NA	NA	18.10	20.01	090
21431		A	Treat craniofacial fracture	7.05	NA	NA	6.16	6.35	0.58	NA	NA	13.79	13.98	090
21432		A	Repair craniofacial fracture	8.61	NA	NA	6.12	6.73	0.99	NA	NA	15.72	16.33	090
21433		A	Repair craniofacial fracture	25.35	NA	NA	16.31	17.90	2.18	NA	NA	43.84	45.43	090
21435		A	Repair craniofacial fracture	17.25	NA	NA	11.14	12.76	1.42	NA	NA	29.81	31.43	090
21436		A	Repair craniofacial fracture	28.04	NA	NA	14.69	15.30	1.99	NA	NA	44.72	45.33	090
21440		A	Repair dental ridge fracture	2.70	5.27	4.30	3.04	3.13	0.22	8.19	7.22	5.96	6.05	090
21445		A	Repair dental ridge fracture	5.38	6.39	6.51	4.21	5.32	0.45	12.22	12.34	10.04	11.15	090
21450		A	Treat lower jaw fracture	2.97	5.26	4.17	2.31	2.70	0.25	8.48	7.39	5.53	5.92	090
21451		A	Treat lower jaw fracture	4.87	6.14	6.24	4.65	5.24	0.40	11.41	11.51	9.92	10.51	090
21452		A	Treat lower jaw fracture	1.98	8.07	4.79	3.31	2.41	0.16	10.21	6.93	5.45	4.55	090
21453		A	Treat lower jaw fracture	5.54	7.00	7.11	5.27	5.94	0.47	13.01	13.12	11.28	11.95	090
21454		A	Treat lower jaw fracture	6.46	NA	NA	4.75	6.24	0.51	NA	NA	11.72	13.21	090
21461		A	Repair lower jaw fracture	8.09	8.33	9.00	6.69	8.18	0.69	17.11	17.78	15.47	16.96	090
21462		A	Repair lower jaw fracture	9.79	9.59	10.64	7.19	9.44	0.81	20.19	21.24	17.79	20.04	090
21465		A	Repair lower jaw fracture	11.91	NA	NA	7.09	8.13	1.02	NA	NA	20.02	21.06	090
21470		A	Repair lower jaw fracture	15.34	NA	NA	9.88	14.10	1.29	NA	NA	26.51	30.73	090
21480		A	Reset dislocated jaw	0.61	2.08	1.47	0.18	0.46	0.05	2.74	2.13	0.84	1.12	000
21485		A	Reset dislocated jaw	3.99	4.07	3.23	2.87	2.03	0.29	8.35	7.51	7.15	6.31	090
21490		A	Repair dislocated jaw	11.86	NA	NA	6.72	6.79	0.90	NA	NA	19.48	19.55	090
21493		A	Treat hyoid bone fracture	1.27	0.49	1.07	0.49	1.01	0.10	1.86	2.44	1.86	2.38	090
21494		A	Repair hyoid bone fracture	6.28	2.40	5.28	2.40	5.28	0.48	9.16	12.04	9.16	12.04	090
21495		A	Repair hyoid bone fracture	5.69	NA	NA	4.39	4.81	0.43	NA	NA	10.51	10.93	090
21497		A	Interdental wiring	3.86	4.76	4.54	3.54	3.93	0.31	8.93	8.71	7.71	8.10	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
21499		C	Head surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
21501		A	Drain neck/chest lesion	3.81	3.83	2.91	3.32	2.65	0.39	8.03	7.11	7.52	6.85	090
21502		A	Drain chest lesion	7.12	NA	NA	7.94	6.26	0.81	NA	NA	15.87	14.19	090
21510		A	Drainage of bone lesion	5.74	NA	NA	6.89	5.52	0.65	NA	NA	13.28	11.91	090
21550		A	Biopsy of neck/chest	2.06	1.96	1.44	1.19	0.83	0.13	4.15	3.63	3.38	3.02	010
21555		A	Remove lesion neck/chest	4.35	3.92	2.83	2.49	2.12	0.41	8.68	7.59	7.25	6.88	090
21556		A	Remove lesion neck/chest	5.57	NA	NA	3.24	3.68	0.53	NA	NA	9.34	9.78	090
21557		A	Remove tumor, neck or chest	8.88	NA	NA	7.41	8.32	0.85	NA	NA	17.14	18.05	090
21600		A	Partial removal of rib	6.89	NA	NA	7.57	6.23	0.83	NA	NA	15.29	13.95	090
21610		A	Partial removal of rib	14.61	NA	NA	10.26	7.94	2.03	NA	NA	26.90	24.58	090
21615		A	Removal of rib	9.87	NA	NA	8.61	9.80	1.38	NA	NA	19.86	21.05	090
21616		A	Removal of rib and nerves	12.04	NA	NA	9.19	8.54	1.56	NA	NA	22.79	22.14	090
21620		A	Partial removal of sternum	6.79	NA	NA	8.26	7.85	0.83	NA	NA	15.88	15.47	090
21627		A	Sternal debridement	6.81	NA	NA	13.05	9.26	0.87	NA	NA	20.73	16.94	090
21630		A	Extensive sternum surgery	17.38	NA	NA	13.37	13.68	2.07	NA	NA	32.82	33.13	090
21632		A	Extensive sternum surgery	18.14	NA	NA	13.30	12.91	2.41	NA	NA	33.85	33.46	090
21700		A	Revision of neck muscle	6.19	6.82	5.67	6.47	5.49	0.78	13.79	12.64	13.44	12.46	090
21705		A	Revision of neck muscle/rib	9.80	NA	NA	8.59	6.93	1.36	NA	NA	19.55	17.89	090
21720		A	Revision of neck muscle	5.68	7.41	5.79	6.00	5.09	0.87	13.96	12.34	12.55	11.64	090
21725		A	Revision of neck muscle	6.99	NA	NA	6.20	5.73	0.68	NA	NA	13.87	13.40	090
21740		A	Reconstruction of sternum	16.50	NA	NA	14.54	12.15	2.05	NA	NA	33.09	30.70	090
21750		A	Repair of sternum separation	10.77	NA	NA	12.44	10.20	1.41	NA	NA	24.62	22.38	090
21800		A	Treatment of rib fracture	0.96	1.81	1.33	0.92	0.88	0.09	2.86	2.38	1.97	1.93	090
21805		A	Treatment of rib fracture	2.75	NA	NA	4.10	2.79	0.30	NA	NA	7.15	5.84	090
21810		A	Treatment of rib fracture(s)	6.86	NA	NA	6.74	7.35	0.60	NA	NA	14.20	14.81	090
21820		A	Treat sternum fracture	1.28	2.17	1.83	1.30	1.39	0.13	3.58	3.24	2.71	2.80	090
21825		A	Repair sternum fracture	7.41	NA	NA	11.08	9.29	1.01	NA	NA	19.50	17.71	090
21899		C	Neck/chest surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
21920		A	Biopsy soft tissue of back	2.06	1.99	1.43	0.77	0.60	0.10	4.15	3.59	2.93	2.76	010
21925		A	Biopsy soft tissue of back	4.49	9.79	5.96	4.24	3.18	0.45	14.73	10.90	9.18	8.12	090
21930		A	Remove lesion, back or flank	5.00	4.19	3.57	2.66	2.81	0.49	9.68	9.06	8.15	8.30	090
21935		A	Remove tumor of back	17.96	NA	NA	11.75	9.45	1.88	NA	NA	31.59	29.29	090
22100		A	Remove part of neck vertebra	9.73	NA	NA	8.15	8.22	1.41	NA	NA	19.29	19.36	090
22101		A	Remove part, thorax vertebra	9.81	NA	NA	8.42	8.56	1.28	NA	NA	19.51	19.65	090
22102		A	Remove part, lumbar vertebra	9.81	NA	NA	8.14	6.51	1.38	NA	NA	19.33	17.70	090
22103		A	Remove extra spine segment	2.34	NA	NA	1.25	1.84	0.35	NA	NA	3.94	4.53	ZZZ
22110		A	Remove part of neck vertebra	12.74	NA	NA	10.16	10.36	1.98	NA	NA	24.88	25.08	090
22112		A	Remove part, thorax vertebra	12.81	NA	NA	9.91	10.33	1.67	NA	NA	24.39	24.81	090
22114		A	Remove part, lumbar vertebra	12.81	NA	NA	12.27	10.07	1.46	NA	NA	26.54	24.34	090
22116		A	Remove extra spine segment	2.32	NA	NA	1.24	1.82	0.35	NA	NA	3.91	4.49	ZZZ
22210		A	Revision of neck spine	23.82	NA	NA	16.48	15.75	3.65	NA	NA	43.95	43.22	090
22212		A	Revision of thorax spine	19.42	NA	NA	14.05	16.41	2.14	NA	NA	35.61	37.97	090
22214		A	Revision of lumbar spine	19.45	NA	NA	14.61	15.51	2.48	NA	NA	36.54	37.44	090
22216		A	Revise, extra spine segment	6.04	NA	NA	3.21	4.36	0.87	NA	NA	10.12	11.27	ZZZ
22220		A	Revision of neck spine	21.37	NA	NA	15.12	16.59	3.31	NA	NA	39.80	41.27	090
22222		A	Revision of thorax spine	21.52	NA	NA	10.44	12.61	1.07	NA	NA	33.03	35.20	090
22224		A	Revision of lumbar spine	21.52	NA	NA	15.27	15.60	2.60	NA	NA	39.39	39.72	090
22226		A	Revise, extra spine segment	6.04	NA	NA	3.22	4.36	0.78	NA	NA	10.04	11.18	ZZZ
22305		A	Treat spine process fracture	2.05	2.67	2.56	1.70	2.08	0.22	4.94	4.83	3.97	4.35	090
22310		A	Treat spine fracture	2.61	3.87	3.30	2.96	2.85	0.29	6.77	6.20	5.86	5.75	090
22315		A	Treat spine fracture	8.84	NA	NA	9.48	7.73	1.20	NA	NA	19.52	17.77	090
22325		A	Repair of spine fracture	18.30	NA	NA	13.78	11.41	2.42	NA	NA	34.50	32.13	090
22326		A	Repair neck spine fracture	19.59	NA	NA	15.33	16.31	3.33	NA	NA	38.25	39.23	090
22327		A	Repair thorax spine fracture	19.20	NA	NA	14.05	15.68	2.77	NA	NA	36.02	37.65	090
22328		A	Repair each add spine fx	4.61	NA	NA	2.38	3.58	0.71	NA	NA	7.70	8.90	ZZZ
22505		A	Manipulation of spine	1.87	10.53	5.98	10.17	5.80	0.14	12.54	7.99	12.18	7.81	010
22548		A	Neck spine fusion	25.82	NA	NA	17.49	21.09	4.90	NA	NA	48.21	51.81	090
22554		A	Neck spine fusion	18.62	NA	NA	13.68	17.59	3.29	NA	NA	35.59	39.50	090
22556		A	Thorax spine fusion	23.46	NA	NA	16.26	19.90	3.36	NA	NA	43.08	46.72	090
22558		A	Lumbar spine fusion	22.28	NA	NA	15.38	18.64	2.76	NA	NA	40.42	43.68	090
22585		A	Additional spinal fusion	5.53	NA	NA	2.91	4.39	0.89	NA	NA	9.33	10.81	ZZZ
22590		A	Spine & skull spinal fusion	20.51	NA	NA	15.02	19.22	3.49	NA	NA	39.02	43.22	090
22595		A	Neck spinal fusion	19.39	NA	NA	14.19	18.67	3.38	NA	NA	36.96	41.44	090
22600		A	Neck spine fusion	16.14	NA	NA	12.35	15.81	2.63	NA	NA	31.12	34.58	090
22610		A	Thorax spine fusion	16.02	NA	NA	12.22	15.67	2.34	NA	NA	30.58	34.03	090
22612		A	Lumbar spine fusion	21.00	NA	NA	15.15	18.76	2.77	NA	NA	38.92	42.53	090
22614		A	Spine fusion, extra segment	6.44	NA	NA	3.44	4.79	0.87	NA	NA	10.75	12.10	ZZZ
22630		A	Lumbar spine fusion	20.84	NA	NA	15.69	17.85	3.23	NA	NA	39.76	41.92	090
22632		A	Spine fusion, extra segment	5.23	NA	NA	2.78	4.10	0.75	NA	NA	8.76	10.08	ZZZ
22800		A	Fusion of spine	18.25	NA	NA	13.46	17.63	2.23	NA	NA	33.94	38.11	090
22802		A	Fusion of spine	30.88	NA	NA	20.46	25.60	3.60	NA	NA	54.94	60.08	090
22804		A	Fusion of spine	36.27	NA	NA	23.14	26.94	4.09	NA	NA	63.50	67.30	090
22808		A	Fusion of spine	26.27	NA	NA	17.77	18.88	3.94	NA	NA	47.98	49.09	090
22810		A	Fusion of spine	30.27	NA	NA	19.32	19.65	3.73	NA	NA	53.32	53.65	090
22812		A	Fusion of spine	32.70	NA	NA	20.23	24.19	3.85	NA	NA	56.78	60.74	090
22818		A	Kyphectomy, 1-2 segments	31.83	NA	NA	20.83	25.75	4.55	NA	NA	57.21	62.13	090
22819		A	Kyphectomy, 3 & more segment	36.44	NA	NA	22.98	26.82	5.20	NA	NA	64.62	68.46	090
22830		A	Exploration of spinal fusion	10.85	NA	NA	9.51	11.24	1.38	NA	NA	21.74	23.47	090
22840		A	Insert spine fixation device	12.54	NA	NA	8.17	7.33	1.71	NA	NA	22.42	21.58	ZZZ
22841		B	Insert spine fixation device	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
22842		A	Insert spine fixation device	12.58	NA	NA	6.69	7.07	1.72	NA	NA	20.99	21.37	ZZZ
22843		A	Insert spine fixation device	13.46	NA	NA	8.61	8.35	1.73	NA	NA	23.80	24.14	ZZZ
22844		A	Insert spine fixation device	16.44	NA	NA	10.23	10.79	1.88	NA	NA	28.55	29.11	ZZZ
22845		A	Insert spine fixation device	11.96	NA	NA	7.88	7.04	2.04	NA	NA	21.88	21.04	ZZZ

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
22846		A	Insert spine fixation device	12.42	NA	NA	8.17	8.37	2.09	NA	NA	22.68	22.88	ZZZ
22847		A	Insert spine fixation device	13.80	NA	NA	8.53	9.03	1.75	NA	NA	24.08	24.58	ZZZ
22848		A	Insert pelvic fixationdevice	6.00	NA	NA	4.53	5.37	0.69	NA	NA	11.22	12.06	ZZZ
22849		A	Reinsert spinal fixation	18.51	NA	NA	13.25	13.01	2.35	NA	NA	34.11	33.87	090
22850		A	Remove spine fixation device	9.52	NA	NA	8.32	9.14	1.25	NA	NA	19.09	19.91	090
22851		A	Apply spine prosth device	6.71	NA	NA	5.06	6.01	0.98	NA	NA	12.75	13.70	ZZZ
22852		A	Remove spine fixation device	9.01	NA	NA	8.16	9.40	1.15	NA	NA	18.32	19.56	090
22855		A	Remove spine fixation device	15.13	NA	NA	11.23	9.67	2.47	NA	NA	28.83	27.27	090
22899		C	Spine surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
22900		A	Remove abdominal wall lesion	5.80	NA	NA	4.18	3.74	0.59	NA	NA	10.57	10.13	090
22999		C	Abdomen surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
23000		A	Removal of calcium deposits	4.36	6.73	5.13	5.99	4.76	0.43	11.52	9.92	10.78	9.55	090
23020		A	Release shoulder joint	8.93	NA	NA	9.20	8.55	0.99	NA	NA	19.12	18.47	090
23030		A	Drain shoulder lesion	3.43	4.69	3.52	3.70	3.02	0.36	8.48	7.31	7.49	6.81	010
23031		A	Drain shoulder bursa	2.74	4.76	2.65	3.46	1.87	0.27	7.77	5.66	6.47	4.88	010
23035		A	Drain shoulder bone lesion	8.61	NA	NA	14.03	10.39	0.94	NA	NA	23.58	19.94	090
23040		A	Exploratory shoulder surgery	9.20	NA	NA	10.19	10.13	1.01	NA	NA	20.40	20.34	090
23044		A	Exploratory shoulder surgery	7.12	NA	NA	9.08	8.29	0.78	NA	NA	16.98	16.19	090
23065		A	Biopsy shoulder tissues	2.27	2.23	1.48	1.31	1.02	0.12	4.62	3.87	3.70	3.41	010
23066		A	Biopsy shoulder tissues	4.16	6.42	3.85	5.27	3.28	0.44	11.02	8.45	9.87	7.88	090
23075		A	Removal of shoulder lesion	2.39	4.31	3.07	2.73	2.28	0.25	6.95	5.71	5.37	4.92	010
23076		A	Removal of shoulder lesion	7.63	NA	NA	7.17	5.51	0.82	NA	NA	15.62	13.96	090
23077		A	Remove tumor of shoulder	16.09	NA	NA	15.11	11.56	1.66	NA	NA	32.86	29.31	090
23100		A	Biopsy of shoulder joint	6.03	NA	NA	7.97	7.59	0.65	NA	NA	14.65	14.27	090
23101		A	Shoulder joint surgery	5.58	NA	NA	7.28	6.97	0.62	NA	NA	13.48	13.17	090
23105		A	Remove shoulder joint lining	8.23	NA	NA	9.01	9.42	0.90	NA	NA	18.14	18.55	090
23106		A	Incision of collarbone joint	5.96	NA	NA	7.67	6.41	0.69	NA	NA	14.32	13.06	090
23107		A	Explore,treat shoulder joint	8.62	NA	NA	9.50	9.90	0.94	NA	NA	19.06	19.46	090
23120		A	Partial removal, collar bone	7.11	NA	NA	8.83	6.92	0.78	NA	NA	16.72	14.81	090
23125		A	Removal of collarbone	9.39	NA	NA	9.44	9.33	1.04	NA	NA	19.87	19.76	090
23130		A	Partial removal,shoulderbone	7.55	NA	NA	9.13	8.39	0.82	NA	NA	17.50	16.76	090
23140		A	Removal of bone lesion	6.89	NA	NA	7.32	5.92	0.72	NA	NA	14.93	13.53	090
23145		A	Removal of bone lesion	9.09	NA	NA	9.60	9.21	0.87	NA	NA	19.56	19.17	090
23146		A	Removal of bone lesion	7.83	NA	NA	8.99	7.34	0.82	NA	NA	17.64	15.99	090
23150		A	Removal of humerus lesion	8.48	NA	NA	8.73	7.97	0.89	NA	NA	18.10	17.34	090
23155		A	Removal of humerus lesion	10.35	NA	NA	10.29	9.92	1.16	NA	NA	21.80	21.43	090
23156		A	Removal of humerus lesion	8.68	NA	NA	8.72	8.51	0.96	NA	NA	18.36	18.15	090
23170		A	Remove collarbone lesion	6.86	NA	NA	8.94	7.08	0.77	NA	NA	16.57	14.71	090
23172		A	Remove shoulder blade lesion	6.90	NA	NA	8.53	7.07	0.78	NA	NA	16.21	14.75	090
23174		A	Remove humerus lesion	9.51	NA	NA	12.18	10.73	1.01	NA	NA	22.70	21.25	090
23180		A	Remove collar bone lesion	8.53	NA	NA	13.60	9.14	0.94	NA	NA	23.07	18.61	090
23182		A	Remove shoulder blade lesion	8.15	NA	NA	13.94	10.54	0.88	NA	NA	22.97	19.57	090
23184		A	Remove humerus lesion	9.38	NA	NA	14.49	12.04	1.02	NA	NA	24.89	22.44	090
23190		A	Partial removal of scapula	7.24	NA	NA	7.70	7.15	0.79	NA	NA	15.73	15.18	090
23195		A	Removal of head of humerus	9.81	NA	NA	9.35	9.51	1.06	NA	NA	20.22	20.38	090
23200		A	Removal of collar bone	12.08	NA	NA	13.26	11.61	1.28	NA	NA	26.62	24.97	090
23210		A	Removal of shoulderblade	12.49	NA	NA	12.65	11.22	1.31	NA	NA	26.45	25.02	090
23220		A	Partial removal of humerus	14.56	NA	NA	13.20	13.14	1.56	NA	NA	29.32	29.26	090
23221		A	Partial removal of humerus	17.74	NA	NA	13.63	16.66	1.35	NA	NA	32.72	35.75	090
23222		A	Partial removal of humerus	23.92	NA	NA	19.62	17.96	2.57	NA	NA	46.11	44.45	090
23330		A	Remove shoulder foreign body	1.85	4.48	2.54	3.27	1.79	0.19	6.52	4.58	5.31	3.83	010
23331		A	Remove shoulder foreign body	7.38	NA	NA	8.32	5.39	0.81	NA	NA	16.51	13.58	090
23332		A	Remove shoulder foreign body	11.62	NA	NA	10.99	10.77	1.28	NA	NA	23.89	23.67	090
23350		A	Injection for shoulder x-ray	1.00	10.12	5.34	0.27	0.42	0.04	11.16	6.38	1.31	1.46	000
23395		A	Muscle transfer,shoulder/arm	16.85	NA	NA	12.64	12.36	1.85	NA	NA	31.34	31.06	090
23397		A	Muscle transfers	16.13	NA	NA	12.88	14.02	1.81	NA	NA	30.82	31.96	090
23400		A	Fixation of shoulder blade	13.54	NA	NA	12.70	11.69	1.52	NA	NA	27.76	26.75	090
23405		A	Incision of tendon & muscle	8.37	NA	NA	8.24	8.19	0.92	NA	NA	17.53	17.48	090
23406		A	Incise tendon(s) & muscle(s)	10.79	NA	NA	10.05	10.13	1.21	NA	NA	22.05	22.13	090
23410		A	Repair of tendon(s)	12.45	NA	NA	11.66	11.77	1.36	NA	NA	25.47	25.58	090
23412		A	Repair of tendon(s)	13.31	NA	NA	12.21	13.36	1.45	NA	NA	26.97	28.12	090
23415		A	Release of shoulder ligament	9.97	NA	NA	9.24	7.43	1.09	NA	NA	20.30	18.49	090
23420		A	Repair of shoulder	13.30	NA	NA	12.98	14.43	1.45	NA	NA	27.73	29.18	090
23430		A	Repair biceps tendon	9.98	NA	NA	10.36	9.17	1.09	NA	NA	21.43	20.24	090
23440		A	Removal/transplant tendon	10.48	NA	NA	10.71	9.25	1.15	NA	NA	22.34	20.88	090
23450		A	Repair shoulder capsule	13.40	NA	NA	11.76	12.80	1.47	NA	NA	26.63	27.67	090
23455		A	Repair shoulder capsule	14.37	NA	NA	12.45	14.67	1.57	NA	NA	28.39	30.61	090
23460		A	Repair shoulder capsule	15.37	NA	NA	13.22	14.25	1.66	NA	NA	30.25	31.28	090
23462		A	Repair shoulder capsule	15.30	NA	NA	12.83	14.63	1.61	NA	NA	29.74	31.54	090
23465		A	Repair shoulder capsule	15.85	NA	NA	13.32	14.34	1.74	NA	NA	30.91	31.93	090
23466		A	Repair shoulder capsule	14.22	NA	NA	12.16	14.57	1.56	NA	NA	27.94	30.35	090
23470		A	Reconstruct shoulder joint	17.15	NA	NA	14.08	16.14	1.87	NA	NA	33.10	35.16	090
23472		A	Reconstruct shoulder joint	16.92	NA	NA	13.88	17.04	1.85	NA	NA	32.65	35.81	090
23480		A	Revision of collarbone	11.18	NA	NA	10.23	8.69	1.25	NA	NA	22.66	21.12	090
23485		A	Revision of collar bone	13.43	NA	NA	12.78	12.55	1.45	NA	NA	27.66	27.43	090
23490		A	Reinforce clavicle	11.86	NA	NA	10.69	10.76	1.33	NA	NA	23.88	23.95	090
23491		A	Reinforce shoulder bones	14.21	NA	NA	11.89	12.84	1.59	NA	NA	27.69	28.64	090
23500		A	Treat clavicle fracture	2.08	3.14	2.47	2.15	1.97	0.22	5.44	4.77	4.45	4.27	090
23505		A	Treat clavicle fracture	3.69	4.86	3.83	3.46	3.13	0.40	8.95	7.92	7.55	7.22	090
23515		A	Repair clavicle fracture	7.41	NA	NA	7.48	7.50	0.81	NA	NA	15.70	15.72	090
23520		A	Treat clavicle dislocation	2.16	3.24	2.37	2.20	1.85	0.22	5.62	4.75	4.58	4.23	090
23525		A	Treat clavicle dislocation	3.60	4.92	3.54	3.13	2.64	0.39	8.91	7.53	7.12	6.63	090
23530		A	Repair clavicle dislocation	7.31	NA	NA	6.94	7.04	0.80	NA	NA	15.05	15.15	090
23532		A	Repair clavicle dislocation	8.01	NA	NA	7.12	7.49	0.90	NA	NA	16.03	16.40	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
23540		A	Treat clavicle dislocation	2.23	3.59	2.64	2.13	1.91	0.22	6.04	5.09	4.58	4.36	090
23545		A	Treat clavicle dislocation	3.25	4.12	3.14	3.04	2.60	0.33	7.70	6.72	6.62	6.18	090
23550		A	Repair clavicle dislocation	7.24	NA	NA	7.37	8.01	0.77	NA	NA	15.38	16.02	090
23552		A	Repair clavicle dislocation	8.45	NA	NA	7.97	7.94	0.91	NA	NA	17.33	17.30	090
23570		A	Treat shoulderblade fracture	2.23	3.15	2.50	2.27	2.06	0.24	5.62	4.97	4.74	4.53	090
23575		A	Treat shoulderblade fracture	4.06	5.07	4.03	3.69	3.34	0.44	9.57	8.53	8.19	7.84	090
23585		A	Repair scapula fracture	8.96	NA	NA	8.27	8.32	0.98	NA	NA	18.21	18.26	090
23600		A	Treat humerus fracture	2.93	4.93	4.04	3.30	3.23	0.32	8.18	7.29	6.55	6.48	090
23605		A	Treat humerus fracture	4.87	7.31	6.24	5.82	5.50	0.54	12.72	11.65	11.23	10.91	090
23615		A	Repair humerus fracture	9.35	NA	NA	9.15	10.16	1.03	NA	NA	19.53	20.54	090
23616		A	Repair humerus fracture	21.27	NA	NA	14.99	19.61	2.33	NA	NA	38.59	43.21	090
23620		A	Treat humerus fracture	2.40	4.64	3.89	3.03	2.24	0.26	7.30	6.55	5.69	4.90	090
23625		A	Treat humerus fracture	3.93	6.45	5.30	4.94	4.55	0.44	10.82	9.67	9.31	8.92	090
23630		A	Repair humerus fracture	7.35	NA	NA	7.29	8.04	0.80	NA	NA	15.44	16.19	090
23650		A	Treat shoulder dislocation	3.39	4.63	3.46	3.04	2.66	0.34	8.36	7.19	6.77	6.39	090
23655		A	Treat shoulder dislocation	4.57	NA	NA	3.85	3.52	0.48	NA	NA	8.90	8.57	090
23660		A	Repair shoulder dislocation	7.49	NA	NA	8.16	8.55	0.73	NA	NA	16.38	16.77	090
23665		A	Treat dislocation/fracture	4.47	6.64	5.14	5.18	4.41	0.49	11.60	10.10	10.14	9.37	090
23670		A	Repair dislocation/fracture	7.90	NA	NA	7.64	8.54	0.85	NA	NA	16.39	17.29	090
23675		A	Treat dislocation/fracture	6.05	7.35	5.81	6.01	5.14	0.67	14.07	12.53	12.73	11.86	090
23680		A	Repair dislocation/fracture	10.06	NA	NA	8.73	10.37	1.10	NA	NA	19.89	21.53	090
23700		A	Fixation of shoulder	2.52	NA	NA	3.00	2.64	0.28	NA	NA	5.80	5.44	010
23800		A	Fusion of shoulder joint	14.16	NA	NA	13.02	14.97	1.52	NA	NA	28.70	30.65	090
23802		A	Fusion of shoulder joint	16.60	NA	NA	13.77	14.52	1.80	NA	NA	32.17	32.92	090
23900		A	Amputation of arm & girdle	19.72	NA	NA	14.42	14.03	1.97	NA	NA	36.11	35.72	090
23920		A	Amputation at shoulder joint	14.61	NA	NA	12.40	13.72	1.56	NA	NA	28.57	29.89	090
23921		A	Amputation follow-up surgery	5.49	6.69	5.66	5.97	5.30	0.53	12.71	11.68	11.99	11.32	090
23929		C	Shoulder surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
23930		A	Drainage of arm lesion	2.94	4.81	3.28	3.36	2.56	0.30	8.05	6.52	6.60	5.80	010
23931		A	Drainage of arm bursa	1.79	4.59	2.70	3.00	1.71	0.18	6.56	4.67	4.97	3.68	010
23935		A	Drain arm/elbow bone lesion	6.09	NA	NA	10.29	7.69	0.66	NA	NA	17.04	14.44	090
24000		A	Exploratory elbow surgery	5.82	NA	NA	6.49	6.72	0.62	NA	NA	12.93	13.16	090
24006		A	Release elbow joint	9.31	NA	NA	7.51	7.63	1.02	NA	NA	17.84	17.96	090
24065		A	Biopsy arm/elbow soft tissue	2.08	3.98	2.42	2.77	1.60	0.12	6.18	4.62	4.97	3.80	010
24066		A	Biopsy arm/elbow soft tissue	5.21	6.64	4.79	5.87	4.41	0.58	12.43	10.58	11.66	10.20	090
24075		A	Remove arm/elbow lesion	3.92	6.24	4.20	5.08	3.62	0.40	10.56	8.52	9.40	7.94	090
24076		A	Remove arm/elbow lesion	6.30	NA	NA	6.14	5.07	0.67	NA	NA	13.11	12.04	090
24077		A	Remove tumor of arm/elbow	11.76	NA	NA	11.31	10.97	1.23	NA	NA	24.30	23.96	090
24100		A	Biopsy elbow joint lining	4.93	NA	NA	4.86	4.73	0.49	NA	NA	10.28	10.15	090
24101		A	Explore/treat elbow joint	6.13	NA	NA	6.07	6.69	0.68	NA	NA	12.88	13.50	090
24102		A	Remove elbow joint lining	8.03	NA	NA	6.78	8.18	0.88	NA	NA	15.69	17.09	090
24105		A	Removal of elbow bursa	3.61	NA	NA	4.32	4.21	0.40	NA	NA	8.33	8.22	090
24110		A	Remove humerus lesion	7.39	NA	NA	8.22	8.29	0.83	NA	NA	16.44	16.51	090
24115		A	Remove/graft bone lesion	9.63	NA	NA	8.11	8.22	0.91	NA	NA	18.65	18.76	090
24116		A	Remove/graft bone lesion	11.81	NA	NA	10.63	10.59	1.29	NA	NA	23.73	23.69	090
24120		A	Remove elbow lesion	6.65	NA	NA	5.96	6.25	0.73	NA	NA	13.34	13.63	090
24125		A	Remove/graft bone lesion	7.89	NA	NA	6.26	6.27	0.82	NA	NA	14.97	14.98	090
24126		A	Remove/graft bone lesion	8.31	NA	NA	6.43	7.23	0.93	NA	NA	15.67	16.47	090
24130		A	Removal of head of radius	6.25	NA	NA	6.19	6.74	0.69	NA	NA	13.13	13.68	090
24134		A	Removal of arm bone lesion	9.73	NA	NA	13.25	11.34	1.00	NA	NA	23.98	22.07	090
24136		A	Remove radius bone lesion	7.99	NA	NA	5.72	7.63	0.86	NA	NA	14.57	16.48	090
24138		A	Remove elbow bone lesion	8.05	NA	NA	6.92	6.93	0.90	NA	NA	15.87	15.88	090
24140		A	Partial removal of arm bone	9.18	NA	NA	14.21	11.87	1.01	NA	NA	24.40	22.06	090
24145		A	Partial removal of radius	7.58	NA	NA	9.66	8.29	0.83	NA	NA	18.07	16.70	090
24147		A	Partial removal of elbow	7.54	NA	NA	9.31	8.24	0.86	NA	NA	17.71	16.64	090
24149		A	Radical resection of elbow	14.20	NA	NA	9.94	11.83	1.54	NA	NA	25.68	27.57	090
24150		A	Extensive humerus surgery	13.27	NA	NA	13.24	14.26	1.41	NA	NA	27.92	28.94	090
24151		A	Extensive humerus surgery	15.58	NA	NA	13.95	14.48	1.61	NA	NA	31.14	31.67	090
24152		A	Extensive radius surgery	10.06	NA	NA	8.11	7.75	1.03	NA	NA	19.20	18.84	090
24153		A	Extensive radius surgery	11.54	NA	NA	6.34	8.84	0.71	NA	NA	18.59	21.09	090
24155		A	Removal of elbow joint	11.73	NA	NA	8.50	10.09	1.22	NA	NA	21.45	23.04	090
24160		A	Remove elbow joint implant	7.83	NA	NA	6.83	6.04	0.84	NA	NA	15.50	14.71	090
24164		A	Remove radius head implant	6.23	NA	NA	5.88	5.94	0.69	NA	NA	12.80	12.86	090
24200		A	Removal of arm foreign body	1.76	4.24	2.43	2.79	1.55	0.15	6.15	4.34	4.70	3.46	010
24201		A	Removal of arm foreign body	4.56	7.17	5.25	5.81	4.57	0.50	12.23	10.31	10.87	9.63	090
24220		A	Injection for elbow x-ray	1.31	11.11	5.83	0.38	0.47	0.07	12.49	7.21	1.76	1.85	000
24301		A	Muscle/tendon transfer	10.20	NA	NA	8.47	8.52	1.12	NA	NA	19.79	19.84	090
24305		A	Arm tendon lengthening	7.45	NA	NA	6.88	5.11	0.79	NA	NA	15.12	13.35	090
24310		A	Revision of arm tendon	5.98	NA	NA	6.85	5.03	0.67	NA	NA	13.50	11.68	090
24320		A	Repair of arm tendon	10.56	NA	NA	9.83	9.91	1.06	NA	NA	21.45	21.53	090
24330		A	Revision of arm muscles	9.60	NA	NA	7.68	8.59	1.09	NA	NA	18.37	19.28	090
24331		A	Revision of arm muscles	10.65	NA	NA	8.18	9.31	1.20	NA	NA	20.03	21.16	090
24340		A	Repair of biceps tendon	7.89	NA	NA	7.04	7.32	0.86	NA	NA	15.79	16.07	090
24341		A	Repair tendon/muscle arm	7.90	NA	NA	6.82	7.21	0.87	NA	NA	15.59	15.98	090
24342		A	Repair of ruptured tendon	10.62	NA	NA	8.46	9.86	1.17	NA	NA	20.25	21.65	090
24350		A	Repair of tennis elbow	5.25	NA	NA	5.41	5.00	0.59	NA	NA	11.25	10.84	090
24351		A	Repair of tennis elbow	5.91	NA	NA	5.81	5.39	0.66	NA	NA	12.38	11.96	090
24352		A	Repair of tennis elbow	6.43	NA	NA	6.35	6.27	0.70	NA	NA	13.48	13.40	090
24354		A	Repair of tennis elbow	6.48	NA	NA	6.03	6.06	0.72	NA	NA	13.23	13.26	090
24356		A	Revision of tennis elbow	6.68	NA	NA	6.21	7.06	0.74	NA	NA	13.63	14.48	090
24360		A	Reconstruct elbow joint	12.34	NA	NA	8.94	11.84	1.34	NA	NA	22.62	25.52	090
24361		A	Reconstruct elbow joint	14.08	NA	NA	10.46	12.36	1.54	NA	NA	26.08	27.98	090
24362		A	Reconstruct elbow joint	14.99	NA	NA	8.92	8.03	1.42	NA	NA	25.33	24.44	090
24363		A	Replace elbow joint	18.49	NA	NA	12.77	17.42	2.04	NA	NA	33.30	37.95	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
24365		A	Reconstruct head of radius	8.39	NA	NA	7.01	7.59	0.93	NA	NA	16.33	16.91	090
24366		A	Reconstruct head of radius	9.13	NA	NA	7.39	9.15	0.99	NA	NA	17.51	19.27	090
24400		A	Revision of humerus	11.06	NA	NA	11.43	10.29	1.20	NA	NA	23.69	22.55	090
24410		A	Revision of humerus	14.82	NA	NA	11.58	13.41	1.45	NA	NA	27.85	29.68	090
24420		A	Revision of humerus	13.44	NA	NA	14.05	13.70	1.46	NA	NA	28.95	28.60	090
24430		A	Repair of humerus	12.81	NA	NA	11.70	13.50	1.40	NA	NA	25.91	27.71	090
24435		A	Repair humerus with graft	13.17	NA	NA	12.61	14.17	1.44	NA	NA	27.22	28.78	090
24470		A	Revision of elbow joint	8.74	NA	NA	5.81	7.21	0.98	NA	NA	15.53	16.93	090
24495		A	Decompression of forearm	8.12	NA	NA	9.99	8.12	0.95	NA	NA	19.06	17.19	090
24498		A	Reinforce humerus	11.92	NA	NA	11.19	11.22	1.31	NA	NA	24.42	24.45	090
24500		A	Treat humerus fracture	3.21	6.65	4.71	3.01	2.89	0.34	10.20	8.26	6.56	6.44	090
24505		A	Treat humerus fracture	5.17	9.89	7.39	6.05	5.47	0.57	15.63	13.13	11.79	11.21	090
24515		A	Repair humerus fracture	11.65	NA	NA	11.21	10.84	1.24	NA	NA	24.10	23.73	090
24516		A	Repair humerus fracture	11.65	NA	NA	10.58	10.53	1.28	NA	NA	23.51	23.46	090
24530		A	Treat humerus fracture	3.50	7.59	5.28	4.24	3.60	0.38	11.47	9.16	8.12	7.48	090
24535		A	Treat humerus fracture	6.87	9.99	7.63	6.06	5.66	0.76	17.62	15.26	13.69	13.29	090
24538		A	Treat humerus fracture	9.43	NA	NA	9.36	9.01	1.03	NA	NA	19.82	19.47	090
24545		A	Repair humerus fracture	10.46	NA	NA	9.16	9.39	1.14	NA	NA	20.76	21.59	090
24546		A	Repair humerus fracture	15.69	NA	NA	12.40	11.61	1.72	NA	NA	29.81	29.02	090
24560		A	Treat humerus fracture	2.80	6.34	4.34	2.76	2.55	0.29	9.43	7.43	5.85	5.64	090
24565		A	Treat humerus fracture	5.56	9.17	6.46	5.30	4.52	0.61	15.34	12.63	11.47	10.69	090
24566		A	Treat humerus fracture	7.79	NA	NA	8.28	7.43	0.84	NA	NA	16.91	16.06	090
24575		A	Repair humerus fracture	10.66	NA	NA	7.87	8.16	1.17	NA	NA	19.70	19.99	090
24576		A	Treat humerus fracture	2.86	6.24	4.29	2.87	2.61	0.31	9.41	7.46	6.04	5.78	090
24577		A	Treat humerus fracture	5.79	9.37	6.86	5.56	4.95	0.63	15.79	13.28	11.98	11.37	090
24579		A	Repair humerus fracture	11.60	NA	NA	10.22	9.65	1.28	NA	NA	23.10	22.53	090
24582		A	Treat humerus fracture	8.55	NA	NA	9.58	8.38	0.94	NA	NA	19.07	17.87	090
24586		A	Repair elbow fracture	15.21	NA	NA	10.16	13.07	1.66	NA	NA	27.03	29.94	090
24587		A	Repair elbow fracture	15.16	NA	NA	10.10	12.50	1.55	NA	NA	26.81	29.21	090
24600		A	Treat elbow dislocation	4.23	8.90	5.51	4.51	3.32	0.44	13.57	10.18	9.18	7.99	090
24605		A	Treat elbow dislocation	5.42	NA	NA	4.37	3.43	0.59	NA	NA	10.38	9.44	090
24615		A	Repair elbow dislocation	9.42	NA	NA	7.12	8.60	1.04	NA	NA	17.58	19.06	090
24620		A	Treat elbow fracture	6.98	NA	NA	5.98	5.04	0.74	NA	NA	13.70	12.76	090
24635		A	Repair elbow fracture	13.19	NA	NA	19.64	15.82	1.45	NA	NA	34.28	30.46	090
24640		A	Treat elbow dislocation	1.20	4.97	3.04	1.64	1.37	0.12	6.29	4.36	2.96	2.69	010
24650		A	Treat radius fracture	2.16	6.15	4.30	2.53	1.88	0.23	8.54	6.69	4.92	4.27	090
24655		A	Treat radius fracture	4.40	8.58	5.93	4.78	4.03	0.48	13.46	10.81	9.66	8.91	090
24665		A	Repair radius fracture	8.14	NA	NA	8.49	8.12	0.89	NA	NA	17.52	17.15	090
24666		A	Repair radius fracture	9.49	NA	NA	9.41	10.28	1.05	NA	NA	19.95	20.82	090
24670		A	Treatment of ulna fracture	2.54	6.08	4.10	2.69	2.41	0.27	8.89	6.91	5.50	5.22	090
24675		A	Treatment of ulna fracture	4.72	8.73	6.27	4.90	4.36	0.52	13.97	11.51	10.14	9.60	090
24685		A	Repair ulna fracture	8.80	NA	NA	8.76	8.94	0.96	NA	NA	18.52	18.70	090
24800		A	Fusion of elbow joint	11.20	NA	NA	8.48	9.99	1.21	NA	NA	20.89	22.40	090
24802		A	Fusion/graft of elbow joint	13.69	NA	NA	9.60	11.41	1.42	NA	NA	24.71	26.52	090
24900		A	Amputation of upper arm	9.60	NA	NA	9.39	8.86	1.05	NA	NA	20.04	19.51	090
24920		A	Amputation of upper arm	9.54	NA	NA	10.07	8.72	1.02	NA	NA	20.63	19.28	090
24925		A	Amputation follow-up surgery	7.07	NA	NA	7.59	7.20	0.76	NA	NA	15.42	15.03	090
24930		A	Amputation follow-up surgery	10.25	NA	NA	12.19	10.53	1.03	NA	NA	23.47	21.81	090
24931		A	Amputate upper arm & implant	12.72	NA	NA	10.00	11.06	1.36	NA	NA	24.08	25.14	090
24935		A	Revision of amputation	15.56	NA	NA	12.35	13.61	1.67	NA	NA	29.58	30.84	090
24940		C	Revision of upper arm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
24999		C	Upper arm/elbow surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
25000		A	Incision of tendon sheath	3.38	NA	NA	6.14	5.09	0.37	NA	NA	9.89	8.84	090
25020		A	Decompression of forearm	5.92	NA	NA	9.54	7.13	0.70	NA	NA	16.16	13.75	090
25023		A	Decompression of forearm	12.96	NA	NA	15.25	10.58	1.42	NA	NA	29.63	24.96	090
25028		A	Drainage of forearm lesion	5.25	NA	NA	8.72	5.48	0.56	NA	NA	14.53	11.29	090
25031		A	Drainage of forearm bursa	4.14	NA	NA	8.04	4.38	0.39	NA	NA	12.57	8.91	090
25035		A	Treat forearm bone lesion	7.36	NA	NA	13.96	10.40	0.79	NA	NA	22.11	18.55	090
25040		A	Explore/treat wrist joint	7.18	NA	NA	8.11	7.15	0.79	NA	NA	16.08	15.12	090
25065		A	Biopsy forearm soft tissues	1.99	2.08	1.45	2.08	1.25	0.10	4.17	3.54	4.17	3.34	010
25066		A	Biopsy forearm soft tissues	4.13	NA	NA	7.11	4.39	0.44	NA	NA	11.68	8.96	090
25075		A	Removal of forearm lesion	3.74	NA	NA	6.34	4.36	0.38	NA	NA	10.46	8.48	090
25076		A	Removal of forearm lesion	4.92	NA	NA	10.19	7.14	0.53	NA	NA	15.64	12.59	090
25077		A	Remove tumor, forearm/wrist	9.76	NA	NA	13.15	11.18	1.02	NA	NA	23.93	21.96	090
25085		A	Incision of wrist capsule	5.50	NA	NA	9.83	7.42	0.61	NA	NA	15.94	13.53	090
25100		A	Biopsy of wrist joint	3.90	NA	NA	6.18	5.42	0.44	NA	NA	10.52	9.76	090
25101		A	Explore/treat wrist joint	4.69	NA	NA	6.64	6.12	0.52	NA	NA	11.85	11.33	090
25105		A	Remove wrist joint lining	5.85	NA	NA	10.90	8.95	0.63	NA	NA	17.38	15.43	090
25107		A	Remove wrist joint cartilage	6.43	NA	NA	9.37	7.55	0.72	NA	NA	16.52	14.70	090
25110		A	Remove wrist tendon lesion	3.92	NA	NA	6.94	4.99	0.42	NA	NA	11.28	9.33	090
25111		A	Remove wrist tendon lesion	3.39	NA	NA	5.58	4.54	0.37	NA	NA	9.34	8.30	090
25112		A	Reremove wrist tendon lesion	4.53	NA	NA	6.24	5.14	0.49	NA	NA	11.26	10.16	090
25115		A	Remove wrist/forearm lesion	8.82	NA	NA	13.93	10.84	0.98	NA	NA	23.73	20.64	090
25116		A	Remove wrist/forearm lesion	7.11	NA	NA	12.77	10.63	0.79	NA	NA	20.67	18.53	090
25118		A	Excise wrist tendon sheath	4.37	NA	NA	6.66	5.94	0.49	NA	NA	11.52	10.80	090
25119		A	Partial removal of ulna	6.04	NA	NA	10.00	8.61	0.67	NA	NA	16.71	15.32	090
25120		A	Removal of forearm lesion	6.10	NA	NA	11.94	9.52	0.66	NA	NA	18.70	16.28	090
25125		A	Remove/graft forearm lesion	7.48	NA	NA	14.16	10.79	0.83	NA	NA	22.47	19.10	090
25126		A	Remove/graft forearm lesion	7.55	NA	NA	16.49	11.94	0.83	NA	NA	24.87	20.32	090
25130		A	Removal of wrist lesion	5.26	NA	NA	7.05	5.81	0.58	NA	NA	12.89	11.65	090
25135		A	Remove & graft wrist lesion	6.89	NA	NA	7.92	6.93	0.78	NA	NA	15.59	14.60	090
25136		A	Remove & graft wrist lesion	5.97	NA	NA	6.72	5.93	0.67	NA	NA	13.36	12.57	090
25145		A	Remove forearm bone lesion	6.37	NA	NA	14.43	10.45	0.69	NA	NA	21.49	17.51	090
25150		A	Partial removal of ulna	7.09	NA	NA	10.08	8.66	0.76	NA	NA	17.93	16.51	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
25151		A	Partial removal of radius	7.39	NA	NA	13.30	9.77	0.82	NA	NA	21.51	17.98	090
25170		A	Extensive forearm surgery	11.09	NA	NA	14.56	12.59	1.24	NA	NA	26.89	24.92	090
25210		A	Removal of wrist bone	5.95	NA	NA	7.40	6.35	0.66	NA	NA	14.01	12.96	090
25215		A	Removal of wrist bones	7.89	NA	NA	10.90	10.16	0.87	NA	NA	19.66	18.92	090
25230		A	Partial removal of radius	5.23	NA	NA	7.02	6.53	0.57	NA	NA	12.82	12.33	090
25240		A	Partial removal of ulna	5.17	NA	NA	9.17	7.46	0.57	NA	NA	14.91	13.20	090
25246		A	Injection for wrist x-ray	1.45	10.17	5.36	0.40	0.47	0.06	11.68	6.87	1.91	1.98	000
25248		A	Remove forearm foreign body	5.14	NA	NA	8.78	5.58	0.54	NA	NA	14.46	11.26	090
25250		A	Removal of wrist prosthesis	6.60	NA	NA	8.58	7.35	0.73	NA	NA	15.91	14.68	090
25251		A	Removal of wrist prosthesis	9.57	NA	NA	12.84	10.90	1.06	NA	NA	23.47	21.53	090
25260		A	Repair forearm tendon/muscle	7.80	NA	NA	13.56	9.28	0.86	NA	NA	22.22	17.94	090
25263		A	Repair forearm tendon/muscle	7.82	NA	NA	13.65	9.96	0.87	NA	NA	22.34	18.65	090
25265		A	Repair forearm tendon/muscle	9.88	NA	NA	17.41	13.01	1.07	NA	NA	28.36	23.96	090
25270		A	Repair forearm tendon/muscle	6.00	NA	NA	13.37	8.51	0.66	NA	NA	20.03	15.17	090
25272		A	Repair forearm tendon/muscle	7.04	NA	NA	12.93	8.33	0.79	NA	NA	20.76	16.16	090
25274		A	Repair forearm tendon/muscle	8.75	NA	NA	13.71	10.45	0.98	NA	NA	23.44	20.18	090
25280		A	Revise wrist/forearm tendon	7.22	NA	NA	12.85	8.72	0.79	NA	NA	20.86	16.73	090
25290		A	Incise wrist/forearm tendon	5.29	NA	NA	14.41	8.55	0.59	NA	NA	20.29	14.43	090
25295		A	Release wrist/forearm tendon	6.55	NA	NA	12.29	7.80	0.72	NA	NA	19.56	15.07	090
25300		A	Fusion of tendons at wrist	8.80	NA	NA	10.93	9.46	0.92	NA	NA	20.65	19.18	090
25301		A	Fusion of tendons at wrist	8.40	NA	NA	8.70	8.03	0.89	NA	NA	17.99	17.32	090
25310		A	Transplant forearm tendon	8.14	NA	NA	14.25	11.00	0.90	NA	NA	23.29	20.04	090
25312		A	Transplant forearm tendon	9.57	NA	NA	15.49	11.89	1.05	NA	NA	26.11	22.51	090
25315		A	Revise palsy hand tendon(s)	10.20	NA	NA	15.06	11.91	1.18	NA	NA	26.44	23.29	090
25316		A	Revise palsy hand tendon(s)	12.33	NA	NA	21.69	16.59	1.33	NA	NA	35.35	30.25	090
25320		A	Repair/revise wrist joint	10.77	NA	NA	10.70	10.02	1.19	NA	NA	22.66	21.98	090
25332		A	Revise wrist joint	11.41	NA	NA	10.89	10.86	1.25	NA	NA	23.55	23.52	090
25335		A	Realignment of hand	12.88	NA	NA	13.00	12.69	1.45	NA	NA	27.33	27.02	090
25337		A	Reconstruct ulna/radioulnar	10.17	NA	NA	11.94	10.64	1.13	NA	NA	23.24	21.94	090
25350		A	Revision of radius	8.78	NA	NA	14.20	11.23	0.97	NA	NA	23.95	20.98	090
25355		A	Revision of radius	10.17	NA	NA	12.46	11.18	1.12	NA	NA	23.75	22.47	090
25360		A	Revision of ulna	8.43	NA	NA	13.82	10.39	0.96	NA	NA	23.21	19.78	090
25365		A	Revise radius & ulna	12.40	NA	NA	14.84	13.02	1.21	NA	NA	28.45	26.63	090
25370		A	Revise radius or ulna	13.36	NA	NA	11.53	12.15	1.30	NA	NA	26.19	26.81	090
25375		A	Revise radius & ulna	13.04	NA	NA	11.41	12.97	1.27	NA	NA	25.72	27.28	090
25390		A	Shorten radius/ulna	10.40	NA	NA	14.29	11.93	1.13	NA	NA	25.82	23.46	090
25391		A	Lengthen radius/ulna	13.65	NA	NA	15.28	13.75	1.48	NA	NA	30.41	28.88	090
25392		A	Shorten radius & ulna	13.95	NA	NA	14.46	13.98	1.57	NA	NA	29.98	29.50	090
25393		A	Lengthen radius & ulna	15.87	NA	NA	13.84	14.63	1.72	NA	NA	31.43	32.22	090
25400		A	Repair radius or ulna	10.92	NA	NA	15.77	13.74	1.20	NA	NA	27.89	25.86	090
25405		A	Repair/graft radius or ulna	14.38	NA	NA	17.59	15.54	1.57	NA	NA	33.54	31.49	090
25415		A	Repair radius & ulna	13.35	NA	NA	15.62	14.01	1.47	NA	NA	30.44	28.83	090
25420		A	Repair/graft radius & ulna	16.33	NA	NA	18.57	17.26	1.81	NA	NA	36.71	35.40	090
25425		A	Repair/graft radius or ulna	13.21	NA	NA	30.34	21.69	1.38	NA	NA	44.93	36.28	090
25426		A	Repair/graft radius & ulna	15.82	NA	NA	19.05	15.89	1.42	NA	NA	36.29	33.13	090
25440		A	Repair/graft wrist bone	10.44	NA	NA	10.19	10.01	1.16	NA	NA	21.79	21.61	090
25441		A	Reconstruct wrist joint	12.90	NA	NA	11.09	11.71	1.45	NA	NA	25.44	26.06	090
25442		A	Reconstruct wrist joint	10.85	NA	NA	9.90	8.78	1.20	NA	NA	21.95	20.83	090
25443		A	Reconstruct wrist joint	10.39	NA	NA	11.59	10.89	1.17	NA	NA	23.15	22.45	090
25444		A	Reconstruct wrist joint	11.15	NA	NA	12.03	11.52	1.25	NA	NA	24.43	23.92	090
25445		A	Reconstruct wrist joint	9.69	NA	NA	11.61	11.43	1.07	NA	NA	22.37	22.19	090
25446		A	Wrist replacement	16.55	NA	NA	13.89	16.83	1.80	NA	NA	32.24	35.18	090
25447		A	Repair wrist joint(s)	10.37	NA	NA	10.47	10.47	1.14	NA	NA	21.98	21.98	090
25449		A	Remove wrist joint implant	14.49	NA	NA	14.69	11.60	1.60	NA	NA	30.78	27.69	090
25450		A	Revision of wrist joint	7.87	NA	NA	6.79	7.36	0.70	NA	NA	15.36	15.93	090
25455		A	Revision of wrist joint	9.49	NA	NA	10.27	9.86	0.77	NA	NA	20.53	20.12	090
25490		A	Reinforce radius	9.54	NA	NA	13.90	11.67	1.05	NA	NA	24.49	22.26	090
25491		A	Reinforce ulna	9.96	NA	NA	13.68	11.78	1.12	NA	NA	24.76	22.86	090
25492		A	Reinforce radius and ulna	12.33	NA	NA	15.67	13.91	1.39	NA	NA	29.39	27.63	090
25500		A	Treat fracture of radius	2.45	5.77	4.15	2.58	1.93	0.24	8.46	6.84	5.27	4.62	090
25505		A	Treat fracture of radius	5.21	8.94	6.41	5.10	4.49	0.56	14.71	12.18	10.87	10.26	090
25515		A	Repair fracture of radius	9.18	NA	NA	12.22	10.25	0.91	NA	NA	22.31	20.34	090
25520		A	Repair fracture of radius	6.26	9.10	7.67	5.58	5.91	0.68	16.04	14.61	12.52	12.85	090
25525		A	Repair fracture of radius	12.24	NA	NA	10.54	11.32	1.37	NA	NA	24.15	24.93	090
25526		A	Repair fracture of radius	12.98	NA	NA	15.77	14.32	1.44	NA	NA	30.19	28.74	090
25530		A	Treat fracture of ulna	2.09	5.79	4.22	2.51	1.88	0.22	8.10	6.53	4.82	4.19	090
25535		A	Treat fracture of ulna	5.14	8.48	6.18	5.09	4.48	0.55	14.17	11.87	10.78	10.17	090
25545		A	Repair fracture of ulna	8.90	NA	NA	8.77	8.50	0.98	NA	NA	18.65	18.38	090
25560		A	Treat fracture radius & ulna	2.44	5.79	4.13	2.59	2.53	0.25	8.48	6.82	5.28	5.22	090
25565		A	Treat fracture radius & ulna	5.63	9.12	7.09	5.29	5.18	0.61	15.36	13.33	11.53	11.42	090
25574		A	Treat fracture radius & ulna	7.01	NA	NA	7.61	7.99	0.77	NA	NA	15.39	15.77	090
25575		A	Repair fracture radius/ulna	10.45	NA	NA	9.50	10.56	1.15	NA	NA	21.10	22.16	090
25600		A	Treat fracture radius/ulna	2.63	6.13	4.61	2.73	2.14	0.28	9.04	7.52	5.64	5.05	090
25605		A	Treat fracture radius/ulna	5.81	9.42	6.86	5.50	4.90	0.64	15.87	13.31	11.95	11.35	090
25611		A	Repair fracture radius/ulna	7.77	NA	NA	8.52	7.52	0.86	NA	NA	17.15	16.15	090
25620		A	Repair fracture radius/ulna	8.55	NA	NA	8.60	8.17	0.94	NA	NA	18.09	17.66	090
25622		A	Treat wrist bone fracture	2.61	6.12	4.30	2.73	1.99	0.28	9.01	7.19	5.62	4.88	090
25624		A	Treat wrist bone fracture	4.53	8.56	6.27	4.76	3.38	0.50	13.59	11.30	9.79	8.41	090
25628		A	Repair wrist bone fracture	8.43	NA	NA	8.60	8.17	0.93	NA	NA	17.96	17.53	090
25630		A	Treat wrist bone fracture	2.88	6.22	4.30	2.83	2.01	0.31	9.41	7.49	6.02	5.20	090
25635		A	Treat wrist bone fracture	4.39	8.53	6.09	5.01	3.42	0.47	13.39	10.95	9.87	8.28	090
25645		A	Repair wrist bone fracture	7.25	NA	NA	8.04	7.65	0.81	NA	NA	16.10	15.71	090
25650		A	Repair wrist bone fracture	3.05	6.20	4.55	2.88	2.17	0.32	9.57	7.92	6.25	5.54	090
25660		A	Treat wrist dislocation	4.76	NA	NA	4.74	3.36	0.50	NA	NA	10.00	8.62	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
25670		A	Repair wrist dislocation	7.92	NA	NA	8.09	7.89	0.88	NA	NA	16.89	16.69	090
25675		A	Treat wrist dislocation	4.67	8.30	5.39	4.75	3.61	0.50	13.47	10.56	9.92	8.78	090
25676		A	Repair wrist dislocation	8.04	NA	NA	8.46	8.20	0.88	NA	NA	17.38	17.12	090
25680		A	Treat wrist fracture	5.99	NA	NA	9.75	6.20	0.56	NA	NA	16.30	12.75	090
25685		A	Repair wrist fracture	9.78	NA	NA	8.75	9.15	1.06	NA	NA	19.59	19.99	090
25690		A	Treat wrist dislocation	5.50	NA	NA	6.17	5.74	0.59	NA	NA	12.26	11.83	090
25695		A	Repair wrist dislocation	8.34	NA	NA	8.14	7.89	0.91	NA	NA	17.39	17.14	090
25800		A	Fusion of wrist joint	9.76	NA	NA	10.01	10.84	1.08	NA	NA	20.85	21.68	090
25805		A	Fusion/graft of wrist joint	11.28	NA	NA	10.89	12.18	1.25	NA	NA	23.42	24.71	090
25810		A	Fusion/graft of wrist joint	10.57	NA	NA	10.46	11.54	1.15	NA	NA	22.18	23.26	090
25820		A	Fusion of hand bones	7.45	NA	NA	9.09	9.00	0.80	NA	NA	17.34	17.25	090
25825		A	Fusion hand bones with graft	9.27	NA	NA	10.31	10.69	1.01	NA	NA	20.59	20.97	090
25830		A	Fusion radioulnar jnt/ulna	10.06	NA	NA	14.92	12.13	1.09	NA	NA	26.07	23.28	090
25900		A	Amputation of forearm	9.01	NA	NA	12.21	9.95	1.00	NA	NA	22.22	19.96	090
25905		A	Amputation of forearm	9.12	NA	NA	13.49	10.61	1.02	NA	NA	23.63	20.75	090
25907		A	Amputation follow-up surgery	7.80	NA	NA	11.98	9.11	0.87	NA	NA	20.65	17.78	090
25909		A	Amputation follow-up surgery	8.96	NA	NA	12.68	9.35	1.03	NA	NA	22.67	19.34	090
25915		A	Amputation of forearm	17.08	NA	NA	18.76	16.97	1.95	NA	NA	35.79	36.00	090
25920		A	Amputate hand at wrist	8.68	NA	NA	8.59	8.10	0.98	NA	NA	18.25	17.76	090
25922		A	Amputate hand at wrist	7.42	NA	NA	7.71	6.87	0.83	NA	NA	15.96	15.12	090
25924		A	Amputation follow-up surgery	8.46	NA	NA	7.52	7.83	0.65	NA	NA	16.63	16.94	090
25927		A	Amputation of hand	8.80	NA	NA	11.66	9.25	0.98	NA	NA	21.44	19.03	090
25929		A	Amputation follow-up surgery	7.59	NA	NA	6.28	5.71	0.81	NA	NA	14.68	14.11	090
25931		A	Amputation follow-up surgery	7.81	NA	NA	16.31	10.62	0.84	NA	NA	24.96	19.27	090
25999		C	Forearm or wrist surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
26010		A	Drainage of finger abscess	1.54	4.31	2.42	3.36	1.81	0.14	5.99	4.10	5.04	3.49	010
26011		A	Drainage of finger abscess	2.19	5.96	3.82	5.21	3.44	0.23	8.38	6.24	7.63	5.86	010
26020		A	Drain hand tendon sheath	4.67	NA	NA	10.65	7.35	0.51	NA	NA	15.83	12.53	090
26025		A	Drainage of palm bursa	4.82	NA	NA	10.46	7.68	0.53	NA	NA	15.81	13.03	090
26030		A	Drainage of palm bursa(s)	5.93	NA	NA	11.20	8.71	0.66	NA	NA	17.79	15.30	090
26034		A	Treat hand bone lesion	6.23	NA	NA	12.41	8.50	0.69	NA	NA	19.33	15.42	090
26035		A	Decompress fingers/hand	9.51	NA	NA	14.48	10.05	1.03	NA	NA	25.02	20.59	090
26037		A	Decompress fingers/hand	7.25	NA	NA	13.55	10.23	0.80	NA	NA	21.60	18.28	090
26040		A	Release palm contracture	3.33	NA	NA	9.62	6.36	0.36	NA	NA	13.31	10.05	090
26045		A	Release palm contracture	5.56	NA	NA	10.80	8.02	0.61	NA	NA	16.97	14.19	090
26055		A	Incise finger tendon sheath	2.69	6.29	4.93	6.11	4.84	0.30	9.28	7.92	9.10	7.83	090
26060		A	Incision of finger tendon	2.81	NA	NA	6.66	3.95	0.31	NA	NA	9.78	7.07	090
26070		A	Explore/treat hand joint	3.69	NA	NA	9.25	5.38	0.33	NA	NA	13.27	9.40	090
26075		A	Explore/treat finger joint	3.79	NA	NA	9.96	7.03	0.37	NA	NA	14.12	11.19	090
26080		A	Explore/treat finger joint	4.24	NA	NA	10.45	6.93	0.45	NA	NA	15.14	11.62	090
26100		A	Biopsy hand joint lining	3.67	NA	NA	6.53	4.89	0.39	NA	NA	10.59	8.95	090
26105		A	Biopsy finger joint lining	3.71	NA	NA	10.25	7.39	0.40	NA	NA	14.36	11.50	090
26110		A	Biopsy finger joint lining	3.53	NA	NA	9.23	6.21	0.39	NA	NA	13.15	10.13	090
26115		A	Removal of hand lesion	3.86	6.20	4.19	6.20	4.19	0.42	10.48	8.47	10.48	8.47	090
26116		A	Removal of hand lesion	5.53	NA	NA	11.07	7.55	0.61	NA	NA	17.21	13.69	090
26117		A	Remove tumor, hand/finger	8.55	NA	NA	12.22	8.86	0.94	NA	NA	21.71	18.35	090
26121		A	Release palm contracture	7.54	NA	NA	12.43	10.72	0.84	NA	NA	20.81	19.10	090
26123		A	Release palm contracture	9.29	NA	NA	13.52	11.70	1.03	NA	NA	23.84	22.02	ZZZ
26125		A	Release palm contracture	4.61	NA	NA	2.50	2.67	0.51	NA	NA	7.62	7.79	ZZZ
26130		A	Remove wrist joint lining	5.42	NA	NA	12.29	8.87	0.60	NA	NA	18.31	14.89	090
26135		A	Revise finger joint, each	6.96	NA	NA	13.42	9.35	0.77	NA	NA	21.15	17.08	090
26140		A	Revise finger joint, each	6.17	NA	NA	12.71	8.75	0.69	NA	NA	19.57	15.61	090
26145		A	Tendon excision, palm/finger	6.32	NA	NA	12.79	8.95	0.71	NA	NA	19.82	15.98	090
26160		A	Remove tendon sheath lesion	3.15	6.09	4.31	6.09	4.31	0.34	9.58	7.80	9.58	7.80	090
26170		A	Removal of palm tendon, each	4.77	NA	NA	7.22	5.15	0.57	NA	NA	12.56	10.49	090
26180		A	Removal of finger tendon	5.18	NA	NA	7.34	5.85	0.59	NA	NA	13.11	11.62	090
26185		A	Remove finger bone	5.25	NA	NA	7.12	5.86	0.58	NA	NA	12.95	11.69	090
26200		A	Remove hand bone lesion	5.51	NA	NA	10.98	7.92	0.59	NA	NA	17.08	14.02	090
26205		A	Remove/graft bone lesion	7.70	NA	NA	12.44	9.70	0.87	NA	NA	21.01	18.27	090
26210		A	Removal of finger lesion	5.15	NA	NA	10.99	7.61	0.57	NA	NA	16.71	13.33	090
26215		A	Remove/graft finger lesion	7.10	NA	NA	11.77	8.90	0.70	NA	NA	19.57	16.70	090
26230		A	Partial removal of hand bone	6.33	NA	NA	10.51	7.57	0.70	NA	NA	17.54	14.60	090
26235		A	Partial removal, finger bone	6.19	NA	NA	10.33	7.43	0.69	NA	NA	17.21	14.31	090
26236		A	Partial removal, finger bone	5.32	NA	NA	10.30	7.25	0.59	NA	NA	16.21	13.16	090
26250		A	Extensive hand surgery	7.55	NA	NA	14.25	10.38	0.78	NA	NA	22.58	18.71	090
26255		A	Extensive hand surgery	12.43	NA	NA	15.02	12.36	1.28	NA	NA	28.73	26.07	090
26260		A	Extensive finger surgery	7.03	NA	NA	13.39	9.81	0.77	NA	NA	21.19	17.61	090
26261		A	Extensive finger surgery	9.09	NA	NA	7.90	8.13	0.71	NA	NA	17.70	17.93	090
26262		A	Partial removal of finger	5.67	NA	NA	11.27	8.21	0.63	NA	NA	17.57	14.51	090
26320		A	Removal of implant from hand	3.98	NA	NA	10.32	7.08	0.44	NA	NA	14.74	11.50	090
26350		A	Repair finger/hand tendon	5.99	NA	NA	15.00	10.62	0.66	NA	NA	21.65	17.27	090
26352		A	Repair/graft hand tendon	7.68	NA	NA	15.21	11.19	0.85	NA	NA	23.74	19.72	090
26356		A	Repair finger/hand tendon	8.07	NA	NA	16.42	12.12	0.90	NA	NA	25.39	21.09	090
26357		A	Repair finger/hand tendon	8.58	NA	NA	17.03	12.09	0.94	NA	NA	26.55	21.61	090
26358		A	Repair/graft hand tendon	9.14	NA	NA	16.55	12.29	1.03	NA	NA	26.72	22.46	090
26370		A	Repair finger/hand tendon	7.11	NA	NA	16.19	11.74	0.78	NA	NA	24.08	19.63	090
26372		A	Repair/graft hand tendon	8.76	NA	NA	17.37	12.15	0.96	NA	NA	27.09	21.87	090
26373		A	Repair finger/hand tendon	8.16	NA	NA	19.05	13.24	0.90	NA	NA	28.11	22.30	090
26390		A	Revise hand/finger tendon	9.19	NA	NA	13.63	11.13	1.01	NA	NA	23.83	21.33	090
26392		A	Repair/graft hand tendon	10.26	NA	NA	17.46	13.40	1.14	NA	NA	28.86	24.80	090
26410		A	Repair hand tendon	4.63	NA	NA	12.37	7.97	0.51	NA	NA	17.51	13.11	090
26412		A	Repair/graft hand tendon	6.31	NA	NA	13.46	9.99	0.70	NA	NA	20.47	17.00	090
26415		A	Excision, hand/finger tendon	8.34	NA	NA	12.09	9.71	0.79	NA	NA	21.22	18.84	090
26416		A	Graft hand or finger tendon	9.37	NA	NA	14.38	11.88	1.03	NA	NA	24.78	22.28	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
26418		A	Repair finger tendon	4.25	NA	NA	12.14	8.02	0.47	NA	NA	16.86	12.74	090
26420		A	Repair/graft finger tendon	6.77	NA	NA	13.48	9.82	0.73	NA	NA	20.98	17.32	090
26426		A	Repair finger/hand tendon	6.15	NA	NA	12.98	9.92	0.69	NA	NA	19.82	16.76	090
26428		A	Repair/graft finger tendon	7.21	NA	NA	13.93	9.95	0.80	NA	NA	21.94	17.96	090
26432		A	Repair finger tendon	4.02	NA	NA	10.17	5.94	0.44	NA	NA	14.63	10.40	090
26433		A	Repair finger tendon	4.56	NA	NA	10.71	7.50	0.51	NA	NA	15.78	12.57	090
26434		A	Repair/graft finger tendon	6.09	NA	NA	15.07	10.22	0.63	NA	NA	21.79	16.94	090
26437		A	Realignment of tendons	5.82	NA	NA	11.05	7.73	0.65	NA	NA	17.52	14.20	090
26440		A	Release palm/finger tendon	5.02	NA	NA	13.94	8.91	0.56	NA	NA	19.52	14.49	090
26442		A	Release palm & finger tendon	8.16	NA	NA	15.49	9.58	0.91	NA	NA	24.56	18.65	090
26445		A	Release hand/finger tendon	4.31	NA	NA	13.78	8.66	0.48	NA	NA	18.57	13.45	090
26449		A	Release forearm/hand tendon	7.00	NA	NA	15.86	10.95	0.78	NA	NA	23.64	18.73	090
26450		A	Incision of palm tendon	3.67	NA	NA	6.89	4.68	0.41	NA	NA	10.97	8.76	090
26455		A	Incision of finger tendon	3.64	NA	NA	6.86	4.36	0.41	NA	NA	10.71	8.41	090
26460		A	Incise hand/finger tendon	3.46	NA	NA	6.49	4.18	0.38	NA	NA	10.33	8.02	090
26471		A	Fusion of finger tendons	5.73	NA	NA	10.80	7.65	0.64	NA	NA	17.17	14.02	090
26474		A	Fusion of finger tendons	5.32	NA	NA	11.17	8.09	0.59	NA	NA	17.08	14.00	090
26476		A	Tendon lengthening	5.16	NA	NA	12.23	7.69	0.54	NA	NA	17.95	13.41	090
26477		A	Tendon shortening	5.15	NA	NA	10.43	7.38	0.58	NA	NA	16.16	13.11	090
26478		A	Lengthening of hand tendon	5.80	NA	NA	11.35	8.01	0.65	NA	NA	17.80	14.46	090
26479		A	Shortening of hand tendon	5.74	NA	NA	11.29	8.52	0.65	NA	NA	17.68	14.91	090
26480		A	Transplant hand tendon	8.69	NA	NA	15.24	11.17	0.74	NA	NA	22.67	18.60	090
26483		A	Transplant/graft hand tendon	8.29	NA	NA	16.17	12.70	0.88	NA	NA	25.34	21.87	090
26485		A	Transplant palm tendon	7.70	NA	NA	17.09	12.07	0.85	NA	NA	25.64	20.62	090
26489		A	Transplant/graft palm tendon	9.55	NA	NA	18.07	10.88	0.90	NA	NA	28.52	21.33	090
26490		A	Revise thumb tendon	8.41	NA	NA	12.54	10.51	0.94	NA	NA	21.89	19.86	090
26492		A	Tendon transfer with graft	9.62	NA	NA	14.75	12.13	0.96	NA	NA	25.33	22.71	090
26494		A	Hand tendon/muscle transfer	8.47	NA	NA	12.92	10.41	0.96	NA	NA	22.35	19.84	090
26496		A	Revise thumb tendon	9.59	NA	NA	12.62	11.05	1.07	NA	NA	23.28	21.71	090
26497		A	Finger tendon transfer	9.57	NA	NA	15.76	12.23	1.02	NA	NA	26.35	22.82	090
26498		A	Finger tendon transfer	14.00	NA	NA	18.12	15.45	1.55	NA	NA	33.67	31.00	090
26499		A	Revision of finger	8.98	NA	NA	13.62	11.02	0.86	NA	NA	23.46	20.86	090
26500		A	Hand tendon reconstruction	5.96	NA	NA	11.71	7.75	0.86	NA	NA	18.33	14.37	090
26502		A	Hand tendon reconstruction	7.14	NA	NA	12.83	9.28	0.75	NA	NA	20.72	17.17	090
26504		A	Hand tendon reconstruction	7.47	NA	NA	16.06	11.68	0.79	NA	NA	24.32	19.94	090
26508		A	Release thumb contracture	6.01	NA	NA	11.17	7.84	0.67	NA	NA	17.85	14.52	090
26510		A	Thumb tendon transfer	5.43	NA	NA	11.64	8.07	0.59	NA	NA	17.66	14.09	090
26516		A	Fusion of knuckle joint	7.15	NA	NA	11.78	8.15	0.80	NA	NA	19.73	16.10	090
26517		A	Fusion of knuckle joints	8.83	NA	NA	16.06	11.87	0.97	NA	NA	25.86	21.67	090
26518		A	Fusion of knuckle joints	9.02	NA	NA	12.72	9.90	0.99	NA	NA	22.73	19.91	090
26520		A	Release knuckle contracture	5.30	NA	NA	13.90	9.38	0.59	NA	NA	19.79	15.27	090
26525		A	Release finger contracture	5.33	NA	NA	14.05	9.00	0.59	NA	NA	19.97	14.92	090
26530		A	Revise knuckle joint	6.69	NA	NA	15.62	10.61	0.72	NA	NA	23.03	18.02	090
26531		A	Revise knuckle with implant	7.91	NA	NA	16.76	11.99	0.87	NA	NA	25.54	20.77	090
26535		A	Revise finger joint	5.24	NA	NA	8.25	6.75	0.42	NA	NA	13.91	12.41	090
26536		A	Revise/implant finger joint	6.37	NA	NA	14.14	10.88	0.69	NA	NA	21.20	17.94	090
26540		A	Repair hand joint	6.43	NA	NA	11.60	9.41	0.71	NA	NA	18.74	16.55	090
26541		A	Repair hand joint with graft	8.62	NA	NA	13.63	11.67	0.95	NA	NA	23.20	21.24	090
26542		A	Repair hand joint with graft	6.78	NA	NA	11.64	8.90	0.73	NA	NA	19.15	16.41	090
26545		A	Reconstruct finger joint	6.92	NA	NA	11.96	8.84	0.78	NA	NA	19.66	16.54	090
26546		A	Repair non-union hand	8.92	NA	NA	13.68	11.24	0.99	NA	NA	23.59	21.15	090
26548		A	Reconstruct finger joint	8.03	NA	NA	12.76	9.52	0.89	NA	NA	21.68	18.44	090
26550		A	Construct thumb replacement	21.24	NA	NA	24.47	22.99	2.40	NA	NA	48.11	46.63	090
26551		A	Great toe-hand transfer	46.58	NA	NA	34.77	40.31	5.32	NA	NA	86.67	92.21	090
26553		A	Single toe-hand transfer	46.27	NA	NA	26.26	35.90	5.28	NA	NA	77.81	87.45	090
26554		A	Double toe-hand transfer	54.95	NA	NA	35.67	45.00	6.17	NA	NA	96.79	106.12	090
26555		A	Positional change of finger	16.63	NA	NA	17.80	17.26	1.84	NA	NA	36.27	35.73	090
26556		A	Toe joint transfer	47.26	NA	NA	26.64	36.48	5.40	NA	NA	79.30	89.14	090
26560		A	Repair of web finger	5.38	NA	NA	11.78	8.42	0.56	NA	NA	17.72	14.36	090
26561		A	Repair of web finger	10.92	NA	NA	16.08	12.87	1.20	NA	NA	28.20	24.99	090
26562		A	Repair of web finger	9.68	NA	NA	13.40	12.48	1.10	NA	NA	24.18	23.26	090
26565		A	Correct metacarpal flaw	6.74	NA	NA	12.55	9.44	0.74	NA	NA	20.03	16.92	090
26567		A	Correct finger deformity	6.82	NA	NA	11.75	8.20	0.75	NA	NA	19.32	15.77	090
26568		A	Lengthen metacarpal/finger	9.08	NA	NA	13.89	11.53	0.97	NA	NA	23.94	21.58	090
26580		A	Repair hand deformity	18.18	NA	NA	14.27	16.30	1.51	NA	NA	33.96	35.99	090
26585		A	Repair finger deformity	14.05	NA	NA	12.41	13.23	0.89	NA	NA	27.35	28.17	090
26587		C	Reconstruct extra finger	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
26590		A	Repair finger deformity	17.96	NA	NA	12.01	15.03	1.88	NA	NA	31.85	34.87	090
26591		A	Repair muscles of hand	3.25	NA	NA	10.58	6.54	0.36	NA	NA	14.19	10.15	090
26593		A	Release muscles of hand	5.31	NA	NA	10.55	7.51	0.59	NA	NA	16.45	13.41	090
26596		A	Excision constricting tissue	8.95	NA	NA	8.76	8.85	0.93	NA	NA	18.64	18.73	090
26597		A	Release of scar contracture	9.82	NA	NA	13.65	11.18	1.10	NA	NA	24.57	22.10	090
26600		A	Treat metacarpal fracture	1.96	5.75	3.71	2.45	1.65	0.21	7.92	5.88	4.62	3.82	090
26605		A	Treat metacarpal fracture	2.85	7.31	4.90	3.75	2.50	0.31	10.47	8.06	6.91	5.66	090
26607		A	Treat metacarpal fracture	5.36	NA	NA	7.46	5.66	0.59	NA	NA	13.41	11.61	090
26608		A	Treat metacarpal fracture	5.36	NA	NA	7.17	5.51	0.59	NA	NA	13.12	11.46	090
26615		A	Repair metacarpal fracture	5.33	NA	NA	6.56	5.93	0.59	NA	NA	12.48	11.85	090
26641		A	Treat thumb dislocation	3.94	7.62	4.41	4.37	2.79	0.39	11.95	8.74	8.70	7.12	090
26645		A	Treat thumb fracture	4.41	8.34	5.37	4.64	3.52	0.44	13.19	10.22	9.49	8.37	090
26650		A	Repair thumb fracture	5.72	NA	NA	7.23	5.79	0.62	NA	NA	13.57	12.13	090
26665		A	Repair thumb fracture	7.60	NA	NA	8.03	7.48	0.83	NA	NA	16.46	15.91	090
26670		A	Treat hand dislocation	3.69	7.67	4.36	4.61	2.83	0.37	11.73	8.42	8.67	6.89	090
26675		A	Treat hand dislocation	4.64	7.17	5.94	3.73	4.22	0.49	12.30	11.07	8.86	9.35	090
26676		A	Pin hand dislocation	5.52	NA	NA	7.30	6.29	0.61	NA	NA	13.43	12.42	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
26685		A	Repair hand dislocation	6.98	NA	NA	8.74	7.50	0.77	NA	NA	16.49	15.25	090
26686		A	Repair hand dislocation	7.94	NA	NA	8.23	7.54	0.85	NA	NA	17.02	16.33	090
26700		A	Treat knuckle dislocation	3.69	4.13	2.55	2.55	1.76	0.36	8.18	6.60	6.60	5.81	090
26705		A	Treat knuckle dislocation	4.19	7.32	4.63	3.61	2.77	0.44	11.95	9.26	8.24	7.40	090
26706		A	Pin knuckle dislocation	5.12	NA	NA	5.06	5.07	0.56	NA	NA	10.74	10.75	090
26715		A	Repair knuckle dislocation	5.74	NA	NA	6.81	5.65	0.64	NA	NA	13.19	12.03	090
26720		A	Treat finger fracture, each	1.66	2.49	1.84	1.45	1.03	0.17	4.32	3.67	3.28	2.86	090
26725		A	Treat finger fracture, each	3.33	4.30	2.99	2.80	1.82	0.36	7.99	6.68	6.49	5.51	090
26727		A	Treat finger fracture, each	5.23	NA	NA	7.09	4.88	0.58	NA	NA	12.90	10.69	090
26735		A	Repair finger fracture, each	5.98	NA	NA	7.82	5.94	0.65	NA	NA	14.45	12.57	090
26740		A	Treat finger fracture, each	1.94	3.06	2.16	2.14	1.39	0.21	5.21	4.31	4.29	3.54	090
26742		A	Treat finger fracture, each	3.85	8.20	5.18	4.49	3.32	0.41	12.46	9.44	8.75	7.58	090
26746		A	Repair finger fracture, each	5.81	NA	NA	6.93	6.04	0.65	NA	NA	13.39	12.50	090
26750		A	Treat finger fracture, each	1.70	2.94	1.92	1.99	1.45	0.17	4.81	3.79	3.86	3.32	090
26755		A	Treat finger fracture, each	3.10	4.13	2.65	2.57	1.87	0.32	7.55	6.07	5.99	5.29	090
26756		A	Pin finger fracture, each	4.39	NA	NA	6.69	4.38	0.49	NA	NA	11.57	9.26	090
26765		A	Repair finger fracture, each	4.17	NA	NA	5.99	4.44	0.46	NA	NA	10.62	9.07	090
26770		A	Treat finger dislocation	3.02	3.93	2.36	2.34	1.58	0.30	7.25	5.70	5.66	4.90	090
26775		A	Treat finger dislocation	3.71	6.83	4.03	3.40	2.32	0.39	10.93	8.13	7.50	6.42	090
26776		A	Pin finger dislocation	4.80	NA	NA	6.86	4.56	0.54	NA	NA	12.20	9.90	090
26785		A	Repair finger dislocation	4.21	NA	NA	6.02	4.62	0.47	NA	NA	10.70	9.30	090
26820		A	Thumb fusion with graft	8.26	NA	NA	13.25	10.24	0.92	NA	NA	22.43	19.42	090
26841		A	Fusion of thumb	7.13	NA	NA	12.15	9.43	0.79	NA	NA	20.07	17.35	090
26842		A	Thumb fusion with graft	8.24	NA	NA	13.57	11.44	0.91	NA	NA	22.72	20.59	090
26843		A	Fusion of hand joint	7.61	NA	NA	13.81	10.36	0.82	NA	NA	22.24	18.79	090
26844		A	Fusion/graft of hand joint	8.73	NA	NA	14.45	11.22	0.95	NA	NA	24.13	20.90	090
26850		A	Fusion of knuckle	6.97	NA	NA	11.76	8.39	0.77	NA	NA	19.50	16.13	090
26852		A	Fusion of knuckle with graft	8.46	NA	NA	13.02	9.62	0.93	NA	NA	22.41	19.01	090
26860		A	Fusion of finger joint	4.69	NA	NA	10.46	7.57	0.52	NA	NA	15.67	12.78	090
26861		A	Fusion of finger joint,added	1.74	NA	NA	0.94	1.51	0.19	NA	NA	2.87	3.44	ZZZ
26862		A	Fusion/graft of finger joint	7.37	NA	NA	12.26	8.93	0.81	NA	NA	20.44	17.11	090
26863		A	Fuse/graft added joint	3.90	NA	NA	2.13	2.90	0.43	NA	NA	6.46	7.23	ZZZ
26910		A	Amputate metacarpal bone	7.60	NA	NA	11.19	8.40	0.84	NA	NA	19.63	16.84	090
26951		A	Amputation of finger/thumb	4.59	NA	NA	10.09	6.60	0.51	NA	NA	15.19	11.70	090
26952		A	Amputation of finger/thumb	6.31	NA	NA	11.46	7.90	0.70	NA	NA	18.47	14.91	090
26989		C	Hand/finger surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
26990		A	Drainage of pelvis lesion	7.48	NA	NA	13.13	8.25	0.77	NA	NA	21.38	16.50	090
26991		A	Drainage of pelvis bursa	6.68	8.98	5.47	7.84	4.90	0.69	16.35	12.84	15.21	12.27	090
26992		A	Drainage of bone lesion	13.02	NA	NA	17.06	11.99	1.43	NA	NA	31.51	26.44	090
27000		A	Incision of hip tendon	5.62	NA	NA	6.65	4.33	0.62	NA	NA	12.89	10.57	090
27001		A	Incision of hip tendon	6.94	NA	NA	7.25	4.90	0.76	NA	NA	14.95	12.60	090
27003		A	Incision of hip tendon	7.34	NA	NA	8.36	7.86	0.82	NA	NA	16.52	16.02	090
27005		A	Incision of hip tendon	9.66	NA	NA	9.54	6.60	1.05	NA	NA	20.25	17.31	090
27006		A	Incision of hip tendons	9.68	NA	NA	9.24	7.14	1.08	NA	NA	20.00	17.90	090
27025		A	Incision of hip/thigh fascia	11.16	NA	NA	9.39	8.02	1.24	NA	NA	21.79	20.42	090
27030		A	Drainage of hip joint	13.01	NA	NA	11.40	11.90	1.42	NA	NA	25.83	26.33	090
27033		A	Exploration of hip joint	13.39	NA	NA	11.38	11.94	1.46	NA	NA	26.23	26.79	090
27035		A	Denervation of hip joint	16.69	NA	NA	13.89	13.38	1.77	NA	NA	32.35	31.84	090
27036		A	Excision of hip joint/muscle	12.88	NA	NA	11.96	12.19	1.40	NA	NA	26.24	26.47	090
27040		A	Biopsy of soft tissues	2.87	4.62	2.70	3.32	2.05	0.18	7.67	5.75	6.37	5.10	010
27041		A	Biopsy of soft tissues	9.89	NA	NA	7.39	5.15	0.89	NA	NA	18.17	15.93	090
27047		A	Remove hip/pelvis lesion	7.45	7.81	4.93	6.38	4.22	0.77	16.03	13.15	14.60	12.44	090
27048		A	Remove hip/pelvis lesion	6.25	NA	NA	6.77	5.74	0.67	NA	NA	13.69	12.66	090
27049		A	Remove tumor, hip/pelvis	13.66	NA	NA	11.69	11.35	1.39	NA	NA	26.74	26.40	090
27050		A	Biopsy of sacroiliac joint	4.36	NA	NA	7.20	6.20	0.47	NA	NA	12.03	11.03	090
27052		A	Biopsy of hip joint	6.23	NA	NA	8.04	7.74	0.68	NA	NA	14.95	14.65	090
27054		A	Removal of hip joint lining	8.54	NA	NA	9.44	9.82	0.93	NA	NA	18.91	19.29	090
27060		A	Removal of ischial bursa	5.43	NA	NA	6.24	5.26	0.57	NA	NA	12.24	11.26	090
27062		A	Remove femur lesion/bursa	5.37	NA	NA	6.38	5.49	0.59	NA	NA	12.34	11.45	090
27065		A	Removal of hip bone lesion	5.90	NA	NA	8.00	7.04	0.63	NA	NA	14.53	13.57	090
27066		A	Removal of hip bone lesion	10.33	NA	NA	11.38	9.98	1.10	NA	NA	22.81	21.41	090
27067		A	Remove/graft hip bone lesion	13.83	NA	NA	13.63	13.13	1.53	NA	NA	28.99	28.49	090
27070		A	Partial removal of hip bone	10.72	NA	NA	15.84	11.94	1.16	NA	NA	27.72	23.82	090
27071		A	Partial removal of hip bone	11.46	NA	NA	16.45	12.84	1.25	NA	NA	29.16	25.55	090
27075		A	Extensive hip surgery	17.23	NA	NA	14.44	14.57	1.87	NA	NA	33.54	33.67	090
27076		A	Extensive hip surgery	22.12	NA	NA	18.92	18.35	2.36	NA	NA	43.40	42.83	090
27077		A	Extensive hip surgery	23.13	NA	NA	17.40	19.00	2.50	NA	NA	43.03	44.63	090
27078		A	Extensive hip surgery	13.44	NA	NA	13.13	11.56	1.50	NA	NA	28.07	26.50	090
27079		A	Extensive hip surgery	13.75	NA	NA	12.03	10.71	1.49	NA	NA	27.27	25.95	090
27080		A	Removal of tail bone	6.39	NA	NA	6.47	5.83	0.70	NA	NA	13.56	12.92	090
27086		A	Remove hip foreign body	1.87	4.60	2.62	3.29	1.81	0.16	6.63	4.65	5.32	3.84	010
27087		A	Remove hip foreign body	8.54	NA	NA	8.01	5.97	0.91	NA	NA	17.46	15.42	090
27090		A	Removal of hip prosthesis	11.15	NA	NA	10.17	10.02	1.22	NA	NA	22.54	22.39	090
27091		A	Removal of hip prosthesis	22.14	NA	NA	17.64	19.57	2.31	NA	NA	42.09	44.02	090
27093		A	Injection for hip x-ray	1.30	11.02	5.96	0.42	0.66	0.08	12.40	7.34	1.80	2.04	000
27095		A	Injection for hip x-ray	1.50	11.23	6.12	0.47	0.74	0.09	12.82	7.71	2.06	2.33	000
27097		A	Revision of hip tendon	8.80	NA	NA	8.35	8.36	0.95	NA	NA	18.10	18.11	090
27098		A	Transfer tendon to pelvis	8.83	NA	NA	8.40	8.39	0.99	NA	NA	18.22	18.21	090
27100		A	Transfer of abdominal muscle	11.08	NA	NA	11.33	9.83	1.18	NA	NA	23.59	22.09	090
27105		A	Transfer of spinal muscle	11.77	NA	NA	10.53	8.46	1.32	NA	NA	23.62	21.55	090
27110		A	Transfer of iliopsoas muscle	13.26	NA	NA	12.79	12.15	1.23	NA	NA	27.28	26.64	090
27111		A	Transfer of iliopsoas muscle	12.15	NA	NA	10.84	11.73	1.36	NA	NA	24.35	25.24	090
27120		A	Reconstruction of hip socket	18.01	NA	NA	13.29	16.47	1.96	NA	NA	33.26	36.44	090
27122		A	Reconstruction of hip socket	14.98	NA	NA	12.99	15.44	1.63	NA	NA	29.60	32.05	090

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
27125		A	Partial hip replacement	14.69	NA	NA	12.48	15.01	1.59	NA	NA	28.76	31.29	090
27130		A	Total hip replacement	20.12	NA	NA	16.13	20.08	2.19	NA	NA	38.44	42.39	090
27132		A	Total hip replacement	23.30	NA	NA	17.69	22.76	2.53	NA	NA	43.52	48.59	090
27134		A	Revise hip joint replacement	28.52	NA	NA	20.72	27.38	3.11	NA	NA	52.35	59.01	090
27137		A	Revise hip joint replacement	21.17	NA	NA	16.64	20.96	2.31	NA	NA	40.12	44.44	090
27138		A	Revise hip joint replacement	22.17	NA	NA	17.02	21.66	2.43	NA	NA	41.62	46.26	090
27140		A	Transplant of femur ridge	12.24	NA	NA	10.73	11.36	1.34	NA	NA	24.31	24.94	090
27146		A	Incision of hip bone	17.43	NA	NA	15.75	13.78	1.93	NA	NA	35.11	33.14	090
27147		A	Revision of hip bone	20.58	NA	NA	15.19	16.81	2.24	NA	NA	38.01	39.63	090
27151		A	Incision of hip bones	22.51	NA	NA	17.26	18.24	2.53	NA	NA	42.30	43.28	090
27156		A	Revision of hip bones	24.63	NA	NA	18.06	18.97	2.68	NA	NA	45.37	46.28	090
27158		A	Revision of pelvis	19.74	NA	NA	16.04	15.85	2.22	NA	NA	38.00	37.81	090
27161		A	Incision of neck of femur	16.71	NA	NA	14.12	14.83	1.82	NA	NA	32.65	33.36	090
27165		A	Incision/fixation of femur	17.91	NA	NA	13.57	15.88	1.95	NA	NA	33.43	35.74	090
27170		A	Repair/graft femur head/neck	16.07	NA	NA	12.87	15.34	1.77	NA	NA	30.71	33.18	090
27175		A	Treat slipped epiphysis	8.46	NA	NA	6.47	3.88	0.95	NA	NA	15.88	13.29	090
27176		A	Treat slipped epiphysis	12.05	NA	NA	8.70	9.99	1.22	NA	NA	21.97	23.26	090
27177		A	Repair slipped epiphysis	15.08	NA	NA	10.58	12.02	1.64	NA	NA	27.30	28.74	090
27178		A	Repair slipped epiphysis	11.99	NA	NA	12.91	12.13	1.08	NA	NA	25.98	25.20	090
27179		A	Revise head/neck of femur	12.98	NA	NA	9.36	10.73	1.44	NA	NA	23.78	25.15	090
27181		A	Repair slipped epiphysis	14.68	NA	NA	9.92	12.09	1.48	NA	NA	26.08	28.25	090
27185		A	Revision of femur epiphysis	9.18	NA	NA	8.60	5.81	0.86	NA	NA	18.64	15.85	090
27187		A	Reinforce hip bones	13.54	NA	NA	12.11	14.14	1.47	NA	NA	27.12	29.15	090
27193		A	Treat pelvic ring fracture	5.56	6.31	4.47	4.85	3.74	0.61	12.48	10.64	11.02	9.91	090
27194		A	Treat pelvic ring fracture	9.65	8.47	6.35	7.10	5.67	1.08	19.20	17.08	17.83	16.40	090
27200		A	Treat tail bone fracture	1.84	2.56	2.09	1.54	1.58	0.19	4.59	4.12	3.57	3.61	090
27202		A	Repair tail bone fracture	7.04	NA	NA	21.84	14.26	0.95	NA	NA	29.83	22.25	090
27215		A	Pelvic fracture(s) treatment	10.05	NA	NA	8.99	10.50	1.06	NA	NA	20.10	21.61	090
27216		A	Treat pelvic ring fracture	15.19	NA	NA	13.81	9.24	1.62	NA	NA	30.62	26.05	090
27217		A	Treat pelvic ring fracture	14.11	NA	NA	11.65	13.72	1.51	NA	NA	27.27	29.34	090
27218		A	Treat pelvic ring fracture	20.15	NA	NA	16.71	16.25	2.06	NA	NA	38.92	38.46	090
27220		A	Treat hip socket fracture	6.18	6.65	5.64	5.17	4.90	0.68	13.51	12.50	12.03	11.76	090
27222		A	Treat hip socket fracture	12.70	NA	NA	9.27	8.09	1.40	NA	NA	23.37	22.19	090
27226		A	Treat hip wall fracture	14.91	NA	NA	22.82	19.98	1.12	NA	NA	38.85	36.01	090
27227		A	Treat hip fracture(s)	23.45	NA	NA	15.86	18.62	2.67	NA	NA	41.98	44.74	090
27228		A	Treat hip fracture(s)	27.16	NA	NA	18.48	20.07	2.97	NA	NA	48.61	50.20	090
27230		A	Treat fracture of thigh	5.50	6.53	5.06	5.31	4.45	0.58	12.61	11.14	11.39	10.53	090
27232		A	Treat fracture of thigh	10.68	NA	NA	8.30	9.03	1.16	NA	NA	20.14	20.87	090
27235		A	Repair of thigh fracture	12.16	NA	NA	10.09	12.31	1.33	NA	NA	23.58	25.80	090
27236		A	Repair of thigh fracture	15.60	NA	NA	12.84	15.60	1.70	NA	NA	30.14	32.90	090
27238		A	Treatment of thigh fracture	5.52	NA	NA	5.38	5.36	0.59	NA	NA	11.49	11.47	090
27240		A	Treatment of thigh fracture	12.50	NA	NA	9.36	9.95	1.39	NA	NA	23.25	23.84	090
27244		A	Repair of thigh fracture	15.94	NA	NA	12.11	14.90	1.74	NA	NA	29.79	32.58	090
27245		A	Repair of thigh fracture	20.31	NA	NA	14.49	16.09	2.23	NA	NA	37.03	38.63	090
27246		A	Treatment of thigh fracture	4.71	6.25	5.23	5.05	4.63	0.52	11.48	10.46	10.28	9.86	090
27248		A	Repair of thigh fracture	10.45	NA	NA	9.03	10.76	1.12	NA	NA	20.60	22.33	090
27250		A	Treat hip dislocation	6.95	NA	NA	5.99	4.73	0.71	NA	NA	13.65	12.39	090
27252		A	Treat hip dislocation	10.39	NA	NA	7.53	6.12	1.14	NA	NA	19.06	17.65	090
27253		A	Repair of hip dislocation	12.92	NA	NA	10.05	12.16	1.42	NA	NA	24.39	26.50	090
27254		A	Repair of hip dislocation	18.26	NA	NA	12.64	13.63	1.96	NA	NA	32.86	33.85	090
27256		A	Treatment of hip dislocation	4.12	NA	NA	3.70	2.87	0.41	NA	NA	8.23	7.40	010
27257		A	Treatment of hip dislocation	5.22	NA	NA	4.12	4.57	0.55	NA	NA	9.89	10.34	010
27258		A	Repair of hip dislocation	15.43	NA	NA	12.68	13.79	1.68	NA	NA	29.79	30.90	090
27259		A	Repair of hip dislocation	21.55	NA	NA	14.51	16.59	2.18	NA	NA	38.24	40.32	090
27265		A	Treatment of hip dislocation	5.05	NA	NA	5.18	4.47	0.56	NA	NA	10.79	10.08	090
27266		A	Treatment of hip dislocation	7.49	NA	NA	6.53	5.68	0.83	NA	NA	14.85	14.00	090
27275		A	Manipulation of hip joint	2.27	NA	NA	2.99	2.52	0.25	NA	NA	5.51	5.04	010
27280		A	Fusion of sacroiliac joint	13.39	NA	NA	13.94	12.43	1.49	NA	NA	28.82	27.31	090
27282		A	Fusion of public bones	11.34	NA	NA	11.09	10.44	0.90	NA	NA	23.33	22.68	090
27284		A	Fusion of hip joint	16.76	NA	NA	15.78	15.76	1.74	NA	NA	34.28	34.26	090
27286		A	Fusion of hip joint	16.79	NA	NA	13.53	15.02	1.89	NA	NA	32.21	33.70	090
27290		A	Amputation of leg at hip	23.28	NA	NA	15.39	21.48	2.43	NA	NA	41.10	47.19	090
27295		A	Amputation of leg at hip	18.65	NA	NA	13.12	15.54	2.06	NA	NA	33.83	36.25	090
27299		C	Pelvis/hip joint surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
27301		A	Drain thigh/knee lesion	6.49	12.74	7.71	12.10	7.39	0.70	19.93	14.90	19.29	14.58	090
27303		A	Drainage of bone lesion	8.28	NA	NA	12.74	9.55	0.90	NA	NA	21.92	18.73	090
27305		A	Incise thigh tendon & fascia	5.92	NA	NA	8.35	6.24	0.67	NA	NA	14.94	12.83	090
27306		A	Incision of thigh tendon	4.62	NA	NA	6.17	4.17	0.51	NA	NA	11.30	9.30	090
27307		A	Incision of thigh tendons	5.80	NA	NA	6.77	5.02	0.64	NA	NA	13.21	11.46	090
27310		A	Exploration of knee joint	9.27	NA	NA	9.06	9.74	1.01	NA	NA	19.34	20.02	090
27315		A	Partial removal, thigh nerve	6.97	NA	NA	4.46	5.15	0.77	NA	NA	12.20	12.89	090
27320		A	Partial removal, thigh nerve	6.30	NA	NA	4.08	4.85	0.64	NA	NA	11.02	11.79	090
27323		A	Biopsy thigh soft tissues	2.28	4.17	2.58	2.94	1.72	0.15	6.60	5.01	5.37	4.15	010
27324		A	Biopsy thigh soft tissues	4.90	NA	NA	5.85	4.35	0.56	NA	NA	11.31	9.81	090
27327		A	Removal of thigh lesion	4.47	6.62	4.56	5.51	4.00	0.47	11.56	9.50	10.45	8.94	090
27328		A	Removal of thigh lesion	5.57	NA	NA	6.12	5.27	0.60	NA	NA	12.29	11.44	090
27329		A	Remove tumor, thigh/knee	14.14	NA	NA	12.85	12.77	1.47	NA	NA	28.46	28.38	090
27330		A	Biopsy knee joint lining	4.97	NA	NA	5.43	5.69	0.54	NA	NA	10.94	11.20	090
27331		A	Explore/treat knee joint	5.88	NA	NA	6.75	6.89	0.65	NA	NA	13.28	13.42	090
27332		A	Removal of knee cartilage	8.27	NA	NA	8.50	9.19	0.89	NA	NA	17.66	18.35	090
27333		A	Removal of knee cartilage	7.30	NA	NA	7.77	8.24	0.79	NA	NA	15.86	16.33	090
27334		A	Remove knee joint lining	8.70	NA	NA	8.70	9.55	0.95	NA	NA	18.35	19.20	090
27335		A	Remove knee joint lining	10.00	NA	NA	9.81	10.88	1.09	NA	NA	20.90	21.97	090
27340		A	Removal of kneecap bursa	4.18	NA	NA	4.98	4.58	0.46	NA	NA	9.62	9.22	090

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[4] PE RVUs = Practice Expense Relative Value Units.
[5] # indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
27345		A	Removal of knee cyst	5.92	NA	NA	7.11	6.61	0.65	NA	NA	13.68	13.18	090
27347		A	Remove knee cyst	5.78	2.46	2.46	2.46	2.46	0.63	8.87	8.87	8.87	8.87	090
27350		A	Removal of kneecap	8.17	NA	NA	8.26	9.01	0.90	NA	NA	17.33	18.08	090
27355		A	Remove femur lesion	7.65	NA	NA	9.10	8.67	0.84	NA	NA	17.59	17.16	090
27356		A	Remove femur lesion/graft	9.48	NA	NA	10.52	9.71	1.04	NA	NA	21.04	20.23	090
27357		A	Remove femur lesion/graft	10.53	NA	NA	10.41	9.98	1.16	NA	NA	22.10	21.67	090
27358		A	Remove femur lesion/fixation	4.74	NA	NA	2.53	3.74	0.52	NA	NA	7.79	9.00	ZZZ
27360		A	Partial removal leg bone(s)	10.50	NA	NA	16.27	12.78	1.15	NA	NA	27.92	24.43	090
27365		A	Extensive leg surgery	16.27	NA	NA	13.15	14.14	1.73	NA	NA	31.15	32.14	090
27370		A	Injection for knee x-ray	0.96	10.59	5.62	0.26	0.46	0.05	11.60	6.63	1.27	1.47	000
27372		A	Removal of foreign body	5.07	6.82	5.27	5.69	4.70	0.54	12.43	10.88	11.30	10.31	090
27380		A	Repair of kneecap tendon	7.16	NA	NA	7.72	8.14	0.79	NA	NA	15.67	16.09	090
27381		A	Repair/graft kneecap tendon	10.34	NA	NA	9.26	10.75	1.15	NA	NA	20.75	22.24	090
27385		A	Repair of thigh muscle	7.76	NA	NA	8.12	8.70	0.85	NA	NA	16.73	17.31	090
27386		A	Repair/graft of thigh muscle	10.56	NA	NA	10.10	11.36	1.15	NA	NA	21.81	23.07	090
27390		A	Incision of thigh tendon	5.33	NA	NA	6.93	5.83	0.59	NA	NA	12.85	11.75	090
27391		A	Incision of thigh tendons	7.20	NA	NA	7.77	6.83	0.80	NA	NA	15.77	14.83	090
27392		A	Incision of thigh tendons	9.20	NA	NA	9.69	9.01	1.00	NA	NA	19.89	19.21	090
27393		A	Lengthening of thigh tendon	6.39	NA	NA	8.42	7.29	0.68	NA	NA	15.49	14.36	090
27394		A	Lengthening of thigh tendons	8.50	NA	NA	9.35	7.79	0.93	NA	NA	18.78	17.22	090
27395		A	Lengthening of thigh tendons	11.73	NA	NA	12.38	11.88	1.28	NA	NA	25.39	24.89	090
27396		A	Transplant of thigh tendon	7.86	NA	NA	9.02	8.34	0.87	NA	NA	17.75	17.07	090
27397		A	Transplants of thigh tendons	11.28	NA	NA	10.43	10.04	1.27	NA	NA	22.98	22.59	090
27400		A	Revise thigh muscles/tendons	9.02	NA	NA	9.46	9.01	0.97	NA	NA	19.45	19.00	090
27403		A	Repair of knee cartilage	8.33	NA	NA	8.02	8.78	0.91	NA	NA	17.26	18.02	090
27405		A	Repair of knee ligament	8.65	NA	NA	8.76	9.55	0.95	NA	NA	18.36	19.15	090
27407		A	Repair of knee ligament	10.28	NA	NA	10.18	9.91	1.08	NA	NA	21.54	21.27	090
27409		A	Repair of knee ligaments	12.90	NA	NA	11.93	13.67	1.44	NA	NA	26.27	28.01	090
27418		A	Repair degenerated kneecap	10.85	NA	NA	10.35	11.66	1.19	NA	NA	22.39	23.70	090
27420		A	Revision of unstable kneecap	9.83	NA	NA	9.23	10.48	1.06	NA	NA	20.12	21.37	090
27422		A	Revision of unstable kneecap	9.78	NA	NA	9.02	10.35	1.07	NA	NA	19.87	21.20	090
27424		A	Revision/removal of kneecap	9.81	NA	NA	8.69	10.20	1.09	NA	NA	19.59	21.10	090
27425		A	Lateral retinacular release	5.22	NA	NA	6.52	6.38	0.57	NA	NA	12.31	12.17	090
27427		A	Reconstruction, knee	9.36	NA	NA	8.62	9.90	1.01	NA	NA	18.99	20.27	090
27428		A	Reconstruction, knee	14.00	NA	NA	12.52	13.68	1.51	NA	NA	28.03	29.19	090
27429		A	Reconstruction, knee	15.52	NA	NA	12.52	12.38	1.67	NA	NA	29.71	29.57	090
27430		A	Revision of thigh muscles	9.67	NA	NA	8.80	9.48	1.03	NA	NA	19.50	20.18	090
27435		A	Incision of knee joint	9.49	NA	NA	8.48	8.06	1.05	NA	NA	19.02	18.60	090
27437		A	Revise kneecap	8.46	NA	NA	9.95	10.03	0.90	NA	NA	19.31	19.39	090
27438		A	Revise kneecap with implant	11.23	NA	NA	10.21	11.81	1.22	NA	NA	22.66	24.26	090
27440		A	Revision of knee joint	10.43	NA	NA	23.64	18.05	0.72	NA	NA	34.79	29.20	090
27441		A	Revision of knee joint	10.82	NA	NA	22.27	16.10	0.80	NA	NA	33.89	27.72	090
27442		A	Revision of knee joint	11.89	NA	NA	10.73	12.47	1.31	NA	NA	23.93	25.67	090
27443		A	Revision of knee joint	10.93	NA	NA	10.43	11.74	1.20	NA	NA	22.56	23.87	090
27445		A	Revision of knee joint	17.68	NA	NA	13.64	17.38	1.96	NA	NA	33.28	37.02	090
27446		A	Revision of knee joint	15.84	NA	NA	13.82	16.37	1.70	NA	NA	31.36	33.91	090
27447		A	Total knee replacement	21.48	NA	NA	16.21	20.93	2.33	NA	NA	40.02	44.74	090
27448		A	Incision of thigh	11.06	NA	NA	10.74	11.98	1.20	NA	NA	23.00	24.24	090
27450		A	Incision of thigh	13.98	NA	NA	12.53	14.32	1.52	NA	NA	28.03	29.82	090
27454		A	Realignment of thigh bone	17.56	NA	NA	14.78	15.91	1.89	NA	NA	34.23	35.36	090
27455		A	Realignment of knee	12.82	NA	NA	12.13	12.58	1.34	NA	NA	26.29	26.74	090
27457		A	Realignment of knee	13.45	NA	NA	10.79	12.61	1.47	NA	NA	25.71	27.53	090
27465		A	Shortening of thigh bone	13.87	NA	NA	12.36	12.82	1.54	NA	NA	27.77	28.23	090
27466		A	Lengthening of thigh bone	16.33	NA	NA	14.59	14.59	1.80	NA	NA	32.72	32.72	090
27468		A	Shorten/lengthen thighs	18.97	NA	NA	13.16	15.72	2.06	NA	NA	34.19	36.75	090
27470		A	Repair of thigh	16.07	NA	NA	14.54	16.32	1.75	NA	NA	32.36	34.14	090
27472		A	Repair/graft of thigh	17.72	NA	NA	15.31	18.23	1.94	NA	NA	34.97	37.89	090
27475		A	Surgery to stop leg growth	8.64	NA	NA	8.85	8.63	0.92	NA	NA	18.41	18.19	090
27477		A	Surgery to stop leg growth	9.85	NA	NA	9.34	10.55	1.03	NA	NA	20.22	21.43	090
27479		A	Surgery to stop leg growth	12.80	NA	NA	10.02	11.32	1.44	NA	NA	24.26	25.56	090
27485		A	Surgery to stop leg growth	8.84	NA	NA	9.21	8.90	0.95	NA	NA	19.00	18.69	090
27486		A	Revise knee joint replace	19.27	NA	NA	15.09	19.05	2.09	NA	NA	36.45	40.41	090
27487		A	Revise knee joint replace	25.27	NA	NA	18.50	24.32	2.73	NA	NA	46.50	52.32	090
27488		A	Removal of knee prosthesis	15.74	NA	NA	13.16	15.35	1.72	NA	NA	30.62	32.81	090
27495		A	Reinforce thigh	15.55	NA	NA	14.30	16.44	1.69	NA	NA	31.54	33.68	090
27496		A	Decompression of thigh/knee	6.11	NA	NA	7.55	6.24	0.70	NA	NA	14.36	13.05	090
27497		A	Decompression of thigh/knee	7.17	NA	NA	6.92	6.47	0.80	NA	NA	14.89	14.44	090
27498		A	Decompression of thigh/knee	7.99	NA	NA	7.97	7.42	0.91	NA	NA	16.87	16.32	090
27499		A	Decompression of thigh/knee	9.00	NA	NA	7.80	7.85	0.99	NA	NA	17.79	17.84	090
27500		A	Treatment of thigh fracture	5.92	13.17	9.52	6.38	6.13	0.64	19.73	16.08	12.94	12.69	090
27501		A	Treatment of thigh fracture	5.92	14.17	10.02	7.26	6.57	0.66	20.75	16.60	13.84	13.15	090
27502		A	Treatment of thigh fracture	10.58	NA	NA	9.72	9.02	1.17	NA	NA	21.47	20.77	090
27503		A	Treatment of thigh fracture	10.58	NA	NA	9.81	9.07	1.17	NA	NA	21.56	20.82	090
27506		A	Repair of thigh fracture	17.45	NA	NA	13.34	15.37	1.91	NA	NA	32.70	34.73	090
27507		A	Treatment of thigh fracture	13.99	NA	NA	11.52	14.11	1.53	NA	NA	27.04	29.63	090
27508		A	Treatment of thigh fracture	5.83	8.66	6.62	4.92	4.75	0.64	15.13	13.09	11.39	11.22	090
27509		A	Treatment of thigh fracture	7.71	NA	NA	8.16	6.37	0.86	NA	NA	16.73	14.94	090
27510		A	Treatment of thigh fracture	9.13	NA	NA	6.71	7.06	1.00	NA	NA	16.84	17.19	090
27511		A	Treatment of thigh fracture	13.64	NA	NA	12.24	14.26	1.49	NA	NA	27.37	29.39	090
27513		A	Treatment of thigh fracture	17.92	NA	NA	14.49	15.94	1.96	NA	NA	34.37	35.82	090
27514		A	Repair of thigh fracture	17.30	NA	NA	13.63	15.37	1.89	NA	NA	32.82	34.56	090
27516		A	Repair of thigh growth plate	5.37	9.25	7.24	5.17	5.20	0.59	15.21	13.20	11.13	11.16	090
27517		A	Repair of thigh growth plate	8.78	10.27	9.38	7.17	7.83	0.96	20.01	19.12	16.91	17.57	090
27519		A	Repair of thigh growth plate	15.02	NA	NA	12.51	13.14	1.62	NA	NA	29.15	29.78	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
27520		A	Treat kneecap fracture	2.86	7.01	5.16	3.38	2.52	0.31	10.18	8.33	6.55	5.69	090
27524		A	Repair of kneecap fracture	10.00	NA	NA	8.15	9.69	1.09	NA	NA	19.24	20.78	090
27530		A	Treatment of knee fracture	3.78	7.51	5.60	3.85	3.77	0.41	11.70	9.79	8.04	7.96	090
27532		A	Treatment of knee fracture	7.30	6.76	6.46	5.36	5.76	0.81	14.87	14.57	13.47	13.87	090
27535		A	Treatment of knee fracture	11.50	NA	NA	11.19	11.94	1.26	NA	NA	23.95	24.70	090
27536		A	Repair of knee fracture	15.65	NA	NA	11.06	11.88	1.72	NA	NA	28.43	29.25	090
27538		A	Treat knee fracture(s)	4.87	8.91	6.29	5.02	4.34	0.53	14.31	11.69	10.42	9.74	090
27540		A	Repair of knee fracture	13.10	NA	NA	9.81	10.85	1.42	NA	NA	24.33	25.37	090
27550		A	Treat knee dislocation	5.76	8.58	5.69	5.27	4.03	0.60	14.94	12.05	11.63	10.39	090
27552		A	Treat knee dislocation	7.90	NA	NA	6.98	5.35	0.87	NA	NA	15.75	14.12	090
27556		A	Repair of knee dislocation	14.41	NA	NA	12.74	13.14	1.62	NA	NA	28.77	29.17	090
27557		A	Repair of knee dislocation	16.77	NA	NA	14.64	15.24	1.84	NA	NA	33.25	33.85	090
27558		A	Repair of knee dislocation	17.72	NA	NA	14.07	14.96	1.87	NA	NA	33.66	34.55	090
27560		A	Treat kneecap dislocation	3.82	7.80	4.68	3.85	2.70	0.38	12.00	8.88	8.05	6.90	090
27562		A	Treat kneecap dislocation	5.79	NA	NA	4.98	5.30	0.62	NA	NA	11.39	11.71	090
27566		A	Repair kneecap dislocation	12.23	NA	NA	9.36	10.42	1.35	NA	NA	22.94	24.00	090
27570		A	Fixation of knee joint	1.74	NA	NA	2.80	2.34	0.19	NA	NA	4.73	4.27	010
27580		A	Fusion of knee	13.37	NA	NA	15.77	16.41	2.11	NA	NA	37.25	37.89	090
27590		A	Amputate leg at thigh	12.03	NA	NA	11.15	10.52	1.36	NA	NA	24.54	23.91	090
27591		A	Amputate leg at thigh	12.68	NA	NA	12.38	12.58	1.42	NA	NA	26.48	26.68	090
27592		A	Amputate leg at thigh	10.02	NA	NA	10.64	9.72	1.13	NA	NA	21.79	20.87	090
27594		A	Amputation follow-up surgery	6.92	NA	NA	7.57	5.77	0.78	NA	NA	15.27	13.47	090
27596		A	Amputation follow-up surgery	10.60	NA	NA	10.61	9.31	1.20	NA	NA	22.41	21.11	090
27598		A	Amputate lower leg at knee	10.53	NA	NA	9.92	10.41	1.15	NA	NA	21.60	22.09	090
27599		C	Leg surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
27600		A	Decompression of lower leg	5.65	NA	NA	6.91	5.30	0.68	NA	NA	13.24	11.63	090
27601		A	Decompression of lower leg	5.64	NA	NA	6.36	5.02	0.66	NA	NA	12.66	11.32	090
27602		A	Decompression of lower leg	7.35	NA	NA	7.19	5.80	0.89	NA	NA	15.43	14.04	090
27603		A	Drain lower leg lesion	4.94	12.62	7.60	8.39	5.49	0.52	18.08	13.06	13.85	10.95	090
27604		A	Drain lower leg bursa	4.47	9.36	5.24	7.17	3.87	0.40	14.23	10.11	12.04	8.74	090
27605		A	Incision of achilles tendon	2.87	9.90	5.59	3.53	2.41	0.30	13.07	8.76	6.70	5.58	010
27606		A	Incision of achilles tendon	4.14	9.12	5.71	4.45	3.38	0.45	13.71	10.30	9.04	7.97	010
27607		A	Treat lower leg bone lesion	7.97	NA	NA	12.35	9.44	0.85	NA	NA	21.17	18.26	090
27610		A	Explore/treat ankle joint	8.34	NA	NA	8.82	8.44	0.89	NA	NA	18.05	17.67	090
27612		A	Exploration of ankle joint	7.33	NA	NA	7.41	8.03	0.72	NA	NA	15.46	16.08	090
27613		A	Biopsy lower leg soft tissue	2.17	4.32	2.53	2.68	1.53	0.14	6.63	4.84	4.99	3.84	010
27614		A	Biopsy lower leg soft tissue	5.66	8.97	5.71	6.14	4.30	0.59	15.22	11.96	12.39	10.55	090
27615		A	Remove tumor, lower leg	12.56	NA	NA	13.45	11.19	1.32	NA	NA	27.33	25.07	090
27618		A	Remove lower leg lesion	5.09	9.18	5.73	5.73	4.01	0.50	14.77	11.32	11.32	9.60	090
27619		A	Remove lower leg lesion	8.40	10.65	7.57	7.86	6.17	0.85	19.90	16.82	17.11	15.42	090
27620		A	Explore, treat ankle joint	5.98	NA	NA	7.06	6.80	0.62	NA	NA	13.66	13.40	090
27625		A	Remove ankle joint lining	8.30	NA	NA	8.83	9.14	0.83	NA	NA	17.96	18.27	090
27626		A	Remove ankle joint lining	8.91	NA	NA	9.19	9.92	0.94	NA	NA	19.04	19.77	090
27630		A	Removal of tendon lesion	4.80	8.62	5.99	5.85	4.61	0.48	13.90	11.27	11.13	9.89	090
27635		A	Remove lower leg bone lesion	7.78	NA	NA	9.50	9.12	0.84	NA	NA	18.12	17.74	090
27637		A	Remove/graft leg bone lesion	9.85	NA	NA	11.54	10.37	1.08	NA	NA	22.47	21.30	090
27638		A	Remove/graft leg bone lesion	10.57	NA	NA	12.40	11.17	1.14	NA	NA	24.11	22.88	090
27640		A	Partial removal of tibia	11.37	NA	NA	15.26	12.96	1.21	NA	NA	27.84	25.54	090
27641		A	Partial removal of fibula	9.24	NA	NA	14.95	11.35	0.97	NA	NA	25.16	21.56	090
27645		A	Extensive lower leg surgery	14.17	NA	NA	15.21	13.92	1.56	NA	NA	30.94	29.65	090
27646		A	Extensive lower leg surgery	12.66	NA	NA	13.28	12.48	1.31	NA	NA	27.25	26.45	090
27647		A	Extensive ankle/heel surgery	12.24	NA	NA	9.98	10.39	1.10	NA	NA	23.32	23.73	090
27648		A	Injection for ankle x-ray	0.96	9.72	5.14	0.28	0.42	0.05	10.73	6.15	1.29	1.43	000
27650		A	Repair achilles tendon	9.69	NA	NA	8.64	9.20	1.01	NA	NA	19.34	19.90	090
27652		A	Repair/graft achilles tendon	10.33	NA	NA	8.41	9.86	1.05	NA	NA	19.79	21.24	090
27654		A	Repair of achilles tendon	10.02	NA	NA	9.01	10.44	0.96	NA	NA	19.99	21.42	090
27656		A	Repair leg fascia defect	4.57	10.38	6.92	5.44	4.45	0.46	15.41	11.95	10.47	9.48	090
27658		A	Repair of leg tendon, each	4.98	7.59	5.98	7.59	5.98	0.49	13.06	11.45	13.06	11.45	090
27659		A	Repair of leg tendon, each	6.81	6.93	6.65	6.93	6.65	0.66	14.40	14.12	14.40	14.12	090
27664		A	Repair of leg tendon, each	4.59	11.30	7.50	7.56	5.63	0.49	16.38	12.58	12.64	10.71	090
27665		A	Repair of leg tendon, each	5.40	10.27	7.82	7.91	6.64	0.56	16.23	13.78	13.87	12.60	090
27675		A	Repair lower leg tendons	7.18	NA	NA	8.00	7.48	0.74	NA	NA	15.92	15.40	090
27676		A	Repair lower leg tendons	8.42	NA	NA	7.47	7.84	0.78	NA	NA	16.67	17.04	090
27680		A	Release of lower leg tendon	5.74	NA	NA	7.39	5.93	0.58	NA	NA	13.71	12.25	090
27681		A	Release of lower leg tendons	6.82	NA	NA	7.95	7.22	0.72	NA	NA	15.49	14.76	090
27685		A	Revision of lower leg tendon	6.50	7.11	5.64	7.11	5.64	0.61	14.22	12.75	14.22	12.75	090
27686		A	Revise lower leg tendons	7.46	7.88	7.50	7.88	7.50	0.79	16.13	15.75	16.13	15.75	090
27687		A	Revision of calf tendon	6.24	NA	NA	6.95	6.43	0.61	NA	NA	13.80	13.28	090
27690		A	Revise lower leg tendon	8.71	NA	NA	8.26	7.79	0.82	NA	NA	17.79	17.32	090
27691		A	Revise lower leg tendon	9.96	NA	NA	9.95	9.26	1.01	NA	NA	20.92	20.23	090
27692		A	Revise additional leg tendon	1.87	NA	NA	0.98	1.59	0.20	NA	NA	3.05	3.66	ZZZ
27695		A	Repair of ankle ligament	6.51	NA	NA	8.06	7.92	0.67	NA	NA	15.24	15.10	090
27696		A	Repair of ankle ligaments	8.27	NA	NA	8.08	7.87	0.82	NA	NA	17.17	16.96	090
27698		A	Repair of ankle ligament	9.36	NA	NA	8.43	9.81	0.90	NA	NA	18.69	20.07	090
27700		A	Revision of ankle joint	9.29	NA	NA	6.60	8.85	0.72	NA	NA	16.61	18.86	090
27702		A	Reconstruct ankle joint	13.67	NA	NA	11.85	14.09	1.51	NA	NA	27.03	29.27	090
27703		A	Reconstruction, ankle joint	15.87	NA	NA	10.30	12.65	1.42	NA	NA	27.59	29.94	090
27704		A	Removal of ankle implant	7.62	NA	NA	14.72	10.53	0.70	NA	NA	23.04	18.85	090
27705		A	Incision of tibia	10.38	NA	NA	10.09	10.88	1.13	NA	NA	21.60	22.39	090
27707		A	Incision of fibula	4.37	NA	NA	7.10	6.13	0.48	NA	NA	11.95	10.98	090
27709		A	Incision of tibia & fibula	9.95	NA	NA	10.34	11.11	1.09	NA	NA	21.38	22.15	090
27712		A	Realignment of lower leg	14.25	NA	NA	11.91	11.92	1.57	NA	NA	27.73	27.74	090
27715		A	Revision of lower leg	14.39	NA	NA	14.11	13.90	1.56	NA	NA	30.06	29.85	090
27720		A	Repair of tibia	11.79	NA	NA	12.41	13.25	1.27	NA	NA	25.47	26.31	090

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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
27722		A	Repair/graft of tibia	11.82	NA	NA	12.60	12.00	1.24	NA	NA	25.66	25.06	090
27724		A	Repair/graft of tibia	14.99	NA	NA	13.92	15.37	1.64	NA	NA	30.55	32.00	090
27725		A	Repair of lower leg	15.59	NA	NA	13.27	12.30	1.69	NA	NA	30.55	29.58	090
27727		A	Repair of lower leg	14.01	NA	NA	10.88	10.53	1.52	NA	NA	26.41	26.06	090
27730		A	Repair of tibia epiphysis	7.41	15.79	9.85	8.24	6.07	0.80	24.00	18.06	16.45	14.28	090
27732		A	Repair of fibula epiphysis	5.32	11.67	8.46	6.74	6.00	0.57	17.56	14.35	12.63	11.89	090
27734		A	Repair lower leg epiphyses	8.48	NA	NA	7.91	8.05	0.82	NA	NA	17.21	17.35	090
27740		A	Repair of leg epiphyses	9.30	3.55	6.31	3.55	6.31	1.04	13.89	16.65	13.89	16.65	090
27742		A	Repair of leg epiphyses	10.30	13.57	11.83	8.91	9.50	1.00	24.87	23.13	20.21	20.80	090
27745		A	Reinforce tibia	10.07	NA	NA	10.50	10.12	1.08	NA	NA	21.65	21.27	090
27750		A	Treatment of tibia fracture	3.19	7.14	5.44	3.51	3.63	0.35	10.68	8.98	7.05	7.17	090
27752		A	Treatment of tibia fracture	5.84	9.43	7.48	5.53	5.53	0.65	15.92	13.97	12.02	12.02	090
27756		A	Repair of tibia fracture	6.78	NA	NA	9.44	8.77	0.74	NA	NA	16.96	16.29	090
27758		A	Repair of tibia fracture	11.67	NA	NA	11.13	12.53	1.27	NA	NA	24.07	25.47	090
27759		A	Repair of tibia fracture	13.76	NA	NA	12.21	13.56	1.50	NA	NA	27.47	28.82	090
27760		A	Treatment of ankle fracture	3.01	6.84	4.82	3.39	2.40	0.32	10.17	8.15	6.72	5.73	090
27762		A	Treatment of ankle fracture	5.25	8.79	6.22	5.11	4.38	0.57	14.61	12.04	10.93	10.20	090
27766		A	Repair of ankle fracture	8.36	NA	NA	7.74	8.14	0.92	NA	NA	17.02	17.42	090
27780		A	Treatment of fibula fracture	2.65	4.65	3.40	3.23	2.15	0.28	7.58	6.33	6.16	5.08	090
27781		A	Treatment of fibula fracture	4.40	7.95	5.76	4.01	3.79	0.47	12.82	10.63	8.88	8.66	090
27784		A	Repair of fibula fracture	7.11	NA	NA	7.71	6.89	0.77	NA	NA	15.59	14.77	090
27786		A	Treatment of ankle fracture	2.84	6.85	4.79	3.33	2.35	0.30	9.99	7.93	6.47	5.49	090
27788		A	Treatment of ankle fracture	4.45	7.91	5.73	4.16	2.97	0.48	12.84	10.66	9.09	7.90	090
27792		A	Repair of ankle fracture	7.66	NA	NA	7.40	7.71	0.83	NA	NA	15.89	16.20	090
27808		A	Treatment of ankle fracture	2.83	7.68	5.36	3.95	3.49	0.31	10.82	8.50	7.09	6.63	090
27810		A	Treatment of ankle fracture	5.13	8.96	7.22	5.13	5.31	0.56	14.65	12.91	10.82	11.00	090
27814		A	Repair of ankle fracture	10.68	NA	NA	9.82	10.34	1.17	NA	NA	21.67	22.19	090
27816		A	Treatment of ankle fracture	2.89	7.41	5.59	3.99	3.72	0.30	10.60	8.78	7.18	6.91	090
27818		A	Treatment of ankle fracture	5.50	9.14	7.86	5.26	5.92	0.60	15.24	13.96	11.36	12.02	090
27822		A	Repair of ankle fracture	9.20	NA	NA	33.97	22.48	1.01	NA	NA	44.18	32.69	090
27823		A	Repair of ankle fracture	11.80	NA	NA	34.72	24.30	1.29	NA	NA	47.81	37.39	090
27824		A	Treat lower leg fracture	2.89	7.52	5.65	4.00	3.73	0.31	10.72	8.85	7.20	6.93	090
27825		A	Treat lower leg fracture	6.19	9.67	8.37	5.84	6.46	0.69	16.55	15.25	12.72	13.34	090
27826		A	Treat lower leg fracture	8.54	NA	NA	32.89	21.54	0.93	NA	NA	42.36	31.01	090
27827		A	Treat lower leg fracture	14.06	NA	NA	37.65	25.18	1.54	NA	NA	53.25	40.78	090
27828		A	Treat lower leg fracture	16.23	NA	NA	37.29	25.59	1.78	NA	NA	55.30	43.60	090
27829		A	Treat lower leg joint	5.49	NA	NA	25.17	15.86	0.60	NA	NA	31.26	21.95	090
27830		A	Treat lower leg dislocation	3.79	6.75	5.14	3.89	3.71	0.41	10.95	9.34	8.09	7.91	090
27831		A	Treat lower leg dislocation	4.56	NA	NA	4.90	4.61	0.49	NA	NA	9.95	9.66	090
27832		A	Repair lower leg dislocation	6.49	NA	NA	6.96	6.58	0.73	NA	NA	14.18	13.80	090
27840		A	Treat ankle dislocation	4.58	NA	NA	5.07	3.55	0.47	NA	NA	10.12	8.60	090
27842		A	Treat ankle dislocation	6.21	NA	NA	4.59	3.50	0.67	NA	NA	11.47	10.38	090
27846		A	Repair ankle dislocation	9.79	NA	NA	10.32	9.82	1.02	NA	NA	21.13	20.63	090
27848		A	Repair ankle dislocation	11.20	NA	NA	27.84	18.46	1.23	NA	NA	40.27	30.89	090
27860		A	Fixation of ankle joint	2.34	NA	NA	3.20	2.36	0.24	NA	NA	5.78	4.94	010
27870		A	Fusion of ankle joint	13.91	NA	NA	12.74	13.61	1.50	NA	NA	28.15	29.02	090
27871		A	Fusion of tibiofibular joint	9.17	NA	NA	9.61	9.03	0.98	NA	NA	19.76	19.18	090
27880		A	Amputation of lower leg	11.85	NA	NA	10.86	9.97	1.33	NA	NA	24.04	23.15	090
27881		A	Amputation of lower leg	12.34	NA	NA	11.94	11.84	1.39	NA	NA	25.67	25.57	090
27882		A	Amputation of lower leg	8.94	NA	NA	10.49	9.24	1.02	NA	NA	20.45	19.20	090
27884		A	Amputation follow-up surgery	8.21	NA	NA	9.15	6.41	0.93	NA	NA	18.29	15.55	090
27886		A	Amputation follow-up surgery	9.32	NA	NA	9.46	8.62	1.06	NA	NA	19.84	19.00	090
27888		A	Amputation of foot at ankle	9.67	NA	NA	9.71	10.01	1.07	NA	NA	20.45	20.75	090
27889		A	Amputation of foot at ankle	9.98	NA	NA	9.35	9.25	1.13	NA	NA	20.46	20.36	090
27892		A	Decompression of leg	7.39	NA	NA	6.87	5.28	0.84	NA	NA	15.10	13.51	090
27893		A	Decompression of leg	7.35	NA	NA	9.82	6.75	0.70	NA	NA	17.87	14.80	090
27894		A	Decompression of leg	10.49	NA	NA	8.24	6.32	1.17	NA	NA	19.90	17.98	090
27899		C	Leg/ankle surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
28001		A	Drainage of bursa of foot	2.73	4.09	2.33	2.70	1.49	0.20	7.02	5.26	5.63	4.42	010
28002		A	Treatment of foot infection	4.62	5.09	3.77	3.72	3.08	0.40	10.11	8.79	8.74	8.10	010
28003		A	Treatment of foot infection	8.41	8.34	6.07	8.34	5.12	0.70	17.45	15.18	17.45	14.23	090
28005		A	Treat foot bone lesion	8.68	NA	NA	8.70	6.57	0.79	NA	NA	18.17	16.04	090
28008		A	Incision of foot fascia	4.45	5.97	4.44	4.71	3.81	0.33	10.75	9.22	9.49	8.59	090
28010		A	Incision of toe tendon	2.84	5.16	4.55	3.78	2.88	0.20	8.20	7.59	6.82	5.92	090
28011		A	Incision of toe tendons	4.14	6.64	4.28	5.41	3.19	0.36	11.14	8.78	9.91	7.89	090
28020		A	Exploration of a foot joint	5.01	7.65	6.22	5.55	5.17	0.43	13.09	11.66	10.99	10.61	090
28022		A	Exploration of a foot joint	4.67	5.62	4.30	4.98	3.24	0.38	10.67	9.35	10.03	8.29	090
28024		A	Exploration of a toe joint	4.38	5.98	4.29	5.18	3.24	0.34	10.70	9.01	9.90	7.96	090
28030		A	Removal of foot nerve	6.15	NA	NA	3.19	3.73	0.45	NA	NA	9.79	10.33	090
28035		A	Decompression of tibia nerve	5.09	7.53	7.12	4.80	5.44	0.45	13.07	12.66	10.34	10.98	090
28043		A	Excision of foot lesion	3.54	5.47	3.68	4.21	3.05	0.29	9.30	7.51	8.04	6.88	090
28045		A	Excision of foot lesion	4.72	5.96	5.15	4.74	4.54	0.39	11.07	10.26	9.85	9.65	090
28046		A	Resection of tumor, foot	10.18	9.21	7.51	8.58	7.20	0.88	20.27	18.57	19.64	18.26	090
28050		A	Biopsy of foot joint lining	4.25	6.57	5.37	4.61	4.39	0.36	11.18	9.98	9.22	9.00	090
28052		A	Biopsy of foot joint lining	3.94	5.56	4.86	4.99	3.54	0.35	9.85	9.15	9.28	7.83	090
28054		A	Biopsy of toe joint lining	3.45	5.86	4.15	4.86	3.65	0.30	9.61	7.90	8.61	7.40	090
28060		A	Partial removal foot fascia	5.23	6.31	5.45	5.28	4.93	0.41	11.95	11.09	10.92	10.57	090
28062		A	Removal of foot fascia	6.52	6.92	7.29	5.10	6.38	0.48	13.92	14.29	12.10	13.38	090
28070		A	Removal of foot joint lining	5.10	5.56	5.21	5.06	4.96	0.40	11.06	10.71	10.56	10.46	090
28072		A	Removal of foot joint lining	4.58	5.67	4.58	5.61	4.55	0.44	10.69	9.60	10.63	9.57	090
28080		A	Removal of foot lesion	3.58	5.55	4.99	4.35	4.39	0.28	9.41	8.85	8.21	8.25	090
28086		A	Excise foot tendon sheath	4.78	6.92	5.16	6.92	5.16	0.50	12.20	10.44	12.20	10.44	090
28088		A	Excise foot tendon sheath	3.86	7.32	5.63	5.42	4.68	0.37	11.55	9.86	9.65	8.91	090
28090		A	Removal of foot lesion	4.41	5.80	4.54	4.55	3.92	0.35	10.56	9.30	9.31	8.68	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
28092		A	Removal of toe lesions	3.64	6.04	4.12	4.90	3.55	0.30	9.98	8.06	8.84	7.49	090
28100		A	Removal of ankle/heel lesion	5.66	8.64	6.81	6.49	5.73	0.52	14.82	12.99	12.67	11.91	090
28102		A	Remove/graft foot lesion	7.73	NA	NA	8.41	7.92	0.77	NA	NA	16.91	16.42	090
28103		A	Remove/graft foot lesion	6.50	7.53	6.81	6.48	6.29	0.56	14.59	13.87	13.54	13.35	090
28104		A	Removal of foot lesion	5.12	6.29	5.50	5.66	5.18	0.42	11.83	11.04	11.20	10.72	090
28106		A	Remove/graft foot lesion	7.16	NA	NA	5.71	6.34	0.56	NA	NA	13.43	14.06	090
28107		A	Remove/graft foot lesion	5.56	6.03	5.65	5.21	5.24	0.43	12.02	11.64	11.20	11.23	090
28108		A	Removal of toe lesions	4.16	5.29	4.93	4.34	3.31	0.29	9.74	9.38	8.79	7.76	090
28110		A	Part removal of metatarsal	4.08	6.17	4.98	5.59	4.69	0.32	10.57	9.38	9.99	9.09	090
28111		A	Part removal of metatarsal	5.01	6.79	6.13	6.23	5.85	0.45	12.25	11.59	11.69	11.31	090
28112		A	Part removal of metatarsal	4.49	6.61	5.46	6.14	5.22	0.38	11.48	10.33	11.01	10.09	090
28113		A	Part removal of metatarsal	4.79	6.54	5.68	5.69	5.26	0.39	11.72	10.86	10.87	10.44	090
28114		A	Removal of metatarsal heads	9.79	10.28	10.12	9.71	9.83	0.88	20.95	20.79	20.38	20.50	090
28116		A	Revision of foot	7.75	6.60	6.28	6.11	6.03	0.60	14.95	14.63	14.46	14.38	090
28118		A	Removal of heel bone	5.96	6.68	6.44	6.12	6.16	0.51	13.15	12.91	12.59	12.63	090
28119		A	Removal of heel spur	5.39	6.22	6.06	5.00	5.45	0.40	12.01	11.85	10.79	11.24	090
28120		A	Part removal of ankle/heel	5.40	8.88	7.18	7.75	6.61	0.50	14.78	13.08	13.65	12.51	090
28122		A	Partial removal of foot bone	7.29	8.20	6.53	7.86	6.36	0.61	16.10	14.43	15.76	14.26	090
28124		A	Partial removal of toe	4.81	6.76	5.61	6.01	4.12	0.34	11.91	10.76	11.16	9.27	090
28126		A	Partial removal of toe	3.52	5.79	5.06	5.24	3.70	0.26	9.57	8.84	9.02	7.48	090
28130		A	Removal of ankle bone	8.11	NA	NA	8.14	7.89	0.81	NA	NA	17.06	16.81	090
28140		A	Removal of metatarsal	6.91	7.65	6.50	6.48	5.92	0.63	15.19	14.04	14.02	13.46	090
28150		A	Removal of toe	4.09	6.31	4.94	5.71	4.64	0.34	10.74	9.37	10.14	9.07	090
28153		A	Partial removal of toe	3.66	5.75	5.04	4.23	3.20	0.25	9.66	8.95	8.14	7.11	090
28160		A	Partial removal of toe	3.74	5.95	5.21	5.69	3.97	0.29	9.98	9.24	9.72	8.00	090
28171		A	Extensive foot surgery	9.60	NA	NA	6.75	7.71	0.67	NA	NA	17.02	17.98	090
28173		A	Extensive foot surgery	8.80	7.71	6.97	7.52	6.88	0.76	17.27	16.53	17.08	16.44	090
28175		A	Extensive foot surgery	6.05	7.41	6.63	5.31	5.58	0.44	13.90	13.12	11.80	12.07	090
28190		A	Removal of foot foreign body	1.96	4.80	2.68	3.42	1.85	0.14	6.90	4.78	5.52	3.95	010
28192		A	Removal of foot foreign body	4.64	6.30	4.21	4.73	3.43	0.39	11.33	9.24	9.76	8.46	090
28193		A	Removal of foot foreign body	5.73	7.00	4.79	5.58	4.08	0.45	13.18	10.97	11.76	10.26	090
28200		A	Repair of foot tendon	4.60	5.92	5.71	5.46	5.48	0.36	10.88	10.67	10.42	10.44	090
28202		A	Repair/graft of foot tendon	6.84	6.54	6.43	6.54	6.43	0.56	13.94	13.83	13.94	13.83	090
28208		A	Repair of foot tendon	4.37	5.66	4.36	4.77	3.91	0.33	10.36	9.06	9.47	8.61	090
28210		A	Repair/graft of foot tendon	6.35	6.73	6.41	5.45	5.77	0.49	13.57	13.25	12.29	12.61	090
28220		A	Release of foot tendon	4.53	5.74	4.97	4.55	3.33	0.31	10.58	9.81	9.39	8.17	090
28222		A	Release of foot tendons	5.62	6.17	6.56	5.48	4.48	0.40	12.19	12.58	11.50	10.50	090
28225		A	Release of foot tendon	3.66	5.52	4.05	4.36	3.47	0.27	9.45	7.98	8.29	7.40	090
28226		A	Release of foot tendons	4.53	5.98	4.83	4.91	4.29	0.35	10.86	9.71	9.79	9.17	090
28230		A	Incision of foot tendon(s)	4.24	5.70	4.17	5.36	3.34	0.33	10.27	8.74	9.93	7.91	090
28232		A	Incision of toe tendon	3.39	5.61	3.68	5.01	2.94	0.27	9.27	7.34	8.67	6.60	090
28234		A	Incision of foot tendon	3.37	5.84	3.75	4.78	2.81	0.25	9.46	7.37	8.40	6.43	090
28238		A	Revision of foot tendon	7.73	7.47	7.66	6.36	7.11	0.61	15.81	16.00	14.70	15.45	090
28240		A	Release of big toe	4.36	5.84	4.08	5.24	3.78	0.35	10.55	8.79	9.95	8.49	090
28250		A	Revision of foot fascia	5.92	6.33	5.59	5.26	5.05	0.45	12.70	11.96	11.63	11.42	090
28260		A	Release of midfoot joint	7.96	6.98	5.90	6.54	5.68	0.61	15.55	14.47	15.11	14.25	090
28261		A	Revision of foot tendon	11.73	8.64	7.53	8.29	7.35	0.90	21.27	20.16	20.92	19.98	090
28262		A	Revision of foot and ankle	15.83	10.48	11.71	10.48	11.71	1.59	27.90	29.13	27.90	29.13	090
28264		A	Release of midfoot joint	10.35	8.32	9.35	8.32	9.35	0.93	19.60	20.63	19.60	20.63	090
28270		A	Release of foot contracture	4.76	6.24	4.55	5.58	3.51	0.34	11.34	9.65	10.68	8.61	090
28272		A	Release of toe joint, each	3.80	5.36	3.79	4.41	2.76	0.26	9.42	7.85	8.47	6.82	090
28280		A	Fusion of toes	5.19	6.97	4.69	5.85	4.13	0.48	12.64	10.36	11.52	9.80	090
28285		A	Repair of hammertoe	4.59	6.20	5.47	5.55	5.15	0.34	11.13	10.40	10.48	10.08	090
28286		A	Repair of hammertoe	4.56	6.10	5.00	5.12	4.51	0.34	11.00	9.90	10.02	9.41	090
28288		A	Partial removal of foot bone	4.74	6.39	5.23	6.39	5.23	0.41	11.54	10.38	11.54	10.38	090
28289		A	Repair hallux rigidus	7.04	2.81	2.81	2.81	2.81	0.59	10.44	10.44	10.44	10.44	090
28290		A	Correction of bunion	5.66	7.02	6.42	7.02	6.42	0.49	13.17	12.57	13.17	12.57	090
28292		A	Correction of bunion	7.04	7.17	7.41	7.17	7.41	0.53	14.74	14.98	14.74	14.98	090
28293		A	Correction of bunion	9.15	8.12	9.24	6.68	8.52	0.66	17.93	19.05	16.49	18.33	090
28294		A	Correction of bunion	8.56	8.05	9.00	6.24	8.09	0.60	17.21	18.16	15.40	17.25	090
28296		A	Correction of bunion	9.18	8.11	8.84	7.51	8.54	0.70	17.99	18.72	17.39	18.42	090
28297		A	Correction of bunion	9.18	7.86	8.83	7.86	8.83	0.79	17.83	18.80	17.83	18.80	090
28298		A	Correction of bunion	7.94	7.48	8.48	6.67	8.07	0.58	16.00	17.00	15.19	16.59	090
28299		A	Correction of bunion	8.88	7.79	9.20	6.88	8.74	0.65	17.32	18.73	16.41	18.27	090
28300		A	Incision of heel bone	9.54	13.87	10.48	8.59	7.84	0.93	24.34	20.95	19.06	18.31	090
28302		A	Incision of ankle bone	9.55	7.31	8.48	7.31	8.48	0.83	17.69	18.86	17.69	18.86	090
28304		A	Incision of midfoot bones	9.16	8.66	7.83	6.93	6.96	0.73	18.55	17.72	16.82	16.85	090
28305		A	Incise/graft midfoot bones	10.50	17.21	13.95	10.33	10.51	0.66	28.37	25.11	21.49	21.67	090
28306		A	Incision of metatarsal	5.86	6.26	5.61	5.34	5.15	0.48	12.60	11.95	11.68	11.49	090
28307		A	Incision of metatarsal	6.33	5.89	6.13	5.89	6.13	0.55	12.77	13.01	12.77	13.01	090
28308		A	Incision of metatarsal	5.29	5.70	5.95	4.32	5.26	0.38	11.37	11.62	9.99	10.93	090
28309		A	Incision of metatarsals	12.78	NA	NA	8.64	8.05	1.07	NA	NA	22.49	21.90	090
28310		A	Revision of big toe	5.43	6.44	5.49	5.57	5.05	0.40	12.27	11.32	11.40	10.88	090
28312		A	Revision of toe	4.55	6.23	5.59	5.96	5.46	0.36	11.14	10.50	10.87	10.37	090
28313		A	Repair deformity of toe	5.01	6.80	4.80	6.80	4.10	0.49	12.30	10.30	12.30	9.60	090
28315		A	Removal of sesamoid bone	4.86	5.70	5.15	4.51	4.56	0.36	10.92	10.37	9.73	9.78	090
28320		A	Repair of foot bones	9.18	NA	NA	8.02	8.73	0.88	NA	NA	18.08	18.79	090
28322		A	Repair of metatarsals	8.34	9.02	7.05	7.37	6.22	0.79	18.15	16.18	16.50	15.35	090
28340		A	Resect enlarged toe tissue	6.98	6.59	6.74	6.30	6.59	0.55	14.12	14.27	13.83	14.12	090
28341		A	Resect enlarged toe	8.41	7.15	7.73	6.11	7.21	0.60	16.16	16.74	15.12	16.22	090
28344		A	Repair extra toe(s)	4.26	10.56	7.29	5.11	4.57	0.41	15.23	11.96	9.78	9.24	090
28345		A	Repair webbed toe(s)	5.92	6.59	6.20	6.02	5.91	0.51	13.02	12.63	12.45	12.34	090
28360		A	Reconstruct cleft foot	13.34	NA	NA	12.16	12.55	1.50	NA	NA	27.00	27.39	090
28400		A	Treatment of heel fracture	2.16	6.97	4.88	4.06	2.73	0.23	9.36	7.27	6.45	5.12	090

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[3] + Indicates RVUs are not used for Medicare payment.
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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
28405		A	Treatment of heel fracture	4.57	7.73	5.98	5.26	4.75	0.47	12.77	11.02	10.30	9.79	090
28406		A	Treatment of heel fracture	6.31	NA	NA	7.75	7.18	0.70	NA	NA	14.76	14.19	090
28415		A	Repair of heel fracture	15.97	NA	NA	35.45	22.62	1.69	NA	NA	53.11	40.28	090
28420		A	Repair/graft heel fracture	16.64	NA	NA	37.35	24.59	1.78	NA	NA	55.77	43.01	090
28430		A	Treatment of ankle fracture	2.09	6.37	4.52	3.66	2.50	0.21	8.67	6.82	5.96	4.80	090
28435		A	Treatment of ankle fracture	3.40	5.89	4.77	4.15	3.90	0.31	9.60	8.48	7.86	7.61	090
28436		A	Treatment of ankle fracture	4.71	NA	NA	6.72	5.64	0.53	NA	NA	11.96	10.88	090
28445		A	Repair of ankle fracture	9.33	NA	NA	9.28	9.42	0.96	NA	NA	19.57	19.71	090
28450		A	Treat midfoot fracture, each	1.90	6.15	4.09	3.61	2.32	0.19	8.24	6.18	5.70	4.41	090
28455		A	Treat midfoot fracture, each	3.09	5.36	4.06	4.18	2.78	0.27	8.72	7.42	7.54	6.14	090
28456		A	Repair midfoot fracture	2.68	NA	NA	5.17	3.82	0.28	NA	NA	8.13	6.78	090
28465		A	Repair midfoot fracture,each	7.01	NA	NA	19.98	13.00	0.69	NA	NA	27.68	20.70	090
28470		A	Treat metatarsal fracture	1.99	5.70	3.83	2.98	1.98	0.20	7.89	6.02	5.17	4.17	090
28475		A	Treat metatarsal fracture	2.97	5.66	4.10	3.83	2.55	0.28	8.91	7.35	7.08	5.80	090
28476		A	Repair metatarsal fracture	3.38	NA	NA	5.56	4.61	0.35	NA	NA	9.29	8.34	090
28485		A	Repair metatarsal fracture	5.71	NA	NA	19.96	12.52	0.51	NA	NA	26.18	18.74	090
28490		A	Treat big toe fracture	1.09	2.10	1.54	1.78	1.14	0.10	3.29	2.73	2.97	2.33	090
28495		A	Treat big toe fracture	1.58	2.29	1.76	1.88	1.25	0.13	4.00	3.47	3.59	2.96	090
28496		A	Repair big toe fracture	2.33	7.07	4.66	4.50	3.38	0.24	9.64	7.23	7.07	5.95	090
28505		A	Repair big toe fracture	3.81	16.71	9.98	16.71	9.98	0.36	20.88	14.15	20.88	14.15	090
28510		A	Treatment of toe fracture	1.09	1.84	1.41	1.80	1.15	0.09	3.02	2.59	2.98	2.33	090
28515		A	Treatment of toe fracture	1.46	2.05	1.64	1.90	1.26	0.12	3.63	3.22	3.48	2.84	090
28525		A	Repair of toe fracture	3.32	16.49	9.37	16.49	9.37	0.31	20.12	13.00	20.12	13.00	090
28530		A	Treat sesamoid bone fracture	1.06	3.31	2.20	3.31	1.93	0.09	4.46	3.35	4.46	3.08	090
28531		A	Treat sesamoid bone fracture	2.35	62.18	32.13	16.14	9.11	0.18	64.71	34.66	18.67	11.64	090
28540		A	Treat foot dislocation	2.04	3.97	2.31	3.38	1.86	0.17	6.18	4.52	5.59	4.07	090
28545		A	Treat foot dislocation	2.45	3.25	2.34	3.25	2.34	0.23	5.93	5.02	5.93	5.02	090
28546		A	Treat foot dislocation	3.20	8.55	5.76	4.76	3.87	0.32	12.07	9.28	8.28	7.39	090
28555		A	Repair foot dislocation	6.30	19.37	12.72	19.37	12.72	0.63	26.30	19.65	26.30	19.65	090
28570		A	Treat foot dislocation	1.66	5.26	3.50	3.06	1.97	0.16	7.08	5.32	4.88	3.79	090
28575		A	Treat foot dislocation	3.31	4.25	3.63	4.25	3.63	0.34	7.90	7.28	7.90	7.28	090
28576		A	Treat foot dislocation	4.17	33.20	18.11	5.52	4.27	0.44	37.81	22.72	10.13	8.88	090
28585		A	Repair foot dislocation	7.99	13.33	9.36	13.33	9.36	0.76	22.08	18.11	22.08	18.11	090
28600		A	Treat foot dislocation	1.89	5.05	2.90	3.36	1.87	0.17	7.11	4.96	5.42	3.93	090
28605		A	Treat foot dislocation	2.71	5.74	4.10	4.16	3.31	0.27	8.72	7.08	7.14	6.29	090
28606		A	Treat foot dislocation	4.90	11.41	7.60	6.27	5.03	0.53	16.84	13.03	11.70	10.46	090
28615		A	Repair foot dislocation	7.77	NA	NA	23.54	14.46	0.82	NA	NA	32.13	23.05	090
28630		A	Treat toe dislocation	1.70	2.06	1.59	2.00	1.28	0.15	3.91	3.44	3.85	3.13	010
28635		A	Treat toe dislocation	1.91	3.18	2.38	2.30	1.55	0.16	5.25	4.45	4.37	3.62	010
28636		A	Treat toe dislocation	2.77	3.48	3.13	2.76	2.77	0.27	6.52	6.17	5.80	5.81	010
28645		A	Repair toe dislocation	4.22	7.15	5.34	7.15	5.34	0.33	11.70	9.89	11.70	9.89	090
28660		A	Treat toe dislocation	1.23	3.25	1.97	1.99	1.34	0.11	4.59	3.31	3.33	2.68	010
28665		A	Treat toe dislocation	1.92	2.83	1.95	2.72	1.63	0.16	4.91	4.03	4.80	3.71	010
28666		A	Treat toe dislocation	2.66	3.43	3.04	3.04	2.85	0.28	6.37	5.98	5.98	5.79	010
28675		A	Repair of toe dislocation	2.92	11.35	7.31	11.35	7.31	0.29	14.56	10.52	14.56	10.52	090
28705		A	Fusion of foot bones	15.21	NA	NA	11.82	14.11	1.49	NA	NA	28.52	30.81	090
28715		A	Fusion of foot bones	13.10	NA	NA	11.57	12.48	1.37	NA	NA	26.04	26.95	090
28725		A	Fusion of foot bones	11.61	NA	NA	13.72	11.98	1.12	NA	NA	26.45	24.71	090
28730		A	Fusion of foot bones	10.76	NA	NA	10.04	9.91	1.07	NA	NA	21.87	21.74	090
28735		A	Fusion of foot bones	10.85	NA	NA	9.20	9.90	1.03	NA	NA	21.08	21.78	090
28737		A	Revision of foot bones	9.64	NA	NA	9.33	9.48	0.92	NA	NA	19.89	20.04	090
28740		A	Fusion of foot bones	8.02	9.03	7.31	7.96	6.77	0.74	17.79	16.07	16.72	15.53	090
28750		A	Fusion of big toe joint	7.30	9.47	7.62	7.91	6.84	0.75	17.52	15.67	15.96	14.89	090
28755		A	Fusion of big toe joint	4.74	6.14	5.07	5.56	4.78	0.41	11.29	10.22	10.71	9.93	090
28760		A	Fusion of big toe joint	7.75	7.40	6.63	6.52	6.19	0.63	15.78	15.01	14.90	14.57	090
28800		A	Amputation of midfoot	8.21	NA	NA	8.67	7.95	0.87	NA	NA	17.75	17.03	090
28805		A	Amputation thru metatarsal	8.39	NA	NA	7.63	7.25	0.93	NA	NA	16.95	16.57	090
28810		A	Amputation toe & metatarsal	6.21	NA	NA	6.54	5.39	0.68	NA	NA	13.43	12.28	090
28820		A	Amputation of toe	4.41	8.15	5.48	5.98	4.39	0.46	13.02	10.35	10.85	9.26	090
28825		A	Partial amputation of toe	3.59	7.59	5.10	5.49	4.05	0.38	11.56	9.07	9.46	8.02	090
28899		C	Foot/toes surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
29000		A	Application of body cast	2.25	9.22	5.62	1.16	1.59	0.35	11.82	8.22	3.76	4.19	000
29010		A	Application of body cast	2.06	10.98	6.76	1.11	1.79	0.27	13.31	9.09	3.44	4.12	000
29015		A	Application of body cast	2.41	5.62	4.08	0.77	1.02	0.15	8.18	6.64	3.33	3.58	000
29020		A	Application of body cast	2.11	8.84	5.41	0.78	0.89	0.13	11.08	7.65	3.02	3.13	000
29025		A	Application of body cast	2.40	11.02	5.92	1.31	0.86	0.29	13.71	8.61	4.00	3.55	000
29035		A	Application of body cast	1.77	12.26	7.19	0.93	1.00	0.20	14.23	9.16	2.90	2.97	000
29040		A	Application of body cast	2.22	6.83	4.51	0.90	1.55	0.20	9.25	6.93	3.32	3.97	000
29044		A	Application of body cast	2.12	15.98	9.13	1.12	1.70	0.24	18.34	11.49	3.48	4.06	000
29046		A	Application of body cast	2.41	9.93	6.18	1.28	1.85	0.26	12.60	8.85	3.95	4.52	000
29049		A	Application of figure eight	0.89	6.23	3.35	0.33	0.28	0.09	7.21	4.33	1.31	1.26	000
29055		A	Application of shoulder cast	1.78	10.19	5.75	0.92	1.11	0.19	12.16	7.72	2.89	3.08	000
29058		A	Application of shoulder cast	1.31	6.78	3.75	0.51	0.61	0.14	8.23	5.20	1.96	2.06	000
29065		A	Application of long arm cast	0.87	4.46	2.67	0.44	0.44	0.10	5.43	3.64	1.41	1.41	000
29075		A	Application of forearm cast	0.77	4.01	2.34	0.37	0.35	0.08	4.86	3.19	1.22	1.20	000
29085		A	Apply hand/wrist cast	0.87	3.91	2.23	0.37	0.32	0.09	4.87	3.19	1.33	1.28	000
29105		A	Apply long arm splint	0.87	3.07	1.81	0.28	0.28	0.09	4.03	2.77	1.24	1.24	000
29125		A	Apply forearm splint	0.59	2.54	1.47	0.17	0.19	0.06	3.19	2.12	0.82	0.84	000
29126		A	Apply forearm splint	0.77	3.33	1.88	0.28	0.25	0.07	4.17	2.72	1.12	1.09	000
29130		A	Application of finger splint	0.50	0.76	0.47	0.14	0.12	0.05	1.31	1.02	0.69	0.67	000
29131		A	Application of finger splint	0.55	1.18	0.80	0.17	0.19	0.05	1.78	1.40	0.77	0.79	000
29200		A	Strapping of chest	0.65	1.09	0.69	0.16	0.16	0.06	1.80	1.40	0.87	0.87	000
29220		A	Strapping of low back	0.64	1.01	0.71	0.25	0.23	0.05	1.70	1.40	0.94	0.92	000
29240		A	Strapping of shoulder	0.71	1.11	0.70	0.19	0.24	0.07	1.89	1.48	0.97	1.02	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
29260		A	Strapping of elbow or wrist	0.55	0.94	0.60	0.14	0.14	0.05	1.54	1.20	0.74	0.74	000
29280		A	Strapping of hand or finger	0.51	0.94	0.59	0.13	0.13	0.05	1.50	1.15	0.69	0.69	000
29305		A	Application of hip cast	2.03	12.58	7.31	1.09	1.57	0.23	14.84	9.57	3.35	3.83	000
29325		A	Application of hip casts	2.32	12.82	7.47	1.26	1.69	0.26	15.40	10.05	3.84	4.27	000
29345		A	Application of long leg cast	1.40	5.52	3.32	0.72	0.64	0.15	7.07	4.87	2.27	2.19	000
29355		A	Application of long leg cast	1.53	5.96	3.58	0.80	0.70	0.16	7.65	5.27	2.49	2.39	000
29358		A	Apply long leg cast brace	1.43	6.64	4.17	0.73	0.79	0.15	8.22	5.75	2.31	2.37	000
29365		A	Application of long leg cast	1.18	4.85	2.89	0.61	0.54	0.13	6.16	4.20	1.92	1.85	000
29405		A	Apply short leg cast	0.86	4.12	2.49	0.42	0.43	0.09	5.07	3.44	1.37	1.38	000
29425		A	Apply short leg cast	1.01	3.94	2.50	0.49	0.51	0.10	5.05	3.61	1.60	1.62	000
29435		A	Apply short leg cast	1.18	6.68	3.98	0.62	0.63	0.13	7.99	5.29	1.93	1.94	000
29440		A	Addition of walker to cast	0.57	2.16	1.21	0.24	0.19	0.06	2.79	1.84	0.87	0.82	000
29445		A	Apply rigid leg cast	1.78	6.38	4.11	0.77	1.31	0.18	8.34	6.07	2.73	3.27	000
29450		A	Application of leg cast	1.02	3.56	1.99	0.44	0.33	0.08	4.66	3.09	1.54	1.43	000
29505		A	Application long leg splint	0.69	3.52	2.07	0.21	0.42	0.07	4.28	2.83	0.97	1.18	000
29515		A	Application lower leg splint	0.73	2.59	1.55	0.21	0.24	0.07	3.39	2.35	1.01	1.04	000
29520		A	Strapping of hip	0.54	0.96	0.68	0.26	0.23	0.03	1.53	1.25	0.83	0.80	000
29530		A	Strapping of knee	0.57	0.94	0.66	0.15	0.27	0.05	1.56	1.28	0.77	0.89	000
29540		A	Strapping of ankle	0.51	0.47	0.40	0.16	0.17	0.03	1.01	0.94	0.70	0.71	000
29550		A	Strapping of toes	0.47	0.44	0.37	0.18	0.17	0.03	0.94	0.87	0.68	0.67	000
29580		A	Application of paste boot	0.57	0.90	0.88	0.22	0.21	0.05	1.52	1.50	0.84	0.83	000
29590		A	Application of foot splint	0.76	0.66	0.48	0.24	0.20	0.05	1.47	1.29	1.05	1.01	000
29700		A	Removal/revision of cast	0.57	0.70	0.53	0.22	0.20	0.06	1.33	1.16	0.85	0.83	000
29705		A	Removal/revision of cast	0.76	0.88	0.63	0.31	0.25	0.08	1.72	1.47	1.15	1.09	000
29710		A	Removal/revision of cast	1.34	1.66	1.08	0.68	0.47	0.14	3.14	2.56	2.16	1.95	000
29715		A	Removal/revision of cast	0.94	6.66	3.80	0.36	0.42	0.11	7.71	4.85	1.41	1.47	000
29720		A	Repair of body cast	0.68	4.12	2.19	0.34	0.24	0.07	4.87	2.94	1.09	0.99	000
29730		A	Windowing of cast	0.75	0.84	0.56	0.31	0.23	0.08	1.67	1.39	1.14	1.06	000
29740		A	Wedging of cast	1.12	2.90	1.66	0.48	0.35	0.12	4.14	2.90	1.72	1.59	000
29750		A	Wedging of clubfoot cast	1.26	2.97	1.76	0.54	0.41	0.11	4.34	3.13	1.91	1.78	000
29799		C	Casting/strapping procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
29800		A	Jaw arthroscopy/surgery	6.43	NA	NA	7.24	5.80	0.63	NA	NA	14.30	12.86	090
29804		A	Jaw arthroscopy/surgery	8.14	NA	NA	7.59	8.65	0.67	NA	NA	16.40	17.46	090
29815		A	Shoulder arthroscopy	5.89	NA	NA	8.48	6.87	0.62	NA	NA	14.99	13.38	090
29819		A	Shoulder arthroscopy/surgery	7.62	NA	NA	8.99	9.04	0.83	NA	NA	17.44	17.49	090
29820		A	Shoulder arthroscopy/surgery	7.07	NA	NA	10.99	9.72	0.78	NA	NA	18.84	17.57	090
29821		A	Shoulder arthroscopy/surgery	7.72	NA	NA	9.14	9.18	0.85	NA	NA	17.71	17.75	090
29822		A	Shoulder arthroscopy/surgery	7.43	NA	NA	8.99	8.93	0.81	NA	NA	17.23	17.17	090
29823		A	Shoulder arthroscopy/surgery	8.17	NA	NA	9.42	9.59	0.89	NA	NA	18.48	18.65	090
29825		A	Shoulder arthroscopy/surgery	7.62	NA	NA	8.74	8.92	0.84	NA	NA	17.20	17.38	090
29826		A	Shoulder arthroscopy/surgery	8.99	NA	NA	9.77	10.25	0.99	NA	NA	19.75	20.23	090
29830		A	Elbow arthroscopy	5.76	NA	NA	5.38	5.58	0.66	NA	NA	11.80	12.00	090
29834		A	Elbow arthroscopy/surgery	6.28	NA	NA	6.29	6.32	0.68	NA	NA	13.25	13.28	090
29835		A	Elbow arthroscopy/surgery	6.48	NA	NA	6.17	6.36	0.71	NA	NA	13.36	13.55	090
29836		A	Elbow arthroscopy/surgery	7.55	NA	NA	7.24	7.44	0.84	NA	NA	15.63	15.83	090
29837		A	Elbow arthroscopy/surgery	6.87	NA	NA	6.75	6.85	0.76	NA	NA	14.38	14.48	090
29838		A	Elbow arthroscopy/surgery	7.71	NA	NA	6.78	7.22	0.85	NA	NA	15.34	15.78	090
29840		A	Wrist arthroscopy	5.54	NA	NA	7.35	5.46	0.61	NA	NA	13.50	11.61	090
29843		A	Wrist arthroscopy/surgery	6.01	NA	NA	7.51	6.80	0.68	NA	NA	14.20	13.49	090
29844		A	Wrist arthroscopy/surgery	6.37	NA	NA	7.78	6.93	0.71	NA	NA	14.86	14.01	090
29845		A	Wrist arthroscopy/surgery	7.52	NA	NA	9.73	8.67	0.83	NA	NA	18.08	17.02	090
29846		A	Wrist arthroscopy/surgery	6.75	NA	NA	9.86	8.96	0.75	NA	NA	17.36	16.46	090
29847		A	Wrist arthroscopy/surgery	7.08	NA	NA	10.13	8.75	0.80	NA	NA	18.01	16.63	090
29848		A	Wrist endoscopy/surgery	5.44	NA	NA	7.18	5.68	0.62	NA	NA	13.24	11.74	090
29850		A	Knee arthroscopy/surgery	8.19	NA	NA	6.68	5.79	0.75	NA	NA	15.62	14.73	090
29851		A	Knee arthroscopy/surgery	13.10	NA	NA	10.44	11.16	1.40	NA	NA	24.94	25.66	090
29855		A	Tibial arthroscopy/surgery	10.62	NA	NA	9.64	11.16	1.17	NA	NA	21.43	22.95	090
29856		A	Tibial arthroscopy/surgery	14.14	NA	NA	11.11	11.90	1.58	NA	NA	26.83	27.62	090
29860		A	Hip arthroscopy, dx	8.05	NA	NA	7.02	6.14	0.83	NA	NA	15.90	15.02	090
29861		A	Hip arthroscopy/surgery	9.15	NA	NA	8.07	9.13	0.95	NA	NA	18.17	19.23	090
29862		A	Hip arthroscopy/surgery	9.90	NA	NA	8.46	9.70	1.02	NA	NA	19.38	20.62	090
29863		A	Hip arthroscopy/surgery	9.90	NA	NA	8.94	9.20	1.02	NA	NA	19.86	20.12	090
29870		A	Knee arthroscopy, diagnostic	5.07	NA	NA	5.91	5.14	0.55	NA	NA	11.53	10.76	090
29871		A	Knee arthroscopy/drainage	6.55	NA	NA	8.47	7.91	0.63	NA	NA	15.65	15.09	090
29874		A	Knee arthroscopy/surgery	7.05	NA	NA	6.84	7.83	0.72	NA	NA	14.61	15.40	090
29875		A	Knee arthroscopy/surgery	6.31	NA	NA	6.59	7.06	0.70	NA	NA	13.60	14.07	090
29876		A	Knee arthroscopy/surgery	7.92	NA	NA	8.05	8.75	0.86	NA	NA	16.83	17.53	090
29877		A	Knee arthroscopy/surgery	7.35	NA	NA	7.18	7.98	0.81	NA	NA	15.34	16.14	090
29879		A	Knee arthroscopy/surgery	8.04	NA	NA	7.49	8.54	0.89	NA	NA	16.42	17.47	090
29880		A	Knee arthroscopy/surgery	8.50	NA	NA	7.79	8.97	0.94	NA	NA	17.23	18.41	090
29881		A	Knee arthroscopy/surgery	7.76	NA	NA	7.44	8.36	0.86	NA	NA	16.06	16.98	090
29882		A	Knee arthroscopy/surgery	8.65	NA	NA	7.85	9.09	0.96	NA	NA	17.46	18.70	090
29883		A	Knee arthroscopy/surgery	9.46	NA	NA	8.32	9.81	1.06	NA	NA	18.84	20.33	090
29884		A	Knee arthroscopy/surgery	7.33	NA	NA	7.82	8.29	0.81	NA	NA	15.96	16.43	090
29885		A	Knee arthroscopy/surgery	9.09	NA	NA	8.59	8.76	1.00	NA	NA	18.68	18.85	090
29886		A	Knee arthroscopy/surgery	7.54	NA	NA	7.64	7.51	0.84	NA	NA	16.02	15.89	090
29887		A	Knee arthroscopy/surgery	9.04	NA	NA	8.72	9.76	0.99	NA	NA	18.75	19.79	090
29888		A	Knee arthroscopy/surgery	13.90	NA	NA	11.61	14.10	1.51	NA	NA	27.02	29.51	090
29889		A	Knee arthroscopy/surgery	15.13	NA	NA	11.54	11.34	1.68	NA	NA	28.35	28.15	090
29891		A	Ankle arthroscopy/surgery	8.40	NA	NA	8.16	8.89	0.87	NA	NA	17.43	18.16	090
29892		A	Ankle arthroscopy/surgery	9.00	NA	NA	8.41	9.02	0.93	NA	NA	18.34	18.95	090
29893		A	Scope, plantar fasciotomy	5.22	NA	NA	4.88	5.26	0.40	NA	NA	10.50	10.88	090
29894		A	Ankle arthroscopy/surgery	7.21	NA	NA	7.61	8.11	0.69	NA	NA	15.51	16.01	090
29895		A	Ankle arthroscopy/surgery	6.99	NA	NA	7.24	7.80	0.70	NA	NA	14.93	15.49	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
29897		A	Ankle arthroscopy/surgery	7.18	NA	NA	8.60	8.59	0.73	NA	NA	16.51	16.50	090
29898		A	Ankle arthroscopy/surgery	8.32	NA	NA	7.64	8.79	0.79	NA	NA	16.75	17.90	090
29909		C	Arthroscopy of joint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
30000		A	Drainage of nose lesion	1.43	2.21	1.42	1.34	0.83	0.11	3.75	2.96	2.88	2.37	010
30020		A	Drainage of nose lesion	1.43	2.34	1.50	1.43	0.88	0.07	3.84	3.00	2.93	2.38	010
30100		A	Intranasal biopsy	0.94	1.12	0.94	0.53	0.46	0.07	2.13	1.95	1.54	1.47	000
30110		A	Removal of nose polyp(s)	1.63	2.32	1.86	0.91	0.81	0.12	4.07	3.61	2.66	2.56	010
30115		A	Removal of nose polyp(s)	4.35	NA	NA	4.03	3.54	0.32	NA	NA	8.70	8.21	090
30117		A	Removal of intranasal lesion	3.16	3.85	3.47	2.91	3.00	0.23	7.24	6.86	6.30	6.39	090
30118		A	Removal of intranasal lesion	9.69	NA	NA	7.67	8.18	0.74	NA	NA	18.10	18.61	090
30120		A	Revision of nose	5.27	4.85	5.57	4.85	5.57	0.43	10.55	11.27	10.55	11.27	090
30124		A	Removal of nose lesion	3.10	NA	NA	3.00	1.87	0.22	NA	NA	6.32	5.19	090
30125		A	Removal of nose lesion	7.16	NA	NA	6.02	6.02	0.51	NA	NA	13.69	13.69	090
30130		A	Removal of turbinate bones	3.38	NA	NA	3.51	2.66	0.24	NA	NA	7.13	6.28	090
30140		A	Removal of turbinate bones	3.43	NA	NA	3.97	3.64	0.26	NA	NA	7.66	7.33	090
30150		A	Partial removal of nose	9.14	NA	NA	7.45	8.03	0.81	NA	NA	17.40	17.98	090
30160		A	Removal of nose	9.58	NA	NA	7.51	9.48	0.79	NA	NA	17.88	19.85	090
30200		A	Injection treatment of nose	0.78	1.17	0.79	0.45	0.33	0.06	2.01	1.63	1.29	1.17	000
30210		A	Nasal sinus therapy	1.08	1.80	1.04	0.60	0.37	0.08	2.96	2.20	1.76	1.53	010
30220		A	Insert nasal septal button	1.54	2.15	1.90	0.88	0.85	0.12	3.81	3.56	2.54	2.51	010
30300		A	Remove nasal foreign body	1.04	2.13	1.32	0.39	0.32	0.08	3.25	2.44	1.51	1.44	010
30310		A	Remove nasal foreign body	1.96	NA	NA	1.71	1.74	0.15	NA	NA	3.82	3.85	010
30320		A	Remove nasal foreign body	4.52	NA	NA	4.53	4.60	0.36	NA	NA	9.41	9.48	090
30400		R	Reconstruction of nose	9.83	NA	NA	7.93	9.38	0.89	NA	NA	18.65	20.10	090
30410		R	Reconstruction of nose	12.98	NA	NA	9.61	12.56	1.19	NA	NA	23.78	26.73	090
30420		R	Reconstruction of nose	15.88	NA	NA	11.37	15.17	1.32	NA	NA	28.57	32.37	090
30430		R	Revision of nose	7.21	NA	NA	6.38	6.50	0.66	NA	NA	14.25	14.37	090
30435		R	Revision of nose	11.71	NA	NA	9.01	10.03	1.09	NA	NA	21.81	22.83	090
30450		R	Revision of nose	18.65	NA	NA	12.78	12.49	1.73	NA	NA	33.16	32.87	090
30460		A	Revision of nose	9.96	NA	NA	8.00	8.66	0.91	NA	NA	18.87	19.53	090
30462		A	Revision of nose	19.57	NA	NA	12.98	15.80	2.01	NA	NA	34.56	37.38	090
30520		A	Repair of nasal septum	5.70	NA	NA	5.26	6.03	0.43	NA	NA	11.39	12.16	090
30540		A	Repair nasal defect	7.75	NA	NA	5.96	6.58	0.57	NA	NA	14.28	14.90	090
30545		A	Repair nasal defect	11.38	NA	NA	8.51	10.13	0.92	NA	NA	20.81	22.43	090
30560		A	Release of nasal adhesions	1.26	1.98	1.29	1.34	0.82	0.09	3.33	2.64	2.69	2.17	010
30580		A	Repair upper jaw fistula	6.69	4.40	5.59	4.40	3.90	0.52	11.61	12.80	11.61	11.11	090
30600		A	Repair mouth/nose fistula	6.02	4.24	4.17	4.24	4.17	0.49	10.75	10.68	10.75	10.68	090
30620		A	Intranasal reconstruction	5.97	NA	NA	6.62	6.38	0.47	NA	NA	12.06	12.82	090
30630		A	Repair nasal septum defect	7.12	NA	NA	6.26	6.52	0.55	NA	NA	13.93	14.19	090
30801		A	Cautenzation inner nose	1.09	2.13	1.32	1.88	1.07	0.08	3.30	2.49	3.05	2.24	010
30802		A	Cautenzation inner nose	2.03	2.66	1.84	2.40	1.71	0.15	4.84	4.02	4.58	3.89	010
30901		A	Control of nosebleed	1.21	1.88	1.25	0.33	0.32	0.10	3.19	2.56	1.64	1.63	000
30903		A	Control of nosebleed	1.54	2.22	1.57	0.52	0.72	0.13	3.89	3.24	2.19	2.39	000
30905		A	Control of nosebleed	1.97	3.86	2.90	0.81	1.38	0.16	5.99	5.03	2.94	3.51	000
30906		A	Repeat control of nosebleed	2.45	4.11	2.64	1.29	1.23	0.19	6.75	5.28	3.93	3.87	000
30915		A	Ligation nasal sinus artery	7.20	NA	NA	6.33	5.85	0.53	NA	NA	14.06	13.58	090
30920		A	Ligation upper jaw artery	9.83	NA	NA	7.84	9.10	0.73	NA	NA	18.40	19.66	090
30930		A	Therapy fracture of nose	1.26	NA	NA	1.78	1.28	0.09	NA	NA	3.13	2.63	010
30999		C	Nasal surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
31000		A	Irrigation maxillary sinus	1.15	2.02	1.25	0.67	0.46	0.08	3.25	2.48	1.90	1.69	010
31002		A	Irrigation sphenoid sinus	1.91	NA	NA	1.95	1.10	0.14	NA	NA	4.00	3.15	010
31020		A	Exploration maxillary sinus	2.94	3.70	3.30	3.26	3.08	0.22	6.86	6.46	6.42	6.24	090
31030		A	Exploration maxillary sinus	5.92	4.05	5.56	4.05	5.56	0.45	10.42	11.93	10.42	11.93	090
31032		A	Explore sinus,remove polyps	6.57	NA	NA	5.57	6.71	0.50	NA	NA	12.64	13.78	090
31040		A	Exploration behind upper jaw	9.42	NA	NA	6.53	7.60	0.73	NA	NA	16.68	17.75	090
31050		A	Exploration sphenoid sinus	5.28	NA	NA	4.52	5.42	0.41	NA	NA	10.21	11.11	090
31051		A	Sphenoid sinus surgery	7.11	NA	NA	5.89	7.19	0.58	NA	NA	13.58	14.88	090
31070		A	Exploration of frontal sinus	4.28	NA	NA	4.33	4.71	0.32	NA	NA	8.93	9.31	090
31075		A	Exploration of frontal sinus	9.16	NA	NA	7.52	9.23	0.66	NA	NA	17.34	19.05	090
31080		A	Removal of frontal sinus	11.42	NA	NA	8.20	9.10	0.85	NA	NA	20.47	21.37	090
31081		A	Removal of frontal sinus	12.75	NA	NA	9.67	10.44	1.95	NA	NA	24.37	25.14	090
31084		A	Removal of frontal sinus	13.51	NA	NA	9.99	13.02	1.07	NA	NA	24.57	27.60	090
31085		A	Removal of frontal sinus	14.20	NA	NA	10.04	13.50	1.41	NA	NA	25.65	29.11	090
31086		A	Removal of frontal sinus	12.86	NA	NA	9.77	10.79	1.02	NA	NA	23.65	24.67	090
31087		A	Removal of frontal sinus	13.10	NA	NA	9.77	10.53	0.97	NA	NA	23.84	24.60	090
31090		A	Exploration of sinuses	9.53	NA	NA	8.03	9.70	0.71	NA	NA	18.27	19.94	090
31200		A	Removal of ethmoid sinus	4.97	NA	NA	5.30	5.16	0.29	NA	NA	10.56	10.42	090
31201		A	Removal of ethmoid sinus	8.37	NA	NA	7.00	7.31	0.62	NA	NA	15.99	16.30	090
31205		A	Removal of ethmoid sinus	10.24	NA	NA	8.08	8.40	0.65	NA	NA	18.97	19.29	090
31225		A	Removal of upper jaw	19.23	NA	NA	14.01	17.56	1.48	NA	NA	34.72	38.27	090
31230		A	Removal of upper jaw	21.94	NA	NA	16.13	19.86	1.75	NA	NA	39.82	43.55	090
31231		A	Nasal endoscopy, dx	1.10	1.68	1.59	0.61	1.05	0.08	2.86	2.77	1.79	2.23	000
31233		A	Nasal/sinus endoscopy, dx	2.18	2.32	2.68	1.24	1.38	0.16	4.66	5.02	3.58	3.72	000
31235		A	Nasal/sinus endoscopy, dx	2.64	2.60	2.60	1.47	1.39	0.19	5.43	5.43	4.30	4.22	000
31237		A	Nasal/sinus endoscopy, surg	2.98	2.85	3.21	1.69	1.74	0.22	6.05	6.41	4.89	4.94	000
31238		A	Nasal/sinus endoscopy, surg	3.26	3.23	3.57	1.91	1.93	0.24	6.73	7.07	5.41	5.43	000
31239		A	Nasal/sinus endoscopy, surg	8.70	NA	NA	6.31	8.35	0.45	NA	NA	15.46	17.50	010
31240		A	Nasal/sinus endoscopy, surg	2.61	NA	NA	1.53	2.32	0.19	NA	NA	4.33	5.12	000
31254		A	Revision of ethmoid sinus	4.65	NA	NA	2.74	4.15	0.34	NA	NA	7.73	9.14	000
31255		A	Removal of ethmoid sinus	6.96	NA	NA	4.09	6.20	0.52	NA	NA	11.57	13.68	000
31256		A	Exploration maxillary sinus	3.29	NA	NA	1.93	2.93	0.24	NA	NA	5.46	6.46	000
31267		A	Endoscopy, maxillary sinus	5.46	NA	NA	3.21	4.45	0.41	NA	NA	9.08	10.32	000
31276		A	Sinus surgical endoscopy	8.85	NA	NA	5.19	6.24	0.66	NA	NA	14.70	15.75	000
31287		A	Nasal/sinus endoscopy, surg	3.92	NA	NA	2.30	3.49	0.29	NA	NA	6.51	7.70	000

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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
31288		A	Nasal/sinus endoscopy, surg	4.58	NA	NA	2.69	4.08	0.34	NA	NA	7.61	9.00	000
31290		A	Nasal/sinus endoscopy, surg	17.24	NA	NA	11.49	14.68	1.33	NA	NA	30.06	33.25	010
31291		A	Nasal/sinus endoscopy, surg	18.19	NA	NA	11.83	15.31	1.80	NA	NA	31.82	35.30	010
31292		A	Nasal/sinus endoscopy, surg	14.76	NA	NA	9.77	12.15	1.08	NA	NA	25.61	27.99	010
31293		A	Nasal/sinus endoscopy, surg	16.21	NA	NA	10.66	13.28	1.13	NA	NA	28.00	30.62	010
31294		A	Nasal/sinus endoscopy, surg	19.06	NA	NA	11.79	14.97	1.73	NA	NA	32.58	35.76	010
31299		C	Sinus surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
31300		A	Removal of larynx lesion	14.29	NA	NA	15.63	14.10	1.07	NA	NA	30.99	29.46	090
31320		A	Diagnostic incision larynx	5.26	NA	NA	10.31	7.26	0.41	NA	NA	15.98	12.93	090
31360		A	Removal of larynx	17.08	NA	NA	17.37	18.88	1.29	NA	NA	35.74	37.25	090
31365		A	Removal of larynx	24.16	NA	NA	21.27	25.06	1.85	NA	NA	47.28	51.07	090
31367		A	Partial removal of larynx	21.86	NA	NA	21.54	20.12	1.67	NA	NA	45.07	43.65	090
31368		A	Partial removal of larynx	27.09	NA	NA	27.02	28.03	2.06	NA	NA	56.17	57.18	090
31370		A	Partial removal of larynx	21.38	NA	NA	21.15	19.90	1.67	NA	NA	44.20	42.95	090
31375		A	Partial removal of larynx	20.21	NA	NA	20.99	18.55	1.49	NA	NA	42.69	40.25	090
31380		A	Partial removal of larynx	20.21	NA	NA	20.36	19.55	1.51	NA	NA	42.08	41.27	090
31382		A	Partial removal of larynx	20.52	NA	NA	20.43	18.93	1.58	NA	NA	42.53	41.03	090
31390		A	Removal of larynx & pharynx	27.53	NA	NA	26.34	27.87	2.07	NA	NA	55.94	57.47	090
31395		A	Reconstruct larynx & pharynx	31.09	NA	NA	31.19	33.79	2.34	NA	NA	64.62	67.22	090
31400		A	Revision of larynx	10.31	NA	NA	14.11	11.30	0.77	NA	NA	25.19	22.38	090
31420		A	Removal of epiglottis	10.22	NA	NA	13.06	10.92	0.77	NA	NA	24.05	21.91	090
31500		A	Insert emergency airway	2.33	NA	NA	0.53	0.89	0.17	NA	NA	3.03	3.39	000
31502		A	Change of windpipe airway	0.65	1.53	1.08	0.27	0.45	0.04	2.22	1.77	0.96	1.14	000
31505		A	Diagnostic laryngoscopy	0.61	1.50	0.99	0.23	0.24	0.05	2.16	1.65	0.89	0.90	000
31510		A	Laryngoscopy with biopsy	1.92	2.33	1.47	0.99	0.80	0.15	4.40	3.54	3.06	2.87	000
31511		A	Remove foreign body, larynx	2.16	2.56	1.80	0.74	0.89	0.19	4.91	4.15	3.09	3.24	000
31512		A	Removal of larynx lesion	2.07	2.57	2.26	1.11	1.53	0.20	4.84	4.53	3.38	3.80	000
31513		A	Injection into vocal cord	2.10	NA	NA	1.22	1.87	0.16	NA	NA	3.48	4.13	000
31515		A	Laryngoscopy for aspiration	1.80	2.99	2.11	0.75	0.99	0.13	4.92	4.04	2.68	2.92	000
31520		A	Diagnostic laryngoscopy	2.56	NA	NA	1.36	1.57	0.19	NA	NA	4.11	4.32	000
31525		A	Diagnostic laryngoscopy	2.63	2.57	2.48	1.43	1.32	0.19	5.39	5.30	4.25	4.14	000
31526		A	Diagnostic laryngoscopy	2.57	NA	NA	1.50	2.29	0.19	NA	NA	4.26	5.05	000
31527		A	Laryngoscopy for treatment	3.27	NA	NA	1.70	2.47	0.24	NA	NA	5.21	5.98	000
31528		A	Laryngoscopy and dilatation	2.37	NA	NA	1.26	2.05	0.18	NA	NA	3.81	4.60	000
31529		A	Laryngoscopy and dilatation	2.68	NA	NA	1.52	2.10	0.20	NA	NA	4.40	4.98	000
31530		A	Operative laryngoscopy	3.39	NA	NA	1.59	2.77	0.24	NA	NA	5.22	6.40	000
31531		A	Operative laryngoscopy	3.59	NA	NA	2.12	3.21	0.27	NA	NA	5.98	7.07	000
31535		A	Operative laryngoscopy	3.16	NA	NA	1.77	2.78	0.24	NA	NA	5.17	6.18	000
31536		A	Operative laryngoscopy	3.56	NA	NA	2.09	3.17	0.27	NA	NA	5.92	7.00	000
31540		A	Operative laryngoscopy	4.13	NA	NA	2.41	3.67	0.31	NA	NA	6.85	8.11	000
31541		A	Operative laryngoscopy	4.53	NA	NA	2.86	3.81	0.34	NA	NA	7.53	8.68	000
31560		A	Operative laryngoscopy	5.46	NA	NA	3.11	4.27	0.41	NA	NA	8.98	10.14	000
31561		A	Operative laryngoscopy	6.00	NA	NA	3.53	5.17	0.45	NA	NA	9.98	11.62	000
31570		A	Laryngoscopy with injection	3.87	3.63	4.13	2.19	2.25	0.30	7.80	8.30	6.36	6.42	000
31571		A	Laryngoscopy with injection	4.27	NA	NA	2.48	3.69	0.32	NA	NA	7.07	8.28	000
31575		A	Diagnostic laryngoscopy	1.10	1.85	1.77	0.58	0.72	0.08	3.03	2.95	1.76	1.90	000
31576		A	Laryngoscopy with biopsy	1.97	1.89	2.13	1.04	1.70	0.14	4.00	4.24	3.15	3.81	000
31577		A	Remove foreign body, larynx	2.47	2.26	2.61	1.22	2.09	0.19	4.92	5.27	3.88	4.75	000
31578		A	Removal of larynx lesion	2.84	2.50	2.95	1.63	2.51	0.21	5.55	6.00	4.68	5.56	000
31579		A	Diagnostic laryngoscopy	2.26	2.54	2.54	1.21	1.24	0.17	4.97	4.97	3.64	3.67	000
31580		A	Revision of larynx	12.38	NA	NA	15.62	15.20	0.92	NA	NA	28.92	28.50	090
31582		A	Revision of larynx	21.62	NA	NA	19.80	19.60	1.60	NA	NA	43.02	42.82	090
31584		A	Repair of larynx fracture	19.64	NA	NA	17.22	15.51	1.61	NA	NA	38.47	36.76	090
31585		A	Repair of larynx fracture	4.64	NA	NA	7.51	5.80	0.34	NA	NA	12.49	10.78	090
31586		A	Repair of larynx fracture	8.03	NA	NA	10.57	8.84	0.60	NA	NA	19.20	17.47	090
31587		A	Revision of larynx	11.99	NA	NA	12.58	10.20	0.92	NA	NA	25.49	23.11	090
31588		A	Revision of larynx	13.11	NA	NA	15.70	13.66	0.97	NA	NA	29.78	27.74	090
31590		A	Reinnervate larynx	6.97	NA	NA	10.70	8.48	0.49	NA	NA	18.16	15.94	090
31595		A	Larynx nerve surgery	8.34	NA	NA	12.67	10.05	0.63	NA	NA	21.64	19.02	090
31599		C	Larynx surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
31600		A	Incision of windpipe	3.62	NA	NA	1.68	2.99	0.36	NA	NA	5.64	6.97	000
31601		A	Incision of windpipe	4.45	NA	NA	2.43	3.88	0.38	NA	NA	7.26	8.71	000
31603		A	Incision of windpipe	4.15	NA	NA	1.92	3.26	0.39	NA	NA	6.46	7.80	000
31605		A	Incision of windpipe	3.58	NA	NA	1.30	2.79	0.37	NA	NA	5.25	6.74	000
31610		A	Incision of windpipe	8.76	NA	NA	9.88	8.56	0.72	NA	NA	19.36	18.04	090
31611		A	Surgery/speech prosthesis	5.64	NA	NA	8.96	7.98	0.42	NA	NA	15.02	14.04	090
31612		A	Puncture/clear windpipe	0.91	1.51	1.39	0.34	0.72	0.06	2.48	2.36	1.31	1.69	000
31613		A	Repair windpipe opening	4.59	NA	NA	7.97	5.19	0.39	NA	NA	12.95	10.17	090
31614		A	Repair windpipe opening	7.12	NA	NA	10.94	9.13	0.56	NA	NA	18.62	16.81	090
31615		A	Visualization of windpipe	2.09	3.46	2.79	0.95	1.54	0.15	5.70	5.03	3.19	3.78	000
31622		A	Dx bronchoscope/wash	2.78	3.18	3.30	1.12	2.79	0.14	6.10	6.22	4.04	5.71	000
31623		A	Dx bronchoscope/brush	2.88	3.62	3.48	1.00	2.17	0.17	6.67	6.53	4.05	5.22	000
31624		A	Dx bronchoscope/lavage	2.88	3.63	3.49	1.02	2.18	0.17	6.68	6.54	4.07	5.23	000
31625		A	Bronchoscopy with biopsy	3.37	3.71	3.87	1.06	2.55	0.17	7.25	7.41	4.60	6.09	000
31628		A	Bronchoscopy with biopsy	3.81	3.56	4.06	1.12	2.84	0.14	7.51	8.01	5.07	6.79	000
31629		A	Bronchoscopy with biopsy	3.37	NA	NA	1.01	2.52	0.13	NA	NA	4.51	6.02	000
31630		A	Bronchoscopy with repair	3.82	NA	NA	1.59	2.82	0.35	NA	NA	5.76	6.99	000
31631		A	Bronchoscopy with dilation	4.37	NA	NA	1.82	2.95	0.32	NA	NA	6.31	7.64	000
31635		A	Remove foreign body, airway	3.68	NA	NA	1.34	2.87	0.24	NA	NA	5.26	6.79	000
31640		A	Bronchoscopy & remove lesion	4.94	NA	NA	2.04	3.75	0.39	NA	NA	7.37	9.08	000
31641		A	Bronchoscopy, treat blockage	5.03	NA	NA	1.76	3.88	0.29	NA	NA	7.08	9.20	000
31643		A	Dx bronchoscope/catheter	3.50	1.74	2.54	1.24	2.29	0.21	5.45	6.25	4.95	6.00	000
31645		A	Bronchoscopy, clear airways	3.16	NA	NA	0.95	2.37	0.14	NA	NA	4.25	5.67	000
31646		A	Bronchoscopy,reclear airways	2.72	NA	NA	0.84	2.04	0.13	NA	NA	3.69	4.89	000

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
31656		A	Bronchoscopy,inject for xray	2.17	NA	NA	0.60	1.60	0.10	NA	NA	2.87	3.87	000
31700		A	Insertion of airway catheter	1.34	2.71	2.11	0.43	0.97	0.08	4.13	3.53	1.85	2.39	000
31708		A	Instill airway contrast dye	1.41	NA	NA	0.38	0.61	0.06	NA	NA	1.85	2.08	000
31710		A	Insertion of airway catheter	1.30	NA	NA	0.37	0.68	0.06	NA	NA	1.73	2.04	000
31715		A	Injection for bronchus x-ray	1.11	NA	NA	0.32	0.42	0.04	NA	NA	1.47	1.57	000
31717		A	Bronchial brush biopsy	2.12	4.87	2.83	0.62	0.71	0.09	7.08	5.04	2.83	2.92	000
31720		A	Clearance of airways	1.06	2.10	1.45	0.33	0.57	0.06	3.22	2.57	1.45	1.69	000
31725		A	Clearance of airways	1.96	NA	NA	0.58	1.06	0.09	NA	NA	2.63	3.11	000
31730		A	Intro windpipe wire/tube	2.85	2.26	2.47	0.99	1.84	0.16	5.27	5.48	4.00	4.85	000
31750		A	Repair of windpipe	13.02	NA	NA	14.45	12.05	1.05	NA	NA	28.52	26.12	090
31755		A	Repair of windpipe	15.93	NA	NA	17.82	16.13	1.26	NA	NA	35.01	33.32	090
31760		A	Repair of windpipe	22.35	NA	NA	13.36	12.61	2.19	NA	NA	37.90	37.15	090
31766		A	Reconstruction of windpipe	30.43	NA	NA	17.90	18.94	3.70	NA	NA	52.03	53.07	090
31770		A	Repair/graft of bronchus	22.51	NA	NA	16.56	16.46	2.20	NA	NA	41.27	41.17	090
31775		A	Reconstruct bronchus	23.54	NA	NA	17.72	17.75	2.97	NA	NA	44.23	44.26	090
31780		A	Reconstruct windpipe	17.72	NA	NA	13.32	16.07	1.80	NA	NA	32.84	35.59	090
31781		A	Reconstruct windpipe	23.53	NA	NA	16.16	17.23	3.00	NA	NA	42.69	43.76	090
31785		A	Remove windpipe lesion	17.23	NA	NA	12.63	11.16	1.41	NA	NA	31.27	29.80	090
31786		A	Remove windpipe lesion	23.98	NA	NA	16.90	15.67	2.08	NA	NA	42.96	41.73	090
31800		A	Repair of windpipe injury	7.43	NA	NA	6.75	6.04	0.76	NA	NA	14.95	14.23	090
31805		A	Repair of windpipe injury	13.13	NA	NA	12.93	11.80	1.82	NA	NA	27.88	26.75	090
31820		A	Closure of windpipe lesion	4.49	7.30	5.60	7.22	5.56	0.36	12.15	10.45	12.07	10.41	090
31825		A	Repair of windpipe defect	6.81	10.18	7.81	10.18	7.81	0.55	17.54	15.17	17.54	15.17	090
31830		A	Revise windpipe scar	4.50	7.21	5.59	7.21	5.59	0.38	12.09	10.47	12.09	10.47	090
31899		C	Airways surgical procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
32000		A	Drainage of chest	1.54	3.79	2.39	0.46	0.72	0.08	5.41	4.01	2.08	2.34	000
32001		A	Total lung lavage	6.00	2.13	2.13	2.13	2.13	0.61	8.74	8.74	8.74	8.74	000
32002		A	Treatment of collapsed lung	2.19	NA	NA	0.66	1.06	0.12	NA	NA	2.97	3.37	000
32005		A	Treat lung lining chemically	2.19	NA	NA	0.77	0.98	0.19	NA	NA	3.15	3.36	000
32020		A	Insertion of chest tube	3.98	NA	NA	1.42	2.14	0.39	NA	NA	5.79	6.51	000
32035		A	Exploration of chest	8.67	NA	NA	8.79	8.07	1.08	NA	NA	18.54	17.82	090
32036		A	Exploration of chest	9.68	NA	NA	9.96	8.85	1.24	NA	NA	20.88	19.77	090
32095		A	Biopsy through chest wall	8.36	NA	NA	10.42	9.69	1.02	NA	NA	19.80	19.07	090
32100		A	Exploration/biopsy of chest	11.84	NA	NA	10.82	11.51	1.52	NA	NA	24.18	24.87	090
32110		A	Explore/repair chest	13.62	NA	NA	11.44	11.97	1.74	NA	NA	26.80	27.33	090
32120		A	Re-exploration of chest	11.54	NA	NA	10.76	10.51	1.50	NA	NA	23.80	23.55	090
32124		A	Explore chest,free adhesions	12.72	NA	NA	10.48	11.18	1.62	NA	NA	24.82	25.52	090
32140		A	Removal of lung lesion(s)	13.93	NA	NA	11.22	12.32	1.78	NA	NA	26.93	28.03	090
32141		A	Remove/treat lung lesions	14.00	NA	NA	11.91	13.24	1.81	NA	NA	27.72	29.05	090
32150		A	Removal of lung lesion(s)	14.15	NA	NA	11.04	11.13	1.75	NA	NA	26.94	27.03	090
32151		A	Remove lung foreign body	14.21	NA	NA	11.62	10.78	1.87	NA	NA	27.70	26.86	090
32160		A	Open chest heart massage	9.30	NA	NA	6.84	8.38	1.10	NA	NA	17.24	18.78	090
32200		A	Open drainage, lung lesion	15.29	NA	NA	10.22	8.85	1.31	NA	NA	26.82	25.45	090
32201		A	Percut drainage, lung lesion	4.00	NA	NA	6.44	4.87	0.34	NA	NA	10.78	9.21	000
32215		A	Treat chest lining	11.33	NA	NA	11.09	9.68	1.44	NA	NA	23.86	22.45	090
32220		A	Release of lung	19.27	NA	NA	15.46	16.31	2.39	NA	NA	37.12	37.97	090
32225		A	Partial release of lung	13.96	NA	NA	12.04	12.45	1.81	NA	NA	27.81	28.22	090
32310		A	Removal of chest lining	13.44	NA	NA	10.86	11.75	1.74	NA	NA	26.04	26.93	090
32320		A	Free/remove chest lining	20.54	NA	NA	13.76	16.70	2.60	NA	NA	36.90	39.84	090
32400		A	Needle biopsy chest lining	1.76	1.65	1.63	0.51	1.06	0.07	3.48	3.46	2.34	2.89	000
32402		A	Open biopsy chest lining	7.56	NA	NA	8.99	8.61	0.97	NA	NA	17.52	17.14	090
32405		A	Biopsy, lung or mediastinum	1.93	2.04	2.17	0.52	1.41	0.08	4.05	4.18	2.53	3.42	000
32420		A	Puncture/clear lung	2.18	NA	NA	0.64	1.14	0.11	NA	NA	2.93	3.43	000
32440		A	Removal of lung	21.02	NA	NA	14.58	17.36	2.70	NA	NA	38.30	41.08	090
32442		A	Sleeve pneumonectomy	26.24	NA	NA	17.63	18.55	3.49	NA	NA	47.36	48.28	090
32445		A	Removal of lung	25.09	NA	NA	16.07	19.14	3.13	NA	NA	44.29	47.36	090
32480		A	Partial removal of lung	18.32	NA	NA	12.70	15.66	2.35	NA	NA	33.37	36.33	090
32482		A	Bilobectomy	19.71	NA	NA	13.40	16.01	2.47	NA	NA	35.58	38.19	090
32484		A	Segmentectomy	20.69	NA	NA	13.97	16.29	2.62	NA	NA	37.28	39.60	090
32486		A	Sleeve lobectomy	23.92	NA	NA	15.94	16.95	3.12	NA	NA	42.98	43.99	090
32488		A	Completion pneumonectomy	25.71	NA	NA	16.81	18.03	3.31	NA	NA	45.83	47.05	090
32491		R	Lung volume reduction	21.25	NA	NA	14.83	15.80	3.00	NA	NA	39.08	40.05	090
32500		A	Partial removal of lung	14.30	NA	NA	12.09	13.36	1.86	NA	NA	28.25	29.52	090
32501		A	Repair bronchus (add-on)	4.69	NA	NA	1.76	3.22	0.55	NA	NA	7.00	8.46	ZZZ
32520		A	Remove lung & revise chest	21.68	NA	NA	15.02	18.73	2.86	NA	NA	39.56	43.27	090
32522		A	Remove lung & revise chest	24.20	NA	NA	15.76	19.77	3.11	NA	NA	43.07	47.08	090
32525		A	Remove lung & revise chest	26.50	NA	NA	16.30	20.90	3.39	NA	NA	46.19	50.79	090
32540		A	Removal of lung lesion	14.64	NA	NA	11.77	12.22	1.87	NA	NA	28.28	28.73	090
32601		A	Thoracoscopy, diagnostic	5.46	NA	NA	4.13	3.95	0.70	NA	NA	10.29	10.11	000
32602		A	Thoracoscopy, diagnostic	5.96	NA	NA	4.27	4.24	0.76	NA	NA	10.99	10.96	000
32603		A	Thoracoscopy, diagnostic	7.81	NA	NA	3.73	3.75	0.82	NA	NA	12.36	12.38	000
32604		A	Thoracoscopy, diagnostic	8.78	NA	NA	5.39	4.80	1.12	NA	NA	15.29	14.70	000
32605		A	Thoracoscopy, diagnostic	6.93	NA	NA	4.69	4.23	0.90	NA	NA	12.52	12.06	000
32606		A	Thoracoscopy, diagnostic	8.40	NA	NA	5.25	4.73	1.07	NA	NA	14.72	14.20	000
32650		A	Thoracoscopy, surgical	10.75	NA	NA	9.61	8.94	1.31	NA	NA	21.67	21.00	090
32651		A	Thoracoscopy, surgical	12.91	NA	NA	10.10	11.48	1.60	NA	NA	24.61	25.99	090
32652		A	Thoracoscopy, surgical	18.66	NA	NA	13.02	15.09	2.37	NA	NA	34.05	36.12	090
32653		A	Thoracoscopy, surgical	12.87	NA	NA	10.03	10.63	1.59	NA	NA	24.49	25.09	090
32654		A	Thoracoscopy, surgical	12.44	NA	NA	8.36	10.43	1.51	NA	NA	22.31	24.38	090
32655		A	Thoracoscopy, surgical	13.10	NA	NA	10.06	12.31	1.59	NA	NA	24.75	27.00	090
32656		A	Thoracoscopy, surgical	12.91	NA	NA	10.79	12.65	1.70	NA	NA	25.40	27.26	090
32657		A	Thoracoscopy, surgical	13.65	NA	NA	10.87	12.75	1.71	NA	NA	26.23	28.11	090
32658		A	Thoracoscopy, surgical	11.63	NA	NA	9.68	11.78	1.43	NA	NA	22.74	24.84	090
32659		A	Thoracoscopy, surgical	11.59	NA	NA	10.52	12.18	1.53	NA	NA	23.64	25.30	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
32660		A	Thoracoscopy, surgical	17.43	NA	NA	13.33	17.07	2.37	NA	NA	33.13	36.87	090
32661		A	Thoracoscopy, surgical	13.25	NA	NA	12.23	11.14	1.76	NA	NA	27.24	26.15	090
32662		A	Thoracoscopy, surgical	16.44	NA	NA	12.24	14.02	2.15	NA	NA	30.83	32.61	090
32663		A	Thoracoscopy, surgical	18.47	NA	NA	12.90	15.76	2.37	NA	NA	33.74	36.60	090
32664		A	Thoracoscopy, surgical	14.20	NA	NA	10.02	10.74	1.70	NA	NA	25.92	26.64	090
32665		A	Thoracoscopy, surgical	15.54	NA	NA	10.10	12.83	1.86	NA	NA	27.50	30.23	090
32800		A	Repair lung hernia	13.69	NA	NA	10.25	9.62	1.49	NA	NA	25.43	24.80	090
32810		A	Close chest after drainage	13.05	NA	NA	11.31	9.18	1.71	NA	NA	26.07	23.94	090
32815		A	Close bronchial fistula	23.15	NA	NA	16.24	16.38	3.07	NA	NA	42.46	42.60	090
32820		A	Reconstruct injured chest	21.48	NA	NA	13.94	17.29	2.53	NA	NA	37.95	41.30	090
32850		X	Donor pneumonectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
32851		A	Lung transplant, single	38.63	NA	NA	22.95	25.34	5.12	NA	NA	66.70	69.09	090
32852		A	Lung transplant w/bypass	41.80	NA	NA	24.68	27.38	5.56	NA	NA	72.04	74.74	090
32853		A	Lung transplant, double	47.81	NA	NA	28.15	31.41	6.69	NA	NA	82.65	85.91	090
32854		A	Lung transplant w/bypass	50.98	NA	NA	27.60	32.31	6.33	NA	NA	84.91	89.62	090
32900		A	Removal of rib(s)	20.27	NA	NA	13.87	11.53	2.52	NA	NA	36.66	34.32	090
32905		A	Revise & repair chest wall	20.75	NA	NA	14.84	14.34	2.83	NA	NA	38.22	37.72	090
32906		A	Revise & repair chest wall	26.77	NA	NA	17.13	16.93	3.52	NA	NA	47.42	47.22	090
32940		A	Revision of lung	19.43	NA	NA	12.98	12.66	2.50	NA	NA	34.91	34.59	090
32960		A	Therapeutic pneumothorax	1.84	1.99	1.50	0.36	0.69	0.13	3.96	3.47	2.33	2.66	000
32999		C	Chest surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
33010		A	Drainage of heart sac	2.24	NA	NA	0.82	1.25	0.28	NA	NA	3.34	3.77	000
33011		A	Repeat drainage of heart sac	2.24	NA	NA	0.84	0.72	0.26	NA	NA	3.34	3.22	000
33015		A	Incision of heart sac	6.80	NA	NA	4.81	4.72	0.92	NA	NA	12.53	12.44	090
33020		A	Incision of heart sac	12.61	NA	NA	9.68	12.04	1.70	NA	NA	23.99	26.35	090
33025		A	Incision of heart sac	12.09	NA	NA	9.29	11.86	1.61	NA	NA	22.99	25.56	090
33030		A	Partial removal of heart sac	18.71	NA	NA	14.50	18.42	2.50	NA	NA	35.71	39.63	090
33031		A	Partial removal of heart sac	21.79	NA	NA	18.20	16.29	2.98	NA	NA	42.97	41.06	090
33050		A	Removal of heart sac lesion	14.36	NA	NA	12.39	11.22	1.83	NA	NA	28.58	27.41	090
33120		A	Removal of heart lesion	24.56	NA	NA	19.53	24.43	3.29	NA	NA	47.38	52.28	090
33130		A	Removal of heart lesion	21.39	NA	NA	13.59	14.12	2.51	NA	NA	37.49	38.02	090
33200		A	Insertion of heart pacemaker	12.48	NA	NA	12.39	12.86	1.52	NA	NA	26.39	26.86	090
33201		A	Insertion of heart pacemaker	10.18	NA	NA	11.00	11.57	1.41	NA	NA	22.59	23.16	090
33206		A	Insertion of heart pacemaker	6.67	NA	NA	5.70	6.84	0.89	NA	NA	13.26	14.40	090
33207		A	Insertion of heart pacemaker	8.04	NA	NA	6.17	7.88	1.08	NA	NA	15.29	17.00	090
33208		A	Insertion of heart pacemaker	8.13	NA	NA	6.36	8.03	1.12	NA	NA	15.61	17.28	090
33210		A	Insertion of heart electrode	3.30	NA	NA	1.34	2.46	0.44	NA	NA	5.08	6.20	000
33211		A	Insertion of heart electrode	3.40	NA	NA	1.37	2.48	0.47	NA	NA	5.24	6.35	000
33212		A	Insertion of pulse generator	5.52	NA	NA	4.59	5.22	0.74	NA	NA	10.85	11.48	090
33213		A	Insertion of pulse generator	6.37	NA	NA	4.99	5.42	0.86	NA	NA	12.22	12.65	090
33214		A	Upgrade of pacemaker system	7.75	NA	NA	6.14	6.00	1.05	NA	NA	14.94	14.80	090
33216		A	Revision implanted electrode	5.39	NA	NA	5.04	5.25	0.73	NA	NA	11.16	11.37	090
33217		A	Insert/revise electrode	5.75	NA	NA	5.39	5.42	0.79	NA	NA	11.93	11.96	090
33218		A	Repair pacemaker electrodes	5.44	NA	NA	4.61	4.80	0.73	NA	NA	10.78	10.97	090
33220		A	Repair pacemaker electrode	5.52	NA	NA	4.64	4.81	0.75	NA	NA	10.91	11.08	090
33222		A	Pacemaker aicd pocket	4.96	NA	NA	4.21	5.07	0.65	NA	NA	9.82	10.68	090
33223		A	Pacemaker aicd pocket	6.46	NA	NA	5.44	5.82	0.91	NA	NA	12.81	13.19	090
33233		A	Removal of pacemaker system	3.29	NA	NA	3.94	3.41	0.46	NA	NA	7.69	7.16	090
33234		A	Removal of pacemaker system	7.82	NA	NA	5.87	4.48	1.10	NA	NA	14.79	13.40	090
33235		A	Removal pacemaker electrode	9.40	NA	NA	6.60	5.01	1.32	NA	NA	17.32	15.73	090
33236		A	Remove electrode/thoracotomy	12.60	NA	NA	10.25	7.29	1.71	NA	NA	24.56	21.60	090
33237		A	Remove electrode/thoracotomy	13.71	NA	NA	10.52	10.47	1.76	NA	NA	25.99	25.94	090
33238		A	Remove electrode/thoracotomy	15.22	NA	NA	9.26	10.22	1.49	NA	NA	25.97	26.93	090
33240		A	Insert/replace pulse gener	7.60	NA	NA	6.01	5.93	1.07	NA	NA	14.68	14.60	090
33241		A	Remove pulse generator only	3.24	NA	NA	3.68	3.01	0.46	NA	NA	7.38	6.71	090
33242		A	Repair pulse generator/leads	6.17	NA	NA	7.85	7.61	0.87	NA	NA	14.89	14.65	090
33243		A	Remove generator/thoracotomy	22.64	NA	NA	13.06	11.43	3.16	NA	NA	38.86	37.23	090
33244		A	Remove generator	8.97	NA	NA	6.80	8.30	1.27	NA	NA	17.04	18.54	090
33245		A	Implant heart defibrillator	14.30	NA	NA	13.01	15.04	1.95	NA	NA	29.26	31.29	090
33246		A	Implant heart defibrillator	20.71	NA	NA	15.31	18.94	2.90	NA	NA	38.92	42.55	090
33247		A	Insert/replace leads	10.21	NA	NA	7.55	9.87	1.34	NA	NA	19.10	21.42	090
33249		A	Insert/replace leads/gener	13.28	NA	NA	9.25	12.56	1.88	NA	NA	24.41	27.72	090
33250		A	Ablate heart dysrhythm focus	21.85	NA	NA	14.76	13.66	3.19	NA	NA	39.80	38.70	090
33251		A	Ablate heart dysrhythm focus	24.88	NA	NA	18.80	18.31	3.48	NA	NA	47.16	46.67	090
33253		A	Reconstruct atria	31.06	NA	NA	20.10	21.89	4.35	NA	NA	55.51	57.30	090
33261		A	Ablate heart dysrhythm focus	24.88	NA	NA	19.79	17.47	3.08	NA	NA	47.75	45.43	090
33300		A	Repair of heart wound	17.92	NA	NA	13.92	14.75	2.44	NA	NA	34.28	35.11	090
33305		A	Repair of heart wound	21.44	NA	NA	16.49	17.69	2.90	NA	NA	40.83	42.03	090
33310		A	Exploratory heart surgery	18.51	NA	NA	15.35	13.80	2.63	NA	NA	36.49	34.94	090
33315		A	Exploratory heart surgery	22.37	NA	NA	16.57	16.14	3.15	NA	NA	42.09	41.66	090
33320		A	Repair major blood vessel(s)	16.79	NA	NA	13.08	14.22	2.23	NA	NA	32.10	33.24	090
33321		A	Repair major vessel	20.20	NA	NA	11.53	17.57	2.49	NA	NA	34.22	40.26	090
33322		A	Repair major blood vessel(s)	20.62	NA	NA	16.56	20.08	2.85	NA	NA	40.03	43.55	090
33330		A	Insert major vessel graft	21.43	NA	NA	16.47	15.11	2.98	NA	NA	40.88	39.52	090
33332		A	Insert major vessel graft	23.96	NA	NA	15.38	15.87	3.48	NA	NA	42.82	43.31	090
33335		A	Insert major vessel graft	30.01	NA	NA	20.00	18.18	4.10	NA	NA	54.11	52.29	090
33400		A	Repair of aortic valve	25.34	NA	NA	19.80	24.12	3.47	NA	NA	48.61	52.93	090
33401		A	Valvuloplasty, open	23.91	NA	NA	17.26	22.85	3.39	NA	NA	44.56	50.15	090
33403		A	Valvuloplasty, w/cp bypass	24.89	NA	NA	18.46	23.45	3.49	NA	NA	46.84	51.83	090
33404		A	Prepare heart-aorta conduit	28.54	NA	NA	21.52	27.72	3.86	NA	NA	53.92	60.12	090
33405		A	Replacement of aortic valve	30.61	NA	NA	20.80	26.94	4.14	NA	NA	55.55	61.69	090
33406		A	Replacement, aortic valve	32.30	NA	NA	22.21	30.39	4.39	NA	NA	58.90	67.08	090
33411		A	Replacement of aortic valve	32.47	NA	NA	21.53	30.15	4.37	NA	NA	58.37	66.99	090
33412		A	Replacement of aortic valve	34.79	NA	NA	20.84	31.19	4.10	NA	NA	59.73	70.08	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
33413		A	Replacement, aortic valve	35.24	NA	NA	25.14	33.60	4.80	NA	NA	65.18	73.64	090
33414		A	Repair, aortic valve	30.35	NA	NA	20.98	28.61	4.07	NA	NA	55.40	63.03	090
33415		A	Revision, subvalvular tissue	27.15	NA	NA	17.49	24.96	3.00	NA	NA	47.64	55.11	090
33416		A	Revise ventricle muscle	30.35	NA	NA	20.72	25.63	4.17	NA	NA	55.24	60.15	090
33417		A	Repair of aortic valve	28.53	NA	NA	21.08	27.57	3.87	NA	NA	53.48	59.97	090
33420		A	Revision of mitral valve	22.70	NA	NA	10.63	16.07	1.69	NA	NA	35.02	40.46	090
33422		A	Revision of mitral valve	25.94	NA	NA	18.31	24.64	3.47	NA	NA	47.72	54.05	090
33425		A	Repair of mitral valve	27.00	NA	NA	19.61	25.92	3.64	NA	NA	50.25	56.56	090
33426		A	Repair of mitral valve	31.03	NA	NA	21.07	27.88	4.16	NA	NA	56.26	63.07	090
33427		A	Repair of mitral valve	33.72	NA	NA	21.91	29.79	4.59	NA	NA	60.22	68.10	090
33430		A	Replacement of mitral valve	31.43	NA	NA	21.07	29.30	4.27	NA	NA	56.77	65.00	090
33460		A	Revision of tricuspid valve	23.60	NA	NA	18.28	23.23	3.18	NA	NA	45.06	50.01	090
33463		A	Valvuloplasty, tricuspid	25.62	NA	NA	18.62	24.60	3.49	NA	NA	47.73	53.71	090
33464		A	Valvuloplasty, tricuspid	27.33	NA	NA	19.53	26.08	3.70	NA	NA	50.56	57.11	090
33465		A	Replace tricuspid valve	28.79	NA	NA	19.91	27.14	3.81	NA	NA	52.51	59.74	090
33468		A	Revision of tricuspid valve	30.12	NA	NA	24.22	30.09	4.10	NA	NA	58.44	64.31	090
33470		A	Revision of pulmonary valve	20.81	NA	NA	19.43	20.47	2.69	NA	NA	42.93	43.97	090
33471		A	Valvotomy, pulmonary valve	22.25	NA	NA	10.94	18.76	1.84	NA	NA	35.03	42.85	090
33472		A	Revision of pulmonary valve	22.25	NA	NA	12.27	19.42	2.61	NA	NA	37.13	44.28	090
33474		A	Revision of pulmonary valve	23.04	NA	NA	14.16	20.83	2.70	NA	NA	39.90	46.57	090
33475		A	Replacement, pulmonary valve	28.41	NA	NA	19.41	26.66	3.77	NA	NA	51.59	58.84	090
33476		A	Revision of heart chamber	25.77	NA	NA	14.27	22.41	2.42	NA	NA	42.46	50.60	090
33478		A	Revision of heart chamber	26.74	NA	NA	18.13	25.03	3.93	NA	NA	48.80	55.70	090
33496		A	Repair, prosth valve clot	27.25	NA	NA	19.62	26.08	3.53	NA	NA	50.40	56.86	090
33500		A	Repair heart vessel fistula	25.55	NA	NA	16.09	23.30	3.19	NA	NA	44.83	52.04	090
33501		A	Repair heart vessel fistula	17.78	NA	NA	12.81	14.08	2.22	NA	NA	32.81	34.06	090
33502		A	Coronary artery correction	21.04	NA	NA	20.11	17.73	3.01	NA	NA	44.16	41.78	090
33503		A	Coronary artery graft	21.78	NA	NA	19.26	22.63	2.53	NA	NA	43.57	46.94	090
33504		A	Coronary artery graft	24.66	NA	NA	18.03	23.74	2.58	NA	NA	45.27	50.98	090
33505		A	Repair artery w/tunnel	26.84	NA	NA	22.13	27.09	3.24	NA	NA	52.21	57.17	090
33506		A	Repair artery, translocation	26.71	NA	NA	20.43	26.16	3.13	NA	NA	50.27	56.00	090
33510		A	CABG, vein, single	25.12	NA	NA	18.38	24.19	3.42	NA	NA	46.92	52.73	090
33511		A	CABG, vein, two	27.40	NA	NA	19.36	26.04	3.72	NA	NA	50.48	57.16	090
33512		A	CABG, vein, three	29.67	NA	NA	20.46	27.94	3.97	NA	NA	54.10	61.58	090
33513		A	CABG, vein, four	31.95	NA	NA	21.54	29.85	4.32	NA	NA	57.81	66.12	090
33514		A	CABG, vein, five	35.00	NA	NA	23.15	32.47	4.73	NA	NA	62.88	72.20	090
33516		A	CABG, vein, six+	37.40	NA	NA	24.26	34.46	5.08	NA	NA	66.74	76.94	090
33517		A	CABG, artery-vein, single	2.57	NA	NA	1.09	2.08	0.35	NA	NA	4.01	5.00	ZZZ
33518		A	CABG, artery-vein, two	4.85	NA	NA	2.05	3.93	0.65	NA	NA	7.55	9.43	ZZZ
33519		A	CABG, artery-vein, three	7.12	NA	NA	3.01	5.76	0.96	NA	NA	11.09	13.84	ZZZ
33521		A	CABG, artery-vein, four	9.40	NA	NA	3.99	7.61	1.27	NA	NA	14.66	18.28	ZZZ
33522		A	CABG, artery-vein, five	11.67	NA	NA	4.97	9.45	1.57	NA	NA	18.21	22.69	ZZZ
33523		A	CABG, artery-vein, six+	13.95	NA	NA	5.94	11.30	1.88	NA	NA	21.77	27.13	ZZZ
33530		A	Coronary artery, bypass/reop	5.86	NA	NA	2.48	4.74	0.80	NA	NA	9.14	11.40	ZZZ
33533		A	CABG, arterial, single	25.83	NA	NA	18.90	24.87	3.46	NA	NA	48.19	54.16	090
33534		A	CABG, arterial, two	28.82	NA	NA	19.99	27.20	3.85	NA	NA	52.66	59.87	090
33535		A	CABG, arterial, three	31.81	NA	NA	21.04	29.51	4.12	NA	NA	56.97	65.44	090
33536		A	CABG, arterial, four+	34.79	NA	NA	22.08	31.81	4.59	NA	NA	61.46	71.19	090
33542		A	Removal of heart lesion	28.85	NA	NA	21.86	27.61	3.95	NA	NA	54.66	60.41	090
33545		A	Repair of heart damage	36.78	NA	NA	24.00	30.95	4.99	NA	NA	65.77	72.72	090
33572		A	Open coronary endarterectomy	4.45	NA	NA	1.87	2.69	0.61	NA	NA	6.93	7.75	ZZZ
33600		A	Closure of valve	29.51	NA	NA	16.65	25.94	2.66	NA	NA	48.82	58.11	090
33602		A	Closure of valve	28.54	NA	NA	14.77	23.93	2.99	NA	NA	46.30	55.46	090
33606		A	Anastomosis/artery-aorta	30.74	NA	NA	21.87	29.28	4.21	NA	NA	56.82	64.23	090
33608		A	Repair anomaly w/conduit	31.09	NA	NA	19.24	28.18	3.71	NA	NA	54.04	62.98	090
33610		A	Repair by enlargement	30.61	NA	NA	20.82	28.68	3.86	NA	NA	55.29	63.15	090
33611		A	Repair double ventricle	32.30	NA	NA	20.59	29.58	4.27	NA	NA	57.16	66.15	090
33612		A	Repair double ventricle	33.26	NA	NA	21.85	30.78	4.81	NA	NA	59.92	68.85	090
33615		A	Repair (simple fontan)	32.06	NA	NA	21.66	29.97	4.14	NA	NA	57.86	66.17	090
33617		A	Repair by modified fontan	34.03	NA	NA	25.51	33.07	4.82	NA	NA	64.36	71.92	090
33619		A	Repair single ventricle	37.57	NA	NA	30.98	37.92	5.36	NA	NA	73.91	80.85	090
33641		A	Repair heart septum defect	21.39	NA	NA	14.98	20.26	2.90	NA	NA	39.27	44.55	090
33645		A	Revision of heart veins	24.82	NA	NA	16.78	23.21	3.28	NA	NA	44.88	51.31	090
33647		A	Repair heart septum defects	28.73	NA	NA	22.28	28.29	4.08	NA	NA	55.09	61.10	090
33660		A	Repair of heart defects	25.54	NA	NA	19.57	25.03	3.20	NA	NA	48.31	53.77	090
33665		A	Repair of heart defects	28.60	NA	NA	19.75	26.85	4.27	NA	NA	52.62	59.72	090
33670		A	Repair of heart chambers	32.73	NA	NA	17.63	28.35	3.28	NA	NA	53.64	64.36	090
33681		A	Repair heart septum defect	27.67	NA	NA	21.74	27.39	3.78	NA	NA	53.19	58.84	090
33684		A	Repair heart septum defect	29.65	NA	NA	17.73	26.57	3.83	NA	NA	51.21	60.05	090
33688		A	Repair heart septum defect	30.62	NA	NA	15.47	26.01	3.95	NA	NA	50.04	60.58	090
33690		A	Reinforce pulmonary artery	19.55	NA	NA	14.54	18.94	2.52	NA	NA	36.61	41.01	090
33692		A	Repair of heart defects	30.75	NA	NA	19.64	28.18	4.47	NA	NA	54.86	63.40	090
33694		A	Repair of heart defects	31.73	NA	NA	18.26	28.07	3.29	NA	NA	53.28	63.09	090
33697		A	Repair of heart defects	33.71	NA	NA	16.65	28.45	4.82	NA	NA	55.18	66.98	090
33702		A	Repair of heart defects	26.54	NA	NA	21.17	26.43	3.80	NA	NA	51.51	56.77	090
33710		A	Repair of heart defects	29.71	NA	NA	19.37	27.42	3.95	NA	NA	53.03	61.08	090
33720		A	Repair of heart defect	26.56	NA	NA	19.81	25.76	3.76	NA	NA	50.13	56.08	090
33722		A	Repair of heart defect	28.41	NA	NA	20.68	26.88	4.24	NA	NA	53.33	59.53	090
33730		A	Repair heart-vein defect(s)	31.67	NA	NA	21.40	29.61	4.51	NA	NA	57.58	65.79	090
33732		A	Repair heart-vein defect	28.16	NA	NA	21.13	27.38	4.19	NA	NA	53.48	59.73	090
33735		A	Revision of heart chamber	21.39	NA	NA	14.68	21.28	2.36	NA	NA	38.43	45.03	090
33736		A	Revision of heart chamber	23.52	NA	NA	20.52	24.20	3.23	NA	NA	47.27	50.95	090
33737		A	Revision of heart chamber	21.76	NA	NA	10.78	18.38	0.90	NA	NA	33.44	41.04	090
33750		A	Major vessel shunt	21.41	NA	NA	15.79	19.89	2.89	NA	NA	40.09	44.19	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
33755		A	Major vessel shunt	21.79	NA	NA	19.53	21.76	1.34	NA	NA	42.66	44.89	090
33762		A	Major vessel shunt	21.79	NA	NA	12.10	18.04	3.13	NA	NA	37.02	42.96	090
33764		A	Major vessel shunt & graft	21.79	NA	NA	15.97	19.98	2.20	NA	NA	39.96	43.97	090
33766		A	Major vessel shunt	22.76	NA	NA	17.75	20.87	3.26	NA	NA	43.77	46.89	090
33767		A	Major vessel shunt	24.50	NA	NA	18.47	23.18	3.76	NA	NA	46.73	51.44	090
33770		A	Repair great vessels defect	33.29	NA	NA	17.34	28.54	2.92	NA	NA	53.55	64.75	090
33771		A	Repair great vessels defect	34.65	NA	NA	17.01	29.19	3.04	NA	NA	54.70	66.88	090
33774		A	Repair great vessels defect	30.98	NA	NA	17.15	25.55	1.25	NA	NA	49.38	57.78	090
33775		A	Repair great vessels defect	32.20	NA	NA	16.07	25.01	2.82	NA	NA	51.09	60.03	090
33776		A	Repair great vessels defect	34.04	NA	NA	16.78	27.34	2.99	NA	NA	53.81	64.37	090
33777		A	Repair great vessels defect	33.46	NA	NA	16.55	25.25	2.94	NA	NA	52.95	61.65	090
33778		A	Repair great vessels defect	35.82	NA	NA	17.46	30.11	3.14	NA	NA	56.42	69.07	090
33779		A	Repair great vessels defect	36.21	NA	NA	20.22	31.73	5.05	NA	NA	61.48	72.99	090
33780		A	Repair great vessels defect	36.94	NA	NA	21.09	32.59	5.37	NA	NA	63.40	74.90	090
33781		A	Repair great vessels defect	36.45	NA	NA	17.70	30.61	3.20	NA	NA	57.35	70.26	090
33786		A	Repair arterial trunk	34.84	NA	NA	17.08	29.34	3.06	NA	NA	54.98	67.24	090
33788		A	Revision of pulmonary artery	26.62	NA	NA	14.09	22.94	1.77	NA	NA	42.48	51.33	090
33800		A	Aortic suspension	16.24	NA	NA	12.95	14.15	2.07	NA	NA	31.26	32.46	090
33802		A	Repair vessel defect	17.66	NA	NA	15.80	18.45	2.56	NA	NA	36.02	38.67	090
33803		A	Repair vessel defect	19.60	NA	NA	13.62	18.51	2.49	NA	NA	35.71	40.60	090
33813		A	Repair septal defect	20.65	NA	NA	18.42	21.20	3.13	NA	NA	42.20	44.98	090
33814		A	Repair septal defect	25.77	NA	NA	20.27	25.52	3.69	NA	NA	49.73	54.98	090
33820		A	Revise major vessel	16.29	NA	NA	14.14	16.80	2.19	NA	NA	32.62	35.28	090
33822		A	Revise major vessel	17.32	NA	NA	10.39	15.53	2.33	NA	NA	30.04	35.18	090
33824		A	Revise major vessel	19.52	NA	NA	15.18	19.24	2.61	NA	NA	37.31	41.37	090
33840		A	Remove aorta constriction	20.63	NA	NA	11.87	18.25	1.37	NA	NA	33.87	40.25	090
33845		A	Remove aorta constriction	22.12	NA	NA	17.70	22.05	3.32	NA	NA	43.14	47.49	090
33851		A	Remove aorta constriction	21.27	NA	NA	16.26	20.83	3.09	NA	NA	40.62	45.19	090
33852		A	Repair septal defect	23.71	NA	NA	19.52	23.91	3.29	NA	NA	46.52	50.91	090
33853		A	Repair septal defect	31.72	NA	NA	23.56	30.71	4.34	NA	NA	59.62	66.77	090
33860		A	Ascending aorta graft	33.96	NA	NA	22.05	29.86	4.64	NA	NA	60.65	68.46	090
33861		A	Ascending aorta graft	34.52	NA	NA	22.37	30.02	4.70	NA	NA	61.59	69.24	090
33863		A	Ascending aorta graft	36.47	NA	NA	23.09	30.36	4.92	NA	NA	64.48	71.77	090
33870		A	Transverse aortic arch graft	40.31	NA	NA	24.48	36.28	5.66	NA	NA	70.45	82.25	090
33875		A	Thoracic aorta graft	33.06	NA	NA	20.58	27.25	4.46	NA	NA	58.10	64.77	090
33877		A	Thoracoabdominal graft	42.60	NA	NA	25.52	36.70	5.68	NA	NA	73.80	84.98	090
33910		A	Remove lung artery emboli	24.59	NA	NA	18.03	16.97	3.21	NA	NA	45.83	44.77	090
33915		A	Remove lung artery emboli	21.02	NA	NA	13.38	13.21	2.41	NA	NA	36.81	36.64	090
33916		A	Surgery of great vessel	25.83	NA	NA	17.18	18.13	3.18	NA	NA	46.19	47.14	090
33917		A	Repair pulmonary artery	24.50	NA	NA	18.64	23.95	3.27	NA	NA	46.41	51.72	090
33918		A	Repair pulmonary atresia	26.45	NA	NA	15.84	23.71	2.33	NA	NA	44.62	52.49	090
33919		A	Repair pulmonary atresia	32.67	NA	NA	19.68	29.34	4.88	NA	NA	57.23	66.89	090
33920		A	Repair pulmonary atresia	31.95	NA	NA	15.98	27.07	4.77	NA	NA	52.70	63.79	090
33922		A	Transect pulmonary artery	23.52	NA	NA	16.32	22.20	2.53	NA	NA	42.37	48.25	090
33924		A	Remove pulmonary shunt	5.50	NA	NA	2.29	3.32	0.82	NA	NA	8.61	9.64	ZZZ
33930		X	Removal of donor heart/lung	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
33935		R	Transplantation, heart/lung	60.96	NA	NA	31.23	52.01	7.76	NA	NA	99.95	120.73	090
33940		X	Removal of donor heart	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
33945		R	Transplantation of heart	42.10	NA	NA	26.12	38.19	5.82	NA	NA	74.04	86.11	090
33960		A	External circulation assist	19.36	NA	NA	4.43	6.02	1.62	NA	NA	25.41	27.00	XXX
33961		A	External circulation assist	10.93	NA	NA	4.36	5.99	1.33	NA	NA	16.62	18.25	ZZZ
33970		A	Aortic circulation assist	6.75	NA	NA	2.83	5.45	0.94	NA	NA	10.52	13.14	000
33971		A	Aortic circulation assist	9.69	NA	NA	9.11	7.36	1.35	NA	NA	20.15	18.40	090
33973		A	Insert balloon device	9.76	NA	NA	4.08	6.13	1.35	NA	NA	15.19	17.24	000
33974		A	Remove intra-aortic balloon	14.41	NA	NA	11.93	8.96	1.93	NA	NA	28.27	25.32	090
33975		A	Implant ventricular device	21.60	NA	NA	13.78	14.59	2.98	NA	NA	55.76	56.57	010
33976		A	Implant ventricular device	43.00	NA	NA	16.18	18.58	4.01	NA	NA	63.19	65.59	010
33977		A	Remove ventricular device	19.29	NA	NA	12.86	13.17	2.68	NA	NA	34.83	35.14	090
33978		A	Remove ventricular device	21.73	NA	NA	12.85	14.13	2.81	NA	NA	37.39	38.67	090
33999		C	Cardiac surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
34001		A	Removal of artery clot	12.91	NA	NA	6.35	8.38	1.64	NA	NA	20.90	22.93	090
34051		A	Removal of artery clot	15.21	NA	NA	7.92	8.74	1.94	NA	NA	25.07	25.89	090
34101		A	Removal of artery clot	9.97	NA	NA	4.94	7.00	1.19	NA	NA	16.10	18.16	090
34111		A	Removal of arm artery clot	8.07	NA	NA	4.16	6.20	0.89	NA	NA	13.12	15.16	090
34151		A	Removal of artery clot	16.86	NA	NA	7.98	10.48	1.94	NA	NA	26.78	29.28	090
34201		A	Removal of artery clot	9.13	NA	NA	5.03	7.35	1.11	NA	NA	15.27	17.59	090
34203		A	Removal of leg artery clot	12.21	NA	NA	6.30	7.84	1.50	NA	NA	20.01	21.55	090
34401		A	Removal of vein clot	12.86	NA	NA	6.34	7.55	1.32	NA	NA	20.52	21.73	090
34421		A	Removal of vein clot	9.93	NA	NA	5.24	6.67	1.02	NA	NA	16.19	17.62	090
34451		A	Removal of vein clot	14.44	NA	NA	6.80	9.20	1.68	NA	NA	22.92	25.32	090
34471		A	Removal of vein clot	10.18	NA	NA	5.00	4.41	1.06	NA	NA	16.24	15.65	090
34490		A	Removal of vein clot	7.60	NA	NA	5.02	6.46	0.81	NA	NA	13.43	14.87	090
34501		A	Repair valve, femoral vein	10.93	NA	NA	8.35	8.17	1.47	NA	NA	20.75	20.57	090
34502		A	Reconstruct, vena cava	26.95	NA	NA	12.13	16.19	3.10	NA	NA	42.18	46.24	090
34510		A	Transposition of vein valve	13.25	NA	NA	8.57	9.11	1.75	NA	NA	23.57	24.11	090
34520		A	Cross-over vein graft	13.74	NA	NA	8.07	9.10	1.73	NA	NA	23.54	24.57	090
34530		A	Leg vein fusion	17.61	NA	NA	9.26	11.33	2.12	NA	NA	28.99	31.06	090
35001		A	Repair defect of artery	19.64	NA	NA	9.12	13.19	2.52	NA	NA	31.28	35.35	090
35002		A	Repair artery rupture, neck	21.00	NA	NA	9.40	11.56	2.59	NA	NA	32.99	35.15	090
35005		A	Repair defect of artery	18.12	NA	NA	7.27	9.22	1.49	NA	NA	26.88	28.83	090
35011		A	Repair defect of artery	11.65	NA	NA	5.62	9.77	1.43	NA	NA	18.70	22.85	090
35013		A	Repair artery rupture, arm	17.40	NA	NA	7.67	11.81	2.08	NA	NA	27.15	31.29	090
35021		A	Repair defect of artery	19.65	NA	NA	10.06	14.87	2.53	NA	NA	32.24	37.05	090
35022		A	Repair artery rupture, chest	23.18	NA	NA	10.40	13.22	2.29	NA	NA	35.87	38.69	090

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CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
35045		A	Repair defect of arm artery	11.26	NA	NA	6.55	9.98	1.32	NA	NA	19.13	22.56	090
35081		A	Repair defect of artery	28.01	NA	NA	12.71	18.00	3.46	NA	NA	44.18	49.47	090
35082		A	Repair artery rupture, aorta	36.35	NA	NA	15.38	20.12	4.31	NA	NA	56.04	60.78	090
35091		A	Repair defect of artery	35.40	NA	NA	15.46	20.03	4.47	NA	NA	55.33	59.90	090
35092		A	Repair artery rupture, aorta	38.39	NA	NA	16.13	22.32	4.63	NA	NA	59.15	65.34	090
35102		A	Repair defect of artery	30.76	NA	NA	13.61	18.83	3.79	NA	NA	48.16	53.38	090
35103		A	Repair artery rupture, groin	33.57	NA	NA	14.25	21.32	3.97	NA	NA	51.79	58.86	090
35111		A	Repair defect of artery	16.43	NA	NA	7.84	13.47	1.92	NA	NA	26.19	31.82	090
35112		A	Repair artery rupture,spleen	18.69	NA	NA	8.30	9.82	2.27	NA	NA	29.26	30.78	090
35121		A	Repair defect of artery	25.99	NA	NA	11.67	16.21	3.25	NA	NA	40.91	45.45	090
35122		A	Repair artery rupture, belly	33.45	NA	NA	13.62	16.54	3.81	NA	NA	50.88	53.80	090
35131		A	Repair defect of artery	18.55	NA	NA	8.93	13.08	2.30	NA	NA	29.78	33.93	090
35132		A	Repair artery rupture, groin	21.95	NA	NA	9.80	15.04	2.57	NA	NA	34.32	39.56	090
35141		A	Repair defect of artery	14.46	NA	NA	7.40	11.68	1.81	NA	NA	23.67	27.95	090
35142		A	Repair artery rupture, thigh	15.86	NA	NA	7.52	12.50	1.99	NA	NA	25.37	30.35	090
35151		A	Repair defect of artery	17.00	NA	NA	8.21	12.44	2.10	NA	NA	27.31	31.54	090
35152		A	Repair artery rupture, knee	16.70	NA	NA	8.21	9.14	2.11	NA	NA	27.02	27.95	090
35161		A	Repair defect of artery	18.76	NA	NA	9.47	13.35	2.29	NA	NA	30.52	34.40	090
35162		A	Repair artery rupture	19.78	NA	NA	9.21	14.74	2.38	NA	NA	31.37	36.90	090
35180		A	Repair blood vessel lesion	13.62	NA	NA	6.60	7.30	1.63	NA	NA	21.85	22.55	090
35182		A	Repair blood vessel lesion	17.74	NA	NA	8.42	9.99	2.06	NA	NA	28.22	29.79	090
35184		A	Repair blood vessel lesion	12.25	NA	NA	6.08	8.32	1.51	NA	NA	19.84	22.08	090
35188		A	Repair blood vessel lesion	14.28	NA	NA	7.22	8.01	1.76	NA	NA	23.26	24.05	090
35189		A	Repair blood vessel lesion	18.43	NA	NA	8.90	10.60	2.28	NA	NA	29.61	31.31	090
35190		A	Repair blood vessel lesion	12.75	NA	NA	6.38	8.80	1.56	NA	NA	20.69	23.11	090
35201		A	Repair blood vessel lesion	9.99	NA	NA	5.22	8.08	1.29	NA	NA	16.50	19.36	090
35206		A	Repair blood vessel lesion	9.25	NA	NA	6.04	8.53	1.11	NA	NA	16.40	18.89	090
35207		A	Repair blood vessel lesion	10.15	NA	NA	8.44	10.08	1.13	NA	NA	19.72	21.36	090
35211		A	Repair blood vessel lesion	22.12	NA	NA	17.02	15.77	3.03	NA	NA	42.17	40.92	090
35216		A	Repair blood vessel lesion	18.75	NA	NA	13.29	12.44	2.33	NA	NA	34.37	33.52	090
35221		A	Repair blood vessel lesion	16.42	NA	NA	7.75	9.90	1.89	NA	NA	26.06	28.21	090
35226		A	Repair blood vessel lesion	9.06	NA	NA	6.70	8.76	1.20	NA	NA	16.96	19.02	090
35231		A	Repair blood vessel lesion	12.00	NA	NA	6.37	10.35	1.46	NA	NA	19.83	23.81	090
35236		A	Repair blood vessel lesion	10.54	NA	NA	6.49	9.54	1.28	NA	NA	18.31	21.36	090
35241		A	Repair blood vessel lesion	23.12	NA	NA	19.56	17.10	3.04	NA	NA	45.72	43.26	090
35246		A	Repair blood vessel lesion	19.84	NA	NA	13.33	15.87	2.53	NA	NA	35.70	38.24	090
35251		A	Repair blood vessel lesion	17.49	NA	NA	8.13	9.27	1.95	NA	NA	27.57	28.71	090
35256		A	Repair blood vessel lesion	11.38	NA	NA	6.88	10.17	1.42	NA	NA	19.68	22.97	090
35261		A	Repair blood vessel lesion	11.63	NA	NA	5.82	9.85	1.45	NA	NA	18.90	22.93	090
35266		A	Repair blood vessel lesion	10.30	NA	NA	6.22	9.26	1.30	NA	NA	17.82	20.86	090
35271		A	Repair blood vessel lesion	22.12	NA	NA	16.34	14.97	3.05	NA	NA	41.51	40.14	090
35276		A	Repair blood vessel lesion	18.75	NA	NA	13.45	12.62	2.61	NA	NA	34.81	33.98	090
35281		A	Repair blood vessel lesion	16.48	NA	NA	7.93	13.34	1.90	NA	NA	26.31	31.72	090
35286		A	Repair blood vessel lesion	11.87	NA	NA	7.30	10.01	1.45	NA	NA	20.62	23.33	090
35301		A	Rechanneling of artery	18.70	NA	NA	9.57	12.63	2.41	NA	NA	30.68	33.74	090
35311		A	Rechanneling of artery	23.85	NA	NA	11.69	17.82	3.30	NA	NA	38.84	44.97	090
35321		A	Rechanneling of artery	11.97	NA	NA	5.84	9.95	1.48	NA	NA	19.29	23.40	090
35331		A	Rechanneling of artery	23.52	NA	NA	11.00	12.74	3.01	NA	NA	37.53	39.27	090
35341		A	Rechanneling of artery	25.11	NA	NA	11.22	15.04	3.23	NA	NA	39.56	43.38	090
35351		A	Rechanneling of artery	20.11	NA	NA	9.38	12.80	2.44	NA	NA	31.93	35.35	090
35355		A	Rechanneling of artery	16.09	NA	NA	7.80	12.27	1.96	NA	NA	25.85	30.32	090
35361		A	Rechanneling of artery	23.59	NA	NA	10.49	15.76	2.83	NA	NA	36.91	42.18	090
35363		A	Rechanneling of artery	24.66	NA	NA	11.03	17.87	2.93	NA	NA	38.62	45.46	090
35371		A	Rechanneling of artery	11.64	NA	NA	5.93	9.76	1.44	NA	NA	19.01	22.84	090
35372		A	Rechanneling of artery	13.56	NA	NA	6.67	9.41	1.67	NA	NA	21.90	24.64	090
35381		A	Rechanneling of artery	15.81	NA	NA	7.73	11.29	1.95	NA	NA	25.49	29.05	090
35390		A	Reoperation, carotid add-on	3.19	NA	NA	1.24	1.53	0.41	NA	NA	4.84	5.13	ZZZ
35400		A	Angioscopy	3.00	NA	NA	1.16	1.81	0.28	NA	NA	4.44	5.09	ZZZ
35450		A	Repair arterial blockage	10.07	NA	NA	4.52	8.27	1.25	NA	NA	15.84	19.59	000
35452		A	Repair arterial blockage	6.91	NA	NA	3.25	3.99	0.88	NA	NA	11.04	11.78	000
35454		A	Repair arterial blockage	6.04	NA	NA	2.86	5.04	0.75	NA	NA	9.65	11.83	000
35456		A	Repair arterial blockage	7.35	NA	NA	3.42	6.10	0.91	NA	NA	11.68	14.36	000
35458		A	Repair arterial blockage	9.49	NA	NA	4.22	7.61	1.19	NA	NA	14.90	18.29	000
35459		A	Repair arterial blockage	8.63	NA	NA	3.81	7.06	1.04	NA	NA	13.48	16.73	000
35460		A	Repair venous blockage	6.04	NA	NA	2.68	3.06	0.68	NA	NA	9.40	9.78	000
35470		A	Repair arterial blockage	8.63	NA	NA	3.55	6.93	0.73	NA	NA	12.91	16.29	000
35471		A	Repair arterial blockage	10.07	NA	NA	4.08	8.05	0.87	NA	NA	15.02	18.99	000
35472		A	Repair arterial blockage	6.91	NA	NA	2.96	3.44	0.59	NA	NA	10.46	10.94	000
35473		A	Repair arterial blockage	6.04	NA	NA	2.57	4.89	0.44	NA	NA	9.05	11.37	000
35474		A	Repair arterial blockage	7.36	NA	NA	3.10	5.95	0.57	NA	NA	11.03	13.88	000
35475		R	Repair arterial blockage	9.49	NA	NA	3.46	7.23	0.55	NA	NA	13.50	17.27	000
35476		A	Repair venous blockage	6.04	NA	NA	2.35	2.89	0.27	NA	NA	8.66	9.20	000
35480		A	Atherectomy, open	11.08	NA	NA	4.98	9.11	1.17	NA	NA	17.23	21.36	000
35481		A	Atherectomy, open	7.61	NA	NA	3.63	4.18	0.98	NA	NA	12.22	12.77	000
35482		A	Atherectomy, open	6.65	NA	NA	3.05	5.50	0.87	NA	NA	10.57	13.02	000
35483		A	Atherectomy, open	8.10	NA	NA	3.77	6.72	1.02	NA	NA	12.89	15.84	000
35484		A	Atherectomy, open	10.44	NA	NA	4.34	7.67	1.15	NA	NA	15.93	19.26	000
35485		A	Atherectomy, open	9.49	NA	NA	4.25	4.58	1.22	NA	NA	14.96	15.29	000
35490		A	Atherectomy, percutaneous	11.08	NA	NA	4.63	8.93	1.08	NA	NA	16.79	21.09	000
35491		A	Atherectomy, percutaneous	7.61	NA	NA	3.23	3.98	0.81	NA	NA	11.65	12.40	000
35492		A	Atherectomy, percutaneous	6.65	NA	NA	3.19	5.57	0.75	NA	NA	10.59	12.97	000
35493		A	Atherectomy, percutaneous	8.10	NA	NA	3.82	6.75	0.96	NA	NA	12.88	15.81	000
35494		A	Atherectomy, percutaneous	10.44	NA	NA	3.66	7.33	0.53	NA	NA	14.63	18.30	000
35495		A	Atherectomy, percutaneous	9.49	NA	NA	4.43	4.67	1.17	NA	NA	15.09	15.33	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
35500		C	Harvest vein for bypass	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
35501		A	Artery bypass graft	19.19	NA	NA	8.87	14.94	2.51	NA	NA	30.57	36.64	090
35506		A	Artery bypass graft	19.67	NA	NA	9.11	14.96	2.54	NA	NA	31.32	37.17	090
35507		A	Artery bypass graft	19.67	NA	NA	9.31	14.38	2.55	NA	NA	31.53	36.60	090
35508		A	Artery bypass graft	18.65	NA	NA	9.14	14.40	2.54	NA	NA	30.33	35.59	090
35509		A	Artery bypass graft	18.07	NA	NA	8.23	14.37	2.30	NA	NA	28.60	34.74	090
35511		A	Artery bypass graft	16.83	NA	NA	8.15	9.72	2.14	NA	NA	27.12	28.69	090
35515		A	Artery bypass graft	18.65	NA	NA	9.14	10.68	2.56	NA	NA	30.35	31.89	090
35516		A	Artery bypass graft	16.32	NA	NA	7.62	13.24	2.06	NA	NA	26.00	31.62	090
35518		A	Artery bypass graft	15.42	NA	NA	6.84	12.63	1.83	NA	NA	24.09	29.88	090
35521		A	Artery bypass graft	16.17	NA	NA	8.06	13.54	1.98	NA	NA	26.21	31.69	090
35526		A	Artery bypass graft	20.00	NA	NA	9.58	11.82	2.58	NA	NA	32.16	34.40	090
35531		A	Artery bypass graft	25.81	NA	NA	11.18	16.58	3.17	NA	NA	39.96	45.36	090
35533		A	Artery bypass graft	20.52	NA	NA	9.47	16.15	2.34	NA	NA	32.33	39.01	090
35536		A	Artery bypass graft	23.11	NA	NA	10.35	16.77	3.01	NA	NA	36.47	42.89	090
35541		A	Artery bypass graft	25.80	NA	NA	12.25	16.74	3.24	NA	NA	41.29	45.78	090
35546		A	Artery bypass graft	25.54	NA	NA	11.39	17.30	3.03	NA	NA	39.96	45.87	090
35548		A	Artery bypass graft	21.57	NA	NA	9.59	15.41	2.43	NA	NA	33.59	39.41	090
35549		A	Artery bypass graft	23.35	NA	NA	10.69	16.95	2.78	NA	NA	36.82	43.08	090
35551		A	Artery bypass graft	26.67	NA	NA	11.96	16.43	2.95	NA	NA	41.58	46.05	090
35556		A	Artery bypass graft	21.76	NA	NA	10.10	15.21	2.68	NA	NA	34.54	39.65	090
35558		A	Artery bypass graft	14.04	NA	NA	7.14	11.95	1.69	NA	NA	22.87	27.68	090
35560		A	Artery bypass graft	23.56	NA	NA	10.90	16.42	2.96	NA	NA	37.42	42.94	090
35563		A	Artery bypass graft	15.14	NA	NA	7.21	8.12	1.79	NA	NA	24.14	25.05	090
35565		A	Artery bypass graft	15.14	NA	NA	7.36	12.72	1.87	NA	NA	24.37	29.73	090
35566		A	Artery bypass graft	26.92	NA	NA	14.92	18.65	3.36	NA	NA	45.20	48.93	090
35571		A	Artery bypass graft	18.58	NA	NA	10.37	15.69	2.32	NA	NA	31.27	36.59	090
35582		A	Vein bypass graft	27.13	NA	NA	12.07	18.92	3.27	NA	NA	42.47	49.32	090
35583		A	Vein bypass graft	22.37	NA	NA	11.28	16.73	2.77	NA	NA	36.42	41.87	090
35585		A	Vein bypass graft	28.39	NA	NA	14.74	19.83	3.47	NA	NA	46.60	51.69	090
35587		A	Vein bypass graft	19.05	NA	NA	11.08	16.92	2.33	NA	NA	32.46	38.30	090
35601		A	Artery bypass graft	17.50	NA	NA	8.08	14.26	2.29	NA	NA	27.87	34.05	090
35606		A	Artery bypass graft	18.71	NA	NA	8.72	13.89	2.39	NA	NA	29.82	34.99	090
35612		A	Artery bypass graft	15.76	NA	NA	7.96	13.07	1.99	NA	NA	25.71	30.82	090
35616		A	Artery bypass graft	15.70	NA	NA	7.56	12.89	2.02	NA	NA	25.28	30.61	090
35621		A	Artery bypass graft	14.54	NA	NA	7.40	12.38	1.82	NA	NA	23.76	28.74	090
35623		A	Bypass graft, not vein	16.62	NA	NA	8.22	8.49	2.12	NA	NA	26.96	27.23	090
35626		A	Artery bypass graft	23.63	NA	NA	11.27	16.77	3.10	NA	NA	38.00	43.50	090
35631		A	Artery bypass graft	24.60	NA	NA	11.07	15.23	3.13	NA	NA	38.80	42.96	090
35636		A	Artery bypass graft	22.46	NA	NA	9.96	12.31	2.73	NA	NA	35.15	37.50	090
35641		A	Artery bypass graft	24.57	NA	NA	11.58	16.95	3.15	NA	NA	39.30	44.67	090
35642		A	Artery bypass graft	17.98	NA	NA	9.59	9.90	2.30	NA	NA	28.87	30.18	090
35645		A	Artery bypass graft	17.47	NA	NA	7.63	9.87	1.93	NA	NA	27.03	29.27	090
35646		A	Artery bypass graft	25.81	NA	NA	11.84	18.83	3.24	NA	NA	40.89	47.88	090
35650		A	Artery bypass graft	14.36	NA	NA	6.95	12.05	1.78	NA	NA	23.09	28.19	090
35651		A	Artery bypass graft	25.04	NA	NA	11.55	18.85	2.89	NA	NA	39.48	46.78	090
35654		A	Artery bypass graft	18.61	NA	NA	8.77	15.50	2.29	NA	NA	29.67	36.40	090
35656		A	Artery bypass graft	19.53	NA	NA	9.12	14.18	2.37	NA	NA	31.02	36.08	090
35661		A	Artery bypass graft	13.18	NA	NA	6.60	11.17	1.62	NA	NA	21.40	25.97	090
35663		A	Artery bypass graft	14.17	NA	NA	7.27	12.10	1.81	NA	NA	23.25	28.08	090
35665		A	Artery bypass graft	15.40	NA	NA	7.56	12.97	1.93	NA	NA	24.89	30.30	090
35666		A	Artery bypass graft	19.19	NA	NA	11.44	16.61	2.39	NA	NA	33.02	38.19	090
35671		A	Artery bypass graft	14.80	NA	NA	9.03	12.98	1.81	NA	NA	25.64	29.59	090
35681		A	Composite bypass graft	1.60	NA	NA	2.39	6.01	0.20	NA	NA	4.19	7.81	ZZZ
35682		A	Composite bypass graft	7.20	2.81	7.92	2.74	7.90	0.89	10.90	16.01	10.83	15.99	ZZZ
35683		A	Composite bypass graft	8.50	3.32	8.05	3.22	8.02	1.05	12.87	17.60	12.77	17.57	ZZZ
35691		A	Arterial transposition	18.05	NA	NA	8.15	14.72	2.40	NA	NA	28.60	35.17	090
35693		A	Arterial transposition	15.36	NA	NA	6.95	8.58	2.07	NA	NA	24.38	26.01	090
35694		A	Arterial transposition	19.16	NA	NA	8.36	9.25	2.44	NA	NA	29.96	30.85	090
35695		A	Arterial transposition	19.16	NA	NA	8.39	9.26	2.26	NA	NA	29.81	30.68	090
35700		A	Reoperation, bypass graft	3.08	NA	NA	3.14	2.45	0.40	NA	NA	6.62	5.93	ZZZ
35701		A	Exploration, carotid artery	5.55	NA	NA	3.51	4.92	0.66	NA	NA	9.72	11.13	090
35721		A	Exploration, femoral artery	5.28	NA	NA	4.41	5.22	0.65	NA	NA	10.34	11.15	090
35741		A	Exploration popliteal artery	5.37	NA	NA	4.23	5.23	0.65	NA	NA	10.25	11.25	090
35761		A	Exploration of artery/vein	5.37	NA	NA	4.43	5.37	0.64	NA	NA	10.44	11.38	090
35800		A	Explore neck vessels	7.02	NA	NA	4.13	4.93	0.85	NA	NA	12.00	12.80	090
35820		A	Explore chest vessels	12.88	NA	NA	5.45	7.03	1.77	NA	NA	20.10	21.68	090
35840		A	Explore abdominal vessels	9.77	NA	NA	5.30	6.58	1.10	NA	NA	16.17	17.45	090
35860		A	Explore limb vessels	5.55	NA	NA	3.64	4.98	0.67	NA	NA	9.86	11.20	090
35870		A	Repair vessel graft defect	22.17	NA	NA	10.81	11.18	2.75	NA	NA	35.73	36.10	090
35875		A	Removal of clot in graft	10.13	NA	NA	6.02	7.47	1.12	NA	NA	17.27	18.72	090
35876		A	Removal of clot in graft	17.00	NA	NA	9.07	8.99	2.01	NA	NA	28.08	28.00	090
35901		A	Excision, graft, neck	8.19	NA	NA	5.73	6.76	1.02	NA	NA	14.94	15.97	090
35903		A	Excision, graft, extremity	9.39	NA	NA	7.97	7.88	1.12	NA	NA	18.48	18.39	090
35905		A	Excision, graft, thorax	18.19	NA	NA	11.02	9.41	2.22	NA	NA	31.43	29.82	090
35907		A	Excision, graft, abdomen	19.24	NA	NA	9.75	8.77	2.39	NA	NA	31.38	30.40	090
36000		A	Place needle in vein	0.18	0.52	0.39	0.05	0.08	0.01	0.71	0.58	0.24	0.27	XXX
36005		A	Injection, venography	0.95	17.34	8.93	0.26	0.39	0.05	18.34	9.93	1.26	1.39	000
36010		A	Place catheter in vein	2.43	NA	NA	0.79	1.54	0.17	NA	NA	3.39	4.14	XXX
36011		A	Place catheter in vein	3.14	NA	NA	0.98	1.52	0.21	NA	NA	4.33	4.87	XXX
36012		A	Place catheter in vein	3.52	NA	NA	1.00	1.95	0.17	NA	NA	4.69	5.64	XXX
36013		A	Place catheter in artery	2.52	NA	NA	0.74	1.52	0.22	NA	NA	3.48	4.26	XXX
36014		A	Place catheter in artery	3.02	NA	NA	0.86	1.67	0.14	NA	NA	4.02	4.83	XXX
36015		A	Place catheter in artery	3.52	NA	NA	1.01	1.96	0.17	NA	NA	4.70	5.65	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
36100		A	Establish access to artery	3.02	NA	NA	1.16	1.99	0.34	NA	NA	4.52	5.35	XXX
36120		A	Establish access to artery	2.01	NA	NA	0.64	1.52	0.13	NA	NA	2.78	3.66	XXX
36140		A	Establish access to artery	2.01	NA	NA	0.61	1.07	0.14	NA	NA	2.76	3.22	XXX
36145		A	Artery to vein shunt	2.01	NA	NA	0.59	1.50	0.09	NA	NA	2.69	3.60	XXX
36160		A	Establish access to aorta	2.52	NA	NA	0.88	1.70	0.24	NA	NA	3.64	4.46	XXX
36200		A	Place catheter in aorta	3.02	NA	NA	0.88	1.92	0.17	NA	NA	4.07	5.11	XXX
36215		A	Place catheter in artery	4.68	NA	NA	1.44	2.23	0.30	NA	NA	6.42	7.21	XXX
36216		A	Place catheter in artery	5.28	NA	NA	1.52	2.55	0.27	NA	NA	7.07	8.10	XXX
36217		A	Place catheter in artery	6.30	NA	NA	1.90	3.08	0.38	NA	NA	8.58	9.76	XXX
36218		A	Place catheter in artery	1.01	NA	NA	0.32	0.50	0.06	NA	NA	1.39	1.57	ZZZ
36245		A	Place catheter in artery	4.68	NA	NA	1.55	2.49	0.37	NA	NA	6.60	7.54	XXX
36246		A	Place catheter in artery	5.28	NA	NA	1.64	2.61	0.36	NA	NA	7.28	8.25	XXX
36247		A	Place catheter in artery	6.30	NA	NA	1.88	3.07	0.38	NA	NA	8.56	9.75	XXX
36248		A	Place catheter in artery	1.01	NA	NA	0.35	0.51	0.07	NA	NA	1.43	1.59	ZZZ
36260		A	Insertion of infusion pump	9.71	NA	NA	5.72	6.52	0.96	NA	NA	16.39	17.19	090
36261		A	Revision of infusion pump	5.45	NA	NA	3.65	3.04	0.55	NA	NA	9.65	9.04	090
36262		A	Removal of infusion pump	4.02	NA	NA	2.46	2.28	0.43	NA	NA	6.91	6.73	090
36299		C	Vessel injection procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
36400		A	Drawing blood	0.18	0.56	0.33	0.04	0.05	0.02	0.76	0.53	0.24	0.25	XXX
36405		A	Drawing blood	0.18	0.44	0.47	0.05	0.15	0.01	0.63	0.66	0.24	0.34	XXX
36406		A	Drawing blood	0.18	0.45	0.31	0.04	0.07	0.01	0.64	0.50	0.23	0.26	XXX
36410		A	Drawing blood	0.18	0.43	0.34	0.05	0.08	0.01	0.62	0.53	0.24	0.27	XXX
36415		I	Drawing blood	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
36420		A	Establish access to vein	1.01	NA	NA	0.26	0.41	0.10	NA	NA	1.37	1.52	XXX
36425		A	Establish access to vein	0.76	2.83	1.46	0.17	0.13	0.06	3.65	2.28	0.99	0.95	XXX
36430		A	Blood transfusion service	0.00	1.06	1.05	0.53	0.53	0.05	1.11	1.10	0.58	0.58	XXX
36440		A	Blood transfusion service	1.03	NA	NA	0.29	0.66	0.09	NA	NA	1.41	1.78	XXX
36450		A	Exchange transfusion service	2.23	NA	NA	0.74	0.88	0.15	NA	NA	3.12	3.26	XXX
36455		A	Exchange transfusion service	2.43	NA	NA	0.72	1.59	0.15	NA	NA	3.30	4.17	XXX
36460		A	Transfusion service, fetal	6.59	NA	NA	2.35	3.73	0.62	NA	NA	9.56	10.94	XXX
36468		R	Injection(s); spider veins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
36469		R	Injection(s); spider veins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
36470		A	Injection therapy of vein	1.09	2.94	1.62	0.40	0.28	0.11	4.14	2.82	1.60	1.48	010
36471		A	Injection therapy of veins	1.57	3.38	1.90	0.58	0.40	0.15	5.10	3.62	2.30	2.12	010
36481		A	Insertion of catheter, vein	6.99	NA	NA	2.16	3.96	0.42	NA	NA	9.57	11.37	000
36488		A	Insertion of catheter, vein	1.35	NA	NA	0.40	0.73	0.11	NA	NA	1.86	2.19	000
36489		A	Insertion of catheter, vein	1.22	4.24	2.73	0.32	0.77	0.09	5.55	4.04	1.63	2.08	000
36490		A	Insertion of catheter, vein	1.67	NA	NA	0.43	0.97	0.13	NA	NA	2.23	2.77	000
36491		A	Insertion of catheter, vein	1.43	NA	NA	0.46	1.08	0.14	NA	NA	2.03	2.65	000
36493		A	Repositioning of cvc	1.21	NA	NA	0.35	0.52	0.06	NA	NA	1.62	1.79	000
36500		A	Insertion of catheter, vein	3.52	NA	NA	1.16	0.63	0.19	NA	NA	4.87	4.34	000
36510		A	Insertion of catheter, vein	1.09	NA	NA	0.46	0.33	0.07	NA	NA	1.62	1.49	000
36520		A	Plasma and/or cell exchange	1.74	NA	NA	0.63	1.35	0.10	NA	NA	2.47	3.19	000
36522		A	Photopheresis	1.67	8.99	5.84	0.80	1.40	0.07	10.73	7.58	2.54	3.14	000
36530		R	Insertion of infusion pump	6.20	NA	NA	3.42	4.33	0.65	NA	NA	10.27	11.18	010
36531		R	Revision of infusion pump	4.87	NA	NA	3.15	3.95	0.50	NA	NA	8.52	9.32	010
36532		R	Removal of infusion pump	3.30	NA	NA	1.55	1.74	0.35	NA	NA	5.20	5.39	010
36533		A	Insertion of access port	5.32	3.96	4.31	3.27	3.97	0.53	9.81	10.16	9.12	9.82	010
36534		A	Revision of access port	2.80	NA	NA	1.31	2.33	0.23	NA	NA	4.34	5.36	010
36535		A	Removal of access port	2.27	2.72	2.34	1.85	1.91	0.23	5.22	4.84	4.35	4.41	010
36600		A	Withdrawal of arterial blood	0.32	0.37	0.34	0.09	0.20	0.02	0.71	0.68	0.43	0.54	XXX
36620		A	Insertion catheter, artery	1.15	NA	NA	0.21	0.47	0.07	NA	NA	1.43	1.69	000
36625		A	Insertion catheter, artery	2.11	NA	NA	0.52	0.73	0.18	NA	NA	2.81	3.02	000
36640		A	Insertion catheter, artery	2.10	NA	NA	0.74	1.63	0.19	NA	NA	3.03	3.92	000
36660		A	Insertion catheter, artery	1.40	NA	NA	0.45	0.49	0.08	NA	NA	1.93	1.97	000
36680		A	Insert needle, bone cavity	1.20	NA	NA	0.48	0.92	0.11	NA	NA	1.79	2.23	000
36800		A	Insertion of cannula	2.43	NA	NA	1.62	2.02	0.22	NA	NA	4.28	4.67	000
36810		A	Insertion of cannula	3.97	NA	NA	2.26	3.50	0.41	NA	NA	6.64	7.88	000
36815		A	Insertion of cannula	2.62	NA	NA	1.95	2.54	0.28	NA	NA	4.85	5.44	000
36821		A	Artery-vein fusion	8.93	NA	NA	4.97	6.42	1.03	NA	NA	14.93	16.38	090
36822		A	Insertion of cannula(s)	5.42	NA	NA	7.95	7.02	0.74	NA	NA	14.11	13.18	090
36823		C	Insertion cannula(s)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
36825		A	Artery-vein graft	9.84	NA	NA	5.70	8.72	1.15	NA	NA	16.69	19.71	090
36830		A	Artery-vein graft	12.00	NA	NA	6.21	8.51	1.41	NA	NA	19.62	21.92	090
36831		A	Av fistula excision	8.00	2.39	2.39	2.39	2.39	0.89	11.28	11.28	11.28	11.28	090
36832		A	Av fistula revision	10.50	NA	NA	6.66	7.19	1.21	NA	NA	18.37	18.90	090
36833		A	Av fistula revision	11.95	4.52	4.52	4.50	4.50	1.38	17.85	17.85	17.83	17.83	090
36834		A	Repair A-V aneurysm	9.93	NA	NA	4.14	6.31	1.18	NA	NA	15.25	17.42	090
36835		A	Artery to vein shunt	7.15	NA	NA	4.40	4.06	0.85	NA	NA	12.40	12.06	090
36860		A	External cannula declotting	2.01	2.85	2.82	1.93	2.17	0.14	5.00	4.97	4.08	4.32	000
36861		A	Cannula declotting	2.52	NA	NA	1.56	2.29	0.23	NA	NA	4.31	5.04	000
37140		A	Revision of circulation	23.60	NA	NA	8.52	13.10	1.15	NA	NA	33.27	37.85	090
37145		A	Revision of circulation	24.61	NA	NA	10.45	14.52	1.16	NA	NA	36.22	40.29	090
37160		A	Revision of circulation	21.60	NA	NA	9.51	14.38	2.39	NA	NA	33.50	38.37	090
37180		A	Revision of circulation	24.61	NA	NA	10.38	12.89	2.46	NA	NA	37.45	39.96	090
37181		A	Splice spleen/kidney veins	26.68	NA	NA	10.98	14.40	2.61	NA	NA	40.27	43.69	090
37195		A	Thrombolytic therapy, stroke	0.00	8.43	8.38	8.43	8.38	0.42	8.85	8.80	8.85	8.80	XXX
37200		A	Transcatheter biopsy	4.56	NA	NA	1.39	1.56	0.27	NA	NA	6.22	6.39	000
37201		A	Transcatheter therapy infuse	5.00	NA	NA	2.10	4.04	0.26	NA	NA	7.36	9.30	000
37202		A	Transcatheter therapy infuse	5.68	NA	NA	3.06	3.87	0.78	NA	NA	9.52	10.33	000
37203		A	Transcatheter retrieval	5.03	NA	NA	2.17	3.16	0.27	NA	NA	7.47	8.46	000
37204		A	Transcatheter occlusion	18.14	NA	NA	5.05	9.99	0.84	NA	NA	24.03	28.97	000
37205		A	Transcatheter stent	8.28	NA	NA	3.36	4.48	0.65	NA	NA	12.29	13.41	000
37206		A	Transcatheter stent add-on	4.13	NA	NA	1.38	2.09	0.34	NA	NA	5.85	6.56	ZZZ

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
37207		A	Transcatheter stent	8.28	NA	NA	3.68	4.64	1.04	NA	NA	13.00	13.96	000
37208		A	Transcatheter stent add-on	4.13	NA	NA	1.58	2.19	0.52	NA	NA	6.23	6.84	ZZZ
37209		A	Exchange arterial catheter	2.27	NA	NA	0.67	1.10	0.11	NA	NA	3.05	3.48	000
37250		A	Intravascular us	2.10	NA	NA	0.84	1.04	0.25	NA	NA	3.19	3.39	ZZZ
37251		A	Intravascular us	1.60	NA	NA	0.66	0.80	0.20	NA	NA	2.46	2.60	ZZZ
37565		A	Ligation of neck vein	4.44	NA	NA	2.57	3.34	0.46	NA	NA	7.47	8.24	090
37600		A	Ligation of neck artery	4.57	NA	NA	3.33	4.37	0.44	NA	NA	8.34	9.38	090
37605		A	Ligation of neck artery	6.19	NA	NA	3.87	4.95	0.78	NA	NA	10.84	11.92	090
37606		A	Ligation of neck artery	6.28	NA	NA	4.06	5.24	1.05	NA	NA	11.39	12.57	090
37607		A	Ligation of fistula	6.16	NA	NA	3.63	3.48	0.72	NA	NA	10.51	10.36	090
37609		A	Temporal artery procedure	2.30	5.78	4.10	2.09	2.25	0.23	8.31	6.63	4.62	4.78	010
37615		A	Ligation of neck artery	5.73	NA	NA	3.67	4.89	0.61	NA	NA	10.01	11.23	090
37616		A	Ligation of chest artery	16.49	NA	NA	12.15	8.36	1.79	NA	NA	30.43	26.64	090
37617		A	Ligation of abdomen artery	15.95	NA	NA	7.54	8.11	1.67	NA	NA	25.16	25.73	090
37618		A	Ligation of extremity artery	4.84	NA	NA	3.45	4.43	0.57	NA	NA	8.86	9.84	090
37620		A	Revision of major vein	10.56	NA	NA	4.86	7.21	0.83	NA	NA	16.25	18.60	090
37650		A	Revision of major vein	5.13	NA	NA	3.75	4.06	0.63	NA	NA	9.51	9.82	090
37660		A	Revision of major vein	10.61	NA	NA	5.86	6.05	1.23	NA	NA	17.70	17.89	090
37700		A	Revise leg vein	3.73	NA	NA	2.91	3.43	0.43	NA	NA	7.07	7.59	090
37720		A	Removal of leg vein	5.66	NA	NA	3.66	4.61	0.64	NA	NA	9.96	10.91	090
37730		A	Removal of leg veins	7.33	NA	NA	4.39	5.97	0.84	NA	NA	12.56	14.14	090
37735		A	Removal of leg veins/lesion	10.53	NA	NA	5.79	7.42	1.19	NA	NA	17.51	19.14	090
37760		A	Revision of leg veins	10.47	NA	NA	5.56	6.84	1.13	NA	NA	17.16	18.44	090
37780		A	Revision of leg vein	3.84	NA	NA	2.88	2.47	0.46	NA	NA	7.18	6.77	090
37785		A	Revise secondary varicosity	3.88	6.19	3.63	2.74	1.90	0.41	10.48	7.92	7.03	6.19	090
37788		A	Revascularization, penis	22.01	NA	NA	11.81	14.12	1.51	NA	NA	35.33	37.64	090
37790		A	Penile venous occlusion	8.34	NA	NA	6.44	6.32	0.55	NA	NA	15.33	15.21	090
37799		C	Vascular surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
38100		A	Removal of spleen, total	13.01	NA	NA	6.34	7.81	1.35	NA	NA	20.70	22.17	090
38101		A	Removal of spleen, partial	13.74	NA	NA	6.96	7.28	1.45	NA	NA	22.15	22.47	090
38102		A	Removal of spleen, total	4.80	NA	NA	1.81	2.27	0.49	NA	NA	7.10	7.56	ZZZ
38115		A	Repair of ruptured spleen	14.19	NA	NA	6.67	7.48	1.48	NA	NA	22.34	23.15	090
38200		A	Injection for spleen x-ray	2.64	NA	NA	0.74	1.30	0.13	NA	NA	3.51	4.07	000
38230		R	Bone marrow collection	4.54	NA	NA	2.30	2.66	0.25	NA	NA	7.09	7.45	010
38231		R	Stem cell collection	1.50	NA	NA	0.57	1.03	0.07	NA	NA	2.14	2.60	000
38240		R	Bone marrow/stem transplant	2.24	NA	NA	0.86	1.56	0.11	NA	NA	3.21	3.91	XXX
38241		R	Bone marrow/stem transplant	2.24	NA	NA	0.84	1.53	0.11	NA	NA	3.19	3.88	XXX
38300		A	Drainage lymph node lesion	1.53	3.79	2.21	2.05	1.19	0.15	5.47	3.89	3.73	2.87	010
38305		A	Drainage lymph node lesion	4.61	9.74	5.94	5.22	3.68	0.38	14.73	10.93	10.21	8.67	090
38308		A	Incision of lymph channels	4.95	NA	NA	5.17	4.42	0.45	NA	NA	10.57	9.82	090
38380		A	Thoracic duct procedure	7.46	NA	NA	6.41	5.62	0.63	NA	NA	14.50	13.71	090
38381		A	Thoracic duct procedure	12.88	NA	NA	11.29	9.75	1.69	NA	NA	25.86	24.32	090
38382		A	Thoracic duct procedure	10.08	NA	NA	10.54	7.90	1.12	NA	NA	21.74	19.10	090
38500		A	Biopsy/removal,lymph node(s)	2.88	2.47	2.10	2.22	1.98	0.29	5.64	5.27	5.39	5.15	010
38505		A	Needle biopsy, lymph node(s)	1.14	2.77	2.00	1.21	0.91	0.09	4.00	3.23	2.44	2.14	000
38510		A	Biopsy/removal,lymph node(s)	4.14	NA	NA	3.95	3.36	0.40	NA	NA	8.49	7.90	090
38520		A	Biopsy/removal,lymph node(s)	5.12	NA	NA	4.65	3.95	0.55	NA	NA	10.32	9.62	090
38525		A	Biopsy/removal,lymph node(s)	4.66	NA	NA	3.61	3.21	0.48	NA	NA	8.75	8.35	090
38530		A	Biopsy/removal,lymph node(s)	6.13	NA	NA	5.80	4.82	0.89	NA	NA	12.82	11.44	090
38542		A	Explore deep node(s), neck	5.91	NA	NA	5.38	5.00	0.52	NA	NA	11.81	11.43	090
38550		A	Removal neck/armpit lesion	6.73	NA	NA	11.94	7.73	0.51	NA	NA	19.18	14.97	090
38555		A	Removal neck/armpit lesion	14.27	NA	NA	10.16	9.03	1.61	NA	NA	26.04	24.91	090
38562		A	Removal, pelvic lymph nodes	10.49	NA	NA	6.12	6.80	0.89	NA	NA	17.50	18.18	090
38564		A	Removal, abdomen lymph nodes	10.83	NA	NA	9.12	7.07	1.05	NA	NA	18.00	18.95	090
38700		A	Removal of lymph nodes, neck	8.24	NA	NA	11.98	10.91	0.86	NA	NA	20.88	19.81	090
38720		A	Removal of lymph nodes, neck	13.61	NA	NA	14.97	15.61	1.08	NA	NA	29.66	30.30	090
38724		A	Removal of lymph nodes, neck	14.54	NA	NA	15.35	15.47	1.15	NA	NA	31.04	31.16	090
38740		A	Remove armpit lymph nodes	6.77	NA	NA	4.51	4.82	0.70	NA	NA	11.98	12.29	090
38745		A	Remove armpits lymph nodes	8.84	NA	NA	6.48	7.74	0.90	NA	NA	16.22	17.48	090
38746		A	Remove thoracic lymph nodes	4.39	NA	NA	1.80	2.15	0.58	NA	NA	6.77	7.12	ZZZ
38747		A	Remove abdominal lymph nodes	4.89	NA	NA	1.83	2.31	0.47	NA	NA	7.19	7.67	ZZZ
38760		A	Remove groin lymph nodes	8.74	NA	NA	5.36	6.28	0.87	NA	NA	14.97	15.89	090
38765		A	Remove groin lymph nodes	16.06	NA	NA	9.79	11.77	1.40	NA	NA	27.25	29.23	090
38770		A	Remove pelvis lymph nodes	13.23	NA	NA	6.81	11.30	0.90	NA	NA	20.94	25.43	090
38780		A	Remove abdomen lymph nodes	16.59	NA	NA	8.58	13.01	1.34	NA	NA	26.51	30.94	090
38790		A	Injection for lymphatic xray	1.29	34.63	18.21	0.43	0.99	0.09	36.01	19.59	1.81	2.37	000
38792		C	Identify sentinel node	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
38794		A	Access thoracic lymph duct	4.45	NA	NA	1.31	2.20	0.18	NA	NA	5.94	6.83	090
38999		C	Blood/lymph system procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
39000		A	Exploration of chest	6.10	NA	NA	8.63	7.60	0.80	NA	NA	15.53	14.50	090
39010		A	Exploration of chest	11.79	NA	NA	11.62	12.03	1.57	NA	NA	24.98	25.39	090
39200		A	Removal chest lesion	13.62	NA	NA	11.25	11.91	1.73	NA	NA	26.60	27.26	090
39220		A	Removal chest lesion	17.42	NA	NA	13.13	14.67	2.25	NA	NA	32.80	34.34	090
39400		A	Visualization of chest	5.61	NA	NA	7.90	6.73	0.75	NA	NA	14.26	13.09	010
39499		C	Chest procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
39501		A	Repair diaphragm laceration	13.19	NA	NA	8.08	9.83	1.41	NA	NA	22.68	24.43	090
39502		A	Repair paraesophageal hernia	16.33	NA	NA	8.67	10.81	1.71	NA	NA	26.71	28.85	090
39503		A	Repair of diaphragm hernia	34.85	NA	NA	17.61	22.47	3.26	NA	NA	55.72	60.58	090
39520		A	Repair of diaphragm hernia	16.10	NA	NA	10.66	12.13	1.91	NA	NA	28.67	30.14	090
39530		A	Repair of diaphragm hernia	15.41	NA	NA	9.28	12.27	1.72	NA	NA	26.41	29.40	090
39531		A	Repair of diaphragm hernia	16.42	NA	NA	9.60	10.23	1.89	NA	NA	27.91	28.54	090
39540		A	Repair of diaphragm hernia	13.32	NA	NA	8.14	10.57	1.46	NA	NA	22.92	25.35	090
39541		A	Repair of diaphragm hernia	14.41	NA	NA	8.15	10.68	1.53	NA	NA	24.09	26.62	090
39545		A	Revision of diaphragm	13.37	NA	NA	9.67	9.12	1.86	NA	NA	24.70	24.15	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
39599		C	Diaphragm surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
40490		A	Biopsy of lip	1.22	1.36	1.08	0.63	0.52	0.06	2.64	2.36	1.91	1.80	000
40500		A	Partial excision of lip	4.28	4.53	4.82	4.53	4.82	0.33	9.14	9.43	9.14	9.43	090
40510		A	Partial excision of lip	4.70	5.42	5.52	5.31	5.46	0.39	10.51	10.61	10.40	10.55	090
40520		A	Partial excision of lip	4.67	5.94	5.41	5.43	5.16	0.43	11.04	10.51	10.53	10.26	090
40525		A	Reconstruct lip with flap	7.55	NA	NA	6.93	7.98	0.72	NA	NA	15.20	16.25	090
40527		A	Reconstruct lip with flap	9.13	NA	NA	7.95	9.43	0.83	NA	NA	17.91	19.39	090
40530		A	Partial removal of lip	5.40	4.95	5.24	4.95	5.24	0.47	10.82	11.11	10.82	11.11	090
40650		A	Repair lip	3.64	4.12	4.23	3.93	4.14	0.35	8.11	8.22	7.92	8.13	090
40652		A	Repair lip	4.26	5.33	5.21	5.26	5.18	0.42	10.01	9.89	9.94	9.86	090
40654		A	Repair lip	5.31	5.92	6.13	5.91	6.13	0.50	11.73	11.94	11.72	11.94	090
40700		A	Repair cleft lip/nasal	12.79	NA	NA	8.92	9.05	1.05	NA	NA	22.76	22.89	090
40701		A	Repair cleft lip/nasal	15.85	NA	NA	9.60	15.29	1.48	NA	NA	26.93	32.62	090
40702		A	Repair cleft lip/nasal	13.04	NA	NA	8.61	9.39	1.02	NA	NA	22.67	23.45	090
40720		A	Repair cleft lip/nasal	13.55	NA	NA	10.04	10.23	1.34	NA	NA	24.93	25.12	090
40761		A	Repair cleft lip/nasal	14.72	NA	NA	11.43	11.60	1.39	NA	NA	27.54	27.71	090
40799		C	Lip surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
40800		A	Drainage of mouth lesion	1.17	1.68	1.24	0.48	0.44	0.09	2.94	2.50	1.74	1.70	010
40801		A	Drainage of mouth lesion	2.53	2.17	2.01	1.75	1.34	0.20	4.90	4.74	4.48	4.07	010
40804		A	Removal foreign body, mouth	1.24	2.15	1.39	1.99	1.16	0.10	3.49	2.73	3.33	2.50	010
40805		A	Removal foreign body, mouth	2.69	2.75	2.73	2.56	2.64	0.20	5.64	5.62	5.45	5.53	010
40806		A	Incision of lip fold	0.31	0.79	0.59	0.53	0.46	0.03	1.13	0.93	0.87	0.80	000
40808		A	Biopsy of mouth lesion	0.96	1.73	1.28	1.73	1.07	0.07	2.76	2.31	2.76	2.10	010
40810		A	Excision of mouth lesion	1.31	2.27	1.78	1.97	1.31	0.10	3.68	3.19	3.38	2.72	010
40812		A	Excise/repair mouth lesion	2.31	2.52	2.08	2.48	1.65	0.18	5.01	4.57	4.97	4.14	010
40814		A	Excise/repair mouth lesion	3.42	3.50	3.51	3.50	2.63	0.26	7.18	7.19	7.18	6.31	090
40816		A	Excision of mouth lesion	3.67	3.79	3.64	3.79	2.77	0.28	7.74	7.59	7.74	6.72	090
40818		A	Excise oral mucosa for graft	2.41	3.44	2.94	3.44	2.94	0.15	6.00	5.50	6.00	5.50	090
40819		A	Excise lip or cheek fold	2.41	3.03	2.18	3.03	1.85	0.18	5.62	4.77	5.62	4.44	090
40820		A	Treatment of mouth lesion	1.28	2.04	1.31	1.88	1.09	0.09	3.41	2.68	3.25	2.46	010
40830		A	Repair mouth laceration	1.76	2.13	1.43	2.12	1.43	0.16	4.05	3.35	4.04	3.35	010
40831		A	Repair mouth laceration	2.46	2.43	2.27	2.43	2.27	0.22	5.11	4.95	5.11	4.95	010
40840		R	Reconstruction of mouth	8.73	5.70	6.26	5.70	6.26	0.70	15.13	15.69	15.13	15.69	090
40842		R	Reconstruction of mouth	8.73	5.69	6.26	5.69	6.26	0.74	15.16	15.73	15.16	15.73	090
40843		R	Reconstruction of mouth	12.10	6.76	8.16	6.76	8.16	0.67	19.53	20.93	19.53	20.93	090
40844		R	Reconstruction of mouth	16.01	8.37	10.50	8.23	10.43	1.55	25.93	28.06	25.79	27.99	090
40845		R	Reconstruction of mouth	18.58	10.15	16.17	10.15	16.17	1.65	30.38	36.40	30.38	36.40	090
40899		C	Mouth surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
41000		A	Drainage of mouth lesion	1.30	1.98	1.40	1.27	0.84	0.10	3.38	2.80	2.67	2.24	010
41005		A	Drainage of mouth lesion	1.26	1.88	1.28	1.41	1.04	0.10	3.24	2.64	2.77	2.40	010
41006		A	Drainage of mouth lesion	3.24	3.31	2.21	3.00	2.05	0.25	6.80	5.70	6.49	5.54	090
41007		A	Drainage of mouth lesion	3.10	3.13	3.14	2.72	2.94	0.18	6.41	6.42	6.00	6.22	090
41008		A	Drainage of mouth lesion	3.37	3.18	2.17	2.99	1.79	0.25	6.80	5.79	6.61	5.41	090
41009		A	Drainage of mouth lesion	3.59	3.17	3.38	2.98	3.29	0.29	7.05	7.26	6.86	7.17	090
41010		A	Incision of tongue fold	1.06	2.54	1.47	2.54	1.47	0.07	3.67	2.60	3.67	2.60	010
41015		A	Drainage of mouth lesion	3.96	3.51	2.23	2.79	1.87	0.30	7.77	6.49	7.05	6.13	090
41016		A	Drainage of mouth lesion	4.07	3.52	3.76	2.98	3.49	0.33	7.92	8.16	7.38	7.89	090
41017		A	Drainage of mouth lesion	4.07	3.53	2.53	2.93	2.23	0.33	7.93	6.93	7.33	6.63	090
41018		A	Drainage of mouth lesion	5.10	3.99	4.13	3.26	3.77	0.37	9.46	9.60	8.73	9.24	090
41100		A	Biopsy of tongue	1.63	2.25	1.56	2.16	1.30	0.12	4.00	3.31	3.91	3.05	010
41105		A	Biopsy of tongue	1.42	2.09	1.61	2.09	1.33	0.11	3.62	3.14	3.62	2.86	010
41108		A	Biopsy of floor of mouth	1.05	1.95	1.44	1.86	1.16	0.08	3.08	2.57	2.99	2.29	010
41110		A	Excision of tongue lesion	1.51	2.59	2.00	2.13	1.42	0.11	4.21	3.62	3.75	3.04	010
41112		A	Excision of tongue lesion	2.73	3.05	2.82	3.05	2.18	0.21	5.99	5.76	5.99	5.12	090
41113		A	Excision of tongue lesion	3.19	3.09	3.40	3.09	2.47	0.24	6.52	6.83	6.52	5.90	090
41114		A	Excision of tongue lesion	8.47	NA	NA	5.87	6.40	0.65	NA	NA	14.99	15.52	090
41115		A	Excision of tongue fold	1.74	2.33	2.13	2.12	2.03	0.13	4.20	4.00	3.99	3.90	010
41116		A	Excision of mouth lesion	2.44	2.87	2.79	2.87	2.79	0.19	5.50	5.42	5.50	5.42	090
41120		A	Partial removal of tongue	9.77	NA	NA	7.97	7.94	0.75	NA	NA	18.49	18.46	090
41130		A	Partial removal of tongue	11.15	NA	NA	8.92	9.38	0.86	NA	NA	20.93	21.39	090
41135		A	Tongue and neck surgery	23.09	NA	NA	15.42	17.64	1.79	NA	NA	40.30	42.52	090
41140		A	Removal of tongue	25.50	NA	NA	17.25	18.88	1.99	NA	NA	44.74	46.37	090
41145		A	Tongue removal; neck surgery	30.06	NA	NA	21.02	22.88	2.30	NA	NA	53.38	55.24	090
41150		A	Tongue, mouth, jaw surgery	23.04	NA	NA	16.22	18.40	1.78	NA	NA	41.04	43.22	090
41153		A	Tongue, mouth, neck surgery	23.77	NA	NA	16.84	21.99	1.87	NA	NA	42.48	47.63	090
41155		A	Tongue, jaw, & neck surgery	27.72	NA	NA	19.12	25.81	2.13	NA	NA	48.97	55.66	090
41250		A	Repair tongue laceration	1.91	2.32	1.74	1.54	1.35	0.17	4.40	3.82	3.62	3.43	010
41251		A	Repair tongue laceration	2.27	2.09	2.17	1.76	2.01	0.18	4.54	4.62	4.21	4.46	010
41252		A	Repair tongue laceration	2.97	3.03	2.79	2.22	2.39	0.25	6.25	6.01	5.44	5.61	010
41500		A	Fixation of tongue	3.71	NA	NA	3.15	3.36	0.26	NA	NA	7.12	7.33	090
41510		A	Tongue to lip surgery	3.42	NA	NA	4.12	3.44	0.22	NA	NA	7.76	7.08	090
41520		A	Reconstruction, tongue fold	2.73	2.51	2.82	2.51	2.82	0.21	5.45	5.76	5.45	5.76	090
41599		C	Tongue and mouth surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
41800		A	Drainage of gum lesion	1.17	1.66	1.21	1.19	0.79	0.10	2.93	2.48	2.46	2.06	010
41805		A	Removal foreign body, gum	1.24	1.60	1.26	1.60	1.26	0.09	2.93	2.59	2.93	2.59	010
41806		A	Removal foreign body,jawbone	2.69	2.24	2.01	2.24	1.57	0.22	5.15	4.92	5.15	4.48	010
41820		R	Excision, gum, each quadrant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
41821		R	Excision of gum flap	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
41822		R	Excision of gum lesion	2.31	2.37	2.83	0.98	2.14	0.19	4.87	5.33	3.48	4.64	010
41823		R	Excision of gum lesion	3.30	3.07	3.51	2.60	3.27	0.25	6.62	7.06	6.15	6.82	090
41825		A	Excision of gum lesion	1.31	2.01	1.82	1.92	1.37	0.10	3.42	3.23	3.33	2.78	010
41826		A	Excision of gum lesion	2.31	2.32	2.29	2.22	1.68	0.18	4.81	4.78	4.71	4.17	010
41827		A	Excision of gum lesion	3.42	3.14	3.61	3.14	2.59	0.26	6.82	7.29	6.82	6.27	090
41828		R	Excision of gum lesion	3.09	2.72	3.57	2.19	3.31	0.22	6.03	6.88	5.50	6.62	010

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
41830		R	Removal of gum tissue	3.35	2.82	3.41	2.48	3.24	0.26	6.43	7.02	6.09	6.85	010
41850		R	Treatment of gum lesion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
41870		R	Gum graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
41872		R	Repair gum	2.59	2.44	2.77	2.44	2.77	0.21	5.24	5.57	5.24	5.57	090
41874		R	Repair tooth socket	3.09	2.52	3.11	2.15	2.92	0.26	5.87	6.46	5.50	6.27	090
41899		C	Dental surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
42000		A	Drainage mouth roof lesion	1.23	2.03	1.35	1.34	0.84	0.10	3.36	2.68	2.67	2.17	010
42100		A	Biopsy roof of mouth	1.31	2.08	1.47	2.00	1.22	0.10	3.49	2.88	3.41	2.63	010
42104		A	Excision lesion, mouth roof	1.64	2.13	1.95	2.13	1.51	0.13	3.90	3.72	3.90	3.28	010
42106		A	Excision lesion, mouth roof	2.10	2.28	2.35	2.28	1.75	0.16	4.54	4.61	4.54	4.01	010
42107		A	Excision lesion, mouth roof	4.44	3.61	4.46	3.61	3.13	0.33	8.38	9.23	8.38	7.90	090
42120		A	Remove palate/lesion	6.17	NA	NA	5.45	6.41	0.47	NA	NA	12.09	13.05	090
42140		A	Excision of uvula	1.62	3.06	2.27	2.68	2.08	0.12	4.80	4.01	4.42	3.82	090
42145		A	Repair, palate,pharynx/uvula	8.05	NA	NA	6.82	8.22	0.60	NA	NA	15.47	16.87	090
42160		A	Treatment mouth roof lesion	1.80	2.40	2.03	2.23	1.53	0.14	4.34	3.97	4.17	3.47	010
42180		A	Repair palate	2.50	2.63	2.53	1.95	2.19	0.19	5.32	5.22	4.64	4.88	010
42182		A	Repair palate	3.83	2.78	3.28	2.78	3.28	0.30	6.91	7.41	6.91	7.41	010
42200		A	Reconstruct cleft palate	12.00	NA	NA	9.50	8.65	1.08	NA	NA	22.58	21.73	090
42205		A	Reconstruct cleft palate	9.59	NA	NA	5.95	8.70	0.91	NA	NA	16.45	19.20	090
42210		A	Reconstruct cleft palate	14.50	NA	NA	8.88	11.23	1.21	NA	NA	24.59	26.94	090
42215		A	Reconstruct cleft palate	8.82	NA	NA	7.57	7.95	0.82	NA	NA	17.21	17.59	090
42220		A	Reconstruct cleft palate	7.02	NA	NA	5.49	5.68	0.51	NA	NA	13.02	13.21	090
42225		A	Reconstruct cleft palate	9.54	NA	NA	8.00	7.75	0.82	NA	NA	18.36	18.11	090
42226		A	Lengthening of palate	10.01	NA	NA	8.49	8.53	0.82	NA	NA	19.32	19.36	090
42227		A	Lengthening of palate	9.52	NA	NA	7.14	7.59	0.83	NA	NA	17.49	17.94	090
42235		A	Repair palate	7.87	NA	NA	5.83	5.93	0.62	NA	NA	14.32	14.42	090
42260		A	Repair nose to lip fistula	9.80	6.32	5.32	6.09	5.21	0.79	16.91	15.91	16.68	15.80	090
42280		A	Preparation, palate mold	1.54	1.24	1.70	0.79	1.48	0.10	2.88	3.34	2.43	3.12	010
42281		A	Insertion, palate prosthesis	1.93	1.40	1.50	1.00	1.30	0.14	3.47	3.57	3.07	3.37	010
42299		C	Palate/uvula surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
42300		A	Drainage of salivary gland	1.93	2.31	1.68	1.73	1.13	0.15	4.39	3.76	3.81	3.21	010
42305		A	Drainage of salivary gland	6.07	NA	NA	4.88	3.63	0.48	NA	NA	11.43	10.18	090
42310		A	Drainage of salivary gland	1.56	1.88	1.50	1.45	1.01	0.12	3.56	3.18	3.13	2.69	010
42320		A	Drainage of salivary gland	2.35	2.31	2.15	1.94	1.97	0.18	4.84	4.68	4.47	4.50	010
42325		A	Create salivary cyst drain	2.75	2.40	2.35	1.26	1.78	0.24	5.39	5.34	4.25	4.77	090
42326		A	Create salivary cyst drain	3.78	3.88	4.20	2.25	3.38	0.28	7.94	8.26	6.31	7.44	090
42330		A	Removal of salivary stone	2.21	2.42	1.81	0.88	0.74	0.17	4.80	4.19	3.26	3.12	010
42335		A	Removal of salivary stone	3.31	3.19	2.94	3.19	2.27	0.25	6.75	6.50	6.75	5.83	090
42340		A	Removal of salivary stone	4.60	4.09	4.35	4.09	3.20	0.34	9.03	9.29	9.03	8.14	090
42400		A	Biopsy of salivary gland	0.78	2.38	1.62	0.41	0.42	0.06	3.22	2.46	1.25	1.26	000
42405		A	Biopsy of salivary gland	3.29	3.03	2.35	2.94	1.89	0.25	6.57	5.89	6.48	5.43	010
42408		A	Excision of salivary cyst	4.54	3.99	3.76	3.99	3.76	0.36	8.89	8.66	8.89	8.66	090
42409		A	Drainage of salivary cyst	2.81	2.86	2.96	2.86	2.96	0.21	5.88	5.98	5.88	5.98	090
42410		A	Excise parotid gland/lesion	9.34	NA	NA	7.17	6.81	0.82	NA	NA	17.33	16.97	090
42415		A	Excise parotid gland/lesion	16.89	NA	NA	11.87	12.82	1.36	NA	NA	30.12	31.07	090
42420		A	Excise parotid gland/lesion	19.59	NA	NA	13.46	14.77	1.54	NA	NA	34.59	35.90	090
42425		A	Excise parotid gland/lesion	13.02	NA	NA	9.62	10.84	1.04	NA	NA	23.68	24.90	090
42426		A	Excise parotid gland/lesion	21.26	NA	NA	14.24	19.81	1.67	NA	NA	37.17	42.74	090
42440		A	Excision submaxillary gland	6.97	NA	NA	5.49	6.91	0.55	NA	NA	13.01	14.43	090
42450		A	Excision sublingual gland	4.62	4.19	3.95	4.19	3.95	0.37	9.18	8.94	9.18	8.94	090
42500		A	Repair salivary duct	4.30	4.23	4.62	4.23	4.62	0.34	8.87	9.26	8.87	9.26	090
42505		A	Repair salivary duct	6.18	4.99	6.19	4.99	6.19	0.50	11.67	12.87	11.67	12.87	090
42507		A	Parotid duct diversion	6.11	NA	NA	5.40	5.23	0.48	NA	NA	11.99	11.82	090
42508		A	Parotid duct diversion	9.10	NA	NA	6.96	7.62	0.70	NA	NA	16.78	17.42	090
42509		A	Parotid duct diversion	11.54	NA	NA	8.20	8.07	0.86	NA	NA	20.60	20.47	090
42510		A	Parotid duct diversion	8.15	NA	NA	4.81	6.56	0.85	NA	NA	13.81	15.56	090
42550		A	Injection for salivary x-ray	1.25	12.42	6.45	0.34	0.41	0.05	13.72	7.75	1.64	1.71	000
42600		A	Closure of salivary fistula	4.82	5.18	4.70	4.89	4.56	0.39	10.39	9.91	10.10	9.77	090
42650		A	Dilation of salivary duct	0.77	0.93	0.68	0.40	0.31	0.06	1.76	1.51	1.23	1.14	000
42660		A	Dilation of salivary duct	1.13	1.06	0.80	1.06	0.67	0.07	2.26	2.00	2.26	1.87	000
42665		A	Ligation of salivary duct	2.53	3.15	2.68	3.15	2.68	0.19	5.87	5.40	5.87	5.40	090
42699		C	Salivary surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
42700		A	Drainage of tonsil abscess	1.62	2.64	1.78	1.66	1.06	0.12	4.38	3.52	3.40	2.80	010
42720		A	Drainage of throat abscess	5.42	4.47	3.26	4.33	3.19	0.41	10.30	9.09	10.16	9.02	010
42725		A	Drainage of throat abscess	10.72	NA	NA	7.80	6.32	0.87	NA	NA	19.39	17.91	090
42800		A	Biopsy of throat	1.39	2.46	1.63	2.10	1.25	0.10	3.95	3.12	3.59	2.74	010
42802		A	Biopsy of throat	1.54	2.55	1.83	2.18	1.65	0.12	4.21	3.49	3.84	3.31	010
42804		A	Biopsy of upper nose/throat	1.24	2.39	1.79	2.04	1.61	0.09	3.72	3.12	3.37	2.94	010
42806		A	Biopsy of upper nose/throat	1.58	2.77	2.15	2.23	1.88	0.12	4.47	3.85	3.93	3.58	010
42808		A	Excise pharynx lesion	2.30	3.71	3.22	2.66	2.70	0.17	6.18	5.69	5.13	5.17	010
42809		A	Remove pharynx foreign body	1.81	2.88	1.89	1.53	1.21	0.15	4.84	3.85	3.49	3.17	010
42810		A	Excision of neck cyst	3.33	4.53	3.97	3.77	3.59	0.28	8.14	7.58	7.38	7.20	090
42815		A	Excision of neck cyst	7.23	NA	NA	6.02	7.33	0.58	NA	NA	13.83	15.14	090
42820		A	Remove tonsils and adenoids	3.91	NA	NA	6.40	4.91	0.26	NA	NA	10.57	9.08	090
42821		A	Remove tonsils and adenoids	4.29	NA	NA	3.79	4.03	0.32	NA	NA	8.40	8.64	090
42825		A	Removal of tonsils	3.42	NA	NA	3.21	3.04	0.26	NA	NA	6.89	6.72	090
42826		A	Removal of tonsils	3.38	NA	NA	3.29	3.67	0.25	NA	NA	6.92	7.30	090
42830		A	Removal of adenoids	2.57	NA	NA	2.26	2.14	0.19	NA	NA	5.02	4.90	090
42831		A	Removal of adenoids	2.71	NA	NA	2.37	2.47	0.20	NA	NA	5.28	5.38	090
42835		A	Removal of adenoids	2.30	NA	NA	2.44	2.23	0.17	NA	NA	4.91	4.70	090
42836		A	Removal of adenoids	3.18	NA	NA	3.20	3.12	0.24	NA	NA	6.62	6.54	090
42842		A	Extensive surgery of throat	8.76	NA	NA	7.13	7.20	0.65	NA	NA	16.54	16.61	090
42844		A	Extensive surgery of throat	14.31	NA	NA	10.42	11.10	1.12	NA	NA	25.85	26.53	090
42845		A	Extensive surgery of throat	24.29	NA	NA	16.63	18.42	1.91	NA	NA	42.83	44.62	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
42860		A	Excision of tonsil tags	2.22	NA	NA	2.55	2.30	0.17	NA	NA	4.94	4.69	090
42870		A	Excision of lingual tonsil	5.40	NA	NA	5.32	3.92	0.40	NA	NA	11.12	9.72	090
42890		A	Partial removal of pharynx	12.94	NA	NA	10.40	10.08	0.98	NA	NA	24.32	24.00	090
42892		A	Revision of pharyngeal walls	15.83	NA	NA	11.69	11.77	1.20	NA	NA	28.72	28.80	090
42894		A	Revision of pharyngeal walls	22.88	NA	NA	15.93	16.68	1.76	NA	NA	40.57	41.32	090
42900		A	Repair throat wound	5.25	NA	NA	3.68	4.15	0.41	NA	NA	9.34	9.81	010
42950		A	Reconstruction of throat	8.10	NA	NA	6.84	8.26	0.65	NA	NA	15.59	17.01	090
42953		A	Repair throat, esophagus	8.96	NA	NA	7.95	7.42	0.79	NA	NA	17.70	17.17	090
42955		A	Surgical opening of throat	7.39	NA	NA	6.16	4.88	0.62	NA	NA	14.17	12.89	090
42960		A	Control throat bleeding	2.33	NA	NA	1.97	1.57	0.18	NA	NA	4.48	4.08	010
42961		A	Control throat bleeding	5.59	NA	NA	4.66	3.28	0.42	NA	NA	10.67	9.29	090
42962		A	Control throat bleeding	7.14	NA	NA	5.57	6.03	0.54	NA	NA	13.25	13.71	090
42970		A	Control nose/throat bleeding	5.43	NA	NA	3.43	2.28	0.37	NA	NA	9.23	8.08	090
42971		A	Control nose/throat bleeding	6.21	NA	NA	5.32	4.24	0.47	NA	NA	12.00	10.92	090
42972		A	Control nose/throat bleeding	7.20	NA	NA	5.29	5.12	0.56	NA	NA	13.05	12.88	090
42999		C	Throat surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
43020		A	Incision of esophagus	8.09	NA	NA	6.10	6.62	0.79	NA	NA	14.98	15.50	090
43030		A	Throat muscle surgery	7.69	NA	NA	6.44	7.81	0.64	NA	NA	14.77	16.14	090
43045		A	Incision of esophagus	20.12	NA	NA	12.68	13.10	2.48	NA	NA	35.28	35.70	090
43100		A	Excision of esophagus lesion	9.19	NA	NA	7.82	7.27	0.91	NA	NA	17.92	17.37	090
43101		A	Excision of esophagus lesion	16.24	NA	NA	9.79	10.04	1.94	NA	NA	27.97	28.22	090
43107		A	Removal of esophagus	28.79	NA	NA	16.33	20.38	3.42	NA	NA	48.54	52.59	090
43108		A	Removal of esophagus	34.19	NA	NA	17.67	22.55	3.99	NA	NA	55.85	60.73	090
43112		A	Removal of esophagus	31.22	NA	NA	17.63	20.57	3.73	NA	NA	52.58	55.52	090
43113		A	Removal of esophagus	35.27	NA	NA	18.59	23.01	4.09	NA	NA	57.95	62.37	090
43116		A	Partial removal of esophagus	31.22	NA	NA	19.09	23.26	3.14	NA	NA	53.45	57.62	090
43117		A	Partial removal of esophagus	30.02	NA	NA	16.71	22.07	3.58	NA	NA	50.31	55.67	090
43118		A	Partial removal of esophagus	33.20	NA	NA	15.93	21.68	3.47	NA	NA	52.60	58.35	090
43121		A	Partial removal of esophagus	29.19	NA	NA	16.75	19.97	3.50	NA	NA	49.44	52.66	090
43122		A	Partial removal of esophagus	29.11	NA	NA	15.46	19.32	3.34	NA	NA	47.91	51.77	090
43123		A	Partial removal of esophagus	33.20	NA	NA	16.35	21.89	3.52	NA	NA	53.07	58.61	090
43124		A	Removal of esophagus	27.32	NA	NA	16.25	20.34	2.97	NA	NA	46.54	50.63	090
43130		A	Removal of esophagus pouch	11.75	NA	NA	9.10	10.26	1.11	NA	NA	21.96	23.12	090
43135		A	Removal of esophagus pouch	16.10	NA	NA	11.64	12.18	1.99	NA	NA	29.73	30.27	090
43200		A	Esophagus endoscopy	1.59	5.73	3.97	0.79	1.35	0.12	7.44	5.68	2.50	3.06	000
43202		A	Esophagus endoscopy, biopsy	1.89	5.08	3.85	0.77	1.52	0.14	7.11	5.88	2.80	3.55	000
43204		A	Esophagus endoscopy & inject	3.77	NA	NA	1.30	2.90	0.25	NA	NA	5.32	6.92	000
43205		A	Esophagus endoscopy/ligation	3.79	NA	NA	1.32	2.13	0.25	NA	NA	5.36	6.17	000
43215		A	Esophagus endoscopy	2.60	NA	NA	1.04	2.07	0.20	NA	NA	3.84	4.87	000
43216		A	Esophagus endoscopy/lesion	2.40	NA	NA	0.89	1.88	0.18	NA	NA	3.47	4.46	000
43217		A	Esophagus endoscopy	2.90	NA	NA	1.02	2.24	0.20	NA	NA	4.12	5.34	000
43219		A	Esophagus endoscopy	2.80	NA	NA	1.03	2.19	0.22	NA	NA	4.05	5.21	000
43220		A	Esophagus endoscopy,dilation	2.10	NA	NA	0.77	1.64	0.15	NA	NA	3.02	3.89	000
43226		A	Esophagus endoscopy,dilation	2.34	NA	NA	0.82	1.81	0.16	NA	NA	3.32	4.31	000
43227		A	Esophagus endoscopy, repair	3.60	NA	NA	1.25	2.78	0.24	NA	NA	5.09	6.62	000
43228		A	Esophagus endoscopy,ablation	3.77	NA	NA	1.35	2.93	0.28	NA	NA	5.40	6.98	000
43234		A	Upper GI endoscopy, exam	2.01	3.07	2.93	0.71	1.56	0.16	5.24	5.10	2.88	3.73	000
43235		A	Upper gi endoscopy,diagnosis	2.39	5.05	4.19	0.83	1.84	0.17	7.61	6.75	3.39	4.40	000
43239		A	Upper GI endoscopy, biopsy	2.69	5.12	4.43	0.93	2.07	0.18	7.99	7.30	3.80	4.94	000
43241		A	Upper GI endoscopy with tube	2.59	NA	NA	0.90	2.00	0.18	NA	NA	3.67	4.77	000
43243		A	Upper GI endoscopy & inject	4.57	NA	NA	1.57	3.52	0.30	NA	NA	6.44	8.39	000
43244		A	Upper GI endoscopy/ligation	4.59	NA	NA	1.58	2.68	0.30	NA	NA	6.47	7.57	000
43245		A	Operative upper GI endoscopy	3.39	NA	NA	1.18	2.62	0.24	NA	NA	4.81	6.25	000
43246		A	Place gastrostomy tube	4.33	NA	NA	1.51	3.34	0.31	NA	NA	6.15	7.98	000
43247		A	Operative upper GI endoscopy	3.39	NA	NA	1.18	2.62	0.24	NA	NA	4.81	6.25	000
43248		A	Upper GI endoscopy/guidewire	3.15	NA	NA	1.09	2.43	0.21	NA	NA	4.45	5.79	000
43249		A	Esophagus endoscopy,dilation	2.90	NA	NA	1.01	2.24	0.20	NA	NA	4.11	5.34	000
43250		A	Upper GI endoscopy/tumor	3.20	NA	NA	1.11	2.47	0.23	NA	NA	4.54	5.90	000
43251		A	Operative upper GI endoscopy	3.70	NA	NA	1.28	2.85	0.25	NA	NA	5.23	6.80	000
43255		A	Operative upper GI endoscopy	4.40	NA	NA	1.51	3.38	0.29	NA	NA	6.20	8.07	000
43258		A	Operative upper GI endoscopy	4.55	NA	NA	1.57	3.51	0.30	NA	NA	6.42	8.36	000
43259		A	Endoscopic ultrasound exam	4.89	NA	NA	1.86	3.01	0.31	NA	NA	6.86	8.21	000
43260		A	Endoscopy,bile duct/pancreas	5.96	NA	NA	2.05	4.27	0.39	NA	NA	8.40	10.62	000
43261		A	Endoscopy,bile duct/pancreas	6.27	NA	NA	2.16	4.33	0.41	NA	NA	8.84	11.01	000
43262		A	Endoscopy,bile duct/pancreas	7.39	NA	NA	2.55	5.69	0.49	NA	NA	10.43	13.57	000
43263		A	Endoscopy,bile duct/pancreas	6.19	NA	NA	2.14	4.24	0.41	NA	NA	8.74	10.84	000
43264		A	Endoscopy,bile duct/pancreas	8.90	NA	NA	3.06	6.37	0.59	NA	NA	12.55	15.86	000
43265		A	Endoscopy,bile duct/pancreas	8.90	NA	NA	3.06	5.23	0.59	NA	NA	12.55	14.72	000
43267		A	Endoscopy,bile duct/pancreas	7.39	NA	NA	2.54	5.29	0.49	NA	NA	10.42	13.17	000
43268		A	Endoscopy,bile duct/pancreas	7.39	NA	NA	2.55	5.69	0.49	NA	NA	10.43	13.57	000
43269		A	Endoscopy,bile duct/pancreas	6.04	NA	NA	2.08	4.65	0.40	NA	NA	8.52	11.09	000
43271		A	Endoscopy,bile duct/pancreas	7.39	NA	NA	2.54	5.41	0.48	NA	NA	10.41	13.28	000
43272		A	Endoscopy,bile duct/pancreas	7.39	NA	NA	2.50	4.29	0.47	NA	NA	10.36	12.15	000
43300		A	Repair of esophagus	9.14	NA	NA	7.44	9.18	0.91	NA	NA	17.49	19.23	090
43305		A	Repair esophagus and fistula	17.15	NA	NA	13.18	14.03	1.38	NA	NA	31.71	32.56	090
43310		A	Repair of esophagus	25.39	NA	NA	17.03	17.74	3.22	NA	NA	45.64	46.35	090
43312		A	Repair esophagus and fistula	28.42	NA	NA	22.02	18.46	3.58	NA	NA	54.02	50.46	090
43320		A	Fuse esophagus & stomach	16.07	NA	NA	9.56	11.12	1.77	NA	NA	27.40	28.96	090
43324		A	Revise esophagus & stomach	16.58	NA	NA	8.70	10.80	1.73	NA	NA	27.01	29.11	090
43325		A	Revise esophagus & stomach	16.17	NA	NA	8.92	10.76	1.73	NA	NA	26.82	28.66	090
43326		A	Revise esophagus & stomach	15.91	NA	NA	10.50	9.33	1.91	NA	NA	28.32	27.15	090
43330		A	Repair of esophagus	15.94	NA	NA	8.75	10.54	1.59	NA	NA	26.28	28.07	090
43331		A	Repair of esophagus	16.23	NA	NA	10.45	13.00	1.79	NA	NA	28.47	31.02	090
43340		A	Fuse esophagus & intestine	15.81	NA	NA	21.35	17.43	1.79	NA	NA	38.95	35.03	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
43341		A	Fuse esophagus & intestine	16.81	NA	NA	10.66	10.70	1.42	NA	NA	28.89	28.93	090
43350		A	Surgical opening, esophagus	12.72	NA	NA	9.10	8.83	1.24	NA	NA	23.06	22.79	090
43351		A	Surgical opening, esophagus	14.79	NA	NA	10.59	10.06	1.86	NA	NA	27.24	26.71	090
43352		A	Surgical opening, esophagus	12.30	NA	NA	9.23	9.43	1.34	NA	NA	22.87	23.07	090
43360		A	Gastrointestinal repair	28.78	NA	NA	14.66	18.92	3.14	NA	NA	46.58	50.84	090
43361		A	Gastrointestinal repair	32.65	NA	NA	16.30	21.86	3.35	NA	NA	52.30	57.86	090
43400		A	Ligate esophagus veins	17.09	NA	NA	8.57	10.16	1.48	NA	NA	27.14	28.73	090
43401		A	Esophagus surgery for veins	17.81	NA	NA	9.41	9.91	1.81	NA	NA	29.03	29.53	090
43405		A	Ligate/staple esophagus	16.13	NA	NA	8.93	12.24	1.83	NA	NA	26.89	30.20	090
43410		A	Repair esophagus wound	10.86	NA	NA	8.27	8.97	1.21	NA	NA	20.34	21.04	090
43415		A	Repair esophagus wound	17.06	NA	NA	10.64	12.24	1.98	NA	NA	29.68	31.28	090
43420		A	Repair esophagus opening	11.57	NA	NA	7.43	6.91	0.90	NA	NA	19.90	19.38	090
43425		A	Repair esophagus opening	16.95	NA	NA	10.99	10.89	2.09	NA	NA	30.03	29.93	090
43450		A	Dilate esophagus	1.38	1.19	0.97	0.48	0.61	0.10	2.67	2.45	1.96	2.09	000
43453		A	Dilate esophagus	1.51	NA	NA	0.52	1.08	0.10	NA	NA	2.13	2.69	000
43456		A	Dilate esophagus	2.57	NA	NA	0.90	1.79	0.18	NA	NA	3.65	4.54	000
43458		A	Dilation of esophagus	3.06	NA	NA	1.08	1.37	0.21	NA	NA	4.35	4.64	000
43460		A	Pressure treatment esophagus	2.90	NA	NA	1.50	1.66	0.30	NA	NA	5.60	5.76	000
43496		C	Free jejunum flap, microvasc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
43499		C	Esophagus surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
43500		A	Surgical opening of stomach	8.44	NA	NA	4.32	5.49	0.85	NA	NA	13.61	14.78	090
43501		A	Surgical repair of stomach	15.31	NA	NA	7.26	8.29	1.58	NA	NA	24.15	25.18	090
43502		A	Surgical repair of stomach	17.67	NA	NA	8.16	8.74	1.87	NA	NA	27.70	28.28	090
43510		A	Surgical opening of stomach	9.99	NA	NA	6.17	7.59	0.82	NA	NA	16.98	18.40	090
43520		A	Incision of pyloric muscle	7.63	NA	NA	5.89	5.38	0.92	NA	NA	14.44	13.93	090
43600		A	Biopsy of stomach	1.91	NA	NA	0.65	0.60	0.13	NA	NA	2.69	2.64	000
43605		A	Biopsy of stomach	9.15	NA	NA	4.63	5.52	0.94	NA	NA	14.72	15.61	090
43610		A	Excision of stomach lesion	11.15	NA	NA	5.73	7.30	1.14	NA	NA	18.02	19.59	090
43611		A	Excision of stomach lesion	13.63	NA	NA	6.67	7.77	1.39	NA	NA	21.69	22.79	090
43620		A	Removal of stomach	22.54	NA	NA	10.74	13.72	2.33	NA	NA	35.61	38.59	090
43621		A	Removal of stomach	23.06	NA	NA	10.68	13.69	2.37	NA	NA	36.11	39.12	090
43622		A	Removal of stomach	24.41	NA	NA	11.22	13.96	2.54	NA	NA	38.17	40.91	090
43631		A	Removal of stomach, partial	19.66	NA	NA	8.87	11.18	2.04	NA	NA	30.57	32.88	090
43632		A	Removal stomach, partial	19.66	NA	NA	8.88	11.18	2.02	NA	NA	30.56	32.86	090
43633		A	Removal stomach, partial	20.10	NA	NA	9.14	11.31	2.07	NA	NA	31.31	33.48	090
43634		A	Removal stomach, partial	21.86	NA	NA	10.08	16.35	2.28	NA	NA	34.22	40.49	090
43635		A	Partial removal of stomach	2.06	NA	NA	0.78	0.98	0.21	NA	NA	3.05	3.25	ZZZ
43638		A	Partial removal of stomach	21.76	NA	NA	9.86	11.85	2.27	NA	NA	33.89	35.88	090
43639		A	Removal stomach, partial	22.25	NA	NA	10.14	11.99	2.35	NA	NA	34.74	36.59	090
43640		A	Vagotomy & pylorus repair	14.81	NA	NA	7.08	9.15	1.53	NA	NA	23.42	25.49	090
43641		A	Vagotomy & pylorus repair	15.03	NA	NA	7.11	9.17	1.57	NA	NA	23.71	25.77	090
43750		A	Place gastrostomy tube	4.49	NA	NA	2.42	3.57	0.37	NA	NA	7.28	8.43	010
43760		A	Change gastrostomy tube	1.10	1.19	0.97	0.36	0.56	0.08	2.37	2.15	1.54	1.74	000
43761		A	Reposition gastrostomy tube	2.01	NA	NA	0.58	0.87	0.10	NA	NA	2.69	2.98	000
43800		A	Reconstruction of pylorus	10.46	NA	NA	5.47	6.45	1.08	NA	NA	17.01	17.99	090
43810		A	Fusion of stomach and bowel	11.19	NA	NA	5.76	7.03	1.11	NA	NA	18.06	19.33	090
43820		A	Fusion of stomach and bowel	11.74	NA	NA	5.92	7.46	1.20	NA	NA	18.86	20.40	090
43825		A	Fusion of stomach and bowel	14.68	NA	NA	7.02	9.52	1.50	NA	NA	23.20	25.70	090
43830		A	Place gastrostomy tube	7.28	NA	NA	4.17	5.45	0.73	NA	NA	12.18	13.46	090
43831		A	Place gastrostomy tube	7.33	NA	NA	4.24	4.94	0.78	NA	NA	12.35	13.05	090
43832		A	Place gastrostomy tube	11.92	NA	NA	6.28	7.46	1.19	NA	NA	19.39	20.57	090
43840		A	Repair of stomach lesion	11.89	NA	NA	5.96	7.24	1.23	NA	NA	19.08	20.36	090
43842		A	Gastroplasty for obesity	14.71	NA	NA	9.78	12.34	1.55	NA	NA	26.04	28.60	090
43843		A	Gastroplasty for obesity	14.85	NA	NA	9.07	11.98	1.55	NA	NA	25.47	28.38	090
43846		A	Gastric bypass for obesity	19.15	NA	NA	11.39	13.73	1.96	NA	NA	32.50	34.84	090
43847		A	Gastric bypass for obesity	21.44	NA	NA	14.28	15.17	2.13	NA	NA	37.85	38.74	090
43848		A	Revision gastroplasty	23.41	NA	NA	13.77	14.92	2.44	NA	NA	39.62	40.77	090
43850		A	Revise stomach-bowel fusion	19.69	NA	NA	8.77	10.70	1.99	NA	NA	30.45	32.38	090
43855		A	Revise stomach-bowel fusion	20.83	NA	NA	9.70	10.52	2.02	NA	NA	32.55	33.37	090
43860		A	Revise stomach-bowel fusion	19.91	NA	NA	9.00	10.72	2.04	NA	NA	30.95	32.67	090
43865		A	Revise stomach-bowel fusion	21.12	NA	NA	9.44	11.99	2.20	NA	NA	32.76	35.31	090
43870		A	Repair stomach opening	7.40	NA	NA	4.26	5.26	0.74	NA	NA	12.40	13.40	090
43880		A	Repair stomach-bowel fistula	19.63	NA	NA	9.39	9.17	2.02	NA	NA	31.04	30.82	090
43999		C	Stomach surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
44005		A	Freeing of bowel adhesion	13.84	NA	NA	6.62	7.81	1.42	NA	NA	21.88	23.07	090
44010		A	Incision of small bowel	10.68	NA	NA	5.84	6.67	1.10	NA	NA	17.62	18.45	090
44015		A	Insert needle catheter,bowel	2.62	NA	NA	0.96	2.05	0.26	NA	NA	3.84	4.93	ZZZ
44020		A	Exploration of small bowel	11.93	NA	NA	5.85	7.17	1.20	NA	NA	18.98	20.30	090
44021		A	Decompress small bowel	12.01	NA	NA	6.33	6.97	1.23	NA	NA	19.57	20.21	090
44025		A	Incision of large bowel	12.18	NA	NA	5.98	7.19	1.25	NA	NA	19.41	20.62	090
44050		A	Reduce bowel obstruction	11.40	NA	NA	5.68	7.06	1.18	NA	NA	18.26	19.64	090
44055		A	Correct malrotation of bowel	13.14	NA	NA	6.39	7.35	1.31	NA	NA	20.84	21.80	090
44100		A	Biopsy of bowel	2.01	NA	NA	0.72	1.11	0.15	NA	NA	2.88	3.27	000
44110		A	Excision of bowel lesion(s)	10.07	NA	NA	5.22	6.77	1.02	NA	NA	16.31	17.86	090
44111		A	Excision of bowel lesion(s)	12.19	NA	NA	6.55	8.52	1.21	NA	NA	19.95	21.92	090
44120		A	Removal of small intestine	14.50	NA	NA	6.88	8.58	1.49	NA	NA	22.87	24.57	090
44121		A	Removal of small intestine	4.45	NA	NA	1.68	2.10	0.46	NA	NA	6.59	7.01	ZZZ
44125		A	Removal of small intestine	14.96	NA	NA	6.99	9.33	1.54	NA	NA	23.49	25.83	090
44130		A	Bowel to bowel fusion	12.36	NA	NA	6.07	7.74	1.27	NA	NA	19.70	21.37	090
44139		A	Mobilization of colon	2.23	NA	NA	0.84	1.06	0.23	NA	NA	3.30	3.52	ZZZ
44140		A	Partial removal of colon	18.35	NA	NA	8.84	10.59	1.89	NA	NA	29.08	30.83	090
44141		A	Partial removal of colon	19.51	NA	NA	11.65	12.26	2.02	NA	NA	33.18	33.79	090
44143		A	Partial removal of colon	20.17	NA	NA	11.91	12.61	2.08	NA	NA	34.16	34.86	090
44144		A	Partial removal of colon	18.89	NA	NA	10.59	11.84	1.95	NA	NA	31.43	32.68	090

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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
44145		A	Partial removal of colon	23.18	NA	NA	10.93	12.66	2.40	NA	NA	36.51	38.24	090
44146		A	Partial removal of colon	24.16	NA	NA	13.82	15.04	2.50	NA	NA	40.48	41.70	090
44147		A	Partial removal of colon	18.17	NA	NA	9.35	13.00	1.91	NA	NA	29.43	33.08	090
44150		A	Removal of colon	21.01	NA	NA	12.81	14.46	2.19	NA	NA	36.01	37.66	090
44151		A	Removal of colon/ileostomy	20.04	NA	NA	12.63	11.86	2.06	NA	NA	34.73	33.96	090
44152		A	Removal of colon/ileostomy	24.41	NA	NA	15.07	15.92	2.42	NA	NA	41.90	42.75	090
44153		A	Removal of colon/ileostomy	26.83	NA	NA	15.21	18.11	2.81	NA	NA	44.85	47.75	090
44155		A	Removal of colon	24.44	NA	NA	13.74	15.91	2.53	NA	NA	40.71	42.88	090
44156		A	Removal of colon/ileostomy	23.01	NA	NA	14.13	13.25	2.46	NA	NA	39.60	38.72	090
44160		A	Removal of colon	15.88	NA	NA	7.75	10.63	1.65	NA	NA	25.28	28.16	090
44300		A	Open bowel to skin	8.88	NA	NA	5.51	6.03	0.91	NA	NA	15.30	15.82	090
44310		A	Ileostomy/jejunostomy	11.70	NA	NA	8.40	8.48	1.21	NA	NA	21.31	21.39	090
44312		A	Revision of ileostomy	5.88	NA	NA	4.26	3.80	0.55	NA	NA	10.69	10.23	090
44314		A	Revision of ileostomy	11.04	NA	NA	8.53	7.89	1.09	NA	NA	20.66	20.02	090
44316		A	Devise bowel pouch	15.47	NA	NA	12.09	11.28	1.55	NA	NA	29.11	28.30	090
44320		A	Colostomy	12.94	NA	NA	9.90	9.00	1.33	NA	NA	24.17	23.27	090
44322		A	Colostomy with biopsies	11.98	NA	NA	9.74	9.79	1.22	NA	NA	22.94	22.99	090
44340		A	Revision of colostomy	5.66	NA	NA	4.22	3.02	0.57	NA	NA	10.45	9.25	090
44345		A	Revision of colostomy	11.32	NA	NA	6.74	6.00	1.17	NA	NA	19.23	18.49	090
44346		A	Revision of colostomy	12.46	NA	NA	7.20	7.21	1.28	NA	NA	20.94	20.95	090
44360		A	Small bowel endoscopy	2.92	NA	NA	1.01	2.25	0.20	NA	NA	4.13	5.37	000
44361		A	Small bowel endoscopy,biopsy	3.23	NA	NA	1.11	2.48	0.21	NA	NA	4.55	5.92	000
44363		A	Small bowel endoscopy	3.94	NA	NA	1.33	2.29	0.25	NA	NA	5.52	6.48	000
44364		A	Small bowel endoscopy	4.22	NA	NA	1.48	3.26	0.29	NA	NA	5.99	7.77	000
44365		A	Small bowel endoscopy	3.73	NA	NA	1.30	2.88	0.26	NA	NA	5.29	6.87	000
44366		A	Small bowel endoscopy	4.97	NA	NA	1.70	3.82	0.32	NA	NA	6.99	9.11	000
44369		A	Small bowel endoscopy	5.09	NA	NA	1.76	3.92	0.35	NA	NA	7.20	9.36	000
44372		A	Small bowel endoscopy	4.97	NA	NA	1.74	3.84	0.36	NA	NA	7.07	9.17	000
44373		A	Small bowel endoscopy	3.94	NA	NA	1.34	3.02	0.27	NA	NA	5.55	7.23	000
44376		A	Small bowel endoscopy	5.69	NA	NA	1.97	3.19	0.39	NA	NA	8.05	9.27	000
44377		A	Small bowel endoscopy	5.98	NA	NA	2.06	3.34	0.40	NA	NA	8.44	9.72	000
44378		A	Small bowel endoscopy	7.71	NA	NA	2.68	4.20	0.53	NA	NA	10.92	12.44	000
44380		A	Small bowel endoscopy	1.51	NA	NA	0.53	1.17	0.11	NA	NA	2.15	2.79	000
44382		A	Small bowel endoscopy	1.82	NA	NA	0.63	1.40	0.13	NA	NA	2.58	3.35	000
44385		A	Endoscopy of bowel pouch	1.82	3.47	3.00	0.63	1.40	0.14	5.43	4.96	2.59	3.36	000
44386		A	Endoscopy,bowel pouch,biopsy	2.12	4.98	3.33	0.76	1.22	0.18	7.28	5.63	3.06	3.52	000
44388		A	Colon endoscopy	2.82	4.85	4.39	1.01	2.19	0.23	7.90	7.44	4.06	5.24	000
44389		A	Colonoscopy with biopsy	3.13	5.45	4.90	1.10	2.42	0.23	8.81	8.26	4.46	5.78	000
44390		A	Colonoscopy for foreign body	3.83	4.13	3.49	1.39	2.12	0.32	8.28	7.64	5.54	6.27	000
44391		A	Colonoscopy for bleeding	4.32	3.75	4.73	1.51	3.33	0.31	8.38	9.36	6.14	7.96	000
44392		A	Colonoscopy & polypectomy	3.82	5.65	5.63	1.35	2.96	0.30	9.77	9.75	5.47	7.08	000
44393		A	Colonoscopy, lesion removal	4.84	5.37	5.62	1.69	3.73	0.36	10.57	10.82	6.89	8.93	000
44394		A	Colonoscopy w/snare	4.43	5.98	5.79	1.57	3.43	0.35	10.76	10.57	6.35	8.21	000
44500		A	Intro. gastrointestinal tube	0.49	NA	NA	0.13	0.26	0.02	NA	NA	0.64	0.77	000
44602		A	Suture, small intestine	10.61	NA	NA	5.38	6.84	1.09	NA	NA	17.08	18.54	090
44603		A	Suture, small intestine	14.00	NA	NA	6.68	8.27	1.44	NA	NA	22.12	23.71	090
44604		A	Suture, large intestine	14.28	NA	NA	23.11	15.83	1.45	NA	NA	38.84	31.56	090
44605		A	Repair of bowel lesion	15.37	NA	NA	7.59	8.88	1.56	NA	NA	24.52	25.81	090
44615		A	Intestinal stricturoplasty	14.19	NA	NA	6.73	7.02	1.43	NA	NA	22.35	22.64	090
44620		A	Repair bowel opening	10.87	NA	NA	5.46	5.97	1.12	NA	NA	17.45	17.96	090
44625		A	Repair bowel opening	13.41	NA	NA	6.43	8.42	1.38	NA	NA	21.22	23.21	090
44626		A	Repair bowel opening	22.59	NA	NA	9.92	11.13	2.33	NA	NA	34.84	36.05	090
44640		A	Repair bowel-skin fistula	14.83	NA	NA	7.40	7.25	1.54	NA	NA	23.77	23.62	090
44650		A	Repair bowel fistula	15.25	NA	NA	7.57	7.76	1.57	NA	NA	24.39	24.58	090
44660		A	Repair bowel-bladder fistula	14.63	NA	NA	7.00	8.03	1.29	NA	NA	22.92	23.95	090
44661		A	Repair bowel-bladder fistula	16.99	NA	NA	7.97	11.55	1.62	NA	NA	26.58	30.16	090
44680		A	Surgical revision, intestine	13.72	NA	NA	6.87	8.71	1.44	NA	NA	22.03	23.87	090
44700		A	Suspend bowel w/prosthesis	14.35	NA	NA	7.20	9.77	1.32	NA	NA	22.87	25.44	090
44799		C	Intestine surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
44800		A	Excision of bowel pouch	11.23	NA	NA	5.64	5.67	1.14	NA	NA	18.01	18.04	090
44820		A	Excision of mesentery lesion	10.31	NA	NA	5.34	5.82	1.06	NA	NA	16.71	17.19	090
44850		A	Repair of mesentery	9.57	NA	NA	5.40	5.74	0.98	NA	NA	15.95	16.29	090
44899		C	Bowel surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
44900		A	Drain, app abscess, open	8.82	NA	NA	5.34	4.99	0.85	NA	NA	15.01	14.66	090
44901		A	Drain, app abscess, perc	3.38	NA	NA	3.33	3.06	0.33	NA	NA	7.04	6.77	000
44950		A	Appendectomy	8.70	NA	NA	4.79	5.05	0.89	NA	NA	14.38	14.64	090
44955		A	Appendectomy add-on	1.53	NA	NA	0.58	1.20	0.15	NA	NA	2.26	2.88	ZZZ
44960		A	Appendectomy	10.74	NA	NA	5.91	6.15	1.11	NA	NA	17.76	18.00	090
45000		A	Drainage of pelvic abscess	4.52	NA	NA	3.50	2.62	0.39	NA	NA	8.41	7.53	090
45005		A	Drainage of rectal abscess	1.99	4.01	2.71	1.43	1.42	0.19	6.19	4.89	3.61	3.60	010
45020		A	Drainage of rectal abscess	4.72	NA	NA	3.37	3.10	0.46	NA	NA	8.55	8.28	090
45100		A	Biopsy of rectum	3.68	4.31	3.18	1.99	2.02	0.37	8.36	7.23	6.04	6.07	090
45108		A	Removal of anorectal lesion	4.76	6.20	4.55	2.77	2.83	0.49	11.45	9.80	8.02	8.08	090
45110		A	Removal of rectum	23.80	NA	NA	12.38	15.05	2.42	NA	NA	38.60	41.27	090
45111		A	Partial removal of rectum	16.48	NA	NA	8.71	10.74	1.69	NA	NA	26.88	28.91	090
45112		A	Removal of rectum	25.96	NA	NA	12.14	14.79	2.63	NA	NA	40.73	43.38	090
45113		A	Partial proctectomy	25.99	NA	NA	11.54	14.49	2.59	NA	NA	40.12	43.07	090
45114		A	Partial removal of rectum	23.22	NA	NA	11.27	13.99	2.39	NA	NA	36.88	39.60	090
45116		A	Partial removal of rectum	20.89	NA	NA	9.91	10.80	2.09	NA	NA	32.89	33.78	090
45119		A	Remove, rectum w/reservoir	26.21	NA	NA	12.24	14.84	2.66	NA	NA	41.11	43.71	090
45120		A	Removal of rectum	24.60	NA	NA	11.85	14.82	2.44	NA	NA	38.89	41.86	090
45121		A	Removal of rectum and colon	27.04	NA	NA	12.77	12.24	2.75	NA	NA	42.56	42.03	090
45123		A	Partial proctectomy	14.20	NA	NA	7.15	9.96	1.47	NA	NA	22.82	25.63	090
45126		A	Pelvic exenteration	38.39	14.06	14.06	13.78	13.78	2.89	55.34	55.34	55.06	55.06	090

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
45130		A	Excision of rectal prolapse	13.97	NA	NA	6.93	8.31	1.47	NA	NA	22.37	23.75	090
45135		A	Excision of rectal prolapse	16.39	NA	NA	8.28	12.80	1.70	NA	NA	26.37	30.89	090
45150		A	Excision of rectal stricture	5.67	5.06	4.37	3.02	3.35	0.59	11.32	10.63	9.28	9.61	090
45160		A	Excision of rectal lesion	13.02	NA	NA	6.40	7.25	1.36	NA	NA	20.78	21.63	090
45170		A	Excision of rectal lesion	9.77	NA	NA	5.15	5.08	1.02	NA	NA	15.94	15.87	090
45190		A	Destruction, rectal tumor	8.28	NA	NA	4.68	5.10	0.86	NA	NA	13.82	14.24	090
45300		A	Proctosigmoidoscopy	0.70	3.52	2.06	0.25	0.28	0.06	4.28	2.82	1.01	1.04	000
45303		A	Proctosigmoidoscopy	0.80	4.55	2.62	0.29	0.32	0.07	5.42	3.49	1.16	1.19	000
45305		A	Proctosigmoidoscopy; biopsy	1.01	3.47	2.19	0.37	0.42	0.10	4.58	3.30	1.48	1.53	000
45307		A	Proctosigmoidoscopy	1.71	5.25	3.32	0.61	1.00	0.17	7.13	5.20	2.49	2.88	000
45308		A	Proctosigmoidoscopy	1.51	2.70	1.97	0.56	0.59	0.15	4.36	3.63	2.22	2.25	000
45309		A	Proctosigmoidoscopy	2.01	3.87	2.55	0.74	0.68	0.20	6.08	4.76	2.95	2.89	000
45315		A	Proctosigmoidoscopy	2.54	4.71	3.00	0.93	1.11	0.24	7.49	5.78	3.71	3.89	000
45317		A	Proctosigmoidoscopy	2.73	3.16	2.27	1.00	1.19	0.27	6.16	5.27	4.00	4.19	000
45320		A	Proctosigmoidoscopy	2.88	3.45	2.74	1.05	1.54	0.28	6.61	5.90	4.21	4.70	000
45321		A	Proctosigmoidoscopy	2.12	NA	NA	0.77	1.19	0.19	NA	NA	3.08	3.50	000
45330		A	Sigmoidoscopy, diagnostic	0.96	4.53	2.93	0.33	0.46	0.07	5.56	3.96	1.36	1.49	000
45331		A	Sigmoidoscopy and biopsy	1.26	4.61	3.18	0.43	0.97	0.09	5.96	4.53	1.78	2.32	000
45332		A	Sigmoidoscopy	1.96	5.82	3.87	0.68	1.30	0.15	7.93	5.98	2.79	3.41	000
45333		A	Sigmoidoscopy & polypectomy	1.96	4.88	3.66	0.69	1.52	0.15	6.99	5.77	2.80	3.63	000
45334		A	Sigmoidoscopy for bleeding	2.99	NA	NA	1.04	1.99	0.21	NA	NA	4.24	5.19	000
45337		A	Sigmoidoscopy, decompression	2.36	NA	NA	0.83	1.83	0.18	NA	NA	3.37	4.37	000
45338		A	Sigmoidoscopy	2.57	5.47	3.95	0.91	1.67	0.19	8.23	6.71	3.67	4.43	000
45339		A	Sigmoidoscopy	3.14	4.52	4.02	1.10	2.31	0.23	7.89	7.39	4.47	5.68	000
45355		A	Surgical colonoscopy	3.52	NA	NA	1.25	1.26	0.29	NA	NA	5.06	5.07	000
45378		A	Diagnostic colonoscopy	3.70	5.85	5.17	1.30	2.86	0.27	9.82	9.14	5.27	6.83	000
45378	53	A	Diagnostic colonoscopy	0.96	1.27	1.30	0.58	0.87	0.07	2.30	2.33	1.61	1.90	000
45379		A	Colonoscopy	4.72	6.32	6.05	1.68	3.66	0.37	11.41	11.14	6.77	8.75	000
45380		A	Colonoscopy and biopsy	4.01	5.95	5.58	1.39	3.09	0.28	10.24	9.87	5.68	7.38	000
45382		A	Colonoscopy,control bleeding	5.73	6.99	6.68	1.98	4.18	0.39	13.11	12.80	8.10	10.30	000
45383		A	Colonoscopy, lesion removal	5.87	7.09	6.76	2.05	4.24	0.43	13.39	13.06	8.35	10.54	000
45384		A	Colonoscopy	4.70	6.50	6.06	1.64	3.63	0.34	11.54	11.10	6.68	8.67	000
45385		A	Colonoscopy, lesion removal	5.31	6.65	6.94	1.85	4.10	0.38	12.34	12.63	7.54	9.79	000
45500		A	Repair of rectum	7.29	NA	NA	3.98	5.22	0.76	NA	NA	12.03	13.27	090
45505		A	Repair of rectum	6.02	NA	NA	3.11	4.97	0.64	NA	NA	9.77	11.63	090
45520		A	Treatment of rectal prolapse	0.55	0.68	0.67	0.18	0.26	0.06	1.29	1.28	0.79	0.87	000
45540		A	Correct rectal prolapse	12.92	NA	NA	6.88	8.81	1.32	NA	NA	21.12	23.05	090
45541		A	Correct rectal prolapse	10.64	NA	NA	5.85	8.45	1.11	NA	NA	17.60	20.20	090
45550		A	Repair rectum;remove sigmoid	18.26	NA	NA	8.82	10.65	1.91	NA	NA	28.99	30.82	090
45560		A	Repair of rectocele	8.40	NA	NA	5.19	5.20	0.72	NA	NA	14.31	14.32	090
45562		A	Exploration/repair of rectum	12.21	NA	NA	6.09	7.44	1.18	NA	NA	19.48	20.83	090
45563		A	Exploration/repair of rectum	18.63	NA	NA	9.20	11.53	1.83	NA	NA	29.72	32.05	090
45800		A	Repair rectumbladder fistula	14.11	NA	NA	6.59	8.63	1.16	NA	NA	21.86	23.90	090
45805		A	Repair fistula; colostomy	16.50	NA	NA	8.37	10.87	1.56	NA	NA	26.43	28.93	090
45820		A	Repair rectourethral fistula	14.67	NA	NA	6.80	8.28	1.36	NA	NA	22.83	24.31	090
45825		A	Repair fistula; colostomy	16.87	NA	NA	8.55	9.63	1.57	NA	NA	26.99	28.07	090
45900		A	Reduction of rectal prolapse	1.83	NA	NA	0.79	0.71	0.19	NA	NA	2.81	2.73	010
45905		A	Dilation of anal sphincter	1.61	2.45	1.61	0.71	0.74	0.16	4.22	3.38	2.48	2.51	010
45910		A	Dilation of rectal narrowing	1.96	3.07	2.01	0.83	0.89	0.17	5.20	4.14	2.96	3.02	010
45915		A	Remove rectal obstruction	2.20	3.54	2.20	0.80	0.83	0.20	5.94	4.60	3.20	3.23	010
45999		C	Rectum surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
46030		A	Removal of rectal marker	1.23	2.11	1.27	1.08	0.76	0.13	3.47	2.63	2.44	2.12	010
46040		A	Incision of rectal abscess	4.96	4.67	3.25	2.93	2.38	0.51	10.14	8.72	8.40	7.85	090
46045		A	Incision of rectal abscess	4.32	NA	NA	2.62	2.32	0.45	NA	NA	7.39	7.09	090
46050		A	Incision of anal abscess	1.19	2.90	1.78	1.21	0.77	0.12	4.21	3.09	2.52	2.08	010
46060		A	Incision of rectal abscess	5.69	NA	NA	3.51	4.66	0.60	NA	NA	9.80	10.95	090
46070		A	Incision of anal septum	2.71	NA	NA	2.47	1.98	0.28	NA	NA	5.46	4.97	090
46080		A	Incision of anal sphincter	2.49	2.74	2.53	1.54	1.93	0.26	5.49	5.28	4.29	4.68	010
46083		A	Incise external hemorrhoid	1.40	3.96	2.32	1.34	0.84	0.12	5.48	3.84	2.86	2.36	010
46200		A	Removal of anal fissure	3.42	3.12	3.35	2.22	2.90	0.36	6.90	7.13	6.00	6.68	090
46210		A	Removal of anal crypt	2.67	4.30	2.57	2.33	1.59	0.25	7.22	5.49	5.25	4.51	090
46211		A	Removal of anal crypts	4.25	4.93	3.50	4.93	3.50	0.42	9.60	8.17	9.60	8.17	090
46220		A	Removal of anal tab	1.56	1.21	0.95	0.59	0.64	0.16	2.93	2.67	2.31	2.36	010
46221		A	Ligation of hemorrhoid(s)	1.43	2.49	1.61	0.53	0.45	0.15	4.07	3.19	2.11	2.03	010
46230		A	Removal of anal tabs	2.57	3.70	2.30	1.57	1.01	0.26	6.53	5.13	4.40	3.84	010
46250		A	Hemorrhoidectomy	4.53	4.75	3.92	3.00	3.04	0.46	9.74	8.91	7.99	8.03	090
46255		A	Hemorrhoidectomy	5.36	5.09	5.11	3.06	4.09	0.55	11.00	11.02	8.97	10.00	090
46257		A	Remove hemorrhoids & fissure	6.28	NA	NA	3.35	4.52	0.66	NA	NA	10.29	11.46	090
46258		A	Remove hemorrhoids & fistula	6.67	NA	NA	3.48	4.93	0.69	NA	NA	10.84	12.29	090
46260		A	Hemorrhoidectomy	7.42	NA	NA	4.24	5.42	0.78	NA	NA	12.44	13.62	090
46261		A	Remove hemorrhoids & fissure	8.24	NA	NA	4.35	5.77	0.88	NA	NA	13.47	14.89	090
46262		A	Remove hemorrhoids & fistula	8.73	NA	NA	4.62	5.96	0.91	NA	NA	14.26	15.60	090
46270		A	Removal of anal fistula	3.72	4.31	3.17	2.62	2.33	0.38	8.41	7.27	6.72	6.43	090
46275		A	Removal of anal fistula	4.56	4.05	4.75	2.66	4.06	0.48	9.09	9.79	7.70	9.10	090
46280		A	Removal of anal fistula	5.98	NA	NA	3.55	5.08	0.64	NA	NA	10.17	11.70	090
46285		A	Removal of anal fistula	4.09	3.57	3.02	2.59	2.53	0.43	8.09	7.54	7.11	7.05	090
46288		A	Repair anal fistula	7.13	NA	NA	4.09	3.98	0.73	NA	NA	11.95	11.84	090
46320		A	Removal of hemorrhoid clot	1.61	3.25	2.01	1.41	0.90	0.16	5.02	3.78	3.18	2.67	010
46500		A	Injection into hemorrhoids	1.61	2.07	1.21	0.58	0.38	0.17	3.85	2.99	2.36	2.16	010
46600		A	Diagnostic anoscopy	0.50	0.75	0.53	0.15	0.15	0.04	1.29	1.07	0.69	0.69	000
46604		A	Anoscopy and dilation	1.31	0.91	0.66	0.48	0.35	0.13	2.35	2.10	1.92	1.79	000
46606		A	Anoscopy and biopsy	0.81	0.83	0.61	0.30	0.25	0.08	1.72	1.50	1.19	1.14	000
46608		A	Anoscopy;remove foreign body	1.51	1.71	1.44	0.47	0.82	0.14	3.36	3.09	2.12	2.47	000
46610		A	Anoscopy; remove lesion	1.32	1.38	1.15	0.49	0.71	0.12	2.82	2.59	1.93	2.15	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
46611		A	Anoscopy	1.81	1.80	1.36	0.67	0.57	0.17	3.78	3.34	2.65	2.55	000
46612		A	Anoscopy; remove lesions	2.34	1.93	1.72	0.85	1.18	0.21	4.48	4.27	3.40	3.73	000
46614		A	Anoscopy; control bleeding	2.01	1.55	1.62	0.71	0.78	0.18	3.74	3.81	2.90	2.97	000
46615		A	Anoscopy	2.68	1.80	1.74	1.00	0.92	0.23	4.71	4.65	3.91	3.83	000
46700		A	Repair of anal stricture	7.25	NA	NA	3.89	5.28	0.78	NA	NA	11.92	13.31	090
46705		A	Repair of anal stricture	7.17	NA	NA	4.83	4.37	0.77	NA	NA	12.77	12.31	090
46715		A	Repair of anovaginal fistula	7.46	NA	NA	4.47	4.14	0.92	NA	NA	12.85	12.52	090
46716		A	Repair of anovaginal fistula	12.15	NA	NA	6.26	6.42	1.27	NA	NA	19.68	19.84	090
46730		A	Construction of absent anus	21.57	NA	NA	10.69	11.18	2.03	NA	NA	34.29	34.78	090
46735		A	Construction of absent anus	25.94	NA	NA	13.24	13.70	2.72	NA	NA	41.90	42.36	090
46740		A	Construction of absent anus	23.11	NA	NA	10.37	11.45	2.42	NA	NA	35.90	36.98	090
46742		A	Repair, imperforated anus	29.67	NA	NA	14.66	18.05	3.14	NA	NA	47.47	50.86	090
46744		A	Repair, cloacal anomaly	33.21	NA	NA	16.01	20.04	2.70	NA	NA	51.92	55.95	090
46746		A	Repair, cloacal anomaly	36.74	NA	NA	16.97	21.65	3.41	NA	NA	57.12	61.80	090
46748		A	Repair, cloacal anomaly	40.52	NA	NA	17.11	23.22	2.05	NA	NA	59.68	65.79	090
46750		A	Repair of anal sphincter	8.14	NA	NA	4.60	5.56	0.79	NA	NA	13.53	14.49	090
46751		A	Repair of anal sphincter	8.56	NA	NA	5.36	4.89	0.91	NA	NA	14.83	14.36	090
46753		A	Reconstruction of anus	6.58	NA	NA	3.40	4.36	0.70	NA	NA	10.68	11.64	090
46754		A	Removal of suture from anus	1.54	4.43	3.02	1.09	1.35	0.14	6.11	4.70	2.77	3.03	010
46760		A	Repair of anal sphincter	11.46	NA	NA	5.90	6.64	1.13	NA	NA	18.49	19.23	090
46761		A	Repair of anal sphincter	10.99	NA	NA	5.63	6.52	1.11	NA	NA	17.73	18.62	090
46762		A	Implant artificial sphincter	10.09	NA	NA	4.73	5.47	0.99	NA	NA	15.81	16.55	090
46900		A	Destruction, anal lesion(s)	1.91	2.81	1.62	0.78	0.50	0.17	4.89	3.70	2.86	2.58	010
46910		A	Destruction, anal lesion(s)	1.86	2.83	1.76	1.34	0.85	0.16	4.85	3.78	3.36	2.87	010
46916		A	Cryosurgery, anal lesion(s)	1.86	2.62	1.68	1.37	0.87	0.10	4.58	3.64	3.33	2.83	010
46917		A	Laser surgery,anal lesion(s)	1.86	3.66	2.89	1.36	1.21	0.17	5.69	4.92	3.39	3.24	010
46922		A	Excision of anal lesion(s)	1.86	3.25	2.32	1.37	1.38	0.18	5.29	4.36	3.41	3.42	010
46924		A	Destruction, anal lesion(s)	2.76	4.05	3.42	1.63	2.21	0.24	7.05	6.42	4.63	5.21	010
46934		A	Destruction of hemorrhoids	4.08	4.97	3.13	3.28	1.97	0.35	9.40	7.56	7.71	6.40	090
46935		A	Destruction of hemorrhoids	2.43	3.32	2.54	0.89	0.89	0.23	5.98	5.20	3.55	3.55	010
46936		A	Destruction of hemorrhoids	4.30	4.60	3.55	4.60	2.93	0.40	9.30	8.25	9.30	7.63	090
46937		A	Cryotherapy of rectal lesion	2.69	3.20	2.88	1.55	2.05	0.13	6.02	5.70	4.37	4.87	010
46938		A	Cryotherapy of rectal lesion	4.66	3.64	3.18	3.14	2.93	0.50	8.80	8.34	8.30	8.09	090
46940		A	Treatment of anal fissure	2.32	2.49	1.52	0.84	0.56	0.24	5.05	4.08	3.40	3.12	010
46942		A	Treatment of anal fissure	2.04	2.07	1.29	0.72	0.49	0.22	4.33	3.55	2.98	2.75	010
46945		A	Ligation of hemorrhoids	2.14	3.40	2.04	1.93	1.14	0.21	5.75	4.39	4.28	3.49	090
46946		A	Ligation of hemorrhoids	3.00	3.94	2.48	2.18	1.35	0.28	7.22	5.76	5.46	4.63	090
46999		C	Anus surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
47000		A	Needle biopsy of liver	1.90	8.19	4.86	0.56	1.04	0.10	10.19	6.86	2.56	3.04	000
47001		A	Needle biopsy, liver add-on	1.90	NA	NA	0.71	1.12	0.19	NA	NA	2.80	3.21	ZZZ
47010		A	Open drainage, liver lesion	10.28	NA	NA	6.98	7.16	0.58	NA	NA	17.84	18.02	090
47011		A	Percut drain, liver lesion	3.70	NA	NA	5.03	4.04	0.21	NA	NA	8.94	7.95	000
47015		A	Inject/aspirate liver cyst	9.70	NA	NA	5.97	6.65	0.89	NA	NA	16.56	17.24	090
47100		A	Wedge biopsy of liver	7.49	NA	NA	4.87	4.22	0.77	NA	NA	13.13	12.48	090
47120		A	Partial removal of liver	22.79	NA	NA	12.41	12.72	2.30	NA	NA	37.50	37.81	090
47122		A	Extensive removal of liver	35.39	NA	NA	17.25	18.17	3.49	NA	NA	56.13	57.05	090
47125		A	Partial removal of liver	31.58	NA	NA	15.92	17.42	3.17	NA	NA	50.67	52.17	090
47130		A	Partial removal of liver	34.25	NA	NA	16.66	18.75	3.43	NA	NA	54.34	56.43	090
47133		X	Removal of donor liver	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
47134		R	Partial removal, donor liver	39.15	NA	NA	14.95	18.59	3.92	NA	NA	58.02	61.66	XXX
47135		R	Transplantation of liver	81.52	NA	NA	43.54	51.33	8.00	NA	NA	133.06	140.85	090
47136		R	Transplantation of liver	68.60	NA	NA	42.26	39.31	6.86	NA	NA	117.72	114.77	090
47300		A	Surgery for liver lesion	9.68	NA	NA	5.87	7.10	0.97	NA	NA	16.52	17.75	090
47350		A	Repair liver wound	12.56	NA	NA	6.88	7.49	1.27	NA	NA	20.71	21.32	090
47360		A	Repair liver wound	17.28	NA	NA	9.30	10.58	1.77	NA	NA	28.35	29.63	090
47361		A	Repair liver wound	30.25	NA	NA	14.12	15.01	3.05	NA	NA	47.42	48.31	090
47362		A	Repair liver wound	11.88	NA	NA	12.76	9.22	1.17	NA	NA	25.81	22.27	090
47399		C	Liver surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
47400		A	Incision of liver duct	20.86	NA	NA	11.23	10.25	2.05	NA	NA	34.14	33.16	090
47420		A	Incision of bile duct	16.72	NA	NA	8.36	9.33	1.73	NA	NA	26.81	27.78	090
47425		A	Incision of bile duct	16.68	NA	NA	8.44	10.58	1.69	NA	NA	26.81	28.95	090
47460		A	Incise bile duct sphincter	15.17	NA	NA	7.61	12.24	1.32	NA	NA	24.10	28.73	090
47480		A	Incision of gallbladder	9.10	NA	NA	6.03	7.14	0.92	NA	NA	16.05	17.16	090
47490		A	Incision of gallbladder	7.23	NA	NA	6.28	5.08	0.32	NA	NA	13.83	12.63	090
47500		A	Injection for liver x-rays	1.96	NA	NA	0.53	1.09	0.08	NA	NA	2.57	3.13	000
47505		A	Injection for liver x-rays	0.76	14.90	7.98	0.21	0.56	0.03	15.69	8.77	1.00	1.35	000
47510		A	Insert catheter, bile duct	7.83	NA	NA	29.38	16.25	0.36	NA	NA	37.57	24.44	090
47511		A	Insert bile duct drain	10.50	NA	NA	30.68	16.90	0.45	NA	NA	41.63	27.85	090
47525		A	Change bile duct catheter	5.55	NA	NA	2.68	2.21	0.23	NA	NA	8.46	7.99	010
47530		A	Revise, reinsert bile tube	5.85	NA	NA	4.14	2.89	0.30	NA	NA	10.29	9.04	090
47550		A	Bile duct endoscopy add-on	3.02	NA	NA	1.12	1.41	0.31	NA	NA	4.45	4.74	ZZZ
47552		A	Biliary endoscopy, thru skin	6.04	NA	NA	2.08	1.78	0.51	NA	NA	8.63	8.33	000
47553		A	Biliary endoscopy, thru skin	6.35	NA	NA	1.76	2.94	0.30	NA	NA	8.41	9.59	000
47554		A	Biliary endoscopy, thru skin	9.06	NA	NA	3.15	3.71	0.78	NA	NA	12.99	13.55	000
47555		A	Biliary endoscopy, thru skin	7.56	NA	NA	2.06	2.46	0.33	NA	NA	9.95	10.35	000
47556		A	Biliary endoscopy, thru skin	8.56	NA	NA	2.32	2.59	0.37	NA	NA	11.25	11.52	000
47600		A	Removal of gallbladder	11.42	NA	NA	6.11	7.14	1.18	NA	NA	18.71	19.74	090
47605		A	Removal of gallbladder	12.36	NA	NA	6.45	7.64	1.28	NA	NA	20.09	21.28	090
47610		A	Removal of gallbladder	15.83	NA	NA	7.86	9.02	1.63	NA	NA	25.32	26.48	090
47612		A	Removal of gallbladder	15.80	NA	NA	7.73	11.59	1.63	NA	NA	25.16	29.02	090
47620		A	Removal of gallbladder	17.36	NA	NA	8.28	10.24	1.80	NA	NA	27.44	29.40	090
47630		A	Remove bile duct stone	9.11	NA	NA	2.67	3.37	0.50	NA	NA	12.28	12.98	090
47700		A	Exploration of bile ducts	14.93	NA	NA	8.15	8.22	1.42	NA	NA	24.50	24.57	090
47701		A	Bile duct revision	27.81	NA	NA	107.69	58.30	3.05	NA	NA	138.55	89.16	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
47711		A	Excision of bile duct tumor	19.37	NA	NA	10.05	11.57	1.93	NA	NA	31.35	32.87	090
47712		A	Excision of bile duct tumor	25.44	NA	NA	13.00	13.05	2.82	NA	NA	41.26	41.31	090
47715		A	Excision of bile duct cyst	15.81	NA	NA	8.15	8.54	1.63	NA	NA	25.59	25.98	090
47716		A	Fusion of bile duct cyst	13.83	NA	NA	7.32	7.22	1.37	NA	NA	22.52	22.42	090
47720		A	Fuse gallbladder & bowel	13.38	NA	NA	7.68	8.81	1.38	NA	NA	22.44	23.57	090
47721		A	Fuse upper gi structures	16.08	NA	NA	8.66	10.53	1.64	NA	NA	26.38	28.25	090
47740		A	Fuse gallbladder & bowel	15.54	NA	NA	8.56	9.82	1.63	NA	NA	25.73	26.99	090
47741		A	Fuse gallbladder & bowel	17.95	NA	NA	9.55	12.56	1.85	NA	NA	29.35	32.36	090
47760		A	Fuse bile ducts and bowel	21.74	NA	NA	10.93	11.77	2.24	NA	NA	34.91	35.75	090
47765		A	Fuse liver ducts & bowel	20.93	NA	NA	11.31	13.59	2.10	NA	NA	34.34	36.62	090
47780		A	Fuse bile ducts and bowel	22.29	NA	NA	11.12	12.65	2.29	NA	NA	35.70	37.23	090
47785		A	Fuse bile ducts and bowel	26.23	NA	NA	13.49	13.84	2.73	NA	NA	42.45	42.80	090
47800		A	Reconstruction of bile ducts	19.60	NA	NA	9.92	12.14	1.97	NA	NA	31.49	33.71	090
47801		A	Placement, bile duct support	12.76	NA	NA	7.95	6.95	0.78	NA	NA	21.49	20.49	090
47802		A	Fuse liver duct & intestine	18.13	NA	NA	10.71	10.93	1.95	NA	NA	30.79	31.01	090
47900		A	Suture bile duct injury	16.74	NA	NA	8.81	11.58	1.77	NA	NA	27.32	30.09	090
47999		C	Bile tract surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
48000		A	Drainage of abdomen	14.91	NA	NA	7.97	7.78	1.38	NA	NA	24.16	24.05	090
48001		A	Placement of drain, pancreas	18.83	NA	NA	9.27	9.05	1.91	NA	NA	30.01	29.79	090
48005		A	Resect/debride pancreas	22.40	NA	NA	10.50	10.24	2.26	NA	NA	35.16	34.90	090
48020		A	Removal of pancreatic stone	14.22	NA	NA	6.84	7.10	1.07	NA	NA	22.13	22.39	090
48100		A	Biopsy of pancreas	11.08	NA	NA	6.39	5.48	1.12	NA	NA	18.59	17.68	090
48102		A	Needle biopsy, pancreas	4.68	8.07	5.35	1.99	2.31	0.21	12.96	10.24	6.88	7.20	010
48120		A	Removal of pancreas lesion	14.36	NA	NA	7.01	8.78	1.47	NA	NA	22.84	24.61	090
48140		A	Partial removal of pancreas	20.78	NA	NA	10.01	12.22	2.13	NA	NA	32.92	35.13	090
48145		A	Partial removal of pancreas	21.76	NA	NA	10.62	13.84	2.20	NA	NA	34.58	37.80	090
48146		A	Pancreatectomy	23.91	NA	NA	12.71	15.31	2.54	NA	NA	39.16	41.76	090
48148		A	Removal of pancreatic duct	15.71	NA	NA	8.30	8.62	1.60	NA	NA	25.61	25.93	090
48150		A	Partial removal of pancreas	43.48	NA	NA	20.84	22.65	4.44	NA	NA	68.76	70.57	090
48152		A	Pancreatectomy	39.63	NA	NA	21.07	22.77	4.25	NA	NA	64.95	66.65	090
48153		A	Pancreatectomy	43.38	NA	NA	20.69	22.58	4.45	NA	NA	68.52	70.41	090
48154		A	Pancreatectomy	39.95	NA	NA	19.21	21.84	4.08	NA	NA	63.24	65.87	090
48155		A	Removal of pancreas	22.32	NA	NA	13.26	17.70	2.30	NA	NA	37.88	42.32	090
48160		N	Pancreas removal, transplant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
48180		A	Fuse pancreas and bowel	22.39	NA	NA	10.62	12.15	2.31	NA	NA	35.32	36.85	090
48400		A	Injection, intraop add-on	1.95	NA	NA	0.56	0.84	0.10	NA	NA	2.61	2.89	ZZZ
48500		A	Surgery of pancreas cyst	13.84	NA	NA	6.96	8.11	1.28	NA	NA	22.08	23.23	090
48510		A	Drain pancreatic pseudocyst	12.96	NA	NA	6.66	7.42	0.96	NA	NA	20.58	21.34	090
48511		A	Drain pancreatic pseudocyst	4.00	NA	NA	3.74	3.52	0.30	NA	NA	8.04	7.82	000
48520		A	Fuse pancreas cyst and bowel	14.12	NA	NA	7.02	9.64	1.45	NA	NA	22.59	25.21	090
48540		A	Fuse pancreas cyst and bowel	17.86	NA	NA	8.43	11.09	1.87	NA	NA	28.16	30.82	090
48545		A	Pancreatorrhaphy	16.47	NA	NA	8.97	8.64	1.83	NA	NA	27.27	26.94	090
48547		A	Duodenal exclusion	23.40	NA	NA	10.53	11.28	2.48	NA	NA	36.41	37.16	090
48550		X	Donor pancreatectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
48554		R	Transplantallograft pancreas	34.17	NA	NA	13.05	16.22	3.27	NA	NA	50.49	53.66	XXX
48556		A	Removal, allograft pancreas	15.71	NA	NA	8.51	8.20	1.50	NA	NA	25.72	25.41	090
48999		C	Pancreas surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
49000		A	Exploration of abdomen	11.68	NA	NA	6.26	6.82	1.18	NA	NA	19.12	19.68	090
49002		A	Reopening of abdomen	10.49	NA	NA	6.04	6.31	1.07	NA	NA	17.60	17.87	090
49010		A	Exploration behind abdomen	12.28	NA	NA	7.03	7.29	1.28	NA	NA	20.59	20.85	090
49020		A	Drain abdominal abscess	16.79	NA	NA	8.79	7.01	1.17	NA	NA	26.75	24.97	090
49021		A	Drain abdominal abscess	3.38	NA	NA	4.68	4.36	0.22	NA	NA	8.28	7.96	000
49040		A	Open drainage abdom abscess	9.94	NA	NA	6.68	6.89	0.70	NA	NA	17.32	17.53	090
49041		A	Percut drain abdom abscess	4.00	NA	NA	4.77	4.03	0.28	NA	NA	9.05	8.31	000
49060		A	Open drain retroper abscess	11.86	NA	NA	7.29	6.85	0.69	NA	NA	19.64	19.00	090
49061		A	Percutdrain retroper abscess	3.70	NA	NA	4.90	3.97	0.22	NA	NA	8.82	7.89	000
49062		A	Drain to peritoneal cavity	11.36	NA	NA	6.89	7.83	1.12	NA	NA	19.37	20.31	090
49080		A	Puncture, peritoneal cavity	1.35	3.17	2.06	0.43	0.69	0.08	4.60	3.49	1.86	2.12	000
49081		A	Removal of abdominal fluid	1.26	3.36	2.09	0.41	0.61	0.08	4.70	3.43	1.75	1.95	000
49085		A	Remove abdomen foreign body	8.93	NA	NA	5.32	4.54	0.93	NA	NA	15.18	14.40	090
49180		A	Biopsy, abdominal mass	1.73	6.81	4.40	0.47	1.23	0.08	8.62	6.21	2.28	3.04	000
49200		A	Removal of abdominal lesion	10.25	NA	NA	5.98	7.54	0.98	NA	NA	17.19	18.75	090
49201		A	Removal of abdominal lesion	14.84	NA	NA	8.22	10.68	1.34	NA	NA	24.40	26.86	090
49215		A	Excise sacral spine tumor	22.36	NA	NA	10.50	9.86	2.25	NA	NA	35.11	34.47	090
49220		A	Multiple surgery, abdomen	14.88	NA	NA	7.61	10.48	1.52	NA	NA	24.01	26.88	090
49250		A	Excision of umbilicus	8.35	NA	NA	4.92	4.92	0.83	NA	NA	14.10	14.10	090
49255		A	Removal of omentum	11.14	NA	NA	6.59	6.10	1.08	NA	NA	18.81	18.32	090
49400		A	Air injection into abdomen	1.88	NA	NA	0.57	0.90	0.12	NA	NA	2.57	2.90	000
49420		A	Insert abdominal drain	2.22	NA	NA	0.91	1.31	0.17	NA	NA	3.30	3.70	000
49421		A	Insert abdominal drain	5.54	NA	NA	3.98	4.24	0.58	NA	NA	10.10	10.36	090
49422		A	Remove perm cannula/catheter	6.25	NA	NA	3.03	3.76	0.66	NA	NA	9.94	10.67	010
49423		A	Exchange drainage cath	1.46	NA	NA	0.56	0.88	0.15	NA	NA	2.17	2.49	000
49424		A	Assess cyst, contrast inj	0.76	NA	NA	0.29	0.46	0.05	NA	NA	1.10	1.27	000
49425		A	Insert abdomen-venous drain	11.37	NA	NA	6.85	8.03	1.25	NA	NA	19.47	20.65	090
49426		A	Revise abdomen-venous shunt	9.63	NA	NA	5.93	5.89	1.04	NA	NA	16.60	16.56	090
49427		A	Injection, abdominal shunt	0.89	NA	NA	0.25	0.39	0.04	NA	NA	1.18	1.32	000
49428		A	Ligation of shunt	2.38	NA	NA	1.70	1.42	0.31	NA	NA	4.39	4.11	010
49429		A	Removal of shunt	7.40	NA	NA	3.58	3.59	0.82	NA	NA	11.80	11.81	010
49495		A	Repair inguinal hernia, init	5.89	NA	NA	3.45	4.43	0.59	NA	NA	9.93	10.91	090
49496		A	Repair inguinal hernia, init	8.79	NA	NA	5.64	5.56	0.90	NA	NA	15.33	15.25	090
49500		A	Repair inguinal hernia	4.68	NA	NA	2.95	4.18	0.45	NA	NA	8.08	9.31	090
49501		A	Repair inguinal hernia, init	7.58	NA	NA	3.94	4.71	0.80	NA	NA	12.32	13.09	090
49505		A	Repair inguinal hernia	6.49	3.97	4.43	3.91	4.40	0.67	11.13	11.59	11.07	11.56	090
49507		A	Repair, inguinal hernia	8.17	NA	NA	5.38	5.43	0.84	NA	NA	14.39	14.44	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
49520		A	Rerepair inguinal hernia	8.22	NA	NA	4.82	5.25	0.85	NA	NA	13.89	14.32	090
49521		A	Repair inguinal hernia, rec	10.22	NA	NA	5.17	5.32	1.06	NA	NA	16.45	16.60	090
49525		A	Repair inguinal hernia	7.32	NA	NA	4.37	5.20	0.75	NA	NA	12.44	13.27	090
49540		A	Repair lumbar hernia	8.87	NA	NA	4.99	5.32	0.93	NA	NA	14.79	15.12	090
49550		A	Repair femoral hernia	7.37	NA	NA	3.99	4.50	0.76	NA	NA	12.12	12.63	090
49553		A	Repair femoral hernia, init	8.06	NA	NA	4.38	4.69	0.84	NA	NA	13.28	13.59	090
49555		A	Repair femoral hernia	7.71	NA	NA	4.60	5.60	0.80	NA	NA	13.11	14.11	090
49557		A	Repair femoral hernia, recur	9.52	NA	NA	4.87	5.73	0.99	NA	NA	15.38	16.24	090
49560		A	Repair abdominal hernia	9.88	NA	NA	5.40	5.77	1.03	NA	NA	16.31	16.68	090
49561		A	Repair incisional hernia	12.17	NA	NA	5.98	6.06	1.26	NA	NA	19.41	19.49	090
49565		A	Rerepair abdominal hernia	9.88	NA	NA	5.50	6.23	1.02	NA	NA	16.40	17.13	090
49566		A	Repair incisional hernia	12.30	NA	NA	6.00	6.48	1.27	NA	NA	19.57	20.05	090
49568		A	Hernia repair w/mesh	4.89	NA	NA	1.85	2.32	0.51	NA	NA	7.25	7.72	ZZZ
49570		A	Repair epigastric hernia	4.86	NA	NA	3.15	3.95	0.51	NA	NA	8.52	9.32	090
49572		A	Repair, epigastric hernia	5.75	NA	NA	3.54	4.81	0.59	NA	NA	9.88	11.15	090
49580		A	Repair umbilical hernia	3.51	NA	NA	2.74	3.47	0.35	NA	NA	6.60	7.33	090
49582		A	Repair umbilical hernia	5.68	NA	NA	4.24	4.62	0.60	NA	NA	10.52	10.90	090
49585		A	Repair umbilical hernia	5.32	NA	NA	4.79	4.79	0.55	NA	NA	10.66	10.66	090
49587		A	Repair umbilical hernia	6.46	NA	NA	3.89	4.34	0.66	NA	NA	11.01	11.46	090
49590		A	Repair abdominal hernia	7.29	NA	NA	4.38	5.25	0.75	NA	NA	12.42	13.29	090
49600		A	Repair umbilical lesion	10.35	NA	NA	5.41	5.56	1.00	NA	NA	16.76	16.91	090
49605		A	Repair umbilical lesion	22.66	NA	NA	11.02	10.16	2.31	NA	NA	35.99	35.13	090
49606		A	Repair umbilical lesion	18.60	NA	NA	9.91	9.47	2.01	NA	NA	30.52	30.08	090
49610		A	Repair umbilical lesion	10.50	NA	NA	6.27	6.11	0.90	NA	NA	17.67	17.51	090
49611		A	Repair umbilical lesion	8.92	NA	NA	5.02	8.35	0.73	NA	NA	16.57	18.00	090
49900		A	Repair of abdominal wall	12.28	NA	NA	6.74	5.36	1.25	NA	NA	20.27	18.89	090
49905		A	Omental flap	6.55	NA	NA	2.57	3.14	0.67	NA	NA	9.79	10.36	ZZZ
49906		C	Free omental flap, microvasc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
49999		C	Abdomen surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
50010		A	Exploration of kidney	10.98	NA	NA	6.45	8.41	0.80	NA	NA	18.23	20.19	090
50020		A	Open drain renal abscess	14.66	NA	NA	11.66	9.52	0.72	NA	NA	27.04	24.90	090
50021		A	Percut drain renal abscess	3.38	NA	NA	8.43	5.61	0.17	NA	NA	11.98	9.16	000
50040		A	Drainage of kidney	14.94	NA	NA	10.25	9.02	0.87	NA	NA	26.06	24.83	090
50045		A	Exploration of kidney	15.46	NA	NA	7.92	9.29	1.18	NA	NA	24.56	25.93	090
50060		A	Removal of kidney stone	19.30	NA	NA	9.16	11.23	1.20	NA	NA	29.66	31.73	090
50065		A	Incision of kidney	20.79	NA	NA	10.17	12.65	1.27	NA	NA	32.23	34.71	090
50070		A	Incision of kidney	20.32	NA	NA	9.68	11.83	1.51	NA	NA	31.51	33.66	090
50075		A	Removal of kidney stone	25.34	NA	NA	11.49	14.90	1.58	NA	NA	38.41	41.82	090
50080		A	Removal of kidney stone	14.71	NA	NA	9.62	11.43	0.86	NA	NA	25.19	27.00	090
50081		A	Removal of kidney stone	21.80	NA	NA	11.90	14.07	1.30	NA	NA	35.00	37.17	090
50100		A	Revise kidney blood vessels	16.09	NA	NA	11.26	11.24	1.76	NA	NA	29.11	29.09	090
50120		A	Exploration of kidney	15.91	NA	NA	7.97	9.91	0.99	NA	NA	24.87	26.81	090
50125		A	Explore and drain kidney	16.52	NA	NA	8.33	10.11	1.30	NA	NA	26.15	27.93	090
50130		A	Removal of kidney stone	17.29	NA	NA	8.47	11.18	1.11	NA	NA	26.87	29.58	090
50135		A	Exploration of kidney	19.18	NA	NA	9.28	13.89	1.24	NA	NA	29.70	34.31	090
50200		A	Biopsy of kidney	2.63	NA	NA	0.79	1.81	0.15	NA	NA	3.57	4.59	000
50205		A	Biopsy of kidney	11.31	NA	NA	6.24	6.18	0.91	NA	NA	18.46	18.40	090
50220		A	Removal of kidney	17.15	NA	NA	8.69	11.57	1.24	NA	NA	27.08	29.96	090
50225		A	Removal of kidney	20.23	NA	NA	9.56	13.75	1.32	NA	NA	31.11	35.30	090
50230		A	Removal of kidney	22.07	NA	NA	10.18	15.08	1.45	NA	NA	33.70	38.60	090
50234		A	Removal of kidney & ureter	22.40	NA	NA	10.30	14.19	1.46	NA	NA	34.16	38.05	090
50236		A	Removal of kidney & ureter	24.86	NA	NA	12.97	16.11	1.59	NA	NA	39.42	42.56	090
50240		A	Partial removal of kidney	22.00	NA	NA	12.27	14.82	1.44	NA	NA	35.71	38.26	090
50280		A	Removal of kidney lesion	15.67	NA	NA	8.04	9.92	1.06	NA	NA	24.77	26.65	090
50290		A	Removal of kidney lesion	14.73	NA	NA	7.68	8.66	1.21	NA	NA	23.62	24.60	090
50300		X	Removal of donor kidney	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
50320		A	Removal of donor kidney	22.21	NA	NA	11.66	14.78	1.80	NA	NA	35.67	38.79	090
50340		A	Removal of kidney	12.15	NA	NA	9.58	11.57	1.07	NA	NA	22.80	24.79	090
50360		A	Transplantation of kidney	31.53	NA	NA	17.26	21.90	2.99	NA	NA	51.78	56.42	090
50365		A	Transplantation of kidney	36.81	NA	NA	21.31	27.32	3.16	NA	NA	61.28	67.29	090
50370		A	Remove transplanted kidney	13.72	NA	NA	9.15	10.59	1.27	NA	NA	24.14	25.58	090
50380		A	Reimplantation of kidney	20.76	NA	NA	13.28	12.13	1.70	NA	NA	35.74	34.59	090
50390		A	Drainage of kidney lesion	1.96	NA	NA	0.54	1.19	0.09	NA	NA	2.59	3.24	000
50392		A	Insert kidney drain	3.38	NA	NA	0.92	1.74	0.15	NA	NA	4.45	5.27	000
50393		A	Insert ureteral tube	4.16	NA	NA	1.14	2.21	0.18	NA	NA	5.48	6.55	000
50394		A	Injection for kidney x-ray	0.76	15.00	7.80	0.21	0.41	0.03	15.79	8.59	1.00	1.20	000
50395		A	Create passage to kidney	3.38	NA	NA	0.93	2.27	0.15	NA	NA	4.46	5.80	000
50396		A	Measure kidney pressure	2.09	NA	NA	0.58	0.56	0.09	NA	NA	2.76	2.74	000
50398		A	Change kidney tube	1.46	0.89	0.74	0.40	0.49	0.07	2.42	2.27	1.93	2.02	000
50400		A	Revision of kidney/ureter	19.50	NA	NA	9.19	12.01	1.24	NA	NA	29.93	32.75	090
50405		A	Revision of kidney/ureter	23.93	NA	NA	12.34	15.55	1.56	NA	NA	37.83	41.04	090
50500		A	Repair of kidney wound	19.57	NA	NA	10.70	12.11	1.61	NA	NA	31.88	33.29	090
50520		A	Close kidney-skin fistula	17.23	NA	NA	9.78	10.50	1.14	NA	NA	28.15	28.87	090
50525		A	Repair renal-abdomen fistula	22.27	NA	NA	12.11	12.90	2.10	NA	NA	36.48	37.27	090
50526		A	Repair renal-abdomen fistula	24.02	NA	NA	12.97	10.50	2.52	NA	NA	39.51	37.04	090
50540		A	Revision of horseshoe kidney	19.93	NA	NA	9.54	12.05	1.44	NA	NA	30.91	33.42	090
50551		A	Kidney endoscopy	5.60	4.33	3.36	1.89	2.14	0.34	10.27	9.30	7.83	8.08	000
50553		A	Kidney endoscopy	5.99	16.37	9.09	2.00	1.90	0.36	22.72	15.44	8.35	8.25	000
50555		A	Kidney endoscopy & biopsy	6.53	68.91	37.01	2.09	3.60	0.36	75.80	43.90	8.98	10.49	000
50557		A	Kidney endoscopy & treatment	6.62	10.79	7.95	2.23	3.67	0.39	17.80	14.96	9.24	10.68	000
50559		A	Renal endoscopy; radiotracer	6.78	NA	NA	2.05	1.75	0.32	NA	NA	9.15	8.85	000
50561		A	Kidney endoscopy & treatment	7.59	14.22	9.89	2.50	4.03	0.44	22.25	17.92	10.53	12.06	000
50570		A	Kidney endoscopy	9.54	NA	NA	3.22	2.40	0.57	NA	NA	13.33	12.51	000
50572		A	Kidney endoscopy	10.35	NA	NA	3.37	5.62	0.59	NA	NA	14.31	16.56	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
50574		A	Kidney endoscopy & biopsy	11.02	NA	NA	3.70	5.69	0.65	NA	NA	15.37	17.36	000
50575		A	Kidney endoscopy	13.98	NA	NA	4.72	7.75	0.84	NA	NA	19.54	22.57	000
50576		A	Kidney endoscopy & treatment	10.99	NA	NA	3.74	6.59	0.68	NA	NA	15.41	18.26	000
50578		A	Renal endoscopy; radiotracer	11.35	NA	NA	3.75	3.93	0.60	NA	NA	15.70	15.88	000
50580		A	Kidney endoscopy & treatment	11.86	NA	NA	3.97	3.93	0.71	NA	NA	16.54	16.50	000
50590		A	Fragmenting of kidney stone	9.09	5.64	8.25	4.68	7.77	0.54	15.27	17.88	14.31	17.40	090
50600		A	Exploration of ureter	15.84	NA	NA	8.04	9.28	1.05	NA	NA	24.93	26.17	090
50605		A	Insert ureteral support	15.46	NA	NA	8.07	7.35	1.16	NA	NA	24.69	23.97	090
50610		A	Removal of ureter stone	15.92	NA	NA	8.18	10.48	1.05	NA	NA	25.15	27.45	090
50620		A	Removal of ureter stone	15.16	NA	NA	7.67	10.07	0.95	NA	NA	23.78	26.18	090
50630		A	Removal of ureter stone	14.94	NA	NA	7.70	10.75	0.96	NA	NA	23.60	26.65	090
50650		A	Removal of ureter	17.41	NA	NA	8.88	10.99	1.12	NA	NA	27.41	29.52	090
50660		A	Removal of ureter	19.55	NA	NA	9.50	11.53	1.27	NA	NA	30.32	32.35	090
50684		A	Injection for ureter x-ray	0.76	15.39	7.96	0.24	0.39	0.04	16.19	8.76	1.04	1.19	000
50686		A	Measure ureter pressure	1.51	4.33	2.37	0.45	0.43	0.09	5.93	3.97	2.05	2.03	000
50688		A	Change of ureter tube	1.17	NA	NA	1.43	0.93	0.06	NA	NA	2.66	2.16	010
50690		A	Injection for ureter x-ray	1.16	15.99	8.17	0.34	0.35	0.06	17.21	9.39	1.56	1.57	000
50700		A	Revision of ureter	15.21	NA	NA	8.29	10.97	0.99	NA	NA	24.49	27.17	090
50715		A	Release of ureter	18.90	NA	NA	10.75	11.48	1.47	NA	NA	31.12	31.85	090
50722		A	Release of ureter	16.35	NA	NA	8.87	10.04	1.26	NA	NA	26.48	27.65	090
50725		A	Release/revise ureter	18.49	NA	NA	10.30	11.69	1.42	NA	NA	30.21	31.60	090
50727		A	Revise ureter	8.18	NA	NA	5.91	5.87	0.54	NA	NA	14.63	14.59	090
50728		A	Revise ureter	12.02	NA	NA	7.48	8.03	0.94	NA	NA	20.44	20.99	090
50740		A	Fusion of ureter & kidney	18.42	NA	NA	9.13	11.64	1.55	NA	NA	29.10	31.61	090
50750		A	Fusion of ureter & kidney	19.51	NA	NA	10.20	12.72	1.19	NA	NA	30.90	33.42	090
50760		A	Fusion of ureters	18.42	NA	NA	9.23	11.93	1.26	NA	NA	28.91	31.61	090
50770		A	Splicing of ureters	19.51	NA	NA	9.74	13.14	1.26	NA	NA	30.51	33.91	090
50780		A	Reimplant ureter in bladder	18.36	NA	NA	9.16	12.06	1.25	NA	NA	28.77	31.67	090
50782		A	Reimplant ureter in bladder	19.54	NA	NA	10.13	12.54	1.36	NA	NA	31.03	33.44	090
50783		A	Reimplant ureter in bladder	20.55	NA	NA	10.10	12.53	1.38	NA	NA	32.03	34.46	090
50785		A	Reimplant ureter in bladder	20.52	NA	NA	9.95	13.34	1.37	NA	NA	31.84	35.23	090
50800		A	Implant ureter in bowel	14.52	NA	NA	8.70	12.31	0.97	NA	NA	24.19	27.80	090
50810		A	Fusion of ureter & bowel	20.05	NA	NA	12.19	12.92	1.69	NA	NA	33.93	34.66	090
50815		A	Urine shunt to bowel	19.93	NA	NA	10.65	16.05	1.34	NA	NA	31.92	37.32	090
50820		A	Construct bowel bladder	21.89	NA	NA	11.28	15.94	1.53	NA	NA	34.70	39.36	090
50825		A	Construct bowel bladder	28.18	NA	NA	13.70	23.42	1.81	NA	NA	43.69	53.41	090
50830		A	Revise urine flow	31.28	NA	NA	15.00	18.86	2.26	NA	NA	48.54	52.40	090
50840		A	Replace ureter by bowel	20.00	NA	NA	10.72	12.59	1.32	NA	NA	32.04	33.91	090
50845		A	Appendico-vesicostomy	20.89	NA	NA	9.68	12.37	1.33	NA	NA	31.90	34.59	090
50860		A	Transplant ureter to skin	15.36	NA	NA	8.14	10.00	1.06	NA	NA	24.56	26.42	090
50900		A	Repair of ureter	13.62	NA	NA	7.38	9.11	1.03	NA	NA	22.03	23.76	090
50920		A	Closure ureter/skin fistula	14.33	NA	NA	7.73	9.03	1.09	NA	NA	23.15	24.45	090
50930		A	Closure ureter/bowel fistula	18.72	NA	NA	9.23	11.40	1.38	NA	NA	29.33	31.50	090
50940		A	Release of ureter	14.51	NA	NA	7.58	9.16	1.01	NA	NA	23.10	24.68	090
50951		A	Endoscopy of ureter	5.84	4.61	3.21	1.97	1.89	0.36	10.81	9.41	8.17	8.09	000
50953		A	Endoscopy of ureter	6.24	16.06	8.93	2.12	1.96	0.38	22.68	15.55	8.74	8.58	000
50955		A	Ureter endoscopy & biopsy	6.75	14.51	8.64	2.19	2.48	0.39	21.65	15.78	9.33	9.62	000
50957		A	Ureter endoscopy & treatment	6.79	8.69	5.70	2.25	2.48	0.41	15.89	12.90	9.45	9.68	000
50959		A	Ureter endoscopy & tracer	4.40	NA	NA	1.51	2.59	0.26	NA	NA	6.17	7.25	000
50961		A	Ureter endoscopy & treatment	6.05	21.37	12.11	1.99	2.42	0.35	27.77	18.51	8.39	8.82	000
50970		A	Ureter endoscopy	7.14	NA	NA	2.40	4.01	0.43	NA	NA	9.97	11.58	000
50972		A	Ureter endoscopy & catheter	6.89	NA	NA	2.33	2.00	0.42	NA	NA	9.64	9.31	000
50974		A	Ureter endoscopy & biopsy	9.17	NA	NA	3.03	5.32	0.53	NA	NA	12.73	15.02	000
50976		A	Ureter endoscopy & treatment	9.04	NA	NA	3.05	5.01	0.54	NA	NA	12.63	14.59	000
50978		A	Ureter endoscopy & tracer	5.10	NA	NA	1.84	3.12	0.36	NA	NA	7.30	8.58	000
50980		A	Ureter endoscopy & treatment	6.85	NA	NA	2.32	2.86	0.41	NA	NA	9.58	10.12	000
51000		A	Drainage of bladder	0.78	1.72	1.12	0.24	0.38	0.06	2.56	1.96	1.08	1.22	000
51005		A	Drainage of bladder	1.02	2.68	1.59	0.35	0.43	0.08	3.78	2.69	1.45	1.53	000
51010		A	Drainage of bladder	3.53	6.26	3.66	1.73	1.39	0.23	10.02	7.42	5.49	5.15	010
51020		A	Incise & treat bladder	6.71	NA	NA	4.94	6.19	0.44	NA	NA	12.09	13.34	090
51030		A	Incise & treat bladder	6.77	NA	NA	5.59	5.26	0.42	NA	NA	12.78	12.45	090
51040		A	Incise & drain bladder	4.40	NA	NA	3.75	4.50	0.28	NA	NA	8.43	9.18	090
51045		A	Incise bladder, drain ureter	6.77	NA	NA	5.00	5.19	0.46	NA	NA	12.23	12.42	090
51050		A	Removal of bladder stone	6.92	NA	NA	4.61	6.17	0.43	NA	NA	11.96	13.52	090
51060		A	Removal of ureter stone	8.85	NA	NA	5.53	8.05	0.55	NA	NA	14.93	17.45	090
51065		A	Removal of ureter stone	8.85	NA	NA	5.51	6.60	0.54	NA	NA	14.90	15.99	090
51080		A	Drainage of bladder abscess	5.96	NA	NA	4.77	5.20	0.39	NA	NA	11.12	11.55	090
51500		A	Removal of bladder cyst	10.14	NA	NA	5.75	6.60	0.86	NA	NA	16.75	17.60	090
51520		A	Removal of bladder lesion	9.29	NA	NA	5.82	7.54	0.60	NA	NA	15.71	17.43	090
51525		A	Removal of bladder lesion	13.97	NA	NA	7.32	9.45	0.89	NA	NA	22.18	24.31	090
51530		A	Removal of bladder lesion	12.38	NA	NA	7.22	8.63	0.89	NA	NA	20.49	21.90	090
51535		A	Repair of ureter lesion	12.57	NA	NA	7.23	7.78	0.89	NA	NA	20.69	21.24	090
51550		A	Partial removal of bladder	15.66	NA	NA	8.05	9.84	1.15	NA	NA	24.86	26.65	090
51555		A	Partial removal of bladder	21.23	NA	NA	10.12	11.72	1.46	NA	NA	32.81	34.41	090
51565		A	Revise bladder & ureter(s)	21.62	NA	NA	10.59	13.89	1.45	NA	NA	33.66	36.96	090
51570		A	Removal of bladder	24.24	NA	NA	11.60	14.30	1.58	NA	NA	37.42	40.12	090
51575		A	Removal of bladder & nodes	30.45	NA	NA	14.20	19.51	2.01	NA	NA	46.66	51.97	090
51580		A	Remove bladder; revise tract	31.08	NA	NA	14.71	18.18	2.03	NA	NA	47.82	51.29	090
51585		A	Removal of bladder & nodes	35.23	NA	NA	16.42	21.84	2.33	NA	NA	53.98	59.40	090
51590		A	Remove bladder; revise tract	32.66	NA	NA	14.93	20.77	2.13	NA	NA	49.72	55.56	090
51595		A	Remove bladder; revise tract	37.14	NA	NA	16.33	26.51	2.33	NA	NA	55.80	65.98	090
51596		A	Remove bladder, create pouch	39.52	NA	NA	17.57	27.72	2.50	NA	NA	59.59	69.74	090
51597		A	Removal of pelvic structures	38.35	NA	NA	17.36	25.30	2.66	NA	NA	58.37	66.31	090
51600		A	Injection for bladder x-ray	0.88	16.22	8.26	0.25	0.28	0.04	17.14	9.18	1.17	1.20	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
51605		A	Preparation for bladder xray	0.64	15.99	8.16	0.20	0.27	0.03	16.66	8.83	0.87	0.94	000
51610		A	Injection for bladder x-ray	1.05	29.58	14.94	0.32	0.31	0.05	30.68	16.04	1.42	1.41	000
51700		A	Irrigation of bladder	0.88	3.43	1.84	0.29	0.21	0.05	4.36	2.77	1.22	1.14	000
51705		A	Change of bladder tube	1.02	2.29	1.35	1.16	0.69	0.06	3.37	2.43	2.24	1.77	010
51710		A	Change of bladder tube	1.49	4.33	2.48	1.29	0.80	0.09	5.91	4.06	2.87	2.38	010
51715		A	Endoscopic injection/implant	3.74	3.75	3.32	1.27	2.08	0.23	7.72	7.29	5.24	6.05	000
51720		A	Treatment of bladder lesion	1.96	3.61	2.05	0.66	0.46	0.12	5.69	4.13	2.74	2.54	000
51725		A	Simple cystometrogram	1.51	0.93	1.01	0.93	1.01	0.13	2.57	2.65	2.57	2.65	000
51725	26	A	Simple cystometrogram	1.51	0.52	0.60	0.52	0.60	0.10	2.13	2.21	2.13	2.21	000
51725	TC	A	Simple cystometrogram	0.00	0.41	0.41	0.41	0.41	0.03	0.44	0.44	0.44	0.44	000
51726		A	Complex cystometrogram	1.71	1.11	1.26	1.11	1.26	0.14	2.96	3.11	2.96	3.11	000
51726	26	A	Complex cystometrogram	1.71	0.58	0.73	0.58	0.73	0.10	2.39	2.54	2.39	2.54	000
51726	TC	A	Complex cystometrogram	0.00	0.52	0.52	0.52	0.52	0.04	0.56	0.56	0.56	0.56	000
51736		A	Urine flow measurement	0.61	0.37	0.41	0.37	0.41	0.05	1.03	1.07	1.03	1.07	000
51736	26	A	Urine flow measurement	0.61	0.21	0.25	0.21	0.25	0.04	0.86	0.90	0.86	0.90	000
51736	TC	A	Urine flow measurement	0.00	0.16	0.16	0.16	0.16	0.01	0.17	0.17	0.17	0.17	000
51741		A	Electro-uroflowmetry, first	1.14	0.62	0.62	0.62	0.62	0.09	1.85	1.85	1.85	1.85	000
51741	26	A	Electro-uroflowmetry, first	1.14	0.39	0.39	0.39	0.39	0.07	1.60	1.60	1.60	1.60	000
51741	TC	A	Electro-uroflowmetry, first	0.00	0.23	0.23	0.23	0.23	0.02	0.25	0.25	0.25	0.25	000
51772		A	Urethra pressure profile	1.61	1.03	1.03	1.03	1.03	0.14	2.78	2.78	2.78	2.78	000
51772	26	A	Urethra pressure profile	1.61	0.56	0.56	0.56	0.56	0.10	2.27	2.27	2.27	2.27	000
51772	TC	A	Urethra pressure profile	0.00	0.46	0.46	0.46	0.46	0.04	0.50	0.50	0.50	0.50	000
51784		A	Anal/urinary muscle study	1.53	0.96	1.05	0.96	1.05	0.13	2.62	2.71	2.62	2.71	000
51784	26	A	Anal/urinary muscle study	1.53	0.53	0.62	0.53	0.62	0.10	2.16	2.25	2.16	2.25	000
51784	TC	A	Anal/urinary muscle study	0.00	0.43	0.43	0.43	0.43	0.03	0.46	0.46	0.46	0.46	000
51785		A	Anal/urinary muscle study	1.53	0.96	1.05	0.96	1.05	0.13	2.62	2.71	2.62	2.71	000
51785	26	A	Anal/urinary muscle study	1.53	0.53	0.62	0.53	0.62	0.10	2.16	2.25	2.16	2.25	000
51785	TC	A	Anal/urinary muscle study	0.00	0.43	0.43	0.43	0.43	0.03	0.46	0.46	0.46	0.46	000
51792		A	Urinary reflex study	1.10	1.88	1.99	1.88	1.99	0.17	3.15	3.26	3.15	3.26	000
51792	26	A	Urinary reflex study	1.10	0.42	0.53	0.42	0.53	0.06	1.58	1.69	1.58	1.69	000
51792	TC	A	Urinary reflex study	0.00	1.47	1.46	1.47	1.46	0.11	1.58	1.57	1.58	1.57	000
51795		A	Urine voiding pressure study	1.53	1.48	1.52	1.48	1.52	0.17	3.18	3.22	3.18	3.22	000
51795	26	A	Urine voiding pressure study	1.53	0.52	0.57	0.52	0.57	0.09	2.14	2.19	2.14	2.19	000
51795	TC	A–	Urine voiding pressure study	0.00	0.96	0.95	0.96	0.95	0.08	1.04	1.03	1.04	1.03	000
51797		A	Intraabdominal pressure test	1.60	1.04	1.04	1.04	1.04	0.14	2.78	2.78	2.78	2.78	000
51797	26	A	Intraabdominal pressure test	1.60	0.55	0.55	0.55	0.55	0.10	2.25	2.25	2.25	2.25	000
51797	TC	A	Intraabdominal pressure test	0.00	0.49	0.49	0.49	0.49	0.04	0.53	0.53	0.53	0.53	000
51800		A	Revision of bladder/urethra	17.42	NA	NA	8.62	10.83	1.16	NA	NA	27.20	29.41	090
51820		A	Revision of urinary tract	17.89	NA	NA	10.26	9.14	1.45	NA	NA	29.60	28.48	090
51840		A	Attach bladder/urethra	10.71	NA	NA	6.14	8.08	0.78	NA	NA	17.63	19.57	090
51841		A	Attach bladder/urethra	13.03	NA	NA	7.43	9.69	0.96	NA	NA	21.42	23.68	090
51845		A	Repair bladder neck	9.73	NA	NA	6.18	8.90	0.62	NA	NA	16.53	19.25	090
51860		A	Repair of bladder wound	12.02	NA	NA	7.14	7.71	0.97	NA	NA	20.13	20.70	090
51865		A	Repair of bladder wound	15.04	NA	NA	8.24	10.07	1.11	NA	NA	24.39	26.22	090
51880		A	Repair of bladder opening	7.66	NA	NA	4.99	5.19	0.55	NA	NA	13.20	13.40	090
51900		A	Repair bladder/vagina lesion	12.97	NA	NA	7.75	10.20	0.94	NA	NA	21.66	24.11	090
51920		A	Close bladder-uterus fistula	11.81	NA	NA	6.57	7.36	0.90	NA	NA	19.28	20.07	090
51925		A	Hysterectomy/bladder repair	15.58	NA	NA	8.92	9.93	1.27	NA	NA	25.77	26.78	090
51940		A	Correction of bladder defect	26.81	NA	NA	14.59	17.58	1.99	NA	NA	43.39	46.38	090
51960		A#	Revision of bladder & bowel	23.01	NA	NA	11.97	17.60	1.47	NA	NA	36.45	42.08	090
51980		A	Construct bladder opening	11.36	NA	NA	6.57	7.34	0.77	NA	NA	18.70	19.47	090
52000		A	Cystoscopy	2.01	2.87	2.16	0.68	0.70	0.12	5.00	4.29	2.81	2.83	000
52005		A	Cystoscopy & ureter catheter	2.37	4.51	3.45	0.80	1.60	0.14	7.02	5.96	3.31	4.11	000
52007		A	Cystoscopy and biopsy	3.02	NA	NA	1.02	2.04	0.18	NA	NA	4.22	5.24	000
52010		A	Cystoscopy & duct catheter	3.02	4.85	3.46	1.02	1.03	0.18	8.05	6.66	4.22	4.23	000
52204		A	Cystoscopy	2.37	5.22	3.90	0.80	1.69	0.14	7.73	6.41	3.31	4.20	000
52214		A	Cystoscopy and treatment	3.71	5.60	4.32	1.25	2.15	0.22	9.53	8.25	5.18	6.08	000
52224		A	Cystoscopy and treatment	3.14	5.47	4.31	1.06	2.11	0.19	8.80	7.64	4.39	5.44	000
52234		A	Cystoscopy and treatment	4.63	6.31	5.71	1.56	3.34	0.28	11.22	10.62	6.47	8.25	000
52235		A	Cystoscopy and treatment	5.45	6.59	6.55	1.84	4.18	0.33	12.37	12.33	7.62	9.96	000
52240		A	Cystoscopy and treatment	9.72	8.03	9.80	3.28	7.42	0.58	18.33	20.10	13.58	17.72	000
52250		A	Cystoscopy & radiotracer	4.50	NA	NA	1.52	2.31	0.27	NA	NA	6.29	7.08	000
52260		A	Cystoscopy & treatment	3.92	NA	NA	1.32	1.81	0.24	NA	NA	5.48	5.97	000
52265		A	Cystoscopy & treatment	2.94	3.26	2.37	0.99	0.87	0.18	6.38	5.49	4.11	3.99	000
52270		A	Cystoscopy & revise urethra	3.37	5.82	4.80	1.14	2.46	0.20	9.39	8.37	4.71	6.03	000
52275		A	Cystoscopy & revise urethra	4.70	6.40	5.06	1.58	2.65	0.28	11.38	10.04	6.56	7.63	000
52276		A	Cystoscopy and treatment	5.00	6.51	5.74	1.69	3.33	0.30	11.81	11.04	6.99	8.63	000
52277		A	Cystoscopy and treatment	6.17	NA	NA	2.09	3.66	0.38	NA	NA	8.64	10.21	000
52281		A	Cystoscopy and treatment	2.80	3.25	2.88	0.94	1.10	0.17	6.22	5.85	3.91	4.07	000
52282		A	Cystoscopy, implant stent	6.40	6.77	5.87	2.16	3.57	0.38	13.55	12.65	8.94	10.35	000
52283		A	Cystoscopy and treatment	3.74	5.84	3.74	1.27	1.46	0.22	9.80	7.70	5.23	5.42	000
52285		A	Cystoscopy and treatment	3.61	6.04	4.62	1.22	1.41	0.22	9.87	8.45	5.05	5.24	000
52290		A	Cystoscopy and treatment	4.59	NA	NA	1.55	2.05	0.27	NA	NA	6.41	6.91	000
52300		A	Cystoscopy and treatment	5.31	NA	NA	1.79	2.78	0.32	NA	NA	7.42	8.41	000
52301		A	Cystoscopy and treatment	5.51	NA	NA	1.76	2.77	0.43	NA	NA	7.70	8.71	000
52305		A	Cystoscopy and treatment	5.31	NA	NA	1.79	2.80	0.32	NA	NA	7.42	8.43	000
52310		A	Cystoscopy and treatment	2.81	13.28	8.26	0.95	2.10	0.17	16.26	11.24	3.93	5.08	000
52315		A	Cystoscopy and treatment	5.21	14.26	9.34	1.76	3.09	0.31	19.78	14.86	7.28	8.61	000
52317		A	Remove bladder stone	6.72	20.88	13.80	2.27	4.50	0.40	28.00	20.92	9.39	11.62	000
52318		A	Remove bladder stone	9.19	NA	NA	3.10	5.83	0.55	NA	NA	12.84	15.57	000
52320		A	Cystoscopy and treatment	4.70	NA	NA	1.56	3.42	0.28	NA	NA	6.54	8.40	000
52325		A	Cystoscopy, stone removal	6.16	NA	NA	2.08	4.72	0.37	NA	NA	8.61	11.25	000
52327		A	Cystoscopy, inject material	5.19	NA	NA	1.74	2.87	0.31	NA	NA	7.24	8.37	000
52330		A	Cystoscopy and treatment	5.04	17.88	10.83	1.70	2.74	0.30	23.22	16.17	7.04	8.08	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
52332		A	Cystoscopy and treatment	2.83	26.08	14.78	0.95	2.17	0.17	29.08	17.78	3.95	5.17	000
52334		A	Create passage to kidney	4.83	NA	NA	1.61	2.61	0.29	NA	NA	6.73	7.73	000
52335		A	Endoscopy of urinary tract	5.86	NA	NA	1.97	3.53	0.35	NA	NA	8.18	9.74	000
52336		A	Cystoscopy, stone removal	6.88	NA	NA	2.32	5.27	0.41	NA	NA	9.61	12.56	000
52337		A	Cystoscopy, stone removal	7.97	NA	NA	2.69	6.11	0.48	NA	NA	11.14	14.56	000
52338		A	Cystoscopy and treatment	7.34	NA	NA	2.47	4.45	0.44	NA	NA	10.25	12.23	000
52339		A	Cystoscopy and treatment	8.82	NA	NA	2.95	4.69	0.53	NA	NA	12.30	14.04	000
52340		A	Cystoscopy and treatment	9.68	NA	NA	5.03	5.31	0.58	NA	NA	15.29	15.57	090
52450		A	Incision of prostate	7.64	NA	NA	5.72	5.57	0.46	NA	NA	13.82	13.67	090
52500		A	Revision of bladder neck	8.47	NA	NA	5.98	7.03	0.51	NA	NA	14.96	16.01	090
52510		A	Dilation prostatic urethra	6.72	NA	NA	5.06	6.54	0.40	NA	NA	12.18	13.66	090
52601		A	Prostatectomy (TURP)	12.37	NA	NA	7.30	10.09	0.74	NA	NA	20.41	23.20	090
52606		A	Control postop bleeding	8.13	NA	NA	6.39	5.00	0.49	NA	NA	15.01	13.62	090
52612		A	Prostatectomy, first stage	7.98	NA	NA	6.75	8.14	0.48	NA	NA	15.21	16.60	090
52614		A	Prostatectomy, second stage	6.84	NA	NA	5.44	6.57	0.41	NA	NA	12.69	13.82	090
52620		A	Remove residual prostate	6.61	NA	NA	5.35	5.57	0.39	NA	NA	12.35	12.57	090
52630		A	Remove prostate regrowth	7.26	NA	NA	5.58	7.13	0.43	NA	NA	13.27	14.82	090
52640		A	Relieve bladder contracture	5.60	NA	NA	5.03	6.01	0.40	NA	NA	12.05	13.03	090
52647		A	Laser surgery of prostate	10.36	NA	NA	6.64	9.51	0.62	NA	NA	17.62	20.49	090
52648		A	Laser surgery of prostate	11.21	NA	NA	6.90	9.89	0.67	NA	NA	18.78	21.77	090
52700		A	Drainage of prostate abscess	6.80	NA	NA	5.41	4.50	0.42	NA	NA	12.63	11.72	090
53000		A	Incision of urethra	2.28	6.24	4.08	2.18	2.05	0.15	8.67	6.51	4.61	4.48	010
53010		A	Incision of urethra	3.64	NA	NA	4.59	4.21	0.31	NA	NA	8.54	8.16	090
53020		A	Incision of urethra	1.77	3.70	2.30	0.60	0.75	0.11	5.58	4.18	2.48	2.63	000
53025		A	Incision of urethra	1.13	2.98	1.93	0.38	0.63	0.07	4.18	3.13	1.58	1.83	000
53040		A	Drainage of urethra abscess	6.40	8.22	5.12	8.22	5.12	0.40	15.02	11.92	15.02	11.92	090
53060		A	Drainage of urethra abscess	2.63	5.63	3.09	2.46	1.51	0.20	8.46	5.92	5.29	4.34	010
53080		A	Drainage of urinary leakage	6.29	NA	NA	7.34	5.83	0.38	NA	NA	14.01	12.50	090
53085		A	Drainage of urinary leakage	10.27	NA	NA	8.60	7.97	0.64	NA	NA	19.51	18.88	090
53200		A	Biopsy of urethra	2.59	4.66	2.93	0.88	1.04	0.16	7.41	5.68	3.63	3.79	000
53210		A	Removal of urethra	12.57	NA	NA	7.31	7.26	0.85	NA	NA	20.73	20.68	090
53215		A	Removal of urethra	15.58	NA	NA	8.02	9.44	0.99	NA	NA	24.59	26.01	090
53220		A	Treatment of urethra lesion	7.00	NA	NA	4.74	4.96	0.43	NA	NA	12.17	12.39	090
53230		A	Removal of urethra lesion	9.58	NA	NA	5.62	7.12	0.59	NA	NA	15.79	17.29	090
53235		A	Removal of urethra lesion	10.14	NA	NA	6.04	5.75	0.63	NA	NA	16.81	16.52	090
53240		A	Surgery for urethra pouch	6.45	NA	NA	4.78	4.74	0.44	NA	NA	11.67	11.63	090
53250		A	Removal of urethra gland	5.89	NA	NA	3.97	4.19	0.40	NA	NA	10.26	10.48	090
53260		A	Treatment of urethra lesion	2.98	5.19	3.21	2.09	1.66	0.20	8.37	6.39	5.27	4.84	010
53265		A	Treatment of urethra lesion	3.12	5.61	3.83	2.05	2.05	0.20	8.93	7.15	5.37	5.37	010
53270		A	Removal of urethra gland	3.09	5.37	3.14	2.18	1.32	0.22	8.68	6.45	5.49	4.63	010
53275		A	Repair of urethra defect	4.53	NA	NA	3.13	2.85	0.27	NA	NA	7.93	7.65	010
53400		A	Revise urethra, 1st stage	12.77	NA	NA	6.95	7.53	0.79	NA	NA	20.51	21.09	090
53405		A	Revise urethra, 2nd stage	14.48	NA	NA	7.84	9.55	0.86	NA	NA	23.18	24.89	090
53410		A	Reconstruction of urethra	16.44	NA	NA	8.25	8.77	1.01	NA	NA	25.70	26.22	090
53415		A	Reconstruction of urethra	19.41	NA	NA	16.31	14.60	1.21	NA	NA	36.93	35.22	090
53420		A	Reconstruct urethra, stage 1	14.08	NA	NA	7.81	9.81	0.89	NA	NA	22.78	24.78	090
53425		A	Reconstruct urethra, stage 2	15.98	NA	NA	8.25	9.15	0.96	NA	NA	25.19	26.09	090
53430		A	Reconstruction of urethra	16.34	NA	NA	8.32	8.05	1.03	NA	NA	25.69	25.42	090
53440		A	Correct bladder function	12.34	NA	NA	7.12	10.69	0.76	NA	NA	20.22	23.79	090
53442		A	Remove penneal prosthesis	8.27	NA	NA	5.17	5.76	0.50	NA	NA	13.94	14.53	090
53443		A	Reconstruction of urethra	19.89	NA	NA	9.12	10.01	1.32	NA	NA	30.33	31.22	090
53445		A	Correct urine flow control	14.06	NA	NA	7.79	12.29	0.86	NA	NA	22.71	27.21	090
53447		A	Remove artificial sphincter	13.17	NA	NA	7.24	8.59	0.80	NA	NA	21.21	22.56	090
53449		A	Correct artificial sphincter	9.70	NA	NA	5.87	7.50	0.58	NA	NA	16.15	17.78	090
53450		A	Revision of urethra	6.14	NA	NA	4.29	3.63	0.37	NA	NA	10.80	10.14	090
53460		A	Revision of urethra	7.12	NA	NA	4.71	3.68	0.44	NA	NA	12.27	11.24	090
53502		A	Repair of urethra injury	7.63	NA	NA	5.05	5.22	0.50	NA	NA	13.18	13.35	090
53505		A	Repair of urethra injury	7.63	NA	NA	4.87	5.25	0.47	NA	NA	12.97	13.35	090
53510		A	Repair of urethra injury	10.11	NA	NA	6.10	6.84	0.72	NA	NA	16.93	17.67	090
53515		A	Repair of urethra injury	13.31	NA	NA	6.93	8.37	0.83	NA	NA	21.07	22.51	090
53520		A	Repair of urethra defect	8.68	NA	NA	5.36	5.88	0.55	NA	NA	14.59	15.11	090
53600		A	Dilate urethra stricture	1.21	3.62	1.99	0.41	0.30	0.07	4.90	3.27	1.69	1.58	000
53601		A	Dilate urethra stricture	0.98	3.54	1.93	0.33	0.25	0.06	4.58	2.97	1.37	1.29	000
53605		A	Dilate urethra stricture	1.28	NA	NA	0.43	0.47	0.08	NA	NA	1.79	1.83	000
53620		A	Dilate urethra stricture	1.62	5.37	2.94	0.55	0.41	0.10	7.09	4.66	2.27	2.13	000
53621		A	Dilate urethra stricture	1.35	5.35	2.88	0.46	0.34	0.08	6.78	4.31	1.89	1.77	000
53660		A	Dilation of urethra	0.71	3.37	1.84	0.24	0.20	0.04	4.12	2.59	0.99	0.95	000
53661		A	Dilation of urethra	0.72	3.43	1.85	0.24	0.19	0.04	4.19	2.61	1.00	0.95	000
53665		A	Dilation of urethra	0.76	NA	NA	0.26	0.33	0.05	NA	NA	1.07	1.14	000
53670		A	Insert urinary catheter	0.50	3.27	1.76	0.14	0.13	0.03	3.80	2.29	0.67	0.66	000
53675		A	Insert urinary catheter	1.47	4.35	2.43	0.47	0.49	0.09	5.91	3.99	2.03	2.05	000
53850		A	Prostatic microwave thermotx	9.45	NA	NA	6.32	6.80	0.57	NA	NA	16.34	16.82	090
53852		A	Prostatic rf thermotx	9.88	NA	NA	6.46	7.04	0.59	NA	NA	16.93	17.51	090
53899		C	Urology surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
54000		A	Slitting of prepuce	1.54	5.00	2.84	1.31	1.00	0.10	6.64	4.48	2.95	2.64	010
54001		A	Slitting of prepuce	2.19	5.41	3.16	1.84	1.38	0.14	7.74	5.49	4.17	3.71	010
54015		A	Drain penis lesion	5.32	6.52	3.71	2.94	1.92	0.34	12.18	9.37	8.60	7.58	010
54050		A	Destruction, penis lesion(s)	1.24	2.05	1.23	0.52	0.37	0.07	3.36	2.54	1.83	1.68	010
54055		A	Destruction, penis lesion(s)	1.22	5.25	2.96	1.23	0.78	0.07	6.54	4.25	2.52	2.07	010
54056		A	Cryosurgery, penis lesion(s)	1.24	2.27	1.43	0.55	0.42	0.06	3.57	2.73	1.85	1.72	010
54057		A	Laser surg, penis lesion(s)	1.24	2.24	1.95	1.23	1.36	0.07	3.55	3.26	2.54	2.67	010
54060		A	Excision of penis lesion(s)	1.93	4.48	2.88	1.46	1.37	0.12	6.53	4.93	3.51	3.42	010
54065		A	Destruction, penis lesion(s)	2.42	4.46	8.57	1.93	1.64	0.14	7.02	6.13	4.49	4.20	010
54100		A	Biopsy of penis	1.90	2.98	1.85	0.65	0.68	0.10	4.98	3.85	2.65	2.68	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
54105		A	Biopsy of penis	3.50	5.65	3.38	1.99	1.55	0.21	9.36	7.09	5.70	5.26	010
54110		A	Treatment of penis lesion	10.13	NA	NA	7.36	6.95	0.63	NA	NA	18.12	17.71	090
54111		A	Treat penis lesion, graft	13.57	NA	NA	8.52	9.24	0.82	NA	NA	22.91	23.63	090
54112		A	Treat penis lesion, graft	15.86	NA	NA	9.63	10.70	1.02	NA	NA	26.51	27.58	090
54115		A	Treatment of penis lesion	6.15	9.98	7.26	6.08	5.31	0.38	16.51	13.79	12.61	11.84	090
54120		A	Partial removal of penis	9.97	NA	NA	7.45	7.24	0.61	NA	NA	18.03	17.82	090
54125		A	Removal of penis	13.53	NA	NA	8.53	10.54	0.83	NA	NA	22.89	24.90	090
54130		A	Remove penis & nodes	20.14	NA	NA	11.08	13.50	1.26	NA	NA	32.48	34.90	090
54135		A	Remove penis & nodes	26.36	NA	NA	13.15	16.21	1.62	NA	NA	41.13	44.19	090
54150		A	Circumcision	1.81	4.93	2.76	1.69	1.14	0.13	6.87	4.70	3.63	3.08	010
54152		A	Circumcision	2.31	NA	NA	1.62	1.80	0.16	NA	NA	4.09	4.27	010
54160		A	Circumcision	2.48	4.76	3.28	1.68	1.74	0.18	7.42	5.94	4.34	4.40	010
54161		A	Circumcision	3.27	NA	NA	1.91	2.14	0.20	NA	NA	5.38	5.61	010
54200		A	Treatment of penis lesion	1.06	2.21	1.28	0.37	0.28	0.06	3.33	2.40	1.49	1.40	010
54205		A	Treatment of penis lesion	7.93	NA	NA	8.51	7.03	0.47	NA	NA	16.91	15.43	090
54220		A	Treatment of penis lesion	2.42	2.12	1.92	0.82	1.27	0.15	4.69	4.49	3.39	3.84	000
54230		A	Prepare penis study	1.34	NA	NA	0.45	0.59	0.08	NA	NA	1.87	2.01	000
54231		A	Dynamic cavernosometry	2.04	2.00	1.78	0.89	1.13	0.15	4.19	3.97	2.86	3.32	000
54235		A	Penile injection	1.19	1.07	0.77	0.40	0.32	0.07	2.33	2.03	1.66	1.58	000
54240		A	Penis study	1.31	0.97	1.02	0.97	1.02	0.15	2.43	2.48	2.43	2.48	000
54240	26	A	Penis study	1.31	0.45	0.50	0.45	0.50	0.10	1.86	1.91	1.86	1.91	000
54240	TC	A	Penis study	0.00	0.52	0.52	0.52	0.52	0.05	0.57	0.57	0.57	0.57	000
54250		A	Penis study	2.22	1.08	0.98	1.08	0.98	0.16	3.46	3.36	3.46	3.36	000
54250	26	A	Penis study	2.22	0.75	0.65	0.75	0.65	0.14	3.11	3.01	3.11	3.01	000
54250	TC	A	Penis study	0.00	0.33	0.33	0.33	0.33	0.02	0.35	0.35	0.35	0.35	000
54300		A	Revision of penis	10.41	NA	NA	7.92	7.70	0.64	NA	NA	18.97	18.75	090
54304		A	Revision of penis	12.49	NA	NA	9.13	9.27	0.83	NA	NA	22.45	22.59	090
54308		A	Reconstruction of urethra	11.83	NA	NA	12.43	9.39	0.82	NA	NA	25.08	22.04	090
54312		A	Reconstruction of urethra	13.57	NA	NA	10.82	10.50	0.72	NA	NA	25.11	24.79	090
54316		A	Reconstruction of urethra	16.82	NA	NA	11.29	11.80	1.01	NA	NA	29.12	29.63	090
54318		A	Reconstruction of urethra	11.25	NA	NA	9.16	8.67	0.68	NA	NA	21.09	20.60	090
54322		A	Reconstruction of urethra	13.01	NA	NA	8.42	8.34	0.78	NA	NA	22.21	22.13	090
54324		A	Reconstruction of urethra	16.31	NA	NA	10.80	11.36	1.24	NA	NA	28.35	28.91	090
54326		A	Reconstruction of urethra	15.72	NA	NA	10.84	11.13	1.18	NA	NA	27.74	28.03	090
54328		A	Revise penis, urethra	15.65	NA	NA	10.06	10.85	0.93	NA	NA	26.64	27.43	090
54332		A	Revise penis, urethra	17.08	NA	NA	10.54	12.07	1.08	NA	NA	28.70	30.23	090
54336		A	Revise penis, urethra	20.04	NA	NA	13.55	16.97	1.56	NA	NA	35.15	38.57	090
54340		A	Secondary urethral surgery	8.91	NA	NA	7.09	6.84	0.66	NA	NA	16.66	16.41	090
54344		A	Secondary urethral surgery	15.94	NA	NA	10.54	14.29	1.09	NA	NA	27.57	31.32	090
54348		A	Secondary urethral surgery	17.15	NA	NA	11.47	12.04	1.21	NA	NA	29.83	30.40	090
54352		A	Reconstruct urethra, penis	24.74	NA	NA	14.01	15.79	1.19	NA	NA	39.94	41.72	090
54360		A	Penis plastic surgery	11.93	NA	NA	8.17	7.90	0.74	NA	NA	20.84	20.57	090
54380		A	Repair penis	13.18	NA	NA	9.01	9.62	0.91	NA	NA	23.10	23.71	090
54385		A	Repair penis	15.39	NA	NA	10.40	10.88	1.07	NA	NA	26.86	27.34	090
54390		A	Repair penis and bladder	21.61	NA	NA	13.12	13.93	1.50	NA	NA	36.23	37.04	090
54400		A	Insert semi-rigid prosthesis	8.99	NA	NA	5.97	8.35	0.56	NA	NA	15.52	17.90	090
54401		A	Insert self-contd prosthesis	10.28	NA	NA	6.61	9.44	0.64	NA	NA	17.53	20.36	090
54402		A	Remove penis prosthesis	9.21	NA	NA	5.82	6.17	0.57	NA	NA	15.60	15.95	090
54405		A	Insert multi-comp prosthesis	13.43	NA	NA	7.52	11.78	0.83	NA	NA	21.78	26.04	090
54407		A	Remove multi-comp prosthesis	13.34	NA	NA	7.24	9.71	0.82	NA	NA	21.40	23.87	090
54409		A	Revise penis prosthesis	12.20	NA	NA	6.76	8.25	0.75	NA	NA	19.71	21.20	090
54420		A	Revision of penis	11.42	NA	NA	7.83	8.12	0.70	NA	NA	19.95	20.24	090
54430		A	Revision of penis	10.15	NA	NA	7.37	7.48	0.63	NA	NA	18.15	18.26	090
54435		A	Revision of penis	6.12	NA	NA	5.67	5.09	0.36	NA	NA	12.15	11.57	090
54440		C	Repair of penis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
54450		A	Preputial stretching	1.12	0.97	0.86	0.38	0.56	0.07	2.16	2.05	1.57	1.75	000
54500		A	Biopsy of testis	1.31	5.64	3.06	0.44	0.46	0.08	7.03	4.45	1.83	1.85	000
54505		A	Biopsy of testis	3.46	NA	NA	2.41	2.22	0.22	NA	NA	6.09	5.90	010
54510		A	Removal of testis lesion	5.45	NA	NA	3.23	3.26	0.36	NA	NA	9.04	9.07	090
54520		A	Removal of testis	5.23	NA	NA	3.30	4.53	0.33	NA	NA	8.86	10.09	090
54530		A	Removal of testis	8.58	NA	NA	4.86	6.40	0.55	NA	NA	13.99	15.53	090
54535		A	Extensive testis surgery	12.16	NA	NA	6.61	7.94	0.83	NA	NA	19.60	20.93	090
54550		A	Exploration for testis	7.78	NA	NA	4.54	5.12	0.49	NA	NA	12.81	13.39	090
54560		A	Exploration for testis	11.13	NA	NA	6.25	7.05	0.80	NA	NA	18.18	18.98	090
54600		A	Reduce testis torsion	7.01	NA	NA	3.92	4.47	0.44	NA	NA	11.37	11.92	090
54620		A	Suspension of testis	4.90	NA	NA	2.90	3.25	0.30	NA	NA	8.10	8.45	010
54640		A	Suspension of testis	6.90	NA	NA	3.94	6.09	0.49	NA	NA	11.33	13.48	090
54650		A	Orchiopexy (Fowler-Stephens)	11.45	NA	NA	6.43	7.46	0.66	NA	NA	18.54	19.57	090
54660		A	Revision of testis	5.11	NA	NA	3.10	3.40	0.30	NA	NA	8.51	8.81	090
54670		A	Repair testis injury	6.41	NA	NA	3.98	4.33	0.44	NA	NA	10.83	11.18	090
54680		A	Relocation of testis(es)	12.65	NA	NA	6.39	7.64	0.90	NA	NA	19.94	21.19	090
54700		A	Drainage of scrotum	3.43	7.98	4.48	3.05	2.02	0.24	11.65	8.15	6.72	5.69	010
54800		A	Biopsy of epididymis	2.33	4.68	3.41	0.79	1.47	0.16	7.17	5.90	3.28	3.96	000
54820		A	Exploration of epididymis	5.14	NA	NA	3.28	3.06	0.38	NA	NA	8.80	8.58	090
54830		A	Remove epididymis lesion	5.38	NA	NA	3.37	3.59	0.35	NA	NA	9.10	9.32	090
54840		A	Remove epididymis lesion	5.20	NA	NA	3.45	4.35	0.32	NA	NA	8.97	9.87	090
54860		A	Removal of epididymis	6.32	NA	NA	3.86	4.74	0.38	NA	NA	10.56	11.44	090
54861		A	Removal of epididymis	8.90	NA	NA	4.71	6.32	0.53	NA	NA	14.14	15.75	090
54900		A	Fusion of spermatic ducts	13.20	NA	NA	6.34	8.03	0.78	NA	NA	20.32	22.01	090
54901		A	Fusion of spermatic ducts	17.94	NA	NA	8.30	10.82	1.26	NA	NA	27.50	30.02	090
55000		A	Drainage of hydrocele	1.43	1.73	1.08	0.50	0.36	0.10	3.26	2.61	2.03	1.89	000
55040		A	Removal of hydrocele	5.36	NA	NA	3.18	4.24	0.37	NA	NA	8.91	9.97	090
55041		A	Removal of hydroceles	7.74	NA	NA	4.20	6.16	0.52	NA	NA	12.46	14.42	090
55060		A	Repair of hydrocele	5.52	NA	NA	3.25	3.87	0.40	NA	NA	9.17	9.79	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
55100		A	Drainage of scrotum abscess	2.13	9.23	4.96	3.22	1.95	0.14	11.50	7.23	5.49	4.22	010
55110		A	Explore scrotum	5.70	NA	NA	3.32	3.55	0.37	NA	NA	9.39	9.62	090
55120		A	Removal of scrotum lesion	5.09	NA	NA	3.10	2.52	0.32	NA	NA	8.51	7.93	090
55150		A	Removal of scrotum	7.22	NA	NA	4.22	5.07	0.49	NA	NA	11.93	12.78	090
55175		A	Revision of scrotum	5.24	NA	NA	3.33	4.10	0.32	NA	NA	8.89	9.66	090
55180		A	Revision of scrotum	10.72	NA	NA	5.93	6.67	0.75	NA	NA	17.40	18.14	090
55200		A	Incision of sperm duct	4.24	NA	NA	2.85	2.50	0.28	NA	NA	7.37	7.02	090
55250		A	Removal of sperm duct(s)	3.29	8.49	5.67	2.75	2.09	0.21	11.99	9.17	6.25	5.59	090
55300		A	Preparation,sperm duct x-ray	3.51	NA	NA	1.31	2.13	0.20	NA	NA	5.02	5.84	000
55400		A	Repair of sperm duct	8.49	NA	NA	5.63	6.38	0.55	NA	NA	14.67	15.42	090
55450		A	Ligation of sperm duct	4.12	4.40	3.62	2.27	2.55	0.32	8.84	8.06	6.71	6.99	010
55500		A	Removal of hydrocele	5.59	NA	NA	3.46	4.08	0.45	NA	NA	9.50	10.12	090
55520		A	Removal of sperm cord lesion	6.03	NA	NA	3.56	3.48	0.60	NA	NA	10.19	10.11	090
55530		A	Revise spermatic cord veins	5.66	NA	NA	3.47	4.56	0.38	NA	NA	9.51	10.60	090
55535		A	Revise spermatic cord veins	6.56	NA	NA	4.07	4.43	0.43	NA	NA	11.06	11.42	090
55540		A	Revise hernia & sperm veins	7.67	NA	NA	4.17	4.55	0.76	NA	NA	12.60	12.98	090
55600		A	Incise sperm duct pouch	6.38	NA	NA	3.91	4.30	0.38	NA	NA	10.67	11.06	090
55605		A	Incise sperm duct pouch	7.36	NA	NA	4.79	5.44	0.55	NA	NA	13.30	13.95	090
55650		A	Remove sperm duct pouch	11.80	NA	NA	5.86	6.85	0.73	NA	NA	18.39	19.38	090
55680		A	Remove sperm pouch lesion	5.19	NA	NA	3.30	4.06	0.31	NA	NA	8.80	9.56	090
55700		A	Biopsy of prostate	1.57	3.30	2.47	0.52	0.67	0.09	4.96	4.13	2.18	2.33	000
55705		A	Biopsy of prostate	4.57	NA	NA	3.42	3.54	0.26	NA	NA	8.25	8.37	010
55720		A	Drainage of prostate abscess	7.64	NA	NA	5.19	4.50	0.47	NA	NA	13.30	12.61	090
55725		A	Drainage of prostate abscess	8.68	NA	NA	5.67	5.89	0.54	NA	NA	14.89	15.11	090
55801		A	Removal of prostate	17.80	NA	NA	8.94	11.40	1.14	NA	NA	27.88	30.34	090
55810		A	Extensive prostate surgery	22.58	NA	NA	10.80	15.10	1.40	NA	NA	34.78	39.08	090
55812		A	Extensive prostate surgery	27.51	NA	NA	12.71	15.95	1.74	NA	NA	41.96	45.20	090
55815		A	Extensive prostate surgery	30.46	NA	NA	13.90	20.63	1.98	NA	NA	46.34	53.07	090
55821		A	Removal of prostate	14.25	NA	NA	7.42	11.09	0.89	NA	NA	22.56	26.23	090
55831		A	Removal of prostate	15.62	NA	NA	7.90	11.85	0.99	NA	NA	24.51	28.46	090
55840		A	Extensive prostate surgery	22.69	NA	NA	11.52	14.77	1.44	NA	NA	35.65	38.90	090
55842		A	Extensive prostate surgery	24.38	NA	NA	12.19	16.49	1.58	NA	NA	38.15	42.45	090
55845		A	Extensive prostate surgery	28.55	NA	NA	13.23	20.24	1.78	NA	NA	43.56	50.57	090
55859		A	Percut/needle insert, pros	12.52	NA	NA	7.53	6.96	0.73	NA	NA	20.78	20.21	090
55860		A	Surgical exposure, prostate	14.45	NA	NA	7.75	7.75	0.82	NA	NA	23.02	23.02	090
55862		A	Extensive prostate surgery	18.39	NA	NA	8.96	10.83	1.26	NA	NA	28.61	30.48	090
55865		A	Extensive prostate surgery	22.87	NA	NA	10.55	18.58	1.48	NA	NA	34.90	42.93	090
55870		A	Electroejaculation	2.58	1.76	1.88	0.88	1.44	0.16	4.50	4.62	3.62	4.18	000
55899		C	Genital surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
55970		N	Sex transformation, M to F	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
55980		N	Sex transformation, F to M	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
56300		A	Laparoscopy; diagnostic	5.10	NA	NA	3.67	4.25	0.49	NA	NA	9.26	9.84	010
56301		A	Laparoscopy; tubal cautery	5.60	NA	NA	3.33	4.22	0.45	NA	NA	9.38	10.27	010
56302		A	Laparoscopy; tubal block	5.60	NA	NA	3.35	4.53	0.45	NA	NA	9.40	10.58	010
56303		A	Laparoscopy; excise lesions	11.79	NA	NA	15.77	10.89	0.98	NA	NA	28.54	23.66	090
56304		A	Laparoscopy; lysis	11.29	NA	NA	5.30	5.69	1.09	NA	NA	17.68	18.07	090
56305		A	Laparoscopy; biopsy	5.40	NA	NA	3.16	4.24	0.51	NA	NA	9.07	10.15	010
56306		A	Laparoscopy; aspiration	5.70	NA	NA	3.25	4.27	0.51	NA	NA	9.46	10.48	010
56307		A	Laparoscopy; remove adnexa	11.05	NA	NA	4.95	6.36	0.91	NA	NA	16.91	18.32	010
56308		A	Laparoscopy; hysterectomy	14.19	NA	NA	6.39	8.29	1.16	NA	NA	21.74	23.64	010
56309		A	Laparoscopy; remove myoma	14.21	NA	NA	6.37	5.77	1.20	NA	NA	21.78	21.18	010
56310		A	Laparoscopic enterolysis	14.44	NA	NA	6.85	7.92	1.48	NA	NA	22.77	23.84	090
56311		A	Laparoscopic lymph node biop	9.25	NA	NA	4.62	5.77	0.85	NA	NA	14.72	15.87	010
56312		A	Laparoscopic lymphadenectomy	12.38	NA	NA	5.36	7.33	0.82	NA	NA	18.56	20.53	010
56313		A	Laparoscopic lymphadenectomy	14.32	NA	NA	6.09	8.48	1.09	NA	NA	21.50	23.89	010
56314		A	Lapar; drain lymphocele	9.48	NA	NA	4.30	5.80	0.94	NA	NA	14.72	16.22	090
56315		A	Laparoscopic appendectomy	8.70	NA	NA	4.28	4.80	0.90	NA	NA	13.88	14.40	090
56316		A	Laparoscopic hernia repair	6.27	NA	NA	3.42	4.16	0.65	NA	NA	10.34	11.08	090
56317		A	Laparoscopic hernia repair	8.24	NA	NA	4.47	5.07	0.86	NA	NA	13.57	14.17	090
56318		A	Laparoscopic orchiectomy	10.96	NA	NA	6.75	7.30	0.72	NA	NA	18.43	18.98	090
56320		A	Laparoscopy, spermatic veins	6.57	NA	NA	3.64	4.21	0.43	NA	NA	10.64	11.21	090
56321		C	Laparoscopy; adrenalectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
56322		A	Laparoscopy, vagus nerves	10.15	NA	NA	4.75	5.13	1.06	NA	NA	15.96	16.34	090
56323		A	Laparoscopy, vagus nerves	12.15	NA	NA	5.73	6.17	1.08	NA	NA	18.96	19.40	090
56324		A	Laparoscopy, cholecystoenter	12.58	NA	NA	6.08	8.01	1.33	NA	NA	19.99	21.92	090
56340		A	Laparoscopic cholecystectomy	11.09	NA	NA	5.20	6.94	1.14	NA	NA	17.43	19.17	090
56341		A	Laparoscopic cholecystectomy	11.94	NA	NA	5.55	7.35	1.23	NA	NA	18.72	20.52	090
56342		A	Laparoscopic cholecystectomy	14.23	NA	NA	7.42	8.80	1.44	NA	NA	23.09	24.47	090
56343		A	Laparoscopic salpingostomy	13.74	NA	NA	6.64	6.19	1.17	NA	NA	21.55	21.10	090
56344		A	Laparoscopic fimbrioplasty	12.88	NA	NA	6.35	5.95	1.15	NA	NA	20.38	19.98	090
56345		C	Laparoscopic splenectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
56346		A	Laparoscopic gastrostomy	7.73	NA	NA	4.34	5.53	0.77	NA	NA	12.84	14.03	090
56347		C	Laparoscopic jejunostomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
56348		A	Laparo; resect intestine	22.04	NA	NA	10.18	12.28	2.27	NA	NA	34.49	36.59	090
56349		A	Laparoscopy; fundoplasty	17.25	NA	NA	8.95	10.92	1.80	NA	NA	28.00	29.97	090
56350		A	Hysteroscopy; diagnostic	3.33	2.83	2.50	1.28	1.72	0.27	6.43	6.10	4.88	5.32	000
56351		A	Hysteroscopy; biopsy	4.75	3.37	2.77	1.82	1.99	0.38	8.50	7.90	6.95	7.12	000
56352		A	Hysteroscopy; lysis	6.17	NA	NA	2.35	3.22	0.50	NA	NA	9.02	9.89	000
56353		A	Hysteroscopy; resect septum	7.00	NA	NA	2.68	3.39	0.57	NA	NA	10.25	10.96	000
56354		A	Hysteroscopy; remove myoma	10.00	NA	NA	3.85	4.60	0.81	NA	NA	14.66	15.41	000
56355		A	Hysteroscopy; remove impact	5.21	NA	NA	1.96	2.06	0.42	NA	NA	7.59	7.69	000
56356		A	Hysteroscopy; ablation	6.17	NA	NA	2.37	3.57	0.50	NA	NA	9.04	10.24	000
56362		A	Laparoscopy w/cholangio	4.89	NA	NA	2.59	2.80	0.48	NA	NA	7.96	8.17	000
56363		A	Laparoscopy w/biopsy	5.18	NA	NA	2.07	3.17	0.49	NA	NA	7.74	8.84	000

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
56399		C	Laparoscopy procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
56405		A	I & D of vulva/perineum	1.44	2.22	1.52	1.26	0.84	0.12	3.78	3.08	2.82	2.40	010
56420		A	Drainage of gland abscess	1.39	2.21	1.54	1.14	0.79	0.12	3.72	3.05	2.65	2.30	010
56440		A	Surgery for vulva lesion	2.84	3.32	3.09	2.19	2.52	0.24	6.40	6.17	5.27	5.60	010
56441		A	Lysis of labial lesion(s)	1.97	2.49	2.14	2.01	1.90	0.15	4.61	4.26	4.13	4.02	010
56501		A	Destruction, vulva lesion(s)	1.53	2.16	1.38	1.29	0.80	0.12	3.81	3.03	2.94	2.45	010
56515		A	Destruction, vulva lesion(s)	1.88	2.52	2.54	2.04	2.15	0.15	4.55	4.57	4.07	4.18	010
56605		A	Biopsy of vulva/perineum	1.10	1.68	1.21	0.42	0.40	0.09	2.87	2.40	1.61	1.59	000
56606		A	Biopsy of vulva/perineum	0.55	1.48	0.93	0.21	0.20	0.04	2.07	1.52	0.80	0.79	ZZZ
56620		A	Partial removal of vulva	7.47	NA	NA	4.57	5.80	0.60	NA	NA	12.64	13.87	090
56625		A	Complete removal of vulva	8.40	NA	NA	5.51	7.77	0.67	NA	NA	14.58	16.84	090
56630		A	Extensive vulva surgery	12.36	NA	NA	7.08	10.85	1.00	NA	NA	20.44	24.21	090
56631		A	Extensive vulva surgery	16.20	NA	NA	9.67	14.51	1.30	NA	NA	27.17	32.01	090
56632		A	Extensive vulva surgery	20.29	NA	NA	11.15	17.15	1.63	NA	NA	33.07	39.07	090
56633		A	Extensive vulva surgery	16.47	NA	NA	8.71	13.02	1.32	NA	NA	26.50	30.81	090
56634		A	Extensive vulva surgery	17.88	NA	NA	10.34	15.85	1.43	NA	NA	29.65	35.16	090
56637		A	Extensive vulva surgery	21.97	NA	NA	11.75	17.50	1.76	NA	NA	35.48	41.23	090
56640		A	Extensive vulva surgery	22.17	NA	NA	11.67	16.66	1.75	NA	NA	35.59	40.58	090
56700		A	Partial removal of hymen	2.52	2.80	2.39	2.04	2.01	0.20	5.52	5.11	4.76	4.73	010
56720		A	Incision of hymen	0.68	1.53	1.03	0.66	0.59	0.06	2.27	1.77	1.40	1.33	000
56740		A	Remove vagina gland lesion	3.76	3.22	3.17	2.51	2.81	0.32	7.30	7.25	6.59	6.89	010
56800		A	Repair of vagina	3.89	NA	NA	2.73	2.95	0.30	NA	NA	6.92	7.14	010
56805		A	Repair clitoris	18.86	NA	NA	8.41	10.58	1.16	NA	NA	28.43	30.60	090
56810		A	Repair of perineum	4.13	NA	NA	2.67	2.76	0.34	NA	NA	7.14	7.23	010
57000		A	Exploration of vagina	2.97	NA	NA	2.30	2.25	0.23	NA	NA	5.50	5.45	010
57010		A	Drainage of pelvic abscess	6.03	NA	NA	3.71	3.30	0.51	NA	NA	10.25	9.84	090
57020		A	Drainage of pelvic fluid	1.50	1.48	1.10	0.55	0.63	0.12	3.10	2.72	2.17	2.25	000
57061		A	Destruction vagina lesion(s)	1.25	2.11	1.50	1.18	0.82	0.10	3.46	2.85	2.53	2.17	010
57065		A	Destruction vagina lesion(s)	2.61	2.73	2.92	2.19	2.65	0.21	5.55	5.74	5.01	5.47	010
57100		A	Biopsy of vagina	0.97	1.37	1.02	0.36	0.35	0.08	2.42	2.07	1.41	1.40	000
57105		A	Biopsy of vagina	1.69	2.35	2.03	1.81	1.76	0.14	4.18	3.86	3.64	3.59	010
57106		A	Remove vagina wall, partial	6.36	2.48	2.48	2.40	2.40	0.54	9.38	9.38	9.30	9.30	090
57107		A	Remove vagina tissue/partial	23.00	8.81	8.81	8.63	8.63	1.87	33.68	33.68	33.50	33.50	090
57109		A	Vaginectomy partial w/nodes	27.00	9.91	9.91	9.47	9.47	1.92	38.83	38.83	38.39	38.39	090
57110		A	Remove vagina wall, complete	14.29	NA	NA	6.89	7.72	1.14	NA	NA	22.32	23.15	090
57111		A	Remove vagina tissue/compl	27.00	9.70	9.70	9.70	9.70	2.17	38.87	38.87	38.87	38.87	090
57112		A	Vaginectomy complete w/nodes	29.00	10.17	10.17	10.07	10.07	1.99	41.16	41.16	41.06	41.06	090
57120		A	Closure of vagina	7.41	NA	NA	4.53	6.06	0.60	NA	NA	12.54	14.07	090
57130		A	Remove vagina lesion	2.43	NA	NA	2.05	2.45	0.20	NA	NA	4.68	5.08	010
57135		A	Remove vagina lesion	2.67	2.72	2.41	2.13	2.11	0.22	5.61	5.30	5.02	5.00	010
57150		A	Treat vagina infection	0.55	0.95	0.58	0.21	0.16	0.04	1.54	1.17	0.80	0.75	000
57160		A	Insertion of pessary/device	0.89	1.25	0.76	0.33	0.24	0.07	2.21	1.72	1.29	1.20	000
57170		A	Fitting of diaphragm/cap	0.91	1.27	0.81	0.33	0.26	0.07	2.25	1.79	1.31	1.24	000
57180		A	Treat vaginal bleeding	1.58	2.12	1.36	1.34	0.82	0.13	3.83	3.07	3.05	2.53	010
57200		A	Repair of vagina	3.94	NA	NA	2.89	2.92	0.33	NA	NA	7.16	7.19	090
57210		A	Repair vagina/perineum	5.17	NA	NA	3.36	3.46	0.42	NA	NA	8.95	9.05	090
57220		A	Revision of urethra	4.31	NA	NA	3.27	4.05	0.34	NA	NA	7.92	8.70	090
57230		A	Repair of urethral lesion	5.64	NA	NA	3.87	4.02	0.43	NA	NA	9.94	10.09	090
57240		A	Repair bladder & vagina	6.07	NA	NA	4.12	5.69	0.47	NA	NA	10.66	12.23	090
57250		A	Repair rectum & vagina	5.53	NA	NA	3.68	5.14	0.45	NA	NA	9.66	11.12	090
57260		A	Repair of vagina	8.27	NA	NA	4.73	7.06	0.67	NA	NA	13.67	16.00	090
57265		A	Extensive repair of vagina	11.34	NA	NA	6.38	8.30	0.92	NA	NA	18.64	20.56	090
57268		A	Repair of bowel bulge	6.76	NA	NA	4.14	5.88	0.55	NA	NA	11.45	13.19	090
57270		A	Repair of bowel pouch	12.11	NA	NA	6.06	6.74	0.98	NA	NA	19.15	19.83	090
57280		A	Suspension of vagina	15.04	NA	NA	7.18	8.22	1.20	NA	NA	23.42	24.46	090
57282		A	Repair of vaginal prolapse	8.86	NA	NA	4.97	7.22	0.71	NA	NA	14.54	16.79	090
57284		A	Repair paravaginal defect	12.70	NA	NA	6.67	8.00	0.99	NA	NA	20.36	21.69	090
57288		A	Repair bladder defect	13.02	NA	NA	6.68	9.16	0.84	NA	NA	20.54	23.02	090
57289		A	Repair bladder & vagina	11.58	NA	NA	6.30	7.60	0.83	NA	NA	18.71	20.01	090
57291		A	Construction of vagina	7.95	NA	NA	5.00	5.41	0.65	NA	NA	13.60	14.01	090
57292		A	Construct vagina with graft	13.09	NA	NA	7.06	7.09	1.14	NA	NA	21.29	21.32	090
57300		A	Repair rectum-vagina fistula	7.61	NA	NA	4.48	6.53	0.73	NA	NA	12.82	14.87	090
57305		A	Repair rectum-vagina fistula	13.77	NA	NA	6.81	7.50	1.38	NA	NA	21.96	22.65	090
57307		A	Fistula repair & colostomy	15.93	NA	NA	7.85	7.24	1.60	NA	NA	25.38	24.77	090
57308		A	Fistula repair, transperine	9.94	NA	NA	4.66	6.26	0.91	NA	NA	15.51	17.11	090
57310		A	Repair urethrovaginal lesion	6.78	NA	NA	4.44	4.57	0.46	NA	NA	11.68	11.81	090
57311		A	Repair urethrovaginal lesion	7.98	NA	NA	4.75	5.41	0.43	NA	NA	13.16	13.82	090
57320		A	Repair bladder-vagina lesion	8.01	NA	NA	4.95	7.26	0.54	NA	NA	13.50	15.81	090
57330		A	Repair bladder-vagina lesion	12.35	NA	NA	6.60	7.80	0.83	NA	NA	19.78	20.98	090
57335		A	Repair vagina	18.73	NA	NA	8.90	8.20	1.46	NA	NA	29.09	28.39	090
57400		A	Dilation of vagina	2.27	NA	NA	1.45	0.91	0.17	NA	NA	3.89	3.35	000
57410		A	Pelvic examination	1.75	2.50	1.45	1.14	0.77	0.12	4.37	3.32	3.01	2.64	000
57415		A	Removal vaginal foreign body	2.17	3.24	1.82	1.98	1.19	0.17	5.58	4.16	4.32	3.53	010
57452		A	Examination of vagina	0.99	1.56	1.14	0.36	0.36	0.08	2.63	2.21	1.43	1.43	000
57454		A	Vagina examination & biopsy	1.27	1.64	1.48	0.48	0.57	0.10	3.01	2.85	1.85	1.94	000
57460		A	Cervix excision	2.83	1.94	2.07	1.08	1.09	0.23	5.00	5.13	4.14	4.15	000
57500		A	Biopsy of cervix	0.97	1.37	1.00	0.37	0.34	0.08	2.42	2.05	1.42	1.39	000
57505		A	Endocervical curettage	1.14	1.83	1.26	1.19	0.77	0.09	3.06	2.49	2.42	2.00	010
57510		A	Cauterization of cervix	1.90	2.89	1.73	1.49	0.89	0.15	4.94	3.78	3.54	2.94	010
57511		A	Cryocautery of cervix	1.90	2.27	1.60	0.71	0.59	0.15	4.32	3.65	2.76	2.64	010
57513		A	Laser surgery of cervix	1.90	2.40	2.34	1.46	1.87	0.15	4.45	4.39	3.51	3.92	010
57520		A	Conization of cervix	4.04	3.90	3.82	2.69	3.22	0.33	8.27	8.19	7.06	7.59	090
57522		A	Conization of cervix	3.36	3.54	3.64	2.43	3.09	0.27	7.17	7.27	6.06	6.72	090
57530		A	Removal of cervix	4.79	NA	NA	3.39	3.66	0.39	NA	NA	8.57	8.84	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
57531		A	Removal of cervix, radical	28.00	NA	NA	12.26	15.78	2.29	NA	NA	42.55	46.07	090
57540		A	Removal of residual cervix	12.22	NA	NA	5.99	6.65	1.06	NA	NA	19.27	19.93	090
57545		A	Remove cervix, repair pelvis	13.03	NA	NA	6.38	5.68	1.09	NA	NA	20.50	19.80	090
57550		A	Removal of residual cervix	5.53	NA	NA	3.66	5.13	0.45	NA	NA	9.64	11.11	090
57555		A	Remove cervix, repair vagina	8.95	NA	NA	5.20	7.95	0.74	NA	NA	14.89	17.64	090
57556		A	Remove cervix, repair bowel	8.37	NA	NA	5.19	7.60	0.68	NA	NA	14.24	16.65	090
57700		A	Revision of cervix	3.55	NA	NA	2.50	2.55	0.27	NA	NA	6.32	6.37	090
57720		A	Revision of cervix	4.13	NA	NA	3.16	3.08	0.33	NA	NA	7.62	7.54	090
57800		A	Dilation of cervical canal	0.77	1.15	0.84	0.28	0.27	0.06	1.98	1.67	1.11	1.10	000
57820		A	D&c of residual cervix	1.67	2.28	2.27	2.15	2.21	0.14	4.09	4.08	3.96	4.02	010
58100		A	Biopsy of uterus lining	0.71	1.09	0.91	0.27	0.32	0.06	1.86	1.68	1.04	1.09	000
58120		A	Dilation and curettage (D&C)	3.27	3.52	3.23	2.34	2.64	0.27	7.06	6.77	5.88	6.18	010
58140		A	Removal of uterus lesion	14.60	NA	NA	6.83	7.94	1.31	NA	NA	22.74	23.85	090
58145		A	Removal of uterus lesion	8.04	NA	NA	4.69	6.82	0.65	NA	NA	13.38	15.51	090
58150		A	Total hysterectomy	15.24	NA	NA	7.25	8.82	1.26	NA	NA	23.75	25.32	090
58152		A	Total hysterectomy	15.09	NA	NA	7.21	10.11	1.25	NA	NA	23.55	26.45	090
58180		A	Partial hysterectomy	15.29	NA	NA	7.23	8.91	1.30	NA	NA	23.82	25.50	090
58200		A	Extensive hysterectomy	21.39	NA	NA	10.54	12.32	1.76	NA	NA	33.89	35.67	090
58210		A	Extensive hysterectomy	28.85	NA	NA	13.30	16.30	2.32	NA	NA	44.47	47.47	090
58240		A	Removal of pelvis contents	38.39	NA	NA	17.87	24.53	3.16	NA	NA	59.42	66.08	090
58260		A	Vaginal hysterectomy	12.20	NA	NA	5.72	7.96	0.99	NA	NA	18.91	21.15	090
58262		A	Vaginal hysterectomy	13.99	NA	NA	6.42	8.31	1.13	NA	NA	21.54	23.43	090
58263		A	Vaginal hysterectomy	15.28	NA	NA	6.91	9.06	1.24	NA	NA	23.43	25.58	090
58267		A	Hysterectomy & vagina repair	15.00	NA	NA	6.80	9.66	1.22	NA	NA	23.02	25.88	090
58270		A	Hysterectomy & vagina repair	13.48	NA	NA	6.26	8.73	1.10	NA	NA	20.84	23.31	090
58275		A	Hysterectomy, revise vagina	14.98	NA	NA	6.72	9.34	1.25	NA	NA	22.95	25.57	090
58280		A	Hysterectomy, revise vagina	15.41	NA	NA	6.89	9.15	1.26	NA	NA	23.56	25.82	090
58285		A	Extensive hysterectomy	18.57	NA	NA	9.34	10.97	1.53	NA	NA	29.44	31.07	090
58300		N	Insert intrauterine device	+1.01	1.24	1.04	0.39	0.62	0.08	2.33	2.13	1.48	1.71	XXX
58301		A	Remove intrauterine device	1.27	1.40	0.95	0.47	0.36	0.10	2.77	2.32	1.84	1.73	000
58321		A	Artificial insemination	0.92	0.91	0.84	0.36	0.57	0.07	1.90	1.83	1.35	1.56	000
58322		A	Artificial insemination	1.10	1.00	0.89	0.42	0.60	0.09	2.19	2.08	1.61	1.79	000
58323		A	Sperm washing	0.23	0.47	0.32	0.09	0.13	0.02	0.72	0.57	0.34	0.38	000
58340		A	Catheter for hysterography	0.88	14.10	7.36	0.27	0.45	0.06	15.04	8.30	1.21	1.39	000
58345		A	Reopen fallopian tube	4.66	NA	NA	1.50	2.65	0.28	NA	NA	6.44	7.59	010
58350		A	Reopen fallopian tube	1.01	1.85	1.30	1.06	0.91	0.08	2.94	2.39	2.15	2.00	010
58400		A	Suspension of uterus	6.36	NA	NA	3.85	4.99	0.52	NA	NA	10.73	11.87	090
58410		A	Suspension of uterus	12.73	NA	NA	6.64	6.32	0.99	NA	NA	20.36	20.04	090
58520		A	Repair of ruptured uterus	11.92	NA	NA	6.00	5.30	1.10	NA	NA	19.02	18.32	090
58540		A	Revision of uterus	14.64	NA	NA	7.08	6.87	1.19	NA	NA	22.91	22.70	090
58600		A	Division of fallopian tube	3.84	NA	NA	2.52	3.55	0.32	NA	NA	6.68	7.71	090
58605		A	Division of fallopian tube	3.34	NA	NA	2.38	3.18	0.27	NA	NA	5.99	6.79	090
58611		A	Ligate oviduct(s) add-on	0.63	NA	NA	0.24	0.38	0.05	NA	NA	0.92	1.06	ZZZ
58615		A	Occlude fallopian tube(s)	3.90	NA	NA	2.53	2.85	0.32	NA	NA	6.75	7.07	010
58700		A	Removal of fallopian tube	6.49	NA	NA	3.62	5.25	0.61	NA	NA	10.72	12.35	090
58720		A	Removal of ovary/tube(s)	11.36	NA	NA	5.67	6.91	1.00	NA	NA	18.03	19.27	090
58740		A	Revise fallopian tube(s)	5.83	NA	NA	3.62	5.29	0.49	NA	NA	9.94	11.61	090
58750		A	Repair oviduct	14.84	NA	NA	7.36	7.11	1.26	NA	NA	23.46	23.21	090
58752		A	Revise ovarian tube(s)	14.84	NA	NA	7.10	7.21	1.17	NA	NA	23.11	23.22	090
58760		A	Remove tubal obstruction	13.13	NA	NA	6.50	6.03	1.05	NA	NA	20.68	20.21	090
58770		A	Create new tubal opening	13.97	NA	NA	6.70	6.22	1.20	NA	NA	21.87	21.39	090
58800		A	Drainage of ovarian cyst(s)	4.14	3.94	3.43	3.78	3.35	0.30	8.38	7.87	8.22	7.79	090
58805		A	Drainage of ovarian cyst(s)	5.88	NA	NA	3.39	5.16	0.54	NA	NA	9.81	11.58	090
58820		A	Open drain ovary abscess	4.22	NA	NA	3.12	3.06	0.26	NA	NA	7.60	7.54	090
58822		A	Percut drain ovary abscess	10.13	NA	NA	4.82	4.34	0.89	NA	NA	15.84	15.36	090
58823		A	Percut drain pelvic abscess	3.38	NA	NA	2.71	2.75	0.25	NA	NA	6.34	6.38	000
58825		A	Transposition, ovary(s)	6.13	NA	NA	3.69	4.03	0.51	NA	NA	10.33	10.67	090
58900		A	Biopsy of ovary(s)	5.99	NA	NA	3.50	4.57	0.53	NA	NA	10.02	11.09	090
58920		A	Partial removal of ovary(s)	6.78	NA	NA	4.02	5.69	0.63	NA	NA	11.43	13.10	090
58925		A	Removal of ovarian cyst(s)	11.36	NA	NA	5.59	6.36	1.06	NA	NA	18.01	18.78	090
58940		A	Removal of ovary(s)	7.29	NA	NA	3.99	5.52	0.69	NA	NA	11.97	13.50	090
58943		A	Removal of ovary(s)	18.43	NA	NA	9.16	11.15	1.62	NA	NA	29.21	31.20	090
58950		A	Resect ovarian malignancy	15.27	NA	NA	8.02	10.11	1.31	NA	NA	24.60	26.69	090
58951		A	Resect ovarian malignancy	21.81	NA	NA	10.54	15.22	1.81	NA	NA	34.16	38.84	090
58952		A	Resect ovarian malignancy	25.01	NA	NA	11.81	15.73	2.05	NA	NA	38.87	42.79	090
58960		A	Exploration of abdomen	14.65	NA	NA	7.75	10.92	1.24	NA	NA	23.64	26.81	090
58970		A	Retrieval of oocyte	3.53	7.19	4.96	0.90	1.82	0.25	10.97	8.74	4.68	5.60	000
58974		C	Transfer of embryo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
58976		A	Transfer of embryo	3.83	2.16	2.56	1.48	2.22	0.31	6.30	6.70	5.62	6.36	000
58999		C	Genital surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
59000		A	Amniocentesis	1.30	1.53	1.29	0.49	0.77	0.21	3.04	2.80	2.00	2.28	000
59012		A	Fetal cord puncture,prenatal	3.45	NA	NA	1.33	2.09	0.57	NA	NA	5.35	6.11	000
59015		A	Chonon biopsy	2.20	1.26	1.28	0.85	1.08	0.36	3.82	3.84	3.41	3.64	000
59020		A	Fetal contract stress test	0.66	0.81	1.07	0.81	1.07	0.19	1.66	1.92	1.66	1.92	000
59020	26	A	Fetal contract stress test	0.66	NA	NA	0.25	0.52	0.11	NA	NA	1.02	1.29	000
59020	TC	A	Fetal contract stress test	0.00	0.55	0.55	0.55	0.55	0.08	0.63	0.63	0.63	0.63	000
59025		A	Fetal non-stress test	0.53	0.44	0.55	0.44	0.55	0.12	1.09	1.20	1.09	1.20	000
59025	26	A	Fetal non-stress test	0.53	NA	NA	0.20	0.31	0.09	NA	NA	0.82	0.93	000
59025	TC	A	Fetal non-stress test	0.00	0.24	0.24	0.24	0.24	0.03	0.27	0.27	0.27	0.27	000
59030		A	Fetal scalp blood sample	1.99	NA	NA	0.75	1.23	0.33	NA	NA	3.07	3.55	000
59050		A	Fetal monitor w/report	0.89	NA	NA	0.34	0.61	0.15	NA	NA	1.38	1.65	XXX
59051		A	Fetal monitor/interpret only	0.74	NA	NA	0.29	0.59	0.12	NA	NA	1.15	1.45	XXX
59100		A	Remove uterus lesion	12.35	NA	NA	6.06	5.28	2.02	NA	NA	20.43	19.65	090
59120		A	Treat ectopic pregnancy	11.49	NA	NA	5.81	7.17	1.88	NA	NA	19.18	20.54	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
59121		A	Treat ectopic pregnancy	11.67	NA	NA	5.92	5.88	1.91	NA	NA	19.50	19.46	090
59130		A	Treat ectopic pregnancy	14.22	NA	NA	5.44	5.96	2.33	NA	NA	21.99	22.51	090
59135		A	Treat ectopic pregnancy	13.88	NA	NA	6.61	8.65	2.27	NA	NA	22.76	24.80	090
59136		A	Treat ectopic pregnancy	13.18	NA	NA	6.35	6.55	2.16	NA	NA	21.69	21.89	090
59140		A	Treat ectopic pregnancy	5.46	NA	NA	3.38	4.22	0.89	NA	NA	9.73	10.57	090
59150		A	Treat ectopic pregnancy	6.89	NA	NA	4.38	4.65	1.13	NA	NA	12.40	12.67	090
59151		A	Treat ectopic pregnancy	7.86	NA	NA	4.05	6.70	1.29	NA	NA	13.20	15.85	090
59160		A	D&C after delivery	2.71	3.23	3.21	2.15	2.67	0.44	6.38	6.36	5.30	5.82	010
59200		A	Insert cervical dilator	0.79	1.22	0.91	0.28	0.29	0.13	2.14	1.83	1.20	1.21	000
59300		A	Episiotomy or vaginal repair	2.41	1.86	1.47	0.88	0.71	0.39	4.66	4.27	3.68	3.51	000
59320		A	Revision of cervix	2.48	NA	NA	1.35	1.64	0.41	NA	NA	4.24	4.53	000
59325		A	Revision of cervix	4.07	NA	NA	1.96	2.55	0.67	NA	NA	6.70	7.29	000
59350		A	Repair of uterus	4.95	NA	NA	1.81	2.83	0.81	NA	NA	7.57	8.59	000
59400		A	Obstetrical care	23.06	NA	NA	13.42	14.85	3.78	NA	NA	40.26	41.69	MMM
59409		A	Obstetrical care	13.50	NA	NA	5.09	7.69	2.21	NA	NA	20.80	23.40	MMM
59410		A	Obstetrical care	14.78	NA	NA	6.32	8.76	2.42	NA	NA	23.52	25.96	MMM
59412		A	Antepartum manipulation	1.71	1.38	1.35	0.65	0.99	0.28	3.37	3.34	2.64	2.98	MMM
59414		A	Deliver placenta	1.61	NA	NA	1.14	1.20	0.26	NA	NA	3.01	3.07	MMM
59425		A	Antepartum care only	4.81	4.58	3.86	4.58	3.08	0.79	10.18	9.46	10.18	8.68	MMM
59426		A	Antepartum care only	8.28	7.80	6.58	7.80	5.24	1.36	17.44	16.22	17.44	14.88	MMM
59430		A	Care after delivery	2.13	1.13	0.77	1.13	0.67	0.35	3.61	3.25	3.61	3.15	MMM
59510		A	Cesarean delivery	26.22	NA	NA	15.33	16.84	4.29	NA	NA	45.84	47.35	MMM
59514		A	Cesarean delivery only	15.97	NA	NA	5.99	8.96	2.62	NA	NA	24.58	27.55	MMM
59515		A	Cesarean delivery	17.37	NA	NA	7.66	10.25	2.85	NA	NA	27.88	30.47	MMM
59525		A	Remove uterus after cesarean	8.54	NA	NA	3.23	3.68	1.40	NA	NA	13.17	13.62	ZZZ
59610		A	Vbac delivery	24.62	NA	NA	9.27	12.77	4.03	NA	NA	37.92	41.42	MMM
59612		A	Vbac delivery only	15.06	NA	NA	5.74	8.02	2.47	NA	NA	23.27	25.55	MMM
59614		A	Vbac care after delivery	16.34	NA	NA	6.20	8.70	2.68	NA	NA	25.22	27.72	MMM
59618		A	Attempted vbac delivery	27.78	NA	NA	10.69	14.52	4.55	NA	NA	43.02	46.85	MMM
59620		A	Attempted vbac delivery only	17.53	NA	NA	6.65	9.29	2.87	NA	NA	27.05	29.69	MMM
59622		A	Attempted vbac after care	18.93	NA	NA	7.31	10.07	3.10	NA	NA	29.34	32.10	MMM
59812		A	Treatment of miscarriage	3.25	4.25	4.09	2.30	3.10	0.53	8.03	7.87	6.08	6.88	090
59820		A	Care of miscarriage	4.01	4.55	4.31	2.61	3.34	0.66	9.22	8.98	7.28	8.01	090
59821		A	Treatment of miscarriage	4.47	4.70	3.83	2.77	2.86	0.73	9.90	9.03	7.97	8.06	090
59830		A	Treat uterus infection	6.11	NA	NA	3.83	4.38	1.00	NA	NA	10.94	11.49	090
59840		R	Abortion	3.01	4.65	4.07	2.22	2.86	0.49	8.15	7.57	5.72	6.36	010
59841		R	Abortion	5.24	7.06	5.57	3.45	3.76	0.86	13.16	11.67	9.55	9.86	010
59850		R	Abortion	5.91	NA	NA	2.64	3.49	0.97	NA	NA	9.52	10.37	090
59851		R	Abortion	5.93	NA	NA	3.02	3.83	0.97	NA	NA	9.92	10.73	090
59852		R	Abortion	8.24	NA	NA	4.28	5.13	1.35	NA	NA	13.87	14.72	090
59855		R	Abortion	6.12	NA	NA	3.01	3.75	1.00	NA	NA	10.13	10.87	090
59856		R	Abortion	7.48	NA	NA	3.63	4.59	1.23	NA	NA	12.34	13.30	090
59857		R	Abortion	9.29	NA	NA	4.25	5.50	1.52	NA	NA	15.06	16.31	090
59866		R	Abortion	4.00	NA	NA	1.87	2.49	0.66	NA	NA	6.53	7.15	000
59870		A	Evacuate mole of uterus	4.28	NA	NA	3.17	3.17	0.70	NA	NA	8.15	8.15	090
59871		A	Remove cerclage suture	2.13	1.78	1.86	0.81	1.37	0.35	4.26	4.34	3.29	3.85	000
59899		C	Maternity care procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
60000		A	Drain thyroid/tongue cyst	1.76	2.13	1.39	1.81	1.07	0.12	4.01	3.27	3.69	2.95	010
60001		A	Aspirate/inject thyriod cyst	0.97	1.93	1.54	0.33	0.74	0.08	2.98	2.59	1.38	1.79	000
60100		A	Biopsy of thyroid	0.97	2.50	1.82	0.30	0.44	0.06	3.53	2.85	1.33	1.47	000
60200		A	Remove thyroid lesion	9.55	NA	NA	6.28	6.41	0.91	NA	NA	16.74	16.87	090
60210		A	Partial excision thyroid	10.88	NA	NA	6.43	7.93	1.05	NA	NA	18.36	19.86	090
60212		A	Partial thyroid excision	16.03	NA	NA	8.25	9.03	1.61	NA	NA	25.89	26.67	090
60220		A	Partial removal of thyroid	10.53	NA	NA	6.37	7.82	1.01	NA	NA	17.91	19.36	090
60225		A	Partial removal of thyroid	14.19	NA	NA	7.92	9.65	1.36	NA	NA	23.47	25.20	090
60240		A	Removal of thyroid	16.06	NA	NA	9.08	10.28	1.54	NA	NA	26.68	27.88	090
60252		A	Removal of thyroid	18.20	NA	NA	10.45	12.63	1.71	NA	NA	30.36	32.54	090
60254		A	Extensive thyroid surgery	23.88	NA	NA	14.12	17.49	2.07	NA	NA	40.07	43.44	090
60260		A	Repeat thyroid surgery	15.46	NA	NA	9.26	6.34	1.48	NA	NA	26.20	23.28	090
60270		A	Removal of thyroid	17.94	NA	NA	10.99	13.08	1.93	NA	NA	30.86	32.95	090
60271		A	Removal of thyroid	14.89	NA	NA	8.99	11.09	1.45	NA	NA	25.33	27.43	090
60280		A	Remove thyroid duct lesion	6.08	NA	NA	4.93	6.10	0.49	NA	NA	11.50	12.67	090
60281		A	Remove thyroid duct lesion	8.53	NA	NA	5.38	5.43	0.75	NA	NA	14.66	14.71	090
60500		A	Explore parathyroid glands	16.23	NA	NA	7.98	10.16	1.63	NA	NA	25.84	28.02	090
60502		A	Re-explore parathyroids	20.35	NA	NA	9.90	11.13	2.04	NA	NA	32.29	33.52	090
60505		A	Explore parathyroid glands	21.49	NA	NA	12.06	13.16	2.28	NA	NA	35.83	36.93	090
60512		A	Autotransplant, parathyroid	4.45	NA	NA	1.77	2.15	0.45	NA	NA	6.67	7.05	ZZZ
60520		A	Removal of thymus gland	16.81	NA	NA	11.35	13.02	1.97	NA	NA	30.13	31.80	090
60521		A	Removal thymus gland	18.87	NA	NA	14.37	14.53	2.54	NA	NA	35.78	35.94	090
60522		A	Removal of thymus gland	23.09	NA	NA	15.13	14.91	2.98	NA	NA	41.20	40.98	090
60540		A	Explore adrenal gland	17.03	NA	NA	7.85	10.47	1.47	NA	NA	26.35	28.97	090
60545		A	Explore adrenal gland	19.88	NA	NA	9.51	12.50	1.75	NA	NA	31.14	34.13	090
60600		A	Remove carotid body lesion	17.93	NA	NA	13.86	13.15	2.03	NA	NA	33.82	33.11	090
60605		A	Remove carotid body lesion	20.24	NA	NA	18.28	14.95	1.88	NA	NA	40.40	37.07	090
60699		C	Endocrine surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
61000		A	Remove cranial cavity fluid	1.58	1.52	1.34	1.48	1.32	0.14	3.24	3.06	3.20	3.04	000
61001		A	Remove cranial cavity fluid	1.49	1.41	1.19	1.19	0.84	0.13	3.03	2.81	2.81	2.46	000
61020		A	Remove brain cavity fluid	1.51	1.98	1.68	1.33	1.35	0.29	3.78	3.48	3.13	3.15	000
61026		A	Injection into brain canal	1.69	2.11	2.07	1.37	1.70	0.25	4.05	4.01	3.31	3.64	000
61050		A	Remove brain canal fluid	1.51	NA	NA	1.18	1.26	0.17	NA	NA	2.86	2.94	000
61055		A	Injection into brain canal	2.10	NA	NA	1.72	1.88	0.14	NA	NA	3.96	4.12	000
61070		A	Brain canal shunt procedure	0.89	7.07	3.80	1.38	0.83	0.09	8.05	4.78	2.36	1.81	000
61105		A	Twist drill hole	5.14	NA	NA	3.65	4.89	1.08	NA	NA	9.87	11.11	090
61107		A	Drill skull for implantation	5.00	NA	NA	3.00	4.49	1.04	NA	NA	9.04	10.53	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
61108		A	Drill skull for drainage	10.19	NA	NA	7.05	9.61	2.12	NA	NA	19.36	21.92	090
61120		A	Burr hole for puncture	8.76	NA	NA	5.86	6.16	1.82	NA	NA	16.44	16.74	090
61140		A	Pierce skull for biopsy	15.90	NA	NA	10.06	12.70	3.11	NA	NA	29.07	31.71	090
61150		A	Pierce skull for drainage	17.57	NA	NA	10.73	13.32	3.54	NA	NA	31.84	34.43	090
61151		A	Pierce skull for drainage	12.42	NA	NA	8.09	5.20	2.40	NA	NA	22.91	20.02	090
61154		A	Pierce skull, remove clot	14.99	NA	NA	9.68	13.79	3.06	NA	NA	27.73	31.84	090
61156		A	Pierce skull for drainage	16.32	NA	NA	10.33	13.95	3.40	NA	NA	30.05	33.67	090
61210		A	Pierce skull; implant device	5.84	NA	NA	3.42	4.99	1.18	NA	NA	10.44	12.01	000
61215		A	Insert brain-fluid device	4.89	NA	NA	4.27	5.06	0.99	NA	NA	10.15	10.94	090
61250		A	Pierce skull & explore	10.42	NA	NA	6.66	7.69	2.19	NA	NA	19.27	20.30	090
61253		A	Pierce skull & explore	12.36	NA	NA	8.23	9.34	2.54	NA	NA	23.13	24.24	090
61304		A	Open skull for exploration	21.96	NA	NA	12.86	19.54	4.39	NA	NA	39.21	45.89	090
61305		A	Open skull for exploration	26.61	NA	NA	15.10	23.35	5.10	NA	NA	46.81	55.06	090
61312		A	Open skull for drainage	24.57	NA	NA	14.72	20.46	4.97	NA	NA	44.26	50.00	090
61313		A	Open skull for drainage	24.93	NA	NA	14.85	20.47	4.99	NA	NA	44.77	50.39	090
61314		A	Open skull for drainage	24.23	NA	NA	14.27	21.04	4.95	NA	NA	43.45	50.22	090
61315		A	Open skull for drainage	27.68	NA	NA	16.29	21.39	5.56	NA	NA	49.53	54.63	090
61320		A	Open skull for drainage	25.02	NA	NA	15.24	17.77	5.15	NA	NA	46.01	48.54	090
61321		A	Open skull for drainage	28.50	NA	NA	15.97	18.75	5.58	NA	NA	50.05	52.83	090
61330		A	Decompress eye socket	23.32	NA	NA	18.51	16.30	2.88	NA	NA	44.71	42.50	090
61332		A	Explore/biopsy eye socket	27.28	NA	NA	19.54	21.02	4.57	NA	NA	51.39	52.87	090
61333		A	Explore orbit; remove lesion	27.95	NA	NA	16.94	19.57	3.22	NA	NA	48.11	50.74	090
61334		A	Explore orbit; remove object	18.27	NA	NA	10.70	13.30	2.64	NA	NA	31.61	34.21	090
61340		A	Relieve cranial pressure	18.66	NA	NA	11.45	13.76	3.64	NA	NA	33.75	36.06	090
61343		A	Incise skull,pressure relief	29.77	NA	NA	18.19	25.40	6.00	NA	NA	53.96	61.17	090
61345		A	Relieve cranial pressure	27.20	NA	NA	16.44	18.63	5.60	NA	NA	49.24	51.43	090
61440		A	Incise skull for surgery	26.63	NA	NA	13.76	18.14	3.13	NA	NA	43.52	47.90	090
61450		A	Incise skull for surgery	25.95	NA	NA	15.55	18.86	5.20	NA	NA	46.70	50.01	090
61458		A	Incise skull for brain wound	27.29	NA	NA	16.24	22.93	5.37	NA	NA	48.90	55.59	090
61460		A	Incise skull for surgery	28.39	NA	NA	17.29	22.24	4.94	NA	NA	50.62	55.57	090
61470		A	Incise skull for surgery	26.06	NA	NA	14.36	14.70	4.56	NA	NA	44.98	45.32	090
61480		A	Incise skull for surgery	26.49	NA	NA	11.66	14.01	5.10	NA	NA	43.25	45.60	090
61490		A	Incise skull for surgery	25.66	NA	NA	14.62	13.67	4.94	NA	NA	45.22	44.27	090
61500		A	Removal of skull lesion	17.92	NA	NA	11.30	16.35	3.28	NA	NA	32.50	37.55	090
61501		A	Remove infected skull bone	14.84	NA	NA	9.59	13.65	2.67	NA	NA	27.10	31.16	090
61510		A	Removal of brain lesion	28.45	NA	NA	16.77	23.06	5.74	NA	NA	50.96	57.25	090
61512		A	Remove brain lining lesion	35.09	NA	NA	20.42	25.96	7.07	NA	NA	62.58	68.12	090
61514		A	Removal of brain abscess	25.26	NA	NA	14.68	21.19	4.89	NA	NA	44.83	51.34	090
61516		A	Removal of brain lesion	24.61	NA	NA	14.83	21.79	4.89	NA	NA	44.33	51.29	090
61518		A	Removal of brain lesion	37.32	NA	NA	22.51	27.55	7.46	NA	NA	67.29	72.33	090
61519		A	Remove brain lining lesion	41.39	NA	NA	24.38	29.13	8.32	NA	NA	74.09	78.84	090
61520		A	Removal of brain lesion	54.84	NA	NA	32.31	34.53	9.99	NA	NA	97.14	99.36	090
61521		A	Removal of brain lesion	44.48	NA	NA	25.89	30.84	8.59	NA	NA	78.96	83.91	090
61522		A	Removal of brain abscess	29.45	NA	NA	17.53	19.60	6.14	NA	NA	53.12	55.19	090
61524		A	Removal of brain lesion	27.86	NA	NA	16.68	23.24	5.46	NA	NA	50.00	56.56	090
61526		A	Removal of brain lesion	52.17	NA	NA	31.56	34.24	6.63	NA	NA	90.36	93.04	090
61530		A	Removal of brain lesion	43.86	NA	NA	27.17	32.04	6.44	NA	NA	77.47	82.34	090
61531		A	Implant brain electrodes	14.63	NA	NA	9.63	12.95	2.90	NA	NA	27.16	30.48	090
61533		A	Implant brain electrodes	19.71	NA	NA	12.32	15.40	4.05	NA	NA	36.08	39.16	090
61534		A	Removal of brain lesion	20.97	NA	NA	12.88	9.90	3.92	NA	NA	37.77	34.79	090
61535		A	Remove brain electrodes	11.63	NA	NA	8.04	8.18	2.21	NA	NA	21.88	22.02	090
61536		A	Removal of brain tissue	35.52	NA	NA	21.34	22.59	7.46	NA	NA	64.32	65.57	090
61538		A	Removal of brain tissue	26.81	NA	NA	16.37	23.97	5.27	NA	NA	48.45	56.05	090
61539		A	Removal of brain tissue	32.08	NA	NA	18.69	21.81	5.80	NA	NA	56.57	59.69	090
61541		A	Incision of brain tissue	28.85	NA	NA	16.83	19.16	5.44	NA	NA	51.12	53.45	090
61542		A	Removal of brain tissue	31.02	NA	NA	16.58	19.10	6.64	NA	NA	54.24	56.76	090
61543		A	Removal of brain tissue	29.22	NA	NA	17.61	18.16	5.30	NA	NA	52.13	52.68	090
61544		A	Remove & treat brain lesion	25.50	NA	NA	12.74	21.59	4.06	NA	NA	42.30	51.15	090
61545		A	Excision of brain tumor	43.80	NA	NA	25.09	26.47	8.43	NA	NA	77.32	78.70	090
61546		A	Removal of pituitary gland	31.30	NA	NA	18.92	24.12	6.15	NA	NA	56.37	61.57	090
61548		A	Removal of pituitary gland	21.53	NA	NA	13.66	19.68	3.62	NA	NA	38.81	44.83	090
61550		A	Release of skull seams	14.65	NA	NA	6.64	9.73	0.61	NA	NA	21.90	24.99	090
61552		A	Release of skull seams	19.56	NA	NA	8.58	11.80	1.59	NA	NA	29.73	32.95	090
61556		A	Incise skull/sutures	22.26	NA	NA	12.48	14.67	2.86	NA	NA	37.60	39.79	090
61557		A	Incise skull/sutures	22.38	NA	NA	14.47	15.71	4.36	NA	NA	41.21	42.45	090
61558		A	Excision of skull/sutures	25.58	NA	NA	14.05	16.65	5.48	NA	NA	45.11	47.71	090
61559		A	Excision of skull/sutures	32.79	NA	NA	17.40	21.19	7.02	NA	NA	57.21	61.00	090
61563		A	Excision of skull tumor	26.83	NA	NA	15.93	18.17	4.56	NA	NA	47.32	49.56	090
61564		A	Excision of skull tumor	33.83	NA	NA	19.46	22.61	5.28	NA	NA	58.57	61.72	090
61570		A	Remove brain foreign body	24.60	NA	NA	13.93	15.92	4.71	NA	NA	43.24	45.23	090
61571		A	Incise skull for brain wound	26.39	NA	NA	15.18	17.53	4.79	NA	NA	46.36	48.71	090
61575		A	Skull base/brainstem surgery	34.36	NA	NA	21.57	28.69	5.34	NA	NA	61.27	68.39	090
61576		A	Skull base/brainstem surgery	52.43	NA	NA	31.05	30.85	6.91	NA	NA	90.39	90.19	090
61580		A	Craniofacial approach, skull	30.35	NA	NA	18.93	20.87	3.10	NA	NA	52.38	54.32	090
61581		A	Craniofacial approach, skull	34.60	NA	NA	20.76	23.32	2.47	NA	NA	57.83	60.39	090
61582		A	Craniofacial approach, skull	31.66	NA	NA	19.04	21.27	5.44	NA	NA	56.14	58.37	090
61583		A	Craniofacial approach, skull	36.21	NA	NA	22.48	24.65	7.12	NA	NA	65.81	67.98	090
61584		A	Orbitocranial approach/skull	34.65	NA	NA	20.74	23.35	6.50	NA	NA	61.89	64.50	090
61585		A	Orbitocranial approach/skull	38.61	NA	NA	21.90	25.47	6.67	NA	NA	67.18	70.75	090
61586		A	Resect nasopharynx, skull	25.10	NA	NA	16.12	19.66	3.11	NA	NA	44.33	47.87	090
61590		A	Infratemporal approach/skull	41.78	NA	NA	26.11	28.85	4.98	NA	NA	72.87	75.61	090
61591		A	Infratemporal approach/skull	43.68	NA	NA	25.43	29.28	5.39	NA	NA	74.50	78.35	090
61592		A	Orbitocranial approach/skull	39.64	NA	NA	23.98	27.01	7.72	NA	NA	71.34	74.37	090
61595		A	Transtemporal approach/skull	29.57	NA	NA	19.23	20.71	3.10	NA	NA	51.90	53.38	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
61596		A	Transcochlear approach/skull	35.63	NA	NA	22.55	24.76	4.20	NA	NA	62.38	64.59	090
61597		A	Transcondylar approach/skull	37.96	NA	NA	21.92	25.21	5.86	NA	NA	65.74	69.03	090
61598		A	Transpetrosal approach/skull	33.41	NA	NA	20.66	22.88	5.32	NA	NA	59.39	61.61	090
61600		A	Resect/excise cranial lesion	25.85	NA	NA	16.33	17.79	2.87	NA	NA	45.05	46.51	090
61601		A	Resect/excise cranial lesion	27.89	NA	NA	17.35	19.00	5.30	NA	NA	50.54	52.19	090
61605		A	Resect/excise cranial lesion	29.33	NA	NA	18.51	20.16	2.76	NA	NA	50.60	52.25	090
61606		A	Resect/excise cranial lesion	38.83	NA	NA	23.14	26.17	7.24	NA	NA	69.21	72.24	090
61607		A	Resect/excise cranial lesion	36.27	NA	NA	22.47	24.87	6.89	NA	NA	65.63	68.03	090
61608		A	Resect/excise cranial lesion	42.10	NA	NA	24.84	28.29	8.47	NA	NA	75.41	78.86	090
61609		A	Transect, artery, sinus	9.89	NA	NA	5.00	6.40	2.12	NA	NA	17.01	18.41	ZZZ
61610		A	Transect, artery, sinus	29.67	NA	NA	12.09	17.75	4.84	NA	NA	46.60	52.26	ZZZ
61611		A	Transect, artery, sinus	7.42	NA	NA	2.83	4.34	1.59	NA	NA	11.84	13.35	ZZZ
61612		A	Transect, artery, sinus	27.88	NA	NA	12.16	17.08	4.44	NA	NA	44.48	49.40	ZZZ
61613		A	Remove aneurysm, sinus	40.86	NA	NA	24.17	27.64	8.58	NA	NA	73.61	77.08	090
61615		A	Resect/excise lesion, skull	32.07	NA	NA	20.95	22.45	4.85	NA	NA	57.87	59.17	090
61616		A	Resect/excise lesion, skull	43.33	NA	NA	26.56	29.58	7.40	NA	NA	77.29	80.31	090
61618		A	Repair dura	16.99	NA	NA	11.27	11.80	2.89	NA	NA	31.15	31.68	090
61619		A	Repair dura	20.71	NA	NA	13.15	14.28	3.46	NA	NA	37.32	38.45	090
61624		A	Occlusion/embolization cath	20.15	NA	NA	5.92	11.25	1.13	NA	NA	27.20	32.53	000
61626		A	Occlusion/embolization cath	16.62	NA	NA	4.60	9.14	0.79	NA	NA	22.01	26.55	000
61680		A	Intracranial vessel surgery	30.71	NA	NA	18.51	26.11	6.09	NA	NA	55.31	62.91	090
61682		A	Intracranial vessel surgery	61.57	NA	NA	34.37	36.35	12.04	NA	NA	107.98	109.96	090
61684		A	Intracranial vessel surgery	39.81	NA	NA	23.74	28.02	8.53	NA	NA	72.08	76.36	090
61686		A	Intracranial vessel surgery	64.49	NA	NA	36.28	37.67	13.09	NA	NA	113.86	115.25	090
61690		A	Intracranial vessel surgery	29.31	NA	NA	18.03	23.92	5.79	NA	NA	53.13	59.02	090
61692		A	Intracranial vessel surgery	51.87	NA	NA	27.48	29.36	9.03	NA	NA	88.38	90.26	090
61700		A	Inner skull vessel surgery	50.52	NA	NA	28.46	31.43	10.20	NA	NA	89.18	92.15	090
61702		A	Inner skull vessel surgery	48.41	NA	NA	27.29	33.35	9.70	NA	NA	85.40	91.46	090
61703		A	Clamp neck artery	17.47	NA	NA	11.25	12.25	3.48	NA	NA	32.20	33.20	090
61705		A	Revise circulation to head	36.20	NA	NA	19.64	26.32	7.06	NA	NA	62.90	69.58	090
61708		A	Revise circulation to head	35.30	NA	NA	13.75	20.55	2.56	NA	NA	51.61	58.41	090
61710		A	Revise circulation to head	29.67	NA	NA	14.29	16.17	3.75	NA	NA	47.71	49.59	090
61711		A	Fusion of skull arteries	36.33	NA	NA	21.15	28.51	7.35	NA	NA	64.83	72.19	090
61720		A	Incise skull/brain surgery	16.77	NA	NA	10.70	15.36	3.36	NA	NA	30.83	35.49	090
61735		A	Incise skull/brain surgery	20.43	NA	NA	12.57	13.32	3.93	NA	NA	36.93	37.68	090
61750		A	Incise skull; brain biopsy	18.20	NA	NA	11.24	12.97	3.59	NA	NA	33.03	34.76	090
61751		A	Brain biopsy with cat scan	17.62	NA	NA	10.98	16.01	3.58	NA	NA	32.18	37.21	090
61760		A	Implant brain electrodes	22.27	NA	NA	13.12	14.69	4.12	NA	NA	39.51	41.08	090
61770		A	Incise skull for treatment	21.44	NA	NA	12.75	16.89	4.00	NA	NA	38.19	42.33	090
61790		A	Treat trigeminal nerve	10.86	NA	NA	7.37	10.17	1.80	NA	NA	20.03	22.83	090
61791		A	Treat trigeminal tract	14.61	NA	NA	9.23	9.92	2.92	NA	NA	26.76	27.45	090
61793		A	Focus radiation beam	17.24	NA	NA	10.98	15.78	3.38	NA	NA	31.60	36.40	090
61795		A	Brain surgery using computer	4.04	NA	NA	2.14	3.48	0.81	NA	NA	6.99	8.33	ZZZ
61850		A	Implant neuroelectrodes	12.39	NA	NA	7.97	10.30	2.22	NA	NA	22.58	24.91	090
61855		A	Implant neuroelectrodes	13.39	NA	NA	9.32	10.30	2.77	NA	NA	25.48	26.46	090
61860		A	Implant neuroelectrodes	20.87	NA	NA	12.50	10.67	4.47	NA	NA	37.84	36.01	090
61865		A	Implant neuroelectrodes	22.97	NA	NA	13.80	15.47	4.92	NA	NA	41.69	43.36	090
61870		A	Implant neuroelectrodes	14.94	NA	NA	8.70	6.63	3.20	NA	NA	26.84	24.77	090
61875		A	Implant neuroelectrodes	15.06	NA	NA	7.48	7.37	3.22	NA	NA	25.76	25.65	090
61880		A	Revise/remove neuroelectrode	8.29	NA	NA	5.36	5.28	1.27	NA	NA	12.92	12.84	090
61885		A	Implant neuroreceiver	5.85	NA	NA	4.98	3.56	1.25	NA	NA	12.08	10.66	090
61888		A	Revise/remove neuroreceiver	5.07	NA	NA	3.85	3.15	1.09	NA	NA	10.01	9.31	010
62000		A	Repair of skull fracture	12.53	NA	NA	5.36	5.79	0.94	NA	NA	18.83	19.26	090
62005		A	Repair of skull fracture	16.17	NA	NA	9.11	10.57	2.58	NA	NA	27.86	29.32	090
62010		A	Treatment of head injury	19.81	NA	NA	11.72	16.28	3.91	NA	NA	35.44	40.00	090
62100		A	Repair brain fluid leakage	22.03	NA	NA	13.87	18.67	3.78	NA	NA	39.68	44.48	090
62115		A	Reduction of skull defect	21.66	NA	NA	12.80	14.82	3.12	NA	NA	37.58	39.60	090
62116		A	Reduction of skull defect	23.59	NA	NA	14.17	16.30	4.73	NA	NA	42.49	44.62	090
62117		A	Reduction of skull defect	26.60	NA	NA	15.28	18.06	5.70	NA	NA	47.58	50.36	090
62120		A	Repair skull cavity lesion	23.35	NA	NA	14.21	16.28	3.34	NA	NA	40.90	42.97	090
62121		A	Incise skull repair	21.58	NA	NA	14.12	16.56	3.73	NA	NA	39.43	41.87	090
62140		A	Repair of skull defect	13.51	NA	NA	8.87	11.73	2.65	NA	NA	25.03	27.89	090
62141		A	Repair of skull defect	14.91	NA	NA	9.82	13.81	2.93	NA	NA	27.66	31.65	090
62142		A	Remove skull plate/flap	10.79	NA	NA	7.35	10.12	2.14	NA	NA	20.28	23.05	090
62143		A	Replace skull plate/flap	13.05	NA	NA	8.68	9.32	2.59	NA	NA	24.32	24.96	090
62145		A	Repair of skull & brain	18.82	NA	NA	11.96	13.12	3.98	NA	NA	34.76	35.92	090
62146		A	Repair of skull with graft	16.12	NA	NA	10.48	11.21	3.02	NA	NA	29.62	30.35	090
62147		A	Repair of skull with graft	19.34	NA	NA	12.22	13.26	3.37	NA	NA	34.93	35.97	090
62180		A	Establish brain cavity shunt	21.06	NA	NA	13.17	14.30	4.21	NA	NA	38.44	39.57	090
62190		A	Establish brain cavity shunt	11.07	NA	NA	7.80	10.51	2.30	NA	NA	21.17	23.88	090
62192		A	Establish brain cavity shunt	12.25	NA	NA	8.26	11.45	2.35	NA	NA	22.86	26.05	090
62194		A	Replace/irrigate catheter	5.03	NA	NA	2.75	2.40	0.49	NA	NA	8.27	7.92	010
62200		A	Establish brain cavity shunt	18.32	NA	NA	11.78	15.09	3.86	NA	NA	33.96	37.27	090
62201		A	Establish brain cavity shunt	14.86	NA	NA	9.61	9.57	2.87	NA	NA	27.34	27.30	090
62220		A	Establish brain cavity shunt	13.00	NA	NA	8.77	12.15	2.63	NA	NA	24.40	27.78	090
62223		A	Establish brain cavity shunt	12.87	NA	NA	8.57	11.97	2.52	NA	NA	23.96	27.36	090
62225		A	Replace/irrigate catheter	5.41	NA	NA	4.12	4.67	1.10	NA	NA	10.63	11.18	090
62230		A	Replace/revise brain shunt	10.54	NA	NA	6.77	8.72	2.08	NA	NA	19.39	21.34	090
62256		A	Remove brain cavity shunt	6.60	NA	NA	5.41	6.17	1.34	NA	NA	13.35	14.11	090
62258		A	Replace brain cavity shunt	14.54	NA	NA	8.81	12.43	2.84	NA	NA	26.19	29.81	090
62268		A	Drain spinal cord cyst	4.74	NA	NA	2.80	3.02	0.73	NA	NA	8.27	8.49	000
62269		A	Needle biopsy spinal cord	5.02	NA	NA	2.71	2.31	0.77	NA	NA	8.50	8.10	000
62270		A	Spinal fluid tap, diagnostic	1.13	0.79	0.78	0.37	0.57	0.17	2.09	2.08	1.67	1.87	000
62272		A	Drain spinal fluid	1.35	1.84	1.47	0.53	0.82	0.21	3.40	3.03	2.09	2.38	000

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
62273		A	Treat lumbar spine lesion	2.15	2.99	2.11	2.99	2.11	0.33	5.47	4.59	5.47	4.59	000
62274		A	Inject spinal anesthetic	1.78	9.63	5.22	0.32	0.56	0.27	11.68	7.27	2.37	2.61	000
62275		A	Inject spinal anesthetic	1.79	10.01	5.33	0.32	0.48	0.27	12.07	7.39	2.38	2.54	000
62276		A	Inject spinal anesthetic	2.04	11.04	6.19	0.39	0.86	0.31	13.39	8.54	2.74	3.21	000
62277		A	Inject spinal anesthetic	2.15	7.57	4.24	0.37	0.64	0.33	10.05	6.72	2.85	3.12	000
62278		A	Inject spinal anesthetic	1.51	9.19	5.13	0.30	0.68	0.23	10.93	6.87	2.04	2.42	000
62279		A	Inject spinal anesthetic	1.58	12.54	6.72	0.26	0.58	0.24	14.36	8.54	2.08	2.40	000
62280		A	Treat spinal cord lesion	2.63	8.67	4.72	0.56	0.67	0.40	11.70	7.75	3.59	3.70	010
62281		A	Treat spinal cord lesion	2.66	9.57	5.26	0.48	0.71	0.41	12.64	8.33	3.55	3.78	010
62282		A	Treat spinal canal lesion	2.33	7.83	4.84	0.49	1.17	0.36	10.52	7.53	3.18	3.86	010
62284		A	Injection for myelogram	1.54	5.23	3.69	0.44	1.14	0.24	7.01	5.47	2.22	2.92	000
62287		A	Percutaneous diskectomy	8.08	NA	NA	5.14	6.35	1.24	NA	NA	14.46	15.67	090
62288		A	Injection into spinal canal	1.74	5.86	3.54	0.38	0.80	0.27	7.87	5.55	2.39	2.81	000
62289		A	Injection into spinal canal	1.64	13.23	7.20	0.30	0.73	0.25	15.12	9.09	2.19	2.62	000
62290		A	Inject for spine disk x-ray	3.00	5.05	3.54	1.02	1.52	0.46	8.51	7.00	4.48	4.98	000
62291		A	Inject for spine disk x-ray	2.91	7.04	4.49	0.81	1.37	0.45	10.40	7.85	4.17	4.73	000
62292		A	Injection into disk lesion	7.86	NA	NA	7.79	8.59	1.20	NA	NA	16.85	17.65	090
62294		A	Injection into spinal artery	11.83	NA	NA	7.58	8.96	1.81	NA	NA	21.22	20.60	090
62298		A	Injection into spinal canal	2.20	11.75	6.44	0.38	0.76	0.34	14.29	8.98	2.92	3.30	000
62350		A	Implant spinal catheter	6.87	NA	NA	7.80	5.80	1.05	NA	NA	15.72	13.72	090
62351		A	Implant spinal catheter	10.00	NA	NA	7.47	6.54	1.53	NA	NA	19.00	18.07	090
62355		A	Remove spinal canal catheter	5.45	NA	NA	6.15	4.97	0.84	NA	NA	12.44	11.26	090
62360		A	Insert spine infusion device	2.62	NA	NA	6.90	4.06	0.40	NA	NA	9.92	7.08	090
62361		A	Implant spine infusion pump	5.42	NA	NA	7.00	4.96	0.83	NA	NA	13.25	11.21	090
62362		A	Implant spine infusion pump	7.04	NA	NA	7.09	5.45	1.08	NA	NA	15.21	13.57	090
62365		A	Remove spine infusion device	5.42	NA	NA	5.04	4.41	0.83	NA	NA	11.29	10.66	090
62367		C	Analyze spine infusion pump	0.00	0.00	0.00	0.00	0.00	0.07	0.07	0.07	0.07	0.07	XXX
62367	26	A	Analyze spine infusion pump	0.48	0.12	0.25	0.12	0.25	0.07	0.67	0.80	0.67	0.80	XXX
62367	TC	C	Analyze spine infusion pump	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
62368		C	Analyze spine infusion pump	0.00	0.00	0.00	0.00	0.00	0.11	0.11	0.11	0.11	0.11	XXX
62368	26	A	Analyze spine infusion pump	0.75	0.16	0.38	0.16	0.38	0.11	1.02	1.24	1.02	1.24	XXX
62368	TC	C	Analyze spine infusion pump	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
63001		A	Removal of spinal lamina	15.82	NA	NA	12.31	15.60	2.43	NA	NA	30.56	33.85	090
63003		A	Removal of spinal lamina	15.95	NA	NA	11.73	15.39	2.45	NA	NA	30.13	33.79	090
63005		A	Removal of spinal lamina	14.92	NA	NA	11.07	14.44	2.29	NA	NA	28.28	31.65	090
63011		A	Removal of spinal lamina	14.52	NA	NA	13.93	12.39	2.23	NA	NA	30.68	29.14	090
63012		A	Removal of spinal lamina	15.40	NA	NA	10.26	14.32	2.36	NA	NA	28.02	32.08	090
63015		A	Removal of spinal lamina	19.35	NA	NA	13.40	18.22	2.97	NA	NA	35.72	40.54	090
63016		A	Removal of spinal lamina	19.20	NA	NA	13.27	18.10	2.94	NA	NA	35.41	40.24	090
63017		A	Removal of spinal lamina	15.94	NA	NA	11.70	15.36	2.44	NA	NA	30.08	33.74	090
63020		A	Neck spine disk surgery	14.81	NA	NA	11.05	14.23	2.27	NA	NA	28.13	31.31	090
63030		A	Low back disk surgery	12.00	NA	NA	9.75	12.04	1.84	NA	NA	23.59	25.88	090
63035		A	Spinal disk surgery add-on	3.15	NA	NA	1.65	2.71	0.48	NA	NA	5.28	6.34	ZZZ
63040		A	Neck spine disk surgery	18.81	NA	NA	13.04	17.75	2.88	NA	NA	34.73	39.44	090
63042		A	Low back disk surgery	17.47	NA	NA	12.56	16.71	2.68	NA	NA	32.71	36.86	090
63045		A	Removal of spinal lamina	16.50	NA	NA	11.94	15.82	2.53	NA	NA	30.97	34.85	090
63046		A	Removal of spinal lamina	15.80	NA	NA	11.46	15.16	2.42	NA	NA	29.68	33.38	090
63047		A	Removal of spinal lamina	14.61	NA	NA	11.04	14.24	2.24	NA	NA	27.89	31.09	090
63048		A	Remove spinal lamina add-on	3.26	NA	NA	1.73	2.82	0.50	NA	NA	5.49	6.58	ZZZ
63055		A	Decompress spinal cord	21.99	NA	NA	15.01	20.38	3.37	NA	NA	40.37	45.74	090
63056		A	Decompress spinal cord	20.36	NA	NA	13.82	18.76	3.12	NA	NA	37.30	42.24	090
63057		A	Decompress spine cord add-on	5.26	NA	NA	2.79	3.48	0.81	NA	NA	8.86	9.55	ZZZ
63064		A	Decompress spinal cord	24.61	NA	NA	16.50	21.18	3.77	NA	NA	44.88	49.56	090
63066		A	Decompress spine cord add-on	3.26	NA	NA	1.73	2.21	0.50	NA	NA	5.49	5.97	ZZZ
63075		A	Neck spine disk surgery	19.41	NA	NA	13.66	18.37	2.98	NA	NA	36.05	38.76	090
63076		A	Neck spine disk surgery	4.05	NA	NA	2.14	3.49	0.62	NA	NA	6.81	8.16	ZZZ
63077		A	Spine disk surgery, thorax	21.44	NA	NA	14.76	17.38	3.29	NA	NA	39.49	42.11	090
63078		A	Spine disk surgery, thorax	3.28	NA	NA	1.71	2.27	0.50	NA	NA	5.49	6.05	ZZZ
63081		A	Removal of vertebral body	23.73	NA	NA	16.27	22.30	3.64	NA	NA	43.64	49.67	090
63082		A	Remove vertebral body add-on	4.37	NA	NA	2.33	3.78	0.67	NA	NA	7.37	8.82	ZZZ
63085		A	Removal of vertebral body	26.92	NA	NA	17.96	23.85	4.13	NA	NA	49.01	54.90	090
63086		A	Remove vertebral body add-on	3.19	NA	NA	1.68	2.75	0.49	NA	NA	5.36	6.43	ZZZ
63087		A	Removal of vertebral body	35.57	NA	NA	22.78	26.72	5.45	NA	NA	63.80	67.74	090
63088		A	Remove vertebral body add-on	4.33	NA	NA	2.26	3.72	0.66	NA	NA	7.25	8.71	ZZZ
63090		A	Removal of vertebral body	28.16	NA	NA	18.05	24.88	4.32	NA	NA	50.53	57.36	090
63091		A	Remove vertebral body add-on	3.03	NA	NA	1.55	2.26	0.46	NA	NA	5.04	5.75	ZZZ
63170		A	Incise spinal cord tract(s)	19.83	NA	NA	13.62	17.06	3.04	NA	NA	36.49	39.93	090
63172		A	Drainage of spinal cyst	17.66	NA	NA	13.29	17.19	2.71	NA	NA	33.66	37.56	090
63173		A	Drainage of spinal cyst	21.99	NA	NA	15.43	16.11	3.37	NA	NA	40.79	41.47	090
63180		A	Revise spinal cord ligaments	18.27	NA	NA	11.32	11.96	2.80	NA	NA	32.39	33.03	090
63182		A	Revise spinal cord ligaments	20.50	NA	NA	12.47	15.16	3.14	NA	NA	36.11	38.80	090
63185		A	Incise spinal column/nerves	15.04	NA	NA	13.05	14.97	2.31	NA	NA	30.40	32.32	090
63190		A	Incise spinal column/nerves	17.45	NA	NA	12.97	16.91	2.68	NA	NA	33.10	37.04	090
63191		A	Incise spinal column/nerves	17.54	NA	NA	11.37	12.76	2.69	NA	NA	31.60	32.99	090
63194		A	Incise spinal column & cord	19.19	NA	NA	11.91	13.02	2.94	NA	NA	34.04	35.15	090
63195		A	Incise spinal column & cord	18.84	NA	NA	12.91	13.98	2.89	NA	NA	34.64	35.71	090
63196		A	Incise spinal column & cord	22.30	NA	NA	11.47	14.20	3.42	NA	NA	37.19	39.92	090
63197		A	Incise spinal column & cord	21.11	NA	NA	13.87	14.73	3.24	NA	NA	38.22	39.08	090
63198		A	Incise spinal column & cord	25.38	NA	NA	12.65	15.18	3.89	NA	NA	41.92	44.45	090
63199		A	Incise spinal column & cord	26.89	NA	NA	15.23	19.23	4.12	NA	NA	46.24	50.24	090
63200		A	Release of spinal cord	19.18	NA	NA	12.93	13.24	2.94	NA	NA	35.05	35.36	090
63250		A	Revise spinal cord vessels	40.76	NA	NA	20.31	25.35	6.25	NA	NA	67.32	72.36	090
63251		A	Revise spinal cord vessels	41.20	NA	NA	22.83	23.76	6.32	NA	NA	70.35	71.28	090
63252		A	Revise spinal cord vessels	41.19	NA	NA	23.19	26.93	6.31	NA	NA	70.69	74.43	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
63265		A	Excise intraspinal lesion	21.56	NA	NA	13.38	18.64	3.31	NA	NA	38.25	43.51	090
63266		A	Excise intraspinal lesion	22.30	NA	NA	13.81	20.22	3.42	NA	NA	39.53	45.94	090
63267		A	Excise intraspinal lesion	17.95	NA	NA	11.42	16.43	2.75	NA	NA	32.12	37.13	090
63268		A	Excise intraspinal lesion	18.52	NA	NA	11.81	12.72	2.84	NA	NA	33.17	34.08	090
63270		A	Excise intraspinal lesion	26.80	NA	NA	16.21	17.95	4.11	NA	NA	47.12	48.86	090
63271		A	Excise intraspinal lesion	26.92	NA	NA	16.46	22.67	4.13	NA	NA	47.51	53.72	090
63272		A	Excise intraspinal lesion	25.32	NA	NA	15.32	20.22	3.88	NA	NA	44.52	49.42	090
63273		A	Excise intraspinal lesion	24.29	NA	NA	14.43	16.75	3.72	NA	NA	42.44	44.76	090
63275		A	Biopsy/excise spinal tumor	23.68	NA	NA	14.36	21.32	3.63	NA	NA	41.67	48.63	090
63276		A	Biopsy/excise spinal tumor	23.45	NA	NA	14.23	20.85	3.59	NA	NA	41.27	47.89	090
63277		A	Biopsy/excise spinal tumor	20.83	NA	NA	12.97	18.92	3.19	NA	NA	36.99	42.94	090
63278		A	Biopsy/excise spinal tumor	20.56	NA	NA	12.95	18.75	3.15	NA	NA	36.66	42.46	090
63280		A	Biopsy/excise spinal tumor	28.35	NA	NA	17.01	23.74	4.35	NA	NA	49.71	56.44	090
63281		A	Biopsy/excise spinal tumor	28.05	NA	NA	16.92	23.48	4.30	NA	NA	49.27	55.83	090
63282		A	Biopsy/excise spinal tumor	26.39	NA	NA	15.72	20.95	4.05	NA	NA	46.16	51.39	090
63283		A	Biopsy/excise spinal tumor	25.00	NA	NA	15.06	17.72	3.83	NA	NA	43.89	46.55	090
63285		A	Biopsy/excise spinal tumor	36.00	NA	NA	20.52	23.55	5.52	NA	NA	62.04	65.07	090
63286		A	Biopsy/excise spinal tumor	35.63	NA	NA	21.00	26.11	5.46	NA	NA	62.09	67.20	090
63287		A	Biopsy/excise spinal tumor	36.70	NA	NA	21.23	24.57	5.63	NA	NA	63.56	66.90	090
63290		A	Biopsy/excise spinal tumor	37.38	NA	NA	20.55	25.02	5.73	NA	NA	63.66	68.13	090
63300		A	Removal of vertebral body	24.43	NA	NA	14.87	16.81	3.74	NA	NA	43.04	44.98	090
63301		A	Removal of vertebral body	27.60	NA	NA	16.34	18.18	4.23	NA	NA	48.17	50.01	090
63302		A	Removal of vertebral body	27.81	NA	NA	16.14	19.66	4.26	NA	NA	48.21	51.73	090
63303		A	Removal of vertebral body	30.50	NA	NA	17.35	18.72	4.68	NA	NA	52.53	53.90	090
63304		A	Removal of vertebral body	30.33	NA	NA	17.75	20.44	4.65	NA	NA	52.73	55.42	090
63305		A	Removal of vertebral body	32.03	NA	NA	18.46	21.44	4.91	NA	NA	55.40	58.38	090
63306		A	Removal of vertebral body	32.22	NA	NA	17.80	21.25	4.94	NA	NA	54.96	58.41	090
63307		A	Removal of vertebral body	31.63	NA	NA	16.87	21.69	4.85	NA	NA	53.35	58.17	090
63308		A	Remove vertebral body add-on	5.25	NA	NA	2.75	3.58	0.80	NA	NA	8.80	9.63	ZZZ
63600		A	Remove spinal cord lesion	14.02	NA	NA	11.98	11.80	2.15	NA	NA	28.15	27.97	090
63610		A	Stimulation of spinal cord	8.73	NA	NA	5.35	6.33	1.34	NA	NA	15.42	16.40	000
63615		A	Remove lesion of spinal cord	16.28	NA	NA	10.71	11.62	2.50	NA	NA	29.49	30.40	090
63650		A	Implant neuroelectrodes	6.74	NA	NA	6.63	7.34	1.03	NA	NA	14.40	15.11	090
63655		A	Implant neuroelectrodes	10.29	NA	NA	7.74	10.02	1.58	NA	NA	19.61	21.89	090
63660		A	Revise/remove neuroelectrode	6.16	NA	NA	6.76	7.06	0.94	NA	NA	13.86	14.16	090
63685		A	Implant neuroreceiver	7.04	NA	NA	6.67	7.35	1.08	NA	NA	14.79	15.47	090
63688		A	Revise/remove neuroreceiver	5.39	NA	NA	5.79	6.12	0.83	NA	NA	12.01	12.34	090
63700		A	Repair of spinal herniation	16.53	NA	NA	10.40	11.36	2.53	NA	NA	29.46	30.42	090
63702		A	Repair of spinal herniation	18.48	NA	NA	11.47	12.67	2.83	NA	NA	32.78	33.98	090
63704		A	Repair of spinal herniation	21.18	NA	NA	12.84	14.12	3.25	NA	NA	37.27	38.55	090
63706		A	Repair of spinal herniation	24.11	NA	NA	13.95	15.84	3.70	NA	NA	41.76	43.65	090
63707		A	Repair spinal fluid leakage	11.26	NA	NA	8.09	10.77	1.73	NA	NA	21.08	23.76	090
63709		A	Repair spinal fluid leakage	14.32	NA	NA	9.59	13.34	2.20	NA	NA	26.11	29.86	090
63710		A	Graft repair of spine defect	14.07	NA	NA	9.49	10.04	2.16	NA	NA	25.72	26.27	090
63740		A	Install spinal shunt	11.36	NA	NA	7.99	10.78	1.74	NA	NA	21.09	23.88	090
63741		A	Install spinal shunt	8.25	NA	NA	6.34	8.10	1.26	NA	NA	15.85	17.61	090
63744		A	Revision of spinal shunt	8.10	NA	NA	6.15	7.50	1.24	NA	NA	15.49	16.84	090
63746		A	Removal of spinal shunt	6.43	NA	NA	7.52	6.76	0.99	NA	NA	14.94	14.18	090
64400		A	Injection for nerve block	1.11	3.18	1.85	0.25	0.26	0.09	4.38	3.05	1.45	1.46	000
64402		A	Injection for nerve block	1.25	5.02	2.85	0.47	0.57	0.08	6.35	4.18	1.80	1.90	000
64405		A	Injection for nerve block	1.32	4.36	2.53	0.24	0.30	0.13	5.81	3.98	1.69	1.75	000
64408		A	Injection for nerve block	1.41	2.50	1.82	0.43	0.50	0.14	4.05	3.37	1.98	2.05	000
64410		A	Injection for nerve block	1.43	5.34	3.06	0.29	0.53	0.09	6.86	4.58	1.81	2.05	000
64412		A	Injection for nerve block	1.18	4.16	2.42	0.22	0.28	0.10	5.44	3.70	1.50	1.56	000
64413		A	Injection for nerve block	1.40	3.79	2.30	0.30	0.35	0.12	5.31	3.82	1.82	1.87	000
64415		A	Injection for nerve block	1.48	4.32	2.30	0.25	0.27	0.11	5.91	3.89	1.84	1.86	000
64417		A	Injection for nerve block	1.44	10.05	5.37	0.28	0.48	0.11	11.60	6.92	1.83	2.03	000
64418		A	Injection for nerve block	1.32	5.38	3.15	0.23	0.35	0.09	6.79	4.56	1.64	1.76	000
64420		A	Injection for nerve block	1.18	4.01	2.35	0.22	0.46	0.08	5.27	3.61	1.48	1.72	000
64421		A	Injection for nerve block	1.68	7.69	4.30	0.31	0.61	0.11	9.48	6.09	2.10	2.40	000
64425		A	Injection for nerve block	1.75	6.52	3.57	0.32	0.47	0.13	8.40	5.45	2.20	2.35	000
64430		A	Injection for nerve block	1.46	3.93	2.35	0.38	0.57	0.10	5.49	3.91	1.94	2.13	000
64435		A	Injection for nerve block	1.45	3.17	1.84	0.52	0.39	0.11	4.73	3.40	2.08	1.95	000
64440		A	Injection for nerve block	1.34	4.11	2.49	0.32	0.38	0.10	5.55	3.93	1.76	1.82	000
64441		A	Injection for nerve block	1.79	4.46	2.78	0.36	0.46	0.13	6.38	4.70	2.28	2.38	000
64442		A	Injection for nerve block	1.41	6.57	3.93	0.33	0.81	0.10	8.08	5.44	1.84	2.32	000
64443		A	Inject, nerve block add-on	0.98	10.15	5.42	0.22	0.45	0.07	11.20	6.47	1.27	1.50	ZZZ
64445		A	Injection for nerve block	1.48	4.73	2.63	0.28	0.28	0.10	6.31	4.21	1.86	1.86	000
64450		A	Injection for nerve block	1.27	2.81	1.70	0.28	0.29	0.09	4.17	3.06	1.64	1.65	000
64505		A	Injection for nerve block	1.36	3.14	1.91	0.32	0.33	0.09	4.59	3.36	1.77	1.78	000
64508		A	Injection for nerve block	1.12	1.70	1.42	0.26	0.42	0.13	2.95	2.67	1.51	1.67	000
64510		A	Injection for nerve block	1.22	10.92	5.85	0.20	0.49	0.08	12.22	7.15	1.50	1.79	000
64520		A	Injection for nerve block	1.35	7.16	3.97	0.24	0.51	0.10	8.61	5.42	1.69	1.96	000
64530		A	Injection for nerve block	1.58	10.91	6.09	0.28	0.78	0.10	12.59	7.77	1.96	2.46	000
64550		A	Apply neurostimulator	0.18	0.53	0.51	0.05	0.15	0.01	0.72	0.70	0.24	0.34	000
64553		A	Implant neuroelectrodes	2.31	1.49	1.30	1.38	0.97	0.07	3.87	3.68	3.76	3.35	010
64555		A	Implant neuroelectrodes	2.27	2.94	1.70	0.46	0.35	0.17	5.38	4.14	2.90	2.79	010
64560		A	Implant neuroelectrodes	2.36	2.87	2.22	0.48	0.64	0.18	5.41	4.76	3.02	3.18	010
64565		A	Implant neuroelectrodes	1.76	3.39	2.11	0.72	0.57	0.14	5.29	4.01	2.62	2.47	010
64573		A	Implant neuroelectrodes	4.43	NA	NA	3.85	3.64	0.89	NA	NA	9.17	8.96	090
64575		A	Implant neuroelectrodes	4.35	NA	NA	3.91	3.62	0.68	NA	NA	8.94	8.65	090
64577		A	Implant neuroelectrodes	4.62	NA	NA	4.11	3.56	0.66	NA	NA	9.39	8.84	090
64580		A	Implant neuroelectrodes	4.12	NA	NA	5.49	4.33	0.40	NA	NA	10.01	8.85	090
64585		A	Revise/remove neuroelectrode	2.06	5.45	3.25	3.81	2.43	0.27	7.78	5.58	6.14	4.76	010

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
64590		A	Implant neuroreceiver	2.40	NA	NA	2.70	2.35	0.38	NA	NA	5.48	5.13	010
64595		A	Revise/remove neuroreceiver	1.73	NA	NA	5.25	3.24	0.15	NA	NA	7.13	5.12	010
64600		A	Injection treatment of nerve	3.45	3.91	2.87	3.91	2.87	0.35	7.71	6.67	7.71	6.67	010
64605		A	Injection treatment of nerve	5.61	9.81	5.75	5.85	3.77	0.43	15.85	11.79	11.89	9.81	010
64610		A	Injection treatment of nerve	7.16	NA	NA	5.20	6.54	1.33	NA	NA	13.69	15.03	010
64612		A	Destroy nerve, face muscle	1.96	2.69	2.13	1.71	1.25	0.15	4.80	4.24	3.82	3.36	010
64613		A	Destroy nerve, spine muscle	1.96	1.42	1.50	1.42	1.11	0.37	3.75	3.83	3.75	3.44	010
64620		A	Injection treatment of nerve	2.84	9.82	5.46	0.55	0.82	0.20	12.86	8.50	3.59	3.86	010
64622		A	Injection treatment of nerve	3.00	10.51	6.25	0.60	1.29	0.21	13.72	9.46	3.81	4.50	010
64623		A	Inject, tx of nerve add-on	0.99	10.68	5.80	0.20	0.56	0.07	11.74	6.86	1.26	1.62	ZZZ
64630		A	Injection treatment of nerve	3.00	3.53	2.71	0.57	1.23	0.25	6.78	5.96	3.82	4.48	010
64640		A	Injection treatment of nerve	2.76	5.64	3.32	0.85	0.93	0.21	8.61	6.29	3.82	3.90	010
64680		A	Injection treatment of nerve	2.62	11.74	6.71	0.60	1.14	0.17	14.53	9.50	3.39	3.93	010
64702		A	Revise finger/toe nerve	4.23	NA	NA	3.50	4.04	0.47	NA	NA	8.20	8.74	090
64704		A	Revise hand/foot nerve	4.57	NA	NA	2.92	4.19	0.39	NA	NA	7.88	9.15	090
64708		A	Revise arm/leg nerve	6.12	NA	NA	5.12	6.21	0.69	NA	NA	11.93	13.02	090
64712		A	Revision of sciatic nerve	7.75	NA	NA	7.46	8.36	0.78	NA	NA	15.99	16.89	090
64713		A	Revision of arm nerve(s)	11.00	NA	NA	8.53	9.37	1.18	NA	NA	20.71	21.55	090
64714		A	Revise low back nerve(s)	10.33	NA	NA	9.41	8.03	0.79	NA	NA	20.53	19.15	090
64716		A	Revision of cranial nerve	6.31	NA	NA	4.51	4.88	0.62	NA	NA	11.44	11.81	090
64718		A	Revise ulnar nerve at elbow	5.99	NA	NA	4.83	5.99	0.78	NA	NA	11.60	12.76	090
64719		A	Revise ulnar nerve at wrist	4.85	NA	NA	4.21	4.79	0.56	NA	NA	9.62	10.20	090
64721		A	Carpal tunnel surgery	4.29	5.50	5.31	5.27	5.20	0.52	10.31	10.12	10.08	10.01	090
64722		A	Relieve pressure on nerve(s)	4.70	NA	NA	6.26	5.94	0.41	NA	NA	11.37	11.05	090
64726		A	Release foot/toe nerve	4.18	NA	NA	5.34	3.06	0.31	NA	NA	9.83	7.55	090
64727		A	Internal nerve revision	3.10	NA	NA	1.46	2.49	0.35	NA	NA	4.91	5.94	ZZZ
64732		A	Incision of brow nerve	4.41	NA	NA	3.97	4.33	0.78	NA	NA	9.16	9.52	090
64734		A	Incision of cheek nerve	4.92	NA	NA	3.52	4.26	0.75	NA	NA	9.19	9.93	090
64736		A	Incision of chin nerve	4.60	NA	NA	2.68	3.76	0.41	NA	NA	7.69	8.77	090
64738		A	Incision of jaw nerve	5.73	NA	NA	3.42	4.46	0.62	NA	NA	9.77	10.81	090
64740		A	Incision of tongue nerve	5.59	NA	NA	3.31	4.47	0.41	NA	NA	9.31	10.47	090
64742		A	Incision of facial nerve	6.22	NA	NA	4.55	4.99	0.57	NA	NA	11.34	11.78	090
64744		A	Incise nerve, back of head	5.24	NA	NA	4.54	5.40	0.97	NA	NA	10.75	11.61	090
64746		A	Incise diaphragm nerve	5.93	NA	NA	4.41	4.25	0.64	NA	NA	10.98	10.82	090
64752		A	Incision of vagus nerve	7.06	NA	NA	4.40	4.34	0.70	NA	NA	12.16	12.10	090
64755		A	Incision of stomach nerves	13.52	NA	NA	6.60	8.98	1.28	NA	NA	21.40	23.78	090
64760		A	Incision of vagus nerve	6.96	NA	NA	4.28	5.75	0.67	NA	NA	11.91	13.38	090
64761		A	Incision of pelvis nerve	6.41	NA	NA	4.19	4.63	0.46	NA	NA	11.06	11.50	090
64763		A	Incise hip/thigh nerve	6.93	NA	NA	6.00	5.61	0.76	NA	NA	13.69	13.30	090
64766		A	Incise hip/thigh nerve	8.67	NA	NA	5.93	6.59	1.42	NA	NA	16.02	16.68	090
64771		A	Sever cranial nerve	7.35	NA	NA	5.52	6.25	0.91	NA	NA	13.78	14.51	090
64772		A	Incision of spinal nerve	7.21	NA	NA	5.22	6.29	1.20	NA	NA	13.63	14.70	090
64774		A	Remove skin nerve lesion	5.17	NA	NA	4.00	3.49	0.54	NA	NA	9.71	9.20	090
64776		A	Remove digit nerve lesion	5.12	NA	NA	4.27	3.65	0.46	NA	NA	9.85	9.23	090
64778		A	Digit nerve surgery add-on	3.11	NA	NA	1.58	2.27	0.37	NA	NA	5.06	5.75	ZZZ
64782		A	Remove limb nerve lesion	6.23	NA	NA	3.38	4.24	0.48	NA	NA	10.09	10.95	090
64783		A	Limb nerve surgery add-on	3.72	NA	NA	1.85	2.70	0.39	NA	NA	5.96	6.81	ZZZ
64784		A	Remove nerve lesion	9.82	NA	NA	6.41	6.27	1.12	NA	NA	17.35	17.21	090
64786		A	Remove sciatic nerve lesion	15.46	NA	NA	9.81	11.78	1.99	NA	NA	27.26	29.23	090
64787		A	Implant nerve end	4.30	NA	NA	2.16	2.97	0.45	NA	NA	6.91	7.72	ZZZ
64788		A	Remove skin nerve lesion	4.61	NA	NA	3.37	3.66	0.51	NA	NA	8.49	8.78	090
64790		A	Removal of nerve lesion	11.31	NA	NA	7.16	7.44	1.54	NA	NA	20.01	20.29	090
64792		A	Removal of nerve lesion	14.92	NA	NA	8.73	9.25	2.01	NA	NA	25.66	26.18	090
64795		A	Biopsy of nerve	3.01	NA	NA	1.80	2.19	0.44	NA	NA	5.25	5.64	000
64802		A	Remove sympathetic nerves	9.15	NA	NA	7.49	6.68	1.04	NA	NA	17.68	16.87	090
64804		A	Remove sympathetic nerves	14.64	NA	NA	9.70	11.78	1.92	NA	NA	26.26	28.34	090
64809		A	Remove sympathetic nerves	13.67	NA	NA	9.16	10.31	1.77	NA	NA	24.60	25.75	090
64818		A	Remove sympathetic nerves	10.30	NA	NA	7.49	8.40	1.21	NA	NA	19.00	19.91	090
64820		A	Remove sympathetic nerves	10.37	NA	NA	7.36	7.63	1.11	NA	NA	18.84	19.11	090
64831		A	Repair of digit nerve	9.44	NA	NA	6.64	5.16	1.05	NA	NA	17.13	15.65	090
64832		A	Repair nerve add-on	5.66	NA	NA	2.99	2.26	0.62	NA	NA	9.27	8.54	ZZZ
64834		A	Repair of hand or foot nerve	10.19	NA	NA	6.67	5.24	1.13	NA	NA	17.99	16.56	090
64835		A	Repair of hand or foot nerve	10.94	NA	NA	7.33	6.90	1.20	NA	NA	19.47	19.04	090
64836		A	Repair of hand or foot nerve	10.94	NA	NA	7.56	7.42	1.25	NA	NA	19.75	19.61	090
64837		A	Repair nerve add-on	6.26	NA	NA	3.27	4.05	0.69	NA	NA	10.22	11.00	ZZZ
64840		A	Repair of leg nerve	13.02	NA	NA	8.66	9.95	1.09	NA	NA	22.77	24.06	090
64856		A	Repair/transpose nerve	13.80	NA	NA	8.86	8.89	1.59	NA	NA	24.25	24.28	090
64857		A	Repair arm/leg nerve	14.49	NA	NA	9.37	9.86	1.62	NA	NA	25.48	25.97	090
64858		A	Repair sciatic nerve	16.49	NA	NA	10.09	11.01	2.53	NA	NA	29.11	30.03	090
64859		A	Nerve surgery	4.26	NA	NA	2.24	3.02	0.47	NA	NA	6.97	7.75	ZZZ
64861		A	Repair of arm nerves	19.24	NA	NA	11.36	12.96	1.77	NA	NA	32.37	33.97	090
64862		A	Repair of low back nerves	19.44	NA	NA	11.36	17.38	4.16	NA	NA	34.96	40.98	090
64864		A	Repair of facial nerve	12.55	NA	NA	8.28	8.41	1.17	NA	NA	22.00	22.13	090
64865		A	Repair of facial nerve	15.24	NA	NA	9.69	11.54	1.44	NA	NA	26.37	28.22	090
64866		A	Fusion of facial/other nerve	15.74	NA	NA	10.04	11.09	1.50	NA	NA	27.28	28.33	090
64868		A	Fusion of facial/other nerve	14.04	NA	NA	8.91	10.53	1.66	NA	NA	24.61	26.23	090
64870		A	Fusion of facial/other nerve	15.99	NA	NA	8.91	12.01	1.83	NA	NA	26.73	29.83	090
64872		A	Subsequent repair of nerve	1.99	NA	NA	1.07	1.32	0.23	NA	NA	3.29	3.54	ZZZ
64874		A	Repair & revise nerve add-on	2.98	NA	NA	1.52	1.94	0.34	NA	NA	4.84	5.26	ZZZ
64876		A	Repair nerve; shorten bone	3.38	NA	NA	1.29	1.98	0.39	NA	NA	5.06	5.75	ZZZ
64885		A	Nerve graft, head or neck	17.53	NA	NA	11.07	12.42	1.51	NA	NA	30.11	31.46	090
64886		A	Nerve graft, head or neck	20.75	NA	NA	13.02	14.72	1.82	NA	NA	35.59	37.29	090
64890		A	Nerve graft, hand or foot	15.15	NA	NA	9.97	11.64	1.63	NA	NA	26.75	28.42	090
64891		A	Nerve graft, hand or foot	16.14	NA	NA	8.89	10.10	1.62	NA	NA	26.65	27.86	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
64892		A	Nerve graft, arm or leg	14.65	NA	NA	8.79	10.39	1.77	NA	NA	25.21	26.81	090
64893		A	Nerve graft, arm or leg	15.60	NA	NA	8.37	11.75	2.25	NA	NA	26.22	29.60	090
64895		A	Nerve graft, hand or foot	19.25	NA	NA	11.09	12.69	1.93	NA	NA	32.27	33.87	090
64896		A	Nerve graft, hand or foot	20.49	NA	NA	11.91	15.47	2.21	NA	NA	34.61	38.17	090
64897		A	Nerve graft, arm or leg	18.24	NA	NA	10.47	12.09	1.97	NA	NA	30.68	32.30	090
64898		A	Nerve graft, arm or leg	19.50	NA	NA	12.22	13.93	2.06	NA	NA	33.78	35.49	090
64901		A	Nerve graft add-on	10.22	NA	NA	5.30	8.17	1.09	NA	NA	16.61	19.48	ZZZ
64902		A	Nerve graft add-on	11.83	NA	NA	6.49	9.72	1.13	NA	NA	19.45	22.68	ZZZ
64905		A	Nerve pedicle transfer	14.02	NA	NA	7.35	8.78	1.09	NA	NA	22.46	23.89	090
64907		A	Nerve pedicle transfer	18.83	NA	NA	11.15	12.64	2.12	NA	NA	32.10	33.59	090
64999		C	Nervous system surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
65091		A	Revise eye	6.46	NA	NA	8.36	8.04	0.28	NA	NA	15.10	14.78	090
65093		A	Revise eye with implant	6.87	NA	NA	9.10	8.65	0.29	NA	NA	16.26	15.81	090
65101		A	Removal of eye	7.03	NA	NA	9.29	8.84	0.31	NA	NA	16.63	16.18	090
65103		A	Remove eye/insert implant	7.57	NA	NA	9.33	9.19	0.31	NA	NA	17.21	17.07	090
65105		A	Remove eye/attach implant	8.49	NA	NA	9.87	10.01	0.35	NA	NA	18.71	18.85	090
65110		A	Removal of eye	13.95	NA	NA	13.20	14.93	0.71	NA	NA	27.86	29.59	090
65112		A	Remove eye, revise socket	16.38	NA	NA	15.84	14.52	1.26	NA	NA	33.48	32.16	090
65114		A	Remove eye, revise socket	17.53	NA	NA	15.08	14.63	0.86	NA	NA	33.47	33.02	090
65125		A	Revise ocular implant	3.12	4.24	3.46	1.59	2.14	0.17	7.53	6.75	4.86	5.43	090
65130		A	Insert ocular implant	7.15	NA	NA	8.57	8.56	0.32	NA	NA	16.04	16.03	090
65135		A	Insert ocular implant	7.33	NA	NA	8.76	7.32	0.33	NA	NA	16.42	14.98	090
65140		A	Attach ocular implant	8.02	NA	NA	8.96	7.86	0.34	NA	NA	17.32	16.22	090
65150		A	Revise ocular implant	6.26	NA	NA	7.96	7.72	0.26	NA	NA	14.48	14.24	090
65155		A	Reinsert ocular implant	8.66	NA	NA	9.69	10.02	0.42	NA	NA	18.77	19.10	090
65175		A	Removal of ocular implant	6.28	NA	NA	8.07	7.79	0.26	NA	NA	14.61	14.33	090
65205		A	Remove foreign body from eye	0.71	3.76	2.08	0.19	0.20	0.04	4.51	2.83	0.94	0.95	090
65210		A	Remove foreign body from eye	0.84	3.71	2.11	0.29	0.27	0.04	4.59	2.99	1.17	1.15	000
65220		A	Remove foreign body from eye	0.71	5.82	3.19	0.18	0.23	0.06	6.59	3.96	0.95	1.00	000
65222		A	Remove foreign body from eye	0.93	3.70	2.16	0.28	0.30	0.04	4.67	3.13	1.25	1.27	000
65235		A	Remove foreign body from eye	7.57	NA	NA	6.48	6.29	0.33	NA	NA	14.38	14.19	090
65260		A	Remove foreign body from eye	10.96	NA	NA	11.30	10.34	0.44	NA	NA	22.70	21.74	090
65265		A	Remove foreign body from eye	12.59	NA	NA	12.58	11.74	0.52	NA	NA	25.69	24.85	090
65270		A	Repair of eye wound	1.90	3.21	2.24	1.83	1.55	0.09	5.20	4.23	3.82	3.54	010
65272		A	Repair of eye wound	3.82	4.52	3.15	3.82	2.80	0.16	8.50	7.13	7.80	6.78	090
65273		A	Repair of eye wound	4.36	NA	NA	4.03	3.76	0.18	NA	NA	8.57	8.30	090
65275		A	Repair of eye wound	5.34	4.68	2.70	4.40	2.56	0.28	10.30	8.32	10.02	8.18	090
65280		A	Repair of eye wound	7.66	NA	NA	7.50	8.33	0.32	NA	NA	15.48	16.31	090
65285		A	Repair of eye wound	12.90	NA	NA	13.18	13.25	0.53	NA	NA	26.61	26.68	090
65286		A	Repair of eye wound	5.51	7.10	6.15	6.08	4.34	0.23	12.84	11.89	11.82	10.08	090
65290		A	Repair of eye socket wound	5.41	NA	NA	5.87	6.17	0.23	NA	NA	11.51	11.81	090
65400		A	Removal of eye lesion	6.06	7.99	7.50	6.70	6.86	0.25	14.30	13.81	13.01	13.17	090
65410		A	Biopsy of cornea	1.47	1.62	1.68	0.72	1.23	0.06	3.15	3.21	2.25	2.76	000
65420		A	Removal of eye lesion	4.17	6.31	5.48	5.43	5.04	0.17	10.65	9.82	9.77	9.38	090
65426		A	Removal of eye lesion	5.25	7.42	6.85	6.29	6.28	0.21	12.88	12.31	11.75	11.74	090
65430		A	Corneal smear	1.47	4.15	2.37	0.74	0.52	0.06	5.68	3.90	2.27	2.05	000
65435		A	Curette/treat cornea	0.92	1.25	1.05	0.44	0.43	0.04	2.21	2.01	1.40	1.39	000
65436		A	Curette/treat cornea	4.19	4.77	3.22	3.93	2.38	0.17	9.13	7.58	8.29	6.74	090
65450		A	Treatment of corneal lesion	3.27	5.95	4.76	4.94	4.25	0.13	9.35	8.16	8.34	7.65	090
65600		A	Revision of cornea	3.40	4.35	3.60	1.43	1.43	0.15	7.90	7.15	4.98	4.98	090
65710		A	Corneal transplant	12.35	NA	NA	12.66	13.08	0.51	NA	NA	25.52	25.94	090
65730		A	Corneal transplant	14.25	NA	NA	13.57	15.00	0.58	NA	NA	28.40	29.83	090
65750		A	Corneal transplant	15.00	NA	NA	13.96	15.72	0.61	NA	NA	29.57	31.33	090
65755		A	Corneal transplant	14.89	NA	NA	13.91	15.69	0.61	NA	NA	29.41	31.19	090
65760		N	Revision of cornea	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
65765		N	Revision of cornea	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
65767		N	Corneal tissue transplant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
65770		A	Revise cornea with implant	17.56	NA	NA	15.13	15.06	0.71	NA	NA	33.40	33.33	090
65771		N	Radial keratotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
65772		A	Correction of astigmatism	4.29	5.63	5.38	4.77	3.67	0.17	10.09	9.84	9.23	8.13	090
65775		A	Correction of astigmatism	5.79	NA	NA	7.91	7.41	0.24	NA	NA	13.94	13.44	090
65800		A	Drainage of eye	1.91	2.09	1.98	1.37	1.62	0.08	4.08	3.97	3.36	3.61	000
65805		A	Drainage of eye	1.91	2.09	2.03	1.37	1.18	0.08	4.08	4.02	3.36	3.17	000
65810		A	Drainage of eye	4.87	NA	NA	6.55	6.19	0.20	NA	NA	11.62	11.26	090
65815		A	Drainage of eye	5.05	7.27	6.07	6.23	5.55	0.21	12.53	11.33	11.49	10.81	090
65820		A	Relieve inner eye pressure	8.13	NA	NA	8.72	9.54	0.33	NA	NA	17.18	18.00	090
65850		A	Incision of eye	10.52	NA	NA	9.76	11.16	0.43	NA	NA	20.71	22.11	090
65855		A	Laser surgery of eye	4.30	4.88	5.70	3.99	3.63	0.18	9.36	10.18	8.47	8.11	090
65860		A	Incise inner eye adhesions	3.55	3.71	3.98	2.92	2.52	0.15	7.41	7.68	6.62	6.22	090
65865		A	Incise inner eye adhesions	5.60	NA	NA	6.48	6.59	0.23	NA	NA	12.31	12.42	090
65870		A	Incise inner eye adhesions	6.27	NA	NA	6.81	6.59	0.26	NA	NA	13.34	13.12	090
65875		A	Incise inner eye adhesions	6.54	NA	NA	6.94	6.88	0.27	NA	NA	13.75	13.69	090
65880		A	Incise inner eye adhesions	7.09	NA	NA	7.23	7.33	0.29	NA	NA	14.61	14.71	090
65900		A	Remove eye lesion	10.93	NA	NA	12.00	10.29	0.50	NA	NA	23.43	21.72	090
65920		A	Remove implant from eye	8.40	NA	NA	7.88	8.48	0.35	NA	NA	16.63	17.23	090
65930		A	Remove blood clot from eye	7.44	NA	NA	8.22	8.28	0.30	NA	NA	15.96	16.02	090
66020		A	Injection treatment of eye	1.59	2.15	2.03	1.43	1.67	0.07	3.81	3.69	3.09	3.33	010
66030		A	Injection treatment of eye	1.25	1.96	1.28	1.24	0.77	0.05	3.26	2.58	2.54	2.07	010
66130		A	Remove eye lesion	7.69	6.54	6.14	5.70	5.72	0.32	14.55	14.15	13.71	13.73	090
66150		A	Glaucoma surgery	8.30	NA	NA	8.66	9.29	0.34	NA	NA	17.30	17.93	090
66155		A	Glaucoma surgery	8.29	NA	NA	8.64	9.27	0.35	NA	NA	17.28	17.91	090
66160		A	Glaucoma surgery	10.17	NA	NA	9.57	10.63	0.44	NA	NA	20.18	21.24	090
66165		A	Glaucoma surgery	8.01	NA	NA	8.53	9.05	0.32	NA	NA	16.86	17.38	090
66170		A	Glaucoma surgery	12.16	11.11	12.15	10.63	11.91	0.50	23.77	24.81	23.29	24.57	090

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
66172		A	Incision of eye	15.04	NA	NA	12.11	12.65	0.62	NA	NA	27.77	28.31	090
66180		A	Implant eye shunt	14.55	NA	NA	11.94	14.66	0.60	NA	NA	27.09	29.81	090
66185		A	Revise eye shunt	8.14	NA	NA	8.58	9.15	0.34	NA	NA	17.06	17.63	090
66220		A	Repair eye lesion	7.77	NA	NA	9.12	7.79	0.33	NA	NA	17.22	15.89	090
66225		A	Repair/graft eye lesion	11.05	NA	NA	9.42	11.31	0.45	NA	NA	20.92	22.81	090
66250		A	Follow-up surgery of eye	5.98	7.99	7.57	6.66	6.90	0.25	14.22	13.80	12.89	13.13	090
66500		A	Incision of iris	3.71	NA	NA	3.71	4.07	0.15	NA	NA	7.57	7.93	090
66505		A	Incision of iris	4.08	NA	NA	3.94	3.75	0.17	NA	NA	8.19	8.00	090
66600		A	Remove iris and lesion	8.68	NA	NA	8.46	9.31	0.36	NA	NA	17.50	18.35	090
66605		A	Removal of iris	12.79	NA	NA	12.78	12.83	0.54	NA	NA	26.11	26.16	090
66625		A	Removal of iris	5.13	7.26	6.69	6.28	6.20	0.21	12.60	12.03	11.62	11.54	090
66630		A	Removal of iris	6.16	NA	NA	7.19	7.28	0.25	NA	NA	13.60	13.69	090
66635		A	Removal of iris	6.25	NA	NA	6.80	7.14	0.25	NA	NA	13.30	13.64	090
66680		A	Repair iris & ciliary body	5.44	NA	NA	6.39	6.44	0.23	NA	NA	12.06	12.11	090
66682		A	Repair iris and ciliary body	6.21	NA	NA	7.26	7.34	0.25	NA	NA	13.72	13.80	090
66700		A	Destruction, ciliary body	4.78	7.00	6.36	5.72	5.72	0.21	11.99	11.35	10.71	10.71	090
66710		A	Destruction, ciliary body	4.78	6.92	6.32	5.71	5.71	0.20	11.90	11.30	10.69	10.69	090
66720		A	Destruction, ciliary body	4.78	6.65	6.18	5.74	5.73	0.21	11.64	11.17	10.73	10.72	090
66740		A	Destruction, ciliary body	4.78	NA	NA	6.05	5.88	0.19	NA	NA	11.02	10.85	090
66761		A	Revision of iris	4.07	3.95	4.41	3.17	2.80	0.17	8.19	8.65	7.41	7.04	090
66762		A	Revision of iris	4.58	4.20	4.84	3.40	3.07	0.19	8.97	9.61	8.17	7.84	090
66770		A	Removal of inner eye lesion	5.18	4.45	5.32	3.69	3.40	0.21	9.84	10.71	9.08	8.79	090
66820		A	Incision, secondary cataract	3.89	NA	NA	6.03	5.34	0.16	NA	NA	10.08	9.39	090
66821		A	After cataract laser surgery	2.35	3.01	2.91	2.30	2.56	0.10	5.46	5.36	4.75	5.01	090
66825		A	Reposition intraocular lens	8.23	NA	NA	8.24	8.10	0.34	NA	NA	16.81	16.67	090
66830		A	Removal of lens lesion	8.20	9.13	8.73	8.62	8.47	0.34	17.67	17.27	17.16	17.01	090
66840		A	Removal of lens material	7.91	NA	NA	7.68	8.56	0.33	NA	NA	15.92	16.80	090
66850		A	Removal of lens material	9.11	NA	NA	7.94	9.41	0.38	NA	NA	17.43	18.90	090
66852		A	Removal of lens material	9.97	NA	NA	8.47	10.19	0.41	NA	NA	18.85	20.57	090
66920		A	Extraction of lens	8.86	NA	NA	7.86	9.22	0.37	NA	NA	17.09	18.45	090
66930		A	Extraction of lens	10.18	NA	NA	8.48	9.93	0.42	NA	NA	19.08	20.53	090
66940		A	Extraction of lens	8.93	NA	NA	7.86	9.26	0.37	NA	NA	17.16	18.56	090
66983		A	Remove cataract, insert lens	8.99	NA	NA	5.95	8.34	0.51	NA	NA	15.45	17.84	090
66984		A	Remove cataract, insert lens	10.28	NA	NA	7.57	9.92	0.45	NA	NA	18.30	20.65	090
66985		A	Insert lens prosthesis	8.39	NA	NA	6.71	8.37	0.36	NA	NA	15.46	17.12	090
66986		A	Exchange lens prosthesis	12.28	NA	NA	9.40	11.32	0.51	NA	NA	22.19	24.11	090
66999		C	Eye surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
67005		A	Partial removal of eye fluid	5.70	NA	NA	2.87	4.84	0.24	NA	NA	8.81	10.78	090
67010		A	Partial removal of eye fluid	6.87	NA	NA	3.49	5.85	0.28	NA	NA	10.64	13.00	090
67015		A	Release of eye fluid	6.92	NA	NA	7.30	7.15	0.29	NA	NA	14.51	14.36	090
67025		A	Replace eye fluid	6.84	11.93	9.63	6.77	7.05	0.29	19.06	16.76	13.90	14.18	090
67027		A	Implant eye drug system	10.85	13.62	11.72	6.53	8.17	0.45	24.92	23.02	17.83	19.47	090
67028		A	Injection eye drug	2.52	5.88	4.69	1.27	2.14	0.10	8.50	7.31	3.89	4.76	000
67030		A	Incise inner eye strands	4.84	NA	NA	5.90	5.84	0.20	NA	NA	10.94	10.88	090
67031		A	Laser surgery, eye strands	3.67	3.77	4.08	2.97	2.58	0.15	7.59	7.90	6.79	6.40	090
67036		A	Removal of inner eye fluid	11.89	NA	NA	8.46	11.33	0.49	NA	NA	20.84	23.71	090
67038		A	Strip retinal membrane	21.24	NA	NA	14.87	20.11	0.87	NA	NA	36.98	42.22	090
67039		A	Laser treatment of retina	14.52	NA	NA	11.05	14.19	0.59	NA	NA	26.16	29.30	090
67040		A	Laser treatment of retina	17.23	NA	NA	12.84	16.71	0.71	NA	NA	30.78	34.65	090
67101		A	Repair, detached retina	7.53	9.96	9.48	8.21	6.36	0.31	17.80	17.32	16.05	14.20	090
67105		A	Repair, detached retina	7.41	7.39	8.66	5.55	5.26	0.30	15.10	16.37	13.26	12.97	090
67107		A	Repair detached retina	14.84	NA	NA	12.60	15.16	0.61	NA	NA	28.05	30.61	090
67108		A	Repair detached retina	20.82	NA	NA	16.74	20.80	0.86	NA	NA	38.42	42.48	090
67110		A	Repair detached retina	8.81	15.24	12.88	9.52	10.02	0.36	24.41	22.05	18.69	19.19	090
67112		A	Re-repair detached retina	16.86	NA	NA	14.76	16.34	0.69	NA	NA	32.31	33.89	090
67115		A	Release, encircling material	4.99	NA	NA	5.97	5.97	0.20	NA	NA	11.16	11.16	090
67120		A	Remove eye implant material	5.98	11.39	9.27	6.41	6.78	0.25	17.62	15.50	12.64	13.01	090
67121		A	Remove eye implant material	10.67	NA	NA	10.86	10.54	0.45	NA	NA	21.98	21.66	090
67141		A	Treatment of retina	5.20	7.03	6.62	6.13	4.62	0.21	12.44	12.03	11.54	10.03	090
67145		A	Treatment of retina	5.37	5.15	6.10	4.14	3.84	0.22	10.74	11.69	9.73	9.43	090
67208		A	Treatment of retinal lesion	6.70	7.50	7.75	6.53	5.27	0.27	14.47	14.72	13.50	12.24	090
67210		A	Treatment of retinal lesion	8.82	7.26	8.53	5.86	5.38	0.36	16.44	17.71	15.04	14.56	090
67218		A	Treatment of retinal lesion	13.52	NA	NA	12.36	13.40	0.55	NA	NA	26.43	27.47	090
67220		A	Treat choroid lesion	13.13	8.68	6.68	6.62	6.62	0.53	20.34	20.34	20.28	20.28	090
67227		A	Treatment of retinal lesion	6.58	7.79	7.83	6.46	7.16	0.28	14.65	14.69	13.32	14.02	090
67228		A	Treatment of retinal lesion	12.74	9.88	10.04	7.55	8.33	0.52	23.14	23.30	20.81	19.59	090
67250		A	Reinforce eye wall	8.66	NA	NA	9.56	8.58	0.41	NA	NA	18.63	17.65	090
67255		A	Reinforce/graft eye wall	8.90	NA	NA	9.30	9.96	0.37	NA	NA	18.57	19.23	090
67299		C	Eye surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
67311		A	Revise eye muscle	6.65	NA	NA	6.18	7.06	0.28	NA	NA	13.11	13.99	090
67312		A	Revise two eye muscles	8.54	NA	NA	7.15	8.67	0.35	NA	NA	16.04	17.56	090
67314		A	Revise eye muscle	7.52	NA	NA	6.62	7.80	0.31	NA	NA	14.45	15.63	090
67316		A	Revise two eye muscles	9.66	NA	NA	7.64	9.40	0.41	NA	NA	17.71	19.47	090
67318		A	Revise eye muscle(s)	7.85	NA	NA	7.12	6.93	0.32	NA	NA	15.29	15.10	090
67320		A	Revise eye muscle(s) add-on	4.33	NA	NA	6.46	8.40	0.18	NA	NA	10.97	12.91	ZZZ
67331		A	Eye surgery follow-up add-on	4.06	NA	NA	4.92	7.31	0.17	NA	NA	9.15	11.54	ZZZ
67332		A	Rerevise eye muscles add-on	4.49	NA	NA	5.59	8.16	0.19	NA	NA	10.27	12.84	ZZZ
67334		A	Revise eye muscle w/suture	3.98	NA	NA	5.09	5.97	0.16	NA	NA	9.23	10.11	ZZZ
67335		A	Eye suture during surgery	2.49	NA	NA	1.26	2.12	0.10	NA	NA	3.85	4.71	ZZZ
67340		A	Revise eye muscle add-on	4.93	NA	NA	6.64	7.60	0.21	NA	NA	11.78	12.74	ZZZ
67343		A	Release eye tissue	7.35	NA	NA	6.88	6.61	0.30	NA	NA	14.53	14.26	090
67345		A	Destroy nerve of eye muscle	2.96	3.66	3.04	1.45	1.33	0.28	6.90	6.28	4.69	4.57	010
67350		A	Biopsy eye muscle	2.87	NA	NA	2.31	2.45	0.12	NA	NA	5.30	5.44	000
67399		C	Eye muscle surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
67400		A	Explore/biopsy eye socket	9.76	NA	NA	10.99	11.33	0.45	NA	NA	21.20	21.54	090
67405		A	Explore/drain eye socket	7.93	NA	NA	9.99	9.73	0.41	NA	NA	18.33	18.07	090
67412		A	Explore/treat eye socket	9.50	NA	NA	12.17	11.76	0.43	NA	NA	22.10	21.69	090
67413		A	Explore/treat eye socket	10.00	NA	NA	11.36	10.07	0.51	NA	NA	21.87	20.58	090
67414		A	Explore/decompress eye socke	11.13	NA	NA	13.37	11.24	0.54	NA	NA	25.04	22.91	090
67415		A	Aspiration orbital contents	1.76	NA	NA	0.82	1.47	0.09	NA	NA	2.67	3.32	000
67420		A	Explore/treat eye socket	20.06	NA	NA	17.85	18.03	1.13	NA	NA	39.04	39.22	090
67430		A	Explore/treat eye socket	13.39	NA	NA	13.29	12.43	0.62	NA	NA	27.30	26.44	090
67440		A	Explore/drain eye socket	13.09	NA	NA	13.16	14.40	0.56	NA	NA	26.81	28.05	090
67445		A	Explore/decompress eye socke	14.42	NA	NA	14.44	13.26	0.63	NA	NA	29.49	28.31	090
67450		A	Explore/biopsy eye socket	13.51	NA	NA	13.94	15.04	0.69	NA	NA	28.14	29.24	090
67500		A	Inject/treat eye socket	0.79	64.35	32.57	0.17	0.48	0.05	65.19	33.41	1.01	1.32	000
67505		A	Inject/treat eye socket	0.82	3.76	2.45	0.22	0.36	0.04	4.62	3.31	1.08	1.22	000
67515		A	Inject/treat eye socket	0.61	3.60	2.11	0.31	0.31	0.02	4.23	2.74	0.94	0.94	000
67550		A	Insert eye socket implant	10.19	NA	NA	10.37	10.41	0.52	NA	NA	21.08	21.12	090
67560		A	Revise eye socket implant	10.60	NA	NA	10.39	9.70	0.50	NA	NA	21.49	20.80	090
67570		A	Decompress optic nerve	13.58	NA	NA	14.38	11.29	0.85	NA	NA	28.81	25.72	090
67599		C	Orbit surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
67700		A	Drainage of eyelid abscess	1.35	5.13	2.83	0.60	0.44	0.06	6.54	4.24	2.01	1.85	010
67710		A	Incision of eyelid	1.02	5.17	3.14	1.35	0.95	0.04	6.23	4.20	2.41	2.01	010
67715		A	Incision of eyelid fold	1.22	NA	NA	1.49	1.47	0.05	NA	NA	2.76	2.74	010
67800		A	Remove eyelid lesion	1.38	5.26	3.14	0.70	0.61	0.06	6.70	4.58	2.14	2.05	010
67801		A	Remove eyelid lesions	1.88	3.30	2.41	1.82	1.29	0.08	5.26	4.37	3.78	3.25	010
67805		A	Remove eyelid lesions	2.22	7.23	4.37	1.96	1.36	0.09	9.54	6.68	4.27	3.67	010
67808		A	Remove eyelid lesion(s)	3.80	NA	NA	3.54	2.93	0.17	NA	NA	7.51	6.90	090
67810		A	Biopsy of eyelid	1.48	4.64	2.76	0.75	0.60	0.06	6.18	4.30	2.29	2.14	000
67820		A	Revise eyelashes	0.89	3.81	2.11	0.41	0.31	0.04	4.74	3.04	1.34	1.24	000
67825		A	Revise eyelashes	1.38	5.11	3.05	1.49	0.99	0.06	6.55	4.49	2.93	2.43	010
67830		A	Revise eyelashes	1.70	6.12	4.21	1.68	1.86	0.07	7.89	5.98	3.45	3.63	010
67835		A	Revise eyelashes	5.56	NA	NA	4.48	5.56	0.24	NA	NA	10.28	11.36	090
67840		A	Remove eyelid lesion	2.04	6.83	4.08	2.44	1.55	0.09	8.96	6.21	4.57	3.68	010
67850		A	Treat eyelid lesion	1.69	5.56	3.23	1.68	1.07	0.08	7.33	5.00	3.45	2.84	010
67875		A	Closure of eyelid by suture	1.35	6.69	4.28	2.25	1.94	0.06	8.10	5.69	3.66	3.35	000
67880		A	Revision of eyelid	3.80	7.90	6.09	3.36	3.82	0.16	11.86	10.05	7.32	7.78	090
67882		A	Revision of eyelid	5.07	9.65	7.86	4.16	5.11	0.22	14.94	13.15	9.45	10.40	090
67900		A	Repair brow defect	6.14	9.12	6.61	6.19	5.15	0.32	15.58	13.07	12.65	11.61	090
67901		A	Repair eyelid defect	6.97	NA	NA	6.55	7.44	0.36	NA	NA	13.88	14.77	090
67902		A	Repair eyelid defect	7.03	NA	NA	6.54	7.47	0.34	NA	NA	13.91	14.84	090
67903		A	Repair eyelid defect	6.37	10.62	9.12	6.57	7.09	0.43	17.42	15.92	13.37	13.89	090
67904		A	Repair eyelid defect	6.26	11.52	9.50	7.10	7.29	0.27	18.05	16.03	13.63	13.82	090
67906		A	Repair eyelid defect	6.79	8.54	7.24	6.21	6.07	0.27	15.60	14.30	13.27	13.13	090
67908		A	Repair eyelid defect	5.13	8.08	7.10	5.99	6.06	0.22	13.43	12.45	11.34	11.41	090
67909		A	Revise eyelid defect	5.40	8.32	7.39	6.07	6.26	0.24	13.96	13.03	11.71	11.90	090
67911		A	Revise eyelid defect	5.27	NA	NA	6.14	6.22	0.25	NA	NA	11.66	11.74	090
67914		A	Repair eyelid defect	3.68	8.28	6.34	3.70	4.05	0.16	12.12	10.18	7.54	7.89	090
67915		A	Repair eyelid defect	3.18	6.49	3.93	1.62	1.15	0.13	9.80	7.24	4.93	4.46	090
67916		A	Repair eyelid defect	5.31	10.24	8.29	4.69	5.52	0.24	15.79	13.84	10.24	11.07	090
67917		A	Repair eyelid defect	6.02	8.86	8.02	6.33	6.76	0.27	15.15	14.31	12.62	13.05	090
67921		A	Repair eyelid defect	3.40	7.97	6.02	3.45	3.76	0.14	11.51	9.56	6.99	7.30	090
67922		A	Repair eyelid defect	3.06	6.47	3.88	2.76	1.71	0.13	9.66	7.07	5.95	4.90	090
67923		A	Repair eyelid defect	5.88	10.36	8.69	4.95	5.99	0.25	16.49	14.82	11.08	12.12	090
67924		A	Repair eyelid defect	5.79	8.40	7.66	5.77	6.34	0.24	14.43	13.69	11.80	12.37	090
67930		A	Repair eyelid wound	3.61	8.27	4.83	3.27	1.98	0.17	12.05	8.61	7.05	5.76	010
67935		A	Repair eyelid wound	6.22	10.36	7.24	4.86	4.49	0.31	16.89	13.77	11.39	11.02	090
67938		A	Remove eyelid foreign body	1.33	4.98	2.77	0.52	0.40	0.07	6.38	4.17	1.92	1.80	010
67950		A	Revision of eyelid	5.82	7.05	7.00	6.48	6.72	0.29	13.16	13.11	12.59	12.83	090
67961		A	Revision of eyelid	5.69	6.90	6.85	6.06	6.43	0.27	12.86	12.81	12.02	12.39	090
67966		A	Revision of eyelid	6.57	7.34	7.60	5.68	6.77	0.32	14.23	14.49	12.57	13.66	090
67971		A	Reconstruction of eyelid	9.79	NA	NA	7.74	9.67	0.43	NA	NA	17.96	19.89	090
67973		A	Reconstruction of eyelid	12.87	NA	NA	9.59	12.14	0.61	NA	NA	23.07	25.62	090
67974		A	Reconstruction of eyelid	12.84	NA	NA	9.36	12.32	0.62	NA	NA	22.82	25.78	090
67975		A	Reconstruction of eyelid	9.13	NA	NA	7.40	5.95	0.39	NA	NA	16.92	15.47	090
67999		C	Revision of eyelid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
68020		A	Incise/drain eyelid lining	1.37	5.14	2.85	0.68	0.48	0.06	6.57	4.28	2.11	1.91	010
68040		A	Treatment of eyelid lesions	0.85	4.11	2.30	0.41	0.33	0.04	5.00	3.19	1.30	1.22	000
68100		A	Biopsy of eyelid lining	1.35	4.78	2.93	0.67	0.61	0.06	6.19	4.34	2.08	2.02	000
68110		A	Remove eyelid lining lesion	1.77	5.46	3.41	1.69	1.19	0.07	7.30	5.25	3.53	3.03	010
68115		A	Remove eyelid lining lesion	2.36	6.47	4.28	2.01	2.05	0.10	8.93	6.74	4.47	4.51	010
68130		A	Remove eyelid lining lesion	4.93	NA	NA	5.36	4.90	0.20	NA	NA	10.49	10.03	090
68135		A	Remove eyelid lining lesion	1.84	5.46	3.13	1.73	1.07	0.08	7.38	5.05	3.65	2.99	010
68200		A	Treat eyelid by injection	0.49	3.55	2.06	0.25	0.27	0.02	4.06	2.57	0.76	0.78	000
68320		A	Revise/graft eyelid lining	5.37	5.00	5.71	5.00	5.71	0.22	10.59	11.30	10.59	11.30	090
68325		A	Revise/graft eyelid lining	7.36	NA	NA	6.20	7.50	0.36	NA	NA	13.92	15.22	090
68326		A	Revise/graft eyelid lining	7.15	NA	NA	6.11	7.33	0.32	NA	NA	13.58	14.80	090
68328		A	Revise/graft eyelid lining	8.18	NA	NA	6.64	8.21	0.41	NA	NA	15.23	16.80	090
68330		A	Revise eyelid lining	4.83	6.62	6.19	5.39	5.58	0.20	11.65	11.22	10.42	10.61	090
68335		A	Revise/graft eyelid lining	7.19	NA	NA	5.10	6.84	0.31	NA	NA	12.60	14.34	090
68340		A	Separate eyelid adhesions	4.17	9.07	6.24	3.68	3.55	0.18	13.42	10.59	8.03	7.90	090
68360		A	Revise eyelid lining	4.37	6.29	5.76	5.08	5.15	0.18	10.84	10.31	9.63	9.70	090
68362		A	Revise eyelid lining	7.34	NA	NA	7.37	8.03	0.30	NA	NA	15.01	15.67	090
68399		C	Eyelid lining surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
68400		A	Incise/drain tear gland	1.69	6.89	3.99	2.18	1.37	0.07	8.65	5.75	3.94	3.13	010
68420		A	Incise/drain tear sac	2.30	7.24	4.18	2.63	1.60	0.10	9.64	6.58	5.03	4.00	010
68440		A	Incise tear duct opening	0.94	5.08	2.95	1.28	0.85	0.04	6.06	3.93	2.26	1.83	010

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
68500		A	Removal of tear gland	11.02	NA	NA	9.24	8.75	0.54	NA	NA	20.80	20.31	090
68505		A	Partial removal tear gland	10.94	NA	NA	10.20	9.82	0.69	NA	NA	21.83	21.45	090
68510		A	Biopsy of tear gland	4.61	7.61	5.81	2.33	3.17	0.19	12.41	10.61	7.13	7.97	000
68520		A	Removal of tear sac	7.51	NA	NA	6.87	7.92	0.34	NA	NA	14.72	15.77	090
68525		A	Biopsy of tear sac	4.43	NA	NA	2.27	3.13	0.19	NA	NA	6.89	7.75	000
68530		A	Clearance of tear duct	3.66	8.30	5.70	2.66	2.11	0.16	12.12	9.52	6.48	5.93	010
68540		A	Remove tear gland lesion	10.60	NA	NA	8.90	8.96	0.55	NA	NA	20.05	20.11	090
68550		A	Remove tear gland lesion	13.26	NA	NA	10.25	11.28	0.99	NA	NA	24.50	25.53	090
68700		A	Repair tear ducts	6.60	NA	NA	6.37	4.65	0.29	NA	NA	13.26	11.54	090
68705		A	Revise tear duct opening	2.06	5.69	3.40	1.85	1.21	0.09	7.84	5.55	4.00	3.36	010
68720		A	Create tear sac drain	8.96	NA	NA	7.57	9.13	0.40	NA	NA	16.93	18.49	090
68745		A	Create tear duct drain	8.63	NA	NA	7.41	7.27	0.37	NA	NA	16.41	16.27	090
68750		A	Create tear duct drain	8.66	NA	NA	8.02	9.18	0.38	NA	NA	17.06	18.22	090
68760		A	Close tear duct opening	1.73	5.35	3.18	0.88	0.69	0.07	7.15	4.98	2.68	2.49	010
68761		A	Close tear duct opening	1.36	3.81	2.41	0.62	0.56	0.07	5.24	3.84	2.05	1.99	010
68770		A	Close tear system fistula	7.02	10.97	7.79	5.49	3.90	0.32	18.31	15.13	12.83	11.24	090
68801		A	Dilate tear duct opening	0.94	4.67	2.57	0.46	0.35	0.04	5.65	3.55	1.44	1.33	010
68810		A	Probe nasolacrimal duct	1.90	6.19	3.40	1.75	1.03	0.08	8.17	5.38	3.73	3.01	010
68811		A	Probe nasolacrimal duct	2.35	NA	NA	2.01	1.82	0.10	NA	NA	4.46	4.27	010
68815		A	Probe nasolacrimal duct	3.20	6.44	4.27	2.46	1.76	0.15	9.79	7.62	5.81	5.11	010
68840		A	Explore/irrigate tear ducts	1.25	5.17	2.85	0.61	0.44	0.05	6.47	4.15	1.91	1.74	010
68850		A	Injection for tear sac x-ray	0.80	11.44	6.00	0.28	0.42	0.03	12.27	6.83	1.11	1.25	000
68899		C	Tear duct system surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69000		A	Drain external ear lesion	1.45	1.70	1.04	0.55	0.37	0.10	3.25	2.59	2.10	1.92	010
69005		A	Drain external ear lesion	2.11	2.16	1.71	2.16	1.40	0.16	4.43	3.98	4.43	3.67	010
69020		A	Drain outer ear canal lesion	1.48	1.82	1.16	0.71	0.48	0.11	3.41	2.75	2.30	2.07	010
69090		N	Pierce earlobes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
69100		A	Biopsy of external ear	0.81	1.23	0.98	0.41	0.39	0.04	2.08	1.83	1.26	1.24	000
69105		A	Biopsy of external ear canal	0.85	1.21	1.04	0.84	0.64	0.06	2.12	1.95	1.75	1.55	000
69110		A	Partial removal external ear	3.44	2.93	2.89	2.48	2.67	0.26	6.63	6.59	6.18	6.37	090
69120		A	Removal of external ear	4.05	NA	NA	3.77	2.31	0.33	NA	NA	8.15	6.69	090
69140		A	Remove ear canal lesion(s)	7.97	NA	NA	7.01	7.85	0.59	NA	NA	15.57	16.41	090
69145		A	Remove ear canal lesion(s)	2.62	2.88	2.80	2.21	2.47	0.20	5.70	5.62	5.03	5.29	090
69150		A	Extensive ear canal surgery	13.43	NA	NA	10.35	10.85	1.06	NA	NA	24.84	25.34	090
69155		A	Extensive ear/neck surgery	20.80	NA	NA	14.20	15.74	1.74	NA	NA	36.74	38.28	090
69200		A	Clear outer ear canal	0.77	1.17	0.82	0.66	0.45	0.06	2.00	1.65	1.49	1.28	000
69205		A	Clear outer ear canal	1.20	NA	NA	1.25	1.21	0.09	NA	NA	2.54	2.50	010
69210		A	Remove impacted ear wax	0.61	1.06	0.66	0.24	0.19	0.04	1.71	1.31	0.89	0.84	000
69220		A	Clean out mastoid cavity	0.83	1.23	0.89	0.48	0.38	0.06	2.12	1.78	1.37	1.27	000
69222		A	Clean out mastoid cavity	1.40	1.82	1.31	1.41	0.91	0.10	3.32	2.81	2.91	2.41	010
69300		R	Revise external ear	6.36	NA	NA	4.16	4.96	0.53	NA	NA	11.05	11.85	YYY
69310		A	Rebuild outer ear canal	10.79	NA	NA	8.85	9.77	0.81	NA	NA	20.45	21.37	090
69320		A	Rebuild outer ear canal	16.98	NA	NA	13.07	14.49	1.27	NA	NA	31.30	32.72	090
69399		C	Outer ear surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69400		A	Inflate middle ear canal	0.83	1.23	0.86	0.28	0.27	0.06	2.12	1.75	1.17	1.16	000
69401		A	Inflate middle ear canal	0.63	1.12	0.70	0.38	0.26	0.05	1.80	1.38	1.06	0.94	000
69405		A	Catheterize middle ear canal	2.63	2.61	1.57	1.57	0.92	0.19	5.43	4.39	4.39	3.74	010
69410		A	Inset middle ear baffle	0.33	1.00	0.83	0.18	0.26	0.02	1.35	1.18	0.53	0.61	000
69420		A	Incision of eardrum	1.33	1.84	1.30	0.73	0.56	0.10	3.27	2.73	2.16	1.99	010
69421		A	Incision of eardrum	1.73	2.10	1.67	1.62	1.43	0.13	3.96	3.53	3.48	3.29	010
69424		A	Remove ventilating tube	0.85	1.30	0.98	0.75	0.54	0.06	2.21	1.89	1.66	1.45	000
69433		A	Create eardrum opening	1.52	1.90	1.67	0.88	0.80	0.11	3.53	3.30	2.51	2.43	010
69436		A	Create eardrum opening	1.96	NA	NA	1.75	2.03	0.15	NA	NA	3.86	4.14	010
69440		A	Exploration of middle ear	7.57	NA	NA	6.58	7.81	0.56	NA	NA	14.71	15.94	090
69450		A	Eardrum revision	5.57	NA	NA	5.31	5.98	0.42	NA	NA	11.30	11.97	090
69501		A	Mastoidectomy	9.07	NA	NA	7.33	9.08	0.68	NA	NA	17.08	18.83	090
69502		A	Mastoidectomy	12.38	NA	NA	9.77	12.14	0.93	NA	NA	23.08	25.45	090
69505		A	Remove mastoid structures	12.99	NA	NA	10.12	12.82	0.98	NA	NA	24.09	26.79	090
69511		A	Extensive mastoid surgery	13.52	NA	NA	10.40	13.27	1.00	NA	NA	24.92	27.79	090
69530		A	Extensive mastoid surgery	19.19	NA	NA	14.16	16.15	1.50	NA	NA	34.85	36.84	090
69535		A	Remove part of temporal bone	36.14	NA	NA	23.61	25.52	2.71	NA	NA	62.46	64.37	090
69540		A	Remove ear lesion	1.20	1.76	1.57	1.31	1.00	0.09	3.05	2.86	2.60	2.29	010
69550		A	Remove ear lesion	10.99	NA	NA	8.78	10.95	0.81	NA	NA	20.58	22.75	090
69552		A	Remove ear lesion	19.46	NA	NA	13.05	15.61	1.44	NA	NA	33.95	36.51	090
69554		A	Remove ear lesion	33.16	NA	NA	20.64	22.73	3.09	NA	NA	56.89	58.98	090
69601		A	Mastoid surgery revision	13.24	NA	NA	10.78	13.00	0.99	NA	NA	25.01	27.23	090
69602		A	Mastoid surgery revision	13.58	NA	NA	10.61	13.41	1.01	NA	NA	25.20	28.00	090
69603		A	Mastoid surgery revision	14.02	NA	NA	10.68	13.71	1.05	NA	NA	25.75	28.78	090
69604		A	Mastoid surgery revision	14.02	NA	NA	10.85	13.79	1.04	NA	NA	25.91	28.85	090
69605		A	Mastoid surgery revision	18.49	NA	NA	13.35	14.79	1.30	NA	NA	33.14	34.58	090
69610		A	Repair of eardrum	4.43	3.73	2.37	3.23	1.87	0.32	8.48	7.12	7.98	6.62	010
69620		A	Repair of eardrum	5.89	5.89	6.46	3.47	5.25	0.44	12.22	12.79	9.80	11.58	090
69631		A	Repair eardrum structures	9.86	NA	NA	8.76	10.27	0.72	NA	NA	19.34	20.85	090
69632		A	Rebuild eardrum structures	12.75	NA	NA	10.48	12.86	0.95	NA	NA	24.18	26.56	090
69633		A	Rebuild eardrum structures	12.10	NA	NA	10.11	12.28	0.90	NA	NA	23.11	25.28	090
69635		A	Repair eardrum structures	13.33	NA	NA	10.38	13.15	0.99	NA	NA	24.70	27.47	090
69636		A	Rebuild eardrum structures	15.22	NA	NA	12.01	15.09	1.13	NA	NA	28.36	31.44	090
69637		A	Rebuild eardrum structures	15.11	NA	NA	11.88	14.96	1.13	NA	NA	28.12	31.20	090
69641		A	Revise middle ear & mastoid	12.71	NA	NA	10.03	12.60	0.94	NA	NA	23.68	26.25	090
69642		A	Revise middle ear & mastoid	16.84	NA	NA	12.84	16.47	1.25	NA	NA	30.93	34.56	090
69643		A	Revise middle ear & mastoid	15.32	NA	NA	11.96	15.13	1.15	NA	NA	28.43	31.60	090
69644		A	Revise middle ear & mastoid	16.97	NA	NA	12.99	16.63	1.26	NA	NA	31.22	34.86	090
69645		A	Revise middle ear & mastoid	16.38	NA	NA	12.62	16.09	1.21	NA	NA	30.21	33.68	090
69646		A	Revise middle ear & mastoid	17.99	NA	NA	13.70	17.59	1.35	NA	NA	33.04	36.93	090

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
69650		A	Release middle ear bone	9.66	NA	NA	7.76	9.65	0.72	NA	NA	18.14	20.03	090
69660		A	Revise middle ear bone	11.90	NA	NA	8.98	11.60	0.88	NA	NA	21.76	24.38	090
69661		A	Revise middle ear bone	15.74	NA	NA	11.63	15.21	1.19	NA	NA	28.56	32.14	090
69662		A	Revise middle ear bone	15.44	NA	NA	11.54	14.99	1.15	NA	NA	28.13	31.58	090
69666		A	Repair middle ear structures	9.75	NA	NA	7.82	9.73	0.72	NA	NA	18.29	20.20	090
69667		A	Repair middle ear structures	9.76	NA	NA	7.88	9.77	0.72	NA	NA	18.36	20.25	090
69670		A	Remove mastoid air cells	11.51	NA	NA	9.28	10.17	0.83	NA	NA	21.62	22.51	090
69676		A	Remove middle ear nerve	9.52	NA	NA	8.02	8.64	0.69	NA	NA	18.23	18.85	090
69700		A	Close mastoid fistula	8.23	NA	NA	5.35	6.94	0.64	NA	NA	14.22	15.81	090
69710		N	Implant/replace hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
69711		A	Remove/repair hearing aid	10.44	NA	NA	8.65	8.91	0.76	NA	NA	19.85	20.11	090
69720		A	Release facial nerve	14.38	NA	NA	11.27	14.22	1.07	NA	NA	26.72	29.67	090
69725		A	Release facial nerve	25.38	NA	NA	15.66	15.78	1.71	NA	NA	42.75	42.87	090
69740		A	Repair facial nerve	15.96	NA	NA	10.81	11.83	1.17	NA	NA	27.94	28.96	090
69745		A	Repair facial nerve	16.69	NA	NA	11.50	14.41	1.91	NA	NA	30.10	33.01	090
69799		C	Middle ear surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69801		A	Incise inner ear	8.56	NA	NA	7.07	8.65	0.64	NA	NA	16.27	17.85	090
69802		A	Incise inner ear	13.10	NA	NA	10.12	11.16	1.09	NA	NA	24.31	25.35	090
69805		A	Explore inner ear	13.82	NA	NA	10.24	12.25	1.02	NA	NA	25.08	27.09	090
69806		A	Explore inner ear	12.35	NA	NA	9.84	12.30	0.92	NA	NA	23.11	25.57	090
69820		A	Establish inner ear window	10.34	NA	NA	8.70	9.15	0.58	NA	NA	19.62	20.07	090
69840		A	Revise inner ear window	10.26	NA	NA	9.07	9.14	0.41	NA	NA	19.74	19.81	090
69905		A	Remove inner ear	11.10	NA	NA	8.81	11.03	0.80	NA	NA	20.71	22.93	090
69910		A	Remove inner ear & mastoid	13.63	NA	NA	10.44	13.36	1.02	NA	NA	25.09	28.01	090
69915		A	Incise inner ear nerve	21.23	NA	NA	15.02	17.12	1.58	NA	NA	37.83	39.93	090
69930		A	Implant cochlear device	16.81	NA	NA	12.23	16.15	1.26	NA	NA	30.30	34.22	090
69949		C	Inner ear surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69950		A	Incise inner ear nerve	25.64	NA	NA	16.69	18.11	2.46	NA	NA	44.79	46.21	090
69955		A	Release facial nerve	27.04	NA	NA	17.53	19.77	2.36	NA	NA	46.93	49.17	090
69960		A	Release inner ear canal	27.04	NA	NA	17.64	18.51	2.60	NA	NA	47.28	48.15	090
69970		A	Remove inner ear lesion	30.04	NA	NA	19.06	20.22	2.23	NA	NA	51.33	52.49	090
69979		C	Temporal bone surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
69990		R	Microsurgery add-on	3.47	1.85	1.85	1.85	1.85	0.67	5.99	5.99	5.99	5.99	ZZZ
70010		A	Contrast x-ray of brain	1.19	4.87	4.96	4.87	4.96	0.25	6.31	6.40	6.31	6.40	XXX
70010	26	A	Contrast x-ray of brain	1.19	0.34	0.45	0.34	0.45	0.05	1.58	1.69	1.58	1.69	XXX
70010	TC	A	Contrast x-ray of brain	0.00	4.53	4.51	4.53	4.51	0.20	4.73	4.71	4.73	4.71	XXX
70015		A	Contrast x-ray of brain	1.19	1.76	1.86	1.76	1.86	0.12	3.07	3.17	3.07	3.17	XXX
70015	26	A	Contrast x-ray of brain	1.19	0.34	0.45	0.34	0.45	0.05	1.58	1.69	1.58	1.69	XXX
70015	TC	A	Contrast x-ray of brain	0.00	1.42	1.41	1.42	1.41	0.07	1.49	1.48	1.49	1.48	XXX
70030		A	X-ray eye for foreign body	0.17	0.49	0.51	0.49	0.51	0.03	0.69	0.71	0.69	0.71	XXX
70030	26	A	X-ray eye for foreign body	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
70030	TC	A	X-ray eye for foreign body	0.00	0.44	0.44	0.44	0.44	0.02	0.46	0.46	0.46	0.46	XXX
70100		A	X-ray exam of jaw	0.18	0.60	0.62	0.60	0.62	0.03	0.81	0.83	0.81	0.83	XXX
70100	26	A	X-ray exam of jaw	0.18	0.05	0.08	0.05	0.08	0.01	0.24	0.27	0.24	0.27	XXX
70100	TC	A	X-ray exam of jaw	0.00	0.55	0.55	0.55	0.55	0.02	0.57	0.57	0.57	0.57	XXX
70110		A	X-ray exam of jaw	0.25	0.71	0.74	0.71	0.74	0.04	1.00	1.03	1.00	1.03	XXX
70110	26	A	X-ray exam of jaw	0.25	0.07	0.10	0.07	0.10	0.01	0.33	0.36	0.33	0.36	XXX
70110	TC	A	X-ray exam of jaw	0.00	0.64	0.64	0.64	0.64	0.03	0.67	0.67	0.67	0.67	XXX
70120		A	X-ray exam of mastoids	0.18	0.69	0.72	0.69	0.72	0.04	0.91	0.94	0.91	0.94	XXX
70120	26	A	X-ray exam of mastoids	0.18	0.05	0.08	0.05	0.08	0.01	0.24	0.27	0.24	0.27	XXX
70120	TC	A	X-ray exam of mastoids	0.00	0.64	0.64	0.64	0.64	0.03	0.67	0.67	0.67	0.67	XXX
70130		A	X-ray exam of mastoids	0.34	0.92	0.95	0.92	0.95	0.05	1.31	1.34	1.31	1.34	XXX
70130	26	A	X-ray exam of mastoids	0.34	0.09	0.13	0.09	0.13	0.01	0.44	0.48	0.44	0.48	XXX
70130	TC	A	X-ray exam of mastoids	0.00	0.82	0.82	0.82	0.82	0.04	0.86	0.86	0.86	0.86	XXX
70134		A	X-ray exam of middle ear	0.34	0.86	0.90	0.86	0.90	0.05	1.25	1.29	1.25	1.29	XXX
70134	26	A	X-ray exam of middle ear	0.34	0.09	0.13	0.09	0.13	0.01	0.44	0.48	0.44	0.48	XXX
70134	TC	A	X-ray exam of middle ear	0.00	0.76	0.76	0.76	0.76	0.04	0.80	0.80	0.80	0.80	XXX
70140		A	X-ray exam of facial bones	0.19	0.69	0.72	0.69	0.72	0.04	0.92	0.95	0.92	0.95	XXX
70140	26	A	X-ray exam of facial bones	0.19	0.05	0.08	0.05	0.08	0.01	0.25	0.28	0.25	0.28	XXX
70140	TC	A	X-ray exam of facial bones	0.00	0.64	0.64	0.64	0.64	0.03	0.67	0.67	0.67	0.67	XXX
70150		A	X-ray exam of facial bones	0.26	0.89	0.92	0.89	0.92	0.05	1.20	1.23	1.20	1.23	XXX
70150	26	A	X-ray exam of facial bones	0.26	0.07	0.10	0.07	0.10	0.01	0.34	0.37	0.34	0.37	XXX
70150	TC	A	X-ray exam of facial bones	0.00	0.82	0.82	0.82	0.82	0.04	0.86	0.86	0.86	0.86	XXX
70160		A	X-ray exam of nasal bones	0.17	0.60	0.62	0.60	0.62	0.03	0.80	0.82	0.80	0.82	XXX
70160	26	A	X-ray exam of nasal bones	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
70160	TC	A	X-ray exam of nasal bones	0.00	0.55	0.55	0.55	0.55	0.02	0.57	0.57	0.57	0.57	XXX
70170		A	X-ray exam of tear duct	0.30	1.07	1.10	1.07	1.10	0.06	1.43	1.46	1.43	1.46	XXX
70170	26	A	X-ray exam of tear duct	0.30	0.08	0.12	0.08	0.12	0.01	0.39	0.43	0.39	0.43	XXX
70170	TC	A	X-ray exam of tear duct	0.00	0.99	0.99	0.99	0.99	0.05	1.04	1.04	1.04	1.04	XXX
70190		A	X-ray exam of eye sockets	0.21	0.70	0.73	0.70	0.73	0.04	0.95	0.98	0.95	0.98	XXX
70190	26	A	X-ray exam of eye sockets	0.21	0.06	0.09	0.06	0.09	0.01	0.28	0.31	0.28	0.31	XXX
70190	TC	A	X-ray exam of eye sockets	0.00	0.64	0.64	0.64	0.64	0.03	0.67	0.67	0.67	0.67	XXX
70200		A	X-ray exam of eye sockets	0.28	0.90	0.93	0.90	0.93	0.05	1.23	1.26	1.23	1.26	XXX
70200	26	A	X-ray exam of eye sockets	0.28	0.08	0.11	0.08	0.11	0.01	0.37	0.40	0.37	0.40	XXX
70200	TC	A	X-ray exam of eye sockets	0.00	0.82	0.82	0.82	0.82	0.04	0.86	0.86	0.86	0.86	XXX
70210		A	X-ray exam of sinuses	0.17	0.69	0.71	0.69	0.71	0.04	0.90	0.92	0.90	0.92	XXX
70210	26	A	X-ray exam of sinuses	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
70210	TC	A	X-ray exam of sinuses	0.00	0.64	0.64	0.64	0.64	0.03	0.67	0.67	0.67	0.67	XXX
70220		A	X-ray exam of sinuses	0.25	0.89	0.92	0.89	0.92	0.05	1.19	1.22	1.19	1.22	XXX
70220	26	A	X-ray exam of sinuses	0.25	0.07	0.10	0.07	0.10	0.01	0.33	0.36	0.33	0.36	XXX
70220	TC	A	X-ray exam of sinuses	0.00	0.82	0.82	0.82	0.82	0.04	0.86	0.86	0.86	0.86	XXX
70240		A	X-ray exam pituitary saddle	0.19	0.49	0.51	0.49	0.51	0.03	0.71	0.73	0.71	0.73	XXX
70240	26	A	X-ray exam pituitary saddle	0.19	0.05	0.08	0.05	0.08	0.01	0.25	0.28	0.25	0.28	XXX
70240	TC	A	X-ray exam pituitary saddle	0.00	0.44	0.44	0.44	0.44	0.02	0.46	0.46	0.46	0.46	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
70250		A	X-ray exam of skull	0.24	0.71	0.74	0.71	0.74	0.04	0.99	1.02	0.99	1.02	XXX
70250	26	A	X-ray exam of skull	0.24	0.06	0.09	0.06	0.09	0.01	0.31	0.34	0.31	0.34	XXX
70250	TC	A	X-ray exam of skull	0.00	0.64	0.64	0.64	0.64	0.03	0.67	0.67	0.67	0.67	XXX
70260		A	X-ray exam of skull	0.34	1.03	1.06	1.03	1.06	0.06	1.43	1.46	1.43	1.46	XXX
70260	26	A	X-ray exam of skull	0.34	0.09	0.13	0.09	0.13	0.01	0.44	0.48	0.44	0.48	XXX
70260	TC	A	X-ray exam of skull	0.00	0.94	0.93	0.94	0.93	0.05	0.99	0.98	0.99	0.98	XXX
70300		A	X-ray exam of teeth	0.10	0.31	0.32	0.31	0.32	0.03	0.44	0.45	0.44	0.45	XXX
70300	26	A	X-ray exam of teeth	0.10	0.03	0.04	0.03	0.04	0.01	0.14	0.15	0.14	0.15	XXX
70300	TC	A	X-ray exam of teeth	0.00	0.27	0.27	0.27	0.27	0.02	0.29	0.29	0.29	0.29	XXX
70310		A	X-ray exam of teeth	0.16	0.50	0.51	0.50	0.51	0.03	0.69	0.70	0.69	0.70	XXX
70310	26	A	X-ray exam of teeth	0.16	0.05	0.07	0.05	0.07	0.01	0.22	0.24	0.22	0.24	XXX
70310	TC	A	X-ray exam of teeth	0.00	0.44	0.44	0.44	0.44	0.02	0.46	0.46	0.46	0.46	XXX
70320		A	Full mouth x-ray of teeth	0.22	0.89	0.91	0.89	0.91	0.05	1.16	1.18	1.16	1.18	XXX
70320	26	A	Full mouth x-ray of teeth	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
70320	TC	A	Full mouth x-ray of teeth	0.00	0.82	0.82	0.82	0.82	0.04	0.86	0.86	0.86	0.86	XXX
70328		A	X-ray exam of jaw joint	0.18	0.56	0.59	0.56	0.59	0.03	0.77	0.80	0.77	0.80	XXX
70328	26	A	X-ray exam of jaw joint	0.18	0.05	0.08	0.05	0.08	0.01	0.24	0.27	0.24	0.27	XXX
70328	TC	A	X-ray exam of jaw joint	0.00	0.51	0.51	0.51	0.51	0.02	0.53	0.53	0.53	0.53	XXX
70330		A	X-ray exam of jaw joints	0.24	0.94	0.97	0.94	0.97	0.05	1.23	1.26	1.23	1.26	XXX
70330	26	A	X-ray exam of jaw joints	0.24	0.07	0.10	0.07	0.10	0.01	0.32	0.35	0.32	0.35	XXX
70330	TC	A	X-ray exam of jaw joints	0.00	0.88	0.88	0.88	0.88	0.04	0.92	0.92	0.92	0.92	XXX
70332		A	X-ray exam of jaw joint	0.54	2.35	2.40	2.35	2.40	0.12	3.01	3.06	3.01	3.06	XXX
70332	26	A	X-ray exam of jaw joint	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
70332	TC	A	X-ray exam of jaw joint	0.00	2.19	2.18	2.19	2.18	0.10	2.29	2.28	2.29	2.28	XXX
70336		A	Magnetic image jaw joint	1.48	12.12	12.09	12.12	12.09	0.58	14.18	14.15	14.18	14.15	XXX
70336	26	A	Magnetic image jaw joint	1.48	0.40	0.44	0.40	0.44	0.06	1.94	1.98	1.94	1.98	XXX
70336	TC	A	Magnetic image jaw joint	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
70350		A	X-ray head for orthodontia	0.17	0.45	0.47	0.45	0.47	0.03	0.65	0.67	0.65	0.67	XXX
70350	26	A	X-ray head for orthodontia	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
70350	TC	A	X-ray head for orthodontia	0.00	0.39	0.39	0.39	0.39	0.02	0.41	0.41	0.41	0.41	XXX
70355		A	Panoramic x-ray of jaws	0.20	0.65	0.67	0.65	0.67	0.04	0.89	0.91	0.89	0.91	XXX
70355	26	A	Panoramic x-ray of jaws	0.20	0.06	0.08	0.06	0.08	0.01	0.27	0.29	0.27	0.29	XXX
70355	TC	A	Panoramic x-ray of jaws	0.00	0.59	0.59	0.59	0.59	0.03	0.62	0.62	0.62	0.62	XXX
70360		A	X-ray exam of neck	0.17	0.49	0.51	0.49	0.51	0.03	0.69	0.71	0.69	0.71	XXX
70360	26	A	X-ray exam of neck	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
70360	TC	A	X-ray exam of neck	0.00	0.44	0.44	0.44	0.44	0.02	0.46	0.46	0.46	0.46	XXX
70370		A	Throat x-ray & fluoroscopy	0.32	1.44	1.48	1.44	1.48	0.07	1.83	1.87	1.83	1.87	XXX
70370	26	A	Throat x-ray & fluoroscopy	0.32	0.09	0.13	0.09	0.13	0.01	0.42	0.46	0.42	0.46	XXX
70370	TC	A	Throat x-ray & fluoroscopy	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
70371		A	Speech evaluation, complex	0.84	2.42	2.50	2.42	2.50	0.13	3.39	3.47	3.39	3.47	XXX
70371	26	A	Speech evaluation, complex	0.84	0.23	0.32	0.23	0.32	0.03	1.10	1.19	1.10	1.19	XXX
70371	TC	A	Speech evaluation, complex	0.00	2.19	2.18	2.19	2.18	0.10	2.29	2.28	2.29	2.28	XXX
70373		A	Contrast x-ray of larynx	0.44	1.98	2.02	1.98	2.02	0.11	2.53	2.57	2.53	2.57	XXX
70373	26	A	Contrast x-ray of larynx	0.44	0.12	0.17	0.12	0.17	0.02	0.58	0.63	0.58	0.63	XXX
70373	TC	A	Contrast x-ray of larynx	0.00	1.86	1.85	1.86	1.85	0.09	1.95	1.94	1.95	1.94	XXX
70380		A	X-ray exam of salivary gland	0.17	0.75	0.77	0.75	0.77	0.04	0.96	0.98	0.96	0.98	XXX
70380	26	A	X-ray exam of salivary gland	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
70380	TC	A	X-ray exam of salivary gland	0.00	0.70	0.70	0.70	0.70	0.03	0.73	0.73	0.73	0.73	XXX
70390		A	X-ray exam of salivary duct	0.38	1.96	1.99	1.96	1.99	0.11	2.45	2.48	2.45	2.48	XXX
70390	26	A	X-ray exam of salivary duct	0.38	0.10	0.14	0.10	0.14	0.02	0.50	0.54	0.50	0.54	XXX
70390	TC	A	X-ray exam of salivary duct	0.00	1.86	1.85	1.86	1.85	0.09	1.95	1.94	1.95	1.94	XXX
70450		A	CAT scan of head or brain	0.85	5.17	5.23	5.17	5.23	0.26	6.28	6.34	6.28	6.34	XXX
70450	26	A	CAT scan of head or brain	0.85	0.23	0.32	0.23	0.32	0.03	1.11	1.20	1.11	1.20	XXX
70450	TC	A	CAT scan of head or brain	0.00	4.94	4.91	4.94	4.91	0.23	5.17	5.14	5.17	5.14	XXX
70460		A	Contrast CAT scan of head	1.13	6.23	6.31	6.23	6.31	0.32	7.68	7.76	7.68	7.76	XXX
70460	26	A	Contrast CAT scan of head	1.13	0.31	0.43	0.31	0.43	0.05	1.49	1.61	1.49	1.61	XXX
70460	TC	A	Contrast CAT scan of head	0.00	5.92	5.89	5.92	5.89	0.27	6.19	6.16	6.19	6.16	XXX
70470		A	Contrast CAT scans of head	1.27	7.74	7.83	7.74	7.83	0.39	9.40	9.49	9.40	9.49	XXX
70470	26	A	Contrast CAT scans of head	1.27	0.34	0.48	0.34	0.48	0.05	1.66	1.80	1.66	1.80	XXX
70470	TC	A	Contrast CAT scans of head	0.00	7.39	7.35	7.39	7.35	0.34	7.73	7.69	7.73	7.69	XXX
70480		A	CAT scan of skull	1.28	5.29	5.40	5.29	5.40	0.28	6.85	6.96	6.85	6.96	XXX
70480	26	A	CAT scan of skull	1.28	0.35	0.49	0.35	0.49	0.05	1.68	1.82	1.68	1.82	XXX
70480	TC	A	CAT scan of skull	0.00	4.94	4.91	4.94	4.91	0.23	5.17	5.14	5.17	5.14	XXX
70481		A	Contrast CAT scan of skull	1.38	6.29	6.40	6.29	6.40	0.33	8.00	8.11	8.00	8.11	XXX
70481	26	A	Contrast CAT scan of skull	1.38	0.38	0.52	0.38	0.52	0.06	1.82	1.96	1.82	1.96	XXX
70481	TC	A	Contrast CAT scan of skull	0.00	5.92	5.89	5.92	5.89	0.27	6.19	6.16	6.19	6.16	XXX
70482		A	Contrast CAT scans of skull	1.45	7.79	7.90	7.79	7.90	0.40	9.64	9.75	9.64	9.75	XXX
70482	26	A	Contrast CAT scans of skull	1.45	0.39	0.54	0.39	0.54	0.06	1.90	2.05	1.90	2.05	XXX
70482	TC	A	Contrast CAT scans of skull	0.00	7.39	7.35	7.39	7.35	0.34	7.73	7.69	7.73	7.69	XXX
70486		A	CAT scan of face, jaw	1.14	5.25	5.34	5.25	5.34	0.28	6.67	6.76	6.67	6.76	XXX
70486	26	A	CAT scan of face, jaw	1.14	0.31	0.43	0.31	0.43	0.05	1.50	1.62	1.50	1.62	XXX
70486	TC	A	CAT scan of face, jaw	0.00	4.94	4.91	4.94	4.91	0.23	5.17	5.14	5.17	5.14	XXX
70487		A	Contrast CAT scan, face/jaw	1.30	6.27	6.37	6.27	6.37	0.32	7.89	7.99	7.89	7.99	XXX
70487	26	A	Contrast CAT scan, face/jaw	1.30	0.35	0.49	0.35	0.49	0.05	1.70	1.84	1.70	1.84	XXX
70487	TC	A	Contrast CAT scan, face/jaw	0.00	5.92	5.89	5.92	5.89	0.27	6.19	6.16	6.19	6.16	XXX
70488		A	Contrast CAT scans face/jaw	1.42	7.78	7.89	7.78	7.89	0.40	9.60	9.71	9.60	9.71	XXX
70488	26	A	Contrast CAT scans face/jaw	1.42	0.38	0.53	0.38	0.53	0.06	1.86	2.01	1.86	2.01	XXX
70488	TC	A	Contrast CAT scans face/jaw	0.00	7.39	7.35	7.39	7.35	0.34	7.73	7.69	7.73	7.69	XXX
70490		A	CAT scan of neck tissue	1.28	5.28	5.39	5.28	5.39	0.28	6.84	6.95	6.84	6.95	XXX
70490	26	A	CAT scan of neck tissue	1.28	0.34	0.48	0.34	0.48	0.05	1.67	1.81	1.67	1.81	XXX
70490	TC	A	CAT scan of neck tissue	0.00	4.94	4.91	4.94	4.91	0.23	5.17	5.14	5.17	5.14	XXX
70491		A	Contrast CAT of neck tissue	1.38	6.29	6.40	6.29	6.40	0.33	8.00	8.11	8.00	8.11	XXX
70491	26	A	Contrast CAT of neck tissue	1.38	0.37	0.52	0.37	0.52	0.06	1.81	1.96	1.81	1.96	XXX
70491	TC	A	Contrast CAT of neck tissue	0.00	5.92	5.89	5.92	5.89	0.27	6.19	6.16	6.19	6.16	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
70492		A	Contrast CAT of neck tissue	1.45	7.78	7.89	7.78	7.89	0.40	9.63	9.74	9.63	9.74	XXX
70492	26	A	Contrast CAT of neck tissue	1.45	0.39	0.54	0.39	0.54	0.06	1.90	2.05	1.90	2.05	XXX
70492	TC	A	Contrast CAT of neck tissue	0.00	7.39	7.35	7.39	7.35	0.34	7.73	7.69	7.73	7.69	XXX
70540		A	Magnetic image, face, neck	1.48	12.12	12.22	12.12	12.22	0.58	14.18	14.28	14.18	14.28	XXX
70540	26	A	Magnetic image, face, neck	1.48	0.40	0.56	0.40	0.56	0.06	1.94	2.10	1.94	2.10	XXX
70540	TC	A	Magnetic image, face, neck	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
70541		R	Magnetic image, head (MRA)	1.81	12.22	12.27	12.22	12.27	0.59	14.62	14.67	14.62	14.67	XXX
70541	26	R	Magnetic image, head (MRA)	1.81	0.50	0.61	0.50	0.61	0.07	2.38	2.49	2.38	2.49	XXX
70541	TC	R	Magnetic image, head (MRA)	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
70551		A	Magnetic image, brain (MRI)	1.48	12.13	12.22	12.13	12.22	0.58	14.19	14.28	14.19	14.28	XXX
70551	26	A	Magnetic image, brain (MRI)	1.48	0.41	0.57	0.41	0.57	0.06	1.95	2.11	1.95	2.11	XXX
70551	TC	A	Magnetic image, brain (MRI)	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
70552		A	Magnetic image, brain (MRI)	1.78	14.55	14.66	14.55	14.66	0.70	17.03	17.14	17.03	17.14	XXX
70552	26	A	Magnetic image, brain (MRI)	1.78	0.50	0.69	0.50	0.69	0.07	2.35	2.54	2.35	2.54	XXX
70552	TC	A	Magnetic image, brain (MRI)	0.00	14.05	13.98	14.05	13.98	0.63	14.68	14.61	14.68	14.61	XXX
70553		A	Magnetic image, brain	2.36	26.67	26.79	26.67	26.79	1.27	30.30	30.42	30.30	30.42	XXX
70553	26	A	Magnetic image, brain	2.36	0.64	0.90	0.64	0.90	0.10	3.10	3.36	3.10	3.36	XXX
70553	TC	A	Magnetic image, brain	0.00	26.03	25.89	26.03	25.89	1.17	27.20	27.06	27.20	27.06	XXX
71010		A	Chest x-ray	0.18	0.54	0.56	0.54	0.56	0.03	0.75	0.77	0.75	0.77	XXX
71010	26	A	Chest x-ray	0.18	0.05	0.07	0.05	0.07	0.01	0.24	0.26	0.24	0.26	XXX
71010	TC	A	Chest x-ray	0.00	0.49	0.49	0.49	0.49	0.02	0.51	0.51	0.51	0.51	XXX
71015		A	X-ray exam of chest	0.21	0.61	0.63	0.61	0.63	0.03	0.85	0.87	0.85	0.87	XXX
71015	26	A	X-ray exam of chest	0.21	0.06	0.09	0.06	0.09	0.01	0.28	0.31	0.28	0.31	XXX
71015	TC	A	X-ray exam of chest	0.00	0.55	0.55	0.55	0.55	0.02	0.57	0.57	0.57	0.57	XXX
71020		A	Chest x-ray	0.22	0.70	0.73	0.70	0.73	0.04	0.96	0.99	0.96	0.99	XXX
71020	26	A	Chest x-ray	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
71020	TC	A	Chest x-ray	0.00	0.64	0.64	0.64	0.64	0.03	0.67	0.67	0.67	0.67	XXX
71021		A	Chest x-ray	0.27	0.84	0.87	0.84	0.87	0.05	1.16	1.19	1.16	1.19	XXX
71021	26	A	Chest x-ray	0.27	0.07	0.10	0.07	0.10	0.01	0.35	0.38	0.35	0.38	XXX
71021	TC	A	Chest x-ray	0.00	0.76	0.76	0.76	0.76	0.04	0.80	0.80	0.80	0.80	XXX
71022		A	Chest x-ray	0.31	0.85	0.88	0.85	0.88	0.05	1.21	1.24	1.21	1.24	XXX
71022	26	A	Chest x-ray	0.31	0.08	0.12	0.08	0.12	0.01	0.40	0.44	0.40	0.44	XXX
71022	TC	A	Chest x-ray	0.00	0.76	0.76	0.76	0.76	0.04	0.80	0.80	0.80	0.80	XXX
71023		A	Chest x-ray and fluoroscopy	0.38	0.95	0.97	0.95	0.97	0.05	1.38	1.40	1.38	1.40	XXX
71023	26	A	Chest x-ray and fluoroscopy	0.38	0.12	0.15	0.12	0.15	0.01	0.51	0.54	0.51	0.54	XXX
71023	TC	A	Chest x-ray and fluoroscopy	0.00	0.82	0.82	0.82	0.82	0.04	0.86	0.86	0.86	0.86	XXX
71030		A	Chest x-ray	0.31	0.91	0.94	0.91	0.94	0.05	1.27	1.30	1.27	1.30	XXX
71030	26	A	Chest x-ray	0.31	0.08	0.12	0.08	0.12	0.01	0.40	0.44	0.40	0.44	XXX
71030	TC	A	Chest x-ray	0.00	0.82	0.82	0.82	0.82	0.04	0.86	0.86	0.86	0.86	XXX
71034		A	Chest x-ray & fluoroscopy	0.46	1.64	1.68	1.64	1.68	0.09	2.19	2.23	2.19	2.23	XXX
71034	26	A	Chest x-ray & fluoroscopy	0.46	0.15	0.19	0.15	0.19	0.02	0.63	0.67	0.63	0.67	XXX
71034	TC	A	Chest x-ray & fluoroscopy	0.00	1.50	1.50	1.50	1.50	0.07	1.57	1.57	1.57	1.57	XXX
71035		A	Chest x-ray	0.18	0.60	0.62	0.60	0.62	0.03	0.81	0.83	0.81	0.83	XXX
71035	26	A	Chest x-ray	0.18	0.05	0.07	0.05	0.07	0.01	0.24	0.26	0.24	0.26	XXX
71035	TC	A	Chest x-ray	0.00	0.55	0.55	0.55	0.55	0.02	0.57	0.57	0.57	0.57	XXX
71036		A	X-ray guidance for biopsy	0.54	1.80	1.85	1.80	1.85	0.10	2.44	2.49	2.44	2.49	XXX
71036	26	A	X-ray guidance for biopsy	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
71036	TC	A	X-ray guidance for biopsy	0.00	1.65	1.64	1.65	1.64	0.08	1.73	1.72	1.73	1.72	XXX
71040		A	Contrast x-ray of bronchi	0.58	1.69	1.75	1.69	1.75	0.09	2.36	2.42	2.36	2.42	XXX
71040	26	A	Contrast x-ray of bronchi	0.58	0.16	0.23	0.16	0.23	0.02	0.76	0.83	0.76	0.83	XXX
71040	TC	A	Contrast x-ray of bronchi	0.00	1.53	1.52	1.53	1.52	0.07	1.60	1.59	1.60	1.59	XXX
71060		A	Contrast x-ray of bronchi	0.74	2.50	2.58	2.50	2.58	0.14	3.38	3.46	3.38	3.46	XXX
71060	26	A	Contrast x-ray of bronchi	0.74	0.20	0.29	0.20	0.29	0.03	0.97	1.06	0.97	1.06	XXX
71060	TC	A	Contrast x-ray of bronchi	0.00	2.30	2.29	2.30	2.29	0.11	2.41	2.40	2.41	2.40	XXX
71090		A	X-ray & pacemaker insertion	0.54	1.97	1.99	1.97	1.99	0.11	2.62	2.64	2.62	2.64	XXX
71090	26	A	X-ray & pacemaker insertion	0.54	0.22	0.25	0.22	0.25	0.02	0.78	0.81	0.78	0.81	XXX
71090	TC	A	X-ray & pacemaker insertion	0.00	1.75	1.75	1.75	1.75	0.09	1.84	1.84	1.84	1.84	XXX
71100		A	X-ray exam of ribs	0.22	0.65	0.68	0.65	0.68	0.04	0.91	0.94	0.91	0.94	XXX
71100	26	A	X-ray exam of ribs	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
71100	TC	A	X-ray exam of ribs	0.00	0.59	0.59	0.59	0.59	0.03	0.62	0.62	0.62	0.62	XXX
71101		A	X-ray exam of ribs, chest	0.27	0.78	0.81	0.78	0.81	0.04	1.09	1.12	1.09	1.12	XXX
71101	26	A	X-ray exam of ribs, chest	0.27	0.07	0.11	0.07	0.11	0.01	0.35	0.39	0.35	0.39	XXX
71101	TC	A	X-ray exam of ribs, chest	0.00	0.70	0.70	0.70	0.70	0.03	0.73	0.73	0.73	0.73	XXX
71110		A	X-ray exam of ribs	0.27	0.90	0.93	0.90	0.93	0.05	1.22	1.25	1.22	1.25	XXX
71110	26	A	X-ray exam of ribs	0.27	0.07	0.11	0.07	0.11	0.01	0.35	0.39	0.35	0.39	XXX
71110	TC	A	X-ray exam of ribs	0.00	0.82	0.82	0.82	0.82	0.04	0.86	0.86	0.86	0.86	XXX
71111		A	X-ray exam of ribs, chest	0.32	1.02	1.05	1.02	1.05	0.06	1.40	1.43	1.40	1.43	XXX
71111	26	A	X-ray exam of ribs, chest	0.32	0.09	0.13	0.09	0.13	0.01	0.42	0.46	0.42	0.46	XXX
71111	TC	A	X-ray exam of ribs, chest	0.00	0.94	0.93	0.94	0.93	0.05	0.99	0.98	0.99	0.98	XXX
71120		A	X-ray exam of breastbone	0.20	0.74	0.76	0.74	0.76	0.04	0.98	1.00	0.98	1.00	XXX
71120	26	A	X-ray exam of breastbone	0.20	0.05	0.08	0.05	0.08	0.01	0.26	0.29	0.26	0.29	XXX
71120	TC	A	X-ray exam of breastbone	0.00	0.68	0.68	0.68	0.68	0.03	0.71	0.71	0.71	0.71	XXX
71130		A	X-ray exam of breastbone	0.22	0.79	0.82	0.79	0.82	0.04	1.05	1.08	1.05	1.08	XXX
71130	26	A	X-ray exam of breastbone	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
71130	TC	A	X-ray exam of breastbone	0.00	0.73	0.73	0.73	0.73	0.03	0.76	0.76	0.76	0.76	XXX
71250		A	Cat scan of chest	1.16	6.49	6.58	6.49	6.58	0.33	7.98	8.07	7.98	8.07	XXX
71250	26	A	Cat scan of chest	1.16	0.31	0.43	0.31	0.43	0.05	1.52	1.64	1.52	1.64	XXX
71250	TC	A	Cat scan of chest	0.00	6.18	6.15	6.18	6.15	0.28	6.46	6.43	6.46	6.43	XXX
71260		A	Contrast CAT scan of chest	1.24	7.73	7.82	7.73	7.82	0.39	9.36	9.45	9.36	9.45	XXX
71260	26	A	Contrast CAT scan of chest	1.24	0.33	0.47	0.33	0.47	0.05	1.62	1.76	1.62	1.76	XXX
71260	TC	A	Contrast CAT scan of chest	0.00	7.39	7.35	7.39	7.35	0.34	7.73	7.69	7.73	7.69	XXX
71270		A	Contrast CAT scans of chest	1.38	9.62	9.72	9.62	9.72	0.47	11.47	11.57	11.47	11.57	XXX
71270	26	A	Contrast CAT scans of chest	1.38	0.37	0.52	0.37	0.52	0.06	1.81	1.96	1.81	1.96	XXX
71270	TC	A	Contrast CAT scans of chest	0.00	9.25	9.20	9.25	9.20	0.41	9.66	9.61	9.66	9.61	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
71550		A	Magnetic image, chest	1.60	12.16	12.27	12.16	12.27	0.58	14.34	14.45	14.34	14.45	XXX
71550	26	A	Magnetic image, chest	1.60	0.44	0.61	0.44	0.61	0.06	2.10	2.27	2.10	2.27	XXX
71550	TC	A	Magnetic image, chest	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
71555		R	Magnetic imaging/chest (MRA)	1.81	12.41	12.39	12.41	12.39	0.59	14.81	14.79	14.81	14.79	XXX
71555	26	R	Magnetic imaging/chest (MRA)	1.81	0.69	0.74	0.69	0.74	0.07	2.57	2.62	2.57	2.62	XXX
71555	TC	R	Magnetic imaging/chest (MRA)	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
72010		A	X-ray exam of spine	0.45	1.20	1.24	1.20	1.24	0.07	1.72	1.76	1.72	1.76	XXX
72010	26	A	X-ray exam of spine	0.45	0.12	0.17	0.12	0.17	0.02	0.59	0.64	0.59	0.64	XXX
72010	TC	A	X-ray exam of spine	0.00	1.08	1.07	1.08	1.07	0.05	1.13	1.12	1.13	1.12	XXX
72020		A	X-ray exam of spine	0.15	0.48	0.50	0.48	0.50	0.03	0.66	0.68	0.66	0.68	XXX
72020	26	A	X-ray exam of spine	0.15	0.04	0.06	0.04	0.06	0.01	0.20	0.22	0.20	0.22	XXX
72020	TC	A	X-ray exam of spine	0.00	0.44	0.44	0.44	0.44	0.02	0.46	0.46	0.46	0.46	XXX
72040		A	X-ray exam of neck spine	0.22	0.68	0.71	0.68	0.71	0.04	0.94	0.97	0.94	0.97	XXX
72040	26	A	X-ray exam of neck spine	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
72040	TC	A	X-ray exam of neck spine	0.00	0.62	0.62	0.62	0.62	0.03	0.65	0.65	0.65	0.65	XXX
72050		A	X-ray exam of neck spine	0.31	1.02	1.05	1.02	1.05	0.06	1.39	1.42	1.39	1.42	XXX
72050	26	A	X-ray exam of neck spine	0.31	0.08	0.12	0.08	0.12	0.01	0.40	0.44	0.40	0.44	XXX
72050	TC	A	X-ray exam of neck spine	0.00	0.94	0.93	0.94	0.93	0.05	0.99	0.98	0.99	0.98	XXX
72052		A	X-ray exam of neck spine	0.36	1.28	1.32	1.28	1.32	0.06	1.70	1.74	1.70	1.74	XXX
72052	26	A	X-ray exam of neck spine	0.36	0.10	0.14	0.10	0.14	0.01	0.47	0.51	0.47	0.51	XXX
72052	TC	A	X-ray exam of neck spine	0.00	1.19	1.18	1.19	1.18	0.05	1.24	1.23	1.24	1.23	XXX
72069		A	X-ray exam of trunk spine	0.22	0.57	0.60	0.57	0.60	0.03	0.82	0.85	0.82	0.85	XXX
72069	26	A	X-ray exam of trunk spine	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
72069	TC	A	X-ray exam of trunk spine	0.00	0.51	0.51	0.51	0.51	0.02	0.53	0.53	0.53	0.53	XXX
72070		A	X-ray exam of thorax spine	0.22	0.74	0.76	0.74	0.76	0.04	1.00	1.02	1.00	1.02	XXX
72070	26	A	X-ray exam of thorax spine	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
72070	TC	A	X-ray exam of thorax spine	0.00	0.68	0.68	0.68	0.68	0.03	0.71	0.71	0.71	0.71	XXX
72072		A	X-ray exam of thoracic spine	0.22	0.82	0.85	0.82	0.85	0.05	1.09	1.12	1.09	1.12	XXX
72072	26	A	X-ray exam of thoracic spine	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
72072	TC	A	X-ray exam of thoracic spine	0.00	0.76	0.76	0.76	0.76	0.04	0.80	0.80	0.80	0.80	XXX
72074		A	X-ray exam of thoracic spine	0.22	1.02	1.04	1.02	1.04	0.06	1.30	1.32	1.30	1.32	XXX
72074	26	A	X-ray exam of thoracic spine	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
72074	TC	A	X-ray exam of thoracic spine	0.00	0.96	0.95	0.96	0.95	0.05	1.01	1.00	1.01	1.00	XXX
72080		A	X-ray exam of trunk spine	0.22	0.77	0.79	0.77	0.79	0.04	1.03	1.05	1.03	1.05	XXX
72080	26	A	X-ray exam of trunk spine	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
72080	TC	A	X-ray exam of trunk spine	0.00	0.70	0.70	0.70	0.70	0.03	0.73	0.73	0.73	0.73	XXX
72090		A	X-ray exam of trunk spine	0.28	0.78	0.81	0.78	0.81	0.04	1.10	1.13	1.10	1.13	XXX
72090	26	A	X-ray exam of trunk spine	0.28	0.08	0.11	0.08	0.11	0.01	0.37	0.40	0.37	0.40	XXX
72090	TC	A	X-ray exam of trunk spine	0.00	0.70	0.70	0.70	0.70	0.03	0.73	0.73	0.73	0.73	XXX
72100		A	X-ray exam of lower spine	0.22	0.76	0.78	0.76	0.78	0.04	1.02	1.04	1.02	1.04	XXX
72100	26	A	X-ray exam of lower spine	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
72100	TC	A	X-ray exam of lower spine	0.00	0.70	0.70	0.70	0.70	0.03	0.73	0.73	0.73	0.73	XXX
72110		A	X-ray exam of lower spine	0.31	1.04	1.07	1.04	1.07	0.06	1.41	1.44	1.41	1.44	XXX
72110	26	A	X-ray exam of lower spine	0.31	0.08	0.12	0.08	0.12	0.01	0.40	0.44	0.40	0.44	XXX
72110	TC	A	X-ray exam of lower spine	0.00	0.96	0.95	0.96	0.95	0.05	1.01	1.00	1.01	1.00	XXX
72114		A	X-ray exam of lower spine	0.36	1.34	1.38	1.34	1.38	0.07	1.77	1.81	1.77	1.81	XXX
72114	26	A	X-ray exam of lower spine	0.36	0.10	0.14	0.10	0.14	0.02	0.48	0.52	0.48	0.52	XXX
72114	TC	A	X-ray exam of lower spine	0.00	1.24	1.24	1.24	1.24	0.05	1.29	1.29	1.29	1.29	XXX
72120		A	X-ray exam of lower spine	0.22	1.00	1.02	1.00	1.02	0.06	1.28	1.30	1.28	1.30	XXX
72120	26	A	X-ray exam of lower spine	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
72120	TC	A	X-ray exam of lower spine	0.00	0.94	0.93	0.94	0.93	0.05	0.99	0.98	0.99	0.98	XXX
72125		A	CAT scan of neck spine	1.16	6.49	6.58	6.49	6.58	0.33	7.98	8.07	7.98	8.07	XXX
72125	26	A	CAT scan of neck spine	1.16	0.31	0.43	0.31	0.43	0.05	1.52	1.64	1.52	1.64	XXX
72125	TC	A	CAT scan of neck spine	0.00	6.18	6.15	6.18	6.15	0.28	6.46	6.43	6.46	6.43	XXX
72126		A	Contrast CAT scan of neck	1.22	7.72	7.81	7.72	7.81	0.39	9.33	9.42	9.33	9.42	XXX
72126	26	A	Contrast CAT scan of neck	1.22	0.33	0.46	0.33	0.46	0.05	1.60	1.73	1.60	1.73	XXX
72126	TC	A	Contrast CAT scan of neck	0.00	7.39	7.35	7.39	7.35	0.34	7.73	7.69	7.73	7.69	XXX
72127		A	Contrast CAT scans of neck	1.27	9.59	9.68	9.59	9.68	0.46	11.32	11.41	11.32	11.41	XXX
72127	26	A	Contrast CAT scans of neck	1.27	0.34	0.48	0.34	0.48	0.05	1.66	1.80	1.66	1.80	XXX
72127	TC	A	Contrast CAT scans of neck	0.00	9.25	9.20	9.25	9.20	0.41	9.66	9.61	9.66	9.61	XXX
72128		A	CAT scan of thorax spine	1.16	6.49	6.58	6.49	6.58	0.33	7.98	8.07	7.98	8.07	XXX
72128	26	A	CAT scan of thorax spine	1.16	0.31	0.43	0.31	0.43	0.05	1.52	1.64	1.52	1.64	XXX
72128	TC	A	CAT scan of thorax spine	0.00	6.18	6.15	6.18	6.15	0.28	6.46	6.43	6.46	6.43	XXX
72129		A	Contrast CAT scan of thorax	1.22	7.72	7.81	7.72	7.81	0.39	9.33	9.42	9.33	9.42	XXX
72129	26	A	Contrast CAT scan of thorax	1.22	0.33	0.46	0.33	0.46	0.05	1.60	1.73	1.60	1.73	XXX
72129	TC	A	Contrast CAT scan of thorax	0.00	7.39	7.35	7.39	7.35	0.34	7.73	7.69	7.73	7.69	XXX
72130		A	Contrast CAT scans of thorax	1.27	9.59	9.68	9.59	9.68	0.46	11.32	11.41	11.32	11.41	XXX
72130	26	A	Contrast CAT scans of thorax	1.27	0.34	0.48	0.34	0.48	0.05	1.66	1.80	1.66	1.80	XXX
72130	TC	A	Contrast CAT scans of thorax	0.00	9.25	9.20	9.25	9.20	0.41	9.66	9.61	9.66	9.61	XXX
72131		A	CAT scan of lower spine	1.16	6.49	6.58	6.49	6.58	0.33	7.98	8.07	7.98	8.07	XXX
72131	26	A	CAT scan of lower spine	1.16	0.31	0.43	0.31	0.43	0.05	1.52	1.64	1.52	1.64	XXX
72131	TC	A	CAT scan of lower spine	0.00	6.18	6.15	6.18	6.15	0.28	6.46	6.43	6.46	6.43	XXX
72132		A	Contrast CAT of lower spine	1.22	7.72	7.81	7.72	7.81	0.39	9.33	9.42	9.33	9.42	XXX
72132	26	A	Contrast CAT of lower spine	1.22	0.33	0.46	0.33	0.46	0.05	1.60	1.73	1.60	1.73	XXX
72132	TC	A	Contrast CAT of lower spine	0.00	7.39	7.35	7.39	7.35	0.34	7.73	7.69	7.73	7.69	XXX
72133		A	Contrast CAT scans,low spine	1.27	9.59	9.68	9.59	9.68	0.46	11.32	11.41	11.32	11.41	XXX
72133	26	A	Contrast CAT scans,low spine	1.27	0.34	0.48	0.34	0.48	0.05	1.66	1.80	1.66	1.80	XXX
72133	TC	A	Contrast CAT scans,low spine	0.00	9.25	9.20	9.25	9.20	0.41	9.66	9.61	9.66	9.61	XXX
72141		A	Magnetic image, neck spine	1.60	12.16	12.27	12.16	12.27	0.59	14.35	14.46	14.35	14.46	XXX
72141	26	A	Magnetic image, neck spine	1.60	0.44	0.61	0.44	0.61	0.07	2.11	2.28	2.11	2.28	XXX
72141	TC	A	Magnetic image, neck spine	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
72142		A	Magnetic image, neck spine	1.92	14.59	14.71	14.59	14.71	0.71	17.22	17.34	17.22	17.34	XXX
72142	26	A	Magnetic image, neck spine	1.92	0.54	0.74	0.54	0.74	0.08	2.54	2.74	2.54	2.74	XXX
72142	TC	A	Magnetic image, neck spine	0.00	14.05	13.98	14.05	13.98	0.63	14.68	14.61	14.68	14.61	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
72146		A	Magnetic image, chest spine	1.60	13.44	13.55	13.44	13.55	0.65	15.69	15.80	15.69	15.80	XXX
72146	26	A	Magnetic image, chest spine	1.60	0.44	0.61	0.44	0.61	0.07	2.11	2.28	2.11	2.28	XXX
72146	TC	A	Magnetic image, chest spine	0.00	13.01	12.94	13.01	12.94	0.58	13.59	13.52	13.59	13.52	XXX
72147		A	Magnetic image, chest spine	1.92	14.59	14.71	14.59	14.71	0.71	17.22	17.34	17.22	17.34	XXX
72147	26	A	Magnetic image, chest spine	1.92	0.53	0.73	0.53	0.73	0.08	2.53	2.73	2.53	2.73	XXX
72147	TC	A	Magnetic image, chest spine	0.00	14.05	13.98	14.05	13.98	0.63	14.68	14.61	14.68	14.61	XXX
72148		A	Magnetic image, lumbar spine	1.48	13.41	13.50	13.41	13.50	0.64	15.53	15.62	15.53	15.62	XXX
72148	26	A	Magnetic image, lumbar spine	1.48	0.41	0.57	0.41	0.57	0.06	1.95	2.11	1.95	2.11	XXX
72148	TC	A	Magnetic image, lumbar spine	0.00	13.01	12.94	13.01	12.94	0.58	13.59	13.52	13.59	13.52	XXX
72149		A	Magnetic image, lumbar spine	1.78	14.55	14.66	14.55	14.66	0.70	17.03	17.14	17.03	17.14	XXX
72149	26	A	Magnetic image, lumbar spine	1.78	0.50	0.69	0.50	0.69	0.07	2.35	2.54	2.35	2.54	XXX
72149	TC	A	Magnetic image, lumbar spine	0.00	14.05	13.98	14.05	13.98	0.63	14.68	14.61	14.68	14.61	XXX
72156		A	Magnetic image, neck spine	2.57	26.73	26.86	26.73	26.86	1.27	30.57	30.70	30.57	30.70	XXX
72156	26	A	Magnetic image, neck spine	2.57	0.70	0.98	0.70	0.98	0.10	3.37	3.65	3.37	3.65	XXX
72156	TC	A	Magnetic image, neck spine	0.00	26.03	25.89	26.03	25.89	1.17	27.20	27.06	27.20	27.06	XXX
72157		A	Magnetic image, chest spine	2.57	26.73	26.86	26.73	26.86	1.27	30.57	30.70	30.57	30.70	XXX
72157	26	A	Magnetic image, chest spine	2.57	0.70	0.98	0.70	0.98	0.10	3.37	3.65	3.37	3.65	XXX
72157	TC	A	Magnetic image, chest spine	0.00	26.03	25.89	26.03	25.89	1.17	27.20	27.06	27.20	27.06	XXX
72158		A	Magnetic image, lumbar spine	2.36	26.67	26.79	26.67	26.79	1.27	30.30	30.42	30.30	30.42	XXX
72158	26	A	Magnetic image, lumbar spine	2.36	0.64	0.90	0.64	0.90	0.10	3.10	3.36	3.10	3.36	XXX
72158	TC	A	Magnetic image, lumbar spine	0.00	26.03	25.89	26.03	25.89	1.17	27.20	27.06	27.20	27.06	XXX
72159		N	Magnetic imaging/spine (MRA)	+1.80	13.70	13.65	13.70	13.65	0.65	16.15	16.10	16.15	16.10	XXX
72159	26	N	Magnetic imaging/spine (MRA)	+1.80	0.69	0.71	0.69	0.71	0.07	2.56	2.58	2.56	2.58	XXX
72159	TC	N	Magnetic imaging/spine (MRA)	+0.00	13.01	12.94	13.01	12.94	0.58	13.59	13.52	13.59	13.52	XXX
72170		A	X-ray exam of pelvis	0.17	0.60	0.61	0.60	0.61	0.03	0.80	0.81	0.80	0.81	XXX
72170	26	A	X-ray exam of pelvis	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
72170	TC	A	X-ray exam of pelvis	0.00	0.55	0.55	0.55	0.55	0.02	0.57	0.57	0.57	0.57	XXX
72190		A	X-ray exam of pelvis	0.21	0.76	0.78	0.76	0.78	0.04	1.01	1.03	1.01	1.03	XXX
72190	26	A	X-ray exam of pelvis	0.21	0.06	0.09	0.06	0.09	0.01	0.28	0.31	0.28	0.31	XXX
72190	TC	A	X-ray exam of pelvis	0.00	0.70	0.70	0.70	0.70	0.03	0.73	0.73	0.73	0.73	XXX
72192		A	CAT scan of pelvis	1.09	6.47	6.55	6.47	6.55	0.32	7.88	7.96	7.88	7.96	XXX
72192	26	A	CAT scan of pelvis	1.09	0.30	0.41	0.30	0.41	0.04	1.43	1.54	1.43	1.54	XXX
72192	TC	A	CAT scan of pelvis	0.00	6.18	6.15	6.18	6.15	0.28	6.46	6.43	6.46	6.43	XXX
72193		A	Contrast CAT scan of pelvis	1.16	7.47	7.55	7.47	7.55	0.37	9.00	9.08	9.00	9.08	XXX
72193	26	A	Contrast CAT scan of pelvis	1.16	0.31	0.43	0.31	0.43	0.05	1.52	1.64	1.52	1.64	XXX
72193	TC	A	Contrast CAT scan of pelvis	0.00	7.15	7.12	7.15	7.12	0.32	7.47	7.44	7.47	7.44	XXX
72194		A	Contrast CAT scans of pelvis	1.22	9.20	9.28	9.20	9.28	0.44	10.86	10.94	10.86	10.94	XXX
72194	26	A	Contrast CAT scans of pelvis	1.22	0.33	0.46	0.33	0.46	0.05	1.60	1.73	1.60	1.73	XXX
72194	TC	A	Contrast CAT scans of pelvis	0.00	8.87	8.83	8.87	8.83	0.39	9.26	9.22	9.26	9.22	XXX
72196		A	Magnetic image, pelvis	1.60	12.15	12.26	12.15	12.26	0.58	14.33	14.44	14.33	14.44	XXX
72196	26	A	Magnetic image, pelvis	1.60	0.43	0.61	0.43	0.61	0.06	2.09	2.27	2.09	2.27	XXX
72196	TC	A	Magnetic image, pelvis	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
72198		N	Magnetic imaging/pelvis(MRA)	+1.80	12.41	12.39	12.41	12.39	0.59	14.80	14.78	14.80	14.78	XXX
72198	26	N	Magnetic imaging/pelvis(MRA)	+1.80	0.69	0.74	0.69	0.74	0.07	2.56	2.61	2.56	2.61	XXX
72198	TC	N	Magnetic imaging/pelvis(MRA)	+0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
72200		A	X-ray exam sacroiliac joints	0.17	0.60	0.62	0.60	0.62	0.03	0.80	0.82	0.80	0.82	XXX
72200	26	A	X-ray exam sacroiliac joints	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
72200	TC	A	X-ray exam sacroiliac joints	0.00	0.55	0.55	0.55	0.55	0.02	0.57	0.57	0.57	0.57	XXX
72202		A	X-ray exam sacroiliac joints	0.19	0.70	0.72	0.70	0.72	0.04	0.93	0.95	0.93	0.95	XXX
72202	26	A	X-ray exam sacroiliac joints	0.19	0.05	0.08	0.05	0.08	0.01	0.25	0.28	0.25	0.28	XXX
72202	TC	A	X-ray exam sacroiliac joints	0.00	0.64	0.64	0.64	0.64	0.03	0.67	0.67	0.67	0.67	XXX
72220		A	X-ray exam of tailbone	0.17	0.64	0.66	0.64	0.66	0.04	0.85	0.87	0.85	0.87	XXX
72220	26	A	X-ray exam of tailbone	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
72220	TC	A	X-ray exam of tailbone	0.00	0.59	0.59	0.59	0.59	0.03	0.62	0.62	0.62	0.62	XXX
72240		A	Contrast x-ray of neck spine	0.91	5.20	5.28	5.20	5.28	0.27	6.38	6.46	6.38	6.46	XXX
72240	26	A	Contrast x-ray of neck spine	0.91	0.24	0.34	0.24	0.34	0.04	1.19	1.29	1.19	1.29	XXX
72240	TC	A	Contrast x-ray of neck spine	0.00	4.96	4.94	4.96	4.94	0.23	5.19	5.17	5.19	5.17	XXX
72255		A	Contrast x-ray thorax spine	0.91	4.76	4.84	4.76	4.84	0.24	5.91	5.99	5.91	5.99	XXX
72255	26	A	Contrast x-ray thorax spine	0.91	0.23	0.34	0.23	0.34	0.04	1.18	1.29	1.18	1.29	XXX
72255	TC	A	Contrast x-ray thorax spine	0.00	4.53	4.51	4.53	4.51	0.20	4.73	4.71	4.73	4.71	XXX
72265		A	Contrast x-ray lower spine	0.83	4.47	4.55	4.47	4.55	0.24	5.54	5.62	5.54	5.62	XXX
72265	26	A	Contrast x-ray lower spine	0.83	0.21	0.31	0.21	0.31	0.04	1.08	1.18	1.08	1.18	XXX
72265	TC	A	Contrast x-ray lower spine	0.00	4.26	4.24	4.26	4.24	0.20	4.46	4.44	4.46	4.44	XXX
72270		A	Contrast x-ray of spine	1.33	6.74	6.85	6.74	6.85	0.35	8.42	8.53	8.42	8.53	XXX
72270	26	A	Contrast x-ray of spine	1.33	0.36	0.50	0.36	0.50	0.06	1.75	1.89	1.75	1.89	XXX
72270	TC	A	Contrast x-ray of spine	0.00	6.38	6.35	6.38	6.35	0.29	6.67	6.64	6.67	6.64	XXX
72285		A	X-ray of neck spine disk	0.83	8.96	9.02	8.96	9.02	0.43	10.22	10.28	10.22	10.28	XXX
72285	26	A	X-ray of neck spine disk	0.83	0.20	0.31	0.20	0.31	0.04	1.07	1.18	1.07	1.18	XXX
72285	TC	A	X-ray of neck spine disk	0.00	8.76	8.72	8.76	8.72	0.39	9.15	9.11	9.15	9.11	XXX
72295		A	X-ray of lower spine disk	0.83	8.44	8.49	8.44	8.49	0.40	9.67	9.72	9.67	9.72	XXX
72295	26	A	X-ray of lower spine disk	0.83	0.23	0.32	0.23	0.32	0.04	1.10	1.19	1.10	1.19	XXX
72295	TC	A	X-ray of lower spine disk	0.00	8.22	8.18	8.22	8.18	0.36	8.58	8.54	8.58	8.54	XXX
73000		A	X-ray exam of collarbone	0.16	0.60	0.61	0.60	0.61	0.03	0.79	0.80	0.79	0.80	XXX
73000	26	A	X-ray exam of collarbone	0.16	0.04	0.06	0.04	0.06	0.01	0.21	0.23	0.21	0.23	XXX
73000	TC	A	X-ray exam of collarbone	0.00	0.55	0.55	0.55	0.55	0.02	0.57	0.57	0.57	0.57	XXX
73010		A	X-ray exam of shoulder blade	0.17	0.60	0.62	0.60	0.62	0.03	0.80	0.82	0.80	0.82	XXX
73010	26	A	X-ray exam of shoulder blade	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73010	TC	A	X-ray exam of shoulder blade	0.00	0.55	0.55	0.55	0.55	0.02	0.57	0.57	0.57	0.57	XXX
73020		A	X-ray exam of shoulder	0.15	0.53	0.55	0.53	0.55	0.03	0.71	0.73	0.71	0.73	XXX
73020	26	A	X-ray exam of shoulder	0.15	0.04	0.06	0.04	0.06	0.01	0.20	0.22	0.20	0.22	XXX
73020	TC	A	X-ray exam of shoulder	0.00	0.49	0.49	0.49	0.49	0.02	0.51	0.51	0.51	0.51	XXX
73030		A	X-ray exam of shoulder	0.18	0.64	0.66	0.64	0.66	0.04	0.86	0.88	0.86	0.88	XXX
73030	26	A	X-ray exam of shoulder	0.18	0.05	0.07	0.05	0.07	0.01	0.24	0.26	0.24	0.26	XXX
73030	TC	A	X-ray exam of shoulder	0.00	0.59	0.59	0.59	0.59	0.03	0.62	0.62	0.62	0.62	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
73040		A	Contrast x-ray of shoulder	0.54	2.34	2.39	2.34	2.39	0.12	3.00	3.05	3.00	3.05	XXX
73040	26	A	Contrast x-ray of shoulder	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
73040	TC	A	Contrast x-ray of shoulder	0.00	2.19	2.18	2.19	2.18	0.10	2.29	2.26	2.29	2.26	XXX
73050		A	X-ray exam of shoulders	0.20	0.76	0.78	0.76	0.78	0.04	1.00	1.02	1.00	1.02	XXX
73050	26	A	X-ray exam of shoulders	0.20	0.06	0.08	0.06	0.08	0.01	0.27	0.29	0.27	0.29	XXX
73050	TC	A	X-ray exam of shoulders	0.00	0.70	0.70	0.70	0.70	0.03	0.73	0.73	0.73	0.73	XXX
73060		A	X-ray exam of humerus	0.17	0.64	0.66	0.64	0.66	0.04	0.85	0.87	0.85	0.87	XXX
73060	26	A	X-ray exam of humerus	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73060	TC	A	X-ray exam of humerus	0.00	0.59	0.59	0.59	0.59	0.03	0.62	0.62	0.62	0.62	XXX
73070		A	X-ray exam of elbow	0.15	0.59	0.61	0.59	0.61	0.03	0.77	0.79	0.77	0.79	XXX
73070	26	A	X-ray exam of elbow	0.15	0.04	0.06	0.04	0.06	0.01	0.20	0.22	0.20	0.22	XXX
73070	TC	A	X-ray exam of elbow	0.00	0.55	0.55	0.55	0.55	0.02	0.57	0.57	0.57	0.57	XXX
73080		A	X-ray exam of elbow	0.17	0.64	0.66	0.64	0.66	0.04	0.85	0.87	0.85	0.87	XXX
73080	26	A	X-ray exam of elbow	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73080	TC	A	X-ray exam of elbow	0.00	0.59	0.59	0.59	0.59	0.03	0.62	0.62	0.62	0.62	XXX
73085		A	Contrast x-ray of elbow	0.54	2.35	2.40	2.35	2.40	0.12	3.01	3.06	3.01	3.06	XXX
73085	26	A	Contrast x-ray of elbow	0.54	0.16	0.22	0.16	0.22	0.02	0.72	0.78	0.72	0.78	XXX
73085	TC	A	Contrast x-ray of elbow	0.00	2.19	2.18	2.19	2.18	0.10	2.29	2.28	2.29	2.28	XXX
73090		A	X-ray exam of forearm	0.16	0.60	0.61	0.60	0.61	0.03	0.79	0.80	0.79	0.80	XXX
73090	26	A	X-ray exam of forearm	0.16	0.04	0.06	0.04	0.06	0.01	0.21	0.23	0.21	0.23	XXX
73090	TC	A	X-ray exam of forearm	0.00	0.55	0.55	0.55	0.55	0.02	0.57	0.57	0.57	0.57	XXX
73092		A	X-ray exam of arm, infant	0.16	0.56	0.58	0.56	0.58	0.03	0.75	0.77	0.75	0.77	XXX
73092	26	A	X-ray exam of arm, infant	0.16	0.04	0.06	0.04	0.06	0.01	0.21	0.23	0.21	0.23	XXX
73092	TC	A	X-ray exam of arm, infant	0.00	0.51	0.51	0.51	0.51	0.02	0.53	0.53	0.53	0.53	XXX
73100		A	X-ray exam of wrist	0.16	0.56	0.58	0.56	0.58	0.03	0.75	0.77	0.75	0.77	XXX
73100	26	A	X-ray exam of wrist	0.16	0.05	0.07	0.05	0.07	0.01	0.22	0.24	0.22	0.24	XXX
73100	TC	A	X-ray exam of wrist	0.00	0.51	0.51	0.51	0.51	0.02	0.53	0.53	0.53	0.53	XXX
73110		A	X-ray exam of wrist	0.17	0.61	0.63	0.61	0.63	0.03	0.81	0.83	0.81	0.83	XXX
73110	26	A	X-ray exam of wrist	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73110	TC	A	X-ray exam of wrist	0.00	0.56	0.56	0.56	0.56	0.02	0.58	0.58	0.58	0.58	XXX
73115		A	Contrast x-ray of wrist	0.54	1.80	1.85	1.80	1.85	0.10	2.44	2.49	2.44	2.49	XXX
73115	26	A	Contrast x-ray of wrist	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
73115	TC	A	Contrast x-ray of wrist	0.00	1.65	1.64	1.65	1.64	0.08	1.73	1.72	1.73	1.72	XXX
73120		A	X-ray exam of hand	0.16	0.56	0.58	0.56	0.58	0.03	0.75	0.77	0.75	0.77	XXX
73120	26	A	X-ray exam of hand	0.16	0.05	0.07	0.05	0.07	0.01	0.22	0.24	0.22	0.24	XXX
73120	TC	A	X-ray exam of hand	0.00	0.51	0.51	0.51	0.51	0.02	0.53	0.53	0.53	0.53	XXX
73130		A	X-ray exam of hand	0.17	0.61	0.63	0.61	0.63	0.03	0.81	0.83	0.81	0.83	XXX
73130	26	A	X-ray exam of hand	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73130	TC	A	X-ray exam of hand	0.00	0.56	0.56	0.56	0.56	0.02	0.58	0.58	0.58	0.58	XXX
73140		A	X-ray exam of finger(s)	0.13	0.48	0.49	0.48	0.49	0.03	0.64	0.65	0.64	0.65	XXX
73140	26	A	X-ray exam of finger(s)	0.13	0.04	0.06	0.04	0.06	0.01	0.18	0.20	0.18	0.20	XXX
73140	TC	A	X-ray exam of finger(s)	0.00	0.44	0.44	0.44	0.44	0.02	0.46	0.46	0.46	0.46	XXX
73200		A	CAT scan of arm	1.09	5.49	5.57	5.49	5.57	0.27	6.85	6.93	6.85	6.93	XXX
73200	26	A	CAT scan of arm	1.09	0.30	0.41	0.30	0.41	0.04	1.43	1.54	1.43	1.54	XXX
73200	TC	A	CAT scan of arm	0.00	5.19	5.16	5.19	5.16	0.23	5.42	5.39	5.42	5.39	XXX
73201		A	Contrast CAT scan of arm	1.16	6.49	6.58	6.49	6.58	0.33	7.98	8.07	7.98	8.07	XXX
73201	26	A	Contrast CAT scan of arm	1.16	0.32	0.44	0.32	0.44	0.05	1.53	1.65	1.53	1.65	XXX
73201	TC	A	Contrast CAT scan of arm	0.00	6.18	6.15	6.18	6.15	0.28	6.46	6.43	6.46	6.43	XXX
73202		A	Contrast CAT scans of arm	1.22	8.10	8.18	8.10	8.18	0.40	9.72	9.80	9.72	9.80	XXX
73202	26	A	Contrast CAT scans of arm	1.22	0.33	0.46	0.33	0.46	0.05	1.60	1.73	1.60	1.73	XXX
73202	TC	A	Contrast CAT scans of arm	0.00	7.77	7.73	7.77	7.73	0.35	8.12	8.08	8.12	8.08	XXX
73220		A	Magnetic image, arm, hand	1.48	12.13	12.22	12.13	12.22	0.58	14.19	14.28	14.19	14.28	XXX
73220	26	A	Magnetic image, arm, hand	1.48	0.41	0.57	0.41	0.57	0.06	1.95	2.11	1.95	2.11	XXX
73220	TC	A	Magnetic image, arm, hand	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
73221		A	Magnetic image, joint of arm	1.48	12.12	12.09	12.12	12.09	0.58	14.18	14.15	14.18	14.15	XXX
73221	26	A	Magnetic image, joint of arm	1.48	0.40	0.44	0.40	0.44	0.06	1.94	1.98	1.94	1.98	XXX
73221	TC	A	Magnetic image, joint of arm	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
73225		N	Magnetic imaging/upper (MRA)	+1.75	12.38	12.35	12.38	12.35	0.59	14.70	14.67	14.70	14.67	XXX
73225	26	N	Magnetic imaging/upper (MRA)	+1.73	0.66	0.69	0.66	0.69	0.07	2.46	2.49	2.46	2.49	XXX
73225	TC	N	Magnetic imaging/upper (MRA)	+0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
73500		A	X-ray exam of hip	0.17	0.54	0.56	0.54	0.56	0.03	0.74	0.76	0.74	0.76	XXX
73500	26	A	X-ray exam of hip	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73500	TC	A	X-ray exam of hip	0.00	0.49	0.49	0.49	0.49	0.02	0.51	0.51	0.51	0.51	XXX
73510		A	X-ray exam of hip	0.21	0.65	0.68	0.65	0.68	0.04	0.90	0.93	0.90	0.93	XXX
73510	26	A	X-ray exam of hip	0.21	0.06	0.09	0.06	0.09	0.01	0.28	0.31	0.28	0.31	XXX
73510	TC	A	X-ray exam of hip	0.00	0.59	0.59	0.59	0.59	0.03	0.62	0.62	0.62	0.62	XXX
73520		A	X-ray exam of hips	0.26	0.78	0.80	0.78	0.80	0.04	1.08	1.10	1.08	1.10	XXX
73520	26	A	X-ray exam of hips	0.26	0.07	0.10	0.07	0.10	0.01	0.34	0.37	0.34	0.37	XXX
73520	TC	A	X-ray exam of hips	0.00	0.70	0.70	0.70	0.70	0.03	0.73	0.73	0.73	0.73	XXX
73525		A	Contrast x-ray of hip	0.54	2.34	2.39	2.34	2.39	0.12	3.00	3.05	3.00	3.05	XXX
73525	26	A	Contrast x-ray of hip	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
73525	TC	A	Contrast x-ray of hip	0.00	2.19	2.18	2.19	2.18	0.10	2.29	2.28	2.29	2.28	XXX
73530		A	X-ray exam of hip	0.29	0.63	0.66	0.63	0.66	0.03	0.95	0.98	0.95	0.98	XXX
73530	26	A	X-ray exam of hip	0.29	0.08	0.11	0.08	0.11	0.01	0.38	0.41	0.38	0.41	XXX
73530	TC	A	X-ray exam of hip	0.00	0.55	0.55	0.55	0.55	0.02	0.57	0.57	0.57	0.57	XXX
73540		A	X-ray exam of pelvis & hips	0.20	0.65	0.68	0.65	0.68	0.04	0.89	0.92	0.89	0.92	XXX
73540	26	A	X-ray exam of pelvis & hips	0.20	0.06	0.09	0.06	0.09	0.01	0.27	0.30	0.27	0.30	XXX
73540	TC	A	X-ray exam of pelvis & hips	0.00	0.59	0.59	0.59	0.59	0.03	0.62	0.62	0.62	0.62	XXX
73550		A	X-ray exam of thigh	0.17	0.64	0.66	0.64	0.66	0.04	0.85	0.87	0.85	0.87	XXX
73550	26	A	X-ray exam of thigh	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73550	TC	A	X-ray exam of thigh	0.00	0.59	0.59	0.59	0.59	0.03	0.62	0.62	0.62	0.62	XXX
73560		A	X-ray exam of knee, 1 or 2	0.17	0.60	0.61	0.60	0.61	0.03	0.80	0.81	0.80	0.81	XXX
73560	26	A	X-ray exam of knee, 1 or 2	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73560	TC	A	X-ray exam of knee, 1 or 2	0.00	0.55	0.55	0.55	0.55	0.02	0.57	0.57	0.57	0.57	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
73562		A	X-ray exam of knee, 3	0.18	0.64	0.67	0.64	0.67	0.04	0.86	0.89	0.86	0.89	XXX
73562	26	A	X-ray exam of knee, 3	0.18	0.05	0.08	0.05	0.08	0.01	0.24	0.27	0.24	0.27	XXX
73562	TC	A	X-ray exam of knee, 3	0.00	0.59	0.59	0.59	0.59	0.03	0.62	0.62	0.62	0.62	XXX
73564		A	X-ray exam of knee, 4+	0.22	0.71	0.73	0.71	0.73	0.04	0.97	0.99	0.97	0.99	XXX
73564	26	A	X-ray exam of knee, 4+	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
73564	TC	A	X-ray exam of knee, 4+	0.00	0.64	0.64	0.64	0.64	0.03	0.67	0.67	0.67	0.67	XXX
73565		A	X-ray exam of knee	0.17	0.56	0.58	0.56	0.58	0.03	0.76	0.78	0.76	0.78	XXX
73565	26	A	X-ray exam of knee	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73565	TC	A	X-ray exam of knee	0.00	0.51	0.51	0.51	0.51	0.02	0.53	0.53	0.53	0.53	XXX
73580		A	Contrast x-ray of knee joint	0.54	2.89	2.94	2.89	2.94	0.15	3.58	3.63	3.58	3.63	XXX
73580	26	A	Contrast x-ray of knee joint	0.54	0.14	0.21	0.14	0.21	0.02	0.70	0.77	0.70	0.77	XXX
73580	TC	A	Contrast x-ray of knee joint	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX
73590		A	X-ray exam of lower leg	0.17	0.60	0.61	0.60	0.61	0.03	0.80	0.81	0.80	0.81	XXX
73590	26	A	X-ray exam of lower leg	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73590	TC	A	X-ray exam of lower leg	0.00	0.55	0.55	0.55	0.55	0.02	0.57	0.57	0.57	0.57	XXX
73592		A	X-ray exam of leg, infant	0.16	0.56	0.58	0.56	0.58	0.03	0.75	0.77	0.75	0.77	XXX
73592	26	A	X-ray exam of leg, infant	0.16	0.05	0.07	0.05	0.07	0.01	0.22	0.24	0.22	0.24	XXX
73592	TC	A	X-ray exam of leg, infant	0.00	0.51	0.51	0.51	0.51	0.02	0.53	0.53	0.53	0.53	XXX
73600		A	X-ray exam of ankle	0.16	0.56	0.58	0.56	0.58	0.03	0.75	0.77	0.75	0.77	XXX
73600	26	A	X-ray exam of ankle	0.16	0.05	0.07	0.05	0.07	0.01	0.22	0.24	0.22	0.24	XXX
73600	TC	A	X-ray exam of ankle	0.00	0.51	0.51	0.51	0.51	0.02	0.53	0.53	0.53	0.53	XXX
73610		A	X-ray exam of ankle	0.17	0.61	0.63	0.61	0.63	0.03	0.81	0.83	0.81	0.83	XXX
73610	26	A	X-ray exam of ankle	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73610	TC	A	X-ray exam of ankle	0.00	0.56	0.56	0.56	0.56	0.02	0.58	0.58	0.58	0.58	XXX
73615		A	Contrast x-ray of ankle	0.54	2.36	2.40	2.36	2.40	0.12	3.02	3.06	3.02	3.06	XXX
73615	26	A	Contrast x-ray of ankle	0.54	0.16	0.22	0.16	0.22	0.02	0.72	0.78	0.72	0.78	XXX
73615	TC	A	Contrast x-ray of ankle	0.00	2.19	2.18	2.19	2.18	0.10	2.29	2.28	2.29	2.28	XXX
73620		A	X-ray exam of foot	0.16	0.56	0.58	0.56	0.58	0.03	0.75	0.77	0.75	0.77	XXX
73620	26	A	X-ray exam of foot	0.16	0.05	0.07	0.05	0.07	0.01	0.22	0.24	0.22	0.24	XXX
73620	TC	A	X-ray exam of foot	0.00	0.51	0.51	0.51	0.51	0.02	0.53	0.53	0.53	0.53	XXX
73630		A	X-ray exam of foot	0.17	0.61	0.63	0.61	0.63	0.03	0.81	0.83	0.81	0.83	XXX
73630	26	A	X-ray exam of foot	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
73630	TC	A	X-ray exam of foot	0.00	0.56	0.56	0.56	0.56	0.02	0.58	0.58	0.58	0.58	XXX
73650		A	X-ray exam of heel	0.16	0.54	0.56	0.54	0.56	0.03	0.73	0.75	0.73	0.75	XXX
73650	26	A	X-ray exam of heel	0.16	0.04	0.06	0.04	0.06	0.01	0.21	0.23	0.21	0.23	XXX
73650	TC	A	X-ray exam of heel	0.00	0.49	0.49	0.49	0.49	0.02	0.51	0.51	0.51	0.51	XXX
73660		A	X-ray exam of toe(s)	0.13	0.48	0.49	0.48	0.49	0.03	0.64	0.65	0.64	0.65	XXX
73660	26	A	X-ray exam of toe(s)	0.13	0.04	0.06	0.04	0.06	0.01	0.18	0.20	0.18	0.20	XXX
73660	TC	A	X-ray exam of toe(s)	0.00	0.44	0.44	0.44	0.44	0.02	0.46	0.46	0.46	0.46	XXX
73700		A	CAT scan of leg	1.09	5.49	5.57	5.49	5.57	0.27	6.85	6.93	6.85	6.93	XXX
73700	26	A	CAT scan of leg	1.09	0.29	0.41	0.29	0.41	0.04	1.42	1.54	1.42	1.54	XXX
73700	TC	A	CAT scan of leg	0.00	5.19	5.16	5.19	5.16	0.23	5.42	5.39	5.42	5.39	XXX
73701		A	Contrast CAT scan of leg	1.16	6.49	6.58	6.49	6.58	0.33	7.98	8.07	7.98	8.07	XXX
73701	26	A	Contrast CAT scan of leg	1.16	0.32	0.44	0.32	0.44	0.05	1.53	1.65	1.53	1.65	XXX
73701	TC	A	Contrast CAT scan of leg	0.00	6.18	6.15	6.18	6.15	0.28	6.46	6.43	6.46	6.43	XXX
73702		A	Contrast CAT scans of leg	1.22	8.10	8.18	8.10	8.18	0.40	9.72	9.80	9.72	9.80	XXX
73702	26	A	Contrast CAT scans of leg	1.22	0.33	0.46	0.33	0.46	0.05	1.60	1.73	1.60	1.73	XXX
73702	TC	A	Contrast CAT scans of leg	0.00	7.77	7.73	7.77	7.73	0.35	8.12	8.08	8.12	8.08	XXX
73720		A	Magnetic image, leg, foot	1.48	12.12	12.22	12.12	12.22	0.58	14.18	14.28	14.18	14.28	XXX
73720	26	A	Magnetic image, leg, foot	1.48	0.40	0.56	0.40	0.56	0.06	1.94	2.10	1.94	2.10	XXX
73720	TC	A	Magnetic image, leg, foot	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
73721		A	Magnetic image, joint of leg	1.48	12.13	12.10	12.13	12.10	0.58	14.19	14.16	14.19	14.16	XXX
73721	26	A	Magnetic image, joint of leg	1.48	0.41	0.44	0.41	0.44	0.06	1.95	1.98	1.95	1.98	XXX
73721	TC	A	Magnetic image, joint of leg	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
73725		R	Magnetic imaging/lower (MRA)	1.82	12.21	12.26	12.21	12.26	0.60	14.63	14.68	14.63	14.68	XXX
73725	26	R	Magnetic imaging/lower (MRA)	1.82	0.49	0.61	0.49	0.61	0.08	2.39	2.51	2.39	2.51	XXX
73725	TC	R	Magnetic imaging/lower (MRA)	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
74000		A	X-ray exam of abdomen	0.18	0.60	0.62	0.60	0.62	0.03	0.81	0.83	0.81	0.83	XXX
74000	26	A	X-ray exam of abdomen	0.18	0.05	0.07	0.05	0.07	0.01	0.24	0.26	0.24	0.26	XXX
74000	TC	A	X-ray exam of abdomen	0.00	0.55	0.55	0.55	0.55	0.02	0.57	0.57	0.57	0.57	XXX
74010		A	X-ray exam of abdomen	0.23	0.66	0.69	0.66	0.69	0.04	0.93	0.96	0.93	0.96	XXX
74010	26	A	X-ray exam of abdomen	0.23	0.06	0.09	0.06	0.09	0.01	0.30	0.33	0.30	0.33	XXX
74010	TC	A	X-ray exam of abdomen	0.00	0.59	0.59	0.59	0.59	0.03	0.62	0.62	0.62	0.62	XXX
74020		A	X-ray exam of abdomen	0.27	0.72	0.75	0.72	0.75	0.04	1.03	1.06	1.03	1.06	XXX
74020	26	A	X-ray exam of abdomen	0.27	0.07	0.11	0.07	0.11	0.01	0.35	0.39	0.35	0.39	XXX
74020	TC	A	X-ray exam of abdomen	0.00	0.64	0.64	0.64	0.64	0.03	0.67	0.67	0.67	0.67	XXX
74022		A	X-ray exam series, abdomen	0.32	0.85	0.89	0.85	0.89	0.05	1.22	1.26	1.22	1.26	XXX
74022	26	A	X-ray exam series, abdomen	0.32	0.09	0.13	0.09	0.13	0.01	0.42	0.46	0.42	0.46	XXX
74022	TC	A	X-ray exam series, abdomen	0.00	0.76	0.76	0.76	0.76	0.04	0.80	0.80	0.80	0.80	XXX
74150		A	CAT scan of abdomen	1.19	6.24	6.33	6.24	6.33	0.32	7.75	7.84	7.75	7.84	XXX
74150	26	A	CAT scan of abdomen	1.19	0.32	0.44	0.32	0.44	0.05	1.56	1.68	1.56	1.68	XXX
74150	TC	A	CAT scan of abdomen	0.00	5.92	5.89	5.92	5.89	0.27	6.19	6.16	6.19	6.16	XXX
74160		A	Contrast CAT scan of abdomen	1.27	7.50	7.60	7.50	7.60	0.37	9.14	9.24	9.14	9.24	XXX
74160	26	A	Contrast CAT scan of abdomen	1.27	0.34	0.48	0.34	0.48	0.05	1.66	1.80	1.66	1.80	XXX
74160	TC	A	Contrast CAT scan of abdomen	0.00	7.15	7.12	7.15	7.12	0.32	7.47	7.44	7.47	7.44	XXX
74170		A	Contrast CAT scans, abdomen	1.40	9.25	9.35	9.25	9.35	0.45	11.10	11.20	11.10	11.20	XXX
74170	26	A	Contrast CAT scans, abdomen	1.40	0.38	0.53	0.38	0.53	0.06	1.84	1.99	1.84	1.99	XXX
74170	TC	A	Contrast CAT scans, abdomen	0.00	8.87	8.83	8.87	8.83	0.39	9.26	9.22	9.26	9.22	XXX
74181		A	Magnetic image,abdomen (MRI)	1.60	12.15	12.26	12.15	12.26	0.58	14.33	14.44	14.33	14.44	XXX
74181	26	A	Magnetic image,abdomen (MRI)	1.60	0.43	0.61	0.43	0.61	0.06	2.09	2.27	2.09	2.27	XXX
74181	TC	A	Magnetic image,abdomen (MRI)	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
74185		R	Magnetic image/abdomen (MRA)	1.80	12.41	12.39	12.41	12.39	0.59	14.80	14.78	14.80	14.78	XXX
74185	26	R	Magnetic image/abdomen (MRA)	1.80	0.69	0.74	0.69	0.74	0.07	2.56	2.61	2.56	2.61	XXX
74185	TC	R	Magnetic image/abdomen (MRA)	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
74190		A	X-ray exam of peritoneum	0.48	1.49	1.49	1.49	1.49	0.08	2.05	2.05	2.05	2.05	XXX
74190	26	A	X-ray exam of peritoneum	0.48	0.13	0.14	0.13	0.14	0.02	0.63	0.64	0.63	0.64	XXX
74190	TC	A	X-ray exam of peritoneum	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
74210		A	Contrast xray exam of throat	0.36	1.34	1.37	1.34	1.37	0.06	1.76	1.79	1.76	1.79	XXX
74210	26	A	Contrast xray exam of throat	0.36	0.10	0.14	0.10	0.14	0.01	0.47	0.51	0.47	0.51	XXX
74210	TC	A	Contrast xray exam of throat	0.00	1.24	1.24	1.24	1.24	0.05	1.29	1.29	1.29	1.29	XXX
74220		A	Contrast xray exam,esophagus	0.46	1.36	1.41	1.36	1.41	0.07	1.89	1.94	1.89	1.94	XXX
74220	26	A	Contrast xray exam,esophagus	0.46	0.12	0.18	0.12	0.18	0.02	0.60	0.66	0.60	0.66	XXX
74220	TC	A	Contrast xray exam,esophagus	0.00	1.24	1.24	1.24	1.24	0.05	1.29	1.29	1.29	1.29	XXX
74230		A	Cinema xray throat/esophagus	0.53	1.50	1.56	1.50	1.56	0.08	2.11	2.17	2.11	2.17	XXX
74230	26	A	Cinema xray throat/esophagus	0.53	0.14	0.21	0.14	0.21	0.02	0.69	0.76	0.69	0.76	XXX
74230	TC	A	Cinema xray throat/esophagus	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
74235		A	Remove esophagus obstruction	1.19	3.10	3.19	3.10	3.19	0.18	4.47	4.56	4.47	4.56	XXX
74235	26	A	Remove esophagus obstruction	1.19	0.36	0.46	0.36	0.46	0.05	1.60	1.70	1.60	1.70	XXX
74235	TC	A	Remove esophagus obstruction	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX
74240		A	X-ray exam upper GI tract	0.69	1.71	1.79	1.71	1.79	0.10	2.50	2.58	2.50	2.58	XXX
74240	26	A	X-ray exam upper GI tract	0.69	0.19	0.27	0.19	0.27	0.03	0.91	0.99	0.91	0.99	XXX
74240	TC	A	X-ray exam upper GI tract	0.00	1.53	1.52	1.53	1.52	0.07	1.60	1.59	1.60	1.59	XXX
74241		A	X-ray exam upper GI tract	0.69	1.74	1.82	1.74	1.82	0.10	2.53	2.61	2.53	2.61	XXX
74241	26	A	X-ray exam upper GI tract	0.69	0.19	0.27	0.19	0.27	0.03	0.91	0.99	0.91	0.99	XXX
74241	TC	A	X-ray exam upper GI tract	0.00	1.56	1.55	1.56	1.55	0.07	1.63	1.62	1.63	1.62	XXX
74245		A	X-ray exam upper GI tract	0.91	2.74	2.82	2.74	2.82	0.16	3.81	3.89	3.81	3.89	XXX
74245	26	A	X-ray exam upper GI tract	0.91	0.24	0.34	0.24	0.34	0.04	1.19	1.29	1.19	1.29	XXX
74245	TC	A	X-ray exam upper GI tract	0.00	2.49	2.48	2.49	2.48	0.12	2.61	2.60	2.61	2.60	XXX
74246		A	Contrast xray upper GI tract	0.69	1.91	1.98	1.91	1.98	0.11	2.71	2.78	2.71	2.78	XXX
74246	26	A	Contrast xray upper GI tract	0.69	0.19	0.27	0.19	0.27	0.03	0.91	0.99	0.91	0.99	XXX
74246	TC	A	Contrast xray upper GI tract	0.00	1.72	1.71	1.72	1.71	0.08	1.80	1.79	1.80	1.79	XXX
74247		A	Contrast xray upper GI tract	0.69	1.94	2.02	1.94	2.02	0.12	2.75	2.83	2.75	2.83	XXX
74247	26	A	Contrast xray upper GI tract	0.69	0.19	0.27	0.19	0.27	0.03	0.91	0.99	0.91	0.99	XXX
74247	TC	A	Contrast xray upper GI tract	0.00	1.75	1.75	1.75	1.75	0.09	1.84	1.84	1.84	1.84	XXX
74249		A	Contrast xray upper GI tract	0.91	2.93	3.02	2.93	3.02	0.17	4.01	4.10	4.01	4.10	XXX
74249	26	A	Contrast xray upper GI tract	0.91	0.24	0.34	0.24	0.34	0.04	1.19	1.29	1.19	1.29	XXX
74249	TC	A	Contrast xray upper GI tract	0.00	2.69	2.68	2.69	2.68	0.13	2.82	2.81	2.82	2.81	XXX
74250		A	X-ray exam of small bowel	0.47	1.48	1.53	1.48	1.53	0.08	2.03	2.08	2.03	2.08	XXX
74250	26	A	X-ray exam of small bowel	0.47	0.13	0.18	0.13	0.18	0.02	0.62	0.67	0.62	0.67	XXX
74250	TC	A	X-ray exam of small bowel	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
74251		A	X-ray exam of small bowel	0.69	1.54	1.56	1.54	1.56	0.09	2.32	2.34	2.32	2.34	XXX
74251	26	A	X-ray exam of small bowel	0.69	0.19	0.21	0.19	0.21	0.03	0.91	0.93	0.91	0.93	XXX
74251	TC	A	X-ray exam of small bowel	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
74260		A	X-ray exam of small bowel	0.50	1.69	1.74	1.69	1.74	0.09	2.28	2.33	2.28	2.33	XXX
74260	26	A	X-ray exam of small bowel	0.50	0.13	0.19	0.13	0.19	0.02	0.65	0.71	0.65	0.71	XXX
74260	TC	A	X-ray exam of small bowel	0.00	1.56	1.55	1.56	1.55	0.07	1.63	1.62	1.63	1.62	XXX
74270		A	Contrast x-ray exam of colon	0.69	1.97	2.04	1.97	2.04	0.12	2.78	2.85	2.78	2.85	XXX
74270	26	A	Contrast x-ray exam of colon	0.69	0.19	0.27	0.19	0.27	0.03	0.91	0.99	0.91	0.99	XXX
74270	TC	A	Contrast x-ray exam of colon	0.00	1.78	1.77	1.78	1.77	0.09	1.87	1.86	1.87	1.86	XXX
74280		A	Contrast x-ray exam of colon	0.99	2.60	2.70	2.60	2.70	0.15	3.74	3.84	3.74	3.84	XXX
74280	26	A	Contrast x-ray exam of colon	0.99	0.27	0.38	0.27	0.38	0.04	1.30	1.41	1.30	1.41	XXX
74280	TC	A	Contrast x-ray exam of colon	0.00	2.33	2.32	2.33	2.32	0.11	2.44	2.43	2.44	2.43	XXX
74283		A	Contrast x-ray exam of colon	2.02	3.22	3.43	3.22	3.43	0.21	5.45	5.66	5.45	5.66	XXX
74283	26	A	Contrast x-ray exam of colon	2.02	0.54	0.76	0.54	0.76	0.08	2.64	2.86	2.64	2.86	XXX
74283	TC	A	Contrast x-ray exam of colon	0.00	2.68	2.67	2.68	2.67	0.13	2.81	2.80	2.81	2.80	XXX
74290		A	Contrast x-ray, gallbladder	0.32	0.85	0.89	0.85	0.89	0.05	1.22	1.26	1.22	1.26	XXX
74290	26	A	Contrast x-ray, gallbladder	0.32	0.09	0.13	0.09	0.13	0.01	0.42	0.46	0.42	0.46	XXX
74290	TC	A	Contrast x-ray, gallbladder	0.00	0.76	0.76	0.76	0.76	0.04	0.80	0.80	0.80	0.80	XXX
74291		A	Contrast x-rays, gallbladder	0.20	0.50	0.52	0.50	0.52	0.03	0.73	0.75	0.73	0.75	XXX
74291	26	A	Contrast x-rays, gallbladder	0.20	0.05	0.08	0.05	0.08	0.01	0.26	0.29	0.26	0.29	XXX
74291	TC	A	Contrast x-rays, gallbladder	0.00	0.44	0.44	0.44	0.44	0.02	0.46	0.46	0.46	0.46	XXX
74300		C	X-ray bile ducts, pancreas	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.01	0.01	0.01	XXX
74300	26	A	X-ray bile ducts, pancreas	0.36	0.10	0.14	0.10	0.14	0.01	0.47	0.51	0.47	0.51	XXX
74300	TC	C	X-ray bile ducts, pancreas	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
74301		C	X-rays at surgery add-on	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.01	0.01	0.01	ZZZ
74301	26	A	X-rays at surgery add-on	0.21	0.06	0.09	0.06	0.09	0.01	0.28	0.31	0.28	0.31	ZZZ
74301	TC	C	X-rays at surgery add-on	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
74305		A	X-ray bile ducts, pancreas	0.42	0.94	0.98	0.94	0.98	0.06	1.42	1.46	1.42	1.46	XXX
74305	26	A	X-ray bile ducts, pancreas	0.42	0.11	0.16	0.11	0.16	0.02	0.55	0.60	0.55	0.60	XXX
74305	TC	A	X-ray bile ducts, pancreas	0.00	0.82	0.82	0.82	0.82	0.04	0.86	0.86	0.86	0.86	XXX
74320		A	Contrast x-ray of bile ducts	0.54	3.44	3.49	3.44	3.49	0.17	4.15	4.20	4.15	4.20	XXX
74320	26	A	Contrast x-ray of bile ducts	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
74320	TC	A	Contrast x-ray of bile ducts	0.00	3.29	3.28	3.29	3.28	0.15	3.44	3.43	3.44	3.43	XXX
74327		A	X-ray for bile stone removal	0.70	2.03	2.10	2.03	2.10	0.12	2.85	2.92	2.85	2.92	XXX
74327	26	A	X-ray for bile stone removal	0.70	0.19	0.27	0.19	0.27	0.03	0.92	1.00	0.92	1.00	XXX
74327	TC	A	X-ray for bile stone removal	0.00	1.84	1.83	1.84	1.83	0.09	1.93	1.92	1.93	1.92	XXX
74328		A	Xray for bile duct endoscopy	0.70	3.48	3.55	3.48	3.55	0.18	4.36	4.43	4.36	4.43	XXX
74328	26	A	Xray for bile duct endoscopy	0.70	0.19	0.27	0.19	0.27	0.03	0.92	1.00	0.92	1.00	XXX
74328	TC	A	Xray for bile duct endoscopy	0.00	3.29	3.28	3.29	3.28	0.15	3.44	3.43	3.44	3.43	XXX
74329		A	X-ray for pancreas endoscopy	0.70	3.48	3.55	3.48	3.55	0.18	4.36	4.43	4.36	4.43	XXX
74329	26	A	X-ray for pancreas endoscopy	0.70	0.19	0.27	0.19	0.27	0.03	0.92	1.00	0.92	1.00	XXX
74329	TC	A	X-ray for pancreas endoscopy	0.00	3.29	3.28	3.29	3.28	0.15	3.44	3.43	3.44	3.43	XXX
74330		A	Xray,bile/pancreas endoscopy	0.90	3.53	3.57	3.53	3.57	0.19	4.62	4.66	4.62	4.66	XXX
74330	26	A	Xray,bile/pancreas endoscopy	0.90	0.24	0.30	0.24	0.30	0.04	1.18	1.24	1.18	1.24	XXX
74330	TC	A	Xray,bile/pancreas endoscopy	0.00	3.29	3.28	3.29	3.28	0.15	3.44	3.43	3.44	3.43	XXX
74340		A	X-ray guide for GI tube	0.54	2.89	2.94	2.89	2.94	0.15	3.58	3.63	3.58	3.63	XXX
74340	26	A	X-ray guide for GI tube	0.54	0.14	0.21	0.14	0.21	0.02	0.70	0.77	0.70	0.77	XXX
74340	TC	A	X-ray guide for GI tube	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
74350		A	X-ray guide, stomach tube	0.76	3.50	3.57	3.50	3.57	0.18	4.44	4.51	4.44	4.51	XXX
74350	26	A	X-ray guide, stomach tube	0.76	0.21	0.30	0.21	0.30	0.03	1.00	1.09	1.00	1.09	XXX
74350	TC	A	X-ray guide, stomach tube	0.00	3.29	3.28	3.29	3.28	0.15	3.44	3.43	3.44	3.43	XXX
74355		A	X-ray guide, intestinal tube	0.76	2.95	3.02	2.95	3.02	0.16	3.87	3.94	3.87	3.94	XXX
74355	26	A	X-ray guide, intestinal tube	0.76	0.20	0.29	0.20	0.29	0.03	0.99	1.08	0.99	1.08	XXX
74355	TC	A	X-ray guide, intestinal tube	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX
74360		A	X-ray guide, GI dilation	0.54	3.47	3.50	3.47	3.50	0.17	4.18	4.21	4.18	4.21	XXX
74360	26	A	X-ray guide, GI dilation	0.54	0.18	0.23	0.18	0.23	0.02	0.74	0.79	0.74	0.79	XXX
74360	TC	A	X-ray guide, GI dilation	0.00	3.29	3.28	3.29	3.28	0.15	3.44	3.43	3.44	3.43	XXX
74363		A	X-ray, bile duct dilation	0.88	6.61	6.68	6.61	6.68	0.33	7.82	7.89	7.82	7.89	XXX
74363	26	A	X-ray, bile duct dilation	0.88	0.24	0.34	0.24	0.34	0.04	1.16	1.26	1.16	1.26	XXX
74363	TC	A	X-ray, bile duct dilation	0.00	6.38	6.35	6.38	6.35	0.29	6.67	6.64	6.67	6.64	XXX
74400		A	Contrast x-ray urinary tract	0.49	1.88	1.93	1.88	1.93	0.11	2.48	2.53	2.48	2.53	XXX
74400	26	A	Contrast x-ray urinary tract	0.49	0.13	0.19	0.13	0.19	0.02	0.64	0.70	0.64	0.70	XXX
74400	TC	A	Contrast x-ray urinary tract	0.00	1.75	1.75	1.75	1.75	0.09	1.84	1.84	1.84	1.84	XXX
74410		A	Contrast x-ray urinary tract	0.49	2.17	2.22	2.17	2.22	0.11	2.77	2.82	2.77	2.82	XXX
74410	26	A	Contrast x-ray urinary tract	0.49	0.13	0.19	0.13	0.19	0.02	0.64	0.70	0.64	0.70	XXX
74410	TC	A	Contrast x-ray urinary tract	0.00	2.04	2.03	2.04	2.03	0.09	2.13	2.12	2.13	2.12	XXX
74415		A	Contrast x-ray urinary tract	0.49	2.35	2.39	2.35	2.39	0.12	2.96	3.00	2.96	3.00	XXX
74415	26	A	Contrast x-ray urinary tract	0.49	0.13	0.19	0.13	0.19	0.02	0.64	0.70	0.64	0.70	XXX
74415	TC	A	Contrast x-ray urinary tract	0.00	2.21	2.20	2.21	2.20	0.10	2.31	2.30	2.31	2.30	XXX
74420		A	Contrast x-ray urinary tract	0.36	2.85	2.87	2.85	2.87	0.15	3.36	3.38	3.36	3.38	XXX
74420	26	A	Contrast x-ray urinary tract	0.36	0.10	0.14	0.10	0.14	0.02	0.48	0.52	0.48	0.52	XXX
74420	TC	A	Contrast x-ray urinary tract	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX
74425		A	Contrast x-ray urinary tract	0.36	1.46	1.49	1.46	1.49	0.07	1.89	1.92	1.89	1.92	XXX
74425	26	A	Contrast x-ray urinary tract	0.36	0.10	0.14	0.10	0.14	0.01	0.47	0.51	0.47	0.51	XXX
74425	TC	A	Contrast x-ray urinary tract	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
74430		A	Contrast x-ray of bladder	0.32	1.18	1.22	1.18	1.22	0.06	1.56	1.60	1.56	1.60	XXX
74430	26	A	Contrast x-ray of bladder	0.32	0.09	0.13	0.09	0.13	0.01	0.42	0.46	0.42	0.46	XXX
74430	TC	A	Contrast x-ray of bladder	0.00	1.10	1.10	1.10	1.10	0.05	1.15	1.15	1.15	1.15	XXX
74440		A	Xray exam male genital tract	0.38	1.29	1.32	1.29	1.32	0.07	1.74	1.77	1.74	1.77	XXX
74440	26	A	Xray exam male genital tract	0.38	0.11	0.15	0.11	0.15	0.02	0.51	0.55	0.51	0.55	XXX
74440	TC	A	Xray exam male genital tract	0.00	1.19	1.18	1.19	1.18	0.05	1.24	1.23	1.24	1.23	XXX
74445		A	X-ray exam of penis	1.14	1.53	1.62	1.53	1.62	0.11	2.78	2.87	2.78	2.87	XXX
74445	26	A	X-ray exam of penis	1.14	0.34	0.44	0.34	0.44	0.06	1.54	1.64	1.54	1.64	XXX
74445	TC	A	X-ray exam of penis	0.00	1.19	1.18	1.19	1.18	0.05	1.24	1.23	1.24	1.23	XXX
74450		A	X-ray exam urethra/bladder	0.33	1.62	1.65	1.62	1.65	0.08	2.03	2.06	2.03	2.06	XXX
74450	26	A	X-ray exam urethra/bladder	0.33	0.09	0.13	0.09	0.13	0.01	0.43	0.47	0.43	0.47	XXX
74450	TC	A	X-ray exam urethra/bladder	0.00	1.53	1.52	1.53	1.52	0.07	1.60	1.59	1.60	1.59	XXX
74455		A	X-ray exam urethra/bladder	0.33	1.74	1.77	1.74	1.77	0.09	2.16	2.19	2.16	2.19	XXX
74455	26	A	X-ray exam urethra/bladder	0.33	0.09	0.13	0.09	0.13	0.01	0.43	0.47	0.43	0.47	XXX
74455	TC	A	X-ray exam urethra/bladder	0.00	1.65	1.64	1.65	1.64	0.08	1.73	1.72	1.73	1.72	XXX
74470		A	X-ray exam of kidney lesion	0.54	1.45	1.51	1.45	1.51	0.08	2.07	2.13	2.07	2.13	XXX
74470	26	A	X-ray exam of kidney lesion	0.54	0.14	0.21	0.14	0.21	0.02	0.70	0.77	0.70	0.77	XXX
74470	TC	A	X-ray exam of kidney lesion	0.00	1.31	1.30	1.31	1.30	0.06	1.37	1.36	1.37	1.36	XXX
74475		A	Xray control catheter insert	0.54	4.40	4.44	4.40	4.44	0.22	5.16	5.20	5.16	5.20	XXX
74475	26	A	Xray control catheter insert	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
74475	TC	A	Xray control catheter insert	0.00	4.26	4.24	4.26	4.24	0.20	4.46	4.44	4.46	4.44	XXX
74480		A	Xray control catheter insert	0.54	4.40	4.44	4.40	4.44	0.22	5.16	5.20	5.16	5.20	XXX
74480	26	A	Xray control catheter insert	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
74480	TC	A	Xray control catheter insert	0.00	4.26	4.24	4.26	4.24	0.20	4.46	4.44	4.46	4.44	XXX
74485		A	X-ray guide, GU dilation	0.54	3.44	3.49	3.44	3.49	0.17	4.15	4.20	4.15	4.20	XXX
74485	26	A	X-ray guide, GU dilation	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
74485	TC	A	X-ray guide, GU dilation	0.00	3.29	3.28	3.29	3.28	0.15	3.44	3.43	3.44	3.43	XXX
74710		A	X-ray measurement of pelvis	0.34	1.19	1.23	1.19	1.23	0.06	1.59	1.63	1.59	1.63	XXX
74710	26	A	X-ray measurement of pelvis	0.34	0.09	0.13	0.09	0.13	0.01	0.44	0.48	0.44	0.48	XXX
74710	TC	A	X-ray measurement of pelvis	0.00	1.10	1.10	1.10	1.10	0.05	1.15	1.15	1.15	1.15	XXX
74740		A	X-ray female genital tract	0.38	1.46	1.50	1.46	1.50	0.08	1.92	1.96	1.92	1.96	XXX
74740	26	A	X-ray female genital tract	0.38	0.11	0.15	0.11	0.15	0.02	0.51	0.55	0.51	0.55	XXX
74740	TC	A	X-ray female genital tract	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
74742		A	X-ray fallopian tube	0.61	3.46	3.50	3.46	3.50	0.17	4.24	4.28	4.24	4.28	XXX
74742	26	A	X-ray fallopian tube	0.61	0.17	0.22	0.17	0.22	0.02	0.80	0.85	0.80	0.85	XXX
74742	TC	A	X-ray fallopian tube	0.00	3.29	3.28	3.29	3.28	0.15	3.44	3.43	3.44	3.43	XXX
74775		A	X-ray exam of perineum	0.62	1.70	1.76	1.70	1.76	0.10	2.42	2.48	2.42	2.48	XXX
74775	26	A	X-ray exam of perineum	0.62	0.17	0.24	0.17	0.24	0.03	0.82	0.89	0.82	0.89	XXX
74775	TC	A	X-ray exam of perineum	0.00	1.53	1.52	1.53	1.52	0.07	1.60	1.59	1.60	1.59	XXX
75552		A	Magnetic image, myocardium	1.60	12.17	12.27	12.17	12.27	0.58	14.35	14.45	14.35	14.45	XXX
75552	26	A	Magnetic image, myocardium	1.60	0.45	0.62	0.45	0.62	0.06	2.11	2.28	2.11	2.28	XXX
75552	TC	A	Magnetic image, myocardium	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
75553		A	Magnetic image, myocardium	2.00	12.26	12.32	12.26	12.32	0.60	14.86	14.92	14.86	14.92	XXX
75553	26	A	Magnetic image, myocardium	2.00	0.54	0.66	0.54	0.66	0.08	2.62	2.74	2.62	2.74	XXX
75553	TC	A	Magnetic image, myocardium	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
75554		A	Cardiac MRI/function	1.83	12.31	12.34	12.31	12.34	0.59	14.73	14.76	14.73	14.76	XXX
75554	26	A	Cardiac MRI/function	1.83	0.59	0.69	0.59	0.69	0.07	2.49	2.59	2.49	2.59	XXX
75554	TC	A	Cardiac MRI/function	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
75555		A	Cardiac MRI/limited study	1.74	12.38	12.38	12.38	12.38	0.58	14.70	14.70	14.70	14.70	XXX
75555	26	A	Cardiac MRI/limited study	1.74	0.66	0.72	0.66	0.72	0.06	2.46	2.52	2.46	2.52	XXX
75555	TC	A	Cardiac MRI/limited study	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
75556		N	Cardiac MRI/flow mapping	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
75600		A	Contrast x-ray exam of aorta	0.49	13.38	13.33	13.38	13.33	0.61	14.48	14.43	14.48	14.43	XXX
75600	26	A	Contrast x-ray exam of aorta	0.49	0.20	0.22	0.20	0.22	0.02	0.71	0.73	0.71	0.73	XXX
75600	TC	A	Contrast x-ray exam of aorta	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75605		A	Contrast x-ray exam of aorta	1.14	13.54	13.56	13.54	13.56	0.63	15.31	15.33	15.31	15.33	XXX
75605	26	A	Contrast x-ray exam of aorta	1.14	0.36	0.45	0.36	0.45	0.04	1.54	1.63	1.54	1.63	XXX

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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
75605	TC	A	Contrast x-ray exam of aorta	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75625	.....	A	Contrast x-ray exam of aorta	1.14	13.50	13.54	13.50	13.54	0.64	15.28	15.32	15.28	15.32	XXX
75625	26	A	Contrast x-ray exam of aorta	1.14	0.32	0.43	0.32	0.43	0.05	1.51	1.62	1.51	1.62	XXX
75625	TC	A	Contrast x-ray exam of aorta	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75630	.....	A	X-ray aorta, leg arteries	1.79	14.26	14.24	14.26	14.24	0.69	16.74	16.72	16.74	16.72	XXX
75630	26	A	X-ray aorta, leg arteries	1.79	0.53	0.58	0.53	0.58	0.07	2.39	2.44	2.39	2.44	XXX
75630	TC	A	X-ray aorta, leg arteries	0.00	13.72	13.65	13.72	13.65	0.62	14.34	14.27	14.34	14.27	XXX
75650	.....	A	Artery x-rays, head & neck	1.49	13.59	13.67	13.59	13.67	0.65	15.73	15.81	15.73	15.81	XXX
75650	26	A	Artery x-rays, head & neck	1.49	0.41	0.57	0.41	0.57	0.06	1.96	2.12	1.96	2.12	XXX
75650	TC	A	Artery x-rays, head & neck	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75658	.....	A	X-ray exam of arm arteries	1.31	13.66	13.66	13.66	13.66	0.65	15.62	15.62	15.62	15.62	XXX
75658	26	A	X-ray exam of arm arteries	1.31	0.48	0.56	0.48	0.56	0.06	1.85	1.93	1.85	1.93	XXX
75658	TC	A	X-ray exam of arm arteries	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75660	.....	A	Artery x-rays, head & neck	1.31	13.56	13.61	13.56	13.61	0.65	15.52	15.57	15.52	15.57	XXX
75660	26	A	Artery x-rays, head & neck	1.31	0.38	0.51	0.38	0.51	0.06	1.75	1.88	1.75	1.88	XXX
75660	TC	A	Artery x-rays, head & neck	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75662	.....	A	Artery x-rays, head & neck	1.66	13.71	13.77	13.71	13.77	0.65	16.02	16.08	16.02	16.08	XXX
75662	26	A	Artery x-rays, head & neck	1.66	0.53	0.67	0.53	0.67	0.06	2.25	2.39	2.25	2.39	XXX
75662	TC	A	Artery x-rays, head & neck	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75665	.....	A	Artery x-rays, head & neck	1.31	13.56	13.61	13.56	13.61	0.65	15.51	15.57	15.51	15.57	XXX
75665	26	A	Artery x-rays, head & neck	1.31	0.38	0.51	0.38	0.51	0.06	1.75	1.88	1.75	1.88	XXX
75665	TC	A	Artery x-rays, head & neck	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75671	.....	A	Artery x-rays, head & neck	1.66	13.64	13.74	13.64	13.74	0.66	15.96	16.06	15.96	16.06	XXX
75671	26	A	Artery x-rays, head & neck	1.66	0.46	0.63	0.46	0.63	0.07	2.19	2.36	2.19	2.36	XXX
75671	TC	A	Artery x-rays, head & neck	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75676	.....	A	Artery x-rays, neck	1.31	13.56	13.61	13.56	13.61	0.65	15.52	15.57	15.52	15.57	XXX
75676	26	A	Artery x-rays, neck	1.31	0.38	0.51	0.38	0.51	0.06	1.75	1.88	1.75	1.88	XXX
75676	TC	A	Artery x-rays, neck	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75680	.....	A	Artery x-rays, neck	1.66	13.64	13.74	13.64	13.74	0.66	15.96	16.06	15.96	16.06	XXX
75680	26	A	Artery x-rays, neck	1.66	0.46	0.63	0.46	0.63	0.07	2.19	2.36	2.19	2.36	XXX
75680	TC	A	Artery x-rays, neck	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75685	.....	A	Artery x-rays, spine	1.31	13.54	13.60	13.54	13.60	0.64	15.49	15.55	15.49	15.55	XXX
75685	26	A	Artery x-rays, spine	1.31	0.36	0.50	0.36	0.50	0.05	1.72	1.86	1.72	1.86	XXX
75685	TC	A	Artery x-rays, spine	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75705	.....	A	Artery x-rays, spine	2.18	13.80	13.95	13.80	13.95	0.68	16.66	16.81	16.66	16.81	XXX
75705	26	A	Artery x-rays, spine	2.18	0.62	0.84	0.62	0.84	0.09	2.89	3.11	2.89	3.11	XXX
75705	TC	A	Artery x-rays, spine	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75710	.....	A	Artery x-rays, arm/leg	1.14	13.51	13.54	13.51	13.54	0.64	15.29	15.32	15.29	15.32	XXX
75710	26	A	Artery x-rays, arm/leg	1.14	0.33	0.44	0.33	0.44	0.05	1.52	1.63	1.52	1.63	XXX
75710	TC	A	Artery x-rays, arm/leg	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75716	.....	A	Artery x-rays, arms/legs	1.31	13.55	13.61	13.55	13.61	0.64	15.50	15.56	15.50	15.56	XXX
75716	26	A	Artery x-rays, arms/legs	1.31	0.37	0.50	0.37	0.50	0.05	1.73	1.86	1.73	1.86	XXX
75716	TC	A	Artery x-rays, arms/legs	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75722	.....	A	Artery x-rays, kidney	1.14	13.54	13.56	13.54	13.56	0.63	15.31	15.33	15.31	15.33	XXX
75722	26	A	Artery x-rays, kidney	1.14	0.36	0.45	0.36	0.45	0.04	1.54	1.63	1.54	1.63	XXX
75722	TC	A	Artery x-rays, kidney	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75724	.....	A	Artery x-rays, kidneys	1.49	13.73	13.74	13.73	13.74	0.64	15.86	15.87	15.86	15.87	XXX
75724	26	A	Artery x-rays, kidneys	1.49	0.55	0.64	0.55	0.64	0.05	2.09	2.18	2.09	2.18	XXX
75724	TC	A	Artery x-rays, kidneys	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75726	.....	A	Artery x-rays, abdomen	1.14	13.49	13.53	13.49	13.53	0.64	15.27	15.31	15.27	15.31	XXX
75726	26	A	Artery x-rays, abdomen	1.14	0.31	0.43	0.31	0.43	0.05	1.50	1.62	1.50	1.62	XXX
75726	TC	A	Artery x-rays, abdomen	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75731	.....	A	Artery x-rays, adrenal gland	1.14	13.49	13.53	13.49	13.53	0.64	15.27	15.31	15.27	15.31	XXX
75731	26	A	Artery x-rays, adrenal gland	1.14	0.31	0.43	0.31	0.43	0.05	1.50	1.62	1.50	1.62	XXX
75731	TC	A	Artery x-rays, adrenal gland	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75733	.....	A	Artery x-rays,adrenal glands	1.31	13.55	13.61	13.55	13.61	0.64	15.50	15.56	15.50	15.56	XXX
75733	26	A	Artery x-rays,adrenal glands	1.31	0.37	0.50	0.37	0.50	0.05	1.73	1.86	1.73	1.86	XXX
75733	TC	A	Artery x-rays,adrenal glands	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75736	.....	A	Artery x-rays, pelvis	1.14	13.49	13.53	13.49	13.53	0.64	15.27	15.31	15.27	15.31	XXX
75736	26	A	Artery x-rays, pelvis	1.14	0.31	0.43	0.31	0.43	0.05	1.50	1.62	1.50	1.62	XXX
75736	TC	A	Artery x-rays, pelvis	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75741	.....	A	Artery x-rays, lung	1.31	13.55	13.61	13.55	13.61	0.64	15.50	15.56	15.50	15.56	XXX
75741	26	A	Artery x-rays, lung	1.31	0.37	0.50	0.37	0.50	0.05	1.73	1.86	1.73	1.86	XXX
75741	TC	A	Artery x-rays, lung	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75743	.....	A	Artery x-rays, lungs	1.66	13.63	13.73	13.63	13.73	0.66	15.95	16.05	15.95	16.05	XXX
75743	26	A	Artery x-rays, lungs	1.66	0.46	0.63	0.46	0.63	0.07	2.19	2.36	2.19	2.36	XXX
75743	TC	A	Artery x-rays, lungs	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75746	.....	A	Artery x-rays, lung	1.14	13.51	13.54	13.51	13.54	0.63	15.28	15.31	15.28	15.31	XXX
75746	26	A	Artery x-rays, lung	1.14	0.33	0.44	0.33	0.44	0.04	1.51	1.62	1.51	1.62	XXX
75746	TC	A	Artery x-rays, lung	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75756	.....	A	Artery x-rays, chest	1.14	13.66	13.62	13.66	13.62	0.63	15.43	15.39	15.43	15.39	XXX
75756	26	A	Artery x-rays, chest	1.14	0.48	0.51	0.48	0.51	0.04	1.66	1.69	1.66	1.69	XXX
75756	TC	A	Artery x-rays, chest	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75774	.....	A	Artery x-ray, each vessel	0.36	13.29	13.25	13.29	13.25	0.60	14.25	14.21	14.25	14.21	ZZZ
75774	26	A	Artery x-ray, each vessel	0.36	0.11	0.14	0.11	0.14	0.01	0.48	0.51	0.48	0.51	ZZZ
75774	TC	A	Artery x-ray, each vessel	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	ZZZ
75790	.....	A	Visualize A-V shunt	1.84	1.92	2.11	1.92	2.11	0.15	3.91	4.10	3.91	4.10	XXX
75790	26	A	Visualize A-V shunt	1.84	0.50	0.70	0.50	0.70	0.08	2.42	2.62	2.42	2.62	XXX
75790	TC	A	Visualize A-V shunt	0.00	1.42	1.41	1.42	1.41	0.07	1.49	1.48	1.49	1.48	XXX
75801	.....	A	Lymph vessel x-ray, arm/leg	0.81	5.90	5.95	5.90	5.95	0.30	7.01	7.06	7.01	7.06	XXX
75801	26	A	Lymph vessel x-ray, arm/leg	0.81	0.23	0.32	0.23	0.32	0.04	1.08	1.17	1.08	1.17	XXX
75801	TC	A	Lymph vessel x-ray, arm/leg	0.00	5.66	5.63	5.66	5.63	0.26	5.92	5.89	5.92	5.89	XXX
75803	.....	A	Lymph vessel x-ray,arms/legs	1.17	5.98	6.07	5.98	6.07	0.31	7.46	7.55	7.46	7.55	XXX
75803	26	A	Lymph vessel x-ray,arms/legs	1.17	0.31	0.43	0.31	0.43	0.05	1.53	1.65	1.53	1.65	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
75803	TC	A	Lymph vessel x-ray,arms/legs	0.00	5.66	5.63	5.66	5.63	0.26	5.92	5.89	5.92	5.89	XXX
75805	.....	A	Lymph vessel x-ray, trunk	0.81	6.60	6.66	6.60	6.66	0.32	7.73	7.79	7.73	7.79	XXX
75805	26	A	Lymph vessel x-ray, trunk	0.81	0.22	0.31	0.22	0.31	0.03	1.06	1.15	1.06	1.15	XXX
75805	TC	A	Lymph vessel x-ray, trunk	0.00	6.38	6.35	6.38	6.35	0.29	6.67	6.64	6.67	6.64	XXX
75807	.....	A	Lymph vessel x-ray, trunk	1.17	6.69	6.78	6.69	6.78	0.34	8.20	8.29	8.20	8.29	XXX
75807	26	A	Lymph vessel x-ray, trunk	1.17	0.31	0.43	0.31	0.43	0.05	1.53	1.65	1.53	1.65	XXX
75807	TC	A	Lymph vessel x-ray, trunk	0.00	6.38	6.35	6.38	6.35	0.29	6.67	6.64	6.67	6.64	XXX
75809	.....	A	Nonvascular shunt, x-ray	0.47	0.95	0.99	0.95	0.99	0.06	1.48	1.52	1.48	1.52	XXX
75809	26	A	Nonvascular shunt, x-ray	0.47	0.13	0.17	0.13	0.17	0.02	0.62	0.66	0.62	0.66	XXX
75809	TC	A	Nonvascular shunt, x-ray	0.00	0.82	0.82	0.82	0.82	0.04	0.86	0.86	0.86	0.86	XXX
75810	.....	A	Vein x-ray, spleen/liver	1.14	13.49	13.53	13.49	13.53	0.64	15.27	15.31	15.27	15.31	XXX
75810	26	A	Vein x-ray, spleen/liver	1.14	0.31	0.43	0.31	0.43	0.05	1.50	1.62	1.50	1.62	XXX
75810	TC	A	Vein x-ray, spleen/liver	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75820	.....	A	Vein x-ray, arm/leg	0.70	1.18	1.26	1.18	1.26	0.08	1.96	2.04	1.96	2.04	XXX
75820	26	A	Vein x-ray, arm/leg	0.70	0.19	0.27	0.19	0.27	0.03	0.92	1.00	0.92	1.00	XXX
75820	TC	A	Vein x-ray, arm/leg	0.00	0.99	0.99	0.99	0.99	0.05	1.04	1.04	1.04	1.04	XXX
75822	.....	A	Vein x-ray, arms/legs	1.06	1.84	1.94	1.84	1.94	0.11	3.01	3.11	3.01	3.11	XXX
75822	26	A	Vein x-ray, arms/legs	1.06	0.29	0.40	0.29	0.40	0.04	1.39	1.50	1.39	1.50	XXX
75822	TC	A	Vein x-ray, arms/legs	0.00	1.55	1.54	1.55	1.54	0.07	1.62	1.61	1.62	1.61	XXX
75825	.....	A	Vein x-ray, trunk	1.14	13.50	13.54	13.50	13.54	0.64	15.28	15.32	15.28	15.32	XXX
75825	26	A	Vein x-ray, trunk	1.14	0.32	0.43	0.32	0.43	0.05	1.51	1.62	1.51	1.62	XXX
75825	TC	A	Vein x-ray, trunk	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75827	.....	A	Vein x-ray, chest	1.14	13.49	13.53	13.49	13.53	0.64	15.27	15.31	15.27	15.31	XXX
75827	26	A	Vein x-ray, chest	1.14	0.31	0.43	0.31	0.43	0.05	1.50	1.62	1.50	1.62	XXX
75827	TC	A	Vein x-ray, chest	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75831	.....	A	Vein x-ray, kidney	1.14	13.48	13.53	13.48	13.53	0.64	15.26	15.31	15.26	15.31	XXX
75831	26	A	Vein x-ray, kidney	1.14	0.30	0.42	0.30	0.42	0.05	1.49	1.61	1.49	1.61	XXX
75831	TC	A	Vein x-ray, kidney	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75833	.....	A	Vein x-ray, kidneys	1.49	13.60	13.68	13.60	13.68	0.65	15.74	15.82	15.74	15.82	XXX
75833	26	A	Vein x-ray, kidneys	1.49	0.42	0.57	0.42	0.57	0.06	1.97	2.12	1.97	2.12	XXX
75833	TC	A	Vein x-ray, kidneys	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75840	.....	A	Vein x-ray, adrenal gland	1.14	13.53	13.55	13.53	13.55	0.64	15.31	15.33	15.31	15.33	XXX
75840	26	A	Vein x-ray, adrenal gland	1.14	0.35	0.45	0.35	0.45	0.05	1.54	1.64	1.54	1.64	XXX
75840	TC	A	Vein x-ray, adrenal gland	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75842	.....	A	Vein x-ray, adrenal glands	1.49	13.58	13.67	13.58	13.67	0.65	15.72	15.81	15.72	15.81	XXX
75842	26	A	Vein x-ray, adrenal glands	1.49	0.40	0.56	0.40	0.56	0.06	1.95	2.11	1.95	2.11	XXX
75842	TC	A	Vein x-ray, adrenal glands	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75860	.....	A	Vein x-ray, neck	1.14	13.50	13.54	13.50	13.54	0.64	15.28	15.32	15.28	15.32	XXX
75860	26	A	Vein x-ray, neck	1.14	0.32	0.43	0.32	0.43	0.05	1.51	1.62	1.51	1.62	XXX
75860	TC	A	Vein x-ray, neck	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75870	.....	A	Vein x-ray, skull	1.14	13.50	13.54	13.50	13.54	0.64	15.28	15.32	15.28	15.32	XXX
75870	26	A	Vein x-ray, skull	1.14	0.33	0.44	0.33	0.44	0.05	1.52	1.63	1.52	1.63	XXX*
75870	TC	A	Vein x-ray, skull	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75872	.....	A	Vein x-ray, skull	1.14	13.49	13.53	13.49	13.53	0.64	15.27	15.31	15.27	15.31	XXX
75872	26	A	Vein x-ray, skull	1.14	0.31	0.43	0.31	0.43	0.05	1.50	1.62	1.50	1.62	XXX
75872	TC	A	Vein x-ray, skull	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75880	.....	A	Vein x-ray, eye socket	0.70	1.17	1.25	1.17	1.25	0.08	1.95	2.03	1.95	2.03	XXX
75880	26	A	Vein x-ray, eye socket	0.70	0.19	0.27	0.19	0.27	0.03	0.92	1.00	0.92	1.00	XXX
75880	TC	A	Vein x-ray, eye socket	0.00	0.99	0.99	0.99	0.99	0.05	1.04	1.04	1.04	1.04	XXX
75885	.....	A	Vein x-ray, liver	1.44	13.57	13.65	13.57	13.65	0.65	15.66	15.74	15.66	15.74	XXX
75885	26	A	Vein x-ray, liver	1.44	0.39	0.54	0.39	0.54	0.06	1.89	2.04	1.89	2.04	XXX
75885	TC	A	Vein x-ray, liver	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75887	.....	A	Vein x-ray, liver	1.44	13.57	13.65	13.57	13.65	0.65	15.66	15.74	15.66	15.74	XXX
75887	26	A	Vein x-ray, liver	1.44	0.39	0.54	0.39	0.54	0.06	1.89	2.04	1.89	2.04	XXX
75887	TC	A	Vein x-ray, liver	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75889	.....	A	Vein x-ray, liver	1.14	13.49	13.53	13.49	13.53	0.64	15.27	15.31	15.27	15.31	XXX
75889	26	A	Vein x-ray, liver	1.14	0.31	0.43	0.31	0.43	0.05	1.50	1.62	1.50	1.62	XXX
75889	TC	A	Vein x-ray, liver	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75891	.....	A	Vein x-ray, liver	1.14	13.49	13.53	13.49	13.53	0.64	15.27	15.31	15.27	15.31	XXX
75891	26	A	Vein x-ray, liver	1.14	0.31	0.43	0.31	0.43	0.05	1.50	1.62	1.50	1.62	XXX
75891	TC	A	Vein x-ray, liver	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75893	.....	A	Venous sampling by catheter	0.54	13.33	13.32	13.33	13.32	0.61	14.48	14.47	14.48	14.47	XXX
75893	26	A	Venous sampling by catheter	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
75893	TC	A	Venous sampling by catheter	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75894	.....	A	Xrays, transcatheter therapy	1.31	25.61	25.60	25.61	25.60	1.18	28.10	28.09	28.10	28.09	XXX
75894	26	A	Xrays, transcatheter therapy	1.31	0.38	0.51	0.38	0.51	0.05	1.74	1.87	1.74	1.87	XXX
75894	TC	A	Xrays, transcatheter therapy	0.00	25.23	25.10	25.23	25.10	1.13	26.36	26.23	26.36	26.23	XXX
75896	.....	A	Xrays, transcatheter therapy	1.31	22.36	22.35	22.36	22.35	1.03	24.70	24.69	24.70	24.69	XXX
75896	26	A	Xrays, transcatheter therapy	1.31	0.42	0.53	0.42	0.53	0.05	1.78	1.89	1.78	1.89	XXX
75896	TC	A	Xrays, transcatheter therapy	0.00	21.94	21.83	21.94	21.83	0.98	22.92	22.81	22.92	22.81	XXX
75898	.....	A	Follow-up angiogram	1.65	1.57	1.73	1.57	1.73	0.12	3.34	3.50	3.34	3.50	XXX
75898	26	A	Follow-up angiogram	1.65	0.48	0.64	0.48	0.64	0.07	2.20	2.36	2.20	2.36	XXX
75898	TC	A	Follow-up angiogram	0.00	1.10	1.10	1.10	1.10	0.05	1.15	1.15	1.15	1.15	XXX
75900	.....	A	Arterial catheter exchange	0.49	22.07	22.01	22.07	22.01	1.01	23.57	23.51	23.57	23.51	XXX
75900	26	A	Arterial catheter exchange	0.49	0.14	0.20	0.14	0.20	0.02	0.65	0.71	0.65	0.71	XXX
75900	TC	A	Arterial catheter exchange	0.00	21.93	21.81	21.93	21.81	0.99	22.92	22.80	22.92	22.80	XXX
75940	.....	A	X-ray placement, vein filter	0.54	13.33	13.32	13.33	13.32	0.61	14.48	14.47	14.48	14.47	XXX
75940	26	A	X-ray placement, vein filter	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
75940	TC	A	X-ray placement, vein filter	0.00	13.18	13.11	13.18	13.11	0.59	13.77	13.70	13.77	13.70	XXX
75945	.....	A	Intravascular us	0.40	NA	NA	4.92	4.94	0.25	NA	NA	5.57	5.59	XXX
75945	26	A	Intravascular us	0.40	NA	NA	0.15	0.20	0.03	NA	NA	0.58	0.63	XXX
75945	TC	A	Intravascular us	0.00	NA	NA	4.77	4.75	0.22	NA	NA	4.99	4.97	XXX
75946	.....	A	Intravascular us add-on	0.40	NA	NA	2.55	2.58	0.14	NA	NA	3.09	3.12	ZZZ
75946	26	A	Intravascular us add-on	0.40	NA	NA	0.15	0.20	0.03	NA	NA	0.58	0.63	ZZZ

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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
75946	TC	A	Intravascular us add-on	0.00	NA	NA	2.39	2.38	0.11	NA	NA	2.50	2.49	ZZZ
75960		A	Transcatheter intro, stent	0.82	15.84	15.83	15.84	15.83	0.73	17.39	17.38	17.39	17.38	XXX
75960	26	A	Transcatheter intro, stent	0.82	0.26	0.33	0.26	0.33	0.04	1.12	1.19	1.12	1.19	XXX
75960	TC	A	Transcatheter intro, stent	0.00	15.58	15.50	15.58	15.50	0.69	16.27	16.19	16.27	16.19	XXX
75961		A	Retrieval, broken catheter	4.25	12.16	12.54	12.16	12.54	0.67	17.08	17.46	17.08	17.46	XXX
75961	26	A	Retrieval, broken catheter	4.25	1.17	1.62	1.17	1.62	0.18	5.60	6.05	5.60	6.05	XXX
75961	TC	A	Retrieval, broken catheter	0.00	10.99	10.93	10.99	10.93	0.49	11.48	11.42	11.48	11.42	XXX
75962		A	Repair arterial blockage	0.54	16.62	16.59	16.62	16.59	0.76	17.92	17.89	17.92	17.89	XXX
75962	26	A	Repair arterial blockage	0.54	0.16	0.22	0.16	0.22	0.02	0.72	0.78	0.72	0.78	XXX
75962	TC	A	Repair arterial blockage	0.00	16.46	16.37	16.46	16.37	0.74	17.20	17.11	17.20	17.11	XXX
75964		A	Repair artery blockage, each	0.36	8.88	8.87	8.88	8.87	0.41	9.65	9.64	9.65	9.64	ZZZ
75964	26	A	Repair artery blockage, each	0.36	0.11	0.14	0.11	0.14	0.02	0.49	0.52	0.49	0.52	ZZZ
75964	TC	A	Repair artery blockage, each	0.00	8.77	8.73	8.77	8.73	0.39	9.16	9.12	9.16	9.12	ZZZ
75966		A	Repair arterial blockage	1.31	16.89	16.90	16.89	16.90	0.79	18.99	19.00	18.99	19.00	XXX
75966	26	A	Repair arterial blockage	1.31	0.43	0.53	0.43	0.53	0.05	1.79	1.89	1.79	1.89	XXX
75966	TC	A	Repair arterial blockage	0.00	16.46	16.37	16.46	16.37	0.74	17.20	17.11	17.20	17.11	XXX
75968		A	Repair artery blockage, each	0.36	8.89	8.87	8.89	8.87	0.40	9.65	9.63	9.65	9.63	ZZZ
75968	26	A	Repair artery blockage, each	0.36	0.12	0.15	0.12	0.15	0.01	0.49	0.52	0.49	0.52	ZZZ
75968	TC	A	Repair artery blockage, each	0.00	8.77	8.73	8.77	8.73	0.39	9.16	9.12	9.16	9.12	ZZZ
75970		A	Vascular biopsy	0.83	12.32	12.34	12.32	12.34	0.57	13.72	13.74	13.72	13.74	XXX
75970	26	A	Vascular biopsy	0.83	0.25	0.33	0.25	0.33	0.03	1.11	1.19	1.11	1.19	XXX
75970	TC	A	Vascular biopsy	0.00	12.07	12.01	12.07	12.01	0.54	12.61	12.55	12.61	12.55	XXX
75978		A	Repair venous blockage	0.54	16.61	16.71	16.61	16.71	0.76	17.91	18.01	17.91	18.01	XXX
75978	26	A	Repair venous blockage	0.54	0.15	0.34	0.15	0.34	0.02	0.71	0.90	0.71	0.90	XXX
75978	TC	A	Repair venous blockage	0.00	16.46	16.37	16.46	16.37	0.74	17.20	17.11	17.20	17.11	XXX
75980		A	Contrast xray exam bile duct	1.44	6.05	6.17	6.05	6.17	0.32	7.81	7.93	7.81	7.93	XXX
75980	26	A	Contrast xray exam bile duct	1.44	0.39	0.54	0.39	0.54	0.06	1.89	2.04	1.89	2.04	XXX
75980	TC	A	Contrast xray exam bile duct	0.00	5.66	5.63	5.66	5.63	0.26	5.92	5.89	5.92	5.89	XXX
75982		A	Contrast xray exam bile duct	1.44	6.76	6.88	6.76	6.88	0.35	8.55	8.67	8.55	8.67	XXX
75982	26	A	Contrast xray exam bile duct	1.44	0.38	0.54	0.38	0.54	0.06	1.88	2.04	1.88	2.04	XXX
75982	TC	A	Contrast xray exam bile duct	0.00	6.38	6.35	6.38	6.35	0.29	6.67	6.64	6.67	6.64	XXX
75984		A	Xray control catheter change	0.72	2.24	2.31	2.24	2.31	0.12	3.08	3.15	3.08	3.15	XXX
75984	26	A	Xray control catheter change	0.72	0.19	0.28	0.19	0.28	0.03	0.94	1.03	0.94	1.03	XXX
75984	TC	A	Xray control catheter change	0.00	2.04	2.03	2.04	2.03	0.09	2.13	2.12	2.13	2.12	XXX
75989		A	Abscess drainage under x-ray	1.19	3.61	3.72	3.61	3.72	0.20	5.00	5.11	5.00	5.11	XXX
75989	26	A	Abscess drainage under x-ray	1.19	0.32	0.44	0.32	0.44	0.05	1.56	1.68	1.56	1.68	XXX
75989	TC	A	Abscess drainage under x-ray	0.00	3.29	3.28	3.29	3.28	0.15	3.44	3.43	3.44	3.43	XXX
75992		A	Atherectomy, x-ray exam	0.54	16.64	16.60	16.64	16.60	0.76	17.94	17.90	17.94	17.90	XXX
75992	26	A	Atherectomy, x-ray exam	0.54	0.18	0.23	0.18	0.23	0.02	0.74	0.79	0.74	0.79	XXX
75992	TC	A	Atherectomy, x-ray exam	0.00	16.46	16.37	16.46	16.37	0.74	17.20	17.11	17.20	17.11	XXX
75993		A	Atherectomy, x-ray exam	0.36	8.91	8.88	8.91	8.88	0.40	9.67	9.64	9.67	9.64	ZZZ
75993	26	A	Atherectomy, x-ray exam	0.36	0.14	0.16	0.14	0.16	0.01	0.51	0.53	0.51	0.53	ZZZ
75993	TC	A	Atherectomy, x-ray exam	0.00	8.77	8.73	8.77	8.73	0.39	9.16	9.12	9.16	9.12	ZZZ
75994		A	Atherectomy, x-ray exam	1.31	16.91	16.91	16.91	16.91	0.80	19.02	19.02	19.02	19.02	XXX
75994	26	A	Atherectomy, x-ray exam	1.31	0.45	0.54	0.45	0.54	0.06	1.82	1.91	1.82	1.91	XXX
75994	TC	A	Atherectomy, x-ray exam	0.00	16.46	16.37	16.46	16.37	0.74	17.20	17.11	17.20	17.11	XXX
75995		A	Atherectomy, x-ray exam	1.31	16.98	16.95	16.98	16.95	0.78	19.07	19.04	19.07	19.04	XXX
75995	26	A	Atherectomy, x-ray exam	1.31	0.52	0.58	0.52	0.58	0.04	1.87	1.93	1.87	1.93	XXX
75995	TC	A	Atherectomy, x-ray exam	0.00	16.46	16.37	16.46	16.37	0.74	17.20	17.11	17.20	17.11	XXX
75996		A	Atherectomy, x-ray exam	0.36	8.89	8.87	8.89	8.87	0.40	9.65	9.63	9.65	9.63	ZZZ
75996	26	A	Atherectomy, x-ray exam	0.36	0.11	0.14	0.11	0.14	0.01	0.48	0.51	0.48	0.51	ZZZ
75996	TC	A	Atherectomy, x-ray exam	0.00	8.77	8.73	8.77	8.73	0.39	9.16	9.12	9.16	9.12	ZZZ
76000		A	Fluoroscope examination	0.17	1.40	1.42	1.40	1.42	0.07	1.64	1.66	1.64	1.66	XXX
76000	26	A	Fluoroscope examination	0.17	0.05	0.07	0.05	0.07	0.01	0.23	0.25	0.23	0.25	XXX
76000	TC	A	Fluoroscope examination	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
76001		A	Fluoroscope exam, extensive	0.67	2.93	2.99	2.93	2.99	0.16	3.76	3.82	3.76	3.82	XXX
76001	26	A	Fluoroscope exam, extensive	0.67	0.18	0.26	0.18	0.26	0.03	0.88	0.96	0.88	0.96	XXX
76001	TC	A	Fluoroscope exam, extensive	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX
76003		A	Needle localization by x-ray	0.54	1.50	1.56	1.50	1.56	0.08	2.12	2.18	2.12	2.18	XXX
76003	26	A	Needle localization by x-ray	0.54	0.14	0.21	0.14	0.21	0.02	0.70	0.77	0.70	0.77	XXX
76003	TC	A	Needle localization by x-ray	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
76006		A	X-ray stress view	0.41	0.11	0.11	0.11	0.11	0.02	0.54	0.54	0.54	0.54	XXX
76010		A	X-ray, nose to rectum	0.18	0.60	0.62	0.60	0.62	0.03	0.81	0.83	0.81	0.83	XXX
76010	26	A	X-ray, nose to rectum	0.18	0.05	0.07	0.05	0.07	0.01	0.24	0.26	0.24	0.26	XXX
76010	TC	A	X-ray, nose to rectum	0.00	0.55	0.55	0.55	0.55	0.02	0.57	0.57	0.57	0.57	XXX
76020		A	X-rays for bone age	0.19	0.61	0.63	0.61	0.63	0.03	0.83	0.85	0.83	0.85	XXX
76020	26	A	X-rays for bone age	0.19	0.05	0.08	0.05	0.08	0.01	0.25	0.28	0.25	0.28	XXX
76020	TC	A	X-rays for bone age	0.00	0.55	0.55	0.55	0.55	0.02	0.57	0.57	0.57	0.57	XXX
76040		A	X-rays, bone evaluation	0.27	0.90	0.93	0.90	0.93	0.05	1.22	1.25	1.22	1.25	XXX
76040	26	A	X-rays, bone evaluation	0.27	0.08	0.11	0.08	0.11	0.01	0.36	0.39	0.36	0.39	XXX
76040	TC	A	X-rays, bone evaluation	0.00	0.82	0.82	0.82	0.82	0.04	0.86	0.86	0.86	0.86	XXX
76061		A	X-rays, bone survey	0.45	1.17	1.21	1.17	1.21	0.07	1.69	1.73	1.69	1.73	XXX
76061	26	A	X-rays, bone survey	0.45	0.12	0.17	0.12	0.17	0.02	0.59	0.64	0.59	0.64	XXX
76061	TC	A	X-rays, bone survey	0.00	1.05	1.04	1.05	1.04	0.05	1.10	1.09	1.10	1.09	XXX
76062		A	X-rays, bone survey	0.54	1.64	1.70	1.64	1.70	0.09	2.27	2.33	2.27	2.33	XXX
76062	26	A	X-rays, bone survey	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
76062	TC	A	X-rays, bone survey	0.00	1.50	1.50	1.50	1.50	0.07	1.57	1.57	1.57	1.57	XXX
76065		A	X-rays, bone evaluation	0.28	0.84	0.87	0.84	0.87	0.05	1.17	1.20	1.17	1.20	XXX
76065	26	A	X-rays, bone evaluation	0.28	0.08	0.11	0.08	0.11	0.01	0.37	0.40	0.37	0.40	XXX
76065	TC	A	X-rays, bone evaluation	0.00	0.76	0.76	0.76	0.76	0.04	0.80	0.80	0.80	0.80	XXX
76066		A	Joint(s) survey, single film	0.31	1.26	1.28	1.26	1.28	0.06	1.63	1.65	1.63	1.65	XXX
76066	26	A	Joint(s) survey, single film	0.31	0.09	0.12	0.09	0.12	0.01	0.41	0.44	0.41	0.44	XXX
76066	TC	A	Joint(s) survey, single film	0.00	1.17	1.16	1.17	1.16	0.05	1.22	1.21	1.22	1.21	XXX
76070		I	CT scan, bone density study	0.25	3.17	3.18	3.17	3.18	0.15	3.57	3.58	3.57	3.58	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
76070	26	I	CT scan, bone density study	0.25	0.10	0.12	0.10	0.12	0.01	0.36	0.38	0.36	0.38	XXX
76070	TC	I	CT scan, bone density study	0.00	3.08	3.07	3.08	3.07	0.14	3.22	3.21	3.22	3.21	XXX
76075		A	Dual energy x-ray study	0.30	3.33	3.33	3.33	3.33	0.16	3.79	3.79	3.79	3.79	XXX
76075	26	A	Dual energy x-ray study	0.30	0.09	0.11	0.09	0.11	0.01	0.40	0.42	0.40	0.42	XXX
76075	TC	A	Dual energy x-ray study	0.00	3.24	3.22	3.24	3.22	0.15	3.39	3.37	3.39	3.37	XXX
76076		A	Dual energy x-ray study	0.22	0.87	0.88	0.87	0.88	0.05	1.14	1.15	1.14	1.15	XXX
76076	26	A	Dual energy x-ray study	0.22	0.08	0.10	0.08	0.10	0.01	0.31	0.33	0.31	0.33	XXX
76076	TC	A	Dual energy x-ray study	0.00	0.79	0.79	0.79	0.79	0.04	0.83	0.83	0.83	0.83	XXX
76078		A	Photodensitometry	0.20	0.87	0.88	0.87	0.88	0.05	1.12	1.13	1.12	1.13	XXX
76078	26	A	Photodensitometry	0.20	0.07	0.09	0.07	0.09	0.01	0.28	0.30	0.28	0.30	XXX
76078	TC	A	Photodensitometry	0.00	0.79	0.79	0.79	0.79	0.04	0.83	0.83	0.83	0.83	XXX
76080		A	X-ray exam of fistula	0.54	1.24	1.30	1.24	1.30	0.07	1.85	1.91	1.85	1.91	XXX
76080	26	A	X-ray exam of fistula	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
76080	TC	A	X-ray exam of fistula	0.00	1.10	1.10	1.10	1.10	0.05	1.15	1.15	1.15	1.15	XXX
76086		A	X-ray of mammary duct	0.36	2.84	2.87	2.84	2.87	0.14	3.34	3.37	3.34	3.37	XXX
76086	26	A	X-ray of mammary duct	0.36	0.10	0.14	0.10	0.14	0.01	0.47	0.51	0.47	0.51	XXX
76086	TC	A	X-ray of mammary duct	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX
76088		A	X-ray of mammary ducts	0.45	3.96	3.99	3.96	3.99	0.19	4.60	4.63	4.60	4.63	XXX
76088	26	A	X-ray of mammary ducts	0.45	0.12	0.17	0.12	0.17	0.02	0.59	0.64	0.59	0.64	XXX
76088	TC	A	X-ray of mammary ducts	0.00	3.83	3.81	3.83	3.81	0.17	4.00	3.98	4.00	3.98	XXX
76090		A	Mammogram, one breast	0.58	1.25	1.24	1.25	1.24	0.07	1.90	1.89	1.90	1.89	XXX
76090	26	A	Mammogram, one breast	0.58	0.16	0.15	0.16	0.15	0.02	0.76	0.75	0.76	0.75	XXX
76090	TC	A	Mammogram, one breast	0.00	1.10	1.10	1.10	1.10	0.05	1.15	1.15	1.15	1.15	XXX
76091		A	Mammogram, both breasts	0.69	1.54	1.55	1.54	1.55	0.09	2.32	2.33	2.32	2.33	XXX
76091	26	A	Mammogram, both breasts	0.69	0.19	0.20	0.19	0.20	0.03	0.91	0.92	0.91	0.92	XXX
76091	TC	A	Mammogram, both breasts	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
76092		X	Mammogram, screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76093		A	Magnetic image, breast	1.63	18.87	18.94	18.87	18.94	0.89	21.39	21.46	21.39	21.46	XXX
76093	26	A	Magnetic image, breast	1.63	0.44	0.61	0.44	0.61	0.07	2.14	2.31	2.14	2.31	XXX
76093	TC	A	Magnetic image, breast	0.00	18.43	18.33	18.43	18.33	0.82	19.25	19.15	19.25	19.15	XXX
76094		A	Magnetic image, both breasts	1.63	25.44	25.48	25.44	25.48	1.18	28.25	28.29	28.25	28.29	XXX
76094	26	A	Magnetic image, both breasts	1.63	0.44	0.61	0.44	0.61	0.07	2.14	2.31	2.14	2.31	XXX
76094	TC	A	Magnetic image, both breasts	0.00	25.00	24.87	25.00	24.87	1.11	26.11	25.98	26.11	25.98	XXX
76095		A	Stereotactic breast biopsy	1.59	7.95	8.07	7.95	8.07	0.42	9.96	10.08	9.96	10.08	XXX
76095	26	A	Stereotactic breast biopsy	1.59	0.45	0.61	0.45	0.61	0.08	2.12	2.28	2.12	2.28	XXX
76095	TC	A	Stereotactic breast biopsy	0.00	7.49	7.45	7.49	7.45	0.34	7.83	7.79	7.83	7.79	XXX
76096		A	X-ray of needle wire, breast	0.56	1.51	1.57	1.51	1.57	0.08	2.15	2.21	2.15	2.21	XXX
76096	26	A	X-ray of needle wire, breast	0.56	0.15	0.22	0.15	0.22	0.02	0.73	0.80	0.73	0.80	XXX
76096	TC	A	X-ray of needle wire, breast	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
76098		A	X-ray exam, breast specimen	0.16	0.49	0.50	0.49	0.50	0.03	0.68	0.69	0.68	0.69	XXX
76098	26	A	X-ray exam, breast specimen	0.16	0.04	0.06	0.04	0.06	0.01	0.21	0.23	0.21	0.23	XXX
76098	TC	A	X-ray exam, breast specimen	0.00	0.44	0.44	0.44	0.44	0.02	0.46	0.46	0.46	0.46	XXX
76100		A	X-ray exam of body section	0.58	1.46	1.52	1.46	1.52	0.08	2.12	2.18	2.12	2.18	XXX
76100	26	A	X-ray exam of body section	0.58	0.16	0.23	0.16	0.23	0.02	0.76	0.83	0.76	0.83	XXX
76100	TC	A	X-ray exam of body section	0.00	1.31	1.30	1.31	1.30	0.06	1.37	1.36	1.37	1.36	XXX
76101		A	Complex body section x-ray	0.58	1.63	1.70	1.63	1.70	0.09	2.30	2.37	2.30	2.37	XXX
76101	26	A	Complex body section x-ray	0.58	0.16	0.23	0.16	0.23	0.02	0.76	0.83	0.76	0.83	XXX
76101	TC	A	Complex body section x-ray	0.00	1.48	1.48	1.48	1.48	0.07	1.55	1.55	1.55	1.55	XXX
76102		A	Complex body section x-rays	0.58	1.97	2.03	1.97	2.03	0.11	2.66	2.72	2.66	2.72	XXX
76102	26	A	Complex body section x-rays	0.58	0.16	0.23	0.16	0.23	0.02	0.76	0.83	0.76	0.83	XXX
76102	TC	A	Complex body section x-rays	0.00	1.81	1.80	1.81	1.80	0.09	1.90	1.89	1.90	1.89	XXX
76120		A	Cinematic x-rays	0.38	1.23	1.25	1.23	1.25	0.07	1.68	1.70	1.68	1.70	XXX
76120	26	A	Cinematic x-rays	0.38	0.13	0.16	0.13	0.16	0.02	0.53	0.56	0.53	0.56	XXX
76120	TC	A	Cinematic x-rays	0.00	1.10	1.10	1.10	1.10	0.05	1.15	1.15	1.15	1.15	XXX
76125		A	Cinematic x-rays add-on	0.27	0.91	0.93	0.91	0.93	0.05	1.23	1.25	1.23	1.25	ZZZ
76125	26	A	Cinematic x-rays add-on	0.27	0.08	0.11	0.08	0.11	0.01	0.36	0.39	0.36	0.39	ZZZ
76125	TC	A	Cinematic x-rays add-on	0.00	0.82	0.82	0.82	0.82	0.04	0.86	0.86	0.86	0.86	ZZZ
76140		I	X-ray consultation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76150		A	X-ray exam, dry process	0.00	0.44	0.44	0.44	0.44	0.02	0.46	0.46	0.46	0.46	XXX
76350		C	Special x-ray contrast study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76355		A	CAT scan for localization	1.21	8.97	9.05	8.97	9.05	0.43	10.61	10.69	10.61	10.69	XXX
76355	26	A	CAT scan for localization	1.21	0.34	0.46	0.34	0.46	0.05	1.60	1.72	1.60	1.72	XXX
76355	TC	A	CAT scan for localization	0.00	8.63	8.59	8.63	8.59	0.38	9.01	8.97	9.01	8.97	XXX
76360		A	CAT scan for needle biopsy	1.16	8.94	9.01	8.94	9.01	0.43	10.53	10.60	10.53	10.60	XXX
76360	26	A	CAT scan for needle biopsy	1.16	0.31	0.43	0.31	0.43	0.05	1.52	1.64	1.52	1.64	XXX
76360	TC	A	CAT scan for needle biopsy	0.00	8.63	8.59	8.63	8.59	0.38	9.01	8.97	9.01	8.97	XXX
76365		A	CAT scan for cyst aspiration	1.16	8.94	9.01	8.94	9.01	0.43	10.53	10.60	10.53	10.60	XXX
76365	26	A	CAT scan for cyst aspiration	1.16	0.31	0.43	0.31	0.43	0.05	1.52	1.64	1.52	1.64	XXX
76365	TC	A	CAT scan for cyst aspiration	0.00	8.63	8.59	8.63	8.59	0.38	9.01	8.97	9.01	8.97	XXX
76370		A	CAT scan for therapy guide	0.85	3.31	3.39	3.31	3.39	0.17	4.33	4.41	4.33	4.41	XXX
76370	26	A	CAT scan for therapy guide	0.85	0.23	0.32	0.23	0.32	0.03	1.11	1.20	1.11	1.20	XXX
76370	TC	A	CAT scan for therapy guide	0.00	3.08	3.07	3.08	3.07	0.14	3.22	3.21	3.22	3.21	XXX
76375		A	3d/holograph reconstr add-on	0.16	3.75	3.75	3.75	3.75	0.17	4.08	4.08	4.08	4.08	XXX
76375	26	A	3d/holograph reconstr add-on	0.16	0.04	0.06	0.04	0.06	0.01	0.21	0.23	0.21	0.23	XXX
76375	TC	A	3d/holograph reconstr add-on	0.00	3.70	3.68	3.70	3.68	0.16	3.86	3.84	3.86	3.84	XXX
76380		A	CAT scan follow-up study	0.98	3.93	4.02	3.93	4.02	0.20	5.11	5.20	5.11	5.20	XXX
76380	26	A	CAT scan follow-up study	0.98	0.26	0.37	0.26	0.37	0.04	1.28	1.39	1.28	1.39	XXX
76380	TC	A	CAT scan follow-up study	0.00	3.66	3.64	3.66	3.64	0.16	3.82	3.80	3.82	3.80	XXX
76390		A	Mr spectroscopy	1.40	12.25	12.28	12.25	12.28	0.58	14.23	14.26	14.23	14.26	XXX
76390	26	A	Mr spectroscopy	1.40	0.53	0.63	0.53	0.63	0.06	1.99	2.09	1.99	2.09	XXX
76390	TC	A	Mr spectroscopy	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX
76400		A	Magnetic image, bone marrow	1.60	12.15	12.26	12.15	12.26	0.58	14.33	14.44	14.33	14.44	XXX
76400	26	A	Magnetic image, bone marrow	1.60	0.43	0.61	0.43	0.61	0.06	2.09	2.27	2.09	2.27	XXX
76400	TC	A	Magnetic image, bone marrow	0.00	11.72	11.66	11.72	11.66	0.52	12.24	12.18	12.24	12.18	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
76499		C	Radiographic procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76499	26	C	Radiographic procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76499	TC	C	Radiographic procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76506		A	Echo exam of head	0.63	1.70	1.74	1.70	1.74	0.10	2.43	2.47	2.43	2.47	XXX
76506	26	A	Echo exam of head	0.63	0.22	0.27	0.22	0.27	0.03	0.88	0.93	0.88	0.93	XXX
76506	TC	A	Echo exam of head	0.00	1.48	1.48	1.48	1.48	0.07	1.55	1.55	1.55	1.55	XXX
76511		A	Echo exam of eye	0.94	1.71	1.84	1.71	1.84	0.09	2.74	2.67	2.74	2.67	XXX
76511	26	A	Echo exam of eye	0.94	0.40	0.34	0.40	0.34	0.03	1.37	1.31	1.37	1.31	XXX
76511	TC	A	Echo exam of eye	0.00	1.31	1.30	1.31	1.30	0.06	1.37	1.36	1.37	1.36	XXX
76512		A	Echo exam of eye	0.66	1.91	1.91	1.91	1.91	0.10	2.67	2.67	2.67	2.67	XXX
76512	26	A	Echo exam of eye	0.66	0.32	0.33	0.32	0.33	0.02	1.00	1.01	1.00	1.01	XXX
76512	TC	A	Echo exam of eye	0.00	1.59	1.58	1.59	1.58	0.08	1.67	1.66	1.67	1.66	XXX
76513		A	Echo exam of eye, water bath	0.66	1.90	1.90	1.90	1.90	0.10	2.66	2.66	2.66	2.66	XXX
76513	26	A	Echo exam of eye, water bath	0.66	0.31	0.32	0.31	0.32	0.02	0.99	1.00	0.99	1.00	XXX
76513	TC	A	Echo exam of eye, water bath	0.00	1.59	1.58	1.59	1.58	0.08	1.67	1.66	1.67	1.66	XXX
76516		A	Echo exam of eye	0.54	1.57	1.57	1.57	1.57	0.08	2.19	2.19	2.19	2.19	XXX
76516	26	A	Echo exam of eye	0.54	0.27	0.27	0.27	0.27	0.02	0.83	0.83	0.83	0.83	XXX
76516	TC	A	Echo exam of eye	0.00	1.31	1.30	1.31	1.30	0.06	1.37	1.36	1.37	1.36	XXX
76519		A	Echo exam of eye	0.54	1.58	1.57	1.58	1.57	0.08	2.20	2.19	2.20	2.19	XXX
76519	26	A	Echo exam of eye	0.54	0.27	0.27	0.27	0.27	0.02	0.83	0.83	0.83	0.83	XXX
76519	TC	A	Echo exam of eye	0.00	1.31	1.30	1.31	1.30	0.06	1.37	1.36	1.37	1.36	XXX
76529		A	Echo exam of eye	0.57	1.68	1.69	1.68	1.69	0.09	2.34	2.35	2.34	2.35	XXX
76529	26	A	Echo exam of eye	0.57	0.25	0.27	0.25	0.27	0.02	0.84	0.86	0.84	0.86	XXX
76529	TC	A	Echo exam of eye	0.00	1.43	1.42	1.43	1.42	0.07	1.50	1.49	1.50	1.49	XXX
76536		A	Echo exam of head and neck	0.56	1.63	1.69	1.63	1.69	0.09	2.28	2.34	2.28	2.34	XXX
76536	26	A	Echo exam of head and neck	0.56	0.15	0.22	0.15	0.22	0.02	0.73	0.80	0.73	0.80	XXX
76536	TC	A	Echo exam of head and neck	0.00	1.48	1.48	1.48	1.48	0.07	1.55	1.55	1.55	1.55	XXX
76604		A	Echo exam of chest	0.55	1.51	1.57	1.51	1.57	0.08	2.14	2.20	2.14	2.20	XXX
76604	26	A	Echo exam of chest	0.55	0.15	0.22	0.15	0.22	0.02	0.72	0.79	0.72	0.79	XXX
76604	TC	A	Echo exam of chest	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
76645		A	Echo exam of breast	0.54	1.24	1.30	1.24	1.30	0.07	1.85	1.91	1.85	1.91	XXX
76645	26	A	Echo exam of breast	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
76645	TC	A	Echo exam of breast	0.00	1.10	1.10	1.10	1.10	0.05	1.15	1.15	1.15	1.15	XXX
76700		A	Echo exam of abdomen	0.81	2.28	2.36	2.28	2.36	0.12	3.21	3.29	3.21	3.29	XXX
76700	26	A	Echo exam of abdomen	0.81	0.22	0.31	0.22	0.31	0.03	1.06	1.15	1.06	1.15	XXX
76700	TC	A	Echo exam of abdomen	0.00	2.06	2.05	2.06	2.05	0.09	2.15	2.14	2.15	2.14	XXX
76705		A	Echo exam of abdomen	0.59	1.64	1.70	1.64	1.70	0.09	2.32	2.38	2.32	2.38	XXX
76705	26	A	Echo exam of abdomen	0.59	0.16	0.23	0.16	0.23	0.02	0.77	0.84	0.77	0.84	XXX
76705	TC	A	Echo exam of abdomen	0.00	1.48	1.48	1.48	1.48	0.07	1.55	1.55	1.55	1.55	XXX
76770		A	Echo exam abdomen back wall	0.74	2.26	2.34	2.26	2.34	0.12	3.12	3.20	3.12	3.20	XXX
76770	26	A	Echo exam abdomen back wall	0.74	0.20	0.29	0.20	0.29	0.03	0.97	1.06	0.97	1.06	XXX
76770	TC	A	Echo exam abdomen back wall	0.00	2.06	2.05	2.06	2.05	0.09	2.15	2.14	2.15	2.14	XXX
76775		A	Echo exam abdomen back wall	0.58	1.64	1.70	1.64	1.70	0.09	2.31	2.37	2.31	2.37	XXX
76775	26	A	Echo exam abdomen back wall	0.58	0.16	0.23	0.16	0.23	0.02	0.76	0.83	0.76	0.83	XXX
76775	TC	A	Echo exam abdomen back wall	0.00	1.48	1.48	1.48	1.48	0.07	1.55	1.55	1.55	1.55	XXX
76778		A	Echo exam kidney transplant	0.74	2.27	2.34	2.27	2.34	0.12	3.13	3.20	3.13	3.20	XXX
76778	26	A	Echo exam kidney transplant	0.74	0.20	0.29	0.20	0.29	0.03	0.97	1.06	0.97	1.06	XXX
76778	TC	A	Echo exam kidney transplant	0.00	2.06	2.05	2.06	2.05	0.09	2.15	2.14	2.15	2.14	XXX
76800		A	Echo exam spinal canal	1.13	1.80	1.91	1.80	1.91	0.12	3.05	3.16	3.05	3.16	XXX
76800	26	A	Echo exam spinal canal	1.13	0.32	0.43	0.32	0.43	0.05	1.50	1.61	1.50	1.61	XXX
76800	TC	A	Echo exam spinal canal	0.00	1.48	1.48	1.48	1.48	0.07	1.55	1.55	1.55	1.55	XXX
76805		A	Echo exam of pregnant uterus	0.99	2.49	2.58	2.49	2.58	0.14	3.62	3.71	3.62	3.71	XXX
76805	26	A	Echo exam of pregnant uterus	0.99	0.29	0.39	0.29	0.39	0.04	1.32	1.42	1.32	1.42	XXX
76805	TC	A	Echo exam of pregnant uterus	0.00	2.19	2.18	2.19	2.18	0.10	2.29	2.28	2.29	2.28	XXX
76810		A	Echo exam of pregnant uterus	1.97	4.98	5.14	4.98	5.14	0.27	7.22	7.38	7.22	7.38	XXX
76810	26	A	Echo exam of pregnant uterus	1.97	0.60	0.78	0.60	0.78	0.07	2.64	2.82	2.64	2.82	XXX
76810	TC	A	Echo exam of pregnant uterus	0.00	4.39	4.37	4.39	4.37	0.20	4.59	4.57	4.59	4.57	XXX
76815		A	Echo exam of pregnant uterus	0.65	1.68	1.74	1.68	1.74	0.09	2.42	2.48	2.42	2.48	XXX
76815	26	A	Echo exam of pregnant uterus	0.65	0.20	0.27	0.20	0.27	0.02	0.87	0.94	0.87	0.94	XXX
76815	TC	A	Echo exam of pregnant uterus	0.00	1.48	1.48	1.48	1.48	0.07	1.55	1.55	1.55	1.55	XXX
76816		A	Echo exam followup or repeat	0.57	1.36	1.40	1.36	1.40	0.07	2.00	2.04	2.00	2.04	XXX
76816	26	A	Echo exam followup or repeat	0.57	0.19	0.24	0.19	0.24	0.02	0.78	0.83	0.78	0.83	XXX
76816	TC	A	Echo exam followup or repeat	0.00	1.17	1.16	1.17	1.16	0.05	1.22	1.21	1.22	1.21	XXX
76818		A	Fetal biophysical profile	0.77	1.95	2.00	1.95	2.00	0.11	2.83	2.88	2.83	2.88	XXX
76818	26	A	Fetal biophysical profile	0.77	0.26	0.32	0.26	0.32	0.03	1.06	1.12	1.06	1.12	XXX
76818	TC	A	Fetal biophysical profile	0.00	1.69	1.68	1.69	1.68	0.08	1.77	1.76	1.77	1.76	XXX
76825		A	Echo exam of fetal heart	1.67	2.65	2.54	2.65	2.54	0.15	4.47	4.36	4.47	4.36	XXX
76825	26	A	Echo exam of fetal heart	1.67	0.59	0.49	0.59	0.49	0.06	2.32	2.22	2.32	2.22	XXX
76825	TC	A	Echo exam of fetal heart	0.00	2.06	2.05	2.06	2.05	0.09	2.15	2.14	2.15	2.14	XXX
76826		A	Echo exam of fetal heart	0.83	1.01	1.24	1.01	1.24	0.07	1.91	2.14	1.91	2.14	XXX
76826	26	A	Echo exam of fetal heart	0.83	0.27	0.51	0.27	0.51	0.03	1.13	1.37	1.13	1.37	XXX
76826	TC	A	Echo exam of fetal heart	0.00	0.73	0.73	0.73	0.73	0.04	0.77	0.77	0.77	0.77	XXX
76827		A	Echo exam of fetal heart	0.58	2.01	2.24	2.01	2.24	0.12	2.71	2.94	2.71	2.94	XXX
76827	26	A	Echo exam of fetal heart	0.58	0.21	0.45	0.21	0.45	0.02	0.81	1.05	0.81	1.05	XXX
76827	TC	A	Echo exam of fetal heart	0.00	1.80	1.79	1.80	1.79	0.10	1.90	1.89	1.90	1.89	XXX
76828		A	Echo exam of fetal heart	0.56	1.38	1.42	1.38	1.42	0.09	2.03	2.07	2.03	2.07	XXX
76828	26	A	Echo exam of fetal heart	0.56	0.21	0.26	0.21	0.26	0.02	0.79	0.84	0.79	0.84	XXX
76828	TC	A	Echo exam of fetal heart	0.00	1.17	1.16	1.17	1.16	0.07	1.24	1.23	1.24	1.23	XXX
76830		A	Echo exam, transvaginal	0.69	1.78	1.85	1.78	1.85	0.11	2.58	2.65	2.58	2.65	XXX
76830	26	A	Echo exam, transvaginal	0.69	0.19	0.27	0.19	0.27	0.03	0.91	0.99	0.91	0.99	XXX
76830	TC	A	Echo exam, transvaginal	0.00	1.59	1.58	1.59	1.58	0.08	1.67	1.66	1.67	1.66	XXX
76831		A	Echo exam, uterus	0.72	1.79	1.86	1.79	1.86	0.11	2.62	2.69	2.62	2.69	XXX
76831	26	A	Echo exam, uterus	0.72	0.20	0.28	0.20	0.28	0.03	0.95	1.03	0.95	1.03	XXX
76831	TC	A	Echo exam, uterus	0.00	1.59	1.58	1.59	1.58	0.08	1.67	1.66	1.67	1.66	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
76856		A	Echo exam of pelvis	0.69	1.78	1.85	1.78	1.85	0.11	2.58	2.65	2.58	2.65	XXX
76856	26	A	Echo exam of pelvis	0.69	0.19	0.27	0.19	0.27	0.03	0.91	0.99	0.91	0.99	XXX
76856	TC	A	Echo exam of pelvis	0.00	1.59	1.58	1.59	1.58	0.08	1.67	1.66	1.67	1.66	XXX
76857		A	Echo exam of pelvis	0.38	1.21	1.24	1.21	1.24	0.07	1.66	1.69	1.66	1.69	XXX
76857	26	A	Echo exam of pelvis	0.38	0.11	0.15	0.11	0.15	0.02	0.51	0.55	0.51	0.55	XXX
76857	TC	A	Echo exam of pelvis	0.00	1.10	1.10	1.10	1.10	0.05	1.15	1.15	1.15	1.15	XXX
76870		A	Echo exam of scrotum	0.64	1.76	1.82	1.76	1.82	0.11	2.51	2.57	2.51	2.57	XXX
76870	26	A	Echo exam of scrotum	0.64	0.17	0.24	0.17	0.24	0.03	0.84	0.91	0.84	0.91	XXX
76870	TC	A	Echo exam of scrotum	0.00	1.59	1.58	1.59	1.58	0.08	1.67	1.66	1.67	1.66	XXX
76872		A	Echo exam, transrectal	0.69	1.80	1.86	1.80	1.86	0.11	2.60	2.66	2.60	2.66	XXX
76872	26	A	Echo exam, transrectal	0.69	0.21	0.28	0.21	0.28	0.03	0.93	1.00	0.93	1.00	XXX
76872	TC	A	Echo exam, transrectal	0.00	1.59	1.58	1.59	1.58	0.08	1.67	1.66	1.67	1.66	XXX
76880		A	Echo exam of extremity	0.59	1.64	1.70	1.64	1.70	0.09	2.32	2.38	2.32	2.38	XXX
76880	26	A	Echo exam of extremity	0.59	0.16	0.23	0.16	0.23	0.02	0.77	0.84	0.77	0.84	XXX
76880	TC	A	Echo exam of extremity	0.00	1.48	1.48	1.48	1.48	0.07	1.55	1.55	1.55	1.55	XXX
76885		A	Echo exam, infant hips	0.74	1.79	1.86	1.79	1.86	0.11	2.64	2.71	2.64	2.71	XXX
76885	26	A	Echo exam, infant hips	0.74	0.20	0.28	0.20	0.28	0.03	0.97	1.05	0.97	1.05	XXX
76885	TC	A	Echo exam, infant hips	0.00	1.59	1.58	1.59	1.58	0.08	1.67	1.66	1.67	1.66	XXX
76886		A	Echo exam, infant hips	0.62	1.65	1.71	1.65	1.71	0.09	2.36	2.42	2.36	2.42	XXX
76886	26	A	Echo exam, infant hips	0.62	0.17	0.23	0.17	0.23	0.02	0.81	0.87	0.81	0.87	XXX
76886	TC	A	Echo exam, infant hips	0.00	1.48	1.48	1.48	1.48	0.07	1.55	1.55	1.55	1.55	XXX
76930		A	Echo guide for heart sac tap	0.67	1.84	1.88	1.84	1.88	0.10	2.61	2.65	2.61	2.65	XXX
76930	26	A	Echo guide for heart sac tap	0.67	0.26	0.30	0.26	0.30	0.02	0.95	0.99	0.95	0.99	XXX
76930	TC	A	Echo guide for heart sac tap	0.00	1.59	1.58	1.59	1.58	0.08	1.67	1.66	1.67	1.66	XXX
76932		A	Echo guide for heart biopsy	0.67	1.85	1.88	1.85	1.88	0.10	2.62	2.65	2.62	2.65	XXX
76932	26	A	Echo guide for heart biopsy	0.67	0.26	0.30	0.26	0.30	0.02	0.95	0.99	0.95	0.99	XXX
76932	TC	A	Echo guide for heart biopsy	0.00	1.59	1.58	1.59	1.58	0.08	1.67	1.66	1.67	1.66	XXX
76934		A	Echo guide for chest tap	0.67	1.77	1.84	1.77	1.84	0.11	2.55	2.62	2.55	2.62	XXX
76934	26	A	Echo guide for chest tap	0.67	0.18	0.26	0.18	0.26	0.03	0.88	0.96	0.88	0.96	XXX
76934	TC	A	Echo guide for chest tap	0.00	1.59	1.58	1.59	1.58	0.08	1.67	1.66	1.67	1.66	XXX
76936		A	Echo guide for artery repair	1.99	7.18	7.52	7.18	7.52	0.41	9.58	9.92	9.58	9.92	XXX
76936	26	A	Echo guide for artery repair	1.99	0.60	0.98	0.60	0.98	0.11	2.70	3.08	2.70	3.08	XXX
76936	TC	A	Echo guide for artery repair	0.00	6.58	6.55	6.58	6.55	0.30	6.88	6.85	6.88	6.85	XXX
76938		A	Echo exam for drainage	0.67	1.77	1.84	1.77	1.84	0.11	2.55	2.62	2.55	2.62	XXX
76938	26	A	Echo exam for drainage	0.67	0.18	0.26	0.18	0.26	0.03	0.88	0.96	0.88	0.96	XXX
76938	TC	A	Echo exam for drainage	0.00	1.59	1.58	1.59	1.58	0.08	1.67	1.66	1.67	1.66	XXX
76941		A	Echo guide for transfusion	1.34	2.00	2.12	2.00	2.12	0.12	3.46	3.58	3.46	3.58	XXX
76941	26	A	Echo guide for transfusion	1.34	0.40	0.53	0.40	0.53	0.05	1.79	1.92	1.79	1.92	XXX
76941	TC	A	Echo guide for transfusion	0.00	1.60	1.59	1.60	1.59	0.07	1.67	1.66	1.67	1.66	XXX
76942		A	Echo guide for biopsy	0.67	1.79	1.85	1.79	1.85	0.11	2.57	2.63	2.57	2.63	XXX
76942	26	A	Echo guide for biopsy	0.67	0.20	0.27	0.20	0.27	0.03	0.90	0.97	0.90	0.97	XXX
76942	TC	A	Echo guide for biopsy	0.00	1.59	1.58	1.59	1.58	0.08	1.67	1.66	1.67	1.66	XXX
76945		A	Echo guide, villus sampling	0.67	1.79	2.02	1.79	2.02	0.10	2.56	2.79	2.56	2.79	XXX
76945	26	A	Echo guide, villus sampling	0.67	0.19	0.43	0.19	0.43	0.03	0.89	1.13	0.89	1.13	XXX
76945	TC	A	Echo guide, villus sampling	0.00	1.60	1.59	1.60	1.59	0.07	1.67	1.66	1.67	1.66	XXX
76946		A	Echo guide for amniocentesis	0.38	1.72	1.74	1.72	1.74	0.09	2.19	2.21	2.19	2.21	XXX
76946	26	A	Echo guide for amniocentesis	0.38	0.13	0.16	0.13	0.16	0.01	0.52	0.55	0.52	0.55	XXX
76946	TC	A	Echo guide for amniocentesis	0.00	1.59	1.58	1.59	1.58	0.08	1.67	1.66	1.67	1.66	XXX
76948		A	Echo guide, ova aspiration	0.38	1.70	1.73	1.70	1.73	0.10	2.18	2.21	2.18	2.21	XXX
76948	26	A	Echo guide, ova aspiration	0.38	0.11	0.15	0.11	0.15	0.02	0.51	0.55	0.51	0.55	XXX
76948	TC	A	Echo guide, ova aspiration	0.00	1.59	1.58	1.59	1.58	0.08	1.67	1.66	1.67	1.66	XXX
76950		A	Echo guidance radiotherapy	0.58	1.53	1.59	1.53	1.59	0.09	2.20	2.26	2.20	2.26	XXX
76950	26	A	Echo guidance radiotherapy	0.58	0.18	0.24	0.18	0.24	0.03	0.79	0.85	0.79	0.85	XXX
76950	TC	A	Echo guidance radiotherapy	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
76960		A	Echo guidance radiotherapy	0.58	1.54	1.59	1.54	1.59	0.08	2.20	2.25	2.20	2.25	XXX
76960	26	A	Echo guidance radiotherapy	0.58	0.18	0.24	0.18	0.24	0.02	0.78	0.84	0.78	0.84	XXX
76960	TC	A	Echo guidance radiotherapy	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
76965		A	Echo guidance radiotherapy	1.34	6.25	6.81	6.25	6.81	0.33	7.92	8.48	7.92	8.48	XXX
76965	26	A	Echo guidance radiotherapy	1.34	0.42	1.01	0.42	1.01	0.07	1.83	2.42	1.83	2.42	XXX
76965	TC	A	Echo guidance radiotherapy	0.00	5.82	5.79	5.82	5.79	0.26	6.08	6.05	6.08	6.05	XXX
76970		A	Ultrasound exam follow-up	0.40	1.21	1.25	1.21	1.25	0.07	1.68	1.72	1.68	1.72	XXX
76970	26	A	Ultrasound exam follow-up	0.40	0.11	0.16	0.11	0.16	0.02	0.53	0.58	0.53	0.58	XXX
76970	TC	A	Ultrasound exam follow-up	0.00	1.10	1.10	1.10	1.10	0.05	1.15	1.15	1.15	1.15	XXX
76975		A	GI endoscopic ultrasound	0.81	1.85	1.90	1.85	1.90	0.11	2.77	2.82	2.77	2.82	XXX
76975	26	A	GI endoscopic ultrasound	0.81	0.26	0.32	0.26	0.32	0.03	1.10	1.16	1.10	1.16	XXX
76975	TC	A	GI endoscopic ultrasound	0.00	1.59	1.58	1.59	1.58	0.08	1.67	1.66	1.67	1.66	XXX
76977		A	Us bone density measure	0.05	0.94	0.94	0.94	0.94	0.05	1.04	1.04	1.04	1.04	XXX
76977	26	A	Us bone density measure	0.05	0.08	0.08	0.08	0.08	0.01	0.14	0.14	0.14	0.14	XXX
76977	TC	A	Us bone density measure	0.00	0.86	0.86	0.86	0.86	0.04	0.90	0.90	0.90	0.90	XXX
76986		A	Echo exam at surgery	1.20	3.11	3.20	3.11	3.20	0.19	4.50	4.59	4.50	4.59	XXX
76986	26	A	Echo exam at surgery	1.20	0.36	0.47	0.36	0.47	0.06	1.62	1.73	1.62	1.73	XXX
76986	TC	A	Echo exam at surgery	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX
76999		C	Echo examination procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76999	26	C	Echo examination procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
76999	TC	C	Echo examination procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77261		A	Radiation therapy planning	1.39	0.47	0.57	0.47	0.57	0.05	1.91	2.01	1.91	2.01	XXX
77262		A	Radiation therapy planning	2.11	0.69	0.86	0.69	0.86	0.08	2.88	3.05	2.88	3.05	XXX
77263		A	Radiation therapy planning	3.14	1.01	1.27	1.01	1.27	0.13	4.28	4.54	4.28	4.54	XXX
77280		A	Set radiation therapy field	0.70	3.83	3.89	3.83	3.89	0.19	4.72	4.78	4.72	4.78	XXX
77280	26	A	Set radiation therapy field	0.70	0.20	0.28	0.20	0.28	0.03	0.93	1.01	0.93	1.01	XXX
77280	TC	A	Set radiation therapy field	0.00	3.63	3.61	3.63	3.61	0.16	3.79	3.77	3.79	3.77	XXX
77285		A	Set radiation therapy field	1.05	6.12	6.19	6.12	6.19	0.31	7.48	7.55	7.48	7.55	XXX
77285	26	A	Set radiation therapy field	1.05	0.29	0.40	0.29	0.40	0.04	1.38	1.49	1.38	1.49	XXX
77285	TC	A	Set radiation therapy field	0.00	5.82	5.79	5.82	5.79	0.27	6.09	6.06	6.09	6.06	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
77290	.....	A	Set radiation therapy field	1.56	7.24	7.37	7.24	7.37	0.37	9.17	9.30	9.17	9.30	XXX
77290	26	A	Set radiation therapy field	1.56	0.44	0.60	0.44	0.60	0.06	2.06	2.22	2.06	2.22	XXX
77290	TC	A	Set radiation therapy field	0.00	6.80	6.77	6.80	6.77	0.31	7.11	7.08	7.11	7.08	XXX
77295	.....	A	Set radiation therapy field	4.57	30.49	30.81	30.49	30.81	1.51	36.57	36.89	36.57	36.89	XXX
77295	26	A	Set radiation therapy field	4.57	1.29	1.77	1.29	1.77	0.18	6.04	6.52	6.04	6.52	XXX
77295	TC	A	Set radiation therapy field	0.00	29.20	29.05	29.20	29.05	1.33	30.53	30.38	30.53	30.38	XXX
77299	.....	C	Radiation therapy planning	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77299	26	C	Radiation therapy planning	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77299	TC	C	Radiation therapy planning	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77300	.....	A	Radiation therapy dose plan	0.62	1.58	1.64	1.58	1.64	0.08	2.28	2.34	2.28	2.34	XXX
77300	26	A	Radiation therapy dose plan	0.62	0.17	0.24	0.17	0.24	0.02	0.81	0.88	0.81	0.88	XXX
77300	TC	A	Radiation therapy dose plan	0.00	1.41	1.40	1.41	1.40	0.06	1.47	1.46	1.47	1.46	XXX
77305	.....	A	Radiation therapy dose plan	0.70	2.14	2.21	2.14	2.21	0.12	2.96	3.03	2.96	3.03	XXX
77305	26	A	Radiation therapy dose plan	0.70	0.20	0.28	0.20	0.28	0.03	0.93	1.01	0.93	1.01	XXX
77305	TC	A	Radiation therapy dose plan	0.00	1.94	1.93	1.94	1.93	0.09	2.03	2.02	2.03	2.02	XXX
77310	.....	A	Radiation therapy dose plan	1.05	2.73	2.82	2.73	2.82	0.16	3.94	4.03	3.94	4.03	XXX
77310	26	A	Radiation therapy dose plan	1.05	0.29	0.40	0.29	0.40	0.04	1.38	1.49	1.38	1.49	XXX
77310	TC	A	Radiation therapy dose plan	0.00	2.43	2.42	2.43	2.42	0.12	2.55	2.54	2.55	2.54	XXX
77315	.....	A	Radiation therapy dose plan	1.56	3.22	3.37	3.22	3.37	0.19	4.97	5.12	4.97	5.12	XXX
77315	26	A	Radiation therapy dose plan	1.56	0.44	0.60	0.44	0.60	0.06	2.06	2.22	2.06	2.22	XXX
77315	TC	A	Radiation therapy dose plan	0.00	2.78	2.77	2.78	2.77	0.13	2.91	2.90	2.91	2.90	XXX
77321	.....	A	Radiation therapy port plan	0.95	4.49	4.57	4.49	4.57	0.23	5.67	5.75	5.67	5.75	XXX
77321	26	A	Radiation therapy port plan	0.95	0.27	0.37	0.27	0.37	0.04	1.26	1.36	1.26	1.36	XXX
77321	TC	A	Radiation therapy port plan	0.00	4.23	4.21	4.23	4.21	0.19	4.42	4.40	4.42	4.40	XXX
77326	.....	A	Radiation therapy dose plan	0.93	2.73	2.82	2.73	2.82	0.16	3.82	3.91	3.82	3.91	XXX
77326	26	A	Radiation therapy dose plan	0.93	0.26	0.36	0.26	0.36	0.04	1.23	1.33	1.23	1.33	XXX
77326	TC	A	Radiation therapy dose plan	0.00	2.46	2.45	2.46	2.45	0.12	2.58	2.57	2.58	2.57	XXX
77327	.....	A	Radiation therapy dose plan	1.39	4.02	4.14	4.02	4.14	0.22	5.63	5.75	5.63	5.75	XXX
77327	26	A	Radiation therapy dose plan	1.39	0.39	0.53	0.39	0.53	0.06	1.84	1.98	1.84	1.98	XXX
77327	TC	A	Radiation therapy dose plan	0.00	3.63	3.61	3.63	3.61	0.16	3.79	3.77	3.79	3.77	XXX
77328	.....	A	Radiation therapy dose plan	2.09	5.78	5.96	5.78	5.96	0.31	8.18	8.36	8.18	8.36	XXX
77328	26	A	Radiation therapy dose plan	2.09	0.59	0.80	0.59	0.80	0.08	2.76	2.97	2.76	2.97	XXX
77328	TC	A	Radiation therapy dose plan	0.00	5.19	5.16	5.19	5.16	0.23	5.42	5.39	5.42	5.39	XXX
77331	.....	A	Special radiation dosimetry	0.87	0.77	0.86	0.77	0.86	0.05	1.69	1.78	1.69	1.78	XXX
77331	26	A	Special radiation dosimetry	0.87	0.25	0.34	0.25	0.34	0.03	1.15	1.24	1.15	1.24	XXX
77331	TC	A	Special radiation dosimetry	0.00	0.52	0.52	0.52	0.52	0.02	0.54	0.54	0.54	0.54	XXX
77332	.....	A	Radiation treatment aid(s)	0.54	1.56	1.61	1.56	1.61	0.08	2.18	2.23	2.18	2.23	XXX
77332	26	A	Radiation treatment aid(s)	0.54	0.15	0.21	0.15	0.21	0.02	0.71	0.77	0.71	0.77	XXX
77332	TC	A	Radiation treatment aid(s)	0.00	1.41	1.40	1.41	1.40	0.06	1.47	1.46	1.47	1.46	XXX
77333	.....	A	Radiation treatment aid(s)	0.84	2.22	2.30	2.22	2.30	0.12	3.18	3.26	3.18	3.26	XXX
77333	26	A	Radiation treatment aid(s)	0.84	0.24	0.33	0.24	0.33	0.03	1.11	1.20	1.11	1.20	XXX
77333	TC	A	Radiation treatment aid(s)	0.00	1.98	1.97	1.98	1.97	0.09	2.07	2.06	2.07	2.06	XXX
77334	.....	A	Radiation treatment aid(s)	1.24	3.75	3.85	3.75	3.85	0.20	5.19	5.29	5.19	5.29	XXX
77334	26	A	Radiation treatment aid(s)	1.24	0.35	0.47	0.35	0.47	0.05	1.64	1.76	1.64	1.76	XXX
77334	TC	A	Radiation treatment aid(s)	0.00	3.40	3.38	3.40	3.38	0.15	3.55	3.53	3.55	3.53	XXX
77336	.....	A	Radiation physics consult	0.00	3.12	3.10	3.12	3.10	0.14	3.26	3.24	3.26	3.24	XXX
77370	.....	A	Radiation physics consult	0.00	3.65	3.63	3.65	3.63	0.16	3.81	3.79	3.81	3.79	XXX
77380	.....	C	Proton beam delivery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77380	26	C	Proton beam delivery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77380	TC	C	Proton beam delivery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77381	.....	C	Proton beam treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77381	26	C	Proton beam treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77381	TC	C	Proton beam treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77399	.....	C	External radiation dosimetry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77399	26	C	External radiation dosimetry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77399	TC	C	External radiation dosimetry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77401	.....	A	Radiation treatment delivery	0.00	1.85	1.84	1.85	1.84	0.09	1.94	1.93	1.94	1.93	XXX
77402	.....	A	Radiation treatment delivery	0.00	1.85	1.84	1.85	1.84	0.09	1.94	1.93	1.94	1.93	XXX
77403	.....	A	Radiation treatment delivery	0.00	1.85	1.84	1.85	1.84	0.09	1.94	1.93	1.94	1.93	XXX
77404	.....	A	Radiation treatment delivery	0.00	1.85	1.84	1.85	1.84	0.09	1.94	1.93	1.94	1.93	XXX
77406	.....	A	Radiation treatment delivery	0.00	1.85	1.84	1.85	1.84	0.09	1.94	1.93	1.94	1.93	XXX
77407	.....	A	Radiation treatment delivery	0.00	2.18	2.17	2.18	2.17	0.10	2.28	2.27	2.28	2.27	XXX
77408	.....	A	Radiation treatment delivery	0.00	2.18	2.17	2.18	2.17	0.10	2.28	2.27	2.28	2.27	XXX
77409	.....	A	Radiation treatment delivery	0.00	2.18	2.17	2.18	2.17	0.10	2.28	2.27	2.28	2.27	XXX
77411	.....	A	Radiation treatment delivery	0.00	2.18	2.17	2.18	2.17	0.10	2.28	2.27	2.28	2.27	XXX
77412	.....	A	Radiation treatment delivery	0.00	2.43	2.42	2.43	2.42	0.12	2.55	2.54	2.55	2.54	XXX
77413	.....	A	Radiation treatment delivery	0.00	2.43	2.42	2.43	2.42	0.12	2.55	2.54	2.55	2.54	XXX
77414	.....	A	Radiation treatment delivery	0.00	2.43	2.42	2.43	2.42	0.12	2.55	2.54	2.55	2.54	XXX
77416	.....	A	Radiation treatment delivery	0.00	2.43	2.42	2.43	2.42	0.12	2.55	2.54	2.55	2.54	XXX
77417	.....	A	Radiology port film(s)	0.00	0.61	0.61	0.61	0.61	0.03	0.64	0.64	0.64	0.64	XXX
77419	.....	A	Weekly radiation therapy	3.60	1.16	1.46	1.16	1.46	0.14	4.90	5.20	4.90	5.20	XXX
77420	.....	A	Weekly radiation therapy	1.81	0.55	0.67	0.55	0.67	0.06	2.22	2.34	2.22	2.34	XXX
77425	.....	A	Weekly radiation therapy	2.44	0.80	1.00	0.80	1.00	0.10	3.34	3.54	3.34	3.54	XXX
77430	.....	A	Weekly radiation therapy	3.60	1.16	1.46	1.16	1.46	0.14	4.90	5.20	4.90	5.20	XXX
77431	.....	A	Radiation therapy management	1.81	0.64	0.76	0.64	0.76	0.07	2.52	2.64	2.52	2.64	XXX
77432	.....	A	Stereotactic radiation trmt	7.93	2.62	3.99	2.62	3.99	0.32	10.87	12.24	10.87	12.24	XXX
77470	.....	A	Special radiation treatment	2.09	12.23	12.39	12.23	12.39	0.60	14.92	15.08	14.92	15.08	XXX
77470	26	A	Special radiation treatment	2.09	0.59	0.80	0.59	0.80	0.08	2.76	2.97	2.76	2.97	XXX
77470	TC	A	Special radiation treatment	0.00	11.65	11.59	11.65	11.59	0.52	12.17	12.11	12.17	12.11	XXX
77499	.....	C	Radiation therapy management	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77499	26	C	Radiation therapy management	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77499	TC	C	Radiation therapy management	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77600	.....	R	Hyperthermia treatment	1.56	3.62	3.77	3.62	3.77	0.21	5.39	5.54	5.39	5.54	XXX
77600	26	R	Hyperthermia treatment	1.56	0.44	0.60	0.44	0.60	0.07	2.07	2.23	2.07	2.23	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
77600	TC	R	Hyperthermia treatment	0.00	3.18	3.17	3.18	3.17	0.14	3.32	3.31	3.32	3.31	XXX
77605	.....	R	Hyperthermia treatment	2.09	4.83	5.02	4.83	5.02	0.29	7.21	7.40	7.21	7.40	XXX
77605	26	R	Hyperthermia treatment	2.09	0.59	0.80	0.59	0.80	0.09	2.77	2.98	2.77	2.98	XXX
77605	TC	R	Hyperthermia treatment	0.00	4.25	4.23	4.25	4.23	0.20	4.45	4.43	4.45	4.43	XXX
77610	.....	R	Hyperthermia treatment	1.56	3.67	3.79	3.67	3.79	0.20	5.43	5.55	5.43	5.55	XXX
77610	26	R	Hyperthermia treatment	1.56	0.49	0.63	0.49	0.63	0.06	2.11	2.25	2.11	2.25	XXX
77610	TC	R	Hyperthermia treatment	0.00	3.18	3.17	3.18	3.17	0.14	3.32	3.31	3.32	3.31	XXX
77615	.....	R	Hyperthermia treatment	2.09	4.82	5.02	4.82	5.02	0.28	7.19	7.39	7.19	7.39	XXX
77615	26	R	Hyperthermia treatment	2.09	0.57	0.79	0.57	0.79	0.08	2.74	2.96	2.74	2.96	XXX
77615	TC	R	Hyperthermia treatment	0.00	4.25	4.23	4.25	4.23	0.20	4.45	4.43	4.45	4.43	XXX
77620	.....	R	Hyperthermia treatment	1.56	3.69	3.80	3.69	3.80	0.20	5.45	5.56	5.45	5.56	XXX
77620	26	R	Hyperthermia treatment	1.56	0.52	0.64	0.52	0.64	0.06	2.14	2.26	2.14	2.26	XXX
77620	TC	R	Hyperthermia treatment	0.00	3.18	3.17	3.18	3.17	0.14	3.32	3.31	3.32	3.31	XXX
77750	.....	A	Infuse radioactive materials	4.91	2.77	3.19	2.77	3.19	0.26	7.94	8.36	7.94	8.36	090
77750	26	A	Infuse radioactive materials	4.91	1.39	1.81	1.39	1.81	0.20	6.50	6.92	6.50	6.92	090
77750	TC	A	Infuse radioactive materials	0.00	1.39	1.39	1.39	1.39	0.06	1.45	1.45	1.45	1.45	090
77761	.....	A	Radioelement application	3.81	3.61	3.97	3.61	3.97	0.30	7.72	8.08	7.72	8.08	090
77761	26	A	Radioelement application	3.81	0.98	1.36	0.98	1.36	0.17	4.96	5.34	4.96	5.34	090
77761	TC	A	Radioelement application	0.00	2.63	2.61	2.63	2.61	0.13	2.76	2.74	2.76	2.74	090
77762	.....	A	Radioelement application	5.72	5.35	5.84	5.35	5.84	0.42	11.49	11.98	11.49	11.98	090
77762	26	A	Radioelement application	5.72	1.57	2.08	1.57	2.08	0.25	7.54	8.05	7.54	8.05	090
77762	TC	A	Radioelement application	0.00	3.77	3.75	3.77	3.75	0.17	3.94	3.92	3.94	3.92	090
77763	.....	A	Radioelement application	8.57	7.01	7.77	7.01	7.77	0.58	16.16	16.92	16.16	16.92	090
77763	26	A	Radioelement application	8.57	2.31	3.10	2.31	3.10	0.37	11.25	12.04	11.25	12.04	090
77763	TC	A	Radioelement application	0.00	4.70	4.67	4.70	4.67	0.21	4.91	4.88	4.91	4.88	090
77776	.....	A	Radioelement application	4.66	3.48	4.00	3.48	4.00	0.32	8.46	8.98	8.46	8.98	XXX
77776	26	A	Radioelement application	4.66	1.20	1.74	1.20	1.74	0.21	6.07	6.61	6.07	6.61	XXX
77776	TC	A	Radioelement application	0.00	2.27	2.26	2.27	2.26	0.11	2.38	2.37	2.38	2.37	XXX
77777	.....	A	Radioelement application	7.48	6.67	7.23	6.67	7.23	0.52	14.67	15.23	14.67	15.23	090
77777	26	A	Radioelement application	7.48	2.23	2.82	2.23	2.82	0.32	10.03	10.62	10.03	10.62	090
77777	TC	A	Radioelement application	0.00	4.44	4.41	4.44	4.41	0.20	4.64	4.61	4.64	4.61	090
77778	.....	A	Radioelement application	11.19	8.56	9.48	8.56	9.48	0.71	20.46	21.38	20.46	21.38	090
77778	26	A	Radioelement application	11.19	3.20	4.15	3.20	4.15	0.47	14.86	15.81	14.86	15.81	090
77778	TC	A	Radioelement application	0.00	5.36	5.34	5.36	5.34	0.24	5.60	5.58	5.60	5.58	090
77781	.....	A	High intensity brachytherapy	1.66	21.71	21.73	21.71	21.73	1.02	24.39	24.41	24.39	24.41	090
77781	26	A	High intensity brachytherapy	1.66	0.49	0.62	0.49	0.62	0.07	2.22	2.35	2.22	2.35	090
77781	TC	A	High intensity brachytherapy	0.00	21.23	21.12	21.23	21.12	0.95	22.18	22.07	22.18	22.07	090
77782	.....	A	High intensity brachytherapy	2.49	21.93	22.04	21.93	22.04	1.05	25.47	25.58	25.47	25.58	090
77782	26	A	High intensity brachytherapy	2.49	0.71	0.93	0.71	0.93	0.10	3.30	3.52	3.30	3.52	090
77782	TC	A	High intensity brachytherapy	0.00	21.23	21.12	21.23	21.12	0.95	22.18	22.07	22.18	22.07	090
77783	.....	A	High intensity brachytherapy	3.73	22.28	22.48	22.28	22.48	1.10	27.11	27.31	27.11	27.31	090
77783	26	A	High intensity brachytherapy	3.73	1.05	1.37	1.05	1.37	0.15	4.93	5.25	4.93	5.25	090
77783	TC	A	High intensity brachytherapy	0.00	21.23	21.12	21.23	21.12	0.95	22.18	22.07	22.18	22.07	090
77784	.....	A	High intensity brachytherapy	5.61	22.82	23.18	22.82	23.18	1.18	29.61	29.97	29.61	29.97	090
77784	26	A	High intensity brachytherapy	5.61	1.59	2.07	1.59	2.07	0.23	7.43	7.91	7.43	7.91	090
77784	TC	A	High intensity brachytherapy	0.00	21.23	21.12	21.23	21.12	0.95	22.18	22.07	22.18	22.07	090
77789	.....	A	Radioelement application	1.12	0.80	0.89	0.80	0.89	0.06	1.98	2.07	1.98	2.07	090
77789	26	A	Radioelement application	1.12	0.33	0.42	0.33	0.42	0.04	1.49	1.58	1.49	1.58	090
77789	TC	A	Radioelement application	0.00	0.47	0.47	0.47	0.47	0.02	0.49	0.49	0.49	0.49	090
77790	.....	A	Radioelement handling	1.05	0.82	0.92	0.82	0.92	0.06	1.93	2.03	1.93	2.03	XXX
77790	26	A	Radioelement handling	1.05	0.30	0.40	0.30	0.40	0.04	1.39	1.49	1.39	1.49	XXX
77790	TC	A	Radioelement handling	0.00	0.52	0.52	0.52	0.52	0.02	0.54	0.54	0.54	0.54	XXX
77799	.....	C	Radium/radioisotope therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77799	26	C	Radium/radioisotope therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
77799	TC	C	Radium/radioisotope therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78000	.....	A	Thyroid, single uptake	0.19	1.08	1.08	1.08	1.08	0.06	1.31	1.33	1.31	1.33	XXX
78000	26	A	Thyroid, single uptake	0.19	0.05	0.08	0.05	0.08	0.01	0.25	0.28	0.25	0.28	XXX
78000	TC	A	Thyroid, single uptake	0.00	1.01	1.01	1.01	1.01	0.05	1.06	1.06	1.06	1.06	XXX
78001	.....	A	Thyroid, multiple uptakes	0.26	1.43	1.46	1.43	1.46	0.07	1.76	1.79	1.76	1.79	XXX
78001	26	A	Thyroid, multiple uptakes	0.26	0.07	0.10	0.07	0.10	0.01	0.34	0.37	0.34	0.37	XXX
78001	TC	A	Thyroid, multiple uptakes	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
78003	.....	A	Thyroid suppress/stimul	0.33	1.10	1.13	1.10	1.13	0.06	1.49	1.52	1.49	1.52	XXX
78003	26	A	Thyroid suppress/stimul	0.33	0.09	0.13	0.09	0.13	0.01	0.43	0.47	0.43	0.47	XXX
78003	TC	A	Thyroid suppress/stimul	0.00	1.01	1.01	1.01	1.01	0.05	1.06	1.06	1.06	1.06	XXX
78006	.....	A	Thyroid,imaging with uptake	0.49	2.63	2.67	2.63	2.67	0.14	3.26	3.30	3.26	3.30	XXX
78006	26	A	Thyroid,imaging with uptake	0.49	0.14	0.19	0.14	0.19	0.02	0.65	0.70	0.65	0.70	XXX
78006	TC	A	Thyroid,imaging with uptake	0.00	2.49	2.48	2.49	2.48	0.12	2.61	2.60	2.61	2.60	XXX
78007	.....	A	Thyroid, image, mult uptakes	0.50	2.82	2.87	2.82	2.87	0.15	3.47	3.52	3.47	3.52	XXX
78007	26	A	Thyroid, image, mult uptakes	0.50	0.14	0.20	0.14	0.20	0.02	0.66	0.72	0.66	0.72	XXX
78007	TC	A	Thyroid, image, mult uptakes	0.00	2.69	2.68	2.69	2.68	0.13	2.82	2.81	2.82	2.81	XXX
78010	.....	A	Thyroid imaging	0.39	2.01	2.04	2.01	2.04	0.11	2.51	2.54	2.51	2.54	XXX
78010	26	A	Thyroid imaging	0.39	0.11	0.15	0.11	0.15	0.02	0.52	0.56	0.52	0.56	XXX
78010	TC	A	Thyroid imaging	0.00	1.90	1.89	1.90	1.89	0.09	1.99	1.98	1.99	1.98	XXX
78011	.....	A	Thyroid imaging with flow	0.45	2.64	2.68	2.64	2.68	0.14	3.23	3.27	3.23	3.27	XXX
78011	26	A	Thyroid imaging with flow	0.45	0.12	0.18	0.12	0.18	0.02	0.59	0.65	0.59	0.65	XXX
78011	TC	A	Thyroid imaging with flow	0.00	2.52	2.51	2.52	2.51	0.12	2.64	2.63	2.64	2.63	XXX
78015	.....	A	Thyroid met imaging	0.67	2.87	2.94	2.87	2.94	0.16	3.70	3.77	3.70	3.77	XXX
78015	26	A	Thyroid met imaging	0.67	0.18	0.26	0.18	0.26	0.03	0.88	0.96	0.88	0.96	XXX
78015	TC	A	Thyroid met imaging	0.00	2.69	2.68	2.69	2.68	0.13	2.82	2.81	2.82	2.81	XXX
78016	.....	A	Thyroid met imaging/studies	0.82	3.87	3.94	3.87	3.94	0.19	4.88	4.95	4.88	4.95	XXX
78016	26	A	Thyroid met imaging/studies	0.82	0.23	0.32	0.23	0.32	0.03	1.08	1.17	1.08	1.17	XXX
78016	TC	A	Thyroid met imaging/studies	0.00	3.64	3.62	3.64	3.62	0.16	3.80	3.78	3.80	3.78	XXX
78018	.....	A	Thyroid, met imaging, body	0.86	5.92	6.00	5.92	6.00	0.29	7.07	7.15	7.07	7.15	XXX
78018	26	A	Thyroid, met imaging, body	0.86	0.25	0.36	0.25	0.36	0.03	1.14	1.25	1.14	1.25	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
78018	TC	A	Thyroid, met imaging, body	0.00	5.67	5.64	5.67	5.64	0.26	5.93	5.90	5.93	5.90	XXX
78020		A	Thyroid met uptake	0.60	0.17	0.17	0.17	0.17	0.08	0.85	0.85	0.85	0.85	ZZZ
78020	26	A	Thyroid met uptake	#0.60	0.02	0.02	0.02	0.02	0.02	0.64	0.64	0.64	0.64	ZZZ
78020	TC	A	Thyroid met uptake	#0.00	0.15	0.15	0.15	0.15	0.06	0.21	0.21	0.21	0.21	ZZZ
78070		A	Parathyroid nuclear imaging	0.82	2.13	2.13	2.13	2.13	0.12	3.07	3.07	3.07	3.07	XXX
78070	26	A	Parathyroid nuclear imaging	0.82	0.23	0.24	0.23	0.24	0.03	1.08	1.09	1.08	1.09	XXX
78070	TC	A	Parathyroid nuclear imaging	0.00	1.90	1.89	1.90	1.89	0.09	1.99	1.98	1.99	1.98	XXX
78075		A	Adrenal nuclear imaging	0.74	5.88	5.93	5.88	5.93	0.29	6.91	6.96	6.91	6.96	XXX
78075	26	A	Adrenal nuclear imaging	0.74	0.21	0.29	0.21	0.29	0.03	0.98	1.06	0.98	1.06	XXX
78075	TC	A	Adrenal nuclear imaging	0.00	5.67	5.64	5.67	5.64	0.26	5.93	5.90	5.93	5.90	XXX
78099		C	Endocrine nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78099	26	C	Endocrine nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78099	TC	C	Endocrine nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78102		A	Bone marrow imaging, ltd	0.55	2.29	2.34	2.29	2.34	0.12	2.96	3.01	2.96	3.01	XXX
78102	26	A	Bone marrow imaging, ltd	0.55	0.16	0.22	0.16	0.22	0.02	0.73	0.79	0.73	0.79	XXX
78102	TC	A	Bone marrow imaging, ltd	0.00	2.13	2.12	2.13	2.12	0.10	2.23	2.22	2.23	2.22	XXX
78103		A	Bone marrow imaging, mult	0.75	3.52	3.59	3.52	3.59	0.18	4.45	4.52	4.45	4.52	XXX
78103	26	A	Bone marrow imaging, mult	0.75	0.21	0.29	0.21	0.29	0.03	0.99	1.07	0.99	1.07	XXX
78103	TC	A	Bone marrow imaging, mult	0.00	3.31	3.30	3.31	3.30	0.15	3.46	3.45	3.46	3.45	XXX
78104		A	Bone marrow imaging, body	0.80	4.48	4.55	4.48	4.55	0.23	5.51	5.58	5.51	5.58	XXX
78104	26	A	Bone marrow imaging, body	0.80	0.22	0.31	0.22	0.31	0.03	1.05	1.14	1.05	1.14	XXX
78104	TC	A	Bone marrow imaging, body	0.00	4.26	4.24	4.26	4.24	0.20	4.46	4.44	4.46	4.44	XXX
78110		A	Plasma volume, single	0.19	1.04	1.06	1.04	1.06	0.06	1.29	1.31	1.29	1.31	XXX
78110	26	A	Plasma volume, single	0.19	0.06	0.08	0.06	0.08	0.01	0.26	0.28	0.26	0.28	XXX
78110	TC	A	Plasma volume, single	0.00	0.99	0.99	0.99	0.99	0.05	1.04	1.04	1.04	1.04	XXX
78111		A	Plasma volume, multiple	0.22	2.75	2.76	2.75	2.76	0.14	3.11	3.12	3.11	3.12	XXX
78111	26	A	Plasma volume, multiple	0.22	0.06	0.09	0.06	0.09	0.01	0.29	0.32	0.29	0.32	XXX
78111	TC	A	Plasma volume, multiple	0.00	2.69	2.68	2.69	2.68	0.13	2.82	2.81	2.82	2.81	XXX
78120		A	Red cell mass, single	0.23	1.88	1.90	1.88	1.90	0.10	2.21	2.23	2.21	2.23	XXX
78120	26	A	Red cell mass, single	0.23	0.07	0.10	0.07	0.10	0.01	0.31	0.34	0.31	0.34	XXX
78120	TC	A	Red cell mass, single	0.00	1.81	1.80	1.81	1.80	0.09	1.90	1.89	1.90	1.89	XXX
78121		A	Red cell mass, multiple	0.32	3.13	3.15	3.13	3.15	0.14	3.59	3.61	3.59	3.61	XXX
78121	26	A	Red cell mass, multiple	0.32	0.09	0.13	0.09	0.13	0.01	0.42	0.46	0.42	0.46	XXX
78121	TC	A	Red cell mass, multiple	0.00	3.04	3.03	3.04	3.03	0.13	3.17	3.16	3.17	3.16	XXX
78122		A	Blood volume	0.45	4.95	4.97	4.95	4.97	0.24	5.64	5.66	5.64	5.66	XXX
78122	26	A	Blood volume	0.45	0.13	0.18	0.13	0.18	0.02	0.60	0.65	0.60	0.65	XXX
78122	TC	A	Blood volume	0.00	4.82	4.79	4.82	4.79	0.22	5.04	5.01	5.04	5.01	XXX
78130		A	Red cell survival study	0.61	3.17	3.21	3.17	3.21	0.15	3.93	3.97	3.93	3.97	XXX
78130	26	A	Red cell survival study	0.61	0.18	0.24	0.18	0.24	0.02	0.81	0.87	0.81	0.87	XXX
78130	TC	A	Red cell survival study	0.00	2.99	2.97	2.99	2.97	0.13	3.12	3.10	3.12	3.10	XXX
78135		A	Red cell survival kinetics	0.64	5.27	5.31	5.27	5.31	0.25	6.16	6.20	6.16	6.20	XXX
78135	26	A	Red cell survival kinetics	0.64	0.18	0.25	0.18	0.25	0.02	0.84	0.91	0.84	0.91	XXX
78135	TC	A	Red cell survival kinetics	0.00	5.09	5.07	5.09	5.07	0.23	5.32	5.30	5.32	5.30	XXX
78140		A	Red cell sequestration	0.61	4.30	4.34	4.30	4.34	0.21	5.12	5.18	5.12	5.16	XXX
78140	26	A	Red cell sequestration	0.61	0.18	0.24	0.18	0.24	0.02	0.81	0.87	0.81	0.87	XXX
78140	TC	A	Red cell sequestration	0.00	4.11	4.09	4.11	4.09	0.19	4.30	4.28	4.30	4.28	XXX
78160		A	Plasma iron turnover	0.33	3.96	3.96	3.96	3.96	0.18	4.47	4.47	4.47	4.47	XXX
78160	26	A	Plasma iron turnover	0.33	0.13	0.15	0.13	0.15	0.01	0.47	0.49	0.47	0.49	XXX
78160	TC	A	Plasma iron turnover	0.00	3.83	3.81	3.83	3.81	0.17	4.00	3.98	4.00	3.98	XXX
78162		A	Iron absorption exam	0.45	3.54	3.54	3.54	3.54	0.16	4.15	4.15	4.15	4.15	XXX
78162	26	A	Iron absorption exam	0.45	0.19	0.21	0.19	0.21	0.01	0.65	0.67	0.65	0.67	XXX
78162	TC	A	Iron absorption exam	0.00	3.35	3.33	3.35	3.33	0.15	3.50	3.48	3.50	3.48	XXX
78170		A	Red cell iron utilization	0.41	5.67	5.68	5.67	5.68	0.27	6.35	6.36	6.35	6.36	XXX
78170	26	A	Red cell iron utilization	0.41	0.12	0.16	0.12	0.16	0.02	0.55	0.59	0.55	0.59	XXX
78170	TC	A	Red cell iron utilization	0.00	5.55	5.52	5.55	5.52	0.25	5.80	5.77	5.80	5.77	XXX
78172		C	Total body iron estimation	0.00	0.00	0.00	0.00	0.00	0.02	0.02	0.02	0.02	0.02	XXX
78172	26	A	Total body iron estimation	0.53	0.15	0.21	0.15	0.21	0.02	0.70	0.76	0.70	0.76	XXX
78172	TC	C	Total body iron estimation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78185		A	Spleen imaging	0.40	2.58	2.61	2.58	2.61	0.14	3.12	3.15	3.12	3.15	XXX
78185	26	A	Spleen imaging	0.40	0.11	0.16	0.11	0.16	0.02	0.53	0.58	0.53	0.58	XXX
78185	TC	A	Spleen imaging	0.00	2.46	2.45	2.46	2.45	0.12	2.58	2.57	2.58	2.57	XXX
78190		A	Platelet survival, kinetics	1.09	6.30	6.37	6.30	6.37	0.31	7.70	7.77	7.70	7.77	XXX
78190	26	A	Platelet survival, kinetics	1.09	0.33	0.43	0.33	0.43	0.04	1.46	1.56	1.46	1.56	XXX
78190	TC	A	Platelet survival, kinetics	0.00	5.98	5.95	5.98	5.95	0.27	6.25	6.22	6.25	6.22	XXX
78191		A	Platelet survival	0.61	7.84	7.87	7.84	7.87	0.36	8.81	8.84	8.81	8.84	XXX
78191	26	A	Platelet survival	0.61	0.18	0.24	0.18	0.24	0.02	0.81	0.87	0.81	0.87	XXX
78191	TC	A	Platelet survival	0.00	7.67	7.63	7.67	7.63	0.34	8.01	7.97	8.01	7.97	XXX
78195		A	Lymph system imaging	1.20	4.60	4.58	4.60	4.58	0.25	6.05	6.03	6.05	6.03	XXX
78195	26	A	Lymph system imaging	1.20	0.35	0.35	0.35	0.35	0.05	1.60	1.60	1.60	1.60	XXX
78195	TC	A	Lymph system imaging	0.00	4.26	4.24	4.26	4.24	0.20	4.46	4.44	4.46	4.44	XXX
78199		C	Blood/lymph nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78199	26	C	Blood/lymph nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78199	TC	C	Blood/lymph nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78201		A	Liver imaging	0.44	2.59	2.62	2.59	2.62	0.14	3.17	3.20	3.17	3.20	XXX
78201	26	A	Liver imaging	0.44	0.12	0.17	0.12	0.17	0.02	0.58	0.63	0.58	0.63	XXX
78201	TC	A	Liver imaging	0.00	2.46	2.45	2.46	2.45	0.12	2.58	2.57	2.58	2.57	XXX
78202		A	Liver imaging with flow	0.51	3.16	3.20	3.16	3.20	0.15	3.82	3.86	3.82	3.86	XXX
78202	26	A	Liver imaging with flow	0.51	0.14	0.20	0.14	0.20	0.02	0.67	0.73	0.67	0.73	XXX
78202	TC	A	Liver imaging with flow	0.00	3.02	3.00	3.02	3.00	0.13	3.15	3.13	3.15	3.13	XXX
78205		A	Liver imaging (3D)	0.71	6.38	6.43	6.38	6.43	0.31	7.40	7.45	7.40	7.45	XXX
78205	26	A	Liver imaging (3D)	0.71	0.20	0.28	0.20	0.28	0.03	0.94	1.02	0.94	1.02	XXX
78205	TC	A	Liver imaging (3D)	0.00	6.18	6.15	6.18	6.15	0.28	6.46	6.43	6.46	6.43	XXX
78206		A	Liver image (3-d) w/flow	0.96	6.46	6.46	6.46	6.46	0.13	7.55	7.55	7.55	7.55	XXX
78206	26	A	Liver image (3-d) w/flow	0.96	0.28	0.28	0.28	0.28	0.04	1.28	1.28	1.28	1.28	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
78206	TC	A	Liver image (3-d) w/flow	0.00	6.18	6.18	6.18	6.18	0.09	6.27	6.27	6.27	6.27	XXX
78215		A	Liver and spleen imaging	0.49	3.20	3.24	3.20	3.24	0.15	3.84	3.88	3.84	3.88	XXX
78215	26	A	Liver and spleen imaging	0.49	0.14	0.19	0.14	0.19	0.02	0.65	0.70	0.65	0.70	XXX
78215	TC	A	Liver and spleen imaging	0.00	3.07	3.06	3.07	3.06	0.13	3.20	3.19	3.20	3.19	XXX
78216		A	Liver & spleen image, flow	0.57	3.80	3.84	3.80	3.84	0.18	4.55	4.59	4.55	4.59	XXX
78216	26	A	Liver & spleen image, flow	0.57	0.16	0.22	0.16	0.22	0.02	0.75	0.81	0.75	0.81	XXX
78216	TC	A	Liver & spleen image, flow	0.00	3.64	3.62	3.64	3.62	0.16	3.80	3.78	3.80	3.78	XXX
78220		A	Liver function study	0.49	4.03	4.06	4.03	4.06	0.19	4.71	4.74	4.71	4.74	XXX
78220	26	A	Liver function study	0.49	0.14	0.19	0.14	0.19	0.02	0.65	0.70	0.65	0.70	XXX
78220	TC	A	Liver function study	0.00	3.89	3.87	3.89	3.87	0.17	4.06	4.04	4.06	4.04	XXX
78223		A	Hepatobiliary imaging	0.84	4.06	4.13	4.06	4.13	0.20	5.10	5.17	5.10	5.17	XXX
78223	26	A	Hepatobiliary imaging	0.84	0.23	0.32	0.23	0.32	0.03	1.10	1.19	1.10	1.19	XXX
78223	TC	A	Hepatobiliary imaging	0.00	3.83	3.81	3.83	3.81	0.17	4.00	3.98	4.00	3.98	XXX
78230		A	Salivary gland imaging	0.45	2.40	2.44	2.40	2.44	0.13	2.98	3.02	2.98	3.02	XXX
78230	26	A	Salivary gland imaging	0.45	0.13	0.18	0.13	0.18	0.02	0.60	0.65	0.60	0.65	XXX
78230	TC	A	Salivary gland imaging	0.00	2.27	2.26	2.27	2.26	0.11	2.38	2.37	2.38	2.37	XXX
78231		A	Serial salivary imaging	0.52	3.46	3.50	3.46	3.50	0.17	4.15	4.19	4.15	4.19	XXX
78231	26	A	Serial salivary imaging	0.52	0.15	0.21	0.15	0.21	0.02	0.69	0.75	0.69	0.75	XXX
78231	TC	A	Serial salivary imaging	0.00	3.31	3.30	3.31	3.30	0.15	3.46	3.45	3.46	3.45	XXX
78232		A	Salivary gland function exam	0.47	3.83	3.87	3.83	3.87	0.18	4.48	4.52	4.48	4.52	XXX
78232	26	A	Salivary gland function exam	0.47	0.13	0.19	0.13	0.19	0.02	0.62	0.68	0.62	0.68	XXX
78232	TC	A	Salivary gland function exam	0.00	3.70	3.68	3.70	3.68	0.16	3.86	3.84	3.86	3.84	XXX
78258		A	Esophageal motility study	0.74	3.22	3.29	3.22	3.29	0.16	4.12	4.19	4.12	4.19	XXX
78258	26	A	Esophageal motility study	0.74	0.21	0.29	0.21	0.29	0.03	0.98	1.06	0.98	1.06	XXX
78258	TC	A	Esophageal motility study	0.00	3.02	3.00	3.02	3.00	0.13	3.15	3.13	3.15	3.13	XXX
78261		A	Gastric mucosa imaging	0.69	4.48	4.54	4.48	4.54	0.23	5.40	5.46	5.40	5.46	XXX
78261	26	A	Gastric mucosa imaging	0.69	0.19	0.27	0.19	0.27	0.03	0.91	0.99	0.91	0.99	XXX
78261	TC	A	Gastric mucosa imaging	0.00	4.29	4.27	4.29	4.27	0.20	4.49	4.47	4.49	4.47	XXX
78262		A	Gastroesophageal reflux exam	0.68	4.64	4.69	4.64	4.69	0.23	5.55	5.60	5.55	5.60	XXX
78262	26	A	Gastroesophageal reflux exam	0.68	0.20	0.27	0.20	0.27	0.03	0.91	0.98	0.91	0.98	XXX
78262	TC	A	Gastroesophageal reflux exam	0.00	4.45	4.43	4.45	4.43	0.20	4.65	4.63	4.65	4.63	XXX
78264		A	Gastric emptying study	0.78	4.53	4.60	4.53	4.60	0.23	5.54	5.61	5.54	5.61	XXX
78264	26	A	Gastric emptying study	0.78	0.22	0.31	0.22	0.31	0.03	1.03	1.12	1.03	1.12	XXX
78264	TC	A	Gastric emptying study	0.00	4.32	4.30	4.32	4.30	0.20	4.52	4.50	4.52	4.50	XXX
78270		A	Vit B-12 absorption exam	0.20	1.67	1.69	1.67	1.69	0.09	1.96	1.98	1.96	1.98	XXX
78270	26	A	Vit B-12 absorption exam	0.20	0.06	0.09	0.06	0.09	0.01	0.27	0.30	0.27	0.30	XXX
78270	TC	A	Vit B-12 absorption exam	0.00	1.61	1.61	1.61	1.61	0.08	1.69	1.69	1.69	1.69	XXX
78271		A	Vit B-12 absorp exam, IF	0.20	1.78	1.80	1.78	1.80	0.09	2.07	2.09	2.07	2.09	XXX
78271	26	A	Vit B-12 absorp exam, IF	0.20	0.06	0.09	0.06	0.09	0.01	0.27	0.30	0.27	0.30	XXX
78271	TC	A	Vit B-12 absorp exam, IF	0.00	1.72	1.71	1.72	1.71	0.08	1.80	1.79	1.80	1.79	XXX
78272		A	Vit B-12 absorp, combined	0.27	2.50	2.52	2.50	2.52	0.13	2.90	2.92	2.90	2.92	XXX
78272	26	A	Vit B-12 absorp, combined	0.27	0.08	0.11	0.08	0.11	0.01	0.36	0.39	0.36	0.39	XXX
78272	TC	A	Vit B-12 absorp, combined	0.00	2.42	2.41	2.42	2.41	0.12	2.54	2.53	2.54	2.53	XXX
78278		A	Acute GI blood loss imaging	0.99	5.36	5.45	5.36	5.45	0.27	6.62	6.71	6.62	6.71	XXX
78278	26	A	Acute GI blood loss imaging	0.99	0.27	0.38	0.27	0.38	0.04	1.30	1.41	1.30	1.41	XXX
78278	TC	A	Acute GI blood loss imaging	0.00	5.09	5.07	5.09	5.07	0.23	5.32	5.30	5.32	5.30	XXX
78282		C	GI protein loss exam	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.01	0.01	0.01	XXX
78282	26	A	GI protein loss exam	0.38	0.11	0.15	0.11	0.15	0.01	0.50	0.54	0.50	0.54	XXX
78282	TC	C	GI protein loss exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78290		A	Meckel's divert exam	0.68	3.37	3.43	3.37	3.43	0.17	4.22	4.28	4.22	4.28	XXX
78290	26	A	Meckel's divert exam	0.68	0.19	0.27	0.19	0.27	0.03	0.90	0.98	0.90	0.98	XXX
78290	TC	A	Meckel's divert exam	0.00	3.18	3.17	3.18	3.17	0.14	3.32	3.31	3.32	3.31	XXX
78291		A	Leveen/shunt patency exam	0.88	3.44	3.52	3.44	3.52	0.17	4.49	4.57	4.49	4.57	XXX
78291	26	A	Leveen/shunt patency exam	0.88	0.24	0.33	0.24	0.33	0.03	1.15	1.24	1.15	1.24	XXX
78291	TC	A	Leveen/shunt patency exam	0.00	3.20	3.19	3.20	3.19	0.14	3.34	3.33	3.34	3.33	XXX
78299		C	GI nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78299	26	C	GI nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78299	TC	C	GI nuclear procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78300		A	Bone imaging, limited area	0.62	2.77	2.83	2.77	2.83	0.15	3.54	3.60	3.54	3.60	XXX
78300	26	A	Bone imaging, limited area	0.62	0.17	0.24	0.17	0.24	0.02	0.81	0.88	0.81	0.88	XXX
78300	TC	A	Bone imaging, limited area	0.00	2.60	2.59	2.60	2.59	0.13	2.73	2.72	2.73	2.72	XXX
78305		A	Bone imaging, multiple areas	0.83	4.06	4.13	4.06	4.13	0.20	5.09	5.16	5.09	5.16	XXX
78305	26	A	Bone imaging, multiple areas	0.83	0.23	0.32	0.23	0.32	0.03	1.09	1.18	1.09	1.18	XXX
78305	TC	A	Bone imaging, multiple areas	0.00	3.83	3.81	3.83	3.81	0.17	4.00	3.98	4.00	3.98	XXX
78306		A	Bone imaging, whole body	0.86	4.70	4.77	4.70	4.77	0.23	5.79	5.86	5.79	5.86	XXX
78306	26	A	Bone imaging, whole body	0.86	0.24	0.33	0.24	0.33	0.03	1.13	1.22	1.13	1.22	XXX
78306	TC	A	Bone imaging, whole body	0.00	4.47	4.45	4.47	4.45	0.20	4.67	4.65	4.67	4.65	XXX
78315		A	Bone imaging, 3 phase	1.02	5.27	5.35	5.27	5.35	0.27	6.56	6.64	6.56	6.64	XXX
78315	26	A	Bone imaging, 3 phase	1.02	0.28	0.39	0.28	0.39	0.04	1.34	1.45	1.34	1.45	XXX
78315	TC	A	Bone imaging, 3 phase	0.00	4.99	4.97	4.99	4.97	0.23	5.22	5.20	5.22	5.20	XXX
78320		A	Bone imaging (3D)	1.04	6.48	6.55	6.48	6.55	0.32	7.84	7.91	7.84	7.91	XXX
78320	26	A	Bone imaging (3D)	1.04	0.30	0.40	0.30	0.40	0.04	1.38	1.48	1.38	1.48	XXX
78320	TC	A	Bone imaging (3D)	0.00	6.18	6.15	6.18	6.15	0.28	6.46	6.43	6.46	6.43	XXX
78350		A	Bone mineral, single photon	0.22	0.87	0.88	0.87	0.88	0.05	1.14	1.15	1.14	1.15	XXX
78350	26	A	Bone mineral, single photon	0.22	0.08	0.10	0.08	0.10	0.01	0.31	0.33	0.31	0.33	XXX
78350	TC	A	Bone mineral, single photon	0.00	0.79	0.79	0.79	0.79	0.04	0.83	0.83	0.83	0.83	XXX
78351		N	Bone mineral, dual photon	+0.30	1.42	0.82	0.11	0.16	0.01	1.73	1.13	0.42	0.47	XXX
78399		C	Musculoskeletal nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78399	26	C	Musculoskeletal nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78399	TC	C	Musculoskeletal nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78414		C	Non-imaging heart function	0.00	0.00	0.00	0.00	0.00	0.02	0.02	0.02	0.02	0.02	XXX
78414	26	A	Non-imaging heart function	0.45	0.15	0.19	0.15	0.19	0.02	0.62	0.66	0.62	0.66	XXX
78414	TC	C	Non-imaging heart function	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78428		A	Cardiac shunt imaging	0.78	2.64	2.68	2.64	2.68	0.14	3.56	3.60	3.56	3.60	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
78428	26	A	Cardiac shunt imaging	0.78	0.29	0.34	0.29	0.34	0.03	1.10	1.15	1.10	1.15	XXX
78428	TC	A	Cardiac shunt imaging	0.00	2.35	2.34	2.35	2.34	0.11	2.46	2.45	2.46	2.45	XXX
78445		A	Vascular flow imaging	0.49	2.09	2.14	2.09	2.14	0.11	2.69	2.74	2.69	2.74	XXX
78445	26	A	Vascular flow imaging	0.49	0.14	0.20	0.14	0.20	0.02	0.65	0.71	0.65	0.71	XXX
78445	TC	A	Vascular flow imaging	0.00	1.94	1.93	1.94	1.93	0.09	2.03	2.02	2.03	2.02	XXX
78455		A	Venous thrombosis study	0.73	4.37	4.43	4.37	4.43	0.22	5.32	5.38	5.32	5.38	XXX
78455	26	A	Venous thrombosis study	0.73	0.20	0.28	0.20	0.28	0.03	0.96	1.04	0.96	1.04	XXX
78455	TC	A	Venous thrombosis study	0.00	4.16	4.14	4.16	4.14	0.19	4.35	4.33	4.35	4.33	XXX
78457		A	Venous thrombosis imaging	0.77	2.99	3.06	2.99	3.06	0.16	3.92	3.99	3.92	3.99	XXX
78457	26	A	Venous thrombosis imaging	0.77	0.22	0.30	0.22	0.30	0.03	1.02	1.10	1.02	1.10	XXX
78457	TC	A	Venous thrombosis imaging	0.00	2.78	2.77	2.78	2.77	0.13	2.91	2.90	2.91	2.90	XXX
78458		A	Ven thrombosis images, bilat	0.90	4.48	4.54	4.48	4.54	0.22	5.60	5.66	5.60	5.66	XXX
78458	26	A	Ven thrombosis images, bilat	0.90	0.27	0.35	0.27	0.35	0.03	1.20	1.28	1.20	1.28	XXX
78458	TC	A	Ven thrombosis images, bilat	0.00	4.21	4.19	4.21	4.19	0.19	4.40	4.38	4.40	4.38	XXX
78459		I	Heart muscle imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.07	0.07	0.07	0.07	0.07	XXX
78459	26	I	Heart muscle imaging (PET)	1.88	0.72	1.09	0.72	1.09	0.07	2.67	3.04	2.67	3.04	XXX
78459	TC	I	Heart muscle imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78460		A	Heart muscle blood single	0.86	2.73	2.80	2.73	2.80	0.15	3.74	3.81	3.74	3.81	XXX
78460	26	A	Heart muscle blood single	0.86	0.26	0.34	0.26	0.34	0.03	1.15	1.23	1.15	1.23	XXX
78460	TC	A	Heart muscle blood single	0.00	2.46	2.45	2.46	2.45	0.12	2.58	2.57	2.58	2.57	XXX
78461		A	Heart muscle blood multiple	1.23	5.34	5.41	5.34	5.41	0.28	6.85	6.92	6.85	6.92	XXX
78461	26	A	Heart muscle blood multiple	1.23	0.40	0.50	0.40	0.50	0.05	1.68	1.78	1.68	1.78	XXX
78461	TC	A	Heart muscle blood multiple	0.00	4.94	4.91	4.94	4.91	0.23	5.17	5.14	5.17	5.14	XXX
78464		A	Heart image (3D) single	1.09	7.73	7.78	7.73	7.78	0.38	9.20	9.25	9.20	9.25	XXX
78464	26	A	Heart image (3D) single	1.09	0.33	0.43	0.33	0.43	0.04	1.46	1.56	1.46	1.56	XXX
78464	TC	A	Heart image (3D) single	0.00	7.39	7.35	7.39	7.35	0.34	7.73	7.69	7.73	7.69	XXX
78465		A	Heart image (3D) multiple	1.46	12.81	12.86	12.81	12.86	0.60	14.87	14.92	14.87	14.92	XXX
78465	26	A	Heart image (3D) multiple	1.46	0.48	0.60	0.48	0.60	0.05	1.99	2.11	1.99	2.11	XXX
78465	TC	A	Heart image (3D) multiple	0.00	12.33	12.27	12.33	12.27	0.55	12.88	12.82	12.88	12.82	XXX
78466		A	Heart infarct image	0.69	2.95	3.01	2.95	3.01	0.16	3.80	3.86	3.80	3.86	XXX
78466	26	A	Heart infarct image	0.69	0.20	0.28	0.20	0.28	0.03	0.92	1.00	0.92	1.00	XXX
78466	TC	A	Heart infarct image	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX
78468		A	Heart infarct image, EF	0.80	4.07	4.13	4.07	4.13	0.20	5.07	5.13	5.07	5.13	XXX
78468	26	A	Heart infarct image, EF	0.80	0.24	0.32	0.24	0.32	0.03	1.07	1.15	1.07	1.15	XXX
78468	TC	A	Heart infarct image, EF	0.00	3.83	3.81	3.83	3.81	0.17	4.00	3.98	4.00	3.98	XXX
78469		A	Heart infarct image (3D)	0.92	5.75	5.80	5.75	5.80	0.28	6.95	7.00	6.95	7.00	XXX
78469	26	A	Heart infarct image (3D)	0.92	0.28	0.36	0.28	0.36	0.03	1.23	1.31	1.23	1.31	XXX
78469	TC	A	Heart infarct image (3D)	0.00	5.46	5.43	5.46	5.43	0.25	5.71	5.68	5.71	5.68	XXX
78472		A	Gated heart, planar single	0.98	6.07	6.13	6.07	6.13	0.31	7.36	7.42	7.36	7.42	XXX
78472	26	A	Gated heart, planar single	0.98	0.30	0.39	0.30	0.39	0.04	1.32	1.41	1.32	1.41	XXX
78472	TC	A	Gated heart, planar single	0.00	5.76	5.73	5.76	5.73	0.27	6.03	6.00	6.03	6.00	XXX
78473		A	Gated heart, multiple	1.47	9.09	9.17	9.09	9.17	0.43	10.99	11.07	10.99	11.07	XXX
78473	26	A	Gated heart, multiple	1.47	0.46	0.59	0.46	0.59	0.05	1.98	2.11	1.98	2.11	XXX
78473	TC	A	Gated heart, multiple	0.00	8.63	8.59	8.63	8.59	0.38	9.01	8.97	9.01	8.97	XXX
78478		A	Heart wall motion add-on	0.62	1.83	1.87	1.83	1.87	0.10	2.55	2.59	2.55	2.59	ZZZ
78478	26	A	Heart wall motion add-on	0.62	0.21	0.26	0.21	0.26	0.02	0.85	0.90	0.85	0.90	ZZZ
78478	TC	A	Heart wall motion add-on	0.00	1.62	1.62	1.62	1.62	0.08	1.70	1.70	1.70	1.70	ZZZ
78480		A	Heart function add-on	0.62	1.83	1.87	1.83	1.87	0.10	2.55	2.59	2.55	2.59	ZZZ
78480	26	A	Heart function add-on	0.62	0.21	0.26	0.21	0.26	0.02	0.85	0.90	0.85	0.90	ZZZ
78480	TC	A	Heart function add-on	0.00	1.62	1.62	1.62	1.62	0.08	1.70	1.70	1.70	1.70	ZZZ
78481		A	Heart first pass single	0.98	5.80	5.84	5.80	5.84	0.28	7.06	7.10	7.06	7.10	XXX
78481	26	A	Heart first pass single	0.98	0.34	0.41	0.34	0.41	0.03	1.35	1.42	1.35	1.42	XXX
78481	TC	A	Heart first pass single	0.00	5.46	5.43	5.46	5.43	0.25	5.71	5.68	5.71	5.68	XXX
78483		A	Heart first pass multiple	1.47	8.76	8.81	8.76	8.81	0.42	10.65	10.70	10.65	10.70	XXX
78483	26	A	Heart first pass multiple	1.47	0.53	0.62	0.53	0.62	0.05	2.05	2.14	2.05	2.14	XXX
78483	TC	A	Heart first pass multiple	0.00	8.23	8.19	8.23	8.19	0.37	8.60	8.56	8.60	8.56	XXX
78491		I	Heart image (pet) single	0.00	0.00	0.00	0.00	0.00	0.06	0.06	0.06	0.06	0.06	XXX
78491	26	I	Heart image (pet) single	1.50	0.57	1.01	0.57	1.01	0.06	2.13	2.57	2.13	2.57	XXX
78491	TC	I	Heart image (pet) single	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78492		I	Heart image (pet) multiple	0.00	0.00	0.00	0.00	0.00	0.07	0.07	0.07	0.07	0.07	XXX
78492	26	I	Heart image (pet) multiple	1.87	0.71	1.08	0.71	1.08	0.07	2.65	3.02	2.65	3.02	XXX
78492	TC	I	Heart image (pet) multiple	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78494		A	Heart image, spect	1.19	6.13	6.13	6.13	6.13	0.31	7.63	7.63	7.63	7.63	XXX
78494	26	A	Heart image, spect	1.19	0.37	0.37	0.37	0.37	0.04	1.60	1.60	1.60	1.60	XXX
78494	TC	A	Heart image, spect	0.00	5.76	5.76	5.76	5.76	0.27	6.03	6.03	6.03	6.03	XXX
78496		A	Heart first pass add-on	0.50	1.81	1.81	1.81	1.81	0.29	2.60	2.60	2.60	2.60	ZZZ
78496	26	A	Heart first pass add-on	0.50	0.19	0.19	0.19	0.19	0.02	0.71	0.71	0.71	0.71	ZZZ
78496	TC	A	Heart first pass add-on	0.00	1.62	1.62	1.62	1.62	0.27	1.89	1.89	1.89	1.89	ZZZ
78499		C	Cardiovascular nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78499	26	C	Cardiovascular nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78499	TC	C	Cardiovascular nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78580		A	Lung perfusion imaging	0.74	3.80	3.86	3.80	3.86	0.19	4.73	4.79	4.73	4.79	XXX
78580	26	A	Lung perfusion imaging	0.74	0.21	0.29	0.21	0.29	0.03	0.98	1.06	0.98	1.06	XXX
78580	TC	A	Lung perfusion imaging	0.00	3.59	3.57	3.59	3.57	0.16	3.75	3.73	3.75	3.73	XXX
78584		A	Lung V/Q image single breath	0.99	3.62	3.71	3.62	3.71	0.19	4.80	4.89	4.80	4.89	XXX
78584	26	A	Lung V/Q image single breath	0.99	0.27	0.38	0.27	0.38	0.04	1.30	1.41	1.30	1.41	XXX
78584	TC	A	Lung V/Q image single breath	0.00	3.35	3.33	3.35	3.33	0.15	3.50	3.48	3.50	3.48	XXX
78585		A	Lung V/Q imaging	1.09	6.19	6.27	6.19	6.27	0.31	7.59	7.67	7.59	7.67	XXX
78585	26	A	Lung V/Q imaging	1.09	0.30	0.41	0.30	0.41	0.04	1.43	1.54	1.43	1.54	XXX
78585	TC	A	Lung V/Q imaging	0.00	5.90	5.87	5.90	5.87	0.27	6.17	6.14	6.17	6.14	XXX
78586		A	Aerosol lung image, single	0.40	2.81	2.85	2.81	2.85	0.15	3.36	3.40	3.36	3.40	XXX
78586	26	A	Aerosol lung image, single	0.40	0.11	0.16	0.11	0.16	0.02	0.53	0.58	0.53	0.58	XXX
78586	TC	A	Aerosol lung image, single	0.00	2.71	2.70	2.71	2.70	0.13	2.84	2.83	2.84	2.83	XXX
78587		A	Aerosol lung image, multiple	0.49	3.06	3.10	3.06	3.10	0.15	3.70	3.74	3.70	3.74	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
78587	26	A	Aerosol lung image, multiple	0.49	0.14	0.19	0.14	0.19	0.02	0.65	0.70	0.65	0.70	XXX
78587	TC	A	Aerosol lung image, multiple	0.00	2.93	2.92	2.93	2.92	0.13	3.06	3.05	3.06	3.05	XXX
78588		A	Perfusion lung image	1.09	3.89	3.89	3.89	3.89	0.20	5.18	5.18	5.18	5.18	XXX
78588	26	A	Perfusion lung image	1.09	0.30	0.30	0.30	0.30	0.04	1.43	1.43	1.43	1.43	XXX
78588	TC	A	Perfusion lung image	0.00	3.59	3.59	3.59	3.59	0.16	3.75	3.75	3.75	3.75	XXX
78591		A	Vent image, 1 breath, 1 proj	0.40	3.10	3.13	3.10	3.13	0.15	3.65	3.68	3.65	3.68	XXX
78591	26	A	Vent image, 1 breath, 1 proj	0.40	0.11	0.16	0.11	0.16	0.02	0.53	0.58	0.53	0.58	XXX
78591	TC	A	Vent image, 1 breath, 1 proj	0.00	2.99	2.97	2.99	2.97	0.13	3.12	3.10	3.12	3.10	XXX
78593		A	Vent image, 1 proj, gas	0.49	3.75	3.78	3.75	3.78	0.18	4.42	4.45	4.42	4.45	XXX
78593	26	A	Vent image, 1 proj, gas	0.49	0.14	0.19	0.14	0.19	0.02	0.65	0.70	0.65	0.70	XXX
78593	TC	A	Vent image, 1 proj, gas	0.00	3.61	3.59	3.61	3.59	0.16	3.77	3.75	3.77	3.75	XXX
78594		A	Vent image, mult proj, gas	0.53	5.36	5.39	5.36	5.39	0.25	6.14	6.17	6.14	6.17	XXX
78594	26	A	Vent image, mult proj, gas	0.53	0.15	0.21	0.15	0.21	0.02	0.70	0.76	0.70	0.76	XXX
78594	TC	A	Vent image, mult proj, gas	0.00	5.21	5.18	5.21	5.18	0.23	5.44	5.41	5.44	5.41	XXX
78596		A	Lung differential function	1.27	7.75	7.84	7.75	7.84	0.39	9.41	9.50	9.41	9.50	XXX
78596	26	A	Lung differential function	1.27	0.36	0.49	0.36	0.49	0.05	1.68	1.81	1.68	1.81	XXX
78596	TC	A	Lung differential function	0.00	7.39	7.35	7.39	7.35	0.34	7.73	7.69	7.73	7.69	XXX
78599		C	Respiratory nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78599	26	C	Respiratory nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78599	TC	C	Respiratory nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78600		A	Brain imaging, ltd static	0.44	3.14	3.17	3.14	3.17	0.15	3.73	3.76	3.73	3.76	XXX
78600	26	A	Brain imaging, ltd static	0.44	0.12	0.17	0.12	0.17	0.02	0.58	0.63	0.58	0.63	XXX
78600	TC	A	Brain imaging, ltd static	0.00	3.02	3.00	3.02	3.00	0.13	3.15	3.13	3.15	3.13	XXX
78601		A	Brain ltd imaging & flow	0.51	3.70	3.74	3.70	3.74	0.18	4.39	4.43	4.39	4.43	XXX
78601	26	A	Brain ltd imaging & flow	0.51	0.14	0.20	0.14	0.20	0.02	0.67	0.73	0.67	0.73	XXX
78601	TC	A	Brain ltd imaging & flow	0.00	3.55	3.54	3.55	3.54	0.16	3.71	3.70	3.71	3.70	XXX
78605		A	Brain imaging, complete	0.53	3.70	3.75	3.70	3.75	0.18	4.41	4.46	4.41	4.46	XXX
78605	26	A	Brain imaging, complete	0.53	0.15	0.21	0.15	0.21	0.02	0.70	0.76	0.70	0.76	XXX
78605	TC	A	Brain imaging, complete	0.00	3.55	3.54	3.55	3.54	0.16	3.71	3.70	3.71	3.70	XXX
78606		A	Brain imaging comp & flow	0.64	4.22	4.27	4.22	4.27	0.20	5.06	5.11	5.06	5.11	XXX
78606	26	A	Brain imaging comp & flow	0.64	0.18	0.25	0.18	0.25	0.02	0.84	0.91	0.84	0.91	XXX
78606	TC	A	Brain imaging comp & flow	0.00	4.04	4.02	4.04	4.02	0.18	4.22	4.20	4.22	4.20	XXX
78607		A	Brain imaging (3D)	1.23	7.22	7.30	7.22	7.30	0.36	8.81	8.89	8.81	8.89	XXX
78607	26	A	Brain imaging (3D)	1.23	0.36	0.48	0.36	0.48	0.05	1.64	1.76	1.64	1.76	XXX
78607	TC	A	Brain imaging (3D)	0.00	6.86	6.82	6.86	6.82	0.31	7.17	7.13	7.17	7.13	XXX
78608		N	Brain imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78609		N	Brain imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78610		A	Brain flow imaging only	0.30	1.74	1.76	1.74	1.76	0.09	2.13	2.15	2.13	2.15	XXX
78610	26	A	Brain flow imaging only	0.30	0.09	0.12	0.09	0.12	0.01	0.40	0.43	0.40	0.43	XXX
78610	TC	A	Brain flow imaging only	0.00	1.65	1.64	1.65	1.64	0.08	1.73	1.72	1.73	1.72	XXX
78615		A	Cerebral blood flow imaging	0.42	4.16	4.18	4.16	4.18	0.20	4.78	4.80	4.78	4.80	XXX
78615	26	A	Cerebral blood flow imaging	0.42	0.13	0.17	0.13	0.17	0.02	0.57	0.61	0.57	0.61	XXX
78615	TC	A	Cerebral blood flow imaging	0.00	4.02	4.00	4.02	4.00	0.18	4.20	4.18	4.20	4.18	XXX
78630		A	Cerebrospinal fluid scan	0.68	5.45	5.50	5.45	5.50	0.27	6.40	6.45	6.40	6.45	XXX
78630	26	A	Cerebrospinal fluid scan	0.68	0.19	0.27	0.19	0.27	0.03	0.90	0.98	0.90	0.98	XXX
78630	TC	A	Cerebrospinal fluid scan	0.00	5.26	5.24	5.26	5.24	0.24	5.50	5.48	5.50	5.48	XXX
78635		A	CSF ventriculography	0.61	2.89	2.91	2.89	2.91	0.15	3.65	3.67	3.65	3.67	XXX
78635	26	A	CSF ventriculography	0.61	0.23	0.27	0.23	0.27	0.02	0.86	0.90	0.86	0.90	XXX
78635	TC	A	CSF ventriculography	0.00	2.66	2.65	2.66	2.65	0.13	2.79	2.78	2.79	2.78	XXX
78645		A	CSF shunt evaluation	0.57	3.75	3.79	3.75	3.79	0.18	4.50	4.54	4.50	4.54	XXX
78645	26	A	CSF shunt evaluation	0.57	0.16	0.22	0.16	0.22	0.02	0.75	0.81	0.75	0.81	XXX
78645	TC	A	CSF shunt evaluation	0.00	3.59	3.57	3.59	3.57	0.16	3.75	3.73	3.75	3.73	XXX
78647		A	Cerebrospinal fluid scan	0.90	6.44	6.50	6.44	6.50	0.31	7.65	7.71	7.65	7.71	XXX
78647	26	A	Cerebrospinal fluid scan	0.90	0.26	0.35	0.26	0.35	0.03	1.19	1.28	1.19	1.28	XXX
78647	TC	A	Cerebrospinal fluid scan	0.00	6.18	6.15	6.18	6.15	0.28	6.46	6.43	6.46	6.43	XXX
78650		A	CSF leakage imaging	0.61	5.03	5.07	5.03	5.07	0.24	5.88	5.92	5.88	5.92	XXX
78650	26	A	CSF leakage imaging	0.61	0.18	0.24	0.18	0.24	0.02	0.81	0.87	0.81	0.87	XXX
78650	TC	A	CSF leakage imaging	0.00	4.85	4.83	4.85	4.83	0.22	5.07	5.05	5.07	5.05	XXX
78660		A	Nuclear exam of tear flow	0.53	2.36	2.41	2.36	2.41	0.12	3.01	3.06	3.01	3.06	XXX
78660	26	A	Nuclear exam of tear flow	0.53	0.14	0.21	0.14	0.21	0.02	0.69	0.76	0.69	0.76	XXX
78660	TC	A	Nuclear exam of tear flow	0.00	2.21	2.20	2.21	2.20	0.10	2.31	2.30	2.31	2.30	XXX
78699		C	Nervous system nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78699	26	C	Nervous system nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78699	TC	C	Nervous system nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78700		A	Kidney imaging, static	0.45	3.30	3.34	3.30	3.34	0.16	3.91	3.95	3.91	3.95	XXX
78700	26	A	Kidney imaging, static	0.45	0.12	0.17	0.12	0.17	0.02	0.59	0.64	0.59	0.64	XXX
78700	TC	A	Kidney imaging, static	0.00	3.18	3.17	3.18	3.17	0.14	3.32	3.31	3.32	3.31	XXX
78701		A	Kidney imaging with flow	0.49	3.86	3.89	3.86	3.89	0.18	4.53	4.56	4.53	4.56	XXX
78701	26	A	Kidney imaging with flow	0.49	0.13	0.19	0.13	0.19	0.02	0.64	0.70	0.64	0.70	XXX
78701	TC	A	Kidney imaging with flow	0.00	3.72	3.70	3.72	3.70	0.16	3.88	3.86	3.88	3.86	XXX
78704		A	Imaging renogram	0.74	4.34	4.40	4.34	4.40	0.22	5.30	5.36	5.30	5.36	XXX
78704	26	A	Imaging renogram	0.74	0.20	0.29	0.20	0.29	0.03	0.97	1.06	0.97	1.06	XXX
78704	TC	A	Imaging renogram	0.00	4.13	4.11	4.13	4.11	0.19	4.32	4.30	4.32	4.30	XXX
78707		A	Kidney flow & function image	0.96	4.94	5.01	4.94	5.01	0.25	6.15	6.22	6.15	6.22	XXX
78707	26	A	Kidney flow & function image	0.96	0.27	0.37	0.27	0.37	0.04	1.27	1.37	1.27	1.37	XXX
78707	TC	A	Kidney flow & function image	0.00	4.68	4.65	4.68	4.65	0.21	4.89	4.86	4.89	4.86	XXX
78708		A	Kidney flow & function image	1.21	5.01	5.05	5.01	5.05	0.26	6.48	6.52	6.48	6.52	XXX
78708	26	A	Kidney flow & function image	1.21	0.34	0.40	0.34	0.40	0.05	1.60	1.66	1.60	1.66	XXX
78708	TC	A	Kidney flow & function image	0.00	4.68	4.65	4.68	4.65	0.21	4.89	4.86	4.89	4.86	XXX
78709		A	Kidney flow & function image	1.41	5.07	5.08	5.07	5.08	0.27	6.75	6.76	6.75	6.76	XXX
78709	26	A	Kidney flow & function image	1.41	0.39	0.43	0.39	0.43	0.06	1.86	1.90	1.86	1.90	XXX
78709	TC	A	Kidney flow & function image	0.00	4.68	4.65	4.68	4.65	0.21	4.89	4.86	4.89	4.86	XXX
78710		A	Kidney imaging (3D)	0.66	6.36	6.40	6.36	6.40	0.31	7.33	7.37	7.33	7.37	XXX
78710	26	A	Kidney imaging (3D)	0.66	0.18	0.26	0.18	0.26	0.03	0.87	0.95	0.87	0.95	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
78710	TC	A	Kidney imaging (3D)	0.00	6.18	6.15	6.18	6.15	0.28	6.46	6.43	6.46	6.43	XXX
78715	.....	A	Renal vascular flow exam	0.30	1.74	1.76	1.74	1.76	0.09	2.13	2.15	2.13	2.15	XXX
78715	26	A	Renal vascular flow exam	0.30	0.09	0.12	0.09	0.12	0.01	0.40	0.43	0.40	0.43	XXX
78715	TC	A	Renal vascular flow exam	0.00	1.65	1.64	1.65	1.64	0.08	1.73	1.72	1.73	1.72	XXX
78725	.....	A	Kidney function study	0.38	1.97	2.00	1.97	2.00	0.10	2.45	2.48	2.45	2.48	XXX
78725	26	A	Kidney function study	0.38	0.11	0.15	0.11	0.15	0.01	0.50	0.54	0.50	0.54	XXX
78725	TC	A	Kidney function study	0.00	1.86	1.85	1.86	1.85	0.09	1.95	1.94	1.95	1.94	XXX
78730	.....	A	Urinary bladder retention	0.36	1.64	1.66	1.64	1.66	0.09	2.09	2.11	2.09	2.11	XXX
78730	26	A	Urinary bladder retention	0.36	0.11	0.14	0.11	0.14	0.02	0.49	0.52	0.49	0.52	XXX
78730	TC	A	Urinary bladder retention	0.00	1.53	1.52	1.53	1.52	0.07	1.60	1.59	1.60	1.59	XXX
78740	.....	A	Ureteral reflux study	0.57	2.37	2.42	2.37	2.42	0.12	3.06	3.11	3.06	3.11	XXX
78740	26	A	Ureteral reflux study	0.57	0.16	0.22	0.16	0.22	0.02	0.75	0.81	0.75	0.81	XXX
78740	TC	A	Ureteral reflux study	0.00	2.21	2.20	2.21	2.20	0.10	2.31	2.30	2.31	2.30	XXX
78760	.....	A	Testicular imaging	0.66	2.97	3.04	2.97	3.04	0.16	3.79	3.86	3.79	3.86	XXX
78760	26	A	Testicular imaging	0.66	0.18	0.26	0.18	0.26	0.03	0.87	0.95	0.87	0.95	XXX
78760	TC	A	Testicular imaging	0.00	2.80	2.79	2.80	2.79	0.13	2.93	2.92	2.93	2.92	XXX
78761	.....	A	Testicular imaging & flow	0.71	3.55	3.61	3.55	3.61	0.18	4.44	4.50	4.44	4.50	XXX
78761	26	A	Testicular imaging & flow	0.71	0.20	0.28	0.20	0.28	0.03	0.94	1.02	0.94	1.02	XXX
78761	TC	A	Testicular imaging & flow	0.00	3.35	3.33	3.35	3.33	0.15	3.50	3.48	3.50	3.48	XXX
78799	.....	C	Genitourinary nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78799	26	C	Genitourinary nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78799	TC	C	Genitourinary nuclear exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78800	.....	A	Tumor imaging, limited area	0.66	3.74	3.80	3.74	3.80	0.19	4.59	4.65	4.59	4.65	XXX
78800	26	A	Tumor imaging, limited area	0.66	0.19	0.26	0.19	0.26	0.03	0.88	0.95	0.88	0.95	XXX
78800	TC	A	Tumor imaging, limited area	0.00	3.55	3.54	3.55	3.54	0.16	3.71	3.70	3.71	3.70	XXX
78801	.....	A	Tumor imaging, mult areas	0.79	4.64	4.70	4.64	4.70	0.23	5.66	5.72	5.66	5.72	XXX
78801	26	A	Tumor imaging, mult areas	0.79	0.22	0.31	0.22	0.31	0.03	1.04	1.13	1.04	1.13	XXX
78801	TC	A	Tumor imaging, mult areas	0.00	4.42	4.40	4.42	4.40	0.20	4.62	4.60	4.62	4.60	XXX
78802	.....	A	Tumor imaging, whole body	0.86	6.03	6.09	6.03	6.09	0.30	7.19	7.25	7.19	7.25	XXX
78802	26	A	Tumor imaging, whole body	0.86	0.24	0.33	0.24	0.33	0.03	1.13	1.22	1.13	1.22	XXX
78802	TC	A	Tumor imaging, whole body	0.00	5.78	5.75	5.78	5.75	0.27	6.05	6.02	6.05	6.02	XXX
78803	.....	A	Tumor imaging (3D)	1.09	7.19	7.25	7.19	7.25	0.35	8.63	8.69	8.63	8.69	XXX
78803	26	A	Tumor imaging (3D)	1.09	0.32	0.42	0.32	0.42	0.04	1.45	1.55	1.45	1.55	XXX
78803	TC	A	Tumor imaging (3D)	0.00	6.86	6.82	6.86	6.82	0.31	7.17	7.13	7.17	7.13	XXX
78805	.....	A	Abscess imaging, ltd area	0.73	3.76	3.82	3.76	3.82	0.19	4.68	4.74	4.68	4.74	XXX
78805	26	A	Abscess imaging, ltd area	0.73	0.20	0.28	0.20	0.28	0.03	0.96	1.04	0.96	1.04	XXX
78805	TC	A	Abscess imaging, ltd area	0.00	3.55	3.54	3.55	3.54	0.16	3.71	3.70	3.71	3.70	XXX
78806	.....	A	Abscess imaging, whole body	0.86	6.96	7.01	6.96	7.01	0.34	8.16	8.21	8.16	8.21	XXX
78806	26	A	Abscess imaging, whole body	0.86	0.24	0.33	0.24	0.33	0.03	1.13	1.22	1.13	1.22	XXX
78806	TC	A	Abscess imaging, whole body	0.00	6.72	6.69	6.72	6.69	0.31	7.03	7.00	7.03	7.00	XXX
78807	.....	A	Nuclear localization/abscess	1.09	7.18	7.24	7.18	7.24	0.35	8.62	8.68	8.62	8.68	XXX
78807	26	A	Nuclear localization/abscess	1.09	0.32	0.42	0.32	0.42	0.04	1.45	1.55	1.45	1.55	XXX
78807	TC	A	Nuclear localization/abscess	0.00	6.86	6.82	6.86	6.82	0.31	7.17	7.13	7.17	7.13	XXX
78810	.....	N	Tumor imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.07	0.07	0.07	0.07	0.07	XXX
78810	26	N	Tumor imaging (PET)	+1.93	0.74	1.12	0.74	1.12	0.07	2.74	3.12	2.74	3.12	XXX
78810	TC	N	Tumor imaging (PET)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78890	.....	B	Nuclear medicine data proc	0.05	1.38	1.38	1.38	1.38	0.06	1.49	1.49	1.49	1.49	XXX
78890	26	B	Nuclear medicine data proc	0.05	0.02	0.02	0.02	0.02	0.00	0.07	0.07	0.07	0.07	XXX
78890	TC	B	Nuclear medicine data proc	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
78891	.....	B	Nuclear med data proc	0.10	2.78	2.77	2.78	2.77	0.13	3.01	3.00	3.01	3.00	XXX
78891	26	B	Nuclear med data proc	0.10	0.04	0.05	0.04	0.05	0.00	0.14	0.15	0.14	0.15	XXX
78891	TC	B	Nuclear med data proc	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX
78990	.....	I	Provide diag radionuclide(s)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78999	.....	C	Nuclear diagnostic exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78999	26	C	Nuclear diagnostic exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
78999	TC	C	Nuclear diagnostic exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79000	.....	A	Intial hyperthyroid therapy	1.80	3.26	3.43	3.26	3.43	0.20	5.26	5.43	5.26	5.43	XXX
79000	26	A	Intial hyperthyroid therapy	1.80	0.51	0.70	0.51	0.70	0.07	2.38	2.57	2.38	2.57	XXX
79000	TC	A	Intial hyperthyroid therapy	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX
79001	.....	A	Repeat hyperthyroid therapy	1.05	1.66	1.76	1.66	1.76	0.10	2.81	2.91	2.81	2.91	XXX
79001	26	A	Repeat hyperthyroid therapy	1.05	0.30	0.40	0.30	0.40	0.04	1.39	1.49	1.39	1.49	XXX
79001	TC	A	Repeat hyperthyroid therapy	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
79020	.....	A	Thyroid ablation	1.81	3.24	3.42	3.24	3.42	0.20	5.25	5.43	5.25	5.43	XXX
79020	26	A	Thyroid ablation	1.81	0.49	0.69	0.49	0.69	0.07	2.37	2.57	2.37	2.57	XXX
79020	TC	A	Thyroid ablation	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX
79030	.....	A	Thyroid ablation, carcinoma	2.10	3.34	3.54	3.34	3.54	0.21	5.65	5.85	5.65	5.85	XXX
79030	26	A	Thyroid ablation, carcinoma	2.10	0.59	0.81	0.59	0.81	0.08	2.77	2.99	2.77	2.99	XXX
79030	TC	A	Thyroid ablation, carcinoma	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX
79035	.....	A	Thyroid metastatic therapy	2.52	3.48	3.71	3.48	3.71	0.22	6.22	6.45	6.22	6.45	XXX
79035	26	A	Thyroid metastatic therapy	2.52	0.73	0.98	0.73	0.98	0.09	3.34	3.59	3.34	3.59	XXX
79035	TC	A	Thyroid metastatic therapy	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX
79100	.....	A	Hematopoetic nuclear therapy	1.32	3.14	3.24	3.14	3.24	0.18	4.64	4.74	4.64	4.74	XXX
79100	26	A	Hematopoetic nuclear therapy	1.32	0.39	0.51	0.39	0.51	0.05	1.76	1.88	1.76	1.88	XXX
79100	TC	A	Hematopoetic nuclear therapy	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX
79200	.....	A	Intracavitary nuc treatment	1.99	3.36	3.52	3.36	3.52	0.21	5.56	5.72	5.56	5.72	XXX
79200	26	A	Intracavitary nuc treatment	1.99	0.61	0.79	0.61	0.79	0.08	2.68	2.86	2.68	2.86	XXX
79200	TC	A	Intracavitary nuc treatment	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX
79300	.....	C	Interstitial nuclear therapy	0.00	0.00	0.00	0.00	0.00	0.06	0.06	0.06	0.06	0.06	XXX
79300	26	A	Interstitial nuclear therapy	1.60	0.43	0.60	0.43	0.60	0.06	2.09	2.26	2.09	2.26	XXX
79300	TC	C	Interstitial nuclear therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79400	.....	A	Nonhemato nuclear therapy	1.96	3.31	3.48	3.31	3.48	0.21	5.48	5.65	5.48	5.65	XXX
79400	26	A	Nonhemato nuclear therapy	1.96	0.56	0.75	0.56	0.75	0.08	2.60	2.79	2.60	2.79	XXX
79400	TC	A	Nonhemato nuclear therapy	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX
79420	TC	C	Intravascular nuc therapy	0.00	0.00	0.00	0.00	0.00	0.06	0.06	0.06	0.06	0.06	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
79420	26	A	Intravascular nuc therapy	1.51	0.42	0.58	0.42	0.58	0.06	1.99	2.15	1.99	2.15	XXX
79420	TC	C	Intravascular nuc therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79440	.....	A	Nuclear joint therapy	1.99	3.31	3.50	3.31	3.50	0.21	5.51	5.70	5.51	5.70	XXX
79440	26	A	Nuclear joint therapy	1.99	0.56	0.77	0.56	0.77	0.08	2.63	2.84	2.63	2.84	XXX
79440	TC	A	Nuclear joint therapy	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.86	2.88	2.86	XXX
79900	.....	C	Provide ther radiopharm(s)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79999	.....	C	Nuclear medicine therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79999	26	C	Nuclear medicine therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
79999	TC	C	Nuclear medicine therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80049	.....	X	Metabolic panel, basic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80050	.....	N	General health panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80051	.....	X	Electrolyte panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80054	.....	X	Comprehen metabolic panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80055	.....	I	Obstetric panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80058	.....	X	Hepatic function panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80059	.....	X	Hepatitis panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80061	.....	X	Lipid panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80072	.....	X	Arthritis panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80090	.....	X	Torch antibody panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80091	.....	X	Thyroid panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80092	.....	X	Thyroid panel w/TSH	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80100	.....	X	Drug screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80101	.....	X	Drug screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80102	.....	X	Drug confirmation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80103	.....	X	Drug analysis, tissue prep	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80150	.....	X	Assay of amikacin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80152	.....	X	Assay of amitriptyline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80154	.....	X	Assay of benzodiazepines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80156	.....	X	Assay carbamazepine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80158	.....	X	Assay of cyclosporine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80160	.....	X	Assay of desipramine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80162	.....	X	Assay for digoxin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80164	.....	X	Assay, dipropylacetic acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80166	.....	X	Assay of doxepin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80168	.....	X	Assay of ethosuximide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80170	.....	X	Gentamicin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80172	.....	X	Assay for gold	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80174	.....	X	Assay of imipramine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80176	.....	X	Assay for lidocaine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80178	.....	X	Assay for lithium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80182	.....	X	Assay for nortriptyline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80184	.....	X	Assay for phenobarbital	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80185	.....	X	Assay for phenytoin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80186	.....	X	Assay for phenytoin, free	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80188	.....	X	Assay for primidone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80190	.....	X	Assay for procainamide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80192	.....	X	Assay for procainamide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80194	.....	X	Assay for quinidine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80196	.....	X	Assay for salicylate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80197	.....	X	Assay for tacrolimus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80198	.....	X	Assay for theophylline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80200	.....	X	Assay for tobramycin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80201	.....	X	Assay for topiramate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80202	.....	X	Assay for vancomycin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80299	.....	X	Quantitative assay, drug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80400	.....	X	Acth stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80402	.....	X	Acth stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80406	.....	X	Acth stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80408	.....	X	Aldosterone suppression eval	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80410	.....	X	Calcitonin stimul panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80412	.....	X	CRH stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80414	.....	X	Testosterone response	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80415	.....	X	Estradiol response panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80416	.....	X	Renin stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80417	.....	X	Renin stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80418	.....	X	Pituitary evaluation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80420	.....	X	Dexamethasone panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80422	.....	X	Glucagon tolerance panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80424	.....	X	Glucagon tolerance panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80426	.....	X	Gonadotropin hormone panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80428	.....	X	Growth hormone panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80430	.....	X	Growth hormone panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80432	.....	X	Insulin suppression panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80434	.....	X	Insulin tolerance panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80435	.....	X	Insulin tolerance panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80436	.....	X	Metyrapone panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80438	.....	X	TRH stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80439	.....	X	TRH stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80440	.....	X	TRH stimulation panel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
80500	.....	A	Lab pathology consultation	0.37	0.20	0.21	0.16	0.19	0.01	0.58	0.59	0.54	0.57	XXX
80502	.....	A	Lab pathology consultation	1.33	0.63	0.50	0.59	0.48	0.04	2.00	1.87	1.96	1.85	XXX
81000	.....	X	Urinalysis, nonauto, w/scope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81001	.....	X	Urinalysis, auto, w/scope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81002	.....	X	Urinalysis nonauto w/o scope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
81003	.....	X	Urinalysis, auto, w/o scope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81005	.....	X	Urinalysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81007	.....	X	Urine screen for bacteria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81015	.....	X	Microscopic exam of urine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81020	.....	X	Urinalysis, glass test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81025	.....	X	Urine pregnancy test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81050	.....	X	Urinalysis, volume measure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
81099	.....	X	Urinalysis test procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82000	.....	X	Assay blood acetaldehyde	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82003	.....	X	Assay acetaminophen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82009	.....	X	Test for acetone/ketones	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82010	.....	X	Acetone assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82013	.....	X	Acetylcholinesterase assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82016	.....	X	Acylcarnitines, qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82017	.....	X	Acylcarnitines, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82024	.....	X	ACTH	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82030	.....	X	ADP & AMP	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82040	.....	X	Assay serum albumin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82042	.....	X	Assay urine albumin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82043	.....	X	Microalbumin, quantitative	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82044	.....	X	Microalbumin, semiquant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82055	.....	X	Assay ethanol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82075	.....	X	Assay breath ethanol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82085	.....	X	Assay of aldolase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82088	.....	X	Aldosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82101	.....	X	Assay of urine alkaloids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82103	.....	X	Alpha-1-antitrypsin, total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82104	.....	X	Alpha-1-antitrypsin, pheno	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82105	.....	X	Alpha-fetoprotein, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82106	.....	X	Alpha-fetoprotein; amniotic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82108	.....	X	Assay, aluminum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82127	.....	X	Amino acid, single qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82128	.....	X	Amino acids, mult qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82131	.....	X	Amino acids, single quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82135	.....	X	Assay, aminolevulinic acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82136	.....	X	Amino acids, 2-5 quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82139	.....	X	Amino acids, 6+ quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82140	.....	X	Assay of ammonia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82143	.....	X	Amniotic fluid scan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82145	.....	X	Assay of amphetamines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82150	.....	X	Assay of amylase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82154	.....	X	Androstanediol glucuronide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82157	.....	X	Assay of androstenedione	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82160	.....	X	Androsterone assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82163	.....	X	Assay of angiotensin II	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82164	.....	X	Angiotensin I enzyme test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82172	.....	X	Apolipoprotein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82175	.....	X	Assay of arsenic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82180	.....	X	Assay of ascorbic acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82190	.....	X	Atomic absorption	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82205	.....	X	Assay of barbiturates	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82232	.....	X	Beta-2 protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82239	.....	X	Bile acids, total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82240	.....	X	Bile acids, cholylglycine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82247	.....	X	Bilirubin total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82248	.....	X	Bilirubin direct	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82251	.....	X	Assay bilirubin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82252	.....	X	Fecal bilirubin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82261	.....	X	Assay biotinidase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82270	.....	X	Test feces for blood	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82273	.....	X	Test for blood, other source	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82286	.....	X	Assay of bradykinin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82300	.....	X	Assay cadmium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82306	.....	X	Assay of vitamin D	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82307	.....	X	Assay of vitamin D	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82308	.....	X	Assay of calcitonin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82310	.....	X	Assay calcium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82330	.....	X	Assay calcium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82331	.....	X	Calcium infusion test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82340	.....	X	Assay calcium in urine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82355	.....	X	Calculus (stone) analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82360	.....	X	Calculus (stone) assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82365	.....	X	Calculus (stone) assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82370	.....	X	X-ray assay,calculus (stone)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82374	.....	X	Assay blood carbon dioxide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82375	.....	X	Assay blood carbon monoxide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82376	.....	X	Test for carbon monoxide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82378	.....	X	Carcinoembryonic antigen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82379	.....	X	Assay carnitine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82380	.....	X	Assay carotene	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82382	.....	X	Assay urine catecholamines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82383	.....	X	Assay blood catecholamines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82384	.....	X	Assay three catecholamines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82387	.....	X	Cathepsin-D	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
82390	.....	X	Assay ceruloplasmin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82397	.....	X	Chemiluminescent assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82415	.....	X	Assay chloramphenicol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82435	.....	X	Assay blood chloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82436	.....	X	Assay urine chloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82438	.....	X	Assay other fluid chlorides	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82441	.....	X	Test for chlorohydrocarbons	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82465	.....	X	Assay serum cholesterol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82480	.....	X	Assay serum cholinesterase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82482	.....	X	Assay rbc cholinesterase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82485	.....	X	Assay chondroitin sulfate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82486	.....	X	Gas/liquid chromatography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82487	.....	X	Paper chromatography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82488	.....	X	Paper chromatography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82489	.....	X	Thin layer chromatography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82491	.....	X	Chromotography, quantitative	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82492	.....	X	Chromotography, quant, mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82495	.....	X	Assay chromium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82507	.....	X	Assay citrate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82520	.....	X	Assay for cocaine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82523	.....	X	Collagen crosslinks	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82525	.....	X	Assay copper	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82528	.....	X	Assay corticosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82530	.....	X	Cortisol, free	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82533	.....	X	Total cortisol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82540	.....	X	Assay creatine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82541	.....	X	Column chromotography qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82542	.....	X	Column chromotography quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82543	.....	X	Column chromotograph/isotope	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82544	.....	X	Column chromotography quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82550	.....	X	Assay CK (CPK)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82552	.....	X	Assay CPK in blood	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82553	.....	X	Creatine, MB fraction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82554	.....	X	Creatine, isoforms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82565	.....	X	Assay creatinine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82570	.....	X	Assay urine creatinine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82575	.....	X	Creatinine clearance test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82585	.....	X	Assay cryofibrinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82595	.....	X	Assay cryoglobulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82600	.....	X	Assay cyanide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82607	.....	X	Vitamin B-12	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82608	.....	X	B-12 binding capacity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82615	.....	X	Test for urine cystines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82626	.....	X	Dehydroepiandrosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82627	.....	X	Dehydroepiandrosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82633	.....	X	Desoxycorticosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82634	.....	X	Deoxycortisol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82638	.....	X	Assay dibucaine number	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82646	.....	X	Assay of dihydrocodeinone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82649	.....	X	Assay of dihydromorphinone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82651	.....	X	Dihydrotestosterone assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82652	.....	X	Assay, dihydroxyvitamin D	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82654	.....	X	Assay of dimethadione	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82657	.....	X	Enzyme cell activity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82658	.....	X	Enzyme cell activity ra	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82664	.....	X	Electrophoretic test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82666	.....	X	Epiandrosterone assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82668	.....	X	Erythropoietin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82670	.....	X	Estradiol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82671	.....	X	Estrogens assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82672	.....	X	Estrogen assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82677	.....	X	Estriol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82679	.....	X	Estrone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82690	.....	X	Ethchlorvynol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82693	.....	X	Ethylene glycol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82696	.....	X	Etiocholanolone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82705	.....	X	Fats/lipids,feces,qualitativ	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82710	.....	X	Fats/lipids,feces,quantitati	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82715	.....	X	Fecal fat assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82725	.....	X	Assay blood fatty acids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82726	.....	X	Long chain fatty acids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82728	.....	X	Assay ferritin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82731	.....	X	Fetal fibronectin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82735	.....	X	Assay fluoride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82742	.....	X	Assay of flurazepam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82746	.....	X	Blood folic acid serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82747	.....	X	Folic acid, RBC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82757	.....	X	Assay semen fructose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82759	.....	X	RBC galactokinase assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82760	.....	X	Assay galactose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82775	.....	X	Assay galactose transferase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82776	.....	X	Galactose transferase test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82784	.....	X	Assay gammaglobulin IgM	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82785	.....	X	Assay, gammaglobulin IgE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
82787		X	IgG1, 2, 3 and 4	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82800		X	Blood pH	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82803		X	Blood gases: pH, pO2 & pCO2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82805		X	Blood gases W/02 saturation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82810		X	Blood gases, O2 sat only	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82820		X	Hemoglobin-oxygen affinity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82926		X	Assay gastric acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82928		X	Assay gastric acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82938		X	Gastrin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82941		X	Assay of gastrin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82943		X	Assay of glucagon	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82946		X	Glucagon tolerance test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82947		X	Assay quantitative, glucose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82948		X	Reagent strip/blood glucose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82950		X	Glucose test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82951		X	Glucose tolerance test (GTT)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82952		X	GTT-added samples	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82953		X	Glucose-tolbutamide test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82955		X	Assay G6PD enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82960		X	Test for G6PD enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82962		X	Glucose blood test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82963		X	Glucosidase assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82965		X	Assay GDH enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82975		X	Assay glutamine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82977		X	Assay of GGT	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82978		X	Glutathione assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82979		X	Assay RBC glutathione enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82980		X	Assay of glutethimide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
82985		X	Glycated protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83001		X	Gonadotropin (FSH)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83002		X	Gonadotropin (LH)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83003		X	Assay growth hormone (HGH)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83008		X	Assay guanosine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83010		X	Quant assay haptoglobin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83012		X	Assay haptoglobins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83013		X	H pylori breath test anal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83014		X	H pylori drug admin/collect	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83015		X	Heavy metal screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83018		X	Quantitative screen, metals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83020		X	Hemoglobin electrophoresis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83020	26	A	Hemoglobin electrophoresis	0.37	0.16	0.19	0.16	0.19	0.01	0.54	0.57	0.54	0.57	XXX
83021		X	Hemoglobin chromotography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83026		X	Hemoglobin, copper sulfate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83030		X	Fetal hemoglobin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83033		X	Fetal fecal hemoglobin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83036		X	Glycated hemoglobin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83045		X	Blood methemoglobin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83050		X	Blood methemoglobin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83051		X	Assay plasma hemoglobin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83055		X	Blood sulfhemoglobin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83060		X	Blood sulfhemoglobin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83065		X	Hemoglobin heat assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83068		X	Hemoglobin stability screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83069		X	Assay urine hemoglobin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83070		X	Qualt assay hemosiderin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83071		X	Quant assay of hemosiderin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83080		X	B hexosaminidase assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83088		X	Assay histamine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83150		X	Assay for HVA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83491		X	Assay of corticosteroids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83497		X	Assay 5-HIAA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83498		X	Assay of progesterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83499		X	Assay of progesterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83500		X	Assay free hydroxyproline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83505		X	Assay total hydroxyproline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83516		X	Immunoassay, non antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83518		X	Immunoassay, dipstick	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83519		X	Immunoassay nonantibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83520		X	Immunoassay, RIA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83525		X	Assay of insulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83527		X	Assay of insulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83528		X	Assay intrinsic factor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83540		X	Assay iron	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83550		X	Iron binding test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83570		X	Assay IDH enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83582		X	Assay ketogenic steroids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83586		X	Assay 17-(17-KS)ketosteroids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83593		X	Fractionation ketosteroids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83605		X	Lactic acid assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83615		X	Lactate (LD) (LDH) enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83625		X	Assay LDH enzymes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83632		X	Placental lactogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83633		X	Test urine for lactose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83634		X	Assay urine for lactose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
83655		X	Assay for lead	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83661		X	Assay L/S ratio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83662		X	L/S ratio, foam stability	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83670		X	Assay LAP enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83690		X	Assay lipase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83715		X	Assay blood lipoproteins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83716		X	Assay blood lipoproteins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83718		X	Blood lipoprotein assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83719		X	Blood lipoprotein assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83721		X	Blood lipoprotein assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83727		X	LRH hormone assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83735		X	Assay magnesium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83775		X	Assay of md enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83785		X	Assay of manganese	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83788		X	Mass spectrometry qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83789		X	Mass spectrometry quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83805		X	Assay of meprobamate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83825		X	Assay mercury	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83835		X	Assay metanephrines	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83840		X	Assay methadone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83857		X	Assay methemalbumin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83858		X	Assay methsuximide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83864		X	Mucopolysaccharides	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83866		X	Mucopolysaccharides screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83872		X	Assay synovial fluid mucin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83873		X	Assay, CSF protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83874		X	Myoglobin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83883		X	Nephelometry, not specified	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83885		X	Assay for nickel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83887		X	Assay nicotine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83890		X	Molecule isolate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83891		X	Molecule isolate nucleic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83892		X	Molecular diagnostics	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83893		X	Molecule dot/slot/blot	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83894		X	Molecule gel electrophor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83896		X	Molecular diagnostics	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83897		X	Molecule nucleic transfer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83898		X	Molecule nucleic amp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83901		X	Molecule nucleic amp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83902		X	Molecular diagnostics	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83903		X	Molecule mutation scan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83904		X	Molecule mutation identify	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83905		X	Molecule mutation identify	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83906		X	Molecule mutation identify	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83912		X	Genetic examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83912	26	A	Genetic examination	0.37	0.14	0.18	0.14	0.18	0.01	0.52	0.56	0.52	0.56	XXX
83915		X	Assay nucleotidase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83916		X	Oligoclonal bands	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83918		X	Assay organic acids quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83919		X	Assay organic acids qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83925		X	Opiates	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83930		X	Assay blood osmolality	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83935		X	Assay urine osmolality	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83937		X	Assay for osteocalcin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83945		X	Assay oxalate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83970		X	Assay of parathormone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83986		X	Assay body fluid acidity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
83992		X	Assay for phencyclidine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84022		X	Assay of phenothiazine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84030		X	Assay blood PKU	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84035		X	Assay phenylketones	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84060		X	Assay acid phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84061		X	Phosphatase, forensic exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84066		X	Assay prostate phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84075		X	Assay alkaline phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84078		X	Assay alkaline phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84080		X	Assay alkaline phosphatases	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84081		X	Amniotic fluid enzyme test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84085		X	Assay RBC PG6D enzyme	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84087		X	Assay phosphohexose enzymes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84100		X	Assay phosphorus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84105		X	Assay urine phosphorus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84106		X	Test for porphobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84110		X	Assay porphobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84119		X	Test urine for porphyrins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84120		X	Assay urine porphyrins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84126		X	Assay feces porphyrins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84127		X	Porphyrins, feces	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84132		X	Assay serum potassium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84133		X	Assay urine potassium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84134		X	Prealbumin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84135		X	Assay pregnanediol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84138		X	Assay pregnanetriol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84140		X	Assay for pregnenolone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
84143		X	Assay/17-hydroxypregnenolone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84144		X	Assay progesterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84146		X	Assay for prolactin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84150		X	Assay of prostaglandin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84153		X	Psa total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84154		X	Psa free	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84155		X	Assay protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84160		X	Assay serum protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84165		X	Assay serum proteins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84165	26	A	Assay serum proteins	0.37	0.16	0.19	0.16	0.19	0.01	0.54	0.57	0.54	0.57	XXX
84181		X	Western blot test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84181	26	A	Western blot test	0.37	0.14	0.18	0.14	0.18	0.01	0.52	0.56	0.52	0.56	XXX
84182		X	Protein, western blot test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84182	26	A	Protein, western blot test	0.37	0.14	0.18	0.14	0.18	0.01	0.52	0.56	0.52	0.56	XXX
84202		X	Assay RBC protoporphyrin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84203		X	Test RBC protoporphyrin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84206		X	Assay of proinsulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84207		X	Assay vitamin B-6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84210		X	Assay pyruvate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84220		X	Assay pyruvate kinase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84228		X	Assay quinine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84233		X	Assay estrogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84234		X	Assay progesterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84235		X	Assay endocrine hormone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84238		X	Assay non-endocrine receptor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84244		X	Assay of renin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84252		X	Assay vitamin B-2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84255		X	Assay selenium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84260		X	Assay serotonin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84270		X	Sex hormone globulin (SHBG)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84275		X	Assay sialic acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84285		X	Assay silica	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84295		X	Assay serum sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84300		X	Assay urine sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84305		X	Somatomedin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84307		X	Somatostatin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84311		X	Spectrophotometry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84315		X	Body fluid specific gravity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84375		X	Chromatogram assay, sugars	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84376		X	Sugars single qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84377		X	Sugars multiple qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84378		X	Sugars single quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84379		X	Sugars multiple quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84392		X	Assay urine sulfate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84402		X	Testosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84403		X	Assay total testosterone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84425		X	Assay vitamin B-1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84430		X	Assay thiocyanate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84432		X	Thyroglobulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84436		X	Assay, total thyroxine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84437		X	Assay neonatal thyroxine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84439		X	Assay, free thyroxine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84442		X	Thyroid activity (TBG) assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84443		X	Assay thyroid stim hormone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84445		X	Thyroid immunoglobulins TSI	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84446		X	Assay vitamin E	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84449		X	Assay for transcortin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84450		X	Transferase (AST) (SGOT)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84460		X	Alanine amino (ALT) (SGPT)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84466		X	Transferrin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84478		X	Assay triglycerides	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84479		X	Assay thyroid (t-3 or t-4)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84480		X	Assay triiodothyronine (t-3)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84481		X	Free assay (FT-3)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84482		X	T3 reverse	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84484		X	Troponin, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84485		X	Assay duodenal fluid trypsin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84488		X	Test feces for trypsin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84490		X	Assay feces for trypsin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84510		X	Assay tyrosine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84512		X	Troponin, qual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84520		X	Assay urea nitrogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84525		X	Urea nitrogen semi-quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84540		X	Assay urine urea-N	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84545		X	Urea-N clearance test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84550		X	Assay blood uric acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84560		X	Assay urine uric acid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84577		X	Assay feces urobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84578		X	Test urine urobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84580		X	Assay urine urobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84583		X	Assay urine urobilinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84585		X	Assay urine VMA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84586		X	VIP assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84588		X	Assay vasopressin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
84590		X	Assay vitamin-A	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84597		X	Assay vitamin-K	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84600		X	Assay for volatiles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84620		X	Xylose tolerance test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84630		X	Assay zinc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84681		X	Assay C-peptide	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84702		X	Chorionic gonadotropin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84703		X	Chorionic gonadotropin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84830		X	Ovulation tests	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
84999		X	Clinical chemistry test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85002		X	Bleeding time test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85007		X	Differential WBC count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85008		X	Nondifferential WBC count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85009		X	Differential WBC count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85013		X	Hematocrit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85014		X	Hematocrit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85018		X	Hemoglobin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85021		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85022		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85023		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85024		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85025		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85027		X	Automated hemogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85031		X	Manual hemogram,complete cbc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85041		X	Red blood cell (RBC) count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85044		X	Reticulocyte count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85045		X	Reticulocyte count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85046		X	Reticyte, hgb concentrate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85048		X	White blood cell (WBC) count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85060		A	Blood smear interpretation	0.45	0.72	0.48	0.20	0.22	0.01	1.18	0.94	0.66	0.68	XXX
85095		A	Bone marrow aspiration	1.08	4.38	2.56	0.43	0.58	0.03	5.49	3.67	1.54	1.69	XXX
85097		A	Bone marrow interpretation	0.94	2.81	1.67	0.41	0.47	0.03	3.78	2.64	1.38	1.44	XXX
85102		A	Bone marrow biopsy	1.37	4.50	2.69	0.54	0.71	0.04	5.91	4.10	1.95	2.12	XXX
85130		X	Chromogenic substrate assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85170		X	Blood clot retraction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85175		X	Blood clot lysis time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85210		X	Blood clot factor II test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85220		X	Blood clot factor V test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85230		X	Blood clot factor VII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85240		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85244		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85245		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85246		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85247		X	Blood clot factor VIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85250		X	Blood clot factor IX test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85260		X	Blood clot factor X test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85270		X	Blood clot factor XI test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85280		X	Blood clot factor XII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85290		X	Blood clot factor XIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85291		X	Blood clot factor XIII test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85292		X	Blood clot factor assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85293		X	Blood clot factor assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85300		X	Antithrombin III test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85301		X	Antithrombin III test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85302		X	Blood clot inhibitor antigen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85303		X	Blood clot inhibitor test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85305		X	Blood clot inhibitor assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85306		X	Blood clot inhibitor test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85335		X	Factor inhibitor test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85337		X	Thrombomodulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85345		X	Coagulation time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85347		X	Coagulation time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85348		X	Coagulation time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85360		X	Euglobulin lysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85362		X	Fibrin degradation products	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85366		X	Fibrinogen test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85370		X	Fibrinogen test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85378		X	Fibrin degradation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85379		X	Fibrin degradation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85384		X	Fibrinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85385		X	Fibrinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85390		X	Fibrinolysins screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85390	26	A	Fibrinolysins screen	0.37	0.15	0.19	0.15	0.19	0.01	0.53	0.57	0.53	0.57	XXX
85400		X	Fibrinolytic plasmin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85410		X	Fibrinolytic antiplasmin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85415		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85420		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85421		X	Fibrinolytic plasminogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85441		X	Heinz bodies; direct	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85445		X	Heinz bodies; induced	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85460		X	Hemoglobin, fetal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85461		X	Hemoglobin, fetal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85475		X	Hemolysin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85520		X	Heparin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
85525		X	Heparin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85530		X	Heparin-protamine tolerance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85535		X	Iron stain, blood cells	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85540		X	Wbc alkaline phosphatase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85547		X	RBC mechanical fragility	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85549		X	Muramidase	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85555		X	RBC osmotic fragility	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85557		X	RBC osmotic fragility	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85576		X	Blood platelet aggregation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85576	26	A	Blood platelet aggregation	0.37	0.16	0.19	0.16	0.19	0.01	0.54	0.57	0.54	0.57	XXX
85585		X	Blood platelet estimation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85590		X	Platelet manual count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85595		X	Platelet count, automated	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85597		X	Platelet neutralization	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85610		X	Prothrombin time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85611		X	Prothrombin test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85612		X	Viper venom prothrombin time	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85613		X	Russell viper venom, diluted	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85635		X	Reptilase test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85651		X	Rbc sed rate, nonauto	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85652		X	Rbc sed rate, auto	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85660		X	RBC sickle cell test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85670		X	Thrombin time, plasma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85675		X	Thrombin time, titer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85705		X	Thromboplastin inhibition	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85730		X	Thromboplastin time, partial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85732		X	Thromboplastin time, partial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85810		X	Blood viscosity examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
85999		X	Hematology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86000		X	Agglutinins; febrile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86003		X	Allergen specific IgE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86005		X	Allergen specific IgE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86021		X	WBC antibody identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86022		X	Platelet antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86023		X	Immunoglobulin assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86038		X	Antinuclear antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86039		X	Antinuclear antibodies (ANA)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86060		X	Antistreptolysin O titer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86063		X	Antistreptolysin O screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86077		A	Physician blood bank service	0.94	0.48	0.41	0.41	0.37	0.03	1.45	1.38	1.38	1.34	XXX
86078		A	Physician blood bank service	0.94	0.54	0.46	0.41	0.39	0.03	1.51	1.43	1.38	1.36	XXX
86079		A	Physician blood bank service	0.94	0.53	0.45	0.42	0.39	0.03	1.50	1.42	1.39	1.36	XXX
86140		X	C-reactive protein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86147		X	Cardiolipin antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86148		X	Phospholipid antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86155		X	Chemotaxis assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86156		X	Cold agglutinin screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86157		X	Cold agglutinin, titer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86160		X	Complement, antigen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86161		X	Complement/function activity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86162		X	Complement, total (CH50)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86171		X	Complement fixation, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86185		X	Counterimmunoelectrophoresis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86215		X	Deoxyribonuclease, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86225		X	DNA antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86226		X	DNA antibody, single strand	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86235		X	Nuclear antigen antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86243		X	Fc receptor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86255		X	Fluorescent antibody; screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86255	26	A	Fluorescent antibody; screen	0.37	0.17	0.20	0.16	0.19	0.01	0.55	0.58	0.54	0.57	XXX
86256		X	Fluorescent antibody; titer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86256	26	A	Fluorescent antibody; titer	0.37	0.16	0.19	0.16	0.19	0.01	0.54	0.57	0.54	0.57	XXX
86277		X	Growth hormone antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86280		X	Hemagglutination inhibition	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86308		X	Heterophile antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86309		X	Heterophile antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86310		X	Heterophile antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86316		X	Immunoassay, tumor antigen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86317		X	Immunoassay,infectious agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86318		X	Immunoassay,infectious agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86320		X	Serum immunoelectrophoresis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86320	26	A	Serum immunoelectrophoresis	0.37	0.17	0.20	0.16	0.19	0.01	0.55	0.58	0.54	0.57	XXX
86325		X	Other immunoelectrophoresis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86325	26	A	Other immunoelectrophoresis	0.37	0.16	0.19	0.16	0.19	0.01	0.54	0.57	0.54	0.57	XXX
86327		X	Immunoelectrophoresis assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86327	26	A	Immunoelectrophoresis assay	0.42	0.16	0.19	0.16	0.19	0.01	0.59	0.62	0.59	0.62	XXX
86329		X	Immunodiffusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86331		X	Immunodiffusion ouchterlony	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86332		X	Immune complex assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86334		X	Immunofixation procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86334	26	A	Immunofixation procedure	0.37	0.15	0.19	0.15	0.19	0.01	0.53	0.57	0.53	0.57	XXX
86337		X	Insulin antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86340		X	Intrinsic factor antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86341		X	Islet cell antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
86343		X	Leukocyte histamine release	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86344		X	Leukocyte phagocytosis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86353		X	Lymphocyte transformation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86359		X	T cells, total count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86360		X	T cell absolute count/ratio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86361		X	T cell absolute count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86376		X	Microsomal antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86378		X	Migration inhibitory factor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86382		X	Neutralization test, viral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86384		X	Nitroblue tetrazolium dye	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86403		X	Particle agglutination test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86406		X	Particle agglutination test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86430		X	Rheumatoid factor test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86431		X	Rheumatoid factor, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86485		C	Skin test, candida	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86490		A	Coccidioidomycosis skin test	0.00	0.31	0.31	0.31	0.31	0.02	0.33	0.33	0.33	0.33	XXX
86510		A	Histoplasmosis skin test	0.00	0.33	0.33	0.33	0.33	0.02	0.35	0.35	0.35	0.35	XXX
86580		A	TB intradermal test	0.00	0.26	0.26	0.26	0.26	0.02	0.28	0.28	0.28	0.28	XXX
86585		A	TB tine test	0.00	0.21	0.21	0.21	0.21	0.01	0.22	0.22	0.22	0.22	XXX
86586		C	Skin test, unlisted	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86588		X	Streptococcus, direct screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86590		X	Streptokinase, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86592		X	Blood serology, qualitative	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86593		X	Blood serology, quantitative	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86602		X	Antinomyces antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86603		X	Adenovirus, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86606		X	Aspergillus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86609		X	Bacterium, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86612		X	Blastomyces, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86615		X	Bordetella antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86617		X	Lyme disease antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86618		X	Lyme disease antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86619		X	Borrelia antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86622		X	Brucella, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86625		X	Campylobacter, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86628		X	Candida, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86631		X	Chlamydia, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86632		X	Chlamydia, IgM, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86635		X	Coccidioides, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86638		X	Q fever antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86641		X	Cryptococcus antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86644		X	CMV antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86645		X	CMV antibody, IgM	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86648		X	Diphtheria antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86651		X	Encephalitis antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86652		X	Encephalitis antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86653		X	Encephalitis, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86654		X	Encephalitis, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86658		X	Enterovirus, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86663		X	Epstein-barr antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86664		X	Epstein-barr antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86665		X	Epstein-barr, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86668		X	Francisella tularensis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86671		X	Fungus, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86674		X	Giardia lamblia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86677		X	Helicobacter pylori	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86682		X	Helminth, antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86684		X	Hemophilus influenza	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86687		X	HTLV I	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86688		X	HTLV-II	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86689		X	HTLV/HIV confirmatory test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86692		X	Hepatitis, delta agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86694		X	Herpes simplex test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86695		X	Herpes simplex test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86698		X	Histoplasma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86701		X	HIV-1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86702		X	HIV-2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86703		X	HIV-1/HIV-2, single assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86704		X	Hep b core ab test, igg & m	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86705		X	Hep b core ab test, igm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86706		X	Hepatitis b surface ab test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86707		X	Hepatitis be ab test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86708		X	Hep a ab test, igg & m	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86709		X	Hep a ab test, igm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86710		X	Influenza virus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86713		X	Legionella	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86717		X	Leishmania	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86720		X	Leptospira	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86723		X	Listeria monocytogenes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86727		X	Lymph choriomeningitis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86729		X	Lympho venerseum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86732		X	Mucormycosis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86735		X	Mumps	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86738		X	Mycoplasma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
86741		X	Neisseria meningitidis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86744		X	Nocardia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86747		X	Parvovirus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86750		X	Malaria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86753		X	Protozoa, not elsewhere	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86756		X	Respiratory virus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86759		X	Rotavirus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86762		X	Rubella	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86765		X	Rubeola	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86768		X	Salmonella	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86771		X	Shigella	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86774		X	Tetanus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86777		X	Toxoplasma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86778		X	Toxoplasma, IgM	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86781		X	Treponema pallidum confirm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86784		X	Trichinella	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86787		X	Varicella-zoster	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86790		X	Virus, not specified	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86793		X	Yersinia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86800		X	Thyroglobulin antibody	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86803		X	Hepatitis c ab test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86804		X	Hep c ab test, confirm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86805		X	Lymphocytotoxicity assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86806		X	Lymphocytotoxicity assay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86807		X	Cytotoxic antibody screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86808		X	Cytotoxic antibody screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86812		X	HLA typing, A, B, or C	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86813		X	HLA typing, A, B, or C	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86816		X	HLA typing, DR/DQ	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86817		X	HLA typing, DR/DQ	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86821		X	Lymphocyte culture, mixed	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86822		X	Lymphocyte culture, primed	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86849		X	Immunology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86850		X	RBC antibody screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86860		X	RBC antibody elution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86870		X	RBC antibody identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86880		X	Coombs test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86885		X	Coombs test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86886		X	Coombs test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86890		X	Autologous blood process	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86891		X	Autologous blood, op salvage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86900		X	Blood typing, ABO	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86901		X	Blood typing, Rh (D)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86903		X	Blood typing, antigen screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86904		X	Blood typing, patient serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86905		X	Blood typing, RBC antigens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86906		X	Blood typing, Rh phenotype	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86910		N	Blood typing, paternity test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86911		N	Blood typing, antigen system	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86915		X	Bone marrow	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86920		X	Compatibility test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86921		X	Compatibility test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86922		X	Compatibility test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86927		X	Plasma, fresh frozen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86930		X	Frozen blood prep	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86931		X	Frozen blood thaw	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86932		X	Frozen blood, freeze/thaw	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86940		X	Hemolysins/agglutinins auto	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86941		X	Hemolysins/agglutinins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86945		X	Blood product/irradiation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86950		X	Leukacyte transfusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86965		X	Pooling blood platelets	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86970		X	RBC pretreatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86971		X	RBC pretreatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86972		X	RBC pretreatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86975		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86976		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86977		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86978		X	RBC pretreatment, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86985		X	Split blood or products	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
86999		X	Transfusion procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87001		X	Small animal inoculation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87003		X	Small animal inoculation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87015		X	Specimen concentration	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87040		X	Blood culture for bacteria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87045		X	Stool culture for bacteria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87060		X	Nose/throat culture,bacteria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87070		X	Culture specimen, bacteria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87072		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87075		X	Culture specimen, bacteria	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87076		X	Bacteria identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87081		X	Bacteria culture screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87082		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87083		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
87084		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87085		X	Culture of specimen by kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87086		X	Urine culture, colony count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87087		X	Urine bacteria culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87088		X	Urine bacteria culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87101		X	Skin fungus culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87102		X	Fungus isolation culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87103		X	Blood fungus culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87106		X	Fungus identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87109		X	Mycoplasma culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87110		X	Culture, chlamydia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87116		X	Mycobacteria culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87117		X	Mycobacteria culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87118		X	Mycobacteria identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87140		X	Culture typing, fluorescent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87143		X	Culture typing, GLC method	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87145		X	Culture typing, phage method	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87147		X	Culture typing, serologic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87151		X	Culture typing, serologic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87155		X	Culture typing, precipitin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87158		X	Culture typing, added method	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87163		X	Special microbiology culture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87164		X	Dark field examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87164	26	A	Dark field examination	0.37	0.11	0.17	0.11	0.17	0.01	0.49	0.55	0.49	0.55	XXX
87166		X	Dark field examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87174		X	Endotoxin, bacterial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87175		X	Assay, endotoxin, bacterial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87176		X	Endotoxin, bacterial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87177		X	Ova and parasites smears	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87181		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87184		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87186		X	Antibiotic sensitivity, MIC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87187		X	Antibiotic sensitivity, MBC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87188		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87190		X	TB antibiotic sensitivity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87192		X	Antibiotic sensitivity, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87197		X	Bactericidal level, serum	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87205		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87206		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87207		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87207	26	A	Smear, stain & interpret	0.37	0.17	0.20	0.17	0.20	0.01	0.55	0.58	0.55	0.58	XXX
87208		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87210		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87211		X	Smear, stain & interpret	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87220		X	Tissue exam for fungi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87230		X	Assay, toxin or antitoxin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87250		X	Virus inoculation for test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87252		X	Virus inoculation for test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87253		X	Virus inoculation for test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87260		X	Adenovirus ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87265		X	Pertussis ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87270		X	Chylmd trach ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87272		X	Cryptosporidum ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87274		X	Herpes simplex ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87276		X	Influenza ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87278		X	Legion pneumo ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87280		X	Resp syncytial ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87285		X	Trepon pallidum ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87290		X	Varicella ag, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87299		X	Ag detection nos, dfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87301		X	Adenovirus ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87320		X	Chylmd trach ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87324		X	Clostridium ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87328		X	Cryptospor ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87332		X	Cytomegalovirus ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87335		X	E coli 0157 ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87340		X	Hepatitis b surface ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87350		X	Hepatitis b ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87380		X	Hepatitis delta ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87385		X	Histoplasma capsul ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87390		X	Hiv-1 ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87391		X	Hiv-2 ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87420		X	Resp syncytial ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87425		X	Rotavirus ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87430		X	Strep a ag, eia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87449		X	Ag detect nos, eia, mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87450		X	Ag detect nos, eia, single	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87470		X	Bartonella, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87471		X	Bartonella, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87472		X	Bartonella, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87475		X	Lyme dis, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87476		X	Lyme dis, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87477		X	Lyme dis, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87480		X	Candida, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician work RVUs [3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
87481		X	Candida, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87482		X	Candida, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87485		X	Chylmd pneum, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87486		X	Chylmd pneum, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87487		X	Chylmd pneum, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87490		X	Chylmd trach, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87491		X	Chylmd trach, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87492		X	Chylmd trach, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87495		X	Cytomeg, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87496		X	Cytomeg, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87497		X	Cytomeg, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87510		X	Gardner vag, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87511		X	Gardner vag, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87512		X	Gardner vag, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87515		X	Hepatitis b, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87516		X	Hepatitis b , dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87517		X	Hepatitis b , dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87520		X	Hepatitis c , rna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87521		X	Hepatitis c , rna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87522		X	Hepatitis c, rna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87525		X	Hepatitis g , dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87526		X	Hepatitis g, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87527		X	Hepatitis g, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87528		X	Hsv, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87529		X	Hsv, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87530		X	Hsv, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87531		X	Hhv-6, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87532		X	Hhv-6, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87533		X	Hhv-6, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87534		X	Hiv-1, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87535		X	Hiv-1, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87536		X	Hiv-1, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87537		X	Hiv-2, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87538		X	Hiv-2, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87539		X	Hiv-2, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87540		X	Legion pneumo, dna, dir prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87541		X	Legion pneumo, dna, amp prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87542		X	Legion pneumo, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87550		X	Mycobacteria, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87551		X	Mycobacteria, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87552		X	Mycobacteria, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87555		X	M.tuberculo, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87556		X	M.tuberculo, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87557		X	M.tuberculo, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87560		X	M.avium-intra, dna, dir prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87561		X	M.avium-intra, dna, amp prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87562		X	M.avium-intra, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87580		X	M.pneumon, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87581		X	M.pneumon, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87582		X	M.pneumon, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87590		X	N.gonorrhoeae, dna, dir prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87591		X	N.gonorrhoeae, dna, amp prob	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87592		X	N.gonorrhoeae, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87620		X	Hpv, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87621		X	Hpv, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87622		X	Hpv, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87650		X	Strep a, dna, dir probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87651		X	Strep a, dna, amp probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87652		X	Strep a, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87797		X	Detect agent nos, dna, dir	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87798		X	Detect agent nos, dna, amp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87799		X	Detect agent nos, dna, quant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87810		X	Chylmd trach assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87850		X	N. gonorrhoeae assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87880		X	Strep a assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87899		X	Agent nos assay w/optic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
87999		X	Microbiology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88000		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88005		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88007		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88012		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88014		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88016		N	Autopsy (necropsy), gross	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88020		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88025		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88027		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88028		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88029		N	Autopsy (necropsy), complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88036		N	Limited autopsy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88037		N	Limited autopsy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88040		N	Forensic autopsy (necropsy)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88045		N	Coroner's autopsy (necropsy)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88099		N	Necropsy (autopsy) procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88104		A	Cytopathology, fluids	0.56	0.48	0.48	0.48	0.48	0.04	1.08	1.08	1.08	1.08	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT [1] / HCPCS [2]	MOD	Status	Description	Physician work RVUs [3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
88104	26	A	Cytopathology, fluids	0.56	0.25	0.25	0.25	0.25	0.02	0.83	0.83	0.83	0.83	XXX
88104	TC	A	Cytopathology, fluids	0.00	0.23	0.23	0.23	0.23	0.02	0.25	0.25	0.25	0.25	XXX
88106		A	Cytopathology, fluids	0.56	0.44	0.42	0.44	0.42	0.03	1.03	1.01	1.03	1.01	XXX
88106	26	A	Cytopathology, fluids	0.56	0.25	0.24	0.25	0.24	0.01	0.82	0.81	0.82	0.81	XXX
88106	TC	A	Cytopathology, fluids	0.00	0.19	0.19	0.19	0.19	0.02	0.21	0.21	0.21	0.21	XXX
88107		A	Cytopathology, fluids	0.76	0.59	0.55	0.59	0.55	0.04	1.39	1.35	1.39	1.35	XXX
88107	26	A	Cytopathology, fluids	0.76	0.34	0.30	0.34	0.30	0.02	1.12	1.08	1.12	1.08	XXX
88107	TC	A	Cytopathology, fluids	0.00	0.25	0.25	0.25	0.25	0.02	0.27	0.27	0.27	0.27	XXX
88108		A	Cytopath, concentrate tech	0.56	0.50	0.51	0.50	0.51	0.03	1.09	1.10	1.09	1.10	XXX
88108	26	A	Cytopath, concentrate tech	0.56	0.25	0.26	0.25	0.26	0.01	0.82	0.83	0.82	0.83	XXX
88108	TC	A	Cytopath, concentrate tech	0.00	0.25	0.25	0.25	0.25	0.02	0.27	0.27	0.27	0.27	XXX
88125		A	Forensic cytopathology	0.26	0.16	0.14	0.16	0.14	0.01	0.43	0.41	0.43	0.41	XXX
88125	26	A	Forensic cytopathology	0.26	0.12	0.10	0.12	0.10	0.01	0.39	0.37	0.39	0.37	XXX
88125	TC	A	Forensic cytopathology	0.00	0.04	0.04	0.04	0.04	0.00	0.04	0.04	0.04	0.04	XXX
88130		X	Sex chromatin identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88140		X	Sex chromatin identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88141		A	Cytpath c/vag interpret	0.42	0.18	0.31	0.18	0.31	0.01	0.61	0.74	0.61	0.74	ZZZ
88142		X	Cytpath c/vag t/layer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88143		X	Cytpath c/vag t/layer redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88144		X	Cytpathc/vagt/layerauto redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88145		X	Cytpath c/vag t/layer select	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88147		X	Cytpath c/vag automated	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88148		X	Cytpath c/vag auto rescreen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88150		X	Cytpath c/vag manual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88152		X	Cytpath c/vag auto redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88153		X	Cytpath c/vag redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88154		X	Cytpath c/vag select	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88155		X	Cytpath c/vag index add-on	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
88160		A	Cytopath smear, other source	0.50	0.39	0.37	0.39	0.37	0.03	0.92	0.90	0.92	0.90	XXX
88160	26	A	Cytopath smear, other source	0.50	0.22	0.20	0.22	0.20	0.01	0.73	0.71	0.73	0.71	XXX
88160	TC	A	Cytopath smear, other source	0.00	0.17	0.17	0.17	0.17	0.02	0.19	0.19	0.19	0.19	XXX
88161		A	Cytopath smear, other source	0.50	0.43	0.43	0.43	0.43	0.03	0.96	0.96	0.96	0.96	XXX
88161	26	A	Cytopath smear, other source	0.50	0.22	0.22	0.22	0.22	0.01	0.73	0.73	0.73	0.73	XXX
88161	TC	A	Cytopath smear, other source	0.00	0.21	0.21	0.21	0.21	0.02	0.23	0.23	0.23	0.23	XXX
88162		A	Cytopath smear, other source	0.76	0.75	0.80	0.75	0.80	0.04	1.55	1.60	1.55	1.60	XXX
88162	26	A	Cytopath smear, other source	0.76	0.34	0.39	0.34	0.39	0.02	1.12	1.17	1.12	1.17	XXX
88162	TC	A	Cytopath smear, other source	0.00	0.41	0.41	0.41	0.41	0.02	0.43	0.43	0.43	0.43	XXX
88164		X	Cytpath tbs c/vag manual	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88165		X	Cytpath tbs c/vag redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88166		X	Cytpath tbs c/vag auto redo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88167		X	Cytpath tbs c/vag select	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88170		A	Fine needle aspiration	1.27	1.05	1.06	1.05	1.06	0.08	2.40	2.41	2.40	2.41	XXX
88170	26	A	Fine needle aspiration	1.27	0.54	0.55	0.54	0.55	0.05	1.86	1.87	1.86	1.87	XXX
88170	TC	A	Fine needle aspiration	0.00	0.51	0.51	0.51	0.51	0.03	0.54	0.54	0.54	0.54	XXX
88171		A	Fine needle aspiration	1.27	1.16	1.31	1.16	1.31	0.07	2.50	2.65	2.50	2.65	XXX
88171	26	A	Fine needle aspiration	1.27	0.46	0.62	0.46	0.62	0.04	1.77	1.93	1.77	1.93	XXX
88171	TC	A	Fine needle aspiration	0.00	0.70	0.70	0.70	0.70	0.03	0.73	0.73	0.73	0.73	XXX
88172		A	Evaluation of smear	0.60	0.65	0.71	0.65	0.71	0.04	1.29	1.35	1.29	1.35	XXX
88172	26	A	Evaluation of smear	0.60	0.27	0.33	0.27	0.33	0.02	0.89	0.95	0.89	0.95	XXX
88172	TC	A	Evaluation of smear	0.00	0.38	0.38	0.38	0.38	0.02	0.40	0.40	0.40	0.40	XXX
88173		A	Interpretation of smear	1.39	1.08	1.02	1.08	1.02	0.06	2.53	2.47	2.53	2.47	XXX
88173	26	A	Interpretation of smear	1.39	0.62	0.56	0.62	0.56	0.04	2.05	1.99	2.05	1.99	XXX
88173	TC	A	Interpretation of smear	0.00	0.46	0.46	0.46	0.46	0.02	0.48	0.48	0.48	0.48	XXX
88180		A	Cell marker study	0.36	0.33	0.34	0.33	0.34	0.03	0.72	0.73	0.72	0.73	XXX
88180	26	A	Cell marker study	0.36	0.16	0.17	0.16	0.17	0.01	0.53	0.54	0.53	0.54	XXX
88180	TC	A	Cell marker study	0.00	0.17	0.17	0.17	0.17	0.02	0.19	0.19	0.19	0.19	XXX
88182		A	Cell marker study	0.77	0.82	0.90	0.82	0.90	0.05	1.64	1.72	1.64	1.72	XXX
88182	26	A	Cell marker study	0.77	0.34	0.42	0.34	0.42	0.02	1.13	1.21	1.13	1.21	XXX
88182	TC	A	Cell marker study	0.00	0.48	0.48	0.48	0.48	0.03	0.51	0.51	0.51	0.51	XXX
88199		C	Cytopathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88199	26	C	Cytopathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88199	TC	C	Cytopathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88230		X	Tissue culture, lymphocyte	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88233		X	Tissue culture, skin/biopsy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88235		X	Tissue culture, placenta	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88237		X	Tissue culture, bone marrow	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88239		X	Tissue culture, tumor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88240		X	Cell cryopreserve/storage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88241		X	Frozen cell preparation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88245		X	Chromosome analysis, 20-25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88248		X	Chromosome analysis, 50-100	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88249		X	Chromosome analysis, 100	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88261		X	Chromosome analysis, 5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88262		X	Chromosome analysis, 15-20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88263		X	Chromosome analysis, 45	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88264		X	Chromosome analysis, 20-25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88267		X	Chromosome analysis:placenta	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88269		X	Chromosome analysis:amniotic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88271		X	Cytogenetics, dna probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88272		X	Cytogenetics, 3-5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88273		X	Cytogenetics, 10-30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88274		X	Cytogenetics, 25-99	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88275		X	Cytogenetics, 100-300	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88280		X	Chromosome karyotype study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
88283		X	Chromosome banding study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88285		X	Chromosome count: additional	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88289		X	Chromosome study: additional	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88291		A	Cyto/molecular report	0.52	0.21	0.21	0.21	0.21	0.01	0.74	0.74	0.74	0.74	XXX
88299		C	Cytogenetic study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88300		A	Surg path, gross	0.08	0.15	0.19	0.15	0.19	0.00	0.23	0.27	0.23	0.27	XXX
88300	26	A	Surg path, gross	0.08	0.04	0.08	0.04	0.08	0.00	0.12	0.16	0.12	0.16	XXX
88300	TC	A	Surg path, gross	0.00	0.11	0.11	0.11	0.11	0.00	0.11	0.11	0.11	0.11	XXX
88302		A	Tissue exam by pathologist	0.13	0.31	0.37	0.31	0.37	0.02	0.46	0.52	0.46	0.52	XXX
88302	26	A	Tissue exam by pathologist	0.13	0.06	0.12	0.06	0.12	0.00	0.19	0.25	0.19	0.25	XXX
88302	TC	A	Tissue exam by pathologist	0.00	0.25	0.25	0.25	0.25	0.02	0.27	0.27	0.27	0.27	XXX
88304		A	Tissue exam by pathologist	0.22	0.46	0.54	0.46	0.54	0.03	0.71	0.79	0.71	0.79	XXX
88304	26	A	Tissue exam by pathologist	0.22	0.10	0.18	0.10	0.18	0.01	0.33	0.41	0.33	0.41	XXX
88304	TC	A	Tissue exam by pathologist	0.00	0.36	0.36	0.36	0.36	0.02	0.38	0.38	0.38	0.38	XXX
88305		A	Tissue exam by pathologist	0.75	0.89	1.01	0.89	1.01	0.05	1.69	1.81	1.69	1.81	XXX
88305	26	A	Tissue exam by pathologist	0.75	0.34	0.46	0.34	0.46	0.02	1.11	1.23	1.11	1.23	XXX
88305	TC	A	Tissue exam by pathologist	0.00	0.55	0.55	0.55	0.55	0.03	0.58	0.58	0.58	0.58	XXX
88307		A	Tissue exam by pathologist	1.59	1.52	1.59	1.52	1.59	0.09	3.20	3.27	3.20	3.27	XXX
88307	26	A	Tissue exam by pathologist	1.59	0.70	0.78	0.70	0.78	0.04	2.33	2.41	2.33	2.41	XXX
88307	TC	A	Tissue exam by pathologist	0.00	0.81	0.81	0.81	0.81	0.05	0.86	0.86	0.86	0.86	XXX
88309		A	Tissue exam by pathologist	2.28	2.02	2.05	2.02	2.05	0.11	4.41	4.44	4.41	4.44	XXX
88309	26	A	Tissue exam by pathologist	2.28	1.01	1.04	1.01	1.04	0.06	3.35	3.38	3.35	3.38	XXX
88309	TC	A	Tissue exam by pathologist	0.00	1.02	1.02	1.02	1.02	0.05	1.07	1.07	1.07	1.07	XXX
88311		A	Decalcify tissue	0.24	0.22	0.23	0.22	0.23	0.01	0.47	0.48	0.47	0.48	XXX
88311	26	A	Decalcify tissue	0.24	0.11	0.12	0.11	0.12	0.01	0.36	0.37	0.36	0.37	XXX
88311	TC	A	Decalcify tissue	0.00	0.11	0.11	0.11	0.11	0.00	0.11	0.11	0.11	0.11	XXX
88312		A	Special stains	0.54	0.37	0.33	0.37	0.33	0.01	0.92	0.88	0.92	0.88	XXX
88312	26	A	Special stains	0.54	0.24	0.20	0.24	0.20	0.01	0.79	0.75	0.79	0.75	XXX
88312	TC	A	Special stains	0.00	0.13	0.13	0.13	0.13	0.00	0.13	0.13	0.13	0.13	XXX
88313		A	Special stains	0.24	0.22	0.23	0.22	0.23	0.01	0.47	0.48	0.47	0.48	XXX
88313	26	A	Special stains	0.24	0.11	0.12	0.11	0.12	0.01	0.36	0.37	0.36	0.37	XXX
88313	TC	A	Special stains	0.00	0.11	0.11	0.11	0.11	0.00	0.11	0.11	0.11	0.11	XXX
88314		A	Histochemical stain	0.45	0.49	0.58	0.49	0.58	0.03	0.97	1.06	0.97	1.06	XXX
88314	26	A	Histochemical stain	0.45	0.20	0.29	0.20	0.29	0.01	0.66	0.75	0.66	0.75	XXX
88314	TC	A	Histochemical stain	0.00	0.29	0.29	0.29	0.29	0.02	0.31	0.31	0.31	0.31	XXX
88318		A	Chemical histochemistry	0.42	0.32	0.29	0.32	0.29	0.01	0.75	0.72	0.75	0.72	XXX
88318	26	A	Chemical histochemistry	0.42	0.19	0.16	0.19	0.16	0.01	0.62	0.59	0.62	0.59	XXX
88318	TC	A	Chemical histochemistry	0.00	0.13	0.13	0.13	0.13	0.00	0.13	0.13	0.13	0.13	XXX
88319		A	Enzyme histochemistry	0.53	0.48	0.51	0.48	0.51	0.03	1.04	1.07	1.04	1.07	XXX
88319	26	A	Enzyme histochemistry	0.53	0.23	0.26	0.23	0.26	0.01	0.77	0.80	0.77	0.80	XXX
88319	TC	A	Enzyme histochemistry	0.00	0.25	0.25	0.25	0.25	0.02	0.27	0.27	0.27	0.27	XXX
88321		A	Microslide consultation	1.30	1.02	0.73	0.57	0.51	0.04	2.36	2.07	1.91	1.85	XXX
88323		A	Microslide consultation	1.35	0.97	0.88	0.97	0.88	0.06	2.38	2.29	2.38	2.29	XXX
88323	26	A	Microslide consultation	1.35	0.60	0.51	0.60	0.51	0.04	1.99	1.90	1.99	1.90	XXX
88323	TC	A	Microslide consultation	0.00	0.36	0.36	0.36	0.36	0.02	0.38	0.38	0.38	0.38	XXX
88325		A	Comprehensive review of data	2.22	1.30	0.91	0.97	0.74	0.07	3.59	3.20	3.26	3.03	XXX
88329		A	Pathology consult in surgery	0.67	0.40	0.40	0.30	0.35	0.02	1.09	1.09	0.99	1.04	XXX
88331		A	Pathology consult in surgery	1.19	1.12	1.16	1.12	1.16	0.06	2.37	2.41	2.37	2.41	XXX
88331	26	A	Pathology consult in surgery	1.19	0.53	0.57	0.53	0.57	0.03	1.75	1.79	1.75	1.79	XXX
88331	TC	A	Pathology consult in surgery	0.00	0.59	0.59	0.59	0.59	0.03	0.62	0.62	0.62	0.62	XXX
88332		A	Pathology consult in surgery	0.59	0.55	0.58	0.55	0.58	0.04	1.18	1.21	1.18	1.21	XXX
88332	26	A	Pathology consult in surgery	0.59	0.26	0.29	0.26	0.29	0.02	0.87	0.90	0.87	0.90	XXX
88332	TC	A	Pathology consult in surgery	0.00	0.29	0.29	0.29	0.29	0.02	0.31	0.31	0.31	0.31	XXX
88342		A	Immunocytochemistry	0.85	0.72	0.71	0.72	0.71	0.04	1.61	1.60	1.61	1.60	XXX
88342	26	A	Immunocytochemistry	0.85	0.38	0.37	0.38	0.37	0.02	1.25	1.24	1.25	1.24	XXX
88342	TC	A	Immunocytochemistry	0.00	0.34	0.34	0.34	0.34	0.02	0.36	0.36	0.36	0.36	XXX
88346		A	Immunofluorescent study	0.86	0.67	0.65	0.67	0.65	0.04	1.57	1.55	1.57	1.55	XXX
88346	26	A	Immunofluorescent study	0.86	0.38	0.36	0.38	0.36	0.02	1.26	1.24	1.26	1.24	XXX
88346	TC	A	Immunofluorescent study	0.00	0.29	0.29	0.29	0.29	0.02	0.31	0.31	0.31	0.31	XXX
88347		A	Immunofluorescent study	0.86	0.65	0.55	0.65	0.55	0.04	1.55	1.45	1.55	1.45	XXX
88347	26	A	Immunofluorescent study	0.86	0.36	0.26	0.36	0.26	0.02	1.24	1.14	1.24	1.14	XXX
88347	TC	A	Immunofluorescent study	0.00	0.29	0.29	0.29	0.29	0.02	0.31	0.31	0.31	0.31	XXX
88348		A	Electron microscopy	1.51	1.86	2.17	1.86	2.17	0.10	3.47	3.78	3.47	3.78	XXX
88348	26	A	Electron microscopy	1.51	0.66	0.98	0.66	0.98	0.04	2.21	2.53	2.21	2.53	XXX
88348	TC	A	Electron microscopy	0.00	1.20	1.19	1.20	1.19	0.06	1.26	1.25	1.26	1.25	XXX
88349		A	Scanning electron microscopy	0.76	1.17	1.43	1.17	1.43	0.07	2.00	2.26	2.00	2.26	XXX
88349	26	A	Scanning electron microscopy	0.76	0.34	0.60	0.34	0.60	0.02	1.12	1.38	1.12	1.38	XXX
88349	TC	A	Scanning electron microscopy	0.00	0.83	0.83	0.83	0.83	0.05	0.88	0.88	0.88	0.88	XXX
88355		A	Analysis, skeletal muscle	1.85	1.67	1.78	1.67	1.78	0.11	3.63	3.74	3.63	3.74	XXX
88355	26	A	Analysis, skeletal muscle	1.85	0.78	0.89	0.78	0.89	0.06	2.69	2.80	2.69	2.80	XXX
88355	TC	A	Analysis, skeletal muscle	0.00	0.90	0.90	0.90	0.90	0.05	0.95	0.95	0.95	0.95	XXX
88356		A	Analysis, nerve	3.02	2.63	2.76	2.63	2.76	0.16	5.81	5.94	5.81	5.94	XXX
88356	26	A	Analysis, nerve	3.02	1.24	1.38	1.24	1.38	0.10	4.36	4.50	4.36	4.50	XXX
88356	TC	A	Analysis, nerve	0.00	1.39	1.39	1.39	1.39	0.06	1.45	1.45	1.45	1.45	XXX
88358		A	Analysis, tumor	2.82	2.52	2.52	2.52	2.52	0.14	5.48	5.48	5.48	5.48	XXX
88358	26	A	Analysis, tumor	2.82	1.25	1.26	1.25	1.26	0.08	4.15	4.16	4.15	4.16	XXX
88358	TC	A	Analysis, tumor	0.00	1.27	1.27	1.27	1.27	0.06	1.33	1.33	1.33	1.33	XXX
88362		A	Nerve teasing preparations	2.17	1.98	2.06	1.98	2.06	0.12	4.27	4.35	4.27	4.35	XXX
88362	26	A	Nerve teasing preparations	2.17	0.91	1.00	0.91	1.00	0.07	3.15	3.24	3.15	3.24	XXX
88362	TC	A	Nerve teasing preparations	0.00	1.07	1.06	1.07	1.06	0.05	1.12	1.11	1.12	1.11	XXX
88365		A	Tissue hybridization	0.93	0.81	0.81	0.81	0.81	0.05	1.79	1.79	1.79	1.79	XXX
88365	26	A	Tissue hybridization	0.93	0.41	0.41	0.41	0.41	0.03	1.37	1.37	1.37	1.37	XXX
88365	TC	A	Tissue hybridization	0.00	0.40	0.40	0.40	0.40	0.02	0.42	0.42	0.42	0.42	XXX
88371		X	Protein, western blot tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
88371	26	A	Protein, western blot tissue	0.37	0.12	0.17	0.12	0.17	0.01	0.50	0.55	0.50	0.55	XXX
88372		X	Protein analysis w/probe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88372	26	A	Protein analysis w/probe	0.37	0.14	0.18	0.14	0.18	0.01	0.52	0.56	0.52	0.56	XXX
88399		C	Surgical pathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88399	26	C	Surgical pathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
88399	TC	C	Surgical pathology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89050		X	Body fluid cell count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89051		X	Body fluid cell count	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89060		X	Exam,synovial fluid crystals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89060	26	A	Exam,synovial fluid crystals	0.37	0.17	0.20	0.16	0.19	0.01	0.55	0.58	0.54	0.57	XXX
89100		A	Sample intestinal contents	0.60	1.14	0.80	0.21	0.34	0.02	1.76	1.42	0.83	0.96	XXX
89105		A	Sample intestinal contents	0.50	3.18	1.80	0.17	0.30	0.02	3.70	2.32	0.69	0.82	XXX
89125		X	Specimen fat stain	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89130		A	Sample stomach contents	0.45	1.57	1.01	0.14	0.29	0.02	2.04	1.48	0.61	0.76	XXX
89132		A	Sample stomach contents	0.19	1.54	0.88	0.07	0.14	0.01	1.74	1.08	0.27	0.34	XXX
89135		A	Sample stomach contents	0.79	0.80	0.72	0.25	0.44	0.03	1.62	1.54	1.07	1.26	XXX
89136		A	Sample stomach contents	0.21	1.68	0.96	0.08	0.16	0.01	1.90	1.18	0.30	0.38	XXX
89140		A	Sample stomach contents	0.94	1.42	1.15	0.33	0.61	0.04	2.40	2.13	1.31	1.59	XXX
89141		A	Sample stomach contents	0.85	2.06	1.43	0.30	0.55	0.03	2.94	2.31	1.18	1.43	XXX
89160		X	Exam feces for meat fibers	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89190		X	Nasal smear for eosinophils	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89250		X	Fertilization of oocyte	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89251		X	Culture oocyte w/embryos	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89252		X	Assist oocyte fertilization	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89253		X	Embryo hatching	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89254		X	Oocyte identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89255		X	Prepare embryo for transfer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89256		X	Prepare cryopreserved embryo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89257		X	Sperm identification	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89258		X	Cryopreservation, embryo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89259		X	Cryopreservation, sperm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89260		X	Sperm isolation, simple	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89261		X	Sperm isolation, complex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89264		X	Sperm tissue identify	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89300		X	Semen analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89310		X	Semen analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89320		X	Semen analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89325		X	Sperm antibody test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89329		X	Sperm evaluation test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89330		X	Evaluation, cervical mucus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89350		A	Sputum specimen collection	0.00	0.43	0.43	0.43	0.43	0.02	0.45	0.45	0.45	0.45	XXX
89355		X	Exam feces for starch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89360		A	Collect sweat for test	0.00	0.47	0.47	0.47	0.47	0.02	0.49	0.49	0.49	0.49	XXX
89365		X	Water load test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89399		C	Pathology lab procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89399	26	C	Pathology lab procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
89399	TC	C	Pathology lab procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90281		I	Human ig, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90283		I	Human ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90287		I	Botulinum antitoxin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90288		I	Botulism ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90291		I	Cmv ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90296		E	Diphtheria antitoxin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90371		X	Hepb ig, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90375		E	Rabies ig, im/sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90376		E	Rabies ig, heat treated	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90379		E	Rsv ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90384		I	Rh ig, full-dose, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90385		E	Rh ig, minidose, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90386		I	Rh ig, iv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90389		E	Tetanus ig, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90393		E	Vaccina ig, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90396		E	Varicella-zoster ig, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90399		I	Immune globulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90471		X	Immunization admin, single	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90472		X	Immunization admin, 2+	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90476		E	Adenovirus vaccine, type 4	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90477		E	Adenovirus vaccine, type 7	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90581		E	Anthrax vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90585		E	Bcg vaccine, percut	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90586		E	Bcg vaccine, intravesical	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90592		E	Cholera vaccine, oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90632		E	Hepa vaccine adult im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90633		E	Hepa vaccine ped/adol-2 dose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90634		E	Hepa vaccine ped/adol-3 dose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90636		E	Hepa/hepb vaccine adult im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90645		E	Hib vaccine, hboc, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90646		E	Hib vaccine, prp-d, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90647		E	Hib vaccine, prp-omp, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90648		E	Hib vaccine, prp-t, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90657		X	Flu vaccine, 6-35 mo, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90658		X	Flu vaccine, 3 yrs, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90659		X	Flu vaccine, whole, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90660		X	Flu vaccine, nasal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
90665		E	Lyme disease vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90669		X	Pneumococcal vaccine, ped	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90675		E	Rabies vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90676		E	Rabies vaccine, id	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90680		E	Rotovirus vaccine, oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90690		E	Typhoid vaccine, oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90691		E	Typhoid vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90692		E	Typhoid vaccine, h-p, sc/id	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90693		E	Typhoid vaccine, akd, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90700		E	Dtap vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90701		E	Dtp vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90702		E	Dt vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90703		E	Tetanus vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90704		E	Mumps vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90705		E	Measles vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90706		E	Rubella vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90707		E	Mmr vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90708		E	Measles-rubella vaccine sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90709		E	Rubella & mumps vaccine sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90710		E	Mmrv vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90712		E	Oral poliovirus vaccine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90713		E	Poliovirus, ipv, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90716		E	Chicken pox vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90717		E	Yellow fever vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90718		E	Td vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90719		E	Diphtheria vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90720		E	Dtp/hib vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90721		E	Dtap/hib vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90725		E	Cholera vaccine, injectable	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90727		E	Plague vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90732		X	Pneumococcal vaccine, adult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90733		E	Meningococcal vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90735		E	Encephalitis vaccine, sc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90744		X	Hepb vaccine, ped/adol, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90745		X	Hepb vaccine, adol/risk, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90746		X	Hepb vaccine, adult, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90747		X	Hepb vaccine, ill pat, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90748		E	Hepb/hib vaccine, im	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90749		E	Vaccine toxoid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90780		A	IV infusion therapy, 1 hour	0.00	1.17	1.16	1.17	1.16	0.06	1.23	1.22	1.23	1.22	XXX
90781		A	IV infusion, additional hour	0.00	0.58	0.58	0.58	0.58	0.03	0.61	0.61	0.61	0.61	ZZZ
90782		T	Injection (SC)/(IM)	0.00	0.11	0.11	0.11	0.11	0.01	0.12	0.12	0.12	0.12	XXX
90783		T	Injection (IA)	0.00	0.43	0.43	0.43	0.43	0.02	0.45	0.45	0.45	0.45	XXX
90784		T	Injection (IV)	0.00	0.49	0.49	0.49	0.49	0.03	0.52	0.52	0.52	0.52	XXX
90788		T	Injection of antibiotic	0.00	0.12	0.12	0.12	0.12	0.01	0.13	0.13	0.13	0.13	XXX
90799		C	Therapeutic/diag injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90801		A	Psy dx interview	2.80	1.13	0.93	0.91	0.82	0.08	4.01	3.81	3.79	3.70	XXX
90802		A	Intac psy dx interview	3.01	1.24	0.83	0.99	0.70	0.08	4.33	3.92	4.08	3.79	XXX
90804		A	Psytx, office (20-30)	1.21	0.53	0.46	0.40	0.39	0.03	1.77	1.70	1.64	1.63	XXX
90805		A	Psytx, office (20-30) w/e&m	1.37	0.56	0.47	0.44	0.41	0.04	1.97	1.88	1.85	1.82	XXX
90806		A	Psytx, office (45-50)	1.86	0.79	0.69	0.84	0.62	0.05	2.70	2.60	2.55	2.53	XXX
90807		A	Psytx, office (45-50) w/e&m	2.02	0.76	0.68	0.85	0.62	0.05	2.83	2.75	2.72	2.69	XXX
90808		A	Psytx, office (75-80)	2.79	1.14	1.14	0.95	1.05	0.08	4.01	4.01	3.82	3.92	XXX
90809		A	Psytx, office (75-80) w/e&m	2.95	1.08	1.11	0.95	1.05	0.08	4.11	4.14	3.98	4.08	XXX
90810		A	Intac psytx, office (20-30)	1.32	0.56	0.60	0.44	0.54	0.03	1.91	1.95	1.79	1.89	XXX
90811		A	Intac psytx, off 20-30 w/e&m	1.48	0.58	0.61	0.46	0.55	0.04	2.10	2.13	1.98	2.07	XXX
90812		A	Intac psytx, office (45-50)	1.97	0.87	0.76	0.85	0.65	0.05	2.89	2.78	2.67	2.67	XXX
90813		A	Intac psytx, off 45-50 w/e&m	2.13	0.81	0.73	0.86	0.65	0.06	3.00	2.92	2.85	2.84	XXX
90814		A	Intac psytx, office (75-80)	2.90	1.22	0.93	1.05	0.85	0.08	4.20	3.91	4.03	3.83	XXX
90815		A	Intac psytx, off 75-80 w/e&m	3.06	1.16	0.90	0.94	0.79	0.08	4.30	4.04	4.08	3.93	XXX
90816		A	Psytx, hosp (20-30)	1.25	0.60	0.49	0.43	0.41	0.03	1.88	1.77	1.71	1.69	XXX
90817		A	Psytx, hosp (20-30) w/e&m	1.41	0.60	0.49	0.43	0.41	0.04	2.05	1.94	1.88	1.86	XXX
90818		A	Psytx, hosp (45-50)	1.89	0.83	0.71	0.67	0.63	0.05	2.77	2.65	2.61	2.57	XXX
90819		A	Psytx, hosp (45-50) w/e&m	2.05	0.83	0.71	0.63	0.61	0.05	2.93	2.81	2.73	2.71	XXX
90821		A	Psytx, hosp (75-80)	2.83	1.18	1.16	0.96	1.05	0.08	4.09	4.07	3.87	3.96	XXX
90822		A	Psytx, hosp (75-80) w/e&m	2.99	1.13	1.14	0.92	1.03	0.08	4.20	4.21	3.99	4.10	XXX
90823		A	Intac psytx, hosp (20-30)	1.36	0.70	0.67	0.45	0.55	0.04	2.10	2.07	1.85	1.95	XXX
90824		A	Intac psytx, hsp 20-30 w/e&m	1.52	0.67	0.66	0.46	0.55	0.04	2.23	2.22	2.02	2.11	XXX
90826		A	Intac psytx, hosp (45-50)	2.01	0.95	0.80	0.68	0.66	0.05	3.01	2.86	2.74	2.72	XXX
90827		A	Intac psytx, hsp 45-50 w/e&m	2.16	0.88	0.76	0.66	0.65	0.06	3.10	2.98	2.88	2.87	XXX
90828		A	Intac psytx, hosp (75-80)	2.94	1.30	0.97	0.98	0.81	0.08	4.32	3.99	4.00	3.83	XXX
90829		A	Intac psytx, hsp 75-80 w/e&m	3.10	1.18	0.91	0.94	0.79	0.08	4.36	4.09	4.12	3.97	XXX
90845		A	Psychoanalysis	1.79	0.68	0.56	0.54	0.49	0.05	2.52	2.40	2.38	2.33	XXX
90846		R	Family psytx w/o patient	1.83	0.77	0.72	0.61	0.64	0.05	2.65	2.60	2.49	2.52	XXX
90847		R	Family psytx w/patient	2.21	0.86	0.75	0.73	0.68	0.06	3.13	3.02	3.00	2.95	XXX
90849		R	Multiple family group psytx	0.59	0.37	0.33	0.20	0.24	0.02	0.98	0.94	0.81	0.85	XXX
90853		A	Group psychotherapy	0.59	0.35	0.32	0.20	0.24	0.02	0.96	0.93	0.81	0.85	XXX
90857		A	Intac group psytx	0.63	0.36	0.26	0.22	0.19	0.02	1.01	0.91	0.87	0.84	XXX
90862		A	Medication management	0.95	0.42	0.41	0.29	0.35	0.03	1.40	1.39	1.27	1.33	XXX
90865		A	Narcosynthesis	2.84	4.63	2.59	0.87	0.71	0.10	7.57	5.53	3.81	3.65	XXX
90870		A	Electroconvulsive therapy	1.98	0.70	0.65	0.57	0.59	0.05	2.63	2.58	2.50	2.52	000
90871		A	Electroconvulsive therapy	2.72	NA	NA	0.83	0.87	0.07	NA	NA	3.62	3.66	000
90875		III	Psychophysiological therapy	+1.20	0.80	0.80	0.46	0.46	0.03	2.03	2.03	1.69	1.69	XXX
90876		N	Psychophysiological therapy	+1.90	1.06	1.06	0.73	0.73	0.05	3.01	3.01	2.68	2.68	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
90880		A	Hypnotherapy	2.19	0.90	0.80	0.69	0.69	0.06	3.15	3.05	2.94	2.94	XXX
90882		N	Environmental manipulation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90885		B	Psy evaluation of records	0.97	0.37	0.36	0.37	0.36	0.03	1.37	1.36	1.37	1.36	XXX
90887		B	Consultation with family	1.48	0.76	0.56	0.57	0.47	0.04	2.28	2.08	2.09	1.99	XXX
90889		III	Preparation of report	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90899		C	Psychiatric service/therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90901		A	Biofeedback, any method	0.41	0.86	0.96	0.44	0.75	0.02	1.29	1.39	0.87	1.18	000
90911		A	Biofeedback peri/uro/rectal	0.89	0.72	0.98	0.36	0.80	0.05	1.66	1.92	1.30	1.74	000
90918		A	ESRD related services, month	11.18	5.02	3.70	4.10	3.24	0.51	16.71	15.39	15.79	14.93	XXX
90919		A	ESRD related services, month	8.54	4.02	3.20	3.17	2.78	0.42	12.98	12.16	12.13	11.74	XXX
90920		A	ESRD related services, month	7.27	3.43	2.91	2.67	2.53	0.40	11.10	10.58	10.34	10.20	XXX
90921		A	ESRD related services, month	4.47	2.42	2.40	1.71	2.05	0.28	7.17	7.15	6.46	6.80	XXX
90922		A	ESRD related services, day	0.37	0.14	0.11	0.12	0.10	0.02	0.53	0.50	0.51	0.49	XXX
90923		A	Esrd related services, day	0.28	0.13	0.11	0.10	0.09	0.01	0.42	0.40	0.39	0.38	XXX
90924		A	Esrd related services, day	0.24	0.11	0.10	0.09	0.09	0.01	0.36	0.35	0.34	0.34	XXX
90925		A	Esrd related services, day	0.15	0.08	0.08	0.06	0.07	0.01	0.24	0.24	0.22	0.23	XXX
90935		A	Hemodialysis, one evaluation	1.22	NA	NA	0.38	0.92	0.08	NA	NA	1.68	2.22	000
90937		A	Hemodialysis, repeated eval.	2.11	NA	NA	0.63	1.59	0.12	NA	NA	2.88	3.82	000
90945		A	Dialysis, one evaluation	1.28	NA	NA	0.40	0.89	0.08	NA	NA	1.76	2.25	000
90947		A	Dialysis, repeated eval.	2.16	NA	NA	0.67	1.47	0.13	NA	NA	2.96	3.76	000
90989		X	Dialysis training/complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90993		X	Dialysis training/incomplete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90997		A	Hemoperfusion	1.84	NA	NA	0.59	1.39	0.10	NA	NA	2.53	3.33	000
90999		C	Dialysis procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
91000		A	Esophageal intubation	0.73	0.33	0.53	0.33	0.53	0.03	1.09	1.29	1.09	1.29	000
91000	26	A	Esophageal intubation	0.73	0.25	0.45	0.25	0.45	0.02	1.00	1.20	1.00	1.20	000
91000	TC	A	Esophageal intubation	0.00	0.08	0.08	0.08	0.08	0.01	0.09	0.09	0.09	0.09	000
91010		A	Esophagus motility study	1.25	1.29	1.82	1.29	1.82	0.09	2.63	3.16	2.63	3.16	000
91010	26	A	Esophagus motility study	1.25	0.43	0.97	0.43	0.97	0.04	1.72	2.26	1.72	2.26	000
91010	TC	A	Esophagus motility study	0.00	0.86	0.86	0.86	0.86	0.05	0.91	0.91	0.91	0.91	000
91011		A	Esophagus motility study	1.50	1.60	2.23	1.60	2.23	0.10	3.20	3.83	3.20	3.83	000
91011	26	A	Esophagus motility study	1.50	0.52	1.16	0.52	1.16	0.05	2.07	2.71	2.07	2.71	000
91011	TC	A	Esophagus motility study	0.00	1.08	1.07	1.08	1.07	0.05	1.13	1.12	1.13	1.12	000
91012		A	Esophagus motility study	1.46	1.72	2.33	1.72	2.33	0.12	3.30	3.91	3.30	3.91	000
91012	26	A	Esophagus motility study	1.46	0.51	1.13	0.51	1.13	0.06	2.03	2.65	2.03	2.65	000
91012	TC	A	Esophagus motility study	0.00	1.21	1.20	1.21	1.20	0.06	1.27	1.26	1.27	1.26	000
91020		A	Gastric motility	1.44	1.29	1.90	1.29	1.90	0.11	2.84	3.45	2.84	3.45	000
91020	26	A	Gastric motility	1.44	0.49	1.10	0.49	1.10	0.06	1.99	2.60	1.99	2.60	000
91020	TC	A	Gastric motility	0.00	0.80	0.80	0.80	0.80	0.05	0.85	0.85	0.85	0.85	000
91030		A	Acid perfusion of esophagus	0.91	0.55	0.58	0.55	0.58	0.05	1.51	1.54	1.51	1.54	000
91030	26	A	Acid perfusion of esophagus	0.91	0.32	0.35	0.32	0.35	0.03	1.26	1.29	1.26	1.29	000
91030	TC	A	Acid perfusion of esophagus	0.00	0.23	0.23	0.23	0.23	0.02	0.25	0.25	0.25	0.25	000
91032		A	Esophagus, acid reflux test	1.21	1.20	1.67	1.20	1.67	0.10	2.51	2.98	2.51	2.98	000
91032	26	A	Esophagus, acid reflux test	1.21	0.42	0.89	0.42	0.89	0.05	1.68	2.15	1.68	2.15	000
91032	TC	A	Esophagus, acid reflux test	0.00	0.77	0.77	0.77	0.77	0.05	0.82	0.82	0.82	0.82	000
91033		A	Prolonged acid reflux test	1.30	1.86	2.40	1.86	2.40	0.14	3.30	3.84	3.30	3.84	000
91033	26	A	Prolonged acid reflux test	1.30	0.45	1.00	0.45	1.00	0.05	1.80	2.35	1.80	2.35	000
91033	TC	A	Prolonged acid reflux test	0.00	1.41	1.40	1.41	1.40	0.09	1.50	1.49	1.50	1.49	000
91052		A	Gastric analysis test	0.79	0.63	0.76	0.63	0.76	0.05	1.47	1.60	1.47	1.60	000
91052	26	A	Gastric analysis test	0.79	0.27	0.41	0.27	0.41	0.03	1.09	1.23	1.09	1.23	000
91052	TC	A	Gastric analysis test	0.00	0.35	0.35	0.35	0.35	0.02	0.37	0.37	0.37	0.37	000
91055		A	Gastric intubation for smear	0.94	0.59	0.73	0.59	0.73	0.07	1.60	1.74	1.60	1.74	000
91055	26	A	Gastric intubation for smear	0.94	0.27	0.41	0.27	0.41	0.05	1.26	1.40	1.26	1.40	000
91055	TC	A	Gastric intubation for smear	0.00	0.32	0.32	0.32	0.32	0.02	0.34	0.34	0.34	0.34	000
91060		A	Gastric saline load test	0.45	0.36	0.57	0.36	0.57	0.04	0.85	1.06	0.85	1.06	000
91060	26	A	Gastric saline load test	0.45	0.13	0.34	0.13	0.34	0.02	0.60	0.81	0.60	0.81	000
91060	TC	A	Gastric saline load test	0.00	0.23	0.23	0.23	0.23	0.02	0.25	0.25	0.25	0.25	000
91065		A	Breath hydrogen test	0.20	0.44	0.53	0.44	0.53	0.03	0.67	0.76	0.67	0.76	000
91065	26	A	Breath hydrogen test	0.20	0.07	0.16	0.07	0.16	0.01	0.28	0.37	0.28	0.37	000
91065	TC	A	Breath hydrogen test	0.00	0.37	0.37	0.37	0.37	0.02	0.39	0.39	0.39	0.39	000
91100		A	Pass intestine bleeding tube	1.08	NA	NA	0.28	0.45	0.07	NA	NA	1.43	1.60	000
91105		A	Gastric intubation treatment	0.37	NA	NA	0.09	0.27	0.02	NA	NA	0.48	0.66	000
91122		A	Anal pressure record	1.77	1.36	1.62	1.36	1.62	0.19	3.32	3.58	3.32	3.58	000
91122	26	A	Anal pressure record	1.77	0.63	0.89	0.63	0.89	0.12	2.52	2.78	2.52	2.78	000
91122	TC	A	Anal pressure record	0.00	0.73	0.73	0.73	0.73	0.07	0.80	0.80	0.80	0.80	000
91299		C	Gastroenterology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
91299	26	C	Gastroenterology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
91299	TC	C	Gastroenterology procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92002		A	Eye exam, new patient	0.88	1.06	0.80	0.35	0.31	0.03	1.97	1.71	1.26	1.22	XXX
92004		A	Eye exam, new patient	1.67	1.67	1.15	0.69	0.50	0.06	3.40	2.88	2.42	2.23	XXX
92012		A	Eye exam established pt	0.67	1.43	0.96	0.31	0.28	0.02	2.12	1.65	1.00	0.97	XXX
92014		A	Eye exam & treatment	1.10	1.33	0.96	0.49	0.40	0.04	2.47	2.10	1.63	1.54	XXX
92015		N	Refraction	+0.38	1.27	0.81	0.15	0.25	0.01	1.66	1.20	0.54	0.64	XXX
92018		A	New eye exam & treatment	1.51	NA	NA	0.71	0.61	0.05	NA	NA	2.27	2.17	XXX
92019		A	Eye exam & treatment	1.31	NA	NA	0.56	0.41	0.05	NA	NA	1.92	1.77	XXX
92020		A	Special eye evaluation	0.37	0.55	0.43	0.18	0.17	0.01	0.93	0.81	0.56	0.55	XXX
92060		A	Special eye evaluation	0.69	0.51	0.47	0.51	0.47	0.03	1.23	1.19	1.23	1.19	XXX
92060	26	A	Special eye evaluation	0.69	0.30	0.27	0.30	0.27	0.02	1.01	0.98	1.01	0.98	XXX
92060	TC	A	Special eye evaluation	0.00	0.20	0.20	0.20	0.20	0.01	0.21	0.21	0.21	0.21	XXX
92065		A	Orthoptic/pleoptic training	0.37	0.36	0.38	0.36	0.38	0.01	0.74	0.76	0.74	0.76	XXX
92065	26	A	Orthoptic/pleoptic training	0.37	0.19	0.21	0.19	0.21	0.01	0.57	0.59	0.57	0.59	XXX
92065	TC	A	Orthoptic/pleoptic training	0.00	0.17	0.17	0.17	0.17	0.00	0.17	0.17	0.17	0.17	XXX
92070		A	Fitting of contact lens	0.70	0.95	1.13	0.35	0.50	0.02	1.67	1.85	1.07	1.22	XXX
92081		A	Visual field examination(s)	0.36	0.32	0.33	0.32	0.33	0.01	0.69	0.70	0.69	0.70	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
92081	26	A	Visual field examination(s)	0.36	0.16	0.17	0.16	0.17	0.01	0.53	0.54	0.53	0.54	XXX
92081	TC	A	Visual field examination(s)	0.00	0.16	0.16	0.16	0.16	0.00	0.16	0.16	0.16	0.16	XXX
92082		A	Visual field examination(s)	0.44	0.42	0.48	0.42	0.48	0.02	0.88	0.94	0.88	0.94	XXX
92082	26	A	Visual field examination(s)	0.44	0.21	0.27	0.21	0.27	0.01	0.66	0.72	0.66	0.72	XXX
92082	TC	A	Visual field examination(s)	0.00	0.21	0.21	0.21	0.21	0.01	0.22	0.22	0.22	0.22	XXX
92083		A	Visual field examination(s)	0.50	0.56	0.73	0.56	0.73	0.03	1.09	1.26	1.09	1.26	XXX
92083	26	A	Visual field examination(s)	0.50	0.25	0.43	0.25	0.43	0.02	0.77	0.95	0.77	0.95	XXX
92083	TC	A	Visual field examination(s)	0.00	0.31	0.31	0.31	0.31	0.01	0.32	0.32	0.32	0.32	XXX
92100		A	Serial tonometry exam(s)	0.92	0.74	0.51	0.33	0.24	0.03	1.69	1.46	1.28	1.19	XXX
92120		A	Tonography & eye evaluation	0.81	0.75	0.55	0.35	0.26	0.03	1.59	1.39	1.19	1.10	XXX
92130		A	Water provocation tonography	0.81	0.85	0.69	0.41	0.34	0.03	1.69	1.53	1.25	1.18	XXX
92135		A	Opthalmic dx imaging	0.35	0.48	0.48	0.48	0.48	0.02	0.85	0.85	0.85	0.85	XXX
92135	26	A	Opthalmic dx imaging	0.35	0.17	0.17	0.17	0.17	0.01	0.53	0.53	0.53	0.53	XXX
92135	TC	A	Opthalmic dx imaging	0.00	0.31	0.31	0.31	0.31	0.01	0.32	0.32	0.32	0.32	XXX
92140		A	Glaucoma provocative tests	0.50	0.86	0.60	0.24	0.21	0.02	1.38	1.12	0.76	0.73	XXX
92225		A	Special eye exam, initial	0.38	1.12	0.81	0.16	0.21	0.01	1.51	1.20	0.55	0.60	XXX
92226		A	Special eye exam, subsequent	0.33	1.18	0.81	0.15	0.19	0.01	1.52	1.15	0.49	0.53	XXX
92230		A	Eye exam with photos	0.00	2.13	1.44	0.21	0.30	0.02	2.75	2.06	0.83	0.92	XXX
92235		A	Eye exam with photos	0.81	1.49	1.60	1.49	1.60	0.08	2.38	2.49	2.38	2.49	XXX
92235	26	A	Eye exam with photos	0.81	0.41	0.53	0.41	0.53	0.03	1.25	1.37	1.25	1.37	XXX
92235	TC	A	Eye exam with photos	0.00	1.09	1.08	1.09	1.08	0.05	1.14	1.13	1.14	1.13	XXX
92240		A	Icg angiography	1.10	1.64	1.68	1.64	1.68	0.09	2.83	2.87	2.83	2.87	XXX
92240	26	A	Icg angiography	1.10	0.56	0.60	0.56	0.60	0.04	1.70	1.74	1.70	1.74	XXX
92240	TC	A	Icg angiography	0.00	1.09	1.08	1.09	1.08	0.05	1.14	1.13	1.14	1.13	XXX
92250		A	Eye exam with photos	0.44	0.41	0.43	0.41	0.43	0.02	0.87	0.89	0.87	0.89	XXX
92250	26	A	Eye exam with photos	0.44	0.22	0.25	0.22	0.25	0.01	0.67	0.70	0.67	0.70	XXX
92250	TC	A	Eye exam with photos	0.00	0.19	0.19	0.19	0.19	0.01	0.20	0.20	0.20	0.20	XXX
92260		A	Ophthalmoscopy/dynamometry	0.20	0.19	0.39	0.08	0.19	0.01	0.40	0.60	0.29	0.40	XXX
92265		A	Eye muscle evaluation	0.81	0.50	0.41	0.50	0.41	0.05	1.36	1.27	1.36	1.27	XXX
92265	26	A	Eye muscle evaluation	0.81	0.25	0.17	0.25	0.17	0.03	1.09	1.01	1.09	1.01	XXX
92265	TC	A	Eye muscle evaluation	0.00	0.24	0.24	0.24	0.24	0.02	0.26	0.26	0.26	0.26	XXX
92270		A	Electro-oculography	0.81	0.65	0.69	0.65	0.69	0.05	1.51	1.55	1.51	1.55	XXX
92270	26	A	Electro-oculography	0.81	0.32	0.36	0.32	0.36	0.03	1.16	1.20	1.16	1.20	XXX
92270	TC	A	Electro-oculography	0.00	0.33	0.33	0.33	0.33	0.02	0.35	0.35	0.35	0.35	XXX
92275		A	Electroretinography	1.01	0.87	0.92	0.87	0.92	0.06	1.94	1.99	1.94	1.99	XXX
92275	26	A	Electroretinography	1.01	0.44	0.50	0.44	0.50	0.04	1.49	1.55	1.49	1.55	XXX
92275	TC	A	Electroretinography	0.00	0.43	0.43	0.43	0.43	0.02	0.45	0.45	0.45	0.45	XXX
92283		A	Color vision examination	0.17	0.20	0.26	0.20	0.26	0.01	0.38	0.44	0.38	0.44	XXX
92283	26	A	Color vision examination	0.17	0.07	0.13	0.07	0.13	0.01	0.25	0.31	0.25	0.31	XXX
92283	TC	A	Color vision examination	0.00	0.13	0.13	0.13	0.13	0.00	0.13	0.13	0.13	0.13	XXX
92284		A	Dark adaptation eye exam	0.24	0.27	0.38	0.27	0.38	0.02	0.53	0.64	0.53	0.64	XXX
92284	26	A	Dark adaptation eye exam	0.24	0.08	0.19	0.08	0.19	0.01	0.33	0.44	0.33	0.44	XXX
92284	TC	A	Dark adaptation eye exam	0.00	0.19	0.19	0.19	0.19	0.01	0.20	0.20	0.20	0.20	XXX
92285		A	Eye photography	0.20	0.22	0.27	0.22	0.27	0.01	0.43	0.48	0.43	0.48	XXX
92285	26	A	Eye photography	0.20	0.09	0.15	0.09	0.15	0.01	0.30	0.36	0.30	0.36	XXX
92285	TC	A	Eye photography	0.00	0.12	0.12	0.12	0.12	0.00	0.12	0.12	0.12	0.12	XXX
92286		A	Internal eye photography	0.66	0.75	1.04	0.75	1.04	0.04	1.45	1.74	1.45	1.74	XXX
92286	26	A	Internal eye photography	0.66	0.32	0.61	0.32	0.61	0.02	1.00	1.29	1.00	1.29	XXX
92286	TC	A	Internal eye photography	0.00	0.43	0.43	0.43	0.43	0.02	0.45	0.45	0.45	0.45	XXX
92287		A	Internal eye photography	0.81	3.16	2.41	0.33	0.58	0.03	4.00	3.25	1.17	1.42	XXX
92310		I	Contact lens fitting	+1.17	0.93	1.17	0.45	0.93	0.05	2.15	2.39	1.67	2.15	XXX
92311		A	Contact lens fitting	1.08	0.99	0.99	0.40	0.45	0.04	2.11	2.11	1.52	1.57	XXX
92312		A	Contact lens fitting	1.26	0.96	1.11	0.58	0.61	0.05	2.27	2.42	1.89	1.92	XXX
92313		A	Contact lens fitting	0.92	0.88	0.92	0.27	0.38	0.03	1.83	1.87	1.22	1.33	XXX
92314		N	Prescription of contact lens	+0.69	0.75	0.79	0.26	0.54	0.03	1.47	1.51	0.98	1.26	XXX
92315		A	Prescription of contact lens	0.45	0.69	0.71	0.16	0.26	0.02	1.16	1.18	0.63	0.73	XXX
92316		A	Prescription of contact lens	0.68	0.77	0.90	0.35	0.44	0.02	1.47	1.60	1.05	1.14	XXX
92317		A	Prescription of contact lens	0.45	0.84	0.63	0.17	0.19	0.01	1.30	1.09	0.63	0.65	XXX
92325		A	Modification of contact lens	0.00	0.41	0.41	0.41	0.41	0.01	0.42	0.42	0.42	0.42	XXX
92326		A	Replacement of contact lens	0.00	1.71	1.70	1.71	1.70	0.05	1.76	1.75	1.76	1.75	XXX
92330		A	Fitting of artificial eye	1.08	0.85	1.04	0.38	0.50	0.04	1.97	2.16	1.50	1.62	XXX
92335		A	Fitting of artificial eye	0.45	0.79	1.47	0.15	0.61	0.02	1.26	1.94	0.62	1.08	XXX
92340		N	Fitting of spectacles	+0.37	0.55	0.51	0.14	0.29	0.01	0.93	0.89	0.52	0.67	XXX
92341		III	Fitting of spectacles	+0.47	0.59	0.59	0.18	0.37	0.02	1.08	1.08	0.67	0.86	XXX
92342		N	Fitting of spectacles	+0.53	0.61	0.63	0.20	0.42	0.02	1.16	1.18	0.75	0.97	XXX
92352		B	Special spectacles fitting	0.37	0.55	0.44	0.14	0.24	0.01	0.93	0.82	0.52	0.62	XXX
92353		III	Special spectacles fitting	0.50	0.60	0.52	0.19	0.31	0.02	1.12	1.04	0.71	0.83	XXX
92354		B	Special spectacles fitting	0.00	9.26	9.21	9.26	9.21	0.08	9.34	9.29	9.34	9.29	XXX
92355		B	Special spectacles fitting	0.00	4.53	4.51	4.53	4.51	0.01	4.54	4.52	4.54	4.52	XXX
92358		B	Eye prosthesis service	0.00	1.01	1.01	1.01	1.01	0.04	1.05	1.05	1.05	1.05	XXX
92370		N	Repair & adjust spectacles	+0.32	0.41	0.40	0.12	0.25	0.01	0.74	0.73	0.45	0.58	XXX
92371		III	Repair & adjust spectacles	0.00	0.64	0.64	0.64	0.64	0.02	0.66	0.66	0.66	0.66	XXX
92390		N	Supply of spectacles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92391		N	Supply of contact lenses	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92392		I	Supply of low vision aids	0.00	4.23	4.21	4.23	4.21	0.02	4.25	4.23	4.25	4.23	XXX
92393		I	Supply of artificial eye	0.00	13.12	13.05	13.12	13.05	0.52	13.64	13.57	13.64	13.57	XXX
92395		I	Supply of spectacles	0.00	1.44	1.43	1.44	1.43	0.08	1.52	1.51	1.52	1.51	XXX
92396		I	Supply of contact lenses	0.00	2.40	2.39	2.40	2.39	0.06	2.46	2.45	2.46	2.45	XXX
92499		C	Eye service or procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92499	26	C	Eye service or procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92499	TC	C	Eye service or procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92502		A	Ear and throat examination	1.51	NA	NA	1.21	1.22	0.05	NA	NA	2.77	2.78	000
92504		A	Ear microscopy examination	0.18	0.80	0.54	0.10	0.12	0.01	0.99	0.73	0.29	0.31	XXX
92506		A	Speech & hearing evaluation	0.86	1.14	0.85	0.39	0.34	0.03	2.03	1.74	1.28	1.23	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
92507		A	Speech/hearing therapy	0.52	1.11	0.74	0.22	0.20	0.02	1.65	1.28	0.76	0.74	XXX
92508		A	Speech/hearing therapy	0.26	0.85	0.53	0.16	0.13	0.01	1.12	0.80	0.43	0.40	XXX
92510		A	Rehab for ear implant	1.50	1.58	1.53	0.83	0.79	0.05	3.13	3.08	2.38	2.34	XXX
92511		A	Nasopharyngoscopy	0.84	0.98	0.95	0.44	0.45	0.03	1.85	1.82	1.31	1.32	000
92512		A	Nasal function studies	0.55	0.96	0.74	0.17	0.22	0.02	1.53	1.31	0.74	0.79	XXX
92516		A	Facial nerve function test	0.43	0.75	0.59	0.20	0.21	0.01	1.19	1.03	0.64	0.65	XXX
92520		A	Laryngeal function studies	0.76	0.56	0.57	0.38	0.34	0.03	1.35	1.36	1.17	1.13	XXX
92525		A	Oral function evaluation	1.50	1.45	1.28	0.69	0.63	0.05	3.00	2.83	2.24	2.18	XXX
92526		A	Oral function therapy	0.55	1.24	0.88	0.18	0.22	0.02	1.81	1.45	0.75	0.79	XXX
92531		B	Spontaneous nystagmus study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92532		B	Positional nystagmus study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92533		B	Caloric vestibular test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92534		B	Optokinetic nystagmus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92541		A	Spontaneous nystagmus test	0.40	0.43	0.58	0.43	0.58	0.03	0.86	1.01	0.86	1.01	XXX
92541	26	A	Spontaneous nystagmus test	0.40	0.19	0.34	0.19	0.34	0.01	0.60	0.75	0.60	0.75	XXX
92541	TC	A	Spontaneous nystagmus test	0.00	0.24	0.24	0.24	0.24	0.02	0.26	0.26	0.26	0.26	XXX
92542		A	Positional nystagmus test	0.33	0.43	0.55	0.43	0.55	0.03	0.79	0.91	0.79	0.91	XXX
92542	26	A	Positional nystagmus test	0.33	0.16	0.28	0.16	0.28	0.01	0.50	0.62	0.50	0.62	XXX
92542	TC	A	Positional nystagmus test	0.00	0.27	0.27	0.27	0.27	0.02	0.29	0.29	0.29	0.29	XXX
92543		A	Caloric vestibular test	0.10	0.16	0.20	0.16	0.20	0.01	0.27	0.31	0.27	0.31	XXX
92543	26	A	Caloric vestibular test	0.10	0.05	0.09	0.05	0.09	0.00	0.15	0.19	0.15	0.19	XXX
92543	TC	A	Caloric vestibular test	0.00	0.11	0.11	0.11	0.11	0.01	0.12	0.12	0.12	0.12	XXX
92544		A	Optokinetic nystagmus test	0.26	0.34	0.43	0.34	0.43	0.03	0.63	0.72	0.63	0.72	XXX
92544	26	A	Optokinetic nystagmus test	0.26	0.12	0.21	0.12	0.21	0.01	0.39	0.48	0.39	0.48	XXX
92544	TC	A	Optokinetic nystagmus test	0.00	0.22	0.22	0.22	0.22	0.02	0.24	0.24	0.24	0.24	XXX
92545		A	Oscillating tracking test	0.23	0.33	0.39	0.33	0.39	0.03	0.59	0.65	0.59	0.65	XXX
92545	26	A	Oscillating tracking test	0.23	0.11	0.17	0.11	0.17	0.01	0.35	0.41	0.35	0.41	XXX
92545	TC	A	Oscillating tracking test	0.00	0.22	0.22	0.22	0.22	0.02	0.24	0.24	0.24	0.24	XXX
92546		A	Sinusoidal rotational test	0.29	0.38	0.48	0.38	0.48	0.03	0.70	0.80	0.70	0.80	XXX
92546	26	A	Sinusoidal rotational test	0.29	0.13	0.23	0.13	0.23	0.01	0.43	0.53	0.43	0.53	XXX
92546	TC	A	Sinusoidal rotational test	0.00	0.25	0.25	0.25	0.25	0.02	0.27	0.27	0.27	0.27	XXX
92547		A	Supplemental electrical test	0.00	0.58	0.58	0.58	0.58	0.05	0.63	0.63	0.63	0.63	ZZZ
92548		A	Posturography	0.50	1.81	1.91	1.81	1.91	0.13	2.44	2.54	2.44	2.54	XXX
92548	26	A	Posturography	0.50	0.27	0.38	0.27	0.38	0.02	0.79	0.90	0.79	0.90	XXX
92548	TC	A	Posturography	0.00	1.54	1.53	1.54	1.53	0.11	1.65	1.64	1.65	1.64	XXX
92551		N	Pure tone hearing test, air	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92552		A	Pure tone audiometry, air	0.00	0.46	0.46	0.46	0.46	0.03	0.49	0.49	0.49	0.49	XXX
92553		A	Audiometry, air & bone	0.00	0.69	0.69	0.69	0.69	0.05	0.74	0.74	0.74	0.74	XXX
92555		A	Speech threshold audiometry	0.00	0.39	0.39	0.39	0.39	0.03	0.42	0.42	0.42	0.42	XXX
92556		A	Speech audiometry, complete	0.00	0.59	0.59	0.59	0.59	0.05	0.64	0.64	0.64	0.64	XXX
92557		A	Comprehensive hearing test	0.00	1.24	1.24	1.24	1.24	0.10	1.34	1.34	1.34	1.34	XXX
92559		N	Group audiometric testing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92560		III	Bekesy audiometry, screen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92561		A	Bekesy audiometry, diagnosis	0.00	0.74	0.74	0.74	0.74	0.05	0.79	0.79	0.79	0.79	XXX
92562		A	Loudness balance test	0.00	0.43	0.43	0.43	0.43	0.03	0.46	0.46	0.46	0.46	XXX
92563		A	Tone decay hearing test	0.00	0.39	0.39	0.39	0.39	0.03	0.42	0.42	0.42	0.42	XXX
92564		A	Sisi hearing test	0.00	0.49	0.49	0.49	0.49	0.04	0.53	0.53	0.53	0.53	XXX
92565		A	Stenger test, pure tone	0.00	0.41	0.41	0.41	0.31	0.03	0.44	0.44	0.44	0.34	XXX
92567		A	Tympanometry	0.00	0.55	0.55	0.55	0.55	0.05	0.60	0.60	0.60	0.60	XXX
92568		A	Acoustic reflex testing	0.00	0.39	0.39	0.39	0.39	0.03	0.42	0.42	0.42	0.42	XXX
92569		A	Acoustic reflex decay test	0.00	0.43	0.43	0.43	0.43	0.03	0.46	0.46	0.46	0.46	XXX
92571		A	Filtered speech hearing test	0.00	0.40	0.40	0.40	0.30	0.03	0.43	0.43	0.43	0.33	XXX
92572		A	Staggered spondaic word test	0.00	0.09	0.09	0.09	0.09	0.01	0.10	0.10	0.10	0.10	XXX
92573		A	Lombard test	0.00	0.36	0.36	0.36	0.36	0.03	0.39	0.39	0.39	0.39	XXX
92575		A	Sensorineural acuity test	0.00	0.32	0.32	0.32	0.24	0.02	0.34	0.34	0.34	0.26	XXX
92576		A	Synthetic sentence test	0.00	0.46	0.46	0.46	0.35	0.04	0.50	0.50	0.50	0.39	XXX
92577		A	Stenger test, speech	0.00	0.74	0.74	0.74	0.56	0.06	0.80	0.80	0.80	0.62	XXX
92579		A	Visual audiometry (vra)	0.00	0.75	0.75	0.75	0.75	0.05	0.80	0.80	0.80	0.80	XXX
92582		A	Conditioning play audiometry	0.00	0.74	0.75	0.74	0.56	0.05	0.79	0.80	0.79	0.61	XXX
92583		A	Select picture audiometry	0.00	0.94	0.93	0.94	0.93	0.07	1.01	1.00	1.01	1.00	XXX
92584		A	Electrocochleography	0.00	2.59	2.58	2.59	2.58	0.19	2.78	2.77	2.78	2.77	XXX
92585		A	Auditory evoked potential	0.50	2.14	2.84	2.14	2.84	0.15	2.79	3.49	2.79	3.49	XXX
92585	26	A	Auditory evoked potential	0.50	0.21	0.92	0.21	0.92	0.02	0.73	1.44	0.73	1.44	XXX
92585	TC	A	Auditory evoked potential	0.00	1.93	1.92	1.93	1.92	0.13	2.06	2.05	2.06	2.05	XXX
92587		A	Evoked auditory test	0.13	1.43	1.45	1.43	1.45	0.09	1.65	1.67	1.65	1.67	XXX
92587	26	A	Evoked auditory test	0.13	0.07	0.10	0.07	0.10	0.01	0.21	0.24	0.21	0.24	XXX
92587	TC	A	Evoked auditory test	0.00	1.36	1.36	1.36	1.36	0.09	1.45	1.45	1.45	1.45	XXX
92588		A	Evoked auditory test	0.36	1.71	1.78	1.71	1.78	0.12	2.19	2.26	2.19	2.26	XXX
92588	26	A	Evoked auditory test	0.36	0.17	0.25	0.17	0.25	0.01	0.54	0.62	0.54	0.62	XXX
92588	TC	A	Evoked auditory test	0.00	1.54	1.53	1.54	1.53	0.11	1.65	1.64	1.65	1.64	XXX
92589		A	Auditory function test(s)	0.00	0.56	0.56	0.56	0.56	0.05	0.61	0.61	0.61	0.61	XXX
92590		N	Hearing aid exam, one ear	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92591		N	Hearing aid exam, both ears	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92592		N	Hearing aid check, one ear	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92593		N	Hearing aid check, both ears	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92594		N	Electro hearing aid test,one	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92595		N	Electro hearingaid test,both	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92596		A	Ear protector evaluation	0.00	0.61	0.61	0.61	0.61	0.05	0.66	0.66	0.66	0.66	XXX
92597		A	Oral speech device eval	1.35	1.53	1.32	0.73	0.92	0.05	2.93	2.72	2.13	2.32	XXX
92598		A	Modify oral speech device	0.99	1.00	0.86	0.56	0.64	0.03	2.02	1.88	1.58	1.66	XXX
92599		C	ENT procedure/service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92599	26	C	ENT procedure/service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92599	TC	C	ENT procedure/service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
92950		A	Heart/lung resuscitation(CPR	3.80	1.61	2.04	1.00	1.73	0.22	5.63	6.06	5.02	5.75	000

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
92953		A	Temporary external pacing	0.23	NA	NA	0.07	0.17	0.01	NA	NA	0.31	0.41	000
92960		A	Heart electroconversion	2.25	2.09	2.07	0.88	1.46	0.08	4.42	4.40	3.21	3.79	000
92970		A	Cardioassist, internal	3.52	NA	NA	1.22	2.50	0.17	NA	NA	4.91	6.19	000
92971		A	Cardioassist, external	1.77	NA	NA	0.74	0.97	0.06	NA	NA	2.57	2.80	000
92975		A	Dissolve clot, heart vessel	7.25	NA	NA	3.04	4.62	0.24	NA	NA	10.53	12.11	000
92977		A	Dissolve clot, heart vessel	0.00	NA	NA	8.43	8.38	0.41	NA	NA	8.84	8.79	XXX
92978	26	A	Intravas us, heart add-on	1.80	NA	NA	5.53	5.70	0.28	NA	NA	7.61	7.78	ZZZ
92978	TC	A	Intravas us, heart add-on	1.80	NA	NA	0.76	0.96	0.06	NA	NA	2.62	2.82	ZZZ
92979		A	Intravas us, heart (add-on)	0.00	NA	NA	4.77	4.75	0.22	NA	NA	4.99	4.97	ZZZ
92979	26	A	Intravas us, heart (add-on)	1.44	NA	NA	3.01	3.15	0.16	NA	NA	4.61	4.75	ZZZ
92979	TC	A	Intravas us, heart (add-on)	1.44	NA	NA	0.81	0.77	0.05	NA	NA	2.10	2.26	ZZZ
92980		A	Insert intracoronary stent	0.00	NA	NA	2.39	2.38	0.11	NA	NA	2.50	2.49	ZZZ
92981		A	Insert intracoronary stent	14.84	NA	NA	6.27	11.99	0.48	NA	NA	21.59	27.31	000
92982		A	Coronary artery dilation	4.17	NA	NA	1.75	3.37	0.14	NA	NA	6.06	7.68	ZZZ
92984		A	Coronary artery dilation	10.98	NA	NA	4.65	8.88	0.36	NA	NA	15.99	20.22	000
92986		A	Revision of aortic valve	2.97	NA	NA	1.25	2.40	0.10	NA	NA	4.32	5.47	ZZZ
92987		A	Revision of mitral valve	21.80	NA	NA	10.82	11.95	0.73	NA	NA	33.35	34.48	090
92990		A	Revision of pulmonary valve	22.70	NA	NA	11.17	12.21	0.79	NA	NA	34.66	35.70	090
92992		C	Revision of heart chamber	17.34	NA	NA	8.68	9.55	0.65	NA	NA	26.67	27.54	090
92993		C	Revision of heart chamber	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
92995		A	Coronary atherectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
92996		A	Coronary atherectomy	12.09	NA	NA	5.12	9.78	0.39	NA	NA	17.60	22.26	000
92997		A	Pul art balloon repair, perc	3.28	NA	NA	1.41	2.66	0.11	NA	NA	4.78	6.03	ZZZ
92998		A	Pul art balloon repair, perc	12.00	NA	NA	4.61	9.47	0.36	NA	NA	16.99	21.85	000
93000		A	Electrocardiogram, complete	6.00	NA	NA	2.32	3.22	0.19	NA	NA	8.51	9.41	ZZZ
93005		A	Electrocardiogram, tracing	0.17	0.54	0.59	0.54	0.59	0.01	0.72	0.77	0.72	0.77	XXX
93010		A	Electrocardiogram report	0.00	0.47	0.47	0.47	0.47	0.02	0.49	0.49	0.49	0.49	XXX
93012		A	Transmission of ecg	0.17	0.06	0.12	0.06	0.12	0.01	0.24	0.30	0.24	0.30	XXX
93014		A	Report on transmitted ecg	0.00	2.46	2.45	2.46	2.45	0.16	2.62	2.61	2.62	2.61	XXX
93015		A	Cardiovascular stress test	0.52	0.20	0.32	0.20	0.32	0.02	0.74	0.86	0.74	0.86	XXX
93016		A	Cardiovascular stress test	0.75	2.05	2.29	2.05	2.29	0.02	2.82	3.06	2.82	3.06	XXX
93017		A	Cardiovascular stress test	0.45	0.18	0.30	0.18	0.30	0.01	0.64	0.76	0.64	0.76	XXX
93018		A	Cardiovascular stress test	0.00	1.75	1.75	1.75	1.75	0.09	1.84	1.84	1.84	1.84	XXX
93024		A	Cardiac drug stress test	0.30	0.12	0.24	0.12	0.24	0.01	0.43	0.55	0.43	0.55	XXX
93024	26	A	Cardiac drug stress test	1.17	1.66	2.11	1.66	2.11	0.11	2.94	3.39	2.94	3.39	XXX
93024	TC	A	Cardiac drug stress test	1.17	0.48	0.94	0.48	0.94	0.04	1.69	2.15	1.69	2.15	XXX
93040		A	Rhythm ECG with report	0.00	1.18	1.17	1.18	1.17	0.07	1.25	1.24	1.25	1.24	XXX
93041		A	Rhythm ECG, tracing	0.16	0.36	0.32	0.36	0.32	0.01	0.53	0.49	0.53	0.49	XXX
93042		A	Rhythm ECG, report	0.00	0.15	0.15	0.15	0.15	0.01	0.16	0.16	0.16	0.16	XXX
93224		A	ECG monitor/report, 24 hrs	0.16	0.05	0.09	0.05	0.09	0.01	0.22	0.26	0.22	0.26	XXX
93225		A	ECG monitor/record, 24 hrs	0.52	0.70	2.43	0.70	2.43	0.02	1.24	2.97	1.24	2.97	XXX
93226		A	ECG monitor/report, 24 hrs	0.00	1.30	1.29	1.30	1.29	0.07	1.37	1.36	1.37	1.36	XXX
93227		A	ECG monitor/review, 24 hrs	0.00	2.28	2.27	2.28	2.27	0.13	2.41	2.40	2.41	2.40	XXX
93230		A	ECG monitor/report, 24 hrs	0.52	0.20	0.41	0.20	0.41	0.02	0.74	0.95	0.74	0.95	XXX
93231		A	Ecg monitor/record, 24 hrs	0.52	0.66	2.55	0.66	2.55	0.02	1.20	3.09	1.20	3.09	XXX
93232		A	ECG monitor/report, 24 hrs	0.00	1.59	1.58	1.59	1.58	0.09	1.68	1.67	1.68	1.67	XXX
93233		A	ECG monitor/review, 24 hrs	0.00	2.27	2.26	2.27	2.26	0.12	2.39	2.38	2.39	2.38	XXX
93235		A	ECG monitor/report, 24 hrs	0.52	0.20	0.41	0.20	0.41	0.02	0.74	0.95	0.74	0.95	XXX
93236		A	ECG monitor/report, 24 hrs	0.45	0.53	1.89	0.53	1.89	0.01	0.99	2.35	0.99	2.35	XXX
93237		A	ECG monitor/review, 24 hrs	0.00	2.75	2.73	2.75	2.73	0.13	2.88	2.88	2.88	2.88	XXX
93268		A	ECG record/review	0.45	0.17	0.36	0.17	0.36	0.01	0.63	0.82	0.63	0.82	XXX
93270		A	ECG recording	0.52	0.89	2.53	0.89	2.53	0.02	1.43	3.07	1.43	3.07	XXX
93271		A	Ecg/monitoring and analysis	0.00	1.30	1.29	1.30	1.29	0.07	1.37	1.36	1.37	1.36	XXX
93272		A	Ecg/review,interpret only	0.00	2.46	2.45	2.46	2.45	0.16	2.62	2.61	2.62	2.61	XXX
93278		A	ECG/signal-averaged	0.52	0.20	0.32	0.20	0.32	0.02	0.74	0.86	0.74	0.86	XXX
93278	26	A	ECG/signal-averaged	0.25	1.31	1.40	1.31	1.40	0.10	1.66	1.75	1.66	1.75	XXX
93278	TC	A	ECG/signal-averaged	0.25	0.10	0.20	0.10	0.20	0.01	0.36	0.46	0.36	0.46	XXX
93303		A	Echo transthoracic	0.00	1.21	1.20	1.21	1.20	0.09	1.30	1.29	1.30	1.29	XXX
93303	26	A	Echo transthoracic	1.30	4.56	4.82	4.56	4.82	0.25	6.11	6.37	6.11	6.37	XXX
93303	TC	A	Echo transthoracic	1.30	0.53	0.81	0.53	0.81	0.04	1.87	2.15	1.87	2.15	XXX
93304		A	Echo transthoracic	0.00	4.03	4.01	4.03	4.01	0.21	4.24	4.22	4.24	4.22	XXX
93304	26	A	Echo transthoracic	0.75	2.33	2.54	2.33	2.54	0.13	3.21	3.42	3.21	3.42	XXX
93304	TC	A	Echo transthoracic	0.75	0.30	0.52	0.30	0.52	0.02	1.07	1.29	1.07	1.29	XXX
93307		A	Echo exam of heart	0.00	2.03	2.02	2.03	2.02	0.11	2.14	2.13	2.14	2.13	XXX
93307	26	A	Echo exam of heart	0.92	4.41	4.75	4.41	4.75	0.24	5.57	5.91	5.57	5.91	XXX
93307	TC	A	Echo exam of heart	0.92	0.37	0.73	0.37	0.73	0.03	1.32	1.68	1.32	1.68	XXX
93308		A	Echo exam of heart	0.00	4.03	4.01	4.03	4.01	0.21	4.24	4.22	4.24	4.22	XXX
93308	26	A	Echo exam of heart	0.53	2.24	2.44	2.24	2.44	0.13	2.90	3.10	2.90	3.10	XXX
93308	TC	A	Echo exam of heart	0.53	0.21	0.42	0.21	0.42	0.02	0.76	0.97	0.76	0.97	XXX
93312		A	Echo transesophageal	0.00	2.03	2.02	2.03	2.02	0.11	2.14	2.13	2.14	2.13	XXX
93312	26	A	Echo transesophageal	2.20	4.71	5.05	4.71	5.05	0.35	7.26	7.60	7.26	7.60	XXX
93312	TC	A	Echo transesophageal	2.20	0.76	1.12	0.76	1.12	0.09	3.05	3.41	3.05	3.41	XXX
93313		A	Echo transesophageal	0.00	3.95	3.93	3.95	3.93	0.26	4.21	4.19	4.21	4.19	XXX
93314		A	Echo transesophageal	0.95	7.41	4.07	0.24	0.49	0.05	8.41	5.07	1.24	1.49	XXX
93314	26	A	Echo transesophageal	1.25	4.45	4.55	4.45	4.55	0.30	6.00	6.10	6.00	6.10	XXX
93314	TC	A	Echo transesophageal	1.25	0.49	0.61	0.49	0.61	0.04	1.78	1.90	1.78	1.90	XXX
93315		A	Echo transesophageal	0.00	3.95	3.93	3.95	3.93	0.26	4.21	4.19	4.21	4.19	XXX
93315	26	A	Echo transesophageal	2.78	4.97	5.18	4.97	5.18	0.38	8.13	8.34	8.13	8.34	XXX
93315	TC	A	Echo transesophageal	2.78	1.02	1.25	1.02	1.25	0.12	3.92	4.15	3.92	4.15	XXX
93316		A	Echo transesophageal	0.00	3.95	3.93	3.95	3.93	0.26	4.21	4.19	4.21	4.19	XXX
93317		A	Echo transesophageal	0.95	1.14	0.94	0.24	0.49	0.05	2.14	1.94	1.24	1.49	XXX
93317	26	A	Echo transesophageal	1.83	4.59	4.62	4.59	4.62	0.33	6.75	6.78	6.75	6.78	XXX
93317	TC	A	Echo transesophageal	1.83	0.64	0.69	0.64	0.69	0.07	2.54	2.59	2.54	2.59	XXX
				0.00	3.95	3.93	3.95	3.93	0.26	4.21	4.19	4.21	4.19	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
93320		A	Doppler echo exam, heart	0.38	1.94	2.09	1.94	2.09	0.11	2.43	2.58	2.43	2.58	ZZZ
93320	26	A	Doppler echo exam, heart	0.38	0.15	0.31	0.15	0.31	0.01	0.54	0.70	0.54	0.70	ZZZ
93320	TC	A	Doppler echo exam, heart	0.00	1.79	1.78	1.79	1.78	0.10	1.89	1.88	1.89	1.88	ZZZ
93321		A	Doppler echo exam, heart	0.15	1.23	1.28	1.23	1.28	0.07	1.45	1.50	1.45	1.50	ZZZ
93321	26	A	Doppler echo exam, heart	0.15	0.06	0.12	0.06	0.12	0.00	0.21	0.27	0.21	0.27	ZZZ
93321	TC	A	Doppler echo exam, heart	0.00	1.17	1.16	1.17	1.16	0.07	1.24	1.23	1.24	1.23	ZZZ
93325		A	Doppler color flow add-on	0.07	3.06	3.05	3.06	3.05	0.19	3.32	3.31	3.32	3.31	ZZZ
93325	26	A	Doppler color flow add-on	0.07	0.03	0.04	0.03	0.04	0.00	0.10	0.11	0.10	0.11	ZZZ
93325	TC	A	Doppler color flow add-on	0.00	3.03	3.02	3.03	3.02	0.19	3.22	3.21	3.22	3.21	ZZZ
93350		A	Echo transthoracic	0.78	2.16	2.46	2.16	2.46	0.14	3.08	3.38	3.08	3.38	XXX
93350	26	A	Echo transthoracic	0.78	0.32	0.63	0.32	0.63	0.03	1.13	1.44	1.13	1.44	XXX
93350	TC	A	Echo transthoracic	0.00	1.84	1.83	1.84	1.83	0.11	1.95	1.94	1.95	1.94	XXX
93501		A	Right heart catheterization	3.02	18.12	19.60	18.12	19.60	1.04	22.18	23.66	22.18	23.66	000
93501	26	A	Right heart catheterization	3.02	1.21	2.41	1.21	2.41	0.10	4.33	5.53	4.33	5.53	000
93501	TC	A	Right heart catheterization	0.00	16.91	17.20	16.91	17.20	0.94	17.85	18.14	17.85	18.14	000
93503		A	Insert/place heart catheter	2.91	1.08	1.83	0.67	1.62	0.17	4.16	4.91	3.75	4.70	000
93505		A	Biopsy of heart lining	4.38	3.79	4.57	3.79	4.57	0.32	8.49	9.27	8.49	9.27	000
93505	26	A	Biopsy of heart lining	4.38	1.82	2.56	1.82	2.56	0.18	6.38	7.12	6.38	7.12	000
93505	TC	A	Biopsy of heart lining	0.00	1.98	2.02	1.98	2.02	0.14	2.12	2.16	2.12	2.16	000
93508		A	Cath placement, angiography	4.10	14.17	15.11	14.17	15.11	0.72	18.99	19.93	18.99	19.93	000
93508	26	A	Cath placement, angiography	4.10	1.57	2.30	1.57	2.30	0.13	5.80	6.53	5.80	6.53	000
93508	TC	A	Cath placement, angiography	0.00	12.61	12.82	12.61	12.82	0.59	13.20	13.41	13.20	13.41	000
93510		A	Left heart catheterization	4.33	36.75	40.15	38.75	40.15	2.20	45.28	46.68	45.28	46.68	000
93510	26	A	Left heart catheterization	4.33	1.81	2.57	1.81	2.57	0.14	6.28	7.04	6.28	7.04	000
93510	TC	A	Left heart catheterization	0.00	36.94	37.58	36.94	37.58	2.06	39.00	39.64	39.00	39.64	000
93511		A	Left heart catheterization	5.03	38.07	39.06	38.07	39.06	2.16	45.26	46.25	45.26	46.25	000
93511	26	A	Left heart catheterization	5.03	2.11	2.48	2.11	2.48	0.16	7.30	7.67	7.30	7.67	000
93511	TC	A	Left heart catheterization	0.00	35.96	36.59	35.96	36.59	2.00	37.96	38.59	37.96	38.59	000
93514		A	Left heart catheterization	7.05	38.96	40.56	38.96	40.56	2.22	48.23	49.83	48.23	49.83	000
93514	26	A	Left heart catheterization	7.05	2.99	3.97	2.99	3.97	0.22	10.26	11.24	10.26	11.24	000
93514	TC	A	Left heart catheterization	0.00	35.96	36.59	35.96	36.59	2.00	37.96	38.59	37.96	38.59	000
93524		A	Left heart catheterization	6.95	49.92	51.80	49.92	51.80	2.84	59.71	61.59	59.71	61.59	000
93524	26	A	Left heart catheterization	6.95	2.94	4.00	2.94	4.00	0.22	10.11	11.17	10.11	11.17	000
93524	TC	A	Left heart catheterization	0.00	46.99	47.81	46.99	47.81	2.62	49.61	50.43	49.61	50.43	000
93526		A	Rt & Lt heart catheters	5.99	50.78	53.32	50.78	53.32	2.89	59.66	62.20	59.66	62.20	000
93526	26	A	Rt & Lt heart catheters	5.99	2.50	4.21	2.50	4.21	0.20	8.69	10.40	8.69	10.40	000
93526	TC	A	Rt & Lt heart catheters	0.00	48.28	49.12	48.28	49.12	2.69	50.97	51.81	50.97	51.81	000
93527		A	Rt & Lt heart catheters	7.28	50.03	53.20	50.03	53.20	2.85	60.16	63.33	60.16	63.33	000
93527	26	A	Rt & Lt heart catheters	7.28	3.04	5.40	3.04	5.40	0.23	10.55	12.91	10.55	12.91	000
93527	TC	A	Rt & Lt heart catheters	0.00	46.99	47.81	46.99	47.81	2.62	49.61	50.43	49.61	50.43	000
93528		A	Rt & Lt heart catheters	9.00	50.79	52.11	50.79	52.11	2.91	62.70	64.02	62.70	64.02	000
93528	26	A	Rt & Lt heart catheters	9.00	3.81	4.31	3.81	4.31	0.29	13.10	13.60	13.10	13.60	000
93528	TC	A	Rt & Lt heart catheters	0.00	46.99	47.81	46.99	47.81	2.62	49.61	50.43	49.61	50.43	000
93529		A	Rt, Lt heart catheterization	4.80	48.93	50.37	48.93	50.37	2.79	56.52	57.96	56.52	57.96	000
93529	26	A	Rt, Lt heart catheterization	4.80	1.95	2.57	1.95	2.57	0.17	6.92	7.54	6.92	7.54	000
93529	TC	A	Rt, Lt heart catheterization	0.00	46.99	47.81	46.99	47.81	2.62	49.61	50.43	49.61	50.43	000
93530		A	Rt heart cath, congenital	4.23	18.61	20.01	18.61	20.01	1.08	23.92	25.32	23.92	25.32	000
93530	26	A	Rt heart cath, congenital	4.23	1.70	2.81	1.70	2.81	0.14	6.07	7.18	6.07	7.18	000
93530	TC	A	Rt heart cath, congenital	0.00	16.91	17.20	16.91	17.20	0.94	17.85	18.14	17.85	18.14	000
93531		A	R & l heart cath, congenital	8.35	51.76	53.81	51.76	53.81	2.96	63.07	65.12	63.07	65.12	000
93531	26	A	R & l heart cath, congenital	8.35	3.48	4.70	3.48	4.70	0.27	12.10	13.32	12.10	13.32	000
93531	TC	A	R & l heart cath, congenital	0.00	48.28	49.12	48.28	49.12	2.69	50.97	51.81	50.97	51.81	000
93532		A	R & l heart cath, congenital	10.00	50.99	53.68	50.99	53.68	2.94	63.93	66.62	63.93	66.62	000
93532	26	A	R & l heart cath, congenital	10.00	4.01	5.88	4.01	5.88	0.32	14.33	16.20	14.33	16.20	000
93532	TC	A	R & l heart cath, congenital	0.00	46.99	47.81	46.99	47.81	2.62	49.61	50.43	49.61	50.43	000
93533		A	R & l heart cath, congenital	6.70	49.56	50.68	49.56	50.68	2.84	59.10	60.22	59.10	60.22	000
93533	26	A	R & l heart cath, congenital	6.70	2.57	2.88	2.57	2.88	0.22	9.49	9.80	9.49	9.80	000
93533	TC	A	R & l heart cath, congenital	0.00	46.99	47.81	46.99	47.81	2.62	49.61	50.43	49.61	50.43	000
93536		A	Insert circulation assi	4.85	NA	NA	2.06	3.93	0.23	NA	NA	7.14	9.01	000
93539		A	Injection, cardiac cath	0.40	0.79	0.88	0.17	0.33	0.01	1.20	1.29	0.58	0.74	000
93540		A	Injection, cardiac cath	0.43	0.80	0.88	0.18	0.35	0.01	1.24	1.32	0.62	0.79	000
93541		A	Injection for lung angiogram	0.29	NA	NA	0.12	0.24	0.01	NA	NA	0.42	0.54	000
93542		A	Injection for heart x-rays	0.29	NA	NA	0.12	0.24	0.01	NA	NA	0.42	0.54	000
93543		A	Injection for heart x-rays	0.29	0.51	0.57	0.12	0.24	0.01	0.81	0.87	0.42	0.54	000
93544		A	Injection for aortography	0.25	0.50	0.56	0.10	0.20	0.01	0.76	0.82	0.36	0.46	000
93545		A	Injection for coronary xrays	0.40	0.79	0.84	0.17	0.33	0.01	1.20	1.05	0.58	0.74	000
93555		A	Imaging, cardiac cath	0.81	6.61	6.70	6.61	6.70	0.33	7.75	7.84	7.75	7.84	XXX
93555	26	A	Imaging, cardiac cath	0.81	0.34	0.32	0.34	0.32	0.03	1.18	1.16	1.18	1.16	XXX
93555	TC	A	Imaging, cardiac cath	0.00	6.27	6.38	6.27	6.38	0.30	6.57	6.68	6.57	6.68	XXX
93556		A	Imaging, cardiac cath	0.83	10.23	10.48	10.23	10.48	0.48	11.54	11.79	11.54	11.79	XXX
93556	26	A	Imaging, cardiac cath	0.83	0.35	0.42	0.35	0.42	0.03	1.21	1.28	1.21	1.28	XXX
93556	TC	A	Imaging, cardiac cath	0.00	9.89	10.06	9.89	10.06	0.45	10.34	10.51	10.34	10.51	XXX
93561		A	Cardiac output measurement	0.50	0.70	0.92	0.70	0.92	0.07	1.27	1.49	1.27	1.49	000
93561	26	A	Cardiac output measurement	0.50	0.17	0.39	0.17	0.39	0.02	0.69	0.91	0.69	0.91	000
93561	TC	A	Cardiac output measurement	0.00	0.53	0.54	0.53	0.54	0.05	0.58	0.59	0.58	0.59	000
93562		A	Cardiac output measurement	0.16	0.36	0.45	0.36	0.45	0.04	0.56	0.65	0.56	0.65	000
93562	26	A	Cardiac output measurement	0.16	0.05	0.13	0.05	0.13	0.01	0.22	0.30	0.22	0.30	000
93562	TC	A	Cardiac output measurement	0.00	0.32	0.33	0.32	0.33	0.03	0.35	0.36	0.35	0.36	000
93571		A	Heart flow reserve measure	1.80	5.46	5.46	5.46	5.46	0.28	7.54	7.54	7.54	7.54	ZZZ
93571	26	A	Heart flow reserve measure	1.80	0.69	0.69	0.69	0.69	0.06	2.55	2.55	2.55	2.55	ZZZ
93571	TC	A	Heart flow reserve measure	0.00	4.77	4.77	4.77	4.77	0.22	4.99	4.99	4.99	4.99	ZZZ
93572		A	Heart flow reserve measure	1.44	5.32	5.32	5.32	5.32	0.16	6.92	6.92	6.92	6.92	ZZZ
93572	26	A	Heart flow reserve measure	1.44	0.55	0.55	0.55	0.55	0.05	2.04	2.04	2.04	2.04	ZZZ
93572	TC	A	Heart flow reserve measure	0.00	4.77	4.77	4.77	4.77	0.11	4.88	4.88	4.88	4.88	ZZZ

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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
93600		A	Bundle of His recording	2.12	2.93	3.74	2.93	3.74	0.18	5.23	6.04	5.23	6.04	000
93600	26	A	Bundle of His recording	2.12	0.89	1.71	0.89	1.71	0.07	3.08	3.90	3.08	3.90	000
93600	TC	A	Bundle of His recording	0.00	2.04	2.03	2.04	2.03	0.11	2.15	2.14	2.15	2.14	000
93602		A	Intra-atrial recording	2.12	2.06	2.57	2.06	2.57	0.15	4.33	4.84	4.33	4.84	000
93602	26	A	Intra-atrial recording	2.12	0.89	1.41	0.89	1.41	0.09	3.10	3.62	3.10	3.62	000
93602	TC	A	Intra-atrial recording	0.00	1.17	1.16	1.17	1.16	0.06	1.23	1.22	1.23	1.22	000
93603		A	Right ventricular recording	2.12	2.64	3.38	2.64	3.38	0.18	4.94	5.68	4.94	5.68	000
93603	26	A	Right ventricular recording	2.12	0.89	1.64	0.89	1.64	0.09	3.10	3.85	3.10	3.85	000
93603	TC	A	Right ventricular recording	0.00	1.75	1.75	1.75	1.75	0.09	1.84	1.84	1.84	1.84	000
93607		A	Right ventricular recording	3.26	2.95	3.45	2.95	3.45	0.19	6.40	6.90	6.40	6.90	000
93607	26	A	Right ventricular recording	3.26	1.39	1.90	1.39	1.90	0.10	4.75	5.26	4.75	5.26	000
93607	TC	A	Right ventricular recording	0.00	1.56	1.55	1.56	1.55	0.09	1.65	1.64	1.65	1.64	000
93609		A	Mapping of tachycardia	10.07	7.05	7.02	7.05	7.02	0.49	17.61	17.58	17.61	17.58	000
93609	26	A	Mapping of tachycardia	10.07	4.21	4.19	4.21	4.19	0.34	14.62	14.60	14.62	14.60	000
93609	TC	A	Mapping of tachycardia	0.00	2.84	2.83	2.84	2.83	0.15	2.99	2.98	2.99	2.98	000
93610		A	Intra-atrial pacing	3.02	2.68	3.30	2.68	3.30	0.20	5.90	6.52	5.90	6.52	000
93610	26	A	Intra-atrial pacing	3.02	1.26	1.89	1.26	1.89	0.12	4.40	5.03	4.40	5.03	000
93610	TC	A	Intra-atrial pacing	0.00	1.42	1.41	1.42	1.41	0.08	1.50	1.49	1.50	1.49	000
93612		A	Intraventricular pacing	3.02	2.94	3.58	2.94	3.58	0.22	6.18	6.82	6.18	6.82	000
93612	26	A	Intraventricular pacing	3.02	1.25	1.90	1.25	1.90	0.13	4.40	5.05	4.40	5.05	000
93612	TC	A	Intraventricular pacing	0.00	1.69	1.68	1.69	1.68	0.09	1.78	1.77	1.78	1.77	000
93615		A	Esophageal recording	0.99	0.54	0.63	0.54	0.63	0.07	1.60	1.69	1.60	1.69	000
93615	26	A	Esophageal recording	0.99	0.21	0.30	0.21	0.30	0.05	1.25	1.34	1.25	1.34	000
93615	TC	A	Esophageal recording	0.00	0.33	0.33	0.33	0.33	0.02	0.35	0.35	0.35	0.35	000
93616		A	Esophageal recording	1.49	0.73	1.27	0.73	1.27	0.09	2.31	2.85	2.31	2.85	000
93616	26	A	Esophageal recording	1.49	0.40	0.94	0.40	0.94	0.07	1.96	2.50	1.96	2.50	000
93616	TC	A	Esophageal recording	0.00	0.33	0.33	0.33	0.33	0.02	0.35	0.35	0.35	0.35	000
93618		A	Heart rhythm pacing	4.26	5.94	7.57	5.94	7.57	0.36	10.56	12.19	10.56	12.19	000
93618	26	A	Heart rhythm pacing	4.26	1.80	3.45	1.80	3.45	0.14	6.20	7.85	6.20	7.85	000
93618	TC	A	Heart rhythm pacing	0.00	4.14	4.12	4.14	4.12	0.22	4.36	4.34	4.36	4.34	000
93619		A	Electrophysiology evaluation	7.32	11.09	13.90	11.09	13.90	0.66	19.07	21.88	19.07	21.88	000
93619	26	A	Electrophysiology evaluation	7.32	3.05	5.90	3.05	5.90	0.24	10.61	13.46	10.61	13.46	000
93619	TC	A	Electrophysiology evaluation	0.00	8.05	8.01	8.05	8.01	0.42	8.47	8.43	8.47	8.43	000
93620		A	Electrophysiology evaluation	11.59	14.20	18.66	14.20	18.66	0.85	26.64	31.10	26.64	31.10	000
93620	26	A	Electrophysiology evaluation	11.59	4.84	9.34	4.84	9.34	0.38	16.81	21.31	16.81	21.31	000
93620	TC	A	Electrophysiology evaluation	0.00	9.37	9.32	9.37	9.32	0.47	9.84	9.79	9.84	9.79	000
93621		C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	0.00	0.44	0.44	0.44	0.44	0.44	000
93621	26	A	Electrophysiology evaluation	12.66	5.32	10.22	5.32	10.22	0.44	18.42	23.32	18.42	23.32	000
93621	TC	C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
93622		Q	Electrophysiology evaluation	0.00	0.00	0.00	0.00	0.00	0.42	0.42	0.42	0.42	0.42	000
93622	26	A	Electrophysiology evaluation	12.74	5.31	10.26	5.31	10.26	0.42	18.47	23.42	18.47	23.42	000
93622	TC	C	Electrophysiology evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
93623		C	Stimulation, pacing heart	0.00	0.00	0.00	0.00	0.00	0.10	0.10	0.10	0.10	0.10	ZZZ
93623	26	A	Stimulation, pacing heart	2.85	1.19	2.11	1.19	2.11	0.10	4.14	5.06	4.14	5.06	ZZZ
93623	TC	C	Stimulation, pacing heart	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
93624		A	Electrophysiologic study	4.81	4.02	4.66	4.02	4.66	0.27	9.10	9.74	9.10	9.74	000
93624	26	A	Electrophysiologic study	4.81	1.95	2.60	1.95	2.60	0.16	6.92	7.57	6.92	7.57	000
93624	TC	A	Electrophysiologic study	0.00	2.07	2.06	2.07	2.06	0.11	2.18	2.17	2.18	2.17	000
93631		A	Heart pacing, mapping	7.60	9.64	11.13	9.64	11.13	0.99	18.23	19.72	18.23	19.72	000
93631	26	A	Heart pacing, mapping	7.60	3.21	4.73	3.21	4.73	0.44	11.25	12.77	11.25	12.77	000
93631	TC	A	Heart pacing, mapping	0.00	6.43	6.40	6.43	6.40	0.55	6.98	6.95	6.98	6.95	000
93640		A	Evaluation heart device	3.52	9.00	10.31	9.00	10.31	0.50	13.02	14.33	13.02	14.33	000
93640	26	A	Evaluation heart device	3.52	1.49	2.85	1.49	2.85	0.12	5.13	6.49	5.13	6.49	000
93640	TC	A	Evaluation heart device	0.00	7.50	7.46	7.50	7.46	0.38	7.88	7.84	7.88	7.84	000
93641		A	Electrophysiology evaluation	5.93	9.98	12.24	9.98	12.24	0.58	16.49	18.75	16.49	18.75	000
93641	26	A	Electrophysiology evaluation	5.93	2.48	4.78	2.48	4.78	0.20	8.61	10.91	8.61	10.91	000
93641	TC	A	Electrophysiology evaluation	0.00	7.50	7.46	7.50	7.46	0.38	7.88	7.84	7.88	7.84	000
93642		A	Electrophysiology evaluation	4.89	9.55	11.41	9.55	11.41	0.54	14.98	16.84	14.98	16.84	000
93642	26	A	Electrophysiology evaluation	4.89	2.05	3.95	2.05	3.95	0.16	7.10	9.00	7.10	9.00	000
93642	TC	A	Electrophysiology evaluation	0.00	7.50	7.46	7.50	7.46	0.38	7.88	7.84	7.88	7.84	000
93650		A	Ablate heart dysrhythm focus	10.51	NA	NA	4.46	8.51	0.35	NA	NA	15.32	19.37	000
93651		A	Ablate heart dysrhythm focus	16.25	NA	NA	6.83	13.09	0.54	NA	NA	23.62	29.88	000
93652		A	Ablate heart dysrhythm focus	17.68	NA	NA	7.40	13.38	0.60	NA	NA	25.68	31.66	000
93660		C	Tilt table evaluation	0.00	0.00	0.00	0.00	0.00	0.06	0.06	0.06	0.06	0.06	000
93660	26	A	Tilt table evaluation	1.89	0.79	1.18	0.79	1.18	0.06	2.74	3.13	2.74	3.13	000
93660	TC	C	Tilt table evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
93720		A	Total body plethysmography	0.17	0.72	0.85	0.72	0.65	0.01	0.90	1.03	0.90	0.83	XXX
93721		A	Plethysmography tracing	0.00	0.73	0.73	0.73	0.55	0.05	0.78	0.78	0.78	0.60	XXX
93722		A	Plethysmography report	0.17	0.05	0.15	0.05	0.13	0.01	0.23	0.33	0.23	0.31	XXX
93724		A	Analyze pacemaker system	4.89	6.21	6.72	6.21	6.72	0.38	11.48	11.99	11.48	11.99	000
93724	26	A	Analyze pacemaker system	4.89	2.06	2.60	2.06	2.60	0.16	7.11	7.65	7.11	7.65	000
93724	TC	A	Analyze pacemaker system	0.00	4.14	4.12	4.14	4.12	0.22	4.36	4.34	4.36	4.34	000
93731		A	Analyze pacemaker system	0.45	0.70	0.78	0.70	0.78	0.05	1.20	1.28	1.20	1.28	XXX
93731	26	A	Analyze pacemaker system	0.45	0.19	0.27	0.19	0.27	0.02	0.66	0.74	0.66	0.74	XXX
93731	TC	A	Analyze pacemaker system	0.00	0.51	0.51	0.51	0.51	0.03	0.54	0.54	0.54	0.54	XXX
93732		A	Analyze pacemaker system	0.92	0.91	0.95	0.91	0.95	0.06	1.89	1.93	1.89	1.93	XXX
93732	26	A	Analyze pacemaker system	0.92	0.38	0.42	0.38	0.42	0.03	1.33	1.37	1.33	1.37	XXX
93732	TC	A	Analyze pacemaker system	0.00	0.53	0.53	0.53	0.53	0.03	0.56	0.56	0.56	0.56	XXX
93733		A	Telephone analysis,pacemaker	0.17	0.83	0.90	0.83	0.90	0.06	1.06	1.13	1.06	1.13	XXX
93733	26	A	Telephone analysis,pacemaker	0.17	0.07	0.14	0.07	0.14	0.01	0.25	0.32	0.25	0.32	XXX
93733	TC	A	Telephone analysis,pacemaker	0.00	0.75	0.75	0.75	0.75	0.05	0.80	0.80	0.80	0.80	XXX
93734		A	Analyze pacemaker system	0.38	0.52	0.61	0.52	0.61	0.03	0.93	1.02	0.93	1.02	XXX
93734	26	A	Analyze pacemaker system	0.38	0.15	0.25	0.15	0.25	0.01	0.54	0.64	0.54	0.64	XXX
93734	TC	A	Analyze pacemaker system	0.00	0.36	0.36	0.36	0.36	0.02	0.38	0.38	0.38	0.38	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
93735		A	Analyze pacemaker system	0.74	0.77	0.85	0.77	0.85	0.06	1.57	1.65	1.57	1.65	XXX
93735	26	A	Analyze pacemaker system	0.74	0.30	0.39	0.30	0.39	0.03	1.07	1.16	1.07	1.16	XXX
93735	TC	A	Analyze pacemaker system	0.00	0.46	0.46	0.46	0.46	0.03	0.49	0.49	0.49	0.49	XXX
93736		A	Telephone analysis,pacemaker	0.15	0.72	0.78	0.72	0.78	0.06	0.93	0.99	0.93	0.99	XXX
93736	26	A	Telephone analysis,pacemaker	0.15	0.06	0.12	0.06	0.12	0.01	0.22	0.28	0.22	0.28	XXX
93736	TC	A	Telephone analysis,pacemaker	0.00	0.65	0.65	0.65	0.65	0.05	0.70	0.70	0.70	0.70	XXX
93737		A	Analyze cardio/defibrillator	0.45	0.70	0.75	0.70	0.75	0.04	1.19	1.24	1.19	1.24	XXX
93737	26	A	Analyze cardio/defibrillator	0.45	0.19	0.24	0.19	0.24	0.01	0.65	0.70	0.65	0.70	XXX
93737	TC	A	Analyze cardio/defibrillator	0.00	0.51	0.51	0.51	0.51	0.03	0.54	0.54	0.54	0.54	XXX
93738		A	Analyze cardio/defibrillator	0.92	0.91	0.93	0.91	0.93	0.06	1.89	1.91	1.89	1.91	XXX
93738	26	A	Analyze cardio/defibrillator	0.92	0.38	0.40	0.38	0.40	0.03	1.33	1.35	1.33	1.35	XXX
93738	TC	A	Analyze cardio/defibrillator	0.00	0.53	0.53	0.53	0.53	0.03	0.56	0.56	0.56	0.56	XXX
93740		A	Temperature gradient studies	0.16	0.20	0.35	0.20	0.35	0.02	0.38	0.53	0.38	0.53	XXX
93740	26	A	Temperature gradient studies	0.16	0.04	0.19	0.04	0.19	0.01	0.21	0.36	0.21	0.36	XXX
93740	TC	A	Temperature gradient studies	0.00	0.16	0.16	0.16	0.16	0.01	0.17	0.17	0.17	0.17	XXX
93760		N	Cephalic thermogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	000
93762		N	Peripheral thermogram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93770		A	Measure venous pressure	0.16	0.08	0.15	0.06	0.15	0.01	0.25	0.32	0.25	0.32	XXX
93770	26	A	Measure venous pressure	0.16	0.05	0.12	0.05	0.12	0.01	0.22	0.29	0.22	0.29	XXX
93770	TC	A	Measure venous pressure	0.00	0.03	0.03	0.03	0.03	0.00	0.03	0.03	0.03	0.03	XXX
93784		N	Ambulatory BP monitoring	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93786		N	Ambulatory BP recording	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93788		N	Ambulatory BP analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93790		N	Review/report BP recording	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93797		A	Cardiac rehab	0.18	0.38	0.30	0.07	0.09	0.01	0.57	0.49	0.26	0.28	000
93798		A	Cardiac rehab/monitor	0.28	0.43	0.47	0.11	0.19	0.01	0.72	0.76	0.40	0.48	000
93799		C	Cardiovascular procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93799	26	C	Cardiovascular procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93799	TC	C	Cardiovascular procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
93875		A	Extracranial study	0.22	1.23	1.32	1.23	1.32	0.10	1.55	1.64	1.55	1.64	XXX
93875	26	A	Extracranial study	0.22	0.08	0.17	0.08	0.17	0.01	0.31	0.40	0.31	0.40	XXX
93875	TC	A	Extracranial study	0.00	1.16	1.15	1.16	1.15	0.09	1.25	1.24	1.25	1.24	XXX
93880		A	Extracranial study	0.60	4.09	4.18	4.09	4.18	0.35	5.04	5.13	5.04	5.13	XXX
93880	26	A	Extracranial study	0.60	0.19	0.31	0.19	0.31	0.04	0.83	0.95	0.83	0.95	XXX
93880	TC	A	Extracranial study	0.00	3.89	3.87	3.89	3.87	0.31	4.20	4.18	4.20	4.18	XXX
93882		A	Extracranial study	0.40	2.72	2.78	2.72	2.78	0.23	3.35	3.41	3.35	3.41	XXX
93882	26	A	Extracranial study	0.40	0.14	0.21	0.14	0.21	0.03	0.57	0.64	0.57	0.64	XXX
93882	TC	A	Extracranial study	0.00	2.59	2.58	2.59	2.58	0.20	2.79	2.78	2.79	2.78	XXX
93886		A	Intracranial study	0.94	4.76	4.79	4.76	4.79	0.40	6.10	6.13	6.10	6.13	XXX
93886	26	A	Intracranial study	0.94	0.36	0.41	0.36	0.41	0.05	1.35	1.40	1.35	1.40	XXX
93886	TC	A	Intracranial study	0.00	4.41	4.39	4.41	4.39	0.35	4.76	4.74	4.76	4.74	XXX
93888		A	Intracranial study	0.62	3.16	3.19	3.16	3.19	0.28	4.06	4.09	4.06	4.09	XXX
93888	26	A	Intracranial study	0.62	0.23	0.27	0.23	0.27	0.04	0.89	0.93	0.89	0.93	XXX
93888	TC	A	Intracranial study	0.00	2.94	2.93	2.94	2.93	0.24	3.18	3.17	3.18	3.17	XXX
93922		A	Extremity study	0.25	1.30	1.40	1.30	1.40	0.13	1.68	1.78	1.68	1.78	XXX
93922	26	A	Extremity study	0.25	0.09	0.20	0.09	0.20	0.02	0.36	0.47	0.36	0.47	XXX
93922	TC	A	Extremity study	0.00	1.21	1.20	1.21	1.20	0.11	1.32	1.31	1.32	1.31	XXX
93923		A	Extremity study	0.45	2.44	2.62	2.44	2.62	0.24	3.13	3.31	3.13	3.31	XXX
93923	26	A	Extremity study	0.45	0.16	0.35	0.16	0.35	0.04	0.65	0.84	0.65	0.84	XXX
93923	TC	A	Extremity study	0.00	2.28	2.27	2.28	2.27	0.20	2.48	2.47	2.48	2.47	XXX
93924		A	Extremity study	0.50	2.65	2.65	2.65	2.65	0.28	3.43	3.63	3.43	3.63	XXX
93924	26	A	Extremity study	0.50	0.18	0.39	0.18	0.39	0.05	0.73	0.94	0.73	0.94	XXX
93924	TC	A	Extremity study	0.00	2.47	2.46	2.47	2.46	0.23	2.70	2.69	2.70	2.69	XXX
93925		A	Lower extremity study	0.58	4.10	4.20	4.10	4.20	0.35	5.03	5.13	5.03	5.13	XXX
93925	26	A	Lower extremity study	0.58	0.19	0.31	0.19	0.31	0.04	0.81	0.93	0.81	0.93	XXX
93925	TC	A	Lower extremity study	0.00	3.91	3.89	3.91	3.89	0.31	4.22	4.20	4.22	4.20	XXX
93926		A	Lower extremity study	0.39	2.74	2.80	2.74	2.80	0.24	3.37	3.43	3.37	3.43	XXX
93926	26	A	Lower extremity study	0.39	0.13	0.21	0.13	0.21	0.03	0.55	0.63	0.55	0.63	XXX
93926	TC	A	Lower extremity study	0.00	2.62	2.60	2.62	2.60	0.21	2.83	2.81	2.83	2.81	XXX
93930		A	Upper extremity study	0.46	4.31	4.42	4.31	4.42	0.36	5.13	5.24	5.13	5.24	XXX
93930	26	A	Upper extremity study	0.46	0.15	0.29	0.15	0.29	0.03	0.64	0.78	0.64	0.78	XXX
93930	TC	A	Upper extremity study	0.00	4.15	4.13	4.15	4.13	0.33	4.48	4.46	4.48	4.46	XXX
93931		A	Upper extremity study	0.31	2.87	2.94	2.87	2.94	0.24	3.42	3.49	3.42	3.49	XXX
93931	26	A	Upper extremity study	0.31	0.10	0.19	0.10	0.19	0.02	0.43	0.52	0.43	0.52	XXX
93931	TC	A	Upper extremity study	0.00	2.77	2.75	2.77	2.75	0.22	2.99	2.97	2.99	2.97	XXX
93965		A	Extremity study	0.35	1.25	1.40	1.25	1.40	0.12	1.72	1.87	1.72	1.87	XXX
93965	26	A	Extremity study	0.35	0.12	0.27	0.12	0.27	0.02	0.49	0.64	0.49	0.64	XXX
93965	TC	A	Extremity study	0.00	1.14	1.14	1.14	1.14	0.10	1.24	1.24	1.24	1.24	XXX
93970		A	Extremity study	0.68	4.53	4.82	4.53	4.62	0.41	5.62	5.71	5.62	5.71	XXX
93970	26	A	Extremity study	0.68	0.22	0.33	0.22	0.33	0.05	0.95	1.06	0.95	1.06	XXX
93970	TC	A	Extremity study	0.00	4.32	4.30	4.32	4.30	0.36	4.68	4.66	4.68	4.66	XXX
93971		A	Extremity study	0.45	3.01	3.07	3.01	3.07	0.27	3.73	3.79	3.73	3.79	XXX
93971	26	A	Extremity study	0.45	0.13	0.21	0.13	0.21	0.03	0.61	0.69	0.61	0.69	XXX
93971	TC	A	Extremity study	0.00	2.88	2.86	2.88	2.86	0.24	3.12	3.10	3.12	3.10	XXX
93975		A	Vascular study	1.80	5.45	5.39	5.45	5.39	0.49	7.74	7.68	7.74	7.68	XXX
93975	26	A	Vascular study	1.80	0.53	0.50	0.53	0.50	0.10	2.43	2.40	2.43	2.40	XXX
93975	TC	A	Vascular study	0.00	4.92	4.89	4.92	4.89	0.39	5.31	5.26	5.31	5.28	XXX
93976		A	Vascular study	1.21	3.62	3.58	3.62	3.58	0.33	5.16	5.12	5.16	5.12	XXX
93976	26	A	Vascular study	1.21	0.34	0.32	0.34	0.32	0.06	1.61	1.59	1.61	1.59	XXX
93976	TC	A	Vascular study	0.00	3.28	3.26	3.28	3.26	0.27	3.55	3.53	3.55	3.53	XXX
93978		A	Vascular study	0.65	4.24	4.32	4.24	4.32	0.38	5.27	5.35	5.27	5.35	XXX
93978	26	A	Vascular study	0.65	0.22	0.32	0.22	0.32	0.05	0.92	1.02	0.92	1.02	XXX
93978	TC	A	Vascular study	0.00	4.02	4.00	4.02	4.00	0.33	4.35	4.33	4.35	4.33	XXX
93979		A	Vascular study	0.44	2.84	2.89	2.84	2.89	0.25	3.53	3.58	3.53	3.58	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
93979	26	A	Vascular study	0.44	0.16	0.22	0.16	0.22	0.03	0.63	0.69	0.63	0.69	XXX
93979	TC	A	Vascular study	0.00	2.68	2.67	2.68	2.67	0.22	2.90	2.89	2.90	2.89	XXX
93980	.....	A	Penile vascular study	1.25	4.06	4.28	4.06	4.28	0.38	5.69	5.91	5.69	5.91	XXX
93980	26	A	Penile vascular study	1.25	0.40	0.65	0.40	0.65	0.08	1.73	1.98	1.73	1.98	XXX
93980	TC	A	Penile vascular study	0.00	3.65	3.63	3.65	3.63	0.30	3.95	3.93	3.95	3.93	XXX
93981	.....	A	Penile vascular study	0.44	3.50	3.63	3.50	3.63	0.31	4.25	4.38	4.25	4.38	XXX
93981	26	A	Penile vascular study	0.44	0.13	0.28	0.13	0.28	0.03	0.60	0.75	0.60	0.75	XXX
93981	TC	A	Penile vascular study	0.00	3.37	3.35	3.37	3.35	0.28	3.65	3.63	3.65	3.63	XXX
93990	.....	A	Doppler flow testing	0.25	2.72	2.76	2.72	2.76	0.22	3.19	3.23	3.19	3.23	XXX
93990	26	A	Doppler flow testing	0.25	0.10	0.16	0.10	0.16	0.01	0.36	0.42	0.36	0.42	XXX
93990	TC	A	Doppler flow testing	0.00	2.62	2.60	2.62	2.60	0.21	2.83	2.81	2.83	2.81	XXX
94010	.....	A	Breathing capacity test	0.17	0.49	0.61	0.49	0.61	0.03	0.69	0.81	0.69	0.81	XXX
94010	26	A	Breathing capacity test	0.17	0.05	0.18	0.05	0.18	0.01	0.23	0.36	0.23	0.36	XXX
94010	TC	A	Breathing capacity test	0.00	0.44	0.44	0.44	0.44	0.02	0.46	0.46	0.46	0.46	XXX
94014	.....	A	Patient recorded spirometry	0.52	0.64	0.64	0.64	0.64	0.04	1.20	1.20	1.20	1.20	XXX
94015	.....	A	Patient recorded spirometry	0.00	0.44	0.00	0.44	0.00	0.02	0.46	0.02	0.46	0.02	XXX
94016	.....	A	Review patient spirometry	0.52	0.20	0.20	0.20	0.20	0.02	0.74	0.74	0.74	0.74	XXX
94060	.....	A	Evaluation of wheezing	0.31	1.07	1.21	1.07	1.21	0.06	1.44	1.58	1.44	1.58	XXX
94060	26	A	Evaluation of wheezing	0.31	0.09	0.23	0.09	0.23	0.01	0.41	0.55	0.41	0.55	XXX
94060	TC	A	Evaluation of wheezing	0.00	0.98	0.98	0.98	0.98	0.05	1.03	1.03	1.03	1.03	XXX
94070	.....	A	Evaluation of wheezing	0.60	1.71	1.82	1.71	1.82	0.10	2.41	2.52	2.41	2.52	XXX
94070	26	A	Evaluation of wheezing	0.60	0.18	0.30	0.18	0.30	0.02	0.80	0.92	0.80	0.92	XXX
94070	TC	A	Evaluation of wheezing	0.00	1.53	1.52	1.53	1.52	0.08	1.61	1.60	1.61	1.60	XXX
94150	.....	B	Vital capacity test	0.07	0.12	0.15	0.12	0.15	0.01	0.20	0.23	0.20	0.23	XXX
94150	26	B	Vital capacity test	0.07	0.03	0.06	0.03	0.06	0.00	0.10	0.13	0.10	0.13	XXX
94150	TC	B	Vital capacity test	0.00	0.09	0.09	0.09	0.09	0.01	0.10	0.10	0.10	0.10	XXX
94200	.....	A	Lung function test (MBC/MVV)	0.11	0.29	0.34	0.29	0.34	0.02	0.42	0.47	0.42	0.47	XXX
94200	26	A	Lung function test (MBC/MVV)	0.11	0.03	0.08	0.03	0.08	0.00	0.14	0.19	0.14	0.19	XXX
94200	TC	A	Lung function test (MBC/MVV)	0.00	0.26	0.26	0.26	0.26	0.02	0.28	0.28	0.28	0.28	XXX
94240	.....	A	Residual lung capacity	0.26	0.79	0.88	0.79	0.88	0.05	1.10	1.19	1.10	1.19	XXX
94240	26	A	Residual lung capacity	0.26	0.08	0.17	0.08	0.17	0.01	0.35	0.44	0.35	0.44	XXX
94240	TC	A	Residual lung capacity	0.00	0.71	0.71	0.71	0.71	0.04	0.75	0.75	0.75	0.75	XXX
94250	.....	A	Expired gas collection	0.11	0.17	0.22	0.17	0.22	0.01	0.29	0.34	0.29	0.34	XXX
94250	26	A	Expired gas collection	0.11	0.03	0.08	0.03	0.08	0.00	0.14	0.19	0.14	0.19	XXX
94250	TC	A	Expired gas collection	0.00	0.14	0.14	0.14	0.14	0.01	0.15	0.15	0.15	0.15	XXX
94260	.....	A	Thoracic gas volume	0.13	0.61	0.66	0.61	0.66	0.03	0.77	0.82	0.77	0.82	XXX
94260	26	A	Thoracic gas volume	0.13	0.04	0.10	0.04	0.10	0.00	0.17	0.23	0.17	0.23	XXX
94260	TC	A	Thoracic gas volume	0.00	0.57	0.57	0.57	0.57	0.03	0.60	0.60	0.60	0.60	XXX
94350	.....	A	Lung nitrogen washout curve	0.26	0.85	0.72	0.85	0.72	0.04	0.95	1.02	0.95	1.02	XXX
94350	26	A	Lung nitrogen washout curve	0.26	0.08	0.16	0.08	0.16	0.01	0.35	0.43	0.35	0.43	XXX
94350	TC	A	Lung nitrogen washout curve	0.00	0.57	0.57	0.57	0.57	0.03	0.60	0.60	0.60	0.60	XXX
94360	.....	A	Measure airflow resistance	0.26	1.08	1.15	1.08	1.15	0.06	1.40	1.47	1.40	1.47	XXX
94360	26	A	Measure airflow resistance	0.26	0.08	0.15	0.08	0.15	0.01	0.35	0.42	0.35	0.42	XXX
94360	TC	A	Measure airflow resistance	0.00	1.01	1.01	1.01	1.01	0.05	1.06	1.06	1.06	1.06	XXX
94370	.....	A	Breath airway closing volume	0.26	0.36	0.40	0.36	0.40	0.03	0.65	0.69	0.65	0.69	XXX
94370	26	A	Breath airway closing volume	0.26	0.08	0.12	0.08	0.12	0.01	0.35	0.39	0.35	0.39	XXX
94370	TC	A	Breath airway closing volume	0.00	0.28	0.28	0.28	0.28	0.02	0.30	0.30	0.30	0.30	XXX
94375	.....	A	Respiratory flow volume loop	0.31	0.59	0.66	0.59	0.66	0.03	0.93	1.00	0.93	1.00	XXX
94375	26	A	Respiratory flow volume loop	0.31	0.09	0.16	0.09	0.16	0.01	0.41	0.48	0.41	0.48	XXX
94375	TC	A	Respiratory flow volume loop	0.00	0.50	0.50	0.50	0.50	0.02	0.52	0.52	0.52	0.52	XXX
94400	.....	A	CO2 breathing response curve	0.40	0.45	0.65	0.45	0.65	0.07	0.92	1.12	0.92	1.12	XXX
94400	26	A	CO2 breathing response curve	0.40	0.11	0.31	0.11	0.31	0.02	0.53	0.73	0.53	0.73	XXX
94400	TC	A	CO2 breathing response curve	0.00	0.33	0.33	0.33	0.33	0.05	0.38	0.38	0.38	0.38	XXX
94450	.....	A	Hypoxia response curve	0.40	0.53	0.60	0.53	0.60	0.03	0.96	1.03	0.96	1.03	XXX
94450	26	A	Hypoxia response curve	0.40	0.12	0.19	0.12	0.19	0.01	0.53	0.60	0.53	0.60	XXX
94450	TC	A	Hypoxia response curve	0.00	0.40	0.40	0.40	0.40	0.02	0.42	0.42	0.42	0.42	XXX
94620	.....	A	Pulmonary stress test/simple	0.64	1.74	2.11	1.74	2.11	0.11	2.49	2.86	2.49	2.86	XXX
94620	26	A	Pulmonary stress test/simple	0.64	0.27	0.64	0.27	0.64	0.03	0.94	1.31	0.94	1.31	XXX
94620	TC	A	Pulmonary stress test/simple	0.00	1.47	1.47	1.47	1.47	0.08	1.55	1.55	1.55	1.55	XXX
94621	.....	A	Pulm stress test/complex	1.42	1.74	2.11	1.74	2.11	0.11	3.27	3.64	3.27	3.64	XXX
94621	26	A	Pulm stress test/complex	1.42	0.27	0.64	0.27	0.64	0.03	1.72	2.09	1.72	2.09	XXX
94621	TC	A	Pulm stress test/complex	0.00	1.47	1.47	1.47	1.47	0.08	1.55	1.55	1.55	1.55	XXX
94640	.....	A	Airway inhalation treatment	0.00	0.43	0.43	0.43	0.43	0.02	0.45	0.45	0.45	0.45	XXX
94642	.....	C	Aerosol inhalation treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94650	.....	A	Pressure breathing (IPPB)	0.00	0.40	0.40	0.40	0.40	0.02	0.42	0.42	0.42	0.42	XXX
94651	.....	A	Pressure breathing (IPPB)	0.00	0.39	0.39	0.39	0.39	0.02	0.41	0.41	0.41	0.41	XXX
94652	.....	A	Pressure breathing (IPPB)	0.00	NA	NA	0.45	0.45	0.06	NA	NA	0.51	0.51	XXX
94656	.....	A	Initial ventilator mgmt	1.22	NA	NA	0.30	0.77	0.06	NA	NA	1.58	2.05	XXX
94657	.....	A	Cont. ventilator	0.83	NA	NA	0.24	0.46	0.03	NA	NA	1.10	1.32	XXX
94660	.....	A	Pos airway pressure, CPAP	0.76	0.59	0.68	0.23	0.50	0.03	1.38	1.47	1.02	1.29	XXX
94662	.....	A	Neg pressure ventilation,cnp	0.76	NA	NA	0.23	0.28	0.02	NA	NA	1.01	1.06	XXX
94664	.....	A	Aerosol or vapor inhalations	0.00	0.55	0.55	0.55	0.55	0.03	0.58	0.58	0.58	0.58	XXX
94665	.....	A	Aerosol or vapor inhalations	0.00	0.50	0.50	0.50	0.50	0.04	0.54	0.54	0.54	0.54	XXX
94667	.....	A	Chest wall manipulation	0.00	0.60	0.60	0.60	0.60	0.04	0.64	0.64	0.64	0.64	XXX
94668	.....	A	Chest wall manipulation	0.00	0.37	0.37	0.37	0.37	0.02	0.39	0.39	0.39	0.39	XXX
94680	.....	A	Exhaled air analysis: O2	0.26	0.61	0.73	0.61	0.73	0.06	0.93	1.05	0.93	1.05	XXX
94680	26	A	Exhaled air analysis: O2	0.26	0.08	0.20	0.08	0.20	0.01	0.35	0.47	0.35	0.47	XXX
94680	TC	A	Exhaled air analysis: O2	0.00	0.53	0.53	0.53	0.53	0.05	0.58	0.58	0.58	0.58	XXX
94681	.....	A	Exhaled air analysis: O2,CO2	0.20	1.51	1.59	1.51	1.59	0.11	1.82	1.90	1.82	1.90	XXX
94681	26	A	Exhaled air analysis: O2,CO2	0.20	0.08	0.15	0.08	0.15	0.01	0.27	0.38	0.27	0.36	XXX
94681	TC	A	Exhaled air analysis: O2,CO2	0.00	1.45	1.44	1.45	1.44	0.10	1.55	1.54	1.55	1.54	XXX
94690	.....	A	Exhaled air analysis	0.07	0.58	0.59	0.58	0.59	0.03	0.68	0.69	0.68	0.69	XXX
94690	26	A	Exhaled air analysis	0.07	0.02	0.04	0.02	0.04	0.00	0.09	0.11	0.09	0.11	XXX
94690	TC	A	Exhaled air analysis	0.00	0.56	0.56	0.56	0.56	0.03	0.59	0.59	0.59	0.59	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
94720	.....	A	Monoxide diffusing capacity	0.26	0.95	1.04	0.95	1.04	0.06	1.27	1.36	1.27	1.36	XXX
94720	26	A	Monoxide diffusing capacity	0.26	0.08	0.17	0.08	0.17	0.01	0.35	0.44	0.35	0.44	XXX
94720	TC	A	Monoxide diffusing capacity	0.00	0.88	0.88	0.88	0.88	0.05	0.93	0.93	0.93	0.93	XXX
94725	.....	A	Membrane diffusion capacity	0.26	1.90	1.95	1.90	1.95	0.11	2.27	2.32	2.27	2.32	XXX
94725	26	A	Membrane diffusion capacity	0.26	0.08	0.14	0.08	0.14	0.01	0.35	0.41	0.35	0.41	XXX
94725	TC	A	Membrane diffusion capacity	0.00	1.82	1.81	1.82	1.81	0.10	1.92	1.91	1.92	1.91	XXX
94750	.....	A	Pulmonary compliance study	0.23	0.67	0.77	0.67	0.77	0.04	0.94	1.04	0.94	1.04	XXX
94750	26	A	Pulmonary compliance study	0.23	0.07	0.17	0.07	0.17	0.01	0.31	0.41	0.31	0.41	XXX
94750	TC	A	Pulmonary compliance study	0.00	0.60	0.60	0.60	0.60	0.03	0.63	0.63	0.63	0.63	XXX
94760	.....	A	Measure blood oxygen level	0.00	0.27	0.27	0.27	0.27	0.02	0.29	0.29	0.29	0.29	XXX
94761	.....	A	Measure blood oxygen level	0.00	0.70	0.70	0.70	0.70	0.05	0.75	0.75	0.75	0.75	XXX
94762	.....	A	Measure blood oxygen level	0.00	1.19	1.18	1.19	1.18	0.08	1.27	1.26	1.27	1.26	XXX
94770	.....	A	Exhaled carbon dioxide test	0.15	0.36	0.40	0.36	0.40	0.07	0.58	0.62	0.58	0.62	XXX
94770	26	A	Exhaled carbon dioxide test	0.15	0.04	0.08	0.04	0.08	0.01	0.20	0.24	0.20	0.24	XXX
94770	TC	A	Exhaled carbon dioxide test	0.00	0.32	0.32	0.32	0.32	0.06	0.38	0.38	0.38	0.38	XXX
94772	.....	C	Breath recording, infant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94772	26	C	Breath recording, infant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94772	TC	C	Breath recording, infant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94799	.....	C	Pulmonary service/procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94799	26	C	Pulmonary service/procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94799	TC	C	Pulmonary service/procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95004	.....	A	Allergy skin tests	0.00	0.10	0.10	0.10	0.10	0.01	0.11	0.11	0.11	0.11	XXX
95010	.....	A	Sensitivity skin tests	0.15	0.36	0.24	0.06	0.06	0.00	0.51	0.39	0.21	0.21	XXX
95015	.....	A	Sensitivity skin tests	0.15	0.42	0.27	0.06	0.06	0.00	0.57	0.42	0.21	0.21	XXX
95024	.....	A	Allergy skin tests	0.00	0.15	0.15	0.15	0.15	0.01	0.16	0.16	0.16	0.16	XXX
95027	.....	A	Skin end point titration	0.00	0.15	0.15	0.15	0.15	0.01	0.16	0.16	0.16	0.16	XXX
95028	.....	A	Allergy skin tests	0.00	0.24	0.24	0.24	0.24	0.01	0.25	0.25	0.25	0.25	XXX
95044	.....	A	Allergy patch tests	0.00	0.21	0.21	0.21	0.21	0.01	0.22	0.22	0.22	0.22	XXX
95052	.....	A	Photo patch test	0.00	0.26	0.26	0.26	0.26	0.01	0.27	0.27	0.27	0.27	XXX
95056	.....	A	Photosensitivity tests	0.00	0.19	0.19	0.10	0.10	0.01	0.20	0.20	0.11	0.11	XXX
95060	.....	A	Eye allergy tests	0.00	0.36	0.36	0.36	0.36	0.02	0.38	0.38	0.38	0.38	XXX
95065	.....	A	Nose allergy test	0.00	0.21	0.21	0.21	0.16	0.01	0.22	0.22	0.22	0.17	XXX
95070	.....	A	Bronchial allergy tests	0.00	2.38	2.37	2.38	2.37	0.02	2.40	2.39	2.40	2.39	XXX
95071	.....	A	Bronchial allergy tests	0.00	3.05	3.04	3.05	3.04	0.02	3.07	3.06	3.07	3.06	XXX
95075	.....	A	Ingestion challenge test	0.95	0.73	1.44	0.38	0.73	0.03	1.71	2.42	1.36	1.71	XXX
95078	.....	A	Provocative testing	0.00	0.26	0.26	0.26	0.26	0.02	0.28	0.28	0.28	0.28	XXX
95115	.....	A	Immunotherapy, one injection	0.00	0.40	0.40	0.40	0.40	0.02	0.42	0.42	0.42	0.42	000
95117	.....	A	Immunotherapy injections	0.00	0.52	0.52	0.52	0.52	0.02	0.54	0.54	0.54	0.54	000
95120	.....	I	Immunotherapy, one injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95125	.....	I	Immunotherapy, many antigens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95130	.....	I	Immunotherapy, insect venom	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95131	.....	I	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95132	.....	I	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95133	.....	I	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95134	.....	I	Immunotherapy, insect venoms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95144	.....	A	Antigen therapy services	0.06	0.23	0.19	0.02	0.05	0.00	0.29	0.25	0.08	0.11	000
95145	.....	A	Antigen therapy services	0.06	0.42	0.40	0.02	0.11	0.00	0.48	0.46	0.08	0.17	000
95146	.....	A	Antigen therapy services	0.06	0.28	0.47	0.02	0.18	0.00	0.34	0.53	0.08	0.24	000
95147	.....	A	Antigen therapy services	0.06	0.31	0.65	0.02	0.26	0.00	0.37	0.71	0.08	0.32	000
95148	.....	A	Antigen therapy services	0.06	0.34	0.67	0.02	0.26	0.00	0.40	0.73	0.08	0.32	000
95149	.....	A	Antigen therapy services	0.06	0.49	0.87	0.02	0.32	0.00	0.55	0.93	0.08	0.38	000
95165	.....	A	Antigen therapy services	0.06	0.23	0.17	0.02	0.04	0.00	0.29	0.23	0.08	0.10	000
95170	.....	A	Antigen therapy services	0.06	0.24	0.31	0.02	0.11	0.00	0.30	0.37	0.08	0.17	000
95180	.....	A	Rapid desensitization	2.01	1.56	0.86	0.84	0.46	0.06	3.63	2.93	2.91	2.53	000
95199	.....	C	Allergy immunology services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
95805	.....	A	Multiple sleep latency test	1.88	6.07	6.03	6.07	6.03	0.37	8.32	8.28	8.32	8.28	XXX
95805	26	A	Multiple sleep latency test	1.88	0.63	0.62	0.63	0.62	0.07	2.58	2.57	2.58	2.57	XXX
95805	TC	A	Multiple sleep latency test	0.00	5.43	5.40	5.43	5.40	0.30	5.73	5.70	5.73	5.70	XXX
95806	.....	A	Sleep study, unattended	1.66	5.83	6.81	5.83	6.48	0.34	7.83	8.81	7.83	8.48	XXX
95806	26	A	Sleep study, unattended	1.66	0.63	1.65	0.63	1.31	0.06	2.35	3.37	2.35	3.03	XXX
95806	TC	A	Sleep study, unattended	0.00	5.19	5.16	5.19	5.16	0.28	5.47	5.44	5.47	5.44	XXX
95807	.....	A	Sleep study, attended	1.66	7.43	8.13	7.43	8.13	0.44	9.53	10.23	9.53	10.23	XXX
95807	26	A	Sleep study, attended	1.66	0.51	1.25	0.51	1.25	0.06	2.23	2.97	2.23	2.97	XXX
95807	TC	A	Sleep study, attended	0.00	6.91	6.88	6.91	6.88	0.38	7.29	7.26	7.29	7.26	XXX
95808	.....	A	Polysomnography, 1-3	2.65	7.80	8.65	7.80	8.65	0.47	10.92	11.77	10.92	11.77	XXX
95808	26	A	Polysomnography, 1-3	2.65	0.89	1.78	0.89	1.78	0.09	3.63	4.52	3.63	4.52	XXX
95808	TC	A	Polysomnography, 1-3	0.00	6.91	6.88	6.91	6.88	0.38	7.29	7.26	7.29	7.26	XXX
95810	.....	A	Polysomnography, 4 or more	3.53	8.06	8.78	8.06	8.78	0.50	12.09	12.81	12.09	12.81	XXX
95810	26	A	Polysomnography, 4 or more	3.53	1.15	1.91	1.15	1.91	0.12	4.80	5.56	4.80	5.56	XXX
95810	TC	A	Polysomnography, 4 or more	0.00	6.91	6.88	6.91	6.88	0.38	7.29	7.26	7.29	7.26	XXX
95811	.....	A	Polysomnography w/cpap	3.80	8.50	9.24	8.50	9.24	0.52	12.82	13.56	12.82	13.56	XXX
95811	26	A	Polysomnography w/cpap	3.80	1.24	2.02	1.24	2.02	0.13	5.17	5.95	5.17	5.95	XXX
95811	TC	A	Polysomnography w/cpap	0.00	7.26	7.22	7.26	7.22	0.39	7.65	7.61	7.65	7.61	XXX
95812	.....	A	Electroencephalogram (EEG)	1.08	1.91	1.96	1.91	1.96	0.13	3.12	3.17	3.12	3.17	XXX
95812	26	A	Electroencephalogram (EEG)	1.08	0.43	0.49	0.43	0.49	0.04	1.55	1.61	1.55	1.61	XXX
95812	TC	A	Electroencephalogram (EEG)	0.00	1.48	1.48	1.48	1.48	0.09	1.57	1.57	1.57	1.57	XXX
95813	.....	A	Electroencephalogram (EEG)	1.73	2.15	2.08	2.15	2.08	0.16	4.04	3.97	4.04	3.97	XXX
95813	26	A	Electroencephalogram (EEG)	1.73	0.67	0.61	0.67	0.61	0.07	2.47	2.41	2.47	2.41	XXX
95813	TC	A	Electroencephalogram (EEG)	0.00	1.48	1.48	1.48	1.48	0.09	1.57	1.57	1.57	1.57	XXX
95816	.....	A	Electroencephalogram (EEG)	1.08	1.81	1.74	1.81	1.74	0.13	3.02	2.95	3.02	2.95	XXX
95816	26	A	Electroencephalogram (EEG)	1.08	0.43	0.37	0.43	0.37	0.05	1.56	1.50	1.56	1.50	XXX
95816	TC	A	Electroencephalogram (EEG)	0.00	1.38	1.38	1.38	1.38	0.08	1.46	1.46	1.46	1.46	XXX
95819	.....	A	Electroencephalogram (EEG)	1.08	1.86	1.91	1.86	1.91	0.13	3.07	3.12	3.07	3.12	XXX
95819	26	A	Electroencephalogram (EEG)	1.08	0.43	0.49	0.43	0.49	0.05	1.56	1.62	1.56	1.62	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
95819	TC	A	Electroencephalogram (EEG)	0.00	1.43	1.42	1.43	1.42	0.08	1.51	1.50	1.51	1.50	XXX
95822		A	Sleep electroencephalogram	1.08	2.32	2.40	2.32	2.40	0.16	3.56	3.64	3.56	3.64	XXX
95822	26	A	Sleep electroencephalogram	1.08	0.43	0.52	0.43	0.52	0.05	1.56	1.65	1.56	1.65	XXX
95822	TC	A	Sleep electroencephalogram	0.00	1.89	1.88	1.89	1.88	0.11	2.00	1.99	2.00	1.99	XXX
95824		A	Electroencephalography	0.74	0.74	0.90	0.74	0.90	0.05	1.53	1.69	1.53	1.69	XXX
95824	26	A	Electroencephalography	0.74	0.30	0.47	0.30	0.47	0.03	1.07	1.24	1.07	1.24	XXX
95824	TC	A	Electroencephalography	0.00	0.44	0.44	0.44	0.44	0.02	0.46	0.46	0.46	0.46	XXX
95827		A	Night electroencephalogram	1.08	2.79	3.06	2.79	3.06	0.17	4.04	4.31	4.04	4.31	XXX
95827	26	A	Night electroencephalogram	1.08	0.40	0.68	0.40	0.68	0.04	1.52	1.80	1.52	1.80	XXX
95827	TC	A	Night electroencephalogram	0.00	2.39	2.38	2.39	2.38	0.13	2.52	2.51	2.52	2.51	XXX
95829		A	Surgery electrocorticogram	6.21	2.72	1.68	2.72	1.68	0.28	9.21	8.17	9.21	8.17	XXX
95829	26	A	Surgery electrocorticogram	6.21	2.57	1.53	2.57	1.53	0.26	9.04	8.00	9.04	8.00	XXX
95829	TC	A	Surgery electrocorticogram	0.00	0.15	0.15	0.15	0.15	0.02	0.17	0.17	0.17	0.17	XXX
95830		A	Insert electrodes for EEG	1.70	3.10	1.98	0.69	0.77	0.07	4.87	3.75	2.46	2.54	XXX
95831		A	Limb muscle testing, manual	0.28	0.49	0.40	0.13	0.15	0.01	0.78	0.69	0.42	0.44	XXX
95832		A	Hand muscle testing, manual	0.29	0.33	0.30	0.13	0.14	0.01	0.63	0.60	0.43	0.44	XXX
95833		A	Body muscle testing, manual	0.47	0.54	0.48	0.23	0.22	0.02	1.03	0.97	0.72	0.71	XXX
95834		A	Body muscle testing, manual	0.60	0.57	0.62	0.28	0.31	0.02	1.19	1.24	0.90	0.93	XXX
95851		A	Range of motion measurements	0.16	0.46	0.36	0.08	0.11	0.01	0.63	0.53	0.25	0.28	XXX
95852		A	Range of motion measurements	0.11	0.36	0.26	0.05	0.07	0.01	0.48	0.38	0.17	0.19	XXX
95857		A	Tensilon test	0.53	0.58	0.56	0.22	0.25	0.02	1.13	1.11	0.77	0.80	XXX
95858		A	Tensilon test & myogram	1.56	1.08	1.08	1.08	1.08	0.09	2.71	2.73	2.71	2.73	XXX
95858	26	A	Tensilon test & myogram	1.56	0.64	0.67	0.64	0.67	0.06	2.26	2.29	2.26	2.29	XXX
95858	TC	A	Tensilon test & myogram	0.00	0.41	0.41	0.41	0.41	0.03	0.44	0.44	0.44	0.44	XXX
95860		A	Muscle test, one limb	0.98	0.80	0.99	0.80	0.99	0.06	1.82	2.01	1.82	2.01	XXX
95860	26	A	Muscle test, one limb	0.98	0.40	0.60	0.40	0.60	0.04	1.40	1.60	1.40	1.60	XXX
95860	TC	A	Muscle test, one limb	0.00	0.39	0.39	0.39	0.39	0.02	0.41	0.41	0.41	0.41	XXX
95861		A	Muscle test, two limbs	1.54	1.42	1.78	1.42	1.78	0.11	3.07	3.43	3.07	3.43	XXX
95861	26	A	Muscle test, two limbs	1.54	0.65	1.02	0.65	1.02	0.06	2.25	2.62	2.25	2.62	XXX
95861	TC	A	Muscle test, two limbs	0.00	0.76	0.76	0.76	0.76	0.05	0.81	0.81	0.81	0.81	XXX
95863		A	Muscle test, 3 limbs	1.87	1.74	2.12	1.74	2.12	0.12	3.73	4.11	3.73	4.11	XXX
95863	26	A	Muscle test, 3 limbs	1.87	0.77	1.15	0.77	1.15	0.07	2.71	3.09	2.71	3.09	XXX
95863	TC	A	Muscle test, 3 limbs	0.00	0.98	0.98	0.98	0.98	0.05	1.03	1.03	1.03	1.03	XXX
95864		A	Muscle test, 4 limbs	1.99	2.89	3.22	2.69	3.22	0.18	4.86	5.39	4.86	5.39	XXX
95864	26	A	Muscle test, 4 limbs	1.99	0.83	1.37	0.83	1.37	0.08	2.90	3.44	2.90	3.44	XXX
95864	TC	A	Muscle test, 4 limbs	0.00	1.86	1.85	1.86	1.85	0.10	1.96	1.95	1.96	1.95	XXX
95867		A	Muscle test, head or neck	0.79	0.95	1.09	0.95	1.09	0.06	1.80	1.94	1.80	1.94	XXX
95867	26	A	Muscle test, head or neck	0.79	0.34	0.49	0.34	0.49	0.03	1.16	1.31	1.16	1.31	XXX
95867	TC	A	Muscle test, head or neck	0.00	0.60	0.60	0.60	0.60	0.03	0.63	0.63	0.63	0.63	XXX
95868		A	Muscle test, head or neck	1.18	1.20	1.65	1.20	1.65	0.09	2.47	2.92	2.47	2.92	XXX
95868	26	A	Muscle test, head or neck	1.18	0.47	0.92	0.47	0.92	0.05	1.70	2.15	1.70	2.15	XXX
95868	TC	A	Muscle test, head or neck	0.00	0.72	0.72	0.72	0.72	0.04	0.76	0.76	0.76	0.76	XXX
95869		A	Muscle test, thor parraspinal	0.37	0.38	0.48	0.38	0.48	0.03	0.78	0.88	0.78	0.88	XXX
95869	26	A	Muscle test, thor parraspinal	0.37	0.16	0.26	0.16	0.26	0.01	0.54	0.64	0.54	0.64	XXX
95869	TC	A	Muscle test, thor parraspinal	0.00	0.22	0.22	0.22	0.22	0.02	0.24	0.24	0.24	0.24	XXX
95870		A	Muscle test, non-parraspinal	0.37	0.36	0.47	0.36	0.47	0.03	0.76	0.87	0.76	0.87	XXX
95870	26	A	Muscle test, non-parraspinal	0.37	0.14	0.25	0.14	0.25	0.01	0.52	0.63	0.52	0.63	XXX
95870	TC	A	Muscle test, non-parraspinal	0.00	0.22	0.22	0.22	0.22	0.02	0.24	0.24	0.24	0.24	XXX
95872		A	Muscle test, one fiber	1.50	1.22	1.29	1.22	1.29	0.10	2.82	2.89	2.82	2.89	XXX
95872	26	A	Muscle test, one fiber	1.50	0.60	0.67	0.60	0.67	0.06	2.16	2.23	2.16	2.23	XXX
95872	TC	A	Muscle test, one fiber	0.00	0.62	0.62	0.62	0.62	0.04	0.66	0.66	0.66	0.66	XXX
95875		A	Limb exercise test	1.34	0.95	0.80	0.95	0.80	0.11	2.40	2.25	2.40	2.25	XXX
95875	26	A	Limb exercise test	1.34	0.54	0.39	0.54	0.39	0.06	1.94	1.79	1.94	1.79	XXX
95875	TC	A	Limb exercise test	0.00	0.41	0.41	0.41	0.41	0.05	0.46	0.46	0.46	0.46	XXX
95900		A	Motor nerve conduction test	0.42	0.47	0.57	0.47	0.57	0.04	0.93	1.03	0.93	1.03	XXX
95900	26	A	Motor nerve conduction test	0.42	0.17	0.28	0.17	0.28	0.02	0.61	0.72	0.61	0.72	XXX
95900	TC	A	Motor nerve conduction test	0.00	0.29	0.29	0.29	0.29	0.02	0.31	0.31	0.31	0.31	XXX
95903		A	Motor nerve conduction test	0.60	0.51	0.58	0.51	0.58	0.04	1.15	1.22	1.15	1.22	XXX
95903	26	A	Motor nerve conduction test	0.60	0.25	0.32	0.25	0.32	0.02	0.87	0.94	0.87	0.94	XXX
95903	TC	A	Motor nerve conduction test	0.00	0.26	0.26	0.26	0.26	0.02	0.28	0.28	0.28	0.28	XXX
95904		A	Sense nerve conduction test	0.34	0.37	0.49	0.37	0.49	0.03	0.74	0.86	0.74	0.86	XXX
95904	26	A	Sense nerve conduction test	0.34	0.14	0.26	0.14	0.26	0.01	0.49	0.61	0.49	0.61	XXX
95904	TC	A	Sense nerve conduction test	0.00	0.23	0.23	0.23	0.23	0.02	0.25	0.25	0.25	0.25	XXX
95920		A	Intraop nerve test add-on	2.11	NA	NA	2.27	2.59	0.15	NA	NA	4.53	4.85	ZZZ
95920	26	A	Intraop nerve test add-on	2.11	NA	NA	0.91	1.23	0.09	NA	NA	3.11	3.43	ZZZ
95920	TC	A	Intraop nerve test add-on	0.00	NA	NA	1.36	1.36	0.06	NA	NA	1.42	1.42	ZZZ
95921		A	Autonomic nervous func test	0.90	0.73	0.74	0.73	0.74	0.05	1.68	1.69	1.68	1.69	XXX
95921	26	A	Autonomic nervous func test	0.90	0.34	0.35	0.34	0.35	0.03	1.27	1.28	1.27	1.28	XXX
95921	TC	A	Autonomic nervous func test	0.00	0.39	0.39	0.39	0.39	0.02	0.41	0.41	0.41	0.41	XXX
95922		A	Autonomic nervous func test	0.96	0.78	0.77	0.78	0.77	0.06	1.80	1.79	1.80	1.79	XXX
95922	26	A	Autonomic nervous func test	0.96	0.39	0.38	0.39	0.38	0.04	1.39	1.38	1.39	1.38	XXX
95922	TC	A	Autonomic nervous func test	0.00	0.39	0.39	0.39	0.39	0.02	0.41	0.41	0.41	0.41	XXX
95923		A	Autonomic nervous func test	0.90	0.75	0.75	0.75	0.75	0.06	1.71	1.71	1.71	1.71	XXX
95923	26	A	Autonomic nervous func test	0.90	0.36	0.36	0.36	0.36	0.04	1.30	1.30	1.30	1.30	XXX
95923	TC	A	Autonomic nervous func test	0.00	0.39	0.39	0.39	0.39	0.02	0.41	0.41	0.41	0.41	XXX
95925		A	Somatosensory testing	0.54	1.18	1.41	1.18	1.41	0.07	1.79	2.02	1.79	2.02	XXX
95925	26	A	Somatosensory testing	0.54	0.22	0.46	0.22	0.46	0.02	0.78	1.02	0.78	1.02	XXX
95925	TC	A	Somatosensory testing	0.00	0.96	0.95	0.96	0.95	0.05	1.01	1.00	1.01	1.00	XXX
95926		A	Somatosensory testing	0.54	1.19	1.41	1.19	1.41	0.07	1.80	2.02	1.80	2.02	XXX
95926	26	A	Somatosensory testing	0.54	0.23	0.46	0.23	0.46	0.02	0.79	1.02	0.79	1.02	XXX
95926	TC	A	Somatosensory testing	0.00	0.96	0.95	0.96	0.95	0.05	1.01	1.00	1.01	1.00	XXX
95927		A	Somatosensory testing	0.54	1.19	1.41	1.19	1.41	0.07	1.80	2.02	1.80	2.02	XXX
95927	26	A	Somatosensory testing	0.54	0.23	0.46	0.23	0.46	0.02	0.79	1.02	0.79	1.02	XXX
95927	TC	A	Somatosensory testing	0.00	0.96	0.95	0.96	0.95	0.05	1.01	1.00	1.01	1.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
95930		A	Visual evoked potential test	0.35	0.41	0.66	0.41	0.66	0.02	0.78	1.03	0.78	1.03	XXX
95930	26	A	Visual evoked potential test	0.35	0.14	0.39	0.14	0.39	0.01	0.50	0.75	0.50	0.75	XXX
95930	TC	A	Visual evoked potential test	0.00	0.27	0.27	0.27	0.27	0.01	0.28	0.28	0.28	0.28	XXX
95933		A	Blink reflex test	0.59	1.06	1.21	1.06	1.21	0.07	1.72	1.87	1.72	1.87	XXX
95933	26	A	Blink reflex test	0.59	0.23	0.39	0.23	0.39	0.02	0.84	1.00	0.84	1.00	XXX
95933	TC	A	Blink reflex test	0.00	0.82	0.82	0.82	0.82	0.05	0.87	0.87	0.87	0.87	XXX
95934		A	A reflex test	0.51	0.44	0.52	0.44	0.52	0.04	0.99	1.07	0.99	1.07	XXX
95934	26	A	h reflex test	0.51	0.21	0.29	0.21	0.29	0.02	0.74	0.82	0.74	0.82	XXX
95934	TC	A	h reflex test	0.00	0.22	0.22	0.22	0.22	0.02	0.24	0.24	0.24	0.24	XXX
95936		A	h reflex test	0.55	0.46	0.53	0.46	0.53	0.04	1.05	1.12	1.05	1.12	XXX
95936	26	A	h reflex test	0.55	0.24	0.31	0.24	0.31	0.02	0.81	0.88	0.81	0.88	XXX
95936	TC	A	h reflex test	0.00	0.22	0.22	0.22	0.22	0.02	0.24	0.24	0.24	0.24	XXX
95937		A	Neuromuscular junction test	0.65	0.61	0.73	0.61	0.73	0.05	1.31	1.43	1.31	1.43	XXX
95937	26	A	Neuromuscular junction test	0.65	0.26	0.38	0.26	0.38	0.03	0.94	1.06	0.94	1.06	XXX
95937	TC	A	Neuromuscular junction test	0.00	0.35	0.35	0.35	0.35	0.02	0.37	0.37	0.37	0.37	XXX
95950		A	Ambulatory eeg monitoring	1.51	7.23	7.55	7.23	7.55	0.46	9.20	9.52	9.20	9.52	XXX
95950	26	A	Ambulatory eeg monitoring	1.51	0.60	0.96	0.60	0.96	0.07	2.18	2.54	2.18	2.54	XXX
95950	TC	A	Ambulatory eeg monitoring	0.00	6.63	6.59	6.63	6.59	0.39	7.02	6.98	7.02	6.98	XXX
95951		A	EEG monitoring/videorecord	6.00	10.45	10.02	10.45	10.02	0.66	17.11	16.68	17.11	16.68	XXX
95951	26	A	EEG monitoring/videorecord	6.00	2.42	2.03	2.42	2.03	0.25	8.67	8.28	8.67	8.28	XXX
95951	TC	A	EEG monitoring/videorecord	0.00	8.04	8.00	8.04	8.00	0.41	8.45	8.41	8.45	8.41	XXX
95953		A	EEG monitoring/computer	3.08	7.86	7.86	7.86	7.86	0.52	11.46	11.46	11.46	11.46	XXX
95953	26	A	EEG monitoring/computer	3.08	1.23	1.27	1.23	1.27	0.13	4.44	4.48	4.44	4.48	XXX
95953	TC	A	EEG monitoring/computer	0.00	6.63	6.59	6.63	6.59	0.39	7.02	6.98	7.02	6.98	XXX
95954		A	EEG monitoring/giving drugs	2.45	1.49	2.01	1.49	2.01	0.15	4.09	4.61	4.09	4.61	XXX
95954	26	A	EEG monitoring/giving drugs	2.45	0.99	1.51	0.99	1.51	0.10	3.54	4.06	3.54	4.06	XXX
95954	TC	A	EEG monitoring/giving drugs	0.00	0.49	0.49	0.49	0.49	0.05	0.54	0.54	0.54	0.54	XXX
95955		A	EEG during surgery	1.01	2.40	2.78	2.40	2.78	0.20	3.61	3.99	3.61	3.99	XXX
95955	26	A	EEG during surgery	1.01	0.35	0.74	0.35	0.74	0.05	1.41	1.80	1.41	1.80	XXX
95955	TC	A	EEG during surgery	0.00	2.05	2.04	2.05	2.04	0.15	2.20	2.19	2.20	2.19	XXX
95956		A	EEG monitoring/cable/radio	3.08	7.87	8.03	7.87	8.03	0.52	11.47	11.63	11.47	11.63	XXX
95956	26	A	EEG monitoring/cable/radio	3.08	1.24	1.44	1.24	1.44	0.13	4.45	4.65	4.45	4.65	XXX
95956	TC	A	EEG monitoring/cable/radio	0.00	6.63	6.59	6.63	6.59	0.39	7.02	6.98	7.02	6.98	XXX
95957		A	EEG digital analysis	1.98	2.58	2.51	2.58	2.51	0.18	4.74	4.67	4.74	4.67	XXX
95957	26	A	EEG digital analysis	1.98	0.80	0.74	0.80	0.74	0.08	2.86	2.80	2.86	2.80	XXX
95957	TC	A	EEG digital analysis	0.00	1.78	1.77	1.78	1.77	0.10	1.88	1.87	1.88	1.87	XXX
95958		A	EEG monitoring/function test	4.25	3.44	4.38	3.44	4.38	0.28	7.97	8.91	7.97	8.91	XXX
95958	26	A	EEG monitoring/function test	4.25	1.62	2.57	1.62	2.57	0.17	6.04	6.99	6.04	6.99	XXX
95958	TC	A	EEG monitoring/function test	0.00	1.82	1.81	1.82	1.81	0.11	1.93	1.92	1.93	1.92	XXX
95961		A	Electrode stimulation, brain	2.97	2.62	2.76	2.62	2.76	0.19	5.78	5.92	5.78	5.92	XXX
95961	26	A	Electrode stimulation, brain	2.97	1.27	1.41	1.27	1.41	0.13	4.37	4.51	4.37	4.51	XXX
95961	TC	A	Electrode stimulation, brain	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	XXX
95962		A	Electrode stimulation, brain	3.21	2.70	2.80	2.70	2.80	0.20	6.11	6.21	6.11	6.21	ZZZ
95962	26	A	Electrode stimulation, brain	3.21	1.34	1.45	1.34	1.45	0.14	4.69	4.80	4.69	4.80	ZZZ
95962	TC	A	Electrode stimulation, brain	0.00	1.36	1.36	1.36	1.36	0.06	1.42	1.42	1.42	1.42	ZZZ
95970		A	Neurostim analyze,no program	0.45	0.12	0.12	0.11	0.11	0.03	0.60	0.60	0.59	0.59	XXX
95971		A	Simple neurostim analyze	0.78	0.21	0.21	0.18	0.18	0.05	1.04	1.04	1.01	1.01	XXX
95972		A	Complex neurostim analyze	1.50	0.40	0.40	0.35	0.35	0.09	1.99	1.99	1.94	1.94	XXX
95973		A	Complex neurostim analyze	0.92	0.25	0.25	0.22	0.22	0.05	1.22	1.22	1.19	1.19	ZZZ
95974		A	Complex cranial neurostim	3.00	0.97	0.97	0.76	0.76	0.16	4.13	4.13	3.92	3.92	XXX
95975		A	Complex cranial neurostim	1.70	0.63	0.63	0.49	0.49	0.09	2.42	2.42	2.28	2.28	ZZZ
95999		C	Neurological procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
96100		A	Psychological testing	0.00	1.84	1.83	1.84	1.83	0.16	2.00	1.99	2.00	1.99	XXX
96105		A	Assessment of aphasia	0.00	1.84	1.83	1.84	1.83	0.16	2.00	1.99	2.00	1.99	XXX
96110		C	Developmental test, lim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
96111		A	Developmental test, extend	0.00	1.84	1.83	1.84	1.83	0.16	2.00	1.99	2.00	1.99	XXX
96115		A	Neurobehavior status exam	0.00	1.84	1.83	1.84	1.83	0.16	2.00	1.99	2.00	1.99	XXX
96117		A	Neuropsych test battery	0.00	1.84	1.83	1.84	1.83	0.16	2.00	1.99	2.00	1.99	XXX
96400		A	Chemotherapy, (SC)/(IM)	0.00	0.14	0.14	0.14	0.14	0.01	0.15	0.15	0.15	0.15	XXX
96405		A	Intralesional chemo admin	0.52	1.51	0.96	0.23	0.22	0.02	2.05	1.50	0.77	0.76	000
96406		A	Intralesional chemo admin	0.80	1.85	1.23	0.29	0.30	0.02	2.67	2.05	1.11	1.12	000
96408		A	Chemotherapy, push technique	0.00	1.01	1.01	1.01	1.01	0.05	1.06	1.06	1.06	1.06	XXX
96410		A	Chemotherapy,infusion method	0.00	1.61	1.61	1.61	1.61	0.07	1.68	1.68	1.68	1.68	XXX
96412		A	Chemotx infuse method add-on	0.00	1.21	1.20	1.21	1.20	0.06	1.27	1.26	1.27	1.26	ZZZ
96414		A	Chemotx infuse method add-on	0.00	1.39	1.39	1.39	1.39	0.07	1.46	1.46	1.46	1.46	XXX
96420		A	Chemotherapy, push technique	0.00	1.31	1.30	1.31	1.30	0.07	1.38	1.37	1.38	1.37	XXX
96422		A	Chemotherapy,infusion method	0.00	1.29	1.28	1.29	1.28	0.07	1.36	1.35	1.36	1.35	XXX
96423		A	Chemotx infuse method add-on	0.00	0.50	0.50	0.50	0.50	0.02	0.52	0.52	0.52	0.52	ZZZ
96425		A	Chemotherapy,infusion method	0.00	1.49	1.49	1.49	1.49	0.07	1.56	1.56	1.56	1.56	XXX
96440		A	Chemotherapy, intracavitary	2.37	6.70	3.79	0.91	0.90	0.09	9.16	6.25	3.37	3.36	000
96445		A	Chemotherapy, intracavitary	2.20	6.43	3.75	0.82	0.68	0.08	8.71	6.03	3.10	2.96	000
96450		A	Chemotherapy, into CNS	1.89	5.03	2.99	0.74	0.61	0.07	6.99	4.95	2.70	2.57	000
96520		A	Pump refilling, maintenance	0.00	0.94	0.93	0.94	0.93	0.05	0.99	0.98	0.99	0.98	XXX
96530		A	Pump refilling, maintenance	0.00	1.11	1.11	1.11	1.11	0.05	1.16	1.16	1.16	1.16	XXX
96542		A	Chemotherapy injection	1.42	3.22	2.20	0.57	0.58	0.05	4.69	3.67	2.04	2.05	XXX
96545		B	Provide chemotherapy agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
96549		C	Chemotherapy, unspecified	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
96900		A	Ultraviolet light therapy	0.00	0.41	0.41	0.41	0.41	0.02	0.43	0.43	0.43	0.43	XXX
96902		B	Trichogram	0.41	0.23	0.27	0.16	0.24	0.01	0.65	0.69	0.58	0.66	XXX
96910		A	Photochemotherapy with UV-B	0.00	0.60	0.60	0.60	0.60	0.03	0.63	0.63	0.63	0.63	XXX
96912		A	Photochemotherapy with UV-A	0.00	0.69	0.69	0.69	0.69	0.04	0.73	0.73	0.73	0.73	XXX
96913		A	Photochemotherapy, UV-A or B	0.00	1.42	1.41	1.42	1.41	0.08	1.50	1.49	1.50	1.49	XXX
96999		C	Dermatological procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97001		A	Pt evaluation	1.20	0.41	0.40	0.41	0.40	0.05	1.66	1.65	1.66	1.65	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
97002	.....	A	Pt re-evaluation	0.60	0.29	0.17	0.21	0.13	0.02	0.91	0.79	0.83	0.75	XXX
97003	.....	A	Ot evaluation	1.20	0.56	0.47	0.46	0.42	0.05	1.81	1.72	1.71	1.67	XXX
97004	.....	A	Ot re-evaluation	0.60	0.34	0.19	0.19	0.12	0.02	0.96	0.81	0.81	0.74	XXX
97010	.....	B	Hot or cold packs therapy	0.06	0.15	0.19	0.01	0.12	0.00	0.21	0.25	0.07	0.18	XXX
97012	.....	A	Mechanical traction therapy	0.25	0.17	0.19	0.04	0.13	0.01	0.43	0.45	0.30	0.39	XXX
97014	.....	A	Electric stimulation therapy	0.18	0.16	0.19	0.03	0.13	0.01	0.35	0.38	0.22	0.32	XXX
97016	.....	A	Vasopneumatic device therapy	0.18	0.16	0.22	0.03	0.15	0.01	0.35	0.41	0.22	0.34	XXX
97018	.....	A	Paraffin bath therapy	0.06	0.14	0.20	0.01	0.14	0.00	0.20	0.26	0.07	0.20	XXX
97020	.....	A	Microwave therapy	0.06	0.15	0.19	0.01	0.12	0.00	0.21	0.25	0.07	0.18	XXX
97022	.....	A	Whirlpool therapy	0.17	0.16	0.19	0.02	0.12	0.01	0.34	0.37	0.20	0.30	XXX
97024	.....	A	Diathermy treatment	0.06	0.15	0.19	0.01	0.12	0.00	0.21	0.25	0.07	0.18	XXX
97026	.....	A	Infrared therapy	0.06	0.14	0.18	0.01	0.11	0.00	0.20	0.24	0.07	0.17	XXX
97028	.....	A	Ultraviolet therapy	0.08	0.14	0.18	0.01	0.11	0.00	0.22	0.26	0.09	0.19	XXX
97032	.....	A	Electrical stimulation	0.25	0.18	0.17	0.04	0.10	0.01	0.44	0.43	0.30	0.36	XXX
97033	.....	A	Electric current therapy	0.26	0.20	0.18	0.04	0.10	0.01	0.47	0.45	0.31	0.37	XXX
97034	.....	A	Contrast bath therapy	0.21	0.18	0.15	0.03	0.07	0.01	0.40	0.37	0.25	0.29	XXX
97035	.....	A	Ultrasound therapy	0.21	0.18	0.15	0.03	0.08	0.01	0.40	0.37	0.25	0.30	XXX
97036	.....	A	Hydrotherapy	0.26	0.22	0.23	0.04	0.14	0.01	0.51	0.52	0.33	0.43	XXX
97039	.....	A	Physical therapy treatment	0.20	0.17	0.22	0.03	0.15	0.01	0.38	0.43	0.24	0.36	XXX
97110	.....	A	Therapeutic exercises	0.45	0.24	0.19	0.06	0.10	0.02	0.71	0.66	0.53	0.57	XXX
97112	.....	A	Neuromuscular reeducation	0.45	0.20	0.17	0.06	0.10	0.02	0.67	0.64	0.53	0.57	XXX
97113	.....	A	Aquatic therapy/exercises	0.44	0.21	0.22	0.06	0.14	0.02	0.67	0.68	0.52	0.60	XXX
97116	.....	A	Gait training therapy	0.40	0.20	0.16	0.06	0.09	0.01	0.6'	0.57	0.47	0.50	XXX
97124	.....	A	Massage therapy	0.35	0.19	0.16	0.05	0.09	0.01	0.55	0.52	0.41	0.45	XXX
97139	.....	A	Physical medicine procedure	0.21	0.17	0.17	0.03	0.10	0.01	0.39	0.39	0.25	0.32	XXX
97140	.....	A	Manual therapy	0.43	0.21	0.21	0.06	0.06	0.02	0.66	0.66	0.51	0.51	XXX
97150	.....	A	Group therapeutic procedures	0.27	0.17	0.20	0.04	0.13	0.02	0.46	0.49	0.33	0.42	XXX
97504	.....	A	Orthotic training	0.45	0.18	0.17	0.06	0.11	0.03	0.66	0.65	0.54	0.59	XXX
97520	.....	A	Prosthetic training	0.45	0.20	0.18	0.06	0.11	0.02	0.67	0.65	0.53	0.58	XXX
97530	.....	A	Therapeutic activities	0.44	0.20	0.19	0.06	0.12	0.02	0.66	0.65	0.52	0.58	XXX
97535	.....	A	Self care mngment training	0.45	0.20	0.19	0.06	0.12	0.02	0.67	0.66	0.53	0.59	XXX
97537	.....	A	Community/work reintegration	0.45	0.20	0.19	0.06	0.12	0.01	0.66	0.65	0.52	0.58	XXX
97542	.....	A	Wheelchair mngement training	0.25	0.17	0.18	0.04	0.11	0.01	0.43	0.44	0.30	0.37	XXX
97545	.....	R	Work hardening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97546	.....	R	Work hardening add-on	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
97703	.....	A	Prosthetic checkout	0.25	0.08	0.14	0.04	0.12	0.01	0.34	0.40	0.30	0.38	XXX
97750	.....	A	Physical performance test	0.45	0.19	0.23	0.06	0.16	0.02	0.66	0.70	0.53	0.63	XXX
97770	.....	A	Cognitive skills development	0.44	0.18	0.24	0.06	0.18	0.01	0.63	0.69	0.51	0.63	XXX
97780	.....	N	Acupuncture w/o stim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97781	.....	N	Acupuncture w/stim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
97799	.....	C	Physical medicine procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
98925	.....	A	Osteopathic manipulation	0.45	0.35	0.31	0.15	0.21	0.02	0.82	0.78	0.62	0.68	000
98926	.....	A	Osteopathic manipulation	0.85	0.44	0.44	0.27	0.35	0.02	1.11	1.11	0.94	1.02	000
98927	.....	A	Osteopathic manipulation	0.87	0.49	0.45	0.30	0.38	0.03	1.39	1.35	1.20	1.26	000
98928	.....	A	Osteopathic manipulation	1.03	0.57	0.52	0.34	0.40	0.04	1.64	1.59	1.41	1.47	000
98929	.....	A	Osteopathic manipulation	1.19	0.63	0.53	0.38	0.40	0.04	1.86	1.76	1.61	1.63	000
98940	.....	A	Chiropractic manipulation	0.45	0.24	0.28	0.12	0.14	0.01	0.70	0.74	0.58	0.60	000
98941	.....	A	Chiropractic manipulation	0.65	0.29	0.30	0.17	0.17	0.02	0.96	0.97	0.84	0.84	000
98942	.....	A	Chiropractic manipulation	0.87	0.35	0.33	0.23	0.20	0.03	1.25	1.23	1.13	1.10	000
98943	.....	N	Chiropractic manipulation	+0.40	0.34	0.33	0.15	0.23	0.01	0.75	0.74	0.56	0.64	XXX
99000	.....	B	Specimen handling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99001	.....	B	Specimen handling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99002	.....	B	Device handling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99024	.....	B	Post-op follow-up visit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99025	.....	B	Initial surgical evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99050	.....	B	Medical services after hrs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99052	.....	B	Medical services at night	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99054	.....	B	Medical services,unusual hrs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99058	.....	B	Non-office medical services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99058	.....	B	Office emergency care	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99070	.....	B	Special supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99071	.....	B	Patient education materials	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99075	.....	N	Medical testimony	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99078	.....	B	Group health education	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99080	.....	B	Special reports or forms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99082	.....	C	Unusual physician travel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99090	.....	B	Computer data analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99100	.....	B	Special anesthesia service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99116	.....	B	Anesthesia with hypothermia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99135	.....	B	Special anesthesia procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99140	.....	B	Emergency anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99141	.....	B	Sedation, iv/im or inhalant	0.80	1.63	1.27	0.31	0.61	0.05	2.48	2.12	1.16	1.46	XXX
99142	.....	B	Sedation, oral/rectal/nasal	0.80	1.55	1.11	0.23	0.45	0.04	2.19	1.75	0.87	1.09	XXX
99175	.....	A	Induction of vomiting	0.00	1.46	1.45	1.46	1.45	0.08	1.54	1.53	1.54	1.53	XXX
99183	.....	A	Hyperbaric oxygen therapy	2.34	0.77	1.29	0.73	1.27	0.13	3.24	3.76	3.20	3.74	XXX
99185	.....	A	Regional hypothermia	0.00	NA	NA	0.67	0.67	0.03	NA	NA	0.70	0.70	XXX
99186	.....	A	Total body hypothermia	0.00	NA	NA	1.86	1.85	0.40	NA	NA	2.26	2.25	XXX
99190	.....	X	Special pump services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99191	.....	X	Special pump services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99192	.....	X	Special pump services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99195	.....	A	Phlebotomy	0.00	0.46	0.46	0.46	0.46	0.02	0.48	0.48	0.48	0.48	XXX
99199	.....	C	Special service or report	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99201	.....	A	Office/outpatient visit, new	0.45	0.78	0.62	0.15	0.18	0.02	1.25	1.09	0.62	0.65	XXX
99202	.....	A	Office/outpatient visit, new	0.88	1.03	0.79	0.32	0.29	0.04	1.95	1.71	1.24	1.21	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
99203	.....	A	Office/outpatient visit, new	1.34	1.37	1.01	0.49	0.39	0.07	2.78	2.42	1.90	1.80	XXX
99204	.....	A	Office/outpatient visit, new	2.00	1.86	1.41	0.72	0.58	0.09	3.95	3.50	2.81	2.67	XXX
99205	.....	A	Office/outpatient visit, new	2.67	2.13	1.59	0.93	0.70	0.11	4.91	4.37	3.71	3.48	XXX
99211	.....	A	Office/outpatient visit, est	0.17	0.52	0.38	0.06	0.09	0.01	0.70	0.56	0.24	0.27	XXX
99212	.....	A	Office/outpatient visit, est	0.45	0.59	0.47	0.16	0.16	0.02	1.06	0.94	0.63	0.63	XXX
99213	.....	A	Office/outpatient visit, est	0.67	0.72	0.60	0.23	0.22	0.03	1.42	1.30	0.93	0.92	XXX
99214	.....	A	Office/outpatient visit, est	1.10	1.06	0.84	0.39	0.33	0.04	2.20	1.98	1.53	1.47	XXX
99215	.....	A	Office/outpatient visit, est	1.77	1.33	1.13	0.62	0.52	0.07	3.17	2.97	2.46	2.36	XXX
99217	.....	A	Observation care discharge	1.28	NA	NA	0.44	0.50	0.05	NA	NA	1.77	1.83	XXX
99218	.....	A	Observation care	1.28	NA	NA	0.44	0.59	0.05	NA	NA	1.77	1.92	XXX
99219	.....	A	Observation care	2.14	NA	NA	0.72	0.93	0.08	NA	NA	2.94	3.15	XXX
99220	.....	A	Observation care	2.99	NA	NA	1.02	1.13	0.11	NA	NA	4.12	4.23	XXX
99221	.....	A	Initial hospital care	1.28	NA	NA	0.45	0.59	0.05	NA	NA	1.78	1.92	XXX
99222	.....	A	Initial hospital care	2.14	NA	NA	0.73	0.93	0.08	NA	NA	2.95	3.15	XXX
99223	.....	A	Initial hospital care	2.99	NA	NA	1.02	1.13	0.11	NA	NA	4.12	4.23	XXX
99231	.....	A	Subsequent hospital care	0.64	NA	NA	0.23	0.32	0.02	NA	NA	0.89	0.98	XXX
99232	.....	A	Subsequent hospital care	1.06	NA	NA	0.36	0.43	0.04	NA	NA	1.46	1.53	XXX
99233	.....	A	Subsequent hospital care	1.51	NA	NA	0.51	0.58	0.05	NA	NA	2.07	2.14	XXX
99234	.....	A	Observ/hosp same date	2.56	NA	NA	0.87	0.81	0.11	NA	NA	3.54	3.48	XXX
99235	.....	A	Observ/hosp same date	3.42	NA	NA	1.15	1.15	0.13	NA	NA	4.70	4.70	XXX
99236	.....	A	Observ/hosp same date	4.27	NA	NA	1.46	1.35	0.16	NA	NA	5.89	5.78	XXX
99238	.....	A	Hospital discharge day	1.28	NA	NA	0.43	0.49	0.05	NA	NA	1.76	1.82	XXX
99239	.....	A	Hospital discharge day	1.75	NA	NA	0.60	0.58	0.06	NA	NA	2.41	2.39	XXX
99241	.....	A	Office consultation	0.64	1.01	0.85	0.20	0.26	0.04	1.69	1.53	0.88	0.96	XXX
99242	.....	A	Office consultation	1.29	1.43	1.14	0.45	0.44	0.08	2.80	2.51	1.82	1.81	XXX
99243	.....	A	Office consultation	1.72	1.75	1.40	0.62	0.58	0.09	3.56	3.21	2.43	2.39	XXX
99244	.....	A	Office consultation	2.58	2.19	1.76	0.89	0.78	0.12	4.89	4.46	3.59	3.48	XXX
99245	.....	A	Office consultation	3.43	2.59	2.21	1.18	1.05	0.16	6.18	5.80	4.77	4.64	XXX
99251	.....	A	Initial inpatient consult	0.66	NA	NA	0.29	0.51	0.04	NA	NA	0.99	1.21	XXX
99252	.....	A	Initial inpatient consult	1.32	NA	NA	0.55	0.69	0.08	NA	NA	1.95	2.09	XXX
99253	.....	A	Initial inpatient consult	1.82	NA	NA	0.74	0.89	0.09	NA	NA	2.65	2.80	XXX
99254	.....	A	Initial inpatient consult	2.64	NA	NA	1.03	1.17	0.12	NA	NA	3.79	3.93	XXX
99255	.....	A	Initial inpatient consult	3.65	NA	NA	1.39	1.55	0.16	NA	NA	5.20	5.36	XXX
99261	.....	A	Follow-up inpatient consult	0.42	NA	NA	0.20	0.28	0.02	NA	NA	0.64	0.72	XXX
99262	.....	A	Follow-up inpatient consult	0.85	NA	NA	0.36	0.43	0.03	NA	NA	1.24	1.31	XXX
99263	.....	A	Follow-up inpatient consult	1.27	NA	NA	0.51	0.62	0.05	NA	NA	1.83	1.94	XXX
99271	.....	A	Confirmatory consultation	0.45	0.59	0.61	0.19	0.26	0.02	1.06	1.08	0.66	0.73	XXX
99272	.....	A	Confirmatory consultation	0.84	0.79	0.78	0.36	0.38	0.05	1.68	1.67	1.25	1.27	XXX
99273	.....	A	Confirmatory consultation	1.19	1.02	1.07	0.49	0.53	0.07	2.28	2.33	1.75	1.79	XXX
99274	.....	A	Confirmatory consultation	1.73	1.32	1.32	0.69	0.68	0.09	3.14	3.14	2.51	2.50	XXX
99275	.....	A	Confirmatory consultation	2.31	1.55	1.72	0.87	1.38	0.10	3.96	4.13	3.28	3.79	XXX
99281	.....	A	Emergency dept visit	0.33	NA	NA	0.09	0.20	0.02	NA	NA	0.44	0.55	XXX
99282	.....	A	Emergency dept visit	0.55	NA	NA	0.15	0.28	0.03	NA	NA	0.73	0.86	XXX
99283	.....	A	Emergency dept visit	1.24	NA	NA	0.31	0.42	0.08	NA	NA	1.63	1.74	XXX
99284	.....	A	Emergency dept visit	1.95	NA	NA	0.48	0.62	0.12	NA	NA	2.55	2.69	XXX
99285	.....	A	Emergency dept visit	3.06	NA	NA	0.75	0.99	0.20	NA	NA	4.01	4.25	XXX
99288	.....	B	Direct advanced life support	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99291	.....	A	Critical care, first hour	4.00	1.48	1.52	1.27	1.41	0.16	5.64	5.68	5.43	5.57	XXX
99292	.....	A	Critical care, addl 30 min	2.00	0.80	0.74	0.64	0.66	0.08	2.88	2.82	2.72	2.74	ZZZ
99295	.....	A	Neonatal critical care	16.00	NA	NA	5.02	5.27	0.66	NA	NA	21.68	21.93	XXX
99296	.....	A	Neonatal critical care	8.00	NA	NA	2.67	2.67	0.26	NA	NA	10.93	10.93	XXX
99297	.....	A	Neonatal critical care	4.00	NA	NA	1.30	1.32	0.13	NA	NA	5.43	5.45	XXX
99298	.....	A	Neonatal critical care	2.75	0.95	0.95	0.89	0.89	0.09	3.79	3.79	3.73	3.73	XXX
99301	.....	A	Nursing facility care	1.20	NA	NA	0.41	0.45	0.04	NA	NA	1.65	1.69	XXX
99302	.....	A	Nursing facility care	1.61	NA	NA	0.54	0.54	0.06	NA	NA	2.21	2.21	XXX
99303	.....	A	Nursing facility care	2.01	NA	NA	0.66	0.85	0.07	NA	NA	2.74	2.93	XXX
99311	.....	A	Nursing facility care,subseq	0.60	NA	NA	0.20	0.29	0.02	NA	NA	0.82	0.91	XXX
99312	.....	A	Nursing facility care,subseq	1.00	NA	NA	0.33	0.39	0.03	NA	NA	1.36	1.42	XXX
99313	.....	A	Nursing facility care,subseq	1.42	NA	NA	0.47	0.49	0.05	NA	NA	1.94	1.96	XXX
99315	.....	A	Nursing fac discharge day	1.13	NA	NA	0.43	0.49	0.04	NA	NA	1.60	1.66	XXX
99316	.....	A	Nursing fac discharge day	1.50	NA	NA	0.57	0.56	0.05	NA	NA	2.12	2.11	XXX
99321	.....	A	Rest home visit, new patient	0.71	0.41	0.41	0.32	0.36	0.03	1.15	1.15	1.06	1.10	XXX
99322	.....	A	Rest home visit, new patient	1.01	0.64	0.60	0.43	0.49	0.04	1.69	1.65	1.48	1.54	XXX
99323	.....	A	Rest home visit, new patient	1.28	0.83	0.81	0.52	0.66	0.05	2.16	2.14	1.85	1.99	XXX
99331	.....	A	Rest home visit, estab pat	0.60	0.42	0.36	0.29	0.30	0.02	1.04	0.98	0.91	0.92	XXX
99332	.....	A	Rest home visit, estab pat	0.80	0.52	0.46	0.36	0.38	0.03	1.35	1.29	1.19	1.21	XXX
99333	.....	A	Rest home visit, estab pat	1.00	0.64	0.56	0.44	0.46	0.03	1.67	1.59	1.47	1.49	XXX
99341	.....	A	Home visit, new patient	1.01	0.50	0.54	0.43	0.51	0.04	1.55	1.59	1.48	1.56	XXX
99342	.....	A	Home visit, new patient	1.52	0.78	0.72	0.63	0.64	0.06	2.36	2.30	2.21	2.22	XXX
99343	.....	A	Home visit, new patient	2.27	1.19	1.02	0.92	0.88	0.08	3.54	3.37	3.27	3.23	XXX
99344	.....	A	Home visit, new patient	3.03	1.45	1.19	1.19	1.06	0.11	4.59	4.33	4.33	4.20	XXX
99345	.....	A	Home visit, new patient	3.79	1.70	1.31	1.46	1.19	0.14	5.63	5.24	5.39	5.12	XXX
99347	.....	A	Home visit, estab patient	0.76	0.44	0.47	0.34	0.42	0.03	1.23	1.26	1.13	1.21	XXX
99348	.....	A	Home visit, estab patient	1.26	0.67	0.63	0.52	0.55	0.04	1.97	1.93	1.82	1.85	XXX
99349	.....	A	Home visit, estab patient	2.02	0.97	0.82	0.71	0.69	0.07	3.06	2.91	2.80	2.78	XXX
99350	.....	A	Home visit, estab patient	3.03	1.30	1.06	1.00	0.91	0.10	4.43	4.19	4.13	4.04	XXX
99354	.....	A	Prolonged service, office	1.77	1.29	1.06	0.58	0.50	0.06	3.12	2.89	2.41	2.33	ZZZ
99355	.....	A	Prolonged service, office	1.77	1.13	0.98	0.53	0.47	0.06	2.96	2.81	2.36	2.30	ZZZ
99356	.....	A	Prolonged service, inpatient	1.71	NA	NA	0.58	0.75	0.06	NA	NA	2.35	2.52	ZZZ
99357	.....	A	Prolonged service, inpatient	1.71	NA	NA	0.60	0.76	0.07	NA	NA	2.38	2.54	ZZZ
99358	.....	B	Prolonged serv, w/o contact	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99359	.....	B	Prolonged serv, w/o contact	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	ZZZ
99360	.....	X	Physician standby services	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99361	.....	B	Physician/team conference	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
99362		B	Physician/team conference	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99371		B	Physician phone consultation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99372		B	Physician phone consultation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99373		B	Physician phone consultation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99374		B	Home health care supervision	1.10	1.24	0.90	0.42	0.49	0.04	2.38	2.04	1.56	1.63	XXX
99375		A	Home health care supervision	1.73	1.27	0.91	0.59	0.57	0.06	3.06	2.70	2.38	2.36	XXX
99377		B	Hospice care supervision	1.10	1.24	0.90	0.42	0.49	0.04	2.38	2.04	1.56	1.63	XXX
99378		A	Hospice care supervision	1.73	1.34	0.95	0.57	0.56	0.06	3.13	2.74	2.36	2.35	XXX
99379		B	Nursing fac care supervision	1.10	1.24	0.90	0.42	0.49	0.04	2.38	2.04	1.56	1.63	XXX
99380		B	Nursing fac care supervision	1.73	1.48	1.02	0.66	0.61	0.06	3.27	2.81	2.45	2.40	XXX
99381		N	Preventive visit, new,infant	+1.19	1.28	1.31	0.45	0.89	0.19	2.66	2.69	1.83	2.27	XXX
99382		N	Preventive visit,new,age 1-4	+1.36	1.33	1.43	0.52	1.03	0.04	2.73	2.83	1.92	2.43	XXX
99383		N	Preventive visit,new,age5-11	+1.36	1.28	1.41	0.52	1.03	0.04	2.68	2.81	1.92	2.43	XXX
99384		N	Preventive visit, new, 12-17	+1.53	1.35	1.54	0.58	1.16	0.05	2.93	3.12	2.16	2.74	XXX
99385		N	Preventive visit, new, 18-39	+1.53	1.35	1.44	0.58	1.05	0.05	2.93	3.02	2.16	2.63	XXX
99386		N	Preventive visit, new, 40-64	+1.88	1.53	1.70	0.72	1.30	0.06	3.47	3.64	2.66	3.24	XXX
99387		N	Preventive visit,new,65&over	+2.06	1.64	1.84	0.79	1.42	0.07	3.77	3.97	2.92	3.55	XXX
99391		N	Preventive visit, est,infant	+1.02	0.88	1.02	0.39	0.77	0.17	2.07	2.21	1.56	1.96	XXX
99392		N	Preventive visit,est,age 1-4	+1.19	0.95	1.14	0.45	0.89	0.04	2.18	2.37	1.68	2.12	XXX
99393		N	Preventive visit,est,age5-11	+1.19	0.93	1.13	0.45	0.89	0.04	2.16	2.36	1.68	2.12	XXX
99394		N	Preventive visit, est, 12-17	+1.36	1.01	1.27	0.52	1.03	0.04	2.41	2.67	1.92	2.43	XXX
99395		N	Preventive visit, est, 18-39	+1.36	1.04	1.20	0.52	0.94	0.04	2.44	2.60	1.92	2.34	XXX
99396		N	Preventive visit, est, 40-64	+1.53	1.12	1.32	0.58	1.05	0.05	2.70	2.90	2.16	2.63	XXX
99397		N	Preventive visit,est,65&over	+1.71	1.22	1.46	0.65	1.17	0.05	2.98	3.22	2.41	2.93	XXX
99401		N	Preventive counseling, indiv	+0.48	0.53	0.51	0.18	0.34	0.01	1.02	1.00	0.67	0.83	XXX
99402		N	Preventive counseling, indiv	+0.98	0.76	0.87	0.37	0.67	0.03	1.77	1.88	1.38	1.68	XXX
99403		N	Preventive counseling, indiv	+1.46	0.98	1.22	0.56	1.01	0.04	2.48	2.72	2.06	2.51	XXX
99404		N	Preventive counseling, indiv	+1.95	1.20	1.57	0.74	1.34	0.05	3.20	3.57	2.74	3.34	XXX
99411		N	Preventive counseling, group	+0.15	0.15	0.15	0.06	0.11	0.00	0.30	0.30	0.21	0.26	XXX
99412		N	Preventive counseling, group	+0.25	0.21	0.23	0.10	0.18	0.01	0.47	0.49	0.36	0.44	XXX
99420		N	Health risk assessment test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99429		N	Unlisted preventive service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99431		A	Initial care, normal newborn	1.17	NA	NA	0.38	0.85	0.04	NA	NA	1.59	2.06	XXX
99432		A	Newborn care not in hospital	1.26	1.02	1.22	0.36	0.89	0.04	2.32	2.52	1.66	2.19	XXX
99433		A	Normal newborn care,hospital	0.62	NA	NA	0.20	0.45	0.02	NA	NA	0.84	1.09	XXX
99435		A	Hospital NB discharge day	1.50	NA	NA	0.48	1.08	0.05	NA	NA	2.03	2.63	XXX
99436		A	Attendance, birth	1.50	0.86	1.17	0.46	1.07	0.05	2.21	2.72	2.01	2.62	XXX
99440		A	Newborn resuscitation	2.93	NA	NA	0.96	2.13	0.09	NA	NA	3.98	5.15	XXX
99450		N	Life/disability evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99455		R	Disability examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99456		R	Disability examination	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
99499		C	Unlisted E/M service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0021		I	Outside state ambulance serv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0030		X	Air ambulance service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0040		X	Helicopter ambulance service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0050		X	Water amb service emergency	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0080		I	Noninterest escort in non er	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0090		I	Interest escort in non er	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0100		I	Nonemergency transport taxi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0110		I	Nonemergency transport bus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0120		I	Noner transport mini-bus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0130		I	Noner transport wheelch van	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0140		I	Nonemergency transport air	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0160		I	Noner transport case worker	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0170		I	Noner transport parking fees	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0180		I	Noner transport lodging recip	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0190		I	Noner transport meals recip	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0200		I	Noner transport lodging escrt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0210		I	Noner transport meals escort	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0225		X	Neonatal emergency transport	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0300		X	Ambulance basic non-emer all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0302		X	Ambulance basic emergency all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0304		X	Amb adv non-er no serv all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0306		A	Amb adv non-er spec serv all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0308		X	Amb adv er no spec serv all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0310		X	Amb adv er spec serv all	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0320		X	Amb basic non-er + supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0322		X	Amb basic emerg + supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0324		X	Adv non-er serv sep mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0326		X	Adv non-er no serv sep mile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0328		X	Adv er no serv sep mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0330		X	Adv er spec serv sep mile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0340		X	Amb basic non-er + mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0342		X	Ambul basic emer + mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0344		X	Amb adv non-er no serv +mile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0346		X	Amb adv non-er serv + mile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0348		X	Adv emer no spec serv + mile	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0350		X	Adv emer spec serv + mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0380		X	Basic non-er sep mile & supp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0382		X	Basic emer sep mile & supply	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0384		X	Adv non-er no serv sep mi&su	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0386		X	Adv non-er serv sep mi&supp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0388		X	Adv er no serv sep mile&supp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0370		X	Adv er spec serv sep mi&supp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
A0380		X	Basic life support mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0382		X	Basic support routine supplis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0384		X	Bls defibrillation supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0390		X	Advanced life support mileag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0392		X	Als defibrillation supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0394		X	Als IV drug therapy supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0396		X	Als esophageal intub supplis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0398		X	Als routine disposble supplis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0420		X	Ambulance waiting 1/2 hr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0422		X	Ambulance 02 life sustaining	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0424		X	Extra ambulance attendant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0888		N	Noncovered ambulance mileage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A0999		X	Unlisted ambulance service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4206		G	1 CC sterile syringe&needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4207		G	2 CC sterile syringe&needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4208		G	3 CC sterile syringe&needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4209		G	5+ CC sterile syringe&needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4210		N	Nonneedle injection device	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4211		P	Supp for self-adm injections	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4212		P	Non coring needle or stylet	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4213		G	20+ CC syringe only	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4214		P	30 CC sterile water/saline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4215		G	Sterile needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4220		P	Infusion pump refill kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4221		X	Maint drug infus cath per wk	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4222		X	Drug infusion pump supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4230		N	Infus insulin pump non-needl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4231		#	Infusion insulin pump needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4232		N	Syringe w/needle insulin 3cc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4244		G	Alcohol or peroxide per pint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4245		G	Alcohol wipes per box	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4246		G	Betadine/phisohex solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4247		G	Betadine/iodine swabs/wipes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4250		N	Urine reagent strips/tablets	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4253		P	Blood glucose/reagent strips	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4254		X	Battery for glucose monitor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4255		X	Glucose monitor platforms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4256		P	Calibrator solution/chips	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4258		P	Lancet device each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4259		P	Lancets per box	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4260		#	Levonorgestrel implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4261		#	Cervical cap contraceptive	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4262		#	Temporary tear duct plug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4263		A	Permanent tear duct plug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4265		P	Paraffin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4270		#	Disposable endoscope sheath	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4300		A	Cath impl vasc access portal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4301		P	Implantable access syst perc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4305		P	Drug delivery system >=50 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4306		P	Drug delivery system <=5 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4310		P	Insert tray w/o bag/cath	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4311		P	Catheter w/o bag 2-way latex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4312		P	Cath w/o bag 2-way silicone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4313		P	Catheter w/bag 3-way	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4314		P	Cath w/drainage 2-way latex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4315		P	Cath w/drainage 2-way silcne	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4316		P	Cath w/drainage 3-way	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4320		P	Irrigation tray	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4321		X	Cath therapeutic irrig agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4322		P	Irrigation syringe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4323		P	Saline irrigation solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4326		P	Male external catheter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4327		P	Fem urinary collect dev cup	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4328		P	Fem urinary collect pouch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4329		P	External catheter start set	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4330		P	Stool collection pouch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4335		P	Incontinence supply	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4338		P	Indwelling catheter latex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4340		P	Indwelling catheter special	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4344		P	Cath indw foley 2 way silicn	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4346		#	Cath indw foley 3 way	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4347		P	Male external catheter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4351		P	Straight tip urine catheter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4352		P	Coude tip urinary catheter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4353		X	Intermittent urinary cath	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4354		P	Cath insertion tray w/bag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4355		P	Bladder irrigation tubing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4356		P	Ext ureth clmp or compr dvc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4357		P	Bedside drainage bag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4358		P	Urinary leg bag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4359		P	Urinary suspensory w/o leg b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4361		P	Ostomy face plate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4362		P	Solid skin barrier	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4363		P	Liquid skin barrier	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
A4364		P	Ostomy/cath adhesive	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4365		X	Ostomy adhesive remover wipe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4367		P	Ostomy belt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4368		X	Ostomy filter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4397		P	Irrigation supply sleeve	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4398		P	Ostomy irrigation bag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4399		P	Ostomy irrg cone/cath w brs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4400		P	Ostomy irrigation set	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4402		P	Lubricant per ounce	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4404		P	Ostomy ring each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4421		P	Ostomy supply misc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4454		P	Tape all types all sizes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4455		P	Adhesive remover per ounce	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4460		P	Elastic compression bandage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4462		X	Abdmnl drssng holder/binder	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4465		P	Non-elastic extremity binder	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4470		P	Gravlee jet washer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4480		P	Vabra aspirator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4481		X	Tracheostoma filter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4483		X	Moisture exchanger	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4490		N	Above knee surgical stocking	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4495		N	Thigh length surg stocking	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4500		N	Below knee surgical stocking	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4510		N	Full length surg stocking	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4550		A	Surgical trays	0.00	0.00	0.52	0.00	0.52	0.00	0.00	0.52	0.00	0.52	XXX
A4554		N	Disposable underpads	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4556		P	Electrodes	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4557		P	Lead wires	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4558		P	Conductive paste or gel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4560		X	Pessary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4565		X	Slings	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4570		X	Splint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4572		X	Rib belt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4575		N	Hyperbaric o2 chamber disps	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4580		X	Cast supplies (plaster)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4590		X	Special casting material	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4595		X	TENS suppl 2 lead per month	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4611		X	Heavy duty battery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4612		X	Battery cables	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4613		X	Battery charger	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4614		X	Hand-held PEFR meter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4615		X	Cannula nasal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4616		X	Tubing (oxygen) per fdbt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4617		X	Mouth piece	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4618		X	Breathing circuits	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4619		X	Face tent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4620		X	Variable concentration mask	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4621		X	Tracheotomy mask or collar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4622		X	Tracheostomy or laryngectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4623		X	Tracheostomy inner cannula	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4624		X	Tracheal suction tube	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4625		X	Trach care kit for new trach	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4626		X	Tracheostomy cleaning brush	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4627		N	Spacer bag/reservoir	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4628		X	Oropharyngeal suction cath	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4629		X	Tracheostomy care kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4630		X	Repl bat t.e.n.s. own by pt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4631		X	Wheelchair battery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4635		X	Underarm crutch pad	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4636		X	Handgrip for cane etc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4637		X	Repl tip cane/crutch/walker	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4640		X	Alternating pressure pad	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4641		E	Diagnostic imaging agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4642		E	Seturmomab pendetide per dose	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4643		E	High dose contrast MRI	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4644		E	Contrast 100-199 MGs iodine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4645		E	Contrast 200-299 MGs iodine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4646		E	Contrast 300-399 MGs iodine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4647		B	Supp- paramagnetic contr mat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4649		P	Surgical supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4650		X	Supp esrd centrifuge	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4655		X	Esrd syringe/needle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4660		X	Esrd blood pressure device	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4663		X	Esrd blood pressure cuff	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4670		N	Auto blood pressure monitor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4680		X	Activated carbon filters	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4690		X	Dialyzers	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4700		X	Standard dialysate solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4705		X	Bicarb dialysate solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4712		X	Sterile water	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4714		X	Treated water for dialysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4730		X	Fistula cannulation set dial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4735		X	Local/topical anesthetics	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4740		X	Esrd shunt accessory	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
A4750		X	Arterial or venous tubing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4755		X	Arterial and venous tubing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4760		X	Standard testing solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4765		X	Dialysate concentrate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4770		X	Blood testing supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4771		X	Blood clotting time tube	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4772		X	Dextrostick/glucose strips	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4773		X	Hemostix	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4774		X	Ammonia test paper	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4780		X	Esrd sterilizing agent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4790		X	Esrd cleansing agents	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4800		X	Heparin/antidote dialysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4820		X	Supplies hemodialysis kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4850		X	Rubber tipped hemostats	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4860		X	Disposable catheter caps	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4870		X	Plumbing/electrical work	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4880		X	Water storage tanks	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4890		R	Contracts/repair/maintenance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4900		X	Capd supply kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4901		X	Ccpd supply kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4905		X	Ipd supply kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4910		X	Esrd nonmedical supplies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4912		X	Gomco drain bottle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4913		X	Esrd supply	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4914		X	Preparation kit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4918		X	Venous pressure clamp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4919		X	Supp dialysis dialyzer holde	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4920		X	Harvard pressure clamp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4921		X	Measuring cylinder	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A4927		X	Gloves	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5051		P	Pouch clsd w barr attached	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5052		P	Clsd ostomy pouch w/o barr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5053		P	Clsd ostomy pouch faceplate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5054		P	Clsd ostomy pouch w/flange	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5055		P	Stoma cap	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5061		P	Pouch drainable w barrier at	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5062		P	Drnble ostomy pouch w/o barr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5063		P	Drain ostomy pouch w/flange	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5064		I	Drain ostomy pouch w/fcplte	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5065		I	Drain ostomy pouch on fcplte	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5071		P	Urinary pouch w/barrier	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5072		P	Urinary pouch w/o barrier	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5073		P	Urinary pouch on barr w/flng	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5074		I	Urinary pouch w/faceplate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5075		I	Urinary pouch on faceplate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5081		#	Continent stoma plug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5082		#	Continent stoma catheter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5093		P	Ostomy accessory convex insr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5102		P	Bedside drain btl w/wo tube	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5105		P	Urinary suspensory	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5112		P	Urinary leg bag	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5113		P	Latex leg strap	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5114		P	Foam/fabric leg strap	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5119		P	Skin barrier wipes box pr 50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5121		#	Solid skin barrier 6x6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5122		P	Solid skin barrier 8x8	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5123		P	Skin barrier with flange	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5126		P	Adhesive disc/foam pad	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5131		P	Appliance cleaner	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5149		P	Incontinence/ostomy supply	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5200		X	Percutaneous catheter anchor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5500		X	Diab shoe for density insert	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5501		X	Diabetic custom molded shoe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5502		X	Diabetic shoe density insert	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5503		X	Diabetic shoe w/roller/rockr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5504		X	Diabetic shoe with wedge	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5505		X	Diab shoe w/metatarsal bar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5506		X	Diabetic shoe w/off set heel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A5507		X	Modification diabetic shoe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6020		P	Collagen wound dressing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6025		I	Silicone gel sheet, each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6154		P	Wound pouch each	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6196		P	Alginate dressing <=16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6197		P	Alginate dsg >16 <=48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6198		P	alginate dressing > 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6199		P	Alginate dsg wound filler	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6200		X	Compos dsg <=16 no border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6201		X	Compos dsg >16<=48 no bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6202		X	Compos dsg >48 no border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6203		P	Composite dsg <= 16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6204		P	Composite dsg >16<=48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6205		P	Composite dsg > 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6206		P	Contact layer <= 16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6207		P	Contact layer >16<= 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
A6208		P	Contact layer > 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6209		P	Foam drsg <=16 sq in w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6210		P	Foam drg >16<=48 sq in w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6211		P	Foam drg > 48 sq in w/o brdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6212		P	Foam drg <=16 sq in w/border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6213		P	Foam drg >16<=48 sq in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6214		P	Foam drg > 48 sq in w/border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6215		P	Foam dressing wound filler	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6216		P	Non-sterile gauze<=16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6217		P	Non-sterile gauze>16<=48 sq	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6218		P	Non-sterile gauze > 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6219		P	Gauze <= 16 sq in w/border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6220		P	Gauze >16 <=48 sq in w/bordr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6221		P	Gauze > 48 sq in w/border	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6222		P	Gauze <=16 in no w/sal w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6223		P	Gauze >16<=48 no w/sal w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6224		P	Gauze > 48 in no w/sal w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6228		P	Gauze <= 16 sq in water/sal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6229		P	Gauze >16<=48 sq in watr/sal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6230		P	Gauze > 48 sq in water/saline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6234		P	Hydrocolld drg <=16 w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6235		P	Hydrocolld drg >16<=48 w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6236		P	Hydrocolld drg > 48 in w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6237		P	Hydrocolld drg <=16 in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6238		P	Hydrocolld drg >16<=48 w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6239		P	Hydrocolld drg > 48 in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6240		P	Hydrocolld drg filler paste	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6241		P	Hydrocolloid drg filler dry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6242		P	Hydrogel drg <=16 in w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6243		P	Hydrogel drg >16<=48 w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6244		P	Hydrogel drg >48 in w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6245		P	Hydrogel drg <= 16 in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6246		P	Hydrogel drg >16<=48 in w/b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6247		P	Hydrogel drg > 48 sq in w/b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6248		P	Hydrogel drsg gel filler	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6250		P	Skin seal protect moisturizr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6251		P	Absorpt drg <=16 sq in w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6252		P	Absorpt drg >16 <=48 w/o bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6253		P	Absorpt drg > 48 sq in w/o b	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6254		P	Absorpt drg <=16 sq in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6255		P	Absorpt drg >16<=48 in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6256		P	Absorpt drg > 48 sq in w/bdr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6257		P	Transparent film <= 16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6258		P	Transparent film >16<=48 in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6259		P	Transparent film > 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6260		P	Wound cleanser any type/size	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6261		P	Wound filler gel/paste /oz	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6262		P	Wound filler dry form / gram	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6263		P	Non-sterile elastic gauze/yd	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6264		P	Non-sterile no elastic gauze	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6265		P	Tape per 18 sq inches	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6266		P	Impreg gauze no h20/sal/yard	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6402		P	Sterile gauze <= 16 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6403		P	Sterile gauze>16 <= 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6404		P	Sterile gauze > 48 sq in	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6405		P	Sterile elastic gauze /yd	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A6406		P	Sterile non-elastic gauze/yd	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9150		E	Misc/exper non-prescript dru	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9160		N	Podiatrist non-covered servi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9170		N	Chiropractor non-covered ser	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9190		N	Misc/expe personal comfort i	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9270		N	Non-covered item or service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9300		N	Exercise equipment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9500		E	Technetium TC 99m sestamibi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9502		X	Technetium TC99M tetrofosmin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9503		E	Technetium TC 99m medronate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9505		E	Thallous chloride TL 201/mci	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9507		X	Indium/111 capromab pendetid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9600		X	Strontium-89 chloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
A9605		X	Samarium sm153 lexidronamm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0120		N	Periodic oral evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0140		N	Limit oral eval problm focus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0150		R	Comprehensve oral evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0160		N	Extensv oral eval prob focus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0210		I	Intraor complete film series	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0220		I	Intraoral periapical first f	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0230		I	Intraoral periapical ea add	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0240		R	Intraoral occlusal film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0250		R	Extraoral first film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0260		R	Extraoral ea additional film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0270		R	Dental bitewing single film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0272		R	Dental bitewings two films	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0274		R	Dental bitewings four films	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0290		I	Dental film skull/facial bon	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
D0310		I	Dental saliography	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0320		I	Dental tmj arthrogram incl i	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0321		I	Dental other tmj films	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0322		I	Dental tomographic survey	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0330		I	Dental panoramic film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0340		I	Dental cephalometric film	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0415		N	Bacteriologic study	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0425		N	Caries susceptibility test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0460		R	Pulp vitality test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0470		N	Diagnostic casts	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D0471		R	Diagnostic photographs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0501		R	Histopathologic examinations	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0502		R	Other oral pathology procedu	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D0999		R	Unspecified diagnostic proce	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1110		N	Dental prophylaxis adult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1120		N	Dental prophylaxis child	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1201		N	Topical fluor w prophy child	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1203		N	Topical fluor w/o prophy chi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1204		N	Topical fluor w/o prophy adu	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1205		N	Topical fluoride w/ prophy a	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1310		N	Nutri counsel-control caries	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1320		N	Tobacco counseling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1330		N	Oral hygiene instruction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1351		N	Dental sealant per tooth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D1510		R	Space maintainer fxd unilat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1515		R	Fixed bilat space maintainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1520		R	Remove unilat space maintain	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1525		R	Remove bilat space maintain	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D1550		R	Recement space maintainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D2110		N	Amalgam one surface primary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2120		N	Amalgam two surfaces primary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2130		N	Amalgam three surfaces prima	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2131		N	Amalgam four/more surf prima	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2140		N	Amalgam one surface permanen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2150		N	Amalgam two surfaces permane	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2160		N	Amalgam three surfaces perma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2161		N	Amalgam 4 or > surfaces perm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2210		N	Silicate cement per restorat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2330		N	Resin one surface-anterior	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2331		N	Resin two surfaces-anterior	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2332		N	Resin three surfaces-anterio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2335		N	Resin 4/> surf or w incis an	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2336		N	Composite resin crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2380		N	Resin one surf poster primar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2381		N	Resin two surf poster primar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2382		N	Resin three/more surf post p	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2385		N	Resin one surf poster perman	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2386		N	Resin two surf poster perman	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2387		N	Resin three/more surf post p	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2410		N	Dental gold foil one surface	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2420		N	Dental gold foil two surface	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2430		N	Dental gold foil three surfa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2510		N	Dental inlay metalic 1 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2520		N	Dental inlay metallic 2 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2530		N	Dental inlay metl 3/more sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2543		N	Dental onlay metallic 3 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2544		N	Dental onlay metl 4/more sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2610		N	Inlay porcelain/ceramic 1 su	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2620		N	Inlay porcelain/ceramic 2 su	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2630		N	Dental onlay porc 3/more sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2642		N	Dental onlay porcelin 2 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2643		N	Dental onlay porcelin 3 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2644		N	Dental onlay porc 4/more sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2650		N	Inlay composite/resin one su	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2651		N	Inlay composite/resin two su	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2652		N	Dental inlay resin 3/mre sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2662		N	Dental onlay resin 2 surface	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2663		N	Dental onlay resin 3 surface	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2664		N	Dental onlay resin 4/mre sur	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2710		N	Crown resin laboratory	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2720		N	Crown resin w/ high noble me	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2721		N	Crown resin w/ base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2722		N	Crown resin w/ noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2740		N	Crown porcelain/ceramic subs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2750		N	Crown porcelain w/ h noble m	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2751		N	Crown porcelain fused base m	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2752		N	Crown porcelain w/ noble met	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2790		N	Crown full cast high noble m	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2791		N	Crown full cast base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2792		N	Crown full cast noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2810		N	Crown 3/4 cast metallic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2910		N	Dental recement inlay	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2920		N	Dental recement crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2930		N	Prefab stnlss steel crwn pri	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
D2931		N	Prefab stniss steel crown pe	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2932		N	Prefabricated resin crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2933		N	Prefab stainless steel crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2940		N	Dental sedative filling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2950		N	Core build-up incl any pins	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2951		N	Tooth pin retention	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2952		N	Post and core cast + crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2954		N	Prefab post/core + crown	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2955		N	Post removal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2960		N	Laminate labial veneer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2961		N	Lab labial veneer resin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2962		N	Lab labial veneer porcelain	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2970		R	Temporary- fractured tooth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2980		N	Crown repair	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D2999		R	Dental unspec restorative pr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D3110		N	Pulp cap direct	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3120		N	Pulp cap indirect	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3220		N	Therapeutic pulpotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3230		N	Pulpal therapy anterior prim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3240		N	Pulpal therapy posterior pri	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3310		N	Anterior	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3320		N	Root canal therapy 2 canals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3330		N	Root canal therapy 3 canals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3346		N	Retreat root canal anterior	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3347		N	Retreat root canal bicuspid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3348		N	Retreat root canal molar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3351		N	Apexification/recalc initial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3352		N	Apexification/recalc interim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3353		N	Apexification/recalc final	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3410		N	Apicoect/perirad surg anter	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3421		N	Root surgery bicuspid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3425		N	Root surgery molar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3426		N	Root surgery ea add root	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3430		N	Retrograde filling	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3450		N	Root amputation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3460		R	Endodontic endosseous implan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D3470		N	Intentional replantation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3910		N	Isolation- tooth w rubb dam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3920		N	Tooth splitting	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3950		N	Canal prep/fitting of dowel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3960		N	Bleaching of discolored toot	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D3999		R	Endodontic procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4210		I	Gingivectomy/plasty per quad	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4211		I	Gingivectomy/plasty per toot	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4220		N	Gingival curettage per quadr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4240		N	Gingival flap proc w/ planin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4249		N	Crown lengthen hard tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4250		R	Mucogingival surg per quadra	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4260		R	Osseous surgery per quadrant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4263		R	Bone replce graft first site	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4264		R	Bone replce graft each add	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4265		N	Guided tiss regen resorble	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4267		N	Guided tiss regen nonresorb	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4270		R	Pedicle soft tissue graft pr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4271		R	Free soft tissue graft proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4273		R	Subepithelial tissue graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4274		N	Distal/proximal wedge proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4320		N	Provision splint intracoronal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4321		N	Provisional splint extracoro	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4341		N	Periodontal scaling & root	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4355		R	Full mouth debridement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4381		R	Localized chemo delivery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D4910		N	Periodontal maint procedures	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4920		N	Unscheduled dressing change	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D4999		N	Unspecified periodontal proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5110		N	Dentures complete maxillary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5120		N	Dentures complete mandible	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5130		N	Dentures immediat maxillary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5140		N	Dentures immediat mandible	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5211		N	Dentures maxill part resin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5212		N	Dentures mand part resin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5213		N	Dentures maxill part metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5214		N	Dentures mandibl part metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5281		N	Removable partial denture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5410		N	Dentures adjust cmplt maxil	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5411		N	Dentures adjust cmplt mand	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5421		N	Dentures adjust part maxill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5422		N	Dentures adjust part mandibl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5510		N	Dentur repr broken compl bas	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5520		N	Replace denture teeth cmplt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5610		N	Dentures repair resin base	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5620		N	Rep part denture cast frame	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5630		N	Rep partial denture clasp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5640		N	Replace part denture teeth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,4]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
D5650		N	Add tooth to partial denture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5660		N	Add clasp to partial denture	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5710		N	Dentures rebase cmplt maxil	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5711		N	Dentures rebase cmplt mand	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5720		N	Dentures rebase part maxill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5721		N	Dentures rebase part mandibl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5730		N	Denture rein cmplt maxil ch	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5731		N	Denture rein cmplt mand chr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5740		N	Denture rein part maxil chr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5741		III	Denture rein part mand chr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5750		N	Denture rein cmplt max lab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5751		N	Denture rein cmplt mand lab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5760		N	Denture rein part maxil lab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5761		N	Denture rein part mand lab	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5810		N	Denture interm cmplt maxill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5811		N	Denture interm cmplt mandibl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5820		N	Denture interm part maxill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5821		N	Denture interm part mandibl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5850		III	Denture tiss conditn maxill	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5851		N	Denture tiss conditn mandibl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5860		III	Overdenture complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5861		N	Overdenture partial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5862		N	Precision attachment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5899		N	Removable prosthodontic proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5911		R	Facial moulage sectional	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5912		R	Facial moulage complete	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5913		I	Nasal prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5914		I	Auricular prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5915		I	Orbital prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5916		I	Ocular prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5919		I	Facial prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5922		I	Nasal septal prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5923		I	Ocular prosthesis interim	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5924		I	Cranial prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5925		I	Facial augmentation implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5926		I	Replacement nasal prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5927		I	Auricular replacement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5928		I	Orbital replacement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5929		I	Facial replacement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5931		I	Surgical obturator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5932		I	Postsurgical obturator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5933		I	Refitting of obturator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5934		I	Mandibular flange prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5935		I	Mandibular denture prosth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5936		I	Temp obturator prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5937		I	Trismus appliance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5951		R	Feeding aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5952		I	Pediatric speech aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5953		I	Adult speech aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5954		I	Superimposed prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5955		I	Palatal lift prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5958		I	Intraoral con def inter plt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5959		I	Intraoral con def mod palat	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5960		I	Modify speech aid prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5982		I	Surgical stent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5983		R	Radiation applicator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5984		R	Radiation shield	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5985		R	Radiation cone locator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5986		N	Fluoride applicator	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5987		R	Commissure splint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D5988		I	Surgical splint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D5999		I	Maxillofacial prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6010		I	Odontics endosteal implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6020		I	Odontics abutment placement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6040		I	Odontics eposteal implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6050		I	Odontics transosteal implnt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6055		I	Implant connecting bar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6080		I	Implant maintenance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6090		I	Repair implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6095		I	Odontics repr abutment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6100		I	Removal of implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6199		I	Implant procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6210		N	Prosthodont high noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6211		N	Bridge base metal cast	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6212		N	Bridge noble metal cast	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6240		N	Bridge porcelain high noble	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6241		N	Bridge porcelain base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6242		N	Bridge porcelain nobel metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6250		N	Bridge resin w/high noble	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6251		N	Bridge resin base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6252		N	Bridge resin w/noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6520		N	Dental retainer two surfaces	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6530		N	Retainer metallic 3+ surface	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6543		N	Dental retainr onlay 3 surf	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
D6544		N	Dental retainr onlay 4/more	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6545		N	Dental retainr cast metl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6720		N	Retain crown resin w hi nble	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6721		N	Crown resin w/base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6722		N	Crown resin w/noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6750		N	Crown porcelain high noble	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6751		N	Crown porcelain base metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6752		N	Crown porcelain noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6780		N	Crown 3/4 high noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6790		N	Crown full high noble metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6791		N	Crown full base metal cast	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6792		N	Crown full noble metal cast	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6920		R	Dental connector bar	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D6930		N	Dental recement bridge	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6940		N	Stress breaker	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6950		N	Precision attachment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6970		N	Post & core plus retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6971		N	Cast post bridge retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6972		N	Prefab post & core plus reta	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6973		N	Core build up for retainer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6975		N	Coping metal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6980		N	Bridge repair	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D6999		N	Fixed prosthodontic proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7110		R	Oral surgery single tooth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7120		R	Each add tooth extraction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7130		R	Tooth root removal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7210		R	Rem imp tooth w mucoper flp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7220		R	Impact tooth remov soft tiss	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7230		R	Impact tooth remov part bony	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7240		R	Impact tooth remov comp bony	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7241		R	Impact tooth rem bony w/comp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7250		R	Tooth root removal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7260		R	Oral antral fistula closure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7270		N	Tooth reimplantation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7272		N	Tooth transplantation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7280		N	Exposure impact tooth orthod	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7281		N	Exposure tooth aid eruption	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7285		I	Biopsy of oral tissue hard	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7286		I	Biopsy of oral tissue soft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7290		N	Repositioning of teeth	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7291		R	Transseptal fiberotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D7310		I	Alveoplasty w/ extraction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7320		I	Alveoplasty w/o extraction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7340		I	Vestibuloplasty ridge extens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7350		I	Vestibuloplasty exten graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7410		I	Rad exc lesion up to 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7420		I	Lesion ≤ 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7430		I	Exc benign tumor to 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7431		I	Benign tumor exc ≤ 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7440		I	Malig tumor exc to 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7441		I	Malig tumor ≤ 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7450		I	Rem odontogen cyst to 1.25cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7451		I	Rem odontogen cyst ≤ 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7460		I	Rem nonodonto cyst to 1.25cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7461		I	Rem nonodonto cyst ≤ 1.25 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7465		I	Lesion destruction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7470		I	Rem exostosis maxilla/mandib	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7480		I	Partial ostectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7490		I	Mandible resection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7510		I	I&d abac intraoral soft tiss	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7520		I	I&d abscess extraoral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7530		I	Removal fb skin/areolar tiss	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7540		I	Removal of fb reaction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7550		I	Removal of sloughed off bone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7560		I	Maxillary sinusotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7610		I	Maxilla open reduct simple	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7620		I	Clsd reduct simpl maxilla fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7630		I	Open red simpl mandible fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7640		I	Clsd red simpl mandible fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7650		I	Open red simp malar/zygom fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7660		I	Clsd red simp malar/zygom fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7670		I	Open red simple alveolus fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7680		I	Reduct simple facial bone fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7710		I	Maxilla open reduct compound	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7720		I	Clsd reduct compd maxilla fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7730		I	Open reduct compd mandible fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7740		I	Clsd reduct compd mandible fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7750		I	Open red comp malar/zygma fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7760		I	Clsd red comp malar/zygma fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7770		I	Open reduc compd alveolus fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7780		I	Reduct compnd facial bone fx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7810		I	Tmj open reduct-dislocation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7820		I	Closed tmp manipulation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7830		I	Tmj manipulation under anest	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
D7840		I	Removal of tmj condyle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7850		I	Tmj meniscectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7852		I	Tmj repair of joint disc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7854		I	Tmj excisn of joint membrane	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7856		I	Tmj cutting of a muscle	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7858		I	Tmj reconstruction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7860		I	Tmj cutting into joint	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7865		I	Tmj reshaping components	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7870		I	Tmj aspiration joint fluid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7872		I	Tmj diagnostic arthroscopy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7873		I	Tmj arthroscopy lysis adhesn	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7874		I	Tmj arthroscopy disc reposit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7875		I	Tmj arthroscopy synovectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7876		I	Tmj arthroscopy discectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7877		I	Tmj arthroscopy debridement	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7880		I	Occlusal orthotic appliance	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7899		I	Tmj unspecified therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7910		I	Dent suture recent wnd to 5cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7911		I	Dental suture wound to 5 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7912		I	Suture complicate wnd ≤ 5 cm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7920		I	Dental skin graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7940		R	Reshaping bone orthognathic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7941		I	Bone cutting ramus closed	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7942		I	Bone cutting ramus open	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7943		I	Cutting ramus open w/graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7944		I	Bone cutting segmented	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7945		I	Bone cutting body mandible	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7946		I	Reconstruction maxilla total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7947		I	Reconstruct maxilla segment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7948		I	Reconstruct midface no graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7949		I	Reconstruct midface w/graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7950		I	Mandible graft	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7955		I	Repair maxillofacial defects	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7960		I	Frenulectomy/frenulotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7970		I	Excision hyperplastic tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7971		I	Excision pericoronal gingiva	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7980		I	Sialolithotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7981		I	Excision of salivary gland	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7982		I	Sialodochoplasty	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7983		I	Closure of salivary fistula	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7990		I	Emergency tracheotomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7991		I	Dental coronoidectomy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7995		I	Synthetic graft facial bones	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7996		I	Implant mandible for augment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D7999		I	Oral surgery procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8010		N	Limited dental tx primary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8020		N	Limited dental tx transition	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8030		N	Limited dental tx adolescent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8040		N	Limited dental tx adult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8050		N	Intercep dental tx primary	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8060		N	Intercep dental tx transitn	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8070		N	Compre dental tx transition	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8080		N	Compre dental tx adolescent	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8090		N	Compre dental tx adult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8210		N	Orthodontic rem appliance tx	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8220		N	Fixed appliance therapy habt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8660		N	Preorthodontic tx visit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8670		N	Periodic orthodontc tx visit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8680		N	Orthodontic retention	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8690		N	Orthodontic treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D8999		N	Orthodontic procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9110		R	Tx dental pain minor proc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9210		I	Dent anesthesia w/o surgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9211		I	Regional block anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9212		I	Trigeminal block anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9215		I	Local anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9220		I	General anesthesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9221		I	General anesthesia ea ad 15m	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9230		R	Analgesia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9240		I	Intravenous sedation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9310		I	Dental consultation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9410		I	Dental house call	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9420		I	Hospital call	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9430		I	Office visit during hours	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9440		I	Office visit after hours	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9610		I	Dent therapeutic drug inject	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9630		R	Other drugs/medicaments	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9910		N	Dent appl desensitizing med	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9920		N	Behavior management	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9930		R	Treatment of complications	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9940		R	Dental occlusal guard	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9941		N	Fabrication athletic guard	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9950		R	Occlusion analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9951		R	Limited occlusal adjustment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
D9952	.....	R	Complete occlusal adjustment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
D9970	.....	N	Enamel microabrasion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
D9999	.....	I	Adjunctive procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0001	.....	X	Drawing blood for specimen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0002	.....	A	Temporary urinary catheter	0.50	2.90	1.83	0.17	0.47	0.03	3.43	2.36	0.70	1.00	000
G0004	.....	A	ECG transm phys review & int	0.52	0.77	4.35	0.77	4.35	0.02	1.31	4.89	1.31	4.89	XXX
G0005	.....	A	ECG 24 hour recording	0.00	1.30	1.29	1.30	1.29	0.07	1.37	1.36	1.37	1.36	XXX
G0006	.....	A	ECG transmission & analysis	0.00	6.29	6.26	6.29	6.26	0.39	6.68	6.65	6.68	6.65	XXX
G0007	.....	A	ECG phy review & interpret	0.52	0.19	0.31	0.19	0.31	0.02	0.73	0.85	0.73	0.85	XXX
G0008	.....	X	Admin influenza virus vac	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0009	.....	X	Admin pneumococcal vaccine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0010	.....	X	Admin hepatitis b vaccine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0015	.....	A	Post symptom ECG tracing	0.00	6.29	6.26	6.29	6.26	0.39	6.68	6.65	6.68	6.65	XXX
G0016	.....	A	Post symptom ECG md review	0.52	0.24	0.34	0.24	0.34	0.02	0.78	0.88	0.78	0.88	XXX
G0025	.....	A	Collagen skin test iii	0.00	0.00	0.52	0.00	0.52	0.00	0.00	0.52	0.00	0.52	XXX
G0026	.....	X	Fecal leukocyte examinction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0027	.....	X	Semen analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0030	.....	C	PET imaging prev PET single	0.00	0.00	0.00	0.00	0.00	0.05	0.05	0.05	0.05	0.05	XXX
G0030	26	A	PET imaging prev PET single	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0030	TC	C	PET imaging prev PET single	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0031	.....	C	PET imaging prev PET multple	0.00	0.00	0.00	0.00	0.00	0.08	0.08	0.08	0.08	0.08	XXX
G0031	26	A	PET imaging prev PET multple	1.87	0.70	0.71	0.70	0.71	0.08	2.65	2.65	2.65	2.66	XXX
G0031	TC	C	PET imaging prev PET multple	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0032	.....	C	PET follow SPECT 78464 singl	0.00	0.00	0.00	0.00	0.00	0.05	0.05	0.05	0.05	0.05	XXX
G0032	26	A	PET follow SPECT 78464 singl	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0032	TC	C	PET follow SPECT 78464 singl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0033	.....	C	PET follow SPECT 78464 mult	0.00	0.00	0.00	0.00	0.00	0.06	0.06	0.06	0.06	0.06	XXX
G0033	26	A	PET follow SPECT 78464 mult	1.87	0.70	0.71	0.70	0.71	0.06	2.63	2.64	2.63	2.64	XXX
G0033	TC	C	PET follow SPECT 78464 mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0034	.....	C	PET follow SPECT 76865 singl	0.00	0.00	0.00	0.00	0.00	0.05	0.05	0.05	0.05	0.05	XXX
G0034	26	A	PET follow SPECT 76865 singl	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0034	TC	C	PET follow SPECT 76865 singl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0035	.....	C	PET follow SPECT 78465 mult	0.00	0.00	0.00	0.00	0.00	0.07	0.07	0.07	0.07	0.07	XXX
G0035	26	A	PET follow SPECT 78465 mult	1.87	0.70	0.71	0.70	0.71	0.07	2.64	2.65	2.64	2.65	XXX
G0035	TC	C	PET follow SPECT 78465 mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0036	.....	C	PET follow comry angio sing	0.00	0.00	0.00	0.00	0.00	0.06	0.06	0.06	0.06	0.06	XXX
G0036	26	A	PET follow comry angio sing	1.50	0.52	0.52	0.52	0.52	0.06	2.08	2.08	2.08	2.08	XXX
G0036	TC	C	PET follow comry angio sing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0037	.....	C	PET follow comry angio mult	0.00	0.00	0.00	0.00	0.00	0.07	0.07	0.07	0.07	0.07	XXX
G0037	26	A	PET follow comry angio mult	1.87	0.70	0.71	0.70	0.71	0.07	2.64	2.65	2.64	2.65	XXX
G0037	TC	C	PET follow comry angio mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0038	.....	C	PET follow myocard perf sing	0.00	0.00	0.00	0.00	0.00	0.05	0.05	0.05	0.05	0.05	XXX
G0038	26	A	PET follow myocard perf sing	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0038	TC	C	PET follow myocard perf sing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0039	.....	C	PET follow myocard perf mult	0.00	0.00	0.00	0.00	0.00	0.06	0.06	0.06	0.06	0.06	XXX
G0039	26	A	PET follow myocard perf mult	1.87	0.70	0.71	0.70	0.71	0.06	2.63	2.64	2.63	2.64	XXX
G0039	TC	C	PET follow myocard perf mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0040	.....	C	PET follow stress echo singl	0.00	0.00	0.00	0.00	0.00	0.05	0.05	0.05	0.05	0.05	XXX
G0040	26	A	PET follow stress echo singl	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0040	TC	C	PET follow stress echo singl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0041	.....	C	PET follow stress echo mult	0.00	0.00	0.00	0.00	0.00	0.06	0.06	0.06	0.06	0.06	XXX
G0041	26	A	PET follow stress echo mult	1.87	0.70	0.71	0.70	0.71	0.06	2.63	2.64	2.63	2.64	XXX
G0041	TC	C	PET follow stress echo mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0042	.....	C	PET follow ventriculogm sing	0.00	0.00	0.00	0.00	0.00	0.05	0.05	0.05	0.05	0.05	XXX
G0042	26	A	PET follow ventriculogm sing	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0042	TC	C	PET follow ventriculogm sing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0043	.....	C	PET follow ventriculogm mult	0.00	0.00	0.00	0.00	0.00	0.06	0.06	0.06	0.06	0.06	XXX
G0043	26	A	PET follow ventriculogm mult	1.87	0.70	0.71	0.70	0.71	0.06	2.63	2.64	2.63	2.64	XXX
G0043	TC	C	PET follow ventriculogm mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0044	.....	C	PET following rest ECG singl	0.00	0.00	0.00	0.00	0.00	0.05	0.05	0.05	0.05	0.05	XXX
G0044	26	A	PET following rest ECG singl	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0044	TC	C	PET following rest ECG singl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0045	.....	C	PET following rest ECG mult	0.00	0.00	0.00	0.00	0.00	0.06	0.06	0.06	0.06	0.06	XXX
G0045	26	A	PET following rest ECG mult	1.87	0.70	0.71	0.70	0.71	0.06	2.63	2.64	2.63	2.64	XXX
G0045	TC	C	PET following rest ECG mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0046	.....	C	PET follow stress ECG singl	0.00	0.00	0.00	0.00	0.00	0.05	0.05	0.05	0.05	0.05	XXX
G0046	26	A	PET follow stress ECG singl	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0046	TC	C	PET follow stress ECG singl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0047	.....	C	PET follow stress ECG mult	0.00	0.00	0.00	0.00	0.00	0.07	0.07	0.07	0.07	0.07	XXX
G0047	26	A	PET follow stress ECG mult	1.87	0.70	0.71	0.70	0.71	0.07	2.64	2.65	2.64	2.65	XXX
G0047	TC	C	PET follow stress ECG mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0050	.....	A	Residual urine by ultrasound	0.00	0.89	0.89	0.89	0.89	0.04	0.93	0.93	0.93	0.93	XXX
G0101	.....	A	CA screen;pelvic/breast exam	0.45	0.60	0.45	0.17	0.24	0.02	1.07	0.92	0.64	0.71	XXX
G0104	.....	A	CA screen;flexi sigmoidscope	0.96	4.50	2.92	0.37	0.48	0.04	5.50	3.92	1.37	1.48	000
G0105	.....	A	Colorectal scrn; hi risk ind	3.70	6.25	5.37	1.41	2.92	0.15	10.10	9.22	5.26	6.77	000
G0106	.....	A	Colon CA screen;barium enema	0.99	2.71	2.76	2.71	2.76	0.15	3.85	3.90	3.85	3.90	XXX
G0106	26	A	Colon CA screen;barium enema	0.99	0.38	0.44	0.38	0.44	0.04	1.41	1.47	1.41	1.47	XXX
G0106	TC	A	Colon CA screen;barium enema	0.00	2.33	2.32	2.33	2.32	0.11	2.44	2.43	2.44	2.43	XXX
G0107	.....	X	CA screen; fecal blood test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0108	.....	A	Diab manage trn per indiv	0.00	1.64	1.64	1.64	1.64	0.01	1.65	1.65	1.65	1.65	XXX
G0109	.....	A	Diab manage trn ind/group	0.00	0.96	0.97	0.96	0.97	0.01	0.97	0.98	0.97	0.98	XXX
G0110	.....	R	Nett pulm-rehab educ; ind	0.90	0.79	0.54	0.34	0.31	0.04	1.73	1.48	1.28	1.25	XXX
G0111	.....	R	Nett pulm-rehab educ; group	0.27	0.30	0.26	0.10	0.16	0.01	0.58	0.54	0.38	0.44	XXX
G0112	.....	R	Nett;nutrition guid, initial	1.72	1.53	1.29	0.66	0.86	0.07	3.32	3.08	2.45	2.65	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
G0113	.....	R	Nett;nutrition guid,subseqnt	1.29	1.31	1.08	0.49	0.67	0.05	2.65	2.42	1.83	2.01	XXX
G0114	.....	R	Nett; psychosocial consult	1.20	0.58	0.47	0.46	0.42	0.03	1.79	1.70	1.69	1.65	XXX
G0115	.....	R	Nett; psychological testing	1.20	0.64	0.51	0.46	0.42	0.03	1.87	1.74	1.69	1.65	XXX
G0116	.....	R	Nett; psychosocial counsel	1.11	0.76	0.57	0.42	0.40	0.03	1.90	1.71	1.56	1.54	XXX
G0120	.....	A	Colon ca scrn; barium enema	0.99	2.71	2.76	2.71	2.76	0.15	3.85	3.90	3.85	3.90	XXX
G0120	26	A	Colon ca scrn; barium enema	0.99	0.38	0.44	0.38	0.44	0.04	1.41	1.47	1.41	1.47	XXX
G0120	TC	A	Colon ca scrn; barium enema	0.00	2.33	2.32	2.33	2.32	0.11	2.44	2.43	2.44	2.43	XXX
G0121	.....	N	Colon ca scrn not hi risk ind	+3.70	6.25	5.37	1.41	2.92	0.15	10.10	9.22	5.26	6.77	XXX
G0122	.....	N	Colon ca scrn; barium enema	+0.99	2.71	2.76	2.71	2.76	0.15	3.85	3.90	3.85	3.90	XXX
G0122	26	N	Colon ca scrn; barium enema	+0.99	0.38	0.44	0.38	0.44	0.04	1.41	1.47	1.41	1.47	XXX
G0122	TC	N	Colon ca scrn; barium enema	+0.00	2.33	2.32	2.33	2.32	0.11	2.44	2.43	2.44	2.43	XXX
G0123	.....	X	Screen cerv/vag thin layer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0124	.....	A	Screen c/v thin layer by MD	0.42	0.18	0.31	0.18	0.31	0.02	0.62	0.76	0.62	0.76	XXX
G0125	.....	A	Lung image (PET)	1.50	56.15	56.15	56.15	56.15	2.16	59.81	59.81	59.81	59.81	XXX
G0125	26	A	Lung image (PET)	1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0125	TC	A	Lung image (PET)	0.00	55.63	55.63	55.63	55.63	2.11	57.74	57.74	57.74	57.74	XXX
G0126	.....	A	Lung image (PET) staging	1.87	56.33	56.34	56.33	56.34	2.17	60.37	60.38	60.37	60.38	XXX
G0126	26	A	Lung image (PET) staging	1.87	0.70	0.71	0.70	0.71	0.06	2.63	2.64	2.63	2.64	XXX
G0126	TC	A	Lung image (PET) staging	0.00	55.63	55.63	55.63	55.63	2.11	57.74	57.74	57.74	57.74	XXX
G0127	.....	R	Trim nail(s)	0.11	1.06	0.66	0.04	0.09	0.00	1.17	0.77	0.15	0.20	000
G0128	.....	R	CORF skilled nursing service	0.08	0.00	0.00	0.00	0.00	0.00	0.08	0.08	0.08	0.08	XXX
G0130	.....	A	Single energy x-ray study	0.22	0.90	0.90	0.90	0.90	0.05	1.17	1.17	1.17	1.17	XXX
G0130	26	A	Single energy x-ray study	0.22	0.11	0.11	0.11	0.11	0.01	0.34	0.34	0.34	0.34	XXX
G0130	TC	A	Single energy x-ray study	0.00	0.79	0.79	0.79	0.79	0.04	0.83	0.83	0.83	0.83	XXX
G0131	.....	A	CT scan, bone density study	0.25	3.18	3.18	3.18	3.18	0.15	3.58	3.58	3.58	3.58	XXX
G0131	26	A	CT scan, bone density study	0.25	0.13	0.13	0.13	0.13	0.01	0.39	0.39	0.39	0.39	XXX
G0131	TC	A	CT scan, bone density study	0.00	3.05	3.05	3.05	3.05	0.14	3.19	3.19	3.19	3.19	XXX
G0132	.....	A	CT scan, bone density study	0.22	0.90	0.90	0.90	0.90	0.05	1.17	1.17	1.17	1.17	XXX
G0132	26	A	CT scan, bone density study	0.22	0.11	0.11	0.11	0.11	0.01	0.34	0.34	0.34	0.34	XXX
G0132	TC	A	CT scan, bone density study	0.00	0.79	0.79	0.79	0.79	0.04	0.83	0.83	0.83	0.83	XXX
G0141	.....	A	Scr c/v cyto,autosys and md	0.42	0.18	0.18	0.18	0.18	0.02	0.62	0.62	0.62	0.62	XXX
G0143	.....	X	Scr c/v cyto,thinlayer,rescr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0144	.....	X	Scr c/v cyto,thinlayer,rescr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0145	.....	X	Scr c/v cyto,thinlayer,rescr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0147	.....	X	Scr c/v cyto, automated sys	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0148	.....	X	Scr c/v cyto, autosys, rescr	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0160	.....	C	Cryosurgery, prostate cancer	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	090
G0161	.....	C	Echo guidance cryosurgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0161	26	C	Echo guidance cryosurgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0161	TC	C	Echo guidance cryosurgery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
G0163	.....	A	Positron emission tomography	#1.50	56.15	56.15	56.15	56.15	2.16	59.81	59.81	59.81	59.81	XXX
G0163	26	A	Positron emission tomography	#1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0163	TC	A	Positron emission tomography	#0.00	55.63	55.63	55.63	55.63	2.11	57.74	57.74	57.74	57.74	XXX
G0164	.....	A	Positron emission tomography	#1.87	56.34	56.34	56.34	56.34	2.19	60.40	60.40	60.40	60.40	XXX
G0164	26	A	Positron emission tomography	#1.87	0.71	0.71	0.71	0.71	0.08	2.66	2.66	2.66	2.66	XXX
G0164	TC	A	Positron emission tomography	#0.00	55.63	55.63	55.63	55.63	2.11	57.74	57.74	57.74	57.74	XXX
G0165	.....	A	Positron emission tomography	#1.50	56.15	56.15	56.15	56.15	2.16	59.81	59.81	59.81	59.81	XXX
G0165	26	A	Positron emission tomography	#1.50	0.52	0.52	0.52	0.52	0.05	2.07	2.07	2.07	2.07	XXX
G0165	TC	A	Positron emission tomography	#0.00	55.63	55.63	55.63	55.63	2.11	57.74	57.74	57.74	57.74	XXX
J0120	.....	E	Tetracyclin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0130	.....	E	Abciximab injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0150	.....	E	Injection adenosine 6 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0151	.....	E	Adenosine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0170	.....	E	Adrenalin epinephrin inject	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0190	.....	E	Inj biperiden lactate/5 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0205	.....	E	Alglucerase injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0207	.....	E	Amifostine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0210	.....	E	Methyldopate hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0256	.....	E	Alpha 1 proteinase inhibitor	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0270	.....	E	Alprostadil for injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0275	.....	E	Alprostadil urethral suppos	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0280	.....	E	Aminophyllin 250 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0285	.....	E	Amphotericin B	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0286	.....	E	Amphotericin B lipid complex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0290	.....	E	Ampicillin 500 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0295	.....	E	Ampicillin sodium per 1.5 gm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0300	.....	E	Amobarbital 125 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0330	.....	E	Succinycholine chloride inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0340	.....	E	Nandrolon phenpropionate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0350	.....	E	Injection anistreplase 30 u	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0360	.....	E	Hydralazine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0380	.....	E	Inj metaraminol bitartrate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0390	.....	E	Chloroquine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0395	.....	E	Arbutamine HCl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0400	.....	E	Inj trimethaphan camsylate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0460	.....	E	Atropine sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0470	.....	E	Dimecaprol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0475	.....	E	Baclofen 10 MG injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0476	.....	E	Baclofen intrathecal trial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0500	.....	E	Dicyclomine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0510	.....	E	Benzquinamide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0515	.....	E	Inj benztropine mesylate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0520	.....	E	Bethanechol chloride inject	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0530	.....	E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
J0540		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0550		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0560		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0570		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0580		E	Penicillin g benzathine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0585		E	Botulinum toxin a per unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0590		E	Ethylnorepinephrine hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0600		E	Edetate calcium disodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0610		E	Calcium gluconate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0620		E	Calcium glycer & lact/10 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0630		E	Calcitonin salmon injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0635		E	Calcitriol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0640		E	Leucovorin calcium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0670		E	Inj mepivacaine HCL/10 ml	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0690		E	Cefazolin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0694		E	Cefoxitin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0695		E	Ceftonocid sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0696		E	Ceftriaxone sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0697		E	Sterile cefuroxime injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0698		E	Cefotaxime sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0702		E	Betamethasone acet&sod phosp	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0704		E	Betamethasone sod phosp/4 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0710		E	Cephapirin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0713		E	Inj ceftazidime per 500 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0715		E	Ceftizoxime sodium / 500 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0720		E	Chloramphenicol sodium injec	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0725		E	Chorionic gonadotropin/1000u	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0730		E	Chlorpheniramin maleate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0735		E	Clonidine hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0740		E	Cidofovir injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0743		E	Cilastatin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0745		E	Inj codeine phosphate /30 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0760		E	Colchicine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0770		E	Colistimethate sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0780		E	Prochlorperazine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0800		E	Corticotropin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0810		E	Cortisone injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0835		E	Inj cosyntropin per 0.25 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0850		E	Cytomegalovirus imm IV /vial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0895		E	Deferoxamine mesylate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0900		E	Testosterone enanthate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0945		E	Brompheniramine maleate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J0970		E	Estradiol valerate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1000		E	Depo-estradiol cypionate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1020		E	Methylprednisolone 20 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1030		E	Methylprednisolone 40 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1040		E	Methylprednisolone 80 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1050		E	Medroxyprogesterone inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1055		N	Medroxyprogester acetate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1060		E	Testosterone cypionate 1 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1070		E	Testosterone cypionat 100 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1080		E	Testosterone cypionat 200 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1090		E	Testosterone cypionate 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1095		E	Inj dexamethasone acetate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1100		E	Dexamethosone sodium phos	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1110		E	Inj dihydroergotamine mesylt	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1120		E	Acetazolamid sodium injectio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1160		E	Digoxin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1165		E	Phenytoin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1170		E	Hydromorphone injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1180		E	Dyphylline injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1190		E	Dexrazoxane HCl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1200		E	Diphenhydramine hcl injectio	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1205		E	Chlorothiazide sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1212		E	Dimethyl sulfoxide 50% 50 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1230		E	Methadone injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1240		E	Dimenhydrinate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1245		E	Dipyridamole injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1250		E	Inj dobutamine HCL/250 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1260		E	Dolasetron mesylate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1320		E	Amitriptyline injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1325		E	Epoprostenol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1330		III	Ergonovine maleate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1362		E	Erythromycin glucep / 250 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1364		E	Erythro lactobionate /500 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1380		E	Estradiol valerate 10 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1390		E	Estradiol valerate 20 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1410		E	Inj estrogen conjugate 25 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1435		E	Injection estrone per 1 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1436		E	Etidronate disodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1440		E	Filgrastim 300 mcg injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1441		E	Filgrastim 480 mcg injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1455		E	Foscarnet sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1460		E	Gamma globulin 1 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
J1470		E	Gamma globulin 2 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1480		E	Gamma globulin 3 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1490		E	Gamma globulin 4 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1500		E	Gamma globulin 5 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1510		E	Gamma globulin 6 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1520		E	Gamma globulin 7 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1530		E	Gamma globulin 8 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1540		E	Gamma globulin 9 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1550		E	Gamma globulin 10 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1560		E	Gamma globulin ≤ 10 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1561		E	Immune globulin 500 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1562		E	Immune globulin 5 gms	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1565		E	RSV-ivig	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1570		E	Ganciclovir sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1580		E	Garamycin gentamicin inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1600		E	Gold sodium thiomaleate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1610		E	Glucagon hydrochloride/1 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1620		E	Gonadorelin hydrochl 100 mcg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1626		E	Granisetron HCl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1630		E	Haloperidol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1631		E	Haloperidol decanoate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1642		E	Inj heparin sodium per 10 u	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1644		E	inj heparin sodium per 1000u	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1645		E	Dalteparin sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1650		E	Inj enoxaparin sodium 30 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1670		E	Tetanus immune globulin inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1690		E	Prednisolone tebutate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1700		E	Hydrocortisone acetate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1710		E	Hydrocortisone sodium ph inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1720		E	Hydrocortisone sodium succ i	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1730		E	Diazoxide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1739		E	Hydroxyprogesterone cap 125	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1741		E	Hydroxyprogesterone cap 250	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1742		E	Ibutilide fumarate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1760		E	Iron dextran 2 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1770		E	Iron dextran 5 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1780		E	Iron dextran 10 CC inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1785		E	Injection imiglucerase /unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1790		E	Droperidol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1800		E	Propranolol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1810		E	Droperidol/fentanyl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1820		E	Insulin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1825		E	Interferon beta-1a	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1830		E	Interferon beta-1b / .25 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1840		E	Kanamycin sulfate 500 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1850		E	Kanamycin sulfate 75 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1885		E	Ketorolac tromethamine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1890		E	Cephalothin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1910		E	Kutapressin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1930		E	Propiomazine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1940		E	Furosemide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1950		E	Leuprolide acetate /3.75 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1955		E	Inj levocarnitine per 1 gm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1956		E	Levofloxacin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1960		E	Levorphanol tartrate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1970		E	Methotrimeprazine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1980		E	Hyoscyamine sulfate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J1990		E	Chlordiazepoxide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2000		E	Lidocaine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2010		E	Lincomycin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2060		E	Lorazepam injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2150		E	Mannitol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2175		E	Meperidine hydrochl /100 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2180		E	Meperidine/promethazine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2210		E	Methylergonovin maleate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2240		E	Metocunne iodide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2250		E	Inj midazolam hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2260		E	Inj milrinone lactate / 5 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2270		E	Morphine sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2271		E	Morphine so4 injection 100mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2275		E	Morphine sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2300		E	Inj nalbuphine hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2310		E	Inj naloxone hydrochloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2320		E	Nandrolone decanoate 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2321		E	Nandrolone decanoate 100 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2322		E	Nandrolone decanoate 200 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2330		E	Thiothixene injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2350		E	Niacinamide/niacin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2355		E	Oprelvekin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2360		E	Orphenadrine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2370		E	Phenylephrine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2400		E	Chloroprocaine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2405		E	Ondansetron hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2410		E	Oxymorphone hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
J2430		E	Pamidronate disodium /30 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2440		E	Papaverin hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2460		E	Oxytetracycline injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2480		E	Hydrochlorides of opium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2510		E	Penicillin g procaine inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2512		E	Inj pentagastrin per 2 ML	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2515		E	Pentobarbital sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2540		E	Penicillin g potassium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2545		E	Pentamidine isethionte/300mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2550		E	Promethazine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2560		E	Phenobarbital sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2590		E	Oxytocin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2597		E	Inj desmopressin acetate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2640		E	Prednisolone sodium ph inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2650		E	Prednisolone acetate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2670		E	Tolazoline hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2675		E	Inj progesterone per 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2680		E	Fluphenazine decanoate 25 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2690		E	Procainamide hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2700		E	Oxacillin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2710		E	Neostigmine methylsulfte inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2720		E	Inj protamine sulfate/10 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2725		E	Inj protirelin per 250 mcg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2730		E	Pralidoxime chloride inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2760		E	Phentolamine mesylate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2765		E	Metoclopramide hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2790		E	Rho d immune globulin inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2792		E	Rho(D) immune globulin h, sd	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2800		E	Methocarbamol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2810		E	Inj theophylline per 40 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2820		E	Sargramostim injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2860		E	Secobarbital sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2910		E	Aurothioglucose injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2912		E	Sodium chloride injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2920		E	Methylprednisolone injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2930		E	Methylprednisolone injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2950		E	Promazine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2970		E	Methicillin sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2994		E	Reteplase double bolus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2995		E	Inj streptokinase /250000 IU	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J2996		E	Alteplase recombinant inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3000		E	Streptomycin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3010		E	Fentanyl citrate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3030		E	Sumatriptan succinate / 6 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3070		E	Pentazocine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3080		E	Chlorprothixene injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3105		E	Terbutaline sulfate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3120		E	Testosterone enanthate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3130		E	Testosterone enanthate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3140		E	Testosterone suspension inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3150		E	Testosteron propionate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3230		E	Chlorpromazine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3240		E	Thyrotropin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3250		E	Trimethobenzamide hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3260		E	Tobramycin sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3265		E	Injection torsemide 10 mg/ml	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3270		E	Imipramine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3280		E	Thiethylperazine maleate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3301		E	Triamcinolone acetonide inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3302		E	Triamcinolone diacetate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3303		E	Triamcinolone hexacetonl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3305		E	Inj trimetrexate glucoronate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3310		E	Perphenazine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3320		E	Spectinomycn di-hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3350		E	Urea injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3360		E	Diazepam injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3364		E	Urokinase 5000 IU injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3365		E	Urokinase 250,000 IU inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3370		R	Vancomycin hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3390		E	Methoxamine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3400		E	Triflupromazine hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3410		E	Hydroxyzine hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3420		E	Vitamin b12 injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3430		E	Vitamin k phytonadione inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3450		E	Mephentermine sulfate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3470		E	Hyaluronidase injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3475		E	Inj magnesium sulfate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3480		E	Inj potassium chloride	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3490		E	Drugs unclassified injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3520		N	Edetate disodium per 150 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3530		E	Nasal vaccine inhalation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3535		N	Metered dose inhaler drug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J3570		N	Laetrile amygdalin vit B17	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7030		E	Normal saline solution infus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
J7040		E	Normal saline solution infus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7042		E	5% dextrose/normal saline	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7050		E	Normal saline solution infus	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7051		E	Sterile saline/water	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7060		E	5% dextrose/water	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7070		E	D5w infusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7100		E	Dextran 40 infusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7110		E	Dextran 75 infusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7120		E	Ringers lactate infusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7130		E	Hypertonic saline solution	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7190		X	Factor viii	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7191		X	Factor VIII (porcine)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7192		X	Factor viii recombinant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7194		X	Factor ix complex	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7196		X	Othr hemophilia clot factors	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7197		X	Antithrombin iii injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7300		N	Intraut copper contraceptive	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7310		E	Ganciclovir long act implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7315		E	Sodium hyaluronate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7320		E	Hylan G-F 20 injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7500		X	Azathiop po tab 50mg 100s ea	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7501		X	Azathioprine parenteral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7503		X	Cyclosporine parenteral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7504		X	Lymphocyte immune globulin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7505		X	Monoclonal antibodies	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7506		X	Prednisone oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7507		E	Tacrolimus oral per 1 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7508		E	Tacrolimus oral per 5 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7509		X	Methylprednisolone oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7510		X	Prednisolone oral per 5 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7513		E	Daclizumab, parenteral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7599		X	Immunosuppressive drug noc	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7610		E	Acetylcysteine 10% injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7615		E	Acetylcysteine 20% injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7620		E	Albuterol sulfate .083%/ml	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7625		E	Albuterol sulfate .5% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7627		E	Bitolterolmesylate inhal sol	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7630		E	Cromolyn sodium injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7640		E	Epinephrine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7645		E	Ipratropium bromide .02%/ml	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7650		E	Isoetharine hcl .1% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7651		E	Isoetharine hcl .125% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7652		E	Isoetharine hcl .167% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7653		E	Isoetharine hcl .2%/ inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7654		E	Isoetharine hcl .25% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7655		E	Isoetharine hcl 1% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7660		E	Isoproterenol hcl .5% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7665		E	Isoproterenol hcl 1% inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7670		E	Metaproterenol sulfate .4%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7672		E	Metaproterenol sulfate .6%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7675		E	Metaproterenol sulfate 5%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7699		E	Inhalation solution for DME	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J7799		E	Non-inhalation drug for DME	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8499		N	Oral prescrip drug non chemo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8530		E	Cyclophosphamide oral 25 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8560		E	Etoposide oral 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8600		E	Melphalan oral 2 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8610		E	Methotrexate oral 2.5 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J8999		E	Oral prescription drug chemo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9000		E	Doxorubic hcl 10 MG vl chemo	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9015		E	Aldesleukin/single use vial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9020		E	Asparaginase injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9031		E	Bcg live intravesical vac	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9040		E	Bleomycin sulfate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9045		E	Carboplatin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9050		E	Carmus bischl nitro inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9060		E	Cisplatin 10 MG injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9062		E	Cisplatin 50 MG injeciton	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9065		E	Inj cladribine per 1 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9070		E	Cyclophosphamide 100 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9080		E	Cyclophosphamide 200 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9090		E	Cyclophosphamide 500 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9091		E	Cyclophosphamide 1.0 gm inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9092		E	Cyclophosphamide 2.0 gm inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9093		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9094		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9095		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9096		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9097		E	Cyclophosphamide lyophilized	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9100		E	Cytarabine hcl 100 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9110		E	Cytarabine hcl 500 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9120		E	Dactinomycin actinomycin d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9130		E	Dacarbazine 10 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9140		E	Dacarbazine 200 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
J9150		E	Daunorubicin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9151		E	Daunorubicin citrate liposom	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9165		E	Diethylstilbestrol injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9170		E	Docetaxel	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9181		E	Etoposide 10 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9182		E	Etoposide 100 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9185		E	Fludarabine phosphate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9190		E	Fluorouracil injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9200		E	Floxuridine injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9201		E	Gemcitabine HCl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9202		E	Goserelin acetate implant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9206		E	Irinotecan injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9208		E	Ifosfamide injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9209		E	Mesna injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9211		E	Idarubicin hcl injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9212		E	Interferon alfacon-1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9213		E	Interferon alfa-2a inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9214		E	Interferon alfa-2b inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9215		E	Interferon alfa-n3 inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9216		E	Interferon gamma 1-b inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9217		E	Leuprolide acetate suspension	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9218		E	Leuprolide acetate injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9230		E	Mechlorethamine hcl inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9245		E	Inj melphalan hydrochl 50 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9250		E	Methotrexate sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9260		E	Methotrexate sodium inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9265		E	Paclitaxel injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9266		E	Pegaspergase/singl dose vial	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9268		E	Pentostatin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9270		E	Plicamycin (mithramycin) inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9280		E	Mitomycin 5 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9290		E	Mitomycin 20 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9291		E	Mitomycin 40 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9293		E	Mitoxantrone hydrochl / 5 MG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9310		E	Rituximab cancer treatment	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9320		E	Streptozocin injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9340		E	Thiotepa injection	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9350		E	Topotecan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9360		E	Vinblastine sulfate inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9370		E	Vincristine sulfate 1 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9375		E	Vincristine sulfate 2 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9380		E	Vincristine sulfate 5 MG inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9390		E	Vinorelbine tartrate/10 mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9600		E	Porfimer sodium	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
J9999		E	Chemotherapy drug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0064		A	Visit for drug monitoring	0.37	0.26	0.24	0.12	0.17	0.01	0.64	0.62	0.50	0.55	XXX
M0075		N	Cellular therapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0076		N	Prolotherapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0100		N	Intragastric hypothermia	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0300		N	IV chelationtherapy	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0301		N	Fabric wrapping of aneurysm	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
M0302		N	Assessment of cardiac output	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P2028		X	Cephalin flocculation test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P2029		X	Congo red blood test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P2031		N	Hair analysis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P2033		X	Blood thymol turbidity	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P2038		X	Blood mucoprotein	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P3000		X	Screen pap by tech w md supv	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P3001		A	Screening pap smear by phys	0.42	0.18	0.27	0.18	0.27	0.01	0.61	0.70	0.61	0.70	XXX
P7001		I	Culture bacterial urine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9010		E	Whole blood for transfusion	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9011		E	Blood split unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9012		E	Cryoprecipitate each unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9013		E	Unit/s blood fibrinogen	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9016		E	Leukocyte poor blood, unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9017		E	One donor fresh frozn plasma	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9018		E	Plasma protein fract, unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9019		E	Platelet concentrate unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9020		E	Platelet rich plasma unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9021		E	Red blood cells unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9022		E	Washed red blood cells unit	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9603		X	One-way allow prorated miles	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9604		X	One-way allow prorated trip	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9612		X	Catheterize for urine spec	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
P9615		X	Urine specimen collect mult	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0034		X	Admin of influenza vaccine	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0035		A	Cardiokymography	0.17	0.47	0.50	0.47	0.50	0.03	0.67	0.70	0.67	0.70	XXX
Q0035	26	A	Cardiokymography	0.17	0.05	0.10	0.08	0.10	0.01	0.24	0.28	0.24	0.28	XXX
Q0035	TC	A	Cardiokymography	0.00	0.40	0.40	0.40	0.40	0.02	0.42	0.42	0.42	0.42	XXX
Q0068		A	Extracorpeal plasmapheresis	1.67	4.41	2.90	0.53	0.96	0.11	6.19	4.68	2.31	2.74	000
Q0091		A	Obtaining screen pap smear	0.37	0.74	0.52	0.14	0.22	0.01	1.12	0.90	0.52	0.60	XXX
Q0092		A	Set up port xray equipment	0.00	0.33	0.33	0.33	0.33	0.01	0.34	0.34	0.34	0.34	XXX
Q0111		X	Wet mounts/ w preparations	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0112		X	Potassium hydroxide preps	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
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[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUs) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
Q0113		X	Pinworm examinations	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0114		X	Fern test	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0115		X	Post-coital mucous exam	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0132		X	Dispensing fee DME neb drug	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0136		X	Non esrd epoetin alpha inj	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0144		N	Azithromycin dihydrate, oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0156		X	Human albumin 5%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0157		X	Human albumin 25%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0160		X	Factor IX non-recombinant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0161		X	Factor IX recombinant	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0163		X	Diphenhydramine HCl 50mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0164		X	Prochlorperazine maleate 5mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0165		X	Prochlorperazine maleate10mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0166		X	Granisetron HCl 1 mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0167		X	Dronabinol 2.5mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0168		X	Dronabinol 5mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0169		X	Promethazine HCl 12.5mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0170		X	Promethazine HCl 25 mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0171		X	Chlorpromazine HCl 10mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0172		X	Chlorpromazine HCl 25mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0173		X	Trimethobenzamide HCl 250mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0174		X	Thiethylperazine maleate10mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0175		X	Perphenazine 4mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0176		X	Perphenazine 8mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0177		X	Hydroxyzine pamoate 25mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0178		X	Hydroxyzine pamoate 50mg	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0179		X	Ondansetron HCl 8mg oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0180		X	Dolasetron mesylate oral	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0181		X	Unspecified oral anti-emetic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0183		E	Nonmetabolic active tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0184		E	Metabolically active tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0185		E	Metabolic active D/E tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9920		E	Epoetin with hct <= 20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9921		E	Epoetin with hct = 21	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9922		E	Epoetin with hct = 22	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9923		E	Epoetin with hct = 23	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9924		E	Epoetin with hct = 24	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9925		E	Epoetin with hct = 25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9926		E	Epoetin with hct = 26	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9927		E	Epoetin with hct = 27	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9928		E	Epoetin with hct = 28	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9929		E	Epoetin with hct = 29	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9930		E	Epoetin with hct = 30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9931		E	Epoetin with hct = 31	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9932		E	Epoetin with hct = 32	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9933		E	Epoetin with hct = 33	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9934		E	Epoetin with hct = 34	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9935		E	Epoetin with hct = 35	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9936		E	Epoetin with hct = 36	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9937		E	Epoetin with hct = 37	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9938		E	Epoetin with hct = 38	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9939		E	Epoetin with hct = 39	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q9940		E	Epoetin with hct >= 40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
R0070		C	Transport portable x-ray	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.01	0.01	0.01	XXX
R0075		C	Transport port x-ray multipl	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.01	0.01	0.01	XXX
R0076		B	Transport portable EKG	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2020		X	Vision svcs frames purchases	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2025		N	Eyeglasses delux frames	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2100		X	Lens spher single plano 4.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2101		X	Single visn sphere 4.12-7.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2102		X	Singl visn sphere 7.12-20.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2103		X	Spherocylindr 4.00d/12-2.00d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2104		X	Spherocylindr 4.00d/2.12-4d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2105		X	Spherocylinder 4.00d/4.25-6d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2106		X	Spherocylinder 4.00d/>6.00d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2107		X	Spherocylinder 4.25d/12-2d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2108		X	Spherocylinder 4.25d/2.12-4d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2109		X	Spherocylinder 4.25d/4.25-6d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2110		X	Spherocylinder 4.25d/over 6d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2111		X	Spherocylindr 7.25d/.25-2.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2112		X	Spherocylindr 7.25d/2.25-4d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2113		X	Spherocylindr 7.25d/4.25-6d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2114		X	Spherocylinder over 12.00d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2115		X	Lens lenticular bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2116		X	Nonaspheric lens bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2117		X	Aspheric lens bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2118		X	Lens anseikonic single	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2199		X	Lens single vision not oth c	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2200		X	Lens spher bifoc plano 4.00d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2201		X	Lens sphere bifocal 4.12-7.0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2202		X	Lens sphere bifocal 7.12-20.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2203		X	Lens sphcyl bifocal 4.00d/.1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2204		X	Lens sphcy bifocal 4.00d/2.1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2205		X	Lens sphcy bifocal 4.00d/4.2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
V2206		X	Lens sphcy bifocal 4.00d/ove	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2207		X	Lens sphcy bifocal 4.25-7d/.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2208		X	Lens sphcy bifocal 4.25-7/2.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2209		X	Lens sphcy bifocal 4.25-7/4.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2210		X	Lens sphcy bifocal 4.25-7/ov	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2211		X	Lens sphcy bifo 7.25-12/.25-	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2212		X	Lens sphcyl bifo 7.25-12/2.2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2213		X	Lens sphcyl bifo 7.25-12/4.2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2214		X	Lens sphcyl bifocal over 12.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2215		X	Lens lenticular bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2216		X	Lens lenticular nonaspheric	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2217		X	Lens lenticular aspheric bif	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2218		X	Lens aniseikonic bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2219		X	Lens bifocal seg width over	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2220		X	Lens bifocal add over 3.25d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2299		X	Lens bifocal speciality	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2300		X	Lens sphere trifocal 4.00d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2301		X	Lens sphere trifocal 4.12-7.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2302		X	Lens sphere trifocal 7.12-20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2303		X	Lens sphcy trifocal 4.0/.12-	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2304		X	Lens sphcy trifocal 4.0/2.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2305		X	Lens sphcy trifocal 4.0/4.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2306		X	Lens sphcyl trifocal 4.00/>6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2307		X	Lens sphcy trifocal 4.25-7/.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2308		X	Lens sphc trifocal 4.25-7/2.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2309		X	Lens sphc trifocal 4.25-7/4.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2310		X	Lens sphc trifocal 4.25-7/>6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2311		X	Lens sphc trifo 7.25-12/.25-	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2312		X	Lens sphc trifo 7.25-12/2.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2313		X	Lens sphc trifo 7.25-12/4.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2314		X	Lens sphcyl trifocal over 12	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2315		X	Lens lenticular trifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2316		X	Lens lenticular nonaspheric	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2317		X	Lens lenticular aspheric tri	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2318		X	Lens aniseikonic trifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2319		X	Lens trifocal seg width > 28	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2320		X	Lens trifocal add over 3.25d	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2399		X	Lens trifocal speciality	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2410		X	Lens variab asphericity sing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2430		X	Lens variable asphericity bi	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2499		X	Variable asphericity lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2500		X	Contact lens pmma spherical	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2501		X	Cntct lens pmma-toric/prism	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2502		X	Contact lens pmma bifocal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2503		X	Cntct lens pmma color vision	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2510		X	Cntct gas permeable sphercl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2511		X	Cntct toric prism ballast	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2512		X	Cntct lens gas permbl bifocl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2513		X	Contact lens extended wear	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2520		P	Contact lens hydrophilic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2521		X	Cntct lens hydrophilic toric	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2522		X	Cntct lens hydrophil bifocl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2523		X	Cntct lens hydrophil extend	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2530		X	Contact lens gas impermeable	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2531		X	Contact lens gas permeable	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2599		X	Contact lens/es other type	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2600		X	Hand held low vision aids	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2610		X	Single lens spectacle mount	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2615		X	Telescop/othr compound lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2623		X	Plastic eye prosth custom	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2624		X	Polishing artifical eye	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2625		X	Enlargemnt of eye prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2626		X	Reduction of eye prosthesis	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2627		X	Scleral cover shell	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2628		X	Fabrication & fitting	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2629		X	Prosthetic eye other type	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2630		X	Anter chamber intraocul lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2631		X	Iris support intraocir lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2632		X	Post chmbr intraocular lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2700		X	Balance lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2710		X	Glass/plastic slab off prism	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2715		X	Prism lens/es	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2718		X	Fresnell prism press-on lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2730		X	Special base curve	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2740		X	Rose tint plastic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2741		X	Non-rose tint plastic	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2742		X	Rose tint glass	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2743		X	Non-rose tint glass	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2744		X	Tint photochromatic lens/es	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2750		X	Anti-reflective coating	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2755		X	UV lens/es	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2760		X	Scratch resistant coating	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2770		X	Occluder lens/es	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2780		X	Oversize lens/es	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

[1] CPT codes and descriptions only are copyright 1998 American Medical Association. All Rights Reserved. Applicable FARS/DFARS Apply.
[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.
[5] # Indicates new CPT/HCPCS codes which were not factored into budget neutrality adjustments.

ADDENDUM B.—RELATIVE VALUE UNITS (RVUS) AND RELATED INFORMATION—Continued

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3,5]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
V2781		X	Progressive lens per lens	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2785		X	Corneal tissue processing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V2799		X	Miscellaneous vision service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5008		N	Hearing screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5010		N	Assessment for hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5011		N	Hearing aid fitting/checking	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5014		N	Hearing aid repair/modifying	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5020		N	Conformity evaluation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5030		N	Body-worn hearing aid air	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5040		N	Body-worn hearing aid bone	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5050		N	Body-worn hearing aid in ear	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5060		N	Behind ear hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5070		N	Glasses air conduction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5080		N	Glasses bone conduction	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5090		N	Hearng aid dispensing fee	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5100		N	Body-worn bilat hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5110		N	Hearing aid dispensing fee	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5120		N	Body-worn binaur hearng aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5130		N	In ear binaural hearng aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5140		N	Behind ear binaur hearing ai	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5150		N	Glasses binaural hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5160		N	Dispensing fee binaural	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5170		N	Within ear cros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5180		N	Behind ear cros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5190		N	Glasses cros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5200		N	Cros hearing aid dispens fee	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5210		N	In ear bicros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5220		N	Behind ear bicros hearing ai	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5230		N	Glasses bicros hearing aid	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5240		N	Dispensing fee bicros	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5299		R	Hearing service	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5336		N	Repair communication device	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5362		R	Speech screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5363		R	Language screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
V5364		R	Dysphagia screening	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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July 22, 1999

Part IV

Department of Justice

Office of Justice Programs

28 CFR Part 90
Grants To Combat Violent Crimes Against Women on Campuses; Final Rule

Notice of Grants To Combat Violent Crimes Against Women on Campuses Solicitation; Notice

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DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 90

[OJP (OJP)–1206f]

RIN 1121–AA49

Grants To Combat Violent Crimes Against Women on Campuses

AGENCY: Office of Justice Programs, Violence Against Women Office, Justice.

ACTION: Final rule.

SUMMARY: The Violence Against Women Office, Office of Justice Programs, U.S. Department of Justice, is publishing final regulations governing the implementation of Grants to Combat Violent Crimes Against Women on Campuses authorized by Title VIII, Part E, section 826 of the Higher Education Amendments of 1998. This authorization provides funds to institutions of higher education for two broad purposes: To develop and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, particularly domestic violence, sexual assault, and stalking and to develop, enlarge, and strengthen victim services in cases involving violent crimes against women on campuses.

As microcosms of the larger society, institutions of higher education harbor many of the same social conditions and forces that permit violence against women to occur outside the campus community. Sexism, male student support systems that validate and perpetuate violence against women, and institutional minimization of, or indifference to, violence against women can create a hostile environment for women on campuses. Therefore, the higher education community must address not only the actual incidents and consequences, but also the underlying causes of violence against women.

EFFECTIVE DATE: This regulation is effective July 22, 1999.

FOR FURTHER INFORMATION CONTACT: Preet Kang, Senior Associate, Violence Against Women Office, Office of Justice Programs, 810 Seventh Street, NW, Washington, DC 20531. Telephone: (202) 307–6026.

SUPPLEMENTARY INFORMATION: On April 23, 1999, the Violence Against Women Office (VAWO) of the Office of Justice Programs (OJP) published proposed regulations in the **Federal Register** at 64 FR 20091, to amend the regulations governing the STOP Violence Against Women Formula and Discretionary Grants Program, found at 28 CFR Part 90, to comply with the amendments to the authorizing statutes, 42 U.S.C. 3796gg through 3796gg–5, enacted by the Violence Against Women Act, Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, and Title VIII, Part E, section 826 of the Higher Education Amendments of 1998, Public Law 105–244, 112 Stat. 1815 (1998).

The Higher Education Amendments of 1998 authorize Federal financial assistance to institutions of higher education to work individually or in consortia consisting of campus personnel, student organizations, campus administrators, security personnel, and regional crisis centers affiliated with the institution. Grant funds may be used to develop, implement, and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, including sexual assault, stalking, and domestic violence; and to develop and strengthen victim services and prevention efforts.

In an effort to fulfill the letter, as well as the spirit of Title VIII, Part E, section 826 of the Higher Education Amendments of 1998, the Violence Against Women Office of the Office of Justice Programs sought comments on all aspects of this Program, consistent with the statutory limitations. Comments were specifically solicited regarding, but not limited to, the following issues:

1. The Violence Against Women Office of the Office of Justice Programs sought comments on other priority areas that should be considered in addition to the statutory purpose areas identified in § 90.102 of Subpart E of the regulation set out in the following pages.

2. For the purposes of this Program, the Violence Against Women Office of the Office of Justice Programs sought comments on whether there are any special needs of diverse campuses with underserved populations that should be considered.

3. For the purposes of this Program, victims are eligible for assistance provided through grant-funded programs if they qualify for the types of services provided through rape crisis centers, campus women's centers, battered women's shelters, sexual assault and domestic violence programs, including campus counseling support and victim advocate organizations, campus health centers, and other campus victim service providers, consistent with sections 826(b)(4), (5) and (8) of the Higher Education Amendments of 1998. The Violence Against Women Office of the Office of Justice Programs sought comments on whether this scope of eligibility adequately covered the types of services needed by victims.

4. For the purposes of this Program, section 826(f) of the Higher Education Amendments of 1998 defines the term "victim services" to mean a nonprofit, nongovernmental organization that assists domestic violence or sexual assault victims, including campus women's centers, rape crisis centers, battered women's shelters, and other sexual assault or domestic violence programs, including campus counseling support and victim advocate organizations with domestic violence, stalking, and sexual assault programs, whether or not organized and staffed by students. This statutory definition excludes victim service providers, including women's centers, rape crisis centers and other sexual assault and domestic violence programs that are established and operated by public institutions of higher education. The Violence Against Women Office of the Office of Justice Programs sought comments on whether and/or how the exclusion of programs established and operated by public institutions would affect the effectiveness of this Program.

5. For the purposes of this Grant Program, the Violence Against Women Office of the Office of Justice Programs is defining "students" to include both full-and part-time students enrolled at an institution of higher education; and "employees" of the institution to include full-and part-time faculty, staff, and administrators, as well as temporary and contract employees such as visiting professors, and contractors whose primary work duties are on campus or at a location that is affiliated with the institution. The Violence Against Women Office of the Office of Justice Programs sought comments on whether or not these definitions adequately covered all persons on campuses.

6. For the purposes of this Grant Program, "campus-community members" is defined as including all campus students and employees as defined above. The Violence Against Women Office of the Office of Justice Programs sought comments on whether or not the scope of the definition of campus-community members adequately encompassed the types of victimizations against women likely to occur in a campus environment.

7. For the purposes of this Grant Program, victims are eligible for services provided through grant funds if they are students or employees (as defined above) at the institution. Victims are also eligible for services provided through grant funds if the victimization took place within the campus community as defined above. In addition, victims are eligible for grant-funded services if they are victimized by perpetrators who are students, faculty, staff, administrators or affiliated in some manner with an entity that is officially recognized by the institution of higher education, such as fraternities and sororities. Victims are also eligible for grant-funded services if the victimization occurred at events associated with campus life, such as educational activities, meetings, and social gatherings sponsored by an institution of higher education or a group affiliated with an institution of higher education. The Violence Against Women Office of the Office of Justice Programs sought comments on whether or not the eligibility criteria for grant-funded services adequately covered all types of victims affiliated with institutions of higher education.

8. For the purposes of this Grant Program, victim services include, but are not limited to, 24-hour hotlines; development of safety plans with the victim; transportation to hospitals, medical appointments, police stations, prosecutor's offices, court hearings, and on-and off-campus service agencies; intervention with professors, employers, creditors, and landlords; relocation to another on-campus housing facility; provision of new locks and other security devices; provision of a new, unlisted telephone number and e-mail address; provision of services to victims with disabilities; provision of language interpretation services; orientation to the criminal justice and the institution's administrative disciplinary systems; written information about the institution's administrative disciplinary systems and criminal justice systems and options; escort to court, the administrative disciplinary hearings, and medical appointments; victim notification regarding offender release, case status and outcome; assistance with preparation of victim impact statements and restitution claims; assistance with insurance and other compensation claims; referrals to off-campus counseling; arrangements for and referrals to on-campus counseling; and assistance with a transfer to another institution of higher education if the victim chooses. For the purposes of this Grant Program, "victim services" excludes mediation between the victim and the offender, and any counseling or other support services for the perpetrator. The Violence Against Women Office of the Office of Justice Programs sought comments on whether or not the scope of the proposed grant-funded services adequately covered the needs of victims of sexual assault, stalking, and domestic violence.

9. For the purposes of this Grant Program, institutions of higher education would be required to provide equal information about both the administrative disciplinary process and the criminal and civil justice process to victims, if available. In no case should less information be provided about the criminal and civil justice process than about the internal institutional administrative disciplinary process in an effort to influence the victim to pursue university adjudication of violent crimes against women. If applicable, victims should be provided with information about pursuing the matter through both the criminal and civil justice systems and the institution's administrative disciplinary process simultaneously. The Violence Against Women Office of the Office of Justice Programs sought comments on whether or not this requirement adequately ensures that victims receive information about options to seek redress and hold the perpetrator accountable through not only internal administrative disciplinary processes, but also through the criminal and civil justice systems.

10. For the purposes of this Grant Program, institutions of higher education would be required to establish specific penalties for specific crimes, if not already in place (for example, mandatory permanent expulsion for criminal justice system convictions or a finding of guilt by the campus administrative disciplinary board for crimes of domestic violence, stalking, and sexual assault). Institutions of higher education also would have to develop means for entering permanent notations on the permanent student records or employee records of offenders. The Violence Against Women Office of the Office of Justice Programs sought comments on whether or not these requirements will assist in holding offenders accountable adequately.

11. For the purposes of this Grant Program, institutions of higher education would be required to encourage victims to report sexual assault, domestic violence, and stalking to local law enforcement authorities and hold offenders accountable through the criminal and civil justice systems. Institutions must make every effort to facilitate victims' access to the criminal justice system by providing information about options; an explanation of how the criminal justice system operates; telephone numbers of appropriate law enforcement and legal agencies; and transportation to police stations, prosecutor's offices, and the courts. The Violence Against Women Office of the Office of Justice Programs sought comments on whether or not these requirements would provide adequate information to victims to enable them to make informed decisions about their options to use the criminal and civil justice systems.

12. For the purposes of this Grant Program, Congress appropriated $10 million. To maximize the impact of these limited funds, the Violence Against Women Office of the Office of Justice Programs sought comments on whether the most effective use of these funds would be to support a limited number (e.g., 10 to 15) of carefully selected demonstration projects, or more numerous, smaller grants to a larger number of institutions of higher education.

The Violence Against Women Office received a total of 32 sets of comments on the proposed regulations from 17 organizations and individuals. The respondent organizations and individuals consisted of: 12 public institutions of higher education; a private institution of higher education; a national campus crime organization; a Member of Congress; a county health agency; and a Federal agency. The Violence Against Women Office thanks these organizations and individuals for sharing their views. These comments are on file in the Violence Against Women Office.

In preparing the Final Rule, the Violence Against Women Office considered all comments that it received, and has interpreted the scope of the Program as broadly as possible, while adhering closely to the letter and spirit of the Congressional legislation. Language contained in this final rule has been modified to reflect consideration of the comments. The 32 sets of comments provided by the 17 respondents are delineated and addressed.

Comment Set #1: Four respondents, consisting of one national campus crime organization, one Federal government agency, one public institution of higher education, and one Member of Congress, commented on the Grant Program's requirements related to the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended by Public Law 105–244, 112 Stat. 1835, section 951 of the Higher Education Amendments of 1998. These four respondents recommended that victim consent should not be required before public disclosure of offender information. A fifth respondent from a

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public higher education institution commented more generally on the difficulty of obtaining a student's class schedule from institutions of higher education.

Response #1: The final rule at § 90.103(b)(3) has been modified, and the proposed rule formerly denoted at § 90.103(4) has been deleted. These changes were made from the proposed rule so as to be consistent with the requirements of FERPA, as amended by Section 951 of the Higher Education Amendments of 1998. To be eligible for this Grant Program, institutions of higher education must certify that they are in compliance with FERPA.

Comment Set #2: Three comments were received regarding the requirement that eligible applicants must have or institute a policy prohibiting the release of a victim's or a witness' name and other identifying information without their consent. Commenters, which consisted of one national campus crime organization and two public higher education institutions, expressed concern that this requirement may conflict with applicable State laws.

Response #2: Provisions of the proposed regulations, formerly denoted as §§ 90.103 (b)(5), (b)(6), and (b)(7), under the proposed rule, dealt with certifying that grant recipients have or plan to develop written policies prohibiting the disclosure of a victim's or witness' identifying information without prior voluntary written consent. As a result of the concerns expressed by the commenters, this proposed regulatory provision has been removed.

Comment Set #3: One respondent, a national campus crime organization, recommended that applicants be required to disclose the number of rapes reported to counseling centers during the previous three years.

Response #3: Victims seek assistance from counseling centers with the belief that all information related to this contact will be kept confidential. If counseling centers are unable to provide such assurances, it will deter victims from contacting counseling centers when they have been assaulted or abused. Even if centers are merely required to disclose the number of rapes, on many campuses, the identity of the victims could be easily determined. Requiring counseling centers to collect and disclose such information would prevent them from serving their true purpose—assisting victims in the recovery process.

Comment Set #4: One respondent, a national campus crime organization, recommended that to be eligible for this Grant Program, applicants be required to conduct an independent audit to verify that institutions of higher education are in compliance with the campus crime reporting requirements set forth in section 486(e) of the Higher Education Amendments of 1998, as amended. Public Law 105–244, 112 Stat. 1741. 20 U.S.C. 1092(f).

Response #4: The Violence Against Women Office is requiring all applicants to certify that they are in compliance with the campus crime reporting requirements of the Higher Education Amendments of 1998. However, an independent audit is not programmatically necessary or warranted by legislative intent.

Comment Set #5: One respondent, a national campus crime organization, recommended that institutions of higher education be required to provide victims with more information about the criminal justice system than about internal administrative disciplinary procedures because of the former's complexity.

Response #5: In the Fiscal Year 1999 solicitation for the Grant Program, applicants will be strongly encouraged to provide extensive information about both the criminal justice system and internal administrative proceedings to enable victims to make informed decisions.

Comment Set #6: Eight respondents, consisting of a national campus crime organization and seven public institutions of higher education, suggested that "victim services" as defined by section 826(f) of the Higher Education Amendments of 1998 be modified so that it does not exclude victim service providers at public higher education institutions.

Response #6: Because "victim services" is statutorily defined and mandated, the suggested modifications cannot be incorporated into this final rule. Consistent with the vision guiding all efforts supported by the Violence Against Women Office, all applicants will be required to collaborate with private, non-profit victim service providers to develop coordinated community responses to violence against women on campuses. The Fiscal Year 1999 solicitation will also clarify that campus-based victim service providers should be part of any coordinated campus response to violence against women.

Comment Set #7: Three respondents—one private institution of higher education and two public institutions of higher education—supported the proposition that grants be awarded to support a few, large demonstration programs, while three others from public higher education institutions recommended awarding mid-sized grants to more institutions and another two respondents—a national campus crime organization and one public university—proposed awarding numerous smaller grants. One respondent from a public university recommended funding a combination of two or three large demonstration grants and awarding the remainder of the funds to support numerous smaller grants. One group of respondents from a public university could not reach agreement on this issue, while another response from a public university was unclear.

Response #7: Based on these comments, the Violence Against Women Office plans to award a mix of large and mid-sized grants in Fiscal Year 1999.

Comment Set #8: Two respondents from public universities recommended that higher education institutions not be required to impose specific sanctions for specific offenses.

Response #8: After carefully considering these comments, the Violence Against Women Office has decided to adopt these recommendations. Institutions of higher education will not be required to impose specific sanctions for specific crimes, but will be encouraged to impose serious sanctions on perpetrators of sexual assault, stalking, and domestic violence.

Comment Set #9: One respondent from a public university recommended that victims should be eligible for grant-funded services if they are victimized at a function that is not an officially sanctioned event or a campus life associated event but is held in close proximity to the campus and an informal association can be inferred.

Response #9: Victims are eligible for services provided through grant funds if the victimization took place within the campus community, which is defined as including all campus students and employees. In addition, victims are eligible for grant-funded services if they are victimized by students, faculty, staff, administrators or someone affiliated in some manner with an entity that is officially recognized by the institution of higher education, such as fraternities and sororities.

Comment Set #10: One respondent from a county health department recommended requiring the involvement of libraries in programs funded by the Grant Program.

Response #10: This recommendation has been incorporated into the Fiscal Year 1999 solicitation for the Grant Program by encouraging institutions of higher education to consider library administrators as potential partners in the development of coordinated campus and community responses to violence against women.

Comment Set #11: One respondent from a public university indicated that the regulation was too heavily oriented toward directing victims to the criminal justice system, under the assumption that criminal justice professionals have adequate training to respond effectively to sexual assault cases. The respondent requested clarification on whether funds provided under this Grant Program could be used to educate county prosecutors about effective prosecutions of such cases.

Response #11: In developing this regulation, the Violence Against Women Office followed Congressional intent as specified in the statute. The statute explicitly authorizes the Attorney General to make grants to institutions of higher education to develop and strengthen effective security and investigation strategies to combat violent crimes against women on campuses and to develop and strengthen victim services in cases involving violent crimes against women on campuses. In the Fiscal Year 1999 solicitation for the Grant Program, grant recipients will be required to develop coordinated community responses to violence against women by collaborating with both local nonprofit, nongovernmental victim advocacy organizations and one or more criminal justice and civil legal agencies, including local prosecutors.

Comment Set #12: One respondent from a public university requested clarification on whether funds through the Grant Program can be used to duplicate and distribute a sexual assault handbook to the broader community.

Response #12: Section 826 of the Higher Education Amendments of 1998 directs the Attorney General to award funds to institutions of higher education for two broad purposes: to develop and strengthen effective security and investigation strategies to combat violent crimes against women on campuses; and to develop and strengthen victim services in cases involving violent crimes against women on campuses. Further, the Violence Against Women Office is requiring all grant applicants to develop coordinated community responses to violence against women on campuses in partnership with community-based nonprofit, nongovernmental victim service providers and criminal justice and civil legal agencies. The Violence Against Women Office recognizes the importance of educating the entire community about violence against women. However, the Congressional intent as reflected in the statutory language is that the primary beneficiaries of these grant funds would be the campus population. To the extent that campuses are inextricably linked to the broader community, products intended primarily for a campus population could be made available to the larger community, secondarily.

Comment Set #13: One respondent from a public university requested clarification on whether or not self-defense training for women students qualified for funding under the regulation denoted as § 90.102(c) under the proposed and final rules, which indicates that grant funds may be used to implement and operate education programs for prevention of violent crimes against women.

Response #13: The Violence Against Women Office is requiring applicants to develop comprehensive, coordinated responses to violence against women on campuses. Accordingly, prevention strategies, such as self defense classes, must be part of a broader approach that addresses the underlying causes of sexual assault, domestic violence, and stalking on campus.

Comment Set #14: One respondent from a public university requested clarification on the eligibility of a Victim Witness Assistance program that is housed in the prosecutor's office and an education and survivor advocacy program housed in a State mental health facility for receiving funds under the Grant Program.

Response #14: Consistent with Sec. 826 of the Higher Education Amendments of 1998, eligibility for the Grant Program is limited to institutions of higher education who are in compliance with all applicable requirements of the Higher Education Amendments of 1998. In the Fiscal Year 1999 solicitation for the Grant Program, grant recipients will be required to develop coordinated community responses to violence against women involving partnerships with both nonprofit, nongovernmental victim service providers and at least one criminal justice or civil legal agency, including the prosecutor's office.

Comment Set #15: One respondent from a public university requested clarification as to whether, under § 90.102 (a) of the proposed and final rules, grant funds could be used to collect data for ongoing, existing research efforts such as interviews with survivors of sexual violence on college campuses to determine why they chose to use the campus judiciary and not the criminal justice process.

Response #15: The relevant regulatory provision, § 90.102 (a) stipulates that funds can be used to provide personnel, training, technical assistance, data collection, and other equipment to increase arrests, investigations, and adjudication of persons committing violent crimes against women on campus. Accordingly, the Violence Against Women Office believes that data collection for research purposes as envisioned by the respondent falls outside the scope of the statute.

Comment Set #16: One respondent from a public university requested clarification of the use of Grant Program funds to document the impact of existing campus programs.

Response #16: The regulatory provision at § 90.104 (c)(4) requires applicants to provide measurable goals and expected results from programs funded through the Grant Program, not existing campus programs.

Comment Set #17: Two respondents from public universities proposed that grants be awarded for larger sums of money for a longer period, such as five years, and one of the respondents further recommended that applicants be asked to demonstrate their capacity to sustain the program over time.

Response #17: Based on the comments received, the Violence Against Women Office is planning to award a range of mid-sized to large grants for up to two years. Given the limited amount of funds, the Violence Against Women Office is unable to commit to awarding grants for longer periods. Regarding the sustainability issue, the Violence Against Women Office strongly encourages all applicants to include program strategies for sustaining the program beyond the grant period and to commit matching funds to the program as a demonstration of ongoing commitment to sustain the effort.

Comment Set #18: One respondent from a public university suggested that educational programs, training programs, and expansion of support services aimed at reducing violent crimes should be considered integral components of a prevention program.

Response #18: In the Fiscal Year 1999 solicitation for the Grant Program, the Violence Against Women Office lists prevention programs as one of the priority areas that the office is particularly interested in supporting. Under this special interest category, the Office envisions supporting projects that are designed to address the underlying causes of violence against women through comprehensive training, education and other related efforts for the entire campus community.

Comment Set #19: One respondent from a public university suggested that there be a strong focus on evaluation,

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including consideration of program design and replication in other settings.

Response #19: In the Fiscal Year 1999 solicitation for this Grant Program, the Violence Against Women Office is requiring programs to set aside funds for program evaluations that are practitioner-driven and conducted by those who are knowledgeable about violence against women issues.

Comment Set #20: One respondent from a public university recommended that grant funding under this rule be provided to support one year planning grants to enable applicants to develop stronger applications.

Response #20: After serious consideration, the Violence Against Women Office has modified the Fiscal Year 1999 solicitation to require applicants to include a planning phase in their proposal.

Comment Set #21: One respondent from a public institution of higher education recommended that funds through the Grant Program be allowed for the development of an offender program that confronts perpetrators of violence against women.

Response #21: The Violence Against Women Office is unable to adopt this recommendation as it is beyond the statutory scope of Sec. 826 of the Higher Education Amendments of 1998, the Grants to Combat Violent Crimes Against Women on Campuses.

Comment Set #22: One respondent from a private university recommended that the definition of "campus-community members" be expanded to include wives of international students so that these spouses can be included in prevention programs as well.

Response #22: For the purposes of this Grant Program, spouses and intimate partners of students, faculty, staff, and administrators may be considered part of the "campus-community."

Comment Set #23: One respondent from a private university suggested that educating women about information gathering through technology should be a priority area.

Response #23: In its Fiscal Year 1999 solicitation for the Grant Program, the Violence Against Women Office has included prevention programs as one of its priority areas that it is particularly interested in supporting. Applicants are encouraged to educate the entire campus-community about violence against women. Prevention programs could include information about the uses of new technologies in perpetrating, as well as responding to, these crimes and the steps that can be taken to prevent such crimes.

Comment Set #24: One recommendation from a private university was received concerning using Grant Program funds to support counseling and other support programs as part of an "early identification and intervention" effort.

Response #24: Grant Program funds may be used to support prevention programs that include providing information about warning signs and other identifiers of potential perpetrators of violence against women.

Comment Set #25: One comment from a respondent at a public university was received suggesting that projects funded through the Grant Program provide services to victims of verbal and psychological abuse.

Response #25: Collaboration with nonprofit, nongovernmental victim service providers is required by the Violence Against Women Office. The Fiscal Year 1999 solicitation for the Grant Program includes comprehensive victim advocacy programs as a special interest category. Such programs could include assisting victims of various types of abuse.

Comment Set #26: One public university respondent recommended that the definition of domestic violence be expanded to include dating violence and Grant Program funds be made available to address this violence.

Response #26: Domestic violence is statutorily defined for this Grant Program and includes dating violence in States in which domestic or family violence statutes include dating violence. In addition, the Fiscal Year 1999 solicitation for this Grant Program encourages collaboration with campus- and community-based victim service providers, many of which provide services to victims of dating violence.

Comment Set #27: One respondent from a public university suggested that grant recipients be required to make available advocacy services to victims who are reporting to and involved in pursuing their cases through administrative disciplinary proceedings and/or in the criminal justice system.

Response #27: After serious consideration of this recommendation, the Violence Against Women Office decided not to mandate advocacy services in the final regulations, but is requiring all applicants to collaborate with private non-profit, non-governmental victim service providers and advocates as part of a broad strategy to develop coordinated campus-community response to violence against women.

Comment Set #28: Three suggestions by respondents from public universities were made to consider the special needs of international students. One of the three also urged consideration of the special needs of the disabled student population, while another mentioned commuters and returning older students.

Response #28: The Violence Against Women Office has incorporated these suggestions in the Fiscal Year 1999 solicitation for the Grant Program.

Comment Set #29: One respondent from a public university recommended that projects funded through the Grant Program be allowed to support intervention and treatment services for students who witnessed violence in their homes or were themselves victims of this violence.

Response #29: The Violence Against Women Office concurs that students who witnessed or experienced violence in their homes may need intervention or treatment services when they attend institutions of higher education. The Fiscal Year 1999 solicitation for the Grant Program encourages the development and strengthening of comprehensive campus-based victim advocacy programs, which could include such services.

Comment Set #30: One respondent from a public university recommended that grant funds be used to provide personal protection equipment using global positioning satellite technology, and further that Internet technology be made available to allow victims and witnesses to report violence against women, anonymously if necessary, through a secure web site.

Response #30: The Violence Against Women Office is requiring that applicants adopt coordinated community responses to violence against women in which technology and infrastructure development are a small component of a broader strategy that addresses the underlying causes of sexual assault, stalking, and domestic violence.

Comment Set #31: One respondent from a public university recommended that resident assistants employed by campus housing offices be provided with annual training.

Response #31: The Violence Against Women Office has included a recommendation in the FY 1999 solicitation for the Grant Program that residence hall assistants be part of a coordinated campus response to violence against women. The special interest category addressing prevention also recommends educating the entire campus community about violence against women, including campus housing authorities.

Comment Set #32: A respondent from a public university recommended broadening the definition of campus-community to include guests such as high school students who may be visiting the campus for an event and are assaulted.

Response #32: The Violence Against Women Office has adopted this recommendation by modifying the eligibility for services funded through the Grant Program to include individuals who are victimized on campus. For the purposes of this Grant Program, victims are eligible for services provided through grant funds if they are students or employees (as defined previously) at the institution. Victims are also eligible for services provided through grant funds if the victimization took place within the campus community as defined previously. In addition, victims are eligible for grant-funded services if they are victimized by perpetrators who are students, faculty, staff, administrators or affiliated in some manner with an entity that is officially recognized by the institution of higher education, such as fraternities and sororities. Victims are also eligible for grant-funded services if the victimization occurred on campus or at events associated with campus life, such as educational activities, meetings, and social gatherings sponsored by an institution of higher education or a group affiliated with an institution of higher education.

Statement of the Problem

Violence against women on college and university campuses is a serious, widespread problem. More than half of all stalking victims are between 18–29 years old, according to the National Violence Against Women Survey sponsored by the National Institute of Justice (NIJ) and the Centers for Disease Control and Prevention.[1] Similarly, National Crime Victimization Survey (NCVS) data indicate that more than 52 percent of all rape/sexual assault victims are females younger than age 25.[2] Although these figures are for the population as a whole, they are especially significant for the campus community in its efforts to recognize and address violent crimes against women, given the typical age of the campus populace. Further, results of several studies indicate that among college students, the average prevalence rate for nonsexual dating violence is 32 percent.[3]

Sexual assault is the second most common violent crime committed on college campuses, according to a national survey of 3,472 students at 12 randomly selected sites around the country.[4] This 1995 study also revealed that:

- Most of the perpetrators of sexual victimization are students known to the victims;
- More sexual victimizations occur on-campus than off-campus;
- Half of the off-campus sexual victimizations occur in the victims' residence and an additional one-third occur in off-campus student housing, such as fraternities;
- Most of the victims of sexual assaults are full-time students, with about one-third of them being freshmen between 17–19 years old; and
- Almost 81 percent of the on-campus and 84 percent of the off-campus sexual assaults are not reported to police.

Consistent with the findings of this survey, numerous other studies have also revealed that sexual assaults, as well as other forms of violence against women, are seriously underreported generally and on campuses, indicating that the problem is even more acute than the available data suggest. Victims cite a number of reasons for not reporting the violence, including considering the matter to be private, being unaware or unclear that the violent behavior was in fact criminal, being embarrassed, fearing reprisals, and in some instances relenting to peer pressure, especially when the perpetrator is a prominent member of the campus community, such as an athlete.

One of the most frequent factors cited for violence against women on campus is substance abuse, particularly alcohol abuse, which is disproportionately high among college students. A survey of 89,874 students at 171 institutions of higher education revealed that alcohol was involved in 74 percent of the sexual assaults.[5] Another study conducted by the Harvard School of Public Health indicates that "non-binge drinking women living on campuses with high levels of binge drinking had almost twice the risk of experiencing unwanted sexual advances as their counterparts at lower drinking-level schools."[6]

While alcohol may be an important, and all too frequent, exacerbating factor in violence against women in the campus community, alcohol consumption cannot be viewed as a cause of these crimes. Ultimately, the responsibility for the criminal actions rests with perpetrators, who must be held accountable. Unfortunately, many male students continue to hold beliefs and attitudes, about gender roles, often supported by their male peers, that result in the physical and sexual abuse of women, whether or not alcohol is involved.

Recently, cases have been reported in which perpetrators have used drugs to subdue their victims prior to the sexual assault. These drugs, such as Rohypnol and GHB, can be easily slipped into drinks and consumed by unsuspecting victims. Within 15 to 30 minutes of ingestion, the drugs may produce effects ranging from drowsiness, impaired memory or judgement, loss of motor skills, and dizziness to loss of consciousness. These effects are further magnified when the drugs are mixed with alcohol and can be potentially lethal. Victims often do not remember the attack itself but wake up knowing that something is wrong. They may have hazy memories of waking up for a few seconds during the assault and then losing consciousness again. For these reasons, an assault may not be reported to the police for several days, if at all, and victims may have difficulty testifying in court about the assault.

Unlike their counterparts in the larger community, female students victimized by students often face additional challenges in a "closed" campus environment. For instance, stalking victims may find it difficult to escape their tormentors because the stalker may have a seemingly "legitimate" reason for remaining in contact with or proximity to the victim (e.g., attending class or studying in the library). Similarly, the fear and anguish suffered by rape victims may continue because they attend the same classes or live in the same dormitory as their rapists. Even changing class schedules or living arrangements may not eliminate the threat of encountering the perpetrator on campus, assuming such options are available without the victim incurring

[1] "Stalking and Domestic Violence," Attorney General's Third Annual Report to Congress under the Violence Against Women Act, Office of Justice Programs, Violence Against Women Grants Office, (Washington, DC: U.S. Department of Justice, July 1998), p. 10.

[2] U.S. Department of Justice, Bureau of Justice Statistics, "Age Patterns of Victims of Serious Violent Crime," September 1997, NCJ–162031.

[3] "Fact Sheet on Dating Violence," Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, January 1998, p. 1.

[4] Bonnie Fisher, John J. Sloan, III, and Francis T. Cullen, "Final Report: Understanding Crime Victimization Among College Students: Implications for Crime Prevention," Funded through National Institute of Justice Grant No. 93–IJ–CX–0049, 1995, p. 65.

[5] Presley, C.A., Meilman, P.W., Cashin, J.R., Leichliter, J.S., "Alcohol and Drugs on American College Campuses: Issues of Violence, A Report to College Presidents," Core Institute Monograph, Southern Illinois University, Carbondale, IL, p. 4.

[6] Henry Wechsler, Bryn Austin, and William DeJong, "Secondary Effects of Binge Drinking on College Campuses," The Higher Education Center for Alcohol and Other Drug Prevention Bulletin, February 1996, p. 4.

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any academic disadvantage or further financial penalties and emotional hardship.

Historically, institutions of higher education generally have handled crimes of violence against women through closed administrative procedures or processes rather than initiating criminal proceedings through the local law enforcement agency. However, this approach, where it is used in lieu of a report to local law enforcement, sends a message to victims, perpetrators, and the entire campus community that violence against women is not criminal behavior. Quite simply, an administrative response trivializes the seriousness of these crimes. When campus administrators fail to respond adequately, they perpetuate the acceptance and continuation of violence against women and may also encourage the escalation of such behaviors.

Institutions of higher education are in a unique position to educate young men and women about violence against women, and to help shape attitudes that students will carry with them long after they leave. The campus community can create large-scale social change by adopting policies and protocols that treat violence against women as a serious offense and by developing victim services and programs that make victim safety, offender accountability and prevention of such crimes a high priority. Through their policies, protocols, and actions, colleges and universities can demonstrate to every student that violence against women in any shape or form will not be tolerated and that sexual assault, stalking, and domestic violence are serious crimes, requiring legal action. Should such violence and abuse occur, appropriate steps should be taken to ensure victim safety and offender accountability both through internal administrative disciplinary processes and through the criminal justice system. Violence against women should be treated with the same gravity as any other criminal justice matter, whether it occurs on a campus, on the streets, or in private homes.

Effective Responses To Combat Violence Against Women on Campuses

The cornerstone of any effective strategy for addressing violence against women must include the development of a coordinated, multidisciplinary response involving the entire campus community, including victim service providers, campus security, faculty, staff, administrators, offices of the dean of students, women's centers, the athletic department, student groups, fraternity and sorority life coordinators, health care professionals, and campus clergy. In addition, this comprehensive effort must involve the larger community in which the institution is located by developing partnerships with community-based victim service providers, victim advocates, civil legal agencies, local law enforcement and prosecution agencies and other criminal justice officials. A comprehensive, coordinated approach not only provides enhanced victim safety and offender accountability, but also includes prevention efforts to address the underlying causes of violence against women. Implementation of such coordinated strategies sends a strong message that acts of violence against women are serious criminal offenses and that ending violence against women requires the involvement of the entire campus and broader community.

Elements of a coordinated, multidisciplinary response include:

- Enlisting the full support and commitment of the entire campus leadership of the higher education institution, including the president or chancellor. This commitment can be demonstrated by establishing and strengthening campus policies and protocols; consistently implementing these policies; vigorously responding to victimization; publicly condemning all forms of violence against women; and actively communicating expectations about appropriate conduct. For instance, the president of the University of Virginia wrote a letter condemning acquaintance rape, along with a discussion of what constitutes acquaintance rape.[7] Both the letter and the discussion were published in the college newspaper.
- Emphasizing that sexual assault, stalking, and domestic violence are serious crimes and encouraging victims to report these crimes to criminal justice authorities. Higher education institutions, as a matter of policy, should routinely provide information about the criminal and civil justice options available to victims, with guidance on how to access these systems (e.g., providing information cards that list addresses and telephone numbers of sexual assault and domestic violence units in the local police department and the prosecutor's office). Victims should be provided assistance with obtaining services from criminal justice agencies (for example, transportation to the police department or the court.)
- Developing formal written policies and protocols specifically for responding to sexual assault, stalking, and domestic violence, emphasizing victim safety and confidentiality, as well as meaningful offender accountability. These policies and protocols must be formulated in collaboration with community and campus experts on violence against women to ensure that the needs of victims are met and that perpetrators are held accountable.

These protocols should provide clear guidance to campus officials on specific procedures for handling incidents of sexual assault, stalking and domestic violence, including who victims should notify on campus, how victims should make a report, the specific procedures to be followed once a report is made, and how officials should work with victims on the issue of notifying local law enforcement agencies to report the crime. The protocols must make clear that sexual assault, stalking, and domestic violence are crimes, that victims must be provided full information on how to report these crimes to local law enforcement, and that officials must not dissuade victims from reporting these crimes to local law enforcement. Training should be provided to all relevant persons in positions likely to respond to, or have authority over those responding to, violent crimes against women.

These policies and protocols must be widely disseminated to the campus community. Written materials should be developed for dissemination by the office of the dean of students, explaining the protocols and procedures as well as how victims can contact local law enforcement. These materials should also explain when a report will be filed with an internal disciplinary board, how the board operates, how long it will take to review and take action on such a report, the victim's and perpetrator's rights before the board, the range of sanctions or disciplinary actions possible, and any other relevant information.

- Developing comprehensive, appropriate victim services for all students[8] and campus employees[9],

[7] "Preventing Alcohol-Related Problems on Campus: Acquaintance Rape, A Guide for Program Coordinators," The Higher Education Center for Alcohol and Other Drug Prevention, (Newton, MA, 1997), p. 5–7.

[8] For the purposes of this Grant Program, students include both full- and part-time students enrolled at an institution of higher education.

[9] For the purposes of this Grant Program, employees include full- and part-time permanent faculty, staff, and administrators, as well as temporary and contract employees (e.g., visiting professors who are on sabbatical from other institutions for an extended time), and contractors whose primary work duties are on campus or at a location that is affiliated with the institution.

including underserved campus populations. To accomplish this goal, institutions of higher education must forge strong, meaningful partnerships with community-based victim service providers, victim advocates, and local law enforcement authorities to enhance collaboration and coordination of resources so that victims receive services tailored to their specific safety needs and perpetrators are held accountable through the criminal and civil justice system. These partnerships have the added benefit of ensuring that the higher education institution's decisionmaking is informed by the realities and experiences of the larger community.

- Reviewing and revising, if necessary, the student and employee codes of conduct and policies to ensure that incidents involving violence against women are treated as serious offenses, with strong consequences. These codes of conduct should be distributed to every new student and employee entering the institution. Institutions should explore other means of disseminating this information as widely as possible, including posting the code on an institution's website, sending it through e-mail, and posting excerpts on student and employee bulletin boards throughout the campus.
- Working in collaboration with campus and community-based victim advocates and victim service providers to develop training programs and materials (e.g., brochures and stickers with campus and local hotline numbers) for students and campus employees that explain the causes and consequences of violence against women. This training should include basic information and precise definitions of sexual assault, domestic violence, and stalking so that everyone understands what actions constitute each of these crimes, that these crimes are serious, and that offenders will face severe criminal sanctions. Information must be provided about both the internal institutional and external legal sanctions against perpetrators; common myths surrounding violence against women; why different victims may have very different responses to the same crime; the importance of gathering evidence promptly after a crime has been committed; the role of drugs and alcohol as contributory factors, including Rohypnol, GHB, and other drugs used by rapists; maintenance of victim confidentiality; available campus and community resources and how to access them; safety planning; how peers can support victims and hold offenders accountable; campus policies and protocols addressing violence against women; and any mandatory reporting policies and laws. The training should also include a discussion of the underlying causes, such as social attitudes, beliefs, and conditions that allow violence against women to exist in our society. These education programs should be made an integral component of orientation sessions for all first year students and other new students on campus and be mandatory for all campus employees.
- Formulating audience-specific training and awareness campaigns and developing resources to reach out effectively to student groups, such as athletes, fraternities, sororities, student groups representing diverse communities, first year students, and other new students. Materials should be tailored to the specific audiences being addressed. Members of these student groups should be recruited as trainers and spokespersons on issues related to violence against women. These individuals should receive rigorous training on the underlying causes of such violence.
- Developing ongoing, innovative public outreach campaigns to raise awareness and reinforce continually the information provided during the training. Possible opportunities for this ongoing training could include the periodic meetings convened by resident assistants for dormitory residents, and special events in conjunction with sexual assault and domestic violence awareness months. As part of this outreach campaign, the campus and local community media, such as the campus radio and television stations, could be used to disseminate information about violence against women, including how to identify signs of abuse, the legal rights of victims, availability of resources for victims, and sanctions for perpetrators.
- Developing strategies for preventing violence against women on campuses through education programs and media campaigns. These efforts should be designed to change the social norms and attitudes that support and perpetuate violence against women.
- Evaluating the campus infrastructure for safety and security and the quality and availability of resources such as escort services after dark, shuttles, and extra lighting. This undertaking, however, should be only one element of a larger effort to address the problem comprehensively. As studies indicate, most women are victimized in private spaces, such as houses or apartments, by people they know. Therefore, by themselves, physical security measures have only a limited impact.

Campus sexual assault, stalking, and domestic violence are serious crimes requiring swift, forceful and coordinated responses from the higher education community. These responses must be sensitive to victims' needs and safety and must hold offenders accountable for their criminal actions through the criminal justice system and, as a supplement but not a substitute, through internal administrative disciplinary processes. Pursuing criminal charges enables victims of violence against women to use the criminal justice system to enhance their safety and potentially deter future abuse. These intervention efforts, however, must be combined with prevention strategies that seek to change the underlying campus culture and social norms that explicitly or implicitly support violent and abusive behavior against women.

Fiscal Year 1999 Grants To Combat Violent Crimes Against Women on Campuses

Consistent with the vision guiding all of the efforts supported through the Violence Against Women Act (VAWA), the Grants to Combat Violent Crimes Against Women on Campuses are designed to encourage the higher education community to adopt comprehensive, multidisciplinary strategies for preventing, detecting, and stopping violence against women, particularly sexual assault, stalking, and domestic violence. Addressing and ending violence against women is the entire community's responsibility. Institutions of higher education, working in partnership with the communities in which they are located, must adopt coordinated, campus-wide and community-wide efforts for responding to sexual assault, stalking, and domestic violence. Accordingly, all applicants for these grants are strongly encouraged to form consortia consisting of campus personnel, such as the athletic department and the women's center; student organizations, such as fraternities and sororities; groups working with diverse communities; campus housing officials, including student residence hall assistants; campus administrators, such as the institution's president and the dean of students; campus disciplinary boards; security personnel such as campus police and local law enforcement; and on-campus and community-based victim service providers; prosecutors; and judicial personnel to shape and guide grant-funded efforts. This multidisciplinary approach is intended to create strategies that are responsive to victims, bring perpetrators to justice *and*

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change the underlying campus climate to make it inhospitable to violence and abuse against women in all shapes and forms.

For Fiscal Year 1999, Congress appropriated $10 million to the Department of Justice to fight violent crimes against women on campuses across the country. These funds will be awarded competitively for the following broad purposes:

1. To provide personnel, training, technical assistance, data collection, and other equipment to increase arrests, investigations, and adjudication of persons committing violent crimes against women on campus;

2. To train campus administrators, campus security personnel, and campus disciplinary or judicial boards to identify and respond more effectively to violent crimes against women on campus, including sexual assault, stalking, and domestic violence;

3. To implement and operate education programs for prevention of violent crimes against women;

4. To develop, expand, or strengthen support services programs, including medical or psychological counseling, for victims of sexual offense crimes;

5. To create, disseminate, or otherwise provide assistance and information about victims' options on and off campus to bring disciplinary or other legal action;

6. To develop and implement more effective campus policies, protocols, orders, and services to prevent, identify, and respond to violent crimes against women on campus, including the crimes of sexual assault, stalking, and domestic violence;

7. To develop, install, or expand data collection and communication systems, including computerized systems, linking campus security to the local law enforcement for the purposes of identifying and tracking arrests, protection orders, violations of protection orders, prosecutions, and convictions with respect to violent crimes against women on campus, including sexual assault, stalking, and domestic violence;

8. To develop, enlarge, or strengthen victim service programs for the campus and to improve delivery of victim services on campus;

9. To provide capital improvements (including improved lighting and communications facilities but excluding the construction of buildings) on campuses to address violent crimes against women on campus, including the crimes of sexual assault, stalking, and domestic violence; and

10. To support improved coordination among campus administrators, campus security personnel, and local law enforcement to reduce violent crimes against women on campus.

Distribution of Grant Funds

The Higher Education Amendments of 1998 call on the Attorney General to award the Grants to Combat Violent Crimes Against Women on Campuses on a competitive basis. Every effort will be made to ensure the equitable participation of private and public institutions of higher education in activities supported through this Grant Program and the equitable geographic distribution of grants under this section among the various regions of the country.

Eligibility Requirements

To be eligible to receive grant funds under this Program, all grant applicants must be in compliance with the campus crime reporting requirements set forth in 20 U.S.C. 1092 (f) as amended by Public Law 105–244, 112 Stat. 1581, section 486(e) (1998).

This section requires in part that all institutions of higher education collect crime statistics and information about any campus security policies for their respective campuses. The information must be compiled in an annual security report and disseminated to all current students and employees, and, upon request, to any applicant for enrollment or employment. The annual security report must contain information regarding campus security policies and campus crime statistics. (See Exhibit A for relevant provisions of the Campus Security Act of 1990, as amended by Public Law 105–244, 112 Stat. 1741, section 486 (e) of the Higher Education Amendments of 1998.)

FERPA Requirements

To be eligible for this Grant Program, institutions of higher education must certify that they have developed policies consistent with the requirements of the Amendment to the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended by Public Law 105–244, 112 Stat. 1835, section 951 of the Higher Education Amendments of 1998. (See Exhibit B for an excerpt of this section.)

Application Requirements

In their applications, all grant applicants must:

- Describe the need for grant funds and a plan for implementation of any of the 10 purpose areas. Higher Education Amendments of 1998, section 826(b), 20 U.S.C. 1152;
- Describe how campus authorities shall consult and coordinate with nonprofit and other victim service programs both on campus and in the local community, including sexual assault and domestic violence victim service programs;
- Describe the characteristics of the population being served, including type of campus, demographics of the population, and the number of students;
- Provide measurable goals and expected results from the use of grant funds; and
- Provide assurances that Federal funds made available under this section shall be used to supplement and, to the extent practical, increase the level of funds that would, in the absence of Federal funds, be made available by the institution for the 10 purpose areas set forth in section 826(b) of the Higher Education Amendments of 1998. 20 U.S.C. 1152.

Other Requirements

OJP will require all applicants seeking funds for capital improvements to combine these efforts with a broader approach to addressing violence against women, consisting of some combination of the following: victim service provision, local law enforcement, local prosecution, or formation of a task force whose members include representatives of the institution's administration, the athletic department, student organizations such as the fraternities and sororities, the women's center, the health center, faculty and staff. While security strategies such as increased lighting and alarms are important, to be fully effective they must be part of a broader coordinated community response that addresses the underlying causes of violence against women. All applicants also will be required to enter into partnerships with nonprofit, nongovernmental victim service providers through formal memoranda of understanding (MOU) clearly describing the responsibilities of each partner.

Reporting Requirements

In addition to semi-annual progress reports, all institutions of higher education receiving a grant through this Program are required to submit annual performance reports to the Violence Against Women Office in the Office of Justice Programs. Funding shall be suspended if an institution fails to submit an annual performance report.

Upon completion of the grant period, the institution shall be required to file a performance report with the Violence Against Women Office of the Office of Justice Programs, Violence Against Women Office, and the U.S. Department of Education's Safe and Drug-Free Schools Program, explaining the activities carried out and assessing the effectiveness of those activities in achieving the purposes of the Program.

Administrative Requirements

Executive Order 12866

This proposed regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Justice Programs has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act.

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: The Grants to Combat Violence Against Women on Campuses will be administered by the Office of Justice Programs, and any funds distributed under it shall be distributed to institutions of higher education, not small entities, and the economic impact is limited to the Office of Justice Programs' appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of Unites States-based companies to compete in domestic and export markets.

Paperwork Reduction Act

The collection of information requirements contained in the final regulation were approved on March 22, 1999 by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3504(h)). In accordance with 5 CFR 1320.5(b), the OMB control number pertaining to the collection of information is 1121–0233.

List of Subjects in 28 CFR Part 90

Colleges and universities, Crime, Grant programs—Indians, Grant programs—law, Grant programs—women, Reporting and recordkeeping requirements, Women.

For the reasons set forth in the preamble, 28 CFR Chapter I is proposed to be amended as follows:

PART 90—VIOLENCE AGAINST WOMEN

1. The authority for Part 90 is revised to read as follows:

Authority: 42 U.S.C. 3711 *et seq.*; Sec. 826, part E, title VIII, Pub. L. 105–244, 112 Stat. 1815.

2. Part 90 is amended by adding a new Subpart E to read as follows:

Subpart E—Grants to Combat Violent Crimes Against Women on Campuses

Sec.

90.100 What is the scope of the grant program?
90.101 What definitions apply for the grant program?
90.102 What are the purposes of the grant program?
90.103 What are the eligibility requirements for the grant program?
90.104 What must the grant program application contain?
90.105 What are the review criteria for grant program applications?
90.106 What are the grantee reporting requirements for the grant program?

Subpart E—Grants To Combat Violent Crimes Against Women on Campuses

§ 90.100 What is the scope of the grant program?

This Subpart implements the Higher Education Amendments of 1998, Part E, section 826 (Pub. L. 105–244, 112 Stat. 1815), which authorizes Federal financial assistance to institutions of higher education to work individually or in consortia consisting of campus personnel, student organizations, campus administrators, security personnel, and regional crisis centers affiliated with the institution for two broad purposes: to develop, implement, and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, including sexual assault, stalking, and domestic violence and to develop, enlarge, and strengthen support services for victims of sexual assault, stalking, and domestic violence.

§ 90.101 What definitions apply for the grant program?

For the purposes of this Subpart, the following definitions apply:

(a) *Domestic violence* includes acts or threats of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or by any other person against a victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

(b) *Institution of higher education* is defined to include an educational institution in any State that admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; is legally authorized within such State to provide a program of education beyond secondary education; provides an educational program for which the institution has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time. Section 101, Public Law 105–244, 20 U.S.C. 1001.

(c) *Sexual assault* means any conduct proscribed by chapter 109A of Title 18, United States Code, whether or not the conduct occurs in the special maritime and territorial jurisdiction of the United States or in a Federal prison, including both assaults committed by offenders who are strangers to the victim and assaults committed by offenders who are known or related by blood or marriage to the victim.

(d) *Victim services* means a nonprofit, nongovernmental organization that assists domestic violence or sexual

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assault victims, including campus women's centers, rape crisis centers, battered women's shelters, and other sexual assault or domestic violence programs, including campus counseling support and victim advocate organizations with domestic violence, stalking, and sexual assault programs, whether or not organized and staffed by students.

§ 90.102 What are the purposes of the grant program?

The purposes of the grant program in this subpart are:

(a) To provide personnel, training, technical assistance, data collection, and other equipment with respect to the increased apprehension, investigation, and adjudication of persons committing violent crimes against women on campus;

(b) To train campus administrators, campus security personnel, and personnel serving on campus disciplinary or judicial boards to more effectively identify and respond to violent crimes against women on campus, including the crimes of sexual assault, stalking, and domestic violence;

(c) To implement and operate education programs for the prevention of violent crimes against women;

(d) To develop, enlarge or strengthen support services programs, including medical or psychological counseling, for victims of sexual offense crimes;

(e) To create, disseminate, or otherwise provide assistance and information about victims' options on and off campus to bring disciplinary or other legal action;

(f) To develop and implement more effective campus policies, protocols, orders, and services specifically devoted to prevent, identify, and respond to violent crimes against women on campus, including the crimes of sexual assault, stalking, and domestic violence;

(g) To develop, install, or expand data collection and communication systems, including computerized systems, linking campus security to the local law enforcement for the purpose of identifying and tracking arrests, protection orders, violations of protection orders, prosecutions, and convictions with respect to violent crimes against women on campus, including the crimes of sexual assault, stalking, and domestic violence;

(h) To develop, enlarge, or strengthen victim services programs for the campus and to improve delivery of victim services on campus;

(i) To provide capital improvements (including improved lighting and communications facilities but not including the construction of buildings) on campuses to address violent crimes against women on campus, including the crimes of sexual assault, stalking, and domestic violence; and

(j) To support improved coordination among campus administrators, campus security personnel, and local law enforcement to reduce violent crimes against women on campus.

§ 90.103 What are the eligibility requirements for the grant program?

(a) Eligible grantees are institutions of higher education that are in compliance with the campus crime reporting requirements as set forth in section 486(e) of the Higher Education Amendments of 1998, as amended, Public Law 105–244, 112 Stat. 1741, 20 U.S.C. 1092(f).

(b) To be eligible for this Grant Program, such institutions of higher education referred to in paragraph (a) of this section must:

(1) Collect crime statisucs and information about any campus security policies for their respective campuses, and compile such data in an annual security report and disseminate it to all current students and employees, and, upon request, to any applicant for enrollment or employment;

(2) Include in all annual security reports referred to in paragraph (b)(1) of this section information regarding campus security policies and campus crime statistics;

(3) Certify that they have developed and carry out policies consistent with the requirements of the Amendment to the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended by section 951 of the Higher Education Amendments of 1998;

(4) Enter into partnerships with nonprofit, nongovernmental victim service providers through formal memoranda of understanding (MOU) clearly describing the responsibilities of each partner.

§ 90.104 What must the grant program application contain?

(a) *Format.* Applications from institutions of higher education must be submitted on Standard Form 424, Application for Federal Assistance, at a time designated by the Violence Against Women Office of the Office of Justice Programs. The Violence Against Women Office of the Office of Justice Programs will develop and disseminate to institutions of higher education and other interested parties a complete Application Kit, which will include a Standard Form 424, a list of assurances to which applicants must agree, and additional guidance on how to prepare and submit an application for grants under this Subpart. Complete application kits will be available from: The Violence Against Women Office, Office of Justice Programs, 810 Seventh Street, N.W., Washington, D.C. 20531. Telephone: (202) 307–6026.

(b) *Programs.* Applications must set forth programs and projects that meet the purposes and criteria of the Grants to Combat Violent Crimes Against Women on Campuses set out in §§ 90.102 and 90.103.

(c) *Requirements.* Applicants in their applications must, at a minimum:

(1) Describe the need for grant funds and a plan for implementation of any of the 10 purpose areas set forth in § 826 (b) of the Higher Education Amendments of 1998. Public Law 105–244, 112 Stat. 1816 (20 U.S.C. 1152);

(2) Describe how campus authorities shall consult and coordinate with nonprofit and other victim service programs, including sexual assault and domestic violence victim service programs;

(3) Describe the characteristics of the population being served, including type of campus, demographics of the population, and the number of students;

(4) Provide measurable goals and expected results from the use of grant funds;

(5) Provide assurances that Federal funds made available under this section shall be used to supplement and, to the extent practical, increase the level of funds that would, in the absence of Federal funds, be made available by the institution for the 10 purposes as set forth in § 826 (b) of the Higher Education Amendments of 1998, Public Law 105–244, 112 Stat. 1816 (20 U.S.C. 1152);

(6) Identify the agency or office or groups of agencies or offices responsible for carrying out the Program; and

(7) Include documentation from nonprofit, nongovernmental sexual assault and domestic violence victims' programs demonstrating their participation in developing the application, and explain how these groups will be involved in the development and implementation of the project.

(d) *Certifications.* (1) Each institution of higher education applying for grant funds must be in compliance with the eligibility requirements set out in § 90.103.

(2) Each institution of higher education applying for grant funds must certify that it is in compliance with the requirements of section 485(f) of the Higher Education Act of 1965.

(3) Each institution of higher education applying for grant funds must certify that it has developed policies

consistent with the requirements of the Amendment to the Family Educational Rights and Privacy Act (FERPA) of 1974, at section 951 of the Higher Education Amendments of 1998, Public Law 105–244, 112 Stat. 1835.

(4) Each institution of higher education applying for grant funds must certify that all the information contained in the application is correct. All submissions will be treated as a material representation of fact upon which reliance will be placed, and any false or incomplete representation may result in suspension or termination of funding, recovery of funds provided, and civil and/or criminal sanctions.

§ 90.105 What are the review criteria for grant program applications?

(a) *Equitable participation and geographic distribution.* In accordance with section 826(a)(3) of the Higher Education Amendments of 1998, Public Law 105–244, 112 Stat. 1816, every effort shall be made to ensure:

(1) The equitable participation of private and public institutions of higher education in the activities assisted under this Subpart; and

(2) The equitable geographic distribution of grants funded through this Subpart among the various regions of the United States.

(b) *Additional review criteria.* Priority shall be given to applicants that demonstrate a commitment to developing strong collaborative models for developing services that are victim-centered; policies, protocols and penalties that hold offenders accountable; and programs that educate the entire campus community about how to end and prevent violence against women through systemic change. Commitment may be demonstrated in a number of ways including: clear communication from the institution's top leadership that strong responses to and prevention of violence against women is a priority; development and vigorous enforcement of campus policies and adherence to local laws addressing violence against women; creation of coordinated, multidisciplinary task forces that include at a minimum both campus and community-based victim service providers and campus security personnel and local law enforcement; innovative approaches to educating the entire campus community, including faculty, staff, administration, and students; provision of training and education programs to campus security personnel, others in positions of authority, and campus victim service providers; development of resource materials and information on violence against women; and innovative dissemination strategies for communicating information about the identification of violence against women, its underlying causes, and the consequences of committing violent crimes against women.

(c) *Intergovernmental review.* This grant program is covered by Executive Order 12372, Intergovernmental Review of Federal Programs (3 CFR, 1982 Comp., p. 197), and implementing regulations at 28 CFR Part 30. A copy of the application submitted to the Violence Against Women Office of the Office of Justice Programs should also be submitted at the same time to the State's Single Point of Contact, if there is a Single Point of Contact.

§ 90.106 What are the grantee reporting requirements for the grant program?

(a) *Semi-annual progress reports and annual performance reports.* Each grantee receiving funds under this Subpart shall submit semi-annual progress reports and an annual performance report to the Attorney General (Office of Justice Programs, Violence Against Women Office). Funding shall be suspended if a grantee fails to submit an annual performance report.

(b) *Final performance report.* Upon completion of the grant period, the institution shall be required to file a final performance report to the Attorney General (Office of Justice Programs, Violence Against Women Office) and the Secretary of Education (U.S. Department of Education's Safe and Drug Free Schools Program) explaining the activities carried out under this Subpart along with an assessment of the effectiveness of those activities in achieving the purposes set forth previously.

Note: The following exhibits will not appear in the Code of Federal Regulations.

Exhibit A to Preamble—Excerpts From Section 204 of the Student Right-to-Know and Campus Security Act, as Amended by Section 486(e) of the Higher Education Amendments of 1998

Relevant sections of the campus crime reporting requirements set forth in the Student Right-To-Know and Campus Security Act, as amended by the section 486(e) of the Higher Education Amendments of 1998, 20 U.S.C. 1092(f),[1] mandate the following:

(f) Disclosure of campus security policy and campus crime statistics

(1) Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 shall on August 1, 1991, begin to collect the following information with respect to campus crime statistics and campus security policies of that institution, and beginning September 1, 1992, and each year thereafter, prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution:

(A) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to such reports.

(B) A statement of current policies concerning security and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(C) A statement of current policies concerning campus law enforcement, including—

(i) The enforcement authority of security personnel, including their working relationship with State and local police agencies; and

(ii) Policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies.

(D) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(E) A description of programs designed to inform students and employees about the prevention of crimes.

(F) Statistics concerning the occurrence on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year, and during the 2 preceding calendar years for which data are available—

(i) Of the following criminal offenses reported to campus security authorities or local police agencies:

(I) murder;

(II) sex offenses, forcible or nonforcible;

(III) robbery;

(IV) aggravated assault;

(V) burglary;

(VI) motor vehicle theft;

(VII) manslaughter;

(VIII) arson; and

(IX) arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession; and

(ii) Of the crimes described in subclauses (I) through (VIII) of clause (i), and other crimes involving bodily injury to any person in which the victim is intentionally selected because of the actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability of the victim that are reported to campus security authorities or local police agencies, which data shall be collected and reported according to category of prejudice.

(G) A statement of policy concerning the monitoring and recording through local

[1] **Note:** The official version of section 486(e) of Public Law 105–244 appears at 112 Stat. 1742.

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police agencies of criminal activity at off-campus student organizations which are recognized by the institution and that are engaged in by students attending the institution, including those student organizations with off-campus housing facilities.

(H) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws and a statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws and a description of any drug or alcohol abuse education programs as required under Section 1011i of this title.

(2) Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to campus crimes or campus security.

(3) Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 shall make timely reports to the campus community on crimes considered to be a threat to other students and employees described in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.

(4) (A) Each institution participating in any program under this subchapter [20 U.S.C.A. § 1070 *et seq.*] and part C of subchapter I of chapter 34 of Title 42 [42 U.S.C.A. § 2751 *et seq.*] that maintains a police or security department of any kind shall make, keep, and maintain a daily log, written in a form that can be easily understood, recording all crimes reported to such police or security department, including—

(i) The nature, date, time, and general location of each crime; and

(ii) The disposition of the complaint, if known.

(B) (i) All entries that are required pursuant to this paragraph shall, except where disclosure of such information is prohibited by law or such disclosure would jeopardize the confidentiality of the victim, be open to public inspection within two business days of the initial report being made to the department or a campus security authority.

(ii) If new information about an entry into a log becomes available to a police or security department, then the new information shall be recorded in the log not later than two business days after the information becomes available to the police or security department.

(iii) If there is clear and convincing evidence that the release of such information would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until that damage is no longer likely to occur from the release of such information.

(5) On an annual basis, each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 [42 U.S.C.A. § 2751 *et seq.*] shall submit to the Secretary a copy of the statistics required to be made available under paragraph (1)(F). The Secretary shall—

(A) Review such statistics and report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on campus crime statistics by September 1, 2000;

(B) Make copies of the statistics submitted to the Secretary available to the public; and

(C) In coordination with representatives of institutions of higher education, identify exemplary campus security policies, procedures, and practices and disseminate information concerning those policies, procedures, and practices that have proven effective in the reduction of campus crime.

(6)(A) In this subsection:

(i) The term *campus* means—

(I) Any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

(II) Property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor).

(ii) The term *noncampus building or property means*—

(I) Any building or property owned or controlled by a student organization recognized by the institution; and

(II) Any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution's educational purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution.

(iii) The term *public property* means all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution, if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes.

(B) In cases where branch campuses of an institution of higher education, schools within an institution of higher education, or administrative divisions within an institution are not within a reasonably contiguous geographic area, such entities shall be considered separate campuses for purposes of the reporting requirements of this section.

(7) The statistics described in paragraph (1)(F) shall be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation, and the modifications in such definitions as implemented pursuant to the Hate Crime Statistics Act. Such statistics shall not identify victims of crimes or persons accused of crimes.

(8)(A) Each institution of higher education participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding—

(i) Such institution's campus sexual assault programs, which shall be aimed at prevention of sex offenses; and

(ii) The procedures followed once a sex offense has occurred.

(B) The policy described in subparagraph (A) shall address the following areas:

(i) Education programs to promote the awareness of rape, acquaintance rape, and other sex offenses.

(ii) Possible sanctions to be imposed following the final determination of an on-campus disciplinary procedure regarding rape, acquaintance rape, or other sex offenses, forcible or nonforcible.

(iii) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.

(iv) Procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that—

(I) The accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and

(II) Both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.

(v) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses.

(vi) Notification of students of existing counseling, mental health or student services for victims of sexual assault, both on campus and in the community.

(vii) Notification of students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.

(C) Nothing in this paragraph shall be construed to confer a private right of action upon any person to enforce the provisions of this paragraph.

(9) The Secretary shall provide technical assistance in complying with the provisions of this section to an institution of higher education who requests such assistance.

(10) Nothing in this Section shall be construed to require the reporting or disclosure of privileged information.

(11) The Secretary shall report to the appropriate committees of Congress each institution of higher education that the Secretary determines is not in compliance with the reporting requirements of this subsection.

(12) For purposes of reporting the statistics with respect to crimes described in paragraph (1)(F), an institution of higher education shall distinguish, by means of separate categories, any criminal offenses that occur—

(A) On campus;

(B) In or on a noncampus building or property;

(C) On public property; and

(D) In dormitories or other residential facilities for students on campus.

(13) Upon a determination pursuant to section 1094(c)(3)(B) of this title that an institution of higher education has substantially misrepresented the number, location, or nature of the crimes required to be reported under this Subsection, the Secretary shall impose a civil penalty upon the institution in the same amount and pursuant to the same procedures as a civil penalty is imposed under section 1094(c)(3)(B) of this title.

(14) (A) Nothing in this Subsection may be construed to—

(i) Create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or

(ii) Establish any standard of care.

(B) Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with this subsection shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this subsection.

* * * * *

Note: The following exhibits will not appear in the Code of Federal Regulations.

Exhibit B to Preamble—Excerpts From the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g(b), as Amended by Section 951 of the Higher Education Amendments of 1998

Relevant sections of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g(b), as amended by Section 951 of the Higher Education Amendments of 1998, 112 Stat. 1835,[1] state the following:

* * * * *

(B) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in Section 16 of Title 18, United States Code), or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

(C) For the purpose of this paragraph, the final results of any disciplinary proceeding—

(i) Shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and

(ii) May include the name of any other student, such as a victim or witness, only with the written consent of that other student.

* * * * *

Dated: July 15, 1999.

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 99–18591 Filed 7–21–99; 8:45 am]

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[1] **Note:** The official version of section 951 of Public Law 105–244 appears at 112 Stat. 1835.

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DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OJP)–1240]

RIN 1121–ZB74

Notice of Grants To Combat Violent Crimes Against Women on Campuses Solicitation

AGENCY: Office of Justice Programs, Violence Against Women Office, Justice.

ACTION: Notice of Funds Availability.

SUMMARY: The Violence Against Women Office of the Office of Justice Programs hereby announces the availability of funds for Grants to Combat Violent Crimes Against Women on Campuses. These funds are available to institutions of higher education for two broad purposes: (1) to develop and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, particularly domestic violence, sexual assault, and stalking; and (2) to develop, enlarge, and strengthen victim services in cases involving violent crimes against women on campuses. Copies of the application for this solicitation can be obtained on the Internet from the Violence Against Women Office web site at http://www.ojp.usdoj.gov/vawgo or by calling toll free (800) 851–3420 and requesting publication number SL000360. Applications for this solicitation are due no later than 5:00 p.m. EDT, Friday, July 30, 1999.

ADDRESSES: The Violence Against Women Office, Office of Justice Programs, 810 Seventh Street, N.W., Washington, D.C. 20531. The telephone number is (202) 307–6026, and this is not a toll-free telephone number.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be directed to the Violence Against Women Office, at the above address and telephone number.

SUPPLEMENTARY INFORMATION:

Authority: The Grants to Combat Violent Crimes Against Women on Campuses are authorized by Title VIII, Part E, section 826 of the Higher Education Amendments of 1998.

Dated: July 15, 1999.

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 99–18592 Filed 7–21–99; 8:45 am]

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federal register

Thursday
July 22, 1999

Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1218

Proposed Blueberry Promotion, Research, and Information Order; Proposed Rule

Blueberry Promotion, Research, and Information Order; Referendum Procedures; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[FV–99–701–PR1]

Proposed Blueberry Promotion, Research, and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is seeking comments regarding the establishment of an industry-funded promotion, research, and information program for cultivated blueberries. A proposed program—the Blueberry Promotion, Research, and Information Order (Order)—was submitted to USDA by the North American Blueberry Council, Inc. Under the Order, blueberry producers and importers would pay an assessment of $12 per ton, which would be paid to the proposed U.S.A. Blueberry Council. Producers and importers of less than 2,000 pounds of fresh and processed blueberries annually would be exempt from the assessment. The proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act).

DATES: Comments must be received by September 20, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number, the date, and the page number of this issue of the **Federal Register**. A copy of this rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm.

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Oliver L. Flake, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, S.W., Room 2535–S, Washington, D.C. 20250–0244; telephone 202) 720–5976 or fax (202) 205–2800.

SUPPLEMENTARY INFORMATION: This proposed Order is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. 7401–7425; Public Law 104–127, enacted April 4, 1996, hereinafter referred to as the Act.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary of Agriculture (Secretary) will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Executive Order 12866

This proposed rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

This program is intended to develop and finance an effective and coordinated program of promotion, research, and consumer information to maintain and expand the markets for cultivated blueberries (hereinafter referred to as blueberries). A proposal was submitted by the North American Blueberry Council, Inc. (proponent or NABC). The proponent has proposed that blueberry producers and importers approve the program in a referendum in advance of its implementation. In addition, NABC proposed that producers, importers, exporters, and a first handler would serve on a 13-member U.S.A. Blueberry Council (USABC) that would administer the program under USDA's oversight. In addition, any person subject to the program may file with the Secretary a petition stating that the Order or any provision is not in accordance with law and requesting a modification of the Order or an exemption from the Order.

While the proposed Order would impose certain record keeping requirements on first handlers, information required under the proposed Order could be compiled from records currently maintained. First handlers would collect and remit the assessments on domestic blueberries to the Council. Their responsibilities would include accurate recordkeeping and accounting of all blueberries purchased or contracted for, including the number of pounds handled, the names of their producers, and when blueberries are purchased. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such records shall be retained for at least two years. These requirements are already being conducted as a normal business practice.

In addition, first handlers of blueberries who seek nomination to serve on the USABC would be required to complete a nomination form which would be submitted to the Secretary.

The added burden to first handlers for a blueberry promotion, research, and information program is therefore expected to be minimal.

There is also a minimal burden on producers. The burden relates to those producers who would seek nomination to serve on the USABC and those who vote in referenda. In addition, the proposed Order would require producers to keep records and to provide information to the USABC or the Secretary when requested. However, it is not anticipated that producers would be required to submit forms to the USABC. Most likely, the information would be obtained through an audit of a producer's records to confirm information provided by a first handler or if a first handler did not file the required reports as part of the USABC's compliance operation. When seeking nomination to serve on the USABC, producers would be required to complete one form which would be submitted to the Secretary.

In addition, there is a minimal burden on importers. The import assessments would be collected by the U.S. Customs Service (Customs) at time of entry into the United States. Importers would be required to keep records and to provide information to the USABC or the Secretary when requested. However, it is not anticipated that importers would be required to submit forms to the USABC. Importers who seek nomination to serve on the USABC would be required to complete one form which would be submitted to the Secretary.

Further, there would be a minimal burden on exporters who seek nomination to serve on the USABC. They would be required to complete one form which would be submitted to the Secretary.

The estimated annual cost of providing the information to the USABC by an estimated 1,611 respondents (1,287 producers, 200 first handlers, 120 importers, and 4 exporters) would be $12,995 or $7,185 for all producers or $5.58 per producer, $2,000 for all first handlers or $10.00 per first handler, $3,800 for all importers or $31.66 per importer, and $10 for all exporters or $2.50 per exporter

USDA would oversee program operations and, if the program is implemented, would conduct a referendum (1) every five years to determine whether blueberry producers and importers support continuation of the program, (2) at the request of the USABC established under the Order, or (3) at the request of 10 percent or more of the number of persons eligible to vote in referenda. Additionally, the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by those eligible to vote in referenda.

There are approximately 1,287 producers, 200 first handlers, and 120 importers, and 4 exporters of blueberries who would be subject to the program. Most of the producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.601]. Most importers and first handlers would not be classified as small businesses and while most exporters are large we assume that some are small. The SBA defines small agricultural handlers as those whose annual receipts are less than $5 million, and small agricultural producers are defined as those having annual receipts of not more than $500,000 annually.

The blueberry, along with the cranberry and Concord grape, is one of only three native North American fruits. Blueberries were domesticated from wild highbush blueberries in the early 1900's. Over the years, they have been bred for flavor, size, color, vigor, and yield.

North America is the world's leading producer of blueberries. From 1993 to 1997, cultivated blueberries represented an average of approximately 70 percent of all blueberries produced in the United States with the remainder, known as lowbush (wild) blueberries, produced primarily in Maine. There are over 37 varieties of blueberries, but not all are actively produced for market.

Blueberries are harvested from April through October, with more than 60 percent harvested from mid-June though mid-August. Blueberries are grown in 35 states. Commercial production operations are located in Michigan (44 percent), New Jersey (19 percent), Oregon (12 percent), Georgia 9 percent), North Carolina (5 percent), Washington (5 percent), Indiana and Florida (2 percent each), and all other states (2 percent).

A majority of blueberry growers are relatively small business owners, operating 20 to 30-acre farms which have been in their families for a number of generations. Blueberry acreage is expanding in the United States, with considerable growth in the high-yielding areas of the Northwest and South. Harvested acreage in the United States has more than doubled over the past 15 years, from 21,850 harvested acres in 1980 to an estimated 46,685 harvested acres in 1996.

U.S. blueberry production has more than doubled since the late 1970's, from an average of 35,693 tons during the five-year period 1977 through 1981 to an average of more than 75,500 tons from 1993 through 1997. According to USDA's National Agricultural Statistics Service (NASS), total production of blueberries was 79,485 tons in 1998, a decrease from 84,990 tons in 1997. Approximately 39,493 tons of the total were utilized for fresh market sale and 37,608 tons were processed (primarily frozen).

Farm value of the 1997 blueberry crop was $141 million, compared with $113.6 million a year earlier.

U.S. frozen blueberry per capita consumption has been declining rapidly in recent years, decreasing from 0.38 pounds in 1996 to 0.33 pounds in 1997. From calendar year 1991 through 1995, U.S. per capita consumption of frozen blueberries averaged 0.43 pounds.

The United States exported 6.3 million pounds of fresh blueberries in 1997, valued at $7.9 million. Canada is the principal destination for U.S. exports—accounting for nearly 79 percent of the total in 1997. Other key markets included Switzerland (7 percent), the United Kingdom (5 percent), and Germany (3 percent). The remaining export volume went mostly to other European and Asian countries.

U.S. exports of frozen blueberries totaled 11,050 tons in 1997, and were valued at $9.9 million. The largest U.S. export market for frozen blueberries is Canada, accounting for 90 percent of the total quantity exported in 1997. Japan was the second largest U.S. market, accounting for 8 percent of the total. The remaining 2 percent of U.S. exports were sent mainly to other Asian and European countries.

In 1997, the United States imported 6,950 tons of fresh blueberries worth $10.8 million. Imports from Canada accounted for 89 percent of the total. Other major suppliers of fresh blueberries were Chile, with 9 percent of the total, and New Zealand with 2 percent.

In 1997, total imports of frozen blueberries reached 4,900 tons, valued at $8.5 million. The bulk of U.S. frozen blueberry imports (about 96 percent) in 1997 came from Canada. U.S. imports of frozen blueberries from Chile represented 2 percent of the total, while Mexico accounted for 1 percent of the total. The rest of the 1997 import volume originated from the Netherlands, Costa Rica and Colombia.

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During the 1997 season, average annual production per U.S. producer was approximately 66.04 tons of blueberries. Blueberries produced during this growing season provided average annual gross sales of $109,557 per blueberry producer.

The proposed Order would authorize a fixed assessment paid by producers (to be collected by first handlers) and importers (to be collected by Customs) at a rate of $12 per ton.

Section 516(a)(1) of the Act provides authority to the Secretary to exempt from the Order any de minimis quantity of an agricultural commodity otherwise covered by the Order. The proponent has recommended that producers and importers of less than 2,000 pounds of blueberries annually be exempt from assessment.

At the proposed rate of assessment of $12 per ton, the USABC would collect approximately $1.1 million annually. It is expected that the assessment would represent less than 1 percent of producers' average return. In 1997, the average price for blueberries was $1,659 per ton.

USDA will keep all individuals informed throughout the referendum process to ensure that they are aware of and are able to participate in the referendum. USDA will publicize information regarding the referendum process so that trade associations and related industry media can be kept informed. If the program is implemented, the newly established USABC would recommend to USDA regulations for the program.

In addition, the blueberry industry would nominate producers, importers, exporters, and a first handler to serve as members and alternates on the USABC. The USABC would recommend the assessment rate, programs, projects, a budget, and any rules and regulations that might be necessary for the administration of the program. USDA would ensure that the nominees represent the blueberry industry in accordance with the proposed Order.

The USABC would consist of 13 members: one producer representative from each of four regions, one producer representative for each of the top five producing states, one importer, one exporter, one first handler, and one public member. The regional and state members would be nominated from within the respective regions or states by the state commissions or the NABC as applicable for initial nominations, and the importer, exporter, and first handler members would be nominated by the USABC. There would be an alternate for each member. The importer position would be filled by a person who imports fresh or processed blueberries from outside of the United States for sale in the United States. The exporter position would be filled by a representative of the foreign production area which, based on a 3-year average, produces the most blueberries that are shipped to the United States.

In order to provide the opportunity for public input into USABC deliberations, the Secretary has added one public member and alternate to the proponent's proposed USABC. The public member and alternate would be nominated by the USABC.

Proposed record keeping and reporting requirements for the blueberry promotion, research, and information program would be designed to minimize the burden on the blueberry industry. The blueberry promotion program would be designed to strengthen the position of blueberries in the marketplace, maintain and expand existing domestic and foreign markets, and develop new uses and markets for blueberries.

The estimated annual cost of providing the information to the USABC by an estimated 1,611 respondents (1,287 producers, 200 first handlers, 120 importers, and 4 exporters) would be $12,995 or $7,185 for all producers or $5.58 per producer, $2,000 for all first handlers or $10.00 per first handler, $3,800 for all importers or $31.66 per importer, and $10 for all exporters or $2.50 per exporter.

With regard to alternatives to this proposed rule, the Act itself does provide for authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an order in Section 516 of the Act, and other sections provide for alternatives. For example, Section 514 of the Act provides for orders applicable to (1) producers, (2) first handlers and other persons in the marketing chain as appropriate, and (3) importers (if imports are subject to assessment). Section 516 authorizes an order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports. In addition, Section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the order. An order also may provide for its approval in a referendum to be based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. Section 515 of the Act provides for establishment of a board from among producers, first handlers, and others in the marketing chain as appropriate and importers, if importers are subject to assessment.

This proposal includes provisions for both domestic and foreign market expansion and improvement; reserve funds; and an initial referendum to be conducted prior to the Order going into effect. Approval would be based upon a majority of the blueberry production and imports represented by those voting in the referendum.

While we have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed Order on small entities, in order to obtain all the data necessary for a comprehensive analysis, we invite comments concerning potential effects of the proposed Order. In particular, we are seeking information on the number of first handlers and importers that would be covered by the program and the number of exporters that would be eligible to serve on the USABC. In addition, we are interested in more information on the number and kind of small entities that may incur benefits or costs from implementation of the proposed Order and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR Part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and record keeping requirements that may be imposed by this Order have been submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number for background form (number 1 below): 0505–0001.

Expiration Date of Approval: November 30, 1999.

OMB Number for other information collections: 0581–0093.

Expiration Date of Approval: November 30, 2000.

Type of Request: Revision of currently approved information collections for advisory committees and boards and for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Act.

In addition, there will be the additional burden on producers and importers voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures which is published separately in this issue of the **Federal Register**.

Under the proposed program, first handlers would be required to collect assessments from producers and file reports with and submit assessments to the USABC. While the proposed Order would impose certain record keeping requirements on first handlers, information required under the proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the marketing year of their applicability. The estimated annual cost of providing the information to the USABC by an estimated 1,611 respondents (1,287 producers, 200 first handlers, 120 importers, and 4 exporters) would be $12,995 or $7,185 for all producers or $5.58 per producer, $2,000 for all first handlers or $10.00 per first handler, $3,800 for all importers or $31.66 per importer, and $10 for all exporters or $2.50 per exporter.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary record keeping costs or requirements, including efforts to utilize information already submitted under other blueberry programs administered by USDA.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the USABC. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information yearly would coincide with normal industry business practices. Reporting other than yearly would impose an additional and unnecessary record keeping burden on first handlers. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual producers and first handlers who are subject to the provisions of the Act.

Therefore, there is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this proposal include:

(1) A Background Information Form

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each producer.

Respondents: Producers, importers, exporters, and first handlers.

Estimated number of Respondents: 18 (52 for initial nominations to the USABC, 28 in the second year, and 24 in the fourth year).

Estimated number of Responses per Respondent: 1 every 3 years.

Estimated Total Annual Burden on Respondents: 26 hours for the initial nominations to the promotion board and 9 hours annually thereafter.

(2) An Annual Report by Each First Handler of Blueberries

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per each first handler reporting on blueberries handled.

Respondents: First handlers.

Estimated number of Respondents: 200.

Estimated number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 100 hours.

(3) A Request for Certificate of Exemption

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per first handler, producer, or importer reporting on blueberries handled. Upon approval of an application, producers and importers will receive exemption certification.

Respondents: Producers and importers.

Estimated number of Respondents: 200.

Estimated number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 100 hours.

(4) Importer Application for Reimbursement of Assessment

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per importer requesting a refund.

Respondents: Producers and importers.

Estimated number of Respondents: 45.

Estimated number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 270 hours.

(5) A Requirement to Maintain Records Sufficient to Verify Reports Submitted Under the Order

Estimate of Burden: Public record keeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Recordkeepers: Producers, first handlers, and importers.

Estimated number of recordkeepers: 1,607.

Estimated total record keeping hours: 803.5 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the USDA's oversight of the program, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Act provides for the submission of proposals for a blueberry promotion, research, and information order by industry organizations or any other interested person affected by the Act.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–0093. Comments addressing the nomination background information form should reference OMB No. 0505–0001. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames listed above. All

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comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

The Act authorizes the Secretary, under a generic authority, to establish agricultural commodity research and promotion orders. The Act provides for a number of optional provisions that allow the tailoring of orders for different commodities. Section 516 of the Act provides permissive terms for orders, and other sections provide for alternatives. For example, Section 514 of the Act provides for orders applicable to (1) producers, (2) first handlers and others in the marketing chain as appropriate, and (3) importers (if importers are subject to assessment). Section 516 authorizes an order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports. In addition, Section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the order. The order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

This proposed Order includes provisions for both domestic and foreign market expansion and improvement, reserve funds, and an initial referendum to be conducted prior to the Order going into effect. Approval would be based upon a majority of the blueberry production and imports represented by the persons voting in the referendum.

The proponent has requested the establishment of a national blueberry promotion, research, and information order pursuant to the Act. The Act authorizes the establishment and operation of generic promotion programs which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. This proposal would provide for the development and financing of an effective and coordinated program of research, promotion, and information for blueberries. The purpose of the program would be to strengthen the position of blueberries in domestic and foreign markets, and to develop, maintain, and expand markets for blueberries.

The program would not become effective until approved in a referendum conducted by USDA. Section 518 of the Act provides for USDA (1) to conduct an initial referendum, preceding a proposed order's effective date, among persons who would pay assessments under the program or (2) to implement a proposed order, pending the conduct of a referendum, among persons subject to assessments, within three years after assessments first begin.

In accordance with Section 518(e) of the Act, the results of the referendum must be determined one of three ways: (1) approval by a majority of those persons voting; (2) approval by persons voting who represent a majority of the volume of the commodity covered by the program; or (3) approval by a majority of the persons voting who also represent a majority of the volume of the commodity produced, handled, or imported by the persons voting.

The proponent has recommended that the Secretary conduct a referendum in which approval of the Order would be based on producers and importers voting for approval who represent a majority of the volume of blueberries. The proponent has also recommended that a referendum be conducted prior to the proposed order going into effect.

In accordance with the Act, USDA would oversee the program's operations. In addition, the Act requires the Secretary to conduct subsequent referenda: (1) not later than 7 years after assessments first begin under the Order; or (2) at the request of the board established under the Order; or (3) at the request of 10 percent or more of the number of persons eligible to vote. The proponent group has requested that a referendum be conducted every five years to determine if producers and importers want the program to continue.

In addition to these criteria, the Act provides that the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by persons eligible to vote.

A national research and promotion program for blueberries would help the industry to address the many market problems it currently faces. According to the proponent, three main factors currently affecting blueberry sales, both here in the domestic market and abroad, are increasing production, aggressive competition, and changing consumer habits.

Over the years, increased blueberry production has led to depressed grower prices and increasing cold storage inventory levels. Though slightly lower production and inventory levels in 1996 and early 1997 improved grower returns to more profitable levels, record production in 1997 led once again to a build up in cold storage inventory of frozen blueberries and a downturn in grower prices in late 1997 and early 1998. The potential for continued increases in tonnage from new plantings, expected to come into full production in the future, will continue to affect the balance of supply and demand and threaten to depress grower returns.

The blueberry industry has seen tremendous growth in the Northwest and Southern states which accounted for an estimated 19.9 percent of total U.S. blueberry acreage in 1980 and an estimated 38.6 percent of acres by 1996. The growth in the Northwest is an important factor for the future of the industry, given its production potential. Over the years, yield per acre in the Northwest has been substantially above that of the major growing regions of Michigan and New Jersey. On average, from 1990 to 1996, Oregon produced 71 percent more blueberries per acre than New Jersey (3.6 tons per acre versus 2.1 tons per acre) and more than twice the yield of Michigan (3.6 tons per acre versus 1.6 tons per acre). During this same time period, Washington produced an average of 38 percent more blueberries per acre than New Jersey (2.9 tons per acre compared to 2.1 tons per acre) and 81 percent more than Michigan (2.9 tons per acre versus 1.6 tons per acre).

The blueberry industry is facing strong competition in the marketplace from both indirect and direct competitors. Like all food products, the blueberry must compete for a share of the consumer dollar. As competition in the supermarket increases, the blueberry industry must work harder to gain its share of consumer attention at a time when the industry's direct and indirect competitors expand their promotional activities.

A recent informal survey conducted by the proponent showed that from 1991 to 1995, the blueberry industry committed an average of 0.26 percent of farm gate value to the voluntary NABC domestic marketing program, far below the average of products such as prunes, kiwifruit, figs, pears, grapes, apples, citrus, and avocados whose domestic marketing expenditures averaged 2.10 percent of crop value. Though some individual members of the blueberry industry conduct promotional efforts on their own as well as contribute to the NABC program, it is extremely difficult to compete for a share of consumer and industrial user attention when the national generic marketing expenditure is slightly more than one-tenth the average amount of competitive products.

The blueberry industry must also address direct competition with the lowbush blueberry industry which is very active and aggressive in the industrial market both in the United States and abroad. The blueberry industry must also contend with artificial blueberries which are making their presence felt in a wide range of national and regional branded food products.

Changing consumer trends are also having an impact on the use of blueberries. Of great concern to the blueberry industry is the overall decline in home baking, given the fact that consumers perceive blueberries as the primary baking berry. As consumers move away from home baking of blueberry muffins and pies and decide to buy rather than bake, the industry must increase its efforts in the industrial market to be sure that manufacturers maintain and expand their use of blueberries in baked applications.

It is also necessary for the industry to expand the awareness of the versatility of blueberries and encourage new consumer and food manufacturer uses.

In 1965, the NABC was established as a voluntary association of U.S. and Canadian lowbush (native) and cultivated (highbush) blueberry growers and marketers who collectively worked to promote blueberry awareness and consumption. Over the years, the structure of the organization changed to where the association now represents only the cultivated blueberry industry in the United States and Canada. The 31 U.S.-based NABC members account for an estimated 78 percent of the U.S. blueberry crop. These members, along with members from British Columbia and Quebec, voluntarily assess themselves at a rate of $9 per ton to fund domestic publicity and promotion efforts directed to both the consumer and industrial user, as well as to support international market development. The NABC generates approximately $500,000 annually.

As the only national organization funding blueberry market development efforts, the voluntary NABC has not been able to generate the funds necessary to support the aggressive marketing efforts needed to help expand blueberry consumption and improve the profitability of the industry. In order to deal with increased production, aggressive competition, and changing consumer habits, the proponent states that a more extensive marketing program is needed. A mandatory national program could solve this problem. In addition, a mandatory national program would place all domestic growers, first handlers, and importers on an equal playing field with each investing a fair share in promoting blueberries.

Additional funds generated through a national program would allow the blueberry industry to take advantage of a wide range of promotional opportunities. At a minimum, increased funding would allow the industry to expand its current consumer, food service, and food manufacturer promotion efforts. It would also allow for increased participation in the USDA's Market Access Program and the opportunity to develop stronger markets overseas. Increased funding would allow for a more aggressive school effort (educational films, educational booklets, Internet lesson plans, and the like) and help increase awareness and demand among children. In addition, such a program would create the opportunity to explore tie-in promotional activities with nationally branded food products which would help the blueberry industry gain advertising and in-store exposure. Further, a mandatory national program would generate the funds for the industry to support expanded varietal research activities, new product development efforts, and nutritional and health research proposals.

Section 516(f) of the Act allows an order to authorize the levying of assessments on imports of the commodity covered by the program or on products containing that commodity, at a rate comparable to the rate determined for the domestic agricultural commodity covered by the order. The proponent has proposed to assess imports.

The assessment levied on domestically-produced and imported blueberries would be used to pay for promotion, research, and consumer and industry information as well as administration, maintenance, and functioning of the Council. Expenses incurred by the Secretary in implementing and administering the Order, including referenda costs, also would be paid from assessments.

Sections 516(e)(1) and (2) of the Act state that the Secretary may provide credits of assessments for generic and branded activities. The proponent has elected not to propose credits for generic or branded activities. Therefore, the terms "generic activities" and "branded activities" are not defined in the Order, and credits for assessments would not be made.

First handlers would be responsible for the collection of assessments from the producer and payment to the Council. First handlers would be required to maintain records for each producer for whom blueberries are handled, including blueberries produced by the first handler. In addition, first handlers would be required to file reports regarding the collection, payment, or remittance of the assessments.

Assessments on imported fresh and processed blueberries would be collected by Customs at the time of entry into the United States and remitted to the Council.

All information obtained from persons subject to this Order as a result of record keeping and reporting requirements would be kept confidential by all officers, employees, and agents of USDA and of the Council. However, this information may be disclosed only if the Secretary considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of USDA is a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports or on information relating to a number of persons subject to an order if the statements do not identify the information furnished by any person or the publication, by direction of the Secretary of the name of any person violating the Order and a statement of the particular provisions of the Order violated by the person.

The proposed Order provides for USDA to conduct an initial referendum preceding the proposed Order's effective date. Therefore, the proposed Order must be approved by producers and importers voting in the referendum. Approval will be determined by producers and importers voting who represent a majority of the volume of

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blueberries covered by the program. The proposed Order also provides for subsequent referenda to be conducted (1) every 5 years after the program is in effect, (2) at the request of the Board established under the Order, or (3) when requested by 10 percent or more of blueberry producers and importers covered by the Order. In addition, the Secretary may conduct a referendum at any time.

The Act requires that such a proposed order provide for the establishment of a board to administer the program under USDA supervision. The proponent's proposal provides for a 12-member U.S.A. Blueberry Council to which the Secretary would add a public member, as stated earlier.

To ensure fair and equitable representation of the blueberry industry on the USABC, the Act requires membership on the USABC to reflect the geographical distribution of the production of blueberries and the quantity or value of imports. To that end, this proposal divides the production area into four relatively equal regions which would each have one member on the USABC. Regions were based on the most recent 3-year average of blueberries produced in each region. The proposal also provides for a representative from each of the top five blueberry producing states based on the most recent 3-year average of blueberries produced in each state. In addition, the proposal provides for one importer, a first handler, and a exporter position to be filled by a representative of the foreign production area which, based on a 3-year average, produces the most blueberries that are shipped to the United States. Each member would have an alternate.

Upon implementation of the Order and pursuant to the Act, the USABC would at least once in each five-year period, but not more frequently than once in each three-year period, review the geographical distribution of blueberries in the United States and the quantity of blueberries imported into the United States and make a recommendation to the Secretary after considering the results of its review and other information it deems relevant regarding the reapportionment of the USABC.

Members and alternates would serve for three-year terms, except that the members and alternates appointed to the initial USABC would serve proportionately for two, three, and four years. No member or alternate would serve more than two consecutive three-year terms.

The proposed Order submitted by the proponent is summarized as follows:

Sections 1218.1 through 1218.23 of the proposed Order define certain terms, such as blueberries, producer, and importer, which are used in the proposed Order.

Sections 1218.40 through 1216.47 include provisions relating to the USABC. These provision cover establishment and membership, nominations, selections, acceptance, term of office, vacancies, procedures for conducting USABC business, alternate members, compensation and reimbursement, and powers and duties of the USABC, which is the governing body authorized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about blueberries, subject to oversight of the Secretary. These sections also include maintenance of books and records by the USABC and prohibited activities of the USABC, its employees, and agents.

Sections 1218.50 through 1218.56 cover budget review and approval; authorize the collection of assessments; specify how assessments would be used, including reimbursement of necessary expenses incurred by the USABC for the performance of its duties and expenses incurred for USDA's oversight responsibilities; specify who pays the assessment and how; authorize the imposition of a late-payment charge on past-due assessments; address programs, plans, and projects; require the USABC to periodically conduct an independent review of its overall program; specify a program operating reserve; cover the investment of assessment funds; and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

The proponent recommends a proposed assessment rate of $12 per ton for domestic blueberries and imported fresh and processed blueberries. The assessment rate may be raised or lowered after the initial continuance referendum which would be conducted after the program has been in operation 5 years. A referendum on a new assessment rate is not required.

The federal debt collection procedures referenced in § 1218.52(e) include those set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by AMS [60 FR 12533, March 7, 1995].

Sections 1218.60 through 1218.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information from such books, records, or reports.

Sections 1218.70 through 1218.78 describe the rights of the Secretary; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after suspension or termination; and address personal liability, separability, and amendments.

USDA has modified the proponent's proposal to make it consistent with the Act and other similar national research and promotion programs; for consistency throughout the text; and for clarity.

In the definitions, "commodity covered" was changed to "blueberries," "consumer information" and "producer information" were combined into a definition of "information" to conform with the Act. Additionally, the definition of "research," and "importer" were altered to conform with the Act.

In the definitions and throughout the proposed Order, "grower/producer" was changed to "producer," "handler" was changed to "first handler," the term "board" was eliminated, and "council" was changed to "U.S.A. Blueberry Council" or "USABC." The terms "plans, projects, and programs" were deleted because they were deemed unnecessary, and a definition for "processed blueberries" and "part and subpart" were added. Throughout the proposed Order, the term "blueberry products" was changed to "fresh and processed blueberries," and, for clarity, time periods were changed to match definitions.

The following terms were removed from the definitions: "association," "buyer," "broker," "distributor," "packer," "processor," and "shipper." These terms were removed because they are not necessary for the administration of the proposed program.

In § 1218.40 *Establishment and membership,* the two exporter/importer positions on the proposed USABC have been changed to an importer position and an exporter position. The industry's proposal made importer representation optional. However, § 515(a)(1)(B) of the Act requires importers to have representation on boards when imports are assessed under a program. It is estimated that imports will represent approximately 12 percent of the assessments under this proposed program. One of the optional importer/exporter positions has been changed to provide for an importer position, and the other position has been changed to provide for an exporter position. The exporter position will be filled by a representative of the foreign production area which, based on a 3-year average, produces the most blueberries that are shipped to the United States. In addition, to provide the opportunity for public input into USABC deliberations, the Secretary has added a public member and alternate to the proponent's proposed USABC. The public member and alternate would be nominated by the USABC.

In this same section, a statement indicating that the addition of importer members and alternates will be accomplished by notice and rulemaking, was deleted as unnecessary.

In § 1218.43 *Vacancies,* additional information was added to specify that alternate members would assume the position of member if the member position becomes vacant during a term of office. In § 1218.44, a new paragraph (g) was added to clarify that proxy voting is not authorized. In addition, a new paragraph (h) was added to allow the chairperson to have a vote during the USABC meetings.

In § 1218.60, the date all reports are due was changed from November 30 of the crop year to 30 days after the end of the crop year. This phrase was changed for clarity.

In § 1218.61, the length of time records must be maintained by first handlers, producers, and importers was changed from seven years to two years beyond the fiscal period to be consistent with other research and promotion programs. Also, the following sections were added to the proponent's proposal: § 1218.73 *Proceedings after termination;* § 1218.74 *Effect of termination or amendment;* and § 1218.76 *Separability.*

Minor grammatical changes and other minor changes which do not materially affect the text were made.

USDA has determined that this proposed Order is consistent with and will effectuate the purposes of the Act.

The proposal set forth below has not received the approval of the Secretary.

List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Blueberries, Consumer information, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that chapter XI of title 7 of the Code of Federal Regulations be amended by adding part 1218 to read as follows:

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Blueberry Promotion, Research, and Information Order

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U.S.A. Blueberry Council

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Authority: 7 U.S.C. 7401–7425.

Subpart A—Blueberry Promotion, Research, and Information Order

Definitions

§ 1218.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C.7401–7425; Pub. L. 104–127; 110 Stat. 1029), or any amendments thereto.

§ 1218.2 Blueberries.

Blueberries means cultivated blueberries grown in or imported into the United States of the genus Vaccinium *Corymbosum* and *Ashei,* including the northern highbush, southern highbush, and rabbit eye varieties and excluding the lowbush (native) blueberry Vaccinium *Angustifolium.*

§ 1218.3 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the U.S.A. Blueberry Council has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Council for anything of economic value.

§ 1218.4 Crop year.

Crop year means the 12-month period from November 1 through October 31 of the following year or such other period approved by the Secretary.

§ 1218.5 Department.

Department means the U.S. Department of Agriculture.

§ 1218.06 Exporter.

Exporter means a person involved in exporting blueberries from another country to the United States.

§ 1218.7 First handler.

First handler means any person, (excluding a common or contact carrier), receiving blueberries from producers and who as owner, agent, or otherwise ships or causes blueberries to be shipped as specified in the order. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing blueberries in commercial quantities. This does not include a retailer, except a retailer who purchases or acquires from, or handles on behalf of any producer, blueberries.

§ 1218.8 Fiscal period.

Fiscal period means a calendar year from January 1 through December 31, or such other period as approved by the Secretary.

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§ 1218.09 Importer.

Importer means any person who imports fresh or processed blueberries into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles fresh or processed blueberries outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such blueberries.

§ 1218.10 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of blueberries on a national or international basis. These include:

(a) *Consumer information,* which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of blueberries; and

(b) *Industry information,* which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the blueberry industry, and activities to enhance the image of the blueberry industry.

§ 1218.11 Market or marketing.

(a) *Marketing* means the sale or other disposition of blueberries in any channel of commerce.

(b) To *market* means to sell or otherwise dispose of blueberries in interstate, foreign, or intrastate commerce.

§ 1218.12 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1218.13 Part and subpart.

Part means the Blueberry Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a *subpart* of such part.

§ 1218.14 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1218.15 Processed blueberries.

Processed blueberries means blueberries which have been frozen, dried, pureed, or made into juice.

§ 1218.16 Producer.

Producer means any person who grows blueberries in the United States for sale in commerce, or a person who is engaged in the business of producing, or causing to be produced for any market, blueberries beyond the person's own family use and having value at first point of sale.

§ 1218.17 Promotion.

Promotion means any action taken to present a favorable image of blueberries to the general public and the food industry for the purpose of improving the competitive position of blueberries both in the United States and abroad and stimulating the sale of blueberries. (This includes paid advertising and public relations.)

§ 1218.18 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of blueberries, including research relating to nutritional value, cost of production, new product development, varietal development, nutritional value, health research, and marketing of blueberries.

§ 1218.19 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1218.20 Suspend.

Suspend means to issue a rule under section 553 of title 5, U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1218.21 Terminate.

Terminate means to issue a rule under section 553 of title 5, U.S.C., to cancel permanently the operation of an order or part thereof beginning on a date certain specified in the rule.

§ 1218.22 United States.

United States means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1218.23 USABC.

USABC, or U.S.A. Blueberry Council, means the administrative body established pursuant to § 1218.40.

U.S.A. Blueberry Council

§ 1218.40 Establishment and membership.

(a) *Establishment of the U.S.A. Blueberry Council.* There is hereby established a U.S.A. Blueberry Council, hereinafter called the USABC, composed of no more than 13 members and alternates, appointed by the Secretary from the nominations as follows:

(1) One producer member and alternate from each of the following regions:

(i) Region #1 Western Region (all states from the Pacific east to the Rockies): Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(ii) Region #2 Midwest Region (all states east of the Rockies to the Great Lakes and south to the Kansas/Missouri/Kentucky state line) Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

(iii) Region #3 Northeast Region (all states east of the Great Lakes and North of the North Carolina/Tennessee state line) Connecticut, Delaware, New York, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, Vermont, Washington, D.C., and West Virginia.

(iv) Region #4 Southern Region (all states south of the Virginia/Kentucky/Missouri/Kansas state line and east of the Rockies) Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, and Texas.

(2) One producer member and alternate from each of the top five blueberry producing states, based upon the average of the total tons produced over the previous three years. Average tonnage will be based upon North American Blueberry Council production figures for the initial election and production and assessment figures generated by the USABC thereafter.

(3) One importer and alternate.

(4) One exporter and alternate shall be filled by foreign blueberry producers currently shipping blueberries into the United States from the largest foreign blueberry production area, based on a 3-year average.

(5) One first handler member and alternate shall be filled by a United States based independent or cooperative organization which is a producer/shipper of domestic blueberries.

(6) One public member and alternate.

(b) *Adjustment of membership.* At least once every five years, the USABC will review the geographical distribution of United States production of blueberries and the quantity of imports. The review will be conducted through an audit of state crop production figures and USABC assessment receipts. If warranted, the USABC will recommend to the Secretary that membership on the USABC be altered to reflect any changes in geographical distribution of domestic blueberry production and the quantity of imports. If the level of imports increases, importer members and alternates may be added to the USABC.

§ 1218.41 Nominations and appointments.

(a) Nominations for regional and state representatives will be made by mail ballot.

(b) In a case where a state has a state blueberry commission or marketing order in place, the state commission or committee will nominate members and alternates to serve on the USABC. At least two nominees shall be submitted to the Secretary for each member and each alternate.

(c) Nomination and election of regional, and state representatives where no commission or order is in place will be handled by the USABC, provided that the initial nominations will be handled by the North American Blueberry Council. The USABC will seek nominations for members and alternates from the specific states and/or regions. Nominations will be returned to the USABC and placed on a ballot which will then be sent to producers in the state and/or region for vote. The final nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the final nominee for alternate. The persons with the third and fourth place highest number of votes cast will be designated as additional nominees for consideration by the Secretary.

(d) Nominations for the importer, exporter, first handler, and public member positions will be made by the USABC. Two nominees for each member and alternate position will be submitted to the Secretary for consideration.

(e) From the nominations, the Secretary shall select the members of the USABC and alternates for each position on the USABC.

§ 1218.42 Term of office.

USABC members and alternates will serve for a term of three years and be able to serve a maximum of two consecutive terms. A USABC member may serve as an alternate during the years the member is ineligible for a member position. When the USABC is first established, the state representatives, first handler member, and their respected alternates will be assigned initial terms of three years. Regional representatives, the importer member, the exporter member, public member, and their alternates will serve an initial term of two years. Thereafter, each of these positions will carry a full three-year term. USABC nominations and appointments will take place in two out of every three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

§ 1218.43 Vacancies.

(a) In the event any member of the USABC ceases to be a member of the category of members from which the member was appointed to the USABC, such position shall automatically become vacant.

(b) If a member of the USABC consistently refuses to perform the duties of a member of the USABC, or if a member of the USABC engages in acts of dishonesty or willful misconduct, the USABC may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the USABC shows adequate cause, the Secretary shall remove such member from office.

(c) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be appointed in the manner specified in § 1218.40 and § 1218.41, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

§ 1218.44 Alternate members.

An alternate member of the USABC, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any member, the alternate for that member shall automatically assume the position of said member. In the event that both a producer member of the USABC and the alternate are unable to attend a meeting, the USABC may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

§ 1218.45 Procedure.

(a) At a USABC meeting, it will be considered a quorum when a minimum of seven members, or their alternates serving in the absence, are present.

(b) At the start of each fiscal period, the USABC will select a chairperson and vice chairperson who will conduct meetings throughout that period.

(c) All USABC members and alternates will receive a minimum of 10 days advance notice of all USABC and committee meetings.

(d) Each member of the USABC will be entitled to one vote on any matter put to the USABC, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the USABC members present.

(e) It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present. Alternates may also be assigned to committees as necessary.

(f) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the USABC such action is considered necessary, the USABC may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or any other means of communication, and all telephone votes shall be confirmed promptly in writing. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the USABC. All votes shall be recorded in USABC minutes.

(g) There shall be no voting by proxy.

(h) The chairperson shall be a voting member.

(i) The organization of the USABC and the procedures for the conducting of meetings of the USABC shall be in accordance with its bylaws, which shall be established by the USABC and approved by the Secretary.

§ 1218.46 Compensation and reimbursement.

The members of the USABC, and alternates when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the USABC, incurred by them in the performance of their duties as USABC members.

§ 1218.47 Powers and duties of the U.S.A. Blueberry Council.

The USABC shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

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(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the USABC, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the USABC a chairperson, other officers, committees, and subcommittees, as the USABC determines to be appropriate;

(d) To employ persons, other than the members, as the USABC considers necessary to assist the USABC in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the USABC shall develop and submit to the USABC a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the USABC of activities conducted under the contract or agreement; and make such other reports available as the USABC or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the USABC a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the USABC of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the USABC may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a USABC contractor and who receives or otherwise uses funds allocated by the USABC shall be subject to the same provisions as the contractor.

(f) To prepare and submit for approval of the Secretary fiscal year budgets in accordance with § 1218.50;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the USABC;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(i) To give the Secretary the same notice of meetings of the USABC as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the USABC to the Secretary;

(j) To act as intermediary between the Secretary and any producer, first handler, importer, or exporter;

(k) To furnish to the Secretary any information or records that the Secretary may request;

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary such amendments to the Order as the USABC considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the blueberry industry's position in the marketplace; maintain and expand existing markets and uses for blueberries; and to carry out programs, plans, and projects designed to provide maximum benefits to the blueberry industry.

§ 1218.48 Prohibited activities.

The USABC may not engage in, and shall prohibit the employees and agents of the USABC from engaging in:

(a) Any action that would be a conflict of interest; and

(b) Using funds collected by the USABC under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order;

Expenses and Assessments

§ 1218.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the USABC shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the USABC's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(d) The USABC is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the USABC for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the USABC.

(e) With approval of the Secretary, the USABC may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the USABC. Any funds borrowed by the USABC shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the USABC.

(f) The USABC may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the USABC shall retain complete control of their use.

(g) The USABC may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, with the approval of the Secretary, for authorized activities.

(h) The USABC shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the

Order, including all referendum costs in connection with the Order.

(i) The USABC may not expend for administration, maintenance, and functioning of the USABC in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the USABC for that fiscal year. Reimbursements to the Secretary required under paragraph (h) are excluded from this limitation on spending.

§ 1218.51 Financial statements.

(a) As requested by the Secretary, the USABC shall prepare and submit financial statements to the Secretary on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The USABC shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

§ 1218.52 Assessments.

(a) The funds to cover the Board's expenses shall be acquired by the levying of assessments upon producers and importers.

(b) The collection of assessments on domestic blueberries will be the responsibility of the first handler receiving the blueberries. In the case of the producer acting as its own first handler, the producer will be required to collect and remit its individual assessments.

(c) Such assessments shall be levied at a rate of $12 per ton on all blueberries. The assessment rate will be reviewed, and may be modified with the approval of the Secretary, after the first referendum is conducted as stated in § 1218.71(b).

(d) Each importer of fresh and processed blueberries shall pay an assessment to the USABC on blueberries imported for marketing in the United States, through the U.S. Customs Service.

(1) The assessment rate for imported fresh and processed blueberries shall be the same or equivalent to the rate for fresh blueberries produced in the United States.

(2) The import assessment shall be uniformly applied to imported fresh and frozen blueberries that are identified by the numbers 0810.40.0028 and 0811.90.2028, respectively, in the Harmonized Tariff Schedule of the United States or any other numbers used to identify fresh and frozen blueberries. Assessments on other types of imported processed blueberries, such as dried blueberries, puree, and juice, may be added at the recommendation of the USABC with the approval of the Secretary.

(3) The assessments due on imported fresh and processed blueberries shall be paid when they enter or are withdrawn for consumption in the United States.

(e) All assessment payments and reports will be submitted to the office of the USABC. All final payments for a crop year are to be received no later than November 30 of that year. Payments received after that date will be subject to a late payment charge to be determined by the USABC with the approval of the Secretary. The late payment charge will be in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed by the Secretary.

(f) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(g) The USABC may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

§ 1218.53 Exemption procedures.

(a) Any producer who produces less than 2,000 pounds of blueberries annually who desires to claim an exemption from assessments during a fiscal year as provided in § 1218.52 shall apply to the USABC, on a form provided by the USABC, for a certificate of exemption. Such producer shall certify that the producer's production of blueberries shall be less than 2,000 pounds for the fiscal year for which the exemption is claimed. Any importer who imports less than 2,000 pounds of fresh and processed blueberries annually who desires to claim an exemption from assessments during a fiscal year as provided in § 1218.52 shall apply to the USABC, on a form provided by the USABC, for a certificate of exemption. Such importer shall certify that the importer's importation of fresh and processed blueberries shall not exceed 2,000 pounds, for the fiscal year for which the exemption is claimed.

(b) On receipt of an application, the USABC shall determine whether an exemption may be granted. The USABC then will issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. Each producer who is exempt from assessment must provide an exemption number to the first handler in order to be exempt from the collection of an assessment on blueberries. First handlers and importers, except as otherwise authorized by the USABC, shall maintain records showing the exemptee's name and address along with the exemption number assigned by the USABC.

(c) Importers who are exempt from assessment shall be eligible for reimbursement of assessments collected by the U.S. Customs Service and shall apply to the USABC for reimbursement of such assessments paid. No interest will be paid on assessments collected by the U.S. Customs Service. Requests for reimbursement shall be submitted to the USABC within 90 days of the last day of the year the blueberries were actually imported.

(d) Any person who desires an exemption from assessments for a subsequent fiscal year shall reapply to the USABC, on a form provided by the USABC, for a certificate of exemption.

(e) The USABC may require persons receiving an exemption from assessments to provide to the USABC reports on the disposition of exempt blueberries and, in the case of importers, proof of payment of assessments.

§ 1218.54 Programs, plans, and projects.

(a) The USABC shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to fresh and processed blueberries; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing of fresh and processed blueberries, and the creation of new products thereof, to the end that the marketing and use of blueberries may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of fresh and processed blueberries.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the USABC shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by

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the USABC to ensure that it contributes to an effective program of promotion, research, or consumer information. If it is found by the USABC that any such program, plan, or project does not contribute to an effective program of promotion, research, or consumer information, then the USABC shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading or disparaging another agricultural commodity. Blueberries of all origins shall be treated equally.

§ 1218.55 Independent evaluation.

The USABC shall, not less often than every five years, authorize and fund, from funds otherwise available to the USABC, an independent evaluation of the effectiveness of the Order and other programs conducted by the USABC pursuant to the Act. The USABC shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1218.56 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the USABC under this subpart shall be the property of the U.S. Government as represented by the USABC and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the USABC; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the USABC; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1218.73 shall apply to determine disposition of all such property.

Reports, Book, and Records

§ 1218.60 Reports.

(a)(1) Each first handler subject to this subpart may be required to provide to the USABC periodically such information as may be required by the USABC, with the approval of the Secretary, which may include but not be limited to the following:

(i) Number of pounds handled;

(ii) Number of pounds on which an assessment was collected;

(iii) Name and address of person from whom the first handler has collected the assessments on each pound handled; and

(iv) Date collection was made on each pound handled.

(2) All reports are due to the USABC 30 days after the end of the crop year.

(b)(1) Each producer and importer subject to this subpart may be required to provide to the USABC periodically such information as may be required by the USABC, with the approval of the Secretary, which may include but not be limited to the following:

(i) Number of pounds produced;

(ii) Number of pounds on which an assessment was paid;

(iii) Name and address of the producer;

(iv) Date collection was made on each pound produced.

(2) All reports are due to the USABC 30 days after the end of the crop year.

§ 1218.61 Books and records.

Each first handler, producer, and importer subject to this subpart shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least 2 years beyond the fiscal period of their applicability.

§ 1218.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the USABC, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to USABC members, producers, importers, exporters, or first handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

§ 1218.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the USABC shall be submitted to the Secretary for approval.

§ 1218.71 Referenda.

(a) *Initial referendum.* The Order shall not become effective unless:

(1) The Secretary determines that the Order is consistent with and will effectuate the purposes of the Act; and

(2) The Order is approved by a simple majority of the blueberry volume represented by the eligible producers and importers voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries.

(b) *Subsequent referenda.* Every five years, the Secretary shall hold a referendum to determine whether blueberry producers and importers favor the continuation of the Order. The Order shall continue if it is approved by a simple majority of the blueberry volume represented by the eligible producers and importers voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries. The Secretary will also conduct a referendum if 10 percent or more of all eligible blueberry producers and importers request the Secretary to hold a referendum. In addition, the Secretary may hold a referendum at any time.

§ 1218.72 Suspension and termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a simple majority of the blueberry volume represented by eligible producers and importers voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1218.73 Proceedings after termination.

(a) Upon the termination of this subpart, the USABC shall recommend not more than three of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the USABC. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the USABC, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the USABC under any contracts or agreements entered into pursuant to the Order;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the USABC and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested in the USABC or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the USABC and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to the blueberry producer organizations in the interest of continuing blueberry promotion, research, and information programs.

§ 1218.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1218.75 Personal liability.

No member or alternate member of the USABC shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or alternate, except for acts of dishonesty or willful misconduct.

§ 1218.76 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1218.77 Amendments.

Amendments to this subpart may be proposed from time to time by the USABC or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1218.78 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0581–0093, except for the USABC nominee background statement form which is assigned OMB control number 0505–001.

Dated: July 16, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–18691 Filed 7–21–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[FV–99–702–PR]

Blueberry Promotion, Research, and Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Blueberry Promotion, Research, and Information Order (Order) is favored by the blueberry industry. Approval will be determined by producers and importers voting for approval who represent a majority of the volume of blueberries. These procedures would also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The proposal is being published in a separate document. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act).

DATES: Comments must be received by September 20, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm.

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the information

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collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Oliver L. Flake, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, S.W., Room 2535–S, Washington, D.C. 20250–0244; telephone (202) 720–5976 or fax (202) 205–2800.

SUPPLEMENTARY INFORMATION: A referendum will be conducted among eligible blueberry producers and importers to determine whether the issuance of the proposed Blueberry Promotion, Research, and Information Order (Order) (7 CFR Part 1218) is favored by those who would pay assessments under the program. Approval will be determined by persons voting for approval who represent a majority of the volume of blueberries. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [Pub. L. 104–427, 7 U.S.C. 7401–7425]. It would cover domestic and imported cultivated blueberries (hereinafter called blueberries). A proposed Order is being published separately in the **Federal Register**.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the order may file a petition with the Secretary of Agriculture (Secretary) stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with the law, and requesting a modification of the order or an exemption from the order. Any petition filed challenging the order, any provision of the order or any obligation imposed in connection with the order, shall be filed within two years after the effective date of the order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of the Secretary's final ruling.

Executive Order 12866

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The Act, which authorizes the Secretary to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who also represent a majority of the volume of the agricultural commodity voted in the referendum. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. The North American Blueberry Council, Inc. (proponent), has recommended that the Secretary conduct a referendum in which approval of the Order would be based on producers and importers voting for approval who represent a majority of the volume of blueberries. The proponent also has recommended that a referendum be conducted prior to the proposed Order going into effect.

This proposed rule would establish the procedures under which producers and importers may vote on whether they want a blueberry promotion, research, and information program to be implemented. Blueberry producers and importers of 2,000 pounds or more of blueberries annually would be eligible to vote. The proposed order provides for an exemption from assessments for producers and importers of less than 2,000 pounds of fresh and processed blueberries. This proposal would add a new subpart which establishes procedures to conduct an initial and future referenda. The proposed subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 1,287 producers, 200 first handlers, 120 importers, and 4 exporters of blueberries who would be subject to the program. It is estimated that 1,132 producers and 75 importers would be eligible to vote in the first referendum. Most of the producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.601]. Most importers and first handlers would not be classified as small businesses. The SBA defines small agricultural handlers as those whose annual receipts are less than $5 million, and small agricultural producers are defined as those having annual receipts of not more than $500,000 annually.

According to USDA's National Agricultural Statistics Service (NASS), total production of cultivated blueberries was 172.9 million pounds in 1997, up 35 percent from the 1996 output. Approximately 70.2 million pounds of the total were utilized for fresh market sale and 99.4 million pounds were used for processing (primarily frozen). Blueberries are grown in 35 states. Commercial production operations are located in Michigan (44 percent), New Jersey (19 percent), Oregon (12 percent), Georgia 9 percent), North Carolina (5 percent), Washington (5 percent), Indiana and Florida (2 percent each), and all other states (2 percent). Farm value for the 1997 cultivated blueberry crop was $141 million, compared with $113.6 million a year earlier.

U.S. frozen blueberry per capita consumption has been declining rapidly in recent years, decreasing from 0.38 pounds in 1996 to 0.33 pounds in 1997. From calendar year 1991 through 1995, U.S. per capita consumption of frozen blueberries averaged 0.43 pounds.

The United States exported 6.3 million pounds of fresh cultivated blueberries in 1997, valued at $7.9 million. Canada is the principal destination for U.S. exports—accounting for nearly 79 percent of the total in 1997. Other key markets included Switzerland (7 percent), the United Kingdom (5 percent), and Germany (3 percent). The remaining export volume of fresh cultivated blueberries primarily went to other European and Asian countries.

U.S. exports of frozen cultivated blueberries totaled 22.1 million pounds in 1997 and were valued at $9.9 million. The largest U.S. export market is Canada, accounting for 90 percent of the total quantity in 1997. Japan was the second largest U.S. market for frozen cultivated blueberries, accounting for 8 percent of the total. The remaining 2 percent of U.S. exports were sent mainly to other Asian and European countries.

In 1997, the United States imported 13.9 million pounds of fresh cultivated blueberries worth $10.8 million. Imports from Canada alone accounted for 89 percent of the total. Other important fresh cultivated blueberry import sources were Chile with 9 percent of the total and New Zealand with 2 percent. Small amounts were also imported from Mexico and Honduras.

In 1997, total imports of frozen cultivated blueberries were 9.8 million pounds and were valued at $8.5 million. The vast majority of U.S. frozen blueberry imports (about 96 percent) came from Canada in 1997. U.S. imports of frozen cultivated blueberries from Chile represented 2 percent of the total, while Mexico accounted for 1 percent of the total. The rest of the 1997 import volume originated from the Netherlands, Costa Rica and Colombia.

This proposed rule provides the procedures under which blueberry producers and importers may vote on whether they want the Order to be implemented. In accordance with the provisions of the Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply. There are approximately 1132 producers and 75 importers who will be eligible to vote in the first referendum.

USDA will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producers and importers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this proposed rule are designed to minimize the burden on producers and importers. This rule provides for a ballot to be used by eligible producers and importers to vote in the referendum. The estimated annual cost of providing the information by an estimated 1,132 producers (1,287–155 exempt producers) would be $556.00 or $.50 per producer and for an estimated 75 importers (120–45 exempt importers) would be $37.50 or $.50 per importer.

The Secretary considered requiring eligible voters to vote in person at various USDA offices across the country. The Secretary also considered electronic voting, but the use of computers is not universal, current technology is not reliable enough to ensure that electronic ballots would be received in a readable format, and technology is insufficient at this time to provide sufficient safeguards of voters' confidentiality. Conducting the referendum from one central location by mail ballot would be more cost-effective and reliable. The Department will provide easy access to information for potential voters through a toll-free telephone line. The Department will also accept ballots sent by facsimile (fax) machine. A pilot of this method was conducted during a recent referendum for another program. A fax machine was dedicated to the receipt of ballots.

There are no federal rules that duplicate, overlap, or conflict with this rule.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. However, in order to obtain all of the data necessary for a comprehensive analysis, we invite comments concerning the potential effects of this proposed rule. In particular, we are interested in obtaining more information on the number of small entities that may incur benefits or costs from the implementation of this proposed rule and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation (5 CFR 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: November 30, 2000.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act. The burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each producer and importer.

Respondents: Producers and importers.

Estimated Number of Respondents: 1207.

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 1,208 hours.

The estimated annual cost of providing the information by an estimated 1,132 producers (1,287–155 exempt producers) would be $556.00 or $.50 per producer and for an estimated 75 importers (120–45 exempt importers) would be $37.50 or $.50 per importer.

The ballot will be added to the other information collections approved for use under OMB Number 0581–0093.

Comments are invited on: (a) Whether the proposed collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–0093, the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames specified above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

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Background

The Act authorizes the Secretary, under generic authority, to establish agricultural commodity research and promotion orders. The North American Blueberry Council, Inc. (proponent) has requested the establishment of a Blueberry Promotion, Research, and Information Order (Order) pursuant to the Act. The proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and information for fresh and processed blueberries. The program would be funded by an assessment levied on producers (to be collected by handlers) and importers (to be collected by the U.S. Customs Service at time of entry into the United States) at a rate of $12 per ton. In the proposed Order, blueberries are defined as cultivated blueberries grown in or imported into the United States of the genus Vaccinium *Corymbosum* and *Ashei*, including the northern highbush, southern highbush, and rabbit eye varieties, and excluding the lowbush (native) blueberry Vaccinium *Angustifolium*.

Assessments would be used to pay for promotion, research, and consumer information; administration, maintenance, and functioning of the U.S.A. Blueberry Council; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

Section 518 of the Act requires that a referendum be conducted among eligible blueberry producers and importers to determine whether they favor the Order. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. According to a proposed rule that is published separately in this issue of the **Federal Register**, the Order would become effective if it is approved during the initial referendum, which will be held before the program is implemented. Approval will be determined by producers and importers voting for approval who represent a majority of the volume of blueberries. Producers and importers of 2,000 pounds or more of blueberries annually will be eligible to vote.

This proposed rule establishes the procedures under which producers and importers may vote on whether they want the blueberry promotion, research, and information program to be implemented. There are approximately 1207 eligible voters.

This proposed rule would add a new subpart which would establish procedures to be used in this and future referenda.

The subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for the blueberry industry.

List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Blueberries, Consumer information, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

1. The authority citation for part 1218 continues to read as follows:

Authority: 7 U.S.C. 7401–7425.

2. Subpart B is added to proposed part 1218 to read as follows:

Subpart B—Procedure for the Conduct of Referenda in Connection with the Blueberry Promotion, Research, and Information Order

Sec.

1218.100 General.
1218.101 Definitions.
1218.102 Voting.
1218.103 Instructions.
1218.104 Subagents.
1218.105 Ballots.
1218.106 Referendum report.
1218.107 Confidential information.

Subpart B—Procedure for the Conduct of Referenda in Connection with the Blueberry Promotion, Research, and Information Order

§ 1218.100 General.

Referenda to determine whether eligible blueberry producers and importers favor the issuance, amendment, suspension, or termination of the Blueberry Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1218.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Blueberries* means cultivated blueberries grown in or imported into the United States of the genus Vaccinium *Corymbosum* and *Ashei*, including the northern highbush, southern highbush, and rabbit eye varieties, and excluding the lowbush (native) blueberry Vaccinium *Angustifolium*.

(c) *Eligible importer* means any person who imported 2,000 pounds or more of fresh or processed blueberries, that are identified by the numbers 0810.40.0028 and 0811.90.2028, respectively, in the Harmonized Tariff Schedule of the United States or any other numbers used to identify fresh and frozen blueberries. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced blueberries immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of blueberries from the U.S. Customs Service when such blueberries are entered or withdrawn for consumption in the United States.

(d) *Eligible producer* means any person who produced 2,000 pounds or more of blueberries in the United States during the representative period who:

(1) Owns, or shares the ownership and risk of loss of, the crop;

(2) Rents blueberry production facilities and equipment resulting in the ownership of all or a portion of the blueberries produced;

(3) Owns blueberry production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the blueberries produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce blueberries who share the risk of loss and receive a share of the blueberries produced. No other acquisition of legal title to blueberries shall be deemed to result in persons becoming eligible producers.

(e) *Order* means the Blueberry Promotion, Research, and Information Order.

(f) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term

"partnership" includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a blueberry farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(g) *Processed blueberries* means blueberries which have been frozen, dried, pureed, or made into juice.

(h) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(i) *Representative period* means the period designated by the Secretary.

(j) *United States* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1218.102 Voting.

(a) Each person who is an eligible producer or an eligible importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce blueberries, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail or by facsimile, as instructed by the Secretary.

§ 1218.103 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1218.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1218.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1218.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1218.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

Dated: July 16, 1999.

Robert C. Keeney, Deputy Administrator,
Fruit and Vegetable Programs

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Part VI

Department of Health and Human Services

Food and Drug Administration

Public Health Service

21 CFR Part 291
42 CFR Part 8
Narcotic Drugs in Maintenance and Detoxification Treatment of Narcotic Dependence; Repeal of Current Regulations and Proposal to Adopt New Regulations; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 291

Public Health Service

42 CFR Part 8

[Docket No. 98N–0617]

RIN 0910–AA52

Narcotic Drugs in Maintenance and Detoxification Treatment of Narcotic Dependence; Repeal of Current Regulations and Proposal to Adopt New Regulations

AGENCIES: Food and Drug Administration and Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Secretary of the Department of Health and Human Services (the Secretary) (DHHS) is proposing to revise the conditions for the use of narcotic drugs in maintenance and detoxification treatment of opioid addiction. The proposal includes the repeal of the existing narcotic treatment regulations enforced by the Food and Drug Administration (FDA), the creation of a new regulatory system based on an accreditation model under new 42 CFR part 8, and a shift in administrative responsibility and oversight from FDA to the Substance Abuse and Mental Health Services Administration (SAMHSA). This proposal follows a study by the Institute of Medicine (IOM) and reflects recommendations by the IOM and several other entities to improve narcotic addict treatment by allowing for increased clinical judgment in treatment. The proposal is also part of DHHS's Reinvention of Government review (Ref. 1).

DATES: Submit written comments on this proposal by November 19, 1999. Submit written comments on the information collection provisions by August 23, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. Submit comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503, Attn: Desk Officer for SAMHSA.

FOR FURTHER INFORMATION CONTACT:
Primary Contact: Nicholas Reuter, Center for Substance Abuse Treatment (CSAT), SAMHSA, Rockwall II, 5515 Security Lane, Rockville, MD 20857, 301–443–0457, or
Ellsworth Dory, Center for Drug Evaluation and Research (HFD–342), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7264.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The use of therapeutic narcotic drugs in the treatment of narcotic addiction has been the subject of a unique system of Federal regulation for nearly 30 years. As described as follows, one component of that system has been the enforcement by FDA of "process oriented regulations" governing the operation of "narcotic treatment programs." These regulations reflect the fact that narcotic addiction is an illness with medical and societal origins, the treatment of which must include careful professional oversight and the availability of specialized support services. The regulatory system enforced by FDA also reflects the risks of abuse and diversion that are endemic to opioid agonist therapy (Ref. 2).

The current regulations and the system for enforcing those regulations emerged at a time when narcotic maintenance treatment experience was limited and abuses among practitioners providing narcotic drug products, including methadone, to narcotic addicts were not uncommon. In addition, there was considerable diversion of methadone. Thus, the intent of the current system was to help ensure quality treatment and reduce the risks of diversion while permitting further study of the relatively unfamiliar methadone maintenance treatment modality.

Additional study and experience has demonstrated the value of narcotic maintenance therapy in reducing drug abuse, criminal behavior, and infectious disease transmission. However, the narcotic addict patient population, and the health-care system in general, have changed dramatically since the inception of the current regulations. Despite several retrospective reviews and prospective evaluations, the system has remained essentially unchanged.

For example, compliance with the current system still depends upon inspections conducted by either FDA or State inspectors, rather than by expert accrediting teams (as is typical in many other areas of health care). Second, the regulations themselves have been criticized for imposing detailed requirements on program physicians and support personnel in a manner that has been said to stifle clinical judgment, to the detriment of the patient population. Several aspects of the current regulations also appear to reflect scientific views on opioid addiction that may be considered outdated. For example, the current regulations do not address phases of treatment, with more intense and focused treatment provided to patients at earlier stages. In addition, the current regulations emphasize the suppression of abstinence symptoms in determining appropriate dosing but do not integrate newer concepts such as "blockade" in determining adequate dosing.

Third, the current regulations have been criticized as being overly "process oriented" in that they establish administrative requirements for programs but ignore the need for "effectiveness standards" (Ref. 3). It has been said that under the current system, process takes precedence over performance and that a reemphasis on clinical outcomes and controls would greatly improve the effectiveness of treatment (Ref. 4).

This proposal would repeal the existing regulatory system and substitute in its place an accreditation-based system that allows for greater administrative flexibility, fewer constraints on clinical judgment, and even more focus on the needs of patients. Among other things, the new system would increase significantly the direct participation of the medical community in the oversight of addiction treatment. Moreover, individual programs will have increased flexibility to design treatments for specific patients and communities. This is expected to increase patient compliance and adherence to therapeutic regimens which, in turn, will increase the likelihood of successful outcomes.

Part and parcel with the proposed new regulatory approach will be a shift in administrative and oversight responsibilities. FDA will refocus its efforts on assuring the safety and effectiveness of new treatment modalities and will relinquish day-to-day oversight of the treatment programs. SAMHSA will take full responsibility for carrying out the new system on behalf of the Secretary. The transfer of authority to SAMHSA, whose mission includes the goal of improving access to high quality programs for the treatment of addictive and mental disorders, reflects in part the evolution of methadone treatment from an emerging new drug therapy to a widely accepted and well understood treatment modality.

II. Background

A. Statutory and Regulatory Developments

The current system by which FDA regulates and monitors the use of narcotic drugs in the treatment of narcotic addiction began in 1970 with passage of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (the CDAPCA) (Pub. L. 91–513). Prior to the CDAPCA, FDA's control over therapeutic narcotic drugs such as methadone, in the treatment of addiction, was based on FDA's regulation of new drugs under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355).

Section 4 of Title I of the CDAPCA directed the Secretary to determine, after consultation with the Attorney General and national organizations, the appropriate methods of professional practice in the medical treatment of narcotic addiction of various classes of narcotic addicts (see 42 U.S.C. 257a). The primary intent of the legislation was to reduce "uncertainty as to the extent to which [physicians] may prescribe narcotic drugs for addiction patients" (Ref. 5). The legislation also consolidated existing Federal drug control statutes into the Controlled Substances Act (CSA) and the Controlled Substances Import and Export Act.

In 1972, FDA issued its narcotic treatment regulations based in part on the new drug provisions of the act and the CDAPCA. These regulations provided for a closed distribution system for the treatment of narcotic addiction, detailed procedures for approval of treatment programs, medical treatment standards, and procedures for revoking approval for failure to comply with the standards.

In 1974, Congress enacted the Narcotic Addict Treatment Act (the NATA) (Pub. L. 93–281) to establish the basis for increased control of narcotic addict treatment programs by the Attorney General and the Secretary. The NATA ensured that only confirmed narcotic addicts would be admitted to maintenance or detoxification treatment, that they would receive quality care, and that illicit diversions would be limited. Under the NATA, which amended the CSA (21 U.S.C. 801 *et seq.*), practitioners who dispense narcotic drugs in the treatment of narcotic-dependent persons must obtain an annual registration from the Attorney General. This authority has been delegated to the Drug Enforcement Administration (DEA). To be registered, practitioners must comply with the requirements established by DEA for secure drug storage, recordkeeping, and unsupervised use; practitioners must be qualified under the treatment standards established by the Secretary; and practitioners must comply with standards established by the Secretary regarding quantities of narcotic drugs for unsupervised "take-home" use by persons undergoing treatment (21 U.S.C. 823(g)).

In 1980, FDA and the National Institute on Drug Abuse (NIDA) jointly issued a final rule (45 FR 62694, September 19, 1980) amending FDA's narcotic treatment regulations to make them consistent with the requirements of the CSA, as amended by the NATA, and with implementing regulations issued by DEA. The amended regulations, codified at § 291.505 (21 CFR 291.505), have provided the Secretary's regulatory standards for the use of narcotic drugs in treating narcotic addiction.

The requirements of § 291.505 have represented the minimum standards for the appropriate methods of professional practice in the medical treatment of narcotic addiction with narcotic drugs such as methadone. Under the regulations, FDA approves new programs, periodically inspects existing programs, and may revoke approval of a program's application if the program fails to abide by all of the requirements set forth in § 291.505, or fails to monitor the activities of those employed in the program.

New legislation enacted in 1992 restructured much of DHHS's drug abuse services and research responsibilities. Under the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) Reorganization Act (Pub. L. 102–321), ADAMHA was restructured to transfer its substance abuse and mental health research institutes, including NIDA, to the National Institutes of Health (NIH), with SAMHSA established to support and administer programs relating to substance abuse and mental health prevention and treatment services. Part of SAMHSA's mission is to improve the provision of substance abuse treatment and "coordinate Federal policy with respect to the provision of treatment services for substance abuse utilizing anti-addiction medications, including methadone" (42 U.S.C. 290aa(d)(7)). Within SAMHSA, the Center for Substance Abuse Treatment (CSAT) has developed and issued comprehensive Treatment Improvement Protocols (TIPS) and Technical Assistance Publications (TAPS), including the publication entitled "Approval and Monitoring of Narcotic Treatment Programs: A Guide on the Roles of Federal and State Agencies and State Methadone Treatment Guidelines." CSAT has also developed guidelines on phases of treatment and guidelines on the dosing of Levo-*Alpha*-Acetyl-Methadol (LAAM), another approved opioid agonist treatment medication.

In 1993, FDA and SAMHSA revised the methadone regulations to set forth conditions for authorizing "interim methadone maintenance." The change, which implemented provisions of the ADAMHA Reorganization Act, authorizes public and nonprofit private narcotic treatment programs to provide interim maintenance treatment to patients awaiting placement in comprehensive maintenance treatment. In addition, the 1993 rule required all narcotic treatment programs to provide counseling on preventing exposure to, and preventing the transmission of, human immunodeficiency virus (HIV) disease (58 FR 495, January 6, 1993). Finally, the regulations were revised again in 1993 to establish standards for the use of LAAM in the maintenance treatment of narcotic addicts (58 FR 38704, July 20, 1993).

B. Current Oversight

FDA has enforced the existing narcotic treatment regulations (part 291 (21 CFR part 291)) by approving programs, monitoring programs through periodic inspections, and pursuing various means of obtaining compliance, including enforcement actions and proposals to revoke program approval. Approximately 900 treatment programs are approved under the regulations. The number of approved programs has not changed significantly over the years.

Periodic compliance inspections are carried out by FDA personnel, who generally have no specialized expertise in drug abuse treatment, or by State officials under contract with FDA. These inspections are primarily documentation audits, with an emphasis on appropriate recordkeeping and control of take-home doses. FDA inspectors typically focus their review on a sample of patient records to determine whether the program has

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complied with the regulations. If an inspection results in observations of possible violations, FDA has several options for bringing the program into compliance, ranging from informal meetings with the program to warning letters to proposals to revoke the program's operating approval.

The frequency with which FDA conducts routine inspections has been steadily decreasing as FDA continues to focus on its other core priorities.

C. Evaluations of the Current System

While both the patient population and the health risks associated with illicit narcotic drug abuse have changed substantially over the last 30 years, the Federal regulatory framework governing the treatment of narcotic addiction has remained relatively unchanged. Coordination among several Federal agencies through the Interagency Narcotic Treatment Policy Review Board (Ref. 6) (INTPRB) has brought about modest changes to the existing regulations. The INTPRB helped coordinate the introduction of interim methadone maintenance and led several changes that allowed increased flexibility with regard to issues such as counselor-to-patient ratios and certain reporting requirements (Ref. 7). Nevertheless, the system that remains in place today largely remains unchanged from the original regulatory system.

The existing system, for example, has been roundly criticized for its rigidity and for the constraints it imposes on clinical judgment. As an expert agency-based panel noted:

> Some regulations, although intended to foster quality care, are based on the premise that a patient's behavior can be adequately controlled through rules. This idea often conflicts with the clinician's need to establish a therapeutic alliance and conflicts with most treatment professionals' understanding that one person is fundamentally powerless to control the drug use of another (Ref. 8).

Many in the field have also expressed concern about the future of methadone maintenance treatment under managed care (Ref. 9). Since the inception of the existing regulations, the health-care system has been evolving to a managed care environment that relies on quality assurance assessments and outcome measurements, with careful matching of patient needs to particular treatment. In such an environment, the enforcement of process oriented regulations has been criticized as having "inhibited the development of patient-matching strategies [and] diverted attention from more clinically focused approaches, such as matching strategies and treatment guidelines" (Ref. 10).

Others have criticized the current enforcement process to the extent that "[m]onitoring compliance by a regulatory agency is by definition adversarial," and that inspectors are trained to find violations and not to "provide technical assistance" (Ref. 11). Even the very need for the current regulations has been questioned, with one commentator noting:

> The authorities provided to DEA by the NATA and the 1984 CSA amendments [which provided DEA with "public interest" revocation authority] themselves are sufficient to prevent the excesses, which occurred during the late 1960's, of an unregulated narcotic addiction treatment system. Thus, program registration by both the FDA and the DEA is duplicative, costly, and unnecessary (Ref. 12).

These types of concerns prompted several noteworthy assessments of the existing system, including reports by the General Accounting Office (GAO) and the IOM, and a thorough assessment of these reports and other relevant data by an interagency-work group.

1. The 1990 GAO Report

In 1990, the GAO issued a lengthy report, based on its review of 24 narcotic treatment programs, analyzing the effectiveness of the existing narcotic treatment regulations. The report focused on: (1) The extent of drug use by patients in methadone maintenance treatment programs; (2) the goals, objectives, and approaches of the treatment programs; and (3) the types of services available to patients in treatment.

The report noted a wide disparity in the quality of treatment provided among the 24 narcotic treatment programs reviewed. The GAO found that:

> * * * policies, goals, and practices varied greatly among the 24 methadone maintenance treatment programs. None of the 24 programs evaluated the effectiveness of their treatment. There are no federal treatment effectiveness standards for treatment programs. Instead, federal regulations are process oriented in that they establish administrative requirements for programs. Even with regard to these requirements, federal oversight of methadone maintenance treatment programs has been very limited since 1982 (Ref. 13).

Based on these findings, the GAO recommended that the Secretary direct FDA or NIDA, as appropriate, to: (1) Develop result-oriented performance standards for methadone maintenance treatment programs, (2) provide guidance to treatment programs regarding the type of data that must be collected to permit assessment of programs' performance, and (3) assure increased program oversight oriented toward performance standards.

In response to the GAO report, NIDA initiated the methadone treatment quality assurance system (MTQAS). The goal of the MTQAS was to develop outcome measures to compare the performance of methadone maintenance treatment programs. In 1993, NIDA developed a survey form with outcome variables adjusted for variations in case mix. For example, NIDA used retention in treatment and patient drug abuse as outcome variables for comparing the performance of individual treatment programs. Initial results from pilot tests of this system showed that performance measures, such as retention in treatment and decreased drug abuse, could in fact differentiate the quality and effectiveness of treatment.

The GAO report and the new information from MTQAS prompted the Public Health Service (PHS) to fund a comprehensive study on the Federal regulation of methadone treatment by the IOM.

2. The 1993 IOM Study

In 1993, NIDA, SAMHSA, and the Office of the Assistant Secretary for Health funded a 2-year IOM study of the current regulations, including enforcement issues, quality of treatment, and diversion.

In a report issued in 1995, the IOM concluded that the current regulations have little effect on the quality of treatment provided in clinics (Ref. 14). In particular, the report emphasized the need to balance process oriented regulations with clinical practice guidelines and quality assurance systems. The IOM found that "enforceable federal standards" are needed, not for medical reasons, but to prevent substandard or unethical practices, and to maintain community support. It recommended, therefore, that the regulations be reduced in scope to be less intrusive and to allow more clinical judgment in treatment. Clinical practice guidelines, according to the IOM, would ensure that clinical discretion is exercised in a "sound manner."

The IOM report also addressed the current system of enforcing the regulations, noting costly overlap among multiple Federal, State, and sometimes local inspections. As a result, the IOM recommended "reducing the scope of administrative control by FDA and other DHHS agencies" (Ref. 15). This reduction in scope of administrative control would follow the IOM's recommendation that:

> FDA, with SAMHSA and NIDA, conduct an extensive review of methadone enforcement policies, procedures, and practices by all health agencies of government - federal, state, and local - for the purpose of designing a single inspection format, having multiple elements, that would provide for (1) consolidated, comprehensive inspections conducted by one agency (under a delegation of federal authority, if necessary), which serves all agencies and (2) improve the efficiency of the provision of methadone services by reducing the number of inspections and consolidating their purposes (Ref. 16).

Moreover, the IOM recommended that "DHHS conduct a review of its priorities in substance abuse treatment, including methadone treatment, in a way that integrates changes in regulations and the development of practice guidelines with decisions about treatment financing." Finally, the IOM recommended that policy leadership on drug abuse treatment should be elevated to the Office of the Assistant Secretary for Health (Ref. 17).

3. The Interagency Narcotic Treatment Policy Review Board

In response to these recommendations, the Assistant Secretary for Health requested that the Interagency Narcotic Treatment Policy Review Board (INTPRB), which had been formed in the early 1970's to coordinate Federal policy regarding the use of methadone, evaluate the IOM's findings and recommendations. Membership on the INTPRB included representatives from FDA, NIDA, SAMHSA (including CSAT), the Office of the Secretary, the DEA, the Department of Veterans Affairs (VA), and the Office of National Drug Control Policy (ONDCP). Representatives from two other DHHS agencies, the Agency for Health Care Policy and Research and the Health Care Financing Administration (HCFA), were also included at various times.

After careful consideration of the IOM's work and all that preceded, the INTPRB concluded that a regulatory system centered around a core set of Federal treatment standards, in conjunction with monitoring of treatment programs through private accreditation, would be both feasible and preferable to the existing system.

First, the INTPRB reasoned that an accreditation-based system would be more consistent with the oversight approach in most other health-care fields. For example, HCFA relies on accreditation to certify approximately 7,000 hospitals that provide services to Medicare patients. In addition, under the Clinical Laboratory Improvement Act of 1988 (CLIA), private accreditation is now used as the primary basis for certifying human clinical laboratories.

Moreover, a number of narcotic treatment programs are already subject to accreditation standards and inspections. As noted in the IOM report, approximately 5 percent of the methadone maintenance patients in the United States are treated in facilities under the VA medical system (Ref. 18), all of which are subject to outside accreditation.

In addition, the INTPRB found that interest in accreditation is increasing steadily, due at least in part to its emphasis on self assessment and improvement, and on the integration of quality assurance and performance elements developed by expert accreditation organizations. The expanded use of accreditation, particularly in the substance abuse field, is reflected in the number of national accreditation bodies with standards for substance abuse treatment. The Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) and two other national accreditation bodies, the Commission on Accreditation of Rehabilitation Facilities (CARF) and the Council on Accreditation of Services for Families and Children, Inc. (COA), have significant experience in accrediting substance abuse treatment programs. CARF conducts approximately 1,000 surveys each year (Ref. 19) and more than 100 entities, including the Federal government, have accepted accreditation by CARF. COA accredits approximately 1,000 behavioral health-care programs and 3,000 social service programs annually (Ref. 20). CARF, COA, and JCAHO all have developed or expressed an interest in developing methadone treatment accreditation standards.

The INTPRB also concluded that an accreditation-based system would improve the quality of treatment by increasing the participation of the treatment community in establishing measures for determining the effectiveness and overall success of treatment programs. Some have attributed problems in the methadone treatment area to the absence of the medical profession's participation in determining the standards of care in this area (Ref. 21). Professional accreditation bodies are expected to be able to focus closely on those aspects of treatment that, if maintained at appropriate levels, will show a measurable improvement in treatment outcomes and a measurable improvement in the overall quality of the medical care. Also, because of its widespread use in health care, an accreditation-based regulatory system may also help to mainstream the medical treatment of narcotic dependence.

The INTPRB also reasoned that accreditation could significantly improve program performance, especially at poorly functioning programs, by providing much-needed advisory services that generally have been lacking under the existing system.

Importantly, the INTPRB noted that an accreditation-based system provides an opportunity to reduce the layers of inspections from Federal, State, and local regulatory entities. State authorities may choose to apply to act as accreditation bodies for programs in their jurisdiction and, if approved, would consolidate inspections and minimize burdens. Alternatively, State authorities could adopt accreditation body findings. At least one State, Ohio, accepts as documentation of a program's compliance with State standards a program's accreditation by any of the leading private accreditation bodies (Ref. 22).

Overall, the INTPRB concluded that fewer resources would be expended at the Federal level. While there would be costs to the government in monitoring accreditation bodies, assuring that accreditation body elements are appropriate, and reviewing and approving guidelines, the overall cost should be less than that of the present system. Treatment programs would be expected to absorb modest accreditation fees, but treatment quality would be greatly improved by being more closely matched to patient needs.

In addition, accreditation holds out the prospect for more efficient treatment which, in time, would allow for more treatment at a lower cost to payers. Indeed, with its similarity to HCFA's oversight of Medicare and Medicaid programs, the accreditation-based regulatory system provides the potential for a model system that unifies "financing, treatment, and the regulation of services" as envisioned by the IOM and others:

> Service providers have demanded that accrediting and regulatory bodies conduct their reviews jointly and/or at least accept all or part of each other's standards, reviews and reports as equivalent. It is a hopeful sign that in at least 23 states, the surveys of the JCAHO and of state health departments are being conducted jointly, and 17 others are considering such arrangements. These collaborations have been commended by the General Accounting Office of the U.S. Congress, as cost-containing efforts that successfully reduce some of the duplication of preparation and the overuse of scarce resources, which could better be used toward the improvement of quality of care (Ref. 70).

The INTPRB in April 1995 forwarded its recommendations to the Assistant Secretary for Health who, thereafter, solicited views from all Federal agencies with a substantial interest in therapeutic and controlled substances. After

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receiving and evaluating endorsements from other agencies, the Assistant Secretary for Health concluded that DHHS should take all necessary steps to phase out the existing regulatory approach and adopt in its place an accreditation-based system centered around a limited set of core Federal treatment standards.

In September 1995, the Assistant Secretary for Health assigned to SAMHSA responsibility for developing the new regulatory approach. Subsequently, an interagency workgroup of the INTPRB, with representatives from DHHS (including SAMHSA, FDA, and NIDA), DEA, VA, and ONDCP, was formed to develop the new system, including the development of this proposed rule.

4. NIH Consensus Development Conference

On November 17 to 19, 1997, NIDA, the NIH Office of Medical Applications Research, and the NIH Office of Research on Women's Health sponsored a consensus development conference on the effective medical treatment of heroin addiction. NIH convened this conference to present the available data on opioid agonist treatment for heroin addiction in order to address the most important and controversial issues surrounding narcotic maintenance treatment. The independent panel concluded that opioid addiction is a medical disorder and that pharmacologic agents, such as methadone and LAAM, are effective in its treatment. The panel also addressed barriers to such treatment, including the existing regulations:

> However well-intentioned the FDA's treatment regulations when written in 1972, they are no longer necessary. We recommend that these regulations be eliminated. Alternative means, such as accreditation, for improving the quality of [opioid treatment] should be instituted (Ref. 23).

5. State Licensure and Accreditation Activities

Many States have adopted requirements that are more rigorous than the FDA standards alone. These requirements most often are imposed through licensure or funding authorities. Licensure in these States often involves a costly annual inspection program. However, the degree of oversight varies enormously across and within States. For example, many States require at least annual State licensure reviews. Of these, only one State has regulations that do not include more stringent compliance requirements than the FDA standards alone. Other States, beyond initial opening requirements, rely almost exclusively on FDA and DEA oversight of methadone programs for assuring continued compliance with those standards and regulations.

FDA's model allows for more intense oversight by States, but does not require it. Thus, many of the same problems that have been identified at the Federal level have not necessarily been corrected at the State level unless specifically addressed by a given State. To raise the standard of care consistently throughout the country, standards issued and/or required at the Federal level will have to rise. Standards on which accreditation is based are generally viewed as the highest standards of care.

At least one State, Michigan, has both a licensing and an accreditation requirement. Michigan requires opioid treatment programs (OTP's) to be accredited as a condition of receiving Medicaid and block grant funds. DHHS understands that a number of private payers in Michigan also require methadone programs to be accredited in order to receive payment for services. Payers in Michigan appear to have decided that opioid treatment should be held to the standards to which health-care providers are held, and payers in Michigan generally require hospitals and clinics to be accredited as a condition of participation. In fact, a large number of private payers throughout the nation as a whole require accreditation as a means to insure that the health care meets standards of quality and appropriateness. Based on discussion with officials in Michigan, the move to accreditation for substance abuse programs has raised standards of care. Almost all OTP's in Michigan have been accredited under this system, and it has been noted that almost all of these OTP's increased the number of patients in treatment after receiving accreditation.

6. Conclusion

This notice of proposed rulemaking (NPRM) addresses the problems and potential of opioid agonist treatment which so far in the United States has been limited to methadone and LAAM treatment. The NPRM is consistent with national policy and direction regarding the role of methadone and LAAM and other opioid agonist treatments in reducing opiate addiction. Indeed, the Office of National Drug Control Policy (ONDCP), in its "Policy Paper—Opioid Agonist Treatment," highlights this proposed accreditation-based regulatory system as a key element in improving the quality of methadone treatment and expanding treatment capacity (see appendix 1). The ONDCP Policy Paper notes that in addition to a shortfall in treatment capacity, problems in the opioid agonist treatment system have long existed at two levels: (1) OTP's have not functioned with uniform high quality; and (2) Federal oversight, grounded in process-focused regulations, has not served to improve or maintain the quality of OTP's. To reduce the use of heroin and illicit opioid drugs, both of these problems must be addressed.

Methadone, the most effective treatment for chronic opioid addiction, has been used for the treatment of heroin addiction since the 1960's. It is an effective, long-acting, synthetic opioid agonist that is taken orally. Methadone blocks the craving and produces tolerance to its own analgesic effects and psychoactive effects. When used properly, at adequate doses, it also produces a physiological cross-tolerance to other opioids, rendering the patient unable to experience pharmacologic pleasure from the administration of practical doses of other opioids. Treatment with methadone requires daily dosing; LAAM blocks the effects of injected heroin for up to 3 days.

This NPRM introduces a model accreditation system for OTP's, with transfer of regulatory oversight from FDA to SAMHSA. The current, process-oriented regulatory approach, with routine inspections by HHS (FDA) staff, will be replaced by a clinically-based accreditation system, with additional oversight from SAMHSA.

D. Long Term Goals and Interim Steps

The long-term goals of this initiative are to make Federal oversight more effective, reduce the variability in the quality of opioid treatment services, and reform the treatment system to provide for expanded treatment capacity. This requires a comprehensive set of reforms including, but not limited to, the changes proposed in this document.

By incorporating accreditation into the oversight model as proposed, DHHS will be better able to identify and assist poorly functioning programs. Accreditation reviews will be conducted every 3 years by experts in the field of substance abuse treatment. Oversight will be more effective because medical experts, including addiction treatment specialists, will be conducting the onsite reviews. In addition, the onsite reviews will include a focus on treatment outcomes rather than simply measuring adherence to process-oriented standards. Importantly, the shift to an accreditation model will result in a treatment system more responsive and accountable to the public's desire to see improvement in outcomes of addiction care.

Elsewhere in this proposed rule, DHHS describes a transition plan that sets forth a timetable for moving from the existing purely regulatory system to the accreditation-based system. In addition, DHHS has taken several key steps to ensure that the eventual implementation of an accreditation-based system will be accomplished in the least disruptive manner possible. CSAT has awarded a contract to CARF in 1997 and JCAHO in 1998 for development of accreditation guidelines and to conduct accreditation surveys of a cohort of treatment programs. Technical assistance will be provided to assist programs in preparing for and working with these accreditation guidelines.

The impact of accreditation on these programs will be studied over time and the findings used to help improve the accreditation approach. SAMHSA's CSAT has developed a project to study the impacts of accreditation using both existing standards and newly developed, methadone/LAAM specific standards, in a cohort of OTP's. This assessment will also help familiarize existing treatment programs with the accreditation process as it becomes the new standard. Finally, the study will allow for the phasing in of accreditation by providing administrative feedback that can be used to adjust the implementation of accreditation in such a manner as to minimize any potential disruptive effects. The Secretary believes that this study will demonstrate that programs will be able to achieve accreditation with minimal disruption to treatment capacity.

III. Summary of Proposed Rule

The Secretary is proposing to add new part 8 under title 42 of the Code of Federal Regulations to codify the new accreditation-based system. The proposal also includes the repeal of the existing FDA-enforced narcotic treatment regulations at 21 CFR part 291, which would go into effect when the new regulations are finalized and effective. The Secretary will delegate to SAMHSA the authority to oversee the new program proposed under 42 CFR part 8.

The proposed regulations establish the procedures by which the Secretary will determine whether a practitioner is qualified under section 303(g) of the CSA (21 U.S.C. 823(g)(1)) to dispense certain therapeutic narcotic drugs in the treatment of individuals suffering from narcotic addiction. These regulations also establish the Secretary's standards regarding the appropriate quantities of narcotic drugs that may be provided for unsupervised use by individuals undergoing such treatment (21 U.S.C. 823(g)(3)). (See also 42 U.S.C. 257a.)

Under the proposed regulations, a practitioner who intends to dispense narcotic drugs in the treatment of addiction must first obtain from the Secretary or her delegated authority, SAMHSA, a certification that the practitioner is qualified under the Secretary's standards and will comply with such standards. Eligibility for certification will depend upon the practitioner obtaining accreditation from a private nonprofit entity, or from a State agency, that has been approved by SAMHSA to accredit narcotic treatment programs.

The proposed new regulations are divided into three parts, subpart A, subpart B, and subpart C. Subpart A addresses accreditation that includes, at proposed § 8.3, the sequence of events that accreditation bodies will follow to achieve approval to accredit OTP's under the new system. It also establishes in proposed § 8.4 the accreditation bodies' responsibilities, including the use of accreditation elements during accreditation surveys. Subpart B of part 8 sets forth the sequence and requirement for obtaining certification. This section addresses how and when programs must apply for initial certification and renewal of their certification. DHHS's opioid treatment standards are included in this section and are segregated for a separate detailed discussion because of their importance. Subpart C of part 8 establishes the procedures for review of either withdrawal of approval of the accreditation body or the suspension or proposed revocation of an OTP certification. This section addresses procedural and informational requirements in the event of a challenge to a SAMHSA determination.

A. Subpart A—Accreditation

Subpart A of part 8 would establish the procedures whereby an entity can apply to SAMHSA to become an approved accreditation body. This part also establishes "accreditation body responsibilities" and general standards for accreditation bodies to ensure that practitioners are consistently evaluated for compliance with the Secretary's standards for opioid treatment.

1. Definitions and Related Requirements

Section 8.2 in subpart A defines a number of key terms for purposes of applying 42 CFR part 8. Most of these proposed definitions are identical or similar to those set forth under the existing regulations at § 291.505(a). Several, however, are unique to the new accreditation-based system and require brief mention.

For example, the Secretary is proposing to define the term "accreditation body" to mean a body that has been approved by SAMHSA under proposed § 8.3 to accredit OTP's. Under proposed § 8.3(a), private nonprofit organizations as well as State governmental entities, including a political subdivision of a State (such as a county) may apply to serve as an accreditation body. The Secretary believes that allowing States to serve as accreditation bodies may also help expedite the transition of previously approved programs to the new system.

It should be noted, however, that the Secretary is proposing in § 8.3 to limit eligibility to those applicants (including States and political subdivisions of a State) who demonstrate that they will be able to accredit at least 50 OTP's per year. The Secretary believes that this requirement is needed to ensure the quality of the accreditation services performed by accreditation bodies and to minimize the variability in the standards used by accrediting organizations. The Secretary is interested in comments on this restriction and may revisit this requirement after the first 3 years.

Under the proposal, prospective accreditation bodies will be required to develop and submit as part of an application for approval, "accreditation elements". These elements, which are defined in proposed § 8.2, are the elements that the accreditation body will apply during "accreditation surveys" as the basis or benchmark for determining whether a treatment program should receive accreditation. The accreditation elements are expected at a minimum to incorporate the "Federal opioid treatment standards" issued by the Secretary in proposed § 8.12, albeit with much greater detail. One focus of SAMHSA's oversight of the accreditation system will be the development and publication of up-to-date treatment guidelines to assist accreditation bodies in developing accreditation elements. It is also expected that an essential part of the accreditation elements will be clinical outcome and performance measures. Again, SAMHSA expects to issue detailed guidance on the development of such measures.

As mentioned previously, accreditation bodies will base their accreditation decisions on experience gained during onsite "surveys," as defined in proposed § 8.2. The accreditation body's policies and procedures for conducting surveys will

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be a major focus of the application process under proposed § 8.3. The Secretary expects these accreditation body surveys to, in large measure, take the place of onsite inspections by DHHS investigators as the primary means of monitoring the operations of OTP's. Nevertheless, it is important to note that the Secretary has retained the right to conduct inspections of programs, including "for-cause inspections," as defined in proposed § 8.2. A "certified opioid treatment program," as defined in proposed § 8.2(i), is an organization that administers or dispenses "opioid agonist treatment medications" (see proposed § 8.2(t)) for maintenance or detoxification treatment of opioid addiction, and that is the subject of a current certification issued by SAMHSA under proposed § 8.11. As discussed below, to obtain certification from SAMHSA, under proposed § 8.11, a treatment program must, at a minimum, "be the subject of a current, valid accreditation by an accreditation body approved by SAMHSA * * *." Certification will be granted for a period not to exceed 3 years and will serve as the final determination by the Secretary that the program is "qualified," as that term is used under section 303(g) of the CSA (21 U.S.C. 823(g)).

It is important to note that the proposed definition of a "certified opioid treatment program" includes individual practitioners, such as private physicians. Although the term "practitioners" was used in the NATA, historically there have been few individual practitioners who have applied to dispense methadone or LAAM under the existing regulations. The Secretary is aware, however, that there is considerable interest in the issue of physicians in private or group practices providing opioid treatment outside the traditional OTP setting.

The intent of this proposal is to develop a process for certifying qualified providers to dispense opioid drugs in the treatment of opioid addiction. Ideally, the proposed process would be sufficiently flexible to allow individual practitioners themselves to provide such services. Admittedly, the proposed Federal opioid treatment standards in some instances may not be well suited to office-based treatment. The Secretary therefore is specifically seeking comment on how the Federal opioid treatment standards might be modified to accommodate office-based treatment and on whether a separate set of Federal opioid treatment standards should be included in this rule for office-based treatment.

The proposal also retains the concept of "medication units," as defined in proposed § 8.2(s). A "medication unit" is a facility established as part of, but geographically dispersed from, the central location of an OTP. Licensed private practitioners and community pharmacists are permitted to administer and dispense opioid drugs from medication units without seeking a separate accreditation or a separate certification from SAMHSA. (Medication units, however, may require separate registration from DEA under section 303(g) of the CSA and 21 CFR part 1300.) These units are also authorized to collect samples for drug testing or analysis for narcotic drugs. Medication units can serve to decrease the burden of patients who must travel considerable distances to obtain medication. SAMHSA must be notified before a medication unit can begin to provide opioid treatment medications to patients.

Finally, the Secretary has proposed as a definition of the term "opioid addiction," in proposed § 8.2(u), a condition in which an individual exhibits a compulsive craving for, or compulsively uses, opioid drugs despite being harmed or causing harm as a result of such craving or use. This definition reflects the idea that an individual suffering from opioid addiction may not exhibit concurrent physical dependence on opioids, as evidenced by the onset of signs of withdrawal upon administration of an opioid antagonist or following the last dose of an opioid drug.

2. Accreditation Body Approval and Related Requirements

Proposed § 8.3 outlines the process for applying to SAMHSA to become an approved accreditation body. The initial accreditation application shall include the name, address, and telephone number of the applicant and a responsible official for the application signed by the responsible official. The application also requires evidence of the nonprofit status of the applicant if the applicant is not a State governmental entity or political subdivision. The application must also include evidence that the applicant will be able to survey no less than 50 OTP's annually.

This section also requires that the application include a set of accreditation elements and a detailed discussion showing how the elements will ensure that each OTP surveyed by the applicant is qualified to meet or is meeting each of the Federal opioid treatment standards set forth in proposed § 8.12. An accreditation body must also include a detailed description of its decisionmaking process. The process shall include procedures for initiating and performing onsite accreditation surveys of OTP's and the procedures for assessing OTP personnel qualifications.

The accreditation body must submit copies of the application used for accreditation, along with guidelines, instructions, and other materials to be sent to OTP's during the accreditation process. This includes a request for a complete history of prior accreditation activities and a statement that all information and data submitted in the application for accreditation are true and accurate, and that no material fact has been omitted. Applicant accreditation bodies must also submit the policies and procedures for notifying OTP's and SAMHSA of deficiencies and for monitoring corrections of deficiencies by OTP's and policies and procedures for suspending or revoking an OTP's accreditation. The application shall include the policies and procedures that ensure processing of applications for accreditation and applications for renewal of accreditation within a timeframe approved by SAMHSA. Accreditation bodies must submit a description of the applicant's appeals process to allow OTP's to contest adverse accreditation decisions.

The application also must include a description of the policies and procedures established by the accreditation body to avoid conflicts of interest or the appearance of conflicts of interest by the applicant's board members, commissioners, professional personnel, consultants, administrative personnel, and other representatives. In addition, the applicant must submit a description of the education, experience, and training requirements of the applicant's professional staff, accreditation survey team membership and the identification of at least one licensed physician on the applicant's staff and a description of the applicant's training policies. The application must include fee schedules, with supporting cost data. Applicant accreditation bodies must provide satisfactory assurances that the body will comply with the requirements of proposed § 8.4, including a contingency plan for investigating complaints under proposed § 8.4(e). Finally the application must include policies and procedures established to protect confidential information the applicant will collect or receive in its role as an accreditation body and any other information SAMHSA may require.

Proposed § 8.4 sets forth accreditation body responsibilities. Accreditation bodies will be responsible for conducting accreditation surveys and to take actions based upon the results of these surveys. In addition, the accreditation body will have to keep certain records and submit periodic reports. Under proposed § 8.5, SAMHSA will periodically evaluate the performance of accreditation bodies by inspecting a sample of OTP's that have been surveyed by the accreditation body and determining whether there are deficiencies that would warrant the withdrawal of the approval of the accreditation body under proposed § 8.6. Proposed § 8.6 establishes the actions and procedures that SAMSHA will take if it determines that an accreditation body is not complying with the requirements in this rule. This section describes contingencies for major and minor accreditation body deficiencies, including probationary status and reinstatement. Finally, proposed § 8.6, provides an opportunity for accreditation bodies to challenge an adverse finding by requesting a hearing. Proposed §§ 8.7 through 8.10 are reserved.

These provisions were developed after consulting other Federal agencies, including the VA and the HCFA, and after reviewing existing accreditation systems. DHHS has also carefully reviewed existing certification-accreditation oversight systems, including FDA's mammography regulatory system. As such, DHHS believes that these provisions are reasonable and reflect what has become a standard approach for ensuring the quality of health-care practices. Similarly, it is customary for oversight agencies to validate the performance of accreditation bodies through periodic direct inspections of establishments that have or have not received full accreditation. DHHS believes that validation inspections are a reasonable and efficient mechanism for ensuring that approved accreditation bodies are carrying out their responsibilities.

a. Patient confidentiality. The patient records maintained by OTP's are subject to the confidentiality protections of State and Federal laws. With respect to patient confidentiality, section 543 of the PHS Act (42 U.S.C. 290dd–1) and its implementing regulations, 42 CFR part 2, are fully applicable to OTP's. OTP's are "programs" as defined by 42 CFR 2.11 and are "federally-assisted" as defined by 42 CFR 2.12(b)(2). Under these regulations, the treatment programs are prohibited from disclosing patient identifying information except in certain prescribed circumstances such as under patient consent, for purposes of research, audit or evaluation, or under a court order consistent with subpart E of 42 CFR part 2.

The regulations at 42 CFR part 2 would permit programs to disclose patient records to accreditation bodies under the audit and evaluation exception at 42 CFR 2.53. To the extent that the accreditation body needs to copy records containing patient identifying information, it must agree in writing to: (1) Maintain the patient identifying information in accordance with the security requirements provided in 42 CFR 2.16 of the regulations, (2) destroy all patient identifying information upon completion of the audit or evaluation, and (3) comply with the limitations on redisclosure of 42 CFR 2.53(d).

b. Prevention of conflicts of interest. With respect to conflicts of interest, the Secretary is proposing that accreditation bodies must submit to SAMHSA, as part of an application for approval under proposed § 8.3(b)(6), the policies and procedures maintained by the accreditation body to ensure that the body remains impartial and free of commercial, financial, and other pressures that might present an actual or apparent conflict. Although it is not possible to state categorically all of the criteria for assessing whether an accreditation body will be free of conflicts, the most common condition that would indicate a potential conflict would be one in which any member of the accreditation team (or an immediate family relative) has a financial interest of any type, direct or indirect, in the treatment program to which the team is assigned. Likewise, it may be appropriate that anyone employed by the accreditation body who is involved in any respect in the accreditation decision for a particular program must be free of a financial interest in the program. DHHS seeks comments on the types of financial conflicts that should be prohibited, or on the amount of financial interest that may be considered *de minimus* such that it would not rise to a conflict of interest. Fees charged to programs must in no way be made contingent, in whole or in part, on a particular accreditation decision or outcome.

B. Subpart B—Certification and Treatment Standards

Subpart B of part 8 proposes the process by which OTP's may obtain certification from SAMHSA, the conditions necessary for remaining certified, and the process by which SAMHSA may suspend or revoke certification. In addition, subpart B of part 8 proposes the Secretary's Federal opioid treatment standards.

1. OTP Certification

Under proposed § 8.11, treatment programs must obtain certification from SAMHSA for the program to be considered "qualified" by the Secretary under 21 U.S.C. 823(g). Certification will be for a term not to exceed 3 years but may be extended as necessary, with permission from SAMHSA, to accommodate accreditation cycles.

A program must obtain a current, valid accreditation from a SAMHSA approved accreditation body in order to be considered eligible for certification. Although SAMHSA expects that most programs that obtain accreditation will, as a matter of course, obtain certification, there are circumstances in which SAMHSA could deny certification to an accredited program. Under proposed § 8.11(c)(2), SAMHSA may deny certification if a program's application for certification (see proposed § 8.11(b)) is deficient in any respect; if SAMHSA independently determines that the program will not be operated in accordance with the Federal opioid treatment standards; if the program has improperly denied access to the facilities or to its records; or if it is determined that the program has in any respect made misrepresentations or omitted material facts in the course of obtaining accreditation or applying for certification. Although it is expected that a denial of certification for a program that has obtained accreditation would be a rare occurrence, the Secretary nevertheless has retained the authority to deny certification. Likewise, the Secretary has retained the authority to independently certify a program that has not obtained accreditation. Again, this authority would be used only in rare circumstances.

Proposed § 8.11(d) provides for "transitional certification" during the period when the former regulations at part 291 will have been repealed and the new accreditation based regulations, under 42 CFR part 8, are just beginning to be implemented. The intent of these provisions is to allow programs that were approved under the old regulations to remain in operation for a reasonable period of time so that there is sufficient time for: (1) SAMHSA to approve one or more accreditation bodies, (2) programs to apply for and obtain accreditation from one of the approved accreditation bodies, and (3) SAMHSA to make certification decisions based on the outcome of the accreditation process.

First, OTP's that have not obtained certification from SAMHSA, but are the subject of a current approval by FDA

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under part 291 as of the effective date of the regulation will be granted "transitional certification" for a period of 90 days after the effective date of the final rule. Under the proposal, programs that are granted transitional certification must apply to SAMHSA during this 90-day period to extend their transitional certification for up to 2 years from the effective date of the regulation. To extend transitional certification, an OTP must submit the information that would be required in a new application for certification (proposed § 8.11(b)). In addition, the program must include a statement certifying that the OTP will apply for accreditation from a SAMHSA approved accrediting body within 90 days from the date SAMHSA approves the first accreditation body under proposed § 8.3. SAMHSA intends to announce the approval of accreditation bodies in the **Federal Register** and through other media. In addition, if a program has applied for accreditation but the accreditation body is unable to complete its survey prior to 2 years from the effective date of this regulation, SAMHSA may extend a program's transitional certification for up to 1-additional year.

It should be noted that the Secretary is proposing that treatment programs will be subject to the requirements of these rules upon the effective date. SAMHSA will be overseeing the regulations and will be monitoring programs during the 90-day application period as well as subsequently in accordance with the regulations. It is expected that 3 years will be sufficient time for all OTP's to become accredited, although the Secretary would expect that most programs will be accredited within 2 years.

Proposed § 8.11 also provides a mechanism to allow for "provisional certification" when a program is diligently pursuing accreditation. Under § 8.11(e), OTP's that have not previously obtained certification from SAMHSA, but have applied for accreditation with an accreditation body, are eligible to receive a provisional certification for up to 1 year. To receive a provisional certification for up to 1 year, an OTP must submit the information set out in § 8.11(b) to SAMHSA along with a statement identifying the accreditation body to which the OTP has applied for accreditation, the date on which the OTP applied for accreditation, the dates of any accreditation surveys that have taken place or are expected to take place, and the expected schedule for completing the accreditation process. A provisional certification for up to 1 year will be granted, following receipt of the information described in this paragraph, unless SAMHSA determines that patient health would be adversely affected by the granting of provisional certification.

An extension of provisional certification may be granted in extraordinary circumstances or otherwise to protect public health. To apply for a 90-day extension of provisional certification, an OTP must submit to SAMHSA a statement explaining the program's efforts to obtain accreditation and a schedule for obtaining accreditation as expeditiously as possible.

Proposed § 8.11 also addresses the use of opioid treatment medications in patients hospitalized or admitted to long-term care facilities for treatment of a medical condition other than opioid addiction. Under proposed § 8.11(a)(4), the Secretary will not require such facilities to seek certification in order to provide maintenance or detoxification treatment to a patient who has been admitted for medical conditions other than addiction or if the patient is already enrolled in a certified OTP and such enrollment has been verified. The terms "hospital" and "long-term care facility" are determined according to the law of the State in which the facility is located. This provision is not intended to relieve hospitals and long-term care facilities from their obligations for registration under section 303(g) of the CSA and under regulations issued by DEA (see 21 CFR 1306.07(c)).

Under DEA's regulations, DEA requires (and will continue to require) registration of such facilities if approved controlled substances are dispensed or administered from a location, such as a long-term care facility, even though the controlled substances are not stored overnight. Further, if an OTP patient is admitted to a hospital for anything other than addiction, the hospital can administer or dispense a narcotic drug to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment during the term of the stay in the hospital. However, because long-term care facilities are not considered hospitals by DEA, patients in long-term care facilities cannot currently receive methadone as an adjunct to medical or surgical treatment of conditions other than addiction unless the facility is registered with the DEA. However, if the individual was formerly a patient in an OTP, the OTP may transfer the opioid medication (i.e., methadone or LAAM) to the long-term care facility under a delivery protocol which complies with State and Federal regulations.

Section 8.11(f) proposes the general conditions of certification. First, under the proposal, OTP's must agree to comply with all applicable State laws and regulations. The Secretary, however, will not require State approval of a program as a condition precedent to obtaining certification under proposed § 8.11(c). DEA regulations will continue to require State approval before issuing a DEA registration.

As provided in the CSA, the Secretary's role in the oversight of narcotic treatment is to set standards for the appropriate use of narcotic drugs in the treatment of addiction, and then to ensure compliance with those standards. The States, on the other hand, have a broader set of responsibilities, including regional and local considerations such as the number and distribution of treatment facilities, the structural safety of each facility, and issues relating to the types of treatment that should be available. For example, under the ADAMHA Reorganization Act of 1992, the Chief Public Health Officer within a State must certify that interim methadone maintenance will not "reduce the capacity of comprehensive programs" within the State. In addition, some States consider the proximity of other treatment programs in deciding whether to approve a treatment program, or the number of treatment programs currently operating in the State (Refs. 25 and 26). And, at least one State limits methadone treatment to nonprofit programs (Ref. 27).

Nothing in this part is intended to restrict State governments from regulating the use of opioid drugs in the treatment of opioid addiction. Importantly, there will still be extensive cooperation between SAMHSA and relevant State authorities. However, in determining whether an OTP that is applying for certification satisfies the requirements of section 303(g) of the CSA (21 U.S.C. 823(g)), the Secretary will not require that the program first obtain approval from a relevant State authority.

Second, treatment programs must agree to allow SAMHSA, DEA officials, relevant State officials, and authorized accreditation bodies access to conduct surveys and inspections (including unannounced inspections), and full access to patient records. Failure to allow such access will be grounds for denial of certification or, in the case of a certified facility, suspension or revocation of certification under proposed § 8.14(a)(4). Note also that SAMHSA will continue to conduct inspections of OTP's to validate the performance of accreditation bodies, in instances where accreditation is determined to be inadequate and otherwise as needed to ensure that all treatment programs are operating in a manner consistent with the Federal opioid treatment standards.

Third, the proposal retains under § 8.11(g) the provisions and requirements for authorizing interim methadone maintenance program approval. These provisions were mandated by the ADAMHA Reorganization Act of 1992 and remain in effect. Under proposed § 8.12(e), SAMHSA will process requests for interim maintenance approval.

The proposal retains, under § 8.11(h), a provision that allows an OTP to request from SAMHSA an exemption from the regulatory requirements set forth under proposed §§ 8.11 and 8.12. An example of a case in which an exemption might be granted would be for a private practitioner seeking to treat a limited number of patients in an area with few physicians and no geographically accessible rehabilitative services. In such an instance, SAMHSA would consider a request for an exemption from certain of the staff credential or required services standards, as well as an exemption from the requirement to be accredited. Another example would be an exemption that might be granted to a State sponsored pilot program which uses innovative dose schedules or dispensing practices for an already approved opioid agonist treatment medication.

Finally, the proposal requires as a condition of continued certification that programs must notify SAMHSA within 3 weeks regarding any change in the status of the program sponsor, such as a corporate reorganization, or a change in the status of the medical director, such as the retirement or termination of the individual in that role.

2. Federal Opioid Treatment Standards

Proposed § 8.12 proposes the Secretary's "Federal opioid treatment standards" as enforceable regulatory requirements that treatment programs must follow as a condition of certification. The requirements, which are discussed in greater detail as follows, address the opioid drug products approved for use in certified OTP's, dosage form limitations, the requirements necessary to assure that medications dispensed for unsupervised or "take-home" use do not present inappropriate risks for diversion, the minimum program staffing requirements and staff responsibilities, admission and enrollment requirements, and required services. These standards will form the outline for, and will inform the development of, each accreditation body's approved accreditation elements.

Proposed §§ 8.13 and 8.14 address the process that SAMHSA will follow in suspending or revoking certification under these regulations. The proposal includes timeframes for notifying DEA when a treatment program's registration should be suspended or revoked. In addition, these sections address the contingencies when an accreditation body itself revokes a program's accreditation, or when an accreditation body's approval to perform accreditations is revoked.

Proposed § 8.14(b) provides the circumstances under which SAMHSA will suspend a treatment program's certification. If SAMHSA finds substantial evidence of an imminent hazard to health, SAMHSA will suspend certification and notify DEA to suspend registration under 21 U.S.C. 824(d). Substantial evidence of imminent hazard could include evidence that treatment program practices are leading to unacceptable levels of diversion or other practices that create an unacceptable level of risk to the safety of patients or the community.

The procedures set forth in this proposal for revoking or suspending certification of treatment programs are similar to the existing procedures for withdrawing approval under § 291.505(h). Notice and an opportunity for an informal review and hearing will be provided prior to revocation, in accordance with proposed subpart C (discussed as follows). An expedited process is also included for seeking review of decisions to immediately suspend certification.

It should be noted that DEA also has a process for review when a registration is revoked or suspended consistent with the requirements of 21 U.S.C. 824(c). (See part 1301 (21 CFR part 1301).) Although the procedures for review of a suspension or revocation set forth in this notice are being proposed at this time, DHHS intends to work with DEA to ensure that only a single hearing occurs when a program's certification is suspended or revoked under the DHHS regulations, so as not to duplicate effort. Specifically, it may be decided, as part of the final rule, that DEA should have the lead in conducting the hearing, in which case the regulations at part 1301 would apply rather than the hearing process in subpart C of part 8 of the proposed rule. Alternatively, it may be decided that the hearing process in subpart C of part 8 will be retained in the final rule, but that SAMHSA would request the DEA hearing official to defer to the decision of the Secretary with respect to determinations made under 21 U.S.C. 823(g)(1) and (g)(3). At this time, however, the Secretary is proposing a separate hearing process and is seeking comment on the proposed process.

The final provision in subpart B (proposed 42 CFR 8.15) proposes two new application forms: SMA–162, Application for Certification for Use of Opioid Drugs in a Treatment Program; and SMA–163, Application for Becoming an Accreditation Body under proposed 42 CFR 8.3. SAMHSA is in the process of obtaining OMB review for these new forms.

SMA–162, Application for Certification to Use Opioid Drugs in a Treatment Program, will closely track the existing application form for FDA approved treatment programs. The applicant will have to provide the name of the program (or primary dispensing location), the address of the primary dispensing location, the name and address of the program sponsor, along with appropriate telephone numbers. In addition, the form requires the submitter to provide estimates of the number of patients to be treated and the program funding source, along with descriptions of the organizational structure of the program. The new form will retain the language on establishing a patient record system, and maintaining patient records for at least 3 years. The proposed SAMHSA form would require information on the program's accreditation status as required by proposed § 8.11(a)(2).

Under the existing regulation, a treatment program is required to complete and submit a new form when there is a change in location of the treatment program, or a change in program sponsor. SAMHSA is retaining this reporting requirement. In addition, a treatment program must submit a new form before establishing a medication unit.

Under the proposal, Form FDA–2635, Consent to Treatment with an Approved Narcotic Drug, would be eliminated. Current regulations require that the person responsible for the program must ensure that the patient has voluntarily chosen to participate in treatment; that all relevant facts concerning the use of the opioid drug are clearly and adequately explained; and that the patient, with full knowledge and understanding of its contents, signs the consent form. A specific consent to treatment form was considered necessary when methadone maintenance treatment was a relatively unfamiliar treatment modality in the early 1970's. Indeed, Form FDA–2635 reflected the idea that methadone is a drug that FDA had identified under 21 CFR 310.303 as one for which

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additional long-term studies were needed. FDA, however, has removed that designation for methadone (61 FR 29476, June 11, 1996). While patients should continue to be counseled on the risks of opioid agonist maintenance therapy and provide written consent to treatment, and accreditation bodies should include elements to assure such counseling, the Secretary has tentatively concluded that a Federally mandated consent-to-treatment form is no longer necessary.

Form FDA–2633, Medical Responsibility Statement for Use of Narcotic Drugs in a Treatment Program, would also be discontinued. This form predates the NATA, and was first announced in the initial 1972 regulation (Ref. 28). According to a Paperwork Reduction Act analysis published in 1998 (Ref. 29), FDA estimated that 275 of these forms are submitted annually, requiring a total of 70 hours to complete. The form must be signed by all program physicians who, in turn, agree to assume responsibility for dispensing and administering opioid substances and agree to abide by the standards set forth in the regulations. In addition, program physicians agree to adhere to the patient confidentiality requirements of 42 CFR part 2. Finally, the form requires that those program physicians who are also medical directors will assume responsibility for administering medical services and for ensuring compliance with all applicable Federal, State, and local laws. While the Secretary is proposing to retain these requirements for program physicians and medical directors, as part of the Federal opioid treatment standards and as a condition for continued certification, the requirement that a form be submitted is no longer considered necessary in order to ensure compliance.

The Secretary is also proposing to eliminate the requirement for separate forms for maintenance treatment and detoxification treatment (see FDA–2636 Hospital Request for Methadone Detoxification Treatment). Under the proposed rule, entities providing either maintenance or detoxification treatment must conform to the same core Federal opioid treatment standards. One qualification, however, is that a hospital-based detoxification program would not be required to obtain a separate accreditation if the hospital itself is accredited by a SAMHSA approved accreditation body and certified by SAMHSA.

C. Subpart C—Procedures for Review of Denial, Suspension, or Revocation of Certification

Subpart C of proposed part 8 sets forth procedures for programs to seek review of denials, suspensions, or revocations of certification. The subpart C procedures are also available to accreditation bodies who are denied approval or whose approval has been revoked by SAMHSA.

The proposed procedures will ensure that programs will be given adequate notice of adverse actions, ample opportunity to submit written information, and an opportunity to request an oral hearing. The procedural framework follows the procedures applied by SAMHSA's Division of Workplace Programs under the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (59 FR 29908, June 9, 1994).

IV. Federal Opioid Treatment Standards

A. General

Proposed § 8.12 sets forth the Secretary's Federal opioid treatment standards. These standards represent the Secretary's core requirements for the medical treatment of opioid addiction with opioid agonist treatment medications. Taken together, the Secretary's standards outline the essential framework of a state-of-the-art addiction treatment program, with additional details to be supplied through Federal guidelines under development by SAMHSA and by accreditation elements to be developed by expert accreditation bodies.

The Secretary's proposed standards also reflect the minimal requirements necessary to reduce the risk of diversion of opioid treatment drugs. Among other things, the Secretary has set forth specific quantities of opioid drugs to be used for unsupervised "take home" use and certain other constraints on take-home use.

On the whole, these standards carefully balance the need for enforceable requirements, including clear standards to minimize the risk of diversion, against the pressing need to increase the clinical discretion and judgment in opioid addiction treatment. In addition, these standards reflect many of the elements that the IOM identified as necessary to prevent "substandard treatment."

B. Administrative and Organizational Structure

Section 8.12(b) proposes to require that an OTP's organizational structure must be adequate to ensure patient care. At a minimum, there must be a program sponsor who agrees to adhere to regulatory requirements. In addition, the Secretary believes it is essential, as with other medical treatments, that physicians oversee the medical aspects of treatment. Therefore, all OTP's must have a designated medical director.

C. Continuous Quality Improvement

Proposed § 8.12(c) requires that OTP's have a quality assurance plan and pursue continuous quality improvement activities. Importantly, treatment programs must continuously assess patient outcomes. Consistent with the findings from the GAO report, programs will be required to assess and improve the quality of the treatment they provide. In addition, as discussed elsewhere in this document, considerable advancements have been made in the field of methadone treatment outcome assessment. (*See* section II.C. of this document, discussion of MTQAS.) Examples of possible outcomes include: Reducing or eliminating illicit drug use, reducing or eliminating associated criminal activities, reducing behaviors contributing to the spread of infectious diseases, and improving quality of life by restoration of physical and mental health status.

The Secretary also proposes, under § 8.12(c)(2), that treatment programs include a "Diversion Control Plan" as part of the quality assurance plan. As noted elsewhere in this proposal, the IOM devoted an entire chapter to the issue of the diversion of treatment medications, an issue that remains a serious concern. While existing regulations require programs to monitor patients with drug abuse tests, and to include contingencies for positive results, the Secretary believes that program specific diversion control plans will help to reduce the scope and significance of diversion. Such plans would describe, among other things, a comprehensive diversion monitoring program that assigns specific responsibility to medical and administrative staff for carrying out diversion control measures and functions.

D. Staff Credentials

Proposed § 8.12(d) requires that physicians, nurses, addiction counselors, and other licensed professionals have sufficient education, training, and experience to enable them to perform assigned functions. While the standard does not require that treatment programs retain on staff individuals credentialed in the addiction treatment field, the Secretary notes the existence of such specialties and encourages treatment programs to maintain or employ sufficient expertise in the field of addiction treatment to ensure quality treatment. In addition, licensed professional care providers, including addictions counselors, must comply with the credentialing requirements of their respective professions.

E. Patient Admission Criteria

The proposal retains most of the criteria from the existing regulation for admitting patients to maintenance and detoxification treatment. Under these criteria, patients eligible for admission to detoxification treatment (the IOM used the term "Medically Supervised Withdrawal") must be physiologically dependent upon opioids. In addition, qualified personnel must use accepted medical criteria, including those listed in the *Diagnostic and Statistical Manual for Mental Disorders* (DSM–IV), to determine that patients eligible for maintenance treatment are currently addicted to an opioid drug and became addicted at least 1 year before admission to treatment. The regulation retains exceptions for pregnant patients, patients released from penal institutions, and previously treated patients.

The current criteria require a 7 day waiting period between each detoxification treatment admission. The rationale for this requirement seems to have been a concern that overlapping detoxification admissions could lead to *de facto* maintenance treatment, albeit without the comprehensive treatment requirements associated with maintenance treatment. The Secretary has now tentatively concluded that 7 days is more time than is needed for this purpose, and may unnecessarily expose addicts to increased risks from HIV and other infectious diseases. The Secretary seeks comments on a shorter period, perhaps 2 days, as a waiting period between detoxification admissions.

F. Required Services

Under proposed § 8.12(f), OTP's must provide adequate medical, counseling, vocational, educational, and assessment services to patients enrolled in the OTP. These services were identified in the IOM report and elsewhere as essential standards of adequate treatment. The proposal retains the provision that these services must be available at the primary facility, unless the program sponsor has entered into a formal agreement with another entity to provide these services. Further, the proposal retains the requirement for the development and periodic evaluation of a treatment plan for each patient that reflects an assessment of the patient's current needs.

While the medication (methadone or LAAM) itself is an essential element of this modality of treatment, most patients also require a variety of other services to obtain the best and most expeditious outcomes. Since their inception, the existing regulations have reflected the need to provide services to patients in addition to the treatment medications. Indeed, the IOM report recommended that certain services should be retained as an enforceable requirement. This proposal specifies such services in the opioid treatment standards. In the past, DHHS has attempted to write all facets of these required services into regulation. It is now accepted, however, that: (1) Different patients, at different times, may need vastly different services, and (2) the state of the clinical art has changed, to reflect scientific developments and clinical experience, and is likely to continue to change and evolve as treatment methods improve.

Through this rulemaking, DHHS is proposing a more flexible, performance-based approach. With guidance from SAMHSA, the accreditation bodies will develop the elements needed to determine whether a given OTP is meeting patient needs for required services. SAMHSA will review these elements as part of the accreditation body's application to ensure that accreditation bodies have incorporated the Federal opioid treatment standards into their accreditation elements. SAMHSA will also review accreditation body elements to ensure that the elements do not exceed Federal expectations.

G. Recordkeeping and Patient Confidentiality

Under proposed § 8.12(g), OTP's must maintain a patient record system that is adequate to document and monitor patient care and outcomes, and comply with relevant Federal and State requirements. In addition, OTP's are required to keep patient records confidential in accordance with applicable Federal and State requirements.

Although difficult to quantify, there have been cases of patients enrolling in more than one treatment program. The Secretary, therefore, is retaining the requirement that treatment programs determine that patients upon admission are not enrolled in any other OTP.

H. Medication Administration, Dispensing, and Use

The proposal retains requirements from the existing regulations that treatment medications are dispensed by practitioners licensed under all applicable Federal and State laws to dispense such medications. In addition, the proposal retains initial and first day dose requirements for methadone which are consistent with the IOM recommendations.

Proposed § 8.12(h)(2) includes the requirement that only medications approved by FDA for the treatment of opioid dependence or addiction shall be available for use by OTP's in treating these conditions. Currently, methadone and LAAM are listed in this section. If FDA approves a new opioid medication for the treatment of opioid dependence, the Secretary would amend this regulation to address the new medication. This section is not intended to preclude the use of other types of medications in treating the patient for medical conditions other than opioid addiction. Similarly, this section is not intended to preclude the use of ancillary, approved nonnarcotic medications for the treatment of the opioid addiction to improve the effectiveness of the addiction treatment.

Moreover, approved medications must be used in accordance with current, FDA-approved labeling. Deviations from the approved labeling must be approved by the program physician and justified in the patient's medical records.

The proposed regulations do not include the specific requirements set forth in the existing regulations at § 291.505(k)(1) for the use of LAAM. These requirements include provisions on initial dosing with LAAM, LAAM dosage form, distinguishing LAAM and methadone dosage forms, and prohibiting the unsupervised (take-home) use of LAAM. In addition, the regulations prohibit the use of LAAM in patients under 18 years of age and require initial and periodic pregnancy testing for the drug to be administered to patients of childbearing potential.

The Secretary is proposing to withdraw these LAAM specific requirements from the Federal opioid treatment standards, to allow more room for clinical judgment. Some of these changes reflect the experience gained from over 4-years experience with the use of LAAM in OTP's. Requirements relating to the unsupervised use of LAAM are discussed as follows.

The Secretary notes that there are new medications under development for the treatment of opioid addiction. While still under investigation and review, it is conceivable that these new medications will present safety and effectiveness profiles that differ from the existing approved treatment

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medications, methadone and LAAM. A new medication, for example, could rely on weak or partial agonist properties or on mixed agonist-antagonist properties, with pharmacokinetic and pharmacodynamic properties that would minimize the risk of deliberate abuse through injection and, in turn, would minimize the overall risk of diversion. As such, it may be appropriate to tailor the Federal opioid treatment standards to the specific characteristics of these future medications.

I. Unsupervised Use

The existing regulations establish a complex scheme to address the unsupervised use of methadone, including extensive "time in treatment requirements." The program physician's rationale for prescribing take-home doses must be documented in the patient's medical records and must reflect eight subjective criteria ("take-home criteria") specified in the regulations (§ 291.505(d)(6)(iv)(B)(*1*) through (d)(6)(iv)(B)(*8*)), to ensure that the patient will be responsible in handling the opioid drugs.

Many have criticized the emphasis and extent of these requirements, noting that methadone patients are already subject to extraordinary degrees of monitoring (Ref. 30). The regulations governing the use of take-home medications in OTP's are among the requirements that have been in existence since 1972.

As noted in the 1995 IOM report, problems associated with diverted methadone have been reduced substantially from the 1970's. The IOM, for example, examined 1992 Drug Use Forecasting (DUF) data on arrests and found that the recent use of methadone among those arrested is low relative to other drugs included in the DUF database. The IOM noted that "while some street methadone is abused, it constitutes a relatively small part of the drug abuse problem generally * * * [and] instances of primary addiction are few" (Ref. 31). The IOM concluded that most of the diversion associated with methadone is from patients' take-home supplies, however, "the amount of methadone diverted to the street, by whatever means, is relatively small." The IOM also found a dearth of information on the degree to which methadone is implicated in drug-related crimes and on the amount of police effort devoted to the prevention of its diversion and, therefore, concluded that "diverted methadone plays a small part in the overall drug-crime problem and receives a low priority in law enforcement efforts."

The IOM also examined the extent to which diverted methadone contributes to death and morbidity, and the extent to which proceeds from the sale of diverted methadone are used to purchase other illicit drugs. No strong evidence surfaced to demonstrate that methadone plays a significant role in drug-related deaths or emergency hospital care, or that proceeds from the sale of diverted methadone are used to any notable extent in the purchase of illicit drugs.

DEA, on the other hand, published a "Methadone Diversion" (Ref. 32) report in April 1995 citing cases of armed robbery and clandestine methadone laboratories and found that, indeed, methadone is diverted and abused. In addressing some of the IOM recommendations, DEA stated that "[t]o relax controls in clearly identified areas which contribute to the illicit trafficking would not enhance treatment, but instead would further erode public confidence in treatment and expand traffic and abuse of methadone."

Having considered both sides of the issue, the Secretary is proposing several options for determining whether OTP's comply with standards respecting the quantities of opioid drugs which may be provided to patients for unsupervised use. The Secretary is specifically requesting comment on these approaches, as well as the optimal combination of regulatory requirements, accreditation elements, and oversight procedures to reduce the risks of diversion.

The options set forth as follows reflect two important factors. First, the Secretary has tentatively concluded that certain of the restrictions in the existing regulations are too restrictive, especially when they are applied to those patients who have been in treatment for extended periods and have demonstrated responsibility in handling opioid drugs. Such a patient, for example, could greatly benefit from having access to take-home supplies beyond 6 days, an amount which under the current regulations would require the granting of a special exemption by FDA. The options, then, reflect greater flexibility for providing take-home supplies to certain long-term patients.

Second, as noted previously, the current regulations prohibit the dispensing of LAAM for unsupervised use. This prohibition reflected the lack of experience with LAAM at the time of its approval in 1993, coupled with concerns about LAAM's lengthy induction properties. LAAM has now been available to treatment programs for several years, and the number of programs authorized to use LAAM has grown considerably. In addition, FDA and SAMHSA have received numerous inquiries expressing concern about the prohibition on the unsupervised use of LAAM, particularly with respect to those who need to travel and must abruptly switch to methadone. Such switching can be disruptive to patients stabilized on LAAM. Accordingly, the Secretary has tentatively decided to remove the prohibition on the unsupervised use of LAAM.

Options 2, 3, and 4, would allow unsupervised use of any approved opioid treatment medication. The Secretary, however, is specifically requesting comments, including data from the treatment field, that bear on the issue of whether to allow take-home use of LAAM.

1. Option 1—Retain Current System

Under the first option, the Secretary would retain the current regulatory scheme prohibiting the unsupervised use of LAAM. For methadone, the time-in-treatment requirements, maximum 6-day supply, probation, exemptions, and criteria for determining responsibility all remain as opioid treatment regulatory requirements. As in the current regulations, the program physician would be required to consider the following "take-home criteria" in determining whether a patient is responsible in handling opioid drugs:

1. Absence of recent abuse of drugs (opioid or nonnarcotic), including alcohol;

2. Regularity of clinic attendance;

3. Absence of serious behavioral problems at the clinic;

4. Absence of known recent criminal activity, e.g., drug dealing;

5. Stability of the patient's home environment and social relationships;

6. Length of time in comprehensive maintenance treatment;

7. Assurance that take-home medication can be safely stored within the patient's home; and

8. Whether the rehabilitative benefit to the patient derived from decreasing the frequency of clinic attendance outweighs the potential risks of diversion (§ 291.505(d)(6)(iv)(B)).

Accreditation bodies would have elements designed to ensure that treatment program quality assurance plans include sentinel events and followup actions to assure that patients are not misusing medications provided for unsupervised use. SAMHSA would determine program-wide and individual patient exemptions for take-home use beyond a 6-day supply.

2. Option 2—Follow the IOM's Recommendation

The second option tracks the IOM's recommendation. This option would retain the regulatory requirement that the medical director shall be responsible for determining whether a patient can responsibly handle opioid treatment drugs for unsupervised use. In addition, all decisions on take-home medications would be documented in the patient's medical chart. The basis for the medical director's clinical judgment must be, at a minimum, the eight criteria listed currently in § 291.505(d)(6)(iv)(B). These criteria would be a required part of the accreditation elements that will be assessed periodically by accreditation bodies and would be included in the determination of whether to accredit the treatment program.

The Federal opioid treatment standards would include the following restrictions on the use of controlled opioid medications for unsupervised use:

1. For the first month of treatment, the maximum take-home supply is limited to a single dose each week and the patient shall ingest all other doses under appropriate supervision.

2. In the second month of treatment, the maximum take-home supply is two doses after each supervised ingestion.

3. In the third month of treatment, the patient should have ingestion observed at least twice a week, with take-home permitted for other doses.

4. In the remaining months of the first year, the maximum take-home supply of methadone is three doses after each supervised ingestion.

5. After 1 year, a selected patient would become eligible for less intensive supervision of medical ingestion and may be given up to a 31-day supply of take-home medication and monthly visits. Another variation on this option would have patients receiving up to a 14 day take-home supply after 1 year, and up to a 31-day supply after 2 years. In addition, patients could be subject to monthly drug abuse tests.Under this option, SAMHSA would still consider individual, but not program-wide, exemptions for travel, medical, or other "hardships."

The Secretary has tentatively concluded that Option 2 contains the optimal level of control and has therefore included this option in § 8.12 of the proposed rule. Option 2 is the alternative which follows the IOM's recommendations and which involves the regulatory requirement that the medical director shall be responsible for determining whether a patient can responsibly handle unsupervised medication. Documentation of the decision regarding take-home medication would continue to be required in the patient record, and the decision would be based on the eight criteria currently listed in § 291.505(d)(6)(iv)(B). Restrictions on controlled opioid medications for unsupervised use would be: 1 take-home dose per week for the first month of treatment; 2 doses per week after each supervised ingestion in the second month of treatment; ingestion observed at least twice weekly with take-homes permitted for other doses during the third month of treatment and maximum take-home supply of 3 doses per week after each supervised ingestion for the remainder of the first year. After 1 year, a selected patient may become eligible for less intensive supervision and may have take-home doses varying from 14 to 31 days at a time. DHHS believes this take-home schedule reflects patient responsibility timeframes and adequately balances the need for clinical judgment in this treatment parameter with the risk of medication diversion. The DEA supports proposed Option 2.

3. Option 3—Maximum Amount Approach

Under the third option, the regulations would set a maximum amount, 1.5 grams of methadone or 0.8 grams of LAAM, per 2-week period. In addition, treatment programs would be required to maintain adequate records on the dispensing of opioids for unsupervised use to demonstrate compliance with conditions of accreditation. The existing regulatory criteria would become accreditation elements.

4. Option 4—Retain Existing Requirements, Subject to Continuous Review by Accreditation Bodies

The fourth and final option would retain the regulatory requirement that the medical director, or a designated program physician, is responsible for determining that a patient can responsibly handle medication for unsupervised use. All decisions on take-home medications would be documented in the patients' medical chart, using a standardized format. The basis for the medical director's clinical judgment must follow, at a minimum, the types of criteria listed in § 291.505(b)(3)(i)(D). The criteria and the methodology by which they are applied must be included in the accreditation elements, must be assessed periodically by accrediting bodies, and must be part of the determination of whether to accredit the program. The methodology shall include the OTP's quality assurance plan for regular review of all take-home decisions (initial authorization, renewals, and revocations).

At least one existing accreditation body has accreditation standards that address take-home privileges. COA's Methadone Maintenance Service Standard requires that take-home privileges are earned by the individual and are part of each individual's service plan. A team consisting of the patients's counselor, medical and other appropriate personnel, the patient, and whenever possible, his/her family are involved in deciding whether the patient is ready to receive take-home privileges. Factors that support initiation of take-home privileges include: Length of time in treatment, attainment of clinical stability, progress in rehabilitation, medical necessity, behavioral factors, and emergency circumstances. In addition, the standard includes protocols for deciding when take-home medication is contraindicated, including: Signs or symptoms of withdrawal, continued illicit drug use, the absence of laboratory evidence of methadone in toxicology samples, potential complications from concurrent disorders, ongoing criminal behavior, and an unstable home environment.

Moreover, under COA's standards, toxicology tests are to be scheduled regularly to ensure that the patient is consuming the methadone provided and remains free of illicit substance use, and other such measures to help avoid diversion must be implemented. Importantly, each patient's case or record is reviewed by a physician at least every 90 days, or more frequently if clinically indicated, and the team periodically reviews the benefits and drawbacks of continuing take-home privileges.

I. Interim Maintenance Treatment

The proposal retains standards for interim maintenance treatment. Conceptually, interim maintenance treatment allows authorized programs with documented treatment waiting lists to provide methadone treatment to eligible patients without some of the services required under the regulations. Interim maintenance treatment was mandated by the ADAMHA Reorganization Act.

With respect to the issue of unsupervised use of opioid treatment medications, the proposal retains the prohibition on unsupervised use for patients in short-term detoxification treatment and interim maintenance

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treatment. Under the existing regulations, patients in long-term detoxification treatment are permitted one unsupervised dose of methadone per week. The Secretary is proposing to allow the unsupervised use of treatment medications with responsible patients in long-term detoxification treatment because long-term detoxification patients who meet the time in treatment requirements set forth for patients in maintenance treatment should be also eligible to be considered for unsupervised use of treatment medications. This proposed change is consistent with other changes in this notice (e.g., consolidated application forms) that will make the regulations less complicated.

V. Legal Authority

The Secretary's legal authority under section 303(g) of the CSA to issue treatment standards, including standards regarding the quantities of opioid drugs that may be dispensed for unsupervised use, is well established. (See generally section II.A of this document. See also 42 U.S.C. 257a.) In addition, the Secretary has specific authority, through the Administrator of SAMHSA, to coordinate Federal policy with respect to the provision of treatment services for substance abuse using medications such as methadone (21 U.S.C. 290aa(d)(7)). The Secretary is also authorized to establish conditions for allowing interim treatment of opioid addiction. (See section 1976 of the PHS Act, 42 U.S.C. 300y–11.)

Part and parcel with the Secretary's general authority to establish treatment standards, and to ensure that those standards will be met, is the authority to delegate to qualified third parties a role in helping to ensure compliance with the Secretary's standards. The Secretary has retained full responsibility for all final determinations, including all standard setting determinations, as well as the authority to reject the recommendations of an accreditation body, to independently inspect treatment programs, and to perform her own independent certifications. The proposal also includes ample measures to ensure the impartiality of the accreditation body decision makers. Under these circumstances, the Secretary believes that her reliance on accreditation bodies, as outlined in the proposal, is fully consistent with the law as it pertains to subdelegation of agency responsibilities to third parties. See, e.g., *Fleming* v. *Mohawk Wrecking and Lumber Co.*, 331 U.S. 111 (1947); *Tabor* v. *Joint Board for Enrollment of Actuaries*, 566 F.2d 705, 708 n.5 (D.C. Cir. 1977); *National Association of Psychiatric Treatment* v. *Mendez*, 857 F. Supp. 85, 91 (D.D.C. 1994); *Hall* v. *Marshall*, 476 F. Supp. 262, 272 (E.D. Pa. 1979), aff'd 622 F.2d 578 (3d Cir. 1980).

VI. Proposed Implementation Plan

There are approximately 900 OTP's (currently referred to as narcotic treatment programs or "NTPs") approved under the existing regulatory system. The Secretary intends to move entirely to the accreditation-based system as soon as practicable, albeit with certain accommodations to allow treatment programs sufficient time to obtain accreditation and, thereafter, certification under new 42 CFR part 8.

The Secretary is proposing that the effective date of the rule, once finalized, will be 60 days after publication of the final rule in the **Federal Register**. However, as discussed in section III.B of this document, the rule will allow for transitional certification for programs that were approved under part 291 as of the effective date of this regulation. In addition, SAMHSA will apply the provisional certification provisions under proposed § 8.11(e) to allow new programs to begin to operate while completing accreditation.

These provisions will allow a sufficient amount of time for accreditation bodies to apply for and obtain SAMHSA approval and, in turn, to begin conducting accreditation surveys.

As part of the transition from the current regulatory approach to the proposed accreditation/regulatory approach, SAMHSA's CSAT has developed a study of an initial cohort of 180 randomly selected, volunteer OTP's (Ref. 33). The study will be used by SAMHSA to develop and continually update the agency's accreditation guidelines. The study, which is not expected to be completed for several years, may also provide useful information for refining the accreditation model that is the subject of this proposed rulemaking.

The shift to an accreditation model is expected to have both administrative and clinical consequences. The CSAT study is designed to provide additional information on the processes, barriers, administrative outcomes, and costs associated with an accreditation-based system. The study will measure program accessibility, client population served, program structure, operation and costs, clinical practice, staff attitudes and behavior, methadone diversion, patient satisfaction, and treatment outcomes at a sample of treatment providers before and after they go through the accreditation process. No OTP participating in the study will be prohibited by the FDA or the DEA from operating because of failure to meet the standards for accreditation.

The focus of the study is a pretest-posttest design with a comparison or control group. This design assumes that a series of variables will be influenced by the intervention, i.e., accreditation, and that measurable information on these variables is available both prior to and following the intervention. The effect of the intervention is then measured by comparing the post-intervention values of the outcomes with the pre-intervention values. The evaluation contractor will collect pre-intervention data from participating OTP's at approximately 6 months prior to accreditation to provide sufficient lead time to measure the baseline status of these programs. It is expected that the OTP's will make program changes to meet the accreditation standards, apply for accreditation, undergo the accreditation process, deliver services post-accreditation, and collaborate in the evaluation. The evaluation contractor will collect post-intervention data from each participating OTP at approximately 6 months following the accreditation survey to provide sufficient time to measure the changes in OTP operations after the accreditation process. The evaluation contractor will collect data from the control group at approximately the same time that data will be collected from the study group.

SAMHSA's CSAT Advisory Council will assist in the evaluation of the study data. SAMHSA expects that the advisory council will establish a subcommittee that will make recommendations to the full committee which, after deliberation, will make recommendations to SAMHSA as appropriate. SAMHSA expects to bring in consultants to the subcommittee who ideally will include representation from stakeholders such as OTP's (both large and small programs), medical and other substance abuse professionals, consumers, and State officials. SAMHSA expects the first meeting of the advisory committee and subcommittee on the issues will convene within 6 months of the first group of accreditation surveys.

DHHS has determined that accreditation is a valid and reliable system for providing external monitoring of the quality of health care—including substance abuse treatment. This study, which will proceed alongside the rulemaking proceeding, is expected to provide important information to allow DHHS to keep its guidelines, and its accreditation program, as responsive and up-to-date as possible. Among other things, the study will allow DHHS to continuously monitor the monetary costs of accreditation, to ensure that successful OTP's are not precluded from operating by the costs of accreditation, and that patients are not denied treatment based on costs.

Finally, under the project, SAMHSA will fund the accreditation of a large cohort of OTP's. As a result, a substantial subset of the universe of approved programs will have experience with accreditation. During the course of the study, CSAT will make technical assistance available to OTP's to help them meet accreditation requirements.

VII. Environmental Impact

The Secretary has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

A. Introduction

This section briefly describes the current estimates of accreditation costs likely to accrue to OTP's as a result of this proposed rule.

The Secretary has examined the impact of this proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (Pub. L. 96–354), under the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act extends the Regulatory Flexibility Act by making such analyses subject to more detailed reviews. The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). A summary of the appropriate analyses follows.

B. Purpose of the Proposed Regulation

Federal, State, local, and private sponsors spend billions of dollars each year for substance abuse treatment programs (Ref. 34), of which opioid maintenance has been an important option since the early 1970's. OTP's have been subjected to regulations administered by FDA for more than 25 years. These regulations reflect the view that because such treatment programs dispense treatment drugs with abuse potential to drug abusers, they pose risks to communities from potential abuse and/or diversion of the supplied therapeutic drug (Ref. 35). In addition, DEA requires annual registration of OTP's, and enforces regulations relating to security and control of the controlled drug products (Ref. 36).

The motivation for providing opioid maintenance is rarely based on economic criteria. One study indicated that treatment expenditures may be offset by decreased direct costs of incarceration and legal supervision (Ref. 37). Another study suggested that continued methadone treatment for recovering opioid addiction resulted in significant reductions in criminal activity (Ref. 38). Reduced health care costs have also been identified as a benefit of continued treatment, particularly as treatment procedures have been revised to reduce the spread of HIV infection through needles (Ref. 39). Continued treatment has also been shown to lead to increased earnings by allowing patients to maintain regular employment (Ref. 40) and family and personal relationships and to decrease mortality (Ref. 41). A recent study has estimated that the value of avoiding morbidity associated with drug use could be as high as $160,000 per case (Ref. 42). But studies show that these benefits are obtainable only if patients continue to take active roles in their treatments.

As discussed in section II.B of this document, compliance with current regulations is assured through process oriented inspections conducted by either FDA or State inspectors. As FDA has focused on other core priorities, the annual number of OTP inspections by FDA has declined. Meanwhile, as summarized in section II.C of this document, several groups have questioned the emphasis of the current regulations. This proposal is designed to improve the quality of care by shifting oversight of OTP's from a system based on process compliance to an accreditation-based system refocused on the needs of patients.

There has long been controversy centered around the appropriate measures to use in assessing outcomes from drug abuse treatment programs (Ref. 43), although substantial progress has been made in outcome assessment over the last 20 years. One of the important areas of progress from this research has been to shift the focus of treatment outcome assessment from implicitly conceptualizing drug addiction as an acute illness from which the patient either recovers (i.e., remains abstinent) or does not (everything else) to one that is chronic and relapsing. This shift in recognition has resulted in a change in expectations for the outcomes of any one treatment episode where reduced consumption, longer abstention periods, reduced psychiatric symptoms, improved health, maintaining employment, fewer legal problems, and improved family relations demonstrate treatment efficacy. The strategy for measuring success is similar to that used with other chronic disorders such as asthma, arthritis, diabetes, heart disease, hypertension, and other psychiatric disorders. This strategy for assessing outcomes has been adopted by the FDA for measuring pharmaceutical efficacy (Ref. 44).

This change in the way drug addiction and abuse is viewed has led to the development of improved outcome measures, such as those contained in the Addiction Severity Index (Ref. 45), the Individual Assessment Profile (Ref. 46), and the Client Assessment Profile (Ref. 46). These instruments all measure changes in the severity of the problem areas that are commonly affected by addiction. These areas are: Drug use, alcohol use, medical, legal, employment, family/social, and psychiatric. Particularly notable have been studies demonstrating reductions in criminal behavior associated with participation in methadone treatment (Refs. 47, 48, and 49).

Improvements in outcomes after methadone treatment are almost always equal to or greater than improvements seen in treatments for other chronic relapsing disorders (Ref. 50). For example, studies of methadone maintenance programs routinely show reductions of 80 percent or more in heroin use after several months with even greater reductions for patients who remain in treatment for more than 1 year (Refs. 51, 52, and 53). More recently, studies have consistently shown that the risk for HIV infection is significantly reduced by opioid agonist therapy, even

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in the absence of total cessation of drug use (Refs. 54, 55, and 56). These proposed regulations are designed to improve the therapeutic impact of treatment programs by assuring adequate quality of care, including adequate doses of medication to have optimal therapeutic effects.

C. Baseline Description of the Industry

FDA has approved 869 methadone treatment programs as of early 1997, including 209 programs also approved for LAAM treatment (Ref. 57). This total encompasses only outpatient maintenance programs and does not include almost 300 inpatient hospital detoxification units. This total likely overstates the actual universe of OTP's because FDA considers individual dispensing sites as separate treatment programs for inspectional purposes, although sites may be affiliated with other organizations. Another estimate of active programs includes 668 reports of active methadone services from SAMHSA's 1996 Uniform Facility Data Set (UFDS) (Ref. 58), although the definition of "treatment unit" was left up to the discretion of the respective States (Ref. 59). This estimate may understate the universe of approved treatment programs because not all treatment programs responded to the annual survey. For this assessment, the Secretary has assumed 900 active OTP's as the universe of affected programs.

Data from SAMHSA's UFDS Data Set (Ref. 60) can be used to estimate the number of patients in treatment. The 1996 Data Set includes a 1-day census of patients in treatment, by type of care and jurisdiction. According to the most recent report, there were 940,131 patients in substance abuse treatment facilities (private and public funded) on October 1, 1996. The 1996 report indicates that 13.2 percent or 124,098 of these patients were receiving narcotic substances (assumed to be methadone or LAAM). For the purposes of this analysis, the Secretary estimates the total census of patients in opioid treatment to be approximately 125,000.

Data from SAMHSA indicate that some OTP's may be providing treatment to over 2,085 patients, but most programs have very small patient bases (Ref. 61). Approximately 20 percent of all programs treat 50 or fewer patients (Ref. 62), and 10 percent treat 10 or fewer patients. The median OTP had a patient census of 125 patients, but the mean program size was much larger. Two studies that included methadone program cost parameters indicate a weighted average of 250 patients per OTP (Refs. 63 and 64). For this assessment, the Secretary has assumed a typical OTP can treat 140 patients, for a total industry census of 125,000 patients.

Current cost estimates of providing annual treatment have ranged from approximately $2,500 (Ref. 65) to $4,000 (Ref. 66). The lower cost estimate did not account for all fixed and variable costs associated with operating a treatment facility (e.g., rent and equipment maintenance and operating costs were not adequately accounted). For this assessment, the Secretary has estimated that it costs approximately $4,000 per year to treat one patient.

D. Costs of the Current Regulations

For purposes of this analysis, the Secretary estimates the costs of enforcing the current regulations to average approximately $3.3 million per year. These costs include inspections, support, review of applications, and all overhead. In addition, OTP's found to be violative must improve performance in order to continue operations. Typically, many inspections result in observable violations based on a failure to fully document or record activities. The Secretary has estimated that a typical facility must improve patient recordkeeping as a result of an inspection at a cost of $4.70 per patient per year (or almost $660 per OTP per year ($4.70 x 140)). This cost is estimated by assuming that 10 minutes of nurse/technician time will be required to enter and check records for each patient per year. The total average compensation for a nurse/technician in the health services sector totaled $28.07 per hour in 1996 (Ref. 67). The estimated annual cost for programs to meet requirements of current inspections and correct violations equals $0.59 million. The Secretary seeks comments and information to further assess or estimate the costs for programs to meet the requirements of the current regulations. The total annual cost of continuing the current regulations (in the absence of these proposed regulations) is estimated to equal $3.9 million, most of which is administrative costs of maintaining a regulatory system.

E. Costs of the Proposed Regulation

The proposed rule will generate regulatory costs to OTP's in two general areas. These areas are: (1) The direct costs of becoming accredited through a survey of practices and procedures, and (2) the more indirect costs of improving procedures, if necessary, to meet the quality level required to achieve and maintain accreditation, including resurvey costs. The Secretary has developed preliminary estimates of these cost elements in terms of costs per annual client. Thus, if an OTP must initiate an activity to become accredited, the costs include maintaining that activity at an acceptable level of quality.

In addition, SAMHSA will incur costs to provide oversight of accreditation bodies, review and approve applications from prospective programs, and conduct "for-cause" inspections. The Secretary has assumed that DEA will not incur any change in enforcement costs due to these proposed regulations.

Costs are estimated as average annual costs. A 7-percent discount rate is used to estimate the present value of future expenditures and to amortize one-time costs. A 3-year evaluation period (the length of the expected accreditation cycle) is used to analyze any one-time costs associated with compliance.

F. Accreditation of Opioid Treatment Programs

The process of professional accreditation includes external peer review of practices in order to assure an acceptable level of quality. Most accrediting organizations have criteria of what clinical procedures assure a minimum level of quality of care. Usually, a team consisting of various professional specialties will spend several days at a candidate facility during an accrediting survey. The team will examine records and observe practices that determine the facility's level of quality. After receiving accreditation, a facility must show that quality remains at an acceptable level by maintaining proper procedures. Recently, the JCAHO announced that it would develop specific performance outcome measures as accreditation criteria.

The costs of operating an accreditation program are estimated from data provided by three national accreditation bodies: JCAHO, CARF, and COA. Currently, most OTP's are not required to be routinely accredited by any national accreditation body. However, all three bodies have some experience accrediting OTP's. Approximately 36 hospital-affiliated OTP's are currently accredited by the JCAHO, and CARF has accredited some OTP's and is currently developing a specific accreditation manual. COA has drafted standards for OTP services that incorporate many of the requirements of the proposed regulation.

JCAHO would charge a mental health facility with size and operating characteristics similar to an average OTP a base of $5,655 plus $0.23 per outpatient-visit (Ref. 68). JCAHO's definition of an outpatient visit may not strictly apply to opioid treatment because patients are typically treated as many as six times a week. For the purposes of this analysis, the Secretary has applied the $0.23 per outpatient-visit charge on a weekly basis. The estimated accreditation survey charge for JCAHO accreditation is the base charge plus $1,674 (140 patients times $0.23 times 52 weeks), or approximately $7,300.

Discussions with CARF have indicated that a facility seeking accreditation would pay an application fee of $300, purchase a survey manual for $100, and pay $950 per surveyor per day to conduct an accreditation survey. CARF expected a facility survey to require 2 days onsite, and while they estimated two-person teams, three-person teams may be likely. Thus, a CARF accreditation survey for an OTP seeking accreditation is estimated to cost approximately $5,100, including travel costs.

COA presented data that showed an average charge of about $5,500, but added an additional $1,500 for travel expenses of the accreditation survey team. In addition to the direct accreditation costs, the survey team for COA incurs opportunity costs based on the time necessary to complete a survey. Discussions with COA show that typically a survey team consists of three unpaid persons from previously accredited facilities. While JCAHO and CARF indicated that the labor costs for a survey team were included in the charges, COA did not. For the purpose of estimating the opportunity costs of these survey members, the Secretary has estimated that a typical survey team will consist of an administrator or program director, and a nurse or counselor or social worker. A typical survey is expected to take 2 days to complete. The Bureau of Labor Statistics collects average wage rates by occupation (Ref. 69). In 1996 (the latest year for which these data are published), the average hourly compensation of a nurse or technologist was $28.07, while an administrator or clinic director had total hourly compensation of approximately $33.29. Thus, the opportunity cost of the survey team for conducting an accreditation survey adds almost $1,000 for a total estimated survey cost of $8,000.

For the purposes of this analysis, the Secretary estimates the direct cost of conducting an accreditation survey as the average of these three programs, or $6,800 per treatment program. Assuming a 3-year accreditation cycle, and a 7-percent discount rate, the average annual cost to a treatment facility of conducting accreditation surveys will equal approximately $2,600. Overall, the total average annual accreditation costs for all affected programs are likely to equal $2.3 million.

G. Compliance and Quality Assurance for Opioid Treatment Programs

According to COA, approximately 30 percent of the nonvoluntary accreditation inspections result in some remedial action. CARF has reported an approximately 25 percent less-than-full accreditation rate for facilities that have been required to seek accreditation. Regardless of what the less-than-full accreditation rate is for the first accreditation cycle, subsequent accreditation cycles should have significantly lower rates of less-than-full accreditation as programs adjust to the accreditation process. In addition, CSAT will make available technical assistance to help programs meet accreditation requirements.

While it is possible that increased Federal inspection and enforcement activity (in the absence of this rule) could result in fewer violative programs, the Secretary believes the requirement of accreditation will provide a greater impetus for program-by-program improvements. Shorter accreditation cycles are believed to minimize the opportunity for programs to become noncompliant. In addition, managed health-care payers for psychiatric care often require program accreditation for reimbursement (Ref. 70) and this trend is expected to continue for opioid treatment.

The costs of remediation were estimated from variable program cost data developed for SAMHSA from nine OTP's (Ref. 71). This study presented annual operating costs per patient to maintain what is presumed to be an acceptable level of quality. The consultants collected accounting costs for 14 specific parameters that contribute to overall program quality such as initial assessment, medical examination, case management, etc. While the Secretary does not have data to show that these 14 parameters are inclusive, a weighted average of the costs for the variable cost parameters (for both methadone and LAAM patients) resulted in an average cost per activity of approximately $150 per parameter per patient.

Remedial action to achieve accreditation could require implementation of a service that is currently not available, or it could require only marginal improvements to the level of an ongoing activity. For example, an OTP that did not offer acquired immune deficiency syndrome (AIDS) counseling would be required to start doing so, while a different OTP may be required to improve the quality of such counseling.

At this time, the Secretary does not have data to indicate the minimum level of compliance that would currently allow an OTP to remain in operation. The Secretary has assumed that the complete absence of any one quality enhancing activity would result in a loss of accreditation. Assuming that 25 percent of facilities are expected to require remediation from the initial cycle of accreditation surveys, these facilities are likely to be distributed between two extremes.

The most costly compliance activities would be for OTP's that currently do not offer one of the identified services. In order to continue operations, these facilities would be required to offer these services, and incur costs of $150 per patient or $21,000.

The other extreme would be OTP's that must increase resources to one activity (e.g., improve recordkeeping). This may require increased costs of only $0.67 per patient (based on dividing $150 by 25 percent of the affected programs).

The average cost for a typical less-than-fully accredited OTP to come into compliance during this initial inspection is estimated as the average of these amounts, or approximately $75 per patient or $10,500 per noncompliant program. Having assumed that 25 percent of all OTP's (or 225 programs) would require improvements in the first accreditation cycle, the total costs to the industry are estimated to be $2.4 million.

These costs are estimated based on costs per patient per year, and are thus annual operating costs of ongoing quality assurance activities as well as implementation costs. As such, they also incorporate the cost of maintaining acceptable quality levels between accreditation cycles. These cost estimates take into account typical quality assurance programs that include development of quality assurance manuals and periodic meetings by a quality assurance staff through the evaluation period. Each OTP is likely to invest in a quality assurance program that will contain elements of authority, purpose, organization, scope, responsibility, implementation, and evaluation (Ref. 72). Future accreditation surveys may identify OTP's that do not receive full accreditation, but the noncompliant rate is expected to be low. By maintaining current expenditures and quality assurance programs as estimated in this section, no additional costs are attributable to this regulation.

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A resurvey would be required for each OTP needing remedial action. Direct costs for resurveying are part of the original survey, but indirect costs must be accounted for, as measured by the opportunity costs of the survey team. This would likely be travel costs ($1,500) and opportunity costs for the survey team ($1,000) for a total of approximately $2,500 for a resurvey. With an estimated 225 resurveys, the total industry cost would equal $0.6 million. This one-time cost, when amortized for 3 years at 7-percent discount rate to account for an accreditation cycle, results in an average annual cost for the industry of $0.2 million.

H. Annual Costs to Opioid Treatment Programs of the Proposed Regulation

Total costs of this proposed regulation include average annual direct accreditation survey costs of approximately $2.3 million. The average annual costs of both coming into compliance and ensuring an acceptable level of quality is estimated to be $2.6 million. The total average annual costs to OTP's for this proposed regulation is $4.9 million, which includes maintaining an improved quality level. These annual costs equal approximately $5,400 per facility and $39 per patient, an overall average increase of approximately 1.0 percent per patient. Costs are expected to vary by facility and by patient population.

I. Costs to SAMHSA of the Proposed Regulation

The average estimated annual cost of administering an accreditation based system of regulation, based on SAMHSA estimates, is $3.4 million.

J. Total Net Costs of the Proposed Regulations

The total cost of these proposed regulations is the combination of the industry and the government costs. The best estimate of the total average annual cost is $8.3 million. The annual cost of FDA enforcement of the current regulation of OTP's has been estimated to equal $3.9 million. The average annual net cost of this proposal equals the difference, or $4.4 million.

K. Benefits of the Proposed Regulations

Methadone maintenance (and by extension LAAM maintenance) has been identified as the most successful known treatment in avoiding relapses in addiction. Depending on definitions, approximately 80 percent of individuals seeking treatment for substance abuse (including alcohol), from all such treatments (including all alternative treatments), have been reported to have returned to substance use following treatment (Ref. 73). While individual opioid maintenance programs vary in success rates, a study of six clinics showed that the continued use of drugs ranged from only 10 percent of patients in the most effective clinic to 56 percent in the least effective (Ref. 74). Among other factors, the more effective clinics were characterized by treatment goals of ongoing maintenance, better staff-patient relationships, and higher average medication doses (Ref. 75).

A study of relapse rates reported that overall methadone maintenance programs reported a 40-percent average relapse rate (Ref. 76), compared to an 80-percent relapse rate for all substance abuse treatment. However, for patients still in treatment, the reported relapse rate was 31.7 percent, while patients out of treatment reported a 65-percent relapse rate. But, those patients who had completed a course of treatment of at least 24 months reported relapse rates one-third lower than those in treatment for fewer than 6 months (50 percent to 71.8 percent) (Ref. 77). These findings imply that continuing treatment and length of treatment decrease the probability of relapse.

The Secretary cannot with certainty predict the effect of these regulations on the expected rate of relapse. However, the following example illustrates the range of potential benefits that might be achieved if the average patient remains in treatment for 6 months longer than the current reported average duration of treatment (14.7 months to 20.7 months). In this instance, the expected average rate of relapses would decrease from 40 percent to 32.3 percent. This implies that the number of annual relapses from therapy would be reduced by 12,320 patients. In 1993, there were more than 13,000 drug related mortalities (Ref. 78), not all of which could be attributable to drugs treatable by opioid maintenance. However, it is likely that at least some of these mortalities would be avoided if greater numbers of patients avoided relapse by maintaining treatment.

In addition, other benefits such as reduced health expenditures, better personal relationships, and reduced criminal activity would be expected. Based on plausible values for such gains, even very minor improvements in patient outcomes could easily offset the net annual compliance cost of this proposed regulation.

L. Impact on Small Opioid Treatment Programs

1. Description of Impact

As discussed previously, the proposal is expected to provide more frequent quality surveys of OTP's and allow for greater flexibility in the delivery of opioid treatment.

Under definitions provided by the Small Business Administration (SBA), virtually the entire industry would be composed of small entities (Ref. 79). The SBA uses an estimate of $5.0 million in gross revenues as a definition of small entity for industry SIC 8093 (Specialty Outpatient Facilities, NEC). An OTP would need to provide treatment to 1,250 to reach that level. As stated earlier, 20 percent of the OTP's serve 50 or fewer patients. This segment of the industry may be assumed to be considered small relative to the typical OTP.

All small programs would be required to be accredited by an accreditation body approved by SAMHSA. Each OTP, regardless of size would be expected to maintain this accreditation in order to continue to treat patients. There are several important changes in these proposed regulations from current requirements, but no major changes in current recordkeeping.

2. Analysis of Alternatives

Alternative regulatory schemes were considered. The continuation of the current regulatory oversight was dismissed in light of the findings and criticisms discussed in section II of this document. The idea of providing greater levels of self-certification was deemed insufficient, primarily because of concerns over the potential diversion of the treatment medications.

SAMHSA has issued evaluation contracts to determine whether this proposal will result in unforeseen impacts on small programs. In particular, the feasibility of exempting small facilities from some requirements will be examined. Some small OTP's may find it necessary or desirable to forge arrangements with more financially secure organizations so as to provide quality treatment services to individuals in the community. SAMHSA will make every effort possible to ensure that access to quality opioid addiction treatment services is not diminished, especially in rural areas, as a consequence of this regulatory reform.

3. Assuring Small Entity Participation

It is likely that this proposed rule may have a significant economic effect on a substantial number of small entities.

Based on the cost parameters reported for the three smallest programs included in a SAMHSA analysis (Ref. 80), the average cost to maintain and service a patient for 1 year in a small, 50-patient facility was estimated to be $3,200. An average accreditation survey for a program of only 50 patients is expected to take only 1 day and cost approximately $4,000, or approximately $1,500/year (at a 7-percent discount rate). The average cost per patient of achieving and maintaining a quality-enhancing activity at a small OTP at an acceptable compliance level is assumed to be equal to the industry average of $45. A 25 percent less-than-full accreditation rate (the same as for the overall industry) was assumed and resurveys are estimated to cost $500.

Overall, the cost per patient for a program servicing 50 patients would increase by slightly more than the industry average ($50 compared to $39) under the proposed regulations. This represents a greater proportionate increase (1.6 percent as compared to 1.0 percent) than the increase expected for the average sized facility. The Secretary is in the process of collecting better data on this industry segment and solicits comments in this area.

M. Conclusions

The average annual net cost of this regulation is estimated to be $4.4 million. The costs represent a shift of costs to individual OTP's to maintain accreditation and the accompanying assurance of quality. Research has indicated that increased compliance with drug abuse treatment is correlated with beneficial and therapeutic outcomes to patients, and the Secretary believes that the use of private accreditation would improve treatment outcomes. If patient participation in therapy could be extended by an average of 6 months, relapse rates could decrease by approximately 20 percent. Even modest improvements, therefore, would bring substantial reductions in mortality and significant improvements in physical health, decreased criminal activity (including diversions), increased earnings and employment, better family and personal relationships (Ref. 81). The Secretary, including SAMHSA, continues to research this area and is specifically soliciting comments on these issues.

This proposal constitutes a significant impact on a substantial number of small entities. The Secretary solicits comments on how to address this impact.

The estimated annual cost of $4.4 million is far below the threshold defined by the Unfunded Mandates Act.

IX. Paperwork Reduction Act of 1995

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3507(d)). The title, description, and respondent description of the information collections are shown in the following paragraphs with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: *Narcotic Drugs in Maintenance and Detoxification Treatment of Narcotic Dependence; Repeal of Current Regulations and Proposal to Adopt New Regulations.*

Description. The Secretary is proposing to issue regulations to establish an accreditation-based regulatory system to replace the current system that relies solely upon direct Federal inspection of treatment programs for compliance with process oriented regulations.

These proposed changes are intended to enhance the quality of opioid treatment by allowing increased clinical judgment in treatment and by the accreditation process itself with its emphasis on continuous quality assessment. As set forth in this proposed rule, there will be fewer reporting requirements and fewer required forms under the new system. The total reporting requirements are estimated at 2,074 hours for treatment programs, and 341 hours for accrediting organizations.

A recent FDA information collection analysis (Ref. 82) estimated the annual paperwork burden for the existing regulations to be approximately 1,500 hours. The proposed regulation requires a one-time reporting requirement for transitioning from the old system to the new system. The estimated reporting burden for "transitional certification" is approximately 475 hours. The proposal also requires ongoing certification on a 3-year cycle, with an estimated reporting burden of approximately 300 hours. Deducting these two requirements (total 775 hours) from the estimate for the proposed system (2,074 hours) leaves a reporting burden of approximately 1,300 hours, which is less than the estimated burden under the existing system. This is consistent with the streamlining of requirements under the proposal, and the elimination of certain forms and reporting requirements altogether.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; Federal government; State, local or tribal government.

TABLE 1.—ANNUAL REPORTING BURDEN FOR TREATMENT PROGRAMS

42 CFR Citation and Purpose	No. of Respondents	Responses per Respondent	Minutes per Response	Total Hours
8.11(b)—New program approval SMA–162	75	1	90	112.5
8.11(b)—Renewal of approval[1] SMA–162	300	1	60	300
8.11(b)(3)—Relocation SMA–162	35	1	70	40.83
8.11(d)—Application for transitional certification[2] SMA–162	300	1	95	475
8.11(e)(1)—Application for provisional certification	75	1	30	37.5
8.11(e)(2)—Application for extension of provisional certification	30	1	15	7.5
8.11(f)(5)—Notification of sponsor or medical director change	60	1	20	20
8.11(g)(2)—Documentation to SAMHSA for interim maintenance	1	1	120	2
8.11(h)—Request to SAMHSA for exemption from 8.11 and 8.12	800	3	26.25	1050
8.11(i)(1)—Notification to SAMHSA before establishing medication units	3	1	15	.75
8.12(j)(2)—Notification to State Health Officer when patient begins interim maintenance	1	1	20	3.33
8.24—Contents of appellant request for review of suspension	2	1	15	.5
8.25(a)—Informal review request	2	1	60	2
8.26(a)—Appellant's review file and written statement	2	1	300	10
8.28(a)—Appellant's's request for expedited review	2	1	60	2

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TABLE 1.—ANNUAL REPORTING BURDEN FOR TREATMENT PROGRAMS—Continued

42 CFR Citation and Purpose	No. of Respondents	Responses per Respondent	Minutes per Response	Total Hours
8.28(c)—Appellant review file and written statement	2	1	300	10
Totals				2,073.91

[1] Applications for renewal of certification are required every 3 years.
[2] Transitional Certification is a one-time requirement and will be included in the total annualized burden but averaged over the 3-year period of the OMB collection activity approval.

The proposal does not increase the estimated annualized burden. Certain reporting requirements have been proposed for elimination, such as submissions for authorizations to use LAAM, the requirement to submit a physician responsibility statement (FDA Form 2633), and elimination of the requirement to obtain Federal approval for take-home doses of methadone in excess of 100 mg that exceed a 6-day supply. The proposal adds a one time requirement for existing programs to apply for transitional certification, and a requirement to apply for certification renewal every third year. The annualized burdens associated with these new reporting requirements offset the burdens proposed for elimination, resulting in no estimated net change.

Accreditation bodies will also require treatment programs to submit information as part of the standard operating procedures for accreditation.

As mentioned earlier in this proposal, accreditation bodies, under contract to SAMSHA, will be accrediting existing OTP's as part of an initiative to gain more information on the accreditation of OTP's. SAMHSA has prepared a separate OMB Paperwork Reduction notice and analysis for that information collection activity (63 FR 10030, February 27, 1998, OMB approval number 0930–0194).

TABLE 2.—ANNUAL REPORTING BURDEN FOR ACCREDITATION ORGANIZATIONS[1]

42 CFR Citation and Purpose	No. of Respondents	Responses per Respondents	Hours per Response	Total Hours
8.3(b)—Initial approval SMA–163	10	1	3	30
8.3(c)—Renewal of approval SMA–163	3	1	1	3
8.3(e)—Relinquishment notification	1	1	0.5	0.5
8.3(f)—Nonrenewal notification to accredited OTP's	1	90	0.1	9
8.4(b)(1)(ii)—Notification to SAMHSA for serious noncompliant programs	2	2	1	4
8.4(b)(1)(iii)—Notification to noncompliant programs	2	2	1	4
8.4(d)(1)—General documents and information to SAMHSA upon request	10	2	0.5	10
8.4(d)(2)—Accreditation survey to SAMHSA upon request	10	6	0.2	12
8.4(d)(3)—List of surveys, surveyors to SAMHSA upon request	10	6	0.2	12
8.4(d)(4)—Less than full accreditation report to SAMHSA	10	7.5	0.5	37.5
8.4(d)(5)—Summaries of inspections	10	30	0.5	150
8.4(e)—Notification complaints	10	1	0.5	5
8.6(a)(2) and (b)(3)—Revocation Notification to accredited OTP's	1	90	0.3	27
8.6(b)—Submission of 90-day corrective plan to SAMHSA	1	1	10	10
8.6(b)(1)—Notification to accredited OTP's of probationary status	1	90	0.3	27
Totals				341

[1] Because some of the numbers underlying these estimates have been rounded, figures in this table are approximate. There are no maintenance and operation costs nor start up and capital costs.

Recordkeeping—The recordkeeping requirements for OTP's set forth in proposed § 8.12 include maintenance of the following: A patient's medical evaluation and other assessments when admitted to treatment, and periodically throughout treatment § 8.12(f)(4)); the provision of needed services, including any prenatal support provided the patient (§ 8.12(g)(1)and (g)(2)); justification of exceptional initial doses; changes in a patient's dose and dosage schedule; justification of exceptional daily doses (§ 8.12(h)(3)(iii)); justification for variations from the approved product labeling for LAAM and future medications (§ 8.12(h)(4)); and the rationale for decreasing a patient's clinic attendance (§ 8.12(i)(3)).

In addition, proposed § 8.4(c)(1) will require accreditation bodies to keep and retain for 5 years certain records pertaining to their respective accreditation activities. These recordkeeping requirements for OTP's and accreditation bodies are customary and usual practices within the medical and rehabilitative communities, and thus impose no additional response burden hours or costs.

Disclosure—This proposal retains requirements that OTP's and accreditation organizations disclose information. For example, proposed § 8.12(e)(1) requires that a physician explain the facts concerning the use of opioid drug treatment to each patient. This type of disclosure is considered to be consistent with the common medical practice and is not considered an additional burden. Further, the proposal requires under § 8.4(i)(1) that each accreditation organization shall make public its fee structure. The Secretary notes that the preceding section of this notice contains publicly available information on the fee structure for each of three accreditation bodies. This type of disclosure is standard business practice and is not considered a burden in this analysis.

As required by section 3507(d) of the PRA, the Secretary has submitted a copy of this proposed rule to OMB for its review. Comments on the information collection requirements are specifically solicited in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of DHHS's functions, including whether the information will have practical utility; (2) evaluate the accuracy of DHHS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to DHHS on the proposed regulations.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, (address above).

X. Request for Comments

Interested persons may, on or before November 19, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

XI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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List of Subjects

21 CFR Part 291

Health professions, Methadone, Reporting and recordkeeping requirements.

42 CFR Part 8

Health professionals, Levo-Alpha-Acetyl-Methadol (LAAM), Methadone, Reporting and recordkeeping requirements.

Therefore, under the Comprehensive Drug Abuse Prevention and Control Act of 1970, the Controlled Substances Act as amended by the Narcotic Addict Treatment Act of 1974, the Public Health Service Act, the Federal Food, Drug, and Cosmetic Act, and applicable delegations of authority thereunder, it is proposed that titles 21 and 42 of the Code of Federal Regulations be amended as follows:

21 CFR Chapter I

PART 291 [REMOVED]

1. Under authority of sections 301(d), 543, 1976 of the Public Health Service Act (42 U.S.C. 241(d), 290dd–2, 300y–11); 38 U.S.C. 7332, 42 U.S.C. 257a; sections 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355, 371); and section 303(g) of the Controlled Substances Act (21 U.S.C. 823(g)), amend title 21 of the Code of Federal Regulations by removing part 291.

42 CFR Chapter I

2. Amend 42 CFR Chapter I by adding part 8 to subchapter A to read as follows:

PART 8—CERTIFICATION OF OPIOID TREATMENT PROGRAMS

Subpart A—Accreditation

Sec.
8.1 Scope.
8.2 Definitions.
8.3 Application for approval as an accreditation body.
8.4 Accreditation body responsibilities.
8.5 Periodic evaluation of accreditation bodies.
8.6 Withdrawal of approval of accreditation bodies.

Subpart B—Certification and Treatment Standards

8.11 Opioid treatment program certification.
8.12 Federal opioid treatment standards.
8.13 Revocation of accreditation and accreditation body approval.
8.14 Suspension or revocation of certification.
8.15 Forms.

Subpart C—Procedures for Review of Suspension or Proposed Revocation of OTP Certification

8.21 Applicability.
8.22 Definitions.
8.23 Limitation on issues subject to review.
8.24 Specifying who represents the parties.
8.25 Informal review and the reviewing official's response.
8.26 Preparation of the review file and written argument.
8.27 Opportunity for oral presentation.
8.28 Expedited procedures for review of immediate suspension.
8.29 Ex parte communications.
8.30 Transmission of written communications by reviewing official and calculation of deadlines.
8.31 Authority and responsibilities of reviewing official.
8.32 Administrative record.
8.33 Written decision.
8.34 Court review of final administrative action; exhaustion of administrative remedies.

Authority: 21 U.S.C. 823; 42 U.S.C. 257a, 290aa(d), 290dd–2, 300x–23, 300x–27(a), 300y–11.

Subpart A—Accreditation

§ 8.1 Scope.

The regulations in this part establish the procedures by which the Secretary of Health and Human Services (the Secretary) will determine whether a practitioner is qualified under section 303(g) of the Controlled Substances Act (21 U.S.C. 823(g)) to dispense opioid drugs in the treatment of opioid addiction. These regulations also establish the Secretary's standards regarding the appropriate quantities of opioid drugs that may be provided for unsupervised use by individuals undergoing such treatment (21 U.S.C. 823(g)(3)). Under these regulations, a practitioner who intends to dispense opioid drugs in the treatment of opioid addiction must first obtain from the Secretary or by delegation, from the Substance Abuse and Mental Health Services Administration (SAMHSA) a certification that the practitioner is qualified under the Secretary's standards and will comply with such standards. Eligibility for certification will depend upon the practitioner obtaining accreditation from an accreditation body that has been approved by SAMHSA. These regulations establish the procedures whereby an entity can apply to become an approved accreditation body. This part also establishes requirements and general standards for accreditation bodies to ensure that practitioners are consistently evaluated for compliance with the Secretary's standards for opioid treatment.

§ 8.2 Definitions.

The following definitions apply to this part:

Accreditation means the process of review and acceptance by an accreditation body.

Accreditation body means a body that has been approved by SAMHSA under § 8.3 to accredit opioid treatment programs.

Accreditation body application means the application filed with SAMHSA for purposes of obtaining approval as an accreditation body, as described in § 8.3(b).

Accreditation elements mean the elements that are developed and adopted by an accreditation body and approved by SAMHSA.

Accreditation survey means an onsite review and evaluation of an opioid treatment program by an accreditation body for the purpose of determining compliance with the Federal opioid treatment standards described in § 8.12.

Accredited opioid treatment program means an opioid treatment program that is the subject of a current, valid accreditation from an approved accreditation body.

Certification means the process by which SAMHSA determines that an opioid treatment program is qualified to provide opioid treatment under the Federal opioid treatment standards.

Certification application means the application filed by an opioid treatment program for purposes of obtaining certification from SAMHSA, as described in § 8.11(b).

Certified opioid treatment program means an opioid treatment program that is the subject of a current, valid certification under § 8.11.

Comprehensive maintenance treatment is maintenance treatment provided in conjunction with a comprehensive range of appropriate medical and rehabilitative services.

Detoxification treatment means the dispensing of an opioid agonist treatment medication in decreasing doses to an individual to alleviate adverse physical or psychological effects incident to withdrawal from the continuous or sustained use of an opioid drug and as a method of bringing the individual to a drug-free state within such period.

Federal opioid treatment standards means the standards established by the Secretary in § 8.12 that are used to determine whether an opioid treatment program is qualified to engage in opioid treatment. The Federal opioid treatment standards established in § 8.12 also include the standards established by the Secretary regarding the quantities of opioid drugs which may be provided for unsupervised use.

For-cause inspection means an inspection of an opioid treatment program by the Secretary, or by an accreditation body, that may be operating in violation of Federal opioid treatment standards, may be providing substandard treatment, or may be serving as a possible source of diverted medications.

Interim maintenance treatment means maintenance treatment provided in conjunction with appropriate medical services while a patient is awaiting transfer to a program that provides comprehensive maintenance treatment.

Long-term detoxification treatment means detoxification treatment for a period more than 30 days but not in excess of 180 days.

Maintenance treatment means the dispensing of an opioid agonist treatment medication at stable dosage levels for a period in excess of 21 days in the treatment of an individual for opioid addiction.

Medical director means a physician, licensed to practice medicine in the jurisdiction in which the opioid treatment program is located, who assumes responsibility for administering all medical services performed by the program, either by performing them directly or by delegating specific responsibility to authorized program physicians and healthcare professionals functioning under the medical director's direct supervision.

Medical and rehabilitative services means services such as medical evaluations, counseling, and rehabilitative and other social programs (e.g., vocational and educational guidance, employment placement), that are intended to help patients in opioid treatment programs become productive members of society.

Medication unit means a facility established as part of, but

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geographically separate from, an opioid treatment program from which licensed private practitioners or community pharmacists dispense or administer an opioid agonist treatment medication or collect samples for drug testing or analysis.

Opioid addiction means a condition in which an individual exhibits a compulsive craving for or compulsively uses opioid drugs despite being harmed or causing harm as a result of such craving or use.

Opioid agonist treatment medication means any opioid agonist drug that is approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid addiction.

Opioid drug means any drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.

Opioid treatment means the dispensing of an opioid agonist treatment medication, along with a comprehensive range of medical and rehabilitative services, when clinically necessary, to an individual to alleviate the adverse medical, psychological, or physical effects incident to opioid addiction. This term encompasses detoxification treatment, short-term detoxification treatment, long-term detoxification treatment, maintenance treatment, comprehensive maintenance treatment, and interim maintenance treatment.

Opioid treatment program or "OTP" means a program or practitioner engaged in opioid treatment of individuals with an opioid agonist treatment medication.

Patient means any individual who undergoes treatment in an opioid treatment program.

Program sponsor means the person named in the application for certification described in § 8.11(b) as responsible for the operation of the opioid treatment program and who assumes responsibility for all its employees, including any practitioners, agents, or other persons providing medical, rehabilitative, or counseling services at the program or any of its medication units. The program sponsor need not be a licensed physician but shall employ a licensed physician for the position of medical director.

Registered opioid treatment program means an opioid treatment program that is registered under 21 U.S.C. 823(g).

Short-term detoxification treatment means detoxification treatment for a period not in excess of 30 days.

Treatment plan means a plan that outlines for each patient attainable short-term treatment goals that are mutually acceptable to the patient and the opioid treatment program.

§ 8.3 Application for approval as an accreditation body.

(a) *Eligibility.* Private nonprofit organizations or State governmental entities, or political subdivisions thereof, capable of meeting the requirements of this part may apply for approval as an accreditation body.

(b) *Application for initial approval.* Three copies of an accreditation body application form [SMA–163] shall be submitted to SAMHSA at rm. 12–105, 5600 Fishers Lane, Rockville, MD 20857, and marked ATTENTION: OTP Certification Program. Accreditation body applications shall include the following information and supporting documentation:

(1) Name, address, and telephone number of the applicant and a responsible official for the application. The application shall be signed by the responsible official;

(2) Evidence of the nonprofit status of the applicant (i.e., of fulfilling Internal Revenue Service requirements as a nonprofit organization) if the applicant is not a State governmental entity or political subdivision;

(3) Evidence demonstrating that the applicant will be able to survey no less than 50 OTP's annually;

(4) A set of the accreditation elements and a detailed discussion showing how the proposed accreditation elements will ensure that each OTP surveyed by the applicant is qualified to meet or is meeting each of the Federal opioid treatment standards set forth in § 8.12;

(5) A detailed description of the applicant's decisionmaking process, including:

(i) Procedures for initiating and performing onsite accreditation surveys of OTP's;

(ii) Procedures for assessing OTP personnel qualifications;

(iii) Copies of an application for accreditation, guidelines, instructions, and other materials the applicant will send to OTP's during the accreditation process, including a request for a complete history of prior accreditation activities and a statement that all information and data submitted in the application for accreditation is true and accurate, and that no material fact has been omitted;

(iv) Policies and procedures for notifying OTP's and SAMHSA of deficiencies and for monitoring corrections of deficiencies by OTP's;

(v) Policies and procedures for suspending or revoking an OTP's accreditation;

(vi) Policies and procedures that will ensure processing of applications for accreditation and applications for renewal of accreditation within a timeframe approved by SAMHSA; and

(vii) A description of the applicant's appeals process to allow OTP's to contest adverse accreditation decisions.

(6) Policies and procedures established by the accreditation body to avoid conflicts of interest, or the appearance of conflicts of interest, by the applicant's board members, commissioners, professional personnel, consultants, administrative personnel, and other representatives;

(7) A description of the education, experience, and training requirements for the applicant's professional staff, accreditation survey team membership, and the identification of at least one licensed physician on the applicant's staff;

(8) A description of the applicant's training policies;

(9) Fee schedules, with supporting cost data;

(10) Satisfactory assurances that the body will comply with the requirements of § 8.4, including a contingency plan for investigating complaints under § 8.4(e);

(11) Policies and procedures established to protect confidential information the applicant will collect or receive in its role as an accreditation body; and

(12) Any other information SAMHSA may require.

(c) *Application for renewal of approval.* An accreditation body that intends to continue to serve as an accreditation body beyond its current term shall apply to SAMHSA for renewal, or notify SAMHSA of its intention not to apply for renewal, in accordance with the following procedures and schedule:

(1) At least 9 months before the date of expiration of an accreditation body's term of approval, the body shall inform SAMHSA in writing of its intent to seek renewal.

(2) SAMHSA will notify the applicant of the relevant information, materials, and supporting documentation required under paragraph (b) of this section that the applicant shall submit as part of the renewal procedure.

(3) At least 3 months before the date of expiration of the accreditation body's term of approval, the applicant shall furnish to SAMHSA three copies of a renewal application containing the information, materials, and supporting documentation requested by SAMHSA under paragraph (c)(2) of this section.

(4) An accreditation body that does not intend to renew its approval shall so notify SAMHSA at least 9 months before the expiration of the body's term of approval.

(d) *Rulings on applications for initial approval or renewal of approval.* (1) SAMHSA will grant an application for initial approval or an application for renewal of approval if it determines the applicant substantially meets the accreditation body requirements of this subpart.

(2) If SAMHSA determines that the applicant does not substantially meet the requirements set forth in subpart A of this part, SAMHSA will notify the applicant of the deficiencies in the application and request that the applicant resolve such deficiencies within 90 days of receipt of the notice. If the deficiencies are resolved to the satisfaction of SAMHSA within the 90-day time period, the body will be approved as an accreditation body. If the deficiencies have not been resolved to the satisfaction of SAMHSA within the 90-day time period, the application for approval as an accreditation body will be denied.

(3) If SAMHSA does not reach a final decision on a renewal application before the expiration of an accreditation body's term of approval, the approval will be deemed extended until SAMHSA reaches a final decision, unless an accreditation body does not rectify deficiencies in the application within the specified time period, as required in paragraph (d)(2) of this section.

(e) *Relinquishment of approval.* An accreditation body that intends to relinquish its accreditation approval before expiration of the body's term of approval shall submit a letter of such intent to SAMHSA, at the address in paragraph (b) of this section, at least 9 months before relinquishing such approval.

(f) *Notification.* An accreditation body that does not apply for renewal of approval, or is denied such approval by SAMHSA, relinquishes its accreditation approval before expiration of its term of approval, or has its approval withdrawn, shall:

(1) Transfer copies of records and other related information as required by SAMHSA to a location, including another accreditation body, and according to a schedule approved by SAMHSA; and

(2) Notify, in a manner and time period approved by SAMHSA, all OTP's accredited or seeking accreditation by the body that the body will no longer have approval to provide accreditation services.

(g) *Term of approval.* An accreditation body's term of approval is for a period not to exceed 5 years.

(h) *State accreditation bodies.* State governmental entities, including political subdivisions thereof, may establish organizational units that may act as accreditation bodies, provided such units meet the requirements of this section, are approved by SAMHSA under this section, and have taken appropriate measures to prevent actual or apparent conflicts of interest, including cases in which State or Federal funds are used to support opioid treatment services.

§ 8.4 Accreditation body responsibilities.

(a) *Accreditation surveys and inspections.* (1) Accreditation bodies shall conduct routine accreditation surveys for initial, renewal, and continued accreditation of each OTP at least every 3 years.

(2) Accreditation bodies must agree to conduct for-cause inspections upon the request of SAMHSA.

(3) Accreditation decisions shall be fully consistent with the policies and procedures submitted as part of the approved accreditation body application.

(b) *Response to noncompliant programs.* (1) If an accreditation body receives or discovers information that suggests that an OTP is not meeting Federal opioid treatment standards, or if review of the OTP by the accreditation body otherwise demonstrates one or more deficiencies in the OTP, the accreditation body shall as appropriate either require and monitor corrective action or shall suspend or revoke accreditation of the OTP, as appropriate based on the significance of the deficiencies.

(i) Accreditation bodies shall either not accredit or shall revoke the accreditation of any OTP that substantially fails to meet the Federal opioid treatment standards.

(ii) Accreditation bodies shall notify SAMHSA as soon as possible but in no case longer than 48 hours after becoming aware of any practice or condition that may pose a serious risk to public health or safety or patient care.

(iii) If an accreditation body determines that an OTP is substantially meeting the Federal opioid treatment standards, but is not meeting one or more accreditation elements, the accreditation body shall determine the necessary corrective measures to be taken by the OTP, establish a schedule for implementation of such measures, and notify the OTP in writing that it must implement such measures within the specified schedule in order to ensure continued accreditation. The accreditation body shall verify that the necessary steps are taken by the OTP within the schedule specified and that all accreditation elements are being substantially met or will be substantially met.

(2) Nothing in this part shall prevent accreditation bodies from granting accreditation, contingent on promised programmatic or performance changes, to programs with less substantial violations. Such accreditation shall not exceed 12 months. Programs that have been granted such accreditation must have their accreditation revoked if they fail to make changes to receive unconditional accreditation upon resurvey or reinspection.

(c) *Recordkeeping.* (1) Accreditation bodies shall maintain records of their accreditation activities for at least 3 years from the creation of the record. Such records must contain sufficient detail to support each accreditation decision made by the accreditation body.

(2) Accreditation bodies shall establish procedures to protect confidential information collected or received in their role as accreditation bodies that are consistent with, and that are designed to ensure compliance with, all Federal and State laws, including 42 CFR part 2.

(i) Information collected or received for the purpose of carrying out accreditation body responsibilities shall not be used for any other purpose or disclosed, other than to SAMHSA or its duly designated representatives, unless otherwise required by law or with the consent of the OTP.

(ii) Nonpublic information that SAMHSA shares with the accreditation body concerning an OTP shall not be further disclosed except with the written permission of SAMHSA.

(d) *Reporting.* (1) Accreditation bodies shall provide to SAMHSA any documents and information requested by SAMHSA within 5 days of receipt of the request.

(2) Accreditation bodies shall make a summary of the results of each accreditation survey available to SAMHSA upon request. Such summaries shall contain sufficient detail to justify the accreditation action taken.

(3) Accreditation bodies shall provide SAMHSA upon request a list of each OTP surveyed and the identity of all individuals involved in the conduct and reporting of survey results.

(4) Accreditation bodies shall submit to SAMHSA the name of each OTP for

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which the accreditation body accredits conditionally, denies, suspends, or revokes accreditation, and the basis for the action, within 48 hours of the action.

(5) Notwithstanding any reports made to SAMHSA under paragraphs (d)(1) through (d)(4) of this section, each accreditation body shall submit to SAMHSA semi-annually, on January 15 and July 15 of each calendar year, a report consisting of a summary of the results of each accreditation survey conducted in the past year. The summary shall contain sufficient detail to justify each accreditation action taken.

(6) All reporting requirements listed in this section shall be provided to SAMHSA at the address specified in § 8.3(b).

(e) *Complaint response.* Accreditation bodies shall have policies and procedures to respond to complaints from SAMHSA, patients, and others within a reasonable period of time but not more than 5 days of the receipt of the complaint. Accreditation bodies shall also agree to notify SAMHSA within 48 hours of receipt of a complaint and keep SAMHSA informed of all aspects of the response to the complaint.

(f) *Modifications of accreditation elements.* Accreditation bodies shall obtain SAMHSA's authorization prior to making any substantive (i.e., noneditorial) change in accreditation elements.

(g) *Conflicts of interest.* The accreditation body shall maintain and apply policies and procedures that SAMHSA has approved in accordance with § 8.3 to reduce the possibility of actual conflict of interest, or the appearance of a conflict of interest, on the part of individuals who act on behalf of the accreditation body. Individuals who participate in accreditation surveys or otherwise participate in the accreditation decision or an appeal of the accreditation decision, as well as their spouses and minor children, shall not have a financial interest in the OTP that is the subject of the accreditation survey or decision.

(h) *Accreditation teams.* (1) An accreditation body survey team shall consist of healthcare professionals with expertise in drug abuse treatment and, in particular, opioid treatment. The accreditation body shall consider factors such as the size of the OTP, the anticipated number of problems, and the OTP's accreditation history, in determining the composition of the team. At a minimum, survey teams shall consist of at least 2 healthcare professionals whose combined expertise includes:

(i) The dispensing and administration of drugs subject to control under the Controlled Substances Act (21 U.S.C. 801 *et seq.*);

(ii) Medical issues relating to the dosing and administration of opioid agonist treatment medications for the treatment of opioid addiction;

(iii) Psychosocial counseling of individuals undergoing opioid treatment; and

(iv) Organizational and administrative issues associated with opioid treatment programs.

(2) Members of the accreditation team must be able to recuse themselves at any time from any survey in which either they or the OTP believes there is an actual conflict of interest or the appearance of a conflict of interest.

(i) *Accreditation fees.* Fees charged to OTP's for accreditation shall be reasonable. SAMHSA generally will find fees to be reasonable if the fees are limited to recovering costs to the accreditation body, including overhead incurred. Accreditation body activities that are not related to accreditation functions are not recoverable through fees established for accreditation.

(1) The accreditation body shall make public its fee structure, including those factors, if any, contributing to variations in fees for different OTP's.

(2) At SAMHSA's request, accreditation bodies shall provide to SAMHSA financial records or other materials, in a manner specified by SAMHSA, to assist in assessing the reasonableness of accreditation body fees.

§ 8.5 Periodic evaluation of accreditation bodies.

SAMHSA will evaluate periodically the performance of accreditation bodies primarily by inspecting a selected sample of the OTP's accredited by the accrediting body and by evaluating the accreditation body's reports of surveys conducted, to determine whether the OTP's surveyed and accredited by the accreditation body are in compliance with the Federal opioid treatment standards. The evaluation will include a determination of whether there are major deficiencies in the accreditation body's performance that, if not corrected, would warrant withdrawal of the approval of the accreditation body under § 8.6.

§ 8.6 Withdrawal of approval of accreditation bodies.

If SAMHSA determines that an accreditation body is not in substantial compliance with this subpart, SAMHSA shall take appropriate action as follows:

(a) *Major deficiencies.* If SAMHSA determines that the accreditation body has a major deficiency, such as commission of fraud, material false statement, failure to perform a major accreditation function satisfactorily, or significant noncompliance with the requirements of this subpart, SAMHSA shall withdraw approval of that accreditation body.

(1) In the event of a major deficiency, SAMHSA shall notify the accreditation body of the agency's action and the grounds on which the approval was withdrawn.

(2) An accreditation body that has lost its approval shall notify each OTP that has been accredited or is seeking accreditation that the accreditation body's approval has been withdrawn. Such notification shall be made within a time period and in a manner approved by SAMHSA.

(b) *Minor deficiencies.* If SAMHSA determines that the accreditation body has minor deficiencies in the performance of an accreditation function, that are less serious or more limited than the types of deficiencies described in paragraph (a) of this section, SAMHSA will notify the body that it has 90 days to submit to SAMHSA a plan of corrective action. The plan must include a summary of corrective actions and a schedule for their implementation. SAMHSA may place the body on probationary status for a period of time determined by SAMHSA, or may withdraw approval of the body if corrective action is not taken.

(1) If SAMHSA places an accreditation body on probationary status, the body shall notify all OTP's that have been accredited, or that are seeking accreditation, of the accreditation body's probationary status within a time period and in a manner approved by SAMHSA.

(2) Probationary status will remain in effect until such time as the body can demonstrate to the satisfaction of SAMHSA that it has successfully implemented or is implementing the corrective action plan within the established schedule, and the corrective actions taken have substantially eliminated all identified problems.

(3) If SAMHSA determines that an accreditation body that has been placed on probationary status is not implementing corrective actions satisfactorily or within the established schedule, SAMHSA may withdraw approval of the accreditation body. The accreditation body shall notify all OTP's that have been accredited, or are seeking accreditation, of the accreditation body's loss of SAMHSA approval within a time period and in a manner approved by SAMHSA.

(c) *Reapplication.* (1) An accreditation body that has had its approval withdrawn may submit a new application for approval if the body can provide information to SAMHSA to establish that the problems that were grounds for withdrawal of approval have been resolved.

(2) If SAMHSA determines that the new application demonstrates that the body satisfactorily has addressed the causes of its previous unacceptable performance, SAMHSA may reinstate approval of the accreditation body.

(3) SAMHSA may request additional information or establish additional conditions that must be met before SAMHSA approves the reapplication.

(4) SAMHSA may refuse to accept an application from a former accreditation body whose approval was withdrawn because of fraud, material false statement, or willful disregard of public health.

(d) *Hearings.* An opportunity to challenge an adverse action taken regarding withdrawal of approval of an accreditation body shall be addressed through the relevant procedures set forth in subpart C of this part, except that the procedures in § 8.28 for expedited review of an immediate suspension would not apply to an accreditation body that has been notified under paragraph (a) or (b) of this section of the withdrawal of its approval.

Subpart B—Certification and Treatment Standards

§ 8.11 Opioid treatment program certification.

(a) *General.* (1) An OTP must be the subject of a current, valid certification from SAMHSA to be considered qualified by the Secretary under section 303(g)(1) and (g)(3) of the Controlled Substances Act (21 U.S.C. 823(g)(1) and (g)(3)) to dispense opioid drugs in the treatment of opioid addiction. An OTP must be determined to be qualified under section 303(g)(1) and (g)(3) of the Controlled Substances Act, and must be determined to be qualified by the Attorney General under section 303(g)(2), to be registered by the Attorney General to dispense opioid agonist treatment medications to individuals for treatment of opioid addiction.

(2) To obtain certification from SAMHSA, an OTP must meet the Federal opioid treatment standards in § 8.12, must be the subject of a current, valid accreditation by an accreditation body or other entity designated by SAMHSA, and must comply with any other conditions for certification established by SAMHSA.

(3) Certification shall be granted for a term not to exceed 3 years, except that certification may be extended during the third year if an application for accreditation is pending.

(b) *Application for certification.* Three copies of an application for certification must be submitted by the OTP to the address identified in § 8.3(b). The application for certification shall include:

(1) A description of the current accreditation status of the OTP;

(2) A description of the organizational structure of the OTP;

(3) The names of the persons responsible for the OTP;

(4) The address of the OTP and of each medication unit or other facility under the control of the OTP;

(5) The sources of funding for the OTP and the name and address of each governmental entity that provides such funding; and

(6) A statement that the OTP will comply with the conditions of certification set forth in paragraph (f) of this section.

(7) The application shall be signed by the program sponsor who shall certify that the information submitted in the application is truthful and accurate.

(c) *Action on application.* (1) Following SAMHSA's receipt of an application for certification of an OTP, and after consultation with the appropriate State authority regarding the qualifications of the applicant, SAMHSA may grant the application for certification, or renew an existing certification, if SAMHSA determines that the OTP has satisfied the requirements for certification or renewal of certification.

(2) SAMHSA may deny the application if SAMHSA determines that:

(i) The application for certification is deficient in any respect;

(ii) The OTP will not be operated in accordance with the Federal opioid treatment standards established under § 8.12;

(iii) The OTP will not permit an inspection or a survey to proceed, or will not permit in a timely manner access to relevant records or information; or

(iv) The OTP has made misrepresentations in obtaining accreditation or in applying for certification.

(3) Within 5 days after it reaches a final determination that an OTP meets the requirements for certification, SAMHSA will notify the Drug Enforcement Administration (DEA) that the OTP has been determined to be qualified to provide opioid treatment under section 303(g)(1) and (g)(3) of the Controlled Substances Act.

(d) *Transitional certification.* OTP's that on (date 60 days after date of publication of final rule in the **Federal Register**) were the subject of a current, valid approval by FDA under 21 CFR part 291, are deemed to be the subject of a current valid certification for purposes of paragraph (a)(11) of this section. Such "transitional" certification shall expire on (date 150 days after date of publication of final rule in the **Federal Register**), except that such transitional certification of an OTP that submits the information required by paragraph (b) of this section to SAMHSA on or before (date 150 days after date of publication of the final rule in the **Federal Register**), along with a statement certifying that the OTP will apply for accreditation from a SAMHSA approved accreditation body within 90 days from the date SAMHSA announces the approval of the first accreditation body under § 8.3, shall expire on (date 2 years and 60 days after date of publication of final rule in the **Federal Register**). SAMHSA may extend the transitional certification of an OTP for up to 1 additional year provided the OTP demonstrates that it has applied for accreditation, that an accreditation survey has taken place or is scheduled to take place, and that an accreditation decision is expected within a reasonable period of time (e.g., within 90 days from the date of survey). Transitional certification under this section may be suspended or revoked in accordance with § 8.14.

(e) *Provisional certification.* (1) OTP's that have no current certification from SAMHSA, but have applied for accreditation with an accreditation body, are eligible to receive a provisional certification for up to 1 year. To receive a provisional certification, an OTP shall submit the information required by paragraph (b) of this section to SAMHSA along with a statement identifying the accreditation body to which the OTP has applied for accreditation, the date on which the OTP applied for accreditation, the dates of any accreditation surveys that have taken place or are expected to take place, and the expected schedule for completing the accreditation process. A provisional certification for up to 1 year will be granted, following receipt of the information described in this paragraph, unless SAMHSA determines that patient health would be adversely affected by the granting of provisional certification.

(2) An extension of provisional certification may be granted in

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extraordinary circumstances or otherwise to protect public health. To apply for a 90-day extension of provisional certification, an OTP shall submit to SAMHSA a statement explaining the program's efforts to obtain accreditation and a schedule for obtaining accreditation as expeditiously as possible.

(f) *Conditions for certification.* (1) OTP's shall comply with all pertinent State laws and regulations. Nothing in this part is intended to limit the authority of State and local governmental entities to regulate the use of opioid drugs in the treatment of opioid addiction. The provisions of this section requiring compliance with requirements imposed by State law, or the submission of applications or reports required by the State authority, do not apply to programs operated directly by the Veterans' Administration or any other department or agency of the United States. Federal agencies operating narcotic treatment programs have agreed to cooperate voluntarily with State agencies by granting permission on an informal basis for designated State representatives to visit Federal narcotic treatment programs and by furnishing a copy of Federal reports to the State authority, including the reports required under this section.

(2) OTP's shall allow, in accordance with Federal controlled substances laws and Federal confidentiality laws, inspections and surveys by duly authorized employees of SAMHSA, by accreditation bodies, by the DEA, and by authorized employees of any relevant State or Federal governmental authority.

(3) Disclosure of patient records maintained by an OTP is governed by the provisions of 42 CFR part 2, and every program must comply with that part. Records on the receipt, storage, and distribution of opioid agonist treatment medications are also subject to inspection under Federal controlled substances laws and under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.*). Federally-sponsored treatment programs are subject to applicable Federal confidentiality statutes.

(4) A treatment program or medication unit or any part thereof, including any facility or any individual, shall permit a duly authorized employee of SAMHSA to have access to and to copy all records on the use of opioid drugs in accordance with the provisions of 42 CFR part 2.

(5) OTP's shall notify SAMHSA within 3 weeks of any replacement or other change in the status of the program sponsor or medical director.

(6) OTP's shall comply with all regulations enforced by the DEA under 21 CFR chapter II, and must be registered by the DEA before administering or dispensing opioid agonist treatment medications.

(7) OTP's must operate in accordance with Federal opioid treatment standards and approved accreditation elements.

(g) *Conditions for interim maintenance treatment program approval.* (1) Before a public or nonprofit private OTP may provide interim maintenance treatment, the program must receive the approval of both SAMHSA and the chief public health officer of the State in which the OTP operates.

(2) Before SAMHSA may grant such approval, the OTP must provide SAMHSA with documentation from the chief public health officer of the State in which the OTP operates demonstrating that:

(i) Such officer does not object to the providing of interim maintenance treatment in the State;

(ii) The OTP seeking to provide such treatment is unable to place patients in a public or nonprofit private comprehensive treatment program within a reasonable geographic area within 14 days of the time patients seek admission to such programs;

(iii) The authorization of the OTP to provide interim maintenance treatment will not otherwise reduce the capacity of comprehensive maintenance treatment programs in the State to admit individuals (relative to the date on which such officer so certifies); and

(iv) The State certifies that each individual enrolled in interim maintenance treatment will be transferred to a comprehensive maintenance treatment program no later than 120 days from the date on which each individual first requested treatment, as provided in section 1923 of the Public Health Service Act (21 U.S.C. 300x–23).

(3) SAMHSA will provide notice to the OTP denying or approving the request to provide interim maintenance treatment. The OTP shall not provide such treatment until it has received such notice from SAMHSA.

(h) *Exemptions.* An OTP may, at the time of application for certification or any time thereafter, request from SAMHSA exemption from the regulatory requirements set forth under §§ 8.11 and 8.12. The OTP shall support the rationale for the exemption with thorough documentation, to be supplied in an appendix to the initial application for certification or in a separate submission. SAMHSA will approve or deny such exemptions at the time of application, or any time thereafter, if appropriate. SAMHSA may consult with the appropriate State authority prior to taking action on an exemption request.

(i) *Medication units, long-term care facilities and hospitals.* (1) Certified OTP's may establish medication units that are authorized to dispense opioid agonist treatment medications for observed ingestion. Before establishing a medication unit, a certified OTP must notify SAMHSA by submitting SMA–162. The OTP must also comply with the provisions of 21 CFR part 1300 before establishing a medication unit.

(2) Certification as an OTP under this part will not be required for the maintenance or detoxification treatment of a patient who is admitted to a hospital or long-term care facility for the treatment of medical conditions other than addiction and who requires maintenance or detoxification treatment during the period of his or her stay in that hospital or long-term care facility. The terms "hospital" and "long-term care facility" as used in this section are to have the meaning that is assigned under the law of the State in which the treatment is being provided. Nothing in this section is intended to relieve hospitals and long-term care facilities from the obligation to obtain registration from the Attorney General, as appropriate, under section 303(g) of the Controlled Substances Act.

§ 8.12 Federal opioid treatment standards.

(a) *General.* OTP's must provide treatment in accordance with these standards and must comply with these standards as a condition of certification.

(b) *Administrative and organizational structure.* An OTP's organizational structure shall be adequate to ensure quality patient care and to meet the requirements of all pertinent Federal, State, and local laws and regulations. At a minimum, each program shall formally designate a program sponsor and medical director. The program sponsor shall agree on behalf of the program to adhere to all requirements set forth in this part and any regulations regarding the use of opioid agonist treatment medications in the treatment of opioid addiction which may be promulgated in the future. The medical director shall assume responsibility for administering all medical services performed by the program. In addition, the medical director shall be responsible for ensuring that the program is in compliance with all applicable Federal, State, and local laws and regulations.

(c) *Continuous quality improvement.* (1) An OTP must maintain current quality assurance and quality control plans that include, among other things, annual reviews of program policies and procedures and ongoing assessment of patient outcomes.

(2) An OTP must maintain a current "Diversion Control Plan" or "DCP" as part of its quality assurance program that contains specific measures to reduce the possibility of diversion of controlled substances from legitimate treatment use and that assigns specific responsibility to the medical and administrative staff of the OTP for carrying out the diversion control measures and functions described in the DCP.

(d) *Staff credentials.* Each person engaged in the treatment of opioid addiction must have sufficient education, training, and experience, or any combination thereof, to enable that person to perform the assigned functions. All physicians, nurses, and other licensed professional care providers, including addiction counselors, must comply with the credentialing requirements of their respective professions.

(e) *Patient admission criteria*—(1) *Maintenance treatment.* An OTP shall maintain current procedures designed to ensure that patients are admitted to maintenance treatment by qualified personnel who have determined, using accepted medical criteria such as those listed in the *Diagnostic and Statistical Manual for Mental Disorders* (DSM–IV), that the person is currently addicted to an opioid drug, and that the person became addicted at least 1 year before admission for treatment. In addition, a program physician shall ensure that each patient voluntarily chooses maintenance treatment and that all relevant facts concerning the use of the opioid drug are clearly and adequately explained to the patient, and that each patient provides informed written consent to treatment.

(2) *Maintenance treatment for persons under age 18.* A person under 18 years of age is required to have had two documented attempts at short-term detoxification or drug-free treatment to be eligible for maintenance treatment. A waiting period of no less than 7 days is required between the first and the second short-term detoxification treatment. No person under 18 years of age may be admitted to maintenance treatment unless a parent, legal guardian, or responsible adult designated by the relevant State authority consents in writing to such treatment.

(3) *Maintenance treatment admission exceptions.* If clinically appropriate, the program physician may waive the requirement of a 1 year history of addiction under paragraph (e)(1) of this section, for patients released from penal institutions (within 6 months after release), for pregnant patients (program physician must certify pregnancy), and for previously treated patients (up to 2 years after discharge).

(4) *Detoxification treatment.* An OTP shall maintain current procedures that are designed to ensure that patients are admitted to short- or long-term detoxification treatment by qualified personnel, such as a program physician, who determines that such treatment is appropriate for the specific patient by applying established diagnostic criteria. At a minimum, a program physician shall determine that each patient admitted is physically dependent on opioid drugs. In addition, a patient is required to wait no less than 7 days between concluding a short-term detoxification or long-term detoxification treatment episode and beginning another.

(f) *Required services*—(1) *General.* OTP's shall provide adequate medical, counseling, vocational, educational, and assessment services. These services must be available at the primary facility, except where the program sponsor has entered into a formal, documented agreement with a private or public agency, organization, practitioner, or institution to provide these services to patients enrolled in the OTP. The program sponsor, in any event, must be able to document that these services are fully and reasonably available to patients.

(2) *Initial medical examination services.* OTP's shall require each patient to undergo a complete, fully documented medical evaluation by a program physician or a primary care physician, or an authorized healthcare professional under the supervision of a program physician, within the first 30 days following admission to the OTP.

(3) *Special services for pregnant patients.* OTP's must maintain current policies and procedures that reflect the special needs of patients who are pregnant. Prenatal care and other gender specific services for pregnant patients must be provided either by the OTP or by referral to appropriate healthcare providers.

(4) *Initial and periodic assessment services.* Each patient accepted for treatment at an OTP shall be assessed initially and periodically by qualified personnel to determine the most appropriate combination of services and treatment. The initial assessment must include preparation of a treatment plan that includes the patient's short-term goals and the tasks the patient must perform to complete the short-term goals; the patient's requirements for education, vocational rehabilitation, and employment; and the medical, psychosocial, economic, legal, or other supportive services that a patient needs. The treatment plan also must identify the frequency with which these services are to be provided. The plan must be reviewed and updated to reflect that patients's personal history, his or her current needs for medical, social, and psychological services, and his or her current needs for education, vocational rehabilitation, and employment services.

(5) *Counseling services.* (i) OTP's must provide adequate substance abuse counseling to each patient as clinically necessary. This counseling shall be provided by a program counselor, qualified by education, training, or experience to assess the psychological and sociological background of drug abusers, to contribute to the appropriate treatment plan for the patient and to monitor patient progress.

(ii) OTP's must provide counseling on preventing exposure to, and the transmission of, human immunodeficiency virus (HIV) disease for each patient admitted or readmitted to maintenance or detoxification treatment.

(iii) OTP's must provide directly, or through referral to adequate and reasonably accessible community resources, vocational rehabilitation, education, and employment services for patients who either request such services or who have been determined by the program staff to be in need of such services.

(6) *Drug abuse testing services.* OTP's must provide adequate testing or analysis for drugs of abuse, including at least eight random drug abuse tests per year, per patient, in accordance with generally accepted clinical practice. For patients in short-term detoxification treatment, the OTP shall perform at least one initial drug abuse test. For patients receiving long-term detoxification treatment, the program shall perform initial and monthly random tests on each patient.

(g) *Recordkeeping and patient confidentiality.* (1) OTP's shall establish and maintain a recordkeeping system that is adequate to document and monitor patient care. This system is required to comply with all Federal and State reporting requirements relevant to opioid drugs approved for use in treatment of opioid addiction. All records are required to be kept confidential in accordance with all applicable Federal and State requirements.

(2) OTP's shall include, as an essential part of the recordkeeping

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system, documentation in each patient's record showing that the OTP made the determination, upon the admission of each patient, that the patient is not enrolled in any other OTP. A patient enrolled in an OTP shall not be permitted to obtain treatment in any other OTP except in exceptional circumstances. If the medical director or program physician of the OTP in which the patient is enrolled determines that such exceptional circumstances exist, the patient may be granted permission to seek treatment at another OTP, provided the justification for finding exceptional circumstances is noted in the patient's record both at the OTP in which the patient is enrolled and at the OTP that will provide the treatment.

(h) *Medication administration, dispensing, and use.* (1) OTP's must ensure that opioid agonist treatment medications are administered or dispensed only by a practitioner licensed under the appropriate State law and registered under the appropriate State and Federal laws to administer or dispense opioid drugs, or by an agent of such a practitioner, supervised by and under the order of the licensed practitioner. This agent is required to be a pharmacist, registered nurse, or licensed practical nurse, or any other healthcare professional authorized by Federal and State law to administer or dispense opioid drugs.

(2) OTP's shall use only those opioid agonist treatment medications that are approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid addiction. In addition, OTP's may administer a drug that has been authorized by the Food and Drug Administration under an investigational new drug application under section 505(i) of the Federal Food, Drug, and Cosmetic Act for investigational use in the treatment of opioid addiction, provided the investigational use of the drug by the OTP is fully consistent with the protocol and other conditions set forth in that application. Only the following opioid agonist treatment medications will be considered to be approved by the Food and Drug Administration for use in the treatment of opioid addiction:

(i) Methadone; and

(ii) Levo-Alpha-Acetyl-Methadol (LAAM).

(3) OTP's shall maintain current procedures that are adequate to ensure that the following dosage form and initial dosing requirements are met:

(i) Methadone shall be administered or dispensed only in oral form and shall be formulated in such a way as to reduce its potential for parenteral abuse.

(ii) For each new patient enrolled in a program, the initial dose of methadone shall not exceed 30 milligrams and the total dose for the first day shall not exceed 40 milligrams, unless the program physician documents in the patient's record that 40 milligrams did not suppress opiate abstinence symptoms.

(iii) The administering physician shall ensure that any time a daily dose greater than 100 milligrams is provided to a patient, the justification for such a daily dose is stated in the patient's record.

(4) OTP's shall maintain current procedures adequate to ensure that each opioid agonist treatment medication used by the program is administered and dispensed in accordance with its approved product labeling. Dosing and administration decisions shall be made by a program physician familiar with the most up-to-date product labeling. These procedures must ensure that any deviations from the approved labeling, including deviations with regard to dose, frequency, or the conditions of use described in the approved labeling, are justified in the patient's record.

(i) *Unsupervised or "take-home" use.* To limit the potential for diversion of opioid agonist treatment medications to the illicit market, opioid agonist treatment medications dispensed to patients for unsupervised use shall be subject to the following requirements.

(1) Any patient in comprehensive maintenance treatment may receive a single take-home dose for a day that the clinic is closed for business, including Sundays and State and Federal holidays.

(2) Treatment program decisions on dispensing opioid treatment medications to patients for unsupervised use beyond that set forth in paragraph (h)(4)(i)(1) of this section, shall be determined by the medical director. In determining which patients may be permitted unsupervised use, the medical director shall consider the following take-home criteria in determining whether a patient is responsible in handling opioid drugs for unsupervised use.

(i) Absence of recent abuse of drugs (opioid or nonnarcotic), including alcohol;

(ii) Regularity of clinic attendance;

(iii) Absence of serious behavioral problems at the clinic;

(iv) Absence of known recent criminal activity, e.g., drug dealing;

(v) Stability of the patient's home environment and social relationships;

(vi) Length of time in comprehensive maintenance treatment;

(vii) Assurance that take-home medication can be safely stored within the patient's home; and

(viii) Whether the rehabilitative benefit the patient derived from decreasing the frequency of clinic attendance outweighs the potential risks of diversion.

(3) Such determinations and the basis for such determinations consistent with the criteria outlined in paragraph (h)(4)(i)(2) of this section shall be documented in the patient's medical record. If it is determined that a patient is responsible in handling opioid drugs, the following restrictions apply:

(i) During the first month of treatment, the maximum take-home supply is limited to a single dose each week and the patient shall ingest all other doses under appropriate supervision as provided for under these regulations.

(ii) In the second month of treatment, the maximum take-home supply is two doses after each supervised ingestion.

(iii) In the third month of treatment, the patient shall have observed ingestion at least twice a week, with take-home permitted for other doses.

(iv) In the remaining months of the first year, the maximum take-home supply of opioid medication is three doses after each supervised ingestion.

(v) After 1 year, a patient may be given a maximum of 31 days take-home medication, but must make monthly visits.

(4) No medications shall be dispensed to patients in short-term detoxification treatment or interim maintenance treatment for unsupervised or take-home use.

(5) OTP's must maintain current procedures adequate to identify the theft or diversion of take-home medications, including labeling containers with the OTP's name, address, and telephone number. Programs also must ensure that take-home supplies are packaged in a manner that is designed to reduce the risk of accidental ingestion (see Poison Prevention Packaging Act, Pub. L. 91–601 (15 U.S.C. 1471 *et seq.*)).

(j) *Interim maintenance treatment.* (1) The program sponsor of a public or nonprofit private OTP may place an individual, who is eligible for admission to comprehensive maintenance treatment, in interim maintenance treatment if the individual cannot be placed in a public or nonprofit private comprehensive program within a reasonable geographic area and within 14 days of the individual's application for admission to comprehensive maintenance treatment. An initial and at least two other urine screens shall be taken from interim patients during the maximum of 120 days permitted for

such treatment. A program shall establish and follow reasonable criteria for establishing priorities for transferring patients from interim maintenance to comprehensive maintenance treatment. These transfer criteria shall be in writing and shall include, at a minimum, a preference for pregnant women in admitting patients to interim maintenance and in transferring patients from interim maintenance to comprehensive maintenance treatment. Interim maintenance shall be provided in a manner consistent with all applicable Federal and State laws, including sections 1923, 1927(a), and 1976 of the Public Health Service Act (21 U.S.C. 300x–23, 300x–27(a), and 300y–11).

(2) The program shall notify the State health officer when a patient begins interim maintenance treatment, when a patient leaves interim maintenance treatment, and before the date of mandatory transfer to a comprehensive program, and shall document such notifications.

(3) SAMHSA may revoke the interim maintenance authorization for programs that fail to comply with the provisions of § 8.12(j). Likewise, SAMHSA will consider revoking the interim maintenance authorization of a program if the State in which the program operates is not in compliance with the provisions of § 8.11(g).

(4) All requirements for comprehensive maintenance treatment apply to interim maintenance treatment with the following exceptions:

(i) The opioid agonist treatment medication is required to be administered daily under observation;

(ii) Unsupervised or "take-home" use is not allowed;

(iii) An initial treatment plan and periodic treatment plan evaluations are not required;

(iv) A primary counselor is not required to be assigned to the patient;

(v) Interim maintenance cannot be provided for longer than 120 days in any 12 month-period; and

(vi) Rehabilitative, education, and other counseling services described in paragraphs (f)(4), (f)(5)(i), and (f)(5)(iii) of this section are not required to be provided to the patient.

§ 8.13 Revocation of accreditation and accreditation body approval.

(a) *SAMHSA action following revocation of accreditation.* If an accreditation body revokes an OTP's accreditation, SAMHSA may conduct an investigation into the reasons for the revocation. Following such investigation, SAMHSA may determine that the OTP's certification should no longer be in effect, at which time SAMHSA will initiate procedures to revoke the facility's certification in accordance with § 8.14. Alternatively, SAMHSA may determine that another action or combination of actions would better serve the public health, including the establishment and implementation of a corrective plan of action that will permit the certification to continue in effect while the OTP seeks reaccreditation.

(b) *Accreditation body approval.* (1) If SAMHSA withdraws the approval of an accreditation body under § 8.6, the certifications of OTP's accredited by such body shall remain in effect for a period of 1 year after the date of withdrawal of approval of the accreditation body, unless SAMHSA determines that to protect public health or safety, or because the accreditation body fraudulently accredited treatment programs, the certifications of some or all of the programs should be revoked or suspended or that a shorter time period should be established for the certifications to remain in effect. SAMHSA may extend the time in which a certification remains in effect under this paragraph on a case-by-case basis.

(2) Within 1 year from the date of withdrawal of approval of an accreditation body, or within any shorter period of time established by SAMHSA, OTP's currently accredited by the accreditation body must obtain accreditation from another accreditation body. SAMHSA may extend the time period for obtaining reaccreditation on a case-by-case basis.

§ 8.14 Suspension or revocation of certification.

(a) *Revocation.* Except as provided in paragraph (b) of this section, SAMHSA may revoke the certification of an OTP if SAMHSA finds, after providing the program sponsor with notice and an opportunity for a hearing in accordance with subpart C of this part, that the program sponsor, or any employee of the OTP:

(1) Has been found guilty of misrepresentation in obtaining the certification;

(2) Has failed to comply with the Federal opioid treatment standards in any respect;

(3) Has failed to comply with reasonable requests from SAMHSA or from an accreditation body for records, information, reports, or materials that are necessary to determine the continued eligibility of the OTP for certification or continued compliance with the Federal opioid treatment standards; or

(4) Has refused a reasonable request of a duly designated SAMHSA inspector, Drug Enforcement Administration (DEA) Inspector, State Inspector, or accreditation body representative for permission to inspect the program or the program's operations or its records.

(b) *Suspension.* Whenever SAMHSA has reason to believe that revocation may be required and that immediate action is necessary to protect public health or safety, SAMHSA may immediately suspend the certification of an OTP before holding a hearing under subpart C of this part. SAMHSA may immediately suspend as well as propose revocation of the certification of an OTP before holding a hearing under subpart C of this part if SAMHSA makes a finding described in paragraph (a) of this section and also determines that:

(1) The failure to comply with the Federal opioid treatment standards presents an imminent danger to the public health or safety;

(2) The refusal to permit inspection makes immediate suspension necessary; or

(3) There is reason to believe that the failure to comply with the Federal opioid treatment standards was intentional or was associated with fraud.

(c) *Written notification.* In the event that SAMHSA suspends the certification of an OTP in accordance with paragraph (b) of this section or proposes to revoke the certification of an OTP in accordance with paragraph (a) of this section, SAMHSA shall promptly provide the sponsor of the OTP with written notice of the suspension or proposed revocation by facsimile transmission, personal service, commercial overnight delivery service, or certified mail, return receipt requested. Such notice shall state the reasons for the action and shall state that the OTP may seek review of the action in accordance with the procedures in subpart C of this part.

(d)(1) If SAMHSA suspends certification in accordance with paragraph (b) of this section:

(i) SAMHSA will immediately notify DEA that the OTP's registration should be suspended under 21 U.S.C. 824(d); and

(ii) SAMHSA will provide an opportunity for a hearing under subpart C of this part.

(2) Suspension of certification under paragraph (b) of this section shall remain in effect until the agency determines that:

(i) The basis for the suspension cannot be substantiated;

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(ii) Violations of required standards have been corrected to the agency's satisfaction; or

(iii) The OTP's certification shall be revoked.

§ 8.15 Forms.

(a) SMA–162—Application for Certification to Use Opioid Agonist Treatment Medications for Opioid Treatment.

(b) SMA–163—Application for Becoming an Accreditation Body under 42 CFR 8.3.

Subpart C—Procedures for Review of Suspension or Proposed Revocation of OTP Certification

§ 8.21 Applicability.

These procedures apply when:

(a) SAMHSA has notified an OTP in writing that its certification under these regulations has been suspended or that SAMHSA proposes to revoke such certification; and

(b) The OTP has, within 30 days of the date of such notification or within 3 days of the date of such notification when seeking an expedited review of a suspension, requested in writing an opportunity for a review of the suspension or proposed revocation.

§ 8.22 Definitions.

(a) *Appellant* means the treatment program which has been notified of its suspension or proposed revocation of its certification under these regulations and has requested a review thereof.

(b) *Respondent* means the person or persons designated by the Secretary in implementing these regulations.

(c) *Reviewing official* means the person or persons designated by the Secretary who will review the suspension or proposed revocation. The reviewing official may be assisted by one or more of his or her employees or consultants in assessing and weighing the scientific and technical evidence and other information submitted by the appellant and respondent on the reasons for the suspension and proposed revocation.

§ 8.23 Limitation on issues subject to review.

The scope of review shall be limited to the facts relevant to any suspension or proposed revocation, the necessary interpretations of those facts, these regulations, and other relevant law.

§ 8.24 Specifying who represents the parties.

The appellant's request for review shall specify the name, address, and phone number of the appellant's representative. In its first written submission to the reviewing official, the respondent shall specify the name, address, and phone number of the respondent's representative.

§ 8.25 Informal review and the reviewing official's response.

(a) Within 30 days of the date of the notice of the suspension or proposed revocation, the appellant must submit a written request to the reviewing official seeking review, unless some other time period is agreed to by the parties. A copy must also be sent to the respondent. The request for review must include a copy of the notice of suspension or proposed revocation, a brief statement of why the decision to suspend or propose revocation is incorrect, and the appellant's request for an oral presentation, if desired.

(b) Within 5 days after receiving the request for review, the reviewing official will send an acknowledgment and advise the appellant of the next steps. The reviewing official will also send a copy of the acknowledgment to the respondent.

§ 8.26 Preparation of the review file and written argument.

The appellant and the respondent each participate in developing the file for the reviewing official and in submitting written arguments. The procedures for development of the review file and submission of written argument are:

(a) *Appellant's documents and brief.* Within 15 days after receiving the acknowledgment of the request for review, the appellant shall submit to the reviewing official the following (with a copy to the respondent):

(1) A review file containing the documents supporting appellant's argument, tabbed and organized chronologically, and accompanied by an index identifying each document. Only essential documents should be submitted to the reviewing official.

(2) A written statement, not to exceed 20 double-spaced pages, explaining why respondent's decision to suspend or propose revocation of appellant's certification is incorrect (appellant's brief).

(b) *Respondent's documents and brief.* Within 15 days after receiving a copy of the acknowledgment of the request for review, the respondent shall submit to the reviewing official the following (with a copy to the appellant):

(1) A review file containing documents supporting respondent's decision to suspend or revoke appellant's certification, tabbed and organized chronologically, and accompanied by an index identifying each document. Only essential documents should be submitted to the reviewing official.

(2) A written statement, not exceeding 20 double-spaced pages in length, explaining the basis for suspension or proposed revocation (respondent's brief).

(c) *Reply briefs.* Within 5 days after receiving the opposing party's submission, or 20 days after receiving acknowledgment of the request for review, whichever is later, each party may submit a short reply not to exceed 10 double-spaced pages.

(d) *Cooperative efforts.* Whenever feasible, the parties should attempt to develop a joint review file.

(e) *Excessive documentation.* The reviewing official may take any appropriate step to reduce excessive documentation, including the return of or refusal to consider documentation found to be irrelevant, redundant, or unnecessary.

§ 8.27 Opportunity for oral presentation.

(a) *Electing oral presentation.* If an opportunity for an oral presentation is desired, the appellant shall request it at the time it submits its written request for review to the reviewing official. The reviewing official will grant the request if the official determines that the decisionmaking process will be substantially aided by oral presentations and arguments. The reviewing official may also provide for an oral presentation at the official's own initiative or at the request of the respondent.

(b) *Presiding official.* The reviewing official or designee will be the presiding official responsible for conducting the oral presentation.

(c) *Preliminary conference.* The presiding official may hold a prehearing conference (usually a telephone conference call) to consider any of the following: simplifying and clarifying issues; stipulations and admissions; limitations on evidence and witnesses that will be presented at the hearing; time allotted for each witness and the hearing altogether; scheduling the hearing; and any other matter that will assist in the review process. Normally, this conference will be conducted informally and off the record; however, the presiding official may, at his or her discretion, produce a written document summarizing the conference or transcribe the conference, either of which will be made a part of the record.

(d) *Time and place of oral presentation.* The presiding official will attempt to schedule the oral presentation within 30 days of the date appellant's request for review is received or within 10 days of submission of the last reply brief, whichever is later. The oral presentation will be held at a time and place determined by the presiding official following consultation with the parties.

(e) *Conduct of the oral presentation*—(1) *General.* The presiding official is responsible for conducting the oral presentation. The presiding official may be assisted by one or more of his or her employees or consultants in conducting the oral presentation and reviewing the evidence. While the oral presentation will be kept as informal as possible, the presiding official may take all necessary steps to ensure an orderly proceeding.

(2) *Burden of proof/standard of proof.* In all cases, the respondent bears the burden of proving by a preponderance of the evidence that its decision to suspend or propose revocation is appropriate. The appellant, however, has a responsibility to respond to the respondent's allegations with evidence and argument to show that the respondent is incorrect.

(3) *Admission of evidence.* The rules of evidence do not apply and the presiding official will generally admit all testimonial evidence unless it is clearly irrelevant, immaterial, or unduly repetitious. Each party may make an opening and closing statement, may present witnesses as agreed upon in the prehearing conference or otherwise, and may question the opposing party's witnesses. Since the parties have ample opportunity to prepare the review file, a party may introduce additional documentation during the oral presentation only with the permission of the presiding official. The presiding official may question witnesses directly and take such other steps necessary to ensure an effective and efficient consideration of the evidence, including setting time limitations on direct and cross-examinations.

(4) *Motions.* The presiding official may rule on motions including, for example, motions to exclude or strike redundant or immaterial evidence, motions to dismiss the case for insufficient evidence, or motions for summary judgment. Except for those made during the hearing, all motions and opposition to motions, including argument, must be in writing and be no more than 10 double-spaced pages in length. The presiding official will set a reasonable time for the party opposing the motion to reply.

(5) *Transcripts.* The presiding official shall have the oral presentation transcribed and the transcript shall be made a part of the record. Either party may request a copy of the transcript and the requesting party shall be responsible for paying for its copy of the transcript.

(f) *Obstruction of justice or making of false statements.* Obstruction of justice or the making of false statements by a witness or any other person may be the basis for a criminal prosecution under 18 U.S.C. 1505 or 1001.

(g) *Post-hearing procedures.* At his or her discretion, the presiding official may require or permit the parties to submit post-hearing briefs or proposed findings and conclusions. Each party may submit comments on any major prejudicial errors in the transcript.

§ 8.28 Expedited procedures for review of immediate suspension.

(a) *Applicability.* When the Secretary notifies a treatment program in writing that its certification has been immediately suspended, the appellant may request an expedited review of the suspension and any proposed revocation. The appellant must submit this request in writing to the reviewing official within 5 days of the date the OTP received notice of the suspension. The request for review must include a copy of the suspension and any proposed revocation, a brief statement of why the decision to suspend and propose revocation is incorrect, and the appellant's request for an oral presentation, if desired. A copy of the request for review must also be sent to the respondent.

(b) *Reviewing official's response.* As soon as practicable after the request for review is received, the reviewing official will send an acknowledgment with a copy to the respondent.

(c) *Review file and briefs.* Within 10 days of the date the request for review is received, but no later than 2 days before an oral presentation, each party shall submit to the reviewing official the following:

(1) A review file containing essential documents relevant to the review, tabbed, indexed, and organized chronologically; and

(2) A written statement, not to exceed 20 double-spaced pages, explaining the party's position concerning the suspension and any proposed revocation. No reply brief is permitted.

(d) *Oral presentation.* If an oral presentation is requested by the appellant or otherwise granted by the reviewing official in accordance with § 8.27(a), the presiding official will attempt to schedule the oral presentation within 10 to 14 days of the date of appellant's request for review at a time and place determined by the presiding official following consultation with the parties. The presiding official may hold a pre-hearing conference in accordance with § 8.27(c) and will conduct the oral presentation in accordance with the procedures of § 8.27(e), (f), and (g).

(e) *Written decision.* The reviewing official shall issue a written decision upholding or denying the suspension or proposed revocation and will attempt to issue the decision within 7 to 10 days of the date of the oral presentation or within 3 days of the date on which the transcript is received or the date of the last submission by either party, whichever is later. All other provisions set forth in § 8.33 will apply.

(f) *Transmission of written communications.* Because of the importance of timeliness for these expedited procedures, all written communications between the parties and between either party and the reviewing official shall be by facsimile transmission, personal service, commercial overnight delivery service, or certified mail, return receipt requested.

§ 8.29 Ex parte communications.

Except for routine administrative and procedural matters, a party shall not communicate with the reviewing or presiding official without notice to the other party.

§ 8.30 Transmission of written communications by reviewing official and calculation of deadlines.

(a) Because of the importance of a timely review, the reviewing official should normally transmit written communications to either party by facsimile transmission, personal service, commercial overnight delivery service, or certified mail, return receipt requested, in which case the date of transmission or day following mailing will be considered the date of receipt. In the case of communications sent by regular mail, the date of receipt will be considered 3 days after the date of mailing.

(b) In counting days, include Saturdays, Sundays, and holidays. However, if a due date falls on a Saturday, Sunday, or Federal holiday, then the due date is the next Federal working day.

§ 8.31 Authority and responsibilities of reviewing official.

In addition to any other authority specified in these procedures, the reviewing official and the presiding official, with respect to those authorities involving the oral presentation, shall have the authority to issue orders; examine witnesses; take all steps necessary for the conduct of an orderly hearing; rule on requests and motions; grant extensions of time for good

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reasons; dismiss for failure to meet deadlines or other requirements; order the parties to submit relevant information or witnesses; remand a case for further action by the respondent; waive or modify these procedures in a specific case, usually with notice to the parties; reconsider a decision of the reviewing official where a party promptly alleges a clear error of fact or law; and to take any other action necessary to resolve disputes in accordance with the objectives of these procedures.

§ 8.32 Administrative record.

The administrative record of review consists of the review file; other submissions by the parties; transcripts or other records of any meetings, conference calls, or oral presentation; evidence submitted at the oral presentation; and orders and other documents issued by the reviewing and presiding officials.

§ 8.33 Written decision.

(a) *Issuance of decision.* The reviewing official shall issue a written decision upholding or denying the suspension or proposed revocation. The decision will set forth the reasons for the decision and describe the basis therefor in the record. Furthermore, the reviewing official may remand the matter to the respondent for such further action as the reviewing official deems appropriate.

(b) *Date of decision.* The reviewing official will attempt to issue his or her decision within 15 days of the date of the oral presentation, the date on which the transcript is received, or the date of the last submission by either party, whichever is later. If there is no oral presentation, the decision will normally be issued within 15 days of the date of receipt of the last reply brief. Once issued, the reviewing official will immediately communicate the decision to each party.

(c) *Public notice and communications to the Drug Enforcement Administration (DEA).*

(1) If the suspension and proposed revocation are upheld, the revocation of certification will become effective immediately and the public will be notified by publication of a notice in the **Federal Register**. SAMHSA will notify DEA within 5 days that the OTP's registration should be revoked.

(2) If the suspension and proposed revocation are denied, the revocation will not take effect and the suspension will be lifted immediately. Public notice will be given by publication in the **Federal Register**. SAMHSA will notify DEA within 5 days that the OTP's registration should be restored, if applicable.

§ 8.34 Court review of final administrative action; exhaustion of administrative remedies.

Before any legal action is filed in court challenging the suspension or proposed revocation, respondent shall exhaust administrative remedies provided under this subpart, unless otherwise provided by Federal law. The reviewing official's decision, under § 8.28(e) or § 8.33(a), constitutes final agency action as of the date of the decision.

Dated: July 14, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

Nelba Chavez,

Administrator, Substance Abuse and Mental Health Services Administration.

Donna E. Shalala,

Secretary of Health and Human Services.

Note: The following appendix will not appear in the Code of Federal Regulations:

BILLING CODE 4160-01-F

Appendix 1

OFFICE OF NATIONAL DRUG CONTROL POLICY
POLICY PAPER
OPIOID AGONIST TREATMENT

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OFFICE OF NATIONAL DRUG CONTROL POLICY (ONDCP) POLICY PAPER -- OPIOID AGONIST TREATMENT

INTRODUCTION

This paper is circulated by the Director, ONDCP, under his statutory authority [Section 704 (b) (3) of Public Law 105-2 77, the Office of National Drug Control Policy Reauthorization Act of 19981 to coordinate and oversee the implementation by the National Drug Control Program agencies of the policies, goals, objectives, and priorities established for the national drug control programs and the fulfillment of the responsibilities of such agencies under the National Drug Control Strategy.

In response to recent increases in heroin use, ONDCP has joined with the Departments of Health and Human Services (DHHS) and Justice (DOJ), to address the problems and potential of opioid agonist treatment, primarily methadone treatment. In addition to a shortfall in treatment capacity, problems have long existed at two levels: first, methadone treatment programs have not functioned with uniform high quality; and, second, Federal oversight, grounded in process-focused regulations, has not served to improve or maintain the quality of methadone treatment programs. To reduce the use of illicit drugs, both of these problems must be addressed.

1. **PURPOSE:** The purpose of this document is to discuss national policy and direction regarding the role of methadone, levo-alpha-acetylmethadol hydrochloride (LAAM), and other opioid agonist treatments in reducing opiate addiction.

2. **OBJECTIVE: A** major priority of the Office of National Drug Control Policy (ONDCP) is to allow those addicted to heroin to receive quality drug treatment, including opioid agonist treatment when it is the indicated modality, in the context of expanding overall treatment capacity for all drugs of abuse.

3. **DISCUSSION:**

A. The Scope of the Heroin Problem: Although a relatively small percentage of America's illegal drug users use heroin, the debilitating effects of the drug make it, along with cocaine, a major source of drug-related health, crime, and social costs. And the heroin using population has grown in recent years. Data from the National Household Survey on Drug Abuse indicate that current (i.e., past month) use of heroin in the household population, age 12 years and older, has risen dramatically, from 71,000 in 1991 to 325,000 in 1997. ONDCP estimates a population of 810,000 chronic heroin users in the United States in 1995.

(1) Trends -- High Purity: While the number of new heroin initiates is still relatively low, it is apparent that the availability of high-purity heroin has led to an increase in use, probably related to changes in the route of administration. High purity heroin can be snorted, smoked, or otherwise inhaled, and need not be injected. Heroin users

who have snorted or smoked heroin increased from 55 percent of heroin users in 1994 to 82 percent m 1996. This trend is disturbing in two aspects: first, because it expands the use of heroin to those who might be reluctant to inject drugs; and, second, because heroin can now be ingested using the same "pathway" as abused substances such as tobacco, crack, methamphetamine, and marijuana. The ability to snort or smoke heroin is likely to foster experimentation, adding to the number of users and leading to injection for many of them over time. The *Drug Abuse Warning Network* (DAWN) reports that the proportion of drug-related episodes that involve heroin/morphine increased steadily from 4 percent in 1978 to 13.8 percent in 1995, before leveling off in 1996 and the first six months of 1997. The number of heroin/morphine "mentions—" increased each year from 1991 through 1996 (35,898 in 1991, 48,003 in 1992, 63,232 in 1993, 64,013 in 1994, 70,838 in 1995, and 73,846 in 1996). Most of these patients sought detoxification or medical treatment to deal with overdose or the chronic health effects of heroin use.

(2) Trends -- Heroin Addicts and Other Chronic, Hardcore Drug Users are Undercounted: Because of the nature of heroin abuse, many chronic users may not be captured by traditional surveys such as the *National Household Survey on Drug Abuse* (which only surveys those living in households) and *Monitoring the Future* (which only surveys youth enrolled in school and present on the day of the survey). To provide a more accurate estimate, ONDCP sponsored a pilot research study in Cook County, Illinois, to test a new methodology for estimating addicted drug users. In addition to validating the new methodology, the study found that there were three times as many hardcore addicts in Cook County than the number estimated by the Household Survey. These results suggest that the actual number of chronic heroin users in the United States may be even larger than ONDCP's estimate of 810,000.

(3) Trends -- The Population of Addicts is Aging, Even as Younger Initiates Increase: Many heroin addicts encounter serious health problems after years of use. Heroin addicts who began use in the last great heroin epidemic of the late 1960s and early 1970s now require significantly increased and costly medical care for the cumulative debilitating effects of their drug use. Since 1978 the number of emergency room mentions for heroin among those aged 35 and older has tripled. The DAWN report of drug mentions in hospital emergency departments shows that heroin/morphine mentions more than doubled from 1990 through 1996 (from 33,900 to 73,800), as did the rate per 100,000 population (from 15.3 in 1990 to 31.4 in 1996). And, although their numbers remain relatively small, increases in heroin mentions are also seen among youth ages 12 to 17 and 18 to 25. This DAWN data is consistent with the finding of the National Household Survey on Drug Abuse that the mean age of initiation for heroin dropped from 26.2 years in 1988 to 18.1 in 1996.

B. The Implications of the Problem: As with cocaine and methamphetamine users, heroin users are at risk for a plethora of negative social and health consequences.

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(1) Heroin is a Toxic Substance: The danger of a fatal overdose is more immediate and likely for a heroin user today than for users of other common drugs of abuse because of the route of administration and common miscalculations regarding drug purity. Misjudging heroin purity can have fatal implications. Heroin use is involved in about 15 percent of all drug-related emergency room visits -- a number that far exceeds the proportion of heroin users in the general drug-using population.

(2) Heroin Use is Associated with Crime: Because of the addictive and tolerance properties of heroin, users find that they need heroin frequently in increasing amounts. Because the withdrawal effects of heroin are both severe and frequent, addicts typically use heroin several times a day. The need to purchase large amounts of a costly drug inevitably leads to crime. For decades some cities have estimated that over half of all property crime is attributable to heroin use. Twenty percent of all people arrested in Manhattan in 1997 tested positive for opiates. In the same year, 22 percent of all arrestees in Chicago tested positive for opiates.

(3) Heroin Use Affects Public Health: There is a strong nexus between heroin use and many life-threatening diseases, including infections such as hepatitis B and C, HIV/AIDS, and endocarditis; as well as tuberculosis and sexually transmitted diseases. The heroin subculture -- with its sharing of needles and "cooking equipment" and associated high-risk sexual behaviors, including prostitution and trading sex for drugs -- is a major factor in the transmission of disease. The Centers for Disease Control (CDC) estimates injecting drug users (most of whom are heroin users) account for between 15 and 36 percent of the nation's new HIV infections each year. According to CDC's HIV/AIDS Surveillance Report, of 13,111 new HIV cases reported between July 1996 and June 1997, injecting drug use was an "exposure category" for over 2,200. Heroin not only undermines the health of users, but -- in the case of pregnant women -- can seriously affect the health of their children.

(4) Heroin Addiction is Difficult to Overcome: The National Institute of Drug Abuse has declared that heroin is a powerfully addicting substance producing tolerance, physical dependence, and the clinical state of addiction (defined as compulsive, often truly uncontrollable drug craving, seeking, and use). The psycho-pharmacological effects of heroin are extremely strong. Satisfaction of the self-destructive need becomes nearly a full-time occupation. Heroin addicts spend a large amount of their time searching for drugs. An ONDCP study of cocaine, crack, and heroin abuse in six cities found that the percentage of heroin users who used heroin for 30 or more consecutive days over a 90 day period was four times greater than the percentage for crack and powder cocaine users. This finding indicates that there is a high proportion of heroin addicts among the users of heroin. Cessation of heroin use is difficult: the same study found that heroin users reporting 30 or more consecutive days of abstinence in a 90 day period tended to be lower than for crack or powder cocaine users. The relatively stable number of heroin addicts over the years, particularly in older age groups, indicates the relative shortfall in effective treatment capacity and aggressive outreach programs to get the addicts into treatment. In some cities, an entire heroin culture that spans generations has evolved, as addicts cycle through the criminal justice system and back into street addiction without any prospect of entering an effective treatment regimen.

C. Methadone -- Part of the Solution: Methadone has been used for the treatment of heroin addiction since the 1960s. It is an orally effective, long-acting, synthetic opioid agonist. In other words, methadone operates by "occupying" the brain receptor sites that are affected by heroin and blocks the craving attendant to addiction. Eventually it produces tolerance to its own analgesic effects, as well as its psychoactive effects, and also produces a physiological cross-tolerance to other opiates. Initially, methadone was used in the context of abstinence-based drug treatment to alleviate withdrawal pains for heroin addicts. Because of methadone's long duration of action before withdrawal begins (24 hours at adequate doses), it is relatively easy to maintain an addict on methadone without abrupt side effects. A more recently approved agent, levo-alpha-acetylmethadol hydrochloride (LAAM), will last even longer, up to three days.

Although much is known about the action and effectiveness of methadone, less is known about the addict population. Among the questions remaining to be answered by research and experience is how to determine with confidence which addicts should most properly be referred to therapeutic community-like residential treatment, which to methadone detoxification, which to limited term methadone-to-abstinence treatment, and which to long-term maintenance.

(1) The Rise of Methadone Treatment: Heroin addiction became a major public concern during the epidemic of the 1960s and early 1970s. The growth in heroin addiction occurred during a major shift in public health approaches, away from an (often coercive) in-patient treatment regimen to out-patient, community-based treatment. Confronted with a rising number of heroin addicts and faced with a choice between methadone treatment and other treatment regimes, which promised uncertain results at the time, many governmental agencies opted to pursue methadone treatment. The American Bar Association noted in a 1972 report that New York City had 18,072 people in methadone programs, with a waiting list of 15,000 more, and that 65 percent of all participants in New York City treatment programs were in methadone treatment. National estimates of the number of patients in methadone treatment have indicated growth, with an estimate of 81,852 in methadone treatment in 1987, nearly 95, 300 in 1991, and 117,000 in 1993. A recent survey of the states by the American Methadone Treatment Association (AMTA) indicates that over 170,000 patients are engaged in some form of methadone treatment at this time.

(2) Methadone Treatment Today: Methadone treatment is the most widely used treatment for heroin addiction today. It has been studied more than any other drug treatment modality, with uniformly positive results. Thousands of Americans are able to

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lead stable lives as a result of methadone treatment. Most of the over 900 methadone treatment programs in America provide an invaluable service. Typically, methadone patients go to a treatment program each day, to receive, and be observed ingesting, an oral dose of methadone in liquid form. Many stable, compliant patients are eventually allowed to take a number of doses home, reducing the number of trips they must make to the program. Better treatment programs make provision for systematic drug testing, monitoring for compliance, counseling, provision of other needed services, and periodic assessment of the continuing appropriateness of methadone. Unfortunately, many programs do not provide such comprehensive services.

Given the less than uniform state of methadone treatment, the outcomes achieved are remarkable. The National Institute on Drug Abuse (NIDA) has conducted literally dozens of studies that show the effectiveness of methadone treatment. *The Drug Abuse Treatment Outcome Study (DATOS),* the most recent study by NIDA, found that among participants in outpatient methadone treatment, weekly heroin use decreased 69 percent, cocaine use by 48 percent (many heroin users are polydrug users), illegal activity decreased 52 percent, and full time work increased by 24 percent. Methadone treatment, at an average cost of $13 or less per day, is clearly a cost effective alternative to incarceration for many drug-dependent offenders. Yet, in spite of this proven track record, methadone treatment capacity has not experienced marked growth. Treatment capacity is insufficient to provide most of the 810,000 chronic heroin addicts with methadone treatment or any other effective form of drug abuse treatment. Methadone treatment is still not available in eight states: Idaho, Mississippi, Montana, New Hampshire, North Dakota, South Dakota, Vermont, and West Virginia.

(3) Criticisms of Methadone Treatment: The full benefits of any intervention, including methadone treatment, are only obtained within a comprehensive treatment environment, which screens and evaluates patients and assigns them to appropriate treatment regimes, based upon the nature of each patient's addiction as well as other problems (e.g., psychological, family, vocational). By itself, methadone is simply a medication, a drug. As noted by the November 1997 National Institutes of Health Consensus Development Statement, non-pharmacologic supportive services are pivotal to successful treatment. Ongoing substance abuse counseling and other psychosocial therapies, vocational rehabilitation, and needed medical and social services are essential for program retention and positive outcome. For example, a study by McLellan in 1993 showed that patients who received comprehensive services including methadone, when compared to those who received methadone only, had a strikingly higher level of improvement. Comprehensive programs evaluate continued use of methadone and assess methadone's utility for each patient at regular intervals, as well as evaluating the need for treatment of problems that often interfere with adequate rehabilitation.

Unfortunately, such discipline has not universally been the case among programs. A 1990 GAO report based on observations of 24 methadone treatment organizations found that policies, goals and practices varied greatly and that not one of the programs studied

evaluated the effectiveness of their treatment. Although many improvements have been made, the failures of the unsuccessful programs tarnished the entire idea of methadone treatment, rather than spurring significant efforts to improve the quality of services and acknowledging the effectiveness of comprehensive programs.

(4) The Future of Methadone Treatment:

a. A standardized accreditation system for opioid agonist treatment programs with transfer of regulatory oversight from the Food and Drug Administration (FDA) to the Substance Abuse and Mental Health Services Administration (SAMHSA): The current, process-oriented regulatory approach will be replaced with a system that is more akin to a clinically-based accreditation model. Providers will know with certainty what is required of them --clinically, administratively, and programmatically -- to initiate or continue an opioid agonist treatment program. Regulatory and enforcement agencies will have a clear understanding of the nature and limits of their authority.

To start this process, CSAT/SAMHSA will lead the interagency effort, in 1999, to assess the impact of the accreditation process and proposed accreditation standards on methadone program quality, capacity, and oversight. Based on the results of the evaluation, feedback from treatment experts and public officials, and public comments on the Notice of Proposed Rule Making, a final rule will be promulgated to introduce reformed treatment standards and an accreditation process. Integrating regulatory oversight for methadone into CSAT/SAMHSA responsibilities for overseeing treatment services will facilitate the much-needed expansion of methadone treatment capacity while enhancing the application of clinical standards. In the interim, programs will remain subject to FDA oversight and monitoring.

Responsibility for preventing the diversion of methadone to illicit use will remain with the Drug Enforcement Administration (DEA). For the process of reform to progress with clear expectations, DEA's role will be spelled out in detail and distinguished from that of the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Treatment (SAMHSA/CSAT). Specifically, DEA's anti-diversion authority will be clearly distinguished from SAMHSA/CSAT' s clinical practice authority.

b. Provision for individual physician administration of methadone treatment to stabilized, methadone-maintained patients: Methadone is a tool of proven effectiveness in treating heroin addicts. But no tool is effective in isolation. The recovering heroin addict must be integrated back into employment and into society. It is estimated that, at a minimum, seven percent of those presently receiving methadone are sufficiently stable to be transferred to a private

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physician for continued maintenance. When this transfer can be accomplished, additional program capacity will be made available for those awaiting treatment.

This will not happen overnight. Most physicians are ill-equipped to practice addiction medicine. However, as physician training and certification in the administration of opioid agonist treatment is accomplished, regulations will be reformed to allow trained physicians to use all the counter-addiction modalities in the physician's preferred clinical setting supported by ancillary services.

4. THE CHALLENGE: Currently only a fraction of those addicts who can benefit from methadone treatment do so. Expansion of methadone and other heroin treatment modalities, such as residential treatment, is essential to reach the untreated majority of the opiate addicted.

A. Policy Barriers: The laws governing methadone treatment -- the Controlled Substances Act (C.S.A.) and Narcotic Addict Treatment Act (NAIA) -- date from the 1970s, and reflect the political and social climate of the day, rather than rigorous study. These laws pre-date research breakthroughs on the nature of addiction and the success of drug treatment, and they arbitrarily limit the administration of treatment programs and the expansion of treatment capacity. Furthermore, they are implemented with process-focused regulations, which do not address treatment quality.

(1) Uneven Application of Standards for Admission to Methadone Treatment: As the 1990 GAO study noted, there is a wide variance of policies among methadone treatment programs. FDA admission standards are not uniformly applied by programs in evaluating potential patients and referring them to appropriate treatment. This lack of uniformity in practice continues under state managed care systems. Not everyone will benefit from methadone treatment and the failure to apply uniform assessment standards makes it probable that some addicts will be assigned to methadone or other treatment regimes inappropriately.

(2) Variance in Oversight and Limits on Program Administration: There is considerable overlap in governmental oversight and enforcement, with Federal, state, and local agencies involved in some states with different priorities and concerns. And an attempt to accomplish, with regulations, matters that depend on medical discretion. For example, Federal regulations address limits on dosage and on take-home medication privileges, with take-home privileges based on time spent in the program, rather than on clinical criteria. Both practices should be based on sound clinical criteria for decision-making, as the former practice can lead to under-treatment and the latter to both diversion to illicit use and interference with rehabilitation.

Given the critical role of the states in the reform of methadone regulations, lead Federal agencies must maintain continuing communication with relevant state authorities, to identified state-specific issues and plan for their resolution.

(3) Lack of Enforceable Clinical Guidelines: Paradoxically, in an environment in which methadone is over-regulated, there is a dearth of enforceable clinical guidelines. In lieu of outcome-oriented measures, the Federal Government has developed over time a regime of regulatory oversight that has controlled diversion to illegal use, but does little to enhance treatment quality, and at times actually interferes with treatment. There is a substantial body of knowledge and a rare scientific consensus on both the utility of methadone treatment and its appropriateness for many addicts. This body of clinical knowledge -- rather than the current regulatory maze -- should form the basis for clinical oversight and broader employment of methadone treatment.

Bringing existing treatment programs into conformance with established science will, at a minimum, require comprehensive technical assistance. And funding assistance might well be needed for programs to be able to meet the costs of the accreditation process and meet accreditation standards.

(4) Stigmatization of Addiction and Methadone Treatment: Some critics have called methadone treatment simply a way to keep people addicted, simply the substitution of one addiction for another. But methadone treatment is not simply a substitute for heroin. As noted by scholars such as Avram Goldstein, methadone's totally different pharmacokinetics make it a very different drug. While both heroin and methadone can occupy the mu opioid receptors in the brain, the steady, stable occupancy by methadone contrasts sharply with the repeated, excessive "highs" followed by excessive "lows" with heroin. This continuous receptor occupancy is the stabilizing factor that permits addicts on methadone to normalize their behavior and to discontinue heroin use. It diminishes the craving for heroin and, by producing opioid tolerance, blocks the heroin "high." Methadone makes possible the substitution of a stable existence for one of compulsive drug seeking and taking, criminal behavior, chronic unemployment, and high risk sexual and drug use behaviors.

"Drug-free" treatment (i.e., treatment with no pharmacologic agents) is considered by many to be preferable to methadone. (And it should be noted that evaluations of residential programs, although fewer in number, yield essentially similar results.) Some who prefer drug-free treatment reject the use of methadone entirely and others would set specific time limits on it's use (e.g., six months). The problem with these strident approaches is that they fail to recognize the changes in brain structure that accompany, and might in certain cases precede, addiction. Medical technology has enabled scientists to observe the changes in the addicted brain, specifically the damage to the reward pathway that spurs compulsive use and the sick feeling that

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accompanies withdrawal. And while it is clear that addiction is a disease of the brain, more research is needed to distinguish those addicts who may have had a damaged brain reward pathway from birth, thus being predisposed to addiction, from those who have damaged their brain reward pathway through drug use. Furthermore, research will be required to distinguish brain changes that can be reversed from those that appear permanent. The decision to administer methadone and the duration of its use are clinical matters that should be informed by a science-based assessment of each patient's requirements.

B. Understanding the Role of Drug Treatment: The contributions of drug treatment in general and methadone treatment in particular are not universally understood or accepted. Drug treatment is sometimes characterized as another form of welfare, as "something for nothing," when it is actually very demanding for participants and the single most cost effective policy option for reducing the consumption of drugs and the commission of drug-related crimes. Indeed, from a public policy perspective, drug treatment is not solely, or even primarily, a service for the benefit of the drug-dependent. Although addicts clearly benefit with the acceptance of personal accountability; it is public safety, public health, and the public purse that are the primary beneficiaries of drug treatment. And they suffer when treatment is withheld or poorly delivered.

The Institute of Medicine of the National Academy of Sciences found in 1995 that a reduction in existing regulations could be accomplished without negative impact on health or safety standards. A 1997 consensus development conference, convened by the National Institutes of Health (NIH), strongly recommended broader availability of methadone treatment programs for people who are addicted to heroin or other opiate drugs and assessed as likely to benefit from agonist treatment. The NIH conference called for the elimination of Federal and State regulations and other barriers that improperly impede access. And a 1998 GAO review of the science identified methadone as the most effective treatment (to date) for heroin addiction. The conclusions of these prestigious bodies join the overwhelming scientific evidence supporting the expansion of methadone treatment within the overall context of an expansion of drug abuse treatment.

5. OUTCOMES: Methadone treatment is a lynchpin of modern opiate addiction treatment. It must be more widely available to those who need it and it must be conducted in a way that ensures quality and inspires public confidence.

Effective methadone treatment is an essential contributor to the attainment of the Performance Measures of Effectiveness established for the *National Drug Control Strategy*. This is most directly the case regarding Impact Targets for Goal 3, Reduce health and social costs to the public of illegal drug use:

- Reduce the health and social costs associated with illegal drugs by 10 percent by 2002, and by 25 percent by 2007; and

- Reduce the number of chronic drug users by 20 percent by 2002, and by 50 percent by 2007.

A. DESIRED END STATE:

(1) A comprehensive system of treatment oversight and delivery, guided by continuous assessment to ensure appropriate initial placement, appropriate retention, and movement to other modalities as necessary.

(2) A national cadre of well-trained health professionals, skilled in treating and managing addiction.

(3) Adequate treatment capacity for all who need and are willing to accept drug treatment.

(4) Adequate methadone treatment capacity for all of America's opiate drug addicts for whom it is indicated by appropriate assessment.

(5) Well-run programs with sufficient capacity, and ancillary services, to accommodate:

- state-of-the-art detoxification services;
- those who need long-term maintenance;
- those who can benefit from short-term methadone treatment, while receiving appropriate rehabilitation services to increase the likelihood they can remain abstinent after detoxification.

(6) A comprehensive evaluation and accreditation system to continue to ensure the effectiveness of methadone treatment.

- programs should be held accountable for, and required to monitor, participant cessation of alcohol and other drug use, engagement in productive employment, and cessation of criminal activity.

B. INTERMEDIATE BENCHMARKS:

(1) Increased public and, especially, medical community understanding of the efficacy of methadone treatment for those for whom it is indicated by appropriate assessment.

(2) Development of rational rules governing access to methadone treatment, allowing such treatment, where clinically warranted, in the offices of trained and accredited physicians.

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- Both certification by a nationally recognized professional organization, and successful completion of a specific training program on issues pertinent to opioid maintenance therapies, should be required for primary care physicians to provide office-based narcotic addiction treatment.

- Physicians in private practice who prescribe methadone for stabilized addicts should make provision for simultaneous treatment of substance abuse disorders and physical and psychiatric comorbidity, and for other community services and self-help.

- Methadone treatment programs should function as hub referral sites.

(3) Development and utilization of a field-tested and proven system for accrediting methadone treatment programs with transfer of regulatory oversight from FDA to SAMHSA.

C. IMMEDIATE ACTIONS:

(1) Testing and evaluation of newly developed accreditation standards.

- Accreditation standards should be adopted only after a demonstration of their successful application.

(2) SAMHSA and FDA provision of technical assistance to programs, and continuing communication with Federal, state, and local government authorities, to facilitate a thorough demonstration and evaluation.

(3) Active ONDCP oversight of the demonstration and evaluation process, and subsequent action plan, to be accomplished through the Interagency Narcotic Treatment Policy Review Board.

(4) Discussion of the role of both short- and long-term methadone treatment and of alternative strategies for expanding treatment capacity for opiate drug addicts in the drug treatment and medical communities.

(5) A clear delineation and distinction of the roles and authorities of SAMHSA/CSAT and DEA.

(6) Active ONDCP oversight of the development of educational standards in addictions for health professionals, to be accomplished through the Interagency Narcotic Treatment Policy Review Board.

6. CONCLUSION: Methadone treatment, in its present state, has been demonstrated to be effective. However, it is not as effective as it can and should be. With increased funding must come increased quality and accountability. Appropriate treatment needs to be based on an assessment of each individual and development of a regimen best suited to that individual's condition. Comprehensive patient assessment should precede any decision to provide opioid-based therapy. Anti-addiction medication should be prescribed in conjunction with comprehensive treatment services, such as counseling and needed medical services to diagnose and treat infectious diseases. And periodic assessment should determine the appropriateness of continuing opioid-based therapy. To improve quality and access, continuing work is necessary regarding government oversight of programs, quality assurance in both public and private programs, and the role of private medical practitioners.

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July 22, 1999

Part VII

Department of Health and Human Services

Administration for Children and Families

Grants and Cooperative Agreements; Availability, etc.; Developmental Disabilities; Projects of National Significance Program; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93631–98–03]

Developmental Disabilities: Final Notice of Availability of Financial Assistance and Request for Applications to Support Demonstration Projects Under the Projects of National Significance Program

AGENCY: Administration on Developmental Disabilities (ADD), ACF, DHHS.

ACTION: Invitation to apply for financial assistance.

SUMMARY: The Administration on Developmental Disabilities, Administration for Children and Families, announces that applications are being accepted for funding of Fiscal Year 1999 Projects of National Significance.

This program announcement consists of five parts. Part I, the Introduction, discusses the goals and objectives of ACF and ADD. Part II provides the necessary background information on ADD for applicants. Part III describes the review process. Part IV describes the priority under which ADD requests applications for Fiscal Year 1999 funding of projects. Part V describes in detail how to prepare and submit an application.

Grants will be awarded under this program announcement subject to the availability of funds for support of these activities.

DATES: The closing date for submittal of applications under this announcement is August 23, 1999. Mailed or handcarried applications received after 4:30 p.m. on the closing date will be classified as late.

DEADLINE: *Mailed* applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, ACF/Administration on Developmental Disabilities, 370 L'Enfant Promenade SW, Mail Stop 326F–HHH, Washington, DC 20447, Attention: Lois Hodge.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing.

Applications *handcarried* by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, ACF/Administration on Developmental Disabilities, ACF Mail Center, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW, Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "Attention: Lois Hodge". Applicants using express/overnight services should allow two working days prior to the deadline date for receipt of applications. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.) Any applications received after 4:30 p.m. on the deadline date will not be considered for competition.

ADD cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ADD electronically will not be accepted regardless of date or time of submission and time of receipt.

LATE APPLICATIONS: Applications that do not meet the criteria above are considered late applications. ADD shall notify each late applicant that its application will not be considered in the current competition.

EXTENSION OF DEADLINES: ADD may extend the deadline for all applicants because of acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. However, if ADD does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

ADDRESSES: Application materials are available from Pat Laird, 370 L'Enfant Promenade, S.W., Rm. 300F, Washington, DC 20447, 202/690–7447; http://www.acf.dhhs.gov/ programs/add; or add@acf.dhhs.gov.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families (ACF), Pat Laird, 370 L'Enfant Promenade, SW, Rm. 300F, Washington, D.C., 20447, 202/690–7447; or add@acf.dhhs.gov.

NOTICE OF INTENT TO SUBMIT APPLICATION: If you intend to submit an application, please send a post card with the number and title of this announcement and which priority area, your organization's name and address, and your contact person's name, phone and fax numbers, and e-mail address to: Administration on Developmental Disabilities, 370 L'Enfant Promenade SW, Rm. 300F, Washington, DC, 20447, Attn: Projects of National Significance.

This information will be used to determine the number of expert reviewers needed and to update the mailing list to whom program announcements are sent.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is located within the Administration for Children and Families (ACF), Department of Health and Human Services (DHHS). Although different from the other ACF program administrations in the specific populations it serves, ADD shares a common set of goals that promote the economic and social well-being of families, children, individuals and communities. Through national leadership, ACF and ADD envision:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States and Congress that enable solutions which transcend traditional agency boundaries;
- Services planned and integrated to improve client access;
- A strong commitment to working with Native Americans, persons with developmental disabilities, refugees and migrants to address their needs, strengths and abilities; and
- A community-based approach that recognizes and expands on the resources and benefits of diversity.

Emphasis on these goals and progress toward them will help more individuals, including people with developmental disabilities, to live productive and independent lives integrated into their communities. The Projects of National Significance Program is one means through which ADD promotes the achievement of these goals.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is the lead agency within ACF and DHHS responsible for planning and administering programs that promote the self-sufficiency and protect the rights of persons with developmental disabilities.

The Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000, *et seq.*) (the Act) supports and provides assistance to States and public and private nonprofit agencies and organizations to assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity, integration and inclusion into the community.

In the Act, Congress expressly found that:

- Disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to enjoy the opportunity for independence, productivity, integration and inclusion into the community;
- Individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely;
- Individuals with developmental disabilities often require lifelong specialized services and assistance, provided in a coordinated and culturally competent manner by many agencies, professionals, advocates, community representatives, and others to eliminate barriers and to meet the needs of such individuals and their families; The Act further established as the policy of the United States:
- Individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of achieving independence, productivity, integration and inclusion into the community, and often require the provision of services, supports and other assistance to achieve such;
- Individuals with developmental disabilities have competencies, capabilities and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual;
- Individuals with developmental disabilities and their families are the primary decision makers regarding the services and supports such individuals and their families receive; and play decision making roles in policies and programs that affect the lives of such individuals and their families; and
- It is in the nation's interest for people with developmental disabilities to be employed, and to live conventional and independent lives as a part of families and communities.

Toward these ends, ADD seeks: to enhance the capabilities of families in assisting people with developmental disabilities to achieve their maximum potential; to support the increasing ability of people with developmental disabilities to exercise greater choice and self-determination; to engage in leadership activities in their communities; as well as to ensure the protection of their legal and human rights.

The four programs funded under the Act are:

- Federal assistance to State developmental disabilities councils;
- State system for the protection and advocacy of individuals rights;
- Grants to University Affiliated Programs for interdisciplinary training, exemplary services, technical assistance, and information dissemination; and
- Grants for Projects of National Significance.

C. Statutory Authorities Covered Under This Announcement

The Developmental Disabilities Assistance and Bill of Rights Act of 1996, 42 U.S.C. 6000, *et.seq.* The Projects of National Significance is Part E of the Developmental Disabilities Assistance and Bill of Rights Act of 1996, 42 U.S.C. 6081, *et.seq.*

Part II. Background Information For Applicants

A. Description of Projects of National Significance

Under Part E of the Act, grants and contracts are awarded for projects of national significance that support the development of national and State policy to enhance the independence, productivity, and integration and inclusion of individuals with developmental disabilities through:

- Data collection and analysis;
- Technical assistance to enhance the quality of State developmental disabilities councils, protection and advocacy systems, and university affiliated programs; and
- Other projects of sufficient size and scope that hold promise to expand or improve opportunities for people with developmental disabilities, including:
  - —Technical assistance for the development of information and referral systems;
  - —Educating policy makers;
  - —Federal interagency initiatives;
  - —The enhancement of participation of minority and ethnic groups in public and private sector initiatives in developmental disabilities;
  - —Transition of youth with developmental disabilities from school to adult life; and
  - —Special pilots and evaluation studies to explore the expansion of programs under part B (State developmental disabilities councils) to individuals with severe disabilities other than developmental disabilities.

B. Comments on FY 1999 Proposed Priority Areas

ADD received 46 letters in response to the public comment notice. Commentary was from the following sources:

- Advocacy agencies, including national organizations and associations, national advocacy groups and State/local advocacy groups;
- Service organizations, including agencies that provide services for individuals with developmental disabilities as well as providing advocacy services on behalf of a particular disability, including developmental disabilities councils;
- Educational systems, including schools, colleges, and universities, programs located within a university setting and University Affiliated Programs;
- Private agencies, including national, State, and local nonprofit organizations;
- Government agencies, including Federal, State, county, and local government agencies; and
- Private individuals.

Comments ranged from general support to informative, clarifying responses for this year's proposed funding priorities and recommendations for other priority areas. The vast majority supported and expanded upon what we proposed in the announcement. Other comments relate specifically to the program goals and priorities of the particular agencies that responded to the announcement.

The comments helped highlight the concerns of the developmental disabilities field and have been used in refining the final priority areas.

Comment: Six letters were submitted to ADD recommending additional or other funding priorities for FY 1999. Suggestions included projects

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addressing: business opportunities; fetal alcohol syndrome (FAS); welfare reform; postsecondary education; dissemination of information on past PNS projects; and siblings.

Response: Increasing access to employment and postsecondary education are closely interwined if individuals with developmental disabilities are to be successfully included in their communities. ADD continues to have an interest in these areas and is supportive in various ways. Through a recent Small Business and Innovation Research project (SBIR), a feasibility study was conducted to determine the barriers and enhancers to self-operated home businesses for individuals with developmental disabilities or families with a member having a developmental disability and were receiving welfare assistance. The Commissioner, staff, and some ADD programs are actively involved in the President's Task Force on Employment of Adults with Disabilities, which includes postsecondary education and transitional issues. Additionally, several of ADD's University-Affiliated Programs (UAPs) have undertaken projects concerning employment and specifically postsecondary education. For instance, the System Change Network, at the Iowa UAP, is a public policy effort for the passage of laws expanding eligibility for a state program supporting entrepreneurs with disabilities. Another is the Georgia UAP working with the Georgia Association of Disabilities Service Providers in Higher Education which is conducting research on ADA awareness and information on selecting a postsecondary institution; while the Mississippi UAP has initiated Project Advance: Postsecondary Educational Opportunities for People with Disabilities having a focus on African Americans and Native Americans.

Regarding Fetal Alcohol Syndrome, ADD funded a joint project with the Administration on Native Americans in the early 1990s. Many of our UAPs are involved in this area; their activities range from research, outreach, clinics, training, conference and teleconferencing support to assessments. Under new systems change grants for family support services funded by ADD families having children with FAS have a vital role to play in the development or enhancement of their state's system.

The National Technical Assistance Center on Welfare Reform and Disability at the University of Kansas is a currently funded project under PNS. It is serving states, communities and stakeholders to implement effective welfare reform; it tracks trends and practices; reports through research summaries, and details best practices, promising approaches and lessons learned. Its website is *www.welfare-policy.org.* Another ADD project at Wayne State University is studying the effects of welfare reform and children's health insurance on families whose children have disabilities. Also, there are numerous projects being funded through the Office of the Assistant Secretary on Planning and Evaluation/HHS that have as their focus the effect of welfare reform on people and families with disabilities.

ADD understands the importance of knowledge sharing and promotes this effort in different ways. In all of our grant announcements it is stated that ADD will expect to fund only those applications that incorporate certain elements; one of those being the development of capacity to communicate and disseminate information and technical assistance through electronic and other effective, affordable, and accessible formats. Within our website is a listing of current PNS projects with contact information; other ADD programs can be contacted by using the lists contained there. ADD's National Information Center on Developmental Disabilities will list products and materials available from our programs and grantees.

ADD recognizes the important role siblings can have in a family when another sibling has a disability, especially a cognitive disability. Often times we lose sight of the stresses, emotions, and needs of these siblings when parents are distracted by the various systems meant to serve their child. We are aware that many siblings take on the role of the parents when parents are no longer able to do so, or when they have passed away. For these reasons, ADD thinks this issue should be encompassed within state family support service systems. The development and growth of family support services is a significant effort in this country and within ADD. The issues expressed in the letters to ADD will sharpen our focus as we begin our effort to implement new family support systems change projects. The energy and feelings conveyed in these letters are valuable contributions that should be made as these projects and other actions are undertaken by the States to further family support services.

Comment: 10 comments were received on Proposed Priority Area 1, Ongoing Data Collection and Information Dissemination. One letter of comment included 91 letters of endorsement of the Project on Data on Public Expenditures and Related Statistics. There were comments addressing the scope, content quality, and dissemination of data collection efforts. Other comments suggested specific studies on employment, the prevention of institutionalization, and the impact of various components of the service delivery system on people with developmental disabilities. Some comments suggested that data be collected at other than the state level.

There were two comments regarding inclusive education, one of which endorsed such a study. The other letter commented that such a study would further marginalize "inclusive education" as a part of special education.

Response: ADD remains committed to collecting data on public expenditures, employment and economic status, and residential services as they impact on the independence, productivity, integration, and inclusion of people with developmental disabilities. Proposed data collection systems will be evaluated for their scope, content, quality and potential uses. Many issues concerned with employment, the effectiveness of the service system, and inclusion will be addressed in the data collection projects.

Although ADD does acknowledge that collecting data on an individual basis and not from state records would be profitable, data collection through any mechanism other than state agency records would not be feasible in these projects.

Comment/Response: ADD received 8 comments on Proposed Priority Area 2, Breaking Through the Glass Ceiling to Attain First Class Citizenship. ADD is committed to strengthening the leadership and self-determination of individuals with developmental disabilities and family members. We take seriously the continued growth of the self-advocacy movement and have reflected this by incorporating some of the comments in this priority area. We encourage partnerships between a self-advocacy organization and another organization in submitting an application. The comments provided some useful ideas that assisted in clarifying some points and adding to others. Although we understand the concerns of one of the commenters regarding travel stipends, ADD would not be able to implement this initiative without the support of Developmental Disability Councils and University Affiliated Programs, (UAP) who did comment favorably in this matter. ADD doesn't think we need to formalize a national network of leaders; we believe this will occur as a natural outgrowth of this project, and that it is not properly

controlled by a federal agency. We expect that the knowledge and skills gained through participation in the academy will provide the interconnection between Federal and state systems thus strengthening leadership abilities at the state level. Contributions at both levels will be enhanced. The idea of sponsoring fellowships for academy graduates, as suggested by another commenter, has merit and would be a logical step; however, that step could be at least one year behind the academy. Possibly the project could offer guidance for those individuals who want to pursue this type of experience. ADD and the developmental disabilities community must continue to strive for the cultural diversity of our leadership. It is expected that the academy will reflect this. ADD began a PNS leadership initiative in this area in 1994 by funding four projects at the UAPs of Puerto Rico, Wisconsin and Georgia, and People First of Tennessee. This was a first step in developing new leadership from culturally diverse communities.

Comment: ADD received 8 comments in response to the Proposed Priority Area 3, Reinventing Quality: Ensuring and Enhancing That Community Living Settings and Services Are Responsive to People With Developmental Disabilities. All expressed support for sponsoring more work on the development of consumer outcome quality assurance systems. The most detailed of the comments expressed concern, however, that the proposed priority took too narrow a focus by calling for individual demonstration projects using volunteers to assess the quality of programs and services. These letters stated that there are many programs around the country delivering consumer outcome-oriented services as well as various efforts to establish new programs and conduct consumer outcome quality assurance. Given the existence of these efforts, the comment letters noted that there is a need to learn more about the existing programs and to broadly disseminate the findings. Comment letters suggested that the emphasis of this area be broadened to a national level and designed more as an information dissemination or technical assistance effort rather than individual demonstration projects.

Response: In response to these comments, ADD has changed this Proposed Priority Area to a best practices information dissemination project which will be conducted as a cooperative agreement with ADD. There are already various efforts within the U.S. Department of Health and Human Services to promote quality community-based long-term care services such as developing a Primer to the Medicaid program which will clarify long-term care options in Medicaid that promote consumer responsive community-based long-term care and establishing a National Consortium on Home and Community-Based Long-Term Care. This ADD project will complement these efforts with a specific focus on services for people with developmental disabilities. More specific information is given in the revised Priority Area 3.

Part III. The Review Process

A. Eligible Applicants

Before applications under this Announcement are reviewed, each will be screened to determine that the applicant is eligible for funding as specified under the selected priority area. Applications from organizations that do not meet the eligibility requirements for the priority area will not be considered or reviewed in the competition, and the applicant will be so informed.

Only public or non-profit private entities, not individuals, are eligible to apply under any of the priority areas. All applications developed jointly by more than one agency or organization must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-participants, subgrantees or subcontractors.

Nonprofit organizations must submit proof of nonprofit status in their applications at the time of submission. One means of accomplishing this is by providing a copy of the applicant's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501 (c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

ADD cannot fund a nonprofit applicant without acceptable proof of its nonprofit status.

B. Review Process and Funding Decisions

Timely applications under this Announcement from eligible applicants received by the deadline date will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal government, will use the appropriate evaluation criteria listed later in this Part to review and score the applications. The results of this review are a primary factor in making funding decisions.

ADD reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. It may also solicit comments from ADD Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ADD in making funding decisions.

In making decisions on awards, ADD will consider whether applications focus on or feature: services to culturally diverse or ethnic populations among others; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations administering or delivering of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

This year, 5 points will be awarded in scoring for any project that includes partnership and collaboration with the 112 Empowerment Zones/Enterprise Communities.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ADD may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Process

Using the evaluation criteria below, a panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. To facilitate this review, applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation

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criteria listed below, provide comments, and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section may be given in the review process.

D. Structure of Priority Area Descriptions

The priority area description is composed of the following sections:

- Eligible Applicants: This section specifies the type of organization that is eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.
- Purpose: This section presents the basic focus and/or broad goal(s) of the priority area.
- Background Information: This section briefly discusses the legislative background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACF and/or other State models are noted, where applicable.
- Evaluation Criteria: This section presents the basic set of issues that must be addressed in the application. Typically, they relate to need for assistance, results expected, project design, and organizational and staff capabilities. Inclusion and discussion of these items is important since the information provided will be used by the reviewers in evaluating the application against the evaluation criteria. Applicants should review the section on the Uniform Project Description and the evaluation section under each priority area.
- Minimum Requirements for Project Design: This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since they will be used by the reviewers to evaluate the applications against the evaluation criteria. Project products, continuation of the project after Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.
- Project Duration: This section specifies the maximum allowable length of the project period; it refers to the amount of time for which Federal funding is available.
- Federal Share of Project Costs: This section specifies the maximum amount of Federal support for the project.
- Matching Requirement: This section specifies the minimum non-Federal contribution, either cash or in-kind match, required.
- Anticipated Number of Projects To Be Funded: This section specifies the number of projects ADD anticipates funding under the priority area.
- CFDA: This section identifies the Catalog of Federal Domestic Assistance (CFDA) number and title of the program under which applications in this priority area will be funded. This information is needed to complete item 10 on the SF 424.

Please note that applications under this Announcement that do not comply with the specific priority area requirements in the section on "Eligible Applicants" will not be reviewed. Applicants under this Announcement must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. Experience has shown that an application which is broader and more general in concept than outlined in the priority area description is less likely to score as well as an application more clearly focused on, and directly responsive to, the concerns of that specific priority area.

E. Available Funds

ADD intends to award new grants resulting from this announcement during the fourth quarter of fiscal year 1999, subject to the availability of funding. The size of the awards will vary. Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose shorter project periods than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas.

For multi-year projects, continued Federal funding beyond the first budget period, but within the approved project period, is subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

F. Grantee Share of Project Costs

Grantees must match $1 for every $3 requested in Federal funding to reach 25% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $33,333 (total project cost is $133,333, of which $33,333 is 25%).

An exception to the grantee cost-sharing requirement relates to applications originating from American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Applications from these areas are covered under Section 501(d) of P. L. 95–134, which requires that the Department waive "any requirement for local matching funds for grants under $200,000."

The applicant contribution must generally be secured from non-Federal sources. Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. However, funds from some Federal programs benefiting Tribes and Native American organizations have been used to provide valid sources of matching funds. If this is the case for a Tribe or Native American organization submitting an application to ADD, that organization should identify the programs which will be providing the funds for the match in its application. If the application successfully competes for PNS grant funds, ADD will determine whether there is statutory authority for this use of the funds. The Administration for Native Americans and the DHHS Office of General Counsel will assist ADD in making this determination.

G. General Instructions for the Uniform Project Description

The following ACF Uniform Project Description (UPD) has been approved under OMB Control Number 0970–0139.

1. Introduction: Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions.

2. Project summary/abstract: Provide a summary of the project description (a page or less) with reference to the funding request.

3. Objectives and need for assistance: Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

4. Results or benefits expected: Identify the results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

5. Approach: Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a "collection of information" that is "conducted or sponsored" by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

6. Organization Profile: Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

G. Cooperation in Evaluation Efforts

Grantees funded by ADD may be requested to cooperate in evaluation efforts funded by ADD. The purpose of these evaluation activities is to learn from the combined experience of multiple projects funded under a particular priority area.

H. Closed Captioning for Audiovisual Efforts

Applicants are encouraged to include "closed captioning" in the development of any audiovisual products.

Part IV. Fiscal Year 1999 Priority Areas for Projects of National Significance—Description and Requirements

The following section presents the final priority areas for Fiscal Year 1998 Projects of National Significance (PNS) and solicits the appropriate applications.

Fiscal Year 1999 Priority Area 1: Ongoing Data Collection and Information Dissemination

Eligible Applicants: State agencies, public or private nonprofit organizations, institutions or agencies.

Purpose: Under this priority area, ADD will award grant funds through a cooperative agreement which will collect data on public expenditures, residential services, employment and economic status, and other factors as they impact on the independence, productivity and integration into the community of persons with developmental disabilities. ADD is particularly interested in the maximum use of existing data bases and in fostering the broadest dissemination to, and use of, the data by consumers, families and advocacy audiences.

Background Information: In the 1990s the United States modified how it provided certain financial assistance to citizens with and without disabilities. In addition, changes were made in how the nation provided enhanced employment opportunities. These changes included new legislation such as the Personal Responsibility and Work Opportunity Reconciliation Act, the Work Incentives Improvement Act, and the Workforce Investment Act. Another national trend of the past decade has been the devolution of responsibility and authority for a variety of social programs to state governments.

ADD is interested in the effect of these recent national initiatives on people with developmental disabilities, both in terms of whether they have been included in programs and whether participation in these programs generate measurable outcomes for people with developmental disabilities.

Examples of successful projects that ADD has funded include:

University of Minnesota: National Recurring Data Set Project on Residential Services—Ongoing National and State-by-State Data Collection and Policy/Impact Analysis on Residential Services for Persons with Developmental Disabilities (Charles Lakin: 612/624–2097)

University of Illinois at Chicago: Fourth National Study of Public Mental Retardation/Developmental Disabilities Spending (David Braddock: 312/413–1647)

Boston Children's Hospital: Ongoing National Collection on Data and Employment Services for Citizens with Developmental Disabilities (Bill Kiernan: 617/735–6506)

Examples of projects include activities that would:

- Identify, collect and disseminate new data bases.
- Modify, expand and/or reformulate existing data bases.
- Connect, integrate or analyze available data bases.
- Project and model the cost-benefit impact of alternative future decisions based on the analysis of discrete programmatic options in the areas of residential services and employment.

Minimum Requirements for Project Design: Given its interest in promoting the increased independence, productivity, and community integration of people with

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developmental disabilities in a cost-beneficial manner, ADD emphasizes its desire to support projects that provide quantitative and qualitative analysis in the following areas:

- Trends in the movement of people with developmental disabilities from institutional to community settings (especially domiciles of their own) and the outcomes experienced by individuals with disabilities who receive publicly funded residential services.
- The impact of managed care plans on the delivery and efficacy of residential and support services to individuals with developmental disabilities, and on the relationship between Federal and State governments.
- The efficacy of various approaches to the full inclusion of people with developmental disabilities in local community activities where the majority of participants do not have a disability.
- The employment status of people with developmental disabilities on a state and national basis.
- Employment models that accurately predict employment outcomes of persons with developmental disabilities, and the systemic factors that lead to integrated employment.
- The inclusion of people with developmental disabilities in nation-wide legislatively-mandated efforts to alleviate welfare and unemployment.
- The use of generic community resources versus the existing special delivery system by people with developmental disabilities and their families.

Any sampling techniques used as part of this analysis should be broadly representative of persons with developmental disabilities of working age on a national basis, including people with severe disabilities. Quantitative data should provide statistical information on current placement patterns and their cost as well as projections regarding future placement options and associated costs. It is also recognized that certain areas may be more appropriate for qualitative analysis, although a summary of any quantitative data (if available) should be included in the proposal.

All projects funded under this priority area must provide evidence of the soundness of their proposed research methods and analytic techniques. In addition, proposals should clearly delineate (via a comprehensive literature review) data sets that are already in existence, how these data sets will be incorporated into the research design, and what new knowledge will be gained through the proposed project.

All projects shall provide for the widespread distribution of their products (reports, summary documents, audio-visual materials, and the like) in accessible formats to a national audience consisting of, at a minimum, people with developmental disabilities and their families, advocacy groups, State Developmental Disabilities Councils, Protection and Advocacy Systems, University Affiliated Programs, State Mental Retardation/Developmental Disabilities Directors, State Governor's Offices, Federal agencies represented on the Interagency Committee on Developmental Disabilities, as well as the Secretaries of Health and Human Services and Education at the federal level.

The application should also respond to the following:

- Describe the physical setting, the administrative and organizational structure within which the program will function, and internal and external organizational relationships relevant to this project. Charts outlining these relationships, and any formal agreements defining them, should be included in the appendices.
- Describe staff, space, equipment, research facilities, and other supports available to carry out the program.
- Describe briefly how the additional resources sought to accomplish the purposes of this effort will be integrated into and augmented by other resources available or accessible by the applicant.
- Develop and implement an evaluation process to ensure that systematic, objective information is available about the utilization and effectiveness of the products of this project. Specific outcomes must be built into the project for evaluation. The evaluation should be performed by an independent evaluator.

Applications should also include provisions for the travel of two key personnel during the first and last year of the project to Washington, DC for a one day meeting with ADD staff.

In addition to the three national data projects, ADD is interested in a separate analysis of state-level supports and services for people who have disabilities and, within this population, people who have developmental disabilities. For this reason the recipient of the grant award to collect data on public expenditures will be provided additional funding to conduct a study focusing on state funding of human services programs for people with disabilities as compared to funding of programs for people with developmental disabilities. The analysis could be a nation-wide comparison of states or involve a selection of states. The study would not involve income maintenance programs but would include state expenditures for supports and services relating to housing, medical care, employment or vocational training, transportation, education including efforts to enhance inclusive education, and personal assistants and other supports for independent living. ADD anticipates that the activity will be a duration of 12 months.

As noted earlier, the award will be made as a cooperative agreement. While an organization receiving an award will not be conducting its project on behalf of ADD, ADD and the awardee will work cooperatively in the development and implementation of the project's agenda. Under the cooperative agreement mechanism, ADD and the awardees will share the responsibility for planning the objectives of the projects. Awardees will have the primary responsibility for developing and implementing the activities of the project. ADD will jointly participate with awardees in such activities as clarifying the specific issue areas to be addressed through periodic briefings and ongoing consultation, sharing with awardees its knowledge of the issues being addressed by past and current projects, and providing feedback to awardees about the usefulness to the field of written products and information sharing activities. The details of the relationship between ADD and awardees will be set forth in the cooperative agreement to be developed and signed prior to issuance of the award.

Project Duration: This announcement solicits applications for project periods of up to five years. Awards on a competitive basis will be for one-year budget periods, although project periods may be for five years. Applications for continuation grants funded under this priority beyond the one-year budget period, but within the five-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the interest of the Government.

Evaluation Criteria: The four criteria that follow will be used to review and evaluate each application under this announcement. Each of these criteria should be addressed in the project description section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description. Additional information that must be addressed is described below.

Criterion 1: Objectives and Need for Assistance (20 Points)

The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids should be attached.

Criterion 2: Results or Benefits Expected (20 Points)

The extent to which they are consistent with the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs is reasonable in view of the expected results.

Criterion 3: Approach (35 Points)

Discuss the criteria to be used to evaluate the results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Criterion 4: Organization Profile (25 Points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and other work planned, anticipated or under way by the applicant which is being supported by Federal assistance.

This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

Project Duration: This announcement is soliciting applications for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The maximum Federal share is not to exceed $200,000 for the first 12-month budget period or a maximum of $1,000,000 for a 5-year project period. The maximum Federal share for the additional study of state-level supports and services is not to exceed $100,000 for a 12-month budget period.

Matching Requirement: Grantees must match $1 for every $3 requested in Federal funding to reach 25% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Cash or in-kind contributions may meet the non-Federal share, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $200,000 in Federal funds (based on an award of $200,000 per budget period) must include a match of at least $66,666 (the total project cost is $266,666, of which $66,666 is 25%).

Anticipated Number of Projects to be Funded: It is anticipated that at least three data collection projects will be funded.

CFDA: ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF 424.

Fiscal Year 1999 Priority Area 2: Breaking Through the Glass Ceiling to Attain First Class Citizenship

Eligible Applicants: State agencies, public or private nonprofit organizations, institutions or agencies, including a consortia of some or all of the above.

Purpose: To provide experiential learning opportunities at the national level for experienced state leaders who are adults with developmental disabilities and family members of children with developmental disabilities gain the necessary knowledge and skills to shape and guide the implementation of Federal and state policies, practices and approaches which enhance their own self determination. Specifically, this project would seek to strengthen and expand national leadership for the 21st Century by and for people with developmental disabilities and families of children with disabilities. To address this set of challenges and opportunities, ADD proposes to fund a national policy training academy by issuing an award through the instrument of a cooperative agreement.

Background Information: The May 1998 publication of the "Disability Statistics Abstract" reports that the 1994 Harris poll of Americans with Disabilities indicated that 63 per cent of respondents said their quality of life had improved during the previous four years. However, trend data show only slow improvements in the lives of people with disabilities as measured by such things as more opportunities for employment and improved economic status, greater freedom of movement and ease of access, and increased levels of social integration.

In the release of its 1998 progress report on the status of disability policy, the National Council on Disability stated that "The country continues to move forward, however the rate of progress is slower and less steady than many in the disability community had hoped when the Americans with Disabilities Act (ADA) was enacted in 1990. Federal policy remains rife with inconsistent messages and unrealistic requirements for people with disabilities who rely on federal programs like Social Security disability benefits, vocational rehabilitation, Medicaid, Medicare, special education, and Temporary Assistance for Needy Families (TANF). In addition, the backlash against civil rights for children and adults with disabilities continues to motivate attempts to weaken laws such as the Individuals with Disabilities Education Act (IDEA) and ADA."

Through Projects of National Significance, in particular, ADD has assisted its grantees in developing and replicating a variety of innovative and successful approaches to increased leadership development and self-determination among people with significant disabilities and their families. Most notably, this has taken the form of early and formative support of such endeavors as Partners in Policymaking, the active participation of families of children with disabilities in the design and implementation of State family support policies and programs, the Home of Your Own initiative, personal assistance system change projects and targeted leadership efforts

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among people of color who have developmental disabilities.

ADD's programs are State-based, and so are systems that serve Americans with developmental disabilities. In fact, data measuring the delivery of services and supports to people with developmental disabilities and their families show little comparability from State to State. To respond to State flexibility, devolution, and States' ongoing needs for input from stakeholders, DD network programs in most States provide some form of training or leadership development to people with developmental disabilities and their families. Many people have been trained to interact effectively on their own behalf with State systems designed to serve them, and with State policymakers.

However, some issues, problems, programs and systems are inherently national (such as civil rights) or are national in scope (such as the design of federal systems including entitlements). ADD believes that devolution will increase, not decrease the demand for national stakeholders.

Minimum Requirements for Project Design: ADD expects this project will be an equal partnership between people with developmental disabilities and family members and advocates.

To be considered seriously for funding applicants must address the following elements:

- Building a leadership network of adults with developmental disabilities and family members.
- Developing systemic strategies for identifying, involving, supporting, and advancing grassroots leaders who live with developmental disabilities, especially self-advocates and family members of children with developmental disabilities.
- Disseminating best practices, curricula, guides, and informational materials on self-determination and leadership development especially those that have been adapted for individuals with cognitive disabilities.
- Providing experiential learning opportunities that will enable individuals to acquire and deepen their knowledge and skills in the areas of: (1) The operations of the legislative and executive branches; (2) the programs and processes of significant federal agencies; (3) the art of effective communication; (4) the analysis of current or new proposals, policies, guidelines, approaches, or regulations; (5) effective strategies to monitor and evaluate current and proposed oversight and enforcement activities of Federal and state agencies; (6) negotiation techniques; (7) the capacity of computer technology as a communication tool; (8) the resources of national advocacy organizations; (9) grant writing and reviewing; (10) using and influencing research and data collection, and making data-based arguments; and (11) the development of non-profit organizations.
- A selection process for participants using the following criteria: (a) Representation of various developmental disabilities, particularly cognitive disabilities; (b) distinguished graduates of State-based training programs including Leadership Today and Partners-type projects, that are experienced, thoughtful, and responsible advocates as a result of these State-based training programs; (c) a range of age; (d) racial and ethnic diversity.

It is highly recommended to ensure the appropriateness and understanding of materials and various teaching styles that self-advocates are involved in the design of the training. In regard to sponsorships by Developmental Disability Councils and UAPs, ADD contemplates that up to two individuals from a state might be given a stipend to cover expenses related to attending the Academy. It is estimated that $10,000 per state, depending on the number of individuals sponsored (not on the state's proximity to Washington, D.C.), would be an appropriate amount. In selecting these individuals, ADD would expect the above criteria to be used and that half of the participants should be self-advocates.

As a general guide, ADD will expect to fund only those applications that incorporate the following elements:

- Consumer/self-advocate orientation and participation.
- Key project personnel with direct life experience with living with a disability.
- Strong advisory components that consist of a majority of individuals with developmental or severe disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant.
- Research reflecting the principles of participatory action.
- Cultural competency.
- A description of how individuals with disabilities and their families will be involved in all aspects of the design, implementation, and evaluation of the project.
- Attention to unserved and inadequately served individuals, having a range of disabilities from mild to severe, from multicultural backgrounds, rural and inner-city areas, migrant, homeless, and refugee families, with severe disabilities.
- Compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794).
- Collaboration through partnerships and coalitions.
- Development of the capacity to communicate and disseminate information and technical assistance through electronic and other effective, affordable, and accessible formats of communication.
- Development and establishment of practices and programs beyond project period.
- Dissemination of models, products, best practices, and strategies for distribution between the networks and beyond. A plan describing initial activities is needed between funded projects as well as at the end of the project period. These activities should maintain and share ongoing information, existing resources of consultants/experts, and curriculum/materials with funded projects and within the network.

Applications should also include provisions for the travel of two key personnel during the first and last year of the project to Washington, DC for a one day meeting with ADD staff.

As noted earlier, the award will be made as a cooperative agreement. While an organization receiving an award will not be conducting its project on behalf of ADD, ADD and the awardee will work cooperatively in the development and implementation of the project's agenda. Under the cooperative agreement mechanism, ADD and the awardee will share the responsibility for planning the objectives of the project. The awardee will have the primary responsibility for developing and implementing the activities of the project. ADD will jointly participate with the awardee in such activities as clarifying the specific issue areas to be addressed through periodic briefings and ongoing consultation, sharing with awardee its knowledge of the issues being addressed by past and current projects, and providing feedback to awardee about the usefulness to the field of written products and information sharing activities. The details of the relationship between ADD and awardee will be set forth in the cooperative agreement to be developed and signed prior to issuance of the award.

Evaluation Criteria: The four criteria that follow will be used to review and evaluate each application under this announcement. Each of these criterion should be addressed in the project description section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description. Additional information that must be addressed is described below.

Criterion 1: Objectives and Need for Assistance (20 Points)

The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids should be attached.

Criterion 2: Results or Benefits Expected (20 Points)

The extent to which they are consistent with the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs is reasonable in view of the expected results.

Criterion 3: Approach (35 Points)

Discuss the criteria to be used to evaluate the results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Criterion 4: Organization Profile (25 Points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and other work planned, anticipated or under way by the applicant which is being supported by Federal assistance.

This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

Project Duration: This announcement is soliciting applications for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The Federal share is a range of $200,000—$250,000 for the first 12-month budget period or a minimum of $600,000 for a three-year project period.

Matching Requirement: Grantees must match $1 for every $3 requested in Federal funding to reach 25% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $200,000 in Federal funds (based on an award of $200,000 per budget period) must include a match of at least $66,666 (the total project cost is $266,666, of which your $66,666 share is 25%).

Anticipated Number of Projects to be Funded: It is anticipated that up to one (1) project will be funded under this priority area.

CFDA: ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF 424.

Fiscal Year 1999 Priority Area 3: Reinventing Quality: Best Practices Information Dissemination Project for Ensuring That Community Living Settings and Services Are Responsive to the Needs and Goals of People With Developmental Disabilities

Eligible Applicants: State agencies, public or private nonprofit organizations, institutions or agencies, including a consortia of some or all of the above.

Purpose: Under this priority area, ADD will issue an award through the instrument of a cooperative agreement that will outline the terms of ADD's involvement as well as the responsibilities of the recipient organization or agency in the development of an information dissemination project on best planning practices in consumer responsive services and quality assurance processes in programs for people with developmental disabilities. ADD is interested in helping states and others respond to the challenges of establishing and assuring the quality of consumer-outcome oriented community-based long-term support programs. Especially in light of the recent Supreme Court "Olmstead" decision which reaffirms the ADA provision that public entities must administer programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities and to make reasonable modifications to avoid discrimination on the basis of disability, ADD is interested in supporting work that will help public entities and others establish comprehensive plans for the appropriate provision of services to people with developmental disabilities. This project will provide information and broker technical assistance on existing successful approaches to assuring the quality and appropriateness of long-term supports for people with developmental disabilities.

Background Information: In 1993, the Federal government presented its response to improving how it does business—The National Performance Review, the Federal government's "reinvention" project. When the Review asked Americans what they expect from government services this is what they heard:

- "Ask us what we want."
- "Don't tell us, 'That's not my department.'"
- "Treat us with courtesy, respect, and enthusiasm."
- "Make it easy."
- "Provide reliable, timely help."

Americans with disabilities and their families share these expectations of government services. According to the American Association on Mental Retardation (AAMR) publication, "Shaping Our Destiny—A Provider's Guide to Quality Community Services," people with developmental disabilities and their families "should have an equal right to quality services and supports—including clear, relevant service standards, and reliable, timely help."

Assuring the quality of services for people with developmental disabilities means not only ensuring that abuse and neglect are prevented, but also that persons' life goals and potentials are

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identified and addressed. As the provider's guide states, "Merely delivering services in the community doesn't make them quality services. Community services are quality services when they are flexible, reliable, and complete enough to meet an individual's needs." The guide explains that the old system of service delivery is not based on individually-designed services; that new service standards must be developed that ensure that everybody understands how community services and supports are supposed to work and that the new standards focus on results or outcomes that are meaningful to the people who use the supports. Contained in the guide are examples of quality projects and ways for service providers to interact with stakeholders.

The "quality revolution" described in the AAMR publication reflects a trend in the States toward systems that assure outcome-focused quality assurance systems in residential services for individuals with developmental disabilities. The status of the States activities toward implementing an outcome-based approach was the subject of a 1996 report "Compendium of State Outcome-Focused Quality Assurance Systems" in ICF/MR settings by the Human Services Research Institute (HSRI). HRSI found that there was a general sense in the States "that traditional quality assurance, in particular comprehensive licensure and certification surveys, focuses too heavily on environment and process and not enough on outcomes for the individual (consumer) or on 'quality of life' issues. Across the States there appears to be a relationship between the evolution of the State's mental retardation/developmental disabilities service system and the degree of quality assurance reform toward an outcome-focused system."

It is obvious that "monitoring" in the traditional sense of the word is no longer an acceptable method for determining the quality of services and supports to people with developmental disabilities and their families. "Reinventing Quality: The 1998 Sourcebook of Innovative Programs for the Quality Assurance and Quality Improvement of Community Services," produced by the Institute on Community Integration/University of Minnesota, reaffirms this trend in the States as reported by HSRI and reasserts the need to change the service standards to reflect the evolution to community-based services focused on individual needs and individual outcomes. The Sourcebook notes that "Recent years have seen a shift in long-term care for persons with developmental disabilities from large institutions to community settings. But people receiving community services can fully realize the potential for improved quality of life afforded by this movement only if quality assurance expectations and activities are changed significantly from those originally developed for institutional care." Many innovative and comprehensive quality assessment and enhancement practices are profiled in the Sourcebook. It is these efforts to improve the quality of community services that "may help others to fashion their own responses that not only protect the basic safety and well-being of individuals, but also encourage and support their preferred choices, personal growth, and individual lifestyles."

On June 22, 1999, in its decision on the "Olmstead" case, the Supreme Court reaffirmed the Americans with Disabilities Act provision that public entities must administer programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities and to make reasonable modifications to avoid discrimination on the basis of disability. While public entities are not required to fundamentally alter the nature of their programs, efforts must be made to provide services in the most integrated setting. The Court concluded that under Title II of ADA, States are required to place persons with mental disabilities in community settings rather than in institutions when the State's treatment professionals have determined that community placement is appropriate, that transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.

Under the Clinton Administration, the U.S. Department of Health and Human Services (HHS) is already engaged in a variety of activities designed to promote the delivery of services in the most integrated setting. HHS activities include building on existing Medicaid flexibility in home health services, home and community-based waivers, the personal care option, and the mental health block grant. HHS is developing a Primer to the Medicaid program which will clarify long-term care options in Medicaid that promote consumer responsive community-based long-term care and establishing a National Consortium on Home and Community-Based Long-Term Care.

As part of the Department's overall efforts to promote quality home and community-based long-term care systems, ADD is interested in establishing a best practices information dissemination project. The project will help States and other entities to respond to the challenges of developing and assuring quality consumer-oriented service systems for people with developmental disabilities. The best practices information gathered and disseminated by the project can be used by services providers in such activities as:

- Developing comprehensive State plans for serving people with developmental disabilities in the most appropriate setting,
- Managing waiting lists for services by conducting assessments so that the most appropriate consumer-responsive services can be delivered,
- Changing existing programs to be more responsive to specific consumer needs and goals, Developing new consumer outcome-oriented programs, and
- Developing quality assurance systems that measure and assess specific consumer outcomes.

Minimum Requirements for Project Design: Significant research, best practices, and "lessons learned" exist in regard to planning and developing consumer outcome-oriented, community-based programs for people with developmental disabilities with new standards of consumer-oriented quality assurance. States, communities, direct service providers, disability constituencies and others can benefit from information dissemination about existing and evolving best practices based on consumer-specific outcomes. Information dissemination about best planning practices should seek to better equip major stakeholders with the skills, knowledge and expertise necessary to apply what is already known in the process of developing a comprehensive state plan.

The mission of the project would be to serve as a resource to States, the disability community, service providers, and others to enhance the development of new comprehensive state plans to develop consumer-oriented community-based programs as well as to develop appropriately linked quality assurance systems for new and existing programs. Specifically, the project would:

- Track and report on trends and best and promising practices in consumer outcome oriented community-based services and quality assurance systems affecting children and adults with developmental disabilities and their families;
- Convene working conferences to develop and share strategies for developing new comprehensive state plans for consumer-outcome oriented programs and/or quality assurance methods;
- Disseminate relevant research findings pertaining to consumer-oriented programs and quality assurance methods for people with developmental disabilities;
- Broker technical assistance, especially peer-to-peer consultations, designed to assist stakeholders to work together to apply research and best practices regarding consumer-outcome oriented service and linked quality assurance systems for people with developmental disabilities;
- Sponsor forums, on-line conferences and other ongoing exchanges to facilitate a greater understanding of best practices in consumer-oriented community-based programs and quality assurance systems.

These activities may be sequenced so that information gathering is the principal activity of the first year with dissemination (along with continued information gathering) beginning in the second and continued into the third year of the project.

Applications should include provisions for the travel of two key personnel during the first and last year of the project to Washington, DC for a one day meeting with ADD staff.

As noted earlier, the award will be made as a cooperative agreement. While an organization receiving an award will not be conducting its project on behalf of ADD, ADD and the awardee will work cooperatively in the development and implementation of the project's agenda. Under the cooperative agreement mechanism, ADD and the awardee will share the responsibility for planning the objectives of the project. The awardee will have the primary responsibility for developing and implementing the activities of the project. ADD will jointly participate with the awardee in such activities as clarifying the specific issue areas to be addressed through periodic briefings and ongoing consultation, sharing with awardee its knowledge of the issues being addressed by past and current projects, and providing feedback to awardee about the usefulness to the field of written products and information sharing activities. The details of the relationship between ADD and awardee will be set forth in the cooperative agreement to be developed and signed prior to issuance of the award.

As a general guide, ADD will expect to fund only those applications that incorporate the following elements:

- Consumer/self-advocate orientation and participation.
- Key project personnel with direct life experience with living with a disability.
- Strong advisory components that consist of a majority of individuals with disabilities and a structure where individuals with disabilities make real decisions that determine the outcome of the grant.
- Research reflecting the principles of participatory action.
- Cultural competency.
- A description of how individuals with disabilities and their families will be involved in all aspects of the design, implementation, and evaluation of the project.
- Attention to unserved and inadequately served individuals, having a range of disabilities from mild to severe, from multicultural backgrounds, rural and inner-city areas, migrant, homeless, and refugee families, with severe disabilities.
- Compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794).
- Collaboration through partnerships and coalitions.
- Development of the capacity to communicate and disseminate information and technical assistance through electronic and other effective, affordable, and accessible formats of communication.
- Development and establishment of practices and programs beyond project period.
- Dissemination of models, products, best practices, and strategies for distribution between the networks and beyond. A plan describing initial activities is needed between funded projects as well as at the end of the project period. These activities should maintain and share ongoing information, existing resources of consultants/experts, and curriculum/materials with funded projects and within the network.

Evaluation Criteria: The four criteria that follow will be used to review and evaluate each application under this announcement. Each of these criterion should be addressed in the project description section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description. Additional information that must be addressed is described below.

Criterion 1: Objectives and Need for Assistance (20 Points)

The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids must be attached.

Criterion 2: Results or Benefits Expected (20 Points)

The extent to which they are consistent with the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs is reasonable in view of the expected results.

Criterion 3: Approach (35 Points)

Discuss the criteria to be used to evaluate the results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Criterion 4: Organization Profile (25 Points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and other work planned, anticipated or under way by the applicant which is being supported by Federal assistance.

This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization must be included.

Project Duration: This announcement is soliciting applications for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although the project period may be for three years. Applications for

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continuation grants funded under this priority area beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The Federal share is a range of $200,000–$250,000 for the first 12-month budget period or a minimum of $600,000 for a three-year project period. There is a possibility of increased funding in year two and three contingent on additional funds.

Matching Requirement: Grantees must provide at least 25 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $200,000 in Federal funds (based on an award of $200,000 per budget period) must include a match of at least $66,666 (the total project cost is $266,666, of which $66,666 is 25%).

Anticipated Number of Projects to be Funded: It is anticipated that up to one (1) project will be funded under this priority area.

Part V. Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. An application package containing forms can be obtained by any of the following methods: Pat Laird, ADD, 370 L'Enfant Promenade SW, Washington, DC, 20447, 202/690–7447; http://www.acf.dhhs.gov/programs/add; or add@acf.dhhs.gov.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in Part IV.

A. Required Notification of the State Single Point of Contact (SPOC)

All applications under the ADD priority areas are required to follow the Executive Order (E.O.) 12372 process, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Note: State/territory participation in the Intergovernmental Review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if applicable, or to ACF.

As of September 22, 1997, all States and territories, except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa and Palau, have elected to participate in the Executive Order process and have established a State Single Point of Contact (SPOC). Applicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action regarding E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions.

Applicants must submit all required materials to the SPOC as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials and indicate the date of this submittal (or date SPOC was contacted, if no submittal is required) on the SF 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application due date to comment on proposed new or competing continuation awards. However, there is insufficient time to allow for a complete SPOC comment period. Therefore, we have reduced the comment period to 30 days from the closing date for applications. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in delays in awarding grants.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations that may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, 370 L'Enfant Promenade, SW, Mail Stop 326F-HHH, Washington, DC 20447, Attn: 93.631 ADD—Projects of National Significance.

Contact information for each State's SPOC is found in the application package or ADD's website.

B. Notification of State Developmental Disabilities Planning Councils

A copy of the application must also be submitted for review and comment to the State Developmental Disabilities Council in each State in which the applicant's project will be conducted. A list of the State Developmental Disabilities Councils is included in the application package or ADD's website under Programs.

C. Deadline for Submittal of Applications

One signed original and two copies of the application must be submitted on or before August 23, 1999 to: U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Developmental Disabilities, 370 L'Enfant Promenade, SW, Mail Stop 326F–HHH, Washington, DC 20447, Attn: Lois Hodge.

Applications may be mailed or hand-delivered. Hand-delivered applications are accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday. Applications shall be considered as meeting an announced deadline if received by the deadline date at the ACF Grants Office (Close of Business: 4:30 p.m., local prevailing time).

Late applications: Applications that do not meet the criterion stated above are considered late applications. ACF/ADD shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend the deadline for all applicants due to acts of God, such as floods, hurricanes, or earthquakes; or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

D. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A, SF 424A-Page 2 and Certifications/ Assurances are contained in the application package. Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1. "Type of Submission"—Preprinted on the form.

Item 2. "Date Submitted" and "Applicant Identifier"—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. "Date Received By State"—State use only (if applicable).

Item 4. "Date Received by Federal Agency"—Leave blank.

Item 5. "Applicant Information".

"Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

"Organizational Unit"—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. "Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. "Type of Applicant"—Self-explanatory.

Item 8. "Type of Application"—Preprinted on the form.

Item 9. "Name of Federal Agency"—Preprinted on the form.

Item 10. "Catalog of Federal Domestic Assistance Number and Title"—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title. For all of ADD's priority areas, the following should be entered, "93.631—Developmental Disabilities: Projects of National Significance."

Item 11. "Descriptive Title of Applicant's Project"—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. "Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. "Proposed Project"—Enter the desired start date for the project and projected completion date.

Item 14. "Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If Statewide, a multi-State effort, or nationwide, enter "00."

Items 15. Estimated Funding Levels—In completing 15a through 15f, the dollar amounts entered should reflect, for a 17-month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost-sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part III, Sections E and F, and the specific priority area description.

Item 15f. Enter the estimated amount of program income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this program income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. "Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application.

Item 16b. "Is Application Subject to Review By State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. "To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. "Signature of Authorized Representative" —Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. "Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of

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17 months or less or (2) the first year budget period, if the proposed project period exceeds 15 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period of 17 months or less or (2) the first-year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is tangible, non-expendable personal property having a useful life of more than one year and acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, "Other."

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled "Totals." In-kind contributions are defined in title 45 of the Code of Federal Regulations, Parts 74.51 and 92.24, as "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant."

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column "(b) First." If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under "(c) Second." Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Description

The Project Description is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part IV. The narrative should also provide information concerning how the application meets the evaluation criteria, using the following headings:

(a) Objectives and Need for Assistance;
(b) Results and Benefits Expected;
(c) Approach; and
(d) Organization Profile.

The specific information to be included under each of these headings is described in Section G of Part III, General Instructions for the Uniform Project Description.

The narrative should be typed double-spaced on a single-side of an 8½" x 11" plain white paper, with 1" margins on all sides, using black print no smaller than 12 pitch or 12 point size. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. This will be strictly enforced. A page is a single side of an 8½ x 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose copying difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

4. Part V—Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. Applicants must also provide certifications regarding: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications, and need not be mailed back with the application.

In addition, applicants are required under Section 162(c)(3) of the Act to provide assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who will receive services under projects assisted under Part E will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities). Each application must include a statement providing this assurance.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

E. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

___One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;
___Application is from an organization that is eligible under the eligibility requirements defined in the priority area description (screening requirement);
___Application length does not exceed 60 pages, unless otherwise specified in the priority area description.

A complete application consists of the following items in this order:

___Application for Federal Assistance (SF 424, REV 4–88);
___A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.
___Budget Information—Non-Construction Programs (SF 424A, REV 4–88);
___Budget justification for Section B—Budget Categories;
___Table of Contents;
___Letter from the Internal Revenue Service, etc. to prove non-profit status, if necessary;
___Copy of the applicant's approved indirect cost rate agreement, if appropriate;
___Project Description (See Part III, Section C);
___Any appendices/attachments;
___Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);
___Certification Regarding Lobbying; and

___Certification of Protection of Human Subjects, if necessary.
___Certification of the Pro-Children Act of 1994; signature on the application represents certification.

F. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

G. Paper Reduction Act of 1995 (P.L. 104–13)

The Uniform Project Description information collection within this announcement is approved under the Uniform Project Description (0970–0139), Expiration Date 10/31/2000.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(Federal Catalog of Domestic Assistance Number 93.631 Developmental Disabilities—Projects of National Significance)

Dated: July 13, 1999.

Sue Swenson,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 99–18511 Filed 7–21–99; 8:45 am]

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Part VIII

Environmental Protection Agency

40 CFR Part 300
National Priorities List for Uncontrolled Hazardous Waste Sites; Final Rule and Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6401–5]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds a total of 15 new sites to the NPL: 13 sites to the General Superfund Section of the NPL and 2 sites to the Federal Facilities Section of the NPL.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be August 23, 1999.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see Section II, "Availability of Information to the Public" in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (mail code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action." ("Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on May 10, 1999 (64 FR 24949).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions * * *." 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the threat presented by a release" will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals

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more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

As of July 13, 1999, the Agency has deleted 185 sites from the NPL.

H. Can Portions of Sites be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of July 13, 1999, EPA has deleted portions of 16 sites.

I. What is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL.

Of the 185 sites that have been deleted from the NPL, 176 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). In addition, there are 432 sites also on the NPL CCL. Thus, as of July 13, 1999, the CCL consists of 608 sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund/.

II. Availability of Information to the Public

A. Can I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the site in this final rule are contained in dockets located both at EPA Headquarters and in the appropriate Regional office.

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters docket for this rule contains HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List Final Rule, July 1999."

C. What Documents Are Available for Review at the Regional Dockets?

The Regional dockets contain all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the site. These reference documents are available only in the appropriate Regional docket.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, 703/603–8917.

The contact information for the Regional dockets are as follows:

Barbara Callahan, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Records Center, Mailcode HBS, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1356

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435

Dawn Shellenberger (GCI), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364

Sherryl Decker, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436

Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7224

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343

David Bennett, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–2103

E. How Can I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at http://www.epa.gov/superfund/ (look under site information category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds 15 sites to the NPL: 13 sites to the General Superfund Section of the NPL and 2 sites to the Federal Facilities Section of the NPL. Table 1 presents the 13 sites in the General Superfund Section and Table 2 contains the 2 sites in the Federal Facilities Section. Sites in each table are arranged alphabetically by State.

TABLE 1.—NATIONAL PRIORITIES LIST FINAL RULE, GENERAL SUPERFUND SECTION

State	Site name	City/county
AR	Mountain Pine Pressure Treating, Inc.	Plainview.
CO	Vasquez Boulevard and I–70	Denver.
ME	Eastland Woolen Mill	Corinna.
NC	North Belmont PCE	North Belmont.
NJ	Emmell's Septic Landfill	Galloway Township.
NJ	Martin Aaron, Inc.	Camden.
NJ	United States Avenue Burn	Gibbsboro.
OK	Hudson Refinery	Cushing.
PR	Vega Baja Solid Waste Disposal	Vega Baja.
TX	Hart Creosoting Company	Jasper.
VA	Kim-Stan Landfill	Selma.
VA	Former Nansemond Ordnance Depot	Suffolk.
WV	Hanlin-Allied-Olin	Moundsville.

Number of Sites Added to the General Superfund Section: 13.

TABLE 2.—NATIONAL PRIORITIES LIST FINAL RULE, FEDERAL FACILITIES SECTION

State	Site name	City/county
CA	Alameda Naval Air Station	Alameda.
VA	Norfolk Naval Shipyard	Portsmouth

Number of Sites Added to the Federal Facilities Section: 2.

B. Status of NPL

With the 15 new sites added in today's rule, the NPL now contains 1,226 sites (1,068 in the General Superfund section and 158 in the Federal Facilities section).

With a separate rule proposing to add 11 new sites to the NPL published elsewhere in today's **Federal Register**, there are now 59 sites proposed and awaiting final agency action; 53 in the General Superfund section and 6 in the Federal Facilities section. Final and proposed sites now total 1,285.

C. What Did EPA do With the Public Comments it Received?

EPA reviewed all comments received on the sites in this rule. The Norfolk Naval Shipyard site was proposed on March 6, 1998 (63 FR 11340). The United States Avenue Burn site was proposed on September 29, 1998 (63 FR 51882). The Vasquez Boulevard and I–70 site and the Former Nansemond Ordnance Depot site were proposed on January 19, 1999 (64 FR 2950). The following sites were proposed on April 23, 1999 (64 FR 19968): Mountain Pine Pressure Treating, Inc., Eastland Woolen Mill, North Belmont PCE, Emmell's Septic Landfill, Martin Aaron, Inc., Hudson Refinery, Vega Baja Solid Waste Disposal, Hart Creosoting Company, Kim-Stan Landfill, and Hanlin-Allied-Olin. The Alameda Naval Air Station site was proposed on May 10, 1999 (64 FR 24990).

For the Mountain Pine Pressure Treating, Inc., Hudson Refinery, Kim-Stan Landfill, and Hanlin-Allied-Olin sites, EPA received only comments in favor of placing the sites on the NPL. EPA received no comments on the actual scoring of these sites and the Agency has identified no other reason to change the original HRS scores for the sites. Therefore, EPA is placing these sites on the final NPL at this time.

No comments were received on several sites (Eastland Woolen Mill, North Belmont PCE, Emmell's Septic Landfill, Martin Aaron, Inc., Vega Baja Solid Waste Disposal, Hart Creosoting Company, Alameda Naval Air Station) and therefore, EPA is placing them on the final NPL at this time.

EPA responded to all relevant comments received on the other sites. EPA's responses to site-specific public comments are addressed in the "Support Document for the Revised National Priorities List Final Rule, July. 1999

IV. Executive Order 12866

A. What is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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B. Is This Final Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Does the Regulatory Flexibility Act Apply to This Final Rule?

No. While this rule revises the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

VII. Possible Changes to the Effective Date of the Rule

A. Has This Rule Been Submitted to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

B. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

C. What Could Cause the Effective Date of This Rule to Change?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA*, 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

VIII. National Technology Transfer and Advancement Act

A. What is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

IX. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to This Final Rule?

No. While this rule revises the NPL, no action will result from this rule that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

X. Executive Order 13045

A. What is Executive Order 13045?

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

XI. Paperwork Reduction Act

A. What is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

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The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Final Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XII. Executive Order 12875

What is Executive Order 12875 and is it Applicable to This Final Rule?

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XIII. Executive Order 13084

What is Executive Order 13084 and is it Applicable to This Final Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 16, 1999.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Table 1 and Table 2 of Appendix B to Part 300 are amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes (a)
AR	Mountain Pine Pressure Treating, Inc	Plainview.	
CO	Vasquez Boulevard and I–70	Denver.	
ME	Eastland Woolen Mill	Corinna.	
NC	North Belmont PCE	North Belmont.	
NJ	Emmell's Septic Landfill	Galloway Township.	
NJ	Martin Aaron, Inc	Camden.	
NJ	United States Avenue Burn	Gibbsboro.	

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes (a)
OK	Hudson Refinery	Cushing.	
PR	Vega Baja Solid Waste Disposal	Vega Baja.	
TX	Hart Creosoting Company	Jasper.	
VA	Former Nansemond Ordnance Depot	Suffolk.	
VA	Kim-Stan Landfill	Selma.	
WV	Hanlin-Allied-Olin	Moundsville.	

(a) A=Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤ 28.50).
C=Sites on construction completion list.
S=State top priority (included among the 100 top priority sites regardless of score).
P=Sites with partial deletion(s).

TABLE 2.—FEDERAL FACILITIES SECTION

State	Site name	City/county	Notes (a)
CA	Alameda Naval Air Station	Alameda.	
VA	Norfolk Naval Shipyard	Portsmouth.	

(a) A=Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤ 28.50).
C=Sites on construction completion list.
S=State top priority (included among the 100 top priority sites regardless of score).
P=Sites with partial deletion(s).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6401–4]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 29

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "the Act"), requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add 11 new sites to the NPL. Ten of the sites are being proposed to the General Superfund Section of the NPL and one site is being proposed to the Federal Facilities Section.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before September 20, 1999.

ADDRESSES: By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–9232.

By Express Mail: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to superfund.docket@epa.gov. E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, "Public Review/Public Comment," of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action." "Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as a appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on May 10, 1999 (64 FR 24949).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions. * * *" 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the threat presented by a release" will be determined by a Remedial Investigation/Feasibility Study ("RI/FS") as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the

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release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of July 13, 1999, the Agency has deleted 185 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of July 13, 1999, EPA has deleted portions of 16 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) The site qualifies for deletion from the NPL.

Of the 185 sites that have been deleted from the NPL, 176 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). In addition, there are 432 sites also on the NPL CCL. Thus, as of July 13, 1999, the CCL consists of 608 sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in dockets located both at EPA Headquarters in Washington, DC and in the Regional offices.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional dockets after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway 1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional dockets is as follows:

Barbara Callahan, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Records Center, Mailcode HBS, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1356

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435

Dawn Shellenberger (GCI), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PMH52, Philadelphia, PA 19103; 215/814–5364.

Sherryl Decker, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7224.

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.

David Bennett, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–2103.

You may also request copies from EPA Headquarters or the Regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for the proposed site; a Documentation Record for the site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional dockets for this rule contain all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

I. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

With today's proposed rule, EPA is proposing to add 11 new sites to the NPL; 10 sites to the General Superfund Section of the NPL and one site to the Federal Facilities Section. The sites are being proposed based on HRS scores of 28.50 or above. The sites being proposed to the General Superfund Section in this rule are presented in Table 1 while the site being proposed to the Federal Facilities Section is presented in Table 2. These tables follow this preamble.

B. Status of NPL

A final rule published elsewhere in today's **Federal Register** finalizes 15 sites to the NPL; resulting in an NPL of 1,226 final sites; 1,068 in the General Superfund Section and 158 in the Federal Facilities Section. With this proposal of 11 new sites, there are now 59 sites proposed and awaiting final agency action, 53 in the General Superfund Section and 6 in the Federal Facilities Section. Final and proposed sites now total 1,285.

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Proposed Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year.

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This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

No. While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

VII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VIII. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to This Proposed Rule?

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

IX. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XI. Executive Order 12875

What Is Executive Order 12875 and Is It Applicable to This Proposed Rule?

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This proposed rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XII. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Proposed Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 29, GENERAL SUPERFUND SECTION

State	Site name	City/county
NJ	Iceland Coin Laundry Area Ground Water Plume	Vineland.
NJ	Lightman Drum Company	Winslow Township.
NM	Fruit Avenue Plume	Albuquerque.
MT	Basin Mining Area	Basin.
MT	Upper Tenmile Creek Mining Area	Lewis and Clark County.
PA	Old Wilmington Road Ground Water Contamination	Sadsburyville.
TX	Garland Creosoting	Longview.
TX	Star Lake Canal	Port Neches.
TX	State Road 114 Ground Water Plume	Levelland.
UT	Jacobs Smelter	Stockton.

Number of Sites Proposed to General Superfund Section: 10.

TABLE 2.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 29, FEDERAL FACILITIES SECTION

State	Site name	City/county
NJ	McGuire Air Force Base #1	Wrightstown.

Number of Sites Proposed to Federal Facilities Section: 1.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

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Dated: July 16, 1999.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

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Thursday
July 22, 1999

Part IX

The President

Proclamation 7209—Captive Nations Week, 1999

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Presidential Documents

Title 3—

The President

Proclamation 7209 of July 16, 1999

Captive Nations Week, 1999

By the President of the United States of America

A Proclamation

This month Americans mark 223 years of freedom from tyranny. We celebrate the vision of our founders who, in signing the Declaration of Independence, proclaimed the importance of liberty, the value of human dignity, and the need for a new form of government dedicated to the will of the people. As heirs to that legacy and the fortunate citizens of a democratic Nation, we continue to cherish the values of freedom and equality. Many people across the globe, however, are still denied the rights we exercise daily and too often take for granted. During Captive Nations Week, we reaffirm our solidarity with those around the world who suffer under the shadow of dictators and tyrants.

Americans have expressed their devotion to freedom and human rights through actions as well as words, having fought and died for these ideals time and again. In World War II, we battled the brutality of fascism. In Korea, Vietnam, and throughout the Cold War, we stood up to the despotism of communism. In the Persian Gulf, and in partnership with our NATO allies in the skies over Serbia and Kosovo, we have fought brutal and oppressive regimes.

Thanks to our strength and resolve and the courage of countless men and women in countries around the world, we can be proud that the list of captive nations has grown smaller. The fall of the Berlin Wall a decade ago finally enabled us to pursue democratic reform in Central and Eastern Europe and to lay the firm foundations of freedom, peace, and prosperity. And in countries around the world, from South Africa to South Korea to South America, democracy is flourishing, and citizens enjoy the liberty to seek their own destiny.

The post-Cold War world, however, confronts us with a new set of dangers to freedom—threats such as civil wars, terrorism, and ethnic cleansing. There are still rulers in the world who refuse to join the march toward freedom, who believe that the only way to govern is with an iron fist, and who rely on reprehensible practices like arbitrary detention, forced labor, torture, and execution to subjugate their people.

As we observe this Captive Nations Week, let us once again reaffirm our profound commitment to freedom and universal human rights. Let us continue to promote tolerance, justice, and equality and to speak out for those who have no voice. Let us rededicate ourselves to the growth of democracy and the rule of law; and let us resolve that in the next century we will foster the further expansion of the rights and freedoms with which Americans have been blessed for so long.

The Congress, by Joint Resolution approved July 17, 1959 (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

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NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 18 through July 24, 1999, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities and to rededicate ourselves to supporting the cause of freedom, human rights, and self-determination for all the peoples of the world.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of July, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

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H.R. 775/P.L. 106–37
Y2K Act (July 20, 1999; 113 Stat. 185)

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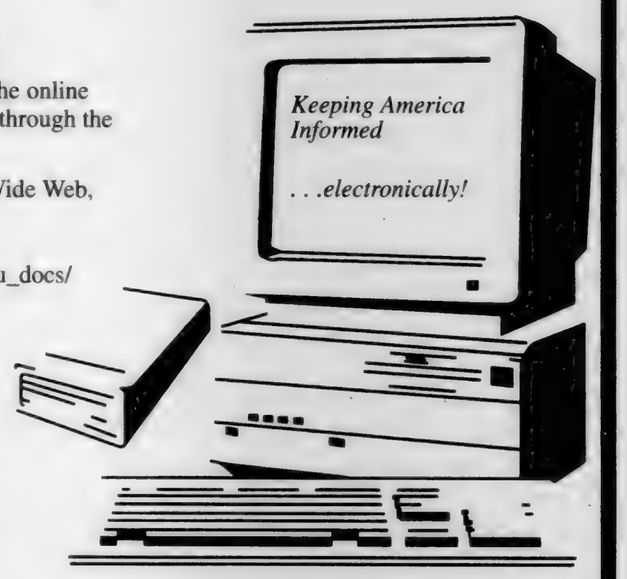

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Title 3—

The President

Notice of July 20, 1999

Continuation of Iraqi Emergency

On August 2, 1990, by Executive Order 12722, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Iraq. By Executive Orders 12722 of August 2, 1990, and 12724 of August 9, 1990, the President imposed trade sanctions on Iraq and blocked Iraqi government assets. Because the Government of Iraq has continued its activities hostile to United States interests in the Middle East, the national emergency declared on August 2, 1990, and the measures adopted on August 2 and August 9, 1990, to deal with that emergency must continue in effect beyond August 2, 1999. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iraq.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
July 20, 1999.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE145; Special Conditions No. 23–096–SC]

Special Conditions: Raytheon Model 390 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Raytheon Aircraft Company Model 390 airplane. This airplane will have a novel or unusual design feature(s) not typically associated with normal, utility, acrobatic, and commuter category airplanes. These design features include turbofan engines, engine location, swept wings and stabilizer, and certain performance characteristics necessary for this type of airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that existing in the current business jet fleet and expected by the user of this class of aircraft.

EFFECTIVE DATE: August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, Room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 1995, Raytheon Aircraft Company (then Beech Aircraft Corporation), 9707 East Central, Wichita, Kansas 67201, applied for a type certificate for their new Raytheon Model 390 Airplane. The Raytheon Model 390 has a composite fuselage, ■ metal wing with 22.8 degrees of leading-edge sweepback, and a combination composite/metal empennage in a T-tail configuration with trimmable horizontal tail with 27.3 degrees of leading-edge sweepback. The airplane will accommodate six passengers and a crew of two. The Model 390 will have a V_{MO}/M_{MO} of 320 knots/m.83, and has two turbofan engines mounted on the aft fuselage above and behind the wing.

Raytheon plans to incorporate certain novel and unusual design features into the Model 390 airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features include turbofan engines, engine location, swept wings and stabilizer, and certain performance characteristics necessary for this type of airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, Raytheon Aircraft Company must show that the Raytheon Model 390 meets the applicable provisions of 14 CFR part 23, effective February 1, 1965, as amended by Amendments 23–1 through 23–52, effective July 25, 1996; 14 CFR part 36, effective December 1, 1969, through the amendment effective on the date of type certification; 14 CFR part 34; exemptions, if any; and the special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 23) do not contain adequate or appropriate safety standards for the Raytheon Model 390 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Raytheon Model 390 will incorporate the following novel or unusual design features: These features include turbofan engines, engine location, swept wings and stabilizer, and certain performance characteristics necessary for this type of airplane.

Performance

The Raytheon Model 390 has a wing with 22.8 degrees of leading-edge sweepback and a T-tail configuration with trimmable horizontal stabilizer with 27.3 degrees of leading-edge sweepback. The Model 390 will have a V_{MO}/M_{MO} of 320 knots/M.83, and it will have two turbofan engines mounted on the aft fuselage.

Previous certification and operational experience with airplanes of like design in the transport category reveal certain unique characteristics compared to conventional aircraft certificated under part 23. These characteristics have caused safety problems in the past when pilots attempted takeoffs and landings, particularly with a large variation in temperature and altitude, using procedures and instincts developed with conventional airplanes.

One of the major distinguishing features of a swept-wing design not considered in current part 23 is a characteristically flatter lift curve without a "stall" break near the maximum coefficient of lift, as in a conventional wing. The "stall" separation point may occur at a much higher angle of attack than the point of maximum lift, and the angle of attack for maximum lift can be only recognized by precise test measurements or specific detection systems. This phenomenon is not apparent to a pilot accustomed to operating a conventional airplane where increasing angle of attack produces increased lift to the point where the wing stalls. In a swept-wing design, if the pilot does not operate in accordance with established standards developed through a dedicated test program, increasing angle of attack may produce very little lift yet increase drag markedly to the point where flight is impossible. These adverse conditions may be further compounded by the characteristics of turbofan engines, including specified N_1/N_2 rotational speeds, temperature, and pressure limits that make its variation in thrust output with changes in temperature and altitude more

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complex and difficult to predict. In recognition of these characteristics, Special Civil Air Regulations No. SR–422 and follow-on regulations established weight-altitude-temperature (WAT) limitations and procedures for scheduling takeoff and landing for turbine powered transport category airplanes, so the pilot could achieve reliable and repeatable results under all expected conditions of operation. This entails specific tests such as minimum unstick speed, V_{MU}, to ensure that rotation and fly-out speeds are correct and that the airplane speed schedule will not allow the airplane to lift off in ground effect and then be unable to accelerate and continue to climb out. In conjunction with the development of takeoff and landing procedures, it was also necessary to establish required climb gradients and data for flight path determination under all approved weights, altitudes, and temperatures. This enables the pilot to determine, before takeoff, that a safe takeoff, departure, and landing at destination can be achieved.

Takeoff

Based upon the knowledge and experience gained with similar high speed, high efficiency turbojet airplanes, special conditions require performance standards for takeoff, takeoff speeds, accelerate-stop distance, takeoff path, takeoff distance, takeoff run, and takeoff flight path.

Additionally, procedures for takeoff, accelerate-stop distance, and landing are proposed as those established for operation in service and must be executable by pilots of average skill and include reasonably expected time delays.

Climb

To maintain a level of safety that is equivalent to the current business jet fleet for takeoff, takeoff speeds, takeoff path, takeoff distance, and takeoff run, it is appropriate to require specific climb gradients, airplane configurations, and consideration of atmospheric conditions that will be encountered. These special conditions include climb with one engine inoperative, balked landing climb, and general climb conditions.

Landing

Landing distance determined for the same parameters is consistent with takeoff information for the range of weights, altitudes, and temperatures approved for operation. Further, it is necessary to consider time delays to provide for in-service variation in the activation of deceleration devices such as spoilers and brakes.

Trim

Special conditions are issued to maintain a level of safety that is consistent with the use of V_{MO}/M_{MO} and the requirements established for previous part 23 jet airplanes. Current standards in part 23 did not envision this type of airplane and the associated trim considerations.

Demonstration of Static Longitudinal Stability

To maintain a level of safety consistent with existing business jet airplanes, it is appropriate to define applicable requirements for static longitudinal stability. Current standards in part 23 did not envision this type of airplane and the associated stability considerations. Special conditions will establish static longitudinal stability requirements that include a stick force versus speed specification and stability requirements applicable to high speed jet airplanes.

Consistent with the concept of V_{MO}/M_{MO} being a maximum operational speed limit, rather than a limiting speed for the demonstration of satisfactory flight characteristics, it is appropriate to extend the speed for demonstration of longitudinal stability characteristics from the V_{MO}/M_{MO} of 14 CFR part 23 to the maximum speed for stability characteristics, V_{FC}/M_{FC}, for this airplane.

Static Directional and Lateral Stability

Consistent with the concept of V_{MO}/M_{MO} being a maximum operational speed limit, rather than a limiting speed for the demonstration of satisfactory flight characteristics, it is appropriate to extend the speed for demonstration of lateral/directional stability characteristics from the V_{MO}/M_{MO} of part 23 to the maximum speed for stability characteristics, V_{FC}/M_{FC} for this airplane.

Stall Characteristics

The stall characteristics requirements are relaxed from part 23 to be equivalent to that acceptable in current business jets. These special conditions reflect a higher expected pilot proficiency level, the remote chance that a stall will be encountered in normal operation, and the requirements are relaxed as compensation for meeting the higher performance requirements in these special conditions.

Vibration and Buffeting

The Raytheon Model 390 will be operated at high altitudes where stall-Mach buffet encounters (small speed margin between stall and transonic flow buffet) are likely to occur, which is not presently addressed in part 23. The special condition will require buffet onset tests and the inclusion of information in the Airplane Flight Manual (AFM) to provide guidance to the flightcrew. This information will enable the flightcrew to plan flight operations that will maximize the maneuvering capability during high altitude cruise flight and preclude intentional operations exceeding the boundary of perceptible buffet. Buffeting is considered to be a warning to the pilot that the airplane is approaching an undesirable and eventually dangerous flight regime, that is, stall buffeting, high speed buffeting or maneuvering (load factor) buffeting. In straight flight, therefore, such buffet warning should not occur at any normal operating speed up to the maximum operating limit speed, V_{MO}/M_{MO}.

High Speed Characteristics and Maximum Operating Limit Speed

The Raytheon Model 390 will be operated at high altitude and high speeds. The proposed operating envelope includes areas in which Mach effects, which have not been considered in part 23, may be significant. The anticipated low drag of the airplane and the proposed operating envelope are representative of the conditions not envisioned by the existing part 23 regulations. These conditions may degrade the ability of the flightcrew to promptly recover from inadvertent excursions beyond maximum operating speeds. The ability to pull a positive load factor is needed to ensure, during recovery from upset, that the airplane speed does not continue to increase to a value where recovery may not be achievable by the average pilot or flightcrew.

Additionally, to allow the aircraft designer to conservatively design to higher speeds than may be operationally required for the airplane, the concept of V_{DF}/M_{DF}, the highest demonstrated flight speed for the type design, is appropriate for this airplane. This permits V_D/M_D, the design dive speed, to be higher than the speed actually required to be demonstrated in flight. Accordingly, the special conditions allow one to determine a maximum demonstrated flight speed and to relate the speeds V_{MO}/M_{MO} and V_{DF}/M_{DF}.

Flight Flutter Tests

Flight flutter test special conditions are proposed to V_{DF}/M_{DF} rather than to V_D, in keeping with the V_{DF}/M_{DF} concept.

Out-of-Trim Characteristics

High speed airplanes have experienced a number of upset incidents involving out-of-trim conditions. This is particularly true for swept-wing airplanes and airplanes with a trimmable stabilizer. Service experience has shown that out-of-trim conditions can occur in flight for various reasons and that the control and maneuvering characteristics of the airplane may be critical in recovering from upsets. The existing part 23 regulations do not address high speed out-of-trim conditions. These special conditions test the out-of-trim flight characteristics by requiring the longitudinal trim control be displaced from the trimmed position by the amount resulting from the three-second movement of the trim system at this normal rate with no aerodynamic load, or the maximum mis-trim that the autopilot can sustain in level flight in the high speed cruise condition, whichever is greater. Special conditions require the maneuvering characteristics, including stick force per g, be explored throughout a specified maneuver load factor speed envelope. The dive recovery characteristics of the aircraft in the out-of-trim condition specified would be investigated to determine that safe recovery can be made from the demonstrated flight dive speed V_{DF}/M_{DF}.

Takeoff Warning System

Jet airplanes incorporating leading-edge sweep in the wing and horizontal tail and incorporating a trimmable horizontal tail have had accidents because of the criticality of the airplane's configuration at takeoff. Unlike simple, straight wing airplanes, an incorrect flap or horizontal tail trim setting can significantly alter the takeoff distance. Special conditions to require a takeoff warning system are proposed to maintain a level of safety appropriate for this class of aircraft.

Engine Fire Extinguishing System

The Model 390 design includes engines mounted aft on the fuselage; therefore, early visual detection of engine fires is precluded. The applicable existing regulations do not require fire-extinguishing systems for engines. Aft mounted engine installations were not envisaged in the development of part 23; therefore, special conditions for a fire extinguishing system with the applicable agents, containers, and materials for the engines of the Model 390 are appropriate.

Airspeed Indicating System

To maintain a level of safety consistent with that existing in the current business jet fleet, and to be consistent with the establishment of speed schedule performance requirements, it is appropriate to establish applicable requirements for determining and providing airspeed indicating system calibration information. Additionally, it is appropriate to establish special conditions requiring protection of the pitot tube from malfunctions associated with icing conditions. Special conditions will establish airspeed indicating system calibration and pitot tube ice protection requirements applicable to transport category jet airplanes.

Static Pressure System

Special conditions are appropriate to establish applicable requirements for providing static pressure system calibration information in the AFM. Since aircraft of this type are frequently equipped with devices to correct the altimeter indication, it is also appropriate to establish requirements to ensure the continued availability of altitude information where such a device malfunctions. Current standards in part 23 did not envision this type of airplane and the associated static pressure requirements.

Minimum Flightcrew

The Raytheon Model 390 operates at high altitudes and speeds not envisioned in part 23 and must be flown in a precise speed schedule to achieve flight manual takeoff and landing distances; therefore, it is appropriate to specify workload considerations. Special conditions will specify the items to be considered in workload determination.

Airplane Flight Manual (AFM) Information

To be consistent with the performance special conditions, it is also necessary to require that the maximum takeoff and landing weights, takeoff distances, and associated atmospheric conditions be made available to the pilot in the AFM and that the airplane be operated within its performance capabilities. Special conditions will add maximum takeoff weights, maximum landing weights, and minimum takeoff distances as limitations in the AFM. Additionally, special conditions are included to add takeoff flight path and procedures necessary to achieve the performance in the limitations section as information in the AFM.

Effects of Contamination on Natural Laminar Flow Airfoils

Airfoil configurations similar to the Raytheon Model 390 had measurable degradations of handling qualities and performance when laminar flow was lost due to airfoil contamination. Tripping of the boundary layer could be caused from flight in precipitation conditions or by the presence of contamination such as insects. If measurable effects are detected, it should be determined that the minimum flight characteristics standards continue to be met and that any degradations to performance information are identified. This may be accomplished by a combination of analysis and testing. Current standards in part 23 did not envision this type of airplane and the associated airfoil contamination considerations. Special considerations are issued since existing regulations do not require these adverse effects to be evaluated.

Discussion of Comments

A notice of proposed special conditions No. 23–98–01–SC for the Raytheon Aircraft Company Model 390 airplanes was published on November 2, 1998 (63 FR 58660). Comments were received from two organizations.

1. Comment

SC23.45 and 23.53 Accelerate-Stop Distances. The first commenter expected the special conditions to reflect the intent of NPRM 93–8, Accelerate-Stop (NPA 25B, D, G–244) and, as such, include reference to the following:

i. specific accelerate-stop delays
ii. wet runway accountability
iii. worn brakes

SC23.45(l)(3) and 23.53(c) are relevant in this regard.

FAA Response

Not adopted. Part 23 twin engine jet special conditions reflect earlier 14 CFR part 25 requirements and are basically parallel to existing commuter category requirements. Worn brakes have not been a safety problem for commuter or small business jets, only the large transport airplanes. Worn brake requirements are not included in this special condition, or previous jet special conditions, because there isn't a safety-based justification.

2. Comment

Enroute flight paths. The special condition lacks consideration of the determination and scheduling of enroute flight paths. It is proposed that the provisions of 25.123, enroute flight paths, be included much as 25.111/SC23.61 have been.

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FAA Response

Not adopted. The enroute flight paths requirement, § 25.123, is a requirement that addresses specific requirements for part 121 operating rules. Part 121 specifies terrain and obstruction clearances required of the net enroute flight paths subsequent to the failure of one or two engines. This class is typically not operated under part 121.

3. Comment

Use of the Flight Test Guide. Whilst it may not be relevant inside special conditions, we would expect use to be made of the Flight Test Guide for large transport airplanes (AC 25.7A), as appropriate.

FAA Response

We agree that this is not relevant to special conditions.

4. Comment

It is a normally expected condition in the operation of jet powered airplanes that prolonged descents are made from high cruising altitude with low thrust settings. It is desirable that the airplane be trimmable in this flight phase. Compliance with JAR 23.161(c)(3) must be shown, in addition to the requirements of FAA SC23.161.

FAA Response

Not adopted. Special condition 23.161(c)(3) for trim is identical to § 25.161(c)(3). We believe that part 25 requirements for trim are adequate for this class of airplane.

5. Comment

SC23.175 Demonstration of static longitudinal stability. The FAA position is acceptable with the following modifications:

Delete SC23.175(d)(4) and (5) and introduce a new (d)(4) to read:

(4) The airplane trimmed at 1.4 V_{SO} with—

i. Power or thrust off

ii. Power or thrust for level flight

FAA Response

Not adopted. The special condition is based on § 25.175(d) and is appropriate for this class airplane. Commenter is requesting new requirement not in § 23.175 or § 25.175 at this time.

6. Comment

SC23.181 Dynamic Stability. The FAA position is acceptable with the following modification: In 23.181(a) and (b) replace "stalling speed" by "1.2 V_S."

FAA Response

Not adopted. The current requirement in § 23.181(a) is more conservative than 1.2 V_S and will, therefore, be retained. This is not a special condition.

7. Comment

SC23.203 Turning flight and accelerated turning stalls. The FAA position is acceptable with the following modifications.

In SC23.203(c)(1), before "The thrust necessary to maintain level flight" add "with flight idle thrust and * * *."

In SC23.203(c)(2), after "flaps and landing gear" add "and deceleration devices."

Delete SC23.203(c)(5).

Justification—The turning and accelerated stalls must be investigated over the thrust range required for wings level stalls. The B390 has speed brakes whose effects on stall characteristics must be taken into account. The B390 may be fitted with a device that affects stall characteristics. Stall characteristics must then be assessed over all loading conditions as required by 23.141.

FAA Response

Partially adopted. Deceleration devices should be considered and have been added. Idle thrust stalls were not considered necessary for the previous part 23 jets; therefore, it will not be included in these special conditions. Section 23.141 addresses all loading conditions so SC23.203(c)(5) is redundant and unnecessary and has been deleted.

8. Comment

SC23.251 Vibration and buffeting. The FAA position is acceptable with the following comment: The cross-reference to SC23.1581 is incorrect. It should be to SC23.1583.

FAA Response

Adopted. This has been corrected in the final version.

9. Comment

SC23.253 High-speed characteristics. The FAA position is acceptable with the following addition:

23.253(a)(4) Trim change due to airbrake selection:

With the airplane trimmed at V_{MO}/M_{MO}, extension of the airbrakes at speeds above V_{MO}/M_{MO}, over the available range of movements of the pilots control must not result in a positive load factor greater than 2.0 with the stick free, and any nose down pitching moment must not require a stick force of more than 20 lbs. to maintain 1g flight.

FAA Response

Not adopted. This requirement is not currently addressed in part 23 or part 25.

10. Comment

SC23.1323 Airspeed indication system. The FAA position is acceptable with the following additions:

(c) From 1.3 V_S to stall warning speed the IAS must change perceptibly with CAS and in the same sense, and at speeds below stall warning speed the IAS must not change in an incorrect sense.

(d) From V_{MO} to $V_{MO}+2/3(V_{DF}-V_{MO})$ the IAS must change perceptively with CAS and in the same sense, and at higher speeds up to V_{DF} the IAS must not change in an incorrect sense.

(e) There must be no indication of speed that would cause undue difficulty to the pilot during the takeoff between the initiation of rotation and the achievement of a steady climbing condition.

FAA Response

Not adopted. These requirements are not currently addressed in part 23 or part 25.

11. Comment

SC23.201 Wings level stall. The FAA position is acceptable with the following modifications:

In SC23.201(e)(2), after "Flaps and landing gear" and add "and deceleration devices."

Delete SC23.201(e)(5).

Justification—The B390 has speed brakes whose effects on stall characteristics must be taken into account. Furthermore, the B390 may also be fitted with a device that affects stall characteristics. Stall characteristics must then be assessed over all loading conditions as required by 23.141.

FAA Response

Adopted. Deceleration devices should be considered and have been added. Section 23.141 addresses all loading conditions so SC23.201(e)(5) is redundant and unnecessary and has been deleted.

12. Comment

Additional Items. The JAA validation team for the Beech 390 is currently considering the following additional FAA special conditions, which are not listed in the FR of 2nd November.

84SC23.1513 Minimum Control Speed
SC23.1523 Minimum Flight Crew
SC23.1541 Markings and Placards
SC23.1545 Airspeed Indicator
SC23.1581 (Airplane Flight Manual and Approved Material) General
SC23.1583 Operating Limitations
SC23.1585 Operating Procedures
SC23.A Effects on contamination on natural laminar flow airfoils

We have the following comments on one of these:

SC23.1583 Operating Limitations

1. Federal Aviation Regulations 23.1583(a)(2) and this SC23.1583(a)(3) incorrectly refer to maneuvering speed as V_O. It should be V_A.

2. Replace SC23.1583(k) by:

(k) Ambient temperatures. Where appropriate maximum and minimum ambient temperatures for operation.

3. Add.

(l) Allowable lateral fuel loading. The maximum allowable lateral fuel loading differential, if less than the maximum possible.

(m) Baggage and cargo loading. The following information for each baggage and cargo compartment or zone.

(1) The maximum allowable load; and

(2) The maximum intensity of loading

(n) Systems. Any limitation on the use of airplane systems and equipment.

(o) Smoking. Any restriction on smoking in the airplane.

FAA Response

Partially adopted. All of these are included in the FAA special conditions and listed in the **Federal Register**. Comments 2 and 3 are from the current § 23.1583 and were inadvertently omitted and will be used. V_O replaced V_A and is correctly used in this special condition.

13. Comment

SC23.207 Stall Warning. In 23.207(d), change the reference from 23.1585 to special condition SC23.1585.

FAA Response

Adopted. This was inadvertently omitted in the notice and will be corrected in the final version.

14. Comment

SC23.1545 Airspeed indicator. Instead of compliance with Federal Aviation Regulations 23.1545, the following applies:

"The following markings must be made on each airspeed indicator:

a. A maximum allowable airspeed indication showing the variation of V_{MO}/M_{MO} with altitude or compressibility limitations (as appropriate), or a radial red line marking for V_{MO}/M_{MO} established for any altitude up to the maximum operating altitude for the airplane.

A revision to the published special conditions for the Model 390 is required to add special condition 23.1545 as written in Issue Paper F–1.

FAA Response

Adopted. This was inadvertently omitted in the notice and will be corrected as follows:

"Instead of compliance with Federal Aviation Regulations 23.1545, the following applies:

The following markings must be made on each airspeed indicator:

(a) A maximum allowable airspeed indication showing the variation of V_{MO}/M_{MO} with altitude or compressibility limitations (as appropriate), or a radial red line marking for V_{MO}/M_{MO} must be made at the lowest value of V_{MO}/M_{MO} established for any altitude up to the maximum operating altitude for the airplane."

15. Comment

SC23.1195 Engine Fire Extinguishing System. The published special condition states the following:

"The fire extinguishing system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires."

SC23.1195 "Engine Fire Extinguishing System", as written in Issue Paper P–1, was not incorporated exactly in the published Special Condition 23.1195(a)(2). The Issue Paper states the following:

"The fire extinguishing system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. An individual 'one shot' system may be used."

A revision to the published Special Condition for the Model 390 is required to incorporate the last sentence as stated in the Issue Paper P–1.

It was further recommended that the FAA revise existing SC23.1195 to add the paragraph numbering to coincide with the existing Federal Aviation Regulations part 23 paragraphs § 23.1197, § 23.1197, § 23.1199, § 23.1201.

FAA Response

Adopted. This was inadvertently omitted in the notice and will be corrected in the final version. The existing paragraphs will also be separated into sections that parallel existing part 23 paragraphs.

16. Comment

Special Condition 23.1587 "Performance Information." A typographical error appears in the published SC23.1587(b)(4).

The reference in this section to SC23.45 (d), (e), and (f) should be SC23.45 (j), (k), and (l). SC23.45 (d), (e), and (f) do not exist.

A revision to the published Special Conditions for the Model 390 is required to correct the typographical error.

FAA Response

Adopted. This was inadvertently omitted in the notice and will be corrected in the final version.

Except as discussed above, the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Raytheon Model 390 Airplane. Should Raytheon Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

The authority citation for these special conditions is as follows: 49 U.S.C. 106(g); 40113, 44701, 44702, and 44704; 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Raytheon Aircraft Company Model 390 airplane.

Special Condition (SC) 23.45. Performance: General

Instead of the requirements of 14 CFR Part 23, § 23.45(g) and (h), the following apply:

(g) The following, as applicable, must be determined on a smooth, dry, hard-surfaced runway—

(1) Takeoff distance of special condition SC23.53;

(2) Accelerate-stop distance of special condition SC23.55;

(3) Takeoff distance and takeoff run of special condition SC23.59; and

(4) Landing distance of special condition SC23.75.

Note: The effect on these distances of operation on other types of surfaces (for example, grass, gravel), when dry, may be determined or derived and these surfaces listed in the Airplane Flight Manual.

(h) Unless otherwise prescribed, the applicant must select the takeoff,

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enroute, approach, and landing configurations for the airplane.

In addition to the requirements of § 23.45 and the paragraphs above, the following apply:

(i) The airplane configurations may vary with weight, altitude, and temperature to the extent that they are compatible with the operating procedures required by paragraph (d) of this special condition.

(j) Unless otherwise prescribed, in determining the accelerate-stop distances, takeoff flight paths, takeoff distances, and landing distances, changes in the airplane's configuration, speed, power, and thrust, must be made in accordance with procedures established by the applicant for operation in service.

(k) Procedures for the execution of balked landings and discontinued approaches associated with the conditions prescribed in special conditions SC23.77 and SC23.67(d) must be established.

(l) The procedures established under paragraphs (d) and (e) of § 23.45 must:

(1) Be able to be consistently executed in service by crews of average skill;

(2) Use methods or devices that are safe and reliable; and

(3) Include allowance for any time delays in the execution of the procedures that may reasonably be expected in service.

SC23.49 Stalling speed.

In § 23.49(b), change the reference from "§ 23.201" to "§ 23.201 and special condition SC23.201."

SC23.51 Takeoff speeds.

Instead of compliance with § 23.51, the following apply:

(a) V_1 must be established in relation to V_{EF}, as follows:

(1) V_{EF} is the calibrated airspeed at which the critical engine is assumed to fail. V_{EF} must be selected by the applicant, but may not be less than V_{MCG} determined under § 23.149(f) and special condition SC23.149(f).

(2) V_1, in terms of calibrated airspeed, is the takeoff decision speed selected by the applicant; however, V_1 may not be less than V_{EF} plus the speed gained with the critical engine inoperative during the time interval between the instant at which the critical engine failed and the instant at which the pilot recognizes and reacts to the engine failure, as indicated by the pilot's application of the first retarding means during the accelerate-stop test.

(b) $V_{2\ min}$, in terms of calibrated airspeed, may not be less than the following:

(1) 1.2 V_{S1}, or

(2) 1.10 times V_{MC} established under § 23.149.

(c) V_2, in terms of calibrated airspeed, must be selected by the applicant to provide at least the gradient of climb required by special condition SC23.67(b), but may not be less than the following:

(1) $V_{2\ min}$, and

(2) V_R plus the speed increment attained (in accordance with special condition SC23.57(c)(2)) before reaching a height of 35 feet above the takeoff surface.

(d) V_{MU} is the calibrated airspeed at and above which the airplane can safely lift off the ground and continue the takeoff. V_{MU} speeds must be selected by the applicant throughout the range of thrust-to-weight ratios to be certified. These speeds may be established from free-air data if these data are verified by ground takeoff tests.

(e) V_R, in terms of calibrated airspeed, must be selected in accordance with the following conditions of paragraphs (e)(1) through (e)(4) of this special condition:

(1) V_R may not be less than the following:

(i) V_1;

(ii) 105 percent of V_{MC};

(iii) The speed (determined in accordance with special condition SC23.57(c)(2)) that allows reaching V_2 before reaching a height of 35 feet above the takeoff surface; or

(iv) A speed that, if the airplane is rotated at its maximum practicable rate, will result in a V_{LOF} of not less than 110 percent of V_{MU} in the all-engines-operating condition and not less than 105 percent of V_{MU} determined at the thrust-to-weight ratio corresponding to the one-engine-inoperative condition.

(2) For any given set of conditions (such as weight, configuration, and temperature), a single value of V_R, obtained in accordance with this special condition, must be used to show compliance with both the one-engine-inoperative and the all-engines-operating takeoff provisions.

(3) It must be shown that the one-engine-inoperative takeoff distance, using a rotation speed of 5 knots less than V_R, established in accordance with paragraphs (e)(1) and (e)(2) of this special condition, does not exceed the corresponding one-engine-inoperative takeoff distance using the established V_R. The takeoff distances must be determined in accordance with special condition SC23.59(a)(1).

(4) Reasonably expecting variations in service from the established takeoff procedures for the operation of the airplane (such as over-rotation of the airplane and out-of-trim conditions) may not result in unsafe flight characteristics or in marked increases in the scheduled takeoff distances established in accordance with special condition SC23.59.

(f) V_{LOF} is the calibrated airspeed at which the airplane first becomes airborne.

SC23.53 Takeoff performance.

Instead of complying with § 23.53, the following apply:

(a) In special conditions SC23.51, SC23.55, SC23.57 and SC23.59, the takeoff speeds, the accelerate-stop distance, the takeoff path, the takeoff distance, and takeoff run described must be determined:

(1) At each weight, altitude, and ambient temperature within the operation limits selected by the applicant; and

(2) In the selected configuration for takeoff.

(b) No takeoff made to determine the data required by this section may require exceptional piloting skill or alertness.

(c) The takeoff data must be based on a smooth, dry, hard-surfaced runway.

(d) The takeoff data must include, within the established operational limits of the airplane, the following operational correction factors:

(1) Not more than 50 percent of nominal wind components along the takeoff path opposite to the direction of takeoff, and not less than 150 percent of nominal wind components along the takeoff path in the direction of takeoff; and

(2) Effective runway gradients.

SC23.55 Accelerate-stop distance.

In the absence of specific accelerate-stop distance requirements, the following apply:

(a) The accelerate-stop distance is the sum of the distances necessary to—

(1) Accelerate the airplane from a standing start to V_{EF} with all engines operating;

(2) Accelerate the airplane from V_{EF} to V_1, assuming that the critical engine fails at V_{EF}; and

(3) Come to a full stop from the point at which V_1 is reached assuming that, in the case of engine failure, the pilot has decided to stop as indicated by application of the first retarding means at the speed V_1.

(b) Means other than wheel brakes may be used to determine the accelerate-stop distance if that means—

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected under normal operating conditions; and

(3) Is such that exceptional skill is not required to control the airplane.

(c) The landing gear must remain extended throughout the accelerate-stop distance.

SC23.57 Takeoff path.

In the absence of specific takeoff path requirements, the following apply:

(a) The takeoff path extends from a standing start to a point in the takeoff at which the airplane is 1,500 feet above the takeoff surface or at which the transition from the takeoff to the enroute configuration is completed and a speed is reached at which compliance with special condition SC23.67(c) is shown, whichever point is higher. In addition, the following apply:

(1) The takeoff path must be based on procedures prescribed in special condition SC23.45;

(2) The airplane must be accelerated on the ground to V_{EF}, at which point the critical engine must be made inoperative and remain inoperative for the rest of the takeoff; and

(3) After reaching V_{EF}, the airplane must be accelerated to V_2.

(b) During the acceleration to speed V_2, the nose gear may be raised off the ground at a speed not less than V_R. However, landing gear retraction may not begin until the airplane is airborne.

(c) During the takeoff path determination, in accordance with paragraphs (a) and (b) of this special condition, the following apply:

(1) The slope of the airborne part of the takeoff path must be positive at each point;

(2) The airplane must reach V_2 before it is 35 feet above the takeoff surface and must continue at a speed as close as practical to, but not less than, V_2 until it is 400 feet above the takeoff surface;

(3) At each point along the takeoff path, starting at the point at which the airplane reaches 400 feet above the takeoff surface, the available gradient of climb may not be less than 1.2 percent; and

(4) Except for gear retraction, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

(d) The takeoff path must be determined by a continuous demonstrated takeoff or by synthesis from segments. If the takeoff path is determined by the segmental method, the following apply:

(1) The segments must be clearly defined and must be related to the distinct changes in the configuration, speed, and power or thrust;

(2) The weight of the airplane, the configuration, and the power or thrust must be constant throughout each segment and must correspond to the most critical condition prevailing in the segment;

(3) The flight path must be based on the airplane's performance without ground effect; and

(4) The takeoff path data must be checked by continuous demonstrated takeoffs, up to the point at which the airplane is out of ground effect and its speed is stabilized, to ensure that the path is conservative relative to the continuous path.

Note: The airplane is considered to be out of the ground effect when it reaches a height equal to its wing span.

SC23.59 Takeoff distance and takeoff run.

In the absence of specific takeoff distance and takeoff run requirements, the following apply:

(a) Takeoff distance is the greater of the following:

(1) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, determined under special condition SC23.57; or

(2) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, as determined by a procedure consistent with special condition SC23.57.

(b) If the takeoff distance includes a clear way, the takeoff run is the greater of the following:

(1) The horizontal distance along the takeoff path from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, as determined under special condition SC23.57; or

(2) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, determined by a procedure consistent with special condition SC23.57.

SC23.61 Takeoff flight path.

In the absence of specific takeoff flight path requirements, the following apply:

(a) The takeoff flight path begins 35 feet above the takeoff surface at the end of the takeoff distance determined in accordance with special condition SC23.59.

(b) The net takeoff flight path data must be determined so that they represent the actual takeoff flight paths (determined in accordance with special condition SC23.57 and with paragraph (a) of this special condition) reduced at each point by a gradient of climb equal to 0.8 percent.

(c) The prescribed reduction in climb gradient may be applied as an equivalent reduction in acceleration along that part of the takeoff flight path at which the airplane is accelerated in level flight.

SC23.63 Climb: general.

Instead of compliance with § 23.63, the following applies:

Compliance with the requirements of special conditions SC23.67 and SC23.77 must be shown at each weight, altitude, and ambient temperature within the operational limits established for the airplane and with the most unfavorable center of gravity for each configuration.

SC23.65 Climb: all engines operating.

Delete requirement of § 23.65.

SC23.66 Takeoff climb: One engine inoperative.

Delete requirement of § 23.66.

SC23.67 Climb: One engine inoperative.

Instead of compliance with § 23.67, the following apply:

(a) Takeoff; landing gear extended. In the critical takeoff configuration existing along the flight path (between the points at which the airplane reaches V_{LOF} and at which the landing gear is fully retracted) and in the configuration used in special condition SC23.57 without ground effect, unless there is a more critical power operating condition existing later along the flight path before the point at which the landing gear is fully retracted, the steady gradient of climb must be positive at V_{LOF} and with the following:

(1) The critical engine inoperative and the remaining engine at the power or thrust available when retraction of the landing gear begins in accordance with special condition SC23.57, and

(2) The weight equal to the weight existing when retraction of the landing gear begins, determined under special condition SC23.57.

(b) Takeoff; landing gear retracted. In the takeoff configuration existing at the point of the flight path at which the landing gear is fully retracted and in the configuration used in special condition SC23.57, without ground effect, the steady gradient of climb may not be less than 2.4 percent at V_2 and with the following:

(1) The critical engine inoperative, the remaining engine at the takeoff power or thrust available at the time the landing gear is fully retracted, determined under special condition SC23.57 unless there is a more critical power operating

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condition existing later along the flight path but before the point where the airplane reaches a height of 400 feet above the takeoff surface; and

(2) The weight equal to the weight existing when the airplane's landing gear is fully retracted, determined under special condition SC23.57.

(c) Final takeoff. In the enroute configuration at the end of the takeoff path, determined in accordance with special condition SC23.57, the steady gradient of climb may not be less than 1.2 percent at not less than 1.25 V_S and with the following:

(1) The critical engine inoperative and the remaining engine at the available maximum continuous power or thrust; and

(2) The weight equal to the weight existing at the end of the takeoff path, determined under special condition SC23.57.

(d) Approach. In the approach configuration corresponding to the normal all-engines-operating procedure in which V_S for this configuration does not exceed 110 percent of the V_S for the related landing configuration, the steady gradient of climb may not be less than 2.1 percent with the following:

(1) The critical engine inoperative, the remaining engine at the available in-flight takeoff power or thrust;

(2) The maximum landing weight; and

(3) A climb speed established in connection with normal landing procedures, but not exceeding 1.5 V_S.

SC23.73 Reference landing approach speed.

In § 23.73(b), change the reference from "§ 23.149(c)" to "special condition SC23.149."

SC23.75 Landing distance.

Instead of compliance with § 23.75, the following apply:

(a) The horizontal distance necessary to land and to come to a complete stop from a point 50 feet above the landing surface must be determined (for each weight, altitude, temperature, and wind within the operational limits established by the applicant for the airplane), as follows:

(1) The airplane must be in the landing configuration;

(2) A steady approach at a gradient of descent not greater than 5.2 percent (3 degrees), with an airspeed of not less than V_{REF}, determined in accordance with special condition SC23.73, must be maintained down to the 50-foot height;

(3) Changes in configuration, power or thrust, and speed must be made in accordance with the established procedures for service operation;

(4) The landing must be made without excessive vertical acceleration, tendency to bounce, nose over, ground loop, or porpoise;

(5) The landings may not require exceptional piloting skill or alertness; and

(6) It must be shown that a safe transition to the balked landing conditions of special condition SC23.77 can be made from the conditions that exist at the 50-foot height.

(b) The landing distance must be determined on a level, smooth, dry, hard-surfaced runway. In addition, the following apply:

(1) The brakes may not be used so as to cause excessive wear of brakes or tires; and

(2) Means other than wheel brakes may be used if that means is as follows:

(i) Is safe and reliable;

(ii) Is used so that consistent results can be expected in service; and

(iii) Is such that exceptional skill is not required to control the airplane.

(c) The landing distance data must include correction factors for not more than 50 percent of the nominal wind components along the landing path opposite to the direction of landing and not less than 150 percent of the nominal wind components along the landing path in the direction of landing.

(d) If any device is used that depends on the operation of any engine, and if the landing distance would be noticeably increased when a landing is made with that engine inoperative, the landing distance must be determined with that engine inoperative unless the use of compensating means will result in a landing distance not more than that with each engine operating.

SC23.77 Balked landing.

Instead of compliance with § 23.77, the following apply:

In the landing configuration, the steady gradient of climb may not be less than 3.2 percent with the following:

(a) The engines at the power or thrust that is available eight seconds after initiation of movement of the power or thrust controls from the minimum flight idle to the inflight takeoff position; and

(b) A climb speed of not more than V_{REF}, as defined in § 23.73(b).

SC23.145 Longitudinal control.

In § 23.145(c), change the reference from "§ 23.251" to "special condition SC23.251."

SC23.149 Minimum control speed.

In § 23.149(c), change the reference from "§ 23.75" to "special condition SC23.75."

Delete § 23.149(d).

In § 23.149(f), delete "At the option of the applicant, to comply with the requirements of § 23.51(c)(1), V_{MCG} may be determined."

SC23.153 Control during landings.

In § 23.153(c), change the reference from "§ 23.75" to "special condition SC23.75."

SC23.161 Trim.

Instead of compliance with § 23.161, the following apply:

(a) General. Each airplane must meet the trim requirements of this special condition after being trimmed, and without further pressure upon or movement of the primary controls or their corresponding trim controls by the pilot or the automatic pilot.

(b) Lateral and directional trim. The airplane must maintain lateral and directional trim with the most adverse lateral displacement of the center of gravity within the relevant operating limitations during normally expected conditions of operation (including operation at any speed from 1.4 V_{S1} to V_{MO}/M_{MO}).

(c) Longitudinal trim. The airplane must maintain longitudinal trim during the following:

(1) A climb with maximum continuous power at a speed not more than 1.4 V_{S1}, with the landing gear retracted, and the flaps in the following positions:

(i) Retracted, and

(ii) In the takeoff position.

(2) A power approach with a 3 degree angle of descent, the landing gear extended, and with the following:

(i) The wing flaps retracted and at a speed of 1.4 V_{S1}; and

(ii) The applicable airspeed and flap position used in showing compliance with special condition SC23.75.

(3) Level flight at any speed from 1.4 V_{S1} to V_{MO}/M_{MO} with the landing gear and flaps retracted, and from 1.4 V_{S1} to V_{LE} with the landing gear extended.

(d) Longitudinal, directional, and lateral trim. The airplane must maintain longitudinal, directional, and lateral trim (for the lateral trim, the angle of bank may not exceed five degrees) at 1.4 V_{S1} during climbing flight with the following:

(1) The critical engine inoperative;

(2) The remaining engine at maximum continuous power or thrust; and

(3) The landing gear and flaps retracted.

SC23.171 [Stability] General.

In § 23.171, change reference from "§§ 23.173 through 23.181" to "special conditions SC23.173, SC23.175, SC23.177, SC23.181, and § 23.181."

SC23.173 Static longitudinal stability.

Instead of compliance with § 23.173, the following apply:

Under the conditions specified in special condition SC23.175, the characteristics of the elevator control forces (including friction) must be as follows:

(a) A pull must be required to obtain and maintain speeds below the specified trim speed, and a push must be required to obtain and maintain speeds above the specified trim speed. This must be shown at any speed that can be obtained except speeds higher than the landing gear or wing flap operating limit speeds or V_{FC}/M_{FC}, whichever is appropriate, or lower than the minimum speed for steady unstalled flight.

(b) The airspeed must return to within 10 percent of the original trim speed for the climb, approach, and landing conditions specified in special condition SC23.175, paragraph (a), (c), and (d), and must return to within 7.5 percent of the original trim speed for the cruising condition specified in special condition SC23.175, paragraph (b), when the control force is slowly released from any speed within the range specified in paragraph (a) of this special condition.

(c) The average gradient of the stable slope of the stick force versus speed curve may not be less than 1 pound for each 6 knots.

(d) Within the free return speed range specified in paragraph (b) of this special condition, it is permissible for the airplane, without control forces, to stabilize on speeds above or below the desired trim speeds if exceptional attention on the part of the pilot is not required to return to and maintain the desired trim speed and altitude.

SC23.175 Demonstration of static longitudinal stability.

Instead of compliance with § 23.175, static longitudinal stability must be shown as follows:

(a) Climb. The stick force curve must have a stable slope at speeds between 85 and 115 percent of the speed at which the airplane—

(1) Is trimmed, with—.'

(i) Wing flaps retracted;

(ii) Landing gear retracted;

(iii) Maximum takeoff weight; and

(iv) The maximum power or thrust selected by the applicant as an operating limitation for use during climb; and

(2) Is trimmed at the speed for best rate of climb except that the speed need not be less than 1.4 V_{S1}.

(b) Cruise. Static longitudinal stability must be shown in the cruise condition as follows:

(1) With the landing gear retracted at high speed, the stick force curve must have a stable slope at all speeds within a range which is the greater of 15 percent of the trim speed plus the resulting free return speed range, or 50 knots plus the resulting free return speed range, above and below the trim speed (except that the speed range need not include speeds less than 1.4 V_{S1}, nor speeds greater than V_{FC}/M_{FC}, nor speeds that require a stick force of more than 50 pounds), with—.'

(i) The wing flaps retracted;

(ii) The center of gravity in the most adverse position;

(iii) The most critical weight between the maximum takeoff and maximum landing weights;

(iv) The maximum cruising power selected by the applicant as an operating limitation, except that the power need not exceed that required at V_{MO}/M_{MO}; and

(v) The airplane trimmed for level flight with the power required in paragraph (b)(1)(iv) of this special condition.

(2) With the landing gear retracted at low speed, the stick force curve must have a stable slope at all speeds within a range which is the greater of 15 percent of the trim speed plus the resulting free return speed range, or 50 knots plus the resulting free return speed range, above and below the trim speed (except that the speed range need not include speeds less than 1.4 V_{S1}, nor speeds greater than the minimum speed of the applicable speed range prescribed in paragraph (b)(1), nor speeds that require a stick force of more than 50 pounds), with—

(i) Wing flaps, center of gravity position, and weight as specified in paragraph (b)(1) of this special condition;

(ii) Power required for level flight at a speed equal to $(V_{MO} + 1.4\ V_{S1})/2$; and

(iii) The airplane trimmed for level flight with the power required in paragraph (b)(2)(ii) of this special condition.

(3) With the landing gear extended, the stick force curve must have a stable slope at all speeds within a range which is the greater of 15 percent of the trim speed plus the resulting free return speed range, or 50 knots plus the resulting free return speed range, above and below the trim speed (except that the speed range need not include speeds less than 1.4 V_{S1}, nor speeds greater than V_{LE}, nor speeds that require a stick force of more than 50 pounds), with—

(i) Wing flap, center of gravity position, and weight as specified in paragraph (b)(1) of this section;

(ii) The maximum cruising power selected by the applicant as an operating limitation, except that the power need not exceed that required for level flight at V_{LE}; and

(iii) The aircraft trimmed for level flight with the power required in paragraph (b)(3)(ii) of this section.

(c) Approach. The stick force curve must have a stable slope at speeds between 1.1 V_{S1} and 1.8 V_{S1}, with—

(1) Wing flaps in the approach position;

(2) Landing gear retracted;

(3) Maximum landing weight; and

(4) The airplane trimmed at 1.4 V_{S1} with enough power to maintain level flight at this speed.

(d) Landing. The stick force curve must have a stable slope, and the stick force may not exceed 80 pounds, at speeds between 1.1 V_{S0} and 1.8 V_{S0} with—

(1) Wing flaps in the landing position;

(2) Landing gear extended;

(3) Maximum landing weight;

(4) Power or thrust off on the engines; and

(5) The airplane trimmed at 1.4 V_{S0} with power or thrust off.

SC23.177 Static directional and lateral stability.

Instead of compliance with § 23.177, the following apply:

(a) The static directional stability (as shown by the tendency to recover from a skid with the rudder free) must be positive for any landing gear and flap position, and it must be positive for any symmetrical power condition to speeds from 1.2 V_{S1} up to V_{FE}, V_{LE}, or V_{FC}/M_{FC} (as appropriate).

(b) The static lateral stability (as shown by the tendency to raise the low wing in a sideslip with the aileron controls free and for any landing gear position and flap position, and for any symmetrical power conditions) may not be negative at any airspeed (except speeds higher than V_F or V_{LE}, when appropriate) in the following airspeed ranges:

(1) From 1.2 V_{S1} to V_{MO}/M_{MO}.

(2) From V_{MO}/M_{MO} to V_{FC}/M_{FC}, unless the Administrator finds that the divergence is—

(i) Gradual;

(ii) Easily recognizable by the pilot; and

(iii) Easily controllable by the pilot.

(c) In straight, steady, sideslips (unaccelerated forward slips) the aileron and rudder control movement and forces must be substantially proportional to the angle of the sideslip. The factor of proportionality must lie between limits found necessary for safe operation throughout the range of

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sideslip angles appropriate to the operation of the airplane. At greater angles, up to the angle at which full rudder control is used or when a rudder pedal force of 180 pounds is obtained, the rudder pedal forces may not reverse and increased rudder deflection must produce increased angles of sideslip. Unless the airplane has a yaw indicator, there must be enough bank accompanying sideslipping to clearly indicate any departure from steady unyawed flight.

SC23.181 Dynamic stability.

In § 23.181(d), change the reference from § 23.175 to SC23.175.

SC23.201 Wings level stall.

In § 23.201(c), change the reference from "§ 23.49" to "§ 23.49 and special condition SC23.49."

Instead of compliance with § 23.201 (d) and (e), the following apply:

(d) The roll occurring between the stall and the completion of the recovery may not exceed approximately 20 degrees.

(e) Compliance with the requirements of this section must be shown with:

(1) Power—

(i) Off; and

(ii) The thrust necessary to maintain level flight at 1.6 V_{S1} (where V_{S1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(2) Flaps, landing gear, and deceleration devices in any likely combination of positions.

(3) Trim at 1.4 V_{S1} or at the minimum trim speed, whichever is higher.

(4) Representative weights within the range for which certification is requested.

SC23.203 Turning flight and accelerated turning stalls.

Instead of compliance with § 23.203(c), the following apply:

(c) Compliance with the requirements of this section must be shown with:

(1) The thrust necessary to maintain level flight at 1.6 V_{S1} (where V_{S1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(2) Flaps, landing gear, and deceleration devices in any likely combination of positions.

(3) Trim at 1.4 V_{S1} or at the minimum trim speed, whichever is higher.

(4) Representative weights within the range for which certification is requested.

SC23.207 Stall warning.

Instead of compliance with § 23.207(c) and (d), the following applies:

(c) During the stall tests required by § 23.201(b) and § 23.203(a)(1), the stall warning must begin at a speed exceeding the stalling speed by seven percent or at any lesser margin if the stall warning has enough clarity, duration, distinctiveness, or similar properties.

(d) Change reference from 23.1585 to SC23.1585.

SC23.251 Vibration and buffeting.

Instead of compliance with § 23.251, the following apply:

(a) The airplane must be designed to withstand any vibration and buffeting that might occur in any likely operating condition. This must be shown by calculations, resonance tests, or other tests found necessary by the Administrator.

(b) Each part of the airplane must be shown in flight to be free from excessive vibration, under any appropriate speed and power conditions up to V_{DF}/M_{DF}. The maximum speeds shown must be used in establishing the operating limitations of the airplane in accordance with special condition SC23.1583.

(c) Except as provided in paragraph (d) of this special condition, there may be no buffeting condition in normal flight, including configuration changes during cruise, severe enough to interfere with the control of the airplane, to cause excessive fatigue to the flightcrew, or to cause structural damage. Stall warning buffeting within these limits is allowable.

(d) There may be no perceptible buffeting condition in the cruise configuration in straight flight at any speed up to V_{MO}/M_{MO}, except that stall warning buffeting is allowable.

(e) With the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or Mach Number, weight, and altitude for which the airplane is to be certified. The envelopes of load factor, speed, altitude, and weight must provide a sufficient range of speeds and load factors for normal operations. Probable inadvertent excursions beyond the boundaries of the buffet onset envelopes may not result in unsafe conditions.

SC23.253 High speed characteristics.

Instead of compliance with § 23.253, the following apply:

(a) Speed increase and recovery characteristics. The following speed increase and recovery characteristics must be met:

(1) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely cruise speed up to V_{MO}/M_{MO}. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradient in relation to control friction, passenger movement, leveling off from climb, and descent from Mach to airspeed limit altitudes.

(2) Allowing for pilot reaction time after effective inherent or artificial speed warning occurs, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to V_{MO}/M_{MO} without the following:

(i) Exceptional piloting strength or skill;

(ii) Exceeding V_D/M_D, or V_{DF}/M_{DF}, or the structural limitations; and

(iii) Buffeting that would impair the pilot's ability to read the instruments or control the airplane for recovery.

(3) There may be no control reversal about any axis at any speed up to V_{DF}/M_{DF} with the airplane trimmed at V_{MO}/M_{MO}. Any tendency of the airplane to pitch, roll, or yaw must be mild and readily controllable, using normal piloting techniques. When the airplane is trimmed at V_{MO}/M_{MO}, the slope of the elevator control force versus speed curve need not be stable at speeds greater than V_{FC}/M_{FC}, but there must be a push force at all speeds up to V_{DF}/M_{DF} and there must be no sudden or excessive reduction of elevator control force as V_{DF}/M_{DF} is reached.

(b) Maximum speed for stability characteristics. V_{FC}/M_{FC}. V_{FC}/M_{FC} is the maximum speed at which the requirements of special conditions SC23.173, SC23.175, SC23.177, SC23.181 and § 23.181 must be met with the flaps and landing gear retracted. It may not be less than a speed midway between V_{MO}/M_{MO} and V_{DF}/M_{DF} except that, for altitudes where Mach number is the limiting factor, M_{FC} need not exceed the Mach number at which effective speed warning occurs.

SC23.255 Out-of-trim characteristics.

In the absence of specific requirements for out-of-trim characteristics, the Raytheon Model 390 must comply with the following:

(a) From an initial condition with the airplane trimmed at cruise speeds up to V_{MO}/M_{MO}, the airplane must have satisfactory maneuvering stability and controllability with the degree of out-of-trim in both the airplane nose-up and nose-down directions, which results from the greater of the following:

(1) A three-second movement of the longitudinal trim system at its normal rate for the particular flight condition with no aerodynamic load (or an equivalent degree of trim for airplanes that do not have a power-operated trim system), except as limited by stops in the trim system, including those required by § 23.655(b) for adjustable stabilizers; or

(2) The maximum mis-trim that can be sustained by the autopilot while maintaining level flight in the high speed cruising condition.

(b) In the out-of-trim condition specified in paragraph (a) of this special condition, when the normal acceleration is varied from 1 g to the positive and negative values specified in paragraph (c) of this special condition, the following apply:

(1) The stick force versus g curve must have a positive slope at any speed up to and including V_{FC}/M_{FC}; and

(2) At speeds between V_{FC}/M_{FC} and V_{DF}/M_{DF}, the direction of the primary longitudinal control force may not reverse.

(c) Except as provided in paragraph (d) and (e) of this special condition, compliance with the provisions of paragraph (a) of this special condition must be demonstrated in flight over the acceleration range as follows:

(1) −1 g to +2.5 g; or

(2) 0 g to 2.0 g, and extrapolating by an acceptable method to −1 g and +2.5 g.

(d) If the procedure set forth in paragraph (c)(2) of this special condition is used to demonstrate compliance and marginal conditions exist during flight test with regard to reversal of primary longitudinal control force, flight tests must be accomplished from the normal acceleration at which a marginal condition is found to exist to the applicable limit specified in paragraph (b)(1) of this special condition.

(e) During flight tests required by paragraph (a) of this special condition, the limit maneuvering load factors, prescribed in §§ 23.333(b) and 23.337, need not be exceeded. Also, the maneuvering load factors associated with probable inadvertent excursions beyond the boundaries of the buffet onset envelopes determined under special condition SC23.251(e), need not be exceeded. In addition, the entry speeds for flight test demonstrations at normal acceleration values less than 1 g must be limited to the extent necessary to accomplish a recovery without exceeding V_{DF}/M_{DF}.

(f) In the out-of-trim condition specified in paragraph (a) of this special condition, it must be possible from an overspeed condition at V_{DF}/M_{DF} to produce at least 1.5 g for recovery by applying not more than 125 pounds of longitudinal control force using either the primary longitudinal control alone or the primary longitudinal control and the longitudinal trim system. If the longitudinal trim is used to assist in producing the required load factor, it must be shown at V_{DF}/M_{DF} that the longitudinal trim can be actuated in the airplane nose-up direction with the primary surface loaded to correspond to the least of the following airplane nose-up control forces:

(1) The maximum control forces expected in service, as specified in §§ 23.301 and 23.397.

(2) The control force required to produce 1.5 g.

(3) The control force corresponding to buffeting or other phenomena of such intensity that is a strong deterrent to further application of primary longitudinal control force.

SC23.629 Flutter.

Instead of the term/speed "V_D" in § 23.629(b), use "V_{DF}/M_{DF}."

SC23.703 Takeoff warning system.

In the absence of specific requirements for a takeoff warning system, the following apply:

Unless it can be shown that a lift or longitudinal trim device that affects the takeoff performance of the aircraft would not give an unsafe takeoff configuration when selected out of an approved takeoff position, a takeoff warning system must be installed and meet the following requirements:

(a) The system must provide to the pilots an aural warning that is automatically activated during the initial portion of the takeoff roll if the airplane is in a configuration that would not allow a safe takeoff. The warning must continue until—

(1) The configuration is changed to allow safe takeoff, or

(2) Action is taken by the pilot to abandon the takeoff roll.

(b) The means used to activate the system must function properly for all authorized takeoff power settings and procedures and throughout the ranges of takeoff weights, altitudes, and temperatures for which certification is requested.

SC23.1195 Engine Fire Extinguishing System.

(a) Fire extinguishing systems must be installed and compliance must be shown with the following:

(1) Except for combustor, turbine, and tailpipe sections of turbine-engine installations that contain lines or components carrying flammable fluids for which a fire originating in these sections can be controllable, a fire extinguisher system must serve each engine compartment.

(2) The fire extinguishing system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. An individual "one shot" system may be used.

(3) The fire extinguishing system for a nacelle must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

SC23.1197 Fire Extinguishing Agents.

(a) Fire extinguishing agents must meet the following requirements:

(1) Be capable of extinguishing flames emanating from any burning of fluids or other combustible materials in the area protected by the fire extinguishing system;

(2) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored; and

(3) If any toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid or fluid vapors from entering any personnel compartment even though a defect may exist in the extinguishing system. This must be shown by test except for built-in carbon dioxide fuselage compartment fire extinguishing systems for which:

(i) Five pounds or less of carbon dioxide will be discharged, under established fire control procedures, into any fuselage compartment; or

(ii) Protective breathing equipment is available for each flight crew member on flight deck duty.

SC23.1199 Extinguishing Agent Containers.

(a) Fire extinguishing agent containers must meet the following requirements:

(1) Each extinguishing agent container must have a pressure relief to prevent bursting of the container by excessive internal pressures.

(2) The discharge end of each discharge line from a pressure relief connection must be located so the discharge of the fire extinguishing agent would not damage the airplane. The line must also be located or protected to prevent clogging caused by ice or other foreign matter.

(3) A means must be provided for each fire extinguishing agent container to indicate that the container has discharged or that the charging pressure is below the established minimum necessary for proper functioning.

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(4) The temperature of each container must be maintained, under intended operating conditions, to prevent the pressure in the container from falling below that necessary to provide an adequate rate of discharge, or rising high enough to cause premature discharge.

(5) If a pyrotechnic capsule is used to discharge the fire extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

SC23.1201 Fire Extinguishing System Materials.

(a) Fire extinguisher system materials must meet the following requirements:

(1) No material in any fire extinguishing system may react chemically with any extinguishing agent so as to create a hazard; and

(2) Each system component in an engine compartment must be fireproof.

SC23.1323 Airspeed indicating system.

In addition to the requirements of § 23.1323, the following apply:

(a) The airspeed indicating system must be calibrated to determine the system error in flight and during the accelerate-takeoff ground run. The ground run calibration must be determined as follows:

(1) From 0.8 of the minimum value of V_1 to the maximum value of V_2, considering the approved ranges of altitude and weight; and

(2) With the flaps and power settings corresponding to the values determined in the establishment of the takeoff path under special condition SC23.57, assuming that the critical engine fails at the minimum value of V_1.

(b) The information showing the relationship between IAS and CAS, determined in accordance with paragraph (a) of this special condition, must be shown in the Airplane Flight Manual.

SC23.1325 Static pressure system.

In addition to the requirements of § 23.1325, the following apply:

(a) The altimeter system calibration required by § 23.1325(e) must be shown in the Airplane Flight Manual.

(b) If an altimeter system is fitted with a device that provides corrections to the altimeter indication, the device must be designed and installed in such manner that it can be by-passed when it malfunctions, unless an alternate altimeter system is provided. Each correction device must be fitted with a means for indicating the occurrence of reasonably probable malfunctions, including power failure, to the flightcrew. The indicating means must be effective for any cockpit lighting condition likely to occur.

SC23.1501 [Operating Limitations and Information] General.

Instead of the requirements of § 23.1501(a), the following apply:

(a) Each operating limitation specified in §§ 23.1505 through 23.1522, 23.1524 through 23.1527 and special conditions SC23.1505, SC23.1513, and SC23.1523.

SC23.1505 Airspeed limitations.

In § 23.1505 (a)(2)(ii), change the reference from "§ 23.251" to "special condition SC23.251."

Instead of compliance with § 23.1505(c), the following applies: The maximum operating limit speed (V_{MO}/M_{MO} airspeed or Mach number, whichever is critical at a particular altitude) is a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent), unless a higher speed is authorized for flight test or pilot training operations. V_{MO}/M_{MO} must be established so that it is not greater than the design cruising speed, V_C, and so that it is sufficiently below V_D/M_D, or V_{DF}/M_{DF}, to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between V_{MO}/M_{MO} and V_D/M_D, or V_{DF}/M_{DF}, may not be less than that determined under § 23.335(b) or found necessary during the flight tests conducted under special condition SC23.253.

SC23.1513 Minimum control speed.

In § 23.1513, change the reference from "§ 23.149" to "§ 23.149 and special condition SC23.149."

SC23.1523 Minimum flightcrew.

Instead of compliance with § 23.1523, the following apply:

The minimum flightcrew must be established so that it is sufficient for safe operation considering:

(a) The workload on individual flightcrew members and each flightcrew member workload determination must consider the following:

(1) Flight path control,

(2) Collision avoidance,

(3) Navigation,

(4) Communications,

(5) Operation and monitoring of all essential airplane systems,

(6) Command decisions, and

(7) The accessibility and ease of operation of necessary controls by the appropriate flightcrew member during all normal and emergency operations when at the flightcrew member station.

(b) The accessibility and ease of operation of necessary controls by the appropriate flightcrew member; and

(c) The kinds of operation authorized under § 23.1525.

SC23.1541 [Markings and Placards] General.

Instead of § 23.1541(a)(1), the following applies:

(a)(1) The markings and placards specified in §§ 23.1545 to 23.1567 and special condition SC23.1545; and

SC23.1545 Airspeed indicator.

Instead of compliance with § 23.1545, the following applies:

"The following markings must be made on each airspeed indicator:

(a) A maximum allowable airspeed indication showing the variation of V_{MO}/M_{MO} with altitude or compressibility limitations (as appropriate), or a radial red line marking for V_{MO}/M_{MO} must be made at the lowest value of V_{MO}/M_{MO} established for any altitude up to the maximum operating altitude for the airplane.

SC23.1581 [Airplane Flight Manual and Approved Manual Material.] General.

In § 23.1581 replace references to § 23.1583, § 23.1585, and § 23.1587 with special conditions SC23.1583, SC23.1585, and SC23.1587, respectively.

SC23.1583 Operating limitations.

Instead of the requirements of § 23.1583, the following apply:

(a) Airspeed limitations. The following airspeed limitations and any other airspeed limitations necessary for safe operation must be furnished:

(1) The maximum operating limit speed, V_{MO}/M_{MO}, and a statement that this speed limit may not be deliberately exceeded in any regime of flight (climb, cruise, or descent) unless a higher speed is authorized for flight test or pilot training.

(2) If an airspeed limitation is based upon compressibility effects, a statement to this effect and information as to any symptoms, the probable behavior of the airplane, and the recommended recovery procedures.

(3) The maneuvering speed, V_O, and a statement that full application of rudder and aileron controls, as well as maneuvers that involve angles of attack near the stall, should be confined to speeds below this value.

(4) The maximum speed for flap extension, V_{FE}, for the takeoff, approach, and landing positions.

(5) The landing gear operating speed or speeds, V_{LO}.

(6) The landing gear extended speed, V_{LE} if greater than V_{LO}, and a statement that this is the maximum speed at which the airplane can be safely flown with the landing gear extended.

(b) Powerplant limitations. The following information must be furnished:

(1) Limitations required by § 23.1521.

(2) Explanation of the limitations, when appropriate.

(3) Information necessary for marking the instruments, required by § 23.1549 through § 23.1553.

(c) Weight and loading distribution. The weight and extreme forward and aft center of gravity limits required by §§ 23.23 and 23.25 must be furnished in the Airplane Flight Manual. In addition, all of the following information and the information required by § 23.1589 must be presented either in the Airplane Flight Manual or in a separate weight and balance control and loading document, which is incorporated by reference in the Airplane Flight Manual:

(1) The condition of the airplane and the items included in the empty weight, as defined in accordance with § 23.29.

(2) Loading instructions necessary to ensure loading of the airplane within the weight and center of gravity limits, and to maintain the loading within these limits in flight.

(d) Maneuvers. A statement that acrobatic maneuvers, including spins, are not authorized.

(e) Maneuvering flight load factors. The positive maneuvering limit load factors for which the structure is proven, described in terms of accelerations, and a statement that these accelerations limit the angle of bank in turns and limit the severity of pull-up maneuvers must be furnished.

(f) Flightcrew. The number and functions of the minimum flightcrew must be furnished.

(g) Kinds of operation. The kinds of operation (such as VFR, IFR, day, or night) and the meteorological conditions in which the airplane may or may not be used must be furnished. Any installed equipment that affects any operating limitation must be listed and identified as to operational function.

(h) Additional operating limitations must be established as follows:

(1) The maximum takeoff weights must be established as the weights at which compliance is shown with the applicable provisions of part 23 (including the takeoff climb provisions of special condition SC23.67(a) through (c) for altitudes and ambient temperatures).

(2) The maximum landing weights must be established as the weights at which compliance is shown with the applicable provisions of part 23 (including the approach climb and balked landing climb provisions of special conditions SC23.67(d) and SC23.77 for altitudes and ambient temperatures).

(3) The minimum takeoff distances must be established as the distances at which compliance is shown with the applicable provisions of part 23 (including the provisions of special conditions SC23.55 and SC23.59 for weights, altitudes, temperatures, wind components, and runway gradients).

(4) The extremes for variable factors (such as altitude, temperature, wind, and runway gradients) are those at which compliance with the applicable provision of part 23 and these special conditions is shown.

(i) Maximum operating altitude. The maximum altitude established under § 23.1527 must be furnished.

(j) Maximum passenger seating configuration. The maximum passenger seating configuration must be furnished.

(k) Ambient temperatures. Where appropriate, maximum and minimum ambient air temperatures for operation.

(l) Allowable lateral fuel loading. The maximum allowable lateral fuel loading differential, if less than the maximum possible.

(m) Baggage and cargo loading. The following information for each baggage and cargo compartment or zone.

(1) The maximum allowable load; and

(2) The maximum intensity of loading.

(n) Systems. Any limitation on the use of airplane systems and equipment.

(o) Smoking. Any restriction on smoking in the airplane.

SC23.1585 Operating procedures.

Instead of the requirements of § 23.1585, the following applies:

(a) Information and instruction regarding the peculiarities of normal operations (including starting and warming the engines, taxiing, operation of wing flaps, slats, landing gear, speed brake, and the automatic pilot) must be furnished, together with recommended procedures for the following:

(1) Engine failure (including minimum speeds, trim, operation of the remaining engine, and operation of flaps);

(2) Restarting turbine engines in flight (including the effects of altitude);

(3) Fire, decompression, and similar emergencies;

(4) Use of ice protection equipment;

(5) Operation in turbulence (including recommended turbulence penetration airspeeds, flight peculiarities, and special control instructions);

(6) Procedures for transition from landing approach to balk landing climb; and

(7) The demonstrated crosswind velocity and procedures and information pertinent to operation of the airplane in crosswinds.

(b) Information identifying each operating condition in which the fuel system independence prescribed in § 23.953 is necessary for safety must be furnished, together with instructions for placing the fuel system in a configuration used to show compliance with that section.

(c) For each airplane showing compliance with § 23.1353(g)(2) or (g)(3), the operating procedures for disconnecting the battery from its charging source must be furnished.

(d) If the unusable fuel supply in any tank exceeds 5 percent of the tank capacity, or 1 gallon, whichever is greater, information must be furnished indicating that, when the fuel quantity indicator reads "zero" in level flight, any fuel remaining in the fuel tank cannot be used safely in flight.

(e) Information on the total quantity of usable fuel for each fuel tank must be furnished.

(f) The buffet onset envelopes determined under special condition SC23.251 must be furnished. The buffet onset envelopes presented may reflect the center of gravity at which the airplane is normally loaded during cruise if corrections for the effect of different center of gravity locations are furnished.

SC23.1587 Performance information.

Instead of the requirements of § 23.1587, the following applies:

(a) Each Airplane Flight Manual must contain information to permit conversion of the indicated temperature to free air temperature if other than a free air temperature indicator is used to comply with the requirements of § 23.1303(d).

(b) Each Airplane Flight Manual must contain the performance information computed under the applicable provisions of this part for the weights, altitudes, temperatures, wind components, and runway gradients, as applicable, within the operational limits of the airplane, and must contain the following:

(1) The conditions under which the performance information was obtained, including the speeds associated with the performance information.

(2) V_S determined in accordance with special condition SC23.49.

(3) The following performance information (determined by extrapolation and computed for the range of weights between the maximum landing and maximum takeoff weights):

(i) Climb in the landing configuration.

(ii) Climb in the approach configuration.

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(iii) Landing distance.

(4) Procedures established under special condition SC23.45(j), (k), and (l) that are related to the limitations and information required by special condition SC23.1583(h) and by this paragraph. These procedures must be in the form of guidance material, including any relevant limitations or information.

(5) An explanation of significant or unusual flight or ground handling characteristics of the airplane.

SC23.A Effects of contamination on natural laminar flow airfoils.

In the absence of specific requirements for airfoil contamination, airplane airfoil designs that have airfoil pressure gradient characteristics and smooth aerodynamic surfaces that may be capable of supporting natural laminar flow must comply with the following:

(a) It must be shown by tests, or analysis supported by tests, that the airplane complies with the requirements of §§ 23.141 through 23.207, 23.233, 23.251, 23.253 (and any changes made to these paragraphs by these special conditions) with any airfoil contamination that would normally be encountered in service and that would cause significant adverse effects on the handling qualities of the airplanes resulting from the loss of laminar flow.

(b) Significant performance degradations identified as resulting from the loss of laminar flow must be provided as part of the information required by special conditions SC23.1585 and SC23.1587.

Issued in Kansas City, Missouri on July 9, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18819 Filed 7–22–99; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Compliance With Commission Regulation 3.31 Requirements for Reporting Deficiencies, Inaccuracies, and Changes Resulting From Exchange Disciplinary and Access Denial Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Advisory.

SUMMARY: The Commodity Futures Trading Commission ("Commission") advises registrants and applicants for registrant status that they are relieved of filing a Form 3–R, as required under Commission regulation 3.31, if the information to be reported is solely the result of an exchange disciplinary or access denial action. The Commission has recently delegated to the National Futures Association ("NFA") the duty to receive and to process exchange disciplinary and access denial action information filed by the exchanges in accordance with Commission Regulation 9.11. Thus, the NFA will possess the foregoing information that registrants and applicants for registrant status would otherwise be required to include in a Form 3–R.

EFFECTIVE DATE: July 23, 1999.

FOR FURTHER INFORMATION CONTACT: Rachel F. Berdansky, Special Counsel, or Joshua R. Marlow, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission has published elsewhere today in the **Federal Register** an Advisory and a Notice and Order relating to the filing, processing, and maintenance of exchange disciplinary or access denial actions required under Regulation 9.11 ("Regulation 9.11 notices").[1] The Advisory, among other things, permits exchanges to file either electronic or written Regulation 9.11 notices with the NFA rather than filing these notices with the Commission. The Notice and Order accompanying the Advisory delegates to the NFA the duty to receive and to process disciplinary and access denial action information filed by exchanges pursuant to Regulation 9.11(a). As part of this delegation, the NFA will serve as the official custodian of records for exchange disciplinary and access denial actions.

Information contained in exchange Regulation 9.11 notices must be reported by registrants—and applicants awaiting registration—on Form 3–R, pursuant to Regulation 3.31. Regulation 3.31(a) requires an applicant or registrant as a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant to correct promptly any deficiency or inaccuracy in Form 7–R or Schedule D to Form 7–R which has rendered the information contained therein non-current or inaccurate. These corrections must be made on Form 3–R. Section (b) imposes a similar requirement on an applicant or registrant as a floor broker, floor trader, associated person, any person qualifying for temporary no-action under Part 1.66 of the Commission's regulations,[2] and each principal of a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant. These individuals must use Form 3–R to make changes to Form 8–R.

As the official custodian of records for exchange Regulation 9.11 filings, the NFA will now have disciplinary information currently required to be reported in a Form 3–R prior to an individual or entity subject to an exchange disciplinary or access denial action actually filing the form. Therefore, to avoid duplicative regulatory reporting, the Commission hereby advises all individuals and entities subject to Regulation 3.31 that they are relieved from Regulation 3.31 reporting obligations resulting from an exchange disciplinary or access denial action and reported by an exchange pursuant to a Regulation 9.11 notice.

II. Compliance With Regulation 3.31

The NFA has apprised the Commission that exchange Regulation 9.11 notices will be regularly reviewed by the NFA's registration processing group staff.[3] This is the same staff currently responsible for receiving and processing Form 3–Rs filed pursuant to Regulation 3.31. Exchange disciplinary information reported in Regulation 9.11 filings will be posted on the NFA's Background Affiliation Status Information Center ("BASIC") database.[4] On a daily basis, the NFA will print copies of all entries made in BASIC. These copies will be forwarded to the registration processing group and treated as substitutes for Form 3–Rs. The registration processing group will then update the necessary registration records and the paper copy will be placed in the registrant's or potential registrant's file.

III. Conclusion

The information contained in a Form 3–R filed as a result of an exchange disciplinary or access denial action is identical to that included in an exchange Regulation 9.11 filing. Pursuant to the Commission's delegation to the NFA to receive and to process exchange Regulation 9.11 notices and to maintain a database of the information contained therein, the NFA will have timely access to exchange Regulation 9.11 notices. Therefore, the Commission, in order to avoid duplicative regulatory reporting, is permitting any individual or entity otherwise required under Regulation 3.31(a) or (b) to file a Form 3–R as a result of an exchange disciplinary or access denial action to forego this reporting obligation. The Commission emphasizes that this relief applies only with respect to exchange disciplinary or access denial actions. All other reporting obligations under Regulation 3.31 remain unchanged.

Issued in Washington, D.C. on July 19, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–18805 Filed 7–22–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 9

Performance of Certain Functions by the National Futures Association With Respect to Regulation 9.11

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and order.

SUMMARY: Consistent with the Commodity Futures Trading Commission's ("Commission") efforts toward reducing the burden of regulatory reporting by exchanges and recognizing advances in electronic media technology, the Commission is delegating to the National Futures Association ("NFA") the duty to receive and to process exchange disciplinary and access denial action information, in accordance with procedures established by the Commission. As part of this delegation, the NFA shall serve as the official custodian of records for exchange disciplinary filings. The NFA additionally will be responsible for using the data collected to generate administrative reports for Commission oversight use.

EFFECTIVE DATE: July 23, 1999.

FOR FURTHER INFORMATION CONTACT: Rachel F. Berdansky, Special Counsel, or Joshua R. Marlow, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, telephone (202) 418–5490.

SUPPLEMENTARY INFORMATION:

I. Introduction

Commission Regulation 9.11 was established in 1978 to carry out certain mandates of Section 8c of the Commodity Exchange Act ("Act").[1] Among other things, Section 8c of the Act requires exchanges to discipline members; to notify the disciplined individuals, the Commission, and the public of disciplinary actions; and grants the Commission the authority to review exchange disciplinary actions. Regulation 9.11 sets forth the manner in which an exchange is to provide that notice.[2]

In January 1991, the NFA created its Clearinghouse of Disciplinary Information ("CDI") database, a central repository for information regarding disciplinary actions taken by the NFA, the Commission, and the exchanges. The need for a resource of this kind became evident following the 1989 joint Commission and Federal Bureau of Investigation undercover investigation of floor trading practices at the Chicago Board of Trade and the Chicago Mercantile Exchange. Members of the media found that they had to contact several different organizations to obtain disciplinary history and registration information regarding individuals allegedly involved in illegal trading practices.

CDI has since been replaced by a more versatile database called the Background Affiliation Status Information Center ("BASIC"). A primary reason for the NFA's switch to BASIC was to make information found in CDI available to the public on the Internet.[3] Specifically, the public can access information pertaining to the types of violations committed, penalties imposed, the effective date of the action, and, in some cases, text from the exchange's decision.[4] BASIC, which can be searched by NFA identification number, individual name or firm name, essentially replicates what was previously available to the public only by calling the NFA's toll-free telephone line.

One result from the creation of CDI and BASIC has been that since 1991, the exchanges have been filing disciplinary and access denial action notices ("Regulation 9.11 notices") in duplicate, once with the Commission pursuant to Regulation 9.11, and again with the NFA. Pursuant to ongoing discussions between the Joint Compliance Committee ("JCC"),[5] the NFA, and the Commission, the exchanges and the NFA have requested Commission permission to allow the exchanges to file Regulation 9.11 notices solely with the NFA to reduce the exchanges' regulatory reporting obligations. Toward that end, the NFA has agreed to process all exchange Regulation 9.11 notices and to assume complete responsibility for maintaining a database of all

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[1] Regulation 9.11(a) requires that whenever an exchange decision pursuant to which a disciplinary or access denial action is to be imposed has become final, the exchange must provide written notice of such action to the person against whom the action was taken and the Commission within 30 days thereafter.

[2] Regulation 1.66 grants no-action relief to those floor traders granted trading privileges on a contract market on or before April 26, 1993 from the then-new registration requirements for floor traders under Regulation 3.11.

[3] Pursuant to Section 8a(10) of the Commodity Exchange Act, the NFA has been delegated numerous registration functions by the Commission. Part 3 of Commission Regulations, 17 C.F.R. § 3 (1998), is dedicated to registration. Most registration functions were delegated to the NFA in 1983. 49 FR 35158 (August 3, 1983) ("NFA's registration rules . . . apply to all persons required to be registered under the Act (and not otherwise exempt by Commission rule or order) . . . [A]ll documents referred to in [Part 3] regulations will be filed with, submitted to or given by NFA at its Chicago office instead of the Commission.") Subsequent orders have added to, or clarified, this delegation. *See* 48 FR 51809 (November 14, 1983); 48 FR 8226 (March 5, 1984); 49 FR 39593 (October 9, 1984), amended by 49 FR 45418 (November 16, 1984); 50 FR 34885 (August 28, 1985); 51 FR 25929 (July 17, 1986); 51 FR 34490 (September 29, 1986); 54 FR 19594 (May 8, 1989); 54 FR 41133 (October 5, 1989); 58 FR 19657 (April 15, 1993); 59 FR 38957 (August 1, 1994); 62 FR 36050 (July 3, 1997); 63 FR 18821 (April 16, 1998); and 63 FR 63913 (November 17, 1998). An earlier Notice and Order delegated to the NFA limited registration functions with respect to introducing brokers and their associated persons. *See* 49 FR 15940 (April 13, 1983).

[4] A description of BASIC and how exchange disciplinary data is posted on the system can be found in the Advisory and Notice and Order published elsewhere today in the *Federal Register*.

[1] 43 FR 59343 (December 20, 1978). Commission regulations referred to herein can be found at 17 C.F.R. § 9 (1998).

[2] Regulation 9.11(a) requires that whenever an exchange decision pursuant to which a disciplinary or access denial action is to be imposed has become final, the exchange must provide written notice of such action to the person against whom the action was taken and the Commission within 30 days thereafter. The contents to be included in the notice are set forth in Regulation 9.11(b). Regulation 9.11(c) specifies that notice must be delivered either in person or by mail to both the individual subject to the action and to the Commission. Notice filed with the Commission also must include the date on which notice was delivered to the individual and state whether delivery was in person or by mail. Pursuant to Regulation 9.11(d), filing by mail becomes complete upon deposit in the mail. Finally, Regulation 9.11(e) provides that a duly authorized officer, agent, or employee of the exchange must certify that the required notice is true and correct.

[3] The Internet address for the NFA's BASIC system is http://www.nfa.futures.org/BASIC/.

[4] BASIC contains all disciplinary actions taken by the NFA since its inception in 1982, all Commission disciplinary actions taken since 1975, and all disciplinary actions taken by exchanges since at least 1990.

[5] The JCC was established in May 1989 to aid in the development of improved compliance systems through joint exchange efforts and information sharing among self-regulatory organizations. The JCC is comprised of senior compliance officials from all of the domestic futures exchanges and the NFA. Commission staff participate as observers.

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exchange, NFA, and Commission disciplinary actions.

In the past, periodic reviews by the Commission's Division of Trading and Markets ("Division") of exchange accuracy and timeliness in filing notices of disciplinary and access denial actions with the NFA revealed that the information provided to the NFA often was incomplete and generally arrived two to six months after the relevant action. Thus, the Commission was unwilling to relinquish its responsibility for collecting and maintaining exchange disciplinary information until satisfied that the exchanges were filing complete and accurate information with the NFA in a timely manner. The exchanges were apprised of the Division's concerns and the Division has continued to monitor the exchanges' progress.[6] The Commission is now satisfied that the exchanges are filing accurate and timely disciplinary and access denial action notices with the NFA.

In recognition of the exchanges' progress in filing accurate and timely notices of disciplinary and access denial actions with the NFA, and the NFA's success in developing its BASIC system, the Commission hereby delegates to the NFA the following duties: (1) To process exchange disciplinary information; (2) to provide the Commission with access to a Management Report summarizing all recent exchange disciplinary information; (3) to assist the Commission in enforcing exchange compliance with Regulation 9.11 filing requirements; and (4) to serve as the official custodian of a database containing records of the exchanges' disciplinary and access denial actions.[7] The Commission is retaining its oversight authority of the exchanges' disciplinary programs, including its authority to review and to modify exchange disciplinary actions and to take enforcement or other remedial action against exchanges for noncompliance with Regulation 9.11.

This Notice and Order is being issued in conjunction with a Commission Advisory, published elsewhere today in the **Federal Register**, permitting the exchanges to file Regulation 9.11 notices directly with the NFA, rather than filing these notices with the Commission. Among other things, the Advisory provides the exchanges with the option of filing Regulation 9.11 notices with the NFA electronically or in writing. The Commission believes that the resulting effect of the Advisory will be to reduce exchanges' compliance costs by lessening the exchanges' regulatory reporting burden and allowing the exchanges to take advantage of electronic media technology.[8]

[6] In a June 11, 1998 letter to all JCC representatives, Stephen Braverman, Associate Director, Division of Trading and Markets, expressed the Division's view that it was eager to pursue the goal of allowing exchanges to file Regulation 9.11 notices electronically with the NFA, but wanted assurances that the exchanges' filings would be accurate and timely.

[7] Section II. *infra* includes a complete description of these duties.

[8] The Commission is encouraging all exchanges to file electronic Regulation 9.11 notices with the NFA due to associated time and cost savings. *See* Advisory, note 10.

[9] The Commission expects that, pursuant to the Advisory, the exchanges will file all Regulation 9.11 notices with the NFA. However, if an exchange files a Regulation 9.11 notice with the Commission rather than the NFA, the Commission will immediately forward the notice to the NFA for processing.

[10] *See* Advisory, Section IV.C.

II. Delegation of Duties to the NFA

A. Processing Regulation 9.11 Filings and Notice of Filing Deficiencies

The NFA must process exchange Regulation 9.11 notices in a manner consistent with Regulation 9.11.[9] For purposes of this Notice and Order, the term "process" generally refers to receipt of filings and review of filings for compliance with applicable requirements. As explained in the accompanying Advisory, regulation 9.11 notices filed with the NFA, either in writing or electronically, must satisfy all of the content requirements set forth in Regulation 9.11(b) and must be filed in a timely manner. Toward that end, electronic notices will be deemed timely if verified by an exchange within 30 days of a final disciplinary or access denial action. Written notices also must be promptly verified, and it shall be the NFA's duty to monitor that those exchanges choosing to file written notices complete the verification process in a timely manner.[10]

B. NFA Reports and BASIC Query Capabilities

The NFA shall have a duty to provide the Commission with access to a Management Report so that the Commission can diligently carry out its legislative mandate. This Management Report must include the following for each disciplinary or access denial action:

- Name of Contributor (*i.e.*, an exchange, the NFA, or the Commission).
- Name of Respondent.
- Contributor Reference Number.
- Date of Decision or Order.
- Date of Notification of Member.
- Date of Notification of NFA.
- Date Available to BASIC Users.
- Total Number of Days for Data to be Released into BASIC (*i.e.* the number of days from the date of an exchange final action until the date of exchange verification/certification).
- Changes Made to Records By Exchanges After the 30-day Period Prescribed in Regulation 9.11(a) Has Expired.
- Name of Staff Person Entering Data (*i.e.*, initials).

The Commission currently maintains a database of all exchange disciplinary and access denial actions ("9.11 database") which it uses to generate 42 standardized statistical reports and four standardized summary reports, including a management report.[11] Generally, the Commission has been generating these reports on a quarterly basis, except the management report, which is produced biweekly. As the Commission needs these reports for effective oversight of the domestic futures industry, the BASIC system must provide the Commission with the capability to generate these standardized reports, whenever needed, without having to submit requests to the NFA. The NFA therefore shall provide the Commission with unlimited local access to the BASIC system.[12]

The Commission also requires that BASIC have the capability to conduct specialized ad hoc queries of the NFA database. For instance, the Commission often needs data that pertain to a particular rule violation or exchange. The NFA has assured the Commission that, as part of BASIC's query capability development, the system will soon have the capacity to process customized queries and generate resulting reports. This Notice and Order hereby requires that BASIC's customized ad hoc query capability be developed in a manner which will allow the NFA to produce and deliver customized reports to the Commission, on demand, in approximately three business days from the day of request. All Commission requests for ad hoc queries and customized reports shall be made by designated Division staff members.

C. BASIC Maintenance

The NFA shall maintain, and serve as the official custodian of, records for exchange Regulation 9.11 filings. The NFA shall fulfill this obligation by continuing to maintain the BASIC system and further developing it as necessary to comply with the terms of this Notice and Order.

[11] Although the Commission's 9.11 database only includes exchange disciplinary and access denial actions, and thus, only these actions are included in the Commission's management report, BASIC also includes all NFA and Commission disciplinary and administrative actions. Therefore, the Commission believes that the Management Report generated from BASIC will best serve the Commission and the NFA if it includes the above specified information, where applicable, about all actions input into the BASIC system.

[12] "Unlimited local access" in this context means that the Commission shall have the capability to access all data in BASIC and BASIC's query features from its headquarters and regional offices.

III. Authority

Pursuant to Section 8a(10) of the Act, the Commission has issued numerous orders authorizing the NFA to perform various portions of the Commission's registration functions and responsibilities under the Act.[13] In this connection, the Commission previously has issued orders authorizing the NFA to perform registration processing functions with respect to floor brokers ("FBs") and floor traders ("FTs"), including: (1) Processing and, where appropriate, granting applications for registration under the Act; (2) issuing and terminating, where appropriate, temporary licenses; (3) processing the triennial review of registration information, periodic updates, terminations of trading privileges, and requests for withdrawal from registration; (4) establishing and maintaining systems of records regarding FBs and FTs and serving as official custodian of those records; (5) denying, conditioning, suspending, modifying, restricting or revoking the registration of any FB, FT, or applicant for registration in either category; and (6) granting the registration of any applicant for registration as an FB or FT, or maintaining the registration of any registered FB or FT who may be subject to statutory disqualification from registration without forwarding such cases to the Commission for review.[14] Accordingly, the NFA has adopted, and the Commission has approved, rules to govern the performance of those functions. For example, NFA Rule 501(b) pertains to the NFA's authority to deny, condition, suspend, restrict and revoke registration of floor brokers and floor traders. Additionally, Rule 505 sets forth procedures governing floor broker applicants, floor trader applicants, and registrants disqualified from registration under Sections 8a(2), 8a(3) or 8a(4) of the Act.[15]

This Notice and Order is in accord with the Commission's previous delegation to the NFA to perform registration processing functions with respect to FBs and FTs, in that, an individual's disciplinary history clearly is a factor that must be considered in any determination of his or her fitness to execute customer orders and personal trades on an exchange floor. Deeming the NFA as the custodian of all exchange Regulation 9.11 filings, and delegating to the NFA the responsibility for processing these notices and generating statistical and summary reports with the information amassed, should ensure that the NFA has the necessary information to continue to make appropriate registration determinations.

Moreover, the Commission anticipates that, when BASIC's customized ad hoc query capabilities are fully developed and operational, as discussed above, there will be no need to continue maintaining the Commission's 9.11 database. Thus, this delegation will facilitate the Commission performing its regulatory and oversight functions in a more efficient manner by eliminating a duplicative and time-consuming administrative duty.

[13] Section 8a(10) of the Act provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provisions of law, in accordance with rules adopted and submitted by that person to the Commission and subject to the provisions of the Act applicable to registrations granted by the Commission. 7 U.S.C. 12(a)(10) (1982).

[14] *See* 51 FR 25929 (July 17, 1986); 51 FR 34490 (September 29, 1986); 58 FR 19657 (April 15, 1993); 59 FR 38957 (August 1, 1994); and 62 FR 36050 (July 3, 1997). In addition, the Commission previously has authorized the NFA to perform registration functions, and to take adverse registration actions, with respect to futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, leverage transaction merchants, agricultural trade option merchants, associated persons of any of the foregoing entities, as well as applicants for registration in any of the aforementioned categories. *See* 49 FR 15940 (April 13, 1983); 49 FR 35158 (August 3, 1983); 48 FR 51809 (November 14, 1983); 48 FR 8226 (March 5, 1984); 49 FR 39593 (October 9, 1984), amended by 49 FR 45418 (November 16, 1984); 50 FR 34885 (August 28, 1985); 54 FR 19594 (May 8, 1989); 54 FR 41133 (October 5, 1989); 63 FR 18821 (April 16, 1998); and 63 FR 63913 (November 17, 1998).

IV. Conclusion and Order

In light of the NFA's and exchanges' requests for Commission authorization to allow exchanges to file Regulation 9.11 notices solely with the NFA, and for the NFA to assume complete responsibility for processing these notices and maintaining a database of all exchange, NFA, and Commission actions, the Commission has determined, in accordance with Section 8(a)(10) of the Act, to delegate to the NFA the authority to perform the following functions:

1. To process exchange disciplinary information filed with it by an exchange or the Commission for inclusion in the BASIC system;

2. To provide the Commission with access to a Management Report summarizing all recent exchange disciplinary information; to provide the Commission with the capability to generate standardized reports on the BASIC system; and to provide the Commission with ad hoc queries generated from BASIC;

3. To assist the Commission in enforcing exchange compliance with Regulation 9.11 filing requirements; and

4. To serve as the official custodian of a database containing records of all exchange disciplinary and access denial actions filed with the NFA for inclusion in the BASIC system.

The NFA is authorized to perform all functions specified herein until such time as the Commission orders otherwise. Nothing in this Notice and Order shall affect the Commission's oversight authority of the exchanges' disciplinary programs. The Commission is relating all of its oversight authority, including its authority to review and to modify exchange disciplinary actions and to take enforcement or other remedial action against exchanges for noncompliance with Regulation 9.11. The NFA may submit to the Commission for clarification any specific matters that have been delegated to it, and Commission staff will be available to discuss with NFA staff issues relating to implementation of this Notice and Order.

Issued in Washington, D.C. on July 19, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–18806 Filed 7–22–99; 8:45 am]

BILLING CODE 6351–01–M

[15] The entire set of NFA rules governing registration can be found in the current "National Futures Association Manual." Vol. 5, No. 3, April 1, 1999. *See* Registration Rules, Rule 101 through Rule 801, pp. 8001–8057. After July 1, 1999, the NFA rules will be available on the NFA's website. *See* note 3.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 9

Alternative Methods of Compliance With Requirements for Disclosure of Exchange Disciplinary Information and Access Denial Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Advisory.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is issuing guidance concerning alternative methods of compliance with the requirements of Regulation 9.11(a) for the disclosure of information to the Commission by exchanges regarding disciplinary actions and access denial

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actions.[1] Rather than filing notices of these actions with the Commission, an exchange may now electronically transmit the required notice to the National Futures Association ("NFA") through the NFA's Background Affiliation Status Information Center ("BASIC") system, or deliver written notice to the NFA to be input into BASIC. Because of the relative convenience, and since BASIC's ultimate success depends upon direct filing of exchange Regulation 9.11 notices with the NFA, the Commission anticipates that the exchanges will comply with Regulation 9.11(a) by one of these two alternative methods rather than filing these notices with the Commission. This Advisory does not affect the manner in which an exchange must provide written notice to the person against whom the relevant action was taken. The Commission also is clarifying its view that Regulation 9.11(b)(2) requires that all notices of disciplinary and access denial actions indicate whether financial harm to a customer was involved in the rule violation resulting in imposition of the action.

EFFECTIVE DATE: July 23, 1999.

FOR FURTHER INFORMATION CONTACT: Rachel F. Berdansky, Special Counsel, or Joshua R. Marlow, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is advising exchanges concerning two alternative methods of compliance with Regulation 9.11(a) pertaining to the disclosure of disciplinary actions and access denial actions. As explained below, Regulation 9.11(a) requires, among other things, that an exchange file written notice with the Commission of actions which result in discipline or denial of access to its members. Pursuant to this Advisory, rather than filing the required notice with the Commission, an exchange has the option of filing the notice with the NFA either electronically or in writing.[2] As discussed below, based on current practice, the Commission expects that all exchanges will adopt one of these two alternative notification methods for Regulation 9.112(a) compliance.[3]

II. Regulation 9.11 Requirements

Regulation 9.11(a) requires that whenever an exchange decision pursuant to which a disciplinary or access denial action is to be imposed has become final, the exchange must provide written notice of such action to the person against whom the action was taken and the Commission within 30 days thereafter.[4] The content to be included are set forth in Regulation 9.11(b), which requires that notice include the name of the individual against whom the action was taken; a statement of the reasons for the action; a list of any rules which the individual was charged with having violated or which otherwise serve as the basis of the action; a statement of the exchange's conclusions and findings regarding each violation charged or, in the event of a settlement, a statement specifying those rule violations which the exchange believes were committed; the terms of the action; the date the action was taken; the date the action will become effective; and a statement informing the party subject to the action of the availability of Commission review pursuant to Section 8c of the Commodity Exchange Act. Regulation 9.11(c) specifies that notice must be delivered either in person or by mail to both the individual subject to the action and to the Commission. Notice filed with the Commission also must include the date on which notice was delivered to the individual and state whether delivery was in person or by mail. Pursuant to Regulation 9.11(d), filing by mail becomes complete upon deposit in the mail. Finally, Regulation 9.11(e) provides that a duly authorized officer, agent, or employee of the exchange must certify that the required notice is true and correct.

III. Alternative Methods of Compliance

In response to requests from the NFA and the Joint Compliance Committee ("JCC"),[5] the Commission is issuing this Advisory to reduce exchanges' regulatory reporting burden and to facilitate the use of electronic media by exchanges for delivery of notice of disciplinary and access denial actions to the NFA's BASIC system.[6] Earlier this year, BASIC replaced its predecessor, the Clearinghouse of Disciplinary Information ("CDI"), as the central repository for disciplinary actions imposed by the NFA, the Commission, and the exchanges. BASIC contains information regarding all disciplinary actions taken by the NFA since its inception in 1982, all Commission disciplinary actions taken since its inception in 1975, and all disciplinary actions taken by domestic exchange since at least 1990.[7] A primary reason for the NFA's move from CDI to BASIC was to create a more versatile database capable of providing the public with information regarding the disciplinary history of brokers. Accordingly, the NFA has made BASIC accessible to the public via the World Wide Web.[8]

To assist the NFA is maintaining a complete database of disciplinary and access denial actions, all of the domestic exchanges have been voluntarily filing Regulation 9.11 information with the NFA since 1990, either electronically or in written form, in addition to filing required Regulation 9.11 notice with the Commission.[9] Thus, to avoid duplication and to diminish the burden of regulatory reporting, the Commission is allowing the exchanges to file Regulation 9.11 notices directly with the NFA, either in writing or by electronic entry of the required data into BASIC, rather than filing the required notice with the Commission. Although exchanges are permitted to file the required notice with the NFA in writing, the Commission believes that electronic filing is a faster and more cost-effective means of transmission for both the exchanges and the NFA.[10] Therefore, the Commission strongly encourages exchanges to file Regulation 9.11 notices electronically with the NFA.

This Advisory is being issued in conjunction with a Notice and Order delegating to the NFA the responsibility of processing all Regulation 9.11 filings into BASIC.[11] Pursuant to the Notice and Order, the NFA will furnish the Commission with local access to BASIC and will facilitate the Commission's access to regular management reports and oversight reports regarding exchange disciplinary and access denial actions. Thus, the Commission's ability to perform its regulatory and oversight duties will not be diminished.

IV. Content and Delivery of Notice

A. Content of Notice

With respect to the content of Regulation 9.11 notices, the Commission is clarifying that Regulation 9.11(b)(2) requires that an exchange indicate in its notification of disciplinary or access denial actions whether the violation that resulted in the action also resulted in financial harm to any customers. Regulation 9.11(b)(2) mandates that an exchange include in its notification "[a] statement of the reasons for the disciplinary action or access denial action." Clearly, customer harm should be a critical fact considered by an exchange in determining whether to discipline or to deny access to a member. Inclusion of a customer harm determination in Regulation 9.11 notices should not impose any additional burden on the exchanges. Currently, exchanges have a similar obligation under Commission Regulation 1.67 to notify an FCM of any disciplinary action involving a customer transaction cleared by the FCM if the exchange determines that the member conducting the transaction committed a rule violation that resulted in financial harm to the customer.[12] Thus, those cases involving a notification to an FCM under Regulation 1.67 should be reported under Regulation 9.11(b)(2). This clarification should result in more uniformity among the exchanges regarding the content of Regulation 9.11 notices, given that several exchanges already commonly indicate in their notifications if a member was ordered to or agreed to pay restitution.[13]

The Commission believes that inclusion of customer harm is essential because it cannot effectively perform its regulatory and oversight functions without knowledge of those instances in which brokers violate their fiduciary duty to customers by taking advantage of customer orders and engaging in fraudulent activity. This Advisory does not affect any other exchange obligations set forth under Regulation 9.11, though for purposes of compliance with Regulation 9.11(e), it does provide for electronic certification that electronic filings are true and correct.

B. Verification and Timeliness of Electronic Notice

Although this Advisory permits an exchange to fulfill its Commission notification obligations by electronically transmitting Regulation 9.11 notices directly to the NFA, exchanges must take precautions to ensure the accuracy of information entered into BASIC, as the NFA makes most of this information publicly available on its World Wide Web site.[14] Thus, those exchange electronically filing with the NFA must verify the accuracy of their information as input into BASIC within the 30-day deadline imposed by Regulation 9.11(a). Verification must be accomplished by an authorized exchange employee, after data entry into the appropriate fields, by marking a field labeled "complete." If the "incomplete" field is marked, the system will save the data already entered and an exchange employee must return to edit or complete the data and mark the "complete" field. Checking "complete" will result in the information being uploaded onto BASIC for public access.[15]

Accordingly, exchanges have a duty to supervise the transmission process to ensure accuracy of data, to proofread the information once entered into the appropriate fields, and to correct any data which is incomplete or inaccurate. Marking the "complete" field shall be deemed verification and the information will be released to the public. Furthermore, the date of exchange verification will be considered the date of notification to the NFA.[16] In sum, to comply with Regulation 9.11(a), all electronic filings must be complete, accurate, and verified no later than 30 days after an exchange decision to impose a disciplinary or access denial action has become final.[17] For regulatory purposes, exchange verification of an electronic filing in the manner described above will satisfy the

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[1] Commission regulations referred to herein are found at 17 CFR 9 (1998).

[2] The exchange is still required to provide notice to the individual subject to the action in the manner prescribed by Regulation 9.11.

[3] This Advisory does not eliminate the permissibility of an exchange filing a Regulation 9.11 notice with the Commission to satisfy its Regulation 9.11(a) obligations. However, the Commission believes that the industry and the public are better served by the exchanges filing Regulation 9.11 notices with the NFA in the manner prescribed by this Advisory.

[4] As authorized by Regulation 8.27, an exchange is not required to notify the Commission of any summary action resulting in the imposition of minor penalties for the violation of exchange rules relating to decorum or attire.

[5] The JCC was established in May 1989 to aid in the development of improved compliance systems through joint exchange efforts and information-sharing among self-regulatory organizations. The JCC is comprised of senior compliance officials from all of the domestic futures exchanges and the NFA. Commission staff participate as observers.

Exchange requests to file notices of disciplinary and access denial actions with the NFA, in lieu of filing paper notices with the Commission pursuant to Commission Regulation 9.11(a), were the product of ongoing discussions among the JCC, the NFA and Commission staff. The most recent meeting concerning this issue took place at the Commission's headquarters in Washington, DC on February 24, 1999. Present were representatives of the NFA and staff from the Commission's Division of Trading and Markets.

[6] This Advisory constitutes the latest in a series of measures the Commission has taken to recognize advances in electronic media technology and to facilitate the use of such technology where adequate measures exist to safeguard customer interests. *See, e.g.*, 62 FR 7675 (February 20, 1997) (permitting the use of electronic recordkeeping of customer orders generated by electronic order-routing systems); 62 FR 18265 (April 15, 1997) (adopting a program for commodity pool operators and commodity trading advisers to file disclosure documents with the Commission electronically on a voluntary basis); and 62 FR 31507 (June 10, 1997) (offering alternative, electronic methods of compliance to futures commission merchants ("FCM") regarding order confirmation, purchase-and-sale and monthly statements, and recordkeeping requirements).

[7] BASIC makes available information pertaining to the types of violations a registrant has committed, penalties imposed, the effective date of the action(s), and, in some cases, additional information in the form of case text from an exchange decision. Information may be accessed by NFA identification number, registrant name, or firm name.

[8] BASIC can be accessed on the World Wide Web at http://www.nfa.futures.org/BASIC/.

[9] According to the NFA, the Chicago Board of Trade (including the MidAmerica Commodity Exchange) and the Chicago Mercantile Exchange currently file notices of all disciplinary and access denial actions electronically through BASIC. The New York Mercantile Exchange (including Commodity Exchange, Inc.) electronically files notices of all actions relating to trade practice violations only; its recordkeeping violations are input by NFA. The NFA inputs all exchange disciplinary action information for the Coffee, Sugar and Cocoa Exchange, Inc.; the Kansas City Board of Trade; the Minneapolis Grain Exchange; and the New York Cotton Exchange & Affiliates.

[10] As explained below, if an exchange files in writing, the NFA must input the data into BASIC. The NFA then will take the additional step of providing the exchange with the information as it will appear on BASIC. The exchange then must proofread the information to verify its accuracy. Whereas, if an exchange files electronically, the exchange can accomplish the input and verification of the data in a single log-in session.

[11] The Commission has chosen to issue an Advisory, in lieu of amending Regulation 9.11, in order to expedite the delegation of certain Regulation 9.11 responsibilities to the NFA. The timing of the issuance of this Advisory is intended to coincide with the NFA's recent introduction of its BASIC system. Among other features, the BASIC system will make electronic filing faster and easier. Because this Advisory simply facilitates exchange compliance with the existing substantive requirements of Regulation 9.11, the Commission considers an amendment unnecessary. However, the Commission will continue to monitor exchange compliance with regulation 9.11 and reserves the right to amend Regulation 9.11 if it deems necessary.

[12] Regulation 1.67 was promulgated pursuant to Section 206 of the Futures Trading Practices Act of 1992, Pub. L. No. 102–546, § 206, 106 Stat. 3590 (1992). 58 FR 37644 (July 13, 1993).

[13] *See, e.g.*, "New York Mercantile Exchange Notice of Final disciplinary Action Pursuant to CFTC Regulation 9.11," March 8, 1996; "96–INV–13," amended notice of disciplinary action (Chicago Board of Trade), June 27, 1997; "Report of Disciplinary Action," (Chicago Mercantile Exchange), January 16, 1998; "Notice of Disciplinary Action," (Coffee, sugar & Cocoa Exchange, Inc.), March 26, 1998; "Notice of Disciplinary Action." (Coffee, Sugar & Cocoa Exchange, Inc.), May 4, 1998.

[14] Commission Advisory 4027–97 (62 FR 31507) defines the term "electronic media" as "facsimiles, electronic mail, Internet World Wide Web sites and computer networks (e.g., local area networks and commercial on-line services)." However, for purposes of this release, the term "electronic media" only encompasses local access to BASIC. An exchange may not transmit a Regulation 9.11 notice by mailing it electronically over the internet or via any other electronic media.

[15] These are current NFA procedures respecting input of 9.11 information into BASIC. These procedures are likely to subject to change when BASIC is upgraded later this year.

[16] An incomplete electronic filing will not constitute notice compliant with Regulation 9.11(a), even if an exchange verifies that the information is complete. Because the Commission will have local access to BASIC, information entered in a complete manner and electronically verified shall be deemed notice to the Commission.

[17] The Commission will review the timeliness of exchange Regulation 9.11 filings pursuant to its oversight activities, including rule enforcement reviews conducted by the Commission's Division of Trading and Markets.

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certification procedure set forth in Commission Regulation 9.11(e).[18]

C. Verification and Timeliness of Written Notice

Alternatively, exchanges filing written Regulation 9.11 notices with the NFA, in lieu of filing with the Commission, shall be deemed in compliance with the 30-day period prescribed in Regulation 9.11(a) when notice to the NFA is filed in person with the NFA during normal business hours or placed in the mail within 30 days of the date of final action.[19] All other Regulation 9.11 requirements must be satisfied by these exchanges, including certification. Consistent with current practice employed by the NFA for processing written notices, the NFA will continue to enter the information into BASIC on behalf of the exchange, mark the "incomplete" field, and provide a copy of the information as entered into BASIC to the exchange. The exchange is responsible for ensuring the accuracy of information posted on BASIC.[20] Toward that end, an authorized exchange employee must, after proofreading for completeness and accuracy, log-in to BASIC and change the "incomplete" marking to "complete" or otherwise notify the NFA that the data has been verified and that the NFA is authorized to change the marking to "complete." The Commission expects that the exchanges will promptly complete the verification process after receiving a copy of the data from the NFA.

V. Conclusion

This Advisory permits an exchange to comply with the Commission notification provision of Regulation 9.11(a) by filing with the NFA electronic or written notices of disciplinary or access denial actions. Because all exchanges have been voluntarily providing the NFA with these notices, in addition to filing with the Commission, the exchanges should realize a reduction in their regulatory reporting duty. Although each exchange has the choice of filing electronic or written Regulation 9.11 notices, the Commission believes that electronic filing will prove more cost-effective for the exchanges and the NFA. Again, the Commission urges exchanges to file with NFA by this alternative electronic means.

This Advisory, in conjunction with the accompanying Notice & Order, gives the NFA the responsibility of maintaining BASIC, an electronic clearinghouse of all exchange, NFA, and Commission disciplinary actions. The Commission is relying on the exchanges to work with the NFA to keep BASIC current. This not only will assist the Commission in performing its oversight functions, but will provide the public with up-to-date information regarding the disciplinary history of anyone against whom a futures-related action has been taken. Commission staff will closely monitor the manner in which this new process operates to assure that it fully satisfies the relevant regulatory requirements.

Issued in Washington, DC on July 19, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–18804 Filed 7–22–99; 8:45 am]

BILLING CODE 6351–01–M

[18] Commission Regulation 9.11(e) provides that certification must be completed by an authorized exchange employee. Because verification of an electronically filed Regulation 9.11 notice shall satisfy the certification provision of Regulation 9.11(e), the Commission believes it is appropriate to require that exchange verification be completed by an authorized exchange employee.

[19] Filings may be mailed to the National Futures Association, Attn: General Counsel's Office, 200 West Madison Street, Chicago, IL 60606.

[20] When CDI was created in 1990, each exchange signed a contract shielding the NFA from any liability arising out of inaccurate information posted on CDI. All of the exchanges executed addenda in December 1998 and January 1999 extending the terms of those contracts to BASIC.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

General Rules and Regulations, Securities Exchange Act of 1934

CFR Correction

In Title 17 of the Code of Federal Regulations, parts 240 to end, revised as of April 1, 1999, page 384, § 240.17a–5 is corrected by adding paragraphs (g)(2) and (3) after paragraph (g)(1)(iv) to read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(g) * * *

(2) If the broker or dealer is exempt from § 240.15c3–3, the independent public accountant shall ascertain that the conditions of the exemption were being complied with as of the examination date and that no facts came to his attention to indicate that the exemption had not been complied with during the period since his last examination.

(3) A material inadequacy in the accounting system, internal accounting controls, procedures for safeguarding securities, and practices and procedures referred to in paragraph (g)(1) of this section which is expected to be reported under these audit objectives includes any condition which has contributed substantially to or, if appropriate corrective action is not taken, could reasonably be expected to (i) inhibit a broker or dealer from promptly completing securities transactions or promptly discharging his responsibilities to customers, other broker–dealers or creditors; (ii) result in material financial loss; (iii) result in material misstatements of the broker's or dealer's financial statements; or (iv) result in violations of the Commission's recordkeeping or financial responsibility rules to an extent that could reasonably be expected to result in the conditions described in paragraphs (g)(3) (i), (ii), or (iii) of this section.

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[FR Doc. 99–55522 Filed 7–22–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Marbofloxacin Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for use of marbofloxacin tablets in dogs for the treatment of infections associated with bacteria susceptible to marbofloxacin.

EFFECTIVE DATE: July 23, 1999.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed NADA 141–151 Zeniquin™ (marbofloxacin) tablets for the treatment of infections in dogs associated with bacteria susceptible to marbofloxacin. The drug is limited to use by or on the order of a licensed veterinarian, and prohibited from extralabel use in food-producing animals. The NADA is approved as of June 26, 1999, and the regulations are amended by adding § 520.1310 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning June 26, 1999, because no active ingredient (including any ester or salt of the active ingredient) has been approved in any other application filed under section 512(b)(1) of the act.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.1310 is added to read as follows:

§ 520.1310 Marbofloxacin tablets.

(a) *Specifications.* Each tablet contains either 25, 50, 100, or 200 milligrams of marbofloxacin.

(b) *Sponsor.* See No. 000069 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 1.25 milligrams per pound of body weight once daily, but may be increased to 2.5 milligrams per pound of body weight once daily.

(ii) *Indications for use.* For the treatment of infections in dogs associated with bacteria susceptible to marbofloxacin.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. Federal law prohibits the extralabel use of this drug in food-producing animals.

Dated: July 15, 1999.

George A. Mitchell,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 99–18769 Filed 7–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

United States Mint

31 CFR Part 100

RIN 1525–ZA00

Exchange of Coin

AGENCY: United States Mint, Treasury.

ACTION: Final rule.

SUMMARY: In furtherance of the U.S. Mint's efforts to improve the environment, reduce energy consumption and enhance workplace safety and efficiency, the Mint wishes to discontinue melting and instead employ mechanical means to destroy mutilated coins. These mechanical means cannot be used to process fused or mixed coins, which represent a very small percentage of the coins redeemed annually by the Mint. Accordingly, by this amendment the Mint will also discontinue accepting fused or mixed coins for redemption, and require that all bent or partial coins submitted for redemption be separated by denomination in order to be acceptable.

EFFECTIVE DATE: August 23, 1999.

FOR FURTHER INFORMATION CONTACT: (Legal) Gwen Mattleman, Attorney-Advisor (202) 874–4043, or Kenneth Gubin, Chief Counsel (202) 874–5953; (Technical) Andrew Cosgarea, Associate Director, Head, Circulating Coinage Business Unit (202) 874–6100.

SUPPLEMENTARY INFORMATION:

Background

Part 100, Subpart C of Treasury Regulations 31 CFR, promulgated under 31 U.S.C. 5120, provides for the exchange of bent, partial, fused and mixed coins. The Mint has identified and is actively pursuing initiatives to improve the environment, reduce energy consumption and enhance efficiency and workplace safety. Melting coins submitted for redemption by the Mint's current heat induction procedures is not energy efficient and adds to the Mint's annual electrical expenses. It is also a physically challenging process for the Mint's employees. For these reasons, in 64 FR 4063, January 27, 1999, the Mint published a proposed rule notifying the public of its intention to discontinue melting and begin using mechanical means (such as a hammer mill or rolling mill) to destroy mutilated coins. As the mechanical destruction process requires that coins be separated by alloy, these mechanical methods cannot be used to process fused coins or unsorted (mixed) coin lots. Mutilated coins delivered in these lots of mixed alloy categories often are in a condition which precludes machine sorting, and redemption of mixed coins can be labor-intensive and inefficient. Fused and mixed coins represent a very small component of the United States Mint's annual coin redemptions. Therefore, the Mint's proposed rule published in 64 FR 4063, January 27, 1999 also notified the public of the Mint's intention to amend Part 100 of 31 CFR to discontinue acceptance of fused and mixed coins for redemption and require that all bent or partial coins submitted for redemption be separated by denomination. Comments were solicited through the January 27, 1999 publication of the proposed rule in the **Federal Register** (which included telephone numbers of legal and technical staff and a dedicated email address). No comments from the public were received. For the foregoing reasons, effective 30 days from the date of publication of this final rule, the Mint amends Part 100 of 31 CFR to discontinue acceptance of fused and mixed coins for redemption and to require that all bent or partial coins submitted for redemption be separated by denomination.

Special Analyses

This regulation is not a significant regulatory action for purposes of Executive Order 12866. The Mint has paid out less than $8 million in total annual mutilated coin redemptions for each of 1996, 1997 and the seven-month period ending July 31, 1998. For each such period, fused and mixed coins as a group constitute less than 1% of total coins redeemed, and approximately 1% or less of the total lots redeemed. Fused and mixed coins are currently redeemed at metal rates lower than the rates paid for sorted coins. For these reasons, the United States Mint does not believe that the regulation will have an annual effect on the economy of $100 million or more or materially adversely affect any sector of the economy, productivity,

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competition, jobs, the environment, public health, or State, local, or tribal governments or communities. The Mint does not anticipate that the rule will result in inconsistency, interfere with another agency's actions, materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. It is hereby certified that this regulation will not have a significant economic impact on a significant number of small entities. Accordingly, a regulatory flexibility analysis is not required. Lots of fused and mixed coins recorded together as a group constituted approximately 1% or less of the total coin lots redeemed for each of calendar 1996, 1997 and the period ending July 31, 1998, amounting to 23, 19 and 13 lots, respectively, of fused and mixed coins. Although the Mint does not maintain records which consistently indicate the business or personal nature of the transactions conducted by individuals or entities tendering coins for redemption, the majority of these lots were submitted by individuals transacting with the Mint in their own name. Even if each such individual were a "small entity" within the meaning of 5 U.S.C. 604(a), the Mint does not believe that this quantity of lots indicates that a significant number of small entities will be significantly impacted if the Mint were to require sorting of coins previously accepted as mixed and discontinue accepting fused coins.

List of Subjects in 31 CFR Part 100

Currency, Gold.

For the reasons set forth in the preamble, the United States Mint amends 31 CFR Part 100 as follows:

PART 100—EXCHANGE OF PAPER CURRENCY AND COIN

Subpart C—Exchange Of Coin

1. The authority citation for Part 100 is revised to read as follows:

Authority: 31 U.S.C. 321.

2. Revise § 100.11(b) to read as follows:

§ 100.11 Exchange of bent and partial coins.

* * * * *

(b) *Redemption basis.* Bent and partial coins shall be presented separately by denomination category in lots of at least one pound for each category. Bent and partial coins shall be redeemed on the basis of their weight and denomination category rates (which is the weight equivalent of face value). If not presented separately by denomination category, bent and partial coins will not be accepted for redemption. Denomination categories and rates are Cents, @ $1.4585 per pound; Nickels, @ $4.5359 per pound; Dimes, Quarters, Halves, and Eisenhower Dollars @ $20.00 per pound; and Anthony Dollars @ $56.00 per pound. Copper plated zinc cents shall be redeemed at the face value equivalent of copper one cent coins.

* * * * *

3. Revise § 100.12(b) to read as follows:

§ 100.12 Exchange of fused and mixed coins.

* * * * *

(b) The United States Mint will not accept fused or mixed coins for redemption.

Philip N. Diehl,

Director.

[FR Doc. 99–18849 Filed 7–22–99; 8:45 am]

BILLING CODE 4810–37–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 71–154a; FRL6400–1]

Clean Air Act Approval and Promulgation of California State Implementation Plan for the San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions are rules from the San Joaquin Valley Unified Air Pollution Control District (District). These rules were submitted by the State on behalf of the District to provide general permitting requirements and general provisions for the implementation of NSR and other SIP requirements for stationary sources in the District.

This approval action will incorporate these rules into the federally approved SIP. EPA is approving these rules to support District new source review (NSR) rules that are required by section 110(a) and part D of Clean Air Act as amended in 1990 (CAA or Act). These other rules, which are required for areas that have not attained the national ambient air quality standards (NAAQS) for one or more pollutants, will be the subject of a subsequent rulemaking action. Thus, EPA is finalizing the approval of these general provisions and general permitting rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: This rule is effective on September 21, 1999 without further notice, unless EPA receives adverse comments by August 23, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that EPA's approval of these rules will not take effect.

ADDRESSES: Comments must be submitted in writing to Ed Pike at the Region IX mailing address listed below. Copies of the rules and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Permits Office (AIR–3), Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

San Joaquin Valley Unified Air Pollution Control District, Central Region, 1990 E. Gettysburg Avenue, Fresno CA 93726

A courtesy copy of these rules may be available via the Internet at http://arbis.arb.ca.gov/drdb/sju/cur.htm. However, these versions of the District rules may be different than the versions submitted to EPA for approval. Readers are cautioned to verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval. The official submittal is only available at the four agency addresses listed above.

FOR FURTHER INFORMATION CONTACT: Ed Pike, (telephone 415/744–1211), Air Division (Air–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or pike.ed@epa.gov.

SUPPLEMENTARY INFORMATION

I. Applicability

The rules being approved into the California SIP in this action are District Rules 1110, 1140, 1150, 2010, 2031, 2040, 2070, 2080, and 2092. Rules 1110, 1140, 1150, 2010, and 2040 were adopted by the District Board of Directors on December 17, 1992, and submitted to EPA by the California Air Resources Board (CARB) as a revision to the SIP on September 28, 1994. Rules 2031, 2070, 2080, and 2092 were adopted by the District on December 17, 1992, and submitted to EPA by CARB on November 18, 1993.

The District is composed of Fresno County, a portion of Kern County [1], Kings County, Madera County, Merced County, San Joaquin County, Stanislaus County, and Tulare County. The eight former County air pollution management agencies merged to form the unified Valley-wide District in 1992. The District is designated as a serious nonattainment area for ozone and particulate matter less than ten microns in diameter (PM_{10}). The District is designated attainment for the nitrogen dioxide (NO_2), sulfur dioxide (SO_2), and carbon monoxide (CO) NAAQS, although nitrogen oxides (including NO_2) and sulfur oxide (including SO_2) are regulated as precursors to other nonattainment pollutants. For the detailed area designations that apply to the District, please refer to 40 CFR 81.305. The CAA air quality planning requirements for nonattainment NSR are set out in part D of Title I of the Act, with implementing regulations at 40 CFR 51.160 through 51.165.

II. Summary of Rule Contents

Prior to the formation of the current District in 1992, EPA had approved separate SIPs for each of the eight individual Counties.[2] Today's action eliminates minor variations in the eight separate County SIPs by approving one set of rules that apply across all eight counties. This action will provide consistency and clarity by allowing regulated sources of air pollution, the public, and regulatory agencies to refer to one set of rules for the entire District rather than eight sets of rules.

District Rule 1110, "Circumvention," prohibits concealment or dilution of emissions to circumvent statutory or regulatory requirements. District Rule 1140, "Applicability of Emission Limits," states that a source subject to multiple emission limits must comply with the most stringent applicable emission or concentration rate unless specifically exempted. Rule 1150, "Separation and Combination," specifies how compliance is determined for emission streams that are combined prior to release to the atmosphere. These rules are contained in the General Provisions section of the District regulations. They contain the procedures for implementing other requirements, but do not contain or directly impose numerical air pollutant limitations.

District Rule 2010, "Permits Required," contains the general requirement to (1) obtain an Authority to Construct permit for a new or modified source; and (2) obtain a Permit to Operate prior to operation. District Rule 2031, "Transfer of Permits," requires District approval for the transfer of a permit to a different person or piece of equipment. District Rule 2040, "Applications," requires that applicants submit all necessary information and specifies the administrative process for the District to act on the application. District Rule 2070, "Standards for Granting Applications," explains the procedures for the District to approve or deny an application for an Authority to Construct or Permit to Operate. District Rule 2080, "Conditional Approval," grants the District authority to issue or revise specific written conditions on an Authority to Construct or a Permit to Operate to assure compliance with air contaminant emission standards or limitations. District Rule 2092, "Standards for Permits to Operate," defines the conditions which must be met in order for the District to issue a Permit to Operate.

III. EPA Evaluation and Action

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Clean Air Act. EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion. EPA has also proposed regulations to implement the changes under the 1990 Amendments in the NSR provisions in part D of Title I of the Act. (See 61 FR 38249 (July 23, 1996)). Upon final promulgation of those regulations, EPA will review those NSR SIP submittals on which it has already taken final action to determine whether additional SIP revisions are necessary.

This rulemaking replaces rules from the following SIPs: Fresno County, Kern County, Kings County, Madera County, Merced County, San Joaquin County, Stanislaus County, and Tulare County. EPA's approval of the following rules replaces similar categories of rules in the individual County SIPs: Circumvention (Rule 1110), Applicability of Emission Limits (Rule 1140), Separation and Combination (Rule 1150), Permits Required (Rule 2010), Transfer of Permits (Rule 2031), Applications (2040), Standards for Granting Applications (Rule 2070), and Standards for Permits to Operate (Rule 2092). Please see the Technical Support Document for a complete list of the SIP rules that EPA is replacing.

EPA has evaluated District Rules 110, 1140, 1150, 2010, 2031, 2040, 2070, 2080, and 2092 and has determined that each rule is consistent with the CAA, EPA regulations and EPA policy. These general provisions and permitting rules will support permitting requirements for major and minor sources in the District (updates to District New Source Review requirements will be the subject of subsequent EPA rulemaking action). Therefore, these rules are being approved under section 110(k)(3) of the CAA as consistent with the requirements of section 110(a), including section 110(a)(2)(C), and part D of Title I of the Act. For additional description of these Rules and EPA's approval action, please refer to the Technical Support Document for this action.

EPA is publishing this direct final approval without prior proposal because the Agency views this SIP revision as a noncontroversial revision and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This direct final approval will be effective September 21, 1999 without further notice unless the Agency receives adverse comments by August 23, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are

[1] This District includes the portion of Kern County defined in District rule 1020 section 3.44 (adopted November 13, 1996 and approved at 64 FR 13514).

[2] Each County SIP generally contains a rule corresponding to each of the current District rules that EPA is taking action on, although the current rules have been renumbered.

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received, the public is advised that this direct final approval will be effective on September 21, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 21, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, General provisions, Hydrocarbons, Incorporation by reference, Intergovernmental relations, New source review, Nitrogen dioxide, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 7, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority-citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(194)(i)(C)(*4*) and (c)(199)(i)(D)(*6*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(194) * * *

(i) * * *

(C) * * *

(*4*) Rules 2031, 2070, 2080, and 2092 adopted on May 21, 1992 and amended on December 17, 1992.

* * * * *

(199) * * *

(i) * * *

(D) * * *

(*6*) Rules 1110, 1140, 1150, 2010, and 2040 amended on December 17, 1992.

* * * * *

[FR Doc. 99–18600 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–227–151; FRL–6378–2]

Approval and Promulgation of State Implementation Plans; California—South Coast

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is concluding the Public Consultative Process (PCP) on mobile source emission reductions needed for attainment of the 1-hour ozone national ambient air quality standard (NAAQS) in the Los Angeles-South Coast Air Basin Area (South Coast). EPA is also approving the State's update to the state implementation plan (SIP) for ozone in the South Coast to reflect the outcome of this process and the implementation status of some of the control measures. Finally, EPA is approving the State's joint commitment with EPA to issue regulations to eliminate the remaining SIP shortfall as determined appropriate for each agency. EPA is taking these actions under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for NAAQS, and plan requirements for nonattainment areas.

EFFECTIVE DATE: This rule is effective on August 23, 1999.

ADDRESSES: The rulemaking docket for this rule is available for public inspection during normal business hours at EPA's Region IX office, Air Division, 75 Hawthorne Street, San Francisco, CA 94105–3901. A reasonable fee may be charged for copying parts of the docket.

Electronic availability: This document is also available as an electronic file on EPA's Region 9 Web Page at http://www.epa.gov/region09.

Copies of related materials are also available for inspection at the following location: California Air Resources Board, 2020 L Street, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, EPA Region IX Air Planning Office, (415) 744–1288, or jesson.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. EPA's Final Action

We are concluding the Public Consultative Process on mobile source reductions needed for attainment of the 1-hour ozone NAAQS in the South Coast.[1] During this process, we have issued or are in the process of issuing regulations which are expected to reduce emissions of nitrogen oxides (NO_X) in the South Coast in 2010 by approximately 94 tons per day (tpd), and reduce emissions of volatile organic compounds (VOC) by about 39 tpd.[2] This is roughly 85 percent of the Federal emission reductions identified in the 1994 ozone SIP submittal for the South Coast.

To achieve the remaining reductions (15 tpd of NO_X and 8 tpd of VOC), we intend to continue a focused cooperative effort with California to resolve remaining issues and to agree upon the best approach for achieving the balance of reductions still unaccomplished. We will complete by December 31, 2001, any actions identified as appropriate for our rulemaking under our existing commitment, promulgated when we approved the 1994 ozone SIP (40 CFR 52.238).

We are approving a similar commitment by the California Air Resources Board (CARB). The State included this commitment in Executive Order G–99–037, dated May 20, 1999.[3] In the order, CARB "commits to continue working with U.S. EPA and the affected parties to achieve the emission reductions identified in the SIP for federal measures, and to (a) adopt by December 31, 2000, and submit as a SIP revision, a revised attainment demonstration for the federal one-hour ozone standard in the South Coast Air Basin, and (b) adopt by December 31, 2001, control measures needed to achieve any additional emission reductions which are determined to be appropriate for ARB." This State commitment replaces a commitment made at the beginning of the Public Consultative Process in 1996, and codified at 40 CFR 52.220(c)(235). We are therefore rescinding that prior commitment.

Finally, we are approving the State's update on the status of CARB control measures in the 1994 ozone SIP, included as Attachment A to the Executive Order. This update displays

[1] For a description of the boundaries of the Los Angeles-South Coast Air Basin, see 40 CFR 81.305. The nonattainment area includes all of Orange County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties.

[2] The South Coast plan sometimes substitutes the term Reactive Organic Gases (ROG) for VOC. These terms are essentially synonymous.

[3] CARB submitted the Executive Order on May 20, 1999. We found the submittal complete on May 20, 1999. We adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

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reductions from CARB's various measures for control of mobile sources, consumer products, and aerosol paints. It also discusses new CARB control measures to achieve the reductions required in the 1994 ozone SIP.

II. Background

On June 7, 1999, in 64 FR 30276–30287, we proposed to conclude the Public Consultative Process, identified emissions reductions from promulgated and pending Federal measures, discussed potential measures for eliminating the remaining emissions reduction shortfall, and proposed to approve CARB's commitment and SIP update for the South Coast. For additional details and background, please consult that document and our final approval of the 1994 ozone SIP for the South Coast, which was issued on January 8, 1997 (62 FR 1150–1187).[4]

You may also find in the proposal a description of EPA's consent decree and settlement agreement with environmental plaintiffs in *Coalition for Clean Air, et al.* v. *SCAQMD, CARB, and USEPA*, No. CV 97–6916 HLH (C.D. Cal.). Among other things, the consent decree requires us to conclude the Public Consultative Process by July 1, 1999, and to attempt to promulgate by December 31, 2001, final measures that are needed for ozone attainment and are appropriate for EPA to promulgate.[5]

III. Response to Public Comments

A. Summary of Comments and Responses

In response to the proposal, we received comments from South Coast Air Quality Management District ("SCAQMD"), City of Los Angeles ("City"), Los Angeles County Sanitation Districts, and US Navy (Region Southwest). We appreciate the thoughtful comments and the commenters' support and encouragement of our efforts to achieve further emission reductions from national and international mobile sources beyond the jurisdiction of local and State agencies.

[4] The 1994 ozone SIP for the South Coast consists of two plans: *California's 1994 State Implementation Plan for Ozone*, which deals with the State's control measures, and the South Coast Air Quality Management District's *1994 Air Quality Management Plan*, which includes all of the local control measures and other plan elements. The State's portion of the plan is available electronically at the California Air Resources Board's web site at *www.arb.ca.gov/sip/sip.htm*.

[5] We issued a notice of the pending settlement on December 9, 1998 (63 FR 67879), consistent with CAA section 113(g). The consent decree was entered by the Court on June 9, 1999; the settlement agreement has been signed by the plaintiffs and EPA.

1. Fair Share Reductions of Federal Sources

All but one of the commenters asked the Federal government to do its fair share in reducing emissions from Federal mobile sources, stating that: (a) Further control of local stationary sources will be difficult, given the stringency of existing local rules, and (b) Federal sources are under-controlled. To make this point visually, SCAQMD presented a table showing 2010 reductions from 1990 baseline emissions inventories for Federal sources, in contrast to much greater reductions required from stationary sources in the 1994 California Ozone SIP. Commenters stated that it is especially critical that EPA and other federal agencies cooperate and achieve additional reductions from sources beyond the State's regulatory authority.

Response: We intend that the Federal government will contribute emission reductions to help the South Coast attain the NAAQS. We will fulfill our regulatory responsibilities under Title II of the CAA and thus will continue to pursue all appropriate national mobile source controls, even after the current shortfall is eliminated.

2. Toxic Benefit of Diesel Emission Reductions

SCAQMD noted that we stated that mobile sources are a contributor to urban air toxics and adverse health effects have been associated with diesel exhaust. SCAQMD presented a table of the potential cancer risk contribution from diesel compared to all other emission sources in the South Coast. SCAQMD stated that local citizens may not benefit from potential reductions in toxic emissions if reductions are achieved from non-diesel sources located in and around airports and marine ports, rather than from diesel-type sources in the aircraft and marine engine categories.

Response: We appreciate SCAQMD's information regarding the relative magnitude of diesel emissions among sources of air toxics in the South Coast. Reductions in urban air toxics are, and will continue to be, an important consideration in our standard-setting activities.

3. Heavy-Duty Off-Cycle Settlement

SCAQMD estimated a 7 tpd NO_X emission reduction shortfall in 2010 in the South Coast due to excess emissions from non-compliant engines. SCAQMD expressed concern about claiming benefits from the settlement until this issue is resolved.

Response: We agree that this issue warrants further analysis in the context of future SIP revisions, and wish to work with SCAQMD and CARB to assess 2010 emissions from trucks in the South Coast using the most current inventory models and assumptions. For purposes of the close-out of the Public Consultative Process, which is rooted in the 1994 SIP submittal, we continue to agree with CARB that use of the 1994 SIP assumptions throughout made the most sense, rather than attempting to adjust the SIP analysis with various updates to our information base. Thus, all of the calculations in the table of Public Consultative Process reductions and shortfalls at 64 FR 30280–1 are consistent with the 1994 ozone SIP in terms of base year and projected emissions inventories and emissions factors. The emission reduction numbers shown for the heavy-duty off-cycle settlement are for the early introduction in October 2002 of cleaner engines assumed in the 1994 ozone SIP to be introduced in January 2004.

4. Public Process

Commenters desired greater opportunities for public input. SCAQMD noted that agreements negotiated by EPA and CARB with affected industries did not go through extensive discussions and public input. In order to update stakeholders on future developments and public involvement opportunities, the City of Los Angeles recommended that we establish an information mechanism, such as EPA Region IX's web page. Commenters objected to the 14-day public comment period as too short to allow for the most meaningful comment.

Response: We intend to post information on the status of our South Coast mobile source activities on the Region IX web page (www.epa.gov/region09/air). The Office of Mobile Source web page (www.epa.gov/omswww) informs the public of ongoing national mobile source rulemaking activities and opportunities for public involvement. Both EPA and CARB will also continue to use mailing lists of parties interested in the aircraft/airport and vessel/port task forces. We solicit suggestions for other ways to expand public notification and involvement. While we prefer longer public comment periods, we need to comply with a consent decree, which requires final action by July 1.

5. Enforceability of Credited SIP Reductions; Credit for Voluntary Measures

SCAQMD expressed concern that CARB and EPA should not claim credit for voluntary agreements (such as the State's clean locomotive fleet agreement with railroads operating in California), unless the agreements are turned into regulatory form. SCAQMD encouraged us to provide backstop measures for future rules, in the event that emission reductions do not occur. The City of Los Angeles supported voluntary measures, noted that existing EPA policy on credit for voluntary measures constrains SIP accounting for such measures, and urged us to assist states and local air districts in developing flexible and innovative emission reduction strategies and allowing full SIP credit for such programs.

Response: As indicated in the proposal, we have concluded that it is appropriate to assign credit to the South Coast Locomotive Fleet Average Emissions Program. The agreement between CARB and the railroads is exemplary in its detail and in the extent of its provisions to quantify and verify reductions. We believe that the program will achieve the scheduled reductions, but if it does not, we will use our existing authorities to assure that the reductions will occur. We support voluntary and other innovative measures and commit to work with agencies to establish SIP credit to the extent that such credit is consistent with the Clean Air Act.

6. Remaining Shortfall

Some commenters encouraged EPA not to downplay the potential shortfall of 23 tpd, which must be eliminated if the area is to attain the ozone NAAQS. These commenters also felt that EPA should not assign responsibility for remaining reductions to the State. If EPA ultimately does assign responsibility to the State, SCAQMD urged EPA to require the State to achieve reductions from mobile sources, rather than stationary sources, which are already stringently controlled. SCAQMD also felt that EPA's statement that "EPA actions might not be limited to controls on mobile sources and fuels" was not consistent with the consent decree.

Response: We agree with commenters that the task of eliminating the shortfall is important and directly linked to public health protection. In concert with the State and other parties, we expect to achieve most, if not all, of the remaining reductions from mobile sources rather than stationary sources.

7. Marine Vessel Activities

The City requested that EPA fund finalization of the ship emission and alternative marine vessel control strategy study, and that EPA support (including with Federal funds) CARB's Deep Sea Vessel/Shipping Channel Technical Working Group. The Navy reiterated its opposition to an operational control strategy to move the vessel channel 25 miles off the coast, based on the Navy's belief that the strategy lacks scientific support and would have severe impacts on the Pt. Mugu Sea Test Range. The Navy preferred a strategy involving slowing commercial vessels, and encouraged us to make that determination, implement the measure, and conclude the process with respect to marine vessel operational controls.

Response: In May 1999, the EPA contracted study referenced in the City's comment letter was finalized. However, the results may need to be updated to reflect more recent information. We will continue to participate in, and support, studies needed to evaluate the feasibility and benefit of marine vessel control options. We appreciate the Navy's valuable contributions to the technical assessment of potential strategies, as we do the participation and expertise of the shipping industry, the ports, and other stakeholders. CARB, EPA, and other participants will provide the Navy with opportunities to express its views and share its research as we conclude the technical projects and reach final decisions on the best approaches.

8. Programs to Increase Engine Turn-Over Rates

The City encouraged us to pursue Federal funding sources for such programs and to ensure that Federal fleets, such as the U.S. Postal Service fleet, convert to cleaner technologies at an accelerated rate.

Response: We identified possible Federal funding sources in the proposal and will attempt to direct currently available funds to projects that can reduce pollutants in the South Coast. Other potential Federal funds, such as for the Clean Air Partnership, or Federal subsidies, including changes to the Federal Tax Code, depend upon Congressional action. We intend to work with Federal agencies in the South Coast to increase use of alternative-fueled vehicles with the lowest emissions.

B. Conclusion

We are finalizing the action as proposed. As noted above, however, we will undertake additional actions in response to comments in order to improve and strengthen the process for resolving the remaining shortfall in emission reductions.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of

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the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian tribal governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

G. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 21, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

H. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 1, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by removing paragraph (c)(235) and adding paragraph (c)(265) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(265) New and amended plans for the following agencies were submitted on May 20, 1999, by the Governor's designee.

(i) Incorporation by reference.

(A) California Air Resources Board.

(*1*) Executive Order G–99–037, dated May 20, 1999, State commitment to continue working with U.S. EPA and the affected parties to achieve the emission reductions identified in the SIP for federal measures, and to adopt by December 31, 2000, and submit as a SIP revision, a revised attainment demonstration for the federal one-hour ozone standard in the South Coast Air Basin, and adopt by December 31, 2001, control measures needed to achieve any additional emission reductions which are determined to be appropriate for ARB; Attachment A, update to the 1994 ozone SIP for the South Coast.

[FR Doc. 99–18719 Filed 7–22–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–6377–3]

Ocean Dumping; Amendment of Site Designation

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the site designation for the San Francisco Deep Ocean Disposal Site (SF–DODS), an existing deep ocean dredged material disposal site located off San Francisco, California, by setting a permanent annual disposal volume limit and clarifying conditions and requirements for use of the site.

Use of the SF–DODS, at the annual volume limit of 4.8 million cubic yards, is consistent with, and is an important component of the regional Long Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region (LTMS). Clarifications to the original site designation Rule, developed from experience with and monitoring of site use since designation, include addition of management measures and other site use requirements to further minimize the potential for any adverse environmental impacts. All aspects of the August 11, 1994 SF–DODS designation Final Rule not explicitly amended here remain in full effect.

EFFECTIVE DATE: July 23, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Dadey, Dredging and Sediment Management Team, U.S. Environmental Protection Agency, Region IX (WTR–8), 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 744–1995 or Mr. Allan Ota, telephone (415) 744–1980.

SUPPLEMENTARY INFORMATION: The primary supporting documents for this designation amendment are the Final EIS for the Designation of a Deep Water Ocean Dredged Material Disposal Site off San Francisco, California (August 1993), the Long Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region Final Policy EIS/Programmatic EIR (October, 1998), and the SF–DODS designation Final Rule (40 CFR 228.15(l)(3)). All are available for public inspection at the following locations:

1. EPA Region IX, Library, 75 Hawthorne Street, 13th Floor, San Francisco, California 94105
2. EPA Public Information Reference Unit, Room 2904, 401 M Street, SW, Washington, DC 20460
3. ABAG/MTC Library, 101 8th Street, Oakland, California 94607
4. Alameda County Library, 835 C Street, Hayward, California 94541
5. Bancroft Library, University of California, Berkeley, California 94720
6. Berkeley Public Library, 2090 Kittredge Street, Berkeley, California 94704
7. Daly City Public Library, 40 Wembley Drive, Daly City, California 94015
8. Environmental Information Center, San Jose State University, 125 South 7th Street, San Jose, California 95192
9. Half Moon Bay Library, 620 Correas Street, Half Moon Bay, California 94019
10. Hayward Public Library, 835 C Street, Hayward, California 94541
11. Hoover Institute, Stanford University, Stanford, California 94305
12. Marin County Library, Civic Center, 3501 Civic Center Drive, San Rafael, California 94903
13. North Bay Cooperative Library, 725 Third Street, Santa Rosa, California 95404
14. Oakland Public Library, 125 14th Street, Oakland, California 94612
15. Richmond Public Library, 325 Civic Center Plaza, Richmond, California 94804
16. San Francisco Public Library, Civic Center, Larkin & McAllister, San Francisco, California 94102
17. San Francisco State University Library, 1630 Holloway Avenue, San Francisco, California 94132
18. San Mateo County Library, 25 Tower Road, San Mateo, California 94402
19. Santa Clara County Free Library, 1095 North Seventh Street, San Jose, California 95112
20. Santa Cruz Public Library, 224 Church Street, Santa Cruz, California 95060
21. Sausalito Public Library, 420 Litho Street, Sausalito, California 94965
22. Stanford University Library, Stanford, California 94305

Additional supporting documentation is contained in the draft SF–DODS Site Management and Monitoring Plan Implementation Manual, the LTMS EIS/R administrative record, and related documents, available from the EPA Region IX Library (number 1 in the list above).

A. Regulated Entities

Entities potentially regulated by this action are persons, organizations, or Government bodies seeking to dispose of dredged material in ocean waters at the SF–DODS, under the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* The Rule is primarily of relevance to parties in the San Francisco area seeking permits from the U.S. Army Corps of Engineers to transport dredged material for the purpose of disposal into ocean waters at the SF–DODS, as well as the U.S. Army Corps of Engineers itself (when proposing to dispose of dredged material at the SF–DODS).

Potentially regulated categories and entities seeking to use the SF–DODS and thus subject to this Rule include:

Examples of potentially regulated entities	
Industry and General Public	• Ports. • Marinas and Harbors • Shipyards and Marine Repair Facilities. • Berth owners.
State, local and tribal governments	• Governments owning and/or responsible for ports, harbors, and/or berths. • Government agencies requiring disposal of dredged material associated with public works projects.
Federal Government	• U.S. Army Corps of Engineers Civil Works projects. • Other Federal agencies, including the Department of Defense.

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This table lists the types of entities that EPA is now aware could potentially be regulated. EPA notes, however, that nothing in this amendment alters in any way, the jurisdiction of EPA, or the types of entities regulated under the Marine Protection Research and Sanctuaries Act. To determine if you or your organization is potentially regulated by this action, you should carefully consider whether you expect to propose ocean disposal of dredged material, in accordance with the Purpose and Scope provisions of 40 CFR 220.1, and if you wish to use the SF–DODS. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the proceeding **FOR FURTHER INFORMATION** section.

B. Background

Section 102 (c) of the Marine Protection Research and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated authority to designate ocean dredged material disposal sites to the Regional Administrator of the EPA Region in which the site(s) is located. Today's action, amending the 40 CFR 228.15 (l)(3) SF–DODS designation Rule, is being made pursuant to that authority.

By publication of a Final Rule in the **Federal Register** on August 11, 1994 (59 FR 41243), EPA Region IX designated the SF–DODS as an ocean dredged material disposal site. The center of the SF–DODS is located approximately 49 nautical miles (91 kilometers) west of the Golden Gate and occupies an area of approximately 6.5 square nautical miles (22 square kilometers). Water depths within the SF–DODS range from approximately 8,200 to 9,840 feet (2,500 to 3,000 meters). The center coordinates of the oval-shaped site are: 37°39.0′ North latitude by 123°29.0′ West longitude (North American datum, dated 1983). The north-south axis is approximately four nautical miles (7.5 kilometers); the east-west axis is 2.5 nautical miles (4.5 kilometers).

The SF–DODS is an important component of the LTMS. The LTMS is a cooperative interagency planning process for dredged material management that incorporates concerns and issues of a wide range of stakeholders, including navigation and fishing interests, environmental organizations and the general public. The LTMS seeks to develop a comprehensive, technically feasible, environmentally suitable, and economically prudent long-range approach to meeting the region's dredged material disposal needs.

In its August 11, 1994 Final Rule, EPA designated the SF–DODS for use for a period of 50 years, with an interim capacity of six million cubic yards per calendar year until December 31, 1996. Because the LTMS regional planning effort was not completed by that date, the SF–DODS designation was subsequently extended (by Final Rule dated December 30, 1996, 61 FR 68964) at an interim annual volume limit of 4.8 million cubic yards until December 31, 1998. The reason for revising the volume limit from six to 4.8 million cubic yards was the revised and substantially decreased estimate of the long term need for ocean disposal of dredged material, resulting primarily from military base closures in the region.

Since the August 11, 1994 and December 30, 1996 Final Rules, substantial effort has been made toward development of a comprehensive dredged material management approach for the region. The federal and state LTMS agencies have prepared the Final LTMS EIS/R which was published in October 1998. The LTMS EIS/R evaluates dredged material management options for the San Francisco Bay Region over the next 50 years, and contains a comprehensive evaluation of alternatives for dredged material disposal in the San Francisco Bay area, including ocean disposal, in-Bay disposal (placement at designated sites within the San Francisco Bay Estuary that are managed under section 404 of the Clean Water Act), and upland disposal or beneficial reuse. The alternatives evaluated in the LTMS EIS/R include varying levels of dredged material disposal or reuse in each of these three placement environments. The potential environmental and socioeconomic effects of each alternative were evaluated in the EIS/R. Based on these analyses, the environmentally preferred alternative (and the selected action) calls for significantly reducing in-Bay disposal and significantly increasing beneficial reuse and/or upland disposal. Specifically, the LTMS selected alternative includes a long-term goal of 20% in-Bay disposal, 40% beneficial reuse (and/or upland disposal), and 40% ocean disposal, primarily at the SF–DODS.

The LTMS EIS/R recognized, however, that beneficial reuse of dredged material, especially in the earlier years of LTMS implementation, will not always be a practicable alternative. Currently, only limited opportunities for beneficial use of dredged material exist in the Bay area. Although several reuse projects are in the planning stages, their specific capacities and the time frames of their availability are uncertain. In addition, the costs associated with reuse options may render them not practicable for certain projects or entities. For these reasons, a relatively higher proportion of aquatic (ocean plus in-Bay) disposal than called for as the long term goal under the LTMS selected alternative is expected to be necessary until substantial new upland disposal or reuse capacity becomes available.

EPA has determined that disposal of suitable dredged material at the SF–DODS presents less risk of adverse environment impact than does in-Bay disposal (see for example, Section 6.1 of the LTMS Final EIS/R). Therefore, to the extent that disposal at the SF–DODS is practicable, it may be the least environmentally damaging alternative, and in-Bay disposal of dredged material may not be permitted under the Clean Water Act section 404(b)(1) Guidelines (40 CFR part 230). Consequently, EPA has determined that there is a need for continued availability of the SF–DODS for dredged material disposal at the annual volume limit of 4.8 million cubic yards, and that this disposal volume limit is an important aspect of the regional LTMS planning effort and necessary for its success. Today's action is primarily intended to set a permanent annual volume limit that will allow the SF–DODS to accommodate dredging projects for which beneficial reuse (and/or upland disposal) is not practicable, while minimizing the amount of dredged material disposed in-Bay. In addition, EPA is making several changes that clarify the Site Management and Monitoring Plan (SMMP) for the SF–DODS, and that provide enhanced environmental protection.

C. Disposal Volume Limit

The annual disposal limit for the SF–DODS (as a permanently designated site) is 4.8 million cubic yards. This volume is considerably less than the 6 million cubic yards per year originally determined to be environmentally acceptable for the SF–DODS. To date, project-specific, annual, and confirmatory monitoring efforts have indicated that disposal at the SF–DODS has not resulted in significant adverse environmental impacts, consistent with the conclusions of the original (1993) site designation EIS.

A number of disposal violations have occurred since the SF–DODS was designated in 1994. However, considering that nearly 2,500 barge loads have been disposed at the site over the past three years, violations have been relatively rare. Furthermore, EPA has vigorously pursued enforcement of permit violations and will continue to do so.

Public comments on the LTMS EIS/R and on the draft SF–DODS Site Management and Monitoring Plan Implementation Manual expressed the concern that the original SF–DODS site designation EIS (EPA, 1993) contained an inaccurate evaluation of potential impacts due to increased disposal-related vessel traffic to and from the SF–DODS. Specifically, the original site designation EIS concluded that vessel traffic in the area would increase by only approximately two percent as a result of trips to the SF–DODS. (The 1998 LTMS EIS/R assumed a worst-case situation of approximately three times the average disposal frequency evaluated in the SF–DODS EIS.) One commenter, using vessel traffic information summarized in the SF–DODS EIS, calculated that worst-case overall vessel traffic increases in the Western Traffic Lane due to dredged material transport could be as great as 77 percent of the existing traffic. The commenter was concerned that this vessel traffic increase could result in significant disturbance-related impacts, especially to seabirds and marine mammals.

EPA has re-evaluated the potential vessel traffic increase, and the potential for this increase to result in adverse environmental impacts. This evaluation, which is presented in detail in the response to comments on the LTMS EIS/R, corroborates the EIS/R commenter's calculations and suggests that overall traffic increases may be between 110 and 162 percent. Nevertheless, EPA has determined that significant adverse impacts are unlikely to result from even the worst-case vessel traffic increases potentially associated with the 4.8 million cubic yard annual disposal volume limit, for the following reasons:

The worst-case increase in vessel traffic is significant in terms of absolute numbers. However, the majority of other vessels using the Western Traffic Lane (i.e., the one used by dredged material disposal-related vessels) are considerably larger in size, travel faster, carry cargo that is likely to be more dangerous to the aquatic environment if spilled or otherwise discharged, and generally are expected to result in a greater potential for disturbance to birds and mammals along the route to the SF–DODS than do the relatively small and slow-moving tugs and barges transporting dredged material. For example, as documented in the LTMS Final EIS/R, large commercial ships (56%) and tankers (13.3%) comprised the majority of the vessels using the Western Transit Lane during the period of 1980 through 1991.

Monitoring to date, including regional environmental monitoring and observers on dredged material disposal vessels, particularly during years of high disposal activity, has confirmed that no adverse effects to seabirds and marine mammals have occurred in terms of distraction, stress or alteration of behavior. Furthermore, seabird and marine mammal monitoring during transits to the SF–DODS will continue, and in some cases may increase, as a result of changes to Mandatory Condition #12 (see below).

D. Other Technical Changes to the SF–DODS SMMP

SMMP Implementation Manual

EPA is clarifying the SF–DODS Rule to ensure that permittees use the most current information available regarding site management and monitoring by explicitly directing them to adhere to requirements contained in the current version of the SMMP Implementation Manual. EPA intends to use the Implementation Manual as the primary vehicle for addressing new technology, making changes resulting from site monitoring, and incorporating other improvements. In this way, EPA can effect necessary modifications in the most expedient and efficient manner.

Surface Target Area

EPA is modifying to Mandatory Condition #5 to reduce the surface target area of the SF–DODS from the existing radius of 1,000 meters to a circle with a radius of 600 meters. EPA's intent is to ensure that dredged material deposition outside of the SF–DODS boundary is minimized.

Acceptable Sea State

A number of commenters to the SF–DODS SMMP Implementation Manual and the LTMS EIS/R expressed concern regarding the maximum acceptable sea state for transit to the SF–DODS. They felt that the existing limits of "gale warning" and seas "over 18 feet" were not restrictive enough to minimize spillage and accidents. The Corps has incorporated revised acceptable sea states in its contracts for recent dredging projects and EPA has clarified sea states in the SMMP Implementation Manual to address these concerns. EPA is codifying a more restrictive sea state limit by modifying Mandatory Condition #1 to specifically limit the acceptable wave height to a maximum of 16 feet. Improvements in technology may result in changes to particular characteristics of the acceptable sea state (e.g., wave period). EPA will update the SMMP Implementation Manual to incorporate these changes, as appropriate.

Scow Loading and Certification

EPA and the Corps have implemented several other modifications to dredging and disposal operations as a result of experience gained from monitoring and managing the SF–DODS to date. We are revising to Mandatory Condition #2 to clarify dredged material disposal vessel loading limitations and to include more specific provisions for inspections and written certification of each disposal vessel.

Distance From Farallon Islands

The U.S. Coast Guard has noted that EPA does not have authority to restrict vessel traffic within already existing designated marine traffic lanes. A portion of the existing traffic lane used to transport material to the SF–DODS overlaps the three mile limit around the Farallon Islands. Therefore, EPA is changing to Mandatory Condition #4 to reflect that the permittee must be at all times within the traffic lane, but is encouraged to remain at least three miles from the Farallon Islands whenever possible, consistent with safe navigation practices.

Navigation Systems

Previous experience with disposal at SF–DODS has indicated to EPA that some permittees and/or their contractors may not be interpreting the details of this condition as EPA intended. Therefore, we are clarifying our intent by providing more specific information in the condition.

Monitoring During Transit

EPA is clarifying Mandatory Condition #12 to ensure continued and representative monitoring of birds and marine mammals during transit of dredged material vessels to the SF–DODS and to focus monitoring effort during times when transport of material is high. We intend to ensure that observers are present on a sufficient number of disposal vessel trips to characterize fully the potential impact of disposal site use and transit on seabirds and marine mammals, taking into account, to the extent feasible, seasonal variations in such potential impacts.

Violation Notification

In response to a request from the National Oceanic and Atmospheric Administration, EPA is modifying

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Mandatory Condition #11 to specifically require permittees to notify the Sanctuary Manager within 24 hours of any permit violation which occurs within the boundaries of either the Gulf of the Farallones National Marine Sanctuary or the Monterey Bay National Marine Sanctuary. Furthermore, EPA will continue to inform the Sanctuary Managers of all violations, both within and outside of the Sanctuaries.

Reporting Requirements

EPA is modifying Mandatory Condition #13 to specifically require permittees to provide all pertinent information related to the dredging and dredged material disposal to the agencies. This will ensure that EPA and the Corps of Engineers have adequate data to determine if permit violations have occurred and to correct such violations at the earliest possible time.

E. Ocean Dumping Site Designation Criteria

Five general criteria and 11 specific site selection criteria are used in the selection and approval of ocean disposal sites for continued use (40 CFR 228.5 and 40 CFR 228.6(a)). As described in the site designation EIS, the SF–DODS was specifically selected as the alternative which best complies with these criteria.

Monitoring activities conducted pursuant to the requirements of the SF–DODS SMMP have shown that the SF–DODS is in compliance with the site designation criteria and is performing as predicted in the site designation EIS. For example, seafloor mapping indicates that bulk of the dredged material has landed within the site boundary and has not been transported offsite thereafter. Deposits exceeding 17 centimeters in thickness have been identified only at the center of the SF–DODS and no deposits thicker than the five centimeter threshold established in the site designation Final Rule have been detected at or outside of the site boundary. No apparent changes in the basic successional stage of the native benthic communities attributable to dredged material disposal have been observed outside the site boundary. Therefore, any significant disturbances associated with dredged material disposal are limited to within the site boundary. In addition, water column studies have confirmed that plumes resulting from disposal operations dissipate rapidly and that the suspended sediment concentration of plumes decreases to ambient levels shortly after disposal.

Vessel traffic associated with disposal operations has not interfered with overall navigation in the region and has had no significant impact on marine mammals, birds, fish or other flora or fauna in the general region of the SF–DODS. Moreover, management actions taken by EPA and codified in today's final Rule further reduce the potential for adverse impacts.

EPA has determined that, in general, disposal of suitable dredged material at the SF–DODS is less environmentally damaging than in-Bay disposal (see for example, section 6.1 in the LTMS Final EIS/R). Therefore, use of the SF–DODS for disposal of suitable dredged material has reduced potential cumulative adverse impacts to the aquatic environment. Use of the SF–DODS during 1996, 1997 and 1998 resulted in a total of approximately 5.7 million cubic yards of dredged material not being disposed at in-Bay sites.

Taken together, the evaluations presented in the site designation EIS and Final Rule, and the site monitoring results to date, confirm that the SF–DODS is performing as predicted and that it continues to meet the general and specific site designation criteria of 40 CFR 228.5 and 228.6. Furthermore, EPA Region IX has determined that it is appropriate to designate a permanent annual disposal volume limit of 4.8 million cubic yards for the SF–DODS.

Management of the site continues to be the responsibility of the Regional Administrator of EPA Region IX, in cooperation with the Corps South Pacific Division Engineer and the San Francisco District Engineer, based on the requirements defined in the Final Rule. The requirement for compliance with the Ocean Dumping Criteria of the MPRSA may not be superseded by the provisions of the LTMS or any future comprehensive regional management plan for dredged material. EPA also emphasizes that ocean disposal site designation does not constitute or imply EPA Region IX's or the Corps San Francisco District's approval of ocean disposal of dredged material from any project. Before disposal of any dredged material at the SF–DODS may occur, EPA Region IX and the Corps San Francisco District must evaluate the proposed project according to the Ocean Dumping Criteria (40 CFR part 227) adopted pursuant to the MPRSA. EPA Region IX or the Corps San Francisco District will not allow ocean disposal of material if either agency determines that the Ocean Dumping Criteria are not met.

F. Response to Comments

The proposed Rule was published in the **Federal Register** on April 29, 1999. The comment period ended June 1, 1999. A total of two comment letters were received.

Annual Volume Limitation

Both letters received addressed EPA's proposed annual volume limit at SF–DODS. One commenter wanted EPA to reduce the annual limit, while the other wanted EPA to increase it. The first commenter expressed concern that the proposed volume of 4.8 million cubic yards per year was too high and requested that EPA set the limit at 3.8 million cubic yards. The commenter cited the LTMS agencies' earlier decision to consider a maximum of 80 percent of total volume disposed in any one placement environment. EPA's decision to reduce the SF–DODS annual volume limit from six million cubic yards to 4.8 million cubic yards in fact, reflects our commitment to the 80 percent maximum concept. EPA revised the annual volume limit in 1996 to reflect new estimates of dredging in the Bay area (average annual volume of six million cubic yards). Today's 4.8 million cubic yard figure is 80 percent of that total. EPA believes that the 4.8 million cubic yard limit, along with other controls and requirements included in the Site Management and Monitoring Plan, is adequately protective of the marine environment, while providing the "safety valve" needed to ensure that in-Bay disposal is minimized.

The second commenter believed that EPA's choice of 4.8 million cubic yards per year could hamper the LTMS process, particularly in years when dredging needs exceed the average. This commenter used dredging data from 1991 to 1997 (presumably the same or similar to data reported in the LTMS EIS/R) to calculate a maximum likely annual dredging volume of nearly eight million cubic yards. Based on this, the commenter requested that EPA reestablish the original annual limit of six million cubic yards. EPA rejects this argument for several reasons. Early years of the data set incorporate dredging volumes associated with projects that no longer occur (primarily operations at military facilities that are now closed). Therefore, the standard deviation calculated by the commenter may no longer provide an appropriate estimate of expected dredged material volumes. Moreover, the year 1997 includes two port deepening projects, each with larger volumes than generally associated with maintenance work, which also tend to skew the data. EPA believes that the 4.8 million cubic yard limit is appropriate, given recent changes in Bay area dredging requirements and the high-end estimate of future deepening projects used to calculate the average volume of material dredged.

Vessel Traffic Impacts

One commenter, while commending EPA for reducing the surface target area and clarifying other conditions, reiterated concerns regarding potential impacts associated with transport of dredged material to the site. As stated above, as a result of comments on the LTMS EIS/R, EPA re-evaluated dredged material transit prior to publishing the final SF–DODS Rule. Based on this review, we believe that the potential for adverse impacts from dredged material vessels using the Western Traffic lane are minimal, particularly compared with those associated with other users. Risks associated with marine transit occur primarily during periods of bad weather and high seas. Vessels such as oil tankers and cargo ships are not subject to weather-related regulatory constraints, whereas dredged material vessels going to SF–DODS are. Moreover, EPA has further restricted the acceptable sea state for transport of dredged material to SF–DODS. In addition, EPA has strengthened and clarified the monitoring requirements during transport to SF–DODS. This monitoring is our best scientific basis for determining whether use of SF–DODS results in impacts to marine wildlife.

Monitoring Requirements

Both commenters referred to the Rule's monitoring requirements. One commenter objected to EPA's clarification to Mandatory permit condition (12) regarding monitoring during transit, suggesting that it was an increase in monitoring. This clarification is based on review of prior monitoring reports and would not result in any actual increase in the average number of monitoring trips that the Corps required during either of its recent projects using SF–DODS. In fact, we commend the Corps for conducting for adequate and representative monitoring on those projects. We amended condition (12) to ensure that all permitees provide similar representative monitoring.

The other commenter requested that EPA provide data on impacts to wildlife behavior at reference sites or at SF–DODS prior to designation, as a "frame of reference" comparison. EPA believes that the regional environmental monitoring currently undertaken provides such a reference.

The commenter also indicated that monitoring data from year(s) of high site usage are necessary to confirm the conclusions of 1995–1996 monitoring (during which relatively little disposal at SF–DODS occurred). EPA concurs and now has the full report of monitoring from 1997–1998, during which the highest site use has occurred. This report provides supporting evidence of the lack of impacts to wildlife from dredged material transit, as originally noted by the monitoring group by letter dated February 4, 1999. This commenter also suggested that the monitoring data may indicate that marine mammals are avoiding ship traffic. We do not expect that this avoidance, if it occurs, is likely to significantly disrupt migration, feeding, or other behaviors, as a result of the small area of the Western Traffic Lane relative to the overall habitat of marine mammals, as well as other wildlife.

Reporting Requirements

Finally, one commenter expressed concerns regarding language in Mandatory permit condition (13) requiring that the EPA or Corps could request reports "at any other time or interval required". The commenter suggested that EPA include in the Rule the conditions under which this requirement might be invoked. EPA recognizes the commenter's concern that this language might be considered "arbitrary and capricious". However, we have decided to defer further constraints on reporting requirements to the SF–DODS Implementation Plan. EPA has decided to retain this broad language in the Rule for subsequent clarification as necessary.

G. Regulatory Requirements

1. Consistency With the Coastal Zone Management Act

EPA prepared a Coastal Zone Consistency Determination (CCD) document based on information presented in the site designation EIS (August 1993). The CCD evaluated whether the proposed action—designation of "Alternative Site 5" (now SF–DODS) as described in the site designation EIS as an ocean disposal site for up to 50 years, with an annual capacity of six million cubic yards of dredged material meeting ocean disposal criteria—would be consistent with the provisions of the Coastal Zone Management Act. The CCD was formally presented to the California Coastal Commission (Commission) at their public hearing April 12, 1994. The Commission staff report recommended that the Commission concur with EPA's CCD, which the Commission did by a unanimous vote. Because the approved CCD was based on 50 years of site use at up to six million cubic yards of material annually, and none of the provisions in this amendment exceed these parameters, the effects of today's rule are well within the scope of the prior review and do not require further Commission review.

2. Endangered Species Act Consultation

During development of the site designation EIS, EPA consulted with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) pursuant to the provisions of the Endangered Species Act (ESA), regarding the potential for designation and use of any of the alternative ocean disposal sites under study to jeopardize the continued existence of any federally listed species. This consultation process is fully documented in the August 1993 site designation EIS. NMFS and FWS concluded that none of the three alternative disposal sites, including the SF–DODS, if designated and used for disposal of dredged material meeting the criteria for ocean disposal, would likely jeopardize the continued existence of any federally listed species.

The results of over four years of monitoring data indicate that disposal of dredged material at the SF–DODS has not had an adverse impact on federally listed or candidate species, nor their designated critical habitat.

The ESA consultation was based on site use of up to six million cubic yards of dredged material per year, for 50 years. Since the action now do s not exceed these parameters and b cause conditions have not changed or any of the listed or candidate threatened or endangered species potentially affected by disposal site use, the effects of today's rule are well within the scope of the original consultation and do not require further Endangered Species Act consultation.

H. Administrative Review

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant", and therefore subject to OMB review and other requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(a) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

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(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the Presidents priorities, or the principles set forth in the Executive Order.

This amendment should have minimal impact on permittees. Clarifications contained herein do not substantively alter the intent of the Rule nor its interpretation, and in general, codify actions that are already being taken. The annual volume limitation merely makes permanent the temporary volume set in the December 30, 1996 Rule amendment (61 FR 68964). Consequently, EPA has determined that this final Rule is not a "significant regulatory action" under the terms of Executive Order 12866.

2. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Tribal governments are not affected in any fashion. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

3. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) provides that whenever an agency promulgates a final rule under 5 U.S.C. 553, the agency must prepare a regulatory flexibility analysis (RFA) unless the head of the agency certifies that the final Rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 604 and 605). The amended site designation only has the effect of clarifying an existing Rule and setting a permanent annual disposal volume, providing a continuing disposal option for dredged material. Consequently, EPA's action will not impose any additional economic burden on small entities. For this reason, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the final Rule will not have a significant economic impact on a substantial number of small entities.

4. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OMB. Since the Rule does not establish or modify any information or record-keeping requirements, but only clarifies existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.

5. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any year.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. As described elsewhere in this preamble, today's Rule only has the effect of clarifying an existing Rule and setting a permanent annual disposal volume, providing a continuing disposal option for dredged material. Consequently, it imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this Rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this Rule.

6. Executive Order 12875

Today's Rule does not create a mandate on State, local or tribal governments. The Rule does not impose any enforceable duties on these entities. As described elsewhere in this preamble, today's Rule only has the effect of clarifying an existing Rule and setting a permanent annual disposal volume, providing a continuing disposal option for dredged material. Consequently, it imposes no new enforceable duty on any State, local or tribal governments. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this Rule.

7. Executive Order 13045

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This Rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

8. Executive Order 12898

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

This Final Rule only clarifies an existing Rule and sets a permanent annual disposal volume at the SF–DODS. Consequently, today's action is not subject to further review under E.O. 12898.

9. Compliance With Administrative Procedure Act

The Administrative Procedure Act (APA), 5. U.S.C. 551 *et seq.*, generally requires that substantive rules be published 30 days prior to their effective date except:

"(1) A substantive rule which grants or recognizes an exemption or relieves a restriction: * * * or (3) as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d).

EPA is issuing today's final rule as effective July 23, 1999, under the provisions of 5 U.S.C. 553(d). As is explained elsewhere in this preamble, today's final Rule is needed to clarify mandatory conditions for site use and to set a permanent site volume limit. Continued availability of SF–DODS for disposal of suitable dredged material is essential to the success of the Long Term Management Strategy for the San Francisco Bay area. The site, however, has not been available for disposal since December 31, 1998, restricting project proponents' disposal options and potentially hindering efficient and environmentally-protective planning. In the absence of today's Rule, SF–DODS would remain closed to dredged material unless the USACE undertakes site selection under MPRSA section 103 or invokes an economic waiver (40 CFR 225.3). A number of dredging projects proposing to use SF–DODS this calendar year could experience substantial delays and/or increase pressures on in-Bay disposal sites. By re-opening SF–DODS for disposal of suitable dredged material, today's final Rule has the effect of removing a restriction and thus meets the exception specified in 5 U.S.C. 553(d). In addition, EPA believes today's rule meets the "good cause" exception of 5 U.S.C. 553(d)(3). As previously noted, failure to re-open the site could adversely affect a number of proposed projects, including federal civil works maintenance activities. Issuing today's final Rule as immediately effective would avoid potential disruption of projects, and is in the public interest. EPA has determined that there is good cause within the meaning of 5 U.S.C. 553(d)(3) to issue this Rule as effective July 23, 1999.

10. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure on the rule is impracticable, unnecessary or contrary to the public interest. As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of July 23, 1999. As stated above, failure to re-open SF–DODS to disposal of suitable dredged material as expeditiously as possible could adversely affect a number of proposed projects, including federal civil works maintenance activities. Issuing today's final Rule as immediately effective would avoid potential disruption of projects, and is in the public interest. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: June 29, 1999.

Alexis Strauss,

Acting Regional Administrator, Region IX.

In consideration of the foregoing, chapter I of title 40 of the Code of Federal Regulations is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended in paragraph (l)(3)(vi) by adding a sentence before the last sentence; by revising paragraph (l)(3)(vii); and revising paragraphs (l)(3)(viii)(A)(*1*), (*2*), (*4*), (*5*), (*7*), (*11*), (*12*), and (*13*) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(l) * * *

(3) * * *

(vi) * * * Adherence to the provisions of the most current SMMP Implementation Manual, including mandatory permit conditions, site monitoring activities, and any other condition(s) EPA or the Corps have required as part of the project authorization or permit, is a requirement for use of the SF–DODS.

* * *

* * * * *

(vii) *Type and capacity of disposed materials.* Site disposal capacity is 4.8 million cubic yards of suitable dredged material per year for the remaining period of site designation. This limit is based on considerations in the regional Long Term Management Strategy for the placement of dredged material within the San Francisco Bay region, and on monitoring of site use since the SF–DODS was designated in 1994.

(viii) * * *

(A) * * *

(*1*) Transportation of dredged material to the SF–DODS shall only be allowed when weather and sea state conditions will not interfere with safe transportation and will not create risk of spillage, leak or other loss of dredged material in transit to the SF–DODS. No disposal trips shall be initiated when the National Weather Service has issued a gale warning for local waters during the time period necessary to complete dumping operations, or when wave heights are 16 feet or greater. The permittee must consult the most current version of the SMMP Implementation Manual for additional restrictions and/or clarifications regarding other sea state parameters, including, but not limited to wave period.

(*2*) All vessels used for dredged material transportation and disposal must be loaded to no more than 80 percent by volume of the vessel. Before any disposal vessel departs for the SF–DODS, an independent quality control inspector must certify in writing that the vessel meets the conditions and requirements of a certification checklist that contains all of the substantive elements found in the example contained in the most current SMMP Implementation Manual. For the purposes of paragraph (l)(3)(viii) of this section, "independent" means not an employee of the permittee or dredging contractor; however, the Corps of Engineers may provide inspectors for Corps of Engineers dredged material disposal projects.

* * * * *

(*4*) Disposal vessels in transit to and from the SF–DODS should remain at least three nautical miles from the Farallon Islands whenever possible. Closer approaches should occur only in situations where the designated vessel traffic lane enters the area encompassed by the 3-mile limit, and where safety may be compromised by staying outside of the 3-mile limit. In no case may disposal vessels leave the designated vessel traffic lane.

(*5*) When dredged material is discharged within the SF–DODS, no portion of the vessel from which the materials are to be released (*e.g.*, hopper dredge or towed barge) can be further

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than 1,900 feet (600 meters) from the center of the target area at 37°39′ N, 123°29′ W.

* * * * *

(*7*) Disposal vessels shall use an appropriate navigation system capable of indicating the position of the vessel carrying dredged material (for example, a hopper dredged vessel or towed barge) with a minimum accuracy and precision of 100 feet during all disposal operations. The system must also indicate the opening and closing of the doors of the vessel carrying the dredged material. If the positioning system fails, all disposal operations must cease until the navigational capabilities are restored. The back-up navigation system, with all the capabilities listed in this condition, must be in place on the vessel carrying the dredged material.

* * * * *

(*11*) The permittee shall report any anticipated or actual permit violations to the District Engineer and the Regional Administrator within 24 hours of discovering such violation. If any anticipated or actual permit violations occur within the Gulf of the Farallones or the Monterey Bay National Marine Sanctuaries, the permittee must also report any such violation to the respective Sanctuary Manager within 24 hours. In addition, the permittee shall prepare and submit reports, certified accurate by the independent quality control inspector, on a frequency that shall be specified in permits, to the District Engineer and the Regional Administrator setting forth the information required by Mandatory Conditions in paragraphs (I)(3)(viii)(A)(*8*) and (*9*) of this section.

(*12*) Permittees, and the Corps in its Civil Works projects, must make arrangements for independent observers to be present on disposal vessels for the purpose of conducting shipboard surveys of seabirds and marine mammals. Observers shall employ standardized monitoring protocols, as referenced in the most current SMMP Implementation Manual. At a minimum, permittees shall ensure that independent observers are present on at least one disposal trip during each calendar month that disposal occurs, AND on average at least once every 25 vessel trips to the SF–DODS.

(*13*) At the completion of short-term dredging projects, at least annually for ongoing projects, and at any other time or interval requested by the District Engineer or Regional Administrator, permittees shall prepare and submit to the District Engineer and Regional Administrator a report that includes complete records of all dredging, transport and disposal activities, such as navigation logs, disposal coordinates, scow certification checklists, and other information required by permit conditions. Electronic data submittals may be required to conform to a format specified by the agencies. Permittees shall include a report indicating whether any dredged material was dredged outside the areas authorized for dredging or was dredged deeper than authorized for dredging by their permits.

* * * * *

[FR Doc. 99–18606 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431 and 498

[HCFA–2054–IFC]

RIN 0938–AJ59

Medicare and Medicaid Program; Appeal of the Loss of Nurse Aide Training Programs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule revises current Medicare and Medicaid regulations to provide participating nursing facilities, skilled nursing facilities, and dually participating nursing facilities an opportunity for an evidentiary hearing before an administrative law judge to challenge a facility's loss of its approved nurse aide training program. This rule also amends Medicaid regulations to permit States to provide evidentiary hearings for facilities that participate only in the Medicaid program and that face a loss of their nurse aide training programs. Previous regulations have provided only for an informal hearing when facilities lose training programs and do not otherwise face enforcement remedies under the Medicare and Medicaid programs.

DATES: Effective date: These regulations are effective July 23, 1999.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 21, 1999.

ADDRESSES: Mail an original and 3 copies of written comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2054–IFC, P.O. Box 9010, Baltimore, MD 21244–9010

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Comments may be submitted electronically to the following e-mail address: (filecode 2054ifc)@hcfa.gov. For e-mail procedures and information on ordering copies of the **Federal Register** containing this document and electronic access, see the beginning of **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jeffrey Golland, (202) 619–3377.

SUPPLEMENTARY INFORMATION:

E-Mail, Comments, Procedures, Availability of Copies, and Electronic Access

E-mail comments must include the full name and address of the sender, and must be submitted to the referenced address to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address, below. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2054–IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

I. Background

To participate in the Medicare and Medicaid programs, facilities furnishing nursing services must satisfy certain requirements as a prerequisite to their receiving a provider agreement. Specifically, they must comply with the requirements set forth at section 1819(b), (c), and (d) of the Social Security Act (the Act) for the Medicare program, and section 1919(b), (c), and (d) of the Act for the Medicaid program. Implementing regulations further clarifying these statutory requirements are set forth at 42 CFR Part 483 (Requirements for States and Long Term Care Facilities). Facilities wishing to participate in these programs may do so only after they have been surveyed, or inspected, by a survey team and found to be in substantial compliance with program requirements. While we administer these programs at the Federal level, typically these surveys are performed by State agencies acting under an agreement with us pursuant to section 1864 of the Act. States conduct routine surveys on the average of once annually for each facility. When States perform these surveys, they make recommendations to us if Medicare determinations are involved, whereas determinations for facilities wishing to participate only in the Medicaid program are made predominately by the States. Facilities found to be furnishing services in substantial compliance with Federal requirements are issued a provider agreement and are thereby entitled to furnish reimbursable nursing services to Medicare beneficiaries and Medicaid recipients.

Among the requirements that nursing facilities must meet is an obligation to employ only those nurse aides who are qualified to fill those positions. Sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Act specifically prohibit nursing facilities from employing individuals as nurse aides for more than 4 months unless these individuals have completed a training and competency evaluation program and are competent to furnish nursing or nursing related services. These requirements are reflected in the regulations at § 483.75(g) (Staff qualifications). According to sections 1819(f)(2)(B) and 1919(f)(2)(B) of the Act, States approve these training programs and have discretion to approve nurse aide training programs that are offered by or in facilities.

Under sections 1819(g)(2)(B) and 1919(g)(2)(B) of the Act, if a facility is found to have furnished substandard quality of care during a standard survey, it is subject to an extended survey that is designed to probe in more depth the facility's policies and procedures that produced substandard quality of care. If a facility is subjected to an extended survey and has been operating an approved nurse aide training program, it loses its ability to provide the program for 2 years as required by sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act.

When we published the nursing home survey and enforcement regulations in the November 10, 1994 final rule (59 FR 56116), we addressed issues raised by a facility's loss of its nurse aide training program. In that final rule (59 FR 56228), we concluded that facilities facing this loss should have access to the informal dispute resolution process offered under § 488.331, but that they should not have an opportunity for an administrative law judge (ALJ) hearing since we perceived a facility's loss in this context as not rising to the level of deprivation marked by sanctions described elsewhere in the statute such as facility agreement terminations or civil money penalties. It is only if a facility suffers an adverse and direct legal consequence under the Medicare program that it is entitled to administrative and judicial review. Accordingly, the regulations at § 498.3(d)(10)(iii) (Scope and applicability), precluded the opportunity for an ALJ hearing when a facility loses its approval to train nurse aides. Similarly, Medicaid regulations, at § 431.153(f)(2) (Evidentiary hearing), also precluded the opportunity for Medicaid-only certified facilities to receive a full evidentiary hearing for losses of their approved nurse aide training programs. Facilities have had the ability to challenge the loss of their nurse aide training programs only if they also were challenging the imposition of a remedy that was appealable.

II. Provisions of the Interim Final Rule

We are amending the Medicare and Medicaid regulations to permit a facility an opportunity for an evidentiary hearing if it loses its approved nurse aide training program. In the context of the appeals system available to long term care facilities that are either Medicare or Medicaid certified or dually certified for both the Medicare and Medicaid programs, this means the opportunity for a hearing before an ALJ of the Departmental Appeals Board and to request review by the Board of an ALJ decision. As has always been the case, the nurse aide training program ceases to operate pending an appeal. While we are deleting the Medicaid regulation that foreclosed the possibility of an evidentiary hearing in these cases, we are leaving to States the details of whether or how they may provide hearings to those facilities participating only in the Medicaid program. However, nurse aid training programs provided by Medicaid-only facilities in States that elect to provide these hearings must cease to operate pending an appeal just has been the case for Medicare certified facilities.

When we published the survey and enforcement final rule in November 1994, we did not have the benefit of the experience we have had since that time. We could continue to advance the same arguments we made in the preamble to the November 1994 final rule as to the relative merits of losing a nurse aide training program compared with the impact of one or more of the remedies set out in the statute. We believe, however, that we should acknowledge the arguments that have been advanced by individual facilities on the magnitude of the loss to them when they are unable to train nurse aides themselves. Facilities have alerted us to the difficulty they sometimes have in finding qualified nurse aides once they are unable to train their own. Those employed as nurse aides are not highly paid and are not always available in abundance to facilities whenever they need to hire additional staff or replace those who leave. Turnover in these positions is high, thereby placing increased pressures on facilities to maintain the staff they need to furnish essential services to facility residents. Thus, the loss of an ability to train nurse aides can have significant consequences for a facility.

Although the waiver provision in the statute, at sections 1819(f)(2)(C) and 1919(f)(2)(C) of the Act, provides relief to some facilities in these situations, it is not universal in scope and, therefore, may not reach all facilities that have difficulty employing qualified individuals as nurse aides. The waiver provision authorizes a State to permit a facility that has lost its approval to train its nurse aides to continue that training in the facility (although not under the direction of the facility) if it determines that there is no other training program within a reasonable distance of the facility and the State can assure that there is an adequate environment to operate the program in the facility.

Because the reason for the loss of nurse aide training is a fact-driven conclusion that the facility has provided substandard quality of care, we recognize the desirability of furnishing a facility the opportunity to challenge these factual findings in a forum that is designed to hear identical disputes that arise when remedies are imposed on noncompliant facilities. Thus, there is sufficient reason to have a regulation that furnishes the same appeal process that has been available for the imposition of remedies on a facility.

We view the provision of administrative hearings in cases involving the loss of nurse aide training, along with those that have been furnished up to now for most of the remedies imposed under § 488.406 (Available remedies), as being derived from sections 1866(b)(2) and 1866(h) of the Act. These sections provide for the review of certain determinations we have made such as those in which we conclude that a facility is not complying substantially with the requirements of

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the Act. We believe these sections of the statute are triggered when affected facilities sustain genuinely adverse legal consequences under the Medicare program as a result of action we have taken. As a matter governed by sections 1866(b)(2) and 1866(h) of the Act, these hearings are funneled through the administrative process described in section 205(b) of the Act and to judicial review of our final decision according to section 205(g) of the Act. Both sections 205(b) and 205(h) are incorporated in the Medicare statute at section 1866(h) of the Act.

Therefore, we are revising the Medicare and the Medicaid sections of the regulations. We are revising the Medicaid hearing regulations by deleting the reference at § 431.153(b)(3) (Limit on grounds for appeal) that preclude States from granting evidentiary hearings to Medicaid facilities losing their nurse aide training programs. We are not affirmatively requiring States to provide a hearing in these cases because that is a decision we believe States should determine in light of circumstances that are apt to differ among the States.

We are revising the Medicare hearing regulations that have precluded facilities from challenging the level of noncompliance we have found since findings of substandard quality of care are uniquely sensitive to specific findings of noncompliance. Specifically, a finding of substandard quality of care is premised upon a determination that there are discrete levels of noncompliance found under three regulations (§§ 483.13 (Resident behavior and facility practices), 483.15 (Quality of life), and 483.25 (Quality of care)). Thus, to adequately challenge a finding of substandard quality of care, a facility may need to be in a position to challenge the specific levels of noncompliance that gave rise to the finding. Accordingly, we are revising § 498.3(b)(13) to permit this kind of challenge.

We are also revising § 498.3(b) (Initial determinations by HCFA) by adding a new paragraph (15) that will make a finding of substandard quality of care that results in the loss of the approval of a facility's nurse aide training program an initial determination for purposes of receiving an evidentiary hearing.

Additionally, we are revising the regulations at § 498.3(d)(10)(iii) (Administrative actions that are not initial determinations) by deleting the reference to the loss of nurse aide training as an administrative action that is not an initial determination. These revisions will affect the hearing rights of facilities that are participating in the Medicare or Medicaid program or are dually participating in the Medicare and Medicaid programs.

We intend that these changes to the regulations be effective upon publication. Thus, we will apply the new rules to determinations made after the effective date of this interim final rule in which we or the States find substandard quality of care (communicated to the facility in a statement of deficiencies on HCFA Form 2567) that leads to the facility's loss of its ability to train nurse aides.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

We believe that engaging in proposed rulemaking in the context of this rule is unnecessary. We are not making substantive changes in the standards that nursing facilities must meet to participate in the Medicare and Medicaid programs. Facilities will continue to be obligated to meet the requirements of 42 C.F.R. Part 483 to retain program certification including the requirement that only trained nurse aides be employed by the facility. Nor are we changing in any way the basis for the imposition of remedies on long term care facilities when they are found to be out of compliance with Federal certification requirements. Facilities will still face the imposition of remedies, as they have before, when they fail to comply. They will continue to be subject to the consequences of a finding of substandard quality of care including the loss of nurse aide training programs and the required notifications to attending physicians and a State's Administrator Licensing Board. Thus, these rule changes will not affect the well being of residents by releasing facilities from any obligation they already owe under these programs. Indeed, under this rule, facilities that have lost their ability to train nurse aides will face that consequence unless our determination that the facility has provided substandard quality of care is reversed by an ALJ or by the Departmental Appeals Board upon its review of the hearing decision. This final rule only affects the type of review that nursing facilities may receive when they face the loss of their training programs.

In addition, we do not believe that this rule will adversely impact States. While those States that choose to provide hearings in nurse aide training cases may experience some added burdens, we believe they will be minimal. Specifically, we expect that there will be very few cases involving the loss of nurse aide training in facilities certified only in the Medicaid program.

Moreover, we are providing facilities with appeal rights that were not previously granted. In doing so, we are recognizing the industries' interest in having additional appeal rights.

For the same reasons, we believe that we have good cause to dispense with the usual 30 day delay in the effective date of a rule, and believe that this rule should become effective immediately upon publication. Because we are not revising either a substantive standard that governs nursing home conduct or the consequences facilities may face because of their failure to comply with these requirements, we are, therefore, not affecting any provision that governs the manner in which nursing facilities must furnish safe and healthful conditions for the delivery of nursing services they furnish to their residents. Nursing home residents will continue to have all the protections they have always had under the nursing home requirements of participation and the survey and enforcement rules. Accordingly, we believe that we have good cause to make this procedural change effective immediately.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 60-day comment period for public comment.

V. Information Collection Requirements

Ordinarily, we would be required to estimate the public reporting burden for information collection requirements for these regulations in accordance with Chapter 35 of Title 44 of the United State Code. However, sections 4204(b) and 4214(d) of the Omnibus Budget Reconciliation Act of 1987 provide for a waiver of Paperwork Reduction Act requirements for these regulations.

VI. Regulatory Impact Statement

We have examined the impacts of this interim final rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by non-profit status or by having revenues of $5 million or less annually. For purposes of the RFA, all participating nursing facilities, skilled nursing facilities, and dually participating nursing facilities are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Section 1102(b) of the Social Security Act, (the Act) requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million. We believe that this interim final rule is not an economically significant rule as described in the Executive order, nor a significant action as defined in the Unfunded Mandates Reform Act. Aggregate impacts of the rule, and aggregate expenditures caused by the rule, would not approach $100 million for either the public or the private sector. Also, we believe that nursing facilities will not object to any additional costs they might incur in pursuing challenges to a loss of their nurse aide training programs because they have been advocating this type of hearing since we published our nursing facility enforcement final rule in November 1994.

In addition, national provider organizations, as well as individual providers, have requested that we permit an appeal through our administrative process. Furthermore, this interim final rule would not affect a facility's decision to continue to serve beneficiaries.

According to our survey estimates, approximately 400 of the 17,000 long term care facilities participating in Medicare and Medicaid programs would be affected by this interim final rule. The facilities affected are those that have had an extended survey conducted as a result of an inspection finding substandard quality of care, with no remedies imposed. Whenever substandard quality of care is found, the facility may not conduct nurse aide training in its facility.

Although there would be no economic impact on Medicare contractors or beneficiaries, some providers would incur the cost of preparing an appeal when an inspection triggers an extended survey (and subsequent loss of the ability to provide nurse aide training). This would be in addition to appealing the finding through the already available informal dispute resolution process. Also, States may incur additional costs if their surveyors need to testify in cases that previously would not have been permitted to be heard by an ALJ and would incur additional costs if they choose to provide hearings themselves for Medicaid-only facilities. These costs, however, would be minimal since we anticipate very few of these cases to arise in any State.

As stated earlier, we believe that this interim final rule will not have a significant economic impact on providers, Medicare contractors, or beneficiaries. In addition, long term care facilities that lose the ability to conduct nurse aide training with no other remedies involved, will be supportive of their ability to appeal the findings that gave rise to the loss of their training programs since they have been seeking just this solution since the publication of the final nursing home enforcement rule in 1994.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR Chapter IV is amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

A. Part 431 is amended as set forth below.

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 431.153 [Amdended]

2. In § 431.153, paragraph (b)(3) is removed and reserved.

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFs/MR AND CERTAIN NFs IN THE MEDICAID PROGRAM

B. Part 498 is amended as set forth below:

1. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social security Act (42 U.S.C. 1302 and 1395hh).

2. In § 498.3, paragraph (b)(13) is revised, a new paragraph (b)(15) is added, and paragraph (d)(10)(iii) is revised to read as follows:

§ 498.3 Scope and applicability.

* * * * *

(b) *Initial determinations by HCFA.*

* * *

(13) The level of noncompliance found by HCFA in a SNF or NF but only

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if a successful challenge on this issue would affect—

(i) The range of civil money penalty amounts that HCFA could collect (The scope of review during a hearing on imposition of a civil money penalty is set forth in § 488.438(e) of this chapter); or

(ii) A finding of substandard quality of care that results in the loss of approval for a SNF or NF of its nurse aide training program.

* * * * *

(15) The finding of substandard quality of care that leads to the loss by a SNF or NF of the approval of its nurse aide training program.

* * * * *

(d) *Administrative actions that are not initial determinations.* * * *

(10) * * *

(iii) The imposition of State monitoring.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 14, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

Approved: July 16, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–18802 Filed 7–20–99; 12:04 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 63

[CC Docket No. 97–11; FCC 99–104]

Section 214 Deregulated Entry Requirements and Streamlined Exit Requirements for Domestic Telecommunications Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted rules that de-regulate market entry and streamline market exit filing requirements, under section 214 of the Communications Act of 1934. The rules confer "blanket" section 214 certification for new lines of all domestic carriers, exempt line extensions and video programming services from section 214 requirements, and provide that all section 214 applications to discontinue domestic service will be automatically granted unless the Commission notifies the applicants otherwise. The Commission's action also grants the substance of the section 214 regulatory relief requested by the Independent Telephone and Telecommunications Alliance in its forbearance petition and extends that relief to all domestic carriers.

DATES: Effective August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Marty Schwimmer, 202–418–2334.

SUPPLEMENTARY INFORMATION:

1. Section 214 of the Communications Act of 1934 requires common carriers to obtain Commission approval for the construction, acquisition, or operation of lines of communication (entry certification) and for the discontinuance of service to a community (exit certification). The FCC implements the section 214 requirements with its rules at 47 CFR part 63 and related rules of practice at 47 CFR part 1. The Telecommunications Act of 1996 exempted from section 214 line extensions and video programming systems, under section 402(b)(2)(A) (codified as a Note to section 214) and under Section 302(a) (codified as section 651), respectively. The 1996 Act also enabled the Commission to forbear from enforcing provisions of the Act, codified as Section 10 of the Act.

2. In 1997, the Commission released an NPRM proposing to modify its rules at 47 CFR part 63 to implement these changes, entitled Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, *Notice of Proposed Rulemaking*, CC Docket No. 97–11, 12 FCC Rcd 1111 (1997), 62 FR 4965 (February 3, 1997). The Commission proposed to (1) codify the statutory exemptions, (2) forbear from enforcing the section 214 entry certification requirements for some carriers; and (3) streamline its exit certification rules. The Commission also sought comment on alternatives, including whether to streamline the section 214 entry certification procedures, which would include granting blanket authority rather than forbearing from enforcing section 214. On February 17, 1998, the Independent Telephone and Telecommunications Alliance (ITTA) filed a petition seeking forbearance from section 214 entry certification requirements for its members.

3. The Commission has revised 47 CFR parts 1 and 63, in a Report and Order released June 30, 1999, in Docket No. 97–11. In the same document, it has also granted the substance of the section 214 relief sought by ITTA, in a Memorandum Opinion and Order in AAD File No. 98–43. The revised rules confer section 214 authorization for new lines of all domestic carriers, so that no applications need be filed, codify the statutory exemptions from section 214 authorization for line extensions and video programming systems, and provide that all applications for section 214 authorization to discontinue service will be approved automatically, in 31 days for non-dominant carriers and 60 days for dominant carriers, unless the Commission notifies the carriers otherwise.

4. The Commission's purpose in conferring blanket section 214 authority for new lines of all carriers, rather than forbearing from exercising its section 214 jurisdiction for only some carriers, is to deregulate and promote competition in domestic market entry. At the same time, with blanket authority, unlike forbearance, the Commission retains the ability to stop extremely abusive practices against consumers by withdrawing the section 214 authorization that allows the abusive carrier to operate.

5. The Commission's purpose in automatically granting all domestic discontinuance applications of dominant carriers as well as non-dominant carriers is, similarly, to reduce regulatory exit burdens and advance Congress' pro-competitive and de-regulatory policies. The Commission recognizes that carriers assume a certain amount of risk in entering a new market and that, if there are significant barriers to exit, a carrier may be reluctant to assume these risks and may choose not to enter the market. At the same time, the Commission also recognizes that even customers with competitive alternatives need fair notice and information to choose a substitute service, and that by requiring applications to be filed and notice to be given to all customers, unlike de-regulating exit procedures by eliminating filing and notice requirements altogether, subscribers will have adequate opportunity to comment on whether substitute service is available.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 63 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 207, 303, and 309(j), unless otherwise noted.

2. Section 1.763 is amended by revising the first sentence in paragraph (b) to read as follows:

§ 1.763 Construction, extension, acquisition or operation of lines.

* * * * *

(b) In cases under this section requiring a certificate, notice is given to and a copy of the application is filed with the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State involved. * * *

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

3. The part heading is revised as set out above.

4. The authority citation for part 63 is revised to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

§§ 63.01 through 63.03 [Removed]

5. Sections 63.01 through 63.03 are removed.

§§ 63.05 and 63.06 [Removed]

6. Sections 63.05 and 63.06 are removed.

§ 63.08 [Removed]

7. Section 63.08 is removed.

8. Section 63.07 is redesignated as § 63.01 and is revised to read as follows:

§ 63.01 Authority for all domestic common carriers.

(a) Any party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct, acquire, or operate any domestic transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies. This authority does not apply to acquisitions of corporate control, which are not limited to acquisitions of equity ownership, such as stock or partnership interests, and which include actual working control by whatever manner exercised (such as, for example, by veto power, controlling interest in a board of directors, or other shareholder agreement provisions).

(b) Domestic common carriers subject to this section shall not engage in any line construction that may have a significant effect on the environment as defined in § 1.1307 of this chapter without prior compliance with the Commission's environmental rules. See § 1.1312 of this chapter.

9. New § 63.02 is added to read as follows:

§ 63.02 Exemptions for extensions of lines and for systems for the delivery of video programming.

(a) Any common carrier is exempt from the requirements of section 214 of the Communications Act of 1934, as amended, for the extension of any line.

(b) A common carrier shall not be required to obtain a certificate under section 214 of the Communications Act of 1934 with respect to the establishment or operation of a system for the delivery of video programming.

10. Section 63.04 is redesignated as § 63.25 and the section heading is revised to read as follows:

§ 63.25 Special provisions relating to temporary or emergency service by international carriers.

11. Section 63.52 is amended by revising the section heading and paragraph (b) to read as follows:

§ 63.52 Copies required; fees; and filing periods.

* * * * *

(b) No application accepted for filing and subject to part 63 of these rules, unless provided for otherwise, shall be granted by the Commission earlier than 30 days following issuance of public notice by the Commission of the acceptance for filing of such application or any major amendment unless said public notice specifies another time period.

* * * * *

12. Section 63.71 is revised to read as follows:

§ 63.71 Procedures for discontinuance, reduction or impairment of service by domestic carriers.

Any domestic carrier that seeks to discontinue, reduce or impair service shall be subject to the following procedures:

(a) The carrier shall notify all affected customers of the planned discontinuance, reduction, or impairment of service and shall notify and submit a copy of its application to the public utility commission and to the Governor of the State in which the discontinuance, reduction, or impairment of service is proposed, and also to the Secretary of Defense, Attn. Special Assistant for Telecommunications, Pentagon Washington, DC 20301: Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice. Notice shall include the following:

(1) Name and address of carrier;

(2) Date of planned service discontinuance, reduction or impairment;

(3) Points of geographic areas of service affected;

(4) Brief description of type of service affected; and

(5) One of the following statements:

(i) If the carrier is non-dominant with respect to the service being discontinued, reduced or impaired, the notice shall state:

The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments within 15 days after receipt of this notification. Address them to the Federal Communications Commission, Washington, DC 20554, referencing the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

(ii) If the carrier is dominant with respect to the service being discontinued, reduced or impaired, the notice shall state:

The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments within 30 days

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after receipt of this notification. Address them to the Federal Communications Commission, Washington, DC 20554, referencing the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

(b) The carrier shall file with this Commission, on or after the date on which notice has been given to all affected customers, an application which shall contain the following:

(1) Caption—"Section 63.71 Application";

(2) Information listed in § 63.71(a) (1) through (4) above;

(3) Brief description of the dates and methods of notice to all affected customers;

(4) Whether the carrier is considered dominant or non-dominant with respect to the service to be discontinued, reduced or impaired; and

(5) Any other information the Commission may require.

(c) The application to discontinue, reduce or impair service, if filed by a domestic, non-dominant carrier, shall be automatically granted on the 31st day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective. The application to discontinue, reduce or impair service, if filed by a domestic, dominant carrier, shall be automatically granted on the 60th day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective. For purposes of this section, an application will be deemed filed on the date the Commission releases public notice of the filing.

[FR Doc. 99–18765 Filed 7–21–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–48; RM–9472]

Radio Broadcasting Services; Carbondale, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 244A to Carbondale, Colorado, as that community's first local commercial FM transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 8781, February 23, 1999. Coordinates used for Channel 244A at Carbondale are 39–25–30 NL and 107–22–43 WL. With this action, the proceeding is terminated.

DATES: Effective August 30, 1999. A filing window for Channel 244A at Carbondale, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–48, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Carbondale, Channel 244A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18826 Filed 7–22–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–47; RM–9471]

Radio Broadcasting Services; Council Grove, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 281C3 to Council Grove, Kansas, as that community's first local aural transmission service in response to a petition for rule making filed by Dana Puopolo. *See* 64 FR 8781, February 23, 1999. Coordinates used for Channel 281C3 at Council Grove are 38–39–42 NL and 96–29–18 WL. With this action, the proceeding is terminated.

DATES: Effective August 30, 1999. A filing window for Channel 281C3 at Council Grove, Kansas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–47, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Council Grove, Channel 281C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18827 Filed 7–22–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–49; RM–9473]

Radio Broadcasting Services; El Jebel, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 263A to El Jebel, Colorado, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 8780, February 23, 1999. Coordinates used for Channel 263A at El Jebel are 39–23–42 NL and 107–06–29 WL. With this action, the proceeding is terminated.

DATES: Effective August 30, 1999. A filing window for Channel 263A at El Jebel, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–49, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding El Jebel, Channel 263A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18828 Filed 7–22–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications*, 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: July 23, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 269C2 and adding Channel 269C1 at Springerville.

3. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 289C3 and adding Channel 289C at Ouray.

4. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 280C1 and adding Channel 280C at Cape Coral and by removing Channel 284C3 and adding Channel 284C2 at Naples.

5. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 239C2 and adding Channel 239C1 at Valdosta.

6. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 288A and adding Channel 288C3 at Mount Sterling, by removing Channel 288A and adding Channel 287A at Prestonsburg, and by removing Channel 247A and adding Channel 247C3 at Salyersville.

7. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 281C1 [1] and adding Channel 288C3 at Gladstone and by removing Channel 276A and adding Channel 274A at Pentwater.

8. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 270A and adding Channel 270C2 at Walker.

9. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 267A and adding Channel 267C3 at Vicksburg.

10. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 228C3 and adding Channel 228C2 at Osage Beach, by removing Channel 237A and adding Channel 237C2 at Owensville and by removing Channel 230A and adding Channel 230C3 at Scott City.

11. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 251C3 and adding Channel 254C1 at Hamilton.

12. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended

[1] The Report and Order in MM Docket No. 88–49 substituted Channel 288C1 for Channel 288A. *See* 54 FR 37682, September 12, 1989.

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by removing Channel 241A and adding Channel 241C at McCook.

13. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 233C2 and adding Channel 233C3 at Sun Valley.

14. Section 73.202(b), the Table of FM Allotments under New Hampshire, is amended by removing Channel 272A and adding Channel 272C3 at Lancaster.

15. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 287C2 and adding Channel 287C3 at Alamogordo.

16. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 264C2 and adding Channel 264C3 at Overton.

17. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by removing Channel 229C3 and adding Channel 229A at Addison.[2]

18. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 254A and adding Channel 254C3 at Mabton.

19. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Channel 285A and adding Channel 285B1 at Clarksburg.

20. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 297A and adding Channel 297C2 at Kemmerer, by removing Channel 235C1 and adding Channel 235C at Sheridan and by removing Channel 269A and adding Channel 269C1 at Thermopolis.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18835 Filed 7–22–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 89–553, PP Docket No. 93–253, GN Docket No. 93–252, FCC 95–395]

Metropolitan Trading Area Licensees; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule, correction.

SUMMARY: This correction amendment clarifies 47 CFR 90.665(c). This correction amendment is necessary to clarify that the Commission adopted two distinct options to satisfy construction requirements for Metropolitan Trading Area (MTA) licensees in the 900 MHz Specialized Mobile Radio Service.

EFFECTIVE DATE: August 12, 1999.

FOR FURTHER INFORMATION CONTACT: Don Johnson, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–7240.

SUPPLEMENTARY INFORMATION: This *Second Erratum*, DA 95–2327, released November 8, 1995, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, S.W., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington D.C. 20036 (202) 857–3800. The document is also available via the internet at http://www.fcc.gov/Bureaus/Wireless/Orders/1995/index.html.

Synopsis

This document corrects 47 CFR 90.665(c) of the Final Rules, set forth in the amendatory text to the Second Order on Reconsideration and Seventh Report and Order in the above—captioned proceeding, 60 FR 48913 (September 19, 1995), 47 CFR 90.665. This correction clarifies that there are two distinct options to satisfy construction requirements for Metropolitan Trading Area (MTA) licensees in the 900 MHz Specialized Mobile Radio Service. Under the first option, the MTA licensee must demonstrate coverage of one-third of the MTA's population three years from the date of license grant, and demonstrate two-thirds coverage of the MTA's population five years after license grant. The second option requires an MTA licensee to demonstrate five years after license grant that it is providing substantial service to the MTA. An MTA licensee must, three years from license grant, either show that the one-third population coverage standard has been satisfied, or provide written notification that it has elected to show substantial service to the MTA five years from license grant. In addition, as part of the election to provide a substantial service showing, each MTA licensee must, three years from license grant, indicate how it expects to demonstrate substantial service at five years. We find good cause under section 553(d)(3) of the Administrative Procedure Act (5 U.S.C. chapter 5) and 47 CFR 1.427(b) to depart from the general requirement that final rules take effect not less than thirty days after their publication in the **Federal Register**. In this case, the three-year construction deadline for most licensees affected by this erratum is August 12, 1999. Therefore, to avoid any possible confusion of what a licensee would need to do if it elects the substantial service option, we make the effective date of the amended rule to be August 12, 1999.

List of Subjects in 47 CFR Part 90

Private Land Mobile Radio Service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Accordingly, 47 CFR Part 90 is corrected by making the following amendment:

PART 90—PRIVATE LAND MOBILE RADIO SERVICE

1. The authority citation for Part 90 is revised as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. § 90.665(c) is revised to read as follows:

§ 90.665 Authorization, construction and implementation of MTA licenses.

* * * * *

(c) Each MTA licensee in the 896–901/935–940 MHz band must, three years from the date of license grant, construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of the MTA; further, each MTA licensee must provide coverage to at least two-thirds of the population of the MTA five years from the date of license grant. Alternatively, an MTA licensee must demonstrate, through a showing to the Commission five years from the date of license grant, that it is providing substantial service. An MTA licensee must, three years from license grant, either show that the ⅓ population coverage standard has been satisfied, or provide written notification that it has elected to show substantial service to the MTA five years from license grant. In addition, as part of the election to provide a substantial service showing, each MTA licensee must, three years from license grant, indicate how it expects to demonstrate substantial service at five years. The MTA licensee must meet the population coverage benchmarks regardless of the extent to which incumbent licensees are present within the MTA block.

* * * * *

[FR Doc. 99–18766 Filed 7–22–99; 8:45 am]

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[2] Pursuant to MM Docket No. 98–52, effective December 14, 1998, Channel 229C3 was substituted for Channel 229A at Hague, New York, and reallotted to Addison, Vermont. *See* 63 FR 62957, November 10, 1998.

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Proposed Rules

Federal Register
Vol. 64, No. 141
Friday, July 23, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–268–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9, DC–9–80, and C–9 (Military) Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of two existing airworthiness directives (AD), applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes, that currently require installation of hydraulic line restrictors in the main landing gear (MLG), and modification or replacement of the left and right MLG hydraulic damper assemblies. This action would require an additional modification of the MLG hydraulic damper assemblies, or replacement of the MLG hydraulic damper assemblies with modified and reidentified hydraulic damper assemblies. This proposal is prompted by reports indicating that MLG hydraulic damper assemblies removed for overhaul had failed or damaged spring retainers, due to insufficient material thickness of the spring retainers. The actions specified by the proposed AD are intended to prevent failure of the hydraulic damper assemblies of the MLG, which could result in vibration damage and collapse of the MLG.

DATES: Comments must be received by August 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–268–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–268–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–268–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 5, 1996, the FAA issued AD 96–01–09, amendment 39–9485 (61 FR 2407, January 26, 1996), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, to require installation of hydraulic line restrictors in the main landing gear (MLG), and modification of the hydraulic damper assembly of the MLG. That action was prompted by reports of vibration occurring in the MLG during landing; in some cases, such vibration has led to the collapse of the MLG. The requirements of that AD are intended to prevent incidents of vibration in the MLG, which can adversely affect the integrity of the MLG.

On September 30, 1996, the FAA issued AD 96–21–01, amendment 39–9777 (61 FR 53042, October 10, 1996), applicable to certain McDonnell Douglas Model DC–9 series airplanes. That AD is similar to AD 96–01–09 in that it requires either replacement or modification of the hydraulic damper assembly. That action was prompted by reports indicating that insufficient damping of the hydraulic shimmy damper in the MLG can allow high torsional vibration to occur. The requirements of that AD are intended to prevent such vibration, which can damage the MLG assembly and lead to its collapse.

Actions Since Issuance of Previous Rule

Since the issuance of those AD's, the FAA has received reports indicating that, during overhaul, 30 percent of the latest configuration of the MLG hydraulic damper assemblies installed on McDonnell Douglas Model DC–9 series airplanes had failed or damaged spring retainers in the assemblies. Investigation revealed that the cause of the failed or damaged spring retainers may be insufficient material thickness of the spring retainers. Such failure of the spring retainers, if not corrected, could result in failure of the hydraulic damper assemblies of the MLG, which could result in vibration damage and collapse of the MLG.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–32–311, dated July 6, 1998, and McDonnell Douglas Alert Service Bulletin DC9–32A311, Revision 01, dated March 8, 1999, which describe procedures for modification of the hydraulic damper assemblies of the MLG, or replacement of the MLG hydraulic damper assemblies with modified and reidentified hydraulic damper assemblies. The modification involves removal and disassembly of the damper assembly, removal of the spring retainers in the damper assembly, and replacement with new spring retainers. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would supersede AD 96–01–09 and AD 96–21–01 to continue to require replacement or modification of the left and right MLG hydraulic damper assemblies and installation of hydraulic line restrictors in the MLG. This proposed AD would add an additional modification of the hydraulic damper assemblies of the MLG, or replacement of the MLG hydraulic damper assemblies with modified and reidentified hydraulic damper assemblies. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

There are approximately 2,015 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,145 airplanes of U.S. registry would be affected by this proposed AD.

The installation that is currently required by AD 96–01–09, and retained in this proposal, takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $928 per airplane. Based on these figures, the cost impact of the currently required installation on U.S. operators is estimated to be $1,168 per airplane.

The modification that is currently required by AD 96–01–09, and retained in this proposal, takes approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $4,000 per airplane. Based on these figures, the cost impact of the currently required modification on U.S. operators is estimated to be $4,360 per airplane.

The replacement that is currently required by AD 96–21–01, and retained in this proposal, takes approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $11,139 per airplane (two assemblies at $5,569 each). Based on these figures, the cost impact of the currently required replacement on U.S. operators is estimated to be $11,499 per airplane.

The modification that is currently required by AD 96–21–01, and retained in this proposal, takes approximately 11 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $2,907 per airplane. Based on these figures, the cost impact of the currently required modification on U.S. operators is estimated to be $3,567 per airplane.

The modification or replacement that is proposed in this AD action would take approximately 18 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $608 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $1,932,760, or $1,688 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9485 (61 FR 2407, January 26, 1996), and amendment 39–9777 (61 FR 53042, October 10, 1996), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 98–NM–268–AD. Supersedes AD 96–01–09, Amendment 39–9485; and AD 96–21–01, Amendment 39–9777.

Applicability: Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) series airplanes, and Model MD–88 airplanes; as listed in McDonnell Douglas Service Bulletins MD80–32–276 and MD80–32–278, both dated March 31, 1995; and Model DC–9–10, –20, –30, –40, and –50; and C–9 (military) series airplanes, as listed in McDonnell Douglas Service Bulletin DC9–32–289, dated March 7, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the hydraulic damper assemblies of the MLG, which could result in vibration damage and collapse of the MLG, accomplish the following:

Restatement of Requirements of AD 96–01–09

Modifications

(a) For airplanes listed in McDonnell Douglas MD–80 Service Bulletin MD80–32–276, dated March 31, 1995, that have not been previously modified (installation of brake line restrictors) in accordance with McDonnell Douglas MD–80 Service Bulletin MD80–32–246: Within 9 months after February 26, 1996 (the effective date of AD 96–01–09, amendment 39–9485), install filtered brake line restrictors in the MLG hydraulic brake system in accordance with McDonnell Douglas MD–80 Service Bulletin MD80–32–276, dated March 31, 1995, or Revision 1, dated October 17, 1995.

Note 2: Installation of filtered restrictors in accordance with the instructions specified in McDonnell Douglas MD–80 Alert Service Bulletin, MD80–A32–286, dated September 11, 1995, is considered acceptable for compliance with paragraph (a) of this AD.

(b) For airplanes listed in McDonnell Douglas MD–80 Service Bulletin MD80–32–278, dated March 31, 1995: Within 36 months after February 26, 1996, modify the hydraulic damper assembly (by removing shims, increasing bolt torque, and incorporating changes to increase the volume of fluid passing between the two damper chambers) in accordance with McDonnell Douglas MD–80 Service Bulletin MD80–32–278, dated March 31, 1995, or Revision 1, dated September 6, 1995.

Restatement of Requirements of AD 96–21–01

Replacement or Modification

(c) For airplanes listed in McDonnell Douglas Service Bulletin DC9–32–289, dated March 7, 1996: Within 24 months after November 14, 1996 (the effective date of AD 96–21–01, amendment 39–9777), either replace or modify the MLG hydraulic damper assembly, in accordance with the procedures specified as either "Option 1" or "Option 2," respectively, of the service bulletin.

New Requirements of this AD

Replacement or Modification

(d) For McDonnell Douglas Model DC–9 series airplanes, and C–9 (military) series airplanes (as listed in McDonnell Douglas Alert Service Bulletin DC9–32A311, Revision 01): Within 18 months after the effective date of this AD, accomplish the requirements specified in either paragraph (d)(1) or (d)(2) of this AD in accordance with McDonnell Douglas Service Bulletin DC9–32–311, dated July 6, 1998, or McDonnell Douglas Alert Service Bulletin DC9–32A311, Revision 01, dated March 8, 1999.

(1) Modify the left and right MLG hydraulic damper assemblies.

(2) Replace the left and right MLG hydraulic damper assemblies with modified and reidentified hydraulic damper assemblies having part number (P/N) SR09320057–7005, SR09320057–7007, SR09320057–7009, or 5923142–5513.

(e) For McDonnell Douglas Model DC–9–80 series airplanes, and MD–88 airplanes (as listed in McDonnell Douglas Alert Service Bulletin DC9–32A311, Revision 01): Within 3,000 flight cycles after incorporation of the latest configuration of the left and right MLG hydraulic damper assemblies, or within 9 months after the effective date of this AD, whichever occurs later; accomplish the requirements specified in either paragraph (d)(1) or (d)(2) of this AD in accordance with McDonnell Douglas Service Bulletin DC9–32–311, dated July 6, 1998, or McDonnell Douglas Alert Service Bulletin DC9–32A311, Revision 01, dated March 8, 1999.

(f) Paragraph (b) or (c) of this AD, as applicable, must be accomplished prior to or concurrent with the accomplishment of either paragraph (d) or (e) of this AD, as applicable.

Spares

(g) As of the effective date of this AD, no person shall install on any airplane a damper sub assembly having P/N SR09320057–9, SR09320057–17, or 5923142–5017; or a damper assembly having P/N SR09320057–7001, SR09320057–7003, or 5923142–5511, unless the part has been modified and reidentified in accordance with paragraph (d)(2) of this AD.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 15, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18627 Filed 7–22–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–91–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A310 series airplanes. This proposal would require repetitive high frequency eddy current inspections to detect fatigue cracking at the hole in the lower web of the inner and outer attachment fittings of the number 3 wing spoilers; and corrective actions, if necessary. This proposal also provides for an optional modification, which would terminate the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking and eventual failure of the attachment fittings of the number 3 wing spoilers.

DATES: Comments must be received by August 23, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99-NM-91-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule.

The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–91–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–91–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A310 series airplanes. The DGAC advises that it has received reports of fatigue cracking in the attachment fittings of the number 3 wing spoilers. The propagation of such cracks could result in the deformation of the wing rear spar web and associated Titanium doubler which, if left undetected, could lead to fuel leaks and loss of various hydraulic and electrical systems.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A310–57–2078, Revision 01, dated January 11, 1999, which describes procedures for repetitive high frequency eddy current inspections to detect fatigue cracking at the hole in the lower web of the inner and outer attachment fittings of the number 3 wing spoilers, and corrective actions, if necessary. (The corrective actions are contained in the service bulletin described below.) The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 98–483–271(B) R1, dated June 2, 1999, in order to assure the continued airworthiness of these airplanes in France.

Airbus also has issued Service Bulletin A310–75–2079, Revision 01, dated January 11, 1999, which describes procedures for performing a high frequency eddy current inspection to detect fatigue cracking of holes in the wing structure; reaming and cold working of those holes; and replacing the attachment fittings with new steel fittings.

Accomplishment of this replacement would eliminate the need for the repetitive inspections described in Airbus Service Bulletin A310–57–2078.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below. This proposed AD also would provide for optional terminating action for the repetitive inspections.

Operators should note that, in consonance with the findings of the DGAC, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. Additionally, the FAA has determined that, for certain instances where cracking is detected, the repair may be deferred for a specified period of time. In making these determinations, the FAA considers that, in the case of this AD, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect cracking before it represents a hazard to the airplane, and by accomplishing repairs within the specified time limits.

Differences Between the Proposed AD and Service Bulletins

The referenced service bulletins do not include any repair procedures for cracks found in the holes of the wing structure that is not part of the attachment fittings. This proposal would require that repair of such cracks be accomplished in accordance with a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC (or its delegated agent) would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 44 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,280, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take approximately 110 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour.

Required parts will cost approximately $13,280 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $19,880 per airplane.

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Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 99–NM–91–AD.

Applicability: Model A310 series airplanes, on which Airbus Industrie Modification 04117 or 04799 has been installed in production; except those airplanes on which Airbus Industrie Modification 11929 (reference Airbus Industrie Service Bulletin A310–57–2079, dated July 21, 1998, or Revision 01, dated January 11, 1999) has been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking and eventual failure of the attachment fittings of the number 3 wing spoilers, which, if left undetected, could lead to fuel leaks and loss of various hydraulic and electrical systems, accomplish the following:

Inspection

(a) At the applicable compliance time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, perform a high frequency eddy current inspection to detect fatigue cracking at the hole in the lower web of the inner and outer attachment fittings of the number 3 wing spoilers, in accordance with Airbus Industrie Service Bulletin A310–57–2078, Revision 01, dated January 11, 1999. Repeat the inspection thereafter at intervals not to exceed 1,200 flight cycles.

(1) For airplanes that have accumulated 14,200 or fewer total flight cycles as of the effective date of this AD, accomplish the inspection required by paragraph (a) of this AD prior to the accumulation 10,800 total flight cycles or within 800 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated more than 14,200 total flight cycles but fewer than 15,400 total flight cycles as of the effective date of this AD, accomplish the inspection required by paragraph (a) of this AD within 400 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 15,400 or more total flight cycles as of the effective date of this AD, accomplish the inspection required by paragraph (a) of this AD within 200 flight cycles after the effective date of this AD.

Note 2: Inspection of the attachment fittings of the number 3 wing spoilers accomplished prior to the effective date of this AD in accordance with the original issue of Airbus Industrie Service Bulletin A310–57–2078, dated July 21, 1998, is considered acceptable for compliance with the inspection required by paragraph (a) of this AD.

Replacement

(b) If any crack is found during any inspection required by paragraph (a) of this AD, at the applicable compliance time specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, perform a high frequency eddy current inspection for fatigue cracking of the holes in the wing structure; ream and cold work those holes; and replace the cracked aluminum wing spoiler number 3 actuator attachment fitting with a new steel fitting; in accordance with Airbus Industrie Service Bulletin A310–57–2079, Revision 01, dated January 11, 1999. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD for the replaced fitting.

(1) If the crack is less than 0.078 inches (2.0 mm) in length, inspect, ream, cold work, and replace within 100 flight cycles after accomplishment of the inspection.

(2) If the crack is 0.078 inches (2.0 mm) in length or greater and less than 0.118 inches (5.0 mm) in length, inspect, ream, cold work, and replace within 50 flight cycles after accomplishment of the inspection.

(3) If the crack is greater than 0.118 inches (5.0 mm) in length, inspect, ream, cold work, and replace prior to further flight.

Optional Terminating Modification

(c) Accomplishment of the high frequency eddy current inspection for fatigue cracking of the holes in the wing structure; reaming and cold working of those holes; and replacement of all aluminum wing spoiler number 3 actuator attachment fittings with new steel fittings; in accordance with Airbus Industrie Service Bulletin A310–57–2079, Revision 01, dated January 11, 1999; constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

Note 3: Replacement of aluminum attachment fittings of the number 3 wing spoilers with steel fittings accomplished prior to the effective date of this AD in accordance with the original issue of Airbus Industrie Service Bulletin A310–57–2079, dated July 21, 1998, is considered acceptable for compliance with the applicable fitting replacement specified in paragraphs (b) and (c) of this AD.

Wing Repair

(d) If any crack is found in the wing structure during any inspection required by paragraph (b) or specified in paragraph (c) of this AD, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Note 4: For paragraph (d) of this AD, the wing spoiler number 3 actuator attachment fittings are not considered part of the wing structure.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 6: The subject of this AD is addressed in French airworthiness directive 98–483–271(B) R1, dated June 2, 1999.

Issued in Renton, Washington, on July 19, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18861 Filed 7–22–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–43]

Proposed Modification of Class E airspace; Madison, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Madison, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 21, and a VHF Omnidirectional Range (VOR) SIAP to Rwy 21, have been developed for Dane County Regional Airport-Truax Field. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before September 9, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–43, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–43." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed of a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which described the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Madison, WI, to accommodate aircraft executing the proposed GPS Rwy 21 SIAP, and VOR Rwy 21 SIAP, at Dane County Regional Airport-Truax Field by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 Feet or more above the surface of the earth.

* * * * *

AGL WI E5 MADISON, WI [Revised]

Madison, Dane County Regional Airport—Truax Field, WI
(Lat. 43° 08′ 23″N., long. 89° 20′ 15″W)
Middleton, Morey Airport, WI
(Lat. 43° 06′ 51″N., long. 89° 31′ 51″W)

That airspace extending upward from 700 feet above the surface within an 8.8-mile radius of Dane County Regional Airport—Truax Field and within 2.6 miles either side of the 188° bearing from the airport extending from the 8.8-mile radius to 13.9 miles south of the airport, and within a 6.3-mile radius of Morey Airport.

* * * * *

Issued in Des Plaines, Illinois on July 8, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–18820 Filed 7–22–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–38]

Proposed Modification of Class E Airspace; Bryan, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Bryan, OH. A global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 07, and a GPS SIAP to Rwy 25, have been developed for Williams County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before August 16, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Council, AGL–7, Rules Docket No. 99–AGL 38, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air traffic Division, Airspace Branch, Federal Aviation Administration 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–38." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Bryan, OH, to accommodate aircraft executing the proposed GPS Rwy 07 SIAP, and GPS Rwy 25 SIAP, at Williams County Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory flexibility Act.

List of Subjects in 14 CFR Part 71

Airspsace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Bryan, OH [Revised]

Bryan, Williams County Airport, OH
(Lat. 41°28′03″N., long. 84°30′24″W)
Bryan NDB
(Lat. 41°28′47″N., long. 84°27′58″W)
Community Hospitals of Williams County, Inc., OH
Point in Space Coordinates
(Lat. 41°27′47″N., long. 84°33′28″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Williams County Airport and within 1.7 miles each side of the 068° bearing from the Bryan NDB, extending from the NDB to 7.0 miles east of the NDB, and within a 6.0-mile radius of the Point in Space serving Community Hospitals of Williams County, Inc., excluding the airspace within the Defiance, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on June 16, 1999.

David B. Johnson,

Acting Manger, Air Traffic Division.

[FR Doc. 99–18822 Filed 7–22–99; 8:45 am]

BILLING CODE 4910–13–M

PRESIDIO TRUST

36 CFR Part 1010

RIN 3212–AA02

Management of the Presidio: Environmental Quality

AGENCY: The Presidio Trust.

ACTION: Proposed rule.

SUMMARY: The Presidio Trust (Trust) was created by Congress in 1996 to manage a portion of the former U.S. Army base known as the Presidio, in San Francisco, California. Pursuant to law, administrative jurisdiction of approximately 80 percent of this property was transferred from the National Park Service (NPS), Department of the Interior (DOI), to the Trust as of July 1, 1998. By publication in the **Federal Register** on June 30, 1998 (63 FR 35694), the Trust adopted a final interim rule for interim management of the area under its administrative jurisdiction. This proposed rule would supplement those requirements with regulations implementing the National Environmental Policy Act of 1969 (NEPA) and would replace the Trust's interim procedures and guidelines for implementing NEPA, the availability of which was noticed in the **Federal Register** on September 14, 1998 (63 FR 49142). Public comment is invited on this proposed rule and will be considered by the Trust in promulgating a final rule.

DATES: Comments on this rulemaking must be received by September 21, 1999.

ADDRESSES: Written comments on this proposed rule must be sent to Karen A. Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052.

FOR FURTHER INFORMATION CONTACT: Karen A. Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052, Telephone: 415–561–5300.

SUPPLEMENTARY INFORMATION:

Background

The Presidio Trust is a wholly-owned government corporation created pursuant to Title I of the Omnibus Parks and Public Lands Act of 1996, Public Law 104–333, 110 Stat. 4097 (the Trust Act). Pursuant to section 103(b) of the Trust Act, the Secretary of the Interior transferred administrative jurisdiction to the Trust of all of Area B of the former Presidio Army Base, as shown on the map referenced in the statute, on July 1, 1998.

Section 104(j) of the Trust Act authorizes the Trust, "in consultation with the Secretary [of the U.S. Department of the Interior], to adopt and to enforce those rules and regulations that are applicable to the Golden Gate National Recreation Area and that may be necessary and appropriate to carry out its duties and responsibilities" under the Trust Act. Consistent with that authority as well as regulations of the Council on Environmental Quality (CEQ) at 40 CFR 1507.3(a), the Trust has adopted interim procedures and guidelines for implementing NEPA, in consultation with CEQ. These interim procedures and guidelines consist of those of the National Park Service, to the extent they do not conflict with the Presidio Trust Act or regulations of the Presidio Trust. Notice of the Trust's adoption of these interim procedures was published in the **Federal Register** on September 14, 1998 (63 FR 49142). These interim procedures and guidelines will remain in effect until the Trust adopts final procedures and guidelines, as proposed herein, which will replace the interim procedures and guidelines in their entirety.

Prior to proposing these regulations, the Trust consulted with CEQ pursuant to its regulations, 40 CFR 1507.3(a). The Trust has also consulted with officials of the Department of the Interior and the National Park Service designated by the Secretary of the Interior to facilitate such consultation. The Trust anticipates that consultation with these and other interested entities will continue during the comment period on these proposed regulations.

The Trust is providing for a public comment period of 60 days on these regulations. All comments, including names and addresses, when provided, will be placed in the public record and made available for public inspection and copying. The Trust will consider each comment received within this period and then publish final regulations in the **Federal Register**. That promulgation will include a discussion of any comments received and any amendments made to these proposed regulations as a result of the comments.

Foundations of This Rulemaking

In drafting these proposed regulations, the Trust primarily consulted the NEPA procedures and guidelines of the National Park Service, the Department of Housing and Urban Development (HUD), and the former Pennsylvania Avenue Development Corporation (PADC), a wholly-owned government corporation that had responsibility for administering projects and property along the corridor from the White House to the Capitol in Washington, D.C. Although parts of the

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NEPA procedures of each of these federal entities are incorporated into the Trust's proposed regulations, the Trust relied on the PADC regulations as the primary model for their structure and format. These regulations of the PADC are found at 36 CFR part 907.

The Trust chose the PADC regulations as its model for a number of reasons. First, there are many similarities between the Trust and the PADC. Both were created to manage a relatively large area of property of national interest in an urban locale. Like the PADC, the Trust is a wholly-owned federal government corporation and is expected to make use of private sector resources and approaches in meeting its goals on behalf of the public. Both the Trust and the PADC were designed to be directed by a Board of Directors including private individuals and public officials, and their statutory authorities are similar. Second, the Trust found the PADC regulations to be appropriately concise and flexible for an organization of the Trust's size that is involved to a great extent in planning, land use, construction, and leasing activities. Third, the PADC regulations were published in the **Federal Register** following notice, public comment, and CEQ review, and they have been formally promulgated as regulations in the Code of Federal Regulations. Finally, like the PADC at the time that its NEPA regulations were adopted, the Trust is in a position to refer to and build upon significant planning and environmental review work that has already been completed for the area under its administrative jurisdiction, undergone public review, and been approved by appropriate agencies. This work has been documented in the Final General Management Plan Amendment (July 1994) for the Presidio of San Francisco (the "Plan"), prepared by the NPS, and in the Final Environmental Impact Statement (July 1994) (the "Plan EIS") prepared in conjunction with the Plan by the NPS. The Trust is required to exercise many of its authorities in accordance with the general objectives of the General Management Plan Amendment. Trust Act, section 104(a).

Although the Trust did not rely on them as a model for the structure of its NEPA regulations, the Trust also looked both to the NEPA regulations of the Department of Housing and Urban Development (HUD) and to the NPS procedures and guidelines to provide substantive content in certain areas, particularly concerning categorical exclusions from further NEPA review. The current HUD regulations are found at 24 CFR part 50 and contain a categorical exclusion that is potentially applicable to the anticipated activities of the Trust with respect to the residential structures in the area under its administrative jurisdiction. The current NPS procedures and guidelines are found in "NPS–12: National Environmental Policy Act Guidelines," which was originally adopted in 1982 and, while advisory, serves as a permanent directive to the NPS. NPS is in the process of developing a Director's Order and NPS Handbook 12 to replace the 1982 NPS–12. A draft of the handbook is currently available on the Internet at http://www.nps.gov/planning/nepa/!nps12.pdf. It is to this draft that the Trust has referred in drafting its proposed NEPA regulations. Although the scope and structure of this 129-page draft is beyond what is necessary for the Trust's purposes, and although it interweaves guidance on certain authorities that are inapplicable to the Trust, a number of categorical exclusions identified in the NPS draft are potentially applicable to the anticipated activities of the Trust and therefore have been incorporated into these proposed regulations.

Section-by-Section Analysis

Although these regulations adopt the general structure of the PADC regulations, they have been reorganized in order to more clearly describe the usual order in which NEPA issues are considered. Specifically, the PADC regulations first describe "actions that normally require an EIS," then "actions that do not require an EA or an EIS," and then "actions that normally require an EA." In the normal course, the responsible agency official first determines whether an action is one that normally does not require either an EA or an EIS, i.e., one that is categorically excluded. If it is not such an action, the responsible agency official then considers whether the action is one that normally requires an EIS, and if so, an EIS is usually prepared. If the action is not one that is categorically excluded and also not one that normally requires an EIS, then an EA is usually prepared, following which a determination is made as to whether an EIS should be prepared or a finding of no significant impact (FONSI) should be made. These regulations have been reordered to parallel this customary course of decision-making.

Section 1010.1 Policy

This section is adapted almost verbatim from § 907.1 of this title. Paragraph (d) of this section has been revised slightly to recognize that the Trust has a broader mission than the PADC.

Section 1010.2 Purpose

This section is adapted almost verbatim from § 907.2 of this title and has been revised simply to be applicable to the Trust and to provide a precise reference to the CEQ regulations implementing NEPA.

Section 1010.3 Definitions

In modeling these proposed regulations on the existing regulations of the NPS and DOI, the Trust consistently changed a variety of terms used in the existing regulations as appropriate to the Trust and its separate mission, organization and statutory authority. First, references to the "Corporation" were changed to the "Trust." Second, the term "development area" was replaced by "Presidio Trust Area," as defined in § 1001.4 of the Trust's proposed regulations. Third, the definitions of "Plan" and "Final EIS" were changed to reflect the full titles of the management plan (referred to herein as the "Plan") and environmental impact statement (referred to herein as the "Plan EIS") that apply to the Presidio Trust Area as opposed to the PADC area. (Although these documents were prepared by the NPS, the Trust is a successor in interest to the NPS with respect to compliance with NEPA and other environmental compliance statutes. Trust Act, section 104(c).) Fourth, definitions for the authorizing statute and governing body are unnecessary in this section, since they already appear in § 1001.4 of this chapter. Fifth, other definitions were eliminated because they appear infrequently in the body of the regulations.

More substantive changes were made to the definitions as follows:

—The term "Private Developer" was changed to "project applicant," since projects that may be proposed for the Presidio Trust Area are likely to encompass a wider variety of work than simply development by private parties. The definition was also expanded to include partnerships and corporations, in order to make clear that the form of organization is immaterial to its status as a project applicant.

—The acronyms "EIS" for environmental impact statement and "EA" for environmental assessment were used in order to make the regulations more concise and easier to read. These acronyms are in common usage today among agencies, public interest groups, courts, and the media.

—The definition of "decision-maker" was shortened to simply "the Board or its designee" in order to be consistent with other Trust regulations and practices.

Section 1010.4 Responsible Trust Official

This section combines the provisions of § § 907.4 and 907.5 of this title in order to keep the regulations concise. The provisions of § 907.4 of this title are included in paragraph (a), and the provisions of § 907.5 are included in paragraph (b). Minor modifications to these provisions include the following:

—A sentence has been added at the end of paragraph (a) to clarify that ultimate responsibility and authority for implementation of NEPA with respect to the Trust's activities continues to rest with the Executive Director and the Board of Directors. Under current Trust practice, the Executive Director is entitled to overrule or alter decisions of any Trust employee, and the Board is entitled to overrule or alter decisions of the Executive Director.

—In paragraph (b)(6), the term "with the assistance of the Office of the General Counsel" has been changed to "in consultation with the General Counsel" to reflect that the responsible Trust official should cooperatively consult with and seek the advice of the General Counsel and not simply be provided with the General Counsel's assistance.

—In paragraph (b)(8), the phrase concerning submittal of EIS's with proposed legislation has been removed since this issue is dealt with elsewhere in the regulations.

—In paragraph (b)(10), the reference to the Paperwork Reduction Act has been removed because it is unnecessary. The Trust intends to fulfill the requirements of this law, but need not restate it in the Code of Federal Regulations.

—A provision has been added, at paragraph (b)(12), allowing the responsible Trust official to designate other Trust employees to execute these duties under his or her supervision. This is necessary for the sake of administrative flexibility.

Section 1010.5 Major Decision Points

This section is based on § 907.6 of this title but has been revised for clarity. Most significantly, paragraph (b)(2) now makes clear that (1) A determination on whether to require an EA or EIS must be made prior to moving beyond the conceptual or preliminary study stage if the proposed action or project is not categorically excluded, and (2) A determination on whether to require an EIS can be made either with or without the completion of an EA.

Section 1010.6 Determination of Requirement for EA or EIS

This section is adapted from § 907.7 of this title and has been revised to reflect the usual order in which environmental review determinations are made, as discussed above. When appropriate, the Trust anticipates that this determination will be documented and made available to the public.

Section 1010.7 Actions That Do Not Require an EA or an EIS

This section is adapted from § 907.10 of this title and Appendix A to part 907 of this title. Paragraph (a) restates the general rule provided in the first paragraph of § 907.10. Paragraph (b) restates the criteria set by § 907.10(a). For the sake of clarity and ease of use, paragraph (c) provides the list of categorical exclusions without reference to an appendix. In accordance with 40 CFR 1508.4, paragraph (d) provides criteria for determining that an otherwise applicable categorical exclusion should not be utilized because of extraordinary circumstances.

The first criterion in paragraph (b) has been drafted in light of section 104(c) of the Trust Act, which provides that the Trust is considered a successor in interest to the National Park Service with respect to compliance with the National Environmental Policy Act, 42 U.S.C. sec. 4321 *et seq.* and other environmental compliance statutes. In preparation for the transfer of the Presidio from the Army, the NPS undertook an extensive planning effort, which culminated in the Plan and the Plan EIS. The Trust Act (section 104(a)) requires the Trust to use its key authorities in accordance with the general objectives of the Plan, among other things. The Trust therefore anticipates that the environmental effects of many of the actions it considers will have already been analyzed in the Plan EIS. Similarly, the Trust anticipates that, in accordance with 1010.9(c) and guidance provided by CEQ, proposed actions whose environmental effects may not have already been adequately analyzed in the Plan EIS will be considered in a NEPA document that will tier off of the Plan EIS. The criterion in the PADC regulations concerning estimated cost of the project has been removed in recognition of the fact that even inexpensive actions may have the potential for significant environmental impacts. In its place are inserted two additional criteria (at (b)(2) and (b)(4)) concerning whether additional analysis is necessary.

Most of the categorical exclusions listed in paragraph (c) were derived from the PADC regulations and the draft NPS–12 guidelines. The PADC regulations contain ten categorical exclusions (identified herein as PADC–i through PADC–x); the draft NPS–12 guidelines contain 17 categorical exclusions for which no formal documentation is necessary (identified herein as letters NPS–A through NPS–Q in section 3.3 of the draft NPS–12 guidelines) and 54 categorical exclusions for which minimal documentation is necessary (identified herein as NPS–A1 through NPS–A10, NPS–B1 through NPS–B8, NPS–C1 through NPS–C19, NPS–D1 through NPS–D4, NPS–E1 through NPS–E7, and NPS–F1 through NPS–F6 of section 3.4 of the draft NPS–12 guidelines). In addition, because the Trust has administrative jurisdiction of a variety of residential housing units, one of the categorical exclusions was derived from the NEPA regulations of the Department of Housing and Urban Development (HUD), found at 24 CFR 50.20. These HUD regulations contain six categorical exclusions (identified herein as HUD–1 through HUD–6).

These categorical exclusions of other agencies were combined and reorganized in order to read more clearly and apply more precisely to the types of actions that are likely to be undertaken in the Presidio Trust Area without significant environmental effects. The introductory paragraph also clarifies that these exclusions apply regardless of whether the Trust is undertaking the action, is participating in the action with an outside entity or entities, or is approving the action to be undertaken by an outside entity or entities. The following chart identifies the source of and discusses each categorical exclusion included in these proposed regulations:

Proposed categorical exclusion	Source(s) and discussion
(1) Personnel actions and investigations and personal services contracts.	This categorical exclusion was taken directly from NPS–A. In addition, PADC–i covers "personnel actions."

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Proposed categorical exclusion	Source(s) and discussion
(2) Administrative actions and operations directly related to the operation of the Trust (e.g., purchase of furnishings, services, and space acquisition or conversion for the Trust offices or maintenance facilities).	This categorical exclusion was taken from PADC–ii, adapted to the Trust, and modified to included maintenance facilities.
(3) Internal organizational changes and facility and office expansions, reductions, and closings.	This categorical exclusion was taken from NPS–B and modified to include expansions of the Trust's facilities and offices.
(4) Routine financial transactions, including such things as salaries and expenses, procurement, guarantees, financial assistance, income transfers, audits, fees, bonds and royalties.	This categorical exclusion was taken from NPS–C and modified to include procurement of all sorts and not simply procurement contracts, since the Trust by law operates under different procurement requirements than does the NPS.
(5) Management, formulation, allocation, transfer and reprogramming of the Trust's budget.	This categorical exclusion was taken from NPS–G.
(6) Routine and continuing government business, including such things as supervision, administration, operations, maintenance, and replacement activities having limited context and intensity (limited size and magnitude or short-term effects).	This categorical exclusion was taken directly from NPS–F.
(7) Preparation, issuance, and submittal of publications and routine reports.	This categorical exclusion combines NPS–L and NPS–N. Although NPS–N applies only to routine reports required by law or regulation, that limitation has been dropped here in recognition of the fact that the Trust will likely prepare routine reports from time to time at its own initiative, but that will nevertheless have no significant environmental impacts.
(8) Activities which are educational, informational, or advisory (including interpretive programs), or otherwise in consultation with or providing technical assistance to other agencies, public and private entities, visitors, individuals, or the general public.	This categorical exclusion combines the categorical exclusions of NPS–J, NPS–M, NPS–Q, and NPS–B3.
(9) Legislative proposals of an administrative or technical nature, including such things as changes in authorizations for appropriations or financing authority, minor boundary changes and land transactions; or having primarily economic, social, individual or institutional effects, as well as and comments and reports on legislative proposals.	This categorical exclusion was taken almost verbatim from NPS–H.
(10) Promulgation of regulations and requirements, or amendments thereto, provided such actions do not: (i) increase public use to the extent of compromising the nature and character of the area or causing physical damage to it; (ii) introduce non-compatible uses which might compromise the nature and characteristics of the area or cause physical damage to it; (iii) conflict with adjacent ownerships or land uses; or (iv) cause a nuisance to adjacent owners or occupants.	This categorical exclusion was taken from NPS–A8 and modified to make clear that it covers both promulgation of new regulations and requirements and modification of existing regulations and requirements.
(11) Proposal, adoption, revision, and termination of policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful environmental analysis.	This categorical exclusion was taken from NPS–I. The words "proposal, adoption, revision, and termination" were included to describe actions related to the items listed in NPS–I. In addition, this categorical exclusion does not include the restriction in NPS–I concerning such policies, etc., being subject to later review under NEPA, either collectively or on a case-by-case basis. If such policies, etc., do have environmental effects that lend themselves to meaningful environmental analysis in the future, then those effects will be reviewed under NEPA at that time.
(12) Preparation, approval, coordination, and implementation of plans, including priorities, justifications, and strategies, for non-manipulative and non-destructive research, monitoring, inventorying, and information gathering.	This categorical exclusion is derived primarily from NPS–B4 and includes language from NPS–B5 and NPS–E6. In addition, the terms "preparation, approval, coordination, and implementation" were added in order to cover the type of items listed in NPS–B5 (i.e., "statements for management, outlines of planning requirements, and agreements between NPS offices for plans and studies"). The term "non-destructive" was added from NPS–E6.
(13) Identification, nomination, certification, and determination of eligibility of properties for listing in the National Register of Historic Places and the National Historic Landmark and National Natural Landmark Programs.	This categorical exclusion is derived from NPS–E5. The term "biosphere reserves" was removed because it is unlikely to be applicable in light of the fact that the Golden Gate National Recreation Area is already a part of a biosphere reserve. Similarly, the term "development of standards" was removed because the Presidio Trust does not anticipate engaging in such activities.
(14) Minor or temporary changes in amounts or types of visitor use for the purpose of ensuring visitor safety or resource protection, minor changes in programs or regulations pertaining to visitor activities, and approval of permits for special events or public assemblies and meetings, as well as leases for use of real property for no more than three months, provided such events, assemblies, meetings and leases entail only short-term or readily mitigated environmental disturbance.	This categorical exclusion combines NPS–D1, NPS–D2, and NPS–D3 into a single item. It adds the concept of "temporary" changes in amounts or types of visitor use. It also includes within its ambit short-term leases of no longer than three months, provided that such leases entail only short-term or readily mitigated environmental disturbance.
(15) Designation of environmental study areas and research areas, including those closed temporarily or permanently to the public, provided there is no environmental impact.	This categorical exclusion is derived from NPS–E7.

Proposed categorical exclusion	Source(s) and discussion
(16) Land and boundary surveys and minor boundary adjustments or land acquisitions or exchanges resulting in no significant change in land use.	This categorical exclusion combines NPS–K, NPS–A2, and NPS–C2.
(17) Archaeological surveys and permits involving only surface collection or small-scale test excavations.	This categorical exclusion is derived from NPS–E1.
(18) Promulgation of development guidelines that are in accordance with the general objectives of the Plan as covered by the Plan EIS.	This categorical exclusion was taken from PADC–v. The term "development general and square guidelines" was changed to simply "development guidelines" in light of the non-urban nature of much of the Presidio Trust Area.
(19) Implementation of a proposal or plan which was covered by a previously prepared EA and/or EIS or categorically excluded, or changes to such a proposal or plan when such changes would cause no environmental impact.	This categorical exclusion combines PADC–x, NPS–A1, and NPS–B1. Although PADC–x was restricted to "development proposal[s] identical to the requirements of the" PADC's development plan, a proposal need not be absolutely "identical" to a previously considered proposal in order to be covered by the EA and/or EIS for a very similar proposal.
(20) Contracts, work authorizations, or procurement actions directly related to and implementing proposals, programs, and master agreements for which an EA and/or an EIS have been prepared, or which were categorically excluded, or which are related to administrative operation of the Trust.	This categorical exclusion was taken from PADC–vi. The words "or which were categorically excluded" have been added to make clear that the criteria here is that the proposal, program, or master agreement have gone through the NEPA process to the extent that it was required.
(21) The leasing, permitting, sale, or financing of, or granting of non-fee interests regarding, real or personal property in the Presidio Trust Area.	This categorical exclusion is based on PADC–vii, which uses the term "[a]cquisition/disposal by lease, easement, or sale of real and personal property owned by the Corporation." " " The term "permitting" was added to recognize this form of legal agreement, which has been used by the NPS in the past and may continue to be used by the Trust. The PADC–vii exclusion also refers to such actions "implementing a prior decision of the Board of Directors." The Trust anticipates that all such actions will be implementing prior decisions of or direction provided by the Boafd, and therefore has eliminated this requirement as superfluous. The Trust is barred from selling fee interests in real property under its administrative jurisdiction, and the wording of this categorical exclusion is in no way intended to add to the Trust's authority under law.
(22) Extension, reissuance, renewal, renegotiation, modification, conversion in form, or termination of agreements for use of real property (including but not limited to leases, permits, licenses, concession contracts, use and occupancy agreements, easements, and rights-of-way) that were in force as of the date the Trust received administrative jurisdiction of the underlying real property, so long as such agreements were previously subject to NEPA, do not involve new construction or new or substantially greater environmental impacts, and new information of substantial importance or changed circumstances relevant to environmental conditions do not come into play.	This categorical exclusion combines NPS–A3, NPS–A4, NPS–A5, and NPS–A6. The term "conversion in form" is intended to cover the situation in NPS–A4 regarding "conversion of existing permits to rights-of-way" as well as other conversions in form (e.g., from a concession contract to a lease). The Trust has inherited a variety of agreements from the NPS in a variety of forms and may wish to standardize these through such conversion.
(23) Issuance of permits relating to minor development activities (sign approval, interior modifications, minor exterior changes to facade, etc.) that are consistent with the Secretary of the Interior's "Standards for the Treatment of Historic Properties" at 36 CFR Part 68, as applicable.	This categorical exclusion comes from PADC–iv, which was modified (1) to cover "issuance of permits," which entails a decision, rather than "review of permit applications," and (2) to add a requirement of consistency with the Secretary's Standards as they may apply to the Presidio, since the Presidio is a National Historic Landmark. The restriction to the PADC "Development Area" was also removed as it was relevant only to the PADC.
(24) Rehabilitation, modification, or improvement of historic properties in conformance with the Secretary of the Interior's "Standards for the Treatment of Historic Properties" at 36 CFR Part 68.	This categorical exclusion is intended to cover work on structures and other properties that will not have the potential for significant environmental effect. Work undertaken in conformance with similar standards at 36 CFR 67.7 is considered not to harm historic structures under regulations of the Advisory Council on Historic Preservation at 36 CFR 800.9(c)(2).
(25) Rehabilitation, modification, or improvement of non-historic properties when the following conditions are met:. (i) In the case of residential buildings, the unit density is not changed more than 20 percent (ii) The project does not involve changes in land use (from non-residential to residential or from residential to non-residential); and (iii) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation	This categorical exclusion is taken from HUD–2, but has been restricted to apply only to non-historic structures and other properties, since historic structures and other properties are covered by the preceding categorical exclusion.
(26) Removal, reduction, or restraint of resident individuals of species that are not threatened or endangered which pose dangers to visitors, residents, or neighbors or immediate threats to resources of the Presidio Trust Area.	This categorical exclusion is derived from NPS–E3 and has been modified to cover dangers to residents and neighbors of the Presidio Trust Area and also to cover reduction (e.g., trimming of vegetation) and restraint (e.g., impoundment of animals).

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Proposed categorical exclusion	Source(s) and discussion
(27) Removal of non-historic materials and structures in order to restore natural conditions when such removal has no potential for adverse environmental impacts, including impacts to cultural landscapes or archaeological resources.	This categorical exclusion comes directly from NPS–E4.
(28) Installation, construction, removal, permitting, maintenance, replacement-in-kind, relocation, operation, or modification of signs, displays, kiosks, traffic control devices, pedestrian and traffic safety features, trails, trailside camping zones, fencing, landscaping, sanitary facilities, comfort stations, utility facilities, parking lots, and other minor structures and facilities.	This categorical exclusion combines NPS–C5, NPS–C8, NPS–C9, NPS–C10; NPS–C11; NPS–C12, NPS–C17, NPS–C18, NPS–C19, and NPS–D4, which cover such minor structures. The restriction in NPS–C17 and NPS–C18 on "areas showing clear evidence of recent human disturbance" has been removed as unnecessary in light of the centuries of human occupation of the Presidio Trust Area and the developed state of much of the Presidio Trust Area. Likewise, the restriction in NPS–C19 on construction of fences "posing no effect on wildlife migrations" has also been removed in light of the lack of existing wildlife migration in the Presidio Trust Area that would be hindered by fences.
(29) Routine maintenance, property management, resource management, and research or educational activities with no potential for environmental impact or non-conformance with the Secretary of the Interior's "Standards for the Treatment of Historic Properties" at 36 CFR Part 68, as applicable.	This categorical exclusion comes primarily from NPS–O. PADC–iii also covers "property management," and that term was added here to reflect the breadth of the Trust's authorities in the Presidio Trust Area. Also added was the reference to the Secretary's Standards, in light of the Presidio's status as a National Historic Landmark.
(30) Issuance of rights-of-way for and installation, maintenance, or repair of overhead or underground utility lines (e.g., power, water, irrigation, telecommunications, etc.) not involving placement of poles or towers outside of existing traffic and utility corridors and not involving vegetation clearance (other than for placement of poles), and not resulting in visual intrusion in the Presidio Trust Area or non-conformance with the Secretary's "Standards for the Treatment of Historic Properties" at 36 CFR Part 68, as applicable; and.	This categorical exclusion combines NPS–C13, NPS–C14, NPS–C15, and NPS–C16 concerning utilities and utility rights-of-way. The restriction in NPS–C16 on "areas showing clear evidence of recent human disturbance" has been modified to require conformance with the Secretary's Standards, in light of the developed state of much of the Presidio Trust Area.
(31) Experimental testing of no longer than 180 days of mass transit systems, and changes in operation of existing systems with no potential for adverse environmental impact.	This categorical exclusion is derived from NPS–C7. The limitation in NPS–C7 is for "testing of short duration (no more than one season)," but this categorical exclusion sets a more precise (and longer) limit of 180 days, both for the sake of clarity and for the sake of necessary and appropriate testing under real-world conditions in an area that interacts with mass transit systems of neighboring jurisdictions.

The provisions of § 907.10(c) of this title concerning changes to the list of categorical exclusions have not been included in these regulations. Nevertheless, the Trust anticipates that this list of categorical exclusions will be reviewed and refined as additional categories are identified and as experience is gained in the categorical exclusion process. Changes to this list—like any changes to the wording of these proposed regulations—will be made only after consultation with CEQ and public notice and opportunity for comment.

Section 1010.8 Actions That Normally Require an EIS

This section is adapted from § 907.8 of this title and has generally been revised for clarity and simplicity. In particular, the specific criteria in paragraph (b) have been replaced by a reference to the criteria enumerated in the CEQ regulations at 40 CFR 1508.27.

In paragraph (c), the reference to amendments to the PADC Plan in the PADC regulations has not been included. Paragraphs (c)(1) and (2) are derived from § 907.8(b)(3) and (4) of this title, respectively. Paragraph (c)(2) has been revised to remove any implication that the Trust might approve, fund, or construct a building that is not in accordance with the general objectives of the Plan, since such action would not be authorized by the Trust Act. Paragraph (c)(3) has been added.

Section 1010.9 Preparation of an EIS

This section is adapted from § 907.9 of this title. The second sentence of paragraph (a), while not included in the PADC regulations, is specifically authorized by 40 CFR 1507.3(e), and the Trust believes it is necessary to include this provision in order to provide for circumstances in which there may be a lengthy delay between the decision to prepare an EIS and the actual preparation of the EIS.

In paragraph (b), the Trust believes the sentence referencing the CEQ regulations is unnecessary and so has omitted it.

Paragraph (c) is likely to be invoked by the Trust in preparing NEPA documents that tier off of the Plan EIS for proposed actions that are in accordance with the Plan's general objectives, but whose environmental effects may not have been adequately analyzed in the Plan EIS.

Section 1010.10 Actions That Normally Require an EA

This section is adapted from § 907.11 of this title. The most significant changes were made to the categories of action in paragraph (c), which are based on § 907.11(b) of this title. The first item in this list—which is derived from § 907.11(b)(2) of this title—has been modified slightly to use terms more applicable to the Presidio Trust Area. As noted in the introductory phrase of § 1010.10(c), regulations that would be categorically excluded under § 1010.7(c)(11) are not required to undergo an EA. The second item has been revised to use a broader term than "development proposals"—the term used in § 907.11(b)(3) of this title—for proposals that may be submitted by project applicants. The third item on the list is derived from § 907.11(b)(6) and revised to cover more broadly all significant alterations to public access. The items listed in § § 907.11(b)(1), (4), (5), (7), and (8) of this title have not been included, as they are either dealt with more precisely under the section on categorical exclusions or they are not applicable to the Presidio Trust Area.

Section 1010.11 Preparation of an EA

The first three paragraphs of this section are adapted almost verbatim from § 907.12 of this title. Paragraph (b) has been shortened by not listing all areas possibly covered by an EA, but instead noting that only those resources that are relevant need to be addressed in the EA. Paragraph (d) has been added to allow the use of "mitigated FONSIs" in which the original proposal is revised so as to avoid impacts that would otherwise require the preparation of an EIS.

Section 1010.12 Public Involvement

This section is based on § 907.13 of this title, but has been expanded to specify specific means by which the Trust will provide for public involvement.

Section 1010.13 Trust Decision-making Procedures

This section is based on § 907.14 of this title.

Section 1010.14 Review of Proposals by Project Applicants

This section is adapted from § 907.15 of this title. Throughout these regulations, care has been taken to revise the PADC regulations to clarify that, consistent with CEQ regulations and this § 1010.14, in certain circumstances the Trust is not the entity that will be performing the actual work to prepare the initial EA or EIS. For example, in § 1010.8(a) (based on § 907.8 of this title), the phrase "PADC shall perform or have performed an environmental assessment" has been changed to read "the Trust shall require the preparation of an EA." Similarly, the phrase "PADC will immediately begin to prepare or have prepared the environmental impact statement" has been changed to read "the Trust will prepare or direct the preparation of an EIS * * * ."

In forming the Trust, Congress required that the Trust become financially self-sufficient within fifteen complete fiscal years. Trust Act section 105(b). If the Trust does not achieve this goal, the property under its administrative jurisdiction will be transferred to the General Services Administration for disposal in accordance with the Defense Authorization Act of 1990. Trust Act section 104(o). As a result, it is necessary for the Trust to recover from project applicants, to the greatest appropriate extent, the costs of environmental review of their proposals.

Under the CEQ Regulations at 40 CFR 1506.5(b), the Trust may require that a project applicant complete the EA (as opposed to the EIS) regarding its project on behalf of the Trust, so long as the Trust makes its own evaluation of the environmental issues and takes responsibility for the scope and content of the final EA. This provision has been incorporated herein at paragraph (d).

The CEQ Regulations contemplate that an EIS, in contrast to an EA, will be completed by the reviewing agency or its contractor, and not by the project applicant. Such an undertaking can require significant resources and cost in the tens or hundreds of thousands of dollars. Given the Trust's statutory obligation to become financially self-sufficient, the Trust believes it is appropriate in most circumstances to require the project applicant to cover these substantial costs. For similar reasons, the Trust likewise believes it is appropriate in most circumstances to require the project applicant to cover the costs of any applicable historic preservation review, including review under section 106 of the National Historic Preservation Act.

The Trust is mindful of the need—as expressed in the CEQ Regulations—for the EIS to be prepared independently by either the Trust or a contractor to the Trust with no financial or other interest in approval of the project. In light of the Trust's mandate to become self-sufficient, the Trust therefore has the option of recovering the costs of preparing EIS's either in the form of higher rents or other charges to the project applicant or its tenants, or in the form of an upfront charge on the project applicant. The Trust has rejected the former option, since it places the Trust in the position of not being able to recover its environmental review costs from an applicant whose project is ultimately rejected (e.g., for reasons identified in the environmental review process), and therefore in the position of potentially being viewed as having an interest in a less searching or independent environmental review that would encourage the ultimate approval of the project and recoupment of the Trust's environmental review costs. This would be contrary to the spirit of NEPA and the Trust Act.

As a result, the Trust has opted to charge most project applicants an upfront, non-refundable fee sufficient to cover the anticipated costs of project review in the EIS stage. Paragraph (e) has been added in order to specify procedures for the Trust to cover these costs. Should an amendment or supplement to the EIS be required, the Trust may require an additional non-refundable fee to cover some or all of the anticipated costs of this work. In order to provide greater certainty for project applicants, encourage careful estimation and control of costs, and avoid any appearance that the Trust is acting at the direction of a project applicant because the applicant is making regular payments to the Trust during the review process, the Trust alone will bear the risk that its estimate of anticipated costs proves too low as a result of unforeseen circumstances (other than the need to prepare an amendment or supplement to the EIS). Likewise, in order to avoid any potential pressure for the Trust to cut corners in its environmental review, no portion of the fee will be refundable. In this way, appropriate resources will be devoted to preparation of EIS's, without threatening the Trust's goal of self-sufficiency and without jeopardizing the independence of the environmental review process.

Furthermore, section 1010.14(e) also provides that fees paid by project applicants will also include costs associated with review under other applicable laws. Key among such other applicable laws is Section 106 of the National Historic Preservation Act. Although section 1010.14(e) is not applicable unless an EIS is to be prepared, the Trust intends to require applicants to bear the full cost of reviewing proposals under Section 106 of the National Historic Preservation Act, while the Trust will remain responsible for the final decision on such proposals, consistent with regulations of the Advisory Council on Historic Preservation at 36 CFR 800.1(c)(1)(i).

Because the Trust believes that in many circumstances it will be appropriate to require project applicants to prepare EA's and to cover the anticipated costs of preparing EIS's on their projects, the Trust has considered the potential effects that such requirements might have on the number of potential applicants for projects in the Presidio Trust Area. The Trust has concluded that such requirements will be financially acceptable in the marketplace among project applicants. First, the Presidio Trust Area is a remarkably desirable location with features that are unique, both in the Bay Area and elsewhere in the country. Second, project applicants under the California state counterpart to NEPA, the California Environmental Quality Act, are almost uniformly required by relevant state and local agencies in proximity to the Presidio to prepare the relevant environmental documentation at their own expense (and at the risk that the project will not be approved in an economically viable form). Third, the

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Trust anticipates that the economics of most projects that may be proposed will support an upfront investment for environmental review. In any event, these proposed regulations would provide the Trust with the discretion not to apply these requirements with respect to certain projects or applicants where such a waiver would be appropriate.

Section 1010.15 Actions Where Lead Agency Designation is Necessary

This section is adapted from § 907.16 of this title. As a practical matter, the Trust anticipates that NPS will be its most likely partner for consultation purposes, but the regulations allow for consultation with other agencies (such as the U.S. Fish and Wildlife Service) where appropriate.

Regulatory Impact

This proposed rulemaking will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, prices, the environment, public health or safety, or State or local governments. This proposed rule will not interfere with an action taken or planned by another agency or raise new legal or policy issues. In short, little or no effect on the national economy will result from adoption of this proposed rule. Because this proposed rule is not "economically significant," it is not subject to review by the Office of Management and Budget under Executive Order 12866. Furthermore, this proposed rule is not a "major rule" under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 *et seq.*

The Trust has determined and certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this proposed rule will not have a significant economic effect on a substantial number of small entities.

The Trust has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

Environmental Impact

The Presidio Trust has prepared an Environmental Assessment (EA) in connection with this proposed rule. The EA determined that this proposed rule will not have a significant effect on the quality of the human environment because it is neither intended nor expected to change the physical status quo of the Presidio in any significant manner.

As a result, the Trust has issued a Finding of No Significant Impact (FONSI) concerning these final interim regulations and has therefore not prepared an Environmental Impact Statement concerning this proposed action. The EA and the FONSI were prepared in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA), and regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA, 40 CFR parts 1500–1508.

Both the EA and the FONSI are available for public inspection at the offices of the Presidio Trust, 34 Graham Street, The Presidio, San Francisco, CA 94129, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Other Applicable Authorities

The Presidio Trust has drafted and reviewed these proposed regulations in light of Executive Order 12988 and has determined that they meet the applicable standards provided in secs. 3(a) and (b) of that order.

List of Subjects in 36 CFR Part 1010

Administrative practice and procedure, Environmental impact statements, National parks, Public lands, Recreation and recreation areas.

Dated: July 16, 1999.

Karen A. Cook,

General Counsel.

Accordingly, the Presidio Trust proposes to add 36 CFR Part 1010, as set forth below:

CHAPTER X—PRESIDIO TRUST

Part
1010 Environmental quality

PART 1010—ENVIRONMENTAL QUALITY

Sec.
1010.1 Policy.
1010.2 Purpose.
1010.3 Definitions.
1010.4 Responsible Trust official.
1010.5 Major decision points.
1010.6 Determination of requirement for EA or EIS.
1010.7 Actions that do not require an EA or EIS.
1010.8 Actions that normally require an EIS.
1010.9 Preparation of an EIS.
1010.10 Actions that normally require an EA.
1010.11 Preparation of an EA.
1010.12 Public involvement.
1010.13 Trust decision-making procedures.
1010.14 Review of proposals by project applicants.
1010.15 Actions where lead agency designation is necessary.
1010.16 Actions to encourage agency cooperation early in the NEPA process.
1010.17 Actions to eliminate duplication with State and local procedures.

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. sec. 460bb note); 42 U.S.C. sec. 4321 et seq.; 40 CFR 1507.3.

§ 1010.1 Policy.

The Presidio Trust's policy is to:

(a) Use all practical means, consistent with the Trust's statutory authority, available resources, and national policy, to protect and enhance the quality of the human environment;

(b) Ensure that environmental factors and concerns are given appropriate consideration in decisions and actions by the Trust;

(c) Use systematic and timely approaches which will ensure the integrated use of the natural and social sciences and environmental design arts in planning and decision-making which may have an impact on the human environment;

(d) Develop and utilize ecological, cultural, and other environmental information in the management of the Presidio Trust Area pursuant to the Trust Act;

(e) Invite the cooperation and encourage the participation, where appropriate, of Federal, State, and local authorities and the public in Trust planning and decision-making processes that affect the quality of the human environment; and

(f) Minimize any possible adverse effects of Trust decisions and actions upon the quality of the human environment.

§ 1010.2 Purpose.

The regulations in this part are prepared to supplement Council on Environmental Quality regulations at 40 CFR parts 1500 through 1508 for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (NEPA), and otherwise to describe how the Trust intends to consider environmental factors and concerns in the Trust's decision-making process.

§ 1010.3 Definitions.

(a) The following terms have the following meanings as used in this part:

Decision-maker means the Board or its designee.

EA means an environmental assessment, as defined at 40 CFR 1508.9.

EIS means an environmental impact statement, as defined at 40 CFR 1508.11.

The Plan means the Final General Management Plan Amendment (July 1994) for the Presidio of San Francisco, prepared by the National Park Service, U.S. Department of the Interior.

The Plan EIS means the Final Environmental Impact Statement (July 1994) prepared in conjunction with the Plan by the National Park Service. The term "previously prepared EIS" includes the Plan EIS.

Project applicant means an individual, firm, partnership, corporation, joint venture, or other public or private entity other than the Trust (including a combination of more than one such entities) which seeks to demolish, construct, reconstruct, develop, preserve, rehabilitate, or restore real property within the Presidio Trust Area.

(b) If not defined in this part or in this chapter, other terms used in this part have the same meanings as those provided in 40 CFR part 1508.

§ 1010.4 Responsible Trust official.

(a) The Executive Director shall designate an employee of the Trust as the official responsible for implementation and operation of the Trust's policies and procedures on environmental quality and control. The delegation of this responsibility shall not abrogate the responsibility of the Executive Director and the Board to ensure that NEPA and other applicable laws are followed, or the right of the Executive Director and the Board to overrule or alter decisions of the responsible Trust official in accordance with the Trust's regulations and procedures.

(b) This responsible Trust official shall:

(1) Coordinate the formulation and revision of Trust policies and procedures on matters pertaining to environmental protection and enhancement;

(2) Establish and maintain working relationships with relevant government agencies concerned with environmental matters;

(3) Develop procedures within the Trust's planning and decision-making processes to ensure that environmental factors are properly considered in all proposals and decisions in accordance with this part;

(4) Develop, monitor, and review the Trust's implementation of standards, procedures, and working relationships for protection and enhancement of environmental quality and compliance with applicable laws and regulations;

(5) Monitor processes to ensure that the Trust's procedures regarding consideration of environmental quality are achieving their intended purposes;

(6) Advise the Board, officers, and employees of the Trust of technical and management requirements of environmental analysis, of appropriate expertise available, and, in consultation with the Trust's General Counsel, of relevant legal developments;

(7) Monitor the consideration and documentation of the environmental aspects of the Trust's planning and decision-making processes by appropriate officers and employees of the Trust;

(8) Ensure that all EA's and EIS's are prepared in accordance with the appropriate regulations adopted by the Council on Environmental Quality and the Trust;

(9) Consolidate and transmit to appropriate parties the Trust's comments on EIS's and other environmental reports prepared by other agencies;

(10) Acquire information and prepare appropriate reports on environmental matters required of the Trust;

(11) Coordinate Trust efforts to make available to other parties information and advice on the Trust's policies for protecting and enhancing the quality of the environment; and

(12) Designate other Trust employees to execute these duties under the supervision of the responsible Trust official, where necessary for administrative convenience and efficiency. As used in this chapter, the term "responsible Trust official" includes any such designee.

§ 1010.5 Major decision points.

(a) The possible environmental effects of a proposed action or project within the Presidio Trust Area must be considered along with technical, financial, and other factors throughout the decision-making process. For most Trust projects there are three distinct stages in the decision-making process:

(1) Conceptual or preliminary study stage;

(2) Detailed planning or final approval stage;

(3) Implementation stage.

(b) Environmental review will be integrated into the decision-making process of the Trust as follows:

(1) During the conceptual or preliminary study stage, the responsible Trust official shall determine whether the proposed action or project is one which is categorically excluded under § 1010.7 or requires further NEPA review (i.e., an EA or an EIS).

(2) If the proposed action or project is not categorically excluded, then prior to the Trust's proceeding beyond the conceptual or preliminary study stage, the responsible Trust official must determine whether an EIS is required.

(3) An EIS, if determined necessary, must be completed and circulated at the earliest point at which meaningful analysis can be developed for the proposed action or project, and in any event prior to the Trust's final approval of the proposed action or project.

§ 1010.6 Determination of requirement for EA or EIS.

In deciding whether to require the preparation of an EA or an EIS, the responsible Trust official will determine whether the proposal is one that:

(a) Normally does not require either an EA or an EIS (i.e., qualifies for a categorical exclusion under § 1010.7);

(b) Normally requires an EIS; or

(c) Normally requires an EA, but not necessarily an EIS.

§ 1010.7 Actions that do not require an EA or EIS.

(a) *General rule.* Pursuant to 40 CFR 1508.4, neither an EA nor an EIS is required for actions that do not individually or cumulatively have a significant effect on the human environment.

(b) *Criteria.* The criteria which were used to determine those categories of action that normally do not require either an EA or an EIS, and which are therefore covered by the categorical exclusions listed in paragraph (c) of this section, include:

(1) Implementation of the action or proposal is in accordance with the general objectives of the Plan and with the Trust Act, and the environmental effects have been adequately analyzed in the Plan EIS, or in a supplement thereto, or in an EA and/or an EIS; or

(2) No additional analysis or public input is necessary to determine whether there is a potential for significant impact; or

(3) The action or proposal is related solely to internal administrative operations of the Trust; or

(4) Preliminary analysis indicates that no potential significant impact would occur.

(c) *Categorical exclusions.* The categories of action identified in this paragraph have been determined by the Trust to have no significant effect on the human environment and are therefore categorically excluded. Such actions (whether approved by the Trust or undertaken by the Trust directly or indirectly) do not require the preparation of an EA or an EIS:

(1) Personnel actions and investigations and personal services contracts;

(2) Administrative actions and operations directly related to the operation of the Trust (e.g., purchase of furnishings, services, and space acquisition or conversion for the Trust offices or maintenance facilities);

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(3) Internal organizational changes and facility and office expansions, reductions, and closings;

(4) Routine financial transactions, including such things as salaries and expenses, procurement, guarantees, financial assistance, income transfers, audits, fees, bonds and royalties;

(5) Management, formulation, allocation, transfer and reprogramming of the Trust's budget;

(6) Routine and continuing government business, including such things as supervision, administration, operations, maintenance, and replacement activities having limited context and intensity (limited size and magnitude or short-term effects);

(7) Preparation, issuance, and submittal of publications and routine reports;

(8) Activities which are educational, informational, or advisory (including interpretive programs), or otherwise in consultation with or providing technical assistance to other agencies, public and private entities, visitors, individuals, or the general public;

(9) Legislative proposals of an administrative or technical nature, including such things as changes in authorizations for appropriations or financing authority, minor boundary changes and land transactions; or having primarily economic, social, individual or institutional effects, as well as comments and reports on legislative proposals;

(10) Promulgation of regulations and requirements, or amendments thereto, provided such actions do not:

(i) increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(ii) introduce non-compatible uses which might compromise the nature and characteristics of the area or cause physical damage to it;

(iii) conflict with adjacent ownerships or land uses; or

(iv) cause a nuisance to adjacent owners or occupants;

(11) Proposal, adoption, revision, and termination of policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful environmental analysis;

(12) Preparation, approval, coordination, and implementation of plans, including priorities, justifications, and strategies, for non-manipulative and non-destructive research, monitoring, inventorying, and information gathering;

(13) Identification, nomination, certification, and determination of eligibility of properties for listing in the National Register of Historic Places and the National Historic Landmark and National Natural Landmark Programs;

(14) Minor or temporary changes in amounts or types of visitor use for the purpose of ensuring visitor safety or resource protection, minor changes in programs or regulations pertaining to visitor activities, and approval of permits for special events or public assemblies and meetings, as well as leases for use of real property for no more than three months, provided such events, assemblies, meetings and leases entail only short-term or readily mitigated environmental disturbance;

(15) Designation of environmental study areas and research areas, including those closed temporarily or permanently to the public, provided there is no environmental impact;

(16) Land and boundary surveys and minor boundary adjustments or land acquisitions or exchanges resulting in no significant change in land use;

(17) Archaeological surveys and permits involving only surface collection or small-scale test excavations;

(18) Promulgation of planning and design guidelines that are in accordance with the general objectives of the Plan as covered by the Plan EIS;

(19) Implementation of a proposal or plan which was covered by a previously prepared EA and/or EIS or categorically excluded, or changes to such a proposal or plan when such changes would cause no environmental impact;

(20) Contracts, work authorizations, or procurement actions directly related to and implementing proposals, programs, and master agreements for which an EA and/or an EIS have been prepared, or which were categorically excluded, or which are related to administrative operation of the Trust;

(21) The leasing, permitting, sale, or financing of, or granting of non-fee interests regarding, real or personal property in the Presidio Trust Area;

(22) Extension, reissuance, renewal, renegotiation, modification, conversion in form, or termination of agreements for use of real property (including but not limited to leases, permits, licenses, concession contracts, use and occupancy agreements, easements, and rights-of-way) that were in force as of the date the Trust received administrative jurisdiction of the underlying real property, so long as such agreements were previously subject to NEPA, do not involve new construction or new or substantially greater environmental impacts, and new information of substantial importance or changed circumstances relevant to environmental conditions do not come into play.

(23) Issuance of permits relating to minor development activities (sign approval, interior modifications, minor exterior changes to facade, etc.) that are consistent with the Secretary of the Interior's "Standards for the Treatment of Historic Properties" at 36 CFR part 68, as applicable;

(24) Rehabilitation, modification, or improvement of historic properties in conformance with the Secretary of the Interior's "Standards for the Treatment of Historic Properties" at 36 CFR part 68;

(25) Rehabilitation, modification, or improvement of non-historic properties when the following conditions are met:

(i) In the case of residential buildings, the unit density is not changed more than 20 percent;

(ii) The project does not involve changes in land use (from non-residential to residential or from residential to non-residential); and

(iii) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation;

(26) Removal, reduction, or restraint of resident individuals of species that are not threatened or endangered which pose dangers to visitors, residents, or neighbors or immediate threats to resources of the Presidio Trust Area;

(27) Removal of non-historic materials and structures in order to restore natural conditions when such removal has no potential for adverse environmental impacts, including impacts to cultural landscapes or archaeological resources;

(28) Installation, construction, removal, permitting, maintenance, replacement-in-kind, relocation, operation, or modification of signs, displays, kiosks, traffic control devices, pedestrian and traffic safety features, trails, trailside camping zones, fencing, landscaping, sanitary facilities, comfort stations, utility facilities, parking lots, and other minor structures and facilities;

(29) Routine maintenance, property management, resource management, and research or educational activities with no potential for environmental impact or non-conformance with the Secretary of the Interior's "Standards for the Treatment of Historic Properties" at 36 CFR part 68, as applicable;

(30) Issuance of rights-of-way for and installation, maintenance, or repair of overhead or underground utility lines (e.g., power, water, irrigation, telecommunications, etc.) not involving placement of poles or towers outside of existing traffic and utility corridors and not involving vegetation clearance (other than for placement of poles), and not resulting in visual intrusion in the Presidio Trust Area or non-conformance with the Secretary's "Standards for the Treatment of Historic Properties" at 36 CFR part 68, as applicable; and

(31) Experimental testing of no longer than 180 days of mass transit systems, and changes in operation of existing systems with no potential for adverse environmental impact.

(d) *Overriding criteria.* An action which falls into one or more of the categories in paragraph(s) of this section may still require the preparation of an EIS or an EA if the responsible Trust official determines it meets the criteria stated in § 1010.8(b) or § 1010.10(b), respectively, or involves extraordinary circumstances that may have a significant environmental effect. At its discretion, the Trust may require the preparation of an EA or an EIS for a proposal or action that otherwise qualifies for a categorical exclusion.

§ 1010.8 Actions that normally require an EIS.

(a) *General procedure.* So long as a proposed action or project is not categorically excluded under § 1010.7, the Trust shall require the preparation of an EA to determine if the proposed action or project requires an EIS. Nevertheless, if it is readily apparent to the responsible Trust official that the proposed action or project will have a significant impact on the environment, an EA is not required, and the Trust will prepare or direct the preparation of an EIS without preparing or completing the preparation of an EA. To assist the responsible Trust official in determining if a proposal or action normally requires the preparation of an EIS, the following criteria and categories of action are provided.

(b) *Criteria.* Criteria used to determine whether proposals or actions may significantly affect the environment and therefore require an EIS are described in 40 CFR 1508.27.

(c) *Categories of action.* The following categories of action normally require an EIS (unless categorically excluded or previously analyzed in an EA or EIS):

(1) Legislative proposals made by the Trust to the United States Congress;

(2) Approval, funding, construction, and/or demolition in preparation for construction of any new building, if that activity is not contemplated by the Plan and has a significant effect on the human environment that has not previously been reviewed in the Plan EIS or other previously prepared EA or EIS; and

(3) Proposals that would significantly alter the kind and amount of recreational, historical, or cultural resources of the Presidio Trust Area or the integrity of the setting.

§ 1010.9 Preparation of an EIS.

(a) *Notice of intent.* When the Trust decides to prepare an EIS, it shall publish a notice of intent in the **Federal Register** in accordance with 40 CFR 1501.7 and 1508.22. Where there is a lengthy period between the Trust's decision to prepare an EIS and the time of actual preparation, then at the discretion of the responsible Trust official the notice of intent shall be published at a reasonable time in advance of preparation of the EIS.

(b) *Preparation.* After having determined that an EIS will be prepared and having published the notice of intent, the Trust will begin to prepare or to direct the preparation of the EIS. The EIS shall be formatted in accordance with 40 CFR 1502.10.

(c) *Supplemental environmental impact statements.* The Trust may supplement a draft or final EIS at any time. The Trust shall prepare a supplement to either a draft or final EIS when: (1) Substantial changes are proposed to an action analyzed in the draft or final EIS that are relevant to environmental concerns;

(2) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; or

(3) Actions are proposed which relate to or are similar to other actions taken or proposed and that together will have a cumulatively significant impact on the human environment.

§ 1010.10 Actions that normally require an EA.

(a) *General procedure.* If a proposal or action is not one that normally requires an EIS, and does not qualify for a categorical exclusion under § 1010.7, the Trust will require, prepare, or direct the preparation of an EA. An EA should be prepared when the Trust has insufficient information on which to determine whether a proposal may have significant impacts. An EA assists the Trust in complying with NEPA when no EIS is necessary, and it facilitates the preparation of an EIS, if one is necessary.

(b) *Criteria.* Criteria used to determine those categories of action that normally require an EA, but not necessarily an EIS, include:

(1) Potential for minor degradation of environmental quality;

(2) Potential for cumulative impact on environmental quality; and

(3) Potential for impact on protected resources.

(c) *Categories of action.* The following categories of action normally require the preparation of an EA (unless categorically excluded or previously analyzed in an EA or EIS):

(1) Promulgation of regulations and requirements to the extent such an action is not covered by a categorical exclusion;

(2) Proposals submitted by project applicants to the Trust for its review, as described in § 1010.14; and

(3) Proposals to significantly add or alter access between the Presidio Trust Area and surrounding neighborhoods.

§ 1010.11 Preparation of an EA.

(a) *When to prepare.* The Trust will begin the preparation of an EA (or require it to be begun) as early as possible after it is determined by the responsible Trust official to be required. The Trust may prepare or require an EA at any time to assist planning and decision-making.

(b) *Content and format.* An EA is a concise public document used to determine whether to prepare an EIS. Only those resources that may experience significant impacts and that are specifically relevant to the particular proposal should be addressed in the EA. Those areas should be addressed in as much detail as is necessary to allow an analysis of the alternatives and the proposal. The EA shall contain brief discussions of the following topics:

(1) Purpose and need for the proposed action.

(2) Description of the proposed action.

(3) Alternatives considered, including a No Action alternative.

(4) Environmental effects of the proposed action and the alternatives, including mitigation measures.

(5) Listing of agencies, organizations, and/or persons consulted.

(c) *Finding of no significant impact ("FONSI").* If an EA is completed and the responsible Trust official determines that an EIS is not required, then the responsible Trust official shall prepare a finding of no significant impact. The finding of no significant impact shall be made available to the public by the Trust as specified in 40 CFR 1506.6.

(d) *Mitigated FONSI.* If an EA is completed and the responsible Trust official determines that an EIS is required, then prior to preparation of an EIS, the proposal may be revised in order to mitigate the impacts identified in the EA through adherence to legal requirements, inclusion of mitigation as an integral part of the proposal, and/or fundamental changes to the proposal. If the revised proposal does not qualify for

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a categorical exclusion under § 1010.7, a subsequent EA will be prepared on the revised proposal and will result in a Mitigated Finding of No Significant Impact, preparation of an EIS, or additional revision of the proposal and a subsequent EA.

§ 1010.12 Public involvement.

The Trust will make public involvement an essential part of its environmental review process. Public notice of anticipated Trust actions, opportunities for involvement, and availability of environmental documents will be facilitated through announcements in the Trust's monthly newsletter, postings on its web site (www.presidiotrust.gov), placement of public notices in newspapers, direct mailings, and other means appropriate for involving the public in a meaningful way. The Trust will conduct scoping with interested federal, state and local agencies and Indian tribes, and hold public workshops to gather early input whenever appropriate. Notice of all public workshops will be given in a timely manner. Interested persons may also obtain information concerning any pending EIS or any other element of the environmental review process of the Trust by contacting the responsible Trust official at the following address: Presidio Trust, P.O. Box 29052, San Francisco, California, 94129–0052.

§ 1010.13 Trust decision-making procedures.

To ensure that at major decision-making points all relevant environmental concerns are considered by the decision-maker, the following procedures are established.

(a) An environmental document (i.e., the EA, finding of no significant impact, EIS, or notice of intent), in addition to being prepared at the earliest point in the decision-making process, shall accompany the relevant proposal or action through the Trust's decision-making process to ensure adequate consideration of environmental factors.

(b) The decision-maker shall consider in its decision-making process only decision alternatives encompassed by the range of alternatives discussed in the relevant environmental documents. Also, where an EIS has been prepared, the decision-maker shall consider all alternatives described in the EIS, and a written record of the consideration of alternatives during the decision-making process shall be maintained.

(c) Any environmental document prepared for a proposal or action shall be made part of the record of any formal rulemaking by the Trust.

§ 1010.14 Review of proposals by project applicants.

(a) Each proposal for demolition, construction, reconstruction, development, preservation, rehabilitation, or restoration of real property submitted by a project applicant to the Trust for its review, and which the decision-maker agrees to consider, shall require an EA unless categorically excluded or covered by a previously prepared EA and/or EIS.

(b) The decision-maker may not take any approval action on such a proposal submitted by a project applicant until such time as the appropriate environmental review documents have been prepared and submitted to the decision-maker

(c) At a minimum, and as part of any submission made by a project applicant to the decision-maker for its approval, such project applicant shall make available data and materials concerning the proposal sufficient to permit the Trust to carry out its environmental review responsibilities. When requested, the project applicant shall provide additional information that the responsible Trust official believes is necessary to permit it to satisfy its environmental review functions.

(d) With respect to each project proposed for consideration for which the responsible Trust official determines an EA shall be prepared, the decision-maker may require a project applicant to submit a draft EA regarding its proposal for the Trust's evaluation and revision. In accordance with 40 CFR 1506.5(b), the Trust shall make its own evaluation of the environmental issues and shall take responsibility for the scope and content of the final EA.

(e) With respect to each project proposed for consideration for which the responsible Trust official determines an EIS shall be prepared, the decision-maker may require a project applicant to pay a non-refundable fee to the Trust sufficient to cover a portion or all of the Trust's anticipated costs associated with preparation and review of the EIS, including costs associated with review under other applicable laws. Such fee shall be paid to the Trust in full prior to commencement of the preparation of the EIS or any amendment or supplement thereto.

(f) In accordance with 40 CFR 1506.5(c), the EIS shall be prepared by the Trust and/or by contractors who are selected by the Trust and who certify that they have no financial or other interest in the outcome of the project, and the Trust shall independently evaluate the EIS prior to its approval and take responsibility for ensuring its adequacy. The EIS shall be prepared in accordance with 40 CFR part 1502.

(g) The responsible Trust official may set time limits for environmental review appropriate to each proposal, consistent with 40 CFR 1501.8 and 1506.10.

(h) The responsible Trust official shall at the earliest possible time ensure that the Trust commences its environmental review on a proposed project and shall provide the project applicant with any policies or information deemed appropriate in order to permit effective and timely review by the Trust of a proposal once it is submitted to the decision-maker for approval.

§ 1010.15 Actions where lead agency designation is necessary.

(a) Consistent with 40 CFR 1501.5, where a proposed action by the Trust involves one or more other Federal agencies, or where actions by the Trust and one or more Federal agencies are directly related to each other because of their functional interdependence or geographical proximity, the Trust will seek designation as lead agency for those actions that directly relate to implementation of the general objectives of the Plan and for those actions that relate solely to the Presidio Trust Area.

(b) For an action that qualifies as one for which the Trust will seek designation as lead agency, the Trust will promptly consult with the appropriate Federal agency to establish lead agency and cooperating agency designations.

(c) For an action as to which the Trust undertakes lead or cooperating agency status, the Trust is authorized to enter into a memorandum of understanding or agreement to define the rights and responsibilities of lead and cooperating agencies.

§ 1010.16 Actions to encourage agency cooperation early in the NEPA process.

(a) Consistent with 40 CFR 1501.6, the Trust may request the NPS to be a cooperating agency for actions or projects significantly affecting the quality of the Presidio. In addition, upon request of the Trust, any other Federal agency that has jurisdiction by law or special expertise with respect to any environmental issue that should be addressed in the analysis may be a cooperating agency. The Trust shall use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise to the maximum extent possible consistent with its responsibility as lead agency.

§ 1010.17 Actions to eliminate duplication with State and local procedures.

Consistent with 40 CFR 1506.2, the Trust shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements. Such cooperation shall to the fullest extent possible include:

(a) Joint planning processes.

(b) Joint environmental research and studies.

(c) Joint public hearings (except where otherwise provided by statute).

(d) Joint environmental assessments.

[FR Doc. 99–18687 Filed 7–22–99; 8:45 am]

BILLING CODE 4310–4R–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 71–154b; FRL–6400–2]

Proposed Approval and Promulgation of California State Implementation Plan for San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP). These rules were submitted by the State on behalf of the District to provide general permitting requirements and general provisions for the implementation of NSR and other SIP requirements for stationary sources in the District. The rules were also submitted to improve the consistency and clarity of the existing SIP.

The intended effect of proposing approval of these rules is to control air pollution in accordance with the requirements of the Act and improve the consistency and clarity of the existing SIP. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments on this proposed action must be received in writing by August 23, 1999.

ADDRESSES: Written comments on this action must be sent to Ed Pike at the Region IX address mailing address listed below.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours at the following address: Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460

California Air Resources Board Stationary Source Division, Rule Evaluation Section 2020 "L" Street, Sacramento, CA 95814

San Joaquin Valley Unified Air Pollution Control District, Central Region, 1990 E. Gettysburg Avenue, Fresno, CA 93726

A courtesy copy of current District regulations may be available via the Internet at http://arbis.arb.ca.gov/drdb/sju/cur.htm. However, EPA assumes no responsibility for the availability or accuracy of this website. In addition, the version of the rules available on this website may not be the same as the rules submitted to EPA for approval, and readers should verify that the adoption dates are the same.

FOR FURTHER INFORMATION CONTACT: Ed Pike at (415) 744–1211 or pike.ed@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is proposing to approve the following rules into the SIP: 1110 Circumvention; 1140 Applicability of Emission Limits; 1150 Separation and Combination; 2010 Permits Required; 2031 Transfer of Permits; 2040 Applications; 2070 Standards for Granting Applications; 2080 Conditional Approval; and 2092 Standards for Permits to Operate. Rules 1110, 1140, 1150, 2010, and 2040 were adopted by the District Board of Directors on December 17, 1992, and submitted to EPA by the California Air Resources Board (CARB) as a revision to the SIP on September 28, 1994. Rules 2031, 2070, 2080, and 2092 were adopted by the District on December 17, 1992, and submitted to EPA by CARB on November 18, 1993.

For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Dated: July 9, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 99–18601 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–256, RM–9527]

Radio Broadcasting Services; Refugio and Taft, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Pacific Broadcasting of Missouri, L.L.C. requesting the substitution of Channel 293C2 for Channel 291C3 at Refugio, Texas, reallotment of Channel 293C2 from Refugio, Texas, to Taft, Texas, and modification of the license for Station KTKY to specify operation on Channel 293C2 at Taft, Texas. The coordinates for Channel 293C2 at Taft are 27–52–00 and 97–13–08. Pacific also requested the allotment of Channel 291A at Refugio, Texas, at coordinates 28–21–58 and 97–19–11. Mexican concurrence will be requested for the allotment the allotments at Refugio and Taft. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 293C2 at Refugio.

DATES: Comments must be filed on or before September 7, 1999, and reply comments on or before September 22, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Pamela C. Cooper, Davis Wright Tremaine LLP, 1155 Connecticut Avenue, NW, suite 700, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–256, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center,

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Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18829 Filed 7–22–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–258, RM–9681]

Radio Broadcasting Services; Iowa Park, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Fred R. Morton, Jr. proposing the allotment of Channel 242A at Iowa Park, Texas. The channel can be allotted to Iowa Park in compliance with the Commission's spacing requirements at coordinates 34–01–27 NL and 98–41–14 WL. There is a site restriction 8.3 kilometers (5.2 miles) north of the community.

DATES: Comments must be filed on or before September 7, 1999, and reply comments on or before September 22, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Fred R. Morton, Jr., Post Office Box 704, Sugar Land, Texas 77487–0704.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–258, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18830 Filed 7–22–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–259, RM–9685]

Radio Broadcasting Services; Soperton, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by John Morgan Dowdy seeking the allotment of Channel 253A to Soperton, GA, as the community's second local FM service. Channel 253A can be allotted to Soperton in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.6 kilometers (6 miles) southeast, at coordinates 32–19–41 NL; 82–29–50 WL, to avoid a short-spacing to Station WSB-FM, Channel 253C, Atlanta, GA, and to the proposed allotment of Channel 252C3, at Hawkinsville, GA (MM Docket No. 99–199).

DATES: Comments must be filed on or before September 7, 1999, and reply comments on or before September 22, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence J. Bernard, Jr., 5224 Chevy Chase Parkway NW, Washington, D.C. 20015 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–259, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18831 Filed 7–22–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–260, RM–9686]

Radio Broadcasting Services; Bristol, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Blue Sky Broadcasting, LLC, seeking the allotment of Channel 248A to Bristol, VT, as the community's first local aural service. Channel 248A can be allotted to Bristol in compliance with the Commission's minimum distance separation requirements with respect to domestic allotments without the imposition of a site restriction, at coordinates 44–08–18 NL; 73–05–00 WL. Canadian concurrence as a specially negotiated short-spaced allotment is required since Bristol is located within 320 kilometers (200 miles) of the U.S.-Canadian border and the allotment would be short-spaced to Station CHOM–FM, Channel 249C1, Montreal, Quebec.

DATES: Comments must be filed on or before September 7, 1999, and reply comments on or before September 22, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Fisher Wayland Cooper Leader & Zaragoza, L.L.P., 2001 Pennsylvania Avenue, NW, Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–260, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18832 Filed 7–22–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–257, RM–9683]

Radio Broadcasting Services; Centerville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Wolverine Broadcasting proposing the allotment of Channel 274A at Centerville, Texas. The channel can be allotted to Centerville in compliance with the Commission's spacing requirements at coordinates 31–17–00 NL and 95–53–00 WL. There is a site restriction 9.4 kilometers (5.8 miles) east of the community.

DATES: Comments must be filed on or before September 7, 1999, and reply comments on or before September 22, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, NW, Suite 900, Washington, DC 20036–4192.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–257, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18833 Filed 7–22–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[ID. 052799B]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for an Exempted Fishing Permit (EFP).

SUMMARY: NMFS announces receipt of an application for an EFP that would permit the Pacific Whiting Conservation Cooperative and the Midwater Trawlers Cooperative to use trawl gear to conduct a pre-recruit survey for Pacific whiting.

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Such information could improve the ability to determine whiting yields. An EFP is needed to authorize the use of a 1.5 cm mesh liner, smaller than legal 3-inch mesh allowed for midwater trawl gear, that applicants will use to catch pre-recruit whiting. An EFP is also needed to allow the vessels to operate at times and in areas which Federal regulations would otherwise prohibit.

DATES: The survey will begin in July 1999, and is expected to be completed in about 6 weeks.

ADDRESSES: Copies of the EFP are available from Becky Renko, Northwest Region, NMFS, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko 206–526–6110.

SUPPLEMENTARY INFORMATION: This action is authorized by the Magnuson-Stevens Fishery Conservation and Management Act and by the implementing regulations at 50 CFR 600.745, which state that EFPs may be used to authorize fishing activities that would otherwise be prohibited.

An EFP application from Dr. Vidar Wespestad, who represents the Pacific Whiting Conservation Cooperative (the catcher/processor fleet representative in the whiting fishery) and the Midwater Trawlers Cooperative, and a supporting cover memorandum from NMFS, were received and considered by the Pacific Fishery Management Council (Council) at an April 5–9, 1999, meeting in Sacramento, CA. The Council discussed the EFP application, solicited public comment on it, and recommended issuance of the EFP.

The applicant proposes to use two trawl vessels to conduct a pre-recruit survey to establish an annual recruitment index for assessing Pacific whiting year-class strength off the coasts of Washington, Oregon, and California. Such a recruitment survey is consistent with research and data needs identified by the Council for 1998–2000. This EFP would further support a cooperative industry/NMFS program that started in 1998.

During this project, the applicant anticipates a catch of approximately 42 metric tons (mt) of whiting, less than 0.02 percent of the 1999 optimum yield, and an incidental catch of less than 7 mt (consisting of Pacific herring, sanddab, jack mackerel, spiny dogfish, yellowtail rockfish, widow rockfish, sablefish, flatfish, and others). The applicant expects a low incidental take of chinook salmon (approximately 45 fish). Except for small quantities preserved for laboratory study, or to fill Federal, state, or university requests, the applicant will not retain any fish caught. The applicant expects that the whiting taken will be too small and too fragile to sell or donate to a foodbank. Hence, the applicant will discard the whiting at sea after biological samples of whiting are collected.

The survey will begin south of Monterey Bay at 36°40′ north latitude and proceed north to 48°20′ north latitude. Trawl stations will be set at 20 mile intervals and located between the 50 and 200 meter depth contours. The trawl gear used in this survey will be comparable to that used by NMFS survey vessels.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–18883 Filed 7–22–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 141
Friday, July 23, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AMERICAN BATTLE MONUMENTS COMMISSION

Utah Beach, Normandy, France; Wall of Liberty Foundation Proposed WWII Memorial Project; Public Meeting

AGENCY: American Battle Monuments Commission.

ACTION: Proposed construction by the Wall of Liberty Foundation of a World War II memorial project near Utah Beach, Normandy, France; Public Meeting to receive comments on project proposal and concept design.

SUMMARY: The Wall of Liberty (WOL) Foundation has prepared a proposal and concept design regarding the construction of a proposed World War II memorial project in the vicinity of Utah Beach on the coast of Normandy, France. The American Battle Monuments Commission (ABMC) will conduct a public meeting to hear the presentation by the Wall of Liberty Foundation regarding this proposal, ask questions and discuss the project, and receive public comments on the foundation's proposal and design.

As the federal agency charged with oversight of erection of private association memorials on foreign soil under the Code of Federal Regulations, Title 36, Chapter 4, Parts 400 through 402, ABMC announces its intent to conduct a public meeting to receive comments on the WOL Foundation proposal at the following date, time and location: Tuesday, August 17, 1999, at 9:30AM; Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, VA 22201.

The purpose of the public meeting is to afford all interested persons the opportunity to hear the Foundation's proposal, view the concept design, and present their views regarding the information presented in the proposal.

SUPPLEMENTARY INFORMATION: This memorial is proposed to be built just behind the Normandy invasion Utah Beach on a site donated by a private French citizen. The concept design has been developed for the WOL Foundation by a French architect. This project would include a memorial consisting of inscribed granite walls set in circular gardens, a small visitors center and entry way, parking facilities, lighting, pedestrian walkways, and other infrastructure improvements to support the siting of the memorial.

On August 10, 1999, the WOL Foundation proposal and concept design will be available for review by interested persons at the offices of the ABMC located at the address shown above.

The public meeting will begin with a formal presentation by the WOL Foundation and will then be open to the public for comments on the proposed project. Following comments from the public, members of the Commission will also be provided an opportunity to comment and, through questioning, clarify any pertinent aspects of the proposal. In an effort to accommodate those who wish to speak, the following procedures will be followed:

- Upon entering the meeting area, every individual who wishes to speak must sign up and include his/her name (clearly written) and current mailing address. A speakers list will be created and speakers will be called in the order of sign-up. No sign-ups will be accepted after 9:00AM.
- Advance sign-up is available by calling ABMC at (703) 696–6900.
- Group representatives presenting formally adopted positions of their group and elected officials may speak for five (5) minutes. Individuals may speak for three (3) minutes. In the interest of fairness, no time extension will be allowed. All comments should address the content of the proposal and/or the concept design. It is expected that all attendees will be courteous and respectful of the views of others.

Written comments will also be accepted through August 25, 1999, and will receive the same weight as comments made at the public meeting. All such comments should be addressed to ABMC, at the address shown above, Attention: LTC Theodore Gloukhoff. ABMC will render a written decision following the public meeting. All comments will be fully considered in the preparation of the final decision of the Commission.

FOR FURTHER INFORMATION CONTACT: COL Dale F. Means for technical information at 703–696–6899; LTC Theodore Gloukhoff, for administrative/logistical information at 703–696–6900.

Dated: July 9, 1999.

Theodore Gloukhoff,

Director of Personnel and Administration, ABMC

[FR Doc. 99–18815 Filed 7–22–99; 8:45 am]

BILLING CODE 6120–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List, Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

EFFECTIVE DATE: August 23, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 23, May 21, June 4 and 11, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 F.R. 19976, 27752, 29992, 31539 and 31540) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government

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under 41 U.S.C. 46—48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Hood, Stockinette
8415–LL–S04–8922

Services

Base Supply Center and Operation of Individual Equipment Element Store, Francis E. Warren Air Force Base, Wyoming
Janitorial/Custodial, USDA Building 255E, Sanford Airport, Sanford, Florida
Operation of Peace Corps Warehouse and Distribution Center, 2416 Oakville Street, Alexandria, Virginia
Switchboard Operation, Langley Air Force Base, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the service.

3. The action may result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following service is hereby deleted from the Procurement List:

Grounds Maintenance, Basewide (except Military Family Housing), Kelly Air Force Base, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–18862 Filed 7–22–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 23, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Table, Field Operating
6530–01–321–5592
NPA: Arizona Industries for the Blind, Phoenix, Arizona
Portfolio, Canvas, Imprintable
8105–00–NIB–1079
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin

Services

Acquisition & Distribution of Batteries
6135–00–985–7846
NPA: Eastern Carolina Vocational Center, Inc., Greenville, North Carolina
Base Supply Center, New London U.S. Naval Submarine Base, Groton, Connecticut
NPA: Central Association for the Blind & Visually Impaired Utica, New York
Commissary Shelf Stocking, Custodial and Warehousing, Fort Knox, Kentucky
NPA: Trace, Inc., Eagle, Idaho
Duplication of Official Use Documents (GPO Program C492–S), Government Printing Office, North Capitol & H Streets, NW, Washington, DC
NPA: Alliance, Inc., Baltimore, Maryland
Mailing Services, National Council on Disability, 1331 F Street, NW, Washington, DC
NPA: Anchor Mental Health Association (Anchor Services Workshop), Washington, DC
Operation of Individual Equipment Element Store, Randolph Air Force Base, Texas
NPA: San Antonio Lighthouse, San Antonio, Texas
Storage & Distribution of Tape, Webbing and Other Accouterments, Defense Supply Center—Philadelphia, Philadelphia, Philadelphia
NPA: Arizona Industries for the Blind, Phoenix, Arizona
Telephone Switchboard Operations, Barksdale Air Force Base, Louisiana
NPA: Louisiana Association for the Blind, Shreveport, Louisiana

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Cabinet, Tool, Mobile & Tool Box, Portable
5140–01–010–4776
5140–00–030–6617
5140–00–870–4796
5140–00–319–5079
5140–00–494–2015
Tool Box, Portable
5140–01–010–4861
Mirror, Glass
7105–00–496–9866

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–18863 Filed 7–22–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Additions to the Procurement List; Correction

In the document appearing on page 37098, FR Doc. 99–17479, in the issue of July 9, 1999, in the second column, the service listed as Janitorial/Custodial, Fort Hamilton Proper, Fort Hamilton Manor and Fort Hamilton Tenants (less buildings 114 & 116), Fort Hamilton, New York should read Janitorial/Custodial, Fort Hamilton Proper, Fort Hamilton Manor and Fort Hamilton Tenants, Fort Hamilton, New York.

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–18865 Filed 7–22–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Chemical Weapons Convention Declaration Forms.

Agency Form Number: Form 1–1, Form 1–2, Form 1–2A, Form 1–2B, etc.

OMB Approval Number: 0694–0091.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Burden: 34,709 hours.

Average Time Per Response: 10 minutes—31 hours per response.

Number of Respondents: 2,241 respondents.

Needs and Uses: Declarations: The CWC requires initial and annual declarations for activities involving Schedule 1, Schedule 2, Schedule 3 and Unscheduled Discrete Organic Chemicals (UDOCs) above specified threshold quantities. The frequency of this collection is the minimum required under the CWC.

Schedule 1: The CWC requires initial declarations for facilities that produced in excess of specified aggregate quantities of Schedule 1 chemicals in calendar year 1997, 1998 or 1999.

Schedule 2: The CWC requires industry to review production, processing and consumption data from the three previous calendar years to determine whether there is a declaration requirement on past activities.

Schedule 3: The CWC requires initial declarations from plant sites that had one or more plants that produced in excess of specified quantities of one or more Schedule 3 chemicals in calendar year 1996.

UDOCs: Although the majority of declarations will come from plant sites that produced UDOCs, the declaration requirements for such production involve the fewest forms. The CWC only requires declarations from plant sites that produced UDOCs in excess of specified quantities in the previous calendar year.

BXA officials will review the information collected from the data declarations for completeness and accuracy. The data will then be compiled into a report for transmittal to the USNA and subsequent presentation to the OPCW. The collected data will also be used by BXA officials to monitor the aggregate amount of Schedule 1 chemicals in the United States to ensure that it is at all times below 1 metric ton (as required by Part VI.A.2 of the Convention's Annex on Implementation and Verification), and to prepare such additional reports as the USNA may reasonably require.

Inspections: Each State Party to the CWC, including the United States Government, has agreed to allow inspections of certain declared facilities by inspectors employed by the Organization for the Prohibition of Chemical Weapons (OPCW) to ensure that their activities are consistent with obligations under the CWC. The Department of Commerce is responsible for leading, hosting and escorting inspections of all facilities in the United States, except Department of Defense and Department of Energy facilities and other United States Government facilities that notify the USNA of their decision to be excluded from the CWCR.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: July 16, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–18779 Filed 7–22–99; 8:45 am]

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DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commence (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology.

Title: Manufacturing Extension Partnership Program Evaluation Pilot Survey.

Agency Form Number: None.

OMB Approval Number: N/A.

Type of Request: New Collection.

Burden: 213 hours.

Number of Respondents: 850.

Avg. Hours Per Response: 15 minutes.

Needs and Uses: The Manufacturing Extension Partnership Program is a nationwide network of services and support for smaller manufacturers giving them access to new technologies, resources, and expertise. The goal of the program is to improve the global competitiveness of U.S. manufacturing establishments. This collection will measure the impact of these centers on the nation's manufacturers.

Affected Public: Businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Virginia Huth, (202) 395–6929.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Virginia Huth, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: July 15, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–18780 Filed 7–22–99; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–833]

Amended Preliminary Antidumping Determination: Live Cattle From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 23, 1999.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Kris Campbell, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–1442 or (202) 482–3813, respectively.

Amendment of Preliminary Determination

The Department of Commerce (the Department) is amending the preliminary determination in the antidumping investigation of live cattle from Canada. This amended preliminary determination results in revised antidumping rates.

On June 30, 1999, the Department issued its affirmative preliminary determination in this proceeding. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Live Cattle from Canada*, 64 FR 36847 (July 8, 1999). In the preliminary determination, we provided notice that we were considering issuing an amended preliminary determination based on the following facts:

> Immediately prior to the date of the determination (on June 29th and 30th), the respondents filed revised U.S., home market, and cost databases. Our initial examination of the information indicates that, for at least one company, the antidumping rate calculated using such data may differ significantly from the rates listed below. We will examine this data further and, if we find that the errors corrected result in a rate that differs substantially from the rates as calculated for this preliminary determination, we may issue an amended preliminary determination for any such company.

Id. at 36848.

On July 1, 1999, we confirmed that the corrections contained in the revised data filed prior to the preliminary determination result in a substantial change to the antidumping rate for one company (Schaus). This company's June 30th filing corrected a number of errors, found in preparing for verification, to the company's U.S., home market, and cost databases, including omissions of cost items that had previously resulted in significantly understated costs prior to the correction of these errors. The company's corrected data results in a change to its antidumping rate from 5.43 percent to 15.69 percent.

On July 12, 1999, Schaus filed a submission indicating that it was ceasing its participation in this investigation. In this submission, Schaus stated that, "[f]rom the very beginning of this investigation, Schaus has sought to cooperate to the best of its ability" but that it was unable to continue due to resource constraints. *See* Letter from Schaus Land & Cattle Company to the Department, July 12, 1999, at 1–2. Schaus also stated its intent to withdraw certain information from the record in this investigation, specifying that it wished to withdraw "its responses to Sections B, C, and D of the Department's questionnaire and its supplemental submissions pertaining to those sections." *Id.*

Given that Schaus declined, subsequent to the preliminary determination, to cooperate further in this proceeding, we may determine for the final determination that Schaus will be subject to the facts available. However, their withdrawal after the preliminary determination does not prevent corrections of the preliminary determination to accurately reflect the information on the record at the time it was made. To do otherwise would allow manipulation of the administrative process in a manner that prevents the determination of accurate antidumping rates, and would thwart the proper administration of the antidumping law. Accordingly, we are implementing the corrections referred to in our preliminary determination, based on the significant corrections to errors in Schaus's data as provided in its June 30th submission. In so doing, we have determined that under these facts (*i.e.*, a pre-preliminary correction by the respondent of significant errors as acknowledged in the Department's Notice of Preliminary Determination, which results in a corrected rate that differs substantially from the prior rate, and Schaus's post-preliminary withdrawal of information), correction of the preliminary antidumping duty rate is warranted.

Therefore, we are amending our preliminary determination to revise the antidumping rate for Schaus, along with the corresponding correction to the "all others" rate, as listed below. Suspension of liquidation will be revised accordingly and parties shall be notified of this determination, in accordance with sections 733(d) and (f) of the Act.

The revised weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin percentage
Cor Van Raay	4.49
Groenenboom	3.90
JGL	3.94
Pound Maker	*0.18
Riverside/Grandview	6.81
Schaus	15.69
All Others	5.57

* de minimis.

This determination is published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: July 16, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–18855 Filed 7–22–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–046]

Polychloroprene Rubber From Japan: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On January 25, 1999, the Department of Commerce ("the Department") initiated an administrative review of the antidumping duty order on polychloroprene rubber from Japan for Denki Kagaku Kogyo K.K. ("Denka") and Tosoh Corporation ("Tosoh"). *See* 64 FR 3682. This review was requested by the petitioner, DuPont Dow Elastomers L.L.C. ("DuPont"), and covers the period December 1, 1997 through November 30, 1998, We are now rescinding this review as a result of DuPont's timely withdrawal of its request for an administrative review for Denka and the non-shipper status of Tosoh.

EFFECTIVE DATE: July 23, 1999.

FOR FURTHER INFORMATION CONTACT: Nova Daly or Thomas Futtner, Group II, Office 4, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department 0of Commence, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0989 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR part 351 (1998).

Background

On December 31, 1998, the petitioner, DuPont, requested that the Department conduct an administrative review of the antdumping duty order on polchloroprene rubber from Japan for the period December 1, 1997 through November 30, 1998, covering two producers and/or exporters: Denka and Tosoh. No other interested party requested that the Department conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review for these companies on January 25, 1999 (64 FR 3682).

Scope of the Review

Imports covered by this review are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.42.00, 4002.49.00, 4003.00.00, 4462.15.21 and 4462.00.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). HTSUS item numbers are provided for convenience and for the U.S. Customs Service purposes. The written descriptions remain dispositive.

Rescission of 1997/1998 Antidumping Duty Administrative Review

On February 26, 1999, in response to the Department's questionnaire, Tosoh stated that it had made no shipments to the United States of the subject merchandise during the period of review ("POR"). The Department independently confirmed with the U.S. Customs Service that there were no shipments from Tosoh during the POR. Therefore, in accordance with § 351.213(d)(3) of the Department's regulations, and consistent with our practice, we are treating this firm as a non-shipper for purposes of this review, and are rescinding this review with respect to Tosoh (*see, e.g. Certain Welded Carbon Steel Pipe and Tube From Turkey: Final Results and Partial Rescission of Antidumping Administrative Review.*, 63 FR 35190, 35191 (June 29, 1998)). On March 15, 1999, the petitioner filed a letter with the Department withdrawing its request that the Department conduct an administrative review of Denka sales. This withdrawal complies with § 351.213(d)(1) of the Department's regulations which grants parties 90 days from the publication of the notice of initiation of review to withdraw their request for review. Because of the non-shipper status of one company, Tosoh, and DuPont's timely request for the termination of the review for Denka, the Department is rescinding this review in its entirety in accordance with § 351.213(d) of our regulations.

This notice is in accordance with section 751 of the Tariff Act and § 351.213(d) of the Department's regulations.

Dated: July 20, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–18859 Filed 7–22–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

University of Illinois at U/C; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 99–009. *Applicant:* University of Illinois at U/C, Urbana, IL 61801. *Instrument:* Confocal Microscope Attachment. *Manufacturer:* Witec GmbH, Germany. *Intended Use:* See notice at 64 FR 31540, June 11, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an existing instrument purchased for the use of the applicant. The National Institutes of Health advises in its memorandum dated June 8, 1999, that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the existing instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–18851 Filed 7–22–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Application may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 99–018. *Applicant:* University of California at Santa Barbara, Santa Barbara, CA 93106. *Instrument:* Electron Microscope, Model JEM–1230. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used to carry out research objectives during studies of the following: (1) Adult and Developing Visual System, (2) Age Related Macular Degeneration, (3) Cellular and Molecular Mechanisms in Retinal Detachment, (4) Molecular Structure and Function of Tau Protein, (5) Mechanism of Action of the Anti-tumor Drug Taxol, (6) Dispersion Patterns for Retinal Neuroblasts, (7) Development and Anatomy of the Nematode C. elegans. In addition, the instrument will be used for training graduate students, postdoctoral fellows, faculty and staff. Application accepted by Commissioner of Customs: July 9, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–18852 Filed 7–22–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge.

DATES: Wednesday, August 4, 1999 6:00–9:30 p.m.

ADDRESSES: Garden Plaza, 215 S. Illinois Avenue, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Federal Coordinator/Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, (423) 576–0314.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Recognition ceremony for outgoing Board members and an orientation for new Board members.
2. The ORSSAB Project Teams will share their FY99 accomplishments.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Marianne Heiskell at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (423) 576–0314.

Issued at Washington, DC on July 20, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–18823 Filed 7–22–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–585–000, FERC–585]

Proposed Information Collection and Request for Comments

July 19, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1195 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before September 21, 1999.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Abstract: The information collected under the requirements of FERC–585 "Reporting of Electric Energy Shortages and Contingency Plans under PURPA 206" (OMB No. 1902–0138) is used by the Commission to implement the statutory provisions of sections 206 of the Public Utility Regulatory Policies Act of 1979 (PURPA) Pub. L. 95–617, 92 Stat. 3117 added to the Federal Power Act (FPA) section 202, subsection (g). FPA section 202(g) requires the Commission to establish rules requiring each public utility to report to FERC and appropriate State regulatory authorities any anticipated shortage of electric energy or capacity which would affect the utility's ability to serve its wholesale customers; and submit to the Commission and the appropriate State regulatory authority, and periodically revise contingency plans respecting shortages of electric energy or capacity which would equitably accommodate service to both direct retail customers and those served by utilities supplied at wholesale by the public utility.

The Commission uses the information to evaluate and formulate appropriate options for action in the event an anticipated shortage is reported and/or materializes. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 294.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
7	1	73	511

Estimated cost burden to respondents: 511 hours / 2,080 hours per year × $109,889 per year = $26,997.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overheard costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–18785 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2689–021]

N.E.W. Hydro, Inc.; Meeting

July 19, 1999.

Take notice that Commission staff will be at the Oconto Falls Project (Project No. 2689) on August 4, 1999, to conduct a site visit. This site visit concerns N.E.W. Hydro, Inc.'s (licensee) request for an amendment of article 401 of the license, filed with the Commission on May 26, 1999. The site visit is scheduled to begin at 10 a.m. Expected participants need to contact Mr. Loyal Gake at (920) 293–4628, or Diana Shannon at (202) 208–7774. For further information, please contact Diana Shannon at the number above.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–18788 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–157–000, et al.]

Minergy Neenah, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

July 16, 1999.

Take notice that the following filings have been made with the Commission:

1. Minergy Neenah, L.L.C.

[Docket No. EG99–157–000]

Take notice that on July 13, 1999, Minergy Neenah, L.L.C. amended its application to clarify which electric utility companies are affiliated companies.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Astoria Gas Turbine Power LLC

[Docket No. EG99–167–000]

Take notice that on July 12, 1999, Astoria Gas Turbine Power LLC filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The amendment provided a clarified explanation of the company's affiliations with electric utility companies.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Okeechobee Generating Company

[Docket No. EG99–188–000]

On July 13, 1999, Okeechobee Generating Company (Okeechobee), a limited liability corporation with its principal place of business at 7500 Old Georgetown Road, Bethesda, MD 20814, filed with the Federal Energy Regulatory Commission an application for

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determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Okeechobee proposes to construct, own and operate a nominally rated 500 MW natural gas-fired, combined cycle power plant in Okeechobee County, Florida. The proposed power plant is expected to commence commercial operation in the Spring of 2003. All capacity and energy from the plant will be sold exclusively by Okeechobee at wholesale.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Lone Star Steel Sales Company

[Docket No. EG99–189–000]

On July 13, 1999, Lone Star Steel Sales Company (LSSS), P.O. Box 803546, Dallas, Texas 75380, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

LSSS is a Delaware corporation with its principal place of business in Dallas, Texas. LSSS is engaged exclusively in the business of owning or operating an eligible facility selling electric energy at wholesale. The eligible facility consists of 15 MW of gas-fired generation located in Northeast Texas that is entirely within the certificated service area of Southwestern Electric Power Company (SWEPCO).

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Indeck-Yerkes Limited Partnership

[Docket No. EG99–190–000]

On July 13, 1999, Indeck-Yerkes Limited Partnership (Indeck-Yerkes) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Indeck-Yerkes is a Delaware limited partnership created for the purpose of owning and/or operating a 53 MW cogeneration facility located in Tonawanda, New York (the Facility).

The Facility is a topping cycle, natural gas and No. 2 oil-fueled, combined cycle cogeneration plant. It is an "eligible facility" within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935 because it will be used for the generation of electric energy exclusively for sale at wholesale.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Indeck-Yerkes Energy Services, Inc.

[Docket No. EG99–191–000]

On July 13, 1999, Indeck-Yerkes Energy Services, Inc. , filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Indeck-Yerkes is an Illinois corporation created for the sole purpose of operating a 53 MW cogeneration facility located in Tonawanda, New York (the Facility).

The Facility is a topping cycle, natural gas and No. 2 oil-fueled, combined cycle cogeneration plant. It is an "eligible facility" within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935 because it will be used for the generation of electric energy exclusively for sale at wholesale.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Indeck-Oswego Limited Partnership

[Docket No. EG99–192–000]

On July 13, 1999, Indeck-Oswego Limited Partnership (Indeck-Oswego), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Indeck-Oswego is an Illinois limited partnership created for the purpose of owning and/or operating a 54 MW cogeneration facility located in Oswego, New York (the Facility).

The Facility is a topping cycle, natural gas and No. 2 oil-fueled, combined cycle cogeneration plant. It is an "eligible facility" within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935 because it will be used for the generation of electric energy exclusively for sale at wholesale.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Indeck Energy Services of Ilion, Inc.

[Docket No. EG99–193–000]

On July 13, 1999, Indeck Energy Services of Ilion, Inc. (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. The Applicant is an Illinois corporation created for the sole purpose of operating a 58 MW cogeneration facility located in Ilion, New York (the Facility).

The Facility is a topping cycle, natural gas and No. 2 oil-fueled, combined cycle cogeneration plant. It is an "eligible facility" within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935 because it will be used for the generation of electric energy exclusively for sale at wholesale.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Indeck-Ilion Limited Partnership

[Docket No. EG99–194–000]

On July 13, 1999, Indeck-Ilion Limited Partnership (Indeck-Ilion), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Indeck-Ilion is an Illinois limited partnership created for the purpose of owning and/or operating a 58 MW cogeneration facility located in Ilion, New York (the Facility).

The Facility is a topping cycle, natural gas and No. 2 oil-fueled, combined cycle cogeneration plant. It is an "eligible facility" within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935 because it will be used for the generation of electric energy exclusively for sale at wholesale.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Indeck Energy Services of Oswego, Inc.

[Docket No. EG99–195–000]

On July 13, 1999, Indeck Energy Services of Oswego, Inc. filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Indeck Energy Services of Oswego, Inc. is an Illinois corporation created for the sole purpose of operating a 54 MW cogeneration facility located in Oswego, New York (the Facility).

The Facility is a topping cycle, natural gas and No. 2 oil-fueled, combined cycle cogeneration plant. It is an "eligible facility" within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935 because it will be used for the generation of electric energy exclusively for sale at wholesale.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Tractebel Energy Marketing, Inc.; Cogentrix Energy Power Marketing, Inc.; South Jersey Energy Company, and CHI Power Marketing, Inc.

[Docket Nos. ER94–142–023; ER95–1739–016; ER97–1397–006 and ER96–2640–011]

Take notice that on July 12, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

12. Tennessee Power Company; EMC Gas Transmission Company; Lambda Energy Marketing Company; AMVEST Power, Inc.; ER97–2045–009; American Power Exchange, Inc.; Clearinghouse Corporation; TexPar Energy, Inc.; PowerTec International, LLC; and J. L. Walker & Associates

[Docket Nos. ER95–581–017; ER96–2320–012; ER94–1672–018; ER94–1578–019; ER98–2020–004; ER95–62–018; ER96–1–015 and ER95–1261–016]

Take notice that on July 12, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

13. Energy Transfer Group, L.L.C.; AMVEST Coal Sales, Inc.; Symmetry Devise Research, Inc.; Power Exchange Corporation; ICC Energy Corporation; Superior Electric Power Corporation; InterCoast Power Marketing Company; and DC Tie, Inc.

[Docket Nos. ER96–280–014; ER97–464–011; ER96–2524–006; ER95–72–019; ER96–1819–011; ER95–1747–015; ER94–6–014 and ER91–435–030]

Take notice that on July 13, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

14. Illinova Power Marketing, Inc.

[Docket No. ER99–3208–000]

On July 13, 1999, Illinova Power Marketing, Inc., filed an amendment to its June 11, 1999 application requesting approval of a proposed market-based rate tariff, waiver of certain regulations, and blanket approvals, and for specific approval of a power purchase agreement.

Comment date: August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Lakewood Cogeneration, LP

[Docket No. ER99–3542–000]

Take notice that on July 12, 1999, the above-mentioned affiliated power producer filed its quarterly report for the quarter ending June 30, 1999.

Comment date: July 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Great Bay Power Corporation

[Docket No. ER99–3552–000]

Take notice that on July 13, 1999, Great Bay power Corporation (Great Bay), tendered for filing a service agreement between PP&L, Inc. and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on July 24, 1999, in Docket No. ER98–3470–000. The service agreement is proposed to be effective July 8, 1999.

Comment date: August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. American REF–FUEL Company of Essex County

[Docket No. ER99–3553–000]

Take notice that American REF–FUEL Company of Essex County (REF–FUEL/Essex), owner of a qualifying small power production facility located in Newark, New Jersey, on July 13, 1999, tendered for filing proposed changes in its Rate Schedule FERC No. 1, Supplement No. 2. Under the proposed new rate schedule, the rates charged by REF–UEL/Essex for capacity and energy sold to Public Service Electric and Gas Company would be lower than the rates currently in effect.

Copies of this filing were served upon the jurisdictional customers and the New Jersey Board of Public Utilities.

Comment date: August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Lone Star Steel Sales Company

[Docket No. ER99–3554–000]

Take notice that on July 13, 1999, Lone Star Steel Sales Company (LSSS), petitioned the Commission for acceptance of Lone Star Steel Sales Company Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain Commission regulations.

LSSS intends to engage in wholesale electric power and energy purchases and sales as market-based rates. LSSS is an Exempt Wholesale Generator (EWG) with a total of 15 MW of generation, located in Northeast Texas. LSSS is a wholly owned subsidiary of Lone Star Steel Company which is primarily in the business of producing tubular steel products.

Comment date: August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Florida Power & Light Company

[Docket No. ER99–3555–000]

Take notice that on July 13, 1999, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Florida Power & Light Company—Energy Marketing and Trading Division for Short-Term Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreement be permitted to become effective on July 1, 1999

FPL states that this filing is in accordance with section 35 of the Commission's regulations.

Comment date: August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER99–3556–000]

Take notice that on July 13, 1999, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Firm Point-To-Point Transmission Service between LG&E/KU and West Penn Power Company d/b/a Allegheny Energy under LG&E/KU's Open Access Transmission Tariff.

Comment date: August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Bangor Hydro-Electric Company

[Docket No. ER99–3557–000]

Take notice that on July 13, 1999, Bangor Hydro-Electric Company filed an executed service agreement for market-based sales with Reliant Energy Services, Inc.

Comment date: August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. PP&L, Inc.

[Docket No. ER99–3558–000]

Take notice that on July 13, 1999, the above-mentioned public utility filed its

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quarterly report for the quarter ending June 30, 1999.

Comment date: August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. W. Hayne Hipp

[Docket No. ID–2271–001]

Take notice that on July 9, 1999, W. Hayne Hipp filed an executed Application under section 305(b) of the Federal Power Act For Authorization to Hold Interlocking Positions as a director of SCANA Corporation and Wachkovia Corporation.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18786 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

July 19, 1999.

a. *Type of filing:* Notice of Intent to File Application for a New License.

b. *Project No.:* 201.

c. *Date filed:* July 7, 1999.

d. *Submitted By:* Petersburg Municipal Power and Light.

e. *Name of Project:* Blind Slough Project.

f. *Location:* On Crystal Creek, Mitkof Island, near the City of Petersburg, Alaska.

g. *Filed Pursuant to:* 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of current license:* June 1, 1980.

i. *Expiration date of current license:* November 12, 2004.

j. *The project consists of:* (1) a 32-foot high by 205-foot long rockfill dam; (2) an ungated side-channel spillway; (3) Crystal Lake Reservoir, with approximately 4,450 acre-feet of active storage and a surface area of 233 acres at spillway crest elevation 1,294 feet msl; (4) a 4,642-foot long, 20-inch diameter steel penstock; (5) two powerhouses containing generating units with rated capacities of 1,600 kW and 400 kW; and (6) other facilities and interests appurtenant to operation of the project.

k. *Pursuant to 18 CFR 16.7 information on the project is available at:* Dennis Lewis, Superintendent, Petersburg Municipal Power and Light, P.O. Box 329, 11 South Nordic, Petersburg, AK 99833, (907) 772–4203.

l. *FERC contact:* Vince Yearick, 202–219–3073 or vince.yearick@ferc.fed.us.

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 12, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–18787 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Amendment To License, and Soliciting Comments, Motions To Intervene, and Protests

July 19, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No.:* 2306–024.

c. *Date Filed:* June 18, 1999.

d. *Applicant:* Citizens Utilities Company.

e. *Name of Project:* Clyde River Hydroelectric Project.

f. *Location:* On the Clyde River in Orleans County, Vermont. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kevin Perry, Citizens Utilities Company, Citizens Road, Newport, VT 05855, (802) 334–0326.

i. *FERC Contact:* Any questions on this notice should be addressed to Frankie Green at (202) 501–7704, or e-mail address: frankie.green@ferc.fed.us.

j. *Deadline for filing comments and or motions:* August 23, 1999.

All documents (original and eight copies) should be filed with David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (2306–024) on any comments or motions filed.

k. *Description of Proposal.* The applicant proposes modifications in both the Seymour Lake and Echo Lake Dams in order to utilize the spillways to help regulate lake levels. The applicant would lower spillway crests at both dams to facilitate run-of-river operations and to leave existing gates open one inch to provide continuous river flow. Provisions for the installation of flashboards on the lowered spillways have been made allowing the dams to be operated under the current mode of operation, if desired. At the Seymour Dam, the existing timber crib with concrete cap would be replaced with a new concrete gravity type structure. To compensate for the lost gate, the discharge capacity at Seymour Dam the Spillway length would be increased to include the area of the existing abutment wall.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211,.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–18789 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

July 19, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2503–051.

c. *Date Filed:* June 4, 1999.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Keowee & Jocassee Hydroelectric Project.

f. *Location:* Adjacent to Outerbanks of Keowee Resorts and Marina, on Lake Keowee, in Pickens County, South Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *FERC Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12V), Charlotte, NC 28201–1006, (704) 382–5778.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 219–3076, or e-mail address: brian.romanek@ferc.fed.us.

j. *Deadline for filing comments and or motions:* August 30, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Please include the project number (2503–051) on any comments or motions filed.

k. *Description of Proposal:* Duke Energy Corporation proposes to lease to Outerbanks, Inc., a 1.62-acre parcel within the bed of Lake Keowee for the construction of a commercial/residential marina. This facility will include 5 piers with a total of 56 boat slips. The facility is intended to provide boating access for renters of cabins and townhomes that are part of the Outerbanks of Keowee Resorts & Marina facility. No dredging is proposed in conjunction with this application.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us /online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITION", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–18790 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 19, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11735–000.

c. *Date filed:* April 26, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Red River Lock and Dam No. 5 Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 5 on the Red River, near the Town of Coushatta, Bossier County, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

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j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 5, and would consist of the following facilities: (1) Five new steel penstocks, each about 100-foot-long and 12-foot-in-diameter; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 19,800 kilowatts; (3) a new 300-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 121 gigawatthours. The cost of the studies under the permit will not exceed $2,200,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application maybe may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–18791 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 19, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11737–000.

c. *Date filed:* April 26, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Red River Lock and Dam No. 4 Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 4 on the Red River, near the town of Powhatan, Red River County, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 4, and would consist of the following facilities: (1) Five new steel penstocks, each about 100-foot-long and 10.5-foot-in-diameter; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 27,000 kilowatts; (3) a new 300-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 166 gigawatt hours. The cost of the studies under the permit will not exceed $3,000,000.

m. *Avialable Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individual desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS" "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–18792 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 19, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

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a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 11764–000.
c. *Date Filed:* June 14, 1999.
d. *Applicant:* Universal Electric Power Corporation.
e. *Name of Project:* Mississippi Lock and Dam No. 22 Hydroelectric Project.
f. *Location:* On the Mississippi River near the town of Ashburn, in Ralls County, Missouri, and near the town of Kinderhook, in Pike County, Illinois. The project would utilize the U.S. Army Corps of Engineers Mississippi Lock and Dam No. 22 and reservoir.
g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).
h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.
i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, 202–219–2778.
j. *Deadline for Filing Comments, Motions to Intervene, and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affects the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would be located at the existing U.S. Army Corps of Engineers Mississippi Lock and Dam No. 22 and would consist of the following proposed facilities: (1) Eight 80-foot-long, 108-inch-diameter penstocks; (2) a powerhouse on the downstream side of the dam housing eight turbine generating units with a total installed capacity of 10.0 MW; (3) a tailrace discharge apron; (4) a 200-foot-long, 14.7 kV transmission line; and (5) other appurtenances.

Applicant estimates that the average annual generation would be 61,000 MWh and that the cost of the studies under the permit would be $2,000,000.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–18793 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 19, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 11765–000.
c. *Date Filed:* June 15, 1999.
d. *Applicant:* Universal Electric Power Corporation.
e. *Name of Project:* Lock A Hydroelectric Project.
f. *Location:* On the Tombigbee River near the town of Amory, in Monroe County, Mississippi. The project would utilize the U.S. Army Corps of Engineers Lock A and reservoir.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.
i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, 202–219–2778.
j. *Deadline for Filing Comments, Motions to Intervene, and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would be located at the existing U.S. Army Corps of Engineers Lock A and would consist of the following proposed facilities: (1) One 240-foot-long, 96-inch-diameter penstock; (2) a powerhouse on the downstream side of the dam housing a single turbine generating unit with an installed capacity of 1.35 MW; (3) a tailrace discharge apron; (4) a 500-foot-long, 14.7 kV transmission line; and (5) other appurtenances.

Applicant estimates that the average annual generation would be 8,200 MWh and that the cost of the studies under the permit would be $600,000.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent (allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant, desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–18794 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 19, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

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a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 11766–000.
c. *Date Filed:* June 18, 1999.
d. *Applicant:* Universal Electric Power Corporation.
e. *Name of Project:* Mississippi Lock and Dam No. 5 Hydroelectric Project.
f. *Location:* On the Mississippi River near Minnesota City, in Winona County, Minnesota, and near Fountain City, in Buffalo County, Wisconsin. The project would utilize the U.S. Army Corps of Engineers Mississippi Lock Dam No. 5 and reservoir.
g. *Filed Pursuant to :* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.
i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, 202–219–2778.
j. *Deadline for Filing Comments, Motions to Intervene, and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would be located at the existing U.S. Army Corps of Engineers Mississippi Lock and Dam No. 5 and would consist of the following proposed facilities: (1) Six 80-foot-long, 96–inch-diameter penstocks; (2) a powerhouse on the downstream side of the dam housing six turbine generating units with a total installed capacity of 10.0 MW; (3) a tailrace discharge apron; (4) a 200-foot-long, 14.7 kV transmission line; and (5) other appurtenances.

Applicant estimates that the average annual generation would be 61,000 MWh and that the cost of the studies under the permit would be $2,000,000.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http:www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in items above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before, the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans—and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the. requirements of Rules of Practice and Procedure, 18 CFR 385.20, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Protest Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an Agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 99–18795 Filed 7–22–99; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 19, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 11767–000.
c. *Date Filed:* June 21, 1999.
d. *Applicant:* Universal Electric . Power Corporation.
e. *Name of Project:* Mississippi Lock and Dam No. 6 Hydroelectric Project.
f. *Location:* On the Mississippi River near the town of Trempealeau, in Trempealeau County, Wisconsin, and near the town of Winona, in Winona County, Minnesota. The project would utilize the U.S. Army Corps of Engineers Mississippi Lock and Dam No. 6 and reservoir.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.
i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, 202–219–2778.
j. *Deadline for Filing Comments, Motions to Intervene, and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would be located at the existing U.S. Army Corps of Engineers Mississippi Lock and Dam No. 6 and would consist of the following proposed facilities: (1) Eight 80-foot-long, 96-inch-diameter penstocks; (2) a powerhouse on the downstream side of the dam housing eight turbine generating units with a total installed capacity of 10.8 MW; (3) a tailrace discharge apron; (4) a 4-mile-long, 14.7 kV transmission line; and (5) other appurtenances.

Applicant estimates that the average annual generation would be 66,000 MWh and that the cost of the studies under the permit would be $2,000,000.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) name in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party of the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 99–18796 Filed 7–23–99; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 19, 1999.

Take notice that the following hydroelectric application has been filed

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with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11768–000.

c. *Date Filed:* June 21, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* H.K. Thatcher Lock and Dam Hydroelectric Project.

f. *Location:* On the Ouachita River near the towns of El Dorado and Calion, in Union County, Arkansas. The project would utilize the U.S. Army Corps of Engineers H.K. Thatcher Lock and Dam and reservoir.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, 202–219–2778.

j. *Deadline for Filing Comments, Motions To Intervene, and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would be located at the existing U.S. Army Corps of Engineers H.K. Thatcher Lock and Dam and would consist of the following proposed facilities: (1) Two 240-foot-long, 96-inch-diameter penstocks; (2) a powerhouse on the downstream side of the dam housing two turbine generating units with a total installed capacity of 3.0 MW; (3) a tailrace discharge apron; (4) a 500-foot-long, 14.7 kv transmission line; and (5) other appurtenances.

Applicant estimates that the average annual generation would be 18,000 MWh and that the cost of the studies under the permit would be $1,000,000.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc. fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–18797 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Tendered for Filing With the Commission and Soliciting Additional Requests

July 19, 1999.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. *Type of Application:* Exemption (Less than 5 MW).

b. *Project No.:* 11784–000.

c. *Date filed:* June 28, 1999.

d. *Applicant:* Wynning Resources Roanoak Limited Partnership.

e. *Name of Project:* Roanoak Hydroelectric Project.

f. *Location:* On Howard's Fork of the San Miguel River, San Miguel County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant:* Mr. E. Lee Wynne, President, Wynning Resources, Inc., 4710 Kannah Creek Road, Whitewater, CO 81527, Phone (970) 243–8284.

i. *FERC Contact:* M. Charlene Scott, charlene.scott@ferc.fed.us, 202–219–2817.

j. *Deadline for Filing Additional Study Request:* August 27, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The proposed project would consist of: (1) A diversion structure; (2) a 3,500-foot-long, 12-inch-diameter PVC penstock; (3) a powerhouse with an installed capacity of 325 kilowatts; and (4) other appurtenances.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–18798 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 19, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11778–000.

c. *Date Filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi Lock and Dam #5A Hydroelectric Project.

f. *Location:* On Mississippi River, Winona County, Minnesota. The project would utilize the U.S. Army Corps of Engineers, Mississippi Lock and Dam #5A.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for Filing Motions To Intervene, Protest and Comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would use the U.S. Army Corps of Engineer's Mississippi Lock and Dam #5A and would consist of the following facilities: Five new 80-foot-long, 96-inch-diameter penstocks at the outlet works; (2) a new powerhouse containing five generating units having a total installed capacity of 6 MW; (3) a new tailrace; (4) a new 300-foot-long, 14.7-KV transmission line; and (5) other appurtenances.

The project would have an annual generation of 37,000 MWh and project power would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be

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served on the applicant(s) named in this public notice.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST, MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–18799 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6402–4]

Agency Information Collection Activities: Continuing Collection; Comment Request; Part B: Permit Application, Permit Modifications and Special Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Part B Permit Application, Permit Modifications and Special Permits, EPA ICR #1573.05, OMB No. 2050-0009, expires on December 31, 1999. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 21, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–1999–PBIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ) 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA address below. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–1999–PBIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. This document and the supporting documents that detail the Part B Permit Application, Permit Modifications and Special Permits ICR are also electronically available. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: Dave Eberly by mail at the Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, by phone at (703) 308–8645, or by Internet e-mail at: eberly.david@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Internet Availability

Today's document and the supporting documents that detail the Part B Permit Application, Permit Modifications and Special Permits ICR are available on the Internet. Follow these instructions to access this information electronically:

WWWURL:http//www.epa.gov/epaoswer/hazwaste/permit/partb/index.htm

FTP:ftp.epa.gov

Login: anonymous

Password: your Internet e-mail address

Path:/pub/epaoswer

Note: The official record for this action will be kept in paper form and maintained at the address in the **ADDRESSES** section above.

Affected Entities: Entities potentially affected by this action are owners and operators of hazardous waste management facilities.

Title: Part B Permit Application, Permit Modifications and Special Permits, EPA ICR #1573.05, OMB No. 2050–0009, expires on December 31, 1999.

Abstract: Section 3005 of Subtitle C of RCRA requires treatment, storage or disposal (TSD) facilities to obtain a permit. To obtain the permit, the TSD must submit an application describing the facility's operation. There are two parts to the RCRA permit application—part A and part B. Part A defines the processes to be used for treatment, storage, and disposal of hazardous wastes; the design capacity of such processes; and the specific hazardous wastes to be handled at the facility. Part B requires detailed site specific information such as geologic, hydrologic, and engineering data. In the event that permit modifications are proposed by the applicant or EPA, modifications must conform to the requirements under sections 3004 and 3005.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Agency today begins an effort to examine the part B permit application requirements and consider options for reducing the burden and increasing the usefulness of the information that is collected. The Agency would appreciate any information on the users of this information, how they use this information, how the information could be improved, and how the burden for this information collected can be reduced.

Therefore, the EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The estimated average burden for renewing the existing part B ICR is as follows:

—Demonstrations and exceptions: 2.4 hours
—Legal review: 100 hours
—Permit information under 270.10(j): 10 hours
—Demonstrations under 270.14(a): .1 hour
—General facility standards: 486 hours
—Financial assurance: 19 hours
—Ground-water protection: 237 hours
—Specific unit requirements under 270.15 through 270.26: 1,737 hours
—Permit modifications: 2.4 hours
—Renewal of permits: 1 hour
—Special forms of permits: 99 hours

The number of respondents per year for part B permit applications, permit modifications and special permits is variable. In the 1996 part B ICR, EPA estimated that 44 part B permit applications, 58 permit modifications and 5 special forms of permits were submitted annually. The 1996 estimated total annual burden on respondents for part B permit applications, permit modifications and special permits was 118,926 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 16, 1999.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 99–18874 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6402–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, NSPS Glass Manufacturing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS Subpart CC, Glass Manufacturing Plants, OMB Control Number 2060–0054, EPA number 1131.06, expiration date July 31, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1131.06.

SUPPLEMENTARY INFORMATION:

Title: NSPS Subpart CC, Glass Manufacturing Plants, OMB Control Number 2060–0054, EPA number 1131.06, expiration date July 31, 1999. This is a request for extension of a currently approved collection.

Abstract: The New Source Performance Standards (NSPS) for glass manufacturing plants were proposed on June 15, 1979 and promulgated on October 7, 1980, and amended October 19, 1984. Approximately 30 sources are currently subject to the standard, and it is estimated that no additional sources will become subject to the standard in the next three years. The standards do not apply to hand glass melting furnaces, glass melting furnaces designed to produce less than 4,550 kilograms of glass per day, or all-electric melters. Experimental furnaces are not subject to the emission standards at 40 CFR 60.292. The standards set particulate matter emission limits. There are separate limits for sources using "modified-process" glass melting furnaces. Modified-process is defined as any technique designed to minimize emissions without add-on controls. Emission limits are specific for the type of glass produced, and are listed at section 60.292(a) and section 60.293(b).

Owners or operators of the affected facilities described must make initial reports when a source becomes subject, conduct and report on a performance test, demonstrate and report on continuous monitor performance, maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are required, in general, for all sources subject to NSPS. The recordkeeping and reporting requirements specific to glass manufacturing plants are detailed in the CFR. This information is being collected to assure compliance with 40 CFR part 60, subpart CC.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following

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the date of such measurements, maintenance reports, and records. All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

In the Administrator's judgment, particulate matter emissions from glass manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category at 40 CFR part 60, subpart CC.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 5, 1999. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of Glass Manufacturing Plants.

Estimated Number of Respondents: 30

Frequency of Response: Initial reports if there are new sources, and, semiannual excess emissions reports

Estimated Total Annual Hour Burden: 398 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $174,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1131.06 and OMB Control No. 2060–0054 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: July 19, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–18872 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6402–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Reporting and Recordkeeping Requirements for the New Source Performance Standards for Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting and Recordkeeping Requirements for the New Source Performance Standards for Municipal Solid Waste Landfills, OMB Control Number 2060–0220, expiration date August 31, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1557.04.

SUPPLEMENTARY INFORMATION: *Title:* Reporting and Recordkeeping Requirements for the New Source Performance Standards for Municipal Solid Waste Landfills (OMB Control No. 2060–0220; EPA ICR No. 1557.04) expiring 8/31/99. This is a request for extension of a currently approved collection.

Abstract: In the Administrator's judgement municipal solid waste (MSW) landfill emissions generated by decomposition of municipal solid waste deposited in an MSW landfill may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category.

All respondents must submit an initial design capacity report which includes the landfill's maximum design capacity, date of anticipated startup, and the anticipated refuse acceptance rate. If the design capacity of a new landfill is less than 2,500,000 megagrams (Mg), no further reporting or recordkeeping is required. Under certain circumstances, amended design capacity reports may be required. If the facility's design capacity is equal to or greater than 2,500,000 Mg, the owner or operator is required to determine the facility's nonmethane organic compound (NMOC) emission rate.

If the NMOC emission rate is determined to be <50 Mg/yr, using Tier 1, Tier 2, or Tier 3 calculations, no further calculation or testing is required for that year. Owners or operators of MSW landfills emitting <50 Mg NMOC per year may submit reports of NMOC emission rates yearly. However, NSPS Subpart WWW, also allow owners or operators to report less frequently. Under these provisions, the NMOC report may be accompanied by an estimation of the annual NMOC emission rate for each of the next 5 years, provided that none of the estimated rates reaches 50 Mg/yr. In this case, the owner or operator would not submit annual reports, but the estimation would be updated and resubmitted every 5 years. The owner or operator would also be required to revise the estimate in any year in which the actual waste acceptance rate for that year exceeds the waste acceptance rate upon which the previously submitted estimate is based.

Owners or operators of landfills with collection and control systems installed in compliance with the standards are not required to submit reports of NMOC emission rates. Owners or operators of affected facilities would be required to keep records of accumulated refuse and waste acceptance rates for a minimum of 5 years.

For landfills required to install collection and control systems (i.e., those emitting greater than 50 Mg/yr of NMOC), submission of a collection and control system design plan is required. After review of the design plan and installation of the collection and control system, an initial performance test and report for the system is required. Thereafter, annual compliance reports would be required.

For control systems using an enclosed combustion device, the initial performance test would also include the average combustion temperature, and the percent reduction of NMOC achieved. For control systems using a boiler, the initial performance report would include a description of the location at which the emission stream is introduced into the boiler, and the average combustion temperature of the boiler.

For control systems using an open flare, the initial performance report would include a description and the flare type, visible emissions reading, a heat content determination, flow rate measurements, and exit velocity determinations. Where control devices other than an open flare or closed combustion device are used, owners or operators would be required to submit to the Administrator information describing the control device and parameters that will indicate its proper performance.

Following submission of the initial performance report, owners or operators would be required to keep continuous monitoring records of the parameters reported in the initial performance report and records of monthly monitoring of the collection system and quarterly monitoring of surface methane concentration. Annual compliance reports and recordkeeping would include descriptions of any periods in which the value of any of the monitored operating parameters falls outside the established ranges and any period when the collection system or air pollution control equipment malfunctioned or when the collected gas was diverted from the control device. When applicable, each owner or operator of a controlled landfill will submit a closure report to EPA within 30 days of waste acceptance cessation.

The information collected will be used by EPA personnel to ensure compliance with the NSPS and identify the sources subject to the standards. When appropriate under NSPS, Subpart WWW, each owner or operator of a controlled landfill shall submit annual reports of exceedances, gas steam diversion, control device non-operation, collection system failure, the date at installations and the location of each well or well collection system and equipment removal.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 1/5/99 (64 FR 499); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 11.3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or Operators of MSW landfills for which construction, modification, or reconstruction commences on or began accepting waste after May 30, 1991.

Estimated Number of Respondents: 172 each year.

Frequency of Response: quarterly, annually.

Estimated Total Annual Hour Burden: 3,379 hours.

Estimated Total Annualized Cost Burden: $80,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1557.04 and OMB Control No. 2060–0220 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 19, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–18873 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6244–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 21, 1999 Through July 02, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–5167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (64 FR 17362).

Draft EISs

ERP No. D–AFS–L65319–OR Rating EO2, Pelican Butte Ski Area Master Development Plan, Implementation, Winema National Forest, Klamath Ranger District, Klamath County, OR.

Summary: EPA expressed environmental objections concerning insufficient information to predict impacts to water quality and air quality, especially visibility. Reductions in habitat, especially for the spotted owl, do not comply with the NW Forest Plan.

ERP No. D–BLM–J65298–CO Rating EC2, Yankee Gulch Sodium Minerals Project, To Produce Sodium Products, Piceance Basin, Right-of-Way Permit and COE Section 404 Permit, Rio Blanco County, CO.

Summary: EPA expressed environmental concerns for the protection of soil and ground water, and ensuring that impacts are monitored and mitigated.

ERP No. D–FHW–E40778–NC Rating EC2, US 74 Shelby Bypass Transportation Improvements, Construction, Funding and COE Section 404 Permit, Cleveland County, NC.

Summary: EPA is requesting further consideration of a bypass corridor to the south of the Shelby Central Business District. No particular bypass alternative to the north of Shelby is preferred by EPA, and the agency has noted

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substantial impacts to surface streams because they traverse two water supply watersheds and would require stream locations. Socioeconomic impacts (i.e., relocations, and noise) also appear to be substantial for a north bypass alternative.

ERP No. D–FHW–F40381–MN Rating EC2, Phalen Boulevard Project, Construction of a new 4.3 Kilometer Roadway, from I35E to Johnson Parkway, Funding, in the City of St. Paul, Ramsey County, MN.

Summary: EPA expressed environmental concerns regarding the remediation of contaminated sites that would most likely occur if the proposed project were to be implemented.

ERP No. D–FHW–K40233–CA Rating EC2, US–7 Expressway Project, Construction between CA–98 to Interstate 8, Improve Access to the new Calexico East Port of Entry, Funding and COE Section 404 Permit, Imperial County, CA.

Summary: EPA expressed environmental concerns with potential cumulative and secondary effects, as well as impacts to water quality and prime farmland.

ERP No. DS–AFS–J65277–CO Rating EC2, Sheep Flats Diversity Unit, Timber Sales and Related Road Construction, Additional Information on Soils and Water Quality, Grand Mesa, Uncompahgre and Gunnison National Forests, Colibran Ranger District, Mesa County, CO.

Summary: EPA expressed environmental concerns and requested additional information on the effectiveness of current Best Management Practices for mitigating sedimentation impacts.

Final EISs

ERP No. F–AFS–K65199–AZ, Windmill Range Allotment Management Plan, Cattle Grazing Use, Implementation, Coconino National Forest, Mormon Lake, Peaks and Sedona Ranger Districts, Coconino and Yavapal Counties, AZ.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–FTA–K54022–CA, Third Street Light Rail Project, Transportation Improvements, Funding, U.S. Coast Guard Permit, and COE Section 404 Permit, San Francisco Municipal Railway, in the City and County of San Francisco, CA.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory.

Dated: July 20, 1999.

Joseph C. Montgomery,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 99–18884 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6244–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed July 12, 1999 Through July 16, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990237, Draft Supplement, IBR, CA, Programmatic EIS—Central Valley Project Improvement Act (CVPIA) of 1992 Implementation, Additional Information for the Project Simulation Model (PROSIM) Hydrology, Central Valley, Trinity Contra Costa, Alamenda, Santa Clara and San Benito Counties, CA, Due: September 13, 1999, Contact: Alan Candish (916) 978–5197.

EIS No. 990238, Draft EIS, AFS, CA, Eldorado and Tahoe National Forests Land and Resource Management Plan, Standard and Guidelines for the Grazing Allotment, Implementation, CA, Due: October 15, 1999, Contact: Susan A. Rodman (530) 621–5298.

EIS No. 990239, Final EIS, AFS, CO, South Fork Salvage Analysis Area, Implementation, Routt Divide Blowdown, Land and Resource Management Plan, Medicine Bow-Routt National Forests, Hahns Peak/Bears Ears Ranger District, Rounty County, CO, Due: August 23, 1999, Contact: Sherry Reed (970) 870–2184.

EIS No. 990240, Draft EIS, FHW, NC, Fayetteville Outer Loop Corridor Study, Transportation Improvement Program (TIP) Cape Fear River, Cumberland, Hoke and Robeson Counties, NC, Due: September 7, 1999, Contact: Nicolas L. Graf (919) 856–4346.

EIS No. 990241, Draft EIS, AFS, WA, Stimson ANILCA Access Easement Project, Reconstruct and Construct, Colville National Forest, Sullivan Lake Ranger District, Pend Oreille Counties, WA, Due: September 07, 1999, Contact: Timothy M. Bertram (509) 446–7500.

EIS No. 990242, Final EIS, BOP, KY, McCreary County Federal Correctional Facility, Construction and Operation, Five Possible Sites, McCreary County, KY, Due: August 23, 1999, Contact: James B. Jones (202) 307–3230.

EIS No. 990243, Draft EIS, NPS, WA, Vancouver National Historic Reserve Cooperative Management Plan, Preservation, Education and Public Use, Implementation, Clark County, City of Vancouver, WA, Due: September 7, 1999, Contact: Larry Beal (303) 969–2454.

EIS No. 990244, Draft EIS, COE, FL, Lake Okeechobee Regulation Schedule Study, To Maintain or Improve Existing Water Storage, St. Lucie and Caloosahatchee River Estuaries, FL, Due: September 30, 1999, Contact: Mark Ziminske (904) 232–1786.

EIS No. 990245, Final Supplement, NOA, Northeast Multispecies Fishery Management Plan, Updated Information concerning Overfishing of Red Hake and Silver Hake Fishiers, Northeast United States, Due: August 23, 1999, Contact: Kathi Rodrigues (978) 281–9300.

EIS No. 990246, Draft EIS, NOA, NC, VA, Tilefish Fishery Management Plan (FMP), (Lopholatilus chamaeleonticeps), To Prevent Overfishing and Rebuild the Resource of Tilefish, Located in the Atlantic Ocean north of the Virginia/North Carolina Border, VA and NC, Due: September 7, 1999, Contact: Kathi Rodriques (978) 281–9300.

EIS No. 990247, Final EIS, GSA, CA, United States Border Facility, Tecate Port of Entry (POE) Realignment and Expansion, NPDES Permit, City of Tecate, San Diego County, CA, Due: August 23, 1999, Contact: Rosanne Nieto (415) 522–3490.

EIS No. 990248, Final EIS, COE, GA, Latham River/Jekyll Creek Environmental Restoration Project (Section 1135), To Establish the Without Project Condition, Atlantic Intracoastal Waterway (AIWW), Glynn County, GA, Due: August 23, 1999, Contact: Rudy Nyc (404) 562–5223.

EIS No. 990249, Final EIS, FHW, CA, California Forest Highway 137, Improvements to Wentworth Springs Road and the Stumpy Meadows Reservoir Dam eastward (14.4 miles) to Ice House Road, Eldorado National Forest, El Dorado County, CA, Due: August 23, 1999, Contact: Richard J. Cushing (303) 716–2138.

EIS No. 990250, Final EIS, COE, WI, IL, Upper Des Plaines River Flood Damage Reduction Project, Recommended Plan to Construct a Lateral Storage Area, National Economic Development (NED), Lake County, IL and Kenosha and Racine Counties, WI, Due: August 23, 1999, Contact: Keith Ryder (312) 353–6400.

EIS No. 990251, Final EIS, NPS, MT, Glacier National Park, General Management Plan, Implementation, Waterton Glacier International Peace Park, Lake National Park, Flathead and Glacier, MT, Due: August 23, 1999, Contact: Christina Anderson (406) 888–7911.

EIS No. 990252, Final Supplement, FAA, IN, Indianapolis International Airport Master Plan Development, Updated/New Information, Establishing New Air Traffic Procedures to Restore, Construct and Operate, Runway 5L/23R Parallel to existing Runway 14/32 and connecting to Runways 5R/23L and 5L/23R, Airport Layout Plan Approval, Funding and US COE Section 404 Permit, Marion County, IN, Due: August 16, 1999, Contact: Wally Welter (847) 294–8091.

The above FAA EIS should have appeared in the 07/16/99 **Federal Register**. The 30-day Comment Period is Calculated from 7/16/99.

Joseph C. Montgomery,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 99–18885 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6402–3]

Proposed Settlement, Clearwater Finishing Site, Clearwater, Aiken County, South Carolina

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) proposes to enter into a "prospective purchaser agreement" (PPA) concerning property owned by the Aiken County Forfeited Land Commission (FLC) in Aiken County, South Carolina. EPA proposes to enter into the PPA with the Clearwater Development Corporation, Inc., (CDC). The PPA concerns the acquisition by the CDC of certain real property presently owned the FLC in Clearwater, Aiken County, South Carolina.

The real property in question consists of a 64.39 acre tract located at U.S. Highway One and State Road #126 (also known as Belvadere Road), Clearwater, Aiken County, South Carolina. The Property is the subject of a Purchase and Sale Agreement between the FLC and CDC. Pursuant to the PPA, the Settling Respondent agrees to conduct further environmental assessment at the Site pursuant to a Voluntary Contract with the South Carolina Department of Health and Environmental Control. The PPA will also settle and resolve, subject to reservations and limitations contained in the PPA, the potential liability of the Settling Respondent for the Existing Contamination as defined in the PPA at the Property which may otherwise result from Settling Respondent becoming the owner of the property. The CDC will be protected from CERCLA liability for past costs which may arise from their participation in the acquisition of the Property, as described above.

EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should public comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–8909.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of publication.

Dated: July 14, 1999.

Anita Davis,

Acting Chief, Program Services Branch, Waste Management Division.

[FR Doc. 99–18867 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6402–2]

John P. Saad Superfund Site; Notice To Rescind Federal Register Notice Dated June 16, 1999

AGENCY: Environmental Protection Agency.

ACTION: Notice to rescind previous **Federal Register** notice.

SUMMARY: On June 16, 1999, the Environmental Protection Agency (EPA) published two (2) Notices of Proposed Settlements for response costs incurred by the EPA at the John P. Saad Superfund Site (site) located Nashville, Tennessee. The purpose of this notice is to rescind EPA's June 16, 1999 **Federal Register** Notices (64 FR 32234–32235) regarding the settlements of response costs at the Site. The Notice of Proposed Settlements for the Site may be republished in the future following final approval of the settlements.

Dated: July 14, 1999.

Anita Davis,

Acting Chief, Program Services Branch, Waste Management Division.

[FR Doc. 99–18868 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6401–8]

Proposed Amendment to CERCLA Administrative De Minimis Settlement; Waste, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed amendment to an administrative de minimis settlement concerning the Waste, Inc. Superfund site in Michigan City, Indiana, which will add The Toro Company as a settling party. The amended settlement is designed to resolve fully The Toro Company's liability at the site through a covenant not to sue under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973. The Toro Company will pay $19,581.14 into a Waste, Inc. Special Account within the EPA Hazardous Substances Superfund which will be used to finance the response action being implemented by the major PRPs under a unilateral order for the Site. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the amended settlement. The Agency will consider all comments received and may modify or withdraw its consent to the amended settlement if comments received disclose facts or considerations which indicate that the amended settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at:

Michigan City Public Library, 100 E. 4th Street, Michigan City, Indiana; and

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U.S. Environmental Protection Agency, Region 5 Records Center, 77 West Jackson Boulevard (7–HJ), Chicago, IL 60604, TEL: (312) 886–0900, Mon–Fri: 8:00 a.m.–4:00 p.m.

Commenters may request an opportunity for a public meeting in the affected area in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments must be submitted on or before August 23, 1999.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at:

Michigan City Public Library, 100 E. 4th Street, Michigan City, Indiana;
La Porte County Health Department, 104 Brinckmann Avenue, Michigan City, Indiana;
Bethany Baptist Church, 215 Miller Street, Michigan City, Indiana; and
U.S. Environmental Protection Agency, Region 5 Records Center, 77 West Jackson Boulevard (7–HJ), Chicago, IL 60604, TEL: (312) 886–0900, Mon–Friday: 8:00 a.m.–4:00 p.m.

A copy of the proposed settlement may be obtained from John Tielsch, Assistant Regional Counsel, 77 W. Jackson Blvd., Chicago, Illinois 60604, Mail Code C–14J, 312/353–7447.

Comments should reference the Waste, Inc. site, Michigan City, Indiana, and EPA Docket No. V–W–98–C–439 and should be addressed to: Sonja Brooks, Regional Hearing Clerk, U.S. Environmental Protection Agency, Mail Code R–19J, 77 W. Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John H. Tielsch, Assistant Regional Counsel, United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604, Mail Code C–14J, 312/353–7447.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 99–18869 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 16, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 21, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0573.
Title: FCC Form 394 Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise.
Form Number: FCC Form 394.
Type of Review: Extension of a currently approved collection.
Respondents: Business and other for-profit entities; State, local or tribal governments.
Number of Respondents: 2,000.
Estimated Time Per Response: 1–5 hours.
Frequency of Response: On occasion filing requirement.
Total Annual Burden: 7,000 hours.
Total Annual Cost: $377,000.
Needs and Uses: FCC Form 394 is a standardized form that is completed by cable operators in connection with the transfer of control of cable television systems. FCC Form 394 is used by cable operators to apply for local franchise authority ("LFA") approval to assign or transfer control of a cable television system. The data are used by the LFAs to restrict profiteering transactions and other transfers that are likely to adversely affect cable rates or service in the franchise area.

OMB Control Number: 3060–0106.
Title: Section 43.61—Reports of Overseas Telecommunications Traffic.
Form Number: N/A.
Type of Review: Extension.
Respondents: Business or other for-profit entities.
Number of Respondents: 440 respondents.
Estimated Time Per Response: 47.8 hours per response (avg.).
Total Annual Burden: 21,070 hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $518,000.
Frequency of Response: Annual, Quarterly, On occasion.
Needs and Uses: The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The collection of Section 43.61 overseas telecommunications traffic data is necessary for the Commission to fulfill its regulatory responsibilities under the Communications Act of 1934, as amended, 47 U.S.C. Sections 151–614 (1996). The collected data are essential to both the Commission and carriers for international facilities planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. Subject carriers are required to submit their annual reports no later than July 31 of each year for the preceding period of January through December. A revised report must be submitted for inaccuracies exceeding five percent of the reported figure by October 31, pursuant to Section 43.61(a)(2).

OMB Control Number: 3060–0817.
Title: Computer III Further Remand Proceedings: BOC Provision of Enhanced Services (ONA Requirements), CC Docket No. 95–20.
Form Number: N/A.
Type of Review: Extension.
Respondents: Business or other for-profit entities.
Number of Respondents: 500 respondents.
Estimated Time Per Response: 72.5 hours per response (avg.).
Total Annual Burden: 36,250 hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; third party disclosures.

Needs and Uses: In the Report and Order issued in CC Docket No. 95–20, released March 10, 1998, the Commission eliminates outdated, unnecessary regulations, while continuing to protect against potential anticompetitive behavior by the Bell Operating Companies (BOCs) in the provision of information services. The Commission established several collections of information: (1) The Commission no longer requires BOCs to file their Comparably Efficient Interconnection (CEI) plans with the Commission and to obtain pre-approval of CEI plans and amendments before initiating or altering an intraLATA information service. Instead, we require BOCs to post their CEI plans and plan amendments on their publicly accessible Internet sites linked to and searchable from the BOC's main Internet page, and to notify the Common Carrier Bureau at the time of the posting. The substance of the notification may be limited to the Internet address and path to the relevant CEI plan or amended plan; the form may consist of a letter to the Secretary with a copy to the Bureau. The requirement extends to CEI plans for new or modified telemessaging or alarm monitoring services, and for new or amended payphone services. In addition, if the BOC receives a good faith request for a plan from someone who does not have Internet access, the BOC must notify that person where a paper copy of the plan is available for public inspection. (2) The Commission removes the Computer II network disclosure rules for BOCs providing information through a Compute II separate subsidiary, the Computer II carrier rule, and the Computer III network disclosure rules. The Commission extends the disclosure requirements in Section 51.325(a) of its rules to require incumbent LECs to provide public notice of any network changes that will affect the manner in which CPE is attached to the network. The collections relating to CEI plans will be used to ensure that BOCs comply with Commission policies and regulations safeguarding against potential anticompetitive behavior by the BOCs in the provision of information services. The disclosure of CPE is necessary to encourage competition in the telecommunications services market by lifting operations barriers to entry.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–18763 Filed 7–22–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

July 14, 1999.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0898.
Expiration Date: 12/31/98.
Title: Incumbent Local Exchange Carrier Anti-Cramming Best Practices Statistics.
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 0 respondents; 9 hours per response (avg.); 81 total annual burden hours for all collections.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: One time requirement.
Description: Certain incumbent local exchange carriers (ILECs) have been requested to submit data regarding records of consumer complaints for cramming. Cramming is the placement of invalid or unclear charges on consumers' local telephone bills. ILECs possess information that will assist the Commission in determining the degree to which the anti-cramming best practices have been effective during the past year. The information will also provide the Commission with the ability to suggest modifications to the guidelines prior to competition. Obligation to comply: Voluntary.

OMB Control No.: 3060–0540.
Expiration Date: 05/31/2002.
Title: Tariff Filing Requirements for Nondominant Common Carriers.
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 2000 respondents; 10.5 hours per response (avg.); 21,000 total annual burden hours for all collections.
Estimated Annual Reporting and Recordkeeping Cost Burden: $1,260,000.
Frequency of Response: On occasion.
Description: Domestic nondominant carriers must file tariffs pursuant to 47 USC Section 203, implementing regulations are found at 47 CFR Sections 61.20–61.23. The information collected pursuant to the nondominant tariff filing rules is used to comply with Section 203 of the Communications Act of 1934, as amended, which requires that carriers file schedules indicating the rates, terms, and conditions of their service offerings. The information collected pursuant to the tariff filing requirements is used by the Commission to determine whether the rates, terms, and conditions of service offered are just and reasonable as the Act requires. These tariff filing requirements enable the Commission and the public to ensure that the service offerings of communications common carriers comply with the requirements of the Act. Obligation to respond: Mandatory.

OMB Control No.: 3060–0853.
Expiration Date: 05/31/2002.
Title: Receipt of Service Confirmation Form; Universal Service for Schools and Libraries.
Form No.: FCC 486.
Respondents: Business or other for-profit.
Estimated Annual Burden: 30,000 respondents; 1.5 hours per response (avg.); 45,000 total annual burden hours for all collections.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: On occasion.
Description: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program, schools and libraries must confirm that they are actually receiving the services eligible for support. FCC Form 486, Receipt of Service Confirmation Form is used by all billed entities who filed an FCC Form 471 on behalf of an eligible school, library, library consortium, or consortium of multiple entities, to inform the School and Library Division when they begin receiving or have received service from the service provider. The FCC Form 486 is also used to confirm that technology plans of entities applying for universal service support have a plan in place to utilize the services for which they have contracted, and to indicate the name of

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the authorized reviewing body, contact name, and contact telephone number. The FCC Form 486 is used to implement the Congressional mandate for universal service. Applications and forms used to administer the universal service schools and libraries program, including FCC Form 472, Billed Entity Applicant Reimbursement Form, may be obtained by calling the Schools and Libraries Division at 1–888–203–8100 or visiting 2021 L Street, NW, Suite 600, Washington, DC 20037. Obligation to comply: To obtain or retain benefits.

OMB Control No.: 3060–0106.
Expiration Date: 10/31/99.
Title: Section 43.61—Reports of Overseas Telecommunications Traffic.
Form No.: N/A.
Respondents: Business or other for-profit.
Estimated Annual Burden: 440 respondents; 47.8 hours per response (avg.); 21,070 total annual burden hours for all collections.
Estimated Annual Reporting and Recordkeeping Cost Burden: $518,000.
Frequency of Response: Annual, Quarterly, On occasion.
Description: The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The collection of Section 43.61 overseas telecommunications traffic data is necessary for the Commission to fulfill its regulatory responsibilities under the Communications Act of 1934, as amended, 47 U.S.C. Sections 151–614 (1996). The collected data are essential to both the Commission and carriers for international facilities planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. Subject carriers are required to submit their annual reports no later than July 31 of each year for the preceding period of January through December. A revised report must be submitted for inaccuracies exceeding five percent of the reported figure by October 31, pursuant to Section 43.61(a)(2). Obligation to respond: Mandatory.

OMB Control No.: 3060–0411.
Expiration Date: 06/30/2002.
Title: Procedures for Formal Complaints Filed Against Common Carriers.
Form No.: FCC Form 485.
Respondents: Business or other for-profit; Individuals; Not-for-Profit Institutions; Federal Government; and State, Local or Tribal Government.
Estimated Annual Burden: 5645 respondents; 2.95 hours per response (avg.); 16,677 total annual burden hours for all collections.
Estimated Annual Reporting and Recordkeeping Cost Burden: $63,000.
Frequency of Response: On occasion.
Description: Sections 206 to 209 of the Communications Act of 1934, as amended provide the statutory framework for our current rules for resolving formal complaints filed against common carriers. Section 208(a) authorizes complaints by any person complaining of anything done or omitted to be done by any common carrier subject to the provisions of the Act. Section 208(a) specifically states that it should be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper. Information filed pursuant to 47 CFR 1.720 *et seq.* is provided either with or in response to a formal complaint to determine whether or not there has been a violation of the Communications Act of 1934, as amended, or the Commissions' Rules or Orders. Respondents must submit a FCC Form 485 (Formal Complaint Intake Form) with any formal complaint to indicate that the complaint satisfies the applicable procedural and substantive requirements under the Communications Act of 1934, as amended, and the FCC's rules. The information is used by the Commission to determine the sufficiency of the complaint and aid its processing by the staff. FCC Form 485 is being revised. A public notice will be issued to announce the availability of the revised FCC Form 485 for public use. Affected respondents are complainants and potential defendant common carriers. Obligations to respond: Required to obtain or retain benefits.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–18764 Filed 7–22–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Submitted to OMB for Review and Approval

July 14, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 23, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0713.
Title: Alternative Broadcast Inspection Program (ABIP) Compliance Notification.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities; and Not-for-profit institutions.
Number of Respondents: 50.
Estimated Time Per Response: 5 mins. (50 responses/yr.).
Frequency of Response: On occasion reporting requirements; Third party disclosure.
Total Annual Burden: 250 hours.
Total Annual Cost: None.
Needs and Uses: The Commission established an ABIP that permits broadcast stations to arrange for a voluntary inspection of their facility by an entity, usually a state broadcast association, and to have the entity notify the Commission's local field office that the broadcast station has passed an inspection. The information collection requires such entities to file a statement with the FCC field office, in whose geographic area of responsibility the broadcast station is located, that the broadcast station has passed an ABIP inspection. The Commission will use the information collected to determine which broadcast stations are exempted from routine, random inspections by the local FCC field office during a two or three year period.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–18762 Filed 7–22–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–1346; Report No. AUC–99–25–A (Auction No. 25)]

Auction of AM, FM, TV, LPTV, and FM and TV Translator Construction Permits Scheduled for September 28, 1999; Minimum Opening Bids and Other Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On July 9, 1999, the Mass Media Bureau ("MMB") and the Wireless Telecommunications Bureau ("WTB") (collectively, "Bureaus") released a Public Notice announcing the minimum opening bids and other auction procedures for the Closed Broadcast Auction of AM, FM, TV, LPTV, and FM and TV Translator Construction Permits.

DATES: The auction will begin on September 28, 1999.

ADDRESSES: See text of the Public Notice and related attachments for information regarding important addresses.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau: Auctions and Industry Analysis Division: Bob Allen, Legal Branch at (202) 418–0660; Jeff Garrettson, Auctions Operations Branch at (202) 418–0660 or Bob Reagle, Auctions Operations Branch at (717) 338–2807.

Mass Media Bureau: Shaun Maher, Video Services Division at (202) 418–2324; Lisa Scanlan, Audio Services Division at (202) 418–2700.

Media Contact: Meribeth McCarrick at (202) 418–0654.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice that was released on July 9, 1999. The complete text of this Public Notice is available in its entirety, including all Attachments, for inspection and copying during normal business hours in the Reference Information Center, Room CY A–257, 445 12th Street, S.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, fax (202) 857–3805, 1231 20th Street, N.W., Washington, D.C. 20036. It is also available on the Commission's website at http://www.fcc.gov.

Synopsis of the Public Notice

A. Introduction

1. This Public Notice announces the procedures and minimum opening bids for the upcoming Closed Broadcast Auction. On May 17, 1999 the Bureaus released a Public Notice (*See* "Closed Broadcast Auctions Scheduled for September 28, 1999; Comment Sought on Minimum Opening Bids and Other Auction Procedures," *Public Notice*, DA 99–940 (rel. May 17, 1999) ("*Closed Broadcast Auction Public Notice*"), 64 FR 29312 (June 1, 1999), seeking comment on the establishment of reserve prices or minimum opening bids for the auction of AM, FM, TV, LPTV, and FM and TV Translator Construction Permits (Auction No. 25), in accordance with the Balanced Budget Act of 1997. In addition, the Bureaus sought comment on a number of procedures to be used in Auction No. 25. The Bureaus received 39 comments and 7 reply comments in response to the *Closed Broadcast Auction Public Notice*.

2. Pursuant to the *Broadcast First Report and Order*, 63 FR 48615 (September 11, 1998), (*See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *First Report and Order*, MM Docket No. 97–234, GC Docket No. 92–52 and GEN Docket No. 90–264, ("*Broadcast First Report and Order*") and *Memorandum Opinion and Order*, 64 FR 24523 (May 7, 1999), ("*Memorandum Opinion and Order on Reconsideration*"), participation in this auction is limited to those applicants identified in the *Closed Broadcast Auction Public Notice*.

3. Auction Date: The auction will begin on September 28, 1999. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted each business day and will continue until bidding has stopped on all licenses.

4. Auction Title: Auction No. 25 (Closed Broadcast Auction).

5. Bidding Methodology: Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

6. Pre-Auction Deadlines:
- Auction Seminar—August 3, 1999.
- Short Form Application (FCC Form 175)—August 20, 1999; 5:30 p.m. ET.
- Orders for Remote Bidding Software—August 20, 1999.
- Upfront Payments (via wire transfer)—September 13, 1999; 6:00 p.m. ET.
- Mock Auction—September 24, 1999.

7. Telephone Contacts:
- Auctions Hotline—(888) CALL–FCC ((888) 225–5322), press Option #2 or (717) 338–2888 (direct dial). (*For General Auction Information, and Seminar Registration. Hours of service: 8 a.m.–5:30 p.m. ET. Monday–Friday*).
- FCC Technical Support Hotline—(202) 414–1250 (voice); (202) 414–1255 (text telephone (TTY)). (*Hours of service: 8 a.m.–6 p.m. ET, Monday–Friday*).

8. List of Attachments:
- Attachment A—Summary of Construction Permits to be Auctioned, Upfront Payments, Minimum Opening Bids.
- Attachment B—Guidelines for Completion of FCC Forms 175 and Exhibits.
- Attachment C—Auction-Specific Instructions for FCC Remittance Advice FCC Form 159.
- Attachment D—Electronic Filing and Review of FCC Form 175.
- Attachment E—Accessing the FCC Network Using Windows 95/98.
- Attachment F—FCC Remote Bidding Software Order Form.
- Attachment G—Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing the Application of the Anti-Collusion Rules.
- Attachment H—Auction Seminar Registration Form.

9. Background: All spectrum to be auctioned is the subject of pending,

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mutually exclusive applications for construction permits for the AM, FM, TV, LPTV, and FM and television translator services, for which the Commission has not approved a settlement agreement that obviates the need for an auction. This includes mutually exclusive applications for full service FM, AM and television stations that were subject to the comparative freeze, instituted after the decision of the U.S. Court of Appeals for the District of Columbia in *Bechtel* v. *FCC*. The auction will also include pending mutually exclusive applications for LPTV, FM translator and television translator, as well as certain mutually exclusive LPTV and television translator DTV displacement relief applications. Pursuant to the *Broadcast First Report and Order*, participation in the auction will be limited to those applicants identified in this Public Notice and applicants will be potentially eligible to bid on only those construction permits for which they filed an appropriate long-form application and the Bureaus will dismiss the previously-filed long-form application of any pending applicant failing to timely file a short-form application to participate in the Closed Broadcast Auction.

10. Due Diligence: Potential bidders are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the facilities on which they intend to bid.

11. The FCC makes no representation or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become a FCC permittee in these services, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC construction permit or license constitute a guarantee of business success.

12. Participation: Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) by 5:30 p.m. Eastern Time, August 20, 1999.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. Eastern Time, September 13, 1999.
- Comply with all provisions outlined in this Public Notice and applicable rules of the Commission.

13. Prohibition of Collusion: To ensure the competitiveness of the auction process, the Commission's Rules prohibit mutually exclusive applicants within a group from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition becomes effective at the short form filing deadline and ends on the down payment due date. Bidders competing for the same construction permit(s) are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or engineering consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. The Bureaus, however, caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. However, applicants may enter into bidding agreements *before* filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications. By electronically submitting their FCC Form 175 short form applications, applicants are certifying their compliance with Sections 1.2105(c) and 73.5002. In addition, Section 1.65 of the Commission's Rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

14. Bidder Information Package: Given the closed nature of Auction No. 25 and the fact that the pool of potential bidders is limited to those that had previously filed long-form applications, no Bidder Information Package will be provided. All information necessary to participate in the Closed Broadcast Auction is contained in this Public Notice, the *Closed Broadcast Auction Public Notice*, the *Broadcast First Report and Order*, the *Memorandum Opinion and Order on Reconsideration* and the Commission's rules. Applicants may access updated information about Auction No. 25 at the following address on WTB's web site:

http:// www.fcc.gov/wtb/auctions/auc25/auc25.html

15. Future Releases: Further information regarding sequencing and length of bidding rounds and other procedural issues will be released in a future public notice.

16. Relevant Authority: Prospective bidders must familiarize themselves thoroughly with the Commission's Rules relating to broadcast auctions, contained in Title 47, Part 73 of the Code of Federal Regulations.

17. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this Public Notice, the *Closed Broadcast Auction Public Notice*, the *Broadcast First Report and Order;* the *Memorandum Opinion and Order on Reconsideration* and Part 1, Subpart Q of the Commission's Rules concerning Competitive Bidding Proceedings.

18. The terms contained in the Commission's Rules, relevant orders, public notices and bidder information package are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission Rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC World Wide Web site at http://www.fcc.gov/wtb/auctions. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 314–3070. When ordering documents from ITS, please provide the appropriate FCC number (*e.g.*, FCC 98–194 for the *Broadcast First Report and Order*, 63 FR 48615 (September 11, 1998) and FCC 99–234 for the *Memorandum Opinion and Order for Reconsideration* 64 FR 24523 (May 7, 1999).

19. Bidder Alerts: All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission construction permits or licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Applicants should be aware that by filing their FCC Form 175 applications, they are certifying that they have long-form applications on file and that there has been no change of control of their long-form applications that would render them ineligible to participate in the auction under 47 U.S.C. 309(1) or any applicable Commission rule. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

20. Although applicants have had an extensive opportunity to conduct due diligence due to the length of time ensuing since the filing of their long-form applications, the following reminder is provided: As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the broadcast spectrum to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than $25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

21. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals may also call the FCC National Call Center at (888) CALL–FCC ((888) 225–5322).

22. National Environmental Policy Act (NEPA) Requirements: Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a broadcast antenna facility is a federal action and licensees must comply with the Commission's NEPA rules for each such facility. See 47 CFR 1.1305–1.1319.

B. Eligibility For New Entrant Bidding Credit

23. For the Closed Broadcast Auction the Commission adopted the New Entrant Bidding Credit to promote and facilitate the diversification of ownership in the mass media. The bidder's attributable interests shall be determined as of the short form (FCC Form 175) filing deadline—August 20, 1999. Bidders intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline—August 20, 1999.

24. *Determination of Eligibility for Bidding Credit.* The interests of the bidder, and of any individuals or entities with an attributable interest in the bidder in other media of mass communications shall be considered when determining a bidder's eligibility for the New Entrant bidding credit.

25. For purposes of determining which entities qualify for a New Entrant Bidding Credit, the following information should be considered: the interests of the bidder, and of individuals or entities with an attributable interest in the bidder, in other media of mass communications at the time of the short-form application filing deadline. These interests should be considered to the extent that they are considered attributable under the broadcast multiple ownership rules. Further, any bidder asserting new entrant status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit.

26. Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in a bidder include: all officers and directors of a corporate bidder; any owner of 5% or more of the voting stock of a corporate bidder; all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated from exercising management and control of the partnership; and all members of a limited liability company, unless sufficiently insulated. In cases where a bidder is an individual and his or her spouse or other close family member holds interests in other media, such interests are not automatically attributable to the bidder, rather the Commission decides attribution issues in this context based on certain factors that it has traditionally considered to be relevant. Bidders are also reminded that, in the *Memorandum Opinion and Order on Reconsideration*, the Commission determined to consider, in a future order, whether to attribute the mass media interests of any individual or entity who holds a significant equity and/or debt interest in a broadcast auction bidder claiming New Entrant status, even if such an interest is nonvoting. Specifically, the *Memorandum Opinion and Order on Reconsideration* stated that this further order would consider the appropriateness of attributing the mass media interests held by substantial investors in a bidder claiming a credit as a New Entrant and the threshold at which a nonvoting equity and/or debit interest in a New Entrant should be attributable. While the Commission has not yet released its further order resolving these issues, it stated in the *Memorandum Opinion and Order on Reconsideration* that the further order would be released "expeditiously" and its release would not delay the commencement of broadcast service auctions. Therefore, bidders should be aware of these outstanding issues when considering their qualifications for the New Entrant bidding credit. The eligibility standards will be governed by the rule in effect on the short-form filing for the New Entrant bidding credit.

27. *Consortia and Joint Bidding Arrangements.* A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits in the same MX Group provided that: (1) the attributable interest holder certify that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, has

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formed a consortium, or has entered into a joint bidding arrangement; and (2) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rule does not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussion or exchanges could broach on impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements and other transactional arrangements.

28. *Application Showing.* Applicants should note that they will be required to file supporting documentation as Exhibits A and C to their FCC Form 175 short form applications to establish that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit. Ownership information must also be provided in the Closed Broadcast Auction in order for us to verify eligibility to participate in the auction. Specifically, for the Closed Broadcast Auction, applicants will be required to file (in Exhibit A to their FCC Form 175 short form applications) a full and complete statement of the ownership of the bidding entity, to include all attributable interest holders. If the information reflects that here has been a change of control, the related long-form application will be dismissed and the applicant will be ineligible to participate in the auction. The applicant must provide the ownership information for itself and its attributable interest-holders, as defined by Section 73.3555 and Note 2 of that section, including: all officers and directors of a corporate bidder; any owner of 5% or more of the voting stock of a corporate bidder; all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated from the management or operation of the partnership; and all members of a limited liability company, except those sufficiently insulated from its management or operation. Bidders must certify (in Exhibit A) compliance with the Commission's policies relating to media interests of immediate family members. In addition, in those cases where a New Entrant Bidding credit is being sought, a certification under penalty of perjury must be set forth in Exhibit C attesting to the eligibility of the bidder for the level of credit claimed. If the applicant is applying to bid as a consortium of applicants eligible for the New Entrant bidding credit, this information must be provided for each consortium member. In cases where a joint biding arrangement is contemplated, an Exhibit B must be filed. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(b)(2), may attach an exhibit (Exhibit D) regarding this status.

29. *Bidding Credits.* Applicants that qualify for the New Entrant Bidding Credit, as set forth in 47 CFR 73.5007, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008 and
- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in no more than three media of mass communications, as defined in 47 CFR 73.5008; and
- No bidding credit will be given if any of the commonly owned mass media facilities would serve the same area as the proposed broadcast or secondary broadcast station, as defined in 47 CFR 73.5007, or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, have attributable interests in more than three mass media facilities.

30. Attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidders' other mass media facilities. Bidding credits are not cumulative: qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both.

31. Closed Broadcast Auction bidders should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same level of bidding credit. Finally, Closed Broadcast Auction bidders should also note that there are no installment payment plans in the Closed Broadcast Auction.

C. Pre-Auction Procedures

32. *Short-Form Application (FCC Form 175)—Due August 20, 1999, 5:30 p.m. ET.* In order to be eligible to bid in this auction, applicants must first electronically submit an FCC Form 175 application. This application must be received at the Commission by 5:30 p.m. ET on August 20, 1999. Late applications will not be accepted.

33. There is no application fee required when filing an FCC Form 175. However, to purchase bidding eligibility, an applicant must submit an upfront payment. *See* Paragraph 40 below.

34. *Electronic Filing.* As of January 1, 1999, applications to participate in FCC auctions must be filed electronically, unless it is not operationally feasible. *See* 47 CFR 1.2105(a). Applicants will be permitted to file their FCC Form 175 applications in paper form only in the event the FCC experiences technical difficulties with its electronic systems. In such an event, the FCC will announce the procedure for submitting paper applications.

35. For Auction No. 25, applicants may file applications electronically beginning August 3, 1999. The system will generally be open for filing on a 24-hour basis. The Form 175 filing window will remain open until 5:30 p.m. ET on August 20, 1999. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on August 20, 1999. Information about the electronic filing of the FCC Form 175 application is included in Attachment D. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service are 8 a.m.—6 p.m. ET, Monday—Friday.

36. *Completion of the FCC Form 175.* Applicants should carefully review 47 CFR 1.2105 and 73.5002 and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment B to the Public Notice. Applicants should not consider their form submitted to the FCC until they press the "Submit Form 175" button on the "Submit" page and receive confirmation from the filing system that the form has been received by the Commission.

37. *Electronic Review of FCC Form 175.* The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 applications. Applicants may also view other applicants' completed FCC Form 175 after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. There are no fees for accessing this system or for submitting an FCC Form 175. *See* Attachment D of the Public Notice for details.

38. *Application Processing and Minor Corrections.* After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted short-form applications to determine which are acceptable for filing, and will subsequently issue a public notice identifying: (1) those short-form applications which are mutually exclusive and are acceptable for filing (including FCC file numbers and the construction permits for which they applied); (2) those applications rejected; and (3) those short-formed applications that have minor defects that may be corrected, and the deadline for filing such corrected applications.

39. As described more fully in the Commission's Rules, after the August 20, 1999, short form filing deadline, applicants may make only minor non-technical corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections or proposed service areas, change the certifying official, or change control of the applicant, or change bidding credits). *See* 47 CFR 1.2105.

40. *Upfront Payments—Due September 13, 1999.* In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). Applicants may access an electronic version of the FCC Form 159 (August 1998 version) after completing the electronic FCC Form 175; however, the FCC Remittance Advice Form (FCC Form 159) is to be submitted by facsimile transmission to Mellon Bank in accordance with the instructions below. Earlier versions of this form will not be accepted. All upfront payments must be received at Mellon Bank in Pittsburgh, PA, by 6:00 p.m. ET on September 13, 1999.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 25 go to a lockbox number different from the ones used in previous FCC auctions, and are different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the September 13, 1999 deadline will result in no bidding eligibility being accorded the applicant.

41. *Making Auction Payments by Wire Transfer.* Wire transfer payments must be received by 6:00 p.m. ET on September 13, 1999. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/ 910–0171
OBI Field: (Skip one space between each information item)
"AUCTIONPAY"
TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, block 26)
PAYMENT TYPE CODE (enter "A25U")
FCC CODE 1 (same as FCC Form 159, block 23A: "25")
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. #358430

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

42. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 25." Bidders may confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

43. *FCC Form 159.* Each upfront payment must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159). Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C to the Public Notice.

44. *Amount of Upfront Payment.* In the *Broadcast First Report and Order* the Commission delegated to the Bureaus the authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned. In the *Closed Broadcast Auction Public Notice*, the Bureaus proposed certain upfront payments. We received comments from a number of parties, including the National Translator Association ("NTA"). NTA states that any organization which is exempt from annual regulatory fees should be exempted from the requirement of filing upfront payments. However, Section 73.5003 of the Commission's rules requires that every bidder in every broadcast service shall submit an upfront payment prior to the commencement of bidding. Therefore, we shall not adopt NTA's suggestion and all bidders will be required to submit an upfront payment.

45. Applicants potentially eligible to participate in competitive bidding in more than one MX Group should note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 25, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, *e.g.*, a $25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all construction permits which the applicant has selected on FCC Form 175, but rather to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold high bids at any given time. Bidders are reminded that failure to submit an upfront payment of sufficient size to provide bidding eligibility for every MX Group in which an applicant has a pending long-form application will limit the bidding eligibility of that applicant.

46. In order to be able to place a bid on a construction permit, in addition to having specified that permit on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

47. In calculating the upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. Bidders should check their calculations carefully as there is no provision for

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increasing a bidder's maximum eligibility after the upfront payment deadline.

48. An applicant potentially eligible to bid in more than one MX group may, on its FCC Form 175, indicate an intent to bid on every construction permit for which an underlying long-form has been filed, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

49. *Applicant's Wire Transfer Information for Purposes of Refunds.* Because experience with prior auctions has shown that in most cases wire transfers provide quicker and more efficient refunds than paper checks, the Commission will use wire transfers for all Auction No. 25 refunds. To avoid delays in processing refunds, applicants should include wire transfer instructions with any refund request they file; they may also provide this information in advance by faxing it to the FCC Billings and Collections Branch, ATTN: Linwood Jenkins or Geoffrey Idika, at (202) 418–2843. Please include the following information:

Name of Bank
ABA Number
Account Number to Credit
Correspondent Bank (if applicable)
ABA Number
Account Number
Contact and Phone Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.)

50. *Auction Registration.* Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for Auction No. 25. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which a long-form application was previously accepted.

51. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the applicant address listed in the FCC Form 175.

52. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on September 23, 1999 should contact the FCC National Call Center at (888) CALL–FCC ((888) 225–5322, press option 2 at the prompt). Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

53. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing in person at the FCC Auction Headquarters located at 445—12th Street, S.W., Washington, D.C. 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Bidders needing replacement codes must call technical support at 202–414–1250 prior to arriving at the FCC.

54. *Remote Electronic Bidding Software.* Qualified bidders that file or amend the FCC Form 175 electronically are strongly encouraged to bid electronically. Due to the fact that each of the potential bidders has already paid substantial fees to the Commission in connection with the filing of their long-form applications, the software packages required to participate in remote electronic bidding will be provided on request at no charge to the bidders in the Closed Broadcast Auction. These software packages must be ordered by August 20, 1999. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 25.) A software order form is included in the Public Notice.

55. *Auction Seminar.* On August 3, 1999, the FCC will sponsor a free, informational seminar for the Closed Broadcast Auction at the Main Meeting Room on the first floor of the Headquarters Building of the Federal Communications Commission located at 445—12th Street, S.W., Washington, DC 20554. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the Closed Broadcast Auction service and auction rules.

56. To register, refer to the registration materials form included as Attachment H with the Public Notice. Registrations are accepted on a first-come, first-served basis.

57. *Mock Auction.* All qualified bidders will be eligible to participate in a mock auction on September 24, 1999. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

D. Auction Event

58. The first round of the auction will begin on September 28, 1999. The initial round schedule will be announced in a Public Notice listing the qualified bidders, to be released approximately 10 days before the start of the auction.

59. *Auction Structure—Simultaneous Multiple Round Auction.* In the *Closed Broadcast Auction Public Notice*, we proposed to award the construction permits in a single, simultaneous multiple round auction. On this proposal, Community Broadcasters Association ("CBA") filed comments, stating that auctions for LPTV displacement applications should be set up to run seriatim. CBA stresses the importance of the auction for displaced LPTV licensees and notes that this category of bidder consists of small operators who cannot afford the time or staff to stay on-line indefinitely. However, contrary to CBA's expressed concerns, bidders in the Closed Broadcast Auction are not compelled by our procedures to stay online indefinitely, or for extensive periods of time. Only a periodic presence will be required during each round of the auction: first to place a bid; then later to check round results.

60. The Bureau concludes that the construction permits in the Closed Broadcast Auction will be awarded through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction. This approach allows for a more efficient auction process and, in cases where bidders are eligible to participate in multiple markets, allows them to take advantage of any synergies that exist among construction permits.

61. *Maximum Eligibility and Activity Rules.* In the *Closed Broadcast Auction Public Notice*, the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. We received comments from Fant Broadcasting Company ("Fant"). Fant believes that the 100% eligibility rule is too high for a multiple market bidder and will force such bidders to either exercise a waiver or to bid, producing artificially low bid amounts for markets with smaller bidding units. Fant suggests a 50% eligibility requirement in stage one of the auction.

62. We note that in the Closed Broadcast Auction, only a very small percentage of bidders are potentially eligible to bid on more than one market. For that reason, even if valid, we do not see the factors stated by Fant as having a significant impact on the conduct of the Closed Broadcast Auction. Further, no other commenter raises similar concerns and none of the reply comments express support for this position.

63. We adopt the maximum eligibility and activity rule proposal for the Closed Broadcast Auction. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific construction permits, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid.

64. To ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on 100 percent of their maximum eligibility during each round of the auction.

65. A bidder is considered active on a construction permit in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round. A bidder's activity level in a round is the sum of the bidding units associated with construction permits on which the bidder is active. Required minimum activity levels ensure that an auction will proceed expeditiously and efficiently. Because such procedures have proven successful in maintaining the pace of previous auctions, we adopt them for the Closed Broadcast Auction.

66. *Activity Rule Waivers, Reducing Eligibility and Stopping Rules.* In the *Closed Broadcast Auction Public Notice*, we proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction. We also proposed to employ a simultaneous stopping rule in Auction No. 25, meaning that all construction permits would remain open until the first round in which no new acceptable bids, proactive waivers or withdrawals were received. Finally, we proposed a special stopping rule, meaning that the Bureaus would accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. We received numerous comments on our activity rule, eligibility reduction and stopping rule proposals.

67. Based upon our experience in previous auctions, the Bureau adopts its proposal and each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit.

68. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

69. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

70. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

71. Bidding will remain open on all construction permits until bidding stops on every construction permit. Thus, the auction will close for all construction permits when one round passes during which no bidder submits a new acceptable bid on any construction permit, applies a proactive waiver, or withdraws a previous high bid. The Bureaus retain the discretion to close the auction for all construction permits after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing highest bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

72. The Bureaus retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

73. The Bureaus reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the FCC invokes this special stopping rule, it will accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. The FCC intends to exercise this option only in extreme circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the FCC is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day.

74. *Auction Delay, Suspension, or Cancellation.* In the *Closed Broadcast Auction Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. The Commission received no comments on this proposal.

75. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau will adopt its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach,

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unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

76. *Bidding Procedures—Round Structure.* The initial bidding schedule will be announced by public notice at least one week before the start of the auction, and will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results.

77. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

78. *Reserve Price or Minimum Opening Bid.* In the *Closed Broadcast Auction Public Notice*, the Bureaus proposed to establish minimum opening bids and to retain discretion to lower the minimum opening bids. In the alternative, the Bureaus sought comment on whether, consistent with the Budget Act, the public interest would be served by having no minimum opening bid or reserve price. Numerous comments addressed the issue of minimum opening bids and reserve prices.

79. Except as disclosed below, the Bureaus will adopt the minimum opening bids proposed for each of the construction permits in the Closed Broadcast Auction and which are reducible at the discretion of the Bureaus, if circumstances warrant. This discretion will be exercised sparingly and early in the auction, i.e. before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureaus will not entertain any bidder requests to reduce the minimum opening bid on specific construction permits.

80. A number of commenters submitted comments requesting that certain minimum opening bids be lowered for specific primary service television markets, due to disproportionate differences in the sizes of the markets, the number of households in the proposed markets and the average price of stations in the market. We find merit in these commenters suggesting that minimum opening bids be lowered due to differences in the size of the markets and the revisions are contained in Attachment A of the Public Notice.

81. *Minimum Accepted Bids and Bid Increments.* In the *Closed Broadcast Auction Public Notice*, the Bureaus proposed a minimum bid increment of 10 percent. Biltmore Forest submitted comments stating that 10 percent bidding increments are too high to maintain in the later stages of an auction. However, our past experience has shown us that a 10 percent bid increment is not excessive and will not significantly affect the amounts of prospective bids or the rate at which bidding occurs. Furthermore, we do have discretion to lower the bid increment during the progress of an auction, if we deem that circumstances so dictate.

82. The Bureaus adopt the proposal contained in the *Closed Broadcast Auction Public Notice.* The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate, such as raising the minimum bid increment toward the end of the auction to speed the pace at which bids reach their final values. The Bureaus will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction.

83. Once there is a standing high bid on a construction permit, there will be a bid increment associated with that bid indicating the minimum amount by which the bid on that license can be raised. For the Closed Broadcast Auction, we will use a flat, across-the-board increment of 10 percent to calculate minimum bid increments and retain the discretion to compute the minimum bid increment through other methodologies if circumstances so dictate.

84. Please note that all bidding will take place either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when handling bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid, by placing their calls well in advance of the close of a round, because four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 25.

85. A bidder's ability to bid on specific construction permits in the first round of the auction is determined by two factors: (1) the construction permits applied for on FCC Form 175; and (2) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175.

86. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials.

87. The bid entry screen of the Automated Auction System software for the Closed Broadcast Auction allows bidders to place multiple increment bids which will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a construction permit.

88. *Bid Removal and Bid Withdrawal—Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed. This procedure will enhance bidder flexibility and serve to expedite the course of the auction. Therefore, the Bureaus will adopt these procedures for the Closed Broadcast Auction.

89. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the "withdraw bid" function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g) and 1.2109.

90. In previous auctions, the Bureaus have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Bureaus continues to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various construction permits or licenses in combination, the Bureaus concludes that, for the Closed Broadcast Auction, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so the Bureaus believe they strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auction, 800 MHz SMR auction, and LMDS auction, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this Closed Broadcast Auction.

91. The Bureaus will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g), and 1.2109. Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

92. If a high bid is withdrawn, the construction permit will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The FCC will serve as a "place holder" on the construction permit until a new acceptable bid is submitted on that permit.

93. *Calculation.* Generally, a bidder that withdraws a standing high bid during the course of an auction will be subject to a payment equal to the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that construction permit. In the case of multiple withdrawals on a construction permit, the payment for the final withdrawer will be computed as above. The payment for all other withdrawers will be computed as the lower of: (1) either the difference between the net withdrawn bid and the highest of the subsequent net winning bids or the difference between the net withdrawn bid and the subsequent net winning bid, whichever is less; or (2) either the difference between the gross withdrawn bid and the highest of the subsequent gross withdrawn bids or the difference between the gross withdrawn bid and the subsequent gross winning bid, whichever is less. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent gross or net winning bid or if any of the subsequent gross or net withdrawn bids exceed the gross or net amount of the withdrawn bid. In the event that a construction permit for which there have been withdrawn bids is not won in that auction, then those bidders with outstanding withdrawals will have 3 percent of their withdrawn bid withheld until such time as the construction permit can be reauctioned and a final payment assigned.

94. *Round Results.* The bids placed during a round are not published until the conclusion of that bidding period. After a round closes, the FCC will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

95. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 25 will be available before and during the auction. Thus, bidders will know in advance the identities of the bidders against which they are bidding.

96. *Auction Announcements.* The FCC will use auction announcements to announce items such as schedule changes and round sequences and length. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet and the FCC Bulletin Board System.

97. *Other Matters —Deletions and Corrections.* Commenters Association of American Public Television Stations (APTS) and Rocky Mountain Public Broadcasting Network, Inc. (Rocky Mountain) request that so-called "noncommercial educational" applicants for secondary television facilities not be included in the auction. We decline the requests of APTS and Rocky Mountain and disagree that they are exempt from auction. In this case, applicants in the secondary television services are not eligible to be licensed as noncommercial educational, a key element in the Communications Act, Section 309(j)(2)(c) statutory exemption. Accordingly, the Commission must subject these applications to auction.

98. *Pre-auction Procedures for Pending, Applications.* Several commenters urge the Commission to remove their particular MX Group from the September 28, 1999 Closed Broadcast Auction, alleging that their only competitor within the group is unacceptable and should be dismissed. In the *First Report and Order*, the Commission decisively rejected this argument and unequivocally stated that it would "not consider petitions to deny already filed, or accept additional petitions against pending applications, nor consider any questions raised in such petitions relating to the tenderability or acceptability of the pending long form applications." Rather, petitions to deny will be entertained only with respect to the auction winning bidder. The Commission concluded that the interests of the group of pending applicants is best served by this approach and, to do otherwise would significantly delay the commencement of competitive bidding and ultimate service to the public. Accordingly, we reject commenters' requests to examine issue pleadings at this time.

99. *Conflict Removal.* One applicant for an MX FM translator facility contends that there is no need for an auction because alternative frequencies exist and either one of the competing applicants could amend to specify a different frequency and remove the conflict. The applicant argues that the Commission's failure to open a filing window, however, precludes the filing of such amendment and forces the parties into an unnecessary auction. The applicant's assessment of its settlement options is misguided. As explicitly stated in the *First Report and Order*, pending secondary service applicants may still avoid an auction through a settlement agreement that complies with all Commission regulations, including the resolution of mutual exclusivity through various engineering means.

100. *Minor Modifications to FCC Form 175 Applications.* After the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. Filers should make these changes on-line, submit a letter to Amy Zoslov, Chief Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Suite 4–A760 Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Bob Allen of the FCC Auctions and Industry Analysis Division at (202) 418–0660.

101. *Maintaining Currency of Information in FCC Form 175 Applications.* Applicants have an obligation under Section 1.65 of the Commission's Rules, 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information

contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

E. Post-Auction Procedures

102. *Down Payments and Withdrawn Bid Payments.* After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each construction permit and listing withdrawn bid payments due.

103. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). *See* 47 CFR 1.2107(b). In addition, by the same deadline, all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g). (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

104. *Default and Disqualification.* Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the construction permit to the next highest bidder (in descending order) at their final bids. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing construction permits or licenses held by the applicant. *See* 47 CFR 1.2109(d).

105. *Refund of Remaining Upfront Payment Balance.* All applicants that submitted upfront payments but were not winning bidders for a Closed Broadcast Auction construction permit may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

106. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions, a Taxpayer Identification Number ("TIN"), and a copy of their bidding eligibility screen print, to: Federal Communications Commission, Billings and Collections Branch, Attn: Regina Dorsey or Linwood Jenkins, 445 12th Street, S.W., Room 1-A824, Washington, D.C. 20554.

107. Bidders can also fax their request to the Billings and Collections Branch at (202) 418–2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159. Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Linwood Jenkins or Geoffrey Idika at (202) 418–1995.

Federal Communications Commission.

Mark R. Bollinger,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 99–18834 Filed 7–22–99; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, July 27, 1999, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Revision to Memorandum of Understanding Between the Federal Deposit Insurance Corporation and the Financing Corporation regarding the Collection of Assessments.

Memorandum and resolution re: Repayment of Resolution Trust Corporation Appropriations.

Discussion Agenda

Memorandum and resolution re: Amendment to Part 361—Minority and Women Outreach Program—Contracting and Withdrawal of Proposed Rule entitled "Formal Minority—and Women-Owned Business and Law Firm Certification Program."

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. James D. LaPierre, Deputy Executive Secretary of the Corporation, at (202) 898–6757.

Dated: July 20, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99–18937 Filed 7–21–99; 10:40 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1279–DR]

North Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota, (FEMA–1279–DR), dated June 8, 1999, and related determinations.

EFFECTIVE DATE: July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Dakota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 8, 1999:

Burke, Divide, Sioux, Williams Counties, and the Indian Reservation of the Standing Rock Sioux (that portion of the reservation which lies within the State of North Dakota) for Individual Assistance and Public Assistance.

Mercer County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–18845 Filed 7–22–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1279–DR]

North Dakota; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota, (FEMA–1279–DR), dated June 8, 1999, and related determinations.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Dakota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 8, 1999:

Cavalier, Eddy, and Morton Counties for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–18846 Filed 7–22–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1280–DR]

South Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota (FEMA–1280–DR), dated June 9, 1999, and related determinations.

EFFECTIVE DATE: June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 18, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–18847 Filed 7–22–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3127–EM]

Texas; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Texas, (FEMA–3127–EM), dated June 23, 1998, and related determinations.

EFFECTIVE DATE: July 13, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that reimbursement for the eligible costs associated with the pre-staging of State fire suppression assets is authorized for mobilization and demobilization costs when associated with an approved fire grant. This reimbursement is limited to the two weeks prior to the beginning of the incident period of the associated approved fire grant.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–18848 Filed 7–22–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 6, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice

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President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Mahlon T. White CRT No. 7, Mahlon T. White CRT No. 2, and Lester L. Ward, Jr., as Trustee, all of Denver, Colorado; to acquire voting shares of First Bancorp of Durango, Durango, Colorado, and thereby indirectly acquire voting shares of First National Bank of Durango, Durango, Colorado.

Board of Governors of the Federal Reserve System, July 19, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18782 Filed 7–22–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 16, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Canadian Imperial Bank of Commerce, The CIBC World Markets Corporation, CIBC World Markets, Inc., all of Ontario, Canada, and CIBC Delaware Holdings Inc., New York, New York; to become bank holding companies by acquiring 100 percent of the voting shares of CIBC National Bank, Maitland, Florida.

B. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Oak Hill Financial, Inc., Jackson, Ohio (Oak Hill); to acquire all of the voting shares of Towne Bank, Cincinnati, Ohio. As described below, Towne Bank would be formed through the conversion of Blue Ash Building and Loan Company, Cincinnati, Ohio, into a state-chartered bank.

In connection with this proposal, Oak Hill has filed notice under section 4 of the BHC Act to acquire Towne Financial, Inc., Cincinnati, Ohio, and thereby indirectly acquire Blue Ash Building and Loan Company, Cincinnati, which currently is a wholly-owned subsidiary of Towne Financial, Inc., and thereby engage in operating a savings association, pursuant to § 225.28(b)(4) of Regulation Y. After this acquisition, Oak Hill would convert Blue Ash Building and Loan Company into a state-chartered bank and the institution would be renamed Towne Bank.

2. Sky Financial Group, Inc., Bowling Green, Ohio; to merge with Mahoning National Bancorp, Inc., Youngstown, Ohio, and thereby indirectly acquire Mahoning National Bank, Youngstown, Ohio.

C. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Skylake Bankshares, Inc., North Miami Beach, Florida; to merge with Kislak Financial Corporation, Miami Lakes, Florida, and thereby indirectly acquire Kislak National Bank, North Miami, Florida.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Delta Trust & Banking Corporation, Little Rock, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of SEA Bancshares, Inc., Parkdale, Arkansas, and thereby indirectly acquire voting shares of Southeast Arkansas Bank, Parkdale, Arkansas.

E. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Milk River Banquo, Inc., Malta, Montana; to become a bank holding company by acquiring 81.45 percent of the voting shares of Malta Banquo, Inc., Malta, Montana, and thereby indirectly acquire First Security Bank of Malta, Malta, Montana, and Valley Bank of Glasgow, Glasgow, Montana.

F. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Hillcrest Bancshares, Inc., Overland Park, Kansas; to acquire 100 percent of the voting shares of American Bank, Wichita, Kansas.

G. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Western Commerce Bank Stock Bonus Plan and Trust Agreement, Carlsbad, New Mexico; to become a bank holding company by acquiring 29 percent of the voting shares of Western Commerce Bancshares of Carlsbad, Inc., Carlsbad, New Mexico, and thereby indirectly acquire voting shares of Western Commerce Bank, Carlsbad, New Mexico.

2. The Jere J. Ruff Family Limited Partnership II, Longview, Texas (in formation); to become a bank holding company by acquiring 38 percent of the voting shares of The First State Bank, Hallsville, Texas.

H. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wallowa Bancorp, Joseph, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bancshares, Inc., Joseph, Oregon, and thereby indirectly acquire voting shares of Community Bank, Joseph, Oregon.

In connection with this application, Applicant has also applied to acquire Citizens Title & Escrow Service, Inc., Enterprise, Oregon, and thereby engage in insurance agency activities in small towns and escrow service activities pursuant to §§ 225.28(b)(11)(iii) and 225.28(b)(5) of Regulation Y.

2. Zions Bancorporation, Salt Lake City, Utah; to merge with Regency Bancorp, Fresno, California, and thereby indirectly acquire Regency Bank, Fresno, California.

In connection with this application, Applicant has also applied to acquire Regency Investment Advisors, Fresno, California, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y; and in providing securities brokerage, private placement, riskless principal, futures commission merchant and other agency transactional services for customer investments,

pursuant to § 225.28(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, July 19, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18781 Filed 7–22–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 6, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. U.S. Trust Corporation, New York, New York; to acquire North Carolina Trust Company, Greensboro, North Carolina, and thereby engage in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, July 19, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18783 Filed 7–22–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 3:00 p.m., Wednesday, July 28, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 21, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18957 Filed 7–21–99; 11:18 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Submission for OMB Review; Comment Request; Attitudes of U.S. and Developing Country Researchers Regarding U.S. Human Subjects Regulations

SUMMARY: Under the provision of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Bioethics Advisory Commission has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 18, 1998, page 70135–70136, and allowed 60 days for public comment. Comments were received from two parties concerning the inclusion of additional respondents in the data collection. The purpose of this notice is to allow an additional 30 days for public comment.

Proposed Collection

Title: Attitudes of U.S. and Developing Country Researchers Regarding U.S. Human Subjects Regulations. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This project is an information collection commissioned by the National Bioethics Advisory Commission (NBAC) to assist the Commission in its review of U.S. policies and regulations regarding human subjects research conducted in developing countries. This study will collect information from researchers both in the U.S. and in developing countries who are involved with human subjects research, to ask them about their experiences with U.S. regulations and guidelines and with ethical issues in developing country research. The study consists of qualitative data collection in the form of focus groups and in-depth interviews, and quantitative data collection via a self-administered written survey. The respondents in this study are U.S.-based and developing country investigators who have conducted research in developing countries. U.S.-based respondents will include government, military, academic and private industry researchers. Developing country respondents will be identified through databases maintained by international organizations and will be researchers funded through a variety of sources and who work in developing countries throughout the world. Questions to be asked in focus groups, interviews and surveys include questions about informed consent procedures, about the appropriateness of U.S. regulations for developing country research activities, and about ethical challenges which researchers have faced in their developing country work. *Frequency of Response:* once. *Affected Public:* Individuals, business or other for-profit, not-for-profit institutions, Federal government. *Type of Respondents:* Researchers. *Estimated Number of Respondents:* 786. *Estimated Number of Responses per Respondent:* one. *Average Burden Hours Per Response:* 0.57. *Estimated Total Annual Burden Hours Requested:* 449. The annualized cost to respondents is estimated at: $34,800. There are no Capital Costs, Operating Costs, or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies

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should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: OMB Desk Officer. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Eric M. Meslin, National Bioethics Advisory Commission, 6100 Executive Blvd., Suite 5B01, Rockville, MD 20892–7508, or contact the Commission by phone at 301–480–6900 or by e-mail at MeslinE@OD.NIH.GOV.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before August 23, 1999.

Dated: July 19, 1999.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 99–18803 Filed 7–22–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Centers for Excellence in Health Statistics

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Centers for Excellence in Health Statistics, Program Announcement #99119.

Times and Dates: 9 a.m.–9:30 a.m., July 29, 1999 (Open); 9:30 a.m.–5 p.m., July 29, 1999 (Closed); 9 a.m.–5 p.m., July 30, 1999 (Closed).

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD. 20814. Telephone 301/652–2000.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99119.

Due to administrative delays, this notice is published less than 15 days before the meeting.

Contact Person for More Information: Audrey L. Burwell, M.S., Grants Coordinator, CDC National Center for Health Statistics, 1600 Clifton Rd., m/s P08, Atlanta, Ga 30333. Telephone 301/436–7062, e-mail azb2@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 20, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–18938 Filed 7–21–99; 10:47 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0320]

Agency Information Collection Activities; Announcement of OMB Approval; Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry: Notification of a Health Claim Based on an Authoritative Statement of a Scientific Body" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 30, 1999 (64 FR 23336), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0374. The approval expires on July 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at "http://www.fda.gov/ohrms/dockets".

Dated: July 15, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–18770 Filed 7–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0222]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by August 23, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices (OMB Control No. 0910–0390)—Extension

In the **Federal Register** of November 20, 1998 (63 FR 64555), FDA published a final rule to add a new part 99 (21 CFR part 99) entitled "Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices." The final rule implemented section 401 of the Food and Drug Administration Modernization Act (FDAMA) (Pub. L. 105–115). In brief, section 401 of FDAMA amended the Federal Food, Drug, and Cosmetic Act (the act) to permit drug, biologic, and device manufacturers to disseminate certain written information concerning the safety, effectiveness, or benefits of a use that is not described in the product's approved labeling to health care practitioners, pharmacy benefit managers, health insurance issuers, group health plans, and Federal and State Government agencies, provided that the manufacturer complies with certain statutory requirements. For example, the information that is to be disseminated must be about a drug or device that is being legally marketed; it must be in the form of an unabridged reprint or copy of a peer-reviewed journal article or reference publication; and it must not be derived from another manufacturer's clinical research, unless that other manufacturer has given its permission for the dissemination. The information must be accompanied by certain information, including a prominently displayed statement that the information discusses a use or uses that have not been approved or cleared by FDA. Additionally, 60 days before dissemination, the manufacturer must submit to FDA a copy of the information to be disseminated and any other clinical trial information that the manufacturer has relating to the safety or effectiveness of the new use, any reports of clinical experience that pertain to the safety of the new use, and a summary of such information.

The rule sets forth the criteria and procedures for making such submissions to FDA. Under the rule, a submission would include a certification that the manufacturer has completed clinical studies necessary to submit a supplemental application to FDA for the new use and will submit the supplemental application within 6 months after its initial dissemination of information. If the manufacturer has planned, but not completed, such studies, the submission would include proposed protocols and a schedule for conducting the studies, as well as a certification that the manufacturer will complete the clinical studies and submit a supplemental application no later than 36 months after its initial dissemination of information. The rule also permits manufacturers to request extensions of the time period for completing a study and submitting a supplemental application and to request an exemption from the requirement to submit a supplemental application. The rule prescribes the timeframe within which the manufacturer shall maintain records that would enable it to take corrective action. The rule requires the manufacturer to submit lists pertaining to the disseminated articles and reference publications and the categories of persons (or individuals) receiving the information and to submit a notice and summary of any additional research or data (and a copy of the data) relating to the product's safety or effectiveness for the new use. The rule requires the manufacturer to maintain a copy of the information, lists, records, and reports for 3 years after it has ceased dissemination of the information and to make the documents available to FDA for inspection and copying.

FDA based its estimates of the number of submissions it would receive and the number of manufacturers who would be subject to part 99 on the number of efficacy and new use supplements for approved drugs, biologics, and devices received in fiscal year (FY) 1997 and on a projected increase in supplements due to FDAMA. In FY 1997, FDA received 198 efficacy and new use supplements from 115 manufacturers. The number of supplements increased 100 percent from FY 1995 to FY 1997 as a result of two new initiatives, the Prescription Drug User Fee Act and a new pediatric labeling regulation. If FDAMA results in an additional 50 percent increase in the number of supplements and a corresponding increase in the number of manufacturers, then the estimated number of submissions under part 99 is 297 (198 + (0.5 x 198)), and the estimated number of manufacturers is 172 (115 + (0.5 x 115)). These figures are reflected in Tables 1 and 2 of this document for §§ 99.201(a)(1), 99.201(a)(2), 99.201(a)(3), 99.201(b), 99.201(c), 99.501(a)(1), 99.501(a)(2), 99.501(b)(1), 99.501(b)(3), and 99.501(c).

The estimated burden hours for these provisions are provided in the following paragraphs of this document.

Section 99.201(a)(1) requires the manufacturer to provide an identical copy of the information to be disseminated, including any required information. The manufacturer must compile this information to prepare its submission to FDA. FDA estimates that 40 hours would be required per submission. Because 297 annual responses are expected under § 99.201(a)(1), the total burden for this provision is 11,880 hours (297 responses x 40 hours per response).

Section 99.201(a)(2) requires the manufacturer to submit clinical trial information pertaining to the safety and effectiveness of the new use, clinical experience reports on the safety of the new use, and a summary of the information. FDA estimates 24 burden hours per response for this provision for assembling, reviewing, and submitting the information and assumes that the manufacturer will have already acquired some of this information in order to decide whether to disseminate information on an unapproved use under part 99. The total burden for this provision is 7,128 hours (297 annual responses x 24 hours per response).

Section 99.201(a)(3) requires the manufacturer to explain its search strategy when assembling its bibliography. The manufacturer would have developed and used its search strategy before preparing the bibliography. FDA estimates that 1 hour would be required for the explanation. Because 297 annual responses are expected under § 99.201(a)(3), the total burden for this provision is 297 hours (297 annual responses x 1 hour per response).

Section 99.201(b) requires the manufacturer's attorney, agent, or other authorized official to sign its submissions, certifications, and requests for an exemption. FDA estimates that 30 minutes are necessary for such signatures. Because 297 annual responses are expected under § 99.201(b), the total burden for this provision is 148.5 hours (297 response x 0.5 hours per response = 148.5 hours).

Section 99.201(c) requires the manufacturer to provide two copies with its original submission. FDA does not expect that copying the submission

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will be time-consuming. FDA estimates the burden to be 30 minutes. Because 297 annual responses are expected under § 99.201(c), the total burden for this provision is 148.5 hours.

While the act requires manufacturers to provide a submission to FDA before they disseminate information on unapproved/new uses, it also permits manufacturers to: (1) Have completed studies and promise to submit a supplemental application for the new use within 6 months after the date of initial dissemination, (2) provide protocols and a schedule for completing studies and submitting a supplemental application for the new use within 36 months after the date of initial dissemination. (3) have completed studies and have submitted a supplemental application for the new use, or (4) request an exemption from the requirement to submit a supplemental application. These possible scenarios are addressed in §§ 99.201(a)(4)(i)(A), 99.201(a)(4)(ii)(A), 99.201(a)(5), and 99.205(b), respectively.

To determine the number of responses in §§ 99.201(a)(4)(i)(A), 99.201(a)(4)(ii)(A), 99.201(a)(5), and 99.205(b), FDA began by estimating the number of requests for an exemption under § 99.205(b). The legislative history indicates that such exemptions are to be limited. In the final rule, FDA estimated that approximately 10 percent of all respondents would seek—or 10 percent of all submissions would contain—an "economically prohibitive" exemption (resulting in 17 total respondents and approximately 30 annual responses) and that the estimated reporting burden per response would be 82 hours. This results in a total hour burden of 2,460 hours for § 99.205(b) (30 submissions x 82 hours per submission).

The estimated increase in the number of exemption requests results in a corresponding decrease in the remaining number of respondents and submissions under §§ 99.201(a)(4)(i)(A), 99.201(a)(4)(ii)(A), and 99.201(a)(5). FDA assumes that the remaining 267 submissions (297 total submissions—30 submissions containing an exemption request) will be divided equally among §§ 99.201(a)(4)(i)(A), 99.201(a)(4)(ii)(A), and 99.201(a)(5), resulting in 89 responses in each provision (267 submissions/3 provisions). FDA has estimated the number of respondents in a similar fashion ((172 total respondents—17 respondents submitting an exemption request)/3 provisions = 51.6, rounded up to 52 respondents per provision).

As stated earlier, § 99.201(a)(4)(i)(A)) requires the manufacturer, if the manufacturer has completed studies needed for the submission of a supplemental application for the new use, to submit the protocol(s) for the completed studies, or, if the protocol was submitted to an investigational new drug application (IND) or investigational device exemption (IDE), to submit the IND or IDE number(s), the date of submission of the protocol(s), the protocol number(s), and the date of any amendments to the protocol(s) must be submitted with the application. This is information that each manufacturer already maintains for its drugs or devices. FDA estimates that 30 hours would be required for this response. The total burden for this provision is 2,670 hours (89 annual responses x 30 hours per response).

For manufacturers who submit protocols and a schedule for conducting studies, § 99.201(a)(4)(ii)(A)) requires the manufacturer to include, in its schedule, the projected dates on which the manufacturer expects the principal study events to occur. Manufacturers would have to contact the studies' principal investigator(s) and other company officials. FDA estimates a manufacturer would need approximately 60 hours to include the projected dates. The total burden for this provision is 5,340 hours (89 annual responses x 60 hours per response).

If the manufacturer has submitted a supplemental application for the new use, § 99.201(a)(5) requires a cross-reference to that supplemental application. Manufacturers already maintain this information. FDA estimates that 1 hour would be needed to comply with the requirement. The total burden for this provision is 89 hours (89 annual responses x 1 hour per response).

Under § 99.203, a manufacturer who has certified that it will complete studies necessary to submit a supplemental application within 36 months after its submission to FDA, but later finds that it will be unable to complete such studies or submit a supplemental application within that time period, may request an extension of time from FDA. Such requests for extension should be limited, occurring less than 1 percent of the time, because manufacturers and FDA, when developing or reviewing study protocols, should be able to identify when a study will require more than 36 months to complete. Section 99.203 contemplates extension requests under two different scenarios. Under § 99.203(a), a manufacturer may make an extension request *before* it makes a submission to FDA regarding the dissemination of information under part 99. The agency expects such requests to be limited, occurring less than 1 percent of the time (or 1 annual response), and that such requests will result in a reporting burden of 10 hours per request. The total burden hours for this provision, therefore, is 10 hours (1 annual response x 10 hours per response).

Section 99.203(b) specifies the contents of a request to extend the time for completing planned studies *after* the manufacturer has provided its submission to FDA. The required information includes a description of the studies, the current status of the studies, reasons why the study cannot be completed on time, and an estimate of the additional time needed. FDA estimates that 10 hours for reporting the required information under § 99.203(b) because it would require consultation between the manufacturer and key individuals (such as the study's principal investigator(s)). As in the case of § 99.203(a), the expected number of responses is very small (1 annual response), and the total burden hours for this provision is 10 hours (1 annual response x 10 hours per response).

Section 99.203(c) requires two copies of an extension request (in addition to the request required under section 554(c)(3) of the act (21 U.S.C. 360aaa–3)). FDA estimates that these copies would result in a reporting burden of 30 minutes. This requirement would apply to extension requests under § 99.203(a) and (b), so the total number of annual responses is 2, resulting in a total burden hour for this provision of 1 hour (2 annual responses x 0.5 hours per response).

Section 99.501(a)(1) requires the manufacturer to maintain records that identify recipients by category or individually. Under § 99.301(a)(3), FDA will notify the manufacturer whether it needs to maintain records identifying individual recipients due to special safety considerations associated with the new use. This means that, in most cases, the manufacturer will only have to maintain records identifying recipients by category. In either event, the manufacturer will know whether it must maintain records that identify individual recipients before it begins disseminating information. The time required to identify recipients individually should be minimal, and the time required to identify recipients by category should be even less. FDA estimates the burden for this provision to be 10 hours, and, because 297 annual responses are expected under § 99.501(a)(1), the total burden for this provision is 2,970 hours (297 annual responses x 10 hours per response).

Section 99.501(a)(2) requires the manufacturer to maintain a copy of the information it disseminates. FDA estimates the burden to be 1 hour. Because 297 annual responses are expected under § 99.501(a)(2), the total burden for this provision is 297 hours (297 annual responses x 1 hour per response).

Section 99.501(b)(1) requires the manufacturer to submit to FDA semiannually a list containing the articles and reference publications that were disseminated in the preceding 6-month period. FDA tentatively estimates a burden of 8 hours for this provision. The actual burden may be less if the manufacturer develops and updates the list while it disseminates articles and reference publications during the 6-month period (as opposed to generating a completely new list at the end of each 6-month period) and if the volume of disseminated materials is small. The total burden for this provision is 4,752 hours (297 responses submitted semiannually x 8 hours per response = 297 x 2 x 8 = 4,752 hours).

Section 553(a)(2) of the act (21 U.S.C. 360aaa–2) requires manufacturers that disseminate information to submit to FDA semiannually a list that identifies the categories of providers who received the articles and reference publications. Section 99.501(b)(2) also requires the list to identify which category of recipients received each particular article or reference publication. If each of the 297 submissions under part 99 results in disseminated information, § 99.501(b)(2) would result in 594 lists (297 submissions x 2 submissions per year) identifying which category of recipients received each particular article or reference publication. The agency estimates the burden to be only 1 hour per response because this type of information is maintained as a usual and customary business practice, and the total burden for this provision is 594 hours (594 lists x 1 hour per list).

In relation to § 99.201(a)(2), § 99.501(b)(3) requires the manufacturer to provide, on a semiannual basis, a notice and summary of any additional clinical research or other data relating to the safety and effectiveness of the new use and, if it possesses such research or data, to provide a copy to FDA. This burden should not be as extensive as that in § 99.201(a)(2). FDA estimates the burden to be 20 hours per response, for a total burden of 11,880 hours for this provision (297 annual responses submitted semiannually x 20 hours per response = 297 x 2 x 20 = 11,880 hours).

If a manufacturer discontinues or terminates a study before completing it, § 99.501(b)(4)) requires the manufacturer to state the reasons for discontinuing or terminating the study in its next progress report. Based on FDA's regulatory experience in monitoring studies to support supplemental applications, FDA estimates this would affect only 1 percent of all applications (297 at 0.01 = 2.97, rounded up to 3) and only 2 manufacturers (172 x 0.01 = 1.72, rounded up to 2). FDA estimates 2 hours of reporting time for this requirement because the manufacturer should know the reasons for discontinuing or terminating the study and would only need to provide those reasons in its progress report. The total burden hours for this provision is 6 hours (3 annual responses x 2 hours per response).

Section 99.501(b)(5) requires the manufacturer to submit any new or additional information that relates to whether the manufacturer continues to meet the requirements for the exemption after an exemption has been granted. FDA cannot determine, at this time, how many exemption requests will be granted, but, for purposes of this information of collection, has estimated that 10 percent of all submissions will contain an exemption request (297 total submissions x 0.10 = 29.7, rounded up to 30) and has assumed that all exemption requests will be granted, for a total of 30 annual responses. The information sought under § 99.501(b)(5) pertains solely to new or additional information and is not expected to be as extensive as the information required to obtain an exemption. Thus, FDA tentatively estimates the burden for § 99.501(b)(5) to be 41 hours per response (or half the burden associated with an exemption request), for a total burden of 1,230 hours for this provision (30 annual responses x 41 hours per response).

Section 99.501(c) requires the manufacturer to maintain records for 3 years after it has ceased dissemination of the information. FDA estimates the burden hour for this provision to be 1 hour. Because 297 annual responses are expected under § 99.501(c), the total burden for this provision is 297 hours.

Description of Respondents: All manufacturers (persons and businesses, including small businesses) of drugs, biologics, and device products.

In the **Federal Register** of March 4, 1999 (64 FR 10470), the agency requested comments on the proposed collections of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
99.201(a)(1)	172	1.7	297	40	11,880
99.201(a)(2)	172	1.7	297	24	7,128
99.201(a)(3)	172	1.7	297	1	297
99.201(a)(4)(i)(A)	52	1.7	89	30	2,670
99.201(a)(4)(ii)(A)	52	1.7	89	60	5,340
99.201(a)(5)	52	1.7	89	1	89
99.201(b)	172	1.7	297	0.5	148.5
99.201(c)	172	1.7	297	0.5	148.5
99.203(a)	1	1	1	10	10
99.203(b)	1	1	1	10	10
99.203(c)	2	1	2	0.5	1
99.205(b)	17	1.8	30	82	2,460
99.501(b)(1)	172	3.4	594	8	4,752
99.501(b)(2)	172	3.4	594	1	594
99.501(b)(3)	172	3.4	594	20	11,880
99.501(b)(4)	2	1.7	3	2	[illegible]
99.501(b)(5)	17	1.8	30	41	1,230

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TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Total Hours					48,644

[1] There are no capital costs or operating and maintenance costs associated with this collection of information

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[2]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
99.501(a)(1)	172	1.7	297	10	2,970
99.501(a)(2)	172	1.7	297	1	297
99.501(c)	172	1.7	297	1	297
Total Hours					3,564

[2] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated burden associated with the information collection requirements for this rule is 52,208 hours.

Dated: July 15, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–18767 Filed 7–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing changes to its Orphan Products Development (OPD) grant program for fiscal year (FY) 2000. The previous announcement of this program, which was published in the Federal Register of August 5, 1998 (63 FR 41855), is superseded by this announcement. In the future, a new announcement will be published annually.

DATES: The application receipt dates are November 15, 1999, and April 3, 2000.

ADDRESSES: Application forms are available from, and completed applications should be submitted to: Maura C. Stephanos, Grants Management Specialist, Division of Contracts and Procurement Management (HFA–522), Food and Drug Administration, 5600 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7183. (Applications hand-carried or commercially delivered should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20852.)

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Maura C. Stephanos (address above).

Regarding the programmatic aspects of this notice: Ronda A. Balham, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, rm. 8–73, Rockville, MD 20857, 301–827–3666.

SUPPLEMENTARY INFORMATION: FDA is announcing the anticipated availability of funds for FY 2000 for awarding grants to support clinical trials on the safety and effectiveness of products for a rare disease or condition (i.e., one with a prevalence, not incidence, of fewer than 200,000 people in the United States). Contingent on availability of FY 2000 funds, it is anticipated that $11.5 million will be available, of which $8.5 million will be for noncompeting continuation awards. This will leave $3 million for funding approximately 10 new applications. Any phase clinical trial is eligible for up to $100,000 in direct costs per annum plus applicable indirect costs for up to 3 years. Phase 2 and phase 3 clinical trials are eligible for up to $200,000 in direct costs per annum plus applicable indirect costs for up to 3 years.

FDA will support the clinical studies covered by this notice under section 301 of the Public Health Service Act (the PHS Act) (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

The Public Health Service (PHS) strongly encourages all grant recipients to provide a smoke-free work place and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

PHS urges applicants to submit work plans that address specific objectives of "Healthy People 2000." Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, stock no. 017–001–00474–0) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, 202–512–1800.

PHS policy is that applicants for PHS clinical research grants are required to include minorities and women in study populations so that research findings can be of benefit to all persons at risk of the disease, disorder, or condition under study; special emphasis must be placed on the need for inclusion of minorities and women in studies of diseases, disorders, and conditions which disproportionately affect them. This policy is intended to apply to males and females of all ages. If women or minorities are excluded or inadequately represented in clinical research, particularly in proposed population-based studies, a clear compelling rationale must be provided.

I. Program Research Goals

OPD was established to identify and facilitate the availability of orphan products. In the OPD grant program, orphan products are defined as drugs, biologics, medical devices, and foods for medical purposes that are indicated for a rare disease or condition (i.e., one with a prevalence, not incidence, of fewer than 200,000 people in the United States). Diagnostic tests and vaccines will qualify only if the U.S. population of intended use is lower than 200,000 per annum.

One way to make orphan products available is to support clinical research to determine whether the products are safe and effective. All funded studies are subject to the requirements of the Federal Food, Drug, and Cosmetic Act (the act) and regulations issued thereunder. The grants are funded under the legislative authority of section 301 of the PHS Act (42 U.S.C. 241).

The goal of FDA's OPD grant program is the clinical development of products for use in rare diseases or conditions where no current therapy exists or where current therapy would be improved. FDA provides grants to conduct clinical studies intended to provide data acceptable to the agency which will either result in or substantially contribute to approval of these products. Applicants should keep this goal in mind and must include an explanation in the "Background and Significance" section of the application of how their proposed study will either facilitate product approval or provide essential data needed for product development. Information regarding meetings and/or discussions with FDA reviewing division staff about the product to be studied should also be provided as an appendix to the application. This information is extremely important for the review process.

Except for medical foods that do not require premarket approval, FDA will only consider awarding grants to support clinical studies for determining whether the products are safe and effective for premarket approval under the act (21 U.S.C. 301 *et seq.*) or under section 351 of the PHS Act (42 U.S.C. 262). All studies of new drug and biological products must be conducted under the FDA's investigational new drug (IND) procedures and studies of medical devices must be conducted under the investigational device exemption (IDE) procedures. Studies of approved products to evaluate new orphan indications are also acceptable; however, these are also required to be conducted under an IND or IDE to support a change in labeling. (See section V.B of this document ("Program Review Criteria") for critical requirements concerning IND/IDE status of products to be studied under these grants.)

Studies submitted for the larger grants ($200,000) must be continuing in phase 2 or phase 3 of investigation. Phase 2 trials include controlled clinical studies conducted to evaluate the effectiveness of the product for a particular indication in patients with the disease or condition and to determine the common or short-term side effects and risks associated with it. Phase 3 trials gather additional information about effectiveness and safety that is necessary to evaluate the overall risk-benefit relationship of the product and to provide an adequate basis for physician labeling. Studies submitted for the smaller grants ($100,000) may be phase 1, 2, or 3 trials. If a study is submitted as a phase 1/2 trial, the maximum budget support for all years requested may not exceed $100,000 per year. Budgets for all years of requested support may not exceed the $200,000 or $100,000 limitation, whichever is applicable.

Applications must propose a clinical trial of one therapy for one indication. The applicant must provide supporting evidence that a sufficient quantity of the product to be investigated is available to the applicant in the form needed for the clinical trial. The applicant must also provide supporting evidence that the patient population has been surveyed and that there is reasonable assurance that the necessary number of eligible patients is available for the study.

Funds may be requested in the budget for travel to FDA to meet with reviewing division staff about product development progress.

II. Human Subject Protection and Informed Consent

A. Protection of Human Research Subjects

Some activities carried out by a recipient under this announcement may be governed by the Department of Health and Human Services (DHHS) regulations for the protection of human research subjects (45 CFR part 46). These regulations require recipients to establish procedures for the protection of subjects involved in any research activities. Prior to funding and upon request of the Office for Protection from Research Risks (OPRR), prospective recipients must have on file with OPRR an assurance to comply with 45 CFR part 46. This assurance to comply is called an Assurance document. It includes the designated Institutional Review Board (IRB) for review and approval of procedures for carrying out any research activities occurring in conjunction with this award. If an applicable Assurance document for the applicant is not already on file with OPRR, a formal request for the required Assurance will be issued by OPRR at an appropriate point in the review process, prior to award, and examples of required materials will be supplied at that time. No applicant or performance site, without an approved and applicable Assurance on file with OPRR, may spend funds on human subject activities or accrue subjects. No performance site, even with an OPRR-approved and applicable Assurance, may proceed without approval by OPRR of an applicable Assurance for the recipients. Applicants may wish to contact OPRR by fax (301–402–0527) to obtain preliminary guidance on human subjects issues. When contacting OPRR, applicants should provide their institutional affiliation, geographic location, and all available Request For Applications (RFA) citation information.

Applicants are advised that the section on human subjects in the application kit entitled "Section C. Specific Instructions—Forms, Item 4, Human Subjects," on pages 7 and 8 of the application kit, should be carefully reviewed for the certification of IRB approval requirements. Documentation of IRB approval for every participating center is required to be on file with the Grants Management Officer, FDA. The goal should be to include enough information on the protection of human subjects in a sufficiently clear fashion so reviewers will have adequate material to make a complete review. Those approved applicants who do not have a current Multiple Project Assurance with OPRR will be required to obtain a Single Project Assurance from OPRR prior to award.

B. Informed Consent

Consent and/or assent forms, and any additional information to be given to a subject, should accompany the grant application. Information that is given to the subject or the subject's representative must be in language that the subject or his or her representative can understand. No informed consent, whether oral or written, may include any language through which the subject or the subject's representative is made to waive any of the subject's legal rights, or by which the subject or representative releases or appears to release the investigator, the sponsor, or the institution or its agent from liability.

If a study involves both adults and children, separate consent forms should be provided for the adults and the parents or guardians of the children.

C. Elements of Informed Consent

The elements of informed consent are stated in the regulations at 45 CFR 46.116 and 21 CFR 50.25 as follows:

1. Basic elements of informed consent.

In seeking informed consent, the following information shall be provided to each subject.

(a) A statement that the study involves research, an explanation of the

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purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.

(b) A description of any reasonably foreseeable risks or discomforts to the subject.

(c) A description of any benefits to the subject or to others which may reasonably be expected from the research.

(d) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.

(e) A statement that describes the extent, if any, to which confidentiality of records identifying the subject will be maintained, and that notes the possibility that FDA may inspect the records.

(f) For research involving more than minimal risk, an explanation as to whether any compensation and any medical treatments are available if injury occurs and, if so, what they consist of or where further information may be obtained.

(g) An explanation of whom to contact for answers to pertinent questions about the research and research subject's rights, and whom to contact in the event of research-related injury to the subject.

(h) A statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

2. Additional elements of informed consent.

When appropriate, one or more of the following elements of information shall also be provided to each subject.

(a) A statement that the particular treatment or procedure may involve risks to the subject (or the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable.

(b) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent.

(c) Any costs to the subject that may result from participation in the research.

(d) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.

(e) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject.

(f) The approximate number of subjects involved in the study. The informed consent requirements are not intended to preempt any applicable Federal, State, or local laws which require additional information to be disclosed for informed consent to be legally effective.

Nothing in the notice is intended to limit the authority of a physician to provide emergency medical care to the extent that a physician is permitted to do so under applicable Federal, State, or local law.

III. Reporting Requirements

An annual Financial Status Report (SF–269) is required. The original and two copies of this report must be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the grant. Failure to file the Financial Status Report (SF–269) in a timely fashion will be grounds for suspension or termination of the grant.

For continuing grants, an annual program progress report is also required. The noncompeting continuation application (PHS 2590) will be considered the annual program progress report.

Additionally, all new and continuing grants must comply with all regulatory requirements necessary to maintain active status of their IND/IDE. This includes, but is not limited to, submission of an annual report to the appropriate regulatory review division within the FDA. Failure to meet regulatory requirements will be grounds for suspension or termination of the grant.

Program monitoring of grantees will be conducted on an ongoing basis and written reports will be prepared by the project officer. The monitoring may be in the form of telephone conversations between the project officer/grants management specialist and the principal investigator. Periodic site visits with appropriate officials of the grantee organization may also be conducted. The results of these reports will be recorded in the official grant file and may be available to the grantee upon request consistent with FDA disclosure regulations. Additionally, the grantee organization will be required to comply with all Special Terms and Conditions which state that future funding of the study will be contingent on recommendations from the OPD Project Officer verifying that: (1) There has been adequate progress toward enrollment, based on specific circumstances of the study; (2) there is an adequate supply of the product/device; and (3) there is continued compliance with all FDA regulatory requirements for the trial (e.g., annual report to IND/IDE file, communication of all protocol changes to the appropriate FDA Center, etc.).

A final program progress report, a Final Financial Status Report (SF–269), and an Invention Statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

IV. Mechanism of Support

A. Award Instrument

Support will be in the form of a grant. All awards will be subject to all policies and requirements that govern the research grant programs of PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program. All grant awards are subject to applicable requirements for clinical investigations imposed by sections 505, 512, and 515 of the act (21 U.S.C. 355, 360b, and 360e), section 351 of the PHS Act (42 U.S.C. 262), and regulations issued under any of these sections.

B. Eligibility

These grants are available to any public or private nonprofit entity (including State and local units of government) and any for-profit entity. For-profit entities must commit to excluding fees or profit in their request for support to receive grant awards. Organizations described in section 501(c)4 of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive grant awards

C. Length of Support

The length of the study will depend upon the nature of the study. For those studies with an expected duration of more than 1 year, a second or third year of noncompetitive continuation of support will depend on: (1) Performance during the preceding year, (2) the availability of Federal funds, and (3) compliance with regulatory requirements of the IND/IDE.

D. Funding Plan

The number of studies funded will depend on the quality of the applications received and the availability of Federal funds to support the projects. Before an award will be made, OPD will verify the active status of the IND/IDE for the proposed study. If the IND/IDE for the proposed study is not active or if an annual report has not been submitted to the IND file in the last 12 months, no award will be made. Further, documentation of IRB approvals for all performance sites must be on file with the Grants Management Officer, FDA (address above), before an award can be made.

V. Review Procedure and Criteria

A. Review Method

All applications submitted in response to this RFA will first be reviewed by grants management and program staff for responsiveness to this RFA. If applications are found to be nonresponsive, they will be returned to the applicant without further consideration.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence with the recommendations made by the first-level reviewers, and funding decisions will be made by the Commissioner of Food and Drugs.

B. Program Review Criteria

Applications will be evaluated by program and grants management staff for responsiveness. Applications considered nonresponsive will be returned to the applicant, without being reviewed. Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria prior to the submission of their application. All questions of a technical or scientific nature must be directed to the OPD program staff and all questions of an administrative or financial nature must be directed to the grants management staff. (See **FOR FURTHER INFORMATION CONTACT** section of this document.) Responsiveness will be based on the following criteria:

1. The application must propose a clinical trial intended to provide safety and/or efficacy data of one therapy for one orphan indication. Additionally, there must be an explanation in the "Background and Significance" section of how the proposed study will either facilitate product approval or provide essential data needed for product development.

2. The prevalence, not incidence, of population to be served by the product must be fewer than 200,000 individuals in the United States. The applicant should include, in the "Background and Significance" section, a detailed explanation supplemented by authoritative references in support of the prevalence figure. If the product has been designated by FDA as an orphan product for the proposed indication, a statement of that fact will suffice. Diagnostic tests and vaccines will qualify only if the population of intended use is fewer than 200,000 individuals in the United States per annum.

3. The number assigned to the IND/IDE for the proposed study should appear on the face page of the application with the title of the project. Only medical foods that do not require premarket approval are exempt from this requirement. The IND/IDE must be in active status and in compliance with all regulatory requirements of FDA at the time of submission of the application. In order to meet this requirement, the original IND/IDE application, pertinent amendments, and the protocol for the proposed study must have been received by the appropriate FDA reviewing division a minimum of 30 days prior to the due date of the grant application. Studies of already approved products, evaluating new orphan indications, must also have an active IND. Exempt IND's must have their status changed to active to be eligible for this program. If the sponsor of the IND/IDE is other than the principal investigator listed on the application, a letter from the sponsor verifying access to the IND/IDE is required, and both the application's principal investigator and the study protocol must have been submitted to the IND/IDE.

4. The requested budget should be within the limits (either $100,000 in direct costs for each year for up to 3 years for any phase study, or $200,000 in direct costs for each year for up to 3 years for phase 2 or 3 studies) as stated in this request for applications. Multi-phase studies that include phase I are only eligible for $100,000 per annum for the entire 3-year period. Any application received that requests support in excess of the maximum amount allowable for that particular study will be considered nonresponsive and returned to the applicant unreviewed.

5. Consent and/or assent forms, and any additional information to be given to a subject, should be included in the grant application.

6. All applicants should follow guidelines specified in the PHS 398 Grant Application kit.

7. Evidence that a sufficient quantity of the product is available to the applicant in the form needed for the investigation must be included in the application. A current letter from the supplier as an appendix will be acceptable.

C. Scientific/Technical Review Criteria

The ad hoc expert panel will provide the first level of review. The application will be judged on the following scientific and technical merit criteria:

1. The soundness of the rationale for the proposed study;

2. The quality and appropriateness of the study design to include the rationale for the statistical procedures;

3. The statistical justification for the number of patients chosen for the trial, based on the proposed outcome measures and the appropriateness of the statistical procedures to be used in analysis of the results;

4. The adequacy of the evidence that the proposed number of eligible subjects can be recruited in the requested timeframe;

5. The qualifications of the investigator and support staff, and the resources available to them;

6. The adequacy of the justification for the request for financial support;

7. The adequacy of plans for complying with regulations for protection of human subjects; and

8. The ability of the applicant to complete the proposed study within its budget and within time limitations stated in this RFA.

The priority score will be based on the scientific/technical review criteria in section V.C of this document. In addition, the reviewers may advise the program staff concerning the appropriateness of the proposal to the goals of the OPD Grant Program described in section I (Program Research Goals) of this document.

D. Award Criteria

Resources for this program are limited. Therefore, should two or more applications be received and approved by FDA which propose duplicative or very similar studies, FDA will support only the study with the best score.

VI. Submission Requirements

The original and five copies of the completed Grant Application Form PHS 398 (Rev. 5/95) or the original and two copies of the PHS 5161 (Rev. 7/92) for State and local governments, with copies of the appendices for each of the copies, should be delivered to Maura C. Stephanos (address above). State and local governments may choose to use the PHS 398 application form in lieu of the PHS 5161. The application receipt dates are November 15, 1999 and April 3, 2000. No supplemental or addendum material will be accepted after the receipt date. Evidence of final IRB approval will be accepted for the file after the receipt date.

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The outside of the mailing package and item 2 of the application face page should be labeled, "Response to RFA FDA OPD–2000."

If an application for the same study was submitted in response to a previous RFA, but has not yet been acted upon, a submission in response to this RFA will be considered a request to withdraw the previous application. Resubmissions are treated as new applications; therefore, the applicant may wish to address the issues presented in the summary statements from the previous review.

VII. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt dates.

Applications will be considered received on time if sent or mailed on or before the receipt dates as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. (Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.)

Do not send applications to the Center for Scientific Research (CSR), National Institutes of Health (NIH). Any application that is sent to the NIH, that is then forwarded to FDA and received after the applicable due date, will be deemed unresponsive and returned to the applicant. Instructions for completing the application forms can be found on the NIH home page on the Internet (address "http://www.nih.gov/grants/funding/phs398/phs398.html"; the forms can be found at "http://www.nih.gov/grants/funding/phs398/forms—toc.html"). However, as noted previously, applications are not to be mailed to the NIH. Applicants are advised that the FDA does not adhere to the page limitations or the type size and line spacing requirements imposed by the NIH on its applications). Applications must be submitted via mail delivery as stated previously. FDA is unable to receive applications via the Internet.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 5/95). All "General Instructions" and "Specific Instructions" in the application kit should be followed with the exception of the receipt dates and the mailing label address. Do not send applications to the CSR, NIH. Applications from State and Local Governments may be submitted on Form PHS 5161 (Rev. 7/92) or Form PHS 398 (Rev. 5/95).

The face page of the application should reflect the request for applications number RFA–FDA–OPD–000. The title of the proposed study should include the name of the product and the disease/disorder to be studied along with the IND/IDE number. The format for all subsequent pages of the application should be single-spaced and single-side.

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by the PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the DHHS or by a court, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: July 15, 1999

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–18771 Filed 7–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 2, 1999, 8 a.m. to 5 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Martha T. O'Lone. Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12520. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss possible revisions to the 1995 draft guidance entitled "Supplementary Guidance on the Content of Premarket Notification [510(k)] Submissions for Medical Devices With Sharps Injury Prevention Features." The committee will also discuss the development of guidance for needle-free devices such as jet injectors intended for the delivery of drugs and biologics and the need for and content of educational programs to encourage the safe and effective use of these devices. Single copies of the 1995 draft guidance are available to the public by calling 1–800–899–0381 or 301–827–0111, and requesting Facts-on-Demand document number 934, or on the Internet using the World Wide Web (WWW) "http://www.fda.gov/cdrh/ode/doc934.pdf".

Procedure: On August 2, 1999, from 8:30 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 23, 1999. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 m. and between approximately 3:45 p.m. and 4:15 p.m. Time allotted for each presentation may be limited. Those individuals desiring to make formal oral presentations should notify the contact person by July 23, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On August 2, 1999, from 8 a.m. to 8:30 a.m., the meeting will be closed to permit FDA to present to the committee trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) regarding pending issues and applications.

FDA regrets that it was unable to publish this notice 15 days prior to the August 2, 1999, General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 16, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–18768 Filed 7–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–138]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Medicare Geographical Classification Review Board (MGCRB) Procedures and Criteria and Supporting Regulations in 42 CFR, Section 412.256;

Form No.: HCFA–R–138;

Use: This regulation sets up an application process for prospective payment system hospitals who choose to appeal their geographic status to the Medicare Geographic Classification Review Board (MGCRB). This regulation also establishes procedural guidelines for the MGCRB.

Frequency: Annually;

Affected Public: Business or other for profit, and Not for profit institutions;

Number of Respondents: 1,000;

Total Annual Responses: 1,000;

Total Annual Hours Requested: 1,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 8, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–18816 Filed 7–22–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–70]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Information Collection Requirements in HSQ–110, Acquisition, Protection and Disclosure of Peer Review Organization Information and Supporting Regulations in 42 CFR, Sections 476.104, 476.105, 476.116, and 476.134;

Form No.: HCFA–R–70 (OMB# 0938–0426);

Use: "Medicare Disclosure Information, Regulatory" The Peer Review Improvement Act of 1982 authorizes PRO's to acquire information necessary to fulfill their duties and functions and places limits on disclosure of the information. These requirements are on the PRO to provide notices to the affected parties when disclosing information about them. These requirements serve to protect the rights of the affected parties;

Frequency: On occasion;

Affected Public: Business or other for-profit, Individuals or Households, and Not-for-profit institutions;

Number of Respondents: 53;

Total Annual Responses: 53;

Total Annual Hours: 30,683.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://

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www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 22, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–18817 Filed 7–22–99; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill three vacancies on the Advisory Commission on Childhood Vaccines (ACCV). The ACCV was established by Title XXI of the Public Health Service Act (the Act), as enacted by Pub. L. 99–660 and as subsequently amended, and advises the Secretary of Health and Human Services (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP).

FOR FURTHER INFORMATION CONTACT: Ms. Shelia Tibbs, Committee Management Assistant, Policy Analysis Branch, Division of Vaccine Injury Compensation, at (301) 443–4036.

DATES: Nominations are to be submitted by August 23, 1999.

ADDRESSES: All nominations are to be submitted to the Director, Division of Vaccine Injury Compensation, Bureau of Health Professions, HRSA, Parklawn Building, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: Under the authorities that established the ACCV, viz., the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463) and section 2119 of the Act, 42 U.S.C. 300aa–19, as added by Pub. L. 99–660 and amended, HRSA is requesting nominations for three voting members of the ACCV.

The ACCV advises the Secretary on the implementation of the VICP; on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table; advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b); advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; and recommends to the Director, National Vaccine Program Office, research related to vaccine injuries which should be conducted to carry out the VICP.

The ACCV consists of nine voting members appointed by the Secretary as follows: three health professionals, of whom at least two are pediatricians, who are not employees of the United States, who have expertise in the health care of children, the epidemiology, etiology and prevention of childhood diseases, and the adverse reactions associated with vaccines; three members from the general public, of whom at least two are legal representatives (parents or guardians) of children who have suffered a vaccine-related injury or death; and three attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and one shall be an attorney whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health and Surgeon General, the Director of the Centers for Disease Control and Prevention, and the Commissioner of the Food and Drug Administration (or the designees of such officials) serve as nonvoting ex officio members.

Specifically, HRSA is requesting nominations for three voting members of the ACCV representing: (1) A pediatrician with special experience in childhood diseases; (2) a member from the general public who is a legal representative (parent or guardian) of a child (or children) who has suffered a vaccine-related injury or death, or who has personally suffered a vaccine-related injury (an individual who is nominated for the seat representing the general public based on a personal vaccine-related injury, may only be selected if legislation proposed by the Secretary and currently pending before Congress is enacted by October 1, 1999 to allow this expansion to the membership criteria), and (3) an attorney with no specific affiliation (as stated above, this category requires membership of three attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death and one of whom is an attorney whose specialty includes representation of vaccine manufacturers—by this notice, the Department is soliciting nominations for the third attorney position). Nominees will be invited to serve 3-year terms beginning January 1, 2000, and ending December 31, 2002.

Interested persons may nominate one or more qualified persons for membership on the ACCV. Nominations shall state that the nominee is willing to serve as a member of the ACCV and appears to have no conflict of interest that would preclude the ACCV membership. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflicts of interest. A curriculum vitae or resume should be submitted with the nomination.

The Department of Health and Human Services has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and therefore extends particular encouragement to nominations for appropriately qualified female, minority, or physically handicapped candidates.

Dated: July 19, 1999.

Claude Earl Fox,

Administrator, HRSA.

[FR Doc. 99–18809 Filed 7–22–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Scholars Program.

Date: August 12–13, 1999.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Mary Bell, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, 301/496–7978.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18904 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Phase II Chemoprevention Trials.

Date: August 12, 1999.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6130 Executive Blvd., 6th Floor, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Wilna A. Woods, Deputy Chief, Special Review, Referral and Research Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Rockville, MD 20852, (301) 496–7903.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18903 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Prospective Study of Diet and Cancer in Women.

Date: July 29, 1999.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: EPN, Room 611C, 6130 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Deborah R. Jaffe, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Bethesda, MD 20892, (301) 496–7221.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18905 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee E—Cancer Epidemiology, Prevention and Control.

Date: August 17–19, 1999.

Time: 7:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, N.W., Washington, DC, 20007.

Contact Person: Mary C. Fletcher, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN-Room 643G, Bethesda, MD 20814, 301/496–7413.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction;

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93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, (HHS)

Dated: July 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18906 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee C—Basic & Preclinical.

Date: August 10–12, 1999.

Time: 7:30 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Virginia P. Wray, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6130 Executive Boulevard—Room 635, Rockville, MD 20895–7405, 301/496–9236.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18907 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel.

Date: July 18–20, 1999.

Time: 7:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Silver Cloud Inn, 1150 Fairview Avenue North, Seattle, WA 98109.

Contact Person: Mary C. Fletcher, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN–Room 643G, Bethesda, MD 20814, 301/496–7413.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 13, 1999.

LaVerne J. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18908 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung and Blood Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Rat Genome Data Base.

Date: August 3, 1999.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 6701 Rockledge Drive, Rockledge II, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Ivan C. Baines, Scientific Review Administrator, NIH, NHBLI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Suite 7184, Bethesda, MD 20892–7922, 301/435–0277.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18909 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Adrenal Insufficiency Research Project Application.

Date: August 2, 1999.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 16, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18895 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Disease; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: September 3, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Room 4139, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–435–3732.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 16, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18896 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: September 2–3, 1999.

Open: September 2, 1999, 1:00 pm to 3:30 pm.

Agenda: The meeting of the full Council will be open to the public for general discussion and program presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: September 2, 1999, 3:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: September 2–3, 1999.

Closed: September 2, 1999, 8:30 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Open: September 3, 1999, 8:30 am to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: September 2–3, 1999.

Closed: September 2, 1999, 8:30 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room F1/F2, 45 Center Drive, Bethesda, MD 20892.

Open: September 3, 1999, 8:30 am to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, Conference Room F1/F2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: September 2–3, 1999.

Closed: September 2, 1999, 8:30 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Open: September 3, 1999, 8:30 am to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

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Contact Person: John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 16, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18897 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1–GRB–C 01 S.

Date: August 17, 1999.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 19, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–18900 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: August 2, 1999.

Time: 11 a.m. to 1 p.m.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Katherine Woodbury, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 15, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18902 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel K23 Grant Review.

Date: July 30, 1999.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Institute of Environmental Health Sciences, Building 101, Main Conference Room, South Campus, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, Scientific Review Administrator, NIEHS, PO Box 12233 EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel R01 Special Review.

Date: August 17, 1999.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, Scientific Review Administrator, NIEHS, PO Box 12233 EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: July 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18910 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 29, 1999.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301/443–9787, etaylor@niaaa.nih.gov.

This notice is being published less than 15 day prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 14, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–18911 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Alcohol Abuse and Alcoholism; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 19, 1999.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 14, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–18912 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Health and Retirement Study.

Date: August 29–30, 1999.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Mary Ann Guadagno, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 14, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–18913 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

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Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1–GRB 5 (02)M.
Date: July 27, 1999.
Time: 3 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20982 (Telephone Conference Call).
Contact Person: Francisco O. Calvo, Chief, Special Emphasis Panel, Review Branch, DEA, NIDDK, National Institutes of Health, Room 6AS37D, Bldg. 45, Bethesda, MD 20892, 301–594–8897.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB2 (01)S.
Date: August 2, 1999.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Shan S. Wong, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6 AS 25, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–5 (01)S.
Date: August 3, 1999.
Time: 12 pm to 7 pm.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Francisco O. Calvo, Chief, Special Emphasis Panel, Review Branch, DEA, NIDDK, National Institutes of Health, Room 6AS37D, Bldg. 45, Bethesda, MD 20892, 301–594–8897.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–8 (02).
Date: August 10–12, 1999.
Time: 7 pm to 12 pm.
Agenda: To review and evaluate grant applications.
Place: The Daniele Hotel, 216 N. Meramec, Clayton, MO 63105.
Contact Person: Roberta J. Haber, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–25N, National Institutes of Health, Bethesda, MD 20892, (301) 594–8898.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 14, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–18914 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: July 23, 1999.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jack D. Maser, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: July 26, 1999.
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: River Inn, 924 25th Street, NW, Washington, DC 20037.
Contact Person: Russell E. Martenson, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: August 9–10, 1999.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Robert H. Stretch, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: August 12, 1999.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. James Hotel, 950 24th Street N.W., Washington, DC 20037.
Contact Person: Fred Altman, Scientific Review Administrator, Fellowships and Merit Programs, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6220, MSC 9621, Bethesda, MD 20892–9621, 301–443–9700.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: July 14, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18915 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 19–20, 1999.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Patricia H. Hand, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, handp@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–06(01).
Date: July 22–23, 1999.
Time: 8 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Sami A. Mayyasi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 22, 1999.
Time: 12 p.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Robert Weller, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 23, 1999.
Time: 11 a.m. to 1 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Patricia H. Hand, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, handp@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 27, 1999.
Time: 2:30 PM. to 5 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Cheri Wiggs, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–8367.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 28, 1999.
Time: 8 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.
Contact Person: Leonard Jakubczack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG–1 VACC (02).
Date: July 28, 1999.
Time: 8:30 AM to 7:00 PM.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 28, 1999.
Time: 10 AM to 2 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892.
Contact Person: Jean Hickman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG–1 AARR–1 (03).
Date: July 28, 1999.
Time: 11 AM to 1 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ranga V. Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 28, 1999.
Time: 2 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jay Cinque, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel SSS–7 (79).
Date: July 28–30, 1999.
Time: 6 AM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: Dinah's Garden Hotel, 4261 El Camino Real, Palo Alto, CA 94306.
Contact Person: Houston Baker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, (301) 435–1175, bakerh@drg.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 29, 1999.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Gertrude K. McFarland, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784, mcfarlag@drg.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–RPHB–1 (3).
Date: July 29, 1999.
Time: 10:30 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Victoria S. Levin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levinv@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

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Name of Committee: Center or Scientific Review Special Emphasis Panel.
Date: July 29, 1999.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Priscilla B. Chen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 29, 1999.
Time: 1:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ranga V. Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center or Scientific Review Special Emphasis Panel.
Date: July 29, 1999.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Eugene Zimmerman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220, zimmerng@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 29, 1999.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Marcia Litwack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 30, 1999.
Time: 11:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: J. Terrell Hoffeld, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 16, 1999.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–18898 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel zrg1–ifcn5–06.
Date: July 19–20, 1999.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Gopal C. Sharma, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7816, Bethesda, MD 20892, (301) 435–1783.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 19, 1999.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel zrgl–c/fcn–06.
Date: July 20, 1999.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel IFCN5–07.
Date: July 23, 1999.
Time: 10 am to 11 am.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 27, 1999.
Time: 1 pm to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: William C. Branche, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 28, 1999.
Time: 3 pm to 4 pm.
Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: .Harold M. Davidson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 28–30, 1999.
Time: 6 pm to 6pm.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Jean D. Sipe, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–1743.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 28, 1999.
Time: 12 pm to 3 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda MD 20892, (Telephone Conference Call).
Contact Person: Michael A. Lang, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 29, 1999.
Time: 1 pm to 2 pm.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Jean D. Sipe, Scientific Review Administration, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–1743.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 30, 1999.
Time: 8 am to 8 pm.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel Georgetown, 3000 M Street, NW, Washington, DC 20007.
Contact Person: Jeanne N. Ketley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–1789.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 30, 1999.
Time: 10 am to 10:30 am.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel Georgetown, 3000 M Street, NW, Washington DC 20007.
Contact Person: Jeanne N. Ketley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814. Bethesda, MD 20892, (301) 435–1789.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 16, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–18899 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–RPHB–1 (2).
Date: July 22, 1999.
Time: 10:15 a.m. to 11:15 a.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Victoria S. Levin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levinv@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 23, 1999.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Anshumali Chaudhari, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7802, Bethesda, MD 20892, (301) 435–1210.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 23, 1999.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Sami A. Mayyasi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 23, 1999.
Time: 1 pm to 2 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (telephone conference Call).
Contact Person: Everett E. Sinnett, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7818, Bethesda, MD 20892, (301) 435–1016, ev__sinnett@nih.govc.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel zrg1 ifcn–7 (06).
Date: July 23, 1999.
Time: 2 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

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Contact Person: Bernard F. Driscoll, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 23, 1999.

Time: 12 pm to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Nancy Hicks, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 23, 1999.

Time: 12 pm to 1:30 pm.

Agenda: to review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Chhanda L. Ganguly, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 24, 1999.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Opryland Hotel, 2800 Opryland Drive, Nashville, TN 37214.

Contact Person: Paul K. Strudler, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SSS–Z ZRG1 (4).

Date: July 26–28, 1999.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The Best Western Boston-The Inn at Longbeach Medic, 342 Longwood Avenue, Boston, MA 02115.

Contact Person: Ron Manning, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1723.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 26–27, 1999.

Time: 8 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Martin L. Padarathsingh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG–1 VACC (03).

Date: July 26, 1999.

Time: 8 am to 7 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 26–27, 1999.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.

Contact Person: Sooja K. Kim, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 26–27, 1999.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sooja K. Kim, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 26, 1999.

Time: 9:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, Washington, DC 20037.

Contact Person: Gloria B. Levin, Scientific review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 26, 1999.

Time: 10 am to 11:30 am.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William C. Branche, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 26, 1999.

Time: 2:30 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anita Miller Sostek, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848 Bethesda, MD 20892, (301) 435–0910.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Pane,l ZRG–1 VACC (01).

Date: July 27, 1999.

Time: 8:30 AM to 7 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852 Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–7 (04).

Date: July 27, 1999.

Time: 11 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 27, 1999.

Time: 2:30 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 15, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18901 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4445–N–19]

Proposed Information Collection: Comment Request; Multifamily Insurance Benefits Claim Package

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 21, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Betty A. Belin, Systems Accountant, Office of Financial Services, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 401–2168 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Multifamily Insurance Benefits Claim Package.

OMB Control Number, if applicable: 2502–0415.

Description of he need for the information and proposed use: The Claim package requests from mortgagees the necessary fiscal data required for HUD to determine insurance owed to mortgagees that filed an insurance claim. When terms of a Multifamily contract are breached or when a mortgage meets conditions stated within the Multifamily contract for an automated assignment, the holder of the mortgage may file for insurance benefits. The law which supports this action is Statute 12 USC 1713(g) and Title II, Section 207(g) of the National Housing Act. This Act provides in the part ". . . the mortgagee shall be entitled to receive the benefits of the insurance as hereinafter provided, upon assignment, transfer, and delivery to the Secretary, within a period and in accordance with rules and regulations to be prescribed by the Secretary of (1) all rights and interest arising under the mortgage so in default; (2) all claims of the mortgagee against the mortgagor or others, arising under the mortgage transaction; (3) all policies of title or other insurance or surety bonds or guaranties and any or all claims thereunder; (4) any balance of the mortgage loan not advanced to the mortgagor; (5) any cash or property held by the mortgagee, or to which it is entitled, as deposits made for account of the mortgagor and which have been applied in reduction of the principal of the mortgage indebtedness; and (6) all records, documents, books, papers and accounts relating to the mortgage transaction." These provisions are further spelled out in CFR 24 Part 207—Subpart B—Contract Rights and Obligations. To receive these benefits, the mortgagee must prepare and submit to HUD the Multifamily Insurance Benefits Claim Package.

Agency form numbers, if applicable: HUD–2742, 2744A, 2744B, 2744C, 2744D, and 2744E.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 118, frequency of responses is one per claim submission, and the total annual burden hours requested are 411.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 20, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–18879 Filed 7–22–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–37]

Submission of Proposed Information Collection to OMB; Emergency Comment Request; Single Family Property Disposition Teacher Next Door Initiative

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

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SUMMARY: The collection information is needed in order to provide a binding contract between the property purchaser and HUD. The respondents are teachers, school districts, nonprofit organizations and governmental entities.

DATES: *Comments Due Date:* July 30, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval number (2502–0306) and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to a Notice "Teacher Next Door Initiative; Notice." This emergency processing is essential to the Department's mission to expand homeownership opportunities and strengthen neighborhoods and communities by making properties available to teachers, who will have an incentive to live and work in urban school districts where they are needed most. The Teacher Next Door Initiative is critical to the Cities 2000 Agenda which was announced by Secretary Cuomo on June 12, 1999 to boost homeownership in America's cities.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Teacher Next Door Initiative; Notice.

OMB Control Number, if applicable: 2502–0306.

Agency form numbers, if applicable: HUD9548–A, HUD–9548B, HUD–9548–C.

Members of affected public: Teachers.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents are estimated to be 2,000, an average of 1,020 annual burden hours are estimated, and the frequency of responses is estimated to be once.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 19, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 99–18881 Filed 7–22–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–36]

Submission for OMB Review: Public Housing Assessment System (PHAS) Management Operations Certification

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: Public Housing Assessment System (PHAS) Management Operations Certification.

DATES: Comments Due Date: August 23, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2535–0106) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll free number. Copies of the proposed and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information. (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of any agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1955, 44 U.S.C. 35, as amended.

Dated: July 19, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Public Housing Assessment System (PHAS) Management Operations Certification.

Office: Real Estate Assessment Center.

OMB Approval Number: 2535–0106.

Description of the Need for the Information and Its Proposed Use: Public Housing Assessment System (PHAS) indicators will be used to assess the management performance of PHAs, designated troubled PHAs and PHAs troubled with respect to the program, for assistance from the Capital Fund..

Form Number: HUD–50072.

Respondents: State, Local or Tribal Government not-for-profit institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–50072	3,268		1		2.2		7,041

Total Estimated Burden Hours: 7,041.

Status: Revision.

Contact: Wanda Funk, HUD, (202) 708–4932 ext. 3276, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–18880 Filed 7–22–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–29]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 23, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 15, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–18468 Filed 7–22–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4463–N–02]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under Section 221(g)(4) of the Act during the 6-month period beginning July 1, 1999, is 6⅝ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning July 1, 1999, is 6⅛ percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Department of Housing and Urban Development, 451 7th Street, SW, Room 6164, Washington, DC 20410. Telephone (202) 708–3944 extension 2612, or TTY (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning July 1, 1999, is 6⅛ percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 6⅛ percent for the 6-month period beginning July 1, 1999. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the first 6 months of 1999.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	on or after	prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
11¼	July 1, 1986	Jan. 1, 1987.
8¼	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.

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Effective interest rate	on or after	prior to
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" of interest in effect at the time the debentures are issued. The term "going Federal rate" is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the 6-month period beginning July 1, 1999, is 6⅝ percent.

HUD expects to publish its next notice of change in debenture interest rates in December 1999.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

(Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: July 16, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–18878 Filed 7–22–99; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 4456–N–04]

Privacy Act; Proposed New Systems of Records

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Establish three new privacy Act systems of records.

SUMMARY: The Department of Housing and Urban Development (HUD) proposes to establish three new record systems to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new systems of records are: HUD/FHA Lender approval Files, HUD/HS–50, Single Family Insurance System (A33) and Home Equity Conversion Mortgage System (F12), HUD/HS–10 and Single Family Data Warehouse System (D64A), HUD/HS–15. HUD/FHA Lender Approval Files contains information pertaining to individuals who are principals or officers of financial institutions seeking approval or approved to originate, service or hold FHA single family or multifamily insured mortgages, or Title I insured loans. The Single Family Insurance System and Home Equity Conversion Mortgage System contains information on individuals who have obtained a mortgage insured under HUD/FHA's single family mortgage insurance programs and individuals who assumed an insured mortgage. The Single Family Data Warehouse System contains information on individuals who have obtained a mortgage insured under HUD/FHA's Title I and Title II single family mortgage insurance programs, individuals who assumed such a mortgage, and individuals involved in appraising or underwriting the mortgage.

DATES: *Effective Date:* This action shall be effective without further notice in 30 calendar days unless comments are received during or before this period that would result in a contrary determination.

Comments due by: August 23, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding these new systems of records to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communication should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Telephone Number (202) 708–2374.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended notice is given that HUD proposes to establish three new systems of records as identified as Single Family Insurance (A43) and Home Equity Conversion Mortgage System (F12), HUD/HS–10, Single Family Data Warehouse System (D64A), HUD/IIS–15, and HUD/FHA Lender Approval Files, HUD/HS–50.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new systems of records.

The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Operations pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, "Federal Responsibilities for Maintaining Records About Individuals," July 25, 1994; 59 FR 37914.

Authority: 5 U.S.C. 552a 88 Stat. 1896; 342 U.S.C. 3535(d).

Dated: July 20, 1999.

Gloria R. Parker,

Chief Information Officer.

HUD/HS–50

SYSTEM NAME:

HUD/FHA Lender Approval Files.

SYSTEM LOCATION:

Headquarters and Single Family Homeownership Centers in Atlanta, Denver, Philadelphia, and Santa Ana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are principals or officers of financial institutions seeking approval or approved to originate, service or hold FHA single family or multifamily insured mortgages, or Title I insured loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual files contain name, address, social security number, and may contain resumes and credit bureau reports. Automated files contain name and social security number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I and Title II of the National Housing Act; 12 U.S.C. 1703, 1709 and 1751b; 42 U.S.C. 1436a and 3535(d).

PURPOSE:

The information in this system of records enables HUD/FHA to comply with any orders of the Mortgagee Review Board which disqualify individuals as principals or officers of FHA-approved lenders. It also permits correspondence to be addressed to individuals rather than job titles.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act other routine uses include:

(a) To the FBI to investigate possible fraud revealed in underwriting, insuring or monitoring.

(b) To Department of Justice for prosecution of fraud revealed in underwriting, insuring or monitoring.

(c) To General Accounting Office (GAO) for audit purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records are stored in file folders. Automated records are stored on magnetic tape/disc/drum.

RETRIEVABILITY:

Records are retrieved by name, social security number or other identification number.

SAFEGUARDS:

Manual records are maintained in lockable file cabinets in secure office space. Automated records are maintained in secured areas. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Manual records are maintained for 10 years beyond the lender's approval termination. Automated records are maintained for 10 years beyond the individual's replacement.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Lender Approval and Recertification Division, HULL, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location in accordance with 24 CFR part 16. A list of all locations is given in appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Mortgagee officer or principal.

HUD/HS–10

SYSTEM NAME:

Single Family Insurance System and Home Equity Conversion Mortgage System.

SYSTEM LOCATION:

Headquarters and Single Family Homeownership Centers in Atlanta, Denver, Philadelphia, and Santa Ana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have obtained a mortgage insured under HUD/FHA's single family mortgage insurance programs and individuals who assumed an insured mortgage.

CATEGORIES OF RECORDS IN THE SYSTEM:

Automated files contain name, address, and social security number on mortgagors; and data regarding the insured loan such as original terms and status of the mortgage insurance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 203, National Housing Act, Pub. L. 73–479.

PURPOSE:

The information in this system of records enables HUD/FHA to operate the single family mortgage insurance programs (*e.g.*, refund unearned premiums to homeowners who prepay their mortgage) and respond to inquiries regarding insured mortgages.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act other routine uses include: To General Accounting Office (GAO) for audit purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape/disc/drum.

RETRIEVABILITY:

Records are retrieved by name, social security number or other identification number.

SAFEGUARDS:

Automated records are maintained in secured areas. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Computerized records of insured cases are retained for at least 3 years beyond maturity, prepayment, or claim termination.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Single Family Insurance Operations Division, HFFF, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location in accordance with 24 CFR part 16. A list of all locations is given in appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Mortgagors, mortgagees.

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HUD/HS–15

SYSTEM NAME:

Single Family Data Warehouse System (D64A).

SYSTEM LOCATION:

Headquarters and Single Family Homeownership Centers in Atlanta, Denver, Philadelphia, and Santa Ana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have obtained a mortgage insured under HUD/FHA's single family mortgage insurance programs, individuals who assumed such a mortgage, and individuals involved in appraising or underwriting the mortgage.

CATEGORIES OF RECORDS IN THE SYSTEM:

Automated files contain name, address, and social security number; racial/ethnic background, if disclosed, on mortgagors; identifying numbers on individuals involved in processing the loan; and data regarding currently and formerly insured mortgages. The loan data includes underwriting data, such as loan-to-value ratios and credit ratios; original terms, such as mortgage amount, interest rate, term in months; status of the mortgage insurance; and history of payment defaults, if any.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 203, National Housing Act, Pub. L. 73–479.

PURPOSE:

This information aids HUD/FHA's monitoring of the single family mortgage insurance programs; it brings together data regarding the mortgage, its performance and parties involved, which facilitates research and analysis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act other routine uses include:

(a) To the FBI to investigate possible fraud revealed in underwriting, insuring or monitoring.

(b) To Department of Justice for prosecution of fraud revealed in underwriting, insuring or monitoring.

(c) To General Accounting Office (GAO) for audit purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape/disc/drum.

RETRIEVABILITY:

Records are retrieved by name, social security number or other identification number, case number, property address, or any other type of stored data.

SAFEGUARDS:

Automated records are maintained in secured areas. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Computerized records of insured cases are retained for at least 10 years beyond maturity, prepayment, or claim termination.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Field Management, Office of the Deputy Assistant Secretary for Single Family Housing, HU, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location in accordance with 24 CFR part 16. A list of all locations is given in appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Mortgagors, appraisers, mortgagee staff underwriters, and HUD employees—indirectly, immediate source is the operational system that captures the data (CHUMS, SFIS, SF Claims, SF Default Monitoring System).

[FR Doc. 99–18882 Filed 7–22–99; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–09–1060–00]

Notice of Intent; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent; correction.

SUMMARY: The Bureau of Land Management (BLM), Salt Lake Field Office, Utah published in the May 13, 1999 issue of the **Federal Register** a notice of intent to prepare a plan amendment to the Pony Express Resource Management Plan (RMP). The notice omitted that a review of the wild horse herd areas may result in boundary changes.

FOR FURTHER INFORMATION CONTACT: Alice Stephenson, Environmental Specialist, Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 977–4300. Existing planning documents are available at the Salt Lake Field Office.

Correction

The plan amendment and environmental assessment will evaluate the herd areas as of 1971 (Wild Horse and Burro Act passage) and the herd areas as defined in the RMP. Potential additions to the herd areas are: Onaqui Mountain HMA—Davis Mountain, Davis Knolls, and Riverbed; Cedar Mountain HMA—west side of the Cedar Mountains and within Dugway Proving Grounds.

LeRoy R. Turner,

Acting State Director.

[FR Doc. 99–18860 Filed 7–22–99; 8:45 am]
BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision Final Environmental Impact Statement; General Management Plan; New Orleans Jazz National Historical Park, LA

Introduction

The National Park Service (NPS) has written a Final General Management Plan/Environmental Impact Statement (FEIS) for New Orleans Jazz National Historical Park, New Orleans, Louisiana. The FEIS is presented in an abbreviated format. The document must be integrated with the Draft General Management Plan, Environmental Impact Statement, New Orleans Jazz National Historical Park, printed in October, 1998, to be considered a complete document reflecting the full proposal, its alternatives, and all significant environmental impacts. The two documents together compose the complete Final Environmental Impact Statement. The FEIS presents alternatives and environmental consequences for resource management and protection, visitor use and interpretation, and facilities development at the national historical park.

The purpose of the Record of Decision (ROD) is to document the NPS selection of the proposed action for the general management plan for New Orleans Jazz National Historical Park from among the alternatives presented in the FEIS. The ROD highlights information contained in the FEIS. The reader should refer to the FEIS for more details relating to the topics presented below.

Purpose

The purpose of this general management plan is to provide a comprehensive plan for the future management and protection of jazz resources, the improved interpretation of jazz and the overall visitor experience, and the provision of necessary and appropriate visitor use facilities.

Decision (Selected Action)

The National Park Service will implement alternative C, the propose action described in the final environmental impact statement. Under the proposed action, the National Park Service will provide funding for basic park operations and will work intensely with others to develop partnerships and alternative funding sources for interpretation, visitor use,and experiences, and other activities focusing on preserving the jazz tradition. The proposed action recognizes that a wide variety of personal and nonpersonal interpretive services will be required to fulfill park purposes. In addition, the proposed action will require a strong partnership between the National Park Service and other entities involved in preserving the New Orleans jazz tradition. The extent and success of this alternative will depend on substantial support from partners, especially from the private sector. The role of the National Park Service will be to assist in coordinating efforts to preserve and interpret jazz and to help visitors understand how the diverse environments of jazz influenced its early development.

Interpretation media will be extensively used, and the size and scope of park and educational and preservation programs will be guided by the development of partnerships. Under this alternative, the visitor center will be located at a complex in Louis Armstrong Park. The visitor center will provide a variety of media (with significant audiovisual, experiential, and interactive elements) that would interpret New Orleans jazz and its progression. It will be a major component of visitors' experiences. Resources and activities around the city will also be very important. Personal services will be an important component of the park program as well as orientation and information. This complex will have a small curatorial storage capacity for items used in displays and educational activities. The visitor center will be developed in Armstrong Park on lands provided to the National Park Service under a long-term lease by the city of New Orleans. Facility development will be phased along with interpretive media development.

Education will be a major priority and will be emphasized in both phases of development. Onsite programming will be a principal emphasis, in order to give students access to the multimedia resources at the visitor center. Offsite programming will provide decentralized services close to home and school; programs will be designed to relate not only to park themes and school curricula, but also to explore the local history and personalities of specific neighborhoods. NPS personnel will be involved in all stages of programming, from planning through presentation and evaluation. In addition, the National Park Service will prepare materials relating to the origins and history of jazz that would be distributed on a nationwide basis. Important partners will include the New Orleans Jazz Commission, local musicians, educators, volunteers, and other agencies and organizations.

Preserving historical and cultural resources such as the South Rampart Street properties, will be a high priority. Historic sites could be adaptively used for activities such as music education, seminars, and performances. Historic jazz sites and cultural activities will receive enhanced public interest and involvement as they better appreciate the significance of these resources and activities. The New Orleans Jazz Commission will assist the National Park Service and others in preservation efforts.

Perseverance Hall No. 4 and the Caretaker's House will be rehabilitated. The rehabilitated hall will be expanded to construct a visitor center complex suitable to meet interpretive and educational needs. The Reimann and Rabassa houses will be considered for rehabilitating based on costs; should rehabilitation costs prove excessive, other options will be considered. Offices for NPS staff will also be located in this complex.

Other Alternatives Considered

Two other alternatives are presented in the alternatives in the abbreviated FEIS. The emphasis of alternative A is on continuing current conditions at New Orleans Jazz National Historical Park. This alternative would provide a minimal necessary orientation to jazz in New Orleans, as well as information on jazz history and personalities. This concept recognizes the many venues in New Orleans that feature jazz and emphasizes enjoyment through listening more than through interpretation or education. Orientation and information would occur mostly through personal services and partnerships. Visitor experiences would occur mostly at non-Park Service sites.

Alternative B would emphasize conveying the park's interpretive story through such personal programs as interpretive talks and demonstrations, interpreted performances. seminars, and performances. Educational activities would be given maximum emphasis in this alternative. It would allow the park to assist in the adaptive use of structures related to jazz. Interpretive programming would heavily depend on the involvement of local musicians and educators, thus supporting cultural preservation. Under this alternative, the visitor center would be located at the Old U.S. Mint.

Basis for Decision

Alternative C is the selected action because it most fully meets the park's purpose and management objectives relating to preserving resources and information associated with the origins and early development of jazz in New Orleans. It provides an enhanced opportunity for visitors to experience and appreciate early jazz and its origins, history and progression. Further, this alternative would promote and assist the education of students in various forms of jazz in order to perpetuate its continued evolution as a true American art form. This alternative more than alternatives A and B will allow the National Park Service to actively seek out partners and maximize federal expenditures in providing preservation and interpretation of jazz resources.

During the public response period for the DEIS, there was considerable support for alternative C, the proposed action, both locally and statewide.

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There were a few comments that supported the various proposed programs, but supported the location of the park at the old U.S. Mint. Other concerns expressed by agencies and the general public are addressed in the "Responses" section of the abbreviated FEIS.

Environmentally Preferable Alternative

The environmentally preferable alternative is alternative C, the selected action. This alternative best protects, preserves, and enhances the historic, cultural, and natural resources relative to the other alternatives analyzed. The emphasis on partnerships in this alternative, which is greater than in alternatives A and B, will result in greater preservation of jazz resources. The area subject to development will not result in any further loss of natural habitat.

Measures To Minimize Environmental Harm

All practicable means to avoid or minimize environmental harm from implementation of the selected action have been adopted and will be enacted. The mitigating measures are presented in detail in the FEIS and are summarized below.

Cultural Resources: A professional archaeologist will determine the need for archaeological inventory or testing prior to any ground-disturbing activities. Any such studies will meet the needs of the state historic preservation offices and the National Park Service. Any large-scale archeological investigations will be undertaken in consultation with the Louisiana Historic Preservation Office. Decisions on the identification and appropriate treatment of historic properties will follow NPS management policies for cultural resources. The planning and implementation of preservation treatments, such as rehabilitation for adaptive use, will be undertaken in accordance with section 106 of the National Historic Preservation Act of 1966, as amended, and as set forth in the Advisory Council on Historic Preservation guidelines in 30 CFR 800 and the servicewide programmatic agreement among the National Park Service, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers. All preservation treatment to historic properties will follow the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation.

In response to the enabling legislation, a National Historic Landmark theme study was undertaken and sites relating to early jazz were identified and measures for their preservation were addressed in the planning process. However, the National Historic Landmark theme study process has been delayed because required authorization from some landowners to evaluate their properties for integrity has not yet been obtained despite attempts by the National Park Service to gain this permission. If owner concurrence is received in the future the National Historic Landmark evaluation process will proceed.

The park will undertake a historic resource study that will provide a comprehensive context on the evolution of New Orleans Jazz. The historic resource study, prepared in accordance with provisions contained in NPS–28: Cultural Resource Management Guidelines, will not only provide important data to define and identify jazz-related resources and guide interpretation and resource protection, but will also afford management more complete knowledge and direction in its decision-making responsibility. During the implementation phase of the proposed action, archaeological surveys may be required as well as historic structure reports and ethnographic use studies. This will be determined on a case-by-case basis when advance planning is funded and undertaken.

Plan implementation actions that require further review by the Louisiana State Historic Preservation office and the Advisory Council on Historic Preservation to determine the effect on archaeological resources, historic resources, and/or cultural landscapes, are listed in the abbreviated FEIS. The National Park Service will complete an "Assessment of Actions Having an Effect on Cultural Resources" form before implementing any proposed action. This will document project impacts, and outline actions that will mitigate impacts.

National Resources: In general, natural resources will not be impacted by National Park Service activities. Because of NPS construction activities, there is a potential for short-term impacts on water quality. Strict erosion and sediment controls will be instituted as part of any NPS construction activity in accordance with federal and state laws. The state of Louisiana will be consulted, and the state's nonpoint source pollution coordinator will be contacted to determine whether a sediment or erosion control plan will be required. In addition, any such construction will conform with the NPS Floodplain Management Guidelines, which were issued as NPS Special Directive 93–4 in 1993. Appropriate permits will be obtained prior to beginning work, and all water quality standards will be met.

Impacts on rare, threatened, or endangered species due to construction will be minimal if at all, because the proposed NPS development will be in previously disturbed areas. Potential impacts on soils as a result of NPS construction will be minimal, especially in relation to existing disturbance. Site preparation will result in either removal or addition of earth, altering soil structure. Rehabilitation of severely impacted areas will be attempted wherever possible. Revegetation will be enhanced by conserving and using existing topsoil.

NPS development activities will result in temporary elevated levels of particulate matter and other air pollutants. Appropriate control measures will be used to ensure minimal impacts from air pollution. All federal, state, and local air quality standards will be met.

Socioeconomic Environment: The park's development is expected to have minimal effect upon city utilities, such as power lines and sanitary sewer systems. The National Park Service will consult with appropriate city, park, state, and federal offices to minimize impacts.

During the next planning and design phase for the park, the National Park Service will consult with local planning and traffic/transportation management agencies to ensure that minimal impact occurs. In conjunction with local agencies, the National Park Service will ensure adequate directional signs and informational brochures. Local traffic is not expected to be significantly affected by the anticipated increase in visitation. Some congestion could occur during peak use periods. The park will work with local planning and traffic/transportation management agencies and neighborhood groups to develop mitigating measures, if necessary.

Public and Interagency Involvement

During the process of creating the general management plan for New Orleans Jazz National Historic Park, newsletters were distributed, public meetings held, press releases were issued, radio interviews given. The draft document was placed on the internet, and the park staff and planning team met with local agencies and on a regular basis with the New Orleans Jazz Commission and other individuals and groups to exchange information and to solicit input and responses from the public.

The Draft New Orleans Jazz National Historical Park, General Management Plan, Environmental Impact Statement was released on November 21, 1998. More than 800 copies were distributed to local, state, and federal government agencies and to organizations and individuals on the plan's mailing list. Following this, a newsletter was released and six public meetings were held to present the plan and record public comments. Written comments on the document were requested to be received by January 25, 1999. However, some comments were received after that date and were also considered.

Forty-two letters and comment forms were received from government agencies, organizations, and individuals. These letters were reproduced in the "Comments and Responses" section of the abbreviated FEIS, and are on file at the New Orleans Jazz National Historical Park headquarters in New Orleans, Louisiana. All comments were considered by the National Park Service in the preparation of the abbreviated FEIS.

A notice of availability for the abbreviated FEIS was published in the **Federal Register** on May 5, 1999. The 30-day no-action period ended on July 6, 1999.

Conclusion

After careful evaluation of each alternative and its environmental impacts, and consideration of public response, park mission, and park goals, the National Park Service believes that the selected action, alternative C, represents the best course of action in the future preservation of jazz resources and interpretation of the story of New Orleans jazz and its progression.

Approved: July 9, 1999.

W. Thomas Brown,

Acting Regional Director, Southeast Regional Office, National Park Service.

[FR Doc. 99–18894 Filed 7–22–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Vancouver National Historic Reserve Draft Cooperative Management Plan/ Environmental Impact Statement, Washington

AGENCY: National Park Service.

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: The National Park Service announces the availability of a Draft Cooperative Management Plan/ Environmental Impact Statement (CMP/ EIS) for Vancouver National Historic Reserve, Washington. This notice also announces public meetings for the purpose of receiving comments on the draft document.

DATES: Comments on the draft CMP/EIS should be received no later than September 21, 1999. Public meetings will be held in Vancouver, WA, on August 25, 1999, 6–8 p.m. at the Water Resources Education Center, and in Portland, OR, on August 26, 1999, 11:30 a.m.–1:00 p.m. at the Oregon Historical Society.

SUPPLEMENTARY INFORMATION: This plan provides for the cooperative administration of the Vancouver National Historic Reserve as directed by the legislation establishing the Historic Reserve. The 366-acre Reserve includes Fort Vancouver National Historic Site, the U.S. Army's Vancouver Barracks, Officers Row, Pearson Field, the Water Resources Education Center, and portions of the Columbia River waterfront. This plan is a statement of a shared vision by four public agencies and their partners in the coordinated management of the Historic Reserve for public benefit. The Historic Reserve will be administered through this plan by a partnership composed of the National Park Service, the Department of the Army, the Office of Archaeology and Historic Preservation of the State of Washington, and the City of Vancouver, Washington.

The plan analyzes three possible alternatives for future management and recommends a preferred alternative. The shared vision presented in the preferred alternative can be summarized in three broad goals:

—*Preservation* of historic structures, physical assets, and cultural landscapes,

—*Education* and interpretation of the significance and history of the area for public benefit,

—*Public use* of and accessibility to the Historic Reserve.

The primary consideration for the Vancouver Barracks would be to adaptively use the historic structures for sustainable public use and enjoyment, interpretation, and preservation of the historic scene. A new interpretive center would be developed for the barracks to focus on their history. Barracks structures would be adaptively used for a mix of public, nonprofit, and commercial uses. For the Parade Ground, a variety of theme-related activities would be encouraged.

Reconstruction of Fort Vancouver would continue, consistent with interpretative objectives, and the portions of the cultural landscape adjacent to the fort would be rehabilitated. The National Park Service would prepare a general management plan for the national historic site to address visitor center needs and location, further reconstruction of the fort, access, parking, interpretation, and other issues.

The Pearson Field visitor experience would provide interwar period civilian and U.S. Army aviation history and ambiance. The ongoing adaptive use of historic structures would continue, and older, nonhistoric hangars would be removed. Along the Columbia River Waterfront there would be expanded interpretation of the historic activities that link the waterfront with the Historic Reserve.

The CMP/EIS includes a no-action alternative and another alternative that would restore historic structures and landscapes to a condition representative of the most significant period of the structures and landscape. The DEIS presents a full discussion of the environmental impacts associated with implementing each alternative.

ADDRESSES: Comments on the draft CMP/EIS should be submitted to: Larry Beal, Denver Service Center, 12795 W. Alameada Parkway, Denver, CO 80225–0287. Copies of the draft CMP/EIS are available by request from the aforementioned address. The document will also be available on the Internet at www.nps.gov.

FOR FURTHER INFORMATION CONTACT: Larry Beal, Job Captain, Denver Service Center, phone (303) 969–2454, or E-mail: larry_beal@nps.gov.

Dated: July 13, 1999.

William C. Walters,

Deputy Regional Director, Pacific West Region.

[FR Doc. 99–18892 Filed 7–22–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Extension of Public Scoping Comment Period for Merced Wild and Scenic River Management Plan, Yosemite National Park, Mariposa and Madera Counties, CA

SUMMARY: Pursuant to provisions of the National Environmental Policy Act (Pub. L. 91–190) and the Wild and Scenic Rivers Act (Pub. L. 90–542), the National Park Service is initiating a conservation planning and environmental impact analysis process for a Merced River Management Plan for river segments within Yosemite National Park. In deference to public interest expressed to date during the scoping effort, the original period

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expiring on July 14 has been extended through July 30, 1999.

SUPPLEMENTARY INFORMATION: Written comments must now be post-marked not later than July 30, 1999, and should be directed to the Superintendent, Yosemite National Park, P.O. Box 577, Yosemite National Park, California 95389 (or if sent via e-mail, transmitted by that date to "Yose_Merced_River@nps.gov").

Dated: July 19, 1999.

James R. Shevock,

Acting Regional Director, Pacific West Region.

[FR Doc. 99–18893 Filed 7–22–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Cuyamaca Rancho State Park, CA in the Possession of the California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Cuyamaca Rancho State Park, CA in the possession of the California Department of Parks and Recreation, Sacramento, CA.

A detailed assessment of the human remains was made by California Department of Parks and Recreation professional staff in consultation with representatives of the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, the Capitan Grande Band of Diegueno Mission Indians, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the Jamul Indian Village, the La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, the Sycuan Band of Diegueno Mission Indians, and the Viejas Band of Mission Indians.

In 1937, human remains representing 30 individuals were recovered from site CA-SDI-901, San Diego County, CA during excavations supervised by George F. Carter and Malcolm J. Rogers of the San Diego Museum of Man. No known individuals were identified. The 2,827 associated funerary objects include burial urns (plainware ollas and Tizon brown jars), olivella beads, a steatite bead, a bowl, a quartz flake, a projectile point, sherds, pieces of shell, mammal bones, bird bones, fish bones, seeds, charcoal pieces, small pieces of rock, and melted glass beads.

Based on manner of interment and associated funerary objects, these human remains have been identified as Native American dating to the late prehistoric to historic period (700 A.D.-1400 A.D.). Archeological evidence indicates this area of western San Diego County was occupied by Kumeyaay (Diegueno) peoples from 500 A.D. through the historic post-contact period.

In 1934, human remains representing a minimum of one individual were recovered from Arrow Makers Ridge, Arrowmakers Camp, Hapcha, West Mesa, San Diego County, CA under the direction of M. Rogers of the San Diego Museum of Man. In 1981 and 1983, portions of this collection were reburied prior to NAGPRA. No known individual was identified. The one associated funerary object is a stone bead.

Based on the manner of interment and associated funerary objects, these human remains have been identified as Native American dating to the late pre-contact to contact period (500-1500 A.D.). Archeological evidence indicates this area of San Diego county was occupied by Kumeyaay (Diegueno) peoples from 500 A.D. through the historic contact period.

Based on the above mentioned information, officials of the California Department of Parks and Recreation have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 31 individuals of Native American ancestry. Officials of the California Department of Parks and Recreation have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 2,828 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the California Department of Parks and Recreation have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, the Capitan Grande Band of Diegueno Mission Indians, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the Jamul Indian Village, the La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, the Sycuan Band of Diegueno Mission Indians, and the Viejas Band of Mission Indians.

This notice has been sent to officials of the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, the Capitan Grande Band of Diegueno Mission Indians, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the Jamul Indian Village, the La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, the Sycuan Band of Diegueno Mission Indians, and the Viejas Band of Mission Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Paulette Hennum, NAGPRA Coordinator, California Department of Parks and Recreation, 1416-9th Street, Room 1431, Sacramento, CA 95814; telephone: (916) 653-7976, before August 23, 1999. Repatriation of the human remains and associated funerary objects to the culturally affiliated tribes may begin after that date if no additional claimants come forward.

Dated: July 16, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–18889 Filed 7–22–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Minnesota Indian Affairs Council, St. Paul and Bemidji, MN

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Minnesota Indian Affairs Council, St. Paul and Bemidji, MN.

A detailed assessment of the human remains was made by Minnesota Indian Affairs Council professional staff in consultation with representatives of the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Indians, Oklahoma.

In 1979, human remains representing three individuals were collected from site 21-HU-26, Houston County, MN during an archeological survey conducted by Tom Trow of the Minnesota Historical Society. In 1987, two of these individuals were turned over to the Minnesota Indian Affairs Council. In 1993, the third individual was turned over to the Minnesota Indian Affairs Council. No known individuals were identified. No associated funerary objects are present.

Based on archeological surveys, ethnohistoric evidence, material culture, and types of associated funerary objects, site 21-HU-26 has been identified as an Oneota/Orr phase Mississippian site. Based on continuities of material culture, historical documents, and oral history, the Oneota/Orr phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Ioway tribes.

In 1935, human remains representing seven individuals were removed from site 21-FL-09, Rushford Mound site, Fillmore County, near Rushford, MN during an archeological excavation conducted by A.E. Jenks of the University of Minnesota. After 1987, these human remains were turned over to the Minnesota Indian Affairs Council. No known individuals were identified. The two associated funerary objects are two mortuary ceramic vessels.

Based on archeological surveys, material culture, and types of associated funerary objects, site 21-FL-09 has been identified as an Oneota/Orr phase Mississippian site. Based on continuities of material culture, historical documents, and oral history, the Oneota/Orr phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Ioway tribes.

In 1942, human remains representing 12 individuals were removed from site 21-HU-04, Wilsey site, Houston County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. At a later date, these human remains were turned over to the Minnesota Indian Affairs Council. No known individuals were identified. The five associated funerary objects include flint chips, a catlinite pipe, an end scraper, a pottery vessel, and a notched arrowhead.

In 1947, human remains representing 16 individuals were recovered from site 21-HU-04, Wilsey site, Houston County, MN during further archeological excavations conducted by L.A. Wilford of the University of Minnesota. At a later date, these human remains were turned over to the Minnesota Indian Affairs Council. No known individuals were identified. The six associated funerary objects include flint flakes, a quartzite knife, tip of a flint knife, a pottery vessel, copper beads with leather, and a copper bead.

Based on archeological surveys, material culture, and types of associated funerary objects, site 21-HU-04 has been identified as an Oneota/Orr phase Mississippian site. Based on continuities of material culture, historical documents, and oral history, the Oneota/Orr phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Ioway tribes.

In 1942 and 1947, human remains representing three individuals were removed from 21-HU-01, Hogback site, Houston County, MN during salvage and archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The six associated funerary objects include flint chips, one ceramic sherd, one copper bead, a projectile point, a pottery vessel, and a catlinite pipe.

In 1953, human remains representing 52 individuals were removed from site 21-HU-01, Hogback site, Houston County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The 22 associated funerary objects include bark/leather fragments, two polished bird metapodials, mortuary vessels, a bone fish hook, shell and copper beads, a catlinite pipe, spiral copper beads, shell and bark/fabric, spiral copper beads and a large clamshell, a necklace of copper, shell, and glass beads, a necklace of copper beads and springs, an end scraper, a grooved axe, a triangular projectile point, a bear claw necklace with copper spring and shell beads, a bone awl, a flint knife, copper bead and beaver teeth, worked bone with drilled holes, and a clamshell.

Based on archeological surveys, material culture, and types of associated funerary objects, site 21-HU-01 has been identified as an Oneota/Orr phase Mississippian site. Based on continuities of material culture, historical documents, and oral history, the Oneota/Orr phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Ioway tribes.

In 1948, human remains representing one individual were removed from site 21-FL-08, Riehl Mound site, Fillmore County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individual was identified. The three associated funerary objects include a base of a biface, a crescent chert knife, and a projectile point.

Based on archeological surveys, material culture, and types of associated funerary objects, site 21-FL-08 has been identified as an Oneota/Orr phase Mississippian site. Based on continuities of material culture, historical documents, and oral history, the Oneota/Orr phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Ioway tribes.

In 1954, human remains representing two individuals were removed from site 21-GD-04, Bryan site, Goodhue County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. In 1991, these human remains were transferred to the Minnesota Indian Affairs Council. No known individuals were identified. No associated funerary objects are present.

In 1984, human remains representing three individuals were removed from site 21-GD-04, the Bryan site, Goodhue County, MN during archeological excavations conducted by Clark Dobbs of the Institute for Minnesota Archaeology and the University of Minnesota. In 1994, these human remains were transferred to the Minnesota Indian Affairs Council. No known individuals were identified. The eight associated funerary objects include ceramice sherds, burned bone, charcoal, rock, ochre, shell, a lithic flake and a possible hammerstone.

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At an unknown date, human remains representing one individual were removed from site 21-GD-04, the Bryan site, Goodhue County, MN by an unknown person who donated the remains to the University of Minnesota. No known individual was identified. No associated funerary objects are present.

During 1970-1971, human remains representing one individual were removed from site 21-GD-04, the Bryan site, Goodhue County, MN by David Nystuen of the Minnesota Historical Society. In 1987, these human remains were transferred to the Minnesota Indian Affairs Council. No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing one individual were removed from site 21-GD-04, the Bryan site, Goodhue County, MN by Heinz Weisse. In 1979, these human remains were donated to the Minnesota Historical Society by Tom Igwn. In 1987, these human remains were transferred to the Minnesota Indian Affairs Council. No known individual was identified. No associated funerary objects are present.

In 1952, human remains representing four individuals were removed from site 21-GD-04, the Bryan site, Goodhue County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The three associated funerary objects are an animal bone, a scapula hoe, and clam shells.

In 1955, human remains representing three individuals were removed from site 21-GD-04, the Bryan site, Goodhue County, MN during archeological investigations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. No associated funerary objects were present.

During the 1950s, human remains representing four individuals were removed from site FL-8, Riehl Mounds, Fillmore County, MN by person(s) unknown. In 1992, these human remains were turned over to J. Oothoudt who turned them over to the Minnesota Indian Affairs Council. No known individual was identified. No associated funerary objects are present.

Based on archeological surveys, material culture, and types of associated funerary objects, site 21-GD-04 has been identified as Mississippian, Oneota/Blue Earth and Silvernale phases. Based on continuities of material culture, historical documents, and oral history, the Oneota/Blue Earth phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Otoe. Based on continuities of material culture, historical documents, and oral history, the Silvernale phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Ioway.

In 1950, human remains representing one individual were removed from site 21-GD-05, Eggleston Mound Group site, Goodhue County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The two associated funerary objects are a lithic flake/scraper, and clam shells.

Based on archeological surveys, material culture, and types of associated funerary objects, site 21-GD 05 has been identified as Mississippian, Oneota phase. Based on continuities of material culture, historical documents, and oral history, the Oneota phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Otoe and Ioway.

In 1955, human remains representing two individuals were removed from site 21-SB-01, High Island Mound site/Black Tortoise Mound, Sibley County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. No associated funerary objects were present.

Based on archeological surveys, material culture, and types of associated funerary objects, site 21-SB-01 has been identified as Mississippian, Oneota phase. Based on continuities of material culture, historical documents, and oral history, the Oneota phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Otoe and Ioway.

In 1952, human remains representing three individuals were removed from site 21-WL-02, McCauleyville Mound site, Wilkin County, MN during excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. No associated funerary objects were present.

Based on archeological surveys, material culture, and types of associated funerary objects, site 21-WL-02 has been identified as Mississippian, Oneota phase. Based on continuities of material culture, historical documents, and oral history, the Oneota phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Otoe and Ioway.

Based on the above mentioned information, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 117 individuals of Native American ancestry. Officials of the Minnesota Indian Affairs Council have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 57 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Indians, Oklahoma.

This notice has been sent to officials of the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Indians, Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Mr. James L. (Jim) Jones, Cultural Resource Specialist, Minnesota Indian Affairs Council, 1819 Bemidji Ave. Bemidji, MN 56601; telephone: (218) 755-3825, before August 23, 1999. Repatriation of the human remains and associated funerary objects to the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Indians, Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 16, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–18890 Filed 7–22–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the University Museum, University of Arkansas, Fayetteville, AR

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the University Museum, University of Arkansas, Fayetteville, AR which meet the definition of "unassociated funerary objects" under Section 2 of the Act.

The four cultural items consist of a small shell-tempered pottery vessel and three animal bone tools.

At an unknown date, these cultural items were found with a human burial in the Kohler Mound, Alexander County, IL. In 1947, these cultural items were acquired by the University Museum as part of the purchase of the artifact collection of Fain White King.

Based on the temper and character of the pottery, these cultural items have been determined to relate to the Middle Mississippian Culture of the Mississippi Period (800-1600 A.D.). Based on geographical continuity, the University Museum has identified the Peoria Tribe of Indians of Oklahoma as the likely descendant of the Mississippian culture in that part of Illinois.

Based on the above mentioned information, officials of the University Museum, University of Arkansas have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these four cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the University Museum, University of Arkansas have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Peoria Tribe of Indians of Oklahoma.

This notice has been sent to officials of the Peoria Tribe of Indians of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Michael P. Hoffman, Curator of Anthropology, University Museum, University of Arkansas, Fayetteville, AR 72702; telephone: (501) 575-3855 before August 23, 1999. Repatriation of these objects to the Peoria Tribe of Indians of Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 13, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–18886 Filed 7–22–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Montgomery County, IL in the Possession of the University Museum, University of Arkansas, Fayetteville, AR

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Montgomery County, IL in the possession of the University Museum, University of Arkansas, Fayetteville, AR.

A detailed assessment of the human remains was made by University Museum professional staff in consultation with representatives of the Peoria Tribe of Indians of Oklahoma.

In 1963, human remains representing 11 individuals were recovered from site CIPS 5 Dam site during salvage excavations conducted by Michael P. Hoffman, a graduate student at Harvard University and a crew of students. No known individuals were identified. The 103 associated funerary objects include ceramic sherds, stone flakes, deer bones, ground stone tools and stone core fragments.

Based on the associated funerary objects, these individuals have been identified as Native American. Based on ceramic temper and styles, these burials date to the Bluff Culture of the Late Woodland Period (700-900 A.D.). The Bluff Culture is at least partially ancestral to the Middle Mississippian Culture of southern Illinois. Based on geographical continuity, the Peoria Tribe of Indians of Oklahoma is likely to be descendant of archeological cultures of the Woodland and Mississippian periods in central and southern Illinois.

Based on the above mentioned information, officials of the University Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 11 individuals of Native American ancestry. Officials of the University Museum have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 103 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Peoria Tribe of Indians of Oklahoma.

This notice has been sent to officials of the Peoria Tribe of Indians of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Michael P. Hoffman, Curator of Anthropology, University Museum, University of Arkansas, Fayetteville, AR 72702; telephone: (501) 575-3855, before August 23, 1999. Repatriation of the human remains and associated funerary objects to the Peoria Tribe of Indians of Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 15, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–18887 Filed 7–22–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the University of Pennsylvania Museum of Archaeology and Anthropology, University of Pennsylvania, Philadelphia, PA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, University of Pennsylvania, Philadelphia, PA.

A detailed assessment of the human remains was made by University of Pennsylvania Museum professional staff in consultation with representatives of the Pawnee Indian Tribe of Oklahoma.

At an unknown date, human remains representing one individual were removed from an unknown site by person(s) unknown. At an unknown date, these human remains were donated to the University of

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Pennsylvania Museum by person(s) unknown. No known individual was identified. No associated funerary objects are present.

Based on the label on this skull, this individual has been identified as Native American of Pawnee affiliation. The skull is incised with symbols or pictures, and two man-made holes are present at either side of its base. The cranium also exhibits parietal flattening (artificial deformation). No further information exists for this individual.

Based on the above mentioned information, officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of Pennsylvania Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Pawnee Indian Tribe of Oklahoma.

This notice has been sent to officials of the Pawnee Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Jeremy Sabloff, the Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 33rd and Spruce Streets, Philadelphia, PA 19104-6324; telephone: (215) 898-4051, fax (215) 898-0657, before August 23, 1999. Repatriation of the human remains to the Pawnee Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 12, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–18888 Filed 7–22–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Revised Guidance on All Requests for Wireless Telecommunication; Facilities in Units of the National Park System, Reference Manual 53, Appendix 5, Exhibit 6

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) announces the availability of the revised guidance document for all requests for Wireless Telecommunication Facilities in units of the NPS. This document revises existing guidance to park managers concerning all aspects of requests for Wireless Telecommunications Facilities in the National Park System, from the initial contact, through on-scene protection of resources, and ending with complete recovery and restoration of the site. This document supersedes and replaces the existing NPS–53, Appendix 8, Exhibit 6 dealing with the same subject.

Copies of the guidance document will be made available upon request by writing: National Park Service, Ranger Activities Division-Telecom, 1849 C St. NW, Suite 7408, Washington, DC 20240, or by calling 202–208–4874.

FOR FURTHER INFORMATION CONTACT: Dick Young at 757–898–7846, or 757–898–3400, ext. 51.

Dated: July 20, 1999.

Dennis Burnett,

Acting Chief, Ranger Activities Division, National Park Service.

[FR Doc. 99–18891 Filed 7–22–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–412]

Certain Video Graphics Display Controllers and Products Containing SAME; Commission Determination Not To Review the Bulk of an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review, as explained below, the presiding administrative law judge's final initial determination (ID) and has thereby made a final determination of no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205–3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission ordered the institution of this investigation on July 27, 1998, based on a complaint filed on behalf of Cirrus Logic, Inc., Fremont, California ("Cirrus" or "complainant"). 63 FR 40932 (1998). The notice of investigation was published in the **Federal Register** on July 31, 1998. *Id.* The complaint alleged that ATI Technologies, Inc., Thornhill, Ontario, Canada ("ATI" or "respondent") violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by importing, selling for importation, and selling in the United States after importation certain video graphics display controllers that infringe claims 37 and 43 of Cirrus' U.S. Letters Patent 5,598,525 ("the "525 patent"). Id. On October 29, 1998, the presiding administrative law judge (ALJ) issued an ID (ALJ Order No. 14) granting Cirrus' motion to amend the complaint and notice of investigation to add allegations of infringement of claims 1–10, 12–21, and 23–24 of the "525 patent, and that ID was not reviewed by the Commission. 63 FR 66581 (1998).

The ALJ held a tutorial on the technology for displaying video and graphics data on personal computers on January 7, 1999. On January 20, 1999, Cirrus filed a notice of withdrawal of certain disputed claims, indicating that only claims 13, 15, 16, 17, 23, and 37 remained in dispute. An evidentiary hearing was held from January 21, 1999, to January 29, 1999.

The ALJ issued her final ID on April 30, 1999, concluding that there was no violation of section 337, based on the following findings: (a) complainant failed to establish the requisite domestic industry; (b) the asserted claims of the "525 patent, claims 13, 15, 16, 17, 23, and 37, are invalid; and (c) assuming, *arguendo*, the validity of the asserted claims, respondent's accused devices.do not infringe the asserted claims. On May 11, 1999, the ALJ issued her recommended determination on remedy and bonding, in the event the Commission were to conclude there is a violation of section 337.

On May 13, 1999, complainant filed a petition for review of the ID, arguing that the ALJ erred in construing specific terms in claims 13, 15, 16, 17, and 23, erred in her invalidity and infringement analyses of those claims, and erred in concluding that complainant did not satisfy the domestic industry requirement. Complainant's petition included a request for contingent review of the ALJ's conclusions concerning certain prior art and her construction of additional terms in these claims, should the Commission adopt complainant's claim construction over the ALJ's. Complainant did not petition for review of the ALJ's conclusions as to claim 37. Respondent filed a contingent petition for review identifying as issues for consideration should the Commission decide to review the ID certain aspects of the ALJ's construction of claims 13, 15, 16, 17, 23, and 37, application of the doctrine of equivalents, and conclusions as to invalidity and inequitable conduct. The Commission investigative attorney (IA) petitioned for review of the ALJ's alternative basis for finding no domestic industry as erroneous as a matter of law. On May 20, 1999, respondent, complainant, and the IA filed responses to the petitions for review.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission determined not to review the ID, except that the Commission determined to take no position as to the ALJ's findings as to the following issues: (1) The invention date of the 525 patent; (2) the prior art status of the Oak/Brooktree combination under 35 U.S.C. 102(a); (3) the prior art status of the Bindlish 864 patent under 35 U.S.C. 102(e); (4) the invalidity of claim 37 of the 525 patent as anticipated by the Bindlish 864 prior art patent under 35 U.S.C. 102(e); and (5) the non-enablement of claims 13, 15, 16, 17, and 23. With respect to the ID's finding that complainant failed to satisfy the technical prong of the domestic industry requirement in part because claim 13 is invalid for indefiniteness, the Commission clarifies that it understands the ID to mean that complainant cannot meet the burden of demonstrating the practice of an indefinite claim. The Commission thereby adopted the ID, with the exceptions noted, as its final determination.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–210.43 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.42–.43).

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000.

Issued: July 19, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18843 Filed 7–22–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act and Oil Pollution Act of 1990

Notice is hereby given that a consent decree in *United States* v. *Carlos R. Leffler, Inc.*, Civil Action No. 99–3027 (E.D. Pa) was lodged with the court on June 15, 1999.

The proposed decree resolves claims of the United States against Carlos R. Leffler, Inc. under Section 311 of the Clean Water Act, as amended by the Oil Pollution Act of 1990, 33 U.S.C. 1321, for failure to timely prepare and submit EPA plans for the prevention, control and cleanup of potential oil spills for twelve of its oil storage facilities in Pennsylvania. The decree requires Carlos R. Leffler to pay a penalty of $435,000.00 to the Oil Spill Liability Trust Fund and to spend a minimum of $110,000.00 for the donation and enhancement of approximately fifteen acres of wetlands and uplands in Walker Township, Juaniata County, Pennsylvania.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice. Washington, DC 20530, and should refer to *United States* v. *Carlos R. Leffler, Inc.*, Civil Action No. 99–3027, DOJ Ref. #90–5–1–1–4452.

The proposed consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, NW, 4th floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.50 (25 cent per page reproduction cost), payable to the Consent Decree Library.

Walker Smith,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–18812 Filed 7–22–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *FMC Corporation*, Civil Action No. 5:99–CV–0054, was lodged on July 9, 1999 with the United States District Court for the Western District of Virginia. The United States filed this action pursuant to Sections 106 & 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9606 & 9607 at the Avtex Fibers Superfund Site in Front Royal, Virginia.

Before it closed in 1989, the Avtex plant in Front Royal was the largest rayon manufacturing facility in the United States and is now the largest Superfund site in the Commonwealth of Virginia. The plant is a 440 acre facility that is located directly adjacent to the Shenandoah River in the town of Front Royal. The site is contaminated with a variety of hazardous substances including PCBs, arsenic, lead, cadmium, chromium, zinc and carbon disulfide as the result of rayon manufacturing operations conducted at the site over the course of 50 years. The consent decree requires FMC to pay $9.1 million for past and interim responses costs incurred by EPA at the Avtex Site. In addition, FMC has agreed to perform future response work at the site, with a value of $62.7 million (in 1998 dollars) and pay for EPA's oversight of the clean up. Finally, FMC has agreed to oversee and participate in the removal of abandoned buildings and structures at the Avtex plant. This additional future work is not covered under CERCLA but will enable the property to be redeveloped or reused.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to: *United States* v. *FMC Corporation*, DOJ Ref. #90–11–3–372A.

The proposed consent decree may be examined at the Office of the United States Attorney, Western District of Virginia, Office of the U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pa., and at the Consent Decree Library, 1120 G Street, NW, 3rd

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Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 2005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $37.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 99–18810 Filed 7–22–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on July 9, 1999 a proposed Consent Decree in *United States and Cheyenne River Sioux Tribe* v. *Homestake Mining Company of California,* Civil Action No. 97–5100, and *State of South Dakota* v. *Homestake Mining Company of California,* Civil Action No. 97–5078 (consolidated) was lodged with the United States District Court for the District of South Dakota in Rapid City.

The Consent Decree settled federal, state, and tribal natural resource damage and trustee response costs claims associated with contamination resulting from deposits of millions of tons of tailings from Homestake's mining operations. Since the late 1870's Homestake has operated a gold mine in Lead, South Dakota. In their respective claims, the United States, the Cheyenne River Sioux Tribe, and the State of South Dakota alleged that tailings deposited into Whitewood Creek caused injuries to natural resources in the Cheyenne River Basin, and sued Homestake under CERCLA Section 107, 42 U.S.C. 9607, the Clean Water Act Section 311(f), 33 U.S.C. 1321(f), and state nuisance law. Homestake asserted a variety of counterclaims against all plaintiffs, including the United States. This global settlement reached among Homestake, the United States, the Cheyenne River Sioux Tribe and the State of South Dakota, provides $4 million to be shared equally among the United States, the State, and the Tribe, to be used for natural resource restoration. Additionally, the Tribe will receive 400 acres in the Black Hills to be used for non-commercial purposes, and $500,000 for environmental monitoring on the reservation, and the State will receive water rights in the Black Hills. The United States will receive $500,000 for damage assessment costs and will enter into an agreement with Homestake to exchange BLM mine-contaminated land for clean land. All EPA response cost claims have been specifically reserved. In exchange for the covenants and releases provided to Homestake, Homestake will dismiss all of its counterclaims.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and Cheyenne River Sioux Tribe* v. *Homestake Mining Company of California,* D.J. Ref. 90–11–3–1718.

The Consent Decree may be examined at the Office of the United States Attorney, 230 Phillips Avenue, Suite 600, Sioux Falls, South Dakota 57104–6321, the United States Attorney's Office, District of South Dakota, 515 9th Street, Rapid City, South Dakota 55701, the Office of the Attorney General, State of South Dakota, 500 East Capitol, Pierre, South Dakota, the Office of the Secretary of the Chairman of the Cheyenne Sioux River Tribe, Eagle Butte, South Dakota, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0852. In requesting a copy, please enclose a check for the copy production of the decree (25 cents per page) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–18811 Filed 7–22–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. 50.7, and section 113(g) of the Clean Air Act, 42 U.S.C. 7413(g), notice is hereby given that a proposed consent decree in *United States* v. *Department of Housing Preservation and Development of the City of New York,* Civil Action No. CV–99–3781, was lodged on July 6, 1999, with the United States District Court for the Eastern District of New York. The proposed consent decree would settle a civil action that the United States brought on behalf of the United States Environmental Protection Agency under Section 113 of the Clean Air Act, 42 U.S.C. 7413, against the Department of Housing Preservation and Development of the City of New York ("the defendant") seeking civil penalties and injunctive relief to redress the defendant's alleged violations of Sections 112 and 114 of the Clean Air Act, 42 U.S.C. 7412, 7414, and the National Emission Standard for Hazardous Air Pollutants for asbestos, 40 C.F.R. part 61, subpart M ("the asbestos NESHAP"). Specifically, the United States' complaint alleged that the defendant violated these provisions by failing to notify EPA of the removal of asbestos during demolition operations the defendant contracted to have performed at 272 sites throughout New York City in or about 1993–95.

Under the terms of the proposed consent decree, the defendant (1) Must pay a civil penalty of $110,000, and (2) will be enjoined to comply with the Clean Air Act and the asbestos NESHAP.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Department of Housing Preservation and Development of the City of New York,* DOJ Ref, No. 90–5–2–1–2085.

The proposed consent decree may be examined at the office of the United States Attorney for the Eastern District of New York, One Pierrepont Plaza, 14th Floor, Brooklyn, New York 11201; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, D.C. (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.50 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–18813 Filed 7–22–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement

Summary: The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 1999 for a cooperative agreement to fund the "Development of a Training Curriculum for Investigation Allegations of Staff Sexual Misconduct With Inmates."

The National Institute of Corrections (NIC) invites applications for a cooperative agreement to develop a standard, core curriculum for training persons responsible for the investigations of staff sexual misconduct in correctional settings. To enable the Institute to offer state of the art investigative training in addressing staff sexual misconduct, the award recipient will develop a 24 hour training curriculum with a faculty guide and a participant workbook. The 24 hour training program will provide an overview of the national scope of correctional staff sexual misconduct while providing information and an interactive training experience that will enhance the knowledge and skills of investigators and administrators from state and local jurisdictions specifically charged with investigating staff sexual misconduct with inmates. (It is not within the scope of this cooperative agreement to provide skill development for individual investigative techniques requiring extensive technical application).

The award recipient will become familiar with the work currently being done at NIC on issues related to staff sexual misconduct and will contribute to the development of information on current investigative practices in this sensitive subject matter area.

As a collaborative venture with the NIC Prisons Division, the recipient will develop training outcomes for the project in partnership with the NIC project manager. A total of $60,000 is reserved for the project which will support one cooperative agreement for a 10 month period. The recipient of the award will be selected through a competitive solicitation process. Andie Moss is the designated NIC project manager.

Background

The fine balance in the relationship of staff and inmates is critical to the well being of healthy institutional and organizational cultures in corrections. The need for effective investigations into allegations of staff sexual misconduct is at the core of the correctional management response to the issue of staff sexual misconduct. Investigations must be objective and professional and serve as a tool to support and protect both staff and inmates from individuals who compromise security and create personal and professional disruption through misconduct. Since the mid nineties NIC has provided leadership in addressing the issues of staff sexual misconduct through training seminars and on-site technical assistance to state and local departments of corrections. The Institute has developed training materials for state prison systems that address policy and practice, the importance of state law, the investigative process, staff training and responses to the media. Through this work, NIC recognizes the need for a training curriculum that specifically addresses the training of investigators in more depth.

Purpose

This project is intended to provide agency investigators and administrators with:

- A training curriculum that provides investigators with an in depth understanding of the dynamics of staff sexual misconduct and the most effective investigative responses identified through experienced investigators and subject matter experts.
- An interactive training format minimally using a trainer's guide and a participant notebook that provides participants with a record of core principles and concepts learned in the training experience.

Project Content

The award recipient will propose a strategy for identifying effective models for investigating staff sexual misconduct and demonstrate knowledge of the legal and administrative considerations in the use of investigative practices and techniques in prison and/or jail settings. The award recipient will develop case studies clearly demonstrating the fact patterns of a variety of cases and the investigative techniques applied. Additional topics for development may include, though not limited to: legal issues and case law; the potential role of the medical and mental health staff; the human resource personnel in the administrative review of investigations; the role of external law enforcement; the dynamics of staff-offender relationships when sexual misconduct develops; examples of organizational structure of investigative units; and the tracking and analysis of incidents within the institutional setting. The overall development of a strong investigative policy should be addressed in the training curriculum.

A. Required Activity

- Initial meeting with NIC staff for an overview of the Institute's training and technical assistance activities that are relevant to the development of an investigative training curriculum.

B. Other Possible Activities

- Interviews or focus groups with key personnel in state and local jurisdictions with experience in the management of or investigative response to sexual misconduct.
- Review of current investigative policies, case law and other related written materials and reports.
- Development and presentation of case examples involving staff misconduct that lead to or conclude with inappropriate involvement with inmates.

Authority: Public Law 93–415.

Funds Available: The award will be limited to a maximum total of $60,000 (direct and indirect costs) and project activity must be completed within 10 months of the date of the award. Funds may only be used for the activities that are linked to the desired outcomes of the project.

All products from this funding effort will be in the public domain and available to interested agencies through the National Institute of Corrections.

Deadline for Receipt of Applications: Applications must be received by 4:00 p.m. on Tuesday, August 27, 1999. They should be addressed to: National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534, Attention: Administrative Officer. Hand delivered applications can be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

Addresses and further information: Requests for the application kit, which consists of a copy of this announcement and copies of the required forms, should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534

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or by calling (800) 995–6423, extension 159 or (202) 307–3106, extension 159. She can also be contacted by E-mail via *jevens@bop.gov*. All technical and/or programmatic questions concerning this announcement should be directed to Andi Moss at the above address or by calling (800) 995–6423, or (202 307–3106, extension 140, or by E-mail via *amoss@bop.gov*. Application forms may also be obtained though the NIC website: *http://www.nicic.org*. (Click on "What's New" and "cooperative agreements."

Eligible Applicants: An eligible applicant is any private or non-profit organization, institution, individual, or team with expertise in production of training videos and related training materials.

Review Considerations: Applications received under this announcement will be subjected to an NIC three to five member Peer Review Process.

Number of Awards: One (1).

NIC Application Number: (99P13) This number would appear as a reference line in the cover letter and also in box 11 of Standard Form 424.

(The Catalog of Federal Domestic Assistance number is: 16.601)

Morris. L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 99–18775 Filed 7–22–99; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,535]

American Silicon Technologies, Rock Island, WA; Revised Determination on Reconsideration

By letter of May 5, 1999, the United States Steelworkers of America, Local #3661, requested administrative reconsideration of the Department's denial of eligibility to apply for trade adjustment assistance applicable to workers and former workers of the subject firm.

The initial investigation resulted in a negative determination issued on April 2, 1999, based on the finding that during the time period relevant to the petition investigation, customers of American Silicon Technologies did not increase reliance on imports of articles like or directly competitive with silicon produced by workers at the Rock Island plant. The denial notice was published in the **Federal Register** on April 27, 1999 (64 FR 22647).

On reconsideration, additional customer survey was conducted. New investigation findings show that from 1997 to 1998 a major declining customer increased import purchases of silicon while decreasing purchases from the subject firm.

Sales, production and employment declined during the relevant period.

Conclusion

After careful review of the additional facts obtained on reopening, I conclude that increased imports of articles like or directly competitive with silicon contributed importantly to the decline in sales or production and to the total or partial separation of workers of American Silicon Technologies, Rock Island, Washington. In accordance with the provisions of the Act, I make the following certification:

All workers of American Silicon Technologies, Rock Island, Washington who became totally or partially separated from employment on or after January 6, 1998 through two years from the date of this certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 8th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–18841 Filed 7–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,899]

Consolidated Coal Company, Humphrey #7 Mine, Osage, WV; Negative Determination on Reconsideration

On June 8, 1999, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on June 23, 1999 (64 FR 33523).

The Department initially denied TAA to workers of Consolidated Coal's Humphrey #7 Mine because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. Aggregate U.S. imports of bituminous coal were negligible during the relevant time period. The workers at the subject firm were engaged in employment related to the production of bituminous coal.

The petitioner asserted that increased foreign competition was a major factor in the closing of the facility and provided additional information which warranted reconsideration of the Department's previous denial.

On reconsideration, the Department conducted a survey of the major customers of Humphrey #7 Mine and found that the customers had not increased their reliance on imports of coal; one customer reported no imports, another reported declining imports.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Consolidated Coal, Humphrey #7 Mine, Osage, West Virginia.

Signed at Washington, DC, this 6th day of July 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–18840 Filed 7–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,322]

International Paper Corporation; Containerboard Division, Gardiner, Oregon; Revised Determination on Reconsideration

On May 12, 1999, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration regarding the petition for workers of the subject firm.

The initial investigation resulted in a negative determination issued on February 8, 1999, based on the finding that during the time period relevant to the petition investigation, customers of International Paper Corporation, Containerboard Division did not increase reliance on imports of articles like or directly competitive with liner board produced at the Gardiner plant. The denial notice was published in the **Federal Register** on April 6, 1999 (64 FR 16752).

On reconsideration further customer survey was conducted. New investigation findings show that from 1997 to 1998 a major declining customer increased import purchases of liner board while decreasing purchases from the Gardiner, Oregon Plant.

Sales, production and employment declined during the relevant period.

Conclusion

After careful review of the additional facts obtained on reopening, I conclude that increased imports of articles like or directly competitive with liner board contributed importantly to the declines in sales or production and to the total or partial separation of workers of International Paper Company, Containerboard Division, Gardiner, Oregon. In accordance with the provisions of the Act, I make the following certification:

"All workers of International Paper Corporation, Containerboard Division, Gardiner, Oregon who became totally or partially separated from employment on or after November 23, 1997 through two years from the date of this certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, DC, this 8th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–18842 Filed 7–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than August 2, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 2, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 28th day of June, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 06/28/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,460	Maine Rubber Int'l (Comp)	Scarborough, ME	06/12/1999	Tire Base Bands.
36,461	J.R. Simplot Co. (Wkrs)	Caldwell, ID	06/10/1999	Potato Processing.
36,462	Lee County Textiles (Wkrs)	Giddings, TX	05/28/1999	Baby Bids, Hooded Towels, Pants.
36,463	I.T.T. Cannon (Wkrs)	New Britain, CT	06/01/1999	Radio Frequency Connectors.
36,464	Giro Sport Design (Wkrs)	Santa Cruz, CA	06/15/1999	Bike and Ski Helmets.
36,465	ABC NACO, Inc. (UAW)	Anderson, IN	06/15/1999	Steel Trackwork Castings.
36,466	Dalta Tanning Corp. (Comp)	North Bergen, NJ	06/08/1999	Leather.
36,467	Kimberly Clark (Comp)	Mobile, AL	06/14/1999	Tissue and Towel Products.
36,468	DHV International, Inc. (Comp)	Ventura, CA	06/08/1999	Downhole Video Service.
36,469	Insurdata Imaging Service (Comp)	Price, UT	06/10/1999	Process Medical Claims.
36,470	Cable Repair of Hobbs (Comp)	Hobbs, NM	06/14/1999	Electrical Submersible Pump Cable.
36,471	Fort James Corp. (AWPPN)	Portland, OR	06/10/1999	Paper Bags.
36,472	International Paper (Wkrs)	Spring Hope, NC	06/14/1999	Fiberboard.
36,473	A.H.B. International (Wkrs)	New York, NY	06/08/1999	Ladies' Sportswear.
36,474	Weyerhauser Export Serv. (IAM)	North Bend, OR	06/07/1999	Receive, Store, Export Wood Chips.
36,475	Unitog (Cintas) (UFCW)	Concordra, MO	06/07/1999	Rental Uniforms and Denim Jeans.
36,476	Macha International (Comp)	Houston, TX	06/14/1999	Seismic Field Instrumentation.
36,477	Thomson Precision Ball (Comp)	Unionville, CT	06/16/1999	Precision Steel Balls.
36,478	Weatherford, Arrow Comp. (Wkrs)	Midland, TX	06/14/1999	Packers for Oil and Gas.
36,479	Diamond Products Int'l (Wkrs)	Corpus Christi, TX	06/10/1999	Drill Bits.
36,480	Casablanca Group (Wkrs)	Secaucus, NJ	05/26/1999	Ladies Apparel.
36,481	Wyman Gordon Forgings (Comp)	Houston, TX	06/07/1999	Aircraft Parts.
36,482	Weatherford A.L.S. (Wkrs)	Odessa, TX	01/06/1999	Builds Pump Jack Oil.
36,483	Brookman Cast Industries (Comp)	Salem, OR	06/02/1999	Valves.
36,484	Syntron, Inc. (Wkrs)	Houston, TX	06/16/1999	Seismic Modules.
36,485	Emhart Glass Machinery (Comp)	Windsor, CT	06/14/1999	Glass Container Refractory.
36,486	Roxobel Curtain Co. (Comp)	Roxobel, NC	06/17/1999	Curtains.
36,487	Praegitzer Industries (Comp)	Madison, AL	06/18/1999	Printed Circuit Boards.
36,488	Overly Raker, Inc. (Comp)	McConnellsburg, PA	06/17/1999	Stuffed Cloth Items.
36,489	Kirkpatrick Energy Assoc. (Wkrs)	Denver, CO	06/17/1999	Oil & Gas Financial Research Reports.
36,490	Trans Texas Corp. (Wkrs)	Laredo, TX	06/14/1999	Compressor Station Gagers.
36,491	Pittencrieff America (Wkrs)	Abilene, TX	06/18/1999	Crude Oil and Natural Gas.
36,492	Banko Petroleum (Comp)	Denver, CO	06/18/1999	Crude Oil.
36,493	Apex Engineering (Comp)	Evanston, WY	06/14/1999	Drilling Fluid Additives.
36,494	FWA—JSM Drilling Co. (Wkrs)	Odessa, TX	06/14/1999	Oil and Gas Services.
36,495	Enron Oil and Gas Co. (Wkrs)	Tyler, TX	06/15/1999	Oil and Gas.

APPENDIX

[Petitions instituted on 06/28/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,496	Core Laboratories R.P. (Comp)	Casper, WY	06/15/1999	Examine Core Samples.
36,497	Power Exploration, Inc. (Wkrs)	Tyler, TX	06/04/1999	Oil and Gas.
36,498	Trace Ventures Explor. (Wkrs)	Midland, TX	06/14/1999	Seismic Data Exploration.
36,499	ARCO Alaska, Inc. (Comp)	Anchorage, AK	06/17/1999	Oil and Gas.

[FR Doc. 99–18839 Filed 7–22–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps: Final Finding of No Significant Impact (FONSI) for the Relocation of the Jacksonville Job Corps Center to a Property Located off of Walgreen Road in Jacksonville, FL

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of final finding of no significant impact (FONSI) for the relocation of the Jacksonville Job Corps Center to a property located off of Walgreen Road in Jacksonville, Florida.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR Part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Employment and Training Administration, Office of Job Corps, gives final notice of the proposed relocation of the Jacksonville Job Corps Center to a property located off of Walgreen Road in Jacksonville, Florida, and final notice that the construction of the new center will not have a significant adverse impact on the environment. In accordance with 29 CFR 11.11(d) and 40 CFR 1501.4(e)(2), a preliminary FONSI for the relocation of the Jacksonville Job Corps Center was published in the April 12, 1999, **Federal Register** (64 FR 17685). No comments were received regarding the preliminary FONSI. The Employment and Training Administration has reviewed the conclusions of the environmental assessment (EA), and agrees with the finding of no significant impact. This notice serves as the Final Finding of No Significant Impact for the relocation of the Jacksonville Job Corps Center to a property located off of Walgreen Road in Jacksonville, Florida. The preliminary FONSI and the EA are adopted in final with no change.

EFFECTIVE DATE: August 23, 1999.

ADDRESSES: Copies of the EA and additional information are available to interested parties by contacting Melvin R. Collins, Regional Director, Region IV (Four), Office of Job Corps, 1371 Peachtree Street, NE, Room 405, Atlanta, GA 30309, (404) 347–3178 (This is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Amy Knight, Department of Labor, Office of Management Information and Support, 200 Constitution Avenue, NW, Room N4659, Washington, DC 20210, (202) 219–5468 (This is not a toll-free number).

Dated at Washington, DC, this 19th day of July 1999.

Mary Silva,

Director of Job Corps.

[FR Doc. 99–18837 Filed 7–22–99; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–003132]

Fairfield Industries Incorporated, Sugar Land, TX; Termination

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–1) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on April 29, 1999, in response to a petition filed on behalf of workers at Fairfield Industries Incorporated, Sugar Land, Texas. Workers produce digital telemetry systems used in oil and gas exploration.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of July 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–18838 Filed 7–22–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the revised Representative Fee Request. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 23, 1999. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW, Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act and the Longshore and Harbor Workers' Compensation Act. Individuals filing for compensation benefits with OWCP may be represented by an attorney or other representative. The representative is entitled to request a fee for services, and this fee must be approved by the OWCP before any demand for payment can be made by the representative. This information collection is reviewed by OWCP for approval of the fee.

II. Current Actions

The Department of Labor seeks a revision of the currently approved information collection. Requirements for the submission of information have been changed to comply with new regulations under the Federal Employees' Compensation Act. These regulations are found at 20 CFR 10.700 through 703. Regulations under the Longshore and Harbor Workers' Act remain unchanged. These regulations are found at 20 CFR 702.132.

Type of Review: Revision.
Agency: Employment Standards Administration.
Title: Representative Fee Request.
OMB Number: 1215–0078.
Affected Public: Business of other for-profit; individuals or households.
Total Respondents: 13,720.
Frequency: On occasion.
Total Responses: 13,720.
Time per Response: 30–90 minutes.
Estimated Total Burden Hours: 9,860.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $17,000.

Dated: July 19, 1999.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 99–18836 Filed 7–22–99; 8:45 am]
BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276(a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions, thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Act," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the US Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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NV990009 (Mar. 12, 1999)

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 15th day of July 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–18599 Filed 7–22–99; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services, Office of Museum Services; Proposed Collection, Comment Request; Professional Services Program (PSP) Evaluation

AGENCY: Institute of Museum and Library Services.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) [44 U.S.C. 3508(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Institute of Museum and Library Services is currently soliciting comments concerning the proposed Professional Services Program (PSP) Evaluation. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice .

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 21, 1999. IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collocation of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to: Dr. Rebecca Danvers, Director of the Office of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW, Room 802, Washington, DC 20506. Dr. Danvers can be reached at telephone: 202–606–2478; fax: 202–606–1077; or e-mail:rdanvers@imls.fed.us.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services (IMLS) is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Public Law 104–208. The Institute of Museum and Library Service is seeking to collect and analyze information related to the Professional Services Program (PSP), which provides grants to museum organizations for programs that address core museum issues, such as improving services to the public, professional training, and leadership development. The research evaluation will help IMLS evaluate the direct and indirect outcomes for museums and other participants in PSP-funded projects, evaluate the effectiveness and efficiency of PSP, identify potential areas for improvement, determine the level of need/interest for the program within the key stakeholder groups, and assess the program's contribution to meeting the agency mission.

II. Current Actions

IMLS seeks to collect, analyze and report on basic information about the effectiveness of the Professional Services Program. From this evaluation, IMLS will be able to asses the strengths, weaknesses, and overall success of the PSP program, and make improvements on the program.

Agency: Institute of Museum and Library Services.

Title: Professional Service Program Evaluation.

OMB Number: Agency Number 3137.

Frequency: Once.

Affected Public: Museums and museum organizations.

Number of Respondents: 400.

Estimated Time Per Respondent: 30 minutes or less.

Total Burden Hours: 200 hours.

Total Annualized capital/startup costs: 0.

Total Annual costs: 0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–4648.

Dated: July 19, 1999.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 99–18800 Filed 7–22–99; 8:45 am]

BILLING CODE 7036–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of the Board of Directors

TIME & DATE: 2:00 p.m., Tuesday, August 3, 1999.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW, Suite 800, Board Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, (202) 220–2372.

AGENDA:

I. Call to Order.
II. Approval of Minutes: May 24, 1999, Annual Meeting.
III. Budget Committee Report, July 12, 1999:
a. Proposed FY 1999 Budget Reallocation.
b. Proposed FY 2000 Budget Request.
c. Proposed FY 2001 OMB Submission.
IV. Treasurer's Report.
V. Executive Director's Quarterly Management Report.
VI. Adjourn.

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 99–18922 Filed 7–20–99; 4:07 pm]

BILLING CODE 7570–01–M

POSTAL SERVICE

Sunshine Act Meeting

United States Postal Service Board of Governors

TIMES AND DATES: 12:30 p.m., Monday, August 2, 1999; 8:30 a.m., Tuesday, August 3, 1999.

PLACE: Seattle, Washington, at the U.S. Postal Service Processing and Distribution Center, 10700 27th Avenue South, in the Second Floor Large Conference Room.

STATUS: August 2 (Closed); August 3 (Open).

MATTERS TO BE CONSIDERED:

Monday, August 2—12:30 p.m. (Closed)

1. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC99–2, Weight-Averaged, Nonletter-Size Business Reply Mail.
2. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC99–4, Bulk Parcel Return Service (BPRS).
3. Rate Case Briefing.
4. Financial Performance.
5. Budget Outlook.
6. Personal Matters.

Tuesday, August 3—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, July 12–13, 1999.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Fiscal Year 2000 Operating Budget.
4. Review of the Five-Year Capital Investment Program.
5. Fiscal Year 2000 Financing Plan.
6. Preliminary FY 2001 Appropriation Request.
7. Capital Investments.
   a. Mail Cartridge System Pre-Production.
   b. 100 Robotics Containerization Systems (RCS) Loading Robot Program.
   c. 123 Automatic Tray Sleevers.
   d. 11,775 Flex Fuel, Alaskan, and Electric Carrier Route Vehicles.
   e. Greensboro, North Carolina, Processing and Distribution Center.
   f. Columbus, Ohio, Processing and Distribution Center.
8. Report on the Western Area and Seattle Performance Cluster.
9. Tentative Agenda for the August 30–31, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the

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Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 99–18995 Filed 7–21–99; 1:09 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23904; 812–11550]

Colchester Street Trust, et al., Notice of Application

July 16, 1999.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under sections 6(c), 12(d)(1)(J) and 17(b) of the Investment Company Act of 1940 (the "Act") for exemptions from sections 12(d)(1) and 17(a) and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: Applicants seek an order that would amend a prior order ("Prior Order") [1] to permit certain registered investment companies and other entities ("Participating Funds") to invest uninvested cash ("Uninvested Cash") and cash collateral received in connection with a securities lending program ("Cash Collateral") in shares of affiliated money market funds and/or short-term bond funds ("Investment Funds").

Applicants: Colchester Street Trust, Fidelity Aberdeen Street Trust, Fidelity Advisor Korea Fund, Inc., Fidelity Advisor Emerging Asia Fund, Inc., Fidelity Advisor Series I, Fidelity Advisor Series II, Fidelity Advisor Series III, Fidelity Advisor Series IV, Fidelity Advisor Series V, Fidelity Advisor Series VI, Fidelity Advisor Series VII, Fidelity Advisor Series VIII, Fidelity Beacon Street Fund, Fidelity Boston Street Trust, Fidelity California Municipal Trust, Fidelity California Municipal Trust II, Fidelity Capital Trust, Fidelity Charles Street Trust, Fidelity Commonwealth Trust, Fidelity Concord Street Trust, Fidelity Congress Street Fund, Fidelity Contrafund, Fidelity Court Street Trust, Fidelity Court Street Trust II, Fidelity Covington Trust, Fidelity Destiny Portfolios, Fidelity Devonshire Trust, Fidelity Exchange Fund, Fidelity Financial Trust, Fidelity Fixed-Income Trust, Fidelity Hastings Street Trust, Fidelity Hereford Street Trust, Fidelity Income Fund, Fidelity Investment Trust, Fidelity Magellan Fund, Fidelity Massachusetts Municipal Trust, Fidelity Money Market Trust, Fidelity Mt. Vernon Street Trust, Fidelity Municipal Trust, Fidelity Municipal Trust II, Fidelity New York Municipal Trust, Fidelity New York Municipal Trust II, Fidelity Oxford Street Trust, Fidelity Phillips Street Trust, Fidelity Puritan Trust, Fidelity Revere Street Trust, Fidelity School Street Trust, Fidelity Securities Fund, Fidelity Select Portfolios, Fidelity Summer Street Trust, Fidelity Trend Fund, Fidelity Union Street Trust, Fidelity Union Street Trust II, Fidelity U.S. Investment-Bond Fund, L.P., Fidelity Investments-Government Securities Fund, L.P., Newbury Street Trust, Variable Insurance Products Fund, Variable Insurance Products Fund II, Variable Insurance Products Fund III (collectively, the "Trust"); Fidelity Advisor World Global High Income Fund (Bermuda) Ltd., Fidelity Advisor World U.S. Intermediate Bond Fund (Bermuda) Ltd., Fidelity Advisor World International Bond Fund (Bermuda) Ltd., Fidelity Advisor World U.S. Large-Cap Stock Fund (Bermuda) Ltd., Fidelity Advisor World Europe Fund (Bermuda) Ltd., Fidelity Advisor World Southeast Asia Fund (Bermuda) Ltd., Fidelity Advisor World U.S. Treasury Money Fund (Bermuda) Ltd. (collectively, the "World Funds"), Fidelity Management & Research Company ("FMR"); Fidelity Group Trust for Employee Benefit Plans ("Group Trust")' Fidelity Management Trust Company ("FMTC"); Fidelity Service Company, Inc. ("FSC"); Fidelity Investments Institutional Operations Company, Inc. ("FIIOC"); Fidelity Investments Money Management, Inc. ("FIMM"); all other registered investment companies and series thereof that are advised by FMR or a person controlling, controlled by, or under common control with FMR (collectively, the "Adviser") and all other registered investment companies and series thereof for which the Adviser in the future acts as investment adviser (collectively, the "Registered Funds"); the World Funds, and other pooled investment funds advised or in the future advised by the Adviser, or a person controlling, controlled by, or under common control with the Adviser, offered exclusively outside the United States to non-U.S. residents (the "Off-Shore Funds"); state and local entities or accounts thereof advised or in the future advised by the Adviser that are exempt from regulation under the Act pursuant to section 2(b) of the Act (the "2(b) Entities"); collective trust funds of the Group Trust, the trustee for which, or in the future the trustee for which, is FMTC, that are excepted from the definition of investment company by section 3(c)(11) of the Act (the "3(c)(11) Entities"); and individual institutional accounts advised by the Adviser ("Institutional Accounts").[2]

Filing Dates: The application was filed on March 26, 1999. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested person may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 10, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Each of the Registered Funds is registered under the Act and most of the Trusts are series companies. The Participating Funds include the Registered Funds ("Participating Registered Funds"), Off-Shore Funds, 2(b) Entities, 3(c)(11) Entities, and Institutional Accounts. The current Off-Shore Funds are established under the laws of Bermuda. Each 3(c)(11) Entity is organized as a separate pooled account under the Fidelity Group Trust, for which FMTC acts as trustee. FMR, an investment adivser registered under the Investment Advisers Act of 1940, acts as each Participating Fund's investment manager and provides the Participating Funds with administrative services.

2. Certain of the Investment Funds (the "Central Funds") are series of Fidelity Revere Street Trust, an open-end management investment company registered under the Act. The Central Funds have not registered their shares under the Securities Act of 1933 ("Securities Act"). Shares of the Central Funds will be sold only to the Participating Funds. FIMM, a wholly-owned subsidiary of FMR, serves as investment adviser to the Central Funds. The other Investment Funds are open-end management investment companies registered under the Act, and their shares are registered under the Securities Act. These Investment Funds are advised by FMR. All Investment Funds will be taxable or tax-exempt money market funds or short-term bond funds with a portfolio maturity of three years or less.

3. Approximately 45 Registered Funds participate in a securities lending program in which they earn additional income by lending their portfolio securities. Cash Collateral received by the Registered Funds may be invested in shares of investment companies approved by the board of trustees of the Registered Fund and that have investment objectives that are consistent with the investment restrictions and guidelines of the Registered Fund.

4. The Prior Order permits Participating Funds to invest cash that has otherwise not been invested in portfolio securities in the Central Funds. In addition, the Prior Order permits the Participating Funds and the Central Funds to engage in interfund purchase and sale transactions in securities that would otherwise be effected in reliance on rule 17a–7 under the Act ("Interfund Transactions").

5. Applicants request an order amending the Prior Order to permit the Participating Funds to invest Cash Collateral and Uninvested Cash in other Investment Funds in addition to the Central Funds. The requested relief would permit (a) the Participating Funds to use Cash Collateral and Uninvested Cash to purchase shares of the Investment Funds; (b) the Investment Funds to sell their shares to the Participating Funds; (c) the Investment Funds to redeem their shares from the Participating Funds; and (d) the Adviser to effect these purchases and sales (collectively, these transactions are the "Cash Transactions").

6. The board of trustees of the Participating Registered Funds has or will approve the Investment Funds as vehicles for the investment of Cash Collateral and Uninvested Cash. The investment by each Participating Registered Fund in shares of the Investment Funds will be in accordance with that Registered Fund's investment policies and restrictions as set forth in its registration statement. A Participating Registered Fund that is a money market fund will not invest its Uninvested Cash or Cash Collateral in an Investment Fund that does not comply with the requirements of rule 2a–7 under the Act.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides, in relevant part, that no investment company may acquire securities of a registered investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's outstanding total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by the investment company. Applicants state that the investment of Uninvested Cash and Cash Collateral by the Registered Funds and Off-Shore Funds in shares of the Investment Funds is subject to the limits in sections 12(d)(1)(A) and (B).

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Registered Funds and the Off-Shore Funds to invest in the Investment Funds in excess of the limits in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that the proposed arrangement will not result in inappropriate layering of either sales charges or investment advisory fees. Shares of the Investment Funds sold to the Participating Funds will not be subject to a sales load, redemption fee, asset-based distribution fee or service fee. Applicants state that since investment advisory fees are calculated on the net, rather than the total, assets of the Participating Registered Funds, and since Cash Collateral does not increase net assets, the Participating Registered Funds would not pay duplicative advisory fees with respect to investments made with Cash Collateral. Applicants further state advisory fees with respect to an investment of Uninvested Cash will be subject to condition 2 below. Applicants also state that because each Participating Fund will invest in an Investment Fund on the same basis as each other Participating Fund, there is no risk that the Adviser would exercise undue influence to advantage any Participating Funds to the detriment of others.

B. Section 17(a)

1. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such affiliated person, acting as principal, to sell or purchase any security to or from such investment company. Section 2(a)(3) of the Act defines an affiliated person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person or the investment adviser to an investment company. The Adviser is an affiliated person of each Registered Fund under section 2(a)(3). Because the Participating Funds either share a common investment adviser or have an investment adviser that is under common control with the investment adviser to another Participating Fund, and most Registered Funds also share a common board of trustees, the Participating Funds may be deemed to be under "common control" and therefore affiliated persons of each other. As a result, applicants state that section 17(a) would prohibit the Cash Transactions.

2. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the term of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company

[1] *Daily Money Fund, et al.*, Investment Company Act Release Nos. 22236 (Sept. 20, 1996) (notice) and 22285 (Oct. 16, 1996)(order).

[2] All existing entities that currently intend to rely on the requested order are named as applicants. Any other existing entity and future entity will rely on the requested order only in accordance with the terms and conditions of the application.

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concerned, and the proposed transaction is consistent with the general policy of the Act. Section 6(c) under the Act permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act.

3. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that the Cash Transactions will provide the Participating Funds and their shareholders with a means of obtaining high current rates of return on Cash Collateral and Uninvested Cash, reducing aggregate counterparty exposure on repurchase agreements, protecting liquidity, reducing credit exposure to custodian banks, reducing transaction costs, and diversifying risk. In addition, applicants state that the Cash Transactions will be effected in accordance with each Participating Fund's investment restrictions and will be consistent with each Participating Registered Fund's policies as set forth in its registration statement.

C. Section 17(d) and Rule 17d–1

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates. As noted above, applicants are affiliated persons of each other. Applicants state that Cash Transactions may be deemed a joint enterprise for the purposes of section 17(d) and rule 17d–1.

2. Rule 17d–1 permits the SEC to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants. Applicants state that investments by the Participating Registered Funds in the Investment Funds will be on the same basis as other participants.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. The shares of the Investment Funds that are sold to and redeemed from the Registered Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers' Rules of Conduct).

2. If the Adviser to an Investment Fund collects a fee from the Investment Fund for acting as its investment adviser, and unless the fee payable to the Adviser for acting as the adviser of the Registered Fund is reduced by the amount of such other fee paid with respect to the investment of the Registered Fund's Uninvested Cash, before the next meeting of the board of trustees of a Registered Fund ("Board") that invests in the Investment Fund is held for the purpose of voting on an advisory contract under section 15 of the Act, the Adviser to the Registered Fund will provide the board with specific information regarding the approximate cost to the Adviser for managing the Uninvested Cash that can be expected to be invested in such Investment Fund. Before approving any advisory contract under section 15, the Board, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the advisory fees charged to the Registered Fund by the Adviser should be reduced to account for the fee indirectly paid by the Registered Fund because of the advisory fee paid by the Investment Fund, to the extent that the latter fee is not credited against the advisory fee payable by the Registered Fund. The minute books of the Registered Fund will record fully the Board's consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each Participating Fund, each Investment Fund, and any future fund that may rely on the order shall be advised by or, in the case of a 3(c)(11) Entity, shall have as its trustee, FMR or a person controlling, controlled by, or under common control with FMR.

4. Investment in shares of the Investment Funds will be in accordance with each Registered Fund's respective investment restrictions and will be consistent with each Registered Fund's policies as set forth in its prospectus and statement of additional information.

5. No Investment Fund in which a Registered Fund invests shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except as permitted by a Commission order concerning an interfund lending and borrowing facility.

6. Each of the Registered Funds will invest Uninvested Cash in, and hold shares of, the Investment Funds only to the extent that a Registered Fund's aggregate investment of Uninvested Cash in the Investment Funds at the time the investment is made does not exceed 25% of the Registered Fund's total net assets. For purposes of this limitation, each Registered Fund or series thereof will be treated as a separate investment company.

7. To engage in Interfund Transactions, the Participating Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or affiliated persons of affiliated persons) of each other solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common officers, and/or common directors.

8. A Registered Fund that is a money market fund will not invest its Uninvested Cash or Cash Collateral in an Investment Fund that does not comply with the requirements of rule 2a–7 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–18777 Filed 7–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 26, 1999.

An open meeting will be held on Tuesday, July 27, 1999, at 10 a.m. A closed meeting will be held on Wednesday, July 28, 1999 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters will be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meetings.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject of the open meeting scheduled for Tuesday, July 27, 1999, at 10 a.m., will be:

The Commission will consider adopting temporary Rules 15b7–3T, 17Ad–21T, and 17a–9T regarding operational capability of non-bank transfer agents and broker-dealers in the Year 2000. These rules are designed to protect the securities markets from non-bank transfer agents and broker-dealers that are not Year 2000 compliant. For further information, contact Lori Bucci, Special Counsel, at (202) 942–0742 (Rule 17Ad–21T), Robert Long, Staff Attorney, at (202) 942–0097 (Rule 15b7–3T), and Deana La Barbera, Staff Attorney, at (202) 942–0734 (Rule 17a–9T), Office of Market Supervision, Division of Market Regulation.

The subject matter of the closed meeting scheduled for Wednesday, July 28, 1999, at 11:00 a.m., will be:

Institution of injunctive actions.
Institution and settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Institution and settlement of injunctive actions.

Commissioner Carey, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: July 20, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–19068 Filed 7–21–99; 3:56 pm]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collection listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collection would be most useful if received by the Agency within 60 days from the date of this notice. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of the notices. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

Social Security Card Fee Survey–0960–NEW. The Social Security Administration (SSA) processes over 11 million applications per year for replacement Social Security Number (SSN) cards. SSA is proposing to conduct a survey of a random sample of applicants who request a replacement SSN card to obtain information on reasons for replacing the SSN card and willingness to pay a fee for a replacement card. SSA is evaluating whether to charge a fee for replacements cards (other than for a name change) and will use the information from the survey to develop policy on when it would be appropriate to charge a fee for a replacement SSN card.

Number of Respondents: 3,600.

Frequency of Response: Once.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 300 hours.

SSA Address—Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

OMB Address—Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

Dated: July 16, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–18825 Filed 7–22–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In June 1999, there were five applications approved. Additionally, nine approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of the 1990) (Pub. L 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Port of Oakland, Oakland, California.

Application Number: 99–08–C–00–OAK.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $12,251,844.

Earliest Charge Effective Date: September 1, 1999.

Estimated Charge Expiration Date: July 1, 2000.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Multi-user system equipment/common use terminal equipment.
Rehabilitate apron at Building L820 and a portion of taxiway D.
Reconstruct concrete apron southeast of Building L812.
Year 2000 compliance program.
Overlay taxiway R.
Upgrade security access system.
Threshold improvement of runway 11/19.
Noise insulation program.

Brief Description of Projects Disapproved:

Airport facilities complex.

Determination: The FAA has determined that this project is not Airport Improvement Program (AIP) eligible in accordance with Appendix 2 of FAA Order 5100.38A, AIP Handbook (October 24, 1989). Therefore, this project does not meet the requirements of § 158.15(b) and is disapproved.

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Airport comprehensive management system.
Determination: The FAA has determined that this project is not AIP eligible in accordance with Appendix 2 of FAA Order 5100.38A, AIP Handbook (October 24, 1989). Therefore, this project does not meet the requirements of § 158.15(b) and is disapproved.
Decision Date: June 18, 1999.
For Further Information Contact: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: Waterloo Airport Commission, Waterloo, Iowa.
Application Number: 99–03–C–00–ALO
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $763,830.
Earliest Charge Effective Date: September 1, 1999.
Estimated Charge Expiration Date: November 1, 2003.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
Rehabilitate east general aviation apron.
Terminal building modernization—conceptual plan.
Terminal building modernization—architectural design.
Reconstruct taxiway D.
Brief Description of Project Approved for Collection Only: Terminal building modernization—construction.
Decision Date: June 18, 1999.
For Further Information Contact: Lorna Sandridge, Central Region Airports Division, (816) 426–4730.

Public Agency: City of Lubbock, Texas.
Application Number: 99–03–C–00–LBB.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $4,527,023.
Earliest Charge Effective Date: April 1, 2000.
Estimated Charge Expiration Date: August 1, 2002.
Class of Air Carriers Not Required To Collect PFC's: Part 135 charter operators who operate aircraft with a seating capacity of less than 10 passengers.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Lubbock International Airport.
Brief Description of Projects Approved for Collection and Use:
Signs and graphics improvements.
PFC application.
Entrance road and canopy improvements.
Westport access road.
Reconstruct/repair runway 17R–35L.
Brief Description of Projects Approved for Collection Only:
Americans with Disabilities Act (ADA)/maintenance elevator.
Westport apron and taxiway expansion—south.
Taxiway B–1.
ADA aircraft access.
Decision Date: June 29, 1999.
For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Board of Trustees of the University of Illinois, Savoy, Illinois.
Application Number: 99–02–C–00–CMI.
Application Type: Impose and use a PFC.
PFC Level: $3.00
Total PFC Revenue Approved in This Decision: $1,418,400.
Earliest Charge Effective Date: November 1, 1999.
Estimated Charge Expiration Date: April 1, 2003.
Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at University of Illinois—Willard Airport.
Brief Description of Projects Approved for Collection and Use:
North quadrant site development—phase 1.
PFC application reimbursement.
Phase 5 of rehabilitation of runway 14R/32L.
Airport layout plan update.
Improve airfield lighting—phase I.
Acquire snow removal equipment.
North quadrant site development—phase 2.
Acquire aircraft rescue and firefighting vehicle.
Acquire snow removal truck and plow.
Acquire ADA passenger lift device.
Improve airfield lighting—phase II.
Security fencing—phase I.
Construct exit taxiway on runway 14R/32L.
Security fencing—phase II.
Security fencing—phase III.
Terminal security system revisions.
Decision Date: June 30, 1999.
For Further Information Contact: Gary K. Regan, Chicago Airports District Office, (847) 294–7525.

Public Agency: County of Clinton, Plattsburgh, New York.
Application Number: 99–03–C–00–PLB.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
total PFC Revenue Approved in This Decision: $63,764.
Earliest Charge Effective Date: July 1, 1999.
Estimated Charge Expiration Date: October 1, 2000.
Class of Air Carriers Not Required to Collect PFC's: Air taxi and charter carriers filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Clinton County Airport.
Brief Description of Projects Approved for Collection and Use:
Obstruction evaluation and mapping.
Airport master plan.
Brief Description of Projects Approved for Collection Only:
Off airport obstruction removal (phase I).
Easement acquisition.
Off airport obstruction removal (phase II).
Terminal expansion and renovation.
Decision Date: June 30, 1999.
For Further Information Contact: Robert Levine, New York Airports District Office, (516) 227–3807.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amendment approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
97–01–C–01–COD, Cody, WY	05/13/99	$102,662	$123,662	10/01/99	08/01/99

AMENDMENTS TO PFC APPROVALS—Continued

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amendment approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
98–01–C–02–PHL, Philadelphia, PA	06/04/99	26,150,000	29,650,000	01/01/99	03/01/99
93–01–C–02–TPA, Tampa, FL	06/14/99	93,007,614	97,132,614	08/01/99	10/01/99
94–02–U–01–TPA, Tampa, FL	06/14/99	17,500,000	20,125,000	08/01/99	10/01/99
92–01–I–03–ABE, Allentown, PA	06/15/99	8,700,000	9,592,349	03/01/00	12/01/99
94–03–U–02–ABE, Allentown, PA	06/15/99	8,700,000	9,592,349	03/01/00	12/01/99
94–02–C–05–PDX, Portland, OR	06/21/99	36,681,708	42,526,708	09/01/15	05/01/16
97–05–U–01–PDX, Portland, OR	06/21/99	12,824,000	18,669,000	09/01/15	05/01/16
94–01–I–01–CBE, Cumberland, MD	06/23/99	150,000	150,000	07/01/99	0701//99

Issued in Washington, DC on July 12, 1999.
Eric Gabler,
Manager, Passenger Facility Charge Branch.
[FR Doc. 99–18821 Filed 7–22–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.
ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before (30 days after publication).
ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.
Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 20, 1999.
J. Suzanne Hedgepeth,
Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12279–N	RSPA–1999–5763.	Toyota Motor Sales, USA, Inc., Torrance, CA.	49 CFR 100–180.	To authorize the transportation in commerce of small quantities of Class 3 material in inner packaging consisting of a non-refillable receptacle enclosed in a sealed, leakproof 2 mil polyethylene bag overpacked in plastic bins or suitable strong outer packagings. (mode 1)
12288–N	RSPA–1999–5853.	Huntsman Chemical Company, West Footscray VIC 3012, AU.	49 CFR 178.245–7(a).	To authorize the transportation in commerce of Ethyl chloride, Division 2.1, in non–DOT specification steel portable tanks permanently fitted within an ISO frame. (modes 1, 2, 3)
12289–N	RSPA–1999–5855.	Arbel Fauvet Rail (AFR), Cedex, FR.	49 CFR 178.245–1(a).	To authorize the manufacturing, marking, sale and use of DOT Specification 51 steel portable tanks permanently enclosed within a ISO frame for use in transporting Division 2.1 and 2.2 materials as presently authorized. (modes 1, 2, 3)
12290–N	RSPA–1999–5858.	Savage Industries Inc., Pottstown, PA.	49 CFR 174.67(a)2.	To authorize an alternative blocking method of rail cars while transferring various classes of hazardous materials. (mode 2)
12291–N	RSPA–1999–5856.	Jean Philippe Fragrances, Inc., New York, NY.	49 CFR 173.306, 173.306(1).	To authorize the transportation in commerce of aerosol fragrance products not to exceed 5 ounces to be transported in aluminum containers with overpack. (modes 1, 2)
12292–N	RSPA–1999–5854.	Westway Trading Corporation, New Orleans, LA.	49 CFR 179.12.	To authorize the one-time transportation in commerce of loaded non-hazardous material railcars containing broken interior steam coils. (mode 2)

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NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12293–N	RSPA–1999–5875.	Intercontinental Packaging Corp., Tuckahoe, NY.	49 CFR 173.306(a)(3)(v), 178.33a–2 & 8.	To authorize the manufacture, marking, and sale of non-DOT specification non-refillable metal and plastic aerosol containers filled with a propellant gas. (modes 1, 2, 3, 4)
12295–N	RSPA–1999–5878.	Uniroyal Chemical Co., Middlebury, CT.	49 CFR 172.101, SP T15.	To authorize the transportation in commerce of a Division 6.1 material in IM–tanks equipped with bottom outlets. (modes 2, 3)
12296–N	RSPA–1999–5879.	Clean Earth Systems, Inc., Tampa, FL.	49 CFR 173.12(b)(2)(i).	To authorize the manufacture, marking and sale of UN 11G IBC for use as the outer packaging for lab packs for transporting various classes of hazardous materials. (mode 1)
12297–N	RSPA–1999–5877.	Applied Companies, Valencia, CA.	49 CFR 178.53.	To authorize the transportation in commerce of non-DOT specification cylinders for aircraft use constructed of stainless steel with a psi maximum service pressure that exceeds the requirement for use in transporting Division 2.2 material. (mode 4)
12299–N	RSPA–1999–5904.	Minnesota School of Diving, Inc., Brainerd, MN.	49 CFR 177.870(e).	To authorize the transportation in commerce of Division 2.2, compressed air in DOT-Specification scuba cylinders that exceed the quantity limitations to be transported aboard passenger-carrying vehicle. (mode 1)
12300–N	RSPA–1999–5905.	Container Products Corp., Wilmington, NC.	49 CFR 178.800.	To authorize the manufacture, marking and sale of intermediate bulk containers which exceed the quantity limitations presently authorized for use in transporting Packing Groups II and III liquid hazardous materials and Packing Groups I, II, & III solid hazardous materials. (modes 1, 2, 3)
12301–N	RSPA–1999–5903.	Niklor Chemical Co., Long Beach, CA.	49 CFR 173.193(b).	To authorize the transportation in commerce of Division 2.3 and 6.1 materials in DOT-Specification 4BW cylinders that exceed the presently authorized quantity limitations. (modes 1, 2, 3)
12303–N	RSPA–1999–5954.	Halliburton Energy Services, Duncan, OK.	49 CFR 173.201, 173.302, 173.304, 178.35(e), 178.35(f), 178.36.	To authorize the transportation in commerce of certain Division 2.1, 2.2 and Class 3 materials in non-DOT specification cylinders used for oil well sampling. (modes 1, 2, 3, 4)
12305–N	RSPA–1999–5955.	Fragrance Materials Association of the U.S., Washington, DC.	49 CFR 172, Subparts C, D, E, 175.	To authorize the transportation of samples of flavor and fragrance materials in Class 3, 9 and Division 6.1 to be transported without required marking, labeling and shipping papers. (modes 1, 2, 3, 4, 5)
12306–N	RSPA–1999–5956.	Griffin Pipe Products Co., Lynchburg, VA.	49 CFR 172 Subpart C & F.	To authorize the transportation of closed head 1A1 55 gallon drums from a storage yard into the main plant via fork trucks, without required bill of lading or placards. (mode 1)
12307–N	RSPA–1999–5957.	Kern County Dept. of Weights & Measures, Bakersfield, CA.	49 CFR 173.24, 173.24(b).	To authorize the transportation of specially designed equipment used for meter proving purposes and transportation of various Class 3 petroleum products to offloading sites. (mode 1)
12308–N	RSPA–1999–5958.	AlliedSignal Inc. Morristown, NJ.	49 CFR 173.243(b)(1), 173.33(d)(1), 178.345–10, 178.346–3.	To authorize the transportation in commerce of a Class 8 and Division 6.1 material in MC–412 cargo tank trucks equipped with an alternative pressure relief device. (mode 1)

[FR Doc. 99–18917 Filed 7–22–99; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before August 9, 1999.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center. Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Docket No.	Applicant	Modification of exemption
8723–M		Dyno Noble, Inc., Salt Lake City, UT (See Footnote 1)	8723
9672–M		Albermarle Corporation, Baton Rouge, LA (See Footnote 2)	9672
10427–M		Astrotech Space Operations, Inc., Titusville, FL (See Footnote 3)	10427
10656–M		Conf. of Radiation Control Program Directors, Inc., Frankfort, KY (See Footnote 4).	10656
10945–M		Structural Composites Industries (SCI), Pomona, CA (See Footnote 5)	10945
10987–M		Air Products and Chemical, Inc., Allentown, PA (See Footnote 6)	10987
11263–M		Koopers Industries, Inc., Pittsburgh, PA (See Footnote 7)	11263
11329–M		Degesch America, Inc., Weyers Cave, VA (See Footnote 8)	11329
11406–M		Conf. of Radiation Control Program Directors, Inc., Frankfort, KY (See Footnote 9).	11406
11753–M		Ashland Specialty Chemical Company, Columbus, OH (See Footnote 10).	11753
12283–M		RSPA–1999–5767 AT&T ALASCOM, Anchorage, AK (See Footnote 11)	12283
12284–M		RSPA–1999–5935 L&D Safety Marking Corp., Barre, VT (See Footnote 12).	12284

[1] To modify the exemption to allow for an additional emulsion tote bin design for shipments of certain Division 1.5 explosives and/or Division 5.1 oxidizers.
[2] To modify the exemption to allow for additional shipping descriptions, classed as Division 4.2 materials, in DOT Specification MC–330 or MC–331 cargo tanks.
[3] To modify the exemption to delete the midnight to 6:00 am transport requirement for shipment of "Flight-ready" spacecraft containing hazardous materials in specially designed non-DOT specification transport containers.
[4] To modify the exemption to revise approval provisions and documentation required for shipments of metal containing unknown amounts of unidentified radionuclides.
[5] To modify the exemption to authorize an addition Division 2.2 material in a non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinder.
[6] To modify the exemption to extend the requalification and inspection period to once every five years for non-DOT specification open heal, steel salvage cylinders containing gases and mixtures of gases.
[7] To modify the exemption to authorize the use of non-DOT specification fiber drums for the transportation of solid coal tar pitch compounds, Class 9, that exceed reportable quantities.
[8] To modify the exemption to authorize an additional Division 4.3 material transported by private motor vehicle in specifically designed packages.
[9] To modify the exemption to revise approval provisions and documentation required for shipments of waste or recycled materials, Class 7.
[10] To modify the exemption to include an additional UN1H1 drum as authorized packaging for the transportation of certain Class 8 materials.
[11] To reissue the exemption originally issued on an emergency basis for the transportation in commerce of large wet storage batteries in non-DOT specification packages.
[12] To reissue the exemption originally issued on an emergency basis for the transportation of certain non-DOT specification cargo tanks used for roadway striping.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 20, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 99–18918 Filed 7–22–99; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 16, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the

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Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

DATES: Written comments should be received on or before August 23, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0049.

Form Number: IRS Form 990–BL, Schedule A (Form 990–BL), Form 6069.

Type of Review: Extension.

Title: Form 990–BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons; Schedule A, (Form 990–BL), Initial Excise Taxes on Black Lung Benefit Trusts and Certain Related Persons Under sections 4951 and 4952 of the Internal Revenue Code; and Form 6069, Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under Section 4953 and Computation of Section 192 Deduction.

Description: IRS uses Form 990–BL to monitor activities of black lung benefit trusts, and to collect excise taxes on these trusts and certain related persons if they engage in proscribed activities. The tax is figured on Schedule A and attached to Form 990–BL. Form 6069 is used by coal mine operators to figure the maximum deduction to a black lung benefit trust. If excess contributions are made, IRS uses the form to figure and collect the tax on excess contributions.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 22.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 990–BL	Schedule A
Recordkeeping	16 hr., 44 min	6 hr., 56 min.
Learning about the law or the form	3 hr., 28 min	18 min.
Preparing and sending the form to the IRS	3 hr., 55 min	25 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 573 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 99–18784 Filed 7–22–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–55]

Treasury Decisions; Retraction of Revocations of Customs Brokers' Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Brokers' licenses revocations retraction.

The following Customs brokers' licenses were erroneously included on a list of revoked Customs brokers' licenses published in the **Federal Register**. The licenses listed below are valid.

Port	Individual	License No.
New York	Robert W. Hardy	11294
New York	Michael J. Hubert	03355
New York	Norman Isacoff	04970
New York	Daniel L. Kotcher	09515
New York	Ignacio Sapot	04320
New York	Newell C. Shannon	10276
New York	Matthew G. Shaw	12656
New York	Barbara E. Vatier	07138
New York	Robert P. Weinrib	06455
New York	Stateside Customs Brokerage, Inc	06692

Dated: July 19, 1999.

Raymond W. Kelly,

Commissioner.

[FR Doc. 99–18807 Filed 7–22–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

U.S. Customs Service

[T.D. 99–56]

Treasury Decisions; Cancellations of Customs Brokers' Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Brokers' licenses cancellations.

I, as Commissioner, hereby pursuant to section 641(f), Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 CFR 111.51(a)), cancel the following Customs brokers' licenses without prejudice.

Port	Individual	License No. #
Dallas	Sterling International	13809
San Francisco	Alrod International, Inc	07867
San Francisco	Armen Cargo Services, Inc	10909
San Francisco	Columbia Shipping Inc	12259
San Francisco	Cosdel International Co., Inc	07736
San Francisco	G.M. Miller & Company International	04936

Dated: July 19, 1999.

Raymond W. Kelly,

Commissioner.

[FR Doc. 99–18808 Filed 7–22–99; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Meeting of the Cultural Property Advisory Committee

AGENCY: United States Information Agency.

ACTION: Notice of meeting of the Cultural Property Advisory Committee.

The Cultural Property Advisory Committee will meet on Friday, August 6, 1999, from approximately 9 a.m. to 5 p.m. at the Woodrow Wilson International Center for Scholars, Ronald Reagan Building, The Board Room, 6th Floor, 1300 Pennsylvania Ave., NW, Washington, DC, to review the bilateral cultural property agreements the U.S. entered into with Canada and Peru pursuant to the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*, Public Law 97–446). A portion of the meeting, from approximately 1 p.m. to 2:30 p.m. will be open to interested parties wishing to provide comment to the Committee that may have relevance to these agreements. The texts of the agreements and the designated lists of artifacts from these countries that are restricted from importation by U.S. customs may be found at www.usia.gov/education/culprop, or copies may be requested by calling the telephone number listed below. The agreements, entered into with Canada on April 10, 1997, and with Peru on June 9, 1997, will be reviewed pursuant to the Act. Since review of this matter by the Committee will involve information the premature disclosure of which would be likely to significantly frustrate implementation of proposed action, the meeting from approximately 9 a.m. to approximately 12 Noon, and from approximately 2:30 p.m. to approximately 5 p.m. will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h). Persons wishing to attend the open portion of the meeting, must notify the Cultural Property Office at (202) 619–6612 no later than 5 p.m. (EDT) Wednesday, August 4, 1999, to arrange for admission.

Dated: July 16, 1999.

William B. Bader,

Associate Director for Educational and Cultural Affairs, United States Information Agency.

Determination To Close Portion of the Meeting of the Cultural Property Advisory Committee, August 6, 1999

In accordance with 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605(h), I hereby determine that the portions of the Cultural Property Advisory Committee meeting on August 6, 1999, from approximately 9 a.m. to approximately 12 Noon and from approximately 2:30 p.m. to approximately 5 p.m., will be closed in order to discuss information the premature disclosure of which would be likely to significantly frustrate implementation of proposed actions.

Dated: July 16, 1999.

William B. Bader,

Associate Director for Educational and Cultural Affairs, United States Information Agency.

[FR Doc. 99–18778 Filed 7–22–99; 8:45 am]

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federal register

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Part II

Environmental Protection Agency

40 CFR Parts 35 and 745
Environmental Program Grants—State, Interstate, and Local Government Agencies; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 35 and 745

[FRL–6373–1]

RIN 2030–AA55

Environmental Program Grants—State, Interstate, and Local Government Agencies

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This regulation proposes to revise and update requirements in several Environmental Protection Agency regulations, particularly subpart A of part 35, governing grants to State, interstate and local government agencies from EPA under several environmental programs. The regulation advances ongoing efforts to build more effective State-EPA partnerships and to improve environmental conditions by providing States with increased flexibility to direct resources where they are needed most to address environmental and public health needs. This regulation: updates, clarifies, and streamlines requirements governing environmental program grants; establishes requirements for the new Performance Partnership Grant (PPG) program; and establishes requirements for grant programs that began after the original rule was published. (A regulation governing environmental program grants to Indian Tribes and Tribal Consortia is published elsewhere in this issue of the **Federal Register**.)

DATES: Please submit comments on this proposed rule by September 7, 1999.

ADDRESSES: Written comments should be submitted to: Performance Partnership Grants—State Comment Clerk (Docket #WD–98–9); Water Docket (MC–4104); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460. Comments may be hand-delivered to the Water Docket; U.S. Environmental Protection Agency; 401 M Street, SW; East Tower Basement; Washington, DC 20460. Comments may be submitted electronically to owdocket@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: W. Scott McMoran, Grants Operations Branch B (3903R), United States Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 564–5376.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities eligible to receive the environmental grants listed in 40 CFR 35.100 are regulated by this rule. Regulated categories and entities include:

Category	Regulated entities
Government	State Governments/Agencies. Local Governments/Agencies. Interstate Agencies.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities eligible under EPA's authorizing and appropriations statutes that EPA is now aware could potentially be regulated by this action. Other types of entities could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria in § 35.134 and the program-specific provision in §§ 35.140 through 35.418 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Comments and Record

Please submit an original and three copies of your comments and enclosures (including references). The Agency requests that commenters follow the following format: Type or print comments in ink, and cite, where possible, the paragraphs in this notice to which each comment refers. Electronic comments must be submitted as a WP5.1 or WP6.1 file or as an ASCII file avoiding the use of special characters. Comments and data will also be accepted on disks in the formats above. Electronic comments may be filed online at many Federal Depository Libraries. Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

Availability of Record: The record for this Notice, which includes supporting documentation as well as printed, paper versions of electronic comments, is available for inspection from 9 a.m. to 4 p.m. (Eastern Time), Monday through Friday, excluding legal holidays, at the Water Docket, U.S. EPA Headquarters, 401 M Street, SW; East Tower Basement; Washington, DC 20460. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

III. Background

Since EPA was formed in 1970, State capacity and responsibility for implementing environmental and public health protection programs has grown steadily. Meanwhile, environmental problems and their solutions have grown more complex. In light of these changes, State and EPA leaders recognized that continued environmental progress could be best achieved if EPA and States worked together more effectively—as partners.

In 1995, they agreed to develop and implement the National Environmental Performance Partnership System (NEPPS). NEPPS is designed to: promote joint planning and priority setting by EPA and the States; provide States with greater flexibility to direct resources where they are needed most; foster use of integrated and innovative strategies for solving water, air, and waste problems; achieve a better balance in the use of environmental indicators and traditional activity measures for managing programs; and improve public understanding of environmental conditions and the strategies being used to address them.

The changes proposed in this rule are intended to promote State-EPA collaboration; provide opportunities for innovation; and reduce paperwork—while ensuring sound fiscal management and accountability for environmental performance—in a manner consistent with NEPPS. For example, EPA hopes to foster joint planning and priority-setting by explicitly requiring that State priorities and needs be considered, along with national and regional guidance, in negotiating grant work plans. Under this rule, a State can choose to organize its grant work plans in accordance with environmental goals and objectives or in other new ways rather than using categories pre-defined by EPA. The length of a grant budget period will be negotiable. These flexibilities are available to all States, regardless of whether they are actively participating in other aspects of NEPPS.

More than half of the States have elected to negotiate and enter into Performance Partnership Agreements (PPAs) with EPA as the primary mechanism for implementing NEPPS. Although each PPA is different, PPAs typically set out jointly developed goals, objectives, and priorities; the strategies to be used in meeting them; the roles and responsibilities of the State and EPA; and the measures to be used in assessing progress. (In some cases, comparable negotiated agreements are given a different name, such as Environmental Performance Agreements.) A PPA is generally based on information about the environmental and program conditions of the State as well as national and regional priorities and concerns. A State may apply for and receive any grant, including a PPG, without negotiating a PPA. However, a PPA can provide the strategic underpinning for the work a State plans to carry out with EPA financial assistance and the PPA can serve as a grant work plan if it meets other grant-related statutory and regulatory requirements.

Recognizing the limitations of traditional categorical grants to allow full achievement of the NEPPS goals, EPA asked Congress for new authority that would give States greater flexibility in the use of federal grant funds. In the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134) and EPA's FY 1998 Appropriation Act (Pub. L. 105–65), Congress authorized the award of Performance Partnership Grants (PPGs), in which State and interstate agencies (and Tribes and Intertribal Consortia) can choose to combine two or more environmental program grants.

Under a PPG, a recipient can achieve cost and administrative savings by reductions in the amount of grant paperwork as well as simplified accounting requirements that do not require the recipient to account for expenditures in accordance with their original funding sources. With PPGs, recipients can negotiate work plans with EPA that direct federal funds where the recipients need them most to address environmental and public health problems. Recipients can also try new multi-media approaches and initiatives, such as children's health protection programs, multi-media inspections, compliance assistance programs, and ecosystem management, that were difficult to fund under traditional categorical grants.

This rule is designed to accommodate all potential variations in how EPA and individual States may work to build partnerships. The rule is also designed to minimize duplicative effort by allowing for multiple uses of information or processes wherever appropriate. A State may choose to negotiate a PPA or comparable strategic agreement with EPA. Where a State negotiates both a PPA and PPG, the processes and documentation can be integrated and, if appropriate, identical. Also, a State can receive a separate categorical grant for each environmental program, a PPG covering all programs eligible for inclusion, or a combination of separate categorical grants and PPGs covering only some programs.

These regulations will be codified in 40 CFR part 35 as EPA's Environmental Program Grant regulations. Subpart A applies to State, interstate, and local agencies. EPA is proposing to add to the existing subpart A provisions for the following programs: Performance Partnership Grants, Lead-Based Paint Grant Program; State Indoor Radon Grants; Toxic Substances Enforcement Grants; State Underground Storage Tank Grants; Pollution Prevention Incentives Grants for States; Water Quality Cooperative Agreements; and Wetlands Development Grant Program. EPA is also publishing subpart B in this issue of the **Federal Register**, which applies to Tribes and Intertribal Consortia.

These regulations supplement EPA's Grants and Cooperative Agreements to State and Local Governments regulations (40 CFR part 31). Part 31 applies to grants and subawards to State governments, interstate agencies, and local governments, including a council of governments (whether or not incorporated as a nonprofit under State law), and any other regional or interstate government entity.

This rule proposes to delete 40 CFR 745.330, which authorizes EPA to make grants to States and Indian Tribes under section 404(g) of the Toxic Substances Control Act for lead-based paint programs. Provisions governing those grants are included in this proposed subpart A and in proposed subpart B of 40 CFR part 35.

IV. Requirements for Environmental Program Grants

Sections 35.100 through 35.118 of the proposed rule apply to all environmental program grants covered by subpart A of part 35, including PPGs. This rule contains changes to foster State-EPA partnerships, improve accountability for environmental and program performance, and streamline administrative requirements. Some of the proposed rule's key features are discussed below.

State-EPA Partnerships

To foster joint planning and priority setting, the rule explicitly requires consideration of State priorities along with national and regional guidance in negotiating grants. However, the EPA Regional Administrator must consult with the National Program Manager before agreeing to a State work plan that differs substantially from national guidance. A State is provided flexibility through the work plan negotiation process, and in particular through its ability to organize work plan components in whatever way fits best. States applying for PPGs will have still greater flexibility as described in the PPG discussion below. Where appropriate, the grant work plan will reflect both EPA and State roles and responsibilities and there will be a negotiated joint performance evaluation process.

Accountability

The rule has been updated to accommodate results-oriented approaches to planning and managing environmental programs. Definitions and other aspects of the rule dovetail with the new Government Performance and Results Act (GPRA) and reflect efforts to establish goals and objectives as well as environmental and program performance measures at both the national and State levels. The rule recognizes the need for a mix of outcome (results) and output (activity) measures for management purposes. While the revised rule encourages States to organize their work plans around goals and objectives, States may continue to use existing structures if they wish.

Administrative Changes

Under the rule, States can negotiate budget periods of one or more years with EPA. EPA recommends, however, that budget periods not exceed five years because it is difficult to account for funds and maintain records for longer periods.

The rule streamlines some requirements and eliminates other requirements associated with changes made to grant work plan commitments and budgets. These requirements replace those found in 40 CFR 31.30. Prior written approval from EPA is still required for significant changes in a grantee's work plan commitments. Written, but not prior, approval is required for changes requiring increases in grant amounts and extensions of the budget period. EPA approval is no longer required for other changes in the work plan or budget, changes in key persons or decisions to carry out portions of the work through subgrants or contracts unless the Regional Administrator determines, on a case-by-

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case basis, that circumstances warrant imposing additional approval requirements on a particular recipient.

Pre-award Costs

Pre-award costs may be reimbursed under the grants without prior approval so long as they are incurred within the budget period, identified in the approved grant application, and would have been allowable if incurred after the award.

Insular Areas

EPA is proposing conforming changes in the rule to reflect the change in status of the Marshall Islands, the Federated States of Micronesia, and Palau. They were previously entities within the Trust Territory of the Pacific Islands, but they have entered into Compacts of Free Association with the Government of the United States. As a result, each is now a sovereign, self-governing State and as such is no longer eligible to receive grants as a territory or possession of the United States. Because the Trust Territory of the Pacific Islands no longer exists, the rule's provisions regarding allotments omit any reference to the Trust Territory and references to the Trust Territory in environmental program grant statutes, including the references in the definitions of "State," no longer have legal effect.

The Administrator of EPA is authorized to consolidate grants and waive administrative requirements for grants made to certain insular areas. 48 U.S. C. 1469a. Through this regulation that authority is delegated to the Regional Administrators.

V. Performance Partnership Grants

Sections 35.130 through 35.138 contain requirements that apply only to Performance Partnership Grant (PPGs). In a Performance Partnership Grant, the recipient can combine funds from two or more environmental program grants into a single grant under streamlined administrative requirements. Funds may be used for eligible cross-media activities or strategies and do not need to be accounted for in accordance with their original program sources. Key features of the PPG rule are discussed below.

Funds and Activities Eligible for Inclusion in a PPG

Funds for any particular environmental program grant may be included in a PPG only if the funds for that grant are appropriated in the same specific appropriation (earmark) as the funds for PPGs. EPA will announce any changes in its appropriation acts that affect the list of programs in § 35.101. Currently, funds from all but two of the environmental program grants listed in § 35.101 are eligible for inclusion in a PPG. Funds for Water Quality Management Planning grants under section 205(j)(2) of the Clean Water Act are not available for inclusion in PPGs because funds for these grants are reserved from a different earmark in the Agency's appropriation act. In addition, there are no funds appropriated for State Administration grants under section 205(g) of the Clean Water Act.

A PPG recipient may use PPG funds to carry out any activity that would be authorized under at least one of the environmental program grants from which funds are combined in the PPG. This means that a PPG recipient may not spend PPG funds on an activity unless the PPG includes some funds from an environmental program grant under which that activity would be eligible. For example, a PPG recipient could not use PPG funds for an activity that is authorized only under sections 205(g) or 205(j)(2) of the Clean Water Act because no section 205(g) or 205(j)(2) funds will have been included in the PPG. On the other hand, if an activity would be authorized under section 106 of the Clean Water Act, and the PPG includes section 106 funds, then the activity may be funded by the PPG.

A State or interstate agency must meet the requirements for award of each of the environmental programs from which funds are combined in the PPG, with a few specified exceptions. The exceptions are requirements that restrict how a specific environmental program grant can be used after award. These requirements are not appropriate to be carried over to Performance Partnership Grants because after funds are awarded in a Performance Partnership Grant they may be used for cross-media purposes and States interstate agencies do not need to account for the funds in accordance with their original program sources.

Entities Eligible for PPGs

The types of organizations eligible for PPGs are determined by the authorizing statutes for the PPG program, which are EPA's FY 1996 and 1998 appropriation acts, (Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134, 110 Stat. 1321, 1321–299 (1996); Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, Pubic Law 105–65, 111 Stat. 1344, 1373 (1997)). Consistent with those statutes, only States and interstate agencies will be eligible for PPGs under this proposed rule. Interstate agencies are only eligible for PPGs that combine funds from a few existing grant programs because interstate agencies are only authorized to receive grants under those few environmental programs. Specifically, interstate agencies are eligible for PPGs that include funds from the following programs: Air Pollution Control (section 105 of the Clean Air Act); Water Pollution Control (section 106 of the Clean Water Act); Wetlands Development Grants (section 104(b)(3) of the Clean Water Act); and Water Quality Cooperative Agreements (section 104(b)(3) of the Clean Water Act). Recipients must be interstate agencies as defined by either the Clean Water Act, the Clean Air Act, or both, depending on which funds are included in the PPG. Congress authorized EPA to award PPGs to interstate agencies, but only as provided in authorizing statutes; Congress did not intend to change any of the existing program grant eligibility requirements, including the definition of interstate agency. The ability of recipients to make subgrants will not be affected by combining funds into a PPG.

Competitive Grants and PPGs

States must compete for some of the environmental programs eligible for a PPG (*e.g.*, pollution prevention incentives for States, wetlands program development, and water quality cooperative agreements). States must first be selected in the competitive process in order to include these competitive grants in a PPG. In some programs, this process may include the awarding of funds to a State agency through decisions made during a joint planning process. To maintain the integrity of the competitive process and ensure that the work that was the basis for EPA's selection of the proposal is performed, the State must include the work plan commitments proposed in the competitive grant application in the PPG work plan. However, as with other program funds included in a PPG, the State does not need to account for these funds in accordance with the funds' original environmental program source. Although a State must agree to complete the work plan commitments proposed in the competitive work plan, it need not account for the funds spent on a specific environmental program or activity. Also, if the time required to complete work under the competitive program is longer than the budget period for the States' PPG, States must make provisions to carry the activities (and funds, if appropriate) to subsequent PPG budget periods to complete them.

Administrative Flexibility

A primary advantage of PPGs is the administrative flexibility provided to all PPG recipients. A PPG requires only a single application, work plan, and budget regardless of how many environmental programs provide the funds for the PPG. Once funds are awarded in a PPG, recipients can direct the funds as needed to achieve work plan commitments and need not account for funds in accordance with their original funding program sources. The minimum cost share required for a PPG is the sum of the cost share amounts required for each of the environmental program grants combined in the PPG. If a program has both a match and a maintenance of effort requirement, the greater of the two amounts will be used to calculate the minimum cost share attributed to that program. Just as federal funds in the PPG do not need to be accounted for on the basis of their original program source, the non-federal share of a PPG may be expended on work plan commitments without regard to the original source of the cost share requirement. These administrative features also make it possible for States to negotiate a work plan that includes cross-media or innovative strategies for addressing environmental problems.

Programmatic Flexibility

If approved by the EPA Regional Administrator, a PPG can also provide the State with programmatic flexibility to increase efforts in some program areas where the State's needs are greater and decrease them in others where the State's needs are less. In applying for programmatic flexibility, the State agency must provide a rationale commensurate with the type and amount of flexibility being proposed, explaining the basis for the State's priorities and the environmental or other benefits it expects to achieve. The State must also assure that basic programs are maintained for all programs combined in the grant. The Regional Administrator and State agency will negotiate regarding the environmental and other information that EPA needs to make a decision regarding the application for flexibility. Information useful in supporting a State's proposal for programmatic flexibility may already exist, such as in a PPA, a recent water quality report, or a previous grant evaluation. Such information should be used to the extent possible to minimize duplication of effort.

Performance Incentives

One goal of the performance partnership grant program is to find ways to encourage and reward outstanding State recipient performance. EPA believes this regulation will establish the foundation for such an incentive program by assuring—

- States and EPA's regions agree to measurable outcomes and outputs when awards are signed in accordance with the agreement on core measures.
- Outcome and output accomplishments are measured and documented through the joint evaluation process developed and agreed to by the States and EPA under the rule.

We would expect such a program to be based on each year's performance evaluation. We are considering incentive approaches such as—

- Using a part of each year's funds to provide incentive bonuses to States which are most successful in meeting commitments, and
- Using a part of each year's funds to provide bonuses to States which assume primacy/authorization for programs such as drinking water and hazardous waste.

There may be many other possible incentive approaches and we are soliciting recommendations for them. We also request your comments on the options suggested above.

VI. Implementing GPRA

The Agency has developed an approach toward the integrated implementation of GPRA, the Chief Financial Officers Act (CFOA), and the Federal Financial Management Improvement Act of 1996 (FFMIA). These laws provide EPA with a framework to demonstrate to Congress and the taxpayers the costs to the federal government of EPA's program goals and objectives. The States, by virtue of delegated program authorities and as recipients of EPA grant funds, play an integral part in achieving those goals and objectives. Thus EPA's reports of Agency resources associated with outcomes and outputs will incorporate—at some level—expenditures incurred in the form of payments under grants and cooperative agreements . In order to comply with the Paperwork Reduction Act and the federal government's general grant regulations, EPA also has a responsibility to minimize additional administrative reporting requirements and costs borne by the States. In addition, under current regulations EPA generally may not impose accounting requirements on States beyond those currently required by 40 CFR part 31.

EPA will therefore use the budget information that States provide in grant applications as a basis for linking the Agency's actual expenditures with outcomes. EPA will be able to rely on State budget information to determine the costs of EPA's outcomes, as long as the following three conditions exist, which are all required by the proposed regulation:

(1) States provide the program budget information required as part of the application;

(2) EPA and the States explicitly define work plan activities, outcomes, and outputs, as well as the program flexibility contained in the work plan; and

(3) States report back on work plan accomplishments.

The proposed rule ensures that States will meet these three conditions, thus providing a reasonable basis for using State grant program budgets to estimate State contributions to the costs of achieving EPA's outcomes.

EPA's regional offices, with necessary consultation with recipients, will be responsible for cross-walking the State budget information (grant application and work plan data) into the GPRA goals and objectives architecture. If a grant is subsequently amended to reflect significant adjustments to work plan commitments, the region will consult with the State to develop an estimate of the budget associated with the revision so that it can be reflected in regional GPRA reporting. The Office of the Chief Financial Officer will provide regions with guidance on the approach to use for the cross-walk process to ensure that the results achieved by States with EPA funds are captured in the Agency's Annual Performance Reports.

VII. Program Specific Provisions

Requirements applicable to each environmental grant program are located in §§ 35.140 through 35.418.

Eligibility

The requirements that recipients must meet to qualify to receive funds under specific environmental programs are included in the program-specific provisions (see §§ 35.140 through 35.418).

Cost Share

The required cost share for each environmental program is identified in the program specific sections. Some programs do not have cost share requirements, while others have percentage matching share

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requirements, level of effort requirements, or both.

VIII. Conclusion

This regulation will be the foundation for continuing efforts to improve partnerships between EPA and its State, interstate, and local environmental protection partners. All recipients will benefit from the streamlined and simplified requirements of the regulation. In addition, it will provide recipients choosing to participate in the PPG program with programmatic flexibility to better use funds to address environmental priorities.

Regulatory Flexibility Act

The Agency has determined that the requirement in the Regulatory Flexibility Act (RFA) to prepare a regulatory flexibility analysis does not apply to this rule. A regulatory flexibility analysis must be prepared only where the Agency is required by Administrative Procedure Act (APA) or another statute to publish a general notice of proposed rulemaking. 5 U.S.C. 603. Grant making matters, such this rule, are not subject to the notice and comment requirements of the APA (5 U.S.C. 553(a)(1)). Nor is this rule required to undergo notice and comment rulemaking under any other statute.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 2 U.S.C. 1501 *et seq.*, 109 Stat. 48 (1995), establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This regulation contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The UMRA excludes from the definitions of "federal intergovernmental mandate" and "federal private sector mandates" duties that arise from conditions of federal assistance.

National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used, the Act requires EPA to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

This proposed rule does not involve any technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. Commenters who disagree with this conclusion should indicate how the Notice is subject to the Act and identify any potentially applicable voluntary consensus standards.

Executive Order 13045

Executive Order 13045 applies to any rule that is determined to be: (1) "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA has determined that the proposed rule is not a covered regulatory action because it is not economically significant and it does not involve decisions based on environmental health or safety risks. As a result, the proposed rule is not subject to the requirements of the Executive Order.

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is a "significant regulatory action" under the terms of Executive Order 12866 because the Performance Partnership Grant authority is a new type of grant authority and therefore raises novel policy issues. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions and recommendations are documented in the public record.

Paperwork Reduction Act

In keeping with the requirements of the Paperwork Reduction Act (PRA), as amended, 44 U.S.C. 3501 *et seq.*, the information collection requirements contained in this rule have been approved by OMB under information collection request number 0938.06 (OMB Control Number 2030–0020) and Quality Assurance Specifications and Requirements information request number 0866.05 (OMB Control Number 2080–033). This rule does not contain any collection of information requirements beyond those already approved. Since this action imposes no new or additional information collection, reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, no information request will be submitted to the Office of Management and Budget for review.

Executive Order 12875

Under Executive Order 12875, Enhancing Intergovernmental Partnerships, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and Tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This proposed rule does not create a mandate on State, local or Tribal governments nor does it impose any enforceable duties on these entities as it governs the award of financial assistance. Instead, this proposed rule is designed to reduce the administrative burden associated with grants for environmental programs. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply.

Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If a regulatory mandate is necessary, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This proposed rule does not affect the communities of Indian Tribal governments, because environmental program grants to Tribes and intertribal consortia are not covered in this rule; they are covered under 40 CFR part 35, subpart B, published elsewhere in this **Federal Register**. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply.

List of Subjects

40 CFR Part 35

Environmental protection, Administrative practice and procedures, Evaluation of performance, Performance partnership grants, Requirements for specific grant programs, Work plan requirements.

40 CFR Part 745

Environmental protection, Administrative practice and procedures, Hazardous substances.

Dated: June 30, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in this preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 35—[AMENDED]

1. The authority citation for Part 35 is revised to read as follows:

Authority: 42 U.S.C. 4368b unless otherwise noted.

2. Revise § 35.001 to read as follows:

§ 35.001 Applicability.

This part codifies policies and procedures for financial assistance awarded by the Environmental Protection Agency (EPA) to State, interstate, and local agencies, Indian Tribes and Intertribal Consortia for pollution abatement and control programs. These provisions supplement the EPA general assistance regulations in 40 CFR part 31.

3. Revise Subpart A to read as follows:

Subpart A—Environmental Program Grants

All Grants—General

Sec.
35.100 Purpose of the subpart.
35.101 Environmental programs covered by the subpart.
35.102 Definition of terms.

Preparing an Application

35.104 Components of a complete application.
35.105 Time frame for submitting an application.
35.107 Work plans.
35.108 Budget period.
35.109 Consolidated grants.

EPA Action on Application

35.110 Time frame for EPA action.
35.111 Criteria for approving an application.
35.112 Factors considered in determining award amount.
35.113 Reimbursement for pre-award costs.

Post-Award Requirements

35.114 Amendments and other changes.
35.115 Evaluation of performance.
35.116 Direct implementation.
35.117 Unused funds.
35.118 Unexpended balances.

Performance Partnership Grants

35.130 Purpose of Performance Partnership Grants.
35.132 Requirements summary.
35.133 Programs eligible for inclusion.
35.134 Eligible recipients.
35.135 Activities eligible for funding.
5.136 Cost share requirements.
35.137 Application requirements.
35.138 Competitive grants.

Air Pollution Control (Section 105)

35.140 Purpose.
35.141 Definitions.
35.143 Allotment.
35.145 Maximum Federal share.
35.146 Maintenance of effort.
35.147 Minimum cost share for a Performance Partnership Grant.
35.148 Award limitations.

Water Pollution Control (Section 106)

35.160 Purpose.
35.161 Definition.
35.162 Basis for allotment.
35.165 Maintenance of effort.
35.168 Award limitations.

Public Water System Supervision (Section 1443(a))

35.170 Purpose.
35.172 Allotment.
35.175 Maximum Federal share.
35.178 Award limitations.

Underground Water Source Protection (Section 1443(b))

35.190 Purpose.
35.192 Basis for allotment.
35.195 Maximum Federal share.
35.198 Award limitation.

Hazardous Waste Management (Section 3011(a))

35.210 Purpose.
35.212 Basis for allotment.
35.215 Maximum Federal share.
35.218 Award limitation.

Pesticide Cooperative Enforcement (Section 23(a)(1))

35.230 Purpose.
35.232 Basis for allotment.
35.235 Maximum Federal share.

Pesticide Applicator Certification and Training (Section 23(a)(2))

35.240 Purpose.
35.242 Basis for allotment.
35.245 Maximum Federal share.

Pesticide Program Implementation (Section 23(a)(1))

35.250 Purpose.
35.251 Basis for allotment.
35.252 Maximum Federal share.

Nonpoint Source Management (Section 319(h))

35.260 Purpose.
35.265 Maximum Federal share.
35.266 Maintenance of effort.
35.268 Award limitations.

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Subpart A—Environmental Program Grants

Authority: 42 U.S.C. 7401 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f *et seq.*; 42 U.S.C. 6901 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 13101 *et seq.*; Pub. L. 104–134, 110 Stat. 1321, 1321–299 (1996); Pub. L. 105–65, 111 Stat. 1344, 1373 (1997).

All Grants—General

§ 35.100 Purpose of the subpart.

This subpart establishes administrative requirements for grants awarded to State, interstate, and local agencies and other entities for the environmental programs listed in § 35.101. This subpart supplements requirements in EPA's general grant regulations found at 40 CFR part 31. Sections 35.100–35.118 contain administrative requirements that apply to all environmental program grants included in this subpart. Sections 35.130 through 35.418 contain requirements that apply to specified environmental program grants. Many of these environmental programs also have programmatic and technical requirements that are published elsewhere in the Code of Federal Regulations.

§ 35.101 Environmental programs covered by the subpart.

(a) The requirements in this subpart apply to grants awarded for the following programs:

(1) Performance partnership grants Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134, 110 Stat. 1321, 1321–299 (1996) and Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, Public Law 105–65, 111 Stat. 1344, 1373 (1997)).

(2) Air pollution control (section 105 of the Clean Air Act).

(3) Water pollution control (section 106 of the Clean Water Act).

(4) Public water system supervision (section 1443(a) of the Safe Drinking Water Act).

(5) Underground water source protection (section 1443(b) of the Safe Drinking Water Act).

(6) Hazardous waste management (section 3011(a) of the Solid Waste Disposal Act).

(7) Pesticide cooperative enforcement (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act).

(8) Pesticide applicator certification and training (section 23(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act).

(9) Pesticide program implementation (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act).

(10) Nonpoint source management (sections 205(j)(5) and 319(h) of the Clean Water Act).

(11) Lead-based paint program (section 404(g) of the Toxic Substances Control Act).

(12) State indoor radon grants (section 306 of the Toxic Substances Control Act).

(13) Toxic substances compliance monitoring (section 28 of the Toxic Substances Control Act).

(14) State underground storage tanks (section 2007(f)(2) of the Solid Waste Disposal Act).

(15) Pollution prevention incentives for states (section 6605 of the Pollution Prevention Act of 1990).

(16) Water quality cooperative agreements (section 104(b)(3) of the Clean Water Act).

(17) Wetlands development grants program (section 104(b)(3) of the Clean Water Act).

(18) State administration of construction grant, permit, and planning programs (section 205(g) of the Clean Water Act).

(19) Water quality management planning (section 205(j)(2) of the Clean Water Act).

(b) Unless otherwise prohibited by statute or regulation, the requirements in § 35.100 through § 35.118 of this subpart also apply to grants under environmental programs established after this subpart becomes effective if specified in Agency guidance for such programs.

§ 35.102 Definitions of terms.

Terms are defined as follows when they are used in this subpart.

Allotment. EPA's calculation of the funds that may be available to an eligible recipient for an environmental program grant. An allotment is not an entitlement.

Budget period. The period specified in the grant agreement during which the recipient may expend or obligate funds for the purposes specified in the agreement.

Consolidated grant. A single grant made to a recipient consolidating funds from more than one environmental grant program. After the award is made, recipients must account for grant funds in accordance with the funds' original environmental program sources. Consolidated grants are not Performance Partnership Grants.

Environmental program. A program for which EPA awards grants under the authorities listed in § 35.101. The grants are subject to the requirements of this subpart.

National program guidance. Guidance issued by EPA's National Program Managers for establishing and maintaining effective environmental programs. This guidance establishes national goals, objectives, and priorities as well as the core performance measures and other information to be used in monitoring progress. The guidance may also set out specific environmental strategies, criteria for evaluating programs, and other elements of program implementation.

Outcome. The environmental result, effect, or consequence that will occur from carrying out an environmental program or activity that is related to an environmental or programmatic goal or objective. Outcomes must be quantitative, and they may not necessarily be achievable during a grant budget period. See "output."

Output. An environmental activity or effort and associated work products related to an environmental goal or objective that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative but must be measurable during a grant budget period. See "outcome."

Performance Partnership Agreement. A negotiated agreement signed by the EPA Regional Administrator and an appropriate official of a State agency and designated as a Performance Partnership Agreement. Such agreements typically set out jointly developed goals, objectives, and priorities; the strategies to be used in meeting them; the roles and responsibilities of the State and EPA; and the measures to be used in assessing progress. A Performance Partnership Agreement may be used as all or part of a work plan for a grant if it meets the requirements for a work plan set out in § 35.107.

Performance Partnership Grant. A single grant combining funds from more than one environmental program. A Performance Partnership Grant may provide for administrative savings or programmatic flexibility to direct grant resources where they are most needed to address public health and environmental priorities (see also § 35.130). Each Performance Partnership Grant has a single, integrated budget and recipients do not need to account for grant funds in accordance with the funds' original environmental program sources.

Planning target. The amount of funds that the Regional Administrator suggests a grant applicant consider in developing its application, including the work plan, for an environmental program.

Regional supplemental guidance. Guidance to environmental program applicants prepared by the Regional Administrator, based on the national program guidance and specific regional and applicant circumstances, for use in preparing a grant application.

Work plan commitments. The outputs and outcomes associated with each work plan component, as established in the grant agreement.

Work plan component. A negotiated set or group of work plan commitments established in the grant agreement. A work plan may have one or more work plan components.

Preparing an Application

§ 35.104 Components of a complete application.

A complete application for an environmental program must:

(a) Meet the requirements in 40 CFR part 31, subpart B;

(b) Include a proposed work plan (§ 35.107); and

(c) Specify the environmental program and the amount of funds requested.

§ 35.105 Time frame for submitting an application.

An applicant should submit a complete application to EPA at least 60 days before the beginning of the proposed budget period.

§ 35.107 Work plans.

(a) *Bases for negotiating work plans.* The work plan is negotiated between the applicant and the Regional Administrator and reflects consideration of national, regional, and State environmental and programmatic needs and priorities.

(1) *Negotiation considerations.* In negotiating the work plan, the Regional Administrator and applicant will consider such factors as national program guidance; any regional supplemental guidance; goals, objectives, and priorities proposed by the applicant; other jointly identified needs or priorities; and the planning target.

(2) *National program guidance.* If an applicant proposes a work plan that differs significantly from the goals and objectives, priorities, or core performance measures in the national program guidance associated with the proposed activities, the Regional Administrator must consult with the appropriate National Program Manager before agreeing to the work plan.

(3) *Use of existing guidance.* An applicant should base the grant application on the national program guidance in place at the time the application is being prepared.

(b) *Work plan requirements.*

(1) The work plan is the basis for the management and evaluation of performance under the grant agreement.

(2) An approvable work plan must specify:

(i) The work plan components to be funded under the grant;

(ii) The estimated work years and funding amounts for each work plan component;

(iii) The work plan commitments for each work plan component and a time frame for their accomplishment;

(iv) A performance evaluation process and reporting schedule in accordance with § 35.115 of this subpart; and

(v) The roles and responsibilities of the recipient and EPA in carrying out the work plan commitments.

(3) The work plan must be consistent with applicable federal statutes, regulations, circulars, executive orders, and delegation or authorization agreements.

(c) *Performance Partnership Agreement as work plan.* An applicant may use a Performance Partnership Agreement or a portion of a Performance Partnership Agreement as the work plan for an environmental program grant if the portions of the Performance Partnership Agreement that can serve as all or part of the grant work plan:

(1) Are clearly identified and distinguished from other portions of the Performance Partnership Agreement; and

(2) Meet the requirements in § 35.107(b).

§ 35.108 Budget period.

The Regional Administrator and applicant may negotiate the length of the budget period for environmental program grants, subject to limitations in appropriations acts.

§ 35.109 Consolidated grants.

(a) Any applicant eligible to receive funds from more than one environmental program may submit an application for a consolidated grant. For consolidated grants, an applicant prepares a single budget and work plan covering all of the environmental programs included in the application. The consolidated budget must identify each environmental program to be included, the amount of each program's funds, and the extent to which each program's funds support each work plan component. Recipients of consolidated grants must account for grant funds in accordance with the funds' environmental program sources; funds included in a consolidated grant from a particular environmental program may be used only for that program.

(b) Insular areas that choose to consolidate environmental program grants may be exempted by the Regional Administrator from requirements of this subpart in accordance with 48 U.S.C. 1469a.

EPA Action on Application

§ 35.110 Time frame for EPA action.

The Regional Administrator will review a complete application and either approve, conditionally approve, or disapprove it within 60 days of receipt. This period may be extended by

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mutual agreement between EPA and the applicant. The Regional Administrator will award the funds for approved or conditionally approved applications when the funds are available.

§ 35.111 Criteria for approving an application.

(a) The Regional Administrator may approve an application if he or she determines, that:

(1) The application meets the requirements of this subpart and 40 CFR part 31;

(2) The application meets the requirements of all applicable federal statutes, regulations, circulars, executive orders, and delegation or authorization agreements;

(3) The proposed work plan complies with the requirements of § 35.107; and

(4) The achievement of the proposed work plan is feasible, considering such factors as the applicant's existing circumstances, past performance, program authority, organization, resources, and procedures.

(b) If the Regional Administrator finds the application does not satisfy the criteria in paragraph (a) of this section, the Regional Administrator may either:

(1) Conditionally approve the application if only minor changes are required, with grant conditions necessary to ensure compliance with the criteria, or

(2) Disapprove the application in writing.

§ 35.112 Factors considered in determining award amount.

(a) After approving an application under § 35.111, the Regional Administrator will consider such factors as the applicant's allotment, the extent to which the proposed work plan is consistent with EPA guidance and mutually agreed upon priorities, and the anticipated cost of the work plan relative to the proposed work plan components, to determine the amount of funds to be awarded.

(b) If the Regional Administrator finds the requested level of funding is not justified or that the work plan does not comply with the requirements of § 35.107, he or she will attempt to negotiate a resolution of the issues with the applicant before determining the award amount. The Regional Administrator may determine that the award amount will be less than the amount allotted or requested.

§ 35.113 Reimbursement for pre-award costs.

(a) Notwithstanding the requirements of 40 CFR 31.23(a) and OMB cost principles, EPA may reimburse recipients for pre-award costs incurred from the beginning of the budget period established in the grant agreement if such costs would have been allowable if incurred after the award and the recipients submitted complete grant applications before the beginning of the budget period. Such costs must be identified in the grant application EPA approves.

(b) The applicant incurs pre-award costs at its own risk. EPA is under no obligation to reimburse such costs unless they are included in an approved grant award.

Post-Award Requirements

§ 35.114 Amendments and other changes.

The provisions of 40 CFR 31.30 do not apply to environmental program grants awarded under this subpart. The following provisions govern amendments and other changes to grant work plans and budgets after the work plan is negotiated and a grant awarded.

(a) *Changes requiring prior approval.* Recipients may make significant changes in work plan commitments only after obtaining the Regional Administrator's prior written approval. The regional office, in consultation with the recipient, will document these revisions including budgeted amounts associated with the revisions.

(b) *Changes requiring approval.* Recipients must request, in writing, grant amendments for changes requiring increases in environmental program grant amounts and extensions of the budget period. Recipients may begin implementing a change before the amendment has been approved by EPA, but do so at their own risk. If EPA approves the change, EPA will issue a grant amendment. EPA will notify the recipient in writing if the change is disapproved.

(c) *Changes not requiring approval.* Other than those situations described in paragraphs (a) and (b) of this section, recipients do not need to obtain approval for changes, including changes in grant work plans, budgets, or other components of grant agreements, unless the Regional Administrator determines approval requirements should be imposed on a specific recipient for a specified period of time.

(d) *OMB cost principles.* The Regional Administrator may waive in writing approval requirements for specific recipients and costs contained in OMB cost principles.

(e) *Changes in consolidated grants.* Recipients of consolidated grants under § 35.109 may not transfer funds among environmental programs.

(f) *Subgrants.* Subgrantees must request required approvals in writing from the recipient and the recipient shall approve or disapprove the request in writing. A recipient will not approve any work plan or budget revision which is inconsistent with the purpose or terms and conditions of the federal grant to the recipient. If the revision requested by the subgrantee would result in a significant change to the recipient's approved grant which requires EPA approval, the recipient will obtain EPA's approval before approving the subgrantee's request.

§ 35.115 Evaluation of performance.

(a) *Joint evaluation process.* The applicant and the Regional Administrator will develop a process for jointly evaluating and reporting progress and accomplishments under the work plan. A description of the evaluation process and a reporting schedule must be included in the work plan. The schedule must require the recipient to report at least annually and must satisfy the requirements for progress reporting under 40 CFR 31.40(b).

(b) *Elements of the evaluation process.* The evaluation process must provide for:

(1) A discussion of accomplishments as measured against work plan commitments;

(2) A discussion of the cumulative effectiveness of the work performed under all work plan components;

(3) A discussion of existing and potential problem areas; and

(4) Suggestions for improvement, including, where feasible, schedules for making improvements.

(c) *Resolution of issues.* If the joint evaluation reveals that the recipient has not made sufficient progress under the work plan, the Regional Administrator and the recipient will negotiate a resolution that addresses the issues. If the issues cannot be resolved through negotiation, the Regional Administrator may take appropriate measures under 40 CFR 31.43. The recipient may request review of the Regional Administrator's decision under the dispute processes in 40 CFR 31.70.

(d) *Evaluation reports.* The Regional Administrator will ensure that the required evaluations are performed according to the negotiated schedule and that copies of evaluation reports are placed in the official files and provided to the recipient.

§ 35.116 Direct implementation.

If funds remain in a State's allotment for an environmental program grant either after grants for that environmental program have been made or because no grant was made, the Regional Administrator may, subject to any

limitations contained in appropriation acts, use all or part of the funds to support a federal program required by law in the State in the absence of an acceptable State program.

§ 35.117 Unused funds.

If funds for an environmental program grant remain in a State's allotment either after an initial environmental program grant has been made or because no grant was made, and the Regional Administrator does not use the funds under § 35.116 of this subpart, the Regional Administrator may award the funds to any eligible recipient in the region, including the same State or an Indian Tribe or Tribal consortium, for the same environmental program or for a Performance Partnership Grant, subject to any limitations in appropriation acts.

§ 35.118 Unexpended balances.

Subject to any relevant provisions of law, if a recipient's Financial Status Report shows unexpended balances, the Regional Administrator will deobligate the unexpended balances and make them available, to either the same recipient in the same region or other eligible recipients, including Indian Tribes and Tribal Consortia, for environmental program grants.

Performance Partnership Grants

§ 35.130 Purpose of Performance Partnership Grants.

(a) *Purpose of section.* Sections 35.130 through 35.138 govern Performance Partnership Grants to States and interstate agencies authorized in the Omnibus Consolidated Rescissions and Appropriations Act of 1996, (Pub. L. 104–134, 110 Stat. 1321, 1321–299 (1996)) and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, (Pub. L. 105–65, 111 Stat. 1344, 1373 (1997).

(b) *Purpose of program.* Performance Partnership Grants enable States and interstate agencies to combine funds from more than one environmental program grant into a single grant with a single budget. Recipients do not need to account for Performance Partnership Grant funds in accordance with the funds' original environmental program sources; they need only account for total Performance Partnership Grant expenditures subject to the requirements of this subpart. The Performance Partnership Grant program is designed to:

(1) Strengthen partnerships between EPA and State and interstate agencies through joint planning and priority-setting and better deployment of resources;

(2) Provide State and interstate agencies with flexibility to direct resources where they are most needed to address environmental and public health priorities;

(3) Link program activities more effectively with environmental and public health goals and program outcomes;

(4) Foster development and implementation of innovative approaches such as pollution prevention, ecosystem management, and community-based environmental protection strategies; and

(5) Provide savings by streamlining administrative requirements.

§ 35.132 Requirements summary.

Applicants and recipients of Performance Partnership Grants must meet:

(a) The requirements in §§ 35.100 to 35.118, which apply to all environmental program grants, including Performance Partnership Grants; and

(b) The requirements in §§ 35.130 to 35.138, which apply only to Performance Partnership Grants.

§ 35.133 Programs eligible for inclusion.

(a) *Eligible programs.* Except as provided in paragraph (b) of this section, the environmental programs eligible, in accordance with appropriation acts, for inclusion in a Performance Partnership Grant are listed in § 35.101(a)(2) through (17). (Funds available from the section 205(g) State Administration Grants program (§ 35.100(b)(18)) and the Water Quality Management Planning Grant program (§ 35.100(b)(19)) may not be included in Performance Partnership Grants.)

(b) *Changes in eligible programs.* The Administrator may, in guidance or regulation, describe subsequent additions, deletions, or changes to the list of environmental programs eligible for inclusion in Performance Partnership Grants.

§ 35.134 Eligible recipients.

(a) *Eligible agencies.* All State agencies (including environmental, health, agriculture, and other agencies) and interstate agencies eligible to receive funds from more than one environmental program may receive Performance Partnership Grants.

(b) *Designated agency.* A State agency must be designated by a Governor, State legislature, or other authorized State process to receive grants under each of the environmental programs to be combined in the Performance Partnership Grant. If it is not the designated agency for a particular grant program to be included in the Performance Partnership Grant, the State agency must have an agreement with the State agency that does have the designation regarding how the funds will be shared between the agencies.

(c) *Programmatic requirements.* A State or interstate agency must meet the requirements for award of each of the environmental programs from which funds are combined in the agency's Performance Partnership Grant, except the requirements at §§ 35.268(b) and (c), 35.272, and 35.298 (c),(d),(e), and (g). These requirements can be found in this regulation beginning at § 35.140.

§ 35.135 Activities eligible for funding.

(a) A recipient may use a Performance Partnership Grant, subject to the requirements of paragraph (c) of this section, to fund any activity that is eligible for funding under at least one of the environmental programs from which funds are combined into the grant.

(b) A recipient may also use a Performance Partnership Grant to fund multi-media activities that are eligible in accordance with paragraph (a) of this section and have been agreed to by the Regional Administrator. Such activities may include multi-media permitting and enforcement and pollution prevention, ecosystem management, community-based environmental protection, and other innovative approaches.

(c) A recipient may not use a Performance Partnership Grant to fund activities eligible only under a specific environmental program grant unless some or all of the recipient's allotted funds for that program have been included in the Performance Partnership Grant.

§ 35.136 Cost share requirements.

(a) An applicant for a Performance Partnership Grant must provide a non-federal cost share that is not less than the sum of the minimum non-federal cost share required under each of the environmental programs that are combined in the Performance Partnership Grant. Cost share requirements for the individual environmental programs are described in §§ 35.140 to 35.418.

(b) When an environmental program included in the Performance Partnership Grant has both a matching and maintenance of effort requirement, the greater of the two amounts will be used to calculate the minimum cost share attributed to that environmental program.

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§ 35.137 Application requirements.

(a) An application for a Performance Partnership Grant must contain:

(1) A list of the environmental programs and the amount of funds from each program to be combined in the Performance Partnership Grant;

(2) A consolidated budget;

(3) A consolidated work plan that addresses each program being combined in the grant and that meets the requirements of § 35.107; and,

(4) A rationale, commensurate with the extent of any programmatic flexibility (i.e., increased effort in some programs and decreased effort in others) indicated in the work plan, that explains the basis for the applicant's priorities, the expected environmental or other benefits to be achieved, and the anticipated impact on any environmental programs or program areas proposed for reduced effort.

(b) The applicant and the Regional Administrator will negotiate regarding the information necessary to support the rationale for programmatic flexibility required in paragraph (a)(4) of this section. The rationale may be supported by information from a variety of sources, including a Performance Partnership Agreement or comparable negotiated document, the evaluation report required in § 35.125, and other environmental and programmatic data sources.

(c) A State agency seeking programmatic flexibility is encouraged to include a description of efforts to involve the public in developing the State agency's priorities.

§ 35.138 Competitive grants.

(a) Some environmental program grants are awarded through a competitive process. An applicant and the Regional Administrator may agree to add funds available for a competitive grant to a Performance Partnership Grant. If this is done, the work plan commitments that would have been included in the competitive grant must be included in the Performance Partnership Grant work plan. After the funds have been added to the Performance Partnership Grant, the recipient does not need to account for these funds in accordance with the funds' original environmental program source.

(b) If the projected completion date for competitive grant work plan commitments added to a Performance Partnership Grant is after the end of the Performance Partnership Grant budget period, the Regional Administrator and the applicant will agree in writing as to how the work plan commitments will be carried over into future work plans.

Air Pollution Control (Section 105)

§ 35.140 Purpose.

(a) *Purpose of section.* Sections 35.140 through 35.148 govern Air Pollution Control Grants to State, local, interstate, or intermunicipal air pollution control agencies (as defined in section 302(b) of the Clean Air Act) authorized under section 105 of the Act.

(b) *Purpose of program.* Air Pollution Control Grants are awarded to administer programs that prevent and control air pollution or implement national ambient air quality standards.

(c) *Program regulations.* Refer to 40 CFR parts 49, 50, 51, 52, 58, 60, 61, 62, and 81 for associated program regulations.

§ 35.141 Definitions.

In addition to the definitions in § 35.102, the following definitions apply to the Clean Air Act's section 105 grant program:

Implementing means any activity related to planning, developing, establishing, carrying-out, improving, or maintaining programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.

Nonrecurrent expenditures are those expenditures which are shown by the recipient to be of a nonrepetitive, unusual, or singular nature such as would not reasonably be expected to recur in the foreseeable future. Costs categorized as nonrecurrent must be approved in the grant agreement or an amendment thereto.

Recurrent expenditures are those expenses associated with the activities of a continuing environmental program. All expenditures are considered recurrent unless justified by the applicant as nonrecurrent and approved as such in the grant award or an amendment thereto.

§ 35.143 Allotment.

(a) The Administrator allots air pollution control funds under section 105 of the Clean Air Act based on a number of factors, including:

(1) Population;

(2) The extent of actual or potential air pollution problems; and

(3) The financial need of each agency.

(b) The Regional Administrator shall allot to a State not less than one-half of one percent nor more than 10 percent of the annual section 105 grant appropriation.

(c) The Administrator may award funds on a competitive basis.

§ 35.145 Maximum Federal share.

(a) The Regional Administrator may provide air pollution control agencies, as defined in section 302(b) of the Clean Air Act, up to three-fifths of the approved costs of implementing programs for the prevention and control of air pollution or implementing national primary and secondary ambient air quality standards.

(b) Subject to the conditions set forth below, the Regional Administrator may, at the request of the Governor of a State or the Governor's designee, or in the case of a local jurisdiction, the authorized local official, waive, for a one year period, all or a portion of the cost-sharing requirement of paragraph (a) of this section. The Regional Administrator may renew the waiver for no more than two years so long as the total waiver period does not exceed three years from the approval date of a State's permit program required under section 502 of the Clean Air Act.

(1) The waiver may be approved on a case-by-case basis and only when a State or local government's non-federal contribution is reduced below the required two-fifths minimum as a result of the redirection of its non-federal air resources to meet the requirements of section 502(b) of the Act.

(2) In applying for a waiver, the Governor or the Governor's designee, or in the case of a local jurisdiction, the authorized local official, must:

(i) Describe the extent of fiscal and programmatic impact on the agency's section 105 program as a result of the transfer of non-federal resources to support the program approved by EPA under section 502(b) of the Clean Air Act;

(ii) Provide documentation of the amount of the cost-sharing shortfall and the programmatic activities that would not be able to be carried out if the section 105 grant is reduced or not awarded as a result of a State or local air pollution control agency's inability to meet the cost-sharing requirements;

(iii) Assure that there is no source of funding that may reasonably be used to meet the cost-sharing requirement for the affected grant budget period; and

(iv) Assure that during the section 105 grant period the non-federal share of the program costs will not be reduced in an amount greater than that authorized by the waiver.

§ 35.146 Maintenance of effort.

(a) To receive funds under section 105, an agency must expend annually, for recurrent section 105 program expenditures, an amount of non-federal funds at least equal to such expenditures during the preceding fiscal year.

(b) In order to award grants in a timely manner each fiscal year, the Regional Administrator shall compare an agency's proposed expenditure level, as detailed in the agency's grant application, to that agency's expenditure level in the second preceding fiscal year.

(c) The Regional Administrator may grant an exception to 40 CFR 35.146(a) if, after notice and opportunity for a public hearing, the Regional Administrator determines that the reduction is attributable to a non-selective reduction of the programs of all executive branch agencies of the applicable unit of government.

(d) The Regional Administrator will not award section 105 funds unless the applicant provides assurance that the grant will not supplant non-federal funds that would otherwise be available for maintaining the section 105 program.

§ 35.147 Minimum cost share for a Performance Partnership Grant.

(a)(1) To calculate the cost share for a Performance Partnership Grant (see §§ 35.130 through 35.138) that includes section 105 funds, the minimum cost share contribution for the section 105 program will be the match requirement set forth in § 35.145 or the maintenance of effort established under § 35.146, whichever is greater.

(2) The maintenance of effort established under § 35.146 of this subpart in the first year that the section 105 grant is included in a Performance Partnership Grant will be the maintenance of effort amount used to calculate the cost share in subsequent years in which the section 105 funds are included in a Performance Partnership Grant.

(b) If an air pollution control agency includes section 105 air program funding in a Performance Partnership Grant and subsequently withdraws that program from the grant, the maintenance of effort amount for the section 105 grant in the first year after the grant is withdrawn will be equal to the amount required in the year before the agency included the section 105 program in the Performance Partnership Grant.

(c) The Regional Administrator may approve an exception from paragraph (b) of this section if the Regional Administrator determines that exceptional circumstances justify a reduction in the maintenance of effort, including when an air pollution control agency reduces section 105 funding as part of a non-selective reduction of the programs of all executive branch agencies of the applicable unit of government.

§ 35.148 Award limitations.

(a) The Regional Administrator will not award section 105 funds to an interstate or intermunicipal agency:

(1) That does not provide assurance that it can develop a comprehensive plan for the air quality control region which includes representation of appropriate State, interstate, local, Tribal, and international interests; and

(2) Without consulting with the appropriate official designated by the Governor or Governors of the State or States affected or the appropriate official of any affected Indian Tribe or Tribes.

(b) The Regional Administrator will not disapprove an application for or terminate or annul a section 105 grant without prior notice and opportunity for a public hearing in the affected State or States.

Water Pollution Control (Section 106)

§ 35.160 Purpose.

(a) *Purpose of section.* Sections 35.160 through 35.168 govern Water Pollution Control Grants to State and interstate agencies (as defined in section 502 of the Clean Water Act) authorized under section 106 of the Clean Water Act.

(b) *Purpose of program.* Water Pollution Control Grants are awarded to assist in administering programs for the prevention, reduction, and elimination of water pollution, including programs for the development and implementation of ground-water protection strategies. Some of these activities may also be eligible for funding under sections 104(b)(3) (Water Quality Cooperative Agreements and Wetlands Development Grants), 205(j)(2) (Water Quality Management Planning), and section 205(g) (State Administration Grants) of the Clean Water Act. (See §§ 35.160, 35.360, 35.380, 35.400, and 35.410.)

(c) *Associated program requirements.* Program requirements for water quality planning and management activities are provided in 40 CFR part 130.

§ 35.161 Definition.

Recurrent expenditures are those expenditures associated with the activities of a continuing environmental program. All expenditures, except those for equipment purchases of $5,000 or more, are considered recurrent unless justified by the applicant as nonrecurrent and approved as such in the grant award or an amendment thereto.

§ 35.162 Basis for allotment.

The Administrator allots funds for Water Pollution Control Grants to States and interstate agencies based on the extent of the pollution problems in the respective States.

§ 35.165 Maintenance of effort.

To receive section 106 funds, a State or interstate agency must expend annually for recurrent section 106 program expenditures an amount of non-federal funds at least equal to expenditures during the fiscal year ending June 30, 1971.

§ 35.168 Award limitations.

(a) The Regional Administrator may award section 106 funds to a State only if:

(1) The State monitors and compiles, analyzes, and reports water quality data as described in section 106(e)(1) of the Clean Water Act;

(2) The State has authority comparable to that in section 504 of the Clean Water Act and adequate contingency plans to implement such authority;

(3) There is no federally assumed enforcement as defined in section 309(a)(2) of the Clean Water Act in effect with respect to the State agency; and

(4) The State's work plan shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under sections 205 (g) and (j) of the Clean Water Act.

(5) The State filed with the Administrator within one hundred and twenty days after October 18, 1972, a summary report of the current status of the State pollution control program, including the criteria used by the State in determining priority of treatment works.

(b) The Regional Administrator may award section 106 funds to an interstate agency only if:

(1) The interstate agency filed with the Administrator within one hundred and twenty days after October 18, 1972, a summary report of the current status of the State pollution control program, including the criteria used by the State in determining priority of treatment works.

(2) There is no federally assumed enforcement as defined in section 309(a)(2) of the Clean Water Act in effect with respect to the interstate agency.

Public Water System Supervision (Section 1443(a))

§ 35.170 Purpose.

(a) *Purpose of section.* Sections 35.170 through 35.178 govern Public Water System Supervision Grants to States (as defined in section 1401(13)(A) of the

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Safe Drinking Water Act) authorized under section 1443(a) of the Act.

(b) *Purpose of program.* Public Water System Supervision Grants are awarded to carry out public water system supervision programs including implementation and enforcement of the requirements of the Act that apply to public water systems.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 141, 142, and 143.

§ 35.172 Allotment.

(a) *Basis for allotment.* The Administrator allots funds for grants to support States' Public Water System Supervision programs based on each State's population, geographic area, numbers of community and non-community water systems, and other relevant factors.

(b) *Allotment limitation.* No State, except American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, shall be allotted less than $334,500 (which is one percent of the FY 1989 appropriation).

§ 35.175 Maximum Federal share.

The Regional Administrator may provide a maximum of 75 percent of the State's approved work plan costs.

§ 35.178 Award limitations.

(a) *Initial Grants:* The Regional Administrator will not make an initial award unless the applicant has an approved Public Water System Supervision program or agrees to establish an approvable program within one year of the initial award.

(b) *Subsequent Grants:* The Regional Administrator will not award a grant to a State after the initial award unless the applicant has assumed and maintained primary enforcement responsibility for the State's Public Water System Supervision program.

Underground Water Source Protection (Section 1443(b))

§ 35.190 Purpose.

(a) *Purpose of section.* Sections 35.190 through 35.198 govern Underground Water Source Protection Grants to States (as defined in section 1401(13)(A) of the Safe Drinking Water Act) authorized under section 1443(b) of the Act.

(b) *Purpose of program.* The Underground Water Source Protection Grants are awarded to carry out underground water source protection programs.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 124, 144, 145, 146, and 147.

§ 35.192 Basis for allotment.

The Administrator allots funds for grants to support States' underground water source protection programs based on such factors as population, geographic area, extent of underground injection practices, and other relevant factors.

§ 35.195 Maximum Federal share.

The Regional Administrator may provide a maximum of seventy-five percent of a State's approved work plan costs.

§ 35.198 Award limitation.

The Regional Administrator will only award section 1443(b) funds to States that have primary enforcement responsibility for the underground water source protection program.

Hazardous Waste Management (Section 3011(a))

§ 35.210 Purpose.

(a) *Purpose of section.* Sections 35.210 through 35.218 govern Hazardous Waste Management Grants to States (as defined in section 1004 of the Solid Waste Disposal Act) under section 3011(a) of the Act.

(b) *Purpose of program.* Hazardous Waste Management Grants are awarded to assist States in the development and implementation of authorized State hazardous waste management programs.

(c) *Associated program regulations.* Associated program regulations are at 40 CFR part 124, subparts B, E, and F; 40 CFR parts 260 through 266; 40 CFR parts 268 through 273; and 40 CFR part 279.

§ 35.212 Basis for allotment.

The Administrator allots funds for Hazardous Waste Management Grants under section 3011(b) of the Solid Waste Disposal Act based on factors including:

(a) The extent to which hazardous waste is generated, transported, treated, stored, and disposed of in the State;

(b) The extent to which human beings and the environment in the State are exposed to such waste, and;

(c) Other factors the Administrator deems appropriate.

§ 35.215 Maximum Federal share.

The Regional Administrator may provide up to 75 percent of the approved work plan costs.

§ 35.218 Award limitation.

The Regional Administrator will not award Hazardous Waste Management Grants to a State with interim or final hazardous waste authorization unless the applicant is the lead agency designated in the authorization agreement.

Pesticide Cooperative Enforcement (Section 23(a)(1))

§ 35.230 Purpose.

(a) *Purpose of section.* Sections 35.230 through 35.235 govern Pesticide Enforcement Cooperative Agreements to States (as defined in section 2 of Federal Insecticide, Fungicide, and Rodenticide Act) under section 23(a)(1) of the Act.

(b) *Purpose of program.* Pesticides Enforcement Cooperative Agreements are awarded to assist States to implement pesticide enforcement programs.

(c) *Program regulations.* Associated program regulations are at 40 CFR parts 150 through 189 and 19 CFR part 12.

§ 35.232 Basis for allotment.

(a) *Factors for FIFRA enforcement program funding.* The factors considered in allotment of funds for enforcement of FIFRA are:

(1) The State's population,

(2) The number of pesticide-producing establishments,

(3) The numbers of certified private and commercial pesticide applicators,

(4) The number of farms and their acreage, and

(5) As appropriate, the State's potential farm worker protection concerns.

(b) *Final allotments.* Final allotments are negotiated between each State and the appropriate Regional Administrator.

§ 35.235 Maximum Federal share.

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

Pesticide Applicator Certification and Training (Section 23(a)(2))

§ 35.240 Purpose.

(a) *Purpose of section.* Sections 35.240 through 35.245 govern Pesticide Applicator Certification and Training Grants to States (as defined in section 2 of Federal Insecticide, Fungicide, and Rodenticide Act) under section 23(a)(2) of the Act.

(b) *Purpose of program.* Pesticide Applicator Certification and Training Grants are awarded to train and certify restricted use pesticide applicators.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 162, 170, and 171.

§ 35.242 Basis for allotment.

The Regional Administrator considers two factors in allotting pesticides

applicator certification and training funds:

(a) The number of farms in each State; and

(b) The numbers of private and commercial applicators requiring certification and recertification in each State.

§ 35.245 Maximum Federal share.

The Regional Administrator may provide up to 50 percent of the approved work plan costs.

Pesticide Program Implementation (Section 23(a)(1))

§ 35.250 Purpose.

(a) *Purpose of section.* Sections 35.250 through 35.259 govern Pesticide Program Implementation Cooperative Agreements to States (as defined in section 2 of Federal Insecticide, Fungicide, and Rodenticide Act) under section 23(a)(1) of the Act.

(b) *Purpose of program.* Pesticide Program Implementation Cooperative Agreements are awarded to assist States to develop and implement pesticide programs, including programs that protect farm workers, groundwater, and endangered species from pesticide risks and for other pesticide management programs designated by the Administrator.

(c) *Program regulations.* Associated program regulations are at 40 CFR parts 150 through 189 and 19 CFR part 12.

§ 35.251 Basis for allotment.

(a) *Factors for pesticide program implementation funding.* The factors considered in allotment of funds for pesticide program implementation are based upon potential ground water, endangered species, and worker protection concerns in each State relative to other States and on other factors the Administrator deems appropriate for these or other pesticide program implementation activities.

(b) *Final allotments.* Final allotments are negotiated between each State and the appropriate Regional Administrator.

§ 35.252 Maximum Federal share.

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

Nonpoint Source Management (Section 319(h))

§ 35.260 Purpose.

(a) *Purpose of section.* Sections 35.260 through 35.268 govern Nonpoint Source Management Grants to States (as defined in section 502 of the Clean Water Act) authorized under section 319 of the Act.

(b) *Purpose of program.* Nonpoint Source Management Grants may be awarded for the implementation of EPA-approved nonpoint source management programs, including ground-water quality protection activities, that will advance the implementation of a comprehensive approved nonpoint source management program.

§ 35.265 Maximum Federal share.

The Regional Administrator may provide up to 60 percent of the approved work plan costs in any fiscal year. The non-federal share of costs must be provided from non-federal sources.

§ 35.266 Maintenance of effort.

To receive section 319 funds in any fiscal year, a State must agree to maintain its aggregate expenditures from all other sources for programs for controlling nonpoint pollution and improving the quality of the State's waters at or above the average level of such expenditures in Fiscal Years 1985 and 1986.

§ 35.268 Award limitations.

The following limitations apply to funds appropriated and awarded under section 319(h) of the Act in any fiscal year.

(a) *Award amount.* The Regional Administrator will award no more than 15 percent of the amount appropriated to carry out section 319(h) of the Act to any one State. This amount includes any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of the State.

(b) *Financial assistance to persons.* States may use funds for financial assistance to persons only to the extent that such assistance is related to the cost of demonstration projects.

(c) *Administrative costs.* Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with these funds shall not exceed 10 percent of the funds the State receives in any fiscal year. The cost of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs are not subject to this limitation.

(d) *Requirements.* The Regional Administrator will not award section 319(h) funds to a State unless:

(1) *Approved assessment report.* EPA has approved the State's assessment report on nonpoint sources, prepared in accordance with section 319(a) of the Act;

(2) *Approved State management program.* EPA has approved the State's management program for nonpoint sources, prepared in accordance with section 319(b) of the Act;

(3) *Progress on reducing pollutant loadings.* The Regional Administrator determines that the State made satisfactory progress in the preceding fiscal year in meeting its schedule for achieving implementation of best management practices to reduce pollutant loadings from categories of nonpoint sources, or particular nonpoint sources, designated in the State's management program. The State must have developed this schedule in accordance with section 319(b)(2)(C) of the Act;

(4) *Activity and output descriptions.* The work plan briefly describes each significant category of nonpoint source activity and the work plan commitments to be produced for each category; and

(5) Significant watershed projects. For watershed projects whose costs exceed $50,000, the work plan also contains:

(i) A brief synopsis of the watershed implementation plan outlining the problem(s) to be addressed;

(ii) The project's goals and objectives; and

(iii) The performance measures or environmental indicators that will be used to evaluate the results of the project.

Lead-Based Paint Program (Section 404(g))

§ 35.270 Purpose.

(a) *Purpose of section.* Sections 35.270 through 35.278 govern Lead-Based Paint Program Grants to States (as defined in section 3 of the Toxic Substances Control Act), under section 404(g) of the Act.

(b) *Purpose of program.* Lead-Based Paint Program Grants are awarded to develop and carry out authorized programs to ensure that individuals employed in lead-based paint activities are properly trained; that training programs are accredited; and that contractors employed in such activities are certified.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR part 745.

§ 35.272 Funding coordination.

Recipients must use the lead-based paint program funding in a way that complements any related assistance they receive from other federal sources for lead-based paint activities.

State Indoor Radon Grants (Section 306)

§ 35.290 Purpose.

(a) *Purpose of section.* Sections 35.290 through 35.298 govern Indoor Radon

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Grants to States (as defined in section 3 of the Toxic Substances Control Act, which include territories and the District of Columbia) under section 306 of the Toxic Substances Control Act.

(b) *Purpose of program.* (1) State Indoor Radon Grants are awarded to assist States with the development and implementation of programs that assess and mitigate radon and that aim at reducing radon health risks. State Indoor Radon Grant funds may be used for the following eligible activities:

(i) Survey of radon levels, including special surveys of geographic areas or classes of buildings (such as public buildings, school buildings, high-risk residential construction types);

(ii) Development of public information and education materials concerning radon assessment, mitigation, and control programs;

(iii) Implementation of programs to control radon on existing and new structures;

(iv) Purchase by the State of radon measurement equipment and devices;

(v) Purchase and maintenance of analytical equipment connected to radon measurement and analysis, including costs of calibration of such equipment;

(vi) Payment of costs of Environmental Protection Agency-approved training programs related to radon for permanent State or local employees;

(vii) Payment of general overhead and program administration costs in accordance with § 35.298(d);

(viii) Development of a data storage and management system for information concerning radon occurrence, levels, and programs;

(ix) Payment of costs of demonstration of radon mitigation methods and technologies as approved by EPA, including State participation in the Environmental Protection Agency Home Evaluation Program; and

(x) A toll-free radon hotline to provide information and technical assistance.

(2) States may use grant funds to assist local governments in implementation of activities eligible for assistance under paragraphs (b)(1)(ii), (iii), and (vi) of this section.

(3) In implementing paragraphs (b)(1)(iv) and (ix) of this section, a State should make every effort, consistent with the goals and successful operation of the State radon program, to give preference to low-income persons.

(4) Recipients may not use State Radon Program Grant funds to cover the costs of proficiency rating programs under section 305(a)(2) of the Act.

§ 35.292 Basis for allotment.

(a) The Regional Administrator will allot State Indoor Radon Grant funds based on the criteria in EPA Guidance in accordance with section 306(d) and (e) of the Toxic Substances Control Act.

(b) No State may receive a State Indoor Radon Grant in excess of 10 percent of the total appropriated amount made available each fiscal year.

§ 35.295 Maximum Federal share.

The Regional Administrator may provide State agencies up to 50 percent of the approved costs for the development and implementation of radon program activities.

§ 35.298 Award limitations.

(a) The Regional Administrator shall not include State Indoor Radon funds in a Performance Partnership Grant awarded to another State Agency without consulting with the State Agency which has the primary responsibility for radon programs as designated by the Governor of the affected State.

(b) No grant may be made in any fiscal year to a State which in the preceding fiscal year did not satisfactorily implement the activities funded by the grant in the preceding fiscal year.

(c) The costs of radon measurement equipment or devices (see § 35.290(b)(1)(iv)) and demonstration of radon mitigation, methods, and technologies (see § 35.290(b)(1)(ix)) shall not, in the aggregate, exceed 50 percent of a State's radon grant award in a fiscal year.

(d) The costs of general overhead and program administration (see § 35.290(b)(1)(vii)) of a State Indoor Radon grant shall not exceed 25 percent of the amount of a State's Indoor Radon Grant in a fiscal year.

(e) A State may use funds for financial assistance to persons only to the extent such assistance is related to demonstration projects or the purchase and analysis of radon measurement devices.

(f) Recipients must provide the Regional Administrator all radon-related information generated in its grant supported activities, including the results of radon surveys, mitigation demonstration projects, and risk communication studies.

(g) Recipients must maintain and make available to the public, a list of firms and individuals in the State that have received a passing rating under the EPA proficiency rating program under section 305(a)(2) of the Act.

Toxic Substances Compliance Monitoring (Section 28)

§ 35.310 Purpose.

(a) *Purpose of section.* Sections 35.310 through 35.315 govern Toxic Substances Compliance Monitoring Grants to States (as defined in section 3(13) of the Toxic Substances Control Act) under section 28(a) of the Act.

(b) *Purpose of program.* Toxic Substances Compliance Monitoring Grants are awarded to establish and operate compliance monitoring programs to prevent or eliminate unreasonable risks to health or the environment associated with chemical substances or mixtures within the States with respect to which the Administrator is unable or not likely to take action for their prevention or elimination.

(c) *Associated program regulations.* Associated program regulations are at 40 CFR parts 700 through 799.

§ 35.312 Competitive process.

EPA will award Toxic Substances Control Act Compliance Monitoring grant funds to States through a competitive process in accordance with national program guidance.

§ 35.315 Maximum Federal share.

The Regional Administrator may provide up to 75 percent of the approved work plan costs.

§ 35.318 Award limitation.

If the toxic substances compliance monitoring grant funds are included in a Performance Partnership Grant, the toxic substances compliance monitoring work plan commitments must be included in the Performance Partnership Grant work plan.

State Underground Storage Tanks (Section 2007(f)(2))

§ 35.330 Purpose.

(a) *Purpose of section.* Sections 35.330 through 35.335 govern Underground Storage Tank Grants to States (as defined in section 1004 of the Solid Waste Disposal Act) under section 2007(f)(2) of the Act.

(b) *Purpose of program.* State Underground Storage Tank Grants are awarded to States to develop and implement a State underground storage tank release detection, prevention, and corrective action program under Subtitle I of the Resource Conservation and Recovery Act.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 280 through 282.

§ 35.332 Basis for allotment.

The Administrator allots State Underground Storage Tank Grant funds

to each regional office. Regional offices award funds to States based on their programmatic needs and applicable EPA guidance.

§ 35.335 Maximum Federal share.

The Regional Administrator may provide up to 75 percent of the approved work plan costs.

Pollution Prevention Incentives for States (Section 6605)

§ 35.340 Purpose.

(a) *Purpose of section.* Sections 35.340 through 35.349 govern Pollution Prevention Incentive for States Grants under section 6605 of the Pollution Prevention Act.

(b) *Purpose of program.* Pollution Prevention Incentives for States Grants are awarded to promote the use of source reduction techniques by businesses.

§ 35.342 Competitive Process.

EPA regions award Pollution Prevention Incentives for States Grants to State programs through a competitive process in accordance with EPA guidance. When evaluating State applications, EPA must consider, among other criteria, whether the proposed State program would:

(a) Make specific technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice to businesses seeking assistance in the development of source reduction plans;

(b) Target assistance to businesses for whom lack of information is an impediment to source reduction; and

(c) Provide training in source reduction techniques. Such training may be provided through local engineering schools or other appropriate means.

§ 35.343 Definitions.

In addition to the definitions in § 35.102, the following definition, Pollution prevention/Source reduction, applies to the Pollution Prevention Incentives for States Grants program and to §§ 35.340 through 35.349:

(a) Pollution prevention/source reduction is any practice that:

(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal;

(2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants; or

(3) Reduces or eliminates the creation of pollutants through

(i) Increased efficiency in the use of raw materials, energy, water, or other resources; or

(ii) Protection of natural resources by conservation.

(b) Pollution prevention/source reduction does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

§ 35.345 Eligible applicants.

Applicants eligible for funding under this grant program include any agency or instrumentality, including State universities, of the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§ 35.348 Award limitation.

If the Pollution Prevention Incentives for States Grants are included in a Performance Partnership Grant, the work plan commitments must be included in the Performance Partnership Grant work plan (see § 35.138).

§ 35.349 Maximum Federal share.

The Federal share for Pollution Prevention Incentives for States Grants will not exceed 50 percent of the allowable pollution prevention incentives to States project cost.

Water Quality Cooperative Agreements (Section 104(b)(3))

§ 35.360 Purpose.

(a) *Purpose of section.* Sections 35.360 through 35.364 govern Water Quality Cooperative Agreements to State water pollution control agencies and interstate agencies (as defined in section 502 of the Clean Water Act) and local government agencies under section 104(b)(3) of the Act. These sections do not govern Water Quality Cooperative Agreements to other entities eligible under sections 104(b)(3); those cooperative agreements generally are subject to the uniform administrative requirements of 40 CFR part 30.

(b) *Purpose of program.* EPA awards Water Quality Cooperative Agreements for investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. EPA issues guidance each year advising EPA regions and headquarters regarding appropriate priorities for funding for this program. This guidance may include such focus areas as National Pollutant Discharge Elimination System watershed permitting, urban wet weather programs, or innovative pretreatment program or biosolids projects.

§ 35.362 Competitive process.

EPA will award Water Quality Cooperative Agreement funds through a competitive process in accordance with national program guidance.

§ 35.364 Maximum Federal share.

The Regional Administrator may provide up to 100 percent of approved work plan costs.

State Wetlands Development Grants (Section 104(b)(3))

§ 35.380 Purpose.

(a) *Purpose of section.* Sections 35.380 through 35.385 govern State Wetlands Development Grants for State and interstate agencies (as defined in section 502 of the Clean Water Act) and local government agencies under section 104(b)(3) of the Act. These sections do not govern wetlands development grants to other entities eligible under section 104(b)(3); those grants generally are subject to the uniform administrative requirements of 40 CFR part 30.

(b) *Purpose of program.* EPA awards State Wetlands Development Grants to to assist in the development of new, or refinement of existing, wetlands protection and management programs.

§ 35.382 Competitive process.

State Wetlands Development Grants are awarded on a competitive basis. EPA annually establishes a deadline for receipt of proposed grant project applications. EPA reviews applications and decides which grant projects to fund in a given year based on criteria established by EPA. After the competitive process is complete, the recipient can, at its discretion, accept the award as a State Wetlands Development Grant or add the funds to a Performance Partnership Grant. If the recipient chooses to add the funds to a Performance Partnership Grant, the wetlands development program work plan commitments must be included in the Performance Partnership Grant work plan.

§ 35.385 Maximum Federal share.

EPA may provide up to 75 percent of the approved work plan costs for the development or refinement of a wetlands protection and management program.

State Administration (Section 205(g))

§ 35.400 Purpose.

(a) *Purpose of section.* Sections 35.400 through 35.408 govern State Administration Grants to States (as defined in section 502 of the Clean Water Act) authorized under section 205(g) of the Act.

(b) *Purpose of program.* EPA awards these grants for the following two purposes:

(1) *Construction management grants.* A State may use section 205(g) funds for administering elements of the construction grant program under sections 201, 203, 204, and 212 of the Clean Water Act and for managing waste treatment construction grants for small communities. A State may also use construction management assistance funds for administering elements of a State's construction grant program which are implemented without federal grants, if the Regional Administrator determines that those elements are consistent with 40 CFR part 35, subpart I.

(2) *Permit and planning grants.* A State may use section 205(g) funds for administering permit programs under sections 402 and 404, including Municipal Wastewater Pollution Prevention activities under an approved section 402 program and State operator training programs, and for administering statewide waste treatment management planning programs, including the development of State biosolids management programs, under section 208(b)(4). Some of these activities may also be eligible for funding under sections 106 (Water Pollution Control), 205(j)(2) (Water Quality Management Planning), and 104(b)(3) (Water Quality Cooperative Agreements and Wetlands Development Grants) of the Clean Water Act. (See §§ 35.160, 35.410, 35.360, and 35.380.)

(c) *Associated program requirements.* Program requirements for State construction management activities under delegation are provided in 40 CFR part 35, subparts I and J. Program requirements for water quality management activities are provided in 40 CFR part 130.

§ 35.402 Allotment.

Each State may reserve up to four percent of the State's authorized construction grant allotment as determined by Congress or $400,000, whichever is greater for section 205(g) grants.

§ 35.405 Maintenance of effort.

To receive funds under section 205(g), a State agency must expend annually for recurrent section 106 program expenditures an amount of non-federal funds at least equal to such expenditures during fiscal year 1977, unless the Regional Administrator determines that the reduction is attributable to a non-selective reduction of expenditures in State executive branch agencies (see § 35.165).

§ 35.408 Award limitations.

The Regional Administrator will not award section 205(g) funds:

(a) For construction management grants unless there is a signed agreement delegating responsibility for administration of those activities to the State.

(b) For permit and planning grants before awarding funds providing for the management of a substantial portion of the State's construction grants program. The maximum amount of permit and planning grants a State may receive is limited to the amount remaining in its reserve after the Regional Administrator allows for full funding of the management of the construction grant program under full delegation.

(c) For permit and planning grants unless the work plan submitted with the application shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under sections 106 (Water Pollution Control) and 205(j) (Water Quality Management Planning) of the Clean Water Act.

Water Quality Management Planning Grants (Section 205(j)(2))

§ 35.410 Purpose.

(a) *Purpose of section.* Sections 35.410 through 35.418 govern Water Quality Management Planning Grants to States (as defined in section 502 of the Clean Water Act) authorized under section 205(j)(2) of the Act.

(b) *Purpose of program.* EPA awards Water Quality Management Planning Grants to carry out water quality management planning activities. Some of these activities may also be eligible for funding under sections 106 (Water Pollution Control), 104(b)(3) (Water Quality Cooperative Agreements and Wetlands Development Grants) and section 205(g) (State Administration Grants) of the Clean Water Act. (See §§ 35.160, 35.360, 35.380, and 35.400.) EPA awards these grants for purposes such as:

(1) Identification of the most cost-effective and locally acceptable facility and nonpoint measures to meet and maintain water quality standards.

(2) Development of an implementation plan to obtain State and local financial and regulatory commitments to implement measures developed under paragraph (b)(1) of this section.

(3) Determination of the nature, extent, and causes of water quality problems in various areas of the State and interstate region.

(4) Determination of those publicly owned treatment works which should be constructed with State Revolving Fund assistance. This determination should take into account the relative degree of effluent reduction attained, the relative contributions to water quality of other point or nonpoint sources, and the consideration of alternatives to such construction.

(5) Implementation of section 303(e) of the Clean Water Act.

(c) Program requirements for water quality management planning activities are provided in 40 CFR part 130.

§ 35.412 Allotment.

States must reserve, each fiscal year, not less than $100,000 nor more than one percent of the State's construction grant allotment as determined by Congress for Water Quality Management Planning Grants under section 205(j)(2). However, Guam, the Virgin Islands, American Samoa and the Commonwealth of the Northern Mariana Islands must reserve a reasonable amount for this purpose. (See 40 CFR 35.3110(g)(4) regarding reserves from State allotments under Title VI of the Clean Water Act for section 205(j) grants.)

§ 35.415 Maximum Federal share.

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

§ 35.418 Award limitations.

The following limitations apply to funds awarded under section 205(j)(2) of the Clean Water Act. The Regional Administrator will not award these grants to a State agency:

(a) Unless the agency develops its work plan jointly with local, regional and interstate agencies and gives funding priority to such agencies and designated or undesignated public comprehensive planning organizations to carry out portions of that work plan.

(b) Unless the agency reports annually on the nature, extent, and causes of water quality problems in various areas of the State and interstate region.

(c) Unless the work plan submitted with the application shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under section 106 (Water Pollution Control) of the Clean Water Act.

PART 745—[AMENDED]

4. The authority citation for Part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681–2692, and 42 U.S.C. 4852d.

5. EPA is proposing to remove 40 CFR 745.330.

[FR Doc. 99–17341 Filed 7–22–99; 8:45 am]
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Federal Register

Friday
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Part III

Environmental Protection Agency

40 CFR Part 35
Environmental Program Grants for Indian Tribes; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[FRL–6373–2]

RIN 2030–AA56

Environmental Program Grants for Indian Tribes

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise and update requirements in several Environmental Protection Agency (EPA) regulations, particularly subpart A of 40 CFR part 35, governing grants to Indian Tribes and Intertribal Consortia. It creates a new Tribal-specific subpart which contains only the provisions for environmental program grants that apply to Tribes; simplifies, clarifies, and streamlines current provisions for environmental program grants to Tribes, and addresses the Performance Partnership Grant (PPG) program for Tribes. The PPG program fosters EPA's continuing efforts to improve partnerships with its Tribal recipients by increasing flexibility in using environmental program funding. The regulation reflects efforts by EPA and its Tribal partners to increase administrative and programmatic flexibility for Tribes while moving toward improved environmental protection.

DATES: Please submit comments on this proposed rule by September 7, 1999.

ADDRESSES: Written comments should be submitted to: Performance Partnership Grants—Tribal Comment Clerk (Docket #WD–98–16); Water Docket (MC–4104); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460. Comments may be hand-delivered to the Water Docket; U.S. Environmental Protection Agency; 401 M Street, SW; East Tower Basement; Washington, DC 20460. Comments may be submitted electronically to owdocket@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Maureen J. Ross, Grants Policy, Information, and Training Branch (3903R), United States Environmental Protection Agency, 401 M. Street, SW, Washington, DC 20460 (202) 564–5356.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities regulated by this action are eligible to receive the environmental grants listed in 40 CFR 35.501. Regulated categories and entities include:

Category	Regulated entities
Government ...	Federally recognized Indian Tribal Governments.
Other Entities	Intertribal Consortia.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the definitions of Tribe and Intertribal Consortium in § 35.502 and in the specific program rules found following § 35.540 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Comments and Record

Please submit an original and three copies of your comments and enclosures (including references). The Agency requests that commenters follow the following format: Type or print comments in ink, and cite, where possible, the paragraphs in this notice to which each comment refers. Electronic comments must be submitted as a WP5.1 or WP6.1 file or as an ASCII file avoiding the use of special characters. Comments and data will also be accepted on disks in the formats above. Electronic comments may be filed online at many Federal Depository Libraries. Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

The record for this Notice, which includes supporting documentation as well as printed, paper versions of electronic comments, is available for inspection from 9 to 4 p.m. (Eastern Time), Monday through Friday, excluding legal holidays, at the Water Docket, U.S. EPA Headquarters, 401 M Street, SW; East Tower Basement; Washington, DC 20460. For access to docket materials, please call 202–260–3027 to schedule an appointment.

III. Background

The United States Government has a unique legal relationship with Tribal governments as set forth in the United States Constitution, treaties, statutes, executive orders, and court decisions. EPA recognized this uniqueness of Tribal governments by issuing and reaffirming its 1984 policy on the "Administration of Environmental Programs on Indian Reservations." Specifically, EPA recognizes the existence of the trust responsibility in Principle Number 5 of its Indian Policy, which states that the Agency will assure that Tribal concerns and interests will be considered when Agency actions may affect Tribal environments. Additionally, in 1994, the President of the United States issued a presidential memorandum for the heads of Executive Departments and Agencies reaffirming the government-to-government relationships with Native American Tribal Governments. Most recently, on May 14, 1998, the President issued Executive Order 13084, "Consultation and Coordination With Tribal Governments." The Executive Order addresses regular and meaningful consultation and collaboration with Indian Tribal governments in developing regulatory policies on federal matters affecting their communities, reducing the imposition of unfunded mandates on Indian Tribal governments, and streamlining the application process and increasing the availability of statutory or regulatory waivers for Indian Tribal governments. Consistent with these principles, this regulation provides an easy-to-use Tribal-specific subpart to optimize the administration of Tribal assistance programs through increased flexibility and to remove procedural impediments to effective environmental programs for Indian Tribes.

In various program specific regulations in this subpart we have used terms such as "treatment as a State" or "treatment in a manner similar to a State." We have used those terms because they are in the statutes authorizing awards to Tribes. EPA recognizes that Tribes are sovereign nations with a unique legal status and a relationship to the federal government that is significantly different than that of States. EPA believes that Congress did not intend to alter this when it authorized treatment of Tribes "as States;" rather, the purpose was to reflect an intent that, insofar as possible, Tribes should assume a role in implementing the environmental statutes on Tribal land comparable to the role States play on State land.

Generally, the administration of financial assistance to Tribes is the same as the administration of financial assistance to States. However, there are provisions in some assistance programs unique to Indian Tribes. For example, Indian Tribes currently compete with each other for limited financial resources in many of the Tribal environmental grant programs listed

under § 35.501(a) of the proposed rule. Thus, the stability of annual grant funding for State, interstate, and local environmental programs grants (see 40 CFR part 35, subpart A) is not shared by Tribes. Indian Tribes do not currently receive and cannot rely on continuity of funding from year to year. This uncertainty in financial assistance makes long-term environmental planning difficult. Therefore, the administration of these programs by EPA requires a different approach compared to the approach used when administering an environmental program for State, interstate, or local government agencies.

EPA and many Indian Tribal governments have forged partnerships on a government-to-government basis . An important mechanism to further support these relationships was established when EPA requested and received authorization for a Performance Partnership Grants (PPG) program for Indian Tribes and Intertribal Consortia. (Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134, 110 Stat. 1321, 1321–299 (1996); Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, Public Law 105–65, 111 Stat. 1344, 1373 (1997)). PPGs allow eligible Tribes and Intertribal Consortia to combine environmental program grants into a single grant in order to improve environmental performance, increase programmatic flexibility, achieve administrative savings, and strengthen the partnerships between States, Indian Tribes, and EPA. Environmental program grants that may be included in PPGs are listed in 40 CFR 35.501(a) and funded under EPA's State and Tribal Assistance Grant (STAG) appropriation.

This regulation will be codified in 40 CFR part 35, subpart B, as "Environmental Program Grants for Indian Tribes." Subpart B incorporates administrative provisions for grants formerly included in 40 CFR part 35, subparts A and Q. This regulation supplements EPA's regulation, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," contained in 40 CFR part 31, which will apply to grants awarded under this regulation (including grants to Intertribal Consortia as defined in § 35.502, regardless of whether the Consortia are organized as nonprofit corporations).

We have used the terms "Tribe" and "Intertribal Consortium" to refer to the entities eligible to receive grants throughout this subpart. Those terms are defined in § 35.502 for environmental programs that do not include their own program-specific definitions. When the definition of either term is different in a specific program provision in §§ 35.540 through 35.718 of the rule, the specific definition will determine the entities eligible for a grant under such programs.

IV. Requirements for All Environmental Program Grants

Sections 35.500 through 35.518 apply to all environmental program grants covered by 40 CFR part 35, subpart B, including PPGs. This rule contains changes to foster Tribal-EPA partnerships, improve accountability for environmental and program performance, and streamline administrative requirements. Some of the rule's key features are discussed below.

Tribal-EPA Partnerships

To foster joint planning and priority setting, the rule explicitly requires consideration of Tribal priorities along with national and regional guidance in negotiating all grant work plans. All Tribes are provided flexibility through the work plan negotiation process, and, in particular, through their ability to organize work plan components in whatever way fits the Tribe best. Tribes applying for PPGs will have still greater flexibility as described in the PPG discussion below. The EPA Regional Administrator must consult with the National Program Manager before agreeing to a Tribal work plan that deviates significantly from national program guidance. Where appropriate, the grant work plan will reflect both EPA and Tribal roles and responsibilities in carrying out work plan commitments and there will be a negotiated process for jointly evaluating performance.

Core Performance Measures

Core performance measures for Tribal programs are still evolving and may be different from those negotiated by EPA National Program Managers with the States. When EPA has negotiated these measures with the Tribes, they will be included in national program guidance and incorporated, as appropriate, into Tribal/EPA Environmental Agreements and grant work plans as the basis for reporting requirements. Until the Tribal core performance measures are further developed, the regions should use significant work plan goals, objectives or commitments for measuring performance, as appropriate.

Accountability

The proposed rule accommodates results-oriented approaches to planning and managing environmental programs. Definitions and other aspects of the rule dovetail with the new Government Performance and Results Act (GPRA) and reflect efforts to establish goals and objectives as well as environmental and program performance measures at both the national and Tribal levels. The rule recognizes the need for a mix of outcome (results) and output (activity) measures for management purposes. The rule encourages Tribes and Intertribal Consortia to organize their work plans around goals and objectives to reflect the new GPRA requirements.

Administrative Changes

Under the proposed rule, Tribes can negotiate budget periods of more than one year with EPA thereby improving stability in the programs. EPA recommends, however, that budget periods not exceed five years because it is difficult to account for funds and maintain records for longer periods. (The budget period of a General Assistance Program (GAP) grant cannot exceed four years.)

The rule streamlines some requirements and eliminates other requirements associated with post-award changes to grant work plan commitments and budgets. It replaces the requirements regarding changes found in 40 CFR 31.30. Prior written approval from EPA is still required for significant changes in a recipient's work plan commitments. Written, but not prior, approval is required for work that will result in a need for increases in grant amounts and extensions of the budget period. However, recipients beginning such work without prior, written approval do so at their own risk. EPA approval is no longer required for other changes in the work plan, budget, key persons, or to carry out portions of the work through subgrants or contracts unless the Regional Administrator determines, on a case-by-case basis, that circumstances warrant imposing additional approval requirements on a particular recipient.

Pre-Award Costs

Pre-award costs may be reimbursed under the grants without prior approval so long as they are incurred within the budget period, identified in the approved grant application, and would have been allowable if incurred after the award.

Intertribal Consortia

Under this rule, EPA will treat a group of Tribes that applies for a grant

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(called an Intertribal Consortium in the rule) in the same manner as a single Tribe. Thus, in the absence of clear Congressional intent to the contrary, if a Tribe is eligible for a particular grant, EPA will also treat a group of individually eligible Tribes as eligible for the grant. EPA believes this approach is a practical, reasonable and prudent way to help interested Tribes strengthen environmental protection when limited funding is available to support Tribal environmental programs. Tribes that form Consortia may be able to use their limited resources more efficiently and address environmental issues more effectively than they could if each Tribe separately developed and maintained separate environmental programs Accordingly, Intertribal Consortia as defined in § 35.502, will be eligible to receive grants under the programs listed in 40 CFR 35.501.

For all grants except General Assistance Program (GAP) grants, all members of an Intertribal Consortium must be eligible to receive the grant and must authorize the Consortium to apply for and receive the grant. This means, for example, that for a Consortium to be eligible for a Clean Water Act section 106 grant, each member of the Consortium must establish that it is a federally recognized Tribe and that it has met the requirement for treatment in a manner similar to a State, because that is required for individual Tribes seeking section 106 grants. If a grant authority does not require Tribes to establish eligibility for treatment in a manner similar to a State to receive a grant, then the authorizing members of a Consortium need not satisfy that prerequisite.

For GAP grants, an Intertribal Consortium will be eligible if (1) a majority of the Consortium's members meet the eligibility requirements for the grant; (2) all members that meet the eligibility requirements authorize the Consortium to apply for and receive the grant; and (3) only the members that meet the eligibility requirements will benefit directly from the grant project and the Consortium agrees to a grant condition to that effect. This means that a Consortium may receive a GAP grant even if the Consortium includes Tribal governments that are not recognized as eligible for the special services provided by the United States to Indians because of their status as Indians so long as the Consortium meets the three requirements specified above. EPA decided to impose somewhat less restrictive requirements on Intertribal Consortia seeking GAP grants because the Indian Environmental General Assistance Program Act of 1992, 42 U.S.C. 4368b (IEGAPA), explicitly authorizes GAP grants to an "intertribal consortium," which it defines as "a partnership of two or more Indian Tribal governments authorized by the governing bodies of those Tribes to apply for and receive assistance pursuant to this section." This definition may reasonably be interpreted to include a Consortium comprised of a majority of federally recognized Tribes and a few non-recognized Tribal governments. Such a Consortium would be a partnership of federally recognized Tribes, although it would not be a partnership of only federally recognized Tribes. In effect, the recipient of the GAP grant to such an Intertribal Consortium would be a subset of the original Consortium consisting only of those individually eligible Tribes. The Agency is adopting this approach to meet those very rare circumstances where awarding a GAP grant to such a Consortium would be consistent with the intent of the IEGAPA.

EPA believes its proposed approach for making environmental program grants available to Intertribal Consortia is consistent with President Clinton's Executive Order 13084, which encourages agencies to adopt "flexible policy approaches" and to respect the principle of Indian self-government and sovereignty.

Preferences for Indians, Indian Organizations, and Indian-Owned Economic Enterprises

Section 450e(b) of the Indian Self Determination Act (25 U.S.C. 450 *et seq.*) provides:

> Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended [25 USCS 452 *et seq.*], or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians shall require to the extent feasible'
>
> (1) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and
>
> (2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77) [25 USCS § 1452].

EPA has determined that these preference requirements of the Indian Self-Determination Act apply to the award of grants, contracts, subcontracts and subgrants under the grant programs covered by this subpart. EPA seeks comments on implementing this provision. In particular, EPA seeks comments on adapting the requirements at 40 CFR 31.36(c) (governing competition in procuring property and services under a grant) to reflect the preference requirements of the Indian Self-Determination Act.

V. Performance Partnership Grants

Sections 35.530 through 35.538 contain the requirements that apply only to Performance Partnership Grants (PPGs) to Tribes or Intertribal Consortia. In a PPG, the recipient can combine funds from two or more environmental program grants into a single grant under streamlined administrative requirements. Before a Tribe or Intertribal Consortium can include funds from an EPA environmental program in a PPG, the Tribe or Intertribal Consortium must meet the requirements for that program with a few specified exceptions. For example, if a program requires treatment in a manner similar to a State, the Tribe or Tribal members of a Consortium must satisfy that requirement in order to include that program's funds in a PPG. The exceptions are requirements that restrict how a specific environmental program grant can be used after award. These requirements are not appropriate to be carried over to PPGs because after funds are awarded in a PPG, they may be used for cross-media activities or strategies and do not need to be accounted for in accordance with their original program sources. However, the source of the funds is considered by the Regional Administrator in negotiating a work plan with the applicant. See §§ 35.507(a) and 35.535. Key features of the PPG rule are discussed below.

Funds and Activities Eligible for Inclusion in a PPG

Funds for any environmental program grant listed in § 35.501 may be included in a PPG if the funds for that grant were appropriated in the same specific appropriation as the funds for PPGs. EPA will announce any changes in its appropriation acts that affect the list of programs in § 35.501.

Unlike the rule governing PPGs to States, § 35.535 of this rule allows Tribes and Intertribal Consortia to use PPG funds for any environmental activity that is eligible under the environmental programs listed in § 35.501 (except EPA-delegated or EPA-authorized activities, which still require delegation or authorization), regardless of whether a Tribe applied for or was selected for funding for that particular activity, provided that the Regional Administrator consults with the appropriate National Program Managers. The National Program Manager may expressly waive or modify the consultation requirement in national program guidance. For example, if EPA found that a Tribe was not eligible for a Clean Air Act section 105 grant, but the Tribe wanted to perform air program monitoring or inspections, the Tribe could pay for those activities with PPG funds, provided that: (1) the Regional Administrator consulted with the National Program Managers for the sources of the PPG funds (unless waived in national program guidance) and (2) the activity was included in the approved PPG work plan. The Tribe would perform these air activities using Tribal authority. To implement an EPA-delegated or authorized program under a PPG, a Tribe would need the delegation(s) or authorization(s) as required under § 35.535(a). Given the wide variety of environmental activities eligible under the General Assistance Program (GAP) (see §§ 35.540—35.548), this will allow Tribes, as determined by the Regional Administrator, to use funds from other programs that are put into a PPG for the same wide variety of activities. Furthermore, this will allow Tribes to use GAP funds, if they are included in a PPG, to implement as well as develop environmental programs.

Within the framework of EPA oversight established by §§ 35.507, 35.514(a), 35.535 and national program guidance, EPA is proposing that Tribes have considerable flexibility to use PPG funds for a broad variety of activities. EPA is proposing this approach because Tribes need to address a broad range of environmental issues, but do not have the same access to diverse funding sources as States and, generally, Tribes must compete annually for their funds while States do not. EPA believes this approach will help achieve a key purpose of the PPG program: to provide Tribes and Intertribal Consortia with the flexibility to direct resources where they are most needed to address environmental and public health priorities. EPA will retain sufficient programmatic control because § 35.535(b) requires the Regional Administrator to consult with the appropriate National Program Managers before agreeing to a work plan that would differ significantly from any of the proposed work plans submitted with the Tribe's or the Consortium's applications for funds. For example, if a Tribe or Intertribal Consortium was selected for funding in a competition based on its proposed work plan for that grant and the Tribe or Consortium proposed a PPG work plan that would significantly modify those proposed work plan activities, then the Regional Administrator would have to consult with the National Program Manager associated with the funding source (unless waived in national program guidance). Accordingly, the Regional Administrator will be responsible for ensuring that the Tribes and Intertribal Consortia meet the basic requirements of programs which provide funds for the PPG before the Tribes use funds for other important activities.

EPA intends to evaluate the flexibility provided under the rule regarding the activities eligible for funding under a PPG. After the third year of implementing the program, but before the end of the fifth year, the Agency will evaluate the environmental benefits of this flexibility as compared to the costs, which may include reduced accountability for funds and outcomes. Based on that evaluation, the Agency will determine whether to continue to allow Tribes to use PPG funds to perform activities under programs for which they are not eligible to receive a grant. If the Agency determines that a change in the regulation is appropriate, it will undertake a rulemaking to make such a change.

Administrative Flexibility

A primary advantage of PPGs is the administrative flexibility provided to all PPG recipients. A PPG requires only a single application, work plan, and budget. Once funds are awarded in a PPG, the Tribe or Intertribal Consortium can direct the funds as needed to achieve work plan commitments and does not need to account for funds in accordance with their original program sources. These administrative features also make it possible for Tribes to negotiate a work plan that includes cross-media or innovative strategies for addressing environmental problems.

Cost Share

The PPG cost share is the sum of the cost shares required for all individual program grants included in the PPG in accordance with 40 CFR 35.536(b) and (c) for each individual program grant included in the PPG. EPA will not require Tribes and Intertribal Consortia to provide a PPG cost share for funds from programs which do not require cost shares, such as GAP. (Cost sharing requirements for individual programs are found under §§ 35.540 through 35.718.) For funds from programs with a cost share requirement of five percent or less under the provisions of §§ 35.540 through 35.718, the PPG cost share will be the same as the cost share for the individual programs, as identified in §§ 35.540 through 35.718. For funds from programs with a required cost share greater than five percent, EPA is proposing a PPG cost share similar to that required under the Tribal Air Pollution Control program provision found at § 35.575. For funds from such programs, EPA will require Tribes to provide a cost share of five percent; however, after the first two years, the Regional Administrator will determine through an objective assessment whether the Tribe or the members of an Intertribal Consortium meet socio-economic indicators that demonstrate the ability of the Tribe or the Intertribal Consortium to provide a cost share greater than five percent. If the Regional Administrator determines that the Tribe or members of the Intertribal Consortium meet such indicators, then the Regional Administrator shall increase the required cost share up to a maximum of 10 percent. If the Regional Administrator determines that the Tribe or the members of the Intertribal Consortium do not meet such indicators, then the cost share will remain at five percent. (The required cost share for the Tribal Water Pollution Control Grant Program (Clean Water Act, section 106) is five percent. Thus, this program is not included in the grant programs whose cost share could be raised to 10 percent through the Regional Administrator assessment and determination process.)

Further, the Regional Administrator may waive the required PPG cost share at the request of the Tribe or Intertribal Consortium if the Regional Administrator determines, based on an objective assessment of socio-economic indicators that fulfilling the cost share requirement would impose undue hardship on the Tribe or members of the Intertribal Consortium.

EPA invites suggestions for the socio-economic indicators for approval of the lower cost share and waiver of cost share, as well as suggestions for how the cost share for Intertribal Consortia should be calculated.

VI. Indian Environmental General Assistance Program (GAP) and Performance Partnership Grants

An important and unique environmental program available only to Tribes and Intertribal Consortia is the Indian Environmental General Assistance Program (GAP) (40 CFR 35.540 *et seq.*) This program was created to assist Indian Tribes in developing the capacity to manage their own environmental programs. GAP offers the opportunity for Tribes to develop integrated environmental programs, to develop capacity to manage specific programs that can be delegated by EPA, and to plan and establish a core program for environmental protection. It also

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provides the opportunity for Tribes to define and develop administrative and legal infrastructures, to conduct assessments, monitoring, and planning, and to undertake additional activities to develop environmental programs within a simplified administrative framework.

GAP funds can be used more flexibly than categorical environmental program funds. EPA recognizes the Tribes' need for flexibility in using limited resources available for protecting Tribal environments, but believes that this need for flexibility must be balanced with the Agency's goals of establishing a strong Tribal environmental presence throughout Indian country and of diversifying financial resources available to Tribes for the administration of comprehensive environmental programs. GAP funds are primarily available for and critical to the development of sustainable, integrated Tribal environmental programs. The long-term goal of developing and maintaining an adequate level of funding for Tribal environmental programs will be best served not by increasing the number of activities that are funded by GAP, but rather by expanding and diversifying the use of various categorical environmental programs funds, in addition to the use of GAP funds.

When Congress authorized the PPG program, it allowed GAP funds to be included in such a grant. However, to balance competing interests in the use of GAP funds, EPA encourages Tribes and Intertribal Consortia to continue to use GAP funds, at least in the first instance, for the development of Tribal capacity to manage environmental programs and not to use these funds for environmental media activities. EPA believes that the overriding value of the General Assistance Program lies in its ability to assist Tribes in the development of their environmental capacity. This original and primary purpose of GAP has not been fully realized since some Tribes have not yet developed an environmental program capacity. Including a GAP grant in a PPG should not result in a reduction of EPA media-specific environmental program assistance available to Indian Tribes and Tribal Consortia.

VII. Implementing GPRA

EPA has developed an approach toward the integrated implementation of GPRA, the Chief Financial Officers Act (CFOA), and the Federal Financial Management Improvement Act of 1996 (FFMIA). These laws provide EPA with a framework to demonstrate to Congress and the taxpayers the costs to the federal government of EPA's program accomplishments or outcomes. Tribes and Intertribal Consortia, by virtue of delegated program authorities and as recipients of EPA grant funds, play an integral part in achieving those goals and objectives. Thus EPA's reports of Agency resources associated with results-based outcomes will incorporate—at some level—expenditures incurred in the form of payments to the Tribes under grants and cooperative agreements. In order to comply with the Paperwork Reduction Act and the federal government's general grant regulations, EPA also has a responsibility to minimize additional administrative reporting requirements and costs borne by the Tribes. In addition, under current regulations EPA generally may not impose accounting requirements on Tribes beyond those currently required by 40 CFR part 31.

EPA will therefore use the budget information that Tribes and Intertribal Consortia provide in grant applications as a basis for linking the Agency's actual expenditures with EPA's results-based accomplishments or outcomes. EPA will be able to sufficiently rely on Tribal budget information to determine the costs of EPA's results-based outcomes based on the following three requirements of the proposed regulation:

(1) Tribes and Intertribal Consortia provide the program budget information required as part of the application;

(2) EPA and the recipients explicitly define work plan goals, objectives, outcomes, and outputs, as well as the program flexibility contained in the work plan; and

(3) Recipients report back on work plan accomplishments.

The proposed rule ensures that Tribes and Intertribal Consortia will meet these three conditions. EPA will thus have a reasonable basis for associating the costs of its grants with the Agency's results-based outcomes.

EPA's Regional offices, with necessary consultation with recipients, will be responsible for cross-walking the State budget information (grant application and work plan data) into the GPRA goals and objectives architecture. If a grant is subsequently amended to reflect significant adjustments to work plan commitments, the region will consult with the State to develop an estimate of the budget associated with the revision so that it can be reflected in regional GPRA reporting. The Office of the Chief Financial Officer will provide regions with guidance on the approach to use for the cross-walk process to ensure that the results achieved by States with EPA funds are captured in the Agency's Annual Performance Reports.

VIII. Program Specific Provisions

Requirements applicable to each environmental grant program, such as the requirements regarding eligibility and cost share, are located in 40 CFR 35.540 through 35.718.

Programs Not Specifically Available to Tribes

Sections 28 and 306 of the Toxic Substances Control Act (TSCA) and section 6605 of the Pollution Prevention Act (PPA) provide explicit authority for grants to States, but are silent regarding grants to Tribes. This rule reflects EPA's determination that those statutes may also be interpreted to authorize grants to Tribes for radon abatement (TSCA section 306) and toxic substances compliance monitoring programs (TSCA sections 28), and reaffirms EPA's determination that Tribes are eligible for Pollution Prevention Incentive grants under section 6605 of the PPA (*see, e.g.,* 56 FR 11553 (1991)).

Previously, EPA determined that it has the authority to approve Tribal lead-based paint abatement certification and training programs and make grants to Tribes under section 404(g) of TSCA for the development and implementation of such programs even though TSCA makes no mention of Tribes. 61 FR 45778, 45805–808 (1996). The Agency reasoned that its interpretation of TSCA is governed by the principles of *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984) and that because Congress had not explicitly stated its intent in adopting the statutory provision, the Agency could adopt an interpretation which in its expert judgment is reasonable in light of the goals and purposes of the statute. EPA opined further that since TSCA did not define a role for Tribes, there was an ambiguity in Congressional intent and therefore, the Agency's interpretation of TSCA to allow Tribes to apply for program authorization was permissible under Chevron. EPA reasoned further that this interpretation is consistent with Supreme Court precedent holding that limitations on Tribal sovereignty must be "unmistakably clear," *Montana* v. *Blackfeet Indian Tribe,* 471 U.S. 759 (1985), and that statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted for their benefit. *County of Yakima* v. *Yakima Indian Nation,* 502 U.S. 251, 268 (1992). Finally, EPA noted that allowing Tribes to apply for program authorization is consistent with the general principles of federal Indian law "encouraging tribal independence," *Ramah Navaho Sch. Bd.* v. *Bureau of Revenue,* 458 U.S. 832, 846 (1985), and the Agency's Indian policy which states that environmental programs in Indian country will be implemented to the maximum extent possible by Tribal governments. In light of these principles, EPA reasoned that Tribes are also eligible for grants to develop and implement lead-based paint certification and training programs under section 404(g) of TSCA.

Consistent with the reasoning that warranted EPA's determination with respect to Tribal lead program approval and grant authority, EPA interprets sections 28 and 306 of TSCA and section 6605 of PPA to authorize grants to Tribes as well as States, even though there is no program approval or authorization associated with the grant programs for radon abatement, toxics substance compliance monitoring, or pollution prevention incentives. While Congress did not expressly provide a role for Tribes in either TSCA or PPA, both statutes were clearly intended to have comprehensive, nationwide coverage—including the provisions regarding financial assistance for these programs. EPA does not believe that Congress intended the Agency to provide grants exclusively to States and thereby leave Tribal lands without the benefit of the grant assistance for these programs, since the problems and goals they address—toxic substances, radon abatement and pollution prevention—are relevant throughout the nation in both State and Tribal areas. Therefore, EPA has determined that it is appropriate to provide grants to Tribes for Radon Abatement programs under section 306 of TSCA, Toxics Substances Compliance Monitoring programs under section 28 of TSCA, and Pollution Prevention Incentives programs under section 6605 of PPA, EPA invites comments on this issue.

In order to be eligible for a grant under TSCA section 28, TSCA section 306, or PPA section 6605, a Tribe or each member of an Intertribal Consortium must establish eligibility for treatment in a manner similar to a State by demonstrating that it:

(1) Is recognized by the Secretary of Interior;

(2) Has an existing government exercising substantial governmental duties and powers;

(3) Has adequate authority to carry out the grant activities; and,

(4) Is reasonably expected to be capable, in the Regional Administrator's judgment, of administering the grant program.

If the Administrator has previously determined that an Indian Tribe has met the prerequisites in (1) and (2) for another EPA program, the Tribe need provide only that information unique to the particular program required by paragraph (3) and (4).

Public Water System Supervision Tribal Reserve

The current regulation (40 CFR 35.115(g)) provides that the EPA shall annually reserve up to three percent of each year's Public Water System Supervision (PWSS) funds for use on Indian lands. The Agency is proposing to increase the authorized amount of the reserve to up to seven percent. This increase will provide needed funds for the Tribal PWSS program without affecting States' current funding.

The Tribal reserve is used for two purposes: to allow EPA to directly implement the PWSS program on Tribal lands; and to assist Tribes with developing PWSS primacy programs. The three percent ceiling, established in 1988, was EPA's estimate of the amount that would be needed to achieve both of these purposes. Over the past 10 years, we have realized that three percent is not adequate to achieve both purposes. To date, only the Navajo Nation has submitted a complete PWSS primacy package and only three other Tribes have taken steps toward primacy. We believe that there are more Tribes which may be interested in the program but have not yet voiced that interest because they do not have the capacity to develop an adequate program. We also believe more Tribes would take interest in the program if sufficient funds were available.

In addition, the current Tribal reserve is insufficient to cover basic direct implementation needs. Tribal systems have a high number of monitoring/reporting and maximum contaminant level violations. These same systems will need to abide by upcoming drinking water regulations and will be asked to partake in several new initiatives outlined in the revised SDWA, including source water protection, capacity development, and operator certification. Although these initiatives are not required of Tribes, we believe that EPA, as the primary enforcement authority of non primacy Tribal systems, should address these initiatives on Tribal lands. Additional Tribal funding can help EPA and Tribes respond to Tribal safe drinking water needs.

EPA requested Congress to provide for funding in excess of an amount necessary for the traditional three percent reserve in fiscal year 1998 to assist Tribes in developing capacity, maintaining their own PWSS programs and to provide additional support to the Tribal PWSS Direct Implementation program. In fiscal years 1998 and 1999, EPA received an additional $3,780,500 for these purposes. In order to use those funds for Tribes, EPA needed to deviate from the regulation at 40 CFR 35.115(g), which limits EPA's Tribal PWSS reserve to three percent. Instead of continuing to deviate from the regulations, EPA proposes to raise the ceiling of our annual Tribal reserve to Aup to seven percent. With the additional $3.78M PWSS program appropriation, the ceiling of funding for Tribes can be raised to 6.91 percent (the amount we propose to give Tribes in FY–00) without taking away from States' current funding levels.

Safe Drinking Water Act and Alaska Native Villages

EPA is proposing a new interpretation of the definition of "Indian Tribe" in 42 U.S.C. 300f(14) that would include eligible Alaska Native Villages (ANVs) in that definition for purposes of PWSS and Underground Water Source Protection (also known as underground injection control (UIC)) grants under 42 U.S.C . 300j–2(a) and (b), and primacy for PWSS and UIC programs under 42 U.S.C. 300g–2, 300h–1 and 300h–4. Under this proposed approach, a federally-recognized Tribe in Alaska could seek to demonstrate that it is eligible for treatment in the same manner as a State according to the criteria established by Congress in 42 U.S.C . 300j–11 and in EPA's regulations at 40 CFR 142.72 and 145.52.

In 1988, EPA announced its interpretation that the term "Indian Tribe" in 42 U.S.C . 300(f)(14) does not include ANVs. 53 FR 37396, 37407. This interpretation was based on the Agency's reading of legislative history and EPA's view that Congress would have explicitly mentioned ANVs if it intended to include ANVs in the definition of Indian Tribes. EPA now believes it is more consistent with Congressional intent and federal Indian law and policy to interpret the term "Indian Tribe" in 42 U.S.C . 300f(14) to include Indian Tribes located in Alaska (i.e., ANVs) that otherwise meet the SDWA's definition of Indian Tribe.

Under the SDWA, the term "Indian Tribe" means "any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over any area." 42 U.S.C . 300(f)(14). In 1993, the Department of the Interior (DOI) clarified that the Alaska Native entities listed on DOI's list of federally-recognized Tribes have the same governmental status as other federally acknowledged Indian Tribes by

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virtue of their status as Indian Tribes with a government-to-government relationship with the United States; are entitled to the same protection, immunities, privileges as other acknowledged Tribes; have the right, subject to general principles of federal Indian law, to exercise the same inherent and delegated authorities available to other Tribes; and are subject to the same limitations imposed by law on other Tribes. 58 FR 54364, 54366 (1993).

Thus, because DOI has clarified that federally-recognized Tribes in Alaska have the same status as other federally-recognized Tribes, EPA believes that ANVs that otherwise meet the SDWA's definition of Indian Tribe should not be excluded from seeking PWSS and UIC program primacy or related program grants. This interpretation is consistent with the plain language of the SDWA's definition of "Indian Tribe" and EPA's policy that Indian Tribes are the appropriate entities to set environmental standards and manage their environments where they have the authority and capability to do so. *See* EPA's 1984 Indian Policy. It is also consistent with Supreme Court precedent holding that any statutory limitations on Tribal sovereignty must be stated explicitly, *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49 (1978); *Montana* v. *Blackfeet Indian Tribe*, 471 U.S. 759 (1985), and that statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted for their benefit. *County of Yakima* v. *Yakima Indian Nation*, 502 U.S. 251, 268 (1992).

EPA notes that, while this change in interpretation would include ANVs that otherwise meet the SDWA's definition of Indian Tribe within the context of the PWSS and UIC programs, any ANV wishing to seek primacy, or a primacy development grant, for either the PWSS or UIC programs would still need to demonstrate that it meets the relevant statutory and regulatory eligibility criteria, including the jurisdictional requirements contained in 42 U.S.C. 300j–11, 40 CFR 142.72 and 145.52, 40 CFR 35.676 and 35.686 of this subpart. The Agency also wants to clarify that under this proposal, EPA would evaluate, on a case-by-case basis (when requested to do so by an Alaska Tribe in an application for grant or primacy eligibility) whether an Alaska Tribe meets the criteria for program primacy or a related program grant. The State of Alaska currently has primacy for PWSS and UIC (Class II wells) for all areas in Alaska except Indian country. EPA is not proposing to amend the extent of the State's primacy through this notice.

In the 1996 amendments to the Safe Drinking Water Act, Congress added a sentence to the definition of Indian Tribe explicitly noting that the term "Indian Tribe" for purposes of the State Revolving Fund (SRF) program includes "any Native village." 42 U.S.C. 300f(14) (emphasis added). EPA believes that, through this change, Congress only intended to ensure that all Native villages may receive SRF grants. EPA believes that this provision was not intended to mean that federally-recognized Tribes carrying out substantial governmental duties and powers in Alaska are excluded from the definition of Indian Tribe for purposes other than SRF.

EPA requests comments on this change in interpretation of the definition of an Indian Tribe.

Regulations for Programs To Manage Hazardous Waste and Underground Storage Tanks

After the EPA workgroup reached closure on this proposed rulemaking, Congress authorized the Agency to award grants to Tribes "for the development and implementation of programs to manage hazardous waste, and underground storage tanks." Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L. 105–276, 112 Stat. 2461, 2499 (1998). EPA intends to include regulations for these programs in the final rule. Therefore, EPA seeks comments on providing financial assistance to Tribes for programs to manage hazardous waste and underground storage tanks.

IX. Conclusion

This Tribal-specific subpart reflects EPA's regulatory and budgetary efforts to improve the continuity and stability of financial assistance for Tribal environmental programs. Recipients will benefit from the streamlined and simplified requirements of the regulation. In addition, it will provide Tribes and Intertribal Consortia choosing to participate in the PPG program with the flexibility to better use funds to address their environmental priorities.

Regulatory Flexibility Act

The Agency has determined that the requirement in the Regulatory Flexibility Act (RFA) to prepare a regulatory flexibility analysis does not apply to this rule. A regulatory flexibility analysis must be prepared only where the Agency is required by the Administrative Procedure Act (APA) or any other statute to publish a general notice of proposed rule making (5 U.S.C. 603). Grant-related matters, such as this rule, are not subject to the notice and comment requirements of the APA (5 U.S.C. 553(a)(1)). Nor is this rule required to undergo notice and comment rule making by any other statute.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This regulation contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The UMRA excludes from the definitions of "federal intergovernmental mandate" and federal participation mandates" duties that arise from conditions of federal assistance.

National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used, the Act requires EPA to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

This proposed rule does not involve any technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. Commenters who disagree with this conclusion should indicate how the Notice is subject to the Act and identify any potentially applicable voluntary consensus standards.

Executive Order 13045

Executive Order 13045 applies to any rule that is determined to be: (1) "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA has determined that the proposed rule is not a covered regulatory action because it is not economically significant and it does not involve decisions based on environmental health and safety risks. As such, the proposed rule is not subject to the requirements of the Executive Order.

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is a "significant regulatory action" under the terms of Executive Order 12866 because the Performance Partnership Grant authority is a new type of grant authority and therefore raises novel policy issues. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions and recommendations will be documented in the public record.

Paperwork Reduction Act

In keeping with the requirements of the Paperwork Reduction Act (PRA), as amended, 44 U.S.C. 3501 *et seq.*, the information collection requirements contained in this rule have been approved by OMB under General Administrative Requirements for Assistance Programs information collection request number 0938.06 (OMB Control Number 2030–0020) and Quality Assurance Specifications and Requirements information request number 0866.05 (OMB Control Number 2080–0033). This rule does not contain any collection of information requirements beyond those already approved. Since this action imposes no new or additional information collection, reporting, or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, no information request will be submitted to the Office of Management and Budget for review.

Executive Order 12875

Under Executive Order 12875, Enhancing Intergovernmental Partnerships, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with these governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and Tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This proposed rule does not create a mandate on State, local or Tribal governments nor does it impose any enforceable duties on these entities as it governs the award of financial assistance. Instead, this proposed rule is designed to reduce the administrative burden associated with grants for environmental programs. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply.

Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments or consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule may significantly or uniquely affect the communities of Indian Tribal governments, but it will not impose substantial direct compliance costs on such communities. This rule governs financial assistance to Tribes. Any costs associated with this regulation will be incurred by a Tribe as a result of its discretionary decision to seek financial assistance. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply.

List of Subjects in 40 CFR Part 35

Environmental protection, Administrative practice and procedures, Evaluation of performance, Performance partnership grants, Requirements for specific grant programs, Work plan requirements.

Dated: June 30, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in this preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 35—[AMENDED]

1. The authority citation for part 35 continues to read as follows:

Authority: 42 U.S.C. 4368b.

2. EPA is proposing to remove subpart Q.

3. EPA is proposing to add a new subpart B to read as follows.

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Subpart B—Environmental Program Grants for Indian Tribes

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Subpart B—Environmental Program Grants—Indian Tribes

Authority: 42 U.S.C. 300f *et seq. 6901 et seq.*, 7401 *et seq.*, 13101 *et seq* 33 U.S.C. 1251 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; Pub. L. 104-134, 110 Stat. 1321, 1321–299 (1996); Pub. L. 105–65, 111 Stat. 1344, 1373 (1997).

All Grants—General

§ 35.500 Purpose of the subpart.

This subpart establishes administrative requirements for grants awarded to Indian Tribes and Intertribal Consortia for the environmental programs listed in § 35.501. This subpart supplements requirements in EPA's general grant regulations found at 40 CFR part 31. Sections 35.500 through 35.518 contain administrative requirements that apply to all environmental program grants included in this subpart. Sections 35.530 through 35.718 contain requirements that apply to specified environmental program grants. Many of these environmental programs also have programmatic and technical requirements that are published elsewhere in the Code of Federal Regulations.

§ 35.501 Environmental programs covered by the subpart.

(a) The requirements in this subpart apply to grants awarded for the following programs:

(1) Performance Partnership Grants (1996 Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134, 110 Stat. 1321, 1321–299 (1996) and Departments of Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act of 1998, Public Law 105–65, 111 Stat. 1344, 1373 (1997)).

(2) The Indian Environmental General Assistance Program Act of 1992, 42 U.S.C. 4368b.

(3) Clean Air Act. Air pollution control (section 105).

(4) Clean Water Act.

(i) Water pollution control (section 106 and 518).

(ii) Water quality cooperative agreements (section 104(b)(3)).

(iii) Wetlands development grant program (section 104(b)(3)).

(iv) Nonpoint source management (section 319(h)).

(5) Federal Insecticide, Fungicide, and Rodenticide Act.

(i) Pesticide cooperative enforcement (section 23(a)(1)).

(ii) Pesticide applicator certification and training (section 23(a)(2)).

(iii) Pesticide program implementation (section 23(a)(1)).

(6) Pollution Prevention Act of 1990. Pollution prevention incentives for Tribes (section 6605).

(7) Safe Drinking Water Act.

(i) Public water system supervision (section 1443(a)).

(ii) Underground water source protection (section 1443(b)).

(8) Toxic Substances Control Act.

(i) Lead-based paint program (section 404(g)).

(ii) Indoor radon grants (section 306).

(iii) Toxic substances compliance monitoring (section 28).

(b) Unless otherwise prohibited by statute or regulation, the requirements in § 35.500 through § 35.518 of this subpart also apply to grants to Indian Tribes and Intertribal Consortia under environmental programs established after this subpart becomes effective, if specified in Agency guidance for such programs.

§ 35.502 Definition of terms.

Terms are defined as follows when they are used in this regulation.

Budget period. The period specified in the grant agreement during which the recipient may expend or obligate funds for the purposes specified in the agreement.

Consolidated grant. A single grant made to a recipient consolidating funds from more than one environmental grant program. After the award is made, recipients must account for grant funds in accordance with the funds' original environmental program sources. Consolidated grants are not Performance Partnership Grants.

Environmental program. A program for which EPA awards grants under the authorities listed in § 35.501. The grants are subject to the requirements of this subpart.

Federal Indian reservation. All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Indian country. (1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and,

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Intertribal Consortium or Consortia. A partnership between two or more Tribes that is authorized by the governing bodies of those Tribes to apply for and receive assistance under one or more of the programs listed in § 35.501. A Consortium must have adequate documentation of the existence of the partnership and the authorization to apply for and receive assistance.

National program guidance. Guidance issued by EPA's National Program Managers for establishing and maintaining effective environmental programs. This guidance establishes national goals, objectives, and priorities as well as other information to be used in monitoring progress. The guidance may also set out specific environmental strategies, core performance measures, criteria for evaluating programs, and other elements of program implementation.

Outcome. The environmental result, effect, or consequence that will occur from carrying out an environmental program or activity that is related to an environmental or programmatic goal or objective. Outcomes must be quantitative, and they may not necessarily be achievable during a grant budget period. *See* "output."

Output. An environmental activity or effort and associated work products related to an environmental goal or objective that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative but must be measurable during a grant budget period. See "outcome."

Performance Partnership Grant. A single grant combining funds from more than one environmental program. A Performance Partnership Grant may provide for administrative savings or programmatic flexibility to direct grant resources where they are most needed to address public health and environmental priorities (see also § 35.530). Each Performance Partnership Grant has a single, integrated budget and recipients do not need to account for grant funds in accordance with the funds' original environmental program sources.

Planning target. The amount of funds that the Regional Administrator suggests a grant applicant consider in developing its application, including the work plan, for an environmental program.

Regional supplemental guidance. Guidance to environmental program grant applicants prepared by the Regional Administrator, based on the national program guidance and specific regional and applicant circumstances, for use in preparing a grant application.

Tribal Environmental Agreement (TEA). A strategic planning document designated as a TEA and signed by the Regional Administrator and an appropriate Tribal official that sets out negotiated environmental goals, objectives, outcomes, outputs, priorities, actions to be taken, and measures of performance.

Tribe. Except as otherwise defined in statute or this subpart, Indian Tribal Government (Tribe) means: any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village, which is recognized as eligible by the United States Department of the Interior for the special services provided by the United States to Indians because of their status as Indians.

Work plan. The document which identifies how and when the applicant will use funds from environmental program grants and is the basis for management and evaluation of performance under the grant agreement to produce specific outputs and outcomes (see 35.507). The work plan must be consistent with applicable statutes, regulations, and delegation or authorization agreements.

Work plan commitments. The outputs and outcomes associated with each work plan component, as established in the grant agreement.

Work plan component. A negotiated set or group of work plan commitments established in the grant agreement. A work plan may have one or more work plan components.

§ 35.503 Deviation from this subpart.

EPA will consider and may approve requests for an official deviation from non-statutory provisions of this regulation in accordance with 40 CFR 31.6.

§ 35.504 Eligibility of an Intertribal Consortium.

(a) An Intertribal Consortium is eligible to receive grants under the authorities listed in § 35.501 only if the Consortium demonstrates that all members of the Consortium meet the eligibility requirements for the grant and authorize the Consortium to apply for and receive assistance, except as provided in paragraph (b) of this section.

(b) An Intertribal Consortium is eligible to receive a grant under the

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Indian Environmental General Assistance Program Act, in accordance with § 35.540, if the Consortium demonstrates that:

(1) A majority of its members meets the eligibility requirements for the grant;

(2) All members that meet the eligibility requirements authorize the Consortium to apply for and receive assistance; and

(3) Only members that meet the eligibility requirements will benefit directly from the grant project and the Consortium agrees to a grant condition to that effect.

Preparing an Application

§ 35.505 Components of a complete application.

A complete application for an environmental program grant must:

(a) Meet the requirements in 40 CFR part 31, subpart B;

(b) Include a proposed work plan (§ 35.507 of this subpart); and

(c) Specify the environmental program and the amount of funds requested.

§ 35.506 Time frame for submitting an application.

An applicant should submit a complete application to EPA at least 60 days before the beginning of the proposed budget period.

§ 35.507 Work plans.

(a) *Bases for negotiating work plans.* The work plan is negotiated between the applicant and the Regional Administrator and reflects consideration of national, regional, and Tribal environmental and programmatic needs and priorities.

(1) *Negotiation considerations.* In negotiating the work plan, the Regional Administrator and applicant will consider such factors as national program guidance; any regional supplemental guidance; goals, objectives, and priorities proposed by the applicant; other jointly identified needs or priorities; and the planning target.

(2) *National program guidance.* If an applicant proposes a work plan that differs significantly from the goals and objectives, priorities, or performance measures in the national program guidance associated with the proposed work plan activities, the Regional Administrator must consult with the appropriate National Program Manager before agreeing to the work plan.

(3) *Use of existing guidance.* An applicant should base the grant application on the national program guidance in place at the time the application is being prepared.

(b) *Work plan requirements.*

(1) The work plan is the basis for the management and evaluation of performance under the grant agreement.

(2) An approvable work plan must specify:

(i) The work plan components to be funded under the grant;

(ii) The estimated work years and funding amounts for each work plan component;

(iii) The work plan commitments for each work plan component, and a time frame for their accomplishment;

(iv) A performance evaluation process and reporting schedule in accordance with § 35.515 of this subpart; and

(v) The roles and responsibilities of the recipient and EPA in carrying out the work plan commitments.

(3) The work plan must be consistent with applicable federal statutes, regulations, circulars, executive orders, and delegation or authorization agreements.

(c) *Tribal Environmental Agreement as work plan.* An applicant may use a Tribal Environmental Agreement (TEA) or a portion of the TEA as the work plan or part of the work plan for an environmental program grant if the portion of the TEA that is to serve as the grant work plan:

(1) Is clearly identified and distinguished from other portions of the TEA; and

(2) Meets the requirements in § 35.507(b).

§ 35.508 Budget period.

The Regional Administrator and applicant may negotiate the length of the budget period for environmental program grants, subject to limitations in appropriations and authorizing statutes.

§ 35.509 Consolidated grants.

Any applicant eligible to receive funds from more than one environmental program may submit an application for a consolidated grant. For consolidated grants, an applicant prepares a single budget and work plan covering all of the environmental programs included in the application. The consolidated budget must identify each environmental program to be included, the amount of each program's funds, and the extent to which each program's funds support each work plan component. Recipients of consolidated grants must account for grant funds in accordance with the funds' environmental program sources; funds included in a consolidated grant from a particular environmental program may be used only for that program.

EPA Action on Application

§ 35.510 Time frame for EPA action.

The Regional Administrator will review a complete application and either approve, conditionally approve, or disapprove it within 60 days of receipt. The Regional Administrator will award grants for approved or conditionally approved applications if funds are available.

§ 35.511 Criteria for approving an application.

(a) After evaluating other applications as appropriate, the Regional Administrator may approve an application if he or she determines that:

(1) The application meets the requirements of this subpart and 40 CFR part 31;

(2) The application meets the requirements of all applicable federal statutes, regulations, circulars, executive orders, and delegation or authorization agreements;

(3) The proposed work plan complies with the requirements of § 35.507 of this subpart; and

(4) The achievement of the proposed work plan is feasible, considering such factors as the applicant's existing circumstances, past performance, program authority, organization, resources, and procedures.

(b) If the Regional Administrator finds the application does not satisfy the criteria in paragraph (a) of this section, the Regional Administrator may either:

(1) Conditionally approve the application if only minor changes are required, with grant conditions necessary to ensure compliance with the criteria, or

(2) Disapprove the application in writing.

§ 35.512 Factors considered in determining award amount.

(a) After approving an application under § 35.511, the Regional Administrator will consider such factors as the amount of funds available for award to Indian Tribes and Intertribal Consortia, the extent to which the proposed work plan is consistent with EPA guidance and mutually agreed upon priorities, and the anticipated cost of the work plan relative to the proposed work plan components to determine the amount of funds to be awarded.

(b) If the Regional Administrator finds that the requested level of funding is not justified, he or she will attempt to negotiate a resolution of the issues with the applicant before determining the award amount.

§ 35.513 Reimbursement for pre-award costs.

(a) Notwithstanding the requirements of 40 CFR 31.23(a) (Period of availability of funds), and OMB cost principles, EPA may reimburse recipients for pre-award costs incurred from the beginning of the budget period established in the grant agreement if such costs would have been allowable if incurred after the award. Such costs must be specifically identified in the grant application EPA approves.

(b) The applicant incurs pre-award costs at its own risk. EPA is under no obligation to reimburse such costs unless they are included in an approved grant application .

Post-Award Requirements

§ 35.514 Amendments and other changes.

The provisions of 40 CFR 31.30 do not apply to environmental program grants awarded under this subpart. The following provisions govern amendments and other changes to grant work plans and budgets after the work plan is negotiated and a grant awarded.

(a) *Changes requiring prior approval.* The recipient needs the Regional Administrator's prior written approval to make significant post-award changes to work plan commitments. The Regional Office, in consultation with the recipient, will document approval of these changes including budgeted amounts associated with the revisions.

(b) *Changes requiring approval.* Recipients must request, in writing, grant amendments for changes requiring increases in environmental program grant amounts and extensions of the budget period. Recipients may begin implementing a change before the amendment has been approved by EPA, but do so at their own risk. If EPA approves the change, EPA will issue a grant amendment. EPA will notify the recipient in writing if the change is disapproved.

(c) *Changes not requiring approval.* Other than those situations described in paragraphs (a) and (b) of this section, recipients do not need to obtain approval for changes, including changes in grant work plans, budgets, or other parts of grant agreements, unless the Regional Administrator determines approval requirements should be imposed on a specific recipient for a specified period of time.

(d) *OMB cost principles.* The Regional Administrator may waive, in writing, approval requirements for specific recipients and costs contained in OMB cost principles.

(e) *Changes in consolidated grants.* Recipients of consolidated grants under § 35.509 may not transfer funds among environmental programs.

(f) *Subgrants.* Subgrantees must request required approvals in writing from the recipient and the recipient shall approve or disapprove the request in writing. A recipient will not approve any work plan or budget revision which is inconsistent with the purpose or terms and conditions of the federal grant to the recipient. If the revision requested by the subgrantee would result in a significant change to the recipient's approved grant which requires EPA approval, the recipient will obtain EPA's approval before approving the subgrantee's request.

§ 35.515 Evaluation of performance.

(a) *Joint evaluation process.* The applicant and the Regional Administrator will develop a process for jointly evaluating and reporting progress and accomplishments under the work plan. A description of the evaluation process and reporting schedule must be included in the work plan. The schedule must require the recipient to report at least annually and must satisfy the requirements for progress reporting under 40 CFR 31.40(b).

(b) *Elements of the evaluation process.* The evaluation process must provide for:

(1) A discussion of accomplishments as measured against work plan commitments;

(2) A discussion of the cumulative effectiveness of the work performed under all work plan components;

(3) A discussion of existing and potential problem areas; and

(4) Suggestions for improvement, including, where feasible, schedules for making improvements.

(c) *Resolution of issues.* If the joint evaluation reveals that the recipient has not made sufficient progress under the work plan, the Regional Administrator and the recipient will negotiate a resolution that addresses the issues. If the issues cannot be resolved through negotiation, the Regional Administrator may take appropriate measures under 40 CFR 31.43. The recipient may request review of the Regional Administrator's decision under the dispute processes in 40 CFR 31.70.

(d) *Evaluation reports.* The Regional Administrator will ensure that the required evaluations are performed according to the negotiated schedule and that copies of evaluation reports are placed in the official files and provided to the recipient.

§ 35.516 Direct implementation.

If funds for an environmental program remain after Tribal and Intertribal Consortia environmental program grants for that program have been awarded or because no grants were awarded, the Regional Administrator may, subject to any limitations contained in appropriation acts, use all or part of the funds to support a federal program required by law in Indian country in the absence of an acceptable Tribal program.

§ 35.517 Unused funds.

If funds for an environmental program remain after Tribal and Intertribal Consortia grants for that program have been awarded or because no grants were awarded, and the Regional Administrator does not use the funds under § 35.516 of this subpart, the Regional Administrator may award the funds to any eligible Indian Tribe or Intertribal Consortium in the region (including a Tribe or Intertribal Consortium that has already received funds) for the same environmental program or for a Performance Partnership Grant, subject to any limitations in appropriation acts.

§ 35.518 Unexpended balances.

Subject to any relevant provisions of law, if a recipient's final Financial Status Report shows unexpended balances, the Regional Administrator will deobligate the unexpended balances and make them available, either to the same recipient or other Tribes or Intertribal Consortia in the region, for environmental program grants.

§ 35.519 Preferences for Indians, Indian organizations, and Indian-owned economic enterprises.

Any grant awarded under this subpart, and any subgrant, contract, or subcontract under such grant, shall require that to the greatest extent feasible:

(a) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants be given to Indians; and

(b) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77) [25 USCS 1452].

Performance Partnership Grants

§ 35.530 Purpose of Performance Partnership Grants.

(a) *Purpose of section.* Sections 35.530 through 35.538 govern Performance Partnership Grants to Tribes and

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Intertribal Consortia authorized in the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134, 110 Stat. 1321, 1321–299 (1996) and Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, Public Law 105–65, 111 Stat. 1344, 1373 (1997).

(b) *Purpose of program.* Performance Partnership Grants enable Tribes and Intertribal Consortia to combine funds from more than one environmental program grant into a single grant with a single budget. Recipients do not need to account for Performance Partnership Grant funds in accordance with the funds' original environmental program sources; they need only account for total Performance Partnership Grant expenditures. Subject to the requirements of this subpart, the Performance Partnership Grant program is designed to:

(1) Strengthen partnerships between EPA and Tribes and Intertribal Consortia through joint planning and priority-setting and better deployment of resources;

(2) Provide Tribes and Intertribal Consortia with flexibility to direct resources where they are most needed to address environmental and public health priorities;

(3) Link program activities more effectively with environmental and public health goals and program outcomes;

(4) Foster development and implementation of innovative approaches, such as pollution prevention, ecosystem management, and community-based environmental protection strategies; and

(5) Provide savings by streamlining administrative requirements.

§ 35.532 Requirements summary.

(a) Applicants and recipients of Performance Partnership Grants must meet:

(1) The requirements in §§ 35.500 to 35.518 of this subpart which apply to all environmental program grants, including Performance Partnership Grants; and

(2) The requirements in §§ 35.530 to 35.538 of this subpart which apply only to Performance Partnership Grants.

(b) In order to include funds from an environmental program grant listed in § 35.501(a) of this subpart in a Performance Partnership Grant, applicants must:

(1) Meet the requirements for award of each environmental program from which funds are included in the Performance Partnership Grant, except the requirements at §§ 35.548(c), 35.638(b) and (c), 35.691, and 35.708 (c), (d), (e), and (g). These requirements can be found in this regulation beginning at § 35.540. If the applicant is an Intertribal Consortium, each Tribe that is a member of the Consortium must meet the requirements.

(2) Apply for the environmental program grant.

(3) Obtain the Regional Administrator's approval of the application for that grant.

(c) If funds from an environmental program are not included in a Performance Partnership Grant, an applicant is not required to meet the requirements of that environmental program in order to carry out activities eligible under that program as provided in § 35.535.

§ 35.533 Programs eligible for inclusion.

(a) *Eligible programs.* Except as provided in paragraph (b) of this section, the environmental program grants eligible for inclusion in a Performance Partnership Grant are listed in § 35.501(a)(2) through (8) of this subpart.

(b) *Changes in eligible programs.* The Administrator may, in guidance or regulation, describe subsequent additions, deletions, or changes to the list of environmental programs eligible for inclusion in Performance Partnership Grants.

§ 35.534 Eligible recipients.

(a) A Tribe or Intertribal Consortium is eligible for a Performance Partnership Grant if the Tribe or each member of the Intertribal Consortium is eligible for, and the Tribe or Intertribal Consortium receives funding from, more than one of the environmental program grants listed in § 35.501(a) in accordance with the requirements for those environmental programs.

(b) For grants to Tribes, a Tribal agency must be designated by a Tribal government or other authorized Tribal process to receive grants under each of the environmental programs to be combined in the Performance Partnership Grant.

§ 35.535 Activities eligible for funding.

(a) *Delegated or authorized activities.* A Tribe or Intertribal Consortium may use Performance Partnership Grant funds to carry out EPA-delegated or EPA-authorized activities, such as permitting and primary enforcement responsibility only if the Tribe or each member of the Intertribal Consortium receives from the Regional Administrator the delegations or authorizations to conduct such activities.

(b) *Other program activities.* Except for the limitation in paragraph (a) of this section, a Tribe or Intertribal Consortium may use Performance Partnership Grant funds for any activity that is eligible under the environmental programs listed in § 35.501(a) of this subpart, as determined by the Regional Administrator. If an applicant proposes a Performance Partnership Grant work plan that differs significantly from any of the proposed work plans approved for funding that the applicant now proposes to move into a Performance Partnership Grant, the Regional Administrator must consult with the appropriate National Program Managers before agreeing to the Performance Partnership Grant work plan. National Program Managers may expressly waive or modify this requirement for consultation in national program guidance. National Program Managers may also define in national program guidance "significant" deviations from a work plan submitted with a Tribe's or a Consortium's application for funds.

§ 35.536 Cost share requirements.

(a) The Performance Partnership Grant cost share shall be the sum of the amounts required for each environmental program grant included in the Performance Partnership Grant, as determined in accordance with paragraphs (b) and (c) of this section, unless waived under paragraph (d) of this section.

(b) For each environmental program grant included in the Performance Partnership Grant that has a cost share of five percent or less under the provisions of §§ 35.540 through 35.718, the required cost share shall be that identified in §§ 35.540 through 35.718 of this subpart.

(c) For each environmental program grant included in the Performance Partnership Grant that has a cost share of greater than five percent under the provisions of §§ 35.540 through 35.718 of this subpart, the required cost share shall be five percent of the allowable cost of the work plan budget for that program. However, after the first two years in which a Tribe or Intertribal Consortium receives a Performance Partnership Grant, the Regional Administrator must determine through objective assessment whether the Tribe or the members of an Intertribal Consortium meet socio-economic indicators that demonstrate the ability of the Tribe or the Intertribal Consortium to provide a cost share greater than five percent. If the regional Administrator determines that the Tribe or the members of Intertribal Consortium meets such indicators, then he or she shall increase the required cost share up to a maximum of 10 percent of the allowable cost of the work plan budget.

(d) The Regional Administrator may waive the cost share required under this section upon request of the Tribe or Intertribal Consortium, if he or she determines, based on an objective assessment of socio-economic indicators, that meeting the cost share would impose undue hardship.

§ 35.537 Application requirements.

An application for a Performance Partnership Grant must contain:

(a) A list of the environmental programs and the amount of funds from each program to be combined in the Performance Partnership Grant;

(b) A consolidated budget;

(c) A consolidated work plan that addresses each program being combined in the grant and which meets the requirements of § 35.507.

§ 35.538 Project period.

If the projected completion date for a work plan commitment funded under an environmental program grant that is added to a Performance Partnership Grant extends beyond the end of the project period for the Performance Partnership Grant, the Regional Administrator and the recipient will agree in writing as to how and when the work plan commitment will be completed.

Indian Environmental General Assistance Program (GAP)

§ 35.540 Purpose.

(a) *Purpose of section.* Sections 35.540 through 35.547 govern grants to Tribes and Intertribal Consortia under the Indian Environmental General Assistance Program Act of 1992 (42 U.S.C. 4368b.)

(b) *Purpose of program.* Indian Environmental General Assistance Program grants are awarded to build capacity to administer environmental programs on Indian lands by providing general assistance to plan, develop, and establish the capability to implement environmental protection programs in Indian country.

§ 35.542 Definitions.

Tribe. Any Indian Tribe, band, nation, or other organized group or community including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601, *et seq.*)), which is recognized as eligible for the special services provided by the United States to Indians because of their status as Indians.

§ 35.543 Eligible recipients.

The following entities are eligible to receive grants under this program:

(a) Tribes and

(b) Intertribal Consortia as provided in § 35.504.

§ 35.545 Eligible activities.

Tribes and Intertribal Consortia may use General Assistance Program funds for planning, developing, and establishing capability to implement environmental protection programs and to develop and implement solid and hazardous waste programs on Indian lands.

§ 35.548 Award limitations.

(a) Each grant awarded under the General Assistance Program shall be not less than $75,000. This limitation does not apply to additional funds that may become available for award to the same Tribe or Intertribal Consortium.

(b) The Regional Administrator shall not award a grant to a single Tribe or Intertribal Consortium of more than 10 percent of the total annual funds appropriated under the Act.

(c) The project period of a General Assistance Program award may not exceed four years.

(d) No award under this program shall result in reduction of total EPA grants for environmental programs to the recipient.

Air Pollution Control (Section 105)

§ 35.570 Purpose.

(a) *Purpose of section.* Sections 35.570 through 35.577 govern air pollution control grants to Tribes (as defined in section 302(r) of the Clean Air Act (CAA)) authorized under sections 105 and 301(d) of the Act and Intertribal Consortia.

(b) *Purpose of program.* Air pollution control grants are awarded to develop and administer programs that prevent and control air pollution or implement national air quality standards in Indian country.

(c) *Associated program regulations.* Refer to 40 CFR parts 49, 50, 51, 52, 58, 60, 61, 62, and 81 for associated program regulations.

§ 35.572 Definitions.

In addition to the definitions in § 35.502, the following definitions apply to the Clean Air Act's section 105 grant program:

Nonrecurrent expenditures are those expenditures which are shown by the recipient to be of a nonrepetitive, unusual, or singular nature such as would not reasonably be expected to recur in the foreseeable future. Costs categorized as nonrecurrent must be approved in the grant agreement or an amendment thereto.

Recurrent expenditures are those expenses associated with the activities of a continuing environmental program. All expenditures are considered recurrent unless justified by the applicant as nonrecurrent and approved as such in the grant award or an amendment thereto.

§ 35.573 Eligible tribe.

(a) A Tribe is eligible to receive financial assistance if it has demonstrated eligibility to be treated as a State under 40 CFR 49.6. An Intertribal Consortium consisting of Tribes that have demonstrated eligibility to be treated as States under 40 CFR 49.6 is eligible for financial assistance under this paragraph.

(b) A Tribe that has not made a demonstration under 40 CFR 49.6 is eligible for financial assistance under sections 105 and 302(b)(5) of the Clean Air Act. An Intertribal Consortium consisting of Tribes that have not demonstrated eligibility to be treated as States under 40 CFR 49.6 is eligible for financial assistance under this paragraph.

§ 35.575 Maximum Federal share.

(a) For Tribes and Intertribal Consortia eligible under § 35.573(a), the Regional Administrator may provide financial assistance in an amount up to 95 percent of the approved costs of planning, developing, establishing, or improving an air pollution control program, and up to 95 percent of the approved costs of maintaining that program. After two years from the date of each Tribe's or Intertribal Consortium's initial grant award, the Regional Administrator will reduce the maximum federal share to 90 percent if the Regional Administrator determines that the Tribe or each member of the Intertribal Consortium meets certain economic indicators that would provide an objective assessment of the Tribe's or each of the Intertribal Consortiums member's ability to increase its share. For a Tribe or Intertribal Consortium eligible under § 35.573(a), the Regional Administrator may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or within the member Tribes of the Intertribal Consortium are constrained to such an extent that fulfilling the

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match requirement would impose undue hardship.

(b) For Tribes and Intertribal Consortia eligible under § .573(b), the Regional Administrator may provide financial assistance in an amount up to 60 percent of the approved costs of planning, developing, establishing, or improving an air pollution control program, and up to 60 percent of the approved costs of maintaining that program.

§ 35.576 Maintenance of effort.

(a) For Tribes and Intertribal Consortia that are eligible for financial assistance under § 35.573(b) of this subpart, the Tribe or each of the Intertribal Consortium's members must expend annually, for recurrent section 105 program expenditures, an amount of non-federal funds at least equal to such expenditures during the preceding fiscal year.

(b) In order to award grants in a timely manner each fiscal year, the Regional Administrator shall compare a Tribe's or each of the Intertribal Consortiums member's proposed expenditure level, as detailed in the grant application, to its expenditure level in the second preceding fiscal year.

(c) The Regional Administrator may grant an exception to § 35.576(a) if, after notice and opportunity for a public hearing, the Regional Administrator determines that the reduction is attributable to a non-selective reduction of all the Tribe's or each of the Intertribal Consortiums member's programs.

(d) The Regional Administrator will not award section 105 funds unless the applicant provides assurance that the grant will not supplant non-federal funds that would otherwise be available for maintaining the section 105 program.

§ 35.578 Award limitation.

The Regional Administrator will not disapprove an application for, or terminate or annul an award of, financial assistance under § 35.573 without prior notice and opportunity for a public hearing within the appropriate jurisdiction or, where more than one area is affected, within one of the affected areas within the jurisdiction

Water Pollution Control (Sections 106 and 518)

§ 35.580 Purpose.

(a) *Purpose of section.* Sections 35.580 through 35.588 govern water pollution control grants to eligible Tribes and Intertribal Consortia (as defined in § 35.502) authorized under sections 106 and 518 of the Clean Water Act.

(b) *Purpose of program.* Water pollution control grants are awarded to assist Tribes and Intertribal Consortia in administering programs for the prevention, reduction, and elimination of water pollution, including programs for the development and implementation of ground-water protection strategies.

(c) *Associated program requirements.* Program requirements for water quality planning and management activities are provided in 40 CFR part 130.

§ 35.582 Definitions.

Federal Indian reservation. All lands within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Tribe. Any Indian Tribe, band, group, or community recognized by the Secretary of the Interior, exercising governmental authority over a federal Indian reservation.

§ 35.583 Eligible recipients.

A Tribe, including an Intertribal Consortium, is eligible to receive a section 106 grant if EPA has determined that the Indian Tribe or each member of the Intertribal Consortium meets the requirements for treatment in a manner similar to a State under section 518(e) of the Clean Water Act. (See 40 CFR 130.6(d))

§ 35.585 Maximum Federal share.

(a) The Regional Administrator may provide up to 95 percent of the approved work plan costs for Tribes or Intertribal Consortia establishing a section 106 program. Work plan costs include costs of planning, developing, establishing, improving or maintaining a water pollution control program.

(b) The Regional Administrator may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or within each Tribe that is a member of an Intertribal Consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship.

§ 35.588 Award limitations.

(a) The Regional Administrator will only award section 106 funds or reprogram section 106 funds to a Tribe or Intertribal Consortium if:

(1) All monitoring and analysis activities performed by the Tribe or Intertribal Consortium meets the applicable quality assurance and quality control requirements in 40 CFR 31.45.

(2) The Tribe or each member of the Intertribal Consortium has emergency power authority comparable to that in section 504 of the Clean Water Act and adequate contingency plans to implement such authority.

(3) EPA has not assumed enforcement as defined in section 309(a)(2) of the Clean Water Act in the Tribe's or any Intertribal Consortium member's jurisdiction.

(4) The Tribe or Intertribal Consortium agrees to include a discussion of how the work performed under section 106 addressed water quality problems on Tribal lands in the annual report required under § 35.515(d).

(5) After an initial award of section 106 funds, the Tribe or Intertribal Consortium shows satisfactory progress in meeting its negotiated work plan commitments.

(b) A Tribe or Intertribal Consortium is eligible to receive a section 106 grant or section 106 grant funds even if the Tribe or each of the members of an Intertribal Consortium does not meet the requirements of section 106(e)(1) and 106(f)(1) of the Clean Water Act.

Water Quality Cooperative Agreements (Section 104(b)(3))

§ 35.600 Purpose.

(a) *Purpose of section.* Sections 35.600 through 35.604 govern Water Quality Cooperative Agreements to Tribes and Intertribal Consortia authorized under section 104(b)(3) of the Clean Water Act. These sections do not govern Water Quality Cooperative Agreements under section 104(b)(3) to organizations that do not meet the definitions of Tribe or Intertribal Consortium in § 35.502; such cooperative agreements generally are subject to the uniform administrative requirements for grants at 40 CFR part 30.

(b) *Purpose of program.* EPA awards Water Quality Cooperative Agreements for investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. EPA issues guidance each year advising EPA regions and headquarters regarding appropriate priorities for funding for this program. This guidance may include such focus areas as National Pollutant Discharge Elimination System watershed permitting, urban wet weather programs, or innovative pretreatment programs and biosolids projects.

§ 35.603 Competitive process.

EPA will award water quality cooperative agreement funds through a competitive process in accordance with national program guidance. After the competitive process is complete, the recipient can, at its discretion, accept the award as a separate cooperative agreement or add the funds to a Performance Partnership Grant. If the recipient chooses to add the funds to a Performance Partnership Grant, the water quality work plan commitments must be included in the Performance Partnership Grant work plan.

§ 35.604 Maximum Federal share.

The Regional Administrator may provide up to 100 percent of approved work plan costs.

Wetlands Development Grant Program (Section 104(b)(3))

§ 35.610 Purpose.

(a) *Purpose of section.* Sections 35.610 through 35.615 govern wetlands development grants to Tribes and Intertribal Consortia under section 104(b)(3) of the Clean Water Act. These sections do not govern wetlands development grants under section 104(b)(3) to organizations that do not meet the definitions of Tribe or Intertribal Consortium in § 35.502; such grants generally are subject to the uniform administrative requirements for grants at 40 CFR part 30.

(b) *Purpose of program.* EPA awards wetlands development grants to assist in the development of new, or the refinement of existing, wetlands protection and management programs.

§ 35.613 Competitive process.

Wetlands development grants are awarded on a competitive basis. EPA annually establishes a deadline for receipt of grant applications. EPA reviews applications and decides which grant projects to fund based on criteria established by EPA. After the competitive process is complete, the recipient can, at its discretion, accept the award as a wetlands development program grant or add the funds to a Performance Partnership Grant. If the recipient chooses to add the funds to a Performance Partnership Grant, the wetlands development program work plan commitments must be included in the Performance Partnership Grant work plan.

§ 35.615 Maximum Federal share.

EPA may provide up to 75 percent of the approved work plan costs for the development or refinement of a wetlands protection and management program.

Nonpoint Source Management Grants (Sections 319(h) and 518(f))

§ 35.630 Purpose.

(a) *Purpose of section.* Sections 35.630 through 35.638 govern nonpoint source management grants to eligible Tribes and Intertribal Consortia under sections 319(h) and 518(f) of the Clean Water Act.

(b) *Purpose of program.* Nonpoint source management grants may be awarded for the implementation of EPA-approved nonpoint source management programs, including ground-water quality protection activities that will advance the implementation of a comprehensive approved nonpoint source management program.

§ 35.632 Definition.

Tribe. Any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a federal Indian reservation.

§ 35.633 Eligibility requirements.

A Tribe or Intertribal Consortium is eligible to receive a Nonpoint Source Management grant if EPA has determined that the Tribe or each member of the Intertribal Consortium meets the requirements for treatment in a manner similar to a State under section 518(e) of the Clean Water Act. (See 40 CFR 130.6(d).)

§ 35.635 Maximum Federal share.

(a) The Regional Administrator may provide up to 60 percent of the approved work plan costs in any fiscal year. The non-Federal share of costs must be provided from non-Federal sources.

(b) The Regional Administrator may increase the maximum Federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or within each Tribe that is a member of the Intertribal Consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship. In no case shall the Federal share be greater than 90 percent.

§ 35.636 Maintenance of effort.

To receive funds under section 319 in any fiscal year, a Tribe or each member of an Intertribal Consortium must agree that the Tribe or each member of the Intertribal Consortium will maintain its aggregate expenditures from all other sources for programs for controlling nonpoint source pollution and improving the quality of the Tribe's or the Intertribal Consortiums members' waters at or above the average level of such expenditures in Fiscal Years 1985 and 1986.

§ 35.638 Award limitations.

(a) *Available funds.* EPA may use no more than the amount authorized under the Clean Water Act section 319 and 518(f) for making grants to Tribes or Intertribal Consortia.

(b) *Financial assistance to persons.* Tribes or Intertribal Consortia may use funds for financial assistance to persons only to the extent that such assistance is related to the cost of demonstration projects.

(c) *Administrative costs.* Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with these funds shall not exceed 10 percent of the funds the Tribe or Intertribal Consortium receives in any fiscal year. The cost of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs are not subject to this limitation.

(d) The Regional Administrator will not award section 319(h) funds to any Tribe or Intertribal Consortium unless:

(1) *Approved assessment report.* EPA has approved the Tribes' or each member of the Intertribal Consortium's Assessment Report on nonpoint sources, prepared in accordance with section 319(a) of the Act;

(2) *Approved Tribe or Intertribal Consortium management program.* EPA has approved the Tribes' or each member of the Intertribal Consortium's management program for nonpoint sources, prepared in accordance with section 319(b) of the Act;

(3) *Progress on reducing pollutant loadings.* The Regional Administrator determines, for a Tribe or Intertribal Consortium that received section 319 funds in the preceding fiscal year, that the Tribe or each member of the Intertribal Consortium made satisfactory progress in meeting its schedule for achieving implementation of best management practices to reduce pollutant loadings from categories of nonpoint sources, or particular nonpoint sources, designated in the Tribe's or each member of the Intertribal Consortium's management program. The Tribe or each member of the Intertribal Consortium must develop this schedule in accordance with section 319(b)(2) of the Act;

(4) *Activity and output descriptions.* The work plan briefly describes each significant category of nonpoint source

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activity and the work plan commitments to be produced for each category; and

(5) *Significant watershed projects.* For watershed projects whose costs exceed $50,000, the work plan contains:

(i) A brief synopsis of the watershed implementation plan outlining the problems to be addressed;

(ii) The project's goals and objectives; and

(iii) The performance measures and environmental indicators that will be used to evaluate the results of the project.

Pesticide Cooperative Enforcement (Section 23(a)(1))

§ 35.640 Purpose.

(a) *Purpose of section.* Sections 35.640 through 35.645 govern cooperative agreements to Tribes and Intertribal Consortia authorized under section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act for pesticide enforcement.

(b) *Purpose of program.* Cooperative agreements are awarded to assist Tribes and Intertribal Consortia in implementing pesticide enforcement programs.

(c) *Associated program regulations.* Refer to 19 CFR part 12 and 40 CFR parts 150 through 189 for associated regulations.

§ 35.641 Eligible recipients.

Eligible recipients of pesticide enforcement cooperative agreements are Tribes and Intertribal Consortia.

§ 35.642 Maximum Federal share.

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

§ 35.645 Basis for allotment.

The Administrator allots pesticide enforcement cooperative agreement funds to each regional office. Regional offices award funds to Tribes and Intertribal Consortia based on their programmatic needs and applicable EPA guidance.

Pesticide Applicator Certification and Training (Section 23(a)(2))

§ 35.646 Purpose.

(a) *Purpose of section.* Sections 35.646 through 35.649 govern pesticide applicator certification and training grants to Tribes and Intertribal Consortia under section 23(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act.

(b) *Purpose of program.* Pesticide applicator certification and training grants are awarded to train and certify restricted use pesticide applicators.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 162, 170, and 171.

§ 35.649 Maximum Federal share.

The Regional Administrator may provide up to 50 percent of the approved work plan costs.

Pesticide Program Implementation (Section 23(a)(1))

§ 35.650 Purpose.

(a) *Purpose of section.* Sections 35.650 through 35.659 govern cooperative agreements to Tribes and Intertribal Consortia for pesticide enforcement and compliance programs under section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act.

(b) *Purpose of program.* Cooperative agreements are awarded to assist Tribes and Intertribal Consortia to develop and implement pesticide programs, including programs that protect farm workers, ground water, and endangered species from pesticide risks and other pesticide management programs designated by the Administrator.

(c) *Program regulations.* Refer to 40 CFR parts 150 through 189 and 19 CFR part 12 for associated regulations.

§ 35.653 Eligible recipients.

Eligible recipients of pesticide program implementation cooperative agreements are Tribes and Intertribal Consortia.

§ 35.655 Basis for allotment.

The Administrator allots pesticide program implementation cooperative agreement funds to each regional office. Regional offices award funds to Tribes and Intertribal Consortia based on their programmatic needs and applicable EPA guidance.

§ 35.659 Maximum Federal share.

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

Pollution Prevention Incentive Grants (Section 6605)

§ 35.660 Purpose.

(a) *Purpose of section.* Sections 35.660 through 35.669 govern grants to Tribes and Intertribal Consortia under section 6605 of the Pollution Prevention Act.

(b) *Purpose of program.* Pollution Prevention Incentive Grants are awarded to promote the use of source reduction techniques by businesses.

§ 35.661 Competitive process.

EPA regions award pollution prevention grant funds to Tribes and Intertribal Consortia through a competitive process in accordance with EPA guidance. When evaluating a Tribe's or Intertribal Consortium's application, EPA must consider, among other criteria, whether the proposed program would:

(a) Make specific technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice to businesses seeking assistance in the development of source reduction plans;

(b) Target assistance to businesses for whom lack of information is an impediment to source reduction; and

(c) Provide training in source reduction techniques. Such training may be provided through local engineering schools or other appropriate means.

§ 35.662 Definitions.

The following definition applies to the Pollution Prevention Incentive grant program and to §§ 35.660 through 35.669:

(a) Pollution prevention/source reduction is any practice that:

(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal;

(2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants; and

(3) Reduces or eliminates the creation of pollutants through:

(i) Increased efficiency in the use of raw materials, energy, water, or other resources; or

(ii) Protection of national resources by conservation.

(b) Pollution prevention/source reduction does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

§ 35.663 Eligible recipients.

(a) The Regional Administrator will treat a Tribe or Intertribal Consortium as eligible to apply for a pollution prevention incentive grant if the Tribe or each member of the Intertribal Consortium:

(1) Is recognized by the Secretary of Interior;

(2) Has an existing government exercising substantial governmental duties and powers;

(3) Has adequate authority to carry out the grant activities; and,

(4) Is reasonably expected to be capable, in the Regional Administrator's judgment, of administering the grant program.

(b) If the Administrator has previously determined that an Indian Tribe has met the prerequisites in paragraph (a)(1) and (2) of this section for another EPA program, the Tribe need provide only that information unique to the pollution prevention incentive grants program required by paragraph (b)(3) and (4) of this section.

§ 35.668 Award limitations.

If the Pollution Prevention Incentive grant funds are included in a Performance Partnership Grant the Pollution Prevention Incentive work plan commitments must be included in the Performance Partnership Grant work plan.

§ 35.669 Maximum Federal share.

The Federal share for Pollution Prevention Incentive Grants will not exceed 50 percent of the allowable Tribe and Intertribal Consortium Pollution Prevention Incentives project cost.

Public Water System Supervision (Section 1443(a) and Section 1451)

§ 35.670 Purpose.

(a) *Purpose of section.* Sections 35.670 through 35.678 govern public water system supervision grants to Tribes and Intertribal Consortia authorized under sections 1443(a) and 1451 of the Safe Drinking Water Act.

(b) *Purpose of program.* Public water system supervision grants are awarded to carry out public water system supervision programs including implementation and enforcement of the requirements of the Act that apply to public water systems..

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 141, 142, and 143.

§ 35.672 Definition.

Tribe. Any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over any area.

§ 35.673 Annual amount reserved by EPA.

Each year, EPA shall reserve up to seven percent of the public water system supervision funds for grants to Tribes and Intertribal Consortia under section 1443(a).

§ 35.675 Maximum Federal share.

(a) The Regional Administrator may provide up to 75 percent of the approved work plan costs.

(b) The Regional Administrator may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or Consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship, except that the federal share shall not be greater than 90 percent.

§ 35.676 Eligible recipients.

A Tribe or Intertribal Consortium is eligible to apply for a public water system supervision grant if the Tribe or each member of the Intertribal Consortium meets the following criteria:

(a) The Tribe or each member of the Intertribal Consortium is recognized by the Secretary of the Interior;

(b) The Tribe or each member of the Intertribal Consortium has a governing body carrying out substantial governmental duties and powers over any area;

(c) The functions to be exercised under the grant are within the area of the Tribal government's jurisdiction; and

(d) The Tribe or each member of the Intertribal Consortium is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions to be exercised under the grant.

§ 35.678 Award limitations.

(a) *Initial grant.* The Regional Administrator will not make an initial award unless the Tribe or each member of the Intertribal Consortium has:

(1) Met the requirements of 40 CFR part 142, subpart H (treatment in a manner similar to a State);

(2) Established an approved public water system supervision program or agrees to establish an approvable program within three years of the initial award and assumed primary enforcement responsibility within this period; and

(3) Agreed to use at least one year of the grant funding to demonstrate program capability to implement the requirements found in 40 CFR 142.10.

(b) *Subsequent grants.* The Regional Administrator will not make a subsequent grant, after the initial award, unless the Tribe or each member of the Intertribal Consortia can demonstrate reasonable progress towards assuming primary enforcement responsibility within the three-year period after initial award. After the three-year period expires, the Regional Administrator will not award section 1443(a) funds to an Indian Tribe or Intertribal Consortium unless the Tribe or each member of the Intertribal Consortia has assumed primary enforcement responsibility for the public water system supervision program.

Underground Water Source Protection (Section 1443(b))

§ 35.680 Purpose.

(a) *Purpose of section.* Sections 35.680 through 35.688 govern underground water source protection grants to Tribes and Intertribal Consortia under section 1443(b) of the Safe Drinking Water Act.

(b) *Purpose of program.* The Underground Water Source Protection grants are awarded to carry out underground water source protection programs.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 124, 144, 145, 146, and 147.

§ 35.682 Definition.

Tribe. Any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over any area.

§ 35.683 Annual amount reserved by EPA.

EPA shall reserve up to five percent of the underground water source protection funds each year for underground water source protection grants to Tribes under section 1443(b) of the Safe Drinking Water Act.

§ 35.685 Maximum Federal share.

(a) The Regional Administrator may provide up to 75 percent of the approved work plan costs.

(b) The Regional Administrator may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or Consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship, except that the Federal share shall not be greater than 90 percent.

§ 35.686 Eligible recipients.

A Tribe or Intertribal Consortium is eligible to apply for an underground water source protection grant if the Tribe or each member of the Intertribal Consortium meets the following criteria:

(a) The Tribe or each member of the Intertribal Consortium is recognized by the Secretary of the Interior;

(b) The Tribe or each member of the Intertribal Consortium has a governing body carrying out substantial governmental duties and powers over any area;

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(c) The functions to be exercised under the grant are within the area of the Tribal government's jurisdiction; and

(d) The Tribe or each member of the Intertribal Consortium is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions to be exercised under the grant.

§ 35.688 Award limitations.

(a) *Initial grants.* The Regional Administrator will not make an initial award unless the Tribe or each member of the Intertribal Consortium has:

(1) Met the requirements of 40 CFR part 145, subpart E (treatment in a manner similar to a State); and

(2) Established an approved underground water source protection program or agrees to establish an approvable program within four years of the initial award.

(b) *Subsequent grants.* The Regional Administrator will not make a subsequent grant, after the initial award, unless the Tribe can demonstrate reasonable progress towards assuming primary enforcement responsibility within the four-year period after initial award. After the four-year period expires, the Regional Administrator shall not award section 1443(b) funds to an Indian Tribe unless the Tribe has assumed primary enforcement responsibility for the underground water source protection program.

Lead-Based Paint Program (Section 404(g))

§ 35.690 Purpose.

(a) *Purpose of section.* Sections 35.690 through 35.693 govern grants to Tribes and Intertribal Consortia under section 404(g) for the Toxic Substances Control Act .

(b) *Purpose of program.* Lead-Based Paint Program grants are awarded to develop and, if the recipient is authorized, to carry out lead-based paint activities programs to ensure that individuals employed in lead-based paint activities are properly trained; that training programs are accredited; and that contractors employed in such activities are certified.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR part 745.

§ 35.691 Funding coordination.

Recipients must use the Lead-Based Paint program funding in a way that complements any related assistance they receive from other federal sources for lead-based paint activities.

§ 35.693 Eligible recipients.

(a) The Regional Administrator will treat a Tribe or Intertribal Consortium as eligible to apply for a lead-based paint program grant if the Tribe or each member of the Intertribal Consortium:

(1) Is recognized by the Secretary of Interior;

(2) Has an existing government exercising substantial governmental duties and powers;

(3) Has adequate authority to carry out the grant activities; and,

(4) Is reasonably expected to be capable, in the Regional Administrator's judgment, of administering the grant program.

(b) If the Administrator has previously determined that an Indian Tribe has met the prerequisites in paragraph (a)(1) and (2) of this section for another EPA program, the Tribe need provide only that information unique to the lead-based paint program required by paragraph (b)(3) and (4) of this section.

Indoor Radon Grants (Section 306)

§ 35.700 Purpose.

(a) *Purpose of section.* Sections 35.700 through 35.708 govern Indoor Radon Grants to Tribes and Intertribal Consortia under section 306 of the Toxic Substances Control Act.

(b) *Purpose of program.* (1) Indoor radon grants are awarded to assist Tribes and Intertribal Consortia with the development and implementation of programs that assess and mitigate radon and that aim at reducing radon health risks. Indoor radon grant funds may be used for the following eligible activities.

(i) Survey of radon levels, including special surveys of geographic areas or classes of buildings (such as public buildings, school buildings, high-risk residential construction types);

(ii) Development of public information and education materials concerning radon assessment, mitigation, and control programs;

(iii) Implementation of programs to control radon on existing and new structures;

(iv) Purchase, by the Tribe or Intertribal Consortium of radon measurement equipment and devices;

(v) Purchase and maintenance of analytical equipment connected to radon measurement and analysis, including costs of calibration of such equipment;

(vi) Payment of costs of Environmental Protection Agency-approved training programs related to radon for permanent Tribal employees;

(vii) Payment of general overhead and program administration costs;

(viii) Development of a data storage and management system for information concerning radon occurrence, levels, and programs;

(ix) Payment of costs of demonstration of radon mitigation methods and technologies as approved by EPA, including Tribal and Intertribal Consortia participation in the Environmental Protection Agency Home Evaluation Program; and

(x) A toll-free radon hotline to provide information and technical assistance.

(2) In implementing paragraphs (b)(1)(iv) and (ix) of this section, a Tribe or Intertribal Consortia should make every effort, consistent with the goals and successful operation of the Tribal radon program, to give preference to low-income persons.

§ 35.702 Basis for allotment.

(a) The Regional Administrator will allot indoor radon grant funds based on the criteria in EPA Guidance in accordance with section 306(d) and (e) of the Toxic Substances Control Act.

(b) No Tribe or Intertribal Consortium may receive an indoor radon grant in excess of 10 percent of the total appropriated amount made available each fiscal year.

§ 35.703 Eligible recipients.

(a) The Regional Administrator will treat a Tribe or Intertribal Consortium as eligible to apply for an indoor radon grant if the Tribe or each member of the Intertribal Consortium:

(1) Is recognized by the Secretary of Interior;

(2) Has an existing government exercising substantial governmental duties and powers;

(3) Has adequate authority to carry out the grant activities; and,

(4) Is reasonably expected to be capable, in the Regional Administrator's judgment, of administering the grant program.

(b) If the Administrator has previously determined that a Tribe has met the prerequisites in paragraphs (a)(1) and (2) of this section for another EPA program, the Tribe need provide only that information unique to the radon grant program required by paragraphs (a)(3) and (4) of this section.

§ 35.705 Maximum Federal share.

The Regional Administrator may provide Tribes and Intertribal Consortia up to 75 percent of the approved costs for the development and implementation of radon program activities incurred by the Tribe in the first year of a grant to the Tribe or Consortium; 60 percent in the second year; and 50 percent in the third and each year thereafter.

§ 35.708 Award limitations.

(a) The Regional Administrator shall consult with the Tribal agency which has the primary responsibility for radon programs as designated by the affected Tribe before including indoor funds in a Performance Partnership Grant with another Tribal agency.

(b) No grant may be made in any fiscal year to a Tribe or Intertribal Consortium which did not satisfactorily implement the activities funded by the most recent grant awarded to the Tribe or Intertribal Consortium for an indoor radon program.

(c) The costs of radon measurement equipment or devices (see § 35.820(b)(1)(iv)) and demonstration of radon mitigation, methods, and technologies (see § 35.820(b)(1)(ix)) shall not, in aggregate, exceed 50 percent of a Tribe's or Intertribal Consortium's radon grant award in a fiscal year.

(d) The costs of general overhead and program administration (see § 35.820(b)(1)(vii)) of an indoor radon grant shall not exceed 25 percent of the amount of a Tribe's or Intertribal Consortium's radon grant in a fiscal year.

(e) A Tribe or Intertribal Consortium may use funds for financial assistance to persons only to the extent such assistance is related to demonstration projects or the purchase and analysis of radon measurement devices.

(f) Recipients must provide the Regional Administrator all radon-related information generated in its grant supported activities, including the results of radon surveys, mitigation demonstration projects, and risk communication studies.

(g) Recipients must maintain and make available to the public, a list of firms and individuals that have received a passing rating under the EPA proficiency rating program under section 305(a)(2) of the Act.

(h) Recipients may not use radon program grant funds to cover the costs of proficiency rating programs under section 305(a)(2) of the Act.

Toxic Substances Compliance Monitoring (Section 28)

§ 35.710 Purpose.

(a) *Purpose of section.* Sections 35.710 through 35.715 govern Toxic Substances Compliance Monitoring grants to Tribes and Intertribal Consortia under section 28 of the Toxic Substances Control Act.

(b) *Purpose of program.* Toxic Substances Compliance Monitoring grants are awarded to establish and operate compliance monitoring programs to prevent or eliminate unreasonable risks to health or the environment associated with chemical substances or mixtures on Tribal lands with respect to which the Administrator is unable or not likely to take action for their prevention or elimination.

(c) *Associated program regulations.* Refer to 40 CFR parts 700 through 799 for associated program regulations.

§ 35.712 Competitive process.

EPA will award Toxic Substances Control Act Compliance Monitoring grants to Tribes or Intertribal Consortia through a competitive process in accordance with national program guidance.

§ 35.713 Eligible recipients.

(a) The Regional Administrator will treat a Tribe or Intertribal Consortium as eligible to apply for a Toxic Substances Compliance Monitoring grant if the Tribe or each member of the Intertribal Consortium:

(1) Is recognized by the Secretary of Interior;

(2) Has an existing government exercising substantial governmental duties and powers;

(3) Has adequate authority to carry out the grant activities; and,

(4) Is reasonably expected to be capable, in the Regional Administrator's judgment, of administering the grant program.

(b) If the Administrator has previously determined that an Indian Tribe has met the prerequisites in paragraphs (a)(1) and (2) of this section for another EPA program, the Tribe need provide only that information unique to the Toxic Substances Compliance Monitoring grant program required by paragraphs (a)(3) and (4) of this section.

§ 35.715 Maximum Federal share.

The Regional Administrator may provide up to 75 percent of the approved work plan costs.

§ 35.718 Award limitation.

If the Toxic Substances Compliance Monitoring grant funds are included in a Performance Partnership Grant, the toxic substances compliance monitoring work plan commitments must be included in the Performance Partnership Grant work plan.

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Part IV

Department of Commerce

Bureau of Export Administration

15 CFR Parts 740, 743 and 774

Revisions to the Export Administration Regulations; Commerce Control List: Revision to Categories 1, 2, 3, 4, 5, 6, 7, and 9 Based on Wassenaar Arrangement Review; Final Rule

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 740, 743 and 774

[Docket No. 990625176–9176–01]

RIN 0694–AB86

Revisions to the Export Administration Regulations; Commerce Control List: Revision to Categories 1, 2, 3, 4, 5, 6, 7, and 9 Based on Wassenaar Arrangement Review

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export controls. This final rule revises certain entries controlled for national security reasons in Categories 1, 2, 3, 4, 5, 6, 7, and 9 to conform with changes in the Wassenaar Arrangement's List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement controls strategic items with the objective of improving regional and international security and stability.

DATES: This rule is effective July 23, 1999.

FOR FURTHER INFORMATION CONTACT: For questions of technical nature, the following persons in the Office of Strategic Trade are available:

Category 1: Robert Teer—(202) 482–4749
Category 2: Tanya Mottley—(202) 482–1837
Category 3: Hector Rivera—(202) 482–5534
Category 4: Tanya Mottley—(202) 482–1837
Category 5 (Telecommunications): Tony Koo—(202) 482–3206
Category 6: Chris Costanzo—(202) 482–0718
Category 7: Herb Wahler—(202) 482–5250
Category 9: Gene Christiansen—(202) 482–2984

SUPPLEMENTARY INFORMATION:

Background

In July 1996, the United States and thirty-two other countries gave final approval to the establishment of a new multilateral export control arrangement, called the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement contributes to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of such items. Participating states have committed to exchange information on exports of dual-use goods and technologies to non-participating states for the purposes of enhancing transparency and assisting in developing common understandings of the risks associated with the transfers of these items.

On January 15, 1998, the Bureau of Export Administration (BXA) published an interim rule (63 FR 2452) fulfilling U.S. commitments to the Wassenaar Arrangement by implementing the Wassenaar Arrangement list of dual-use items and imposing reporting requirements for exports of certain items controlled under the Wassenaar Arrangement.

This final rule revises a number of national security controlled entries on the Commerce Control List (CCL) to conform with recent changes in the Wassenaar List of Dual-Use Goods and Technologies. Specifically, this rule makes the following amendments:

Category 1—Materials, Chemicals, Microorganisms, and Toxins

1C004—Amended by modifying controls on the elastic limit from 1,250 MPa to 880 MPa (1C004.b).

1C006—Amended by removing national security controls on hydrocarbon oils (1C006.a.1).

Category 2—Material Processing

2B001—Amended by modifying the note to 2B001.c to clarify that certain tool or cutter grinding machines are not controlled for national security reasons (decontrol note 2B001.c). In addition, the related controls section has been amended by adding a reference to refer to 1B101.d for cutting equipment designed or modified for removing prepregs and preforms controlled by 9A110 (2B001, related controls).

2B004—Amended by (1) revising the entry heading by removing national security controls on dies, molds and controls specially designed for certain hot isostatic presses (2B004, heading); and (2) revising the related controls section to by adding two new references, as follows: (a) for specially designed dies, molds and tooling refer to 1B001, 9B009, and ML18 of the Munitions List; and (b) in addition, see 1B101.d, 2B104, and 2B204 for controls on dies, molds and tooling (2B004, related controls).

2B005—Amended by correcting an editorial error (2B005.c).

2D001—Amended by modifying the entry heading to read "software", other than that controlled by 2D002, specially designed or modified for the "development", "production" or "use" of equipment controlled by 2A001 or 2B001 to 2B009 (2D001, heading). In addition, the related controls section is amended by clarifying that 2D001 controls software not covered by 2D101, that are specially designed or modified for the controllers of flow forming machines described in 2B109 (2D001, related controls).

2E003—Amended by (1) revising the related controls section by adding a reference to refer to 2E001, 2E002 and 2E101 for "development", "production" and "use" technology for equipment that are designed or modified for densification of carbon-carbon composites, structural composite rocket nozzles and reentry vehicle nose tips (2E003, related controls); and (2) revising the Deposition Techniques Table by (1) adding new "resultant coatings" technologies for diamond, boron nitride, and beryllium; and (2) updating the "sensor window materials" note by including diamond, gallium phosphide, sapphire, zirconium fluoride and hafnium fluoride and by removing potassium iodide, potassium fluoride, thallium bromide and thallium chlorobromide.

Category 3—Electronics

3A001—Amended by increasing the gate count from 300 to 3,000 for digital integrated circuits (3A001.a.11).

3A002—Amended by: (1) liberalizing controls for digital video magnetic tape recorders from 180 to 360 Mbits/s (3A002.a.2); (2) modifying the note to 3A002.a.2 by clarifying that 3A001.a.2 does not control digital video magnetic tape recorders specially designed for television recording using a signal format, which may include a compressed signal format, standardized or recommended by the ITU, the IEC, the SMPTE, the EBU or the IEEE for civil television applications (decontrol note to 3A002.a.2); and (3) modifying the note to 3A002.c.2 by clarifying that 3A002 does not control those "dynamic signal analyzers" using only constant percentage bandwidth filters (also known as octave or fractional octave filters) (clarification note to 3A002.c.2).

3B001—Amended by: (1) adding controls for molecular beam epitaxial growth equipment using solid sources

(3B001.a.3); (2) liberalizing controls for ion implantaters and adding a new term "beam energy" (3B001.b.1 and b.2); and (3) clarifying lithography equipment controls to include direct step on wafer equipment or step and scan (scanner) equipment, relaxing controls on the light source wavelength of lithography equipment from 400 nm to 350 nm and relaxing controls on minimum resolvable feature size on lithography equipment from 0.7 to 0.5 microns or less (3B001.f).

3C002—Amended by relaxing wavelength controls for positive resists for semiconductor lithography from 370 nm to 350 nm (3C002.a).

3E001—Amended by revising the note to 3E001 to indicate that 3E001 does not control integrated circuits using technology of 0.7 microns or more (decontrol note to 3E001).

3E002—Amended by adding new controls for substrates of silicon-on insulator (SOI) for integrated circuits in which the insulator is silicon dioxide (3E002.e) and substrates of silicon carbide for electronic components (3E002.f). In addition the related controls section is amended by adding a reference to refer to 3E001 for silicon-on-insulation technology for the "development" or "production" related to radiation hardening of integrated circuits (3E002, related controls).

Category 4—Computers

4A003—Amended by removing controls for 4A003.f (Equipment containing "terminal interface equipment" exceeding the limits in 5A001.b.3). This revision is consistent with consequential changes to 5A001 (i.e., the removal of equipment containing "network access controllers" or "communication channel controllers". In addition, to avoid possible confusion, the note to 4A003.g has been amended to clarify that "network access controllers" or "communication channel controllers" are not controlled by this entry (decontrol note to 4A003.g).

Table to Category 4—Amended by revising Note 5 to clarify that aggregation for CTP values do not apply to "electronic assemblies" described in 4A003.c (technical note 5 on CTP)

Category 5—Telecommunications, Part I

Several sections of Part I, Telecommunications have been removed creating a significant number of changes to the controls on telecommunication equipment. The majority of changes are identified in the following entries.

Note 1 to Category 5—Part 1—Telecommunications: Amended by removing the phrase "materials" (Note 1), as 5C001 was deleted from national security controls.

5A001—Amended by:

(1) removing controls on telecommunications equipment or systems containing any of the following:

—Employing digital techniques (5A001.b.1);

—Containing "network access controllers" or "communication channel controllers" (5A001.b.3);

—employing a laser (5A001.b.4);

—being radio equipment operating at input or output frequencies exceeding 31 GHz (5A001.b.5);

—being radio equipment employing Quadrature Amplitude Modulation (QAM) techniques or other digital modulation techniques and having a spectral efficiency exceeding 3 bit/sec/Hz (5A001.b.6);

(2) removing controls on "stored program controlled" switching equipment containing any of the following (5A001.c):

—common channel signalling (5A001.c.1);

—dynamic adaptive routing (5A001.c.2);

—being packet switches, circuit switches and routers (5A001.c.3);

—optical switches (5A001.c.4);

—employing "Asynchronous Transfer Mode" (ATM) techniques (5A001.c.5);

(3) modifying controls for optical fiber communication cables (5A001.d); removing controls on optical fiber cables and liberalizing controls on optical fibers from 50 m to 500 m (5A001.d.1); and removing controls for single mode operation (5A001.d.1.a); and

(4) adding a Nota Bene to 5A001.d.2 clarifying that you should review 8A002.a.3 for underwater umbilical cables and connectors therefor.

5B001—Amended by: (1) revising the entry heading to read "test, inspection and production equipment, see list of items controlled"; (2) redesignating the former entry heading as 5B001.a and by removing the term "materials"; (3) adding a note to 5B001.a specifying that 5B001.a does not control optical fiber characterization equipment not using semiconductor "lasers", formerly described in the Related Controls section. The format changes to the entry heading and to 5B001.a are consistent with the format revisions agreed to by the Wassenaar Arrangement. In addition, 5B001 is amended by creating a new 5B001.b. This new paragraph b adds national security controls for equipment and specially designed components or accessories therefor, specially designed for the "development" of certain telecommunication transmission or "stored program controlled" switching equipment.

5C001—Amended by removing national security controls for preforms of glass or of any other material optimized for the manufacturer of optical fibers controlled by 5A001.d.

5D001—Amended by: (1) removing controls for software for the use of digital cellular radio equipment or systems (5D001.c.1) and (2) creating a new 5D001.d. This new paragraph d adds national security controls for "software" specially designed or modified for the "development" of certain telecommunication transmission or "stored program controlled" switching equipment (5D001.d).

5E001—Amended by: (1) removing national security controls on certain technology for the "development" or "use" of laser communication techniques (5E001.b.4, 5E001.b.6, 5E001.b.8, and 5E001.b.9) and (2) creating a new 5E001.c. This new paragraph c adds national security controls for "technology" according to the General Technology Note for the "development" or "production" of certain telecommunication transmission or "stored program controlled" equipment functions or features (5E001.c).

Category 6—Sensors and Lasers

6A003—Amended by: (1) modifying the term intensifiers to read intensifier tubes (6A003.b.3); and (2) adding a note to 6A003.b.4 clarifying that 6A003.b.4 does not control imaging cameras incorporating linear "focal plane arrays" with twelve elements or fewer, not employing time-delay-and-integration within the element, designed for (a) industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems; (b) industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes; (c) industrial equipment used for inspection, sorting or analysis of the properties of materials; (d) equipment specially designed for laboratory use; or (e) medical equipment (decontrol note to 6A003.b.4).

6A005—Amended by: (1) adding a note for excimer lasers, specially designed for lithography equipment (related controls); and (2) adding a new control for individual single-transverse mode semiconductor lasers (6A005.b.1).

6C002—Amended by relaxing controls on zinc cadmium telluride (6C005.b).

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Category 7—Navigation and Avionics

Notes to Category 7A—Amended by revising the "Note to Category 7A" as "Nota Bene (N.B.) 2" and by revising the existing Nota Bene as "N.B. 1" (notes to Category 7 A).

Category 9—Propulsion Systems, Space Vehicles and Related Equipment

Parenthetical note to Category 9A—Amended by redesignating the parenthetical phrase as a Nota Bene (N.B.).

Items placed under control will be subject to both national security (NS) and antiterrorism (AT) controls. (see ECCN 3E002.e and f.) These actions are taken in consultation with the Departments of State and Defense and pursuant to agreements reached in the Wassenaar Arrangement.

All items removed from national security (NS) controls as a result of the Wassenaar List of Dual-Use Goods and Technologies will continue to be controlled for antiterrorism (AT) reasons.

BXA is continuing a comprehensive review of the Commerce Control List (CCL) to account for items controlled by the Nuclear Suppliers Group (NSG), the Missile Technology Control Regime (MTCR), and the Australia Group (AG) and to correct errors unavoidably reprinted in this version of the CCL. The review will be based in large part upon the comments received and upon ongoing efforts to harmonize the CCL with the EU's control list.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), and August 13, 1998 (63 FR 44121).

Saving Clause

Shipments of items removed from eligibility for export or reexport under a particular License Exception authorization or the designator NLR, as a result of this regulatory action, may continue to be exported or reexported under that License Exception authorization or designator until August 23, 1999. In addition, this rule revises the numbering and structure of certain entries on the Commerce Control List. For items under such entries and for October 21, 1999, BXA will accept license applications for items described either by the entries in effect immediately before July 23, 1999 or the entries described in this rule.

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) These collections has been approved by the Office of Management and Budget under control numbers 0694–0073, 0694–0086, and 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 743

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign Trade.

Accordingly, parts 740, 743 and 774 of the Export Administration Regulations (15 CFR parts 730 through 799) are amended as follows:

1. The authority citation for part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228 and of Notice of August 13, 1998 (63 FR 44121, 3 CFR, 1998 Comp., p. 294.

2. The authority citation for part 743 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1998 Comp., p. 294.

3. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 720; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995, 60 FR 42767, 3 CFR, 1995 Comp., p. 501; Notice of August 14, 1996, 61 FR 42527, 3 CFR, 1996 Comp., p. 298; Notice of August 13, 1997, 62 FR 43629, 3 CFR, 1997 Comp. p., 306; Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1998 Comp., p. 294.

PART 740—[AMENDED]

4. Section 740.11 is amended:

a. By revising paragraph (a)(2);

b. By revising Supplement No. 1, as follows:

§ 740.11 Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV).

* * * * *

(a) * * *

(2) The following items controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) identified on the Commerce Control List may not be exported or reexported under this License Exception to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom: 1C001, 1C012, 5A001.b.4, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.7, 6A001.a.2.b, 6A001.a.2.e.1, 6A001.a.2.e.2, 6A002.a.1.c, 6A008.l.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., 9A011; and

(i) "Composite" structures or laminates controlled by 1A002.a., having an organic "matrix" and made from materials listed under 1C010.c. or 1C010.d.; and

(ii) "Digital" computers controlled by 4A003.b. and having a CTP exceeding 10,000 MTOPS; and

(iii) "Electronic assemblies" controlled by 4A003.c. and capable of enhancing performance by aggregation of "computing elements" so that the CTP of the aggregation exceeds 10,000 MTOPS; and

(iv) Processing equipment controlled by 6A001.a.2.c. and specially designed for real time application with towed acoustic hydrophone arrays; and

(v) Bottom or bay cable systems controlled by 6A001.a.2.e.3 and having processing equipment specially designed for real time application with bottom or bay cable systems; and

(vi) "Software", as follows:

(A) Controlled by 4D001, specially designed for the "development" or "production" for items controlled by 4A003.b or .c, as defined by paragraphs (a)(2)(ii) and (iii) of this section; and

(B) Controlled by 5D001.a, specially designed for items controlled by 5A001.b.4; and

(C) Controlled by 6D001 for items controlled by 6A008.l.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the "development" or "production" of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

(G) Controlled by 9D001, specially designed for the "development" of equipment or "technology" controlled by 9A011, 9E003.a.1, or by 9E003.a.3, for items controlled by 1A002.a, as described in paragraph (a)(2)(i) of this section; and

(H) Controlled by 9D002 for "software" specially designed for the "production" of equipment controlled by 9A011; and

(I) Controlled by 9D004.a or .c.

* * * * *

Supplement No. 1 to § 740.11—Additional Restrictions On Use of License Exception GOV.

(a) Items for official use within national territory by agencies of the U.S. Government. License Exception GOV is available for all items consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government, except:

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 1C012, 5A001.b.4, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.7, 6A001.a.2.b, 6A001.a.2.e.1, 6A001.a.2.e.2, 6A002.a.1.c, 6A008.l.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., 9A011; and

(i) "Composite" structures or laminates controlled by 1A002.a., having an organic "matrix" and made from materials listed under 1C010.c. or 1C010.d.; and

(ii) "Digital" computers controlled by 4A003.b. and having a CTP exceeding 10,000 MTOPS; and

(iii) "Electronic assemblies" controlled by 4A003.c. and capable of enhancing performance by aggregation of "computing elements" so that the CTP of the aggregation exceeds 10,000 MTOPS; and

(iv) Processing equipment controlled by 6A001.a.2.c. and specially designed for real time application with towed acoustic hydrophone arrays; and

(v) Bottom or bay cable systems controlled by 6A001.a.2.e.3 and having processing equipment specially designed for real time application with bottom or bay cable systems; and

(vi) "Software", as follows:

(A) Controlled by 4D001, specially designed for the "development" or "production" for items controlled by 4A003.b or .c, as defined by paragraphs (a)(1)(ii) and (iii) of this Supplement; and

(B) Controlled by 5D001.a, specially designed for items controlled by 5A001.b.4; and

(C) Controlled by 6D001 for items controlled by 6A008.l.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the "development" or "production" of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

(G) Controlled by 9D001, specially designed for the "development" of equipment or "technology" controlled by 9A011, 9E003.a.1, or by 9E003.a.3, for items controlled by 1A002.a, as described in paragraph (a)(1)(i) of this Supplement; and

(H) Controlled by 9D002 for "software" specially designed for the "production" of equipment controlled by 9A011; and

(I) Controlled by 9D004.a or .c.; and

(vii) "Technology", as follows:

(A) Controlled by 5E001.a for items controlled by 5A001.b.4 or 5D001.a; and

(B) Controlled by 1E001 for items controlled by 1A002.a, 1C001, or 1C102 as described by paragraph (a)(1)(i) of this Supplement; and

(C) Controlled by 6E001 for the "development" of equipment or "software" in 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.7, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2, a.3, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(D) Controlled by 6E002 for the "production" of equipment controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.7, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.3, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(E) Controlled by 8E001 for items controlled by 8A001.b, 8A002.o.3.b, or 8A001.d; and

(F) Controlled by 9E001 for items controlled by 9A011, 9D001, or 9D002; and

(G) Controlled by 9E002 for items controlled by 9A011; and

(H) Controlled by 9E003.a.1; and

(I) Controlled by 9E003.a.3 for items controlled by 1A002.a as described in paragraph (a)(1) of this Supplement;

(2) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons;

(3) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002, 6A003, 6E001, 6E002, 7D001, 7E001, 7E002, and 7E101 as described in § 742.6(a)(1) of the EAR; or

(4) Encryption items controlled for EI reasons as described in the Commerce Control List.

(b) *Diplomatic and consular missions of a cooperating government.* License Exception GOV is available for all items consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Group B (see Supplement No. 1 to part 740), except:

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 1C012, 5A001.b.4, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.7, 6A001.a.2.b, 6A001.a.2.e.1, 6A001.a.2.e.2, 6A002.a.1.c, 6A008.l.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., 9A011; and

(i) "Composite" structures or laminates controlled by 1A002.a., having an organic "matrix" and made from materials listed under 1C010.c. or 1C010.d.; and

(ii) "Digital" computers controlled by 4A003.b. and having a CTP exceeding 10,000 MTOPS; and

(iii) "Electronic assemblies" controlled by 4A003.c. and capable of enhancing performance by aggregation of "computing elements" so that the CTP of the aggregation exceeds 10,000 MTOPS; and

(iv) Processing equipment controlled by 6A001.a.2.c. and specially designed for real time application with towed acoustic hydrophone arrays; and

(v) Bottom or bay cable systems controlled by 6A001.a.2.e.3 and having processing equipment specially designed for real time application with bottom or bay cable systems; and

(vi) "Software", as follows:

(A) Controlled by 4D001, specially designed for the "development" or "production" for items controlled by 4A003.b or .c, as defined by paragraphs (b)(1)(ii) or (iii) of this Supplement; and

(B) Controlled by 5D001.a, specially designed for items controlled by 5A001.b.4; and

(C) Controlled by 6D001 for items controlled by 6A008.l.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the "development" or "production" of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

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(G) Controlled by 9D001, specially designed for the "development" of equipment or "technology" controlled by 9A011, 9E003.a.1, or by 9E003.a.3, for items controlled by 1A002.a, as described in paragraph (b)(1)(i) of this Supplement; and

(H) Controlled by 9D002 for "software" specially designed for the "production" of equipment controlled by 9A011; and

(I) Controlled by 9D004.a or .c; and

(vii) "Technology", as follows:

(A) Controlled by 5E001.a for items controlled by 5A001.b.4 or 5D001.a; and

(B) Controlled by 1E001 for items controlled by 1A002.a, 1C001, or 1C102 as described by paragraph (b)(1) of this Supplement; and

(C) Controlled by 6E001 for the "development" of equipment or "software" in 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.7, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.3, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (b)(1) of this Supplement; and

(D) Controlled by 6E002 for the "production" of equipment controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.7, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.3, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (b)(1) of this Supplement; and

(E) Controlled by 8E001 for items controlled by 8A001.b, 8A002.o.3.b, or 8A001.d; and

(F) Controlled by 9E001 for items controlled by 9A011, 9D001, or 9D002; and

(G) Controlled by 9E002 for items controlled by 9A011; and

(H) Controlled by 9E003.a.1; and

(I) Controlled by 9E003.a.3 for items controlled by 1A002.a as described in paragraph (b)(1)(i) of this Supplement;

(2) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons;

(3) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002, 6A003, 6E001, 6E002, 7D001, 7E001, 7E002, and 7E101 as described in § 742.6(a)(1) of the EAR; or

(4) Encryption items controlled for EI reasons as described in the Commerce Control List.

PART 743—[AMENDED]

5. Section 743.1 is amended by revising (c)(1) to read as follows:

§ 743.1 Wassenaar Arrangement.

* * * * * *

(c) *Items for which reports are required.* (1) You must submit reports to BXA under the provisions of this section only for exports of items controlled under the following ECCNs:

(i) *Category 1:* 1A002, 1C007.c and .d, 1C010.c and .d, 1D002, 1E001, 1E002.e, and 1E002.f.;

(ii) *Category 2:* 2B001.a or .b (certain items only; see Note to this paragraph) 2B001.d and .f, 2B003, 2D001, 2E001, and 2E002;

Note to paragraph (c)(1)(ii): The following are not controlled for NP reasons: turning machines controlled by 2B001.a with a capacity equal to or less than 35 mm diameter; bar machines (Swissturn), limited to machining only bar feed through, if maximum bar diameter is equal to or less than 42 mm and there is no capability of mounting chucks (machines may have drilling and/or milling capabilities for machining parts with diameters less than 42 mm); or milling machines controlled by 2B001.b with x-axis travel greater than two meters and overall "positioning accuracy" on the x-axis more (worse) than 0.030 mm. Therefore, exports of such items under License Exception GOV are subject to reporting requirements.

(iii) *Category 3:* 3A002.g.2, 3B001.a.2, 3D001, and 3E001;

(iv) *Category 4:* 4A001.a.2 and .b. 4A003.b and .c (see paragraph (c)(2) of this section), 4D001, 4D003.c, and 4E001;

(v) *Category 5:* 5A001.b.3, 5B001 (items specially designed for 5A001.b.3), 5D001.a and .b, and 5E001.a;

(vi) *Category 6:* 6A001.a.1.b, .a.2.c, .a.2.d, and .a.2.e; 6A002.b, 6A004.c and d, 6A006.g and h, 6A008.d, .h, and .k; 6D001, 6D003.a, 6E001, and 6E002;

(vii) *Category 8:* 8A001.c; 8A002.b, .h, .j, .o.3.a, and .p; 8D001, 8D002, 8E001, and 8E002.a; and

(viii) *Category 9:* 9B001.b, 9D001, 9D002, 9D004.a and .c, 9E001, 9E002, 9E003.a.1, 9E003.a.2, .a.3, .a.4, .a.5, .a.8, and .a.9.

* * * * *

PART 774—[AMENDED]

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms, and Toxins, Export Control Classification Numbers (ECCNs) are amended:

a. By revising the List of Items Controlled section for ECCNs 1C004 and 1C006; and

b. By adding a new ECCN 1C996, to read as follows:

1C004 Uranium titanium alloys or tungsten alloys with a "matrix" based on iron, nickel or copper, having all of the characteristics (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Kilograms
Related Controls: N/A
Related Definitions: N/A
Items:

a. A density exceeding 17.5 g/cm^3;

b. An elastic limit exceeding 880 MPa;

c. An ultimate tensile strength exceeding 1,270 MPa; *and*

d. An elongation exceeding 8%.

1C006 Fluids and lubricating materials, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Barrels (55 U.S. gallons/ 209 liters)
Related Controls: N/A
Related Definitions: N/A
Items:

a. Hydraulic fluids containing, as their principal ingredients, any of the following compounds or materials:

a.1. Synthetic or silahydrocarbon oils, having all of the following:

Note: For the purpose of 1C006.a.1, silahydrocarbon oils contain exclusively silicon, hydrogen and carbon.

a.1.a. A flash point exceeding 477 K (204° C);

a.1.b. A pour point at 239 K (−34° C) or less;

a.1.c. A viscosity index of 75 or more; *and*

a.1.d. A thermal stability at 616 K (343° C); *or*

a.2. Chlorofluorocarbons, having all of the following:

Note: For the purpose of 1C006.a.2, chlorofluorocarbons contain exclusively carbon, fluorine and chlorine.

a.2.a. No flash point;

a.2.b. An autogenous ignition temperature exceeding 977 K (704° C);

a.2.c. A pour point at 219 K (−54° C) or less;

a.2.d. A viscosity index of 80 or more; *and*

a.2.e. A boiling point at 473 K (200° C) or higher;

b. Lubricating materials containing, as their principal ingredients, any of the following compounds or materials:

b.1. Phenylene or alkylphenylene ethers or thio-ethers, or their mixtures, containing more than two ether or thio-ether functions or mixtures thereof; *or*

b.2. Fluorinated silicone fluids with a kinematic viscosity of less than 5,000 mm^2/s (5,000 centistokes) measured at 298 K (25° C);

c. Damping or flotation fluids with a purity exceeding 99.8%, containing less than 25 particles of 200 µm or larger in size per 100 ml and made from at least 85% of any of the following compounds or materials:

c.1. Dibromotetrafluoroethane;

c.2. Polychlorotrifluoroethylene (oily and waxy modifications only); *or*

c.3. Polybromotrifluoroethylene;

d. Fluorocarbon electronic cooling fluids, having all of the following characteristics:

d.1. Containing 85% by weight or more of any of the following, or mixtures thereof:

d.1.a. Monomeric forms of perfluoropolyalkylether-triazines or perfluoroaliphatic-ethers;

d.1.b. Perfluoroalkylamines;

d.1.c. Perfluorocycloalkanes; *or*

d.1.d. Perfluoroalkanes;

d.2. Density at 298 K (25° C) of 1.5 g/ml or more;

d.3. In a liquid state at 273 K (0° C); *and*

d.4. Containing 60% or more by weight of fluorine.

Technical Note: For the purpose of 1C006:

a. Flash point is determined using the Cleveland Open Cup Method described in ASTM D–92 or national equivalents;

b. Pour point is determined using the method described in ASTM D–97 or national equivalents;

c. Viscosity index is determined using the method describe in ASTM D–2270 or national equivalents;

d. Thermal stability is determined by the following test procedure or national equivalents:

Twenty ml of the fluid under test is placed in a 46 ml type 317 stainless steel chamber containing one each of 12.5 mm (nominal) diameter balls of M–10 tool steel, 52100 steel and naval bronze (60% Cu, 39% Zn, 0.75% Sn);

The chamber is purged with nitrogen, sealed at atmospheric pressure and the temperature raised to and maintained at 644 ± 6 K (371 ± 6° C) for six hours;

The specimen will be considered thermally stable if, on completion of the above procedure, all of the following conditions are met:

1. The loss in weight of each ball is less than 10 mg/mm^2 of ball surface;

2. The change in original viscosity as determined at 311 K (38° C) is less than 25%; *and*

3. The total acid or base number is less than 0.40;

e. Autogenous ignition temperature is determined using the method described in ASTM E–659 or national equivalents.

1C996 Hydraulic fluids containing synthetic hydrocarbon oils, having all the following characteristics (see List of Items Controlled).

License Requirements

Reason for Control: *AT*

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Barrels (55 U.S. gallons/209 liters)
Related Controls: N/A
Related Definitions: N/A
Items:

a. A flash point exceeding 477 K (204° C);

b. A pour point at 239 K (-34° C) or less;

c. A viscosity index of 75 or more; *and*

d. A thermal stability at 616 K (343° C).

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Numbers (ECCNs) are amended:

a. By revising ECCN 2B001;

b. By revising the entry heading and the List of Items Controlled section for ECCN 2B004;

c. By revising the List of Items Controlled section for ECCN 2B005;

d. By revising the entry heading and the List of Items Controlled for ECCN 2D001; and

e. By revising the List of Items Controlled section for ECCN 2E003, to read as follows:

2B001 Machine tools (see List of Items Controlled) and any combination thereof, for removing (or cutting) metals, ceramics or "composites", which, according to the manufacturer's technical specification, can be equipped with electronic devices for "numerical control".

License Requirements

Reason for Control: NS, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
NP applies to 2B001.a,b,c, and d, EXCEPT:(1) turning machines under 2B001.a with a capacity equal to or less than 35 mm diameter; (2) bar machines (Swissturn), limited to machining only bar feed through, if maximum bar diameter is equal to or less than 42 mm and there is no capability of mounting chucks. (Machines may have drilling and/or milling capabilities for machining parts with diameters less than 42 mm); or (3) milling machines under 2B001.b. with x-axis travel greater than two meters and overall "positioning accuracy" on the x-axis more (worse) than 0.030 mm.	NP Column 1
AT applies to entire entry	AT Column 1

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value
Related Controls: (1) See also 2B290 and 2B991; (2) See also 1B101.d for cutting equipment designed or modified for removing prepregs and preforms controlled by 9A110.
Related Definitions: N/A
Items:

a. Machine tools for turning, having all of the following characteristics:

a.1. Positioning accuracy with "all compensations available" of less (better) than 6 µm along any linear axis; *and*

a.2. Two or more axes which can be coordinated simultaneously for "contouring control";

Note: 2B001.a does not control turning machines specially designed for the production of contact lenses.

b. Machine tools for milling, having any of the following characteristics:

b.1.a. Positioning accuracy with "all compensations available" of less (better) than 6 µm along any linear axis; *and*

b.1.b. Three linear axes plus one rotary axis which can be coordinated simultaneously for "contouring control";

b.2. Five or more axes which can be coordinated simultaneously for "contouring control"; *or*

b.3. A positioning accuracy for jig boring machines, with "all compensations available", of less (better) than 4 µm along any linear axis;

c. Machine tools for grinding, having any of the following characteristics:

c.1.a. Positioning accuracy with "all compensations available" of less (better) than 4 µm along any linear axis; *and*

c.1.b. Three or more axes which can be coordinated simultaneously for "contouring control"; *or*

c.2. Five or more axes which can be coordinated simultaneously for "contouring control";

Notes: 2B001.c does not control grinding machines, as follows:

1. Cylindrical external, internal, and external-internal grinding machines having all the following characteristics:

a. Limited to cylindrical grinding; *and*

b. Limited to a maximum workpiece capacity of 150 mm outside diameter or length.

2. Machines designed specifically as jig grinders having any of following characteristics:

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a. The c-axis is used to maintain the grinding wheel normal to the work surface; *or*

b. The a-axis is configured to grind barrel cams.

3. Tool or cutter grinding machines limited to the production of tools or cutters.

4. Crank shaft or cam shaft grinding machines.

5. Surface grinders.

d. Electrical discharge machines (EDM) of the non-wire type which have two or more rotary axes which can be coordinated simultaneously for "contouring control";

e. Machine tools for removing metals, ceramics or "composites":

e.1. By means of:

e.1.a. Water or other liquid jets, including those employing abrasive additives;

e.1.b. Electron beam; *or*

e.1.c. "Laser" beam; *and*

e.2. Having two or more rotary axes which:

e.2.a. Can be coordinated simultaneously for "contouring control"; *and*

e.2.b. Have a positioning accuracy of less (better) than 0.003°;

f. Deep-hole-drilling machines and turning machines modified for deep-hole-drilling, having a maximum depth-of-bore capability exceeding 5,000 mm and specially designed components therefor.

2B004 Hot "isostatic presses", having all of the following characteristics described in the List of Items Controlled, and specially designed components, and accessories therefor.

* * * * *

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value

Related Controls: (1) See also 2B104 and 2B204. (2) For specially designed dies, molds and tooling, see 1B003, 9B009 and ML18 (22 CFR part 121). (3) In addition, see 1B101.d, 2B104 and 2B204 for controls on dies, molds and tooling.

Related Definitions: N/A

Items:

a. A controlled thermal environment within the closed cavity and possessing a chamber cavity with an inside diameter of 406 mm or more; *and*

b. Any of the following:

b.1. A maximum working pressure exceeding 207 MPa;

b.2. A controlled thermal environment exceeding 1,773 K (1,500° C); *or*

b.3. A facility for hydrocarbon impregnation and removal of resultant gaseous degradation products.

Technical Note: The inside chamber dimension is that of the chamber in which both the working temperature and the working pressure are achieved and does not include fixtures. That dimension will be the smaller of either the inside diameter of the pressure chamber or the inside diameter of the insulated furnace chamber, depending on which of the two chambers is located inside the other.

2B005 Equipment specially designed for the deposition, processing and in-process control of inorganic overlays, coatings and surface modifications for non-electronic substrates, by processes shown in the Table and associated Notes following 2E003.f, and specially designed automated handling, positioning, manipulation and control components therefor.

* * * * *

List of Items Controlled

Unit: $ value

Related Controls: (1) This entry does not control chemical vapor deposition, cathodic arc, sputter deposition, ion plating or ion implantation equipment specially designed for cutting or machining tools. (2) Vapor deposition equipment for the production of filamentary materials are controlled by 1B001 or 1B101. (3) Chemical Vapor Deposition furnaces designed or modified for densification of carbon-carbon composites are controlled by 2B104.

Related Definitions: N/A

Items:

a. "Stored program controlled" chemical vapor deposition (CVD) production equipment having all of the following:

a.1. Process modified for one of the following:

a.1.a. Pulsating CVD;

a.1.b. Controlled nucleation thermal deposition (CNTD); *or*

a.1.c. Plasma enhanced or plasma assisted CVD; *and*

a.2. Any of the following:

a.2.a. Incorporating high vacuum (equal to or less than 0.01 Pa) rotating seals; *or*

a.2.b. Incorporating *in situ* coating thickness control;

b. "Stored program controlled" ion implantation production equipment having beam currents of 5 mA or more;

c. "Stored program controlled" electron beam physical vapor (EB–PVD) production equipment incorporating power systems rated for over 80 kW, having any of the following:

c.1. A liquid pool level "laser" control system which regulates precisely the ingots feed rate; or

c.2. A computer controlled rate monitor operating on the principle of photo-luminescence of the ionized atoms in the evaporant stream to control the deposition rate of a coating containing two or more elements;

d. "Stored program controlled" plasma spraying production equipment having any of the following characteristics:

d.1. Operating at reduced pressure controlled atmosphere (equal or less than 10 kPa measured above and within 300 mm of the gun nozzle exit) in a vacuum chamber capable of evacuation down to 0.01 Pa prior to the spraying process; *or*

d.2. Incorporating *in situ* coating thickness control;

e. "Stored program controlled" sputter deposition production equipment capable of current densities of 0.1 mA/mm^2 or higher at a deposition rate 15 μm/h or more;

f. "Stored program controlled" cathodic arc deposition equipment incorporating a grid of electromagnets for steering control of the arc spot on the cathode;

g. "Stored program controlled" ion plating production equipment allowing for the *in situ* measurement of any of the following:

g.1. Coating thickness on the substrate and rate control; or

g.2. Optical characteristics.

2D001 "Software", other than that controlled by 2D002, specially designed or modified for the "development", "production" or "use" of equipment controlled by 2A001 or 2B001 to 2B009.

* * * * *

List of Items Controlled

Unit: N/A

Related Controls: This entry controls software, not covered by 2D101, that are specially designed or modified for the controllers of flow forming machines specified by 2B109.

Related Definitions: N/A

Items:

The list of items controlled is contained in the ECCN heading.

2E003 Other "technology", as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: N/A

Related Controls: See 2E001, 2E002, and 2E101 for "development" and "use" technology for equipment that are designed or modified for densification of carbon-carbon composites, structural composite rocket nozzles and reentry vehicle nose tips.

Related Definitions: N/A

Items:

a. "Technology" for the "development" of interactive graphics as an integrated part in "numerical control" units for preparation or modification of part programs;

b. "Technology" for metal-working manufacturing processes, as follows:

b.1. "Technology" for the design of tools, dies or fixtures specially designed for any of the following processes:

b.1.a. "Superplastic forming";

b.1.b. "Diffusion bonding"; *or*

b.1.c. "Direct-acting hydraulic pressing";

b.2. Technical data consisting of process methods or parameters as listed below used to control:

b.2.a. "Superplastic forming" of aluminum alloys, titanium alloys or "superalloys":

b.2.a.1. Surface preparation;

b.2.a.2. Strain rate;

b.2.a.3. Temperature;

b.2.a.4. Pressure;

b.2.b. "Diffusion bonding" of "superalloys" or titanium alloys:

b.2.b.1. Surface preparation;

b.2.b.2. Temperature;

b.2.b.3. Pressure;

b.2.c. "Direct-acting hydraulic pressing" of aluminum alloys or titanium alloys:

b.2.c.1. Pressure;

b.2.c.2. Cycle time;

b.2.d. "Hot isostatic densification" of titanium alloys, aluminum alloys or "superalloys":

b.2.d.1. Temperature;

b.2.d.2. Pressure;

b.2.d.3. Cycle time;

c. "Technology" for the "development" or "production" of hydraulic stretch-forming machines and dies therefor, for the manufacture of airframe structures;

d. "Technology" for the "development" of generators of machine tool instructions (e.g., part programs) from design data residing inside "numerical control" units;

e. "Technology for the development" of integration "software" for incorporation of expert systems for advanced decision support of shop floor operations into "numerical control" units;

f. "Technology" for the application of inorganic overlay coatings or inorganic surface modification coatings (specified in column 3 of the following table) to non-electronic substrates (specified in column 2 of the following table), by processes specified in column 1 of the following table and defined in the Technical Note.

N.B. This table should be read to control the technology of a particular 'Coating Process' only when the 'Resultant Coating' in column 3 is in a paragraph directly across from the relevant 'Substrate' under column 2. For example, Chemical Vapor Deposition (CVD) coating process technical data are controlled for the application of 'silicides' to 'Carbon-carbon, Ceramic and Metal "matrix" "composites" substrates, but are not controlled for the application of 'silicides' to 'Cemented tungsten carbide (16), Silicon carbide (18)' substrates. In the second case, the 'Resultant Coating' is not listed in the paragraph under column 3 directly across from the paragraph under column 2 listing 'Cemented tungsten carbide (16), Silicon carbide (18)'.

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Material Processing is amended by revising the Materials Processing Table in Category 2E to read as follows:

CATEGORY 2E.—MATERIALS PROCESSING TABLE; DEPOSITION TECHNIQUES

1. Coating process (1) [1]	2. Substrate	3. Resultant coating
A. Chemical Vapor Deposition (CVD)	"Superalloys"	Aluminides for internal passages Silicides Carbides Dielectric layers (15) Diamond Diamond-like carbon (17)
	Ceramics (19) and Low-expansion glasses (14).	
	Carbon-carbon, Ceramic, and Metal "matrix" "composites".	Silicides Carbides Refractory metals, Mixtures thereof (4) Dielectric layers (15) Aluminides Alloyed aluminides (2) Boron nitride
	Cemented tungsten carbide (16), Silicon Carbide (18).	Carbides Tungsten Mixtures thereof (4) Dielectric layers (15)
	Molybdenum and Molybdenum alloys	Dielectric Players (15)
	Beryllium and Beryllium alloys	Dielectric layers (15) Diamond Diamond-like carbon (17)
	Sensor window materials (9)	Dielectric layers (15) Diamond Diamond-like carbon (17)
B. Thermal Evaportation Physical Vapor 1. Physical Vapor Deposition (PVD): Deposition (TE-PVD) Electron-Beam (EB–PVD).	"Superalloys"	Alloyed silicides Alloyed aluminides (2) McrAlX (5) Modified zirconia (12) Silicides Aluminides Mixtures thereof (4)
	Ceramics (19) and Low-expansion glasses (14).	Dielectric layers (15)
	Corrosion resistant steel (7)	MCrAlX (5) Modified zirconia (12) Mixtures thereof (4)

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CATEGORY 2E.—MATERIALS PROCESSING TABLE; DEPOSITION TECHNIQUES—Continued

1. Coating process (1)[1]	2. Substrate	3. Resultant coating
	Carbon-carbon, Ceramic and Metal "matrix" "composites".	Silicides Carbides Refractory metals Mixtures thereof (4) Dielectric layers (15) Boron nitride
	Cemented tungsten carbide (16), Silicon carbide (18).	Carbides Tungsten Mixtures thereof (4) Dielectric layers (15)
	Molybdenum and Molybdenum alloys	Dielectric layers (15)
	Beryllium and Beryllium alloys	Dielectric layers (15) Borides Beryllium
	Sensor window materials (9)	Dielectric layers (15)
	Titanium alloys (13)	Borides Nitrides
2. Ion assisted resistive heating. Physical Vapor Deposition (PVD) (Ion Plating).	Ceramics (19) and Low-expansion glasses (14).	Dielectric layers (15) Diamond-like carbon (17)
	Carbon-carbon, Ceramic and Metal "matrix" "composites".	Dielectric layers (15)
	Cemented tungsten carbide (16), Silicon carbide.	Dielectric layers (15)
	Molybdenum and Molybdenum alloys	Dielectric layers (15)
	Beryllium and Beryllium alloys	Dielectric layers (15)
	Sensor window materials (9)	Dielectric layers (15) Diamond-like carbon (17)
3. Physical Vapor Deposition (PVD): "Laser" Vaporization.	Ceramics (19) and Low-expansion glasses (14).	Silicides Dielectric layers (15) Diamond-like carbon (17)
	Carbon-carbon, Ceramic and Metal "matrix" "composites".	Dielectric layers (15)
	Cemented tungsten carbide (16), Silicon carbide.	Dielectric layers (15)
	Molybdenum and Molybdenum alloys	Dielectric layers (15)
	Beryllium and Beryllium alloys	Dielectric layers (15)
	Sensor window materials (9)	Dielectric layers (15) Diamond-like carbon
4. Physical Vapor Deposition (PVD): Cathodic Arc Discharge.	"Superalloys"	Alloyed silicides Alloyed Aluminides (2) MCrAlX (5)
	Polymers (11) and Organic "matrix" "composites".	Borides Carbides Nitrides Diamond-like carbon (17)
C. Pack cementation (see A above for out-of-pack cementation) (10).	Carbon-carbon, Ceramic and Metal "matrix" "composites".	Silicides Carbides Mixtures thereof (4)
	Titanium alloys (13)	Silicides Aluminides Alloyed aluminides (2)
	Refractory metals and alloys (8)	Silicides Oxides
D. Plasma spraying	"Superalloys"	MCrAlX (5) Modified zirconia (12) Mixtures thereof (4) Abradable Nickel-Graphite Abradable materials containing Ni-Cr-Al Abradable Al-Si-Polyester Alloyed aluminides (2)
	Aluminum alloys (6)	MCrAlX (5) Modified zirconia (12) Silicides Mixtures thereof (4)
	Refractory metals and alloys (8), Carbides, Corrosion resistant steel (7).	Aluminides Silicides MCrAlX (5) Modified zirconia (12) Mixtures thereof (4)

CATEGORY 2E.—MATERIALS PROCESSING TABLE; DEPOSITION TECHNIQUES—Continued

1. Coating process (1)[1]	2. Substrate	3. Resultant coating
	Titanium alloys (13)	Carbides Aluminides Silicides Alloyed aluminides (2)
	Abradable, Nickel-Graphite	Abradable materials containing Ni-Cr-Al Abradable Al-Si-Polyester
E. Slurry Deposition	Refractory metals and alloys (8)	Fused silicides Fused aluminides except for resistance heating elements
	Carbon-carbon, Ceramic and Metal "matrix" "composites".	Silicides Carbides Mixtures thereof (4)
F. Sputter Deposition	"Superalloys"	Alloyed silicides Alloyed aluminides (2) Noble metal modified aluminides (3) McrAlX (5) Modified zirconia (12) Platinum Mixtures thereof (4)
	Ceramics and Low-expansion glasses (14)	Silicides Platinum Mixtures thereof (4) Dielectric layers (15) Diamond-like carbon (17)
	Titanium alloys (13)	Borides Nitrides Oxides Silicides Aluminides Alloyed aluminides (2)
	Carbon-carbon, Ceramic and Metal "matrix" "Composites".	Carbides Silicides Carbides Refractory metals Mixtures thereof (4) Dielectric layers (15) Boron nitride
	Cemented tungsten carbide (16), Silicon carbide (18).	Carbides Tungsten Mixtures thereof (4) Dielectric layers (15) Boron nitride
	Molybdenum and Molybdenum alloys	Dielectric layers (15)
	Beryllium and Beryllium alloys	Borides Dielectric layers (15) Beryllium
	Sensor window materials (9)	Dielectric layers (15)
	Refractory metals and alloys (8)	Diamond-like carbon (17) Aluminides Silicides Oxides Carbides
G. Ion Implantation	High temperature bearing steels	Additions of Chromium, Tantalum, or Niobium (Columbium)
	Titanium alloys (13)	Borides Nitrides
	Beryllium and Beryllium alloys	Borides
	Cemented tungsten carbide (16)	Carbides Nitrides

[1] The numbers in parenthesis refer to the Notes following this Table.

Notes to Table on Deposition Techniques

1. The term 'coating process' includes coating repair and refurbishing as well as original coating.

2. The term 'alloyed aluminide coating' includes single or multiple-step coatings in which an element or elements are deposited prior to or during application of the aluminide coating, even if these elements are deposited by another coating process. It does not, however, include the multiple use of single-step pack cementation processes to achieve alloyed aluminides.

3. The term 'noble metal modified aluminide' coating includes multiple-step coatings in which the noble metal or noble metals are laid down by some other coating process prior to application of the aluminide coating.

4. The term 'mixtures thereof' includes infiltrated material, graded compositions, co-deposits and multilayer deposits and are obtained by one or more of the coating processes specified in the Table.

5. MCrAlX refers to a coating alloy where M equals cobalt, iron, nickel or combinations thereof and X equals hafnium, yttrium, silicon, tantalum in any amount or other intentional additions over 0.01 weight

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percent in various proportions and combinations, except:

a. CoCrAlY coatings which contain less than 22 weight percent of chromium, less than 7 weight percent of aluminum and less than 2 weight percent of yttrium;

b. CoCrAlY coatings which contain 22 to 24 weight percent of chromium, 10 to 12 weight percent of aluminum and 0.5 to 0.7 weight percent of yttrium; *or*

c. NiCrAlY coatings which contain 21 to 23 weight percent of chromium, 10 to 12 weight percent of aluminum and 0.9 to 1.1 weight percent of yttrium.

6. The term 'aluminum alloys' refers to alloys having an ultimate tensile strength of 190 MPa or more measured at 293 K (20° C).

7. The term 'corrosion resistant steel' refers to AISI (American Iron and Steel Institute) 300 series or equivalent national standard steels.

8. 'Refractory metals and alloys' include the following metals and their alloys: niobium (columbium), molybdenum, tungsten and tantalum.

9. 'Sensor window materials', as follows: alumina, silicon, germanium, zinc sulphide, zinc selenide, gallium arsenide, diamond, gallium phosphide, sapphire and the following metal halides: sensor window materials of more than 40 mm diameter for zirconium fluoride and hafnium fluoride.

10. "Technology" for single-step pack cementation of solid airfoils is not controlled by this Category.

11. 'Polymers', as follows: polyimide, polyester, polysulfide, polycarbonates and polyurethanes.

12. 'Modified zirconia' refers to additions of other metal oxides, (e.g., calcia, magnesia, yttria, hafnia, rare earth oxides) to zirconia in order to stabilize certain crystallographic phases and phase compositions. Thermal barrier coatings made of zirconia, modified with calcia or magnesia by mixing or fusion, are not controlled.

13. 'Titanium alloys' refers only to aerospace alloys having an ultimate tensile strength of 900 MPa or more measured at 293 K (20° C).

14. 'Low-expansion glasses' refers to glasses which have a coefficient of thermal expansion of 1×10^{-7} K^{-1} or less measured at 293 K (20° C).

15. 'Dielectric layers' are coatings constructed of multi-layers of insulator materials in which the interference properties of a design composed of materials of various refractive indices are used to reflect, transmit or absorb various wavelength bands. Dielectric layers refers to more than four dielectric layers or dielectric/metal "composite" layers.

16. 'Cemented tungsten carbide' does not include cutting and forming tool materials consisting of tungsten carbide/(cobalt, nickel), titanium carbide/(cobalt, nickel), chromium carbide/nickel-chromium and chromium carbide/nickel.

17. "Technology" specially designed to deposit diamond-like carbon on any of the following is not controlled: magnetic disk drives and heads, polycarbonate eyeglasses, equipment for the manufacture of disposals, bakery equipment, valves for faucets, acoustic diaphragms for speakers, engine parts for automobiles, cutting tools, punching-pressing dies, high quality lenses designed for cameras or telescopes, office automation equipment, microphones or medical devices.

18. 'Silicon carbide' does not include cutting and forming tool materials.

19. Ceramic substrates, as used in this entry, does not include ceramic materials containing 5% by weight, or greater, clay or cement content, either as separate constituents or in combination.

Technical Note to Table on Deposition Techniques: Processes specified in Column 1 of the Table are defined as follows:

a. Chemical Vapor Deposition (CVD) is an overlay coating or surface modification coating process wherein a metal, alloy, "composite", dielectric or ceramic is deposited upon a heated substrate. Gaseous reactants are decomposed or combined in the vicinity of a substrate resulting in the deposition of the desired elemental, alloy or compound material on the substrate. Energy for this decomposition or chemical reaction process may be provided by the heat of the substrate, a glow discharge plasma, or "laser" irradiation.

Note 1: CVD includes the following processes: directed gas flow out-of-pack deposition, pulsating CVD, controlled nucleation thermal decomposition (CNTD), plasma enhanced or plasma assisted CVD processes.

Note 2: Pack denotes a substrate immersed in a powder mixture.

Note 3: The gaseous reactants used in the out-of-pack process are produced using the same basic reactions and parameters as the pack cementation process, except that the substrate to be coated is not in contact with the powder mixture.

b. Thermal Evaporation-Physical Vapor Deposition (TE–PVD) is an overlay coating process conducted in a vacuum with a pressure less than 0.1 Pa wherein a source of thermal energy is used to vaporize the coating material. This process results in the condensation, or deposition, of the evaporated species onto appropriately positioned substrates. The addition of gases to the vacuum chamber during the coating process to synthesize compound coatings is an ordinary modification of the process. The use of ion or electron beams, or plasma, to activate or assist the coating's deposition is also a common modification in this technique. The use of monitors to provide in-process measurement of optical characteristics and thickness of coatings can be a feature of these processes. Specific TE–PVD processes are as follows:

1. Electron Beam PVD uses an electron beam to heat and evaporate the material which forms the coating;

2. Ion Assisted Resistive Heating PVD employs electrically resistive heating sources in combination with impinging ion beam(s) to produce a controlled and uniform flux of evaporated coating species;

3. "Laser" Vaporization uses either pulsed or continuous wave "laser" beams to vaporize the material which forms the coating;

4. Cathodic Arc Deposition employs a consumable cathode of the material which forms the coating and has an arc discharge established on the surface by a momentary contact of a ground trigger. Controlled motion of arcing erodes the cathode surface creating a highly ionized plasma. The anode can be either a cone attached to the periphery of the cathode, through an insulator, or the chamber. Substrate biasing is used for non line-of-sight deposition.

Note: This definition does not include random cathodic arc deposition with non-biased substrates.

5. Ion Plating is a special modification of a general TE–PVD process in which a plasma or an ion source is used to ionize the species to be deposited, and a negative bias is applied to the substrate in order to facilitate the extraction of the species from the plasma. The introduction of reactive species, evaporation of solids within the process chamber, and the use of monitors to provide in-process measurement of optical characteristics and thicknesses of coatings are ordinary modifications of the process.

c. Pack Cementation is a surface modification coating or overlay coating process wherein a substrate is immersed in a powder mixture (a pack), that consists of:

1. The metallic powders that are to be deposited (usually aluminum, chromium, silicon or combinations thereof);

2. An activator (normally a halide salt); *and*

3. An inert powder, most frequently alumina.

Note: The substrate and powder mixture is contained within a retort which is heated to between 1,030 K (757 °C) to 1,375 K (1,102 °C) for sufficient time to deposit the coating.

d. Plasma Spraying is an overlay coating process wherein a gun (spray torch) which produces and controls a plasma accepts powder or wire coating materials, melts them and propels them towards a substrate, whereon an integrally bonded coating is formed. Plasma spraying constitutes either low pressure plasma spraying or high velocity plasma spraying.

Note 1: Low pressure means less than ambient atmospheric pressure.

Note 2: High velocity refers to nozzle-exit gas velocity exceeding 750 m/s calculated at 293 K (20 °C) at 0.1 MPa.

e. Slurry Deposition is a surface modification coating or overlay coating process wherein a metallic or ceramic powder with an organic binder is suspended in a liquid and is applied to a substrate by either spraying, dipping or painting, subsequent air or oven drying, and heat treatment to obtain the desired coating.

f. Sputter Deposition is an overlay coating process based on a momentum transfer phenomenon, wherein positive ions are accelerated by an electric field towards the surface of a target (coating material). The kinetic energy of the impacting ions is sufficient to cause target surface atoms to be released and deposited on an appropriately positioned substrate.

Note 1: The Table refers only to triode, magnetron or reactive sputter deposition which is used to increase adhesion of the coating and rate of deposition and to radio frequency (RF) augmented sputter deposition used to permit vaporization of non-metallic coating materials.

Note 2: Low-energy ion beams (less than 5 keV) can be used to activate the deposition.

g. Ion Implantation is a surface modification coating process in which the element to be alloyed is ionized, accelerated through a potential gradient and implanted into the surface region of the substrate. This includes processes in which ion implantation is performed simultaneously with electron beam physical vapor deposition or sputter deposition.

Accompanying Technical Information to Table on Deposition Techniques:

1. "Technology" for pretreatments of the substrates listed in the Table, as follows:
a. Chemical stripping and cleaning bath cycle parameters, as follows:
1. Bath composition:
a. For the removal of old or defective coatings corrosion product or foreign deposits;
b. For preparation of virgin substrates:
2. Time in bath;
3. Temperature of bath;
4. Number and sequences of wash cycles;
b. Visual and macroscopic criteria for acceptance of the cleaned part;
c. Heat treatment cycle parameters, as follows:
1. Atmosphere parameters, as follows:
a. Composition of the atmosphere;
b. Pressure of the atmosphere;
2. Temperature for heat treatment;
3. Time of heat treatment;
d. Substrate surface preparation parameters, as follows:
1. Grit blasting parameters, as follows:
a. Grit composition;
b. Grit size and shape;
c. Grit velocity;
2. Time and sequence of cleaning cycle after grit blast;
3. Surface finish parameters;
4. Application of binders to promote adhesion;
e. Masking technique parameters, as follows:
1. Material of mask;
2. Location of mask;
2. "Technology" for in situ quality assurance techniques for evaluation of the coating processes listed in the Table, as follows:
a. Atmosphere parameters, as follows:
1. Composition of the atmosphere;
2. Pressure of the atmosphere;
b. Time parameters;
c. Temperature parameters;
d. Thickness parameters;
e. Index of refraction parameters;
f. Control of composition;
3. "Technology" for post deposition treatments of the coated substrates listed in the Table, as follows:
a. Shot peening parameters, as follows:
1. Shot composition;
2. Shot size;
3. Shot velocity;
b. Post shot peening cleaning parameters;
c. Heat treatment cycle parameters, as follows:
1. Atmosphere parameters, as follows:
a. Composition of the atmosphere;
b. Pressure of the atmosphere;
2. Time-temperature cycles;
d. Post heat treatment visual and macroscopic criteria for acceptance of the coated substrates;
4. "Technology" for quality assurance techniques for the evaluation of the coated substrates listed in the Table, as follows:
a. Statistical sampling criteria;
b. Microscopic criteria for:
1. Magnification;
2. Coating thickness, uniformity;
3. Coating integrity;
4. Coating composition;
5. Coating and substrates bonding;
6. Microstructural uniformity.
c. Criteria for optical properties assessment (measured as a function of wavelength):
1. Reflectance;
2. Transmission;
3. Absorption;
4. Scatter;
5. "Technology" and parameters related to specific coating and surface modification processes listed in the Table, as follows:
a. For Chemical Vapor Deposition (CVD):
1. Coating source composition and formulation;
2. Carrier gas composition;
3. Substrate temperature;
4. Time-temperature-pressure cycles;
5. Gas control and part manipulation;
b. For Thermal Evaporation-Physical Vapor Deposition (PVD):
1. Ingot or coating material source composition;
2. Substrate temperature;
3. Reactive gas composition;
4. Ingot feed rate or material vaporization rate;
5. Time-temperature-pressure cycles;
6. Beam and part manipulation;
7. "Laser" parameters, as follows:
a. Wave length;
b. Power density;
c. Pulse length;
d. Repetition ratio;
e. Source;
c. For Pack Cementation:
1. Pack composition and formulation;
2. Carrier gas composition;
3. Time-temperature-pressure cycles;
d. For Plasma Spraying:
1. Powder composition, preparation and size distributions;
2. Feed gas composition and parameters;
3. Substrate temperature;
4. Gun power parameters;
5. Spray distance;
6. Spray angle;
7. Cover gas composition, pressure and flow rates;
8. Gun control and part manipulation;
e. For Sputter Deposition:
1. Target composition and fabrication;
2. Geometrical positioning of part and target;
3. Reactive gas composition;
4. Electrical bias;
5. Time-temperature-pressure cycles;
6. Triode power;
7. Part manipulation;
f. For Ion Implantation:
1. Beam control and part manipulation;
2. Ion source design details;
3. Control techniques for ion beam and deposition rate parameters;
4. Time-temperature-pressure cycles.
g. For Ion Plating:
1. Beam control and part manipulation;
2. Ion source design details;
3. Control techniques for ion beam and deposition rate parameters;
4. Time-temperature-pressure cycles;
5. Coating material feed rate and vaporization rate;
6. Substrate temperature;
7. Substrate bias parameters.

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Numbers (ECCNs), are amended:

a. By revising the List of Items Controlled section for ECCNs 3A001, 3A002, 3A991, 3B001, 3B991, 3C002 and 3E001;

b. By adding a new ECCN 3C992;

c. By revising the License Exceptions section and the List of Items Controlled section for 3E002, to read as follows:

3A001 Electronic components, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Number

Related Controls: See also 3A101, 3A201, and 3A991

Related Definitions: For the purposes of integrated circuits in 3A001.a.1, 5×10^3 Gy(Si) = 5×10^5 Rads (Si); 5×10^6 Gy (Si)/s = 5×10^8 Rads (Si)/s.

Items:

a. General purpose integrated circuits, as follows:

Note 1: The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.

Note 2: Integrated circuits include the following types:
"Monolithic integrated circuits";
"Hybrid integrated circuits";
"Multichip integrated circuits";
"Film type integrated circuits", including silicon-on-sapphire integrated circuits;
"Optical integrated circuits".

a.1. Integrated circuits, designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of 5×10^3 Gy (Si), or higher; *or*

a.1.b. A dose rate upset of 5×10^6 Gy (Si)/s, or higher;

a.2. Integrated circuits described in 3A001.a.3 to 3A001.a.10 or 3A001.a.12, electrical erasable programmable read-only memories (EEPROMs), flash memories and static random-access memories (SRAMs), having any of the following:

a.2.a. Rated for operation at an ambient temperature above 398 K (125° C);

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a.2.b. Rated for operation at an ambient temperature below 218 K (−55° C); *or*

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55° C) to 398 K (125° C);

Note: 3A001.a.2 does not apply to integrated circuits for civil automobiles or railway train applications.

a.3. "Microprocessor microcircuits", "micro-computer microcircuits" and microcontroller microcircuits, having any of the following characteristics:

Note: 3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. A "composite theoretical performance" ("CTP") of 260 million theoretical operations per second (Mtops) or more and an arithmetic logic unit with an access width of 32 bit or more;

a.3.b. Manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz; *or*

a.3.c. More than one data or instruction bus or serial communication port for external interconnection in a parallel processor with a transfer rate exceeding 2.5 Mbyte/s;

a.4. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bit or more, but less than 12 bit, with a total conversion time to maximum resolution of less than 10 ns;

a.5.a.2. A resolution of 12 bit with a total conversion time to maximum resolution of less than 200 ns; *or*

a.5.a.3. A resolution of more than 12 bit with a total conversion time to maximum resolution of less than 2 µs;

a.5.b. Digital-to-analog converters with a resolution of 12 bit or more, and a "settling time" of less than 10 ns;

a.6. Electro-optical and "optical integrated circuits" designed for "signal processing" having all of the following:

a.6.a. One or more than one internal "laser" diode;

a.6.b. One or more than one internal light detecting element; *and*

a.6.c. Optical waveguides;

a.7. Field programmable gate arrays having any of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates); *or*

a.7.b. A typical "basic gate propagation delay time" of less than 0.4 ns;

a.8. Field programmable logic arrays having any of the following:

a.8.a. An equivalent usable gate count of more than 30,000 (2 input gates); *or*

a.8.b. A toggle frequency exceeding 133 MHz;

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 208 terminals;

a.10.b. A typical "basic gate propagation delay time" of less than 0.35 ns; or

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12, based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); *or*

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having any of the following:

a.12.a. A rated execution time for a 1,024 point complex FFT of less than 1 ms;

a.12.b. A rated execution time for an N-point complex FFT of other than 1,024 points of less than $N \log_2 N$ /10,240 ms, where N is the number of points; *or*

a.12.c. A butterfly throughput of more than 5.12 MHz;

b. Microwave or millimeter wave components, as follows:

b.1. Electronic vacuum tubes and cathodes, as follows:

Note: 3A001.b.1 does not control tubes designed or rated to operate in the ITU allocated bands at frequencies not exceeding 31 GHz.

b.1.a. Traveling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies higher than 31 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with an "instantaneous bandwidth" of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An "instantaneous bandwidth" of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An "instantaneous bandwidth" of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; *or*

b.1.a.4.c. Being "space qualified";

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes designed for electronic tubes, with any of the following:

b.1.c.1. A turn on time to rated emission of less than 3 seconds; *or*

b.1.c.2. Producing a continuous emission current density at rated operating conditions exceeding 5 A/cm²;

b.2. Microwave integrated circuits or modules having all of the following:

b.2.a. Containing "monolithic integrated circuits"; and

b.2.b. Operating at frequencies above 3 GHz;

Note: 3A001.b.2 does not control circuits or modules for equipment designed or rated to operate in the ITU allocated bands at frequencies not exceeding 31 GHz.

b.3. Microwave transistors rated for operation at frequencies exceeding 31 GHz;

b.4. Microwave solid state amplifiers, having any of the following:

b.4.a. Operating frequencies exceeding 10.5 GHz and an "instantaneous bandwidth" of more than half an octave; *or*

b.4.b. Operating frequencies exceeding 31 GHz;

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (F_{max}/F_{min}) in less than 10 µs having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. Microwave "assemblies" capable of operating at frequencies exceeding 31 GHz;

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A002.c, 3A002.e or 3A002.f beyond the limits stated therein;

b.8. Microwave power amplifiers containing tubes controlled by 3A001.b and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power density exceeding 80 W/kg; *and*

b.8.c. A volume of less than 400 cm³;

Note: 3A001.b.8 does not control equipment designed or rated for operation in an ITU allocated band.

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (i.e., "signal processing" devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 2.5 GHz, and having any of the following:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in µs and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; *or*

c.1.b.4. A dispersive delay of more than 10 µs; *or*

c.1.c. A carrier frequency of 1 GHz or less, having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in µs and bandwidth in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 µs; *or*

c.1.c.3. A frequency side-lobe rejection exceeding 55 dB and a bandwidth greater than 50 MHz;

c.2. Bulk (volume) acoustic wave devices (i.e., "signal processing" devices employing elastic waves) that permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic "signal processing" devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices and circuits containing components, manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of the "superconductive" constituents, with any of the following:

d.1. Electromagnetic amplification:

d.1.a. At frequencies equal to or less than 31 GHz with a noise figure of less than 0.5 dB; *or*

d.1.b. At frequencies exceeding 31 GHz;

d.2. Current switching for digital circuits using "superconductive" gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; *or*

d.3. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries and photovoltaic arrays, as follows:

Note: 3A001.e.1 does not control batteries with volumes equal to or less than 27 cm³ (e.g., standard C-cells or R14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30° C) to above 343 K (70° C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20° C) to above 333 K (60° C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75% of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. "Space qualified" and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m² at an operating temperature of 301 K (28° C) under a tungsten illumination of 1 kW/m² at 2,800 K (2,527° C);

e.2. High energy storage capacitors, as follows:

N.B.: See also 3A201.a.

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; *and*

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; *and*

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. "Superconductive" electromagnets and solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

N.B.: See also 3A201.b.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; *and*

e.3.c. Rated for a magnetic induction of more than 8 T or "overall current density" in the winding of more than 300 A/mm²;

Note: 3A001.e.3 does not control "superconductive" electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

f. Rotary input type shaft absolute position encoders having any of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; *or*

f.2. An accuracy better than ±2.5 seconds of arc.

3A002 General purpose electronic equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Number

Related Controls: See also 3A202 and 3A992

Related Definitions: N/A

Items:

a. Recording equipment, as follows, and specially designed test tape therefor:

a.1. Analog instrumentation magnetic tape recorders, including those permitting the recording of digital signals (e.g., using a high density digital recording (HDDR) module), having any of the following:

a.1.a. A bandwidth exceeding 4 MHz per electronic channel or track;

a.1.b. A bandwidth exceeding 2 MHz per electronic channel or track and having more than 42 tracks; *or*

a.1.c. A time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of less than ±0.1 µs;

Note: Analog magnetic tape recorders specially designed for civilian video purposes are not considered to be instrumentation tape recorders.

a.2. Digital video magnetic tape recorders having a maximum digital interface transfer rate exceeding 360 Mbit/s;

Note: 3A002.a.2 does not control digital video magnetic tape recorders specially designed for television recording using a signal format, which may include a compressed signal format, standardized or recommended by the ITU, the IEC, the SMPTE, the EBU or the IEEE for civil television applications.

a.3. Digital instrumentation magnetic tape data recorders employing helical scan techniques or fixed head techniques, having any of the following:

a.3.a. A maximum digital interface transfer rate exceeding 175 Mbit/s; *or*

a.3.b. Being "space qualified";

Note: 3A002.a.3 does not control analog magnetic tape recorders equipped with

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HDDR conversion electronics and configured to record only digital data.

a.4. Equipment, having a maximum digital interface transfer rate exceeding 175 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

a.5. Waveform digitizers and transient recorders having all of the following:

N.B.: See also 3A202.

a.5.a. Digitizing rates equal to or more than 200 million samples per second and a resolution of 10 bits or more; *and*

a.5.b. A continuous throughput of 2 Gbit/s or more;

Technical Note: For those instruments with a parallel bus architecture, the continuous throughput rate is the highest word rate multiplied by the number of bits in a word. Continuous throughput is the fastest data rate the instrument can output to mass storage without the loss of any information while sustaining the sampling rate and analog-to-digital conversion.

b. "Frequency synthesizer", "assemblies" having a "frequency switching time" from one selected frequency to another of less than 1 ms;

c. "Signal analyzers", as follows:

c.1. "Signal analyzers" capable of analyzing frequencies exceeding 31 GHz;

c.2. "Dynamic signal analyzers" having a "real-time bandwidth" exceeding 25.6 kHz;

Note: 3A002.c.2 does not control those "dynamic signal analyzers" using only constant percentage bandwidth filters (also known as octave or fractional octave filters).

Technical Note: Constant percentage bandwidth filters are also known as octave or fractional octave filters.

d. Frequency synthesized signal generators producing output frequencies, the accuracy and short term and long term stability of which are controlled, derived from or disciplined by the internal master frequency, and having any of the following:

d.1. A maximum synthesized frequency exceeding 31 GHz;

d.2. A "frequency switching time" from one selected frequency to another of less than 1 ms; *or*

d.3. A single sideband (SSB) phase noise better than $-(126 + 20 \log_{10}F - 20 \log_{10}f)$ in dBc/Hz, where F is the off-set from the operating frequency in Hz and f is the operating frequency in MHz;

Note: 3A002.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.

e. Network analyzers with a maximum operating frequency exceeding 40 GHz;

f. Microwave test receivers having all of the following:

f.1. A maximum operating frequency exceeding 40 GHz; *and*

f.2. Being capable of measuring amplitude and phase simultaneously;

g. Atomic frequency standards having any of the following:

g.1. Long-term stability (aging) less (better) than 1×10^{-11}/month; *or*

g.2. Being "space qualified".

Note: 3A002.g.1 does not control non-"space qualified" rubidium standards.

3A991 Electronic devices and components not controlled by 3A001.

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List of Items Controlled

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items:

a. "Microprocessor microcircuits", "microcomputer microcircuits", and microcontroller microcircuits having a clock frequency exceeding 25 MHz;

b. Storage integrated circuits, as follows:

b.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

b.1.a. Exceeding 16 Mbits per package for flash memory types; *or*

b.1.b. Exceeding either of the following limits for all other EEPROM types:

b.1.b.1. Exceeding 1 Mbit per package; *or*

b.1.b.2. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

b.2. Static random access memories (SRAMs) with a storage capacity:

b.2.a. Exceeding 1 Mbit per package; *or*

b.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

c. Field programmable logic arrays having either of the following:

c.1. An equivalent gate count of more than 5000 (2 input gates); *or*

c.2. A toggle frequency exceeding 100 MHz;

d. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

d.1. More than 144 terminals; *or*

d.2. A typical "basic propagation delay time" of less than 0.4 ns.

e. Travelling wave tubes, pulsed or continuous wave, as follows:

e.1. Coupled cavity tubes, or derivatives thereof;

e.2. Helix tubes, or derivatives thereof, with any of the following:

e.2.a.1. An "instantaneous bandwidth" of half an octave or more; *and*

e.2.a.2. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

e.2.b.1 An "instantaneous bandwidth" of less than half an octave; *and*

e.2.b.2. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

f. Flexible waveguides designed for use at frequencies exceeding 40 GHz;

g. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (i.e., "signal processing" devices employing elastic waves in materials), having either of the following:

g.1. A carrier frequency exceeding 1 GHz; *or*

g.2. A carrier frequency of 1 GHz or less; *and*

g.2.a. A frequency side-lobe rejection exceeding 55 dB;

g.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; *or*

g.2.c. A dispersive delay of more than 10 microseconds.

h. Batteries, as follows:

Note: 3A991.h does not control batteries with volumes equal to or less than 26 cm^3 (e.g., standard C-cells or UM–2 batteries).

h.1. Primary cells and batteries having an energy density exceeding 350 Wh/kg and rated for operation in the temperature range from below 243 K (−30° C) to above 343 K (70° C);

h.2. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20° C) to above 333 K (60° C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

i. "Superconductive" electromagnets or solenoids specially designed to be fully charged or discharged in less than one minute, having all of the following:

Note: 3A991.i does not control "superconductive" electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.

i.1. Maximum energy delivered during the discharge divided by the duration of the discharge of more than 500 kJ per minute;

i.2. Inner diameter of the current carrying windings of more than 250 mm; *and*

i.3. Rated for a magnetic induction of more than 8T or "overall current density" in the winding of more than 300 A/mm.[2]

j. Circuits or systems for electromagnetic energy storage, containing components manufactured from "superconductive" materials specially designed for operation at temperatures below the "critical temperature" of at least one of their "superconductive" constituents, having all of the following:

j.1. Resonant operating frequencies exceeding 1 MHz;

j.2. A stored energy density of 1 MJ/M^3 or more; *and*

j.3. A discharge time of less than 1 ms;

k. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rate for a peak current of 500 A or more;

l. Digital integrated circuits based on any compound semiconductor having an equivalent gate count of more than 300 (2 input gates).

3B001 Equipment for the manufacturing of semiconductor devices or materials and specially designed components and accessories therefor.

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List of Items Controlled

Unit: Number
Related Controls: See also 3B991
Related Definitions: N/A
Items:

a. "Stored program controlled" equipment designed for epitaxial growth, as follows:

a.1. Equipment capable of producing a layer thickness uniform to less than ± 2.5% across a distance of 75 mm or more;

a.2. Metal organic chemical vapor deposition (MOCVD) reactors specially designed for compound semiconductor crystal growth by the chemical reaction between materials controlled by 3C003 or 3C004;

a.3. Molecular beam epitaxial growth equipment using gas or solid sources;

b. "Stored program controlled" equipment designed for ion implantation, having any of the following:

b.1. A beam energy (accelerating voltage) exceeding 1MeV;

b.2. Being specially designed and optimized to operate at a beam energy (accelerating voltage of less than 2 keV;

b.3. Direct write capability; *or*

b.4. Being capable of high energy oxygen implant into a heated semiconductor material "substrate";

c. "Stored program controlled" anisotropic plasma dry etching equipment, as follows:

c.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

c.1.a. Magnetic confinement; *or*

c.1.b. Electron cyclotron resonance (ECR);

c.2. Equipment specially designed for equipment controlled by 3B001.e and having any of the following:

c.2.a. Magnetic confinement; *or*

c.2.b. ECR;

d. "Stored program controlled" plasma enhanced CVD equipment, as follows:

d.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

d.1.a. Magnetic confinement; *or*

d.1.b. ECR;

d.2. Equipment specially designed for equipment controlled by 3B001.e and having any of the following:

d.2.a. Magnetic confinement; *or*

d.2.b. ECR;

e. "Stored program controlled" automatic loading multi-chamber central wafer handling systems, having all of the following:

e.1. Interfaces for wafer input and output, to which more than two pieces of semiconductor processing equipment are to be connected; *and*

e.2. Designed to form an integrated system in a vacuum environment for sequential multiple wafer processing;

Note: 3B001.e does not control automatic robotic wafer handling systems not designed to operate in a vacuum environment.

f. "Stored program controlled" lithography equipment, as follows:

f.1. Align and expose step and repeat (direct step on wafer) or step and scan (scanner) equipment for wafer processing using photo-optical or X-ray methods, having any of the following:

f.1.a. A light source wavelength shorter than 350 nm; *or*

f.1.b. Capable of producing a pattern with a minimum resolvable feature size of 0.5 µm or less;

Note: The minimum resolvable feature size is calculated by the following formula:

$$MRF = \frac{(\text{an exposure light source wavelength in } \mu m) \times (\text{K factor})}{\text{numerical aperture}}$$

Where the K factor = 0.7.
MRF = minimum resolvable feature size.

f.2. Equipment specially designed for mask making or semiconductor device processing using deflected focussed electron beam, ion beam or "laser" beam, having any of the following:

f.2.a. A spot size smaller than 0.2 µm;

f.2.b. Being capable of producing a pattern with a feature size of less than 1 µm; *or*

f.2.c. An overlay accuracy of better than ±0.20 µm (3 sigma);

g. Masks and reticles designed for integrated circuits controlled by 3A001;

h. Multi-layer masks with a phase shift layer.

3B991 Equipment not controlled by 3B001 for the manufacture of electronic components and materials, and specially designed components and accessories therefor.

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List of Items Controlled

Unit: Equipment in number
Related Controls: N/A
Related Definitions: N/A
Items:

a. Equipment specially designed for the manufacture of electron tubes, optical elements and specially designed components therefor controlled by 3A001 or 3A991;

b. Equipment specially designed for the manufacture of semiconductor devices, integrated circuits and "assemblies", as follows, and systems incorporating or having the characteristics of such equipment:

Note: 3B991.b also controls equipment used or modified for use in the manufacture of other devices, such as imaging devices.

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electro-optical devices, acoustic-wave devices.

b.1. Equipment for the processing of materials for the manufacture of devices and components as specified in the heading of 3B991.b, as follows:

Note: 3B991 does not control quartz furnace tubes, furnace liners, paddles, boats (except specially designed caged boats), bubblers, cassettes or crucibles specially designed for the processing equipment controlled by 3B991.b.1.

b.1.a. Equipment for producing polycrystalline silicon and materials controlled by 3C001;

b.1.b. Equipment specially designed for purifying or processing III/V and II/VI semiconductor materials controlled by 3C001, 3C002, 3C003, or 3C004, except crystal pullers, for which see 3B991.b.1.c below;

b.1.c. Crystal pullers and furnaces, as follows:

Note: 3B991.b.1.c does not control diffusion and oxidation furnaces.

b.1.c.1. Annealing or recrystallizing equipment other than constant temperature furnaces employing high rates of energy transfer capable of processing wafers at a rate exceeding 0.005 m^2 per minute;

b.1.c.2. "Stored program controlled" crystal pullers having any of the following characteristics:

b.1.c.2.a. Rechargeable without replacing the crucible container;

b.1.c.2.b. Capable of operation at pressures above 2.5 x 10^5 Pa; *or*

b.1.c.2.c. Capable of pulling crystals of a diameter exceeding 100 mm;

b.1.d. "Stored program controlled" equipment for epitaxial growth having any of the following characteristics:

b.1.d.1. Capable of producing a layer thickness uniformity across the wafer of equal to or better than ±3.5%;

b.1.d.2. Rotation of individual wafers during processing; *or*

b.1.e. Molecular beam epitaxial growth equipment;

b.1.f. Magnetically enhanced "sputtering" equipment with specially designed integral load locks capable of transferring wafers in an isolated vacuum environment;

b.1.g. Equipment specially designed for ion implantation, ion-enhanced or photo-enhanced diffusion, having any of the following characteristics:

b.1.g.1. Patterning capability;

b.1.g.2. Beam energy (accelerating voltage) exceeding 200 keV;

b.1.g.3 Optimized to operate at a beam energy (accelerating voltage) of less than 10 keV; *or*

b.1.g.4. Capable of high energy oxygen implant into a heated "substrate";

b.1.h. "Stored program controlled" equipment for the selective removal (etching) by means of anisotropic dry methods (e.g., plasma), as follows:

b.1.h.1. Batch types having either of the following:

b.1.h.1.a. End-point detection, other than optical emission spectroscopy types; *or*

b.1.h.1.b. Reactor operational (etching) pressure of 26.66 Pa or less;

b.1.h.2. Single wafer types having any of the following:

b.1.h.2.a. End-point detection, other than optical emission spectroscopy types;

b.1.h.2.b. Reactor operational (etching) pressure of 26.66 Pa or less; *or*

b.1.h.2.c. Cassette-to-cassette and load locks wafer handling;

Notes: 1. "Batch types" refers to machines not specially designed for production processing of single wafers. Such machines can process two or more wafers simultaneously with common process parameters, e.g., RF power, temperature, etch gas species, flow rates.

2. "Single wafer types" refers to machines specially designed for production processing of single wafers. These machines may use automatic wafer handling techniques to load a single wafer into the equipment for processing. The definition includes equipment that can load and process several wafers but where the etching parameters, e.g., RF power or end point, can be independently determined for each individual wafer.

b.1.i. "Chemical vapor deposition" (CVD) equipment, e.g., plasma-enhanced CVD (PECVD) or photo-enhanced CVD, for semiconductor device manufacturing, having either of the following capabilities, for deposition of oxides, nitrides, metals or polysilicon:

b.1.i.1. "Chemical vapor deposition" equipment operating below 10^5 Pa; *or*

b.1.i.2. PECVD equipment operating either below 60 Pa (450 millitorr) or having automatic cassette-to-cassette and load lock wafer handling;

Note: 3B991.b.1.i does not control low pressure "chemical vapor deposition" (LPCVD) systems or reactive "sputtering" equipment.

b.1.j. Electron beam systems specially designed or modified for mask making or semiconductor device processing having any of the following characteristics:

b.1.j.1. Electrostatic beam deflection;

b.1.j.2. Shaped, non-Gaussian beam profile;

b.1.j.3. Digital-to-analog conversion rate exceeding 3 MHz;

b.1.j.4. Digital-to-analog conversion accuracy exceeding 12 bit; *or*

b.1.j.5. Target-to-beam position feedback control precision of 1 micrometer or finer;

Note: 3B991.b.1.j does not control electron beam deposition systems or general purpose scanning electron microscopes.

b.1.k. Surface finishing equipment for the processing of semiconductor wafers as follows:

b.1.k.1. Specially designed equipment for backside processing of wafers thinner than 100 micrometer and the subsequent separation thereof; *or*

b.1.k.2. Specially designed equipment for achieving a surface roughness of the active surface of a processed wafer with a two-sigma value of 2 micrometer or less, total indicator reading (TIR);

Note: 3B991.b.1.k does not control single-side lapping and polishing equipment for wafer surface finishing.

b.1.l. Interconnection equipment which includes common single or multiple vacuum chambers specially designed to permit the integration of any equipment controlled by 3B991 into a complete system;

b.1.m. "Stored program controlled" equipment using "lasers" for the repair or trimming of "monolithic integrated circuits" with either of the following characteristics:

b.1.m.1. Positioning accuracy less than ± 1 micrometer; *or*

b.1.m.2. Spot size (kerf width) less than 3 micrometer.

b.2. Masks, mask "substrates", mask-making equipment and image transfer equipment for the manufacture of devices and components as specified in the heading of 3B991, as follows:

Note: The term "masks" refers to those used in electron beam lithography, X-ray lithography, and ultraviolet lithography, as well as the usual ultraviolet and visible photo-lithography.

b.2.a. Finished masks, reticles and designs therefor, except:

b.2.a.1. Finished masks or reticles for the production of unembargoed integrated circuits; *or*

b.2.a.2. Masks or reticles, having both of the following characteristics:

b.2.a.2.a. Their design is based on geometries of 2.5 micrometer or more; *and*

b.2.a.2.b. The design does not include special features to alter the intended use by means of production equipment or "software";

b.2.b. Mask "substrates" as follows:

b.2.b.1. Hard surface (e.g., chromium,silicon, molybdenum) coated "substrates" (e.g., glass, quartz, sapphire) for the preparation of masks having dimensions exceeding 125 mm × 125 mm; *or*

b.2.b.2. "Substrates" specially designed for X-ray masks;

b.2.c. Equipment, other than general purpose computers, specially designed for computer aided design (CAD) of semiconductor devices or integrated circuits;

b.2.d. Equipment or machines, as follows, for mask or reticle fabrication:

b.2.d.1. Photo-optical step and repeat cameras capable of producing arrays larger than 100 mm × 100 mm, or capable of producing a single exposure larger than 6 mm × 6 mm in the image (i.e., focal) plane, or capable of producing line widths of less than 2.5 micrometer in the photoresist on the "substrate";

b.2.d.2. Mask or reticle fabrication equipment using ion or "laser" beam lithography capable of producing line widths of less than 2.5 micrometer; *or*

b.2.d.3. Equipment or holders for altering masks or reticles or adding pellicles to remove defects;

Note: 3B991.b.2.d.1 and b.2.d.2 do not control mask fabrication equipment using photo-optical methods which was either commercially available before the 1st January, 1980, or has a performance no better than such equipment.

b.2.e. "Stored program controlled" equipment for the inspection of masks, reticles or pellicles with:

b.2.e.1. A resolution of 0.25 micrometer or finer; *and*

b.2.e.2. A precision of 0.75 micrometer or finer over a distance in one or two coordinates of 63.5 mm or more;

Note: 3B991.b.2.e does not control general purpose scanning electron microscopes except when specially designed and instrumented for automatic pattern inspection.

b.2.f. Align and expose equipment for wafer production using photo-optical or X-ray methods, including both projection image transfer equipment and step and repeat (direct step on wafer) or step and scan (scanner) equipment, capable of performing any of the following functions:

Note: 3B991.b.2.f does not control photo-optical contact and proximity mask align and expose equipment or contact image transfer equipment.

b.2.f.1. Production of a pattern size of less than 2.5 micrometer;

b.2.f.2. Alignment with a precision finer than ± 0.25 micrometer (3 sigma);

b.2.f.3. Machine-to-machine overlay no better than ± 0.3 micrometer;

b.2.f.4. A light source wavelength shorter than 400 nm; *or*

b.2.f.5. Capable of producing a pattern with a minimum resolvable feature size of 0.7 microns or less.

b.2.g. Electron beam, ion beam or X-ray equipment for projection image transfer capable of producing patterns less than 2.5 micrometer;

Note: For focussed, deflected-beam systems (direct write systems), see 3B991.b.1.j or b.10.

b.2.h. Equipment using "lasers" for direct write on wafers capable of producing patterns less than 2.5 micrometer.

b.3. Equipment for the assembly of integrated circuits, as follows:

b.3.a. "Stored program controlled" die bonders having all of the following characteristics:

b.3.a.1. Specially designed for "hybrid integrated circuits";

b.3.a.2. X–Y stage positioning travel exceeding 37.5 x 37.5 mm; *and*

b.3.a.3. Placement accuracy in the X–Y plane of finer than ± 10 micrometer;

b.3.b. "Stored program controlled" equipment for producing multiple bonds in a single operation (e.g., beam lead bonders, chip carrier bonders, tape bonders);

b.3.c. Semi-automatic or automatic hot cap sealers, in which the cap is heated locally to a higher temperature than the body of the package, specially designed for ceramic microcircuit packages controlled by 3A001 and that have a throughput equal to or more than one package per minute.

Note: 3B991.b.3 does not control general purpose resistance type spot welders.

. b.4. Filters for clean rooms capable of providing an air environment of 10 or less particles of 0.3 micrometer or smaller per 0.02832 m^3 and filter materials therefor;

3C002 Resist material and "substrates" coated with controlled resists.

* * * * *

List of Items Controlled

Unit: $ value
Related Controls: N/A
Related Definitions: Silylation techniques are defined as processes incorporating oxidation of the resist surface to enhance performance for both wet and dry developing.
Items:

a. Positive resists designed for semiconductor lithography specially adjusted (optimized) for use at wavelengths below 350 nm;

b. All resists designed for use with electron beams or ion beams, with a sensitivity of 0.01 µcoulomb/mm^2 or better;

c. All resists designed for use with X-rays, with a sensitivity of 2.5 mJ/mm^2 or better;

d. All resists optimized for surface imaging technologies, including silylated resists.

3C992 Positive resists designed for semiconductor lithography specially adjusted (optimized) for use at wavelengths between 370 and 350 nm.

License Requirements

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

3E001 "Technology" according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 3A (except 3A292, 3A980, 3A981, 3A991 or 3A992), 3B (except 3B991 and 3B992) or 3C.

* * * * *

List of Items Controlled

Unit: N/A
Related Controls: (1.) See also 3E101 and 3E201.(2.) 3E001 does not control "technology" for the "development" or "production" of: (a) Microwave transistors operating at frequencies below 31 GHz; (b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following: 1. Using "technology" of 0.7 micrometer or more, AND 2. Not incorporating multi-layer structures. (3.) The term multi-layer structures in this entry does not include devices incorporating a maximum of two metal layers and two polysilicon layers.
Related Definition: N/A
Items:

The list of items controlled is contained in the ECCN heading.

3E002 Other "technology" for the "development" or "production" of items described in the List of Items Controlled.

* * * * *

License Exceptions

CIV: N/A
TSR: Yes, except .e and .f

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List of Items Controlled

Unit: N/A
Related Controls: See 3E001 for silicon-on-insulation (SOI) technology for the "development" or "production" related to radiation hardening of integrated circuits
Related Definitions: N/A
Items:
a. Vacuum microelectronic devices;
b. Hetero-structure semiconductor devices such as high electron mobility transistors (HEMT), hetero-bipolar transistors (HBT), quantum well and super lattice devices;
c. "Superconductive" electronic devices;
d. Substrates of films of diamond for electronic components;
e. Substrates of silicon-on-insulator (SOI) for integrated circuits in which the insulator is silicon dioxide;
f. Substrates of silicon carbide for electronic components.

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—computers is amended by revising Export Control Classification Number (ECCN) 4A003, to read as follows:

4A003 "Digital computers", "electronic assemblies", and related equipment therefor, and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

Control(s)	*Country Chart*
NS applies to 4A003.b and .c.	NS Column 1
NS applies to 4A003.a, .d, .e, and .g.	NS Column 2
MT applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B005 or 9B006.	MT Column 1
CC applies to digital computers for computerized finger-print equipment.	CC Column 1
AT applies to entire entry (refer to 4A994 for controls on digital computers with a CTP ≥ 6 but ≤ to 2,000 Mtops).	AT Column 1

NP applies to digital computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to digital computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See § 742.12 of the EAR for additional information.

Note: For all destinations, except Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria, no license is required (NLR) for computers with a CTP of 2,000 Mtops, and for assemblies described in 4A003.c that are not capable of exceeding a CTP of 2,000 Mtops in aggregation. Computers controlled in this entry for MT reasons are not eligible for NLR.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions

LVS: $5000; N/A for MT and "digital" computers controlled by 4A003.b and having a CTP exceeding 10,000 MTOPS; or "electronic assemblies" controlled by 4A003.c and capable of enhancing performance by aggregation of "computing elements" so that the CTP of the aggregation exceeds 10,000 MTOPS.
GBS: Yes, for 4A003.d, .e, and .g and specially designed components therefor, exported separately or as part of a system.
CTP: Yes, for computers controlled by 4A003.a, .b and .c, to the exclusion of other technical parameters, with the exception of parameters specified as controlled for Missile Technology (MT) concerns and 4A003.e (equipment performing analog-to-digital or digital-to-analog conversions exceeding the limits of 3A001.a.5.a). See § 740.7 of the EAR.
CIV: Yes, for 4A003.d (having a 3–D vector rate less than 10 M vectors/sec), .e, and .g.

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value
Related Controls: See also 4A994
Related Definitions: N/A
Items:

Note 1: 4A003 includes the following:

a. Vector processors;
b. Array processors;
c. Digital signal processors;
d. Logic processors;
e. Equipment designed for "image enhancement";
f. Equipment designed for "signal processing".

Note 2: The control status of the "digital computers" and related equipment described in 4A003 is determined by the control status of other equipment or systems provided:

a. The "digital computers" or related equipment are essential for the operation of the other equipment or systems;
b. The "digital computers" or related equipment are not a "principal element" of the other equipment or systems; *and*

N.B. 1: The control status of "signal processing" or "image enhancement" equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the "principal element" criterion.

N.B. 2: For the control status of "digital computers" or related equipment for telecommunications equipment, see Category 5, Part 1 (Telecommunications).

c. The "technology" for the "digital computers" and related equipment is determined by 4E.

a. Designed or modified for "fault tolerance";

Note: For the purposes of 4A003.a., "digital computers" and related equipment are not considered to be designed or modified for "fault tolerance" if they utilize any of the following:

1. Error detection or correction algorithms in "main storage";
2. The interconnection of two "digital computers" so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;
3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; or
4. The synchronization of two central processing units by "software" so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

b. "Digital computers" having a "composite theoretical performance" ("CTP") exceeding 2,000 million theoretical operations per second (Mtops);

c. "Electronic assemblies" specially designed or modified to be capable of enhancing performance by aggregation of "computing elements" ("CEs") so that the "CTP" of the aggregation exceeds the limit in 4A003.b;

Note 1: 4A003.c applies only to "electronic assemblies" and programmable interconnections not exceeding the limit in 4A003.b when shipped as unintegrated "electronic assemblies". It does not apply to "electronic assemblies" inherently limited by nature of their design for use as related equipment controlled by 4A003.d, or 4A003.e.

Note 2: 4A003.c does not control "electronic assemblies" specially designed for a product or family of products whose maximum configuration does not exceed the limit of 4A003.b.

d. Graphics accelerators and graphics coprocessors exceeding a "three dimensional Vector Rate" of 3,000,000;

e. Equipment performing analog-to-digital conversions exceeding the limits in 3A001.a.5;

f. Reserved.

g. Equipment specially designed to provide external interconnection of "digital computers" or associated equipment that allows communications at data rates exceeding 80 Mbyte/s.

Note: 4A003.g does not control internal interconnection equipment (e.g., backplanes, buses) passive interconnection equipment, "network access controllers" or "communication channel controllers".

11. In Supplement No. 1 to part 774, the Commerce Control List, Category 4—Computers is amended by revising the table following the EAR99 entry to read as follows:

Information on How to Calculate "Composite Theoretical Performance ("CTP")

Technical Note: "COMPOSITE THEORETICAL PERFORMANCE" ("CTP")

Abbreviations used in this Technical Note

"CE"	"computing element" (typically an arithmetic logical unit)
FP	floating point
XP	fixed point
t	execution time
XOR	exclusive OR
CPU	central processing unit
TP	theoretical performance (of a single "CE")
"CTP"	"composite theoretical performance" (multiple "CEs")
R	effective calculating rate
WL	word length
L	word length adjustment
*	multiply

Execution time t is expressed in microseconds, TP and "CTP" are expressed in millions of theoretical operations per second (Mtops) and WL is expressed in bits.

Outline of "CTP" calculation method

"CTP" is a measure of computational performance given in Mtops. In calculating the "CTP" of an aggregation of "CEs" the following three steps are required:

1. Calculate the effective calculating rate R for each "CE";
2. Apply the word length adjustment (L) to the effective calculating rate (R), resulting in a Theoretical Performance (TP) for each "CE";
3. If there is more than one "CE", combine the TPs, resulting in a "CTP" for the aggregation.

Details for these steps are given in the following sections.

Note 1: For aggregations of multiple "CEs" that have both shared and unshared memory subsystems, the calculation of "CTP" is completed hierarchically, in two steps: first, aggregate the groups of "CEs" sharing memory; second, calculate the "CTP" of the groups using the calculation method for multiple "CEs" not sharing memory.

Note 2: "CEs" that are limited to input/output and peripheral functions (e.g., disk drive, communication and video display controllers) are not aggregated into the "CTP" calculation.

The following table shows the method of calculating the Effective Calculating Rate R for each "CE":

Step 1: The effective calculating rate R

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For "CEs" Implementing: **Note:** Every "CE" must be evaluated independently.	Effective calculating Rate, R
XP only (R_{xp})	1 --- $3 * (t_{xp\ add})$ if no add is implemented use: 1 --- $(t_{xp\ mult})$ If neither add nor multiply is implemented use the fastest available arithmetic operation as follows: 1 --- $3 * t_{xp}$ See Notes X & Z
FP only (R_{fp})	1 1 max ---, --- $t_{fp\ add}$ $t_{fp\ mult}$ See Notes X & Y
Both FP and XP (R)	Calculate both R_{xp}, R_{fp}

For simple logic processors not implementing any of the specified arithmetic operations.	1 --- $3 * t_{log}$ Where t_{log} is the execute time of the XOR, or for logic hardware not implementing the XOR, the fastest simple logic operation. See Notes X & Z
For special logic processors not using any of the specified arithmetic or logic operations.	R = R' * WL/64 Where R' is the number of results per second, WL is the number of bits upon which the logic operation occurs, and 64 is a factor to normalize to a 64 bit operation.

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Note W: For a pipelined "CE" capable of executing up to one arithmetic or logic operation every clock cycle after the pipeline is full, a pipelined rate can be established. The effective calculating rate (R) for such a "CE" is the faster of the pipelined rate or non-pipelined execution rate.

Note X: For a "CE" that performs multiple operations of a specific type in a single cycle (e.g., two additions per cycle or two identical logic operations per cycle), the execution time t is given by:

$$t = \frac{\text{cycle time}}{\text{the number of identical operations per machine cycle}}$$

"CEs" that perform different types of arithmetic or logic operations in a single machine cycle are to be treated as multiple separate "CEs" performing simultaneously (e.g., a "CE" performing an addition and a multiplication in one cycle is to be treated as two "CEs", the first performing an addition in one cycle and the second performing a multiplication in one cycle). If a single "CE" has both scalar function and vector function, use the shorter execution time value.

Note Y: For the "CE" that does not implement FP add or FP multiply, but that performs FP divide:

$$R_{fp} = \frac{1}{t_{fpdivide}}$$

If the "CE" implements FP reciprocal but not FP add, FP multiply or FP divide, then

$$R_{fp} = \frac{1}{t_{fpreciprocal}}$$

If none of the specified instructions is implemented, the effective FP rate is 0.

Note Z: In simple logic operations, a single instruction performs a single logic manipulation of no more than two operands of given lengths. In complex logic operations, a single instruction performs multiple logic manipulations to produce one or more results from two or more operands.

Rates should be calculated for all supported operand lengths considering both pipelined operations (if supported), and non-pipelined operations using the fastest executing instruction for each operand length based on:

1. Pipelined or register-to-register operations. Exclude extraordinarily short execution times generated for operations on a predetermined operand or operands (for example, multiplication by 0 or 1). If no register-to-register operations are implemented, continue with (2).

2. The faster of register-to-memory or memory-to-register operations; if these also do not exist, then continue with (3).

3. Memory-to-memory.

In each case above, use the shortest execution time certified by the manufacturer.

Step 2: *TP for each supported operand length WL*

Adjust the effective rate R (or R') by the word length adjustment L as follows:
TP = R * L, where L = (1/3 + WL/96)

Note: The word length WL used in these calculations is the operand length in bits. (If an operation uses operands of different lengths, select the largest word length.) The combination of a mantissa ALU and an exponent ALU of a floating point processor or unit is considered to be one "CE" with a Word Length (WL) equal to the number of bits in the data representation (typically 32 or 64) for purposes of the "CTP" calculation.

This adjustment is not applied to specialized logic processors that do not use XOR instructions. In this case TP = R.

Select the maximum resulting value of TP for:

Each XP-only "CE" (R_{xp});
Each FP-only "CE" (R_{fp});
Each combined FP and XP "CE" (R);
Each simple logic processor not implementing any of the specified arithmetic operations; *and*
Each special logic processor not using any of the specified arithmetic or logic operations.

Step 3: *"CTP" for aggregations of "CEs", including CPUs.*

For a CPU with a single "CE", "CTP" = TP (for "CEs" performing both fixed and floating point operations TP = max (TP_{fp}, TP_{xp}))

"CTP" for aggregations of multiple "CEs" operating simultaneously is calculated as follows:

Note 1: For aggregations that do not allow all of the "CEs" to run simultaneously, the possible combination of "CEs" that provides the largest "CTP" should be used. The TP of each contributing "CE" is to be calculated at its maximum value theoretically possible before the "CTP" of the combination is derived.

N.B.: To determine the possible combinations of simultaneously operating "CEs", generate an instruction sequence that initiates operations in multiple "CEs", beginning with the slowest "CE" (the one needing the largest number of cycles to complete its operation) and ending with the fastest "CE". At each cycle of the sequence, the combination of "CEs" that are in operation during that cycle is a possible combination. The instruction sequence must take into account all hardware and/or architectural constraints on overlapping operations.

Note 2: A single integrated circuit chip or board assembly may contain multiple "CEs".

Note 3: Simultaneous operations are assumed to exist when the computer manufacturer claims concurrent, parallel or simultaneous operation or execution in a manual or brochure for the computer.

Note 4: "CTP" values are not to be aggregated for "CE" combinations (inter)connected by "Local Area Networks", Wide Area Networks, I/O shared connections/devices, I/O controllers and any communication interconnection implemented by "software".

Note 5: "CTP" values must be aggregated for multiple "CEs" specially designed to enhance performance by aggregation, operating simultaneously and sharing memory,-or multiple memory/"CE"-combinations operating simultaneously utilizing specially designed hardware.

This aggregation does not apply to "electronic assemblies" described by 4A003.c.

"CTP"=$TP_1+C_2*TP_2+...+C_n*TP_n$,

Where the TPs are ordered by value, with TP_1 being the highest, TP_2 being the second highest, ..., and TP_n being the lowest. C_i is a coefficient determined by the strength of the interconnection between "CEs", as follows:

For multiple "CEs" operating simultaneously and sharing memory:

$C_2=C_3=C_4=...=C_n=0.75$

Note 1: When the "CTP" calculated by the above method does not exceed 194 Mtops, the following formula may be used to calculate C_i:

$$C_i = \frac{0.75}{\sqrt{m}} \qquad (i = 2, \ldots, n)$$

Where m=the number of "CEs" or groups of "CEs" sharing access.

provided:

1. The TP_i of each "CE" or group of "CEs" does not exceed 30 Mtops;

2. The "CEs" or groups of "CEs" share access to main memory (excluding cache memory) over a single channel; *and*

3. Only one "CE" or group of "CEs" can have use of the channel at any given time.

N.B.: This does not apply to items controlled under Category 3.

Note 2: "CEs" share memory if they access a common segment of solid state memory. This memory may include cache memory, main memory or other internal memory. Peripheral memory devices such as disk drives, tape drives or RAM disks are not included.

For Multiple "CEs" or groups of "CEs" not sharing memory, interconnected by one or more data channels:

$C_i=0.75*k_i$ (i=2,..., 32) (see Note below)
$=0.60*k_i$ (i=33,..., 64)
$=0.45*k_i$ (i=65,..., 256)
$=0.30 * k_i$ (i >256)

The value of C_i is based on the number of "CE"s, not the number of nodes.

Where k_i=min (S_i/K_r, 1), and
K_r=normalizing factor of 20 MByte/s.
S_i = sum of the maximum data rates (in units of MByte/s) for all data channels connected to the i^{th} "CE" or group of "CEs" sharing memory.

When calculating a C_i for a group of "CEs", the number of the first "CE" in a group determines the proper limit for C_i. For example, in an aggregation of groups consisting of 3 "CEs" each, the 22nd group will contain "CE"$_{64}$, "CE"$_{65}$ and "CE"$_{66}$. The proper limit for C_i for this group is 0.60.

Aggregation (of "CEs" or groups of "CEs") should be from the fastest-to-slowest; i.e.: $TP_1 \geq TP_2 \geq ... \geq TP_n$, and

in the case of $TP_i=TP_{i+1}$, from the largest to smallest; i.e.: $C_i \geq C_{i+1}$

Note: The k_i factor is not to be applied to "CEs" 2 to 12 if the TP_i of the "CE" or group of "CEs" is more than 50 Mtops; i.e., C_i for "CEs" 2 to 12 is 0.75.

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", Part I—Telecommunications is amended by revising the telecommunications notes that immediately follow the Category 5—I "telecommunications" heading, to read as follows:

Category 5—Telecommunications and "Information Security"

I. Telecommunications

Notes: 1. The control status of components, "lasers", test and "production" equipmentand "software" therefor which are specially designed for telecommunications

equipment or systems is determined in Category 5, Part I.

2. "Digital computers", related equipment or "software", when essential for the operation and support of telecommunications equipment described in this Category, are regarded as specially designed components, provided they are the standard models customarily supplied by the manufacturer. This includes operation, administration, maintenance, engineering or billing computer systems.

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and "Information Security", is amended as follows:

a. By revising ECCN 5A001;
b. By revising ECCN 5A991;
c. By revising ECCN 5B001;
d. By removing ECCN 5C001;
e. By adding a new ECCN 5C991; and
f. By revising the License Exceptions section and the List of Items Controlled for ECCNs 5D001 and 5E001, to read as follows:

5A001 Telecommunications systems, equipment, and components.

License Requirements

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to 5A001.a	NS Column 1
NS applies to 5A001.b, .c, or .d.	NS Column 2
AT applies to entire entry	AT Column 1

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions

LVS: N/A for 5A001.a and b.4
$5000 for 5A001b.2, b.3, b.5, and .d
$3000 for 5A001.c
GBS: Yes, except 5A001.a and b.4
CIV: Yes, except 5A001.a, b.3 and b.4

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value
Related Controls: See also 5A101 and 5A991
Related Definitions: N/A
Items:

a. Any type of telecommunications equipment having any of the following characteristics, functions or features:

a.1. Specially designed to withstand transitory electronic effects or electromagnetic pulse effects, both arising from a nuclear explosion;

a.2. Specially hardened to withstand gamma, neutron or ion radiation; *or*

a.3. Specially designed to operate outside the temperature range from 218 K (−55°C) to 397 K (124°C).

Note: 5A001.a.3 applies only to electronic equipment.

Note: 5A001.a.2 and 5A001.a.3 do not apply to equipment on board satellites.

b. Telecommunication transmission equipment and systems, and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

b.1 Being underwater communications systems having any of the following characteristics:

b.1.a. An acoustic carrier frequency outside the range from 20 kHz to 60 kHz;

b.1.b. Using an electromagnetic carrier frequency below 30 kHz; *or*

b.1.c. Using electronic beam steering techniques;

b.2. Being radio equipment operating in the 1.5 MHz to 87.5 MHz band and having any of the following characteristics:

b.2.a. Incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal; or

b.2.b. Having all of the following:

b.2.b.1. Automatically predicting and selecting frequencies and "total digital transfer rates" per channel to optimize the transmission; *and*

b.2.b.2. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the 1.5 MHz to 30 MHz frequency range or 250 W or more in the 30 MHz to 87.5 MHz frequency range, over an "instantaneous bandwidth" of one octave or more and with an output harmonic and distortion content of better than −80 dB;

b.3. Being radio equipment employing "spread spectrum" or "frequency agility" (frequency hopping) techniques having any of the following characteristics:

b.3.a. User programmable spreading codes; or b.3.b. A total transmitted bandwidth which is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz;

Note: 5A001. b.3.b does not control cellular radio equipment operating in civil bands.

Note: 5A001.b.3 does not control equipment operating at an output power of 1.0 Watt or less.

b.4. Being digitally controlled radio receivers having all of the following:

b.4.a. More than 1,000 channels;

b.4.b. A "frequency switching time" of less than 1 ms;

b.4.c. Automatic searching or scanning of a part of the electromagnetic spectrum;

and

b.4.d. Identification of the received signals or the type of transmitter; *or*

Note: 5A001.b.4 does not control cellular radio equipment operating in civil bands.

b.5. Employing functions of digital "signal processing" to provide voice coding at rates of less than 2,400 bit/s.

c. Optical fiber communication cables, optical fibers and accessories, as follows:

c.1. Optical fibers of more than 500 m in length specified by the manufacturer as being capable of withstanding a proof test tensile stress of 2 x 10^9 N/m^2 or more;

Technical Note: Proof Test: on-line or off-line production screen testing that dynamically applies a prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5 m/s while passing between capstans approximately 150 mm in diameter. The ambient temperature is a nominal 293 K (20° C) and relative humidity 40%.

N.B.: Equivalent national standards may be used for executing the proof test.

c.2. Optical fiber cables and accessories designed for underwater use.

Note: 5A001.c.2 does not control standard civil telecommunication cables and accessories.

N.B. 1: For underwater umbilical cables, and connectors thereof, see 8A002.a.3.

N.B. 2: For fiber-optic hull penetrators or connectors, see 8A002.c.

d. "Electronically steerable phased array antennae" operating above 31 GHz.

Note: 5A001.d does not control "electronically steerable phased array antennae" for landing systems with instruments meeting ICAO standards covering microwave landing systems (MLS).

5A991 Telecommunication Equipment, Not Controlled by 5A001.

License Requirements

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items:

a. Any type of telecommunications equipment, not controlled by 5A001.a, specially designed to operate outside the temperature range from 219 K (−54° C) to 397 K (124° C).

b. Telecommunication transmission equipment and systems, and specially

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designed components and accessories therefor, having any of the following characteristics, functions or features:

Note: Telecommunication transmission equipment:

a. Categorized as follows, or combinations thereof:
1. Radio equipment (e.g., transmitters, receivers and transceivers);
2. Line terminating equipment;
3. Intermediate amplifier equipment;
4. Repeater equipment;
5. Regenerator equipment;
6. Translation encoders (transcoders);
7. Multiplex equipment (statistical mutiplex included),
8. Modulators/demodulators (modems);
9. Transmultiplex equipment (see CCITT Rec. G701);
10. "Stored program controlled" digital crossconnection equipment;
11. "Gateways" and bridges;
12. "Media access units"; *and*

b. Designed for use in single or multi-channel communication via any of the following:
1. Wire (line);
2. Coaxial cable;
3. Optical fiber cable;
4. Electromagnetic radiation; *or*
5. Underwater acoustic wave propagation.

b.1. Employing digital techniques, including digital processing of analog signals, and designed to operate at a "digital transfer rate" at the highest multiplex level exceeding 45 Mbit/s or a "total digital transfer rate" exceeding 90 Mbit/s;

Note: 5A991.b.1 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

b.2. Modems using the "bandwidth of one voice channel" with a "data signalling rate" exceeding 9,600 bits per second;

b.3. Being "stored program controlled" digital cross connect equipment with "digital transfer rate" exceeding 8.5 Mbit/s per port.

b.4. Being equipment containing any of the following:

b.4.a. "Network access controllers" and their related common medium having a "digital transfer rate" exceeding 33 Mbit/s; *or*

b.4.b. "Communication channel controllers" with a digital output having a "data signalling rate" exceeding 64,000 bit/s per channel;

Note: If any uncontrolled equipment contains a "network access controller", it cannot have any type of telecommunications interface, *except* those described in, but not controlled by 5A991.b.4.

b.5. Employing a "laser" and having any of the following characteristics:

b.5.a. A transmission wavelength exceeding 1,000 nm; *or*

b.5.b. Employing analog techniques and having a bandwidth exceeding 45 MHz;

Note: 5A991.b.5.b does not control commercial TV systems.

b.5.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

b.5.d. Employing wavelength division multiplexing techniques; *or*

b.5.e. Performing "optical amplification";

b.6. Radio equipment operating at input or output frequencies exceeding:

b.6.1. 31 GHz for satellite-earth station applications; *or*

b.6.2. 26.5 GHz for other applications;

Note: 5A991.b.6 does not control equipment for civil use when conforming with an International Telecommunications Union (ITU) allocated band between 26.5 GHz and 31 GHz.

b.7. Being radio equipment employing any of the following:

b.7.a. Quadrature-amplitude-modulation (QAM) techniques above level 4 if the "total digital transfer rate" exceeds 8.5 Mbit/s;

b.7.b. QAM techniques above level 16 if the "total digital transfer rate" is equal to or less than 8.5 Mbit/s; *or*

b.7.c. Other digital modulation techniques and having a "spectral efficiency" exceeding 3 bit/sec/Hz;

Notes: 1. 5A001.b.7 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

2. 5A001.b.7 does not control radio relay equipment for operation in an ITU allocated band:

a. Having any of the following:
a.1. Not exceeding 960 MHz; *or*
a.2. With a "total digital transfer rate" not exceeding 8.5 Mbit/s;
and
b. Having a "spectral efficiency" not exceeding 4 bit/sec/Hz.

b.8. Providing functions of digital "signal processing" as follows:

b.8.a. Voice coding at rates less than 2,400 bit/s;

b.8.b. Employing circuitry that incorporates "user-accessible programmability" of digital "signal processing" circuits exceeding the limits of 4A003.b.

c. "Stored program controlled" switching equipment and related signalling systems, having any of the following characteristics, functions or features, and specially designed components and accessories therefor:

Note: Statistical multiplexers with digital input and digital output which provide switching are treated as "stored program controlled" switches.

c.1. "Data (message) switching" equipment or systems designed for "packet-mode operation" and assemblies and components therefor, n.e.s.

c.2. Containing "Integrated Services Digital Network" (ISDN) functions and having any of the following:

c.2.a. Switch-terminal (e.g., subscriber line) interfaces with a "digital transfer rate" at the highest multiplex level exceeding 192,000 bit/s, including the associated signalling channel (e.g., 2B+D); *or*

c.2.b. The capability that a signalling message received by a switch on a given channel that is related to a communication on another channel may be passed through to another switch.

Note: 5A991.c. does not preclude the evaluation and appropriate actions taken by the receiving switch or unrelated user message traffic on a D channel of ISDN.

c.3. Routing or switching of "datagram" packets;

c.4. Routing or switching of "fast select" packets;

Note: The restrictions in 5A991.c.3 and c.4 do not apply to networks restricted to using only "network access controllers" or to "network access controllers" themselves.

c.5. Multi-level priority and pre-emption for circuit switching;

Note: 5A991.c.5 does not control single-level call preemption.

c.6. Designed for automatic hand-off of cellular radio calls to other cellular switches or automatic connection to a centralized subscriber data base - common to more than one switch;

c.7. Containing "stored program controlled" digital crossconnect equipment with "digital transfer rate" exceeding 8.5 Mbit/s per port.

c.8. "Common channel signalling" operating in either non-associated or quasi-associated mode of operation;

c.9. "Dynamic adaptive routing";

Note: 5A991.c.10 does not control packet switches or routers with ports or lines not exceeding the limits in 5A001.c.10.

c.10. Being packet switches, circuit switches and routers with ports or lines exceeding any of the following:

c.10.a. A "data signalling rate" of 64,000 bit/s per channel for a "communications channel controller"; *or*

Note: 5A991.c.10.a does not control multiplex composite links composed only of communication channels not individually controlled by 5A991.b.1.

c.10.b. A "digital transfer rate" of 33 Mbit/s for a "network access controller" and related common media;

c.10.c. "Optical switching";

c.10.d. Employing "Asynchronous Transfer Mode" ("ATM") techniques.

d. Optical fibers and optical fiber cables of more than 50 m in length designed for single mode operation;

e. Centralized network control having all of the following characteristics:

e.1. Receives data from the nodes; *and*

e.2. Process these data in order to provide control of traffic not requiring operator decisions, and thereby performing "dynamic adaptive routing";

Note: 5A991.e does not preclude control of traffic as a function of predictable statistical traffic conditions.

f. Phased array antennae, operating above 10.5 GHz, containing active elements and distributed components, and designed to permit electronic control of beam shaping and pointing, except for landing systems with instruments meeting International Civil Aviation Organization (ICAO) standards (microwave landing systems (MLS)).

g. Mobile communications equipment, n.e.s., and assemblies and components therefor; *or*

h. Radio relay communications equipment designed for use at frequencies equal to or exceeding 19.7 GHz and assemblies and components therefor, n.e.s.

B. Test, Inspection and Production Equipment

5B001 Telecommunication test, inspection and production equipment, as follows (See List of Items Controlled).

License Requirements

Reason for Control: NS, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2
AT applies to entire entry	AT Column 1

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions

LVS: $5000
GBS: Yes
CIV: Yes

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value
Related Controls: See also 5B991.
Related Definition: N/A
Items:

a. Equipment and specially designed components or accessories therefor, specially designed for the "development", "production" or "use" of equipment, functions or features controlled by 5A001, 5D001 or 5E001.

Note: 5B001.a does not control optical fiber characterization equipment not using semiconductor "lasers".

b. Equipment and specially designed components or accessories therefor, specially designed for the "development" of any of the following telecommunication transmission or "stored program controlled" switching equipment:

b.1. Equipment employing digital techniques, including "Asynchronous Transfer Mode" ("ATM"), designed to operate at a "total digital transfer rate" exceeding 1.5 Gbit/s;

b.2. Equipment employing a "laser" and having any of the following:

b.2.a. A transmission wavelength exceeding 1750 nm;

b.2.b. Performing "optical amplification";

b.2.c. Employing coherent transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques); *or*

b.2.d. Employing analogue techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5B001.b.2.d does not include equipment specially designed for the "development" of commercial TV systems.

b.3. Equipment employing "optical switching";

b.4. Radio equipment having any of the following:

b.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 128; *or*

b.4.b. Operating at input or output frequencies exceeding 31 GHz; *or*

Note: 5B001.b.4.b does not include equipment specially designed for the "development" of equipment designed or modified for operation in any ITU allocated band.

b.5. Equipment employing "common channel signalling" operating in either the non-associated mode of operation.

5C991 Preforms of glass or of any other material optimized for the manufacture of optical fibers controlled by 5A991.

License Requirements

Reason for Control: AT

Control(s)	*Country Chart*
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

D. Software

5D001 "Software", as described in the List of Items Controlled.

* * * * *

License Exceptions

CIV: Yes, except for "software" controlled by 5D001.a and specially designed for the "development" or "production" of items controlled by 5A001.b.4 TSR: Yes, except for exports and reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of "software" controlled by 5D001.a and specially designed for items controlled by 5A001.b.4.

List of Items Controlled

Unit: $ value
Related Controls: See also 5D991
Related Definitions: N/A
Items:

a. "Software" specially designed or modified for the "development", "production" or "use" of equipment, functions or features controlled by 5A001 or 5B001.

b. "Software" specially designed or modified to support "technology" controlled by 5E001.

c. Specific "software" as follows:

c.1. "Software" specially designed or modified to provide characteristics, functions or features of equipment controlled by 5A001 or 5B001;

c.2. "Software" which provides the capability of recovering "source code" of telecommunications "software" controlled by 5D001;

c.3. "Software", other than in machine-executable form, specially designed for "dynamic adaptive routing".

d. "Software" specially designed or modified for the "development" of any of the following telecommunication transmission or "stored program controlled" switching equipment:

d.1. Equipment employing digital techniques, including "Asynchronous Transfer Mode" ("ATM"), designed to operate at a "total digital transfer rate" exceeding 1.5 Gbit/s;

d.2. Equipment employing a "laser" and having any of the following:

d.2.a. A transmission wavelength exceeding 1750 nm;

d.2.b. Employing analogue techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5D001.d.2.b does not include "software" specially designed or modified for the "development" of commercial TV systems.

d.3. Equipment employing "optical switching"; *or*

d.4. Radio equipment having any of the following:

d.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 128; *or*

d.4.b. Operating at input or output frequencies exceeding 31 GHz; *or*

Note: 5D001.d.4.b does not include "software" specially designed or modified for the "development" of equipment designed or modified for operation in any ITU allocated band.

5E001 "Technology", (see List of Items Controlled).

* * * * *

License Exceptions

CIV: N/A

TSR: Yes, except for exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of "technology" controlled by 5E001.a for the "development" or "production" of the following:

(1) Items controlled by 5A001.b.4; or

(2) "Software" controlled by 5D001.a that is specially designed for the "development" or "production" of items controlled by 5A001.b.4.

List of Items Controlled

Unit: $ value

Related Controls: See also 5E101 and 5E991

Related Definitions: N/A

Items:

a. "Technology" according to the General Technology Note for the "development", "production" or "use" (excluding operation) of equipment, functions or features or "software" controlled by 5A001, 5B001or 5D001.

b. Specific "technologies", as follows:

b.1. "Required" "technology" for the "development" or "production" of telecommunications equipment specially designed to be used on board satellites;

b.2. "Technology" for the "development" or "use" of "laser" communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3. "Technology" for the "development" of digital cellular radio systems;

b.4. "Technology" for the "development" of "spread spectrum" or "frequency agility" (frequency hopping) techniques.

c. "Technology" according the General Technology Note for the "development" of any of the following telecommunication transmission or "stored program controlled" switching equipment, functions or features:

c.1. Equipment employing digital techniques, including "Asynchronous Transfer Mode" ("ATM"), designed to operate at a "total digital transfer rate" exceeding 1.5 Gbit/s;

c.2. Equipment employing a "laser" and having any of the following:

c.2.a. A transmission wavelength exceeding 1750 nm;

c.2.b. Performing "optical amplification" using praseodymium-doped fluoride fiber amplifiers (PDFFA);

c.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

c.2.d. Employing wavelength division multiplexing techniques exceeding 8 optical carriers in a single optical window; *or*

c.2.e. Employing analogue techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5E001.c.2.e does not include "technology" for the "development" or "production" of commercial TV systems.

c.3. Equipment employing "optical switching"; *or*

c.4. Radio equipment having any of the following:

c.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 128; *or*

c.4.b. Operating at input or output frequencies exceeding 31 GHz; *or*

Note: 5E001.c.4.b does not include "technology" for the "development" or "production" of equipment designed or modified for operation in any ITU allocated band.

c. 5. Equipment employing "common channel signalling" operating in either non-associated or quasi-associated mode of operation.

14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the List of Items Controlled section for ECCNs 6A003, 6A005 and 6C002; and

b. By revising the entry heading for ECCN 6C992, to read as follows:

6A003 Cameras

* * * * *

List of Items Controlled

Unit: Number

Related Controls: See also 6A203. See 8A002.d and .e for cameras specially designed or modified for underwater use.

Related Definitions: N/A

Items:

a. Instrumentation cameras, as follows:

a.1. High-speed cinema recording cameras using any film format from 8 mm to 16 mm inclusive, in which the film is continuously advanced throughout the recording period, and that are capable of recording at framing rates exceeding 13,150 frames/s;

Note: 6A003.a.1 does not control cinema recording cameras designed for civil purposes.

a.2. Mechanical high speed cameras, in which the film does not move, capable of recording at rates exceeding 1,000,000 frames/s for the full framing height of 35 mm film, or at proportionately higher rates for lesser frame heights, or at proportionately lower rates for greater frame heights;

a.3. Mechanical or electronic streak cameras having writing speeds exceeding 10 mm/µs;

a.4. Electronic framing cameras having a speed exceeding 1,000,000 frames/s;

a.5. Electronic cameras, having all of the following:

a.5.a. An electronic shutter speed (gating capability) of less than 1 µs per full frame; and

a.5.b. A read out time allowing a framing rate of more than 125 full frames per second.

b. Imaging cameras, as follows:

Note: 6A003.b does not control television or video cameras specially designed for television broadcasting.

b.1. Video cameras incorporating solid state sensors, having any of the following:

b.1.a. More than 4 x 10^6 "active pixels" per solid state array for monochrome (black and white) cameras;

b.1.b. More than 4 x 10^6 "active pixels" per solid state array for color cameras incorporating three solid state arrays; *or*

b.1.c. More than 12 x 10^6 "active pixels" for solid state array color cameras incorporating one solid state array;

b.2. Scanning cameras and scanning camera systems, having all of the following:

b.2.a. Linear detector arrays with more than 8,192 elements per array; *and*

b.2.b. Mechanical scanning in one direction;

b.3. Imaging cameras incorporating image intensifier tubes having the characteristics listed in 6A002.a.2.a;

b.4. Imaging cameras incorporating "focal plane arrays" having the characteristics listed in 6A002.a.3.

Note: 6A003.b.4 does not control imaging cameras incorporating linear "focal plane arrays" with twelve elements or fewer, not employing time-delay-and integration with the element, designed for any of the following:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Equipment specially designed for laboratory use; *or*

e. Medical equipment.

6A005 "Lasers", components and optical equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value

Related Controls: (1.) See also 6A205, 6A995, 0B001.g.5 and 0B001.b.6. (2.) For excimer "lasers" specially designed for lithography equipment; see 3B001. (3.) Shared aperture optical elements, capable of operating in "super-high power laser" applications are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.)

Related Definitions: (1.) Pulsed "lasers" include those that run in a continuous wave (CW) mode with pulses superimposed. (2.) Pulse-excited "lasers" include those that run in a continuously excited mode with pulse excitation superimposed. (3.) The control status of Raman "lasers" is determined by the parameters of the pumping source "lasers". The pumping source "lasers" can be any of the "lasers" described as follows:

Items:

a. Gas "lasers", as follows:

a.1. Excimer "lasers", having any of the following:

a.1.a. An output wavelength not exceeding 150 nm and having any of the following:

a.1.a.1. An output energy exceeding 50 mJ per pulse; *or*

a.1.a.2. An average or CW output power exceeding 1 W;

a.1.b. An output wavelength exceeding 150 nm but not exceeding 190 nm and having any of the following:

a.1.b.1. An output energy exceeding 1.5 J per pulse; *or*

a.1.b.2. An average or CW output power exceeding 120 W;

a.1.c. An output wavelength exceeding 190 nm but not exceeding 360 nm and having any of the following:

a.1.c.1. An output energy exceeding 10 J per pulse; *or*

a.1.c.2. An average or CW output power exceeding 500 W; *or*

a.1.d. An output wavelength exceeding 360 nm and having any of the following:

a.1.d.1. An output energy exceeding 1.5 J per pulse; *or*

a.1.d.2. An average or CW output power exceeding 30 W;

a.2. Metal vapor "lasers", as follows:

a.2.a. Copper (Cu) "lasers" having an average or CW output power exceeding 20 W;

a.2.b. Gold (Au) "lasers" having an average or CW output power exceeding 5 W;

a.2.c. Sodium (Na) "lasers" having an output power exceeding 5 W;

a.2.d. Barium (Ba) "lasers" having an average or CW output power exceeding 2 W;

a.3. Carbon monoxide (CO) "lasers" having any of the following:

a.3.a. An output energy exceeding 2 J per pulse and a pulsed "peak power" exceeding 5 Kw; *or*

a.3.b. An average or CW output power exceeding 5 Kw;

a.4. Carbon dioxide (CO_2) "lasers" having any of the following:

a.4.a. A CW output power exceeding 15 Kw;

a.4.b. A pulsed output having a "pulse duration" exceeding 10 µs and having any of the following:

a.4.b.1. An average output power exceeding 10 Kw; *or*

a.4.b.2. A pulsed "peak power" exceeding 100 Kw; *or*

a.4.c. A pulsed output having a "pulse duration" equal to or less than 10 µs; and having any of the following:

a.4.c.1. A pulse energy exceeding 5 J per pulse; *or*

a.4.c.2. An average output power exceeding 2.5 Kw;

a.5. "Chemical lasers", as follows:

a.5.a. Hydrogen Fluoride (HF) "lasers";

a.5.b. Deuterium Fluoride (DF) "lasers";

a.5.c. "Transfer lasers", as follows:

a.5.c.1. Oxygen Iodine (O_2–I) "lasers";

a.5.c.2. Deuterium Fluoride-Carbon dioxide (DF-CO_2) "lasers";

a.6. Krypton ion or argon ion "lasers" having any of the following:

a.6.a. An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 50 W; *or*

a.6.b. An average or CW output power exceeding 50 W;

a.7. Other gas "lasers", having any of the following:

Note: 6A005.a.7 does not control nitrogen "lasers".

a.7.a. An output wavelength not exceeding 150 nm and having any of the following:

a.7.a.1. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*

a.7.a.2. An average or CW output power exceeding 1 W;

a.7.b. An output wavelength exceeding 150 nm but not exceeding 800 nm and having any of the following:

a.7.b.1. An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 30 W; *or*

a.7.b.2. An average or CW output power exceeding 30 W;

a.7.c. An output wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:

a.7.c.1. An output energy exceeding 0.25 J per pulse and a pulsed "peak power" exceeding 10 W; *or*

a.7.c.2. An average or CW output power exceeding 10 W; *or*

a.7.d. An output wavelength exceeding 1,400 nm and an average or CW output power exceeding 1 W.

b. Semiconductor "lasers", having a wavelength of less than 950 nm or more than 2000 nm, as follows:

b.1. Individual single-transverse mode semiconductor "lasers" having an average or CW output power exceeding 100 mW;

b.2. Individual, multiple-transverse mode semiconductor "lasers" and arrays of individual semiconductor "lasers", having any of the following:

b.2.a. An output energy exceeding 500 µJ per pulse and a pulsed "peak power" exceeding 10 W; *or*

b.2.b. An average or CW output power exceeding 10 W.

Technical Note: Semiconductor "lasers" are commonly called "laser" diodes.

Note 1: 6A005.b includes semiconductor "lasers" having optical output connectors (e.g. fiber optic pigtails).

Note 2: The control status of semiconductor "lasers" specially designed for other equipment is determined by the control status of the other equipment.

c. Solid state "lasers", as follows:

c.1. "Tunable" "lasers" having any of the following:

Note: 6A005.c.1 includes titanium—sapphire (Ti: Al_2O_3), thulium—YAG (Tm: YAG), thulium—YSGG (Tm: YSGG).

alexandrite (Cr: $BeAl_2O_4$) and color center "lasers".

c.1.a. An output wavelength less than 600 nm and having any of the following:
c.1.a.1. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*
c.1.a.2. An average or CW output power exceeding 1 W;
c.1.b. An output wavelength of 600 nm or more but not exceeding 1,400 nm and having any of the following:
c.1.b.1. An output energy exceeding 1 J per pulse and a pulsed "peak power" exceeding 20 W; *or*
c.1.b.2. An average or CW output power exceeding 20 W; or
c.1.c. An output wavelength exceeding 1,400 nm and having any of the following:
c.1.c.1. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*
c.1.c.2. An average or CW output power exceeding 1 W;
c.2. Non-"tunable" "lasers", as follows:

Note: 6A005.c.2 includes atomic transition solid state "lasers".

c.2.a. Neodymium glass "lasers", as follows:
c.2.a.1. "Q-switched lasers" having any of the following:
c.2.a.1.a. An output energy exceeding 20 J but not exceeding 50 J per pulse and an average output power exceeding 10 W; *or*
c.2.a.1.b. An output energy exceeding 50 J per pulse;
c.2.a.2. Non-"Q-switched lasers" having any of the following:
c.2.a.2.a. An output energy exceeding 50 J but not exceeding 100 J per pulse and an average output power exceeding 20 W; *or*
c.2.a.2.b. An output energy exceeding 100 J per pulse;
c.2.b. Neodymium-doped (other than glass) "lasers", having an output wavelength exceeding 1,000 nm but not exceeding 1,100 nm, as follows:
N.B.: For neodymium-doped (other than glass) "lasers" having an output wavelength not exceeding 1,000 nm or exceeding 1,100 nm, see 6A005.c.2.c.
c.2.b.1. Pulse-excited, mode-locked, "Q-switched lasers" having a "pulse duration" of less than 1 ns and having any of the following:
c.2.b.1.a. A "peak power" exceeding 5 GW;
c.2.b.1.b. An average output power exceeding 10 W; *or*
c.2.b.1.
c. A pulsed energy exceeding 0.1 J;
c.2.b.2. Pulse-excited, "Q-switched lasers" having a pulse duration equal to or more than 1 ns, and having any of the following:
c.2.b.2.a. A single-transverse mode output having:
c.2.b.2.a.1. A "peak power" exceeding 100 MW;
c.2.b.2.a.2. An average output power exceeding 20 W; *or*
c.2.b.2.a.3. A pulsed energy exceeding 2 J; *or*
c.2.b.2.b. A multiple-transverse mode output having:
c.2.b.2.b.1. A "peak power" exceeding 400 MW;
c.2.b.2.b.2. An average output power exceeding 2 kW; *or*
c.2.b.2.b.3. A pulsed energy exceeding 2 J;
c.2.b.3. Pulse-excited, non-"Q-switched lasers", having:
c.2.b.3.a. A single-transverse mode output having:
c.2.b.3.a.1. A "peak power" exceeding 500 kW; *or*
c.2.b.3.a.2. An average output power exceeding 150 W; *or*
c.2.b.3.b. A multiple-transverse mode output having:
c.2.b.3.b.1. A "peak power" exceeding 1 MW; *or*
c.2.b.3.b.2. An average power exceeding 2 kW;
c.2.b.4. Continuously excited "lasers" having:
c.2.b.4.a. A single-transverse mode output having:
c.2.b.4.a.1. A "peak power" exceeding 500 kW; *or*
c.2.b.4.a.2. An average or CW output power exceeding 150 W; *or*
c.2.b.4.b. A multiple-transverse mode output having:
c.2.b.4.b.1. A "peak power" exceeding 1 MW; *or*
c.2.b.4.b.2. An average or CW output power exceeding 2 kW;
c.2.c. Other non-"tunable" "lasers", having any of the following:
c.2.c.1. A wavelength less than 150 nm and having any of the following:
c.2.c.1.a. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*
c.2.c.1.b. An average or CW output power exceeding 1 W;
c.2.c.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:
c.2.c.2.a. An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 30 W; *or*
c.2.c.2.b. An average or CW output power exceeding 30 W;
c.2.c.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm, as follows:
c.2.c.3.a. "Q-switched lasers" having:
c.2.c.3.a.1. An output energy exceeding 0.5 J per pulse and a pulsed "peak power" exceeding 50 W; *or*
c.2.c.3.a.2. An average output power exceeding:
c.2.c.3.a.2.a. 10 W for single-mode "lasers";
c.2.c.3.a.2.b. 30 W for multimode "lasers";
c.2.c.3.b. Non-"Q-switched lasers" having:
c.2.c.3.b.1. An output energy exceeding 2 J per pulse and a pulsed "peak power" exceeding 50 W; *or*
c.2.c.3.b.2. An average or CW output power exceeding 50 W; *or*
c.2.c.4. A wavelength exceeding 1,400 nm *and* having any of the following:
c.2.c.4.a. An output energy exceeding 100 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*
c.2.c.4.b. An average or CW output power exceeding 1 W;
d. Dye and other liquid "lasers", having any of the following:
d.1. A wavelength less than 150 nm and:
d.1.a. An output energy exceeding 50 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*
d.1.b. An average or CW output power exceeding 1 W;
d.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:
d.2.a. An output energy exceeding 1.5 J per pulse and a pulsed "peak power" exceeding 20 W;
d.2.b. An average or CW output power exceeding 20 W; *or*
d.2.c. A pulsed single longitudinal mode oscillator having an average output power exceeding 1 W and a repetition rate exceeding 1 Khz if the "pulse duration" is less than 100 ns;
d.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:
d.3.a. An output energy exceeding 0.5 J per pulse and a pulsed "peak power" exceeding 10 W; *or*
d.3.b. An average or CW output power exceeding 10 W; *or*
d.4. A wavelength exceeding 1,400 nm and having any of the following:
d.4.a. An output energy exceeding 100 mJ per pulse and a pulsed "peak power" exceeding 1 W; *or*
d.4.b. An average or CW output power exceeding 1 W;
e. Components, as follows:
e.1. Mirrors cooled either by active cooling or by heat pipe cooling;

Technical Note: Active cooling is a cooling technique for optical components using flowing fluids within the subsurface (nominally less than 1 mm below the optical surface) of the optical component to remove heat from the optic.

e.2. Optical mirrors or transmissive or partially transmissive optical or electro-optical components specially designed for use with controlled "lasers";
f. Optical equipment, as follows:

(For shared aperture optical elements, capable of operating in "Super-High Power Laser" ("SHPL") applications, see the U.S. Munitions List.)

f.1. Dynamic wavefront (phase) measuring equipment capable of mapping at least 50 positions on a beam wavefront having any of the following:

f.1.a. Frame rates equal to or more than 100 Hz and phase discrimination of at least 5% of the beam's wavelength; *or*

f.1.b. Frame rates equal to or more than 1,000 Hz and phase discrimination of at least 20% of the beam's wavelength;

f.2. "Laser" diagnostic equipment capable of measuring "SHPL" system angular beam steering errors of equal to or less than 10 µrad;

f.3. Optical equipment and components specially designed for a phased-array "SHPL" system for coherent beam combination to an accuracy of lambda/10 at the designed wavelength, or 0.1 µm, whichever is the smaller;

f.4. Projection telescopes specially designed for use with "SHPL" systems.

6C002 Optical sensor materials, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Number

Related Controls: See also 6C992

Related Definitions: N/A

Items:

a. Elemental tellurium (Te) of purity levels of 99.9995% or more;

b. Single crystals of cadmium zinc telluride (CdZnTe), with zinc content less than 6% by weight, or cadmium telluride (CdTe), or mercury cadmium telluride (HgCdTe) of any purity level, including epitaxial wafers thereof.

6C992 Optical sensing fibers not controlled by 6A002.d.3 which are modified structurally to have a "beat length" of less than 500 mm (high birefringence) or optical sensor materials not described in 6C002.b and having a zinc content of equal to or more than 6% by weight.

* * * * *

15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics is amended by revising the notes that immediately follow the Category 7A (Systems, Equipment and Components) heading, to read as follows:

Category 7—Navigation and Avionics

A. SYSTEMS, EQUIPMENT AND COMPONENTS

N.B. 1: For automatic pilots for underwater vehicles, see Category 8. For radar, see Category 6.

N.B. 2: For inertial navigation equipment for ships or submersibles see item 9.e on the Wassenaar Munitions List.

16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment is amended by revising the parenthetical phrase that immediately follows the Category 9A (Systems, Equipment and Components) heading, to read as follows:

Category 9—Propulsion Systems, Space Vehicles and Related Equipment

A. SYSTEMS, EQUIPMENT AND COMPONENTS

N.B.: For propulsion systems designed or rated against neutron or transient ionizing, see the U.S. Munitions List, 22 CFR part 121.

Dated: July 13, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

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Part V

Environmental Protection Agency

40 CFR Part 22

Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 22

[FRL–6373–3]

RIN 2020–AA13

Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This Rule revises the Consolidated Rules of Practice ("CROP"), including expansion of these procedural rules to include certain permit revocation, termination and suspension actions, and new rules for administrative proceedings not governed by section 554 of the Administrative Procedure Act. The CROP has not been substantially revised since 1980. This Rule will remove inconsistencies, fill in gaps in the CROP by codifying accepted procedures, and make the CROP more clear and easily understood. Most of these changes will not produce any procedural or substantive difference in the Agency's administrative enforcement actions. Other changes make the CROP more efficient and more effective, or to conform to new statutory requirements and new judicial decisions.

DATES: *Effective Date:* This rule shall become effective August 23, 1999.

Applicability Date: This rule shall be applicable to all proceedings commenced on or after August 23, 1999. Proceedings commenced before August 23, 1999 shall become subject to this rule on August 23, 1999, unless to do so would result in substantial injustice.

FOR FURTHER INFORMATION CONTACT: Scott Garrison (202–564–4047), Office Enforcement and Compliance Assurance, Office of Regulatory Enforcement (2248A), U.S. Environmental Protection Agency, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

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I. Background

The Consolidated Rules of Practice ("CROP"), 40 CFR part 22, are procedural rules for the administrative assessment of civil penalties, issuance of compliance or corrective action orders, and the revocation, termination or suspension of permits, under most environmental statutes. The CROP were first promulgated on April 9, 1980 (45 FR 24360). On February 25, 1998, (63 FR 9464) EPA issued a notice of proposed rule making giving public notice and soliciting comments on proposed revisions to the CROP.

During the public comment period, EPA received substantive comments from Dow Chemical Company ("Dow"), the U.S. Air Force ("USAF"), the Utility Air Regulatory Group ("UARG"), the Utility Water Act Group ("UWAG"), the Corporate Environmental Enforcement Council ("CEEC"), and joint comments from the Chemical Manufacturers Association and the American Petroleum Institute ("CMA/API"). The original public comment period closed on April 27, 1998. On May 6, 1998 (63 FR 25006), EPA published a second notice reopening the public comment period for an additional 60 days. During this reopened public comment period, EPA received one set of supplementary comments from CEEC.

All of the public comments submitted in response may be reviewed at the Enforcement and Compliance Docket and Information Center, room 4033 of the Ariel Rios Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, DC. Persons interested in reviewing the comments must make advance arrangements to do so by calling 202–564–2614. A reasonable fee may be charged by EPA for copying docket materials. The public comments may also be viewed on the internet at http://www.epa.gov/oeca/forepart22.html.

Today's final rule includes most of the revisions identified in the proposed rule, with certain additional changes (both to the proposed revisions and to other provisions of the existing rule) responding to public comments. EPA's response to the public comments appears below.

II. Response to Public Comments

A. Significant Comments Supporting Proposed Revisions

Dow stated that "[m]ost of the CROP provisions appear to reflect an appropriate balancing of interests" and that it has a "favorable impression of part 22 as a whole." CMA/API support EPA's efforts to simplify and clarify the CROP. CEEC states that it supports "many of the types of changes EPA has proposed, as they will increase efficiency and reduce complexity in the administrative process." The following are specific comments supporting particular provisions of the proposed rule.

Commenters generally support the consolidation of the various rules into a single set of CROP procedures for APA and non-APA proceedings. CMA/API supports the Agency's decision to use the CROP instead of the proposed part 28 procedures for Class I proceedings under the Clean Water Act and the Safe Drinking Water Act (56 FR 29996 (July 1, 1991)). Dow and UARG support the use of CROP procedures in lieu of the procedures originally proposed for use under the Clean Air Act Field Citation Program.

Dow states that it supports the "change" in § 22.4(d)(1)[1] that would make appeals from a denial of a motion to disqualify a Presiding Officer go to the Environmental Appeals Board ("EAB") "rather than the Administrator." EPA notes that this revision of § 22.4(d)(1) is not intended to change the substance of the existing rule but merely to eliminate any implication that the Administrator must personally rule on appeals from the denial of disqualification requests made to Presiding Officers. *See In re Woodcrest Manufacturing, Inc.*, EPCRA Appeal No. 97–2, slip op. at 11–12 (EAB, July 23, 1998)(stating that the term "Administrator" is defined at 40 CFR 22.4(d)(1) to include the Administrator's delegate, and therefore "the Administrator is not required to act personally on disqualification issues, but may instead delegate this authority to other individuals within the EPA").

Dow supports the proposed change to § 22.5(c)(5), giving the Presiding Officer and the EAB, rather than the hearing clerks, authority to rule on the adequacy of documents filed. Dow strongly supports the inclusion of language in § 22.5(d) stating that the Agency's rules governing treatment of Confidential Business Information (40 CFR part 2) apply in CROP proceedings.

Dow supports proposed changes to §§ 22.5 and 22.6 allowing service of documents by reliable commercial delivery services other than the U.S. Mail, and supports the decision to expand the "mail box rule" of § 22.7(c) to provide that service is complete when the document is placed in the custody of a reliable commercial delivery service.

CMA/API support the provision in the proposed § 22.14(a)(6) requiring that the complaint give notice whether subpart I, non-APA procedures apply to the proceeding.

CMA/API and Dow support the proposed revision to § 22.15(a) expanding to 30 days the time allowed to file an answer.

CMA/API and Dow support the provisions in the proposed rule extending the time period for filing a response to a motion from 10 days to 15 days. Additionally, CMA/API supports not placing page limits on motion papers.

Dow supports the revisions to § 22.17(a) & (c) that give the Presiding Officers greater discretion in determining the appropriate relief in the default orders, because this "flexibility will let the Presiding Officer ensure that any relief ordered is supported by the administrative record." CMA/API "support the provision requiring the Presiding Officer, when issuing a default order, to determine that the relief sought in the complaint is consistent with the applicable statute."

CEEC supports the Agency's explicit recognition of Alternative Dispute Resolution in the proposed § 22.18(d). Dow supports the provisions of the proposed § 22.18(d)(2) that permit the Presiding Officer to grant extensions of time for the parties to engage in alternative dispute resolution procedures.

CMA/API support the proposed § 22.19 allowing amendment of prehearing exchanges without restriction, and support the § 22.19(f) requirement that parties promptly supplement or correct information known to be incomplete, inaccurate or outdated, without requiring the parties to constantly check the accuracy of their information exchanges. CEEC supports the proposed revisions to §§ 22.19 and 22.22 that would allow use of information that has not been timely provided to the opposing party, upon a showing of "good cause" for the failure to timely provide that information. CEEC also supports the proposed limitation that "other discovery" pursuant to § 22.19(e) should be available only after the prehearing exchange required under § 22.19(a).

The CMA/API comments support the proposed change in § 22.27(b) "requiring the Presiding Officer in all cases to explain how the civil penalty imposed corresponds to the statutory penalty criteria, rather than just the Agency's penalty policies." Dow notes its support for the provision in § 22.27(b) requiring that the Presiding Officer articulate how the amount of penalty conforms to the criteria set forth in the law under which the proceeding has been commenced. Dow supports the proposed revision of § 22.27(c) that would make an initial decision inoperative pending review by the EAB, because it "will avoid premature recourse to the Federal courts" and avoid harm to respondents whose appeals might be successful. Dow also supports the provision in the proposed § 22.28(b) under which a motion to reopen a hearing would expressly stay the deadlines for appeal or EAB review of the initial decision.

Both CMA/API and Dow support the new provision in § 22.30(a) allowing a party who has initially declined to

[1] To conform the CROP to the preferred style of the U.S. Government Printing Office, EPA has converted § 22.01 to § 22.1, § 22.02 to § 22.2, etc., in this final rule. For simplicity, this preamble will use the new numbering system throughout, even when referring to sections of the proposed rule or the 1980 CROP.

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appeal an additional 20 days to raise additional issues in a cross appeal.

EPA received no significant public comment on many of the proposed revisions to the CROP. Proposed revisions to §§ 22.2, 22.6, 22.12, 22.21, 22.23, 22.24, 22.29, 22.33, and 22.35–22.45 elicited no specific comments at all. Today's final rule incorporates all of the changes identified in the February 25, 1998, Notice of Proposed Rule Making, except as noted below.

B. Significant Comments Critical of Proposed Revisions

1. Scope (40 CFR 22.1)

a. Summary of Proposed Rule. Section 22.1(a) identifies, statute by statute, the types of proceedings that are subject to the CROP. The proposed rule would bring within the scope of the CROP a number of proceedings that had previously used other procedures or that had no formal procedures: field citation proceedings under the Clean Air Act (42 U.S.C. 7413(d)(3)), proceedings to suspend or revoke a permit issued under section 402(a) of the Clean Water Act (33 U.S.C. 1342(a)) or to suspend or revoke a permit under sections 3005(d) and 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6925(d) and 6928(h)) (originally proposed in 60 FR 65280, December 11, 1996), proceedings for the assessment of administrative civil penalties under section 6001 of the Solid Waste Disposal Act (42 U.S.C. 6961), section 311(b)(6) of the Clean Water Act (33 U.S.C. 1321(b)(6)), and sections 1423(c) and 1447(b) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c) and 300j–6, including orders requiring both compliance and the assessment of a civil penalty under 1423(c), and proceedings for the assessment of civil penalties or the issuance of compliance orders under the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14304). Other amendments would clarify the applicability of the CROP to proceedings already within its scope, and delete outdated references.

Section 22.1(b) explains the interrelation between the subpart H, the new subpart I, and the provisions of subparts A–G. Section 22.1(c) empowers the Administrator, the Regional Administrator, and the Presiding Officer to resolve procedural matters not covered in the CROP. The proposed revision to § 22.1(c) would make explicit the authority of the EAB to resolve such procedural matters.

b. Significant Comments and EPA Response. CEEC objects to expanding the scope of the CROP to include non-APA proceedings, arguing that EPA has failed to explain why the proposed CROP is more suitable than other procedures. Dow and CMA/API strongly support revised CROP procedures replacing the procedures proposed for the part 59 field citation program. CMA/API also supports the decision to include non-APA proceedings within the CROP, rather than as a distinct set of procedures under part 28.

The preamble to the proposed rule explained generally why EPA considers the proposed CROP suitable for non-APA enforcement cases, but it did not expressly contrast the suitability of alternative sets of procedures. In drafting the proposed CROP, EPA had the benefit of the public comments received in response to the 1991 proposed part 28 procedures and the 1994 proposed field citations procedures, and the benefit of practical case experience with both the proposed part 28 procedures and the existing CROP procedures. The proposed CROP revisions drew from the best provisions of each set of procedures, and is as a result more clear, more simple and more efficient than its predecessors.

CEEC questions EPA's decision to use the CROP procedures for non-APA cases, asserting that it is inappropriate for EPA "to assume that one size fits all." CEEC does not identify any class of cases for which the proposed CROP might be unsuitable, nor does it identify other procedures that might be more suitable. EPA has taken into account the limits to a "one size fits all" approach through the inclusion of statute-specific supplemental rules (subpart H) and the special rules for non-APA proceedings (subpart I).

In apparent contradiction to its criticism of the "one size fits all" approach of the CROP, CEEC also faults EPA for failing to explain why the scope of the CROP fails to encompass corrective action orders pursuant to Solid Waste Disposal Act ("SWDA") sections 3008(h) and 9003(h)(4), and pesticide cancellation proceedings pursuant to section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). Although the proposed rule would expand the scope of the CROP, EPA did not propose that it should replace all administrative adjudicatory procedures.

EPA determined in 1988 that less formal procedures are appropriate for corrective action orders because of the need for quick response to hazardous waste spills, because such cases present fewer factual issues than cases where a regulatee may be forced to pay a civil penalty for violating the law, and because the cost of the formal CROP procedures is twice as high as the cost of the informal procedures. 53 FR 12256, 12257 (April 13, 1988). EPA's procedures for corrective action orders, codified at 40 CFR part 24, were challenged upon issuance and upheld by the Court of Appeals for the District of Columbia Circuit. The D.C. Circuit agreed with EPA that "to the modest extent that EPA's Part 24 regulations do implicate the private interest in avoiding the expense of unnecessary corrective actions, formal procedures [i.e., the CROP] do not promise a sufficient lowering of the risk of error to justify their significant expense to the Government." *Chemical Waste Management, Inc. and Waste Management of North America, Inc., v. U.S. Environmental Protection Agency*, 873 F.2d 1477, 1485 (D.C. Cir. 1989). EPA continues to believe that the informal procedures of part 24, rather than the CROP, are appropriate for SWDA sections 3008(h) and 9003(h)(4) corrective action orders.

Pesticide cancellation proceedings are subject to rules codified at 40 CFR part 164, as are other proceedings related to the registration status of a pesticide. Although some sections of part 164 are very similar, or identical, to provisions of the CROP, there are also fundamental differences, that reflect differences between FIFRA section 6 and the statutory authorities for various CROP proceedings. Although it would be possible to draft a single set of procedures that could apply to all corrective action orders and pesticide cancellation proceedings, as well as the proceedings within the scope of the CROP, it would call for extensive revisions and elaborate supplemental rules. At this time, it does not appear that combining either part 24 or part 164 with the CROP would produce significant efficiencies or improvements.

c. Final Rule. EPA has adopted § 22.1 as proposed, with minor changes. In the December 11, 1996, "Round Two" permit streamlining proposed rule, EPA proposed to remove the procedures existing in 40 CFR part 124, subpart E, for proceedings to revoke or suspend a permit issued under section 402(a) of the Clean Water Act (33 U.S.C. 1342(a)) or to revoke or suspend a permit under sections 3005(d) and 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6925(d) and 6928(h)). See 61 FR 65268 (December 11, 1996). EPA proposed that such proceedings would be conducted pursuant to the CROP procedures, and proposed CROP revisions to accomplish this. These changes were incorporated into the February 25, 1998, proposed CROP revisions. As EPA has not yet finalized the Round Two permit

streamlining rule and 40 CFR part 124, subpart E remains in effect, EPA has removed from § 22.1 (a)(4) and (a)(6) the proposed references to permit revocation, suspension and termination. EPA anticipates that these references will be restored when the Round Two permit streamlining rule is finalized.

EPA has deleted the word "conducted" from paragraphs (a)(1), (a)(3) and (a)(5). This word is unnecessary, and the deletions make these paragraphs more consistent with the rest of § 22.1(a). In § 22.1(a)(4)(i), EPA has replaced the word "and" in the first parenthetical list of citations to the U.S. Code, with the word "or" for consistency.

In the proposed § 22.1(b), the word "establish" appeared twice in the first sentence. EPA has deleted the redundant word. EPA has also revised the last sentence of 22.1(b) for clarity.

2. Powers and Duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; Disqualification, Withdrawal and Reassignment. (40 CFR 22.4)

a. Summary of Proposed Rule. Proposed revisions to § 22.4(a) clarify the role of the Environmental Appeals Board, to which the Administrator has delegated the authority to rule on appeals. The proposed rule clarifies that the Environmental Appeals Board rules on appeals from decisions, rulings and orders of a Presiding Officer in proceedings under the CROP, acts as Presiding Officer until an answer is filed in cases initiated at EPA Headquarters, and approves settlement of such cases. The proposed rule provides that appeals and motions must be directed to the Environmental Appeals Board except those in matters referred by the Environmental Appeals Board to the Administrator, and motions for disqualification under paragraph (d).

Proposed revisions to § 22.4(b) describe the function of the Regional Judicial Officer, requiring each Regional Administrator to designate one or more Regional Judicial Officers to act as Presiding Officers in proceedings under subpart I, and to act as Presiding Officers in APA CROP proceedings until an answer is filed. The proposed rule provides that the Regional Administrator may delegate to a Regional Judicial Officer the authority to approve settlement of proceedings, ratify consent agreements and issue consent orders.

EPA proposed deleting from § 22.4(b) certain limitations on the Regional Judicial Officers. One proposed deletion is the current prohibition on employment of a Regional Judicial Officer by the Region's Enforcement Division or the Regional Division directly associated with the type of violation at issue in the proceeding. The other is the prohibition, derived from section 554(d) of the Administrative Procedure Act, against a Regional Judicial Officer having "performed prosecutorial or investigative functions in connection . . . with any factually related hearing." The proposed rule would add new language precluding an individual from serving as Regional Judicial Officer in any case in which he or she has any "interest in the outcome." The proposed rule retains the provisions that prohibit an individual from serving as Regional Judicial Officer in the same case in which he or she performed prosecutorial or investigative functions, and that require that Regional Judicial Officers be attorneys employed by a Federal agency.

EPA proposed editorial revisions to § 22.4(c), describing the role of the Presiding Officer, that do not introduce any substantive change.

The proposed § 22.4(d) establishes new procedures for seeking disqualification of the Administrator, a Regional Administrator, a member of the EAB, a Regional Judicial Officer ("RJO"), or an Administrative Law Judge ("ALJ"), from performing functions they are authorized to perform under the CROP. Under the existing rules, any party may seek the disqualification of a Regional Judicial Officer by motion to the Regional Administrator; or may seek the disqualification of any of the other individuals by motion to the Administrator. Under the proposed rules, any party must first file a motion with the particular individual requesting that he or she disqualify himself or herself from the proceeding. If the party has moved to disqualify a Regional Administrator, a Regional Judicial Officer, an ALJ, or a member of the EAB, and the motion is denied, the party may appeal the denial of the motion administratively. The proposed rule does not provide for administrative appeal from the Administrator's denial of a motion to disqualify herself.

The proposed § 22.4(d) provides that an interlocutory appeal may be taken when an ALJ denies a motion that he disqualify himself or herself from a proceeding. However, EPA asked for comments on whether to prohibit such interlocutory appeals.

b. Significant Comments and EPA Responses

22.4(a). Dow suggests clarifying the rule by adding the word "initial" before the word "decisions" in the description of the Environmental Appeals Board's role in ruling on decisions, rulings and orders of a Presiding Officer. EPA accepts the suggested change.

22.4(b). CEEC states that it opposes expansion of the role of RJOs through the CROP. The preamble to the proposed rule stated that EPA had no current plans to use the subpart I procedures for any cases other than those arising under Clean Water Act ("CWA") sections 309(g)(2)(A) and 311(b)(6)(B)(i) (33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(B)(i)), and Safe Drinking Water Act ("SDWA") sections 1414(g)(3)(B) and 1423(c) (42 U.S.C. 300g–3(g)(3)(B) and 300h–2(c)). *See* 63 FR at 9479. To codify that point, EPA has revised the proposed § 22.50 so that it applies only to these cases. With this revision, today's rule clearly does not represent any practical expansion of the RJOs' role. Since the 1980's, RJOs have presided over cases under CWA sections 309(g)(2)(A) and 311(b)(6)(B)(i), and SDWA sections 1414(g)(3)(B) and 1423(c), under the procedures proposed (but not finalized) as part 28 and under other Agency guidance (*e.g. Guidance on UIC Administrative Order Procedures*, November 28, 1986). Now they preside over the same kinds of cases using the CROP.

Of the six commenters on the proposed rule, five (UWAG, UARG, CEEC, CMA/API, and Dow) expressed concern that the proposed rule fails to protect constitutional due process rights and assure the independence and impartiality of Regional Judicial Officers. UARG and UWAG oppose use of any EPA attorneys as Presiding Officers, arguing that Agency loyalty will create bias or the appearance of bias. CEEC, CMA/API, Dow and (by implication) UARG and UWAG oppose the use of EPA enforcement attorneys as Presiding Officers. These commenters argue that allowing enforcement personnel to be Presiding Officers creates actual or apparent bias by commingling the investigative, prosecutorial and adjudicative functions. Particular concerns include EPA enforcement attorneys presiding over cases brought by their colleagues, and over cases with issues or defendants in common with cases the Presiding Officer has litigated. Dow, UARG and UWAG urge the Agency to use Administrative Law Judges for adjudication of all administrative enforcement proceedings, arguing that ALJs are more qualified and are insulated against institutional bias.

In response to these concerns, EPA has made several changes to § 22.4(b). First, EPA has added a requirement that a "Regional Judicial Officer shall not prosecute enforcement cases and shall

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not be supervised by any person who supervises the prosecution of enforcement cases, but may be supervised by the Regional Counsel." This change will assure that the persons presiding over subpart I proceedings will be able to freely exercise independent judgment, without fear of adverse action by EPA enforcement managers.

Commenters suggested various independence criteria: Dow suggested that the CROP should mandate either that the employment and advancement of each EPA attorney serving as RJO expressly be made independent of his or her rulings as Presiding Officer, or the attorney has no direct or indirect supervision (for a total of at least two levels of supervision) by persons or offices responsible for enforcement. UARG and UWAG believe that hearings should be run only by ALJs, but if the Agency refuses to implement that suggestion, they support the idea presented in the preamble to the proposed rule that the Presiding Officer not be directly supervised by any person who directly supervises the prosecution of the case. CMA/API suggested a requirement that the Regional Judicial Officer "should not be employed by or supervised by any enforcement component, whether that component is in the Office of Regional Counsel or the Regional Office of Enforcement."

EPA has considered the various independence criteria suggested by the commenters, and has concluded that prohibiting RJOs from prosecuting enforcement cases, and prohibiting RJOs from being supervised by persons who supervise the prosecution of enforcement cases, will sufficiently separate RJOs from enforcement. Although Regional Administrators and Regional Counsels necessarily have significant responsibility for their Regions' enforcement program, they have other responsibilities which give them a broader perspective. Accordingly, there is little risk that they would exert improper influence over the decisions of an RJO. In order to avoid any confusion, the rule explicitly allows supervision by the Regional Counsel. The Regional Administrators' authority to personally supervise the RJOs is implicit, but may not be delegated to a person who supervises the prosecution of enforcement cases (except the Regional Counsel).

EPA's experience with non-APA adjudications to date indicates that RJOs maintain their independence and impartiality, and their decisions reveal no bias toward the complainant. Only four decisions by EPA attorneys serving as Presiding Officer have been reversed on appeal out of over 180 decisions rendered over a period of approximately 10 years. Moreover, there has not been a single penalty or corrective action case where a respondent has appealed a denial of a motion to disqualify a Regional Judicial Officer, nor where a respondent has alleged a Regional Judicial Officer's actual bias among its grounds for appeal. These results demonstrate that the RJOs' present levels of competence and independence are reasonable. Today's rule assures that this independence will not be compromised.

The more restrictive requirements suggested in some of the comments would not be feasible to implement. Prohibiting supervision by Agency officials who have any enforcement responsibilities would prohibit virtually all upper management in the Regional Offices, including the Regional Administrators, from such supervision. The RJOs' record to date indicates that such restrictive standards are not necessary. Other suggested standards would invite time consuming litigation over side issues, such as whether a supervisor or office is responsible for "enforcement" or whether someone is "indirectly" supervising the RJO, when the proper questions are whether an RJO is in fact biased and whether such bias affected the outcome of a particular case.

Second, EPA has included in the final rule a provision precluding a Regional Judicial Officer from knowingly presiding over a case involving any party concerning which the Regional Judicial Officer performed any functions of prosecution or investigation within the 2 years preceding the initiation of the case. CMA/API recommended that Regional Judicial Officers should not currently be involved in any other proceedings involving the same defendants and should not have been involved in the investigation or prosecution of the defendant within the previous 5 years. EPA agrees that it could create at least an appearance of bias if an EPA attorney were to serve as prosecutor of one complaint and shortly thereafter function as adjudicator of another complaint against the same party. It is neither necessary nor practical for EPA to adopt CMA/API's recommendation that the CROP prohibit prosecutorial or investigative activity against the respondent for 5 years. EPA has included in the final rule a provision precluding a Regional Judicial Officer from knowingly presiding over a case involving any party concerning which the Regional Judicial Officer performed any functions of prosecution or investigation within the 2 years preceding the initiation of the case. EPA has made this requirement contingent upon the RJO's knowledge because name changes are sufficiently common in modern industry that a RJO might preside over a case without being aware that he or she had previous dealings with the same company. Upon becoming aware of such prior relationship, the RJO must promptly disqualify himself or herself from the proceeding. If, in a particular case, a party were to believe that participation in a similar case more than 2 years earlier would bias the RJO, that party could move for disqualification under § 22.4(d). Note also that, owing to the new prohibition against RJOs prosecuting enforcement cases, the potential for these conflicts will decrease over time.

In the response to the public comments, EPA has revised the proposed § 22.4(b) to increase the independence of RJOs (prohibiting RJOs from prosecuting enforcement cases, prohibiting their supervision by persons who supervises prosecution of enforcement cases, and prohibiting the RJO from knowingly presiding over a case involving any party concerning which he or she performed any functions of prosecution or investigation within the 2 years). Other changes sought by the commenters are impractical and unnecessary.

In proceedings subject to section 554 of the APA, Congress has determined that Presiding Officers may not be "engaged in the performance of investigative or prosecuting functions for [EPA] in * * * a factually related case * * *", and may not "be responsible to or subject to the supervision or direction of [persons] engaged in the performance or investigative or prosecuting functions for [EPA]." 5 U.S.C. 554(d). However, subpart I is designed for use in proceedings that are not subject to section 554 of the APA. Congress has expressly authorized EPA to assess civil penalties through procedures that do not meet the standards of section 554. Despite the broad range of options this allows, EPA has chosen as a matter of policy to make subpart I procedures adhere closely to the APA requirements. The subpart I procedures depart from the requirements of section 554 only in regard to the independence of the Presiding Officer. The commenters who object to subpart I for failing to provide this same level of independence are objecting, in effect, to the statutes that authorize non-APA proceedings. The Agency does not agree that such a broad limitation on its authority is appropriate.

Whether adjudication by EPA attorneys under subpart I provides adequate protection for respondents' due process rights must be evaluated according to the three part standard established in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976):

> "[O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 334–35.

The private interests in a proceeding under subpart I of the CROP are the impact on respondent of a civil penalty and on respondent's reputation from a finding of liability, and perhaps in the expense and burden of the hearing itself. Although these interests are important, they are less important than the private interest at stake in *Mathews* v. *Eldridge*, where the governmental agency summarily discontinued an individual's social security disability benefits while the benefit termination hearing was pending. The private interests at stake in CROP proceedings do not rise to this level. Moreover, the interests at stake certainly are not so significant as individual interests in liberty or bodily integrity.

The risk of an erroneous deprivation of respondents' private interests through adjudications by EPA attorneys is low, and certainly lower than in *Mathews* v. *Eldridge*, where the disability benefits were terminated before any hearing was afforded. In a CROP subpart I proceeding, the respondent first has an opportunity for a hearing before an RJO (including the opportunity to present evidence and to cross examine the Agency's witnesses), and has opportunities for administrative review before the penalty is assessed (i.e., appeal of the initial decision to the EAB). The risk of an erroneous deprivation of a respondent's interests should correspond closely to the frequency with which decisions by EPA attorneys serving as Presiding Officer are reversed on appeal by either the EAB or a federal court, and as described above, this rate has been extremely low.

Balanced against the private interests at stake and the risk of their impairment is the government's interest. The government's primary interest in having EPA attorneys preside over certain enforcement cases is in making efficient use of Agency resources. The costs for an ALJ to travel from Washington, D.C., to the hearing location is greater than the cost for an EPA attorney to travel from the Regional office to the hearing location. In addition, ALJs are paid more than the EPA attorneys who serve as Presiding Officers. The other government interest is in having the flexibility to increase the number of Presiding Officers to meet the administrative case load. In the recent past, the number of ALJs was clearly inadequate to handle the number of cases. Although the number of ALJs is today more commensurate with the number of cases, future imbalances might be alleviated by temporarily expanding or contracting the number of EPA attorneys who may serve as Presiding Officer.

To summarize the results of this *Mathews* v. *Eldridge* three-step balancing test, there appears to be a relatively small risk of impairment of private interests that are of a moderate level of importance. This small risk of impairing moderately important interests must be balanced against the government's interests in making best use of its resources. Although it is not possible to weigh these factors with mathematical precision, it is clear that the use of EPA attorneys as Presiding Officers, subject to the provisions adopted in this rule and with the right to appeal to the EAB, is not a violation of respondents' rights to due process of law.

CMA/API recommend that, if EPA allows Agency personnel to serve as Regional Judicial Officers, they should be members in good standing with a bar. EPA notes that under the Federal personnel rules all attorney positions require bar membership, so this need not be addressed in § 22.4(b). CMA/API also argues that Regional Judicial Officers should have substantial litigation experience including adjudication. The position descriptions for Regional Judicial Officers require that they be senior attorneys with substantial litigation experience, and EPA believes that its internal procedures and controls are adequate to assure that Regional Judicial Officers have substantial litigation experience. EPA intends to continue its practice of sending each of its Regional Judicial Officers to the National Judicial College for training in presiding over administrative hearings. This level of experience and training is sufficient to prepare Agency attorneys to preside over the relatively straight-forward cases expected under subpart I.

Some commenters (CMA/API, UWAG, UARG) were concerned that the physical proximity, friendships or colleague relationships of the Regional Judicial Officers with Agency prosecuting attorneys would create an appearance of partiality, where they may share work and social activities, training and secretarial support, and where Regional Judicial Officers may overhear statements made by prosecutors. EPA and its RJOs make efforts to avoid such contacts where feasible, and the contacts that remain are unlikely to result in an actual bias. It does not appear that any solution short of complete physical isolation of Regional Judicial Officers from the enforcement offices could completely eliminate this concern. Such separation would also pose significant logistical difficulties for EPA's Regional offices. Accordingly, this comment is not adopted in the final rule. EPA Regional Offices will continue to take prudent measures to physically separate Regional Judicial Officers from personnel responsible for enforcement case development and prosecution to the extent feasible.

CMA/API suggested that a Regional Judicial Officer should not adjudicate any case involving the same counsel as another case in which he or she performed prosecutorial or investigative functions. EPA disagrees. Counsel serve merely as representatives of their clients, and bias cannot be presumed to attach merely to a representative.

CEEC and Dow suggested that the final sentence of the proposed § 22.4(b), which stated that RJOs may not have "any interest in the outcome of any case", is unclear and should incorporate explanatory language from the preamble to the proposed rule indicating that it includes "a financial interest, personal interest, or career interest in the outcome of the action". 63 FR at 9467. EPA notes that any interpretation of this clause would have to conform to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, which are intended to supersede all agency ethics standards (except those approved by the Office of Governmental Ethics and promulgated as supplemental ethics regulations pursuant to 5 CFR 2635.105). In order to avoid creating a standard which might be interpreted differently than these government-wide ethics standards, EPA has removed this clause from the final rule.

A general principle of the government-wide ethics regulations, particularly 5 CFR 2635.101, is that all federal employees must perform their duties impartially. If an RJO held any interest or bias which would compromise his or her ability to preside

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impartially in a particular proceeding, this would be grounds for disqualification under § 22.4(d).

Dow suggests that the CROP prohibit enforcement attorneys from serving as Presiding Officers unless the attorney has not issued potentially relevant interpretations of the statute or regulations allegedly violated. Dow suggests possible bias where the Regional Judicial Officer had previously issued interpretations of the regulations at issue in a case before him, that may create a reluctance to overrule his own prior interpretation. However, all adjudicators face the possibility of having to overrule their own prior interpretation of a rule, as contained in their own prior decisions. EPA is unaware of any court where adjudicators are barred from deciding cases where their earlier positions are precedent. In every case, the adjudicator's decision must be supported by the evidence and applicable law, and parties may appeal any adverse decision to the EAB. Accordingly, EPA has not made the suggested change in the final rule.

UARG and UWAG argue that anyone who has participated in a rule making proceeding that leads to the promulgation of a substantive rule would have an interest and bias in the interpretation of that rule, and should not serve as Presiding Officer in a case where that rule is at issue. Although Regional Judicial Officers have presided at public rule making hearings during the public comment period, their role is limited to conducting an orderly hearing—they are not responsible for weighing the evidence and do not participate substantively in the regulatory decision making. EPA believes that participation in substantive rule making is unlikely to result in bias in the interpretation of the rule. The Presiding Officer's decisions must include findings of fact and conclusions of law based upon the record in the case, and their interpretations of regulations are subject to appellate review. EPA declines to add the suggested prohibition with regard to rule making.

The proposed rule would delete from § 22.4(b) language precluding a Presiding Officer from hearing a case that is "factually related" to one in which he or she performed investigative or prosecutorial functions. The 1980 CROP was intended to provide procedures for hearings conforming to section 554 of the APA, and the "factually related" clause was derived from section 554(d), that provides that "An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision [or] recommended decision * * *." As the revised CROP is intended for use in proceedings that are not subject to section 554, as well as APA proceedings, provisions of the 1980 CROP such as the "factually related hearing" clause are no longer appropriate for RJOs.

It is very probable that any EPA attorney sufficiently experienced to be selected as RJO would have prosecuted a substantial number of the type of routine cases which are expected to form the bulk of subpart I practice, and these cases may contain similar factual issues. Moreover, the geographical limits on each Region's enforcement efforts make it likely that highly experienced EPA attorneys will have prosecuted cases that have parties, locations, or other facts in common with cases they might hear as an RJO. The prohibition on hearing "factually related" cases is too broad for subpart I proceedings, where the cases will mainly involve well settled law and simple factual issues. The mere fact that two cases have some facts in common need not present any significant risk of bias or "will to win," but it may result in unnecessary litigation over whether the cases are "factually related." Although EPA acknowledges that experience with cases that are factually related in a substantial way could potentially be a cause for concern, there are many more cases where the factual relation is too trivial to result in bias.

Today's final rule will provide respondents in subpart I proceedings a fair and impartial decision maker. Any party may move to have a decision maker disqualified, or a decision overturned, on the basis of partiality where "a disinterested observer may conclude that [the agency] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it." *Cinderella Career and Finishing School* v. *FTC*, 425 F.2d 583, 591 (D.C. Cir. 1970). In the event that an RJO who performed prosecutorial or investigative functions in a factually related case denies a motion for disqualification, respondent can appeal that decision, and, if the appellate body finds that the RJO was not impartial, then the RJO's decision will undoubtedly be reversed.

22.4(c). A comment as to paragraph (c) urges EPA to provide further sanctions, in addition to the existing sanction authorizing the Presiding Officer to draw adverse inferences against a party. For example, the rule should authorize, when a party willfully disregards discovery orders, sanctions up to the level of dismissal with prejudice or default, such as striking a count from a complaint or striking a specific defense. The commenter suggests adding to the rule that a Presiding Officer may impose any other appropriate sanction that could be imposed by a Federal court in a civil proceeding.

EPA believes that it is not necessary to add any additional language with regard to sanctions that may be imposed by a Presiding Officer. The broad language of § 22.4(c)(10) to "[d]o all other acts and take all measures necessary" authorizes the Presiding Officer to impose a broad array of sanctions appropriate for management of cases, to ensure the "maintenance of order and for the efficient, fair and impartial adjudication of issues." Pursuant to that authority, Presiding Officers impose sanctions such as limiting the evidence a party may present. See, Paul Durham, d/b/a Windmill Hill Estates Water System, EPA Docket No. [SDWA]–C930036, 1997 SDWA LEXIS 1, nn. 5, 6 (ALJ, April 14, 1997). In addition, § 22.17(a) and 22.19(g) specifically provide for sanctions of default or dismissal with prejudice, and for exclusion of the information from evidence for failure to comply with information exchange required by § 22.19 or with an order of the Presiding Officer.

22.4(d). Commenters generally favor the proposed disqualification procedures, but have proposed several revisions to the proposed regulation:

CEEC recommends that EPA add a provision that "requires the individual for whom disqualification is sought to specify reasons for his decision" on the disqualification motion. EPA does not agree with the recommendation because it is unnecessary. When a decision maker rules on any motion under the CROP, the decision maker provides reasons for the ruling unless the reasons therefor are patently evident. The precise level of detail provided will depend upon the decision maker's informed discretion and the circumstances of the case. There is no reason to single out disqualification rulings for purposes of imposing an explicit requirement to articulate the basis for the ruling and no reason for limiting a decision maker's discretion in this regard.

Dow proposes that "EPA should provide a procedure for appeal, in cases where the Administrator denies a motion to disqualify himself." EPA rejects the commenter's suggestion. Since all Agency officials are supervised by the Administrator, there is no Agency official who could appropriately resolve such an appeal. Moreover, any need for such a requirement is remote, for the occasions when the Administrator acts or serves as the deciding official under the CROP are extremely rare. In practice, the EAB performs the role of final decision maker pursuant to its delegation from the Administrator under the regulations. For the most part, the Administrator's role is residual and limited to cases specifically referred to her by the EAB. The EAB has not made such a referral since its creation in 1992. A slightly different role is reserved for the Administrator under proposed § 22.31(f) (§ 22.31(e) of this final rule), which provides that, if the EAB were to issue a final order to a Federal agency, the agency may request a conference with the Administrator. This opportunity is not available to other recipients of EAB orders. If a conference occurs as provided in the provision, a decision by the Administrator may become the final decision. Nonetheless, EPA does not expect that many such requests will be made pursuant to this provision. If the Administrator were to deny a motion to disqualify herself from participating in a proceeding, the appropriate recourse would be to federal court, upon issuance of the final agency action at the end of the administrative proceeding.

Under both the existing rule and the proposed rule (except for subpart I cases), an interlocutory appeal under § 22.29 is available where a Presiding Officer denies a motion for disqualification. EPA requested comment on whether to prohibit interlocutory appeals to the EAB following the denial of a disqualification motion, consistent with federal court practice.

In response to EPA's request for comment, Dow and CEEC recommend that interlocutory appeals of motions for disqualification be allowed because "there is a far greater likelihood of bias under CROP proceedings than in Federal courts," especially where the presiding officer is not an ALJ. Dow adds, therefore, that although it might be acceptable to prohibit an interlocutory appeal from the denial of a motion to disqualify an ALJ, because "ALJs are insulated against actual bias," it is not appropriate to prohibit an interlocutory appeal from the denial of a motion for disqualification where the presiding officer is not an ALJ. CEEC argues that prohibiting interlocutory appeals would contribute to delay because the unavailability of an interlocutory appeals process would increase the number of proceedings that would have to be overturned on appeal.

EPA has considered these comments, but has decided to add a provision to the rules prohibiting interlocutory appeals from the denial of disqualification motions. EPA believes a prohibition against interlocutory appeals will not significantly affect the impartiality of the administrative adjudicative process and at the same time will prevent unnecessary delays. Based on the Agency's experience to date, motions to disqualify decision makers have been very infrequent. Therefore, the Agency expects that the circumstances will be extremely rare in which either the Agency or private litigants will have the burden of a retrial.

CEEC proposes that the regulatory bases for disqualifying a decision maker be expanded to include "the appearance of impropriety." Courts have held that appearance of impropriety, without more, does not warrant disqualification under due process standards. *Del Vecchio* v. *Illinois Department of Corrections*, 31 F.3d 1363, 1371–72 (7th Cir. 1994). Courts have also declined to extend the judicial system's strict separation of functions standard to multi-function agencies. See e.g., *Simpson* v. *OTS*, 29 F.3d 1418, 1424 (9th Cir. 1994); EDF v. EPA, 510 F.2d at 1305. Likewise, the more stringent "appearance" standard in 28 U.S.C. 455(a), that requires a Federal judge to disqualify himself whenever his impartiality "might reasonably be questioned", does not apply to agency adjudicators. See, e.g., *Marine Shale Processors, Inc.* v. *EPA*, 81 F.3d 1371, 1386 (5th Cir. 1996). Although EPA intends that RJOs should avoid the appearance of impropriety, EPA does not believe that the CROP should create a disqualification standard based on appearance of impropriety.

The criteria for disqualification in a CROP proceeding are whether decision makers have "a financial interest or [a] relationship with a party or with the subject matter which would make it inappropriate for them to act". Whether a financial interest or a relationship is inappropriate is determined by reference to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635. Decision makers who fail to conform to these government-wide ethics standards are subject to disqualification.

c. Final Rule. EPA has reconsidered the proposed change to the title of § 22.4, and has decided to retain the original title "Powers and duties of the Environmental Appeals Board * * *."

EPA has adopted the language proposed under § 22.4(a), with the addition of the word "initial" before the word "decisions" in the first sentence, as recommended by a commenter. This paragraph appears as § 22.4(a)(1) in today's final rule. As noted above in the response to comments on § 22.4(c), a commenter recommended that Presiding Officers be given additional authority to impose sanctions. Although § 22.4(c) and other sections of the CROP provide adequate authority to impose procedural sanctions, EPA notes that § 22.4(c) applies only to the Presiding Officer, and not the EAB. In order that the CROP should expressly authorize the EAB to employ equivalent procedural sanctions, EPA has added a new paragraph to § 22.4(a). This new paragraph (a)(2) makes explicit the EAB's authority to impose procedural sanctions for failures to conform to CROP requirements and to orders of the EAB, an authority that the Agency has always considered implicit:

(2) In exercising its duties and responsibilities under these Consolidated Rules of Practice, the Environmental Appeals Board may do all acts and take all measures as are necessary for the efficient, fair and impartial adjudication of issues arising in a proceeding, including imposing procedural sanctions against a party who without adequate justification fails or refuses to comply with these Consolidated Rules of Practice or with an order of the Environmental Appeals Board. Such sanctions may include drawing adverse inferences against a party, striking a party's pleadings or other submissions from the record, and denying any or all relief sought by the party in the proceeding.

EPA has also made a minor editorial revision to the last sentence of what is now § 22.4(a)(1), for reasons of grammar and clarity. EPA has changed the last clause from "motions * * * where the Environmental Appeals Board has referred a matter to the Administrator" to "motions filed in matters that the Environmental Appeals Board has referred to the Administrator."

As discussed in the response to comments above, EPA has made several changes to § 22.4(b) in response to public comments. EPA has added a new sentence to § 22.4(b): "A Regional Judicial Officer shall not prosecute enforcement cases and shall not be supervised by any person who supervises the prosecution of enforcement cases, but may be supervised by the Regional Counsel." EPA has also included in the final rule a provision precluding a Regional Judicial Officer from knowingly presiding over a case involving any party concerning which the Regional Judicial Officer performed any functions of prosecution or investigation within the 2 years preceding the initiation of the case. EPA has deleted from the final

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sentence of the proposed § 22.4(b) language prohibiting RJOs having "any interest in the outcome" of any proceeding. EPA has also revised § 22.50(a) to limit the applicability of subpart I to cases under CWA sections 309(g)(2)(A) and 311(b)(6)(B)(i) (33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(B)(i)), and SDWA sections 1414(g)(3)(B) and 1423(c) (42 U.S.C. 300g–3(g)(3)(B) and 300h–2(c)).

EPA has also made a minor, editorial change to § 22.4(b), unrelated to the public comments. The first sentence of the proposed § 22.4(b) stated that the "Regional Administrator shall designate one or more Regional Judicial Officers to act as Presiding Officer...." EPA has revised this sentence to say that the Regional Administrator shall "delegate" that authority.

EPA has adopted the proposed § 22.4(c) without change.

As discussed above, EPA has revised § 22.4(d) by adding a provision prohibiting interlocutory appeals from the denial of disqualification motions.

EPA has made three minor changes to correct errors in the proposed § 22.4(d). Contrary to the Agency's express intent that all motions for disqualification be made first to the official whose disqualification is sought (see 63 FR at 9467), the proposed § 22.4(d) erroneously includes a statement that motions for disqualification of a Regional Judicial Officer should be made to the Regional Administrator. The final rule requires that all motions for disqualification must first be made to the official whose disqualification is sought.

In the final rule, EPA has corrected another error in the proposed rule by substituting "Administrative Law Judge" for "Presiding Officer" in § 22.4(d). In § 22.3 of the 1980 CROP, "Presiding Officer" was defined as an Administrative Law Judge who has been designated by the Chief Administrative Law Judge to serve as Presiding Officer. However, under the proposed rules, the definition of "Presiding Officer" has been revised to mean either an Administrative Law Judge or a Regional Judicial Officer. The proposed § 22.4(d) failed to reflect this change. Because the proposed § 22.4(d) used the term "Presiding Officer" solely to refer to Administrative Law Judges, EPA has revised this paragraph to use the term "Administrative Law Judge" instead.

Finally, the phrase "they deem themselves" should be singular, rather than plural. EPA has substituted the phrase "he deems himself".

3. Filing, Service, and Form of Documents (40 CFR 22.5(a)–(c))

a. Summary of Proposed Rule. EPA proposed revisions of § 22.5(a) clarifying the requirements for filing documents with the hearing clerk or the clerk of the EAB. Proposed revisions of § 22.5(b) clarify the requirements for serving documents on other parties and on the Presiding Officer. The proposed paragraph (b)(1) would allow service of the complaint by any reliable commercial delivery service that provides written verification of delivery, and paragraph (b)(2) would allow service of all documents other than the complaint by any reliable commercial delivery service.

The proposed § 22.5(c) added provisions which would require more information on the first page of every pleading and to require tables of contents and tables of authorities for all legal briefs and memoranda greater than 20 pages in length (excluding attachments) to simplify review. The provision that allowed Hearing Clerks to determine the adequacy of documents was deleted, leaving that authority solely with Presiding Officers or the Environmental Appeals Board.

b. Significant Comments and EPA Response. Dow says that it is unclear whether the language in § 22.5(b)(1) allowing service of the complaint "by certified mail, return receipt requested" refers to one method of service or two alternative methods. EPA has amended this phrase to read "by certified mail *with* return receipt requested".

Dow suggests that § 22.5(b)(1) should allow respondent to waive the requirement that EPA send a copy of the CROP with the complaint. EPA acknowledges that this is superfluous in many cases, but nevertheless believes that this requirement is the most certain way of assuring that respondents are aware of their procedural rights.

USAF requests that the phrase "officer or" be deleted from § 22.5(b)(1)(ii)(B), questioning EPA's authority to file administrative cases against officers of the United States for actions within the scope of their employment. EPA agrees that the words "officer or" should be deleted from the proposed section for the reasons stated. EPA agrees that under normal circumstances, officers of the United States acting outside the scope of their employment would be treated in the same manner as other individuals. Where the real party in interest is a Federal agency, that agency should be named as respondent.

USAF also notes that the proposed § 22.5(b)(1)(ii)(B) provides less guidance as to the manner of service on Federal agencies than the language presently codified at § 22.5(b)(1)(iii). USAF urges the adoption of language clearly providing for service as provided by regulation, and absent regulation, service upon the chief attorney and on the senior executive officer responsible for the overall operations of the geographical unit of the agency being served. The language describing this latter official is adapted from 40 CFR § 270.11(a)(3)(ii), that designates who must sign waste permit applications. EPA agrees with the Air Force that the proposed rule does not succeed in clarifying who must be served. EPA has revised this paragraph to require service as provided by the respondent agency's regulations, or in the absence of controlling regulation, as otherwise provided by law. This will clearly allow Federal agencies to specify how they are to be served, and where they do not do so, it will allow EPA to serve the agency in any manner permitted by the Federal courts.

EPA recognizes the benefits of assuring that those directly in charge of a federal facility get prompt notice of a complaint, and so, has added to the final rule a direction that the complainant should send an additional copy of the complaint to the senior executive official having responsibility for the overall operations of the geographical unit where the alleged violations arose. This language, proposed by USAF, is derived from EPA's regulation designating who must sign applications for hazardous waste permits, 40 CFR 270.11(a)(3)(ii). EPA recognizes that the term "geographical unit" may be subject to varying interpretations, but has concluded that the imprecision is both necessary given the wide variety of federal facilities, and acceptable given that this copy of the complaint merely supplements the official service of the complaint. In recognition of this imprecision, this new provision uses the word "should" rather than "shall." EPA will make a good faith effort to provide a copy of the complaint to the base commander, or equivalent, however, so long as complainant properly serves the federal agency according to its regulations or as otherwise provided by law, the requirements of § 22.5(b)(1)(iii) are satisfied.

USAF finds the phrase "all pleadings and documents other than the complaint", used in § 22.5(b)(2) and elsewhere, to be confusing. USAF recommends using "answer" and/or "complaint" in place of "pleading" and "all filed documents" or "all filings" in place of "pleadings and documents". EPA agrees with this recommendation.

Dow recommends that § 22.5(c)(2) should specify how respondent is to

determine the docket number. EPA agrees that the proposed rule leaves this unclear. EPA has stricken the parenthetical clause "(after the filing of the complaint)" in order to assure that the docket number shall appear on the complaint.

Dow and CEEC observe that under § 22.5(c)(4) a party who fails to furnish or update its name, address, and telephone number, and those of its attorney or representative, if any, completely waives its right to notice and service. The commenters argue that this sanction is too severe for harmless errors. EPA has amended this provision so that where a party fails to update information concerning its representative and/or service address, service to the outdated representative or address shall satisfy the requirements of § 22.5(b)(2) and § 22.6. In this manner, the consequences of any failure to update this information will be commensurate with the severity of the error.

In its comments on §§ 22.17(a) and 22.34(c), Dow notes that default is too harsh a sanction for minor errors in service or filing. The proposed § 22.5(c)(5) would allow the EAB or the Presiding Officer to exclude from the record any document that does not comply with § 22.5(c). This would apparently preclude exclusion for service errors as significant as those in § 22.5(c) (e.g., failure to serve the opposing party, failure to include a certificate of service per § 22.5(a)(3), failure to file the original document per § 22.5(a)(1)). Therefore, the final rule expands this sanction to include failures to conform to paragraphs (a), (b) and (d), as well as (c).

The Agency solicited comments on whether electronic filing and service should be allowed, and if so, under what conditions, but received no comments. After further consideration, EPA has decided that the CROP should permit the Presiding Officer and the EAB, in consultation with the parties and the affected hearing clerk, to authorize facsimile or electronic service and/or filing on a case-by-case basis. Accordingly, language is added to §§ 22.5(a)(1) and 22.5(b)(2) allowing the Presiding Officer or the EAB to authorize facsimile or electronic service and/or filing, subject to any appropriate conditions and limitations.

c. Final Rule In response to public comments, EPA has adopted a modified version of the proposed § 22.5(a), (b), and (c). EPA has revised this and other sections to use the more general term "document" in place of "pleadings and documents", and to use "complaint" or "answer" where reference to one or the other is specifically intended. EPA has edited § 22.5(b)(1) to read "by certified mail with return receipt requested". EPA deletes the phrase "officer or" from § 22.5(b)(1)(ii)(B), and revises the proposed § 22.5(b)(1)(ii)(B) as follows:

"Where respondent is an agency of the United States, complainant shall serve that agency as provided by that agency's regulations, or in the absence of controlling regulation, as otherwise permitted by law. Complainant should also provide a copy of the complaint to the senior executive official having responsibility for the overall operations of the geographical unit where the alleged violations arose."

EPA has stricken from § 22.5(c)(2) the parenthetical clause "(after the filing of the complaint)". EPA has revised § 22.5(c)(4) as follows:

"(4) The first document filed by any person shall contain the name, address, and telephone number of an individual authorized to receive service relating to the proceeding. Parties shall promptly file any changes in this information with the Regional Hearing Clerk, and serve copies on the Presiding Officer and all parties to the proceeding. If a party fails to furnish such information or any changes thereto, service to the party's last known address shall satisfy the requirements of § 22.5(b)(2) and § 22.6."

EPA has revised the proposed § 22.5(c)(5) to allow the EAB or the Presiding Officer to exclude from the record any document that does not comply with any requirement of § 22.5.

In addition to the changes suggested by the commenters, EPA has made several other minor changes to § 22.5. EPA has amended § 22.5(a)(1) to allow the Presiding Officer and the EAB the discretion to allow facsimile or electronic filing under such circumstances and limitations as they deem appropriate. EPA also has added to § 22.5(b)(2) language allowing the Presiding Officer or the EAB to authorize facsimile or electronic service, subject to such conditions and limitations as they deem appropriate. EPA has added a reference to the EAB to § 22.5(b): "A copy of each document filed in the proceeding shall be served on the Presiding Officer or the Environmental Appeals Board, and on each party."

EPA has determined that additional clarifications are appropriate for § 22.5(b)(2). EPA notes that the U.S. Postal Service considers overnight express and priority mail to be forms of first class mail. EPA has revised § 22.5(b)(2) to allow service "by first class mail (including certified mail, return receipt requested, Overnight Express and Priority Mail), or by any reliable commercial delivery service. This change necessitates a corresponding change in § 22.7(c), because 5 day grace period for responding to motions sent by first class mail is unnecessary for documents served by overnight or same-day delivery.

Finally, EPA has revised the CROP to present numbers consistently, adopting the preferred style of the U.S. Government Printing Office. Numbers of 10 or more are expressed in figures and not spelled out. Accordingly, EPA has revised § 22.5(c) to require a table of contents and a table of authorities for all briefs and legal memoranda "greater than 20 pages in length".

4. Confidentiality of Business Information (40 CFR 22.5(d))

a. Summary of Proposed Rule. The proposed § 22.5(d) addresses treatment of information claimed as Confidential Business Information ("CBI") in documents filed in CROP proceedings. The proposed paragraph (d)(1) would provide that any business confidentiality claim shall be made in the manner prescribed by 40 CFR part 2 at the time that the document is filed. It warns that a document filed without a claim of business confidentiality will be available to the public for inspection and copying pursuant to § 22.9.

Paragraph (d)(2) would require the submission of a redacted, non-confidential version in addition to the full document containing the information claimed confidential, and describes the process for preparing these documents. Paragraph (d)(3) describes the procedures for serving documents containing claimed-confidential information and makes clear that only a redacted version of any document may be served on a party, amici, or other representative thereof not authorized to receive the confidential information. Paragraph (d)(4) provides that only the redacted version of a document with claimed-confidential information will become part of the public record of the proceeding, and further provides that an EPA officer or employee may disclose information claimed confidential only as provided by 40 CFR part 2.

b. Significant Comments and EPA Response. Dow and CEEC express concern that under the proposed rule a failure to include a CBI claim at the time a document is submitted forecloses any future protection of the document. They argue that even where a company has inadvertently placed information in the public record, there is still value to in preventing further disclosure. They also point out that the Agency's CBI regulations at 40 CFR 2.203(c) provide that the Agency "will make such efforts as are administratively practicable to

associate [a] late [confidentiality] claim with copies of . . . previously-submitted information in EPA files. . . ."

Section 2.203(c) expresses an Agency intent to give effect to late claims of business confidentiality, to the extent administratively practicable. While it is often administratively practicable to provide meaningful protection for a document that has been submitted in a non-confidential manner to an EPA office for EPA's own regulatory use, it is not administratively practicable to protect information that has become a matter of public record. There are significant costs associated with maintaining the confidentiality of documents EPA uses, and EPA must balance them against the potential benefits of protecting information that is already likely to be circulating among the public. The criteria for determining whether business information is entitled to confidential treatment, at § 2.208, include whether the business has taken reasonable measures to protect the confidentiality of the information. Placing a document in the public record falls short of those reasonable measures. Some of EPA's enforcement dockets receive daily visitors, while others are less frequently examined. Accordingly, once a person has filed a document with a hearing clerk, a subsequent effort by that person to assert a business confidentiality claim for information contained in that document will generally be ineffective. EPA will consider untimely confidentiality claims on a case-by-case basis, but claims asserted more than a few days after the original filing are unlikely to be granted.

CEEC also faults EPA for failing to draw sufficient attention in the notice of proposed rule making to the provisions addressing CBI. CEEC asserts that EPA missed an opportunity to work with the regulated community to achieve important regulatory reforms. EPA disagrees. It is the purpose of a notice of proposed rule making to elicit comment from the public to better inform the Agency's rule making process. EPA has made many changes in this final rule in response to the helpful comments submitted by CEEC and other commenters. Although EPA has not agreed with CEEC's one substantive comment on the CBI provisions, EPA appreciates the comment and carefully considered CEEC's point.

c. *Final Rule.* EPA adopts § 22.5(d) as proposed, except for replacing the phrase "pleading or document" with "document" as discussed in the response to public comments on § 22.5(a), (b) and (c), and replacing "amici" with "non-party participant" for consistency with changes to § 22.11(b).

5. Computation and Extension of Time (40 CFR 22.7)

a. Summary of Proposed Rule. Section 22.7(a) defines time periods for determining the date upon which a document is due. The proposed rule would revise the term "legal holiday" to "Federal holiday" for clarity.

Section 22.7(b) sets forth conditions under which the due date may be extended. The proposed revision to that paragraph would require that a motion for extension of time be filed sufficiently in advance of the due date so as to allow other parties an opportunity to respond and to allow time for the Presiding Officer or EAB to issue a ruling upon the motion.

Section 22.7(c) of the proposed rule would expand the "mailbox rule" to provide that service of documents other than the complaint is complete either upon mailing or when placed in custody of a reliable commercial delivery service, and to allow 5 additional days to respond not only to documents served by mail but also to documents served by reliable commercial delivery service.

b. Significant Comments and EPA Response. Dow requested an exception from including Saturdays, Sundays and holidays where the time period is 10 days or less. The commenter is concerned that there are not enough work days and mail delivery days to respond to a document.

In effect, this would extend the time period for a party's reply to a response, which is 10 days, under § 22.16(b). EPA believes that two different ways of calculating time periods would cause confusion and inconsistency. When a party needs more than 10 days to file a document, an adequate solution would be to request an extension of time.

Dow suggested a "good cause" exception to the time limit for filing a motion for extension of time. EPA believes that including such an exception in the rule is unnecessary and may encourage untimeliness, and thereby adversely affect the Agency's efforts to make administrative proceedings more efficient. A motion for leave to file a document beyond the time limit ("out of time"), stating reasons for not having filed within the time limit, may be submitted in accordance with § 22.16(a), along with the document sought to be filed. The time limit provided in the proposed revision does not require a motion for extension to be filed so far in advance of the due date so as to allow other parties the 15 days provided by § 22.16(b) to respond to the motion. A "reasonable opportunity to respond" and "reasonable opportunity to issue an order" will be construed based on the circumstances of the case.

c. Final Rule. Today's additional clarifications to § 22.5(b)(2), which define first class mail as including Overnight Express and Priority Mail, expressly allow for service by EPA's internal mail system, and provide the Presiding Officer and the EAB discretion to authorize facsimile or electronic filing, require a corresponding change to § 22.7(c). To assume 5 days for delivery by mail of a document, and thus to allow 5 additional days for a response, is appropriate where a document is served by first class mail and some forms of commercial delivery. However, it is not appropriate to make such assumption and allowance where there is a date of receipt, logged or stamped by the postal or commercial delivery service, showing that the document was sent by same day or overnight delivery. Accordingly, EPA is revising the third sentence of § 22.7(c) to exempt documents served by overnight or same-day delivery. According to the preferred style of the U.S. Government Printing Office, measurements of time are to be expressed in figures and not spelled out. EPA has revised § 22.7(c) to say that "5 days shall be added".

6. Ex Parte Discussion of Proceeding (40 CFR 22.8)

a. Summary of Proposed Rule. The existing § 22.8 prohibits the decision making officials in a proceeding from discussing the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in the proceeding or a factually related proceeding. This prohibition is also imposed on representatives and to persons likely to advise the decision making officials on the proceeding. The proposed rule would add a sentence that would exempt officials who have formally recused themselves from all adjudicatory functions, including the approval of consent agreements and issuance of final orders.

b. Significant Comments and EPA Response. Dow argues that the CROP should also restrict ex parte contacts before a complaint is issued, in order to avoid the potential for an adjudicator developing a bias in favor of the complainant. Dow suggests that the CROP should prohibit any communication regarding contemplated or reasonably foreseeable enforcement proceedings between potential adjudicators and Agency enforcement personnel. Dow also suggests that where Agency enforcement attorneys may potentially serve as Presiding Officers, any communications regarding contemplated or reasonably foreseeable enforcement proceedings should be recorded, kept on file, and served on respondent as soon as that attorney is designated Presiding Officer.

EPA agrees that EPA attorneys who may serve as Presiding Officers should avoid communications regarding contemplated or reasonably foreseeable enforcement proceedings over which they might preside. However, a complete prohibition is neither feasible nor necessary.

In some instances, it is appropriate for Agency enforcement personnel to have prefiling discussions concerning specific enforcement cases with Agency attorneys who may be called upon act as Presiding Officers. When considering whether to assign a new case to a particular Agency enforcement attorney, it may be necessary to inquire of that attorney whether a prospective case may present a conflict with any cases in which the attorney is acting as Presiding Officer. So long as those discussions are carefully limited to transmitting the identity of the prospective respondent and a bare statement of the statutory or regulatory provisions allegedly violated, and to exploring whether there is any potential conflict of interest, but do not address the merits of the potential action, such discussions could not influence the decisions of the prospective adjudicator, and should not be considered prohibited ex parte communications.

Sound management of the Agency's enforcement program also periodically requires some discussion between complainants and adjudicators concerning anticipated work loads. For example, EPA periodically offers compliance audit programs (see, e.g., Registration and Agreement for TSCA Section 8(e) Compliance Audit Program, 56 FR 4128 (Feb. 1, 1991)) where large numbers potential cases are simultaneously settled on essentially identical terms, and it is appropriate in such cases for the complainant to discuss process issues with the persons who would be responsible for approving the consent agreements and issuing final orders. Discussions of how many consent agreements might be submitted for approval, when they might be submitted, whether or to what extent the consent agreements vary, are all permissible procedural matters that are not prohibited ex parte communications.

Compliance audit programs encourage violators to identify their violations and disclose them to EPA in exchange for a settlement and release of liability on favorable terms. Obtaining advance approval of the generic consent agreements could reassure those members of the regulated community who are wary of disclosing violations that the Agency will in fact conclude the cases according to the terms offered. Although this would result in substantive discussion of the terms of settlement between prospective complainants and adjudicators, this is permissible under the peculiar circumstances of a compliance audit program. It is permissible because compliance audit programs are entirely voluntary. Each compliance audit program is an offer by the Agency to the regulated community at large, and EPA typically engages in these efforts precisely because it does not know who is in violation and it wants to bring a large and ill-defined sector of the industry into compliance. No regulatee is obligated to identify itself as a violator or to participate in the program; each chooses to do so only if it considers the terms offered by the Agency to be in its best interest. Accordingly, where complainants wish to confer with Agency officials responsible for approving consent agreements and issuing final orders concerning potential compliance audit programs, they may do so without violating § 22.8.

Dow's suggested limitations also pose significant implementation problems. Parties may disagree about when an investigation becomes a "contemplated or reasonably foreseeable enforcement proceeding" and about what communications concern such a proceeding. For the foregoing reasons, EPA has not added any prohibition against communications concerning cases before the filing of the complaint. Similarly, EPA does not believe that it is necessary to require by rule that potential adjudicators retain a written record of all communications regarding potential cases. The prohibition in § 22.4(d)(1) against individuals serving as Presiding Officer in regard to "any matter in which they have any relationship with a party or with the subject matter which would make it inappropriate for them to act" provides adequate protection against any bias that might arise through communications prior to the filing of a complaint.

Dow also comments that where an adjudicator obtains advice from other EPA personnel, any such advice should be served on the respondent. The focus of Dow's concern is that EPA personnel such as technical experts, rule writers, and attorneys might be advising adjudicators on the merits of a proceeding. EPA shares Dow's opinion that such ex parte advice is generally unnecessary and inappropriate, and believes that it is in fact extremely uncommon. EPA agrees with the commenter that adjudicators should not be receiving such advice without all parties having the opportunity to review and respond to it. The CROP provides suitable procedures for adjudicators to solicit such advice (e.g., by calling for an expert to testify pursuant to § 22.19(e)(4)) and for EPA personnel to volunteer such advice (through amicus briefs subject to § 22.11(b)) without risk of ex parte communication.

There are, however, circumstances where it is appropriate for adjudicators to obtain from other EPA personnel advice that is not served on the parties. Administrative Law Judges periodically consult with each other, as do the Agency's RJOs. Adjudicators routinely receive advice from the attorneys and law clerks on the staff of the Environmental Appeals Board and the Office of Administrative Law Judges, and on occasion from hearing clerks and from Agency ethics officials. Accordingly, EPA declines to require that all advice to adjudicators from EPA personnel be served on the parties.

c. Final Rule. EPA is adopting § 22.8 as proposed, with minor changes. EPA notes that § 22.8 refers in three places to both Regional Judicial Officers and Presiding Officers. In order to avoid redundancy and potential confusion, EPA has stricken the words "the Regional Judicial Officer." Other minor editorial changes in the first sentence are the substitution of the word "proceeding" for "case", so as to consistently use the word "proceeding" when referring to a particular administrative adjudication, and substitution of "any decision" for "the decision" to clarify ex parte communication is prohibited in regard to small matters as well as large ones. These editorial changes do not alter the substance of the CROP.

The preamble to the proposed rule indicated that the prohibitions on ex parte communications would apply to persons who approve consent agreements and issue final orders. 63 FR at 9468 ("For purposes of this provision [§ 22.8], the Agency would consider the approval of consent agreements and issuance of consent orders to be adjudicatory functions."). In some instances, Regional Administrators have delegated the authority to review settlements and issue final orders to

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persons associated with the Regions' enforcement programs. The Agency has reconsidered the position expressed in the preamble to the proposed rule, and has determined that the person who ultimately approves settlements on the Agency's behalf and issues these final orders need not be as independent as those who adjudicate contested issues. To make this change clear, EPA has amended the last sentence of § 22.8 to state that the ex parte restrictions shall not apply to a person who issues final orders only pursuant to § 22.18(b)(3).

7. Intervention and Non-party Briefs (40 CFR 22.11)

a. Summary of Proposed Rule. Section 22.11(a) describes the process for intervening in a CROP proceeding. The proposed rule provides more specific procedures and would make the standard for intervention equivalent to the standard used in the Federal courts. Paragraph (b) describes the procedures for motion for leave to file an amicus brief; the major change proposed was to provide a uniform 15 day period for responses to an amicus brief, rather than leaving this to the discretion of the Presiding Officer or the EAB.

b. Significant Comments and EPA Response. Dow suggests that § 22.11(b) should expressly allow 15 days for parties to respond to a motion for leave to file an amicus brief, as well as 15 days to respond to the brief itself. This change is not necessary, because "motions" are subject to § 22.16, which provides for responses within 15 days. Nevertheless, EPA accepts Dow's suggestion and has revised § 22.11(a) and (b) so that all CROP requirements apply to any motion for leave to file an amicus brief or motion to intervene in the same manner as if the movant were a party.

c. Final Rule. EPA is adopting the proposed § 22.11 with modifications. EPA has amended the language of § 22.11(a) and (b) so that all requirements of the CROP shall apply to any motion for leave to intervene or motion for leave to file an amicus brief as if the movant were a party.

EPA has also made two other changes to § 22.11(b) on its own initiative. First, it has replaced the terms "amicus curiae" and "amicus brief" with "non-party brief." Second, EPA has replaced the requirement that motions for leave to file a non-party brief "state the reasons why the proposed amicus brief is desirable" with the requirement that it "explain the relevance of the brief to the proceeding." Both changes are intended to improve the clarity and specificity of the CROP, and neither is intended to make a substantive change. To conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.7(c) to state the time allowed for responding to a non-party brief with the numeral "15".

8. Commencement of a Proceeding (40 CFR 22.13)

a. Summary of Proposed Rule. EPA proposed amending § 22.13 to define the commencement of an administrative enforcement proceeding, and to allow the simultaneous commencement and conclusion of a case through the filing of a consent agreement and a final order where pre-commencement negotiations result in settlement.

b. Significant Comments and EPA Response. CEEC recommends that the CROP should require discussions with a prospective respondent before the filing of a complaint. CEEC argues that pre-filing discussions would expedite the proceeding by allowing the parties to resolve the matter cooperatively, and by allowing early elimination of inappropriate allegations or penalties. CEEC proposes that the CROP should require that complainant determine whether a potential respondent had fair notice of the regulatory requirement(s) that it is alleged to have violated, and require EPA to disclose both the information in EPA's possession suggesting the violation and the information EPA will utilize to set the proposed penalty. CEEC argues that such a pre-filing process would maximize the opportunity to resolve compliance matters cooperatively and expeditiously.

EPA has often found it advantageous to engage in pre-filing discussions with prospective respondents under the existing CROP, and the proposed revisions will increase EPA's incentives to do so. Nothing in the proposed rule prevents EPA from engaging in the sort of pre-filing process CEEC proposes. However, EPA declines to go as far as CEEC proposes and create a mandatory pre-filing process. EPA's experience with pre-filing negotiations has been mixed: While in many cases pre-filing negotiations have produced expedited settlements, in other cases they have resulted in delay. Sometimes a respondent is not interested in settlement, but uses settlement discussions as a tactic in efforts to forestall enforcement. In contrast, active management of the case by a neutral presiding officer is generally effective in keeping both parties actively engaged in settlement efforts, and provides an alternative process when settlement efforts fail.

Although EPA does not at this time believe that a mandatory pre-filing process should be part of the CROP, EPA will consider ways to expand use of pre-filing negotiations. Although statutory public commenter provisions somewhat limit the Agency's authority to pursue pre-filing negotiations, the final rule does not add any further limits to EPA's discretion in this regard.

c. Final Rule. EPA is adopting § 22.13 of the CROP as proposed, with two minor changes. The first resolves conflicting language in the proposed rule concerning whether a case subject to public comment requirements of § 22.45 could be commenced through the filing of a consent agreement and final order pursuant to § 22.13(b). Although the proposed § 22.13(b) states that it is limited to cases not subject to § 22.45, the proposed § 22.45(b)(1) and (2) describe a process for public notice in cases commenced pursuant to § 22.13(b). EPA has revised the public comment procedures of § 22.45 to better accommodate cases commenced pursuant to § 22.13(b). Accordingly, EPA has deleted from § 22.13(b) the clause which would have made it inapplicable in cases subject to the public comment provisions of § 22.45. Second, as noted in the discussion of public comments on § 22.18(b) and (c), EPA has eliminated the term "consent order," and is using the term "final order" instead.

9. Complaint (40 CFR 22.14)

a. Summary of Proposed Rule. The primary substantive change proposed in § 22.14 was the addition of explicit authority for complainants to use, at their discretion, a notice pleading approach comparable to that used in administrative enforcement proceedings under the proposed part 28 procedures and in the Federal courts. The proposed § 22.14(a)(4) would expressly permit EPA to file a complaint without specifying the precise penalty sought, as an alternative to pleading a specific penalty. Where complainant elects not to demand a specific penalty in the complaint, complainant is nonetheless obligated to provide a brief explanation of the severity of each violation alleged and a citation to the statutory penalty authority applicable for each violation alleged in the complaint. The text originally in paragraph (c) would be deleted to avoid the possibility of conflict with the notice pleading option proposed under § 22.14(a)(4)(ii).

The proposed § 22.14(a)(6) would require the complainant to specify in the complaint whether the non-APA procedures in subpart I shall apply to the proceeding. If a complaint does not contain an explicit statement that subpart I applies, the ensuing proceeding shall be conducted in conformance with section 554 of the APA.

EPA also proposed editorial revisions, primarily to consolidate the provisions applicable to complaints for assessment of civil penalties with the essentially parallel provisions for revocation, termination or suspension of permits, and to explicitly provide for the issuance of compliance and corrective action orders.

b. Significant Comments and EPA Response

Four of the commenters, CMA/API, CEEC, UWAG and USAF, opposed the proposed notice pleading option.

Implicit in these comments is a concern that respondents will not be able to fairly gauge the amount of their potential penalty liability based on the information in the complaint. EPA agrees that complaints should provide more information than is required under the proposed rule. The proposed § 22.14(a)(4)(ii) arguably would allow issuance of complaints which do not clearly identify the number of violations charged, for example, where a statute authorizes EPA to assess a separate penalty for each day a violation continues. In order to ensure that respondents understand from the complaint how many violations are charged, EPA has revised § 22.14(a)(4)(ii) to require that the complaint specify "the number of violations (where applicable, days of violation) for which a penalty is sought".

CMA/API objected to the notice pleading option and recommended that it be rejected, noting that allowing complaints to issue without stating a sum certain would make it "too easy" for EPA to proceed with an administrative penalty action without gathering sufficient information to make an informed decision, and that the Agency might file meritless complaints that would nonetheless have a "stigmatizing impact" on respondents. EPA notes that the proposed § 22.14 would still require complainant to state the factual basis for alleging the violation, and to specify each provision of a statute, regulation, permit or order that respondent is alleged to have violated. The proposed change would only allow EPA, at its discretion, to postpone stating the extent of the relief sought. Owing to the retention of provisions that require complainant to specifically allege respondent's violation, the risk that EPA might file meritless complaints is not increased by the proposed change.

CMA/API objects that notice pleading will allow EPA to use the administrative complaint as a form of discovery to obtain information from the respondent, and argues that EPA's existing information gathering tools are adequate for that purpose. EPA does not view the administrative complaint as an investigation or discovery tool, but rather, the product of an investigation through which EPA has collected evidence reasonably supporting the conclusion that the respondent has violated the law. However, in some cases the litigation process is the only mechanism by which EPA can obtain the financial information necessary to determine what penalty is appropriate for those violations (see, e.g., FIFRA section 8(b), 7 U.S.C. 136f(b), and Toxic Substances Control Act ("TSCA") section 11(b), 15 U.S.C. 2610(b), which expressly prohibit inspections seeking financial information).

The USAF argues that the proposed change potentially shifts to respondents the burden of demonstrating that something less than the maximum penalty is appropriate. EPA disagrees, as the proposed § 22.24(a) states that complainant bears both "the burdens of presentation and persuasion * * * that the relief sought is appropriate", while respondents only bear "the burden of presenting * * * any response or evidence with respect to the appropriate relief." Notice pleading is common practice in the state and federal courts, and in those courts notice pleading does not put the burden of persuasion on the respondent, is not inherently unfair, and does not violate a defendant's due process rights.

USAF objects that notice pleading is unnecessary to achieve the Agency's stated goal of "provid[ing] the Agency with added flexibility in issuing a complaint under circumstances where only the violator possesses information crucial to the proper determination of the penalty * * *." USAF suggests that a better approach would be to require a specific penalty proposal in the complaint, but allow the complainant to amend the proposed penalty based on information it timely obtains after the commencement of a suit.

EPA agrees that the approach USAF identified is appropriate in many cases. However, where EPA does not have adequate information to confidently recommend a specific penalty, EPA would be misleading the respondent were it to propose an arbitrary penalty which does not reflect significant facts of the case. An unreasonable penalty demand may also make EPA liable for respondent's attorneys' fees under the Equal Access to Justice Act ("EAJA"), 5 U.S.C. 504. The Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub.L. 104–121, expanded the EAJA to allow recovery of attorney's fees where an initial penalty demand is later shown to be unreasonable. Notice pleading is an appropriate and responsible choice in circumstances where liability is clear, but where EPA is not able to determine with confidence the reasonableness of a specific penalty amount before filing the case.

If EPA were not to provide the option of notice pleading, the SBREFA amendments would make it possible for polluters to escape high penalties if they can effectively hide from EPA their financial status or the economic benefits derived from their noncompliance with environmental regulation. Some statutes require EPA to consider a respondent's ability to pay the proposed penalty or its economic benefit of noncompliance in assessing a penalty (e.g., FIFRA section 14(a)(4), TSCA section 16(a)(2)(B), CWA section 309(g)(3), Clean Air Act ("CAA") section 113(e)(1)), and EPA generally considers these factors relevant in penalty assessment under other statutes as well. However, authority for EPA to gather such information is not always clear, and under some statutes it has been expressly withheld (see, e.g., FIFRA section 8(b), 7 U.S.C. 136f(b), TSCA section 11(b), 15 U.S.C. 2610(b)). The SBREFA amendments to the EAJA make the Agency wary of seeking large penalties against individuals or privately held corporations (who do not generally make public disclosures of their financial condition) absent reliable financial information. Because EPA does not have the resources to inspect any but the largest facilities more than once every few years, inspections typically reveal violations that are several years old. The 5-year federal statute of limitations may limit the Agency's ability to sanction violators for older violations, so a respondent need only hide its financial status for a short time in order to forestall EPA from seeking penalties commensurate with a serious violation. Notice pleading increases the deterrent effect of EPA's enforcement program, and levels the regulatory playing field for publicly held and privately held corporations.

CEEC noted in its comments that the February 25, 1998, FR Notice of Proposed Rule Making did not analyze the proposed notice pleading option in light of the SBREFA amendments to the EAJA. The proposed rule, as well as today's final rule, is fully consistent with the EAJA as amended by SBREFA. The EAJA does not prohibit notice

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pleading, and nothing in the SBREFA legislative history suggests any intent by Congress to limit its use in judicial or administrative enforcement. The EAJA does not require the agencies to include specific penalty demands in their complaints.

When a complainant makes an express demand, the remedies of the EAJA may be invoked. However, the EAJA explicitly excludes from the definition of "demand" any "recitation of the maximum statutory penalty" in the administrative or civil complaint. Consistent with this provision, EPA may postpone making a "demand" by exercising the notice pleading option of § 22.14(a)(4)(ii), and providing "a brief explanation of the severity of each violation alleged and a citation to the statutory penalty authority applicable for each violation alleged in the complaint" instead of a specific penalty demand.

Civil administrative penalty complaints should communicate the significance that the Agency places on the alleged violations. The CROP accomplishes this in both the traditional method embodied in § 22.14(a)(4)(i), and the notice pleading option in § 22.14(a)(4)(ii). Section 22.14(a)(4)(i) requires that the complaint state "[t]he amount of the civil penalty which is proposed to be assessed, and a brief explanation of the proposed penalty," while § 22.14(a)(4)(ii) requires "a brief explanation of the severity of each violation alleged and a citation to the statutory penalty authority applicable for each violation alleged in the complaint". Moreover, EPA intends to maintain the practice developed in the notice pleading cases under the proposed part 28 administrative enforcement rules of concurrently supplementing complaints with early, informal settlement overtures to respondents. EPA has found this process expedites settlement while also providing respondents with more specific guidance on the penalty value the Agency places on its enforcement case.

EPA notes that notice pleading is not mandatory, but is instead an option. EPA expects that administrative complaints containing specific penalty proposals will continue to be a central part of the Agency's administrative enforcement program. However, one clear mandate of SBREFA is that the Agency should not make a penalty demand unless it has evidence to fully support that demand. Notice pleading balances the goals of SBREFA with those of the statutes EPA is charged with enforcing, as it allows the Agency to pursue enforcement in cases where adequate financial information is either unavailable or withheld by the respondent during the case development process.

Today's final rule is fully consistent with the spirit and intent of the Equal Access to Justice Act, in that the CROP produces complaints that are substantially justified by the facts, circumstances and relevant statutory and regulatory requirements alleged to be violated. The limitations on discovery in CROP proceedings practically force complainants to have in hand at the time an administrative complaint is filed virtually all the evidence necessary to prove the alleged violations and the appropriateness of the penalty. This is in marked contrast to the rules governing civil judicial enforcement, that allow complaints to be filed so long as the allegations and factual contentions "are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery * * *." See Rule 11(b)(3) of the Federal Rules of Civil Procedure. The notice pleading option does not ease the Agency's pre-filing burdens associated with documenting that a regulatee has violated the law, but merely allows the filing of a complaint with somewhat less information about what penalty might be appropriate for those violations.

UWAG also questioned the efficacy of the notice pleading option, asserting that the Agency will be no better informed at the time of prehearing exchange or default than it is at the time the complaint is issued. EPA has shared this concern, and requested comments on whether complainant might postpone stating a specific proposed penalty for an additional 30 days, or longer, after prehearing exchange. 63 FR at 9472. Dow objected to postponement beyond prehearing exchange (although it did not state any objection to allowing complainant to state a specific proposed penalty for the first time in prehearing exchange). As discussed in the response to comments on § 22.19(a) below, it is appropriate to allow complainant to review respondent's prehearing exchange for 15 days before specifying a proposed penalty. EPA believes that this process properly balances the parties' competing interests.

Most regulatees will engage in settlement discussions with the Agency once a complaint has been filed. Such settlement discussions, often accompanied by voluntary exchanges of certain documents, almost always give EPA additional information about the merits of the Agency's allegations and the appropriateness of a penalty. In addition, § 22.15(b) requires respondent to state in its answer the "circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which respondent disputes; [and] the basis for opposing any proposed relief * * *." As a result of the information received through the answer and settlement discussions, complainant generally has a better understanding of whether respondent has financial limitations significant enough to warrant assessing a lower penalty. EPA recognizes that in some cases, a respondent may still resist providing necessary information. In such cases, the Agency's recourse would be to postpone proposing a specific penalty until 15 days after respondent has filed its prehearing exchange, in accordance with § 22.19(a)(4). If respondent's prehearing exchange fails to contain necessary information, complainant could then move for a discovery order, and subsequently amend the penalty demand as necessary.

Several commenters noted that notice pleading might impede quick resolution and settlement. CEEC notes that failure to provide a specific penalty amount early in the process can frustrate quick resolution of the proceedings. UWAG states that the failure to specify a sum-certain penalty in the complaint will undercut the Agency's goal of resolution of administrative complaints with a minimum of cost and delay, since a party will "have no choice" but to engage in settlement discussions in order to ascertain "exactly what penalty" the Agency is seeking. CMA/API notes that requiring a specific penalty demand amount encourages settlement because it makes clear to the respondent the extent of the penalty relief that EPA is seeking. CMA/API states that without a specific penalty amount stated in the complaint, a respondent can neither judge whether settlement is a realistic possibility nor gauge EPA's view of the significance of the matter. USAF states that the proposed change reduces the respondent's ability to negotiate and removes any incentive to negotiate.

The Agency acknowledges that notice pleading may impede use of the quick resolution process, and that it has the potential to delay settlement relative to cases where a sum certain penalty amount is stated in the complaint. However, notice pleading also provides an additional incentive to settle by preserving EPA's full penalty claim in the event settlement is not achieved. In those cases where the Agency perceives critical information gaps relevant to the amount of the penalty, these potential inefficiencies are an acceptable price to pay in order to avoid making an unreasonable penalty demand.

EPA's introduction of the notice pleading option into CROP proceedings does not signal any intention to alter the Agency's longstanding policies and practices favoring expeditious settlements. Over the past 20 years, more than 98 per cent of all administrative cases have been settled without trials. Today's final rule evidences EPA's continuing commitment to non-adversarial resolution with new provisions such as commencement of pre-negotiated cases with a final order pursuant to § 22.13(b), the quick resolution of § 22.18(a), and procedures supporting alternative dispute resolution at § 22.18(d). Although notice pleading could possibly delay settlement, it is expected that the need to make efficient use of enforcement resources will restrain EPA's use of notice pleading if, in actual practice, it significantly reduces the frequency of settlements or the pace at which settlements are reached.

c. Final Rule. EPA has adopted § 22.14 as proposed, with several changes. As noted above, EPA has revised § 22.14(a)(4)(ii) to require that where complainant chooses not to specify a proposed penalty in the complaint, the complaint must state "the number of violations (where applicable, days of violation) for which a penalty is sought".

EPA also has made several minor changes at its own initiative. The proposed § 22.14(a)(6) required complainant to specify in the complaint whether subpart I "applies to such hearing." EPA has revised this paragraph to clarify that where subpart I applies, it applies to the entire proceeding, and not just the evidentiary hearing phase.

EPA has added two new requirements as to content of the complaint. Section 22.14(a) now requires in paragraph (7) that the complaint include the address of the Regional Hearing Clerk, and in paragraph (8) requires instructions for paying penalties, if applicable. EPA has observed that the names and addresses of the lock box banks change often, and that it would be difficult to keep the proposed Appendix B up to date. EPA also notes that Appendix A is redundant with 40 CFR 1.7, and moreover, notes that these addresses are of less value to respondent than the specific address of the Regional Hearing Clerk. EPA has decided to expand § 22.14(a) to require that the relevant information appear in the complaint, and to delete both appendices.

In recognition of the fact that most complaints allege more than one violation, EPA has amended § 22.14(a)(3) to require that the complaint state the factual basis "for each violation alleged."

For the convenience of respondents receiving complaints which do not specify a proposed penalty, EPA has amended § 22.14(a)(4)(ii) to clarify that the complaint shall include "a recitation of", rather than a mere "citation to", the applicable statutory penalty authority.

EPA has revised § 22.14(a)(4)(iii) and (a)(5), as well as other sections of the CROP, to replace the unwieldy phrase "revocation, termination or suspension of all or part of a permit" with a new term "Permit Action." EPA has moved the "revocation, termination or suspension" language into the definition of "Permit Action" at § 22.3(a), which makes the remainder of the CROP easier to read, and will facilitate any future efforts to bring other permit actions within the scope of the CROP.

EPA has changed the title of this section from "Content and amendment of the complaint" to the more general "Complaint". Finally, to conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.14(c) to state the time allowed for responding to an amended complaint with the numeral "20".

10. Answer to the Complaint (40 CFR 22.15)

a. Summary of Proposed Rule. EPA proposed to amend § 22.15(a) to clarify requirements for filing and serving the answer to a complaint, and to extend the time allowed for the filing of an answer from 20 days to 30 days. EPA proposed to add to paragraph (b) a new requirement that the answer state the basis for opposing any proposed penalty, compliance or corrective action order, or permit revocation, termination or suspension. EPA proposed editorial changes to paragraph (c), and proposed no changes to paragraphs (d) or (e).

b. Significant Comments and EPA Response. USAF notes that where complainant has elected not to specify a penalty in the complaint, respondent cannot comply with the proposed requirement in § 22.15(b) that the answer state respondent's basis for opposing the proposed relief. In response, the final rule now requires that the answer shall state "the basis for opposing any proposed relief * * *"

CEEC urges that EPA amend § 22.15(e) to allow respondent to amend its answer as a matter of right, arguing that respondent is unlikely to have all the necessary information at the time the answer is due. Allowing amendment of the answer as a matter of right would not encourage diligence in answering the complaint, and could disrupt the orderly progress of proceedings. Accordingly, EPA declines to adopt CEEC's suggestion.

The existing CROP allows amendments of the answer at the presiding officer's discretion, and motions to amend pleadings are generally granted. See, e.g., In re Port of Oakland and Great Lakes Dredge and Dock Co., 4 E.A.D. 170, 205 (EAB 1992) ("the Board adheres to the generally accepted legal principle that administrative pleadings are liberally construed and easily amended") (citations omitted). Moreover, in paragraph (a) EPA already has expanded by 50% the time allowed for assembling information and preparing an answer. Although leave to amend pleadings is liberally granted, allowing amendments to the answer as a matter of right would make the CROP significantly less efficient. The purpose of the answer is to clarify what is contested and what is not contested at an early stage of the proceeding. Allowing amendment of the answer as a matter of right would not encourage due diligence in framing the issues, and could unfairly prejudice complainant if, for example, respondent were to substantially alter its defenses shortly before, or even after, the evidentiary hearing. Accordingly, CEEC's recommendation is rejected, except in circumstances where the complaint has been amended.

c. Final Rule. For the foregoing reasons, EPA has adopted § 22.15 of the CROP as proposed, with the exception of certain changes. As discussed above, the language of § 22.15(b) is amended to require that the answer state "the basis for opposing any proposed relief * * *", and the proposed § 22.15(e) is amended to allow amendment as of right whenever the complaint is amended.

Section 22.15(c) of both the proposed rule and the 1980 CROP states that "[a] hearing ... shall be held if requested by respondent in its answer." As used in this context, the word "hearing" refers to an adjudicatory proceeding, and encompasses a determination on motion papers alone. See In re Green Thumb Nursery, Inc., 6 E.A.D. 782, 790 & n.14 (EAB 1997) (holding that there is no right to an oral evidentiary hearing). Elsewhere in both the proposed rule and the 1980 CROP, "hearing" refers specifically to the oral evidentiary hearing phase of a proceeding. In today's final rule, EPA has endeavored to use the term "hearing" to refer specifically to the oral evidentiary hearing. In order to avoid the implication that a request for a hearing

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necessarily results in an oral evidentiary hearing, EPA has replaced the word "shall" with "may."

Consistent with the changes noted in § 22.14(a)(4)(iii) and (a)(5) above, EPA has revised § 22.15(a) by replacing the phrase "permit revocation, termination or suspension" with a new term "Permit Action." To conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.15(a) to state the time allowed for filing an answer with the numeral "30".

11. Default (40 CFR 22.17)

a. Summary of Proposed Rule. The proposed § 22.17 would reorganize the entire section to indicate the role of each of the parties and the Presiding Officer in a sequential manner.

Paragraph (a) would describe the actions of each party that may result in a finding of default and the consequences of such a finding for each of the parties. Provisions describing the end of the process (i.e., when penalty monies come due, when a permit revocation, termination or suspension becomes effective) would be moved to paragraph (d).

Paragraph (b) would describe content requirements for motions for default and would include a requirement that when the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and must put into the record the legal and factual grounds for the relief requested. This amendment accommodates the change in § 22.14 that allows notice pleading in which the complainant elects not to demand a specific penalty in the complaint.

Paragraph (c) would describe the default order itself, would provide that a default order shall be an initial decision, and would clarify the standards for granting the default order, for granting the relief proposed, and for setting the order aside. In addition, proposed paragraph (c) would remove the apparent restriction on the Presiding Officers' discretion in existing § 22.17(a), in which a default order automatically assesses the penalty proposed in the complaint, or automatically revokes or terminates the permit according to the conditions proposed in the complaint. Although the proposed paragraph (c) would acknowledge that the Presiding Officer has some discretion regarding default orders, it would require that the proposed relief must be granted unless the record clearly demonstrates that the requested relief is inconsistent with the Act.

Paragraph (d) would specify when penalties assessed by default are due, and the effective dates for the default revocation, termination or suspension of permits, and for the default issuance of compliance or corrective action orders.

b. Significant Comments and EPA Response. Dow suggests revising § 22.17(a) to allow other less serious sanctions. Dow argues that minor or technical defaults, such as not including a proof of service in a responsive document when proper service is perfected or failing to appear at a conference due to weather conditions, do not deserve the severe sanctions delineated in the section. Dow's objection seems to be two-fold: that issuance of an order of default is mandated upon the violative conduct and that an issued order of default might be too severe under certain circumstances.

Dow's objection concerns language that has been in § 22.17(a) since 1980. The CROP has not mandated and does not now mandate automatic determination of default liability. The proposed rule retained the language in § 22.17(a) which states that a "party may be found to be in default", and in § 22.17(c) included the old § 22.17(d) language "[f]or good cause shown, the Presiding Officer may set aside a default order" [emphasis added]. Moreover, the proposed rule adds a new provision at § 22.17(c), which states that "[w]hen the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party unless the record shows good cause why a default order should not be issued". Therefore, the new provisions at § 22.17 would allow Presiding Officers to exercise discretion in issuing a default order for "minor or technical default."

Furthermore, Presiding Officers do have authority to impose sanctions less than a complete finding of default when appropriate. Section 22.16(b) provides that any party who fails to respond to a motion within the designated period waives any objection to the granting of the motion. Section 22.19(g) provides that a when a party fails to respond to a discovery or prehearing exchange order as required, the Presiding Officer may draw adverse inferences and exclude information from evidence. As noted above in the response to comments on § 22.5(c), EPA has amended § 22.5(c)(5) so that the Presiding Officer may exclude from the record documents that are improperly served or untimely filed.

EPA has made no change to § 22.17(a) in response to Dow's comment because the CROP does not mandate default for minor errors and because other provisions of the CROP authorize less severe sanctions that are appropriate for types of nonperformance that fall short of default. Nevertheless, EPA has revised § 22.17(c) to emphasize the Presiding Officer's discretion, as discussed below.

The proposed § 22.17(b) would require complainant to specify the penalty sought and the legal and factual grounds therefor in any motion that "requests the assessment of a penalty or the imposition of other relief against a defaulting party * * *" This provision was added in order to complement the notice pleading option in § 22.14(a)(4)(ii), giving respondents notice of complainant's specific penalty demand assuring that record will support the penalty assessed. CEEC argues that delaying disclosure of the penalty demand until this stage "delays resolution, fails to give respondents sufficient notice; frustrates small entities' or small business' rights under SBREFA; and thwarts EPA's goal to increase administrative efficiency." For the reasons stated above in the response to comments on § 22.14(a)(4), EPA disagrees. Because EPA has retained the notice pleading option in § 22.14(a)(4), EPA also retains in § 22.17(b) the requirement that complainant specify a penalty and state the legal and factual grounds therefor.

In its objection to the notice pleading option, CEEC states that the new provision requires disclosure of the penalty demand in "any motion for default" when such demand has not been disclosed in the complaint. This statement does not correspond exactly to the text of the § 22.17(b), which only requires that motions for default specify a penalty sought "[w]here the motion requests the assessment of a penalty * * *" Section 22.17(b), consistent with accepted practice under the existing CROP, allows parties to make motions that merely ask the Presiding Officer to determine whether a default has occurred, without arguing at that time what penalty should be assessed.

As noted in the response to comments on § 22.17(a), not all failures to conform to the CROP will warrant a default judgment. Until such time as a respondent is found to be liable for a default judgment, it is not necessary for the parties to commit their resources to arguing what relief is appropriate. Motions for default may be likened to motions for accelerated decision: It is appropriate in many instances to file a motion for partial accelerated decision, that merely attempts to resolve whether as a matter of law respondent is or is not liable for a violation, leaving the determination of the proper penalty for a subsequent motion if liability is established. This approach spares the parties from burdensome litigation over an issue that may be moot.

CEEC's statement mirrors a statement in the preamble to the proposed rule (63 FR at 9469). EPA acknowledges that this statement, while generally accurate, is overly broad in that it incorrectly implies that every motion for default must specify a penalty. In order to avoid unnecessary burdens on the litigants, EPA intends that the CROP should continue to allow parties to make motions that merely ask the Presiding Officer to determine whether a default has occurred, without specifying a penalty in that particular motion. Pursuant to the second sentence of paragraph (b), complainant will still be obliged to specify a penalty if it moves for the assessment of a penalty against a defaulting party. However, this may be a second motion that follows a finding that default judgment against respondent is warranted.

In order to eliminate any confusion resulting from the overly broad statement in the preamble or ambiguity in the regulation itself, EPA has added an additional clarifying sentence to § 22.17(b): "The motion may seek resolution of all or part of the proceeding."

Dow supports the revision of § 22.17(c) that gives the Presiding Officers greater discretion in determining the appropriate relief in the default orders because this "flexibility will let the Presiding Officer ensure that any relief ordered is supported by the administrative record." Dow's comment is essentially reiterated by CMA and API: both organizations "support the provision requiring the Presiding Officer, when issuing a default order, to determine that the relief sought in the complaint is consistent with the applicable statute."

Even though there were no adverse comments regarding this provision, the preceding discussion of paragraphs (a) and (b) suggests some useful revisions of paragraph (c). First, corresponding to § 22.17(b)'s statement that a default "motion may seek resolution of any or all parts of the proceeding", § 22.17(c) is revised to no longer require that a default order must be an initial decision, unless it resolves "all issues and claims in the proceeding." This will allow Presiding Officers to find a party liable in default, without necessarily determining the appropriate relief in the same order.

Second, EPA has also relaxed the proposed requirement that "the relief proposed in the complaint or the motion for default shall be ordered unless the record clearly demonstrates that the requested relief is inconsistent with the Act." Under this proposed language, if a proposed penalty were inconsistent with the record (e.g., owing to a mathematical error), though not to such a degree as to be clearly inconsistent with the statutory penalty authority, the Presiding Officer would apparently be required to assess the proposed penalty. In order to prevent injustice, EPA has amended this language to allow the Presiding Officer to impose other relief where "the requested relief is clearly inconsistent with the record or the Act".

c. Final Rule. EPA is adopting § 22.17 as proposed, but with several modifications. As discussed above, EPA has added one sentence to § 22.17(b). EPA has also noted that the rest of the proposed § 22.17(b) repeats parts of § 22.16(a). Section 22.16 applies to all motions, except as otherwise provided, so restatement is not necessary in § 22.17(b). Moreover, the failure to include all of § 22.16(a) in § 22.17(b) introduces potential confusion. Accordingly, EPA has deleted from the final rule those parts of the proposed § 22.17(b) that are redundant with the general requirements for motions at § 22.16.

The proposed § 22.17(a) provided that a default by respondent would constitute a waiver of respondent's "right to a hearing" on the factual allegations in the complaint. Throughout today's final rule, for clarity and consistency, EPA has endeavored to use the term "hearing" only to refer to oral evidentiary hearings. As there is no right to an oral evidentiary hearing (see, e.g., In re Green Thumb Nursery, Inc., 6 E.A.D. 782 (1997)), EPA has revised § 22.17(a) to state that default by respondent constitutes a waiver of respondent's "right to contest" the factual allegations in the complaint. EPA has replaced the undefined word "action" in § 22.17(a) with the word "proceeding," which is defined in today's final rule as discussed below.

EPA has revised § 22.17(c) as follows: (1) EPA has added the clause "as to all or part of the proceeding," to the first sentence, before "unless the record shows"; (2) EPA has revised the second sentence to say "If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice."; (3) EPA has expanded the next to last sentence in order to allow the Presiding Officer to impose relief other than that requested by complainant if it is clearly inconsistent with the record of the proceeding. In addition, EPA has split the second sentence of the proposed § 22.17(c) into two sentences. This editorial revision is not intended to effect a substantive change.

For consistency with changes elsewhere in the CROP, EPA has revised § 22.17(d) to refer to the effective date of a "Permit Action" rather than the effective date of a permit revocation or suspension. To conform to the preferred style of the U.S. Government Printing Office, EPA has also revised § 22.17(d) to state the time allowed for paying default penalties with the numeral "30".

12. Quick Resolution (40 CFR 22.18(a))

a. Summary of Proposed Rule. In cases where the complaint proposes a specific penalty amount (and seeks no other relief), the proposed § 22.18(a)(1) would provide that the respondent can resolve the case at any time by simply paying the proposed penalty in full. The only restriction on when the respondent can take advantage of the quick resolution provision is in cases involving the public comment provisions of § 22.45. In these cases, the respondent must wait until 10 days after the period for public comment has closed before submitting the penalty payment.

Where the complaint includes a specific proposed penalty, the proposed § 22.18(a)(2) would allow respondent to resolve an action without filing an answer by paying the penalty within 30 days of receipt of the complaint. By paying the proposed penalty within that 30 day time frame, the action is resolved before the answer is due and hence there is no need for respondent to file an answer.

If the respondent wishes to resolve the matter by paying the proposed penalty in full but needs additional time in which to do so, § 22.18(a)(2) would allow the respondent to file a written statement with the Regional Hearing Clerk within 30 days of receiving the complaint in which it agrees to pay the penalty within 60 days of receipt of the complaint.

b. Significant Comments and EPA Response. Dow noted that in actions subject to the public comment provisions, the 30 day public comment period may require respondent to file an answer even though it wants to resolve the action, because the last sentence of § 22.18(a)(1) provides that a respondent cannot utilize the quick resolution provision until 10 days after the close of the public comment period. This commenter suggested amending the last sentence of § 22.18(a)(1) to explicitly provide that the respondent does not have to file an answer if it wishes to settle the action by paying the full penalty. Instead, EPA believes that the

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better approach is for respondent to file a statement agreeing to pay the full penalty, in accordance with § 22.18(a)(2), and delay payment until the eleventh day after the close of the public comment period. Section 22.18(b)(2) provides ample time for paying the proposed penalty after the close of the public comment period, so long as the public notice is issued contemporaneously with the complaint. If the public notice is delayed, a motion for extension of time may be necessary.

CEEC supports the proposed inclusion of the "quick resolution" process, but noted that the quick resolution option is not available to respondents if the complaint does not propose a specific penalty. The proposed language would have prevented respondents who receive complaints that did not contain specific penalty demands from exercising the quick resolution option even after EPA has made a specific penalty demand. This was unintended, and EPA has revised § 22.18(a)(1) so that once complainant has made a specific penalty demand, respondent may resolve the proceeding by paying the proposed penalty in full. The option of notice pleading in lieu of pleading a specific penalty amount is intended to provide EPA with flexibility in those situations where only the violator possesses information crucial to the proper determination of the penalty, such as the economic benefit the violator derived from its noncompliance, or its ability to pay the penalty. Under such circumstances, EPA needs to obtain and review the necessary information before proposing a penalty. Section 22.19 of the rule provides that EPA must at the prehearing exchange stage propose a specific penalty. Once EPA proposes a specific penalty, the respondent may, if it wishes, utilize the quick resolution provision and pay the proposed penalty in full at that time. As a result of this revision, notice pleading does not prevent the use of the quick resolution provision by the respondent, it only delays it. While the respondent, under such circumstances, would not be able to take advantage of the quick settlement until after the prehearing exchange, respondents always have the option of early resolution of the proceeding pursuant to § 22.18(b), by informally negotiating settlement with the Agency.

The same commenter noted that the quick resolution option was available to respondents only if they are willing to pay the full amount of the proposed penalty. This commenter also noted that the quick resolution provision should include safeguards to prevent or redress those situations where EPA may have pled an excessive penalty amount. These comments appear to envision a quick resolution that is entirely unlike that proposed in § 22.18(a), but which does not appear to differ significantly from the settlement process in § 22.18(b) and (c). As presently codified, the CROP does not explicitly provide for a "no contest" plea. EPA intended to remedy this by explicitly providing in the proposed § 22.18(a) a formal process for a respondent who—upon receipt of the complaint or at any later time—wishes to simply pay the proposed penalty and disengage from the proceeding. In contrast, the settlement provisions of § 22.18(b) and (c) provide opportunity to negotiate a settlement that could terminate the proceeding upon payment of a lesser penalty. If the respondent believes that EPA has pled an excessive amount, the respondent has the option of informally discussing the matter with EPA during settlement negotiations, or formally contesting the proposed penalty through the hearing process. Consequently, there is no need to amend the proposed § 22.18(a) to safeguard respondents' interests.

The USAF noted that, because of fiscal law requirements, it would be difficult for a federal agency to make a penalty payment within 60 days of complaint issuance, thereby effectively foreclosing federal agencies from taking advantage of the quick resolution provision. The USAF suggests that 18 months would be appropriate. EPA acknowledges that it may be difficult for a federal agency, or a state or local agency, to pay a penalty within 60 days of receipt of the complaint. However, EPA does not believe that the intended purpose of the quick resolution provision would be served by such an extension of the payment period. Where respondent is unable to pay the penalty within 60 days, EPA believes that the § 22.18(b) settlement process would be the appropriate process for terminating the proceeding.

The USAF also noted that this section obligates respondent to admit the jurisdictional allegations of the complaint and waive its right to appeal a final order, and argues that this deprives the federal respondent its right to elevate the matter to the President. The Agency maintains that if a federal agency wishes to contest a proposed penalty, it should exercise its right to hearing and raise the matter through the appeal processes provided. If, on the other hand, the federal agency wishes to conclude the action, it must be willing to agree to waive its rights to further appeals.

c. Final Rule. As noted above, EPA has amended the proposed § 22.18(a)(1) to allow quick resolution at any point in a proceeding once complainant has proposed a specific penalty, including penalties specified in complainant's prehearing exchange, and by moving from the first to the second sentence the language that limited quick resolution to cases where the complaint contained a specific proposed penalty.

As discussed in connection with the revisions to § 22.14, EPA has deleted Appendix B. Accordingly, EPA has revised the first sentence of § 22.18(a)(1) to require that payment be made as specified by complainant, and deleted reference to Appendix B. In order to address interbank funds transfers, EPA has expanded § 22.18(a)(1) to include other instruments of payment. With these changes, the first two sentences of § 22.18(a)(1) now read as follows:

> A respondent may resolve the action at any time by paying the specific penalty proposed in the complaint or in complainant's prehearing exchange in full as specified by complainant and by filing with the Regional Hearing Clerk a copy of the check or other instrument of payment. If the complaint contains a specific proposed penalty and respondent pays that proposed penalty in full within 30 days after receiving the complaint, then no answer need be filed.

The proposed § 22.18(a)(3) provided that quick resolution would constitute a waiver of respondent's "rights to a hearing". Throughout today's final rule, for clarity and consistency, EPA has endeavored to use the term "hearing" only to refer to oral evidentiary hearings. As there is no right to an oral evidentiary hearing (see, e.g., In re Green Thumb Nursery, Inc., 6 E.A.D. 782 (EAB 1997)), EPA has revised § 22.18(a)(3) to state that quick resolution constitutes a waiver of respondent's "rights to contest the factual allegations in the complaint".

EPA has also corrected a typographical error in the word "section" that appeared in the third sentence of the proposed § 22.18(a)(1). In the third sentence of § 22.18(a)(1), EPA has replaced the phrase "to revoke, terminate or suspend a permit" with the term "Permit Action", as discussed in connection with revisions to § 22.3(a) and § 22.14(a)(4)(iii).

EPA has replaced the undefined word "action" in § 22.18(a)(1) and (2) with the word "proceeding," which is defined in today's final rule as discussed below. Finally, to conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.18(a)(1) and (2) to state all time periods with numerals.

13. Settlement and Scope of Resolution or Settlement (40 CFR 22.18(b)&(c))

a. Summary of Proposed Rule. The proposed § 22.18(b) would clarify the existing settlement process. Paragraph (b)(2) would specify that consent agreements contain an express waiver of the respondent's right to a hearing and appeal of the final order, and establishes additional content requirements for consent agreements in cases where the complainant proposes to simultaneously commence and conclude a case pursuant to § 22.13(b) through filing of a consent agreement and final order negotiated before a complaint is issued.

Paragraph (b)(3) would be revised to expressly provide that an administrative action is settled only when the Regional Judicial Officer or Regional Administrator, or, in cases commenced at EPA Headquarters, the Environmental Appeals Board, approves a consent agreement and issues a final order.

Paragraph (c) would provide that the effect of settlements and full payment of proposed penalties is limited to those facts and violations specifically alleged in the complaint, and reserves the Agency's right to pursue injunctive relief or criminal sanctions.

b. Significant Comments and EPA Response. Dow urges that § 22.18(b)(2) should expressly provide for partial or contingent settlements. Dow's particular concern is that paragraph (b)(2) should not require respondent to waive its right to hearing or to appeal matters that are raised in the complaint but not included in the consent agreement or the final order. Dow's comments do not take issue with the waiver of rights to hearing or appeal in settlements of the entire proceeding.

Paragraphs (a), (b) and (c) of § 22.18 define the process by which the parties may resolve an entire proceeding, and so, consent agreements pursuant to § 22.18(b)(2) and final orders under § 22.18(b)(3) can be neither partial nor contingent. Nevertheless, EPA disagrees with Dow's conclusion that the proposed rule precludes partial or contingent settlements. Where the parties wish to settle some of the counts in a complaint, they may file stipulations as to a respondent's liability, and/or to the appropriate relief, for those counts. Where the parties seek a more final resolution, they may move pursuant to § 22.12(b) to sever the case "with respect to any or all parties or issues." Upon severance, the parties may settle the uncontested portions and litigate the contested portions. Contingent settlements (e.g., where the parties agree that if a contested issue is resolved in a certain manner, then the parties agree to settle on predetermined terms) are possible under the proposed rule, however, the documents committing the parties to the contingency agreement would not themselves constitute "consent agreements" pursuant to § 22.18(b)(2). Such contingent settlements could be accomplished, for example, through formal stipulations as to the appropriateness of certain relief in the event that liability is established, or agreements to sign a specific "consent agreement" when the agreed conditions are met. As the problems Dow describes can easily be avoided, EPA believes that the language in the proposed rule is desirable in that it gives respondents unambiguous notice that consent agreements waive respondents' rights to a hearing and all rights of appeal, including appeal to the federal courts as well as appeal to the EAB under §§ 22.30 and 22.32.

CMA/API object to language proposed for § 22.18(c) that would limit the scope of relief available in settlements to those "violations and facts" alleged in the complaint. CMA/API feel this provision prevents the parties from taking advantage of the economies that result from resolving in a single settlement additional violations that may come to light during the proceeding. EPA agrees that it is, in many cases, desirable to resolve in a single proceeding additional violations that become apparent as a case progresses. However, such expansions of a proceeding should be accomplished through motions to amend the complaint, pursuant to § 22.14(c). Although even a joint or uncontested motion to amend the complaint is somewhat more burdensome that expanding the case through a consent agreement alone, this burden is outweighed by the interest of assuring a clear public record of the Agency's administrative enforcement proceedings.

This is particularly important where statutes require public notice of a proposal to assess penalties for specific violations. Such statutes envision that interested members of the public will have had notice of all violations cited in the complaint and all violations resolved by consent agreement, in order to properly avail themselves of their statutory rights as to those actions.

CEEC also objects to the proposed language limiting settlements to "the facts and violations alleged in the complaint", on the grounds that it is improper for the Agency to assess in a subsequent proceeding additional penalties for other violations arising out of the same circumstances identified in the initial proceeding. As noted above, EPA is well aware that resolving as many violations as possible within a single proceeding generally demands less resources than pursuing multiple cases involving similar facts or issues, and EPA generally can be counted on to take advantage of such cost-saving opportunities. There are, however, circumstances where this may be inadvisable or impossible. For example, where one violation is straightforward and undisputed, neither party would gain from delaying resolution of that case in order to address within the same proceeding another violation sharing certain facts with the first, but concerning a different statute, an unsettled area of the law, and presenting substantial evidentiary disputes. In other circumstances, where new facts establishing other violations come to light after the close of a case, it would be impossible to resolve these newly discovered violations through the closed case. EPA therefore disagrees with CEEC's contention that it is necessarily improper for EPA to seek penalties in a subsequent proceeding for violations related to the initial proceeding.

Section 22.14(a) requires that a complaint specify each statutory provision, regulation, permit or order that respondent is alleged to have violated, and a concise statement of the factual basis for alleging the violation. The complaint thereby describes the violations at issue in the case, in terms of the specific legal requirements and their specific factual circumstances; anything else is outside the scope of the proceeding. This description of the violations that comprise the case must also describe the scope of any settlement. Any violations that are outside the scope of the complaint must necessarily be outside the scope of any possible settlement.

The language of § 22.18(c) to which CEEC objects merely states that payment of a penalty "shall only resolve respondent's liability * * * for the violations and facts alleged in the complaint." This provision defines the scope of settlement in its most obvious and straightforward sense.

c. Final Rule. EPA is adopting § 22.18(b) and (c) as proposed, with minor editorial changes. The proposed § 22.18(b)(2) provided that in a consent agreement, respondent must waive "any right to a hearing". For the reasons noted in the discussion of § 22.18(a)(3) above, EPA has revised this to require that respondent waive "any right to contest the factual allegations in the complaint". EPA has also replaced the term "consent order" with the term "final order" or "proposed final order" in paragraph (b) and elsewhere (§§ 22.3

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(definition of final order), 22.13(b), and 22.45(b)(4)). A consent order is in fact a final order, and CROP's suggestion that there is a distinction only adds potential for confusion. EPA has replaced the phrase "permit revocation, termination or suspension" with "Permit Action", as discussed in connection with revisions to § 22.3(a) and § 22.14(a)(4)(iii). Finally, reflecting changes to § 22.14(a) noted above, EPA has added the requirement that in proceedings commenced pursuant to § 22.13(b), the consent agreement shall also contain the information required in § 22.14(a)(8).

14. Alternative Dispute Resolution (40 CFR 22.18(d))

a. Summary of Proposed Rule. The proposed § 22.18(d) would add a new provision that recognizes the use of alternative dispute resolution ("ADR") within the scope of the Alternative Dispute Resolution Act, 5 U.S.C. 581 *et seq.* The proposed rule would provide that, while the parties engage in ADR, the enforcement proceeding is not automatically stayed, jurisdiction remains with the Presiding Officer, and all provisions of the CROP remain in effect. The parties may select any person to act as a neutral, or may file a motion with the Presiding Officer to request a neutral. If the Presiding Officer concurs with the motion, the Presiding Officer forwards the motion to the Chief Administrative Law Judge who designates a qualified neutral.

b. Significant Comments and EPA Response. Those who commented on the proposed § 22.18(d) support the Agency's use of ADR and inclusion in the CROP of a provision that recognizes ADR. CEEC believes that the proposed rule does not go far enough to encourage ADR, that it seems to employ ADR only after a complaint is filed, and that it limits the use of ADR by not staying the enforcement proceeding when the ADR process is commenced. CEEC urges the Agency to make available and encourage the use of a broad array of ADR options, by formalizing the availability of the complete range of ADR. Dow Chemical supports the allowance upon request of temporary stays and extensions for motions, discovery and hearings during ADR proceedings, to encourage voluntary settlement and to avoid imposing undue burdens on the parties and the Presiding Officer.

EPA believes that the absence of an automatic stay provision in the rule does not unreasonably limit the use of ADR. The Presiding Officer always has the discretion to grant a stay in connection with the parties' use of ADR, but such a decision should be made for each case individually depending on the circumstances, and a stay may be inappropriate in cases of excessive delay.

EPA agrees that a broad array of ADR options should be made available to parties, but believes that it is not necessary to list in the rule, and thereby possibly limit, the range of ADR options. Section 22.18(d)(1) provides for "any process within the scope of the Alternative Dispute Resolution Act." The neutral serving in the particular case may discuss ADR options with the parties.

CEEC objected that the CROP does not require the Agency to attempt to resolve a case before filing the complaint. The CROP does not limit ADR to the time after a complaint is filed. The parties may agree to use ADR prior to the filing of a complaint.

c. Final Rule. EPA has adopted § 22.18(d) as proposed, with minor technical revisions to paragraph (d)(3) intended to address two concerns. First, in subpart I cases, it is appropriate for a neutral to be appointed by the Regional Administrator rather than by the Chief Administrative Law Judge. Second, it is more accurate to say the Presiding Officer "grants" a motion, rather than "concurs with" a motion.

15. Prehearing Exchange; Prehearing Conference (40 CFR 22.19(a)&(b))

a. Summary of Proposed Rule. EPA proposed to amend § 22.19(a) and (b) by reversing paragraphs (a) and (b) in order from the existing CROP, reflecting the fact that the information exchange is more common than, and usually precedes, a prehearing conference. The requirements for the prehearing exchange would now appear in paragraph (a). In addition to the information required to be exchanged under § 22.19(b) of the existing CROP, EPA proposed that the complainant would specify a proposed penalty if it has not done so in the complaint and state the basis for that penalty. The respondent would be required to provide all factual information it considers relevant to the assessment of a penalty, even if the complainant did not identify a specific penalty in the complaint. EPA also proposed under § 22.22 to tighten the standards for admitting into evidence information that was not timely exchanged.

In addition, EPA requested comments on whether it is necessary for the complainant to specify a proposed penalty in the prehearing exchange when it has not specified a specific penalty in the complaint (notice pleading). Comments were also requested on the merits of allowing the complainant to postpone for an additional 30 days, or indefinitely, the making of a specific penalty demand where EPA has not specified a specific penalty in the complaint. EPA also requested comments on the merits of requiring by rule that the parties simultaneously perform their prehearing information exchange 90 or 120 days after the filing of the answer, rather than requiring a prehearing exchange order from the Presiding Officer. 63 FR at 9472.

EPA proposed to revise paragraph (b) to no longer compel the Presiding Officer to require the parties to "appear at a conference before him", but instead would make the nature of the conference more flexible.

b. Significant Comments and EPA Response. CEEC opposes allowing EPA to postpone making a specific proposed penalty until the prehearing information exchange, insisting that the proposed penalty appear in the complaint. Dow does not object to postponing the specific penalty until prehearing exchange, but objects to any further postponement. Dow notes that if information obtained during or after the prehearing exchange warrants a change in the proposed penalty, the CROP already allows for amendment of the pleadings. Dow maintains that requiring a specific proposed penalty is not a hardship for the complainant, however, postponing it beyond prehearing exchange would impose a hardship on the respondent. Respondents need to know the proposed penalty amounts to make informed decisions about settling or contesting violations. Therefore, Dow argues that no further delays or extensions should be allowed, except with the consent of the respondent. UWAG suggested that the proposal would be ineffective because complainant would be no better informed at the time of prehearing exchange than it is at the time the complaint is issued.

As set forth in the discussion concerning § 22.14, EPA has retained § 22.14(a)(4)(ii), which allows EPA to elect not to specify a specific penalty in the complaint. When complainant has incomplete or unreliable information on subjects such as the economic benefit respondent received from its unlawful conduct and its ability to pay a penalty, it would be of little benefit to respondent for complainant to make an uninforme—and possibly unrealistic—penalty demand, which would need to be amended when better information becomes available. Complainant would risk specifying either a too-high figure that could result in EAJA claims, or a too-low figure that fails to achieve

deterrence, and then be forced to defend its guesswork in the penalty litigation. EPA has concluded that complainants should not have to specify a penalty demand until after prehearing exchange.

EPA continues to believe that there is merit to giving respondents a specific penalty demand at the earliest practical stage of a proceeding, and has therefore not adopted the approach used in the federal courts, where specific penalty demands generally are not made until the end of the proceeding. Today's final rule requires complainant to specify a proposed penalty no later than 15 days after respondent has filed its prehearing exchange. The final rule requires each party to include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty, as well as exhibits and documents it intends to use at the hearing, names of witnesses and summaries of their anticipated testimony. Owing to the general nature of these prehearing exchange requirements, further discovery may still be appropriate, and complainants may need to amend their proposed penalties, but the prehearing information exchange nonetheless will provide complainants with a substantial basis for formulating a specific penalty demand.

CEEC and Dow oppose automatic prehearing exchange, stating that during productive settlement discussions such attention could be better spent on settlement. Dow proposes one of the following options: (1) making the prehearing exchange totally dependent on an order from the Presiding Officer, or (2) making the prehearing exchange automatic, but expressly allowing the Presiding Officer to issue a temporary stay or to extend the deadline. CMA/API recommend a default time period of 90 days prehearing exchanges as a starting point, which the parties would be allowed to modify by mutual agreement.

Today's final rule does not require the automatic filing of prehearing exchanges. Although such a requirement may expedite resolution of many cases, EPA believes that it would be a distraction and an unnecessary burden in that greater number of cases that progress readily toward settlement. Furthermore, the Presiding Officer may require additional information from the parties as part of his or her prehearing scheduling order than is provided in § 22.19(a). Therefore, the prehearing exchanges will not be required until ordered by the Presiding Officer.

Regarding the proposed § 22.19(b), Dow notes that EPA failed to delete the phrase "before him", as discussed in the preamble to the proposed rules. EPA agrees that this editorial change would help clarify that § 22.19(b) no longer requires that the parties personally appear before the Presiding Officer, but allows the Presiding Officer to conduct telephonic prehearing conferences.

CEEC proposes that EPA should be required, as part of its prehearing exchange, to provide a respondent with all information relevant to whether the respondent had fair notice of the regulatory requirement(s). Many different offices in EPA conduct compliance assistance, provide speakers, and otherwise publicize regulatory requirements, and documenting all such efforts in every case would present an unreasonable and unnecessary burden on complainant, particularly because fair notice of the law is rarely an issue. Moreover, it is unlikely that EPA would have evidence showing that respondent does not know something. Accordingly, EPA rejects this proposal.

CEEC also proposes that EPA should also be required to disclose all information it uses, or chooses to ignore, in determining the penalty it seeks for each alleged violation. The proposed § 22.19(a) would require complainant to state the basis for the penalty in its prehearing exchange, as well as to provide narrative summaries of witnesses' expected testimony, and copies of all documents and exhibits that it intends to introduce into evidence at the hearing. These requirements would assure that complainant discloses all information it uses in determining the appropriate penalty. It would not, however, require disclosure of all information that EPA "chooses to ignore." EPA believes that little or no reliable, relevant information is ever knowingly ignored in determining proposed penalties. Moreover, such exculpatory evidence and evidence of concerning a respondent's inability to pay the proposed penalty is almost always in respondent's hands, and not in complainant's. Accordingly, it would be exceedingly rare for the requirement proposed by CEEC to provide a respondent with new information. This potential benefit is greatly outweighed by the burden on the complainant to identify, document, and exchange all the information that it has not considered in determining the proposed penalty.

EPA agrees with CEEC's recommendation that § 22.19(a) should be amended to make the complainant's and respondent's burdens more equal. In the proposed § 22.19(a), complainant would be required to state the basis for the proposed penalty, while respondent would have to provide "all factual information it considers relevant to the assessment of a penalty". For cases where complainant has specified a proposed penalty before prehearing exchange, § 22.19(a)(3) of today's final rule now requires that "complainant shall explain in its prehearing information exchange how the proposed penalty was calculated in accordance with any criteria set forth in the Act, and the respondent shall explain in its prehearing information exchange why the proposed penalty should be reduced or eliminated." For those cases where EPA has not specified a proposed penalty, § 22.19(a)(4) imposes on each party the identical burden of providing "all factual information it considers relevant to the assessment of a penalty."

c. Final Rule. For the foregoing reasons, EPA is adopting § 22.19(a) with the two substantive changes noted above. In response to CEEC's comment, EPA has amended the proposed § 22.19(a) to provide a more equitable burden concerning providing information concerning the proposed penalty. EPA has also revised § 22.19(a) to allow complainant to specify a proposed penalty 15 days after prehearing exchange, rather than in its prehearing exchange as proposed.

The parties information exchange burdens necessarily differ depending on whether complainant has specified a proposed penalty before the prehearing exchange, but the proposed rule did not fully address these differences. In order to make the prehearing information exchange process address these differences, EPA has significantly reorganized and revised § 22.19(a). Paragraph (a)(1) contains the provisions describing the nature and effect of the prehearing information exchange. The only significant differences between the provisions of paragraph (a)(1) and their counterparts in the proposed rule are that paragraph (a)(1) expressly requires that prehearing exchange be "filed" (§ 22.5(b) provides for service on the Presiding Officer and opposing parties), and clarifies that an order of the Presiding Officer initiates prehearing exchange.

Paragraph (a)(2) describes the contents of prehearing information exchange, other than those that depend upon whether complainant has specified a proposed penalty. These requirements are unchanged.

As discussed in the response to comments above, paragraph (a)(3) provides that where complainant has already specified a proposed penalty, complainant shall include in its prehearing information exchange an explanation of how the proposed

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penalty was calculated in accordance with any criteria set forth in the Act, and the respondent shall include an explanation why the proposed penalty should be reduced or eliminated.

Paragraph (a)(4) applies where complainant has not specified a proposed penalty, and requires each party to include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty. It also requires that complainant file a document specifying a proposed penalty and explaining how the proposed penalty was calculated in accordance with any criteria set forth in the Act 15 days after respondent has filed its prehearing information exchange.

EPA has adopted § 22.19(b) as proposed, except that in response to comment, EPA has deleted the words "before him".

16. Other Discovery (40 CFR 22.19(e))

a. Summary of Proposed Rule. The proposed § 22.19(e) would provide a mechanism for discovery should any be necessary after the parties have completed their prehearing exchange. Under the CROP, other discovery has always been limited in comparison to the extensive and time-consuming discovery typical in the Federal courts, and designed to discourage dilatory tactics and unnecessary and time-consuming motion practice.

The proposed revisions to § 22.19(e)(1) would require additional detail in motions for discovery, and refine the substantive standards for issuance of a discovery order. The proposed rule would add a prohibition against discovery that would unreasonably burden the other party. The proposal would also elaborate the existing requirement that discovery seeks "information [that] has significant probative value", by the addition of the clause "on a disputed issue of material fact relevant to liability or the relief sought." The proposed rule would clarify the existing prohibition on discovery where "[t]he information to be obtained is not otherwise obtainable", by substituting a requirement that discovery is permissible so long as it "[s]eeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily".

Paragraph (e)(2) of the proposed rule would expressly prohibit discovery of a party's settlement positions and information regarding their development, specifically including penalty calculations that are based on Agency settlement policies. Paragraph (e)(3) would clarify that the Presiding Officer may order depositions upon oral questions only where additional conditions, over and above those in paragraph (e)(1), are satisfied. Paragraph (e)(4) would consolidate in the main body of the CROP the subpoena standards presently scattered through the supplemental rules. This consolidation does not signify any general subpoena authority: Subpoenas are available in CROP proceedings only where authorized by the Act giving rise to the cause of action.

Paragraph (e)(5) states that none of the § 22.19(e) limitations on discovery limit a party's right to request admissions or stipulations, a respondent's right to request Agency records under the Federal Freedom of Information Act ("FOIA"), 5 U.S.C. 552, or EPA's authority under the Act to conduct inspections, issue information request letters or administrative subpoenas, or otherwise obtain information.

b. Significant Comments and EPA Response. Several of the commenters object to proposed changes to § 22.19(e)(1) that would allow discovery only where it "[w]ill neither unreasonably delay the proceeding nor unreasonably burden the non-moving party", and where it "[s]eeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought." UWAG and UARG are concerned that these criteria are vague and might prevent respondents from discovering documents relating to the basis for the Agency's determination that a violation has occurred and concerning how the Agency determined the proposed penalty. UWAG and UARG believe that respondents cannot meaningfully respond to a complaint without access to such documents. CEEC states that while efforts to lessen the burden of discovery are admirable, the proposed limitations on discovery are one-sided and disadvantage respondents. CMA/API believe that the proposed criteria of § 22.19(e)(1) are "unfair and fundamentally tip the balance in favor of EPA." CMA/API say the "unreasonably burdensome" standard is vague, subjective, and too easily abused.

EPA believes that the changes to § 22.19(e)(1) will not significantly alter the amount of discovery permitted, although it is hoped that they will reduce the amount of litigation over whether discovery is to be allowed. EPA notes that the provisions to which the commenters object are less vague than the comparable provisions of the existing rule, which have been reasonably effective for 18 years. Although the standard "neither unreasonably delay nor unreasonably burden" does not achieve mathematical exactness, it is the sort of standard that judges are accustomed to apply. EPA is confident that the impartial presiding officers can implement these standards in a fair and efficient manner.

Although commenters express concern that the proposed discovery criteria may prevent respondents from discovering information important to their defense, no commenter has identified any specific information or category of information that could not be discovered under the proposed discovery standards. None of the commenters have articulated any reason why discovery should extend to information that does not have significant probative value on a disputed issue of material fact relevant to liability or the relief sought, or why a presiding officer should allow unreasonable delay or unreasonable burdens. EPA perceives no basis for the contention that these proposed discovery criteria unfairly limit discovery. The proposed changes to the standards for granting a discovery motion are incremental, and are unlikely to produce different results in the majority of cases. The proposed changes are beneficial in that they clarify the types of discovery that are appropriate and help prevent inappropriate discovery.

There is no inherent unfairness in rules that permit less extensive discovery than those of the Federal courts. Restrictions on discovery work as both an burden and an advantage, and as some of the commenters acknowledge, respondents share in the advantages as well as the burdens. For example, the extensive discovery allowed in the Federal courts allows EPA to expand a judicial case through discovery of all manner of violations. The CROP limits the Agency's discovery to "information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought." As a result, EPA foregoes in its administrative proceedings the opportunities afforded by extensive discovery in exchange for the benefits of more expeditious case resolution.

EPA finds no merit to the contention that respondents cannot meaningfully respond to a complaint without broader discovery of documents relating to the basis for the Agency's determination that a violation has occurred and concerning how the Agency determined the proposed penalty. EPA is unlikely to have unique information relevant to the case. Respondents are generally in a better position than is EPA to obtain

first hand information about whether or not they have conducted their activities in violation of the law, and about the circumstances surrounding any violations. The evidence upon which EPA bases its enforcement action is generally acquired from the respondent through an inspection or information collection request that is well known to respondent, or through respondent's own reporting. The proposed § 22.14(a) requires EPA to articulate the regulatory and factual basis of its case in the complaint. The proposed § 22.19(a) requires EPA in prehearing exchange to identify all witnesses it intends to call at hearing, provide summaries of their expected testimony, provide copies of all exhibits and documents to be introduced as evidence, and specify the basis of the proposed penalty. In this context, it cannot reasonably be argued that the limitations on other discovery imposed through § 22.19(e) would prevent respondents' full and meaningful participation in the hearing.

Dow asserts that it is not appropriate for § 22.19(e)(2) to preclude discovery of penalty calculations based on "settlement policies," because this would leave respondent without information necessary to respond to the proposed penalty. Dow observes that EPA does not have separate written policies for settlement and for pleading penalties, and Dow asserts that EPA uses its "settlement" policies for both purposes. Dow argues that § 22.19(e)(2) should allow discovery of any calculations used to derive a proposed penalty for pleading purposes or otherwise pursued in the proceeding.

EPA had intended that the proposed § 22.19(e)(2) should make clear that a party's settlement positions and information regarding their development are not discoverable. There is merit to Dow's contention that EPA should not be able to shield from discovery the basis for a proposed penalty simply by basing it on a document formally titled a "settlement policy." The preamble to the proposed rule describes this paragraph in a manner that appears to avoid this problem, "the proposed revision would prohibit discovery of a party's settlement positions and information regarding their development specifically including penalty calculations for purposes of settlement based on Agency settlement policies." 63 Fed. Reg. at 9473. Accordingly, EPA has replaced the parenthetical clause from the proposed paragraph (e)(2), "(such as penalty calculations based upon Agency settlement policies)", with more restrictive language taken the preamble, "(such as penalty calculations for purposes of settlement based on Agency settlement policies)".

CMA/API express their understanding and support of limitations on discovery and use of settlement positions, but indicate concern that § 22.19(e)(2) might signal an EPA intention to abandon its practice of sharing penalty and economic benefit calculations in settlement negotiations. This revision of CROP draws on two very different antecedents, as it merges the different approaches of the part 22 and the proposed part 28 procedures. In those programs that have historically relied on the 1980 version of the CROP, the Agency has specified a penalty demand in the complaint and has provided a copy of the applicable penalty policy and penalty calculation worksheets typically at initial settlement conferences, but never later than prehearing exchange. In contrast, in its CWA and SDWA class I administrative enforcement programs under the proposed part 28 rules, EPA did not generally argue the basis of a penalty or specify a penalty demand until post hearing briefs, in the manner of enforcement proceedings in the Federal courts. For those programs where the practice has been to specify a penalty in the complaint, EPA does not intend any dramatic change from current practice regarding disclosure of penalty and economic benefit calculations in settlement negotiations. For those programs that evolved in the Federal courts and under the proposed part 28 procedures, specifying a penalty and the basis for that penalty at prehearing exchange will be a major change, but it is certainly a change that will be to respondents' advantage.

Dow argues that the word "reasonably" should be inserted into § 22.29(e)(3)(i) so as to allow depositions on oral questions in circumstances where the information "cannot reasonably be obtained by alternative methods of discovery." EPA agrees that the suggested change should result in more efficient proceedings, and has therefore adopted this recommendation.

The proposed § 22.19(e)(5) also elicited several comments. Some commenters seem to misinterpret the Agency's proposal as if it were offering FOIA and EPA's other information collection authorities as substitutes for discovery opportunities taken away in § 22.19(e)(1). As noted above, the changes to § 22.19(e)(1) will only produce an incremental restriction of discovery, and would preclude only inappropriate discovery. Accordingly, substitutes for discovery are neither needed nor appropriate, and suggestions that FOIA rights be expanded are rejected. EPA proposed § 22.19(e)(5) simply to make clear that FOIA requests, inspections, statutorily provided information collection requests, and administrative subpoenas issued by an authorized Agency official other than the Presiding Officer do not constitute discovery and are not restricted by the CROP. The proposed revision does not change the CROP, because these activities have never been subject to a Presiding Officer's control.[2]

EPA acknowledges that the statutory information collection tools available to the Agency are substantial, however, EPA does not believe that this undermines the fairness of the CROP proceedings. The central factual issue of a CROP proceeding is whether respondent's conduct has been consistent with the law, and respondent's ability to gather information about its own conduct is always greater than EPA's, statutory information collection authorities notwithstanding. In any event, it is uncommon for EPA to initiate inspections, information collection requests, or administrative subpoenas (other than those issued by the Presiding Officer) to gather information to support cases that have already commenced.

EPA notes that the clause "EPA's authority under the Act" may have contributed to some commenters' view of paragraph (e)(5) as endorsing the use of information collection authorities outside of those in § 22.19 to "otherwise obtain information" support ongoing cases. EPA's primary motivation in proposing § 22.19(e)(5) is that its authority to conduct investigations

[2] See, e.g., In Re: Dominick's Finer Foods, Inc., Docket No. CERCLA/EPCRA–007–95 (February 15, 1996) (holding that a pending action in which the parties are subject to the discovery rules of § 22.19(f) "is by no means a basis for restricting EPA's information gathering rights" under CERCLA § 104(e)). Cases holding that EPA may not be enjoined from exercising its investigative authority under the Solid Waste Disposal Act solely because of the pendency of a related administrative action: Del Val Ink and Color, Inc., RCRA II–91–0104 (January 12, 1993), at 6–7; Florida Dept. Of Transportation, RCRA 92–16–R (October 29, 1993), at 3–6; and Coors Brewing Co., RCRA–VIII–90–09 (January 4, 1991), at 11–15. Comparable federal court decisions: *Linde Thomson Langworthy Kohn & Van Dyke* v. *RTC*, 5 F.3d 1508 1518 (D.C. Cir 1993) (Statute authorizing RTC investigations does not contemplate the termination of investigative authority upon commencement of civil proceedings.); *National-Standard Company* v. *Adamkus*, 881 F.2d 352, 363 (7th Cir. 1989)("The mere pendency of a related civil action does not automatically preclude EPA's use of other authorized law enforcement techniques. * * *"); and In Re Stanley Plating Co., 637 F.Supp. 71, 72–73 (D.Conn. 1986) (Nothing in RCRA suggesting that civil action restricts EPA to investigative techniques in accordance with discovery rules).

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unrelated to the particular proceeding, perhaps under other statutes or at other facilities, should not be restricted by an unrelated enforcement proceeding. EPA has replaced the phrase "authority under the Act" with the more general phrase "under any applicable law" in order to better convey EPA's intention that activities unrelated to an ongoing CROP proceeding are not to be subject to the § 22.19(e) limitations.

EPA cannot agree with commenters' suggestions that EPA's information collection authorities be restricted during the pendency of a case. EPA administers fourteen different regulatory statutes, several of which impose a wide variety of requirements on EPA and on regulatees. Many corporations have dozens, or even hundreds, of facilities that are regulated by EPA. EPA needs to continually conduct inspections and exercise other information collection authorities both to identify noncompliance with existing regulations and to determine the need for new or revised regulations, whether or not a company is presently subject to a CROP proceeding. In effect, the commenters ask EPA to blind itself to anything a respondent might do at any facility during the course of a CROP proceeding. EPA would be derelict in its regulatory and enforcement responsibilities if it were to forego its statutorily authorized information collection tools, even for a relatively short time.

Dow stated that although it agrees generally with the proposed § 22.19(e)(5), it believes that the CROP should allow for protective orders and/or sanctions to prevent a party from abusing or harassing another party. The Presiding Officer has the authority, under §§ 22.4(c)(6), 22.4(c)(10), 22.17, and 22.22, to impose certain sanctions against a party, such as exclusion of evidence, that are not provided in the statute under which a case is commenced. The Presiding Officer in a CROP proceeding does not have the broad powers of a Federal court judge, and can order only such relief (e.g. penalty, compliance order) as is authorized by the statute(s) under which the case is commenced. None of the statutes EPA administers authorize protective orders or contempt sanctions for misuse of the information collection authorities noted in § 22.19(e)(5).

The USAF urges that § 22.19(e)(5) state that where EPA seeks to obtain information from a respondent represented by an attorney in a proceeding under the CROP, it shall seek such information through the respondent's attorney. The USAF observes that § 22.10 requires representatives of parties to conform to the standards of conduct and ethics applicable in the Federal courts, and that one such rule would require that information collection efforts concerning the subject of the litigation are to be made through counsel for the party. EPA notes that these ethical rules are already applicable to attorneys and representatives for all parties through § 22.10, and need not be restated in § 22.19(e)(5).

More importantly, EPA's ability to enforce an information collection request will depend on whether the request has been made of the proper individual. Some statutory information collection authorities are only applicable to specified persons (e.g., Section 308(a) of the Clean Water Act, authorizes EPA to require the owner or operator of a point source to submit reports and provide information). Although an attorney may represent respondent in a particular proceeding, it is not clear that the scope of that representation will always make the attorney the surrogate of the proper recipient of an information collection request. In addition, EPA is a large and decentralized agency, and regulates many large and decentralized corporations. As a result, it is possible that the individuals responsible for a particular enforcement proceeding and those responsible for a particular information request may have no knowledge of each other's activities. For these reasons, it is not appropriate for EPA to commit itself by rule to send all information collection requests to respondent's attorney.

c. Final Rule. As stated above, EPA is adopting the § 22.19(e) as proposed with three modifications: Paragraph (e)(2) shall contain the language "(such as penalty calculations for purposes of settlement based on Agency settlement policies)". Paragraph (e)(3)(i) will allow depositions on oral questions in circumstances where the information "cannot reasonably be obtained by alternative methods of discovery." Paragraph (e)(5) shall state that ". . . Nothing in paragraph (e) of this section shall limit * * * EPA's authority, under any applicable law, to conduct inspections, issue information request letters or administrative subpoenas, or otherwise obtain information".

EPA has also noted an unintended side effect of moving the subpoena provisions from the supplemental rules into the discovery section of the proposed rule. In many cases, subpoenas are not used as discovery tools, but merely to ensure the attendance of a witness at hearing. The witness may also be totally independent from the parties. In these circumstances, the standards set forth in § 22.19(e)(1) are inappropriate. Therefore, EPA has revised § 22.19(e)(4) so that it applies only to subpoenas issued for discovery purposes. Other subpoenas would be at the Presiding Officer's discretion, pursuant to § 22.4(c)(9). Corresponding language is also added to § 22.21 to provide for subpoenas not used as discovery tools.

17. Supplementing Prior Exchanges, and Failure To Exchange Information (40 CFR 22.19(f) & (g))

a. Summary of Proposed Rule. Section 22.19(f) would clarify that parties may freely supplement their information exchanges, and additionally impose on each party a duty to supplement or correct prior exchanges of information when the party learns that a prior exchange is deficient. Section 22.19(g) clarifies that a failure of a party to provide information within its control pursuant to an order of the Presiding Officer may lead to an inference that the information sought would be adverse to the non-exchanging party, to exclusion of the information from evidence, or to issuance of a default order.

b. Significant Comments and EPA Response. CMA/API support the proposed changes to § 22.19(f). Dow suggests that § 22.19(g) should state that "the Presiding Officer may, in his discretion," impose the specified sanctions, in order to clarify that the "abuse of discretion" standard applies on appeal. EPA accepts this suggestion.

c. Final Rule. EPA is adopting the proposed § 22.19(f) and (g) with minor modifications. In the first sentence of paragraph (f), EPA has replaced the word "responded" with the more expressive phrase "exchanged information in response." In response to Dow's comment noted above, EPA has added the phrase "in his discretion" to the language of § 22.19(g). EPA also corrected an erroneous citation in paragraph (g)(3): it should refer to § 22.17(c) rather than § 22.17(a). For consistency with the other paragraphs in § 22.19, EPA has added a heading to paragraph (g), "Failure to exchange information".

18. Evidence (40 CFR 22.22)

a. Summary of Proposed Rule. Section 22.22(a) proposes both structural and substantive changes. Structurally, EPA proposes splitting subsection (a) into two paragraphs, (a)(1) and (a)(2). Paragraph (a)(1) proposes to add an exclusionary provision for information not provided to the opposing party at least 15 days before the hearing date unless there was good cause and the information was provided as soon as it had control of it or there was good cause for not providing the information. Paragraph (a)(2) proposes to clarify how and when confidential business information ("CBI") may be used as evidence in accordance with, and specifically referencing EPA's general confidentiality requirements in 40 CFR Part 2. In conforming with Part 2 requirements, a proposed significant change would authorize the Presiding Officer and EAB to consider CBI information outside the presence of the public or a party as necessary to preserve the confidentiality of business information.

b. Significant Comments and EPA Response. Dow opposes the automatic exclusion of information that is not exchanged in a timely manner unless good cause is shown, as proposed in § 22.22(a)(1). Dow presents hypothetical situations where it believes a respondent would be unable to get exculpatory or mitigating information that comes to its attention admitted into evidence, if EPA "deliberately chooses to withhold" such information "instead of exchanging it in a timely manner." In such situations, Dow reasons that there would be no "good cause" for EPA's failure to exchange the information. As a result, Dow advocates the proposed exclusionary provision be revised to state that the "information will be excluded from evidence *only upon objection* by the innocent party (i.e., the party who did not fail to exchange the information in a timely manner)."

Dow's fears are unfounded. If party A withholds information until just before the hearing, and party B seeks to have that information admitted into evidence, then party A's failure to disclose would constitute "good cause" for the innocent party B's inability to produce the information 15 days prior to the hearing. If the party was required to disclose the information in prehearing exchange or other discovery, § 22.19(g) gives the Presiding Officer some authority to sanction the party who withheld the information. Section 22.19(f) prohibits knowing concealment of deficiencies in information that has previously been exchanged. It imposes an affirmative duty to promptly supplement or correct information provided previously in a prehearing exchange, a response to a request for information, or a response to a discovery order when a party learns that the information is "incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party. * * *" Id. An opposing party's failure to supplement as required under § 22.19(f) would provide "good cause" for admission of evidence. In addition, § 22.4(c)(10) empowers the Presiding Officer do all acts and measures needed for a fair adjudication of the proceedings.

The preamble to the proposed rule noted that the CROP is aimed at the practice of full and complete exchange of information in order to expedite hearings and avoid unnecessary and costly motion practice. *E.g.*, 63 FR at 9472, 9473. The Agency believes that the exclusionary provision facilitates this end and provides a mechanism to enforce the failure of a party to engage in such full disclosure. For parties that act in bad-faith, the CROP, as discussed above, provides adequate safeguards to address these situations and ensure a fair adjudication.

Regarding § 22.22(a)(2), CEEC supports the Agency's proposal to allow the Presiding Officer to review CBI evidence outside the presence of a party if it is necessary to preserve the confidentiality of the business information. In contrast, Dow believes that viewing CBI evidence outside the presence of a party can impede the non-attending party's ability to effectively participate in the hearing and the fairness of the hearing. Dow requests that the Agency include a provision for disclosure of CBI to all parties and to neutral experts, as needed, with safeguards to prevent against using the information outside the scope of the hearing.

The Agency acknowledges the legitimacy of Dow's concerns, however, today's rule and 40 CFR part 2 provide adequate mechanisms to accomplish most of Dow's suggestions. Notwithstanding today's revision of § 22.22(a)(2), EPA retains the authority to disclose CBI in a CROP proceeding where appropriate, pursuant to several statute-specific provisions of part 2 (*see, e.g.*, 40 CFR 2.301(g), 2.302(g), 2.304(g), 2.305(g), 2.306(i), 2.310(g)). Disclosure to a neutral expert could be accomplished through these authorities, or through the statute-specific provisions of part 2 that authorize disclosure to persons performing work under contract to EPA (*see, e.g.*, 40 CFR 2.301(h), 2.302(h), 2.304(h), 2.305(h), 2.306(j), 2.307(h), 2.310(h)). The Agency does not, however, have the authority to enforce secrecy agreements between respondent and an intervener, nor does it have the authority to impose sanctions (other than procedural sanctions such as default) for violations of protective orders that might be issued under the authority of § 22.4(a)(2) or (c). Therefore, it may be advisable for owners of CBI to make such agreements enforceable as contracts.

As expressed in the preamble to the proposed rule, the Agency believes that allowing the independent Presiding Officers the "discretion to review confidential evidence outside the presence of a party * * * strike[s] an appropriate balance between the right of confrontation and the statutory mandates to protect confidential business information." 63 FR at 9474. Contrary to the Dow's suggestion, the Presiding Officer is competent to handle these infrequent situations, including the concern about CBI evidence being unduly relied upon to the detriment of the non-present party. The Presiding Officers handle cases daily involving the Agency's technical regulations and corresponding business information. As an impartial trier of fact, trained to assure that all cases are fairly adjudicated, the Presiding Officer can take into account the failure of a party to be present and to rebut any CBI evidence. Additionally, the Presiding Officer can pose questions to the absent party about any non-CBI issues that exist once the hearing resumes in full. Moreover, as this commenter acknowledges, the CROP provides that a party will have access to a redacted version of the CBI documents. Thus, a right to confrontation and to present its defense will not be unfairly impeded.

c. Final Rule. EPA is adopting § 22.22 as proposed, with four minor changes. In addition to excluding information required to be exchanged under § 22.19(a) or (f) that has not been provided to the opposing party at least 15 days before the hearing date, § 22.22(a)(1) should also exclude information that has not been timely provided pursuant to a § 22.19(e) discovery order. This is a technical change, in as much as § 22.19(g)(2) already permits the exclusion of information not provided pursuant to a discovery order, and that it is clearly the intent of the proposed rule to exclude information that has not been provided to opposing parties in a timely manner. EPA has therefore added to § 22.22(a)(1) a reference to § 22.19(e) discovery orders.

To conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.22(a) to state the duration of this exclusion period with the numeral "15".

EPA has made an editorial change to § 22.22(b), which requires witnesses to testify "orally, under oath or affirmation, except as otherwise provided in these Consolidated Rules of Practice or by the Presiding Officer." EPA has replaced the phrase "in these Consolidated Rules of Practice" with the more specific language "in paragraphs

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(c) and (d) of this section". No provisions of the CROP other than § 22.22(b), (c) and (d) address whether witnesses must testify orally, under oath or affirmation.

EPA notes that although the existing § 22.22(c) places the burden of delivering copies of a witnesses' written testimony on the witness, this burden should fall on the party who would call that witness to testify. EPA has revised this paragraph to require that "the *party who has called the* witness shall deliver a copy of the testimony to the Presiding Officer, the reporter, and opposing counsel."

19. Filing the Transcript (40 CFR 22.25)

a. Summary of Proposed Rule. Section 22.25 provides that the hearing shall be transcribed, and that the reporter shall transmit copies to the Presiding Officer, and to the Regional Hearing Clerk who shall make copies available to the parties. EPA proposed a new provision specifically allowing motions to conform the transcript to the actual testimony, provided that such motions are filed within 20 days after notice of the availability of the transcript.

b. Significant Comments and EPA Response. Dow asserts that 20 days is insufficient time for attorneys and employee witnesses to review, correct, and move to amend a hearing transcript, even if the 20 days commenced upon receipt of the transcript. Dow recommends that § 22.25 be revised to allow motions to conform the transcript to the actual testimony either 30 days from the date the transcript is received, or 45 days from service of the notice of availability. EPA agrees with Dow's recommendation that additional time be allowed.

EPA originally proposed that the time allowed should be measured time from date the parties are notified that the transcript is available, as this appeared to be a single, well-defined reference point. In practice, this has not been the case, because complainants on occasion receive the transcript itself before receiving a formal notice of its availability. Moreover, the proposed standard would generally give complainant more time than respondent, because complainant typically receives the transcript as soon as it becomes available. The commenter's suggestion of 30 days from the date the transcript is received is good benchmark, as it allows each party the same amount of time to review the transcript, however, it is open-ended for so long as a respondent declines to request or pay for its copy of the transcript. In order to balance fairness to each party with the need for finality, EPA has adopt a standard building on both of the commenter's suggestions: "Any party may file a motion to conform the transcript to the actual testimony within 30 days after receipt of the transcript, or 45 days after the parties are notified of the availability of the transcript, whichever is sooner."

c. Final Rule. EPA is adopting the rule as proposed with the exception of modifying the language of § 22.25 to read "Any party may file a motion to conform the transcript to the actual testimony within 30 days after receipt of the transcript, or 45 days after the parties are notified of the availability of the transcript, whichever is sooner."

20. Initial Decision (40 CFR 22.27)

a. Summary of Proposed Rule. Section 22.27 is concerned with initial decision, and it consists (in both the existing and proposed versions) of three paragraphs. Paragraph (a) is concerned with the issuance of an initial decision, what it shall contain, and to whom copies shall be sent. Paragraph (b) outlines the factors a Presiding Officer must take into consideration in determining the amount of a civil penalty and the procedures for determining a civil penalty upon a default. Paragraph (c) sets forth when an initial decision becomes a final order and when it does not; this provision also states that the effect of an initial decision appealed to the EAB is stayed pending a decision on an appeal by the EAB.

Many of the changes in § 22.27(a) are intended to clarify the language. Other changes include requiring that an initial decision, where appropriate, include a compliance order, corrective action order or permit revocation, termination or suspension. This provision also designates to whom, in addition to the parties, copies of the initial decision are to be sent.

The revised § 22.27(b) would require that the Presiding Officer explain in the initial decision how the penalty recommended to be assessed therein corresponds to the evidence in the record and any penalty criteria set forth in the statute under which the action has been commenced. It also establishes that in case of default, the penalty recommended to be assessed shall not exceed the lesser of amount sought in either the complaint or motion for default.

In § 22.27(c), the ways in which a party can prevent an initial decision from becoming a final order are set forth. The proposed rule states that pending the issuance of decisions on appeals of them to the EAB, initial decisions are neither final nor operative. This amendment is to prevent a party from seeking judicial review prior to seeking review from EPA's administrative appellate body, the Environmental Appeals Board.

b. Significant Comments and EPA Response. Dow notes that the second sentence of § 22.27(a) arguably requires that every initial decision must include a civil penalty assessment. To remedy this, Dow recommends that the words "if appropriate" be moved so that they follows the phrase "as well as reasons therefor, and". EPA agrees, and adopts Dow's proposed revision.

Dow supports the inclusion in § 22.27(c) of the provision that states, "An initial decision that is appealed to the Environmental Appeals Board shall not be final or operative pending the Environmental Appeals Board's issuance of a final order" as properly balancing the needs of EPA and respondents. While Dow is pleased that this "will avoid premature recourse to Federal courts", Dow argues that EPA should not require appeal to the EAB for those issues that cannot be adjudicated administratively. As examples of matters that an agency cannot address, Dow cites challenges involving constitutional questions, challenges to an agency's interpretation of a statute and challenges to an agency's authority.

EPA does not agree with the recommendation that the CROP should not require an appeal to the EAB of "issues that cannot be adjudicated administratively." It cannot be left to a party to determine the scope of the EAB's jurisdiction, and respondents should not bear the burden of attempting to predict whether a particular issue must be appealed to the EAB as a prerequisite to judicial review. Also, issues that may not be adjudicated administratively are often mixed with issues that may be adjudicated by the Board. It is appropriate, and in the interest of both the Agency and the parties, for the EAB to decide which issues may be adjudicated administratively. This will ensure that the EAB has the opportunity to exercise its full review authority and protect respondents from losing their right to appeal based on a failure to exhaust administrative remedies.

CEEC also objects to the proposed changes to § 22.27(c), arguing that it is inappropriate to require respondents to appeal any initial decisions to the EAB before appealing to the federal courts. CEEC's initial comments (April 27, 1998) gave no reasons why this is inappropriate. CEEC reiterated this objection in its supplemental comments (June 4, 1998), again without significant explanation. CEEC's supplemental comments elaborated on this point only to the extent of echoing Dow's comment, stating that it is especially inappropriate "where the issue to be addressed is a constitutional challenge, a challenge to an Agency interpretation, or a challenge to the Agency's authority."

As EPA has already discussed issues specific to requiring appeal to the EAB as a prerequisite to judicial review "where the issue to be addressed is a constitutional challenge, a challenge to an Agency interpretation, or a challenge to the Agency's authority", this response will address the larger issue raised by CEEC, whether respondents should be required to appeal any decisions of a Presiding Officer to the EAB as a prerequisite to judicial review.

The EAB is responsible for assuring consistency in Agency adjudications by all of the ALJs and RJOs. The appeal process of the CROP gives the Agency an opportunity to correct erroneous decisions before they are appealed to the federal courts. The EAB assures that final decisions represent with the position of the Agency as a whole, rather than just the position of one Region, one enforcement office, or one Presiding Officer. EPA considers this a necessary and important function, and rejects CEEC's suggestion that this internal appeal and review process be abandoned. In addition to meeting EPA's institutional needs, this process also offers enormous advantages to respondents who are dissatisfied with an initial decision, in that appeals to the EAB are much quicker and much less expensive than appeals to a federal court.

CEEC's comment may be based on a misreading of the proposed rule as requiring respondent to make an interlocutory appeal to the EAB every time there is an adverse decision: "In its Preliminary Comments, CEEC noted its concerns with the proposal requiring appeal to the EAB after every "initial" decision or order of the Presiding Officer before seeking judicial review."

To the extent that this comment is intended to apply to any ruling or order other than an initial decision (as the latter term is defined in § 22.3), it is based on a misreading of the proposed rule. The proposed rule would only require that initial decisions (as specifically defined in § 22.3) be appealed to the EAB as a prerequisite to judicial review. EPA did not propose to require interlocutory appeal of rulings and orders other than initial decisions as a prerequisite to judicial review.

CEEC also objects to the process by which EPA has proposed the revisions relating to exhaustion of remedies. Terming the inclusion of the exhaustion requirement a "major revision" to the CROP, CEEC says that "Given the magnitude of this proposed change, EPA should have brought this proposal to the attention of the regulated community in the summary of its proposed rule-change, and explained it thoroughly."

First, the February 25, 1998, **Federal Register** notice of proposed rule making provided adequate notice of EPA's intention to address the exhaustion doctrine in its rules of administrative procedure. The one-sentence summary that begins the notice of proposed rule making accurately describes the subject of the notice, though it does not attempt to summarize all of the issues raised in the proposal. The body of the notice and the proposed regulations clearly identified and discussed this issue in detail. *See* 63 FR 9474–75, 9489. The proposed rule allowed 60 days for the public to comment on the entire proposal. In addition, in response to CEEC's concern, EPA published a second notice on May 6, 1998, reopening the public comment period for an additional 60 days.

CEEC's contention that the initial proposal did not give adequate notice of the magnitude of the proposed changes is not persuasive. The original notice of proposed rule making attracted the attention of a broad spectrum of the regulated community, and elicited comments from major trade associations representing the chemical manufacturing industry, the petrochemical industry and the utility industry, and individual comments from the U.S. Air Force and one major chemical company, in addition to the companies represented by CEEC. These comments were generally detailed and well considered. Only two of the comments addressed § 22.27(c), and only CEEC considered this an extraordinary revision. CEEC's contention that the initial proposal did not allow enough time to consider and comment on the proposed changes is also undermined by the fact that CEEC's supplemental comments were the only comments received during reopened comment period, as well as by the fact that those supplemental comments did not raise any significant issues that were not raised during the original public comment period.

Second, EPA disagrees with CEEC's characterization of the magnitude of the proposed changes. EPA considers appeals of an initial decision to the EAB as a prerequisite to judicial review under the CROP as previously codified, and that, during such appeal, the initial decision is inoperative. The regulated community also appears to share this understanding, as respondents consistently seek EAB review before appealing to the federal courts. The proposed explicit inclusion of the exhaustion doctrine simply clarifies the status quo, and thus does not represent something that would significantly alter or impact a respondent's rights or position under the CROP.

Although the proposed revision of § 22.27(c) was designed to make it explicit that an initial decision must be appealed to the EAB as a prerequisite for judicial review, Dow points out that § 22.27(c) does not actually say anything about the need for administrative appeal before judicial review. An explicit statement appears in § 22.31(e)(1) of the proposed rule, however. EPA acknowledges that it would be more helpful if the provision advising a respondent of the consequences of failing to appeal an initial decision to the EAB were included in the section discussing initial decisions, rather than the section concerned with final orders. Accordingly, language from § 22.31(e)(1) of the proposed rule now appears in a new § 22.27(d).

c. Final Rule. In response to comment, EPA has moved the words "if appropriate" from the end of the second sentence in § 22.27(a) to follow the phrase "as well as reasons therefor, and", in order to clarify that not all initial decisions will assess a penalty.

Language from § 22.27(c) and § 22.31(e)(1) relating to exhaustion of administrative remedies has been combined in a new § 22.27(d). The remainder of § 22.27(c) has also been subdivided into four paragraphs for easier reading.

EPA has made an additional substantive change to § 22.27(a) on its own initiative. The existing and proposed rules specify that the Regional Hearing Clerk shall forward the entire record of the proceeding to EPA Headquarters as soon as an initial decision is issued, regardless of whether the case is appealed to the EAB. For administrative efficiency, this requirement has been deleted. Regional Hearing Clerks will retain the record of the proceeding unless the EAB requests it. This change should have no effect on respondents' interests.

EPA has made minor editorial changes to § 22.27(a) as well: EPA has deleted the word "reply" from the first sentence to make it more general, and has replaced the phrase "permit revocation and suspension" with "Permit Action", as discussed in connection with revisions to § 22.3(a) and § 22.14(a)(4)(iii)..

In the fourth and fifth sentences of paragraph (b), the proposed rule uses the phrase "penalty recommended to be

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assessed in the complaint". The convention elsewhere in the CROP is to describe the penalty proposed by complainant as the "proposed penalty", and the penalty determined by the Presiding Officer as the "recommended penalty". In order to eliminate the "recommended to be assessed" language and to provide for cases where complainant makes its specific penalty proposal in its prehearing exchange, EPA has replaced "penalty recommended to be assessed in the complaint" in the fourth sentence with the phrase "penalty proposed by complainant". In the fifth sentence, EPA has substituted the phrase "proposed by complainant in the complaint, the prehearing information exchange or the motion for default".

EPA has also changed the order of the sentences in paragraph (b). The sentence stating that "[t]he Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to the any penalty criteria set forth in the Act" has been moved up to follow the sentence stating that "the Presiding Officer shall consider any penalty guidelines issued under the Act." This will make it clearer that the obligation to explain in detail how the penalty corresponds to the penalty criteria of the Act is not limited to circumstances where the Presiding Officer assesses a penalty different from that proposed in the complaint.

As discussed above in connection with public comments on § 22.17, EPA has revised the CROP to clarify that a motion for default or a default order may apply to all or part of a proceeding. EPA has made a corresponding change to § 22.27(c)(3), to clarify that it applies only to those default orders that constitute initial decisions.

To conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.27(c) to state the time after which an initial decision becomes a final order with the numeral "45".

21. Appeal From or Review of Initial Decision (40 CFR 22.30)

a. Summary of Proposed Rule. The proposed revisions to § 22.30(a) would extend the time to file an appeal from 20 to 30 days, clarify the procedure for filing appeals, including, but not limited to, provisions addressing service and filing, and describing the contents of any appeal brief. The proposed rule also contained a new provision whereby a party who initially declined to appeal, but who receives a notice of appeal from another party, is granted an additional 20 days to raise other issues on appeal. This change would eliminate the need for protective filings by parties who otherwise would have elected not to file an appeal.

Proposed revisions to paragraph (b) would clarify the respective roles of the Regional Hearing Clerk and the Clerk of the Board. Paragraph (c) of the proposed rule added a provision expressly limiting the scope of appeals to issues raised during the course of the proceeding or by the initial decision. Minor editorial changes were made to the proposed paragraph (d), as well as to the other paragraphs.

EPA proposed a new paragraph (e) that would specify that the general requirements for motions at § 22.16 apply to motions made in appeals to the EAB. EPA proposed a new paragraph (f), consisting largely of the language formerly contained in § 22.31(a). Paragraph (f) describes the scope of review by the EAB and its authority to increase or decrease a penalty, or to modify any compliance order, corrective action order, or any permit revocation, termination and suspension. The proposed § 22.30(f) would allow the EAB to increase the amount of a penalty assessed in a default order, but would not allow the EAB to increase the default penalty to an amount greater than that proposed in the complaint or in a motion for default, whichever is less.

b. Significant Comments and EPA Responses. CMA/API support the provision extending the time for filing appeals from 20 to 30 days, while Dow objects that 30 days is not sufficient time to review the initial decision and file an appeal brief. CROP proceedings have worked effectively since 1980 with a 20 day appeal period, and with extensions in appropriate cases. Expanding the appeal period by fifty percent should substantially reduce the burdens felt by counsel, as well as allow improvement in the quality of the briefs filed. While today's final rule expands several time periods, EPA still intends that CROP proceedings should progress quickly from the filing of the complaint to the issuance of a final order. EPA believes that further expansion of the appeals period is not necessary at this time.

Dow also commented that the deadline for response briefs would be ambiguous under the proposed § 22.30(a)(2) in cases where two or more notices of appeal are filed in serial fashion. EPA concedes that in such cases there would not be a single date upon which all reply briefs are due, however, the proposed CROP is clear as to when the response briefs are due: A brief responding to an appeal is due within 20 days of service of the appeal brief to which it responds. Requiring all reply briefs to be filed on the same day would give the person filing the last appeal the most time to respond to the opposing party's appeal, while EPA's proposed approach gives each party the same amount of time to respond.

CEEC recommends that the CROP include procedures to ensure that members of the regulated community have access to all administrative complaints, decisions, orders, settlements, etc. EPA notes that all such documents appear in the public docket for each case. The formal opinions of the EAB are published in a series of bound volumes titled Environmental Administrative Decisions (E.A.D.), which may be purchased from the U.S. Superintendent of Documents. The full text of all formal EAB opinions may also be accessed electronically at the EAB's World Wide Web Site (http://www.epa.gov.eab). Decisions and "substantive" orders (i.e., having some discussion of legal argument) of the Agency's ALJs are on http://www.epa.gov/oalj going back to November 1996. A web site for RJO decisions is under construction. Hard copies of ALJ decisions (and substantive orders since 1997) may be obtained from the Headquarters Hearing Clerk, and RJO decisions may be obtained from the Regional Hearing Clerks. Several commercial sources also make available the EAB formal opinions, most ALJ decisions and orders, and some RJO decisions and orders.

The Agency's practice has been for the Regional Hearing Clerk to maintain a complete docket up through the initial decision, and for the Clerk of the Board to maintain the docket of subsequent proceedings. EPA acknowledges that this system has made it difficult for persons reviewing a case docket in an EPA Regional office to review the entire case record. In order that the Regional Hearing Clerk's docket should indicate that a case had been appealed, EPA proposed in § 22.30(a)(1) that each appellant shall serve copies of its notice of appeal and brief with the Regional Hearing Clerk. In response to CEEC's comment, EPA has revised § 22.30(a) and (b) to require that copies of all documents filed with, or by, the EAB shall also be served on the Regional Hearing Clerk.

Finally, Dow notes that despite EPA's stated intention of removing the words "sua sponte" from the CROP, EPA neglected to replace this expression in the title of § 22.30(b). EPA has finished this task by revising this title to read "Review initiated by the Environmental Appeals Board."

c. Final Rule. EPA has adopted § 22.30 as proposed, with several modifications. As discussed above, EPA has revised the title of § 22.30(b) to read "Review initiated by the Environmental Appeals Board", and has revised § 22.30(a) to require that copies of all documents filed with, or by, the EAB shall also be served on the Regional Hearing Clerk. EPA has made several other minor revisions on its own initiative:

As discussed above in connection with the revisions to § 22.11, EPA has replaced the term "amicus curie" in § 22.30(a)(1) and (a)(2) with the term "non-party participant."

In order that the Presiding Officer may be aware of the status of his or her decision, EPA has also revised paragraph (a)(1) to require that a copy of the notice of appeal be served on the Presiding Officer, and revised paragraph (b) to require that the EAB serve on the Presiding Officer a copy of its notice of intent to review a decision.

EPA has also replaced the expression "Clerk of the Environmental Appeals Board" with "Clerk of the Board," using the term defined at § 22.3(a) for consistency.

Because response briefs are to be filed with the Clerk of the Board, the words "and serve" are unnecessary and potentially confusing as they appear in the proposed § 22.30(a)(2), and have therefore been deleted from today's final rule.

The proposed § 22.30(c) included a new provision: "The parties' rights of appeal shall be limited to those issues raised during the course of the proceeding and by the initial decision." In order to reflect the well established principle that the question of subject matter jurisdiction cannot be waived and may be raised at any stage of a proceeding, EPA has revised this provision by adding the clause "and to issues concerning subject matter jurisdiction."

The proposed § 22.30(f) may incorrectly suggest that a final order is the only possible outcome from an EAB decision on appeal of an initial decision. However, it is not uncommon for the EAB to remand a case. EPA has revised paragraph (f) by adding the following sentence: "The Environmental Appeals Board may remand the case to the Presiding Officer for further action."

EPA has replaced the phrase "any permit revocation, termination or suspension" in § 22.30(f) with "Permit Action", as discussed in connection with revisions to § 22.3(a) and § 22.14(a)(4)(iii). To conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.30 to state all time periods with numerals only.

22. Final Order (40 CFR 22.31)

a. Summary of Proposed Rule. Section 22.31 is concerned with final orders, and the proposed section consists of six sub-paragraphs. Paragraph (a) would specify the effect of the final order. It states that a final order constitutes final Agency action and specifies that a final order neither affects the right of the United States to seek criminal or civil relief for any violation of law nor waives a respondent's obligations to comply with applicable law. Paragraph (b) would establish the effective date of a final order. Paragraph (c) would set forth procedures for paying any civil penalties assessed in a final order. Paragraph (d) would establish that any corrective action or compliance order, or any permit revocation, termination or suspension becomes effective and enforceable as of the effective date of a final order unless otherwise specified in the final order. The proposed paragraph (e) is concerned with exhaustion of administrative remedies, and would specify that where a respondent fails to appeal an initial decision or enters into a consent agreement, the right of subsequent judicial review is waived. The proposed paragraph (f) discusses final orders issued to Federal agencies. This provision would specify that where the head of an affected agency seeks the intervention of the EPA Administrator, the decision by the Administrator will be the final order; this provision would also specify that a motion for reconsideration does not affect the 30-day time period for the effective date of final orders against Federal agencies.

b. Significant Comments and EPA Responses. The proposed inclusion in § 22.31(e) of a provision explicitly addressing exhaustion of administrative remedies as a prerequisite to judicial review is viewed by CEEC as a "major" revision of the CROP. CEEC argues that:

> "Given the magnitude of this proposed change, EPA should have brought this proposal to the attention of the regulated community in the summary of its proposed rule-change, and explained it thoroughly."

As discussed in EPA's response to comments on § 22.27(c), above, EPA disagrees with CEEC's characterization of the magnitude of this change, and maintains that the proposed rule gave adequate notice of the proposed change.

As discussed in EPA's response to comments on § 22.27(c), above, EPA agrees with Dow's comment that the requirement that an administrative appeal is a predicate for subsequent judicial review should appear in § 22.27. Therefore, the language that appeared in the proposed § 22.31(e)(1) has been deleted and moved to § 22.27(c). The proposed § 22.31(e)(2), which would specify that "[a] respondent which elects to resolve a proceeding pursuant to § 22.18 waives its rights to judicial review", is redundant with § 22.18(a)(3) and (b)(2) and can be deleted without substantive change. The proposed § 22.31(f) has been redesignated as § 22.31(e) in today's final rule.

The proposed § 22.31(f) describes the manner in which the head of another Federal agency may bring disputes over a final order directly to the EPA Administrator, and provides that the EAB's decision shall not be effective pending the Administrator's review. Essentially the same provision already appears in the supplemental rule governing Solid Waste Disposal Act cases, § 22.37(g). The proposed rule would move this provision from that supplemental rule into the main body of the CROP, in order that this process should be available in any CROP case brought against a Federal agency.

The USAF opposes moving this provision from the supplemental rule governing Solid Waste Disposal Act cases into the main text of the CROP. USAF argues that instead of a generally applicable provision, such procedures should be confined to the statute-specific supplemental rules. USAF argues that EPA should be required to amend the CROP each time Congressional action expands EPA's authority to enforce against another Federal agency, in order to provide a forum for resolving constitutional and jurisdictional issues.

The proposed change does not expand EPA's jurisdiction to assess civil penalties against a Federal facility, nor does it expand the scope of the CROP as it pertains to Federal facilities. EPA can assess penalties against Federal facilities for violations of the Safe Drinking Water Act (42 U.S.C. 300j–6), the Resource Conservation and Recovery Act ("RCRA") (42 U.S.C. 6961), and the Clean Air Act (42 U.S.C. 7413(d), 7524(c) and 7545(d)(1)) through a CROP proceeding regardless of whether the proposed language is adopted. Should other authorities for assessing penalties against Federal facilities become available in the future, this will be true for those authorities as well. The only effect of the change proposed in § 22.31(f) is to provide a mutually understood process for staying a final order while the head of the respondent Federal Agency confers with the EPA Administrator.

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The proposed § 22.31(f) is a procedural provision, not a jurisdictional provision. It does not, on its own, establish authority to assess administrative penalties. It merely provides the process to follow where Congress has provided such authority to EPA. Although EPA has not made the change USAF seeks, EPA has made a minor change to the proposed § 22.31(f)(1) (promulgated today as § 22.31(e)(1)) that should help reduce the chance that this might be misperceived as a jurisdictional provision, by moving the words "pursuant to § 22.30", to follow the word "issued."

c. Final Rule. EPA has made no substantive change in response to the comments on the proposed § 22.31. As described above, EPA has deleted the proposed § 22.31(e) because equivalent provisions now appear in §§ 22.18 and 22.27(c). Also as noted above, EPA has changed the proposed paragraph (f) to "(e)", and has moved the words "pursuant to § 22.30", to follow the word "issued" in § 22.31(e)(1).

On its own initiative, EPA has made several other editorial changes to § 22.31. First, the third sentence of the proposed § 22.31(a) is inartfully drafted and subject to misinterpretation. The relevance of the terms "liability" and "violation" is not clear in relation to proceedings for permit actions. For example, permit actions may often involve facts which could establish violations of the permit or of environmental regulations, however, permit action proceedings do not adjudicate respondents' liability for such violations. In order to avoid the implication that a final order in permit action proceeding might "resolve Respondent's liability for a civil penalty", or conversely, that a final order in a penalty proceeding might resolve "the status of a permit or authority to operate", this sentence must be revised. In addition, this sentence does not address proceedings commenced with a consent agreement and final order pursuant to § 22.13(b). Accordingly, EPA has revised the third sentence of the proposed § 22.31(a) to state that: "The final order shall resolve only those causes of action alleged in the complaint, or for proceedings commenced pursuant to § 22.13(b), alleged in the consent agreement."

Second, EPA has significantly simplified the second sentence of § 22.31(c), by removing the requirements concerning who shall be the payee on the check and where the check should be sent, and by amending § 22.14(a) to require that these be specified in the complaint. EPA notes that the proposed § 22.31(c) was deficient in that it did not provide a mechanism to accommodate changes in the lock box banks or bank addresses other than by amending the CROP, and that it did not provide for cases under Section 311(b)(6) of the Clean Water Act, where penalties must be paid to the "Oil Spill Liability Trust Fund." Moreover, the focus on the "check" left it unclear whether interbank funds transfers were permitted. Requiring that the complaint address these issues allows EPA to replace the second and third sentences of § 22.31(c) with a much simpler statement:

> "Payment shall be made by sending a cashier's check or certified check to the payee specified in the complaint, unless otherwise instructed by the complainant. The check shall note the case title and docket number. Respondent shall serve copies of the check or other instrument of payment on the Regional Hearing Clerk and on complainant."

Third, EPA has replaced the phrase "permit revocation, termination or suspension" in § 22.31(d) with "Permit Action", as discussed in connection with revisions to § 22.3(a) and § 22.14(a)(4)(iii).

Fourth, EPA has clarified an imprecise sentence in the proposed § 22.31(f)(1) (now § 22.31(e)(1). The last sentence of the proposed § 22.31(f)(1) stated that "In that event, a decision by the Administrator shall become the final order." EPA has replaced "In that event" with the more explicit statement, "If a timely request is made".

Finally, to conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.31 to state all time periods with numerals only.

23. Motion to Reconsider a Final Order (40 CFR 22.32)

a. Summary of Proposed Rule. Section 22.32 of the 1980 CROP provides that parties may move for reconsideration of a final order within 10 days of service of the final order, and describes the procedure. The proposed rule made only trivial editorial changes.

b. Significant Comments and EPA Response. Dow objects that 10 days is insufficient time to perform the extensive reviews and legal research on specific issues raised by the final order. Dow concedes that 10 days is sufficient to file a motion for reconsideration, provided that additional time is allowed for the filing of briefs in support of the motion.

The purpose of § 22.32 is to provide a mechanism to bring to the EAB's attention a manifest error, such as a simple oversight, or a mistake of law or fact, or a change in the applicable law. *See In the Matter of Cypress Aviation, Inc.*, 4 E.A.D. 390, 392 (EAB 1992). The motion for reconsideration is not intended as a forum for rearguing positions already considered or raising new arguments that could have been made before. This narrow scope of § 22.32 is reflected in the fact that the CROP does not require a respondent to seek reconsideration in order to exhaust its administrative remedies as a prerequisite for judicial review. Accordingly, EPA has not expanded the time allotted to file a motion for reconsideration or to file briefs in support of a motion for reconsideration.

c. Final Rule. EPA is adopting § 22.32 as proposed, with two modifications. As noted in the discussion of public comments on § 22.18(b)&(c), EPA has eliminated the term "consent order," and is using the term "final order" instead. In the interests of exhaustion of remedies and finality, motions for reconsideration are not appropriate where the final order results from settlement or quick resolution, nor where the parties have declined to appeal an initial decision and it has become final by operation of § 22.27(c). Accordingly, EPA has amended § 22.32 to clarify that it is limited to motions for reconsideration of a final order issued pursuant to § 22.30. In addition, to conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.32 to state the time period allowed for motions for reconsideration with the numeral "10".

24. Supplemental Rules Governing the Administrative Assessment of Civil Penalties Under the Clean Air Act (40 CFR 22.34)

a. Summary of Proposed Rule. Section 22.34 presents supplemental rules applicable to Clean Air Act penalty cases. Paragraph (b) reiterates the requirement of 42 U.S.C. 7413(d)(2)(A) that before issuing an order assessing a civil penalty (i.e., a final order), EPA shall give written notice to the person against whom penalty is to be assessed the order is to be issued, and give that person the opportunity to request a hearing. It clarifies the relationship between this statutory requirement and the CROP by stating that the such notice shall be provided by issuance of a complaint. EPA proposed only minor editorial changes to § 22.34(b).

EPA proposed a new paragraph (c), which would apply to default orders for failure to answer a field citation. Section 59.5(d) of the proposed rule governing CAA field citations (59 FR 22776, May 3, 1994) would provide that when a respondent fails to file a timely answer to a field citation (and fails to offer to pay the penalty under the quick

resolution procedure at § 22.18(a)(2)), the Presiding Officer shall issue a default order assessing the penalty proposed in the complaint.

b. Significant Comments and EPA Response. Dow commented that respondents should be able to waive the written notice required pursuant to § 22.34(b), because this is a procedural protection provided merely for respondents' benefit. EPA agrees that the second sentence of § 22.34(b) appears to require issuance of a complaint in every case. In order to allow the parties to take full advantage of the efficiencies of § 22.13(b) where prefiling negotiations produce a settlement, EPA has amended this provision to specify that a complaint is sufficient to satisfy this notice requirement, but without requiring that a complaint necessarily must be served. The second sentence of § 22.34(b) now reads: "Service of a complaint or a consent agreement and final order pursuant to § 22.13 satisfies this notice requirement."

c. Final Rule. EPA is adopting § 22.34(a) as proposed, and has adopted the proposed § 22.34(b) with the exception of modifying the second sentence to read "Service of a complaint or a consent agreement and final order pursuant to § 22.13 satisfies this notice requirement." EPA has deleted the proposed § 22.34(c), pending adoption of a final rule governing CAA field citations. Any changes necessary to accommodate field citations will be made when the proposed Field Citation rule is finalized.

25. Scope of Subpart I (40 CFR 22.50)

a. Summary of Proposed Rule. Section 22.50 defines the scope of subpart I and its relationship to other provisions of Part 22. The proposed paragraph (a) would restrict the scope of subpart I to adjudicatory proceedings that are initiated by a complaint stating that subpart I shall apply. The proposed paragraph (a) would clarify that subpart I does not apply to any proceeding where the statute requires a hearing subject to section 554 of the Administrative Procedure Act (APA).

Paragraph (b) lists the provisions of subparts A through G which do not apply to subpart I proceedings. Almost all provisions of subparts A through G apply to a subpart I proceeding. Paragraph (b) also addresses the potential for conflicting provisions in the preceding sections of the CROP, providing that where any provisions of subparts A though G conflict with any provision of subpart I, the latter supersedes the former.

The preamble to the proposed rule stated that EPA does not intend to alter its present practice of providing the full APA process in cases pursuant to section 109(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 U.S.C. 9609(a)) or section 325(b)(1), (c), and (d) of the Emergency Planning and Community Right-To-Know Act ("EPCRA") (42 U.S.C. 11045(b)(1), (c), and (d)), but invited comment as to the types of CERCLA and EPCRA penalty cases for which non-APA procedures would be appropriate, if the Agency decides in the future to assess EPCRA and CERCLA penalties through non-APA proceedings.

b. Significant comments and EPA response. Most commenters (Dow, CEEC, UWAG, UARG) oppose any proposed expansion of the role of RJOs under subpart I. The preamble to the proposed rule stated that EPA did not expect to use non-APA procedures except in the kinds of cases where they have historically been used for the foreseeable future. As discussed in the response to comments on § 22.4(b), EPA has revised § 22.50(a) to expressly limit the applicability of subpart I to cases under CWA sections 309(g)(2)(A) and 311(b)(6)(B)(i) (33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(B)(i)), and SDWA sections 1414(g)(3)(B) and 1423(c)(42 U.S.C. 300g–3(g)(3)(B) and 300h–2(c)). This change makes clear that the scope of the RJOs' activities will remain much the same as it has been in recent years.

All who commented on the proposed subpart I (CMA/API, Dow, CEEC, UWAG, UARG) expressed concern that it would not protect constitutional due process rights. In particular, CEEC considers such a proposal a "major concern" and submits that subpart I procedures do not meet the due process standard set forth in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976). Dow, UWAG and UARG believe that there is too great a chance that RJOs would have a pro-Agency bias, and suggest that EPA should eliminate subpart I and apply APA procedures universally. Dow suggests in the alternative that either party should be allowed to opt out of subpart I and have APA procedures applied upon request.

EPA has addressed this due process question in the discussion of public comments on § 22.4(b). Also as noted above in the discussion of § 22.4(b), the Agency has implemented adequate measures to ensure the impartiality of the Regional Judicial Officers. If a litigant has reason to believe that a Regional Judicial Officer is biased, then a motion for disqualification pursuant to § 22.4(d) may be submitted.

As to Dow's suggestion of providing parties the option of having APA procedures apply upon request, Congress has provided for this option only in section 1414(g)(3)(B) of the Safe Drinking Water Act. If APA procedures were provided upon respondent's request in all proceedings brought under subpart I, the regulated community, rather than EPA, would be determining the course of the Agency's enforcement program, and imbalances of Agency resources might result. Nevertheless, the Agency acknowledges that, on occasion, a complainant may not recognize until after a case has been commenced that the subpart I procedures would not be adequate, for example, where intervention, amici, subpoena, or additional discovery appear crucial to the case, or where the issues are such that the proceeding would greatly benefit from the unquestioned independence of an ALJ. In those instances, a complainant may move to withdraw the complaint without prejudice in order that the proceeding be recommenced as an APA proceeding, or either party might move that subpart I should not be applied to the proceeding.

As to paragraph (b), Dow and CEEC suggest deleting the reference to § 22.11 and allowing intervention and amici curiae. This would be inconsistent with the purpose of subpart I, that is to have simpler and more efficient proceedings. To add to subpart I more of the provisions of subparts A through G would frustrate this purpose. If a party believes that intervention or amici curiae would be of crucial importance to a particular case, then as discussed above, it may file a motion requesting withdrawal or dismissal without prejudice to allow refiling under the APA procedures.

c. Final Rule. EPA has revised § 22.50(a) to limit the applicability of subpart I to cases under CWA sections 309(g)(2)(A) and 311(b)(6)(B)(i) (33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(B)(i)), and SDWA sections 1414(g)(3)(B) and 1423(c) (42 U.S.C. 300g–3(g)(3)(B) and 300h–2(c)). EPA adopts § 22.50(b) as proposed, with one correction. The February 25, 1998, FR notice included a typographical error in § 22.50(b). The section number that appeared as "22011" has been corrected to read "22.1."

26. Presiding Officer (40 CFR 22.51)

a. Summary of Proposed Rule. The proposed § 22.51 presents the key modification to the CROP facilitating use of the CROP in administrative adjudications not subject to section 554 of the APA, that the Presiding Officer

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need not be an Administrative Law Judge ("ALJ"). Instead, the Presiding Officer in a "non-APA", subpart I proceeding would be a Regional Judicial Officer ("RJO"). Unlike an APA proceeding, where an RJO presides until an answer is filed and the RJO is replaced by an ALJ, in a subpart I proceeding the RJO serves as Presiding Officer until the initial decision has become final or has been appealed.

b. Significant Comments and EPA Responses. Several commenters objected to EPA attorneys, rather than ALJs, serving as Presiding Officers in subpart I proceedings. Their objections have been fully addressed in the discussion of public comments on the proposed § 22.4, and are not repeated here.

c. Final Rule. EPA has adopted § 22.51 as proposed, but with a minor addition. EPA has observed that while § 22.51 provides that the Presiding Officer "shall rule on all motions until an initial decision has become final or has been appealed", it does not explicitly state that the Presiding Officer will conduct the hearing. As is clear from the preamble to the proposed rule, and from the responses of the commenters, conduct of the hearing is the key element in the Presiding Officer's role in such cases, as it is for ALJ Presiding Officers in APA cases. In order to avoid any future confusion, the final rule includes an explicit statement that: "The Presiding Officer shall conduct the hearing, and rule on all motions * * *"

27. Information Exchange and Discovery (40 CFR 22.52)

a. Summary of Proposed Rule. The proposed § 22.52 would define the parameters of an information exchange in non-APA proceedings. Parties would be subject to the prehearing exchange authorized in § 22.19(a), but most additional discovery would be prohibited under Subpart I. The proposed § 22.52 would require the respondent to provide in its prehearing exchange information concerning any economic benefit it may have enjoyed as a result of the alleged non-compliance or a failure to act.

Although proposed § 22.52 would prohibit most additional discovery that would otherwise be allowed under § 22.19(e), the complainant would be entitled to discovery of information concerning respondent's economic benefit of non-compliance and of financial records probative of respondent's ability to pay a penalty.

b. Significant Comments and EPA Response. CMA/API and CEEC believe that it is unfair to prohibit discovery by private parties but authorize discovery by EPA for penalty information. CMA/API and Dow oppose requiring respondents to provide information on economic benefit in the prehearing exchange because this requirement imposes a burden only upon the respondent. CMA/API argues that the prehearing exchange burdens for each party should be made equivalent, particularly given EPA's far greater information collection powers.

Dow asserts that § 22.52 is unnecessary because § 22.19(d) already provides ways to avoid excessive discovery. Dow argues that § 22.19(d) provides ample authority for the Presiding Officer to protect against excessive or abusive discovery practices. Dow expresses concern that the comparatively less formal procedures of subpart I might be used in very complex cases involving a multitude of separate alleged violations. In such cases, it is likely that additional discovery would be needed and appropriate. Dow urges that EPA abandon the subpart I modifications and apply the standard CROP procedures universally, as this would allow Presiding Officers to tailor the scope of discovery to the needs of each individual case.

While EPA acknowledges that the prehearing exchange requirements and discovery limits of the proposed § 22.52 are asymmetric, EPA disagrees with the contention that they are unfair. The comments suggest that the commenters perceive "fairness" to require that the parties be exact equals subject to the exact same rules. However, the parties are never equals in a CROP proceeding: The complainant alone carries the burden of persuasion, and carries most of the burden of presentation. Yet the statutes generally require penalty assessment to be based in large part on information held by the respondent, not the complainant. The proposed discovery regime redresses this imbalance in knowledge and burden by requiring a respondent to provide such information to the party required to put it forward to the neutral. There is nothing "unfair" about this arrangement. Indeed, it is a logistical necessity.

Being subject to such discovery does not invest in the respondent a reciprocal right to make discovery of the complainant on "fairness" grounds. EPA is not obligated to provide additional discovery in order to satisfy the requirements of the due process clause. *Matthews* v. *Eldridge*, 424 U.S. 319, 344–45 (1976); also see *Chemical Waste Management, Inc.* v. *U.S.E.P.A.*, 873 F.2d 1477 (D.C. Cir. 1989).

Non-APA proceedings are typically for enforcement cases that do not raise significant factual or legal issues. See, e.g., Sen. Rep. 99–50 (99th Cong., 1st. Sess.), reprinted in "A Legislative History of the Water Quality Act of 1987, Congressional Research Service of the Library of Congress (November 1988) at 1448, which states:

> "To serve its intended function, this administrative enforcement tool should be tailored to the less complex cases for which it is intended. Administrative enforcement should be as flexible and unencumbered by procedural complexities as possible, consistent with due process considerations while providing for effective input by citizens who may be affected by the violations. Administrative cases should be resolved promptly * * *. Because administrative penalty assessments will be used in smaller cases and often will be based on discharge monitoring reports routinely submitted by permittees, formal administrative procedures strictly in accordance with the formal adjudicatory procedures of the Administrative Procedures [sic] Act are not required. EPA therefore has the flexibility to streamline its decisionmaking process and procedural rules through promulgation of procedural regulations that provide appropriate due process protection."

Requiring that subpart I provide discovery equal to § 22.19(e) would undermine the objective of subpart I: non-APA proceedings that are more efficient than APA proceedings. See, Superfund Reauthorization: Judicial and Legal Issues, Oversight Hearings before the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee, 99 Cong. 1st Sess. 64 (1985)(statement of F. Henry Habicht II, Assistant Attorney General, Land and Resources Division)(EPA objected to requiring APA procedures for imposition of administrative penalties under CERCLA, stating that such procedures were too lengthy and laborious). Section 22.52 accounts for most of the streamlining in these non-APA procedures relative to the APA procedures. If the same procedures apply to subpart I proceedings as apply to APA proceedings, the only differences remaining are the qualifications and independence of the adjudicator and the absence of the right to interlocutory appeal. Congress intended that the non-APA process provide faster, simpler, less costly and more efficient administrative proceedings, not just an additional corps of adjudicators.

The types of cases that are to be brought under the non-APA provisions are typically factually simple. Expanding discovery in subpart I would raise costs to the litigants and invite delaying motions and fishing expeditions. The inquiry should be centered on the conduct of the respondent and any penalty assessment factors. Allowing additional discovery of EPA beyond the prehearing exchange would not serve those goals, but would raise the complexity and cost of proceedings that Congress intended to be as unencumbered as possible.

c. Final Rule. EPA adopts § 22.52 as proposed. EPA notes that this section does not affect the authority of the Presiding Order to require the attendance of witnesses by subpoena, if authorized by the Act, in accordance with § 22.4(c).

28. Interlocutory Orders or Rulings (40 CFR 22.53)

a. Summary of Proposed Rule. The proposed § 22.53 stated that, for proceedings subject to subpart I, "[i]nterlocutory review as set forth in § 22.29 is prohibited."

b. Significant Comments and EPA Response. Dow argues that the prohibition on interlocutory appeals in subpart I proceedings is unnecessary, because § 22.29 already imposes substantial limits on interlocutory appeals. Dow believes that interlocutory appeal is warranted in any case where the criteria of § 22.29(b) are met (i.e., "(1) The order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion; and (2) either an immediate appeal from the order or ruling will materially advance the ultimate termination of the proceeding, or review after the final order is issued will be inadequate or ineffective.")

EPA intends to use subpart I primarily for cases where EPA has substantial prior enforcement experience, which do not appear to present significant new issues of law, and where the sanctions sought are relatively modest. In these circumstances, meritless appeals are likely to greatly exceed meritorious appeals. Because the likely advantages of interlocutory appeal are outweighed by the anticipated delays that would result from meritless appeals, the final rule retains the prohibition on interlocutory appeal in subpart I cases.

c. Final Rule. In today's final rule, EPA adopts the proposed prohibition on interlocutory appeals in subpart I cases. However, EPA has concluded that the proposed § 22.53 is redundant, because § 22.50(b) states that § 22.29, which provides for interlocutory appeals, does not apply to subpart I proceedings. Although the proposed § 22.53 highlighted this provision for purposes of soliciting public comment, EPA has concluded that this redundancy is inappropriate in the final rule. Accordingly, EPA has deleted the proposed § 22.53. The prohibition against interlocutory appeals in subpart I cases is accomplished through § 22.50(b)'s exclusion of § 22.29.

29. Clean Air Act Field Citations

a. Summary of Proposed Rule. EPA proposed that revisions to the CROP would supersede and replace the rules governing non-APA hearings on field citations under section 113(d)(3) of the Clean Air Act ("CAA"). The Field Citation rules were proposed (59 FR 22776, May 3, 1994) but not yet final at the time EPA proposed the CROP revisions, and EPA expected that the Field Citation rules would be published as a final rule before the CROP revisions. The preamble to the proposed CROP stated that EPA intended to use the procedures that would appear as subpart B of the Field Citation rules until the CROP revisions were made final.

b. Significant Comments and EPA Response. CMA/API, Dow and CEEC opposed the interim use of the procedures in subpart B of the Field Citation rules pending publication of the final CROP. These commenters urged EPA to postpone publication of the Field Citation rules until after publication of the final CROP procedures

EPA agrees that commencing a field citation program using one set of procedures for a short time before switching to the CROP procedures could result in unnecessary burdens and confusion. EPA has postponed issuing a final rule governing hearing procedures for CAA field citations.

c. Final Rule. Today's final rule does not contain the provisions in the proposed rule relating to the removal from the CFR of procedures for CAA field citations. A decision on appropriate hearing procedures for field citations, inclusion in subpart I of the CROP, will be made when the Field Citation rules are finalized.

30. Other Comments Not Related to a Particular Section of the Proposed Rule

a. Significant Comments and EPA Response. CEEC suggests that the CROP should provide respondents an opportunity to review enforcement related press releases and raise objections to the Presiding Officer. CEEC notes that unfair and misleading press releases reduce incentives to reach settlement. EPA makes every effort to assure that press releases are accurate, based on the information available to the Agency at the time. A complainant may, at its discretion, allow a respondent to review a press release before issuance, but EPA does not negotiate the terms of enforcement related press releases. To include in the CROP a provision providing respondents the right to review EPA's press releases and raise objections to the Presiding Officer would create the appearance that the government's ability to communicate with the public is subject to a private party's control. EPA therefore rejects this suggestion.

b. Final Rule. EPA has made no changes to the proposed rule in response to CEEC's suggestion that the CROP should provide respondents an opportunity to review enforcement related press releases and raise objections to the Presiding Officer.

III. Miscellaneous Revisions

Through the process of analyzing the public comments, and pursuant to EPA's own internal review of the proposed rule, EPA has identified a number of typographical and drafting errors. In addition, EPA has identified parts of the proposed rule that could be stated more clearly, as mandated by Executive Order 12866 (September 30, 1993) and the President's memorandum of June 1, 1998, which require each agency to write all rules in plain language. In this final rule EPA adopts a number of changes on its own initiative, and not in response to any particular public comment. Where such revisions pertain to a section of the proposed rule that received significant public comment, the changes have already been discussed above. This section identifies the remaining revisions, which pertain to sections of the proposed rule that received no significant public comment. Public notice of proposed rule making is not required "when the agency for good cause finds * * * that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B). EPA has determined that the following revisions do not significantly affect respondents' substantive or procedural rights. Accordingly, EPA has determined that providing an additional round of public notice before making these minor changes to this procedural rule would be unnecessary and contrary to the public interest.

A. Section Numbering

EPA has converted those section numbers that had contained a preceding zero (§§ 22.01, 22.02, etc.) to conform the CROP to the standard numbering of the Code of Federal Regulations set out in the regulations of the Administrative

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Committee of the Federal Register at CFR 21.11 (§§ 22.1, 22.2, etc.) in this final rule. For simplicity, this preamble uses the new numbering system throughout, even when referring to sections of the proposed rule or the 1980 CROP.

B. Definitions (40 CFR 22.3)

EPA has deleted from the definition of "Administrative Law Judge" the superfluous Public Law citation.

EPA has revised the definition of "Clerk of the Board" to clarify that it means the Clerk of the Environmental Appeals Board.

In the definition of "Complainant", EPA has replaced the ambiguous word "decision" with "adjudication".

Under the proposed § 22.3, "Hearing means a hearing on the record open to the public and conducted under these Consolidated Rules of Practice." It is not clear from this definition whether the hearing is the proceeding as a whole, or just the oral evidentiary hearing. "Hearing" is used throughout the CROP, most often in reference to the oral evidentiary hearing (e.g., prehearing exchange, motion to reopen a hearing), and sometimes in the more general sense (e.g., in the definition of "party" and "Hearing Clerk"). Moreover, the definition of hearing does not acknowledge the fact that protection of confidential business information may require that all or part of a hearing be closed to the public. EPA has clarified the definition of "hearing" as follows:

> *Hearing* means an evidentiary hearing on the record, open to the public (to the extent consistent with § 22.22(a)(2)), conducted as part of a proceeding under these Consolidated Rules of Practice.

Although the terms "proceeding" and "action" are used throughout the CROP, they have not previously been defined. In the final rule, EPA avoids the term "action" in reference to a particular proceeding, and has added to the CROP the following definition:

> *Proceeding* means the entirety of a single administrative adjudication, from the filing of the complaint through the issuance of a final order, including any action on a motion to reconsider under § 22.32.

For consistency with these new definitions of "hearing" and "proceeding", EPA has substituted "proceeding" for "hearing" in the definition of "party."

EPA has simplified the definition of "Initial Decision" by deleting the superfluous phrase "based on the record of the proceedings out of which it arises."

EPA has converted the definition of "permit" into a definition of a new term "Permit Action." By its nature, the CROP provides a set of common procedures applicable to various administrative proceedings under a large number of regulatory statutes, each of which have their own specific terminology. In order to avoid conflict between terms used differently in different regulatory programs, EPA has adopted the new term "Permit Action" as a generic term applicable solely within the CROP. This change allows EPA to replace the unwieldy "permit revocation, termination or suspension" language elsewhere in the CROP with "Permit Action," improving the clarity of the CROP and facilitating any future efforts to bring other permit actions within the scope of the CROP.

EPA has deleted from this definition the references to permits issued under section 402(a) of the Clean Water Act (33 U.S.C. 1342(a)) and permits issued under sections 3005(d) and 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6925(d) and 6928(h)). EPA anticipates that these references will be restored when the Round Two permit streamlining rule (61 FR 65,268) is finalized, involving revocation of 40 CFR part 124, subpart E. In addition, EPA has added a parallel citation to the U.S. Code.

EPA has made two revisions to the definition of "Regional Hearing Clerk." First, EPA has added a clause to the first sentence, specifying that the Regional Hearing Clerk "shall be neutral in every proceeding." Second, EPA has revised the second sentence, which in the proposed rule states that "Correspondence may be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency (address of Regional Office—see Appendix A)." EPA has created a new § 22.14(a)(7) which requires that the complaint contain the address of the Regional Hearing Clerk, which should provide more effective and more specific notice than the reference to Appendix A contained in the definition of Regional Hearing Clerk. EPA has therefore revised this sentence as follows: "Correspondence with the Regional Hearing Clerk shall be addressed to the Regional Hearing Clerk at the address specified in the complaint."

EPA has revised the definition of "Respondent" for clarity, replacing "any person proceeded against in the complaint" with "any person against whom the complaint states a claim for relief."

C. Filing and Service of Rulings, Orders and Decisions (40 CFR 22.6)

The proposed revisions to § 22.6 were intended to delete certain references as surplusage and to allow documents issued by adjudicators to be served by any reliable commercial delivery service. The proposed deletions, however, are inconsistent with the current practice that copies of all rulings, orders and decisions (except initial decisions) issued by an Administrative Law Judge are served on all parties by the Administrative Law Judge's legal staff assistant. Copies of all initial decisions are served on the parties by the Regional Hearing Clerk. Section 22.6 is amended to be consistent with this practice.

As noted in the response to comments on § 22.5(b)(2), the U.S. Postal Service considers overnight express and priority mail to be forms of first class mail. In addition, the proposed rule makes no mention of EPA's internal mail system. EPA's internal mail delivery system has proven to be generally effective, and it is in fact ultimately responsible for delivering first class mail (including certified mail) to individual EPA personnel. To address these points, EPA has revised § 22.6 to allow service "by first class mail (including certified mail, return receipt requested, Overnight Express and Priority Mail), by EPA's internal mail, or by any reliable commercial delivery service."

EPA has also replaced the expression "Clerk of the Environmental Appeals Board" with "Clerk of the Board," using the term defined at § 22.3(a) for consistency.

D. Examination of Documents Filed (40 CFR 22.9)

EPA has replaced the term "Environmental Appeals Board" with "Clerk of the Board," to specify the official document custodian.

E. Consolidation and Severance (40 CFR 22.12)

EPA has added "or the Environmental Appeals Board" to § 22.12(a) and (b), in order to clarify that the EAB has authority to consolidate or sever cases. This authority applies to cases pending before the EAB and to cases before a Presiding Officer through interlocutory appeal of a denial of a motion to consolidate or sever. In order to keep subpart I proceedings expeditious, EPA has also added a new requirement that subpart I proceedings may be consolidated only where all parties agree. This should eliminate the risk of litigation delays over whether one proceeding might be consolidated with another.

F. Motions (40 CFR 22.16)

EPA is adopting § 22.16 as proposed, except that a reference to § 22.51 has been added to § 22.16(c) in order to avoid any apparent conflict between § 22.16(c) and § 22.51, and the implication that an ALJ must rule on motions in proceedings under subpart I. EPA has also rearranged the sentences of § 22.16(a) to improve clarity. To conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.16(b) to state the time allowed for responses and replies with the numerals "15" and "10", respectively.

G. Record of the Prehearing Conference (40 CFR 22.19(c))

The scope of the requirement that the Presiding Officer prepare and file "for the record a written summary of the action taken" at a prehearing conference is not clear. Just as a transcript of a prehearing conference may discourage frank and open discussion, the implication that the Presiding Officer may produce a formal summary of the conference may also reduce the effectiveness of such conferences. Moreover, the CROP is not clear whether the Presiding Officer's summary is supposed to constitute a finding of law or fact, nor is it clear whether the parties have the right to object and change the summary. EPA has revised the last two sentences in order to clarify that the Presiding Officer is only responsible for ensuring that the record of the proceeding includes any stipulations and agreements reached, and rulings and orders issued, during the conference.

H. Accelerated Decision; Decision to Dismiss (40 CFR 22.20)

Section 22.20(b)(2) provides for accelerated decisions and decisions to dismiss some but not all issues or claims in a proceeding. The last sentence requires that the Presiding Officer "shall issue an interlocutory order specifying the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed." This sentence is somewhat ambiguous, in that it might be construed as requiring an interlocutory order separate from, and in addition to, any partial accelerated decision or decision to dismiss certain counts. Such an interpretation would be unwarranted, would unnecessarily complicate the CROP, and would be contrary to the customary practice of the Agency's ALJs. Rule 56(d) of the Federal Rules of Civil Procedure, from which this language is derived, does not require a separate interlocutory order specifying the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed. To clarify that a single decision or order can accomplish all the requirements of § 22.20(b)(2), EPA has amended the last sentence of that paragraph to state that: "The partial accelerated decision or the order dismissing certain counts shall specify the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed."

I. Assignment of Presiding Officer; Scheduling a Hearing (40 CFR 22.21)

EPA has amended § 22.21(a) to clarify that the Regional Hearing Clerk forwards copies, not originals, of the complaint, answer, and other documents in the record to the Chief Administrative Law Judge upon receipt of the answer.

According to § 22.20(a), an accelerated decision is appropriate "if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law." Where this standard is not met, a hearing is appropriate. EPA has revised § 22.21(b) to use the same criterion as § 22.20(a): The first sentence of § 22.21(b) now states that, "The Presiding Officer shall hold a hearing if the proceeding presents genuine issues of material fact." In addition to making § 22.20 and § 22.21 more clearly complementary, this change clarifies that the mere request for a hearing does not require that a hearing be held. Neither § 22.21(b) nor § 22.15(c) of the 1980 CROP required an oral evidentiary hearing merely upon respondent's request for a hearing. See, e.g., In re Green Thumb Nursery, Inc., 6 E.A.D. 782 (EAB 1997) (holding that there is no right to an oral evidentiary hearing).

EPA has also expanded the notice period before a hearing from 20 to 30 days. This will allow the parties, their attorneys, and witnesses additional time to make travel arrangements and to prepare for the hearing.

As noted in the discussion of § 22.19(e), EPA has added to § 22.21(b) an explicit statement of the Presiding Officer's authority (where provided by the Act) to require the attendance of witnesses or the production of documentary evidence by subpoena. This statement includes criteria for issuing subpoenas that appeared in the 1980 CROP (see, e.g., § 22.37(f)(1).

J. Offers of Proof (40 CFR 22.23(b))

The proposed § 22.23(b) provides for offers of proof regarding "evidence * * * excluded from the record." Although the Presiding Officer may decline to admit certain documents, exhibits or testimony into evidence, and may refuse to consider them in his or her decision, it is incorrect to describe the status of such documents as "excluded from the record." This information is indisputably part of "the record" of the proceeding for purposes of appellate review. Accordingly, EPA has revised this paragraph to state that "Whenever the Presiding Officer denies a motion for admission into evidence, the party offering the information may make an offer of proof * * *." For purposes of clarity, EPA has revised this paragraph (b) using the word "information" in place of "evidence" where the subject is information which has not been admitted into evidence.

K. Proposed Findings, Conclusions, and Order (40 CFR 22.26)

Section 22.26 provides that the Presiding Officer must allow 20 days after receipt of notice of the availability of the transcript before requiring the parties to file proposed findings of fact, conclusions of law, and a proposed order. In the response to public comments on § 22.25 above, EPA announced that it would amend that section to allow motions to conform the transcript to the actual testimony to be filed "within 30 days after receipt of the transcript, or 45 days after the parties are notified of the availability of the transcript, whichever is less." EPA has amended § 22.26 in order to assure that parties need not file proposed findings of fact, conclusions of law, and the proposed order before the last date for filing motions to conform the transcript to the actual testimony pursuant to § 22.26. For additional clarity, EPA has reorganized this section and has also substituted the word "filed" for the undefined term "submitted."

After the hearing, any party may file proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. The Presiding Officer shall set a schedule for filing these documents and any reply briefs, but shall not require them before the last date for filing motions under § 22.25 to conform the transcript to the actual testimony. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

L. Motion to Reopen a Hearing (40 CFR 22.28)

The CROP does not specify when a motion is "made", so in the interest of clarity, EPA has substituted the word "filed" for "made" in the first sentence of § 22.28(a). To conform to the

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preferred style of the U.S. Government Printing Office, EPA has revised § 22.28(a) and (b) to state the time periods associated with a motion to reopen a hearing with numerals only.

M. Interlocutory Appeals (40 CFR 22.29)

EPA has corrected a typographical error in the last sentence of the proposed § 22.29(a) "forward the order or ruling to the Environmental Appeals Board * * *." EPA has corrected a typographical error in the proposed § 22.29(b) by replacing the semicolon that follows "proceeding" with a comma. EPA has also changed the title of paragraph (c) from "Decision" to "Interlocutory review." The CROP does not specify when a motion is "made", so in the interest of clarity, EPA has substituted the word "filed" for "made" in the last sentence of § 22.29(c). To conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.29 to state all time periods with numerals only.

N. Supplemental Rules Governing the Administrative Assessment of Civil Penalties Under the Federal Insecticide, Fungicide, and Rodenticide Act (40 CFR 22.35)

As discussed below, EPA has deleted Appendix A. In § 22.35(b), EPA has replaced the reference to Appendix A with a reference to 40 CFR 1.7, which contains the same EPA offices.

O. Supplemental Rules of Practice Governing the Administrative Assessment of Civil Penalties Under the Clean Water Act (40 CFR 22.38)

EPA has revised § 22.38(b) to provide notice to State agencies in proceedings commenced without a complaint, pursuant to § 22.13(b). For ease of administration, EPA has made the timing of such notice consistent with the public notice requirements of § 22.45(b)(1). Where § 22.38(c) refers to section 509(b)(1) of the CWA, EPA has added a parallel citation to 33 U.S.C. 1369(b)(1). As discussed above, EPA deleted from the proposed § 22.31(c) the requirement specifying to whom payment of penalties must be made, in favor of the more flexible requirement that complainant direct respondent as to how payment should be made. In view of this change to § 22.31(c), the proposed § 22.38(d) is unnecessary and has been deleted.

P. Supplemental Rules Governing the Administrative Assessment of Civil Penalties Under CERCLA Section 109 (40 CFR 22.39)

The proposed § 22.39(b) says petitions for judicial review must be filed "within 30 days of the date the order making the assessment was issued." As the CROP does not specify when an order is "issued," EPA has amended this provision to state that petitions for judicial review must be filed within 30 days after the order has been served on the parties. Where § 22.39(b) refers to CERCLA section 109, EPA has specified the relevant paragraphs and has added parallel citations to the U.S. Code.

EPA has deleted from § 22.39 a superfluous quotation mark that appeared in the proposed rule.

Q. Supplemental Rules Governing The Administrative Assessment of Civil Penalties for Violations of Compliance Orders Issued to Owners or Operators of Public Water Systems Under Part B of the Safe Drinking Water Act (40 CFR 22.42)

EPA has revised the title of this section to explicitly state that it applies to cases against owners or operators of public water systems.

Where § 22.42(a) refers to section 1414(g)(3)(B) of the SDWA, EPA has added a parallel citation to 42 U.S.C. § 300g–3(g)(3)(B).

EPA has also revised § 22.42(b) to provide more certain notice to respondents in subpart I proceedings of their right to choose that hearings be conducted in accordance with section 554 of the APA. Paragraph (b) now requires that the complaint must include notice of such right to choose, and notice that the right is waived if respondent does not indicate such choice in its answer. EPA has also revised the final sentence to require that the hearing clerk notify the parties of any changes if the pleadings have been recaptioned.

R. Supplemental Rules Governing the Administrative Assessment of Civil Penalties Against a Federal Agency Under the Safe Drinking Water Act (40 CFR 22.43)

Where § 22.43(a) refers to section 1447(b) of the SDWA, EPA has added a parallel citation to 42 U.S.C. § 300j–6(b). To conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.43(b) and (c)(6) to state time periods with the numeral "30".

In paragraph (c)(6), EPA has added a missing comma after the word "may", and has clarified the reference to 40 CFR part 135. The proposed rule required that the public notice include reference to the requirements of 40 CFR 135. EPA has expanded this clause to state that the public notice shall instruct prospective appellants to provide copies of any appeal to the persons described in 40 CFR 135.11(a).

S. Supplemental Rules Governing the Termination of Permits Under Section 402(a) of the Clean Water Act or Under Section 3005(d) of the Resource Conservation and Recovery Act (40 CFR 22.44)

In the December 11, 1996, "Round Two" permit streamlining proposed rule, EPA proposed to remove the procedures existing in 40 CFR part 124, subpart E, for proceedings to revoke or suspend a permit issued under section 402(a) of the Clean Water Act (33 U.S.C. 1342(a)) or to revoke or suspend a permit under sections 3005(d) and 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6925(d) and 6928(h)). See 61 FR 65,268 (December 11, 1996). EPA proposed that such proceedings would be conducted pursuant to the CROP procedures, and proposed CROP revisions to accomplish this. These changes were incorporated into the February 25, 1998, proposed CROP revisions. As EPA has not yet finalized the Round Two permit streamlining rule and 40 CFR part 124, subpart E remains in effect, EPA has removed and reserved § 22.44. EPA anticipates that this section will be restored when the Round Two permit streamlining rule is finalized.

T. Supplemental Rules Governing Public Notice and Comment in Proceedings Under Section 309(g) of the Clean Water Act and Section 300h–2(c) of the Safe Drinking Water Act (40 CFR 22.45)

The proposed § 22.45 contains several minor errors. The paragraph number "(1)" was omitted from § 22.45(b), and the reference to "paragraph (d)(1) of this section" in § 22.45(c)(3) should instead refer to section (c)(1). EPA has corrected these typographical errors in today's final rule. EPA has revised the heading of this section to refer to "section 1423(c)" of the SDWA, rather than "section 300h–2(c)," which is the U.S. Code section number.

In addition to correcting the above-mentioned errors, EPA has expanded the scope of § 22.45 so that these public comment procedures shall apply to class II civil penalty cases under the oil pollution provisions of Section 311(b)(6)(B)(ii) of the Clean Water Act (33 U.S.C. 1321(b)(6)(B)(ii)). Section 311(b)(6)(C)(i) (33 U.S.C. 1321(b)(6)(C)(i)) requires that EPA provide public notice of and reasonable opportunity to comment on the proposed issuance of a class II civil penalty order.

EPA has also revised paragraphs (b)(1), (b)(2)(i), (c)(1) and (c)(3) to better accommodate cases commenced through the filing of a consent agreement and final order pursuant to § 22.13(b).

EPA has revised paragraphs (b)(1) and (c)(1) to clarify when the public comment period begins and ends.

EPA has revised § 22.45(b)(2)(ii) and (v) to clarify that comments must be submitted to the Regional Hearing Clerk.

EPA has replaced the undefined word "action" in paragraphs (b)(2)(ii), (c)(1)(i), (c)(4)(v)(C), (c)(4)(vii) and (c)(4)(viii), with the word "proceeding," which today's rule defines as discussed above.

In § 22.45(b)(2)(iv), EPA has added the word "and" after the semi-colon.

EPA has edited § 22.45(c)(1)(iii) and (iv) to refer to commenters in the singular, for consistency with the other provisions of § 22.45.

EPA has also revised § 22.45(c)(4)(ii) to more clearly and succinctly state that a commenter may petition to set aside a consent agreement and proposed final order only on the basis that material evidence was not considered.

EPA has edited the proposed § 22.45(c)(4)(vii) to correct deficiencies in grammar.

U. Appendices

The information in Appendix A of the proposed CROP ("Appendix" in the 1980 CROP) is redundant with 40 CFR 1.7. For that reason, EPA has deleted Appendix A. This deletion should have no substantive effect. Section 22.5(c)(4) requires that the complaint include complainant's address, and the revised § 22.14(a)(7) requires that the complaint contain the address of the Regional Hearing Clerk, so respondents will have ample notice of the addresses relevant to their cases.

EPA has observed that the names and addresses of the lock box banks change often, and that it would be difficult to keep the proposed Appendix B up to date. EPA has decided to delete the proposed Appendix B, and instead to require under § 22.14(a)(8) that the complaint provide information on how to pay penalties.

IV. Administrative Requirements

A. The Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rule making for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities, *i.e.*, small business, small organizations, and small governmental jurisdictions. The analysis is not required, however, where the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This regulation will impose no significant costs on any small entities, because it creates no new regulatory requirements, but instead simplifies existing procedural rules. The overall economic impact on small entities is therefore believed to be nominal, if any at all. Accordingly, I hereby certify that this final regulation will not have a significant impact on a substantial number of small entities.

B. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

C. Paperwork Reduction Act

This rule contains no information collection activities and, therefore, no information collection request ("ICR") will be submitted to the Office of Management and Budget for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duties on any of these governmental entities or the private sector.

E. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to

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develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input to the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. This rule does not impose any enforceable duties on these entities. Instead, it merely revises the procedural rules governing EPA's administrative enforcement proceedings.

F. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the E.O. 13045 because it is not "economically significant" as defined in E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

G. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 22

Environment protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 30, 1999.

Carol M. Browner,

Administrator.

Therefore, 40 CFR part 22 is revised to read as follows:

PART 22—COSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS

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22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.
22.36 [Reserved]
22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.
22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.
22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
22.40 [Reserved]
22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).
22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.
22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.
22.44 [Reserved]
22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.
22.46–22.49 [Reserved]

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

22.50 Scope of this subpart.
22.51 Presiding Officer.
22.52 Information exchange and discovery.

Authority: 7 U.S.C. 136*l*; 15 U.S.C. 2610(c), 2615(a) and 2647; 33 U.S.C. 1319(g), 1321(b)(6), 1342(a), 1415(a) and (f) and 1418; 42 U.S.C. 300g-3(g)(3)(B), 300h-2(c), 300j-6(a), 6912, 6925, 6928, 6945(c)(2), 6961, 6991b, 6991e, 7413(d), 7524(c), 7545(d), 7547(d), 7601, 7607(a), 9609, 11045, and 14304.

Subpart A—General

§ 22.1 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136*l*(a));

(2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d) and 7547(d));

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit under section 105(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f));

(4)(i) The issuance of a compliance order pursuant to section 3008(a), section 4005(c)(2), section 6001(b), or section 9006(a) of the Solid Waste Disposal Act ("SWDA") (42 U.S.C. 6925(d) & (e), 6928(a), 6945(c)(2), 6961(b), or 6991e(a)); or the assessment of any administrative civil penalty under sections 3008, 4005(c)(2), 6001(b), and 9006 of the SWDA (42 U.S.C. 6928, 6945(c)(2), 6961(b), and 6991e), except as provided in 40 CFR parts 24 and 124.

(ii) The issuance of corrective action orders under section 3008(h) of the SWDA only when such orders are contained within an administrative order which:

(A) Includes claims under section 3008(a) of the SWDA; or

(B) Includes a suspension or revocation of authorization to operate under section 3005(e) of the SWDA; or

(C) Seeks penalties under section 3008(h)(2) of the SWDA for non-compliance with a order issued pursuant to section 3008(h).

(iii) The issuance of corrective action orders under section 9003(h)(4) of the SWDA only when such orders are contained within administrative orders which include claims under section 9006 of the SWDA;

(5) The assessment of any administrative civil penalty under sections 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647);

(6) The assessment of any administrative civil penalty under sections 309(g) and 311(b)(6) of the Clean Water Act (33 U.S.C. 1319(g) and 1321(b)(6));

(7) The assessment of any administrative civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609);

(8) The assessment of any administrative civil penalty under section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA") (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under sections 1414(g)(3)(B), 1423(c), and 1447(b) of the Safe Drinking Water Act as amended (42 U.S.C. 300g–3(g)(3)(B), 300h–2(c), and 300j–6(b)), or the issuance of any order requiring both compliance and the assessment of an administrative civil penalty under section 1423(c);

(10) The assessment of any administrative civil penalty or the issuance of any order requiring compliance under Section 5 of the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14304).

(b) The supplemental rules set forth in subparts H and I of this part establish special procedures for proceedings identified in paragraph (a) of this section where the Act allows or requires procedures different from the procedures in subparts A through G of this part. Where inconsistencies exist between subparts A through G of this part and subpart H or I of this part, subparts H or I of this part shall apply.

(c) Questions arising at any stage of the proceeding which are not addressed in these Consolidated Rules of Practice shall be resolved at the discretion of the Administrator, Environmental Appeals Board, Regional Administrator, or Presiding Officer, as provided for in these Consolidated Rules of Practice.

§ 22.2 Use of number and gender.

As used in these Consolidated Rules of Practice, words in the singular also include the plural and words in the masculine gender also include the feminine, and vice versa, as the case may require.

§ 22.3 Definitions.

(a) The following definitions apply to these Consolidated Rules of Practice:

Act means the particular statute authorizing the proceeding at issue.

Administrative Law Judge means an Administrative Law Judge appointed under 5 U.S.C. 3105.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his delegate.

Agency means the United States Environmental Protection Agency.

Business confidentiality claim means a confidentiality claim as defined in 40 CFR 2.201(h).

Clerk of the Board means the Clerk of the Environmental Appeals Board, Mail Code 1103B, U.S. Environmental Protection Agency, 401 M St. S.W., Washington, DC 20460.

Commenter means any person (other than a party) or representative of such person who timely:

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(1) Submits in writing to the Regional Hearing Clerk that he is providing or intends to provide comments on the proposed assessment of a penalty pursuant to sections 309(g)(4) and 311(b)(6)(C) of the Clean Water Act or section 1423(c) of the Safe Drinking Water Act, whichever applies, and intends to participate in the proceeding; and

(2) Provides the Regional Hearing Clerk with a return address.

Complainant means any person authorized to issue a complaint in accordance with §§ 22.13 and 22.14 on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be a member of the Environmental Appeals Board, the Regional Judicial Officer or any other person who will participate or advise in the adjudication.

Consolidated Rules of Practice means the regulations in this part.

Environmental Appeals Board means the Board within the Agency described in 40 CFR 1.25.

Final order means:

(1) An order issued by the Environmental Appeals Board or the Administrator after an appeal of an initial decision, accelerated decision, decision to dismiss, or default order, disposing of the matter in controversy between the parties;

(2) An initial decision which becomes a final order under § 22.27(c); or

(3) A final order issued in accordance with § 22.18.

Hearing means an evidentiary hearing on the record, open to the public (to the extent consistent with § 22.22(a)(2)), conducted as part of a proceeding under these Consolidated Rules of Practice.

Hearing Clerk means the Hearing Clerk, Mail Code 1900, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Initial decision means the decision issued by the Presiding Officer pursuant to §§ 22.17(c), 22.20(b) or 22.27 resolving all outstanding issues in the proceeding.

Party means any person that participates in a proceeding as complainant, respondent, or intervenor.

Permit Action means the revocation, suspension or termination of all or part of a permit issued under section 102 of the Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1412).

Person includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

Presiding Officer means an individual who presides in an administrative adjudication until an initial decision becomes final or is appealed. The Presiding Officer shall be an Administrative Law Judge, except where §§ 22.4(b), 22.16(c) or 22.51 allow a Regional Judicial Officer to serve as Presiding Officer.

Proceeding means the entirety of a single administrative adjudication, from the filing of the complaint through the issuance of a final order, including any action on a motion to reconsider under § 22.32.

Regional Administrator means, for a case initiated in an EPA Regional Office, the Regional Administrator for that Region or any officer or employee thereof to whom his authority is duly delegated.

Regional Hearing Clerk means an individual duly authorized to serve as hearing clerk for a given region, who shall be neutral in every proceeding. Correspondence with the Regional Hearing Clerk shall be addressed to the Regional Hearing Clerk at the address specified in the complaint. For a case initiated at EPA Headquarters, the term Regional Hearing Clerk means the Hearing Clerk.

Regional Judicial Officer means a person designated by the Regional Administrator under § 22.4(b).

Respondent means any person against whom the complaint states a claim for relief.

(b) Terms defined in the Act and not defined in these Consolidated Rules of Practice are used consistent with the meanings given in the Act.

§ 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.

(a) *Environmental Appeals Board.* (1) The Environmental Appeals Board rules on appeals from the initial decisions, rulings and orders of a Presiding Officer in proceedings under these Consolidated Rules of Practice; acts as Presiding Officer until the respondent files an answer in proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters; and approves settlement of proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters. The Environmental Appeals Board may refer any case or motion to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and references to the Environmental Appeals Board in these Consolidated Rules of Practice shall be interpreted as referring to the Administrator. If a case or motion is referred to the Administrator by the Environmental Appeals Board, the Administrator may consult with any EPA employee concerning the matter, provided such consultation does not violate § 22.8. Motions directed to the Administrator shall not be considered except for motions for disqualification pursuant to paragraph (d) of this section, or motions filed in matters that the Environmental Appeals Board has referred to the Administrator.

(2) In exercising its duties and responsibilities under these Consolidated Rules of Practice, the Environmental Appeals Board may do all acts and take all measures as are necessary for the efficient, fair and impartial adjudication of issues arising in a proceeding, including imposing procedural sanctions against a party who without adequate justification fails or refuses to comply with these Consolidated Rules of Practice or with an order of the Environmental Appeals Board. Such sanctions may include drawing adverse inferences against a party, striking a party's pleadings or other submissions from the record, and denying any or all relief sought by the party in the proceeding.

(b) *Regional Judicial Officer.* Each Regional Administrator shall delegate to one or more Regional Judicial Officers authority to act as Presiding Officer in proceedings under subpart I of this part, and to act as Presiding Officer until the respondent files an answer in proceedings under these Consolidated Rules of Practice to which subpart I of this part does not apply. The Regional Administrator may also delegate to one or more Regional Judicial Officers the authority to approve settlement of proceedings pursuant to § 22.18(b)(3). These delegations will not prevent a Regional Judicial Officer from referring any motion or case to the Regional Administrator. A Regional Judicial Officer shall be an attorney who is a permanent or temporary employee of the Agency or another Federal agency and who may perform other duties within the Agency. A Regional Judicial Officer shall not have performed prosecutorial or investigative functions in connection with any case in which he serves as a Regional Judicial Officer. A Regional Judicial Officer shall not knowingly preside over a case involving any party concerning whom the Regional Judicial Officer performed any functions of prosecution or investigation within the 2 years preceding the commencement of the case. A Regional Judicial Officer shall not prosecute enforcement cases and shall not be supervised by any person who supervises the prosecution of enforcement cases, but may be supervised by the Regional Counsel.

(c) *Presiding Officer.* The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The Presiding Officer may:

(1) Conduct administrative hearings under these Consolidated Rules of Practice;

(2) Rule upon motions, requests, and offers of proof, and issue all necessary orders;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine witnesses and receive documentary or other evidence;

(5) Order a party, or an officer or agent thereof, to produce testimony, documents, or other non-privileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of facts, law, or discretion;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(9) Issue subpoenas authorized by the Act; and

(10) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these Consolidated Rules of Practice.

(d) *Disqualification, withdrawal and reassignment.* (1) The Administrator, the Regional Administrator, the members of the Environmental Appeals Board, the Regional Judicial Officer, or the Administrative Law Judge may not perform functions provided for in these Consolidated Rules of Practice regarding any matter in which they have a financial interest or have any relationship with a party or with the subject matter which would make it inappropriate for them to act. Any party may at any time by motion to the Administrator, Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer or the Administrative Law Judge request that he or she disqualify himself or herself from the proceeding. If such a motion to disqualify the Regional Administrator, Regional Judicial Officer or Administrative Law Judge is denied, a party may appeal that ruling to the Environmental Appeals Board. If a motion to disqualify a member of the Environmental Appeals Board is denied, a party may appeal that ruling to the Administrator. There shall be no interlocutory appeal of the ruling on a motion for disqualification. The Administrator, the Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer, or the Administrative Law Judge may at any time withdraw from any proceeding in which he deems himself disqualified or unable to act for any reason.

(2) If the Administrator, the Regional Administrator, the Regional Judicial Officer, or the Administrative Law Judge is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned as a replacement. The Administrator shall assign a replacement for a Regional Administrator who withdraws or is disqualified. Should the Administrator withdraw or be disqualified, the Regional Administrator from the Region where the case originated shall replace the Administrator. If that Regional Administrator would be disqualified, the Administrator shall assign a Regional Administrator from another Region to replace the Administrator. The Regional Administrator shall assign a new Regional Judicial Officer if the original Regional Judicial Officer withdraws or is disqualified. The Chief Administrative Law Judge shall assign a new Administrative Law Judge if the original Administrative Law Judge withdraws or is disqualified.

(3) The Chief Administrative Law Judge, at any stage in the proceeding, may reassign the case to an Administrative Law Judge other than the one originally assigned in the event of the unavailability of the Administrative Law Judge or where reassignment will result in efficiency in the scheduling of hearings and would not prejudice the parties.

§ 22.5 Filing, service, and form of all filed documents; business confidentiality claims.

(a) *Filing of documents.* (1) The original and one copy of each document intended to be part of the record shall be filed with the Regional Hearing Clerk when the proceeding is before the Presiding Officer, or filed with the Clerk of the Board when the proceeding is before the Environmental Appeals Board. A document is filed when it is received by the appropriate Clerk. The Presiding Officer or the Environmental Appeals Board may by order authorize facsimile or electronic filing, subject to any appropriate conditions and limitations.

(2) When the Presiding Officer corresponds directly with the parties, the original of the correspondence shall be filed with the Regional Hearing Clerk. Parties who correspond directly with the Presiding Officer shall file a copy of the correspondence with the Regional Hearing Clerk.

(3) A certificate of service shall accompany each document filed or served in the proceeding.

(b) *Service of documents.* A copy of each document filed in the proceeding shall be served on the Presiding Officer or the Environmental Appeals Board, and on each party.

(1) *Service of complaint.* (i) Complainant shall serve on respondent, or a representative authorized to receive service on respondent's behalf, a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice. Service shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.

(ii)(A) Where respondent is a domestic or foreign corporation, a partnership, or an unincorporated association which is subject to suit under a common name, complainant shall serve an officer, partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process.

(B) Where respondent is an agency of the United States complainant shall serve that agency as provided by that agency's regulations, or in the absence of controlling regulation, as otherwise permitted by law. Complainant should also provide a copy of the complaint to the senior executive official having responsibility for the overall operations of the geographical unit where the alleged violations arose. If the agency is a corporation, the complaint shall be served as prescribed in paragraph (b)(1)(ii)(A) of this section.

(C) Where respondent is a State or local unit of government, agency, department, corporation or other instrumentality, complainant shall serve the chief executive officer thereof, or as otherwise permitted by law. Where respondent is a State or local officer, complainant shall serve such officer.

(iii) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed receipt. Such proof of service

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shall be filed with the Regional Hearing Clerk immediately upon completion of service.

(2) *Service of filed documents other than the complaint, rulings, orders, and decisions.* All filed documents other than the complaint, rulings, orders, and decisions shall be served personally, by first class mail (including certified mail, return receipt requested, Overnight Express and Priority Mail), or by any reliable commercial delivery service. The Presiding Officer or the Environmental Appeals Board may by order authorize facsimile or electronic service, subject to any appropriate conditions and limitations.

(c) *Form of documents.* (1) Except as provided in this section, or by order of the Presiding Officer or of the Environmental Appeals Board there are no specific requirements as to the form of documents.

(2) The first page of every filed document shall contain a caption identifying the respondent and the docket number. All legal briefs and legal memoranda greater than 20 pages in length (excluding attachments) shall contain a table of contents and a table of authorities with page references.

(3) The original of any filed document (other than exhibits) shall be signed by the party filing or by its attorney or other representative. The signature constitutes a representation by the signer that he has read the document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The first document filed by any person shall contain the name, address, and telephone number of an individual authorized to receive service relating to the proceeding. Parties shall promptly file any changes in this information with the Regional Hearing Clerk, and serve copies on the Presiding Officer and all parties to the proceeding. If a party fails to furnish such information and any changes thereto, service to the party's last known address shall satisfy the requirements of paragraph (b)(2) of this section and § 22.6.

(5) The Environmental Appeals Board or the Presiding Officer may exclude from the record any document which does not comply with this section. Written notice of such exclusion, stating the reasons therefor, shall be promptly given to the person submitting the document. Such person may amend and resubmit any excluded document upon motion granted by the Environmental Appeals Board or the Presiding Officer, as appropriate.

(d) *Confidentiality of business information.* (1) A person who wishes to assert a business confidentiality claim with regard to any information contained in any document to be filed in a proceeding under these Consolidated Rules of Practice shall assert such a claim in accordance with 40 CFR part 2 at the time that the document is filed. A document filed without a claim of business confidentiality shall be available to the public for inspection and copying.

(2) Two versions of any document which contains information claimed confidential shall be filed with the Regional Hearing Clerk:

(i) One version of the document shall contain the information claimed confidential. The cover page shall include the information required under paragraph (c)(2) of this section and the words "Business Confidentiality Asserted". The specific portion(s) alleged to be confidential shall be clearly identified within the document.

(ii) A second version of the document shall contain all information except the specific information claimed confidential, which shall be redacted and replaced with notes indicating the nature of the information redacted. The cover page shall state that information claimed confidential has been deleted and that a complete copy of the document containing the information claimed confidential has been filed with the Regional Hearing Clerk.

(3) Both versions of the document shall be served on the Presiding Officer and the complainant. Both versions of the document shall be served on any party, non-party participant, or representative thereof, authorized to receive the information claimed confidential by the person making the claim of confidentiality. Only the redacted version shall be served on persons not authorized to receive the confidential information.

(4) Only the second, redacted version shall be treated as public information. An EPA officer or employee may disclose information claimed confidential in accordance with paragraph (d)(1) of this section only as authorized under 40 CFR part 2.

§ 22.6 Filing and service of rulings, orders and decisions.

All rulings, orders, decisions, and other documents issued by the Regional Administrator or Presiding Officer shall be filed with the Regional Hearing Clerk. All such documents issued by the Environmental Appeals Board shall be filed with the Clerk of the Board. Copies of such rulings, orders, decisions or other documents shall be served personally, by first class mail (including by certified mail or return receipt requested, Overnight Express and Priority Mail), by EPA's internal mail, or any reliable commercial delivery service, upon all parties by the Clerk of the Environmental Appeals Board, the Office of Administrative Law Judges or the Regional Hearing Clerk, as appropriate.

§ 22.7 Computation and extension of time.

(a) *Computation.* In computing any period of time prescribed or allowed in these Consolidated Rules of Practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal holiday, the stated time period shall be extended to include the next business day.

(b) Extensions of time. The Environmental Appeals Board or the Presiding Officer may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer or Environmental Appeals Board reasonable opportunity to issue an order.

(c) *Service by mail or commercial delivery service.* Service of the complaint is complete when the return receipt is signed. Service of all other documents is complete upon mailing or when placed in the custody of a reliable commercial delivery service. Where a document is served by first class mail or commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document.

§ 22.8 Ex parte discussion of proceeding.

At no time after the issuance of the complaint shall the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer or any other person who is likely to advise these officials on any decision in the proceeding, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication

addressed to the Administrator, the Regional Administrator, the Environmental Appeals Board, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication. The requirements of this section shall not apply to any person who has formally recused himself from all adjudicatory functions in a proceeding, or who issues final orders only pursuant to § 22.18(b)(3).

§ 22.9 Examination of documents filed.

(a) Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during Agency business hours inspect and copy any document filed in any proceeding. Such documents shall be made available by the Regional Hearing Clerk, the Hearing Clerk, or the Clerk of the Board, as appropriate.

(b) The cost of duplicating documents shall be borne by the person seeking copies of such documents. The Agency may waive this cost in its discretion.

Subpart B—Parties and Appearances

§ 22.10 Appearances.

Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

§ 22.11 Intervention and non-party briefs.

(a) *Intervention.* Any person desiring to become a party to a proceeding may move for leave to intervene. A motion for leave to intervene that is filed after the exchange of information pursuant to § 22.19(a) shall not be granted unless the movant shows good cause for its failure to file before such exchange of information. All requirements of these Consolidated Rules of Practice shall apply to a motion for leave to intervene as if the movant were a party. The Presiding Officer shall grant leave to intervene in all or part of the proceeding if: the movant claims an interest relating to the cause of action; a final order may as a practical matter impair the movant's ability to protect that interest; and the movant's interest is not adequately represented by existing parties. The intervenor shall be bound by any agreements, arrangements and other matters previously made in the proceeding unless otherwise ordered by the Presiding Officer or the Environmental Appeals Board for good cause.

(b) *Non-party briefs.* Any person who is not a party to a proceeding may move for leave to file a non-party brief. The motion shall identify the interest of the applicant and shall explain the relevance of the brief to the proceeding. All requirements of these Consolidated Rules of Practice shall apply to the motion as if the movant were a party. If the motion is granted, the Presiding Officer or Environmental Appeals Board shall issue an order setting the time for filing such brief. Any party to the proceeding may file a response to a non-party brief within 15 days after service of the non-party brief.

§ 22.12 Consolidation and severance.

(a) *Consolidation.* The Presiding Officer or the Environmental Appeals Board may consolidate any or all matters at issue in two or more proceedings subject to these Consolidated Rules of Practice where: there exist common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings. Proceedings subject to subpart I of this part may be consolidated only upon the approval of all parties. Where a proceeding subject to the provisions of subpart I of this part is consolidated with a proceeding to which subpart I of this part does not apply, the procedures of subpart I of this part shall not apply to the consolidated proceeding.

(b) *Severance.* The Presiding Officer or the Environmental Appeals Board may, for good cause, order any proceedings severed with respect to any or all parties or issues.

Subpart C—Prehearing Procedures

§ 22.13 Commencement of a proceeding.

(a) Any proceeding subject to these Consolidated Rules of Practice is commenced by filing with the Regional Hearing Clerk a complaint conforming to § 22.14.

(b) Notwithstanding paragraph (a) of this section, where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to § 22.18(b)(2) and (3).

§ 22.14 Complaint.

(a) *Content of complaint.* Each complaint shall include:

(1) A statement reciting the section(s) of the Act authorizing the issuance of the complaint;

(2) Specific reference to each provision of the Act, implementing regulations, permit or order which respondent is alleged to have violated;

(3) A concise statement of the factual basis for each violation alleged;

(4) A description of all relief sought, including one or more of the following:

(i) The amount of the civil penalty which is proposed to be assessed, and a brief explanation of the proposed penalty;

(ii) Where a specific penalty demand is not made, the number of violations (where applicable, days of violation) for which a penalty is sought, a brief explanation of the severity of each violation alleged and a recitation of the statutory penalty authority applicable for each violation alleged in the complaint;

(iii) A request for a Permit Action and a statement of its proposed terms and conditions; or

(iv) A request for a compliance or corrective action order and a statement of the terms and conditions thereof;

(5) Notice of respondent's right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of any proposed penalty, compliance or corrective action order, or Permit Action;

(6) Notice if subpart I of this part applies to the proceeding;

(7) The address of the Regional Hearing Clerk; and

(8) Instructions for paying penalties, if applicable.

(b) *Rules of practice.* A copy of these Consolidated Rules of Practice shall accompany each complaint served.

(c) *Amendment of the complaint.* The complainant may amend the complaint once as a matter of right at any time before the answer is filed. Otherwise the complainant may amend the complaint only upon motion granted by the Presiding Officer. Respondent shall have 20 additional days from the date of service of the amended complaint to file its answer.

(d) *Withdrawal of the complaint.* The complainant may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the complainant may withdraw the complaint, or any part thereof, without prejudice only upon motion granted by the Presiding Officer.

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§ 22.15 Answer to the complaint.

(a) *General.* Where respondent: Contests any material fact upon which the complaint is based; contends that the proposed penalty, compliance or corrective action order, or Permit Action, as the case may be, is inappropriate; or contends that it is entitled to judgment as a matter of law, it shall file an original and one copy of a written answer to the complaint with the Regional Hearing Clerk and shall serve copies of the answer on all other parties. Any such answer to the complaint must be filed with the Regional Hearing Clerk within 30 days after service of the complaint.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state: The circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which respondent disputes; the basis for opposing any proposed relief; and whether a hearing is requested.

(c) *Request for a hearing.* A hearing upon the issues raised by the complaint and answer may be held if requested by respondent in its answer. If the respondent does not request a hearing, the Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.

(d) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

(e) *Amendment of the answer.* The respondent may amend the answer to the complaint upon motion granted by the Presiding Officer.

§ 22.16 Motions.

(a) *General.* Motions shall be served as provided by § 22.5(b)(2). Upon the filing of a motion, other parties may file responses to the motion and the movant may file a reply to the response. Any additional responsive documents shall be permitted only by order of the Presiding Officer or Environmental Appeals Board, as appropriate. All motions, except those made orally on the record during a hearing, shall:

(1) Be in writing;

(2) State the grounds therefor, with particularity;

(3) Set forth the relief sought; and

(4) Be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon.

(b) *Response to motions.* A party's response to any written motion must be filed within 15 days after service of such motion. The movant's reply to any written response must be filed within 10 days after service of such response and shall be limited to issues raised in the response. The Presiding Officer or the Environmental Appeals Board may set a shorter or longer time for response or reply, or make other orders concerning the disposition of motions. The response or reply shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Any party who fails to respond within the designated period waives any objection to the granting of the motion.

(c) *Decision.* The Regional Judicial Officer (or in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board) shall rule on all motions filed or made before an answer to the complaint is filed. Except as provided in §§ 22.29(c) and 22.51, an Administrative Law Judge shall rule on all motions filed or made after an answer is filed and before an initial decision has become final or has been appealed. The Environmental Appeals Board shall rule as provided in § 22.29(c) and on all motions filed or made after an appeal of the initial decision is filed, except as provided pursuant to § 22.28.

(d) *Oral argument.* The Presiding Officer or the Environmental Appeals Board may permit oral argument on motions in its discretion.

§ 22.17 Default.

(a) *Default.* A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint; upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer; or upon failure to appear at a conference or hearing. Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations. Default by complainant constitutes a waiver of complainant's right to proceed on the merits of the action, and shall result in the dismissal of the complaint with prejudice.

(b) *Motion for default.* A motion for default may seek resolution of all or part of the proceeding. Where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested.

(c) *Default order.* When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act. For good cause shown, the Presiding Officer may set aside a default order.

(d) *Payment of penalty; effective date of compliance or corrective action orders, and Permit Actions.* Any penalty assessed in the default order shall become due and payable by respondent without further proceedings 30 days after the default order becomes final under § 22.27(c). Any default order requiring compliance or corrective action shall be effective and enforceable without further proceedings on the date the default order becomes final under § 22.27(c). Any Permit Action ordered in the default order shall become effective without further proceedings on the date that the default order becomes final under § 22.27(c).

§ 22.18 Quick resolution; settlement; alternative dispute resolution.

(a) *Quick resolution.* (1) A respondent may resolve the proceeding at any time by paying the specific penalty proposed in the complaint or in complainant's prehearing exchange in full as specified by complainant and by filing with the Regional Hearing Clerk a copy of the check or other instrument of payment. If the complaint contains a specific proposed penalty and respondent pays that proposed penalty in full within 30 days after receiving the complaint, then no answer need be filed. This paragraph (a) shall not apply to any complaint which seeks a compliance or corrective action order or Permit Action. In a proceeding subject to the public comment provisions of § 22.45, this quick resolution is not available until 10 days after the close of the comment period.

(2) Any respondent who wishes to resolve a proceeding by paying the proposed penalty instead of filing an answer, but who needs additional time to pay the penalty, may file a written statement with the Regional Hearing Clerk within 30 days after receiving the complaint stating that the respondent agrees to pay the proposed penalty in accordance with paragraph (a)(1) of this section. The written statement need not contain any response to, or admission of, the allegations in the complaint. Within 60 days after receiving the complaint, the respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the complaint may subject the respondent to default pursuant to § 22.17.

(3) Upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, shall issue a final order. Payment by respondent shall constitute a waiver of respondent's rights to contest the allegations and to appeal the final order.

(b) *Settlement.* (1) The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The parties may engage in settlement discussions whether or not the respondent requests a hearing. Settlement discussions shall not affect the respondent's obligation to file a timely answer under § 22.15.

(2) *Consent agreement.* Any and all terms and conditions of a settlement shall be recorded in a written consent agreement signed by all parties or their representatives. The consent agreement shall state that, for the purpose of the proceeding, respondent: Admits the jurisdictional allegations of the complaint; admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action order, to any conditions specified in the consent agreement, and to any stated Permit Action; and waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement. Where complainant elects to commence a proceeding pursuant to § 22.13(b), the consent agreement shall also contain the elements described at § 22.14(a)(1)-(3) and (8). The parties shall forward the executed consent agreement and a proposed final order to the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board.

(3) *Conclusion of proceeding.* No settlement or consent agreement shall dispose of any proceeding under these Consolidated Rules of Practice without a final order from the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, ratifying the parties' consent agreement.

(c) *Scope of resolution or settlement.* Full payment of the penalty proposed in a complaint pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Full payment of the penalty proposed in a complaint pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall only resolve respondent's liability for Federal civil penalties for the violations and facts alleged in the complaint.

(d) *Alternative means of dispute resolution.* (1) The parties may engage in any process within the scope of the Alternative Dispute Resolution Act ("ADRA"), 5 U.S.C. 581 *et seq.*, which may facilitate voluntary settlement efforts. Such process shall be subject to the confidentiality provisions of the ADRA.

(2) Dispute resolution under this paragraph (d) does not divest the Presiding Officer of jurisdiction and does not automatically stay the proceeding. All provisions of these Consolidated Rules of Practice remain in effect notwithstanding any dispute resolution proceeding.

(3) The parties may choose any person to act as a neutral, or may move for the appointment of a neutral. If the Presiding Officer grants a motion for the appointment of a neutral, the Presiding Officer shall forward the motion to the Chief Administrative Law Judge, except in proceedings under subpart I of this part, in which the Presiding Officer shall forward the motion to the Regional Administrator. The Chief Administrative Law Judge or Regional Administrator, as appropriate, shall designate a qualified neutral.

§ 22.19 Prehearing information exchange; prehearing conference; other discovery.

(a) *Prehearing information exchange.* (1) In accordance with an order issued by the Presiding Officer, each party shall file a prehearing information exchange. Except as provided in § 22.22(a), a document or exhibit that has not been included in prehearing information exchange shall not be admitted into evidence, and any witness whose name and testimony summary has not been included in prehearing information exchange shall not be allowed to testify. Parties are not required to exchange information relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer.

(2) Each party's prehearing information exchange shall contain:

(i) The names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called; and (ii) Copies of all documents and exhibits which it intends to introduce into evidence at the hearing.

(3) If the proceeding is for the assessment of a penalty and complainant has already specified a proposed penalty, complainant shall explain in its prehearing information exchange how the proposed penalty was calculated in accordance with any criteria set forth in the Act, and the respondent shall explain in its prehearing information exchange why the proposed penalty should be reduced or eliminated.

(4) If the proceeding is for the assessment of a penalty and complainant has not specified a proposed penalty, each party shall include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty. Within 15 days after respondent files its prehearing information exchange, complainant shall file a document specifying a proposed penalty and explaining how the proposed penalty was calculated in accordance with any criteria set forth in the Act.

(b) *Prehearing conference.* The Presiding Officer, at any time before the hearing begins, may direct the parties and their counsel or other representatives to participate in a conference to consider:

(1) Settlement of the case;

(2) Simplification of issues and stipulation of facts not in dispute;

(3) The necessity or desirability of amendments to pleadings;

(4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;

(5) The limitation of the number of expert or other witnesses;

(6) The time and place for the hearing; and

(7) Any other matters which may expedite the disposition of the proceeding.

(c) *Record of the prehearing conference.* No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the Presiding Officer. The Presiding Officer

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shall ensure that the record of the proceeding includes any stipulations, agreements, rulings or orders made during the conference.

(d) *Location of prehearing conference.* The prehearing conference shall be held in the county where the respondent resides or conducts the business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional Office is located, or in Washington, DC, unless the Presiding Officer determines that there is good cause to hold it at another location or by telephone.

(e) *Other discovery.* (1) After the information exchange provided for in paragraph (a) of this section, a party may move for additional discovery. The motion shall specify the method of discovery sought, provide the proposed discovery instruments, and describe in detail the nature of the information and/or documents sought (and, where relevant, the proposed time and place where discovery would be conducted). The Presiding Officer may order such other discovery only if it:

(i) Will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party;

(ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and

(iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

(2) Settlement positions and information regarding their development (such as penalty calculations for purposes of settlement based upon Agency settlement policies) shall not be discoverable.

(3) The Presiding Officer may order depositions upon oral questions only in accordance with paragraph (e)(1) of this section and upon an additional finding that:

(i) The information sought cannot reasonably be obtained by alternative methods of discovery; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(4) The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act. The Presiding Officer may issue a subpoena for discovery purposes only in accordance with paragraph (e)(1) of this section and upon an additional showing of the grounds and necessity therefor. Subpoenas shall be served in accordance with § 22.5(b)(1). Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Any fees shall be paid by the party at whose request the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by the Agency.

(5) Nothing in this paragraph (e) shall limit a party's right to request admissions or stipulations, a respondent's right to request Agency records under the Federal Freedom of Information Act, 5 U.S.C. 552, or EPA's authority under any applicable law to conduct inspections, issue information request letters or administrative subpoenas, or otherwise obtain information.

(f) *Supplementing prior exchanges.* A party who has made an information exchange under paragraph (a) of this section, or who has exchanged information in response to a request for information or a discovery order pursuant to paragraph (e) of this section, shall promptly supplement or correct the exchange when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section.

(g) *Failure to exchange information.* Where a party fails to provide information within its control as required pursuant to this section, the Presiding Officer may, in his discretion:

(1) Infer that the information would be adverse to the party failing to provide it;

(2) Exclude the information from evidence; or

(3) Issue a default order under § 22.17(c).

§ 22.20 Accelerated decision; decision to dismiss.

(a) *General.* The Presiding Officer may at any time render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law. The Presiding Officer, upon motion of the respondent, may at any time dismiss a proceeding without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.

(b) *Effect.* (1) If an accelerated decision or a decision to dismiss is issued as to all issues and claims in the proceeding, the decision constitutes an initial decision of the Presiding Officer, and shall be filed with the Regional Hearing Clerk.

(2) If an accelerated decision or a decision to dismiss is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted. The partial accelerated decision or the order dismissing certain counts shall specify the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.

Subpart D—Hearing Procedures

§ 22.21 Assignment of Presiding Officer; scheduling the hearing.

(a) *Assignment of Presiding Officer.* When an answer is filed, the Regional Hearing Clerk shall forward a copy of the complaint, the answer, and any other documents filed in the proceeding to the Chief Administrative Law Judge who shall serve as Presiding Officer or assign another Administrative Law Judge as Presiding Officer. The Presiding Officer shall then obtain the case file from the Chief Administrative Law Judge and notify the parties of his assignment.

(b) *Notice of hearing.* The Presiding Officer shall hold a hearing if the proceeding presents genuine issues of material fact. The Presiding Officer shall serve upon the parties a notice of hearing setting forth a time and place for the hearing not later than 30 days prior to the date set for the hearing. The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act, upon a showing of the grounds and necessity therefor, and the materiality and relevancy of the evidence to be adduced.

(c) *Postponement of hearing.* No request for postponement of a hearing shall be granted except upon motion and for good cause shown.

(d) *Location of the hearing.* The location of the hearing shall be determined in accordance with the method for determining the location of a prehearing conference under § 22.19(d).

§ 22.22 Evidence.

(a) *General.* (1) The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, unreliable, or of little probative value, except that evidence relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence (28 U.S.C.) is not admissible. If, however, a party fails to provide any document, exhibit, witness name or summary of expected testimony required to be exchanged under § 22.19 (a), (e) or (f) to all parties at least 15 days before the hearing date, the Presiding Officer shall not admit the document, exhibit or testimony into evidence, unless the non-exchanging party had good cause for failing to exchange the required information and provided the required information to all other parties as soon as it had control of the information, or had good cause for not doing so.

(2) In the presentation, admission, disposition, and use of oral and written evidence, EPA officers, employees and authorized representatives shall preserve the confidentiality of information claimed confidential, whether or not the claim is made by a party to the proceeding, unless disclosure is authorized pursuant to 40 CFR part 2. A business confidentiality claim shall not prevent information from being introduced into evidence, but shall instead require that the information be treated in accordance with 40 CFR part 2, subpart B. The Presiding Officer or the Environmental Appeals Board may consider such evidence in a proceeding closed to the public, and which may be before some, but not all, parties, as necessary. Such proceeding shall be closed only to the extent necessary to comply with 40 CFR part 2, subpart B, for information claimed confidential. Any affected person may move for an order protecting the information claimed confidential.

(b) *Examination of witnesses.* Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in paragraphs (c) and (d) of this section or by the Presiding Officer. Parties shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) *Written testimony.* The Presiding Officer may admit and insert into the record as evidence, in lieu of oral testimony, written testimony prepared by a witness. The admissibility of any part of the testimony shall be subject to the same rules as if the testimony were produced under oral examination. Before any such testimony is read or admitted into evidence, the party who has called the witness shall deliver a copy of the testimony to the Presiding Officer, the reporter, and opposing counsel. The witness presenting the testimony shall swear to or affirm the testimony and shall be subject to appropriate oral cross-examination.

(d) *Admission of affidavits where the witness is unavailable.* The Presiding Officer may admit into evidence affidavits of witnesses who are unavailable. The term "unavailable" shall have the meaning accorded to it by Rule 804(a) of the Federal Rules of Evidence.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit shall be filed with the Presiding Officer for the record and a copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) *Official notice.* Official notice may be taken of any matter which can be judicially noticed in the Federal courts and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 22.23 Objections and offers of proof.

(a) *Objection.* Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Presiding Officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic and is not waived by further participation in the hearing.

(b) *Offers of proof.* Whenever the Presiding Officer denies a motion for admission into evidence, the party offering the information may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the information excluded. The offer of proof for excluded documents or exhibits shall consist of the documents or exhibits excluded. Where the Environmental Appeals Board decides that the ruling of the Presiding Officer in excluding the information from evidence was both erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence.

§ 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.

(a) The complainant has the burdens of presentation and persuasion that the violation occurred as set forth in the complaint and that the relief sought is appropriate. Following complainant's establishment of a prima facie case, respondent shall have the burden of presenting any defense to the allegations set forth in the complaint and any response or evidence with respect to the appropriate relief. The respondent has the burdens of presentation and persuasion for any affirmative defenses.

(b) Each matter of controversy shall be decided by the Presiding Officer upon a preponderance of the evidence.

§ 22.25 Filing the transcript.

The hearing shall be transcribed verbatim. Promptly following the taking of the last evidence, the reporter shall transmit to the Regional Hearing Clerk the original and as many copies of the transcript of testimony as are called for in the reporter's contract with the Agency, and also shall transmit to the Presiding Officer a copy of the transcript. A certificate of service shall accompany each copy of the transcript. The Regional Hearing Clerk shall notify all parties of the availability of the transcript and shall furnish the parties with a copy of the transcript upon payment of the cost of reproduction, unless a party can show that the cost is unduly burdensome. Any person not a party to the proceeding may receive a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript ordered to be kept confidential by the Presiding Officer. Any party may file a motion to conform the transcript to the actual testimony within 30 days after receipt of the transcript, or 45 days after the parties are notified of the availability of the transcript, whichever is sooner.

§ 22.26 Proposed findings, conclusions, and order.

After the hearing, any party may file proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. The Presiding Officer shall set a schedule for filing these documents and any reply briefs, but shall not require them before the last date for filing motions under § 22.25 to conform the transcript to the actual testimony. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

Subpart E—Initial Decision and Motion To Reopen a Hearing

§ 22.27 Initial Decision.

(a) *Filing and contents.* After the period for filing briefs under § 22.26 has expired, the Presiding Officer shall issue an initial decision. The initial decision shall contain findings of fact,

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conclusions regarding all material issues of law or discretion, as well as reasons therefor, and, if appropriate, ■ recommended civil penalty assessment, compliance order, corrective action order, or Permit Action. Upon receipt of an initial decision, the Regional Hearing Clerk shall forward copies of the initial decision to the Environmental Appeals Board and the Assistant Administrator for the Office of Enforcement and Compliance Assurance.

(b) *Amount of civil penalty.* If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. The Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty criteria set forth in the Act. If the Presiding Officer decides to assess a penalty different in amount from the penalty proposed by complainant, the Presiding Officer shall set forth in the initial decision the specific reasons for the increase or decrease. If the respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by complainant in the complaint, the prehearing information exchange or the motion for default, whichever is less.

(c) *Effect of initial decision.* The initial decision of the Presiding Officer shall become a final order 45 days after its service upon the parties and without further proceedings unless:

(1) A party moves to reopen the hearing;

(2) A party appeals the initial decision to the Environmental Appeals Board;

(3) A party moves to set aside a default order that constitutes an initial decision; or

(4) The Environmental Appeals Board elects to review the initial decision on its own initiative.

(d) *Exhaustion of administrative remedies.* Where a respondent fails to appeal an initial decision to the Environmental Appeals Board pursuant to § 22.30 and that initial decision becomes a final order pursuant to paragraph (c) of this section, respondent waives its rights to judicial review. An initial decision that is appealed to the Environmental Appeals Board shall not be final or operative pending the Environmental Appeals Board's issuance of a final order.

§ 22.28 Motion to reopen a hearing.

(a) *Filing and content.* A motion to reopen a hearing to take further evidence must be filed no later than 20 days after service of the initial decision and shall state the specific grounds upon which relief is sought. Where the movant seeks to introduce new evidence, the motion shall: state briefly the nature and purpose of the evidence to be adduced; show that such evidence is not cumulative; and show good cause why such evidence was not adduced at the hearing. The motion shall be made to the Presiding Officer and filed with the Regional Hearing Clerk.

(b) *Disposition of motion to reopen a hearing.* Within 15 days following the service of a motion to reopen a hearing, any other party to the proceeding may file with the Regional Hearing Clerk and serve on all other parties a response. A reopened hearing shall be governed by the applicable sections of these Consolidated Rules of Practice. The filing of a motion to reopen a hearing shall automatically stay the running of the time periods for an initial decision becoming final under § 22.27(c) and for appeal under § 22.30. These time periods shall begin again in full when the motion is denied or an amended initial decision is served.

Subpart F—Appeals and Administrative Review

§ 22.29 Appeal from or review of interlocutory orders or rulings.

(a) *Request for interlocutory appeal.* Appeals from orders or rulings other than an initial decision shall be allowed only at the discretion of the Environmental Appeals Board. A party seeking interlocutory appeal of such orders or rulings to the Environmental Appeals Board shall file a motion within 10 days of service of the order or ruling, requesting that the Presiding Officer forward the order or ruling to the Environmental Appeals Board for review, and stating briefly the grounds for the appeal.

(b) *Availability of interlocutory appeal.* The Presiding Officer may recommend any order or ruling for review by the Environmental Appeals Board when:

(1) The order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion; and

(2) Either an immediate appeal from the order or ruling will materially advance the ultimate termination of the proceeding, or review after the final order is issued will be inadequate or ineffective.

(c) *Interlocutory review.* If the Presiding Officer has recommended review and the Environmental Appeals Board determines that interlocutory review is inappropriate, or takes no action within 30 days of the Presiding Officer's recommendation, the appeal is dismissed. When the Presiding Officer declines to recommend review of an order or ruling, it may be reviewed by the Environmental Appeals Board only upon appeal from the initial decision, except when the Environmental Appeals Board determines, upon motion of a party and in exceptional circumstances, that to delay review would be contrary to the public interest. Such motion shall be filed within 10 days of service of an order of the Presiding Officer refusing to recommend such order or ruling for interlocutory review.

§ 22.30 Appeal from or review of initial decision.

(a) *Notice of appeal.* (1) Within 30 days after the initial decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board (Clerk of the Board (Mail Code 1103B), United States Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460. Hand deliveries may be made at Suite 500, 607 14th Street, NW.). One copy of any document filed with the Clerk of the Board shall also be served on the Regional Hearing Clerk. Appellant also shall serve a copy of the notice of appeal upon the Presiding Officer. Appellant shall simultaneously serve one copy of the notice and brief upon all other parties and non-party participants. The notice of appeal shall summarize the order or ruling, or part thereof, appealed from. The appellant's brief shall contain tables of contents and authorities (with page references), a statement of the issues presented for review, a statement of the nature of the case and the facts relevant to the issues presented for review (with appropriate references to the record), argument on the issues presented, a short conclusion stating the precise relief sought, alternative findings of fact, and alternative conclusions regarding issues of law or discretion. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal on any issue within 20 days after the date on which the first notice of appeal was served.

(2) Within 20 days of service of notices of appeal and briefs under paragraph (a)(1) of this section, any other party or non-party participant may file with the Environmental Appeals Board an original and one copy of a response brief responding to argument raised by the appellant, together with reference to the relevant portions of the record, initial decision, or opposing brief. Appellee shall simultaneously serve one copy of the response brief upon each party , non-party participant, and the Regional Hearing Clerk. Response briefs shall be limited to the scope of the appeal brief. Further briefs may be filed only with the permission of the Environmental Appeals Board.

(b) *Review initiated by the Environmental Appeals Board.* Whenever the Environmental Appeals Board determines to review an initial decision on its own initiative, it shall file notice of its intent to review that decision with the Clerk of the Board, and serve it upon the Regional Hearing Clerk, the Presiding Officer and the parties within 45 days after the initial decision was served upon the parties. The notice shall include a statement of issues to be briefed by the parties and a time schedule for the filing and service of briefs.

(c) *Scope of appeal or review.* The parties' rights of appeal shall be limited to those issues raised during the course of the proceeding and by the initial decision, and to issues concerning subject matter jurisdiction. If the Environmental Appeals Board determines that issues raised, but not appealed by the parties, should be argued, it shall give the parties reasonable written notice of such determination to permit preparation of adequate argument. The Environmental Appeals Board may remand the case to the Presiding Officer for further proceedings.

(d) *Argument before the Environmental Appeals Board.* The Environmental Appeals Board may, at its discretion, order oral argument on any or all issues in a proceeding.

(e) *Motions on appeal.* All motions made during the course of an appeal shall conform to § 22.16 unless otherwise provided.

(f) *Decision.* The Environmental Appeals Board shall adopt, modify, or set aside the findings of fact and conclusions of law or discretion contained in the decision or order being reviewed, and shall set forth in the final order the reasons for its actions. The Environmental Appeals Board may assess a penalty that is higher or lower than the amount recommended to be assessed in the decision or order being reviewed or from the amount sought in the complaint, except that if the order being reviewed is a default order, the Environmental Appeals Board may not increase the amount of the penalty above that proposed in the complaint or in the motion for default, whichever is less. The Environmental Appeals Board may adopt, modify or set aside any recommended compliance or corrective action order or Permit Action. The Environmental Appeals Board may remand the case to the Presiding Officer for further action.

Subpart G—Final Order

§ 22.31 Final order.

(a) *Effect of final order.* A final order constitutes the final Agency action in ■ proceeding. The final order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. The final order shall resolve only those causes of action alleged in the complaint, or for proceedings commenced pursuant to § 22.13(b), alleged in the consent agreement. The final order does not waive, extinguish or otherwise affect respondent's obligation to comply with all applicable provisions of the Act and regulations promulgated thereunder.

(b) *Effective date.* A final order is effective upon filing. Where an initial decision becomes a final order pursuant to § 22.27(c), the final order is effective 45 days after the initial decision is served on the parties.

(c) *Payment of a civil penalty.* The respondent shall pay the full amount of any civil penalty assessed in the final order within 30 days after the effective date of the final order unless otherwise ordered. Payment shall be made by sending a cashier's check or certified check to the payee specified in the complaint, unless otherwise instructed by the complainant. The check shall note the case title and docket number. Respondent shall serve copies of the check or other instrument of payment on the Regional Hearing Clerk and on complainant. Collection of interest on overdue payments shall be in accordance with the Debt Collection Act, 31 U.S.C. 3717.

(d) *Other relief.* Any final order requiring compliance or corrective action, or a Permit Action, shall become effective and enforceable without further proceedings on the effective date of the final order unless otherwise ordered.

(e) *Final orders to Federal agencies on appeal.* (1) A final order of the Environmental Appeals Board issued pursuant to § 22.30 to a department, agency, or instrumentality of the United States shall become effective 30 days after its service upon the parties unless the head of the affected department, agency, or instrumentality requests a conference with the Administrator in writing and serves a copy of the request on the parties of record within 30 days of service of the final order. If a timely request is made, a decision by the Administrator shall become the final order.

(2) A motion for reconsideration pursuant to § 22.32 shall not toll the 30-day period described in paragraph (e)(1) of this section unless specifically so ordered by the Environmental Appeals Board.

§ 22.32 Motion to reconsider a final order.

Motions to reconsider a final order issued pursuant to § 22.30 shall be filed within 10 days after service of the final order. Motions must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to § 22.4(a) and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless so ordered by the Environmental Appeals Board.

Subpart H—Supplemental Rules

§ 22.33 [Reserved]

§ 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under sections 113(d), 205(c), 211(d), and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d), and 7547(d)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Issuance of notice.* Prior to the issuance of a final order assessing a civil penalty, the person to whom the order is to be issued shall be given written notice of the proposed issuance of the order. Service of a complaint or a consent agreement and final order pursuant to § 22.13 satisfies this notice requirement.

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§ 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136l(a)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Venue.* The prehearing conference and the hearing shall be held in the county, parish, or incorporated city of the residence of the person charged, unless otherwise agreed in writing by all parties. For a person whose residence is outside the United States and outside any territory or possession of the United States, the prehearing conference and the hearing shall be held at the EPA office listed at 40 CFR 1.7 that is closest to either the person's primary place of business within the United States, or the primary place of business of the person's U.S. agent, unless otherwise agreed by all parties.

§ 22.36 [Reserved].

§ 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings under sections 3005(d) and (e), 3008, 9003 and 9006 of the Solid Waste Disposal Act (42 U.S.C. 6925(d) and (e), 6928, 6991b and 6991e) ("SWDA"). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Corrective action and compliance orders.* A complaint may contain a compliance order issued under section 3008(a) or section 9006(a), or a corrective action order issued under section 3008(h) or section 9003(h)(4) of the SWDA. Any such order shall automatically become a final order unless, no later than 30 days after the order is served, the respondent requests a hearing pursuant to § 22.15.

§ 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32 and § 22.45, in administrative proceedings for the assessment of any civil penalty under section 309(g) or section 311(b)(6) of the Clean Water Act ("CWA")(33 U.S.C. 1319(g) and 1321(b)(6)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Consultation with States.* For proceedings pursuant to section 309(g), the complainant shall provide the State agency with the most direct authority over the matters at issue in the case an opportunity to consult with the complainant. Complainant shall notify the State agency within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to § 22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty.

(c) *Administrative procedure and judicial review.* Action of the Administrator for which review could have been obtained under section 509(b)(1) of the CWA, 33 U.S.C. 1369(b)(1), shall not be subject to review in an administrative proceeding for the assessment of a civil penalty under section 309(g) or section 311(b)(6).

§ 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.10 through 22.32, in administrative proceedings for the assessment of any civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Judicial review.* Any person who requested a hearing with respect to a Class II civil penalty under section 109(b) of CERCLA, 42 U.S.C. 9609(b), and who is the recipient of a final order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia or for any other circuit in which such person resides or transacts business. Any person who requested a hearing with respect to a Class I civil penalty under section 109(a)(4) of CERCLA, 42 U.S.C. 9609(a)(4), and who is the recipient of a final order assessing the civil penalty may file a petition for judicial review of such order with the appropriate district court of the United States. All petitions must be filed within 30 days of the date the order making the assessment was served on the parties.

(c) *Payment of civil penalty assessed.* Payment of civil penalties assessed in the final order shall be made by forwarding a cashier's check, payable to the "EPA, Hazardous Substances Superfund," in the amount assessed, and noting the case title and docket number, to the appropriate regional Superfund Lockbox Depository.

§ 22.40 [Reserved].

§ 22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 207 of the Toxic Substances Control Act ("TSCA") (15 U.S.C. 2647). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Collection of civil penalty.* Any civil penalty collected under TSCA section 207 shall be used by the local educational agency for purposes of complying with Title II of TSCA. Any portion of a civil penalty remaining unspent after a local educational agency achieves compliance shall be deposited into the Asbestos Trust Fund established under section 5 of AHERA.

§ 22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty under section 1414(g)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. 300g-3(g)(3)(B). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Choice of forum.* A complaint which specifies that subpart I of this part applies shall also state that respondent has a right to elect a hearing on the record in accordance with 5 U.S.C. 554, and that respondent waives this right unless it requests in its answer a hearing on the record in accordance with 5 U.S.C. 554. Upon such request, the Regional Hearing Clerk shall recaption the documents in the record as necessary, and notify the parties of the changes.

§ 22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty against a federal agency under section 1447(b) of the Safe Drinking Water Act, 42 U.S.C. 300j-6(b).

Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Effective date of final penalty order.* Any penalty order issued pursuant to this section and section 1447(b) of the Safe Drinking Water Act shall become effective 30 days after it has been served on the parties.

(c) *Public notice of final penalty order.* Upon the issuance of a final penalty order under this section, the Administrator shall provide public notice of the order by publication, and by providing notice to any person who requests such notice. The notice shall include:

(1) The docket number of the order;

(2) The address and phone number of the Regional Hearing Clerk from whom a copy of the order may be obtained;

(3) The location of the facility where violations were found;

(4) A description of the violations;

(5) The penalty that was assessed; and

(6) A notice that any interested person may, within 30 days of the date the order becomes final, obtain judicial review of the penalty order pursuant to section 1447(b) of the Safe Drinking Water Act, and instruction that persons seeking judicial review shall provide copies of any appeal to the persons described in 40 CFR 135.11(a).

§ 22.44 [Reserved]

§ 22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings for the assessment of any civil penalty under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act (33 U.S.C. 1319(g) and 1321(b)(6)(B)(ii)), and under section 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300h-2(c)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Public notice.*—(1) *General.* Complainant shall notify the public before assessing a civil penalty. Such notice shall be provided within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to § 22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty. The notice period begins upon first publication of notice.

(2) *Type and content of public notice.* The complainant shall provide public notice of the complaint (or the proposed consent agreement if § 22.13(b) is applicable) by a method reasonably calculated to provide notice, and shall also provide notice directly to any person who requests such notice. The notice shall include:

(i) The docket number of the proceeding;

(ii) The name and address of the complainant and respondent, and the person from whom information on the proceeding may be obtained, and the address of the Regional Hearing Clerk to whom appropriate comments shall be directed;

(iii) The location of the site or facility from which the violations are alleged, and any applicable permit number;

(iv) A description of the violation alleged and the relief sought; and

(v) A notice that persons shall submit comments to the Regional Hearing Clerk, and the deadline for such submissions.

(c) *Comment by a person who is not a party.* The following provisions apply in regard to comment by a person not a party to a proceeding:

(1) *Participation in proceeding.* (i) Any person wishing to participate in the proceedings must notify the Regional Hearing Clerk in writing within the public notice period under paragraph (b)(1) of this section. The person must provide his name, complete mailing address, and state that he wishes to participate in the proceeding.

(ii) The Presiding Officer shall provide notice of any hearing on the merits to any person who has met the requirements of paragraph (c)(1)(i) of this section at least 20 days prior to the scheduled hearing.

(iii) A commenter may present written comments for the record at any time prior to the close of the record.

(iv) A commenter wishing to present evidence at a hearing on the merits shall notify, in writing, the Presiding Officer and the parties of its intent at least 10 days prior to the scheduled hearing. This notice must include a copy of any document to be introduced, a description of the evidence to be presented, and the identity of any witness (and qualifications if an expert), and the subject matter of the testimony.

(v) In any hearing on the merits, a commenter may present evidence, including direct testimony subject to cross examination by the parties.

(vi) The Presiding Officer shall have the discretion to establish the extent of commenter participation in any other scheduled activity.

(2) *Limitations.* A commenter may not cross-examine any witness in any hearing and shall not be subject to or participate in any discovery or prehearing exchange.

(3) *Quick resolution and settlement.* No proceeding subject to the public notice and comment provisions of paragraphs (b) and (c) of this section may be resolved or settled under § 22.18, or commenced under § 22.13(b), until 10 days after the close of the comment period provided in paragraph (c)(1) of this section.

(4) *Petition to set aside a consent agreement and proposed final order.* (i) Complainant shall provide to each commenter, by certified mail, return receipt requested, but not to the Regional Hearing Clerk or Presiding Officer, a copy of any consent agreement between the parties and the proposed final order.

(ii) Within 30 days of receipt of the consent agreement and proposed final order a commenter may petition the Regional Administrator (or, for cases commenced at EPA Headquarters, the Environmental Appeals Board), to set aside the consent agreement and proposed final order on the basis that material evidence was not considered. Copies of the petition shall be served on the parties, but shall not be sent to the Regional Hearing Clerk or the Presiding Officer.

(iii) Within 15 days of receipt of a petition, the complainant may, with notice to the Regional Administrator or Environmental Appeals Board and to the commenter, withdraw the consent agreement and proposed final order to consider the matters raised in the petition. If the complainant does not give notice of withdrawal within 15 days of receipt of the petition, the Regional Administrator or Environmental Appeals Board shall assign a Petition Officer to consider and rule on the petition. The Petition Officer shall be another Presiding Officer, not otherwise involved in the case. Notice of this assignment shall be sent to the parties, and to the Presiding Officer.

(iv) Within 30 days of assignment of the Petition Officer, the complainant shall present to the Petition Officer a copy of the complaint and a written response to the petition. A copy of the response shall be provided to the parties and to the commenter, but not to the Regional Hearing Clerk or Presiding Officer.

(v) The Petition Officer shall review the petition, and complainant's response, and shall file with the Regional Hearing Clerk, with copies to the parties, the commenter, and the Presiding Officer, written findings as to:

(A) The extent to which the petition states an issue relevant and material to the issuance of the proposed final order;

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(B) Whether complainant adequately considered and responded to the petition; and

(C) Whether a resolution of the proceeding by the parties is appropriate without a hearing.

(vi) Upon a finding by the Petition Officer that a hearing is appropriate, the Presiding Officer shall order that the consent agreement and proposed final order be set aside and shall establish a schedule for a hearing.

(vii) Upon a finding by the Petition Officer that a resolution of the proceeding without a hearing is appropriate, the Petition Officer shall issue an order denying the petition and stating reasons for the denial. The Petition Officer shall:

(A) File the order with the Regional Hearing Clerk;

(B) Serve copies of the order on the parties and the commenter; and

(C) Provide public notice of the order.

(viii) Upon a finding by the Petition Officer that a resolution of the proceeding without a hearing is appropriate, the Regional Administrator may issue the proposed final order, which shall become final 30 days after both the order denying the petition and a properly signed consent agreement are filed with the Regional Hearing Clerk, unless further petition for review is filed by a notice of appeal in the appropriate United States District Court, with coincident notice by certified mail to the Administrator and the Attorney General. Written notice of appeal also shall be filed with the Regional Hearing Clerk, and sent to the Presiding Officer and the parties.

(ix) If judicial review of the final order is denied, the final order shall become effective 30 days after such denial has been filed with the Regional Hearing Clerk.

§§ 22.46–22.49 [Reserved].

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

§ 22.50 Scope of this subpart.

(a) *Scope.* This subpart applies to all adjudicatory proceedings for:

(1) The assessment of a penalty under sections 309(g)(2)(A) and 311(b)(6)(B)(i) of the Clean Water Act (33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(B)(i)).

(2) The assessment of a penalty under sections 1414(g)(3)(B) and 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300g–3(g)(3)(B) and 300h–2(c)), except where a respondent in a proceeding under section 1414(g)(3)(B) requests in its answer a hearing on the record in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. 554.

(b) *Relationship to other provisions.* Sections 22.1 through 22.45 apply to proceedings under this subpart, except for the following provisions which do not apply: §§ 22.11, 22.16(c), 22.21(a), and 22.29. Where inconsistencies exist between this subpart and subparts A through G of this part, this subpart shall apply. Where inconsistencies exist between this subpart and subpart H of this part, subpart H shall apply.

§ 22.51 Presiding Officer.

The Presiding Officer shall be a Regional Judicial Officer. The Presiding Officer shall conduct the hearing, and rule on all motions until an initial decision has become final or has been appealed.

§ 22.52 Information exchange and discovery.

Respondent's information exchange pursuant to § 22.19(a) shall include information on any economic benefit resulting from any activity or failure to act which is alleged in the administrative complaint to be a violation of applicable law, including its gross revenues, delayed or avoided costs. Discovery under § 22.19(e) shall not be authorized, except for discovery of information concerning respondent's economic benefit from alleged violations and information concerning respondent's ability to pay a penalty.

[FR Doc. 99–17337 Filed 7–22–99; 8:45 am]
BILLING CODE 6560–50–P

federal register

Friday
July 23, 1999

Part VI

Environmental Protection Agency

40 CFR Parts 148, 261 et al.
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Dye and Pigment Industries; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 268, 271, and 302

[SWH–FRL–6373–4]

RIN 2050–AD80

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Dye and Pigment Industries; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities

AGENCY: Environmental protection agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The EPA is proposing to list two of three wastes from the dyes and pigment industries as hazardous wastes under the Resource, Conservation, and Recovery Act (RCRA), which direct EPA to determine whether certain wastes from the dye and pigment industries present a hazard to human health or the environment. The effect of listing these wastes will be to subject them to stringent management and treatment standards and to emergency notification requirements if there are releases of these hazardous wastes to the environment. EPA is proposing concentration-based listings for the two wastes, such that waste generators have the option of determining that their specific waste is nonhazardous. To have their waste classified as nonhazardous, generators must determine the levels of constituents in their wastes, and certify to EPA that their wastes are below the regulatory levels of concern.

DATES: EPA will accept public comments on this proposed rule until September 21, 1999; comments postmarked after this date will be marked "late" and may not be considered. Any person may request a public hearing on this proposal by filing a request with Mr. David Bussard, whose address appears below, by August 6, 1999.

ADDRESSES: If you wish to comment on this proposed rule, you must send an original and two copies of the comments referencing docket number F–1999–DPIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. You may also submit comments electronically by sending electronic mail through the Internet to: rcradocket@epamail.epa.gov. See the beginning of Supplementary Information for instructions on electronic submission.

You should not submit electronically any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460. See the beginning of Supplementary Information for information of viewing public comments and supporting materials.

Address requests for a hearing to Mr. David Bussard at: Office of Solid Waste, Hazardous Waste Identification Division (5304W), U.S. Environmental Protection Agency 401 M Street, SW, Washington. DC 20460, (703)308–8880.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For information on specific aspects of the rule, contact Narendra Chaudhari or Robert Kayser, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. [E-mail addresses and telephone numbers:

chaudhari.narendra@epamail.epa.gov, (703) 308-0454;

kayser.robert@epamail.epa.gov, (703) 308–7304)].

SUPPLEMENTARY INFORMATION: You should identify comments in electronic format with the docket number F–1999-DPIP-FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters and any form of encryption. If you do not submit comments electronically, EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. Supporting documents in the docket for this Notice are also available in electronic format on the Internet. Follow these instructions to access these documents.

WWW: http://www.epa.gov/epaoswer/hazwaste/id

FTP: ftp.epa/gov

Login: anonymous

Password: your Internet address

Files are located in /pub/gopher/OSWRCRA.

EPA will keep the official record for this action in paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. We will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

You may view public comments and supporting materials in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. For information on accessing paper and/or electronic copies of the document, see the **SUPPLEMENTARY INFORMATION** section.

How Can I Influence EPA's Thinking on This Proposed Rule?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this proposed rule may effect you, or other relevant information. We welcome your views on all aspects of this proposed rule, but request comments on specific issues throughout this notice. We grouped these specific requests near the end of the sections in which we discuss the relevant issues. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number with your comments.

Contents of This Proposed Rule

The following outline lists the contents of the preamble to this proposed rule:

I. Overview
  A. Who Would Potentially be Affected by This Proposed Rule?
  B. Why Does This Proposed Rule Read Differently From Other Listing Rules?
  C. What Are the Statutory Authorities for This Proposed Rule?
II. Background
  A. How Does EPA Define a Hazardous Wastes?
  B. What Industries Are Covered in This Proposed Rule?
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I. Overview

A. Who Would Potentially Be Affected by This Proposed Rule?

The action, if finalized, could potentially affect those who handle the waste streams proposed for listing on EPA's RCRA list of hazardous wastes. This action may also affect entities that may need to respond to releases of these wastes as CERCLA hazardous substances. Those affected may include:

Category	Affected entities
Industry	Generators of the following listed wastes, or entities that treat, store, transport, or dispose of these wastes or materials derived from them. K167 Spent filter aids, diatomaceous earth, or adsorbents used in the production of azo, anthraquinone, or triarylmethane dyes, pigments, or FD&C colorants. K168 Wastewater treatment sludges from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock).
State, Local, Tribal Govt	State and Local Emergency Planning entities.
Federal Govt	National Response Center, and any Federal Agency that handle the listed waste or chemical.

We do not intend this table to be exhaustive, but rather our aim is to provide a guide for readers regarding entities likely to be regulated by this action. This table lists those entities that EPA now is aware potentially could be

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affected by this action. However, this action may affect other entities not listed in the table. To determine whether your facility is regulated by this action, you should examine 40 CFR parts 260 and 261 carefully in concert with the amended rules found at the end of this **Federal Register** document. Furthermore, we are proposing this rule as a concentration-based listing, such that waste generators have the option of determining that their specific waste is nonhazardous (see Sections IV and V of today's rule). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

B. Why Does This Proposed Rule Read Differently From Other Listing Rules?

Today's proposed listing determination preamble and regulations are written in "readable regulations" format. The authors tried to use active rather than passive voice, plain language, a question-and-answer format, the pronouns "we" for EPA and "you" for the owner/generator, and other techniques to make the information in today's proposed rule easier to read and understand. This new format is part of the Agency's efforts at regulatory reinvention, and it makes today's proposed rule read differently from other listing rules. The Agency believes that this new format will increase readers' abilities to understand the regulations, which should then increase compliance, make enforcement easier, and foster better relationships between EPA and the regulated community.

All of the requirements found in today's proposed regulations would constitute binding, enforceable legal requirements. The plain language format used in today's proposed regulations may appear different from other rules, but it would establish binding, enforceable legal requirements just as those in the existing regulations.

C. What Are the Statutory Authorities for This Proposed rule?

EPA is proposing these regulations under the authority of Sections 2002(a), 3001 (a), (b) and (e)(2), 3004 (g) and (m), and 3007(a) of the Solid Waste Disposal Act (commonly referred to as RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). These statutes are codified in Volume 42 of the United States Code (U.S.C.), sections 6901 to 6992(k).

Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a), is the authority for the CERCLA aspects of this proposed rule.

II. Background

A. How Does EPA Define a Hazardous Waste?

EPA's regulations establish two ways of identifying wastes as hazardous under RCRA. Wastes may be hazardous either if they exhibit certain properties ("characteristics"), or if the wastes are included on a specific list of wastes EPA has determined are hazardous ("listing" a waste as hazardous). EPA's regulations in the Code of Federal Regulations (40 CFR) §§ 261.20 through 261.24 define characteristic wastes. These regulations classify wastes that exhibit certain properties as having the characteristic of ignitability, corrosivity, reactivity, or toxicity. As a generator, you must identify wastes as characteristic wastes by sampling a waste, or by using appropriate company records concerning the nature of the waste, to determine whether a waste has the relevant properties (see § 262.11(c)). There is no regulatory requirement to conduct sampling, but persons improperly managing materials that are found to be characteristic hazardous wastes are subject to enforcement actions under RCRA.

EPA may "list" wastes as hazardous if we conclude that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed. We have established criteria for listing a hazardous waste at 40 CFR 261.11(a)(3) for wastes that contain hazardous constituents identified in Appendix VIII of 40 CFR part 261. In deciding whether a wastes poses a substantial hazard, we consider the factors given in § 261.11(a)(3). We place constituents in Appendix VIII if scientific studies have shown a chemical has toxic effects on life forms (see 261.11(a)(3)). When listing a waste, we also add the hazardous constituents that serve as the basis for listing to Appendix VII to part 261.

The regulations at 40 CFR 261.31 through 261.33 contain the various hazardous wastes the Agency has listed to date. Section 261.31 lists wastes generated from non-specific sources, known as "F-wastes," and contains wastes that are usually generated by various industries or types of facilities, such as "wastewater treatment sludges from electroplating operations" (see code F006). Section 261.32 lists hazardous wastes generated from specific industry sources, known as "K-wastes," such as "Spent potliners from primary aluminum production" (see code K088). Section 261.33 contains lists of commercial chemical products and other materials that become hazardous wastes, known as "P-wastes" or "U-wastes," when they are discarded or intended to be discarded.

The proposed regulations in today's notice would list wastes from a specific industry and thus these wastes would be added to § 261.32 with K-waste codes. We are proposing to add constituents that serve as the basis for the proposed listings to Appendix VII, Part 261. For the chemicals not already listed on the list of Hazardous Constituents in Appendix VIII, we are also proposing to add these chemicals to that list.

Wastes listed as hazardous are subject to federal requirements under RCRA. These regulations affect persons who generate, transport, treat, store or dispose of such waste. Facilities that must meet the hazardous waste management requirements, including the need to obtain permits to operate, commonly are referred to as Subtitle C facilities. Subtitle C is Congress' original statutory designation for that part of RCRA that directs EPA to issue those regulations for hazardous wastes as may be necessary to protect human health or the environment. EPA standards and procedural regulations implementing Subtitle C are found generally at 40 CFR Parts 260 through 272.

Solid wastes that are not hazardous wastes may be disposed of at facilities that are overseen by state and local governments. These are the so-called Subtitle D facilities, which generally impose less stringent requirements on management of wastes. Subtitle D is Congress' original statutory designation for that part of RCRA that deals with disposal of solid waste. EPA regulations affecting Subtitle D facilities are found generally at 40 CFR Parts 240 thru 247, and 255 thru 258. Regulations for Subtitle D landfills that accept municipal waste ("municipal solid waste landfills") are given in Part 258.

Residuals from the treatment, storage, or disposal of most listed hazardous wastes are also classified as hazardous wastes based on the "derived-from" rule (40 CFR 261.3(c)(2)(i)). For example, ash or other residuals from treatment of the listed wastes generally carry the original waste code and are subject to the hazardous waste regulations. Also, the "mixture" rule (40 CFR 261.3(a)(2)(iv)) provides that, with certain limited exceptions, any mixture of a listed hazardous waste and a solid waste is itself a RCRA hazardous waste. However, when these wastes are recycled as described in 40 CFR 261.2(e)(1)(iii) or 261.4(a)(8), they are not solid wastes and are not subject to hazardous waste regulations. For example, if a waste is collected and returned in a closed-loop fashion to the same process, the waste is not regulated.

All RCRA hazardous wastes are also hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as described in section 101(14)(C) of the CERCLA statute. This applies to wastes listed in 261.31 through 261.33, as well as any wastes that exhibit a RCRA characteristic. Table 302.4 at 40 CFR 302.4 lists CERCLA hazardous substances along with their reportable quantities (RQs). Anyone spilling or releasing a substance at or above the RQ must report this to the National Response Center, as required in CERCLA Section 103. In addition, Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA) requires facilities to report the release of a CERCLA hazardous substance at or above its RQ to State and local authorities. Today's rule proposes to establish RQs for the newly listed wastes. EPA is not taking action at this time to adjust the one-pound statutory RQs for the newly listed hazardous substances.

B. What Industries Are Covered in This Proposed Rule?

1. The Dye and Pigment Industries

Today's proposal applies to the manufacturers of organic dyes and pigments, and does not affect producers of only inorganic dyes or pigments. We have already issued final rules governing the manufacturing of inorganic pigments. Section 261.32 contains wastes codes K002 through K008 that list wastewater treatment sludges and other residues from the production of inorganic pigments.

The organic dye and pigment industries are comprised of three related industries, dye manufacturers, pigment manufacturers, and Food, Drug, and Cosmetic (FD&C) colorant manufacturers. Dyes are colored or fluorescent organic substances which impart color to a substrate. When a dye is applied, it penetrates the substrate in a soluble form, after which it may or may not become insoluble. Dyes are used to color fabrics, leather, paper, ink, lacquers, varnishes, plastics, cosmetics, and some food items. Dye manufacture in the U.S. includes more than 2,000 individual dyes, the majority of which are produced in quantities of less than 50,000 pounds. The U.S. International Trade Commission's (USITC) production data for 1994 showed total production of approximately 156,000 tons for all organic dyes.

Organic pigments possess unique characteristics that distinguish them from dyes and other colorants. The primary difference between pigments and dyes is that, during the application process, pigments are usually insoluble in the substrate. Pigments also retain a crystalline or particulate structure and impart color by selective absorption or by scattering of light. This is different from dyes, which impart color by selective absorption. Pigments are used in a variety of applications; the primary use is in printing inks. There are fewer pigments produced than dyes, though pigment batches are generally larger in size. The USITC publication, Industry and Trade Summary: Synthetic Organic Pigments, USITC (No. 3021, February 1997), indicates that the total U.S. production was an estimated 71,500 tons of organic pigments in 1995.

FD&C colorants are dyes and pigments that have been approved by the Food and Drug Administration (FDA) for use in food items, drugs, and/or cosmetics. Typically, FD&C colorants are azo or triarylmethane dyes and are similar or identical to larger-volume dye products not used in food, drugs, and cosmetics. Manufacture of FD&C colorants is typically the same as that for the corresponding dye or pigment, except that the colorant undergoes additional purification. Each FD&C colorant batch is tested and certified by the FDA.

2. Previous Regulations of Wastes From This Industry

The 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA require EPA to make listing determinations for wastes from the production of dyes and pigments (see RCRA section 3001(e)(2)). On June 1991 EPA entered into a proposed consent decree in a lawsuit filed by the Environmental Defense Fund (*EDF* v. *Browner*, Civ. No. 89–0598 (D.D.C.), hereafter referred to as the consent decree). The consent decree sets out a series of deadlines for promulgating RCRA listing decisions, and has been amended as necessary. Paragraph 1h. of the consent decree obligates EPA to determine whether or not to list as hazardous certain wastes from the production of dyes and pigments.

In the consent decree EPA agreed to examine wastes from the manufacture of three classes of dyes and pigments for regulation: azo/benzidine, anthraquinone, and triarylmethane. The agreement specifies that the listing determination is to address wastes from the azo, monoazo, diazo, triazo, polyazo, azoic, and benzidine categories of the azo/benzidine dye and pigment class; the anthraquinone and perylene categories of the anthraquinone dye and pigment class; and the triarylmethane, triphenylmethane, and pyrazolone categories of the triarylmethane dye and pigment class. The settlement agreement also specifies that the listing determination is to address the following specific types of wastes where they are found: spent catalysts, reactor still overheads, vacuum system condensate, process waters, spent adsorbent, equipment cleaning sludge, product mother liquor, product standardization filter cake, dust collector filter fines, recovery still bottoms, treated wastewater effluent, and wastewater treatment sludge.

Due to the market demand for a wide variety of dye and pigment products, the dye and pigment industries typically operate successive batch processes producing varying dye and pigment products. These batch operations generate a wide variety of solid wastes on a periodic basis. These wastes generally can be divided into two general types: commingled wastes and process-specific wastes. Commingled wastes are wastes combined from multiple processes prior to management (*e.g.*, wastewaters). Commingled wastes include secondary wastes generated from the treatment of other commingled wastes (*e.g.*, wastewater treatment sludges). Process-specific wastes are wastes that are unique to a specific process and may be managed independently of one another (*e.g.*, spent filter aids).

On December 22, 1994, EPA published a notice that proposed listing decisions for 11 of the wastes covered in the consent decree. EPA deferred any listing decisions on three other wastes. (See 59 FR 66072). As a result, EPA and EDF amended the consent decree (paragraph 1h(v)) to establish deadlines for promulgating listing decisions for two of the deferred wastes. In today's notice, EPA is proposing listing determinations for all three of the deferred wastes.

C. Confidential Business Information (CBI) Issues Regarding This Rule

For the purpose of developing the supporting data for listing rulemakings for the dye and pigment industry, a questionnaire was sent out to industry pursuant to RCRA Section 3007. Some of the information collected from industry and used in the 1994 proposed rule, as well as today's proposed rule, was claimed as confidential. As a result of a consent order and a subsequent preliminary injunction in connection

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with a case brought by some of the dye and pigment industry to prevent the disclosure of information claimed as CBI, *Magruder et al.* v. *U.S. EPA*, Civ. No. 94–5768 (D.N.J.), the EPA is enjoined from disclosing information claimed as confidential until all CBI determinations have been made on the data intended to be published in connection with these proposed rules.

Therefore, as with the 1994 proposed rule, we have removed information from this preamble and rule (and supporting background documents), if the information may disclose information claimed as CBI. We note the missing information in the text to this rule, where appropriate. However, we have included data that are not claimed as CBI, whenever such data are available. We have also included data that we obtained from public or non-CBI sources. Wherever we are unable to include pertinent data in a table, the following statement appears in a footnote: "Relevant data are not included at the present time due to business confidentiality concerns."

At this time EPA expects that this rule will also need some form of notice of data availability (NODA) or reproposal prior to promulgation as a final rule because of CBI problems. However, EPA is proceeding as noted above to allow publication of as much of the proposed rule as can be shared at this time. Thus, commenters can see as much as possible of EPA's current thinking and can comment on the basic approach, the implementation issues, and other portions of the rule that can reasonably be commented upon, even with the current redactions. We intend to supplement the public record prior to issuing a final listing determination.

D. What Wastes Are Covered in Today's Proposed Rule?

Today's proposal applies only to the dye and pigment manufacturing industries. The end-user markets for dyes and pigments, which include textiles, paper, leather, ink, paints, coatings, plastics, fibers, and other low volume markets, are not within the scope of our listing determination. Consistent with both HSWA Amendments of 1984 and the consent decree, EPA is only making proposed determinations on wastes from the production and manufacturing of dyes and pigments.

In the 1994 proposed rule, the Agency deferred action on three waste streams based on insufficient characterization data, or lack of health-based levels for specific constituents of concern. The "deferred" dye and pigment waste streams are the subject of today's proposed rule. The three deferred wastes are:

- Spent filter aids, diatomaceous earth, or adsorbents used in the production of azo, anthraquinone, or triarylmethane dyes, pigments, or FD&C colorants.
- Wastewater treatment sludge from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock).
- Wastewater treatment sludge from the production of anthraquinone dyes and pigments.

This proposed rule will refer to these wastes as "filter aids," "TAM sludges," and "anthraquinone sludges" respectively. Brief descriptions of the three wastes are given below.

Filter Aids

Manufacturers add filter aids (*e.g.*, diatomaceous earth) to some reaction processes to remove particulate impurities. The spent filter aids then are collected in a filter press and the press cake, sometimes called a clarification sludge, is disposed as waste. In some cases, facilities also use filter aids following completed reactions to clarify and purify certain products. The Agency grouped spent filter aids, diatomaceous earth, and adsorbents used in the production of all relevant classes of dyes and pigments, because these wastes typically contain unreacted raw materials, by-products, and impurities. The constituent composition of these filter aids varies depending on the dye or pigment produced and the raw materials used. The Agency deferred a determination as to whether to list Filter Aids in 1994 due to insufficient waste characterization data for this widely variable waste (see 59 FR 66103).

TAM Sludges

As described in the 1994 proposed rule, EPA evaluated wastes from the production of TAM pigments that use aniline as starting material ("feedstock") separately from other TAM wastewaters and wastewater treatment sludges. This was because the process that uses aniline as a feedstock is somewhat different (see 59 FR 66081 and 66096). We proposed listing decisions for wastes from TAM pigments derived from aniline in the 1994 notice, but deferred a decision for wastewater treatment sludge from the production of TAM dyes and pigments that do not use aniline. Today's proposed rule addresses the wastewater treatment sludges from production of TAM dyes and pigments, excluding TAM pigments using aniline as a feedstock.

The typical wastewater treatment sludge is generated via the treatment of the following process waste streams: equipment washdown, plant run-off, spent scrubber liquid and mother liquor. Wastewater treatment steps usually include: neutralization to adjust pH, clarification, and biological treatment. Pretreatment sludges may be generated from precipitation/filtration in neutralization tanks, and from treatment with adsorbents, such as activated carbon. Biological treatment can also lead to generation of a wastewater treatment sludge. Sludge streams are further processed, typically through filtration and dewatering, prior to disposal. Information related to the management of TAM sludges is not included due to business confidentiality concerns.

In support of the 1994 proposed rule, we attempted to sample TAM sludges (from production of TAM pigments that do not use aniline as a feedstock). However, TAM dyes or pigments were not being produced at the time EPA collected its samples, and we could not attribute any constituents detected to TAM production. Thus, EPA deferred any listing decision for sludges from the production of TAM dyes and pigments (excluding TAM pigments using aniline as a feedstock) due to insufficient waste characterization data (see 59 FR 66095).

Anthraquinone Sludges

The typical anthraquinone sludge is generated via the treatment of process wastewater similar to that described for TAM sludges. From the data collected for the 1994 proposed rule, the only constituents detected in the waste that we could attribute to anthraquinone production did not have health-based benchmarks. EPA was unable to identify any appropriate surrogate compound of known toxicity to estimate the toxicity of these constituents. Because of the lack of health-based benchmarks or reliable surrogates, we deferred any listing determination in the 1994 proposal. As part of the deferral, we requested toxicity data or any suitable surrogates for the two waste constituents (see 59 FR 66101).

E. What Information Did EPA Collect and Use?

1. The RCRA Section 3007 Survey

In support of the 1994 proposed rule, EPA distributed a detailed RCRA section 3007 survey to dye and pigment manufacturing facilities in 1992. The purpose of the questionnaire was to collect information on the 12 specific residuals identified in the 1991 consent decree. Most questions in this survey requested information on waste generation and management activities in 1991. From data provided by questionnaire respondents, EPA identified facilities that manufacture azo, anthraquinone, or triarylmethane dyes or pigments (the number of facilities is not included due to business confidentiality concerns). In the questionnaire, EPA collected information regarding the products manufactured at each facility, raw materials and additives used, and 1991 production volumes. The questionnaire also collected information on the management of the wastes generated by each facility, including waste quantity and how the wastes were managed and disposed.

EPA contacted companies generating the three deferred wastes at issue in today's proposed rule to update the information in the 1992 § 3007 survey. The updated information EPA collected includes the quantities of wastes generated (for the year 1997), and the waste management practices used by the facilities for each of the wastes. The Agency used this updated information in its risk assessment, as described in Section III.D. The following discussion summarizes the information collected for each waste.

Filter Aids

In response to the 1992 questionnaire, a number of dye and pigment manufacturers reported generating filter aid wastes. We are not including information on the number of facilities generating this waste, nor the waste quantities reported for 1991, due to business confidentiality concerns. We also cannot include information collected by EPA in 1998 on the number of generators and the quantities for 1997 for the same reason. Facilities that generated spent filter aids may generate this waste from the production of a wide variety of different dyes and pigments. For example, one facility reported generating a total of 90 Mtons of filter aid wastes in 1997, comprised of 18 filter aids arising from the production of dyes and/or pigments.

TAM Sludges

In response to the 1992 questionnaire, a number of dye and pigment manufacturers reported generating TAM wastewater treatment sludges. We are not including information on the number of facilities generating this waste, nor the waste quantities reported for 1991, due to business confidentiality concerns. We also cannot include information collected by EPA in 1998 on the number of generators and the quantities for 1997 for the same reason. As noted previously, EPA was unable to collect samples of this waste.

Anthraquinone Sludges

In response to the 1992 questionnaire, a number of dye and pigment manufacturers reported generating anthraquinone wastewater treatment sludges. We are not including information on the number of facilities generating this waste, nor the waste quantities reported for 1991, due to business confidentiality concerns. We also cannot include information collected by EPA in 1998 on the number of generators and the quantities for 1997 for the same reason.

As noted above, the only chemicals detected in sludge that could be attributed to anthraquinone production in 1994 did not have health-based benchmarks. EPA did not receive any information in comments on the 1994 proposal that would assist us in calculating health benchmarks. Furthermore, EPA has not subsequently found any suitable surrogates to estimate the toxicity of the compounds in question.

2. Sampling and Analysis Data

For the 1994 proposed rule, the Agency performed sampling to characterize the wastes generated at dye and pigment manufacturing facilities. EPA collected a total of 34 waste samples from facilities to characterize the residuals under evaluation. The analytical results for all the wastes are summarized in the Background Document for Identification and Listing of the Deferred Dye and Pigment Wastes, Appendix A (hereafter called the Listing Background Document) for today's proposal, which is available in the docket. (Note however, that we cannot release much of the analytical data due to business confidentiality concerns). The dye and pigment manufacturers also provided a limited amount of additional waste sampling and analysis data in 1994. These additional data include aggregated analytical results from 19 industry analyses of samples that EPA and the facilities split during sampling visits. An industry trade group (Color Pigment Manufacturers' Association, or CPMA) aggregated this analytical information and submitted this information to EPA in April 1994. CPMA also included this information in the group's public comments on the 1994 proposed rule (see Docket No. F–94–DPLP–FFFFF, item DPLP–0025). We used the available sampling data from these sources to identify potential constituents of concern for use in today's proposed rule.

For the 1994 proposed rule, EPA collected limited sampling data for spent filter aids. Our sampling results were inconclusive for TAM sludges because these products were not manufactured during our sampling visit. While we did succeed in obtaining samples of anthraquinone sludge, we do not have health benchmarks for the two constituents that could be attributed to production of anthraquinone products.

III. Approach Used in This Proposed Listing

A. Summary of Today's Action

In listings promulgated by EPA, we typically describe the scope of the listing in terms of the waste material and the industry or process generating the waste. However, in today's rule we are proposing to use a new approach in these listings, a "concentration-based listing." In a concentration-based listing, a waste would be hazardous unless a determination is made that it does not contain any of the constituents of concern at or above specified levels of concern. This approach draws from the concept of the characteristic approach to defining a hazardous waste, in that whether a waste is hazardous depends on the levels of key constituents in the wastes. We describe this concept in detail later in this notice.

We are proposing concentration-based listings for two of the deferred wastes:

- Spent filter aids, diatomaceous earth, or adsorbents used in the production of azo, anthraquinone, or triarylmethane dyes, pigments, or FD&C colorants.
- Wastewater treatment sludge from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock).

For both wastes, the listings would apply if the wastes contain any of the constituents identified in the regulation at a concentration equal to or greater than the hazardous level set for that constituent (see tables IV–1 and IV–2 for levels). We are also proposing a set of conditions and requirements that must be met if a facility wishes to claim its waste does not exceed these levels and is, therefore, not covered by the listing.

We are proposing not to list as hazardous the third waste considered:

- Wastewater treatment sludge from the production of anthraquinone dyes and pigments.

In the following sections we describe the concept of a concentration-based listing and the risk assessment methodology we used to develop concentration limits for each wastes. We describe our proposed decisions in more detail in Section IV.

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B. What Is a Concentration-Based Listing?

A concentration-based listing specifies constituent-specific levels in a waste that causes the waste to become a listed hazardous waste. In this proposed rule, we identify constituents of concern likely to be present in two categories of dye and pigment wastes. Using risk assessment tools developed to support our hazardous waste identification program, we assessed the potential risks associated with the constituents of concern. From this analysis, we developed "listing concentrations" for each of the constituents of concern in the two waste categories.

If you generate any of the wastes included in the two categories of dye and pigment wastes referenced above, you must either determine whether or not your waste is hazardous or assume that it is hazardous as-generated. We are proposing that you determine representative concentrations for the constituents of concern in your waste through sampling and analyses, unless you can use process knowledge to demonstrate that certain constituents are not present in your waste. Based on this information, you must make a determination as to whether or not your waste is a listed hazardous waste. Your waste would be a listed hazardous waste if it contains any of the constituents of concern at a concentration equal to or greater than the hazardous concentration identified for that constituent. If all of the constituents of concern in your waste were below their respective listing concentrations, you would need to notify EPA that your wastes are nonhazardous. The detailed descriptions of the steps you would be required to follow to implement the concentration-based listing are described later in this proposed rule.

C. Why Is a Concentration-Based Approach Being Used for This Listing?

There are several reasons for using a concentration-based approach for listing the deferred dyes and pigments wastes. First, these wastes are generated by an industry that uses batch processes to manufacture a variety of products, in response to market demand for a wide variety of dye and pigment products. Batch operations may result in highly variable wastes at the same facility or different facilities. A concentration-based approach allows the variable wastes generated at these facilities to be evaluated individually for hazard, so only the truly hazardous wastes are listed. This tailored approach is more cost-effective for the industry than a standard listing, and avoids the unnecessary regulation of nonhazardous waste.

Alternatively, EPA could have attempted to collect more information on these specific wastes to support a straightforward listing, i.e., without any concentration limits. However, such a data collection effort would have been difficult due to the wide variety of individual dye or pigment products produced and the potential variability in the waste characteristics. For example, one facility generated 18 filter aid wastes in 1997 arising from the production of different dyes and/or pigments. Gathering sufficient samples to evaluate all potential filter aid wastes would require a large commitment of scarce Agency resources that would have been beyond the reasonable scope of this rulemaking, especially given the time constraints of the existing Consent Decree. Given the relatively low quantities of the individual filter aids produced, EPA does not feel such an effort was justified.

Second, many manufacturers in the dye and pigment industries want to keep facility-specific product and waste information confidential. These manufacturers are concerned that release of such information could cause competitive harm. A concentration-based listing allows us to rely less on CBI, since we do not use this information directly to set the listing concentrations. This means we don't use specific information, such as product formulations or concentrations of constituents in the wastes, to set hazardous concentration levels for constituents of concern. As noted earlier, however, in this particular listing EPA still must resolve the CBI claims on some specific data prior to release.

Finally, a concentration-based listing approach may provide an incentive for hazardous waste generating facilities to modify their manufacturing processes or treat their wastes. For example, if a facility has a listed hazardous waste based on constituent-specific concentration levels established by EPA, it also knows the required concentrations levels of constituents in its waste below which its waste would become nonhazardous. Therefore, the facility may decide to modify its manufacturing process in order to generate a nonhazardous waste. Thus, this approach encourages waste minimization.

Section 1003 of the HSWA indicates that one of RCRA's goals is to promote protection of human health and the environment and to conserve valuable material and energy resources by "minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling, and reuse and treatment." Section 1003 further provides that it is a national policy of the United States that, whenever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible.

The Pollution Prevention Act of 1990 (42 U.S.C. 13101 *et seq.*, Pub. L. 101–508, November 5, 1990) provides a hierarchy of pollution prevention approaches. Pollution should be prevented or reduced; pollution that cannot be prevented should be recycled or reused in an environmentally safe manner; pollution that cannot be prevented/reduced or recycled should be treated; and disposal or release into the environment should be chosen only as a last resort. A concentration-based listing may prevent pollution by discouraging generation of wastes with high levels of toxic constituents. If EPA provides a concentration-based target in the listing, generators would have the regulatory and economic incentive to meet the reduced levels.

D. What Risk Assessment Approach Did EPA Use?

Under a concentration-based listing approach, EPA must calculate concentration levels, or "listing levels," in the waste that would present a hazard. To accomplish this, the Agency: (1) Selected constituents of potential concern in the waste, (2) chose a plausible waste management scenario, (3) calculated exposure concentrations by modeling the release and transport of the constituents from the waste management unit to the point of exposure, and (4) calculated waste concentrations that would yield the target risk level at the point of exposure.

The following sections present an overview of the analysis EPA used to calculate risk-based listing levels for filter aids and TAM sludges generated during the manufacture of organic dye and pigment products. You will find more details of how we selected the constituents of concern in the Listing Background Document. Details of the risk assessment are provided in the document in the docket entitled Development of Risk-Based Listing Concentrations for Hazardous Constituents Contained in Spent Filter Aids and Triarylmethane (TAM) Wastewater Treatment Sludges (hereafter called the Risk Assessment Background Document).

1. Choosing the Constituents of Concern

Our initial universe of constituents of potential concern included any constituent detected in any wastestream from the production of all classes of dyes and pigments we examined (i.e., all wastes sampled associated with the production of azo, TAM, and anthraquinone dyes or pigments, including FD& C colorants). We typically obtain samples from the specific wastes of concern for a standard listing evaluation. However, obtaining representative samples of filter aids and TAM sludges was difficult, as noted in the 1994 proposal (see 59 FR 66095 and 66103), due to widely varying wastes and batch processes. We believe that the broad universe of constituents detected in all wastes examined provides an appropriate starting point for selecting constituents of concern for filter aids, because these wastes may be generated from the production of many kinds of dyes and pigments. Because TAM sludge is a much more narrowly defined waste, we relied on available information regarding constituents used in TAM production to determine what constituents we expect in the waste.

Our primary source of potential constituents was the set of analytical data EPA collected to support the 1994 proposed rule described in Section I.E.2 of today's notice. We also examined the limited analytical data from industry to confirm the presence of constituents. These data sets included sampling results for all wastes under consideration in the 1994 proposal, because the available analytical data for the three specific wastes at issue are limited. For filter aids, EPA obtained some samples in support of the 1994 proposed rule. However, filter aids may potentially contain a variety of constituents, depending on what products and processes are in use by different facilities. Therefore, the limited waste analysis data for filter aids alone were not adequate to establish constituents of concern. We have no waste analysis data that would allow us to identify specific constituents of concern for TAM or anthraquinone sludges. As noted in Section II.D, our sampling results were inconclusive for TAM sludges because TAM dyes or pigments were not being produced at the time EPA collected its samples. While we did succeed in obtaining samples of anthraquinone sludge, we do not have health benchmarks for the two constituents that could be attributed to production of anthraquinone products. Thus, we did not pursue a listing for this waste.

We used the analytical data from all wastes to develop an initial list of potential chemicals of concern. We then reduced and augmented this list based on several factors. First, we can only develop a concentration level if a health benchmark exists for the chemical. Therefore, we removed constituents without health benchmarks from further evaluation. The sources we used for health benchmark data are summarized below; the Risk Assessment Background Document contains further information (see Appendix E).

Due to the lack of health-based benchmarks, we excluded certain constituents from consideration in today's proposed rule that we previously evaluated for azo dye and pigment wastes in the 1994 proposed rule. These constituents are acetoacetanilide (AAA), acetoacet-o-toluidine (AAOT), and acetoacet-o-anisidine (AAOA). For the 1994 proposal, we derived health based numbers based on a Structural Activity Relationship (SAR) analysis. The Agency has since reevaluated and revised the SAR analysis based on comments received in response to the 1994 proposal. The revised analysis, which has been independently peer reviewed, concludes that the current available data are insufficient to make a quantitative estimation of the carcinogenic potential of these compounds, or to establish provisional non-cancer benchmarks. The revised toxicological analysis for these compounds and the peer review documents are provided in Appendix A to the Risk Assessment Background Document.

We then screened the remaining potential constituents to remove chemicals that we believed were of little use in defining the hazardous characteristic of the two wastes at issue. In this screen we considered the prevalence with which a constituent is used in the manufacturing of the different classes of dyes and pigments at issue in the consent decree, the likelihood that a chemical could be attributed to such production, and the frequency with which a chemical was detected in wastes samples. In considering if the constituents detected are likely to be derived from dye or pigment production, we used publicly available information from the Colour Index International (3rd edition, 1996). For example, we retained any chemicals that were detected that are commonly used as raw materials in the production of the dyes and pigments at issue (e.g., aniline is widely used in the production of azo products; see Colour Index, vol. 4, pages 4009 and 4699). We also kept some chemicals detected that have no apparent use as raw materials, because they may be impurities or degradation products from chemicals used in the manufacturing process (e.g., naphthalene may be an impurity in a commonly used raw material, beta-naphthol). We removed some constituents, such as acetone and methylene chloride, that were detected frequently in samples, because they are common laboratory contaminants and/or common solvents that have no reported use in the production of these dyes and pigments. While such constituents may be present in wastes, we did not consider them further because we could not reasonably attribute them to dye and pigment production processes sampled. We dropped other constituents that had little or no reported use in the Colour Index; the dropped constituents were also rarely found in waste samples.

We are proposing to include the selected core chemicals in Table III–1 as constituents of concern for defining the two listed wastes. This table summarizes the frequency with which we detected the chemicals in waste samples, and prevalence of use of the chemicals in the production of the three dye and pigment classes (azo, TAM, and anthraquinone) as found in the Colour Index. For filter aids we included constituents on the final list of constituents of concern if we detected the chemicals with at least a low frequency (i.e, in more than one sample), and we found some evidence that industry used the chemicals in the production of the dyes and pigments at issue. We also selected several chemicals that we believe may be degradation products of other raw materials (e.g., p-phenylenediamine), or possible impurities in other starting materials (e.g., naphthalene). Finally, we included several compounds that may arise from TAM production, as described below, even though we do not have analytical data showing these chemicals are present in wastes from this industry. (More details of our rationale for choosing chemicals of concern are given in the Listing Background Document, Section 4).

We chose to add two chemicals for consideration as constituents of concern that were reported to be used in the production of TAM products, even though we did not find them in any waste samples. In the case of benzaldehyde, we did not analyze any of the wastes for this compound. However, this chemical is reported to be used in the production of TAM products (see Colour Index, vol.4, page 4727). We analyzed for the other chemical (the

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identity is not given due to business confidentiality concerns), but we did not find it in any samples. However, the 3007 Survey indicated significant use of this chemical in the production of TAM dyes. EPA did not succeed in obtaining waste samples during the production of TAM dye and pigments (excluding TAM pigments using aniline as a feedstock). Therefore, based on the known uses in TAM manufacturing, we considered these two chemicals as potential constituents of concern.

In the case of TAM sludges, we considered proposing the same list of core constituents used for filter aids. We considered this option primarily because we have no analytical data that reflects wastes arising from TAM production. (We do have data for wastes from the production of TAM pigments using aniline as a feedstock; this subset of TAM wastes were dealt with in the 1994 proposed rule and is not at issue in today's notice. We decided to propose a list based on the constituents that are known to be used in the manufacturing of TAM dyes or pigments. Using public sources of information (i.e., Colour Index), we were able to identify reactants reported in use for TAM products. Except as noted previously, the constituents identified in this way are consistent with the constituents reported in the 3007 Survey. This analysis led to the list of constituents of concern for TAM sludges.

The publicly available information we used was consistent with the information provided by industry in responses to the 3007 Survey, except in a few cases. In some instances (the identities are not given due to business confidentiality concerns), the Colour Index showed low to moderate use of the chemicals that was not confirmed in the 3007 Survey. Conversely, in the case of another chemical (the identity is not given due to business confidentiality concerns), the 3007 Survey indicated significant use in the production of TAM dyes, while the Colour Index did not. In cases where we had these discrepancies, we relied on the source that showed use and assumed that these chemicals may be used in production.

In choosing core constituents of concern for a concentration-based listing for filter aids and TAM sludges, we considered adding other constituents shown in Table III–2. We considered these chemicals because they were detected with a moderate frequency, they had some use in manufacturing the dye and pigment products of concern, or they are in a class of compounds that have been historically linked to dye production (benzidines). However, we believe that these constituents are unlikely to be present in these two specific wastes at levels of concern. Some of the chemicals in Table III–2 could not be linked to the production of the dye and pigment classes at issue. We did not include chemicals in the final list of core constituents of concern unless we could find some evidence that the presence of a chemical was related to the production of the classes of the dyes and pigments of interest (for filter aids, the production of azo, TAM, or anthraquinone products; for TAM sludges, the production of TAM products, excluding TAM pigments using aniline as a feedstock). This is because many waste samples were wastewaters or sludges collected from combined wastewater treatment systems, and such systems typically receive waste streams from various other production processes at facilities. We did not include other chemicals because they were never or rarely detected in EPA's analysis.

TABLE III–1.—CORE CONSTITUENTS OF CONCERN IN FILTER AIDS AND TAM SLUDGES

Constituent	Core constituents of concern for filter aids (FA) and/or TAM sludges (T)	Frequency of detection[1]	Use in production of dye and pigment classes[2]	Comments
Aniline	FA	High; S	High use (Azo); some use in TAM pigment (aniline based)	
Benzaldehyde	FA, T	Not analyzed	Moderate use in TAM products**	Not analyzed, but common reactant in TAM production.
Chloroaniline, p-	FA	Moderate, S	Rare use (Azo)	Aromatic amine; possible contaminant.
Cresol, p-	FA	Moderate, S	Low use (Azo) found in Colour Index;**	Industry split samples did not distinguish meta and para isomers.
Dimethoxybenzidine, 3,3'-.	FA	Low, S	Moderate use (Azo)	
Dimethylaniline, N,N-.	FA, T	Rare	Moderate to high use found for TAM dye production; rare use otherwise.	Rarely detected, but TAM waste not sampled and common reactant in TAM production.
Diphenylamine	FA, T	Moderate	Low use (Azo); rare use in TAMs	Indistinguishable from N-Nitrosodiphenylamine by EPA method (GC/MS).
Diphenylhydrazine, 1,2-.	FA	Moderate	None reported	Possible oxidation product of aniline; indistinguishable from azobenzene by EPA method (GC/MS).
Formaldehyde	FA, T	Moderate, S	Moderate use for TAM; low use for others	
Naphthalene	FA	Moderate/High	None reported	Possible impurity in common Azo raw material (beta-naphthol).
Phenol	FA	Moderate/High, S	Moderate use (Azo)	
Phenylenediamine, p-(4-aminoaniline).	FA	Low/Moderate	Moderate use (Azo)	Possible hydrolysis product of other azo raw materials (aminoacetoacetanilide); indistinguishable from o-isomer in EPA analysis.

TABLE III–1.—CORE CONSTITUENTS OF CONCERN IN FILTER AIDS AND TAM SLUDGES—Continued

Constituent	Core constituents of concern for filter aids (FA) and/or TAM sludges (T)	Frequency of detection[1]	Use in production of dye and pigment classes[2]	Comments
Toluidine, o-(2-aminotoluene).	FA, T	Moderate, S	Moderate use (Azo); low use (TAM)	Hydrolysis product of raw materials (AAOT); EPA could not separate o- and p-isomers during analysis.
Toluidine, p-(4-aminotoluene).	FA, T	Moderate, S	Low to moderate uses (TAM and anthraquinone).	EPA could not separate o-and p-isomers during analysis.
(**)				
(**)				

[1] As found in EPA analysis of samples of all dye and pigment wastes from production of azo, TAM, and anthraquinone dyes/pigments and FD&C colorants; "ND" means not detected; "S" denotes reported in industry split samples.
[2] From the Colour Index International, 3rd edition, 1996.
**Relevant data are not included at the present time for a number of constituents due to business confidentiality concerns.

TABLE III–2.—OTHER CONSTITUENTS OF POSSIBLE CONCERN

Constituent	Frequency of detection[1]	Use in production of dye and pigment classes[2]	Comments
Benzene	Moderate, S	None reported	Found in waste, but no use; common contaminant from many industrial processes.
Benzidine	Low	No reported use domestically.	Used historically (Azo), but no current domestic use reported; only found in wastes from processes that do not use filter aids.
Chlorobenzene	Moderate, S	None reported	No known use; other uses as solvent.
Chloroform	Moderate, S	None reported	No use; contaminant from treated water supplies; other uses as solvent.
Dichlorobenzene, 1,2-	Moderate	None reported	No use in azo/TAM/anthraquinone production; solvent uses in other dye production (Oxazine dyes).[2]
Phenylenediamine, o-(2-aminoaniline).	(See comments)	Low use (anthraquinone)	EPA found analytical methods unreliable (very poor recoveries); may be indistinguishable from p-isomer.
Toluidine, 5-nitro-o-(2-methyl-5-nitroaniline).	ND, S	Moderate use (Azo)	Not detected in any EPA samples of azo wastes and reported in only 1 industry sample.
(**)			

[1] As found in EPA analysis of samples of all dye and pigment wastes from production of azo, TAM, and anthraquinone dyes/pigments and FD&C colorants; "ND" means not detected; "S" denotes reported in industry split samples.
[2] From the Colour Index International, 3rd edition, 1996.
** Relevant data are not included at the present time for a number of constituents due to business confidentiality concerns.

We believe that using analytical data from all dye and pigment wastes sampled is clearly appropriate for filter aids. This is because filter aids are used to treat and purify a wide variety of wastes derived from all of the classes of dye and pigment products (azo, triarylmethane, and anthraquinone). The shorter list for TAM sludges also is appropriate, due to the more limited set of potential waste constituents for this single dye and pigment class. We calculated concentration limits for all constituents in Tables III–1 and III–2 for both spent filter aids and TAM sludges, as we describe later in this notice.

We are seeking comment on whether the constituents of concern we selected are appropriate for the concentration-based listings for the two wastes under consideration. We are interested in any information on the potential for these, or any other constituents in Table III–2, to be in these wastes at levels of concern. We believe that it is reasonable to select constituents that we can link to the dye and pigment processes under evaluation. To require testing for an extensive list of constituents without adequate reason would lead to unnecessary analysis by industry in evaluating if their wastes meet the listing levels. After considering information provided in comments on today's proposed rule, we may choose to add potential constituents from Table III–2, or delete proposed constituents for the two wastes.

Analytical Issues

We found problems in our chemical analysis of dye and pigment waste samples for some of the constituents in Table III–1. In a few cases, our analyses could not distinguish between two compounds when we used the usual EPA methods for semivolatile organic chemicals, GC/MS method 8270 in Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods; SW–846, hereafter called SW–846). We found problems for four pairs of compounds: diphenylamine/N-nitrosodiphenylamine; 1,2-diphenylhydrazine/azobenzene; o-toluidine/p-toluidine; and o-phenylenediamine/p-phenylenediamine. We propose to deal with these problems as outlined below.

N-Nitrosodiphenylamine breaks down to diphenylamine in the method we used; therefore these two chemicals could not be distinguished. This means

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that detection by this method could be due to either compound being in the waste. We found no reported use of the N-nitroso-derivative, but we did find diphenylamine has some use in the production of azo and TAM products. Therefore, for this pair we selected diphenylamine as the likely constituent of concern. This means that, if we finalize diphenylamine as a constituent in the concentration based listings, generators would analyze for this constituent and assume any concentration measured is diphenylamine.

Similarly, we could not distinguish the compounds 1,2-diphenylhydrazine and azobenzene in the analytical method used, because these chemicals interconvert readily under analytical conditions. Thus, our data showed that one or both of these compounds were present in waste samples, but we could not tell which one. In this case, we did not find any reported use of either chemical in dye or pigment production processes. However we believe that the presence of either may be explained by oxidation of aniline from processes that use aniline as a reactant. Thus, in this case we are proposing to include the constituent with the lower concentration level (1,2-diphenylhydrazine) to be protective. This means that generators would analyze their waste for the total level of 1,2-diphenylhydrazine/azobenzene, and assume that the amount detected is due only to the more toxic 1,2-diphenylhydrazine. This is also reasonable because these compounds may readily interconvert in wastes or the environment, thus it is prudent to set the listing level for the more toxic component.

In our analysis we also could not separate two isomers of toluidine (o-toluidine and p-toluidine) and phenylenediamine (o-phenylenediamine and p-phenylenediamine). While it may be possible to distinguish these isomers using other analytical methods, we have no data at this time to indicate this. For the toluidine isomers, we are proposing to include both isomers as constituents of concern. If generators cannot separate these isomers, they could determine a total quantity for both. In the absence of information on which isomer is expected in the waste, generators would assume that the measured concentration is due to the more toxic o-toluidine. Generators could use their knowledge of their production processes, however, to definitively rule out the presence of one of the isomers, and in this way identify which isomer is present. For example, if generators know that only one isomer is used in any of the relevant processes, they could document this and claim this as part of their determination. Note that the risk-based concentration levels we propose to set for these two chemicals are similar (i.e, they differ by less than a factor of two for both wastes), thus the practical distinction between these isomers is relatively unimportant, unless generators measure them at levels approaching the listing levels.

For the o- and p-phenylenediamine isomers, we reviewed the analytical data and now believe that o-phenylenediamine cannot be reliably measured. We found that we could not reliably recover the chemical from samples with known concentrations (spiked samples). In addition, the reported usage of o-phenylenediamine in the production of dyes and pigments is relatively limited compared to the use of p-phenylenediamine (see Colour Index, vol. 4, page 4822). Furthermore, p-phenylenediamine may also form from the degradation of a widely used azo precursor, p-aminoacetoacetanilide. Therefore, because of these analytical problems, and also because its use in dye or pigment production is limited, we are proposing not to include o-phenylenediamine in the list of constituents of concern for either waste. Thus, if we finalize phenylenediamine as a constituent of concern for filter aids, generators would be required only to determine if p-phenylenediamine is present in their wastes below the listing levels.

We seek comment on these analytical issues associated with the potential constituents of concern. We are especially interested in any information on methods that may reliably resolve the analytical problems noted above. We also seek comment on the problematic chemicals we identified, and whether EPA should adopt another approach. One approach might be to simply avoid using any of these compounds on the list of constituents of concern due to the analytical problems. However, due to their potential importance, we believe at this time that the above approach is a reasonable attempt to use these chemicals in setting listing levels. Another approach would be to use the approach described for the 1,2-diphenylhydrazine/azobenzene pair, i.e., if the generators cannot resolve the constituents in the chemical analysis, they would always assume that the more toxic constituent was in fact present. We believe this may be overly conservative in some cases, but solicit comment on this and other possible approaches.

2. Choosing the Risk Assessment Scenarios To Evaluate

For both filter aids and TAM sludges, we evaluated the scenario of disposal in unlined municipal landfills and assessed the impact of the release of leachate from these landfills to the groundwater. In past listings we have found that landfill disposal of wastewater treatment sludges and similar solids is quite common (e.g., see EPA's recent listing for petroleum refining wastes, 63 FR 42110; August 6, 1998). The updated information we collected for both wastes showed that some generators sent these wastes to municipal landfills. In both cases, EPA chose to evaluate this scenario. However due to constraints on release of information claimed as CBI, we cannot discuss in detail the prevalence of this disposal practice or the extent of other practices.

We used the updated 1997 waste volumes (i.e., waste quantities) reported by facilities in our modeling of potential releases from municipal landfills. In the case of filter aids, we combined the filter aids generated by each facility and arrayed these combined waste volumes into a distribution that would represent quantities of filter aids that go to municipal landfills. We then used this distribution of waste volumes as a key input parameter into our modeling.

For TAM sludges (excluding sludges associated with TAM pigments using aniline as a feedstock), the updated data showed few generators of this waste. One facility sent 57 metric tons of sludge derived solely from the production of TAM dyes or pigments to a municipal landfill. This specific sludge was generated from wastewater that arose from the production of TAM products, and did not include wastewaters from other production processes. We cannot discuss the volumes or management practices of the other facilities at this time due to CBI constraints. We used the one volume associated with the dedicated sludge in all modeling for TAM sludge disposal in municipal landfills.

Under Federal regulations, generators are free to send either waste to any Subtitle D municipal landfill. We assumed that any municipal landfill described in EPA's nation-wide distribution of municipal landfills was possible, with some geographic limitations reflecting the locations of the dye and pigment manufacturers (described further below). Therefore, we used the distribution of data available for each of the parameters needed to model potential risk associated with disposal of dye and pigment waste streams in municipal landfills. The primary source of data from which we selected key modeling inputs (e.g., surface area, active life, distance to well) is EPA's 1988 National Survey of Solid Waste Municipal Landfill Facilities. These parameters are described in more detail in the Risk Assessment Background Document (Section 4).

EPA has promulgated regulations governing the design and operation of municipal landfills (see 40 CFR Part 258), and our modeling assumptions reflected some of these requirements when appropriate (e.g., daily cover). We chose to model a landfill without the full liner system described in the regulations, because it is reasonable to assume that many landfills now and in the future may not have synthetic liners. For example, the design criteria in 258.40 apply only to new units or lateral expansions of existing units. Existing landfills (i.e., those in existence prior to the effective date as defined in § 258.1(e)) do not have to meet the design requirements in § 258.40 (e.g., liner systems). Furthermore, the regulations allow exemptions from the standards depending on the location and size of the landfill (Section 258.1(f)), and States may approve alternative designs for new units or lateral expansions based on performance standards (§ 258.40(a)(1)). Finally, EPA is in the process of authorizing States to implement the municipal landfill regulations, and States are still working to issue permits and bring all landfills up to the regulatory requirements. Given the existing exemptions in the regulations, and the uncertainty in how many landfills have liner systems, we believe it is prudent to base our modeling on landfills without a liner.

Another reason the modeling of unlined landfills appears prudent is because industrial wastes also can go to unlined landfills that do not take municipal waste (i.e., industrial nonhazardous waste landfills), and thus would not be subject to those standards. We are unaware of any legal requirement that these wastes could not go to such non-municipal waste landfills. Given the similarities in the disposal practices (municipal and industrial nonhazardous waste landfills), we believe that an unlined landfill scenario is reasonable.

EPA used the approximate geographic locations of the facilities that generated spent filter aids and TAM sludges to estimate location parameters needed to conduct the risk assessment. We used geographic location to identify the soil, climate, and hydrogeologic parameters used in the fate and transport modeling. Location related parameters required for the risk assessment and specific inputs and data distributions used to model risk from these units are described in detail in the Risk Assessment Background Document (Section 4).

As noted above, there is uncertainty in how many landfills that might receive these waste have liner systems in place. EPA acknowledges that a liner system would serve to contain waste leachate, and would lessen the risk while such a liner system was intact. We seek comment as to whether an alternative regulatory approach should be taken for wastes sent to landfills with liners or certain environmental controls.

3. The Receptors and Exposure Pathways Evaluated

The primary receptors we considered in this analysis are adults and children exposed via ingestion (i.e., drinking water) and noningestion (e.g. showering) exposure pathways to water from groundwater wells contaminated by the leachate from the municipal landfill receiving filter aid or TAM sludge wastes. We considered only receptors with residential drinking water wells for the groundwater pathway. We assumed all community wells and other municipal water supplies are treated and, therefore, would not be contaminated with constituents from the wastes of concern.

We also evaluated receptors from nongroundwater pathways in our sensitivity analysis. We assumed the receptors for these pathways were farmers and their children who live in close proximity to the municipal landfill. We chose these receptors because their exposure results in the highest potential risk for nongroundwater pathways, which was appropriate for the initial sensitivity or screening analysis. Nongroundwater exposure pathways for filter aids and TAM sludges disposed in municipal landfills result from the emission of vapors from these landfilled wastes. We evaluated exposure from both direct and indirect nongroundwater pathways. The direct pathway consists of dispersal of vapors from the landfill through the air pathway directly to the receptor via the inhalation. Indirect pathways include deposition to soil, transfer to fruits, vegetables, grain, and forage (air-to-plant transfer and soil-to-plant transfer), and uptake by grazing animals. The plant and animal products are then consumed by the farm family.

E. How Did EPA Estimate Exposure Concentrations?

1. Risk Assessment Methods

To calculate listing levels for constituents of concern, we needed to determine what concentrations at the point of exposure would be associated with levels in the wastes. We conducted the risk assessment in three stages: (1) the sensitivity analysis, (2) the deterministic analysis, and (3) the probabilistic analysis for the groundwater pathways. For the nongroundwater pathways, the Agency used results from the sensitivity analysis to screen out nongroundwater risks, because they were not significant relative to potential groundwater risks associated with disposal of wastes in landfills.

a. Sensitivity Analysis. The purpose of our sensitivity analysis was to identify the most sensitive or risk-driving parameters in the risk assessment model and to determine high-end and central tendency values for subsequent use in the deterministic analysis. A high-end parameter corresponds to its 90th or 10th percentile value depending on whether a high or low value of that parameter results in a higher predicted risk. We conducted the sensitivity analysis by varying each parameter or set of linked parameters to high ends one at a time, while holding all other variables in the analysis at central tendency. We then compared the risk results using a single high-end parameter to the results obtained when all values are set at central tendency. Using this method, we identified the two most sensitive high end parameters that resulted in the highest risks. We then set these parameters to their high-end values in the subsequent deterministic analysis. For the groundwater pathway, we used the sensitivity analysis to identify high-end parameters for use in the deterministic assessment of risk from groundwater.

For the nongroundwater pathway, we were able to use the results from the sensitivity analysis as a screening level analysis of nongroundwater risks. Originally, we intended to use the nongroundwater sensitivity analysis to identify the most sensitive parameters for use in a deterministic analysis of nongroundwater risks from the dye and pigment waste streams. However, we were able to use the results of the nongroundwater sensitivity analysis to screen out or eliminate nongroundwater risks as a primary concern for dye and pigment industry wastes. We screened out nongroundwater risks by comparing the results of the nongroundwater sensitivity analysis to the results of the

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groundwater sensitivity analysis, which we performed using the same inputs for common parameters. In all cases, the groundwater risk analysis produced higher risk estimates for all constituents. Since the purpose of this analysis was to set risk-based concentration limits, we focused our analysis on the pathway of most concern (i.e., highest risk) to determine protective concentrations. Because the groundwater pathway presented the highest risk, we only evaluated the groundwater pathway further using deterministic and Monte Carlo analyses. In other words, risk-based concentrations set based on groundwater pathway risks will also be protective of nongroundwater pathway risks. Based on this finding, no further modeling of nongroundwater risks was conducted. The Risk Assessment Background Document describes the sensitivity analysis for both groundwater and nongroundwater pathways and presents the results in Appendices A and H.

b. Deterministic Analysis. The "deterministic" method uses single values for input parameters in the models to produce a point estimate of risk or hazard. For this analysis, we used a double high-end risk assessment. In this method, we set the two parameters identified to be most sensitive at their high-end values and all other parameters are set at central tendency. A central tendency risk estimate is the point estimate in which all variables are set at central tendency values. We presume the high-end risk estimate to be a plausible estimate of individual risk for those persons at the upper end of the risk distribution. By using these descriptors we intend to convey estimates of exposure in the upper end of the distribution (i.e., above the 90th percentile), while avoiding estimates that are beyond the true distribution. (See the EPA guidance memo entitled, Guidance on Risk Characterization for Risk Managers, 1992; hereafter known as the Habicht memo, 1992). We applied the deterministic methodology to assess groundwater pathway risks from disposal of spent filter aid and TAM sludges in municipal landfills. The parameters that we found to be the two key high-end parameters varied somewhat by chemical and waste. However, these parameters were some combination of waste quantity, well location, and duration of exposure.

c. Probabilistic Analysis (Monte Carlo Method). In the probabilistic analysis, we vary sensitive parameters for which distributions of data are available. Parameters varied for this analysis include waste volumes, landfill size, parameters related to the location of the landfill such as climate and hydrogeologic data, location of the receptor, and exposure factors (e.g., drinking water ingestion rates). The probabilistic analysis is conducted using a Monte Carlo methodology. Monte Carlo analysis provides a means of quantifying some variability and uncertainty in risk assessments by using distributions that describe the full range of values that the various input parameters may have. Some of the parameters in the probabilistic analysis are set as constant values because (1) there are insufficient data to develop a distribution, (2) simplifying assumptions are made, (3) site specific constants are available, or (4) the analysis has not been shown to be sensitive to the values of the parameter, that is, even if the parameter is varied, the risk results do not vary significantly.

Monte Carlo simulation is a statistical technique that calculates an individual risk value or hazard quotient for each category of parameters that affect or determine risk. For each calculation, the Monte Carlo simulation uses parameter values that are randomly selected from the distribution of values available for each parameter. The range of values selected for the input parameters reflects the distribution of values corresponding to each input parameter. The repetitive calculations take many randomly selected combinations of input parameters to generate a range of risk results. Based on the distribution of the output, we can determine a risk or hazard level representing the high end (e.g., 90th or 95th percentile) or central tendency (i.e., 50th percentile). Although the simulation is internally complex, commercial software performs the calculations as a single operation, presenting a distribution of risk results. From these results, we can determine the percentile distribution of exposure point concentrations and risks for the selected risk assessment scenario. We assessed potential groundwater pathway risks from disposal of filter aid and TAM wastes in municipal landfills using the probabilistic risk assessment method.

Monte Carlo simulation can be used to simulate the effects of natural variability and informational uncertainty that often accompany many actual environmental conditions. Further, information on the range and likelihood of possible values for these parameters is produced using this technique. When compared with alternative approaches for assessing parameter uncertainty or variability, the Monte Carlo technique has the advantages of very general applicability, no inherent restrictions on input distributions or input-output relationships, and relatively straightforward computations. Also, Monte Carlo application results can be used to satisfactorily calculate uncertainty, and to quantify the degree of conservatism used. With deterministic analyses, an alternative to Monte Carlo, it is often not possible to quantify the level of protection represented by the results. However, some potential limitations may exist when applying Monte Carlo techniques in modeling efforts. Variability (inherent variation in a measure over time and space) and uncertainty (lack of knowledge) are often difficult to distinguish within applications. Also, one must account for correlations among the various data parameters to avoid distorting results. As explained in Section III.H, we relied on the Monte Carlo approach to set listing levels for today's proposal.

2. Fate and Transport Modeling

The risk analysis employs several key fate and transport models. The models include a landfill partitioning model based upon the equations presented in a series of articles by Jury *et al.* We used this model to estimate the concentration of leachate from the landfill and the emission rate for volatile constituents from the landfill. We applied EPA's Industrial Source Complex Short Term, version 3 (ISCST3) to estimate the dispersion and deposition of vapors emitted from the municipal landfill. For estimating the concentration of constituents of concern at the residential drinking water well, we used the groundwater model EPACMTP or *EPA's Composite Model for Leachate Migration with Transformation Products*. Further details and references for these models are presented in the Risk Assessment Background Document (Section 5.2.2).

a. Landfill Partitioning Model. We used the Jury equations to estimate fate and transport of constituents in the nongroundwater pathways from the landfill to the receptor and to estimate leachate from the landfill. Using a model based on the Jury equations, we projected the contaminant loss from a landfill due to volatilization, run-off, degradation, and leaching. The Jury equations partition the waste in the landfill to waste, air, and pore water and calculate potential losses from leaching, volatilization, and degradation. The landfill partitioning model evaluates contaminant losses over both the active waste disposal period and after the landfill is closed. We used the landfill partitioning model to conduct the

sensitivity, deterministic, and Monte Carlo analyses.

b. Air Model. We used the ISCST3 air dispersion and deposition model to estimate the vapor air concentrations and deposition rates needed to develop relative risk estimates associated with vapor air emissions from the municipal landfill. We estimated air pathway risks using emissions estimates from the landfill partitioning model as inputs to the ISCST3 air model, and using ISCST3 to estimate the air concentration and deposition of vapor for each constituent at receptor locations. This modeling step was only needed for the sensitivity analysis to estimate risks from non-groundwater pathways.

c. Groundwater Model. We used the EPACMTP groundwater model to estimate the concentration of constituents of concern at the residential drinking water well. We conducted the groundwater modeling using six surrogate compounds to represent the movement of all constituents of concern through the groundwater pathway. Identification of surrogate compounds provides a means of minimizing the modeling runs required to model the large number of constituents evaluated for this assessment. For this assessment, organic constituents are grouped into six categories based on like chemical and physical properties. Sorption potential and hydrolysis rate are the key parameters used to group constituents; however, for the constituents of concern in today's proposed rule, hydrolysis was not important. Therefore, the only constituent-specific parameter of importance for transport of the organic compounds of interest was the sorption potential (i.e., the organic carbon partition coefficient, K_{oc}; this is a measure of the tendency for a chemical to adsorb to organic material in soils). For computational efficiency, we only modeled the surrogate constituent in each category, and then applied the modeling results for the surrogate to each constituent in the category. We found that the dilution and attenuation of the constituents we evaluated did not vary significantly (*i.e.*, less that a factor of 2), even with larger differences in K_{oc}. Thus, the use of surrogates did not introduce any appreciable uncertainty into the final results. See Appendix C of the Risk Assessment Background Document for details of the designation of constituent categories and identification of surrogate compounds.

We used the EPACMPT model to conduct the sensitivity analysis, deterministic analysis, and Monte Carlo analysis for the groundwater pathway. The groundwater pathway modeling yields the groundwater exposure concentrations resulting from the release of waste constituents from the landfill. Precipitation that percolates through the waste unit generates leachate, which can infiltrate from the bottom of the landfill into the subsurface. The waste constituents dissolved in the leachate (as predicted by the partitioning model) are then transported via aqueous phase migration through the vadose zone to the underlying saturated zone and then down gradient to a ground water receptor well. We project the concentration at the intake point of a hypothetical groundwater drinking water well or receptor well, located at a specified distance from the down gradient edge of the waste management unit.

We located the residential wells down gradient from the landfill and within the top ten meters of a plume of groundwater contaminated by the leachate from the municipal landfill. As noted previously, we used distances of receptor wells from waste management units from EPA's National Survey of Municipal Landfills. The distance from the landfill to the receptor well, and the location of the well in relation to the plume of contaminated groundwater, are important parameters in the groundwater model. This is because the projected concentrations of constituents at the well, and the corresponding risks, increase as the well location is moved closer to the source within the plume.

For the Monte Carlo analysis, we placed the receptor well downgradient from the waste management unit at a radial distance of up to 1,610 m; the distance for each simulation was taken from the distribution of distances gathered by EPA in its survey noted above. We assumed the lateral location of the well to be randomly distributed within the estimated lateral extent of the plume. For the deterministic analysis, the downgradient receptor well location was fixed within the lateral extent of the plume (most often at the high end value of 102 meters from the landfill).

The objective of this ground-water modeling was to compute the amount of dilution and attenuation a contaminant may undergo as it migrates from a landfill to a ground-water well. The amount of dilution and attenuation is expressed as a dilution/attenuation factor (DAF), which represents the ratio of the initial leachate concentration leaving the landfill to the ground-water receptor well concentration. The high-end DAFs for the different constituents did not vary much for the two wastes, i.e., the DAFs were in the range of 3 to 5.

The groundwater model accounts for the following processes affecting contaminant fate and transport: advection, hydrodynamic dispersion, linear or nonlinear equilibrium sorption, chained first-order decay reactions, and dilution from recharge in the saturated zone. EPACMTP was run in both deterministic mode and Monte Carlo mode. In the deterministic mode, we set the two most sensitive variables to their high end values, while keeping all other parameters set at central tendency. In the probabilistic Monte Carlo mode, the model randomly selected parameter values from their respective statistical distributions. The Monte Carlo procedure allows assessment of the uncertainty associated with ground-water well concentrations that result from uncertainty and variability in climatic and hydrogeologic characteristics of waste management units across the range of locations associated with the Dyes and Pigments industry.

F. What Exposure Assumptions and Toxicity Levels Did EPA Use?

We used values from EPA's Exposure Factors Handbook (EPA, 1997) to set the exposure assumptions for this analysis. We applied the recommended values for the central tendency and high end intake rates in the deterministic analysis, and we used a distribution of values developed from the data presented in the Exposure Factors Handbook in the Monte Carlo analysis. Section 6.0 of the Risk Assessment Background Document discusses these values in detail.

The health benchmark data used in the analysis are based upon the values presented in the Integrated Risk Information System (IRIS) online database of verified health benchmarks or in the Health Effects Assessment Summary Tables (HEAST) document. Appendix E of the Risk Assessment Background Document contains toxicological profiles used in our analysis. The studies used as the basis for these benchmarks have been reviewed and summaries of these studies, along with references to the complete studies, are presented in Appendix E of the Risk Assessment Background Document.

G. What Uncertainties Are Associated With The Risk Assessment?

Uncertainty is inherent in the risk assessment process. It occurs because the risk assessment process is complex, and variability is inherent in the environment. We may classify the sources of uncertainty as parameter uncertainty and variability, exposure

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scenario uncertainty, and model uncertainty. Parameter uncertainty occurs when parameters appearing in equations cannot be measured precisely and/or accurately. Variability refers to the normal variations in physical and biological processes that we cannot reduce with additional data. We have addressed variability in this risk assessment by using a probabilistic analysis. Exposure scenario uncertainty occurs because of the inability to measure exposure of receptors to constituents of concern. Model uncertainty is associated with all models used in risk assessment and occurs because computer models require simplifications of reality, and thus exclude some variables and interactions that influence fate and transport but cannot be included in models due to complexity or lack of data. We discuss each of these issues in detail in Section 8 of the Risk Assessment Background Document.

One important area of uncertainty that we believe should be noted is the uncertainty involving estimates of risks to children from carcinogenic compounds. We used the same overall approach for estimating cancer risks in both adults and children from the dye and pigment waste streams evaluated. We modified the exposure factors for children to account for differences between adult and child receptors (e.g., body weight, exposure duration). However, we recognize that significant uncertainties and unknowns exist regarding the estimation of lifetime cancer risks in children. Methodologies for estimating environmental threats to children's health are relatively new. They are currently being debated within the scientific community, and will continue to evolve. The analysis of cancer risks in children undertaken for this assessment has not been externally peer reviewed.

H. What Risk Level Do the Concentration Levels Represent?

In calculating concentration limits for the two wastes, we assumed the residential drinking water well concentration is equal to EPA established protective or health-based level for each constituent for the most sensitive receptor (adult or child). Protective concentrations are those at which adverse health effects from any single constituent present in contaminated drinking water and/or water used for bathing or showering do not exceed a one in 100,000 (1×10^{-5}) individual lifetime cancer risk or a non-cancer hazard quotient of 1 (where the hazard quotient is the ratio of the concentration in the water to the concentration at which no non-cancer effects are expected). The use of these risk levels is consistent with the initial cancer-risk and HQ "levels of concern" that we described in the discussion on EPA's hazardous waste listing policy in the 1994 proposed rule for dye pigment wastes (see 59 FR 66075). As noted previously, we based the concentrations on the groundwater pathway, which is the pathway of most concern for all constituents of concern for this industry when disposed in municipal landfills. Section 5 of the Risk Assessment Background Document provides the methodology we used to derive risk limiting waste concentrations in greater detail.

I. What Are the Proposed Listing Levels?

Table III–3 presents the risk-based concentration levels for all potential constituents of concern calculated for both spent Filter Aids and TAM sludges based on our risk assessment. These levels represent protective concentrations for constituents that may be present in the wastes, and are based on the receptor that yielded the lowest allowable waste concentration (i.e, adult or child). Using the partitioning model described above, we calculated protective levels for constituents in both the waste itself and for leachate that is released from the landfill. We are proposing to set the concentration levels in the listing at the levels calculated for the constituents in the two wastes. If you generate either waste under consideration, your waste concentrations would have to be below these levels, or else your waste will be a listed hazardous waste. Therefore, under this proposal, you would be assessing constituent concentrations in the waste itself.

1. Selection of Listing Levels in Wastes Versus Leachate

We considered using the landfill leachate levels in Table III–2 instead of the waste levels to define the listed waste. We could do this if we require generators to evaluate their wastes using a test designed to predict leaching from landfills. The Toxicity Characteristic Leaching Procedure (TCLP) is one possible method available. The Toxicity Characteristic (TC) regulation uses the TCLP to decide whether wastes are hazardous under this characteristic (see 40 CFR 261.24). However, we decided not to use the TCLP approach for several reasons. First, we did not perform TCLP analysis for these constituents in any of the dye and pigment wastes examined. Thus, we are uncertain how the method might perform for the wastes at issue. The partitioning model also factors in the placement of the wastes into the landfill and provides a leaching rate that reflects how the volumes of wastes are assumed to be disposed over time. The TCLP approach is appropriate for defining levels of concern under the TC for all wastes on a nationwide basis, where we have no specific information on waste quantities disposed. In today's proposed rule we have information on the specific quantities of the two selected wastes in the dyes and pigments industries. Finally, we believe that the analysis of the waste itself is more straightforward to implement, and would not require measuring levels in a derived leachate that are much lower than those in the waste. Therefore, we chose to propose the concentration based levels for the waste itself.

However, the TCLP does represent an actual measurement of leach potential as opposed to a value generated by a model. Thus, the Agency may still consider a final regulation based on the TCLP, depending on comments received and additional information provided.

2. Selection of Probabilistic Versus Deterministic Modeling Results

The constituent concentrations in Table III–3 reflect the results of the probabilistic modeling assessment. We chose to use the probabilistic results, rather than rely on the deterministic results. While the Agency has used the results of deterministic analyses for past listing decisions, EPA has more recently used Monte Carlo analyses for additional verification (see Petroleum Listing final rule, 63 FR 42110; August 6, 1998). As we have developed and refined the Monte Carlo approach, we believe it provides some distinct advantages. As noted earlier, when compared with alternative approaches for assessing parameter uncertainty or variability, the probabilistic technique has the advantages of general applicability and no inherent restrictions on input distributions or input-output relationships.

An additional factor the Agency considered was the highly variable nature of the data available. The constituents of concern, their concentrations, and waste volumes can be highly variable across the different industry processes, a factor which made the Agency reluctant to rely on selected point estimates for its assessment. Also of particular concern was the difficulty we found in choosing what set of parameters would truly represent a "high-end" analysis for multiple pathways, constituents, and locations. The issues associated with choosing high-end parameters are discussed in the Risk Assessment Background Document, which presents the deterministic as well as the probabilistic results.

The probabilistic simulations used in this proposed rulemaking assessed the full distributions of critical input data (e.g., distance to well, waste volumes, landfill area) to randomly generate receptor well concentrations of key constituents for certain landfill situations, and then combined the results from many runs to produce a probability distribution of risks. We were then able to choose points along the probability distribution of risk for comparison to the high-end analysis. For example, a risk that corresponds to the 90th percentile for a specific waste constituent in a landfill means that the risk would be below this level in 90 percent of the runs.

The concentration levels in Table III–3 represent the probabilistic modeling results at the 90th percentile. As discussed previously, we are attempting to calculate estimates of exposure in the upper end of the distribution (i.e., above the 90th percentile), while avoiding estimates that are beyond the true distribution. (See Habicht memo, 1992.) The Agency's policies do not indicate that there is any particular point on a Monte Carlo distribution that should be the point at which the Agency regulates or does not regulate. This conceptual range is not meant to precisely define the limits of this descriptor, but should be used by the assessor as a target range for characterizing "high-end risk." Therefore, a high-end estimate that falls within the range (above the 90th percentile but still realistically on the distribution) is a reasonable basis for a decision.

We believe that the 90th percentile levels calculated for the waste concentrations in today's proposed rule are protective. For filter aids, the high-end deterministic results gave concentrations that were somewhat higher than the 90th percentile levels from the probabilistic analysis (by a factor of 2–4 fold). Therefore, we believe that using the 90th percentile values (as opposed to higher percentile values) provides results that are more consistent with previous listing determinations based on high-end deterministic assessments. For TAM sludges, the 90th percentile probabilistic levels are also close to the deterministic results, although for this waste the probabilistic levels for most constituents are slightly above the deterministic values (approximately two-fold). Thus, the 90th percentile results appear to agree reasonably well overall with the deterministic results. Furthermore, the probabilistic DAFs predicted for transport of landfill leachate from the landfill to the receptor well were already quite low at the 90th percentile (i.e., 2–5), also suggesting that the 90th percentile is adequately protective.

We are soliciting comments on both the use of the probabilistic modeling results, rather than the deterministic analyses, and also our use of the 90th percentile risk level, rather than any other level. For example, the 95th percentile probabilistic results yields concentrations that are about two-fold lower. Details of the deterministic modeling results, and levels calculated using other percentiles from the probabilistic analysis, are given in the Risk Assessment Background Document (Appendix F). We also seek comment on the setting of the regulatory levels for the waste itself, rather than the option of using the TCLP values.

TABLE III–3.—CALCULATED RISK-BASED CONCENTRATION LEVELS FOR POSSIBLE CONSTITUENTS OF CONCERN FOR DYE AND PIGMENT WASTES[1]

Constituents	Concentration levels for filter aids **		Concentration levels for TAM sludges	
	Waste (mg/kg)	Leachate (mg/ml)	Waste (mg/kg)	Leachate (mg/ml)
Aniline			17	0.03
Benzaldehyde			5000	5.6
Benzene			370	0.11
Benzidine			0.027	0.000023
Chloroaniline, p-			250	0.25
Chlorobenzene			36	0.0036
Chloroform			100	0.042
Cresol, p-			330	0.33
Dichlorobenzene, 1,2–			1100	0.043
Dimethoxybenzidine, 3,3'-			520	0.38
Dimethylaniline, N,N-			300	0.11
Diphenylamine			27,000	1.1
N-Nitrosodiphenylamine			7,400	0.62
Diphenylhydrazine,, 1,2-			31	0.0042
Azobenzene			720	0.013
Formaldehyde			7000	11
Naphthalene			17	0.0028
Phenol			28,000	34
Phenylenediamine, o-(2-aminoaniline)			61	0.11
Phenylenediamine, p-(4-aminoaniline)			5,000	10
Toluidine, o-(2-aminotoluene)			13	0.022
Toluidine, p-(4-aminotoluene)			23	0.029
Toluidine, 5-nitro-o-(2-Methyl-5-nitroaniline)			220	0.15
(**)				

[1] Levels represent the 90th percentile risk derived from the probabilistic analysis.
** Relevant data are not included at the present time for a number of constituents due to business confidentiality concerns.

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IV. Proposed Listing Determinations and Regulations

A. What Are the Proposed Regulations for the Two Wastes?

We are proposing that, if you generate either of the two categories of dye and pigment wastes at issue, you must either determine whether or not your waste is a listed hazardous waste within a specified time, or assume that it is hazardous as generated. Your waste would become a listed hazardous waste if it contains any of the constituents of concern at a concentration equal to or greater than the hazardous concentration identified for that constituent. You must make a determination that all of the constituents of concern in your waste are below the hazardous concentrations to claim that your wastes remain nonhazardous. We are proposing the following specific regulatory language for the two wastes:

K167 Spent filter aids, diatomaceous earth, or adsorbents used in the production of azo, anthraquinone, or triarylmethane dyes, pigments, or FD&C colorants, unless these wastes do not contain any of the constituents identified in § 261.32(b)(3)(iii) at a concentration equal to or greater than the hazardous level set for that constituent as demonstrated by the procedures specified in § 261.32(b).

K168 Wastewater treatment sludges from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock), unless these wastes do not contain any of the constituents identified in § 261.32(b)(3)(iii) at a concentration equal to or greater than the hazardous level set for that constituent as demonstrated by the procedures specified in § 261.32(b).

The constituents and levels in these listing descriptions would be those given in Tables IV–1 for Filter Aids and Table IV–2 for TAM sludges. Section V describes the steps you must follow to implement the concentration-based listing.

We solicit comment on the proposed list of constituents and their levels. Specifically, based on the rather high levels set for some constituents (e.g., diphenylamine, formaldehyde for TAM sludges), EPA is considering removing these. These levels may be unlikely in these wastes, and may not merit analysis. We seek any information that may assist us in deciding on whether we should retain all of these constituents. We also solicit comment as to whether any other constituents (e.g., any others in Table III–3) should be added to the regulatory lists in Tables IV–1 or IV–2.

TABLE IV–1.—CONCENTRATION LEVELS FOR SPENT FILTER AIDS

Constituents	Concentration levels (mg/kg)**
Aniline	
Benzaldehyde	
Chloroaniline, p-	
Cresol, p-	
Dimethylaniline, N,N-	
Dimethoxybenzidine, 3,3'-	
Diphenylamine	
Diphenylhydrazine, 1,2-	
Formaldehyde	
Naphthalene	
Phenol	
Phenylenediamine, p-	
Toluidine, o-	
Toluidine, p-	
(**)	
(**)	

**Relevant data are not included at the present time due to business confidentiality concerns.

TABLE IV–2.—CONCENTRATION LEVELS FOR TAM SLUDGES

Constituent	Concentration levels (mg/kg)
Benzaldehyde	5000
Dimethylamine, N,N-	300
Diphenylamine	27,000
Formaldehyde	7000
Toluidine, o-	13
Toluidine, p-	23
(**)	(**)

**Relevant data are not included at the present time due to business confidentiality concerns.

As required under § 261.30(b), we are adding those constituents that are the bases for listings to Appendix VII of Part 261, "Basis for Listing Hazardous Waste." Thus, we are proposing to add the constituents in Table IV–1 for K167 (filter aids), and the constituents in Table IV–2 for K168 (TAM sludges) to Appendix VII. In addition, several constituents in Tables IV–1 and IV–2 are not currently listed on Appendix VIII to Part 261, "Hazardous Constituents." EPA places constituents on Appendix VIII if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms (see 261.11(a)(3)). The Risk Assessment Background Document contains the detailed toxicological data for all constituents we evaluated, including the specific chemicals that we are proposing to add to Appendix VIII in today's rule: benzaldehyde, N,N-dimethylaniline, p-cresol, and p-phenylenediamine, and another chemical, the identity of which is not given due to business confidentiality concerns. While cresol and phenylenediamine are currently listed on Appendix VII, the precise isomers are not specified. Therefore, we are proposing to add these specific isomers. If, in response to comment, we decide to add any additional constituents to the chemicals of concern in either concentration-based listing, then we would also add those constituents to Appendix VII, and to Appendix VIII, if necessary.

In proposing to promulgate a concentration-based listing for filter aids and TAM sludges under 40 CFR 261.11(a)(3), we considered the factors given under 40 CFR 261.11(a)(3) and believe that these wastes pose a substantial present or potential hazard to human health or the environment at the proposed listing levels. We considered nearly all of these factors as part of the risk assessment described in today's rule. Specifically, we considered the constituents' toxicity/concentration, mobility, persistence, and bioaccumulation potential in setting the concentration-based levels (corresponding to factors (I) through (vi) given in § 261.11(a)(3)). As described in the risk assessment section, we considered municipal landfills as the "plausible" management practice (factor (vii)), and evaluated the waste quantities generated by facilities (factor viii). Concerning factor (ix), we examined damage cases for the dye and pigment industries for the 1994 proposed rule (see Risk Assessment Support for Dye and Pigment Listing Determination, November 29 1994; document number S0333, EPA Docket No. F–94–DPLP–FFFFF). However none of those cases provide any information on the possible damages associated with the two wastes at issue in today's proposal. Finally, we considered other regulatory programs (factor (x)), when appropriate. No other regulatory program EPA identified adequately addressed the risks posed by the wastes. However, as noted in Section IV.C, we considered the protection afforded by the Clean Water Act, and the regulations being considered for leachate from landfills. As a result of this consideration, we are proposing to temporarily defer any regulation of landfill leachate that may be derived from the wastes proposed for listing, provided certain conditions are met.

B. What Are We Proposing for Anthraquinone Sludges?

We are proposing not to list wastewater treatment sludges from the production of anthraquinone dyes and pigments. As described earlier in this notice, the only constituents that were found in wastes that could be attributed to anthraquinone production (the identities are not given due to business confidentiality concerns) do not have health-based benchmarks. We did not receive any data in comments on the 1994 proposed rule that would allow us to estimate such benchmarks.

Discussion of the details of waste generation and management for this waste cannot be released at this time due to business confidentiality concerns.

Therefore, we are proposing not to list anthraquinone sludges because we cannot identify any health threat from these wastes. Further discussion on the generation of this waste cannot be released at this time due to CBI constraints. We do not find any demonstrated risk from the constituents that we can attribute to anthraquinone production. We seek comment on this decision not to list this waste.

C. What Is the Status of Landfill Leachate From Previously Disposed Wastes?

Leachate derived from the treatment, storage, or disposal of listed hazardous wastes is classified as a hazardous waste by virtue of the "derived-from" rule in 40 CFR 261.3(c)(2). The Agency has been clear in the past that hazardous waste listings apply to wastes disposed of prior to the effective date of a listing, even if the landfill ceases disposal of the waste when the waste becomes hazardous (see 53 FR 31147; August 17, 1988). We also have a well-established interpretation that listings likewise apply to leachate derived from the disposal of listed hazardous wastes, including leachate derived from wastes disposed before a listing effective date which meet the listing description. We are not reopening any of these issues by the present notice.

Of course, as set out in detail in the August 1988 notice, this does not mean that landfills holding wastes which are subsequently listed as hazardous become subject to Subtitle C regulation. However, previously disposed wastes now meeting a listing description, including residues such as leachate which are derived from such wastes, which are "actively managed" do become subject to Subtitle C regulation (*id.*). In many, indeed most circumstances, active management of leachate would be exempt from Subtitle C regulation because the usual management practice is discharge either to POTWs via the sewer system, where leachate mixes with domestic sewage and is excluded from RCRA jurisdiction (see RCRA Section 1004(27) and 40 CFR 261.4(a)(1)), or to navigable waters, also excluded from RCRA jurisdiction (see RCRA Section 1004(27) and 40 CFR 261.4(a)(2)). In addition, management of leachate in wastewater treatment tanks prior to discharge under the CWA is also exempt from RCRA regulation (40 CFR 264.1(g)(6)).

However, we believe, because the proposed listings for the two categories of dye and pigment wastes (K167–K168) are concentration-based listings, it would be difficult to know whether the previously disposed wastes that meet the narrative description of K167–K168 are in fact K167–K168 hazardous wastes that exceed the listing levels. We don't anticipate that records documenting the concentrations of proposed constituents of concern for these wastes exist for previously disposed wastes. Therefore, absent a finding that the wastes, when disposed, would have met the listing being proposed today, the previously disposed wastes (including landfill leachate and gas condensate derived from these wastes that are actively managed) could not be classified as K167–K168.

However, if actively managed landfill leachate and gas condensate derived from the two categories of dye and pigment wastes proposed to be listed in today's rule could be classified as K167–K168, we are concerned about the potential disruption in current leachate management that could occur and the possibility for redundant regulation. Recently, this issue was raised to the Agency in the context of the petroleum refinery waste listings (see 63 FR 42173; August 6, 1998). A commenter expressed concern that, because some of their nonhazardous waste landfills received petroleum wastes which are now listed, the leachate that is collected and managed from these landfills would be classified as hazardous. The commenter argued that this could lead to increased treatment and disposal costs without necessarily any environmental benefit. After examining and seeking comment on this issue, we published a final rule that temporarily defers regulation of landfill leachate and gas condensate derived from certain listed petroleum refining wastes (K169–K172) that were disposed before, but not after, the new listings became effective, provided certain conditions are met (see 64 FR 6806; February 11, 1999).

At the time this issue was brought to the Agency's attention in the context of the petroleum refinery waste listings, EPA's Office of Water had recently proposed national effluent limitations guidelines and pretreatment standards for wastewater discharges—most notably, leachate—from certain types of landfills (see 63 FR 6426; February 6, 1998). In support of this proposal, EPA conducted a study of the volume and chemical composition of wastewaters generated by both Subtitle C (hazardous waste) and Subtitle D (nonhazardous waste) landfills, including treatment technologies and management practices currently in use. EPA proposed effluent limitations (for nine pollutants in the Nonhazardous Subcategory) for direct dischargers (see 63 FR 6463). Most pertinent to finalizing the temporary deferral for the petroleum refining wastes, EPA did not propose pretreatment standards for Subtitle D landfill wastewaters sent to POTWs because the Agency's information indicated that such standards were not required.

The conditions included in the temporary deferral published on February 11, 1999 are that the leachate is subject to regulation under the Clean Water Act, and the leachate is not stored in surface impoundments after February 13, 2001. See 40 CFR 261.4(b)(15). We believed that it was appropriate to temporarily defer the application of the new waste codes to such leachate in order to avoid disruption of ongoing leachate management activities while the Agency decides how to integrate the RCRA and CWA regulations consistent with RCRA section 1006(b)(1). As discussed above, we do not anticipate that this situation is likely to occur because the nature of the concentration-based listing makes it difficult to determine whether the wastes previously disposed met the concentrations at the time of disposal. However, to the extent previously disposed of dye and pigment wastes could be determined to meet the listing description and levels, we believe that the same rationale fully discussed in the February 11, 1999 rulemaking applies in this situation as well. As such, we would be concerned about forcing pretreatment of leachate even though pretreatment is neither required by the CWA nor needed. Therefore, we are proposing to temporarily defer landfill leachate and gas condensate derived from the two categories of dye and pigment wastes, with the same conditions as described in 40 CFR 261.4(b)(15) for petroleum wastes. We believe the issue of whether disruptions can be minimized through integration of CWA and RCRA rules will be more amenable to resolution once the CWA rulemaking is completed.

We request any available information on whether or not the two categories of dye and pigment wastes previously disposed in nonhazardous landfills contained constituents of concern identified for these wastes at

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concentrations equal to or greater than the proposed listing levels. Even if we don't receive any information that previously disposed dye and pigment wastes will result in generation of hazardous landfill leachate and gas condensate, we nonetheless intend to finalize the temporary deferral for landfill leachate and gas condensate from these wastes. This is because someone may discover this problem later (after the effective date of the listing), so, by having a temporary deferral in place, it would be possible to avoid disruption of ongoing leachate management activities while we further examine this issue and await the CWA final rule.

V. Generator Requirements for Implementation of Concentration-Based Listings

We are proposing that the concentration-based listings be self-implementing. This requires that you (the waste generator) meet the necessary conditions to determine whether or not your waste is hazardous based on the procedures we describe below. We have identified the constituents of concern for the two categories of dye and pigment wastes in Tables IV–1 and IV–2. We have also identified the listing level for each of these constituents in the same tables. We are proposing that you use this information, in conjunction with waste analysis results, to determine if your waste is a listed hazardous waste.

Unless you make a determination that your waste is nonhazardous using the specified procedures, you are subject to the existing requirements under RCRA for persons who generate hazardous waste. Thus, if you are not already a hazardous waste generator, you must notify the EPA, according to section 3010 of RCRA, that you generate a hazardous waste. You are also subject to all applicable requirements for hazardous waste generators in 40 CFR 262.

If you determine that your waste is nonhazardous, we are proposing to require, under the authority of sections 2002 and 3007 of RCRA, that you keep certain records of your waste and submit a notification and certification to the EPA claiming you have a nonhazardous waste. Following a nonhazardous claim, you would have a continuing obligation to ensure that your waste meets all of the proposed conditions and requirements for the waste to be deemed nonhazardous.

A. Do I Have to Determine Whether or Not My Waste Is Hazardous?

If you want to assume that your waste is hazardous as-generated or you don't want to analyze it to make a hazardous waste determination, you may do that. In such a case, we are proposing your waste would be considered hazardous as-generated and subject to all applicable RCRA Subtitle C hazardous waste requirements, effective as of the effective date of the final rule or initial generation of the waste. However, if you want your waste to be nonhazardous as-generated, you must perform the waste analysis steps in V.C and determine your waste to be nonhazardous. If your waste is determined to be nonhazardous and claimed to be nonhazardous within 60 days (see V.D) following the effective date of the final rule or initial generation of the waste, we are proposing that none of the waste generated following the effective date of the rule or initial generation is hazardous as-generated.

If you elect not to make this determination by the 60th day, or alternatively determine that your waste is hazardous, you may use the same waste analysis procedures (see V.C) to make a nonhazardous determination for your waste at anytime after the 60th day. If this determination shows your waste as-generated is nonhazardous, it can be claimed to be nonhazardous (see V.D). We are proposing that the nonhazardous claim for waste as-generated, if submitted more than 60 days after the effective date of the rule or initial generation, would only become effective on the date when you receive a written receipt or confirmation that your notification and certification has been delivered to the EPA. After you have received this receipt or confirmation, any waste generated on or after the generation date of the waste that was analyzed for the nonhazardous determination may be claimed a nonhazardous waste that is not subject to Subtitle C, including LDR requirements. Any waste generated prior to that generation date remains hazardous.

We request comment on whether the 60 day time limit for making a hazardous or nonhazardous waste listing determination and nonhazardous waste claim should be longer (*e.g.*, 90 days) to allow adequate time for sampling and analyses.

B. How Do I Manage My Waste During the Period Between the Effective Date of the Final Rule and Initial Hazardous Waste Determination for My Waste?

You cannot dispose of your waste as nonhazardous until you complete an initial determination to show that your waste is nonhazardous. Because the potential hazard from your waste is due to its placement on land, we are proposing that, as a condition of the waste being nonhazardous, you must store your waste in containers, or in another manner that does not involve land placement.

Because the interim storage period for the waste prior to a hazardous waste determination is relatively short (60 days), we request comment on whether it is necessary to impose such a condition. Given that the generator would be subject to enforcement for improper storage if the waste turns out to be hazardous, generators may have adequate incentives to store the waste in compliance with Subtitle C requirements during the interim period.

Alternatively, we could condition the waste being nonhazardous on the generator's storing the waste in accordance with the requirements described in 40 CFR 262.34. This would be an appropriate precaution in case the waste turns out to be hazardous. We also request comment on this approach.

C. What Are the Steps I Must Follow To Determine Whether or Not My Waste Is Hazardous?

We are proposing the following waste analysis steps for making a determination that your waste is nonhazardous as-generated:

1. You must collect a minimum of four representative samples of your waste and analyze each for the constituents of concern identified in Tables IV–1 or IV–2. These samples must be adequate to determine the maximum levels of constituents that may be in your waste. Instead of analyzing for a constituent, you may also apply process knowledge (knowledge of the constituents in your waste based on the materials, degradation products, and manufacturing processes used) to document that a constituent could not be present in the waste. You should note, however, that process knowledge cannot be used to determine a level of constituent in your waste.

2. Compare the sampling and analyses results or process knowledge information (documentation that a constituent could not be present in the waste) for the constituents of concern in your waste to the hazardous concentration levels set for these constituents.

3. If none of your waste samples contain any of the constituents of concern at concentrations equal to or greater than the hazardous concentration levels set for these constituents, you can determine that your waste is nonhazardous. However, if any of your waste samples contains any of the constituents of concern at a concentration equal to or greater than the hazardous concentration level set for that constituent, your waste is a listed hazardous waste and subject to all applicable RCRA Subtitle C hazardous waste requirements.

We would consider requiring less than four representative samples of the waste for the initial hazardous waste determination if this could be supported. We request comment on whether generators can reliably determine the maximum concentration of constituents in the waste with less than four samples. We also request comment on whether the generators should be allowed to use process knowledge information, in lieu of testing, to support claims that constituents of concern could not be present in their wastes. Alternatively, we could require testing for all constituents of concern in the initial testing.

We are proposing that the maximum concentration of any constituent detected in any sample must be below the established listing level in order for you to determine that the waste is nonhazardous. We are proposing this approach because we believe it is the most protective, and because it does not rely on any statistical manipulation of waste analysis data to determine constituent concentrations in the waste. However, we request comment on whether the generator should be allowed to average constituent levels in multiple waste samples. Under that approach, the generator would calculate concentrations using an upper confidence limit on the mean (e.g., 95th percent) and compare this limit to the listing levels established for the constituents.

D. What Are the Requirements for a Waste Determined To Be Nonhazardous, and How Do I Claim My Waste To Be Nonhazardous?

We are proposing that after you have determined your waste is nonhazardous, but prior to disposing the waste as nonhazardous, you must claim your waste to be nonhazardous as follows:

1. You must submit a one-time notification to the EPA. The notification must include the facility name, address, and telephone number of an authorized representative, description of the waste and potential waste code, and an estimate of the average annual volume of waste claimed to be nonhazardous. The notification must also include a certification that none of your waste samples contain any of the constituents of concern identified for your waste at concentrations equal to or greater than the hazardous concentration levels set for these constituents, and these levels were determined without dilution of the waste. By dilution, we mean addition of other waste or media to your waste after generation, which do not meet the narrative listing description for your waste, in order to reduce the concentration of the constituents of concern in your waste to below listing levels.

2. The notification and certification must be sent by certified mail return receipt, or by written confirmation of delivery from a commercial delivery service.

3. The certification must be signed by a responsible corporate official and must state as follows: "I certify under penalty of law that none of the waste samples contain any of the constituents of concern identified for this waste at concentrations equal to or greater than the hazardous concentration levels set for these constituents, and that these levels were determined without dilution of the waste. Based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

We are proposing to require the notification and certification under the authority of Sections 2002 and 3007 of RCRA. The notification and certification will provide confirmation that certain wastes that meet the narrative description for the two categories of dye and pigment wastes are not RCRA hazardous wastes. We are not proposing to require submission of waste analysis data to the EPA for review or approval. Instead, we propose to require, also under the authority of sections 2002 and 3007 of RCRA, that certain records be kept on-site (see below). We request comment on whether generators should be required to submit waste analyses data along with the notification.

E. What Records am I Required To Keep On-Site To Support a Nonhazardous Claim for My Waste?

We are proposing that you must, at a minimum, keep the following information on-site:

1. A copy of the notification and certification sent to the EPA and documentation that it was received.

2. The sampling and analysis plan used for collecting and analyzing representative samples of your waste.

3. The initial sampling and analyses data and process knowledge information (if used) that support a nonhazardous claim for your waste.

4. All follow-up sampling and analyses data and process knowledge information (if used) for the most recent three years.

F. What Happens if I Do Not Meet the Notification and Recordkeeping Requirements for a Waste That I Have Determined To Be Nonhazardous?

We are requiring notification and recordkeeping under the authority of sections 2002 and 3007 of RCRA. These provisions are requirements, not conditions of the waste being nonhazardous. Failure to comply with these requirements may result in an enforcement action under Section 3008 of RCRA. This section of the statute permits the imposition of civil penalties in an amount up to $27,500 for each day of noncompliance.

G. What Are the Follow-Up Waste Analysis Requirements for My Nonhazardous Waste?

You must analyze a minimum of one representative sample of the nonhazardous waste every calendar year it is generated. You must also analyze a minimum of one representative sample of the nonhazardous waste anytime, after the initial waste analysis, there is a process change that may increase the concentrations of hazardous constituents of concern in the waste. If process change has not occurred, you may use the results of the initial waste analysis to create a more tailored list of the constituents of concern in your waste and test just for those constituents. If your waste is in fact hazardous (*i.e.*, if it contains any constituent of concern at or above the regulatory level), you are liable for compliance with Subtitle C requirements.

We request comment on whether a minimum of four representative samples should be required for follow-up waste analysis and whether follow-up waste analysis required every calendar year should be terminated after three consecutive years of verification that the waste remains nonhazardous. This would be based on the waste generator performing the required follow-up analysis on the waste and finding that none of the waste samples contain any of the constituents of concern at

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concentrations at or above the hazardous concentration levels set for these constituents for three consecutive years.

H. What Happens if My Waste Constituent Concentration Are No Longer Below the Listing Concentrations?

If follow-up waste analysis (or any analysis of your waste after the initial waste analysis) finds your waste contains one or more constituents of concern at concentrations at or above their hazardous concentrations, your waste is a listed hazardous waste and subject to all applicable RCRA Subtitle C hazardous waste requirements. To claim the waste nonhazardous again, you must repeat the initial waste analysis and show that none of the waste samples contain any of the constituents of concern at or above their hazardous concentrations. You must also submit a new notification and certification for your waste.

I. Can I Treat My Waste to Below Listing Concentrations and Then Claim My Waste To Be Nonhazardous?

If your waste is hazardous as-generated, you can treat the waste to make it nonhazardous. However, if your waste is hazardous as-generated, it is subject to all applicable RCRA Subtitle C hazardous waste requirements and would be required to be treated in any case to meet the proposed LDR treatment standards before any placement in a land-based unit. Under the proposed LDR treatment standards (see Section VI), the wastes must be treated using specified technologies ("technology standards"). We believe that compliance with LDR treatment standards is likely to result in nonhazardous concentrations of constituents in the waste. However, based on the mixture and derived-from rules, the treated waste would still carry the hazardous waste code. Therefore, you may choose to use the initial waste determination procedures for waste as-generated (see V.C above) to determine if your treated waste is nonhazardous. If your treated waste is determined to be nonhazardous and you want to claim it as nonhazardous, you must follow the same procedures as those required to claim "as-generated" waste nonhazardous (see V.D above). We are proposing that the non-hazardous claims for treated waste would only become effective on the date when you receive a written receipt or confirmation that your notification and certification has been delivered to the EPA. Thus, prior to the effective date, your waste still remains a listed hazardous waste and must meet all applicable RCRA Subtitle C hazardous waste requirements.

J. Alternative Implementation Approach

As an alternative to the implementation approach proposed in today's rule, we may adopt a more streamlined approach for waste generators to use in self-implementing the concentration-based listings for these wastes. Under a streamlined approach, we would not require the waste generator to perform sampling and analysis procedures as conditions to determine that its waste (which meets the narrative description of K167 or K168) is nonhazardous. We would also not have notification and recordkeeping requirements for a waste determined to be nonhazardous. However, the levels for the constituents of concern in the waste would have to be below the listing levels, if the waste generated after the effective date of the rule is to be handled as nonhazardous waste. Therefore, after the effective date of the rule, if the waste is in fact hazardous (*i.e.*, if it contains any constituent of concern at or above the regulatory level), the waste would be subject to Subtitle C requirements. We may also adopt an approach somewhere in the middle that includes some minimal waste characterization requirements.

The streamlined implementation approach discussed above for the concentration-based listings would be similar to the existing program for determining whether a waste exhibits a hazardous characteristic. At this time, EPA believes the approach presented earlier in today's proposal (see V. A–I) is the more appropriate approach for this listing since, in contrast to the situation with characteristic wastes, we have performed analyses specific to this industry and have determined that the constituents of concern are likely to be present in the industry's waste. However, we will give careful consideration to any arguments presented or relevant waste analysis data submitted in response to today's proposal (e.g., data showing that only a small portion of the wastestreams in the industry exceed the listing levels) in order to decide whether a more streamlined approach is warranted. We request comment on possibly allowing the waste generators to use a more streamlined approach for self-implementing the concentration-based listings proposed in today's rule.

VI. Proposed Treatment Standards Under RCRA's Land Disposal Restrictions

A. What Are EPA's Land Disposal Restrictions (LDRs)?

The statute requires EPA to establish treatment standards for all hazardous wastes that are land disposed. These are the so called "land disposal restrictions" or LDRs. For any hazardous waste identified or listed after November 8, 1984, EPA must promulgate these LDR treatment standards within six months of the date of identification or final listing (RCRA Section 3004(g)(4), 42 U.S.C. 6924(g)(4)). The statute also requires EPA to set as these treatment standards "* * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." (RCRA Section 3004(m)(1), 42 U.S.C. 6924(m)(1)).

Wastes that meet treatment standards established by EPA may be land disposed. Wastes that do not meet these standards are prohibited from land disposal (except in units meeting a stringent no-migration test). Each waste proposed for listing as hazardous in this rule will be subject to all the land disposal restrictions on the same day their respective listing becomes effective.

B. How Does EPA Develop LDR Treatment Standards?

To establish LDR treatment standards, EPA first identifies the best demonstrated available technology (BDAT) for the hazardous constituents present in the hazardous waste, and then determines what constituent concentrations can be achieved by the technology or technologies identified as BDAT.

EPA typically has established treatment standards based on performance data from the treatment of the waste at issue, if such data are available, and also from the treatment of wastes with similar chemical and physical characteristics or similar concentrations of hazardous constituents. Treatment standards typically cover both wastewater and nonwastewater waste forms on a constituent-specific basis. The constituents selected for regulation under the LDR program are not necessarily limited to those present in a proposed listing , but also may include those constituents or parameters that will ensure that treatment technologies

are operated properly. For listed waste EPA identifies these as "regulated constituents" and they appear individually in the Table at 40 CFR 268.40, along with their respective treatment standards.

EPA may either designate a method of treatment as the treatment standard or develop a numerical treatment standard, which could be satisfied by use of any treatment technology (that doesn't entail impermissible dilution). On the other hand, if the treatment standard is a designated method, that is the only permissible means of treating the waste.

After developing the LDR treatment standards, we must also determine if treatment capacity is available to treat the expected volumes of wastes. If so, the LDR treatment standards become effective essentially at the same time a listing does. If not, EPA may grant up to a two-year national capacity variance (NCV) during which time the LDR treatment standards are not effective.

For a more detailed overview of the Agency's approach for developing treatment standards for hazardous wastes, see the final rule on solvents and dioxins (51 FR 40572, November 7, 1986) and section III.A.1 of the preamble to the final rule that set land disposal restrictions for the "Third Third" wastes (55 FR 22535, June 1, 1990). EPA also has explained its BDAT procedures in "Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/Quality Control Procedures and Methodology (EPA/OSW, October 23, 1991)". This document is available in the docket supporting this proposed rulemaking.

C. What Treatment Standards Are Proposed?

The Agency has previously promulgated technology-specific standards—*i.e.*, in the words of the statute, "methods of treatment"—for the following K167 core constituents of concern: 3,3′-dimethoxybenzidine (U091), 1,2-diphenylhydrazine (U099), formaldehyde (U121), o-toluidine (U328), p-toluidine (U353), and other chemical(s), the identities of which are not included due to business confidentiality concerns. We also promulgated technology-specific standards for K168 core constituents of concern: formaldehyde, o-toluidine, and p-toluidine. Analytical complications formed the basis of the Agency's decision to promulgate technology-based BDAT treatment standards (see 55 FR 22611, June 1, 1990).

These pre-existing technology-specific standards provide the starting point for our analysis. We also assessed the potential of developing numerical standards for these and the other constituents of concern in K167 and K168. We found that numerical treatment standards based on performance of BDAT (combustion) would nonetheless potentially result in situations where threats to human health and the environment are not minimized, as required by section 3004(m). This seeming anomaly is explained by the fact that numerical treatment standards based on performance of combustion consist of an analytical detection limit times a variability factor. In this instance, this numerical value would be significantly above the risk-based model levels of concern which justify the listing, largely due to high analytical detection limits for some constituents. Thus, the numerical treatment standards calculated in the accepted manner would arguably not meet the "minimize threat" language governing LDR treatment standards in RCRA section 3004(m).[1] As a result, we are not inclined to pursue the use of numerical treatment standards for K167 and K168.

In looking further at technology-specific standards, we find that there is significant structural similarity among all the constituents of concern, including those for which we have not previously set technology-specific standards. The constituents of concern either have been demonstrated to be treated effectively by the BDAT technology to below detection, or are of structural similarity that it can be inferred that they would not be more difficult to treat via combustion or other destructive procedures. Hence, we expect that all constituents of concern for these two wastes are amenable to similar methods of treatment. Therefore, we find the previously promulgated technology-specific standards to be the BDAT for the K167 and K168.

We propose that the technology of combustion (CMBST) be specified for nonwastewater waste forms. For wastewater waste forms, we propose to specify that one of two alternatives be used: either a treatment train consisting wet air oxidation (WETOX) or chemical oxidation (CHOXD) followed by carbon adsorption (CARBN), or treatment by combustion (CMBST). We are confident that these technologies in units subject to either Subtitle C rules, or eventually, MACT standards for hazardous waste combustors, both of which require combustion units to meet specific standards to assure proper combustion at all times, will substantially diminish the toxicity of the K167 and K168 wastes so that short-term and long-term threats to human health and the environment are minimized. We repeat that, because we are proposing to express the treatment standards as specified technologies, wastes must be treated by the required technologies before disposal.[2]

D. Other LDR-Related Provisions

The provisions in 40 CFR 268.45 would also be applicable for the treatment and disposal of hazardous debris cross-contaminated with K167 or K168. Debris contaminated with K167 and/or K168 would be required to be treated prior to land disposal, using specific technologies from one or more of the following families of debris treatment technologies: extraction, destruction, or immobilization. Hazardous debris contaminated with a listed waste that is treated by an immobilization technology specified in 40 CFR 268.45 Table 1 is a hazardous waste and must be managed in a hazardous waste facility. Residuals generated from the treatment of debris contaminated with K167 or K168 would remain subject to the treatment standards proposed today. Residuals that no longer exceed the hazardous listing levels may be disposed in nonhazardous waste units. See 57 FR 37277, August 18, 1992, for additional information on the applicability, scope, and content of the hazardous debris provisions.

Lastly, because land disposal also includes placement in injection wells (40 CFR 268.2(c)) application of the land disposal restrictions to K167 and K168 requires the modification of injection well requirements found in 40 CFR 148. We propose that K167 and K168 be prohibited from underground injection. Therefore, K167 and K168 wastes may not be underground injected unless they have been treated in compliance with the LDR treatment standards or a no migration petition for these wells has been approved.

[1] This is not to say that the listing levels necessarily represent "minimize threat" levels for these constituents. EPA is pursuing these questions in the HWIR rulemaking. Our point here is that the levels justifying the listing certainly are not lower than whatever levels EPA may eventually determine minimize threat levels to be, and that a numerical standard developed using our standard methodology would be higher still (essentially due to high detection limits).

[2] There are two exceptions. Where the treatment technology is not appropriate to the waste, regulations provide a petition process whereby the generator or treatment facility may petition the Administrator for a variance (see 40 CFR 268.44) In addition, persons may petition the Administrator for an alternate treatment method by showing that the alternate method can achieve a measure of performance equal to the method specified by rule (see 40 CFR 268.42(b)).

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E. Is There Treatment and Management Capacity Available for These Proposed Newly Identified Wastes?

1. What Is a Capacity Determination?

When EPA develops new hazardous waste LDR regulations, the law (RCRA) requires us to determine whether adequate alternative treatment capacity exists nationally to manage the waste and meet the new treatment standards. The LDRs are effective when promulgated unless EPA grants a national capacity variance from the otherwise-applicable date and establishes a different date (not to exceed two years beyond the statutory deadline) based on "* * * the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available" (RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2)).

Our capacity analysis methodology focuses on the amount of waste currently disposed on the land, which will require alternative or additional treatment as a result of the LDRs. The quantities of wastes that are not disposed on the land, such as discharges regulated under NPDES, discharges to a POTW, or treatment in a RCRA exempt tank, are not included in the quantities requiring additional treatment as a result of the LDRs. Also, land disposed wastes that do not require alternative or additional treatment are excluded from the required capacity estimates (*i.e.*, those that are currently treated to meet standards). Land disposed wastes requiring alternative or additional treatment or recovery capacity that is available on-site or within the same company also are excluded from the required commercial capacity estimates. The resulting estimates of required commercial capacity are then compared to estimates of available commercial capacity. If adequate commercial capacity exists, the waste is restricted from further land disposal. If adequate capacity does not exist, EPA has the authority to grant a national capacity variance.

In making the estimates described above, the volume of waste requiring treatment depends on the current waste management practices employed by the waste generators before this proposed regulation is finalized and becomes effective. Data on waste management practices for these wastes were collected during the development of this proposed rule. However, we realize that as the regulatory process proceeds, generators of these wastes may decide to minimize or recycle their wastes or otherwise alter their management practices. Thus, EPA will monitor changes and update data on current management practices as these changes will affect the volume of wastes ultimately requiring commercial treatment or recovery capacity.

The commercial hazardous waste treatment industry can change rapidly. For example, national commercial treatment capacity changes as new facilities come on-line or old facilities go off-line and as new units and new technologies are added at existing facilities. The available capacity at commercial facilities also changes as facilities change their commercial status (*e.g.*, changing from a fully commercial to a limited commercial or "captive"—company owned—facility). Thus, EPA also continues to update and monitor changes in available commercial treatment capacity.

We request data on the annual generation volumes and characteristics of wastes affected by this proposed rule, including K167 and K168 in wastewater and nonwastewater forms, soil or debris contaminated with these wastes, residuals generated from the treatment or recycling of these wastes, and the current and planned management practices for the wastes, waste mixtures, and treatment residuals. We also request data on the current treatment or recovery capacity capable of treating these wastes, facility and unit permit status related to treatment of the proposed wastes and any plans that facilities may have to expand or reduce existing capacity, or construct new capacity. Of particular interest to us are waste characteristics, such as pH, total organic carbon content, constituent concentrations, and physical forms that may limit the availability of treatment technologies.

2. What Are the Capacity Analysis Results?

This preamble only provides a brief summary of the capacity analysis performed to support this proposed regulation. For additional and more detailed information, please refer to the "Background Document for Capacity Analysis for Land Disposal Restrictions: Newly Identified Dye and Pigment Process Wastes (Proposed Rule), June 1999."

For this capacity analysis, we examined data on waste characteristics and management practices gathered for the purpose of the dyes and pigments hazardous waste listing determination. The source for these data is primarily the 1992 RCRA Section 3007 survey and the follow-up survey specific to these wastes conducted in 1997 (see the docket for more information on these survey instruments—Background Document for proposed hazardous waste listing of Dyes and Pigments Wastes). The available data sources indicate that there are no quantities of either the K167 or K168 wastewater that will require alternative commercial treatment, and therefore this volume is assumed to be zero. There is adequate wastewater treatment capacity available should the need for treatment of the wastewater form of these wastes arise. EPA estimates of the quantity of nonwastewater forms of K167 and K168 that may require alternative commercial treatment and be managed off-site at a commercial hazardous waste treatment facility are not included due to business confidentiality concerns. Also, the ultimate volume of waste estimated to require alternative or additional commercial treatment may change if the final listing determination changes; should this occur, we will revise the capacity analysis accordingly. The actual quantity of waste requiring commercial treatment may be smaller due to facility closures after 1992 (the year of RCRA Section 3007 survey) and changes in product formulations. We recognize the batch process nature of this industry and the speed at which facilities may change product formulations.

As described in the BDAT section above, EPA is proposing that the treatment standards be mandated treatment methods. The proposed treatment standard for nonwastewaters is combustion. We estimate that the commercially available sludge and solid combustion capacity is at least 300,000 tons per year and therefore sufficient to treat the lesser volume of these wastes which would newly require treatment. Therefore, we are proposing to not grant a national capacity variance from LDR treatment standards for these wastes.

For soil and debris contaminated with these wastes, we believe that the vast majority of contaminated soil and debris will be managed on-site and therefore would not require substantial commercial treatment capacity. Therefore, we are proposing to not grant a national capacity variance for hazardous soil and debris contaminated with the newly listed wastes covered under this proposal. Based on the questionnaire responses, there are no data showing mixed radioactive wastes or underground injected wastes associated with the proposed listings. We are also proposing to not grant a national capacity variance for mixed radioactive wastes (i.e., radioactive wastes mixed with K167 or K168) or wastes being underground injected.

We solicit any updated or additional information pertinent to this determination. We also request comments on current and future management practices and the volumes managed for these wastes.

VII. State Authority and Compliance

A. How Are States Authorized Under RCRA?

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA hazardous waste program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under Sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Before the Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities located in the State with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time-frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

By contrast, under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA (including the hazardous waste listings finalized in this notice) take effect in authorized States at the same time that they take effect in non-authorized States. While States must still adopt HSWA-related provisions as State law to retain final authorization, EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so.

Authorized States are required to modify their programs only when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(I). For those Federal program changes, both HSWA and non-HSWA, that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. Less stringent regulations, both HSWA and non-HSWA, do not go into effect in authorized States until those States adopt them and are authorized to implement them.

B. What Is the Effect of Today's Proposal on State Authorizations?

We are proposing today's rule pursuant to HSWA authority. The listing of the new K-wastes is promulgated pursuant to RCRA Section 3001(e)(2), a HSWA provision. Therefore, we are adding this rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. The land disposal restrictions for these wastes are promulgated pursuant to RCRA Section 3004(g) and (m), also HSWA provisions. Table 2 in 40 CFR 271.1(j) is modified to indicate that these requirements are self-implementing. States may apply for either interim or final authorization for the HSWA provisions in 40 CFR 271.1(j), as discussed below. Until the States receive authorization for these more stringent HSWA provisions, EPA will implement them.

A State submitting a program modification for the portions of this rule promulgated pursuant to HSWA authority may apply to receive either interim authorization under RCRA section 3006(g) or final authorization under 3006(b), if the State requirements are, respectively, substantially equivalent or equivalent to EPA's requirements. States can only receive final authorization for program modifications implementing non-HSWA requirements. The procedures and schedule for final authorization of State program modifications are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations are currently scheduled to expire on January 1, 2003 (see 57 FR 60129, February 18, 1992).

Section 271.21(e)(2) of EPA's State authorization regulations (40 CFR Part 271) requires that States with final authorization modify their programs to reflect Federal program changes and submit the modifications to EPA for approval. The deadline by which the States must modify their programs to adopt this regulation is determined by the date of promulgation of a final rule in accordance with section 271.21(e)(2). Table 1 at 40 CFR 271.1 is amended accordingly. Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those in this proposed rule. These State regulations have not been assessed against the Federal regulations being finalized to determine whether they meet the tests for authorization. Thus, a State would not be authorized to implement these regulations as RCRA requirements until State program modifications are submitted to EPA and approved, pursuant to 40 CFR 271.21. Of course, States with existing regulations that are more stringent than or broader in scope than current Federal regulations may continue to administer and enforce their regulations as a matter of State law. In implementing the HSWA requirements, EPA will work with the States under agreements to avoid duplication of effort.

C. Who Must Notify EPA That They Have a Hazardous Waste?

Under RCRA Section 3010, the Administrator may require all persons who handle hazardous wastes to notify EPA of their hazardous waste management activities within 90 days after the wastes are identified or listed as hazardous. This requirement may be applied even to those generators, transporters, and treatment, storage, and disposal facilities (TSDFs) that have previously notified EPA with respect to the management of other hazardous wastes. The Agency has decided to waive this notification requirement for persons who handle wastes that are covered by today's listings and have already (1) notified EPA that they manage other hazardous wastes, and (2) received an EPA identification number. However, any person who generates, transports, treats, stores, or disposes of these wastes and has not previously received an EPA identification number must obtain an identification number pursuant to 40 CFR 262.12 to generate, transport, treat, store, or dispose of these hazardous wastes 90 days after the effective date.

D. What Do Generators and Transporters Have To Do?

Persons that generate newly identified hazardous wastes may be required to obtain an EPA identification number if they do not already have one (as discussed above). In order to be able to generate or transport these wastes after the effective date of this rule, generators of the wastes listed today will be subject to the generator requirements set forth in 40 CFR 262. These requirements include standards for hazardous waste determination (40 CFR 262.11), compliance with the manifest (40 CFR 262.20 to 262.23), pretransport procedures (40 CFR 262.30 to 262.34), generator accumulation (40 CFR

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262.34), record keeping and reporting (40 CFR 262.40 to 262.44), and import/export procedures (40 CFR 262.50 to 262.60). The generator accumulation provisions of 40 CFR 262.34 allow generators to accumulate hazardous wastes without obtaining interim status or a permit only in units that are container storage units or tank systems; the regulations also place a limit on the maximum amount of time that wastes can be accumulated in these units. If these wastes are managed in units that are not tank systems or containers, these units are subject to the permitting requirements of 40 CFR 264 and 265, and the generator is required to obtain interim status and seek a permit (or modify interim status or a permit, as appropriate). Also, the regulations require that persons who transport newly identified hazardous wastes to obtain an EPA identification number as described above; such transporters will be subject to the transporter requirements set forth in 40 CFR Part 263.

E. Which Facilities Are Subject to Permitting?

1. Facilities Newly Subject to RCRA Permit Requirements

Facilities that treat, store, or dispose of wastes that are subject to RCRA regulation for the first time by this proposed rule (that is, facilities that have not previously received a permit pursuant to Section 3005 of RCRA and are not currently operating pursuant to interim status), might be eligible for interim status (see Section 3005(e)(1)(A)(ii) of RCRA). In order to obtain interim status based on treatment, storage, or disposal of such newly identified wastes, eligible facilities are required to comply with 40 CFR 270.70(a) and 270.10(e) by providing notice under Section 3010 and submitting a Part A permit application no later than 6 months after date of publication of the final rule. Such facilities are subject to regulation under 40 CFR Part 265 until a permit is issued.

In addition, under Section 3005(e)(3) and 40 CFR 270.73(d), not later than 6 months after date of publication of the final rule, land disposal facilities newly qualifying for interim status under section 3005(e)(1)(A)(ii) also must submit a Part B permit application and certify that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements. If the facility fails to submit these certifications and a permit application, interim status will terminate on that date.

2. Existing Interim Status Facilities

Pursuant to 40 CFR 270.72(a)(1), all existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of the newly identified hazardous wastes and are currently operating pursuant to interim status under section 3005(e) of RCRA, must file an amended Part A permit application with EPA no later than the effective date of today's rule, (i.e., 6 months after date of publication of a final rule). By doing this, the facility may continue managing the newly listed wastes. If the facility fails to file an amended Part A application by that date, the facility will not receive interim status for management of the newly listed hazardous wastes and may not manage those wastes until the facility receives either a permit or a change in interim status allowing such activity (40 CFR 270.10(g)).

3. Permitted Facilities

Facilities that already have RCRA permits must request permit modifications if they want to continue managing newly listed wastes (see 40 CFR 270.42(g)). This provision States that a permittee may continue managing the newly listed wastes by following certain requirements, including submitting a Class 1 permit modification request by the date on which the waste or unit becomes subject to the new regulatory requirements (i.e., the effective date of a final rule), complying with the applicable standards of 40 CFR Parts 265 and 266 and submitting a Class 2 or 3 permit modification request within 180 days of the effective date.

Generally, a Class 2 modification is appropriate if the newly listed wastes will be managed in existing permitted units or in newly regulated tank or container units and will not require additional or different management practices than those authorized in the permit. A Class 2 modification requires the facility owner to provide public notice of the modification request, a 60-day public comment period, and an informal meeting between the owner and the public within the 60-day period. The Class 2 process includes a "default provision," which provides that if the Agency does not reach a decision within 120 days, the modification is automatically authorized for 180 days. If the Agency does not reach a decision by the end of that period, the modification is permanently authorized (see 40 CFR 270.42(b)).

A Class 3 modification is generally appropriate if management of the newly listed wastes requires additional or different management practices than those authorized in the permit or if newly regulated land-based units are involved. The initial public notification and public meeting requirements are the same as for Class 2 modifications. However, after the end of the 60-day public comment period, the Agency will grant or deny the permit modification request according to the more extensive procedures of 40 CFR Part 124. There is no default provision for Class 3 modifications (see 40 CFR 270.42(c)).

Under 40 CFR 270.42(g)(1)(v), for newly regulated land disposal units, permitted facilities must certify that the facility is in compliance with all applicable 40 CFR Part 265 groundwater monitoring and financial responsibility requirements no later than 6 months after the date of publication of a final rule. If the facility fails to submit these certifications, authority to manage the newly listed wastes under 40 CFR 270.42(g) will terminate on that date.

4. Units

Units in which newly identified hazardous wastes are generated or managed will be subject to all applicable requirements of 40 CFR 264 for permitted facilities or 40 CFR 265 for interim status facilities, unless the unit is excluded from such permitting by other provisions, such as the wastewater treatment tank exclusions (40 CFR 264.1(g)(6) and 265.1(c)(10)) and the product storage tank exclusion (40 CFR 261.4(c)). Examples of units to which these exclusions could never apply include landfills, waste piles, incinerators, and any other miscellaneous units in which these wastes may be generated or managed.

5. Closure

All units in which newly identified hazardous wastes are treated, stored, or disposed after the effective date of this regulation that are not excluded from the requirements of 40 CFR 264 and 265 are subject to both the general closure and post-closure requirements of Subpart G of 40 CFR 264 and 265 and the unit-specific closure requirements set forth in the applicable unit technical standards Subpart of 40 CFR 264 or 265 (e.g., Subpart N for landfill units). In addition, EPA promulgated a final rule that allows, under limited circumstances, regulated landfills or surface impoundments to cease managing hazardous waste, but to delay Subtitle C closure to allow the unit to continue to manage nonhazardous waste for a period of time prior to closure of the unit (see 54 FR 33376, August 14, 1989). Units for which closure is delayed continue to be subject to all applicable 40 CFR 264 and 265 requirements. Dates and procedures for submittal of necessary demonstrations, permit applications, and revised applications are detailed in 40 CFR 264.113(c) through (e) and 265.113(c) through (e).

VIII. CERCLA Designation and Reportable Quantities

A. What Is the Relationship Between RCRA and CERCLA?

CERCLA defines hazardous substances to include RCRA hazardous wastes. When EPA adds a hazardous waste under RCRA, the Agency also adds the waste to its list of CERCLA hazardous substances. CERCLA also establishes a reportable quantity or RQ for each CERCLA hazardous substance as one pound and authorizes EPA to adjust the RQ based on an evaluation of its physical, chemical, and toxic properties. If you are the person in charge of a vessel or facility that releases a CERCLA hazardous substance in an amount that equals or exceeds its RQ, then you must report that release to the National Response Center and State and local authorities. EPA provides a list of the CERCLA hazardous substances along with their RQs in Table 302.4 at 40 CFR 302.

B. Is EPA Proposing To Add Dye and Pigment Production Wastes to CERCLA?

Yes. Today, EPA is proposing to add the dye and pigment production wastes (K167 and K168) to the list of CERCLA hazardous substances. Specifically, EPA is proposing to add the K167 and K168 waste streams as EPA defines them at 40 CFR Part 261 to Table 302.4 at 40 CFR Part 302.

C. Is EPA Proposing To Adjust the Statutory One Pound RQ for K167 and K168 Wastes?

No. Today, EPA is proposing to retain the statutory RQ of one pound for both K167 and K168 wastes. Some of the information on which the Agency is basing its decision to list the waste has been claimed to be confidential business information (CBI) collected for the purposes of RCRA. The Agency would have to rely on some of this information to establish RQs for these wastes under CERCLA. EPA adjusts an RQ of a waste stream based on an evaluation of all of the listed constituents of that waste. Both K167 and K168 wastes may contain hazardous constituents that have been claimed to be CBI. At this point, the Agency has been enjoined from releasing any information claimed as CBI and collected pursuant to this rulemaking. Until the Agency solves pending questions regarding the use of information collected pursuant to RCRA and claimed as CBI for this listing and for the CERCLA RQ determination, EPA is deferring making adjustments to the statutory RQs of these wastes.

D. When Do I Need To Report a Release of K167 and K168 Wastes Under CERCLA?

If EPA promulgates today's proposed rule, you will need to report a release of either K167 or K168 waste if you are the person in charge of a vessel or facility that releases either waste and the amount that is released equals or exceeds one pound.

E. How Do I Report a Release?

To report a release of any CERCLA hazardous substance (including K167 and K168, if EPA promulgates this rule) that equals or exceeds its RQ, you must immediately notify the National Response Center (NRC) as soon as you have knowledge of that release. The toll-free telephone number of the NRC is 1–800–424–8802; in the Washington, DC, metropolitan area, the number is (202) 267–2675.

You also are required to report the release to State and local authorities (see 40 CFR 355). The Emergency Planning and Community Right-to-Know Act (EPCRA) requires that owners and operators of certain facilities report releases of CERCLA hazardous substances and EPCRA extremely hazardous substances to State and local authorities. After the release of an RQ or more of any CERCLA hazardous substance, you must immediately report the release to the community emergency coordinator of the local emergency planning committee for any area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the release.

F. What Is the Statutory Authority for This Program?

Section 101(14) of CERCLA defines the term hazardous substance by referring to substances listed under several other environmental statutes, as well as those substances that EPA designates as hazardous under CERCLA section 102(a). In particular, CERCLA section 101(14)(C) defines the term hazardous substance to include "any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act." CERCLA section 102(a) gives EPA authority to determine RQs for CERCLA hazardous substances. CERCLA section 102(b) establishes a one pound RQ for all hazardous substances unless and until EPA adjusts the RQ under section 102(a). CERCLA section 103(a) requires any person in charge of a vessel or facility that releases a CERCLA hazardous substance in an amount equal to or greater than its RQ to report the release immediately to the federal government. EPCRA section 304 requires owners or operators of certain facilities to report releases of CERCLA hazardous substances and EPCRA extremely hazardous substances to State and local authorities.

We invite comments today's proposal to designate the K167 and K168 wastes under CERCLA and how it may affect you.

IX. Analytical and Regulatory Requirements

A. Is This a Significant Regulatory Action? (Executive Order 12866)

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to OMB review and the other provisions of the Executive Order. A significant regulatory action is defined by Executive Order 12866 as one that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Under the terms of Executive Order 12866, we have determined that this rule is a "significant regulatory action" because of point four (4) above: the rule raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Today's proposed concentration-based listing action deviates from the Agency's standard or historic listing approach. Historically, the Agency's listing program has captured entire quantities of targeted wastestreams posing unacceptable risks to human health and the environment. Today's approach identifies targeted wastestreams but proposes listing only those quantities containing one or more constituents of

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concern at concentration levels that reflect unacceptable risks. This action, therefore, was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

Although this rule is not "economically significant," the Agency has prepared an economic support document for today's rule entitled: Economic Assessment for the Proposed Listing of Wastewater Treatment Sludge from the Production of Triarylmethane (TAM) Dyes and Pigments, and Spent Filter Aids from Azo, Anthraquinone, or Triarylmethane Dyes, Pigments, and Colorants. This Economic Assessment addresses, among other factors, compliance costs to the regulated community, industry economic impacts, qualitative benefits, small entity impacts, children's health, and environmental justice. A summary of findings from this Economic Assessment is presented below. The complete Economic Assessment document is available in the RCRA docket for today's rule.

Today's proposed action is projected to result in incremental annual compliance costs to the organic dyes and pigments industries, however at this time we cannot include the range of aggregate costs due to business confidentiality concerns. Estimated impacts on potentially affected land disposal facilities are highly variable, depending upon the regulatory option. Due to business confidentiality concerns, we are currently not able to include annual aggregate nationwide compliance costs to land disposal facilities.

B. Why is This Proposed Rule Necessary?

While waste produced by dye and pigment facilities already is regulated to a certain extent, certain waste streams generated by these facilities still pose both human health and ecological risks. Current disposal practices for both spent filter aids and TAM wastewater treatment sludge have the potential to pollute soil and water. To date, the market and other private sector institutions have failed to address pollution issues associated with these two wastestreams for several reasons.

First, because individuals not responsible for the pollution bear the costs in human health and ecological damages, insufficient incentives exist for dye and pigment facilities to incur the additional costs for implementing pollution control measures. In this case, the private industry costs of production do not fully reflect the human health and environmental costs of management of these two wastestreams. This situation, referred to as "environmental externality," represents a type of market failure. A non-regulatory approach, such as educational outreach programs, would be largely ineffective because the people who are made aware of the potential health risks (*e.g.*, those people living near landfills where these two wastestreams are disposed) have limited ability to reduce exposure without incurring significant costs.

Second, the parties harmed by the pollution of soil and water are not likely to obtain compensation from dye and pigment facilities through legal or other means. This is due to the high transaction costs involved, and the difficulty citizens may have in establishing a causal relationship between the damage incurred and activity at the dye or pigment facility. Establishing a direct link between a specific dye or pigment facility and human health and/or other damages incurred would be especially difficult since under current practices many facilities dispose of wastes in landfills where it is co-mingled with many other wastes.

We believe that federal government intervention is necessary to correct for these market distortions and to fairly and consistently internalize costs associated with these negative externalities. We feel that federal regulation is the optimal means of correcting these market failures. EPA, therefore, is proposing a concentration based hazardous waste listing for spent filter aids and TAM wastewater treatment sludge.

C. What Regulatory Options Were Considered?

We considered three regulatory options for management of the two waste streams examined in this assessment. These were: no listing-status quo, the standard listing approach (covering the entire quantity of all affected wastestreams), and a concentration-based listing approach. The no-list option would result in affected facilities not incurring any incremental management and administrative costs under RCRA Subtitle C. This option, however, may result in affected facilities facing future human health and environmental liabilities for groundwater damages. The standard listing (includes all affected wastes) option would require that all affected facilities comply with RCRA Subtitle C regulations. These facilities would incur incremental management and administrative costs required under RCRA Subtitle C. The concentration-based listing approach requires that affected facilities determine whether or not their waste contains constituent concentrations that exceed regulatory limits. If concentrations exceed regulatory limits, the waste is regulated under RCRA Subtitle C and the facility will incur incremental management, administrative, and analytical costs. Because of the wide variation in the types of constituents and concentrations present in these two waste streams, the Agency is proposing a concentration-based listing approach in today's action.

D. What are the Potential Cost Impacts of Today's Proposed Rule?

1. Introduction and Scope of Analysis

The value of any regulatory policy is traditionally measured by the net change in social welfare that it generates. The Economic Assessment conducted in support of today's proposed action examines both costs and benefits in an effort to anticipate the overall change in social welfare. The primary focus of the analysis is on compliance costs and economic impacts potentially borne by the dyes and pigments industries. Benefits are examined on a qualitative basis. Other regulatory issues covered in the Economic Assessment include small entity impacts, environmental justice, children's health, and unfunded mandates. The Economic Assessment also examines potential impacts on land disposal facilities which have received wastes considered in this rulemaking.

2. Key Data Sources

The primary source of information used to establish baseline conditions in the dyes and pigments industries was from RCRA 3007 questionnaires. The RCRA 3007 data used in this analysis represent the total number of facilities believed to be generating TAM and spent filter aid waste. Other key data sources include: the 1992 Census of Manufacturers, the U.S. International Trade Commission, and various news sources which report on industry trends. Because our data were limited, the estimated findings from this analysis should be viewed as national, and not specific to any discernible facility.

3. Industry Profile and Market Overview

Today's proposed action is expected to affect three different industries; the organic dyes industry, the organic pigments industry, and the municipal and industrial solid waste landfill industry. The organic dyes and pigments industries produce dyes and pigments for a wide variety of intermediate and end users including the automotive, textile, printing, and plastics industries. The municipal and industrial solid waste landfill industry receives and manages waste from industries generating nonhazardous or exempt materials. A hazardous determination for wastes previously accepted as nonhazardous may require modified management procedures for the leachate generated from municipal and industrial facilities that have previously accepted these wastes.

Organic Dyes and Pigments Industries—General

Both the organic dyes industry and the organic pigments industry are classified under the North American Industry Classification System (NAICS) as 325132, Synthetic Organic Dye and Pigment Manufacturing. The Ecological and Toxicological Association of the Dyestuffs Manufacturing Industry (ETAD) defines dyes as "intensely colored or fluorescent organic substances which impart color to a substrate by selective absorption of light." The Color Pigment Manufacturers' Association (CPMA) defines pigments as "colored, black, white, or fluorescent particulate organic or inorganic solids, which usually are insoluble in, and essentially physically and chemically unaffected by, the vehicle or substrate in which they are incorporated."

More than 2,000 individual dyes are manufactured, generally in multiple small batch quantities. This large number of dyes is attributable to the many different types of materials to which dyes are applied and the different conditions of service for which dyes are required. There are fewer pigments produced than dyes, however, pigment batches are generally larger in size. Organic dyes are classified in several ways including their chemical structure or class, general dye chemistry, and application process. Chemical structure classifications include azos, triarylmethanes (TAM), diphenylmethanes, anthraquinones, stilbenes, methines, polymethines, xanthenes, phthalocyanines, and sulfurs. Organic pigments are derived in whole or in part from benzenoid chemicals and colors and are described as toners or lakes. These pigments essentially are the same in final form, but differ in their preparation method. This proposed waste listing is concerned with TAM wastewater treatment sludges and spent filter aid waste streams resulting from the production of azo, anthraquinone, or triarylmethane dyes, pigments, and colorants.

In 1992, the most recent year for which consistent data are available, there were reportedly 38 establishments listed under Standard Industrial Classification (SIC) 28652, Synthetic Organic Dyes, and 42 establishments listed under SIC Code 28653, Synthetic Organic Pigments, Lakes, and Toners (Bureau of the Census, 1992 Census of Manufacturers). Total employment was estimated at 5,200 individuals for the synthetic organic dyes industry and 4,500 individuals for the synthetic organic pigments industry. Aggregate annual wages for both the dyes and pigments industries totaled approximately $375 million in 1992.

There are significant barriers to entry in both the dyes and pigments industries in terms of capital investment and environmental liability. Both dyes and pigments are produced by organic synthesis, which translates into capital- and time-intensive requirements, making a certain level of economy to scale a necessity. During the 1980s, many smaller dyes businesses either closed or were acquired by larger companies. The smaller dye producers that remain operating today typically supply niche markets not serviced by the large producers because of profitability, environmental concerns, or small volumes. During the 1980s, the colored pigments industry was dramatically restructured due to globalization of pigment markets, competitive factors, and the increasing cost of plant improvements to meet governmental standards, particularly in the United States. A number of smaller producers, unable to compete with larger international firms, closed their plants or were acquired by larger firms, primarily from Western Europe or Japan.

Consolidation has continued in the dyes and pigments industries throughout the 1990s, and is expected to continue through the year 2000 as the industries face increasing pressure from the growth of low-cost producers in Asia and other developing countries. The synthetic organic pigments industry currently consists of a few large multinational companies and a number of smaller pigment companies that specialize in a few product lines. Sales of organic pigments make up a relatively small portion of these multinational's overall chemical sales. The majority of the U.S. dye business is currently controlled by European-owned companies operating in the United States.

The U.S. International Trade Commission's (USITC) production data for the five-year period from 1990 through 1994 indicated that dye production was highest in 1993 at approximately 160,000 tons. Production declined in 1994 to approximately 156,000 tons. More recent production information is not available. The Chemical Market Reporter, December 22, 1997, indicates that the demand for organic dyes is likely to increase between 2.0 and 2.5 percent annually through the end of the decade. The average unit value of all dyes has varied from approximately $6,000 to $6,800 per ton during the 1990 through 1993 period; data for 1994 are not available. The total production value of dyes in the mid 1990's was approximately $1.0 billion. The Industry and Trade Summary: Synthetic Organic Pigments, USITC Publication 3021, February 1997, indicates that total U.S. production of organic pigments grew from 56,400 tons in 1991 to an estimated 71,500 tons in 1995. The average unit value of all organic pigments has varied from about $14,800 to $16,100 per ton over the 1991 through 1995 period. The total production value of organic pigments is estimated at $1.2 billion for 1997.

The majority of organic dye imports to the U.S. in the mid 1990's came from Western Europe. Most of these imports represented intra company sales between European dye manufacturers and their U.S. subsidiaries. Asia accounted for the vast majority of remaining imports. Industry experts predict that this distribution will remain unchanged through the year 2,000. The pigments industry is a global industry with imports having a significant impact on the U.S. market. The major synthetic organic pigments suppliers to the United States have been Germany, Japan, Switzerland, and the United Kingdom. In 1995, these four countries accounted for 73 percent of the value of organic pigments imports. In recent years, imports of lower technical requirement pigments have increased, with the Republic of Korea and Japan being the major suppliers. In recent years, China and India have emerged as important suppliers to the U.S. synthetic organic pigment market. Analysts expect this trend to continue and indicate that increased Chinese imports place downward pressure on prices.

The largest export markets for the U.S. dye industry in 1992, in terms of quantity, were Canada, Mexico, United Kingdom, the Netherlands, and Japan. U.S. exports to Western Europe were mostly intra company sales between European dye manufacturers and their U.S. subsidiaries. The primary export markets for U.S. synthetic organic pigments are Canada, Belgium, the United Kingdom, and Japan. During 1991–95, total U.S. organic pigments exports increased 50 percent from $200

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million in 1991, to $299 million in 1994, with a slight decline in 1995. A large portion of U.S. exports to Europe were believed to be sales by large European-owned multinational companies with production facilities in the U.S. The strength of the U.S. dollar will have a significant impact on the ultimate strength of U.S. exports.

The Municipal and Industrial Solid Waste Landfill Industry

A disposal practice for nonhazardous organic dye and pigment industry wastes is off-site disposal in industrial and/or municipal solid waste landfills. The leachate derived from these wastes has traditionally been collected and recirculated, treated, or disposed. Because of the proposed listing, collected leachate from landfills (i.e., cells) that have accepted these wastes may be hazardous under the Derived-from Rule. Also, when the leachate from these two wastes mixes with leachate from other wastes, the entire leachate quantity from the affected landfill (or cell) may be considered hazardous under the Mixture Rule. By changing the regulatory status of the proposed wastes, the collected leachate from the disposal of these wastes will be covered under Subtitle C of RCRA. Municipal Solid Waste (MSW) and industrial landfills that have previously accepted and generated leachate from these wastes may face increased leachate management costs.

The EPA Report, Characterization of Municipal Solid Waste in the United States: 1997 Update, EPA530–R–98–007, May 1998, estimates there were approximately 2,400 MSW landfills in the contiguous U.S. for 1996. Based on the best available data, we have determined the number of MSW and industrial landfills that received the two organic dye and pigment industry wastes proposed for listing. This information, however, is not included due to business confidentiality concerns.

It is highly probable that these landfills are located within 50 miles of the organic dyes and pigments facilities. Leachate quantities generated by each of these landfills are dependent upon the geographic location, area, leachate collection system design, and operation of the landfill. Recent information from the Solid Waste Digest indicates that landfills receiving anywhere from 250 to 1,500 tons of waste per day are representative of landfills receiving dye and pigment wastes. Based on an average national tipping fee, the approximate annual sales for a landfill that, on average, accepts 750 tons of waste per day, would be about $7.7 million. Aggregate nationwide municipal landfill revenues are estimated in the range of $6.2 to $37.1 billion per year.

4. Baseline Waste Management Procedures and Costs

This section briefly summarizes the baseline management procedures and costs the dyes and pigments industries are subject to in contending with the proposed wastes. Baseline leachate management procedures and costs experienced by landfills accepting the proposed dye and pigment wastes are also discussed.

Organic Dyes and Pigments—Proposed Wastestream Listings

The two wastes generated during the production of dyes and pigments that we are proposing for listing as hazardous under RCRA are identified as K167 and K168. These are described below:

K167—Spent filter aids, diatomaceous earth, or absorbents used in the production of azo, anthraquinone, or triarylmethane dyes or pigments.

K168—Wastewater treatment sludge from the production of TAM dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock).

The annual generation of these proposed hazardous wastes are estimated and analyzed as combined quantities. Further discussion on management practices is not included due to business confidentiality concerns. This analysis applies baseline scenarios using both MSW lined and industrial D unlined landfill facilities.

Costs for baseline waste management practices were derived from published sources and industry submitted data. The cost for waste disposal in a lined MSW landfill with leachate collection is estimated at $75 per ton. Disposal in an unlined landfill is estimated at $63 per ton. Waste disposal costs for Facilities currently managing under Subtitle C are estimated at $650 per ton for incineration and $213 per ton for disposal in a Subtitle C landfill. Waste discharge to a POTW is estimated to cost $1.50 per 1,000 gallons. The Subtitle C transportation cost is estimated at $53 per ton, within a 200-mile limit.

Dye and Pigment Leachate Management—Affected Landfills

Our analysis indicates that a number of landfills are likely to be affected by the proposed dye and pigment listing. The number of affected landfills, however, is not included here due to business confidentiality concerns. Data on leachate management practices for these landfills are extrapolated from a petroleum sample leachate management distribution. Applying the distribution of management practices identified in the petroleum sample to the population of landfills affected by the two wastes indicates results that cannot be included due to business confidentiality concerns.

The average leachate and condensate quantities generated per representative landfill over the 5-year expected generation scenario are as follows: 5.0 million gallons per year discharge via a NPDES-permit, 4.2 million gallons per year to a POTW, 2.0 million gallons per year trucked to an off-site POTW, 1.6 million gallons per year for which a portion is trucked and the remainder (0.6 million gallons per year) is recirculated.

Baseline leachate and condensate management cost data were provided by representative landfill facilities. These data were used to develop average unit cost estimates on a per year per landfill basis for each leachate management practice. Average leachate management costs are estimated as follows: truck to an off-site POTW ($0.07/gallon), truck a portion to an off-site POTW and recirculate the remaining fraction ($0.05/gallon), discharge to an NPDES outfall ($0.04/gallon), discharge via pipe to POTW ($0.03/gallon), and recirculate ($0.01/gallon).

5. Compliance Waste Management Procedures and Costs

We considered three regulatory options in analyzing compliant waste management procedures and costs for generators of the proposed waste listings: no listing-status quo, concentration-based listing, and standard listing. The no-list option results in no incremental compliance costs. The concentration-based listing requires sampling and analysis costs not normally required under a standard listing, but may result in reduced waste quantities managed as hazardous waste. The assessment conducted for today's action examines the economic impacts to the affected facilities under the proposed concentration-based listing and assumes 100 percent of all affected wastestreams must be managed as hazardous waste. This assumption results in a high-end, or worst case scenario for examining industry economic impacts.

We also considered three regulatory options in the evaluation of compliant procedures and costs for leachate generated from landfills that have accepted the proposed dye and pigment wastestreams. These options are: no list, a Clean Water Act temporary deferral option with a two-year impoundment deferral, and, a standard listing leachate management option that treats the leachate as hazardous waste subject to Subtitle C regulation. The no-list option would result in no incremental management and cost impacts to affected landfills. The Clean Water Act temporary deferral option would exempt the landfill leachate from being RCRA Subtitle C regulation if it is managed under the Clean Water Act. After two years, impoundments would no longer be allowed to manage exempt leachate. The standard listing option would require that landfills treat the leachate as hazardous waste and subject to Subtitle C regulation under the Derived-from and Mixture Rules. Existing exemptions would apply. We examined compliance management procedures and incremental cost to landfills under the Clean Water Act temporary deferral and standard listing options.

Organic Dyes and Pigments Industries—Proposed Wastestream Listings

Future post listing compliance waste management practices assume the promulgation of land disposal restrictions (LDRs). The compliance management practice assumed is RCRA Subtitle C hazardous waste incineration, with disposal of the resulting ash in a Subtitle C landfill. Stabilization of the incinerator ash is not assumed given the lack of significant hazardous metal constituents in the wastes. Our assumptions for other management practices reported are not included due to business confidentiality concerns. Cost estimates for compliance management activities have been derived using unit costs from published sources and additional data obtained from Agency and contractor knowledge. Subtitle C incineration and ash disposal in a Subtitle C landfill is estimated at $650/ton and $213/ton, respectively. Shipping costs to Subtitle C facilities is based on a flat fee of $53/ton for a 200-mile radius.

Facilities generating the proposed waste listings are subject to Part 262 of RCRA. There are four primary requirements specified in the Part 262 standards: plants must obtain an EPA identification number, an approved manifest system must be established, pre transport requirements must be satisfied (labeling, marking, placarding), and, specified record keeping and reporting requirements are triggered. All of the facilities affected by this proposed listing are assumed to have already been affected by the previous proposed listing. Therefore, minimal incremental administrative costs are assumed to be incurred as a result of today's proposed listing. This analysis assumes that RCRA Parts 264 and 270 do not apply.

Sampling and analysis costs in this assessment are based on the assumption that wastes produced at each facility will be sampled each year. Aggregate sampling and analysis costs are based on an average and worst case number of chemicals. Sampling and analysis costs include taking the sample, packaging, transportation, analysis of the sample, and reporting the results. Costs were estimated assuming analysis for total concentrations. The annualized sampling costs for constituents are estimated to be $153/sample, and the sampling costs for the worst-case number of constituents are estimated to be $246/sample.

Corrective action compliance costs associated with non-permitted facilities include the cost to conduct a RCRA Facility Investigation (RFI), a Corrective Measures Study (CMS), and remediate solid waste management units (SWMUs) and areas of concern (AOCs). Because of the previous listing, we assumed all facilities affected by this proposed rule will already have triggered quanitification of the above corrective action compliance costs. No incremental costs for corrective action compliance are assumed to be incurred as a result of this proposed listing.

Dye and Pigment Leachate Management—Affected Landfills

Under the Standard Listing regulatory option, the leachate collected from landfill cells that received these two waste streams will be managed according to the requirements specified under Subtitle C of RCRA. Under the Clean Water Act temporary deferral regulatory option, the Agency will exempt the leachate from being regulated as hazardous under Subtitle C if it is managed in tank systems under the Clean Water Act (including POTWs) or through recirculation. Under a no list regulatory option, leachate quantities generated at MSW landfills will continue to be regulated under Subtitle D of RCRA and leachate quantities generated at industrial waste landfills will be subject to state and local regulations.

Cost estimates for leachate compliance management and transportation activities were derived using unit costs from published sources, annualized costs (updated) developed in the previously proposed organic dye and pigment hazardous waste listings, and the recent final listing of four petroleum refining waste streams. Cost estimates have been developed on an annualized per landfill basis for capital and O&M requirements, based on a 5-year, 10-year, and 20-year period of amortization. These periods are designed to reflect the period under RCRA regulation and the remaining life of the landfill. The cost estimate ranges also cover the expected five-year leachate generation and ten-year conservative leachate generation case. Because there are fewer commercial treatment/POTW facilities permitted to receive manifested hazardous wastewaters (i.e., leachate), total transport distances are assumed to increase with the promulgation of the rule.

We have developed compliance cost estimates for the following leachate management practices: truck to a POTW, truck to a POTW plus reticulate, reticulate only, hardpipe to a POTW, and discharge via NPDES. RCRA administrative costs are also estimated. Annualized compliance costs on a per landfill basis, presented in million dollars, are estimated as follows: truck to a POTW ($1.71–$7.00), truck to a POTW plus reticulate ($1.38–$5.64), reticulate only ($0.01–$0.02) , hardpipe to a POTW (same as baseline), and discharge via NPDES ($0.10–$0.27). These costs encompass the full range of amortization over the five, ten, and twenty year period. RCRA administrative costs associated with compliance are estimated to be no more than $4,000 per landfill per year.

6. Incremental Aggregate Compliance Costs

This section summarizes the projected incremental compliance costs associated with today's proposed action. Incremental costs are estimated for the generators of the proposed dye and pigment wastes, and the Subtitle D landfill facilities that accepted these wastes.

Organic Dyes and Pigments—Proposed Wastestream Listings

Total baseline management and compliance management costs were calculated on a per unit basis for each activity. Incremental costs are the difference between baseline and compliance costs, including administrative, and sampling and analysis costs. The total incremental cost is the summation of this difference between baseline and compliance costs across all affected waste quantities/facilities. Our analysis indicates that total incremental costs associated with the proposed listing may fall within a broad range. We are not able to present these findings due to business confidentiality concerns. Presentation of the average incremental cost per ton is

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also subject to business confidentiality restrictions. The high-end estimate assumes 100 percent baseline waste management in an unlined landfill, and analytical costs for the high-end estimate of constituents potentially impacted.

Dye and Pigment Leachate Management—Affected Landfills

The total incremental landfill costs are estimated by multiplying the number of affected landfills in each leachate management category by incremental landfill costs, calculated on a unit-by-unit basis. The estimated impacts on the affected land disposal facilities are highly variable, depending on the regulatory option. Under the standard listing option, costs were found to fall within a broad range. Business confidentiality restrictions prevent us from releasing this information. The range reflects a five, ten, or twenty year amortization schedule, and the five or ten year leachate generation period. Presentation of cost impacts under the Clean Waste Act temporary deferral option is also restricted due to business confidentiality concerns.

E. What Are the Potential Economic Impacts to Industry From the Proposed Rule?

We examined the economic impacts to both dye and pigment manufacturers and solid waste landfill facilities. The impacts to the dye and pigment industry were examined by comparing incremental costs to annual estimated sales for the affected product lines. Incremental compliance costs to landfills were examined as a percent of revenues from tipping fees.

Economic Impacts—Organic Dyes and Pigments Industry

Waste generation rates for filter aids and TAM sludge are variable, depending upon the product being manufactured. A model facilities approach was used based on four representative waste generation rate categories. Information regarding waste generation rates, production rates, and product sales was derived from responses to RCRA 3007 questionnaires and from U.S. International Trade Commission Reports. Like waste generation rates, product prices are also highly variable. Product prices used in this analysis ranged from $6,500 to $18,000 per ton. Data provided in U.S. International Trade Commission public reports served as a basis for approximating average industry prices.

Gross sales, based on the above range of waste generation rates and prices, were estimated. These findings, however may not be divulged due to business confidentiality concerns. A midpoint of annual gross sales was also estimated for the waste generation categories examined. It should be noted that individual facilities are likely to produce a variety of products, not all of which will be affected by this proposed rulemaking. The gross sales estimates developed for this analysis only reflect sales of affected product lines and do not reflect aggregate sales for any single facility.

Incremental compliance cost impacts were estimated but may not be released to the public due to business confidentiality concerns. The actual economic impact will likely be dependent on the price elasticity of demand for individual dye and pigment products. For example, if an affected product has many close substitutes, it is possible that the producer of the impacted product may not be able to modify prices in response to increased production costs. Conversely, dye and pigment products with unique applications may have a more inelastic demand. Prices of these products may be increased enough to largely offset any changes associated with the rulemaking. It is important to consider that this rulemaking affects less than a certain percent of the overall combined production of the dyes and pigments industries. While the estimated impacts may be experienced on selected product lines, overall impacts on the industries are expected to be less due to multiple product lines.

Economic Impacts—Solid Waste Landfills Managing Dye and Pigment Leachate

We examined average incremental compliance costs as a percent of sales (tipping fee revenues) for three different sized landfills to estimate potential economic impacts of the proposed listing on landfill management costs. The model landfill facilities were assumed to accept 250, 750, and 1,500 tons of waste per day. These sizes were selected as representative of the industry and landfills accepting dye and pigment wastes.

Annual landfill sales were derived for each of the models using an average national tipping fee of $35.81/ton. It was assumed that the landfills operated approximately 286 days a year (five and one-half days/week). Therefore, approximate annual sales for a landfill that on average accepts 750 tons of waste per day would be $7.68 million. Impact estimates are based on average leachate generation rates.

Incremental costs were examined for both the Standard Regulatory Option and the Clean Water Act temporary deferral. For each option, incremental costs were considered for six management practices. In estimating the potential economic impacts of the Standard Regulatory Option, expected incremental compliance costs based on a five-year amortization schedule were used. The five-year amortization is believed to correspond more closely to the actual leachate generation. Incremental compliance costs for the analysis of the Clean Water Act temporary deferral option are based on a 20-year capital amortization schedule.

Under the standard listing option, we have estimated costs that facilities would face if they have to truck the leachate to a POTW. These impacts cannot be presented to the public due to business confidentiality concerns. Actual incremental compliance costs for the smallest landfill size were estimated but may not be divulged. Impacts in relation to all other technologies in the standard listing scenario were estimated but may not be divulged due to business confidentiality concerns. Under the Clean Water Act temporary deferral option, costs were also estimated. Business confidentiality concerns prevent us from releasing this information also.

F. What Are the Potential Benefits From the Proposed Rule?

We conducted a qualitative benefits analysis of today's proposed listing of filter aids and TAM wastewater treatment sludges. This analysis addresses human health benefits projected as a result of the proposed listing. The analysis also examines benefits associated with waste minimization efforts potentially stimulated by this action. Potential ecological benefits are not examined. The analysis incorporates findings from, and is consistent with, the risk analysis conducted in support of this action. Incremental individual and/or population benefits are not available for incorporation into this benefits analysis.

In determining whether waste generated from the production of dyes and pigments meets the criteria for listing a waste as hazardous as set out at 40 CFR 261.11, we initially evaluated the potential toxicity and intrinsic hazard of the constituents likely to be present in the waste streams. The fate and mobility of these chemicals, the likely exposure routes, the current waste management practices, and plausible management practices were examined. Based on this assessment we identified a core list of constituents associated with filter aids TAM sludges. We are seeking comment on the inclusion of other constituents of potential concern (see Section IV).

Human Health Benefits

One objective of a human health risk assessment is to estimate the number of chronic health impacts that could be avoided as a result of the implementation of the proposed rule. This would include the exposures by drinking contaminated water from residential wells located near the source of contamination, consuming food products contaminated by blowing dust or vapors, and otherwise being exposed directly to contaminated soil and water.

The benefit associated with today's action is the enhanced security associated with more stringent management requirements for the proposed "high concentration" filter aid and TAM wastestreams. When these wastestreams are managed under the more stringent Subtitle C requirements, the risks to human health and the environment associated with their disposal is minimized.

Waste Minimization Benefits

Regulatory compliance costs for the dyes and pigments industries may be lowered through use of waste minimization practices. A previously issued guidance document on pollution prevention, recycling, and reuse practices for the dye manufacturing industry offers a number of general and specific alternatives. Engineering site visits, particularly at newer facilities, indicated that a number of these practices are economically and technically feasible. These visits also pointed out areas of improvement needed at all facilities, most notably reduction of wastewater volume.

Specific waste minimization procedures and corresponding cost reductions tend to be highly dependent on the manufacturing processes at each facility. The following waste minimization opportunities for specific plant operations and waste streams may decrease compliance costs through reduction in waste volume at dye and pigment facilities: filtering devices with reusable membranes, centrifugation, dry collection of dust and fines whenever practicable, automated handling and measurement of raw materials and products, and consideration of process integration for recycling to other parts of the same facility.

As noted earlier in today's notice, a concentration-based listing also provides an added incentive for generators to reduce the level of hazardous constituents of concern. If constituent levels are reduced to below the concentration levels specified in the listing regulation, then their waste will not be regulated as hazardous.

G. What Consideration Was Given to Small Entities?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

We conducted a screening analysis to answer a series of questions regarding the potential impacts of the proposed dyes and pigments waste listing on small entities. This analysis was conducted per the requirements of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), and Agency guidance. Our screening analysis came to a definitive conclusion. However, we are not able to divulge this conclusion due to business confidentiality concerns.

The Small Business Administration (SBA) size standard for small businesses in the dyes and pigments industry, which is part of cyclic crudes and intermediates (NAICS 325132) is 750 employees (13 CFR 121.201). This, and all size standards apply to the owners or parent corporation, of the business, and not individual plant operations which are most directly affected by this proposed regulation. Of the dye and pigment companies potentially affected by the regulation, we have determined the maximum number of small businesses under the SBA size standard. This determination, however, is not available for public release due to business confidentiality concerns. It is possible that some of the landfills affected by this rulemaking may be small according to the SBA size standards for landfills (less than $5 million in sales).

Data are not available on the financial status of the small entities in question, as they are privately held companies. However, we have made a preliminary estimate of the impact on these companies, assuming that 100 percent of all wastes are managed as Subtitle C. We may not release this finding due to business confidentiality concerns.

It is important to recognize that these estimates are based only on product sales which are directly associated with the waste generated. For instance, an individual company may produce 100 different dyes, but spent filter aids may only be generated in the production of 20 of them. In this case, the impact estimate only represents the sales value of the 20 dyes associated with the generation of the spent filter aids, and not on overall company sales. Overall company impacts would be lower. For the landfills potentially affected by the rule, impacts have been estimated but are not available for release due to business confidentiality concerns.

As a result of the screening analysis, the Agency has come to a conclusion concerning small business impacts but is not able to release this information due to business confidentiality concerns. This rule does not require a full regulatory flexibility analysis. The Economic Assessment document presents the complete regulatory flexibility screening analysis conducted in support of today's action.

H. What Consideration Was Given to Children's Health?

Children's Health (Executive Order 13045)

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

The topic of environmental threats to children's health is growing in regulatory importance as scientists, policy makers, and village leaders continue to recognize the extent to which children are particularly vulnerable to environmental hazards.

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Recent EPA actions have been in the forefront of addressing environmental threats to the health and safety of children. Today's proposed rule further reflects our commitment to mitigating environmental threats to children.

A few significant physiological characteristics are largely responsible for children's increased susceptibility to environmental hazards. First, children eat proportionately more food, drink proportionately more fluids, and breathe more air per pound of body weight than do adults. As a result, children potentially experience greater levels of exposure to environmental threats than do adults. Second, because children's bodies are still in the process of development, their immune systems, neurological systems, and other immature organs can be more easily and considerably affected by environmental hazards. The connection between these physical characteristics and children's susceptibility to environmental threats are reflected in the higher baseline risk levels for children.

Today's proposed rule will reduce risks posed by the hazardous constituents found in the listed waste streams by requiring more appropriate and safer management practices. EPA considered risks to children in its risk assessment and set allowable concentrations for constituents in the waste at levels that are believed to be protective to children, as well as adults. The more appropriate and safer management practices proposed in this rule are projected to reduce risks to children potentially exposed to the constituents of concern.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assess results of early life exposure to the proposed hazardous constituents from filter aids and TAM waste generated in the production of organic dyes and pigments.

I. What Consideration Was Given to Environmental Justice?

Environmental Justice (Executive Order 12898)

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population" (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

To comply with the Executive Order, we have assessed whether today's proposed rule may have disproportionate effects on minority populations or low-income populations. We do not have determinative facility location correlated with minority population and impacts data to indicate that the environmental problems addressed by the proposed listing for dye and pigment wastes could disproportionately effect minority or low income communities. The affected facilities, however, are distributed throughout the country and many are located within highly urbanized areas. Because the proposed rule reduces environmental risks associated with the management of the proposed waste streams, the Agency believes that this rule will not result in adverse human health and environmental impacts. Today's proposed rule, therefore, is not expected to result in any disproportionately negative impacts on minority or low income communities relative to affluent or non minority communities.

J. What Consideration Was Given to Unfunded Mandates?

Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule implements mandates specifically and explicitly set forth by the Congress without the exercise of any policy discretion by EPA. This action is proposed under the authority of Sections 3001(e)(2) and 3001 (b)(1) of the Hazardous and Solid Waste Amendments (HSWA) of 1984, which direct EPA to make a hazardous waste listing determination for certain wastes from the dye and pigment industries. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Unfunded Mandates Reform Act (UMRA)

The Unfunded Mandates Reform Act (UMRA) of 1995 supersedes Executive Order 12875 and reiterates previously established directives, while imposing additional requirements. Title II of the UMRA, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions by State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and final rules for which the Agency published a notice of proposed rulemaking if those rules contain "Federal mandates" that may result in the expenditure by State, local, and tribal governments , in the aggregate, or to the private sector, of $100 million or more in any single year. If a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law.

We have determined that this proposed rule will not result in the expenditure of $100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector in any single year.

K. What Consideration Was Given to Tribal Governments Analysis?

Executive Order 13084

Under Executive Order 13084, "Consultation with Tribal Governments," the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, or that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, the EPA must provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, or proposed rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of their concerns, and a statement supporting the need to issue the regulation. Also, Executive Order 13084 requires the EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to, "provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

For many of the same reasons described above under unfunded mandates, the requirements of Executive Order 13084 do not apply to this proposed rulemaking. While Executive Order 13084 does not provide a specific gauge for determining whether a proposed regulation "significantly or uniquely affects" an Indian tribal government, this proposal does not impose substantial direct compliance costs on tribal governments and/or their communities. Tribal communities are not known to own or operate any dye or pigment manufacturing facilities, nor are these communities disproportionately located adjacent to or near such facilities. Finally, tribal governments will not be required to assume any administrative or permitting responsibilities associated with this proposed rule.

L. Was the National Technology Transfer and Advancement Act Considered?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involved technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

M. How Is the Paperwork Reduction Act Considered in Today's Proposal?

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1918.01) and a copy may be obtained from Sandy Farmer by mail at Office of Policy (OP) Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460, by email at *farmer.sandy@epamail.epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr.

This proposed rule contains concentration-based listings that generators would be self-implementing. Under the concentration-based listings, a generator of wastes that fall within the K167 or K168 listing descriptions must comply with waste analysis requirements if it wants to determine that its waste is nonhazardous. These requirements are necessary to ensure that the levels of selected constituents in the wastes are below the regulatory levels of concern.

The Agency estimated the worst-case burden associated with complying with the requirements in this proposed rule. In 1992, the most recent year for which consistent data are available, there were reportedly 80 dye and pigment facilities (Industrial Organic Chemicals, Manufacturers-Industry Series, Census Bureau, Department of Commerce, 1992). Because of business confidentiality concerns in using the actual number of facilities that reported generating wastes that fall within the K167 or K168 listing descriptions, EPA assumed that all 80 facilities generate these wastes. In addition, EPA assumed that all 80 facilities would analyze their wastes and find the wastes to be hazardous. Under such assumptions, all of these 80 facilities, as well as subsequent handlers, would need to manage and dispose of the wastes under RCRA Subtitle C regulations.

The estimated worst-case burden results from the following requirements for industry respondents: reading the regulations; performing waste analysis, and incremental burden associated with complying with existing RCRA regulations. To the extent that this rule imposes burden as incremental to the existing RCRA regulations promulgated in previous rulemakings, those requirements have been assigned OMB control numbers 2050–0024 (ICR No. 976.08, Hazardous Waste Report—Biennial Report); 2050–0039 (ICR No. 801.12, Requirements for Generators, Transporters, and Waste Management Facilities under the Hazardous Waste Manifest System); 2050–0120 (ICR No. 1571.05, General Hazardous Waste Facility Standards); 2050–0085 (ICR No. 1442.14, Land Disposal Restrictions); and 2050–0009 (ICR No. 1573.05, Part B Permit Application, Permit Modifications and Special Permits).

EPA estimates that the total annual respondent burden for all activities will be 7,334 hours. The estimated total cost for all activities will be $508,605. If generators determine their wastes to be nonhazardous after performing waste analysis, the proposed rule contains some new notification and recordkeeping requirements. However, the information collection burden associated with these requirements would not be expected to be greater than if the generators determine their wastes to be hazardous.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information ; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB

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control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW; Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 23, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by August 23, 1999. The final rule will respond to any OMB and public comments on the information collection requirements contained in this proposal.

List of Subjects

40 CFR Part 148

Administrative practice and procedure, Hazardous wastes, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 30, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Secs. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 148.18 is amended by adding paragraphs (j) and (k) to read as follows:

§ 148.18 Waste specific prohibitions—newly listed and identified wastes.

* * * * *

(j) Effective [date six months after date of final rule], the wastes specified in § 261.32 of this chapter as EPA Hazardous Waste Numbers K167 and K168 are prohibited from underground injection.

(k) The requirements of paragraphs (a) through (j) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of part 268 of this chapter; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

4. Section 261.4 is amended by revising paragraph (b)(15) to read as follows.

§ 261.4 Exclusions.

* * * * *

(b) * * *

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K167, K168, K169, K170, K171, and K172 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in paragraph (b)(15)(i) of this section were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act;

(v) After February 13, 2001, leachate or gas condensate derived from K169–K172 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. After [date 24 months after publication date of the final rule], leachate or gas condensate derived from K167–K168 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph (b)(15) after the emergency ends.

* * * * *

5. Section 261.32 is amended by designating the introductory text and the table as paragraph (a) and by amending the newly designated table by adding a new subgroup "Organic dyes and pigments" and it's entries at the end of the table and by adding paragraphs (b) and (c) to read as follows.

§ 261.32 Hazardous wastes from specific sources.

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazardous code
	* * * * * * *	
Organic dyes and pigments:		
K167	Spent filter aids, diatomaceous earth, or adsorbents used in the production of azo, anthraquinone, or triarylmethane dyes, pigments, or FD&C colorants, unless these wastes do not contain any of the constituents identified in paragraph (b)(3)(iii) of this section at a concentration equal to or greater than the hazardous level set for that constituent as demonstrated by the procedures specified in paragraph (b) of this section.	(T)
K168	Wastewater treatment sludges from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock), unless these wastes do not contain any of the constituents identified in paragraph (b)(3)(iii) of this section at a concentration equal to or greater than the hazardous level set for that constituent as demonstrated by the procedures specified in paragraph (b) of this section.	(T)

(b) *Procedures for determining potential K167 and K168 wastes to be nonhazardous.* A generator of wastes that fall within the K167 or K168 listing descriptions must use the following waste analysis and handling procedures if it wants to determine that its waste is nonhazardous. If the procedures are completed and the waste is determined to be nonhazardous within 60 days of [the effective date of the final rule], or within 60 days after the waste is first generated, then all of the waste generated after the effective date or the first generation date is nonhazardous (assuming the levels of the relevant constituents identified in paragraph (b)(3)(iii) of this section are in fact below the listing levels). If the determination is made more than 60 days after [the effective date of the final rule] or 60 days after the waste is first generated, the determination will not become effective until the date the generator receives a written receipt or confirmation (e.g., Registered Mail or delivery service receipt) that its notification and certification has been delivered to the EPA. After the generator has received this receipt or confirmation, any waste generated on or after the generation date of the waste that was analyzed for the hazardousness determination is nonhazardous (assuming the levels of the relevant constituents identified in paragraph (b)(3)(iii) of this section are in fact below the listing levels). Any waste generated prior to that generation date remains hazardous.

(1) *Initial waste analysis.* The waste generator must collect a minimum of 4 representative samples of the waste as-generated and analyze it for the constituents identified in the applicable list under paragraph (b)(3)(iii) of this section. Instead of analyzing for a constituent, the generator may also apply knowledge of the constituents in the wastes based on the materials and processes used to document that a constituent is not present in the waste.

(2) *Waste holding and handling.* The waste generator must store the waste until a hazardous waste listing determination is completed as specified in the condition in paragraph (b)(3) of this section. The waste must be stored in containers, or in another manner that does not involve land placement.

(3) *Hazardous or nonhazardous waste listing determination for waste as-generated.* The waste generator, following an initial waste analysis, must make a hazardous or nonhazardous determination for the waste as-generated based on the data obtained from the initial waste analysis.

(i) *Hazardous determination.* If any of the waste sampled contains any of the constituents in the applicable list under paragraph (b)(3)(iii) of this section at a concentration equal to or greater than the hazardous level set for that constituent, the waste is a listed hazardous waste and subject to all applicable RCRA Subtitle C hazardous waste requirements.

(ii) *Nonhazardous determination.* If none of the waste sampled contains any of the constituents in the applicable list under paragraph (b)(3)(iii) of this section at concentrations equal to or greater than the hazardous levels set for these constituents, the waste is determined to be nonhazardous and subject only to notification and recordkeeping requirements described in paragraph (c) of this section.

(iii) *Hazardous (listing) levels.* All concentrations in the waste sample(s) for constituents identified in this paragraph (b)(3)(iii) that are equal to or greater than the following levels:

CONSTITUENT LEVELS FOR K167 (MG/KG)

[Levels are not included due to business confidentiality concerns]

Aniline	
Benzaldehyde	
p-Chloroaniline	
p-Cresol	
N,N–Dimethylaniline	
3,3'–Dimethoxybenzidine	
Diphenylamine	
1,2–Diphenylhydrazine	
Formaldehyde	
Naphthalene	
Phenol	
p-Phenylenediamine	
o-Toluidine	
p-Toluidine	

[Other constituent(s) not included due to business confidentiality concerns]

CONSTITUENT LEVELS FOR K168 (MG/KG)

Benzaldehyde	5000
Dimethylamine, N,N-	300
Diphenylamine	27000
Formaldehyde	7000
Toluidine, o-	13
Toluidine, p-	23

[Constituent not included due to business confidentiality concerns]

(4) *Hazardous or nonhazardous waste listing determination for wastes after treatment.* If a waste that has been determined to be a K167 or K168 listed hazardous waste is treated to below hazardous levels, the waste generator or treater may make a determination that the residue of the treatment process is nonhazardous by applying the process set forth for wastes as-generated in paragraphs (b)(1) through (b)(3) of this section to the treated waste. The effective date of when the residue becomes nonhazardous will be the date when the waste generator or treater receives a return receipt or confirmation that the notification and certification submitted has been delivered to EPA. However, the residue remains subject to the LDR treatment standards for K167 or K168 as appropriate.

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(5) *Follow-up analysis.* The waste generator must collect and analyze a minimum of one representative sample of the nonhazardous waste every calendar year it is generated. The waste generator must also analyze a minimum of one representative sample of the nonhazardous waste anytime, after the initial waste analysis, there is a process change that may increase the concentration of hazardous constituents in the waste. If process change has not occurred, the waste generator may use the results of the initial waste analysis to create a more tailored list of constituents for follow-up analysis. If follow-up analysis (or any analysis of your waste after the initial waste analysis) shows that any of the waste sampled contains any of the constituents in the applicable list under paragraph (b)(3)(iii) of this section at a concentration equal to or greater than the hazardous level set for that constituent, the waste is a listed hazardous waste and subject to all applicable RCRA Subtitle C requirements. In order to determine the waste nonhazardous again, the waste generator or treater must apply all of the procedures in paragraphs (b)(1) through (b)(3) or paragraph (b)(4) of this section to the waste.

(c) *Notification and recordkeeping requirements for wastes determined to be nonhazardous.* These requirements apply only for wastes that have been determined to be nonhazardous based on the procedures described in paragraph (b) of this section. The waste generator must meet the following notification and recordkeeping requirements prior to disposing any wastes as nonhazardous.

(1) *Submit notification.* The waste generator claiming that its waste is nonhazardous must submit a one-time notification to EPA (by mail or delivery service which provides return receipt) within 60 days following [the effective date of the final rule] or initial generation of the waste. The notification must include the waste generator's name and address, a representative's name and telephone number, description of the waste and potential waste code, and an estimate of the average annual volume of waste claimed to be nonhazardous. The notification must also include a certification signed by an authorized representative and must state as follows:

I certify under penalty of law that none of the waste sampled contains any of the constituents of concern identified for this waste at concentrations equal to or greater than the hazardous concentration levels set for these constituents, and that these levels were determined without dilution of the waste. Based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(2) *Maintain records on-site.* At a minimum, the waste generator is required to keep the following information on site:

(i) A copy of the notification and certification sent to EPA and return receipt.

(ii) The sampling and analysis plan used for collecting and analyzing representative sample(s) of the waste.

(iii) The initial sampling and analyses data and process knowledge information (if used) that support a nonhazardous claim for the waste.

(iv) All follow-up sampling and analyses data and process knowledge information (if used) for the most recent three years.

6–7. Appendix VII to Part 261 is amended by adding the following waste streams entries in alphanumeric order (by the first column) to read as follows:

Appendix VII to Part 261—Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous constituents for which listed
•	•
K167	Aniline, benzaldehyde, p-chloroaniline, p-cresol, N,N-dimethylaniline, 3,3-dimethoxybenzidine, diphenylamine, 1,2-diphenylhydrazine, formaldehyde, naphthalene, phenol, p-phenylenediamine, o-toluidine, o-toluidine, and other constituents not included due to business confidentiality concerns.
K168	Benzaldehyde, N,N-dimethylaniline, diphenylamine, formaldehyde, o-toluidine, p-toluidine, and other constituents not included due to business confidentiality concerns.
•	•

* * * * *

8. Appendix VIII to Part 261 is amended by adding the following waste streams entries in alphanumeric order to read as follows.

Appendix VIII to Part 261—Hazardous Constituents

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
•	•	•	•
Benzaldehyde	Same	100–52–7	
•	•	•	•
p-Cresol	Phenol, 3-methyl-	106–44–5	U052
•	•	•	•
N,N–Dimethylaniline	Benzenamine, N,N-dimethyl-	121–69–7	
•	•	•	•
p-Phenylenediamine	Benzenediamine, 1,4- Identity of other constituent(s) not included due to business confidentiality concerns.	106–50–3	

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
•	•	•	•

PART 268—LAND DISPOSAL RESTRICTIONS

9. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

10. Section 268.32 is added to subpart C to read as follows:

§ 268.32 Waste specific prohibitions—dye and pigment wastes.

(a) Effective [date 6 MONTHS from date of publication of final rule], the following wastes are prohibited from land disposal: the wastes specified in part 261 of this chapter as EPA Hazardous Waste Numbers K167 and K168, soil and debris contaminated with these wastes, radioactive wastes mixed with these hazardous wastes, and soil and debris contaminated with these radioactive mixed wastes.

(b) The requirements of paragraph (a) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate treatment standards established pursuant to a petition granted under § 268.44; or

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

11. Section 268.40 is amended by adding K167 and K168 in alphanumeric order to the Table of Treatment Standards to read as follows: (The footnotes are republished without change.)

§ 268.40 Applicability of treatment standards.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3], or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP", or technology code
•	•	•	•	•	•
K167	Spent filter aids, diatomaceous earth, or adsorbents used in the production of azo, anthraquinone, or triarylmethane dyes, pigments of FD&C colorants.	NA	NA	(WETOX or CHOXD) fb CARBN: or CMBST. CMBST.	
K168	Wastewater treatment sludges from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock).	NA	NA	(WETOX or CHOXD) fb CARBN: or CMBST. CMBST.	
•	•	•	•	•	•

Footnotes to Treatment Standard Table 268.40

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, Subpart O or part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

12. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

13. Section 271.1(j) is amended by adding the following entry to Table 1 in

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chronological order by date of publication in the **Federal Register**, and by adding the following entry to Table 2 in chronological order by effective date, to read as follows.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
[Date of publication in the Federal Register of final rule].	Dye and Pigment Production Waste Listing.	[Federal Register page numbers for final rule].	[Effective date of final rule].

* * * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
[Effective date of final rule]	Prohibition on land disposal of K167 and K168 wastes, and prohibition on land disposal of radioactive waste mixed with K167 and K168 wastes, including soil and debris.	3004(g)(4)(C) and 3004(m)	[Date of publication of final rule], [FR page numbers].

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

14. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

15. In § 302.4, table 302.4 is amended by adding the following new entries in alphanumerical order at the end of the table to read as follows:

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste No.	Final RQRQ Category	Final RQRQ Pounds (Kg)
K167 Spent filter aids, diatomaceous earth, or adsorbents used in the production of azo, anthraquinone, or triarylmethane dyes, pigments or FD&C colorants.	.....	.....	1*	4	K167	.....	##
K168 Wastewater treatment sludges from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock).	.....	.....	1*	4	K168	.....	##

† Indicates the statutory sources as defined by 1, 2, 3, and 4 below.

*

4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.

1*—Indicates that the 1-pound RQ is a CERCLA statutory RQ.

*

##—The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory RQ applies.

*

[FR Doc. 99–17495 Filed 7–22–99; 8:45 am]

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federal register

Friday
July 23, 1999

Part VII

Department of Housing and Urban Development

24 CFR Part 972

Required Conversion of Developments From Public Housing Stock; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 972

[Docket No. FR–4475–P–01]

RIN 2577–AC01

Required Conversion of Developments From Public Housing Stock

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements a recent revision to the statute that authorizes the public housing and Section 8 housing assistance programs. The revision requires Public Housing Agencies (PHAs) to identify distressed public housing developments that must be converted to tenant-based assistance. If it would be more expensive to modernize and operate a distressed development for its remaining useful life than to provide tenant-based assistance to all residents, or the PHA cannot assure the long-term viability of a distressed development, then it must develop and carry out a five-year plan to remove the development from its public housing inventory, and convert it to tenant-based assistance.

DATES: *Comments Due Date:* September 21, 1999.

ADDRESSES: Submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Please refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0713. (This is not a toll-free telephone number.) Persons with hearing or speech disabilities may access this number via TTY by calling the free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Basis

Section 202 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 (42 U.S.C. 1437l note) provided for a program of required conversion of distressed public housing. HUD implemented that statute by issuing the regulations now found at 24 CFR part 971. Section 33 of the United States Housing Act of 1937 (hereafter Section 33), added by the Quality Housing and Work Responsibility Act of 1998 (hereafter the Public Housing Reform Act), adds provisions for required conversion of distressed public housing to tenant-based assistance. In addition to creating new section 33, section 537 of the Public Housing Reform Act repealed section 202. However, developments that were identified by PHAs or by HUD—before the enactment of the Public Housing Reform Act—for conversion, or for assessment of whether such conversion is required, continue to be subject to the requirements of section 202 and the part 971 regulations implementing that section.

To implement the provisions for required conversions established by the new section 33 of the 1937 Act, this rule would place implementing provisions in a new 24 CFR 972, subpart A.

II. Relationship of Voluntary Conversions to Required Conversions

The same statute that revised this program of required conversions created the provisions for voluntary conversions. Section 533 of the Public Housing Reform Act revised section 22 of the United States Housing Act of 1937, entitled "Authority to Convert Public Housing to Vouchers." A separate rulemaking is underway to implement those provisions through a new 24 CFR 972, subpart B.

III. Description of Specific Sections

A. Identification of Developments Subject to Required Conversion

Under this proposed rule, PHAs are required to identify developments that must be converted to tenant-based assistance. Under the Public Housing Reform Act, developments are subject to required conversion if they are (1) on the same or contiguous sites; (2) are distressed, in accordance with guidelines established by HUD that take into account the criteria established in the Final Report of the National Commission on Severely Distressed Public Housing (hereafter, "the Commission") published in August 1992 by the Government Printing Office; and (3) are either identified as distressed housing for which the PHA cannot assure long term viability, or are more expensive than tenant-based assistance.

In this proposed rule, HUD has repeated portions of the regulations from 24 CFR 971. In identifying units as distressed for which the PHA cannot assure long term viability, the standard used to make this determination remains the same. In addition, the cost test (the methodology for comparing the cost of public housing with the cost of tenant-based assistance) is basically the same test as that used in the current regulation (part 971). The cost test methodology is found in the Appendix to this part, Part 972. HUD is considering the use of a web-based cost comparison calculator on HUD's internet homepage that would reduce the calculation burden on PHAs. HUD is also considering a refinement of the existing cost calculation in the appendix to part 972 to include a more precise net present value calculation.

In this rule, HUD has established certain criteria that a development has to meet in order to be identified as "distressed." In shaping these criteria, HUD took into account the guidelines established by the Commission (see Appendix B of its final report, referenced above). Under this proposed rule, a distressed development is defined as a development predominantly occupied by families that has 250 units or more and has a vacancy rate of at least 10 percent for each of the last three years, where the vacancy rate has not significantly decreased over these years.

Under the superseded provision for required conversion (section 202), only developments with over 300 units were affected. Under the new section 33, there is no such size limit on what developments are subject to required conversion. To reflect this change, this proposed rule decreases the number of units that a development must have in order to be subject to required conversion to 250 dwelling units. HUD invites public comment on the inclusion at a later date of developments smaller than 250 units and developments not predominantly occupied by families. Some of these developments may be suitable for required conversion, even though the incidence is less than with respect to large family developments. HUD did not include such developments in this proposed rule, so that the large family developments would continue to receive HUD's administrative resource priority. We believe that the smaller and not predominantly family developments are more likely to be found viable after conversion assessments and that they do not raise financial issues of the same magnitude as the larger family developments. We also believe that serious problems with respect to the smaller and not predominantly family developments are more likely to be addressed locally, without enforcement action by HUD.

You are invited to comment on whether the required conversion program should be expanded later to include the developments not included in this proposed rule. If so, to what extent? Are there ways of accomplishing any necessary actions with respect to these developments in a manner that assures reasonable commitment of HUD administrative resources relative to the likely benefits?

In determining what factors to use when defining a development as distressed, HUD reviewed all of the factors identified by the Commission as having an impact on whether a development is severely distressed. The criteria that HUD uses in defining distress in this section are identified by the Commission as factors contributing to the distress of public housing—high vacancy rate, high modernization needs, predominantly family developments. Although there are other factors that the Commission identified as contributing to the likelihood of distress, many of these factors are not feasible as criteria for purposes of this section, because data is not readily available to HUD in all cases. This is the case for information such as the crime rate in the development as compared to the city crime rate and relative school dropout rates.

One factor that the Commission used to identify distressed developments was very low median income as compared to the average median income in the City. The Commission's definition gave this factor the most weight, and found that housing was at the greatest risk of being distressed where the average median income in the development was less than 20 percent of the average local median income. HUD specifically invites comments on whether a comparison of the average median income at the development with the average median income in the area (MSA), or another measure of tenant income, should be included in the identification of developments as distressed.

B. Contents of the Conversion Plan

Once a development is identified as subject to required conversion, the PHA must develop a conversion plan. This conversion plan outlines the PHA's plan to remove the units from the inventory, and to provide tenant-based or project-based assistance for the residents that will be displaced as a result of conversion to comparable housing. In developing a conversion plan, the PHA should consider any existing consent orders.

The conversion plan is a five year plan, which may be extended by not more than an additional 5 years if HUD determines the 5-year deadline is impracticable. HUD will allow longer than five years (up to 10 years) for units to be taken out of the public housing inventory in recognition of new statutory language that indicates that the cost comparison should be based on the remaining useful life of the public housing. HUD believes that the cost test, comparing the costs of continued operation of public housing with providing tenant-based assistance, generally should continue to be based on the twenty year time frame in the existing regulation (or thirty years for rehabilitation equivalent to new construction). This conclusion is based on the statute's requirement of long-term viability if required conversion is to be avoided. However, in order to ensure that public housing that has a remaining useful life of less than twenty or thirty years, as applicable, is put to the best use, HUD will allow a PHA up to ten years to take the units out of the public housing inventory in exceptional circumstances where this would be the most beneficial means of providing subsidized housing over that time period.

A description and analysis regarding developments subject to required conversion must be submitted to HUD as part of the PHA Annual Plan. However, HUD approval of the conversion plan is separate from HUD approval of the PHA Annual Plan. A separate approval is required because the standards for approval under the PHA Plan differ from the standards for approval of a conversion plan.

C. Actions After Submission of a Conversion Plan

A PHA may not demolish or dispose of units or property until completion of the required environmental review under 24 CFR part 58 (if a responsible entity has assumed environmental responsibility for the project) or 24 CFR part 50 (if HUD is performing the environmental review). Further, HUD will not approve a conversion plan until completion of the required environmental review. However, before completion of the environmental review, HUD may approve the targeted units for deprogramming and may authorize the PHA to undertake other activities proposed in the conversion plan that do not require environmental review (such as certain activities related to the relocation of residents), as long as the buildings in question are adequately secured and maintained.

Once a conversion plan is approved, the PHA may relocate residents using tenant-based assistance. A PHA must apply for Section 8 tenant-based assistance, and HUD will give a PHA with an approved conversion plan priority for receiving tenant-based assistance. As the development is removed from the public housing inventory, public housing operating subsidy and modernization funding will phase out under the usual process. HUD may require that funding for the initial year of tenant-based assistance be provided from the public housing Capital Fund, Operating Fund, or both.

IV. Findings and Certifications

A. Public Reporting Burden

The information collection requirements contained in §§ 972.107, 972.109, and 972.110 have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

If you have comments regarding the information collections contained in the rule, submit them by September 21, 1999. Please refer to the title of this rule and send the comments to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503;
and to
Millie Hamman, Reports Liaison Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Although the information collections are largely specified by section 33 of the United States Housing Act of 1937, we are nonetheless interested in receiving comments on the most efficient way to collect information necessary to reviewing the necessary elements of this conversion program. We invite comments that do the following: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of HUD's functions, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the

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information to be collected; and (4) Minimize the burden of the information collection on the PHAs, including use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The burden of the information collections in subpart A of part 972 is estimated as follows:

Section number	Number of respondents	Number of Responses per respondent	Number of hours per response	Burden hours
972.107 Conversion Plan	330	*1.5	*8	3,960
972.110 Consultation	330	*1.5	20	9,900

*The number of responses and times estimated are averages.

The total burden hours for new information collections contained in this rule is 13,860 hours.

B. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), HUD is required to determine whether this rule will have a significant economic impact on a substantial number of small entities. If the rule would have such impact, the Department is obligated to perform an initial regulatory flexibility analysis to consider alternative ways of achieving the objective of the rule. The entities that are subject to this rule are public housing agencies that administer public housing. PHAs protected by the Act are those that are organizationally part of a city or county political jurisdiction with less than 50,000 in population.

This rule requires PHAs to determine whether any of their developments must be converted to tenant-based assistance. If a development is distressed and not viable in the long term or is more expensive for the PHA to operate as public housing as compared to providing tenant-based assistance, a PHA may be required to develop a conversion plan for removal of the development. Ultimately, the goal of the rule is to promote more efficient delivery of affordable housing to residents of current public housing developments. This efficiency should benefit small PHAs and large PHAs alike. HUD concludes that this rule will not have a significant economic impact on a substantial number of small entities.

HUD anticipates that no more than 10 percent of all PHAs will be subject to the requirements of required conversion. A large portion of the PHAs that will be subject to required conversion will be large, troubled PHAs. This is a result of the statutory direction to identify units subject to the requirements based on the criteria established by the National Commission on Severely Distressed Public Housing, which focused on large troubled agencies.

The conversion plan will involve a one-time cost, and this cost can vary from development to development, depending on the scope of the assessment, location of the property, and other factors. A mitigating factor concerning the cost for PHAs whose properties are potentially subject to the requirements of required conversion is that they may request assistance from HUD in conducting the required analyses in order to offset the costs. HUD has provided such assistance in the past and intends to continue to do so, if resources are available. Therefore, the cost burden on small entities is not likely to be great.

Despite HUD's determination that the rule does not have a substantial impact on a significant number of small entities, we specifically invite comments regarding alternatives to provisions of this rule that would meet the statutory objectives, while mitigating the impact on small entities.

C. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Regulations Division at the above address.

D. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have substantial direct effects on the States or on the relationship, or the distribution of power and responsibilities, between the Federal government and the States. The rule merely states the conditions under which a PHA is required to convert a public housing development to tenant-based assistance.

E. Unfunded Mandates Reform Act

This rule does not impose a Federal mandate that will result in the expenditure by State and local governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

F. Regulatory Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Regulations Division of the Office of General Counsel, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

G. Catalog

The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.850.

List of Subjects in 24 CFR 972

Grant programs—housing and community development, low and moderate income housing, public housing.

Accordingly, HUD proposes to add part 972, subpart A, to title 24 of the Code of Federal Regulations as follows:

PART 972—CONVERSION OF PUBLIC HOUSING TO TENANT-BASED ASSISTANCE

Subpart A—Required Conversion of Public Housing Developments

Sec.

972.101 What is the definition of "conversion"?
972.102 What is the purpose of this subpart?
972.103 To what developments is this subpart applicable?
972.104 What are the standards for identifying which public housing developments must be converted?
972.105 How does a PHA determine if a property is viable in the long term?
972.107 What does a conversion plan contain?
972.109 When does a PHA submit a conversion plan to HUD?
972.110 What is the public and resident consultation process for developing a conversion plan?
972.112 What is the effect of conversion on operating subsidy?
972.113 How does the conversion plan relate to a demolition/disposition plan?
972.114 How are HOPE VI developments treated?
972.116 How does a PHA obtain funding to assist residents of the units being converted?
972.118 What actions can HUD take with respect to required conversion?
972.120 What environmental reviews are required?
972.122 When may a PHA proceed with converting a public housing development?

Subpart B—[Reserved]

Authority: 42 U.S.C. 1437t, 1437z–5, and 3535(d).

Subpart A—Required Conversion of Public Housing Developments

§ 972.101 What is the definition of "conversion"?

For purposes of this subpart, the term "conversion" means the removal of public housing units from the inventory of a PHA, and the provision of tenant-based or project-based assistance for the residents of the public housing that is being removed. The term "conversion," as used in this subpart, does not necessarily mean the physical removal of the public housing development.

§ 972. 102 What is the purpose of this subpart?

The purpose of this subpart is to implement section 33 of the United States Housing Act of 1937 (42 U.S.C. 1437z–5), which requires PHAs to review their public housing inventory and identify developments, or parts of developments, which must be removed from its stock of public housing operated under an Annual Contributions Contract with HUD. This subpart provides the procedures a PHA must follow to develop and carry out a conversion plan to remove the units from the public housing inventory, including how to provide for the transition for residents of these developments to other affordable housing.

§ 972.103 To what developments is this subpart applicable?

(a) This subpart is applicable to developments not considered for conversion or for assessment for conversion before October 21, 1998, for conversion or for assessment of whether such conversion is required. The developments to which this subpart is applicable are subject to the requirements of section 33 of the United States Housing Act of 1937 (42 U.S.C. 1437z–5).

(b) The provisions of this subpart cease to apply when the units in a development that are subject to the requirements of this subpart have been demolished.

(c) This subpart is not applicable to any development identified before October 21, 1998 by HUD or a PHA for conversion or for assessment of whether such conversion is required (in accordance with section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, approved April 26, 1996, 110 Stat. 1321–279—1321–281)). See part 971 of this title for regulations applicable to such a development.

§ 972.104 What are the standards for identifying which public housing developments must be converted?

The development, or portions thereof, must be converted if it is a predominantly family development of 250 or more dwelling units and it meets the following criteria:

(a) *The development is on the same or contiguous sites.* This refers to the actual number and location of units, irrespective of HUD development project numbers.

(b) *The development has a vacancy rate of at least 10 percent for dwelling units not in funded, on-schedule modernization, for each of the last three years, and the vacancy rate has not significantly decreased in those three years.* For the determination of vacancy rates, you must use the data you relied upon for your last Public Housing Assessment System (PHAS) or Public Housing Management Assessment Program (PHMAP) certification, as reported on the Form HUD–51234 (report on Occupancy). Units in the following categories must not be included in this calculation:

(1) Vacant units in an approved demolition or disposition program;

(2) Vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period of time stated in the law;

(3) Vacant units that have sustained casualty damage, but only until the insurance claim is adjusted; and

(4) Units that are occupied by your employees and units that are used for resident services; and

(c) *The development either is distressed housing for which you cannot assure the long-term viability as public housing, or more expensive for you to operate as public housing than providing tenant-based assistance.*

(1) The development is distressed housing that you cannot assure the long-term viability as public housing through reasonable revitalization, density reduction, or achievement of a broader range of household income. (See § 972.105)

(i) Properties meeting the standards set forth in paragraphs (a)(1) and (2) of this section will be assumed to be "distressed."

(ii) A development satisfies the long-term viability test only if it is probable that, after reasonable investment, for at least twenty years (or at least 30 years for rehabilitation equivalent to new construction) the development can sustain structural/system soundness and full occupancy; will not be excessively densely configured relative to standards for similar (typically family) housing in the community; will not constitute an excessive concentration of very low-income families; and has no other site impairments that clearly should disqualify the site from continuation as public housing.

(2) The development is more expensive for you to operate as public housing than to provide tenant-based assistance if it has an estimated cost, during the remaining useful life of the project, of continued operation and modernization of the development as public housing in excess of the cost of providing tenant-based assistance under section 8 of the United States Housing Act of 1937 for all families in occupancy, based on appropriate indicators of cost (such as the percentage of total development cost required for modernization).

(i) For purposes of this determination, the costs used for public housing must be those necessary to produce a revitalized development as described in the paragraph (c)(1) of this section.

(ii) These costs, including estimated operating costs, modernization costs and accrual needs must be used to develop a per unit monthly cost of continuing the development as public housing.

(iii) That per unit monthly cost of public housing must be compared to the per unit monthly Section 8 cost.

(iv) Both the method to be used and an example are included in the Appendix to this part.

§ 972.105 How does a PHA determine if a property is viable in the long term?

In order for a property to meet the standard of long-term viability, as discussed in § 972.104, the following criteria must be met:

(a) The investment to be made in the development is reasonable. (1) Proposed revitalization costs for viability must be reasonable. Such costs must not exceed, and ordinarily would be substantially less than, 90 percent of HUD's total development cost limit for the units proposed to be revitalized (100 percent of the total development cost limit for any "infill" new construction subject to this regulation). The revitalization cost estimate used in your most recent comprehensive plan for modernization is to be used for this purpose, unless you demonstrate or HUD determines that another cost estimate is clearly more realistic to ensure viability and to sustain the operating costs that are described in paragraph (a)(2) of this section.

(2) The overall projected cost of the revitalized development must not exceed the Section 8 cost under the method contained in the Appendix to this part, even if the cost of revitalization is a lower percentage of the TDC than the limits stated in paragraph (a)(1) of this section.

(3) The source of funding for such a revitalization program must be identified and available. In addition to other resources already available to you, you may assume that future formula funds provided through the Capital Fund over five years are available for this purpose.

(b) *Appropriate density is achieved.* The resulting public housing development must have a density which is comparable that which prevails in or is appropriate for the community for similar types of housing (typically family). The PHA must consider the full range of density options and objectives, including the need to reduce density at the site and the need to confine urban sprawl.

(c) *A greater income mix can be achieved.* (1) Measures generally will be required to broaden the range of resident incomes over time to include a significant mix of households with at least one full-time worker (for example, at least 20 percent with an income at least 30 percent of median area income). Measures to achieve a broader range of household incomes must be realistic in view of the site's location. Evidence of such realism typically would include some mix of incomes of other households located in the same census tract or neighborhood, or unique advantages of the public housing site.

(2) For purposes of judging appropriateness of density reduction and broader range of income measures, overall size of the public housing site and its number of dwelling units will be considered. The concerns these measures would address generally are greater as the site's size and number of dwelling units increase.

§ 972.107 What does a conversion plan contain?

(a) With respect to any development that is identified under § 972.103, you must develop a 5-year plan for removal of the affected public housing units from the inventory. The plan must consider relocation alternatives for households in occupancy, including other public housing and Section 8 tenant-based assistance, and must provide for relocation from the units as soon as possible. For planning purposes, you must assume that HUD will be able to provide in a timely fashion any necessary Section 8 rental assistance. The plan must include:

(1) A listing of the public housing units to be removed from the inventory;

(2) The number of households to be relocated, by bedroom size;

(3) Identification and obligation status of any previously approved modernization, reconstruction, or other capital funds for the distressed development and your recommendations concerning transfer of these funds to Section 8 or alternative public housing uses;

(4) The relocation resources that will be necessary, including a request for any necessary Section 8 and a description of actual or potential public or other assisted housing vacancies that can be used as relocation housing;

(5) A schedule for relocation and removal of units from the public housing inventory;

(6) Provision for notifying families residing in the development, 90 days prior to displacement that:

(i) The development must be removed from the public housing inventory;

(ii) Such families will receive comparable housing in the form of tenant-based or project-based assistance;

(iii) Any necessary counseling with respect to the relocation will be provided;

(iv) Such families will be relocated to other decent, safe, sanitary and affordable housing that is, to the maximum extent possible, housing of their choice; and

(v) If the development is used as housing after conversion, you must ensure each resident the right to remain in the housing, using tenant-based assistance towards rent;

(7) A record indicating compliance with the statute's requirements for consultation with applicable public housing tenants of the affected development and the unit of local government where the public housing is located, as set forth in § 972.110; and

(8) A description of the plans for demolition or disposition of the public housing units.

(b) Generally, the conversion plan may not be more than a five year plan. However, HUD may allow you up to ten years to remove the units from the inventory, in exceptional circumstances where HUD determines that this is clearly the most cost effective and beneficial means of providing housing assistance over that same period. For example, HUD may allow a longer period of time to remove the units from the public housing inventory, where more than one development is being converted, and a larger number of families require relocation than can easily be absorbed into the rental market at one time, provided the housing has a remaining useful life of longer than five years and the longer time frame will assist in relocation.

§ 972.109 When does a PHA submit a conversion plan to HUD?

The requirements of this section are on-going requirements. If you must submit a plan for conversion, you must submit it as part of your Annual Plan.

§ 972.110 What is the public and resident consultation process for developing a conversion plan?

(a) You must consult with appropriate public officials and with the appropriate public housing residents in developing your conversion plan.

(b) You may satisfy the requirement for consultation with public officials by obtaining a certification from the appropriate government official that your conversion plan is consistent with the applicable Consolidated Plan. This may be the same certification as is required for your PHA Annual Plan that includes the conversion plan, if the certifying official is the same for both and the certification specifically addresses the conversion plan.

(c) To satisfy the requirement for consultation with the appropriate public housing residents, in addition to the public participation requirements for the PHA Annual Plan, you must:

(1) Hold a meeting with the residents of the affected sites at which you must:

(i) Explain the requirements of this section, especially as they apply to the residents of the affected developments; and

(ii) Provide draft copies of the conversion plan to the residents;

(2) Provide a reasonable comment period for residents; and

(3) Summarize the resident comments for HUD, in the conversion plan, and consider these comments in developing the final conversion plan.

§ 972.112 What is the effect of conversion on operating subsidy?

For purposes of determining operating subsidy eligibility, HUD will consider the conversion plan you submit to be the equivalent of a formal request to remove dwelling units from your inventory and ACC. HUD will notify you in writing whether it has approved the conversion plan. Units that are vacant or vacated on or after the written notification date will be treated as approved for deprogramming under § 990.108(b)(1) of this title and also will be provided the phase-down of subsidy pursuant to § 990.114 of this title.

§ 972.113 How does the conversion plan relate to a demolition/disposition plan?

Section 18 of the United States Housing Act of 1937 does not apply to demolition of developments removed from your inventory under this section. However, with respect to any such demolition, you must comply with the requirements for environmental review found at part 58 of this title. Section 18 does apply to any disposition of developments removed from your inventory under this section. Therefore, you must submit a disposition application under section 18. HUD's review of any such disposition application will take into account that the development has been required to be converted.

§ 972.114 How are HOPE VI developments treated?

Developments with HOPE VI implementation grants that have approved HOPE VI revitalization plans on September 30, 1999 will not be subject to the requirements of this section. Future HUD actions to approve or deny proposed HOPE VI implementation grant revitalization plans must be consistent with the requirements of this section. Developments with HOPE VI planning or implementation grants, but without approved HOPE VI revitalization plans, are fully subject to required conversion standards under this part.

§ 972.116 How does a PHA obtain funding to assist residents of the units being converted?

(a) You may apply for tenant-based assistance in accordance with Section 8 program requirements, and HUD will give you a priority for receiving tenant-based assistance to replace the public housing units. It is HUD's policy to provide funds for one-for-one replacement housing with either public housing or tenant-based assistance, if funds are available.

(b) HUD may require that funding for the initial year of tenant-based assistance be provided from the public housing Capital Fund, Operating Fund, or both.

§ 972.118 What actions can HUD take with respect to required conversion?

(a) HUD will take appropriate actions to ensure that certain distressed developments are properly identified and converted.

(b) HUD may take any or all of the following actions:

(1) Direct you to cease additional spending in connection with a development that meets, or is likely to meet the statutory criteria, except to the extent that failure to expend such amounts would endanger health or safety;

(2) Identify developments that fall within the statutory criteria where you have failed to do so properly;

(3) Take appropriate actions to ensure the conversion of developments where you have failed to adequately develop or implement a conversion plan;

(4) Require you to revise the conversion plan, or prohibit conversion, where HUD has determined that you have erroneously identified a development as being subject to the requirements of this section; or

(5) Authorize or direct the transfer of capital or operating funds committed to or on behalf of the development (including comprehensive improvement assistance, comprehensive grant or Capital Fund amounts attributable to the development's share of funds under the formula, and major reconstruction of obsolete projects funds) to tenant-based assistance or appropriate site revitalization for the agency.

§ 982.120 What environmental reviews are required?

You may not demolish or dispose of units or property until completion of the required environmental review under part 58 of this title (if a responsible entity has assumed environmental responsibility for the project) or part 50 of this title (if HUD is performing the environmental review). Further, HUD will not approve a conversion plan until completion of the required environmental review. However, before completion of the environmental review, HUD may approve the targeted units for deprogramming and may authorize you to undertake other activities proposed in your conversion plan that do not require environmental review (such as certain activities related to the relocation of residents), as long as the buildings in question are adequately secured and maintained.

§ 972.122 When may a PHA proceed with converting a public housing development?

You may proceed to convert a development covered by a conversion plan only after receiving written approval from HUD. This approval will be separate from the approval that you receive for your PHA Annual Plan.

Dated: July 16, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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Part VIII

Department of Housing and Urban Development

24 CFR Part 972

Voluntary Conversion of Developments From Public Housing Stock; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 972

[Docket No. FR–4476–P–01]

RIN 2577–AC02

Voluntary Conversion of Developments From Public Housing Stock

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements a recent revision to the statute authorizing the public housing and Section 8 housing assistance programs to allow a Public Housing Agency (PHA) to convert any public housing project it owns to tenant-based assistance where the conversion would satisfy statutory objectives. If, after conducting a conversion assessment, the PHA determines that the following conditions are met, it may convert the project: Conversion will not be more expensive than continued operation of the project conversion will benefit residents and the community; and conversion will not adversely affect the availability of affordable housing in the community. The statute requires every PHA to conduct and submit to HUD a conversion assessment for its projects no later than October 1, 2001. However, HUD has the authority to exclude developments or categories of developments from the assessment requirement, or to streamline the conversion assessment requirements, and this rule does include streamlining for specified categories of developments.

DATES: *Comments Due Date:* September 21, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW, Room 4116, Washington, DC 20410; telephone (202) 708–0713 (this is not a toll-free telephone number). Persons with hearing or speech disabilities may access this number via TTY by calling the free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Basis

Section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (the "1937 Act"), as amended by section 533 of the Quality Housing and Work Responsibility Act of 1998 (title V of the FY 1999 HUD Appropriations Act; Public Law 105–276, approved October 21, 1998; 112 Stat. 2518–2680) (the "Public Housing Reform Act"), authorizes Public Housing Agencies (PHAs) to convert a development to tenant-based assistance by removing the development or a portion of a development from its public housing inventory and providing for relocation of the residents or provision of tenant-based assistance to them. This action is permitted only when that change would be economical, be beneficial to residents of the development and the surrounding area, and not have an adverse impact on the availability of affordable housing.

The statute requires a PHA to perform a conversion assessment as the first step toward the change. If that produces support for converting the units, the PHA may develop, and submit, a conversion plan to HUD. A PHA may convert the public housing only if the conversion plan has been approved by HUD. The statute also requires certain assessment actions be taken before October, 1, 2001.

II. Relationship of Voluntary Conversions to Required Conversions

This proposed rule would implement the voluntary conversion requirements set forth in section 22 of the 1937 Act through the creation of a new 24 CFR part 972, subpart B. Subpart A of new 24 CFR part 972 would implement section 537 of the Public Housing Reform Act, which added a new section 33 to the 1937 Act. New Section 33 sets forth provisions for the required conversion of distressed public housing to tenant-based assistance. HUD is implementing section 33 of the 1937 Act through a separate proposed rulemaking.

Section 202 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 (42 U.S.C. 1437l note) provided for a program of required conversion of distressed public housing. HUD implemented that statute by issuing the regulations now found at 24 CFR part 971. In addition to creating new section 33, section 537 of the Public Housing Reform Act repealed section 202. However, those developments that have already been identified by PHAs or by HUD for conversion, or for assessment of whether such conversion is required, continue to be subject to the requirements of section 202 and the part 971 regulations implementing that section.

III. Description of Specific Sections

A. Conversion Assessment Requirements

The Public Housing Reform Act requires that a PHA conduct a conversion assessment for each development that it operates as public housing. HUD is given the authority to exempt certain classes of developments from this requirement, or streamline the requirements of the conversion assessment. In this rule, HUD has streamlined the requirements of the conversion assessment, but requires that every PHA review and determine the best course of action with respect to each development that it operates as public housing.

Any PHA that has passed the Public Housing Assessment System (PHAS) physical conditions indicator must either conduct a conversion assessment for each public housing development, or certify that it has reviewed the operations of the development, and has determined that a full conversion assessment is unnecessary. Any PHA that has failed the PHAS physical conditions indicator must conduct a conversion assessment for each public housing development; however, a streamlined assessment may be conducted. The streamlined conversion assessment for these PHAs must include the cost analysis, comparing the cost of providing tenant-based assistance with the cost of continuing to operate the development as public housing, for each public housing development. This will ensure that the PHA, with respect to each development, at least makes and considers the threshold determination whether it is more economical to convert the public housing. Any PHA that intends to convert a development to tenant-based assistance must conduct the full conversion assessment, including all of the elements listed in § 972.209.

PHAs will be receiving their first PHAS scores at various times during the period for which conversion assessments are required. The last of these scores would be received with ample time remaining in this period for PHAs to conduct the required streamlined assessments, in the event they fail the physical conditions indicator. PHAs that do not want to wait for PHAS scores, however, may fulfill the assessment requirement by conducting the streamlined assessments (cost test only) for each development.

HUD believes that Congressional intent was to ensure that every PHA review the operations of developments operated as public housing, and determine if conversion would be appropriate. The Senate Committee Report (S. Rep. No. 105–21, at 27 (1997)) states that this section "provides a framework for assessing the relative costs of tenant-based assistance and public housing so that PHAs can make informed judgements about their policies." At the same time, Congress did not intend for the requirements of a conversion assessment to place an undue burden on PHAs, and therefore gave HUD broad authority to waive or provide for streamlined assessments (S. Rep. No 105–21, at 27 (1997)).

The certifications and streamlined assessments that HUD is proposing will fulfill both of these intentions. PHAs whose developments are most at risk, where HUD has found that the PHA's stock does not meet basic standards, must conduct a streamlined assessment, including the cost analysis. All others at least must consider the relative costs of public housing and vouchers with respect to each development. This will ensure that PHAs consider the most appropriate future action for all developments, and that PHAs with substandard physical conditions assess the relative costs of tenant-based assistance and public housing before determining the best course of action for each of these properties. HUD is considering the use of a web-based cost comparison calculator on HUD's internet homepage that would reduce the calculation burden on PHAs. HUD is also considering a refinement of the existing cost calculation in the appendix to part 972 to include a more precise net present value calculation.

A conversion assessment, or certification with respect to any development for which a conversion assessment is not necessary, must be submitted to HUD no later than October 1, 2001. PHAs should include the conversion assessments, or certifications as part of the next PHA Annual Plan to be submitted to HUD, after their completion. If the next PHA Annual Plan submission will not be submitted to HUD by October 1, 2001, a PHA must have the conversion assessment on file by October 1, 2001, and include it in the next PHA Annual Plan submission. A PHA may otherwise elect to undertake a conversion assessment at any time for any or all of its developments, and submit it to HUD as part of its next PHA Annual Plan.

Although HUD believes that it has streamlined the conversion assessment in such a way that PHAs will not be burdened by the requirements, HUD specifically invites any comments regarding how the requirements for conversion assessments can more efficiently fulfill the purposes of this section.

A full conversion assessment is required for any PHA that seeks approval to convert a property to tenant-based assistance. A full conversion assessment includes the cost analysis, an analysis of the market value of the public housing, an analysis of the rental market conditions, an analysis of the likely impact of conversion on the neighborhood, and, if applicable, a description of any actions that will be taken to convert the public housing.

The cost analysis, which is required as part of the full conversion assessment, and is necessary to implement a conversion plan, uses the methodology currently used for purposes of required conversion requirements (*See* Appendix to 24 CFR part 971). The appendix to new part 972 would retain this comparison on a monthly cost basis; the results would not change if one calculated a net present value for the remaining useful life of the public housing, because the monthly costs for both public housing and tenant-based assistance would be multiplied by the number of months in question. In response to statutory language that the cost of public housing must be based on "the remaining useful life of the project," HUD has made one specific change to the methodology used for the cost analysis. This change is in the amount of time on which a PHA may amortize its modernization spending. In the current cost test, a PHA must use a time frame of twenty years in keeping with the expected life of the capital improvements (30 years if the work is equivalent to new construction). A PHA that is voluntarily conducting a conversion assessment and seeking approval for conversion may be permitted by HUD to use a time frame of less than 20 or 30 years, so long as the time frame is chosen in five year intervals (i.e. 5 years, 10 years, or 15 years), and the PHA provides HUD with a justification to why a shorter time frame is a reasonable estimate of the property's remaining useful life.

The cost analysis compares the cost of operating a revitalized public housing development with the cost of providing tenant based assistance to the residents of the public housing development. HUD realizes, however, that those PHAs wishing to voluntarily convert a development may not have a proposed revitalization plan. Further, HUD is concerned that those PHAs wanting to voluntarily convert a public housing development may not have sufficient incentive to fully consider whether that development could be revitalized, and in particular may not fully consider whether vacancies and operating costs could be reduced through the reasonable investment of funds in the development. Therefore, HUD is seeking comments on whether to give a PHA the option to:

1. Prepare a revitalization plan for the public housing development (for purposes of the cost analysis, the operating costs of the development would be based on the revitalization plan); or

2. For purposes of the cost analysis, assume that a revitalized development would result in a 10% reduction in current operating costs (this option would only be available to those PHAs that calculate current operating costs based on no greater than a 10% vacancy rate).

The statute states that the cost analysis should be conducted on both a net present value basis, and in terms of new budget authority. The appendix thus adds a calculation for new budget authority. The difference between that calculation and the calculation for net present value is that any capital investment in the public housing is not amortized over the remaining useful life in a manner that reflects the cost of expending the capital funds immediately. In order for a PHA to convert a public housing development, the cost of tenant-based assistance has to be less than the cost of public housing, both on a net present value basis, and based on new budget authority.

The analysis of market value requires that a PHA purchase independent appraisals. Although Congress states that it did not intend for PHAs to need expensive, new appraisals (S. Rep. No. 105–21, at 27 (1997)), under the proposed rule this part of the conversion assessment is not mandatory for any PHA except those that are planning to convert a public housing development to tenant-based assistance. HUD believes that appraisals are the most effective means to undertaking the required estimates of market value.

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An analysis of the rental market conditions, and an analysis of the impact of conversion on the neighborhood must be included in the conversion assessment as well. PHAs should rely, to the greatest extent possible, on existing data sources. In addition, PHAs that are conducting a conversion assessment for more than one property may be able to use the same information and analyses in the assessments submitted to HUD.

HUD specifically invites comments on whether additional guidance should be given regarding how PHAs should conduct the analysis of rental market conditions and the analysis of the impact on the neighborhood and how these analyses relate to the PHA's obligation to affirmatively further fair housing.

B. Conversion Plan

In order for a PHA to convert a public housing development to tenant-based assistance, a PHA must submit, and HUD must approve a conversion plan. A conversion plan must be consistent with any settlement agreement that the PHA has entered into. A conversion plan must be submitted to HUD as part of the PHA Annual Plan submission. Although the conversion plan will be part of a PHA Annual Plan submission, the conversion plan will be subject to a separate approval from HUD. A separate approval is required because the standards for approval of the conversion plan differ from the standards for approval of the PHA Annual plan submission. A PHA may not proceed with conversion until it receives a separate written approval of its conversion plan from HUD.

A PHA may not demolish or dispose of units or property until completion of the required environmental review under 24 CFR part 58 (if a Responsible Entity has assumed environmental responsibility for the project) or 24 CFR part 50 (if HUD is performing the environmental review). Further, HUD will not approve a conversion plan until completion of the required environmental review. However, before completion of the environmental review, HUD may approve the targeted units for deprogramming and may authorize the PHA to undertake other activities proposed in the conversion plan that do not require environmental review (such as certain activities related to the relocation of residents), as long as the buildings in question are adequately secured and maintained.

If a conversion plan is approved by HUD, the PHA may remove the public housing from the inventory and relocate the residents using tenant-based or project-based assistance. If the PHA proposes in its conversion plan to demolish or dispose of the development, the conversion plan will serve as the demolition or disposition application, and a separate application will not be required by HUD. Alternatively, the PHA may retain ownership of the converted buildings as rental units or for other purposes.

Once a conversion plan is approved, tenants may be relocated using tenant-based assistance. A PHA must apply for Section 8 tenant-based assistance and the PHA will be given a priority for receiving tenant-based assistance. Although the statute also gives HUD the authority to consent to a transfer of the funds used for public housing to tenant-based assistance, HUD believes that the most direct way to fund the Section 8 tenant-based assistance is through annual appropriations. As the development is removed from the public housing inventory, public housing operating subsidy and modernization funding will phase out under the usual process. HUD may require that funding for the initial year of tenant based assistance be provided from the new public housing Capital Fund, Operating Fund, or both.

IV. Issues Highlighted for Public Comment

Although HUD welcomes public comment on all aspects of this proposed rule, in particular it seeks comments on the following issues. Public comment is invited on this proposed rule in its entirety, including those issues discussed elsewhere in the preamble. All comments will be considered in the development of the final rule.

A. Use of Voluntary Conversion Process To Promote Housing Deconcentration

HUD requests comments on the possible use of the voluntary conversion process to promote deconcentration of assisted housing, through partial conversion to vouchers of public housing developments, and subject to compliance with the standards of this regulation. For example, a PHA might decide to retain one third of a large public housing development as public housing, and leverage private financing to renovate the development. Two thirds of the public housing units would be replaced with vouchers to be used elsewhere. If successful, such an approach might result in public housing in a mixed-income setting, vouchers used in a manner that deconcentrates poverty and renovation of private market units in an area that needs revitalizing. Would such a result be desirable, financially feasible, or workable, in many situations? If such a result would be desirable, what would HUD need to do to promote it in appropriate situations?

B. Total Development Cost (TDC) Calculation

Section 520 of the Public Housing Reform Act made several changes to the requirements governing the Total Development Cost (TDC) limit for public housing development. Due to these changes, it may no longer be appropriate to use full TDC for accrual. It may be more appropriate to use a housing construction cost component of TDC. This reflects the idea that accrual should primarily be based on the hard costs of revitalization. Unlike TDC, housing construction cost does not include the soft costs associated with redevelopment, and therefore HUD believes that using housing construction cost may yield a better estimate of accrual. HUD may make this change at the final rule stage and specifically requests comment on this issue.

C. Impact of Conversion on Minorities and Persons With Disabilities

HUD requests comments on the best means to ensure that fair housing considerations are appropriately addressed during the voluntary conversion process. In particular, HUD requests comments on whether a description should be required, as part of a full conversion assessment, of the proposed conversion's impact on racial and ethnic minorities and persons with disabilities. This will assist the PHA to carry out its responsibilities under the nondiscrimination requirements of the Fair Housing Act (42 U.S.C. 3601 *et seq.*) to affirmatively further fair housing.

V. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in §§ 972.209 and 972.217 have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent*	Estimated average time for requirement (in hours)*	Estimated annual burden (in hours)
972.209	330	1	8	2,640
972.217	165	1.5	28	6,930
Total Reporting and Recordkeeping Burden (Hours)				9,570

* The number of responses and times estimated are averages.

Although the information collections are largely specified by section 22 of the United States Housing Act of 1937, HUD is nonetheless interested in receiving comments on the most efficient way to collect information necessary to reviewing the necessary elements of this conversion program. In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4476) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503;
and
Mildred Hamman, Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 4244, Washington, DC 20410

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows:

(1) *A Substantial Number of Small Entities Will Not be Affected.* The entities that would be subject to this rule are public housing agencies that administer public housing. Under the definition of "Small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few public housing agencies that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* This rule requires PHAs to perform conversion assessments for certain developments using readily available data to determine whether those developments should be converted to tenant-based assistance. HUD has provided for streamlined assessments, including certifications for any PHA that has passed the Public Housing Assessment System (PHAS) physical conditions indicator and a conversion assessment limited to the cost analysis for other PHAs.

This is a one-time requirement as contemplated by the Public Housing Reform Act. Smaller PHAs will have fewer developments to consider, and the burden on them should consequently be proportionally smaller. Ultimately, the goal of the rule is to promote more efficient delivery of affordable housing to residents of current public housing developments. This efficiency should benefit small PHAs and large PHAs alike.

Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have federalism implications concerning the division of local, State, and Federal responsibilities: The rule merely states the preconditions for a PHA to voluntarily convert a public housing development to tenant-based assistance. No programmatic or policy change will result from this rule that will affect the relationship between the Federal government and State and local governments.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory

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Planning and Review. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.850.

List of Subjects in 24 CFR Part 972

Grant programs—housing and community development, Low and moderate income housing, Public housing.

For the reasons discussed in the preamble, HUD proposes to amend title 24 of the Code of Federal Regulations as follows:

1. Add part 972, subpart B and an appendix to part 972 to read as follows:

PART 972—CONVERSION OF PUBLIC HOUSING TO TENANT-BASED ASSISTANCE

Subpart A—[Reserved]

Subpart B—Voluntary Conversion of Public Housing Developments

Sec.

972.201 What is the definition of "conversion"?
972.203 What is the purpose of this subpart?
972.205 What is the procedure for a PHA to follow if it wants to convert a public housing project to tenant-based assistance?
972.207 For what developments must a PHA perform a conversion assessment?
972.209 What does a conversion assessment contain?
972.211 When does a PHA submit a conversion assessment to HUD?
972.213 What conditions must be addressed in the conversion assessment that will allow HUD to approve conversion?
972.215 What is the public and resident consultation process for developing a conversion plan?
972.217 What are the components of a conversion plan?
972.219 When does a PHA submit a conversion plan to HUD?
972.221 What is the HUD process for approving the conversion plan?
972.223 What action does HUD take with respect to a PHA's conversion plan?
972.225 When may a PHA proceed to convert a development?
Appendix to Part 972—Methodology of Comparing Cost of Public Housing With the Cost of Tenant-Based Assistance

Authority: 42 U.S.C. 1437t, 14372–5, 3535(d).

Subpart A—[Reserved]

Subpart B—Voluntary Conversion of Public Housing Developments

§ 972.201 What is the definition of "conversion"?

For purposes of this subpart, the term "conversion" means the removal of public housing units from the inventory of a Public Housing Agency (PHA), and the provision of tenant-based, or project-based assistance for the residents of the public housing that is being removed. The term "conversion," as used in this subpart, does not necessarily mean the physical removal of the public housing development.

§ 972.203 What is the purpose of this subpart?

This subpart implements section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t). The purposes of this subpart are to:

(a) Require PHAs to perform an assessment which considers developments for which conversion of public housing may be appropriate; and

(b) Provide a basis for a PHA to take action for conversion on a voluntary basis.

§ 972.205 What is the procedure for a PHA to follow if it wants to convert a public housing project to tenant-based assistance?

(a) A PHA must perform a full conversion assessment, in accordance with §§ 972.209–972.211, and submit it to HUD as part of the next PHA Annual Plan submission.

(b) A PHA must prepare a conversion plan, in accordance with § 972.217, and submit it to HUD, as part of the next PHA Annual Plan, within one year after submitting the conversion assessment.

(c) A PHA may proceed to convert the project if HUD approves the conversion plan.

§ 972.207 For what developments must a PHA perform a conversion assessment?

(a) *General rule.* (1) *Required initial conversion assessment.* A PHA must conduct a full conversion assessment in accordance with § 972.209 for each development once during the period of October 1, 1999 through September 30, 2001, unless:

(i) The development is subject to required conversion, under subpart A of this part or part 971 of this title;

(ii) The development is the subject of a plan for demolition that has not been disapproved by HUD; or

(iii) A HOPE VI revitalization grant has been awarded for the development.

(2) *Optional future conversion assessments.* A PHA may otherwise elect to undertake a conversion assessment at any time for any or all of its developments, and submit it to HUD as part of its next PHA Annual Plan.

(b) *Streamlined Assessment.* With respect to the required initial conversion assessment, the following streamlining will apply:

(1) *PHAs that have passed the Public Housing Assessment System (PHAS) physical conditions indicator.* (i) Any PHA that passes the physical condition component of PHAS (part 902, subpart B, of this chapter) may designate developments for which it will not conduct a conversion assessment.

(ii) In order not to assess a particular development, the PHA must certify that it:

(A) Has reviewed the development's operation as public housing;

(B) Considered converting the public housing to tenant-based assistance; and

(C) Concluded that an assessment is unnecessary because conversion would not satisfy the three conditions necessary for voluntary removal set forth in § 972.213(a).

(iii) A PHA must maintain documentation of the reasoning with respect to each development for which it certifies that an assessment is unnecessary.

(2) *PHAs that fail the PHAS physical condition indicator.* (i) Any PHA that does not receive a passing score on the PHAS physical conditions indicator must conduct an assessment for each development except those listed in paragraphs (a)(1)–(3) of this section.

(ii) However, any PHA that is required to perform a conversion assessment for a development, may submit to HUD a streamlined conversion assessment that includes the cost analysis, comparing the cost of providing tenant-based assistance with the cost of continuing to operate the development as public housing, described at § 972.209(a).

(c) *Full assessment required for conversion.* A PHA must submit a full conversion assessment (not a streamlined assessment under paragraph (b) of this section) for any public housing project it wishes to convert to tenant-based assistance.

§ 972.209 What does a conversion assessment contain?

The conversion assessment contains five elements, as described below:

(a) *Cost analysis.* A PHA must conduct a cost analysis comparing the cost of providing Section 8 tenant-based assistance with the cost of continuing to operate the development as public housing for the remainder of its useful life. See the Appendix to this part for the required methodology for this cost analysis.

(b) *Analysis of the market value.* (1) A PHA must have an independent appraisal conducted to compare the market value of the development before and after rehabilitation. In both cases, the market value must be based on the use of the development as public housing.

(2) In addition, the appraisal must compare:

(i) The market value of the development before rehabilitation, based on the use of the development as public housing, with the market value of the development after conversion; with

(ii) The market value of the development after rehabilitation, based on the use of the development as public housing, with the market value of the development after conversion.

(3) A copy of the appraisal findings and the analysis of market value of the development in the conversion assessment must be provided in the conversion assessment.

(c) *Analysis of rental market conditions.* (1) A PHA must conduct an analysis of the likely success of using tenant-based assistance for the residents of the public housing development. This analysis must include an assessment of the availability of decent and safe dwelling units rented at or below the payment standard established for Section 8 tenant-based assistance.

(2) In conducting this assessment, a PHA must take into account:

(i) Its overall use of rental certificates or vouchers under lease and the success rates of using Section 8 tenant-based assistance in the community for the appropriate bedroom sizes; and

(ii) Any particular characteristics of the specific residents of the public housing which may affect their ability to be housed.

(d) *Impact analysis.* A PHA must describe the likely impact of conversion of the public housing development on the neighborhood in which the public housing is located. This should include:

(1) The impact on the availability of affordable housing in the neighborhood; and

(2) The impact on the concentration of poverty in the neighborhood.

(e) *Conversion implementation.* If a PHA intends to convert the development (or a portion of it) to tenant-based assistance, the conversion assessment must include a description of any actions the PHA plans to take in converting the development. This must include a general description of the planned future uses of the development, and the means, and timetable for accomplishing such uses.

§ 972.211 When does a PHA submit a conversion assessment to HUD?

(a) *Required initial conversion assessment.* (1) A PHA must submit a conversion assessment, or certification that a conversion assessment is unnecessary, for any development for which it is required under § 972.207(a) no later than October 1, 2001. The conversion assessment, or the certification that a conversion assessment is unnecessary, must be submitted to HUD as part of the next PHA Annual Plan after its completion. If the next PHA Annual Plan submission will not be submitted to HUD by October 1, 2001, a PHA must have the conversion assessment on file by October 1, 2001, and include it in the next PHA Annual Plan submission.

(b) *Optional future conversion assessments.* A PHA may otherwise elect to undertake a conversion assessment for any or all of its developments, and submit it to HUD as part of its next PHA Annual Plan.

(c) *Required updated conversion assessment.* Where a PHA proposes to convert a development to tenant-based assistance, it must submit an updated conversion assessment if the conversion assessment otherwise would be more than one year older than the conversion plan to be submitted to HUD. To update a conversion assessment, a PHA must ensure that the analysis of rental market conditions is based on the most recently available data, and must include any data that have changed since the initial conversion assessment. A PHA may submit the initial cost analysis and comparison of the market value of the public housing before and after rehabilitation and/or conversion if there is no reason to believe that such information has changed significantly.

§ 972.213 What conditions must be addressed in the conversion assessment that will allow HUD to approve conversion?

(a) *Conditions.* In order to convert a public housing development, the PHA must conduct a conversion assessment that demonstrates that the conversion of the development:

(1) Will not be more expensive than continuing to operate the development (or portion of it) as public housing;

(2) Will principally benefit the residents of the public housing development to be converted and the community; and

(3) Will not adversely affect the availability of affordable housing in the community.

(b) *Evidence.* (1) The relative expense of continuing operation as public housing or conversion to tenant-based assistance may be demonstrated by the cost analysis and market value analysis.

(2) The benefit to residents and the community may be demonstrated in the rental market analysis, the analysis of the impact on the neighborhood, the market value analysis, and the proposed future use of the development.

(3) The impact on affordable housing may be demonstrated in the rental market analysis and the analysis of the impact of conversion on the neighborhood.

§ 972.215 What is the public and resident consultation process for developing a conversion plan?

(a) A conversion plan must be developed in consultation with appropriate public officials and with significant participation by residents of the development.

(b) The requirement for consultation with public officials may be satisfied by obtaining a certification from the appropriate State or local officials that the conversion plan is consistent with that government's Consolidated Plan. This may be the same certification as is required for the PHA Annual Plan that includes the conversion plan, so long as the certification specifically addresses the conversion plan.

(c) To satisfy the requirement for significant participation by residents of the development, in addition to the public participation requirements for the PHA Annual plan, a PHA must:

(1) Hold a meeting with the residents of the affected sites at which the PHA:

(i) Explain the requirements of section 22 of the United States Housing Act and these regulations, especially as they apply to residents of affected developments; and

(ii) Provides draft copies of the conversion plan to them.

(2) Provide a reasonable comment period for residents; and

(3) Summarize the resident comments for HUD and consider these comments in developing the final conversion plan.

§ 972.217 What are the components of a conversion plan?

A conversion plan must:

(a) Describe the conversion and future use or disposition of the public housing development. If the future use of the development is demolition or disposition, the PHA is not required to submit a demolition or disposition application, so long as the PHA submits,

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and HUD approves a conversion plan, which includes a description of the future uses of the development.

(b) Include a timetable, showing when any actions will be taken in converting the development, relocating the tenants, and when the future use will take place.

(c) Include an impact analysis of the conversion on the affected community. This may include the description that is required as part of the conversion assessment.

(d) Include a summary of the resident comments received when developing the conversion plan.

(e) Include the statement used to notify each family residing in the affected public housing 90 days before conversion that the development will no longer be used as public housing and to explain the benefits that will be offered, which must include at least the following information:

(1) The PHA will offer the family comparable tenant-based or project-based assistance that meets the Housing Quality Standards (HQS) for decent, safe and sanitary housing, and that is located in an area that is generally not less desirable than the displaced person's original development;

(2) The PHA will provide the family with actual and reasonable relocation expenses that they incur as a result of the conversion;

(3) The PHA will provide any counseling the family needs as a result of being displaced by the conversion; and

(4) If the development is used as housing after conversion, the PHA will ensure each resident may choose to remain in the housing, using tenant-based assistance towards rent.

(f) Confirm that any proceeds received from the conversion are subject to the limitations under section 18(a)(5) of the United States Housing Act of 1937 (42 U.S.C. 1437p(a)(5)) applicable to proceeds resulting from demolition or disposition.

(g) Summarize why the conversion assessment for the public housing project supports the three condition necessary for conversion described in § 972.213(a).

§ 972.219 When does a PHA submit a conversion plan to HUD?

A PHA that wishes to convert a public housing project to tenant-based assistance must submit a conversion plan to HUD. A PHA must prepare a conversion plan, in accordance with § 972.217, and submit it to HUD, as part of the next PHA Annual Plan within one year after submitting the conversion assessment.

§ 972.221 What is the HUD process for approving the conversion plan?

Although a PHA will submit its conversion plan to HUD as part of the PHA Annual Plan, the conversion plan will be treated separately for purposes of HUD approval. A PHA needs a separate written approval from HUD in order to proceed with conversion. HUD will make reasonable efforts to respond to a conversion plan within 90 days.

§ 972.223 What action does HUD take with respect to a PHA's conversion plan?

(a) When a PHA submits a conversion plan to HUD, HUD will review it to determine whether:

(1) The conversion plan is complete and includes all of the information required under § 972.217; and

(2) The conversion plan is consistent with the conversion assessment the PHA submitted.

(b) HUD will disapprove a conversion plan only if HUD determines that:

(1) The conversion plan is plainly inconsistent with the conversion assessment;

(2) There is reliable information and data available to the Secretary that contradicts the conversion assessment; or

(3) The conversion plan is incomplete or otherwise fails to meet the requirements under § 972.217.

§ 972.225 When may a PHA proceed to convert a development?

(a) A PHA may proceed to convert a development covered by a conversion plan only after receiving written approval of the conversion plan from HUD. This approval will be separate from the approval that the PHA receives for its PHA Annual Plan. A PHA may apply for tenant-based assistance in accordance with Section 8 program requirements, and will be given priority for receiving tenant-based assistance to replace the public housing units.

(b) A PHA may not demolish or dispose of units or property until completion of the required environmental review under part 58 of this title (if a Responsible Entity has assumed environmental responsibility for the project) or part 50 of this title (if HUD is performing the environmental review). Further, HUD will not approve a conversion plan until completion of the required environmental review. However, before completion of the environmental review, HUD may approve the targeted units for deprogramming and may authorize the PHA to undertake other activities proposed in the conversion plan that do not require environmental review (such as certain activities related to the relocation of residents), as long as the buildings in question are adequately secured and maintained.

(c) For purposes of determining operating subsidy eligibility, the submitted plan will be considered the equivalent of a formal request to remove dwelling units from the PHA's inventory and ACC and approval (or acceptance). Units that are vacant or are vacated on or after the written notification date will be treated as approved for deprogramming under § 990.108(b)(1) of this title, and will also be provided the phase down of subsidy pursuant to § 990.114 of this title.

(d) HUD may require that funding for the initial year of tenant based assistance be provided from the new public housing Capital Fund, Operating Fund, or both.

Appendix to Part 972—Methodology of Comparing Cost of Public Housing With the Cost of Tenant-Based Assistance

I. Public Housing-Net Present Value

The costs used for public housing shall be those necessary to produce a revitalized development as described in the next paragraph. These costs, including estimated operating costs, modernization costs and costs to address accrual needs must be used to develop a per unit monthly cost of continuing the development as public housing. That per unit monthly cost of public housing must be compared to the per unit monthly Section 8 cost.

The estimated cost of the continued operation and modernization as public housing shall be calculated as the sum of total operating, modernization, and accrual costs, expressed on a monthly per occupied unit basis. The costs shall be expressed in current dollar terms for the period for which the most recent Section 8 costs are available.

A. Operating Costs

1. The proposed revitalization plan must indicate how unusually high current operating expenses (e.g, security, supportive services, maintenance, utilities) will be reduced as a result of post-revitalization changes in occupancy, density and building configuration, income mix and management. The plan must make a realistic projection of overall operating costs per occupied unit in the revitalized development, by relating those operating costs to the expected occupancy rate, tenant composition, physical configuration and management structure of the revitalized development. The projected costs should also address the comparable costs of buildings or developments whose siting, configuration, and tenant mix is similar to that of the revitalized public housing development.

2. The development's operating cost (including all overhead costs pro-rated to the development—including a Payment in Lieu of Taxes (PILOT) or some other comparable payment, and including utilities and utility allowances) shall be expressed as total operating costs per month, divided by the number of units occupied by households. For example, if a development will have 1,000 units occupied by households and will have $300,000 monthly in non-utility costs (including pro-rated overhead costs and appropriate P.I.L.O.T.) and $100,000 monthly in utility costs paid by the authority and $50,000 monthly in utility allowances that are deducted from tenant rental payments to the authority because tenants paid some utility bills directly to the utility company, then the development's monthly operating cost per occupied unit is $450—the sum of $300 per unit in non-utility costs, $100 per unit in direct utility costs, and $50 per unit in utility allowance costs.

3. In justifying the operating cost estimates as realistic, the plan should link the cost estimates to its assumptions about the level and rate of occupancy, the per-unit funding of modernization, any physical reconfiguration that will result from modernization, any planned changes in the surrounding neighborhood and security costs. The plan should also show whether developments or buildings in viable condition in similar neighborhoods have achieved the income mix and occupancy rate projected for the revitalized development. The plan should also show how the operating costs of the similar developments or buildings compare to the operating costs projected for the development.

4. In addition to presenting evidence that the operating costs of the revitalized development are plausible, when the per-unit operating cost of the renovated development is more than ten percent lower than the current per-unit operating cost of development, then the plan should detail how the revitalized development will achieve its reduction in costs. To determine the extent to which projected operating costs are lower than current operating costs, the current per-unit operating costs of the development will be estimated as follows:

a. If the development has reliable operating costs and if the overall vacancy rate is less than twenty percent, then these costs will be divided by the sum of all occupied units and vacant units fully funded under PFS plus fifty percent of all units not fully funded under PFS. For instance, if the total monthly operating costs of the current development are $6.6 million and it has 1,000 occupied units and 200 vacant units not fully funded under PFS (or a 17 percent overall vacancy rate), then the $6.6 million is divided by 1100—1000 plus 50 percent of 200—to give a per unit figure of $600 per unit month. By this example, the current costs of $600 per occupied unit are at least ten percent higher than the projected costs per occupied unit of $450 for the revitalized development, and the reduction in costs would have to be detailed.

b. If the development currently lacks reliable cost data or has a vacancy rate of twenty percent or higher, then its current per unit costs will be estimated as follows. First, the per unit cost of the entire authority will be computed, with total costs divided by the sum of all occupied units and vacant units fully funded under PFS plus fifty percent of all vacant units not fully funded under PFS. Second, this amount will be multiplied by the ratio of the bedroom adjustment factor of the development to the bedroom adjustment factor of the Housing Authority. The bedroom adjustment factor, which is based on national rent averages for units grouped by the number of bedrooms and which has been used by HUD to adjust for costs of units when the number of bedrooms vary, assigns to each unit the following factors: .70 for 0-bedroom units, .85 for 1-bedroom units, 1.0 for 2-bedroom units, 1.25 for 3-bedroom units, 1.40 for 4-bedroom units, 1.61 for 5-bedroom units, and 1.82 for 6 or more bedroom units. The bedroom adjustment factor is the unit-weighted average of the distribution. For instance, if the development with one thousand occupied units had in occupancy 500 two-bedroom units and 500 three-bedroom units, then its bedroom adjustment factor would be 1.125—500 times 1.0 plus 500 times 1.25, the sum divided by 1,000. Where necessary, HUD field offices will arrange for assistance in the calculation of the bedroom adjustment factors of the Housing Authority and its affected developments.

c. As an example of estimating development operating costs from PHA operating costs, suppose that the Housing Authority had a total monthly operating cost per unit of $500 and a bedroom adjustment factor of .90, and suppose that the development had a bedroom adjustment factor of 1.125. Then, the development's estimated current monthly operating cost per occupied unit would be $625—or $500 times 1.25 (the ratio of 1.125 to .90).

B. Modernization

The cost of modernization is the initial revitalization cost to meet viability standards, that cost amortized over twenty years (which is equivalent to fifteen years at a three percent annual real capital cost for the initial outlay). Expressed in monthly terms, the modernization cost is divided by 180 (or 15 years times 12 months). Thus, if the initial modernization outlay to meet viability standards is $60 million for 1,000 units, then the per-unit outlay is $60,000 and the amortized modernization cost is $333 per unit per month (or $60,000 divided by 180). However, when revitalization would be equivalent to new construction and the PHA thus is permitted to amortize the proposed cost over thirty years (which is equivalent to twenty-two and one-half years at a three percent annual real capital cost to the initial outlay), the modernization cost will be divided by 270, the product of 22.5 and 12, to give a cost per unit month of $ 222.

C. Accrual

The monthly per occupied unit cost of accrual (i.e., replacement needs) will be estimated by using the latest published HUD unit total development cost limits for the area and applying them to the development's structure type and bedroom distribution after modernization, then subtracting from that figure half the per-unit cost of modernization, then multiplying that figure by .02 (representing a fifty year replacement cycle), and dividing this product by 12 to get a monthly cost. For example, if the development will remain a walkup structure containing five hundred two-bedroom occupied and five hundred three-bedroom occupied units, if HUD's Total Development Cost limit for the area is $70,000 for two-bedroom walkup structures and $92,000 for three-bedroom walkup structures, and if the per unit cost of modernization is $60,000, then the estimated monthly cost of accrual per occupied unit is $85. This is the result of multiplying the value of $51,000—the cost guideline value of $81,000 minus half the modernization value of $60,000—by .02 and then dividing by 12.

D. Overall Cost

The overall current cost for continuing the development as public housing is the sum of its monthly post-revitalization operating cost estimates, its monthly modernization cost per occupied unit, and its estimated monthly accrual cost per occupied unit. For example, if the operating cost per occupied unit month is $450 and the amortized modernization cost is $333 and the accrual cost is $85, the overall monthly cost per occupied unit is $868.

E. Adjustment for Shorter Remaining Useful Life (Used Only for Voluntary Conversion—See Subpart B of This Part)

Where a PHA demonstrates that it is reasonable to use a remaining useful life of five, ten or fifteen years rather than twenty or thirty years, the PHA shall divide total modernization costs by 45 to determine the monthly per unit cost if a five year remaining useful life is used, 90 if a ten year remaining useful life is used, and 135 if a fifteen remaining useful life is used.

II. Public Housing-New Budget Authority (Used Only for Voluntary Conversion—See Subpart B of This Part)

This cost analysis shall be conducted in the same manner as the net present value analysis, with one exception. The total capital cost shall be divided by the total number of months in the remaining useful life used in the analysis (*e.g.* for a 20 year remaining useful life, divide the total capital cost by 240) rather than the lower denominator which reflects amortization of capital costs, taking into account the immediate expenditure of capital funds, in the net present value model.

III. Tenant-Based Assistance

The estimated cost of providing tenant-based assistance under Section 8 for all households in occupancy shall be calculated as the unit-weighted averaging of the monthly Fair Market Rents for units of the applicable bedroom size; plus the most recent administrative fee applicable to newly funded Section 8 rental assistance during the year used for calculating public housing operating costs (*e.g.*, the administrative fee for units funded in fiscal years 1995 and 1996 is the monthly administrative fee amount in column C of the January 24, 1995 **Federal Register** at 60 FR 4764); plus the amortized cost of demolishing the occupied public housing units, where the cost per unit is not to exceed ten percent of the TDC prior to amortization. For example, if the development has five hundred occupied two-bedroom units and five hundred occupied three-bedroom units and if the Fair Market

Rent in the area is $600 for two bedroom units and is $800 for three bedroom units and if the administrative fee comes to $46 per unit, and if the cost of demolishing 1000 occupied units is $5 million, then the per unit monthly cost of tenant based assistance is $774 ($700 for the unit-weighted average of Fair Market Rents, or 500 times $600 plus 500 times $800 with the sum divided by 1,000; plus $46 for the administrative fee; plus $28 for the amortized cost of demolition and tenant relocation (including any necessary counseling), or $5000 per unit divided by 180 in this example). In voluntary conversion, this Section 8 cost would then be compared to the cost of revitalized public housing development, both in terms of net present value and new budget authority—in the example of this section, both the revitalized public housing cost (net present value) of $868 monthly per occupied unit, and the revitalized public housing cost (new budget authority) of $785 monthly per occupied unit would exceed the Section 8 cost of $774 monthly per occupied unit. Therefore, the PHA would have the option of preparing a conversion plan for the development under subpart B of this part.

In required conversion, the Section 8 cost would be compared with the cost of the revitalized public housing development on a net present value basis. In the example in this section, the revitalized public housing cost on a net present value basis of $868 per month would exceed the Section 8 cost of $774 monthly per occupied unit. Therefore the PHA would be required to convert the development under the requirements of subpart A of this part.

IV. Detailing the Section-8 Cost Comparison: A Summary Table

The section 8 cost comparison methods are summarized, using the example provided in this section IV.

A. Key Data, Development

The revitalized development has 1000 occupied units. All of the units are in walkup buildings. The 1000 occupied units will consist of 500 two-bedroom units and 500 three-bedroom units. The total current operating costs attributable to the development are $300,000 per month in non-utility costs, $100,000 in utility costs paid by the PHA, and $50,000 in utility allowance expenses for utilities paid directly by the tenants to the utility company. Also, the modernization cost for revitalization is $60,000,000, or $60,000 per occupied unit. This will provide standards for viability but not standards for new construction. The cost of demolition and relocation of the 1000 occupied units is $5 million, or $5000 per unit, based on recent experience.

B. Key Data, Area

The unit total development cost limit is $70,000 for two-bedroom walkups and $92,000 for three-bedroom walkups. The two-bedroom Fair Market Rent is $600 and the three-bedroom Fair Market Rent is $800. The applicable monthly administrative fee amount, in the most recent **Federal Register** Notice, is $46.

C. Preliminary Computation of the Per-Unit Average Total Development Cost of the Development

This results from applying the location's unit total development cost by structure type and number of bedrooms to the occupied units of the development. In this example, five hundred units are valued at $70,000 and five hundred units are valued at $92,000 and the unit-weighted average is $81,000.

D. Current Per Unit Monthly Occupied Costs of Public Housing (Net Present Value)

1. Operating Cost	$450 (total monthly costs divided by occupied units: in this example, the sum of $300,000 and $100,000 and $50,000—divided by 1,000 units).
2. Amortized Modernization Cost	$333 ($60,000 per unit divided by 180 for standards less than those of new construction).
3. Estimated Accrual Cost	$85 (the per-unit average total development cost minus half of the modernization cost per unit, times .02 divided by 12 months: in this example, $51,000 times .02 and then divided by 12).
4. Total Per Unit Public Housing Costs	$868.

E. Per Unit Monthly Occupied Costs of Public Housing (New Budget Authority)

1. Operating Cost	$450 (total monthly costs divided by occupied units: in this example, the sum of $300,000 and $100,000 and $50,000—divided by 1,000 units).
2. Modernization Cost	$250 ($60,000 per unit divided by 240 for standards less than those of new construction).
3. Estimated Accrual Cost	$85 (the per-unit average total development cost minus half of the modernization cost per unit, times .02 divided by 12 months: in this example, $51,000 times .02 and then divided by 12).
4. Total Per Unit Public Housing Costs	$785.

F. Current per Unit Monthly Occupied Costs of Section 8

1. Unit-weighted Fair Market Rents	$700 (the unit-weighted average of the Fair Market Rents of occupied bedrooms: in this example, 500 times $600 plus 500 times $800, divided by 1000).
2. Administrative Fee	$46.
3. Amortized Demolition and Relocation Cost	$28 ($5000 per unit divided by 180).
4. Total Per Unit Section 8 Costs	$774.

G. Result

In this example, because revitalized public housing costs, both on a net present value basis, and based on new budget authority, exceeds current Section 8 costs, a conversion plan would be permissible under voluntary conversion, Subpart B of this Section. Under required conversion, because revitalized public housing costs on a net present value basis exceed Section 8 costs, the PHA would be required to convert the public housing development under subpart A of this Section.

Dated: June 23, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–18774 Filed 7–22–99; 3:35 pm]

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Friday
July 23, 1999

Part IX

Department of Housing and Urban Development

Notice of Funding Availability for the HUD Healthy Homes Initiative; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4516–N–01]

Notice of Funding Availability for the HUD Healthy Homes Initiative

AGENCY: Office of the Director of Lead Hazard Control, Office of the Secretary, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: *Purpose of the Program.* The purpose of the Healthy Homes Initiative is to demonstrate cost effective, preventive measures to correct multiple safety and health hazards in the home environment which produce serious diseases and injuries in children.

Available Funds. Approximately $3.5 million.

Eligible Applicants. Research institutions, not-for-profit institutions, and for-profit firms located in the U.S., State and local governments, and Federally-recognized Indian Tribes. For-profit firms are not allowed to include a fee in the cost proposal (i.e., no profit can be made from the project). Federal agencies and federal employees are not eligible to apply for this program.

Application Deadline. September 23, 1999.

Match. None.

If you are interested in applying for funding under this initiative, please review the following additional information.

ADDITIONAL INFORMATION:

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Submit an original and four copies of your completed application on or before 12:00 midnight Eastern Time on September 23, 1999.

Address for Submitting Applications. For Mailed Applications. The address for mailed applications is: Department of Housing and Urban Development, Office of Lead Hazard Control, 451 Seventh Street, SW, Room P3206, Washington, D.C. 20410.

For Overnight/Express Mail or Hand Carried Applications. The address for applications that are hand carried or sent via overnight delivery is: HUD Office of Lead Hazard Control, Suite 3206, 490 L'Enfant Plaza SW, Washington, D.C. 20024.

For Application Kits. You may obtain an application kit from the HUD Office of Lead Hazard Control at the address shown above. When requesting an application kit, please refer to "Healthy Homes Initiative NOFA." Please be sure to provide your name, address (including zip code), and telephone number (including area code). Alternatively, you may obtain an application kit by downloading it from the internet at *http://www.hud.gov.*

For Further Information Contact. Ms. Ellen Taylor, Planning and Standards Division, Office of Lead Hazard Control, at the address above; telephone (202) 755–1785, extension 116, or Ms. Karen Williams, Grants Officer, extension 118 (these are not toll-free numbers). Hearing- and speech-impaired persons may access the above telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

II. Amount Allocated

Approximately $3.5 million will be available to fund demonstration projects in FY 1999. Grants will be awarded on a competitive basis following evaluation of all proposals according to the Rating Factors described in section V(B). HUD anticipates that approximately 3 to 5 grants will be awarded, ranging from approximately $250,000 to approximately $2,500,000.

III. Program Description, Eligible Applicants, and Eligible Activities

(A) Program Description

(1) *Background.* In the FY 1999 Budget, HUD proposed a Healthy Homes Initiative (sometimes referred to as the "Initiative" or "HHI") that would protect children from housing conditions responsible for multiple diseases and injuries. The Initiative departs from the more traditional approach of attempting to correct one hazard at a time (e.g., asbestos, radon).

The Healthy Homes Initiative builds upon HUD's existing housing-related health and safety issues, including lead hazard control, building structural safety, electrical safety, and fire protection to address multiple childhood diseases and injuries related to housing in a more coordinated fashion. A coordinated effort is feasible because a limited number of building deficiencies contribute to many hazards. Substantial savings are possible using this approach, because separate visits to a home by an inspector, public health nurse, or outreach worker if independently done can add significant cost to efforts to eliminate hazards.

In addition to deficiencies in basic housing facilities that may impact health, changes in the U.S. housing stock and more sophisticated epidemiological methods and biomedical research have led to the identification of new and often more subtle health hazards in the residential environment. While such hazards will tend to be found disproportionately in housing that is substandard (e.g. structural problems, lack of adequate heat, etc.), such housing-related environmental hazards may also exist in housing that is otherwise of good quality. Appendix A briefly describes the housing-associated health and injury hazards HUD considers key targets for intervention. Appendix B lists the references that serve as the basis for the information provided in this NOFA.

(B) Healthy Homes Activities

HUD has identified four categories for grouping Healthy Homes activities. These are: (1) Excess moisture reduction, (2) dust control, (3) ventilation and control of toxins, and (4) education. These four activities are described in this section.

(1) *Excess moisture reduction:* Moisture problems are evident in many homes, more so in older urban areas and communities with humid climates. While high moisture levels alone are not sufficient to necessarily result in health hazards, it is a common precursor. Moisture problems can lead to paint deterioration (lead poisoning), mold formation (pulmonary hemosiderosis in infants), higher concentrations of dust mites, cockroach infestation, asthma and allergen sensitization, and structural hazards associated with rot and rust (injuries). In a 1995 study of pulmonary hemosiderosis in Cleveland, Ohio, toxic molds were identified in 65% of homes within the target areas, compared to a national prevalence rate of 3%. The disease in infants associated with this exposure (infant pulmonary hemorrhage) had a 30% mortality rate. Nationally, this mold-related disease appears to have a low prevalence, but, for those children who contract this disease, a very high mortality rate. There is also evidence that certain molds can be important triggers of asthma in children, a disease which has seen a 160% increase in the past fifteen years in children under five. In addition, the presence of moisture problems is a risk factor for respiratory illnesses and symptoms, especially in children.

Structural problems can allow moisture intrusion, as well as create safety and fire hazards and provide access for rodent and insect pests. Structural defects can result from improper construction, poor maintenance, or natural hazards. Holes in floors are present in more than one million U.S. homes. Open cracks or holes in walls (four million homes) and broken plaster or peeling paint (three million homes) are even more prevalent. Moisture problems require a variety of corrective interventions, ranging from simple patching to correction of basic drainage.

(2) *Dust Control.* Dust sources, sinks and traps can serve as a vehicle for a variety of hazardous agents, such as lead, allergens, and pesticide residues. Settled and airborne dust can become problems where surface conditions hinder cleaning, such as rough or porous surfaces. Dust is the principal pathway through which children are exposed to lead-based paint and mold and is also an exposure route for allergens, dust mites, and some pesticides. In young children, transmission occurs principally through normal hand-to-mouth contact. Some dust traps are relatively easily addressed, for example, the removal of carpets and sealing of floor surfaces. Dust remediation often consists of removal by using special vacuum systems, and the creation of smooth and cleanable surfaces, as well as controlling dust sources, such as sinks (e.g., draperies), sources such as paint and exterior bare soil, and unsafe work practices (uncontrolled renovation). New household vacuums with dust sensors are now available on the retail market and warrant study regarding their effectiveness in house dust control. Another key research need involves the sink and filtering action of carpets, that is, the way in which they attract, trap and release dust and other pollutants. Low-cost dust control methods are available and may cost as little as $250 per unit.

(3) *Ventilation and control of toxins.* Ventilation can be either a problem or an intervention. Proper ventilation supplies adequate oxygen and removes carbon dioxide and other pollutants, such as allergens. Virtually no home ventilation system actively supplies clean fresh air; instead, infiltration through building "leakage" is the norm, although tighter building envelopes and better insulation typically reduce fresh air incursion. In some climates, increasing ventilation can result in increased moisture problems. Poorly-designed systems can contribute to dispersal of mold, soil gases (such as radon) and other contaminants into the living space. Carbon monoxide exposures can occur through combustion spillage caused by airflow reversal in chimneys or use of unvented heaters or appliances. Carbon monoxide alarms and airflow analysis that could detect dangerous air movements are rare in U.S. housing. Improperly-maintained or inadequately vented heating and cooking appliances may introduce hazardous gases and particulate matter into the living environment and are also related to fire hazards. Building materials, cleaning products, and appliances can emit gases with irritant, allergic, or other toxic properties. Ozone generators, for example, are known to increase indoor ozone with no positive impact on air quality.

(4) *Education.* Education is an important part of most of the interventions that will be implemented. Occupants can be encouraged to use checklists, such as that provided in HUD's "Danger in the Home" brochure, to identify and correct hazards, and create a safer and healthier home environment. Occupant behavior can be modified using prompting tools that can be especially effective in preventing injuries or illnesses at low cost ($100–$200 per unit). For example, provision of a hot water thermometer (as a "prompting device") is known to result in reductions in scald injuries, because hot water heater temperatures are lowered and residents know to keep them lowered. Education and outreach efforts also need to be targeted to multiple audiences, such as residential construction contractors, health care deliverers and housing specialists.

(C) Baseline Assessment and Initiation of Projects

Through the Healthy Homes Initiative, HUD will initiate the baseline assessment of available risk reduction techniques and research on the control of key hazards described in Appendix A, and initiate projects to promote implementation of techniques demonstrated to be successful. Grantees will perform research and demonstrate and assess interventions addressing multiple housing-related problems affecting the health of children and develop and disseminate interventions appropriate to residential environments.

The main tasks to be addressed by these projects include the following:

(1) Identification of homes where intervention would be appropriate.

(2) Identification and evaluation of effective methods of hazard abatement and risk reduction.

(3) Development of appropriately-scaled and efficient intervention strategies.

(4) Selection of efficient strategies for evaluating intervention effectiveness.

(5) Development of local capacity to operate sustainable programs to prevent and control toxic housing-based hazards, especially in low and very-low income residences.

HUD has decided to initiate the HHI projects primarily by issuing competitively awarded grants this fiscal year. On February 26, 1999, HUD issued a Notice of Funds Availability targeted at mold and moisture control in inner city housing. That NOFA was published in the **Federal Register** as part of HUD's FY 1999 SuperNOFA (see 64 FR 9719–9724). The broader projects funded though this NOFA, published today, will allow HUD to assess whether and how well mold and moisture control can be integrated into other hazard control efforts. (This Notice, and the application kit, also appears on HUD's Web site, at www.hud.gov/lea.) HUD will evaluate proposals based on the elements described below. Awards are expected to be made by September, 1999.

(D) Project Elements

Project elements include:

(1) Pilot-testing and implementing housing assessment, maintenance, renovation and construction techniques to identify and correct housing-related illness and injury risk factors.

(2) Developing and delivering public education to prevent both emerging and well-recognized housing-related childhood diseases and injuries, and promote the use of identified solutions.

(3) Conducting research that evaluates the effectiveness of housing interventions and public education campaigns, and provides the knowledge base for recommending future use of the most cost-effective strategies.

(E) Goals and Objectives

The primary goal of this program is to protect children by supporting one or more demonstration projects employing cost-effective, replicable interventions to correct safety and health hazards in the home environment capable of producing serious diseases and injuries in children.

Objectives include the following:

(1) Developing a cost-effective protocol for identifying homes that are candidates for interventions, identifying hazards in these homes, and screening out homes where structural or other condition factors (e.g., cost accessibility) make interventions infeasible or impractical.

(2) Developing a flexible set of intervention strategies that take into account the range of conditions likely to be encountered in older housing, and the need to maximize the number of housing units that receive an intervention.

(3) Developing an efficient strategy for evaluating the effectiveness of interventions in preventing disease and injury in children.

(4) Building local capacity to develop a sustainable program that will continue

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to prevent and, where they occur, minimize and control housing—based hazards in low- and very-low income residences when HUD funding is exhausted.

(5) Affirmatively furthering fair housing and environmental justice.

(6) Mobilizing public and private resources, involving cooperation among all levels of government, the private sector, and community-based organizations to develop the most promising, cost-effective methods for identifying and controlling housing-based hazards.

(7) Integrating safe work practices into housing maintenance, repair, and improvements.

(8) To the greatest extent feasible, promoting job training, employment, and other economic opportunities for low-income and minority residents and businesses which are owned by and/or employ low-income and minority residents as defined in 24 CFR 135.5.

(F) Eligible Activities

You will be afforded considerable latitude in designing and implementing the interventions to prevent or correct safety and health hazards in the home environment capable of producing serious diseases and injuries in children. However, in developing a strategy, you should use all reasonably available sources of information on controlling housing-based hazards in buildings and protecting workers and occupants during and after the intervention process. HUD is interested in promoting housing intervention approaches that result in the reduction of health threats for the maximum number of residents, and in particular low-income children, and that demonstrate replicable techniques which are cost-effective and efficient.

The following direct activities and support activities are eligible under this grant program.

(1) Direct Project Elements (activities conducted by you and any sub-recipients):

(a) Performing evaluations of eligible housing to determine the presence of housing-based hazards (e.g., mold growth, unvented appliances, exposed steam pipes or radiators, damaged lead-based paint) through the use of generally accepted testing procedures.

(b) Conducting medical examinations of young children for conditions caused or exacerbated by exposure to hazards where this is considered essential to your project, and there are no alternative sources to cover these costs.

(c) Conducting housing interventions to remediate existing housing-based hazards and address conditions that could result in their recurrence. Any lead hazard evaluation and control work shall be conducted by certified performers in accordance with the HUD *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing ("Guidelines")* and other applicable regulations.

(d) Carrying out temporary relocation of families and individuals during the period in which intervention is conducted and until the time the affected unit receives clearance for reoccupancy. Residents so relocated should be guaranteed the choice of returning to the unit after the intervention.

(e) Performing medical testing recommended by a physician or applicable occupational or public health agency for individuals in hazardous conditions and environmental sampling to protect the health of the intervention workers, supervisors, and contractors.

(f) Undertaking housing rehabilitation activities that are specifically required to carry out effective control of housing-based hazards, and without which the intervention could not be completed and maintained. Grant funds under this program may also be used to control immediate lead-based paint hazards.

(g) Conducting clearance testing and analysis for lead, mold, carbon monoxide and/or other toxins as appropriate, with respect to generally accepted standards or criteria, or where not available, other appropriate levels justified in conjunction with the project.

(h) Carrying out architectural, engineering and work specification development and other construction management services necessary to, and in direct support of, activities to control housing-based hazards and remediate existing hazards.

(i) Providing training on safe maintenance practices to homeowners, renters, painters, remodelers, and housing maintenance staff working in low- or very-low income housing.

(j) Providing cleaning supplies for hazard intervention and hazard control to community/neighborhood-based organizations for use by homeowners and tenants in low income housing, or to such homeowners, and tenants directly.

(k) Conducting general or targeted community awareness or education programs on environmental health and safety hazards. This activity would include training on safe maintenance and renovation practices, among other topics, and further fair housing and environmental justice goals. It would also include making materials available, upon request, in alternative formats for persons with disabilities (e.g., Braille, audio, large type), and in languages other than English that are common in the community, whenever possible.

(l) Securing liability insurance for hazard intervention and hazard evaluation and control activities to be performed.

(m) Supporting data collection, analysis, and evaluation of project activities. This activity is separate from administrative costs.

(n) Conducting applied research activities directed at demonstration of cost-effective evaluation and intervention methods for preventing housing-based hazards.

(o) Presenting research findings at a scientific conference in each project year following the first year of activity.

(p) Maintaining a registry (updated at least monthly) of housing units in which housing-based hazards were not found during evaluation, and those in which such problems and hazards have been controlled. Units on the registry should be affirmatively marketed to families with young children and such families should be given preference for occupancy when they are vacant.

(q) Preparing quarterly progress reports, interim and final research reports, and an overall final grant report detailing activities, findings, conclusions and recommendations, at the conclusion of grant activities.

(2) Support Elements.

(a) Your administrative costs.

(b) Program planning and management costs of sub-grantees and other sub-recipients.

(G) Ineligible Activities

You cannot use program funds for the following:

(1) Purchase of real property.

(2) Purchase or lease of equipment having a per unit cost in excess of $5,000, unless prior written approval is obtained from HUD.

(3) Medical treatment costs.

IV. Program Requirements

Applicants are subject to the following requirements:

(A) Threshold Requirements—Compliance with Fair Housing and Civil Rights Laws

With the exception of Federally recognized Indian tribes, all applicants and their subrecipients must comply with all Fair Housing and civil rights laws, statutes, regulations and executive orders as enumerated in 24 CFR 5.105(a). If you are a Federally recognized Indian tribe, you must comply with the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, and the Indian Civil Rights Act.

If you, the applicant—

(1) Have been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination;

(2) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(3) Have received a letter of noncompliance findings under Title VI of the Civil Rights Act, section 504 of the Rehabilitation Act of 1973, or Section 109 of title I of the Housing and Community Development Act of 1974—

HUD will not rank and rate your application under this NOFA if the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department before the application deadline stated in the individual program NOFA. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(B) Additional Nondiscrimination Requirements

You, the applicant, and your subrecipients, must comply with the Americans with Disabilities Act and Title IX of the Education Amendments Act of 1972.

(C) Other Requirements

(1) *Budgeting.* Administrative Costs. There is a 10% maximum for administrative costs. The application kit contains specific information on allowable administrative costs.

(2) *Period of Performance.* The period of performance cannot exceed 36 months.

(3) *Coastal Barrier Resources Act.* Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3501), funds may not be used for properties located in the Coastal Barrier Resources System.

(4) *Flood Disaster Protection Act.* Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), funds may not be used for construction, reconstruction, repair or improvement of a building or mobile home which is located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with the applicable regulations (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding these hazards; and

(ii) Where the community is participating in the National Flood Insurance Program, flood insurance on the property is obtained in accordance with section 102(a) of the Flood Disaster Protection Act (42 U.S.C. 4012a(a)). You are responsible for assuring that flood insurance is obtained and maintained for the appropriate amount and term.

(5) *National Historic Preservation Act.* The National Historic Preservation Act of 1966 (16 U.S.C. 470) (NHPA) and the regulations at 36 CFR part 800 apply to the mold intervention and related hazard control activities that are undertaken pursuant to this program. HUD and the Advisory Council for Historic Preservation have developed an optional Model Agreement for use by grantees and State Historic Preservation Officers in carrying out any lead hazard control activities under this program.

(6) *Waste Disposal.* Waste disposal will be handled according to the requirements of the Occupational Health and Safety Administration (OSHA) (e.g., 29 CFR part 1910 and/or 1926, as applicable), the Environmental Protection Agency (EPA) (e.g., 40 CFR parts 61, 260–282, 300–374, and/or 700–799, as applicable), the Department of Transportation (e.g., 49 CFR parts 171–177), and/or appropriate State or local regulatory agency(ies). Disposal of wastes from intervention activities that contain lead-based paint but are not classified as hazardous will be handled in accordance with the HUD *Guidelines.*

(7) *Worker Protection Procedures.* You must comply with the requirements of OSHA (e.g., 29 CFR part 1910 and/or 1926, as applicable), or the State or local occupational safety and health regulations, whichever are most stringent.

(8) *Written Policies and Procedures.* You must have written policies and procedures for all phases of intervention, including evaluation, development of specifications, financing, occupant relocation, independent project inspection, and clearance testing (e.g., for mold, lead, carbon monoxide or other hazards, as applicable). You and all your subcontractors, sub-recipients, and their contractors must comply with these policies and procedures.

(9) *Continued Availability of Safe Housing to Low-Income Families.* Units in which housing-based hazards have been controlled under this program shall be occupied by and/or continue to be available to low-income residents.

(10) *Affirmatively Furthering Fair Housing.* If you are a successful applicant, you will have a duty to affirmatively further fair housing. You, the applicant, should include in your application or work plan the specific steps that you will take to:

(i) Address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice;

(ii) Remedy discrimination in housing; or

(iii) Promote fair housing rights and fair housing choice.

(11) *Economic Opportunities for Low and Very Low-Income Persons (Section 3).* Recipients of assistance must comply with section 3 of the Housing and Urban development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low and Very Low-Income Persons in Connection with Assisted Projects) and the HUD regulations at 24 CFR part 135, including the reporting requirements of subpart E. Section 3 requires recipients to ensure that, to the greatest extent feasible, training, employment and other economic opportunities will be directed to (1) low and very low income persons, particularly those who are recipients of government assistance for housing, and (2) business concerns which provide economic opportunities to low and very low income persons.

(12) *Data collection and provision.* You must collect, maintain and provide to HUD the data necessary to document the various approaches used to evaluate and control housing-based hazards, including evaluation and control methods, building conditions, medical and familial information (with confidentiality of individually-identifiable information ensured) in order to determine the effectiveness and relative cost of these methods.

(13) *Certifications and Assurances.* Certification forms are included in the application kit. These forms include:

(i) An assurance in accordance with 24 CFR 50.3(h) that the applicant will carry out its responsibilities regarding HUD's environmental review.

(ii) A certification of compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 49 CFR part 24; and HUD Handbook 1378 (Tenant Assistance, Relocation and Real Property Acquisition).

(iii) An assurance that the applicant's financial management system meets the standards for fund control and accountability described in 24 CFR 85.20 and 84.21.

(iv) An assurance that any pre-intervention and clearance evaluation for lead, and lead hazard abatement will be conducted by certified performers.

(v) An assurance that project funds obtained through this NOFA will not replace existing resources dedicated to any ongoing project.

(vi) Assurance that human research subjects will be protected from research risks in conformance with the Common Rule (Federal Policy for the Protection of Human Subjects, codified by HUD at 24 CFR part 60).

(vii) Certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing. Federally recognized Indian tribes must certify that they will comply with the requirements of the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, and the Indian Civil Rights Act.

(14) *Davis-Bacon Act.* The Davis-Bacon Act does not apply to this program. However, if program funds are used in conjunction with other Federal programs in which Davis-Bacon prevailing wage rates apply, then Davis-Bacon provisions would apply to the extent required under the other Federal programs.

V. Application Selection Process

(A) Rating and Ranking

HUD intends to fund the highest ranked application(s) within the limits of funding. Once available funds have been allocated to meet the requested or negotiated amounts of the top eligible applicant(s), HUD reserves the right, in successive order, to offer any residual amount as partial funding to the next eligible applicant provided HUD, in its sole judgment, is satisfied that the residual amount is sufficient to support a viable, though reduced effort. In the event that HUD commits an error that, when corrected, would result in the selection of an otherwise eligible applicant, HUD may select that applicant when sufficient funds become available.

(1) *Negotiation.* After HUD has rated and ranked all applications and has made selections, HUD may require that all winners participate in negotiations to determine the specific terms of the grant agreement and budget. In cases where HUD cannot successfully conclude negotiations with a selected applicant or a selected applicant fails to provide HUD with requested information, an award will not be made to that applicant. In this instance, HUD may offer an award to the next highest ranking applicant, and proceed with negotiations with the next highest ranking applicant.

(2) *Adjustments to Funding.* HUD reserves the right to fund less than the full amount requested in your application to ensure the fair distribution of the funds and to ensure that the purposes of a specific program are met. HUD may choose not to fund any portion of your application that is not eligible for funding under statutory or regulatory requirements, or which do not meet the requirements of this NOFA or which may duplicate other funded programs or activities.

(B) *Factors for Award Used to Evaluate and Rate Applications*

This section provides the factors for rating and ranking your application and the maximum points for each factor. The application kit provides additional instructions for responding to these factors. The maximum number of points to be awarded is 102.

(1) *Bonus Points.* This NOFA provides for the award of up to two bonus points for eligible activities/projects that the applicant proposes to be located in high performing federally designated Empowerment Zones (EZs) or Enterprise Communities (ECs). To be eligible to receive the two bonus points, you must certify that the proposed activities/projects: (a) Will be located in a Federally designated Empowerment Zone or Enterprise Community and will serve residents of the EZ/EC; and (b) are consistent with the strategic plan of the EZ/EC. If you provide this certification and HUD determines that the area is a high performing EZ/EC, you will be awarded the two points. A listing of the high performing federally designated EZs/ECs are available from the SuperNOFA Information Center, or through the HUD web site on the Internet at http://www.HUD.gov, as well as in the **Federal Register**.

(2) *Court-Ordered Consideration.* For any application submitted by the City of Dallas, Texas, for funds under this NOFA for which the City of Dallas is eligible to apply, HUD will consider the extent to which the strategies or plans in the city's application or applications will be used to eradicate the vestiges of racial segregation in the Dallas Housing Authority's low income housing programs. The City of Dallas should address the effect, if any, that vestiges of racial segregation in Dallas Housing Authority's low income housing programs have on potential participants in the programs covered by this NOFA, and identify proposed actions for remedying those vestiges. HUD may add up to 2 points to the score based on this consideration. This special consideration results from an order of the U.S. District Court for the Northern District of Texas, Dallas, Division. (This Section V(B)(2) is limited to applications submitted by the City of Dallas.)

(3) *Five Rating Factors.* The five rating factors by which your application will be evaluated are as follows:

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses your organizational capacity necessary to successfully implement your proposed activities in a timely manner. The rating of you or your staff includes any community-based organizations, sub-contractors, consultants, sub-recipients, and members of consortia that are firmly committed to your project. In rating this factor HUD will consider:

(1) Your recent, relevant and successful demonstrated experience in undertaking eligible program activities. You must describe the knowledge and experience of the proposed overall project director and day-to-day program manager in planning and managing large and complex interdisciplinary programs, especially those involving housing rehabilitation, public health, or environmental programs. In your narrative response for this factor, you should include information on your program staff, their experience, commitment to the program, and position titles. Resumes of up to three (3) pages each and position descriptions for up to three personnel in addition to the project director and program manager, and a clearly delineated organizational chart for your project must be included as an appendix. Copies of job announcements (including salary range) should be included for any key positions that are currently vacant. Indicate the percentage of time that key personnel will devote to your project and any salary costs to be paid by funds from this program. Include descriptions of the experience and qualifications of subcontractors and consultants.

(2) Your previous experience in reducing or eliminating housing-based hazards (if any).

(3) Whether you have sufficient personnel or will be able to quickly retain qualified experts or professionals to begin your proposed program immediately and to perform your proposed activities in a timely and effective fashion. Describe how principal components of your agency will participate in or support your project. You should thoroughly describe capacity, as demonstrated by experience in initiating and implementing related

environmental, health, or housing projects.

Rating Factor 2: Need/Extent of the Problem (15 Points)

This factor addresses the extent to which there is a need for your proposed program activities to address documented problems in your target area(s).

(1) Document a critical level of need for your proposed activities in the area where activities will be carried out. You should pay specific attention to documenting need as it applies to your target area(s), rather than the larger geographic area.

(2) Your documentation of need should summarize available data linking housing-based hazards to disease or injuries to children in your target area(s). Examples of supporting data that might be used to demonstrate need, include:

(a) Economic and demographic data relevant to your target area(s), including poverty and unemployment rates;

(b) Rates of childhood illnesses or injuries(e.g., asthma, burns) that could be caused or exacerbated by exposure to conditions in the home environment, among children residing in your target area(s), and/or rates of environmentally-related disease or adverse health effects (e.g., hypertension, elevated blood lead levels) in your target area(s);

(c) Unavailability of other Federal, State or local funding or private sector resources that could be, or is used, to address the problem.

(3) For the areas targeted for your project activities, provide data available in your jurisdiction's currently approved Consolidated Plan (including the AI), or derived from 1990 Census Data, or derived from other sources (all data should be documented) that address:

(a) The age and condition of housing;

(b) The number and percentage of very-low and low income families with incomes less than 80% of the median income, as determined by HUD, for the area, with adjustments for smaller and larger families (See application kit for additional information.);

(c) The number and proportion of children under six years old.

(d) Describe how proposed activities would help HUD achieve its goals for this program area.

(e) There must be a direct relationship between the proposed activities, community needs, and the purpose of the program.

Rating Factor 3: Soundness of Approach (45 Points)

This factor addresses the quality and cost-effectiveness of your proposed work plan. You should present information on the proposed approach for controlling housing-based hazards. The response to this factor should include the following elements:

(1) *Intervention Strategy* (30 points). Describe the strategy you will use in planning and executing the housing-based hazard interventions. You should provide information on:

(a) *Strategy for Implementing the Demonstration Project* (10 points). Describe your overall strategy for your proposed demonstration project. The description must include a discussion of:

(i) Your overall strategy for identifying, selecting, prioritizing, and enrolling units of eligible housing in which you will undertake housing-based hazards interventions, and then targeting such units to the low-income families with young children for the long run. Describe the extent to which your proposed activities will occur in an Empowerment Zone or Enterprise Community (EZ/EC), if applicable.

(ii) The estimated total number of owner occupied and/or rental units in which you will conduct interventions.

(iii) The degree to which your work plan focuses on housing units with young children, and how you propose to make treated units available to these households for the long run. Describe your planned approach to control housing-based hazards before children are affected; and/or to control these hazards in units where children have already been treated for illnesses or injuries associated with housing-based hazards (e.g., burns, lead poisoning, asthma). Describe the process for your referral of children for medical case management if this is not ongoing.

(iv) The financing strategy, including eligibility requirements, terms, conditions, and amounts available, to be employed in conducting housing-based hazards activities. You must discuss the way funds will be administered (e.g., use of grants, deferred loans, forgivable loans, other resources, private sector financing, etc.) as well as the agency which will administer the process. Describe how your proposed project will further and support the policy priorities of the Department, including providing opportunities for self-sufficiency, particularly for persons enrolled in welfare-to-work programs; or providing educational and job training opportunities.

(b) *Outreach and Community Involvement* (5 points). You must describe:

(i) Proposed methods of community education. These should include community awareness, education, training, and outreach programs in support of your work plan and objectives. This should include general and/or targeted efforts undertaken to assist your efforts in reducing exposure to housing-based hazards. To the extent possible, programs should be culturally sensitive, targeted, and linguistically appropriate.

(ii) Proposed involvement of neighborhood or community-based organizations in the proposed activities. These activities may include outreach, community education, marketing, inspection, and housing evaluations and interventions.

(c) *Technical Approach for Conducting Housing-Based Hazards Interventions* (15 points)

(i) Describe your process for evaluating units of eligible housing in which you will undertake housing-based hazards interventions.

(ii) Describe any specialized testing or visual inspection that you will conduct during unit inspection with reference to source(s) of the protocol(s). Describe technical qualifications and requirements for laboratories. To be eligible for points under this factor, any laboratories you use must successfully participate in the Clinical Laboratory Program, National Lead Laboratory Accreditation Program, and/or National Voluntary Laboratory Accreditation Program, or other applicable quality assurance program, which you demonstrate to be substantially equivalent.

(iii) Describe the housing-based hazards interventions you will undertake. Provide an estimate of the per unit costs (and a basis for those estimates) for the type of interventions that are planned. Provide a schedule for initiating and conducting interventions in the selected units. Discuss efforts to incorporate cost-effective control methods to address multiple environmental health and safety hazards (e.g., deteriorating lead-based paint, damaged asbestos-containing materials, lack of smoke detectors). Work must be conducted in accordance with the HUD *Guidelines* in units where lead hazards are identified.

(iv) Describe your process for the development of work specifications for selected interventions. Describe your management processes to be used to ensure the cost-effectiveness of the housing interventions. Discuss your contracting process to obtain contractors to conduct interventions in selected units.

(v) Describe your plan for the temporary relocation of occupants of units selected for intervention, and how you will determine the need for

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relocation. Address the use of safe houses and other housing arrangements, storage of household goods, stipends, incentives, etc.

(vi) Describe your plan for ensuring right of return and/or first referral for occupants of units selected for intervention who have had to move for intervention to occur.

(2) *Economic Opportunity* (5 points) Describe methods that will result in economic opportunities for residents and businesses in the community where activities will be carried out. Include information on how you will provide employment, business development, and contract opportunities. Describe how you or your partners will satisfy the requirements of Section 3 of the Housing and Community Development Act of 1992 to give preference to hiring low-and very low-income persons or contracting with businesses owned by or employing low-and very-low income persons.

(3) *Program Evaluation and Research* (10 points).

(a) Identify and discuss the specific methods you will use to measure progress, and evaluate the effectiveness of interventions. Describe how the information will be obtained, documented, and reported.

(b) Provide a detailed description of your proposed applied research activities. Your research designs should be feasible and display thorough knowledge of relevant scientific literature. They should include an appropriate plan for managing, analyzing and archiving data. Also, quality assurance mechanisms must be well integrated into your research design to ensure the validity and quality of collected data.

(4) *Budget* (Not Scored). Your proposed budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of program funds. HUD is not required to approve or fund all proposed activities. You must thoroughly document and justify all budget categories and costs (Part B of Standard Form 424A) and all major tasks. Describe in detail your budgeted costs for each required program element (major task) included in your overall plan. The four required program elements are: administration; education and outreach; control of housing-based hazard (including sampling); and program evaluation and applied research.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses your ability to secure other community resources (such as financing, supplies or services) which can be combined with HUD's resources to achieve project purposes.

(1) In evaluating this factor, HUD will consider the extent to which you have partnered with other entities to secure additional resources to increase the effectiveness of your proposed project. Describe how other organizations will participate in or support your project. Resources may include funding or in-kind contributions (such as services or equipment) allocated to your proposed program. Resources may be provided by governmental entities, public or private organizations, or other entities willing to be your partner in this effort.

(2) Each source of contributions must be supported by a letter of commitment from the contributing entity, whether a public or private source, which must describe the contributed resources that will be used in your program. Staff in-kind contributions should be given a market-based monetary value. If you fail to provide letters of commitment with specific details including the amount of the actual contributions, you will not get rating points for this factor. Each letter of commitment, memorandum of understanding, or agreement to participate shall include the organization's name and the proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must be signed by an official legally able to make commitments on behalf of the organization.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which your program reflects a coordinated, community-based process of identifying needs and building a system to address the needs by using available HUD and other community resources. In evaluating this factor, HUD will consider:

(1) The degree of coordination of your proposed project with those of other groups or organizations to best support and coordinate all activities, and the specific steps you will take to share information on solutions and outcomes with others. Any written agreements or memoranda of understanding in place must be described.

(2) The extent to which you have developed linkages, or the specific steps you will take to develop linkages, to coordinate your activities so solutions are holistic and comprehensive. Linkages include those with other HUD, Federal, State or locally funded activities through meetings, information networks, planning processes, or other means.

(3) The degree of coordination with housing rehabilitation, housing and health inspection, and other related housing programs.

(a) Describe your plan for integrating and coordinating housing-based hazards interventions with other housing-related activities (e.g., rehabilitation, weatherization, removal of code violations, and other similar work).

(b) Describe your plans to consolidate housing-based hazards interventions with applicable housing codes and health regulations.

(c) Describe your plans to generate and use public subsidies or other resources (such as revolving loan funds) to finance future interventions to prevent and control housing-based hazards, particularly in low- and very-low-income housing.

(d) Detail the extent to which you will ensure that the needs of minorities and persons with disabilities will be addressed adequately during your intervention activities; and that housing in which environmental hazards have been addressed will remain available and affordable in the long run for low income, minority, large families, and for persons with disabilities.

(4) If applicable, the application should demonstrate a knowledge of the target community's Consolidated Plan and/or Analysis of Impediments to Fair Housing Choice and detail the Consolidated Plan issue areas in which your organization participates. Describe the degree to which you have become actively involved (or if not currently active, the specific steps you will take to become active) in your community's Consolidated Planning process established to identify and address a need/problem that is related in whole or part, directly, or indirectly the activities you propose.

VI. Application Submission Requirements

(A) Applicant Information

You should submit your application in accordance with the format and instructions contained in this program section of this NOFA. The following is a checklist of required application contents:

(1) Transmittal letter that summarizes your proposed program, provides the dollar amount requested, and identifies you and your partners in the application.

(2) The name, mailing address, telephone number, and principal contact person. If you are a consortium of associates, sub-recipients, partners, major subcontractors, joint venture participants, or others contributing

resources to the project, similar information shall also be provided for each of these entities and you must specify the lead entity.

(3) Completed Forms HUD–2880, Applicant/Recipient Disclosure/Update Report; Certification Regarding Lobbying; and SF–LLL, Disclosure of Lobbying Activities, where applicable.

(4) Standard Forms SF–424, 424A, 424B, and other certifications and assurances listed in this program section. (see application kit).

(5) A narrative statement addressing the rating factors for award. The narrative statement must be numbered in accordance with each factor for award (Factor 1 through 5). The response to the rating factors must not exceed a total of 30 pages.

(6) Any attachments, appendices, references, or other relevant information may accompany the project description, but must not exceed twenty (20) pages for your entire application.

(7) A detailed budget with supporting cost justification for all budget categories of your funding request.

(8) The resumes and position descriptions of your project director and program manager and up to three additional key personnel.

VII. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you, however, to clarify an item in your application or to correct technical deficiencies. You should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of your response to any selection factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may, however, contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include your failure to submit the proper certifications or your failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. You must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If your deficiency is not corrected within this time period, HUD will reject your application as incomplete, and it will not be considered for funding.

VIII. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA were submitted to the Office of Management and Budget for review and approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The approval number when assigned will be announced by separate notice published in the **Federal Register**. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Executive Order 12612, Federalism The General Counsel, as the Designated Official under section 6(a) of

Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order.

Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate that basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

Section 103 HUD Reform Act

HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in

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connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted. The certification and the SF–LLL are included as Attachment D of this NOFA.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995), which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

IX. Environmental Requirements

Activities assisted under this program are subject to HUD environmental review to the extent required under 24 CFR part 50. An award under the Healthy Homes Initiative does not constitute approval of specific sites where activities may be carried out. Following award execution, HUD will perform environmental reviews for activities to be carried out on properties proposed by your organization. You may not rehabilitate, convert, repair or construct a property, or commit or expend program funds or non-HUD funds for these program activities for any eligible property, until you receive written notification from the appropriate HUD official that HUD has completed its environmental review and the property has been approved. The results of environmental reviews may require that proposed activities be modified or proposed sites rejected.

X. Authority

The authority for this program is the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L. 105–276 (approved October 21, 1998), 112 Stat. 2461, 2482.

Dated: July 16, 1999.

David Jacobs,

Director of the Office of Lead Hazard Control.

Appendix A

The following briefly describes the housing-associated health and injury hazards HUD considers key targets for intervention:

Allergens and asthma: Experts estimate that 14 million Americans have asthma, with an associated annual cost of $14 billion. Asthma is now recognized as the leading cause of school and work absence, emergency room visits and hospitalization. For sensitized children, exposure to antigens from dust mites, certain pets, and cockroaches has been associated with more severe asthma. There is a preponderance of evidence showing a dose-response relationship between exposure and prevalence of asthma and allergies; some evidence also indicates that exposure to antigens early in life may predispose or hasten the onset of allergies and asthma Dust mites have been identified as the largest trigger for asthma and allergies. Cockroach allergens appear to be excessive in 30–50% of inner-city housing and affect 5–15% of the population, whereas dust mite appears to be the dominant allergen in other environments. Interventions known to have beneficial effects include installation of impervious mattress and pillow covers, which can reduce allergen exposure by 90%. Other dust mite control measures include dehumidification, laundering bedding, and removal of carpets and other dust sinks. Cleaning carpets with tannic acid solution has also been demonstrated to greatly reduce dust mites. Asthma prevention program costs have been estimated at about $500 per unit, which includes about $150 for educational interventions.

Asbestos: Asbestos is a mineral fiber that has been used commonly in a variety of building construction materials and household products for insulation and as a fire-retardant. The Environmental Protection Agency (EPA) and the Consumer Product Safety Commission (CPSC) have banned most asbestos products. Manufacturers have also voluntarily limited uses of asbestos. Today, asbestos is most commonly found in older homes: in pipe and furnace insulation materials, asbestos shingles, millboard, textured paints and other coating materials, and floor tiles. Elevated concentrations of airborne asbestos can occur when asbestos-containing materials (ACM) are disturbed by cutting, sanding or other remodeling activities. Improper attempts to remove these materials can release asbestos fibers into the air in homes, increasing asbestos levels and endangering people living in those homes. The most dangerous asbestos fibers are too small to be visible. After they are inhaled, they can remain and accumulate in the lungs. Asbestos can cause lung cancer, mesothelioma (a cancer of the chest and abdominal linings), and asbestosis (irreversible lung scarring that can be fatal). Most people with asbestos-related diseases were exposed to elevated concentrations on the job; some developed disease from exposure to clothing and equipment brought home from job sites. As with radon, dose-response extrapolations suggest that lower level exposures, as may occur when asbestos-containing building materials deteriorate or are disturbed, may also cause cancer.

Intact asbestos-containing materials are not a hazard; they should be monitored for damage or deterioration and isolated if possible. Repair of damaged or deteriorating ACM usually involves either sealing (encapsulation) or covering (enclosure) it. Repair is usually cheaper than removal, but it may make later removal of asbestos more difficult and costly. Repairs should be done only by a professional trained and certified to handle asbestos safely and can cost from a few hundred to a few thousand dollars; removal can be more expensive.

Combustion products of heating and cooking appliances: Burning of oil, natural gas, kerosene, and wood for heating or cooking purposes can release a variety of combustion products of health concern. Depending upon the fuel, these may include carbon monoxide (a chemical asphyxiant), oxides of nitrogen (respiratory irritants), polycyclic aromatic hydrocarbons (e.g., the carcinogen benzo[a]pyrene), and airborne particulate matter (respiratory irritants). Carbon monoxide, an odorless gas, can be fatal. Nitrogen dioxide can damage the respiratory tract, and sulfur dioxide can irritate the eyes, nose and respiratory tract. Smoke and other particulates irritate the eyes, nose and throat, and can cause lung cancer.

Improper venting and poor maintenance of heating systems and cooking appliances can dramatically increase exposure to combustion products. Experts recommend having combustion heating systems inspected by a trained professional every year to identify blocked openings to flues and chimneys; cracked or disconnected flue pipe; dirty filters; rust or cracks in the heat exchanger; soot or creosote build-up; and exhaust or gas odors. Installing a carbon monoxide detector is also recommended; however, such a detector will not detect other combustion by-products.

Insect and Rodent pests: The observed association between exposure to cockroach antigen and asthma severity has already been noted above. In addition, cockroaches may act as vehicles to contaminate and environmental surfaces with certain pathogenic organisms. Rodents can transmit a number of communicable diseases to humans, either through bites, arthropod vectors, or exposure to aerosolized excreta. In addition, humans can become sensitized to proteins in rodent, urine, dander and saliva. Such sensitization may contribute to asthma severity among children. Insect and rodent infestation is frequently associated with substandard housing that makes it difficult to eliminate. Treatment of rodent and insect infestations often includes the use of toxic pesticides which may present hazards to occupants (see below). Integrated pest management (IPM) for rodents and cockroaches, which reduces the use of pesticides, is estimated to cost approximately $150 per unit. IPM control measures include sealing holes and cracks, removing food sources and use of traps.

Lead: Exposure to lead, especially from deteriorating lead-based paint, remains one of the most important and best-studied of the household environmental hazards to children. Although blood lead levels have fallen nationally, a large reservoir of lead remains in housing. The most recent national survey, conducted from 1991–94, showed that nearly one million U.S. preschoolers still have elevated blood lead levels. Overall, the prevalence rate among all children under six years of age is 4.4%. Among low-income children living in older housing where lead-based paint is most prevalent, the rate climbs to 16%; and for African-American children living in such housing, it reaches 21%.

HUD estimates that 64 million dwellings have some lead-based paint, and that 20 million have lead-based paint hazards. Of those, about 3.6 million have young children and of those, about 500,000 units have inadequate cash flow to respond to lead-based paint hazards. Costs can range anywhere from $500 to $15,000 per unit. Corrective measures include paint stabilization, enclosure and removal of certain building components coated with lead paint, and cleanup and "clearance testing", which ensures the unit is safe for young children.

Mold and moisture: An analysis of several pulmonary disease studies estimates that 25% of airways disease, and 60% of interstitial lung disease may be associated with moisture in the home or work environment. Moisture is a precursor to the growth of mold and other biological agents, which is also associated with respiratory symptoms. An investigation of a cluster of pulmonary hemosiderosis (PH) cases in infants showed PH was associated with a history of recent water damage to homes and with levels of the mold Stachybotrys atra (SA) in air and in cultured surface samples. Associations between exposure to SA and "sick building" symptoms in adults have also been observed. Other related toxigenic fungi have been found in association with SA-associated illness and could play a role. For sensitive individuals, exposure to a wide variety of common molds may also aggravate asthma. Addressing mold problems in housing requires coordination among the medical, public health, microbiological, housing, and building science communities.

The cost of mold/moisture-related intervention work (e.g., integrated pest management, clean & tune furnace, remove debris ,vent clothes dryer, cover dirt floor with impermeable vapor barrier) is a few hundred dollars, unless major modification of the ventilation system is needed. In Cleveland, mold interventions, including repairs to ventilation systems and basement flooring, in the most heavily-contaminated homes range from $500—$5,000, with some costs also being dedicated to lead hazard control simultaneously through its lead+asthma program.

Pesticide residues: According to the EPA, 75 percent of U.S. households used at least one pesticide product indoors during the past year. Products used most often are insecticides and disinfectants. Another study suggests 80 percent of most people's exposure to pesticides occurs indoors and that measurable levels of up to a dozen pesticides have been found in the air inside homes. The amount of pesticides found in homes appears to be greater than can be explained by recent pesticide use in those households; other possible sources include contaminated soil or dust that migrates in from outside, stored pesticide containers, and household surfaces that collect and then release the pesticides. Pesticides used in and around the home include products to control insects (insecticides), termites (termiticides), rodents (rodenticides), molds and fungi(fungicides), and microbes (disinfectants). In 1990, the American Association of Poison Control Centers reported that some 79,000 children were involved in common household pesticide poisonings or exposures. In households with children under five years old, almost one-half stored at least one pesticide product within reach of children. Exposure to chlorpyriphos (CP), a commonly used organophosphate insecticide, in the prenatal and early postnatal period may impair neurodevelopment. While CP is a biodegradable pesticide, substantial persistence of CP in house dust has been demonstrated. Exposure to high levels of cyclodiene pesticides, commonly associated with misapplication, has produced various symptoms, including headaches, dizziness, muscle twitching, weakness, tingling sensations, and nausea. In addition, EPA is concerned that cyclodienes might cause long-term damage to the liver and the central nervous system, as well as an increased risk of cancer.

There are available data on hazard evaluation methods and remediation effectiveness regarding pesticide residues in the home environment.

Radon progeny: The National Academy of Sciences estimates that approximately 15,000 cases of lung cancer per year are related to radon exposure. Epidemiologic studies of miners exposed to high levels of radon in inhaled air have defined the dose response relation for radon-induced lung cancer at high exposure levels. Extrapolation of these data has been used to estimate the excess risk of lung cancer attributable to exposure to radon gas at the lower levels found in homes. These estimates indicate that radon gas is an important cause of lung cancer deaths in the U.S. Excessive exposures are typically related to home ventilation, structural integrity and location.

Radon measurement and remediation methods are well-developed, and the Environmental Protection Agency (EPA) recommends that every home be measured for radon. EPA estimates that materials and labor costs for radon reduction in an existing home are $800–$2500. Including radon resistant techniques in new home construction costs $350–$500, and can save up to $65 annually in energy costs, according to the EPA.

Take home hazards from work/hobbies and work at home: When the clothing, hair, skin, or shoes of workers become contaminated with hazardous materials in the workplace, such contaminants may inadvertently be carried to the home environment and/or an automobile. Such "take-home" exposures have been demonstrated, for example, in homes of lead-exposed workers. In addition, certain hobbies or workplaces located in the home may provide an especially great risk of household contamination.

Control methods include storing and laundering work clothes separately, and showering and changing before leaving work, or immediately after arriving home. Once a home becomes contaminated, cleaning floors and contact surfaces and replacing furnishings may be necessary to reduce exposures.

Unintentional injuries/fire: Unintentional injury is now the leading cause of death and disability among children younger than 15 years of age. In 1997, nearly 7 million persons in the United States were disabled for at least 1 full day by unintentional injuries received at home. During the same year, 28,400 deaths were attributable to unintentional home injuries, of which 1800 occurred among children 0–4 years of age. Among young children, three types of events accounted for more than ¾ of deaths: fires/burns, drownings, and mechanical suffocation. Falls and poisoning are the next most common.

Home visitation protocols have been shown to be effective in reducing exposure to such hazards. The "add-on" cost of injury prevention measures, when combined with other housing interventions are estimated at about $100 per unit. This includes the cost of some injury prevention devices, such as smoke alarms, electrical socket covers, etc.

Appendix B

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Part X

Department of Housing and Urban Development

24 CFR Part 5, et al.
One-Strike Screening and Eviction for Drug Abuse and Other Criminal Activity; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 200, 247, 880, 882, 884, 891, 960, 966, and 982

[Docket No. FR–4495–P–01]

RIN 2501–AC83

One-Strike Screening and Eviction for Drug Abuse and Other Criminal Activity

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations for the public housing and Section 8 assisted housing programs, and for other HUD assisted housing programs, such as the Section 221 (d)(3) below market interest rate (BMIR) program, Section 202 program for the elderly, and Section 811 program for persons with disabilities, and Section 236 interest reduction program. All of these programs were affected by recent statutory amendments. These amendments give Public Housing Agencies (PHAs) and assisted housing owners the tools for adopting and implementing fair, effective, and comprehensive policies for denying admission to applicants who engage in illegal drug use or other criminal activity and for evicting or terminating assistance of persons who engage in such activity.

DATES: *Comments Due Date:* Comments on the proposed rule and the proposed information collection requirements are due on or before September 21, 1999.

ADDRESSES: Submit written comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: For Section 8 certificate, voucher, and moderate rehabilitation programs—Gerald J. Benoit, Director, Real Estate Performance and Housing Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477. For public housing " Patricia Arnaudo, Senior Program Manager, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4224, Washington DC, 20410; telephone (202) 708–0744 or the Public and Indian Housing Resource Center at 1–800–955–2232.

For the Section 8 project-based programs " Willie Spearmon, Director, Office of Multifamily Business Products, Office of Housing, Department of Housing and Urban Development, Room 6134, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3000.

Only the Public and Indian Housing Resource Center number is toll-free. Persons with hearing or speech impairments may access these numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

President Clinton, in his 1996 State of the Union address, proposed the "one strike and you're out" policy. The President challenged local housing authorities and tenant associations to stop criminal gang members and drug dealers who were destroying the lives of decent tenants. In response to the President's "One Strike" mandate, HUD expeditiously issued guidelines and procedures and conducted extensive training for PHAs around the country. Public housing agencies, localities, police departments and judges have all responded to the President's call. Public housing communities are better, safer places because of their efforts.

It is critical that assisted housing owners have the same opportunities to fight criminal activity, so that residents in their communities can also live in peace. This proposed rule provides for that broadened authority and responsibility. The rule is intended to give PHAs and assisted housing owners the tools for adopting and implementing fair, effective, and comprehensive policies for both crime prevention and enforcement. Crime prevention will be advanced by the authority to screen out those who engage in illegal drug use or other criminal activity, and enforcement will be advanced by the authority to evict and terminate assistance for persons who participate in criminal activity.

In 1996, the Housing Opportunity Program Extension Act (Pub. L. 104–120, 110 Stat. 834–846, approved March 28, 1996) ("the Extension Act") amended the United Stated Housing Act of 1937 (42 U.S.C. 1437a, *et seq.*) ("the 1937 Act"). The Extension Act added significant crime and security protections for public housing and section 8 residents. It made an individual who has been evicted from public housing or any Section 8 program for drug-related criminal activity ineligible for admission to public housing and the section 8 programs for a three-year period, beginning from the date of eviction. The evicted family becomes eligible for re-admission, however, if the individual who engaged in the activity has successfully completed a rehabilitation program approved by the PHA or if the PHA determines that the circumstances leading to the eviction no longer exist.

The Extension Act also required PHAs to establish standards that prohibit occupancy in any public housing unit or participation in a section 8 tenant-based program by any person the PHA determines to be using a controlled substance, or whose pattern of illegal use of a controlled substance or pattern of alcohol abuse would interfere with the health, safety or right to peaceful enjoyment of the premises by other residents of the development. In this connection, the Extension Act authorized the PHA administering the program to determine whether an applicant has been rehabilitated from drug or alcohol abuse. In addition, the Extension Act provided PHAs the opportunity to access criminal records for public housing applicants and residents.

HUD issued a variety of guidance on implementing the Extension Act (PIH Notice 96–16, issued April 12, 1996 and PIH Notice 96–27, issued May 15, 1996). HUD published proposed rules for the section 8 tenant-based and moderate rehabilitation programs on March 31, 1997 (62 FR 15346) and for the public housing program on May 9, 1997 (62 FR 25728).

Sections 575–579 of the Quality Housing and Work Responsibility Act of 1998 (Public Law 105–276, approved Oct. 21, 1998, 112 Stat. 2634–2643) ("the Public Housing Reform Act" or "the 1998 Act") revised provisions of the 1937 Act (sections 6 and 16) and created other statutory authority to expand crime and security provisions to most federally assisted housing. Instead of issuing a final rule on the admission and eviction provisions of the Extension Act, HUD is publishing this new proposed rule on the provisions as they exist after the revision to the drug abuse and criminal activity requirements made by the Public Housing Reform Act.

The 1998 Act revised the prohibition on admitting families for three years because of eviction from public housing or Section 8 units for drug-related criminal activity to cover admissions to (and evictions from) Section 202, Section 811, Section 221(d)(3) BMIR, Section 236, and Section 514/515 rural housing projects. In addition, the 1998 Act (section 578(a)) added the obligation for project owners—including PHAs that administer public housing—to deny admission to sex offenders who are subject to a lifetime registration requirement under a State sex offenders' registration program. The FY 1999 appropriations act (Section 428 of Public Law 105–276, 112 Stat. 2511) added a new paragraph (f) to section 16 of the 1937 Act to bar persons convicted of manufacturing or producing methamphetamine from public housing and Section 8 assisted housing where the PHA determines who is admitted.

An additional crime and safety provision was added to the 1937 Act by the Personal Responsibility and Work Opportunity Act of 1996 (Public Law 104–193, approved August 22, 1996; 110 Stat. 2105, 2348). Section 903 of that Act amended the 1937 Act (42 U.S.C. 1437f(d)(1) and 1437d(*l*)) to add as a grounds for termination of tenancy in the public housing and Section 8 assistance programs fleeing to avoid prosecution, or custody or confinement after conviction, for a felony (or a high misdemeanor in New Jersey). Violating a condition of probation or parole imposed under Federal or State law is also grounds for termination of tenancy under that provision. That provision also created the obligation (in a new section 27 of the 1937 Act) for PHAs to provide Federal, State or local law enforcement officials with information concerning assistance recipients whom the officials are pursuing for violating parole or fleeing to avoid prosecution.

II. Applicability

This proposed rule would implement the statutory provisions described above. However, not all of the statutory provisions apply to all of the programs covered by this rule. The chart below describes which provisions apply to which programs. Until this rule is issued for effect, the provisions of this rule are not effective. However, the following provisions of the recent statutory amendments are already in effect: (1) the drug treatment facility check provision of section 575(e) of the 1998 Act, which applies to public housing only, and (2) the methamphetamine production provision of section 428 of the Fiscal Year 1999 appropriation act. Both of these provisions were described as immediately applicable in the Initial Guidance Notice on the 1998 Act, published in the **Federal Register** on February 18, 1999 (64 FR 8192). The safety and security provisions of the Extension Act remain in effect, as described in PIH Notice 96–27.

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Statutory Provision [Section of 98 Act unless otherwise specified]	Applies to public housing?	Applies to Section 8 tenant-based assistance?	Applies to Section 8 project-based assistance?	Applies to other federally assisted housing: 221(d)(3) BMIR, 236, 202 & 811 projects?
Definition of Person with Disabilities [506 of 98 Act, amending 3 of 37 Act]	Yes	Yes	Yes	No
Access to Drug Abuse Treatment Facility Records [575(e) of 98 Act, adding 6(t) of 37 Act]	Yes	No	No	No
Criminal Activity Grievances & Evictions [575(a)&(b) of 98 Act, amending 6(k) & (l) of 37 Act]	Yes	No	No	No
Access to Criminal Records [575(c) & (d) of 98 Act, adding 6(t) of 37 Act]	Yes	Yes - PHAs No - owners	Yes, except owners obtain info through PHAs	No
Denial of Admission for Previous Eviction for Drug-Related Crime [576(a) of 98 Act, 42 USC 13661]	Yes	Yes	Yes	Yes
Denial of Admission for Drug Use & Alcohol Abuse [576(b) of 98 Act, 42 USC 13661]	Yes	Yes	Yes	Yes
Denial of Admission for Drug-Related, Violent or Other Crime [576(c) of 98 Act, 42 USC 13661]	Yes	Yes	Yes	Yes

Evictions & Termination of Assistance for Drug Use & Alcohol Abuse [577 of 98 Act, 42 USC 13662]	Yes	Yes	Yes	Yes
Denial of Admission & Evictions of Sex Offenders [578 of 98 Act, 42 USC 13663]	Yes	Yes	Yes	Yes
Definitions [579 of 98 Act, 42 USC 13664]	Yes	Yes	Yes	Yes
Denial of Admission, Evictions, & Termination of Assistance for Methamphetamine Manufacture [428 of 99 Appropriations Act, amending 16 of 37 Act]	Yes	Yes	Yes, if a PHA makes admission decisions	No
Evictions of Fleeing Felons [903 of 96 Personal Respons. & Work Opportunity Reconciliation Act, amending 6(l) & 8(d) of 37 Act]	Yes	Yes	Yes	No

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III. Subjects This Rule Covers

A. Ineligibility of Persons Involved in Drug or Alcohol Abuse

The rule requires PHAs and owners of federally assisted housing to develop standards that prohibit admission of any household with a member who (1) the PHA or owner has determined is engaged in illegal drug use; or (2) the PHA or owner has reasonable cause to believe is engaged in illegal drug use or alcohol abuse (or pattern of abuse) that may interfere with the health, safety or right to peaceful enjoyment of other residents of the development. With respect to households already participating in a federally assisted housing program, the rule requires PHAs and owners to develop occupancy standards or lease provisions that allow the PHAs and owners to terminate tenancy or assistance of households with a member engaged in such conduct. The 1998 amendments of the 1996 Extension Act provisions on ineligibility of illegal drug users and alcohol abusers confirm that a PHA or owner may deny admission or terminate assistance for the whole household that includes a person involved in the proscribed activity. With respect to a PHA or owner's discretion to consider rehabilitation for a household member with the offending substance abuse problem, the rule would permit a PHA or owner to hold the whole household responsible for that member's successful rehabilitation as a condition for continued occupancy and avoidance of eviction.

B. Ineligibility of Persons Convicted of Producing Methamphetamine

Individuals convicted of manufacturing or producing methamphetamine are ineligible for public housing, Section 8 tenant-based assistance, and Section 8 project-based assistance administered by a PHA, in accordance with section 428 of the HUD appropriations act for FY 1999 (amending section 16 of the 1937 Act). The restriction applies to persons convicted of producing methamphetamine in a building or complex assisted under the public housing or Section 8 programs. PHAs are required by the statute and this rule (e.g., §§ 966.4(f)(5)(i)(B), 982.310(c), 982.553(b)(1)(ii)) to establish standards that make these persons ineligible for admission and require their immediate termination of tenancy.

C. Termination of Tenancy of Fleeing Felons

Owners of public housing and Section 8 assisted housing are authorized to terminate the tenancy of individuals who are fleeing to avoid prosecution or to avoid custody or confinement after conviction of a crime or attempt to commit a crime, as described above (e.g., §§ 966.4(f)(5)(ii)(B) and 982.553(b)(2)(ii)). The crimes covered are those that are felonies under the laws of the place from which the individual flees (or, in the case of the State of New Jersey, a high misdemeanor). In addition, the rule permits owners to terminate the tenancy of individuals who violate a condition of probation or parole imposed under Federal or State law. In order to implement this provision, the proposed rule requires PHAs and Section 8 housing owners to amend their leases to provide for termination under these circumstances.

D. Criminal Records from Law Enforcement Agencies

PHA Access to Records

PHAs may access criminal conviction records from the National Crime Information Center, police departments, and other law enforcement agencies for purposes of applicant screening, lease enforcement, and eviction. PHAs may access such records for adult applicants and tenants of public housing and adult applicants and participants in the PHA's Section 8 tenant-based programs. In addition, they may access records in order to screen applicants or evaluate tenants for owners of project-based Section 8 housing programs. In order to access an applicant's or tenant's criminal conviction record, the PHA must provide the law enforcement agency with a consent form signed by the applicant or tenant.

Owners' Access to Records

Owners of project-based section 8 developments, including owners of project-based certificate program and moderate rehabilitation program developments, may request a PHA to obtain criminal records and perform determinations for the owner regarding screening applicants, lease enforcement, or eviction for developments located in the PHA's jurisdiction. The owner must provide the PHA with a consent form signed by the applicant or tenant. When the owner makes such a request, the PHA must obtain the applicant or tenant's criminal record from the appropriate law enforcement agency. The PHA must not give the criminal record, or disclose its content, to the owner. Instead, the PHA must use the record to screen the applicant or evaluate the tenant based on the owner's standards for admission and occupancy. The PHA may charge the owner a fee for both obtaining the record and performing the screening and evaluation services.

E. Records of Sex Offenders Subject to a Lifetime Registration Requirement

This proposed rule would implement the requirement that PHAs and owners of federally assisted housing prohibit admission of any household that includes a person subject to a lifetime registration requirement under a State sex offender registration program.

This provision requires that, in addition to any criminal records check a PHA may conduct, the PHA also must make further inquiries, as necessary, with State and local agencies to determine whether an applicant is subject to a lifetime registration requirement under a State sex offender registration program. (State and local agencies responsible for collecting criminal history record information or information on persons required to register as sex offenders are required to comply with PHA requests for such information.) The PHA must make this determination for owners of other federally assisted housing if the housing is located in the PHA's jurisdiction and the owner requests that the PHA assist in this way. As with other criminal records obtained by the PHA on behalf of an owner pursuant to section 6(q) of the 1937 Act, the PHA must not release the information to the owner but must screen the applicant or evaluate the tenant using the owner's criteria. The PHA may charge a fee for this service.

F. Records From Drug Abuse Treatment Facilities—Applicable to Public Housing Only

The Public Housing Reform Act authorizes PHAs to obtain limited information concerning public housing applicants from drug abuse treatment facilities. A PHA may make an inquiry to a drug abuse treatment facility only if it either makes the same inquiry with respect to all applicants or makes inquiry concerning applicants with a prior criminal record or prior tenancy showing the applicant engaged in destruction of property, violent activity against another person or interfered with another tenant's peaceful enjoyment of the premises. To obtain information from a drug treatment facility, the PHA must provide the facility with a written consent form signed by the individual applicant. The PHA may only inquire whether the drug abuse treatment facility reasonably believes that the individual is currently using illegal drugs.

G. Records Management

PHAs must establish a records management system that ensures that criminal records and records from drug abuse treatment facilities are maintained confidentially, are not misused or improperly disseminated, and are destroyed within the statutorily prescribed time frames. The statute requires the imposition of a fine in the event that any PHA agent obtains criminal records under false pretenses or discloses any such information to anyone not legally entitled to such information. The rule provides that records must not be kept in the applicant or tenant file and that once the record is no longer needed it is destroyed.

Information obtained from public records or obtained from law enforcement agencies independent of this authority is not subject to the restrictions on disclosure imposed by this rule.

H. Definition of Person With Disabilities

The 1998 Act amended the 1937 Act (at 42 U.S.C. 1437a(b)(3)(E)) by adding a new sentence to the definition of a person with a disability which states, "Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for low-income housing * * * solely on the basis of any drug or alcohol dependence." This new statutory language is already included in the Department's current definition of person with disabilities (§ 5.403(a)), since the rule refers to the statute. The statutory definition in the 1937 Act includes reference to the definition of disability in section 223(d) of the Social Security Act. The Social Security Administration (SSA) implements that provision through regulations found at 20 CFR 404.1535, which exclude individuals whose alcohol or drug addiction is a contributing factor material to the determination of disability. The SSA rule states that a person is considered disabled if the disabling physical and mental limitations would persist upon discontinuation of drugs or alcohol abuse. (20 CFR 404.1535(b)(2)).

As required by the 1998 Act, the Department consulted with the Departments of Justice, Health and Human Services and the Social Security Administration, and reviewed pertinent regulations related to the definition of disability. The Department is satisfied that the statutory definition of "person with disabilities" included in the existing rule incorporates the Social Security Administration's (SSA) definition of disability located at section 223(d) of the Social Security Act, and that the SSA's rule that excludes individuals whose alcohol or drug addiction is a contributing material factor to their disability is appropriate to apply to disability determinations under HUD programs.

I. Compliance With Civil Rights Requirements

In developing their policies for screening and eviction under this rule, PHAs and owners are, of course, bound to comply with nondiscrimination and equal opportunity requirements, as provided in 24 CFR 5.105.

V. Findings and Certifications

Paperwork Reduction Act

(a) The proposed information collection requirements contained at §§ 5.853, 5.854, 5.855, 5.902, 5.903, 882.517, 960.204, and 982.553 of this rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(b) In accordance with 5 CFR 1320.5(a)(1)(iv), HUD estimates that the total reporting and recordkeeping burden that will result from the proposed collection of information as follows:

REPORTING BURDEN

Section reference	Number of respondents	Est. average response/freq. of response	Est. annual time (hours)	Burden (hours)
5.853, 5.854, 5.855, 882.517, 982.553: Standards for Admission of Drug Criminals; Other Criminals; Alcohol Abusers	4,500	1	30	135,000
5.902(c): Consent form from Family for Release of Criminal Records	3,000	1	.15	450
5.902(d) and (f): PHA and Owner Request for Criminal Conviction Records	1,500	1	4	6,000
5.902(f)(7): PHA Notification to Family and Owner concerning Criminal Conviction Records	1,500	1	1	1,500
5.903(d)(2): PHA request to State or local agency for Sex Offender Information	300	1	2	600
5.903(e)(6)(i): PHA Notification to Family and Owner concerning Sex Offender Information	300	1	1	300
960.204(c): PHA Requirement that Family provide information whether any proposed household member has ever been diagnosed or treated for illegal drug use, abuse; sign consent form	1,500	1	1	1,500
960.204(d), (e)(i)(ii): PHA request for Information from Drug Use Treatment Facility	500	1	1	500
5.902(g), 5.903(f), 960.204(f): Establishment of a Systems of Records Management and Confidentiality	4,500	1	16	72,000
Total Reporting Burden				82,850

(c) In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

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(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

As described above, interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the rule by name and docket number (FR–4495–P–01) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503
and
Millie Hamman, Reports Management Officer, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4238, 451 Seventh Street, SW, Washington, DC 20410

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year within the meaning of Unfunded Mandates Reform Act of 1995.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this proposed rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows:

(1) *A Substantial Number of Small Entities Will Not be Affected.* The proposed rule is exclusively concerned with public housing agencies and with owners of federally assisted housing. Specifically, the proposed rule will establish requirements governing applicant screening and termination of assistance and occupancy based on criminal activity. Under the definition of "Small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. Owners or managers of assisted housing would qualify as small entities only if they had less than $1.5 million in gross receipts annually. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* The proposed rule will not change the amount of funding available under the federally assisted housing assistance programs. In the programs administered by the Office of Housing, management agents perform the functions affected by the rule for owners, including nonprofit owners. These agents are approved because they provide management acceptable to HUD and are capable of carrying out requirement management activities, including changes in procedures. They receive fees based on the work they perform, and guidelines provide for allowing fee increases for changed work procedures. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have federalism implications concerning the division of local, State, and Federal responsibilities. No programmatic or policy change under this rule will affect the relationship between the Federal government and State and local governments.

Catalog of Domestic Assistance Numbers

The Catalog of Domestic Assistance numbers for the programs affected by this proposed rule are 14.120, 14.195, 14.850, 14.855 and 14.857.

List of Subjects

24 CFR Part 5

Administrative practices and procedures, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and Recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Aged, Civil rights, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 247

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, rural areas.

24 CFR Part 891

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant program—housing and community development, Individuals with disabilities, Public housing.

24 CFR Part 966

Grant programs—housing and community development, Public housing.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, HUD proposes to amend 24 CFR parts 5, 200, 247, 880, 882, 884, 891, 960, 966 and 982, as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. Amend § 5.100 by adding the following definitions, in alphabetical order:

§ 5.100 Definitions.

* * * * *

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Drug-related criminal activity means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

* * * * *

Federally assisted housing (for purposes of subparts I and J of this part) means housing assisted under any of the following programs:

(1) Public housing;

(2) Housing receiving project-based or tenant-based assistance under Section 8 (42 U.S.C. 1437f);

(3) Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act (12 U.S.C. 1701q);

(4) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act;

(5) Housing that is assisted under section 811 of the National Affordable Housing Act (42 U.S.C. 8013);

(6) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715*l*(d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. 1715*l*(d)(5));

(7) Housing insured, assisted, or held by HUD or by a State or local agency under section 236 of the National Housing Act (12 U.S.C. 1715z–l); or

(8) Housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949 (42 U.S.C. 1483, 1484).

* * * * *

Public housing means housing assisted under the 1937 Act (42 U.S.C. 1437, *et seq.*), other than housing assisted under Section 8 (42 U.S.C. 1437f).

* * * * *

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, nontrivial bodily injury or property damage.

3. Amend part 5 by adding new subparts I and J, to read as follows:

Subpart I—Preventing Crime in Federally Assisted Housing—When a Project Owner May Deny Admission or Terminate Tenancy for Criminal Activity or Alcohol Abuse by Household Members

Sec.
5.851 Applicability to subsidized projects.
5.852 Terms.
5.853 Prohibiting admission of drug criminals.
5.854 Prohibiting admission of other criminals.
5.855 Prohibiting admission of alcohol abusers.
5.856 Evicting drug criminals.
5.857 Evicting other criminals.
5.858 Evidence of criminal activity.
5.859 Evicting alcohol abusers.
5.860 Drug use and alcohol abuse: owner discretion.

Subpart J—Access to Criminal Records and Information

Sec.
5.901 Definitions.
5.902 Availability of criminal records.
5.903 Sex offender information.

Subpart I—Preventing Crime in Federally Assisted Housing—When a Project Owner May Deny Admission or Terminate Tenancy for Criminal Activity or Alcohol Abuse by Household Members

§ 5.851 Applicability to subsidized projects.

(a) Except as provided in paragraph (b) or (c) of this section, subpart I of this part is applicable to project-based assistance for federally assisted housing.

(b) Subpart I of this part does not apply to public housing or housing assisted with tenant-based assistance under Section 8. For public housing, see part 960 (admission) and part 966 (termination of tenancy) of this title. For Section 8 tenant-based assistance, see part 982 of this title.

(c) Subpart I of this part does not apply to housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949.

§ 5.852 Terms.

(a) *Terms found elsewhere.* The following terms are defined in subpart A of this part: *1937 Act, drug, drug-related criminal activity, federally assisted housing, HUD, public housing, public housing agency (PHA), Section 8, violent criminal activity.*

(b) *Additional terms* (for purposes of subpart I of this part).

Covered person. A resident, any member of the resident's household, a guest or another person under the resident's control.

Household. The family and any live-in aide approved by the responsible entity.

Owner. The owner of federally assisted housing.

Premises. The building or complex in which the assisted dwelling unit is located, including common areas and grounds.

Responsible Entity. For the public housing program, and for the Section 8 tenant-based assistance program (part 982 of this title), the Section 8 project-based certificate or project-based

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voucher program (part 983 of this title) and the Section 8 moderate rehabilitation program (part 882 of this title), *responsible entity* means the PHA administering the program under an ACC with HUD. For all other federally assisted housing, the responsible entity means the owner of the housing.

§ 5.853 Prohibiting admission of drug criminals.

(a) The owner must establish standards that prohibit admission of a household to federally assisted housing (subject to the provisions of § 5.860 of this subpart) if:

(1) The owner determines that any household member is currently engaging in or has engaged in drug-related criminal activity; or

(2) The owner determines that it has reasonable cause to believe that illegal use or a pattern of illegal use of a drug by a household member may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents).

(b) The owner may require the household to submit sufficient evidence, as determined by the owner, that the members of the household have not engaged in drug-related criminal activity during a reasonable period, as determined by the owner, before admission to the federally assisted housing.

(c) The owner standards must prohibit admission to the federally assisted housing if any household member has been evicted from federally assisted housing for drug-related criminal activity. This prohibition applies during a reasonable period, as determined by the owner, which is at least three years from the date of the judicial determination authorizing the eviction. However, the owner may admit the household if the owner determines:

(1) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program, or

(2) That the circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

§ 5.854 Prohibiting admission of other criminals.

(a) The owner may prohibit admission of a household to federally assisted housing under standards established by the owner if the owner determines that any household member is currently engaging in or has engaged in:

(1) Violent criminal activity,

(2) Other criminal activity which may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents, or

(3) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of an owner or PHA (including an employee, contractor, subcontractor or agent).

(b) The owner may require the family to submit sufficient evidence, as determined by the owner, that the members of the household have not engaged in such criminal activity during a reasonable period, as determined by the owner, before admission to the federally assisted housing.

(c) The owner must establish standards that prohibit admission to federally assisted housing if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In screening of applicants, the owner must check public documents or request the PHA to perform criminal history background check necessary to determine whether any household member is subject to a lifetime sex offender registration requirement. (See § 5.903.)

§ 5.855 Prohibiting admission of alcohol abusers.

The owner must establish standards that prohibit admission to federally assisted housing if the owner determines it has reasonable cause to believe that abuse or pattern of abuse of alcohol by a household member may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

§ 5.856 Evicting drug criminals.

The lease must provide that the owner may terminate the tenancy during the term of the lease if any covered person is currently engaged in or has engaged in any drug-related criminal activity on or near the premises.

§ 5.857 Evicting other criminals.

(a) *Threat to other residents.* The lease must provide that any of the following types of criminal activity by a covered person are grounds for termination of tenancy during the term of the lease:

(1) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises); or

(2) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises.

(b) *Fugitive felon or parole violator.* The lease must provide that the owner may terminate the tenancy during the term of the lease if a member of the household is:

(1) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(2) Violating a condition of probation or parole imposed under Federal or State law.

§ 5.858 Evidence of criminal activity.

The owner may deny admission or terminate tenancy for criminal activity by a family member if the owner determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

§ 5.859 Evicting alcohol abusers.

The lease must provide that the owner may terminate the tenancy if the owner determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

§ 5.860 Drug use and alcohol abuse: owner discretion.

(a) *Consideration of rehabilitation.* In determining whether to deny admission or terminate tenancy for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

(b) *Conditions for admission or continued assistance.* (1) In determining whether to deny admission or terminate tenancy for illegal drug use by a household member, or for alcohol abuse by a household member, the owner may impose, as a condition of admission to or continued assistance in the program for other household members, a requirement that any household member who engaged in or is culpable for the drug use or alcohol abuse may not reside with the household or on the premises.

(2) The owner may require a household member who has engaged in the illegal use of a drug (as defined in § 5.100 of this part), or in alcohol abuse that threatened the health or safety of, or the right to peaceful enjoyment of the premises by, other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program as a condition to being allowed to reside with the household or on the premises.

Subpart J—Access to Criminal Records and Information

§ 5.901 Definitions.

(a) *Terms found elsewhere.* The following terms are defined in subpart A of this part: *1937 Act, annual contributions contract (ACC), drug, household, HUD, public housing, public housing agency (PHA), Section 8.*

(b) *Additional terms* (for purposes of subpart J of this part).

Responsible entity. For the public housing program, the Section 8 tenant-based assistance program (part 982 of this title), the Section 8 project-based certificate or project-based voucher program (part 983 of this title), and the Section 8 moderate rehabilitation program (part 882 of this title), *responsible entity* means the PHA administering the program under an ACC with HUD. For all other Section 8 programs, responsible entity means the Section 8 owner.

§ 5.902 Availability of criminal records.

(a) *Purpose and applicability.* (1) This section authorizes PHAs that administer the Section 8 and public housing programs to obtain criminal conviction records from a law enforcement agency. The criminal conviction records are used to screen applicants for admission to these programs and for lease enforcement or eviction. PHAs may not provide these records concerning a household member receiving Section 8 tenant-based assistance to owners.

(2) This section implements section 6(q) of the 1937 Act (42 U.S.C. 1437d(q)). The provisions of this section only apply to criminal records obtained by a PHA from a law enforcement agency under this section. The provisions of this section do not apply to criminal records obtained by a PHA or others from law enforcement agencies other than under this section, e.g., criminal records that are publicly available or records offered by law enforcement agencies.

(b) *Additional definitions* (for purposes of this section).

Adult. A person who is 18 years of age or older, or who has been convicted of a crime as an adult under any Federal, State, or tribal law.

Law enforcement agency. The National Crime Information Center, police departments and other law enforcement agencies that hold criminal conviction records.

(c) *Consent for release of criminal conviction records.* (1) The responsible entity may require the family to submit a consent form signed by each adult household member.

(2) By execution of the consent form, an adult household member consents that:

(i) Any law enforcement agency may release criminal conviction records concerning the household member to a PHA in accordance with this section;

(ii) The PHA may receive the criminal conviction records from a law enforcement agency, and may use the records in accordance with this section.

(d) *PHA request for criminal conviction records.* (1) A PHA that administers a Section 8 or public housing program under an ACC with HUD may request criminal conviction records from any law enforcement agency concerning an adult member of a household:

(i) Applying for admission to a public housing program or to a Section 8 tenant-based or project-based program.

(ii) Residing in public housing or receiving Section 8 project-based assistance.

(2) The PHA request to the law enforcement agency must include a copy of the consent form signed by the household member.

(3) When the law enforcement agency receives the PHA request (including a copy of the signed consent form), the law enforcement agency must promptly release to the PHA a certified copy of any criminal conviction records concerning the household member in the possession or control of the law enforcement agency. NCIC records must be provided in accordance with NCIC procedures.

(4) The law enforcement agency may charge a reasonable fee for releasing criminal conviction records to the PHA.

(e) *Permitted use and disclosure of criminal conviction records received by PHA.* (1) *Use of records.* Criminal conviction records received by a PHA from a law enforcement agency in accordance with this section may only be used for the following purposes:

(i) *Applicant screening:* (A) PHA screening of applicants for admission to public housing (part 960 of this title);

(B) PHA screening of applicants for admission to the Section 8 tenant-based assistance program (part 982 of this title);

(C) PHA screening of applicants for admission to the Section 8 moderate rehabilitation program (part 882 of this title); or the Section 8 project-based certificate or project-based voucher program (part 983 of this title); or

(D) PHA screening concerning criminal conviction of applicants for admission to Section 8 project-based assistance, at the request of the owner. (For requirements governing use of criminal conviction records obtained by a PHA at the request of a Section 8 owner under this section, see paragraph (f) of this section.)

(ii) *Lease enforcement and eviction:* (A) PHA enforcement of public housing leases; and PHA eviction of public housing residents;

(B) Enforcement of leases by a Section 8 project owner; and eviction of residents by a Section 8 project owner. (However, criminal conviction records received by a PHA from a law enforcement agency under this section may not be used for lease enforcement or eviction of residents receiving Section 8 tenant-based assistance.)

(2) *PHA disclosure of records.* A PHA may only disclose the criminal conviction records which it receives from a law enforcement agency as follows:

(i) Criminal conviction records may be disclosed to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information. For example, if the PHA is seeking to evict a public housing tenant on the basis of criminal activity as shown in criminal conviction records provided by a law enforcement agency, the records may be disclosed to PHA employees performing functions related to the eviction, or to a PHA hearing officer conducting an administrative grievance hearing concerning the proposed eviction.

(ii) Criminal conviction records may be disclosed to the extent necessary in connection with a judicial eviction proceeding. For example, criminal conviction records may be included in pleadings or other papers filed in an eviction action, may be disclosed to parties to the action or the court, and may be filed in court or used in evidence. Upon disclosure as necessary in connection with judicial eviction proceedings, such criminal conviction records may become public information, and the PHA is not responsible for controlling access to or knowledge of such records after such disclosure.

(f) *Owner's request for criminal records.* (1) An owner of a unit with Section 8 project-based assistance that is located in a PHA's jurisdiction may request that the PHA obtain criminal conviction records of a household

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member from a law enforcement agency. The PHA must review the records on the owner's behalf in accordance with paragraph (f)(6) of this section.

(2) The owner's request must include a copy of the consent form, signed by the household member.

(3) The owner's request must also specify whether the owner is requesting the PHA to obtain the criminal conviction records concerning the household member for applicant screening, for lease enforcement, or for eviction.

(4) The owner's request must also include the following information concerning the criteria used by the owner in applicant screening, lease enforcement or eviction:

(i) If the owner intends to use the PHA determination regarding any such criminal conviction records for applicant screening, the owner's request must include the owner standards for prohibiting admission of drug criminals in accordance with § 5.853, and for prohibiting admission of other criminals in accordance with § 5.854.

(ii) If the owner intends to use the PHA determination regarding any such criminal conviction records for eviction, the owner's request must include the owner standards for evicting drug criminals in accordance with § 5.856, and for evicting other criminals in accordance with § 5.857.

(iii) If the owner intends to use the PHA determination regarding any such criminal conviction records for lease enforcement other than eviction, the owner's request must include any owner standards for lease enforcement because of criminal activity by members of a household.

(5) If the owner submits a request for criminal conviction records concerning an adult household member to the PHA, the PHA must request the criminal conviction records from the appropriate law enforcement agency or agencies as determined by the PHA.

(6) If the PHA receives criminal conviction records requested by a Section 8 project owner, the PHA must determine whether criminal action by a household member, as shown by such criminal conviction records, may be a basis for applicant screening, lease enforcement or eviction. The PHA determination must be based on the criteria used by the owner as specified in the owner's request (see paragraph (f)(4) of this section). For example, if the owner wants to know if the household member has engaged in criminal activity that may be a basis for denying admission, the PHA must determine whether criminal activity as shown by any criminal conviction record received from a law enforcement agency may be a basis for prohibiting admission in accordance with HUD regulations and the owner criteria.

(7) The PHA must notify the family and the owner whether it has received criminal conviction records concerning the household member, and of its determination whether such criminal conviction records may be a basis for applicant screening, lease enforcement or eviction. However, except as provided in paragraph (f)(8) of this section, the PHA must not disclose the household member's criminal conviction record or the content of that record to the owner.

(8) The PHA may only disclose criminal conviction records to the owner for use in connection with judicial eviction proceedings by the owner. The PHA may only release the records:

(i) If the owner has requested the criminal conviction records concerning a household member for use in connection with eviction; and

(ii) If the PHA has determined that criminal activity by the household member as shown by such records received from a law enforcement agency may be a basis for eviction from a Section 8 unit; and

(iii) If the owner provides the PHA a written certification that the owner must use the criminal conviction records only to the extent necessary in connection with judicial eviction proceeding in which the owner seeks to evict the Section 8 tenant based on criminal activity by the household member as shown in the criminal conviction records.

(9) If an owner requests a PHA to obtain criminal conviction records in accordance with this section, the PHA may charge the owner reasonable fees for making the request on behalf of the owner and for taking other actions for the owner. The PHA may require the owner to reimburse costs incurred by the PHA, including reimbursement of any fees charged to the PHA by the law enforcement agency.

(g) *Records management.* The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is:

(1) Maintained confidentially;

(2) Not misused or improperly disseminated; and

(3) Destroyed, once the purpose for which the record was requested has been accomplished.

§ 5.903 Sex offender information.

(a) *Purpose.* The purpose of this section is to prevent admission of dangerous sex offenders to federally assisted housing. For this purpose, PHAs are authorized to obtain sex offender registration information from State and local agencies.

(b) *Applicability.* The provisions of this section apply to criminal history background checks by a PHA of State sex offender registration information in accordance with 42 U.S.C. 13663. The provisions of this section do not apply to sex offender information obtained by a PHA or others from law enforcement agencies other than under this section, such as publicly available information listing persons subject to a lifetime registration requirement under a State sex offender registration program.

(c) *Terms found elsewhere.* The following terms are defined in subpart A of this part: *federally assisted housing, household, HUD, public housing, public housing agency (PHA), owner, Section 8.*

(d) *How PHA obtains sex offender registration information.* (1) A PHA that administers a Section 8 or public housing program under an ACC with HUD must carry out criminal history background checks necessary to determine whether a member of a household applying for admission to any federally assisted housing program is subject to a lifetime sex offender registration requirement under a State sex offender registration program.

(2) If the PHA requests such information from any State or local agency responsible for the collection or maintenance of such information, the State or local agency must promptly provide the PHA such information in its possession or control.

(3) The State or local agency may charge a reasonable fee for providing the information.

(e) *Owner's request for sex offender registration information.*

(1) An owner of federally assisted housing that is located in the jurisdiction of a PHA that administers a Section 8 or public housing program under an ACC with HUD may request that the PHA obtain information necessary to determine whether a household member is subject to a lifetime registration requirement under a State sex offender registration requirement.

(2) The owner's request must specify whether the owner is asking the PHA to obtain the sex offender registration information concerning the household member for applicant screening, for lease enforcement, or for eviction.

(3) The owner's request must also include the following information concerning the criteria used by the owner in applicant screening, lease enforcement or eviction:

(i) If the owner intends to use the PHA determination regarding any such sex offender registration information for applicant screening, the owner's request must include the owner standards in accordance with § 5.854(c) for prohibiting admission of persons subject to a lifetime sex offender registration requirement.

(ii) If the owner intends to use the PHA determination regarding any such sex offender registration information for eviction, the owner's request must include the owner standards for evicting persons subject to a lifetime registration requirement in accordance with § 5.857.

(iii) If the owner intends to use the PHA determination regarding any such sex offender registration information for lease enforcement other than eviction, the owner's request must include any owner standards for lease enforcement because of criminal activity by members of a household.

(4) If an owner submits a request for sex offender registration information from the PHA, the PHA must obtain such information in accordance with paragraph (d) of this section.

(5) If the PHA obtains sex offender registration information from a State or local agency upon request from an owner, the PHA must determine whether such information may be a basis for applicant screening, lease enforcement or eviction. The PHA determination must be based on the criteria used by the owner as specified in the owner's request.

(6)(i) The PHA must notify the family and the owner of its determination whether sex offender registration information received by the PHA under this section concerning a household member may be a basis for applicant screening, lease enforcement or eviction in accordance with HUD requirements and the criteria used by the owner.

(ii) The PHA must not disclose to the owner any sex offender registration information obtained by the PHA under this section. However, the restriction on PHA disclosure of sex offender registration information does not apply to information that is public information, or is obtained by a PHA other than under this section (for example, information posted on a State sex offender registration website).

(7) If an owner asks a PHA to obtain sex offender registration information concerning a household member in accordance with this section, the PHA may charge the owner reasonable fees for making the request on behalf of the owner and for taking other actions for the owner. The PHA may require the owner to reimburse costs incurred by the PHA, including reimbursement of any fees charged to the PHA by a State or local agency for releasing the information.

(f) *Records management.* (1) The PHA must establish and implement a system of records management that ensures that any sex offender registration information record received by the PHA from a State or local agency under this section is:

(i) Maintained confidentially;

(ii) Not misused or improperly disseminated; and

(iii) Destroyed, once the purpose for which the record was requested has been accomplished.

(2) The records management requirements do not apply to information that is public information, or is obtained by a PHA other than under this section.

(g) *Opportunity to dispute.* If a PHA obtains sex offender registration information from a State or local agency under paragraph (d) of this section showing that a household member is subject to a lifetime sex offender registration requirement, the PHA must provide the family a copy of such information, and an opportunity to dispute the accuracy and relevance of the information. This opportunity must be provided before a denial of admission, eviction or lease enforcement action on the basis of such information.

PART 200—INTRODUCTION TO FHA PROGRAMS

4. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

5. Add a new § 200.37 under the heading "Miscellaneous Cross Cutting Regulations" to read as follows:

§ 200.37 Preventing crime in federally assisted housing.

Programs administered under section 236 and under sections 221(d)(3) and 221(d)(5) of the National Housing Act are subject to the requirements of part 5, subparts I and J, of this title.

PART 247—EVICTIONS FROM SUBSIDIZED AND HUD-OWNED PROJECTS

6. The authority citation for part 247 continues to read as follows:

Authority: 12 U.S.C. 1701q, 1701s, 1715b, 1715l, and 1715z–1; 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

7. In § 247.2, revise the last sentence in the definition of "subsidized project" to read as follows:

§ 247.2 Definitions.

* * * * *

Subsized project * * * For purposes of this part, *subsidized project* also includes those units in a housing project that receive the benefit of:

(1) Rental subsidy in the form of rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); or

(2) Housing assistance payments for project-based assistance under Section 8 of the 1937 Act (42 U.S.C. 1437f). However, this part is not applicable to Section 8 project-based assistance under parts 880, 881, 883 and 884 of this title (except as specifically provided in those parts).

8. In § 247.3, revise paragraph (a)(3) to read as follows:

§ 247.3 Entitlement of tenants to occupancy.

(a) * * *

(3) Criminal activity or alcohol abuse by a covered person in accordance with part 5, subparts I and J, of this title.

* * * * *

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

9. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

§ 880.607 [Amended]

10. In § 880.607, revise paragraph (b)(1)(iii) to read as follows:

* * * * *

(b) * * *

(1) * * *

(iii) Criminal activity or alcohol abuse by a covered person in accordance with part 5, subparts I and J, of this title.

* * * * *

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

11. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

12. In § 882.102, amend paragraph (b) by removing the definitions of the terms "Drug-related criminal activity", "Drug-trafficking", and "Violent criminal activity", and by adding definitions of the following additional terms, in alphabetical order:

§ 882.102 Definitions.

* * * * *

Covered person. A resident, any member of the resident's household, a guest or another person under the resident's control.

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Household. The family and any PHA-approved live-in aide.

§ 882.514 [Amended]

13. In § 882.514, remove paragraph (a)(2) and redesignate paragraph (a)(3) as paragraph (a)(2).

14. In part 882, add a new § 882.518 to read as follows:

§ 882.518 When a PHA may deny admission or terminate assistance for criminals and alcohol abusers.

(a) *Requirement to deny admission.* (1) *Prohibiting admission of drug criminals.* (i) The PHA must establish standards that prohibit admission of a household to the Section 8 moderate rehabilitation program if the PHA determines that any household member is currently engaging in or has engaged in drug-related criminal activity or the PHA determines that it has reasonable cause to believe that illegal use or a pattern of illegal use of a drug, as defined in § 5.100 of this part, by a household member may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents).

(ii) The PHA may require the household to submit sufficient evidence, as determined by the PHA, that the members of the household have not engaged in drug-related criminal activity during a reasonable period, as determined by the PHA, before admission to the program.

(iii) The PHA standards must prohibit admission to the program if any household member has been evicted from federally assisted housing for drug-related criminal activity. This prohibition applies during a reasonable period, as determined by the PHA, which is at least three years from the date of the judicial determination authorizing the eviction. The PHA may admit the household if the PHA determines:

(A) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA, or

(B) That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(iv) The PHA must establish standards that permanently prohibit admission to the program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Prohibiting admission of other criminals.* (i) The PHA may prohibit admission of a household to the program under standards established by the PHA if the PHA determines that any household member is currently engaged in or has engaged in:

(A) Violent criminal activity,

(B) Other criminal activity which may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents,

(C) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

(ii) The PHA may require the household to submit sufficient evidence, as determined by the PHA, that the members of the household have not engaged in such criminal activity during a reasonable period, as determined by the PHA, before admission to the program.

(iii) The PHA must establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement.

(3) *Prohibiting admission of alcohol abusers.* The PHA must establish standards that prohibit admission to the program if the PHA determines that it has reasonable cause to believe that abuse or pattern of abuse of alcohol by a household member may adversely affect the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(b) *Terminating assistance.* (1) *Terminating assistance for drug criminals.* (i) The PHA must establish standards that allow the PHA to terminate assistance for a family under the program if the PHA determines that any household member has engaged in drug-related criminal activity.

(ii) *Methamphetamine conviction—termination of assistance.* The PHA must immediately terminate assistance for a family under the program if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Terminating assistance for other criminals.* (i) The PHA must establish standards that allow the PHA to terminate assistance for a family if the PHA determines that any household member has engaged in violent criminal activity.

(ii) *Fugitive felon or parole violator.* The PHA may terminate assistance for a family if the PHA determines that a member of the household is:

(A) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(B) Violating a condition of probation or parole imposed under Federal or State law.

(3) *Evidence of criminal activity.* The PHA may deny admission or terminate assistance for criminal activity by a household member, as authorized in this section, if the PHA determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

(4) *Terminating assistance for alcohol abusers.* The PHA must establish standards that allow termination of assistance for a family if the PHA determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(5) *Drug use or alcohol use: PHA discretion.* (i) *Consideration of rehabilitation.* In determining whether to deny admission or terminate assistance for illegal drug use by a household member who is no longer engaging in such use, or for alcohol abuse by a household member who is no longer engaging in such abuse, the PHA may consider whether the household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

(ii) *Conditions for admission or continued assistance.* (A) In determining whether to deny admission or terminate assistance for illegal use of a drug (as defined in § 5.100 of this title) by a household member, or for alcohol abuse by a household member, the PHA may impose, as a condition of admission to, or continued assistance in the program for other family members, a requirement that the family member who engaged in or is culpable for such use or abuse may not reside with the household or on the premises.

(B) The PHA may require a household member who has engaged in the illegal use of a drug (as defined in § 5.100 of this title), or in alcohol abuse that threatened the health or safety of, or the right to peaceful enjoyment of the premises by, other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program as a condition of continued assistance.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

15. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

16. In § 884.216, revise paragraph (b) to read as follows:

§ 884.216 Termination of tenancy.

* * * * *

(b) Termination of tenancy for criminal activity or alcohol abuse by a covered person is subject to part 5, subpart G of this title.

* * * * *

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

17. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

18. Revise § 891.430 to read as follows:

§ 891.430 Denial of admission, termination of tenancy, and modification of lease.

(a) The provisions of part 5, subpart I, of this title apply to Section 202 and Section 811 capital advance projects.

(b) The provisions of part 247 of this title apply to all decisions by an owner to terminate the tenancy or modify the lease of a household residing in a unit (or residential space in a group home).

19. Revise § 891.630 to read as follows:

§ 891.630 Denial of admission, termination of tenancy, and modification of lease.

(a) The provisions of part 5, subpart I, of this title apply to Section 202 direct loan projects.

(b) The provisions of part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit.

20. Revise § 891.770 to read as follows:

§ 891.770 Denial of admission, termination of tenancy, and modification of lease.

(a) The provisions of part 5, subpart I, of this title apply to Section 202 direct loan projects with Section 162 assistance for disabled families.

(b) The provisions of part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit (or residential space in a group home).

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

21. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n and 3535(d).

22. In part 960, add a new subpart A to read as follows:

Subpart A—Applicability and Definitions

Sec.
960.1 Applicability.
960.2 Definitions.

Subpart A—Applicability and Definitions

§ 960.1 Applicability.

This part is applicable to public housing.

§ 960.2 Definitions.

(a) *Terms found elsewhere.* The following terms are defined in part 5, subpart A of this title: *1937 Act, drug, drug-related criminal activity, federally assisted housing, HUD, public housing, public housing agency (PHA), Section 8, violent criminal activity.*

(b) *Additional terms* (for purposes of this part).

Covered person. A resident, any member of the resident's household, a guest or another person under the resident's control.

Household. The family and any PHA-approved live-in aide.

Premises. The building or complex in which the public housing dwelling unit is located, including common areas and grounds.

23. In subpart B of part 960, remove § 960.202, redesignate § 960.204 as § 960.202, and add new §§ 960.203 and 960.204 to read as follows:

§ 960.203 When a PHA may deny admission for criminal activity or drug abuse by household members.

(a) *Prohibiting admission of drug criminals.* (1) The PHA must establish standards that prohibit admission of a household to the PHA's public housing program if:

(i) The PHA determines that any household member is currently engaging in or has engaged in drug-related criminal activity; or

(ii) The PHA determines that it has reasonable cause to believe that illegal drug use or a pattern of illegal drug use by a household member may adversely affect the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(2) The PHA may require the household to submit sufficient evidence, as determined by the PHA, that the members of the household have not engaged in drug-related criminal activity during a reasonable period, as determined by the PHA, before admission to the PHA's public housing program.

(3) The PHA standards must prohibit admission to the PHA's public housing program if any household member has been evicted from federally assisted housing for drug-related criminal activity. This prohibition applies during a reasonable period, as determined by the PHA, which is at least three years from the date of the judicial determination authorizing the eviction. However, the PHA may admit the household if the PHA determines:

(i) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(ii) That the circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(4) The PHA must establish standards that permanently prohibit admission to the PHA's public housing program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(b) *Prohibiting admission of other criminals.* (1) The PHA may prohibit admission of a household to the PHA's public housing program, under standards established by the PHA, if the PHA determines that any household member is currently engaging in or has engaged in:

(i) Violent criminal activity; or

(ii) Other criminal activity which may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents; or

(iii) Other criminal activity which may threaten the health or safety of PHA management staff, or persons performing management functions on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

(2) The PHA may require the family to submit sufficient evidence, as determined by the PHA, that the

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members of the household have not engaged in such criminal activity during a reasonable period, as determined by the PHA, before admission to the PHA's public housing program.

(3) The PHA must establish standards that prohibit admission to the PHA's public housing program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement.

(c) *Prohibiting admission of alcohol abusers.* The PHA must establish standards that prohibit admission to the PHA's public housing program if the PHA determines that it has reasonable cause to believe that abuse or pattern of abuse of alcohol by a household member may threaten the health or safety of, or right to peaceful enjoyment of the premises by, other public housing residents.

(d) *Evidence of criminal activity.* The PHA may deny admission for criminal activity by a household member as authorized in this section if the PHA determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

(e) *Criminal records.* Before a PHA denies admission to the PHA's public housing program on the basis of a criminal record, the PHA must provide the household with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record.

(f) *Drug use and alcohol abuse: PHA discretion.* (1) *Consideration of rehabilitation.* In determining whether to deny admission to the PHA's public housing program for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

(2) *Conditions for admission.* In determining whether to deny admission to the PHA's public housing program for illegal drug use by a household member, or for alcohol abuse by a household member, the PHA may impose, as a condition of admission to, and continued assistance in, the PHA's public housing program for other family members, a requirement that the household member who engaged in or is culpable for the drug use or alcohol abuse may not reside in the unit.

(3) *Submission of evidence.* The PHA may require a household member who has engaged in the illegal use of a drug (as defined in § 5.100 of this title), or in alcohol abuse that affected the health or safety of, or the right to peaceful enjoyment of the premises by, other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program as a condition to being allowed to reside in the unit.

§ 960.204 Drug use by applicants: obtaining information from drug treatment facility.

(a) *Purpose.* This section implements section 6(u) of the 1937 Act (42 U.S.C. 1437d(u)) on requesting and obtaining information from drug abuse treatment facilities concerning applicants. The provisions of this section do not apply to information requested or obtained from drug abuse treatment facilities other than under section 6(u).

(b) *Additional definitions* (for purposes of this section).

(1) *Currently engaging in illegal drug use.* Illegal drug use occurred recently enough to justify a reasonable belief that continuing illegal drug use by a household member is a real and ongoing problem.

(2) *Drug abuse treatment facility.* An entity:

(i) That holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use; and

(ii) That is either an identified unit within a general care facility; or an entity other than a general medical care facility.

(c) *Authorization by household member for PHA to receive information from a drug abuse treatment facility.* (1) The PHA may require the family to submit for any household member who is at least 18 years of age, and for each family head or spouse regardless of age a consent form signed by such household member that:

(i) Requests any drug abuse treatment facility to inform the PHA whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use;

(ii) Authorizes the PHA to receive such information from the drug treatment facility, and to utilize such information in determining whether to prohibit admission of the household member to the PHA's public housing program in accordance with § 960.203.

(2) The consent form submitted for a proposed household member must expire automatically after the PHA has made a final decision to either approve or deny the admission of such person.

(d) *PHA request for information from drug use treatment facility.* (1) The PHA may request that a drug abuse treatment facility disclose whether the drug abuse treatment facility has reasonable cause to believe that the proposed household member is currently engaging in the illegal use of a drug (as defined in § 5.100 of this title).

(2) The PHA's request to the drug abuse treatment facility must include a copy of the consent form signed by the proposed household member.

(3) Subject to section 543 of the Public Health Service Act (42 U.S.C. 290dd–2), the drug abuse treatment facility is required to provide the information requested by the PHA in accordance with paragraph (d)(1) of this section.

(4) A drug abuse treatment facility is not liable for damages based on any information required to be disclosed under this section if such disclosure is consistent with section 543 of the Public Health Service Act (42 U.S.C. 290dd–2).

(5) The PHA is not obligated to request information from a drug treatment facility under this section, and is not liable for damages for failing to request or receive such information.

(6) A drug abuse treatment facility may charge the PHA a reasonable fee for information provided under this section.

(e) *Prohibition of discriminatory treatment of applicants.* (1) A PHA may request information from a drug abuse treatment facility under paragraph (d) of this section only if the PHA has adopted and has consistently implemented either of the following policies:

(i) *Policy A—Request for all families.* Under Policy A, the PHA must submit a request for information to a drug abuse treatment facility in accordance with paragraph (d) of this section before admitting any family to the PHA's public housing program. For each such family, the request must be submitted for each proposed household member described in paragraph (c)(3) of this section.

(ii) *Policy B—Request for certain household members.* Under Policy B, the PHA must submit a request to a drug abuse treatment facility only with respect to each proposed household member:

(A) Whose criminal record indicates prior arrest or conviction for any criminal activity that may be a basis for denial of admission under § 960.203; or

(B) Whose prior tenancy records indicate that the proposed household member:

(*1*) Engaged in the destruction of property;

(*2*) Engaged in violent activity against another person; or

(*3*) Interfered with the right of peaceful enjoyment of the premises of other residents.

(2) The policy adopted by the PHA must be included in the PHA administrative plan and the PHA plan.

(f) *Records management and confidentiality.* (1) Each PHA that receives information from a drug abuse treatment facility under this section must establish and implement a system of records management that ensures that any information which the PHA receives from the drug abuse treatment facility about a person:

(i) Is maintained confidentially in accordance with section 543 of the Public Health Service Act (12 U.S.C. 290dd–2);

(ii) Is not misused or improperly disseminated; and

(iii) Is destroyed, as applicable:

(A) Not later than 5 business days after the PHA admits the person as a household member under the PHA's public housing program; or

(B) If the PHA denies the admission of such person as a household member, in a timely manner after the date on which the statute of limitations for the commencement of a civil action based upon that denial of admissions has expired.

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

23a. Revise the heading for part 966 to read as set forth above.

24. The authority citation for part 966 is revised to read as follows:

Authority: 42 U.S.C. 1437d and 3535(d).

25. Revise § 966.1 to read as follows:

§ 966.1 Purpose and applicability.

(a) This part is applicable to public housing.

(b) Subpart A of this part prescribes the provisions that must be incorporated in leases for public housing dwelling units.

(c) Subpart B of this part prescribes public housing grievance hearing requirements.

26. Add a new § 966.2 to read as follows:

§ 966.2 Definitions.

(a) *Terms found elsewhere.* The following terms are defined in part 5, subpart A of this title: *1937 Act, drug, drug-related criminal activity, HUD, public housing, public housing agency, Section 8, violent criminal activity.*

(b) *Additional terms* (for purposes of this part).

Covered person. A resident, any member of the resident's household, a guest or another person under the resident's control.

Federally assisted housing means housing assisted under any of the following programs:

(1) Public housing;

(2) Housing receiving project-based or tenant-based assistance under Section 8 (42 U.S.C. 1437f);

(3) Housing that is assisted under section 202 of the Housing Act of 1959 as amended by section 801 of National Affordable Housing Act) (12 U.S.C. 1701q);

(4) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act;

(5) Housing that is assisted under section 811 of the National Affordable Housing Act (42 U.S.C. 8013);

(6) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715*l*(d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. 1715*l*(d)(5));

(7) Housing insured, assisted, or held by HUD or by a State or State agency under section 236 of the National Housing Act (12 U.S.C. 1715z–1); or

(8) Housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949 (42 U.S.C. 1483, 1484).

Household. The family and any PHA-approved live-in aide.

Premises. The building or complex in which the public housing dwelling unit is located, including common areas and grounds.

27. In § 966.4, redesignate paragraph (l)(5) as paragraph (l)(6), revise paragraphs (f)(12), (l)(2) and (l)(3)(i), and add new paragraph (l)(5) to read as follows:

§ 966.4 Lease requirements.

* * * * *

(f) * * *

(12)(i) To assure that no covered person engages in:

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents; or

(B) Any drug-related criminal activity on or off the premises.

(ii) To assure that no member of the household engages in an abuse or pattern of abuse of alcohol that affects the health, safety, or right to peaceful enjoyment of the premises by other residents.

* * * * *

(l) * * *

(2) *Grounds for termination of tenancy.* The PHA may terminate the tenancy for any of the following grounds:

(i) Serious or repeated violation of the lease. Serious violation includes, but is not limited to:

(A) Failure to pay rent or other payments due under the lease; or

(B) Violation of household obligations as described in paragraph (f) of this section;

(ii) Criminal activity or alcohol abuse as provided in paragraph (l)(5) of this section; or

(iii) Other good cause. Other good cause includes, but is not limited to:

(A) Criminal or other activity by a member of the household that threatens the health or safety of other public housing residents or of persons residing in the immediate vicinity of the premises; or

(B) Criminal or other activity by a member of the household that threatens the health or safety of PHA management staff.

(3) *Lease termination notice.* (i) The PHA must give written notice of lease termination of:

(A) 14 days in the case of failure to pay rent;

(B) A reasonable period of time considering the seriousness of the situation (but not to exceed 30 days):

(*1*) If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or

(*2*) If any member of the household has engaged in any drug-related criminal activity or violent criminal activity; or

(*3*) If any member of the household has been convicted of a felony;

(C) 30 days in any other case, except that if a State or local law allows a shorter notice period, such shorter period shall apply.

* * * * *

(5) *When the PHA may terminate tenancy for criminal activity or alcohol abuse by household members.*—(i) *Evicting drug criminals. (A) Drug crime on or off the premises.* The lease must provide that the PHA may terminate the tenancy if any covered person has engaged in any drug-related criminal activity on or off the premises, including cases where:

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(*1*) A covered person has engaged in drug-trafficking; or

(*2*) A covered person has engaged in illegal drug use (including cases where the PHA determines that illegal drug use or a pattern of illegal drug use by a household member may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents).

(B) *Methamphetamine conviction.* The PHA must immediately terminate the tenancy if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(ii) *Evicting other criminals.* (A) *Threat to other residents.* The lease must provide that any criminal activity by a covered person that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including PHA management staff residing on the premises) is grounds for termination of tenancy.

(B) *Fugitive felon or parole violator.* The PHA may terminate the tenancy if a member of the household is:

(*1*) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(*2*) Violating a condition of probation or parole imposed under Federal or State law.

(iii) *Evidence of criminal activity.* The PHA may terminate tenancy for criminal activity by a household member if the PHA determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

(iv) *Use of criminal record.* If the PHA seeks to terminate the tenancy for criminal activity as shown by a criminal record, the PHA must provide the tenant with a copy of the criminal record before a PHA grievance hearing or court trial concerning the termination of tenancy or eviction, and the tenant must be given an opportunity to dispute the accuracy and relevance of that record in the grievance hearing or court trial.

(v) *Evicting alcohol abusers.* The PHA must establish standards that allow termination of tenancy if the PHA determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(vi) *Drug use and alcohol abuse: PHA discretion.* (A) *Consideration of rehabilitation.* In determining whether to terminate tenancy for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

(B) *Conditions for continued assistance.* (*1*) In determining whether to terminate tenancy for illegal drug use by a household member, or for alcohol abuse by a household member, the PHA may impose, as a condition of continued assistance for other household members, a requirement that any household member who engaged in or is culpable for the drug use or alcohol abuse may not reside in the unit.

(*2*) The PHA may require a household member who has engaged in the illegal use of a drug (as defined in § 5.100 of this title), or in alcohol abuse that threatened the health or safety of, or the right to peaceful enjoyment of the premises by, other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program as a condition to being allowed to reside in the unit.

* * * * *

28. In § 966.51, revise paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) and add paragraph (a)(2)(i)(C) to read as follows:

§ 966.51 Applicability.

(a) * * *

(2)(i) * * *

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA;

(B) Any violent or drug-related criminal activity on or near such premises; or

(C) Any criminal activity that resulted in felony conviction of a household member.

* * * * *

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

29. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

30. Amend § 982.4 as follows:

a. Remove the definitions of *drug-related criminal activity, drug-trafficking,* and *violent criminal activity* from paragraph (b);

b. Add definitions of "covered person" and "household" to paragraph (b), in alphabetical order; and

c. Revise paragraph (a)(2) to read as follows:

§ 982.4 Definitions.

(a) * * *

(2) *Terms found elsewhere.* The following terms are defined in part 5, subpart A of this title: *1937 Act, drug, drug-related criminal activity, federally assisted housing, MSA, HUD, public housing, Section 8,* and *violent criminal activity.*

* * * * *

(b) * * *

Covered person. A resident, any member of the resident's household, a guest or another person under the resident's control.

* * * * *

Household. The family and any PHA-approved live-in aide.

* * * * *

31. In § 982.54, add a new paragraph (d)(4)(iii) to read as follows:

§ 982.54 Administrative plan.

* * * * *

(d) * * *

(4) * * *

(iii) Standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with § 982.553;

* * * * *

32. In § 982.310, revise paragraph (c) to read as follows:

§ 982.310 Owner termination of tenancy.

* * * * *

(c) *Criminal activity.*—(1) *Evicting drug criminals.*—(i) *Drug crime on or near the premises.* During the term of the lease, the owner may terminate tenancy if any covered person has engaged in any drug-related criminal activity on or near the premises, including cases where:

(A) A covered person has engaged in drug-trafficking; or

(B) A covered person has engaged in illegal use of a drug, as defined in § 5.100 of this title, (including cases where the owner determines that illegal use or pattern of illegal use of a drug by a household member may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents).

(2) *Evicting other criminals.*—(i) *Threat to other residents.* During the term of the lease, the owner may terminate tenancy for any of the following types of criminal activity by a covered person:

(A) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);

(B) Any criminal activity that threatens the health, safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises; or

(C) Any violent criminal activity on or near the premises.

(ii) *Fugitive felon or parole violator.* During the term of the lease, the owner may terminate the tenancy if a member of the household is:

(A) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(B) Violating a condition of probation or parole imposed under Federal or State law.

(3) *Evidence of criminal activity.* The owner may terminate tenancy for criminal activity by a family member if the owner determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

* * * * *

33. Amend § 982.551 by redesignating paragraph (m) as paragraph (n); adding a new paragraph (m); and revising paragraph (l) to read as follows:

§ 982.551 Obligations of participant.

* * * * *

(l) *Crime by household members.* The members of the household may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises (see § 982.553).

(m) *Alcohol abuse by household members.* The members of the household must not abuse alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.

* * * * *

34. Amend § 982.552 as amended at 64 FR 26650 effective August 12, 1999, by revising paragraphs (b)(1), (b)(2), and (c)(3), and by adding paragraph (c)(1)(xi), to read as follows:

§ 982.552 PHA denial or termination of assistance for family.

* * * * *

(b) *Requirement to deny admission or terminate assistance.* (1) The PHA may deny admission to the program for a reasonable time period determined by the PHA if any household member has been evicted from federally assisted housing for serious violation of the lease (other than eviction for drug-related criminal activity. For provisions on eviction for drug-related criminal activity, see § 982.553).

(2) The PHA may terminate program assistance for a household evicted from housing assisted under the program for serious violation of the lease (other than an eviction for drug-related criminal activity).

* * * * *

(c) *Authority to deny admission or terminate assistance.*

(1) * * *

(xi) For denial or termination of assistance for crime or alcohol abuse by household members, see § 982.553.

* * * * *

(3) *Exclusion of family members.* In determining whether to deny admission or terminate assistance in accordance with paragraphs (c)(1) or (c)(2) of this section, the PHA may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure will not reside in the unit. The PHA may permit the other members of a participant family to continue receiving assistance.

* * * * *

35. Revise § 982.553 to read as follows:

§ 982.553 Denial of admission or termination of assistance for criminals and alcohol abusers.

(a) *Requirement to deny admission.*—(1) *Prohibiting admission of drug criminals.* (i) The PHA must establish standards that prohibit admission of a household to the program if:

(A) the PHA determines that any household member is currently engaging in or has engaged in drug-related criminal activity; or

(B) the PHA determines that it has reasonable cause to believe that illegal drug use or a pattern of illegal drug use by a household member may adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) The PHA may require the household to submit sufficient evidence, as determined by the PHA, that the members of the household have not engaged in drug-related criminal activity during a reasonable period, as determined by the PHA, before admission to the program.

(iii) The PHA must prohibit admission to the program if any household member has been evicted from federally assisted housing for drug-related criminal activity. This prohibition applies during a reasonable period, as determined by the PHA, which is at least three years from the date of the judicial determination authorizing the eviction. The PHA may admit a household if the PHA determines:

(A) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(B) That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(iv) The PHA must establish standards that permanently prohibit admission to the program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Prohibiting admission of other criminals.* (i) The PHA may prohibit admission of a household to the program if the PHA determines that any household member is currently engaged in or has engaged in:

(A) Violent criminal activity;

(B) Other criminal activity which may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents;

(C) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

(ii) The PHA may require the household to submit sufficient evidence, as determined by the PHA, that the members of the household have not engaged in such criminal activity during a reasonable period, as determined by the PHA, before admission to the program.

(iii) The PHA must establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement.

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(3) *Prohibiting admission of alcohol abusers.* The PHA must establish standards that prohibit admission to the program if the PHA determines that it has reasonable cause to believe that abuse or pattern of abuse of alcohol by a household member may adversely affect the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(b) *Terminating assistance.*—(1) *Terminating assistance for drug criminals.*—(i) *Standards.* The PHA must establish standards that allow the PHA to terminate assistance for a family under the program if the PHA determines that any household member has engaged in drug-related criminal activity.

(ii) *Methamphetamine conviction—termination of assistance.* The PHA must immediately terminate assistance for a family under the program if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Terminating assistance for other criminals.*—(i) *Standards.* The PHA must establish standards that allow the PHA to terminate assistance for a family if the PHA determines that any household member has engaged in violent criminal activity.

(ii) *Fugitive felon or parole violator.* The lease must provide that the PHA may terminate assistance for a family if the PHA determines that a member of the household is:

(A) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(B) Violating a condition of probation or parole imposed under Federal or State law.

(3) *Terminating assistance for alcohol abusers.* The PHA must establish standards that allow termination of assistance for a family if the PHA determines that household member has engaged in abuse or pattern of abuse of alcohol that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(c) *Evidence of criminal activity.* The PHA may deny admission or terminate assistance for criminal activity by a household member as authorized in this section if the PHA determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

(d) *Use of criminal record.* If a PHA proposes to deny admission for criminal activity as shown by a criminal record, the PHA must provide the family with a copy of the criminal record before a PHA informal review of such decision in accordance with § 982.554. If a PHA proposes to terminate assistance for criminal activity as shown by a criminal record, the PHA must provide the family with a copy of the criminal record before a PHA hearing in accordance with § 982.554. The family must be given an opportunity to dispute the accuracy and relevance of that record. For denial of admission, the PHA must provide such opportunity in the informal review process in accordance with § 982.554. For termination of assistance, the PHA must provide such opportunity in accordance with § 982.555.

(e) *Drug use or alcohol use: PHA discretion.* (1) *Consideration of rehabilitation.* In determining whether to deny admission or terminate assistance for illegal drug use by a household member who is no longer engaging in such use, or for alcohol abuse by a household member who is no longer engaging in such abuse, the PHA may consider whether the household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

(2) *Conditions for admission or continued assistance.* (i) In determining whether to deny admission or terminate assistance for illegal use of a drug by a household member, or for alcohol abuse by a household member, the PHA may impose, as a condition of admission to, or continued assistance in the program for other family members, a requirement that the family member who engaged in or is culpable for such use or abuse may not reside in the unit.

(ii) The PHA may require a household member who has engaged in the illegal use of a drug (as defined in § 5.100 of this title), or in alcohol abuse that threatened the health or safety of, or the right to peaceful enjoyment of the premises by, other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program as a condition of continued assistance.

Dated: July 16, 1999.

Andrew Cuomo,

Secretary.

[FR Doc. 99–18801 Filed 7–22–99; 8:45 am]

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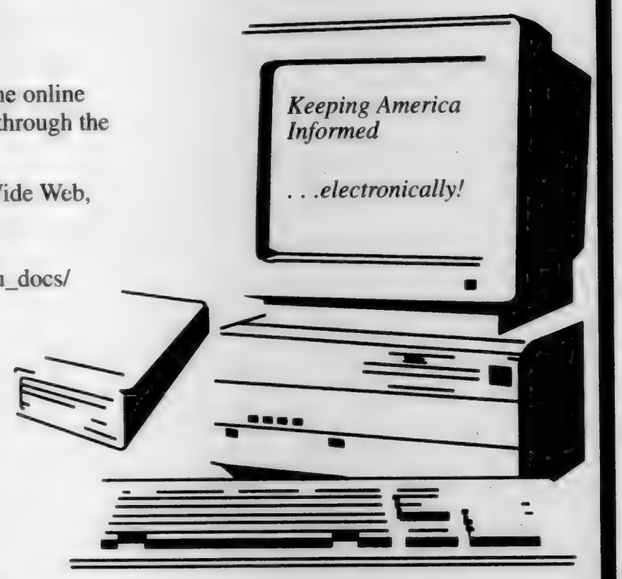

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Rules and Regulations

Federal Register
Vol. 64, No. 142
Monday, July 26, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–082–5]

Mexican Fruit Fly Regulations; Removal of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by removing the regulated portion of San Diego County, CA, from the list of regulated areas. We have determined that the Mexican fruit fly has been eradicated from this area and that restrictions on the interstate movement of regulated articles from this area are no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. This action relieves unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area. As a result of this action, there are no longer any areas regulated for the Mexican fruit fly in the State of California.

DATES: This interim rule is effective as of July 25, 1999. We invite you to comment on this docket. We will consider all comments that we receive by September 24, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–082–5, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–082–5.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Invasive Species and Pest Management Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247; or e-mail: michael.b.stefan@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas. The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), quarantine infested States, designate regulated areas, and restrict the interstate movement of specified fruits and other regulated articles from regulated areas in order to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. Quarantined States are listed in § 301.64(a), and regulated areas are listed in § 301.64–3(c).

In an interim rule effective August 10, 1998, and published in the **Federal Register** on August 14, 1998 (63 FR 43603–43604, Docket No. 98–082–1), we amended the Mexican fruit fly regulations by designating a portion of the El Cajon area of San Diego County, CA, as a regulated area. In a second interim rule effective October 16, 1998, and published in the **Federal Register** on October 22, 1998 (63 FR 56537–56539, Docket No. 98–082–2), we designated a portion of the San Diego area of San Diego County, CA, as a regulated areas. In a third interim rule effective November 16, 1998, and published in the **Federal Register** on November 20, 1998 (63 FR 64409–64411, Docket No. 98–082–3), we expanded the regulated area in the San Diego area of San Diego County, CA. In a fourth interim rule effective June 9, 1999, and published in the **Federal Register** on June 15, 1999 (64 FR 31964–31966, Docket No. 98–083–4), we amended the Mexican fruit fly regulations by removing the regulated portion of the El Cajon area in San Diego County, CA, from the list of regulated areas.

Based on insect trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Mexican fruit fly has been eradicated from the San Diego area of San Diego County, CA. The last finding of Mexican fruit fly thought to be associated with the infestation in this area was made on December 21, 1998.

Since then no evidence of Mexican fruit fly infestations has been found in this area. Therefore, we are removing this area from the list of areas in § 301.64–3(c) that are regulated because of the Mexican fruit fly. As a result of this action, there are no longer any areas in California regulated because of the Mexican fruit fly. Because we have determined that the Mexican fruit fly no longer exists in California, we are removing California from the list in § 301.64(a) of States quarantined because of the Mexican fruit fly.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the public. The area in California affected by this document was regulated due to the possibility that the Mexican fruit fly could spread to noninfested areas of the United States. Since this situation no longer exists, the continued regulated status of this area would impose unnecessary restrictions.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60

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days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule removes restrictions on the interstate movement of regulated articles from a portion of San Diego County, CA. Within this regulated area, there are 265 small entities that may be affected by this rule. These include 210 fruit sellers, 12 nurseries, 16 wholesale distributors, 1 grower, 4 mobile fruit vendors, 2 farmer's markets, and 20 farmer's market vendors. These 265 entities comprise less than 1 percent of the total number of similar enterprises operating in the State of California.

These small entities sell regulated articles primarily for local intrastate, not interstate, movement, and the distribution of these articles was not affected by the regulatory provisions we are removing. Many of these entities also handle other items in addition to the previously regulated articles. The effect on those few entities that move regulated articles interstate was minimized by the availability of various treatments that, in most cases, allowed these small entities to move regulated articles interstate with very little additional cost. Therefore, the effect, if any, of this rule on these entities appears to be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has not retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subject in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.64 [Amended]

2. In § 301.64, paragraph (a) is amended by removing the phrase "the States of California and Texas" and by adding the phrase "the State of Texas" in its place.

§ 301.64–3 [Amended]

3. In § 301.64–3, paragraph (c) is amended by removing the entry for California and the description of the regulated area for San Diego County, CA.

Done in Washington, DC, this 20th day of July 1999.

William R. DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–18980 Filed 7–23–99; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 114

Administrative Claims Under the Tort Claims Act and Representations and Indemnification of SBA Employees

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: With this rule, SBA revises a portion of its regulations governing Administrative Claims under the Tort Claims Act. Previously, a claim had to be presented to the SBA District Counsel for the SBA District Office in the same State as the claim. The SBA District Counsel had the authority to deny a tort claim of $5,000 or less or to recommend any other action to the SBA General Counsel. This final rule provides the same authority to Disaster Area Counsel when the claim is based on the acts or omissions of employees of SBA's Disaster Assistance Program. It also vests authority to approve or deny a tort claim of $25,000 or less with SBA's Associate General Counsel for Litigation, rather than the General Counsel.

DATES: This rule is effective July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Timothy C. Treanor, Chief Counsel to the Disaster Assistance Program, Office of General Counsel, at (202) 205–6885.

SUPPLEMENTARY INFORMATION: SBA promulgates, without change, a rule which it proposed on April 29, 1999 (64 FR 23027). SBA received no comments to the proposed rule.

Under the Disaster Assistance Program, SBA makes direct loans to individual and business victims of natural disasters. SBA makes these loans through an organizational structure that is separate and distinct from other SBA lending programs. The Disaster Assistance Program operates from four permanent Area Offices and from temporary local offices that are from time to time established to handle such disasters. SBA's Disaster Area Office employees and local office employees are located in different offices from other SBA employees and report to different managers.

Under the previous regulation, SBA's District Counsels who are not located in disaster offices had exclusive authority to investigate any claim arising within the jurisdiction covered by their Districts, including claims based on acts or omissions of Disaster Assistance employees. District Counsels also had the authority to deny or recommend approval of a claim for $5,000 or less. Under the previous regulation, District Counsels investigated claims exceeding $5,000 but less than $25,000 and forwarded them with a recommendation to SBA's General Counsel.

Under the new regulation, a claimant may file a tort claim against SBA for the acts or omissions of an employee of SBA's Disaster Assistance Program either at the State's District Office (the one closest to the site of the injury if there is more than one District Office) or at the nearest Disaster Area Office. The new regulation provides authority identical to that of the District Counsel to the Disaster Area Counsel to investigate and make recommendations concerning claims arising from a Disaster Assistance employee's acts or omissions. It also vests the Associate General Counsel for Litigation with the authority to decide claims of $25,000 or less, which is in line with the Agency's current practice.

The new regulation also removes inaccurate language from § 114.105 concerning the requirement that District Counsel consult with the General Counsel before approving claims for less than $5,000 (the District Counsel does not have the authority to approve such claims).

The new regulation also removes unnecessary language from §§ 114.106 and 114.108 which purport to characterize § 114.107, and makes other, minor, technical changes.

Compliance With Executive Orders 12612, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule does not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601–612. It merely changes SBA's internal procedures and serves to make tort claim resolution more accessible to the general public. It will not have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule has no federalism implications warranting the preparation of a federalism assessment.

For purposes of Executive Order 12988, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 3 of that Order.

List of Subjects in 13 CFR Part 114

Tort claims.

For the reasons stated in the preamble, the SBA amends 13 CFR part 114 as follows:

PART 114—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND REPRESENTATION AND INDEMNIFICATION OF SBA EMPLOYEES

Subpart A—Administrative Tort Claims

1. The authority citation for part 114 continues to read as follows:

Authority: 15 U.S.C. 634 (b)(1), (b)(6); 28 U.S.C. 2672; 28 CFR 14.11.

2. Revise § 114.102 to read as follows:

§ 114.102 When, where and how do I present a claim?

(a) *When.* You must present your claim within 2 years of the date of accrual.

(b) *Where.* You may present your claim at the SBA District Office nearest to the site of the action giving rise to the claim and within the same state as the site. If your claim is based on the acts or omissions of an employee of SBA's Disaster Assistance Program, you may present your claim either to the appropriate SBA District Office or to the Disaster Assistance Office nearest to the site of the action giving rise to the claim.

(c) *How.* You must use an official form which can be obtained from the SBA office where you file the claim or give other written notice of your claim, stating the specific amount of your alleged damages and providing enough information to enable SBA to investigate your claim. You may present your claim in person or by mail, but your claim will not be considered presented until SBA receives the written information.

3. In § 114.105, revise paragraphs (b) and (c) to read as follows:

§ 114.105 Who investigates and considers my claim?

* * * * *

(b) In those cases in which SBA investigates your claim, and which arise out of the acts or omissions of employees other than employees of the Disaster Assistance Program, the SBA District Counsel in the office with jurisdiction over the site where the action giving rise to the claim occurred will investigate and make recommendations or determination with respect to your claim. In those cases in which SBA investigates your claim, and which arise out of acts or omissions of Disaster Assistance Program employees, the SBA Disaster Area Counsel in the office with jurisdiction over the site where the action giving rise to the claim occurred will investigate and make recommendations or a determination with respect to your claim. The District Counsel, or Disaster Area Counsel, where appropriate, may negotiate with you, and is authorized to use alternative dispute resolution mechanisms, which are nonbinding on SBA, when they may promote the prompt, fair and efficient resolution of your claim.

(c) If your claim is for $5,000 or less, the District Counsel or Disaster Area Counsel who investigates your claim may deny the claim, or may recommend approval, compromise, or settlement of the claim to the Associate General Counsel for Litigation, who will in such a case take final action.

4. Revise § 114.106 to read as follows:

§ 114.106 What if my claim exceeds $5,000?

The District Counsel or Disaster Area Counsel, as appropriate, must review and investigate your claim and forward it with a report and recommendation to the Associate General Counsel for Litigation, who may approve or deny an award, compromise, or settlement of claims in excess of $5,000, but not exceeding $25,000.

5. Revise § 114.108 to read as follows:

§ 114.108 What if my claim is approved?

SBA will notify you in writing if it approves your claim. The District Counsel or Disaster Area Counsel investigating your claim will forward to you, your agent or legal representative the forms necessary to indicate satisfaction of your claim and your acceptance of the payment. Acceptance by you, your agent or your legal representative of any award, compromise or settlement releases all your claims against the United States under the Federal Tort Claims Act. This means that it binds you, your agent or your legal representative, and any other person on whose behalf or for whose benefit the claim was presented. It also constitutes a complete release of your claim against the United States and its employees. If you are represented by counsel, SBA will designate you and your counsel as joint payees and will deliver the check to counsel. Payment is contingent upon the waiver of your claim and is subject to the availability of appropriated funds.

Dated: July 20, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–18951 Filed 7–23–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–06–AD; Amendment 39–11234; AD 99–15–13]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASH 26E Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

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SUMMARY: This amendment supersedes Airworthiness Directive (AD) 98–09–09, which currently requires replacing the internal cooling air fan with a fan that incorporates a white impeller on all Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model ASH 26E sailplanes. This AD requires inspecting the internal cooling air fan for damage, and replacing any fan that does not incorporate a black impeller with a fan that incorporates a black impeller either immediately or at a certain time period, depending on the results of the inspection. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent failure of the internal cooling system air fan caused by a certain design configuration of the impeller, which could cause the engine to overheat with possible engine failure.

DATES: Effective September 13, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 13, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–06–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Alexander Schleicher Model ASH 26E sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 26, 1999 (64 FR 20231). The NPRM proposed to supersede AD 98–09–09, Amendment 39–10489 (63 FR 20308, April 24, 1998). AD 98–09–09 currently requires replacing the internal cooling air fan with a fan that incorporates a white impeller, part number (P/N) R1K059.

The NPRM proposed to require inspecting the internal cooling air fan for damage, and replacing any fan that does not incorporate a black impeller, P/N R1K074, with a fan that incorporates a P/N R1K074 impeller. The replacement would be accomplished either immediately or at a certain time period, depending on the results of the inspection.

Accomplishment of the proposed actions as specified in the NPRM would be required in accordance with Alexander Schleicher Technical Note No. 5 , dated July 23, 1998, and Mid-West Service Bulletin No. 002, dated November 13, 1997.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Differences Between the Service Bulletin, the German AD, and This AD

Alexander Schleicher Technical Note No. 5, dated July 23, 1998, specifies inspecting the internal air cooling air fan prior to further flight, and German AD 1998–391, dated October 8, 1998, requires the inspection prior to further flight on sailplanes registered in Germany.

The FAA does not have justification to require the inspection prior to further flight. The FAA is utilizing the inspection compliance time of "within the next 30 calendar days after the effective date of the AD." The FAA is utilizing the replacement compliance time of "within the next 9 calendar months after the effective date of the AD", or if damage is found during the inspection, "prior to further flight."

Compliance Time of This AD

Although a damaged impeller blade is only unsafe while the affected sailplanes are in flight, the condition could occur at any time. For example, damage could occur on one sailplane with 25 hours time-in-service (TIS) while not occurring on another until 250 hours TIS. This is due to different usage levels and the various ways sailplanes are operated and utilized. In addition, the average monthly usage of the affected sailplane ranges throughout the fleet. For example, one owner may operate the sailplane 25 hours TIS in one week, while another owner may operate the sailplane 25 hours TIS in one year. In order to assure that the unsafe condition is detected and corrected on all affected sailplanes in a timely manner without inadvertently grounding any affected sailplane, the FAA is utilizing compliance based on calendar time instead of hours TIS.

Cost Impact

The FAA estimates that 9 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 14 workhours per sailplane to accomplish this AD, and that the average labor rate is approximately $60 an hour. Parts are available from the manufacturer at no cost. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $7,560, or $840 per sailplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 98–09–09, Amendment 39–10489 (63 FR 20308, April 24, 1998), and by adding a new airworthiness directive (AD) to read as follows:

99–15–13 Alexander Schleicher Segelflugzeugbau: Amendment 39–11234; Docket No. 99–CE–06–AD; Supersedes AD 98–09–09; Amendment 39–10489.

Applicability: Model ASH 26E sailplanes, all serial numbers, certificated in any category; that are equipped with an internal cooling system air fan that does not incorporate a black impeller, part number (P/N) R1K074.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the internal cooling system air fan caused by a certain design configuration of the impeller, which could cause the engine to overheat with possible engine failure, accomplish the following:

(a) Within the next 30 calendar days after the effective date of this AD, inspect the internal cooling air fan for damage in accordance with Alexander Schleicher Technical Note No. 5, dated July 23, 1998.

(b) Replace the internal cooling system air fan with a fan that incorporates a black impeller, P/N R1K074, at whichever of the compliance times below (paragraphs (b)(1) and (b)(2) of this AD) that applies. Accomplish this replacement in accordance with Mid-West Service Bulletin No. 002, dated November 13, 1997:

(1) Prior to further flight if damage is found in the internal cooling air fan during the inspection required by paragraph (a) of this AD; or

(2) Within the next 9 calendar months after the effective date of this AD if damage is not found during the inspection required by paragraph (a) of this AD.

(c) As of the effective date of this AD, no person may install, on any affected sailplane, an internal cooling system air fan that does not incorporate a black impeller, P/N R1K074, as specified in Mid-West Service Bulletin No. 002, dated November 13, 1997; and Alexander Schleicher Technical Note No. 5, dated July 23, 1998.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) Questions or technical information related to Alexander Schleicher Technical Note No. 5 , dated July 23, 1998, and Mid-West Service Bulletin No. 002, dated November 13, 1997, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) The inspection required by this AD shall be done in accordance with Alexander Schleicher GmbH & Co. Technical Note No. 5, dated July 23, 1998. The replacement required by this AD shall be done in accordance with Mid-West Engines Ltd. Service Bulletin No. 002, dated November 13, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 1998–391, dated October 8, 1998.

(h) This amendment supersedes AD 98–09–09, Amendment 39–10489.

(i) This amendment becomes effective on September 13, 1999.

Issued in Kansas City, Missouri, on July 14, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18625 Filed 7–23–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–23]

RIN 2120–AA66

Establishment of VOR Federal Airways; WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; establishment of effective date.

SUMMARY: On July 22, 1998, the FAA published a final rule in the **Federal Register** that revised Federal Airways V–165 and V–287 located in the State of Washington. Federal Airway V–165 was revised to establish a route between the Olympia Very High Frequency Omnidirectional Range/Tactical Air Navigation System (VORTAC) to the Penn Cove VOR, to Bellingham, WA. Federal Airway V–287 was revised to establish a route from the Paine VORTAC to the Penn Cove VOR. On August 14, 1998, the effective date of these airway revisions was delayed to permit the FAA to conduct additional flight inspections. This action establishes the effective date for V–165 and V–287 as September 9, 1999.

EFFECTIVE DATE: The effective date of the final rule published at 63 FR 39234 and delayed at 63 FR 43622 is 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On May 5, 1998, the FAA published a Notice of Proposed Rulemaking in the **Federal Register** inviting comments on a proposal to revise V–165 and V–287 in the State of Washington (63 FR 24764).

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The proposed revisions would improve the FAA in management of air traffic operations in the State of Washington. No comments were received in response to the proposal.

On July 22, 1998, the FAA published a final rule amending 14 CFR part 71, revising V–165 and V–287 in the State of Washington (63 FR 39234). However, on August 14, 1998 the FAA delayed the effective date for the revisions to conduct additional flight inspections (63 FR 43622). This final rule establishes an effective date of September 9, 1999, for the implementation of changes to V–165 and V–287 in the State of Washington.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Effective Date

The effective date of the final rule, Airspace Docket No. 97–ANM–23, as published in the **Federal Register** on July 22, 1998 (63 FR 39234), and delayed on August 14, 1998 (63 FR 43622) is 0901 UTC September 9, 1999.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Washington, DC, on July 14, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–18565 Filed 7–23–99; 8:45 am]

BILLING CODE 4910–13–P

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: By interim rule published June 26, 1998 (63 FR 34808) the Agency adopted a fee sufficient for it to recover the full cost of its administrative processing of request for waiver of the two-year return to the home country requirement set forth in section 212(e) of the Immigration and Naturalization Act (8 U.S.C. 1182(e)). Such interim rule is hereby adopted as final without change.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, United States Information Agency, 301 4th Street, SW, Washington, DC 20547; telephone, (202) 619–6531.

SUPPLEMENTARY INFORMATION: The Agency has determined that its review of and recommendation regarding requests for the waiver of the two-year return to the home country requirement imposed by 8 U.S.C. 1182(e) confers a specific benefit to the requesting individual. Accordingly, a fee sufficient to recoup the costs of conferring this specific benefit is appropriate. The Agency identified all administrative tasks associated with the administrative processing of a waiver application and determined that the per unit cost of processing a waiver application is $136.

In publishing its interim rule the Agency provided a thirty day public comment period and received four comments. All comments were well reasoned and suggested that the fee should vary according to the statutory basis upon which the application was presented. The assumption underlying these comments was that significantly more or less work is involved in the review and recommendation of waiver cases depending upon the basis of the application. The Agency has examined this suggestion and determines that all waiver and recommendations require that the Agency receive the waiver application, record the fee, input the application data, manage assorted records, adjudicate the application, prepare outgoing correspondence, and respond to various inquiries regarding the application. Accordingly, the administrate cost associated with the processing of these various waiver requests varies little if at all and the $136 unit cost is the appropriate fee for all waiver applications.

A second comment theme to the comments received regarded the segregation of the fee monies collected for use by the administrative processing unit responsible for waiver application. As explained in the interim rule, the Government may recoup the full cost of administrative processing, but not more. Pursuant to statute and Executive Branch directive, the fee collected must be used to pay the costs of the administrative unit responsible for the processing of the applications.

Finally, the comments suggested that the Agency clarify that no fee is required for an advisory opinion request. The Agency does not anticipate imposing a fee for advisory opinions and does not consider an advisory opinion to confer a specific and identifiable benefit upon an individual for which a fee may be lawfully imposed.

List of Subjects in 33 CFR Part 514

Cultural Exchange Programs.

Les Jin,

General Counsel.

Accordingly, the interim rule amending 22 CFR part 514, published at 63 FR 34808 on June 26, 1998 is adopted as a final rule without change.

[FR Doc. 99–18987 Filed 7–23–99; 8:45 am]

BILLING CODE 8230–01–M

NATIONAL MEDIATION BOARD

29 CFR Parts 1203, 1205 and 1209

Adminstrative Corrections

AGENCY: National Mediation Board.

ACTION: Final rule.

SUMMARY: The National Mediation Board is making minor administrative corrections at various locations in its regulations. None of the corrections will affect the substance of any provision in the regulations.

DATES: This rule is effective July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Ronald M. Etters, General Counsel, National Mediation Board, Washington, DC 20572, Telephone (202) 692–5040.

SUPPLEMENTARY INFORMATION: Because these changes are minor and do not affect the substance of 29 CFR, we are publishing this rule as a final rule with no opportunity for public comment.

List of Subjects

29 CFR Part 1203

Administrative practice and procedure, Air carriers, Labor management relations.

29 CFR Part 1205

Air carriers, Railroads.

29 CFR Part 1209

National Mediation Board, Sunshine Act.

Accordingly, the National Mediation Board is amending 29 CFR parts 1203, 1205, and 1209 as follows:

PART 1203—APPLICATIONS FOR SERVICE

1. The authority citation for part 1203 continues to read as follows:

Authority: 44 Stat. 577, as amended; 45 U.S.C. 151–163.

§ 1203.1 [Amended]

2. Section 1203.1 is amended in the first sentence by removing the word "Secretary" and adding in its place the words "Chief of Staff's Office or on the Internet at www.nmb.gov". The last sentence is amended by revising "Board's officer" to read "Board's offices".

§ 1203.2 [Amended]

3. Section 1203.2 is amended in the first sentence by revising "Executive Secretary" to read "Representation and Legal Department or on the Internet at www.nmb.gov".

§ 1203.3 [Amended]

4. Section 1203.3 is amended in paragraph (a) by revising "Secretary" to read "Chief of Staff".

PART 1205—NOTICES IN RE: RAILWAY LABOR ACT

5. The authority citation for part 1205 continues to read as follows:

Authority: 44 Stat. 577, as amended; 45 U.S.C. 151–163.

§ 1205.4 [Amended]

6. Section 1205.4 is amended by removing the "s" in "Acts".

PART 1209—PUBLIC OBSERVATION OF NATIONAL MEDIATION BOARD MEETINGS

7. The authority citation for part 1209 is revised to read as follows:

Authority: 5 U.S.C. 552(b)(g).

§ 1209.7 [Amended]

8. In § 1209.7(f) remove the words "Executive Secretary" and add in their place, the words "Chief of Staff".

§ 1209.8 [Amended]

9. In § 1209.8(d) remove the words "Executive Secretary" and add in their place, the words "Chief of Staff".

Dated: July 19, 1999.

Stephen E. Crable,

Chief of Staff.

[FR Doc. 99–18939 Filed 7–23–99; 8:45 am]

BILLING CODE 7550–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN96–1a; FRL–6401–9]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving temporary revised opacity limits for two processes at ALCOA Warrick Operations, which were submitted by the Indiana Department of Environmental Management (IDEM) on December 8, 1998, as amendments to its State Implementation Plan (SIP). ALCOA Warrick Operations is a primary aluminum smelter located in Newburgh, Indiana. The revised limits allow for higher opacity emissions during fluxing operations at two holding furnaces for a period of one year. The temporary limits for the #1 and #8 complexes expire on May 26, 1999, and June 15, 1999, respectively. Mass emissions limits are not being changed.

DATES: This rule is effective on September 24, 1999, unless EPA receives adverse written comments by August 25, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at: Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean EPA.

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I. What Is the EPA Approving?

We are approving as SIP revisions temporary revised opacity limits for two processes at ALCOA Warrick Operations, which were submitted by IDEM on December 8, 1998. The revised limits allow for higher opacity emissions during fluxing operations at two holding furnaces for a period of one year. The temporary limits for the #1 and #8 complexes expire on May 26, 1999, and June 15, 1999, respectively.

II. What Facilities/Operations Does This Action Apply to?

We are approving temporary revised opacity limits for two processes at ALCOA Warrick Operations. ALCOA Warrick Operations is a primary aluminum smelter located in Newburgh, Indiana. Molten aluminum is transferred from the melt furnaces into the holding furnaces for final fluxing, then cast into slabs. There are no particulate matter (PM) control devices for these processes. Emissions are exhausted through ventilation hoods to the exhaust stacks for each holding furnace. The revised limits apply to the #1 Complex (the Horizontal Direct Chill Casting, or HDC) and the #8 Complex (the Electromagnetic Casting, or EMC).

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III. What Are the Provisions of the Temporary Opacity Limits?

The temporary limits for both the #1 complex and the #8 complex were contained in a variance issued by IDEM on May 8, 1998. The limit on the #8 complex was revised on May 28, 1998. These revised limits became effective in Indiana 18 days after being issued, and are effective for one year. The temporary limits for the #1 and #8 complexes expire on May 26, 1999, and June 15, 1999, respectively.

The revised limits allow emissions with an opacity up to 80 percent during the fluxing portion of the production cycle from the East and West holding furnace exhaust stacks at the #1 Complex (HDC). This opacity is allowed for no more than 6 six-minute averaging periods, and only during fluxing. For all other portions of the production cycle, the limit remains at 40 percent. Fluxing lasts approximately 12–15 minutes of the 5–10 hour production cycle for the HDC.

For the East and West holding furnace exhaust stacks at the #8 Complex (EMC), the revised limit allows opacity during fluxing up to 95 percent for 2 six-minute averaging periods, and up to 90 percent opacity for an additional 4 six-minute averaging periods. During all other portions of the production cycle, the opacity of emissions from the EMC continues to be limited to 40 percent. Fluxing lasts approximately 12–15 minutes of the 3–4 hour production cycle for the EMC.

Mass PM emissions remain the same.

IV. What Are the Current Limits on These Sources?

These processes are currently covered by SIP rule Title 326 Indiana Administrative Code, Article 5, Rule 1, Section 2 (326 IAC 5–1–2), which provides a 40 percent opacity limit.

They are also covered by a SIP mass emission limit contained in 326 IAC 6–3–2. This regulation provides for a limit based on the process rate.

V. What Supporting Materials Did Indiana Provide?

Indiana provided stack test data and opacity readings. Stack tests were conducted by ALCOA to show that the revised opacity limit would still be protective of the SIP mass PM emission limits. ALCOA conducted two rounds of stack tests, and opacity readings were taken during fluxing for many of the runs.

The first round measured emissions of PM over the entire production cycle. (The production cycle lasts 5–10 hours for the HDC and 3–4 hours for the EMC.) Nine test runs were conducted on each exhaust stack. Fluxing was conducted for 35 minutes during each run, to approximate a worst-case scenario. (Fluxing normally lasts only 12–15 minutes.)

These tests showed PM emission rates of 17–32 pounds per hour (lbs/hr) and 1–3 lbs/hr for the HDC East and West holding furnaces, respectively. This compares to SIP limits of 31–44 lbs/hr for the East furnace and 14–28 lbs/hr for the West furnace. (Limits vary because they are based on production rate.)

For the EMC, measured emissions ranged from about 4–7 lbs/hr for the East holding furnace and about 4–10 lbs/hr for the West holding furnace. Limits for the EMC were about 49 lbs/hr for the East furnace and 47–53 lbs/hr for the West furnace.

During fluxing, 6-minute average opacity readings ranged from about 20–95 percent for the EMC, with an average of about 70 percent. For the HDC, 6-minute average opacity readings ranged from about 10–80 percent, with an average of about 50 percent.

The second round of tests was conducted for only one hour of the production cycle each, including the fluxing portion of the cycle. These tests were designed to show compliance with mass PM emissions limits on a one-hour basis. The tests include the fluxing portion of the cycle since fluxing produces the bulk of emissions from the holding furnaces. 3–12 test runs were conducted on each exhaust stack. During these tests, fluxing was also conducted for a "worst-case" time of 35 minutes. Opacity readings were taken during many of the runs.

These tests showed PM emission rates of 11–32 pounds per hour (lbs/hr) and 8–13 lbs/hr for the HDC East and West holding furnaces, respectively. This compares to limits of 17–37 lbs/hr for the East furnace and 12–20 lbs/hr for the West furnace. (Limits vary because they are based on production rate.) For the EMC, measured emissions ranged from about 7–15 lbs/hr for the East holding furnace and about 10–15 lbs/hr for the West holding furnace. Limits for the EMC were about 38–44 lbs/hr for the East furnace and 41–44 lbs/hr for the West furnace.

The tests show that ALCOA can meet SIP mass emissions limits at the EMC and HDC holding furnace stacks during fluxing. Even though opacity was often high during fluxing, no violations of the SIP mass PM emissions limits were measured. The tests indicate that the temporary revised opacity limits will not allow violations of the mass limits for these sources.

VI. What Are the Environmental Effects of This Action?

While they are in effect, the temporary revised opacity limits will allow darker smoke to be emitted than does the current SIP rule. However, since no mass limits are being revised, and since the temporary revised opacity limits are protective of the current mass limits, this SIP revision should not jeopardize air quality.

VII. EPA Rulemaking Action

We are approving, through direct final rulemaking, temporary revised opacity limits for two processes at ALCOA Warrick Operations. We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse written comment by August 25, 1999. Should we receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, you are advised that this action will be effective on September 24, 1999.

It should be noted that the applicable period of these temporary opacity limits is wholly in the past. Therefore, we must judge whether the variance warrants inclusion as a codified element of the Indiana SIP. We are undertaking an effort to revise the presentation of SIPs in a manner that more clearly identifies the enforceable elements of each SIP. Part of this effort is to eliminate referencing of temporary limits that have expired. The temporary opacity limits for ALCOA alter the opacity limits to be enforced for approximately one year, but have no effect on the current regulations governing emissions at this facility. Consequently, we are not codifying the temporary opacity limits for ALCOA as part of the Indiana SIP.

VIII. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this rulemaking action under section 801 because this is a rule of particular applicability.

H. Paperwork Reduction Act

This action does not contain any information collection requirements which requires OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary

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consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter.

Dated: July 9, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–18870 Filed 7–23–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 260, 261, 262, 263, 264, and 265

Temporary Assistance for Needy Families (TANF) Program

AGENCY: Administration for Children and Families, Office of Family Assistance, HHS.

ACTION: Technical and correcting amendments.

SUMMARY: This document contains technical correcting amendments to the Temporary Assistance for Needy Families final rule published on April 12, 1999 (64 FR 17720). The final rule implements key statutory provisions related to work, penalties, and data collection.

DATES: Effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ann Burek, Office of Family Assistance, 202–401–4528.

SUPPLEMENTARY INFORMATION:

I. Background

We published the final rule on the Temporary Assistance for Needy Families (TANF) program on April 12, 1999 in the **Federal Register** (64 FR 17720). The purpose of the final rule is to implement key provisions of the new welfare block grant program, which was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The effective date of the rule is October 1, 1999.

II. Need for Technical and Correcting Amendments in 45 CFR Parts 260, 261, 262, 263, 264, and 265

This document corrects technical errors and omissions in the preamble and text of the final regulations and refines certain provisions to make them clearer.

A. Regulatory Text

We have made the following changes in the regulatory text:

- In § 260.30, we defined noncustodial parent primarily for the purpose of specifying who must be included under certain reporting provisions in part 265. In fact, although the preamble uses the term in a number of places, part 265 is the only place in the regulation that the term is used. But some readers were assuming that the definition restricted the benefits and services that noncustodial parents might receive. Similarly, the definition created confusion about exactly what needed to be reported if a noncustodial parent was involved. We have refined the definition at § 260.30 to eliminate the confusion and revised the regulatory text at § 265.3 to clearly address the circumstances under which States must report information on noncustodial parents.
- The changes to the heading of § 260.59 correct errors in format.
- In § 261.56, we have inserted a missing quotation mark.
- In § 262.5, we intended to give States that could not meet the reporting deadline for the first two quarters of FY 2000 data, due to Y2K compliance activities, additional time to submit the data and avoid a penalty. While the June 30, 2000, date in the rules gave States an additional 90 days to submit the first quarter's data, it did not give States the intended additional time for the second quarter's data. States that submitted the second quarter's data by June 30 would not have been subject to a reporting penalty under the normal TANF reporting rules and therefore received no additional time for that quarter. This result was inadvertent. In order to provide the additional time that we intended, we should have specified a September 30, 2000, date as the final deadline for States wishing to claim reasonable cause for failing to meet the reporting requirements on a timely basis. Thus, we are making that change as a technical amendment. Corresponding changes should also be made to the preamble references to July 1, 2000, on pages 17804 (column 3) and 17866 (column 1) and the reference to June 30, 2000, on page 17858 (column 3).
- In § 263.2(b)(1)(iii), we have added some statutory language that we had inadvertently omitted from the final rule. It is clear from the statute at section 409(a)(7)(B)(i)(IV) and the preamble discussion on page 17822 (i.e., in the first comment) that the third category of "eligible families," for MOE purposes, includes only "families of aliens lawfully present in the United States" that would be eligible for TANF, but for the alien provisions in PRWORA. We have corrected the regulatory text to reflect this limitation.
- We are also refining § 263.2(d). The regulation at § 260.31(c) provides that the definition of assistance does not apply to the use of the term "assistance" in subpart A of part 263—the subpart that addresses allowable MOE expenditures. The MOE regulation at § 263.2(d) included a similar provision. However, this latter provision referenced only paragraph (a) of § 263.2. Since paragraph (b)(1)(i) also included the term "assistance," readers were unsure whether the definition of assistance applied in paragraph (b)(1)(i). The effect of applying the definition of assistance in paragraph (b)(1)(i) would have been to substantially narrow the number and type of families for whom benefits and services that were not "assistance" would count as MOE.

The language at § 260.31(c) broadly addressed the issue of the applicability of the definition of assistance under that section to the MOE provisions of the rule. Under that provision, the definition of assistance does not limit what is considered assistance in paragraph (b)(1)(i) of § 263.2. However, because readers found the language at § 263.2(d) confusing, we have refined it to reaffirm that the definition of assistance does not limit paragraph (b)(1)(i). The change is a conforming amendment.

- In § 264.3(b), we had omitted the word "because" from the original regulatory text.

- In § 264.10(b), the original regulatory text included a reference to a regulatory section—§ 260.52—that had been repealed. Thus, we corrected the citation for the Income Eligibility and Verification Systems (IEVS) regulations (by replacing this reference with a reference to § 205.60). Corresponding changes should also be made to the references to § 205.62 on page 17849 in both the last paragraph in column one and the first response in column two.
- As already explained, in § 265.3(f), we clarify the circumstances under which States must report information on noncustodial parents.

B. Preamble Language

In addition to the regulatory text changes described above, we note the following correction to the preamble language in the final rule:

In the preamble to § 260.30, we inadvertently omitted some language explaining the new definition of "expenditures" in § 260.30. We are removing the first paragraph at the beginning of the third column on page 17752 of the **Federal Register** notice (i.e., immediately following the heading "(c) Significant Fiscal Terms") and adding the following:

In the final rule, we have added a definition for the term expenditure and added a new § 260.33 to explain the circumstances under which refundable Earned Income Tax Credits and other refundable tax credits would count as expenditures. We felt it was necessary to include a basic definition of expenditure and add this additional regulatory text because, under the statute, Federal TANF funds and State MOE funds must both be used for "expenditures."

We have received many questions from States and other interested parties about whether the costs of State EITC programs and other tax provisions could count as expenditures. The new definition and regulatory text are designed to address these questions.

This subpart also incorporates a number of definitions that have substantial policy significance, which we included for clarification purposes.

For example, it incorporates terms that distinguish among several types of expenditures. These distinctions are critical because the applicability of the TANF requirements varies depending on the source of funds for the expenditures. In particular, it distinguishes between expenditures from the Federal TANF grant and from the State funds expended to meet MOE requirements (either within the TANF program or in separate State programs).

Following is a brief summary of the key fiscal terms:

Expenditure. This term refers to the spending or disbursement of funds. It does not include costs avoided or revenue losses.

Omission of this language had no substantive effect on the policy in the final rule. However, the language is helpful in explaining why we added a definition of expenditure, and the omitted language was referenced in the preamble discussion at § 260.33.

Waiver of Notice and Comment Procedures

The Administrative Procedure Act (5 U.S.C. 55(b)(B)) requires that the Department publish a notice of proposed rulemaking unless the Department finds, for good cause, that such notice is impracticable, unnecessary, or contrary to the public interest. In this instance, the notice affects only technical changes, clarifications, and corrections of text not properly included in the regulations. Accordingly, the Department has determined that it would be unnecessary and contrary to the public interest to use notice and comment procedures in issuing these amendments.

Impact Analysis

No impact analysis is needed for the technical amendments. The impact of the necessary corrections falls within the analysis of the TANF final rule published in the **Federal Register** on April 12, 1999 (64 FR 17873).

List of Subjects in 45 CFR Parts 260, 261, 262, 263, 264, and 265

Administrative practice and procedure, Day care, Employment, Grant programs—social programs, Loan programs—social programs, Manpower training programs, Penalties, Public assistance programs, Reporting and recordkeeping requirements, Vocational education.

(Catalogue of Federal Domestic Assistance Programs: 93.558; TANF programs-State Family Assistance Grants, Assistance grants to Territories, Matching grants to Territories, Supplemental Grants for Population Increases and Contingency Fund; 93.559—Loan Fund; 93.595—Welfare Reform Research, Evaluations and National Studies)

Dated: July 14, 1999.

Kerry Weems,

Acting, Deputy Assistant Secretary for Information Resources Management.

For the reasons set forth in the preamble, 45 CFR parts 260, 261, 262, 263, 264, and 265, published in the **Federal Register** (64 FR 17720) on April 12, 1999, are corrected by making the following technical and correcting amendments:

PART 260—GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROVISIONS

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 601, 601 note, 603, 604, 606, 607, 608, 609, 610, 611, 619, and 1308.

2. In § 260.30, correct the definition of "noncustodial parent" to read as follows:

§ 260.30 What definitions apply under the TANF regulations?

* * * * *

Noncustodial parent means a parent of a minor child who:

(1) Lives in the State; and

(2) Does not live in the same household as the minor child.

* * * * *

3. Correct the heading to § 260.59 to read as follows:

§ 260.59 What penalty relief is available to a State that failed to comply with the five-year limit on Federal assistance because it provided federally recognized good cause domestic violence waivers?

PART 261—ENSURING THAT RECIPIENTS WORK

4. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 601, 602, 607, and 609.

§ 261.56 [Corrected]

5. Correct § 261.56(b)(2)(ii) by adding a quotation mark in front of the words "reasonable distance."

PART 262—ACCOUNTABILITY PROVISIONS—GENERAL

6. The authority citation for part 262 continues to read as follows:

Authority: 31 U.S.C. 7501 *et seq.*; 42 U.S.C. 606, 609, and 610.

§ 262.5 [Corrected]

7. Correct § 262.5(b)(1)(ii) by removing "June 30, 2000" and adding "September 30, 2000" in its place.

PART 263—EXPENDITURES OF STATE AND FEDERAL TANF FUNDS

8. The authority citation for part 263 continues to read as follows:

Authority: 42 U.S.C. 604, 607, 609, and 862a.

9. Correct § 263.2 by revising paragraph (b)(1)(iii) and adding a sentence to the end of paragraph (d) to read as follows:

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§ 263.2 What kinds of State expenditures count toward meeting a State's basic MOE expenditure requirement?

(b) * * *

(1) * * *

(iii) Are lawfully present in the United States and would be eligible for assistance, but for the application of title IV of PRWORA;

* * * * *

(d) * * * Further, families that meet the criteria in paragraphs (b)(2) and (b)(3) of this section are considered to be eligible for TANF assistance for the purposes of paragraph (b)(1)(i) of this section.

* * * * *

PART 264—OTHER ACCOUNTABILITY PROVISIONS

10. The authority citation for part 264 continues to read as follows:

Authority: 31 U.S.C. 7501 *et. seq.*; 42 U.S.C. 609, 654, 1302, 1308, and 1337.

11. Correct § 264.3(b) to read as follows:

§ 264.3 How can a state avoid a penalty for failure to comply with the five-year limit?

* * * * *

(b) In addition, we will determine a State has reasonable cause if it demonstrates that it failed to comply with the five-year limit on Federal assistance because of federally recognized good cause domestic violence waivers provided to victims of domestic violence in accordance with provisions of subpart B of part 260.

§ 264.10 [Corrected]

12. Correct § 264.10(b) by removing "205.62" and inserting "205.60" in its place.

PART 265—DATA COLLECTION AND REPORTING REQUIREMENTS

13. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 603, 605, 607, 609, 611, and 613.

14. Correct § 265.3 by redesignating paragraph (f) introductory test as paragraph (f)(1); redesignating paragraphs (f)(1), (2), and (3) as paragraphs (f)(1)(i), (ii), and (iii), respectively; and adding the following paragraph (f)(2) to read as follows:

§ 265.3 What reports must the State file on a quarterly basis?

* * * * *

(f) * * *

(2) *Reporting conditions.* (i) If the noncustodial parent is the only member of the family receiving assistance, the State must report the disaggregated and aggregated information on the entire family under paragraphs (b) and (d) of this section, as applicable.

(ii) If the noncustodial parent is only participating in work activities that do not constitute assistance (as defined in § 260.31 of this chapter) and the other members of the family are not receiving assistance, the State must report only the aggregated information under paragraph (b)(3) of this section on the noncustodial parent.

[FR Doc. 99–18655 Filed 7–23–99; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–46; RM–9470]

Radio Broadcasting Services; Tecopa, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 291A to Tecopa, California, as that community's first local aural transmission service in response to a petition for rule making filed by Hodson Broadcasting. *See* 64 FR 8781 February 23, 1999. Coordinates used for Channel 291A at Tecopa are 35–50–48 NL and 116–13–24 WL. With this action, the proceeding is terminated.

DATES: Effective August 30, 1999. A filing window for Channel 291A at Tecopa, California, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–46, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Tecopa, Channel 291A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18960 Filed 7–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–131; RM–9333]

Radio Broadcasting Services; Llano, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channels 293A and 275A to Llano, Texas, in response to a petition filed by Elgin FM Limited Partnership ("Elgin") to resolve the mutual exclusivity between three applicants for Channel 242A at Llano. *See* 64 FR 24566, May 7, 1999. We shall allot Channel 293A to Llano at coordinates 30–42–27 and 98–46–25 and modify Elgin's application for Channel 242A to specify Channel 293A (BPH–970914MI) and cut-off protection. In response to comments filed by BK Radio ("BK") we shall allot Channel 275A to Llano and modify the application for Channel 242A (BPH–970815MD) to specify Channel 275A with cut-off protection. The coordinates for Channel 275A at Llano are 30–42–24 and 98–46–23. Mexican concurrence has been obtained for the allotment of Channels 293A and 275A at Llano. With this action, this proceeding is terminated.

DATES: Effective August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–131, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channels 275A and 293A at Llano.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–18959 Filed 7–23–99; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 981231333–9127–03; I.D. 071999C]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Whiting Closure for the Catcher/Processor Sector

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces closure of the 1999 catcher/processor fishery for whiting at 12 noon local time (l.t.) July 21, 1999, because the allocation for the catcher/processor sector will be reached by that time. This action is intended to keep the harvest of whiting within the 1999 allocation levels.

DATES: Effective from 12 noon l.t. July 21, 1999, until the start of the 2000 primary season for the catcher/processor sector, unless modified, superseded or rescinded. Comments will be accepted through August 10, 1999.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Katherine King at 206–526–6145 or Becky Renko at 206–526–6110.

SUPPLEMENTARY INFORMATION: This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. On January 8, 1999 (64 FR 1316), regulations were published announcing the 1999 fishing seasons for Pacific whiting. A new whiting stock assessment was completed in early 1999, and an allowable biological catch (ABC) and optimum yield (OY) of 232,000 metric tons (mt) were recommended for all U.S. harvests. On May 24, 1999, (64 FR 27928), NMFS announced the 1999 whiting ABC and OY of 232,000 mt, the tribal whiting allocation of 32,500 mt, and the commercial OY of 199,500 mt.

Regulations at 50 CFR 660.323(a)(3)(i) describe the primary season for catcher/processors as the period(s) when at-sea processing is allowed and the fishery is open for the catcher/processor sector. Regulations at 50 CFR 660.323(a)(4) divide the commercial allocation into separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. When each sector's allocation is reached, the primary season for that sector is ended. The catcher/processor sector is composed of vessels that harvest and process whiting. The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting. The shoreside sector is composed of vessels that harvest whiting for delivery to shore-based processors. The allocations, which are based on the 1999 commercial harvest guideline for whiting of 199,500 mt, are: 67,800 mt (34 percent) for the catcher/processor sector; 47,900 mt (24 percent) for the mothership sector; and 83,800 mt (42 percent) for the shoreside sector.

The best available information on July 20, 1999, indicated that the 67,800–mt catcher/processor allocation would be reached by 12 noon l.t., July 21, 1999.

NMFS Action

For the reasons stated here and in accordance with the regulations at 50 CFR 660.323(a)(4)(iii)(A), NMFS herein announces: Effective 12 noon l.t. July 21, 1999, further taking and retaining, receiving or at-sea processing of whiting by a catcher/processor is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(a)(4)(iii)(A) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 20, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–18996 Filed 7–21–99; 3:52 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9060–01; I.D. 072199A]

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified for the trawl deep-water

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species fishery in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 21, 1999, until 1200 hrs, A.l.t., October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl deep-water species fishery, which is defined at § 679.21(d)(3)(iii)(B), was established by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) for the third season, the period July 4, 1999, through September 30, 1999, as 400 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the third seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: rockfish as defined at § 679.2, deep-water flatfish (Dover sole, Greenland turbot, and deepsea sole), rex sole, arrowtooth flounder, and sablefish.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the third seasonal apportionment of the 1999 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The third seasonal apportionment of the Pacific halibut bycatch allowance has been caught. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 21, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–18997 Filed 7–21–99; 3:52 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 64, No. 142

Monday, July 26, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 31, 32, 170, and 171

RIN 3150–AG03

Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the use of byproduct material in certain measuring, gauging, or controlling devices. The proposed amendments would include adding explicit requirements for a registration process that the NRC plans to initiate through a related rulemaking, would add a registration fee, and would clarify which provisions of the regulations apply to all general licenses for byproduct material. The proposed rule would also modify the reporting, recordkeeping, and labeling requirements for specific licensees who distribute these generally licensed devices. The proposed rule is intended to allow the NRC to better track certain general licensees and the devices they possess and to further ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material.

DATES: Submit comments by October 12, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Send comments by mail to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received and the regulatory analysis, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Catherine R. Mattsen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6264, or e-mail at CRM@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1959 (24 FR 1089), the Atomic Energy Commission (AEC) amended its regulations to provide a general license (10 CFR 30.21(c)) for the use of byproduct material contained in certain measuring, gauging, or controlling devices. Under current regulations in 10 CFR 31.5, certain persons may receive and use a device containing byproduct material under this general license if the device has been manufactured and distributed according to a specific license issued by the NRC or by an Agreement State. A specific license authorizing distribution of generally licensed devices is issued if a regulatory authority determines that the safety features of the device and the instructions for its safe operation are adequate and meet regulatory requirements.

The person or firm who receives such a device is a general licensee. These general licensees are subject to requirements for maintaining labels, following instructions for safe use, storing or disposing of the device properly, and reporting transfers and failure of or damage to the device. For some devices, the general licensee must also comply with testing requirements for leakage and for proper operation of on-off mechanisms. General licensees are also subject to the terms and conditions in § 31.2 concerning general license requirements, transfer of byproduct material, reporting and recordkeeping, and inspection. General licensees must comply with the safety instructions contained in or referenced on the label of the device and must have the testing or servicing of the device performed by an individual who is authorized to manufacture, install, or service these devices except as indicated on the label.

A generally licensed device usually consists of radioactive material, contained in a sealed source, within a shielded housing. The device is designed with inherent radiation safety features so that it can be used by persons with no radiation training or experience. The general license simplifies the licensing process so that a case-by-case determination of the adequacy of the radiation training or experience of each user is not necessary.

There are about 45,000 general licensees authorized by § 31.5 to possess about 600,000 devices that contain byproduct material. The NRC has not contacted or inspected these general licensees on a regular basis because of the relatively small radiation risk posed by these devices.

Individuals who possess devices under this general license are not always aware of applicable requirements and thus are not necessarily complying with all of these requirements. The NRC is most concerned about occurrences where generally licensed devices have not been handled or disposed of properly. In some cases, this has resulted in radiation exposure to the public and contamination of property. Some generally licensed devices have been accidentally melted in steel mills causing considerable contamination of the mill, the steel product, and the wastes from the process, the slag and the baghouse dust. Although known exposures have generally not exceeded the public dose limits, there is a potential for significant exposures.

The NRC conducted a 3-year sampling (1984 through 1986) of general licensees to assess the effectiveness of the general license program. The sampling revealed several areas of concern regarding the

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use of generally licensed devices. In particular, the NRC concluded that—

(1) Many general licensees are unaware of the regulations that apply to the possession of a generally licensed device; and

(2) Many general licensees are unable to account for their devices.

Approximately 15 percent of the general licensees sampled could not account for all of their generally licensed devices. The NRC concluded that these problems could be resolved by more frequent and timely contact between general licensees and the NRC.

On December 27, 1991 (56 FR 67011), the NRC published a notice of proposed rulemaking concerning the accountability of generally licensed devices. The proposed rule contained a number of provisions, including a requirement under § 31.5 for general licensees to provide information to the NRC upon request, through which a device registry could be developed. The proposed rule also included requirements in §§ 32.51a and 32.52 for specific licensees who manufacture or initially transfer generally licensed devices. Although the public comments received were reviewed and a final rule developed, a final rule was not issued because the resources to fully implement the rule were not available.

The NRC has continued to consider the issues related to the loss of control of generally licensed, as well as specifically licensed, devices. In July 1995, the NRC, with assistance from the Organization of Agreement States, formed a working group to evaluate these issues. The working group consisted of both NRC and Agreement State regulatory personnel and encouraged the involvement of all persons having a stake in the process and its final recommendations. All working group meetings were open to the public. A final report was published in October 1996 as NUREG–1551, "Final Report of the NRC-Agreement State Working Group to Evaluate Control and Accountability of Licensed Devices."

In considering the recommendations of this working group, the NRC decided, among other things, to again initiate rulemaking to establish an annual registration of devices generally licensed under § 31.5. This registration program would be similar to the program originally proposed in the 1991 proposed rule. However, it would apply only to those devices considered to present a higher risk of potential exposure of the public or property loss in the case of loss of control (compared to other generally licensed devices). Initially, the NRC has been using the criteria developed by the working group for determining which sources should be subject to the registration program. Using these criteria, it is now estimated that the registration requirement would apply to about 5100 general licensees possessing about 20,000 devices. These criteria were based on considerations of relative risk and are limited to radionuclides currently in use in these types of devices. If quantities of other radionuclides that would present a similar risk are used in these devices in the future, the criteria may be revised to include additional radionuclides. The Commission may also consider revising the criteria to include a larger number of devices in the registration requirement for other reasons in future rulemaking.

The Atomic Energy Act of 1954 (AEA), as amended, provides the NRC with the authority to request information from its licensees concerning licensed activities. However, the Commission had not included an explicit provision in its regulations that would require § 31.5 general licensees to provide information on request. On December 2, 1998 (63 FR 66492), the Commission published a proposed rule that would explicitly require general licensees who possess certain measuring, gauging, or controlling devices to provide the NRC with information about the devices. Assuming it becomes a final rule, the NRC intends to use that provision primarily to institute a registration and accounting system for the devices containing certain quantities of specific radionuclides that present a higher risk of exposure to the public or property damage if a device were lost. That rulemaking was not proposed as a matter of compatibility for Agreement States. That proposed rule presented an estimate of 6000 general licensees, based on the estimates made in the working group report. However, this had not accounted for the fact that, in the interim, Massachusetts had become an Agreement State. Using the same criteria, and removing the previously NRC general licensees in Massachusetts, results in an estimate of 5100 NRC general licensees that would be subject to the registration requirement.

This proposed rule would add specific requirements concerning the registration of devices and additional provisions of an enhanced regulatory oversight program for all general licensees to be registered. The proposed rule would also establish levels of compatibility for Agreement State regulations so that an increased level of oversight for general licensees in Agreement States would also be required. Some States have already instituted some form of enhanced oversight for these general licensees. In a few cases, States have instituted a registration program. A few States have a higher level of control on these devices through requiring specific licenses. Under the proposed level of compatibility for § 31.5, the essential objectives of the regulation should be adopted by the State to avoid conflicts, duplications, or gaps. However, the manner in which the essential objectives of the regulation are addressed need not be the same as NRC. Strict compatibility would only be required for revisions to the requirements applicable to distributors because of interjurisdictional distribution.

Discussion

The December 2, 1998, proposed rule would provide one of the key elements in improving the accountability and control over devices of particular concern through the institution of a registration process. However, current regulatory provisions are inadequate to allow for the NRC to track general licensees and the specific devices they possess. The NRC needs to track these general licensees in order that they can be contacted or inspected when appropriate. The NRC also needs to track individual generally licensed devices, so that the responsible party can be identified when a device is found in an inappropriate situation.

Tracking devices would also allow the NRC to contact the appropriate general licensees if a generic defect in a group of devices is identified. As noted, that proposed rule would not require Agreement State regulations to be compatible.

There are other means for reducing the likelihood of incidents of lost sources. The Commission has reconsidered the provisions in its 1991 proposed rule, evaluated the recommendations of the NRC-Agreement State Working Group, and identified additional issues concerning these devices in developing this proposed rule.

Summary and Discussion of Proposed Requirements

Revisions to the Requirements for General Licensees Under § 31.5

Registration

This proposed rule would add explicit provisions delineating an annual registration requirement, as well as a registration fee. The registration process would be initiated under § 31.5(c)(11), proposed on December 2, 1998, if that requirement is adopted in a final rule. Proposed § 31.5(c)(11) would require licensees to respond to requests for information from NRC within 30 days or as otherwise specified. The provisions proposed in this document (new § 31.5(c)(13)) are essentially consistent with the Commission's plans for the registration process discussed in the December 2, 1998, proposed rule. This proposed rule would specifically require that the information about devices be verified by the licensee through a physical inventory and by checking label information. The advantage of including more explicit requirements in the regulation is that information about the registration process will be more clearly defined and more available. When the distributor of a device supplies copies of § 31.5 to its customers (under § 32.51a(a)), the potential general licensees would be made aware of the registration requirement, the devices to which it applies, the nature of the registration information, and the registration fee.

An organization which uses generally licensed devices at numerous locations is considered a separate general licensee at each location. Different facilities at the same complex or campus are not, however, considered separate locations. In the case of portable devices that are routinely used at multiple field sites, there is one general licensee for each primary place of storage, not for each place of use. Thus, an organization would be required to complete more than one registration, if it possess devices subject to registration at multiple distinct locations.

The proposed rule would add a fee to § 170.31 to be assessed in conjunction with the annual registration process. This registration fee would be for each general licensee filing a registration under § 31.5(c)(13) regardless of the number of devices. As noted above, an organization is considered to be a separate general licensee at each separate address at which devices are used, and would be assessed a registration fee for each location of use.

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended (OBRA–90), to recover approximately 100 percent of its budget through fees. Since OBRA–90 was enacted, all costs of the general license program have been recovered through annual fees paid by specific licensees. The proposed registration fees would recover the cost of the general license program associated with this group of general licensees in an equitable way, as required by law. Those who are allowed to use devices under the general license would now bear the operational cost of the program instead of those who hold specific licenses. However, it should be noted that the initial program startup costs would be recovered from the annual fee paid by current holders of specific licenses.

The costs to be recovered through the registration fee include the costs for obtaining and maintaining information associated with the devices subject to the registration requirement, the costs of processing and reviewing the registrations, and the costs for inspections and follow-up efforts expected to be made as a result of the registration process identifying noncompliance with existing regulations. The fee would be based on the average cost of the program for each of the licensees registering devices. Some of the general licensees, such as non-profit educational institutions, will be exempt from the fee under § 170.11. Costs not recovered from this small segment of the general licensees registering devices would continue to be recovered from annual fees paid by current holders of specific licenses.

It is expected that the overall cost will decline after the initial years of implementation of the registration process, due to increased compliance leading to reduced inspection and follow-up. However, the number of generally licensed devices in NRC jurisdiction is reduced when a State becomes an Agreement State and takes over responsibility for the general licensees in that State. Although a large part of the cost of the program is proportional to the number of general licensees, a portion of the cost is fixed. Thus, the cost per general licensee could increase if the number of general licensees subject to registration decreases. The proposed registration fee is $420 based on the current estimated cost of the program and the current number of general licensees with devices that would be subject to registration. If additional States become Agreement States before this rule is made final, the fee could be somewhat higher in the final rule.

The Commission considered other approaches to the proposed fee structure, such as a fee per device or a sliding scale, i. e., fees set for a few ranges of numbers of devices. However, basing fees on the number of devices or a sliding scale would not necessarily meet the intent of the Independent Offices Appropriation Act of 1952 (IOAA), which is the authority under which 10 CFR part 170 fees are established. The IOAA provides that fees recover the agency's cost in providing the service. The agency's costs to register generally licensed devices at each location is projected to be nearly the same regardless of the number of sources/devices possessed by the licensee. Costs of follow-up and inspection do not go up substantially with increased numbers of devices. In addition, these alternative methods would complicate the determination of the proper fee and the fee recovery process, not only for NRC but for the registrants as well. With the uncertainty of the licensees' status from one year to the next, the additional administrative effort related to the reconciliation of the fee based on the number of devices possessed from year to year, would not be cost effective, considering the total amount projected to be recovered for the registration program. Additionally, under these alternative methods a large diversified firm that owns one device would pay a reduced fee, while a small entity whose business may depend solely on the use of the devices might pay a disproportionate fee because it has more than one device. The NRC believes that basing the fee on a per device basis or a sliding scale would not result in a fair and equitable allocation of its regulatory costs, and would not achieve the goal of the Regulatory Flexibility Act to reduce the impact of fees on small entities. The NRC believes that the proposed approach of assessing a fee for each licensee subject to registration—

(1) Better reflects the costs to administer the program,

(2) Is most consistent with existing NRC fee assessment practices,

(3) Would simplify fee collection,

(4) Would be fair and equitable, and

(5) Would minimize impacts to small entities.

The planned registration process will be somewhat different from that used in the Commission's other registration programs, in which blank forms are filled out by registrants. Instead, it is planned to send a registration request containing the information recorded in the Commission's database, which would ask the general licensee to verify, correct, and/or add to the information provided. This would be similar to the approach typically used by States for the renewal of automobile registrations. This is intended to be more efficient for the general licensees and the Commission.

The first registration that would be carried out under § 31.5(c)(11) would depend on the NRC's ability to contact general licensees because the NRC must request the information. This proposed rule also specifies that the general licensee would complete registration by verifying, correcting, and/or adding to the information in a request for

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registration received from the Commission. It is silent on when or how general licensees should register if the Commission fails to contact the general licensee. Thus, it might be interpreted that, if the Commission fails to contact a general licensee, the registration requirement would not apply. The Commission seeks comment on whether the registration requirement should include a provision that would require the general licensee to complete registration by a certain time, such as 15 months after—

(1) The date of the previous registration certificate;

(2) The receipt of a device subject to registration; or

(3) The effective date of this rule for an unregistered device possessed at the time of the effective date of a final rule enacted in response to this proposed rule.

This would put the burden of registering on general licensees who have not been notified by the NRC of the requirement. The intent would be for general licensees who find out about the new requirements, for example, from a distributor, to contact the NRC to begin the registration process. If this approach were taken, the Commission would likely exercise enforcement discretion in cases where the Commission locates a general licensee who has not previously registered devices, if the general licensee was unaware of the requirement. It is recognized that some general licensees who have received devices in the past may never be located.

The time of year for registration would vary for licensees. However, requests for renewal of registration would be made approximately 1 year after the previous registration request for that licensee. Although registration would not be required before the receipt of a device, the Commission plans to send requests for registration to new general licensees subject to registration that are identified in distributors' quarterly transfer reports submitted under § 32.52 shortly after this information is received and recorded. If a general licensee has previously registered devices and receives additional devices requiring registration, the new devices would be registered when the annual reregistration is carried out. The Commission requests comment on whether the NRC should have earlier contact with previous registrants who receive additional devices, either by an acknowledgment by NRC to the user or by a required response from the general licensee that accounts for the additional device(s). The effective date of the registration fee will be set to apply after the initial registration requests have been sent for response under § 31.5(c)(11) so that the first round of annual registration will be complete prior to this effective date and the fee will be imposed with the first reregistration for all devices currently in use.

Other Revisions for § 31.5 General Licensees.

The proposed rule would establish additional requirements for all general licensees under § 31.5. These proposed requirements include—

(1) An explicit requirement for the general licensee to appoint an individual assigned responsibility for knowing what regulatory requirements are applicable and having authority to take required actions to comply with the applicable regulations and through whom the general licensee carries out its responsibilities to comply with the applicable regulations (new § 31.5(c)(12));

(2) A provision that limits the amount of time a general licensee can keep an unused device in storage and allows the deferment of testing during the period of storage (new § 31.5(c)(15));

(3) A provision to allow transfers to specific licensees authorized under part 30, or equivalent Agreement State regulations, as waste collectors, in addition to currently allowed transfers to part 32 (and Agreement State) licensees; to allow transfers to other specific licensees but only with prior written NRC approval; and to add the recipient's license number, the serial number of the device, and the date of transfer to the information required to be provided to NRC upon transfer of a device (revision of § 31.5(c)(8));

(4) A provision to notify NRC of address changes, including name changes (new § 31.5(c)(14));

(5) For device damage or failures that are likely to or are known to have resulted in contamination, the addition of a plan for ensuring that premises and environs are suitable for unrestricted access, to the information that must be sent to NRC in the case of a failure; a change to the addressee for reporting information concerning a failure; and a note that the criteria in § 20.1402, "Radiological criteria for unrestricted use," may be applied by the Commission in the case of contamination in spite of the exemption in § 31.5(c)(10) (revision to § 31.5(c)(5)); and

(6) A revision of the reporting requirement, in the case of a transfer to a general licensee taking over possession of a device at the same location, to provide the serial number of the device and the name and phone number for the person designated as the responsible individual, rather than simply a contact name (revision to § 31.5(c)(9)(i)).

The rationale for each of these proposed amendments is:

(1) New § 31.5(c)(12)—Responsible person. The "person" who holds a general license is usually a corporation, or public or private institution, rather than an individual. In practice, in order for the general licensee to comply with existing regulations, an individual in the corporation or institution must be aware of the requirements and be authorized to take the required actions. Appointing a specific individual to be responsible for knowing about and taking actions to comply with regulations is an appropriate operational practice, which, unfortunately, is not always followed. If a device is not subject to testing under § 31.5(c)(2), there are no routine actions required to be taken, because the requirements are generally restrictions on actions, such as not abandoning the device, or actions to be taken only in the case of particular, non-routine events, such as notification of NRC of the transfer or failure of the device. It is this type of situation, where knowledge of the nature of the device, the general license, and the associated regulations is unlikely to be maintained and passed on to individuals using the device. Requiring the assignment of the responsibility for knowing and having authority to take required actions for complying with regulations to a specific individual would improve the probability that the general licensees will do what they are already required to do. The impact of this should be minimal, somewhat limiting operational flexibility with regard to the assignment of duties. This individual does not have to work on site at the place of use of the device and does not have to conduct all required actions, but would be responsible to ensure that the general licensee is aware of required actions to be taken. This assignment does not relieve the general licensee of responsibility.

The NRC/Agreement State Working Group recommended that general licensees assign a backup responsible individual (BRI) as well. The proposed rule does not include this requirement, but the Commission solicits comment on this issue and will consider adding it to the final rule. A BRI would add some assurance that there is a continuation of knowledge of the requirements in the event of the person assigned to be the responsible individual leaves his assigned duties. However, even without a BRI, the general licensee would have the responsibility under the proposed rule to replace the responsible individual to maintain compliance with proposed § 31.5(c)(12).

(2) New § 31.5(c)(15)—Timeliness of disposition and deferral of testing while in storage. When a device is not in use for a prolonged time, it is particularly susceptible to being forgotten and ultimately disposed of or transferred inappropriately. General licensees are unlikely to keep a device unused for more than 2 years and subsequently use it. If a device is being held in storage indefinitely, it is likely that it is being stored to avoid the costs of proper disposal. If a general licensee intends to use a device after a period of more than 2 years of nonuse, the device could be sent back to the supplier to be held under the distributor's specific license until later use, or the general licensee could request an exemption from § 31.5(c)(15) indicating the reason(s) why the licensee intends to use the device after 2 years and prefers to keep it on site in the interim.

If a period of storage exceeds the normal interval for testing, testing would not need to be done until the device is to be put back into use again. This would relieve the burden of unnecessary testing during the period of storage as well as eliminate any unnecessary exposure that could occur during testing for that period.

(3) Revision to § 31.5(c)(8)—Provisions for transfers to specific licensees. This proposed revision would provide some flexibility to the general licensee in transferring a device while ensuring that it is transferred appropriately. It would allow a general licensee to transfer a device directly to a waste collector for disposal, rather than going through a distributor. It would also allow the transfer of a device to other specific licensees, but would require NRC approval in these cases so that NRC can ensure that the recipient is authorized to receive the device.

The inclusion of a recipient's license number in the report of transfer would better ensure that the general licensee has verified that the recipient is a part 32 licensee, a part 30 waste collection licensee, or a specific licensee under equivalent Agreement State regulations authorized to receive it. It would also supply an additional means for NRC to identify the recipient, because company names and addresses sometimes change. The addition of the date of transfer will make the transfer easier to track and help to ensure that the general licensee makes the report in a timely manner (required within 30 days of transfer).

(4) New § 31.5(c)(14)—Change of address notification (including change in name of general licensee). The quarterly reports required of distributors under § 32.52(a) and (b) are intended to provide NRC and the Agreement State regulatory agencies with the identity of general licensees in their jurisdictions and addresses at which these general licensees can be contacted (proposed to now be specifically the mailing address for the location of use of the generally licensed device). These general licensees can then be contacted or inspected. If general licensees move their operations without notifying the NRC, or appropriate Agreement State agency, they may be difficult to locate. Even a change of name can cause mail to be returned. This proposed requirement to report address changes would only apply to previously supplied mailing addresses and, for portable devices, the mailing address for the primary place of storage, although the devices may be used at multiple field sites. For those registering devices, other changes in addresses, if different from the mailing address for the location of use, will be provided at the time of the next registration.

Note: Changes to the general licensee, other than a simple name change, such as in the case of a sale of a company, require reporting of additional information under § 31.5(c)(9)(i).

This simple change of address notification is intended to track moves into and within NRC jurisdiction and to maintain current mailing address information. The general license in § 31.5 only applies to persons within NRC jurisdiction. If a general licensee intends to move from one jurisdiction to another, it should contact the applicable regulatory authority, NRC or the particular Agreement State, before doing so to determine the applicable, current regulations in that jurisdiction. All jurisdictions do not have a comparable general license and specific provisions of the general license may vary among jurisdictions. If a general licensee has obtained a portable device in an Agreement State and wishes to use the device within NRC jurisdiction, it must do so under § 31.5, because there is no reciprocity provision applicable to general licenses. In this case, they would be subject to the provisions of § 31.5.

(5) Revision to § 31.5(c)(5)—Reports of device failures. General licensees are not subject to decommissioning requirements. A general license is granted by regulation and, under normal circumstances, does not involve any termination of license process. If a generally licensed device fails or is seriously damaged so as to cause significant contamination of the premises or environs, the NRC may need to respond to the notification of an incident made under § 31.5(c)(5) to ensure that a facility is properly decontaminated. Following such an incident, the NRC would determine what actions are necessary on a case-by-case basis and, if necessary, would apply the criteria set out in § 20.1402, "Radiological criteria for unrestricted use." The general licensee is exempt from this section of part 20 when in possession of an intact generally licensed device. However, when a device has been damaged, the material in the device may no longer be fully contained within the device, i.e., it may also be unsealed radioactive material. Action can be taken by the NRC under § 30.61, "Modification and revocation of licenses," which is applicable to general licensees. The provision proposed in this action would require that the general licensee propose to the Commission how it will be shown that the premises are or will be adequately cleaned up. Depending on the nature of the event, the remedial action taken (and reported under existing requirements) along with any confirmatory surveys may be sufficient to complete action on the event.

The addressee for submitting information under § 31.5(c)(5) would be changed from Regional Administrator to Director of Nuclear Material Safety and Safeguards so that all NRC addressees specified in § 31.5 for reports by these licensees are the same and to eliminate the need for the general licensee to refer to part 20 to determine the appropriate addressee. The addressee and address for registration will be specified in the registration request. Adding a note concerning the possible applicability of § 20.1402 is a clarification.

(6) Revision to § 31.5(c)(9)(i)—Reporting new general licensee's responsible individual. Consistent with the provision for appointing an individual through whom the general licensee will ensure compliance with the applicable regulations and requirements, and other reporting requirements being proposed, it is more effective for the general licensee to provide the name of the new responsible individual when another general licensee takes over the facility and responsibility for the device.

An additional proposed amendment to § 31.5 would clarify the status of a person who receives a device through an unauthorized transfer and would remove a restriction on devices. Paragraph (b) would be revised to (1)

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limit the applicability of the general license to those who receive a device through an authorized transfer and (2) expand the applicability of the general license to devices authorized for distribution by an Agreement State that has no general license covering the use of such devices within that State.

Concerning the first of these issues, the NRC has generally, although not consistently, interpreted the general license to apply to any recipient within the group identified in § 31.5(a), i.e., "* * * commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and Federal, State or local government agencies * * *", even if the device is received through an unauthorized transfer. The proposed language would clearly provide that the general license does not apply if the device is obtained through an unauthorized transfer. In the case of an unauthorized transfer, the recipient would possess the device without a license.

Section 31.5(b) currently restricts applicability of the general license in the case of devices from distributors in Agreement States, to those devices from Agreement States that authorize the devices to be used under a general license within their respective States. However, the NRC practice is to allow a device to be used under the general license in § 31.5, that is distributed in accordance with a license issued under equivalent regulations to § 32.51 by an Agreement State that does not authorize devices to be used under a general license within their State. This approach reserved for NRC the right to require distributors in this situation to obtain an NRC distribution license in order to transfer devices into NRC jurisdiction, but did not require them to do so as long as the State issued acceptably equivalent licenses. Through NRC's oversight of Agreement State programs, NRC ensures the safety of these devices. Given this fact and the experience to date with these few States, the Commission believes that this restriction is no longer necessary.

In addition to the proposed changes to § 31.5, other amendments are proposed that would clarify which sections of the regulations in part 30 apply to all of the general licensees under part 31. Section 31.1, "Purpose and scope," would be amended to clarify that only those paragraphs in part 30 specified in § 31.2 or the particular general license apply to part 31 general licensees. Section 31.2, "Terms and conditions," would be amended to reference the sections of part 30 that are applicable to all of the part 31 general licensees, including § 30.7, "Employee protection," § 30.9, "Completeness and accuracy of information," and § 30.10, "Deliberate misconduct." The proposed clarification would make it easier for general licensees to be aware of applicable regulations. In addition, future amendments to part 30 that would apply to part 31 general licensees would include a conforming amendment to part 31. Note, however, that while § 31.2 would specify sections of part 30 generally applicable to general licenses, it would not eliminate the applicability of other parts of the Commission's regulations that may apply.

The applicability of § 30.34(h) on bankruptcy notification to general licensees also needs to be clarified. Under the existing regulations, this requirement appears to apply to all licensees. However, its application to general licensees is not clear because it is not referenced in § 31.2 or § 31.5. This proposed rule would make the bankruptcy notification requirement applicable only to those general licensees subject to the registration requirement. These licensees possess devices for which the Commission believes a higher level of oversight is appropriate. Thus, notification that such a general licensee is filing for bankruptcy may be important to allow the Commission to intervene to ensure that the financial status of the licensee does not lead to the improper disposal or abandonment of a device.

Requirements for Manufacturers and Initial Distributors of Devices

The proposed rule would modify the quarterly transfer reporting, recordkeeping, and labeling requirements for specific licensees who distribute these generally licensed devices, and the requirement for providing information to users. The existing requirements in these areas are a matter of strict compatibility of Agreement State regulation, that is, the State regulations are essentially identical. The proposed amendments would also be a matter of strict compatibility so that revisions to Agreement State regulations would be necessary and distributors in Agreement States would be affected. The basis of this compatibility requirement is significant direct transboundary implications. This results from the fact that devices are distributed under various Agreement State and NRC authorities into other jurisdictions where different regulatory agencies regulate the possession and use of the devices. Currently, there are 28 NRC licensed distributors and approximately 61 licensed distributors in Agreement States.

Reporting

The following information would be added to the existing quarterly transfer reporting requirement: The serial number and model number of the device; the date of transfer; indication if the device is a replacement, and if so, the type, model number, and serial number of the one returned; name and license number of reporting company; and the specific reporting period. The model number of the device is already required in reports to Agreement States. The general licensee address would be specified as the mailing address for the location of use of the generally licensed device.

The name and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements would replace the name and/or position of a simple contact between the Commission and the general licensee.

A form will be provided for use in making these reports. However, the use of the form would not be required as long as the report is clear and legible and includes all of the required information. Proposed amendments would be made to § 32.52(a) and (b).

The existing reporting requirement is intended to provide NRC and the Agreement State regulatory agencies with the identity of general licensees in their jurisdictions, addresses at which the general licensees can be contacted (which are usually the location of use of the devices), the particulars of the type of device possessed, and the name (or position) of an individual who constitutes a point of contact between the NRC or the Agreement State and the general licensee. These general licensees can then be contacted or inspected. Including the serial number would allow the NRC and Agreement States to track individual devices. The existing reporting requirement in § 31.5(c)(8) does not require the general licensee to report a transfer if it is for the purpose of obtaining a replacement. This is consistent with the original intent of this regulation in that the status of the general licensee is unchanged, only the specific device is changed. In order for individual devices to be tracked, the NRC or Agreement State needs to be informed of such a transfer. The proposed rule would require that the distributor provide this information either to NRC or the appropriate Agreement State. Under existing requirements, quarterly reports are required to include specifics on any new device transferred but not on the devices returned. The NRC believes that the distributor could include this additional information in the quarterly reports without a significant burden and that the distributor is likely to be more reliable than the general licensee in providing this information. The name and license number of the reporting company and the specific reporting period are typically included in the reports in order to show compliance with the reporting requirement. However, this information is not always readily identifiable.

The individual who acts as contact with the NRC or the Agreement State concerning the general license should have knowledge of the device, the general license, and the regulations pertaining to the general license, or at least know who in the organization does. This is the intent of the existing requirement. However, in practice, the name given to the distributor and reported to the NRC (or the Agreement State) frequently is not an individual with this type of knowledge. The proposed rule would specify that the contact designated be the person (1) assigned responsibility for ensuring that the general licensee is aware of its regulatory responsibilities and (2) who has authority to take required actions for complying with the applicable regulations.

Recordkeeping

The proposed rule would add to the recordkeeping requirements information on final disposition of devices. The recordkeeping requirements concerning transfers would have the period of retention extended from 5 years from the date of the recorded event, to 3 years after the expected useful life of the device or the final disposition, if known. Proposed amendments would be made to § 32.52(c).

It is important that information about the general licensees and the specific devices in their possession be available until the device is disposed of permanently. Requiring the distributor to keep these records for an extended time provides a backup to the recordkeeping of NRC and State regulatory agencies. The records include information on final disposition that may not have been included in reports to NRC and the Agreement States. It is NRC's understanding that these distributors generally keep these records indefinitely. Thus, this regulatory requirement should have little, if any, impact.

In addition, distributors would be required to make available records of final disposition of devices to the various regulatory agencies in the case of bankruptcy or termination of license (new § 32.51a(d)). When a distributor goes out of business and terminates its license, the distributor can no longer be required to retain these records. This requirement would give NRC, as well as State regulatory agencies, the opportunity to obtain and retain records of this type previously kept by the distributor. These records could be helpful in verifying information used to keep track of devices relative to the final disposition of devices. This provision would not require distributors to automatically provide these records unless the NRC or the Agreement State in which the device was distributed makes a request for these records. In the case of bankruptcy, NRC or the Agreement State may want to secure these records early in the process, in case financial difficulties interfere with the licensee fulfilling its responsibilities.

Labeling

The proposed rule would amend the existing labeling requirements to require an additional label on any separable source housing and a permanent label on devices meeting the criteria for registration (new § 32.51(a)(4) and (5) and § 32.51a(c)). The NRC would consider a label "permanent," if, for example, it were embossed, etched, stamped, or engraved in metal. Under these requirements, new distributors would have labels approved as part of obtaining a license; distributors, including existing licensees, would have the new labeling requirements as conditions of license in § 32.51(a)(4) and (5). Approval of the new labels by NRC for existing distributors would not be required. However, distributors may voluntarily submit information for NRC review on how they plan to comply with the new labeling requirements. In any case, labeling is subject to inspection. To the extent necessary, the new labeling requirements would supercede anything contradictory in individual license conditions. The individual license conditions would be updated to include specifics related to the new requirements during the first license renewal or amendment following the effective date of those paragraphs of the rule.

The first change simply carries out the initial intent of the existing requirement for devices where the source may be separable in a housing that does not include the label. It is important that this housing, if separated from the remainder of the device, can also be identified. The impact of this requirement should be minimal. The permanent label for devices requiring registration would provide better assurance that even when a device has been exposed to other than normal use conditions, for example, when a building has been refurbished or demolished with the device in place, the label will be intact and the device may be identified and proper actions can be taken. This may result in a more significant change to the production of devices. Distributors would have 1 year after the effective date of the rule to implement these changes to minimize any impact to the manufacturing and distributing process.

Information To Be Provided to General Licensees

The proposed rule would amend the requirements pertaining to the information distributors must provide to the general licensee (§ 32.51a(a) and (b)). Distributors are now required to provide general licensees with a copy of § 31.5 when the device is transferred. The proposed rule would require that a copy of § 31.5 be provided before transfer. The distributor would also be required to provide copies of additional applicable sections of the regulations, a listing of the services that can only be performed by a specific licensee, and information regarding disposal options for the devices being transferred. The disposal options would include the estimated cost for disposal of the device at the end of its useful life to the extent that the cost information is available to the distributor at the time of the sale of the device. For transfers to general licensees in Agreement States, the distributor may furnish either the applicable NRC regulations or the comparable ones of the Agreement State. In addition, the distributor would furnish the name, address, and phone number of the contact at the Agreement State regulatory agency from which additional information may be obtained.

The general licensee should be aware of the specific requirements before purchasing a generally licensed device, rather than afterward. While the Commission does not want to get involved with details of licensees' business practices, it is the Commission's intent that "prior to transfer" would be before a final decision to purchase so that the informafion can be considered in making that decision. The Commission seeks comment on how best to achieve and enforce this intent. For example: What are the advantages/disadvantages of using the words, "prior to purchase" in the regulatory text?

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While § 31.5 contains the primary requirements related to the general license, it does not reference the applicable sections of part 30. The general licensee should have copies of at least those regulations that may require an action on his part. The sections of the regulation that would be included in this requirement are believed to be the most important for the general licensee to be aware of. The inclusion of a listing of services that can only be performed by a specific licensee would clarify the services that can and cannot be performed by the general licensee. These services vary depending on the nature and design of the particular device and so are not specified in the regulations. Information on the estimated cost for disposal of the device at the end of its useful life may be a significant factor in a decision to purchase a device because of the high costs of disposing of radioactive materials. In some cases, the cost of disposal could exceed the purchase price of the device.

Additional clarifying amendments would be made in §§ 30.31, 30.34(h), and 31.5(c)(9)(ii). The wording of § 30.31 would provide a similar clarification as that in the Suggested State Regulations with respect to general licenses. The amendment to § 30.34(h) would be consistent with the previously discussed change concerning reporting bankruptcy.

The revision of § 31.5(c)(9)(ii) to include the term, "intermediate person," is intended to provide clarification about intermediate persons holding devices. Specifically, intermediate persons holding devices in their original shipping containers at their intended location of use are general licensees. Distributors licensed under § 32.51, or equivalent Agreement State regulations, must provide information about both intermediate persons and intended users in their quarterly reports submitted under § 32.52(a). Transfers from intermediate persons to intended users under § 31.5(c)(9)(ii) do not need to be reported to NRC because information about the intended user must be reported by the distributor under § 32.52(a).

Minor conforming amendments would also be made to §§ 170.2, 170.3, 171.5, and 171.16.

Public Comments on the Original Proposed Rule

The NRC reviewed the comments received on the December 27, 1991, proposed rule in developing both the proposed rule published on December 2, 1998 (63 FR 66492), and this proposed rule. There were 26 comment letters received from a variety of sources including private and publicly held corporations, private citizens, citizens groups, the Armed Forces, and State governments. These comments have been considered to the extent applicable to each rule. A detailed analysis of the comments received on the December 27, 1991, proposed rule, which was withdrawn by the notice of proposed rulemaking on December 2, 1998, is not presented in either of the subsequent proposed rules because many of the specific comments pertain to specific provisions that have been withdrawn, a great deal of time has passed since these comments were made, and additional opportunity for comment is being provided.

Early State and Public Input

These proposed amendments were provided to the Agreement States twice during its development via the use of the NRC Technical Conference Website and notification to the States of its availability. Input was received following the first posting through discussions at an All Agreement State meeting in October of 1998. The second posting was also available to the public. A notice of availability was published December 31, 1998 (63 FR 72216). The States and the distributors were notified of its availability directly, as well. Two comments were received. One from a State and one from industry. They were generally supportive and indicated points needing clarification.

Summary of Proposed Provisions by Paragraph

Section 30.31—Revision would reconcile the apparent conflict between the description of a general license and a registration requirement.

Section 30.34, paragraph (h)(1)—Revision would make the bankruptcy notification requirement applicable only to those general licensees subject to the registration requirement.

Section 31.1—Revision would clarify that only those paragraphs in part 30 specified in § 31.2 or the particular general license apply to part 31 general licensees.

Section 31.2—Revision would clarify references to the sections of part 30 that are applicable to all of the part 31 general licensees.

Section 31.5, paragraph (b)—Revision would clarify the status of a person who receives a device through an unauthorized transfer by limiting the applicability of the general license to those who receive a device through an authorized transfer; and would remove the restriction on devices distributed by Agreement State licensees in Agreement States without a general license.

Section 31.5, paragraph (c)(5)—Revision would add a plan for ensuring that premises and environs are suitable for unrestricted access, to the information that must be sent to NRC in the case of a failure, when device damage or failure is likely to or known to have resulted in contamination; would change the addressee for reporting information concerning a failure; and would clarify that the criteria in § 20.1402 may be applied in spite of the exemption in § 31.5(c)(10).

Section 31.5, paragraph (c)(8)—Revision would allow transfers to specific licensees authorized under part 30, or equivalent Agreement State regulations, as waste collectors, in addition to currently allowed transfers to part 32 (and Agreement State) licensees; would allow transfers to other specific licensees but only with prior written NRC approval; and would add the recipient's license number, the serial number of the device, and the date of transfer to the information required to be provided to NRC upon transfer of a device.

Section 31.5, paragraph (c)(9)(i)—Revision would add to the reporting requirement, in the case of a transfer to a general licensee taking over possession of a device at the same location, to provide the serial number of the device and the name and phone number of the person identified as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements, rather than simply a contact name.

Section 31.5, paragraph (c)(9)(ii)—Revision would add the term, "intermediate person," to clarify that a report of transfer is not required only when the information on both an intermediate person and an intended user was provided through the distributor in a quarterly material transfer report.

Section 31.5, paragraph (c)(12)—Would add an explicit requirement for the general licensee to appoint an individual assigned responsibility for knowing what regulatory requirements are applicable to the general licensee and having authority to take required actions to comply with the applicable regulations.

Section 31.5, paragraph (c)(13)—Would add an explicit requirement for the general licensee to register devices meeting certain criteria, which specifies the information to be provided and references the fee requirement in § 170.31.

Section 31.5, paragraph (c)(14)—Would add requirement for general licensees to notify NRC of address changes.

Section 31.5, paragraph (c)(15)—Would limit to 2 years the amount of time a general licensee can keep an unused device in storage and allow the deferment of testing during the period of storage.

Section 32.51, paragraphs (a)(4) and (5)—Would add requirement for an additional label on any separable source housing and a permanent label on devices meeting the criteria for registration.

Section 32.51a, paragraphs (a) and (b)—Revision would amend the requirements pertaining to the information distributors must provide to the general licensee. Distributors are now required to provide general licensees with a copy of § 31.5 when the device is transferred. The proposed rule would require that § 31.5 be provided before transfer. The distributor would also be required to provide copies of additional applicable sections of the regulations, a listing of the services that can only be performed by a specific licensee, and information regarding disposal options for the devices being transferred, including estimated costs of disposal. For transfers to general licensees in Agreement States, the distributor may furnish either the applicable NRC regulations or the comparable ones of the Agreement State. In addition, the distributor would furnish the name, address, and phone number of the contact at the Agreement State regulatory agency from which additional information may be obtained.

Section 32.51a, paragraph (c)—Would make labeling requirements a condition of license 1 year after effective date of rule.

Section 32.51a, paragraph (d)—Would add requirement for distributors to make available records of final disposition of devices to the various regulatory agencies in the case of bankruptcy or termination of the distributor's license.

Section 32.52, paragraphs (a) and (b)—Revision would add the following information to the existing quarterly transfer reporting requirement: the serial number and model number of the device; the date of transfer; indication if device is a replacement, and if so, the type, model number, and serial number of the one returned; name and license number of reporting company; and the specific reporting period. Also, the general licensee address would be specified as the mailing address for the location of use of the generally licensed device.

The name and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements would replace the name and/or position of a simple contact between the Commission and the general licensee. Also, a form will be provided for use in making these reports. However, the use of the form would not be required as long as the report is clear and legible and includes all of the required information.

Section 32.52, paragraph (c)—Revision would add to the recordkeeping requirements information on final disposition of devices. The recordkeeping requirements concerning transfers would have the period of retention extended from 5 years from the date of the recorded event to 3 years after the expected useful life of the device or the final disposition, if known.

Section 170.2—Would conform the scope of part 170 to include a general licensee registrant.

Section 170.3—Would revise definition of "Materials License" to include part 31 and the words, "or granted" as general licenses are granted by regulation rather than individually issued to licensees.

Section 170.31—Revision would add $420 registration fee for general licensees subject to § 31.5(c)(13).

Section 171.5—Would revise definition of "Materials License" to include part 31 and the words, "or granted" as general licenses are granted by regulation rather than individually issued to licensees.

Section 171.16—Would add category for part 31 general license registration for consistency with the Table in § 170.31.

National Database

The Commission is in the process of developing a new computer database to handle information about general licensees and generally licensed devices. Among other improvements from the currently used system, it will be designed to handle the registration process efficiently with automated features. In doing so, the Commission has given some consideration to whether a national database should be established in which information on the identity of general licensees and device information for all jurisdictions would be maintained, making this information accessible to all Agreement States and the NRC. There are variations on the exact approach that might be taken particularly with respect to access and update authority. At this time, the Commission has not yet found it practical to resolve all the issues related to having broad access to the database.

The Commission would like to give further consideration to establishing such a database. It would not require rulemaking. However, if it were to be established, one option would be to change the material transfer reporting requirements so that distributors would report all transfers to the NRC rather than reporting to all jurisdictions into which transfers of devices are made.

A primary advantage of a national database would be the ease of tracing a "found" device back to the general licensee owner responsible for the device. A "found" generally licensed device would be considered an orphan source until such time as the responsible general licensee is identified and it is returned to the licensee. The Commission is in the process of modifying the Nuclear Materials Events Database (NMED) to accept and track information on orphan sources nationally (i.e. all States). Access to the NMED will be available to the NRC and all the States. The Commission will encourage the States to use NMED for this purpose so that this category of information will be shared nationally. However, NMED would rely on reporting of events for its data. In order for a device to be traced back to the responsible general licensee, each jurisdiction would need to search its own files. In addition, information in a national general license database would be immediately available, and would contain the most complete information about general licensees and generally licensed devices.

The primary disadvantage to a national database would be the difficulty of maintaining the security of the data, which is primarily made up of proprietary information. A national database would also present more risk to the integrity of the data, because there would be a higher potential for illicit corruption of data.

In considering whether or not to implement a national database and, if so, what the particular approach would be used, there are a number of aspects to be considered including—

(1) Who will maintain the database (the NRC, an independent third party, or each agency maintaining its own data)?

(2) How access to the data would be controlled.

(3) Potential changes to the reporting requirements for transfers.

(4) The ability for the NRC and the Agreement States to protect information of other agencies.

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(5) Costs to implement and maintain the system or systems (including training).

The Commission seeks comment on the advantages and disadvantages of implementing a national database and on these related issues.

Specific Questions for Public Comment

The Commission welcomes comments on all aspects of this proposed rule, and is especially interested in receiving comments on the specific questions summarized here:

1. The Commission seeks comment on whether the registration requirement should include a provision that would require the general licensee to complete registration by a certain time, whether or not the NRC requests registration.

2. The Commission requests comment on whether it is appropriate for new devices obtained by registrants to be registered when the annual reregistration is carried out without the NRC having earlier contact after additional devices are received. Earlier contact could be made either by an acknowledgment by NRC to the user or by a required response from the general licensee to account for the additional device(s).

3. The Commission solicits comment on whether general licensees should be required to assign a backup responsible individual (BRI).

4. The Commission seeks comment on how best to achieve and enforce the intent that full disclosure of information required to be provided to general licensee customers by distributors be made early enough to be considered in a decision to purchase. For example: Would it be better to use the words, "prior to purchase" in the regulatory text?

5. The Commission seeks comment on the advantages and disadvantages of implementing a national database of general licensees and their devices.

Enforcement

On March 9, 1999 (64 FR 11508), the Commission established an interim enforcement policy for violations of § 31.5 that licensees discover and report during the initial cycle of the registration program. This policy supplements the normal NRC Enforcement Policy in NUREG–1600, Rev. 1. It will remain in effect through one complete cycle of the registration program.

Under this interim enforcement policy, enforcement action normally will not be taken for violations of § 31.5 that are identified by the general licensee, and reported to the NRC if reporting is required, provided that the general licensee takes appropriate corrective action to address the specific violations and prevent recurrence of similar problems and otherwise has undertaken good faith efforts to respond to NRC notices and provide requested information. This change from the Commission's normal enforcement policy is to remove the potential for the threat of enforcement action to be a disincentive for the licensee to identify deficiencies. This approach is warranted given the limited NRC inspections of general licensees. This approach is intended to encourage general licensees to determine if applicable requirements have been met, to search their facilities to ensure sources are located, and to develop appropriate corrective action when deficiencies are found. Under the interim enforcement policy, enforcement action, including issuance of civil penalties and Orders, may be taken where there is—

(a) Failure to take appropriate corrective action to prevent recurrence of similar violations;

(b) Failure to respond and provide the information required by regulation;

(c) Willful failure to provide complete and accurate information to the NRC; or

(d) Other willful violations, such as willfully disposing of generally licensed material in an unauthorized manner.

As noted in the December 2, 1998, proposed rule, the Commission also plans to increase the civil penalty amounts specified in its Enforcement Policy in NUREG–1600, Rev. 1, for violations involving lost or improperly disposed sources or devices. This increase will better relate the civil penalty amount to the costs avoided by the failure to properly dispose of the source or device. Due to the diversity of the types of sources and devices, the Commission is considering the establishment of three levels of base civil penalty for loss or improper disposal. The three levels of base civil penalty would be $5500, $15,000, and $45,000. The higher tiers would be for sources that are relatively costly to dispose of and would be based on approximately three times the average cost of proper transfer or disposal of the source or device.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" published on September 3, 1997 (62 FR 46517), the proposed rule would be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among Agreement State and NRC requirements. The revisions to part 32 would be classified as Category B and the revisions to § 31.5 would be classified as Category C. Through this action, existing provisions of § 31.5 would also be reclassified from Category D to Category C. Although changes are being made to §§ 30.31, 30.34(h)(1), 31.1, and 31.2, and parts 170 and 171 as part of this rulemaking, the existing compatibility designations for these regulations will not be affected.

Category B means the provisions affect a program element with significant direct transboundary implications. The State program element should be essentially identical to that of NRC. Category C means the provisions affect a program element, the essential objectives of which should be adopted by the State to avoid conflicts, duplications, or gaps in the national program. The manner in which the essential objectives are addressed need not be the same as NRC provided the essential objectives are met.

Specific information about the compatibility or health and safety components assigned to this rule may be found at Office of State Programs website, http://www.hsrd.ornl.gov/nrc/home.html.

As discussed above, revised § 32.52(a) and (b) would add the following information to the existing distributors' quarterly transfer reporting requirements: the serial number and model number of the device, the date of transfer, indication if the device is a replacement (and if so, the type, model number, and serial number of the device returned), the name and license number of the reporting company, and the specific reporting period. The proposed revisions would also require the name and phone number of a general licensee's "responsible individual" rather than simply a contact and would specify that the address of the general licensee be the mailing address for the location of use. According to NRC Management Directive (MD) 5.9, "Adequacy and Compatibility of Agreement State Programs," NRC regulations that should be adopted by an Agreement State for purposes of compatibility should be adopted in a time frame such that the effective date of the State requirement is no later than 3 years after the effective date of NRC's final rule. MD 5.9 also provides that some circumstances may warrant that the States adopt certain regulations in less than the recommended 3-year time frame or that the effective dates for both NRC licensees and Agreement State licensees be the same. The Commission believes it is important to the implementation of this program, and to Agreement State programs, to begin receiving the additional information in the distributors' quarterly transfer reports as soon as possible. The Commission requests comments on whether NRC and the Agreement States should establish a single implementation date for this provision which would be earlier than is usually allowed for revision of Agreement State rules for compatibility. One approach would be to request Agreement States to require distributors to provide all the information consistent with this rule (proposed § 32.52(a) and (b)) either coincident with the effective date of the Commission's final action on this rulemaking or within 1 year of that effective date. Agreement States would have the flexibility to adopt this provision through rulemaking, license conditions, or other legally binding requirements.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in the proposed revisions to improve the organization and readability of the existing language of paragraphs being revised. These types of changes are not discussed further in this notice. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading: **ADDRESSES** above.

Environmental Impact: Categorical Exclusion

The NRC has determined that the revisions proposed in this rule are the types of actions described in the categorical exclusions in § 51.22(c)(1) through (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The public reporting burden for this information collection is estimated to average 2 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The time involved is small because most of the proposals are minor revisions to existing information collection requirements. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed information collection, including suggestions for reducing the burden, to the Records Management Branch (T–6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0016), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by August 25, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The NRC has prepared a draft regulatory analysis for this proposed regulation. The analysis examines the cost and benefits of the alternatives considered by the NRC. The comments received on the draft regulatory analysis associated with the proposed rule of December 27, 1991, have been considered to the extent that they apply to this action. The regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained by calling Catherine R. Mattsen, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001; telephone (301) 415–6264; or e-mail at CRM@nrc.gov.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission has evaluated the impact of this rule on small entities. The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.810). The Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The most significant cost of this proposed rule would be the proposed $420 fee to be assessed for each registration. Portions of the proposed rule would apply to the approximately 45,000 persons possessing products under an NRC general license, many of whom may be classified as small entities. However, the annual registration requirement and associated fee would apply to about 5100 of these general licensees. Based on input received previously from small entities who hold specific materials licenses, the NRC believes that the proposed $420 part 170 registration fee would not have a significant economic impact on a substantial number of small entities. The NRC believes that the economic impact of the other proposed requirements on any general licensee would be a negligible increase in administrative burden. The NRC is soliciting comment from the general licensees who meet the NRC's small entity size standards and would be required to register their devices pursuant to part 31 on whether the proposed part 170 fee for their annual registration would have a significant economic impact on their business.

The proposed rule would also revise requirements for specifically licensed distributors of certain generally licensed devices. Currently, there are 28 NRC licensed distributors and approximately 61 Agreement State licensed distributors. Many of these licensees are not small entities and the impact to any of these distributors is not expected to be significant in any case. Distributors who are small entities are also invited to comment on whether they believe the economic impact would be significant.

Those small entities that offer comments on the potential impact on small entities and how that might be minimized should specifically include information on the type and size of their business and how the proposed

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regulations would result in a significant economic impact on them as compared to larger organizations in the same business community. To the extent possible, the commenter should provide relevant economic data, such as the licensee's gross annual receipts, as well as number of employees.

Backfit Analysis

The NRC has determined that the backfit rule, § 50.109, does not apply to this proposed rule and, therefore, a backfit analysis is not required because these amendments would not involve any provisions that would impose backfits as defined in § 50.109(a)(1).

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 31

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out above and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 30, 31, 32, 170, and 171.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83, Stat. 444, as amended, (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Sec. 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486; sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 30.31 is revised to read as follows:

§ 30.31 Types of licenses.

Licenses for byproduct material are of two types: General and specific.

(a) The Commission issues a specific license to a named person who has filed an application for the license under the provisions of this part and parts 32–36, and 39 of this chapter.

(b) A general license is provided by regulation, grants authority to a person for certain activities involving byproduct material, and is effective without the filing of an application with the Commission or the issuance of a licensing document to a particular person. However, registration with the Commission may be required by the particular general license.

3. In § 30.34, paragraph (h)(1) is revised to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(h)(1) Each general licensee that is required to register by § 31.5(c)(13) of this chapter and each specific licensee shall notify the appropriate NRC Regional Administrator, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of title 11 (Bankruptcy) of the United States Code by or against:

(i) The licensee;

(ii) An entity (as that term is defined in 11 U.S.C. 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

(iii) An affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

* * * * *

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

4. The authority citation for part 31 continues to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 31.6 also issued under sec. 274, 73 Stat. 688 (42 U.S.C. 2021).

5. Section 31.1 is revised to read as follows:

§ 31.1 Purpose and scope.

This part establishes general licenses for the possession and use of byproduct material and a general license for ownership of byproduct material. Specific provisions of 10 CFR part 30 are applicable to general licenses established by this part. These provisions are specified in § 31.2 or in the particular general license.

6. Section 31.2 is revised to read as follows:

§ 31.2 Terms and conditions.

The general licenses provided in this part are subject to the general provisions of Part 30 of this chapter (§§ 30.1 through 30.10), the provisions of §§ 30.14(d), 30.34(a) to (e), 30.41, 30.50 to 30.53, 30.61 to 30.63, and parts 19, 20, and 21, of this chapter [1] unless indicated otherwise in the specific provision of the general license.

7. In § 31.5, paragraphs (b), (c)(5), (c)(8), and (c)(9) are revised and paragraphs (c)(12), (13), (14), and (15) are added to read as follows:

§ 31.5 Certain measuring, gauging, or controlling devices.[2]

* * * * *

(b)(1) The general license in paragraph (a) of this section applies only to byproduct material contained in devices which have been manufactured or initially transferred and labeled in accordance with the specifications contained in—

(i) A specific license issued under § 32.51 of this chapter; or

(ii) An equivalent specific license issued by an Agreement State.

(2) The devices must have been received from one of the specific licensees described in paragraph (b)(1)

[1] Attention is directed particularly to the provisions of part 20 of this chapter concerning labeling of containers.

[2] Persons possessing byproduct material in devices under a general license in § 31.5 before January 15, 1975, may continue to possess, use, or transfer that material in accordance with the labeling requirements of § 31.5 in effect on January 14, 1975.

of this section or through a transfer made under paragraph (c)(9) of this section.

(c) * * *

* * * * *

(5) Shall immediately suspend operation of the device if there is a failure of, or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 0.005 microcurie or more removable radioactive material. The device may not be operated until it has been repaired by the manufacturer or other person holding a specific license to repair such devices that was issued under parts 30 and 32 of this chapter or by an Agreement State. The device may be disposed of by transfer to a person authorized by a specific license to receive the byproduct material contained in the device. A report containing a brief description of the event and the remedial action taken; and, in the case of detection of 0.005 microcurie or more removable radioactive material or failure of or damage to a source likely to result in contamination of the premises or the environs, a plan for ensuring that the premises and environs are acceptable for unrestricted use, must be furnished to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 within 30 days. Under these circumstances, the criteria set out in § 20.1402, "Radiological criteria for unrestricted use." may be applicable, as determined by the Commission on a case-by-case basis;

* * * * *

(8)(i) Shall transfer or dispose of the device containing byproduct material only by transfer to another general licensee as authorized in paragraph (c)(9) of this section or to a person authorized to receive the device by a specific license issued under parts 30 and 32 of this chapter, part 30 of this chapter that authorizes waste collection, or equivalent regulations of an Agreement State, or as approved under paragraph (c)(8)(iii) of this section.

(ii) Shall furnish a report to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 within 30 days after the transfer of a device to a specific licensee. A report is not required if the device is transferred to the specific licensee in order to obtain a replacement device from the same specific licensee. The report must contain—

(A) The identification of the device by manufacturer's name, model number, and serial number;

(B) The name, address, and license number of the person receiving the device; and

(C) The date of the transfer.

(iii) Shall obtain written NRC approval before transferring the device to any other specific licensee.

(9) Shall transfer the device to another general licensee only if—

(i) The device remains in use at a particular location. In this case, the transferor shall give the transferee a copy of this section and any safety documents identified in the label of the device. Within 30 days of the transfer, the transferor shall report the manufacturer's name and the model number and the serial number of the device transferred, the name and address of the transferee, and the name and phone number of the responsible individual identified by the transferee in accordance with paragraph (c)(12) of this section to have knowledge of and authority to take actions to ensure compliance with the appropriate regulations and requirements to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; or

(ii) The device is held in storage by an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee.

* * * * *

(12) Shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of responsibility in this regard.

(13)(i) Shall register, in accordance with paragraphs (c)(13)(ii) and (iii) of this section, devices containing at least 370 MBq (10 mCi) of cesium-137, 3.7 MBq (0.1 mCi) of strontium-90, 37 MBq (1 mCi) of cobalt-60, or 37 MBq (1 mCi) of americium-241 or any other transuranic, i.e., element with atomic number greater than uranium (92), based on the activity indicated on the label.

(ii) If in possession of a device meeting the criteria of paragraph (c)(13)(i) of this section, shall register these devices annually with the Commission and shall pay the fee required by § 170.31 of this chapter. Registration must be done by verifying, correcting, and/or adding to the information provided in a request for registration received from the Commission. The registration information must be submitted to the NRC within 30 days of the date of the request for registration or as otherwise indicated in the request. In addition, a general licensee holding devices meeting the criteria of paragraph (c)(13)(i) of this section is subject to the bankruptcy notification requirement in § 30.34(h) of this chapter.

(iii) In registering devices, the general licensee shall furnish the following information and any other information specifically requested by the Commission—

(A) Name and mailing address of the general licensee.

(B) Information about each device: The manufacturer, model number, serial number, the radioisotope and activity (as indicated on the label).

(C) Name and telephone number of the responsible person designated as a representative of the general licensee under paragraph (c)(12) of this section.

(D) Address at which the device(s) are used and/or stored. For portable devices, the address of the primary place of storage.

(E) Certification by the responsible representative of the general licensee that the information concerning the device(s) has been verified through a physical inventory and checking of label information.

(F) Certification by the responsible representative of the general licensee that they are aware of the requirements of the general license.

(14) Shall report changes of address (including change in name of general licensee) to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 within 30 days of the effective date of the change. If it is a portable device, a report of address change is only required for a change in the device's primary place of storage.

(15) May not hold devices that are not in use for longer than 2 years. If devices with shutters are not being used, the shutter must be locked in the closed position. The testing required by paragraph (c)(2) of this section need not be performed during the period of storage only. However, when devices are put back into service or transferred to another person, and have not been tested within the required test interval, they must be tested for leakage before

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use or transfer and the shutter tested before use.

* * * * *

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

8. The authority citation for part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

9. In § 32.51, paragraphs (a)(4) and (5) are added to read as follows:

§ 32.51 Byproduct material contained in devices for use under § 31.5; requirements for license to manufacture, or initially transfer.

(a) * * *

(4) Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words, "Caution—Radioactive Material," the radiation symbol described in § 20.1901 of this chapter, and the name of the manufacturer or initial distributor.

(5) Each device meeting the criteria of § 31.5(c)(13)(i) of this chapter, bears a permanent (e.g., embossed, etched, stamped, or engraved) label affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "Caution—Radioactive Material," and, if practicable, the radiation symbol described in § 20.1901 of this chapter.

* * * * *

10. Section 32.51a is revised to read as follows:

§ 32.51a Same: Conditions of licenses.

(a) If a device containing byproduct material is to be transferred for use under the general license contained in § 31.5 of this chapter, each person that is licensed under § 32.51 shall provide the information specified in this paragraph to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes—

(1) A copy of the general license contained in § 31.5 of this chapter;

(2) A copy of §§ 31.2, 30.51, 20.2201, and 20.2202 of this chapter;

(3) A list of the services that can only be performed by a specific licensee; and (4) Information on acceptable disposal options including estimated costs of disposal.

(b) If byproduct material is to be transferred in a device for use under an equivalent general license of an Agreement State, each person that is licensed under § 32.51 shall provide the information specified in this paragraph to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes —

(1) A copy of the Agreement State's regulations equivalent to §§ 31.5, 31.2, 30.51, 20.2201, and 20.2202 of this chapter or a copy of §§ 31.5, 31.2, 30.51, 20.2201, and 20.2202 of this chapter. If a copy of the NRC regulations is provided to a prospective general licensee, it shall be accompanied by a note explaining that use of the device is regulated by the Agreement State;

(2) A list of the services that can only be performed by a specific licensee;

(3) Information on acceptable disposal options including estimated costs of disposal; and (4) The name, address, and phone number of the contact at the Agreement State regulatory agency from which additional information may be obtained.

(c) Each device that is transferred after (insert date 1 year after the effective date of this rule) must meet the labeling requirements in § 32.51(a)(3) through (5).

(d) If a notification of bankruptcy has been made under § 30.34(h) or the license is to be terminated, each person licensed under § 32.51 shall provide, upon request, to the NRC and to any appropriate Agreement State, records of final disposition required under § 32.52(c).

11. Section 32.52 is revised to read as follows:

§ 32.52 Same: Material transfer reports and records.

Each person licensed under § 32.51 to initially transfer devices to generally licensed persons shall comply with the requirements of this section.

(a) The person shall report all transfers of devices to persons for use under the general license in § 31.5 of this chapter to the Director of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The report must be submitted on a quarterly basis on Form 653—"Transfers of Industrial Devices Report" or in a clear and legible report containing all of the data required by the form.

(1) The required information includes—

(i) The identity of each general licensee by name and mailing address for the location of use;

(ii) The name and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(iii) The date of transfer;

(iv) The type, model number, and serial number of the device transferred; and

(v) The quantity and type of byproduct material contained in the device.

(2) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

(3) If a device transferred replaced another returned by the general licensee, the report must also include the type, model number, and serial number of the one returned.

(4) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(5) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(6) If no transfers have been made to persons generally licensed under § 31.5 of this chapter during the reporting period, the report must so indicate.

(b) The person shall report all transfers of devices to persons for use under a general license in an Agreement State's regulations that are equivalent to § 31.5 of this chapter to the responsible Agreement State agency. The report must be submitted on Form 653—"Transfers of Industrial Devices Report" or in a clear and legible report containing all of the data required by the form.

(1) The required information includes—

(i) The identity of each general licensee by name and mailing address for the location of use;

(ii) The name and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(iii) The date of transfer;

(iv) The type, model number, and serial number of the device transferred; and

(v) The quantity and type of byproduct material contained in the device.

(2) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

(3) If a device transferred replaced another returned by the general licensee, the report must also include the type, model number, and serial number of the one returned.

(4) The report must be submitted within 30 days after the end of each calendar quarter in which such a device is transferred to the generally licensed person and clearly indicate the period covered by the report.

(5) The report must clearly identify the specific licensee submitting the report and must include the license number of the specific licensee.

(6) If no transfers have been made to a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon request of the agency.

(c) The person shall keep records of all transfers of devices for each general licensee including all the information in the reports required by this section and records of final disposition. Records required by this paragraph must be maintained for a period of 3 years following the estimated useful life of the device or the date of final disposition, if known.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

12. The authority citation for part 170 continues to read as follows:

Authority: 31 U.S.C. 9701; sec. 301, Pub. L. 92—314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 9012).

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
. . . . .	
3. * * *	
Q. Registration of a device(s) generally licensed pursuant to Part 31	$420
. . . . .	

[1] Types of fees.

* * *

(f) Generally licensed device registrations under 10 CFR 31.5. Submittals of registration information must be accompanied by the prescribed fee.

* * * * *

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

16. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388 (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242 as amended (42 U.S.C. 5841; sec. 2903, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2214 note).

17. In § 171.5, the definition of Materials License is revised to read as follows:

§ 171.5 Definitions.

* * * * *

Materials License means a license, certificate, approval, registration, or other form of permission issued or granted by the NRC pursuant to the regulations in 10 CFR parts 30, 31 through 36, 39, 40, 61, 70, 71, and 72.

* * * * *

18. In § 171.16, paragraph (d) is amended by adding a fee category, 3. Q. to the schedule of annual fees.

§ 171.16 Annual fees: Material Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

* * * * *

(d) * * *

13. Section 170.2 is amended by adding a paragraph (r) to read as follows:

§ 170.2 Scope.

* * * * *

(r) A holder of a general license granted by 10 CFR part 31 who is required to register a device(s).

14. In § 170.3, the definition of *Materials License* is revised to read as follows:

§ 170.3 Definitions.

* * * * *

Materials License means a license, certificate, approval, registration, or other form of permission issued or granted by the NRC pursuant to the regulations in 10 CFR parts 30, 31 through 36, 39, 40, 61, 70, 71 and 72.

* * * * *

15. Section 170.31 is amended by adding a fee category, 3. Q. to the schedule of materials fees and amending footnote 1 to add a paragraph (f).

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

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SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials license	Annual fees [1,2,3]
3. * * *	
Q. Registration of devices generally licensed pursuant to part 31	[11]N/A

[11] No annual fee is charged for this category since the cost of the general license registration program will be recovered through 10 CFR part 170 fees.

Dated at Rockville, MD., this 19th day of July, 1999.

For the Nuclear Regulatory Commission.

J. Samuel Walker,

Acting Secretary of the Commission.

[FR Doc. 99–18981 Filed 7–23–99; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement Public Law 106–22, enacted on April 27, 1999, which establishes new rules for the loan loss reserve fund which an intermediary must maintain to participate in SBA's microloan program.

DATES: Comments must be submitted on or before August 25, 1999.

ADDRESSES: Comments should be mailed to Jane Palsgrove Butler, Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street, SW., Washington, DC. 20416.

FOR FURTHER INFORMATION CONTACT: Jody Raskind, 202–205–6497.

SUPPLEMENTARY INFORMATION: Public Law 106–22, enacted on April 27, 1999, amended section 7(m) of the Small Business Act (15 U.S.C. 636(7)(m)) in order to change the requirements for the loan loss reserve fund (LLRF) which each intermediary in the SBA's microloan program must maintain. The LLRF is an interest-bearing deposit account at a bank. An intermediary must establish an LLRF to pay any shortage in its day-to-day revolving account caused by delinquencies or losses on microloans it makes to qualified small business borrowers. An intermediary must maintain the LLRF until it repays all obligations it owes to the SBA.

Under the present rule, an intermediary, during its first year in the microloan program, must maintain its LLRF at a level equal to at least 15 percent of the total outstanding balance of notes receivable owed to it by its microloan borrowers (Portfolio). Thereafter, the minimum balance that an intermediary must maintain in its LLRF must be the percent of its Portfolio equal to its actual average loan loss rate after its first year in the microloan program. The maximum level of the LLRF, under the present rule, cannot exceed 15 percent of the Portfolio. There is no prescribed minimum level.

Under the proposed rule, until the intermediary is in the microloan program for at least five years, it would be required to maintain a balance on deposit in its LLRF equal to 15 percent of its Portfolio. After an intermediary is in the microloan program for five years, it may request SBA's Associate Administrator for Financial Assistance (AA/FA) to grant the intermediary's request to reduce the percentage of its Portfolio which it must maintain in its LLRF to an amount equal to its actual average loan loss rate during the preceding five year period. The AA/FA would review the intermediary's annual loss rate for that five year period and determine whether he or she should grant the intermediary's request. The AA/FA could not reduce the loan loss reserve to under ten percent of the Portfolio.

Under the proposed rule, to get a reduction in its loan loss reserve, an intermediary must demonstrate to the satisfaction of the AA/FA that (1) its average annual loss rate during the preceding five years is under fifteen percent, and (2) no other factors exist that might impair its ability to repay all obligations which it may owe to SBA under the microloan program.

Compliance With Executive Orders 12612, 12988 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule does not constitute a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

SBA certifies that this proposed rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

For purposes of Executive Order 12612, SBA certifies that this proposed rule has no federalism implications warranting preparation of a Federalism Assessment.

For purposes of Executive Order 12988, SBA certifies that this proposed rule is drafted, to the extent practicable, to accord with the standards set forth in section 3 of that Order.

List of Subjects in 13 CFR Part 120

Loan programs-business.

For the reasons stated in the preamble, under the authority in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6), the Small Business Administration proposes to amend 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h).

2. Amend § 120.710 by revising paragraphs (b) and (c) and by adding paragraphs (d) and (e) to read as follows:

§ 120.710 What is the Loan Loss Reserve Fund?

* * * * *

(b) *Level of Loan Loss Reserve Fund.* Until it is in the Microloan program for at least five years, an Intermediary must maintain a balance on deposit in its LLRF equal to 15 percent of the outstanding balance of the notes receivable owed to it by its Microloan borrowers ("Portfolio").

(c) *SBA Review of Loan Loss Reserve.* After an Intermediary has been in the Microloan program for five years, it may request the SBA's AA/FA to reduce the percentage of its Portfolio which it must maintain in its LLRF to an amount equal to the actual average loan loss rate during the preceding five year period. Upon receipt of such request, the AA/FA will review the Intermediary's annual loss rate for the most recent five-year period preceding the request.

(d) *Reduction of Loan Loss Reserve.* The AA/FA has the authority to reduce the percentage of an Intermediary's Portfolio which it must maintain in its LLRF to an amount equal to the actual average loan loss rate during the preceding five year period. The AA/FA can not reduce the loan loss reserve to less than ten percent of the Portfolio.

(e) *What Intermediary Must Demonstrate to Get a Reduction in Loan Loss Reserve.* To get a reduction in its loan loss reserve, an Intermediary must demonstrate to the satisfaction of the AA/FA that

(1) Its average annual loss rate during the preceding five years is less than fifteen percent, and

(2) No other factors exist that may impair the Intermediary's ability to repay all obligations which it owes to the SBA under the Microloan program.

Dated: July 20, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–18956 Filed 7–23–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; General Building Contractors, Heavy Construction, Dredging and Surface Cleanup Activities, Special Trade Contractors, Garbage and Refuse Collection, and Refuse Systems

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes a size standard of $25.0 million in average annual receipts for all industries in General Building Contractors (Standard Industrial Classification (SIC) Major Group 15) and for all industries except Dredging and Surface Cleanup Activities in Heavy Construction Other Than Building Construction (SIC Major Group 16); $20.0 million for Dredging and Surface Cleanup Activities (part of SIC 1629, Heavy Construction, Not Elsewhere Classified (NEC)); $10.5 million for all Special Trade Contractors industries (SIC Major Group 17); and $9.0 million for Garbage and Refuse Collection, Without Disposal (part of SIC 4212, Local Trucking Without Storage), and Refuse Systems (SIC 4953). The proposed revisions are being made to adjust these industries' size standards for the effects of inflation since the time they were established in the mid-1980s.

DATES: Comments must be submitted on or before September 24, 1999.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW, Mail Code 6880, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: SBA proposes revisions to its size standards in two industry groups—Construction and Refuse Systems and Related Services. For Construction, SBA proposes an increase to the size standards for all industries in General Building Contractors and Heavy Construction (except Dredging and Surface Cleanup Activities), Major Groups 15 and 16, respectively, from $17 million in average annual receipts to $25 million; for Dredging and Surface Cleanup Activities (a component of SIC 1629, Heavy Construction, NEC), from $13.5 million to $20 million; and for all industries in Special Trade Contractors, Major Group 17, from $7 million to $10.5 million. For the two industries comprising Refuse Systems and Related Services, SBA proposes an increase to the size standard from $6 million to $9 million for Garbage and Refuse Collection, part of SIC 4212 (Local Trucking Without Storage) and for Refuse Systems, SIC 4953.

These proposed revisions adjust the current size standards for inflation that has occurred since 1984, when all but one of these size standards became effective. The size standard for Dredging and Surface Cleanup Activities became effective on December 9, 1985 (50 FR 46418, November 8, 1985), based on a special study of the industrial structure of the Dredging industry. That study essentially verified that the inflation adjustment of 40% which applied to all other Construction industries in 1984 was also appropriate for Dredging. Thus, SBA believes it is appropriate to apply the 1994 inflation adjustment to the Dredging industry without any adjustment for the later date when the Dredging size standard actually took effect.

From September 30, 1988 until September 30, 1996, SBA was prohibited by statute from changing the size standards for the Construction and Refuse Systems and Related Services industries. These industries are subject to the special procurement procedures of the Small Business Competitiveness Demonstration Program (Program) (Title VII of Pub. L. 100–656, 102 Stat. 3853, 3889). This Program specifies special procedures on the use of small business set-aside contracting for the procurement of services within four designated industry groups. The designated groups are: Construction (SIC codes 1521–1542, SIC codes 1611–1629 and SIC codes 1711–1799); Engineering Services (SIC code 8711), Architectural Services (SIC code 8712), and Surveying and Mapping Services (SIC codes 8713 and part of SIC code 7389); Refuse Systems and Related Services (SIC code 4953 and part of SIC code 4212); and Non-nuclear Ship Repair (part of SIC code 3731, Ship Building and Repairing).

Between 1988 and 1996, the Program included a provision that prohibited any change to the size standards for any industry in the designated industry groups that were in effect as of September 30, 1988. However, the Small Business Act of 1996 included an amendment to the Program that repealed this prohibition (Omnibus Consolidated Appropriations Act, 1997, Division D, Title I, section 108 of Pub. L. 104–208, 110 Stat. 3009–733.) In the accompanying legislative history, Congress indicated that SBA should take appropriate action to adjust the size standards for the designated industry groups, although no specific guidance was provided on how these size standards should be adjusted by SBA.

SBA's preliminary assessment of the industries covered by the Program indicated that the size standards for the Engineering Services, Architectural Services, and Surveying and Mapping Services industries, among the lowest of SBA's size standards, were more in need of adjustment than the other size standards. Further review of those industries led to a proposed rule to increase their size standards published

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on February 3, 1998 (63 FR 5480) and a final rule adopting new size standards published on May 14, 1999 (64 FR 26275). At this time, SBA is proposing only an inflation adjustment to the remaining industries covered by the Program which have a receipts-based size standard. A decision will be made at a later time on whether to propose a change to the 1,000-employee size standard for Non-nuclear Ship Repair.

The inflation adjustment proposed for the Construction and Refuse Systems and Related Services industries' size standards is identical to the percentage SBA made to most of its receipts-based size standards in 1994 (see 59 FR 16513, April 7, 1994) to account for the effects of inflation that had occurred since 1984, the year of SBA's previous inflationary adjustment (49 FR 5024, February 9, 1984). SBA is choosing to adjust these size standards to the levels that would have occurred in 1994, if they could have been adjusted at that time, so that all receipts-based size standards will be adjusted for inflation to the same point in time. All of SBA's receipts-based size standards will have been adjusted to the same time period if this rule becomes final (except for the agricultural production size standards which are statutorily set). SBA recognizes that inflation has occurred since 1994, but not to a sufficient amount to warrant further adjustment at this time to these or other receipts-based size standards. SBA will make a consistent inflation adjustment to all receipts-based size standards when data suggest the need for such an inflation adjustment.

Inflation Adjustment Methodology

On April 7, 1994, SBA adjusted most of its receipt-based size standards to account for the effects of inflation that had occurred since SBA's previous inflationary adjustment in 1984 (59 FR 16513, April 7, 1994). In that rule, SBA applied an inflation adjustment of 48.2% to each receipts-based size standard and then rounded that level to the nearest half million dollar increment. This rounding method produces increases to most industry size standards that are slightly above or below the calculated inflation rate of 48.2%.

In determining the rate of inflation, SBA used the U.S. Department of Commerce's Gross Domestic Product (GDP) Implicit Price Deflator. The 1994 adjustment calculated inflation from the third quarter of 1982 (the ending period for the previous inflation adjustment in 1984) to the fourth quarter of 1993 (the latest data available at the time of the 1994 final rule). SBA proposes to make the same adjustments to the industries addressed in this notice of proposed rulemaking.

Dominant in Field of Operation

Section 3(a) of the Small Business Act defines a small concern as one that is:

1. Independently owned and operated,
2. Not dominant in its field of operation, and
3. Meets detailed definitions or standards established by the Administrator of SBA.

In lieu of a separate small business eligibility criterion, SBA includes as part of its evaluation of a size standard whether a concern at or below a recommended size standard would be considered dominant in its field of operation. This assessment generally takes into consideration the market share of firms at a recommended size standard, or other factors that may reveal if a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

SBA has determined that at the recommended size standards of $25.0 million for General Building Contractors and Heavy Construction, $20 million for Dredging and Surface Cleanup Activities, $10.5 million for Special Trade Contractors and $9.0 million for Garbage and Refuse Collection and for Refuse Systems, no firm at or below those levels would be of a sufficient size to be dominant in its field of operation. Firms at the proposed size standards generate less than one percent of total industry sales for each industry reviewed in this proposed rule. This low level of market share for the largest firm covered by SBA's proposed size standards effectively precludes any ability by a firm to exert a controlling effect on the industry in which it operates.

Alternative Size Standards

SBA considered adjusting the Construction and Refuse Systems and Related Services size standards by the amount of inflation that has been reported by the latest available GDP deflator (first quarter of 1999). The GDP deflator records an inflation rate of 60.6% from the third quarter of 1982 through the first quarter of 1999. As discussed earlier, if this adjustment were applied to the Construction and Refuse Systems and Related Services size standards it would result in receipts-based size standards being adjusted at different time periods.

SBA is closely monitoring the amount of inflation that has occurred since the 1994 adjustment and will propose an inflation adjustment to all receipts-based size standards when it has determined that a significant amount of inflation has occurred to warrant such an adjustment. Thus far, inflation has only increased 9.6% since the 1994 adjustment—an amount too small to warrant an inflation adjustment at this time. Furthermore, industry data from the U.S. Bureau of the Census' 1997 Economic Census will be available next year upon which to reassess these industries' size standards.

SBA welcomes public comments on the proposed size standards for the Construction and Refuse Systems and Related Services industries. Comments on alternative size standards should explain the reasons why they are preferable to the proposed size standards.

Compliance With Executive Orders 12612, 12988, and 12866, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

SBA certifies that this rule, if adopted, would be a significant regulatory action within the meaning of Executive Order 12866 since it is expected to have an annual economic impact of over $100 million. For purposes of the Regulatory Flexibility Act, this rule would have a significant impact on a substantial number of small businesses if adopted. Immediately below, SBA has set forth an initial regulatory flexibility analysis and economic impact analysis of this proposed rule.

1. Description of Entities to Which the Rule Applies

SBA estimates that 2,279 additional firms would be considered small as a result of this rule, if adopted. These firms would be eligible to seek available SBA assistance provided they meet other program requirements. Many of these firms (if in existence at the time) probably had small business status in 1984 when the size standards for these industries were established, but have since lost eligibility because of inflationary increases.

Of the additional firms gaining eligibility, 621 operate in General Building Contractors, 375 operate in Heavy Construction, 1,153 operate in the Special Trade Construction industries, while 130 operate in Refuse Systems and Related Services.

Firms becoming eligible for SBA assistance as a result of this rule cumulatively generate $28.9 billion in annual sales, while total sales in these industries are $564 billion. Of the $28.9 billion in annual sales for newly eligible firms, $11.7 billion are in the General Building Contractors industry, $7.2 billion are in Heavy Construction, $9.1 billion are in the Special Trades and $0.9 billion are in Refuse Systems and Related Services.

SBA estimates that out of the approximately $7.85 billion in total initial Federal contracts per year, an additional $400 million worth of contracts could be awarded to firms designated as small firms in the four industry groups affected by this rule. Of these contracts, $378 million could be awarded to the newly defined firms and $22 million to current small firms. These contracts could be obtained through awards under the small business set-aside Program, the 8(a) Program, the Small Disadvantaged Business (SDB) Program, the HUBZone Empowerment Contracting Program, or on an unrestricted basis.

Also, these newly defined small businesses would be eligible for SBA's financial assistance programs and could potentially receive an estimated $21.2 million in loans under the 7(a) Guaranteed Loan Program and $3.9 million in loans under the Certified Development Company (504) Program.

2. Description of Potential Benefits of the Rule

This rule will result in an increase in the number of firms eligible for small business set-aside contracts, the 8(a) Program, the HUBZone Program, and SDB and HUBZone price preferences. For Federal contracts set aside for small business or competed under the 8(a) and HUBZone Programs, this rule will lead to an increase in competition for these contracts and thus lower overall costs to the government.

When an SDB or HUBZone firm competes for an unrestricted contract, the Federal government generally allows them a price preference of up to 10%. This rule may increase the number of firms competing for these contracts in two ways. First, the number of SDB and HUBZone firms will increase. Second, with more small firms competing on unrestricted contracts, the government may decide to set aside more contracts for competition among all small businesses where they had previously awarded price preferences. Any increase in competition that results in a more efficient or competitive firm winning a contract will result in a benefit.

3. Description of Potential Costs of the Rule

In areas where the rule acts to decrease competition for contacts, it may lead to an increase in costs. This may occur in areas where small businesses are currently not present or are not bidding on Federal contracts. If, after issuance of this rule, small businesses bid on these contracts and require the government to provide a price preference or this rule causes a decision to set aside a contract under one of the procurement preference programs, it may increase costs to the Federal government on some contracts. These additional costs will be relatively minor since, as a matter of policy, procurements may be set aside for small businesses or under the 8(a) and HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

4. Transfers

The primary effect of the rule will be transfers among the four parties involved—Federal government, large firms, firms gaining small business status under this rule, and firms that are currently small firms. SBA estimates that, of the $400 million in Federal contracts expected to be awarded to the small firms, approximately 11.3%, or $45.2 million, may be reallocated from large firms to current small firms and the newly defined small firms.

The remaining $354.8 million of contacts will not change hands, rather, the firms holding the contracts will be reclassified as small under the rule. In addition, of $3.9 billion of initial contracts awarded to small firms, SBA estimates that $43.8 million could be transferred from current small firms to larger, more efficient or competitive, newly defined small firms.

5. Description of Reasons Why This Action Is Being Taken and Objectives of Rule

SBA has provided in the supplementary information a statement of the reasons why these new size standards should be established and a statement of the reasons for and the objectives of this rule.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, SBA certifies that this rule would not impose new reporting or record keeping requirements. For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs-business, Loan programs-business, Small business.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: Pub. L. 105–135 sec. 601 *et. seq.*, 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

§ 121.201 [Amended]

2. In § 121.201, the table "SIZE STANDARDS BY SIC INDUSTRY," is amended as follows:

a. Revise DIVISION C—CONSTRUCTION:

b. Under DIVISION E—TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES, MAJOR GROUP 42–MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING, revise the entry 4212 (Part):

c. Under DIVISION E—TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES, MAJOR GROUP 49–ELECTRIC, GAS, AND SANITARY SERVICES, revise the entry 4953 to read as follows:

SIZE STANDARDS BY SIC INDUSTRY

SIC code and description	Size standards in number of employees or millions of dollars
DIVISION C—CONSTRUCTION	
MAJOR GROUP 15–GENERAL BUILDING CONTRACTORS	$25.0

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SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC code and description	Size standards in number of employees or millions of dollars
MAJOR GROUP 16–HEAVY CONSTRUCTION, NON BUILDING	$25.0
EXCEPT:	
1629 (Part) Dredging and Surface Cleanup Activities	$20.01 [1]
MAJOR GROUP 17—CONSTRUCTION-SPECIAL TRADE CONTRACTORS	$10.5
. . . . .	
DIVISION E—TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS, AND SANITARY SERVICES	
. . . . .	
4212 (Part) Garbage and Refuse Collection, Without Disposal	9.0
. . . . .	
4953 Refuse Systems	9.0

[1] SIC code 1629–Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

Dated: May 28, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–18955 Filed 7–23–99; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Arrangement of Transportation of Freight and Cargo

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to modify the way average annual receipts are calculated for firms in the Arrangement of Transportation of Freight and Cargo industry (Standard Industrial Classification (SIC) code 4731). This rule would exclude funds received in trust for unaffiliated third parties from calculation of a firm's receipts. The current size standard for this industry, $18.5 million, is based on gross billings and is equivalent to a firm size of $1.85 million in income from commissions and fees. SBA also proposes a size standard of $5 million in average annual receipts (after excluding funds received in trust for unaffiliated third parties). The revisions are proposed to better define the size of business in this industry that SBA believes should be eligible for Federal small business assistance programs.

DATES: Submit comments on or before September 24, 1999.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, S.W., Mail Code 6880, Washington D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Patricia B. Holden, Office of Size Standards, (202) 205–6618 or (202) 205–6385.

SUPPLEMENTARY INFORMATION: SBA received requests from the public to review the size standard for the Arrangement of Transportation of Freight and Cargo industry (SIC 4731). These requests express concern about the way average annual receipts are calculated for freight forwarders and customs brokers in this industry.

Under SBA's Small Business Size Regulations (13 CFR 121.104), the size of a firm for a receipts-based size standard is based on information reported on a firm's Federal tax returns. Generally, receipts reported to the Internal Revenue Service (IRS) include a firm's gross receipts or sales from provision of goods or services. The requesters believe that receipts collected for payment of charges imposed by the actual transportation provider or shipper should not be included in the calculation of a freight forwarder and customs broker's average annual receipts for size determination purposes.

SBA evaluated this issue and agrees that certain types of receipts should be excluded from the calculation of size for firms in this industry. Related to this issue is whether the current size standard is appropriate if a significant proportion of receipts is excluded from a firm's gross receipts. In reviewing the size standard for this industry, SBA believes the current $18.5 million size standard is not appropriate if size is not measured by gross receipts.

Accordingly, SBA proposes a revision to the size standard for the Arrangement of Transportation of Freight and Cargo industry by excluding funds received in trust for unaffiliated third parties and by changing the size standard from $18.5 million in average annual receipts (gross receipts) to $5 million (excluding funds received in trust for unaffiliated third parties). The following discussion explains the reasons for these two proposed revisions.

Calculation of Average Annual Receipts

Although SBA reviews requests to exclude receipts of certain business activities on a case-by-case basis, the structure of the reviews is consistent with past proposed rules on this issue (e.g., advertising agencies, 57 FR 38452, and conference management planners, 60 FR 57982). The reviews identify and evaluate five industry characteristics under which it might be appropriate to exclude certain funds received and later transmitted to an unaffiliated third party:

1. A broker or agent-like relationship exists between a firm and a third party provider which is a dominant or crucial activity of firms in the industry;
2. The pass-through funds associated with the broker or agent-like relationship are a significant portion of the firm's total receipts;
3. Consistent with the normal business practice of firms in the industry, a firm's income remaining after the pass-through funds are remitted to a third party is typically derived from a standard commission or fee;
4. Firms in this industry do not usually consider billings that are reimbursed to other firms as their own income, preferring instead to count only receipts that are retained for their own use; and,
5. Federal government agencies which engage in the collection of statistics and other industry analysts typically represent receipts of the industry firms on an adjusted receipts basis.

SBA's review of information obtained on the Arrangement of Transportation of Freight and Cargo industry finds that these characteristics exist in the industry. These characteristics support the proposal to exclude funds received in trust for unaffiliated third parties from the calculation of a freight forwarder's or customs broker's receipts-size. The following discussion summarizes these findings.

1. Agent-Like Relationship

The Standard Industrial Classification Manual (1987) states that this industry encompasses "establishments primarily engaged in furnishing shipping information and acting as agents in arranging transportation for freight and cargo" (See SIC 4731, page 280). About half of the establishments in this industry are freight forwarders and customs brokers who advise customers on the options for transporting cargo and coordinate the actual shipment of cargo. These firms act as agents, ensuring that customs, shippers and others for whom the funds are collected get paid. The remaining establishments are other types of agents and brokers and establishments that provide shipping information. Therefore, the dominant activity in this industry is carried out in a broker or agent-like relationship.

2. Pass-Through Funds Are a Significant Portion of Total Receipts

It is common practice in the industry, although not mandatory, for the client's bill from the freight forwarder and customs broker to include charges of transportation providers, duties, etc., which are temporarily held in trust by the firm for remittance to the transportation provider, government agency, or other parties. The charges by other providers are stated on the bill. Moreover, these remitted funds are typically much larger in magnitude than the firm's own earnings for arranging the transportation. It is not unusual for the remitted funds to be over 90% of the total billing.

3. Remaining Income Is Derived From Standard Commission or Fee

The freight forwarder or customs broker earns income as a commission from the transportation provider or as a fee for services from their customers. Only six percent to ten percent of the billings are income from commissions and fees.

4. Firms in This Industry Only Count Receipts Retained for Their Own Use

Firms in this industry do not consider funds collected for unaffiliated third parties as their own funds. As discussed above, the role of freight forwarders and customs brokers is to facilitate the transportation of goods, not to act as the actual shipper. Their income is largely derived from commissions and fees provided by the underlying transporter from the payment of shipping charges paid on behalf of the customer. This payment structure shows that charges for shipping costs are not those of the freight forwarder or customs broker. This point is also reinforced by the fifth and final characteristic.

5. Federal Agencies and Industry Analysts Typically Represent Receipts of These Firms on an Adjusted Receipts Basis

Finally, data from the U.S. Bureau of the Census (Census Bureau) on this industry that SBA uses to evaluate size standards show firm receipts on a commission or fee basis. The survey form used by the Census Bureau (UT 4700) when surveying freight forwarders, customs brokers, shipping agents, and other freight brokers or arrangers specifically instructs them to only report "Agency or brokerage commissions or fees for arranging transportation of freight and cargo" and "Freight Forwarding (net)" (UT 4700, Page 2, items 1 and 2).

Thus, the Census Bureau recognizes that the normal arrangement in this industry is to handle money for others, retaining a small fraction as commission or fee income. Similarly, the credit reporting firm of Dun and Bradstreet also reports receipts for firms in this industry by using income derived from commission and fees, not gross billings.

Based on these findings, SBA believes it is appropriate to exclude amounts collected on behalf of a third party when calculating receipts for firms in the Arrangement of Transportation of Freight and Cargo industry, as it presently does for real estate agencies, travel agencies, conference planners and advertising agencies. More specifically, charges by the shipper for transporting cargo, customs duties, and other direct fees associated with the cost of shipping cargo which the firm holds in trust for an unaffiliated third party and to which it does not have a claim of right would be excluded from gross receipts. Receipts from fees, commissions, and income derived from other activities would be attributable to the firm.

Size Standard for the Arrangement of Transportation of Freight and Cargo

The above proposal effectively increases the current $18.5 million size standard. A firm with receipts exclusive of pass-throughs to third parties of $18.5 million would be equivalent to a firm with gross billings between $185 million to $308 million.

Accordingly, SBA believes it is appropriate to re-evaluate the size standard along with its proposal to allow exclusions for certain types of pass-through funds. Based on that evaluation, SBA proposes a $5 million size standard for this industry—net of pass-through funds. The following discussion describes SBA's size standards methodology and the evaluation of data on the Arrangement of Transportation of Freight and Cargo industry supporting a revision to the current size standard.

Size Standards Methodology

Congress granted SBA discretion to establish detailed size standards. SBA's Standard Operating Procedure (SOP) 90 01 3 "Size Determination Program" sets out four categories for establishing and evaluating size standards:

(1) The structure of the industry and its various economic characteristics.

(2) SBA program objectives and the impact of different size standards on these programs.

(3) Whether a size standard successfully excludes those businesses which are dominant in the industry, and

(4) Other factors, if applicable.

Other factors may come to SBA's attention during the public comment period or from SBA's own research on the industry. The reason SBA has not adopted a general formula or uniform weighting system is to ensure that the factors will be evaluated in context of a specific industry. Below is a discussion of SBA's analysis of the economic characteristics of an industry, the impact of a size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry.

Industry Analysis

In 13 CFR part 121.102 (a) and (b), evaluation factors are listed which are the primary factors describing the structural characteristics of an industry—average firm size, distribution of firms by size, start-up costs and entry barriers, and degree of industry competition. While these evaluation factors are generally considered the most important indicators of industry structure, SBA will consider and evaluate all relevant information that

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would assist it in assessing an industry's size standard. Below is a brief description of the industry structure evaluation factors.

1. *Average firm size* is simply total industry revenues (or number of employees) divided by the total number of firms. If an industry has an average firm size significantly higher than the average firm size of a group of comparative industries (in this case, industries with the anchor size standard of $5 million in receipts), this fact may support establishing a higher size standard than the one in effect for the group of related industries. Conversely, data showing an industry with a significantly lower average firm size relative to the related group of industries tends to support a lower size standard.

2. *The distribution of firms* by size examines the proportion of industry sales, employment, or other economic activity accounted for by firms of different sizes within an industry. If the preponderance of an industry's output is by large firms, this would tend to support a higher size standard than the anchor. The opposite is true for an industry in which the distribution of firms by size indicates that output is concentrated among the smaller firms in an industry.

3. *Start-up costs* affect a firm's initial size because entrants into an industry must have sufficient capital to start a viable business. To the extent that firms in an industry have greater start-up capital requirements than firms in other industries, SBA is justified in considering a higher size standard. As a proxy measure for start-up costs, SBA examines the average level of assets for firms in an industry. An industry with a relatively high level of average assets per firm as compared with the average assets per firm of the group of comparative industries with a $5.0 million size standard is likely to be a capital intensive industry in which start-up costs tend to be higher for firms entering the industry. For those types of industries, that circumstance may support the need for a relatively higher size standard than the anchor size standard.

4. SBA assesses the *degree of industry competition* by measuring the proportion or share of industry sales obtained by firms above a relatively large firm size. In this proposed rule, SBA analyzes the proportion of industry sales generated by the four largest firms in an industry—generally referred to as the "four-firm concentration ratio." If a significant proportion of revenue from sales within an industry is concentrated among a few relatively large producers, SBA tends to set a higher size standard to assist a broader range of firms to compete with firms that are clearly dominant in the industry. If this factor shows the industry to be highly competitive, SBA tends to apply the anchor.

5. *Competition for Federal procurements and SBA financial assistance.* SBA also evaluates the impact of a size standard on its programs and other applications of size standards to determine whether small businesses defined under the existing size standard are receiving a reasonable level of assistance. This assessment mainly focuses on the proportion or share of Federal contract dollars awarded to small businesses. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater is the justification for a size standard higher than the existing one.

As another factor to evaluate the impact of a proposed size standard on SBA programs, the volume of guaranteed loans within an industry and the size of firms in that industry obtaining loans in SBA's financial assistance programs is considered when determining whether or not the current size standard may inappropriately restrict the level of financial assistance to firms in that industry. If small businesses receive ample assistance through these programs, a change to the size standard (especially if it is already above the anchor size) may not be appropriate.

SBA established a size standard of 500 employees for the manufacturing and mining industries at SBA's inception in 1953 and shortly thereafter established a $1 million size standard for the nonmanufacturing industries. These two size standards are generally referred to as "a base or anchor size standards." The revenue-based size standards were adjusted for inflation so that, currently, the anchor size for the nonmanufacturing industries is $5 million.

If the structural characteristics of an industry are significantly different from the average characteristics of industries with the anchor size standard, a size standard higher or, in rare cases, lower than the anchor size standard may be supportable. Only when all or most of the industry data are significantly smaller than the average characteristics of the anchor group industries, or other industry considerations suggest the anchor standard is an unreasonably high size standard, will SBA adopt a size standard below the anchor size standard.

Excluding agriculture and subsistence categories which for the most part have size standards established by statute, only seven industries in the revenue-based size standards are below the $5.0 million anchor and none in the manufacturing or mining industries is below the 500 employee-based size standards.

For the Arrangement of Transportation of Freight and Cargo industry under review in this proposed rule, SBA begins by comparing the characteristics of the five evaluation factors for this industry to the average characteristics of the nonmanufacturing industries which have the anchor size standard of $5 million (hereafter referred to as the nonmanufacturing anchor group). If the characteristics of the industry are similar to the average characteristics of the nonmanufacturing anchor group, then the anchor size standard of $5 million is considered an appropriate size standard for that industry. If, however, the industry characteristics significantly differ from the average characteristics of the nonmanufacturing anchor group, then a size standard above or below $5 million may be appropriate.

Evaluation of Industry Size Standard

SBA analyzed the size standard for the Arrangement of Transportation of Freight and Cargo industry by comparing the industry's characteristics with the average characteristics of the nonmanufacturing group discussed above. SBA examined economic data on the industry using:

- A special tabulation of the 1992 Economic Census prepared on contract by the U.S. Bureau of the Census (which for the Arrangement of Transportation of Freight and Cargo industry collects revenue data based on commissions and fees, not gross billings);
- Asset data from Dun and Bradstreet's 1998 Industry Norms and Key Business Ratios (revenue data are also reported based on commissions and fees); and
- Federal contract award data for fiscal years 1997 and 1998 from the U.S. General Services Administration's Federal Procurement Data Center.
- 7(a) Business Loans from SBA's database.

The table below shows the characteristics for the Arrangement of Transportation of Freight and Cargo industry compared to the average characteristics for the nonmanufacturing anchor group. A review of these factors leads to a proposed size standard of $5 million for this industry.

INDUSTRY CHARACTERISTICS OF SIC 4731 COMPARED TO THE NONMANUFACTURING ANCHOR GROUP

Category	Average firm size ($ mil.)	Percent of industry-sales by firms of			Average assets per firm ($ mil.)	Four-firm concentration ration	Percent of gov't procurement dollars to small business
		<$5mil.	<$10mil.	<$25mil.			
Nonmanufacturing Anchor Group	$0.85	51.0	61.0	67.0	$0.5	15.0	21.0
Arrangement of Transportation of Freight & Cargo	0.94	52.5	61.8	70.9	0.2	5.7	50.1

The average firm size in the Arrangement of Transportation of Freight and Cargo industry is very close to the average firm size of the nonmanufacturing anchor group, and supports a size standard at the $5 million anchor size standard. Similarly, the distribution of sales by firm size also supports a size standard for this industry at the anchor size standard. Under this factor, the proportion of industry sales obtained by firms of $5 million and less in sales, $10 million and less in sales, and $25 million and less in sales, is nearly identical with that of firms of the same size class found for the anchor nonmanufacturing group.

The average assets per firm and the four-firm concentration ratio support a size standard no higher than $5 million. The average assets for firms in the Arrangement of Transportation of Freight and Cargo industry is less than half the average assets of the comparable nonmanufacturing industries in the anchor group. This factor indicates that the industry is not as capital intensive as those in the anchor group, and thus, would support a size standard moderately below the anchor of $5 million.

The four-firm concentration ratio shows that the four largest firms in the Arrangement of Transportation of Freight and Cargo industry account for only about one-third of the proportion accounted for by the four-firm concentration of the anchor group. This factor shows the industry is already highly competitive. If a few large firms were controlling a large portion of the industry revenues, then raising the size standard above the anchor size standard might help smaller firms compete. However, when the industry is already competitive, as this one is, nothing would be gained in competitiveness by lowering the size standard. Therefore, we conclude that the four-firm concentration ratio does not support a standard higher than the anchor, but do not make the parallel argument supporting a size standard lower than the anchor.

Purpose of and Impact on SBA Programs

The percent of Federal contract dollars awarded to small firms in the Arrangement of Transportation of Freight and Cargo industry during fiscal years 1997 and 1998 is more than twice as large as the share of Federal contracting going to small firms within the nonmanufacturing anchor group and does not seem to support an increase to the current size standard. In fiscal years 1997 and 1998, of the 208 actions reported by the Federal Procurement Data System, 97 went to small firms. While the 97 actions were 46.6% of the total actions, they were 50.1% of the total contract dollars awarded, when the two years are combined. Assuming small businesses used gross billings (as required under the current size standard) when they identify themselves as "small," they had obtained a reasonable share of Federal procurements.

However, SBA's review of preliminary data reveals that there may have been inconsistencies on how firms were self-certifying as small business that significantly affects how this factor should be assessed and the conclusions regarding an appropriate size standard. An industry association informed us that there is no standard way for firms to report revenues to the Internal Revenue Service. Whether they report gross billings and deduct pass-through funds as "cost-of goods sold" to arrive at gross or total income, or whether they report commissions and fees as gross or total income, the tax consequences are the same.

For SBA size standard purposes, the different methods have different results. SBA procedures changed effective March 1996 making the Federal tax returns forms the predominant documentation for determining annual receipts. Historically, SBA has interpreted the size standard for SIC 4731 to be based on $18.5 million in gross billings without any deductions for pass-through funds. The proportion of contracts reported to small businesses in this SIC has doubled since SBA started using Federal tax returns for self-certifying to a revenue-based size. When the procurement data are reviewed before and after that procedural change, it shows a big difference in proportion of contract dollars going to small businesses. The 50% share reported above is a two-year average for FY 1997 and 1998. In FY 1994 small businesses in SIC 4731 obtained 26.3%, 21.6% in FY 1995, 39.9% in FY 1996.

The procurement data suggests that the proportion of contracts reported to small business may have been overstated over the last two years as compared to how SBA prefers to define a small business in this industry. When considering that there is some evidence that awards reported to small businesses were likely made to businesses exceeding $18.5 million in gross revenues, it leads to some uncertainty about how to suitably evaluate this factor. If the small business awards were made only to firms with $18.5 million in gross billings (equivalent to $1.85 million in commissions and fees), the current size standard would be appropriate.

However, SBA believes that some of the reported small business awards have been made to firms exceeding $18.5 million in gross billing (although these firms earned commissions and fees less than $18.5 million). If so, a size standard higher than $18.5 million in gross billings or $1.85 million in commissions and fees would be supportable. Based on these considerations, SBA believes that a $5 million size standard measured in adjusted gross receipts (i.e., adjusted to exclude funds held in trust for unaffiliated third-parties) indicated by most of the industry factors would be a reasonable size standard in terms of its impact on Federal procurement. That size standard would likely result in a small business share no higher than currently shown, but would not return to the lower 1994–1995 levels either.

Also, an increase to the size standard for this industry appears reasonable based on the distribution of SBA guaranteed loans under the 7(a) program. In fiscal years 1997 and 1998,

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small businesses in the Arrangement of Transportation of Freight and Cargo industry received approximately $14.5 million in loans per year. About 92% of the loans went to firms with 50 or fewer employees (equivalent to firms with less than $4 million in receipts) and they received $12 million per year in loans, or 83% of the value of 7(a) loans made to all firms in this industry.

The percentage of firms and 7(a) loans to firms in this industry with less than 50 employees is similar but somewhat below the comparable percentages for alf industries combined (96% of firms and 93% of loans made to firms with less than 50 employees). A size standard of $5 million (equivalent to approximately 60 employees) could moderately expand the level of financial assistance SBA is currently providing to firms in this industry. Almost all new loans would likely go to firms in the 20 to 50 employee range, thereby raising the share of loans to firms with less than 50 employees in this industry closer to the average percentage for all industries combined. As with the Federal procurement data, the same size reporting uncertainties as discussed above may exist here. However, only a very few loans could have been made to firms exceeding the current size standard. Thus, the potential increase in 7(a) loans in this industry is expected to be modest and would support a $5 million size standard as one providing a reasonable level of assistance to small businesses in this industry.

Considering these industry structure factors and the impact on SBA programs in the aggregate, SBA believes that the $5 million anchor size standard is reasonable and would provide assistance to firms we believe should be eligible as small business for this industry. Three of the industry factors support a size standard in-line with the nonmanufacturing anchor group and one industry factor supports a size standard lower than the anchor size standard. As discussed above, there exists some uncertainly on how to fully assess the program factor, especially for the Federal procurement data. However, $5 million appears to be a reasonable size standard for SBA programs. Without more of the factors pointing to a size standard lower than the anchor standard, and with no factor pointing to a higher size standard, we believe the anchor standard is a reasonable standard for this industry.

Dominant in Field of Operation

Section 3(a) of the Small Business Act defines a small concern as one that is independently owned and operated, not dominant in its field of operation, and within detailed definitions or standards established by the SBA Administrator. SBA considers as part of its evaluation of a size standard whether a business concern at or below a recommended size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at a proposed size standard as well as other factors that may reveal if a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

SBA has determined that at the recommended size standard of $5 million for the Arrangement of Transportation of Freight and Cargo industry no firm at or below that level would be of a sufficient size to be dominant in its field of operation. A firm at the proposed size standard of $5 million accounts for less than 0.1% of industry total industry sales. This level of market share effectively precludes any firm from exerting a controlling effect on an industry. This is the third of four evaluations and all three support a size like the anchor. As for "other factors", everything we have obtained from the industry association or otherwise, has been considered in the first three evaluations, industry structure, dominance in the industry, or purpose of or impact on SBA programs. However, during the public comment period, we may obtain other information and will consider it before going forward with a final rule.

Alternative Size Standards

SBA considered two alternative size standards for this industry. One alternative considered was modifying the average annual receipts method to allow for pass-through funds received in trust for third parties without adjusting the current $18.5 million size standard. Assuming that firms in this industry normally earn receipts of six percent to ten percent of gross billings, $18.5 million is equivalent to $185 million to $308 million in gross billings. Had SBA only modified the receipts calculation method and retained the current size standard, it would define all but 158 out of 9,631 firms in the industry as small. Further, small businesses with $18.5 million or less in commissions and fees cumulatively account for two-thirds of total industry sales. SBA considers a size standard that defines that large of a proportion of an industry as small businesses to be undesirable.

A second alternative considered was to select a size standard between $1.1 million and $1.8 million to conform to the six percent to ten percent of gross billings that firms in the industry with gross billings of $18.5 million report as receipts. However, the industry characteristics of the Arrangement of Transportation of Freight and Cargo industry, as compared with the average characteristics of the nonmanufacturing anchor group, support a higher size standard than one simply based on an arithmetic conversion of the existing size standard.

SBA welcomes public comments on the proposed size standards for the Arrangement of Transportation of Freight and Cargo industry. Comments addressing the basis for allowing an exclusion of funds held in trust for third parties from the calculation of average annual receipts, as well as the types of receipts held in trust for others would be especially helpful to SBA in making its final decision.

Also, SBA solicits comments on;

1. whether or not six percent to ten percent of gross billings typically represents the commissions and fees earned by firms in this industry, and

2. whether a size standard between the anchor size of $5 million and the current effective size of $ 1.8 million would be more appropriate. In your comments on any of these alternatives, or alternatives not yet discussed, please present the reasons why it is preferable to the proposed size standard.

Compliance With Executive Orders 12612, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

SBA certifies that this rule, if adopted, would not be a significant rule within the meaning of Executive Order 12866. The total amount of Federal procurement and SBA guaranteed loans combined is less than $50 million to this industry annually. It is unlikely that these programs would be significantly affected by a change to the size standard.

For purposes of the Regulatory Flexibility Act, this rule would not have a substantial impact on a significant number of small entities. Although potentially 1,000 additional firms could gain small business status as a result of this rule, only a very small percentage of firms in the industry compete for Federal procurements or obtain guaranteed loans through SBA's financial assistance programs.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, SBA certifies that this rule would not impose new reporting or record-keeping requirements other than those already required of SBA.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12988, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs-business, Loan programs-business, Small business.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of Part 121 continues to read as follows:

Authority: Pub. L. 105–135 Sec. 601 *et. seq.*, 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. Revise § 121.104 (a) (1) to read as follows:

§ 121.104 How does SBA calculate annual receipts?

(a) * * *

Receipts means "total income" (or in the case of a sole proprietorship, "gross income") plus the "cost of goods sold" as these terms are defined or reported on Internal Revenue Service (IRS) Federal tax return forms (Form 1120 for corporations; Form 1120S for Subchapter S corporations; Form 1065 for partnerships; and Form 1040, Schedule F for farm or Schedule C for other sole proprietorships). However, the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker.

* * * * *

§ 121.201 [Amended]

3. In § 121.201, the table "SIZE STANDARDS BY SIC INDUSTRY," is amended as follows:

a. Under Division E-Transportation, Communications, Electric, Gas, and Sanitary Services, Major Group 42—Motor Freight Transportation and Warehousing, revise the entry 4731:

b. Revise, in the table "SIZE STANDARDS BY SIC INDUSTRY," Footnote 6 to read as follows:

SIZE STANDARDS BY SIC INDUSTRY

SIC code and description	Size standards in number of employees or millions of dollars
. . . . .	
Division E—Transportation, Communications, Electric, Gas, and Sanitary Services	
. . . . .	
4731 Arrangement of Transportation of Freight and Cargo	[6] $5.0
. . . . .	

[6] SIC codes 4724, 4731, 6531 7311, 7312, 7313, 7319, and 8741 (part): As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

Dated: July 20, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–19022 Filed 7–23–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–94–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require modification of the autopilot mode engagement/disengagement lever of the rudder artificial feel unit. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent reduced controllability of the airplane due to the failure of the rudder artificial feel unit to properly disengage from autopilot mode during approach and landing.

DATES: Comments must be received by August 25, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–94–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–94–AD." The

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postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–94–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that several cases of stiff rudder pedals have been reported. The stiffness is due to the rudder artificial feel unit being in autopilot mode while the autopilot is disengaged; this is due to jamming of the artificial feel autopilot mode disengagement lever. Investigations have shown that the radial play of the lever bearing together with low temperature could cause an increased operating force. In this case, the back driving force is not able to get the autopilot mode disengaged. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus Industrie has issued Service Bulletin A320–27–1042, Revision 3, dated April 7, 1999, which describes procedures for the modification of the autopilot mode engagement/disengagement lever of the rudder artificial feel unit. This service bulletin introduces a new modified lever with a larger radial play of the bearing. The modification ensures that the correct operating force exists at the pedals during approach and landing. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 1999–075–128(B), dated February 24, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 17 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,120, or $360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 99–NM–94–AD.

Applicability: Model A320 series airplanes, certificated in any category, except airplanes on which Airbus Industrie Modification 22624 has been accomplished or on which Modification 21999 was accomplished in production.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane due to the failure of the rudder artificial feel unit to properly disengage from autopilot mode, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD, modify the rudder artificial feel unit in accordance with Airbus Industrie Service Bulletin A320–27–1042, Revision 3, dated April 7, 1999.

Note 2: Accomplishment of the modification, prior to the effective date of this AD, in accordance with Airbus Industrie Service Bulletin A320–27–1042, dated March 21, 1992, or Revision 1, dated June 6, 1998, or Revision 2, dated November 4, 1998, is considered acceptable for compliance with the requirements of this AD.

Spares

(b) As of the effective date of this AD, no person shall install an artificial feel unit having part number D2727040000600, D2727040000651, D2727040000800, or D2727040000851 on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 1999–075–128(B), dated February 24, 1999.

Issued in Renton, Washington, on July 20, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–19016 Filed 7–23–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 514

[Docket No. 99N–2151]

RIN 0910–AB69

New Animal Drug Applications; Sheep as a Minor Species

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to reclassify sheep as a minor species for all data collection purposes. This would allow sponsors of supplemental new animal drug applications (NADA's) to extrapolate human food safety data from a major species such as cattle to sheep. In particular, this will allow the extrapolation of the tolerances for residues of new animal drugs in cattle to sheep.

DATES: Written comments must be submitted by October 25, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Meg Oeller, Center For Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7581.

SUPPLEMENTARY INFORMATION:

I. Minor Use and Minor Species

Since 1983 (48 FR 1922, January 14, 1983 (hereinafter referred to as the January 1983 final rule)), FDA has permitted some flexibility in the means to meet the data requirements to support the approval of new animal drugs intended for "minor uses" and "minor species." Specifically, these classifications permit data extrapolation from a major use or major species to support the safety and effectiveness of a new animal drug for a minor use or minor species. The requirements were codified in § 514.1(d) (21 CFR 514.1(d)) by the January 1983 final rule (effective February 14, 1983).

"Minor use" is defined as use of new animal drugs in a minor animal species, or use of new animal drugs in any animal species for control of a disease that occurs infrequently or in limited geographic areas. "Minor species" are defined by exclusion as any species other than horses, cattle, swine, dogs, cats, chickens, and turkeys. Sheep are classified as a minor species for the purposes of target animal safety and effectiveness studies. However, they are considered a major species for the purpose of determining the human food safety of edible products.

II. The Minor Species Designation and Safety and Effectiveness

The current minor use regulations (§ 514.1(d)) do not negate or alter the legal requirement that sponsors must provide data from "adequate and well-controlled investigations" to show effectiveness and "adequate tests by all methods reasonably applicable" to demonstrate safety. The agency has guidance that lays out its interpretation of what data for minor use/minor species drugs will be sufficient to meet these legal standards (Ref. 1). The regulations permit data provided in support of a drug approved for use in a major species to be used in support of an approval for the same drug for use in a minor species where scientifically appropriate.

III. The Minor Species Designation and Human food safety

The preamble of the January 1983 final rule (48 FR 1922 at 1923) described the toxicology, residue evaluation, and analytical methodology standards that are components of the human food safety evaluation for minor use drugs. For minor species, sufficient toxicology and metabolism data must be available within the residue evaluation data package in the application, or by reference, to establish a tolerance for new animal drug residues in animal-derived food. The tolerance is a limit on the amount of drug residue in edible tissue, as measured by the approved analytical method, that will not render the edible tissue adulterated under section 402(a)(2)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(2)(D)).

The agency may require the residue evaluation data package to contain additional information on metabolism beyond that used for the approval in major species, if available information raises human food safety concerns about the level or toxicity of metabolic transformation products in edible tissues of the minor target species. In addition, if the conditions of safe use of the product require withholding of animals from slaughter for a prescribed period of time following treatment, a regulatory analytical method will be necessary. The sponsor of the minor use application must then demonstrate that the approved analytical methodology is suitable for monitoring compliance with the approved conditions of use.

IV. The Status of Sheep

In the preamble of the January 1983 final rule, the agency set out the justification for the determination that sheep are a major species for human food safety purposes. The agency's concern centered on consumers in the United States who eat a large proportion of lamb and mutton in their diets. In its evaluations, FDA used data from consumers who had reported eating sheep products during the previous 2 weeks. Using these values, FDA calculated that those consumers eat 24 percent as much lamb as beef. The agency determined that this was enough to categorize sheep as a major species for human food safety purposes. The agency stated in the preamble that it would be willing to reevaluate this conclusion if new data became available.

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V. The Evidence to Support a Change in the Designation of Sheep

New data have become available since publication of the January 1983 final rule. These data allow the agency to conclude that sheep should be a minor species with respect to all data requirements. The new data concern the similarity of drug metabolism between sheep and cattle rather than consumption levels. The agency now believes that the body of evidence concerning drug metabolism is more significant in determining the major/minor status of species than consumption data because it demonstrates the reliability of data extrapolated from a major species. C. R. Short (Ref. 2) reviewed a collection of studies demonstrating that cattle and sheep metabolize drugs similarly. He documented the similarity in both major and minor pathways of drug metabolism between cattle and sheep, and found no differences of a qualitative nature.

These findings are further supported by a comparison of products that have been approved for use in both cattle and sheep under the current regulations. If sheep were considered a minor species for human food safety, the tolerance approved in cattle would be applied to sheep. A tissue residue depletion study would be conducted in sheep to establish the withdrawal period. To evaluate the impact of such an extrapolation, the agency reviewed the codified tolerances for cattle and sheep for those products with existing approvals in both species.

In most cases, the codified tolerances for cattle and sheep already are the same (e.g., ceftiofur, 21 CFR 556.113; chlortetracycline, 21 CFR 556.150; levamisole hydrochloride, 21 CFR 556.350; neomycin, 21 CFR 556.430; oxytetracycline, 21 CFR 556.500; tetracycline, 21 CFR 556.720; and thiabendazole, 21 CFR 556.730).

In two instances, the codified tolerances for cattle and sheep are different: Albendazole, 21 CFR 556.34 and ivermectin, 21 CFR 556.344. In the case of albendazole, the tolerance in cattle is lower than the tolerance in sheep (i.e., 200 parts per billion (ppb) for cattle and 250 ppb in sheep). In this case, application of the cattle tolerance to sheep would result in a longer withdrawal time than the application of the approved sheep tolerance. For ivermectin, the currently approved cattle tolerance of 100 ppb is higher than the approved sheep tolerance of 30 ppb. However, the original tolerance for cattle was 15 ppb (51 FR 27021, July 29, 1986). Following the original approvals in cattle and sheep, a revised acceptable daily intake (ADI) was calculated for ivermectin based on additional toxicological data (59 FR 50829, October 6, 1994). However, the revised ADI was used only to support a revision in the cattle tolerance to 100 ppb. The sheep tolerance was not similarly revised and remained at 30 ppb. Thus, the sheep tolerance of 30 ppb should be compared to the cattle tolerance of 15 ppb. In this circumstance, application of the cattle tolerance to sheep would also result in a longer withdrawal time. Thus, codified tolerances for existing approvals for cattle and sheep demonstrate that extrapolation of the tolerance is scientifically justified.

VI. Proposed Action

The proposed rule would amend § 514.1(d)(1)(ii) to designate sheep as a minor species with respect to all data collection purposes under NADA's. The effect of the change would be to permit the extrapolation of the tolerance from other closely related species, such as cattle, to sheep.

VII. Environmental Impact

The designation of sheep as a minor species means that most new animal drugs to be used in sheep fall within a category of actions which FDA considers to not individually or cumulatively have a significant effect on the human environment and for which neither an environmental assessment nor an environmental impact statement is required (40 CFR 1508.4). The categorical exclusion is in § 25.33(d)(4) (21 CFR 25.33(d)(4)) of FDA's environmental regulations. Categorical exclusion under § 25.33(d)(4) for drugs for minor species applies to those new animal drugs that have been previously approved for use in another or the same species when similar animal management practices are used in the minor species.

VIII. Analysis of Economic Impacts

FDA has examined the impact of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to examine regulatory alternatives for small entities, if the rule may have a significant impact on a substantial number of small entities. The Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before enacting any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any one year.

FDA concludes that this proposed rule is consistent with the principles set forth in the Executive Order and in these two statutes. FDA estimates that the proposed rule will not impose any compliance costs on the animal drug industry, but rather expects it to provide a small cost savings for any company submitting an NADA for an animal drug to be used on sheep. As a result, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order. FDA has further determined, as described in the following paragraph, that the proposed rule will not have a significant economic impact on a substantial number of small entities. Further, since this proposed rule makes no mandates on other government entities and is not expected to result in expenditures of $100 million in any one year, FDA need not prepare additional analyses under the Unfunded Mandates Reform Act.

FDA is proposing to amend the new animal drug regulations to reclassify sheep as a minor species for all data collection purposes, thereby allowing extrapolation from major species data to be used in conjunction with a total residue depletion study in sheep to meet the human food safety data standard for NADA's. Currently, FDA considers sheep a minor species for the purpose of the data necessary to demonstrate animal safety and effectiveness only. It considers sheep a major species for the purpose of human food safety requirements. This division in the classifications for sheep was originally based on expectations of consumption levels of sheep, especially among certain consumer groups. Since the original classification was made, new data demonstrating the similarity of drug metabolism between ruminant species has become available. Since there are not significant differences in the metabolism of most drugs between ruminant species, FDA believes most data packages supporting an NADA for use in sheep should be able to rely on the tolerance calculated for cattle.

The benefit of this proposed rule would be to permit the tolerance calculated for major species, including cattle, to be used with a tissue residue study in sheep to determine a withdrawal time for new animal drugs to be used in sheep. The proposed rule is therefore expected to lower research expenses and provide an impetus for sponsors to submit supplemental NADA's for sheep. More specifically, it would eliminate the need for a total residue metabolism study that can be costly and prohibitive for sponsors of new animal drugs for small markets such as sheep. FDA believes this study is unnecessary in this instance due to the similarities in the metabolism of most drugs in cattle and sheep. Adopting the approach that allows for interspecies data extrapolation, along with the tissue residue depletion studies, would encourage NADA submissions by decreasing research costs while continuing to protect human food safety. Apart from these cost savings, FDA does not expect this proposal to impose any other compliance burdens on sponsors of new animal drugs.

IX. Regulatory Flexibility Analysis

The proposed rule is intended to reduce research costs for sponsors of NADA's for animal drugs used in sheep while maintaining the necessary safeguards concerning animal drug residues in human food. FDA estimates that this rule will not result in any compliance costs on the affected industry, regardless of the size of the companies involved. Further, FDA estimates that the rule will result in cost savings to sponsors of NADA's for animal drugs for use in sheep. In addition, most NADA sponsors would not be considered small businesses according to the standards of the Small Business Administration. Thus, in accordance with the Regulatory Flexibility Act, FDA certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities.

X. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted annually for inflation) in any one year. The publication of the proposal to reclassify sheep as a minor species for all data collection purposes is not expected to result in expenditures of funds by State, local, and tribal governments or the private sector in excess of $100 million in any one year. Because the agency estimates no compliance costs and modest cost savings due to the proposed rule, FDA is not required to perform a cost/benefit analysis according to the Unfunded Mandates Reform Act.

XI. The Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XII. Comments

Interested persons may, on or before October 25, 1999, submit to the Dockets Management Branch (address above), written comments regarding this proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

XIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. U.S. Food and Drug Administration, "Guidance for Industry: FDA Approval of New Animal Drugs for Minor Uses and for Minor Species," Guidance No. 61, January 1999.

2. Short, C. R., "Consideration of Sheep as a Minor Species: Comparison of Drug Metabolism and Disposition with Other Domestic Ruminants," *Veterinary and Human Toxicology*, vol. 36, No. 1, pp. 24–40, February 1994.

List of Subjects in 21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 514 be amended as follows:

PART 514—NEW ANIMAL DRUG APPLICATIONS

1. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 379e, 381.

2. Revise § 514.1 in paragraph (d)(1)(ii) to read as follows:

§ 514.1 Applications.

* * * * *

(d) * * *

(1) * * *

(ii) *Minor species* means animals other than cattle, horses, swine, chickens, turkeys, dogs, and cats.

* * * * *

Dated: July 15, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–18926 Filed 7–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

[SPATS No. KS–021–FOR]

Kansas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of an amendment to the Kansas regulatory program (Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kansas is proposing to condense and revise its previously approved revegetation success guidelines. The amendment is intended to revise the Kansas program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

This document gives the times and locations that the Kansas program and the amendment to that program are available for public inspection, the comment period during which you may submit written comments on the proposed amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., c.d.t., August 25, 1999. If requested, we will hold a public hearing on the amendment on August 20, 1999. We will accept requests to speak at the hearing until 4:00 p.m., c.d.t. on August 10, 1999.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to John Coleman, Mid-Continent Regional Coordinating Center, at the address listed below.

You may review copies of the Kansas program, the amendment, a listing of any scheduled public hearings, and all written comments received in response

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to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Mid-Continent Regional Coordinating Center.

John Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois, 62002, Telephone: (618) 463–6460.

Kansas Department of Health and Environment, Surface Mining Section, 4033 Parkview Drive, Frontenac, Kansas 66763, Telephone (316) 231–8540.

FOR FURTHER INFORMATION CONTACT: John Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet: jcoleman@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Kansas program. You can find general background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5892). You can find later actions concerning the Kansas program at 30 CFR 916.10, 916.12, 916.15, and 916.16.

II. Description of the Proposed Amendment

By letter dated July 12, 1999 (Administrative Record No. KS–616), the Kansas Department of Health and Environment, Surface Mining Section (SMS) sent us an amendment to the Kansas program under SMCRA. The SMS sent the amendment in response to deficiencies that we identified in Kansas' revegetation success guidelines in a final rule decision on August 19, 1992 (57 FR 37430). The amendment also includes changes made at the SMS's own initiative. The SMS proposes to amend the Kansas revegetation success guidelines entitled "Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success." A brief summary of the changes are discussed below. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES.**

1. Preface

Kansas revised the preface to reflect the current revisions to its revegetation success guidelines. Kansas also removed language from the preface that was not approved by us in the August 19, 1992, final rule decision. The removed language appeared to exempt specific permits from possible revisions to reflect the success standards and sampling techniques in Kansas' revegetation success guidelines.

2. Introduction

Kansas made minor revisions to the existing language and added the following new paragraph:

> In adopting the aforementioned references, the operator is required to use a statistically valid sampling technique at a 90% or greater statistical confidence as approved by the SMS in consultation with the United States Department of Agriculture (USDA), Natural Resource Conservation Service (NRCS). Furthermore, success standards for each permit will be based on the most current county survey in place at the time of the permit's issuance.

3. Definitions

Kansas defined the following terms that are used throughout the Kansas revegetation success guidelines: A.U.M.; Cropland; Diverse; Effective; Forage; Historically Cropped; KDWP; KSU; NRCS; Permanent; Previously Mined; Prime Farmland; and SMS.

4. Tables

Kansas added four new tables. Table 1 contains productivity and ground cover vegetation requirements for Phase II and Phase III bond release of pasture land and grazing land; wildlife habitat, recreation, shelter belts, and forest products; and industrial, commercial, or residential land uses. Table 2 lists productivity and ground cover vegetation requirements for Phase II and Phase III bond release of prime farmland. Table 3 contains productivity and ground cover vegetation requirements for Phase II and Phase II bond release of cropland. Table 4 provides the suggested minimum number of samples by size of area being evaluated for corn, soybeans, wheat/oats, sorghum, and forage crops.

5. Chapter I. Ground Cover Success

Kansas consolidated the substantive provisions of its currently approved ground cover success standards for all land uses in this chapter. Section A covers the standard for ground cover on topsoiled areas. Section B discusses the standard for ground cover on previously mined areas. Section C provides the standard for ground cover on wildlife habitat areas. Section D contains standards for ground cover on industrial, commercial, or residential areas with topsoil. Sections E and F provide general information on ground cover sampling criteria and techniques. Section G contains specific pre-mining ground cover sampling techniques. Section H provides specific post-mining ground cover sampling criteria. Finally, Section I covers specific post-mining ground cover sampling techniques.

6. Chapter II. Forage Production Success Standard

Kansas revised and consolidated the substantive provisions of its currently approved forage production success standards for all applicable land uses in this chapter. Kansas also added whole field harvest to the methods of data collection for forage. Section A discusses the use of the USDA–NRCS crop yield database that is listed by soil mapping units in the published county soil surveys for Kansas and the USDA–NRCS database in the Technical Guide Notice KS–145 (Appendix B). Section B contains information on methods of calculation using the Animal Unit Month (A.U.M.) values listed in the USDA–NRCS soil surveys for Kansas. Section C provides productivity standards for prime farmland forage crops. Section D covers the productivity standard for previously mined lands reconstructed to pasture and grazing land. Section E contains information on the productivity standard for pasture and grazing land. Section F discusses the use of representative areas, with test plots, or whole field harvesting as methods for data collection. Section G contains forage crop production sampling criteria. Finally, Section H provides forage crop production sampling techniques.

7. Chapter III. Productivity Standard Databases for Row Crops

Kansas revised and consolidated the substantive provisions of its currently approved row crop production success standards for prime and non-prime farmland in this chapter. Kansas also added corn as an acceptable row crop. Section A discusses the acceptable row crops for revegetation productivity. Section B contains information on the method of row crop production success standard calculations. Section C provides row crop sampling criteria. Section D contains methods for data collection involving representative areas, with test plots, and whole field harvesting. Section E provides productivity sampling criteria for prime farmland row crops. Section F discusses productivity sampling criteria for non-prime farmland cropland row crops. Finally, Section G contains row crop sampling techniques involving test plots and whole field harvest for grain sorghum (milo), wheat, soybeans, and corn. In response to deficiencies that we identified in the August 19, 1992, final rule decision on Kansas' current revegetation success guidelines, Kansas revised its row crop sampling techniques for grain sorghum and wheat to require a determination of statistical sample adequacy based on sample weights corrected to a standard moisture content.

8. Chapter IV. Stem Density

Kansas consolidated its productivity success standards for trees and shrubs in this chapter. Section A discusses the general success standards for fish and wildlife habitat, recreation, shelter belts, and forest products land uses. Section B contains the Phase II and Phase III productivity success standards for these land uses. Section C provides information on productivity sampling criteria. Section D contains stem density sampling techniques. Section E discusses previously mined areas that are reclaimed to fish and wildlife habitat, recreation, shelter belts, or forest products land uses.

9. References

Kansas listed the technical reports, studies and other documents used in developing its revegetation success guidelines.

10. Appendix A, Plant Species List

This appendix lists plant species, tree species, shrub and vine species, and legume species. It lists the plant species that are unacceptable for all land uses, with the following exception. All plant species listed are acceptable for the fish and wildlife habitat land use unless they are marked with an asterisk (*). It lists the acceptable tree species for fish and wildlife habitat, recreation, shelter belts, and forest products land uses. It also lists the acceptable shrub and vine species for fish and wildlife habitat, recreation, and shelter belt land uses. Finally, Appendix A lists the acceptable legume species based on land use for revegetation productivity and ground cover.

11. Appendix B, Methods of Production Success Standard Calculations

Kansas is proposing a new Animal Unit Month (A.U.M.) value for use in calculating forage production. Kansas defines the A.U.M. as the monthly average pounds of forage needed to support each 1,000 pounds of cattle. Kansas submitted calculations and documentation to support an A.U.M. equal to 760 pounds. The documentation included two methods of calculating forage production based on A.U.M. per soil type for cool season grass seed mixtures and warm season grass seed mixtures. Appendix B also contains tables showing two methods of calculating the success standard for grain sorghum by soil type and soybeans by soil type.

12. Appendix C, Planting Reports

This appendix contains the following reports: Mining Section Planting Report; Cropland Seeding Report; Forage/Pastureland Seeding Report; Woodland/Wildlife Seeding and Planting Report; Wildlife Seeding Mixture Report; and Annual Production and Ground Cover Survey.

13. Appendix D, Reference Area Criteria

Kansas moved its previously approved provisions for reference areas to Appendix D.

14. Appendix E, Representative Sample Field Area Definition and Test Plot Criteria

This appendix discusses the use of data from representative sample field areas to prove row crop production success. This data is obtained from individual row crop test plots.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Kansas program.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Mid-Continent Regional Coordinating Center.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on August 10, 1999. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodation to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C)

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of the National Environmental Policy Act (42 U.S.C. 433?(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 19, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–18946 Filed 7–23–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

[SPATS No. MS–015–FOR]

Mississippi Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of an amendment to the Mississippi regulatory program (Mississippi program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Mississippi proposes revisions to regulations concerning formal hearings; bond release; hydrologic balance; cessation orders; formal review of citations; definitions; areas where mining is prohibited or limited; performance bonds; pre-blasting surveys; permitting; inspections; coal exploration; qualified laboratories; disposal of excess spoil; coal mine waste impounding structures; backfilling and grading; roads; and coal preparation plant performance standards. The State also proposes to correct typographical errors and make other non-substantive revisions. Mississippi intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Mississippi program and the amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., c.d.t., August 25, 1999. If requested, we will hold a public hearing on the amendment on August 20, 1999. We will accept requests to speak at the hearing until 4:00 p.m., c.d.t. on August 10, 1999.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Arthur W. Abbs, Director, Birmingham Field Office, at the address listed below.

You may review copies of the Mississippi program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Birmingham Field Office.

Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290–7282.

Department of Environmental Quality, Office of Geology, 2380 Highway 80 West, P.O. Box 20307, Jackson, Mississippi 39289–1307, Telephone: (601) 961–5500.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office. Telephone: (205) 290–7282. Internet: aabbs@balgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Mississippi Program

On September 4, 1980, the Secretary of the Interior approved the Mississippi program. You can find background information on the Mississippi program, including the Secretary's findings and the disposition of comments, in the September 4, 1980, **Federal Register** (45 FR 58520). You can find later actions on the program at 30 CFR 924.10, 924.15, 924.16, and 924.17.

II. Description of the Proposed Amendment

By letter dated July 1, 1999 (Administrative Record No. MS–0373), Mississippi sent us an amendment to its program pursuant to SMCRA. Mississippi sent the amendment in response to required program amendments at 30 CFR 924.16(f)–(h), (j), (k), (m), and (n). The amendment also includes changes made at Mississippi's own initiative. Mississippi proposes to amend the Mississippi Surface Coal Mining Regulations. Below is a summary of the changes proposed by Mississippi. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES.**

A. Revisions required by 30 CFR 924.16(f)–(n)

1. Section 3301. Formal Hearing

Mississippi proposes to revise paragraph (b) to read as follows:

> Any party may file a petition for temporary relief from the Permit Board's action in conjunction with the filing of the request for a formal hearing or at any time before a final decision is issued by the Permit Board after a formal hearing.

2. Section 4501. Procedures for Seeking Release of Performance Bond

Mississippi proposes to revise paragraph (c) to clarify that Federal, State, and local governmental agencies which have special expertise with respect to any environmental, social, or economic impact involved in the coal mining operation are allowed to file written objections to the proposed bond release and to request public hearings.

3. Section 5333. Hydrologic Balance: Surface- and Ground-Water Monitoring

Mississippi proposes to revise paragraph (b)(3)(A) to require the operator to demonstrate that the coal mining operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas.

4. Section 6501. Cessation Orders

Mississippi proposes to revise paragraph (c)(4) to replace a reference to § 53–9–69 with a reference to § 6509.

5. Section 6511. Formal Review of Citations

a. Mississippi proposes to revise paragraph (a) to require interested parties to request formal reviews within 30 days of the date the Commission, the Executive Director, or the Executive Director's authorized representative took the action that is being contested during the formal review. Mississippi also proposes to add a requirement that the Commission notify parties in writing of the time and place of the hearing at least five working days before the hearing date.

b. Mississippi proposes to revise paragraph (l)(1) by changing the reference from § 6511(e) to § 6511(a).

c. Mississippi proposes to revise paragraph (n)(9) to read as follows:

> (9) Any party desiring to appeal a decision of the Commission granting or denying an application for expedited review may appeal to and seek relief from the appropriate chancery court pursuant to § 53–9–77.

B. Revisions Made at Mississippi's Own Initiative

1. Section 105. Definitions

Mississippi proposes to revise the definition for performance bond to read as follows:

> Performance Bond—a surety bond, collateral bond, letter or letters of credit, or self-bond, or a combination thereof, by which a permittee assures faithful performance of all the requirements of the act, these regulations, this program and the requirements of the permit and reclamation plan.

2. Section 1105. Areas Where Mining is Prohibited or Limited

Mississippi proposes to revise paragraph (c) to read as follows:

> (c) on any lands which will adversely affect any publicly owned park or any place included on the National Register of Historic Places, unless approved jointly by the Permit Board and the federal, state or local agency with jurisdiction over the park or place;

3. Section 4301. Form of the Performance Bond

Mississippi proposes to add "a letter or letters of credit" to the list of acceptable forms of performance bond.

4. Section 4303. Terms and Conditions of the Bond

Mississippi proposes to revise paragraph (g)(6) by placing the term "indemnity agreement" with the term "letter of credit."

5. Section 4701. General

Mississippi proposes to revise paragraph (a) to read as follows:

> (a) Except as in compliance with § 4701(b), the Commission shall proceed to cause the forfeiture of all or part of a bond or other collateral accepted pursuant to Chapter 43 for any permit where required or authorized by § 4705.

6. Correction of Typographical Errors

a. Mississippi assigned an incorrect section number (Section 5343) to its regulatory provisions for "Use of Explosives: Pre-blasting Survey." Mississippi proposes to change this incorrect section number to Section 5349.

b. Mississippi proposes to correct typographical errors and other non-substantive revisions in the following sections: Section 105. Definitions; Section 407. Contents of Application for Exemption; Section 413. Conditions of Exemption and Right of Inspection and Entry; Section 1105. Areas Where Mining is Prohibited or Limited; Section 2103. Permit Requirements for Exploration Removing More Than 250 Tons of Coal, or Occurring on Lands Designated as Unsuitable for Surface Coal Mining Operations; Section 2105. Coal Exploration Compliance Duties; Section 2313. Permit Term Information; 3113. Review of Permit Applications; Section 3119. Permit Approval or Denial Actions; Section 3121. Permit Terms; Section 3509. Permit Renewals: Completed Applications; Section 3713. Qualified Laboratories; Section 5359. Disposal of Excess Spoil: General Requirements; Section 5377. Coal mine waste: Impounding structures; Section 5391. Backfilling and Grading: General Grading Requirements; Section 5393. Backfilling and grading: Thin Overburden; Section 53111. Roads: General; Section 5703. Steep Slopes: Backfilling and grading: Steep slopes; and Section 5903.

Coal Preparation Plants: Performance Standards.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Mississippi program.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Birmingham Field Office.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on August 10, 1999. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable

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standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 15, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–18947 Filed 7–23–99; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN96–1b; FRL–6402–1]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving temporary revised opacity limits for two processes at ALCOA Warrick Operations, which were submitted by the Indiana Department of Environmental Management (IDEM) on December 8, 1998. ALCOA Warrick Operations is a primary aluminum smelter located in Newburgh, Indiana. The revised limits allow for higher opacity emissions during fluxing operations at two holding furnaces for a period of one year, ending May 1999. Mass emissions limits are not being changed.

DATES: EPA must receive written comments on this proposed rule by August 25, 1999.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at:

Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we", "us", or "our" are used we mean EPA.

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I. What action is EPA taking today?
II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Action Is EPA Taking Today?

We are proposing to approve temporary revised opacity limits for two processes at ALCOA Warrick Operations, which were submitted by IDEM on December 8, 1998. The revised limits allow for higher opacity emissions during fluxing operations at two holding furnaces for a period of one year, ending May 1999.

II. Where can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: July 9, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–18871 Filed 7–23–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6401–7]

National Oil and Hazardous, Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Mason County Landfill Superfund Site from the National Priorities List; request for comments.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Mason County Landfill Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by U.S. EPA, because it has been determined that all Fund-financed responses under CERCLA have been implemented and U.S. EPA, in consultation with the State of Michigan, has determined that no further response is appropriate. It should be noted,

however, long-term maintenance of the landfill cap and monitoring of the groundwater at the Site will continue to ensure that the effectiveness of the remedy is sustained. U.S. EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before August 25, 1999.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region V office and at the local information repository located at: Ludington Public Library 217 E. Ludington, Ludington, MI 49431. Requests for comprehensive copies of documents should be directed formally to the Region V Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Jeffrey Gore at (312) 886–6552 (SR–6J), Remedial Project Manager or Gladys Beard (SR–6J), Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886-7253 or Stuart Hill (P–19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–0689.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
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I. Introduction

The U.S. Environmental Protection Agency (EPA) Region V announces its intent to delete the Mason County Landfill Site from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, U.S. EPA considers, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial Investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This **Federal Register** document, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day comment period. The public is asked to comment on U.S. EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the U.S. EPA Region V Office to obtain a copy of this responsiveness summary, if one is prepared. If U.S. EPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The Mason County Landfill Site is located three miles south of the city of Ludington, Michigan and one mile east of Lake Michigan. The Site occupies approximately eighteen acres of a predominantly rural area in Pere Marquette Township; approximately ten acres of the Site is landfilled. During its active life, Industrial, commercial and municipal waste was placed in the landfill.

The Site property was originally owned by Edward Dains when it was selected for use as a sanitary landfill by the Mason County Department of Public Works (DPW). In 1971, Mason County DPW leased the property from Mr. Dains and subsequently entered into an agreement with Acme Disposal to operate the landfill. Mr. Dains was hired by Acme Disposal as a Sanitation Engineer to oversee the daily operations of the landfill from 1972 until 1978. The Michigan Department of Public Health (MDPH) approved Acme's Solid Waste Disposal Area License in 1971 with the stipulations that no refuse be disposed of below the 710 foot elevation (mean sea level) that the final cover contained at least twenty percent clay, and that monitoring wells be installed. In 1973, landfill licensing and oversight were transferred from the MDPH to the Michigan Department of Natural Resources (MDNR). During its oversight, the MDNR documented that slurry and sludge wastes from local industries were being dumped at the landfill, allowed to dry, and then covered. The Site's license was renewed annually through 1977. It was closed in August of 1978 when it reached capacity. Public concerns over the water quality in nearby Iris Creek prompted the Mason County DPW and the MDNR to review closure activities at the site.

In 1983, the Mason County DPW received a grant from the State of Michigan for improvements to the landfill. A clay cap was completed and berms and storm drains were constructed to improve Site drainage. Two surface aerators were installed in Babbin Pond to help aerate the pond and facilitate biodegradation of organic matter. Fifteen gas vents were placed into the top of the landfill.

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Ludington, Michigan has a population of about 9,500. The population of Mason County has been estimated at 26,400 based on the 1980 census. The population within a three mile radius of the Site has been estimated at 1,112.

Just north of the Site are heavily wooded areas and orchards are located to the east and south of the Site. The topography varies from relatively level upland areas south and east of the landfill to steep valleys north of the landfill. The landfill is generally a valley fill with a maximum depth estimated to be 40 to 50 feet.

Surface waters which the Site affected included Iris Creek, the Pere Marquette River, Pere Marquette Lake, and Lake Michigan. The headwaters of Iris Creek are located less than 500 feet from the landfill and consist of a wet, marshy area southwest of Babbin Road. Water from the marshy area drains into Babbin Pond, which discharges directly into Iris Creek. Iris Creek discharges into Pere Marquette River, which discharges into Lake Michigan. A pumped-storage power reservoir operated by Consumers Energy Company is located approximately one half mile south of the Site. Lake Michigan is the main drinking water source in the area and is the City of Ludington's water supply. In rural Pere Marquette Township, residents generally depend on small domestic wells screened in sand and gravel aquifers for potable water supplies. Fourteen residential wells are within about a half mile radius of the landfill that vary in depth from 30 to 150 feet below ground surface.

Other water uses in the area include large capacity wells that produce salt brine for industrial use. A salt brine well about 1,000 feet west of the landfill is screened in an aquifer at a depth of 450 feet. The brine aquifer is separated from the overlying aquifers used for potable water by more than 300 feet of low permeability glacial till.

Mason County is undelain by bedrock formations at depths from 300 to 700 feet. The Mississippi Age Coldwater Shale lies beneath the landfill Site at a depth of 650 feet. The formation is predominantly shale with occasional interbeds of sandstone and limestone.

A U.S. EPA Field Investigation Team (FIT) inspected the landfill Site in May 1982. The team sampled and analyzed the existing monitoring wells at the site. Based on this investigation, the Site was assigned a hazard ranking system score of 34.18, a score high enough to qualify it for inclusion on the National Priority List (NPL). This score was arrived at based primarily on the presence in groundwater of ethyl-benzene, pentachlorophenol, trichloroethene, 1,2 trans-dichloroethene, and 1,1-dichloroethene. The Site was proposed for the Federal National Priorities List (NPL) on December 30, 1982. The listing was finalized on September 8, 1983.

U.S. EPA conducted a Remedial Investigation (RI) at the Site through the use of a its contractor, CH2MHill. The RI included two phases of sampling events. Phase I of the RI fieldwork was conducted from September to November 1986 and Phase II was conducted between October 1987 and January 1988. The RI at the Site included the following:

1. Review and evaluation of past investigations as well as historical practices and other records relating to the Site. (RI Phase I)
2. Extensive aquifer sampling and water level measurements (in both the upper and lower aquifers) to determine groundwater quality, flow directions, and gradients. (RI Phase I and II)
3. Evaluation through an electromagnetic geophysical survey to determine whether existing landfill monitoring wells were properly positioned to interpret potential plumes originating from the Site. (RI Phase II)
4. Sampling within the wetland, Babbin Pond, and Iris Creek to define the Site's impact on surface waters and sediment. The base flow in Iris Creek was determined to help estimate groundwater discharge rates into the creek. (RI Phase I and II)
5. Soil borings and the gamma logging of existing monitoring wells were conducted to help define the geology of the Site. (RI Phase I and II)
6. Sampling of the Site's gas vents and ambient air accrued to determine the Site's impact on air quality. (RI Phase I and II)
7. Surface soil samples were taken to determine if erosion along the northern side of the Site presented a pathway of contaminant migration.
8. Samples from a drainage pipe leading from the Site to Iris Creek were taken to determine if groundwater and/or leachate were infiltrating into the pipe and therefore presenting a possible pathway of contaminant migration.

The Remedial Investigation (RI) for the site was completed in July 1988. A Feasibility Study (FS) was prepared for the site to evaluate potential remediations for the site. The FS also was completed in July 1988.

Based on the exposure pathways of the Feasibility Study (FS), two operable units or pathways were selected to be addressed: (1) Landfill contents, and (2) groundwater. The landfill contents operable unit addressed all materials contained beneath the existing Site cap, such as general refuse, sludges, possible buried drums and the underlying soil contaminated by leachate. The landfill contents operable unit also addressed gas generated by the decomposing buried waste. The general remedial action goals for the landfill contents operable unit were to prevent direct contact with contaminant sources and to minimize future release of contaminants. The selected remedy for the landfill operable unit consisted of properly capping the landfill. The operable unit that directly addressed groundwater contamination and other potential off-site contamination was completed after more investigation had been done. These investigations included an assessment of the effectiveness of the new landfill cap called for in the September 28, 1988 ROD. The specific components of the selected remedy include: a RCRA subtitle C compliant soil/clay cap, a fence around the site, deed restrictions on and near the site to prohibit use of the shallow aquifer, and continued monitoring to assess the quality of groundwater and to monitor the effectiveness of the new cap. The Record of Decision (ROD) for the first operable unit was signed on September 28, 1988.

The results of on-site groundwater monitoring indicated that the landfill cap was effective in reducing the amount of contamination reaching the groundwater, resulting in a reduction of the number and levels of chemicals present in the groundwater. Prior to the construction of the upgraded cap a variety of chemicals including volatile, semivolatile and inorganic compounds were detected in several site wells, some at levels exceeding the Maximum Contaminant Level (MCL) set by U. S. EPA under the Safe Drinking Water Act, (benzene, antimony, cadmium, chromium, lead and nickel). After the landfill cap was repaired and upgraded however, many contaminants were no longer detected in the groundwater.

The groundwater operable unit addressed the shallow and deep aquifers. The general remedial action goals for the groundwater operable unit were to minimize migration of contaminants in groundwater and to prevent exposure to contaminants in residential wells. The ROD for this operable unit was signed September 27, 1993. The selected remedy was continued groundwater monitoring. The ROD documented that no further remedial action was necessary at this site beyond continuation of a monitoring program.

Construction of a RCRA subtitle C compliant soil/clay cap began on November 13, 1990 and was completed on September 23, 1991. Institutional controls along with deed restrictions were put in place late 1991 at the Site.

A five-year review pursuant to OSWER Directive 9355.7–02 ("Structure and Components of Five-Year Reviews") was conducted at the Site. The Five-Year review was signed November 13, 1997.

EPA, with concurrence from the State of Michigan, has determined that all appropriate Fund-financed responses under CERCLA at the Mason County Landfill Superfund Site have been completed, and no further CERCLA response is appropriate in order to provide protection of human health and the environment. The long-term maintenance of the landfill cap and monitoring of the groundwater will continue to ensure that the effectiveness of the remedy is sustained. Therefore, EPA proposes to delete the Site from the NPL.

Dated: July 14, 1999.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 99–18720 Filed 7–23–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–262, RM–9659]

Digital Television Broadcast Service; Spokane, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Spokane School District #81, licensee of station KSPS(TV), NTSC Channel *7, Spokane, Washington, proposing the substitution of DTV Channel *8 for station KSPS(TV)'s assigned DTV Channel *39. DTV Channel *8 can be allotted to Spokane, Washington, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 47–34–34 N. and 117–17–58 W. However, since the community of Spokane is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this allotment. As requested, we propose to modify station KSPS(TV)'s authorization to specify operation on DTV Channel *8 at Spokane, Washington, with a power of 21.6 (kW) and a height above average terrain (HAAT) of 558.

DATES: Comments must be filed on or before September 13, 1999, and reply comments on or before September 28, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John Crigler, Esq., Haley, Bader & Potts P.L.C., 4350 North Fairfax Drive, Suite 900, Arlington, Virginia 22203–1633 (Counsel for Spokane School District #).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–262, adopted July 19, 1999, and released July 21, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 99–18958 Filed 7–23–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST Docket No. OST–99–5947]

RIN 2105–AC82

Standard Time Zone Boundary in the State of Nevada: Proposed Relocation

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the City of West Wendover, Nevada, DOT proposes to relocate the boundary between Pacific time and mountain time in the State of Nevada. DOT proposes to relocate the boundary in order to move West Wendover, Nevada from the Pacific Time Zone to the Mountain Time Zone.

DATES: Comments should be received by September 24, 1999 to be assured of consideration. Comments received after that date will be considered to the extent practicable. If the time zone boundary is changed as a result of this rulemaking, the effective date would be 2:00 a.m. PDT Sunday, October 31, 1999.

ADDRESSES: You may submit your comments and related material by one of the following methods:

(1) By mail to the Docket Management Facility (OST–1999–5947), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets,

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Department of Transportation, telephone 202–366–9329.

Public Hearing: A public hearing will be chaired by a representative of DOT at the West Wendover Library, Pilot Peak Room, 590 Camper Drive, West Wendover, Nevada, on Tuesday, August 10, 1999, at 6:00 p.m. MDT/5:00 p.m. PDT. The hearing will be informal and will be tape recorded for inclusion in the docket. Persons who desire to express opinions or ask questions at the hearings do not have to sign up in advance or give any prior notification. To the greatest extent practicable, the DOT representative will provide an opportunity to speak for all those wishing to do so.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, Washington, D.C. 20590; (202) 366–9315; email address: joanne.petrie@ost.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is "regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce."

Petition for Rulemaking

On January 8, 1999, Mayor Walter F. Sanders, Mayor of the City of West Wendover, Nevada sent a letter to the Department of Transportation asking the Department to change the city from the Pacific time zone to the Mountain time zone. The letter noted the following facts in support of its petition.

1. West Wendover is located on the border of Utah and Nevada and is directly adjacent to the City of Wendover, Utah, which is in the Mountain time zone.
2. It is more than one hundred miles to the nearest city.
3. Businesses in West Wendover make most of their purchases from Salt Lake City, which is in the Mountain time zone.
4. The city receives all of its television and radio broadcasts from Salt Lake City. Due to mountain ranges west of West Wendover, radio broadcasts cannot be received from the Nevada area.
5. West Wendover has one weekly local newspaper, which is printed in Salt Lake City.
6. The City of West Wendover currently has no passenger rail service. The nearest public rail service is located in either Salt Lake City, Utah or Elko, Nevada. Both cities are more than one hundred miles from West Wendover.
7. Greyhound buses travel through West Wendover on an east/west run, but only stop in Wendover, Utah.
8. Wendover, Utah has a small airport, which is limited to mostly small private aircraft and which receives no commercial air service. Tooele County, Utah, which is on Mountain time, is in the process of renovating its airport. The closest major airport is Salt Lake City International Airport.
9. A small percentage of West Wendover's working population resides outside the City limits. The majority of employed residents work in the gaming/tourism industry.
10. Medical services are currently provided by a local medical clinic. The facility is owned by the City of West Wendover, which in turn has leased the facility to the University of Utah—Medical Facility. This agreement provided the opportunity for expanded medical services to the community. Most residents of West Wendover travel to Salt Lake City for major and routine health care.
11. Secondary education is offered in Salt Lake City, Utah and Elko, Nevada.
12. West Wendover is in the process of expanding its recreation facilities. These recreational services are designed to accommodate people from the Wastach Front area, which is on Mountain time.
13. West Wendover's residents must travel to Salt Lake City or Elko in order to obtain a greater variety of services, shopping, and recreation.
14. The City of West Wendover is trying to purchase Air Force property adjacent to the Tooele County Airport. This purchase is expected to provide opportunities to establish a more diversified economy within the Wendover/West Wendover community.
15. Historically, West Wendover has always operated on Mountain time. Prior to the 1980s, there was no reason to do otherwise because there was literally nothing to the town fifty yards past the state line. When West Wendover began to "boom," the town tried to operate by Pacific time. According to the Mayor, this action created mass confusion for both residents and those outside the community.

The Mayor stated that by allowing West Wendover to formally move into the Mountain time zone, commerce within the Wendover/West Wendover community would be facilitated and confusion would be eliminated.

Under DOT procedures to change a time zone boundary, the Department will generally begin a rulemaking proceeding if the highest elected officials in the area make a *prima facie* case for the proposed change. DOT has determined that the petition from the City of West Wendover makes a *prima facie* case that warrants opening a proceeding to determine whether the change should be made. Consequently, in this notice of proposed rulemaking, DOT is proposing to make the requested change and is inviting public comment.

Although the City of West Wendover has submitted sufficient information to begin the rulemaking process, the decision whether actually to make the change will be based upon information received at the hearing or submitted in writing to the docket. Persons supporting or opposing the change should not assume that the change will be made merely because DOT is making the proposal. We are not bound either to accept or reject the proposal of the City of West Wendover at the present time in the proceeding. The Department here issues no opinion on the merits of the City's request. Our decision will be made on the basis of information developed during the rulemaking proceeding.

Impact on Observance of Daylight Saving Time

This time zone proposal does not directly affect the observance of daylight saving time. Under the Uniform Time Act of 1966, as amended, the standard time of each time zone in the United States is advanced one hour from 2:00 a.m. on the first Sunday in April until 2:00 a.m. on the last Sunday in October, except in any State that has, by law, exempted itself from this observance.

Regulatory Analysis & Notices

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The rule primarily affects the convenience of individuals in scheduling activities. By itself, it imposes no direct costs. Its impact is localized in nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This proposal, if adopted, would primarily affect individuals and their scheduling of activities. Although it would effect some small businesses, not-for-profits and, the City of West Wendover, it would not be a substantial number. In addition, the change should have little, if any, economic impact.

Therefore, the Office of the Secretary certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Joanne Petrie at (202) 366–9315.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under E.O. 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

This rulemaking is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, an environmental impact statement is not required.

List of Subjects in 49 CFR Part 71

Time zones.

For the reasons discussed above, the Office of the Secretary proposes to amend Title 49 Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 would continue to read as follows:

Authority: Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; 49 CFR 159(a), unless otherwise noted.

2. In § 71.9 paragraph (b) would be revised to read as follows:

§ 71.9 Boundary line between mountain and Pacific zones.

(a) * * *

(b) *Utah-Nevada-Arizona-California.* From the northeast corner of the State of Nevada southerly along the Utah-Nevada boundary to the junction with the northern border of the City of West Wendover, Utah. Then westward along the northern, western, and southern boundaries of the City of West Wendover back to the Utah-Nevada boundary. Then southerly along the Utah-Nevada boundary, the Nevada-Arizona boundary, and the Arizona-California boundary to the boundary between the United States and Mexico.

* * * * *

Issued in Washington on July 12, 1999, under authority delegated in 49 CFR § 1.57(a).

Rosalind Knapp,

Acting General Counsel.

[FR Doc. 99–19041 Filed 7–23–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF03

Endangered and Threatened Wildlife and Plants; Canada Lynx; Special Rule Record of Compliance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: On July 8, 1998, we published a proposed rule to list the United States (lower 48 States) population segment of the Canada lynx as threatened under the Endangered Species Act of 1973, as amended (Act). The listing included a special rule regulation issued under section 4(d) of the Act that would allow the export under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of live captive-bred Canada lynx, and skins derived from the captive-bred population of Canada lynx. This notice announces the availability of the Record of Compliance with the various statutory, Executive Order, and Departmental requirements applicable to the special rule regulation and invites comments on the Record of Compliance.

ADDRESSES: To request a copy of the Record of Compliance, contact the U.S. Fish and Wildlife Service, Montana

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Field Office, 100 N. Park Ave., Suite 320, Helena, Montana 59601. Send your comments on the Record of Compliance to this same address.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, Field Supervisor, U.S. Fish and Wildlife Service, Montana Field Office, at the address above.

SUPPLEMENTARY INFORMATION:

On July 8, 1998, we published a proposed rule to list the United States population (lower 48 States) segment of the Canada lynx (Lynx canadensis) as threatened, and the captive-bred population of Canada lynx within the lower 48 States as threatened due to similarity of appearance.

The proposed listing rule included a special rule regulation under section 4(d) of the Act that would allow the export under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)(50 CFR part 23) of live captive-bred Canada lynx, and skins derived from the United States captive-bred population (lower 48 States) of Canada lynx, accompanied by a valid CITES export tag and permit. CITES is an international treaty for the regulation of international trade in certain animal and plant species. We would authorize such export in accordance with the permit requirements at 50 CFR 17.32.

The range of the United States population (lower 48 States) segment of the Canada lynx includes the States of Washington, Oregon, Idaho, Montana, Utah, Wyoming, Colorado, Minnesota, Wisconsin, Michigan, Maine, New Hampshire, Vermont, New York, Pennsylvania, and Massachusetts. Currently within the lower 48 States there are facilities in Idaho, Minnesota, Montana, North Dakota, and Utah that raise captive-bred Canada lynx for commercial purposes.

The Department of the Interior Manual Part 318 DM, **Federal Register** Documents, guides the **Federal Register** rulemaking process. A key component of 318 DM is the preparation of a Record of Compliance (ROC). The ROC certifies that a rulemaking action complies with the various statutory, Executive Order, and Departmental Manual requirements applicable to rulemaking. The contents of the ROC include certification of compliance with the requirements of: Executive Order 12866-Regulatory Planning and Review; the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*); the Small Business Regulatory Enforcement Fairness Act, (5 U.S.C. 804(2)); the Unfunded Mandates Reform Act,(2 U.S.C. 1501 *et seq.*); Executive Order 12630-Government Actions and Interference With Constitutionally Protected Property Rights; Executive Order 12612-Federalism; Executive Order 12988-Civil Justice Reform; the Paperwork Reduction Act of 1995 (44 U.S.C. 350); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); the President's memorandum of April 29, 1994, "Government-to-Government Relations with the Native American Tribal Governments" (59 FR 22951); and the Department of Interior Manual, Departmental Responsibilities for Indian Trust Resources (512 DM 2). In accordance with the restrictions of section 4(b)(1)(A) of the Act regarding the basis for listing determinations, the economic determinations contained in the ROC are not applicable to the listing decision for the Canada lynx and pertain only to the operation of the special rule regulation under section 4(d) of the Act if the species is listed. You can obtain a copy of this ROC by request (see **ADDRESSES** section).

Dated: May 6, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–18962 Filed 7–23–99; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 64, No. 142

Monday, July 26, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Recreation Fee Permit Envelope

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to reinstate an information collection. This information collection will help the Forest Service ensure that visitors to National Forest System recreational sites comply with Forest Service policies and regulations and pay user fees, when required. The data also will help the agency evaluate how well it meets the recreational needs of its visitors.

DATES: Comments must be received in writing on or before September 24, 1999.

ADDRESSES: Send written comments to Developed Sites Program Manager, Recreation, Heritage, and Wilderness Resources Staff, Mail Stop 1125, Forest Service, USDA, PO Box 96090, Washington, DC 20090–6090 or FAX to (202) 205–1145 or email: phernand/wo@fs.fed.us.

The public may inspect comments in the Office of the Director, Recreation, Heritage, and Wilderness Resources Staff, 201 14th Street, SW, Washington, DC. Visitors are encouraged to call (202) 205–1706 to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Peggy Hernandez, Developed Sites Program Manager, Recreation, Heritage and Wilderness Resources Staff, at (202) 205–1169.

SUPPLEMENTARY INFORMATION:

Background

Annually, millions of people visit National Forest System recreational sites. The Land and Water Conservation Fund Act of 1965, section 4(b), and Forest Service regulations at Title 36, Code of Federal Regulations (CFR), section 291.2 authorize some of the National Forest and Grassland recreational sites to collect fees from visitors. The Forest Service uses the Recreation Fee Permit Envelope to collect these fees.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: FS–2300–26, Recreation Fee Permit Envelope.

OMB Number: 0596–0106.

Expiration Date of Approval: August 31, 1998.

Type of Request: This is a request for reinstatement of an information collection that was previously approved by the Office of Management and Budget.

Abstract: The agency will analyze the collected data to evaluate visitor use of recreational sites to determine the law enforcement, cleaning, maintenance, inspection personnel, and other staffing needs at these recreational sites. The Forest Service also will use the collected information to track demographic data (such as a visitor's length of stay at a specific recreational site, a visitor's recreational activities of choice, or the recreational sites most frequented) and to ensure that visitors on National Forest System recreational sites comply with the agency's fee payment policies and regulations at 36 CFR, 261.15.

Visitors pick up self-service fee envelopes at recreational sites that charge fees, such as campgrounds or other facilities. The visitors complete the blocks of information requested and place the money in the envelope, which they deposit in a secure collection box or fee tube, generally located at the entrance to the site. As part of the fee collection process, the Forest Service asks visitors to provide the following information: the amount of money enclosed, the number of days for which they paid, the date and time period for which they paid, their vehicle license plate number, the State in which they live, their camp unit number, the number of people in their party, and their planned date of departure. The envelope also asks for comments on how the Forest Service can improve the facilities or services at the site. The agency will use the collected data to evaluate accessibility for all visitors based on actual reported need rather than agency personnel assumptions. For example, visitors could report that they were unable to get a wheelchair to a picnic table or restroom or that signs weren't available in braille.

To determine the estimate of burden, six Forest Service employees were requested to pick up fee envelopes at a Forest Service campground, read the directions, complete the form, place the fee in the envelope, deposit the envelope in a fee tube, and place the stubs on their dashboards. The estimate of burden is based on the average time it took the six employees to complete the fee-payment process.

Data collected in this information collection is not available from other sources.

Estimate of Burden: 3 minutes.

Type of Respondents: Individuals and groups using National Forests and Grasslands recreational sites at which fees are collected.

Estimated Number of Respondents: 400,000. This estimate is based on the number of fee envelopes that are printed and placed in recreational sites annually (500,000).

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 20,000 hours.

Comment Is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comment

All comments received in response to this notice, including name and address

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when provided, will become a matter of public record. Comments also will be summarized and included in the request for Office of Management and Budget approval.

Dated: June 21, 1999.

Janette S. Kaiser,

Acting Associate Deputy Chief, NFS.

[FR Doc. 99–18948 Filed 7–23–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Aquarius Ecosystem Restoration Project; Dixie National Forest, Garfield County, Utah

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an Environmental Impact Statement. (The original notice of intent was published on November 16, 1998.)

The Aquarius Ecosystem Restoration Project is hereby being named the Griffin Springs Resource Management Project. Comments originally collected under the NOI for the Aquarius Ecosystem Restoration Project will be used for the Griffin Springs Resource Management Project.

SUMMARY: The Dixie National Forest, Garfield County, Utah, announced November 16, 1998, it's intent to prepare an Environmental Impact Statement (EIS) which would analyze management proposals within the Aquarius Ecosystem Restoration Project. Because a portion of the area has been affected by 36 CFR part 212, Administration of the Forest Development Transportation System: Temporary Suspension of Road Construction and Reconstruction in Unroaded Areas, and there are existing roadless areas within the project area, it does not appear to be feasible to make decisions affecting that portion of the area at this time. For these reasons, the project area will be divided into smaller decision blocks. The first area that will be decided upon will be the Griffin Springs Resource Management Project.

Comments that were received during the initial scoping period will be used in this analysis, and an Environmental Impact Statement will be prepared. Analysis and disclosure on the other decision areas will be made at later dates. The responsible official for this decision will be the Forest Supervisor, Dixie National Forest. The DEIS is expected to be available for review by October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Cindy Calbaum, Interdisciplinary Team Leader (435) 826–5400, Escalante Ranger District, PO Box 246, Escalante, Utah, 84726.

Dated: July 13, 1999.

Mary Wagner,

Forest Supervisor, Dixie National Forest.

[FR Doc. 99–18944 Filed 7–23–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Technical Advisory Committees; Notice of Recruitment of Private-Sector Members

SUMMARY: Six Technical Advisory Committees (TACs) advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. The TACs are composed of representatives from industry and Government representing diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, foreign policy, non-proliferation, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. The membership reflects the Department's commitment to attaining balance and diversity. TAC members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members can be permitted access to the classified information needed to formulate recommendations to the Department of Commerce. Each TAC meets approximately 4 times per year. Members of the committees will not be compensated for their services.

The six TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within the following areas: Information Systems TAC: Control List Categories 3 (electronics—semiconductor section), 4 (computers), and 5 (telecommunications and information security); Materials TAC: Control List Category 1 (materials, chemicals, microorganisms, and toxins); Materials Processing Equipment TAC: Control List Category 2 (materials processing); Regulations and Procedures TAC: the Export Administration Regulations (EAR) and procedures for implementing the EAR; Sensors and Instrumentation TAC: Control List Categories 3 (electronics—instrumentation section) and 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine technology), and 9 (propulsion systems, space vehicles, and related equipment).

To respond to this recruitment notice, please send a copy of your resume. Materials may be faxed to the number below.

DEADLINE: This Notice of Recruitment will be open for one year from date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Lee Ann Carpenter on (202) 482–2583. Materials may be faxed to (202) 501–8024, to the attention of Ms. Lee Ann Carpenter.

Dated: July 8, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 99–19017 Filed 7–23–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–810; C–412–811—A–428–811; C–428–812]

Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Negative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders.

SUMMARY: On May 1, 1998, the Department of Commerce published preliminary negative determinations of circumvention of the antidumping and countervailing duty orders on hot-rolled lead and bismuth carbon steel products from Germany and the United Kingdom.

We provided interested parties an opportunity to comment on the preliminary negative determinations. After our analysis of the case and rebuttal briefs, we have determined that imports into the United States of leaded steel billets that were exported from Germany and the United Kingdom do not constitute circumvention of the antidumping and countervailing duty orders on hot-rolled lead and bismuth carbon steel products from Germany and the United Kingdom, within the meaning of section 781(a) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Richard Herring, Office of AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930 (the Act), as amended, by the Uruguay Round Agreements Act (URAA), effective January 1, 1995. In addition, unless otherwise indicated, all references to the Department's regulations are to 19 C.F.R. Parts 353 and 355 (1997).

Background

On March 22, 1993, the Department of Commerce (the Department) published in the **Federal Register** the antidumping duty (AD) orders (58 FR 15334) and countervailing duty (CVD) orders (58 FR 15325, 15327) on hot-rolled lead and bismuth carbon steel products (hot-rolled lead bar) from Germany and the United Kingdom. On April 14, 1997, the Department received an application (amended on May 14, 1997) filed by Inland Steel Bar Company and USS/KOBE Steel Company (the petitioners) requesting that the Department conduct anticircumvention inquiries of the AD and CVD orders on lead bar from Germany and the United Kingdom pursuant to section 781(a) of the Act. The petitioners alleged that the principal German (Saarstahl A.G. i.K. and Thyssen Stahl A.G.) and British (British Steel plc) producers of lead bar are circumventing their respective orders by shipping leaded-steel billets (lead billets) to the United States, where they are easily and inexpensively converted into the lead bar products covered by the orders.

Pursuant to the petitioners' application and in accordance with 19 C.F.R. 353.29(e) and 355.29(e), the Department initiated circumvention inquiries of the AD and CVD orders on hot-rolled lead bar from Germany and the United Kingdom (62 FR 34213; June 25, 1997).

In conducting the inquiries, we requested and received detailed information on a range of topics, such as processing, pricing, and conversion costs. We also collected data on patterns of trade, sourcing patterns, and other trend data for the period January 1, 1991 through June 30, 1997, for the United Kingdom proceeding and January 1, 1988 through June 30, 1997, for the German proceeding.

The preliminary determination in this investigation was issued on April 23, 1998. *See Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders,* 63 FR 24156 (May 1, 1998) (*Preliminary Determination*).

In May 1998, we verified the responses of two of the re-rollers, American Steel & Wire and Republic Engineered Steels. We followed standard verification procedures, including meeting with company officials, and examination of relevant accounting records and original source documents. Our verification results are outlined in detail in the verification reports, which are on file in public version form in the Central Records Unit, Room B–099, of the Commerce Department.

In May 1998, the petitioners requested that the Department hold a public hearing on these circumvention inquiries. Based upon their request a hearing was held on July 29, 1998. Case and rebuttal briefs were filed by the interested parties prior to the hearing. Comments raised by the interested parties in their respective case and rebuttal briefs are addressed in the "Analysis of Comments Received" section of this notice.

Scope of AD and CVD Orders

Imports covered by these orders include hot-rolled bars and rod of non-alloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent of lead or 0.05 percent of bismuth, in coils or cut lengths, and in numerous shapes and sizes. The order excludes "other alloy steels," as defined by Chapter 72, note 1(f) of the Harmonized Tariff Schedule of the United States (HTSUS), "except steels classified as other alloy steel by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellurium or selenium." Most of the products covered are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and for customs purposes, the written description of the scope of the order remains dispositive.

Scope of the Circumvention Inquiries

The products subject to these circumvention inquiries are carbon or alloy steel billets containing 0.03 percent or more of lead or 0.05 percent or more of bismuth (the only accepted metallurgical equivalent to lead), and other alloy steel billets by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellurium or selenium, that meet the chemical requirements for the merchandise subject to the orders.

Facts Available

Section 776(a)(2) of the Act requires the Department to use facts available if "an interested party or any other person * * * withholds information that has been requested by the administering authority * * * under this title." The facts on the record show that Bar Tech did not comply with the Department's requests for information required to calculate the value of the processing performed in the United States. In our initial questionnaire dated September 10, 1997, the Department requested information regarding the total amount of lead billet consumed in the production of one unit of lead bar (lead billet consumption rate). Bar Tech responded to our questionnaire on October 29, 1997, but did not provide its lead billet consumption rate.

The Department's supplemental questionnaires dated November 18, 1997 and January 7, 1998, again requested that Bar Tech report its lead billet consumption rate. Bar Tech, however, did not provide its lead billet consumption rate to the Department.

Section 776(b) of the Act permits the administering authority to use an inference that is adverse to the interests of an interested party if that party has "failed to cooperate by not acting to the best of its ability to comply with a request for information." Such an adverse inference may include reliance on information derived from (1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753 regarding the country under consideration, or (4) any other information placed on the record. Because Bar Tech did not comply with the Department's requests to provide its

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lead billet consumption rate, we find that Bar Tech failed to cooperate by not acting to the best of its ability to comply with the Department's information requests. Therefore, we are using adverse inferences in accordance with section 776(b) of the Act. In making an adverse inference for Bar Tech's lead billet consumption rate, the Department has used the highest average lead billet consumption rate submitted by another U.S. re-roller participating in these inquiries. Corroboration of this data is not necessary because this information is not considered secondary information. See Statement of Administrative Action (SAA) accompanying the URAA, H.Doc. 103–316, Vol. 1, at 870 (1994).

Nature of the Circumvention Inquiry

Section 781(a)(1) of the Act provides that the Department, after taking into account any advice provided by the United States International Trade Commission (ITC) under section 781(e), may include the imported merchandise under review within the scope of an order if the following criteria have been met:

A. The merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of—

(i) an antidumping duty order issued under section 736,

(ii) a finding issued under the Antidumping Act, 1921, or

(iii) a countervailing duty order issued under section 706 or section 303;

B. Such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies;

C. The process of assembly or completion in the United States is minor or insignificant; and

D. The value of the parts or components [produced in the foreign country with respect to which the order applies], is a significant portion of the total value of the merchandise.

If one of the four elements does not apply, there can be no finding of circumvention. However, even if all four of these criteria are met, the Act requires that the Department also consider additional factors. Section 781(a)(3) of the Act directs the Department to consider, in determining whether to include parts or components produced in a foreign country within the scope of an AD and CVD order, such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country; and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

U.S. Re-Rollers

We requested information from U.S. re-rollers with respect to these circumvention inquiries. Information was submitted by the following five U.S. re-rollers: (1) American Steel & Wire (AS&W), a wholly-owned subsidiary of Birmingham Steel Corporation; (2) Bar Tech; (3) Nucor Steel Corporation (Nucor); (4) Republic Engineered Steels (Republic); and (5) Sheffield Steel Corporation (Sheffield). Based upon our analysis of the information submitted by the foreign respondents and the U.S. re-rollers, we have determined that no affiliation exists between the U.S. re-rollers and the foreign respondents, as defined in section 771(33) of the Act. A determination with respect to sections 781(a)(1) and (2) of the Act is based solely on the processing of lead billets into hot-rolled lead bar by these unaffiliated U.S. re-rollers. The rolling facilities owned by each of the U.S. re-rollers, except Bar Tech, were in operation before the initiation of the respective AD and CVD investigations of hot-rolled lead bar from Germany and the United Kingdom. Bar Tech was established after the issuance of the AD and CVD orders when Bar Tech purchased Bethlehem Steel's Bar, Rod & Wire (BRW) facilities in Lackawanna, New York in 1994. Bethlehem Steel, a former roller of lead billet into hot-rolled lead bar, was one of the original petitioners in the lead bar investigations.

Much of the information provided by the U.S. re-rollers is proprietary. Therefore, in most instances, the information used in our analysis below has been ranged, and our discussion of this information has been generalized in order to maintain the proprietary treatment of submitted information. In addition, for most of the U.S. re-rollers, the source of their imported lead billet supply is also proprietary. Therefore, the analysis below refers to imports from both Germany and the United Kingdom.

Statutory Analysis

(1) Whether the Class or Kind of Merchandise Is Sold in the United States

AS&W, Bar Tech, Republic, and Sheffield sell hot-rolled lead bar in the United States. Nucor processes lead billets into hot-rolled lead bar, which the company further processes into cold-finished products.

(2) Whether Merchandise Sold in the United States is Completed or Assembled in the United States from Foreign Parts or Components

All of the U.S. re-rollers purchase lead billets from one or more of the foreign respondents subject to the AD and CVD orders. They each use the lead billets to produce hot-rolled lead bar in the United States.

(3) Whether the Process of Assembly or Completion is Minor or Insignificant

Section 781(a)(2) lists the factors the Department will consider in determining whether the process of assembly or completion is minor or insignificant. The SAA states that no single factor listed in section 781(a)(2) of the Act will be controlling. SAA at 893. The SAA also states that the Department will evaluate each of the factors as they exist in the United States depending on the particular circumvention scenario. *Id.* Therefore, the importance of any one of the factors listed under 781(a)(2) of the Act can vary from case to case depending on the particular circumstances unique to each specific circumvention inquiry. As discussed below, each of the factors set forth in section 781(a)(2) of the Act is examined below for the U.S. re-rollers.

(a) The Level of Investment in the United States

The rolling facilities owned by each of the U.S. re-rollers were in operation before the initiation of the respective AD and CVD investigations of hot-rolled lead bar from Germany and the United Kingdom. Although Bar Tech did not exist before the initiation of the investigations, the facility producing subject merchandise that is operated by the company does pre-date the investigations. Each of the U.S. re-rollers has made substantial capital investments in its respective rolling mills.

AS&W entered the hot-rolled lead bar market in 1986, with its purchase of rolling facilities from U.S. Steel. In 1993, Birmingham Steel acquired AS&W and entered the specialty bar, rod, and wire products business. In 1996, Birmingham Steel invested $132 million in a new high-quality rolling mill at AS&W's Cleveland, Ohio facility, enabling the company to produce larger-sized bar products and bars with tighter size tolerances and more stringent mechanical properties. AS&W primarily produces nonlead hot-rolled bars, and less than a quarter of the mills' production utilizes lead billets. AS&W sells the hot-rolled lead bar that it produces to unaffiliated customers.

Bar Tech came into existence in 1994, with the purchase of Bethlehem Steel's BRW facilities for $19 million. From 1994 through 1997, Bar Tech made additional investments in the rolling facilities' buildings, machinery, and equipment. In April 1996, Bar Tech acquired Bliss & Laughlin (B&L), the largest cold-finishing company in the United States. In September 1997, Bar Tech announced plans to invest $30 million in its steelmaking facilities. Approximately half of the investment is allocated for the production of lead and nonlead semi-finished steels at its Johnstown meltshop. The majority of the remaining investment is designated for equipment upgrades at its 13-inch rolling mill in Lackawanna, New York to roll both lead and nonlead billets.

Nucor's steel mill in Darlington, South Carolina became operational as a new steel mill in 1969. Prior to 1991, Nucor added a high-speed rolling line to its mill. The addition of such equipment allows for automatic straightening, shearing, stacking, and bundling of bar, and has significantly enhanced Nucor's ability to produce hot-rolled lead and nonlead bar from lead and nonlead billets. Since 1991, Nucor has made several investments for a variety of improvements.

In November 1989, Republic was created through an employee stock ownership plan with the purchase of LTV's Bar Division. With the purchased steelmaking facilities, Republic gained the ability to produce lead and nonlead ingots, and hot-rolled and cold-finished bar products. Republic currently produces lead billets via the ingot process in a shared facility; however, the quantity it can produce is restricted by environmental permit limits. During the 1990's, Republic invested in the construction of a continuous casting facility which has the capability to produce both lead and nonlead billets; however, Republic currently only produces nonlead billets at the facility.

Sheffield was established in the early 1980's, with the purchase of the Sand Springs, Oklahoma meltshop and rolling facility in 1981, and the construction of the Kansas City, Missouri rolling facility in 1985. In 1986, Sheffield purchased a 12-inch rolling mill facility in Joliet, Illinois from Continental Steel for $3.5 million. This rolling mill was originally installed around 1957. Since acquiring the Joliet mill in 1986, Sheffield has made additional investments of approximately $6 million in the facility, which is the company's only rolling mill which produces hot-rolled lead bar. Sheffield entered the hot-rolled lead bar market in 1992.

(b) The Level of Research and Development (R&D) in the United States

Four of the five re-rollers had little or no R&D related to the production of hot-rolled lead bar. One U.S. re-roller reported that it conducted some R&D with respect to the development of heating, rolling and inspection practices used in the production of leaded steels. The U.S. re-rollers reported that there have been few technological breakthroughs affecting leaded steels since 1991. Because the rolling of hot-rolled lead bar is a technically mature process, R&D is not a significant factor in this industry.

(c) The Nature of the Production Process in the United States

The ITC states that the manufacturing process for the production of hot-rolled lead bar consists of three different stages: (1) melting, (2) casting, and (3) hot-rolling. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Brazil, France, and the United Kingdom*, Final Determinations of the Commission in Investigations Nos. 701–TA–314 thru 317, USITC Publication 2611 (March 1993). Lead billets are created during the second stage; the U.S. re-rollers perform the third and final stage in the manufacturing process of hot-rolled lead bar.

Each of the U.S. re-rollers are fully operational hot-rolled lead and nonlead bar producers, manufacturing bar in a like manner. The nature of the process overall consists of a series of steps for the purpose of sizing and shaping the lead billets to produce specific sized and shaped hot-rolled bar on rolling equipment used to manufacture either hot-rolled lead or nonlead bars. The rolling process does not require equipment devoted exclusively to the production of hot-rolled lead bar. Three of the five re-rollers also have cold-finishing operations to further process the hot-rolled lead bar. In the cold-finishing process, the bar undergoes surface treatments in the form of polishing, turning, grinding, and straightening.

The process for producing hot-rolled lead bar from lead billets is as follows. First, the lead billets are placed in a re-heat furnace and heated to a temperature usually above 2200 degrees Fahrenheit. This heating procedure increases the malleability of the steel, reducing energy consumption and wear on the rolling mill. Once the lead billets reach the necessary temperature, walking beams gradually discharge them from the re-heat furnace onto the rolling lines. The lead billets are then rolled on a series of rolling mills, including roughing, intermediate, and finishing mills. Each rolling mill has a series of stands which compress and shape the lead billets with each pass through. As a lead billet passes through the stands, it becomes elongated and its cross-section becomes smaller. This process transforms a lead billet into a hot-rolled lead bar product having a specific size and shape. Generally four to 15 percent of a lead billet's weight is lost in the rolling process.

The hot-rolled lead bar is then placed on a hot bed and cooled to a temperature of about 800 degrees Fahrenheit. Once cooled, the hot-rolled lead bar undergoes straightening, non-destructive testing, deburring, and saw cutting. The hot-rolled lead bar is either coiled or cut into various lengths at the finishing shear. At this stage, some re-rollers apply a surface treatment to clean and coat their products. After being inspected for straightness, length, and defects, the hot-rolled lead bars are weighed, packaged, and placed in the warehouse for later shipment.

There are environmental issues and limitations in rolling lead billets versus nonlead billets. Environmental controls, worker safety, and health regulations are more stringent for lead than for nonlead grades. For instance, additional ventilation of exhaust fumes is necessary as lead and bismuth steel wastes are classified as hazardous waste, necessitating their segregation and separate treatment from other scrap. Specialized safety equipment and more rigorous operating procedures must also be used in compliance with Occupational Safety and Health Administration (OSHA) standards.

(d) The Extent of Production Facilities in the United States

In general, each of the U.S. re-rollers has production facilities in various states throughout the United States, but the rolling of hot-rolled lead bar mainly takes place in Illinois, Ohio, Utah, South Carolina, and New York. As we have noted earlier, most of the U.S. re-rollers were rolling lead billets into hot-rolled lead bar before the initiation of the AD and CVD investigations of hot-rolled lead bar from Germany and the United Kingdom.

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In analyzing the extent of production facilities, we considered the square footage of building space dedicated to rolling lead billet into hot-rolled lead bar, the number of employees involved in rolling the lead billets, and the capital equipment used in the production of hot-rolled lead bar. Sheffield, for example, reported that its Joliet rolling facility encompasses 334,305 square feet for the processing of lead billet into hot-rolled lead bar.

With regard to the number and level of skilled employees involved in rolling lead billets into hot-rolled lead bar, Sheffield, for example, reported that in the production process of hot-rolled lead bar, from the time the lead billets are received in the billet yard to the time that hot-rolled lead bar is shipped to a customer, there are 25 skilled workers responsible for the rolling of a lead billet into hot-rolled lead bar, and all of the other ancillary functions.

With respect to the capital equipment used in the processing of lead billet into hot-rolled lead bar, the U.S. re-rollers have invested a substantial amount of money not only in the construction of factory buildings used in rolling operations for both lead and nonlead products, but also in the purchase of sophisticated machinery required to produce hot-rolled bar from lead and nonlead billets, and in the maintenance required for such machinery.

(e) Whether the Value of the Processing Performed in the United States Represents a Small Proportion of the Value of the Merchandise Sold in the United States

We calculated the difference in value between the hot-rolled lead bar sold in the United States and the value of the lead billets purchased from the foreign respondents that were used in the production of that merchandise. For AS&W, BarTech, Republic, and Sheffield, we based our calculation of value added to the merchandise sold in the United States on the difference between the delivered lead billet import price and the ex-factory sales price of the hot-rolled lead bar. This methodology was used because both transactions (lead billet purchases and hot-rolled lead bar sales) were sales between unaffiliated parties. To derive the value of processing performed by each U.S. re-roller, we subtracted from the ex-factory sales price of hot-rolled lead bar to unaffiliated customers the delivered price of lead billets, after adjusting for a yield factor (to account for additional lead billet consumed in the production of one unit of hot-rolled lead bar).

In regard to Nucor, because the company uses all the hot-rolled lead bar that it produces to further manufacture cold-finished products, we applied a different value-added methodology. We based our calculation of value-added on the comparison between the conversion fee Nucor's rolling mill charged its affiliated cold-finisher and the resulting total input cost of hot-rolled lead bar to the cold-finisher, after adjusting both for a yield factor (to account for additional lead billet consumed in the production of one unit of hot-rolled lead bar).

Some of the U.S. re-rollers purchased lead billets from all three suppliers of lead billets subject to these inquiries, while others purchased exclusively from one source. Some of the U.S. re-rollers, however, were unable to identify the supplier of lead billets on a transaction-specific basis with respect to the U.S. sales of the processed hot-rolled lead bar. Therefore, for each U.S. re-roller, the calculation of value-added is based upon a weighted-average price of imported lead billet from the foreign respondent(s) from whom the U.S. re-roller purchased its lead billets. Because the processing of the imported lead billet into hot-rolled lead bar is virtually identical regardless of the source of the imported lead billet, we consider this weighted-average, non-supplier specific calculation of value-added to be appropriate in those instances. However, where possible, we used the supplier-specific information to calculate the value-added to each supplier.

The value of processing performed in the United States ranges from approximately 10 percent to 29 percent for the U.S. re-rollers. The relative value of processing varies because of the lead billet prices charged by the foreign respondents to the U.S. re-rollers, the U.S. re-roller's yield factor for rolling one unit of lead billet into one unit of hot-rolled lead bar, and the different prices charged by the U.S. re-rollers to their customers due to size and shape of the hot-rolled lead bar. Because the calculation of the value of processing is based upon proprietary data, the value-added percentages presented above have been ranged.

(4) Whether the Value of Imported Parts is a Significant Portion of Value of Lead Bar

Under section 781(a)(1)(D) of the Act, the value of the imported parts or components must be a significant portion of the total value of the subject merchandise sold in the United States in order to find circumvention. The imported lead billet is the sole material input into the completed hot-rolled lead bar and a significant portion of the value of the completed hot-rolled lead bar is for this material cost.

Other Factors To Consider

In making a determination whether to include parts or components within an order, section 781(a)(3) of the Act instructs us to take into account such factors as: the pattern of trade, including sourcing patterns; whether affiliation exists between the exporter of the parts and the person who assembles or completes the merchandise sold in the United States; and whether imports into the United States of the parts produced in the foreign country have increased after the initiation of the investigation which resulted in the issuance of the order. Each of these factors are examined below.

(1) Pattern of Trade And Sourcing

The first factor to consider under section 781(a)(3) is changes in the pattern of trade, including changes in the sourcing patterns of the lead billets. SAA at 894. Unlike our examination of the processing of lead billets into hot-rolled lead bar in the United States, which was essentially the same for all of the U.S. re-rollers, there are differences in the pattern of trade among the U.S. re-rollers and the three foreign respondents (British Steel, Thyssen, and Saarstahl). Among the foreign respondents, British Steel and Thyssen are the two largest lead billet exporters to the United States. In comparison, Saarstahl is a small exporter of lead billets.

British Steel began selling lead billets to the United States in 1994. By 1996, the company's lead billet sales doubled. British Steel's sales of hot-rolled lead bar peaked in 1992, declined in 1993 and 1994, rebounded in 1995, and continued to trend upwards in 1996. In general, sales of hot-rolled lead bar by British Steel have greatly exceeded its sales of lead billets to the U.S. market (despite the AD and CVD orders). British Steel's sales of hot-rolled lead bar in the U.S. market have remained substantial since the imposition of the orders. In fact, Sheffield reported that its primary competition for hot-rolled lead bar shapes is imports from British Steel.

Thyssen has been selling lead billets to the United States since 1988, well before the Department initiated its hot-rolled lead bar investigations in May 1992. Thyssen's lead billet shipments to the United States increased steadily from 1991 to 1996, peaking in 1996, while its hot-rolled lead bar sales to the U.S. market terminated in 1992. Thyssen has stated that lead billets, and not hot-rolled lead bar, have always been its primary U.S. market, and the pattern of trade for both products indicates this to be accurate.

Saarstahl began selling lead billets to the United States in 1992, the last year the steelmaker sold hot-rolled lead bar to U.S. customers. Saarstahl's exports of lead billets to the United States peaked in 1993, and since then have significantly decreased.

AS&W has been purchasing lead billets since its inception in 1986. AS&W reported that since 1992, the company has sourced lead billets from both foreign and domestic suppliers. A major change in the company's sourcing was the termination of a billet supply agreement (inclusive of lead and nonlead billets) with USS/KOBE. When Birmingham Steel purchased AS&W in 1993, there was a lead billet supply agreement in effect with USS/Lorain Works, which subsequently became USS/KOBE. USS/KOBE terminated the supply agreement in 1996, citing a lack of lead billet availability. With the termination of this supply agreement, AS&W was no longer able to source lead billets domestically.

Bar Tech began purchasing lead billets in 1996. Bar Tech has not sourced lead billets from domestic producers. Bar Tech never purchased lead bar from the foreign respondents.

Nucor did not begin purchasing lead billets until 1992, when the company began sourcing from foreign respondents. Purchases from the foreign respondents have been generally declining. Nucor had previously purchased hot-rolled lead bar from foreign sources.

Republic's predecessor began purchasing lead billets from foreign sources in the mid-80's. Since becoming an independent company in 1989, Republic has continued to source its lead billets from foreign sources to supplement its own production. Republic has not purchased lead billets from domestic producers. The company did purchase hot-rolled lead bar from foreign sources in the early 1990's; however, since 1993, Republic has sourced hot-rolled lead bar exclusively from domestic suppliers.

Sheffield has sourced lead billets from both domestic and foreign producers since it began purchasing lead billets in 1992. Throughout much of 1993, Sheffield sourced lead billets from Inland; however, by late 1993, Inland stopped its external sales of lead billets citing its own internal lead billet consumption needs. In June 1995, Inland was again in a position to supply lead billets. Sheffield placed orders with Inland, but by the fourth quarter of 1995, Inland once again stopped selling lead billets. Since 1996, Sheffield has sourced lead billets from abroad.

(2) Affiliation

The second factor to consider under section 781(a)(3) of the Act is whether the manufacturer or exporter of the lead billets is affiliated with the entity that assembles or completes the merchandise sold in the United States from the imported lead billets. In these circumvention inquiries, the Department inquired whether affiliation existed between the U.S. re-roller and the foreign respondents, pursuant to section 771(33) of the Act. Based upon our analysis of the information on the record, including the questionnaire responses from both the U.S. re-rollers and the foreign respondents, we find that no affiliation exists between the parties. There is no common ownership, direct or indirect, between the U.S. re-rollers and the foreign suppliers of lead billets, or a joint venture between the companies. Further, there are no facts (e.g., close supplier relationship) that suggest control of any of the re-rollers by the foreign respondents. In sum, we have found no evidence to indicate that the foreign respondents have attempted either to purchase or to construct re-rolling facilities in the United States which would allow them to import lead billet and process it into hot-rolled lead bar for their own use.

(3) Whether Imports Have Increased

The third factor to consider under section 781(a)(3) is whether imports of lead billets into the United States have increased after the initiation of the hot-rolled lead bar investigations. Therefore, we have analyzed the level of imports of lead billets from both Germany and the United Kingdom since 1992, the year in which the AD and CVD investigations of hot-rolled lead bar were initiated. While we find that imports of lead billets have increased from all three foreign respondents, there are reasons beyond the initiation of the AD and CVD investigations to explain their rise.

According to some of the U.S. re-rollers, there has been a switch from domestically produced lead billets to foreign-sourced lead billets because Inland and USS/KOBE have not met the lead billet supply needs of the U.S. market. In addition, there were two new entrants to the hot-rolled lead bar market after the initiation of the hot-rolled lead bar investigations that required supplies of lead billet. Sheffield entered into the hot-rolled lead bar market after Bethlehem Steel exited the market in 1992. Two years later, Bar Tech entered the hot-rolled lead bar market after purchasing Bethlehem's rolling facilities. Bethlehem Steel, one of the original petitioners in the hot-rolled lead bar investigations, produced its own lead billets; however, neither Sheffield nor Bar Tech currently have lead billet production and thus, must source their lead billets from other outside sources.

Further, according to the ITC, in the United States almost all semifinished steel such as blooms, billets, and slabs are used in captive production of finished steel products. Steel processors, such as the U.S. re-rollers, are an important outlet for excess semifinished steel products manufactured by steel producers. In the relatively limited semifinished steel market, the consumer is also likely to be the supplier's competitor in sales of finished steel. *See* USITC Publication 2758, *Industry & Trade Summary Semifinished Steel* (March 1994) 3, 5, and 11. Because the consumer of a billet is generally a competitor of the supplier, the dynamics of supply operate differently than for finished steel products. A steelmaker with excess melting capacity may have incentive to refrain from selling semifinished steel, such as billets.

It has also been difficult to measure the rise in imports of lead billets from Germany and the United Kingdom against import trends from other countries. This is because the primary HTS number under which lead billets are imported is a basket category which includes other imports of semifinished products of iron or nonalloy steel with a chemical content of under 0.25 percent carbon. In its application, Inland and USS/KOBE provided import data for this HTS category. According to these data, imports of semifinished products of iron or nonalloy steels from countries not subject to AD or CVD orders increased after the initiation of the hot-rolled lead bar investigations, and significantly in some cases.

Summary of Statutory Analysis

As discussed above, in order to make an affirmative determination of circumvention, all the elements under sections 781(a)(1) of the Act must be satisfied, taking into account the factors under section 781(a)(2). In addition, section 781(a)(3) of the Act instructs the Department to consider, in determining whether to include parts or components within the scope of an order, such factors as: pattern of trade, affiliation, and whether imports into the United States of such parts or components increased after the initiation of the investigation which resulted in the issuance of the order. When the criteria

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of section 781(a)(1), taking into account the factors under section 781(a)(2), are applied to the individual facts, our analysis of whether circumvention is occurring is inconclusive. However, when the evidence to be considered under section 781(a)(3) of the Act, is incorporated into our analysis, we find that all of the evidence, taken as a whole, does not lead us to find a basis for including lead billets within the scope of the AD and CVD orders on hot-rolled lead bar from Germany and the United Kingdom.

Pursuant to sections 781(a)(1) and (2), we find that the processing of lead billets into hot-rolled lead bar is essentially identical for all of the U.S. re-rollers involved in these inquiries. A detailed description of the re-rolling process is provided above. Though the U.S. re-rollers perform only one of the three processes needed to produce hot-rolled lead bar, they do perform the final process of converting the semifinished steel product into a functional finished steel good. Also, because the production process of converting lead billets into hot-rolled lead bar is a technically mature process, we did not find significant R&D expenditures by the U.S. re-rollers.

The process of rolling lead billet into hot-rolled lead bar requires significant capital investment in rolling machinery and equipment, and compliance with a variety of OSHA and environmental regulations. Capital equipment and machinery used by the U.S. re-rollers, once purchased, installed, and operational, represent significant fixed plant and equipment which cannot be easily disassembled and transported to another location. Investment in re-rolling facilities requires a long-term investment of capital, long-term corporate planning, and a long-term business commitment by the U.S. re-roller.

Pursuant to section 781(a)(3), in reaching our determination, we took into consideration the factors of pattern of trade, sourcing, affiliation, and import trends. The facts concerning pattern of trade, sourcing, affiliation, and import trends do not indicate that there is circumvention of the hot-rolled lead bar orders. Even if we were to conclude that the value of processing performed by the U.S. re-rollers in the United States is relatively small, when we examined sections 781(a)(1) and (2) in conjunction with the factors under section 781(a)(3), the facts, taken as a whole, do not lead us to find that circumvention of the hot-rolled lead bar orders is occurring.

Throughout the United States, the U.S. re-rollers have extensive capital-intensive rolling facilities staffed by skilled workers. As previously discussed, the U.S. re-rollers are not affiliated with the foreign respondents and their rolling facilities were in existence and operational before the initiation of the hot-rolled lead bar investigations. Indeed, the petition for the hot-rolled lead bar investigations was filed on behalf of two of the five U.S. re-rollers, AS&W and Republic. In addition, a third U.S. re-roller, Bar Tech, purchased its rolling facilities from Bethlehem Steel, one of the two original petitioners in the hot-rolled lead bar investigations.

Based upon the information on the record, most of the U.S. re-rollers' investment in rolling facilities in the United States was made before the initiation of the AD and CVD investigations of hot-rolled lead bar from Germany and the United Kingdom. In addition, some of the U.S. re-rollers made large investments in their rolling mills after 1992, the year in which the investigations on hot-rolled lead bar began. Thus, before and after 1992, U.S. re-rollers made large investments of capital and resources into their rolling facilities. These facts demonstrate that there were substantial production facilities for converting lead billets into hot-rolled lead bar before the initiation of the hot-rolled lead bar investigations.

Further, as discussed above, British Steel remains a large exporter of hot-rolled lead bar to the United States and its bar market in the United States is still much larger than its U.S. lead billet market. Thyssen was primarily a lead billet exporter to the United States before 1992, the year the hot-rolled lead bar investigations were initiated. That did not change after the initiation of the hot-rolled lead bar investigations. Saarstahl, which exports a relatively small volume of lead billets to the United States, is not a major player in the U.S. lead billet market.

With respect to the U.S. re-rollers, changes in their respective sourcing patterns after 1992 appear to be due to changes in the U.S. market, independent of the hot-rolled lead bar investigations. U.S. re-rollers were purchasing lead billets and rolling them into hot-rolled lead bar before 1992. For example, Republic began purchasing lead billets in the mid-80's from foreign sources. New hot-rolled lead bar entrants came into the market after the departure of Bethlehem, causing an increase in the demand for lead billets. While Bethlehem was able to produce its own lead billets, the two new entrants, Bar Tech and Sheffield, have to purchase their lead billets from independent sources. In addition, there were also shifts from domestic to foreign billet suppliers because the domestic companies producing lead billets were only able to meet their own internal consumption needs. As discussed above, since 1996, both AS&W and Sheffield have been forced to source lead billets from foreign suppliers as a result of the termination of their supply arrangements with USS/KOBE and Inland, respectively.

Our analysis demonstrates that the increase in the importation of lead billets by the U.S. re-rollers in order to produce hot-rolled lead bar was due to many factors above and beyond the imposition of the bar orders. As noted above, a number of the U.S. re-rollers were producing hot-rolled lead bar from foreign lead billet suppliers prior to the orders and continued to produce hot-rolled lead bar after the orders. In addition, these unaffiliated U.S. re-rollers invested a substantial amount in their rolling facilities both before and after the AD and CVD orders to roll both lead and nonlead billets into hot-rolled bar.

The facts of these inquiries also show that the foreign respondents did not change their product lines in the United States as a result of the initiation of the hot-rolled lead bar investigations. As noted, Thyssen's primary market in the United States has been lead billets since the mid-80's. British Steel, which commenced selling lead billets in 1994, continues to export a significant amount of hot-rolled lead bar to the United States.

Based upon this analysis under section 781(a) of the Act, we determine that circumvention of the AD and CVD orders on hot-rolled lead bar is not occurring by reason of imports of lead billets from Germany and the United Kingdom.

Analysis of Comments Received

We invited interested parties to comment on the preliminary negative determinations of circumvention of hot-rolled lead and bismuth carbon steel products from Germany and the United Kingdom. We received case and rebuttal briefs from the foreign respondents, British Steel, Saarstahl, Thyssen; two of the U.S. re-rollers, Republic and Sheffield; and the petitioners, USS/KOBE and Inland Steel Bar Company. All comments and rebuttal arguments properly raised by the parties in their briefs to the proceeding are discussed below.

Comment 1: The Statute Does Not Instruct the Department To Evaluate Why Imports Into the United States Have Increased

The petitioners argue that pursuant to section 781(a)(3)(C) of the Act, the Department will consider whether "the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding." The petitioners argue that the statute instructs the Department to consider whether an increase of the lead billets have occurred after the initiation of the original investigation without evaluating possible reasons for such an increase before or during the investigation period and up to the order date.

The petitioners assert that the data on the record clearly demonstrates that the level of imported lead billets into the U.S. market from Germany and the United Kingdom has increased dramatically since the investigations of hot-rolled lead bar in 1992, while imports of bars and rods subject to the orders have markedly declined.

The petitioners argue that the Department's reasons for the sharp increase of lead billets, as stated in the preliminary determinations, including general sourcing patterns in the U.S. semifinished steel market, import trends from other countries, and the re-rollers "short supply" argument, do not hold up to the facts. Moreover, the petitioners argue that none of the U.S. re-rollers or foreign respondents has alleged that there is a shortage of lead billets in the United States. The petitioners argue that none of the alternate rationales provided by the Department disproves the fact that the imports of lead billets from the United Kingdom and Germany increased since the investigation and subsequent orders placed on hot-rolled lead bars in 1992 and 1993, respectively.

The foreign respondents argue that the pattern of trade demonstrates that the foreign respondents were selling lead billets to the United States before the imposition of the AD and CVD orders on hot-rolled lead bar. In addition, the U.S. re-rollers participating in these inquiries were in existence before the imposition of the hot-rolled lead bar orders. Further, the U.S. re-rollers that were in existence before the AD and CVD orders on hot-rolled lead and bismuth carbon steel products had been purchasing lead billets prior to the AD and CVD orders.

Collectively, the foreign respondents argue that the individual patterns of trade for British Steel, Thyssen, and Saarstahl are vastly different, and do not demonstrate on their part or the U.S. re-rollers' part that circumvention of the orders is occurring. For example, British Steel argues that its shipments of hot-rolled lead bar to the United States have and continue to exceed its shipments of lead billets. Thyssen argues that it was never a significant exporter of hot-rolled lead bars to the United States. Rather, Thyssen states that it sells significantly greater quantities of lead billets to unrelated companies throughout the world, including the United States, than hot-rolled lead bars. Additionally, Thyssen notes that prior to the certain hot-rolled lead and bismuth carbon steel products from Brazil, France, Germany and the United Kingdom investigations, it sold lead billets to the United States in significantly greater quantities than its sales of hot-rolled lead bar. Saarstahl argues that its sales of lead billets to the United States have significantly declined since peaking in 1993.

Both the foreign respondents and U.S. re-rollers argue that, because four of the five U.S. re-rollers participating in these proceedings either do not currently produce lead billets themselves, or can not produce sufficient quantities of lead billets to meet their requirements, a reliable source of lead billet supply is necessary. The U.S. re-rollers, as well as the foreign respondents, stress that the reason for the increase in lead billet imports from Germany and the United Kingdom is due to the fact that the domestic lead billet industry (*i.e.*, petitioners) is either "unwilling" or "unable" to provide a consistent and reliable supply of lead billets to the U.S. re-rollers respective facilities. AS&W, Republic, and Sheffield have made repeated assertions that Inland and USS/KOBE do not have the capacity to meet their demands or the demands of the domestic lead billet merchant market and, therefore, were compelled to source lead billets from the foreign respondents because both Inland and USS/KOBE refused to sell lead billets on a consistent basis. British Steel notes that AS&W approached British Steel as a possible supply source of lead billets only after USS/KOBE terminated a supply agreement with AS&W in 1996.

Department's Position: Although the pattern of trade is not a determining factor, but rather one of several factors which the Department considers in evaluating whether circumvention is occurring, the Department did consider this to be an important factor in its analysis as to whether circumvention of the AD and CVD orders are occurring.

The petitioners have argued that in evaluating the pattern of trade, it is sufficient merely to look at the trends of the data without further examination of the facts surrounding those trends. For example, petitioners contend that we have disregarded the statute by going behind the import statistics to consider what they characterize as "short supply" issues. We disagree with petitioners" interpretation of the statute. The petitioners' argument that the Department only examine whether imports have increased would convert this criterion into a mechanical approach which we believe is much less meaningful than an examination of all the relevant circumstances, including the causes behind the import trends. The "pattern of trade" is more than just bare import statistics alone.

Therefore, in order to determine whether circumvention of an order has occurred, we are directed by the SAA to examine the individual facts on a case-by-case basis for each circumvention inquiry. For example, if imports of lead billet increased after the order by 10 percent, while the increase in imports of hot-rolled lead bar was 100 percent after the imposition of the order, the petitioners' interpretation of the statute would require that the Department ignore contributing factors and explanations for an increase in the level of importations when deciding whether or not circumvention of an order has occurred. To adopt this interpretation of the statute would render the individual facts of a circumvention inquiry meaningless. In other words, the petitioners' suggestion that the Department must only consider quantitative changes pursuant to section 781(a)(3)(C) of the Act without consideration of the facts of the circumvention inquiry and the underlying causes that may have contributed to such changes is inappropriate for evaluation of this criterion.

In analyzing the level of imports of lead billets from both Germany and the United Kingdom, respectively, we found that imports of lead billets have increased from all three foreign respondents. However, the respective increases appear to be the result of causes other than the initiation of the hot-rolled lead bar investigations and the subsequent orders.

In evaluating the criterion provided by section 781(a)(3)(C), the Department relied, in part, upon the fact that since the mid-1980s Thyssen's primary product market in the United States has been lead billets, not hot-rolled lead bar. With respect to British Steel, the Department found that the pattern of trade did not suggest circumvention because British Steel remains a large exporter of hot-rolled lead bar to the

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United States and its hot-rolled lead bar market in the United States is still much larger than its lead billet market. Further, the reduction or elimination of domestic supply by Inland and/or USS/KOBE's inability to provide a consistent supply of lead billets to the U.S. merchant lead billet market is a contributing cause to the reported increase in imported lead billets into the United States. Thus, even though the petitioners contend that there is now "available" domestic capacity to meet the U.S. lead billet merchant market demand, the record clearly demonstrates that the petitioners' capacity is not necessarily available to U.S. re-rollers as evidenced by the re-rollers' inability to secure a consistent supply from domestic sources. Indeed, Inland has stated publicly that it does not sell lead billets to the U.S. lead billet merchant market. *See* February 17, 1998 *Ex Parte* Memorandum from the Team, through Barbara E. Tillman, to the File.

We also found during our verification of Republic various contractual agreements between Republic and its customers. These contracts, also known as a "frozen practice," identify the lead billet supplier, specifications and functional requirements of the input. Republic has entered into a number of "frozen practice" arrangements with its customers which require Republic to use specific lead billet suppliers in the production of the multiple downstream products which are purchased by the automobile industry in the United States. In these cases, changes in sourcing lead billets without written approval of the customer are subject to refusal. *See Verification of Republic Engineered Steel's Questionnaire Responses in the Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders on Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom*, July 6, 1998 at 4.

Comment 2: The Department Should Compare the Investments in a Re-rolling Mill to the Investments Required for an Integrated Steel Facility

The petitioners argue that the Department failed to provide a proper analysis pursuant to section 781(a)(2) of the Act as to whether the process carried on in the United States is "minor" or "insignificant." In particular, the petitioners argue that the Department's analysis was deficient with respect to the level of investment factor. The petitioners contend that the Department, in reaching its preliminary determinations, merely summarized generic hot-rolling investment information submitted by the U.S. re-rollers and concluded that "[i]nvestment in re-rolling facilities requires a long term investment of capital" and that all of the U.S. re-rollers have made "large investments of capital and resources into their rolling facilities" without providing a proper comparison of what constituted a "long term investment of capital" and "large investment of capital." The petitioners argue that the Department in its final determination must compare the level of investment required to produce lead billets relative to the investment required to roll lead billet into hot-rolled lead bar. The petitioners argue that using a comparative analysis would demonstrate that the production of lead billets requires "substantial" investment in specialized facilities, including dedicated equipment, such as bloom casters, lead injection equipment, and fume control technology, whereas the level of investment dedicated and required to roll lead billets into hot-rolled lead bar at the U.S. re-roller facilities would be deemed "minor" or "insignificant."

The petitioners argue that the investment data from the U.S. re-rollers clearly establishes that the plant and equipment required for the production of hot-rolled lead bar represents only a fraction of the plant and equipment required for the production of lead billets. According to the petitioners, the investment required to construct the facilities and purchase capital machinery dedicated and required for the production of lead billets vastly exceeds the level of investment in the U.S. re-rollers' current facilities and equipment which merely roll the lead and/or nonlead billets into hot-rolled bar.

The petitioners also note that in their application for these circumvention inquiries, the petitioners compared the level of investment necessary to roll lead billets into hot-roll lead bar with that required to produce lead billets, and that this relative comparison prompted the Department to initiate these inquiries because the level of investment required to roll lead billets at the U.S. re-roller facilities was "minor" in comparison to the production of lead billets at the petitioners" integrated facility.

Further, the petitioners contend that the Department, in reaching its preliminary determination, failed to follow previous anticircumvention inquiries where the Department conducted a comparative analysis of the level of investment between an industry and its individual segments. *See Granular Polytetrafluoroethylene Resin from Italy; Final Affirmative Determination of Circumvention of Antidumping Duty Order*, 63 FR 26100 (April 30, 1993)(*PTFE*), and *Brass Sheet and Strip from Canada; Final Affirmative Determination of Circumvention of Antidumping Duty Order*, 58 FR 33610 (June 18, 1993) (*Brass Sheet and Strip*). In *PTFE*, the petitioners assert, the Department made an affirmative finding of circumvention, in part, because "* * * in comparison to the investment required to establish an integrated production facility for granular PTFE resin (finished product), respondent's investment in the United States is relatively minor" (58 FR at 26103). Petitioners also cite to *Brass Sheet and Strip*, where the Department found that failure to compare the re-roller's operations to an integrated mill would not "provide * * * an accurate representation of the industry as a whole * * * nor a meaningful evaluation of Great Lakes' operations in particular" (58 FR at 33613).

The U.S. re-rollers and foreign respondents disagree with the petitioners' assertion that the level of investment is "minor" and that a comparison of an integrated facility to a rolling facility is warranted in these inquiries. The U.S. re-rollers and foreign respondents argue that the record in these inquiries demonstrates that the U.S. re-rollers' absolute level of their investment in their respective bar mills is "significant." Both the U.S. re-rollers and foreign respondents argue that during the course of these inquiries, documentation has been provided and verified confirming that the level of investment required to modernize a bar mill facility or to construct a new state of the art bar mill facility in the United States demonstrated a substantial level of investment in absolute terms. These multi-million dollar investments in the United States, the U.S. re-rollers and foreign respondents argue, do not comport with the type of "screwdriver" operations intended to be captured by the statutory anticircumvention provisions.

Both the U.S. re-rollers and foreign respondents argue that the mining, smelting, casting and refining of steel is performed by integrated producers, which is just one part of the entire U.S. steel making industry, whereas the U.S. re-rollers are a distinct segment of the steel making industry. Further, the foreign respondents point out that the Department has previously rejected comparisons of a petitioner's production activities with those of foreign respondents, when separate segments of the industry exist. *See, e.g., Portable Electric Typewriters from Japan (Brother Industries, Ltd. and Brother Industries (USA), Inc.); Negative Final Determination of Circumvention of Antidumping Order* 56 FR 58031 (November 15, 1991)(*PETS*). Similarly, the foreign respondents argue that the rolling operation of lead billets into lead bar is not the kind of secondary operation the Department found in *Brass Sheet and Strip*, but rather, is a substantial operation involving large amounts of investment necessary to perform its intended operation (*i.e.*, rolling, testing, finishing, etc.).

Department's Position: In reaching our final determinations, the Department evaluated the U.S. re-rollers' level of investment within the context of the amount of investment required at a rolling mill for the production of hot-rolled lead and nonlead bar. We believe that a comparison of the U.S. re-rollers' level of investment with that of an integrated steel making facility, as suggested by the petitioners, is not called for in these inquiries. First, neither the statute and SAA, nor the legislative history contains a requirement that the Department make such a comparison.

Second, it is not necessary or appropriate in this case to undertake such an analysis because the activities undertaken by the U.S. re-rollers historically represent a pre-existing and distinct segment of the leaded steel industry. The investment made by each U.S. re-roller in its facilities, as the Department has verified, was largely made prior to the orders. Although the actual amount of an individual U.S. re-rollers' investment is business proprietary information, the data from the U.S. re-rollers reveal that, prior to the inquiries in these cases, they made long-term commitments to produce hot-rolled bar from leaded and nonleaded billets and, to this end, invested a substantial amount of money in plant and equipment. Furthermore, according to the ITC, the manufacturing process for the leaded steel industry involves mining, melting, casting, rolling, testing, and finishing. The ITC notes that operations performed by integrated mills include all of the above and, therefore, such facilities require more investment in relation to the U.S. re-rollers which undertake the end stage, characterized by rolling, testing and finishing operations. Thus, a comparison of operations undertaken and the investment needed by an integrated mill would not represent an appropriate standard in this case and would fail to provide an accurate representation of the U.S. re-rollers' level of investment. The petitioners' assertion that the U.S. re-rollers' investment in rolling mills is small compared to its integrated mills' investment in the United States is irrelevant because, here, we are only concerned with the investment required at a rolling mill, a separate, recognized segment of the steelmaking industry as identified by the ITC.

Section 781 of the Act was not intended to deter commercial investment in the United States or to thwart the legitimate business interests of U.S. companies. SAA at 894. In this regard, the record in this proceeding establishes that each U.S. re-roller has made significant investment in the United States in plant, equipment, and the training of employees related to the rolling of leaded billets, and they did so largely prior to the antidumping investigations. In view of the amount and type of investment by the U.S. re-rollers and the existence of these operations prior to the investigations, we do not agree that the level of investment in this case plainly supports a finding that the processing in the United States is minor or insignificant, whether or not the level of investment may be smaller than the amount needed for a fully integrated steel mill, as petitioners argue. Rather, when all of the facts of this case are considered, we find that these investments represent significant investments in the re-rolling segment of the U.S. industry.

Although the petitioners cite to previous circumvention decisions where the Department did compare segments of an industry to its whole, the Department has also found it unnecessary to make such comparisons in other circumvention inquiries. *See, e.g., Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Negative Final Determination of Circumvention of Antidumping Duty Order*, 55 FR 6028 (February 21, 1990) (*Forklift Trucks*). In *Forklift Trucks*, the Department noted that the foreign respondents "made substantial investments in plant and equipment" (55 FR at 6029), and that the "level of production operations is too great to characterize these operations as completion or assembly operations established for the purpose of evading the antidumping duty order" (*see Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Preliminary Determination of Circumvention of Antidumping Duty Order*, 54 FR 50260, 50263 (December 5, 1989)). In *Forklift Trucks* the Department determined that "it is not necessary that respondent's investments be comparable with those of (petitioners) * * * in order for the Department to decide if respondent's facilities are more than mere completion or assembly operations' (55 FR at 6029).

In addition, there are factual differences between these circumvention inquiries of the lead bar orders and the two cases cited by the petitioners. In *PTFE*, the inquiry involved whether the Italian PTFE manufacturer set up and operated facilities in the United States in order to circumvent the PTFE order. The facility was newly established and performed only a portion of the manufacturing process the company performed in Italy. Thus, in that case, a comparison of the Italian manufacturer's operations in the United States with its operations in Italy was relevant to the inquiry because the allegation of circumvention in *PTFE* focused on whether the Italian respondent had set up a related subsidiary in the United States in order to circumvent the order. Given the nature of the allegation, it would have been extremely difficult to determine whether the Italian company started its U.S. processing in order to circumvent the order on PTFE without comparing the nature of its processing facilities in the United States with that company's operations in Italy. This fact pattern is not present in these circumvention inquiries on lead bar. For one thing, the U.S. rerollers are not related to the U.K. and German lead bar producers. Moreover, the U.S. rerollers existed at the time that the lead bar orders were issued.

In addition, the fact pattern in *Brass Sheet and Strip* does not support the petitioners' argument that we should compare the investments made by the U.S. re-rollers with the investments required of an integrated steel manufacturer. In *Brass Sheet and Strip*, the Department compared the processes performed by the importer's facility with the operations normally performed by brass mills in the United States, because the importer's operations were not part of a separate, recognized segment of the brass sheet and strip industry. In *Brass Sheet and Strip*, we found that the importer's small amount of cold-breakdown rolling was insufficient for us to consider it a fabricator, but also that its operations were not comparable to the brass re-rollers because the re-rollers purchase brass sheet and strip and roll it into a different brass sheet and strip product. The purchased products already were within the scope of the order, as was the final product. In contrast, the importer subject to the circumvention inquiry, Great Lakes, purchased brass plate that had been processed to the point of being one rolling step short of constituting sheet and strip. Because Great Lakes

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performed some processing of the plate, the operations it performed did not represent the type of processing that had been performed by a separate, recognized segment of the brass sheet and strip industry. Prior to Great Lakes, there were no "re-rollers" that processed plate. Great Lakes' operations, which were established after the order was issued, included an operation normally performed by brass mills and not by re-rollers. Thus, in *Brass Sheet and Strip*, we compared the U.S. importer's processing to that of the brass mill, where the type of processing Great Lakes performed normally took place in that industry. Again, the facts which caused us to compare Great Lakes' rolling facilities to integrated facilities in *Brass Sheet and Strip* are not present in the hot-rolled lead bar circumvention inquiries. This case does not involve a new and different type of processor. The U.S. lead bar industry is comprised of both integrated producers and re-rollers. This composition of the U.S. lead bar industry existed before the initiation of the original AD and CVD investigations of lead bar from Germany and the United Kingdom. Because re-rollers are a separate, recognized part of the U.S. lead bar industry, there is no need to compare their investments and facilities to another segment of the U.S. steel industry.

Comment 3: The Department Should Compare the Extent and Nature of Re-rolling Operations to Those of an Integrated Steel Facility

The petitioners argue that using a comparative analysis between the nature and extent of a U.S. re-roller's processing and that of an integrated facility would demonstrate that the quality, inherent characteristics and machinability of the final product are imparted at the steps taken in the casting stage of an integrated producer and that the rolling of lead billets into hot-rolled lead bar is merely a shaping and sizing process which does not add to the value because the fundamental chemical properties are imparted in the production of the semifinished leaded steel. The petitioners contend that the production of the semifinished lead billet is substantial in terms of equipment required (*i.e.*, specialized facilities, including dedicated equipment, such as bloom casters, lead injection equipment, and fume control technology) and that the conversion of the semifinished steel into hot-rolled bar is "minor."

Further, the petitioners argue that the Department has failed to follow previous anticircumvention precedent where the Department made a comparison of a segment of an industry to the entire industry as a whole. The petitioners argue that, in *Brass Sheet and Strip*, the Department evaluated a similar industry via a relative comparison, and that this comparison rendered an affirmative determination of circumvention. In *Brass Sheet and Strip*, the Department considered that the nature of the production process indicated that U.S. value added was "small" because melting and casting operations performed in integrated brass mills were the "primary operations for production of brass sheet and strip; whereas rolling operations add only the last fraction of value." The petitioners contend that the U.S. re-rollers, in the instant proceeding, perform the last of three stages in the manufacturing process for hot-rolled leaded bar and that this process is similar to the finishing processes of brass plate in *Brass Sheet and Strip*, where the rolling of brass plate into brass sheet entailed only one process for turning a semifinished product into a single finished product.

Similarly, the petitioners assert that in *PTFE* the Department compared the respondent's integrated facility in Italy with its affiliated U.S. production facility. The petitioners point out that in *PTFE* the Department concluded that the "post-treatment processes are not complex relative to the processes required to produce PTFE wet raw polymer, and do not fundamentally alter the nature of the product" (58 FR at 26102). The petitioners argue that as in the instant proceedings, the inherent characteristics of the lead billet are imparted at the melting stage, not the rolling stage and that the rolling stage should be considered similar to post treatment.

The foreign respondents refute the petitioners' allegations that the nature and extent of processing lead billets into hot-rolled lead bar is "minor." In particular, Thyssen points out that Inland argued to the ITC in the original lead bar investigations, that:

> [t]he rolling practice of injected steels is also unique and with it come additional production costs * * * must be heated up to an hour longer than SBQ (special bar quality) carbon steels to achieve the proper rolling temperature; therefore adding extra heating cost * * * [t]here is substantially more time involved in producing a lead or bismuth product and therefore it becomes a more costly process.

(*See* Thyssen's July 21, 1997 submission.) Further, the foreign respondents and U.S. re-rollers contend that the Department has the discretion to engage in a comparative analysis, and that the use of a comparative analysis would be nonsensical in the steel industry context, because the integrated facility produces a full range of products with a different cost structure, different production volumes and various product mixes than that of a rolling mill. The foreign respondents argue that under the petitioners' hypothesis, any production process that takes place after the casting of the semifinished steel may be characterized as "minor or insignificant" by comparison, even though the further processing is very significant in absolute terms. The U.S. re-rollers contend that an examination of their descriptions of the production process reveal that the processing of lead billet into hot-rolled lead bar that they perform in the United States is substantial. According to the U.S. re-rollers, the operations performed at their respective U.S. facilities require sophisticated and complex machinery in order to adhere to strict environmental and process quality controls.

The foreign respondents also refute the petitioners' assertions that the machinery at the melting and casting stages at an integrated facility is dedicated solely to the production of lead billets. The foreign respondents argue that neither an integrated facility's nor the U.S. re-rollers' equipment is used solely for the production of either leaded and nonleaded steel products, but rather a product mix involving chemistries for both leaded and nonleaded products. The foreign respondents argue that the smelting and casting equipment at the integrated facility (*i.e.*, furnace and tundish) can be used to produce both leaded and nonleaded steel products.

Both the foreign respondents and U.S. re-rollers argue that, given the nature of the U.S. re-rollers operations, the fact that they do not add any materials to the imported lead billet is irrelevant because there is virtually no market for lead billet other than re-roller facilities. The U.S. re-rollers state that they must substantially transform the lead billet into a hot-rolled lead bar in order to produce a saleable product. Foreign respondents stress that a lead billet is a semifinished product that is used by the U.S. re-rollers to produce other semifinished products (*e.g.*, hot-rolled lead bar) and finished products, (*i.e.*, cold-finished lead bar).

Department's Position: The petitioners' main argument that the Department should compare a re-rolling facility to an integrated steel facility in determining whether the re-rolling operations in the United States are "minor" or "insignificant" and their citations to *Brass Sheet and Strip* and *PTFE* have been addressed in the "Department's Position" to "Comment 2." The issue present in these circumvention inquiries is not whether the production of steel is more complex than the re-rolling and completion of a semifinished steel product but whether the rolling of lead billets into hot-rolled lead bar is a "minor" or "insignificant" process being used to circumvent the AD and CVD orders on hot-rolled lead bar from Germany and the United Kingdom. For the reasons stated earlier in our response to "Comment 2," we did not compare the operations of the U.S. re-rollers to the production of steel by integrated steel producers.

In our analysis of the process used by the U.S. re-rollers' operations, the Department thoroughly considered many factors, including the square footage of building space dedicated to hot-rolling, the number of employees involved in hot-rolling, and the capital equipment used in the production of hot-rolled lead bar, as well as the ITC's description of the re-rolling process carried on by the U.S. industry. On the basis of this analysis, the Department concluded in the preliminary determinations that throughout the United States, the U.S. re-rollers have extensive capital-intensive rolling facilities staffed by skilled workers which are used to transform lead billet into hot-rolled lead bar.

In making our final determinations, we again reviewed the records in these inquiries. During verification, the Department toured AS&W's rolling facilities and Republic's meltshop and rolling facilities. We reviewed the production processes and facilities with respect to the manufacture of lead billets and the subsequent rolling of the lead billet into hot-rolled lead bar. While touring Republic's meltshop, we verified that Republic employs workers responsible for teeming, controlling, and inoculating the molten steel with lead wire. *See* Republic's Verification Report at 7. In addition, during our tour of AS&W's bar mill facility, company officials stated that while AS&W "does not have machinery dedicated exclusively for the purpose of rolling leaded steel products, the bar mill was designed specifically to roll high quality lead and alloy products." Further, AS&W provided documentation which showed that in comparison to its rod mill, its bar mill rolls at very high tolerances, and as such, normally will roll lead billets as opposed to nonlead billets into hot-rolled products. *See* AS&W Verification Report at 6. Both plant tours demonstrated that the production processes at the U.S. re-roller facilities require stringent quality control, strict adherence to OSHA and environmental regulations, and special training for employees.

Thus, we disagree with the petitioners that the production of hot-rolled lead bar from lead billets is similar to the process examined in *Brass Sheet and Strip*. Based on our analysis of the re-rollers production process, we found the transformation of lead billet into lead bar to be a more substantial undertaking than the process used in *Brass Sheet and Strip*. For example, Great Lakes did not perform hot-breakdown rolling, but merely a small amount of cold-breakdown rolling; whereas, the re-rollers in these inquiries perform hot-breakdown rolling before the lead billet can be transformed into a lead bar. Next, the Department found in *Brass Sheet and Strip* that the rerolling operations that Great Lakes performed, which included all of the processes that rerollers perform, with one additional step, namely that of cold-breakdown rolling, "add only the last fraction of value" because Great Lakes" fabrication process turned a semifinished product (brass plate), a product which was merely one rolling step short of constituting a single finished product (brass sheet and strip). In contrast, the production of lead bar from lead billets is a more involved multi-process operation as we found on verification and as described in the ITC's report. *See Statutory Analysis* Section of this notice for a discussion of the production processes.

In *Forklift Trucks*, the Department examined all of the facts and circumstances surrounding the respondent's domestic assembly operations and noted that all foreign respondents "made substantial investments in plant and equipment," and that the "level of production operations is too great to characterize these operations as completion or assembly operations established for the purpose of evading the antidumping order." Specifically, the Department discussed the manner in which it analyzed the processing operations performed in the following manner:

> We examined the nature of foreign respondents' U.S. production facilities in order to determine whether such facilities were similar to the examples of circumvention cited in the legislative history. Since a major goal of the circumvention provision is to prevent evasion of an antidumping duty order through "slight changes" in the method of production or shipment * * * examination of foreign respondents' U.S. production processes is an important part of our analysis.

55 FR at 6030. *Forklift Trucks* is instructive for these final determinations because the record in these proceedings demonstrates that the operations which the U.S. re-rollers undertake in order to produce hot-rolled lead bar from lead billets do not involve evasion of the orders through "slight changes."

Comment 4: Valued-Added Calculated for U.S. Re-Rolling Process is "Minor"

The petitioners contend that a comparison of the ranged value-added data in these inquiries to that found in *Brass Sheet and Strip* should have led the Department to conclude that the amount of value added by the U.S. re-rollers in rolling lead billet into hot-rolled lead bar is "minor" or "insignificant." In support of their argument, the petitioners provided the Department with a weighted-average calculation of the value-added by the re-rollers which indicated that the value added in the instant inquiries is "similar in amount" to the value-added calculated in *Brass Sheet and Strip*. Given this similarity, the petitioners argue that the weight-averaged value-added calculation is within the range that the Department previously determined to be "small" under the pre-URAA statute.

Foreign respondents argue that the value-added that the Department calculated in its preliminary determinations is not "small." They argue that the Department can determine whether the value-added in a circumvention inquiry is "significant" on a case-by-case basis.

Department's Position: The legislative history to section 781(a) establishes that Congress intended the Department to make determinations regarding circumvention on a case-by-case basis in recognition that the facts of individual cases and the nature of specific industries vary widely. In particular, Congress directed the Department to focus more on the nature of the production process and less on the difference in value between the subject merchandise and the imported parts or components. (*See* S. Rep. No. 103–412, 81–82 (1994)). Thus, we believe that any attempt to establish a numerical standard would be contrary to the intentions of Congress.

The Department's determination that the U.S. value-added in *Brass Sheet and Strip* was "small" is irrelevant to the present proceedings because that decision concerns the unique nature and extent of fabrication undertaken by a U.S. importer in an entirely different industry with different production processes. In addition, that case was decided before 1995, *i.e.*, before the changes made in section 781 of the Act

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by the URAA were effective. The URAA, which became effective on January 1, 1995, redirected the focus of an circumvention inquiry away from a numerical calculation of value-added towards a more qualitative focus on the nature of the production process. Under the URAA, which provides the current statutory language for section 781 of the Act, the numerical calculation of value-added is just one of five factors the Department is to examine in our determination of whether the processing undertaken in the United States is minor or insignificant.

We also note, in conclusion, that in *Brass Sheet and Strip*, which is cited by the petitioners in support of their argument, the Department explicitly stated in the "Affirmative Final Determination of Circumvention" section of that final determination "that our analysis of the difference in value and resulting determination of 'small' in this case are not necessarily synonymous with such determinations that the Department will formulate in future anti-circumvention inquiries since Congress has directed us to make determinations regarding the difference in value on a case-by-case basis."

Comment 5: The Department's Preliminary Determination of No Circumvention Conflicts With Prior Case Precedent

The petitioners argue that the Department's preliminary determinations are incompatible with its previous finding of circumvention in *Brass Sheet and Strip*, which involved similar fact patterns (*i.e.*, value-added calculations, capital-intensive industries, production processes, etc.).

In their case briefs, the petitioners provide the Department with a calculated weighted-average amount of the value-added in the instant inquiries and argue that this weighted-average amount is "similar" to the value-added of 15% determined in *Brass Sheet and Strip*, where the Department found circumvention. The petitioners also contend that in *Brass Sheet and Strip* the Department determined that the re-rolling of brass plate into brass sheet and strip neither adds additional materials nor imparts essentially physical characteristics to the rerolled brass plate but rather "adds only the last fraction of value" by shaping and sizing the brass plate. The petitioners argue that the Department in *Brass Sheet and Strip* considered that the nature of the production process was indicative that the U.S. value-added was "small," since melting and casting operations performed in integrated brass mills were the "primary operations for production of brass sheet and strip; whereas re-rolling operations add only the last fraction of value * * *" (58 FR at 33614).

The foreign respondents argue that the brass sheet and strip industry (*i.e.*, producers and fabricators and its subgroup, secondary mills) and the hot-rolled lead bar industry are vastly different. They contend that in *Brass Sheet and Strip*, the brass plate was merely "finished" into brass sheet and strip. On the other hand, the U.S. re-rollers and foreign respondents argue that the production of hot-rolled lead bar from lead billets is much more involved than merely "finishing" the lead billet into hot-rolled bar. They assert that the record clearly demonstrates that the production of lead billets into hot-rolled lead bar involves more steps (*i.e.*, hot-rolling, testing, and finishing) than the mere conversion of brass sheet and strip from brass plate (*i.e.*, finishing). In addition, the foreign respondents and U.S. re-rollers argue that the majority of hot-rolled lead bar sold in the merchant market is still an intermediate good that must undergo further processing (*i.e.*, cold finishing, forming, and testing) before it can be considered a finished good. On the other hand, foreign respondents argue, brass sheet and/or strip are themselves finished goods.

Department's Position: We agree with the foreign respondents and U.S. re-rollers that the fact pattern of these inquiries is different from *Brass Sheet and Strip*. As we have previously noted, the Department must determine whether or not circumvention of an order has occurred based upon the nature of the specific circumvention inquiry and the facts surrounding that circumvention inquiry. Thus, the facts which are present in the instant circumvention inquiries and the nature of the circumvention allegations differ from the facts which were present in *Brass Sheet and Strip*. A review of *Brass Sheet and Strip* and a review of the allegations and the facts surrounding these lead bar circumvention inquiries reveal that the petitioners' reliance on *Brass Sheet and Strip* to support their argument that the Department has erred in finding no circumvention of the lead bar orders is misplaced.

In order to determine whether the value added by Great Lakes, a secondary mill, specifically a brass plate re-roller, in *Brass Sheet and Strip* was "small," the Department examined the operations of Great Lakes' re-rolling of brass plate into brass sheet and strip. We compared Great Lakes' operations to the operations performed by fabricators in the U.S. brass sheet and strip industry, otherwise known as brass mills, which perform fabrication processes such as casting, melting and some re-rolling. Since Great Lakes re-rolled thicker brass plate, while secondary mills normally re-roll the thinner gauge brass sheet and strip, the Department determined that a comparison of the Great Lakes' operations to the operations normally performed by a brass mill was warranted, and upon examination, determined that the value added by Great Lakes indicated that the processing performed was minor. This decision was essentially based upon the fact that Great Lakes was founded in 1990, more than three years after the issuance of the antidumping order and the fact that, at the time of the original investigation, brass plate re-rollers were not considered a separate and recognized segment of the U.S. brass sheet and strip industry because the established re-rollers began the re-rolling process with brass sheet and strip, which itself was already within the scope of the investigation and subsequent order. *See* the "Department's Position" to "Comment 2" in *Brass Sheet and Strip*. In other words, because there was no brass plate re-roller industry segment with which to compare Great Lakes' activities during the POI, the Department compared Great Lakes' operations to that of a fabricator.

As we stated in *Brass Sheet and Strip*, the U.S. importer, Great Lakes, imported brass plate, a product which was one rolling step short of constituting sheet and strip prior to importation. In the brass sheet and strip industry, the primary fabrication process is hot-breakdown rolling, whereby brass ingots are heated, rolled, and coiled, then further reduced through cold-breakdown rolling. The relatively small amount of Great Lakes' cold-breakdown rolling was insufficient to consider Great Lakes a fabricator; however, since Great Lakes re-rolled brass plate, not the thinner brass sheet and strip re-rolled by the recognized secondary brass sheet and strip mills, the Department compared Great Lakes operations to the operations of brass fabricators and concluded that the re-rolling of brass plate into brass sheet and strip relative to a fabricator's processes was "small." The petitioners' arguments that we should compare the hot rolling process in these inquiries to the process of an integrated steel facility because such a comparison was conducted in *Brass Sheet and Strip* is misplaced, because the rolling mills which subsequently roll lead billets into hot-rolled lead bar predate the order and have always been considered a distinct part of the industry. In contrast, brass plate re-rollers were not considered a separate and recognized segment of the brass sheet and strip industry but one created by a foreign exporter in an attempt to evade the order on brass sheet and strip.

Since the date of the determination of circumvention in *Brass Sheet and Strip*, there were also changes in the statute relating to the determination of the amount of value added in the United States and the place that this has in the Department's analysis. Whereas under the statute applicable in *Brass Sheet and Strip* a determination of circumvention required a finding that the value added to the imported parts or components was "small," under the current statute the amount of value added is but one factor to be considered in determining whether the processing or assembly in the United States is "minor or insignificant." Accordingly, whether or not the value added is a "small proportion," we must consider other factors in determining whether the processing is "minor or insignificant." Thus, while case precedent prior to the enactment of the URAA, which became effective January 1, 1995, can provide useful guidance to the Department in post-URAA circumvention inquiries, certain changes in the Act expanded the factors to be considered by the Department in determining whether circumvention of an order has occurred.

For example, in *Brass Sheet and Strip*, our circumvention determination did not address level of investment. With the changes to the Act under the URAA, the Department must consider the level of investment by the U.S. re-rollers in determining whether the processing in the United States is minor or insignificant. As stated earlier, some of the U.S. re-rollers have invested over 100 million dollars in their rolling facilities. These facts must be considered by the Department in reaching determinations in these hot-rolled lead bar inquiries, while these factors were not addressed in *Brass Sheet and Strip*.

In both these hot-rolled lead bar circumvention inquiries and in *Brass Sheet and Strip*, the Department did examine patterns of trade to determine whether there were increases in imports of the alleged circumventing product. In *Brass Sheet and Strip*, the facilities of Great Lakes, an affiliated importer, were introduced into production in 1990, more than three years after issuance of the antidumping duty order, and imports of Canadian brass plate increased ten-fold from 1990 to 1991 (58 FR at 33610, 33615). This massive increase in imports of brass plate following the establishment of this facility contrasts markedly with the fact pattern in these hot-rolled lead bar inquiries, where there was no dramatic increase in the importation of lead billets connected with the establishment of an affiliated rolling mill in the United States before and after the issuance of these orders (*see* the "Department's Position" to "Comment 1," above). In these inquiries, while there was some increase in imports of lead billets, the product alleged to be circumventing the respective orders, after the initiation of these investigations, the circumstances were quite different. In particular, the U.S. re-rolling facilities existed prior these investigations, the re-rollers that imported the lead billets are not affiliated with any foreign producer or exporter of the lead billets, and at least one of these re-rollers imported lead billets before the initiation of the investigations. Thus, this pattern of trade in these inquiries is different from the pattern of trade in *Brass Sheet and Strip*.

In addition, the history and nature of the production process at issue in *Brass Sheet and Strip* bears no relationship to the history and nature of the processing performed by the U.S. re-rollers in these inquiries. In *Brass Sheet and Strip* the type of processing performed by the U.S. importer was not in existence at the time of the original AD investigation. Indeed, the U.S. importer and brass finisher in *Brass Sheet and Strip* was not established, and did not begin operations, until more than three years after the issuance of the antidumping order on brass sheet and strip. This contrasts with the facts in these lead bar circumvention inquiries, where most of the U.S. re-rollers were in existence, importing lead billets and processing them into lead bar, before the AD and CVD petitions on lead bar were filed with the Department.

In conclusion, the facts in *Brass Sheet and Strip* which caused the Department to find circumvention in that inquiry are not present in the circumvention inquiries on lead bar. Based on the facts present in these inquiries and the current statute, we find that circumvention of the lead bar orders is not occurring. Additional information with respect to the petitioners' comment regarding the similar value-added found in our preliminary determinations and the value-added determined in *Brass Sheet and Strip* can be found in our position in "Comment 4."

Comment 6: Most of the Merchandise Sold in the United States is a Different Class or Kind From That Under the AD and CVD Orders

The foreign respondents argue that the vast majority of the merchandise sold in the United States from the purchase of lead billets is not the same class or kind of merchandise that is subject to the leaded bar order. They state that the majority of the imported lead billet further processed into hot rolled bar is subsequently cold finished by the U.S. re-roller before it is sold to unaffiliated customers or is sold to cold drawers. Thus, much of the merchandise sold in the United States, *i.e.*, cold finished leaded bar, is not the same class or kind of merchandise subject to the orders. Foreign respondents argue that in recognition of the fact that the circumvention provision only applies to component materials used to produce subject merchandise sold in the United States, the Department has previously excluded from its circumvention findings component materials used to produce nonsubject merchandise. The foreign respondents argue that in *Brass Sheet and Strip*, the Department excluded from its final affirmative determination brass plate used to produce products sold as something other than brass sheet and strip. Further, Republic has stated that if the Department issues an affirmative final determination, at the very least, the Department would need to adopt an importer/exporter certificate program so that lead billets purchased by Republic for conversion to cold-finished bars are excluded from the scope of the hot-rolled lead bar orders.

The petitioners argue that the foreign respondents' argument ignores the fact that hot-rolled lead bar has been historically sold to unaffiliated and affiliated cold finishers for further processing and suggests that sales of merchandise for further manufacturing are not "sales" within the meaning of the statute. This would be inconsistent with the Department's previous precedent in circumvention cases such as *Brass Sheet and Strip* and *PTFE*. In both of those cases, the Department found that products sold in the United States were of the same class or kind as the merchandise subject to unfair trade orders even though the items that were produced from parts or components were subject to further processing before reaching the ultimate consumer.

Department's Position: Because the Department has determined that imports of lead billets from Germany and the United Kingdom are not circumventing the respective AD and CVD orders on

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hot-rolled lead bar, we are addressing arguments concerning the coverage of a circumvention finding.

Comment 7: Lead Billets Are Not Parts or Components

The foreign respondents argue that the anticircumvention statute requires that the merchandise sold in the United States be completed or assembled in the United States from parts or components from the country subject to the orders. The foreign respondents assert that the Department's preliminary determinations merely stated that all of the U.S. re-rollers purchased lead billet from one or more of the foreign respondents and that the re-rollers "use the lead billet to produce hot-rolled lead bar in the United States." They argue that the use of a lead billet in the production of hot-rolled lead bar in the United States does not establish a finding that the process of rolling lead billets into hot-rolled lead bar constitutes "completion." The foreign respondents further argue that the petitioners recognized in their methodological comments that lead billets are a complete product upon importation when the petitioners described the hot-rolling of lead billets into bars as a "conversion" process, rather than a process of completion.

Further, the foreign respondents argue that broadening the scope of an order beyond the like product examined in the ITC's injury determination in the original AD and CVD investigations is inconsistent with the anticircumvention statute. The foreign respondents assert that lead billets and hot-rolled lead bar constitute separate and distinct like products produced by separate and distinct domestic industries, as determined by both the ITC and the Department in the initial investigations. They also argue that because the petitioners in the initial hot-rolled lead bar investigations made the strategic decision to limit their petition to hot-rolled lead bar (rather than including lead billets within its scope), the Department must now conclude, as a matter of law, that circumvention does not exist.

The petitioners argue the anticircumvention statute does not require a finding that the parts or components fall within the same like product category as the finished product and certainly does not require a separate finding that the products subject to an anticircumvention inquiry must fall within the ITC's prior like product and injury determinations. The petitioners also note that in previous anticircumvention inquiries, *Steel Wire Rope from Mexico* and *Brass Sheet and Strip*, the Department correctly included merchandise in the scope of antidumping order that had previously been excluded from the ITC's like product and injury determinations.

The petitioners note that the Department stated in its notice of initiation of these inquiries that this investigation is analogous to the anticircumvention inquiry in *Steel Wire Rope from Mexico*, where the Department made an affirmative finding of circumvention and expanded the scope of an order to include a component that the petitioners had expressly excluded from the original investigation. Even though the expressly excluded merchandise was not part of the ITC's like product determination or injury determination, the petitioners argue in the instant case that the Department should follow the plain meaning of the statute (*i.e.*, that the anticircumvention statute permitted expansion of the scope beyond the original like product) and make an affirmative finding. The petitioners note that in *Brass Sheet and Strip* the Department included brass plate within the order on brass sheet and strip even though the brass plate was not included within the scope of the original investigation.

Department's Position: We disagree with the respondents' first argument that a so-called "completed" product cannot be a "part or component" of lead bar for purposes of section 781(a) of the Act. Indeed, it is difficult to imagine that many "parts and components" used to produce or assemble subject merchandise could not be considered "complete" in and of themselves. For example, an engine is a "completed" product, but it can still be imported in the United States and "assembled" into a forklift truck. Accordingly, the engine, although a completed product, can still be a part or component of another item. Thus, whether a part or component is or is not characterized as "completed" is irrelevant to the circumvention section of the statute. The question is whether that item becomes part of the product sold in the United States that is of the same class or kind of merchandise subject to an order.

Because the Department has determined that imports of lead billets from Germany and the United Kingdom are not circumventing the respective AD and CVD orders on hot-rolled lead bar, we are not addressing the arguments concerning the ITC's injury determination.

Comment 8: Because There Is Minimal R&D in the Re-rolling Process, the Re-rolling Process Must Be Minor or Insignificant

The petitioners contend that the Department's findings on the lack of R&D in the U.S. re-rollers' facilities are consistent with the petition, where the petitioners demonstrated that R&D expenditures are typically concentrated in the relatively more complex melt shop facility and that the Department's finding that "R&D into the process of rolling bar is not a significant factor in this industry" demonstrates that foreign producers can easily shift from selling bars and rod to selling billets, and, thus, circumvent the order. Therefore, the petitioners argue that the Department's finding that little, if any, R&D is evident at the rolling stage means that the production process is "minor" or "insignificant."

The foreign respondents agree in part with the petitioners that the amount of R&D expenditures related to the rolling of lead billets into hot-rolled bar is minimal. However, they argue that, because the production of leaded steels is technically a mature process, the Department properly gave little weight to the level of R&D in the United States in determining whether the conversion of leaded billet into hot-rolled lead bar is "minor" or "insignificant." Further, the foreign respondents argue that the anticircumvention statute does not require an analysis of R&D when the Department finds that it is not a meaningful factor with respect to the industry and merchandise under review.

Department's Position: We disagree with the petitioners that a lack of R&D in the production of hot-rolled lead bar means that the foreign respondents can readily shift from the sale of hot-rolled lead bars to the sale of lead billets in circumvention of the orders. While R&D may be a significant factor in some industries, it is not in others. Further, the significance of its presence or absence depends on the industry and product under investigation. For example, changes in technology occur very rapidly in the electronics industry. This requires significant amounts for R&D. Thus, R&D might be a significant factor in a circumvention inquiry of that industry. In other industries, such as this one R&D is not a significant factor because of the maturity of the production process. However, a lack of R&D does not necessarily mean that circumvention is more easily accomplished. Where R&D is almost non-existent in the industry in general, whether that industry is located in the respondent's country or in the United States, the absence of such expenditures does not automatically equate with ease of circumvention. As we have explained above, the re-rolling of lead billet into lead bar is not accomplished in temporary, transitory facilities. The lack of R&D in this industry does not change that fact. Accordingly, the Department gave little weight to R&D as an informative factor in its determination as to whether the lead bar orders were being circumvented.

Comment 9: The Department Placed Too Much Emphasis on the Fact that the U.S. Re-rollers and Foreign Manufacturers are Unaffiliated

The petitioners argue that the Department has placed greater weight on the fact that the respondents and the U.S. re-rollers are unaffiliated than contemplated by the statute or previous circumvention decisions. Specifically, the petitioners cite to the Department's observation in the preliminary determination that "these unaffiliated re-rollers invested a substantial amount in their re-rolling facilities both before and after the AD and CVD orders to roll both lead and nonlead billets into hot-rolled bar." 63 FR at 24162. They also note that affiliation is not necessary in order for the Department to make an affirmative finding of circumvention.

The foreign respondents argue that while the absence of affiliation does not mandate a negative determination, the arm's length nature of the business relationships between the foreign respondents and the U.S. re-rollers cannot be ignored in the Department's analysis.

Department's Position: The second factor the Department is required to consider under section 781(a)(3) of the Act is whether the manufacturer or exporter of the parts or components (in this instance, the foreign respondents which produce and export the lead billets) is affiliated with the persons which assemble or complete the merchandise in the United States (here, the U.S. re-rollers). In its preliminary determination, the Department set out the facts which lead it to find that no affiliation of any kind existed between the foreign respondents and the U.S. re-rollers.

Neither the statute, the SAA, nor the relevant legislative history provide any guidance as to how the Department is to consider this particular factor. Accordingly, the Department may reasonably determine how to evaluate that factor on a case-by-case basis in light of the pertinent facts particular to a specific circumvention inquiry. We agree with the petitioners that, as a general proposition, affiliation is not necessary for a finding of circumvention. However, a finding of no affiliation cannot be dismissed as having no relevance to the Department's determination, particularly when the statute mandates that this factor be considered. Thus, we disagree with the petitioners that we have elevated affiliation beyond that contemplated by the statute or previous circumvention determinations. Indeed, in several prior circumvention determinations, the Department has explicitly stated that we consider circumvention to be more likely when the manufacturer/exporter of the parts and components is related to the party completing or assembling merchandise in the United States using the imported components. *See, e.g., PTFE* and *Brass Sheet and Strip*.

In these circumvention inquiries, we found that the U.S. re-rollers acted on behalf of their respective commercial interests, independently of the foreign respondents' interests. The lack of any affiliation between the foreign respondents and the U.S. re-rollers was a contributing factor in the U.S. re-rollers' decisions on how best to protect and advance their own economic interests given, in particular, the sourcing problems for domestic leaded billet they encountered in the market place. However, as we explained in the preliminary determination and in this final determination, as well, affiliation is only one of several factors the Department considered in reaching a determination that circumvention does not exist.

Conclusion

Based on the analysis under section 781(a) of the Act, detailed above, we determine that circumvention of the AD and CVD orders on hot-rolled lead bar is not occurring by reason of imports of lead billets from Germany and the United Kingdom.

These negative final circumvention determinations and notice are in accordance with section 781(a) of the Act and 19 C.F.R. 353.29(e) and 19 C.F.R. 355.29(e).

Dated: July 20, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19019 Filed 7–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–833]

Notice of Postponement of Final Antidumping Determination: Live Cattle from Canada.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Kris Campbell, AD/CVD Enforcement, Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–1442 or (202) 482–3813, respectively.

Postponement of Final Determination

The Department of Commerce (the Department) is postponing the final determination in the antidumping investigation of live cattle from Canada. The deadline for issuing the final determination in this investigation is now no later than October 4, 1999.

On June 30, 1999, the Department issued its affirmative preliminary determination in this proceeding. The notice stated we would issue our final determination by September 13, 1999. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Live Cattle from Canada*, 64 FR 36847 (July 8, 1999).

On July 2, 1999, pursuant to section 735(a)(2)(A) of the Tariff Act of 1930, as amended, the Canadian Cattlemen's Association and the named respondents in this investigation requested that the Department postpone the issuance of the final determination in this investigation for 21 days. They also requested an extension of the provisional measures (*i.e.*, suspension of liquidation) period from four months to four months and three weeks, in accordance with the Department's regulations (19 CFR 351.210(e)(2)).

The respondents' request was timely, and the Department finds no compelling reason to deny the request. Therefore, we are extending this final determination until October 4, 1999. Suspension of liquidation will be extended accordingly.

In addition, because the countervailing duty investigation of live cattle from Canada has been aligned with this investigation under section 705(a)(1) of the Act, the time limit for completion of the final determination in the countervailing duty investigation

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will be the same date, October 4, 1999, as the final determination of the concurrent antidumping investigation.

This notice of postponement is published pursuant to section 735(a) of the Act and 19 CFR 351.210(g).

Dated: July 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19021 Filed 7–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings From the People's Republic of China: Extension of Time Limit for Preliminary Results of Five-Year Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final result of five-year ("sunset") review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the sunset review on the antidumping duty order on tapered roller bearings from the People's Republic of China. Based on adequate responses from domestic and respondent interested parties, the Department is conducting a full sunset review to determine whether revocation of the order would be likely to lead to continuation or recurrence of dumping. As a result of this extension, the Department intends to issue its preliminary results not later than October 18, 1999.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith, Martha V. Douthit or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230; telephone (202) 482–6397, (202) 482–3207 or (202) 482–1560 respectively.

Extension of Final Results

The Department has determined that the sunset review of the antidumping duty order on tapered roller bearings from the People's Republic of China is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e,* an order in effect on January 1, 1995). *See* section 751(c)(6)(C) of the Act. The antidumping duty order on tapered roller bearings from the People's Republic of China was issued on June 15, 1987 (52 FR 22667) and, as such, is a transition order. Accordingly, the Department is extending the time limit for completion of the preliminary results of this review until not later than October 18, 1999, in accordance with section 751(c)(5)(B) of the Act. The Department will, therefore, issue the final results of this review not later than February 25, 2000.

Dated: July 20, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19020 Filed 7–23–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 980608149–8149–01]

RIN 0648–ZA44

Use of Satellite Data for Studying Local and Regional Phenomena

AGENCY: National Environmental Satellite, Data, and Information Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of availability of Federal assistance.

SUMMARY: The Office of Research and Applications announces the availability of Federal assistance for fiscal year 2000 to expand the use of satellite data for the study of scientific phenomena in local and regional areas. This announcement provides detailed guidelines for the technical program, evaluation criteria, and selection procedures. The standard NOAA Grant Application can be obtained from the Office of Research and Applications (301–763–8127). Each funded project will establish a grant.

DATES: Proposals will be accepted through 5:00 p.m. EST on November 15, 1999. Final selection will occur approximately December 31, 1999.

ADDRESSES: Office of Research and Applications; NOAA/NESDIS; 5200 Auth Road; Rm 701; Camp Springs, MD 20746–4304.

FOR FURTHER INFORMATION CONTACT: Dr. James Purdom, 301–763–8127 or jpurdom@nesdis.noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority: Statutory authority for this program is provided under 49 U.S.C. 44720, 33 U.S.C. 833a, 833d, 833e.

Catalog of Federal Domestic Assistance (CFDA)

This program is listed in the CFDA under Number 11.440.

Program Description. NOAA's National Environmental Satellite, Data, and Information Service (NESDIS) Office of Research and Applications (ORA) is establishing a program which will provide free real-time satellite data to academic institutions for their use in studying local and regional phenomena. The emphasis of the program is to expand the use of satellite data within the academic community. In order to do so, ORA will: (1) Provide free access to satellite data for use in ongoing projects; (2) provide data and funds for the purchase of basic equipment required for analysis as part of an existing program or teaching laboratory; and (3) provide data to support students for research purposes.

The purpose of these guidelines is to identify eligibility criteria, roles and responsibilities, milestones, and selected criteria associated with the award. Each funded project will establish a 1-year grant between ORA and the grantee. Most projects will be funded from $0 plus free data to $22,000 for equipment and personnel plus free data. No cost sharing is required.

Background

ORA provides overall guidance and direction to the research and application activities of NESDIS. ORA provides expert service to other NESDIS offices relating to sensor development, instrument problems, or systems hardware components. It coordinates with NESDIS, other appropriate NOAA units, and U.S. Government agencies in the implementation and evaluation of operational and research satellite data and products that result from research activities. It coordinates research activities of mutual interest with the academic community, NASA laboratories, and with foreign laboratories, particularly those in satellite operating countries. ORA provides advice to the Assistant Administrator concerning interfaces among centers and offices of NESDIS and among the major NOAA elements in relation to broad scale scientific projects. It produces and provides specific programmatic studies and statistics as needed. ORA provides support and coordination on NOAA's activities in the Strategic Plan and the U.S. Global Change Research Program.

Roles and Responsibilities

ORA: ORA will have primary responsibility for the following activities: Provide satellite data needed for the project. (The original data are the property of ORA and cannot be used for purposes other than stated in the proposals, i.e., the data cannot be sold or used for commercial purposes, with the exception of use in academic text.) Provide technical guidance for image processing and analysis. Monitor progress and evaluate progress reports.

Grantee: The grantee shall have primary responsibility for the following activities associated with the project:

Organize and manage grant activities.

Identify Principal Investigator that will take the lead for all technical aspects of the grant and be responsible for using satellite data as a key tool in the activity.

Submit a progress report every 4 months and a final report at the end of the 1-year project period.

Submit scientific findings for this activity.

Project Proposals

All project proposals should include the following sections for a total of 6–8 pages maximum. Multi-year proposals will be accepted; however, future funding will be dependent upon satisfactory performance and the availability of funds. The annual awards must have scopes of work that are clearly severable that can be easily separated into annual increments of meaningful work which represent solid accomplishments if prospective funding is not made available to the Applicant.

Goals and Objectives—identify broad project goals and quantifiable objectives.

Background/Introduction—state the problem and summary of existing federal/state/local efforts.

Audience—identify explicitly the audience and describe specifics of how the project will contribute to improve the use of satellite data with the primary target audience.

Project Description/Methodology—describe the specifics of the activity (3 pages maximum), with a complete and explicit description of the project area.

Expected Results—list desired outcomes in terms of products or services.

Project Budget—provide a detailed budget breakdown by category and provide a brief narrative budget justification.

Selection Process

Applicants will submit project proposals to the Office of Research and Applications by the published due date. A project selection panel will be convened to review and recommend selection using the criteria published in these guidelines. Each proposal will be reviewed by three internal reviewers. This selection panel will present its recommendations to the Director, ORA, for final selection. In addition to the rankings assigned by the panel, the Director may consider program policy factors such as geographic location and balance of technical areas in making his final decision.

Selection Criteria (With Weights)

NOAA Relevance

Will the activity foster broader knowledge concerning the use of satellite data in meteorological and/or oceanographic research at your institution? (40 points)

Technical Merit

Is the proposed activity scientifically sound and relevant. (60 points)

Selection Schedule

Proposals due—November 15, 1999.

Final Selection—Approximately December 31, 1999.

Grant start date—Approximately March 1, 2000.

Note: All deadlines are for receipt by 5:00 p.m. EST on the dates identified. All applicants are required to submit one original and two copies of a completed and signed NOAA Grants Application Package. The application package may be obtained by calling (301) 763–8127 or accessed on-line from the NOAA Grants Home Page at http://www.rdc.noaa.gov/~grants/index/html.

Project Reporting/Evaluation Requirements

The Grantee will be asked to provide progress reports every 4 months and a final report.

Funding Availability

There is no guarantee that sufficient funds will be available to make awards for all approved projects. Publication of this notice does not obligate NOAA to award any specific grant or cooperative agreement or to obligate all or any part of the available funds. NOAA expects that approximately $100,000 will be available in FY 2000 for this program.

Cost Sharing

None.

Eligibility Criteria

The emphasis of this program is to foster new uses of satellite data within the academic community. Any state university, college, institute or laboratory, any public or private nonprofit institution or consortium may apply. Ongoing activities that use this program solely as a source of free data with no other costs encumbered are encouraged to do so.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the current indirect cost rate negotiated and approved by the Applicant's cognizant Federal agency, prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

Federal Policies and Procedures

Recipients and sub-recipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal assistance awards.

Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal, if any, key individuals associated with the recipient have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the recipient's management, honesty, or financial integrity.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Pre-Award Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

No Obligation for Future Funding

If the application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt under either:

(i) The delinquent account is paid in full,

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(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to DOC are made.

Primary Applicant Certifications

All organizations or individuals preparing grant applications must submit a completed Form CD–511 "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters: Drug-Free Workplace Requirements and Lobbying," and explanations are hereby provided.

Non-Procurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, Section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace

Grantees (as defined at 15 CFR, part 26, Section 605) are subject to 15 CFR part 26, subpart f, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying

Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to application/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower-Tier Certifications

Recipients shall require applicants/bidders for sub-grants, contracts, subcontracts, or other lower-tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOC in accordance with the instructions contained in the award document.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Buy American-Made Equipment or Products

Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act of any other law for this notice concerning grants, cooperative agreements, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This Notice involves a collection of information requirement subject to PRA which has been approved under OMB Control Number 0348–0046.

Dated: July 16, 1999.

Gregory W. Withee,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 99–18920 Filed 7–23–99; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070799H]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of cancellation of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is cancelling the meeting of its Research Steering and Experimental Fisheries Committee scheduled for July 29, 1999 at 9:30 a.m. The meeting was announced in the **Federal Register** on July 13, 1999.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422.

SUPPLEMENTARY INFORMATION: The initial notice published on July 13, 1999 (64 FR 37751). Because of scheduling conflicts, the meeting of the Research Steering and Experimental Fisheries Committee will be cancelled. An alternative date will be announced as soon as possible.

Dated: July 20, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–18998 Filed 7–21–99; 3:52 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071599C]

Marine Mammals; File No. 77–1#70

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 925, issued to The National Marine Mammal Laboratory, Northwest and Alaska Fisheries Science Center, National Marine Fisheries Service, 7600 Sand Point Way, NE. Seattle, Washington 98115, was amended to extend the expiration date to September 30, 1999.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR part 222–226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Application and documentation are available in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA, 98115–0070 (206/526–6150); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

Dated: July 19, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–19012 Filed 7–23–99; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Meeting Notice

AGENCY: U.S. Consumer Product Safety Commission Washington, DC 20207.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Volume 64, No. 138, 38896, July 20, 1999.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, July 27, 1999.

CHANGES IN MEETING: The meeting concerning the decision on issues related to the Commission's budget for Fiscal Year 2001 has been canceled.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway., Bethesda, MD 20207 (301) 504–0800.

Dated: July 22, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99–19134 Filed 7–22–99; 2:06 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Panel on Military Operations on Vieques; Notice

AGENCY: Special Panel on Military Operations on Vieques; Notice.

SUMMARY: The Panel will conduct three public meetings to receive and discuss information associated with military operations at Vieques, Puerto Rico and in the adjoining ocean range complex. The panel will receive information from the Mayor of Vieques, the Honorable Manuela Santiago and from representative residents of Vieques on July 24. Because of the short timeframe of the panel's review, and the accelerated pace of the meeting schedule, this announcement must be made less than 15 days before the meetings will take place.

DATES: July 24, 1999 from 12:30 to 2 p.m.

ADDRESSES: 449 Carlos Lebraum Street, City Hall, Vieques, Puerto Rico 00765.

FOR FURTHER INFORMATION CONTACT: Contact Dr. Hector O. Nevarez, the Designated Federal Officer, 1401 Wilson Boulevard, Suite 400, Arlington, VA 22209, phone (703) 696–9456, fax (703) 696–9482, or via Email at *Hector.Nevarez@osd.pentagon.mil.* Copies of the draft meeting agenda can be obtained by contacting Debra Crnkovic at (703) 695–5493.

SUPPLEMENTARY INFORMATION: Seating in the panel meeting room is limited, and spaces will be reserved only for panel members and invited representatives. The remaining seating is available on a first-come, first-served basis. No teleconference lines will be available. Written comments for the record may be mailed to the Panel and will be distributed to the Panel members after the adjournment of the July 24, 1999 meeting.

Dated: July 21, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–19044 Filed 7–23–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Revise and Reissue the Draft Environmental Impact Statement (EIS) on the Proposal To Release Federal Funds to the University of New Mexico To Construct Enchanted Skies Park and Observatory, Near Grants, NM

The United States Air Force prepared a draft Environmental Impact Statement (EIS) to assess the potential environmental impacts of the Air Force's decision to issue Department of Defense (DoD) grant funds to the University of New Mexico to construct an astronomical observatory on Horace Mesa, near Grants. In May 1997 the Air Force began preparation of an Environmental Assessment (EA) to analyze this proposal. Preliminary results from the EA indicated the potential for significant impacts to cultural resources. In accordance with the National Environmental Policy Act, the Air Force continued the analysis of this proposal through the preparation of a draft EIS that was released in July 1998. A public hearing was held in August 1998. Based on comments received by the public, the Air Force will revise and reissue the draft EIS. In addition to addressing issues raised by the public, the Air Force will analyze additional siting alternatives located on Horace Mesa and at a site referred to as the Bibo site. The revised draft EIS will be used by the Air Force in considering whether, and under what conditions, to approve the release of federal funds to construct the observatory on Horace Mesa or at the Bibo site and to document the Air Force's decision in a Record of Decision.

The Air Force will accept public input regarding the Enchanted Skies Park and Observatory throughout the preparation of the revised draft EIS. Written and oral comments received from meetings and correspondence during the preparation of the original draft EIS will be considered in preparation of the revised draft EIS, as will comments received by the Air Force throughout the process. To ensure the Air Force has sufficient time to consider public input in the preparation of the revised draft EIS, comments

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should be submitted to the address below: HQ AFCEE/EXX, ATTN: Ms Julia Cantrell, 3207 North Road, Brooks AFB, TX 78235–5363.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–18945 Filed 7–23–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 25, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 20, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: Extension.
Title: Evaluation of School-to-Work Implementation.
Frequency: Annually.
Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 3,375.
Burden Hours: 33,828.
Abstract: This congressionally mandated five-year study examines the implementation of School-to-Work programs in states and local communities. The evaluation involves surveys of local STW partnerships, in-depth case studies in eight states and 40 communities, and study of students' experiences in high school and postsecondary education.

Requests for copies of this information collection should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the Internet address *Vivian_Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Jacqueline Montague at 202–708–5359 or electronically at her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–18936 Filed 7–23–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10 (a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: August 5–7, 1999.

TIME: August 5—Subject Area Committee #2, 11:30 a.m.–2:30 p.m., (closed) 2:30–3:00 p.m., (open); Design and Methodology Committee, 1:00–3:00 p.m., (open)' Joint Meeting of the Design and Methodology Committee and the Reporting and Dissemination Committee, 3:00–4:00 p.m., (open); Executive Committee, 4:00–5:00 p.m., (open), 5:00–6:00 p.m., (closed). August 6—Full Board, 8:00–10:30 a.m., (open), Subject Area Committee #1, 10:30 a.m.–12:30 p.m., (open). Achievement Levels Committee, 10:30 a.m.–12:30 p.m., (open); Reporting and Dissemination, 10:30 a.m.–12:30 p.m. (open); Full Board, 12:30–2:00 p.m., (closed); 2:00–4:00 p.m. (open). August 7—Full Board, 8:30–adjournment, approximately 11:30 a.m. (open).

LOCATION: Ritz Carlton Hotel, Pentagon City, 1250 South Hayes Street, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under Pub. L. 105–78, the National Assessment Governing Board is also granted exclusive authority over developing the Voluntary National Tests pursuant to contract number RJ97153001.

On August 5, the Subject Area Committee #2 will meet in closed session from 11:30 a.m.–2:30 p.m to review proposed items for the math and science tests to be administered in the year 2000. This meeting must be closed because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C. The Committee will meet in open session from 2:30–3:00 p.m. to discuss plans for the 2004 NAEP mathematics framework and VNT math items.

The Design and Methodology Committee will meet in open session from 1:00–3:00 p.m. The Committee will be taking action on the pilot test design and analysis plans, and the validity research agenda for the proposed Voluntary National Tests. The Committee will hear reports on the provisions that might be made for including special needs students in the Voluntary National Tests, and hear an update on the NAEP evaluations.

From 3:00–4:00 p.m., there will be a joint meeting of the Design and Methodology Committee and the Reporting and Dissemination Committees to review and discuss the sampling and reporting plans for NAEP 2000 assessments in mathematics and science.

Also on August 5, there will be a partially closed meeting of the Executive Committee. In open session from 4:00–5:000 p.m. the Committee will review the NAEP and NAGB reauthorizations preparations, and hear a report on the briefings that were given to Congress and the Secretary.

During the closed portion, 5:00–6:00 p.m., the Executive Committee will discuss the development of cost estimates for the NAEP and future contract initiatives. Public disclosure of this information would likely have an adverse financial affect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption (9)(B) of section 552b(c) of Title 5 U.S.C.

Also in closed session, the Executive Committee will discuss the qualifications of current Board members to serve as Chairman and Vice Chairman of NAGB. Based upon these discussions, the Board will elect a Vice Chairman and recommend a Chairman to the Secretary. This portion of the meeting will relate solely to the internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and, as such, is protected by exemptions (2) and (6) of section 552b(c) of title 5 U.S.C.

On August 5, the full Board will convene in open session from 8:00 to 10:30 a.m. The agenda for this session includes approval of the agenda, the report of the Executive Director, NAEP Update, discussion on Mathematics Framework for Year 2004 Assessment, and NAEP and NAGB reauthorization.

Between 10:30 a.m. to 12:30 p.m., there will be open meetings of Subject Area #1, Achievement Levels, and the Reporting and Dissemination committees.

Subject Area Committee #1 will meet to discuss issues related to the NAEP Foreign Language Framework Consensus Project, and the reading assessment issues in the proposed Voluntary National Tests.

The Achievement Levels Committee will hear briefings on three items: Preliminary results of the booklet classification and the similarities classification studies; findings of a research study designed to observe the impact of using different response probability criteria for setting achievement levels; and a report which summarizes the different methods that have been used to set achievement levels on NAEP.

The Reporting and Dissemination Committee agenda includes a series of reviews for the NAEP assessments: Review of plans for releasing results of the 1998 writing and civics assessments; review of the schedule for release of future NAEP reports; and review of the background questionnaires for NAEP 2000 in math and science. For the proposed Voluntary National Tests, the Committee will consider the workplan for score reporting, 4:00 p.m. The Board will hear the results of a research study concerned with the participation rates of special needs students in NAEP; receive a briefings on the current status of the NAEP redesign and the recommendations for NAGP and NAEP reauthorization.

On August 7, the full Board will be in session from 8:30—adjournment, approximately 11:30 a.m. The agenda includes a briefing on a report titled *Increasing Participation of Special Needs Students in NAEP: Results of the 1996 Research Study;* and an update on the planning for the foreign language framework. Also, the Board will hear reports from its standing committees and, where appropriate, take action on their work.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW, Washington, DC, from 8:30 a.m. to 5:00 p.m.

Roy Truby,

Executive Director, National Assessment Government Board.

[FR Doc. 99–18932 Filed 7–23–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–122–A]

Application To Export Electric Energy; Electric Clearinghouse, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Electric Clearinghouse, Inc. (ECI) has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 25, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586-7983 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: On August 8, 1997, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized ECI to transmit electric energy from the United States to Canada as a power marketer using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Co., Inc., Minnkota Power, New York Power Authority, Niagara Mohawk Power Corp., Northern States Power, and Vermont Electric Transmission Company. That two-year authorization will expire on August 8, 1999. On June 28, 1999, ECI filed an application with FE for renewal of this export authority and requested that the Order be issued for an additional five-year term.

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Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the ECI request to export to Canada should be clearly marked with Docket EA–122–A. Additional copies are to be filed directly with Mr. Daniel A. King, Esq., Electric Clearinghouse, Inc., 805 15th Street, N.W., Suite 510–A, Washington, D.C. 20005–2207, AND Kathryn L. Patton, Esq., Electric Clearinghouse, Inc., 1000 Louisiana, Suite 5800, Houston, TX 77002–5050.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–122. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–122–A proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, D.C., on July 16, 1999.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–18976 Filed 7–23–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–131–A]

Application To Export Electric Energy; Sonat Power Marketing L.P.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Sonat Power Marketing L.P. (Sonat) has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before August 25, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: On July 31, 1997, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized Sonat to transmit electric energy from the United States to Canada as a power marketer using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison, Eastern Maine Electric Coop., Joint Owners of the Highgate Project, Maine Electric Power Co., Maine Public Service, Minnesota Power, Inc., Minnkota Power, New York Power Authority, Niagara Mohawk Power Corp., Northern States Power, and Vermont Electric Transmission Co. That two-year authorization will expire on July 30, 1999. On July 8, 1999, Sonat filed an application with FE for renewal of this export authority and requested that the Order be issued for an additional two-year term.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Sonat request to export to Canada should be clearly marked with Docket EA–131–A. Additional copies are to be filed directly with S. Chris Still, Attorney, Sonat Power Marketing L.P., 1900 Fifth Avenue North (35203), P.O. Box 2563, Birmingham, AL 35202–2563.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–131. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–131 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, D.C., on July 16, 1999.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–18977 Filed 7–23–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, August 5, 1999: 6:00 p.m.–9:30 p.m.

ADDRESSES: College Hill Library, (Front Range Community College), 3705 West 112th Avenue, Westminster, CO 80021.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Update on projects and issues being tracked by the Defense Nuclear Facilities Safety Board
2. Discuss and approve recommendations on the Building Rubble, Rocky Flats Clean-up Agreement Standard Operating Protocol (RFCA), RFCA Standard Operating Protocol (RSOP) document
3. Finalize discussion of cleanup phases end-states
4. Review and discuss the next draft of "Vision" document
5. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday—Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. to 4:00 p.m. Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on July 21, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–18978 Filed 7–23–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Tuesday, July 27, 1999: 8:00 a.m.–7:00 p.m.

ADDRESS: Carson County Square House Museum, Hwy 207, Panhandle, TX.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477-3125.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to advise the Department of Energy and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

8:00 a.m.–12:00 p.m. A Water 101 Seminar will be conducted for the public by Texas Natural Resources Conservation Committee, Bureau of Economic Geology, and the Attorney General's offices
1:00 p.m. Welcome—Agenda Review—Approval of Minutes
1:15 p.m. Co-Chair Comments
1:30 p.m. Ex-Officio Reports
1:45 p.m. Task Force/Subcommittee minutes
2:30 p.m. Updates—Occurrence Reports—DOE
3:00 p.m. Presentation (TBA)
4:00 p.m. Question and Answer
4:20 p.m. Closing Remarks
4:30 p.m. Public Comments
4:45 p.m. Adjourn
5:00 p.m. 7:00 p.m.—Environmental Restoration Program Update—Poster Session

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on July 21, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–18979 Filed 7–23–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–438–000]

Algonquin Gas Transmission Company; Request for Waiver

July 20, 1999.

Take notice that on July 14, 1999, Algonquin Gas Transmission Company (Algonquin) tendered for filing a request for waivers to permit a change in contract conversion election under Order No. 636.

Algonquin states that under Algonquin's Order No. 636 restructuring proceeding, qualifying small customers could make contract conversion elections for small customer no-notice firm transportation under Rate Schedule AFT–1S and small customer firm transportation under Rate Schedule AFT–1S. Algonquin states that the Town of Middleborough, Massachusetts, Municipal Gas and Electric Department (Middleborough) did not make its original contract conversion election for the small customer options, even though it qualifies for small customer status.

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Algonquin also states that Middleborough has requested that Algonquin permit Middleborough to convert its firm service to service under Algonquin's small customer rate schedules. Algonquin states that good cause exists for the Commission to grant the waiver requested herein.

Algonquin states that copies of the filing were served on all affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 27, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18972 Filed 7–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP–440–000]

Black Marlin Pipeline Company; Proposed Changes in FERC Gas Tariff

July 20, 1999.

Take notice that on July 14, 1999, Black Marlin Pipeline Company (Black Marlin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective August 14, 1999:

Second Revised Sheet No. 202
First Revised Sheet No. 204

Black Marlin states that in view of new gas discoveries in its area and corresponding changes in the needs of shippers, Black Marlin has discussed quality of gas standards with its shippers and has agreed to file to implement a change to the General Terms and Conditions (GT&C) of its Tariff to allow for the delivery of non-conforming gas into the Black Marlin system. The proposed change is intended to provide shippers with the increased flexibility that they desire, while preserving the integrity of Black Marlin's system and the commingled gas stream it transports.

Black Marlin states that Section 2.1 of the GT&C of Black Marlin's Tariff requires that gas tendered to Black Marlin by a shipper must meet the quality specifications set forth in the tariff. Section 2.1 further provides that failure to meet such quality specifications shall relive Black Marlin of an obligation to take receipt of such gas. With recent changes in production occurring in its vicinity, however, Black Marlin has determined that it can provide shippers with limited additional flexibility with respect to quality specifications, without impairing Black Marlin's ability to operate its system.

Black Marlin states that specifically, the overall mix of gas being transported is changing, especially in light of different product coming on line. Black Marlin has determined that, because gas of different quality specifications may be commingled without impairing Black Marlin's ability to provide service, a shipper may be permitted to deliver non-conforming gas into the Black Marlin system as long as the safety and reliability of the system are not impaired. Therefore to provide shippers with the increased flexibility they both need and desire, Black Marlin proposes to modify Section 2.1 of its Tariff to provide that it will accept off specifications gas as long as deliveries at all delivery points meet the quality specifications set forth in the Tariff, and the safety and reliability of Black Marlin's system is not impaired.

Further, Black Marlin states that in the event that the quality specifications at all delivery points are not met, the Tariff has been modified to state that, after the shipper has been provided notice and an opportunity to remedy the deficiency, the gas at receipt points most out of compliance with the quality specifications will be the first to be rejected for acceptance into the Black Marlin system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boegers,

Secretary.

[FR Doc. 99–18973 Filed 7–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–441–000]

CNG Transmission Corporation; Proposed Changes in FERC Gas Tariff

July 20, 1999.

Take notice that on July 14, 1999, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets with an effective date of August 1, 1999:

Third Revised Sheet No. 289
Third Revised Sheet No. 386A

CNG states that the purpose of this filing is to modify CNG's FERC Gas Tariff as required to reflect CNG's implementation of additional business practice standards that have been established by the Gas Industry Standards Board (GISB). In particular, the instant revision reflects the Commission's adoption of Version 1.3 GISB standards, as incorporated by reference in the Commission's regulations under Order No. 587–K. CNG states that it has enclosed in its filing an updated chart, detailing CNG's compliance with each GISB Business Practice standard adopted by the Commission.

CNG states that copies of its letter of transmittal and enclosures are being mailed to its customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boegers,

Secretary.

[FR Doc. 99–18974 Filed 7–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–437–000]

Dauphin Island Gathering Partners; Proposed Change in FERC Gas Tariff

July 20, 1999.

Take notice that on July 14, 1999, Dauphin Island Gathering Partners (DIGP) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective August 1, 1999:

First Revised Sheet No. 170
First Revised Sheet No. 225
Original Sheet No. 255A

DIGP states that the purpose of this filing is to comply with Order No. 587–K, Final Rule issued on April 2, 1999, in Docket No. RM96–1–011. The revised tariff sheets reflect certain Version 1.3 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18971 Filed 7–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–373–001]

Destin Pipeline Company, L.L.C.; Tariff Filing

July 20, 1999.

Take notice that on July 15, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet Nos. 71a and 76b, to become effective on August 1, 1999.

Destin states that the purpose of this filing is to correct a pagination error in Destin's July 1, 1999, filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are avaiable for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18970 Filed 7–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–577–000]

Duke Energy Field Services Inc.; Notice of Petition for Declaratory Order

July 20, 1999.

Take notice that, on July 13, 1999, Duke Energy Field Services Inc. (Duke) 370 Seventeenth Street, Suite 900, Denver, Colorado 80202, filed a petition pursuant to Section 1(b) of the Natural Gas Act (NGA), and Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207). Duke requests a declaratory order finding that its proposed acquisition of certain facilities currently owned by Texas Eastern Transmission Corporation (Tetco) will not subject Duke to the jurisdiction of the Federal Energy Regulatory Commission under the provisions of the natural Gas Act. All of this is more fully set forth in the application, which is one file with the Commission and open to public inspection. The application may also be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

The name address, and telephone number of the person to whom correspondence and communications concerning this petition should be addressed is: David E. Williams, Senior Attorney, Duke Energy Field Services, Inc. 370 17th Street—Suite 900, Denver, Colorado 80202, (303) 595–3331.

The facilities which Duke hopes to purchase include Tetco's Kenedy Ranch, Humble-Sarita and Bennett Ranch pipelines located in Kenedy, Brooks and Jim Hogg Counties, Texas. Duke states that it will use the facilities for gathering and will arrange for the purchase of production currently attached to the laterals, or in the alternative will enter into gas gathering agreements with no adverse rate impact for producers and shippers currently using the line.

Any person desiring to be heard or make any protest with reference to said application should on or before August 20, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protesters parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will

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be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Duke to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–18964 Filed 7–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–62–000]

Granite State Gas Transmission, Inc.; Notice of Refund Report

July 20, 1999.

Take notice that on July 16, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing with the Commission a report of Gas Research Institute (GRI) refunds made to its customers.

Granite State states that it received a total refund of $335,102.00 from GRI for over collections during 1998. Granite State says that it allocated the refund proportionately to its firm customers, Bay State Gas Company and Northern Utilities and made the refunds to them on July 7, 1999 by credit to the customers accounts.

Granite State also states that its report has been served on its customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and Regulations. All such motions or protests must be filed on or before July 27, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18967 Filed 7–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–111–002]

Koch Gateway Pipeline Company; Tariff Filing

July 20, 1999.

Take notice that on July 16, 1999, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective August 1, 1999:

Twenty-eighth Revised Sheet No. 20
Twenty-fifth Revised Sheet No. 21
Twenty-sixth Revised Sheet No. 22
Twenty-eighth Revised Sheet No. 24
First Revised Sheet No. 24A

Koch states that the purpose of this filing is to place the rates into effect related to the Offer of Settlement and Stipulation and Agreement resolving all aspects of Koch's costs of service and rate design in Docket No. RP99–111 which was approved by an Order issued July 14, 1999.

Koch also states that it has served copies of the instant filing upon each affected customer, interested state commissions, and other parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18969 Filed 7–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–583–000]

Portland Natural Gas Transmission System; Notice of Request Under Blanket Authorization

July 20, 1999.

Take notice that on July 14, 1999, Portland Natural Gas Transmission System (Portland Natural Gas), One Harbour Place, Portsmouth, New Hampshire 03801, filed in Docket No. CP99–583–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to add a delivery point near mile post 0.48 on the Newington lateral, for G–P Gypsum Corporation (G–P Gypsum) in Newington, New Hampshire. Portland Natural Gas makes such request under its blanket certificate issued in Docket No. CP96–249–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission. The filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Communications concerning this filing should be addressed to: J. Marc Teixiera, Vice President of Engineering and Operations, Portland Natural Gas Transmission System Operations Co., LLC, 603–427–2410.

Specifically, the proposed facilities will consist of approximately 235 feet of 4-inch pipe and a metering facility, that will extend from the existing tap at the Newington lateral to a meter station to be built by G–P Gypsum, which will house the proposed metering facility. Portland Natural Gas indicates that its tariff does not prohibit the installation of the proposed facilities, and that G–P Cypsum is providing all funding for the facilities required for the proposed delivery point, so there will be no cost to Portland Natural Gas or its existing customers. It is averred that G–P Gypsum, who is presently served by Northern Utilities, Inc., a local distribution company, has constructed for 4,000 Dt of IT service from Portland Natural Gas.

It is stated that the Newington lateral is part of the Joint Facilities owned by both Portland Natural Gas and Maritimes & Northeast Pipeline, L.L.C. (Maritimes). Portland Natural Gas indicates that it has already constructed the facilities necessary for a tie-in to the Newington lateral pursuant to Commission authorization in Docket No. CP99–110–000, issued on December 31, 1998. It is therefore indicated that Portland Natural Gas will own the proposed delivery point and that Maritimes, as the operator of the Joint Facilities, will be the operator of the proposed delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–18966 Filed 7–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–578–000]

Texas Eastern Transmission Corporation; Notice of Application To Abandon

July 20, 1999.

Take notice that on July 13, 1999, Texas Eastern Transmission Corporation (Tetco), 5400 Westheimer Court, Houston Texas 77056–5310, filed under Section 7(b) of the Natural Gas Act, for authority to abandon by sale to Duke Energy Field Services Inc., (Duke) the Bennet Ranch line, the Kenedy Ranch Lateral and the Humble Sarita Lateral. These facilities are located in Brooks, Jim Hogg and Kenedy Counties, Texas, all as more fully described in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm. Call 202–208–2222 for assistance.

The name, address, and telephone number of the person to whom correspondence and communications concerning this Application should be addressed is: S.E. Tillman, Director of Regulatory Affairs, Texas Eastern Transmission Corporation, P.O. Box 1642 Houston, Texas 77251–1642, (713) 627–5113, (713) 627–5947 (Fax).

The facilities proposed for sale access supplies of natural gas from production fields in Kenedy, Jim Hogg and Brooks Counties Texas. Tetco states that the facilities are underutilized and that Duke proposes to sell them at a net book value of $395,975, plus incidental costs of transfer not to exceed $25,000. Duke proposes to use the facilities to gather production and has advised Tetco that it will either arrange to purchase production from wells currently attached to the facilities or enter into gather arrangements with rates comparable to those currently being charged by Tetco.

Any person desiring to be heard or make any protest with reference to said application should on or before August 10, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protesters parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene it timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tetco to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–18965 Filed 7–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–442–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

July 20, 1999.

Take notice that on July 16, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective July 16, 1999:

Sixth Revised Sheet No. 3; Sixth Revised Sheet No. 203; Third Revised Sheet No. 225; Sixth Revised Sheet No. 234; Second Revised Sheet No. 277; Second Revised Sheet No. 278; Second Revised Sheet No. 279; Second Revised Sheet No. 509; Fourth Revised Sheet No. 510; Second Revised Sheet No. 559; Fourth Revised Sheet No. 560; Fourth Revised Sheet No. 608; Sheet Nos. 775–778; Sheet Nos. 825–835

Williston Basin respectfully requests that it be granted a permanent waiver from the requirement to report its Master Receipt/Delivery Point Lists in its tariff and instead, to maintain such only on its EBB web site.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining in the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

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David P. Boergers,

Secretary.

[FR Doc. 99–18975 Filed 7–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–92–000, et al.]

Texas-New Mexico Power Company and SW Acquisition, L.P., et al.; Electric Rate and Corporate Regulation Filings

July 19, 1999.

Take notice that the following filings have been made with the Commission:

1. Texas-New Mexico Power Company and SW Acquisition, L.P.

[Docket No. EC99–92–000]

Take notice that on July 9, 1999, Texas-New Mexico Power Company (TNMP) and SW Acquisition, L.P. (together, Joint Applicants) tendered for filing a request that the Commission approve a disposition of facilities and/or grant any other authorization the Commission may deem to be needed under Section 203 of the Federal Power Act as a result of the forthcoming merger between TNP Enterprises, Inc. (TNP), TNMP's parent, and SW Acquisition, L.P. Joint Applicants submit that the planned merger of TNP with SW Acquisition, L.P., will have no effect on the jurisdictional facilities, rates or services of TNMP and will be consistent with the public interest.

Joint Applicants request expeditious action on the application in order that there be no delay in the merger of TNP and SW Acquisition, L.P.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Energy Atlantic, LLC

[Docket No. ER98–4381–003]

Take notice that on July 14, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at *www.ferc.fed.us*/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Tampa Electric Company

[Docket No. ER99–3559–000]

Take notice that on July 14, 1999, Tampa Electric Company (Tampa Electric) tendered for filing service agreements with The Energy Authority, Inc. (TEA) for firm and non-firm point-to-point transmission service under Tampa Electric's open access transmission tariff. Tampa Electric also tendered for filing notices of termination of the existing service agreements with InterCoast Power Marketing Company (InterCoast) and Sonat Power Marketing L.P. (Sonat) under the tariff.

Tampa Electric proposes an effective date of July 14, 1999, for the tendered service agreements and terminations, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on TEA, InterCoast, Sonat, and the Florida Public Service Commission.

Comment date: August 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Energy, Inc.

[Docket No. ER99–3560–000]

Take notice that on July 14, 1999, Puget Sound Energy, Inc. (PSE), as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with ABB Information Systems (ABB), as Transmission Customer.

A copy of the filing was served upon ABB.

PSE respectfully requests that these filings become effective as of July 15, 1999.

Comment date: August 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Yadkin, Inc.

[Docket No. ER99–3561–000]

Take notice that on July 14, 1999, Yadkin, Inc. (Yadkin) tendered for filing a service agreement between Yadkin and Allegheny Power Service Corporation (as agent for Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, collectively d/b/a Allgheny Power) under Yadkin's FERC Electric Tariff Original Volume No. 2—Market-Based Rate Tariff. This Tariff was accepted for filing by the Commission on September 30, 1996, effective as of October 1, 1996, in Docket No. ER96–2603–000.

The service agreement is proposed to be effective July 1, 1999.

Comment date: August 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ER99–3562–000]

Take notice that on July 14, 1999, Virginia Electric and Power Company (Virginia Power), filed a letter agreement amending the provisions of a rate schedule of Virginia Power for service to Northern Virginia Electric Cooperative (NOVEC), a member cooperative of Old Dominion Electric Cooperative (Old Dominion). The amendment is a letter agreement dated April 29, 1999, establishing the terms and conditions for modifying the existing monthly excess facilities charge for NOVEC associated with NOVEC's Godwin delivery point. Virginia Power requests waiver of the Commission's notice requirements for an effective date of January 1, 1999.

Copies of the filing were served upon Old Dominion, NOVEC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Energy, Inc.

[Docket No. ER99–3563–000]

Take notice that on July 14, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with the Los Angeles Department of Water and Power Wholesale Marketing Group (LAWM), as Transmission Customer. A copy of the filing was served upon LAWM.

Comment date: August 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Idaho Power Company

[Docket No. ER99–3564–000]

Take notice that on July 14, 1999, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Non-Firm Point-to-Point Transmission Service and Firm Point-to-Point Transmission Service between Idaho Power Company and Los Angeles Department of Water and Power Wholesale Marketing.

Comment date: August 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER99–3565–000]

Take notice that on July 14, 1999, Louisville Gas and Electric Company/KentuckyUtilities (LG&E/KU), tendered for filing an executed Service Agreement for Firm Point-To-Point Transmission Service between LG&E/KU and TXU Energy Trading Company under LG&E/KU's Open Access Transmission Tariff.

Comment date: August 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Power, a division of Duke Energy Corporation

[Docket No. ER99–3566–000]

Take notice that on July 14, 1999, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement with Sempra Energy Trading Corp. (Sempra) for power sales at market-based rates. Duke requests that the proposed Service Agreement be permitted to become effective on June 18, 1999. Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: August 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER99–3567–000]

Take notice that on July 14, 1999, Commonwealth Edison Company (ComEd), submitted for filing an unexecuted Service Agreement, establishing Western Resources, Inc. (WRI), as a customer under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd also submits for filing a revised Index of Customers reflecting the addition of WRI, and name change for current customer NP Energy, Inc., renamed Duke Energy Trading and Marketing, L.L.C. (DETM).

ComEd requests an effective date of July 1, 1999, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon WRI and DETM.

Comment date: August 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Power Service Corporation, On Behalf of West Penn Power Company

[Docket No. ER99–3568–000]

Take notice that on July 14, 1999, Allegheny Power Service Corporation on behalf of West Penn Power Company (Allegheny Energy), filed Amendment No. 1 to Supplement No. 10 to the Market Rate Tariff to incorporate a Netting Agreement with DTE Energy Trading, Inc. into the tariff provisions. Allegheny Energy requests a waiver of notice requirements to make the Amendment effective as of the effective date therein, June 18, 1999. Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Arizona Public Service Company

[Docket No. ER99–3569–000]

Take notice that on July 19, 1999, Arizona Public Service Company (APS), tendered for filing umbrella Service Agreements to provide short-term Non-Firm and Firm Point-to-Point Transmission Service to TXU Energy Trading Company under APS Open Access Transmission Tariff.

A copy of this filing has been served TXU Energy Trading Company and the Arizona Corporation Commission.

Comment date: August 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18933 Filed 7–23–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission and Soliciting Comments and Recommendations, Motions To Intervene, and Protests and Notice of Public Meeting To Discuss Application

July 20,1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Requested Variance to License Requirement (Article 50).

b. *Project No.:* 2146–081.

c. *Date Filed:* June 30, 1999.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Coosa River Hydroelectric Project.

f. *Location:* The Coosa River Hydroelectric Project includes the following dams on the Coosa River in Alabama: Weiss, H. Neely Henry, Logan Martin and Lay. The H. Neely Henry dam is about 3 miles west of the city of Ohatchee and about 15 miles south of the city of Gadsden. The H. Neely Henry Reservoir is located within Calhoun, St. Clair and Etowah Counties, Alabama. The dam and reservoir do not occupy any federal or tribal lands.

g. *Filed Pursuant to:* Federla Power Act, 18 CFR 4.200.

h. *Applicant Contact:* Mr. James Schauer, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291; (205) 257–1401.

i. *FERC Contact:* Questions about this application can be answered by Steve Hocking, E-mail address steve.hocking@ferc.fed.us, or telephone (202) 219–2656.

j. *Deadline for filing comments and recommendations, motions to intervene, and protests:* August 23, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Please include the project number (2146–081) on any comments and recommendations, motions to intervene and protests.

k. *Description of Application:* Alabama Power Company (APC)

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requests a variance to temporarily change lake levels at H. Neely Henry Reservoir, part of the Coosa River Hydroelectric Project. Currently, lake levels must be maintained at elevation 508 msl from May 1 to October 31; drawn down to elevation 505 msl by about November 7 and maintained at this level until about April 15; then raised to elevation 508 msl by May 1. APC proposes to change H. Neely Henry Reservoir so it is maintained at elevation 508 msl from May 1 to September 30; drawn down to elevation 507 msl by December 1 and maintained at this level until April 1; then raised to elevation 508 masl by May 1. APC would change lake levels as described above for up to three years during a trial period. At the end of the trial, APC would decide whether to file an application to make the above lake levels permanent.

The Federal Energy Regulatory Commission (FERC) will be the lead agency in preparing an environmental assessment (EA) for this proposed action. The U.S. Army Corps of Engineers (Corps) will be a cooperating agency in the preparation of the EA. The FERC and Corps along with APC will jointly host a public meeting to explain APC's proposal and answer any questions. The public meeting will be at 7:00 p.m. on August 24, 1999, at the Elliott Community Center, 2827 West Meighan Blvd., Gadsden, AL 35904, (256) 549–4674).

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", " PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 first Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–18963 Filed 7–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Recreation Plan Amendment and Soliciting Comments, Motions To Intervene, and Protests

July 20, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Recreation Plan.

b. *Project No.:* 271–056.

c. *Date Filed:* June 1, 1999.

d. *Applicant:* Entergy, Arkansas, Inc.

e. *Name of Project:* Carpenter-Remmel Hydroelectric Project.

f. *Location:* The application will affect access to the overlook area adjacent to the Remmel Dam. The project is located in the Ouachita River in Hot Springs and Garland Counties, Arkansas. The project partially occupied federal lands administered by the U.S. Forest Service, Army Corps of Engineers, and Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Douglas R. Sikes, Entergy Arkansas, Inc., P.O. Box 218; Jones Mills, AR 72105, (501) 844–2197.

i. *FERC Contact:* Any questions on this notice should be addressed to Jon Cofranesco at (202) 219–0079, or e-mail address: jon.cofrancesco@ferc.fed.us.

j. *Deadline for filing comments and or motions:* August 30, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Please include the project number (271–056) on any comments or motions filed.

k. *Description of Proposal:* Entergy Arkansas, Inc. (licensee) proposes to amend the approved recreation plan for the Carpenter-Remmel Project. The proposed amendment would involve closing the overlook area immediately adjacent to Remmel Dam. The licensee indicates this closure is necessary to ensure safety at the project after Remmel Dam is converted to remote operation. No alternate facility or access are proposed in lieu of this closure.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Document—Any filings must bear in all capifal letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–18968 Filed 7–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

July 21, 1999.

THE FOLLOWING NOTICE OF MEETING IS PUBLISHED PURSUANT TO SECTION 3(A) OF THE GOVERNMENT IN THE SUNSHINE ACT (PUB. L. NO. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: FEDERAL ENERGY REGULATORY COMMISSION

DATE AND TIME: JULY 28, 1999, 10:00 A.M.

PLACE: ROOM 2C, 888 FIRST STREET, NE, WASHINGTON, DC 20426

STATUS: OPEN

MATTERS TO BE CONSIDERED: AGENDA * NOTE—ITEMS LISTED ON THE AGENDA MAY BE DELETED WITHOUT FURTHER NOTICE.

CONTACT PERSON FOR MORE INFORMATION: DAVID P. BOERGERS, SECRETARY, TELEPHONE (202) 208–0400, FOR A RECORDING LISTING ITEMS STRICKEN FROM OR ADDED TO THE MEETING, CALL (202) 208–1627.

THIS IS A LIST OF MATTERS TO BE CONSIDERED BY THE COMMISSION. IT DOES NOT INCLUDE A LISTING OF ALL PAPERS RELEVANT TO THE ITEMS ON THE AGENDA; HOWEVER, ALL PUBLIC DOCUMENTS MAY BE EXAMINED IN THE REFERENCE AND INFORMATION CENTER.

Consent Agenda—Hydro; 724th Meeting—July 28, 1999; Regular Meeting (10:00 A.M.)

CAH–1.
OMITTED

CAH–2.
DOCKET# P–2325, 022, FPL ENERGY MAINE HYDRO LLC
OTHER#S P–2329, 019, FPL ENERGY MAINE HYDRO LLC
P–2552, 025, FPL ENERGY MAINE HYDRO LLC
P–2671, 007, KENNEBEC WATER POWER COMPANY

CAH–3.
DOCKET# UL96–7, 004, KENNEBEC WATER DISTRICT
OTHER#S P–2555, 007, KENNEBEC WATER DISTRICT
P–2556, 013, FPL ENERGY MAINE HYDRO LLC
P–2557, 010, FPL ENERGY MAINE HYDRO LLC
P–2559, 011, FPL ENERGY MAINE HYDRO LLC
UUL96–8, 004, FPL ENERGY MAINE HYDRO LLC
UL96–9, 004, FPL ENERGY MAINE HYDRO LLC
UL96–10, 004, FPL ENERGY MAINE HYDRO LLC

CAH–4.
DOCKET# P–2004, 073, HOLYOKE WATER POWER COMPANY
OTHER#S P–11607, 000, HOLYOKE GAS & ELECTRIC DEPARTMENT, ASHBURNHAM MUNICIPAL LIGHT PLANT AND MASSACHUSETTS MUNICIPAL WHOLE-SALE ELECTRIC COMPANY

CAH–5.
DOCKET# P–2555, 001, KENNEBEC WATER DISTRICT

CAH–6.
DOCKET# P–2556, 004, FPL ENERGY MAINE HYDRO LLC
OTHER#S P–2557, 004, FPL ENERGY MAINE HYDRO LLC
P–2559, 003, FPL ENERGY MAINE HYDRO LLC

CAH–7. OMITTED

CAH–8.
DOCKET# P–9690, 047, ORANGE AND ROCKLAND UTILITIES INC.
OTHER#S P–10481, 025, ORANGE AND ROCKLAND UTILITIES INC.
P–10482, 038, ORANGE AND ROCKLAND UTILITIES INC.

CAH–9.
DOCKET# P–2494, 028, PUGET SOUND ENERGY, INC.

Consent Agenda—Electric

CAE–1.
DOCKET# ER93–540, 006, AMERICAN ELECTRIC POWER SERVICE CORPORATION

CAE–2.
DOCKET# ER99–3119, 000, ALLIANT ENERGY CORPORATE SERVICES, INC.

CAE–3.
DOCKET # ER99–3301, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–4.
OMITTED.

CAE–5.
DOCKET # ER99–3163, 000, UTILICORP UNITED, INC.
OTHER #S EL99–78, 000, UTILICORP UNITED, INC.

CAE–6.
DOCKET # ER99–3206, 000, ISO NEW ENGLAND, INC.

CAE–7.
DOCKET # ER99–3148, 000, CALIFORNIA POWER EXCHANGE CORPORATION

CAE–8.
DOCKET # ER99–3150, 000, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON COMPANY OF INDIANA

CAE–9.
DOCKET # ER99–3129, 000, FIRSTENERGY OPERATING COMPANIES

CAE–10.
DOCKET # ER99–3196, 000, NORTHEAST UTILITIES SERVICE COMPANY

CAE–11.
DOCKET # OA96–64, 004, DAYTON POWER AND LIGHT COMPANY
OTHER #S ER96–1552, 001, DAYTON POWER AND LIGHT COMPANY

CAE–12.
DOCKET # TX99–2, 000, PRAIRIELAND ENERGY, INC.

CAE–13.
DOCKET # ER99–1414, 003, NEW ENGLAND POWER POOL AND ISO NEW ENGLAND INC.

CAE–14.
DOCKET # OA97–237, 007, NEW ENGLAND POWER POOL
OTHER #S ER97–1079, 006, NEW ENGLAND POWER POOL
ER97–3574, 005, NEW ENGLAND POWER POOL
ER97–4421, 005, NEW ENGLAND POWER POOL
ER98–499, 004, NEW ENGLAND POWER POOL
OA97–608, 005, NEW ENGLAND POWER POOL

CAE–15.
DOCKET # ER99–2335, 000, NEW ENGLAND POWER POOL

CAE–16.
OMITTED.

CAE–17.
DOCKET # ER99–2021, 000, CALIFORNIA POWER EXCHANGE CORPORATION

CAE–18.
DOCKET # OA97–163, 003, MID-CONTINENT AREA POWER POOL
OTHER #S ER97–1162, 002, MID-CONTINENT AREA POWER POOL
OA97–658, 003, MID-CONTINENT AREA POWER POOL

CAE–19.
DOCKET # ER99–3145, 000, PACIFIC GAS AND ELECTRIC COMPANY
OTHER #S EL98–46, 000, LAGUNA IRRIGATION DISTRICT

CAE–20.
DOCKET # EL95–71, 003, PUBLIC SERVICE COMPANY OF NEW

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HAMPSHIRE V. NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC.
CAE–21.
DOCKET # ER98–3594, 001, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–22.
DOCKET # ER97–1523, 003, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND LONG ISLAND LIGHTING COMPANY, ET AL.
OTHER #S ER97–1523, 004, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND LONG ISLAND LIGHTING COMPANY, ET AL.
ER97–4234, 002, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND LONG ISLAND LIGHTING COMPANY, ET AL.
ER97–4234, 003, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND LONG ISLAND LIGHTING COMPANY, ET AL.
OA97–470, 004, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND LONG SLAND LIGHTING COMPANY, ET AL.
OA97–470, 005, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND LONG ISLAND LIGHTING COMPANY, ET AL.
CAE–23.
DOCKET # EL99–46, 000, CAPACITY BENEFIT MARGIN IN COMPUTING AVAILABLE TRANSMISSION CAPACITY
CAE–24.
DOCKET # EL99–57, 000, ENTERGY SERVICES, INC.
CAE–25.
DOCKET # EL98–71, 000, PJM INTERCONNECTION, L.L.C.
CAE–26.
DOCKET # RM99–7, 000, DEPRECIATION ACCOUNTING
CAE–27.
DOCKET # RM95–9, 007, OPEN ACCESS SAME-TIME INFORMATION SYSTEM (OASIS) AND STANDARDS OF CONDUCT
CAE–28.
DOCKET # OA97–520, 003, CITIZENS UTILITIES COMPANY
OTHER #S OA97–610, 003, CITIZENS UTILITIES COMPANY
CAE–29.
DOCKET # ER99–3125, 000, MINERGY NEENAH, L.L.C.
OTHER #S ER99–3118, 000, DUKE ENERGY ST. FRANCIS L.L.C.
ER99–3143, 000, RELIANT ENERGY INDIAN RIVER, LLC
ER99–3165, 000, TENASKA GEORGIA PARTNERS, L.P.
ER99–3168, 000, ASTORIA GENERATING COMPANY, L.P.
ER99–3197, 000, BIV GENERATING COMPANY, L.L.C.
ER99–3207, 000, CAPITAL CENTER GENERATING COMPANY, LLC
ER99–3208, 000, ILLINOVA POWER MARKETING, INC.
ER99–3248, 000, CONSOLIDATED EDISON ENERGY MASSACHUSETTS, INC.
CAE–30.
DOCKET # ER99–34, 002, SIERRA PACIFIC POWER COMPANY
OTHER #S ER99–2339, 001, SIERRA PACIFIC POWER COMPANY

Consent Agenda—Miscellaneous

CAM–1.
DOCKET # RM98–13, 001, COMPLAINT PROCEDURES

Consent Agenda—Gas and Oil

CAG–1.
DOCKET # PR99–11, 000, CINCINNATI GAS & ELECTRIC COMPANY
CAG–2.
DOCKET # RP98–99, 006, TENNESSEE GAS PIPELINE COMPANY
CAG–3.
DOCKET # RP98–206, 005, ATLANTA GAS LIGHT COMPANY
CAG–4.
DOCKET # RP99–355, 000, BALTIMORE GAS AND ELECTRIC COMPANY
CAG–5.
OMITTED
CAG–6.
OMITTED
CAG–7.
DOCKET # RP99–424, 000, TEXAS-OHIO PIPELINE, INC.
CAG–8.
DOCKET # RP99–238, 000, SEA ROBIN PIPELINE COMPANY
CAG–9.
OMITTED
CAG–10.
DOCKET # RP99–381, 000, WYOMING INTERSTATE COMPANY, LTD.
CAG–11.
OMITTED
CAG–12.
OMITTED
CAG–13.
DOCKET # RP99–422, 000, WESTGAS INTERSTATE, INC.
CAG–14.
OMITTED
CAG–15.
DOCKET # RP98–324, 002, BLUE LAKE GAS STORAGE COMPANY
CAG–16.
DOCKET # RP98–326, 001, STEUBEN GAS STORAGE COMPANY
CAG–17.
DOCKET # RP99–159, 000, SOUTHERN NATURAL GAS COMPANY
OTHER #S RP99–159, 001, SOUTHERN NATURAL GAS COMPANY
CAG–18.
DOCKET # RP95–408, 000, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–19.
DOCKET # RP97–156, 008, VIKING GAS TRANSMISSION COMPANY
CAG–20.
DOCKET # RP99–427, 000, GULF STATES TRANSMISSION CORPORATION
CAG–21.
DOCKET # GP98–23, 000, LAJOLLA PROPERTIES, INC.
CAG–22.
DOCKET # RP97–307, 004, ANR PIPELINE COMPANY
OTHER #S RP97–367, 002, ANR PIPELINE COMPANY
CAG–23.
DOCKET # RP98–381, 002, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER #S RP98–381, 003, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–24.
DOCKET # RP99–294, 002, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–25.
OMITTED
CAG–26.
DOCKET # RP98–284, 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER #S RP97–71 011 TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–27.
OMITTED
CAG–28.
DOCKET # RP97–408, 008, TRAILBLAZER PIPELINE COMPANY
CAG–29.
DOCKET # RP99–278, 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–30.
DOCKET # RP97–287, 021, EL PASO NATURAL GAS COMPANY
OTHER #S RP97–287, 019, EL PASO NATURAL GAS COMPANY
RP97–287, 024, EL PASO NATURAL GAS COMPANY
RP97–287, 025, EL PASO NATURAL GAS COMPANY
RP97–287, 026, EL PASO NATURAL GAS COMPANY
CAG–31.
DOCKET # RP99–248, 002, PG&E GAS TRANSMISSION, NORTHWEST CORPORATION
CAG–32.
DOCKET # RP99–249, 001, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–33.
DOCKET # RP98–54, 027, COLORADO INTERSTATE GAS COMPANY
OTHER #S RP98–38, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP98–39, 000, NORTHERN NATURAL GAS COMPANY
RP98–52, 000, WILLIAMS NATURAL GAS COMPANY
RP98–53, 000, KN INTERSTATE GAS TRANSMISSION COMPANY
CAG–34.
DOCKET # RP98–54, 024, COLORADO INTERSTATE GAS COMPANY
CAG–35.
DOCKET # RP99–330, 000, CONSUMER SERVICES ASSOCIATION, INC. D/B/A UNITED GAS SERVICES, INC. V. KN INTERSTATE GAS TRANSMISSION COMPANY AND KN ENERGY, INC.
CAG–36.
DOCKET # RM99–1, 000, REVISIONS TO OIL PIPELINE REGULATIONS
CAG–37.
DOCKET # MG99–18, 000, NORTHERN NATURAL GAS COMPANY
CAG–38.
DOCKET # MG99–20, 000, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–39.
OMITTED
CAG–40.
DOCKET# CP98–238, 002, DESTIN PIPELINE COMPANY, L.L.C.
CAG–41.
DOCKET# CP99–564, 000, CORAL MEXICO PIPELINE, LLC
CAG–42.
DOCKET# CP99–94, 000, FLORIDA GAS TRANSMISSION COMPANY
OTHER#S CP99–94, 001, FLORIDA GAS TRANSMISSION COMPANY
RP96–366, 011, FLORIDA GAS TRANSMISSION COMPANY
CAG–43.
DOCKET# CP98–648, 000, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–44.
DOCKET# CP99–218, 000, ANR PIPELINE COMPANY
CAG–45.
DOCKET# CP99–321, 000, KENTUCKY WEST VIRGINIA GAS COMPANY L.L.C., NORA TRANSMISSION COMPANY AND EQUITABLE PRODUCTION COMPANY
CAG–46.
OMITTED
CAG–47.
OMITTED
CAG–48.
DOCKET# CP99–102, 000, WYOMING INTERSTATE COMPANY, LTD.
CAG–49.
DOCKET# RM99–9, 000, DESIGNATION OF CORPORATE OFFICIALS OF OTHER PERSONS TO RECEIVE SERVICE

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
RESERVED

Regular Agenda—Miscellaneous

M–1. OMITTED

Oil and Gas Agenda

I.
PIPELINE RATE MATTERS
PR–1.
OMITTED
PR–2.
OMITTED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
DOCKET# PL99–3, 000, DETERMINING THE NEED FOR NEW INTERSTATE NATURAL GAS PIPELINE FACILITIES
STATEMENT OF POLICY

David P. Boergers,

Secretary.

[FR Doc. 99–19100 Filed 7–22–99; 11:34 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6408–1]

Draft Toxicological Review of Cadmium and Compounds and IRIS Summaries for Cadmium and Compounds

AGENCY: Environmental Protection Agency.

ACTION: Notice of peer-review panel workshop and public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing an external peer-review workshop to review the external review draft document entitled, Toxicological Review of Cadmium and Compounds (CAS No. 7440–43–9) (NCEA–99–0734), and the companion draft IRIS (Integrated Risk Information System) Summaries for Cadmium and Compounds. The peer-review workshop will be organized, convened, and conducted by the Syracuse Research Corporation, an EPA contractor for external scientific peer review.

The EPA is also announcing a thirty-day public comment period for these same documents. The documents were prepared by the EPA's National Center for Environmental Assessment—Research Triangle Park, NC, Office (NCEA–RTP) within the Office of Research and Development. NCEA–RTP will consider the peer-review advice and public comment submissions in revising all of the documents.

DATES: The peer-review panel workshop will begin on Tuesday, August 3, 1999, at 8:30 a.m. and end at 5:30 p.m. Members of the public may attend as observers, and there will be a limited time for comments from the public in the afternoon. The thirty-day public comment period begins July 27, 1999, and ends August 27, 1999.

ADDRESSES: The external peer-review panel workshop will be held in Classroom #3 at the EPA's Environmental Research Center, 86 T.W. Alexander Drive, Research Triangle Park, NC. The Syracuse Research Corporation, an EPA contractor, is organizing, convening, and conducting the peer-review workshop. To attend the workshop, register by July 29, 1999, by calling Tara Childs, Syracuse Research Corporation, 1215 Jefferson Davis Highway, Arlington, VA 22202 at 703–413–9364, or send a facsimile to 703–418–1044. Space is limited, and reservations will be accepted on a first-come, first-served basis. Please inform Syracuse Research Corporation if you wish to make comments during the designated time in the afternoon.

The draft Toxicological Review and draft IRIS Summaries are available on the Internet at http://www.epa.gov/ncea/ under the "What's New" and "Publications" menus. The documents are identified as "Cadmium and Compounds External Review Draft" and consist of two groups of files, downloadable in .pdf format. The first group contains only the Toxicological Review, while the second group contains this document and the IRIS Summaries in five files. A limited number of paper copies are available by writing to the Technical Information Manager, U.S. Environmental Protection Agency, National Center for Environmental Assessment—RTP Office, MD–52, Research Triangle Park, NC 27711. The facsimile number is 919–541–1818. Or, you may send an e-mail to *ray.diane@epa.gov*. Regardless of the method you choose to request a paper copy, please provide your name, mailing address, and the document titles, Toxicological Review of Cadmium and Compounds and IRIS Summaries for Cadmium and Compounds.

Comments may be mailed to the Project Manager for Cadmium, U.S. Environmental Protection Agency, National Center for Environmental Assessment, MD–52, Research Triangle Park, NC 27711. Comments should be in writing and must be postmarked by August 27, 1999. Please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies. Electronic comments may be sent by e-mail to foureman.gary@epa.gov.

Please note that all technical comments received in response to this notice will be placed in a public record. For that reason, commenters should not submit personal information (such as medical data or home addresses). Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: For workshop information, registration, and logistics, contact Tara Childs, Syracuse Research Corporation, 1215 Jefferson Davis Highway, Arlington, VA 22202; telephone: 703–413–9364; facsimile: 703–418–1044.

For further information on the public comment period, contact Gary L. Foureman, NCEA–RTP, telephone: 919–541–1183; facsimile: 919–541–1818; or send an e-mail to: foureman.gary@epa.gov.

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SUPPLEMENTARY INFORMATION: The Toxicological Review for Cadmium and Compounds will provide the scientific basis for classifying the weight-of-evidence for the carcinogenicity of cadmium, deriving a potency cancer estimate for the inhalation route, and deriving the IRIS Summaries for the non-cancer health risk from exposure to cadmium including an oral reference dose (RfD) and an inhalation reference concentration (RfC).

Dated: July 21, 1999.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 99–19000 Filed 7–23–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00606; FRL–6067–4]

Certain Chemicals; Completion of Comment Period for Reregistration Eligibility Decision Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice, pursuant to section 4(g)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), concludes the comment period for the Reregistration Eligibility Decision (RED) documents for several chemical cases.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED documents should be directed to the appropriate Chemical Review Managers listed in the table under "SUPPLEMENTARY INFORMATION."

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me

This notice is directed to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the appropriate chemical review manager listed in the table in Unit II. of this document.

B. How Can I Get Additional Information, Including Copies of this Document and the REDs?

You may obtain copies of this document from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/fedrgstr/.

Copies of these REDs are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, ATTN: Order Desk; telephone number 1–800–553–6847. To obtain copies you must provide the publication number that has been assigned to the RED listed in the table in Unit II. of this document.

Electronic copies of the REDs and RED Fact sheets can be downloaded from the internet via EPA's website at: http//www.epa.gov/oppsrrd1/REDs.

II. Background

During fiscal years 1990–1998, EPA published Notices in the **Federal Register** announcing the availability of RED documents for the listed pesticide active ingredients. These REDs were issued as final documents, with a 60–day comment period. In these REDs, EPA provided its regulatory position on the current registered uses of these pesticides and set forth certain requirements for product reregistration eligibility. No comments were submitted for the following REDs: Acetic acid and salts, aliphatic alcohols, fosetyl-al, asulam, bis(trichloromethyl)sulfon, M-cresol, dacthal, difenzoquat, ethalfluralin, fosamine ammonium, HPMTS, methomyl, Na and Ca hypochlorites, terbuthylazine, thiodicarb, and triclopyr. Comments were submitted for the following RED documents but did not significantly affect EPA's regulatory position: Furanone, hexazinone, methylisothiazolinone, metribuzin, telone, propachlor, and terbacil.

The NTIS publication number for the REDs subject to this notice are presented below.

Chemical Name	Chemical Review Manager	Case Number	RED Date	RED NTIS Number
Acetic acid and salts	Leonard Ryan 703-308-8067 Ryan.Leonard@epa.gov	4001	3/92	738-R-91-108
Aliphatic alcohols	Leonard Ryan 703-308-8067 Ryan.Leonard@epa.gov	4003	8/95	738-R-95-013
Asulam	Emily Mitchell 703-308-8583 Mitchell.Emily@epa.gov	0265	9/95	738-R-95-024
Bis(trichloromethyl)sulfon	Lorilyn McKay 703-308-8170 McKay.Lorilyn@epa.gov	2055	11/96	738-R-96-028
Dacthal (DCPA)	Jill Bloom 703-308-8019 Bloom.Jill@epa.gov	0270	11/98	738-R-98-005
1,3-Dichloropropene (Telone)	Lisa Nisenson 703-308-8031 Nisenson.Lisa@epa.gov	0328	12/98	738-R-98-002
Difenzoquat	Leonard Ryan 703-308-8067 Ryan.Leonard@epa.gov	0223	1-95	738-R-94-018

Chemical Name	Chemical Review Manager	Case Number	RED Date	RED NTIS Number
Ethalfluralin	Laura Parsons 703-305-5776 Parsons.Laura@epa.gov	2260	3/95	738-R-95-001
Fosamine ammonium	Beth Edwards 703-305-5400 Edwards.Beth@epa.gov	2355	3/95	738-R-95-004
Fosetyl-al (Aliette)	Leonard Ryan 703-308-8067 Ryan.Leonard@epa.gov	0646	12/90	738-R-90-100
Furanone	Emily Mitchell 703-308-8583 Mitchell.Emily@epa.gov	3138	3/96	738-R-96-009
Hexazinone	Michael Goodis 703-308-8157 Goodis.Michael@epa.gov	0266	9/94	738-R-94-022
HPMTS	Pat Dobak 703-308-8180 Dobak.Pat@epa.gov	3033	12/95	738-R-95-035
M-Cresol	Beth Edwards 703-305-5400 Edwards.Beth@epa.gov	4027	11/94	738-R-94-025
Methomyl	Tom Myers 703-308-8589 Myers.Tom@epa.gov	0028	12/98	738-R-98-021
Methylisothiazolinone (Kathon)	Deanna Scher 703-308-7043 Scher.Deanna@epa.gov	3092	11/98	738-R-98-008
Metribuzin	Michael Goodis 703-308-8157 Goodis.Michael@epa.gov	0181	4/98	738-R-97-006
Na and Ca Hypochlorites	Diane Isbell 703-308-8154 Isbell.Diane@epa.gov	0029	2/92	738-R-91-107
Propachlor	Anne Overstreet 703-308-8068 Overstreet.Anne@epa.gov	0177	9/98	738-R-98-015
Terbacil	Emily Mitchell 703-308-8583 Mitchell.Emily@epa.gov	0039	1/98	738-R-97-011
Terbuthylazine	Diane Isbell 703-308-8154 Isbell.Diane@epa.gov	2645	3/95	738-R-95-005
Thiodicarb	Tom Myers 703-308-8589 Myers.Tom@epa.gov	2675	12/98	738-R-98-022
Triclopyr	Dean Monos 703-308-8074 Monos.Dean@epa.gov	2710	10/98	738-R-98-007

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List of Subjects

Environmental protection.

Dated: June 28, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–19002 Filed 7–23–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6402–7]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act; In the Matter of Lakeland Disposal Service, Inc., Claypool, IN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: Notice of *de minimis* Settlement: In accordance with section 112(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), EPA gives notice of a proposed administrative settlement concerning the remedial action at the Lakeland Disposal Service, Inc., Superfund Site, Claypool, County at Kosciusko, Indiana (the Site). The proposed agreement will resolve issues concerning one individual *de minimis* landowner at the site. EPA has previously submitted the proposed agreement to the U.S. Department of Justice for review and has received its approval for the proposed agreement via letter dated June 6, 1997.

DATES: Comments must be provided on or before August 25, 1999.

ADDRESSES: Barbara Wester (C–14J), Office of Regional Counsel, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60605–3590. Include the following name of the matter in the comment: In the Matter of Lakeland Disposal Service Inc., Claypool, Indiana, U.S. EPA Docket No. V–W–97–C–397.

FOR FURTHER INFORMATION CONTACT: Barbara Wester (C–14J), Office of Regional Counsel, U.S. Environmental Protection Agency, Region 5, 77 W, Jackson Boulevard, Chicago, Illinois 60604–3590.

SUPPLEMENTARY INFORMATION: The following parties have executed binding certifications of their consent to participate in the settlement: Dana Corporation; Eaton Corporation; General Motors Corporation; United Technologies Automotive, Inc.; and Warsaw Black Oxide, Inc. (collectively, the UAO Group); David W. Poage, an individual; and the Director, Superfund Division, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604–3590. Summary of the settlement: David W. Poage owns approximately seven and one-half (7.5) acres of property located entirely within the boundaries of the Site and did not himself contribute any wastes to the Site. The Record of Decision (ROD) for the Site, issued on September 28, 1993, contemplated that deed restrictions and institutional controls would be an important part of the remedy.

The Settlement provides: that the UAO Group will compensate Mr. Poage for the loss of use of his property; that Mr. Poage will establish the contractual access provisions and deed restrictions necessary to effect the on-going remediation of the Site proscribed by the ROD; and that Mr. Poage will convert these contractual promises to the form of an environmental easement, if EPA requests that he do so.

EPA will receive written comments relating to this settlement agreement for a period of thirty (30) days from the date of publication of this document. Under CERCLA section 122(i)(3), EPA will consider any comments filed during this public comment period in "determining whether or not to consent to the proposed settlement and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate."

Copies of the proposed administrative settlement agreement and of additional background information relating to the settlement are available for review. These may be obtained in person at the Superfund Division's public records center, 7th Floor, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604–3590, or by mail from Barbara Wester (C–14J), Office of Regional Counsel, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago Illinois 60604–3590.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601–9675.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 99–18999 Filed 7–23–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 20, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 24, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 Twelfth Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0175.

Title: Section 73.1250 Broadcasting emergency information.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 50.

Estimated time per response: 1 hour.

Frequency of Response: Reporting, on occasion.

Total annual burden: 50 hours.

Total Annual Costs: None.

Needs and Uses: Emergency situations in which the broadcasting of information is considered as furthering the safety of life and property include, but are not limited to, tornadoes, hurricanes, floods, tidal waves, earthquakes, and school closings. Section 73.1250(e) requires that immediately upon cessation of an emergency during which broadcast facilities were used for the transmission of point-to-point messages or when daytime facilities were used during nighttime hours by an AM station, a report in letter form shall be forwarded to the FCC in Washington, DC, setting forth the nature of the emergency, the dates and hours of the broadcasting of emergency information and a brief description of the material carried during the emergency. A certification of compliance with the noncommercialization provision must accompany the report where daytime facilities are used during nighttime hours by an AM station.

The report is used by FCC staff to evaluate the need and nature of the emergency broadcast to confirm that an actual emergency existed.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–18961 Filed 7–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATE: 10 a.m., July 28, 1999.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Proposed Rules: Financial Management and Mission Achievement and the Reorganization of Finance Board Regulations

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 99–19082 Filed 7–22–99; 9:52 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 19, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Cornerstone Bancorp, Easley, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Cornerstone National Bank, Easley, South Carolina (in organization).

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of Texas Bancshares Inc., San Antonio, Texas, and thereby indirectly acquire First National Bank of South Texas, San Antonio, Texas, and Bank of South Texas, Floresville, Texas.

Board of Governors of the Federal Reserve System, July 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18923 Filed 7–23–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 9, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Westbank Corporation, West Springfield, Massachusetts; to acquire certain assets and liabilities of New London Trust, FSB, New London, New Hampshire, pursuant to § 225.28(b)(4) of Regulation Y.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. SunTrust Banks, Inc., Atlanta, Georgia; to acquire Atlantic Financial

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Group, Ltd., Arlington, Texas, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; activities related to extending credit, pursuant to § 225.28(b)(2) of Regulation Y; and leasing personal or real property, pursuant to § 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, July 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–18924 Filed 7–23–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99148]

Program To Establish/Operate Health Promotion and Disease Prevention Initiative Program for African Americans Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year FY 1999 funds for a cooperative agreement program to establish a health promotion and disease prevention initiative program for African Americans. "This program addresses the 'Healthy People 2000' priority area Education and Community-Based Programs." The program relates as well to recommendations of the 1985 Secretary's Task Force Report on Black and Minority Health, and the Department of Health and Human Services' (DHHS) initiatives to eliminate disparities in health status among racial and ethnic minorities. The purpose of the cooperative agreement is to assist a National or Regional Minority Organization (NRMO) to establish or operate the following three components: a Health Program Unit, a Speakers Bureau, and a National Health Network. The cooperative agreement will enable the grantee to use the three components for the following:

Health Program Unit to implement prevention strategies to improve the health of African Americans by targeting the leading causes of excess deaths in this population, and to increase the utilization of health care resources by African Americans.

Speakers Bureau consisting of health professionals and other professionals to provide oral presentations on salient health promotion and disease prevention topics relating to African Americans at national, State, and local meetings. Other organizations, including community-based and national/regional organizations which serve primarily African Americans should have ready access to the Speakers Bureau to assist in improving disease prevention and health promotion in their areas.

National Health Network to assist minority organizations to expand their internal and external organizational networks, and to facilitate the dissemination of health promotion and disease prevention information to African Americans.

B. Eligible Applicants

Eligible applicants are NRMOs which principally serve the African American population. The African American community is targeted with this activity because of a critical need to eliminate disparities in health that currently exist among African Americans. Consistent with the findings of the President's Initiative to Eliminating Health Disparities and Healthy People 2000 and 2010 program initiatives, excess morbidity and mortality continues to disproportionately impact African Americans. Eligible applicants must meet the following criteria:

1. Have been granted tax-exempt status under Section 501(c)(3), as evidenced by an Internal Revenue Service (IRS) determination letter.
2. Have a governing body or board that is composed of more than 50% African American.
3. Have a minimum of 12 months documented experience in operating and centrally administering a coordinated public health or related program serving the African American population within a major portion or region (multi-state or multi-territory) of the United States through its own offices, organizational affiliates, or the participation of other minority organizations.
4. Have a specific charge from the Articles of Incorporation or Bylaws or a resolution from its governing body or board to operate nationally or regionally (multi-state or multi-territory) within the United States and its territories, i.e, Virgin Islands, Puerto Rico, Guam.
5. Have agreements with their participating affiliates and chapters that their respective governing body or board is composed of 50% or greater African American membership.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

It is anticipated that a minimum of $100,000 will be available in FY 1999 to fund one award. It is expected that the award will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

A. The Health Program Unit

(1) Communicate science-based health promotion and disease prevention strategies throughout the African American communities to improve the environment and personal health behaviors of those living in these communities.

(2) Assess ongoing health related activities in various communities to determine if African Americans are involved, and to determine if the activities (i.e., immunization, STD/HIV prevention) are appropriate for the target audience.

(3) Develop and implement strategies to improve the utilization of community health resources by African Americans.

(4) Focus on the major risk categories for disease and death in the African American community, and consult with CDC and other federal agencies on the development of strategies to raise awareness within the African American community to reduce health risks and improve the quality of life.

(5) Develop informational resources that provide the African American community with recommendations for the improvement of health and access to related services.

(6) Identify specific quality of life measures and focus these for community members through a consensus building process (e.g., oral health, physical activity, nutrition). Inform the target group about health promotion and disease prevention activities related to the seven leading causes of deaths among African Americans that were found in the community.

B. The National Speakers Bureau

(1) Establish access to a national Speakers Bureau that will improve the information available to minority organizations concerning health promotion and disease prevention activities among African Americans.

(2) Develop/enhance a strategy to access and/or create a cadre of professional speakers to address local, State and national audiences on health promotion and disease prevention needs and practices among African Americans.

(3) Utilize culturally specific measures to encourage African Americans to improve their health.

(4) Identify subject area experts who will address and integrate the structural units of health, i.e., physical, social and psychological well-being. Develop a consensus building strategy to educate the community about the overlapping influence of these three health components.

(5) Develop and deliver effective mechanisms through community based organizations (CBOs), radio, television, or open forums to communicate current/updated information on health promotion and disease prevention to individuals and groups in African American communities.

(6) Develop and deliver mechanisms to advance health promotion and disease prevention activities among members of community groups, health practitioners, educators, consumer groups, health professionals, health professions schools, and public schools. Share the information at national conventions and meetings.

C. The National Health Network

(1) Identify national, State/district and local African American groups with directly related links to collaborate with the CDC and State and local health departments.

(2) Establish a distribution methodology in a minimum of 10 cities with predominate African American population to disseminate health promotion and disease prevention information.

(3) Collaborate with national minority health professional associations, community based organizations, HHS agencies to develop an effective plan to implement health promotion and disease prevention activities (e.g., immunization, tobacco control, diabetes, etc.) in the African American community.

D. Evaluate the Effectiveness of the Program in Achieving Goals and Objectives.

2. CDC Activities

A. As requested, provide consultation, assistance and support to the recipient in planning, implementing and evaluating activities undertaken under the cooperative agreement.

B. As needed, assist the recipient in identifying areas of the project that need evaluation.

C. As needed or requested, assist the recipient in identifying priority areas of focus for public health programs at the national, State and local levels.

D. As needed, assist the recipient in developing, testing and validating more effective and efficient disease prevention and health promotion models for African Americans.

E. Collaborate with the grantee and other concerned parties in developing workshops and conferences to exchange current information, opinions and findings in fields of public health and minority health.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 40 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

F. Submission and Deadline

Application

Submit the original and two copies of the application (PHS Form 5161–1). Forms are available at the following Internet address: www.cdc.gov/...Forms, or in the application kit. On or before September 7, 1999 submit the application to: Albertha Carey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, [Program Announcement 99148], Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Deadline

Applications shall be considered as meeting the deadline if they are either: (a) Received on or before the deadline date; or (b) sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

Late Applications

Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.:

1. Applicant's Understanding of the Problem (15%)

The extent to which the applicant has a clear, concise understanding of the requirements, objectives, and purpose of the cooperative agreement. The extent to which the application reflects an understanding of the complexities surrounding health promotion, health disparities and health promotion issues, that have an impact in the African American community.

2. Organizational Experience (25%)

The extent to which the applicant has demonstrated skill and experience in working effectively with community based projects, and has the ability to establish meaningful relationships with various community based organizations. The applicant must demonstrate experience in providing leadership for community projects at the national, State and local levels. The applicant must provide proof of experience in sharing financial or technical resources with CBOs, affiliates, and chapters that provide a variety of services directly to racial and ethnic minority populations.

3. Approach and Capability (35%)

The extent to which the applicant has included a description of their approach and track record on developing a network which includes the various segments of the African American community at national, State and local levels.

4. Project Management and Staffing (15%)

The adequacy of the description for present or proposed staff and capabilities of the organization to assemble culturally competent and trained staff to conduct all three components proposed in this health promotion and disease prevention initiative. The applicant shall identify all current and potential personnel who will be utilized to work on this cooperative agreement, including qualifications and specific experience as

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it relates to the requirements set forth in this request. The organization must provide proof that their program and administrative staff and the program and administrative staff of affiliates and participating organizations involved in the project are representative of the communities and populations to be served.

5. Evaluation (10%)

The extent and method by which the applicant proposes to measure progress in meeting objectives and program effectiveness, and presents a reasonable plan for: (1) Establishing the three program components and measuring their effectiveness; (2) Utilizing the three program components to share information on health promotion and disease prevention activities with the African American community. For example, how will information sharing be increased as a result of the program? What type of databases or materials will be created to facilitate information sharing? How will the program handle referrals? (3) Evaluating the effectiveness of collaborative processes, i.e., developing partnerships and types of organizations involved, providing training, continuity, and involvement e.g., frequency of meetings, participation of group members, etc.; (4) Obtaining, reporting and sharing programmatic results.

6. Budget (Not Scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

H. Other Requirements

Technical Reporting Requirements

The recipient is required to provide CDC with an original plus two copies of semi-annual progress reports 30 days after the end of each semi-annual time period. An original and two copies of a progress report and financial status report are required no later than 90 days after the end of each budget period. Final financial status and performance reports are required no later than 90 days after the end of the project period.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment (List all applicable requirements by number and title. The Grants Management Branch will include the applicable descriptions in the application kit.)

AR98–4 HIV/AIDS Confidentiality Provisions

AR98–9 Paperwork Reduction Act Requirements

AR98–10 Smoke-Free Workplace Requirements

AR98–11 Healthy People 2000

AR98–12 Lobbying Restrictions

AR98–14 Accounting System Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301(a) and 317(k)(2) of the Public Health Service Act [42 U.S.C. 241(a) and 247b(k)(2), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call toll-free 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Albertha Carey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office [Program Announcement 99148], Centers for Disease Control and Prevention 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2735, Email: ayc1@cdc.gov.

For program technical assistance, contact: Yvonne H. Lewis, Minority Health Program Specialist, Centers for Disease Control and Prevention, Room 4326, 1600 Clifton Road, N.E., M/S D39, Atlanta, GA 30333, Telephone: 404–639–7220, Email: yal0@cdc.gov.

See also the CDC home page on the Internet. You may view and/or download the program announcement and application forms here: http://www.cdc.gov.

Dated: July 20, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–18941 Filed 7–23–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Times and Dates: 1:30 p.m.–4:30 p.m., August 3, 1999. 8:30 a.m.–3:00 p.m., August 4, 1999.

Place: JW Marriott Hotel at Lenox, 3300 Lenox Road, NE, Atlanta, Georgia 30326.

Status: Closed: 1:30 p.m.–2:30 p.m., August 3, 1999, and 8:30 a.m.–9 a.m., August 4, 1999; Open: 2:30 p.m.–4:30 p.m., August 3, 1999, and 9 a.m.–3:00 p.m., August 4, 1999.

Purpose: The Committee advises and makes recommendations to the Secretary, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance and mix of intramural and extramural research, including laboratory research, and provides guidance on intramural and extramural scientific program matters, both present and future, particularly from a long-range viewpoint. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee recommends areas of research to be supported by contracts and provides concept review of program proposals and announcements.

Matters to be Discussed: The meeting will convene in closed session from 1:30 p.m. to 2:30 p.m. on August 3, 1999. The purpose of this closed session is for the Science and Program Review Work Group (SPRWG) to consider individual injury control research grant applications recommended for further consideration by the CDC Injury Research Grant Review Committee. On August 4, 1999, from 8:30 a.m. to 9 a.m., the ACIPC voting members will convene in closed session to vote on a funding recommendation. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552(c)(4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Following the SPRWG closed session, there will be a program oversight session which will include discussion of a biomechanics review update, status of program announcements for fiscal year 2000, whiplash project, research agenda for the National Center for Injury Prevention and Control (NCIPC), and progress on standing Work Group issues. The Committee will also discuss (1) an update from the Director, National Center for Injury Prevention and Control (NCIPC); (2) strategic planning update and (3) SPRWG report on the results of their August 3 meeting.

Agenda items are subject to change as priorities dictate.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

Contact Person for More Information: Mr. Wayne Stephens, Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K61, Atlanta, Georgia 30341–3724, telephone 770/488–1465.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 21, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–19083 Filed 7–23–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Mechanistic-Based Cancer Risk Assessment Methods.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Mechanistic-Based Cancer Risk Assessment Methods, RFA OH–99–003.

Time and Dates: 8 a.m.—8:30 a.m., August 24, 1999 (Open); 8:30 a.m.—5 p.m., August 24, 1999 (Closed).

Place: Embassy Suites Hotel, 1900 Diagonal Rd., Alexandria, Va. 22134.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to the RFA OH–99–003.

Contact Person for More Information: Michael J. Galvin, Jr., Ph.D., Health Scientist Administrator, Office of Extramural Coordination and Special Projects, NIOSH, CDC, 1600 Clifton Rd., Atlanta, Ga. 30333. Telephone 404/639–3525, e-mail mtg3@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 20, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–18940 Filed 7–23–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care Development Fund Financial Reporting Form.

OMB No.: 0970–0163.

Description: The form provides specific data regarding claims and provides a mechanism for States to request grant awards and certify the availability of State matching funds. Failure to collect this data would seriously compromise ACF's ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–696	54	4	8	1,728

Estimated Total Annual Burden Hours: 1,728.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW, Washington DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Attn: ACF Desk Officer.

Dated: July 20, 1999.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 99–18986 Filed 7–23–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0780]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Food Canning Establishment Registration, Process Filing and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods In Hermetically Sealed Containers

AGENCY: Food and Drug Administration, HHS.

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ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by August 25, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Canning Establishment Registration, Process Filing and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers (21 CFR 108.25(c)(1) and (c)(2), (d), (e), (g); 108.35(c)(1), (c)(2), (d), (e), (f), (h); 113.60(c); 113.83; 113.87; 113.89; 113.100; 114.80(b); 114.89; 114.100(a) through (d)) (OMB Control Number 0910–0037—Extension)

Under section 402 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342), FDA is authorized to prevent the interstate distribution of food products that may be injurious to health or that are otherwise adulterated. Under the authority granted to FDA by section 404 of the act (21 U.S.C. 344), FDA's regulations require registration of food processing establishments, filing of process or other data, and maintenance of processing and production records for acidified foods and thermally processed low-acid foods in hermetically sealed containers. These requirements are intended to ensure safe manufacturing, processing, and packing procedures and to permit FDA to verify that these procedures are being followed. Improperly processed low-acid foods present life-threatening hazards if contaminated with foodborne microorganisms, especially *Clostridium botulinum*. The spores of *C. botulinum* must be destroyed or inhibited to avoid production of the deadly toxin that causes botulism. This is accomplished with good manufacturing procedures, which must include the use of adequate heat processes or other means of preservation.

To protect the public health, FDA's regulations require that each firm that manufactures, processes or packs acidified foods or thermally processed low-acid foods in hermetically sealed containers for introduction into interstate commerce register the establishment with the agency using Form FDA 2541 (§§ 108.25(c)(1) and 108.35(c)(2)) (21 CFR 108.25(c)(1) and 108.35(c)(2))). In addition to registering the plant, each firm is required to provide data on the processes used to produce these foods, using Form FDA 2541a for all methods except aseptic processing, or Form FDA 2541c for aseptic processing of low-acid foods in hermetically sealed containers §§ 108.25(c)(2) and 108.35(c)(2)). Plant registration and process filing may be accomplished simultaneously. Process data must be filed prior to packing any new product and operating processes and procedures must be posted near the processing equipment or made available to the operator (21 CFR 113.87(a)).

Regulations in parts 108, 113, and 114 (21 CFR parts 108, 113, and 114) require firms to maintain records showing adherence to the substantive requirements of the regulations. These records must be made available to FDA on request. Firms are also required to document corrective actions when process controls and procedures do not fall within specified limits (§§ 113.89, 114.89, and 114.100(c)); to report any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce (§§ 108.25(d) and 108.35(d) and (e)); and to develop and keep on file plans for recalling products that may endanger the public health (§§ 108.25(e) and 108.35(f)). To permit lots to be traced after distribution, acidified foods and thermally processed low-acid foods in hermetically sealed containers must be marked with an identifying code (§§ 113.60(c) (thermally processed foods) and 114.80(b) (acidified foods)).

In the **Federal Register** of April 30, 1999 (64 FR 23334), the agency requested comments on the proposed collections of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form No.	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Form FDA 2541 (Registration)	108.25(c)(1) and 108.35(c)(1)	300	1	300	.17	51
Form FDA 2541a (Process Filing)	108.25(c)(2) and 108.35(c)(2)	1,000	6.5	6,500	.333	2,165
Form FDA 2541(c) (Process Filing)	108.35(c)(2)	1,000	.50	500	.75	375
Total						2,591

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
108, 113, and 114	5,865	1	5,865	250	1,466,250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for §§ 108.25(d) and 108.35(d) and (e) is insignificant because notification of spoilage, process deviation, or contamination of product in distribution occurs less than once a year. Most firms discover these problems before the product is distributed and, therefore, are not required to report the occurrence. To avoid double counting, estimates for §§ 108.25(g) and 108.35(h) have not been included because they merely cross-reference recordkeeping requirements contained in parts 113 and 114.

Dated: July 19, 1999

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–18925 Filed 7–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0296]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Regulations Under the Federal Import Milk Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by August 25, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Regulations Under the Federal Import Milk Act—21 CFR Part 1210 (OMB Control Number 0910–021)—Extension

Under the regulations (part 1210 (21 CFR part 1210)) implementing the Federal Import Milk Act (21 U.S.C. 141–149), milk or cream may be imported into the United States only by the holder of a valid import milk permit. Before such permit is issued: (1) All cows from which import milk or cream is produced must be physically examined and found healthy; (2) if the milk or cream is imported raw, all such cows must pass a tuberculin test; (3) the dairy farm and each plant in which the milk or cream is processed or handled must be inspected and found to meet certain sanitary requirements; (4) bacterial counts of the milk at the time of importation must not exceed specified limits; and (5) the temperature of the milk or cream at time of importation must not exceed 50 °F. In addition, the regulations require that dairy farmers and plants maintain pasteurization records (§ 1210.15) and that each container of milk or cream imported into the United States bear a tag with the product type, permit number, and shipper's name and address.

In the **Federal Register** of April 30, 1999 (64 FR 23333), the agency requested comments on the proposed collections of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 1815/Permits granted on certificates	1210.23	4	1	4	0.5	2.0
FDA 1993/Applicant of permit	1210.20	4	4	4	0.5	2.0
FDA 1994/Tuberculin test[2]	1210.13					
FDA 1995/Physical examination of cows[2]	1210.12					
FDA 1996/Sanitary inspection of dairy farms	1210.11	4	200[3]	800	1.5	1200.0
FDA 1997/Sanitary inspection of plants	1210.14	4	1	4	2.0	8.0
Total						1212.0

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] No burden has been estimated for Forms FDA 1994 and 1995 because they are not currently being used.

[3] Due to a clerical error, the reporting burden hours for FDA 1996/Sanitary inspection of daily farms that appeared in a notice issued in the FEDERAL REGISTER of April 30, 1999 (64 FR 23333) were incorrect. Table 1 of this document contains the correct estimates.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
1210.15	4	1	4	0.05	0.20

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

No burden has been estimated for the tagging requirement in § 1210.22 because the information on the tag is either supplied by FDA (permit number) or is disclosed to third parties as a usual and customary part of the shipper's normal business activities (type of product, shipper's name and address). No burden has been estimated for Forms FDA 1994 and 1995 because they are not currently being used. The Secretary of Health and Human Services has the discretion to allow Form FDA 1815, a duly certified statement signed by an accredited official of a foreign Government, to be submitted in lieu of Forms FDA 1994 and 1995. To date, Form FDA 1815 has been submitted in lieu of these forms.

Dated: July 19, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–18927 Filed 7–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cooperative Agreement to Support the Joint Institute for Food Safety and Applied Nutrition; Notice of Intent to Supplement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to noncompetitively supplement the cooperative agreement with the University of Maryland, College Park (UMCP) for up to an estimated $2 million per annum. These funds will provide additional support to the UMCP's Joint Institute for Food Safety and Applied Nutrition (JIFSAN) for the purpose of addressing emerging health issues and crises that are related to food safety and applied nutrition and animal health sciences, and expanding the current scope to include other agency programs such as cosmetics.

DATES: Submit the application by August 25, 1999. If this date falls on a weekend, it will be extended to Monday; if this date falls on a holiday, it will be extended to the following workday.

ADDRESSES: An application is available from and should be submitted to: Maura C. Stephanos, Office of Regulatory Affairs Support and Assistance Management Branch (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7183. If the application is hand carried or commercially delivered, it should be addressed to Maura C. Stephanos, 5630 Fishers Lane, rm. 2129, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Maura C. Stephanos (address above).

Regarding the programmatic aspects: Elizabeth M. Calvey, Center for Food Safety and Applied Nutrition (HFS–6), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4716.

SUPPLEMENTARY INFORMATION: This project is authorized under section 301 of the Public Health Service Act (the PHS Act) (42 U.S.C. 241). This activity is generally described in the Catalog of Federal Domestic Assistance at No. 93.103. The application will not be subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Program (45 CFR part 100).

I. Restricted Eligibility

In the **Federal Register** of May 22, 1997 (62 FR 28049), FDA announced that a single source application for a cooperative agreement to support the JIFSAN at the UMCP would be accepted. Supplemental funding referenced herein will provide for the implementation and enhancement of activities associated with the JIFSAN projects described and authorized under the original award (FD–U–001418–01) dated September 29, 1997.

II. Availability of Funds

FDA will provide supplemental funding up to an estimated $2 million per annum to the cooperative agreement, which is at a level greater than the 25 percent of the original award currently provided under agency policy. Supplemental funding will provide support of the JIFSAN programs primarily through available Food Safety Initiative funds and funds from other government agencies.

The original cooperative agreement was approved for 5 years of funding and currently has 3 years of noncompetitive support remaining, which is contingent upon the availability of fiscal year appropriations and successful performance. FDA anticipates that supplemental funding of the cooperative agreement will commence on or before September 30, 1999.

III. Background

JIFSAN was established between FDA and the UMCP in April 1996, through a formal Memorandum of Understanding (MOU), to create a partnership that allows for more efficient use of research resources, thereby enhancing overall public health by expanding and improving food safety and nutrition research as well as research in other program areas that impact on public health policy. As the role of FDA research scientists in regulatory activities increases (e.g., petition review, rulemaking, enforcement compliance standards, hazard analysis critical control point performance standards), it is vital that these same scientists have ready access to very specialized research facilities and expertise that are in close proximity to FDA's administrative offices. The unique needs for research in support of regulatory programs has been one of the key reasons for maintaining a strong FDA research program. JIFSAN is a jointly administered, multi-disciplinary research and outreach program. JIFSAN was established as part of FDA's consolidation project affecting FDA's Center for Food Safety and Applied Nutrition and Center for Veterinary Medicine. The primary focus of JIFSAN is food safety and nutrition, specifically as related to risk analysis, applied microbiology, natural toxins, chemical contaminants, animal health sciences, and food composition and nutrition. JIFSAN also encompasses other agency programs such as cosmetics, dietary supplements, and food labeling.

IV. Purpose

Supplemental funding to FDA's current cooperative agreement will provide the UMCP with the necessary resources to conduct further research related to the goals of the National Food Safety Initiative and to leverage additional resources for applied nutrition, animal health science activities, and other agency programs. These resources would: (1) Expand the expertise for public health research and risk assessment initiatives, (2) support the Risk Assessment Consortium, and (3) increase innovative public/private research and education partnerships. Because international safety regulations must be founded on science-based risk assessments, FDA's scientists must have a lead role in their development.

Additionally, supplemental funding will provide resources to identify gaps in risk analysis to: (1) Minimize/reduce uncertainty in risk management decisions; (2) improve the quality of risk assessments applied to agency programs, principally but not limited to food safety and applied nutrition (e.g., microbial pathogens, natural toxins, chemical contaminants, and food composition and nutrition); and (3) enhance risk communication, through outreach and public information programs, that will help the mass media and consumers understand and act on public health concerns. Innovative research and outreach efforts, made possible by the supplemental funding, will complement existing efforts under FDA's current cooperative agreement with the UMCP and will provide public health officials with the appropriate knowledge to formulate regulatory decisions and enhanced capabilities to communicate with their stakeholders.

V. Substantive Involvement by FDA

All terms and conditions of the current award shall remain in full force and effect for the supplemental awards.

VI. Review Procedure

The application submitted by the UMCP will undergo a noncompetitive, dual peer review. The application will be reviewed for scientific and technical merit by a panel of experts based on applicable evaluation criteria. If the application is recommended for approval it will then be presented to the National Advisory Environmental Health Sciences Council.

VII. Reporting Requirement

All terms and conditions of the current award shall remain in full force and effect for the supplemental awards.

VIII. Mechanism of Support

Support will be in the form of supplements to FDA's cooperative agreement with the UMCP. This agreement will be subject to all policies and requirements that govern the research grant program of the Public Health Service, including provisions of 42 CFR part 52 and 45 CFR part 74.

Dated: July 15, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–18929 Filed 7–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2096]

Draft "Guidance for Industry: Interpreting Sameness of Monoclonal Antibody Products Under the Orphan Drug Regulations;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Guidance for Industry: Interpreting Sameness of Monoclonal Antibody Products Under the Orphan Drug Regulations." The draft guidance document is intended to provide sponsors and manufacturers FDA's current thinking on the criteria by which two monoclonal antibody products would be considered the same under the Orphan Drug Act and implementing regulations.

DATES: Written comments may be submitted at any time, however, comments should be submitted by October 25, 1999, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of "Guidance for Industry: Interpreting Sameness of Monoclonal Antibody Products Under the Orphan Drug Regulations" to the Office of Communication, Training, and Manufacturers Assistance (HFM–940), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance. Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled "Guidance for Industry: Interpreting Sameness of Monoclonal Antibody Products Under the Orphan Drug Regulations."

In the **Federal Register** of December 29, 1992 (57 FR 62076), FDA published the orphan drug regulations final rule. The final rule established in part 316 (21 CFR part 316) regulations that prescribe certain incentives for the development of "orphan drugs," drugs which are intended for use in rare diseases or conditions. One of the incentives for orphan drug development is to obtain exclusive approval for the pioneer product for a period of 7 years during which no approval will be given to a subsequent sponsor of the same drug product for the same indication unless it proves to be clinically superior, as defined in § 316.3(b)(3). In determining whether or not two products would be considered the same, FDA recognized that different criteria were necessary for macromolecules versus small molecules (§ 316.3(b)(13)). Macromolecules include a variety of structures including proteins, nucleic acids, carbohydrates and closely related, complex, partly definable drugs such as vaccines or surfactants. The current definition of sameness for protein drugs (§ 316.3(b)(13)(ii)(A)) however, does not consider the unique nature of antibodies. The draft document is intended to describe FDA's thinking on the criteria by which two monoclonal antibody products would be considered the same under the Orphan Drug Act and its implementing regulations.

This draft guidance document represents the agency's current thinking on the interpretation of the orphan drug regulations as they pertain to monoclonal antibodies. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

This draft document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written

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comments regarding this draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by October 25, 1999, to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document using the World Wide Web (WWW). For WWW access, connect to CBER at "http://www.fda.gov/cber/guidelines.htm".

Dated: July 14, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–18928 Filed 7–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; National Institutes of Health Undergraduate Scholarship Program for Individuals From Disadvantaged Backgrounds

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of the Director (OD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The National Institutes of Health Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds (UGSP). Type of Information Collection Request: Extension of OMB No. 0925–0438, expiration date of November 30, 1999. Need and Use of Information Collection: The UGSP is authorized by § 487D of the Public Health Service (PHS) Act (42 U.S.C. 288–2), as amended by the NIH Revitalization Act of 1993 (Pub. L. 103–43). This program intends to provide scholarships, in an amount not to exceed $20,000 per academic year, toward expenses associated with full-time attendance at an accredited undergraduate institution, including tuition and reasonable educational and living expenses. For each year of scholarship support from the NIH, the recipient agrees to two service obligations or pay-back requirements: (1) ten consecutive weeks of pay-back as a full-time NIH employee during the months of June–August during the academic year (in-school service obligation) and (2) one year (12 months) of pay-back as a full-time NIH employee after graduation from the undergraduate institution (post-graduation service obligation. The post-graduation service obligation or pay-back requirement may be deferred, at the request of the scholarship recipient and with the approval of the Secretary, Department of Health and Human Services, during continuous period of graduate or medical/dental/veterinarian school training. The UGSP is designed to provide an incentive to undergraduate students from disadvantaged backgrounds to pursue studies which will prepare them for careers in biomedical research at the NIH. The information proposed for collection will be used to determine an applicant's eligibility for participation in the UGSP. Frequency of Response: Initial application and annual renewal application. Affected Public: Applicants (High School or undergraduate level students), Undergraduate Institutions. Type of Respondents: The UGSP application consists of two parts: Part I (Information About the Applicant) is completed by the applicant; and Part II (Verification) is completed by the Undergraduate Institution. The annual reporting burden estimates are as follows:

Type of respondent	Number of respondents	Numbr of responses per respondent	Average burden per response (Hrs)
Applicant	500	1	3.0
Undergraduate Institution	500	1	0.5

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Marc S. Horowitz, J.D., Director, Office of Loan Repayment and Scholarship, Office of Intramural Research, OD, NIH, 7550 Wisconsin Avenue, Room 604, Bethesda, MD 20814–9121, or call non-toll-free number (301) 402–5666 or E-mail your request, including your address to: MHorowitz@nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before September 24, 1999.

Dated: July 16, 1999.

Ruth L. Kirschstein,

Deputy Director, National Institutes of Health.

[FR Doc. 99–19038 Filed 7–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: August 13, 1999.

Time: 10:30 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Melissa Stick, PHD, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 20, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–19035 Filed 7–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel RFP–NIH–HG–99–30 Contract Review.

Date: July 27, 1999.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate contract proposals.

Place: NIEHS–East Campus, 79 TW Alexander Drive, Building 4401, Room 3446, Research Triangle Park, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PHD, Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709 (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazard; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: July 20, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–19036 Filed 7–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Institute of Dental Research Special Emphasis Panel, August 15, 1999, 8:30 a.m. to August 16, 1999, 5:00 p.m., Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202 which was published in the **Federal Register** on July 1, 1999, FR 35674.

The meeting is cancelled due to application withdrawn by applicant.

Dated: July 20, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–19037 Filed 7–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, National Heart Attack Alert Program Phase II.

Date: July 29, 1999.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

Contact Person: Peter Clepper, Program Officer, National Library of Medicine, Extramural Programs, Rockledge One, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing

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limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 20, 1999.

LaVerne Y. Stringfield,

Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–19034 Filed 7–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 29, 1999.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7840, Bethesda, MD 20892, (301) 435–1037, dayc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 2, 1999.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, 6701 Rockledge Drive, Conference Room 3087, Bethesda, MD 20892.

Contact Person: David M. Monsees, PhD, Scientific Review Administrator, Center for Scientific Review, National institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7770, Bethesda, MD 20892, (301) 435–0684, monseesd@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 2, 1999.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–8367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 2, 1999.

Time: 3 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nancy Pearson, PhD, Chief, Genetic Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7890, Bethesda, MD 20892, (301) 435–1047.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 2–4, 1999.

Time: 5 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: Edgewater Hotel, 666 Wisconsin Avenue, Madison, WI 53703.

Contact Person: Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 3–4, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: N. Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 3–4, 1999.

Time: 8:30 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave., N.W. Washington, DC 20007.

Contact Person: Syed Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 3, 1999.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: Carole L. Jelsema, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1249, jelsemac@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–IFCN5–03.

Date: August 3, 1999.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 3, 1999.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call.

Contact Person: Sami A. Mayyasi, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 3, 1999.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anita Corman Weinblatt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7778, Bethesda, MD 20892, (301) 435–1124.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 3, 1999.

Time: 2 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge II, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eugene Zimmerman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, (301) 435–1220, zimmerng@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 4, 1999.

Time: 1 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge II, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David M. Monsees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7770, Bethesda, MD 20892, (301) 435–0684, monseesd@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 4, 1999.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge II, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 4, 1999.

Time: 3 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge II, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed Quadri, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 20, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–19033 Filed 7–23–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. TE–014844–0

Applicant: John A. Ebrey, Jacksonville, Illinois.

The applicant requests a permit to purchase, in interstate commerce, two female and two male captive bred Hawaiian (=nene) geese (*Nesochen [=Branta] sandvicensis*) for the purpose of enhancing its propagation and survival.

DATES: Written comments on these permit applications must be received on or before August 25, 1999.

ADDRESSES: Written data or comments should be submitted to the Chief-Endangered Species, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: July 16, 1999.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–18942 Filed 7–23–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–014711

Applicant: Betty Ann Weintraub, Poolesville, MD

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–014959

Applicant: James Alan Sojka, Canterbury, NJ

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Barbara Dicely, dba Leopards, Etc., Occidental, CA

PRT–013568

The applicant requests a permit to import 1.1 captive-born cheetah (*Acinonyx jubatas*) from DeWildt's Cheetah Research and Breeding Center, DeWildt, South Africa, for the purpose of enhancement of the survival of the species through conservation education.

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PRT–14918

Applicant: Alexandria Zoological Park, Alexandria, LA

The applicant requests a permit to export two captive bred Ringtail Lemur (*Lemur catta*) to the Calgary Zoo, Calgary, Alberta, Canada for breeding purposes.

PRT–013951

Applicant: Henry Doorly Zoo, Omaha, Nebraska

The applicant requests a permit to import blood, skin biopsy, hair and fecal samples from Asian Elephant (*Elephus maximus*) collected in the wild in Thailand and Indonesia, and from captive held specimens removed from the wild in Indonesia, for scientific research.

PRT–013445

Applicant: Henry Doorly Zoo, Omaha, Nebraska

The applicant requests a permit to import blood samples from Hicatee (*Dermatemys mawii*), collected in the wild in Belize for scientific research.

PRT–014861

Applicant: Wayne Pocius, Pennsburg, PA

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) from Namibia for the purpose of enhancement of the survival of the species.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–012337

Applicant: Aquarium of the Americas

Permit Type: Public Display of Marine Mammals.

Name and Number of Animals: Northern Sea Otter (Enhydra lutris) 3.

Summary of Activity to be Authorized: The applicant requests a permit for public display of 3 sea otter pelts.

Source of Marine Mammals: Seized goods.

Period of Activity: Up to 5 years, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 21, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–19039 Filed 7–23–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Cancellation of Federal Aid in Sport Fish and Wildlife Restoration Administrative Project Funding

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service is canceling funding for Federal Aid in Wildlife Restoration and Sport Fish Restoration administrative projects. Existing grants for projects approved for funding in Fiscal Year 1999, or prior years, will not be affected by this notice.

DATES: This action takes effect July 26, 1999.

ADDRESSES: U.S. Fish and Wildlife Service, Chief, Division of Federal Aid.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Lange, Jr., Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, MS 140 ARLSQ, 4401 North Fairfax Drive, Arlington, Virginia, 22203: (703) 358–2156.

SUPPLEMENTARY INFORMATION: Administrative funds are authorized by the Federal Aid in Wildlife Restoration and Federal Aid in Sport Fish Restoration Acts to pay expenses incurred by the Fish and Wildlife Service in administering these programs. We may deduct up to eight percent for the Wildlife Restoration program and up to six percent for the Sport Fish Restoration program, with remaining funds apportioned to State fish and wildlife agencies for fish and wildlife restoration and management projects. We have used our discretionary authority to disperse some of the funds deducted for administration to support important national fish and wildlife projects, within the scope of the Acts, that provide collective benefits for a majority of the States.

In the past, we have published an annual notice in the **Federal Register** announcing a deadline for project proposals, the amount of administrative funds available for Sport Fish and Wildlife Restoration projects, and procedures to be followed for submitting proposals. States, local governments, charitable organizations, educational institutions, and other authorized groups have applied for grants according to those procedures.

On September 16, 1998, we published alternatives to Federal Aid Administrative Grants in the **Federal Register**. That notice identified five alternative procedures for administering those grants. Public comments were invited through November 16, 1998. Twenty-two of the twenty-five comments received identified Alternative 3 (enhance existing program without **Federal Register** Notice) as the preferred alternative. However, subsequent to the analysis of comments, we determined that increased costs for administering the Wildlife Restoration and Sport Fish Restoration programs precludes further funding of administrative grants. The increased costs arise from three pressing needs. First, the costs of automating the grants delivery system are more than expected—much greater than two years ago when the process began. Second, the audits of State systems by the Defense Contract Audit Agency are a substantial cost that was not present several years ago. Third, the cost of administering the small grants programs, created by amendments to the Sport Fish Restoration Act (Clean Vessel Act Pumpout Program, the Boating Infrastructure Program, and the Coastal Wetlands Planning, Protection and Restoration Program) must be assessed against the Sport Fish Restoration Program. One of the actions being taken to balance the administrative expenses budget is to cancel the Federal Aid in Sport Fish and Wildlife Restoration administrative project funding effective in Fiscal Year 2000. Projects approved for funding in Fiscal 1999 will not be affected by this decision.

Dated: July 19, 1999.

John G. Rogers,

Acting, Director.

[FR Doc. 99–19040 Filed 7–23–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Operation and Maintenance Rate Adjustment: Colorado River Irrigation Project, Arizona

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed irrigation operation and maintenance rate adjustment.

SUMMARY: The Bureau of Indian Affairs proposes to adjust the assessment rates for operating and maintaining the Colorado River Irrigation Project for the CY 2000 irrigation season.

DATES: Interested parties may submit comments on the proposed rate adjustment. Comments must be submitted on or before September 24, 1999.

ADDRESSES: All comments concerning the proposed rate adjustment must be in writing and addressed to: Director, Office of Trust Responsibilities, Attn.: Irrigation and Power, MS 4513–MIB, Code 210, 1849 C Street, NW, Washington, DC 20240; Telephone (202) 208–5480.

FOR FURTHER INFORMATION CONTACT: Area Director, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, Arizona 85001; Telephone (602) 379–6956.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

This notice is given in accordance with §§ 171.1(e) and 171.1(g) of part 171, Subchapter H, Chapter 1, of Title 25 of the Code of Federal Regulations, which provides for fixing and announcing the rates for annual operation and maintenance assessments and related information of Bureau of Indian Affairs irrigation projects.

The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance mean the expenses we incur to provide direct support or benefit to the project's activities for administration, operation, maintenance, and rehabilitation. We must include at least:

(a) Personnel salary and benefits for the project engineer/manager and our employees under his management/control;

(b) Materials and supplies;

(c) Major and minor vehicle and equipment repairs;

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement;

(e) Capitalization expenses;

(f) Acquisition expenses; and

(g) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

Payments

The irrigation operation and maintenance assessments become due based on locally established payment requirements. No water shall be delivered to any of these lands until all irrigation charges have been paid.

Interest and Penalty Fees

Interest, penalty, and administrative fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, part 102, Federal Claims Collection Standards and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures. Beginning 30 days after the due date, interest will be assessed at the rate of the current value of funds to the U.S. Treasury. An administrative fee of $12.50 will be assessed each time an effort is made to collect a delinquent debt; a penalty charge of 6 percent per year will be charged on delinquent debts over 90 days old and will accrue from the date the debt became delinquent. No water shall be delivered to any farm unit until all irrigation charges have been paid. After 180 days a delinquent debt will be forwarded to the United States Treasury for further action in accordance with Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

Rate Adjustment

The following table illustrates the impact of the rate adjustment:

COLORADO RIVER IRRIGATION PROJECT, IRRIGATION RATE PER ASSESSABLE ACRE

	Present 1999	Proposed 2000
Up to 5 acre-feet/acre.	$36.00	$38.50.
Excess Water/acre-foot.	$17.00	Unchanged.

Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that this rate adjustment meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This rate adjustment is not a significant regulatory action and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is "a rule of particular applicability relating to rates." 5 U.S.C. 601(2).

Executive Order 12630

The Department has determined that this rate adjustment does not have significant "takings" implications.

Executive Order 12612

The Department has determined that this rate adjustment does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

NEPA Compliance

The Department has determined that this rate adjustment does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act of 1995

This rate adjustment does not contain collections of information requiring approval under the Paperwork Reduction Act of 1995.

Unfunded Mandates Act of 1995

This rate adjustment imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

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Dated: July 15, 1999.
Kevin Gover,
Assistant Secretary—Indian Affairs.
[FR Doc. 99–19023 Filed 7–23–99; 8:45 am]
BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–02–24 1A; OMB Approval Number 1004–0169]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) On April 27, 1999, BLM published a notice in the **Federal Register** (64 FR 22639) requesting comment on this proposed collection. The comment period ended on June 28, 1999. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0169), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of BLM, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Use and Occupancy (43 CFR 3715, OMB approval number: 1004–0169.

Abstract: The Bureau of Land Management is proposing to renew the approval of an information collection for an existing rule at 43 CFR 3715. It defines acceptable, reasonably incident use and occupancy of unpatented mining claims and mill sites on Federal lands. The rule provides field managers with the tools necessary to manage existing and proposed use and occupancy. The rule defines those activities that are reasonably incident to prospecting, mining, or processing operations. The rule establishes conditions for determining whether these criteria are met, procedures for initiation of occupancy, standards for the use or occupancy, prohibited acts, procedures for inspection and enforcement. It established procedures for recognizing and managing existing occupancies. It would also provide for penalties and appeals procedures. The rules only applies to public land under the administration of the Bureau of Land Management.

Bureau Form Number: None.

Frequency of Response: Once.

Description of Respondents: Respondents are mining claimants and operators of prospecting, exploration, mining, and processing operations.

Estimated completion time: 2 hour(s).

Annual Responses: 280.

Annual Burden Hours: 560.

Collection Clearance Officer: Carole Smith, 202–452–0367.

Dated: July 9, 1999.

Carole Smith,

Bureau of Land Management Information Clearance Officer.

[FR Doc. 99–19005 Filed 7–23–99; 8:45 am]
BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations in the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Publication of revised Outer Continental Shelf leasing maps and official protraction diagrams.

SUMMARY: Notice is hereby given that effective with this publication, the following Louisiana and Texas Leasing Maps and Protraction Diagrams last revised on the date indicated, are on file and available for information only, in the Gulf of Mexico OCS Regional Office, New Orleans, Louisiana. In accordance with Title 43, Code of Federal Regulations, these official Protraction Diagrams are the basic record for the description of mineral and oil and gas lease sales in the geographic areas they represent.

REVISED MAPS

	Latest revision date
Leasing maps:	
1 West Cameron Area West Addition, LA1A	May 30, 1997.
1 West Cameron Area South Addition, LA1B	May 30, 1997.
2 South Timbalier Area, LA6	December 30, 1994.
2 Bay Marchand Area, LA6C	December 30, 1994.
1, 2 Sabine Pass Area, LA12	May 30, 1997.
4 South Padre Island Area East Addition, TX1A	September 9, 1998.
1 High Island Area East Addition, TX7A	May 30, 1997.
1, 3 High Island Area South Addition, TX7B	March 15, 1999.
1, 3 High Island Area East Addition South Extension, TX7C	March 15, 1999.
1, 2 Sabine pass Area, TX8	May 30, 1997.
Official protraction diagrams:	
4 Port Isabel, NG14–06	September 9, 1998.
1, 3 Garden Banks, NG15–02	March 15, 1999.
4 Aliminos Canyon, NG15–04	September 9, 1998.

Revisions

1. Revised to digital format and correct or clarify the depiction of the Louisiana/Texas Lateral Administrative Boundary.

2. Revised to digital format and separated into a single map.

3. Revised to digital format and depicts Flower Garden Banks National Maritime Sanctuary.

4. Revised to digital format and reflect the ratification of the United States-Mexico Maritime Boundary.

FOR FURTHER INFORMATION CONTACT: Copies of Leasing Maps and Official Protraction are $2.00 each. Complete sets of Louisiana maps are $32.00, and Texas map sets are $18.00. These may be purchased from our Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: Technical comments or questions pertaining to these maps should be directed to the Office of Leasing and Environment, Supervisor, Sales and Support Unit at (504) 736–2768.

Dated: July 19, 1999.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 99–18943 Filed 7–23–99 8:45 am]
BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundatable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet on August 10, 1999, to discuss several issues including a process for setting priorities for FY 2000, a report from the Roundtable Issues Subcommittee, and a long-term strategy for environmental water acquisition. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Ecosystem Roundtable will be held from 9:30 a.m. to 12 p.m. on August 10, 1999.

ADDRESSES: This meeting will meet at the Resources Building, Room 1131, 1416 Ninth Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, Ninth Street, Sacramento, CA 95814, and will be available for public inspection regular business hours, Monday through Friday, within 30 days following the meeting.

Dated: June 20, 1999.

Kirk Rodgers,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. 99–18949 Filed 7–23–99; 8:45 am]
BILLING CODE 8025–01–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[AG Order No. 2234–99]

RIN 1125–AA23

Motion To Reopen: Suspension of Deportation and Cancellation of Removal

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Notice.

SUMMARY: This notice relates to certain aliens who filed an abbreviated motion to reopen their cases, on or before September 11, 1998, in order to apply for benefits under section 203(c) of the Nicaraguan Adjustment and Central American Relief Act (NACARA). A deadline to complete the motion to reopen has been set. The 150-day period for the submission of an application of suspension of deportation or cancellation of removal began June 21, 1999, and ends (150 days from the June 21, 1999, effective date of INS Rule No. 1915–98, RIN 1115–AF14).

FOR FURTHER INFORMATION CONTACT: For matters relating to the Executive Office for Immigration Review—Charles Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470. For matters relating to the Immigration and Naturalization Service—Mary Giovagnolia, Associate General Counsel, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION:

To Whom Does This Notice Apply?

This notice applies to those aliens who filed an abbreviated NACARA motion to reopen by September 11, 1998, as provided in 63 FR 31890 (June 11, 1998).

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What Does This Notice Do?

This notice clarifies the deadline to submit an application for suspension of deportation or special rule cancellation of removal and supporting documentation to complete a NACARA motion to reopen. Initially, the Department established a February 8, 1999, deadline for eligible aliens to submit the application for suspension of deportation or special rule cancellation of removal and all the accompanying documentation in support of the NACARA motion to reopen. *See* 63 FR 31890, 31895 (June 11, 1998). In the final NACARA motion to reopen rule, the Department extended the deadline to complete a NACARA motion to reopen to 150 days after the rule implementing section 203 of NACARA becomes effective. *See* 64 FR 13663 (March 22, 1999). The rule implementing section 203 of NACARA was published on May 21, 1999, and the effective date is June 21, 1999. This notice will alert those eligible aliens that the 150-day period to complete the NACARA motion to reopen has started to run.

When Is the Deadline to Complete a NACARA Motion To Reopen?

The final motion to reopen rule requires an applicant to submit his or her application and accompanying documentation no later than 150 days after the rule implementing section 203 of NACARA becomes effective. The rule implementing section 203 of NACARA became effective June 21, 1999. Accordingly, all suspension of deportation and special rule cancellation of removal applications and accompanying documentation needed to complete a properly filed NACARA motion to reopen must be filed by (150 days from the June 21, 1999, effective date of INS Rule No. 1915–98, RIN 1115–AF14).

Dated: July 15, 1999.

Janey Reno,

Attorney General.

[FR Doc. 99–18930 Filed 7–23–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Pursuant to Section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that on June 30, 1999, a proposed Consent Decree in *United States* v. *Bronson Plating Company, et al.* Civil Action No. 1:99–CV–490, was lodged with the United States District Court for the Western District of Michigan for a period of thirty days to facilitate public comment.

The settlement embodied in the proposed Consent Decree requires the settling defendants, Bronson Plating Company, the City of Bronson, ITT Automotive, Inc., L.A. Darling Company, and The Scott Fetzer Company (the "Settling Defendants"), to implement the estimated $4 million remedy selected by EPA for the first of two operable units for the North Bronson Industrial Area Site ("Site"), located in Branch County, Michigan Site. The Settling Defendants also agree to pay the United States $1,629,114.88 for past response costs through March 31, 1997, as well as future costs of overseeing the implementation of the remedial action. The remedy for the first operable unit includes excavating contaminated eastern lagoon soil and sludge and covering this area with clean soil; dredging sediment from County Drain #30; consolidating contaminated waste from the eastern lagoons and County Drain #30 in the western lagoons; covering the western lagoons; installing a French Drain between the western lagoons and county Drain #30 to capture contaminated groundwater; and treating contaminated groundwater in a treatment wetland before discharging the water into County Drain #30. The selected remedy also includes monitoring groundwater and surface water quality; placing institutional controls on the western lagoon area and the treatment wetland; and placing restrictions on future groundwater use throughout the Site.

The past cost payment includes a settlement with the City of Bronson ("the City") based on its ability to pay, which will pay $118,074 plus interest over a three-year period. The Consent Decree further includes a settlement of a natural resource damages claim of the U.S. Department of the Interior ("DOI"), for either a cash payment of $100,000, plus DOI's assessment costs, or an agreement to conduct compensatory restoration by acquiring replacement habitat of at least 20 acres within the State of Michigan, and to pay DOI's oversight assessment costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Bronson Plating, et al.*, DOJ No. 90–11–2–1311.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Michigan, 330 Ionia Avenue, Grand Rapids, Michigan 49503, at the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3590, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please refer to the above-referenced case and enclose a check in the amount of $22.00 (25 cents per page reproduction cost, without exhibits) payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–19006 Filed 7–23–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement In Re Continental Airlines, Inc. Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a Settlement Agreement ("Agreement") in *In re Continental Airlines, Inc., et al.*, Nos. 90–932 through 984. (Bankr. D. Del..), has been entered into by the United States on behalf of U.S. EPA and Continental Airlines, Inc. and certain of its subsidiaries (collectively the "Debtors") and was lodged with the United States Bankruptcy Court for the United States Bankruptcy Court for the District of Delaware on June 30, 1999. The Agreement relates to liabilities under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq*. The Agreement resolves CERCLA claims against the Debtors for the following six hazardous waste sites, denominated as "Liquidated Sites" under the Agreement: The Operating Industries, Inc. Site in Monterey Park, CA; the Lowry Landfill Site in Denver, CO; the Rocky Flats Industrial Park Site in Jefferson County, CO; the Chemical Handling Corp. Site in Broomfield, CO; the Omega Chemical Corp. Site in Whittier, CA; and the Environmental Pacific Corp. Site in Amity, OR.

Under the Agreement, Continental has agreed to allowed general unsecured claims in the total amount of $1,290.000 and allowed claims to be paid in full as administrative expense claims in the total amount of $229,084.37 as specified in the Agreement. The Agreement also contains provisions pertaining to the treatment of Debtor-Owned Sites and Additional Sites.

The Department of Justice will receive comments relating to the proposed Agreement for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re Continental Airlines, Inc.*, D.J. Ref. No. 90–11–2–1231.

The proposed Agreement may be examined at the Office of the United States Attorney for the District of Delaware, 1201 Market Street, Suite 1100, Chemical Bank Plaza, Wilmington, DE 19899–2046; the United States Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy of the proposed Amended Settlement Agreement, please enclose a check in the amount of $6.75 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–19009 Filed 7–23–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Coon Refrigeration, et al.*, Civil Action No. 90–212 (W.D. Pa.), was lodged on July 1, 1999 with the United States District Court for the Western District of Pennsylvania. The United States filed its action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act to recover costs incurred and to be incurred in cleaning up the Pagan Road Superfund Site in western Pennsylvania. The proposed consent decree requires Marlin Coon and Coon Refrigeration to pay a minimum of $1,002 in reimbursement of past response costs incurred at the Site. The Consent Decree also requires Marlin Coon and Coon Refrigeration to sell the Pagan Road Site and pay seventy-five percent of the proceeds of that sale to the United States in further reimbursement of past response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Coon Refrigeration, et al.*, DOJ Ref. #90–11–2–619.

The proposed consent decree may be examined at the office of the United States Attorney, 100 State Street, Suite 302, Erie, PA 16507, the Regional Office of the Environmental Protection Agency, 615 Arch Street, Philadelphia, PA 19103, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.00 for the consent decree (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–19007 Filed 7–23–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on July 9, 1999, a proposed Consent Decree in *United States and the State of Ohio* v. *City of Port Clinton*, Civil Action Nos. 3:99CV7434 and 3:99CV7435, was lodged with the United States District Court for the Northern District of Ohio, Western Division.

In these consolidated actions, the United States and the State of Ohio sought injunctive relief and penalties against the City of Port Clinton ("Port Clinton") for claims arising in connection with Port Clinton's wastewater treatment plant in Port Clinton, Ohio, under the Clean Water Act, 33 U.S.C. 1251 *et seq*. Under the Consent Decree, Port Clinton will engage in short-term compliance measures that include inspecting and sampling a primary bypass outfall during periods of operation, sampling at a public beach, and permanently improving or closing all combined sewer overflow stations. Port Clinton's long-term compliance measures include submitting plans and construction schedules to eliminate primary bypassing, to disinfect and dechlorinate all secondary bypasses, and to assure that effluent limitations will continue to be met. Port Clinton also must submits a plan to study the feasibility of eliminating secondary bypassing. Port Clinton will pay a civil penalty of $60,000, one-half of which will be paid to the United States,and the other half of which will be paid to Ohio.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of Ohio* v. *City of Port Clinton*, D.J. No. 90–5–1–1–4501.

The Consent Decree may be examined at the Office of the United States Attorney, Four Seagate, Suite 308, Toledo, Ohio, 43604–2624, at the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3590, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please refer to the above-referenced case and enclose a check in the amount of $24.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–19008 Filed 7–23–99; 8:45 am]

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DEPARTMENT OF JUSTICE

[AAG/A Order No. 169–99]

Privacy Act of 1974; Privacy Act System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, the Executive Office for United States Trustees (EOUST), U.S. Department of Justice, has reviewed its Privacy Act systems of records and identified minor changes that will clarify, update, and more accurately describe their systems of records.

As result, the EOUST is reporting minor modifications to the system of records JUSTICE/UST–003 U.S. Trustee Timekeeping System, to reflect records storage on computer disks and on paper. Any comments may be addressed to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Suite 1400, National Place Building).

Dated: July 9, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/UST–003

SYSTEM NAME:

U.S. Trustee Timekeeping System.

SYSTEM LOCATION:

The Executive Office for United States Trustees (EOUST) and various offices of the United States Trustees depending upon where an employee has been assigned for duty. (Field offices can be located on the Internet at http://www.usdoj.gov/ust).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Nonclerical employees of the U.S. Trustees' offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes employees' names and a record of their work time by program activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM.

This system is established and maintained pursuant to 11 U.S.C., and 28 U.S.C. 586.

PURPOSE:

This system consists of a record of the work time, by program activity, of nonclerical employees of the U.S. Trustee program. The system is used by the EOUST to analyze workload as a basis for requesting and allocating personnel and other resources. This information is compiled in each of the field offices and forwarded to EOUST for analysis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ACHIEVES AND RECORDS ADMINISTRATION (NARA) AND THE GENERAL SERVICES ADMINISTRATION (GSA):

A record from the system of records may be disclosed to the NARA and GSA for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer disks and on paper.

RETREIVABILITY:

Information is maintained alphabetically by the name of the employee. In EOUST, duplicate records are maintained and organized by judicial district.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Departmental rules and procedures governing the handling of official records. During duty hours access to this system is monitored and controlled by U.S. Trustee office personnel. During nonduty hours offices are locked.

RETENTION AND DISPOSAL:

Time and Attendance Reports are destroyed by shredding and burning after GAO audit or when three years old.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager for the system in each office, is the U.S. Trustee and in the Executive Office, the Deputy Director. (See appendix of addresses identified as JUSTICE/UST–999.)

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request".

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment(s) to the information.

RECORD SOURCE CATEGORIES:

Nonclerical employees of the U.S. Trustee's offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–19010 Filed 7–23–99; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[A.G. Order No. 2235–99]

Certification of the Attorney General, Leake County, Mississippi

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States in Leake County, Mississippi. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made on August 6, 1965, under section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on August 7, 1965 (30 FR 9897).

Dated: July 16, 1999.

Janet Reno,

Attorney General of the United States.

[FR Doc. 99–18931 Filed 7–23–99; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before September 24, 1999.

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, DC 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Karin G. Kurz, BLS Clearance Officer. (See **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

I. Proposed Collection

Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Cognitive and Psychological Research." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

II. Background

The Bureau of Labor Statistics' Behavior Science Research Laboratory (BSRL) conducts theoretical, applied, and evaluative research aimed at improving the quality of data collected and published by the BLS. Since its creation in 1988, the BSRL has advanced the study of survey methods research, approaching issues of non-sampling error within a framework that draws heavily on the theories and methods of the cognitive, statistical and social sciences. The BSRL research focuses primarily on the assessment of survey instrument design and survey administration, as well as on issues related to interviewer training and the interview process. Improvements in these areas result in better accuracy and response rates of BLS surveys, frequently reduce costs in training and survey administration, and further ensure the effectiveness of the overall BLS mission.

III. Current Actions

The purpose of this request for clearance is to conduct cognitive and psychological research designed to enhance the quality of BLS data collection procedures and overall data management. The BLS is committed to producing the most accurate and complete data within the highest quality assurance guidelines. The BSRL was created to aid in this effort, and over the past decade it has demonstrated the effectiveness and value of its approach. Over the next few years, demand for BSRL consultation is expected to rise, as information processing approaches to survey methods research become more common. Moreover, as the use of computers and web-based surveys continues to grow, so too will the need for careful tests of instrument design and usability, human-computer interactions, and other potential problems in data quality that these technologies bring. The BSRL is uniquely equipped to accommodate these demands.

Much of the work done by the BSRL is conducted under controlled laboratory conditions, and relies on the participation of volunteer subjects recruited from the general public. Retaining subjects as BSRL participants for multiple studies is necessary to minimize the costs of recruitment, and is often methodologically essential for studies investigating temporal effects or the effects of multiple treatments on subject responses. Competition with private research establishments, a perceived high burden to compensation ratio, and travel or scheduling constraints often result in individuals dropping from BSRL rolls after only one study.

The revisions in this submission reflect an effort to reverse recent trends in BSRL subject attrition, and to accommodate increasing interest by BLS statistical program offices and other agencies in the methods used and results obtained by the BSRL. This submission reflects planned research and development activities for Fiscal Year 2000 through Fiscal Year 2002; its approval will enable the continued productivity of a state-of-the-art, multi-disciplinary program of behavioral science research to improve BLS survey methodology.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Cognitive and Psychological Research.

OMB Number: 1220–0141.

Affected Public: Individuals and Households; business and other for-profit; not-for-profit institutions; State, Local, or Tribal Government.

Total Respondents: 4,000.

Frequency: On occasion.

Total Responses: 4,000.

Average Time Per Response: 60 minutes.

Estimated Total Burden Hours: 4,000 hours.

Total Burden Cost (capital/startup): $0

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 20th day of July 1999.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 99–19003 Filed 7–23–99; 8:45 am]

BILLING CODE 4510–24–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U. S. Nuclear Regulatory Commission (the Commission) has granted a request to the Tennessee Valley Authority (the Licensee) to withdraw its December 23, 1998.

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application for proposed amendment to Facility Operating License No. NPF–90 for the Watts Bar Nuclear Plant, located in Rhea County, Tennessee.

The proposed amendment would have provided a temporary change, until the next time the unit entered Mode 3, to the ice condenser inlet door position monitoring system channel check methodology to account for the impact of an annunciator ground on the existing channel check methods.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 31, 1998 (63 FR 72339). However, by letter dated March 9, 1999, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 23, 1998, and the licensee's letter dated March 9, 1999, which withdrew the application for this license amendment. The above documents are available for public inspection at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

Dated at Rockville, Maryland, this 16th day of July, 1999.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–18984 Filed 7–23–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Comment on the Pilot Program for the New Regulatory Oversight Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing significant revisions to its processes for overseeing the safety performance of commercial nuclear power plants that include integrating the inspection, assessment, and enforcement processes. As part of its proposal, the NRC staff established a new regulatory oversight framework with a set of performance indicators and associated thresholds, developed a new baseline inspection program that supplements and verifies the performance indicators, and created a continuous assessment process that includes a method for consistently determining the appropriate regulatory actions in response to varying levels of safety performance. The changes are the result of continuing work on concepts as described in SECY–99–007, "Recommendations for Reactor Oversight" dated January 8, 1999, and SECY–99–007A, "Recommendations for Reactor Oversight Improvements (Follow-Up to SECY–99–007)" dated March 22, 1999. In June 1999, the NRC began a six-month pilot program with two sites participating from each region. The purpose of the pilot program is to exercise the new oversight process, identify problems, develop lessons learned, and make any necessary changes before full implementation at all sites. The NRC is soliciting comments from interested public interest groups, the regulated industry, States, and concerned citizens. The NRC staff will consider comments it receives for further development and refinement of the new oversight process.

DATES: The comment period expires November 30, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC's Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

Comments may be submitted electronically at the "NRC Initiatives 1999" web page at: http://www.nrc.gov/NRC/COMMISSION/INITIATIVES/1999/COMMENTS/ 2a_cmt.html

Copies of the Pilot Program Guidelines may be obtained at the following web site: http://www.nrc.gov/NRR/OVERSIGHT/index.html

Additional information on the pilot program may be obtained from the NRC's Public Document Room at 2120 L St., NW, Washington, DC 20003–1527, telephone 202–634–3272.

FOR FURTHER INFORMATION CONTACT: Alan Madison, Mail Stop: O–5 H4, Inspection Program Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1490.

SUPPLEMENTARY INFORMATION:

Background

In September 1997, the NRC began an integrated review of the process used for assessing safety performance by commercial nuclear power plant licensees. The NRC staff presented a conceptual design for a new integrated assessment process to the Commission in Commission paper SECY–98–045, dated March 9, 1998.

In parallel with the staff's work on the integrated review of the assessment processes (IRAP) and the development of other assessment tools, the nuclear power industry independently developed a proposal for a new assessment and regulatory oversight process. This proposal, developed by the Nuclear Energy Institute (NEI), took a risk-informed and performance-based approach to the inspection, assessment, and enforcement of licensee activities on the basis of the results of a set of performance indicators.

The staff set out to develop a single set of recommendations for making improvements to the regulatory oversight processes in response to NEI's proposal, the Commission's comments on the IRAP proposal, comments made at a Commission meeting on July 17, 1998, with public and industry stakeholders and the hearing before the Senate on July 31, 1998. The IRAP public comment period (which ended in October 1998), during which the NRC conducted a four day public workshop in the Fall of 1998, was used to facilitate internal and external input into the development of these recommendations.

Following the public workshop, the NRC staff formed three task groups to complete the work begun at the workshop and to develop the recommendations for the integrated oversight processes: A technical framework task group, an inspection task group, and an assessment process task group. The technical framework task group was responsible for completing the assessment framework and for identifying the performance indicators (PIs) and appropriate thresholds that could be used to measure safety performance. The inspection task group was responsible for developing the scope, the depth, and the frequency of a risk-informed baseline inspection program that would be used to supplement and verify the PIs. The assessment process task group developed methods for integrating PI data and inspection data, determining

NRC action on the basis of assessment results, and communicating results to licensees and the public. Other staff activities to improve the enforcement process were coordinated with these three task groups to ensure that changes to the enforcement process were properly evaluated in the framework structure and that changes to the inspection and assessment programs were integrated with the changes to the enforcement program.

The task groups completed their work between October and December 1998, and developed recommendations to be presented to the Commission. On January 20, 1999, the staff briefed the Commission on the staff's proposal as described in SECY–99–007, "Recommendations for Reactor Oversight Improvements."

The follow-up recommendations for an integrated oversight process are presented in SECY–99–007A, "Recommendation for Reactor Oversight Process Improvements (Follow-Up to SECY–99-007)" dated March 22, 1999, and its attachments. This paper includes further information on the development of the Significance Determination Process (SDP) and the revised enforcement policy.

Scope of the Public Comment Period

This public comment period will focus on obtaining industry and public views on the new oversight process as implemented during the Pilot Program and any additional issues that need to be addressed prior to full implementation of the new oversight process. To assist respondents the following questions are included as a guide. Comments should be as specific as possible and the use of examples is encouraged.

1. Does the new oversight process provide adequate assurance that plants are being operated safely?

2. Does the new oversight process enhance public confidence by increasing the predictability, consistency, clarity and objectivity of the NRC's oversight process?

3. Does the new oversight process improve the efficiency and effectiveness of the regulatory process focusing agency resources on those issues with the most safety significance?

4. Does the new oversight process reduce unnecessary regulatory burden on licensees?

5. The new oversight process does not currently provide an overall assessment of performance of an individual safety cornerstone other than a determination that the cornerstone objectives have or have not been met. However, it does identify regulatory actions to be taken for degraded performance within the safety cornerstones. Is an overall safety cornerstone assessment warranted or appropriate?

6. Licensee findings as well as NRC inspection findings are candidates for being evaluated by the significance determination process. Does this serve to discourage licensees from having an aggressive problem identification process?

7. In the new oversight program, positive inspection observations are not included in NRC inspection reports and the plant issues matrix (PIM) due to a lack of criteria and past inconsistencies and subjectivity in identifying such issues. Previous feedback on this issue indicated that the vast majority of commenters believed positive inspection findings should not be factored into the assessment process. Does the available public information associated with the revised reactor oversight process, including the NRC's web page which includes information on performance indicators and inspection findings, provide an appropriately balanced view of licensee performance? If not, should positive inspection findings be captured and incorporated into a process to reach an overall inspection indicator for each cornerstone?

8. The staff has established several mechanisms such as public meetings held in the vicinity of the plants, this **Federal Register** Notice, and the NRC's website to solicit public feedback on the Pilot Program. Are there any other appropriate means by which the agency could solicit stakeholder feedback, in a structured and consistent manner, on the Pilot Program?

9. Are there any additional issues that the agency needs to address prior to full implementation of the new oversight process at all sites?

Dated at Rockville, Maryland, this 19th day of July 1999.

For the Nuclear Regulatory Commission.

William M. Dean,

Chief, Inspection Program Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–18983 Filed 7–23–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Severe Accident Management; Notice of Meeting

The ACRS Subcommittee on Severe Accident Management will hold a meeting on August 9–10, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows:

Monday, August 9, 1999—8:30 a.m. until the conclusion of business

Tuesday, August 10, 1999—8:30 a.m. until the conclusion of business

The Subcommittee will review: (1) The proposed final revision of the Source Term Rule and draft versions of the associated regulatory guide and Standard Review Plan Section; (2) the proposed revision to Regulatory Guide 1.78, "Assumptions for Evaluating the Habitability of a Nuclear Power Plant Control Room During a Postulated Hazardous Chemical Release"; and (3) the status of issues associated with the Office of Nuclear Regulatory Research Severe Accident Research Program. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review. Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above

named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: July 20, 1999.

Richard P. Savio,

Associate Director for Technical Support. ACRS/ACNW.

[FR Doc. 99–18982 Filed 7–23–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

July 1, 1999.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of July 1, 1999, of three rescission proposals and three deferrals contained in two special messages for FY 1999. These messages were transmitted to Congress on October 22, 1998, and February 1, 1999.

Recissions (Attachments A and C)

As of July 1, 1999, three rescission proposals totaling $35 million have been transmitted to the Congress. Attachment C shows the status of the FY 1999 rescission proposals.

Deferrals (Attachments B and D)

As of July 1, 1999, $682 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1999.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the **Fedeal Register** cited below:

63 FR 63949, Tuesday, November 17, 1998
64 FR 6721, Wednesday, February 10, 1999

Jacob J. Lew,

Director.

Attachment A

STATUS OF FY 1999 RESCISSIONS

[In millions of dollars]

	Budgetary resources
Recisions proposed by the President	35.0

STATUS OF FY 1999 RESCISSIONS—Continued

[In millions of dollars]

	Budgetary resources
Rejected by the Congress	.....
Amounts rescinded by P.L. 106–31, the FY 1999 Emergency Supplemental Appropriations and Rescissions Act	–16.8
Currently before the Congress	18.2

Attachment B

STATUS OF FY 1999 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	1,680.7
Routine Executive releases through June 1999 (OMB/Agency releases of $1,082.3 million, partially offset by a cumulative positive adjustment of $83.6 million)	–998.7
Overturned by the Congress	.....
Currently before the Congress	682.0

BILLING CODE 3110–01–P

ATTACHMENT C
Status of FY 1999 Rescission Proposals - As of July 1, 1999
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Management of Lands and Resources	R99-1		6,800	2-1-99	*		6,800	P.L. 106-31
EXECUTIVE OFFICE OF THE PRESIDENT								
Unanticipated Needs								
Unanticipated Needs for Natural Disasters	R99-2		10,000	2-1-99	*		10,000	P.L. 106-31
INTERNATIONAL ASSISTANCE PROGRAMS								
International Security Assistance								
Foreign Military Financing Loan Program Account	R99-3		18,240	2-1-99	*			
TOTAL, RESCISSIONS			35,040				16,800	

* No funds were withheld.

ATTACHMENT D
Status of FY 1999 Deferrals - As of July 1, 1999
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Date of Message	Congressional Action	Cumulative Adjustments	Amount Deferred as of 7-1-99
DEPARTMENT OF STATE									
Other									
United States Emergency Refugee and Migration Assistance Fund	D99-1	82,858		10-22-98					7,858
			17,724	92,724		2-1-99			
INTERNATIONAL ASSISTANCE PROGRAMS									
International Security Assistance Economic Support Fund	D99-2	84,777		10-22-98					659,102
			1,310,376	819,658		2-1-99		83,606	
Agency for International Development International Disaster Assistance	D99-3	185,000		2-1-99					15,100
				169,900					
TOTAL, DEFERRALS		352,635	1,328,100	1,082,282				83,606	682,059

[FR Doc. 99–18935 Filed 7–23–99; 8:45 am]
BILLING CODE 3110–01–C

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request;

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, NW, Washington, DC 20549–0102

Extension:
Rule 19b–1, SEC File No. 270–312, OMB Control No. 3235–0354

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collections of information discussed below.

Rule 19b–1 is entitled "Frequency of Distribution of Capital Gains." The rule prohibits registered investment companies ("funds") from distributing long-term capital gains more than once every twelve months unless certain conditions are met. Rule 19b–1(c) permits unit investment trusts ("UITs") engaged exclusively in the business of investing in certain eligible fixed-income securities to distribute long-term capital gains more than once every twelve months, if (i) the capital gains distribution falls within one of several categories specified in the rule [rule 19b–1(c)(1)] and (ii) the distribution is accompanied by a report to the unitholder that clearly describes the distribution as a capital gains distribution [rule 19b–1(c)(2)] (the "notice requirement"). The purpose of this notice requirement is to ensure that unitholders understand that the source of the distribution is long-term capital gains.

Rule 19b–1(e) permits a fund to apply for permission to distribute long-term capital gains more than once a year if the funds did not foresee the circumstances that created the need for the distribution. The application must set forth the pertinent facts and explain the circumstances that justify the distribution. An application that meets those requirements is deemed to be granted unless the Commission denies the request within 15 days after the Commission receives the application. The Commission uses, the information required by rule 19b–1(e) to facilitate the processing of requests from funds for authorization to make a distribution that would not otherwise be permitted by the rule.

The Commission staff estimates the time required to comply with the notice requirement of rule 19b–1(c) to be one hour or less for each additional distribution of long-term capital gains. As of December 31, 1998, there were approximately 11,500 UIT portfolios that may be eligible to use the rule. The staff estimates that on average each UIT may be required to prepare a notice under the rule one time each year. Therefore, the estimated total annual maximum reporting burden is 11,500 hours.

The Commission staff estimates that the time required to prepare an application under rule 19b–1(e) if approximately four hours. The staff estimates that on average six funds each file one application per year under this rule. Based on these estimates, the total paperwork burden is 24 hours for paragraph (e) of rule 19b–1.

Based on these calculations, the total number of respondents for rule 19b–1 is estimated to be 11,506 (11,500 UIT portfolios + 6 funds filing applications) and the total number of burden hours is estimated to be 11,524 (11,500 hours for the notice requirement + 24 hours for applications). This estimate of burden hours represents a decrease of 2,651 hours from the current allocation of 14,175 burden hours. This decrease is attributable to a decrease in the estimated total number of respondents to rule 19b–1.

These estimates of average burden hours are made solely for purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

The collections of information required by 19b–1(c) and 19b–1(e) are necessary to obtain the benefits described above. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 16, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–18988 Filed 7–23–99; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27050]

Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")

July 16, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transactions(s) summarized below. The application(s) and/or declarations(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applications(s) and/or declaration(s) should submit their views in writing by August 10, 1999, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 10, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

West Penn Power Company

(70–7888)

West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, PA 15601, a wholly owned electric public utility subsidiary of Allegheny Energy, Inc., a registered holding company, has filed a post-effective amendment under sections 6(a) and 7 of the Act on an application-declaration originally filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rule 45 under the Act.

By orders dated January 29, 1992 (HCAR No. 25462), February 28, 1992 (HCAR No. 25481), July 14, 1992 (HCAR No. 25581), November 5, 1993 (HCAR

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No. 25919), November 28, 1995 (HCAR No. 26418), April 18, 1996 (HCAR No. 26506), and December 23, 1997 (HCAR No. 26804) (collectively "Prior Orders"), West Penn was authorized, among other things, to issue up to $182 million in short-term debt through December 31, 2001. West Penn now proposes to: (1) Income the amount of short-term debt that West Penn may issue from $182 million up to $500 million under the terms and conditions stated in the Prior Orders; and (2) extend the period of authorization through December 31, 2007.

West Penn states that the increase is necessary to enhance its ability to participate in evolving energy markets resulting from deregulation and, upon subsequent application and approval, to support acquisition and diversification plans.

Conectiv, et al. (70–9069)

Conectiv, a registered holding company, and its nonutility subsidiaries, Conctiv Services, Inc. ("CSI"), a nonutility subsidiary of Conectiv engaged in energy-related services, Delmarva Capital Investment, Inc. ("DCI"), and Conectiv Solutions, Inc. ("Solutions"), an energy marketing subsidiary of Conectiv (together, "Applicants"), all located at 800 King Street, Wilmington, Delaware 19899, have filed a post effective amendment to an application previously filed under sections 9(a) and 10 of the Act, and rule 54 under the Act.

Conectiv holds interests in certain direct and indirect nonutility subsidiary companies, including ATE Investments, Inc. ("ATE"), a direct subsidiary of Conectiv. ATE owns equity interests in three leveraged leases and a 94% limited partnership interest in EnerTech Capital Partners, L.P. ("EnerTech"), a company that invests in companies developing energy-related technologies. By order dated December 16, 1998 (HCAR No. 26953) (the "Restructuring Order"), the Commission authorized Conectiv to restructure its nonutility subsidiaries in two phases that would ultimately result in, among other things, ATE being acquired by DCI (to be renamed Conectiv Property and Investments, Inc. ("CPI")). Conectiv states that it intended to use CPI to hold passive investments. As a result of the restructuring, Conectiv would reduce its active direct nonutility subsidiaries to just three companies: CPI, CSI, and Conectiv Energy Supply, Inc., a company directly and indirectly engaged in the marketing of energy.

Conectiv now proposes for Solutions or CSI,[1] to acquire the common stock of ATE. Applicants state that the technology investments held by ATE through EnerTech are more directly related to the energy-related services conducted by CSI and, therefore, should be a CSI subsidiary.

Alliant Energy Corporation, et al. (70–9513)

Alliant Energy Corporation ("Alliant"), a registered holding company, 222 West Washington Avenue, Madison, Wisconsin 53703 and its wholly owned public utility subsidiary, IES Utilities, Inc. ("IES"),[2] Alliant Tower, Cedar Rapids, Iowa 52401, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 54, 90 and 91 under the Act.

Alliant indirectly owns undivided interest in two nuclear power facilities, the Kewaunee Nuclear Power Plant ("KNPP"),[3] located in the Town of Carlton, Wisconsin, and the Duane Arnold Energy Center ("DAEC"),[4] located in Palo, Iowa.

Alliant request authority to acquire all of the voting securities of a Alliant Nuclear, a to-be-formed subsidiary that will be organized under Wisconsin law. Through Alliant Nuclear, Alliant proposes to acquire a 25% membership interest in Nuclear Management Company, LLC ("NMC"),[5] a Wisconsin limited liability company, formed for the purpose of consolidating specialized employees and resources of IES and certain other unaffiliated nuclear power plant owners. The current members of NMC or their utility affiliates and IES (collectively, "NMC Plant Owners"), own interests and operate seven nuclear generating units at five locations,[6] (collectively, "NMC Plants").

NMC will be managed by a board of directors comprised of representatives of each of its members and will be capitalized with contributions from each of its members, as provided for in the NMC Limited Liability Company Operating Agreement ("Operating Agreement"). It is intended that the capital contributions of members will be equal, the profits and losses of NMC will be allocated to the members in accordance with their percentage interests and additional capital contributions will be made by capital calls, also in accordance with percentage interests. The Operating Agreement further contemplates the admission of other utilities as members. The Operating Agreement requires a supermajority vote of members to make a capital call greater than $250,000 annually per member and the rate of return on NMC's equity capital used to serve the NMC Plants will not exceed the average of the most recent rates of return allowed by the public service commissions that regulate the NMC members.[7]

NMC will provide certain services to NMC Plant Owners, including IES, as stated in a service agreement ("Service Agreement"). The services provided under the Service Agreement include fuel management, procurement and warehousing, licensing, outage support, quality assurance, records management, safety assessment and oversight, security, training and special projects ("Services"). The Service Agreement further allows for a period of time for Service Development Teams to determine whether Services or a group of Services can be provided on a centralized basis. If it is determined that a Service or group of Services can be provided by NMC on an integrated basis, then an implementation plan for transitioning these Services to NMC will be developed. NMC Plant Owners will be obligated to make good faith efforts to take Services from NMC. IES however, will not be obligated to take Services if it believes that to do so would jeopardize the safety, integrity, or reliability of DAEC or compliance with

[1] Under the Restructuring Order, Solutions is to be merged into CSI.

[2] Alliant's other public utility subsidiaries include: Wisconsin Power & Light Company ("WP&L"); South Beloit Water, Gas and Electric Company; and Interstate Power Company (collectively, including IES ("Operating Companies").

[3] KNPP is a 532 megawatt pressurized water reactor, operated by Wisconsin Public Service Corporation ("WPSC"), a subsidiary of WPS Resources Corporation ("WPS Resources") and jointly owned by WPSC, 41.2%, WP&L, 41.0%, and Madison Gas & Electric Company, 17.8%.

[4] DAEC is a 535 megawatt boiling water reactor, operated and 70% owned by IES. The remaining 30% ownership interest is held by two generation and transmission cooperatives.

[5] Current members of NMC include: WEC Nuclear Corp, a subsidiary of Wisconsin Energy Corporation; WPS Nuclear Corporation, a subsidiary of WPS Resources and an affiliate of WPSC; and Northern States Power Company ("NSP").

[6] NSP owns and operates the Prairie Island Units 1 and 2, located near Red Wing, Minnesota. Both units are pressurized water reactors having a combined net generating capacity of 1,003 megawatts, and the Monticello generating station, located near Monticello, Minnesota, a boiling water reactor with a net generating capacity of 536 megawatts. Wisconsin Electric Power Company, a subsidiary of WEC, owns and operates two units at the Point Beach nuclear generating station located near Two Rivers, Wisconsin. Both units are pressurized water reactors and have a combined net generating capacity of 970 megawatts. DAEC and KNPP comprise the remaining two units.

[7] At present, NMC members are regulated by the Iowa Utilities Board, the Minnesota Public Service Commission and the Public Service Commission of Wisconsin.

government regulations, NMC may also offer other categories of services to NMC Plant Owners which NMC Plant Owners may choose to take, however, they will not be obligated to do so.

IES's commitments to purchase services from and provide personnel and other resources to NMC are stated in the Service Agreement and an Employee Lease Agreement[8] which will be substantially identical to those between NMC and each of the other NMC Plant Owners.

In the near term, it is anticipated that IES employees involved in the operation and management of DAEC will continue to devote most of their time to those duties, however, as NMC develops, service delivery will likely become more integrated among the NMC Plant Owners, and IES employees will devote more of their time to the performance of Services for other NMC Plant Owners.

NMC Plant Owners will be committed under the Service Agreement to make available to NMC personnel and other resources as reasonably necessary to enable NMC to provide Services. Personnel resources may be provided under employee leases, direct employee charges to NMC or transfer of employees to NMC. Other resources made available to NMC may include the use of office space, vehicles, furniture, equipment, informational systems and computer time. The NMC Plant Owners providing services or other resources to NMC will be reimbursed for the cost thereof in accordance with rules 90 and 91.

All of the Services furnished by NMC to the NMC Plant Owners will be at cost, fairly and equitably allocated. NMC will submit monthly statements to each NMC Plant Owners for the Services rendered during the previous month. The monthly payment and billing procedure is expected to minimize the need for substantial working capital by NMC.[9] In the case of Services rendered by NMC in respect to DAEC and KNPP, both of which are jointly owned with other utility companies, costs will be reallocated among the plant owners in proportion to their respective ownership shares in the manner provided in the participation or ownership agreement among the owners of those plants.

NMC will maintain its books, records, and system of accounts in substantial conformity with the Uniform System of Accounts for Mutual Services and Subsidiary Service Companies, as in effect from time to time.[10]

To the extent that costs incurred by NMC can be identified to a particular NMC Plant or Plants, these costs will be directly assigned to the owner or owners of the respective NMC Plant or Plants as appropriate. Costs which cannot be directly assigned to a particular Plant will be allocated through a loading on direct labor costs charged to each of the NMC Plant Owners for Services performed. The loading will be based on estimates of direct labor dollars made at the beginning of each year and will be adjusted annually based on actual indirect charges for common costs incurred and actual labor dollars charged for Services in that year. Certain other costs which provides benefits to all NMC Plant Owners will be allocated equitably among the NMC Plant Owners. Subject to the availability of resources and its commitment to the NMC Plant Owners, NMC may also provide services to nonaffiliated companies at rates other than cost, provided that the ultimate purchaser of the services is not an Operating Company.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–18989 Filed 7–23–99; 8:45 am]

BILLING CODE 8010–01–M

[8] The Employee Lease Agreement confirms that each IMC Plant Owner will retain direction and control over its employees and that employees shall continue to be employed by the respective NMC Plant Owners, not NMC. It also enumerates all employee-related expenses which would be included in the determination of a fully loaded, fully allocated cost and incorporates various terms from the Service Agreement to coordinate the Employee Lease Agreement with the Service Agreement.

[9] To the extent that working capital is required, it is anticipated that NMC will borrow funds from lenders as permitted under rule 52.

[10] IES will have full access to NMC's books and records.

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Uniprime Capital Acceptance, Inc.; Order of Suspension of Trading

July 21, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Uniprime Capital Acceptance, Inc. ("Uniprime") because of questions regarding the accuracy of statements by Uniprime to investors concerning, among other things, a product developed by a subsidiary for treating human immunodeficiency virus (HIV).

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, July 22, 1999 through 11:59 p.m. EDT, on August 4, 1999.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–19099 Filed 7–22–99; 11:21 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41627; File No. 600–24]

Self-Regulatory Organization; Delta Clearing Corp.; Notice of Expiration of Temporary Registration as a Clearing Agency

July 20, 1999.

Notice is hereby given that Delta Clearing Corp's ("DCC") temporary registration as a clearing agency will expire on July 31, 1999.[1] DCC has informed the staff of the Securities and Exchange Commission ("Commission") that it will not file an application requesting that the Commission extend its registration as a clearing agency.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Susan Petersen, Staff Attorney, at 202/942–4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

Background

On January 12, 1990, pursuant to Sections 17A and 19(a) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 17Ab2–1(c) thereunder,[3] the Commission granted DCC's application for registration as a clearing agency on a temporary basis for a period of thirty-six months.[4] Since that time, the Commission has extended DCC's temporary registration through July 31, 1999.[5]

[1] Securities Exchange Act Release No. 40112 (June 23, 1998), 63 FR 35298 [File No. SR–DCC–600–24] (order approving DCC's extension of temporary registration).

[2] 15 U.S.C. 78q–1 and 78s(a).

[3] 17 CFR 240.17Ab2–1(c).

[4] Securities Exchange Act Release No. 27611 (January 12, 1990), 55 FR 1890. Prior to a 1996 name change, DCC was named Delta Government Options Corp.

[5] See Securities Exchange Act Release Nos. 31856 (February 11, 1993), 58 FR 9005 (order extending

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On October 26, 1998, DCC informed the Commission staff[6] that it would not accept new transactions after October 29, 1998, and would cease to carry transactions on its books after June 30, 1999. On October 29, 1998, DCC issued a notice to its participants to inform them of its decision to cease operations. DCC in fact ceased operations on January 30, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–18990 Filed 7–23–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3196]

State of Georgia

Fulton County and the contiguous counties of Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, and Gwinnett in the State of Georgia constitute a disaster area as a result of damages caused by severe storms and flooding, and resulting fires, that occurred on July 6, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on Sept. 16, 1999 and for economic injury until the close of business on April 16, 2000 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.000
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster are 319611 for physical damage and 9D2300 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 16, 1999.

Michael D. Schattman,

Acting Administrator.

[FR Doc. 99–18950 Filed 7–23–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3189, Amdt. 2]

State of North Dakota

In accordance with a notice received from the Federal Emergency Management Agency dated July 13, 1999, the above-numbered Declaration is hereby amended to include the following areas as a disaster area due to damages caused by severe storms, flooding, snow and ice, ground saturation, landslides, mudslides, and tornadoes beginning on March 1, 1999 and continuing: Cavalier, Eddy, and Morton Counties.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 6, 1999, and for economic injury the deadline is March 8, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 13, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–18952 Filed 7–23–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3189, Amdt. 1]

State of North Dakota

In accordance with a notice received from the Federal Emergency Management Agency dated July 6, 1999, the above-numbered Declaration is hereby amended to include the following areas as a disaster area due to damages caused by severe storms, flooding, snow and ice, ground saturation, landslides, mudslides, and tornadoes beginning on March 1, 1999 and continuing: Burke, Divide, Mercer, Sioux, and Williams Counties, and the Indian Reservation of the Standing Rock Sioux (that portion of the Reservation within the State of North Dakota).

In addition, applications for economic injury loans from small businesses located in the following contiguous areas may be filed until the specified date at the previously designated location: Adams, Grant, and Stark Counties in North Dakota; Richland, Roosevelt, and Sheridan Counties in Montana; and Corson and Perkins Counties in South Dakota, as well as that portion of the Standing Rock Sioux Indian Reservation located in South Dakota.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 6, 1999, and for economic injury the deadline is March 8, 2000.

The economic injury number for the State of Montana is 9D2200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 9, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–18953 Filed 7–23–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3191, Amdt. 1]

State of South Dakota

In accordance with a notice received from the Federal Emergency Management Agency, with an effective date of June 18, 1999, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on June 4 and continuing through June 18, 1999.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 7, 1999, and for economic injury the deadline is March 9, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 9, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–18954 Filed 7–23–99; 8:45 am]

BILLING CODE 8025–01–P

registration until January 12, 1995); 35198 (January 6, 1995), 60 FR 3286 (order extending registration until January 31, 1997); 38224 (January 31, 1997), 62 FR 5869 (order extending registration until July 31, 1997); 38869 (July 24, 1997), 62 FR 40871 (order extending registration until July 31, 1998); and 40112 (June 23, 1998) 63 FR 35298 (order extending registration until July 31, 1999).

[6] Telephone conversation between Ronald H. Buckner, President, DCC, and Commission staff (October 26, 1998).

[7] 17 CFR 200.30–3(a)(16).

DEPARTMENT OF STATE

[Delegation of Authority No. 235]

Delegation of Responsibility Under Section 2106 of the Foreign Affairs Reform and Restructuring Act of 1998, as Contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277)

By virtue of the authority vested in me as Secretary of State, including the authority of section 1 of the State Department Basic Authorities Act of 1956, (22 U.S.C. 2651a), as amended, and the authority of the Presidential Memorandum of May 26, 1999, I hereby delegate to the Assistant Secretary for International Organization Affairs the functions of section 2106 of the Foreign Affairs Reform and Restructuring Act of 1998, as contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277) and vested in the Secretary of State by Presidential Memorandum dated May 26, 1999.

Notwithstanding this delegation of authority, the Secretary of State may at any time exercise any function delegated by this Delegation.

This delegation of authority shall be published in the **Federal Register**.

Dated: July 7, 1999.

Strobe Talbott,

Acting Secretary, Department of State.

[FR Doc. 99–19004 Filed 7–23–99; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 6, 1999, [FR 64, page 24447].

DATES: Comments must be submitted on or before August 25, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Aviator Safety Studies.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0587.

Forms(s): N/A.

Affected Public: General aviation pilots.

Abstract: In order to develop effective intervention programs to improve aviation safety, data are required on the type and range of various pilot attributes related to their skill in making safety-related aeronautical divisions. The information collected will be used to develop new training methods particularly suited to general aviation pilots.

Estimated Annual Burden Hours: 13,333 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 20, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–18994 Filed 7–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Fairbanks International Airport, Fairbanks, AK

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fairbanks International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 25, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ronnie V. Simpson, Manager, Alaskan Region Airports Division, Federal Aviation Administration; 222 West 7th, Box 14; Anchorage, AK 99513–7587.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Bill O'Leary, Controller, Alaska International Airport System, at the following address: State of Alaska Department of Transportation and Public Facilities, P.O. Box 196960, Anchorage, AK 99519–6960.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the State of Alaska Department of Transportation and Public Facilities under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Debbie Roth, Program Specialist, Alaskan Region Airports Division, Planning and Programming Branch, AAL–611A, 222 W 7th, Box 14, Anchorage, AK, 99513–7578, (907) 271–5543. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#99–01–C–00–FAI) to impose and use the revenue from a PFC at Fairbanks International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the

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Federal Aviation Regulations (14 CFR part 158).

On July 15, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by State of Alaska, Department of Transportation and Public Facilities, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 28, 1999.

The following is a brief overview of the application.

Application number: 99–01–C–00–FAI.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2000.

Proposed charge expiration date: March 1, 2006.

Total estimated PFC revenue: $5,460,000.

Brief description of proposed projects: Terminal Improvements; Acquire Snow Removal Equipment and Airport Rescue and Fire Fighting Vehicle; Construct Maintenance Facility.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Passengers enplaned by any class of carriers or foreign air carrier if the passengers are enplaned on a flight to an airport serving a community which has a population of less than 10,000 and is not connected by a land highway to the land-based National Highway System (as defined by section 103(b)(5) of Title 23.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** at the FAA, Alaskan Region Airports Division, Anchorage, Alaska.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Fairbanks International Airport. 6450 Airport Way #1, Fairbanks, Alaska, 99709.

Issued in Anchorage, Alaska on July 16, 1999.

Ronnie V. Simpson,

Manager, Airports Division, Alaskan Region.

[FR Doc. 99–18993 Filed 7–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–99–5748]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of petitions and intent to grant applications for exemption; request for comments.

SUMMARY: This notice announces the FHWA's preliminary determination to grant the applications of 33 individuals for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). Granting the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before August 25, 1999.

ADDRESSES: Your written, signed comments must refer to the docket number at the top of this document, and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Motor Carrier Research and Standards, (202) 366–2987; for information about legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the office of the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

Thirty-three individuals have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Under 49 U.S.C. 31315 and 31136(e), the FHWA may grant an exemption for a renewable 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Accordingly, the FHWA has evaluated each of the 33 exemption requests on its merits, as required by 49 U.S.C. 31315 and 31136(e), and preliminarily determined that exempting these 33 applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption.

Qualifications of Applicants

1. Terry James Aldridge

Mr. Aldridge is a 35 year-old individual who has operated straight trucks and tractor-trailer combinations for more than 10 years. Because his left eye was removed at eight months of age, Mr. Aldridge is unable to meet the vision requirement in 49 CFR 391.41(b)(10).

A 1999 examination by the optometrist reveals Mr. Aldridge's best-corrected vision in his right eye is 20/20, and no pathological conditions were detected during this examination. In the optometrist's opinion, Mr. Aldridge has adequate vision to operate a CMV safely.

Mr. Aldridge holds a Mississippi commercial driver's license (CDL). He has driven more than one-million miles and his official driving record for the past 3 years contains one accident and no traffic violations in a CMV. Mr. Aldridge was not issued a citation.

2. Jerry D. Bridges

Mr. Bridges, 41, has had amblyopia in his left eye since early childhood. A 1999 medical examination indicates that he has 20/20 corrected acuity in his right eye and 20/100 corrected acuity in his left eye. According to his optometrist, the condition in his left eye is stable, visual fields are full and normal in each eye, and no significant ocular problems were discovered. In the optometrist's opinion, Mr. Bridges' "visual condition should present no difficulties in operating a commercial vehicle."

Mr. Bridges has been a professional truck driver for 20 years and has driven straight trucks and tractor-trailer combinations more than one-million miles. He holds a Texas CDL, and a review of his State driving record indicates no moving violations and no accidents in any vehicle in the last 3 years.

3. Michael L. Brown

Mr. Brown is 51 years old and has been employed as a commercial truck driver for 25 years. He has 20/400 vision in his left eye and therefore cannot meet the vision requirement of 49 CFR 391.41(b)(10).

A 1999 examination indicates Mr. Brown injured the left eye at age 4, and that he underwent corneal transplantation and lens implantation in 1988. Confrontational fields are within normal limits in both eyes. In his ophthalmologist's opinion, Mr. Brown's "visual efficiency is adequate to operate a commercial vehicle."

Mr. Brown holds a Kansas CDL. He has driven straight trucks more than 800,000 miles since 1973. His official driving record for the past 3 years reflects no traffic violations and no accidents in any vehicle.

4. Duane D. Burger

Mr. Burger, 60, is blind in his right eye due to an accident in 1965. A 1999 examination indicates the best corrected vision in his left eye is 20/20. His optometrist says, "It is my impression that Mr. Burger's ocular health and peripheral vision are normal" and "considering Mr. Burger's safety record, I feel there is no reason that he cannot safely continue operating a tractor-trailer."

Mr. Berger has a Kansas CDL. He has driven straight trucks and tractor-trailer combinations for Consolidated Industrial Services since 1985. According to the company safety director, "Mr. Burger has an excellent driving record—an estimated 100,000 accident free miles per year—and is a valued employee." His official State driving record for the past 3 years contains no traffic violations and no accidents in a CMV.

5. Charlie Frank Cook

Mr. Cook, 52, has been employed as a commercial truck driver for 30 years. According to his ophthalmologist, Mr. Cook was treated from 1988 through 1992 for an inflammation in his left eye which damaged his central vision. As a result, he cannot meet the vision requirement of 49 CFR 391.41(b)(10).

A 1999 medical report indicates Mr. Cook's best corrected vision is 20/20 in the right eye and 20/80 in his left eye. In the ophthalmologist's opinion, Mr. Cook's "vision deficiency is stable" and "he has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

He has driven straight trucks and tractor-trailer combinations for more than 3 million miles. Mr. Cook holds a Georgia CDL, and his driving record for the past 3 years reflects no traffic violations and no accidents.

6. Greg L. Dinsmore

Mr. Dinsmore is 39 years old and has been employed as a commercial truck driver for 22 years, driving straight trucks as well as tractor-trailer combinations. He has had limited visual perception in his left eye since the age of two as a result of an injury. Mr. Dinsmore has 20/20 vision in his right eye. In the optometrist's opinion, Mr. Dinsmore has sufficient vision to operate a commercial vehicle. Mr. Dinsmore holds an Oklahoma CDL. He has driven commercial vehicles more than 1 million miles since 1977. His official driving record for the past 3 years reflects no traffic violations and no accidents in any vehicle.

7. Donald D. Dunphy

Mr. Dunphy, 45, has amblyopia in his right eye. A 1999 examination by an ophthalmologist revealed the vision in his right eye to be 20/200 with or without correction and the vision in his left eye to be 20/20 with correction. The ophthalmologist stated Mr. Dunphy has "adapted very well to this level of vision" and has "sufficient vision to operate a commercial motor vehicle."

Mr. Dunphy holds a Virginia CDL. He has operated tractor-trailer combinations for 18 years and straight trucks for 5 years. His official State driving record reflects no traffic citations and no accidents in a CMV for the past 3 years.

8. Ralph E. Eckels

Mr. Eckels, 55, has amblyopia in his left eye. A 1999 examination indicates Mr. Eckels has 20/70 corrected vision in his left eye and 20/20 corrected vison in his right eye. According to the optometrist, Mr. Eckels' "eye condition is considered stable" and he "has acceptable vision for safe driving of commercial vehicles."

Mr. Eckels holds a Kentucky CDL. He has driven straight trucks during a 36-year career. For the last 18 years, he has operated a tandem-axle truck full time for the Union County Road Department. His official State driving record reveals no traffic citations or accidents in any vehicle in the last 3 years.

9. Jerald C. Eyre

Mr. Eyre, 60, has amblyopia in his right eye. Because of this eye condition, Mr. Eyre is unable to meet the Federal vision requirement. He has 20/20 corrected vision in his left eye according to a 1999 examination. In his optometrist's opinion, Mr. Eyre has "sufficient vision and visual skills to perform the driving tasks required to operate a commercial vehicle."

Jerald C. Eyre holds a Montana CDL. He has been a professional truck driver for 40 years and has operated straight trucks, tractor-trailer combinations and buses. His official State driving record contains no moving violations and no accidents in any vehicle in the last 3 years.

10. Russell W. Foster

Mr. Foster, 61, has worn a prosthetic device in his right eye since 1976. His vision in the left eye is 20/20 with corrective lens, according to a 1999 examination. His ophthalmologist states "Mr. Foster is qualified for commercial driving activities."

Russell Foster holds an Ohio CDL with a tank vehicle endorsement. He has driven straight trucks and tractor-trailer combination vehicles during a 45-year career. For the last 10 years, he has operated mainly tractor-trailers for a total of approximately 45,000 to 60,000 miles per year. His official State driving record reveals no traffic citations or accidents in any vehicle in the last 3 years.

11. Arnold D. Gosser

Mr. Gosser, 58, has been employed as a commercial driver for 25 years. His right eye was injured in 1949, resulting in a traumatic cataract which was removed in 1993. The vision in his right eye is 20/200 with glasses. Therefore, Mr. Gosser is unable to meet the vision requirement in 49 CFR 391.41(b)(10).

A 1999 examination revealed Mr. Gosser has 20/20 vision in his left eye with glasses. According to the optometrist, he has more than sufficient vision to perform the tasks required to operate a CMV.

Arnold Gosser holds a Kansas CDL with a tank vehicle endorsement. He has driven tractor-trailer combination vehicles approximately 2.5 million miles and straight trucks approximately

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150,000 miles. There are no moving violations or accidents in any vehicle in the past 3 years on his official driving record. His employer states that "in my 17 years spent in the trucking industry, I have never met a safer driver than Arnold Gosser."

12. Eddie Gowens

Mr. Gowens, 48, has amblyopia in his left eye. Because of this condition, he is unable to meet the Federal vision standard in 49 CFR 391.41(b)(10). An optometrist examined Mr. Gowens in 1999, and found his best corrected vision is 20/100 in the left eye and 20/20 in the right eye. According to the optometrist, "Mr. Gowens" condition will not affect his driving because he has always driven under these conditions."

Eddie Gowens has operated tractor-trailer combinations for Spring Industries, Inc. for 16 years. His employer states Mr. Gowens has done a "wonderful job driving for us and training new drivers." He holds an Alabama CDL, and his official driving record for the past 3 years reflects no moving violations and no accidents in a CMV.

13. Gary R. Gutschow

Mr. Gutschow, 40, has amblyopia in his left eye. He has 20/20 vision in his right eye without correction. An optometrist examined him in 1999 and stated Mr. Gutschow has sufficient vision to perform the driving tasks required to operate a CMV.

Gary Gutschow has 18 years of experience operating tractor-trailer combinations and 3 years' experience operating straight trucks. He holds a Wisconsin CDL with tank vehicle and hazardous materials endorsements and has driven more than 1.6 million miles in commercial vehicles. His official State driving record contains two accidents in a CMV; in each case, Mr. Gutschow was not issued a citation. In one incident, Mr. Gutschow's vehicle was struck from behind when he had to abruptly stop to avoid colliding with a vehicle whose operator had disregarded a red light. In the other incident, the driver of the other vehicle made a lane change into the side of Mr. Gutschow's vehicle. No other violations in any vehicle are reflected in his official driving record for the past 3 years. BSV Transportation, his employer since 1993, states Mr. Gutschow is "an excellent and courteous driver with a good driving record."

14. Richard J. Hanna

Mr. Hanna is a 58-year-old individual who has amblyopia in his left eye. He has 20/20 minus 2 corrected vision in his right eye, according to a 1999 examination. The optometrist who conducted the examination indicates Mr. Hanna has sufficient vision to drive a CMV.

Mr. Hanna has a 30-year career operating tractor-trailer combinations more than 2 million miles. He holds an Oregon CDL and has had no traffic violations or accidents in any vehicle in the past 3 years.

15. Jack L. Henson

Mr. Henson, 45, has been blind in his left eye since 1988 due to an accident involving some tools. A 1999 examination by an optometrist revealed the vision in his right eye to be 20/20 without correction. The optometrist stated Mr. Henson has sufficient vision to perform the driving task required to operate a CMV.

Mr. Henson holds a Texas CDL with a tank vehicle endorsement. He has operated straight trucks and tractor-trailer combinations during a professional driving career spanning more than 20 years. His official State driving record reflects no traffic citations and no accidents in any vehicle for the past 3 years.

16. Richard K. Jensrud

Mr. Jensrud, 30, has operated CMVs for 6 years. He has 20/100 vision in the right eye and therefore cannot meet the vision requirement in 49 CFR 391.41(b)(10).

A 1999 examination indicates Mr. Jensrud suffered a traumatic macular hole in the right eye for which he underwent vitrectomy surgery in 1994. His ophthalmologist states "the vision in his left eye had continued to be excellent at 20/20" and "he [Mr. Jensrud] should have no problems driving a CMV."

Richard Jensrud has a Minnesota CDL with tank vehicle and hazardous materials endorsements. He has driven tractor-trailer combination vehicles for approximately 1.8 million miles. His official State driving record for the past 3 years reveals one accident and no traffic violations in a CMV. Mr. Jensrud's CMV struck the right rear of the other vehicle as both vehicles were leaving a gas station. Although Mr. Jensrud was initially cited for inattentive driving, the case was dismissed. The accident resulted in no injuries.

17. David R. Jesmain

Mr. Jesmain, 54, has amblyopia in his left eye. The vision in his right eye was 20/20 with glasses in a 1999 examination. His optometrist says Mr. Jesmain has sufficient vision to perform the tasks necessary to operate a CMV.

David Jesmain holds a New York CDL. He has 17 years' experience driving straight trucks. His official State driving record contains no traffic violations and no accidents in any vehicle in the past 3 years.

18. Albert E. Malley

Mr. Malley, 57, has glaucoma and an amblyopic left eye, conditions which have been present since birth. Because of these conditions, Mr. Malley is unable to meet the vision requirement in 49 CFR 391.41(b)(10).

A 1999 examination at the Mayo Clinic indicates Mr. Malley had cataract and glaucoma surgery on June 30, 1998. According to the ophthalmologist, the vision in his left eye remains poor (20/400) due to amblyopia but "it is now stable." The vision in his right eye is 20/20 with glasses. The ophthalmologist says Mr. Malley is able to perform the tasks required to operate a CMV.

Mr. Malley has a Minnesota CDL with a tank vehicle/hazardous materials endorsement. He has been a professional truck driver for 35 years and has driven tractor-trailer combination vehicles approximately 4 million miles and straight trucks approximately 30,000 miles. There are no traffic violations or accidents in any vehicle in the past 3 years on his official driving record.

19. Clifford E. Masink

Mr. Masink, 41, has had a macular defect in his left eye for 32 years. Because of this condition, he is unable to meet the Federal vision standard in 49 CFR 391.41(b)(10). An optometrist examined Mr. Masink in 1999, and found his best corrected vision is 20/200 in the left eye and 20/20 in the right eye. The optometrist states Mr. Masink "has sufficient vision to operate a commercial vehicle."

Clifford Masink has operated straight trucks for 20 years and tractor-trailer combinations for 15 years. He holds an Ohio CDL, and his official driving record for the past 3 years reflects no moving violations and no accidents in a CMV.

20. Tyrone O. Mayson

Mr. Mayson, 57, has been employed as a commercial truck driver for Aiken County Roads and Bridges since 1993. He has driven straight trucks and tractor-trailer combinations more than 3 million miles. Mr. Mayson has been blind in his left eye since he was a child.

A 1999 medical report indicates Mr. Mayson has 20/30 corrected vision in the right eye. His ophthalmologist states Mr. Mayson has "functioned as a commercial driver for many years being monocular" and recommended that "Mr. Mayson be granted a renewal of his commercial driver's license."

Tyrone Mayson holds a South Carolina CDL. His driving record for the past 3 years reflects no traffic violations and no accidents in a CMV.

21. Rodney M. Mimbs

Mr. Mimbs is a 33-year-old individual who has amblyopia in his left eye and cannot meet the Federal vision requirement. Mr. Mimbs' best corrected vision in his left eye is 20/200 and 20/25 in his right eye, according to a 1999 examination. According to the optometrist who conducted the examination, Mr. Mimbs' "eyes are healthy and stable" and "he has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Mimbs holds a Georgia CDL with tank vehicle, hazardous materials and passenger transportation endorsements. He has 5 years' experience operating straight trucks and 4 years' experience operating tractor-trailer combinations. He has driven these CMVs almost 700,000 miles. His official State driving record contains no traffic violations or accidents in any vehicle for the past 3 years. His employer reports Mr. Mimbs is a "safe, consistent and dependable driver."

22. Charles E. O'Dell

Mr. O'Dell, 62, has amblyopia in his right eye. Vision in the right eye is 20/200 and 20/20 in the left eye, according to a 1999 examination. His optometrist states Mr. O'Dell "has been driving interstate vehicles since at least 1980," and he does not "see any reason he [Mr. O'Dell] can not safely continue to do so."

Charles O'Dell has a Kansas CDL. He has 21 years' experience operating straight trucks and tractor-trailer combinations. Since 1980, Mr. O'Dell has driven a CMV over 2 million miles for Keim TS, Inc., his employer. His official State driving record reveals no traffic citations or accidents in any vehicle in the past 3 years.

23. Richard W. O'Neill

Mr. O'Neill is a 50-year-old individual who has operated CMVs for 25 years. He has been blind in the right eye since age 12 due to an accident. Because of this condition, Mr. O'Neill is unable to meet the vision requirement in 49 CFR 391.41(b)(10).

A 1999 examination reveals Mr. O'Neill has 20/20 corrected vision in his left eye. The ophthalmologist who conducted the examination states Mr. O'Neill has driven "monocularly for many years" and "he is totally qualified to drive a motor vehicle, commercially."

Mr. O'Neill holds a Washington CDL. He has driven straight trucks and tractor-trailer combinations approximately 2 million miles. His official driving record for the past 3 years contains no moving violations and no accidents.

24. Jerry L. Reese

Mr. Reese, 41, has amblyopia in his left eye. His vision in the right eye is 20/20 with correction, according to a 1999 examination. His optometrist states "Mr. Reese is an experienced truck driver with a safe driving record" and "should be allowed to operate a commercial vehicle."

Jerry Reese holds a Mississippi CDL. He is a self-employed owner-operator who has driven straight trucks and tractor-trailer combination vehicles during a 25 year career. His official State driving record reveals no traffic citations or accidents in a CMV in the last 3 years.

25. Frances C. Ruble

Ms. Ruble, 53, has amblyopia in her right eye. A 1999 medical examination indicates she has 20/15 corrected vision in her left eye. In the optometrist's opinion, there is "no ocular reason that Ms. Ruble cannot operate a commercial vehicle."

Frances Ruble holds an Iowa CDL. She has been operating a tractor-trailer combination for the same employer since 1995. Her official State driving record reflects no moving violations and no accidents in any vehicle in the last 3 years.

26. Johnny L. Stiff

Mr. Stiff is 56 years old and has been employed as a commercial truck driver for 26 years. According to a 1999 examination, Mr. Stiff's central visual acuity in his left eye is limited to finger counting due to an injury in 1986. The peripheral vision in his left eye is intact. The vision in his right eye is 20/15 with glasses. According to his optometrist, Mr. Stiff's vision is "stable in both eyes" and he is "capable of performing the task of driving a commercial vehicle."

Johnny Stiff holds an Illinois CDL with a tank vehicle/hazardous materials endorsement. He has driven CMVs more than 1 million miles since 1973 and his official driving record for the past 3 years reflects no traffic violations and no accidents in a CMV.

27. Robert J. Townsley

Mr. Townsley, 50, has 20/200 vision in his left eye due to a retinal detachment in 1963 and therefore cannot meet the vision requirement in 49 CFR 391.41(b)(10).

He has 20/20 vision in his right eye, according to a 1999 examination.

The optometrist who conducted the examination asserts Mr. Townsley has sufficient vision to drive a CMV.

Mr. Townsley has a Virginia CDL with a tank vehicle endorsement. He has driven straight trucks for 5 years and tractor-trailer combinations for 10 years. His official State driving record for the past 3 years contains no traffic violations and no accidents in any vehicle.

28. Thomas R. Trumpeter

Mr. Trumpeter, 48, is blind in his left eye due to an injury in 1961. According to a 1999 examination, the vision in his right eye was 20/15 with glasses. His optometrist says Mr. Trumpeter has sufficient vision to perform the tasks necessary to operate a CMV.

Mr. Trumpeter holds a Washington CDL with tank vehicle and hazardous materials endorsements. He has 20 years' experience driving tractor-trailer combinations and straight trucks. His official State driving record contains no traffic violations and no accidents in any vehicle in the past 3 years. Mr. Trumpeter has driven intrastate for United Motor Freight since 1992. The company's president says he has "performed all assigned tasks with the utmost safety" and "never had an accident or damaged any expensive machinery."

29. Steven M. Veloz

Mr. Veloz, 43, has amblyopia in his left eye. A 1999 medical examination indicates he has 20/20 vision in his right eye. In the optometrist's opinion, Mr. Veloz has sufficient vision to operate a CMV.

Steve Veloz holds a California CDL with a tank vehicle endorsement. He has driven tractor-trailer combinations more than 1.4 million miles since 1981, and his official driving record for the past 3 years contains no accidents and one conviction for violating weight limits for a commercial vehicle.

30. Thomas E. Walsh

Mr. Walsh is a 43 year old individual who has operated CMVs for 18 years. He has amblyopia in his right eye and is unable to meet the vision requirement in 49 CFR 391.41(b)(10).

A 1999 examination by the optometrist reveals Mr. Walsh has 20/20 vision in his left eye with correction. In

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the optometrist's opinion, Mr. Walsh has sufficient vision to perform the tasks necessary to operate a CMV.

Thomas Walsh holds a California CDL. He has driven straight trucks and tractor-trailer combinations for a total of 900,000 miles and his official driving record for the past 3 years reveals one accident and no traffic violations in a CMV. The driver of the other vehicle involved in the accident failed to yield to oncoming traffic when pulling onto the roadway from private property. Mr. Walsh was not issued a citation for the accident.

31. James T. White

Mr. White, 58, has been driving a tractor-trailer combination approximately 55,000 miles per year for the past 25 years. Mr. White holds a Georgia CDL. Blind since birth in the left eye, Mr. White has vision correctable to 20/15 in the right eye. According to his optometrist, Mr. White has sufficient vision to be a safe commercial driver. "His vision is good and his driving record is clean due to the fact that he has learned to live with his lack of vision in the left eye over the years." His official driving record contains no traffic violations and no accidents in the past 3 years.

32. Harry Ray Littlejohn

Mr. Littlejohn, 50, has amblyopia in his right eye. The vision in his left eye is 20/20 with correction according to a 1998 examination. His ophthalmologist says he has sufficient vision to operate a commercial vehicle.

Harry Littlejohn holds a Louisana CDL. He is self-employed and has driven tractor-trailer combinations over 1.3 million miles. His official driving record contains no traffic violations and no accidents in a CMV in the past 3 years.

33. Mark K. Cheely

Mr. Cheely, 35, has mild corneal dystrophy and amblyopia in his left eye. A 1999 medical report indicates he has 20/20 vision in his right eye without correction. In his optometrist's opinion, Mr. Cheely's condition is stable and he is capable of operating a CMV.

Mark Cheely has 9 years' experience operating tractor-trailer combinations and 2 years' experience operating straight trucks, accumulating almost 400,000 miles. His employer since 1991, Pecht Distributors, Inc., says Mr. Cheely "maintains an excellent safety record" and is a "superior performer." He has a Virginia CDL and his official driving record reveals no traffic citations in any vehicle in the past 3 years. In 1997, his CMV was involved in an accident. There was property damage but no injuries, and he did not receive a citation.

Basis for Preliminary Determination to Grant Exemptions

Independent studies support the principle that past driving performance is a reliable indicator of an individual's future safety record. The studies are filed in FHWA Docket No. FHWA–97–2625 and discussed at 63 FR 1524, 1525 (January 9, 1998). We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrate the driving performance of monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, March 26, 1996.) That monocular drivers in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, with qualifications similar to those required by the waiver program, can also adapt to their vision deficiency and operate safely.

The 33 applicants represented here have qualifications similar to those possessed by drivers in the waiver program. Their experience and safe driving record operating CMVs demonstrate that they have adapted their driving skills to accommodate their vision deficiency. Since past driving records are reliable precursors of the future, there is no reason to expect these individuals to drive less safely after receiving their exemptions. Indeed, there is every reason to expect at least the same level of safety, if not a greater level, because the applicants can have their exemptions revoked if they compile an unsafe driving record.

For these reasons, the FHWA believes exempting the individuals from 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as vision in their better eye continues to meet the standard specified in § 391.41(b)(10). As a condition of the exemption, therefore, the FHWA proposes to impose requirements on the individuals similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that vision in the better eye meets the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to his or her employer for retention in its driver qualification file or keep a copy in his or her driver qualification file if he or she becomes self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), the proposed exemption for each person will be valid for 2 years unless revoked earlier by the FHWA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is effective at the end of the 2-year period, the person may apply to the FHWA for a renewal under procedures in effect at that time.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FHWA is requesting public comment from all interested persons on the exemption petitions and the matters discussed in this notice. All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue exemptions from the vision requirement to the 33 applicants and publish in the **Federal Register** a notice of final determination at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information which becomes available after the closing date. Interested persons should continue to examine the docket for new material.

Authority: 49 U.S.C. 31136 and 31315; 23 U.S.C. 315; 49 CFR 1.48.

Issued on: July 16, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–18991 Filed 7–23–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–1999–5102]

Notice of Public Hearing; The Southeastern Pennsylvania Transportation Authority

The Southeastern Pennsylvania Transportation Authority (SEPTA) has petitioned the Federal Railroad Administration (FRA) seeking a waiver of compliance with the requirements of Title 49 CFR 213.233(c). SEPTA proposes to substitute the operation of a track geometry measuring car over main track and sidings constructed with continuously welded rail in place of one of the currently required twice weekly visual inspections.

The FRA issued a public notice seeking comments of interested parties. After examining the railroad's proposal and the available facts, FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9:00 a.m. EDT, on Wednesday, August 25, 1999 in the Wanamaker Building, 100 Penn Square East, Tenth Floor Training Center, in Philadelphia, Pennsylvania. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (Title 49 CFR Part 211.25), by a representative designated by the FRA.

Issued in Washington, DC on July 16, 1999.

Edwards R. English,

Director, Office of Safety Assurance and Compliance.

[FR Doc. 99–19032 Filed 7–23–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No.: FRA–1999–5628.

Applicant: Burlington Northern and Santa Fe Railway, Mr. William G. Peterson, Director Signal Engineering, 4515 Kansas Avenue, Kansas City, Kansas 66106.

Burlington Northern and Santa Fe Railway seeks approval of the proposed modification of the signal systems, on the single main track and sidings, between milepost 636.5, South Denison, Texas and milepost 650.9, near South Sherman Junction, Texas, on the Texas Division, Madill Subdivision, associated with the removal of the crossing diamond and Tower 16 Interlocking at Sherman, Texas. The proposed changes consist of the following:

1. Conversion of the power-operated switches at South Sherman Junction, Hank, Old Frisco Main, and TNER to hand operation, including removal of all associated signals;

2. Discontinuance and removal of the derails at existing TNER and South Sherman siding;

3. Conversion of the power-operated switches at North Sherman and South Sherman to spring switches;

4. Removal of the "Restricted Limits" between mileposts 650.9 and 649.9, the traffic control system between mileposts 649.9 and 647.7, the "Restricted Limits" between mileposts 647.7 and 645.6, and the traffic control system between mileposts 645.6 and 644.2, associated with the conversion to a track warrant control method of operation; and

5. Removal of the traffic control system between mileposts 644.2 9 and 637.1, and the "Restricted Limits" between mileposts 637.1 and 636.5, associated with the conversion to a track warrant control, supplemented by an automatic block signal system, method of operation.

The reason given for the proposed changes is that the switches involved in the application are now controlled by the interlocking operator at Tower 16, which will be retired with the removal of the crossing diamond.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on July 19, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–19031 Filed 7–23–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No.: FRA–1999–5623.

Applicant: CSX Transportation, Incorporated, Mr. R.M. Kadlick, Chief Engineer Train Control, 4901 Belfort Road, Suite 130 (S/C J–350), Jacksonville, Florida 32256.

CSX Transportation Incorporated seeks approval of the proposed modification of the traffic control system, on the two main tracks, at E.E. Hurricane, West Virginia, milepost CA–477.9, on the Kanawha Subdivision, C&O Business Unit, consisting of the following:

1. Conversion of the power-operated switch to hand operation;

2. Discontinuance and removal of absolute controlled signals 40RA, 40RC, and 40L; and

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3. Installation of new double track, back to back, automatic signals at milepost CA–477.9.

The reasons given for the proposed changes is to increase operating efficiency.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on July 19, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–19026 Filed 7–23–99; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No.: FRA–1999–5627.

Applicant: CSX Transportation, Incorporated, Mr. E. G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation Incorporated seeks approval of the proposed modification of the traffic control system, on the two main tracks, between milepost A487.7 and milepost A489.3, on the Charleston Subdivision, Florence Service Lane, near Savannah, Georgia, consisting of the following:

1. Discontinuance and removal of absolute controlled signals 46R, 46L, 44R, and 44L at Galatia, near milepost A487.75;

2. Discontinuance and removal of intermediate signal 489–5, at milepost A489.44; and

3. Installation of double track, back to back, intermediate signals, at milepost A487.71.

The reason given for the proposed changes is to eliminate facilities no longer needed for present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on July 19, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–19027 Filed 7–23–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No.: FRA–1999–5624.

Applicant: CSX Transportation, Incorporated, Mr. R. M. Kadlick, Chief Engineer Train Control, 4901 Belfort Road, Suite 130 (S/C J–350), Jacksonville, Florida 32256.

CSX Transportation Incorporated seeks approval of the proposed modification of the traffic control system, on the side tracks, at KV Cabin, West Virginia, milepost CA–511.80, on the Kanawha Subdivision, C&O Business Unit, consisting of the conversion of the No. 13 power-operated crossover switches to hand operation.

The reason given for the proposed changes is the elimination of facilities no longer needed for present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on July 19, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–19028 Filed 7–23–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No.: FRA–1999–5625.

Applicant: CSX Transportation, Incorporated, Mr. R. M. Kadlick, Chief Engineer Train Control, 4901 Belfort Road, Suite 130 (S/C J–350), Jacksonville, Florida 32256.

CSX Transportation Incorporated seeks approval of the proposed modification of the traffic control system, on the single main track, between North Earlington, milepost H–272.4 and South Earlington, milepost H–270.7, near Earlington, Kentucky, on the Henderson Subdivision, Chicago Service Lane, consisting of the following:

1. Conversion of the power-operated switch at North Earlington to hand operation, equipped with an electric lock;

2. Discontinuance and removal of absolute controlled signals 99RA, 99RB, 99L, 97L, and 97R; and

3. Installation of back to back intermediate signals 2721 and 2722 at milepost H–272.4.

The reason given for the proposed changes is to increase operating efficiency.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on July 19, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–19029 Filed 7–23–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No.: FRA–1999–5626.

Applicant: CSX Transportation, Incorporated, Mr. E. G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation Incorporated seeks approval of the proposed modification of the signal system, on the single main track, at Beach Island, South Carolina, milepost AK–455.4, on the Augusta Subdivision, Florence Service Lane, consisting of the discontinuance and removal of absolute controlled signals 2R, 2LA, and 2LC, and conversion of the power-operated switch to hand operation.

The reason given for the proposed changes is to improve operations and increase efficiency.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

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Issued in Washington, DC on July 19, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–19030 Filed 7–23–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No.: FRA–1999–5629.

Applicant: Norfolk Southern Corporation, Mr. W.C. Johnson, Chief Engineer-S&E Engineering, 99 Spring Street, SW, Atlanta, Georgia 30303.

Norfolk Southern Corporation seeks approval of the proposed modification of the traffic control system, on the Addison Siding, between CP Jack, milepost N88.2 and CP Addison, milepost N86.9, near Petersburg, Virginia, on the Virginia Division, Norfolk District, consisting of the discontinuance and removal of the switch point protection, on the hand-operated switches, associated with aspect modifications.

The reason given for the proposed changes is that the modification of the signal aspects to provided restricting indications for train movements, through the OS's at each end of the siding, does not require switch point protection and will reduce maintenance costs.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401(Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on July 19, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–19024 Filed 7–23–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No.: FRA–1999–5621

Applicant: Red River Valley and Western Railroad Company, Mr. Dennis W. McLeod, President, 501 Minnesota Avenue, Breckenridge, Minnesota 56520.

The Red River Valley and Western Railroad Company (RRVW) seeks approval of the proposed discontinuance and removal of the automatic interlocking plant, near Davenport, North Dakota, where a single main track of the RRVW Second Subdivision, milepost 39.6, crosses at grade, a single main track of the RRVW Fourth Subdivision, milepost 18.2.

The reason given for the proposed changes is the high cost of rehabilitation of the interlocking; the original signal system was installed in 1906, and the pole line is old, worn, and in need of major repair.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at http://dms.dot.gov.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on July 19, 1999.

Grady C. Cothen, Jr.

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–19025 Filed 7–23–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 383X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—In Washington County, OR

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.38-mile line of its railroad between milepost 27.84 and milepost 28.22 near Banks, in Washington County, OR. The line traverses United States Postal Service Zip Code 97106.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 25, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 5, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 16, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Sarah Whitley Bailiff, Senior General Attorney, The Burlington Northern and Santa Fe Railway Company, 3107 Lou Menk Drive, Fort Worth, TX 76131–2830.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 30, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by July 26, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 19, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–18875 Filed 7–23–99; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

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Part II

Department of Commerce

International Trade Administration

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From Italy, France, India, Republic of Korea, and Indonesia; Notices

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–827]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Michael Grossman, Office of CVD/AD Enforcement II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2786.

PRELIMINARY DETERMINATION: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to certain producers and exporters of certain cut-to-length carbon-quality steel plate from Italy. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation, U.S. Steel Group, a Unit of USX Corporation, Gulf States, Inc., IPSCO Steel Inc., and the United Steelworkers of America (the petitioners).

Case History

Since the publication of the notice of initiation in the **Federal Register** (see Notice of Initiation of Countervailing Duty Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea, 64 FR 12996 (March 16, 1999) (Initiation Notice)), the following events have occurred: On March 19, 1999, we issued countervailing duty questionnaires to the Government of Italy (GOI), the European Commission (EC), and the producers/exporters of the subject merchandise (CTL plate). On April 21, 1999, we postponed the preliminary determination of this investigation until no later than July 16, 1999. *See Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea: Postponement of Time Limit for Preliminary Determination of Countervailing Duty Investigations*, 64 FR 23057 (April 29, 1999).

We received responses to our initial questionnaires from the EC on May 6, 1999, and the GOI on May 10 and 28, 1999. Palini & Bertoli S.p.A. (Palini & Bertoli), a producer of the subject merchandise which had exports to the United States in 1998, submitted its questionnaire response on May 11, 1999. ILVA Lamiere e Tubi S.p.A. and ILVA S.p.A. (collectively referred to as ILVA/ILT) submitted their joint questionnaire response on May 13, 1999. (ILT produced the subject merchandise which was exported to the United States by ILVA in 1998.) On May 25, 1999, we issued a supplemental questionnaire to Palini & Bertoli, and received the company's response on June 14, 1999. On June 1, 1999, we issued supplemental questionnaires to the EC, GOI, and ILVA/ILT. The supplemental questionnaire responses were submitted by the EC on June 15, 1999, by ILVA/ILT on June 21, 1999, and by the GOI on June 22, 1999. We also issued supplemental questionnaires on June 22, 1999, to Palini & Bertoli, and June 29, 1999, to the EC, GOI, and ILVA/ILT. The responses were submitted on July 6, 1999, by Palini & Bertoli and the EC, on July 8 and 9, 1999, by the GOI, and July 9, 1999, by ILVA/ILT. On July 13 and 14, 1999, ILVA/ILT submitted additional information on the record.

In its supplemental response, Palini & Bertoli indicated that the company received benefits under two regional government laws during the POI, *i.e.*, Law 25/65 and Law 30/84. The Department did not receive a request by petitioners to examine these potential benefits, hence we did not initiate on these laws in the *Initiation Notice*. Law 25/65, adopted by the Regional Government of Friuli-Venezia Giulia, provides interest contributions on loans taken by small- and medium-sized enterprises for the construction, enlargement, or technical renovation of industrial plants throughout the region. Palini & Bertoli received interest contributions during the POI on one loan contracted in 1990. Palini & Bertoli also received a capital grant under Law 30/84 of the Regional Government of Friuli-Venezia Giulia. Regional Law 30/84 provides capital grants to industrial and handicraft enterprises intending to open new productive sites or to restructure existing plants within certain mountainous areas of the region. Due to the fact that this information was brought to the Department's attention just prior to the preliminary determination, the Department is unable to make a determination on the countervailability of these programs at this time. More specifically, the Department does not have sufficient information to perform an appropriate specificity analysis of the above mentioned programs. We will request additional and clarifying information with regard to these programs from Palini & Bertoli and the Regional Government of Friuli-Venezia Giulia, and will present our findings in the Final Determination of this investigation.

Scope of Investigation

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. In particular, we sought comments on the specific levels of alloying elements set out in the description below, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage.

On March 29, 1999, Usinor, a respondent in the French antidumping and countervailing duty investigations and Dongkuk Steel Mill Co., Ltd. and Pohang Iron and Steel Co., Ltd., respondents in the Korean antidumping and countervailing duty investigations (collectively the Korean respondents), filed comments regarding the scope of the investigations. On April 14, 1999, the petitioners responded to Usinor's and the Korean respondents' comments. In addition, on May 17, 1999, ILVA/ILT, a respondent in the Italian antidumping and countervailing duty investigations, requested guidance on whether certain products are within the scope of these investigations.

Usinor requested that the Department modify the scope to exclude: (1) Plate that is cut to non-rectangular shapes or that has a total final weight of less than 200 kilograms; and (2) steel that is 4" or thicker and which is certified for use in high-pressure, nuclear or other technical applications; and (3) floor plate (*i.e.*, plate with "patterns in relief") made from hot-rolled coil. Further, Usinor requested that the Department provide clarification of scope coverage with respect to what it argues are over-inclusive HTSUS subheadings included in the scope language.

The Department has not modified the scope of these investigations because the current language reflects the product coverage requested by the petitioners, and Usinor's products meet the product description. With respect to Usinor's clarification request, we do not agree that the scope language requires further elucidation with respect to product coverage under the HTSUS. As indicated in the scope section of every Department antidumping and countervailing duty proceeding, the HTSUS subheadings are provided for convenience and Customs purposes only; the written description of the merchandise under investigation or review is dispositive.

The Korean respondents requested confirmation whether the maximum alloy percentages listed in the scope language are definitive with respect to covered HSLA steels.

At this time, no party has presented any evidence to suggest that these maximum alloy percentages are inappropriate. Therefore, we have not adjusted the scope language. As in all proceedings, questions as to whether or not a specific product is covered by the scope should be timely raised with Department officials.

ILVA/ILT requested guidance on whether certain merchandise produced from billets is within the scope of the current CTL plate investigations. According to ILVA/ILT, the billets are converted into wide flats and bar products (a type of long product). ILVA/ILT notes that one of the long products, when rolled, has a thickness range that falls within the scope of these investigations. However, according to ILVA/ILT, the greatest possible width of these long products would only slightly overlap the narrowest category of width covered by the scope of the investigations. Finally, ILVA/ILT states that these products have different production processes and properties than merchandise covered by the scope of the investigations and therefore are not covered by the scope of the investigations.

As ILVA/ILT itself acknowledges, the particular products in question appear to fall within the parameters of the scope and, therefore, we are treating them as covered merchandise for purposes of these investigations.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348) (CVD Regulations).

Injury Test

Because Italy is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry. On April 8, 1999, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Italy of the subject merchandise (*see Certain Cut-to-Length Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia; Determinations*, 64 FR 17198 (April 8, 1999)).

Alignment With Final Antidumping Duty Determination

On July 2, 1999, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion

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antidumping duty investigation. *See Initiation of Antidumping Duty Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Republic of Korea, and the Former Yugoslav Republic of Macedonia*, 64 FR 12959 (March 16, 1999). In accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the antidumping investigations of certain cut-to-length carbon-quality steel plate.

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1998.

Corporate History of ILVA/ ILT [1]

Prior to 1981, the Italian government holding company Istituto per la Ricostruzione Industriale (IRI), controlled Italy's nationalized steel industry through its wholly-owned subsidiary, Finsider S.p.A (Finsider). The steel operations of Finsider were subdivided into three main companies: Italsider (carbon steel); Terni (stainless and special steel); and Dalmine (pipe and tube). Italsider was the sector leader and the primary producer of the subject merchandise. In 1981, the GOI implemented a restructuring plan, and Finsider was restructured into several operating companies including Nuova Italsider (carbon steel flat products); Terni (speciality flat steels); Nuova Sias (special long products); and other steel product divisions. In the course of the 1981 Restructuring Plan, Italsider transferred all of its assets, with the exception of certain plants, to Nuova Italsider. Italsider became a one-company holding company with Nuova Italsider's stock as its primary asset.

During 1987, Finsider restructured three of its main operating companies: Nuova Italsider, Deltasider, and Terni. Nuova Italsider spun-off its assets to Italsider and transferred its shares in Italsider to Finsider. Nuova Italsider ceased operations after this divestment and Finsider had direct ownership of Italsider. Upon completion of the 1987 restructuring, Italsider re-emerged as the steel sector's carbon steel products producer.

Later in 1987, Finsider and its main operating companies (Italsider, TAS, and Nuova Deltasider) were placed in liquidation and the GOI subsequently implemented the 1988 Restructuring Plan. The goal of the 1988 Restructuring Plan was to restructure Finsider and its operating companies, assembling the group's most productive assets into a new operating company, ILVA S.p.A. (ILVA S.p.A. or (old) ILVA), which began operations on January 1, 1989. The 1988 Restructuring Plan, like the 1981 plan, was submitted and approved by the EC. In accordance with the plan, ILVA S.p.A. took over some of the assets and liabilities of the liquidating companies, and Finsider closed certain facilities to comply with the EC's requirements. With respect to Italsider, part of the company's liabilities and the majority of its viable assets, including all the assets associated with the production of carbon steel flat-rolled products, were transferred to ILVA S.p.A. on January 1, 1989. Non-productive assets and a substantial amount of liabilities were left behind with Finsider and the liquidating operating companies.

The facilities retained by ILVA S.p.A were organized into four primary operating groups: Carbon steel flat products, stainless steel flat products, stainless steel long products, and seamless pipe and tube. In 1992, ILVA Lamiere e Tubi (ILT), a carbon steel flat products operation, was created as a wholly-owned subsidiary of ILVA S.p.A. ILVA S.p.A. was also the majority owner of a large number of separately incorporated subsidiaries. Some of these subsidiaries produced various types of steel products. Others constituted service centers, trading companies, and an electric power company, among others. ILVA S.p.A., together with its subsidiaries, constituted the ILVA Group. The ILVA Group was wholly-owned by IRI.

Although, ILVA S.p.A. was profitable in 1989 and 1990, the company encountered financial difficulties in 1991, and became insolvent by 1993. In October 1993, ILVA S.p.A. entered into liquidation and became known as ILVA Residua (a.k.a., ILVA in Liquidation). In December 1993, IRI initiated the splitting of ILVA S.p.A.'s main productive assets into two new companies: ILVA Laminati Piani (carbon steel flat products) (ILP) and Acciai Speciali Terni (AST) (speciality and stainless steel flat products). On December 31, 1993, ILP and AST became separately incorporated firms in advance of privatization. ILT, the carbon flat steel products operation, was transferred to ILP as its wholly-owned subsidiary. The remainder of ILVA S.p.A.'s productive assets and existing liabilities, along with much of the redundant workforce, was placed in ILVA Residua.

On January 1, 1994, ILP was formally established as a separate corporation. In 1995, 100 percent of ILP was sold through a competitive public tender managed by IRI with the assistance of Istituto Mobiliare Italiano (IMI). The sale of ILP was executed through a share purchase agreement between IRI and a consortium of investors led by Riva Acciaio S.p.A. (RIVA) and investment companies. The contract of sale was signed on March 16, 1995, and all shares of ILP were transferred to the consortium on April 28, 1995. As of that date, the GOI no longer maintained any ownership interest in ILP or had any ownership interest in any of ILP's new owners.

On January 1, 1997, RIVA changed the name of ILP to ILVA S.p.A (creating the "new" ILVA, referred to hereafter as ILVA or (new) ILVA). ILVA continues to wholly-own ILT. Within RIVA's corporate structure, ILT, at its Taranto Works facility, produces the subject merchandise, which is exported to the United States. ILVA, with the assistance of ILVA Commerciale S.p.A. (ICO), a sales company wholly-owned by ILVA, is responsible for selling and exporting the subject merchandise to the United States and other markets.

As of 1998, RIVA owns and/or controls 82.0 percent of ILVA and two foreign-incorporated investment companies own the remaining 18.0 percent of ILVA.

According to ILVA/ILT, Sidercomit Taranto C.S. Lamiere S.r.l. (Sidercomit) was created in 1992, as an indirect subsidiary of (old) ILVA. Sidercomit became an operating unit within (new) ILVA in 1997, and currently operates service centers for the distribution of merchandise, including the subject merchandise for ILVA/ILT. Any benefits to Sidercomit under programs that have preliminarily been found countervailable have been mentioned separately within those program sections below.

Corporate History of Palini & Bertoli

Palini & Bertoli, a 100 percent privately-owned corporation, was incorporated in December 1963. Palini & Bertoli has never been part of the Italian state-owned steel industry.

Change in Ownership

In the General Issues Appendix (GIA), appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993) (*Certain Steel from Austria*), we applied a new methodology with respect to the treatment of subsidies received prior to the sale of a government-owned company to a private entity (*i.e.*, privatization), or the spinning-off (*i.e.*, sale) of a productive unit from a government-owned company to a private entity.

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We do this by first dividing the sold company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which non-recurring subsidies would be attributable to the POI and ending one year prior to the sale of the company. We then take the simple average of these ratios. This averaged ratio serves as a reasonable estimate of the percent that subsidies constitute of the overall value of the company. Next, we multiply this ratio by the purchase price to derive the portion of the purchase price attributable to the payment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time the company is sold.

With respect to the spin-off of a productive unit, consistent with the Department's methodology set out above, we analyze the sale of a productive unit to determine what portion of the sales price of the productive unit can be attributable to the repayment of prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. The result of this calculation yields the amount of remaining subsidies attributable to the spun off productive unit. We next estimate the portion of the purchase price going towards repayment of prior subsidies in accordance with the methodology set out above, and deduct it from the maximum amount of subsidies that could be attributable to the spun-off productive unit.

Use of Facts Available

Both the GOI and ILVA/ILT failed to fully respond to the Department's questionnaires concerning the program "Debt Forgiveness: 1981 Restructuring Plan." Section 776(a)(2) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. In such cases, the Department must use the facts otherwise available in reaching the applicable determination. Because the GOI and ILVA/ILT failed to submit the information that was specifically requested by the Department, we have based our preliminary determination for this program on the facts available. In addition, the Department finds that by not providing the requested information, respondents have failed to cooperate to the best of their abilities.

In accordance with section 776(b) of the Act, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available when the party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (4) any other information placed on the record. *See* 19 CFR 351.308(c). In the absence of information from the GOI and ILVA/ ILT, we consider the petition, as well as our findings from the final determination of Certain Steel from Italy to be appropriate bases for a facts available countervailing duty rate calculation.

The Statement of Administrative Action accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is "secondary information." *See* Statement of Administrative Action, accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994) (SAA), at 870. If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that to corroborate secondary information means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information. With respect to the program for which we did not receive complete information from the respondents, the secondary information was corroborated through exhibits (*i.e.*, financial statements) attached to the petition. The financial transactions discussed within Finsider's 1984 and 1985 financial statements confirm that the GOI engaged in transactions which are tantamount to the assumption of debt and debt forgiveness. Based on such review of the transactions discussed in the financial statements, we find that the secondary information (*i.e.*, the petition and *Certain Steel from Italy*) has probative value and, therefore, the information regarding the debt forgiveness provided under the 1981 Restructuring Plan has been corroborated.

Claims for "Green Light" Subsidy Treatment

Section 771(5B) of the Act describes subsidies that are non-countervailable, the so-called "green light" subsidies. Among these are subsidies to disadvantaged regions. The GOI has requested that certain of their regional subsidies be considered non-countervailable under the green light provisions of section 771(5B).

The GOI has maintained a system of "extraordinary intervention" in southern Italy since the 1950's, authorizing aid to the disadvantaged region. Over time, various laws were passed, including Decree 218/78, relating to the extraordinary intervention in the South. In 1986, Law 64/86 was passed in order to consolidate all laws relating to the extraordinary intervention in the south into one development policy. Tax exemptions under Decree 218/78, for which the GOI has requested green light treatment, is considered part of Law 64/ 86 for this reason.

In determining whether a specific subsidy should be accorded green light status, section 771(5B)(C) of the Act establishes the threshold that the subsidy be provided pursuant to a general framework of regional development, *i.e.*, must be part of an internally consistent and generally applicable regional development policy. The region must be considered disadvantaged on the basis of neutral and objective criteria which do not favor certain regions beyond what is appropriate for the elimination or reduction of regional disparities within this framework. In *Certain Pasta from Italy*, 61 FR at 30307, the Department determined that the GOI did not perform a systematic analysis, using neutral and objective criteria, in order to identify the regions which would receive regional development assistance under Law 64/86. There is no evidence on the record of this investigation that the GOI performed this necessary analysis. While detailed analysis may have been done by the EC with respect to its own regional development policy

[1] As discussed in this section, ILVA/ILT's carbon steel predecessor companies are: Nuova Italsider (1981–1987), Italsider (1987–1988), ILVA S.p.A. (1989–1993), and ILP (1994–1996).

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concerning Italy, there is no indication that the GOI undertook the same or similar efforts on a national level.

In addition, the Act outlines that a subsidy program cannot provide more aid than is appropriate for reduction of regional disparities and must include ceilings on the amount of assistance for each project. There is no evidence on the record that the GOI has given any consideration to a limit on the amount of assistance that could be awarded with regard to the program in question. Furthermore, there is no evidence that the GOI may have been concerned about awarding potentially disproportionate amounts to particular enterprises or industries.

Based on this analysis, we preliminarily determine that subsidies received under this program do not meet the standard for green light treatment. Our treatment of the benefits provided under this program is discussed below in the "Programs Determined To Be Countervailable" section of our notice.

Subsidies Valuation Information

Allocation Period

Section 351.524(d)(2) of the CVD Regulations states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System and updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

On June 21, 1999, ILVA/ILT submitted to the Department four tables illustrating its company-specific AUL calculations for (old) ILVA, ILP, ILT, and (new) ILVA, both separately and in combination. Based upon our analysis of the data submitted by ILVA/ILT regarding the AUL of its assets, we preliminarily determine that the calculation which takes into consideration all producers of the subject merchandise over the past 10 years is the most appropriate AUL calculation. However, because this calculation does not yield a company-specific AUL which is significantly different from the AUL listed in the IRS tables, we are using the 15 year AUL as reported in the IRS tables to allocate non-recurring subsidies under investigation for ILVA/ILT in the preliminary calculations.

Equityworthiness

In measuring the benefit from a government equity infusion, in accordance with § 351.507 (a)(2) of the Department's CVD Regulations, the Department compares the price paid by the government for the equity to actual private investor prices, if such prices exist. According to § 351.507(a)(3) of the Department's CVD Regulations, where actual private investor prices are unavailable, the Department will determine whether the firm was unequityworthy at the time of the equity infusion. In this case, private investor prices were unavailable. Therefore, our review of the record has not led us to change our finding from prior investigations, in which we found ILVA/ILT's predecessor companies, Nuova Italsider and (old) ILVA, unequityworthy from 1984 through 1988, and from 1991 through 1992. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy*, 58 FR 37327, 37328 (July 9, 1993) (*Certain Steel from Italy*); *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR 40,474, 40,477 (July 29, 1998) (*Wire Rod from Italy*); and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from Italy*, 64 FR 30624, 30627 (June 8, 1999) (*Sheet and Strip from Italy*).

Section 351.507(a)(3) of the Department's CVD Regulations provides that a determination that a firm is unequityworthy constitutes a determination that the equity infusion was inconsistent with usual investment practices of private investors. The Department will then apply the methodology described in § 351.507(a)(6) of the regulations, and treat the equity infusion as a grant. Use of the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993), and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014 (October 21, 1997). The Department will consider a firm to be uncreditworthy if it is determined that, based on information available at the time of the government-provided loan, the firm could not have obtained a long-term loan from conventional sources. *See* § 351.505(a)(4)(i) of the CVD Regulations.

Italsider, Nuova Italsider, and (old) ILVA were found to be uncreditworthy from 1977 through 1993. *See Certain Steel from Italy*, 58 FR at 37328–29, *Wire Rod from Italy*, 63 FR at 40477, and *Sheet and Strip from Italy*, 64 FR at 30627. No new information has been presented in this investigation that would lead us to reconsider these findings. Therefore, consistent with our past practice, we continue to find Italsider, Nuova Italsider, and (old) ILVA uncreditworthy from 1977 through 1993. We did not analyze ILP's, (new) ILVA's, or ILT's creditworthiness in the years 1994 through 1998, because the companies did not negotiate new loans with the GOI or EC during these years.

Benchmarks for Long-Term Loans and Discount Rates

Consistent with the Department's finding in *Wire Rod from Italy*, 63 FR at 40477 and *Sheet and Strip from Italy*, 64 FR at 30626–30627, we have based our discount rates on the Italian Bankers' Association (ABI) rates. The ABI rate represents a long-term interest rate provided to a bank's most preferred customers with established low-risk credit histories. In calculating the interest rate applicable to a borrower, commercial banks typically add a spread ranging from 0.55 percent to 4.0 percent onto the ABI rate, which is determined by the company's financial health.

Additionally, information on the record indicates that the published ABI rates do not include amounts for fees, commissions, and other borrowing expenses. While we do not have information on the expenses that would be applied to long-term commercial loans, the GOI supplied information on the borrowing expenses on overdraft loans for 1997, as an approximation of expenses on long-term commercial loans. This information shows that expenses on overdraft loans range from 6.0 to 11.0 percent of interest charged. Such expenses, along with the applied spread, raise the effective interest rate

that a company would pay. Because it is the Department's practice to use effective interest rates, where possible, we are including an amount for these expenses in the calculation of our effective benchmark rates. *See* § 351.505(a)(1) of the CVD Regulations. Therefore, we have added the average of the spread (*i.e.*, 2.28 percent) and borrowing expenses (*i.e.*, 8.5 percent of the interest charged) to the yearly ABI rates to calculate the effective discount rates.

For the years in which ILVA/ILT or their predecessor companies were uncreditworthy (see Creditworthiness section above), we calculated the discount rates in accordance with the formula for constructing a long-term interest rate benchmark for uncreditworthy companies as stated in section 351.505(a)(3)(iii) of the CVD Regulations. This formula requires values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we relied on the average cumulative default rates reported for the Caa to C-rated category of companies as published in Moody's Investors Service, "Historical Default Rates of Corporate Bond Issuers, 1920–1997" (February 1998). For the probability of default by a creditworthy company, we used the average cumulative default rates reported for the Aaa to Baa-rated categories of companies as reported in this study.[2] For non-recurring subsidies, the average cumulative default rates for both uncreditworthy and creditworthy companies were based on a 15 year term, since all of ILVA/ILT's allocable subsidies were based on this allocation period.

In addition, ILVA/ILT had two long-term, fixed-rate loans under ECSC Article 54 outstanding during the POI, each denominated in U.S. dollars. Therefore, we have selected a U.S. dollar-based interest rate as our benchmark. *See § 351.505(a)(2)(i) of the CVD Regulations. Consistent with Wire Rod from Italy*, 63 FR at 40486, we have used as our benchmark the average yield to maturity on selected long-term corporate bonds as reported by the U.S. Federal Reserve, since both of these loans were denominated in U.S. dollars. We used these rates since we were unable to find a long-term borrowing rate for loans denominated in U.S. dollars in Italy. Because ILVA was uncreditworthy in the year these loans were contracted, we calculated the uncreditworthy benchmark rates as per § 351.505(a)(3)(iii) of the CVD Regulations.

I. Programs Determined To Be Countervailable

Government of Italy Programs

A. Equity Infusions to Nuova Italsider and (old) ILVA[3]

The GOI, through IRI, provided new equity capital to Nuova Italsider or (old) ILVA in every year from 1984 through 1992, except in 1987, 1989, and 1990. We preliminarily determine that these equity infusions constitute countervailable subsidies within the meaning of section 771(5)(B)(i) of the Act. These equity infusions constitute financial contributions, as described in section 771(5)(D)(i) of the Act. Because they were not consistent with the usual investment practices of private investors (*see* Equityworthiness section above), the equity infusions confer a benefit within the meaning of section 771(5)(E)(i) of the Act. Because these equity infusions were limited to Finsider and its operating companies, Nuova Italsider and (old) ILVA, we preliminarily determine that they are specific within the meaning of section 771(5A)(D)(iii) of the Act.

We have treated these equity infusions as non-recurring subsidies given in the year the infusion was received because each required a separate authorization. We allocated the equity infusions over a 15 year AUL. Because Nuova Italsider and (old) ILVA were uncreditworthy in the years the equity infusions were received, we constructed uncreditworthy discount rates to allocate the benefits over time. *See* "Subsidies Valuation Information" section, above.

For equity infusions originally provided to Nuova Italsider, a predecessor company that produced carbon steel plate, we examined these equity infusions as though they had flowed directly through (old) ILVA to ILP when ILP took the carbon steel flat product assets out of (old) ILVA. Accordingly, we did not apportion to the other operations of (old) ILVA any part of the equity infusions originally provided directly to Nuova Italsider. While we acknowledge that it would be our preference to look at equity infusions into (old) ILVA as a whole and then apportion an amount to ILP when it was spun-off from (old) ILVA, we find our approach in this case to be the most feasible since information on equity infusions provided to the non-carbon steel operations of (old) ILVA is not available. For the equity infusions to (old) ILVA, however, we did apportion these by asset value to all (old) ILVA operations in determining the amount applicable to ILP.

We applied the repayment portion of our change in ownership methodology to all of the equity infusions described above to determine the subsidy allocable to ILP after its privatization. We divided this amount by ILVA/ILT's total consolidated sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be 2.76 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not receive any equity infusions from the GOI.

B. Debt Forgiveness: 1981 Restructuring Plan

The GOI reported that the objective of the 1981 Restructuring Plan was to redress the economic and financial difficulties the iron and steel industry was realizing in the early 1980's. The GOI stated that this plan, which extended to 1985, due to the prolonged crisis within the sector, envisaged financial interventions to aid in the recovery of the Finsider group. As discussed above in the "Use of Facts Available" section, the GOI and ILVA/ILT failed to submit complete information in regard to the assistance provided under the 1981 Restructuring Plan. Therefore, based on the facts available, we preliminarily determine that certain financial transactions conducted in association with the 1981 Restructuring Plan are countervailable subsidies.

Following Italsider's transfer of all its company facilities to Nuova Italsider in September 1981, Italsider held 99.99 percent of Nuova Italsider's shares. In 1983, Italsider was placed in liquidation. While in liquidation, Italsider sold its shares of Nuova Italsider to Finsider in December 1994. The sales price was 714.6 billion lire. As part of this payment, Finsider assumed Italsider's debts owed to IRI of 696.4 billion lire. The difference between the 714.6 billion lire and 696.4 billion lire was paid directly by Finsider to Italsider.

On December 31, 1984, Finsider also granted to Italsider a non-interest bearing loan of 563.5 billion lire to cover losses realized from the liquidation. A matching provision was also made to Finsider's "Reserve for

[2] We note that since publication of the CVD Regulations, Moody's Investors Service no longer reports default rates for Caa to C-rated category of companies. Therefore for the calculation of uncreditworthy interest rates, we will continue to rely on the default rates as reported in Moody Investor Service's publication dated February 1998 (at Exhibit 28).

[3] In the *Initiation Notice*, these equity infusions were separately listed as "Equity Infusions into Italsider/Nuova Italsider" and "Equity Infusions into ILVA."

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Losses on Investments and Securities," to cover the losses of the liquidation of Italsider. Following a shareholders' meeting of Finsider on December 30, 1985, the amount of 563.5 billion lire was disbursed to cover the losses of Italsider and Italsider's state of liquidation was revoked.

In *Certain Steel from Italy*, the Department determined that the 1981 Restructuring Plan merely shifted assets and debts within a family of companies, all of which were owned by Finsider, and ultimately, by the GOI. Therefore, we determined that both the 696.4 billion lire assumption of debt and the 563.5 billion lire debt forgiveness were specifically limited to the steel companies and constitute countervailable subsidies. *See Certain Steel from Italy*, 58 FR at 37330. No new factual information or evidence of changed circumstances has been provided to the Department in this instant investigation to warrant a reconsideration of the earlier determination that the debt assumption and debt forgiveness are countervailable subsidies. Therefore, consistent with our treatment of these transactions in *Certain Steel from Italy*, we preliminarily determine that the 1984 assumption of debt and 1985 debt forgiveness constitute countervailable subsidies within the meaning of section 771(5)(B)(i) of the Act. In accordance with *Certain Steel from Italy*, debt assumption and debt forgiveness are treated as grants which constitute financial contributions under section 771(5)(D)(i) of the Act. The transactions also confer benefits to the recipient within the meaning of section 771(5)(E)(i) of the Act, in the amount of the debt coverage. Because the debt assumption and debt forgiveness were limited to Italsider, ILVA/ILT's predecessor, we preliminarily determine that these transactions are specific within the meaning of section 771(5A)(D)(iii) of the Act.

To calculate the benefit, we have treated the assumption of debt and debt forgiveness to Italsider as non-recurring subsidies because each transaction was a one-time, extraordinary event. We allocated the 1984 debt assumption and 1985 debt forgiveness over a 15 year AUL. *See* the "Allocation Period" section, above. In our grant formula, we used constructed uncreditworthy discount rates based on our determination that Italsider was uncreditworthy in 1984 and 1985. *See* "Benchmark for Long-Term Loans and Discount Rates" and "Creditworthiness" sections, above. As with the equity infusions made into Nuova Italsider and (old) ILVA, we have treated the assumption of debt and debt forgiveness as though the transactions had flowed directly through (old) ILVA to ILP. To determine the amount appropriately allocated to ILP after its privatization, we followed the methodology described in the "Change in Ownership" section above. We divided this amount by ILVA/ILT's total consolidated sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be 1.10 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not receive any benefit under this program.

C. Debt Forgiveness: 1988 Restructuring Plan

As discussed above in the "Corporate History of ILVA/ILT" section of this notice, the GOI liquidated Finsider and its main operating companies in 1988, and assembled the group's most productive assets into a new operating company, ILVA S.p.A. (*i.e.*, (old) ILVA). The Finsider restructuring plan was developed at the end of 1987, and was approved by the GOI on June 14, 1988, and by the EC on December 23, 1988. The objective of the plan was to restore the industrial, financial, and economic balance to the public iron and steel-making sector in Italy. The restructuring plan included the voluntary liquidation by IRI of Finsider, and IRI's assumption of the debts not covered by the sale of assets of the companies being liquidated. IRI was the sole owner of Finsider, and therefore, the party responsible for payment of the debts of Finsider's liquidation.

A transfer of assets and liabilities from Finsider to (old) ILVA was to be accomplished at the latest by March 31, 1989. Upon completion of the 1988 Restructuring Plan, (old) ILVA owned Finsider's productive assets and a small portion of the group's liabilities. Included in the transfer were the productive portions of the flat-rolled facilities located at Taranto, Genoa, and Novi Ligure.[4] The liquidating companies retained the non-productive assets and the vast majority of the liabilities, which had to be repaid, assumed, or forgiven. Thus, while (old) ILVA emerged from the process with a positive net worth, the other companies were left with capital structures in which their liabilities greatly exceeded the liquidation value of their assets.

We preliminarily determine that certain financial transactions associated with the 1988 Restructuring Plan constituted countervailable subsidies. In 1988, IRI established a fund of 2,943 billion lire to cover losses which Finsider would realize while in liquidation. As of December 31, 1988, Finsider had accumulated losses in excess of its equity. In order to prevent Finsider from becoming insolvent during 1989, IRI utilized 1,364 billion lire of the fund to forgive debts it was owed by Finsider to cover the losses.

Later in 1990, IRI forgave debts it was owed by Finsider when it purchased (old) ILVA's stock from Finsider and Terni for 2,983 billion lire. The 2,983 billion lire was used to pay off the liquidation companies' debts which existed at the time of the sale.

In *Certain Steel from Italy*, we found IRI's purchase of ILVA's stock to be a countervailable subsidy because it effectively forgave Finsider's debts. Though ILVA/ILT, in its July 8, 1999 response, does not dispute that IRI purchased (old) ILVA's stock in 1990, the company disagrees with our earlier characterization that the share purchase was an act of debt forgiveness. We disagree with ILVA/ILT and preliminarily find that IRI's purchase of (old) ILVA's stock to be tantamount to debt forgiveness; however, we will seek further clarification of the stock purchase transaction from ILVA/ILT and the GOI.

In the February 16, 1999 petition, petitioners also alleged that IRI forgave approximately 1.9 trillion lire of Finsider's debt in 1991. They note that the Department countervailed such an amount in *Certain Steel from Italy*. In the instant investigation, both the GOI and ILVA/ILT reported that neither party has record information of such debt forgiven by IRI in 1991. We reviewed the petitioners' allegation and the documentation submitted to support their claim that IRI provided debt forgiveness of 1.9 trillion lire in 1991. In particular, we note that Finsider's 1989 Annual Report at page 12 states that: "During the fiscal year, your company [Finsider] recorded losses totaling 1,568 billion lire; therefore, the circumstances reoccur for which the shareholder IRI later renounced its own credits necessary to cover the difference."

Because Finsider realized a net loss of 1,568 billion lire for fiscal year 1989, in order to avoid insolvency of the company, as in 1988, IRI should have forgiven the 1,568 billion lire it was due from Finsider to cover the company's losses in excess of equity during 1990. However, according to IRI's 1990 Annual Report, IRI did not forgive the 1,568 billion lire by drawing down from the fund it established in 1988, to cover Finsider's losses while in liquidation. Since we cannot track with any degree of certainty what became of Finsider's indebtedness to IRI in 1990, or in subsequent fiscal years, we will gather information on what became of the 1,568 billion lire of losses in the context of seeking clarification of the assistance provided under the 1988 Restructuring Plan.

Also, in the GOI's July 8, 1999 response, the government reported that, in addition to the debt forgiveness IRI provided to Finsider in 1989, IRI disbursed 205 billion lire as authorized by the EC, to cover losses before plant closures. ILVA/ILT, however, in its July 8, 1999 response, stated that IRI provided 738 billion lire to cover losses and expenditures during the liquidation process. For purposes of this preliminary determination, we conclude, based on the information provided to the Department by ILVA/ILT, that IRI provided 738 billion lire to Finsider to cover losses in 1989. However, because the information submitted on the record with respect to the assistance IRI provided to cover losses during the liquidation process is ambiguous, we will seek further clarification of the assistance provided from the GOI and ILVA/ILT at verification.

Consistent with our determination in *Certain Steel from Italy*, we preliminarily determine that the debt forgiveness and coverage of losses, which IRI provided in 1989 and 1990, constitute countervailable subsidies within the meaning of section 771(5)(B)(i) of the Act. In accordance with our practice, debt forgiveness and coverage of losses are treated as grants which constitutes a financial contribution under section 771(5)(D)(i) of the Act, and provides a benefit in the amount of the debt coverage. Because the debt forgiveness and coverage of losses were received by only (old) ILVA, a predecessor company of ILVA/ILT, we preliminarily determine that the debt coverage is specific under section 771(5A)(D)(iii) of the Act. *See Certain Steel from Italy*, 58 FR at 37330.

To determine the benefit from these subsidies, we have treated the amount of debt forgiveness and coverage of losses provided under the 1988 Restructuring Plan as non-recurring grants because they were one-time, extraordinary events. In its July 8, 1999 response, ILVA/ILT reported that (old) ILVA did not receive all of Finsider's assets when the company was established. ILVA/ILT provided an asset allocation table, which demonstrates that only 68.4 percent of Finsider's assets were transferred to (old) ILVA. In performing the preliminary calculations, we applied this percentage to the total amount of debt forgiveness and coverage of losses provided to Finsider in 1989 and 1990, to determine the amount of debt coverage attributable to (old) ILVA. Because (old) ILVA was uncreditworthy in 1989 and 1990, the years in which the assistance was provided, we used constructed uncreditworthy discount rates to allocate the benefits over time. We allocated the debt coverage provided in 1989 and 1990, over a 15 year AUL. *See* the "Subsidies Valuation Information" section, above.

We also apportioned the debt coverage by asset value to all (old) ILVA operations in determining the amount applicable to ILP. We next applied the repayment portion of our change in ownership methodology to the debt forgiveness to determine the amount of the subsidy allocable to ILP after its privatization. We divided this amount by ILVA/ILT's total consolidated sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be 3.64 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not receive any benefit under this program.

D. Debt Forgiveness: 1993–1994 Restructuring Plan, ILVA-to-ILP[5]

During 1992 and 1993, (old) ILVA incurred heavy financial losses, which compelled IRI to place the company into liquidation. In December 1993, the Italian government proposed to the EC a plan to restructure and privatize (old) ILVA by the end of 1994. The reorganization provided for splitting (old) ILVA's main productive assets into two new companies, ILP and AST. ILP would consist of the carbon steel flat production of (old) ILVA, receiving the Taranto facilities. AST would consist of the speciality and stainless steel production. The rest of (old) ILVA's productive assets (*i.e.*, tubes, electricity generation, specialty steel long products, and sea transport), together with the bulk of (old) ILVA's existing debt and redundant work force were placed in a third entity known as ILVA Residua. Under the restructuring plan, ILVA Residua would sell those productive units it could and then would be liquidated, with IRI (*i.e.*, the Italian government) absorbing the debt.

As of December 31, 1993, the majority of (old) ILVA's viable manufacturing activities had been separately incorporated (or "demerged") into either AST or ILP; ILVA Residua was primarily a shell company with liabilities far exceeding assets, although it did contain some operating assets that were later spun-off. In contrast, AST and ILP, ready for sale, had operating assets and relatively modest debt loads. The liabilities remaining with ILVA Residua had to be repaid, assumed, or forgiven. On April 12, 1994, the EC, through the 94/259/ECSC decision, approved the GOI's restructuring and privatization plan for (old) ILVA and IRI's intention to cover ILVA Residua's remaining liabilities.

We preliminarily determine that ILP (and consequently the subject merchandise) received a countervailable subsidy in 1993, within the meaning of section 771(5)(B)(i) of the Act, when the bulk of (old) ILVA's debt was placed in ILVA Residua, rather than being proportionately allocated to AST and ILP. In addition to the debt that was placed in ILVA Residua, we preliminarily determine that the asset write-downs which (old) ILVA took in 1993, as part of the restructuring/privatization plan, are countervailable subsidies under section 771(5)(B)(i) of the Act. The write-down of assets in 1993 officially removed the assets from (old) ILVA's books and, thus, increased the losses to be covered in liquidation. It is the Department's position that when losses, which are later covered by a government, can be tied to specific assets those assets bear the liability for the losses that resulted from the write-downs. *See Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy*, 59 FR 18357, 18359 (April 18, 1994) (*Electrical Steel from Italy*). The 1993 financial statement of (old) ILVA identifies that the write-downs can be tied to the specific assets.

We preliminarily determine that the amount of debt and losses resulting from the asset write-downs that should have been attributable to ILP, but were instead placed with ILVA Residua, was equivalent to debt forgiveness for ILP at the time of its demerger. In accordance with our practice, debt forgiveness is treated as a grant which constitutes a financial contribution under section 771(5)(D)(i) of the Act, and provides a benefit in the amount of the debt forgiveness.

We also preliminarily determine, based on record evidence, that the liquidation process of (old) ILVA did not occur under the normal application of a provision of Italian law, and therefore, the debt forgiveness is *de facto* specific under section 771(5A)(D)(iii)(II) of the Act. As stated above, the liquidation of (old) ILVA was done in the context of a massive restructuring/privatization plan of the

[4] The subject merchandise which ILT produced and (new) ILVA exported to the United States in 1998, was produced at the Taranto facilities.

[5] This program was referred to as "Debt Forgiveness Given in the Course of Privatization in Connection with the 1993–1994 Restructuring Plan" in the *Initiation Notice* (see 64 FR at 13000).

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Italian steel industry undertaken by the GOI and approved and monitored by the EC. Because (old) ILVA's liquidation was part of an extensive state-aid package to privatize the Italian state-owned steel industry, and the debt forgiveness was received by only privatized (old) ILVA operations, we preliminarily find that the assistance provided under the 1993–1994 Restructuring Plan is *de facto* specific. In support of this preliminary finding, we note the EC's 94/259/ECSC decision, in which the Commission identified the restructuring of (old) ILVA as a single program, the basic objective of which was the privatization of the ILVA steel group by the end of 1994. As set forth in the EC's decision, the 1993–1994 Restructuring Plan was limited by its terms to (old) ILVA and the benefits of the plan were received by only (old) ILVA's successor companies.

Consistent with the methodology that we employed in the final determination of *Sheet and Strip from Italy*, the amount of liabilities that we attributed to ILP is based on the gross liabilities left behind in ILVA Residua, as reported in the EC's 10th Monitoring Report. *See* 64 FR at 30628. In calculating the amount of unattributable liabilities remaining after the demerger of ILP, we started with the most recent "total comparable indebtedness" amount from the 10th Monitoring Report, which represents the indebtedness, net of debts transferred in the privatization of ILVA Residua's operations and residual asset sales, of a theoretically reconstituted, pre-liquidation (old) ILVA. In order to calculate the total amount of unattributed liabilities which amount to countervailable debt forgiveness, we made the following adjustments to this figure: for the residual assets that had not actually been liquidated as of the 10th and final Monitoring Report; for assets that comprised SOFINPAR, a real estate company (because these assets were sold prior to the demergers of AST and ILP); for the liabilities transferred to AST and ILP; for income received from the privatization of ILVA Residua's operations; for the amount of the asset write-downs specifically attributable to AST, ILP, and ILVA Residua companies; and for the amount of debts transferred to Cogne Acciai Speciali (CAS), an ILVA subsidiary that was left behind in ILVA Residua and later spun off, as well as the amount of (old) ILVA debt attributed to CAS and countervailed in *Wire Rod from Italy*, (*see*, 63 FR at 40478).

The amount of liabilities remaining represents the pool of liabilities that were not individually attributable to specific (old) ILVA assets. We apportioned this debt to AST, ILP, and operations sold from ILVA Residua based on their relative asset values. We used the total consolidated asset values reported in AST's and ILP's financial statements for the year ending December 31, 1993. For ILVA Residua, we used the sum of the purchase price plus debts transferred as a surrogate for the viable asset value of the operations sold from ILVA Residua. Because we subtracted a specific amount of ILVA's gross liabilities attributed to CAS in *Wire Rod from Italy*, we did not include its assets in the amount of ILVA Residua's privatized assets. Also, we did not include in ILVA Residua's viable assets those assets sold to IRI, because the sale does not represent sales to a non-governmental entity. To the amount of liabilities apportioned to ILP, we added the write-downs that were tied to the asset pool which ILP took when it was separately incorporated from (old) ILVA.

We have treated the debt forgiveness to ILP as a non-recurring subsidy because it was a one-time, extraordinary event. The discount rate we used in our grant formula was a constructed uncreditworthy benchmark rate based on our determination that (old) ILVA was uncreditworthy in 1993. *See* "Benchmarks for Long-Term Loans and Discount Rates" and "Creditworthiness" sections, above. We followed the methodology described in the "Change in Ownership" section above to determine the amount appropriately allocated to ILP after its privatization. We divided this amount by ILVA/ILT's total consolidated sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be 12.40 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not receive any benefits under this program.

E. Capital Grants to Nuova Italsider Under Law 675/77

The Department has investigated Law 675/77 in prior investigations. *See, e.g., Certain Steel from Italy*, 58 FR at 37330–31, and the *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy*, 64 FR 15508, 15513–14 (March 31, 1999) (*Plate in Coils from Italy*). *In Certain Steel from Italy*, we learned that Law 675/77 created a framework for planned intervention by the GOI in the economy. The law provided financial incentives to industrial firms in certain sectors that submitted development, restructuring, and conversion plans for production facilities. In total, eleven sectors were identified as eligible for assistance. The types of funding provided under Law 675/77 included: (1) Interest payments on bank loans and bond issues; (2) low interest loans granted by the Ministry of Industry; (3) grants for companies located in the South; (4) grants for personnel retraining; and (5) increased VAT reductions for firms located in the Mezzogiorno area. In that prior investigation, we found that (old) ILVA and its predecessor companies received direct mortgage loans, interest contributions, and capital grants between 1977 and 1991, under Law 675/77.

In *Certain Steel from Italy*, we verified that of the ten sectors which received Law 675/77 funding, steel accounted for 36.4 percent of the total funding provided under Law 675/77. On this basis we determined that assistance provided to steel companies under Law 675/77 is limited to a specific enterprise or industry, or group of enterprises or industries. We therefore found countervailable capital grants which (old) ILVA and its predecessor companies received under Law 675/77.

In the instant investigation, the GOI and ILVA/ILT reported that Italsider applied for a capital grant in 1981, for an investment project at the Taranto plant. The GOI approved the application in 1982, and awarded a grant of 125,040 million lire to Nuova Italsider. The capital grant was disbursed in four tranches in the years 1985 and 1987. The GOI stated that the capital grant program was established in 1977, to support the development of regions in the south of Italy. The only eligibility criterion for the receipt of this "one-time" assistance was the location of factories in the south of Italy.

Consistent with our finding in *Certain Steel from Italy*, we preliminarily determine that this program constitutes a countervailable subsidy within the meaning of section 771(5)(B)(i) of the Act. The capital grants constitute a financial contribution under section 771(5)(D)(i) of the Act providing a benefit in the amount of the grants. Because the steel sector was found to be the dominant user of Law 675/77 and the capital grants were limited to enterprises located in the south of Italy, we preliminarily determine that the program is specific under section 771(5A)(D)(iii) of the Act.

To determine the benefit, we have treated the capital grants as non-recurring subsidies because the receipt of the grants was a one-time, extraordinary event. Because the benefit to Nuova Italsider is greater than 0.5 percent of the company's sales for 1982 (the year in which the grant was approved), we allocated the benefit over a 15 year AUL. *See* § 351.524(b)(2) of the CVD Regulations. We applied the

change in ownership methodology to the capital grant to determine the subsidy allocable to ILP after its privatization. We divided this amount by ILVA/ILT's total consolidated sales for the POI. On this basis, we preliminarily determine the net countervailable subsidy to be 0.13 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not use this program.

F. Early Retirement Benefits

Law 451/94 was created to conform with EC requirements of restructuring and capacity reduction of the Italian steel industry. Law 451/94 was passed in 1994, and enabled the Italian steel industry to implement workforce reductions by allowing steel workers to retire early. During the 1994–1996 period, and into January 1997, Law 451/94 provided for the early retirement of up to 17,100 Italian steel workers. Benefits applied for during this period continue until the employee reaches his/her natural retirement age, up to a maximum of ten years.

In the final determinations of *Plate in Coils from Italy* and *Sheet and Strip from Italy*, 64 FR at 15514–15 and 64 FR at 30629–30, respectively, the Department determined that early retirement benefits provided under Law 451/94 are countervailable subsidies under section 771(5)(B)(i) of the Act. Law 451/94 provides a financial contribution, as described in section 771(5)(D)(i) of the Act, because Law 451/94 relieves the company of costs it would have normally incurred by having to employ individuals until the normal age of retirement. Also, because Law 451/94 was developed for, and exclusively used by, the steel industry, we determined that Law 451/94 is specific within the meaning of section 771(5A)(D)(iii) of the Act. No new factual information or evidence in the instant investigation has led us to change our prior findings that early retirements under Law 451/94 are countervailable.

As we have in the recent final determinations of *Plate in Coils from Italy* and *Sheet and Strip from Italy*, we treated one-half of the amount paid by the GOI as benefitting the company. Recognizing that ILP [6] would have been required to enter into negotiations with the unions before laying off workers, it is impossible for the Department to determine the outcome of those negotiations absent Law 451/94. At one extreme, the unions might have succeeded in preventing any lay offs. If so, the benefit to ILP would be the difference between what it would have cost to keep those workers on the payroll and what ILP actually paid under Law 451/94. At the other extreme, the negotiations might have failed and ILP would have incurred only the minimal costs described under the so-called "Mobility" provision of Law 223/91, which identifies the minimum payment the company would incur when laying off workers permanently. Then the benefit to ILP would have been the difference between what it would have paid under Mobility and what the company actually paid under Law 451/94.

We have no basis for believing either of these extreme outcomes would have occurred. It is clear, given the EC regulations, that ILP would have laid off workers. However, we do not believe that ILP would have simply fired the workers without reaching accommodation with the unions. The GOI has indicated that failure to negotiate a separation package with the unions would likely lead to strikes, lawsuits and general social unrest. Therefore, we have proceeded on the assumption that ILP's early retirees would have received some support from ILP.

In attempting to determine the level of post-employment support that ILP would have negotiated with its unions, we examined the situation facing (old) ILVA before ILP and AST were spun off. By the end of 1993, (old) ILVA had established an overall plan for terminating redundant workers—a plan that would ultimately affect both ILP and AST. Under this plan, early retirees would first be placed on a temporary worker assistance measure under Law 223/91, Cassa Integrazione Guadagni—Extraordinario (CIG–E), while waiting for the passage of Law 451/94, and then would receive benefits under Law 451/94 when implemented. During the verification of *Plate in Coils from Italy* and *Sheet and Strip from Italy*, the Department learned from AST officials that workers were indeed receiving temporary benefits under CIG–E while they were awaiting the passage of Law 451. *See Results of AST Verification*, Memorandum to the File, dated February 3, 1999 (public version of the document is available on the public file in the Central Records Unit (CRU) of the Department, Room B–099). This indicates that, at the time an agreement was being negotiated with the unions and the labor ministry on the terms of the lay offs, (old) ILVA and its workers were aware that government contributions would ultimately be made to workers' benefits. In such situations, *i.e.*, where the company and its workers are aware at the time of their negotiations that the government will be making contributions to the workers' benefits, the Department's prior practice was to treat half of the amount paid by the government as benefitting the company. We have stated that when the government's willingness to provide assistance is known at the time the contract is being negotiated, this assistance is likely to have an effect on the outcome of the negotiations. While we continue to adhere to this logic in the preamble to the CVD Regulations, we stated that we would examine the facts of each case to determine the appropriate portion of the funds to be considered countervailable. *See* CVD Regulations, 63 FR at 65380.

With respect to ILP and its workers, we preliminarily determine that, under Italian Law 223, ILP would be required to negotiate with its unions about the level of benefits that would be made to workers permanently separated from the company. Since (old) ILVA and its unions were aware at the time of their negotiations that the GOI would be making payments to those workers under Law 451/94, some portion of the payment is countervailable. However, based on the record before us, we have no basis for apportioning the benefit. Therefore, for the preliminary determination, we consider the benefit to ILVA/ILT to be one half of the amount paid to the workers by the GOI under Law 451/94. We will verify this program further to determine the appropriate benefit.

Consistent with the Department's practice, we have treated benefits to ILVA/ILT under Law 451/94 as recurring grants expensed in the year of receipt. To calculate the benefit received by ILVA/ILT during the POI, we multiplied the number of employees by employee type (blue collar, white collar, and senior executive) who retired early by the average salary by employee type. Since the GOI was making payments to these workers equaling 80 percent of their salary, we attributed one-half of that amount to ILVA/ILT. Therefore, we multiplied the total wages of the early retirees by 40 percent. We then divided this total amount by ILVA/ILT's total consolidated sales during the POI. On this basis, we preliminarily determine a net countervailable subsidy to be 1.41 percent *ad valorem* for ILVA/ILT.

As mentioned in the "Corporate History of ILVA/ILT" section of this notice, in October 1993, (old) ILVA entered into liquidation and became known as ILVA Residua (a.k.a., ILVA in Liquidation). In December 1993, IRI

[6] On December 31, 1993, (old) ILVA's main productive assets were spun into two new companies: ILVA Laminati Piani (carbon steel flat products) (ILP) and Acciai Speciali Terni (speciality and stainless steel products) (AST).

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initiated the splitting of (old) ILVA's main productive assets into two new companies, ILP and AST. On December 31, 1993, ILP and AST became separately incorporated firms. The remainder of (old) ILVA's productive assets and existing liabilities, along with much of the redundant workforce, was placed in ILVA Residua. By placing much of this redundant workforce in ILVA Residua, ILP and AST were able to begin their respective operations with a relatively "clean slate" in advance of their privatizations. ILP and AST were relieved of having to assume their respective portions of those redundant workers that were placed in ILVA Residua and received early retirement benefits under Law 451/94. We have, therefore, determined that ILVA/ILT has received a countervailable benefit during the POI since it was relieved of a financial obligation that would otherwise have been due.

In order to calculate the benefit received by ILVA/ILT during the POI, we first needed to determine the appropriate number of early retirees in ILVA Residua that originally should have been apportioned to ILP. To determine this number, we took the asset value of ILP in relation to the asset value of (old) ILVA at the time of the spin-off of ILP. We multiplied this percentage by the total number of ILVA Residua early retirees. It was then necessary to estimate the numbers and salaries of early retirees by employee type since the GOI did not provide this information. To do this, we applied the same ratios of workers by employee type as ILP retired, and applied this to ILVA Residua. We also used the same salaries of ILVA/ILT employees by worker type. As we did with ILP early retirees, we then multiplied the number of employees, by employee type, by the average salary by employee type. Since the GOI was making payments to these workers equaling 80 percent of their salary, we attributed one-half of that amount to ILVA/ILT. Therefore, we multiplied the total wages of the early retirees by 40 percent. We then divided this total amount by ILVA/ILT's total consolidated sales during the POI. On this basis, we preliminarily determine a net countervailable subsidy to be 0.67 percent *ad valorem* for ILVA/ILT.

The Sidercomit unit of ILVA/ILT also received early retirement benefits under Law 451/94 separately from ILVA/ILT. As we did with ILVA/ILT, we multiplied the total wages of the early retirees by 40 percent and then divided this amount by the total consolidated sales of ILVA/ILT during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be less than 0.005 percent *ad valorem* for ILVA/ILT.

Upon consolidation of the above determined rates, we preliminarily determine a total net countervailable subsidy of 2.08 percent *ad valorem* for ILVA/ILT under Law 451/94 for the POI. Palini & Bertoli did not use this program.

G. Exemptions From Taxes

Presidential Decree 218/1978 exempted firms operating in the Mezzogiorno from the local income tax (ILOR) and the profits tax (IRPEG). Companies are eligible for full exemption from the 16.2 percent ILOR tax on profits arising from eligible projects in the Mezzogiorno and less developed regions of the center-north for ten consecutive years after profits first arise. New companies undertaking productive activities in the Mezzogiorno are entitled to a full exemption from the 37 percent IRPEG tax on profits for ten consecutive years after the project is completed. We preliminarily determine that exemptions from ILOR and IRPEG taxes are countervailable subsidies in accordance with section 771(5)(B)(i) of the Act. These tax exemptions constitute financial contributions under section 771(5)(D)(ii) of the Act since revenue that is otherwise due is being foregone. Because these exemptions are limited to a group of enterprises or industries within a designated geographical region, they are specific in accordance with section 771(5A)(D)(iv). Benefits resulting from ILOR and IRPEG tax exemptions were found to be countervailable in *Certain Steel from Italy*, 58 FR at 37334–35.

ILT received an exemption from the IRPEG tax in 1998. In order to calculate the benefit, we multiplied ILT's total profits that would otherwise have been subject to IRPEG by the IRPEG tax rate of 37 percent. We then divided the result by ILVA/ILT's total consolidated sales during the POI to determine the *ad valorem* benefit. On this basis, we preliminarily determine the net countervailable subsidy to be 1.07 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not use this program.

H. Exchange Rate Guarantees Under Law 796/76

Law 796/76 established a program to minimize the risk of exchange rate fluctuations on foreign currency loans. All firms that contract foreign currency loans from the European Coal and Steel Community (ECSC) or the Council of Europe Resettlement Fund (CERF) could apply to the Ministry of the Treasury (MOT) to obtain an exchange rate guarantee. The MOT, through the Ufficio Italiano di Cambi (UIC), calculates loan payments based on the lire-foreign currency exchange rate in effect at the time the loan is contracted (i.e., the base rate). The program establishes a floor and ceiling for exchange rate fluctuations, limiting the maximum fluctuation a borrower would face to two percent above or below the base rate. If the lire depreciates more than two percent against the foreign currency, a borrower is still able to purchase foreign currency at the established (guaranteed) ceiling rate. The MOT absorbs the loss in the amount of the difference between the guaranteed rate and the actual rate. If the lire appreciates against the foreign currency, the MOT realizes a gain in the amount of the difference between the floor rate and the actual rate.

This program was terminated effective July 10, 1992, by Decree Law 333/92. However, the pre-existing exchange rate guarantees continue on any loans outstanding after that date. Italsider contracted two loans, one in 1978, the other in 1979. Both of these loans were ultimately transferred to ILVA/ILT. These two foreign currency denominated loans were outstanding during the POI and exchange rate guarantees applied to both.

We preliminarily determine that this program constitutes a countervailable subsidy within the meaning of section 771(5)(B)(i) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act, to the extent that the lire depreciates against the foreign currency beyond the two percent limit. When this occurs, the borrower receives a benefit in the amount of the difference between the guaranteed rate and the actual exchange rate.

During the verification of the GOI in the *Plate in Coils from Italy* and *Sheet and Strip from Italy* investigations, GOI officials explained that over the last decade, roughly half of all guarantees made under this program were given to coal and steel companies. *See Results of Verification of the Government of Italy*, Memorandum to the File, dated February 3, 1999 (public version of the document is available on the public file in the CRU, Room B–099). This is consistent with the Department's finding in a previous proceeding that the Italian steel industry has been a dominant user of the exchange rate guarantees provided under Law 796/76. *See Final Affirmative Countervailing Duty Determination: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Italy*, 60 FR 31996 (June 19, 1995). Therefore, we determine that the program is specific under section 771(5A)(D)(iii)(II) of the Act.

Once a loan is approved for exchange rate guarantees, access to foreign exchange at the established rate is automatic and occurs at regular intervals throughout the life of the loan. Therefore, we are treating the benefits under this program as recurring grants. ILVA/ILT and its predecessor companies from which these loans were transferred, paid a foreign exchange commission fee to the UIC for each payment made. We determine that this fee qualifies as an "* * * application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy." *See* section 771(6)(A) of the Act. Thus, for the purposes of calculating the countervailable benefit, we have added the foreign exchange commission to the total amount ILVA/ILT paid under this program during the POI. *See Wire Rod from Italy*, 63 FR at 40479.

Under this program, we have calculated the total countervailable benefit as the difference between the total loan payment due in foreign currency, converted at the current exchange rate, less the sum of the total loan payment due in foreign currency converted at the guaranteed rate and the exchange rate commission. We divided this amount by ILVA/ILT's total consolidated sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be 0.07 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not use this program.

European Commission Programs

A. ECSC Loans Under Article 54

Article 54 of the 1951 ECSC Treaty established a program to provide industrial investment loans directly to the member iron and steel industries to finance modernization and purchase new equipment. Eligible companies apply directly to the EC (which administers the ECSC) for up to 50 percent of the cost of an industrial investment project. The Article 54 loans are generally financed on a "back-to-back" basis. In other words, upon granting loan approval, the ECSC borrows funds (through loans or bond issues) at commercial rates in financial markets which it then immediately lends to steel companies at a slightly higher interest rate. The mark-up is to cover the costs of administering the Article 54 program.

We preliminarily determine that these loans constitute a countervailable subsidy within the meaning of section 771(5)(B)(i) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act, which confers a benefit to the extent the interest rate is less than the benchmark interest rate. The Department has found Article 54 loans to be specific in several proceedings, including *Electrical Steel from Italy*, 59 FR at 18362, *Certain Steel from Italy*, 58 FR at 37335, and *Plate in Coils from Italy*, 64 FR at 15515, because loans under this program are provided only to iron and steel companies. The EC has also indicated on the record of this investigation that Article 54 loans are only available to steel and coal companies which fall within the scope of the ECSC Treaty. Therefore, we preliminarily determine that this program is specific pursuant to section 771(5A)(D)(i) of the Act.

ILVA/ILT had two long-term, fixed-rate loans outstanding during the POI, each denominated in U.S. dollars. These loans were contracted by Italsider, one in 1978 and one in 1979. Consistent with *Wire Rod from Italy*, 63 FR at 40486, we have used as our benchmark the average yield to maturity on selected long-term corporate bonds as reported by the U.S. Federal Reserve, since both of these loans were denominated in U.S. dollars. We used these rates since we were unable to find a long-term borrowing rate for loans denominated in U.S. dollars in Italy. The interest rate charged on both of ILVA/ILT's two Article 54 loans was lowered part way through the life of the loan. The interest rate on the loan contracted in 1978 was lowered in 1987, and the rate on the loan contracted in 1979 was lowered in 1992. Therefore, for the purpose of calculating the benefit, we have treated these loans as if they were contracted on the date of this rate adjustment. Because ILVA was uncreditworthy in the year these loans were contracted, 1987 and 1992 (based on the interest rate adjustments mentioned above), we calculated the uncreditworthy benchmark rate as per section 351.505 (a)(3)(iii) of the CVD Regulations. *See* "Benchmark for Long-Term Loans and Discount Rates" section, above.

To calculate the benefit under this program, pursuant to section 351.505(c)(2) of the CVD Regulations, we employed the Department's long-term fixed-rate loan methodology. We compared ILVA/ILT's interest rates on the two loans to our benchmark interest rate for uncreditworthy companies on interest paid by ILVA/ILT during the POI. We then divided the benefit by ILVA/ILT's total consolidated sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be 0.02 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not use this program.

ILVA/ILT was also repaying four ECSC loans under Article 54 during the POI that were taken by ILP for the construction of housing for coal and steel industry workers. Funding for these loans came entirely from the ECSC operational budget, which is composed of levies imposed on coal and steel producers, investment income on those levies, guarantee fees and fines paid to the ECSC, and interest received from companies that have obtained loans from the ECSC. Consistent with previous determinations, because ECSC funding is based on producer levies, we find these loans to be not countervailable. *See Electrical Steel from Italy*, 59 FR at 18364 and Certain Steel from Italy, 58 FR at 37336.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Law 308/82

Law 308/82 was initiated on May 29, 1982, and repealed on January 15, 1991. The GOI and ILVA/ILT reported that Italsider was approved for a grant for investments that reduced energy consumption at the Taranto facilities in 1983. ILP received payment of the grant in 1996. In *Certain Steel from Italy*, we learned that Law 308/82 provided grants to encourage lower energy consumption and the use of renewable energy sources. In that prior investigation, we verified that Law 308 grants were provided to a wide range of industries and confirmed the amount of grants provided to each industrial sector. We found that benefits under Law 308/82 were widely and fairly evenly distributed throughout the sectors with no sector receiving a disproportionate amount. Therefore, because Law 308/82 grants were not limited to a specific enterprise or industry, or group of enterprises or industries, we determined them to be not countervailable. *See Certain Steel from Italy*, 58 FR at 37336. No new factual information or evidence of changed circumstances has been provided to the Department in this instant investigation to warrant the Department to revisit its earlier determination that grants provided under Law 308/82 are not countervailable.

B. Unpaid Portion of Payment Price for ILP

In the February 16, 1999 petition, petitioners alleged that the GOI effectively gave RIVA a zero-interest loan on a portion of the contract price agreed to by RIVA for ILP, because RIVA has not paid the full contract price for

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ILP. RIVA reported that the company entered into arbitration after the transfer of ownership of ILP in April 1995. RIVA stated that it did not invoke arbitration to challenge the purchase price of ILP, but invoked arbitration to obtain an indemnity from pre-existing and unreported liabilities in accordance with the indemnification provision of the contract of sale. The dispute concerns whether IRI owes RIVA a sum of money as indemnification for liabilities, which RIVA has potentially incurred as a result of the acquisition of ILP. To preserve its leverage in the dispute and ensure that the company will obtain relief in the event that it is awarded indemnification by the arbitration panel, RIVA has withheld payment of amounts due to IRI under the contract of sale.

We inquired about the arbitration procedure and whether any Italian company which purchases either a government-owned or private entity can enter into arbitration to remedy a dispute. RIVA reported that Article 25 of the contract of sale provides for arbitration under the rules of the International Chamber of Commerce (ICC). Any company in Italy that purchases another company from either the government or a private seller can include such an arbitration provision in the contract of sale. Article 806 of the Italian Civil Code authorizes the use of arbitration to settle litigation. Because the arbitration which RIVA invoked to obtain an indemnity from liabilities was provided under the rules of the ICC and the Italian Civil Code, we preliminarily determine that the monetary amount, which RIVA has withheld from IRI for the purchase of ILP, is not tantamount to a zero-interest loan provided by the government.

III. Programs Preliminarily Determined To Be Not Used

Government of Italy Programs

1. Lending From the Ministry of Industry Under Law 675/77

ILVA/ILT reported that at the time of its privatization the company became responsible for certain loan obligations of its predecessor companies. ILVA/ILT were responsible for repaying the loans under Law 675/77, which were applicable to those facilities that produce the subject merchandise. Repayment obligations on these loans ended in December 1997. The GOI and ILVA/ILT both reported that no new loans have been provided under Law 675/77 since 1987. Because there were no loans provided under Law 675/77 outstanding in 1998, we preliminarily determine that the program was not used during the POI by ILVA/ILT.

2. Interest Contributions Under Law 675/77

ILVA/ILT reported that an interest contribution was received in 1998, against a loan provided under Law 675/77. Because the loan against which the interest contribution was received was repaid in full in December 1997, we preliminarily determine that this program was not used during the POI. It is the Department's policy to treat interest contributions as countervailable on the date the company made the corresponding interest payments, despite any delay in the receipt of the interest contributions. This is so because the company's entitlement to the interest contributions was automatic when it made the interest payments. Therefore, we find, for purposes of the benefit calculation, that the interest contributions were received at the time the interest payments were made. *See e.g., Stainless Steel Sheet & Strip*, and *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Italy*, 60 FR 33577, 33579 (June 28, 1995) (*Oil Country Tubular Goods from Italy*).

3. Law 305/89

ILVA/ILT reported that (old) ILVA, its predecessor company, applied for a grant under Law 305/89 in 1990. The GOI approved (old) ILVA's application in 1991, and awarded the company a grant of 2.2 billion lire. Because payment of the grant was delayed, ILP received a portion of the grant in 1994, and ILVA/ILT received payment of the remaining portion of the grant in 1996. We applied the 0.5 percent allocation test against the full grant amount approved in 1991. *See* section 351.524(b)(2) of the CVD Regulations. We calculated the benefit under Law 305/82 as less than 0.5 percent *ad valorem* of (old) ILVA's sales in 1991. Therefore, even if we preliminarily determined that Law 305/89 is countervailable, the grant would be expensed in the years of receipt, 1994 and 1996. Because the grant would be expensed and not provide any benefit to ILVA/ILT during the POI, we preliminarily determine that Law 305/89 was not used by ILVA/ILT.

4. Interest Grants for "Indirect Debts" Under Law 750/81

In 1984, Nuova Italsider received a residual payment of 25.3 billion lire against interest grants provided in the fiscal years 1982 and 1983. Because we do not know what portion of the 1984 payment was approved in 1982, and what portion was approved in 1983, to determine whether the 1984 grant payment should be allocated or expensed, we assumed, for purposes of the 0.5 percent allocation test, that the residual amount was approved in 1984. *See* § 351.524(b)(2) of the CVD Regulations. On this basis, we calculated the benefit of the 1984 interest grant to be less than 0.5 percent *ad valorem* of Nuova Italsider's sales in 1984. Therefore, because the interest grant is expensed in the year of receipt, we preliminarily determine that this program was not used during the POI by ILVA/ILT.

5. Capital Grants Under Law 218/78

The GOI reported that (old) ILVA received a grant in 1988, under Law 218/78. The original grant amount was approved in 1978. We applied the 0.5 percent test against the full grant amount approved in 1978. *See* § 351.524(b)(2) of the CVD Regulations. We calculated the benefit as less than 0.5 percent *ad valorem* of Italsider's sales in 1978. Additionally, Sidercomit received a grant in 1996, that was approved in 1995. We applied the 0.5 percent test against the full grant amount approved in 1995. We calculated the benefit as less than 0.5 percent *ad valorem* of ILP's sales in 1995. Therefore, even if we determined that this program is countervailable, the above-mentioned grants would be expensed in the respective years of receipt. Because the grants would be expensed and would not provide any benefit to ILVA/ILT during the POI, we preliminarily determine that capital grants were not used.

6. Urban Redevelopment Packages Under Law 181/89

ILVA/ILT and its predecessor companies, ILP and (old) ILVA, received grants under Law 181/89 between 1991 and 1997. No grants were received during the POI. Because the approved amount of each grant, separately, was less than 0.5 percent of total sales of ILVA/ILT (or predecessor company) in the corresponding year, we would expense the benefit of each approved grant in that year. *See* § 351.524(b)(2) of the CVD Regulations. Therefore, since the grants would be expensed in the years of receipt, and ILVA/ILT would not realize any benefit during the POI, we preliminarily determine that Urban Redevelopment Packages under Law 181/89 was not used.

7. Closure Payments Under Law 481/94 and Predecessor Law

8. Closure Grants Under Laws 46 and 706

9. Decree Law 120/89

10. Law 488/92

11. Law 341/95 Tax Concessions

12. Interest Rate Reductions Under Law 902

13. Interest Contributions Under the Sabatini Law

14. Export Marketing Grants Under Law 394/81

15. Law 549/95: Tax Exemptions on Reinvested Profits for Steel Producers in Objective 1, 2, and 5(B) Areas

European Commission Programs

1. European Social Fund (ESF)

The GOI has reported ESF grants were provided to Nuova Italsider, Italsider and (old) ILVA from 1985 through 1993. Because the amount of each grant, separately, was less than 0.5 percent of total sales of Nuova Italsider, Italsider or (old) ILVA (depending on the year of receipt) in the corresponding year, we would expense the benefit of each grant payment received in that year. *See* § 351.524(b)(2) of the CVD Regulations.

ILVA/ILT has reported that ESF payments were also made to ILP in 1994 and 1995, and to ILVA/ILT in 1998, for projects having taken place in 1994 and 1995. ILVA/ILT has reported that ESF funding was not used for training of ILVA/ILT employees, but for other initiatives in the Mezzogiorno region. ILVA/ILT has provided documentation that payments received by the company were solely for goods and services to IRI that were provided by ILP and ILVA/ILT.

With regard to ESF grants and payments received, because the amounts would either be expensed in the corresponding years of receipt, or were simply payments received for invoiced goods and services, ILVA/ILT would not see any benefit during the POI. Therefore, we preliminarily determine that the European Social Fund was not used.

2. Interest Rebates on ECSC Article 54 Loans

3. ECSC Conversion Loans, Interest Rebates, Restructuring Grants and Traditional and Social Aid Under Article 56

4. ERDF Aid

5. Resider and Resider II (Commission Decision 88/588)

IV. Programs Preliminarily Determined Not To Exist

1. Additional Debt Forgiveness in the Course of Privatization

2. Grants to ILVA to Cover Closure and Liquidation Expenses as Part of the 1993–1994 Privatization Plan

3. Working Capital Grants to ILVA in 1993

With respect to the programs 1, 2, and 3 listed above, the GOI reported in its May 10, 1999 questionnaire response that all monetary assistance (old) ILVA received in the course of the 1993–1994 Restructuring Plan was effected in the EC Decision 94/259/ECSC of April 12, 1994. There were no additional debt forgiveness or grants provided as part of the 1993–1994 Restructuring Plan. Therefore, we preliminary determine that these programs do not exist.

4. Personnel Retraining Grants Under Law 675/77

The GOI reported that personnel retraining grants provided under Law 675/77 were terminated in 1987. The government stated that the resources provided under this program were allocated over the years 1981 through 1987. The GOI reported that no other law providing personnel retraining grants or financial allocations under Law 675/77 have been approved since 1987.

5. VAT Reductions Under Law 675/77

The GOI reported that the tax reductions referred to in section 18 of Law 675 of August 12, 1977, were terminated effective March 29, 1991. Pursuant to section 14(3) of Law 64 of March 1, 1986, section 18 of Law 675/77, applied for a period of five years from the date of promulgation of the law.

6. Grants to ILVA

7. Grants to RIVA/ILP

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual subsidy rate for ILVA/ILT and Palini & Bertoli. We preliminarily determine that the total estimated net countervailable subsidy rate is 23.27 percent *ad valorem* for ILVA/ILT and 0.0 percent *ad valorem* for Palini & Bertoli. The All Others rate is 23.27 percent *ad valorem*, which is the rate calculated for ILVA/ILT. *See* section 705(c)(5)(A) of the Act.

Company	Net subsidy rate
ILVA/ILT	23.27% ad valorem.
Palini & Bertoli	0.0% ad valorem.
All Others	23.27% ad valorem.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain cut-to-length carbon-quality steel from Italy, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts listed above. Since the estimated preliminary net countervailing duty rate for Palini & Bertoli is zero, the company will be excluded from the suspension of liquidation. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of the preliminary determination at the U.S.

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Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, six copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the non-proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days from the date of filing of the case briefs. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: July 16, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–18853 Filed 7–23–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–817]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai, Alysia Wilson, and Gregory Campbell, Office of Antidumping/Countervailing Duty Enforcement, Group I, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4087, 482–0108, or 482–2239, respectively.

Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers or exporters of certain cut-to length carbon-quality plate ("carbon plate") from France. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section of this notice.

Petitioners

The petition in this investigation was filed by the Bethlehem Steel Corporation, U.S. Steel Group, Gulf States Steel, Inc., IPSCO Steel Inc., and the United Steel Workers of America. (collectively referred to hereinafter as the "petitioners").

Case History

Since the publication of the notice of initiation in the **Federal Register** (*see Notice of Initiation of Countervailing Duty Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 64 FR 12996 (March 16, 1999) (*Initiation Notice*)), the following events have occurred:

On March 25, 1999, we met with representatives from the Government of France (GOF) and the European Commission (EC) for a second round of consultations.

On March 17, 1999, we issued countervailing duty questionnaires to the GOF, EC, and the producers/exporters of the subject merchandise. On April 29, 1999, we postponed the preliminary determination of this investigation until July 16, 1999 (*see Certain Cut-to-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy and the Republic of Korea: Postponement of Time Limit for Countervailing Duty Investigations*, 64 FR 23057 (April 29, 1999)).

On May 11, 1999, we received responses from the GOF and the responding companies (Usinor, Sollac S.A., Creusot Loire Industrie S.A. and GTS Industries S.A.). On June 4, 1999, we issued supplemental questionnaires to the GOF, and responding companies. On June 6, 1999, we issued a supplemental questionnaire to the EC.

In their petition, the petitioners asked the Department to reinvestigate whether the 1991 equity infusions by the GOF and Credit Lyonnais provided to Usinor conferred a subsidy. These investments were found not countervailable in the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France*, 58 FR 37304, (July 9, 1993), (*Certain Steel From France*). At the time this proceeding was initiated, we determined that the petitioners had not submitted sufficient information to warrant a reinvestigation of these equity infusions. On June 10, 1999, the petitioners submitted additional information supporting their request. After a review of the petitioners' submission, we have determined that the information they have provided still does not warrant a reinvestigation of these investments. *See* Memorandum to Richard W. Moreland, Deputy Assistant Secretary for AD/CVD Enforcement, "Petitioners" Supplemental Allegations," dated July 16, 1999, on file in the Central Records Unit of the Department of Commerce.

On June 16, 1999, the Department invited interested parties to comment regarding the attribution of subsidies between GTS Industries (GTS), Sollac, and Creusot-Loire (CLI). Comments were submitted by petitioners and respondents on June 28, 1999.

On June 21, 1999, we received responses to the supplemental questionnaires from the EC and on June 23, 1999, from the responding companies and the GOF.

Scope of Investigation

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. In particular, we sought comments on the specific levels of alloying elements set out in the description below, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage.

On March 29, 1999, Usinor, a respondent in the French antidumping and countervailing duty investigations and Dongkuk Steel Mill Co., Ltd. and Pohang Iron and Steel Co., Ltd., respondents in the Korean antidumping and countervailing duty investigations (collectively the Korean respondents), filed comments regarding the scope of the investigations. On April 14, 1999, the petitioners responded to Usinor's and the Korean respondents' comments. In addition, on May 17, 1999, ILVA/ILT, a respondent in the Italian antidumping and countervailing duty investigations, requested guidance on whether certain products are within the scope of these investigations.

Usinor requested that the Department modify the scope to exclude: (1) Plate that is cut to non-rectangular shapes or that has a total final weight of less than 200 kilograms; and (2) steel that is 4" or thicker and which is certified for use in high-pressure, nuclear or other technical applications; and (3) floor plate (*i.e.*, plate with "patterns in relief") made from hot-rolled coil. Further, Usinor requested that the Department provide clarification of scope coverage with respect to what it argues are over-inclusive HTSUS subheadings included in the scope language.

The Department has not modified the scope of these investigations because the current language reflects the product coverage requested by the petitioners, and Usinor's products meet the product description. With respect to Usinor's clarification request, we do not agree that the scope language requires further elucidation with respect to product coverage under the HTSUS. As indicated in the scope section of every Department antidumping and countervailing duty proceeding, the HTSUS subheadings are provided for convenience and Customs purposes only; the written description of the merchandise under investigation or review is dispositive.

The Korean respondents requested confirmation whether the maximum alloy percentages listed in the scope language are definitive with respect to covered HSLA steels.

At this time, no party has presented any evidence to suggest that these maximum alloy percentages are inappropriate. Therefore, we have not adjusted the scope language. As in all proceedings, questions as to whether or not a specific product is covered by the scope should be timely raised with Department officials.

ILVA/ILT requested guidance on whether certain merchandise produced from billets is within the scope of the current CTL plate investigations. According to ILVA/ILT, the billets are converted into wide flats and bar products (a type of long product). ILVA/ILT notes that one of the long products, when rolled, has a thickness range that falls within the scope of these investigations. However, according to ILVA/ILT, the greatest possible width of these long products would only slightly overlap the narrowest category of width covered by the scope of the investigations. Finally, ILVA/ILT states that these products have different production processes and properties than merchandise covered by the scope of the investigations and therefore are not covered by the scope of the investigations.

As ILVA/ILT itself acknowledges, the particular products in question appear to fall within the parameters of the scope and, therefore, we are treating them as covered merchandise for purposes of these investigations.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930,

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as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to our regulations as codified at 19 CFR part 351 (1998) and *Countervailing Duties; Final Rule*, 63 FR 65348 (November 25, 1998) (*CVD Regulations*).

Injury Test

Because France is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from France materially injure, or threaten material injury to, a U.S. industry. On April 8, 1999, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from France of the subject merchandise. (*See Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia; Determinations*, 64 FR 17198 (April 8, 1999)).

Alignment With Final Antidumping Duty Determination

On July 2, 1999, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. *See Initiation of Antidumping Duty Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, the Republic of Korea, and the Former Yugoslav Republic of Macedonia*, 64 FR 12959 (March 16, 1999). Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determination in the antidumping investigation of carbon plate from France.

Period of Investigation

The period for which we are measuring subsidies (the POI) is calendar year 1998.

Company History

The GOF identified Usinor, Sollac S.A., Creusot Loire Industrie S.A. ("CLI"), and GTS Industries S.A. ("GTS") as the only producers of the subject merchandise that exported to the United States during the POI. Sollac and CLI are wholly-owned subsidiaries of Usinor (a holding company), and GTS is an affiliated company.

Usinor

In 1984, the GOF was a majority shareholder of Usinor. In 1986, Usinor was merged with another state-owned company, Sacilor, into a single company called Usinor Sacilor. Usinor Sacilor was 100 percent owned by the GOF.

In 1995, Usinor Sacilor was privatized, principally through the public sale of shares. In October 1997, the GOF reduced its direct shareholdings to 1 percent. As of August 1998, the GOF has no direct ownership interest in Usinor but retains a minority indirect interest in the company.

CTS

Prior to 1992, GTS was 89.73 percent owned by Sollac, a direct subsidiary of Usinor. In 1992, Sollac transferred its shares in GTS to AG der Dillinger Hüttenwerke ("Dillinger"), a German steel producer. In return, Dillinger transferred shares it held in Sollac to Sollac which were of an equivalent value. At that time, Dillinger was majority owned by DHS-Dillinger Hütte Saarstahl AG ("DHS"), a German holding company, which, in turn, was 70 percent owned by Usinor.

In 1996, Usinor reduced its interest in DHS from 70 to 48.75 percent. At that time, DHS owned 95.3 percent of Dillinger, which in turn, owned 99 percent of GTS.

Attribution of Subsidies

The GOF has identified three producers of subject merchandise in this investigation: Sollac, CLI and GTS. During the POI, both Sollac and CLI are wholly-owned by and consolidated subsidiaries of Usinor. With respect to GTS, prior to 1996, it was majority owned by Usinor since Usinor held 70 percent of DHS, which in turn, held approximately 95 percent of Dillinger, GTS' direct parent company. However, since 1996 and during the entire POI, Usinor's interest in DHS is 48.9 percent, *i.e.*, slightly less than a majority.

The issue before the Department is whether the subsidies granted to Usinor are attributable to GTS given that GTS is no longer majority-owned by Usinor. Section 351.525 of the *CVD Regulations* states that the Department will attribute subsidies received by two or more corporations to the products produced by those corporations where cross ownership exists. According to § 351.525(b)(6)(vi) of the *CVD Regulations*, cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation in essentially the same ways it can use its own assets. The regulations state that this standard will normally be met where there is a majority voting ownership interest between two corporations. The preamble to the *CVD Regulations*, identifies situations where cross ownership may exist even though there is less than a majority voting interest between two corporations: "in certain circumstances, a large minority interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership." (63 FR 65401)

In this investigation, we have preliminarily determined that Usinor's 48.9 percent interest in DHS, the holding company of GTS' parent, Dillinger, is insufficient to establish cross-ownership between Usinor and GTS. We base this determination on the following facts: (1) Usinor has less than a majority voting ownership in DHS; (2) Usinor does not have a "golden share" in GTS; (3) there is another shareholder which effectively controls an equivalent amount of shares in DHS; and (4) information submitted by respondents indicates that there are certain limitations on the shareholders' ability to control Dillinger by virtue of labor's representation on its Supervisory and Management Boards. For more information, see Memorandum to Susan Kuhbach regarding Treatment of GTS Industries S.A. dated July 16, 1999.

Therefore, for purposes of this preliminarily determination, we have calculated a separate countervailing subsidy rate for GTS. However, since GTS was part of the Usinor group for much of the allocation period, we have attributed a portion of subsidies received by Usinor through 1996 to GTS, see the *Change in Ownership* section below.

Change in Ownership

In the *General Issues Appendix (GIA)* attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993), we applied a new methodology with respect to the treatment of subsidies received prior to the sale of the company (privatization) or the spinning-off of a productive unit.

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We compute this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which nonrecurring subsidies would be attributable to the POI (*i.e.*, in this case, 1985 for Usinor) and ending one year prior to the privatization. We then take the simple average of the ratios. The simple average of these ratios of subsidies to net worth serves as a reasonable surrogate for the percent that subsidies constitute of the overall value of the company. Next, we multiply the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization.

With respect to spin-offs, consistent with the Department's position regarding privatization, we analyze the spin-off of productive units to assess what portion of the sale price of the productive units can be attributable to payment for prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. We next estimate the portion of the purchase price going towards payment for prior subsidies in accordance with the privatization methodology outlined above.

In accordance with the *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France*, 64 FR 30774, (June 8, 1999), (*French Stainless*), in this investigation we have applied the change-in-ownership methodology to the following transactions: (1) The sale of Ugine's shares in 1994; (2) the 1994 sale of Centrale Siderurgique de Richemont (CSR); (3) the privatization of Usinor which spans 1995, 1996, and 1997; (4) the spin-off of assets to Entreprise Jean LeFebvre in 1994; and (5) the spin-off of assets to FOS–OXY in 1993. Additionally, in this investigation, we have also applied our change-in-ownership methodology to Sollac's sale of GTS shares to Dillinger in 1992. In 1996, Usinor reduced its interest in GTS, see the *Attribution* section above. We applied our change-in-ownership methodology to this transaction. However, because of the lack of information on the record regarding the amount paid for the shares, we have not provided for any reallocation of subsidies to Usinor in this transaction. During the course of this investigation, we will further examine this transaction.

Subsidies Valuation Information

Allocation Period: The current investigation includes untied, non-recurring subsidies to Usinor that were found to be countervailable in *Certain Steel from France:* PACS, FIS, and Shareholders' Advances. Because we have already assigned a company-specific allocation period of 14 years to those subsidies, we have continued to allocate those subsidies over 14 years. *See, French Stainless.*

We have found no other allocable non-recurring subsidies received by Usinor and GTS in the instant proceeding. However, had there been other allocable non-recurring subsidies received we would apply the methodology stated in § 351.524(d)(2) of the *CVD Regulations*. Section 351.524(d)(2) states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System and updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

Creditworthiness: When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. See, § 351.595 of the *CVD Regulations*.

Usinor was found to be uncreditworthy from 1982 through 1988 in *Certain Steel from France*, 58 FR at 37306. No new information has been presented in this investigation that would lead us to reconsider these findings. Therefore, consistent with our past practice, we continue to find Usinor uncreditworthy from 1985 through 1988. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil*, 58 FR 37295, 37297 (July 9, 1993).

In the *Initiation Notice*, we stated that the petitioners provided sufficient information in the petition to believe or suspect that Usinor was uncreditworthy from 1992 through 1995. Our change-in-ownership methodology in addition to the fact that Usinor received a contingent liability interest free loan under the Myosotis project, require the Department to make a creditworthy determination for the 1992–1995 period.

Usinor did not provide the information requested by the Department to make a creditworthy determination, citing the "formidable burdens which would be involved in responding to the Department's Creditworthiness questions." Consequently, the Department has decided to use facts available in accordance with section 776(a)(2)(A) of the Act. Section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested party if that party has "failed to cooperate by not acting to the best of its ability to comply with a request for information." In this investigation, Usinor refused to answer on more than one occasion, the creditworthiness questions in the Department's original and supplemental questionnaires. Therefore, the Department determines it appropriate to use an adverse inference in concluding that the Usinor was uncreditworthy in 1992 through 1995.

Since there was no allegation regarding the creditworthiness of GTS, we have not examined whether GTS is creditworthy.

Benchmarks for Loans and Discount Rates: In accordance with §§ 351.505(a) and 351.524(c)(3)(i) of the *CVD Regulations*, we used Usinor's company-specific cost of long-term, fixed-rate loans, where available, for loan benchmarks and discount rates for years in which Usinor was creditworthy. For years where Usinor was creditworthy and a company-specific rate was not available, we used the rates for average yields on long-term private-sector bonds in France as published by the OECD.

For the years in which Usinor was uncreditworthy (*see* Creditworthiness section above), we calculated the discount rates in accordance with § 351.524(c)(3)(ii) of the *CVD Regulations*. To construct these benchmark rates, we used the formula described in § 351.505(a)(3)(iii) of the *CVD Regulations*. This formula requires values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we relied on the average cumulative default rated reported for Caa to C-rated category of companies as published in Moody's Investors Service, "Historical Default Rates of Corporate Bond Issuers, 1920–1997," (February 1998). For the probability of default by a creditworthy company we used the average cumulative default rates reported for the

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Aaa to Baa-rated categories of companies as reported in this study.[1]

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined To Be Countervailable

GOF Programs

A. Loans With Special Characteristics (PACS)

A plan was agreed upon in 1978 to help the principal steel companies, Usinor, Sacilor, Chatillon-Neuves-Maisons, and their subsidiaries, restructure their massive debt. This plan entailed the creation of a steel amortization fund, called the *Caisse d'Amortissement pour l'Acier* (CAPA), for the purpose of ensuring repayment of funds borrowed by these companies prior to June 1, 1978. In accordance with the restructuring plan of 1978, bonds previously issued on behalf of the steel companies and pre-1978 loans from *Credit National* and *Fonds de Developpement Economique et Social* (FDES) were converted into "loans with special characteristics," or PACS. As a result of this process, the steel companies were no longer liable for the loans and bonds, but did take on PACS obligations.

In 1978, Usinor and Sacilor converted 21.1 billion French francs (FF) of debt into PACS. From 1980 to 1981, Usinor and Sacilor issued FF8.1 billion of new PACS. PACS in the amount of FF13.8 billion, FF12.6 billion and FF2.8 billion were converted into common stock in 1981, 1986, and 1991, respectively.

In *French Stainless, Certain Steel from France, and Final Affirmative Countervailing Duty Determinations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France*, 58 FR 6221 (January 27, 1993) (*Lead and Bismuth*), the Department determined that the conversion of PACS to common stock in 1986 constituted a countervailable equity infusion. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we preliminarily determine that a countervailable benefit exists in the amount of the 1986 equity infusion in accordance with § 351.507(a)(6) of the *CVD Regulations*.

We have treated the 1986 equity infusion as a non-recurring grant received in the year the PACS were converted to common stock. Using the allocation period of 14 years, the 1986 conversion of PACS continues to yield a countervailable benefit during the POI. We used an uncreditworthy discount rate to allocate the benefit of the equity infusion over time. Additionally, we followed the methodology described in the "Change in Ownership" section above to determine the amounts of the equity infusion appropriately allocated to Usinor and GTS. We divided these amounts by Usinor and GTS' total sales of French-produced merchandise during the POI. Accordingly, we preliminarily determine the countervailable subsidy to be 1.31 percent *ad valorem* for Usinor and 0.93 percent *ad valorem* for GTS.

B. 1986 Shareholders' Advances

The GOF provided Usinor and Sacilor grants in the form of shareholders' advances in 1986. The purpose of these advances was to finance the revenue shortfall needs of Usinor and Sacilor while the GOF planned for the next major restructuring of the French steel industry. These shareholders' advances carried no interest and there was no precondition for receipt of these funds. These advances were converted to common stock in 1986.

In *French Stainless, Certain Steel from France*, and *Lead and Bismuth*, the Department determined that the shareholders' advances constituted countervailable grants because no shares were received for them. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we continue to find that these grants constitute countervailable subsidies within the meaning of section 771(5) of the Act.

We have treated the 1986 shareholders' advance as non-recurring subsidies received in 1986. Using the allocation period of 14 years, these shareholders' advances continue to provide countervailable benefits during the POI. We used an uncreditworthy discount rate to allocate the benefits of these shareholders' advances over time. Additionally, we followed the methodology described in the "Change in Ownership" section above to determine the amount of the grant appropriately allocated to Usinor and GTS. We divided these amounts by Usinor and GTS' total sales of French-produced merchandise during the POI. Accordingly, we preliminarily determine the countervailable subsidy to be 0.54 percent *ad valorem* for Usinor and 0.38 percent *ad valorem*.

C. Steel Intervention Fund (FIS)

The 1981 Corrected Finance Law granted Usinor and Sacilor the authority to issue convertible bonds. In 1983, the *Fonds d'Intervention Sidérurgique* (FIS), or steel intervention fund, was created to implement that authority. In 1983, 1984, and 1985, Usinor and Sacilor issued convertible bonds to the FIS, which in turn, with the GOF's guarantee, floated the bonds to the public and to institutional investors. These bonds were converted to common stock in 1986 and 1988.

In *French Stainless, Certain Steel from France* and *Lead and Bismuth*, the Department determined that the conversions of FIS bonds to common stock in 1986 and 1988 were countervailable equity infusions. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we preliminarily determine that a countervailable benefit exists in the amounts of the 1986 and 1988 equity infusions in accordance with § 351.507(a)(6) of the *CVD Regulations*.

We have treated the 1986 and 1988 equity infusions as non-recurring subsidies received in the years the FIS bonds were converted to common stock. Using the allocation period of 14 years, the 1986 and 1988 FIS bond conversions continue to yield a countervailable benefit during the POI. We used an uncreditworthy discount rate to allocate the benefits of the equity infusions over time. Additionally, we followed the methodology described in the "Change in Ownership" section above to determine the amount of the equity infusion appropriately allocated to Usinor and GTS. Dividing these amounts by Usinor and GTS's total sales of French-produced merchandise during the POI, we preliminarily determine the countervailable subsidy to be 3.46 percent *ad valorem* for Usinor and 2.46 percent *ad valorem* for GTS.

D. Investment/Operating Subsidies

During the period 1987 through 1998, Usinor received a variety of small investment and operating subsidies from various GOF agencies as well as from the European Coal and Steel Community (ECSC). The subsidies were provided for research and development, projects to reduce work-related illnesses and accidents, projects to combat water pollution, etc. The subsidies are classified as investment, equipment, or operating subsidies in the company's accounts, depending on how the funds are used.

In *French Stainless*, the Department determined that the funding provided to Usinor by the water boards (*les agences de l'eau*) and certain work/training grants were not countervailable. Therefore, we are not investigating those programs in this proceeding.

For the remaining amounts in these accounts, including certain work/training grants that differed from those found not countervailable in *French Stainless*, the GOF did not provide any information regarding the distribution of funds, stating that, in the GOF's view, the total amount of investment and operating subsidies received by Usinor was "insignificant and would * * * be expensed." Given the GOF's failure to provide the requested information, we are using "facts available" in accordance with section 776(a)(2)(A) of the Act. Further, section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested party if that party has "failed to cooperate by not acting to the best of its ability to comply with a request for information." In this investigation, the GOF has refused to answer the Department's repeated requests for data regarding the distribution of grant funds. Therefore, the Department determines it appropriate to use an adverse inference in concluding that the investment and operating subsidies (except those provided by the water boards and certain work/training contracts) are specific within the meaning of section 771(5A)(D) of the Act.

We also determine that the investment and operating subsidies provide a financial contribution, as described in section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds from the GOF and the ECSC to Usinor, providing a benefit in the amount of the grants.

For the investment and operating subsidies received in the years prior to the POI, we have followed the methodology in *French Stainless*. Since these subsidies were less than 0.5 percent of Usinor's sales of French-produced merchandise, we have expensed these grants in the years of receipt, in accordance with § 351.524 (b)(2) of the Department's new regulations. To calculate the benefit received during the POI, we divided the subsidies received by Usinor in the POI by Usinor's total sales of French-produced merchandise during the POI. Accordingly, we determine the countervailable subsidy to be 0.11 percent *ad valorem*. GTS use of investment and operating subsidies is discussed below.

E. Subsidies Provided Directly to GTS

GTS' 1996 condensed financial statements include a "capital subsidy" in the amount of FF 2.1 million. GTS claims that this amount reflects the unamortized balance of a grant that was provided to GTS pursuant to an agreement dated December 29, 1987, between the GOF and Usinor. The grant was given to support the development of a machine for the accelerated cooling of heavy plate during the hot-rolling process. The grant was provided in two disbursements made in 1988 and 1990.

The GOF responded to the Department's questions on this capital subsidy stating that because of its size, the amounts would be expensed in a period outside the POI. Therefore, the GOF did not provide information on the distribution of other grants that might have been given under the same program.

We preliminarily determine that the total amount approved in 1987 was less than 0.5 percent of Usinor's sales of French-produced merchandise in 1987. Therefore, we preliminarily determine that these grants do not confer a countervailable subsidy in the POI.

F. Myosotis Project

Since 1988, Usinor has been developing a continuous thin-strip casting process called "Myosotis," in a joint venture with the German steelmaker, Thyssen. The Myosotis project is intended to eliminate the separate hot-rolling stage of Usinor's steelmaking process by transforming liquid metal directly into a coil between two to five millimeters thick.

To assist this project, the GOF, through the Ministry of Industry and Regional Planning and *L'Agence pour la Maîtrise de L'Énergie* (AFME), entered into three agreements with Usinor Sacilor (in 1989) and Ugine (in 1991 and 1995). The first agreement, dated December 27, 1989, provided three payments made in 1989, 1991, and 1993. The second agreement between Ugine and the AFME covered the cost of some equipment for the project. This agreement resulted in two disbursements to Ugine from the AFME in 1991 and 1992. The third agreement with Ugine, dated July 3, 1995, provided interest-free reimbursable advances for the final two-year stage of the project, with the goal of casting molten steel from ladles to produce thin strips. The first reimbursable advance under this agreement was made in 1997. Repayment of one-third of the reimbursable advance is due July 31, 1999. The remaining two-thirds are due for repayment on July 31, 2001.

In *French Stainless*, the Department determined that funding associated with the 1989 and 1991 contracts constituted countervailable subsidies within the meaning of section 771(5) of the Act. Furthermore, since the GOF did not provide any information indicating that the grants were provided to other companies in France, the Department determined that the grants were specific within the meaning of section 771(5A)(D) of the Act. No new information has been submitted to warrant a reconsideration of our earlier finding. Therefore, we continue to find that the grants associated with the Myosotis 1989 and 1991 contracts constitute countervailable subsidies within the meaning of section 771 (5) of the Act. Because the amounts received under the 1989 and 1991 contracts were less than 0.5 percent of Usinor's sales during their respective year of approval, these grants were expensed in the years of receipt. *See CVD Regulations*, 64 FR at 65415.

With respect to the reimbursable advance received in 1997, the GOF has requested that we find this subsidy non-countervailable under section 771(5B)(B)(ii)(II) of the Act, *i.e.*, that this is a green-light subsidy. We have preliminarily determined that we do not need to address the issue whether this subsidy is countervailable because the benefit of the reimbursable advance during the POI is less than 0.00 percent. As stated in the preamble to the *CVD Regulations:*

> [W]e will not consider claims for green light status if the subject merchandise did not benefit from the subsidy during the period of investigation or review. Instead, consistent with the Department's existing practice, the green light status of a subsidy will be considered only in an investigation or review of a time period where the subject merchandise did benefit from the subsidy.

See, CVD Regulations, 63 FR at 65388.

To measure whether any benefit was received during the POI, we treated this advance as a long-term interest free loan, consistent with our finding in *French Stainless* (see, 64 FR at 30780). Additionally, in accordance with § 351.505 (d)(1) of the Department's new regulations, we are treating this reimbursable advance as a contingent liability loan because the GOF has indicated that repayment of the loan is contingent on the success of the project (see, *CVD Regulations* 63 FR 65410). We used as our benchmark, a long-term fixed rate loan consistent with § 351.505 (a)(2)(iii) of the Department's regulations. Since Usinor would have been required to make an interest

[1] We note that since publication of the *CVD Regulations*, Moody's Investors Service no longer reports default rates for Caa to C-rated category of companies. Therefore for the calculation of uncreditworthy interest rates, we will continue to rely on the default rates as reported in Moody Investor Service's publication dated February 1998 (see Exhibit 28).

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payment on a comparable commercial loan during the POI (*see, French Stainless*), we calculated the benefit from the reimbursable advance as the amount that would have been due during the POI. Dividing these interest savings by Usinor's sales of French-produced merchandise during the POI, the benefit is 0.00 percent.

EC Programs

European Social Fund

The European Social Fund (ESF), one of the Structural Funds operated by the EC, was established in 1957 to improve workers' employment opportunities and to raise their living standards. The main purpose of the ESF is to make employing workers easier and to increase the geographical and occupational mobility of workers within the European Union. It accomplishes this by providing support for vocational training, employment, and self-employment.

Like the other EC Structural Funds, the ESF seeks to achieve six different objectives explicitly identified in the EC's framework regulations for Structural Funds: Objective 1 is to promote development and structural adjustment in underdeveloped regions; Objective 2 is to assist areas in industrial decline; Objective 3 is to combat long-term unemployment and to create jobs for young people and people excluded from the labor market; Objective 4 is to assist workers adapting to industrial changes and changes in production systems; Objective 5 is to promote rural development; and Objective 6 is to aid sparsely populated areas in northern Europe.

The member states are responsible for identifying and implementing the individual projects that receive ESF financing. The member states also must contribute to the financing of the projects. In general, the maximum benefit provided by the ESF is 50 percent of the project's total cost for projects geared toward Objectives 2, 3, 4, and 5b (see below), and 75 percent of the project's total cost for Objective 1 projects. For all programs implemented under Objective 4 in France, 35 percent of the funding comes from the EC, 25 percent from the GOF, and the remaining 40 percent from the company.

According to the questionnaire responses, CLI received an ESF grant for an Objective 4 project. The amount received during the POI was a portion of a larger total ESF grant authorized for CLI in 1996.

The Department considers worker assistance programs to provide a countervailable benefit to a company when the company is relieved of a contractual or legal obligation it would otherwise have incurred. *See*, § 357.513(a) of the *CVD Regulations*. Only limited information was provided in the questionnaire responses about the purpose of this grant. Therefore, we are unable to determine whether it relieved CLI of any legal or contractual obligations. Likewise, with regard to specificity, the EC has not provided complete information about the distribution of ESF grants.

Consequently, the Department has decided to use facts available in accordance with section 776(a)(2)(A) of the Act. Section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested party if that party has "failed to cooperate by not acting to the best of its ability to comply with a request for information." Since Usinor, the GOF and the EC failed to provide complete information to the Department, we preliminarily determine it appropriate to use an adverse inference in concluding that in receiving the ESF grant that CLI was relieved of an obligation, and that the ESF grant is specific within the meaning of section 771(5A)(D) of the Act.

We preliminarily determine that the 1998 ESF grant is countervailable within the meaning of section 771(5) of the Act. The grant is a financial contribution, as described in section 771(5)(D)(i) of the Act, which provides a benefit to the recipient in the amount of the grant.

The Department normally expenses the benefits from worker-related subsidies in the year in which the recipient is relieved of a payment it would normally incur. *See, CVD Regulations* at 63 FR 65412. Dividing the amount of CLI's 1998 ESF grant by CLI's total 1998 sales yields a countervailable subsidy of 0.00 percent *ad valorem* for this program.

II. Programs Preliminarily Determined Not To Be Countervailable

GOF Programs

A. 1994 Purchase of Power Plant for Excessive Remuneration

The Department initiated an investigation of this program prior to the issuance of the final determination of *French Stainless*. In *French Stainless*, the Department investigated whether the purchase of the Richemont power plant by Électricité de France (EDF), a government-owned entity, was an arm's-length transaction for full market value. The Department determined that while FF 1 billion represented a large gain over the book value of CSR's physical assets, the purchase price included an exclusive supply contract from EDF to Usinor's factories in the Lorraine region. Moreover, the transaction price was supported by reasonable estimates of projected costs and revenues. Therefore, the Department determined this transaction was an arm's-length transaction for full-market value and that EDF's purchase of Richemont did not constitute a countervailable subsidy within the meaning of section 771(5) of the Act.

In this investigation, the petitioners stated that to the extent that the Department determines that the transaction is for full-market value based on the commitments by Usinor to purchase power from EDF, evidence suggests that EDF canceled the contract obligating Usinor to purchase electricity exclusively from EDF. Specifically, the petitioners point to a note in Usinor's 1996 financial statements which states that "other income mainly includes the positive impact (MF 250) of a compensation received from EDF and relating to the termination of a distribution contract".

As indicated in the our *Initiation Checklist* and in an additional Memorandum to the File through Susan Kuhbach, dated June 2, 1999, the Department indicated that it is terminating its investigation into those programs found not countervailable in *French Stainless*. In *French Stainless*, the Department determined that the 1994 Richemont power plant transaction was a market-based transaction. The information contained in Usinor's 1996 financial statements cited by the petitioners describes an event that occurred two years after the investigated transaction and there is no indication that the 1996 compensation from EDF relates to the Richemont transaction. Therefore, we do not consider this information sufficient to reconsider our prior determination in *French Stainless*.

B. GOF Conditional Advance

In *French Stainless*, the Department learned on verification that Usinor received an interest-free conditional advance from the GOF. This advance was provided through the Ministry of Industry to support a project aimed at developing a new type of steel used in the production of catalytic converters. Ugine, Sollac, and two unaffiliated companies participated in the project and each company received a portion of the total project funding provided by the GOF. Ugine received its first payment in 1992 and a second payment in 1995. There is no information on the record indicating exactly when Sollac received payment. According to the agreement between the GOF and the participating companies, repayment of the advance was contingent upon sales of the product resulting from this project exceeding a set amount. The Department learned in *French Stainless*, that since this condition has not been met, the entire amount of the advance received by Ugine remained outstanding in 1997. Usinor did not provide information indicating the outstanding balance of the loans during the POI.

The responding companies have indicated that the GOF conditional advance is for a project aimed at developing a new type of steel for catalytic converters which does not cover subject merchandise. Additionally, the width of this product does not fall within the width range of the subject merchandise as specified in the scope section of this notice. Therefore, the Department preliminarily determines that this program is tied to non-subject merchandise.

III. Other Programs

A. Electric Arc Furnaces

In 1996, the GOF agreed to provide assistance in the form of reimbursable advances to support Usinor's research and development efforts regarding electric-arc furnaces. The first disbursal of funds occurred on July 17, 1998. Repayment of the reimbursable advances will begin on July 31, 2002.

Since these advances may someday be repaid, we are treating them as contingent liability loans. (*See*, § 351.505(d)(1) of the *CVD Regulations*). Under the methodology specified in the Department's new regulations, the benefit occurs when payment would have been made on a comparable commercial loan. (*See*, § 351.505(b) of the *CVD Regulations*). Information provided at verification in the *French Stainless* case indicates that Usinor would make interest payments on its long-term loans on an annual basis. Likewise, information from the Department's discussions in *French Stainless* with private banks in France confirms that such a payment schedule would not be considered atypical of general French banking practices. See *French Stainless*, 64 FR at 30780. Accordingly, we have assumed that a payment on a comparable commercial loan taken out by Usinor at the time of this reimbursable advance would not be due until the year 1999.

Given that no payment would be due during the POI, we preliminarily determine that there is no benefit to Usinor from these reimbursable advances during the POI. Consequently, we have not addressed whether this reimbursable advance is countervailable.

IV. Programs Preliminarily Determined To Be Not Used

Based on the information provided in the responses, we determine that responding companies did not apply for or receive benefits under the following programs during the POI:

GOF Programs

A. *Shareholders Guarantees*
B. *Long-Term Loans from CFDI*
C. *Subsidies Provided Directly To GTS*

EC Programs

A. *Resider and Resider II Program*
B. *ECSC Article 54 Loans*
C. *ECSC Article 56(2)(b) Redeployment/ Readaptation Aid*
D. *Grants from the European Regional Development Fund (ERDF)*

V. Programs Preliminarily Determined Not To Exist

In *French Stainless*, we determined that the alleged program did not exist: "Soft Loans from Credit Lyonnais". Therefore, we are not pursuing this allegation further in this investigation.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for Usinor and GTS the sole manufacturers of the subject merchandise. We preliminarily determine that the total estimated net countervailable subsidy rate is 5.42 percent *ad valorem* for Usinor and 3.77 percent *ad valorem* for GTS. The All Others rate is 3.84 percent, which is the weighted average of the rates for both companies. In accordance with section 703(d) of the Act, we are directing the US Customs Service to suspend liquidation of all entries of certain cut-to-length carbon-quality steel plate from France which are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary, Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of this preliminary determination, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. An interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the publication of this notice. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days

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after the filing of case briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: July 16, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–18854 Filed 7–23–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–818]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Eric B. Greynolds, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

PRELIMINARY DETERMINATION: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to certain producers and exporters of certain cut-to-length carbon-quality steel plate from India. For information on the estimated countervailing duty rate, see the "Suspension of Liquidation" section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation; U.S. Steel Group, a unit of USX Corporation; Gulf States Steel Inc.; IPSCO Steel Inc.; Tuscaloosa Steel Corporation; and the United Steelworkers of America (the petitioners).

Case History

Since the publication of the notice of initiation in the **Federal Register** (*see Notice of Initiation of Countervailing Duty Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 64 FR 12996 (March 16, 1999) (*Initiation Notice*)), the following events have occurred: On March 19, 1999, we issued our original countervailing duty questionnaire to the Government of India (GOI) and to producers/exporters of the subject merchandise. On April 21, 1999, we postponed the preliminary determination of this investigation to no later than July 16, 1999. *See Certain Cut-to-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea: Postponement of Time Limit for Countervailing Duty Investigations*, 64 FR 23057 (April 29, 1999).

On May 10, 1999, we received responses to our initial questionnaire from the GOI and from the Steel Authority of India (SAIL), the only producer and exporter of the subject merchandise. We issued supplemental questionnaires on June 3, 1999, and June 15, 1999. We received responses to these questionnaires on June 25, 1999, and July 6, 1999.

Scope of Investigation

The products covered by this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this investigation unless otherwise specifically excluded. The following products are specifically excluded from this investigation: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to this investigation is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Scope Comments

As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. In particular, we sought comments on the specific levels of alloying elements set out in the description below, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage.

On March 29, 1999, Usinor, a respondent in the French antidumping and countervailing duty investigations and Dongkuk Steel Mill Co., Ltd. and Pohang Iron and Steel Co., Ltd., respondents in the Korean antidumping and countervailing duty investigations (collectively the Korean respondents), filed comments regarding the scope of the investigations. On April 14, 1999, the petitioners responded to Usinor's and the Korean respondents' comments. In addition, on May 17, 1999, ILVA S.p.A. (ILVA), a respondent in the Italian antidumping and countervailing duty investigations, requested guidance on whether certain products are within the scope of these investigations.

Usinor requested that the Department modify the scope to exclude: (1) Plate that is cut to non-rectangular shapes or that has a total final weight of less than 200 kilograms; and (2) steel that is 4" or thicker and which is certified for use in high-pressure, nuclear or other technical applications; and (3) floor plate (*i.e.*, plate with "patterns in relief") made from hot-rolled coil. Further, Usinor requested that the Department provide clarification of scope coverage with respect to what it argues are over-inclusive HTSUS subheadings included in the scope language.

The Department has not modified the scope of these investigations because the current language reflects the product coverage requested by the petitioners, and Usinor's products meet the product description. With respect to Usinor's clarification request, we do not agree that the scope language requires further elucidation with respect to product coverage under the HTSUS. As indicated in the scope section of every Department antidumping and countervailing duty proceeding, the HTSUS subheadings are provided for convenience and Customs purposes only; the written description of the merchandise under investigation or review is dispositive.

The Korean respondents requested confirmation whether the maximum alloy percentages listed in the scope language are definitive with respect to covered HSLA steels.

At this time, no party has presented any evidence to suggest that these maximum alloy percentages are inappropriate. Therefore, we have not adjusted the scope language. As in all proceedings, questions as to whether or not a specific product is covered by the scope and should be timely raised with Department officials.

ILVA requested guidance on whether certain merchandise produced from billets is within the scope of the current CTL plate investigations. According to ILVA, the billets are converted into wide flats and bar products (a type of long product). ILVA notes that one of the long products, when rolled, has a thickness range that falls within the scope of these investigations. However, according to ILVA, the greatest possible width of these long products would only slightly overlap the narrowest category of width covered by the scope of the investigations. Finally, ILVA states that these products have different production processes and properties than merchandise covered by the scope of the investigations and therefore are not covered by the scope of the investigations.

As ILVA itself acknowledges, the particular products in question appear to fall within the parameters of the scope and, therefore, we are treating them as covered merchandise for purposes of these investigations.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348) (CVD Regulations).

Injury Test

Because India is a "Subsidies Agreement country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On April 8, 1999, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from India of the subject merchandise. *See Certain Cut-To-Length Carbon-Quality Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia*, 64 FR 17198 (April 8, 1999).

Alignment With Final Antidumping Duty Determination

On July 2, 1999, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. *See Initiation of Antidumping Duty Investigations: Certain Cut-to-length Carbon-Quality Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, the Republic of Korea, and the Former Yugoslav Republic of Macedonia*, 64 FR 12959 (March 16, 1999). Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the antidumping duty investigations of cut-to-length plate.

Period of Investigation (POI)

Because SAIL is the only exporter/producer of the subject merchandise, the POI for which we are measuring subsidies is the period for SAIL's most recently completed fiscal year, April 1, 1997 through March 31, 1998.

Subsidies Valuation Information

Allocation Period

Section 351.524(d)(2) of the CVD Regulations states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System and updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

In this investigation, no party to the proceeding has claimed that the AUL listed in the IRS tables does not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, according to § 351.524(d)(2) of the CVD

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Regulations, we have allocated SAIL's non-recurring benefits over 15 years, the AUL listed in the IRS tables for the steel industry.

Benchmarks for Loans and Discount Rate

For those programs which require the application of a short-term interest rate benchmark, we used as our benchmark a company-specific, short-term commercial interest rate for both rupee- and U.S. dollar-denominated loans for the POI as reported by SAIL. Where a long-term interest-rate benchmark was required, the selection of a benchmark is specified in the program-specific sections of this notice.

In addition, because SAIL did not report rupee-denominated long-term commercial loans, we could not use a company-specific interest rate as our discount rate. Therefore, the discount rate used was the lending rate on rupee lending from private creditors as reported in the International Financial Statistics.

I. Programs Preliminarily Determined To Be Countervailable

A. Duty Entitlement Passbook Scheme (DEPS)

In its May 10, 1999, response to the Department's original questionnaire, the GOI submitted copies of two publically available Ministry of Commerce publications—"Export and Import Policy" and "Handbook of Procedures" (see Exhibits P and Q of the public version on file in room B–099 of the Main Commerce Building). These publications set forth the rules and regulations of the several programs which allow duty exemptions on imports. Chapter 7 of the "Export and Import Policy" contains the details of India's Duty Exemption Scheme, which consists of the DEPS and "Duty Free Licenses" (Advance Licenses, Advance Intermediate Licenses, and Special Imprest Licenses).

The DEPS formerly was the Passbook Scheme (PBS), which was enacted on April 1, 1995, under the auspices of the Directorate General of Foreign Trade (DGFT). Under the PBS, GOI-designated manufacturers/exporters, upon export of finished goods, could claim credits on certain imported inputs which could be used to pay customs duties on subsequent imports. The amount of credit granted was determined according to the GOI's "Standard Input/Output" (SIO) norm schedule that established the quantities of normally imported raw materials used to produce one unit of the finished product. Using the SIO norm schedule, the GOI granted a credit based on an estimation of the customs duty that would have otherwise been charged absent the program. Rather than receiving the import duty refund in cash, participating companies received their credits in the form of a "passbook" from the DGFT which, in turn, could be used to pay import duties on subsequent GOI-approved imports by means of a debit entry in the company's passbook. According to the GOI, the passbook program was discontinued on April 1, 1997. However, exporters may continue to use a passbook credit that was issued prior to the termination for a period of up to three years after the issuance date. Thus, exporters can, conceivably, continue to use credits earned under the PBS program until their credits have been used up or until March 31, 2000. SAIL has reported that it did not use or receive credits under the PBS during the POI.

On the same date that the PBS was terminated, the GOI enacted the DEPS. Under the DEPS, exporters are eligible to receive a specified percentage of duty credits against the f.o.b. value of their exports. As with the PBS, the GOI determines the amount of credit that can be applied towards a company's remission of import duties according to the GOI's SIO norm schedule, which sets forth the average amount of inputs imported for the manufacture of a specific product and the average amount of duty payable on those imported inputs.

Under the DEPS, an exporter may obtain credits on a pre-export or post-export basis. Eligibility for the DEPS pre-export program is limited to manufacturers/exporters that have exported for a three year period prior to applying for the program. A pre-export credit is capped at five percent of the average export performance of the applicant during the preceding three years. The GOI and the company have stated that SAIL did not use or receive DEPS pre-export credits during the POI.

All exporters are eligible to participate in the DEPS post-export program, provided that the exported product is listed in the GOI's SIO norm schedule. According to the GOI, post-export DEPS credits allow exporters to receive exemptions on any subsequent import regardless of whether it is incorporated into the production of an export product. In addition, credits earned under the DEPS post-export program are valid for 12 months and are freely transferable. During the POI, SAIL received and used post-export DEPS credits.

Section 351.519 of the CVD Regulations sets forth the criteria regarding the remission, exemption or drawback of import duties. Under 351.519(a)(4), the entire amount of an import duty exemption is countervailable if the government does not have in place a system or procedure to confirm which imports are consumed in the production of the exported product, or if the government has not carried out an examination of actual imports involved to confirm which imports are consumed in the production of the exported product.

According to the GOI, once a post-export DEPS credit is earned, companies may use the credit for the exemption of duties on any import regardless of whether the import is consumed in the production of an export product. Because the GOI reported that exporters are free to use products imported with post-export DEPS credits without restriction, we preliminary determine that the GOI does not have a system in place to confirm that imports are consumed in the production of an exported product, nor has it carried out such an examination. Consequently, under § 351.519(a)(4) of the CVD Regulations, the entire amount of the import duty exemption provides a benefit. Furthermore, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program because the GOI is foregoing customs duties. In addition, this program can only be used by exporters, and, thus, the subsidy is specific under section 771(5A)(A) of the Act.

SAIL reported its receipt of DEPS post-export credits during the POI for exports of subject merchandise to the United States and the application fees it paid in order to receive the credits. We preliminarily determine that the fees paid qualify as an "* * * application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy." *See* section 771(6)(A) of the Act. Thus, to calculate the subsidy, we have calculated the amount of DEPS import duty exemptions received by SAIL and the amount of revenue earned on DEPS export credits which have been sold by SAIL during the POI that were attributable to exports of subject merchandise to the United States (less the applicable fees paid). We then divided that amount by SAIL's total exports of subject merchandise to the United States during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be 0.55 percent *ad valorem*.

B. Advance Licenses

Under India's Duty Exemption Scheme, companies may also import inputs duty-free through the use of import licenses. Using advance licenses, companies are able to import inputs "required for the manufacture of goods" without paying India's basic customs duty (*see* chapter 7 of "Export and Import Policy"). Advance intermediate licenses and special imprest licenses are also used to import inputs duty-free. During the POI, SAIL used advance licences and also sold some advance licenses. SAIL reported that it did not use or sell any advance intermediate licenses or special imprest licenses during the POI.

In *Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 62 FR 32297, 32306 (June 13, 1997) (*1994 Castings*), the Department found that the advance licenses system accomplished, in essence, what a drawback system is intended to accomplish, *i.e.*, finished products produced with imported inputs are allowed to be exported free of the import duties assessed on the imported inputs. The Department concluded that, because the imported inputs were used to produce castings which were subsequently exported, the duty-free importation of these inputs under the advance license program did not constitute a countervailable subsidy. *See 1994 Castings* 62 FR at 32306.

Subsequently, in *Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 63 FR 64050, 64058–59 (Nov. 18, 1998) (*1996 Castings*), we stated that we would reevaluate the program in light of new information as to how the program operates. In the petition, petitioners provided new substantive information which indicated that the GOI does not value the licenses according to the inputs actually consumed in the production of the exported good. Based on this information, we initiated a reexamination of the advanced license program.

As stated earlier, § 351.519 of the CVD Regulations sets the criteria used to determine whether programs which provide for the remission, exemption, or drawback of import duties are countervailable. Under § 351.519(a)(4), the government must have a system in place or must carry out an examination to confirm that inputs are consumed in the production of the exported product. Absent these procedures, the entire amount of the import duty exemption provides a countervailable benefit.

Because the GOI reported in its questionnaire response that products imported under an advance license need not be consumed in the production of the exported product, we preliminarily determine that the GOI has no system in place to confirm that the inputs are consumed in the production of the exported product, nor has the GOI carried out such an examination. Consequently, under § 351.519(a)(4) of the CVD Regulations, the entire amount of the duty exemption under the advance licenses program is countervailable. Because only exporters can receive advance licenses, this program constitutes an export subsidy under section 771(5A)(B) of the Act. In addition, a financial contribution is provided by the program under section 771(5)(D)(ii) of the Act.

The GOI also allows companies to sell advance licenses to other companies in India. The Department has previously determined that the sale of import licenses constitutes a countervailable export subsidy. *See, e.g., 1996 Castings* and *1994 Castings*. No new substantive information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this determination. Therefore, in accordance with section 771(5A)(B) of the Act, we continue to find that this program constitutes an export subsidy and that the financial contribution in the form of the revenue received on the sale of licenses constitutes the benefit.

SAIL reported the advance licenses it used and sold during the POI which it received for exports of subject merchandise to the United States and the application fees it paid in order to receive these licenses. We preliminarily determine that the fees paid qualify as an "* * * application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy." *See* section 771(6)(A) of the Act. Under § 351.524(c) of the CVD Regulations, this program provides a recurring benefit. Therefore, to calculate the subsidy for the Advance Licenses program, we added the values of the import duty exemptions realized by SAIL from its use of advance licenses during the POI (net of application fees) and the proceeds it realized from sales of advance licenses during the POI (net of application fees). We then divided this total by the value of SAIL's exports of subject merchandise to the United States during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be 12.90 percent *ad valorem*.

C. Special Import Licenses (SILs)

During the POI, SAIL sold through public auction two other types of import licenses—SILs for Quality and SILs for Star Trading Houses. SILs for Quality are licenses granted to exporters which meet internationally-accepted quality standards for their products, such as ISO 9000 (series) and ISO 14000 (series). SILs for Star Trading Houses are licenses granted to exporters that meet certain export targets. Both types of SILs permit the holder to import products listed on a "Restricted List of Imports" in amounts up to the face value of the SIL but do not relieve the importer of import duties.

SAIL reported that it sold SILs during the POI. As explained above, the Department's practice is that the sale of special import licenses constitutes an export subsidy because companies received these licenses based on their status as exporters. *See, e.g., 1996 Castings* and *1994 Castings*. No new substantive information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this determination. Therefore, in accordance with section 771(5A)(B) of the Act, we continue to find that this program constitutes a countervailable export subsidy, and the financial contribution in the form of the revenue received on the sale of licenses constitutes the benefit.

During the POI, SAIL sold numerous SILs. Because the receipt of SILs cannot be segregated by type or destination of export, we calculated the subsidies by dividing the total amount of proceeds received from the sales of these licenses by the value of SAIL's total exports. On this basis, we preliminarily determine the net countervailable subsidy be 0.15 percent *ad valorem*.

D. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, producers may import capital goods at reduced rates of duty by undertaking to earn convertible foreign exchange equal to four to six times the value of the capital goods within a period of five to eight years. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest.

In the *Final Negative Countervailing Duty Determination: Elastic Rubber Tape From India*, 64 FR 19125 (April 19, 1999) (*ERT*), we determined that the import duty reduction provided under the EPCGS was a countervailable export subsidy. *See ERT* 64 FR at 19129–30. We also determined that the exemption from the excise tax provided under this program was not countervailable. *See ERT* 64 FR at 19130. No new

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information or evidence of changed circumstances have been provided to warrant a reconsideration of these determinations. Therefore, we continue to find that import duty reductions provided under the EPCGS to be countervailable export subsidies.

SAIL reported that it imported machinery under the EPCGS during the POI and in the years prior to the POI. For some of its imported machinery, SAIL met its export commitments prior to the POI. Therefore, the amount of duty for which it had claimed exemption has been completely waived by the GOI. However, SAIL has not completed its export commitments for other imports of capital machinery. Therefore, although SAIL received a reduction in import duties when the capital machinery was imported, the final waiver on the potential obligation to repay the duties has not yet been made by the GOI.

We preliminary determine that SAIL benefitted in two ways by participating in this program during the POI. The first benefit received by SAIL under this program is the benefit on the import duty reductions received on imported capital equipment which has been formally waived by the GOI because SAIL met its export requirements with respect to those imports. Prior to the POI, SAIL met its export requirements for certain capital imports it made under the EPCGS and, therefore, upon that fulfillment, the GOI formally waived the unpaid duties on those imports. Because the GOI has formally waived the unpaid duties on these imports, we have treated the full amount of the duty exemption as a grant received in the year the export requirement for the import was met since that was the year the final waiver of unpaid duties was received.

Section 351.524 of the CVD Regulations specifies the criteria to be used by the Department in determining how to allocate the benefits from a countervailable subsidy program. Under the CVD Regulations, recurring benefits will be expensed in the year of receipt, while non-recurring benefits will be allocated over time. In this investigation, non-recurring benefits will be allocated over 15 years, the AUL of assets used by the steel industry as reported in the IRS tables.

Normally, tax benefits are considered to be recurring benefits and are expensed in the year of receipt. Since import duties are a type of tax, the benefit provided under this program is a tax benefit, and, thus, normally would be considered a recurring benefit. However, the CVD Regulations recognize that under certain circumstances it may be more appropriate to allocate the benefits of a program traditionally considered as a recurring subsidy, rather than to expense the benefits in the year of receipt. For example, § 351.524(c)(2) of the CVD Regulations allows a party to claim that a recurring subsidy should be treated as a non-recurring subsidy and enumerates the criteria to be used by the Department in evaluating that claim. In addition, in the Explanation of the Final Rules (the Preamble) to the CVD Regulations, the Department provides an example of when it may be more appropriate to consider the benefits of a tax program non-recurring, and, thus, allocate those benefits over time. In the Preamble to the CVD Regulations we stated that if a government provides an import duty exemption tied to major capital equipment purchases, such as the program at issue here, that it may be appropriate to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring, even though import duty exemptions are on the list of recurring subsidies. *See* CVD Regulations, 63 FR at 65393. Therefore, because the benefit received from the waiver of import duties under the EPCGS program is tied to the capital assets of SAIL, we consider the benefit to be non-recurring. Accordingly, we have allocated the benefit from this program over the average useful life of assets in the industry, as set forth in the "Subsidies Valuation Information" section, above.

The second type of benefit received under this program was provided by the import duty reductions received on imports of capital equipment for which SAIL had not yet met its export requirements. For those capital equipment imports, we determine that SAIL had unpaid duties which formally had not been waived by the GOI. Thus, the company had outstanding contingent liabilities during the POI. When a company has an outstanding liability and repayment of that liability is contingent upon subsequent events, our practice is to treat any balance on that unpaid liability as an interest-free loan. *See* § 351.505(d)(1) of the CVD Regulations.

In this investigation, the amount of contingent liability which would be treated as an interest-free loan is the amount of the import duty reduction received by SAIL, but not yet finally waived by the GOI. Thus, for duty reductions received on imports of capital equipment for which SAIL had not yet met its export requirements, we consider the full amount of SAIL's unpaid customs duty on those imports which are outstanding during the POI to be an interest-free loan. We calculated this portion of the benefit as the interest that SAIL would have paid during the POI had it borrowed the full amount of the duty reduction at the benchmark rate. Pursuant to § 351.505(d)(1) of the CVD Regulations, we used a long-term interest rate as our benchmark for measuring the subsidy because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period for SAIL to fulfill its export commitments) occurs at a point in time more than one year after the date the capital goods were imported. Because SAIL did not report any rupee-denominated long-term loans for the year in which SAIL imported the capital equipment, we could not use a company-specific benchmark interest rate as a discount rate in calculating the benefit provided to SAIL under this program. Thus, we used, as the discount rate, the lending rate on rupee-lending from private creditors, which is published in *International Financial Statistics*.

To calculate the subsidy, we divided the combined benefit allocable to the POI by SAIL's total exports from its Bhilai facility during the POI because SAIL only reported the capital equipment imported under the EPCGS for the Bhilai facility. (We used this methodology for the purpose of the preliminary determination because SAIL only reported the capital equipment imported under the EPCGS by the Bhilai facility, the only plant which produced the subject merchandise exported to the United States. We are seeking additional information on all import duty exemptions on imports of all capital equipment by SAIL for purposes of the final determination). On this basis, we preliminarily determine the net countervailable subsidy to be 0.25 percent *ad valorem*.

E. Pre-shipment and Post-shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or "packing credits," to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre-shipment loans for working capital purposes, *i.e.*, for the purchase of raw materials, warehousing, packing, and transporting of export merchandise. Exporters may also establish pre-shipment credit lines upon which they may draw as needed. Credit line limits are established by commercial banks, based upon a company's creditworthiness and past export performance, and may be denominated in either Indian rupees or in foreign currency. Companies that have pre-shipment credit lines typically pay interest on a quarterly basis on the outstanding balance of the account at the end of each period.

Commercial banks extending export credit to Indian companies must, by law, charge interest on this credit at rates determined by the RBI. During the POI, the rate of interest charged on pre-shipment, rupee-denominated export loans up to 180 days was 12.0 and 13.0 percent. For those loans over 180 days and up to 270 days, banks charged interest at 15.0 percent. The interest charged on foreign currency denominated export loans up to 180 days during the POI was a 6-month LIBOR rate plus 2.0 percent for banks with foreign branches, or plus 2.5 percent for banks without foreign branches. For those foreign currency denominated loans exceeding 180 days and up to 270 days, the interest charged was 6-month LIBOR plus 4.0 percent for banks with foreign branches, or plus 4.5 percent for banks without foreign branches. Exporters did not receive the concessional interest rate if the loan was beyond 270 days.

Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export documents to their lending bank. The credit covers the period from the date of shipment of the goods, to the date of realization of export proceeds from the overseas customer. Post-shipment financing is, therefore, a working capital program used to finance export receivables. This financing is normally denominated in either rupees or in foreign currency, except when an exporter used foreign currency pre-shipment financing, then the exporter is restricted to post-shipment export financing denominated in the same foreign currency.

In general, post-shipment loans are granted for a period of no more than 180 days. The interest rate charged on these foreign currency denominated loans during the POI was LIBOR plus 2.0 percent for banks with overseas branches or LIBOR plus 2.5 percent for banks without overseas branches. For loans not repaid within the due date, exporters lose the concessional interest rate on this financing.

The Department has previously found both pre-shipment export financing and post-shipment export financing to be countervailable, because receipt of export financing under these programs was contingent upon export performance and the interest rates were lower than the rates the exporters would have paid on comparable commercial loans. *See, e.g., 1995 Castings*, 62 FR at 32998. No new substantive information or evidence of changed circumstances has been submitted in this investigation to warrant reconsideration of this finding. Therefore, in accordance with section 771(5A)(B) of the Act, we continue to find that pre-and post-shipment export financing constitute countervailable export subsidies.

To determine the benefit conferred under the pre-export financing program for rupee-denominated loans, we compared the interest rate charged on these loans to a benchmark interest rate. SAIL reported that, during the POI, it received and paid interest on commercial, short-term, rupee-denominated cash credit loans which were not provided under a GOI program. Cash credit loans are the most comparable type of short-term loans to use as a benchmark because like the pre-export loans received under this program, cash credit loans are denominated in rupee and take the form of a line of credit which can be drawn down by the recipient. Thus, we used these loans to calculate a company-specific, weighted-average, rupee-denominated benchmark interest rate. We compared this company-specific benchmark rate to the interest rates charged on SAIL's pre-shipment rupee loans and found that the interest rates charged were lower than the benchmark rates. Therefore, in accordance with section 771(5)(E)(ii) of the Act, this program conferred countervailable benefits during the POI because the interest rates charged on these loans were less than what a company otherwise would have had to pay on a comparable short-term commercial loan.

To calculate the benefit from these pre-shipment loans, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the benchmark interest rate. Where the benchmark interest exceeded the actual interest paid, the difference is the benefit. We then divided the total amount of benefit by SAIL's total exports. On this basis, we preliminarily determine the net countervailable subsidy to be 0.10 percent *ad valorem*.

During the POI, SAIL also took out U.S. pre-and post-shipment export financing denominated in U.S. dollars. To determine the benefit conferred from this non-rupee pre-and post-shipment export financing, we again compared the program interest rates to a benchmark interest rate. We used the company-specific interest rates from SAIL's "bankers acceptance facility" loans to derive the benchmark. SAIL's bankers acceptance facility loans were the only commercial short-term dollar lending received by the company during the POI. Because the effective rates paid by the exporters are discounted rates, we derived from the bankers acceptance facility rates a discounted weighted-average, dollar-denominated benchmark. We compared this company-specific benchmark rate to the interest rates charged on pre-shipment and post-shipment dollar-denominated loans and determined that the program interest rates were higher than the benchmark rate. Therefore, we preliminarily determine that SAIL did not benefit from dollar-denominated pre-and post-shipment export financing during the POI.

F. Loan Guarantees From the GOI

In its questionnaire response, the GOI reported that it has not extended loan guarantees pursuant to any program *per se*. Rather, the Ministry of Finance extends loan guarantees to selected Indian companies on an *ad hoc* basis, normally to public sector companies in particular industries. The GOI also reported that GOI loan guarantees are not contingent on export performance nor are they contingent on the use of domestic over imported goods. The GOI stated that, while it has not extended loan guarantees to the steel sector since 1992, it continues to extend loan guarantees to other industrial sectors on an *ad hoc* basis.

During the POI, SAIL had outstanding several long-term, foreign currency loans on which it received loan guarantees from the GOI. These loans originated from both foreign commercial banks and international lending/development institutions. According to SAIL, the loan guarantees were earmarked for certain activities related to the company's steel production (i.e. worker training, modernization activities, etc.). In contradiction to the GOI's response, SAIL reported that it finalized its loan agreements, and, thus, its loan guarantees as late as 1994.

Section 351.506 of the CVD Regulations states that in the case of a loan guarantee, a benefit exists to the extent that the total amount a firm pays for the loan with a government-provided guarantee is less than the total amount the firm would pay for a comparable commercial loan that the firm could actually obtain on the market absent the government-provided guarantee, including any differences in guarantee fees. Thus, to determine whether this program confers a benefit, we compared the total amount SAIL paid, including effective interest and guarantee fees, on

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each of its outstanding foreign currency loans with the total amount it would have paid on a comparable commercial loan.

According to SAIL's response, the original loan amounts were denominated in foreign currencies. However, SAIL only reported the rupee-denominated payments on these loans, and reported only a weighted-average interest rate on these loans derived from these rupee payments. Therefore, for this preliminary determination, we are unable to use a foreign currency benchmark to calculate the benefit conferred by these loan guarantees. (We also note that SAIL did not report any non-GOI guaranteed long-term foreign currency loans, thus, even if SAIL had properly reported the interest rates charged on these loans, we could not use a company-specific benchmark interest rate.) SAIL also did not report any long-term rupee loans from commercial sources. Therefore, we used as the benchmark the long-term interest rate for loans denominated in rupees from private creditors, which is published in *International Financial Statistics*. (We are seeking additional information from SAIL on the actual fees charged on these guarantees. We will also seek information on interest rates and guarantee fees charged by commercial banks on foreign currency loans provided within India.)

Using these two rates for comparison purposes, we found that the total amount paid by SAIL on the GOI guaranteed loans was less than what the company would have paid on a comparable commercial loan. Thus, we preliminary determine that the loan guarantees from the GOI conferred a benefit upon SAIL. We preliminarily determine that this program is specific under section 771(5A)(D)(iii)(II) of the Act because it is limited to certain companies selected by the GOI on an *ad hoc* basis. In addition, a financial contribution is provided under the program as defined under section 771(5)(D)(i) of the Act. To calculate the subsidy, we divided the benefit calculated from the loan guarantees by SAIL's total sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be 0.50 percent *ad valorem*.

We did not include in our calculations the loans which originated from international lending/development institutions. According to § 351.527 of the CVD Regulations, the Department does not generally consider loans provided by international lending/development institutions such as the World Bank to be countervailable. However, we will continue to consider the issue for the final determination.

II. Program Preliminarily Determined To Be Not Countervailable

Government of India (GOI) Loans through the Steel Development Fund (SDF)

The SDF was established in 1978 at a time when the steel sector was subject to price and distribution controls. From 1978 through 1994, an SDF levy was imposed on all sales made by India's integrated producers. The proceeds from this levy were then remitted to the Joint Plant Committee (JPC), the administrating authority consisting of four major integrated steel producers in India that have contributed to the fund over the years. The GOI reported in its questionnaire response that these levies, interest earned on loans, and repayments of loans due are the only sources of funds for the SDF.

Under the SDF program, companies that have contributed to the fund are eligible to take out long-term loans from the fund at favorable rates. All loan requests are subject to review by the JPC along with the Development Commission for Iron and Steel. In its questionnaire response, the GOI has claimed that it has never contributed any funds, either directly or indirectly, to the SDF. Thus, we preliminarily determine that the SDF program is not countervailable because it does not constitute a financial contribution as defined under section 771(5)(D)(ii) of the Act.

III. Programs Preliminarily Determined To Be Not Used

Based upon the information provided in the responses, we preliminarily determine that SAIL did not apply for or receive benefits under the following programs during the POI:

A. *Passbook Scheme*
B. *Advanced Intermediate Licenses*
C. *Special Imprest Licenses*
D. *Tax Exemption for Export Profits (Section 80 HHC of the India Tax Act)*

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for the company under investigation—SAIL. We will use this rate for purposes of the "all others" rate.

Producer/exporter	Net subsidy rate
Steel Authority of India (SAIL).	14.45% ad valorem.
All Others	14.45% ad valorem.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from India, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of the preliminary determination at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days from the date of filing of case briefs. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: July 16, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–18856 Filed 7–23–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–837]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Tipten Troidl, CVD/AD Enforcement, Office 6, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2786.

PRELIMINARY DETERMINATION: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to certain producers and exporters of certain cut-to-length carbon-quality steel plate from the Republic of Korea. For information on the estimated countervailing duty rates, see the "Suspension of Liquidation" section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, and the United Steelworkers of America (the petitioners).

Case History

Since the publication of the notice of initiation in the *Federal Register (see Notice of Initiation of Countervailing Duty Investigations: Certain Cut-to-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 64 FR 12996 (March 16, 1999) (*Initiation Notice*)), the following events have occurred. On March 18, 1999, we issued countervailing duty questionnaires to the Government of Korea (GOK), and the producers/exporters of the subject merchandise. On April 29, 1999, we postponed the preliminary determination of this investigation until no later than July 16, 1999. *See Certain Cut-to-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea: Postponement of Time Limit for Countervailing Duty Investigations*, 64 FR 23057 (April 29, 1999).

We received responses to our initial questionnaires from the GOK and Pohang Iron & Steel Company, Ltd. (POSCO), and Dongkuk Steel Mill Co., Ltd. (DSM), producers of the subject merchandise, on May 10, 1999. In addition, on July 1, 1998 we received responses from four trading companies which are involved in exporting the subject merchandise to the United States: POSCO Steel Service & Sales Company, Ltd. (POSTEEL), Dongkuk Industries Co., Ltd. (DKI), Hyosung Corporation (Hyosung), and Sunkyong Ltd. (Sunkyong). On June 9, 1999, we issued supplemental questionnaires to all of the responding parties and received their responses on June 28, 1999, and July 1, 1999.

The Department is currently seeking additional information regarding certain R&D programs used by either POSCO, DSM or their affiliates, which may have benefitted the producers/exporters of the subject merchandise.

Scope of Investigation

For purposes of this investigation, the product covered is certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these

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investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to this investigation is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. In particular, we sought comments on the specific levels of alloying elements set out in the description below, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage.

On March 29, 1999, Usinor, a respondent in the French antidumping and countervailing duty investigations and DSM and POSCO, respondents in the Korean antidumping and countervailing duty investigations (collectively the Korean respondents), filed comments regarding the scope of the investigations. On April 14, 1999, the petitioners responded to Usinor's and the Korean respondents' comments. In addition, on May 17, 1999, ILVA S.p.A. (ILVA), a respondent in the Italian antidumping and countervailing duty investigations, requested guidance on whether certain products are within the scope of these investigations.

Usinor requested that the Department modify the scope to exclude: (1) Plate that is cut to non-rectangular shapes or that has a total final weight of less than 200 kilograms; and (2) steel that is 4" or thicker and which is certified for use in high-pressure, nuclear or other technical applications; and (3) floor plate (*i.e.*, plate with "patterns in relief") made from hot-rolled coil. Further, Usinor requested that the Department provide clarification of scope coverage with respect to what it argues are over-inclusive HTSUS subheadings included in the scope language.

The Department has not modified the scope of these investigations because the current language reflects the product coverage requested by the petitioners, and Usinor's products meet the product description. With respect to Usinor's clarification request, we do not agree that the scope language requires further elucidation with respect to product coverage under the HTSUS. As indicated in the scope section of every Department antidumping and countervailing duty proceeding, the HTSUS subheadings are provided for convenience and Customs purposes only; the written description of the merchandise under investigation or review is dispositive.

The Korean respondents requested confirmation whether the maximum alloy percentages listed in the scope language are definitive with respect to covered HSLA steels.

At this time, no party has presented any evidence to suggest that these maximum alloy percentages are inappropriate. Therefore, we have not adjusted the scope language. As in all proceedings, questions as to whether or not a specific product is covered by the scope should be timely raised with Department officials.

ILVA requested guidance on whether certain merchandise produced from billets is within the scope of the current CTL plate investigations. According to ILVA, the billets are converted into wide flats and bar products (a type of long product). ILVA notes that one of the long products, when rolled, has a thickness range that falls within the scope of these investigations. However, according to ILVA, the greatest possible width of these long products would only slightly overlap the narrowest category of width covered by the scope of the investigations. Finally, ILVA states that these products have different production processes and than merchandise covered by the scope of the investigations and therefore are not covered by the scope of the investigations.

As ILVA itself acknowledges, the particular products in question appear to fall within the parameters of the scope and, therefore, we are treating them as covered merchandise for purposes of these investigations.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348) (CVD Regulations).

Injury Test

Because the Republic of Korea (Korea) is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On April 8, 1999, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Korea of the subject merchandise (*See Certain Cut-To-Length Steel Plate From Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia*, 64 FR 17198 (April 8, 1999).

Alignment With Final Antidumping Duty Determination

On July 2, 1999, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. *See Initiation of Antidumping Duty Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Republic of Korea, and the Former Yugoslav Republic of Macedonia*, 64 FR 12959 (March 16, 1999). Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the antidumping investigations of certain cut-to-length plate.

Period of Investigation

The period for which we are measuring subsidies (the POI) is calendar year 1998.

Subsidies Valuation Information

Allocation Period

Section 351.524(d)(2) of the CVD Regulations states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System and updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

In this investigation, no party to the proceeding has claimed that the AUL listed in the IRS tables does not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, according to § 351.524(d)(2) of the CVD Regulations, we have allocated POSCO and DSM's non-recurring subsidies over 15 years, the AUL listed in the IRS tables for the steel industry.

Benchmarks for Long-Term Loans and Discount Rates

During the POI, POSCO and DSM had a number of won-denominated and foreign currency-denominated long-term loans outstanding which the company received from government-owned banks, Korean commercial banks, overseas banks, and foreign banks with branches in Korea. A number of these loans were received prior to 1992. In the 1993 investigation of *Steel Products from Korea*, the Department determined that the GOK influenced the practices of lending institutions in Korea and controlled access to overseas foreign currency loans through 1991. *See Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea*, 58 FR 37328, 37338 (July 9, 1993) (*Steel Products from Korea*), and the "Direction of Credit" section below. In that investigation, we determined that the best indicator of a market rate for long-term loans in Korea was the three-year corporate bond rate on the secondary market. Also, *see Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15530, 15532 (March 31, 1999) (*Plate in Coils*), and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636, 39641 (June 8, 1999) (*Sheet and Strip*). Therefore, in the preliminary determination of the current investigation, to calculate the benefit which POSCO and DSM received from direct foreign currency loans and domestic foreign currency loans obtained prior to 1991 and still outstanding during the POI, we used as our benchmark the three-year corporate bond rate on the secondary market. We are also using the three-year corporate bond rate on the secondary market as the discount rate to determine the benefit from non-recurring subsidies received prior to 1992.

In *Plate in Coils* and *Sheet and Strip*, the Department determined that the GOK continued to control directly or indirectly the lending practices of most sources of credit in Korea between 1992 and 1997. In the current investigation, we preliminarily determine that the GOK still exercised substantial control over lending institutions in Korea during the POI. Based on our findings on this issue in prior investigations, as well as in the current investigation on CTL Plate, discussed below in the "Direction of Credit" section of this notice, we are using the following benchmarks to calculate POSCO's and DSM's benefit from long-term loans obtained in the years 1992 through 1998: (1) For countervailable, foreign-currency denominated loans, we are using the company-specific, weighted-average U.S. dollar-denominated interest rates on the companies' loans from foreign bank branches in Korea; (2) for countervailable won-denominated loans, where available, we are using the company-specific three-year corporate bond rate on the companies' public bonds. Where unavailable, we continue to use a national average three-year corporate bond rate. In *Plate in Coils* and in *Sheet and Strip*, we found that the Korean domestic bond market was not controlled by the GOK after 1991, and that domestic bonds serve as an appropriate benchmark interest rate.

We are also using the three-year company-specific corporate bond rate as the discount rate to determine the benefit from non-recurring subsidies received between 1992 and 1998.

Benchmarks for Short-Term Financing

For those programs which require the application of a short-term interest rate benchmark, we used as our benchmark a company-specific weighted-average interest rate for commercial won-denominated loans for the POI. Each respondent provided to the Department its respective company-specific, short-term commercial interest rate.

Treatment of Subsidies Received by Trading Companies

During the POI, POSCO exported the subject merchandise to the United States through three trading companies, POSTEEL, Hyosung, and Sunkyong. DSM exported through one trading company, DKI. POSTEEL is affiliated with POSCO, and DKI is affiliated with DSM within the meaning of section 771(33)(E) of the Act because as of December 31, 1998, POSCO owned 95.8 percent of POSTEEL's shares, and DSM owned 51.3 percent of DKI shares. The other trading companies are not affiliated with either POSCO or DSM. We required that the trading companies provide responses to the Department with respect to the export subsidies under investigation. Responses were required from the trading companies because the subject merchandise may be subsidized by means of subsidies provided to both the producer and the exporter. All subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if it is exported to the United States by an unaffiliated trading company rather than by the producer itself. Therefore, the Department calculates countervailable subsidy rates on the subject merchandise by cumulating subsidies provided to the producer, with those provided to the exporter. *See* 19 CFR 351.525.

Under § 351.107 of the Department's Regulations, when the subject merchandise is exported to the United States by a company that is not the producer of the merchandise, the Department may establish a "combination" rate for each combination of an exporter and supplying producer. However, as noted in the "Explanation of the Final Rules" (the Preamble), there may be situations in which it is not appropriate or practicable to establish combination rates when the subject merchandise is exported by a trading company. In such situations, the Department will make exceptions to its combination rate approach on a case-by-case basis. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296; 27303 (May 19, 1997).

In this investigation, we preliminarily determine that it is not appropriate to establish combination rates. This determination is based on two main facts: First, the majority of the subsidies conferred upon the subject merchandise were received by the producers. Second, the difference in the levels of subsidies conferred upon the subject merchandise

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among the individual trading companies is insignificant. Therefore, combination rates would serve no practical purpose because the calculated subsidy rate for POSCO/POSTEEL or POSCO/Sunkyong or POSCO and any of the other trading companies would effectively be the same rate. For these reasons we are not calculating combination rates in this investigation. Instead, we have only calculated one rate for each producer of the subject merchandise, all of which is produced by either POSCO or DSM.

To include the subsidies received by the trading companies, which are conferred upon the export of the subject merchandise, in the calculated *ad valorem* subsidy rate, we used the following methodology. For each of the four trading companies, we calculated the benefit attributable to the subject merchandise and factored that amount into the calculated subsidy rate for the producer. In each case, we determined the benefit received by the trading companies for each export subsidy and weight-averaged the benefit amounts by the relative share of each trading company's value of exports of the subject merchandise to the United States. This calculated *ad valorem* subsidy was then added to the subsidy calculated for either POSCO or DSM. Thus, for each of the programs below, the listed *ad valorem* subsidy rate includes the countervailable subsidies received by both the trading companies and either POSCO or DSM.

I. Programs Preliminarily Determined To Be Countervailable

A. Direction of Credit

In the 1993 investigation of *Steel Products from Korea*, the Department determined (1) that the GOK influenced the practices of lending institutions in Korea; (2) the GOK-regulated long-term loans were provided to the steel industry on a selective basis; and (3) the selective provision of these regulated loans resulted in a countervailable benefit. Accordingly, all long-term loans received by the producers/exporters of the subject merchandise were treated as countervailable. The determination in that investigation covered all long-term loans bestowed through 1991. *See Steel Products from Korea*, 58 FR at 37339.

In the *Plate in Coils* and *Sheet and Strip* investigations, the Department examined whether the GOK continued to influence the practices of lending institutions in Korea between 1992 and 1997. In this investigation, petitioners allege that the GOK continued to control the practices of lending institutions in Korea through the POI, and that the steel sector received a disproportionate share of low-cost, long-term credit, resulting in countervailable benefits being conferred on the producers/exporters of the subject merchandise. Petitioners assert, therefore, that the Department should countervail all long-term loans received by the producers/exporters of the subject merchandise that were still outstanding during the POI.

1. The GOK's Credit Policies Through 1991

As noted above, we previously found significant GOK control over the practices of lending institutions in Korea through 1991, the period investigated in *Steel Products From Korea*. This finding of control was determined to be sufficient to constitute a government program and government action. *See Steel Products from Korea*, 58 FR at 37342. We also determined that (1) the Korean steel sector, as a result of the GOK's credit policies and control over the Korean financial sector, received a disproportionate share of regulated long-term loans, so that the program was, in fact, specific, and (2) that the interest rates on those loans were inconsistent with commercial considerations. Id. at 37343. Thus, we countervailed all long-term loans received by the steel sector from all lending sources.

In this investigation, we provided the GOK with the opportunity to present new factual information concerning the government's credit policies prior to 1992, which we would consider along with our finding in the prior investigation. The GOK has not provided new factual information that would lead us to change our determination in *Steel Products from Korea*. Therefore, we continue to determine that the provision of long-term loans in Korea through 1991 results in a financial contribution within the meaning of section 771(5)(D)(i) of the Act. This finding is in conformance with the Statement of Administrative Action (SAA), which states that "section 771(5)(B)(iii) encompasses indirect subsidy practices like those which Commerce has countervailed in the past, and that these types of indirect subsidies will continue to be countervailable." SAA, accompanying H.R. 5110 (H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess.) (1994), at 926. In accordance with section 771(5)(E)(ii) of the Act, a benefit has been conferred to the recipient to the extent that the regulated loans are provided at interest rates less than the benchmark rates described under the "Subsidies Valuation Information" section, above.

We also continue to determine that all regulated long-term loans provided to the producers/exporters of the subject merchandise through 1991 were provided to a specific enterprise or industry, or group thereof, within the meaning of section 771(5A)(D)(iii)(III) of the Act. This finding is in conformance with our determination in *Steel Products from Korea*, 58 FR at 37342, *Plate in Coils*, 64 FR at 15532 and *Sheet and Strip*, 64 FR at 30642.

POSCO and DSM were the only producers of the subject merchandise, and both companies received long-term loans prior to 1992 that were still outstanding during the POI. To determine the benefit from the regulated loans with fixed interest rates, we applied the long-term loan methodology provided for in § 351.505(c)(3) of the CVD Regulations and calculated the grant equivalent for the loans. To determine the benefit from regulated loans with variable interest rates, we applied the methodology provided for in section 351.505(c)(4) of the CVD Regulations, and compared the amount of interest paid during 1998 on the regulated loans to the amount of interest that would have been paid based upon the interest rate on the comparison benchmark loan. We then summed the benefit amounts from the loans attributable to the POI and divided the total benefit by each company's respective total sales. On this basis, we preliminarily determine the net countervailable subsidy to be 0.10 percent *ad valorem* for POSCO, and 0.06 percent *ad valorem* for DSM.

2. The GOK's Credit Policies From 1992 Through 1998

In *Plate in Coils* and *Sheet and Strip*, the Department examined the GOK's credit policies during the period 1992 through 1997. In those investigations, the Department determined that the GOK continued to control directly and indirectly the lending practices of most sources of credit in Korea through 1997. The Department also determined that the GOK regulated credit from domestic commercial banks and government-controlled banks such as the Korea Development Bank (KDB), was specific to the steel industry. This credit conferred a benefit on the producers/exporters of the subject merchandise to the extent that the interest rates on the countervailable loans were less than the interest rates on comparable commercial loans. *See* section 771(5)(ii) of the Act. Also see *Plate in Coils*, 64 FR at 15533, and *Sheet and Strip*, 64 FR at 30642.

In this investigation, we provided the GOK with the opportunity to present new factual information concerning the

government's credit policies during the 1992 through 1997 period, which we would consider along with our finding in the prior investigations. The GOK has not provided new factual information that would lead us to change our determination in *Plate in Coils* and *Sheet and Strip*. Therefore, we continue to find lending from domestic banks and from government-owned banks such as the KDB to be countervailable.

In the current investigation, we examined whether the GOK continued to control or influence directly or indirectly, the lending practices of sources of credit in Korea in 1998. Because of the Department's determination that the GOK controlled and directed credit provided by domestic banks and government-owned banks during the period 1992 through 1997, the burden of demonstrating that the GOK has changed its practice of interfering in the financial market is placed, in large part, upon the respondents. Similarly, when we have determined a program or a government practice to be not countervailable, petitioners must come forth with new information or evidence of change circumstances before the Department will reexamine the countervailability of that program.

In its questionnaire responses, the GOK asserted that it does not provide direction or guidance to Korean financial institutions in the allocation of loans to selected industries. The GOK stated that the lending decisions and loan distributions of financial institutions in Korea reflect commercial considerations. The GOK also stated that its role in the financial sector is limited to monetary and credit policies as well as bank supervision and examination.

According to the GOK, measures were taken in 1998 to liberalize the Korean financial sector. For example, in January 1998 the GOK announced closure of some banks, and in April 1998, launched the Financial Supervisory Commission (FSC) to monitor the competitiveness of financial institutions. In June 1998, the Regulation on Foreign Exchange Controls was amended to further liberalize foreign currency transactions, and in July, the GOK abolished the limit on purchasing foreign currency. According to the GOK, it also liberalized access to foreign loans. For direct foreign loans to Korean companies, the approval process under Article 19 of the Foreign Investment and Foreign Capital Inducement Act (FIFCIA) and Article 21 of its enforcement decree were eliminated and replaced with the Foreign Investment Promotion Act (FIPA), effective in November 1998. However, during most of the POI, access to direct foreign loans still required the approval of the Ministry of Finance and Economy.

Regarding the GOK regulated credit from government-controlled banks such as the Korea Development Bank (KDB), the GOK reported that the KDB Act was amended in January 1998, in response to the financial crisis in 1997. According to the GOK, the KDB ended the allocation of funds for various functional categories, such as R&D, environment, and technology. All functional loan categories were eliminated and such loans were consolidated into a single category for facility (equipment) loans. The GOK also stated that the KDB strengthened its credit evaluation procedures by developing an objective and systematic credit evaluation standard to prevent arbitrary decisions on loans and interest rates. The KDB changed its Credit Evaluation Committee to the Credit Deliberation Committee (CDC), and gave the CDC the authority to make lending decisions. As a result, the KDB governor no longer makes lending decisions without the approval of the CDC. The GOK also stated that in 1997, the KDB used a system of the prime rate plus a spread for determining interest rates. Effective January 1, 1998, the KDB increased the range of the credit spread to provide more flexibility in determining interest rates based on creditworthiness and allowed the KDB to increase its profits. However, with respect to the KDB reforms, no evidence was provided by respondents to demonstrate that the KDB no longer selectively makes loans to specific firms or activities to support GOK policies.

In *Plate in Coils*, the Department noted conflicting information regarding the GOK's direct or indirect influence over the lending decisions of financial institutions. For example, the GOK policies appeared to be aimed, in part, at promoting certain sectors of the economy, such as high technology and small and medium-sized industries (SMEs).

While the GOK has started to plan and implement reforms in the financial system during the POI as a result of the 1997 financial crisis, the record evidence indicates that the GOK has previously attempted reforms of the financial system in order to remove or reduce its control and influence over lending in the country. In the past ten years, the GOK has twice attempted to reform its financial system. In 1988, the GOK attempted to deregulate interest rates. However, the 1988 liberalization was deemed a failure by the government. When the interest rates began to rise, the GOK canceled the reforms by indirectly pressuring the banks to keep interest rates low. In the early 1990s, the GOK attempted reforms again with a four-stage interest rate deregulation plan. Again, this attempt to reform the financial system was deemed a failure by the GOK. During 1998 and 1999, the GOK has threatened to cut off credit to Korean companies unless the companies follow GOK policies. In addition, during the POI, five large commercial banks were taken over by the GOK due to the financial crisis.

Based upon the information on the record and our determinations in *Plate in Coils* and *Sheet and Strip*, we preliminarily determine that the GOK continued to control directly and indirectly, the lending practices of domestic banks and government-owned banks through the POI. During verification, we will closely examine the financial reforms undertaken by the GOK in 1998. We plan to meet with various individuals knowledgeable about the financial sector in Korea in order to gather information on the impact of the GOK's financial liberalization on the lending practices of Korean banks after 1997. We also plan to gather information to assist us in determining whether we have appropriately measured the benefit conferred to the respondent companies by the GOK's influence over domestic bank and government bank lending.

With respect to foreign sources of credit, in *Plate in Coils* and *Sheet and Strip*, we determined that access to government regulated foreign sources of credit in Korea did not confer a benefit to the recipient as defined by 771(5)(E)(ii) of the Act, and, as such, credit received by respondents from these sources were found not countervailable. This determination was based upon the fact that credit from Korean branches of foreign banks was not subject to the government's control and direction. Thus, respondents' loans from these banks served as an appropriate benchmark to establish whether access to regulated foreign sources of credit conferred a benefit on respondents. On the basis of this comparison, we found that there was no benefit. Petitioners have provided no new information or evidence of changed circumstances to cause us to revisit this determination. Therefore, we continue to determine that credit from Korean branches of foreign banks were not subject to the government's control and direction. As such, lending from this source continues to be not countervailable, and loans from Korean branches of foreign banks continue to

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serve as an appropriate benchmark to establish whether access to regulated foreign sources of funds confer a benefit to respondents.

During the POI, both POSCO and DSM received long-term loans from domestic banks and from government-owned banks during the 1992 to 1998 period that were still outstanding during the POI. These included loans with both fixed and variable interest rates. To determine the benefit from the regulated loans with fixed interest rates, we applied the methodology provided for in § 351.505(c)(2) of the CVD Regulations, and to determine the benefit from regulated loans with variable interest rates, we applied the methodology provided for in § 351.505(c)(4) of the CVD Regulations. Therefore, for both fixed and variable rate loans, we calculated the difference in interest payments for the POI based upon the difference in the amount of actual interest paid during 1998 on the regulated loan and the amount of interest that would have been paid on a comparable commercial loan. We then summed the benefit amounts from the loans attributable to the POI and divided the total benefit by each company's respective total sales. On this basis, we preliminarily determine the net countervailable subsidy to be less than 0.005 percent *ad valorem* for POSCO, and 0.12 percent *ad valorem* for DSM.

(a) Loans From the Energy Savings Fund

Established in accordance with Article 51 of the "Rationalization of Energy Utilization Act" (Energy Use Act), the Energy Saving Fund provides financing at below-market interest rates for investments by businesses in facilities that rationally and efficiently use energy. Overall responsibility for the program lies with the Ministry of Industry and Energy (MIE), but the operation and management of the program is entrusted to the Korea Energy Management Corporation (KEMC). While the Energy Use Act was repealed in 1995, the MIE, under the new "Energy Use Rationalization Act," provides financing for this program from special government accounts.

Korean companies obtain financing under this program by submitting an application to the KEMC. If the KEMC is satisfied that the applicant's business plans are intended for the rationalization of energy use, it will then issue a recommendation, and forward the company's application to a bank. The KEMC will transfer funds to the bank, which will in turn provide the funds to the applicant. POSCO paid interest on two Energy Saving Fund loans during the POI. DSM did not have any of these loans outstanding during the POI.

In *Plate in Coils* and *Sheet and Strip*, the Department determined that the loans provided under the Energy Savings Fund are countervailable as GOK directed credit. See *Plate in Coils*, 64 FR at 15533, and *Sheet and Strip*, 64 FR at 30642. This program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act and, in accordance with section 771(5)(E)(ii) of the Act, provides a benefit to the recipient based on the difference between the interest rate on the program loan and the benchmark rate described in the "Subsidies Valuation" section, above.

To calculate the benefit from the Energy Savings Loans, we employed the Department's long-term fixed-rate loan methodology specified in § 351.505(c)(2) of the CVD Regulations, using as our benchmark the rate described in the "Subsidies Valuation Information" section, above. We divided the benefit attributable to the POI by POSCO's total sales during 1998. On this basis, we preliminarily determine the net countervailable subsidy to be less than 0.005 percent *ad valorem* for POSCO. As stated above, DSM did not use this program.

(b) Korean Export-Import Bank Loans (KExim)

KExim provides import and export credits, overseas investment credits, and guarantees to companies in Korea. The petitioners allege that through its financing mechanisms, KExim provides low-interest loans to the steel industry.

The Department previously determined in *Steel Products from Korea, Plate in Coils* and *Sheet and Strip* that all regulated long-term loans provided to exporters through 1997 are specific and countervailable. POSCO received a fixed-rate regulated KExim long-term loan prior to 1997, which was outstanding during the POI. DSM did not have any outstanding KExim loans during the POI. We preliminarily determine that this program is specific within the meaning of section 771(5A)(B) because only exporters are eligible to use this program.

To calculate the benefit, we applied the Department's standard loan methodology for long-term fixed-rate loans as provided for in § 351.504(c)(2) of the CVD Regulations, using as our benchmark the rate described in the "Subsidies Valuation Information" section of the notice, above. We divided the benefit attributable to the POI by POSCO's total export sales during 1998. On this basis, we preliminarily determine the net countervailable subsidy to be 0.03 percent *ad valorem* for POSCO. As noted earlier, DSM did not use this program.

B. Infrastructure at Kwangyang Bay

Petitioners requested that the Department investigate whether the GOK's infrastructure development at Kwangyang Bay continues to provide a countervailable subsidy to POSCO's steel production. The Department previously determined that the Korean government's infrastructure development at Kwangyang Bay constituted a specific countervailable subsidy to POSCO, because POSCO was found to be the predominant user of the infrastructure. *See Steel Products from Korea*, 58 FR at 37346–47. Because POSCO still produces steel products at Kwangyang Bay, we requested information on this program to determine whether the GOK has made additional investments since 1991, at Kwangyang Bay.

In *Steel Products from Korea*, the Department investigated the GOK's infrastructure investments at Kwangyang Bay over the period 1984–1991. During this period of time, the GOK's investments at Kwangyang Bay included: construction of an industrial waterway, construction of a railroad station, construction of a road to Kwangyang Bay, dredging of the harbor, and construction of three finished goods berths. We determined that the GOK's provision of infrastructure to POSCO at Kwangyang Bay was countervailable because we found POSCO to be the predominant user of the GOK's investments. The Department has consistently held that a countervailable subsidy exists when benefits under a program are provided, or are required to be provided, in law or in fact, to a specific enterprise or industry or group of enterprises or industries. *See Steel Products from Korea*, 58 FR at 37346. No new factual information or evidence of changed circumstances has been provided to the Department with respect to the GOK's infrastructure investments at Kwangyang Bay over the period 1984–1991.

In *Plate in Coils* and *Sheet and Strip*, we also examined whether GOK infrastructure investments made at Kwangyang Bay after 1991 provided countervailable benefits to POSCO. In those investigations, we determined that additional infrastructure investments made by the GOK at Kwangyang Bay after 1991 did not provide countervailable benefits to POSCO. *See Sheet and Strip* at 30648–49. Thus, post-1991 investments are not countervailable. Petitioners have not provided new factual information or evidence of changed circumstances to cause the Department to reexamine our determination that post-1991 investments are not countervailable.

To determine the benefit from the GOK's investments made from the 1984 through 1991 period to POSCO that are attributable to the POI, we relied on the calculations performed in the 1993 investigation of *Steel Products from Korea*, which were placed on the record of this investigation by POSCO. In measuring the benefit from this program in the 1993 investigation, the Department treated the GOK's costs of constructing the infrastructure at Kwangyang Bay as untied, non-recurring grants in each year in which the costs were incurred.

To determine the benefit conferred to POSCO during the POI, we applied the Department's standard grant methodology and allocated the GOK's infrastructure investments over a 15-year period. *See* the allocation period discussion under the "Subsidies Valuation Information" section, above. We used as our discount rate the three-year corporate bond rate on the secondary market used in *Steel Products from Korea*. We then summed the benefits received by POSCO during 1998, from each of the GOK's yearly investments over the period 1984–1991. We then divided the total benefit attributable to the POI by POSCO's total sales for 1998. On this basis, we preliminary determine a net countervailable subsidy of 0.22 percent *ad valorem* for POSCO. DSM did not receive a benefit from this program.

C. Asset Revaluation Pursuant to TERCL Article 56(2)

This provision under Article 56(2) of the Tax Exemption and Reduction Control Act (TERCL) allowed companies making an initial public offering between January 1, 1987, and December 31, 1990, to revalue their assets without meeting the requirement in the Asset Revaluation Act of a 25 percent change in the wholesale price index since the company's last revaluation. In *Steel Products from Korea*, after verification, petitioners submitted additional information, which according to them, indicated that POSCO's revaluation may have been significantly greater than that of the other companies that revalued. Because the information submitted by petitioners was untimely, it was rejected; however, we requested additional information on the subject. The additional information submitted by petitioners contained data on the amount of assets revalued of only 45 of the 207 companies that revalued pursuant to Article 56(2). It was unclear from petitioners' data which companies revalued pursuant to Article 56(2) and which revalued in accordance with the general provisions of the Asset Revaluation Act. Because of these shortcomings, and because the information was submitted too late for verification, we were unable to draw conclusions with respect to the relative benefit derived by POSCO from this program. Since there was no evidence of *de jure* or *de facto* selectivity concerning the timing of POSCO's revaluation or the method of POSCO's revaluation under the Asset Revaluation Act, the Department determined this program to be not countervailable. See *Steel Products from Korea*, 58 FR at 37351.

In the petition, petitioners provided information to substantiate their allegation that POSCO and DSM received a benefit under this program because their massive asset revaluations permitted the companies to substantially increase their depreciation and, thereby, reduce their income taxes payable. In support of their allegation, petitioners provided a chart listing 197 companies that were eligible for revaluation of their assets pursuant to this program. The chart illustrates that POSCO's revaluation accounted for 54 percent of the total amount of asset revaluation by companies that were eligible to revalue under Article 56(2). Furthermore, according to petitioners' data, the 14 companies in the basic metals industry that used this program accounted for 67 percent of the total amount of asset revaluations under Article 56(2). Based on this new information, the Department initiated a reexamination of the countervailability of this program and solicited information regarding the usage of this program.

Because the enabling legislation does not expressly limit access to the subsidy to an enterprise or industry, or group thereof, the program is not *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Although the regulation itself does not expressly limit the access to this law to a specified group or industry, it does place restrictions on the time period and eligibility criteria which may have caused *de facto* limitations on the actual usage of this tax program. For example, Article 56(2) was enacted on November 28, 1987, and applied only to companies making an initial public offering from January 1, 1987 until the provision was abolished effective December 31, 1990. Pursuant to Article 56(2), companies listed on the Korea Stock Exchange between January 1, 1987 and December 31, 1988 (as was the case with POSCO) had until December 31, 1989 to revalue their assets. A company that listed its stock after December 31, 1988 had to revalue its assets prior to being listed on the stock exchange. Therefore, based upon the eligibility criteria of the program, Article 56(2) effectively limited usage of this program to only the 316 companies that were newly listed on the Korean Stock Exchange during the three years the program was in place rather than the 15 to 24 thousand manufacturers in operation in Korea during that period.

According to section 771(5A)(D)(iii), a subsidy is *de facto* specific if one of the following factors exist: (1) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number; (2) An enterprise or industry is a predominant user of the subsidy; (3) An enterprise or industry receives a disproportionately large amount of the subsidy; or (4) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

Information on the record of the current investigation shows that during the period 1987–1990, there were between 14,988 and 24,073 manufacturing companies operating in Korea. A requirement for participation in this program was that companies had to make an initial public offering between January 1, 1987 and December 31, 1990. DSM listed its initial public offering in May 1988 and revalued its assets under Article 56(2) in July 1988. POSCO listed its initial public offering in June 1988 and revalued its assets under Article 56(2) in January 1989. According to the GOK's July 1, 1999 questionnaire response, 77 companies revalued their assets in 1989. The basic metal sector accounted for 83 percent of the total revaluation surplus amount (book value less revalued amount). POSCO's revaluation surplus accounted for 91 percent of the basic metal sector revaluation surplus, and 75 percent of the total revaluation surplus. While we recognize that many factors can affect the relative size of tax benefits claimed under programs (*e.g.*, company size, value of assets, timing of investments, management decisions, capital intensiveness, labor intensiveness), the record evidence indicates that the basic metal industry was a dominant user of this program in 1988/89. *See, e.g., Stainless Steel Plate in Coils from South Africa*, 64 FR 15553 (March 1999). Therefore, we preliminarily determine that this program is specific, within the meaning of 771(5A)(D)(iii). As a result

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of the increase in the value of depreciable assets resulting from the asset revaluation, the companies were able to lower their tax liability. Therefore, we also preliminarily determine that the program provides a financial contribution within the meaning of section 771(5)(D)(ii), because by allowing companies to reduce their income tax liability, the GOK has foregone revenue that is otherwise due.

The benefit from this program is not the amount of the revaluation surplus, but rather the impact of the difference that the revaluation of depreciable assets has on a company's tax liability each year. However, respondents did not provide this information, and stated that the depreciation expense resulting from the asset revaluation would involve a detailed, item-by-item comparison of thousands of items, and that it would be difficult for them to distinguish between the remaining benefit from revaluation under Article 56(2), and revaluation pursuant to normal procedures of the Asset Revaluation Act. Therefore, we have calculated the benefit from this program by determining the surplus amount of the revaluation of assets authorized under the program for each company and divided the total revaluation surplus by 15, the AUL we are using in this investigation. We then multiplied the amount of the revaluation surplus attributable to the POI by the tax rate applicable to the tax return filed in the POI, and divided the benefit for each company by their respective total sales during the POI. On this basis, we preliminarily determine a net countervailable subsidy of 0.50 percent *ad valorem* for POSCO and 0.23 percent *ad valorem* for DSM.

D. Short-term Export Financing

The Department determined that the GOK's short-term export financing program was countervailable in *Steel Products from Korea*, 58 FR at 37350. Petitioners allege that this program may also benefit the producers and/or exporters of the subject merchandise. In this investigation, the GOK reports that the BOK, under the "Detailed Rules of Trade Financing Related to the Aggregate Ceiling Loans" (Detailed Rules), provides discounts on foreign trade bills to commercial banks, which, in turn, extend short-term loans to exporters. Under the aggregate credit ceiling system established in 1994, the BOK allocates a credit ceiling every month to each commercial bank, including branches of Korean and foreign banks. This ceiling is based on each bank's loan performance *i.e.*, each bank's discounting of commercial loans, foreign trade financing, and loans for the production of parts and material. These banks then provide loans to exporters using the funds received from the BOK and funds generated from their own sources to discount trade bills.

There are two types of trade financing: Production financing and raw material financing. A bank provides production financing when a company needs funds for the production of export merchandise or the production of raw materials used in the production of exported merchandise. A bank extends raw material financing to exporters which require financing for the importation or local purchase of raw materials used in the production of exported merchandise.

During the POI, POSCO was the only producer/exporter of the subject merchandise that received short-term export financing. DSM did not have any short-term export financing under this program during the POI. POSCO reports that the company entered into a credit ceiling loan agreement with a commercial bank in accordance with Articles 12 and 13 of the Detailed Rules to receive financing. The loan agreement outlines the maximum amount of credit which POSCO is eligible to receive, the period covered by the loan agreement, the applicable interest rate, and the penalty interest rate. POSCO states that when the company purchases raw materials from a supplier on a letter of credit basis, the supplier presents the letter of credit to POSCO's bank for payment. The bank, in turn, pays the purchase price to the supplier and debits the trade loan against POSCO's line of credit. POSCO pays the full amount of each trade loan after about 90 days, which is the average period from production to sales. Interest is paid by POSCO against each trade loan at the time the loans are received. POSCO reported that the company paid all of its export financing during the POI in a timely manner and incurred no overdue interest penalties. In accordance with section 771(5A)(B) of the Act, we preliminary determine that this program constitutes an export subsidy because receipt of the financing is contingent upon export performance. In order to determine whether this export financing program confers a countervailable benefit to POSCO, we compared the interest rate POSCO paid on the export financing received under this program during the POI with the interest rate POSCO would have paid on a comparable short-term commercial loan. *See* discussion above in the "Subsidies Valuation Information" section with respect to short-term loan benchmark interest rates.

Because loans under this program are discounted (*i.e.*, interest is paid up-front at the time the loans are received), the effective rate paid by POSCO on its export financing is a discounted rate. Therefore, it was necessary to derive from POSCO's company-specific weighted-average interest rate for short-term won-denominated commercial loans, a discounted benchmark interest rate. We compared this discounted benchmark interest rate to the interest rates charged on the export financing and found that the program interest rates were lower than the benchmark rates. Therefore, in accordance with section 771(5)(E)(ii) of the Act, we preliminarily determine that this program provides a countervailable benefit because the interest rates charged on the loans were less than what POSCO would have had to pay on a comparable short-term commercial loan. *See Plate in Coils*, 64 FR at 15533, and *Sheet and Strip*, 64 FR at 30644. We also preliminarily determine that a financial contribution is provided to POSCO under this program within the meaning of section 771(5)(D)(i) of the Act.

To calculate the benefit conferred by this program, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the benchmark interest rate. When the interest that would have been paid at the benchmark rate exceeded the interest that was paid at the program interest rate, the difference between those amounts is the benefit. We then divided the benefit derived from all of the loans on which interest was paid during the POI by total exports. On this basis, we preliminarily determine that POSCO received from this program during the POI a net countervailable subsidy of less than 0.005 percent *ad valorem*.

We also requested information on whether POSCO or DSM received short-term export financing under two additional programs: (1) A 1998 emergency support package unveiled by the GOK which included $4 billion in trade financing, and (2) a 1998 short-term export financing program operated by the Korean Export-Import Bank. According to both the responses of POSCO and DSM, these programs were not used.

E. Reserve for Export Loss—Article 16 of the TERCL

Under Article 16 of the TERCL, a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a three-year period, after a one-year grace period. All of the money in the reserve is eventually reported as income and subject to corporate tax either when it is used to offset export losses or when the grace period expires and the funds are returned to taxable income. The deferral of taxes owed amounts to an interest-free loan in the amount of the company's tax savings. This program is only available to exporters. During the POI, DKI, a trading company, was the only exporter of the subject merchandise which claimed benefits under this program.

We preliminarily determine that the Reserve for Export Loss program constitutes an export subsidy under section 771(5A)(B) of the Act, because the use of the program is contingent upon export performance. We also preliminarily determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. *See Plate in Coils*, 64 FR at 15534, and *Sheet and Strip*, 64 FR at 30645.

To determine the benefit conferred by this program, we calculated the tax savings by multiplying the balance amount of the reserve as of December 31, 1997, by the corporate tax rate for 1997. We treated the tax savings on these funds as a short-term interest-free loan. *See* 19 CFR 351.509. Accordingly, to determine the benefit, the amount of tax savings was multiplied by the company's weighted-average interest rate for short-term won-denominated commercial loans for the POI, described in the "Subsidies Valuation Information" section, above. Using the methodology for calculating subsidies received by trading companies, which also is detailed in the "Subsidies Valuation Information" section, above, we preliminarily determine a net countervailable subsidy of 0.02 percent *ad valorem* for DSM. POSCO did not benefit from this program because it did not export the subject merchandise through DKI during the POI.

F. Reserve for Overseas Market Development—Article 17 of the TERCL

Article 17 of the TERCL allows a domestic person engaged in a foreign trade business to establish a reserve fund equal to one percent of its foreign exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning, from the reserve to the income account, an amount equivalent to the expense. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account over a three-year period, after a one-year grace period. As is the case with the Reserve for Export Loss, the balance of this reserve fund is not subject to corporate income tax during the grace period. However, all of the money in the reserve is eventually reported as income and subject to corporate tax either when it offsets export losses or when the grace period expires. The deferral of taxes owed amounts to an interest-free loan equal to the company's tax savings. This program is only available to exporters. The following exporters of the subject merchandise were entitled to claimed benefits under this program during the POI: Hyosung, POSTEEL, Sunkyong, and DKI.

We determine that the Reserve for Overseas Market Development program constitutes an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. *See* 19 CFR 351.509.

To determine the benefits conferred by this program during the POI, we employed the same methodology used for determining the benefit from the Reserve for Export Loss program. Using the methodology for calculating subsidies received by trading companies, which also is detailed in the "Subsidies Valuation Information" section, above, we preliminarily calculate a net countervailable subsidy of 0.01 percent *ad valorem* for POSCO, and 0.01 percent *ad valorem* for DSM.

G. Investment Tax Credits

Under the TERCL, companies in Korea are allowed to claim investment tax credits for various kinds of investments. If the tax credits cannot all be used at the time they are claimed, the company is authorized to carry them forward for use in later tax years. During the POI, POSCO, and DSM used various investment tax credits received under the TERCL to reduce their net tax liability. In *Steel Products from Korea*, we found that investment tax credits were not countervailable (*see* 58 FR at 37351); however, there were changes in the statute effective in 1995, which caused us to revisit the countervailability of the investment tax credits. *See Plate in Coils*, 64 FR at 15534, and *Sheet and Strip*, 64 FR at 30645.

POSCO claimed or used the following tax credits in its fiscal year 1997 income tax return which was filed during the POI: (1) Tax credits for investments in equipment to develop technology and manpower under Article 10; (2) tax credits for investment in productivity improvement facilities under Article 25; and (3) tax credits for investment in specific facilities under Article 26. DSM only claimed or used tax credits for technology and manpower development expenses under Article 9 and tax credits under Article 25 in its fiscal year 1997 income tax return which was filed during the POI. For certain of these tax credits, a company normally calculates its authorized tax credit based upon 3 or 5 percent of its investment, *i.e.*, the company receives either a 3 or 5 percent tax credit. However, if a company makes the investment in domestically-produced facilities under these Articles, it receives a 10 percent tax credit. The investment tax credit was amended to eliminate the rate differential between domestic and foreign-made facilities for investments that are made after December 31, 1997. However, the differential rate remains in effect for investments made prior to that date, and tax credits on these investments can be carried forward beyond the POI.

Under section 771(5A)(C) of the Act, a program that is contingent upon the use of domestic goods over imported goods is specific, within the meaning of the Act. In *Sheet and Strip*, we examined the use of investment tax credits under Articles 9, 10, 18, 25, 26, 27, and 71. In that case, we determined that investment tax credits received under Articles 10, 18, 25, 26, 27, and 71 constituted import substitution subsidies under section 771(5A)(C) of the Act, because Korean companies received a higher tax credit for investments made in domestically-produced facilities under these Articles. In addition, because the GOK foregoes collecting tax revenue otherwise due under this program, we also determined that a financial contribution is provided under section 771(5)(D)(ii) of the Act. We did not countervail the use of Article 9 because a higher tax credit was not allowed for investments made in domestically-produced facilities. *See Sheet and Strip* at 30645–46.

In this investigation, POSCO claimed investment tax credits under Articles

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10, 25, and 26. Therefore, we preliminarily determine that these tax credits provided POSCO with a countervailable benefit. Petitioners have also alleged that POSCO used investment tax credits under Article 88 and that this tax credit also constitutes an import substitution subsidy because a higher credit is received if more domestically-produced goods are used. However, we have insufficient information on the record at this time to make this determination, but we will further examine Article 88 at verification.

DSM was entitled to claim investment tax credits under Articles 9 and 25 during the POI. However, DSM did not use the tax credits to reduce its tax liability during the POI. Instead, the company carried forward the tax credits which can be used in the future. Because DSM did not claim the investment tax credits on its tax return which was filed during the POI, we preliminarily determine that DSM did not use this program during the POI.

To calculate the benefit to POSCO from this tax credit program, we determined the value of the tax credits POSCO deducted from its taxes payable for the 1997 fiscal year. In POSCO's 1997 income tax return filed during the POI, it deducted from its taxes payable, credits earned in the years 1995 and 1996, which were carried forward and used in the POI. We first determined those tax credits which were claimed based upon the investment in domestically-produced facilities. We then calculated the additional amount of tax credits received by the company because it earned tax credits of 10 percent on investments in domestically-produced facilities rather the regular 3 or 5 percent tax credit. Next, we calculated the amount of the tax savings received through the use of these tax credits during the POI, and divided that amount by POSCO's total sales for the POI. On this basis, we preliminarily determine a net countervailable subsidy of 0.30 percent *ad valorem* for POSCO.

H. Electricity Discounts Under the Requested Load Adjustment Program

Petitioners alleged that POSCO is being charged utility rates at less than adequate remuneration and, hence, the production of the subject merchandise is receiving countervailable benefits from this subsidy. Petitioners alleged that POSCO is receiving these countervailable benefits in the form of utility rate discounts.

The GOK reports that during the POI the government-owned Korea Electric Power Company (KEPCO) provided POSCO and DSM with four types of discounts under its tariff schedule. These four discounts were based on the following rate adjustment programs in KEPCO's tariff schedule: (1) Power Factor Adjustment; (2) Summer Vacation and Repair Adjustment; (3) Requested Load Adjustment; and (4) Voluntary Curtailment Adjustment. (See the discussion below in "Programs Preliminarily Determined To Be Not Countervailable" with respect to the Power Factor Adjustment, Summer Vacation and Repair Adjustment, and the Voluntary Curtailment Porgram discount programs.)

With respect to the Requested Load Adjustment (RLA) program, the GOK introduced this discount in 1990, to address emergencies in KEPCO's ability to supply electricity. Under this program, customers with a contract demand of 5,000 kw or more, who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3,000 kw or more, are eligible to enter into a RLA contract with KEPCO. Customers who choose to participate in this program must reduce their load upon KEPCO's request, or pay a surcharge to KEPCO.

Customers can apply for this program between May 1 and May 15 of each year. If KEPCO finds the application in order, KEPCO and the customer enter into a contract with respect to the RLA discount. The RLA discount is provided based upon a contract for two months, normally July and August. Under this program, a basic discount of 440 won per kW is granted between July 1 and August 31, regardless of whether KEPCO makes a request for a customer to reduce its load. During the POI, KEPCO granted 33 companies RLA discounts even though KEPCO did not need to request these companies to reduce their respective loads. The GOK reports that because KEPCO increased its capacity to supply electricity in 1997, it reduced the number of companies with which it maintained RLA contracts in 1997 and 1998. In 1996, KEPCO entered into RLA contracts with 232 companies, which was reduced to 44 companies in 1997 and 33 in 1998.

In *Sheet and Strip*, we found the RLA program countervailable because the discounts provided under this program were distributed to a limited number of users. *See Sheet and Strip* at 30646. No new information or evidence of changed circumstances have been provided to the Department to warrant a reconsideration of that determination. Therefore, we continue to find the RLA program countervailable.

Because the electricity discounts are not "exceptional" benefits and are received automatically on a regular and predictable basis without further government approval, we preliminarily determine that these discounts provide a recurring benefit to POSCO and DSM. *See* 19 CFR 351.524(a). Therefore, we have expensed the benefit from this program in the year of receipt. *See Sheet and Strip* at 30646. To measure the benefit from these programs, we summed the electricity discounts which POSCO and DSM received from KEPCO under the RLA program during the POI. We then divided the total RLA discount amount each company received by their total sales for 1998. On this basis, we preliminarily determine a net countervailable subsidy of less than 0.005 percent *ad valorem* for POSCO and less than 0.005 percent *ad valorem* for DSM from the RLA discount program.

I. POSCO's Two-Tiered Pricing Structure to Domestic Customers

POSCO maintains three different pricing systems which serve different markets: domestic prices in Korean won for products that will be consumed in Korea, direct export prices in U.S. dollars or Japanese yen, and local export prices in U.S. dollars. According to POSCO's response, local export prices are provided to those domestic customers who purchase steel for further processing into products that are exported. POSCO is the only Korean producer of slabs, which is the main input into the subject merchandise. During the POI, POSCO sold slab to DSM for products that will be consumed in Korea, as well as slab to produce exports of the subject merchandise.

During the POI, POSCO was a government-controlled company. *See Sheet and Strip* at 30642–43. POSCO sets different prices for the identical product for domestic purchasers based upon that purchaser's anticipated export performance. Domestic purchasers which use the raw material to produce a product for export are charged a lower price than those domestic purchasers which do not export. *See Sheet and Strip*, 64 FR at 30647. In *Sheet and Strip*, we found this pricing scheme to be an export subsidy under section 771(5A)(B) of the Act, which provides a financial contribution under this program under section 771(5)(D) of the Act.

The benefit from this type of export subsidy is based upon the difference in the price charged to exporters and the price charged for domestic consumption. The only exception is for pricing programs which fall under Item (d) of the Illustrative List of Export Subsidies, which is provided for in Annex I of the Agreement on Subsidies and Countervailing Measures.[1] Item (d) allows governments to maintain a program which provides different prices based upon export or domestic consumption if certain strict criteria are met by the government. *See* 19 CFR 351.516. Based on the information in the record, it does not appear that POSCO's dual pricing policy is being set directly or indirectly through the application of a consistent method for calculating the difference between the higher domestic and lower international price of slab available to Korean exporters. *See Final Results of Redetermination Pursuant to the Court Remand Creswell Trading Co.* v. *U.S.*, Slip.-Op. 94–65, which is publicly available in Central Records Unit (CRU) (Room B–099 of the Main Commerce Building) (Case No. 533–063), (in which the Department found in *Certain Iron-Metal Casting from India* that the Indian government, under the IPRS program maintained "a clearly defined and consistently applied methodology for calculating the difference between the higher domestic and lower international price of pig iron available to Indian exporters") at 3. We will further investigate POSCO's pricing policies at verification. We preliminarily determine that the benefit from this program is based upon the difference between the prices charged by POSCO for export and the prices charged by POSCO for domestic consumption.

Petitioners argued in a July 12, 1999 submission that POSCO's dual-pricing system is a provision of a good for less than adequate remuneration, and the Department should therefore analyze such pricing in accordance with § 351.511 of the CVD Regulations. In *Sheet and Strip*, we did not analyze POSCO's dual-pricing under the adequate remuneration standard. While we have not modified our analysis in this preliminary determination from our recent final determination in *Sheet and Strip*, we intend to review the applicability of § 351.511 of the CVD Regulations for purposes of the final determination in this investigation and, therefore, we are requesting comments on the appropriate standard to apply to this dual-pricing scheme.

[1] A subsidy arises under Item (d) from the provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of export goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favorable than those commercially available on world markets to their exporters.

To determine the value of the benefit under this program, we compared the monthly weighted-average price charged by POSCO to DSM for domestic production to the monthly weighted-average price charged by POSCO to DSM for export production. Where monthly comparison prices were not available, we used quarterly weighted-average prices. We then divided the amount of the price savings by the value of exports of the subject merchandise during the POI. On this basis, we determine that DSM received a net countervailable subsidy of 0.09 percent *ad valorem* from this program during the POI.

J. Special Cases of Tax for Balanced Development Among Areas (TERCL Article 43)

TERCL Article 43 allows a company to claim a tax reduction or exemption for income gained from the disposition of factory facilities when relocating from a large city to a local area (*e.g.*, Seoul Metropolitan area to a place outside the Seoul Metropolitan area). On December 29, 1995, DSM sold land from its Pusan factory and within three years from the sales date began production at its Pohang plant. In accordance with Article 16, paragraph 7 of the Addenda to the TERCL, DSM was entitled to receive an exemption on its income tax for the resulting capital gain.

Payment for the Pusan facilities is on a long-term installment basis, therefore, the income tax on the capital gain is payable when DSM actually receives payment or transfers the title of ownership. The capital gain in the tax year can not exceed DSM's total taxable income. The maximum tax savings permitted is 100 percent of the taxable income; however, this program is also subject to the minimum tax. This program does not allow carrying forward of unused benefits in future years.

We preliminarily determine that the TERCL Article 43, for Special Cases of Tax for Balanced Development Among Areas is specific within the meaning of section 771(5A)(D)(iv) of the Act, because the program is limited to an enterprise or industry located within a designated geographical region. *See also Iron-Metal Castings from Mexico*, 48 FR 8834 (1983) (Fonei Loan program was regionally specific where available to all companies outside of Mexico City), and *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils From Italy*, 64 FR 15508, 15516 (funds were regionally specific because they were limited to certain areas within Italy). We also preliminarily determine that Article 43 provides a financial contribution within the meaning of section 771(5)(D)(ii), because the GOK foregoes revenue that is otherwise due by granting this tax credit.

To calculate the benefit from this tax credit program, we examined the amount of the tax credit DSM deducted from its taxes payable for the 1997 fiscal year. In DSM's 1997 income tax return filed during the POI, it deducted from its taxes payable, credits earned in 1997. Next, we calculated the amount of the tax savings and divided that amount by DSM's total sales during POI. Using this methodology, we preliminarily determine a net countervailable subsidy of 0.59 percent *ad valorem* for DSM. POSCO did not use this program.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Electricity Discounts Under Power Factor Adjustment, Summer Vacation and Repair Adjustment, and Voluntary Curtailment Adjustment Programs

In *Sheet and Strip*, we determined that the Power Factor Adjustment, and the Summer Vacation and Repair Adjustment programs are not countervailable because the discounts under these programs are distributed to a large number of firms in a wide variety of industries. *See Sheet and Strip* at 30647–48.

Regarding the Voluntary Curtailment Adjustment (VCA) program, KEPCO introduced this discount in 1995, to provide a stable supply of electricity and to improve energy efficiency by reducing demand during periods of peak consumption that occur during the summer. Under this program, customers who use general, educational or industrial services with a contract demand of 1,000 kw or more, and who arrange with KEPCO a curtailment period of five or more days (or times) during the July 15–August 31 period, are eligible to enter into a VCA contract with KEPCO. Customers who choose to participate in this program must curtail demand by 20 percent or more on the basis of the average daily demand during 10 a.m.–12 p.m., or by 3,000 kw.

Customers can apply for this program until June 15 of each year. If KEPCO finds the application in order, KEPCO approves the application. After approval, KEPCO and the customer enter into a contract with respect to the VCA discount. Under this program, a basic discount of 110 won per kw is granted between July 15 and August 31.

We analyzed whether the VCA discount program is specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of section 771(5A)(D)(i) and (iii) of the Act.

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First, we examined the eligibility criteria contained in the law. The Regulation on Electricity Supply and KEPCO's Rate Regulations for Electric Service identified companies within a broad range of industries as being eligible to participate in the electricity discount programs. The VCA discount program is available to numerous companies across all industries, provided that they have the required contract demand and can reduce their maximum demand by a certain percentage. Therefore, we preliminarily determine that the VCA electricity programs is not *de jure* specific under section 771(5A)(D)(i) of the Act because the regulation does not explicitly limit eligibility of the program.

We next examined data on the distribution of assistance under the VCA program to determine whether the electricity discount program meets the criteria for *de facto* specificity under section 771(5A)(D)(iii) of the Act. We found that discounts provided under the VCA program were distributed to a large number of customers, across a wide range of industries. Given the data with respect to the large number of companies and industries which received VCA electricity discounts, and the fact that POSCO and DSM were not dominant or disproportionate users of this program, we preliminarily determine that the VCA program is not *de facto* specific under section 771(5A)(D)(iii) of the Act. Therefore, we preliminarily determine that the VCA program is not countervailable.

B. Port Facility Fees

In *Sheet and Strip*, we determined that this program is not countervailable because a diverse and large group of private sector companies representing a wide cross-section of the economy have made a large number of investments in infrastructure facilities at various ports in Korea, including numerous investments at Kwangyang Bay. *See Sheet and Strip* at 30649.

C. GOK Infrastructure Investments at Kwangyang Bay Post-1991

In *Plate in Coils*, we determined that this program is not countervailable because the GOK's investments at Kwangyang Bay since 1991, in the Jooam Dam, the container terminal, and the public highway were not specific to POSCO. *Id.* at 15536. The respondents state that there have been no additional infrastructure investments at Kwangyang Bay during the POI.

III. Programs Preliminarily Determined To Be Not Used

Based on the information provided in the questionnaire response, we preliminarily determine that the companies under investigation either did not apply for, or receive, benefits under the following programs during the POI:

A. *Special Cases of Tax for Balanced Development Among Areas (TERCL Articles 41, 42, 44 and 45)*
B. *Private Capital Inducement Act (PCIA)*
C. *Social Indirect Capital Investment Reserve Funds (Art. 28)*
D. *Energy-Savings Facilities Investment Reserve Funds (Art. 29)*
E. *Industry Promotion and Research and Development Subsidies*
   1. Highly Advanced National Project Fund
   2. Steel Campaign for the 21st Century
F. *Overseas Resource Development Programs*
G. *Export Insurance Rates Provided By The Korean Export Insurance Corporation*
H. *Export Industry Facility Loans (EIFL) and Specialty Facility Loans*
I. *Scrap Reserve Fund*
J. *Excessive Duty Drawback*

IV. Program Preliminarily Determined Not To Exist

Free Trade Zones (FTZ) at Pusan and Kwangyang

The GOK states that at this time, there are only two FTZs in Korea. One is located in Masan and the other is in Iksan. Therefore, we preliminarily determine that this program does not exist.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual subsidy rate for POSCO, and DSM, manufacturers of the subject merchandise. We preliminarily determine that the total estimated net countervailable subsidy rate is 1.16 percent *ad valorem* for POSCO and 1.12 percent *ad valorem* for DSM. The All Others rate is 1.14 *ad valorem* percent, which is the weighted-average of the rates for both companies.

Company	Net subsidy rate
POSCO	1.16% Ad Valorem.
DSM	1.12% Ad Valorem.
All Others	1.14% Ad Valorem.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain cut-to-length carbon-quality steel from Korea, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts listed above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 75 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of the preliminary determination at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the non-proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days from the date of filing of the case briefs. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: July 16, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–18857 Filed 7–23–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–806]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Lockard or Eva Temkin, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2786.

PRELIMINARY DETERMINATION: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to certain producers and exporters of certain cut-to-length carbon-quality steel plate from Indonesia. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Gulf States Steel, Inc., IPSCO Steel, Inc., Tuscaloosa Steel Corporation, and the United Steel Workers of America (the petitioners).

Case History

Since the publication of the notice of initiation in the **Federal Register** (*see Initiation of Countervailing Duty Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 64 FR 12996 (March 16, 1999) (*Initiation Notice*)), the following events have occurred. On March 16, 1999, we issued countervailing duty questionnaires to the Government of Indonesia (GOI), and the producers/exporters of the subject merchandise. On April 21, 1999, we postponed the preliminary determination of this investigation until no later than July 16, 1999. *See Certain Cut-to-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea: Postponement of Time Limit for Countervailing Duty Investigations*, 64 FR 23057 (April 29, 1999).

We received responses to our initial questionnaires from the GOI and two of the three producers of the subject merchandise, PT Gunawan Dianjaya Steel (Gunawan), and PT Jaya Pari Steel Corporation (Jaya Pari), on April 29, 1999. On May 11, 1999 and June 3, 1999, we issued supplemental questionnaires to the responding parties. On June 7, 1999, petitioners alleged additional subsidies that were not contained in the original petition. We determined to include these allegations in this investigation on June 21, 1999. *See* Memorandum for Bernard Carreau, Deputy Assistant Secretary for AD/CVD Enforcement Group II, a public document on file in the Central Records Unit, room B–099 of the Main Commerce Building (CRU). We issued a questionnaire addressing these programs on June 22, 1999. We received additional responses between June 1, 1999 and July 14, 1999.

Scope of Investigation

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of

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series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. In particular, we sought comments on the specific levels of alloying elements set out in the description below, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage.

On March 29, 1999, Usinor, a respondent in the French antidumping and countervailing duty investigations and Dongkuk Steel Mill Co., Ltd. and Pohang Iron and Steel Co., Ltd., respondents in the Korean antidumping and countervailing duty investigations (collectively the Korean respondents), filed comments regarding the scope of the investigations. On April 14, 1999, the petitioners responded to Usinor's and the Korean respondents' comments. In addition, on May 17, 1999, ILVA S.p.A. (ILVA), a respondent in the Italian antidumping and countervailing duty investigations, requested guidance on whether certain products are within the scope of these investigations.

Usinor requested that the Department modify the scope to exclude: (1) Plate that is cut to non-rectangular shapes or that has a total final weight of less than 200 kilograms; and (2) steel that is 4" or thicker and which is certified for use in high-pressure, nuclear or other technical applications; and (3) floor plate (*i.e.*, plate with "patterns in relief") made from hot-rolled coil. Further, Usinor requested that the Department provide clarification of scope coverage with respect to what it argues are over-inclusive HTSUS subheadings included in the scope language.

The Department has not modified the scope of these investigations because the current language reflects the product coverage requested by the petitioners, and Usinor's products meet the product description. With respect to Usinor's clarification request, we do not agree that the scope language requires further elucidation with respect to product coverage under the HTSUS. As indicated in the scope section of every Department antidumping and countervailing duty proceeding, the HTSUS subheadings are provided for convenience and Customs purposes only; the written description of the merchandise under investigation or review is dispositive.

The Korean respondents requested confirmation whether the maximum alloy percentages listed in the scope language are definitive with respect to covered HSLA steels.

At this time, no party has presented any evidence to suggest that these maximum alloy percentages are inappropriate. Therefore, we have not adjusted the scope language. As in all proceedings, questions as to whether or not a specific product is covered by the scope should be timely raised with Department officials.

ILVA requested guidance on whether certain merchandise produced from billets is within the scope of the current CTL plate investigations. According to ILVA, the billets are converted into wide flats and bar products (a type of long product). ILVA notes that one of the long products, when rolled, has a thickness range that falls within the scope of these investigations. However, according to ILVA, the greatest possible width of these long products would only slightly overlap the narrowest category of width covered by the scope of the investigations. Finally, ILVA states that these products have different technological properties and mechanical uses than merchandise covered by the scope of the investigations and therefore are not covered by the scope of the investigations.

As ILVA itself acknowledges, the particular products in question appear to fall within the parameters of the scope and, therefore, we are treating them as covered merchandise for purposes of these investigations.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR Part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348) (CVD Regulations).

Injury Test

Because Indonesia is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Indonesia materially injure, or threaten material injury to, a U.S. industry. On April 8, 1999, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Indonesia of the subject merchandise. *See Certain Cut-To-Length Carbon-Quality Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia*, 64 FR 17198 (April 8, 1999).

Alignment With Final Antidumping Duty Determination

On July 2, 1999, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. *See Initiation of Antidumping Duty Investigations: Certain Cut-to-Length Carbon-Quality Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, the Republic of Korea, and the Former Yugoslav Republic of Macedonia*, 64 FR 12959 (March 16, 1999). Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the antidumping investigations of cut-to-length plate.

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1998.

Attribution of Subsidies

Section 351.525 of the CVD Regulations states that the Department will attribute subsidies received by two or more corporations to the products produced by those corporations where cross ownership exists. According to § 351.525(b)(6)(vi) of the CVD Regulations, cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation in essentially the same ways it can use its own assets. The regulations state that this standard will normally be met where there is a majority voting ownership interest between two corporations. The preamble to the CVD Regulations, identifies situations where cross ownership may exist even though there is less than a majority voting interest between two corporations: "in certain circumstances, a large minority interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership." *See* 63 FR 65401.

Because we have preliminarily found both Gunawan and Jaya Pari to have zero subsidy rates, we do not reach the question of whether the relationship between the companies satisfies the standard of cross-ownership. However, if we discover subsidies at verification or otherwise modify our findings so that one or more of the companies does have a subsidy rate for the final determination, we will consider whether there is cross-ownership between Gunawan and Jaya Pari and thus, whether, for purposes of calculating a countervailing duty rate, we should attribute any subsidies received by either or both companies to the products produced by both companies. Accordingly, we invite the parties to comment on whether the relationship between the firms satisfies our new cross-ownership standard.

Use of Facts Available

PT Krakatau Steel (Krakatau), a producer of subject merchandise, failed to respond to the Department's questionnaire. Section 776(a)(2) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. As described in more detail below, Krakatau has failed to provide information explicitly requested by the Department; therefore, we must resort to the facts otherwise available.

In using the facts otherwise available, however, the Department notes that the GOI has provided some, although not all, of the information requested about Krakatau. With this information from the GOI, we find that the administrative record with regard to Krakatau is not so incomplete that it cannot serve as a reliable basis for reaching this preliminary determination. In addition, we find that the remainder of the criteria listed in 782(e) of the Act have been met. Consequently, we find it unnecessary to resort to total facts available with respect to Krakatau. Where practicable, we have based our preliminary determination for this company on information provided by the GOI. We have only used facts available where specific information concerning Krakatau, that is necessary for our analysis, is absent from the record.

Furthermore, section 776(b) of the Act provides that in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a party if it determines that party has failed to cooperate to the best of its ability. Here, the Department asked Krakatau to submit the information requested in the initial countervailing duty questionnaire. Krakatau did not respond to the questionnaire. The Department then asked Krakatau once again to respond to the questionnaire, reminding the company that the Department may have to use facts available if no response was received. However, Krakatau failed to submit the information that was specifically requested by the Department on two separate occasions. Krakatau stated that, due to the recent financial crisis, it does not have the resources available to participate in the investigation. We note, however, that Krakatau is participating in the companion antidumping duty investigation.

The Department finds that by not providing necessary information specifically requested by the Department and failing to participate in any respect in this investigation, Krakatau has failed to cooperate to the best of its ability. Therefore, in selecting partial facts available, the Department determines that an adverse inference is warranted.

When employing an adverse inference, the statute indicates that the Department may rely upon information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (4) any other information placed on the record. *See also* § 351.308(c) of the CVD Regulations. Due to the absence of any other relevant information on the record, we consider the petition to be an appropriate source for the necessary information.

Finally, the Statement of Administrative Action accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is "secondary information." *See* Statement of Administrative Action, accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994) (SAA), at 870. If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department shall, "to the extent practicable," corroborate such information using independent sources reasonably at its disposal. The SAA further provides that to corroborate secondary information means simply that the Department will satisfy itself that the secondary information to be used has probative value.

As discussed above, the GOI submitted some information about Krakatau's use of programs included in this investigation. As discussed above and in the Analysis Memo for the Preliminary Countervailing Duty Determination, dated July 16, 1999, public version on file in the CRU (Analysis Memo), we find that the information submitted by the GOI may be used in reaching our determination in accordance with section 782(e) of the Act. Based on this information, we were able to determine that Krakatau did not use the Bank of Indonesia Rediscount Program with respect to shipments of subject merchandise and did not use the Tax Holiday Program. However, we are applying the facts available in countervailing the 1995 Equity Infusion to Krakatau program including our analysis of the company's creditworthiness. For a more detailed description of our treatment of this program, *see* the program description in the *Program Preliminarily Determined to be Countervailable* section of this notice. We are using information submitted in the countervailing duty petition, modified by and corroborated by Krakatau's financial statements which were submitted for the record by petitioners. *See* Analysis Memo.

In addition, as noted earlier, on June 7, 1999, petitioners made new subsidy allegations with respect to Krakatau. The Department has not had sufficient time to collect information from Krakatau and the GOI on the use of the Pre-1993 Equity Infusions to Krakatau, P.T. Cold-Rolled Mill Indonesia (CRMI) Equity Infusions and Two-Step Loan programs. Thus, we do not have sufficient information to make determinations with respect to these programs' countervailability. Because respondents have not had sufficient

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opportunity to provide information about these programs for the record, the use of the facts available is not warranted at this time. We will continue to collect information that will enable us to make a determination about these programs in our final determination.

Subsidies Valuation Information

Allocation Period

Section 351.524(d)(2) of the CVD Regulations states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System and updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

In this investigation, no party to the proceeding has claimed that the AUL listed in the IRS tables does not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, according to § 351.524(d)(2) of the CVD Regulations, we have allocated Krakatau's non-recurring benefits over 15 years, the AUL listed in the IRS tables for the steel industry.

Equityworthiness

In analyzing whether a company is equityworthy, the Department considers whether that company could have attracted investment capital from a reasonable private investor in the year of the government equity infusion based on the information available at that time. In this regard, the Department has consistently stated that a key factor for a company in attracting investment capital is its ability to generate a reasonable return on investment within a reasonable period of time. In making an equityworthiness determination, in accordance with § 351.507(a)(4) of the CVD Regulations, the Department may examine the following factors, among others:

A. Objective analyses of the future financial prospects of the recipient firm or the project as indicated by, *inter alia*, market studies, economic forecasts, and project or loan appraisals prepared prior to the government-provided equity infusion in question;

B. Current and past indicators of the recipient firm's financial health calculated from the firm's statements and accounts, adjusted, if appropriate, to conform to generally accepted accounting principles;

C. Rates of return on equity in the three years prior to the government equity infusion; and

D. Equity investment in the firm by private investors.

The Department has examined Krakatau's equityworthiness for the year 1995. We are also examining Krakatau's equityworthiness for the period 1988 through 1992, to the extent equity infusions may have been received in these years. *See* June 1, 1999, memorandum to Bernard Carreau, Deputy Assistant Secretary for AD/CVD Enforcement II, a public document on file in the CRU. Krakatau did not respond to our first questionnaire regarding the new allegations pertaining to the period 1988 through 1992, but the company has not yet had the opportunity to respond to any additional questionnaire on these allegations. Therefore, we are not addressing Krakatau's equityworthiness in these years for this preliminary determination.

In considering whether Krakatau was equityworthy in 1995, we examined information on the above-listed factors. With respect to factor A, no studies or other relevant data have been submitted to the record. However, according to press articles submitted by petitioners, Krakatau was not an attractive investment. In one article, the Indonesian Minister for the Empowerment of State Enterprises stated, "[w]hy is Krakatau Steel difficult to sell? Because it has often been said that the company would go bankrupt and that it needed an investment of $1.2 billion." The Minister also stated in 1998 that Krakatau had a very low return on equity compared to its international competitors. Another government official stated that Krakatau would, "* * * first have to restructure its subsidiaries, cut costs and reduce staff," in order to complete its proposed privatization. *See* Countervailing Duty Petition, public version on file in the CRU.

In addition, according to information submitted by the Petitioners, the investment climate in Indonesia in 1995 was considered a risky one, further dampening any potential for private investment. According to press articles, problems with state-owned firms would have further deterred private investment in these companies.

To address factors B and C, we examined Krakatau's financial ratios for the three years prior to each of the infusions based on the information contained in Krakatau's translated financial statements that were submitted by petitioners. *See* Analysis Memo. This data indicates that Krakatau did report modest profits in the years relevant to examination. Return on sales was positive, but declined over the period 1992 through 1994. Return on equity declined from 1992 to 1993, but recovered in 1994. In all relevant years Krakatau's return on equity remained less than half of the annual inflation rate; thus the company was posting negative returns in real terms. Further, Krakatau's returns during this period were well-below commercial interest rates.

With respect to the final factor, Krakatau has no private investors. Therefore, there are no private investments that may be used to evaluate Krakatau's equityworthiness.

In light of Krakatau's unfavorable financial position, anemic returns and the press reports about the company's dubious financial health, it seems unlikely that a reasonable private investor would have made equity investments in the company. On this basis, we preliminarily determine that Krakatau was unequityworthy in 1995.

Equity Methodology

In measuring the benefit from a government equity infusion, in accordance with § 351.507(a)(2) of the CVD Regulations, the Department compares the price paid by the government for the equity to actual private investor prices, if such prices exist. According to § 351.507(a)(3) of the CVD Regulations, where actual private investor prices are unavailable, the Department will determine whether the firm was unequityworthy at the time of the equity infusion. In this case, private investor prices were unavailable; thus, we conducted an equityworthy analysis. As discussed above, we have determined that Krakatau was unequityworthy in 1995.

Section 351.507(a)(3) of the CVD Regulations provides that a determination that a firm is unequityworthy constitutes a determination that the equity infusion was inconsistent with the usual investment practices of private investors. The Department will then apply the methodology described in § 351.507(a)(6) of the regulations, and treat the equity infusion as a grant. Use of the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. To do so, the Department examines whether the company received long-term commercial loans in the year in question, and, if necessary, the overall financial health and future prospects of the company. If a company not owned by the government receives long-term financing from commercial sources without government guarantees, that company will normally be considered creditworthy. In the absence of commercial borrowings, in accordance with § 351.505(a)(4) of the CVD Regulations, the Department examines the following factors, among others, to determine whether or not a firm is creditworthy:

A. The receipt by the firm of comparable commercial long-term loans;

B. The present and past financial health of the firm, as reflected in various financial indicators calculated from the firm's financial statements and accounts;

C. The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and

D. Evidence of the firm's future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan.

With respect to the first factor, Krakatau received one long-term commercial loan in 1995 amounting to approximately 3 billion Rupiah. However, because Krakatau is owned by the government, this loan may not be considered dispositive as to the company's creditworthiness. *See* § 351.505(a)(4)(ii) of the CVD Regulations.

Therefore, to determine whether Krakatau was creditworthy in 1995, in accordance with the Department's past practice, we analyzed financial ratios for each of the three years prior to the year under examination to address factors B and C. In examining these ratios, however, because tKrakatau failed to respond to our questionnaires (as discussed in the "Facts Available" section of this notice), we do not have the company's financial statements for 1992 and 1993. The only financial information for the years 1992 and 1993 on the record of this investigation is taken from data from the Indonesian Commercial Newsletter submitted by petitioners. Thus, we are not able to evaluate whether this data is supported by the financial statements and whether there may be any notes to the financial statements that would call the data into question.

Using the only information available on the record, we found that, as discussed above, Krakatau had positive returns on sales and equity during the relevant years, but these rates were lower than commercial interest rates and lower than the level of inflation. Krakatau's current ratio remained relatively strong during this period, ranging from 3.86 to 6.51, showing a fairly strong degree of short-term protection for creditors and no indication of difficulty in covering short-term liabilities.

The Department normally examines other financial ratios including the quick ratio and times-interest-earned ratio; however, data on the record is incomplete, allowing us only to examine the company's position in 1994. Both of these ratios indicate that the company probably did not have difficulties managing its debt obligations in 1994, but we are unable to examine the company's ratios for the other relevant years.

With respect to the final factor, there are no studies or analyses submitted to the record that may be used to evaluate Krakatau's financial position.

While the data we have indicates that Krakatau may not have had any difficulty obtaining financing at commercial interest rates, again, we note that the record evidence is incomplete. In addition, other financial data and press reports, as discussed in the "Equityworthiness" section above, indicate that Krakatau had financial difficulties. Therefore, as adverse facts available we preliminarily find that Krakatau was uncreditworthy in 1995.

Discount Rates

We calculated the discount rates in accordance with the formula for constructing a long-term interest rate benchmark for uncreditworthy companies as stated in the Department's new regulations. *See* § 351.505 (a)(3)(iii) of the CVD Regulations. This formula requires values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we relied on the average cumulative default rated reported for the Caa to C-rated category of companies as published in Moody's Investors Service, "Historical Default Rates of Corporate Bond Issuers, 1920–1997," (February 1998). For the probability of default by a creditworthy company we used the average cumulative default rates reported for the Aaa to Baa.[1] For the period before 1998, we used the average cost of long-term fixed-rate loans in Indonesia in 1995 as the interest rate that would be paid by a creditworthy company, specifically the investment rate offered by commercial banks in Indonesia as reported in the Indonesian Financial Statistics of February 1999, attached to the GOI's April 29, 1999, questionnaire response, a public document on file in the CRU. For this period, we used the average cumulative default rates for both uncreditworthy and creditworthy companies that were based on a 15 year term, since Krakatau's allocable subsidy was based on this allocation period. For 1998, since Indonesia experienced high inflation during this year, we converted the subsidy into U.S. dollars and then applied a long-term dollar rate as the discount rate, specifically, the average yield to maturity on selected long-term Baa-rated bonds. See Analysis Memo. This conforms with our practice in *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014, 55019 (October 22, 1997). In calculating the uncreditworthy rate for 1998, we used the average cumulative default rates for both uncreditworthy and creditworthy companies based on a 12 year term, since that period remained on Krakatau's allocated subsidy.

I. Program Preliminarily Determined To Be Countervailable

1995 Equity Infusion Into Krakatau

Because Krakatau did not respond to this allegation, we used the information and data provided in the petition as adverse facts available, in accordance with section 776(b) of the Act (*See* "Facts Available" discussion above). According to both the Countervailing Duty Petition and Krakatau's financial statements, the GOI provided Krakatau with equity in the form of debt-to-equity conversions in 1995. *See* Analysis Memo. In 1995, the GOI converted subordinated loans into equity. The conversion was authorized by the

[1] We note that since publication of the CVD Regulations, Moody's Investors Service no longer reports default rates for Caa to C-rated category of companies. Therefore for the calculation of uncreditworthy interest rates, we will continue to rely on the default rates as reported in Moody Investor Service's publication dated February 1998 (see Exhibit 28).

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Minister of Finance in decree number S–44/MK016/1995 dated July 25, 1995. According to Krakatau's financial statement, provided in the petition, on April 29, 1996, through decree of the Minister of Finance S–240/MK016/1996, the conversion was approved at a slightly lower amount than originally authorized. The excess amount has not yet been converted into capital and has been recorded as a loan in the financial statement, with interest still due.

We preliminarily determine that under section 771(5)(E)(i) of the Act, the equity conversion into Krakatau was not consistent with the usual investment practice of a private investor and confers a benefit in the amount of each infusion (*see* "Equityworthiness" section above). The equity conversion is specific within the meaning of section 771(5A)(D) of the Act because it was limited to Krakatau. Accordingly, we preliminarily find that the 1995 debt-to-equity conversion is a countervailable subsidy within the meaning of section 771(5) of the Act.

As explained in the "Equity Methodology" section above, we have treated equity infusions into unequityworthy companies as grants given in the year the infusion was received because no market benchmark exists. In accordance with § 351.507(c) of the CVD Regulations, the equity conversion is allocated as a non-recurring subsidy. We allocated the subsidy and converted the remaining face value of the infusion in 1998 into U.S. dollars using the average 1997 rupiah/dollar exchange rate and applied the long-term U.S. dollar uncreditworthy interest rate described in the "Discount Rate" section of this notice. We then divided the benefit amount allocable to the POI by Krakatau's estimated 1998 U.S. dollar total sales figure, which was calculated based on the facts available in the petitioner's submission. See Analysis Memo. On this basis, we preliminarily determine the net countervailable subsidy to be 17.38 percent *ad valorem* for Krakatau.

II. Program Preliminarily Determined To Be Not Countervailable

Reduction in Electricity Tariffs

Petitioners alleged that discounts on electricity rates were provided to the steel industry during the POI; they alleged that after the GOI increased electricity rates in 1998, the GOI decreased rates for the steel industry. According to the questionnaire response, in 1998, the GOI instituted a substantial increase in electricity tariff rates for electricity supplied by the state-owned electricity company, PT Perusahaan Listrik Negara, known as Persero. In accordance with Presidential Decree No. 70/1998 of May 4, 1998, rates were scheduled to increase periodically throughout the year, in May, August, and November. The May 1998 increase was implemented as discussed in the Announcement of the Minister of Mines and Energy, No. Pm/40/MPE/1998 dated May 4, 1998, submitted in the June 23, 1999, questionnaire response. Subsequently, the August and November increases were retroactively postponed, by Presidential Decree No. 1/1999 of January 7, 1999, submitted in the June 1, 1999, questionnaire response. According to this decree, the rate increase was postponed for all electricity customers, with the exception of large residential households.

The postponement of the rate increase applied broadly throughout the economy, with only large residential households excepted from the new rate. According to the GOI, all "[i]ndustrial customers pay electricity rate solely according to the tariff and time of use." Thus, contrary to petitioners' allegation, there is no basis for concluding that the steel industry received a special electricity discount. Based on the record evidence, the electricity discount was not limited to a specific enterprise, industry or group thereof, but was available to all industrial users in the country. Therefore, we preliminarily determine that the electricity discount program is not countervailable.

III. Programs Preliminarily Determined To Be Not Used

Based on the information provided by respondents and the GOI, we determine that Gunawan, Jaya Pari, and Krakatau did not apply for or receive benefits under the following programs during the POI:

A. *Bank of Indonesia Rediscount Loans*
B. *Corporate Income Tax Holidays*

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated individual rates for each of the companies under investigation.

According to section 705(5)(A)(i) of the Act, the all others rate is, "an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates and any rates determined entirely under section 776." Thus, in accordance with section 705(5)(A)(i) of the Act, we are excluding the rates calculated for Gunawan and Jaya Pari because they are zero rates. Although the subsidy rate calculated for Krakatau is based in part on facts available, section 705(5)(A)(i) specifies that only those rates calculated *entirely* under section 776 (facts available) are excluded; thus, we are including the subsidy rate calculated for Krakatau in the all others rate.

Producer/exporter	Net subsidy rate
P.T. Krakatau Steel ..	17.38% ad valorem.
P.T. Gunawan Steel	0.00% ad valorem.
P.T. Jaya Pari	0.00% ad valorem.
All Others Rate	17.38% ad valorem.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of cut-to-length plate from Indonesia, except with respect to Gunawan and Jaya Pari as discussed above, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above. Since the estimated preliminary net countervailing duty rates for Gunawan and Jaya Pari are zero, these two companies will be excluded from the suspension of liquidation. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of the preliminary determination at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, six copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the non-proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days from the date of filing of the case briefs. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: July 16, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–18858 Filed 7–23–99; 8:45 am]

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Part III

Department of Transportation

Federal Transit Administration

Electronic Payment System for Transit Fare Collection, Parking Payment, Electronic Toll Collection and Other Applications; Notice

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Request for Proposals for an Operational Test of an Electronic Payment System for Transportation and Other Applications

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation (US DOT) announces a Request for Proposals from eligible applicants for an operational test of an electronic payment system for transit fare collection, parking payment, electronic toll collection and other applications. The US DOT is interested in identifying and evaluating issues associated with the establishment of partnerships between public transit service providers and other entities in the development and use of multiple-application electronic payment systems. The Department is specifically interested in an operational test of a payment system that includes a variety of applications, but must at a minimum include transit fare collection, parking payment and electronic toll collection.

DATES: Proposals shall be submitted by 4 P.M. EST on or before October 25, 1999.

ADDRESSES: Proposals shall be submitted to Walter Kulyk, Director, Office of Mobility Innovation (TRI–10), Federal Transit Administration, 400 7th Street SW., Room 9402, Washington, DC 20590 and shall reference Electronic Payment System Demonstration.

ELIGIBILITY: Only public transit agencies and metropolitan planning organizations (MPOs) in the United States are eligible to submit proposals in response to this RFP. In the case of MPO applicants, a statement explaining why a local transit partner is unable to submit the application and serve as a grantee must be included in the proposal. This eligibility restriction applies only to the agency submitting the proposal and serving as the applicant and does not limit project partners. All agencies submitting proposals in response to this notice consent to be publicly identified as respondents.

FOR FURTHER INFORMATION CONTACT: Bert Arrillaga, Chief, Service Innovation Division, (TRI–12), at (202) 366–0231 or Sean Ricketson, Office of Mobility Innovation, (TRI–11), at (202) 366–6678. This notice is posted on the FTA website on the Internet under http://www.fta.dot.gov/library/legal/fr99toc.htm. Questions and replies regarding this notice will be posted on the FTA website under http://www.fta.dot.gov/office/research/its.htm.

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I. Background

Recent developments in electronic payment systems and card technology present a unique opportunity for public and private institutions to establish mutually beneficial partnerships in the development and management of electronic payment systems for transportation. These developments include stored-value card systems created by financial institutions, contactless smart card systems for public transportation, electronic toll collection systems on highways and card systems for human service agency program management and benefits delivery. Private industry and public agencies foresee substantial benefits in establishing partnerships to develop further capabilities in electronic fee collection, delivery of benefits payments, funds transfer, settlement and clearinghouse functions. However, a number of institutional issues continue to restrict the formation of these partnerships. Through the development of an operational test this project intends to be a step towards identifying and addressing the complex institutional issues surrounding electronic payment systems in transportation.

The decision to focus the scope of the operational test on integrating transit fare collection, parking payment and electronic toll collection systems rests on a number of factors. Based on responses the US DOT received from the **Federal Register** Notice, Request for Letters of Interest in an Operational Test of Transit Fare Collection and Other Applications, dated November 24, 1998, it is considered that the transit industry is progressing in the development of integrated transit payment systems. With limited research funds available, the US DOT feels that this operational test could facilitate the next step to the development of an integrated, multi-modal transportation payment system infrastructure. However, there is a concern that a project integrating transit, parking and toll collection (given the modal balance found in most areas) may have a limited transit component. Therefore, it has been determined that the lead applicant (the agency submitting the proposal and potential grantee) be limited to transit agencies or MPOs to ensure sufficient participation by a public transit partner. Because this eligibility is more restrictive than first presented in the Request for Letters of Interest, the response period to the RFP has been extended to ninety days.

II. Vision, Goals and Objective(s)

The vision this operational test supports is one of a seamless transportation payment infrastructure where local transportation agencies and other organizations are not limited by institutional constraints in the development of transportation payment products. Examples of possible products are pre-paid integrated accounts for toll payment, parking and transit, or stored value cards for transit and parking meter use. Ideally, only local creativity and transportation needs should limit the development of such products.

While the goals and objectives described below are focused on technical and institutional outcomes, the success of the test will depend upon whether it makes a positive contribution to the enhancement of local transportation service and operational efficiency. This focus must be maintained throughout the lifecycle of the operational test (planning, development, implementation and evaluation) by the grantee.

The goal of the operational test is to provide solutions to transit and other service providers exploring the feasibility of developing multi-modal transportation payment systems and integrating transportation payment with other payment applications. Additionally, the operational test is intended to offer insight to those interested private sector partners (i.e., the electronic payments industry, financial services industry, and other industries) interested in integrating their services with a transportation payment system.

The objective of the operational test is to evaluate and document the integration of transit fare collection, parking payment and electronic toll collection within one coordinated payment system. Additional objectives, if feasible, are to evaluate and document the viability and benefits of integrating transportation payment systems with other payment applications.

III. Project Development

A. General

The operational test will need to achieve an optimal balance of meeting local transportation needs while also providing a worthwhile national model of payment system coordination and partnerships.

B. Management Oversight

The grantee and other local partners in the project will manage the operational test. Additional guidance will be provided by a U.S. DOT committee composed of transportation industry representatives. This committee is already established by the U.S. DOT to provide feedback on electronic fare payment activities. The grantee will consult with the committee prior to any significant changes in project scope or direction. For this project, the committee may be augmented by experts from other industries as needed. Concurrently, this committee will direct a separately funded effort being conducted by the U.S. DOT to develop and document a set of guidelines for the integration of electronic fare payment with other payment systems. These guidelines will provide recommendations for the integration of transit payment systems with other payment systems such as benefits transfer, toll collection, security, parking, retail, financial services, telephony, identification and access control. The results of the operational test are intended to contribute to the advancement of the guidelines document. In turn, the development of the guidelines document is intended to assist the committee, the grantee, and local partners with the implementation of the operational test.

IV. Partnerships

The U.S. DOT will work with the lead public agency (applicant/grantee) participating in the project to ensure the needed support to achieve the objectives of the field operational test. The U.S. DOT will verify that the required institutional, partnership and funding arrangements are in place. All necessary partnership arrangements and institutional agreements to support the proposed project need to be documented by the applicant in the proposal. The grantee and participating partners will be required to implement the first phase of the operational test within 24 months from the time the cooperative agreement is awarded.

V. National ITS Architecture

The National ITS Architecture provides a common structure for the design of Intelligent Transportation Systems (ITS). The architecture defines the function that must be performed to implement a given user service, the physical entities or subsystems where these functions reside, the interfaces/information flows between the physical subsystems, and the communication requirements for the information flows. In addition, the architecture identifies and specifies the requirements for standards needed to support national and regional interoperability, as well as product standards needed to support economy of scale considerations in deployment. The proposal shall provide a "Statement of Intent" to develop a system consistent with the National ITS Architecture.

Proposals shall also provide a "Statement of Intent" to design a system that is consistent with SAE J1708T Bus Vehicle Area Network, the Transit Communications Interface Profiles (TCIP), and other applicable protocols, or standards requirements as these emerge from the National ITS Architecture Development Program. Information about SAE J1708T may be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania, USA, 15096–0001; phone: 412–776–4841, fax: 412–776–5760, or through the Internet at *http://www.sae.org*. Information about TCIP can be obtained on the TCIP homepage at *http://www.tcip.org* or by contacting the Institute of Transportation Engineers, 525 School St., SW, Suite 410 Washington, DC 20024; phone: 202–554–8050. Copies of the Architecture Definition Documents, the draft Standards Requirements Document, and the Standards Development Program from the Architecture Development Program are available from ITS America, 400 Virginia Avenue, SW, Suite 800, Washington, DC 20024, telephone 202–484–4847. Electronic copies are available on the ITS America Internet website, *http://www.itsa.org*. These documents provide insight into the definition of the National ITS Architecture, and the emerging approaches being taken toward standardizing interfaces that would support the integration of transportation management components.

In developing plans for standards and architectural consistency, proposals should recognize the practical benefits of this requirement. The ability to integrate systems and exchange data among applications offers some of the strongest benefits of ITS. As an illustration of understanding of this point, plans should identify potential opportunities for integration and data sharing among fare payment and other systems and applications. Information about key indicators of the electronic payment component of the ITS metropolitan infrastructure and integration of it with other components can be found in, "Measuring ITS Deployment and Integration: August 1998" available through the Internet at URL Http://www.its.fhwa.dot.gov/cyberdocs/welcome.htm, the report is document number 4372 in the Electronic Document Library maintained at this website.

VI. Project Evaluation Activities

A major goal of the US DOT is to promote the development of innovative applications of advanced technologies. In order to encourage the widespread adoption of technological innovations, data and results from the operational test must be analyzed, documented and reported. Accordingly, evaluations are an integral part of the operational test and are critical to the success of the National ITS Program.

This electronic payment system operational test will be evaluated by a US DOT contractor funded separately by the US DOT. The contractor will develop an Evaluation Plan which will specify the data collection requirements which will enable an assessment of the achievement of the goals and objectives of the National ITS Program applicable to this project as well as the goals and objectives of the implementing organizations. The contractor will assemble all the data collected in accordance with the Evaluation Plan, analyze the data, and prepare the Evaluation Report. The Evaluation Plan will also include an assessment of the technological issues, operational issues, customer acceptance, system reliability, attitudes of implementing organizations, implementation and continuing operational costs, integration issues, and a variety of institutional issues including partnership arrangements, legal issues, clearinghouse operation, the reason for selecting the type of system (closed or open), and the success in obtaining multiple agency participants.

The operational test partners (all participating agencies and institutions) will be involved in all phases of the evaluation. Partners will be expected to provide the local goals and objectives, review and comment on the Evaluation Plan, assist the contractor to collect the data specified in the Evaluation Plan (including any surveys that may be

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necessary), provide information on external factors that may affect the project's results, and review and comment on the Evaluation Report prepared by the evaluation contractor.

VII. Funding

Federal funds available for this operational test are $2.33 million. Federal funding shall not exceed 50% of total project costs.

Implementing organizations will be required to furnish the specified evaluation data and perform reviews of evaluation documents. No additional Federal funding will be provided for this effort. The evaluation activities conducted by the evaluation contractor will be funded separately by the US DOT.

The US DOT, the Comptroller General of the United States, and, if appropriate, individual States have the right to access all documents pertaining to the use of Federal ITS funds and non-Federal contributions. Non-Federal partners must submit sufficient documentation during final negotiations and on a regular basis during the life of the project to substantiate these costs. Such items as direct labor, fringe benefits, material costs, consultant costs, and subcontractor costs, and travel costs should be included in that documentation.

VIII. Schedule

The project must remain operational for a period long enough to obtain valid evaluation data. The data collection period will be for a minimum of twelve (12) months from the time that the project is fully operational (i.e., all elements are working as intended). Upon the completion of data collection there shall be a six (6) month period of analysis and report coordination before a final evaluation report is submitted. The system shall remain operational throughout the evaluation process until the final report is received by the US DOT, unless otherwise agreed to by the US DOT.

IX. Proposals

The US DOT will select one operational test proposal for funding under this RFP. Applications should, where possible, focus on utilizing currently available technology. The Department is specifically interested in an operational test that includes transit fare payment, parking payment and electronic toll collection.

Applications that offer the greatest potential for demonstrating and evaluating the benefits of using electronic fare payment in a multi-application transportation environment with at least one private sector partnership are the most desirable.

Proposal Criteria

A proposal shall not exceed forty-five (45) pages in length including title, index, tables, maps, appendices, abstracts, resumes and other supporting materials. A page is defined as one (1) side of an 8½ by 11-inch paper, line spacing no smaller than 1.5 with a type font no smaller than 12 pt. Proposals exceeding forty-five (45) pages are strongly discouraged. Ten (10) copies plus an unbound reproducible copy of the proposal shall be submitted. The cover sheet or front page of the proposal shall include the name, address and phone number of an individual to whom correspondence and questions about the application may be directed. Each proposal shall include a Technical Plan, Financial Plan, and a Management and Staffing Plan that describes how the proposed objectives will be met within the specified time frame and budget. These plans should be structured so that they contain the following information.

A. Technical Plan

General Requirements

1. The technical plan must provide a general description of the local transit market, toll collection system(s), parking payment system(s), and other proposed payment system markets. Information shall include transit ridership statistics, toll plaza throughput statistics, parking systems and parking usage. Additionally, the technical plan must provide an outline of the current fare collection, toll collection and parking payment processes, and types of payment media currently in use. In addition, other potential public/private agency(s) involvement such as partnerships, merchants, retailers, etc. must be outlined.

2. Proposals must include documentation of any existing or planned interagency agreements or public/private cooperative arrangements necessary for the conduct of the operational test.

Project Overview

1. Define existing infrastructure (both physical and information technology) and support systems in place, e.g., current fare collection system and cash handling procedures, toll collection processes and parking collection processes as well as current systems of those additional non-transportation applications being considered for integration.

2. Describe how the existing infrastructure will be expanded and used to support the proposed system. Identify existing technological and institutional linkages within and across modes.

3. Describe the proposed system and how it will be integrated with other non-transportation applications and participating private sector institutions.

4. Summarize the expectations of the proposed system (e.g. costs, benefits, risks, operations, maintenance issues, plans, and system support).

Technical Approach

The Technical Approach will be judged on its ability to incorporate the requirements of a multi-modal, multi-application payment system within the transportation infrastructure. The U.S. DOT recognizes that a single payment instrument or technology may not meet all the stakeholders' needs in a region; however, proposals will be evaluated on demonstrated local willingness and capability to integrate the proposed services among the necessary partners in the transportation environment.

Within the Technical Approach the following areas need to be clearly addressed:

1. Define and describe the goals and objectives of the system, and the goals and objectives of each of the service providers participating in the proposed payment system. Address both customer service and operating efficiency.

2. Describe the system design concept. Describe the extent of proposed system integration, type(s) of proposed media and/or payment mechanisms, settlement and clearinghouse processes, and partners.

3. Describe implementation of the system in probable phases with funding for each phase clearly specified. Document the schedule of work, assumptions and technical uncertainties, and proposed specific approaches to resolve any uncertainties.

4. Describe the approach by which the system design concept will be refined, developed, and operationally tested.

5. Show evidence that the project team has considered service delivery issues. Examples include: Who will use any new payment media? What problems will it solve for the participating transportation providers? What will the benefits of the new system be and how will the project team market the system to the user?

6. Describe the plan for concluding the operational test (Closure Plan), indicating whether hardware, software, and infrastructure will remain in revenue service, be sold, or returned to participating vendors, if applicable. Closure Plans may be contingent upon the results of the operational test, in which case more than one Closure Plan may be developed.

B. Management and Staffing Plan

Provide names and positions of all personnel related to managing the project. Identify key management and control responsibilities for the overall program. Provide a timeline and define key milestones and deliverables for the project. Provide estimated professional and technical staffing in staff-months and staff-hours. Demonstrate that the project manager is capable, available and able to commit to a level of involvement that ensures project success. Include biographical data on key management personnel.

C. Financial Plan

Provide a description of total project costs and of matching funds, if applicable.

Provide a system budget identifying costs for system design, development, implementation, project management, operations, maintenance and evaluation support.

The applicant's evaluation support costs shall include the following information:

Breakdown costs identifying them by one of the following: (1) Local; (2) State; (3) Private; (4) Federal ITS; (5) Other Federal-aid; (6) Other (describe).

Note: Costs attributed to Federal dollars proposed to be received through award of this operational test are Federal ITS.

Provide cost estimates by phase by funding year as defined in the technical plan.

All financial commitments to the project from both public and private sectors shall be documented in signed Memorandum of Understanding (MOU) and included in the proposal.

The proposal shall provide an in-depth description and assessment of the total cost of achieving the objectives of the Electronic Fare Payment System field operational test. The Financial Plan should describe a phased approach that delineates what will be accomplished with the project funding.

The proposal should provide a comprehensive, concise plan that ensures systems integration of the functions necessary to support an electronic payment system for fare collection. The plan shall include a discussion of the ways in which design, acquisition, construction, and other procurement activities will affect systems integration.

X. Proposal Evaluation Criteria

All proposals must include a Technical Plan, Financial Plan, and Management and Staffing Plan that describes how the proposed objectives will be met within the specified time frame and budget. The primary evaluation criterion for the proposal will be the degree to which the proposal demonstrates the potential for successfully testing a multi-use payment system with multi-modal transportation capability. Proposed projects must include viable transit fare collection, parking payment, and electronic toll collection components. Significant consideration will be given to those projects involving public agencies and private sector partners with previous work or experience developing and integrating electronic payment systems. Proposals must demonstrate local viability and must also show strong potential for providing the baseline for a national model. Proposals should emphasize the nature and arrangement of any public-private partnerships. Proposals should present the potential benefits as well as associated risks and costs to transportation agency partners. Significant consideration will be given to those projects with greater levels of private and local funding contributions.

Issued on: July 15, 1999.

Gordon J. Linton,

Administrator.

[FR Doc. 99–18921 Filed 7–23–99; 8:45 am]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 193
Protection of Voluntarily Submitted Information; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 193

[Docket No. FAA–1999–6001; Notice No. 99–14]

RIN 2120–AG36

Protection of Voluntarily Submitted Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to add a new part to provide that certain information submitted to the FAA on a voluntary basis would not be disclosed. This proposal would implement a new statutory provision. It is intended to encourage people to provide information that will assist the FAA in carrying out its safety and security duties.

DATES: Comments must be received on or before September 24, 1999.

ADDRESSES: Comments on this proposed rulemaking should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–6001, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marisa Mullen, Office of Rulemaking, ARM–205, or Mardi Thompson, Office of Assistant Chief Counsel, AGC–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–7653 or (202) 267–3073, respectively.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The Administrator will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–1999–6001." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339) or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No.11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Statement of the Problem

The FAA is committed to make continuing improvements in aviation safety and security. To do so, the FAA must have an increasing amount of information regarding current safety and security systems and how they are functioning today. The FAA is developing data sharing programs in which persons in the aviation community, such as air carriers, would share with the FAA information related to safety and security. In one such program, Flight Operations Quality Assurance (FOQA), in-flight data is collected during normal flights and aggregate trend analyses from that data are made available for FAA inspection. In Aviation Safety Action Programs (ASAP), the FAA and entities of the air transportation industry have entered into programs intended to generate safety information that may not otherwise be obtainable. ASAP is described in Advisory Circular 120–66.

An impediment to further development of these programs is the reluctance of some persons to share information that, when in the hands of a government agency, may be required to be released to the public through the Freedom of Information Act (FOIA) (5 U.S.C. § 552) or other means.

The Federal Aviation Reauthorization Act of 1996 (Pub. L. 104–264) provides relief from these concerns by adding new § 40123 to Title 49, United States Code. The new section provides:

(a) *In General.*—Notwithstanding any other provision of law, neither the Administrator of the Federal Aviation Administration, nor any agency receiving information from the Administrator, shall disclose voluntarily-provided safety or security related information if the Administrator finds that—

(1) The disclosure of the information would inhibit the voluntary provision of that type of information and that the receipt of that type of information aids in fulfilling the Administrator's safety and security responsibilities; and

(2) Withholding such information from disclosure would be consistent with the Administrator's safety and security responsibilities.

(b) Regulations.—The Administrator shall issue regulations to carry out this section.

In the legislative history, Congress cited the data-sharing programs being developed that could help improve safety by allowing the FAA to spot trends before they result in accidents. It noted the concern in the aviation community about the confidentiality of the data. "Much of the information could be incomplete, unreliable, and quite sensitive. There will be a reluctance to share such information if it will be publicly released because it could easily be misinterpreted, misunderstood, or misapplied." H.R. Rep. No. 104–714, 104th Cong., 2d Sess. 41. Congress noted that protecting this information from public disclosure will not reduce the information available to the public, because the information is not provided to the public now. It further noted that the information

"should be useful in the development of safety policies and regulations." H.R. Rep. No. 104–714, 104th Cong., 2d Sess. 42.

In addition, the White House Commission on Aviation Safety and Security issued a recommendation on this subject. In Recommendation 1.8 the Commission noted that the most effective way to identify problems is for the people who operate the system to self-disclose the information, but that people will not provide information to the FAA unless it can be protected. It recommended that the FAA expeditiously complete rulemaking to implement the legislation for protecting *voluntarily provided* information.

This notice contains proposals to carry out § 40123. The FAA anticipates that information received in programs under this part will be used to carry out the FAA's safety and security responsibilities in a number of ways, including identifying potentially unsafe conditions and appropriate corrective action, identifying a need for and the contents of rulemaking, identifying a need for and the contents of policies, and identifying a need for an investigation or inspection.

General Discussion of the Proposals

The proposed rule is intended to furnish a way for people to provide information to the FAA for safety or security purposes, yet protect the information from disclosure to others (with exceptions discussed below).

There is a strong public policy in favor of Federal agencies releasing information to the public, to ensure that the public is informed as to how the government is doing business. Section 40123, however, reflects a recognition that there is a significant benefit to providing exceptions to this policy in order for the FAA to receive additional safety and security related information that it is not now receiving.

Section 40123 requires that the FAA and other agencies not release information that meets the standards in the statute and implementing rules. The information that is subject to this protection is defined in § 40123 as information that is voluntarily provided and that is safety or security related. Section 40123 requires that certain findings be made by the Administrator before its protections apply. The FAA proposes to add a new part 193 that would describe how the Administrator would determine that the requirements of § 40123 are met, thereby making the information protected from disclosure.

Not all information that is voluntarily provided to the FAA meets the standards in § 40123, and, therefore, is not protected from disclosure under § 40123. The FAA often receives information from persons who are willing to provide it without the nondisclosure protections in § 40123. For instance, persons may call an FAA field office to report possible violations such as low flight, or may approach inspectors who are at an airport with information on possible violations. Such information generally does not meet the requirements in § 40123 because the disclosure of the information generally does not inhibit the voluntary provision of that type of information. Indeed, the person often expects disclosure of the information when the FAA acts to address the apparent violation.

Under proposed part 193, the only information to be protected would be information specifically designated as protected in accordance with the procedures in §§ 193.9 or 193.11. Other voluntarily provided information would not be protected under this part. Part 193 would provide for specific findings to be made by the Administrator as to the elements in § 40123. In the ordinary case, the Administrator would publish in the **Federal Register** a proposed designation for specified types of information and request comments. After review of the comments, the FAA could publish a designation protecting the information from disclosure. However, when there is an immediate need for the FAA to provide protection in order to receive information, this rule would also permit the Administrator to designate the information as protected without notice to the public.

Section 40123 and this proposed rule represent a new effort to encourage the aviation community to share information with the FAA. As a developing project, it is not clear how best to structure programs to maximize the benefits. Accordingly, this proposal is written to provide many options for future development and tailoring of individual programs. In all cases except those where there is an immediate need for the information, the FAA would publish notice of these developments and any expansion of the non-disclosure policies in the **Federal Register** and invite comment.

Section-by-Section Analysis

Section 193.1 Scope and Delegations

This section would explain that part 193 implements 49 U.S.C. 40123, protection of voluntarily submitted information.

This section also would provide for delegation of the authority under this part. It would state that the authority of the Administrator to issue, amend, and withdraw designations under this part may be delegated to Associate Administrators and Assistant Administrators and to the Chief Counsel, their deputies, and any individual formally designated to act in their capacity. For instance, if an Associate Administrator were on leave, the person designated as Acting Associate Administrator would have the authority under this part. This section would further state that the authority of the Administrator to issue proposed designations under this part may be further delegated, which could be below the level of Associate Administrator. This would allow the Administrator to delegate to other officials the authority to sign proposed and final designations to be published in the **Federal Register** under §§ 193.9 and 193.11. Because of the strong public policy in favor of disclosure of information held by a Federal agency, authority to grant the final designations, with their extensive non-disclosure protections under this part, should be the decision of senior officials in the agency.

Section 193.3 Definitions

This section would define some of the terms used in part 193.

Section 40123 refers to "any agency receiving information from the Administrator," but does not define "agency." There are many definitions of that term in the United States Code. It appears that in this context, the most appropriate definition is essentially the one in the Administrative Procedures Act, 5 U.S.C. § 551(1). The FAA proposes to use a simplified version of that definition and to define "agency" as each authority of the Federal Government of the United States, whether or not it is within or subject to review by another agency, but does not include—(A) the Congress; (B) the courts of the United States; (C) the governments of the territories or possessions of the United States; (D) the government of the District of Columbia; or (E) court martial and military commissions. This definition would permit the FAA to give information to the National Transportation Safety Board (NTSB), and to other agencies such as the FBI, in the interest of safety or security. See the discussion of § 193.5(d).

As explained below, the proposed rule would provide for some limited disclosure of "de-identified" information, which would be defined to mean that the identity of the source of the information and the names of persons are removed from the information. Under Part 1, "person" is broadly defined to include not only

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individuals, but also such entities as companies and firms. Thus, information from an air carrier that was "de-identified" would not include the name of the air carrier or the names of any crewmembers, maintenance personnel, repair stations, or other persons that may have been in the original information.

Section 40123 provides that "notwithstanding any other provision of law," the FAA and other agencies shall not "disclose" information under specified circumstances. By referring to "any other provision of law," it appears that "disclose" was meant to be read broadly to cover all circumstances under which the FAA and other agencies might otherwise be required or permitted to disclose information. "Disclose" would be defined broadly under this proposal to mean the release of information or a portion of information to other than another agency. Release to another agency, such as the NTSB, would not be considered disclosure under this rule, because § 40123 states that other agencies are under the same requirements as the FAA not to disclose the information.

The most common definition of disclosing agency information generally arises in connection with release under the FOIA. "Disclose" in this regulation would also include release in rulemaking proceedings, in a press release, or to a party in a legal action. Note that in some legal actions, such as some enforcement actions or criminal prosecutions, the rule would permit disclosure of the information. See the discussions of proposed §§ 193.5(f) and 193.7(a).

"Information" would mean data, reports, source, and other information. It is intended to be inclusive. The word "information" would be used to describe all or a part of a submission of information.

"Summarized" information would mean that individual incidents are not specifically described, but are presented in statistical or other more general form. Summarized information might be used in rulemaking, for instance, to explain the need for the rule.

Section 40123 protections apply only to information submitted voluntarily. "Voluntary" would be defined to mean that the information was submitted without mandate or compulsion, and not as a condition of doing business with the government. It would not include information submitted as part of a means of complying with statutory, regulatory, or contractual requirements. Under this proposed definition, information that is required to be submitted under a regulation would not be considered voluntarily provided. If a regulation gives several options for compliance, information provided as part of complying with any option chosen would not be voluntarily provided.

The definition of "voluntary" also provides that a program under this part may be published in the Code of Federal Regulations (CFR) and the information submitted under it will considered "voluntarily provided." The FAA anticipates that some programs adopted under § 193.9 may be published in title 14 of the Code of Federal Regulations. Other programs may be adopted as notices that are published in the **Federal Register** but not incorporated into the CFR. The definition is intended to make clear that a part 193 program can be published in the CFR without destroying its voluntary nature.

This definition is based in part on the views expressed by courts as to the nature of a "voluntary" submission of information in cases under Exemption 4 to the FOIA (5 U.S.C. 552(b)(4)). Under that exemption, certain voluntarily provided trade secrets and commercial or financial information are exempt from disclosure under FOIA.

The FAA has various arrangements under which it receives information from foreign authorities, generally under a bilateral agreement. Whether such information would be considered to be "voluntarily-provided" would depend on all of the circumstances. For instance, in some cases the foreign country inspects an FAA-certificated repair station, production certificate holder, or other FAA-regulated party to determine whether it is in compliance with applicable rules and requirements, and forwards its findings to the FAA. The regulated party is required to submit to such inspections, and thus the information is not voluntarily-provided by the regulated party any more than information obtained during an inspection by FAA personnel would be voluntarily-provided. In other cases, the information provided by a foreign authority might be considered voluntarily provided.

Section 193.5 Withholding Information From Disclosure

This section would state the general provisions for withholding information from disclosure. Section 193.5(a) would provide that, except as provided in this part and in individual programs, the Administrator does not disclose voluntarily provided safety or security information that has been designated as protected under this part.

As discussed above, the protections of this part would apply only to information covered under a designated program, because the Administrator must make findings in accordance with § 40123 before the protections of that section are invoked.

Section 193.5(b) would set forth the basic elements for the Administrator's designation of a program under this part covering a type of information. It includes the elements that are in § 40123.

Section 193.5(b)(1) would require a finding that the information would be provided voluntarily. As noted above, only information that is provided voluntarily may be protected under § 40123. Some information that is provided other than voluntarily may receive protection under other laws, such as exemptions to the FOIA.

Section 193.5(b)(2) would require a finding that the information is safety or security related.

Section 193.5(b)(3) would require a finding that the disclosure of the information would inhibit the voluntary provision of that type of information. The FAA anticipates that this normally would be based in part on statements from the aviation community that they are unwilling to provide the information unless the protections of § 40123 are ensured. The FAA would conduct an analysis to determine whether the possibility of disclosing the information would sufficiently inhibit the provision of the information to warrant granting the protections of § 40123.

In most cases the designation would apply only to information provided after the designation is made. There may be instances, however, when information of that type has been provided in the past, but that future submissions may be inhibited without further protection. This may be true, for instance, where employees have experienced reprisals for submitting adverse information regarding their employers. In such cases the FAA might consider designating as protected information that it has received already.

The FAA notes that § 40123 refers to whether disclosure would "inhibit" the voluntary provision of information. In this context, the FAA interprets "inhibit" to mean to discourage or to repress or restrain, but not to mean prevent the provision of information. The FAA need only find that the provision of information would be discouraged, repressed, or restrained, but not necessarily altogether prevented, to designate it as protected under part 193. This is consistent with the legislative history that refers to the FAA withholding voluntarily provided information if disclosure would "discourage" people from providing it.

H.R. Rep. No. 104–714, 104th Cong., 2d Sess. 49.

Section 193.5(b)(4) would require a finding that the receipt of that type of information aids in fulfilling the Administrator's safety and security responsibilities. This generally would be done by describing how the FAA intends to use the information.

Section 193.5(b)(5) would require a finding that withholding such information from disclosure, under the circumstances stated in the program, would be consistent with the Administrator's safety and security responsibilities. There may be circumstances under which disclosure would be consistent with safety and security. These would be described in the designation. See the discussion of § 193.7(b).

Section 193.5(c) would clarify that only information submitted under a program designated under this part would be protected from disclosure as described in this part. The FAA may receive information on a particular incident both under a designated program and from another unrelated source. Information received by the Administrator through another means is not protected as described in this part. For instance, the FAA might receive information about an airspace deviation both from air traffic control (ATC) and from a part 193 designated program. The information received from ATC would not be protected under this part while the information received under part 193 would be protected from disclosure. Another example would be where information provided under a part 193 program led the FAA to conduct an investigation. If the investigation led to additional information, the additional information would not be protected under part 193, but the original information would continue to be protected.

Section 193.5(d) would make clear that nothing in this part prevents the Administrator from giving information provided in a program under this part to other agencies with safety or security responsibilities. Section 40123 specifically makes such agencies subject to its requirements regarding nondisclosure of information, and thus clearly contemplates that the FAA may give information to such agencies. For instance, at times it may promote safety to share information with the NTSB, and it may be important for security to share information with the FBI or other agencies with security responsibilities. As another example, if the FAA drafts a regulation based on voluntarily submitted information, the FAA may provide that information to the Department of Transportation or the Office of Management and Budget in connection with their review of draft FAA rulemaking documents. (See also the discussion of proposed § 193.7(a)(1).) Further, if information received suggests that there have been criminal violations, the FAA may refer the matter to the Department of Justice or other appropriate agency. Section 40123 supersedes other laws in granting protection to information, when it states that the information shall not be disclosed "Notwithstanding any other provision of law.* * *"

The Administrator would only give the information to another agency if the other agency provides adequate assurance, in writing, that it will protect the information from disclosure as required. The FAA expects that "adequate assurance" usually will include a description of the procedures the other agency will use to ensure that the information is protected from disclosure. This will further promote the purpose of § 40123, which is to give people confidence that they can provide information to the FAA without fear of inappropriate disclosure.

Section 193.5(e) would provide that the nondisclosure protections described in this part do not apply when the person who provided the information agrees to its disclosure.

Section 193.5(f) would provide a specific procedure in the event that the FAA received a subpoena for protected information. This might happen, for instance, in litigation between an air carrier and an individual who alleges he was harmed by the air carrier's negligence. Proposed § 193.5(f) would provide that when the FAA receives a subpoena for information designated as protected under this part, the FAA would contact the person who submitted the information to determine whether the person objects to disclosure of the information or wishes to participate in responding to the subpoena. If the person had no objection the FAA would have the option of disclosing the information. If the person wanted the information to continue to be protected, that person would have the option of participating in the response to the subpoena such as by filing an appropriate motion with the court. The person would not be required to participate, however, and may not wish to if that person wishes to remain anonymous.

The FAA would decide based on all the circumstances how to respond to a subpoena. If the person did not object to releasing the information that likely would be the response, however, there may be instances in which the person who provided particular material may not object to its release but release may compromise other aspects of the program, in which case the FAA may decide to continue to protect it from release.

The FAA represents the government in administrative litigation such as many enforcement actions. The FAA does not represent the United States government in litigation in Federal or state court, rather the Department of Justice (DOJ) provides representations. The FAA would either make an appropriate response to a subpoena or request that DOJ make an appropriate response, such as to resist disclosing the protected information by filing a motion for a protective order or a motion to quash the subpoena, or by releasing the requested information. In limited circumstances, the government may be required to disclose some protected information to a judge so that the judge can determine whether the government is properly withholding information under the law.

Section 193.7 Disclosure of Information

Section 40123(a)(2) requires that, for information to be protected, the Administrator must find that withholding the information would be consistent with safety and security. If all other requirements in § 40123 are met, it will be infrequent that the FAA will find it advisable to disclose the information. However, there are some circumstances under which it would be consistent with safety or security to disclose at least portions of an information submission, which circumstances would be stated in the proposed regulation and in the individual program. Where disclosure would be necessary, attempts would be made to limit the disclosure to the extent practicable, such as releasing only de-identified and summarized information.

Some reasons for disclosing information apply to all FAA programs and activities and are set forth in proposed § 193.7(a). They involve developing new policies and regulations (§ 193.7(a)(1)), evaluating or correcting current deficiencies (§ 193.7(a)(2)), conducting criminal investigations or prosecutions (§ 193.7(a)(3)), and complying with 49 U.S.C. 44905, regarding information about threats to civil aviation (§ 193.7(a)(4)).

Proposed § 193.7(a)(1) would provide for the disclosure of limited information to explain the need for changes in policies and regulations. As is explained in the legislative history for § 40123, the information collected in these voluntary

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programs "could help to improve air safety by helping safety officials identify trends before they cause accidents." H.R. Rep. No. 104–714, 104th Cong., 2d Sess. 41. "The data and information that would be available to the FAA as a result of this provision * * * should be very useful in the formulation of the FAA's safety policy and regulations." Id. at 42.

Generally, during rulemaking the agency is required to make data available that it relied on in developing the proposed rule and is required to give the public an opportunity to comment on the proposal. Providing the data gives the public a chance to look at how the agency analyzed and interpreted the data and provides an opportunity to comment on the conclusions reached. See 5 U.S.C. 553. Such informed comment assists the agency in developing rules that best promote safety and security. Commenters are able to better understand the reasons for the proposed rule, offer alternate interpretations of the underlying data, and offer solutions that they feel would better address the safety or security problem.

Section 40123, however, specifically provides that information voluntarily provided under that section shall not be disclosed "notwithstanding any other provision of law * * *." Another provision of law includes the provisions of 5 U.S.C. § 553 that otherwise would call for full disclosure of data supporting a proposed rulemaking. It would not be consistent with the intent of § 40123 for the FAA to make available to the public all of the raw data on which it relied, if that data was submitted voluntarily in a program under this proposed part. It also would not be consistent with safety and security for the FAA to completely forego the benefits of informed comment on a proposed rule that comes with releasing the data supporting the proposed rule.

The FAA proposes, therefore, that if it enters into rulemaking or policy making based on data submitted voluntarily under this part, it would not release all of the data. Rather, it would release only data that is de-identified and that is summarized. In this way, the source of the data would not be revealed, but enough information would be made available to explain to the public how the FAA made its decisions on the proposed changes. This proposed approach attempts to balance the public's interest in understanding the basis for agency rulemaking and policy making, and the need to encourage the submission of voluntarily provided safety and security information.

In providing de-identified, summarized information, the FAA would provide in the rulemaking sufficient information to permit meaningful comment. Data could be summarized in a number of ways, depending on the rulemaking. For instance, charts might show how often a specific maintenance problem was discovered in different air carriers, without revealing the names of the air carriers. This would show how the maintenance problem was distributed across the industry, leading the FAA to propose a general rulemaking instead of a correction for one air carrier. This approach is similar to that currently used with information that is of a very personal or private nature. Rulemaking based on a review of medical records, for instance, may provide summarized findings without revealing individuals' names.

Proposed § 193.7(a)(2) would provide for disclosure of information received in a program under this part to evaluate or correct a condition that may compromise safety or security. There are a number of instances in which this might occur. Examples include evaluating airworthiness conditions, assuring that the holder of an FAA certificate is qualified for that certificate, and preventing on-going violations of the safety or security regulations.

The FAA may need to make a limited disclosure to evaluate airworthiness conditions. If, for instance, information indicates an unsafe condition in a type of aircraft, engine, or other product, the FAA may consider issuing an Airworthiness Directive (under part 39) to require that the deficiency be corrected. The FAA works with design and production approval holders, such as holders of type certificates or production certificates under part 21, to identify the need for action to correct airworthiness problems and to develop what that action should be. The holders of design and production approvals have expertise in their own products that the FAA does not have, and it is important that their expertise be available to help the FAA analyze potential airworthiness problems. Under proposed § 193.7(a)(2), the FAA could disclose voluntarily-provided information to a design or production approval holder to assist the FAA in assessing the need for, and the content of, required corrective action. The FAA requests comments on whether the holder or other person receiving the information under similar circumstances should be required to protect the information from further disclosure.

Also under § 193.7(a)(2), the FAA would disclose information to assure that the holder of an FAA certificate continues to be qualified to hold the certificate. The FAA issues a certificate (such as for an air carrier, a producer of aircraft, or an airman) when the applicant has shown that all safety and security requirements for that certificate are met. If it later becomes evident that the certificate holder is unable or unwilling to continue to meet the safety and security requirements, that person is no longer qualified to hold the certificate. It would be inconsistent with safety or security for that person to continue to hold the certificate and exercise its privileges.

Section 193.7(a)(2) would be used when the FAA receives information in a program under part 193 that a certificate holder may not be qualified for the certificate. The FAA would first investigate the matter. Generally that investigation would include approaching the certificate holder to attempt to resolve the matter. If the lack of qualifications was confirmed, or if there was a reasonable question as to whether the certificate holder was qualified, and no corrective action was taken, the FAA might have to resort to remedial action. Such remedial action may include an order of compliance or a cease and desist order (§ 13.20), requiring changes to the certificate holder's procedures, or remedial enforcement action. The latter may include suspending the certificate until the holder shows that it is qualified or revoking the certificate. In taking remedial action the FAA may have to disclose some information that was submitted in a part 193 program. In remedial enforcement action, for instance, the certificate holder would have the right to appeal the suspension or revocation to the NTSB. The appeal process, except in very limited circumstances, is a public process, and evidence used in the case is available for inspection and copying by the public. Depending on the case, the voluntarily-provided information that gave rise to the investigation may or may not be used by the FAA to show that the enforcement action was warranted, and may or may not be disclosed in the course of the proceeding. This is consistent with the legislative history for § 40123, which provides: "Examples of information the withholding of which would be inconsistent with the FAA's safety and security responsibilities (and thus still could be disclosed) are information required in an enforcement action to prosecute safety or security violations.

* * *" H.R. Rep. No 104–714, 104th Cong., 2d Sess. 49.

Section 193.7(a)(2) also would provide for disclosure to prevent continuation of an on-going violation of the Federal Aviation Regulations (14 CFR Parts 1 through 199), the Hazardous Materials Regulations as they relate to air transportation (49 CFR Part 171 *et seq.*), and the relevant statutes. This would occur when the information reveals that a violation was continuing to occur and thus remedial enforcement action was necessary to correct the violation.

Section 193.7(a)(3) would provide for disclosure of information to conduct a criminal investigation or prosecution. While the FAA does not prosecute criminal actions, in those rare circumstances in which it is appropriate the agency refers such matters to the Department of Justice or other appropriate agency. For instance, in recent years there have been some criminal prosecutions involving counterfeit aircraft parts. Such parts can present a danger to the traveling public, and it is important that those responsible for such crimes be brought to justice. The FAA anticipates that, in those few instances in which part 193 information is provided to a law enforcement agency, it would be used mostly to develop leads and otherwise assist in the investigation. The part 193 information might not be used as evidence in the prosecution and therefor might not be disclosed. However, it might be necessary to disclose the information during the prosecution.

Finally, § 193.7(a)(4) would provide for disclosure of information to comply with 49 U.S.C. 44905 regarding information about threats to civil aviation. That section requires that public notice be made in specified circumstances about threats to civil aviation, generally involving possible terrorist threats. The legislative history makes clear that such information should be disclosed even if voluntarily provided under § 40123. H.R. Rep. No. 104–714, 104th Cong., 2d Sess. 49.

Section 193.7(b) would provide for other circumstances in which withholding information provided under this part would not be consistent with the Administrator's safety and security responsibilities. These circumstances may be different depending on the program. It is proposed that those circumstances be described in the designation for that program. The FAA cannot predict how information programs may develop in the future. As the FAA develops uses for the information that may require some disclosure, these uses would be proposed in individual programs. Possible examples include disclosure to foreign aviation authorities, disclosure after a period of time in which the information would no longer be protected, and disclosure in punitive enforcement actions.

As to enforcement actions, note that this proposed rule speaks only to when information may be disclosed in connection with an enforcement action. It does not describe what enforcement policy may be applied for each designated program. Each program would have different goals and provisions for such policies.

Section 193.9 Designating Information as Protected Under This Part: Notice Procedure

This section would describe the procedure normally used to designate information as protected under this part. This procedure would be for use where there is not an immediate need for the information. It generally would be used for programs in which a specific type of information is to be provided by types of persons on an on-going basis. For instance, under FOQA, flight recorder data is made available by air carriers on an on-going basis. ASAP programs, which are entered into by the FAA and entities of the air transportation industry, are intended to generate safety information that may not otherwise be obtainable.

The scope of § 193.9 programs would vary. One way would be for FAA to create a national program that is national in scope and that is available to all individuals or companies that meet the basic requirements of that program. For a national program, the FAA would designate the entire national program as protected under § 40123. Then different persons would have the option of participating in the program without obtaining an individual designation under this part.

Examples of national programs are FOQA and ASAP. The FAA anticipates that it will propose to designate the national FOQA and ASAP programs as protected under § 40123. The proposed designations would include all of the items in § 193.9, such as a description of the type of information that may be voluntarily provided. If, after public comment, the FAA decides to designate these programs for protection under § 40123, then individual air carriers would receive the protections of § 40123 without each obtaining a designation under part 193 for their individual FOQA and ASAP programs.

Another way to have an information program designated as protected under § 40123 would be for an air carrier or other person to submit an application for an individual program. The FAA would evaluate the application and either publish a proposed designation based on the application for public comment or deny the application. Any person would be able to apply to have information designated as protected under this part. If the applicant is an air carrier or another certificate holder with an FAA principal inspector, the application would be sent to the principal inspector. If the applicant has no principal inspector, the application would be sent to the local FAA Field Office.

The application would include the designation described in paragraph (c) that the applicant would like to be issued. The Administrator would evaluate the application, and may issue a proposed designation based on the application or may deny the application.

The Administrator may decide to issue a proposed designation based either on an application or the FAA's internal decision. The FAA would publish a proposed designation in the **Federal Register** and request comment. After comments were received, the FAA would review them and evaluate whether the elements in § 193.5 were met. The Administrator would designate information as protected under this part only if the elements in § 193.5 were met.

If the Administrator found that the elements in § 193.5 were met, an order designating the information as protected would be published in the **Federal Register**. The order would include summaries of why the Administrator found that the elements were met. By publishing the order in the **Federal Register**, all interested persons would be able to see that they could provide information under the program and receive the protection described in § 40123 and this part.

The first five items in the order would be the elements of § 40123. Section 193.9(c)(1) would provide for a summary of why the Administrator finds that the information will be provided voluntarily. Paragraph (2) of that section would provide for a description of the type of information that may be voluntarily provided under the program and a summary of why the Administrator finds that the information is safety or security related. Paragraph (3) would call for a summary of why the Administrator finds that the disclosure of the information would inhibit the voluntary provision of that type of information. Paragraph (4) would be for a summary of why the receipt of that type of information aids in fulfilling the Administrator's safety and security

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responsibilities. Paragraph (5) would call for a summary of why withholding such information from disclosure would be consistent with the Administrator's safety and security responsibilities, including a statement as to the circumstances under which, and a summary of why, withholding such information from disclosure would not be consistent with the Administrator's safety and security responsibilities, as described in § 193.7.

Proposed § 193.9(c)(6) would provide for a summary of how the Administrator will distinguish information protected under this part from other information. This might include such items as the method for persons to become involved in the program, how information is submitted under that program, and how the information is segregated within the FAA to ensure that it is handled properly. It might also include such procedures as marking documents as protected under part 193.

The FAA anticipates that the designation published in the **Federal Register** may not contain all the details, conditions, and procedures that apply to the program. For instance, a designation for FOQA might contain only the elements contained in § 193.9(c), such as a description of the information that may be provided under the program. That designation may require each interested air carrier to apply for its own FOQA approval, which would provide particular procedures for that air carrier. The approvals for each air carrier would not need to be published in the **Federal Register** as long as they are consistent with the designation that was published.

Under § 193.9(d), the FAA could amend a designation in the same way it was first adopted.

Section 193.9(e) would provide for withdrawal of the designation if the FAA determines that the program no longer meets the required elements in § 193.5, or if the requirements of the individual program are not met. The withdrawal would be published in the **Federal Register** and would state the effective date of the withdrawal. Information that was received under the program while the designation was effective would remain protected even after the program was discontinued. No newly received information would receive the protection of § 40123 and part 193.

Section 193.11—Designating Information as Protected Under This Part: No Notice Procedure

This proposed procedure is intended for situations in which there was an immediate need for the FAA to receive safety or security information. The FAA might need to obtain the information quickly in order to evaluate the need for immediate remedial or corrective action. The process in this section would be a way that the FAA could assure the source that the information would be protected under this part, but would not require publication in the **Federal Register** and a comment period.

The FAA anticipates using this procedure in rare circumstances. For instance, there may be a serious safety or security violation that an air carrier is unwilling to address, and an employee wishes to report it. If the information would prove to be correct, enforcement action against the air carrier may be likely. The employee may wish for his or her name to be protected from disclosure from the air carrier for fear of being fired or otherwise suffering reprisals. The protection under this part would permit the FAA to withhold the employee's name from disclosure.

The FAA would protect information under this section only when the Administrator has found that the elements of § 193.5 were met, and that there was an immediate need to obtain the information without carrying out the more time-consuming procedures in § 193.9. The designation would be in writing.

This procedure generally would involve an individual who had information regarding a specific condition that could be provided all at once or over a short time, rather than on-going information sharing programs. Section 193.11(c) would contain limitations on the length of time these procedures could be used, and generally would provide that such an information collection could be used only for 60 days. If an enforcement or criminal investigation was underway, the information could continue to be provided under the protection of part 193. However, we do not rule out the possibility that there may arise a critical safety or security need to immediately adopt a program and begin collecting information in a program that normally would be under § 193.9. In that case, the FAA could use § 193.11 to begin obtaining the information right away, and initiate the procedure in § 193.9 to adopt a long-term program.

Section 193.11(d) would describe those circumstances under which the information could be disclosed. This is in addition to the circumstances listed in § 193.7(a), which would apply to all information received under this part. The special circumstances would include use in enforcement actions. As noted above, under the rare circumstances in which this procedure might be used, enforcement action may be the likely result.

Section 193.11(e) would provide for amending the designation in the same way that the designation originally was made.

Finally, proposed § 193.11(f) would state how the designation would be withdrawn. This would be by written notice to the person providing the information.

Paperwork Reduction Act

This proposal contains the following new information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). The title, description, number of respondents, and estimate of the annual total reporting and recordkeeping burden are shown below.

Title: Protection of Voluntarily Submitted Information.

Summary: The FAA proposes to add a new part (part 193) to provide that certain information submitted to the FAA on a voluntary basis would not be disclosed. This proposal would implement a new statutory provision. The purpose of this proposed rule is to encourage the aviation community to voluntarily share information with the FAA so that the agency may work cooperatively with industry to identify modifications to rules, policies, and procedures needed to improve safety, security and efficiency of the National Airspace System.

Use of: To encourage people to voluntarily submit desired information, § 40123 was added to Title 49, United States Code, in the Federal Aviation Reauthorization Act of 1996. Section 40123 allows the Administrator, through FAA regulations, to protect from disclosure voluntarily provided information relating to safety and security issues.

The White House Commission on Aviation Safety and Security issued a recommendation on this subject. In Recommendation 1.8, the Commission noted that the most effective way to identify problems is for the people who operate the system to self-disclose the information, but that people will not provide information to the FAA unless it can be protected. It recommended that the FAA expeditiously complete rulemaking to implement the legislation for protecting voluntarily provided information.

Respondents (including number of): Those individuals, organizations, or businesses that submit information regarding safety or security issues, including aircraft operators, manufacturers, repair stations, and airports.

Annual Burden Estimate: This proposal would impose a negligible paperwork burden for air carriers that choose to participate in this program. The air carrier would submit a letter notifying the Administrator that they wish to participate in a current program. The FAA believes this letter will cost approximately $100 to generate. The FAA also believes that approximately 10 air carriers would prepare one application each. Assuming that each of the 10 air carriers file one application divided by 10 years equals approximately one (1) hour per application times five (5) programs equals a total of 5 hours each year. The estimated hour burden is 5 hours (one time application). The FAA anticipates approximately five (5) programs within the next 10 years. The total cost to the industry of notifying the Administrator concerning the air carriers' participation in these programs would be $5,000 over 10 years.

Occasionally, an air carrier may want to propose a program to the FAA that would require voluntarily submitted information that would have to be protected. The FAA anticipates that it would cost approximately $1,000 to develop such a proposal, and we anticipate that there would only be one (1) such proposal per decade.

The agency solicits public comment regarding the number of applications, proposals, and cost of each on the information collection requirements to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by September 24, 1999, to the address listed in the **ADDRESSES** section of this document.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. The burden associated with this proposal has been submitted to OMB for review. The FAA will publish a notice in the **Federal Register** notifying the public of the approval number.

Compatibility With ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no conflicts in these proposed amendments and the foreign regulations.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, as amended, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that the economic impact of this proposed rule does not meet the standards for a "significant regulatory action" under section 3(f) of Executive Order 12866 and under the Department of Transportation's Regulatory Policies and Procedures for Simplification, Analysis, and Review of Regulations (44 FR 11034, February 26, 1979). However, the FAA has determined that this proposed regulation is significant due to the public interest in this rulemaking and, therefore, is subject to review by the Office of Management and Budget. Additionally, this proposed rule would not have a significant impact on a substantial number of small entities, would not constitute a barrier to international trade, and does not contain a significant intergovernmental or private sector mandate.

The FAA has determined that since the proposed rule has only a negligible economic impact, positive or negative, on the aviation industry, a full regulatory evaluation is not necessary.

The FAA invites the public to provide comments and supporting data on the assumptions made in the evaluation analyses below. All comments received will be considered in the final regulatory evaluation.

The proposed action is initiated in response to requirements of the Federal Aviation Authorization Act of 1996 which requires, in part, that the Federal Aviation Administration issue regulations to carry out a provision of the Act that certain information provided to the FAA on a voluntary basis would not be disclosed. The proposal is intended to encourage people to voluntarily provide information that will assist the FAA in carrying out its safety and security duties.

The purpose of this rule is to encourage the aviation community to voluntarily share information with the FAA so that the agency may work cooperatively with industry to identify modifications to rules, policies, and procedures needed to improve safety, security, and efficiency of the National Airspace System (NAS). To facilitate this process, the FAA has initiated a number of programs designed to capture safety and security related information normally not available to the public or to governmental agencies.

One such program envisioned under this proposal is the Flight Operational Quality Assurance Program (FOQA), which entails the routine extraction and analysis of digital flight data from line operations. The program enables collection of objective information that can be used to identify trends relating to the safety and efficiency of the NAS. Voluntary sharing of such information with the FAA could accelerate agency decision making in many areas of mutual interest, for example, published airport area arrival and departure procedures, air traffic control data, updates to certification criteria for aircraft, agency guidance for the use and performance of key aircraft subsystems, i.e., Traffic Alert and Collision Avoidance System (TCAS) and Global Positioning System (GPS), or the approval under the Advanced Qualification Program of departures from traditional pilot training methods and media. Another benefit of data sharing programs envisioned through the proposed rule is that it provides an objective tool by which the FAA could improve its safety surveillance. For example, voluntarily shared data could

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provide the FAA and industry with an alternative means of monitoring the continued safety of Reduced Vertical Separation Maneuvers (RVSM).

Under current FOQA guidelines, an FAA inspector may review data and information while at the operator's facility. The inspector is not authorized to remove either a paper or electronic copy of data provided under the program from an operator's premises. Not having a voluntarily provided copy of the information severely limits the ability of the FAA to use the information in agency decision making. This circumstance is not always in the interest of the FAA, the airline industry, or the public as it can preclude timely realization of a safety problem or potential efficiency benefits that might otherwise be realized from the shared information.

Adopting this proposed rule would encourage data sharing by ensuring that the information shared is protected from public disclosure, even if requested under the Freedom of Information Act (FOIA). The proposed rule would protect the confidentiality of the individual submitting the information and, therefore, alleviate aviation industry fears that information provided would be used by the public, competitors, or other government agencies for purposes other than those related to safety and security of the aviation system.

In order to participate in any FAA sponsored program where voluntarily submitted information is protected, the air carrier will have to submit a letter notifying the Administrator that the air carrier wishes to participate in the program. The FAA believes that this letter will cost approximately $100 to generate. The FAA also believes that approximately 10 air carriers may participate. The FAA anticipates approximately five(5) new programs will be in existence within the next 10 years. The total cost to the industry of notifying the Administrator concerning the air carriers participation in these programs would be $5,000 over 10 years. Occasionally, an air carrier may want to propose a program to the FAA that would require voluntarily submitted information that would have to be protected. The FAA anticipates that it would cost approximately $1,000 to develop such a proposal, and we anticipate that there would only be one(1) such proposal per decade. We solicit industry comments regarding the number of applications, proposals, and cost of each.

The benefits of this proposed rule are unquantifiable, but nevertheless are positive because the protected information can be used proactively to correct safety concerns, thus preventing avoidable accidents and potentially saving many lives and millions of dollars.

There are negligible application costs associated with implementing the proposed rule. The proposal, if adopted, imposes no reporting requirements on the aviation community and would assure aviation interests such as air carrier operators, pilot associations, airframe manufacturers, and trade associations that voluntarily submit proprietary information would be protected from public disclosure. The cost to the public of having this data or information protected from public disclosure is considered negligible.

On the other hand, the benefit to the FAA of voluntarily submitted sensitive, proprietary, safety, and security information protected from public disclosure outweighs any potential costs to the public of being denied access to this information.

The White House Commission on Aviation Safety and Security noted in its recommendations to the FAA that the most effective way to identify problems is for the people who operate the system to self-disclose the information, but that people will not provide information to the FAA unless it can be protected. The Commission recommended that the FAA complete rulemaking to implement the legislation for protecting voluntarily provided information.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small business, not-for profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, § 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required review of this proposal and determined that it would not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this proposed rule will not have a significant impact on a substantial number of small entities. However, the FAA solicits comments from the public regarding this determination of non-significant impact.

International Trade Impact Statement

The FAA has determined that the proposed rule would have no impact on trade for both United States (U.S.) firms doing business in foreign countries or on foreign firms doing business in the U.S.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified as 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year.

This proposal does not meet the thresholds of the Act. Therefore, the requirements of Title II of the Act do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Pub. L. 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 193

Air transportation, Aircraft, Aviation safety, Safety, Security.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to add part 193 to Title 14, Code of Federal Regulations (14 CFR part 193) as follows:

PART 193—PROTECTION OF VOLUNTARILY SUBMITTED INFORMATION

Sec.

193.1 Scope and delegations.
193.3 Definitions.
193.5 Withholding information from disclosure.
193.7 Disclosure of information.
193.9 Designating information as protected under this part: Notice procedure.
193.11 Designating information as protected under this part: No notice procedure.

Authority: 49 U.S.C. 106(g), 40113, 40123.

§ 193.1 Scope and delegations.

(a) This part implements 49 U.S.C. 40123, protection of voluntarily submitted information.

(b) The authority of the Administrator to issue, amend, and withdraw designations under this part may be delegated to Associate Administrators and Assistant Administrators and to the Chief Counsel, their Deputies, and any individual formally designated as Acting Associate or Assistant Administrator, Acting Chief Counsel, or Acting Deputy of such offices. The authority of the Administrator to issue proposed designations under this part may be further delegated.

§ 193.3 Definitions.

Agency means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(1) The Congress;

(2) The courts of the United States;

(3) The governments of the territories or possessions of the United States;

(4) The government of the District of Columbia;

(5) Courts martial and military commissions.

De-identified means the identity of the source of the information, and the names of persons, are removed from the information.

Disclose means to release information to other than another agency, such as under a request under the Freedom of Information Act (5 U.S.C. 552), in rulemaking proceedings, in a press release, or to a party to a legal action.

Information means data, reports, source, and other information. "Information" may be used to describe the whole or a portion of a submission of information.

Summarized means individual incidents are not specifically described, but are presented in statistical or other more general form.

Voluntary means that the information was submitted without mandate or compulsion, and not as a condition of doing business with the government. "Voluntarily-provided information" does not include information submitted as part of a means of complying with statutory, regulatory, or contractual requirements. However, a program under this part may be published in the Code of Federal Regulations and the information submitted under it will considered "voluntarily provided."

§ 193.5 Withholding information from disclosure.

(a) Except as provided in this part, the Administrator does not disclose voluntarily provided safety or security information that has been designated as protected under this part.

(b) The Administrator designates information as protected under this part when the Administrator finds that—

(1) The information is provided voluntarily;

(2) The information is safety or security related;

(3) The disclosure of the information would inhibit the voluntary provision of that type of information;

(4) The receipt of that type of information aids in fulfilling the Administrator's safety and security responsibilities; and

(5) Withholding such information from disclosure, under the circumstances provided in this part, would be consistent with the Administrator's safety and security responsibilities.

(c) Only information designated as protected under this part is protected from disclosure as described in this part. Information obtained by the Administrator through another means is not protected as described in this part.

(d) Nothing in this part prevents the Administrator from giving information designated as protected under this part to other agencies with safety or security responsibilities. Such agencies are subject to the requirements of 49 U.S.C. 40123 regarding nondisclosure of information. The Administrator will not give the information to another agency unless the other agency provides the Administrator with adequate assurance, in writing, that it will protect the information from disclosure as required in 49 U.S.C. 40123, this part, and the terms of the specific program.

(e) The nondisclosure protections described in this part do not apply when the person who provided the information agrees to its disclosure.

(f) When the Administrator receives a subpoena for information designated as protected under this part, the Administrator contacts the person who submitted the information to determine whether the person objects to disclosure of the information or wishes to participate in responding to the subpoena. Based on all the circumstances, including the person's response, the Administrator requests the Department of Justice to make an appropriate response to the subpoena, or the Administrator files an appropriate response, such as filing a motion for a protective order or a motion to quash the subpoena, or release of the information.

§ 193.7 Disclosure of information.

Withholding information that is designated as protected under this part would not be consistent with the Administrator's safety and security responsibilities, and therefore may be disclosed, as follows:

(a) *Disclosure in all programs.*

(1) De-identified, summarized information provided under this part may be disclosed to explain the need for changes in policies and regulations.

(2) Information provided under this part may be disclosed to correct a condition that may compromise safety or security.

(3) Information provided under this part may be disclosed to carry out a criminal investigation or prosecution.

(4) Information provided under this part may be disclosed to comply with 49 U.S.C. 44905, regarding information about threats to civil aviation.

(b) *Disclosure in particular programs.* In individual programs, the Administrator may find that there are additional circumstances under which withholding information provided

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under this part would not be consistent with the Administrator's safety and security responsibilities. Those circumstances are described in the designation for that program.

§ 193.9 Designating information as protected under this part: Notice procedure.

This section provides the procedure for the Administrator to designate information provided under specific programs as protected under this part, other than when there is an immediate safety or security need for the information. These programs generally specify a type of information that will be provided by types of persons on an on-going basis.

(a) *Application.* Any person may apply to have information designated as protected under this part by submitting an application addressed to the person's FAA principal inspector. If the person has no FAA principal inspector, the application should be submitted to the local FAA field office. The application shall include the designation described in paragraph (c) of this section that the applicant requests be issued. The Administrator may issue a proposed designation based on the application or may deny the application.

(b) *Proposed designation.* Before making a designation under this section, either based on an application or otherwise, the Administrator publishes a proposed designation in the **Federal Register** and requests comment.

(c) *Designation.* The Administrator designates information provided under a program as protected under this part if, after review of the comments, the Administrator finds that the elements in § 193.5 are met. An order designating the information provided under the program to be protected under this part is published in the **Federal Register**. The designation includes at least the following:

(1) A summary of why the Administrator finds that the information will be provided voluntarily.

(2) A description of the type of information that may be voluntarily provided under the program and a summary of why the Administrator finds that the information is safety or security related.

(3) A summary of why the Administrator finds that the disclosure of the information would inhibit the voluntary provision of that type of information.

(4) A summary of why the receipt of that type of information aids in fulfilling the Administrator's safety and security responsibilities.

(5) A summary of why withholding such information from disclosure would be consistent with the Administrator's safety and security responsibilities, including a statement as to the circumstances under which, and a summary of why, withholding such information from disclosure would not be consistent with the Administrator's safety and security responsibilities, as described in § 193.7 of this part.

(6) A summary of how the Administrator will distinguish information protected under this part from other information.

(d) *Amendment of designation.* The Administrator may amend a designation under this section in the same manner as an original designation is made.

(e) *Withdrawal of designation.* The Administrator may withdraw a designation under this section at any time the Administrator finds that continuation of the designation does not meet the elements of § 193.5, or if the requirements of the individual program are not met. The Administrator withdraws the designation by publishing a notice in the **Federal Register**. The withdrawal is effective on the date of publication or such later date as the notice may state. Information provided during the time the program was designated remains protected under this part and the program. Information provided after the withdrawal of the designation is effective is not protected under this part or the program.

§ 193.11 Designating information as protected under this part: No notice procedure.

This section provides the procedure for the Administrator to designate information as protected under this part when there is an immediate safety or security need for the information. This section generally is used for provision of specific information on a short-term basis by a specific person.

(a) *Application.* A person may request that the Administrator designate information the person is offering as protected under this part. The person shall state at least the general nature of information and whether the person will provide the information without the protection of this part.

(b) *Designation.* An order designating information provided under this section as protected under this part is in writing. The Administrator designates the information as protected under this part if the Administrator finds that—

(1) The elements of § 193.5 are met, and

(2) There is an immediate safety or security need to obtain the information without carrying out the procedures in § 193.9 of this part.

(c) *Time limit.* Except as provided in paragraphs (c)(1) and (c)(2) of this section, no designation under this section shall continue in effect for more than 60 days after the date of designation. Information provided during the time the designation was in effect remains protected under this part. Information provided after the designation ceases to be in effect is not protected under this part. The designation remains in effect for more than 60 days if—

(1) The procedures to designate such information under § 193.9(a) have been initiated, or

(2) There is an ongoing enforcement or criminal investigation, in which case the designation may continue until the investigation is completed.

(d) *Disclosure.* Unless otherwise provided in the designation, withholding information provided under this section from disclosure in the conduct of enforcement actions would not be consistent with the Administrator's safety and security responsibilities and, therefore, the information may be disclosed.

(e) *Amendment of designation.* The Administrator may amend a designation under this section in the same manner as an original designation is made.

(f) *Withdrawal of designation.* The Administrator may withdraw a designation under this section at any time the Administrator finds that continuation does not meet the elements of § 193.5, or if the requirements of the individual program are not met. The Administrator withdraws the designation by notifying the person in writing that the designation is withdrawn. The withdrawal is effective on the date of receipt of the notice or such later date as the notice may state. Information provided during the time the designation was in effect remains protected under this part. Information provided after the withdrawal is effective is not protected under this part.

Issued in Washington, DC on July 16, 1999.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

[FR Doc. 99–18818 Filed 7–23–99; 8:45 am]

BILLING CODE 4910–13–P

federal register

Monday
July 26, 1999

Part V

Department of the Treasury

Fiscal Service

31 CFR Parts 315, 353, 357, and 370

Regulations Governing U.S. Savings Bonds, U.S. Savings Notes; Book-Entry Treasury Bonds, Notes and Bills; and Electronic Transactions and Funds Transfers Related to U.S. Securities; Final Rule

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 315, 353, 357, and 370

Regulations Governing U.S. Savings Bonds, Series A, B, C, D, E, F, G, H, J, and K, and U.S. Savings Notes; Regulations Governing United States Savings Bonds, Series EE and HH; Regulations Governing Book-Entry Treasury Bonds, Notes and Bills; and Electronic Transactions and Funds Transfers Related to U.S. Securities

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: We're publishing a final rule on electronic transactions and funds transfers relating to United States securities. In particular, we've eliminated redundant provisions that address our use of Automated Clearing House entries.

DATES: Effective July 26, 1999.

ADDRESSES: You can download this final rule at the following World Wide Web address: <http://www.publicdebt.treas.gov>. You may also inspect and copy this final rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Ave., NW, Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT:

- Wallace L. Earnest, Director, Division of Staff Services, Savings Bond Operations Office, Bureau of the Public Debt, at (304) 480–6319 or <wearnest@bpd.treas.gov>
- Maureen Parker, Director, Division of Securities Systems, Office of Securities and Accounting Services, Bureau of the Public Debt, at (304) 480–7761 or <mparker@bpd.treas.gov>
- Susan J. Klimas, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–3688 or <sklimas@bpd.treas.gov>
- Gregory J. Till, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, at (202) 219–3320 or <gtill@bpd.treas.gov>
- Edward C. Gronseth, Deputy Chief Counsel, Bureau of the Public Debt, at (304)480–3688 or <egronset@bpd.treas.gov>

SUPPLEMENTARY INFORMATION:

I. Background

On November 20, 1998, we published a final rule in the **Federal Register** (63 FR 64543). The final rule amended the regulations at 31 CFR part 370 that governed the transfer of funds on account of United States securities. In particular, the final rule provided for the use of Automated Clearing House (ACH) debit entries for the sale of savings bonds. At the time, we made no attempt to consolidate these provisions with other debit entry provisions already in 31 CFR part 370.

This final rule consolidates the previously separate debit entry provisions in 31 CFR part 370. We've also eliminated redundant credit entry provisions that were found in 31 CFR parts 315, 353, and 357, in favor of unified provisions in part 370. We've also rewritten part 370 in plain language.

II. Summary of Amendments in 31 CFR Part 370

Subpart A—General Information

What Special Terms Do I Need To Know To Understand This Part? (§ 370.1)

We've made several changes to this section. We've amended the definition of "electronic signature" to be consistent with the definition given by Congress in the Government Paperwork Elimination Act, or title XVII of Public Law 105–277 (October 21, 1998). Congress passed this act to facilitate the use and acceptance of electronic signatures by executive agencies. Consistent with the Act, the final rule defines an electronic signature as a signature of an electronic message that:

(1) identifies and authenticates a particular person as the source of the electronic message; and

(2) indicates such person's approval of the information contained in the electronic message.

The definition of "investor account" mirrors that which we will use in an upcoming revision to the *TreasuryDirect* regulations in 31 CFR part 357. We've amended the definition of "payment" for greater accuracy. In addition, we've added definitions of "we" and "you." We've added these definitions, as well as slightly revised a handful of other definitions, to help us write this final rule in plain language.

Subpart B—Credit ACH Entries

How Can I Appoint a Financial Institution To Receive Payments on My Behalf? (§ 370.5)

This section has been amended to require that you name a financial institution and deposit account to receive payments through the ACH method, using an approved form. The former section (b) has been moved to 370.15, relating to limitations on liability.

What Requirements Apply to a Financial Institution That Handles a Credit Entry? (§ 370.6)

This section has been amended by eliminating unnecessary provisions, and by adding a provision that a financial institution, by accepting and handling a credit entry initiated by us, agrees to comply with the Operating Rules of the National Automated Clearing House Association (NACHA Rules), as modified by our regulations.

Are There Any Requirements Related to a Prenotification Entry? (§ 370.8)

This section is amended to provide that we may, in our discretion, send a prenotification message before we send a credit entry or whenever there is a change in the payment instructions. Paragraph (b) requires that the financial institution respond to prenotification messages within the time frame of the National Automated Clearing House Association (NACHA). If the financial institution does not respond to a prenotification message, we may interpret the nonresponsiveness as agreement to this subpart, and that the deposit account information contained in the prenotification message is accurate.

How Can My Payment Instructions Be Changed? (§ 370.9)

This section provides that payment instructions will continue until you or your financial institution asks us to change them.

What Can Cause My Payments To Be Suspended? (§ 370.10)

This section is amended to provide that payments will be suspended if we receive notice that your deposit account has been closed, that someone named on your account is dead or has been declared legally incompetent, that there is a change in the title of your deposit account which alters your interest, or if a corporation has been dissolved. In addition, we will suspend payments if there are changes in the status of the bond, security, or investor account. Payments will continue in suspension until we receive evidence satisfactory to us as to who is entitled to receive payments.

What Must My Financial Institution Do When It Receives a Payment? (§ 370.11)

This former § 370.10 is redesignated as § 370.11.

What Happens if an Error Is Made in a Credit Entry, or if a Duplicate Credit Entry Is Made? (§ 370.12)

This former § 370.11 is redesignated as § 370.12. The former § 370.12 has been deleted as an unnecessary provision.

What Limitations Exist on Liability? (§ 370.15)

This section is the former § 370.16, which has been redesignated as § 370.15. The former § 370.15 has been deleted as unnecessary. Paragraphs (a) and (b) are substantively unchanged. Section (c) has been moved from § 370.5 and is substantively unchanged.

Subpart C—Debit ACH Entries

What Requirements Apply if I Want To Authorize a Debit Entry to My Deposit Account? (§ 370.20)

This section sets out requirements on debit entry authorizations. The provisions of this section are somewhat complicated by the various ways that we use debit entries for the sale of securities, depending on the type of security involved.

We currently accept debit entry authorizations for sales of book-entry (electronic) Treasury securities held in our *TreasuryDirect* system. We also accept debit entry authorizations for sales of definitive (paper) savings bonds sold directly by us through the United States Savings Bond EasySaver Plan^{TM}. (Savings bonds also are sold by savings bond issuing agents, but part 370 has no application to them). We also will accept debit authorizations for collection of fees.

Under this section, we require that if you purchase a book-entry security held in *TreasuryDirect*, you must be named on the investor account that holds the security. On the other hand, we do not impose a similar requirement for our sales of definitive savings bonds, because these are not held in investor accounts.

Also under this section, we limit you to authorizing only single-entry debits for purchases of book-entry securities held in *TreasuryDirect*. On the other hand, debit entries for purchases of definitive savings bonds must be recurring.

For purchases of book-entry Treasury securities, a debit entry authorization may be completed electronically. For instance, for purchases of securities held in *TreasuryDirect*, you must open an investor account; once there is an existing relationship, you may electronically authorize a debit entry to a designated deposit account for the purchase of a book-entry Treasury security by providing some personal identification information. By contrast, the debit entry authorization for definitive savings bonds only may be completed if signed on paper. This difference between the securities is not explicit in the regulations. Rather, it simply reflects how we currently do business.

The section requires that all debit entry authorizations must be signed. We've defined the word "signature" as "any symbol or method executed or adopted by a person with present intention to be bound." This is a traditional legal definition of a signature.

Special consideration has been given to authorizations completed by electronic means. As noted above, a signature may be an electronic signature. However, as stated in section 370.35, not every electronically signed debit entry authorization automatically is acceptable to us. Instead, the electronic signature must be accomplished through a method that we've approved. For instance, we require you to enter your *TreasuryDirect* account number and taxpayer identification number to access our *TreasuryDirect* electronic services. We consider the entry of this information to be an electronic signature that expresses your intent to be bound by any debit entry authorization that you may submit while accessing our electronic services.

In determining what types of electronic signatures are acceptable to us, we will look to how electronic signatures are treated under other law and in the private sector. We also will be bound by whatever procedures may be imposed upon executive agencies governing the use of digital signatures.

Our approach on authorizations completed by electronic means diverges from the approach taken by the Board of Governors of the Federal Reserve ("the Board") and the National Automated Clearing House Association ("NACHA"). The Board is responsible for Regulation E (12 CFR part 205), which sets out consumer rights in electronic funds transfers such as debit entries. NACHA is responsible for the Operating Rules ("the NACHA Rules") that govern the handling of debit entries. These authorities state that a debit entry authorization must be in a "writing signed or similarly authenticated by the consumer." Under Regulation E, this requirement applies only to debit entry authorizations for recurring debits; under the NACHA Rules, this requirement applies to all debit entry authorizations.

Under Regulation E and the NACHA Rules, the meaning of "signed" appears to be limited to a signature completed in longhand, and does not extend to an electronic signature. Neither Regulation E nor the NACHA Rules recognize the term "electronic signature." Instead, a debit ACH authorization that is completed electronically must be "similarly authenticated."

The Board and NACHA have interpreted "similarly authenticated" as allowing authentication by use of a PIN or digital signature. On the other hand, the use of an account number and taxpayer identification number may not be sufficient for the Board and NACHA. Thus, our current means of allowing the electronic submission of a debit entry authorization in *TreasuryDirect* may differ from that allowed by the Board and NACHA.

We have decided not to adopt the "similarly authenticated" language used by the Board and NACHA, for two reasons. First, in the Government Paperwork Elimination Act, Congress defined the term "electronic signature." Congress also stated its intent that executive agencies use and accept such signatures. Of course, we wish to be consistent with Congress. Second, by not adopting the "similarly authenticated" language, we reserve some right to determine what constitutes an acceptable means of electronically submitting a debit entry authorization. In deciding what qualifies as an approved "electronic signature," we will be influenced, but not bound, by the Board and NACHA's interpretation of "similarly authenticated."

We can differ from Regulation E on this point because Regulation E excludes from its coverage "[a]ny transfer of funds the primary purpose of which is the purchase or sale of a security * * * [h]eld in book-entry form by a Federal Reserve Bank or federal agency." Transactions involving book-entry securities held in *TreasuryDirect* fall within this exclusion. As noted above, it only is for these types of securities that the Bureau of the Public Debt allows debit entry authorizations to be completed electronically.

Even without this exclusion, we are consistent with Regulation E. The "signed or similarly authenticated" language in Regulation E applies only to authorizations for recurring debit entries. However, all electronically submitted debit authorizations in *TreasuryDirect* are for single-entry debits. Accordingly, to the extent that we allow debit entry authorizations to be electronically signed, the "signed or similarly authenticated" requirement of Regulation E is not triggered.

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In the future, we may wish to accept electronically submitted debit entry authorizations for our sales of definitive savings bonds. As opposed to book-entry securities, Regulation E applies to debit entry transactions involving definitive securities. Thus, an authorization of recurring debit entries for the sale of definitive savings bonds may have to qualify as "signed or similarly authenticated" under Regulation E, though single-entry authorizations may not have to so qualify. If we decide to pursue sales of definitive savings bonds through electronic debit entry authorizations, we would consider making the "signed or similarly authenticated" requirement explicit in our regulations. However, no such electronic transactions are currently planned for definitive savings bonds.

We can differ from the NACHA Rules because the NACHA Rules are private law. More importantly, today's final rule is consistent with Regulation E, which has carved out an exclusion for transactions involving certain book-entry Treasury securities. Furthermore, although the "signed or similarly authenticated" language in the NACHA Rules applies to single-entry debit authorizations, we note that this application was inspired by NACHA's desire to protect consumers from aggressive telemarketers. This is an admirable purpose but one that has little meaning with regard to consumer dealings with Treasury. We believe we're justified in not following the NACHA Rules on this point.

No matter how an electronic signature of a debit entry authorization may be completed, we have at our disposal several measures to prevent fraud. For instance, for a book-entry security held in *TreasuryDirect*, we reserve the right to prevent the owner from disposing of the security for up to thirty days after purchase. If fraud is reported during this time, we can cancel the security, preventing the fraud from succeeding. Also, even after this thirty-day period, any attempt to transfer out or otherwise collect the value of a security requires the owner to provide identification, in person, to a bank or other institution. In other words, a person attempting a fraud cannot do it anonymously; instead, he must identify himself. Finally, to the extent that fraud may occur, the United States is better capable of prosecuting cases than may be a small, private entity.

In addition, the section states that credit and debit entries with respect to a security must be made to the same deposit account. This is another security feature. The provision helps ensure that funds are placed back into the same deposit account from which the funds were drawn, rather than going to an improper account.

What Rights Do I Have To Terminate or Suspend Debit Entries? (§ 370.25)

This section is amended to state that if you submit a debit entry authorization in conjunction with a Treasury auction tender for the purchase of a book-entry security, you cannot terminate or suspend a debit entry after the auction closes. This is to prevent a person from unfairly withdrawing the remittance if the person receives an unfavorable yield at an auction.

What Limitations Exist on Liability? (§ 370.26)

This section is amended to state that our liability does not extend beyond the amount of the debit entry. Furthermore, if a financial institution causes us a loss because it fails to follow this part, the financial institution cannot be liable to us for more than the amount of the debit.

Can I Be Held Accountable if My Negligence Contributes to a Forged Signature? (§ 370.40)

This section is amended to state that it has no application in any dispute involving a debit authorization or credit card transaction. Instead, we will rely upon the error resolution procedures of the NACHA Rules, credit card association rules, and the Board's regulations.

What Is the Status of a Security if the Remittance Cannot Be Collected? (§ 370.45)

This new section states that if we cannot promptly collect all of the remittance for a security, we may in our discretion cancel the security unless it has been legally transferred for value to a third person who had no knowledge of the improper debit entry at the time of the transfer.

III. Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action," as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

This final rule relates to matters of public contract and procedures for United States securities. The notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply.

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects

31 CFR part 315

Government Securities, Federal Reserve System, Banks and Banking.

31 CFR part 353

Bonds, Electronic Funds Transfers, Government Securities.

31 CFR part 357

Bonds, Electronic funds transfer, Federal Reserve System, Government securities, Securities.

31 CFR part 370

Bonds, Electronic Funds Transfers, Government Securities, Securities.

For the reasons set forth in the preamble, 31 CFR parts 315, 353, 357, and 370 are amended as follows:

PART 315—REGULATIONS GOVERNING U.S. SAVINGS BONDS, SERIES A, B, C, D, E, F, G, H, J, AND K, AND U.S. SAVINGS NOTES

1. The authority citation for part 315 continues to read as follows:

Authority: 31 U.S.C. 3105 and 5 U.S.C. 301.

2. Amend § 315.31 as follows:

a. Remove the last two sentences of paragraph (b);

b. Remove the last sentence of paragraph (c);

c. Revise paragraph (h)(1) to read as set forth below.

d. Remove paragraph (h)(2);

e. Redesignate paragraphs (h)(3), (h)(4), (h)(5), and (h)(6) as (h)(2), (3), (4), and (5);

f. Revise redesignated paragraph (h)(5) to read as set forth below.

g. Remove paragraph (h)(7);

h. Redesignate paragraph (h)(8) as (h)(6) and revise redesignated paragraph (h)(6) to read as set forth below.

i. Redesignate paragraph (i) as (h)(7) and revise redesignated paragraph (h)(7) to read as set forth below.

§ 315.31 Series H bonds.

* * * * *

(h) * * *

(1) *Payments on same account.* Payments on all Series H bonds assigned to the same account maintained by the Bureau will be made to the same deposit account at a financial institution.

* * * * *

(5) *Cancellation of ACH arrangement.* An ACH arrangement shall remain in effect until it is terminated by a request from the owner or coowner submitted to the Bureau of the Public Debt, Parkersburg, WV 26102–1328.

(6) *Rules.* Series H interest payments made by the ACH method are governed by the regulations at 31 CFR part 370.

(7) *Nonreceipt or loss of interest payment.* The Bureau of the Public Debt, Parkersburg, WV 26102 should be notified if:

(i) An interest check is not received or is lost after receipt or

(ii) An ACH payment is not credited to the designated account and the financial institution has no record of receiving it. The notice should include the owner or coowner's name and taxpayer identifying number and the interest payment date.

PART 353—REGULATIONS GOVERNING UNITED STATES SAVINGS BONDS, SERIES EE AND HH

1. The authority citation for part 353 continues to read as follows:

Authority: 31 U.S.C. 3105 and 5 U.S.C. 301.

2. Amend § 353.31 as follows:

a. Remove the third sentence of paragraph (b);

b. Revise the last sentence of paragraph (b) to read as set forth below.

c. Redesignate paragraph (c)(1) as paragraph (c) and remove the last sentence from the redesignated paragraph (c);

d. Remove paragraphs (c)(2), (d), and (e);

e. Redesignate paragraphs (f) and (g) as paragraphs (d) and (e), respectively;

f. Redesignate paragraph (h) as (f);

g. Revise redesignated paragraph (f)(1) to read as set forth below.

h. Remove redesignated paragraph (f)(2);

i. Redesignated paragraphs (f)(3), (f)(4), (f)(5) and (f)(6) are further redesignated as (f)(2), (f)3), (f)(4), and (f)(5), respectively.

j. Revise redesignated (f)(5)(ii) to read as set forth below.

k. Remove redesignated paragraph (f)(7).

l. In redesignated paragraph (f), further redesignate paragraph (f)(8) as (f)(6) and revise to read as set forth below.

m. Redesignate paragraph (i) as (f)(7) and revise to read as set forth below.

§ 353.31 Series HH bonds.

* * * * *

(b) * * * Series H interest payments made by the ACH method are governed by the regulations at 31 CFR part 370.

* * * * *

(f) * * *

(1) *Submission of deposit account information.* Payments on all Series HH bonds assigned to the same account maintained by the Bureau must be made to the same deposit account at a financial institution.

* * * * *

(5) * * *

(ii) Bonds issued prior to October 1, 1989. An ACH arrangement established for Series HH bonds issued prior to October 1, 1989, shall remain in effect until it is terminated by a request from the owner or coowner submitted to the Bureau of the Public Debt, Parkersburg, WV 26102–1328

(6) *Rules.* Series HH interest payments made by the ACH method are governed by the regulations at 31 CFR part 370.

(7) *Nonreceipt or loss of interest payment.* The Bureau of the Public Debt, Parkersburg, WV 26102 should be notified if:

(i) An interest check is not received or is lost after receipt or

(ii) An ACH payment is not credited to the designated account and the financial institution has no record of receiving it. The notice should include the owner or coowner's name and taxpayer identifying number and the interest payment date.

PART 357—GENERAL REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS.

1. The authority citation for part 357 continues to read as follows:

Authority: 31 U.S.C. 31, 5 U.S. 301 and 12 U.S.C. 391.

2. Amend § 357.26 as follows:

a. Revise the section heading as set forth below.

b. Revise paragraph (a) to read as set forth below.

c. Revise the heading for paragraph (b) to read as set forth below.

d. Remove paragraphs (b)(1)(i), (b)(1)(iv), (b)(2), (b)(3), (c) and (d);

e. Redesignate paragraph (b)(1)(ii) as paragraph (b);

f. Redesignate paragraph (b)(1)(iii) as paragraph (c) and add a heading to read as set forth below.

g. Redesignate paragraph (b)(1)(v) as paragraph (d) and add a heading to read as set forth below.

h. Redesignate paragraph (b)(1)(vi) as paragraph (e) and add a heading to read as set forth below.

§ 357.26. Direct Deposit.

(a) *General.* A payment by the Department with respect to a security shall be by direct deposit unless it is deemed necessary by the Department to make payment by another means. Direct Deposit payments are governed by the regulations at 31 CFR part 370.

(b) *Names on account.* * * *

(c) *Inquiry to financial institution.* * * *

(d) *Payments to master account.* * * *

(e) *Deposit account.* * * *

3. Revise § 357.30 to read as follows.

§ 357.30 Cases of delay or suspension of payment.

If evidence required by the Department in support of a transaction request is not received by the Department at least ten (10) business days before the maturity date of the security, or if payment at maturity has been suspended pursuant to 31 CFR 370.10, in cases of reinvestment, the Department will redeem the security and hold the redemption proceeds in the same form of registration as the security redeemed, pending further disposition. No other interest shall accrue or be paid on such proceeds after the security is redeemed.

1. Revise part 370 to read as follows:

PART 370—ELECTRONIC TRANSACTIONS AND FUNDS TRANSFERS RELATING TO UNITED STATES SECURITIES

Subpart A—General Information

Sec.

370.0 What does this part cover?
370.1 What special terms do I need to know to understand this part?

Subpart B—Credit ACH Entries

370.5 How can I appoint a financial institution to receive payments on my behalf?
370.6 What requirements apply to a financial institution that handles a credit entry?
370.7 How can my financial institution change my designated deposit account?
370.8 Are there any requirements related to a prenotification entry?
370.9 How can my payment instructions be changed?
370.10 What can cause my payments to be suspended?
370.11 What must my financial institution do when it receives a payment?
370.12 What happens if an error is made in a credit entry, or if a duplicate credit entry is made?
370.13 Can time limits for taking an action on a credit entry be extended?
370.14 Can substitute payment procedures be used?
370.15 What limitations exist on liability?

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Subpart C—Debit Entries

370.20 What requirements apply if I want to authorize a debit entry to my deposit account?
370.21 Are there any requirements related to a prenotification entry?
370.22 What requirements apply to a financial institution that debits a deposit account?
370.23 What other requirements apply to a financial institution?
370.24 What right does the Bureau of the Public Debt have to terminate or suspend debit entries?
370.25 What rights do I have to terminate or suspend debit entries?
370.26 What limitations exist on liability?

Subpart D—Electronic Submission of Transaction Requests Through the Bureau of the Public Debt

370.35 Does the Bureau of the Public Debt accept all electronically signed transaction requests?
370.36 When does a transaction request become effective?
370.37 Where is the point of transaction for an electronically submitted transaction request?
370.38 What is the legal effect of an electronic signature?
370.39 To what extent is a digital signature admissible in any civil litigation or dispute?
370.40 Can I be held accountable if my negligence contributes to a forged signature?
370.41 What limitations exist on liability?

Subpart E—Additional Provisions

370.45 What is the status of a security if the remittance cannot be collected?
370.46 Are there any situations in which the Bureau of the Public Debt may waive these regulations?
370.47 To what extent may the Bureau of the Public Debt change these regulations?

Authority: 12 U.S.C. 391; 31 U.S.C. chapter 31.

Subpart A—General Information

§ 370.0 What does this part cover?

(a) *Scope.* This part applies to the transfer of funds by the Automated Clearing House method as used by us in connection with United States securities. This part also provides regulations for the electronic submission of transaction requests through us, except as varied by agreement or as otherwise provided. This part does not apply to transactions for the sale of United States Savings Bonds accomplished through savings bond issuing agents generally, except and to the extent we direct otherwise.

(b) *Operating Rules of the National Automated Clearing House Association and Regulations of the Financial Management Service.* The Operating Rules of the National Automated Clearing House Association generally apply to these transactions. However, the Operating Rules do not apply to the extent that the Operating Rules are preempted entirely and excluded specifically by application of Financial Management Service regulations in part 210 of this chapter. In the event of any inconsistencies between this part 370 and either the Operating Rules or part 210, this part 370 applies.

(c) *Regulations of the Board of Governors of the Federal Reserve.* To the extent that Regulation E (12 CFR part 205) and Regulation Z (12 CFR part 226) of the Board of Governors of the Federal Reserve System apply to transactions authorized by this part, those Federal laws are unaffected by this part 370.

(d) *Variance by agreement.* The terms of this part may be varied by agreement.

§ 370.1 What special terms do I need to know to understand this part?

Automated Clearing House (ACH) entry means a transaction in accordance with the Operating Rules of the National Automated Clearing House Association, as modified by these regulations and other law. The regulations in this part control in the event of any inconsistencies with the applicable Operating Rules.

Credit entry means an ACH entry for the payment of money to a deposit account.

Debit entry means an ACH entry for the collection of money from a deposit account.

Deposit account means a demand deposit (checking), savings, or asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution.

Digital signature means a type of electronic signature. A signer creates a digital signature by using public-key encryption to transform a message digest of an electronic message. If a recipient of the digital signature has an electronic message, message digest function, and the signer's public key, the recipient can verify:

(1) whether the transformation was accomplished with the private key that corresponds to the signer's public key; and

(2) Whether the electronic message has been altered since the transformation was made.

Electronic message means information that is stored in an electronic medium and is retrievable in perceivable form.

Electronic signature means a signature of an electronic message that:

(1) identifies and authenticates a particular person as the source of the electronic message; and

(2) indicates such person's approval of the information contained in the electronic message.

Financial institution means:

(1) any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank that is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(2) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank that is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(3) any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank that is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(4) any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union that is eligible to make application to become an insured credit union pursuant to section 201 of such Act (12 U.S.C. 1781);

(5) any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) that is an insured depository institution as defined in that act or is eligible to apply to become an insured depository institution under that act; and

(6) any Federal branch or agency of a foreign bank as defined in section 1(b) of the International Banking Act, as amended (12 U.S.C. 3101).

Investor account is our record of your *TreasuryDirect* holdings, including a list of your total security holdings, the exact form of registration of your account, your mailing address, your *TreasuryDirect* account number, your social security account number or employer identification number, and your deposit account instructions.

Message digest function means an algorithm that transforms an electronic message into a seemingly unintelligible, generally smaller, result called the message digest. A message digest function has these qualities:

(1) the same electronic message yields the same message digest every time the algorithm is executed;

(2) it is computationally infeasible that an electronic message can be derived from the message digest result produced by the algorithm; and

(3) it is computationally infeasible that two electronic messages can be found that produce the same message digest using the algorithm.

Payment means, for the purpose of this part, funds paid by us to you.

Person means any natural person or organization.

Public-key encryption means a cryptographic process which generates and employs a key pair, consisting of a public key and a different but mathematically related private key. One use of the public key is to verify a digital signature created by the private key.

Security means an obligation offered by the Secretary of the Treasury.

Settlement date means the date an exchange of funds with respect to an ACH entry is reflected on the books of the Federal Reserve Bank(s).

Signature means any symbol or method executed or adopted by a person with present intention to be bound.

We (or "us") refers to the Secretary of the Treasury and the Secretary's delegates at the Treasury Department and Bureau of the Public Debt. The term also extends to any fiscal or financial agent acting on behalf of the United States when designated to act by the Secretary or the Secretary's delegates. The term does not extend to United States Savings Bond issuing and paying agents.

You means a deposit account owner, in subparts B and C, unless stated otherwise. The word "you" means a person who electronically submits transaction requests through us, in subpart D.

Subpart B—Credit ACH Entries

§ 370.5 How can I appoint a financial institution to receive payments on my behalf?

You must name a financial institution to receive payments through credit entries using the ACH method. You also must identify the deposit account to which payments are to be made. To do this, you must use a form approved by us.

§ 370.6 What requirements apply to a financial institution that handles a credit entry?

A financial institution that accepts and handles a credit entry initiated by us agrees to the provisions of this subpart, and warrants that it will comply with all requirements imposed upon Receiving Depository Financial Institutions under the Operating Rules of the National Automated Clearing House Association, as modified by these regulations and other law.

§ 370.7 How can my financial institution change my designated deposit account?

If your financial institution requests us to make a change in your deposit account number or type of your account, we will change the information without requiring any confirmation from you. The request from the financial institution must be made following the Operating Rules of the National Automated Clearing House Association. The financial institution's request will be deemed an agreement by the institution to indemnify us and you for any loss resulting from the requested change.

§ 370.8 Are there any requirements related to a prenotification entry?

(a) *Use of prenotification in our discretion.* In our discretion, we may initiate a prenotification entry to a financial institution before we send a credit entry. We may also send a prenotification message whenever there is a change in the payment instructions. If we send a prenotification message, we will follow the time frames as established by the Operating Rules of the National Automated Clearing House Association. A prenotification is a zero-dollar ACH entry that can help us determine whether there might be problems with sending a subsequent credit entry.

(b) *Requirements placed upon financial institution that receives a prenotification.* A financial institution must respond to a prenotification within the time frame for such responses as established by the Operating Rules of the National Automated Clearing House Association. If the receiving financial institution does not respond to the prenotification message within the specified time period, we may interpret the nonresponsiveness as the financial institution's agreement to this subpart. Furthermore, a financial institution warrants by its nonresponsiveness that the deposit account number and the type of account contained in the prenotification entry message was accurate as of the moment the financial institution received it.

§ 370.9 How can my payment instructions be changed?

Your payment instructions will continue to apply until either you or your financial institution requests us to make a change.

§ 370.10 What can cause my payments to be suspended?

(a) *Change in deposit account.* We will suspend payments if we receive notice that your deposit account has been closed, that someone named on your deposit account is dead or has been declared legally incompetent, that there is a change in the title of your deposit account that alters your interests; or, if a corporation is the owner, that it has been dissolved.

(b) *Change in status of owner.* We will suspend payments when we receive notice that an owner of a bond, security, or investor account is dead or has been declared legally incompetent, or in any case where we receive notice of a change in the name or status of an organization or representative named on a bond, security, or investor account.

(c) *Continuation of Suspension.* Payments will continue to be suspended until we receive satisfactory evidence as to who is authorized or entitled to receive payments.

§ 370.11 What must my financial institution do when it receives a payment?

An institution which receives a payment on behalf of its customer must:

(a) Upon receipt, make the payment available to you on the payment date. If a scheduled payment date is not a business day for the Federal Reserve Bank of the district in which the institution is located, payment will be made on the next-succeeding business day. If the institution is unable to make a credit entry to the designated account, it must return the payment in accordance with the Operating Rules of the National Automated Clearing House Association.

(b) Promptly notify us when your account has been closed, or when it is on notice of the death or legal incapacity of you or any other individual named on your account, or when it is on notice of the dissolution of a corporation in whose name the deposit account is held. The institution must return all payments received along with an explanation for the return.

§ 370.12 What happens if an error is made in a credit entry, or if a duplicate credit entry is made?

If we make an erroneous credit entry under this part, we will make a corrected credit entry to your account. We will then take action to recover the erroneous credit entry, or any duplicate credit entry, as follows:

(a) *Return of amount of erroneous or duplicate credit entry by financial institution.* We will send a notice to the financial institution to which the erroneous or duplicate credit entry was sent. When it receives this notice, the financial institution must immediately return to the appropriate Federal Reserve Bank an amount equal to the credit entry. If the institution is unable to do this, the institution must immediately notify us, and provide any

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information that it has about the matter. We reserve the right to request the return of a partial amount of an erroneous or duplicate credit entry.

(b) *Collection of amount of unreturned erroneous or duplicate credit entry.* Where the erroneous or duplicate credit entry has not been returned, we will undertake any other actions that are appropriate. To the extent permitted by law, the collection action may include deducting the amount owed from future credit entries made to the deposit account to which the erroneous or duplicate credit entry was made.

(c) *Authorization of Debit to collect unreturned dulicate or erroneous credit entry.* If a financial institution has not responded within 60 calendar days of the notice, its acceptance of the credit entry will be considered an authorization for a debit in the amount of the entry. The debit will be made from the account maintained or utilized by the financial institution at the Federal Reserve Bank to which the entry was made. An institution designated by a financial institution to receive payment on its behalf, in permitting the usage, is deemed to have authorized a debit. The debit will be made from its account maintained at the Federal Reserve Bank to which the entry was made. The institution to which the credit entry has been directed is deemed to have agreed to provide information and assistance to recover any erroneous or duplicate entry. You are also deemed to have agreed to provide information and assistance, and to take any action provided by law to recover an erroneous or duplicate credit entry.

§ 370.13 Can time limits for taking an action on a credit entry be extended?

If we or your financial institution are delayed beyond applicable time limits in taking any action with respect to a credit entry because of circumstances beyond our control, then the time for taking that action will be extended as necessary until the cause of the delay ends.

§ 370.14 Can substitute payment procedures be used?

We may use substitute payment procedures, instead of ACH, if we consider it to be necessary. Any such action is final.

§ 370.15 What limitations exist on liability?

(a) We may rely on the information provided by you or anyone else authorized to provide information concerning your financial institution or deposit account to which payments are to be made. We do not need to verify this information. We are not liable for any action we may take in reliance on the information furnished.

(b) Our liability does not extend beyond the amount of the payment due.

(c) When you name a financial institution to receive payments on your behalf, you are appointing that institution as your agent for the receipt of payments. When a credit entry is made to your financial institution for deposit to your account following your instructions, we no longer have any further responsibility for that payment. Where your financial institution has arranged with the Federal Reserve Bank to have payments made through another financial institution, the crediting of your payment to that institution relieves us of any further responsibility for that payment.

Subpart C—Debit Entries

§ 370.20 What requirements apply if I want to authorize a debit entry to my deposit account?

(a) *General.* You may pay for a security and related fees by authorizing us to initiate one or more debit entries to your deposit account. For a purchase of a book-entry security to be held in an investor account maintained by us, you must be named on the investor account. The authorization must be accomplished only through forms or means approved by us.

(b) *Single-entry and recurring debit entries.* You only may authorize single-entry debits for purchases of book-entry securities held in *TreasuryDirect.* You only may authorize recurring debit entries for purchases of definitive savings bonds.

(c) *Credit entries to be made to same deposit account.* To the extent that payments by us with respect to a security are to be made through credit entries, you must receive debit and credit entries in the same deposit account.

(d) *Signature.* The authorization must have your signature and that of any other person whose signature is required to withdraw funds from the deposit account. We need not verify your identity or the authenticity of your signature.

§ 370.21 Are there any requirements related to a prenotification entry?

(a) *Use of prenotification in our discretion.* In our discretion, we may initiate a prenotification entry to a financial institution prior to sending a debit entry. A prenotification is a zero-dollar ACH entry that can help us determine whether there might be problems with sending a subsequent debit entry.

(b) *Requirements placed upon financial institution that receives a prenotification.* If sent, a financial institution must respond to a prenotification within the time frame for such responses as established by the National Automated Clearing House Association. If the receiving financial institution does not respond to the prenotification message within the specified time period, we may interpret the nonresponsiveness as the financial institution's agreement to this subpart. Furthermore, a financial institution warrants by its nonresponsiveness that the deposit account number and the type of account contained in the prenotification entry message was accurate as of the moment the financial institution received it.

§ 370.22 What requirements apply to a financial institution that debits a deposit account?

A financial institution that debits a deposit account upon receiving a debit initiated by us agrees to the provisions of this subpart. A financial institution that does so also warrants that it has the authority to receive debit entries.

§ 370.23 What other requirements apply to a financial institution?

The financial institution warrants that it will comply with all requirements imposed upon Receiving Depository Financial Institutions under the Operating Rules of the National Automated Clearing House Association, as modified by these regulations and other law.

§ 370.24 What right does the Bureau of the Public Debt have to terminate or suspend debit entries?

We may terminate or suspend the availability of one or more debit entries in any case or class of cases, and may do so without notice at any time. A decision to terminate or suspend the availability of debit entries is in our sole discretion and is final.

§ 370.25 What rights do I have to terminate or suspend debit entries?

(a) *General.* If you are an investor account owner or deposit account owner, you generally may terminate or suspend one or more debit entries by notifying us orally or in writing at least three business days before the scheduled date of a transfer. In response to an oral notice, we may require you to give written notice, to be received by us within fourteen days of an oral notice. An oral notice ceases to be binding after fourteen days if you fail to provide the required written confirmation. A suspension will remain in effect for the duration you specify, but for no more than six months. The termination and suspension methods need not be recited in the authorization. These termination or suspension rights are in addition to those that you may have through your financial institution under Regulation E of the Board of Governors of the Federal Reserve System (12 CFR part 205).

(b) *Exception.* If you submit a debit entry authorization in conjunction with a Treasury auction tender for the purchase of a book-entry security, you cannot terminate or suspend a debit entry after the auction closes.

§ 370.26 What limitations exist on liability?

If we sustain a loss because a financial institution fails to handle an entry in accordance with this part, the financial institution is liable to us for the loss, but not beyond the amount of the debit entry. In no instance does our liability extend beyond the amount of the debit entry.

Subpart D—Electronic Submission of Transaction Requests Through the Bureau of the Public Debt

§ 370.35 Does the Bureau of the Public Debt accept all electronically signed transaction requests?

An electronic signature will not be accepted if it has not been accomplished through a method that has been approved for specific purposes by us.

§ 370.36 When does a transaction request become effective?

Except for auction bids of U.S. securities or unless otherwise agreed, a transaction request becomes effective at the moment we send a confirmation message. In no instance does a transaction request become effective before we actually receive the request.

§ 370.37 Where is the point of transaction for an electronically submitted transaction request?

For jurisdiction and venue purposes, the point of transaction for a transaction request handled pursuant to this subpart is Parkersburg, West Virginia, regardless of from where the transaction request is transmitted or where the transaction request is actually processed.

§ 370.38 What is the legal effect of an electronic signature?

An electronic signature and any electronic message to which it is affixed or attached may not be denied legal effect, including legal effect as a signature, a writing, or an original, solely because the signature or record is in electronic form.

§ 370.39 To what extent is a digital signature admissible in any civil litigation or dispute?

In asserting a digital signature against you in any civil litigation or dispute, extrinsic evidence of authenticity as a condition precedent of admissibility (such as testimony about the scientific validity of digital signatures) is not necessary to establish:

(a) That a digital signature corresponds to a specific public key pair, and;

(b) That an electronic message to which the digital signature is affixed has not been altered from its original form.

§ 370.40 Can I be held accountable if my negligence contributes to a forged signature?

(a) *General.* If your failure to exercise ordinary care substantially contributes to the submission of a forged signature, then you cannot claim that the signature is a forgery. However, we cannot invoke this section against you if we cannot first establish that we were reasonable in relying upon the signature. If we can do so, you bear the burden of production and the burden of persuasion in establishing your exercise of ordinary care. If you cannot do so, then you cannot claim that the signature is a forgery.

(b) *Exception.* This section has no application in any dispute involving a debit authorization or credit card transaction.

§ 370.41 What limitations exist on liability?

In no instance does our liability extend beyond the amount of the transaction.

Subpart E—Additional Provisions

§ 370.45 What is the status of a security if the remittance cannot be collected?

If we cannot promptly collect all of the remittance for a security, we may in our discretion cancel the security unless it has been legally transferred for value to a third person who had no knowledge of the improper debit entry at the time of the transfer.

§ 370.46 Are there any situations in which the Bureau of the Public Debt may waive these regulations?

We reserve the right, in our discretion, to waive any provision of these regulations in any case or class of cases. We may do so if such action is not inconsistent with law and will not subject the United States to substantial expense or liability.

§ 370.47 To what extent may the Bureau of the Public Debt change these regulations?

Any aspect of this part may be changed at any time and without notice. You assume the risk that a change may terminate a provision that was to your advantage. Nothing in this part creates vested rights in your favor.

Dated: June 28, 1999.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 99–18919 Filed 7–23–99; 8:45 am]

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Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 12, 14 et al.
Federal Acquisition Regulation; Empowerment Contracting; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 12, 14, 15, 26, 36, and 52

[FAR Case 97–603]

RIN 9000–AH58

Federal Acquisition Regulation; Empowerment Contracting

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have decided to withdraw FAR case 97–603, Empowerment Contracting, published in the **Federal Register** at 62 FR 19200, April 18, 1997. The rule proposed to amend the Federal Acquisition Regulation (FAR) to establish phase one of an Empowerment Contracting Program that provided procurement incentives to both large and small businesses to encourage their activity in areas of general and severe economic distress. That action was taken to implement Executive Order 13005 of May 21, 1996, Empowerment Contracting.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAR case 97–603, Empowerment Contracting; Withdrawal.

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 13005 established the Empowerment Contracting Program to encourage business activity in areas of general economic distress by providing procurement incentives to qualified businesses. This initiative has been effectively superseded by the HUBZone Act of 1997, enacted on December 2, 1997, and the subsequent implementation of Sections 601–607 of the Act in the Federal Acquisition Regulation under FAR case 97–307, HUBZone Program. An interim rule was published in the **Federal Register** on December 12, 1998 (63 FR 70265). Therefore, the proposed rule for FAR case 97–603 is withdrawn.

List of Subjects in 48 CFR Parts 12, 14, 15, 26, 36, and 52

Government procurement.

Dated: July 20, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–19011 Filed 7–23–99; 8:45 am]

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Part VII

Department of Housing and Urban Development

24 CFR Part 985

Technical Amendment to the Section 8 Management Assessment Program (SEMAP); Interim Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 985

[Docket No. FR–4498–I–01]

RIN 2577–AC10

Technical Amendment to the Section 8 Management Assessment Program (SEMAP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations for the Section 8 Management Assessment Program (SEMAP) for the purpose of incorporating technical revisions recommended by the Office of Management and Budget to conform to requirements under the Single Audit Act Amendments of 1996. This interim rule revises the basis upon which HUD assigns ratings under eight SEMAP indicators. For the eight SEMAP indicators where the HUD verification method is the latest independent auditor (IA) annual audit report, this interim rule provides that the rating will be based on the housing agency (HA) SEMAP certification to HUD, rather than on statements in the annual audit report. Under this interim rule, SEMAP ratings will be subject to change after HUD receives the HA's annual audit report if the audit report contains information that the HA's SEMAP certification is not accurate.

DATES: *Effective Date:* August 25, 1999. *Comments Due Date:* September 24, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communications submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Acting Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Room 4210, 451 Seventh Street, S.W., Washington, DC 20410–0500. Telephone: (202) 708–0477 (voice); (202) 708–0850 (TTY). Persons with hearing or speech-impairments may call 1–800–877–8339 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

On September 10, 1998 (63 FR 48548), HUD published a final rule which established the Section 8 Management Assessment Program (SEMAP). The September 10, 1998 final rule provided that HUD would rate the performance of a housing authority (HA) under eight SEMAP indicators based on statements in the latest independent auditor (IA) annual audit report. The eight indicators are: (1) Selection from the Waiting List; (2) Reasonable Rent; (3) Determination of Adjusted Income; (4) Utility Allowance Schedule; (5) Housing Quality Standards (HQS) Quality Control Inspections; (6) HQS Enforcement; (7) Expanding Housing Opportunities; and (8) Deconcentration Bonus. HUD intended that IAs would independently test a minimum sample of files for HA compliance with requirements under five of these eight indicators and would include specific statements concerning HA compliance in the audit report on compliance with all eight. Procedures of the Office of Management and Budget (OMB) implementing the Single Audit Act Amendments of 1996, however, do not permit HUD to include audit procedures in the OMB Circular A–133 compliance supplement which require either minimum samples of files or any specific reporting on compliance.

II. This Rule

In accordance with OMB requirements under the Single Audit Act Amendments of 1996, HUD is amending the September 10, 1998 final rule to base ratings for the eight indicators on the HA's SEMAP certification to HUD, rather than on the IA annual audit report. The OMB Circular A–133 compliance supplement for the Section 8 tenant-based programs will still provide procedures for the IA to audit compliance for the eight SEMAP indicators, and to verify the accuracy of the HA's SEMAP certification to HUD. Therefore, the HUD method of verification of HA performance under the eight indicators remains the IA annual audit report. The Department continues to rely on IA's to verify the accuracy of the HA's SEMAP certification with respect to the eight indicators. This interim rule also clarifies that HUD confirmatory reviews will be used as an additional method of verification to the extent they are performed.

This technical amendment to the September 10, 1998 final rule requires the HA to submit a SEMAP certification concerning the results of its supervisory quality control reviews of file samples drawn in an unbiased manner to ensure compliance under four SEMAP indicators ((1) Selection from the Waiting List; (2) Reasonable Rent; (3) Determination of Adjusted Income; and (4) HQS Enforcement). The interim rule, therefore, requires the HA to perform annual quality control reviews of its performance under these indicators in order to complete the SEMAP certification form. While there has previously been no regulatory requirement that an HA perform quality control reviews in these four areas, many HAs would have instituted such procedures under the September 10, 1998 final rule. Further, sound management practices require adequate internal control systems, such as supervisory quality control reviews, which the Department has required and encouraged in the past.

This technical amendment also revises the SEMAP standard under § 985.3(e) for HQS quality control inspections. This indicator is changed to require HQS quality control samples of the same minimum sample size as required for other supervisory quality control reviews. The requirement for a 5 percent HQS quality control sample no longer applies.

III. Justification for Interim Rulemaking

It is HUD's policy to publish rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking found at 24 CFR part 10. Part 10 provides, however, that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.0). HUD finds that in this case prior comment is unnecessary. This interim rule amends §§ 985.1, 985.2, 985.3, and 985.103, only to make technical changes to the basis for HUD ratings on eight SEMAP indicators and to the minimum sample size for HQS quality control inspections. Rather than relying on statements in the IA annual audit report to assign ratings under the eight indicators, HUD will rely on the HA's SEMAP certification to assign ratings. The HA's SEMAP certification for these eight indicators may be subject to a compliance audit under the Single Audit Act Amendments of 1996, or to a HUD confirmatory review, and if the audit report on compliance or the confirmatory review report contains information that the HA's SEMAP certification is not accurate, SEMAP ratings will be subject to change.

IV. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are not any unusual procedures that would need to be complied with by small entities. Nevertheless, the Department is sensitive to the fact that the uniform application of requirements on entities of differing sizes often places a disproportionate burden on small businesses. The Department, therefore, is soliciting alternatives for compliance from small entities as to how these small entities might comply in a way less burdensome to them.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program numbers assigned to the Section 8 Management Assessment Program are 14.855 and 14.857.

List of Subjects for 24 CFR Part 985

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, part 985 of title 24 of the Code of Federal Regulations is amended as follows:

PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

1. The authority citation for 24 CFR part 985 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

2. Section 985.1 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 985.1 Purpose and applicability.

(a) *Purpose.* * * * SEMAP also establishes a system for HUD to measure HA performance in key Section 8 program areas and to assign performance ratings. * * *

* * * * *

3. In § 985.2 amend paragraph (b) by adding definitions of "confirmatory review" and "HA's quality control sample" in alphabetical order to read as follows:

§ 985.2 Definitions.

* * * * *

(b) * * *

Confirmatory review means an on site review performed by HUD to verify the management performance of an HA.

* * * * *

HA's quality control sample means an annual sample of files or records drawn in an unbiased manner and reviewed by an HA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. The minimum size of the HA's quality control sample is as follows:

Universe	Minimum number of files or records to be sampled
50 or less	5.
51–600	5 plus 1 for each 50 (or part of 50) over 50.
601–2000	16 plus 1 for each 100 (or part of 100) over 600.
Over 2000	30 plus 1 for each 200 (or part of 200) over 2000.

Where the universe is: the number of admissions in the last year for each of the two quality control samples under the SEMAP indicator at § 985.3(a) Selection from the Waiting List; the number of families assisted for the SEMAP indicators at § 985.3(b) Reasonable Rent, and 985.3(c) Determination of Adjusted Income; the number of units under HAP contract during the last completed HA fiscal year for the SEMAP indicator at § 985.3(e) HQS Quality Control Inspections; and the number of failed HQS inspections in the last year for the SEMAP indicator at § 985.3(f) HQS Enforcement.

* * * * *

4. Section 985.3 is amended by revising the last sentence of the first introductory paragraph, the first sentence of the second introductory paragraph, and paragraphs (a)(2), (a)(3) introductory text, (a)(3)(i) introductory text, (a)(3)(i)(B), (a)(3)(ii), (b)(2), (b)(3) introductory text, (b)(3)(i) introductory text, (b)(3)(i)(B), (b)(3)(ii), (b)(3)(iii), (c)(2), (c)(3) introductory text, (c)(3)(i) introductory text, (c)(3)(ii), (c)(3)(iii), (d)(2), (d)(3), (e), (f)(2), (f)(3), (g)(2), (g)(3) introductory text, (g)(3)(i) introductory text, (g)(3)(ii), (h)(2) and (h)(3) to read as follows:

§ 985.3 Indicators, HUD verification methods and ratings.

* * * The method for selecting the HA's quality control sample under paragraphs (a), (b), (c) and (f) of this section must leave a clear audit trail that can be used to verify that the HA's quality control sample was drawn in an unbiased manner.

An HA that expends less than $300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor (IA), will not be rated under the SEMAP indicators in paragraphs (a) through (g) of this section for which the annual IA audit report is a HUD verification method. * * *

(a) * * *

(2) HUD verification method: The independent auditor (IA) annual audit report covering the HA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The HA's SEMAP certification states that:

* * * * *

(B) Based on the HA's quality control samples, drawn separately for applicants reaching the top of the waiting list and for admissions, documentation shows that at least 98 percent of the families in both samples of applicants and admissions were selected from the waiting list for admission in accordance with these policies and met the selection criteria that determined their places on the waiting list and their order of selection. 15 points.

(ii) The HA's SEMAP certification does not support the statement in paragraph (a)(3)(i) of this section. 0 points.

(b) * * *

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(2) HUD verification method: The IA annual audit report covering the HA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The HA's SEMAP certification states that:

* * * * *

(B) Based on the HA's quality control sample of tenant files, the HA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable in accordance with § 982.503 for at least 98 percent of units sampled at the time of initial leasing, if there is any increase in the rent to owner and, at the HAP contract anniversary if there is a 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. 20 points.

(ii) The HA's SEMAP certification includes the statements in paragraph (b)(3)(i) of this section, except that the HA documents its determination of reasonable rent for only 80 to 97 percent of units sampled at initial leasing, if there is any increase in the rent to owner, and at the HAP contract anniversary if there is a 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. 15 points.

(iii) The HA's SEMAP certification does not support the statements in either paragraph (b)(3)(i) or (b)(3)(ii) of this section. 0 points.

(c) * * *

(2) HUD verification method: The IA annual audit report covering the HA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The HA's SEMAP certification states that, based on the HA's quality control sample of tenant files, for at least 90 percent of families:

* * * * *

(ii) The HA's SEMAP certification includes the statements in paragraph (c)(3)(i) of this section, except that the HA obtains and uses independent verification of income, properly attributes allowances, and uses the appropriate utility allowances for only 80 to 89 percent of families. 15 points.

(iii) The HA's SEMAP certification does not support the statements in either paragraph (c)(3)(i) or (c)(3)(ii) of this section. 0 points.

(d) * * *

(2) HUD verification method: The IA annual audit report covering the HA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The HA's SEMAP certification states that the HA reviewed utility rate data within the last 12 months, and adjusted its utility allowance schedule if there has been a change of 10 percent or more in a utility rate since the last time the utility allowance schedule was revised. 5 points.

(ii) The HA's SEMAP certification does not support the statement in paragraph (d)(3)(i) of this section. 0 points.

(e) *HQS quality control inspections.* (1) This indicator shows whether an HA supervisor or other qualified person reinspects a sample of units under contract during the HA fiscal year, which meets the minimum sample size requirements specified at § 983.2 under HA's quality control sample, for quality control of HQS inspections. The HA supervisor's reinspected sample is to be drawn from recently completed HQS inspections (i.e., performed during the 3 months preceding reinspection) and is to be drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors. (24 CFR 982.405(b))

(2) HUD verification method: The IA annual audit report covering the HA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The HA's SEMAP certification states that an HA supervisor or other qualified person performed quality control HQS reinspections during the HA fiscal year for a sample of units under contract which meets the minimum sample size requirements specified in § 983.2 under HA's quality control sample. The HA's SEMAP certification also states that the reinspected sample was drawn from recently completed HQS inspections (i.e., performed during the 3 months preceding the quality control reinspection) and was drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors. 5 points.

(ii) The HA's SEMAP certification does not support the statements in paragraph (e)(3)(i) of this section. 0 points.

(f) * * *

(2) HUD verification method: The IA annual audit report covering the HA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The HA's SEMAP certification states that the HA's quality control sample of case files with failed HQS inspections shows that, for all cases sampled, any cited life-threatening HQS deficiencies were corrected within 24 hours from the inspection and, for at least 98 percent of cases sampled, all other cited HQS deficiencies were corrected within no more than 30 calendar days from the inspection or any HA-approved extension, or, if any life-threatening HQS deficiencies were not corrected within 24 hours and all other HQS deficiencies were not corrected within 30 calendar days or any HA-approved extension, the HA stopped (abated) housing assistance payments beginning no later than the first of the month following the correction period, or took prompt and vigorous action to enforce family obligations. 10 points.

(ii) The HA's SEMAP certification does not support the statement in paragraph (f)(3)(i) of this section. 0 points.

(g) * * *

(2) HUD verification method: The IA annual audit report covering the HA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The HA's SEMAP certification states that:

* * * * *

(ii) The HA's SEMAP certification does not support the statement in paragraph (g)(3)(i) of this section. 0 points.

(h) * * *

(2) HUD verification methods: HA data submitted for the deconcentration bonus, the IA annual audit report covering the HA fiscal year entered on the SEMAP certification, and on-site confirmatory review if performed.

(3) Rating: (i) The data submitted by the HA for the deconcentration bonus shows that the HA met the requirements for bonus points in paragraph (h)(1)(i), (ii) or (iii) of this section. 5 points.

(ii) The data submitted by the HA for the deconcentration bonus does not show that the HA met the requirements for bonus points in paragraph (h)(1)(i), (ii) or (iii) of this section. 0 points.

* * * * *

5. Section 985.103 is amended by redesignating paragraph (d) as paragraph (e), adding a new paragraph (d), and revising newly redesignated paragraph (e)(3), to read as follows:

§ 985.103 SEMAP score and overall performance rating.

* * * * *

(d) *Modified rating on an indicator.* A rating on any of the indicators at §§ 985.3(a) through 985.3(h) will be subject to change after HUD receives the HA's annual audit report or after HUD conducts a confirmatory review if the audit report or the confirmatory review report contains information that the HA's SEMAP certification concerning an indicator is not accurate.

(e) *Modified or withheld overall rating.* * * *

(3) When HUD modifies or withholds a rating for any reason, it shall explain in writing to the HA the reasons for the modification or for withholding the rating.

Dated: June 23, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–18877 Filed 7–23–99; 8:45 am]

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Part VIII

The President

Memorandum of July 16, 1999—
Delegation of Authority Under Section 1304(b)(2) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

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Presidential Documents

Title 3—

The President

Memorandum of July 16, 1999

Delegation of Authority Under Section 1304(b)(2) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999

Memorandum for the Secretary of Defense

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of Defense the authority vested in me under section 1304(b)(2) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261). The authority delegated by this memorandum may be redelegated not lower than the Under Secretary level.

Any reference in this memorandum to the provision of any Act shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 16, 1999.

[FR Doc. 99–19232
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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 775/P.L. 106–37

Y2K Act (July 20, 1999; 113 Stat. 185)

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Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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Rules and Regulations

Federal Register
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Tuesday, July 27, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 330

RIN 3206–AI69

Positions Restricted to Preference Eligibles

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations covering competitive service positions that are restricted to preference eligibles. These regulations update the responsibilities of both individual agencies and OPM to provide career transition assistance to preference eligibles who are separated by reduction in force because their positions are contracted out to the private sector under authority of Office of Management and Budget Circular A–76.

DATES: These interim regulations are effective July 27, 1999. Written comments will be considered if received no later than September 27, 1999.

ADDRESSES: Send written comments to Mary Lou Lindholm, Associate Director for Employment, Office of Personnel Management, Room 6500, 1900 E Street, NW, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon or Jacqueline R. Yeatman, 202–606–0960, FAX 202–606–2329.

SUPPLEMENTARY INFORMATION:

Background

Section 5 U.S.C. 3310 limits entrance examinations for the positions of custodian, elevator operator, guard, and messenger only to preference eligibles, provided that preference eligibles are available for these positions.

In final regulations published on September 30, 1985, at 50 FR 39876, OPM provided special career transition benefits for preference eligible employees who hold restricted positions that are contracted out to the private sector under authority of OMB Circular A–76. These regulations were revised on June 27, 1994, at 59 FR 32873, to include changes in OPM's programs for displaced employees.

OPM is now revising this subpart to reflect subsequent changes in available placement programs, including the Career Transition Assistance Plan authorized by 5 CFR part 330, subpart F, and the Interagency Career Transition Assistance Plan authorized by 5 CFR part 330, subpart G.

Updated Provisions Applicable to Preference Eligibles Displaced From Restricted Positions

Revised 5 CFR 330.404 affirms that both individual agencies and OPM have additional responsibilities when the agency, under authority of Office of Management and Budget Circular A–76, contracts out the work of a preference eligible who holds a restricted position.

Revised § 330.405 affirms that, if a preference eligible is separated from a restricted position by reduction in force because the agency contracts out the veteran's work under OMB Circular A–76, the agency must provide the employee with transition services and selection priority authorized under the Career Transition Assistance Plan and the Interagency Career Transition Assistance Plan. The agency is also responsible for applying OMB's policy directives on the preference eligible's right of first refusal for positions that are contracted out to the private sector. Finally, the agency is required to cooperate with State dislocated worker units in retraining the displaced preference eligible for other continuing positions.

Revised 5 CFR 330.406 updates OPM's responsibilities under 5 CFR part 330, subpart D. OPM's responsibilities for preference eligibles displaced from restricted positions as the result of contracting out include requiring agencies to provide the veterans with both internal selection priority (e.g., the Career Transition Assistance Plan), and with interagency selection priority (e.g., the Interagency Career Transition Assistance Plan). Other OPM responsibilities include encouraging cooperation between local Federal activities to assist these displaced preference eligibles in obtaining other Federal positions, including positions with the U.S. Postal Service, and monitoring these placement efforts.

Revised 5 CFR 330.407 provides that preference eligibles who are separated from restricted positions by reduction in force because their work is contracted out have interagency selection priority under the Interagency Career Transition Assistance Plan for 2 years following separation by reduction in force. Other Federal employees have this interagency selection priority for 1 year following reduction in force separation.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because it would be contrary to the public interest to delay access to benefits provided by law. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the effective date and make this amendment effective in less than 30 days in order to provide eligible displaced preference eligibles with special selection priority at the earliest practicable date.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 330

Armed Forces reserves, Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 330 of title 5, Code of Federal Regulations, as follows:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority citation for part 330 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp., p. 218;

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§ 330.102 also issued under 5 U.S.C 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310, subpart I also issued under sec. 4432 of Pub. L. 102–484, 106 Stat. 2315; subpart K also issued under sec. 11203 of Pub. L. 105–33, 111 Stat. 738; subpart L also issued under sec. 1232 of Pub. L. 96–70, 93 Stat. 452.

2. Subpart D of part 330 is revised to read as follows:

Subpart D—Positions Restricted to Preference Eligibles

Sec.
330.401 Competitive examination.
330.402 Direct recruitment.
330.403 Noncompetitive actions.
330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.
330.405 Agency placement assistance.
330.406 OPM placement assistance.
330.407 Eligibility for the Interagency Career Transition Assistance Plan.

Subpart D—Positions Restricted To Preference Eligibles

§ 330.401 Competitive examination.

In each entrance examination for the positions of custodian, elevator operator, guard, and messenger (referred to in this subpart as *restricted positions*), OPM shall restrict competition to preference eligibles as long as preference eligibles are available.

§ 330.402 Direct recruitment.

In direct recruitment by an agency under delegated authority, the agency shall fill each restricted position by the appointment of a preference eligible as long as preference eligibles are available.

§ 330.403 Noncompetitive actions.

An agency may fill a restricted position by the appointment by noncompetitive action of a nonpreference eligible only when authorized by OPM.

§ 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.

An individual agency and OPM both have additional responsibilities when the agency decides, in accordance with the Office of Management and Budget (OMB) Circular A–76, to contract out the work of a preference eligible who holds a restricted position. These additional responsibilities are applicable if a preference eligible holds a competitive service position that is:

(a) A restricted position as designated in 5 U.S.C. 3310 and § 330.401; and

(b) In retention tenure group tenure I or II, as defined in §§ 351.501(b) (1) and (2) of this chapter.

§ 330.405 Agency placement assistance.

An agency that separates a preference eligible from a restricted position by reduction in force under part 351 of this chapter because of a contracting out situation covered in § 330.404 must, consistent with § 330.602, advise the employee of the opportunity to participate in available career transition programs. The agency is also responsible for:

(a) Applying OMB's policy directives on the preference eligibles' right of first refusal for positions that are contracted out to the private sector; and

(b) Cooperating with State dislocated worker units, as designated or created under title III of the Job Training Partnership Act, to retrain displaced preference eligibles for other continuing positions.

§ 330.406 OPM placement assistance.

OPM's responsibilities include:

(a) Assisting agencies in operating positive placement programs, such as the Career Transition Assistance Plan, which is authorized by subpart F of this part;

(b) Providing interagency selection priority through the Interagency Career Transition Assistance Plan, which is authorized by subpart G of this part; and

(c) Encouraging cooperation between local Federal activities to assist these displaced preference eligibles in applying for other Federal positions, including positions with the U.S. Postal Service.

§ 330.407 Eligibility for the Interagency Career Transition Assistance Plan.

(a) A preference eligible who is separated from a restricted position by reduction in force under part 351 of this chapter because of a contracting out situation covered in § 330.404 has interagency selection priority under the Interagency Career Transition Assistance Plan, which is authorized by subpart G of this part. Section 330.704 covers the general eligibility requirements for the Interagency Career Transition Assistance Plan.

(b) A preference eligible covered by this subpart is eligible for the Interagency Career Transition Assistance Plan for 2 years following separation by reduction in force from a restricted position.

[FR Doc. 99–19045 Filed 7–26–99; 8:45 am]
BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 330

RIN 3206–AI39

Career Transition Assistance for Surplus and Displaced Federal Employees

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to extend current career transition assistance programs which assist Federal employees displaced from their jobs by downsizing. In 1995 these programs were implemented as a temporary replacement for the Interagency Placement Program, with a sunset date of September 30, 1999. These interim regulations extend the sunset date for an additional 2 years. These regulations also make several technical changes and clarifications in the career transition programs.

DATES: Interim rule effective July 27, 1999; comments must be received on or before September 27, 1999.

ADDRESSES: Comments may be mailed to the Workforce Restructuring Office, Employment Service, Room 6500, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–9700, or delivered to Room 6500, U.S. Office of Personnel Management, Washington, DC, between 8 a.m. and 4:30 p.m., or faxed to (202) 606–2329.

FOR FURTHER INFORMATION, CONTACT: Jacqueline Yeatman on (202) 606–0960, FAX (202) 606–2329, TDD (202) 606–0023, email: jryeatma@opm.gov .

SUPPLEMENTARY INFORMATION:

Background

On September 12, 1995, the President issued a memorandum entitled, "Career Transition Assistance for Federal Employees," that directs Federal Executive agencies to establish career transition assistance programs to help surplus and displaced workers find other jobs as the Federal Government undergoes downsizing and restructuring. As set forth in the memorandum, such programs are to be developed in partnership with labor and management, in accordance with guidance and regulations provided by the Office of Personnel Management (OPM).

OPM issued interim regulations on December 29, 1995, at 60 FR 67281, which were developed in cooperation with representatives from the Interagency Advisory Group of Personnel Directors and employee unions. Those regulations provided the framework for implementing the President's directive, the purpose of which is to maximize employment opportunities for displaced workers, both within and outside the Federal Government. Those regulations also suspended, through September 30, 1999, the operation of the Interagency Placement Program, the then-existing program to assist displaced workers.

In place of 5 CFR part 330 subpart C, Interagency Placement Program, OPM established subpart F in part 330, Agency Career Transition Assistance Plans (CTAP) for Local Surplus and Displaced Employees, and subpart G in part 330, Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees.

Career Transition Assistance

The programs set up in 1995 under these regulations incorporated a new concept in career transition assistance for displaced workers. Instead of having OPM attempt to place surplus workers in new jobs from a centralized inventory (the traditional government-wide approach used to assist displaced Federal employees under the old Interagency Placement Program in subpart C of part 330), the new career transition program empowers individual workers to find, apply for, and exercise selection priority for specific vacancies in which they are interested. It seeks to motivate and reinforce an employee's self-interest in finding work opportunities by giving displaced workers the resources and hiring priority necessary to support their transition to other employment.

Career transition assistance consists of four components:

- Programs to provide career transition services to the agency's surplus and displaced employees;
- Policies for retraining displaced employees for new career opportunities;
- Policies that require the selection of a well-qualified surplus or displaced internal agency employee who applies for a vacant position in the commuting area, before selecting any other candidate from either within or outside the agency; and
- Policies that require the selection of a well-qualified displaced employee from another agency who applies for a vacant position in the commuting area before selecting any other candidate from outside the agency.

Federal agencies are required to implement Career Transition Assistance Plans to provide career transition services to their surplus and displaced employees, and give special selection priority to these workers. These regulations set minimum standards for the plans, which can be supplemented at the agency's discretion.

At the time of the issuance of the President's directive, the Department of Defense (DOD) already operated an effective program, the Priority Placement Program, which provides selection priority to surplus and displaced employees within the Department. This continuing program is not subject to the special selection requirement affecting employees under the Career Transition Assistance Plan. The Department of Defense is subject to the other elements of these regulations and its employees are eligible for the benefits provided by these programs.

Program Results to Date

The interim regulations implementing the President's instructions were effective on February 29, 1996, at 60 FR 67281, and were issued in final form on June 9, 1997, at 62 FR 31315, with a minor correction issued on June 26, 1997, at 62 FR 34385. Under those regulations, each Executive Branch agency has established and maintains a Career Transition Assistance Plan for its surplus and displaced employees and accords selection priority for vacancies to those employees—first to its own surplus and displaced employees and then to displaced employees from other Federal agencies. During FY 1998, 909 non-Defense employees and 8,554 Defense employees facing possible reductions in force (RIF) were given career transition assistance. A total of 222 non-Defense and 4,050 surplus and displaced employees from Defense agencies were selected for other jobs within their agencies. A total of 183 displaced employees were rehired through their agency's reemployment priority list, another 273 displaced employees who were RIF-separated by one agency were selected for vacancies in different Federal agencies through the Interagency Career Transition Assistance Program.

The net result of the President's program in the past three years has been that 52,803 displaced employees facing RIF-separations have been given career transition assistance and selection priority for other jobs; 21,892 surplus and displaced Federal employees have been placed into other positions within their agencies; 1,921 displaced Federal employees have been rehired through the Reemployment Priority List by the agency from which they were separated; 1,066 displaced Federal employees who were RIF-separated by one agency have been selected for positions in other agencies. The latter figure, a result of the "employee empowerment" concept embodied in the Presidential directive, is over five times as many interagency selections as were made during the last three years that the old Interagency Placement Program was in operation, prior to the adoption of the career transition program.

During the same period, two Internet websites were set up to assist surplus and displaced Federal employees in finding other employment. OPM's USAJOBS Internet site (http://www.usajobs.opm.gov) provides information on Federal employment and complete vacancy listings which are updated daily. A joint website operated by the U.S. Department of Labor in partnership with the U.S. Office of Personnel Management, entitled "Planning Your Future—A Federal Employee's Survival Guide" (http://safetynet.doleta.gov), provides a wide range of critical information to Federal employees who are affected by downsizing and are attempting to make successful career transitions, especially to occupations in the private sector. (Additional information on these sites and other career transition resources is available from OPM's Workforce Restructuring Office at (202) 606–0960; (202) 606–2329, FAX.)

New Interim Regulations To Extend Career Transition Programs

The career transition regulations were originally scheduled to be in effect through September 30, 1999, as a temporary replacement for the Interagency Placement Program (IPP). Because of the success of the career transition program, general support for extending the current program rather than returning to the less successful IPP, and the continuing need for effective assistance programs during ongoing restructuring, OPM is now issuing interim regulations that extend the September 30, 1999, sunset date that is found in §§ 330.603 and 330.702, for an additional 2 years, through September 30, 2001. At the same time, the Interagency Placement Program (subpart C of part 330) will remain suspended for this 2-year period. This 2-year extension will allow agencies and employees to continue benefitting from these successful placement programs during what we expect will be a period of continued restructuring, while also allowing OPM to gather additional data and input from stakeholders on the current career transition programs and determine if they should be made permanent, replaced, or modified in the future.

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Technical Changes to the Career Transition Regulations

Major changes will not be made to these programs without consultation with management and labor. However, OPM is incorporating a number of technical changes to clarify the existing career transition program:

Eligibility for Special Selection Priority Under the Career Transition Assistance Program (CTAP)

Revised § 330.605(b) makes the criteria for eligibility for special selection priority as a surplus employee consistent with the definition of a surplus employee in § 330.604(i)(1).

Expiration of Special Selection Priority Under CTAP

This section clarifies under what conditions a surplus employee may lose his or her eligibility under § 330.605(c)(1).

Clarification of Posting Requirements Under CTAP

Section 330.607(b) clarifies long-standing policy that agencies need not post internal vacancies if they are able to determine and document that there are no agency CTAP eligibles in the particular local commuting area where the vacancy is located. Since most agencies track the number and locations of their CTAP eligibles, this allows them to continue this practice with appropriate documentation rather than posting vacancies for surplus or displaced employees in locations where they have no employees in this category.

Definition of a Displaced Employee Under the Interagency Career Transition Assistance Program (ICTAP)

This section adds a specific reference from § 353.110(b) to the definition of a displaced employee under § 330.703(b)(3).

Order of Selection for Filling Vacancies From Outside the Agency's Workforce Under ICTAP

Revised § 330.705(a)(3) clarifies that two groups of employees with statutory rights to selection priority are entitled to selection for Federal vacancies on the same basis as ICTAP eligible candidates: (1) Employees of the District of Columbia Department of Corrections who are separated from service as a result of the closure of the Lorton Correctional Complex and are eligible for selection priority under subpart K of part 330; and (2) displaced Panama Canal Zone employees eligible under subpart L of part 330.

Exceptions From CTAP and/or ICTAP When Filling Vacancies From Outside the Agency's Workforce

Revised §§ 330.606(d)(27) and 330.705(c)(8) clarify that situations may arise in which agencies are required to carry out certain movements of employees to one or more other agencies as a result of an interagency (1) Transfer of function; (2) mass transfer; or (3) reorganization. Because such actions are mandated by statute and do not involve creation of new vacancies, such actions can be carried out without regard to CTAP or ICTAP restrictions.

The new § 330.705(c)(17) clarifies that interagency details are not subject to ICTAP.

New § 330.705(c)(18) clarifies that the exception of job swaps from CTAP in § 330.606(d)(5) also applies to ICTAP under interagency job swap programs individually approved by OPM.

New § 330.705(c)(19) makes clear that persons who are fully eligible for ICTAP coverage may be selected by an agency without announcing or reporting the vacancy, generally as long as the new position has promotion potential no greater than the potential of the position the employee is leaving or previously held on a permanent basis in the competitive service. This policy was previously implied but was not explicit. This new section is consistent with the provisions and underlying intent of § 330.707(a) of this title which addresses reporting vacancies and parallels the discretionary actions provisions of § 335.103(c)(3)(v) of this title.

New § 330.606(d)(29) and § 330.705(c)(20) allow for the voluntary transfer of employees from one agency to another under a Memorandum of Understanding or similar type of agreement when both agencies and the affected employees agree to the arrangement.

New § 330.606(d)(30) allows agencies to move employees who are under established mobility agreements as part of a planned rotational program within the agency without regard to CTAP eligibles in the new location.

Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Extending these career transition programs will provide continuity of the special selection programs for surplus and displaced Federal employees beyond the present expiration date of September 30, 1999. This change is necessary and critical to assist agencies' restructuring efforts through the remainder FY 1999 and beyond. Immediate elimination of the program's current September 30, 1999, expiration date will ensure that employees affected by reductions in force will receive the full year of career transition benefits, following separation, that they are entitled to under the regulations.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Government employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 330

Armed forces reserves, Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 330 of title 5, Code of Federal Regulations, as follows:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority citation for part 330 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; subparts F–G also issued under Presidential memorandum dated September 12, 1995, entitled "Career Transition Assistance for Federal Employees"; subpart H also issued under 5 U.S.C. 8337(h) and 8457(b); subpart I also issued under 106 Stat. 2720, 5 U.S.C. 3301 note and sec. 4432 of Pub. L. 102–484, 106 Stat. 2315; subpart K also issued under sec. 11203 of Pub. L. 105–33, 111 Stat. 251.

Subpart C—Placement Assistance Programs for Displaced Employees

2. In § 330.301, paragraph (b) is revised to read as follows:

§ 330.301 Coverage.

* * * * *

(b) The operation of this subpart will be suspended from February 29, 1996 through September 30, 2001. In the interim, placement assistance will be provided in accordance with subparts B, F, and G of this part. OPM may extend this date if it determines that the Federal Government is still experiencing an emergency downsizing situation.

Subpart F—Agency Career Transition Assistance Plans (CTAP) for Local Surplus and Displaced Employees

3. Section 330.603 is revised to read as follows:

§ 330.603 Duration.

This subpart will expire on September 30, 2001, unless the Office of Personnel Management extends the program based on its determination that the Federal Government is still experiencing an emergency downsizing situation.

4. In § 330.605, paragraphs (b) and (c)(1) are revised to read as follows.

§ 330.605 Eligibility.

* * * * *

(b) *Eligibility for special selection priority begins* on the date the agency issues the employee a reduction in force separation notice, certificate of expected separation, notice of proposed separation for declining a directed reassignment or transfer of function outside of the local commuting area, or other official agency certification.

(c) * * *

(1) The RIF separation date, the date of the employee's resignation, retirement, or separation from the agency (including separation under adverse action procedures for declining a directed reassignment or transfer of function or similar relocation to another local commuting area).

* * * * *

5. In § 330.606, paragraph (d)(27) is revised to read as follows and paragraphs (d) (29) and (30) are added.

§ 330.606 Order of selection for filling vacancies from within the agency.

* * * * *

(d) * * *

(27) Noncompetitive movement of employees between agencies as a result of interagency reorganization, interagency transfer of function, or interagency mass transfer; and

* * * * *

(29) The voluntary transfer of employees from one agency to another under a Memorandum of Understanding or similar type of agreement when both agencies and the affected employees agree to the transfer.

(30) The reassignment of an employee whose position description or other written mobility agreement provides for reassignments outside the commuting area as part of a planned rotational program within the agency.

6. In § 330.607, paragraph (b) is revised to read as follows.

§ 330.607 Notification of surplus and displaced employees.

* * * * *

(b) Agencies must take reasonable steps to ensure eligible employees are notified of all vacancies the agency is filling in locations where there are CTAP eligibles, and what is required for them to be determined well-qualified for the vacancies. If there are no CTAP eligibles in a local commuting area, the agency may document this fact as an alternative to posting the vacancy under the CTAP program.

* * * * *

Subpart G—Interagency Career Transition Assistance Plan for Displaced Employees

7. Section 330.702 is revised to read as follows:

§ 330.702 Duration.

This subpart will expire on September 30, 2001, unless the Office of Personnel Management extends the program based on its determination that the Federal Government is still experiencing an emergency downsizing situation.

8. In § 330.703, paragraph (b)(3) is revised to read as follows:

§ 330.703 Definitions.

* * * * *

(b) * * *

(3) A former career or career-conditional employee who was separated because of a compensable injury or illness as provided under the provisions of subchapter I of chapter 81 of title 5, United States Code, whose compensation has been terminated and whose former agency is unable to place the individual as required by § 353.110(b) of this chapter;

* * * * *

9. In § 330.705, paragraph (a)(3) is revised, paragraph (c)(8) is revised, and paragraphs (c)(17), (c)(18), (c)(19) and (c)(20) are added to read as follows:

§ 330.705 Order of selection in filling vacancies from outside the agency's workforce.

(a) * * *

(3) Any of the following three conditions:

(i) Current or former Federal employees displaced from other agencies under this subpart;

(ii) Current or former employees displaced from the District of Columbia Department of Corrections eligible under subpart K of this part, or

(iii) Displaced Panama Canal Zone employees eligible under subpart L of this part.

* * * * *

(c) * * *

(8) Noncompetitive movement of employees between agencies as a result of interagency reorganization, interagency transfer of function, or interagency mass transfer;

* * * * *

(17) Interagency details;

(18) Exchange of employees between agencies to avoid involuntary separations, under plans approved by OPM (i.e., interagency job swaps); and

(19) Transfer, reassignment, or reinstatement of an individual who meets the eligibility requirements of § 330.704 to a position having promotion potential no greater than the potential of a position the individual currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons.

(20) The voluntary transfer of employees from one agency to another under a Memorandum of Understanding or similar type of agreement when both agencies and the affected employees agree to the transfer.

[FR Doc. 99–19103 Filed 7–26–99; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–042–1]

Gypsy Moth Generally Infested Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the gypsy moth regulations by adding 4 counties in Indiana, 6 counties in Michigan, 11 counties in Ohio, 4 cities and 3 counties in Virginia, and 2 counties in Wisconsin to the list of generally infested areas. As a result of this action, the interstate movement of certain articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested States.

DATES: This interim rule is effective July 27, 1999. We invite you to comment on this docket. We will consider all comments that we receive by September 27, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–042–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

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Please state that your comment refers to Docket No. 99–042–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Ms. Coanne E. O'Hern, Operations Officer, Invasive Species and Pest Management Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247; or e-mail: Coanne.E.O'Hern@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45–12 and referred to below as the regulations) quarantine certain States because of the gypsy moth and restrict the interstate movement of certain articles from generally infested areas in the quarantined States to prevent the artificial spread of the gypsy moth.

In accordance with § 301.45–2 of the regulations, generally infested areas are, with certain exceptions, those States or portions of States in which a gypsy moth general infestation has been found by an inspector or each portion of a State that the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if: (1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of such articles; and (2) the designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

Designation of Areas as Generally Infested Areas

Section 301.45–3 lists generally infested areas in the quarantined States. We are amending § 301.45–3(a) of the regulations by adding 4 counties in Indiana, 6 counties in Michigan, 11 counties in Ohio, 4 cities and 3 counties in Virginia, and 2 counties in Wisconsin to the list of generally infested areas. As a result of this rule, the interstate movement of regulated articles from these areas will be restricted.

We are taking this action because, in cooperation with the States, the United States Department of Agriculture conducted surveys that detected all life stages of the gypsy moth in these areas. Based on these surveys, we determined that reproducing populations exist at significant levels in these areas. Eradication of these populations is not considered feasible because these areas are immediately adjacent to areas currently recognized as generally infested and are, therefore, subject to reinfestation.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary because of the possibility that the gypsy moth could be artificially spread to noninfested areas of the United States, where it could cause economic losses due to the defoliation of susceptible forest and shade trees.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.45–3, paragraph (a) is amended by adding areas to the entries for Indiana, Michigan, Ohio, Virginia, and Wisconsin, in alphabetical order, to read as follows:

§ 301.45–3 Generally infested areas.

(a) * * *

* * * * *

Indiana

Allen County. The entire county.
Elkhart County. The entire county.
LaGrange County. The entire county.
Porter County. The entire county.

* * * * *

Michigan

* * * * *

Alger County. The entire county.

* * * * *

Delta County. The entire county.
Dickinson County. The entire county.

* * * * *

Marquette County. The entire county.

* * * * *

Menominee County. The entire county.

* * * * *

Schoolcraft County. The entire county.

* * * * *

Ohio

Ashland County. The entire county.

* * * * *

Defiance County. The entire county.
Erie County. The entire county.
Fulton County. The entire county.

* * * * *

Henry County. The entire county.

* * * * *

Licking County. The entire county.

* * * * *

Muskingum County. The entire county.
Noble County. The entire county.

* * * * *

Sandusky County. The entire county.

* * * * *

Williams County. The entire county.
Wood County. The entire county.

* * * * *

Virginia

* * * * *

City of Bedford. The entire city.

* * * * *

City of Danville. The entire city.

* * * * *

City of Lynchburg. The entire city.

* * * * *

City of South Boston. The entire city.

* * * * *

Alleghany County. The entire county.

* * * * *

Bedford County. The entire county.
Botetourt County. The entire county.

* * * * *

Wisconsin

* * * * *

Dodge County. The entire county.

* * * * *

Fond du Lac. The entire county.

* * * * *

Done in Washington, DC, this 21st day of July 1999.

William R. DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–19139 Filed 7–26–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV99–930–3 IFR]

Tart Cherries Grown in the States of Michigan, et al.; Decreased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0025 to $0.00225 per pound. It also decreases the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.00125 to $0.001125 per pound. Both assessment rates are established for the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 1999–2000 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1 and ends June 30. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective July 28, 1999. Comments received by September 27, 1999, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2530-S, PO Box 96456, Washington, DC 20090–6456, telephone: (202) 720–2491; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720–2491; Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may also view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable tart cherries beginning July 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the

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district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Board for the 1999–2000 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0025 to $0.00225 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree is decreased from $0.00125 to $0.001125 per pound.

The tart cherry marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rates. The assessment rates are formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997–98 fiscal period, the Board recommended, and the Department approved, assessment rates that would continue in effect from fiscal period to fiscal period unless modified, suspended or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on March 18–19, 1999, and unanimously recommended 1999–2000 expenditures of $487,780 and an assessment rate of $0.00225 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree, and an assessment rate of $0.001125 per pound for cherries utilized for juice, juice concentrate, or puree. In comparison, last year's budgeted expenditures were $540,000. Decreased assessment rates have been recommended by the Board because the cherry industry has experienced record high crops for the past two seasons, and anticipates another large crop in 1999–2000. In addition, the Board wants to reduce handler costs and keep its monetary reserve within the authorized maximum of approximately one year's operational expenses specified in § 930.42(a). The decreased rates are expected to generate enough income to meet the Board's reduced operating expenses in 1999–2000.

The major expenditures recommended by the Board for the 1999–2000 fiscal period include $222,780 for personnel, $100,000 for Board meetings, and $100,000 for compliance. Budgeted expenses for these items in 1998–99 were $150,000 for personnel, $80,000 for Board meetings, and $175,000 for compliance.

The order provides that when an assessment rate based on the number of pounds of tart cherries handled is established, it should provide for differences in relative market values for various cherry products. The discussion of this provision in the order's promulgation record indicates that proponents testified that cherries utilized in high value products such as frozen, canned, or dried cherries should be assessed one rate while cherries used to make low value products such as juice concentrate or puree should be assessed at one-half that rate.

Data from the National Agricultural Statistics Service (NASS) states that for 1998, tart cherry utilization for juice, wine, or brined uses was 28.3 million pounds for all districts covered under the order. The total processed amount of tart cherries for 1998 was 303.8 million pounds. Juice, wine, and brined tart cherries represented less than 10 percent of the total processed crop, and about 8 percent over the last three seasons (1996 through 1998).

In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the crop year at 260 million pounds. It further estimated that about 204.5 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 55.5 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $460,125 (204.5 million pounds × $0.00225 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree would be $62,500 (55.5 million pounds × $0.001125 per pound). Therefore, total assessment income for 1999–2000 is estimated at $522,625, which will be adequate to cover budgeted expenses. Funds in the reserve (currently $225,000) will be kept within the approximately one year's operational expenses permitted by the order (§ 930.42(a)).

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although the assessment rates are effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modifications of the assessment rates are needed. Further rulemaking will be undertaken as necessary. The Board's 1999–2000 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. The number of reported tart cherry producers in the regulated area has been reduced from 1,220 to 900 based on more recent information received by the Board. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $5,000,000, and small agricultural producers are those whose annual receipts are less than $500,000. The majority of tart cherry handlers and producers may be classified as small entities.

This rule decreases the assessment rate established for the Board and collected from handlers for the 1999–2000 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0025 to $0.00225 per pound, and the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.00125 to $0.001125 per pound. The Board unanimously recommended 1999–2000 expenditures of $487,780 and the reduced assessment rates. The quantity of assessable tart cherries expected to be produced during the 1999–2000 crop year is estimated at 260 million pounds. Assessment income, based on this crop, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 1999–2000 fiscal period include $222,780 for personnel, $100,000 for Board meetings, and $100,000 for compliance. Budgeted expenses for these items in 1998–99 were $150,000 for personnel, $80,000 for Board meetings, and $175,000 for compliance.

The Executive Committee of the Board, after discussing a proposed budget and assessment rates in executive session, recommended the continuation of the current rates. It concluded that it was prudent for the Board to have approximately one year's budget amount in the operating reserve.

However, after considerable discussion, the Board concluded it should reduce handlers' assessment costs and that the reserve should not exceed one-half year's budget amount. Also, the cherry industry has experienced record large crops for the past two seasons, and anticipates a large crop for the upcoming season. Further, the amount budgeted for Board compliance costs has been reduced. The Board discussed the alternative of continuing the existing assessment rates, but concluded that would cause the amount in the operating reserve to exceed what is actually needed.

After the discussion, the Board voted unanimously to decrease the assessment rates. In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the crop year at 260 million pounds. It further estimated that about 204.5 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 55.5 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $460,125 (204.5 million pounds × $0.00225 per pound). The potential income from the tart cherries utilized for juice, juice concentrate, or puree would be $62,500 (55.5 million pounds × $0.001125 per pound). Therefore, total assessment income for 1999–2000 is estimated at $522,625, which will be adequate to cover budgeted expenses. Funds in the reserve (currently $225,000) will be kept within the approximately one year's operational expenses permitted by the order (§ 930.42(a)).

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, the assessment rate decreases reduce the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the March 18–19, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1999–2000 fiscal period began on July 1, 1999, and the marketing order requires that the rates of assessment for each fiscal period apply to all assessable tart cherries handled during such fiscal period; (2) this action decreases the assessment rates for assessable tart cherries beginning on July 1, 1999; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.200 is revised to read as follows:

§ 930.200 Handler assessment rates.

On and after July 1, 1999, the assessment rate imposed on handlers shall be $0.00225 per pound for tart cherries grown in the production area and utilized in the production of tart cherry products other than juice, juice concentrate, or puree. The assessment rate for tart cherries grown in the production area and utilized in the production of juice, juice concentrate, or puree products shall be $0.001125 per pound. The assessment due date shall be October 1 of each crop year.

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Dated: July 21, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–19062 Filed 7–26–99; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–155–AD; Amendment 39–11229; AD 99–15–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–600 series airplanes. This action requires revising the Airplane Flight Manual (AFM) to prohibit operation of the airplane under certain conditions; repetitive inspections of the tab mast fittings of the elevator tab assemblies to detect cracking; an elevator tab freeplay check; and corrective actions, if necessary. This AD also requires installing an additional fastener on the elevator tab mast fitting, which terminates the AFM revision and extends certain repetitive inspections. This AD also requires replacement of the elevator tab mast fitting with a new, improved fitting, which constitutes terminating action for the requirements of this AD. This amendment is prompted by a report of a severe vibration incident on a Boeing Model 737–800 series airplane; inspection revealed fracturing of the elevator tab mast fitting and excessive freeplay in the elevator tab. The actions specified in this AD are intended to prevent loss of controllability of the airplane due to excessive freeplay in the elevator tab or a free tab.

DATES: Effective August 11, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 11, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–155–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gregory L. Schneider, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On June 2, 1999, the FAA received a report of a severe vibration incident on a Boeing Model 737–800 series airplane, which had accumulated 3,517 total flight hours and 1,284 total flight cycles. The airplane was involved in a high-speed descent with speed brakes extended while operating at an airspeed of 320 knots. During the descent, severe vibration occurred at 250 knots. At 230 knots, the speed brakes were retracted and the vibration stopped. The landing was uneventful.

Inspection of the airplane revealed that the upper flange of the right elevator tab mast fitting, to which the elevator tab push rods are attached, was found fractured. The lower flange of the fitting was not damaged. In addition, excessive freeplay in the elevator tab also was observed and measured during the inspection.

Further analysis confirmed that the damage to the fitting was aggravated by speed-brake-induced airframe vibration. Such vibration could lead to damage of the elevator tab mast fitting, excessive freeplay in the tab, and consequent separation of the tab mast fitting from the tab. Excessive freeplay in the tab could result in severe airframe vibration and consequent damage to the tab, elevator, and horizontal stabilizer. Separation of the elevator tab mast fitting will result in a free tab. These conditions, if not corrected, could result in loss of controllability of the airplane.

In light of this information, on June 10, 1999, the FAA issued telegraphic AD T99–13–51, which is applicable to certain Boeing Model 737–700 and –800 series airplanes. In addition, the FAA has received information indicating that Boeing Model 737–600 series airplanes also are subject to the unsafe condition identified in telegraphic AD T99–13–51. Therefore, the FAA has determined that rulemaking action is necessary to address that unsafe condition on Model 737–600 series airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–55A1068, Revision 1, dated June 11, 1999, which describes procedures for repetitive high frequency eddy current (HFEC) and detailed visual inspections of the tab mast fittings of the left and right elevator tab assemblies to detect cracking, and a one-time elevator tab freeplay check to detect excessive freeplay of the elevator tabs; and corrective actions, if necessary. The alert service bulletin also describes procedures for installing an additional high-strength fastener on the elevator tab mast fitting (time-limited modification).

The FAA also has reviewed and approved Boeing Service Bulletin 737–55–1063, dated July 1, 1999, which describes procedures for replacing a cracked elevator tab mast fitting with a new, improved fitting. Such replacement eliminates the need for repetitive inspections of the elevator tab mast fittings.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent loss of controllability of the airplane due to excessive freeplay in the elevator tab or a free tab. This AD requires revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit operation of the airplane at certain airspeeds with the speed brakes extended, and at certain altitudes.

This AD also requires repetitive HFEC and detailed visual inspections of the tab mast fittings of the left and right elevator tab assemblies to detect cracking, and a one-time elevator tab freeplay check to detect excessive freeplay of the elevator tab; and corrective actions, if necessary.

Additionally, this AD requires installing an additional high-strength fastener on the elevator tab mast fitting (time-limited modification). Such installation terminates the AFM revision and allows extension of the repetitive interval for accomplishment of the HFEC and detailed visual inspections.

This AD also requires replacement of the elevator tab mast fittings with new, improved fittings, which constitutes terminating action for the requirements of this AD.

Certain inspections and checks are required to be accomplished in accordance with Boeing Alert Service Bulletin 737–55A1068, Revision 1. Replacement actions are required to be accomplished in accordance with Boeing Service Bulletin 737–55–1063, dated July 1, 1999.

It should be noted that, except as otherwise provided for in the AFM emergency procedures, this AD prohibits the deployment of the spoilers at speeds in excess of 310 knots indicated airspeed (IAS) with speed brakes extended. This AD also prohibits operation of the airplane above FL 390. The FAA recognizes that under emergency circumstances, as specified in the AFM, it might become necessary to deploy spoilers in excess of 310 knots IAS. In that event, this AD requires accomplishment of the HFEC and detailed visual inspections of the elevator tab mast fittings and of the check of the tabs for freeplay, prior to further flight after landing.

Cost Impact

None of the Model 737–600 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future:

It would require approximately 2 work hours to accomplish the inspection and check, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the inspection and check required by this AD would be $120 per airplane.

It would require approximately 3 work hours to accomplish the time-limited modification, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the time-limited modification required by this AD would be $180 per airplane.

It would require approximately 8 work hours to accomplish the replacement action, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,149 per airplane. Based on these figures, the cost impact of the replacement required by this AD would be $5,629 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–155–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–15–09 Boeing: Amendment 39–11229. Docket 99–NM–155–AD.

Applicability: Model 737–600 series airplanes having line numbers 1 through 190, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of controllability of the airplane due to excessive freeplay in the elevator tab or a free tab, accomplish the following:

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Airplane Flight Manual (AFM) Revision

(a) Within 24 clock hours after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM to include the following information.

This may be accomplished by inserting a copy of this AD into the AFM.

Except as otherwise provided for in the AFM emergency procedures, do not operate the airplane at speeds in excess of 310 knots indicated airspeed (IAS) with speed brakes extended. Do not operate the airplane above FL 390.

(b) In the event of deployment of the speed brakes at speeds in excess of 310 knots indicated airspeed (IAS), prior to further flight after landing, accomplish the requirements of paragraph (c) of this AD.

Inspections and Check

Note 2: Accomplishment of the inspections and check required by this AD, prior to the effective date of this AD, in accordance with Boeing Alert Service Bulletin 737–55A1068, dated June 9, 1999, is considered acceptable for compliance with the repetitive inspections and checks required by paragraphs (c) and (d) of this AD.

(c) Within 10 days after the effective date of this AD, perform a high frequency eddy current (HFEC) inspection, and a detailed visual inspection of the elevator tab mast fittings of the left and right elevator tab assemblies to detect cracking, and a one-time elevator tab freeplay check to detect freeplay of the elevator tabs, in accordance with Boeing Alert Service Bulletin 737–55A1068, Revision 1, dated June 11, 1999.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no cracking is found in any elevator tab mast fitting, repeat the HFEC and detailed visual inspections thereafter at intervals not to exceed 15 days, until accomplishment of the actions required by paragraph (d) of this AD.

(2) If any cracking is found in any elevator tab mast fitting, prior to further flight, accomplish the requirements of paragraph (e) of this AD.

(3) If any freeplay is found in any elevator tab, which is outside the limits specified in the alert service bulletin, prior to further flight, perform corrective actions in accordance with the alert service bulletin.

Note 4: Boeing Alert Service Bulletin 737–55A1068, Revision 1, dated June 11, 1999, references Boeing Model 737–600/–700/–800 Maintenance Manual (AMM), Subjects 27–09–91, 27–31–00, and 51–21–99; 737 Nondestructive Test (NDT) Manual D6–37239, Part 6, Subject 55–00–00; 737 Structural Repair Manual (SRM) Subject 51–20–81; and Operations Manual Service Bulletin D6–27370–TBC ("Elevator Tab Operational Limitations"), dated June 10, 1999; as additional sources of service information to accomplish certain requirements of this AD.

Time-Limited Modification

(d) Within 90 days after the effective date of this AD, install an additional high-strength fastener on the elevator tab mast fitting in accordance with Boeing Alert Service Bulletin 737–55A1068, Revision 1, dated June 11, 1999. Accomplishment of this modification constitutes terminating action for the requirements of paragraph (b) of this AD. Following accomplishment of the installation, the AFM revision required by paragraph (a) of this AD may be removed from the AFM. Following accomplishment of the installation, repeat the HFEC and detailed visual inspections required by paragraph (c) of this AD thereafter at intervals not to exceed 90 days until accomplishment of paragraph (e) of this AD.

Terminating Action

(e) Within 4,000 flight cycles or 18 months after the effective date of this AD, whichever occurs earlier, replace the elevator tab mast fittings with new, improved tab mast fittings, in accordance with Boeing Service Bulletin 737–55–1063, dated July 1, 1999. Accomplishment of this replacement action constitutes terminating action for the requirements of this AD.

Spares

(f) As of the effective date of this AD, no elevator tab mast fitting, part number (P/N) 183A8400–1 or 183A8400–2, shall be installed on any airplane.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Except as provided by paragraphs (a) and (b) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–55A1068, Revision 1, dated June 11, 1999, and Boeing Service Bulletin 737–55–1063, dated July 1, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on August 11, 1999.

Issued in Renton, Washington, on July 13, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18364 Filed 7–26–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1309 and 1310

[DEA NUMBER 168–F]

RIN 1117–AA46

Temporary Exemption From Chemical Registration for Distributors of Pseudoephedrine and Phenylpropanolamine Products

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA) is finalizing the Interim Final Rule, which included a request for comment, published in the **Federal Register** on October 17, 1997 (62 FR 53959). The interim rule amended the regulations to provide a temporary exemption from the registration requirement for persons who distribute pseudoephedrine and phenylpropanolamine drug products. No comments to the Interim Final Rule were received. This Final Rule makes those exemptions permanent.

FOR FURTHER INFORMATION CONTACT: Patricia Good, Chief, Liaison and Policy Section, Office of Diversion Control, Washington, DC 20537, telephone (202) 307–7297.

EFFECTIVE DATES: July 27, 1999.

SUPPLEMENTARY INFORMATION: On October 17, 1997, the Drug Enforcement Administration (DEA) published an Interim Final rule with request for comment which provided temporary exemption from the registration requirement for persons who distribute pseudoephedrine and phenylpropanolamine drug products (62 FR 53959).

Two specific exemptions were established in this interim rulemaking. The first exemption dealt with retail distributors of regulated drug products.

DEA amended 21 CFR 1309.29 to exempt retail distributors of pseudoephedrine and phenylpropanolamine related drug products from the registration requirement, so long as they engaged exclusively in distributions of regulated drug products below the 24-gram limit in a single transaction for legitimate medical use, either directly to walk-in customers or in face-to-face transactions by direct sales. The second exemption dealt with persons who are required to obtain a registration. The interim rule amended 21 CFR 1310.09 to provide that any person who submitted an application for registration for activities involving pseudoephedrine and phenylpropanolamine regulated dr products on or before December 3, 1997, was exempted from the registration requirement for their lawful activities with regulated drug products until the Administration takes final action with respect to that application.

No comments were received regarding this interim rulemaking. Therefore, the interim rule is adopted without change.

The Deputy Assistant Administrator for the Office of Diversion Control hereby certifies that this final rulemaking will not have a significant economic impact upon a substantial number of small business entities whose interest must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This final rulemaking is an administrative action to make the regulations consistent with the law and to avoid interruption of legitimate commerce by granting temporary exemptions from registration.

The Deputy Assistant Administrator further certifies that this final rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1–B. DEA has determined that this is not a significant rulemaking action.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. this rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

The interim rule amending 21 CFR parts 1309 and 1310 which was published on October 17, 1997 at 62 FR 53959 is adopted as a final rule.

Dated: June 23, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 99–19047 Filed 7–26–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 100

RIN 0906–AA50

National Vaccine Injury Compensation Program: Addition of Vaccines Against Rotavirus to the Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule amends the existing regulations governing the National Vaccine Injury Compensation Program (VICP) by adding vaccines against rotavirus to the Table of Injuries, which lists the vaccines covered under the VICP. This action is taken under section 2114(e) of the Public Health Service Act (the Act). The VICP provides a system of no-fault compensation for certain individuals who have been injured by specific childhood vaccines.

The two prerequisites for adding vaccines against rotavirus to the VICP have been satisfied. An excise tax of 75 cents per dose was enacted on October 21, 1998, and took effect for sales of the vaccines after October 21, 1998. The Centers for Disease Control and Prevention (CDC) has recommended to the Secretary of HHS that this vaccine be routinely administered to children. Thus, vaccines against rotavirus are now included in the VICP.

EFFECTIVE DATE: This regulation is effective on July 27, 1999. As provided by section 13632(a)(3) of Public Law 103–66, the Omnibus Budget Reconciliation Act of 1993, the addition of the vaccines against rotavirus to the VICP took effect on October 22, 1998, the effective date of the excise tax. See the discussion under **SUPPLEMENTARY INFORMATION**, for an explanation of the implications of this applicability date.

FOR FURTHER INFORMATION CONTACT: Geoffrey Evans, M.D., Medical Director, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number (301) 443–4198.

SUPPLEMENTARY INFORMATION: The statute authorizing the VICP provides for the inclusion of additional vaccines in the Program when they are recommended by the CDC to the Secretary for routine administration to children. See section 2114(e) of the Act, 42 U.S.C. 300aa–14(e). Consistent with section 13632(a)(3) of Public Law 103–66, the regulations governing the Program provide that such vaccines will be included in the Table of Injuries when an excise tax to provide funds for the payment of compensation with respect to such vaccines takes effect. 42 CFR 100.3(c)(3) (1998).

The CDC recommendation regarding vaccines against rotavirus was published in the Morbidity and Mortality Weekly Report on March 19, 1999. The excise tax for such vaccines was enacted by Public Law 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and became effective for sales after October 21, 1998. Accordingly, we are amending the regulations to include specific reference to rotavirus vaccines in the Table of Injuries and in the "coverage" portion of the regulations.

We have not identified any illness, disease, injury or condition which is caused by vaccines against rotavirus. Thus, the vaccine is added to the Table of Injuries with "No Condition Specified." If we learn of any such illness, disease, injury or condition, we will consider amending the Table of Injuries to provide for its coverage, and a time period in which the first symptom or manifestation of its onset will be presumed to be vaccine-related.

Section 2116(b) of the Act, 42 U.S.C. 300aa–16(b), provides that individuals who were not previously eligible to file a petition before a revision to the Table of Injuries may file a petition for compensation for a vaccine added to the Table of Injuries. Such a petition must be filed not later than 2 years after the effective date of the revision if the injury or death occurred not more than

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8 years before the effective date of the revision. Thus, for injuries or deaths related to rotavirus vaccine which occurred before October 22, 1998, petitions may be filed no later than October 22, 2000, provided that the injury or death occurred no earlier than October 22, 1990. Filing deadlines for injuries or deaths related to rotavirus vaccines administered after October 21, 1998, are governed by section 2116(a)(2) and (3) of the Act, 42 U.S.C. 300aa–16(a)(2) and (3).

Justification for Omitting Notice of Proposed Rulemaking

This amendment to 42 CFR 100.3 is required by section 2114(e) of the Act and 42 CFR 100.3, Vaccine injury table. Since this is a technical amendment, the Secretary has determined, under 5 U.S.C. 553 and departmental policy, that it is unnecessary and impractical to follow proposed rulemaking procedures or to delay the effective date of this final rule.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Department has determined that no resources are required to implement the requirements in this rule. Therefore, in accordance with the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities. The Secretary has also determined that this final rule does not meet the criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures. This technical amendment adds a new item to the Vaccine Injury Table.

We have determined that the rule is not a "major rule" within the meaning of the statute providing for Congressional review of agency rulemaking, 5 U.S.C. 801. Similarly, it will not have effects on State, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1980

This final rule has no information collection requirements.

List of Subjects in 42 CFR Part 100

Biologics, Health insurance, and Immunization.

Dated: July 15, 1999.

Donna E. Shalala,

Secretary.

Accordingly, 42 CFR part 100 is amended as set forth below.

PART 100—VACCINE INJURY COMPENSATION

1. The authority citation for 42 CFR part 100 is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act (42 U.S.C. 216); sec. 2115 of the PHS Act; 100 Stat. 3767, as revised (42 U.S.C. 300aa–15); § 100.3 Vaccine Injury Table, issued under secs. 312 and 313 of Pub. L. 99–660, 100 Stat. 3779–3782 (42 U.S.C. 300aa–1 note); and sec. 2114(c) and (e) of the PHS Act, 100 Stat. 3766 and 107 Stat. 645 (42 U.S.C. 300aa–14(c) and (e)); and sec. 904(b) of Pub. L. 105–34, 111 Stat. 873.

§ 100.3 [Amended]

2. The Vaccine Injury Table at § 100.3(a) is amended by redesignating Item XII as Item XIII, and by adding a new Item XII as follows:

Vaccine	Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
. . .	. . .	. . .
XII. Rotavirus vaccine.	No condition specified.	Not applicable.

§ 100.3 [Amended]

3. Section 100.3(c) is amended as follows:

a. Remove in paragraph (c)(1) the words "paragraph (c)(2) or (3) of this section" and add in its place the words "paragraph (c)(2), (3) or (4) of this section";

b. Redesignate paragraph (c)(3) as paragraph (c)(4);

c. Remove in paragraph (c)(4), as redesignated, the words "(Item XII of the Table)" and add in its place the words "(Item XIII of the Table)"; and

d. Add a new paragraph (c)(3) to read as follows:

* * * * *

(c) Coverage provisions. * * *

(3) Rotavirus vaccines (Item XII of the Table) are included in the Table as of October 22, 1998.

* * * * *

[FR Doc. 99–19114 Filed 7–26–99; 8:45 am]
BILLING CODE 4160–15–U

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 828 and 852

RIN 2900–AJ47

VA Acquisition Regulation: Bonds and Insurance

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs Acquisition Regulation to revise and update section numbers and titles to correspond with the Federal Acquisition Regulation, to make minor grammatical corrections and revisions, to allow return of bid guarantees, other than bid bonds, to bidders by any method that will provide evidence of receipt, and to designate the Deputy Assistant Secretary for Acquisition and Materiel Management as the Department's designee for excluding individuals from acting as sureties on bonds and for making determinations to accept bonds from individuals named on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

DATES: *Effective Date:* July 27, 1999.

FOR FURTHER INFORMATION CONTACT: Don Kaliher, Acquisition Policy Team (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington DC 20420, (202) 273–8819.

SUPPLEMENTARY INFORMATION: The requirement at 828.101–70 to return bid guarantees, other than bid bonds, by certified mail has been modified to allow any method of delivery that will provide evidence of receipt. This will allow the use of express delivery services, may simplify the return and tracking process, and is consistent with similar coverage in the Federal Acquisition Regulation (FAR) at 11.403(d) and 33.211(b).

This final rule provides that the Deputy Assistant Secretary for Acquisition and Materiel Management (DAS for A&MM) is delegated authority to act as the Secretary's designee under section 28.203–7 of the FAR. Accordingly, the DAS for A&MM may make determinations to exclude individuals from acting as sureties on bonds and to accept bonds from individuals whose names appear on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. We think the DAS for A&MM is the appropriate official to make these determinations.

This final rule concerns contracts and would not have a significant effect on individuals or entities. Accordingly, we are dispensing with prior notice and comment and a delayed effective date.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This rule would not cause a significant effect on any entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

OMB Review

This document has been reviewed by OMB pursuant to Executive Order 12866.

List of Subjects

48 CFR Part 828

Government procurement, Insurance, Surety bonds.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

Approved: April 14, 1999

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR Chapter 8 is amended as follows:

PART 828—BONDS AND INSURANCE

1. The authority citation for part 828 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

2. The heading for subpart 828.1 is revised to read as follows:

Subpart 828.1—Bonds and Other Financial Protections

828.101–3 [Redesignated as 828.101–2]

3. Section 828.101–3 is redesignated as 828.101–2.

828.101–70 [Amended]

4. Section 828.101–70, paragraph (a) is amended by removing "certified mail or in person upon presentation of proper receipt after contract and bonds" and adding, in its place, "any method that will provide evidence of receipt, or in person upon presentation of proper receipt, after the contract and contract bonds"; paragraph (b) is amended by removing "certified mail, or" and adding, in its place, "by any method that will provide evidence of receipt or"; and paragraph (c) is amended by removing "until contract and bonds" and adding, in its place, "until the contract and contract bonds".

5. Section 828.106 heading is added immediately preceding 828.106–6 to read as follows:

828.106 Administration.

6. Section 828.106–6 is revised to read as follows:

828.106–6 Furnishing information.

For all contracts except contracts awarded by the Office of Facilities Management, the head of the contracting activity, as defined in 802.100, shall be the Department designee referenced in FAR 28.106–6(c) to furnish copies of payment bonds to requestors. For contracts awarded by the Office of Facilities Management, the Office of Facilities Management contracting officer shall be the Department designee.

7. Subpart 828.2 is added to read as follows:

Subpart 828.2—Sureties and Other Security for Bonds

828.203–7 Exclusion of individual sureties.

The Deputy Assistant Secretary for Acquisition and Materiel Management is delegated authority to make the determinations referenced in FAR 28.203–7 to exclude individuals from acting as surety on bonds and to accept bonds from individuals named on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

828.306 [Amended]

8. Section 828.306, paragraph (b) is amended by removing "this 828.306" and adding, in its place, "paragraph (a) of this section".

9. The heading of Subpart 828.70 is removed.

828.7000 [Redesignated as 828.106–70]

10. Section 828.7000 is redesignated as 828.106–70.

828.7100 [Amended]

11. Section 828.7100, paragraph (a) is amended by removing "contracts which involve a risk of an unusually hazardous nature, covering medical research or development as" and adding, in its place, "contracts covering medical research or development which involve risks of an unusually hazardous nature, as".

828.7103 [Amended]

12. Section 828.7103, paragraph (a) is amended by removing "The financial protection to cover" and adding, in its place, "The amount of financial protection that the contractor is required to have and maintain to cover" and by removing "which the contractor is required to have and maintain".

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

852.228–70 [Amended]

14. Section 852.228–70, introductory text is amended by removing "828.7000" and adding, in its place, "828.106–70".

[FR Doc. 99–19107 Filed 7–26–99; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990119022–9164–02; I.D. 111998C]

RIN 0648–AM13

Fisheries of the Northeastern United States; Amendment 1 to the Atlantic Salmon Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues final regulations to implement Amendment 1 to the Atlantic Salmon Fishery Management Plan (FMP). Specifically, these final regulations establish a framework process to implement, add to or adjust

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Atlantic salmon management measures to allow for Atlantic salmon aquaculture projects in the exclusive economic zone (EEZ). Amendment 1 to the FMP also includes an overfishing definition for Atlantic salmon.

DATES: Effective August 26, 1999.

ADDRESSES: Copies of Amendment 1 and its regulatory impact review (RIR) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: Bonnie L. VanPelt, Fishery Management Specialist, 978–281–9244.

SUPPLEMENTARY INFORMATION: On November 13, 1998, the New England Fishery Management Council (Council) submitted for review and Secretarial approval an omnibus amendment that includes Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP. The omnibus amendment was approved in its entirety on March 3, 1999, and a notice of approval of the omnibus amendment was published in the **Federal Register** on April 21, 1999 (64 FR 19503). A proposed rule to implement the aquaculture framework process contained in Amendment 1 to the Atlantic Salmon FMP was published on February 5, 1999 (64 FR 5754). The comment period on the proposed rule closed March 22, 1999. No public comments were received on the proposed rule. A complete discussion of Amendment 1's provisions appears in the preamble to the proposed rule and is not repeated here.

Approved Management Measures

Amendment 1 to the Atlantic Salmon FMP includes a new Atlantic salmon overfishing definition and adds a mechanism to allow for Atlantic salmon aquaculture in the EEZ through a framework adjustment process. For a discussion of the Atlantic salmon overfishing definition, see the notice of approval of the omnibus amendment (64 FR 19503, April 21, 1999).

Although salmon is overfished, no additional management measures are imposed by Amendment 1. The management measures currently in place prohibit harvesting of salmon from the EEZ and require that any Atlantic salmon incidentally caught in other fisheries be released in a manner that insures maximum probability of survival. These measures have been determined to be sufficient to the extent practicable to minimize bycatch and bycatch mortality consistent with national standard 9.

The Northeast Fisheries Science Center certified the Council's recommended overfishing definition with reservation noting that there was no specified mortality limit or threshold projected for a rebuilt stock, or stock size above which fishing mortality could be greater than zero. However, the Center's conclusion was that in light of the status of the Atlantic salmon resource and its long rebuilding schedule, considerations of such biological reference points can be addressed when, and if, necessary. Moreover, overfishing is not occurring, as fishing mortality is zero and is expected to stay at zero for the foreseeable future. The Council has been notified that should the status of the resource change, it would need to revisit the overfishing definition to clarify what level of fishing mortality is appropriate to rebuild the resource to a sustainable level.

For the sake of efficiency, this rule establishes a framework process to allow for implementation of aquaculture projects, which is consistent with the process outlined for all other amendments now being developed to bring New England and Mid-Atlantic Fishery Management Council plans into compliance with the Sustainable Fisheries Act. This action would allow for the implementation of aquaculture projects through the adjustment of the management measures prohibiting the harvest of Atlantic salmon from the EEZ and through the imposition of one or more of the management measures identified in Amendment 1, including, but not limited to: Minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, and establishment of special management areas or zones.

Classification

The Regional Administrator, Northeast Region, NMFS, determined that Amendment 1 is necessary for the conservation and management of the Atlantic salmon fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 21, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 648.41 is added to read as follows:

§ 648.41 Framework specifications.

(a) *Within season management action.* The New England Fishery Management Council (NEFMC) may, at any time, initiate action to implement, add to or adjust Atlantic salmon management measures to allow for Atlantic salmon aquaculture projects in the EEZ, provided such an action is consistent with the goals and objectives of the Atlantic Salmon FMP.

(b) *Framework process.* After initiation of an action to implement, add to or adjust an Atlantic salmon management measure to allow for an Atlantic salmon aquaculture project in the EEZ, the NEFMC shall develop and analyze Atlantic salmon management measures to allow for Atlantic salmon aquaculture projects in the EEZ over the span of at least two NEFMC meetings. The NEFMC shall provide the public with advance notice of the availability of both the proposals and the analysis and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on aquaculture management measures must come from one or more of the following categories: minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones and any other management measures currently included in the FMP.

(c) *NEFMC recommendation.* After developing Atlantic salmon management measures and receiving public testimony, the NEFMC shall make a recommendation to NMFS. The NEFMC's recommendation must include supporting rationale and, if

management measures are recommended, an analysis of impacts and a recommendation to NMFS on whether to issue the management measures as a final rule. If NMFS concurs with the NEFMC's recommendation to issue the management measures as a final rule, the NEFMC must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the NEFMC's recommended management measures.

(3) Whether there is an immediate need to protect the resource.

(4) Whether there will be a continuing evaluation of measures adopted following their implementation as a final rule.

(d) *NMFS action.* If the NEFMC's recommendation includes implementation of management measures and, after reviewing the NEFMC's recommendation and supporting information:

(1) NMFS concurs with the NEFMC's recommended management measures and determines that the recommended measures should be issued as a final rule based on the factors specified in paragraph (c)(1) through (4) of this section, the measures will be issued as a final rule in the **Federal Register**.

(2) NMFS concurs with the NEFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the NEFMC recommendation, the measures will be issued as a final rule in the **Federal Register**.

(3) NMFS does not concur, the NEFMC will be notified in writing of the reasons for the non-concurrence.

(e) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[FR Doc. 99–19172 Filed 7–26–99; 8:45 am]

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Proposed Rules

Federal Register
Vol. 64, No. 143
Tuesday, July 27, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY–98–006]

RIN 0581–AB56

Eligibility Requirements for USDA Graded Shell Eggs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend the regulations governing the voluntary shell egg grading program. Media reports in April 1998 raised concerns about the practice of repackaging eggs. The proposed revisions would provide that in order to be officially identified with a USDA consumer grademark, shell eggs must not have been previously shipped for retail sale. The proposal would also amend the definition of the term "eggs of current production" (currently eggs no older than 30 days) thereby making eggs that were laid more than 15 days before the date of packing ineligible for official grading. However, interested parties are invited to submit comments proposing other periods of time that are viewed as being more appropriate. AMS is particularly interested in receiving comments regarding the period of between 15 to 30 days. In addition, a definition of the term "shipped for retail sale" would be added to the regulations. These revisions would strengthen the integrity of the USDA grade shield by making ineligible for grading certain types of eggs.

DATES: Comments must be received on or before September 27, 1999.

ADDRESSES: Send written comments to Douglas C. Bailey, Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0259, 1400 Independence Avenue, SW, Washington, D.C. 20250–0259. Comments may be faxed to 202/690–0941.

State that your comments refer to Docket No. PY–98–006 and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above location between 8:00 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Rex A. Barnes, Chief, Grading Branch, 202/720–3271.

SUPPLEMENTARY INFORMATION:

Background

AMS administers a voluntary grading program for shell eggs under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). Any interested person, commercial firm, or government agency that applies for service must comply with the terms and conditions of the regulations and must pay for the services rendered. AMS graders monitor processing operations and verify the grade and size of eggs packaged into packages bearing the USDA grade shield. Plants in which these grading services are performed are called official plants. Currently in the United States, about one-third of the eggs marketed in shell form for human consumption are processed under the voluntary grading program.

Shell egg producers either pack their eggs at the site where the eggs are produced (an "in-line" operation), or ship their eggs to a processing facility or egg processor located elsewhere (an "off-line" operation). Egg processors also sell and ship eggs among themselves to accommodate local imbalances in supply. Once eggs are washed, sized, and packaged for retail sale, they are shipped to retailers for distribution to the ultimate consumer.

Occasionally a retail store may have an excess inventory of eggs. They may have overstocked for a seasonal promotion (e.g., Easter or Christmas) or the expiration date printed on the cartons may be approaching. Retailers either dispose of these eggs, give the eggs to local charitable feeding operations before the expiration date, or return the eggs to the processor. The processor may, in turn, repackage the eggs or process them into liquid, frozen, or dried egg products. If repackaged, the eggs are removed from their original package, such as a carton or open tray (known as a "flat"), and placed into a new package which bears a pack date that is the same or different than on the original package. Eggs are usually, but not always, intermixed with other unprocessed eggs, rewashed, and regraded before repacking. The option of repackaging eggs has always been available to egg processors; there are no Federal regulations addressing the practice and Agency personnel have observed very little of it in official plants.

On April 7, 1998, a report was televised about an egg processor's practice of repackaging eggs. This report questioned the food safety and quality implications of this practice. This rule addresses the quality issues.

On April 17, 1998, USDA issued a written notice to the industry announcing suspension of the repackaging of eggs packed under the voluntary grading program while the Department reviewed its policies on egg repackaging. The suspension, effective April 27, ensured that eggs shipped for retail sale and returned were specifically ineligible for USDA-grade identification.

This proposed rule is the result of the Department's review of the repackaging issue. It would prohibit the USDA grade identification of eggs previously shipped for retail sale or eggs laid more than 15 days before date of packing. AMS is also requesting comments on alternate periods, particularly those between 15 and 30 days, that are viewed as being a more appropriate limit.

Eggs are at their peak of quality when they are laid and, over time, quality will decline. The rate of decline varies according to a variety of factors, with the most important being elapsed time since lay, storage temperature, and storage humidity. To maintain the integrity of the quality standards and the grade shield, only "eggs of current production" may be officially graded. AMS has defined those eggs to be shell eggs which have moved through usual marketing channels since the time they were laid and have not been held in refrigerated storage in excess of 30 days. In practice, AMS requires eggs being officially identified to be no older than 30 days on the day of packaging.

The first definition for "eggs of current production" was added to the regulations March 1, 1955, and included a 60-day requirement, which was

reduced to 30 days August 1, 1963. This definition allowed buyers and sellers to differentiate between relatively fresh eggs and cold storage or storage eggs. Commercial cold storage of eggs began in the U.S. around 1890, when egg production was seasonal. Until the 1950s, it was common for eggs to be held in refrigerated storage for up to 6 months. Cold storage could hold the spring and summer production surplus (about 50 percent of the annual production) for release during periods of relative scarcity in autumn and winter, thus avoiding drastic supply and price fluctuation. Modern breeding and flock management practices have virtually eliminated seasonal differences in egg production, so cold storage is no longer necessary or even practical. In addition, technological advances in the handling and marketing of shell eggs have reduced the time it takes for eggs to move through normal marketing channels and provide optimum conditions for maintaining egg quality.

Four dates are associated with the marketing of shell eggs. These, in order of occurrence, are the date of lay, the date of packaging, the expiration date, also known as the "Sell By" date, and the "Use By" date. The "Use By" date suggests the date after which product quality would likely be significantly diminished. Federal law does not require any of these dates to be present on shell egg packaging materials such as egg cartons. However, under the USDA grading program, the date of packaging is required, and if the expiration date is present, it can be no more than 30 days after the packaging date.

AMS believes that current shell egg marketing practices readily allow all processors to package shell eggs within 15 days of lay. However, as currently permitted by regulation, processors may on occasion repackage product returned from retail marketing channels or product stored in the processor's cooler that is approaching the current 30-day limit. In this way, processors can extend the number of days available to market the product by establishing a new, later expiration date. An April 1998 media story reported this practice and raised consumer awareness and concern about its food safety and quality implications.

This proposed rule responds to consumer concerns about product quality by proposing to make retail-returned eggs ineligible for official identification and proposing a shorter time limit for packaging shell eggs under the USDA grading program. This rule would not add or change any program requirements regarding the expiration date or the "Use By" date. By prohibiting retail-returned eggs and eggs older than 15 days from being officially graded and packaged, AMS believes that consumers who purchase officially graded product will receive product that is free of unwanted variation in egg quality that may be caused by the occasional blending of older, lower quality eggs with more recently laid, higher quality eggs.

AMS has tentatively concluded that reducing the time between date of lay and date of packaging will enhance the quality of USDA consumer graded eggs. Differences in the internal quality of eggs are expressed in Haugh units, a standardized quality scale determined primarily by the height of the albumen, or "white", of a broken-out egg under laboratory conditions. In one case study, AMS found that, under proper storage conditions, the Haugh unit average for eggs approximately 15 days old was 72, whereas the Haugh unit average for eggs approximately 30 days old was 68. These findings are consistent with the loss of quality normally associated with eggs of increasing age.

AMS has also tentatively concluded that industry practice readily allows eggs to be packaged within a period shorter than the current 30 days from date of lay. Discussions with industry members and Agency personnel familiar with current industry practice suggest that a 15-day limit would allow sufficient time for both in-line and off-line processors to trade, ship, process, and package eggs. In order to provide consumers with high quality shell eggs, AMS identifies best operational practices for processors that pack officially identified eggs. Accordingly, AMS is proposing to require that all eggs graded by USDA be no older than 15 days on the day of packaging by amending the definition of current production to mean shell eggs that are no more than 15 days old.

However, while formulating this proposal, AMS understood from some in the industry that a 15-day period may be an undue burden in certain situations. For example, smaller size eggs are sometimes stored to accumulate sufficient volumes for processing, and heavy demand for processing during holiday periods may extend the time between the date of lay and date of packaging. Therefore, although AMS still believes that a 15-day limit between the date of lay and date of packaging would generally allow sufficient time for processors to trade, ship, process, and package eggs, we are inviting interested persons to submit comments proposing other periods of time that are viewed as being more appropriate. AMS is especially interested in receiving comments regarding other limits between 15 to 30 days, for example a 21-day limit.

On May 19, 1998, the Food Safety and Inspection Service (FSIS) and the Food and Drug Administration (FDA) jointly published an advance notice of proposed rulemaking that set forth a farm-to-table strategy that may decrease the food safety risks associated with Salmonella enteritidis in shell eggs (63 FR 27502). The comment period closed August 17, 1998. The actions proposed by the two agencies included reviews of potential food safety risks associated with the practices of rewashing and repackaging shell eggs and of expiration dating practices that might mislead consumers. Future regulatory actions taken by FSIS and FDA would apply to all packaged shell eggs, including those packaged under USDA's voluntary grading program, which addresses quality.

Proposed changes

This proposed rule would further restrict the eligibility requirements for shell eggs packed under the voluntary AMS quality grading program.

The proposal would change the definition for *Eggs of current production* (§ 56.1) by specifying that the term denotes eggs that are no more than 15 days old. This definition would require eggs being officially identified to be no older than 15 days on the day of packaging instead of the present 30-day limit. Additionally, reference to the term "Refrigerator or storage eggs" that is used to define eggs held in excess of 30 days is removed because it is obsolete. It is a term that once referred to eggs which had been put into cold storage during periods of high production to be released during periods of relative scarcity. This is no longer industry practice and therefore the term is no longer needed.

The proposal adds a definition for the term *Shipped for retail sale* (§ 56.1). This term would mean shell eggs that are forwarded from the processing facility for distribution to the ultimate consumer. This includes eggs forwarded for sale to wholesalers, brokers, retailer warehouses, retailer stores, or other distribution points in the marketing chain.

Finally, the proposal revises the requirements of shell eggs to be identified with consumer grademarks (§ 56.40). Eggs "shipped for retail sale" that are returned to an egg processor would be ineligible for USDA consumer grade identification, even if they are eggs of current production.

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Executive Order 12866 and Effect on Small Entities

This proposed rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB). In addition, pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this proposed rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration defines small entities that produce and process chicken eggs as those whose annual receipts are less than $9,000,000 (13 CFR 121.201). Approximately 550,000 egg laying hens are needed to produce enough eggs to gross $9,000,000.

Currently, the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) authorizes a voluntary grading program for shell eggs. Shell egg processors that apply for service must pay for the services rendered. These user fees are proportional to the volume of shell eggs graded, so that costs are shared by all users. Shell egg processors are entitled to pack their eggs in packages bearing the USDA grade shield when AMS graders are present to certify that the eggs meet the grade requirements as labeled. Plants in which these grading services are performed are called official plants. Shell egg processors who do not use USDA's grading service may not use the USDA grade shield. There are about 700 shell egg processors registered with the Department that have 3,000 or more laying hens. Of these, 130 are official plants that use USDA's grading service and would be subject to this proposed rule. Of these 130 official plants, 14 meet the small business definition.

Repackaging is the practice of removing eggs from their original package and repacking them into a new package, with a pack date that is the same or different than on the original package. Eggs are at their peak of quality when they are laid and, over time, quality will decline. The repackaging of retail-returned eggs extends the time before those eggs reach the ultimate consumer. Since August 1, 1963, AMS has required eggs being officially identified to be no older than 30 days on the day of packaging.

In April 1998, the Agency surveyed its graders in the 130 official plants to determine the repackaging practices of those plants. Results of the survey indicated that 4 of the 130 plants had infrequently repackaged retail-returned eggs into shielded cartons during the previous year, usually during the holidays. No official plants that meet the definition for small businesses repackaged retail-returned eggs into shielded cartons.

On April 27, 1998, AMS suspended by written notice to the industry the repackaging of eggs into packages bearing the USDA grade shield when retailers had returned those eggs to the processor. The proposed revisions would provide that in order to be officially identified with a USDA consumer grademark, shell eggs must not have been previously shipped for retail sale.

This proposal would also amend the definition of the term "eggs of current production," thereby making eggs that were laid more than 15 days before the date of packing ineligible for grading. AMS is also requesting comments on alternate periods, particularly those between 15 and 30 days, that are viewed as being a more appropriate limit. In addition, a definition of the term "shipped for retail sale" would be added to the regulations.

No adverse industry-wide impact has been observed since AMS suspended the repackaging of eggs returned by retailers, primarily because of the infrequent use of egg repackaging by official plants. Additionally, AMS believes that the proposed 15-day limit from date of lay to date of packaging for eggs officially identified with a USDA consumer grademark minimizes unwanted variations in egg quality while allowing sufficient time for the normal wholesale trading and shipping of shell eggs to be completed. AMS expects this limit to have little or no economic impact on shell egg producers or processors, including those that may be small businesses. Shell egg processors can market eggs that are not of current production by packaging them without USDA grade identification. Since the difference in economic return to processors between USDA graded versus non-USDA graded eggs is about one cent per dozen, the economic impact is minimal for official plants and non-official plants that may later elect to use the grading service. Optionally, processors may divert eggs to the production of liquid, frozen, and dried egg products. By doing so, they can recoup approximately 50 percent of the products' original value.

AMS considered leaving the 30-day requirement unchanged. However, AMS believes industry advances now allow wholesale trading and shipping to be completed in time to allow shell eggs to be packaged by processors within 15 days of lay. By proposing to change the requirement to a shorter period, AMS and the industry can better ensure the quality of officially identified consumer grade eggs.

While formulating this proposal, AMS understood from some in the industry that a 15-day period may impose an undue burden in certain situations. For example, smaller size eggs are sometimes stored to accumulate sufficient volumes for processing, and heavy demand for processing during holiday periods may extend the time between the date of lay and date of packaging. Therefore, although AMS believes that a 15-day limit between the date of lay and date of packaging would generally allow sufficient time for processors to trade, ship, process, and package eggs, AMS is seeking comments about the impact of the proposed 15-day limit, particularly on small businesses. AMS is also interested in receiving comments regarding other limits between 15 to 30 days, for example a 21-day limit.

Executive Orders 12988 and 12898

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations," AMS has considered the potential civil rights implications of this proposed rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or familial status. This included those persons who are employees, program beneficiaries, or applicants for employment or program benefits in the voluntary shell egg grading program. Adoption of the proposed rule would not require official plants to relocate or alter their operations in ways that could adversely affect such persons or groups. Nor would it exclude any persons or groups from participation in the voluntary shell egg grading program, deny any persons or groups the benefits of the grading program, or subject any persons or groups to discrimination.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection and recordkeeping requirements included in this rule, and there are no new requirements. The assigned OMB control number is 0581–0128.

List of Subjects in 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that 7 CFR part 56 be amended as follows:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Amend § 56.1 by revising the term *Eggs of current production* and adding a definition for the term *Shipped for retail sale* to read as follows:

§ 56.1 Meaning of words and terms defined.

* * * * *

Eggs of current production means shell eggs that are no more than 15 days old.

* * * * *

Shipped for retail sale means shell eggs that are forwarded from the processing facility for distribution to the ultimate consumer.

* * * * *

In § 56.40 paragraph (c) is revised to read as follows:

§ 56.40 Grading requirements of shell eggs identified with consumer grademarks.

(a) * * *

* * * * *

(c) In order to be officially identified with a USDA consumer grademark, shell eggs shall:

(1) Be eggs of current production;

(2) Not possess any undesirable odors or flavors; and

(3) Not have previously been shipped for retail sale.

Dated: July 22, 1999.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 99–19093 Filed 7–26–99; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL TRADE COMMISSION

16 CFR Part 312

Children's Online Privacy Protection Rule

AGENCY: Federal Trade Commission.

ACTION: Initial regulatory flexibility analysis.

SUMMARY: The Commission is publishing this initial regulatory flexibility analysis to aid the public in commenting upon the small business impact of its proposed rule implementing the Children's Online Privacy Protection Act ("COPPA" or "the Act").

DATES: Written comments must be submitted on or before August 6, 1999.

ADDRESSES: Written comments should be submitted to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The Commission requests that commenters submit the original plus five copies, if feasible. To enable prompt review and public access, comments also should be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a disk label stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format.) Alternatively, the Commission will accept comments submitted to the following e-mail address <kidsrule@ftc.gov>. Individual members of the public filing comments need not submit multiple copies or comments in electronic form. All submissions should be captioned: "Children's Online Privacy Protection Rule—IRFA Comment, P994504." Comments will be posted on the Commission's Web site: <http://www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT: Toby Milgrom Levin, (202) 326–3156, Loren G. Thompson, (202) 326–2049, or Jill Samuels, (202) 326–2066, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 601 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: This notice supplements the Commission's initial notice of proposed rulemaking, 64 FR 22750 (Apr. 27, 1999), for a Children's Online Privacy Protection Rule, 16 CFR part 312, to implement the requirements of the Children's Online Privacy Protection Act of 1998 ("the Act"), title XIII, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277, 1112 Stat. 2681, ____ (Oct. 21, 1998). The Commission's notice of proposed rulemaking did not include an initial regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (5 U.S.C. 603) based on a certification that the proposed rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605). *See* 64 FR 22761.

In the Notice of Proposed Rulemaking, the Commission concluded that the proposed rule's requirements are expressly mandated by the COPPA. In the Commission's view, the Act's requirements account for most, if not, all of the economic impact of the proposed rule, and the Commission's proposal adds little, if any, additional independent compliance burden to the statutory requirements. For example, as reiterated below, the proposed rule consistently incorporates the overall "performance" standards set forth in the statute rather than mandating any particular compliance method or approach. *See* 5 U.S.C. 603(c)(3). Moreover, certain provisions of the rule (*e.g.*, definitions taken directly from the statute, enforceability of rule by the Commission and the states, severability of the rule's provisions) would appear to have no material effect on the costs or burdens of compliance under the rule for regulated entities, regardless of size. Thus, the marginal cost, if any, that would be imposed by the rule on regulated entities, including small entities, would not be substantial. Since the Regulatory Flexibility Act does not require an initial (or final) regulatory flexibility analysis when a "rule" will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605), such an analysis did not accompany the proposed rule. Nonetheless, in its Notice of Proposed Rulemaking to implement the COPPA, the Commission expressly invited public comment on the proposed rule's effect on the costs, profitability, competitiveness of, and employment in small entities to ensure that no significant economic impact on a substantial number of small entities would be overlooked. *See* 64 FR 22761.

In response, the Commission received comments suggesting, among other things, that the Commission publish an initial regulatory flexibility analysis

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under the Regulatory Flexibility Act.[1] While the Commission continues to believe that such an analysis is not technically required, the Commission has decided to publish the following analysis to provide further information and opportunity for public comment on the small business impact, if any, of the rule. The Commission notes that it has already afforded a period of public comment on the proposed rule for such comments, and will be conducting a public workshop on July 20, 1999, on the issue of obtaining parental consent under the rule. *See* 64 FR 34595 (June 28, 1999). The workshop will provide an additional opportunity for public comment on how compliance with that particular requirement might be achieved, while minimizing the potential impact of the requirement on regulated entities, including small entities, to the extent the Commission has any discretion on that issue. The July 30th deadline for comments in response to the initial regulatory flexibility analysis set forth below is scheduled to coincide with the close of the comment period that will follow the public workshop described earlier.

Description of the reasons that action by the agency is being considered. The COPPA requires the Commission to promulgate this rule not later than one year after the date of enactment of the Act. COPPA § 1303(b)(1).

Succinct statement of the objectives of, and legal basis for, the proposed rule. To prohibit unfair and deceptive acts and practices in connection with commercial websites' and online services' collection and use of personal information from and about children by: (1) Enhancing parental involvement in a child's online activities in order to protect the privacy of children in the online environment; (2) helping to protect the safety of children in online fora such as chat rooms, home pages, and pen-pal services in which children may make public postings of identifying information; (3) maintaining the security of children's personal information collected online; and (4) limiting the collection of personal information without parental consent. The legal basis for the proposed rule is the COPPA.

Description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. In general, the rule will apply to any commercial operator of an online service or Internet website directed to children or a commercial operator of an online service or Internet website who has actual knowledge that he or she is collecting personal information from a child. *See* proposed Rule § 312.3 (general requirements). The rule does not apply to nonprofit entities. *See* proposed Rule § 312.2 (defining "operator"). A precise estimate of the number of small entities that fall within the rule is not currently feasible because the definition of a website directed to children turns on a number of factors that will require a factual analysis on a case-by-case basis.[2] The Commission seeks any information or comment on these issues, as noted below.

Description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record. The statute and proposed rule do not directly impose any "reporting" or "recordkeeping" requirements within the meaning of the Paperwork Reduction Act, but would require that operators make certain third-party disclosures to the public, *i.e.*, provide parents with notice of their privacy policies. *See* proposed Rule §§ 312.3(a) (notice on website or online service), 312.4(a), (b), & (c) (format and contents of notice), 312.5(c)(3) & (4) (parental notification to obtain consent), 312.6(a)(1) (parental notification of information being collected on children). The Commission is seeking clearance from the Office of Management & Budget (OMB) for these requirements and the Commission's Supporting Statement submitted as part of that process is being made available on the public record of this rulemaking.

The statute and proposed rule also contain a number of compliance requirements not subject to the Paperwork Reduction Act, including but not limited to obtaining verifiable parental consent to collect personal information from children, § 312.5(b); allowing parents to have the opportunity to review and make changes to information provided by their children, § 312.6; and developing and implementing methods for maintaining the confidentiality, security, and integrity of personal information collected from children, § 312.8. These statutorily mandated obligations do not require operators to file reports or maintain records within the meaning of the Paperwork Reduction Act, although the Commission recognizes that there are potential compliance costs associated with these requirements. As noted above, the only class of small entities that would be subject to the above-described compliance requirements would be commercial operators of websites or online services directed to children or those commercial operators who have actual knowledge that they are collecting information from children, as discussed earlier.

Since the rule does not directly mandate "reporting" or "recordkeeping" within the meaning of the Paperwork Reduction Act, the rule does not require professional skills for the preparation of "reports" or "records" under that Act. The statute and rule do require that certain third-party disclosures (*i.e.*, privacy policy notices) may initially require professional attorney and computer programmer time to develop and post. For purposes of its Supporting Statement to OMB under the Paperwork Reduction Act, the Commission estimated approximately 60 hours per site (83% attorney hours, 17% programmer hours) in the first year and six hours per web site in subsequent years. However, the Commission as noted below, seeks further comment on the actual costs or expenditures, if any, of developing and posting the required privacy policy notices, and the extent to which these costs may differ or vary for small entities. (*See* the Supporting Statement submitted by the Commission to OMB at <http://www.ftc.gov/os/1999/9906/childprivsup>) It is important to note, however, that the Commission anticipates that any expenditures for professional attorney or programmer time may be significantly reduced or eliminated if websites avail themselves of software or other compliance tools or kits that make it easier and less costly to meet the rule's notice requirements. A number of industry groups have already developed privacy policy toolkits which are available online as part of their self-regulatory efforts in the privacy area. The Commission seeks further comment on this issue.

Certain of the statute's and rule's other non-Paperwork Reduction Act requirements may require some clerical or computer programmer time for compliance. For example, an employee may be required to review parental responses to the operator's requests for consent. Depending on the method chosen by the operator to seek parental consent, some employee training may be required, *e.g.*, training an employee manning a toll-free telephone number to recognize whether a child or adult is on the line. Similar skills would be required of employees responsible for handling requests from parents who want to review the information provided by their children. Finally, computer programming and security expertise will be required to ensure that the operator maintains the confidentiality, security, and integrity of the data collected from children. Because the Commission currently has no basis on which to determine the number of hours required to conduct such tasks and as these requirements are not subject to the Paperwork Reduction Act, the Commission has not attempted here to provide an estimate in terms of burden hours, but is instead seeking reliable information and comment on costs and burdens for small entities.

Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule. The Commission is unaware of any duplicative, overlapping, or conflicting Federal rules. As noted below, the Commission seeks comments and information about any such rules, as well as any other state, local, or industry rules or policies that require website operators and online services to implement business practices (*e.g.*, notification, parental consent, security measures, etc.) that would comply with the requirements of the Commission's proposed rule.

Description of any significant alternative to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities, including alternatives considered, such as: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; (4) any exemption from coverage of the rule, or any part thereof, for such small entities. Under the proposed rule, subject operators will be free to choose one or more methods to achieve the goals of the rule based on their individual business models and needs. In many instances the proposed rule utilizes a performance standard to permit as much flexibility as possible for website operators to comply with the rule. For example, proposed Rule § 312.4(b) minimizes the burden on website operators and online service providers by permitting the notice to be posted by providing "links" to notices, rather than requiring complete texts of the notice, on each "page" or other location(s) where personal information is collected from children. Likewise, the requirements for parental notice (proposed Rule § 312.4(c)) are flexible and open-ended for all entities, not just small entities, requiring simply that the operator make "reasonable efforts, taking into account available technology, to ensure" that notice reaches parents. *See also* proposed Rule § 312.5 regarding parental consent.

Although these rules impose some costs, it is important to recognize that the requirements of notice, consent, access and security are mandated by the COPPA itself. Although the Commission has sought to minimize the burden on all businesses, including small entities, by incorporating the statute's flexible "performance" standards, the Commission does not have the discretion to provide for exemptions from the COPPA based on size of the operator. Likewise, the proposed rule attempts to clarify, consolidate, and simplify the statutory requirements for all entities, including small entities, but the Commission has little discretion, if any, to mandate different compliance methods or schedules for small entities that might "take into account the resources available to small entities" but not comply with the statutory requirements. For example, the COPPA requires the posting of privacy policies by websites and online services before information is collected from children and a waiver for small entities of that prior notice requirement (*e.g.*, by permitting notice after the fact) would be inconsistent with the statutory mandate. *See* COPPA, Pub. L. No. 105–277, § 1303(b)(1)(A) (i) and (ii).

Nevertheless, the Commission is seeking to address the variability of online businesses and to devise performance standards to allow for flexibility and innovation to achieve compliance with the mandated COPPA protections. Throughout the rulemaking proceeding, the Commission has made every effort to gather information regarding the economic impact of the COPPA's parental notice and consent requirements on all operators, including small entities. Thus, the **Federal Register** notice announcing the proposed rule included a number of questions for public comment regarding the costs and benefits associated with these key requirements with respect to small entities.

In addition, the agenda for the July 20th public workshop includes topics designated to elicit economic impact information, particularly as it would affect small businesses. The workshop will examine a wide range of mechanisms to implement parental consent so as to obtain a rich record of how operators, including small entities, can comply with the statutory requirement.

Questions for Comment To Assist Regulatory Flexibility Analysis

1. Please provide comment on any or all of the provisions in the proposed rule with regard to (a) the impact of the provision(s) (including any benefits and costs), if any, and (b) what alternatives, if any, the Commission should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect of the rule on small entities in light of the above analysis. In particular, please provide the above information with regard to the following sections of the proposed rule:

a. The requirement that notice be placed on the website, § 312.4(b);

b. The requirement that notice be provided to parents, § 312.4(c);

c. The requirement that operators obtain verifiable parental consent, § 312.5;

d. The requirement that parents be allowed to review and correct personal information provided by their children, § 312.6;

e. The requirement that operators take steps to ensure the confidentiality, safety, and integrity of the information provided to them, § 312.8; and

f. Any other requirement not mentioned above.

Costs to "implement and comply" with the rule include expenditures of time and money for: any employee training; attorney, computer programmer, or other professional time; preparing relevant materials; processing materials, including, for example, processing parental consent materials or requests for access to information; and recordkeeping.

2. Please describe ways in which the rule could be modified to reduce any costs or burdens for small entities consistent with the COPPA's mandated requirements.

3. Please describe whether and how technological developments (such as the development and implementation of digital signatures) could reduce the costs of implementing and complying with the rule for small entities or other operators.

[1] *See* Comment No. 74 submitted by the Honorable George W. Gekas and James M. Talent of the House of Representatives and Comment No. 91 submitted by Jere W. Gover, Jennifer A. Smith, and Eric E. Menge, Office of Advocacy, U.S. Small Business Administration.

[2] The proposed Rule (§ 312.2) states that "In determining whether a commercial website or online service, or a portion thereof, is targeted to children, the Commission will consider its subject matter, visual or audio content, age of models, language or other characteristics of the website or online service, as well as whether advertising promoting or appearing on the website or online service is directed to children."

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4. Please provide any information quantifying the economic benefits to website operators of collecting personal information from or about children, including any information showing: advertising revenues based in part upon the number of children registered at a site; revenue derived from the sale or rental of children's personal or aggregate information to others; efficiencies resulting from marketing to a targeted audience; or revenue resulting from designing a customized and appealing site.

5. Please identify all relevant Federal, state or local rules that may duplicate, overlap or conflict with the proposed rule. In addition, please identify any industry rules or policies that require website operators and online services to implement business practices (*e.g.*, notification, parental consent, security measures, etc.) that would already comply with the requirements of the Commission's proposed rule.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–19094 Filed 7–26–99; 8:45 am]

BILLING CODE 6750–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 5

Revised Procedures for Commission Review and Approval of Applications for Contract Market Designation and of Related Contract Terms and Conditions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: In 1997, the Commodity Futures Trading Commission (Commission) promulgated a new fast-track procedure for the review and approval of applications for contract market designation in either ten or forty-five days. In response to continued expressions of industry concern that the ability to list new contracts for trading without delay is vital to the exchanges' continued competitiveness, the Commission is proposing a two-year pilot program to permit the listing of contracts for trading prior to Commission approval.

The proposed procedure would preserve the public interest in Commission review and approval of new contracts by providing that no more than one year's trading months may be listed at any time prior to approval. Any problems with a new contract could be rectified within that initial listing period. As proposed, exchanges would retain the choice to proceed under the current procedures for prior approval of new contracts, including fast-track application review.

The proposed listing of new contracts prior to designation does not affect the general requirement that proposed exchange rules and changes to existing exchange rules must be reviewed and approved by the Commission prior to implementation. Exchange rule changes, including both changes to contract terms and conditions and to rules of broad application that are not contract terms or conditions, can and do have an impact on open positions. They may affect the economic utility of contracts. Moreover, exchange rule changes may be the subject of divergent interests or, potentially, conflicts of interest at an exchange or raise broad public policy issues, all of which require that exchange rule changes be addressed through the Commission's statutory process of prior review and approval.

DATES: Comments must be received August 26, 1999.

ADDRESSES: Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Office of the Secretariat; transmitted by facsimile at (202) 418–5521; or transmitted electronically at [secretary@cftc.gov].

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5260, or electronically, [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Need for Additional Flexibility in Listing New Contracts

The Commission thoroughly analyzed the nature of global competition in the futures industry in a major 1994 study mandated by Congress as part of the 1992 amendments to the Act.[1] That study analyzed the growth of futures trading in non-U.S. markets and the relative decline in the global market share of U.S. exchanges. Although much has changed since 1994 in the global competitiveness of the futures industry, including in particular the continued evolution and development of new electronic trading platforms, many of the 1994 study's major conclusions remain valid today. The 1994 study concluded that U.S. exchanges remain leaders in innovation and generally have reached the global market first with new products.[2] Foreign exchanges, by and large, have grown by developing products tailored to their home markets and by trading those products at the same time of day as the underlying foreign cash market.[3] The study found no evidence that disparities in the regulatory frameworks of various jurisdictions, including particularly disparities in procedures for listing new contracts, were a major factor explaining the success of various exchanges in the global market.[4]

The Commission also concluded in its study that, "the U.S. regulatory system must be responsive to changes in the marketplace if U.S. markets are to remain competitively robust. Consistent

[1] A study of the Global Competitiveness of U.S. Futures Markets, Commodity Futures Trading Commission, (April 1994)("1994 study").

[2] The Commission has been supportive, in general, of initiatives of U.S. exchanges to become more competitive both in terms of new products and trading systems. For example, the Commission has encouraged and supported industry-wide innovation and modernization in trading systems, sponsoring a round-table on October 16, 1996, to highlight issues relating to electronic order routing and trading systems. It has also amended many rules to respond to industry requests and on its own initiative to support the competitiveness of U.S. exchanges. Specifically, the Commission has promulgated rules to streamline applications for contract market designation, 64 FR 29217 (June 1, 1999); to permit bunched orders for sophisticated customers to be allocated after their execution, 63 FR 45699 (August 27, 1998); to permit futures-style margining of commodity options, 63 FR 32726 (June 16, 1998); to eliminate the requirement that futures commission merchants and introducing brokers deliver the specified risk disclosure document when opening accounts for sophisticated customers, 63 FR 8566 (February 20, 1998); to eliminate the short option value charge against a future commission merchant's net capital, 63 FR 32725 (June 16, 1998); to expand the use of acceptable electronic storage media for required records, 64 FR 28735 (May 27, 1999); to permit the use of a two-part disclosure document, 63 FR 58300 (October 30, 1998); to permit the trading of "exchange of futures for swaps" on the New York Mercantile Exchange, 63 FR 3708 (January 26, 1998); and to increase speculative position limits, 64 FR 24038 (May 5, 1999).

Moreover, the Commission has been very supportive of industry efforts over the years to introduce innovative futures and option contracts. These include such innovative concepts as the reintroduction of exchange-traded options, the introduction of flexible options, the first cash-settled futures contracts, the first futures contracts on stock indexes and the first futures and option contracts on natural gas, electricity crop yields, pollution permits, and bankruptcy rates.

[3] For example, many foreign exchanges trade interest-rate contracts based upon the sovereign debt of the nation in which they are located.

[4] Moreover, the trend among foreign authorities has been to strengthen their regulatory regimes. The Commission has been a world-leader in promoting the strengthening of regulatory oversigh as futures trading becomes more global in nature. This process has accelerated in light of developments in connection with the Barings, Plc. and Sumitomo Corp. situations. *See*, Windsor Declaration issued May 17, 1995, and London Communiqué on Supervision of Commodity Futures Markets (November 26, 1996).

with that view * * * the CFTC has historically attempted to facilitate U.S. exchange innovation and reduce the costs of regulation within its mandate * * *"[5] One means taken by the Commission in recent years to lower the cost of regulation has been to reduce significantly the time normally required for Commission review and approval of new contracts, particularly since implementing new fast-track procedures in 1997. Generally, the 10- or 45-day review periods provided under the fast-track procedure are readily compatible with the normal gestation period for new contracts.[6]

The Commission is proposing a pilot program to provide U.S. exchanges with substantial, additional flexibility in the listing of new contracts. Representatives of U.S. exchanges have testified that the ability to list contracts more quickly than currently possible is necessary for them to meet competitive challenges by foreign exchanges.[7] The proposed rule would enable designated exchanges generally to list for trading new contracts without any waiting period, directly responding to the exchanges' stated need to be able to respond immediately to competitive challenges.[8]

The proposed rule would not, however, eliminate the requirement that contracts be designated by the Commission. Rather, it would permit the Commission's review of new contracts to proceed after a new contract's initial listing. The Commission would continue to designate such contracts after they have been listed upon finding that they meet the requirements of the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* (Act), and the rules thereunder. This would preserve a speedy, sure and efficient method for the Commission to review new contracts and the public's opportunity to comment on them. The proposed pilot program would not apply to changes to existing contracts. As discussed in more detail below, changes to existing contracts frequently raise issues relating to the value of existing positions and there is often significant interest by the public in commenting on proposed changes to such contracts.

The Commission is proposing this two-year pilot program under the Act's section 4(c) exemptive provision which, together with the other provisions of the Act, provides the Commission with far-ranging regulatory flexibility. The pilot program will provide an opportunity to identify any adverse consequences resulting from the predesignation listing of new contracts. As proposed, the approval requirement will continue to fulfill the important functions of providing a forum to resolve questions relating to the legality of contracts, a means to consider and respond to concerns raised by other regulators, a mechanism for government-to-government coordination when appropriate and the opportunity to subject contracts to impartial, expert scrutiny and to correct various problems early on. Finally, as proposed, exchanges will retain the option to seek prior Commission approval before listing new contracts.

II. History and Purpose of Statutory Requirement that Contracts Be Designated Before Trading and Exemptive Authority

Section 4(a) of the Act provides that, unless exempted by the Commission, futures contracts legally can be traded only on or subject to the rules of a contract market designated by the Commission.[9] Section 4(c)(1) authorizes the Commission, by rule, regulation, or order, to exempt any contract between "appropriate persons" from that or any other of the Act's requirements, with the exception of the accord provisions of section 2(a)(1)(B). Before granting such an exemption, the Commission must determine that its action would be consistent with the public interest and would not have a material adverse effect on the ability of the Commission to discharge its regulatory responsibilities or of any contract market to discharge its self-regulatory responsibilities under the Act.[10]

The requirement that boards of trade meet specified conditions in order to be designated as contract markets has been a fundamental tool of federal regulation of commodity futures exchanges for the past seventy-five years.[11] Prior to the 1974 amendments to the Act, however, the statutory scheme did not require the

[5] 1994 study at p. 139.

[6] U.S. exchanges' initial launch date for new contracts is often well after designation, and many contracts are not listed until months or even years later. In this regard, of the 201 new contracts that were approved during the period 1996 through 1998, about one-fourth (46) have not yet been listed for trading. The average period after designation when the other 155 contracts were listed was about three months (87 days). Only 29 contracts in all were listed for trading within 10 days after Commission approval.

[7] During hearings before the Subcommittee on Risk Management and Specialty Crops of the House Committee on Agriculture, representatives of four U.S. futures exchanges testified that the current regulatory structure is overly burdensome and that statutory changes are necessary to achieve "parity" with foreign exchanges and to better enable U.S. exchanges to compete in the growing global marketplace. CTFC Reauthorization: Hearings Before the Subcommittee on Risk Management and Specialty Crops of the House Committee on Agriculture, 106th Cong., 1st Sess. (1999) See, statements of the Chicago Board of Trade, the Board of Trade of the City of New York, the Chicago Mercantile Exchange, and the New York Mercantile Exchange.

In particular, the U.S. exchanges urged Congress to eliminate the requirement that the Commission review and approve new contracts before they begin trading and amendments to exchange rules before they can be implemented. For example, Daniel Rappaport, Chairman of the Board of Directors of NYMEX testified that, "detailed CFTC review and approval of the specific terms and conditions of the contract has not been necessary, provides marginal, if any value, and adds cost, uncertainty, and delay to the roll-out of new contracts."

[8] However, contracts subject to the accord provision of section 2(a)(1)(B) of the Act would not be eligible for this relief consistent with the provisions of section 4(c) of the Act.

[9] Section 4(a) of the Act provides that: "Unless exempted by the Commission pursuant to subsection (c), it shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of * * * a contract for the purchase or sale of a commodity for future delivery * * * unless—

(1) such transaction is conducted on or subject to the rules of a board of trade which has been designated by the Commission as a "contract market" for such commodity * * *" 7 U.S.C. 6(a).

[10] The Futures Trading Practice Act of 1992, P.L. No. 102–546, added a new subsections (c) and (d) to section 4 of the Act. Specifically, section 4(c), 7 U.S.C. 6(c), provides that:

(1) In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated as a contract market for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act (except section 2(a)(1)(B)), if the Commission determines that the exemption would be consistent with the public interest.

(2) The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) unless the Commission determines that—

(A) The requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and

(B) the agreement, contract, or transaction—

(i) will be entered into solely between appropriate persons; and

(ii) will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under this Act.

[11] *See*, Futures Trading Act of 1921, Pub. L. No. 67–66, 42 Stat. 187 (1921). Designation as a contract market under the 1921 Act was contingent upon a board of trade's meeting specified statutory criteria, including providing for the prevention of manipulative activity. Although the constitutionality of this Act was successfully challenged as an improper use of the Congressional taxing power in *Hill* v. *Wallace*, 259 U.S. 44 (1922), all subsequent legislation regulating the futures industry followed the template of requiring exchanges to be designated as contract markets.

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Commodity Exchange Authority, the Commission's predecessor agency, to approve in advance the trading of all new futures contracts,[12] nor did it require agency approval of exchange rules before they became effective. Rather, exchange rules amending the terms and conditions of futures contracts were subject only to disapproval after becoming effective.[13] The 1974 amendments to the Act reversed that approach, requiring that new contracts be approved prior to trading. As part of Congress' overall intent to strengthen federal regulatory oversight of the futures industry, the 1974 amendments provided for a meaningful government review of all new futures contracts before trading could begin and of proposed amendments to the terms of conditions of existing contracts.[14]

Subsequently, Congress enhanced the opportunity for public participation in the Commission's review of proposed exchange rule amendments.[15] In offering this amendment, Representative AuCoin reasoned that, although many rule changes may be technical,

> there are a number of proposed rule changes that are controversial because of their expected impact on the way a particular commodity is traded or on the broader effects that a change may bring about in the production and distribution of that commodity.
>
> 124 Cong. Rec. H7312 (July 26, 1978).

The Commission, recognizing the validity of Representative AuCoin's observation that various submissions may require differing levels of public scrutiny, has been flexible in implementing its regulatory mandate to review and approve new contracts and amendments to existing contracts. The fast-track review procedures, in particular, broke new ground in how the Commission reviews and approves applications for contract market designation, proposed exchange rules and changes to existing exchange rules. Since promulgating the fast-track designation procedures, the Commission has approved 36 contracts under the 10-day procedures, and 34 contracts under the 45-day procedures. Fast-track designation procedures have provided the exchanges with a time, certain for Commission review, easing their planning for new contract introduction. Fast-track procedures also confirmed, however, that in many instances exchanges may prefer review procedures. Specifically, 43 proposed contracts that were otherwise eligible for fast-track review have been submitted under regular review procedures, which under the Act permits the Commission to take up to one year to review an application for contract market designation.

The Commission's past procedural flexibility has made its review more efficient while at the same time preserving the public interest in Commission approval of new contracts and of contract amendments. Review and approval of new contracts helps assure that futures markets are not readily susceptible to manipulation so that they better can serve their risk transfer and price discovery functions. The Commission, based upon its past experience, has found that appropriate contract design is the best deterrent to market manipulation, price distortion or market congestion, and that contract approval assures that contracts meet these widely-accepted design criteria.[16] Although market incentives, enlightened business judgment and the desire to protect reputation are strong motivations which can lead to a high degree of self-regulation, experience demonstrates that there have been instances when government oversight and action serve to address particular instances where business judgments by the exchange membership did not appear to offer sufficient guidance to inform fully an SRO's regulatory judgment.[17]

Needed changes to contract designs are most easily made before traders become accustomed to, or heavily reliant upon, a particular term or condition. Although it is possible to make adjustments to contract terms or conditions as needed, changing a term or condition of a proposed contract prior to its listing does not have the market impact of an after-the-fact rule change or of an emergency action. In this regard, the terms or conditions for delivery of several contracts for foreign currencies were changed while under Commission review. Commission vetting of exchange rules and CFTC coordination with the interested foreign governments resolved these delivery issues. Absent prior Commission approval, these design flaws might very well have been discovered through a default, a market emergency or similar dislocation.

Review and approval of new contracts also gives the public an opportunity to comment on proposed contracts and provides a forum for resolving disputes. Often, an innovative contract may raise issues for other government agencies. The Commission review process provides a formal mechanism for those agencies to make their views known to the Commission. Moreover, in cases where questions are raised about the legality of a contract's terms, such as recent questions as to whether the delivery terms of an electricity contract would violate certain legal restrictions in effect at the delivery point, the Commission's approval process provides a formal governmental decision on the issue, short of a court challenge to the contract.

Although exchanges have a strong business incentive to list contracts that will not be susceptible to manipulation, they may not receive, and act upon, the breadth of opinion available to the Commission. As discussed above, these views may come from foreign regulators, other government agencies and

[12] Prior to 1974, the Act defined "commodity" by specific enumeration. Accordingly, new contracts that were not so enumerated were unregulated. The definition of commodity periodically would be updated to include additional commodities in which trading had commenced on those exchanges which traded other regulated contracts. For example, livestock and livestock products were added to the Act's definition of "commodity" as part of the 1968 amendments to the Act, after such contracts had already begun trading on the Chicago Mercantile Exchange. Pub. L. No. 90–258 § 1(a), 49 Stat. 1491 (1968). Other futures exchanges, including the Commodity Exchange, Inc. and the former Coffee and Sugar, and the Cocoa exchanges, operated wholly outside of the regulatory scheme.

[13] *See* Pub. L. No. 90–258, § 23, 82 Stat. 33 (1968).

[14] *See* H.R. Rep. No. 93–975, 93d Cong., 2d Sess. at 78, 82 (1974).

[15] As part of the 1978 amendments to the Act, Congress added the provision requiring a public comment period for proposed exchange rules of major economic significance. That amendment to section 5a(a)(12) of the Act was offered from the floor during debate in the House of Representatives.

[16] *See*, e.g., § 5a(a)(10) of the Act and the Commission's proceeding to amend the delivery terms of the CBT corn and soybean futures contracts, "Notification to the CBT to Amend Delivery Specifications." 61 FR 68175 (December 12, 1995). The view that appropriate contract design is an important component of a market surveillance program and deters manipulation, price distortion and market congestion is widely accepted internationally, as well. *See*, the Tokyo Communiqué on Supervision of Commodity Futures Markets issued at the Tokyo Commodity Futures Markets Regulators' Conference on October 31, 1997.

[17] Often, the Commission receives few or no public comments on contract market designations or on exchange rule changes. This is to be expected. It may indicate that the exchange has indeed received and considered input from interested outside sources in connection with a proposal. However, there are more than a few designation applications or proposed exchange rule changes every year that elicit a significant number of comments, casting doubt upon the exchange's theory that its business self-interest will reliably inform all of its regulatory judgements.

In this regard, in response to a Commission advisory on alternative execution or block trading procedures, 64 FR 31195 (June 10, 1999), the Chicago Board of Trade (CBT) by letter dated June 29, 1999, urged the Commission to:

> [S]olicit the input of, and coordinate with, various interested parties by publishing for public comment any proposals to permit alternative execution procedures. The Commission will in that way, be able to get the benefit of additional analysis of such proposals by knowledgeable members of the futures industry. * * *

departments, futures intermediaries, commodity producers or users and other nonmembers. For example, trade interviews by Commission staff first revealed that the discounts for nonpar varieties and locations for a proposed potato contract did not conform to cash market practices. Subsequently, major producer groups opposed the proposed contract's terms in public comments filed with the Commission, and the exchange made extensive revisions. Accordingly, the Commission's review and approval process, which expands participation in the process, may bring to light information not previously considered by an exchange in designing a proposed contract's terms.

Recognizing the potential benefit of receiving additional input from a wider variety of sources, some exchanges, particularly the smaller exchanges, have made positive use of the Commission's review and approval process in developing new products. For example, one exchange accepted Commission staff's suggestions on an appropriate means of constructing an index with a large number of inactively traded stocks. After these revisions, the contract obtained regulatory approval from both the Commission and the Securities and Exchange Commission.

The proposed pilot program for predesignation listing of new contracts will permit exchanges to list new contracts quickly in response to perceived competitive threats. However, it will also retain current procedures, enabling exchanges to benefit from the comments process included in the current procedures, from the Commission's expertise in these issues and from its interaction with U.S. and foreign regulators.

III. The Proposed Rule

Although the rule which the Commission is proposing permits exchanges to list new contracts for a limited period prior to designation, it conforms to the underlying legal requirement that all contracts must be designated by the Commission in order legally to trade. Moreover, the proposed listing rule is consistent with the spirit of the Act's provision which contemplates that in certain instances exchanges may make proposed rules effective pending Commission action. Specifically, section 5a(a)(12) of the Act permits exchanges to make proposed rules effective without Commission approval if the Commission fails to act on the proposed rules within specified time limits. Those exchange rules may remain in effect while Commission action is pending. The Commission's rule on predesignation listing of proposed contracts would apply the same concept in instances where an exchange believes that competitive or other factors make immediate listing of a proposed contract necessary.

Contracts listed under the proposed procedure, although not designated, would be valid and enforceable pursuant to the Commission's rule, which is being proposed under the exemptive authority of section 4(c) of the Act. The board of trade, pursuant to the Commission's rule and section 5a(8)(iii) of the Act, would be required to enforce the contract's terms and conditions, although not yet approved by the Commission.[18] In addition, the board of trade would be required to fulfill all of a contract market's self-regulatory obligations during the period the contract is listed for trading as though it were designated. Upon designation, the Commission, as it does for all contracts, would approve the contract's terms and conditions under section 5a(a)(12) of the Act.

The Commission is proposing that predesignation listing be available only when an exchange already is a designated contract market for at least one nondormant contract. This is because the initial designation of a board of trade as a contract market often entails a more lengthy review which includes analysis of its trading and clearance systems and its self-regulatory programs. Such start up exchanges are not appropriate candidates for the proposed immediate listing rule.

Moreover, the Commission is proposing that while a designation application submitted under regular or fast track procedures is pending, a second exchange may not list the same, or a substantially similar, contract to trade using the pilot procedure. Such a result would penalize the first exchange for submitting a proposed contract market application for Commission review and preapproval, clearly and unwarranted competitive use of the proposed rule. As proposed, the second exchange would be required to wait until the day following approval of the first application to notify the Commission that it intends to list the same, or a substantially similar, contract to trade. Thus, for example, an application for contract designation filed for fast-track review, absent a regulatory problem, would be deemed approved forty-five days after receipt. Not until the forty-sixth day after the Commission has received the application could a second exchange notify the Commission that it intended to list the same or a substantially similar contract for trading prior to designation. The second exchange could then list for trading the contract on the forty-seventh day after receipt of the original application. In this way, the rule would not permit a competing exchange to short-circuit the review process and to disadvantage the exchange choosing to subject a proposed contract to prior Commission review. Of course, where the first contract was listed prior to designation, there would be no purpose served by preventing a second exchange from also listing the contract for trading prior to approval. In that case, both exchanges could list contracts for trading the day after they notify the Commission.[19]

In addition, the proposed prelisting procedure is not intended to be a means of evading an adverse Commission proceeding involving the same or a substantially similar contract. Accordingly, where the Commission has initiated a proceeding to alter an exchange rule under section 8a(7) of the Act, to disapprove a proposed or existing contract term or condition under section 5a(a)(12) of the Act, to alter or change delivery points or commodity or locational differentials under section 5a(a)(10) of the Act or to disapprove an application for designation or suspend a designation under section 6 of the Act, or any similar adverse action, an exchange could not list a "new" contract for trading and thereby frustrate the proceeding against, or evade application of the Commission's process applicable to the original, designated contract.[20] In addition, predesignation listing would not be available for stock indexes, commodities which are subject to the specific approval procedures of the Johnson-Shad jurisdiction.[21]

[18] Compare, 17 CFR 1.53.

[19] Exchanges would not be able to use this proposed rule to forestall a competitor from introducing a new contract by filing an application in bad faith. Although a second exchange could not use the predesignation listing procedure while a prior application was pending, nothing would prevent the second exchange from filing an application for review and approval by the Commission on its own merits.

[20] Similarly, the Commission is not proposing that the listing provision be applicable for a futures contract that is based upon the occurrence of a single event or that is intended to be listed temporarily. For example, a futures contract in a fuel that was being phased out of use, such as leaded gasoline, raises deliverable supply issues. Such a contract should not be able to evade the review and approval provisions of the Act by being listed during the last few months when the commodity is available. Moreover, although single event futures contracts have not yet been proposed, it would be possible to construct such contracts. The proposed rule is not intended to be used as a means to avoid addressing the designation issues which may be raised by such contracts.

[21] *See* section 2(a)(1)(B) of the Act.

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The Commission is proposing that exchanges be able to determine whether and when to make use of the new listing procedure, and is not restricting an exchange's use of the predesignation listing of contracts to a defined set of circumstances. The exchanges have argued that as a matter of business self-interest they will design contracts that comply with the Act's designation requirements and that prior Commission review is an unnecessary check on their role as self-regulators. Based upon these representations, the Commission expects to be able to designate new contracts listed under the proposed pilot rules and to approve their terms and conditions as initially listed.

However, exchanges not infrequently have revised the terms and conditions of pending contracts submitted to the Commission for prior review. Changes to the terms or conditions of a contract listed under the proposed procedure would be required to be approved by the Commission under section 5a(a)(12) of the Act and Commission rules thereunder before being made effective. The Commission generally would approve such changes when designating the contract. Presumably, the revisions would be minor, made in advance of the contract's first expiration, made before a large open interest had been established, and cause no disruption to traders or to the markets generally.

Some designation applications filed with the Commission, however, have included serious flaws. If it becomes evident during the Commission's review that a contract already listed for trading fails to meet a designation requirement, the exchange would have to take appropriate corrective measures. Depending upon the nature of the problem, these steps might be exigent in nature, have to be applied to trading months with open positions and require an exchange to act under its emergency authority. Although this is not the preferred mechanism for vetting new contracts, it may be an unavoidable consequence of listing a contract with a deficiency prior to approval. Accordingly, as with the Commission's fast-track designation procedures, an exchange's choice to list contracts for trading prior to designation would most appropriately be used for contracts which clearly raise no legal or practical impediments to trading.

As proposed, exchanges choosing to list contracts prior to Commission review and designation must notify the Commission of their intent by filing the contract's terms and conditions with the Commission's Office of the Secretariat and the Commission's regional office having jurisdiction over the exchange by close of business on the business day prior to listing the contracts for trading. As proposed, exchanges may list no more than one full year's trading months at any time prior to the contract's designation. An application for designation would be required to be filed within forty-five days of the initial listing, unless during this period the trading months have been delisted. Finally, the exchange would be required to identify the contract listed as pending Commission designation.

As discussed above, the Commission is proposing this rule under its section 4(c) exemptive authority. That section provides that the Commission may exempt from the Act's requirements contracts between appropriate persons. Because the proposed rule applies to contracts listed on designated exchanges subject to the self-regulatory requirements of the Act, the Commission finds all traders are "appropriate" for application of this proposed exemptive rule. Moreover, for the reasons explained above, the Commission believes that the proposed rule would be consistent with the public interest and would not have a material adverse effect on the ability of the Commission to discharge its regulatory responsibilities or of any contract market to discharge its self-regulatory responsibilities under the Act. The Commission specifically requests comment on these findings.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The Commission has previously determined that contract markets are not "small entities" for purposes of the RFA, 5 U.S.C. 601 *et seq.* 47 FR 18618 (April 30, 1982). These amendments propose a two-year pilot program to permit exchanges under section 4(c) of the Act to list new contracts for trading prior to designation as a contract market. Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.* (Supp. I 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA.

The Office of Management and Budget (OMB) approved the collection of information associated with this proposed rule (3038–0022, Rules Pertaining to Contract Markets and their Members) on October 24, 1998. While the proposed rule discussed herein has no burden, the group of rules (3038–0022) of which it is a part has the following burden:

Average burden hours per response.	3,609.89
Number of Respondents.	15,893
Frequency of response	On occasion.

Copies of the OMB-approved information collection submission are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 5

Contract markets, Designation application.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4, 4c, 5, 5a, 6 and 8a thereof, 7 U.S.C. 6, 6c, 7, 7a, 8, and 12a, the Commission proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

PART 5—CONTRACT MARKET COMPLIANCE

1. The authority citation for part 5 is revised to read as follows:

Authority: 7 U.S.C. 6(c), 6c, 7, 7a, 8 and 12a.

2. Part 5 is amended by adding a new § 5.3 to read as follows:

§ 5.3 Predesignation listing of new contracts.

(a) Notwithstanding any contrary provision of the Act or Commission rules, a board of trade seeking designation as a contract market under sections 4c, 5 and 5a(a) of the Act may list for trading delivery months or expirations prior to designation, if the board of trade:

(1) Is already designated as a contract market in at least one other contract which is not dormant within the meaning of § 5.2 of this part;

(2) Complies with all other requirements of the Act and Commission regulations thereunder applicable to designated contract markets during the period the contract is listed for trading prior to its designation as a contract market;

(3) Files with the Commission at its Washington, DC, headquarters and the regional office having jurisdiction over it a copy of the contract's terms and conditions no later than the close of business of the day preceding listing; and

(4) Notifies the public on all public references to the contract or its trading months that the contract is trading pending Commission designation.

(b) The board of trade may not list for trading delivery months or option expirations for more than one year at any time prior to the contract's designation as a contract market under sections 4c, 5, 5a and 6 of the Act and regulations thereunder, or under § 5.1 of this part.

(c) The board of trade must file with the Commission an application for contract market designation which meets the requirements of Appendix A of this part within forty-five days of initially listing for trading a contract under this section, unless the contract is delisted during this period.

(d) The board of trade must enforce each bylaw, rule, regulation and resolution that relates to the terms or conditions of a contract listed for trading under this section. Any proposed revisions to the terms or conditions of the contract as initially listed for trading under this section must be submitted for Commission review under section 5a(a)(12) of the Act and § 1.41 of this chapter.

(e) The provisions of this section for listing trading months prior to contract market designation shall not apply to:

(1) A contract subject to the provisions of section 2(a)(1)(B) of the Act;

(2) A contract that is the same or substantially the same as one for which an application for contract market designation under sections 4c,5, 5a and 6 of the Act or § 5.1 of this part was filed for Commission approval prior to being listed for trading while the application is pending before the Commission.

(3) A contract that is the same or substantially the same as one which is the subject of a Commission proceeding to disapprove designation under section 6 of the Act, to disapprove a term or condition under section 5a(a)(12) of the Act, to alter or amend a term or condition under section 8a(7) of the Act, to amend terms or conditions under section 5a(a)(10) of the Act, to declare an emergency under section 8a(9) of the Act, or to any other proceeding the effect of which is to disapprove, alter, amend, or require a contract market to adopt a specific term or condition, trading rule or procedure, or to refrain from taking a specific action.

Issued in Washington, DC, this 20th day of July, 1999, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–18985 Filed 7–26–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM99–2–000]

Regional Transmission Organizations; Extension of Time For Reply Comments

July 21, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed Rule: Notice of extension of time.

SUMMARY: On May 13, 1999, the Federal Energy Regulatory Commission issued a Notice of Proposed Rulemaking (64 FR 31390, June 10, 1999) proposing to amend its regulations under the Federal Power Act to facilitate the formation of Regional Transmission Organizations. The date for filing reply comments is being extended at the request of the Edison Electric Institute.

DATES: Reply comments shall be filed on or before September 29, 1999.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: David P. Boergers, Secretary, 202–208–1279.

SUPPLEMENTARY INFORMATION:

On June 30, 1999, the Edison Electric Institute (EEI) filed a motion for an extension of time to file reply comments in response to the Commission's Notice of Proposed Rulemaking issued May 13, 1999, in the above-docketed proceeding. The motion states that EEI requires additional time to obtain, evaluate and discuss with its members the large number of initial comments that it is expected will be filed in response to the Commission's RTO NOPR. EEI further states that the American Public Power Association and the National Rural Electric Cooperative do not oppose the motion for additional time.

Upon consideration, notice is hereby given that an extension of time for filing reply comments in response to the Commission's RTO NOPR is granted to and including September 29, 1999.

David P. Boergers,

Secretary.

[FR Doc. 99–19073 Filed 7–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 57 and 75

RIN 1219–AB19

Safety Standards for Self-Rescue Devices in Underground Coal and Underground Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: This document extends the public comment period for the Advance Notice of Proposed Rulemaking (ANPRM) published in the **Federal Register** on July 7, 1999. The ANPRM addressed safety standards for self-rescue devices in underground coal and underground metal and nonmetal mines.

DATES: Submit your comments on or before September 7, 1999.

ADDRESSES: Mail your comments to MSHA, Office of Standards, Regulations, and Variances, MSHA, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203 or telefax your comments to the same office at 703–235–5551.

While we (MSHA) do not require it, we encourage you to also submit a computer disk containing your comments or transmit an e-mail with your comments to comments@msha.gov.

FOR FURTHER INFORMATION CONTACT: Carol Jones, Acting Director, Office of Standards, Regulations, and Variances, 703–235–1910.

SUPPLEMENTARY INFORMATION: We held a joint conference with the National Institute for Occupational Safety and Health in Beckley, West Virginia on June 15 and 16, 1999. This conference provided an opportunity for all segments of the mining community to discuss issues related to self-rescue devices. Using information developed at the conference, we published an ANPRM in the **Federal Register** on July 7 (64 FR 36632). In the ANPRM, we requested comments on issues discussed at the conference and other issues dealing with self-rescue devices. The comment period was to close on August 6, 1999.

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At the request of a segment of the mining community to extend the time to submit comments, we are extending the comment period. The comment period will close September 7, 1999. We believe that this will provide sufficient time for all interested parties to review the ANPRM and submit comments.

Dated: July 21, 1999.

Marvin W. Nichols,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 99–19159 Filed 7–26–99; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–6408–5]

RIN–2050–AE54

Potential Revisions to the Land Disposal Restrictions Mercury Treatment Standards; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA, the Agency).

ACTION: Advance notice of proposed rulemaking (ANPRM); extension of comment period.

SUMMARY: On May 28, 1999 (64 *FR* 28949), EPA issued an ANPRM presenting potential revisions to the 40 CFR part 268 Land Disposal Restrictions treatment standards applicable to mercury-bearing hazardous wastes. The ANPRM requested comment on EPA's waste generation and treatment data for mercury-bearing hazardous waste, as well as on technical and policy issues regarding mercury waste treatment, and potential avenues by which current mercury treatment standards might be revised. The Agency is extending the comment period because several commenters have requested more time to address the Agency's request for comment on potential revisions to the mercury-bearing hazardous waste regulations. This notice extends the comment period for the ANPRM.

DATES: The comment period for this ANPRM is extended from the original closing date of July 27, 1999 to October 25, 1999.

ADDRESSES: If you wish to comment on the ANPRM, you must send an original and two copies of the comments referencing docket number F–1999–MTSP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. You may also submit comments electronically by sending electronic mail through the Internet to: rcradocket@epamail.epa.gov. You should identify comments in electronic format with the docket number F–1999–MTSP–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters and any form of encryption. If you do not submit comments electronically, EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter.

You should not submit electronically any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

You may view public comments and supporting materials in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For general information or to order paper copies of this **Federal Register** document, contact the RCRA Hotline, Monday through Friday between 9:00 a.m. and 6:00 p.m. EST, toll free at (800) 424–9346; or (703) 412–9810 from Government phones or if in the Washington, DC local calling area; or (800) 553–7672 for the hearing impaired. For technical information contact Rita Chow at (703) 308–6158 or Josh Lewis (703) 308–7877, Office of Solid Waste (5302W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: July 20, 1999.

Judy A. Kertcher,

Acting Director, Office of Solid Waste.

[FR Doc. 99–19156 Filed 7–26–99 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 414

[HCFA–1010–P]

RIN 0938–AJ00

Medicare Program; Replacement of Reasonable Charge Methodology by Fee Schedules

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to implement fee schedules to be used for payment of services, excluding ambulance services, still subject to the reasonable charge payment methodology. The authority for establishing these fee schedules is provided by section 4315 of the Balanced Budget Act of 1997 (Public Law 105–33), which adds to the Social Security Act a new section 1842(s). A fee schedule for ambulance services is mandated by a different statutory provision. Section 1842(s) of the Social Security Act specifies that statewide or other areawide fee schedules may be implemented for the following services: medical supplies; home dialysis supplies and equipment; therapeutic shoes; parenteral and enteral nutrients, equipment, and supplies; electromyogram devices; salivation devices; blood products; and transfusion medicine.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 27, 1999.

ADDRESSES: Mail an original and 3 copies of written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1010–P, P.O. Box 26688, Baltimore, MD 21207–0488.

If you prefer, you may deliver an original and 3 copies of your written comments to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or Room C5–09–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1010–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443 C of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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FOR FURTHER INFORMATION CONTACT: Joel Kaiser, (410) 786–4499.

SUPPLEMENTARY INFORMATION:

I. Background

A. Payment Under Reasonable Charges

Payment for most services, including supplies and equipment, furnished under Part B of the Medicare program (Supplementary Medical Insurance) is made through contractors known as Medicare carriers. At one point, payment for most of these services was made on a reasonable charge basis by these carriers. The methodology for determining reasonable charges is set forth in section 1842(b) of the Social Security Act (the Act) and 42 CFR part 405, subpart E of our regulations. Reasonable charge determinations are generally based on customary and prevailing charges derived from historic charge data. The reasonable charge for service is generally set at the lowest of the following factors:

- The supplier's actual charge for the service.
- The supplier's customary charge for the service.
- The prevailing charge in the locality for similar services. (The prevailing charge may not exceed the 75th percentile of the customary charges of suppliers in the locality.)
- The inflation indexed charge (IIC). The IIC is defined in § 405.509(a) as the lowest of the fee screens used to determine reasonable charges for services, including supplies, and equipment paid on a reasonable charge basis (excluding physicians' services) that is in effect on December 31 of the previous fee screen year, updated by the inflation adjustment factor. Fee screens are those factors identified above, including the IIC and lowest charge level if applicable, used to determine payment under the reasonable charge methodology. The inflation adjustment factor is based on the current change in the consumer price index for all urban consumers (CPI–U) for the 12-month period ending June 30.

For parenteral and enteral nutrients, equipment, and supplies, an additional factor, the lowest charge level (LCL), is used to determine the reasonable charge. In accordance with § 405.511(c), the LCL is set at the 25th percentile of the charges (incurred or submitted on claims processed by the carrier) for the above services, in the locality designated by the carrier for this purpose, during the 3-month period of July 1 through September 30 preceding the fee screen year (January 1 through December 31) for which the service was furnished.

Sections 405.502(g) and 405.506 permit exceptions to the general rules for determining reasonable charges. Section 405.502(g) gives the carrier the authority to establish special payment limits for a category of service if it determines that the standard rules for calculating payments result in grossly deficient or grossly excessive payments. Section 405.506 provides that a charge which exceeds the customary charge, the prevailing charge, or the LCL "may be found to be reasonable, but only where there are unusual circumstances, or medical complications requiring additional time, effort or expense which support an additional charge, and only if it is acceptable medical or medical service practice in the locality to make an extra charge in such cases."

B. Payment Under Fee Schedules

The law gradually replaced the reasonable charge payment methodology with fee schedule payment methodologies for most services furnished under Part B of the Medicare program. Fee schedules have been established for physicians' services, laboratory services, durable medical equipment (DME), prosthetics and orthotics, surgical dressings, and, beginning in the year 2000, ambulance services. Subject to coinsurance and deductible rules, Medicare payment for these services is equal to the lower of the actual charge for the service or the amount determined under the fee schedule methodology.

Section 4315 of the Balanced Budget Act of 1997 (BBA) amends the Act at section 1842 by adding a new subsection(s). Section 1842(s) of the Act provides authority for implementing statewide or other areawide fee schedules to be used for payment of the following services that are currently paid on a reasonable charge basis:

- Medical supplies.
- Home dialysis supplies and equipment (as defined in section 1881(b)(8) of the Act).
- Therapeutic shoes.
- Parenteral and enteral nutrients, equipment, and supplies (PEN).
- Electromyogram devices.
- Salivation devices.
- Blood products.
- Transfusion medicine.

Section 1842(s)(1) of the Act provides that the fee schedules for the services listed above are to be updated on an annual basis by the percentage increase in the CPI–U (United States city average) for the 12-month period ending with June of the preceding year. The fee schedules for PEN, however, may not be updated before the year 2003. Finally, total payments for the initial year of the fee schedules must be approximately equal to the estimated total payments that would have been made under the

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reasonable charge payment methodology.

II. Provisions of the Proposed Regulations

A. General

We propose, under section 1842(s) of the Act, to implement fee schedules for those services listed above. Subject to coinsurance and deductible rules, Medicare payment for these services is to be equal to the lower of the actual charge for the service or the amount determined under the applicable fee schedule payment methodology presented below. The fee schedules we propose would apply to services furnished on or after January 1, 1999, and would be calculated using base reasonable charges updated by an inflation update factor.

Section 4315(d) of the BBA requires that the total payments for the initial year of the fee schedules be approximately equal to the estimated total payments that would have been made under the reasonable charge payment methodology. For this reason, for services other than PEN, we are proposing that the fee schedule amounts be based on average reasonable charges from the period July 1, 1996 through June 30, 1997, the same data period used in calculating the 1998 reasonable charges. Furthermore, for the purposes of calculating the 1999 fee schedule amounts, we are proposing that the base fee schedule amounts be increased by the change in the CPI-U for the 12-month period ending with June of 1998, the inflation adjustment factor that would have otherwise been used in calculating the 1999 IICs. This would update the reasonable charge data to the 1999 level, the initial year of the fee schedules. For PEN, which accounts for approximately 90 percent of the Medicare expenditures for services addressed in this rule, we are proposing that the fee schedule amounts be based on the reasonable charges that would have been used in determining payment for PEN in 1999.

The proposed fee schedules would have a minimal, if any, impact on the efforts of HCFA and its contractors to revise their current systems to be millennium or Y2K compliant, as Y2K compliant fee schedule systems are already in place for other services. The proposed fee schedules would be incorporated into these current systems.

B. National Limits

For medical supplies, electromyogram devices, salivation devices, blood products, and transfusion medicine furnished within the continental United States, we propose national limits on the statewide fee schedule amounts similar to those that were mandated by the Congress for DME and surgical dressings in section 1834 of the Act. The Congress mandated ceilings and floors, equal to 100 percent and 85 percent, respectively, of the median of all statewide fee schedule amounts, to limit unreasonably high and low fees resulting from the local fee calculations for DME and surgical dressings. The Congress recognized the unique costs of doing business in areas outside the continental United States and therefore did not apply the national limits for DME and surgical dressings to these areas.

The national limits for DME and surgical dressings have been effective at eliminating outlying fees that cannot be explained by the differences in the costs of doing business in one part of the country versus another. We are therefore proposing that this methodology be applied to the services identified above. Accordingly, the statewide fee schedule amounts for these services may not exceed 100 percent of the median of all statewide fee schedule amounts for areas within the continental United States and may not be less than 85 percent of the median of all statewide fee schedule amounts for areas within the continental United States. The statewide fee schedule amounts for areas outside the continental United States will not be subject to the national limits. National limits are not proposed for home dialysis supplies and equipment, therapeutic shoes, or PEN because the payment amounts for these services are already subject to national limits or are determined on a national basis in the case of PEN.

C. Medical Supplies

Medical supplies are miscellaneous supplies or devices including, but not limited to, casts, splints, and paraffin that are not already included under an existing fee schedule. In addition, intraocular lenses (IOLs) inserted during or subsequent to cataract surgery in a physician's office are considered medical supplies for payment purposes under this rule. For calendar year 1999, we propose statewide fee schedule amounts equal to the weighted average of allowed charges for the services. For these calculations, we will use reasonable charge data with dates of service from July 1, 1996 through June 30, 1997, increased by the change in the CPI-U for the 12-month period ending with June of 1998. The fee schedule amounts are to be updated on an annual basis in accordance with section 1842(s)(1) of the Act. Beginning with the second year of the fee schedule, the statewide fee schedule amounts for IOLs inserted in a physician's office are not to exceed the Medicare allowed payment amount for IOLs furnished by ambulatory surgical centers (ASCs).

D. Home Dialysis Supplies And Equipment

These are services as defined in § 410.52. For calendar year 1999, we propose statewide fee schedule amounts equal to the weighted average of allowed charges for the services. For these calculations, we will use reasonable charge data with dates of service from July 1, 1996 through June 30, 1997, increased by the change in the CPI–U for the 12-month period ending with June of 1998. However, amount of payment under this methodology may not exceed the limit specified for equipment and supplies in § 414.330(c)(2). The fee schedule amounts are to be updated on an annual basis in accordance with section 1842(s)(1) of the Act.

E. Therapeutic Shoes

These services are defined in section 1861(s)(12) of the Act as "extra-depth shoes with inserts or custom molded shoes with inserts for an individual with diabetes." In addition, section 1833(o)(2)(D) of the Act provides that an individual "may substitute modification of such shoes instead of obtaining one (or more, as specified by the Secretary) pairs of inserts (other than the original pair of inserts with respect to such shoes)." Section 1833(o)(2)(A) of the Act establishes national payment limits for these services. These are upper payment limits, or ceilings, applied to the reasonable charges calculated for these services. The initial year, 1988 limits were $300 for one pair of custom molded shoes (including any inserts that are provided initially with the shoes), $100 for one pair of extra-depth shoes (not including inserts provided with such shoes), and $50 for any pairs of inserts. In accordance with section 1833(o)(2)(C) of the Act, these national payment limits are increased on an annual basis by the same annual percentage increase provided for DME, rounded to the nearest multiple of $1. We may establish limits lower than these limits if shoes and inserts of appropriate quality are readily available at or below the limits. We have determined that, to the extent that reasonable charges for shoes and inserts are lower than the limitations contained in section 1834(o)(2)(A) of the Act, shoes and inserts are readily available at that level. Therefore, we find it appropriate and consistent with the direction of the BBA to apply fee schedule amounts lower than the limits.

For calendar year 1999, we propose statewide fee schedule amounts equal to the weighted average of allowed charges for the services. For these calculations, we will use reasonable charge data with dates of service from July 1, 1996 through June 30, 1997, increased by the change in the CPI–U for the 12-month period ending with June of 1998. In addition, the statewide fee schedule amounts may not exceed the national payment limits established under section 1833(o)(2) of the Act. The fee schedule amounts are to be updated on an annual basis in accordance with section 1842(s)(1) of the Act.

F. Parenteral and Enteral Nutrients (PEN)

These services are covered by Medicare as prosthetic devices, which are defined in section 1861(s)(8) of the Act. However, PEN is excluded from the prosthetic and orthotic fee schedule payment methodology by section 1834(h)(4)(B) of the Act. In accordance with section 4551(b) of the BBA, the reasonable charges for PEN for the years 1998 through 2002 may not exceed the reasonable charges determined for 1995. The prevailing charges for PEN are currently determined on a nationwide basis (that is, the 75th percentile of the customary charges of suppliers in the entire nation).

As explained above, section 4551(b) of the BBA limits the reasonable charges calculated for 1998 through 2002 for PEN to the reasonable charges calculated in 1995. Therefore, payment under the reasonable charge methodology would be based on the lesser of the charges calculated for the given fee screen year (for example, 1999) or the charges calculated for 1995. For calendar year 1999, we propose nationwide fee schedule amounts equal to the lesser of the charges determined to be reasonable for the services during 1995 or the charges determined to be reasonable for the services during 1998 (using charge data with dates of service from July 1, 1996 through June 30, 1997), increased by the inflation adjustment factor that would have otherwise been used in calculating the 1999 IICs, in effect, the 1999 reasonable charges. Beginning the fee screen year 2003, the fee schedule amounts are to be updated on an annual basis in accordance with section 1842(s)(1) of the Act.

G. Electromyogram Devices And Salivation Devices

The decision regarding Medicare coverage of these services is made at the carrier's discretion. In any carrier area in which these services are covered, for calendar year 1999, we propose statewide fee schedule amounts equal to the weighted average of allowed charges for the services. For these calculations, we will use reasonable charge data with dates of service from July 1, 1996 through June 30, 1997, increased by the change in the CPI–U for the 12-month period ending with June of 1998. The fee schedule amounts are to be updated on an annual basis in accordance with section 1842(s)(1) of the Act.

H. Blood Products

For calendar year 1999, we propose statewide fee schedule amounts equal to the weighted average of allowed charges for the blood products services. These services are not included under the definition of drugs and biologicals in section 1861(t)(1) of the Act. For these calculations, we will use reasonable charge data with dates of service from July 1, 1996 through June 30, 1997, increased by the change in the CPI–U for the 12-month period ending with June of 1998. The fee schedule amounts are to be updated on an annual basis in accordance with section 1842(s)(1) of the Act.

I. Transfusion Medicine

For calendar year 1999, we propose statewide fee schedule amounts equal to the weighted average of allowed charges for transfusion medicine services. For these calculations, we will use reasonable charge data with dates of service from July 1, 1996 through June 30, 1997, increased by the change in the CPI–U for the 12-month period ending with June of 1998. The fee schedule amounts are to be updated on an annual basis in accordance with section 1842(s)(1) of the Act.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Regulatory Impact Statement

We have examined the impacts of this proposed rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by non-profit status or by having revenues of $5 million or less annually. For purposes of the RFA, all suppliers of Medicare Part B services are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We expect suppliers of the Part B services listed in this preamble to be affected by this proposed rule. For 1999, the initial year of the fee schedules, we estimate that there will be a decrease of less than 1 percent in total expenditures for the services addressed in this proposed rule. Therefore, we expect that the overall impact of this proposed rule will be negligible.

With regard to IOLs, beginning with the second year of the fee schedules, we are proposing that the fee schedule amounts not exceed the Medicare allowed payment amount for IOLs furnished by ASCs. Therefore, it is likely that the IOL fee schedule amounts will decrease after the first year of the fee schedules. We do not believe, however, that limiting payment for IOLs furnished in a physician's office to the amount paid for IOLs furnished in an ASC will result in a lack of availability of IOLs to Medicare beneficiaries. The IOLs furnished by ASCs are the same devices that are furnished in a physician's office. The Medicare payment amount for IOLs furnished by ASCs is established through separate regulations and is based on the average price paid by ASCs for these devices. This amount should represent adequate payment to physicians for the cost of the IOL device that they insert in their office.

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We expect that total expenditures in the outlying fee schedule years of 2000 and beyond will continue to approximate total expenditures that would have otherwise been made under the reasonable charge methodology in part because the fee schedules are updated using the same factor used in updating the IICs under the reasonable charge methodology.

For these reasons, we are not preparing an analysis for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this proposed rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

42 CFR part 414 would be amended as set forth below:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

Subpart A—General Provisions

2. A new § 414.70 is added to read as follows:

§ 414.70 Fee schedules for certain items and services previously paid on a reasonable charge basis.

(a) *General rule.* For services defined in § 400.202 of this chapter furnished on or after January 1, 1999, Medicare pays for the services as described in paragraph (u) of this section on the basis of 80 percent of the lesser of—

(1) The actual charge for the service; or

(2) The fee schedule amount for the service, as determined in accordance with paragraphs (e) through (k) of this section.

(b) *Payment classification.* (1) HCFA or the carrier determines fee schedules for the following categories of services:

(i) Medical supplies, as specified in paragraph (e) of this section.

(ii) Home dialysis supplies and equipment, as specified in paragraph (f) of this section.

(iii) Therapeutic shoes, as specified in paragraph (g) of this section.

(iv) Parenteral and enteral nutrients, equipment, and supplies (PEN), as specified in paragraph (h) of this section.

(v) Electromyogram devices and salivation devices, as specified in paragraph (i) of this section.

(vi) Blood products, as specified in paragraph (j) of this section.

(vii) Transfusion medicine, as specified in paragraph (k) of this section.

(2) HCFA designates the specific services in each category through program instructions.

(c) *Definition. Local payment amount* means the weighted average reasonable charge for the service furnished in a State, the District of Columbia, or a United States territory during the period July 1, 1996 through June 30, 1997, as determined by the carrier, increased by the change in the consumer price index for all urban consumers (CPI–U) for the 12-month period ending with June 1998.

(d) *Updating the fee schedule amounts.* Except for the fee schedule amounts for services described in paragraph (h) of this section, for each year subsequent to 1999, the fee schedule amounts of the preceding year are updated by the percentage increase in the CPI–U for the 12-month period ending with June of the preceding year. For services described in paragraph (h) of this section, for each year subsequent to 2002, the fee schedule amounts of the preceding year are updated by the percentage increase in the CPI–U for the 12-month period ending with June of the preceding year.

(e) *Medical supplies.* (1) This category includes, but is not limited to, cast supplies, splints, paraffin, and intraocular lenses (IOLs) inserted during or subsequent to cataract surgery in a physician's office.

(2) Payment for medical supplies is made in a lump sum amount for purchase of the item based on the applicable fee schedule amount.

(3) The fee schedule amount for an item furnished in 1999 is one of the following:

(i) Within the continental United States, 100 percent of the local payment amount if the local payment amount is neither greater than the median nor less than 85 percent of the median of all local payment amounts for areas within the continental United States.

(ii) Within the continental United States, 100 percent of the median of all local payment amounts for areas within the continental United States if the local payment amount exceeds the median of all local payment amounts for areas within the continental United States.

(iii) Within the continental United States, 85 percent of the median of all local payment amounts for areas within the continental United States if the local payment amount is less than 85 percent of the median of all local payment amounts for areas within the continental United States.

(iv) 100 percent of the local payment amount for areas outside the continental United States.

(4) For each year subsequent to 1999, the fee schedule payment amounts for IOLs inserted in a physician's office may not exceed the Medicare allowed payment amount for IOLs furnished by ambulatory surgical centers.

(f) *Home dialysis supplies and equipment.* (1) This category includes items and services as defined in § 410.52 of this chapter.

(2) Payment for home dialysis supplies and equipment is made in a lump sum based on the applicable fee schedule amount, but may not exceed the limit for equipment and supplies in § 414.330(c)(2).

(3) The fee schedule amount for a service furnished in 1999 is equal to the local payment amount.

(g) *Therapeutic shoes.* (1) This category includes extra-depth shoes with inserts or custom molded shoes with inserts for an individual with diabetes, modifications of the shoes, and replacement inserts for the shoes.

(2) Payment for therapeutic shoes is made in a lump sum based on the applicable fee schedule amount.

(3) The fee schedule amount for payment for a service furnished in 1999 is the lesser of—

(i) The local payment amount; or

(ii) The national payment limit specified in section 1833(o)(2) of the Act.

(h) *Parenteral and enteral nutrients, equipment, and supplies (PEN).* (1) Payment for PEN is made in a lump sum based on the applicable fee schedule amount.

(2) The fee schedule amount for payment for a service furnished in 1999 is the lesser of—

(i) The charge determined to be reasonable for the service during 1995; or

(ii) The charge determined to be reasonable for the service during 1998, increased by the inflation adjustment factor used in calculating the 1999 IIC.

(i) *Electromyogram and salivation devices.*

(1) Payment for an electromyogram device or a salivation device is made in a lump sum for purchase of the device or on a monthly rental basis based on the applicable fee schedule amount.

(2) The fee schedule amount for payment for an electromyogram device or a salivation device furnished in 1999 is one of the following:

(i) Within the continental United States, 100 percent of the local payment amount if the local payment amount is neither greater than the median nor less than 85 percent of the median of all local payment amounts for areas within the continental United States.

(ii) 100 percent of the median of all local payment amounts for areas within the continental United States if the local payment amount within the continental United States exceeds the median of all local payment amounts for areas within the continental United States.

(iii) 85 percent of the median of all local payment amounts for areas within the continental United States if the local payment amount within the continental United States is less than 85 percent of the median of all local payment amounts for areas within the continental United States.

(iv) 100 percent of the local payment amount for areas outside the continental United States.

(j) *Blood products.* (1) Payment for blood products is made in a lump sum based on the applicable fee schedule amount.

(2) The fee schedule amount for payment for a blood product furnished in 1999 is one of the following:

(i) Within the continental United States, 100 percent of the local payment amount if the local payment amount is neither greater than the median nor less than 85 percent of the median of all local payment amounts for areas within the continental United States.

(ii) 100 percent of the median of all local payment amounts for areas within the continental United States if the local payment amount within the continental United States exceeds the median of all local payment amounts for areas within the continental United States.

(iii) 85 percent of the median of all local payment amounts for areas within the continental United States if the local payment amount within the continental United States is less than 85 percent of the median of all local payment amounts for areas within the continental United States.

(iv) 100 percent of the local payment amount for areas outside the continental United States.

(k) *Transfusion medicine.* (1) Payment for transfusion medicine is made in a lump sum based on the applicable fee schedule amount.

(2) The fee schedule amount for payment for transfusion medicine furnished in 1999 is one of the following:

(i) Within the continental United States, 100 percent of the local payment amount if the local payment amount is neither greater than the median nor less than 85 percent of the median of all local payment amounts for areas within the continental United States.

(ii) 100 percent of the median of all local payment amounts for areas within the continental United States if the local payment amount within the continental United States exceeds the median of all local payment amounts for areas within the continental United States.

(iii) 85 percent of the median of all local payment amounts for areas within the continental United States if the local payment amount within the continental United States is less than 85 percent of the median of all local payment amounts for areas within the continental United States.

(iv) 100 percent of the local payment amount for areas outside the continental United States.

Subpart E—Determination of Reasonable Charges Under the ESRD Program

3. In § 414.330 the introductory text of paragraph (a)(2) is revised to read as follows:

§ 414.330 Payment for home dialysis equipment, supplies, and support services.

(a) * * *

(2) *Exception.* If the conditions in paragraphs (a)(2)(i) through (a)(2)(iv) of this section are met, Medicare pays for home dialysis equipment and supplies on a fee schedule basis in accordance with § 414.70, but the amount of payment may not exceed the limit for equipment and supplies in paragraph (c)(2) of this section.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: January 3, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: February 25, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–19115 Filed 7–26–99; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–177; FCC 99–126]

Reduction of Regulatory Requirements For AM Broadcasters Using Directional Antennas

AGENCY: Federal Communications Commission

ACTION: Notice of proposed rulemaking.

SUMMARY: In this *Notice of Proposed Rule Making*, the Commission proposes substantial reductions in the proof of performance requirements for AM directional antenna systems. These proposals are intended to alleviate unnecessary financial burdens imposed on AM broadcasters by such requirements without jeopardizing the Commission's policy objectives of controlling interference and assuring adequate community coverage by AM stations. The Commission previously issued a *Notice of Inquiry* in this proceeding in response to a joint petition for rule making by five broadcast consulting engineering firms requesting a thorough reexamination of testing and verification procedures for AM radio stations that use directional antennas.

DATES: Submit comments on or before September 10, 1999 and reply comments on or before September 27, 1999.

ADDRESSES: Parties who choose to file comments concerning this *Notice of Proposed Rule Making* by paper should address their comments to Magalie Roman Salas, Office of the Secretary, TW–A306, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Comments also should be submitted on a 3.5 inch diskette using WordPerfect 5.1 for Windows or compatible software to Son Nguyen, Federal Communications Commission, 445 12th Street, S.W., Room 2–A330, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Son Nguyen, Dale Bickel or William Ball at (202) 418–2660 or snguyen@fcc.gov, dbickel@fcc.gov, or wball@fcc.gov.

SUPPLEMENTARY INFORMATION: Comments and other data may be submitted via electronic mail to http://www.gcc.gov/e-file/ecfs.html.

The Commission proposes to amend 47 CFR Part 73 Subpart A as set forth below:

1. *Computer Modeling versus Proofs of Performance.* Several computer models have been developed over the years to calculate operating characteristics of particular importance to engineers designing, installing and adjusting AM antenna systems. Unlike the mathematical formulas for calculating the radiation characteristics of AM directional antennas contained in 47 CFR 73.150, 73.152 and 73.160, these computer models or "NEC programs" deal with "internal" array parameters such as impedances, currents and voltages at locations within the power distribution and radiation system. Several commentators suggested that proofs of performance may not be

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necessary for directional arrays adjusted pursuant to NEC programs, arguing that such programs make possible the satisfactory adjustment of directional arrays without reliance on field strength measurements.

2. The Commission does not propose to adopt a methodology based on NEC programs to determine whether directional arrays conform to authorized radiation patterns. The Commission has two fundamental concerns. First, based on the present record, the Commission is concerned that it could not continue to accomplish its core regulatory function of preventing interference among AM broadcast stations if the requirement of proofs of performance were eliminated for stations adjusted pursuant to NEC programs. Second, the Commission is concerned that adopting a methodology based on NEC programs could draw it into controversial issues relating to the adequacy of adjustment programs and procedures, leading to delays in authorizing new service. The Commission generally does not regulate either the design of circuitry internal to antenna systems or the methodology employed in the adjustment of antenna systems. The Commission seeks comment on these matters.

3. *Directional Antenna Proofs of Performance.* A proof of performance establishes whether the radiation pattern of an AM directional array is in compliance with the radiation pattern authorized by the station's construction permit or license. A full proof of performance requires a large number of measurements of the station's signal to establish the shape of the radiation pattern. Each full proof generally consists of two sets of measurements—nondirectional and directional measurements—and a minimum of 30 points along each of eight radials is required. Complex arrays require more radials and, therefore, more measurement points. A partial proof requires a lesser number of measurements to show that the station continues to operate as it did during the last full proof.

4. *Full Proofs—Number of Radials.* The Commission proposes to reduce the minimum number of radials required under 47 CFR 73.151 from eight to six for simple directional antenna patterns and to generally require no more than 12 radials to define complex patterns. (For AM stations operating with different daytime and nighttime directional antenna patterns, different radials may be required for each pattern.) If the major lobe, minor lobes, and nulls of the pattern cannot all be accounted for by the required 12 radials, pattern symmetry may be used to account for the remaining minor lobes and nulls. The radials would be distributed as follows: (A) One radial in the major lobe, at the pattern maximum; (B) At least five additional radials, as needed to definitely establish the pattern, generally at the peaks of minor lobes and at pattern nulls. This may include radials specified on the station's authorization. However, no two radials may be more than 90 degrees azimuth apart. If two radials would be more than 90 degrees apart, then an additional radial must be specified within that arc; and (C) Any radials specified on the construction permit or license.

5. Nondirectional antenna measurements would be taken along the radials used for directional measurements. In addition, the Commission proposes that those few nondirectional stations required to conduct a full proof (due to the proximity of reradiating structures or other atypical circumstances) be permitted to employ six evenly-spaced radials.

6. The Commission tentatively concludes that it can reasonably rely on fewer radials, in conjunction with the 90 degree maximum arc restriction, to establish nondirectional and directional patterns. It tentatively concludes that using a smaller number of radials, or permitting radials to be spaced more than 90 degrees apart, would not provide a sufficient number of points to identify distortion of a nondirectional pattern. Furthermore, the Commission believes that the above-stated proposals can sharply cut the time and cost of conducting a proof of performance. Comment is requested on these matters.

7. *Full Proofs— Number of Points per Radial, Length of Radials.* The Commission proposes to reduce the number of points per radial required under 47 CFR 73.186(a)(1) to a minimum of 15, as well as to shorten the minimum length of the radial from 34 to 15 kilometers ("km"). These 15 measurement points would include the very important close-in measurement points (points at less than three km from the transmitter site) used to determine the inverse distance field. The Commission proposes to specify intervals between these points as follows: (A) The closest point at a distance 10 times the maximum distance between the elements of a directional array, or at a distance five times the vertical height of the antenna in the case of a nondirectional station; (B) Close-in measurements at 0.2 km intervals, out to a distance of three km (unchanged from the present requirements of 47 CFR 73.186); (C) Measurements at one km intervals between three and five km (three points); (D) Measurements at two km intervals between five and 15 km (five points); (E) Additional measurements as necessary at greater distances to achieve at least 15 points clear of potential reradiating structures; and (F) Measurements at any monitoring point locations along the radial (unchanged from the present rule).

8. The Commission tentatively concludes that the proposed reduced number of points and shorter radial length represent the minimum which would allow verification of the performance of the antenna system. The Commission tentatively concludes that the present measurement requirements for close-in measurements (within three km of the transmitter site) should not be modified. The Commission seeks comment on each aspect of this proposal.

9. For each measurement point, the Commission proposes that the applicant provide several pieces of data: the date(s) of the measurements; the azimuth of the radial; the distance from the center of the array to the measurement point; the pattern being measured (day/night/critical hours); the time of the measurement; and the measured field strength value at that point. The Commission proposes to adopt a standardized format for the submission of the data in order to facilitate electronic filing and processing. The Commission seeks comment regarding the format that should be used for the compilation and submission of this data. Comment is also requested as to whether the time of each measurement should continue to be required with these submissions.

10. *Partial Proofs—Number of Points Required.* The Commission proposes to reduce from 10 to eight the minimum number of points per radial required under 47 CFR 73.154. The proof must include any monitoring point locations, and must use radial measurement point locations established in the last full proof of performance, as is the case under the current rule. The Commission believes that reducing the number of points would reduce the financial burden on AM directional licensees conducting partial proofs while still providing sufficient data to confidently verify directional array performance.

11. *Partial Proofs—When Required.* The Commission proposes to eliminate the requirement under 47 CFR 73.68 to conduct a partial proof of performance following replacement or modification of sampling system components mounted on the tower, *provided* the new components are mounted in the exact location of the old components,

measurements made at the monitoring points before and after installation establish that the substitution had no effect, and antenna monitor values remain within the tolerances specified in the Commission's rules or the station's authorization.

12. *Proofs of Performance—Monitoring Points.* Monitoring points are specific locations on selected proof radials where licensees regularly take field strength measurements to verify that a directional array remains within the radiation limits specified in the station's authorization. They are established at the time a station's full proof of performance is conducted. The Commission does *not* propose to eliminate monitoring point requirements, as suggested by some commentators, who argue that seasonal variations in ground conductivity affect the signal strengths measured at many monitoring points. The Commission tentatively concludes that monitoring point measurements remain a fundamental tool in verifying the performance of AM directional arrays independent of antenna monitor and antenna sampling system readings. The Commission also does not propose to adopt a suggestion to delete monitoring point measurements in exchange for yearly skeleton proofs taken on formerly monitored radials. The Commission seeks comment on these tentative conclusions.

13. Under 47 CFR 73.158, an informal application to change a monitoring point must include the results of a partial proof of performance taken on the radial containing the monitoring point to be changed. The Commission proposes to eliminate this requirement. Instead, the applicant would simply reference the measurements taken along that radial in the last full proof of performance submitted to the Commission. The staff would assign a radiation limit for the new monitoring point using the same procedure as described above. The field strength limit would be assigned based on the tolerance available between the radiation along the monitoring point radial as determined by the proof of performance and the radiation permitted by the authorized standard (or augmented) radiation pattern.

14. The Commission also proposes to eliminate the requirement for maps and directions indicating how to reach monitoring points for applicants using GPS-determined coordinates to identify monitoring point locations. A description of the monitoring point as well as a photograph would still be required to verify that the location is free of obstructions such as overhead power lines, *see* 47 CFR 73.151(a)(3) and 73.158(a)(4), to identify the precise location of the monitoring point with respect to nearby landmarks, and to identify the exact placement of measurement equipment. *See* CFR 73.151(a)(3) and 73.158(a)(2), (3). In order to achieve sufficient accuracy, a differential GPS receiver would be required. The Commission would specify monitoring point coordinates submitted in this manner on the station's license. Parties interested in locating these monitoring points could plot the specified coordinates onto topographical or other maps to determine the best route. The Commission asks for comment on these proposals.

15. *AM Station Equipment & Measurements—Base Current Ammeters.* Licensees are currently required under 47 CFR 73.58(b) to install base current ammeters or toroidal transformers (current registering devices) at the power feed point of each tower, typically at the base of the tower. The Commission proposes to delete the requirement for base current ammeters or toroidal transformers for those directional stations employing *approved* antenna sampling systems. Stations not using approved sampling systems have no reliable alternate on-site means of assessing antenna performance and, therefore, the Commission's rules would continue to require the installation and use of base current ammeters if the Commission has not approved the alternative system. The Commission seeks comment on this proposal.

16. *Equipment & Measurements—Antenna Monitors.* All AM directional stations are required to use an antenna monitor verified for compliance with the technical requirements in 47 CFR 73.53 as a means of verifying directional array performance. This rule also establishes detailed specifications that antenna monitors must meet. The Commission proposes to delete most of the antenna monitor construction and operational requirements of 47 CFR 73.53, with the exception of a few provisions that would be shifted to other existing rule sections. Specifically, the present requirement in 47 CFR 73.53(a) that the antenna monitor be verified for compliance with the Commission's technical requirements would be moved to 47 CFR 73.69, which deals with antenna monitors. Antenna monitor requirements for critical arrays would be moved from 47 CFR 73.53(c) to 73.69. Minimum readout levels in 47 CFR 73.53(b)(4) and (b)(5) would be moved to 47 CFR 73.1215. The Commission in recent years has eliminated detailed construction and operational requirements for other types of broadcast equipment, such as transmitters and metering equipment, and tentatively concludes that the instant proposal will encourage the development of more dependable, less expensive antenna monitors. Comment is requested on this proposal.

17. Several commentators requested that 47 CFR 73.68 be modified to permit licensees to use voltage sampling devices to feed antenna monitors in lieu of current sampling devices such as sampling transformers and pick-up loops. The Commission asks for comments as to the accuracy and reliability of voltage sampling devices, whether they are appropriate as sampling devices for assessing array performance, and whether the rules should be modified to permit their use.

18. *Equipment & Measurements—Impedance Measurements Across a Range of Frequencies.* Directional and nondirectional AM stations are currently required to take measurements of impedance across a range of frequencies under 47 CFR 73.54(c)(1) and (c)(2). The Commission proposes to delete this requirement. The Commission tentatively concludes that retention of 47 CFR 73.54(c) is not necessary because competition will serve as a sufficient incentive to maintain quality operations, as has proven to be the case with regard to other broadcast stations. The Commission seeks comment on this proposal.

19. *Equipment & Measurements—Common Point Impedance Measurements.* AM directional stations must take impedance (resistance and reactance) measurements at the common radiofrequency input location under 47 CFR 73.54(b). The reactance at this point is adjusted by the antenna matching network to a value of zero ohms. The Commission proposes to delete the requirement that the common point reactance be adjusted to zero ohms. The Commission seeks comment as to whether a limit should be set for the maximum amount of reactance permitted.

20. *Critical Arrays—Antenna Monitors.* Critical arrays are directional antennas which, because they are unusually sensitive to slight variations in internal operating parameters, are predicted to exceed their standard radiation pattern at normal operating tolerances and, therefore, pose a greater potential for causing objectionable interference. Licenses of stations with critical arrays specify tighter operating tolerances. To monitor these tighter tolerances, 47 CFR 73.69 requires stations with critical arrays to install

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special precision monitors. The Commission proposes to discontinue specifying the use of expensive, specially designed precision antenna monitors for critical arrays. Instead, the Commission proposes to simply require that the monitor installed have a digital readout graduated in increments no larger than one-half of the critical parameter specified in the authorization. The Commission tentatively concludes that the rule can be relaxed to permit the use of off-the-shelf equipment without adverse impact on stations that are protected by critical arrays. Comment on this proposal is requested.

21. *Critical Arrays—Designation.* The Commission does *not* propose to discontinue the critical array classification system, as suggested by several commenters. Some directional antenna systems are inherently more unstable than others and more likely to cause objectionable interference to other AM stations. Authorizations for such stations are conditioned require more stringent monitoring. The Commission acknowledges that the staff has generally investigated an array for stability only if a petition or objection is filed against the application proposing the array. As a result, the staff has not identified and designated as critical arrays all unstable arrays. The Commission intends to change this practice by discontinuing reliance on petitions or objections as the primary method of identifying unstable arrays. Instead, the Commission proposes to apply a uniform screening process to all applications for directional facilities.

22. In addition, the Commission has analyzed all licensed AM directional antennas utilizing its stability criteria and tentatively concluded that the current criteria are too stringent, and that modifications are necessary to tag only those arrays that have the highest probability of causing "real world" interference under normal operating tolerances. Accordingly, the Commission proposes to relax its stability criteria in two ways. First, tests for array stability would be restricted to radiation pattern minima (nulls) and maxima of standard patterns in the horizontal plane only instead of testing at all azimuths and elevations. The studies would be restricted to the horizontal plane radiation pattern because only the horizontal plane pattern can be directly observed by means of field measurements. Second, the Commission proposes to classify an array as critical only if the standard pattern is exceeded at 10 percent or more of the possible parameter variation combinations. (The current test requires only one instance of excessive radiation.) The Commission believes that the proposed 10 percent standard will more realistically predict the likelihood of excessive radiation. The Commission seeks comments on both proposed relaxations to the current stability test criteria.

23. Finally, based on the results of studies the Commission has performed on the licensed AM directional patterns in the AM engineering database, the Commission propose to exclude all two- and three-tower arrays from designation as critical arrays. Furthermore, the Commission proposes to categorically exclude all daytime arrays, considering that objections have never been filed based on daytime interference issues related to array instability. Thus, only nighttime and critical-hours directional proposals would be screened. Licensees with facilities currently classified as critical would be permitted to request staff review of their designation based on the revised criteria; however, the Commission does not propose to review the directional facilities of any station not currently classified as critical. The Commission seeks comment on each aspect of this proposal.

List of Subjects in 47 CFR Part 73

Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–19096 Filed 7–26–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[I.D. 063099A]

RIN 0648–AI78

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Herring Fishery; Atlantic Herring Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) has submitted the Atlantic Herring Fishery Management Plan (FMP) for Secretarial review and is requesting comments from the public. The FMP would allow for the development of a sustainable fishery that targets the entire U.S. Atlantic herring resource more evenly to achieve optimum yield (OY). Overfishing would be prevented through the use of total allowable catch (TAC) allocations for distinct management areas. An annual scientific review of the resource would allow for adjustments to the fishery as a result of fluctuations in stock size. Development of the FMP was coordinated closely with the Atlantic States Marine Fisheries Commission (Commission) and Mid-Atlantic Fishery Management Council (MAFMC) in order to assure complementary management measures in both state and Federal waters.

DATES: Comments must be received on or before September 27, 1999.

ADDRESSES: Comments on the Atlantic Herring FMP should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–3799. Mark the outside of the envelope, "Comments on Herring FMP."

Copies of the Atlantic Herring FMP, its regulatory impact review, initial regulatory flexibility analysis, the final environmental impact statement, the Omnibus Essential Fish Habitat Amendment, and supporting documentation are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION:

The FMP proposes an overfishing definition and implementation of the following measures under authority of the the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act): (1) TAC levels for each of the three management areas, one of which is divided into inshore and offshore sub-areas; (2) a procedure to develop annual specifications; (3) initial plan specifications for the 1999 fishing year; (4) effort limits through mandatory days out of the fishery; (5) spawning closures; (6) trip limits for incidental harvest during spawning closures or when effort controls are in effect; (7) a vessel monitoring system (VMS) requirement; (8) vessel size limits; (9) a framework adjustment process; (10) permitting and reporting requirements; (11) restrictions on transfers at sea; and (12) other measures for administration and enforcement. The FMP also discusses the reduction and monitoring of bycatch and a roe fishery.

The purpose of the FMP is to achieve, on a continuing basis, OY from the fishery and to prevent overfishing of the Atlantic herring resource. In addition, the FMP will provide for the orderly development of the offshore and inshore fisheries.

Overfishing Definition

The FMP proposes an overfishing definition for Atlantic herring comprised of two status determination criteria. If stock biomass is equal or greater than B_{MSY} (the biomass level at maximum sustainable yield), overfishing occurs when the fishing mortality rate exceeds F_{MSY} (the fishing mortality rate that yields B_{MSY}). If stock biomass is below B_{MSY}, overfishing occurs when the fishing mortality rate exceeds the level that has a 50–percent probability of rebuilding stock biomass to B_{MSY} in 5 years ($F_{threshold}$). The stock is in an overfished condition when stock biomass is below $\frac{1}{2}B_{MSY}$ and overfishing occurs when fishing mortality exceeds $F_{threshold}$. These criteria are thresholds and form the basis for the control rule.

The control rule also specifies risk averse fishing mortality rate targets, accounting for uncertainty in the estimate of F_{MSY}. If stock biomass is equal to or greater than $\frac{1}{2}B_{MSY}$, the target fishing mortality rate will be the lower limit of the 80–percent confidence interval about F_{MSY}. When biomass is below B_{MSY}, the target fishing mortality rate will be reduced consistent with the 5-year rebuilding schedule used to determine $F_{threshold}$. Since the Atlantic herring stock is not listed as "overfished" or "approaching an overfished condition" in the Annual Report to Congress for 1998, the Council was not required to submit a rebuilding strategy as part of the FMP at this time.

Essential Fish Habitat (EFH)

The Council submitted an omnibus EFH amendment to address EFH provisions for several FMPs for Northeastern fisheries. The omnibus EFH amendment document also included the EFH components of the proposed Atlantic herring FMP, which was then still under development by the Council. Although the Atlantic herring EFH components were included in the omnibus EFH amendment, they were not considered during Secretarial review of the omnibus EFH amendment. For Atlantic herring, the notice of availability for the omnibus EFH amendment (63 FR 66110, December 1, 1998) stated that "the omnibus amendment includes the EFH components of the Atlantic Herring FMP that is being developed by the NEFMC. The EFH information for Atlantic Herring will be incorporated by reference into the Atlantic Herring FMP when that FMP is submitted for Secretarial approval." Therefore, with publication of this notice of availability for the Atlantic Herring FMP, the public is also invited to comment on the appprovability of the herring EFH provisions in the Council's omnibus EFH amendment. The EFH component of the omnibus EFH amendment describes and identifies EFH for Atlantic herring, discusses measures to address the effects of fishing and non-fishing impacts on EFH, and identifies other actions for the conservation and enhancement of EFH. The comment period for the EFH provisions of the Atlantic herring FMP is the same as it is for this notice of FMP availability. The Council intends to review periodically the EFH designations for Atlantic herring under this FMP and, if needed, will update them. This FMP would authorize any revision to the EFH components through the FMP's framework process.

Management Measures of Concern

While NMFS seeks comment on all of the management issues in the FMP, it invites specific public comment on the following measures for the reasons stated:

Restrictions on the Size of Domestic Fishing and Processing Vessels

This measure would prohibit domestic vessels > 165 ft (50.3 m) in length, or > 750 gross registered tons (GRT)(680.4 mt), or > 3,000 horsepower from fishing for Atlantic herring in the exclusive economic zone (EEZ), but would allow such vessels to process herring if U.S. at-sea processing (USAP) is specified in a given year. Foreign vessels, regardless of size, could also process herring in the EEZ if joint venture processing (JVP) is specified. This could create the possibility that some foreign processing vessels would receive larger allocations than some domestic processing vessels. For example, the proposed 1999 specifications for USAP is zero, whereas the JVP is specified to be 40,000 mt.

Regarding the proposed harvesting vessel size restriction, NMFS notes discrepancies in the size, capacity and/or horsepower restrictions between the Atlantic herring and Atlantic mackerel fisheries. NMFS seeks comment on this measure because the same vessels often participate in the herring and mackerel fisheries; the incidental catch in the herring fishery is likely to consist of mackerel; the incidental catch in the mackerel fishery is likely to consist of herring; and differences in the size, capacity and/or horsepower restrictions within similar fisheries in the same waters may prove to be confusing, administratively burdensome, and difficult to enforce.

Proposed Scheme to Restrict Fishing to Specific Days Based on the Proportion of the TAC Caught in a Management Area

This measure would require NMFS to determine when harvesters have reached 40, 65, and 80 percent of the TAC in any of the four management areas, at which time NMFS would be required to project further when the catch would exceed 50, 75, and 90 percent of the TAC, and if the TAC will be exceeded. If NMFS projects that the TAC will be exceeded, then fishermen would be required to stop fishing for herring for a certain number of days in order to prevent the TAC from being exceeded.

NMFS is concerned that this "days out of the fishery" measure may be administratively burdensome. Further, considering that there is no limited or controlled access in the fishery other than restrictions on the size of domestic fishing and processing vessels, fishermen could increase their participation in the fishery (through additional vessels or hours), adjust their schedules to work around the days-out restriction, or substitute other forms of effort (increased landings during the days available for fishing or shift effort into other management areas) in response to the restricted days, thereby reducing or eliminating the conservation benefit of the "days-out-of-the-fishery" measure.

Spawning Area Closures

To protect spawning concentrations of herring, the FMP would implement five closed areas in the GOM to directed fishing for herring. These areas would be closed on a rotating basis for specified time periods. When an area is closed, fishing vessels could possess, land, or transfer up to 2,000 lb (907.2 kg) of herring per calendar day or per trip, whichever is least, from or in that area.

Allowing vessels to fish in areas designated closed during certain times of the year for spawning herring and allowing an incidental catch of spawning herring may be counter-productive and fail to protect spawning herring. Further, it may pose enforcement problems.

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Adjustment of the TAC for Management Area 1A

This measure would require the Regional Administrator to adjust the TAC for Management Area 1A if she determines that the New Brunswick, Canada, fixed gear fishery will not harvest 20,000 mt of Atlantic herring by October 1. This measure may be problematic because a real-time mechanism to monitor the Canadian catch does not exist, and adjusting the TAC after October 1 might not provide much benefit before the fishing year is over on December 31.

Specification of the Amount of Herring to be Used for Roe in a Roe Fishery

This measure would require that the Regional Administrator specify the amount of herring to be used for roe, should the amount harvested become a concern. Even though the Regional Administrator would make the decision based upon the recommendation of the Council (which would first consult with the Commission), the FMP as submitted by the Council provides no standards by which the Regional Administrator could base her determination.

A proposed rule that would implement the FMP will be published in the **Federal Register** for public comment after NMFS has evaluated it under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by September 27, 1999, the end of the comment period for this notice of availability on the FMP, to be considered in the decision concerning approval or disapproval of the management measures contained in the FMP. All comments received by September 27, 1999, whether specifically directed to the FMP or the proposed rule, will be considered in the approval/disapproval decision on the FMP. Comments received after that date will not be considered in the approval/disapproval decision on the FMP. All comments received on the FMP or on the proposed rule will be responded to in the preamble to the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 21, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–19171 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 071699E]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) will convene four public hearings on Draft Amendment 12 to the Fishery Management Plan for Coastal Migratory Pelagics in the Gulf of Mexico and South Atlantic (draft Amendment 12) and its draft environmental assessment (draft EA) and draft regulatory impact review (draft RIR). Draft Amendment 12 contains provisions for extending the commercial king mackerel permit moratorium for 3 or 5 years from its current expiration date of October 15, 2000, to provide time for the Council and the Gulf of Mexico Fishery Management Council to develop and implement a controlled access system for the king mackerel fishery.

DATES: Written comments will be accepted until 5 p.m. on September 16, 1999. The hearings will be held from August 16 through August 18, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699. Copies of draft Amendment 12 and EA are available from Kerry O'Malley at 843-571-4366. Draft Amendment 12 and its draft EA and draft RIR will also be available to the public at the hearings.

The hearings will be held in Florida, South Carolina, and North Carolina. See **SUPPLEMENTARY INFORMATION** for locations of the hearings and special accommodations.

FOR FURTHER INFORMATION CONTACT: Kerry O'Malley, South Atlantic Fishery Management Council, 843-571-4366; Fax: 843-769-4520; E-mail address: kerry.omalley@noaa.gov.

SUPPLEMENTARY INFORMATION: The Council will hold public hearings on draft Amendment 12 and its draft EA and draft RIR. Draft Amendment 12 includes management measures that would extend the commercial king mackerel permit moratorium beyond its current expiration date of October 15, 2000. The following options are being considered by the Council, with B as the preferred option: Option A—Extend the commercial king mackerel permit moratorium from its current expiration date of October 15, 2000, to October 15, 2003, or until replaced with a license limitation, limited access, and/or individual fishing quota or individual transferable quota system, whichever occurs first; and Option B—Extend the commercial king mackerel permit moratorium from its current expiration date of October 15, 2000, to October 15, 2005, or until replaced with a license limitation, limited access, and/or individual fishing quota or individual transferable quota system, whichever occurs first.

The hearings will begin at 6 p.m. and will end when all business is completed at all of the following locations:

1. Monday, August 16, 1999--Carteret Community College, 3505 Arendell Street, Morehead City, NC; telephone:919–247–3094;

2. Tuesday, August 17, 1999--Town & Country Inn, 2008 Savannah Highway, Charleston, SC; telephone: 843–571–1000;

3. Tuesday, August 17, 1999--Best Western-Miami Airport, 1550 NW LeJuene Road, Miami, FL; telephone: 305–871–2345; and

4. Wednesday, August 18, 1999--Sea Turtle Inn, 1 Ocean Blvd, Atlantic Beach, FL; telephone: 800–874–6000.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by August 9, 1999.

Dated: July 21, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–19173 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 071999A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on August 10–11, 1999, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, August 10, 1999, at 9:30 a.m. and on Wednesday, August 11, 1999, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Four Points Hotel, Route 132 and Bearse's Way, Hyannis, MA 02601; telephone (508) 771–3000. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Tuesday, August 10, 1999

The meeting will begin with an advisory report from the Northeast Fisheries Science Center on the status of sea scallops and witch flounder and updated assessments of all multispecies finfish, including 10-year rebuilding projections. During the afternoon session the Groundfish Committee will ask the Council to consider approval of initial action on a framework adjustment to the Northeast Multispecies Fishery Management Plan (FMP) to modify the Gulf of Maine cod fishery management program to address the 1999 cod discard problem and implement management measures for the 2000–2001 fishing year. A measure would also be included that would modify the mechanism in Georges Bank cod trip limit program (currently under NMFS review in Framework Adjustment 30 to the FMP) that provides authority to the Administrator, Northeast Region, NMFS (Regional Administrator) to reduce the trip limit based on an evaluation of the risk of exceeding the annual catch target. The Groundfish Committee report also will include recommendations for measures to be considered in the development of Amendment 13 to the FMP. The process to identify specific management options will occur between now and the November Council meeting.

Wednesday, August 11, 1999

As the first agenda item, the Council will elect its 1999–2000 officers. Reports will follow from the Council Chairman, Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard, the Atlantic States Marine Fisheries Commission and the U.S. Fish and Wildlife Service. The Enforcement Committee will ask for approval of the enforcement guidelines developed for Council use during the selection of measures to be included in fishery management plans. The Enforcement Report will conclude with an update by NOAA General Counsel on the status of civil penalty cases in the Northeast. During the afternoon portion of the meeting the Interspecies Committee will ask the Council to consider approval of a control date to apply to the use of days-at-sea (DAS) allocated through the Northeast Multispecies, Sea Scallop, and Monkfish FMPs. Fishing effort which occurs after publication of the control date may be treated differently than fishing effort expended prior to that date if the Council chooses to constrain future DAS usage based on more recent levels of use. The meeting will adjourn after the Council addresses any other outstanding business.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 21, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–19170 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–22–F

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Notices

Federal Register
Vol. 64, No. 143
Tuesday, July 27, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of National Genetic Resources Advisory Council Meeting.

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The United States Department of Agriculture announces the ninth meeting of the National Genetic Resources Advisory Council.

SUPPLEMENTARY INFORMATION: The National Genetic Resources Advisory Council consists of 16 members to provide advice to the Secretary and Director, National Genetic Resources Program, regarding the advancement of the Program. The meeting will discuss matters concerning genetic resources conservation and utilization.

TIME AND DATE: August 26, 1999, 8:30 a.m.–5:00 p.m.; August 27, 1999, 8:30 a.m.–4:00 p.m.

PLACE: Room 5030, USDA South Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250.

TYPE OF MEETING: Open to the public. Persons may participate in the meeting as time and space permit.

COMMENTS: The public may file written comments before or after the meeting with the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Henry L. Shands, Director, National Genetic Resources Program, Room 323–A Jamie L. Whitten Federal Building, USDA, 1400 Independence Avenue SW, Washington, D.C. 20250–0300. Telephone 202–205–7835, Fax 202–690–1434.

Done at Washington, D.C. on this 13th Day of July 1999.

Henry L. Shands,

Assistant Administrator for Genetic Resources, USDA–ARS.

[FR Doc. 99–19109 Filed 7–26–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that Federally owned invention U.S. Serial No. 09/122,850, filed July 28, 1998, entitled "Electrostatic Reduction System for Reducing Airborne Dust and Microorganisms" is available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to BioIon, L.L.C., of Athens Georgia, a limited exclusive license to Serial No. 09/122,850.

DATES: Comments must be received on or before October 25, 1999.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as BioIon, L.L.C. has submitted a complete and sufficient application for a license. The prospective limited exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective limited exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 99–19108 Filed 7–26–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that Federally owned invention U.S. Serial No. 09/314,102, filed May 19, 1999, entitled "US–852 Citrus Rootstock" is available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Twyford International, Inc., of Santa Paula, California, an exclusive license to Serial No. 09/314,102.

DATES: Comments must be received on or before October 25, 1999.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Twyford International, Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 99–19110 Filed 7–26–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; USDA National Hunger Clearinghouse Survey

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces FNS' intention to request renewal of Office of Management and Budget (OMB) approval of the USDA National Hunger Clearinghouse Survey.

DATES: Comments on this notice must be received by September 27, 1999.

ADDRESSES: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to Joyce C. Willis, Director, Office of Consumer Affairs, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 813–B, Alexandria, VA 223302

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Joyce C. Willis, (703) 305–2281.

SUPPLEMENTARY INFORMATION:

Title: USDA National Hunger Clearinghouse Survey.

OMB Number: 0584–0474.

Expiration Date: 5/31/99.

Type of Request: Renewal of OMB approval.

Abstract: Section 26 of the National School Lunch Act (42 U.S.C. 1769g(d)) (copy attached), which was added to the Act by section 123 of Pub. L. 103–448 on November 2, 1994, mandated that FNS enter into a contract with a non-governmental organization to establish and maintain an information clearinghouse (named USDA National Hunger Clearinghouse) for groups that assist low-income individuals or communities regarding nutrition assistance programs or other assistance. FNS awarded the 4-year contract to World Hunger Year (WHY) on September 29, 1995; the contract ends on September 30, 1999.

Section 26 was amended by section 112 of Pub. L. 105–336 on October 31, 1998 (applicable amendatory language attached), to extend funding for the Clearinghouse through fiscal year (FY) 2003. FNS is in the process of conducting the necessary competitive procurement activities to award this new contract.

The USDA National Hunger Clearinghouse includes a database of non-governmental, grassroots programs that work in the areas of hunger and nutrition, as well as a mailing list of relevant local governmental agencies. Under the existing contract, Clearinghouse staff established the database by reviewing relevant programs of organizations contained in several existing mailing lists. Updated program and mailing information about organizations culled from these lists were collected and entered into the database once each year (years 1, 2, and 3 of the contract) through a series of electronically-processed survey questionnaires sent through the mail. Returned surveys were scanned and data entered into the database. Clearinghouse staff followed up by phone or fax to ensure the highest possible return rate on the questionnaires. Surveys may also be completed on the World Wide Web. The return rate on questionnaires under the existing contract was 7 percent in year 1 of the contract, 18 percent in year 2, and 27 in year 3.

In order to effectively maintain the database under the new contract, questionnaires will be sent to all organizations included in the database once each year (years 1 through 5 of the contract) in order to obtain updated information, and to add additional organizations to increase the size of the database.

Each survey will be administered to each respondent only once each year.

Estimate of the Burden: Public reporting burden for this collection of information is estimated to average 5 minutes for the survey (the survey includes one 2-page instrument).

Respondents: The respondents are non-governmental organizations that have grassroots food and nutrition programs.

Estimated Number of Respondents: For the first year of the contract, 1,850 respondents are estimated; and for years 2 through 5, 1,750 respondents.

Estimated Number of Responses per Respondents: One response in each of the 5 years.

Estimated Total Annual Burden on Respondents: For the first year of the contract, 154 hours; and for years 2 through 5, 146 hours. The estimated total burden for all 5 years of the contract is 738 hours.

Copies of this information collection can be obtained from Martha Newton, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 813–B, Alexandria, VA 22302.

Dated: June 18, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–19080 Filed 7–26–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2:00 p.m., Thursday, August 5, 1999.

PLACE: Room 5030, South Building, Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Current telecommunications industry issues.
2. Status of PBO planning.
3. Options relating to the conversion of B stock to C stock.
4. Retirement of class A stock in FY 1999.
5. Annual class C stock dividend rate.
6. Allowance for loan losses reserve for FY 1999.
7. Administrative issues.

ACTION: Stockholders' Meeting.

TIME AND DATE: 9:00 a.m., Friday, August 6, 1999.

PLACE: The Williamsburg Room, Room 104–A, Jamie L. Whitten Building, Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the stockholders' meeting:

1. Call to order.
2. Establishment of a quorum.
3. Action on Minutes of the November 6, 1997, stockholders' meeting.

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4. Secretary's report on loans approved in FY 1999.
5. Treasurer's report.
6. Privatization committee report.
7. New business.
8. Adjournment.

ACTION: Board of Directors Meeting.

TIME AND DATE: Following the stockholders' meeting, Friday, August 6, 1999.

PLACE: The Williamsburg Room, Room 104–A, Jamie L. Whitten Building, Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:
1. Call to order.
2. Action on Minutes of the May 14, 1999, board meeting.
3. Report on loans approved in the third quarter of FY 1999.
4. Summary of financial activity for the third quarter of FY 1999.
5. Governor's report on the allowance for loan losses reserve for FY 1999.
6. Privatization committee report.
7. Consideration of resolution to retire class A stock in FY 1999.
8. Consideration of resolution to set annual class C stock dividend rate.
9. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: July 22, 1999.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 99–19292 Filed 7–23–99; 2:27 pm]

BILLING CODE 3410–15–P

CENSUS MONITORING BOARD

Public Meeting

ANNOUNCEMENT DATE: July 22, 1999.

SUMMARY: This notice, in compliance with Public Law 105–119, sets forth the meeting date, time, and place for a public meeting of the U.S. Census Monitoring Board. The meeting agenda will include the completion of the review of the paid advertising program for the 2000 Census, which began on July 8, 1999. Additionally, the Board will have a general business session.

DATE: Tuesday August 3, 1999.

TIME: 9:00 a.m. to 11:30 a.m.

LOCATION: 800 North Capital Street, NW, Conference Room L43, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Clark Reid, 301–457–5080, Communications Director (Congressional Members) or Estela Mendoza, Communications Director (Presidential Members) 301–457–9900.

Fred T. Asbell,

Executive Director, Congressional Members.

[FR Doc. 99–19138 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

International Trade Administration

May 1999 Sunset Reviews: Final Results and Revocation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of sunset reviews and revocation of antidumping duty order on oil country tubular goods from Israel (A–508–602) and the countervailing duty order on oil country tubular goods from Israel (C–508–601).

SUMMARY: On May 3, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty order and countervailing duty order on oil country tubular goods from Israel (64 FR 23596). Because the domestic interested parties have withdrawn, in full, their participation in the ongoing sunset reviews, the Department is revoking these orders.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1987, the Department issued an antidumping duty order on oil country tubular goods from Israel (52 FR 7000, as amended (53 FR 29370 (August 4, 1988)), and a countervailing duty order on oil country tubular goods from Israel (52 FR 6999 (March 6, 1987)). Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), on May 3, 1999, the Department initiated sunset reviews of these orders by publishing notice of the initiation in the **Federal Register** (64 FR 23596). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for these proceedings to inform them of the automatic initiation of sunset reviews on these orders.

In the sunset reviews of the antidumping and countervailing duty orders on oil country tubular goods from Israel, we received Notices of Intent to Participate from North Star Steel Ohio ("North Star") by the May 18, 1999 deadline (*see* § 351.218(d)(1)(i) of *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) ("*Sunset Regulations*")). On June 22, 1999, North Star informed the Department that it intended to withdraw its Notices of Intent to Participate, explaining that it is no longer interested in participating in these reviews. As a result, the Department determined that no domestic party intends to participate in these sunset reviews and, on June 24, 1999, we notified the International Trade Commission that no later than August 2, 1999, we intended to issue final determinations revoking these orders.

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and § 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because North Star withdrew its participation in these reviews and no other domestic interested party filed a Notice of Intent to Participate (*see* §§ 351.218(d)(1)(iii) and 751(c)(3)(A) of the *Sunset Regulations*), we are revoking these orders.

Effective Date of Revocation and Termination

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to these orders entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping and countervailing duty deposit requirements. The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: July 21, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19164 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Germany: Initiation of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of New Shipper Antidumping Duty Review.

SUMMARY: The Department of Commerce has received a request to conduct a new shipper review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Germany. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d), we are initiating this new shipper review.

EFFECTIVE DATE: July 27, 1999.

FOR FURTHER INFORMATION CONTACT: Anne Copper or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0090 or (202) 482–4477, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references are made to the Department of Commerce's ("the Department") regulations at 19 CFR part 351 (1998).

Background

On May 25, 1999, the Department received a request from MPT Prazisionsteile GmbH Mittweider ("MPT") pursuant to section 751(a)(2)(B) of the Act, and in accordance with 19 CFR 351.214(b), for a new shipper review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Germany with respect to ball bearings produced and exported by MPT. This order has a May anniversary month. Accordingly, we are initiating a new shipper review for MPT as requested. The period of review is May 1, 1998, through April 30, 1999.

Initiation of Review

In accordance with 19 CFR 351.214(b)(2), MPT provided certification that it did not export ball bearings, or components thereof, to the United States during the period of investigation. MPT also certified that, since the investigation was initiated, it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of investigation, including those not individually examined during the investigation. It also submitted documentation establishing: (i) The date on which the ball bearings, or components thereof, were first entered or withdrawn from warehouse and the date on which the subject merchandise was first shipped to the United States; (ii) the volume of that shipment; and (iii) the date of the first sale to an unaffiliated customer in the United States. Therefore, in accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Germany with respect to ball bearings produced and exported by MPT. We intend to issue the final results of this review not later than 270 days after the day on which this new shipper review is initiated.

Antidumping duty proceeding	Period to be reviewed
Germany: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof, A–428–801	
MPT Prazisionsteile GmbH Mittweider	5/01/98–4/30/99

Concurrent with publication of this notice and in accordance with 19 CFR 351.214(e), we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by MPT until the completion of the review.

The interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: July 21, 1999.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–19167 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–806]

Carbon Steel Wire Rope From Mexico: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 8, 1999, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its antidumping duty administrative review of the antidumping duty order on carbon steel wire rope from Mexico (64 FR 10979). This review covers one manufacturer/exporter of the subject merchandise to the United States, Aceros Camesa S.A. de C.V. (Camesa), and the period of March 1, 1997 through February 28, 1998. We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from Camesa and from the Committee of Domestic Steel Wire Rope and Specialty Cable

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Manufacturers (the petitioner). We have not changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: July 7, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Laurel LaCivita, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0666, (202) 482–4236, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 351 (April 1998).

Background

On March 8, 1999, the Department published in the **Federal Register** the preliminary results of the review of the antidumping duty order on carbon steel wire rope from Mexico (64 FR 10979). On April 7, 1999, we received comments from the petitioner and Camesa. The petitioner and Camesa submitted rebuttal comments on April 12, 1998.

The Department has now completed this antidumping duty administrative review in accordance with section 751(b) of the Act.

Scope of Review

The product covered by this review is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090.

Excluded from this review is stainless steel wire rope, which is classifiable under HTS subheading 7312.10.6000, and all forms of stranded wire, with the following exception.

In the final affirmative determination of circumvention of antidumping duty order, 60 FR 10831 (February 28, 1995), the Department determined that steel wire strand, when manufactured in Mexico by Camesa and imported into the United States for use in the production of steel wire rope, falls within the scope of the antidumping duty order on steel wire rope from Mexico. Such merchandise is currently classifiable under subheading 7312.10.3020 of the HTS.

Although HTS subheadings are provided for convenience and for Customs purposes, our own written description of the scope of this review remains dispositive.

This review covers one manufacturer/exporter, Camesa, and the period March 1, 1997 through February 28, 1998.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received case and rebuttal briefs from both petitioner and Camesa.

Comment 1: Whether Camesa's Sales to the United States Constitute Bona Fide Transactions

The petitioner contends that the timing and nature of Camesa's sales to the United States during the period of review (POR) indicate that they were not bona fide transactions. The petitioner claims that the sales were contrived for the purpose of orchestrating an export scheme to serve as the basis for an administrative review and adjustment of the antidumping duty deposit requirement. Consequently, the petitioner contends, the Department must disregard these sales and determine that no proper basis existed for an administrative review of the March 1, 1997 through February 28, 1998 period.

The petitioner argues that the circumstances of the sales indicate that they were contrived for purposes of manipulating the Department's antidumping analysis. In this regard, the petitioner points to the small number of sales and the late date of the sales, occurring at the end of the POR, as evidence that these sales were concocted by Camesa solely for purposes of justifying an administrative review and obtaining a zero margin.

The petitioner also contends that Camesa's one customer during the POR was not sincerely interested in purchasing general purpose steel wire rope from Camesa. According to the petitioner, Camesa's sole U.S. purchaser during the POR had been, up until approximately one month before the date of the U.S. sales, a purchaser of fishing ropes, exclusively. Because these fishing ropes were entered in-bond for subsequent export to foreign destinations, they were not subject to review. The petitioner argues that the customer's sudden switch, shortly before the end of the review period, to the general purpose ropes subject to the current review is evidence that the sales were contrived for the purpose of manipulating Camesa's dumping margin.

Finally, the petitioner contends that Department precedent equates the term *bona fide* with commercially reasonable, and points to U.S. Customs data to demonstrate that Camesa's sales were not made at commercially reasonable prices. These customs figures indicate that, for the month of Camesa's sales to the United States, the average price of all goods falling under the tariff schedule subheading that includes the products sold by Camesa during the POR is less than the prices charged by Camesa.

Camesa contends that the petitioner has not provided any evidence beyond its own speculation that the sales in question were not *bona fide*. Camesa argues that the relatively small number and the late timing of the sales to the United States during the POR were the result of Camesa's difficulty in finding U.S. customers in the face of the high cash deposit rate (111.68 percent) in effect during the POR for imports of its steel wire rope products, not the result of an attempt to manipulate the dumping margin.

Similarly, Camesa argues, there is no basis for questioning the genuineness of Camesa's U.S. customer's need for steel wire rope. The only evidence on the record regarding that customer's need for subject merchandise suggests a legitimate business motivation.

Finally, Camesa has three responses to the customs figures submitted by the petitioner. First, Camesa contends that petitioner's submission was untimely, having been filed with the Department after the deadline stipulated in 19 CFR 351.301(b)(2). Second, Camesa claims that it is unreasonable to compare the prices of its products sold to the United States with the average price of all imported products falling within a tariff schedule subheading. Camesa claims that products within this subheading vary greatly in important characteristics that significantly affect price, and, as support, Camesa demonstrates how the catalog prices for its own products falling within this subheading vary greatly. Thus, argues Camesa, the average price of all products within this subheading imported into the United States will vary greatly according to the composition of the products imported. Third, Camesa argues that even if the Department were to accept the figures as timely and find them significant in judging the commercial reasonableness of Camesa's U.S. sales prices, the

petitioner has misinterpreted the law regarding the importance of a sale's commercial reasonableness. According to Camesa, in order to prove that sales are not *bona fide* it is not enough to show that their sales terms are commercially unreasonable. Camesa cites *Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review:* "[T]he Department only disregards U.S. sales in exceptional circumstances where the sale is commercially unreasonable and other facts and circumstances indicate an attempt to manipulate the dumping margins." 64 FR 6305, 6317 (Feb. 9, 1999) (*Silicon Metal from Brazil*).

DOC Position: We agree with Camesa. While the Department's authority to disregard U.S. sales in administrative reviews as non-bona fide transactions has been recognized by the Court of International Trade (CIT), *see, e.g., PQ Corp.* v. *United States,* 652 F. Supp. 724, 729 (CIT 1987), there is no express statutory or regulatory provision that addresses or guides the exclusion of U.S. sales. Nevertheless, the Department has the "authority to prevent fraud upon its proceedings." *Chang Tieh Indust. Co., Ltd.* v. *United States,* 840 F.Supp. 141, 146 (CIT 1993). Thus, the Department has the discretion to exclude certain U.S. sales where those sales are clearly "distorting or unrepresentative." *American Permac, Inc.* v. *United States,* Slip Op. 92–8 (Feb. 4, 1992).

In order to determine whether sales should be excluded as non-bona fide transactions, the Department in the past has looked at a variety of factors indicating "whether the transaction has been so artificially structured as to be commercially unreasonable." *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Rescission of Antidumping Duty Administrative Review,* 63 FR 47232 (Sep. 4, 1998) (*Steel Plate from Romania*); *see also Silicon Metal from Brazil,* 64 FR at 6317 (noting that the Department will exclude U.S. sales where exceptional circumstances demonstrate commercially unreasonable sales terms and an attempt to manipulate the margin calculations).

However, a sale will not be excluded simply because it was made for the purpose of obtaining a smaller margin, "as long as the sale itself is at least arguably commercially reasonable." *Steel Plate from Romania,* 63 FR at 47234; *see also P.Q. Corp.,* 652 F. Supp. at 729 (explaining that an overpriced transaction created solely for the purpose of lowering the margin may be acceptable if the transaction was in fact sold at arm's length). Rather, the Department looks at the totality of the circumstances to determine whether the transactions in question are artificial, and thus, would not provide an appropriate basis for determining the respondent's U.S. pricing behavior. *See Manganese Metal from the PRC,* 60 FR 56,045 (Nov. 6, 1995) ("Based on the totality of the circumstances, . . . the Department determines, . . . that these were not bona fide sales for commercial purposes and, therefore, would not provide an appropriate basis for determining [respondent's] pricing behavior for sales to the United States. Therefore, these sales have been disregarded."); *see also Steel Plate from Romania* ("Based on the cumulative weight of these factors, we determine that this sale was not bona fide because it was not a commercially reasonable transaction and involved selling procedures atypical of (the exporter's and importer's) normal business practices.")

We agree that the facts cited by the petitioner to prove that the sale was artificially structured, namely the small number of sales, the single customer, and the late sale date, could be, as Camesa argues, simply the result of the high cash deposit rate on steel wire rope from Mexico in effect during the POR. Additionally, while the number of sales made by Camesa during the POR was small, the quantity of goods sold was substantial. Finally, nothing in the record suggests that the documentation for the transactions was fabricated, *see Sulfanic Acid from Hungary,* 58 FR 8256, 8257 (Feb. 12, 1993) (the Department applied BIA where documents discovered at verification indicated that information might have been fabricated for the purpose of the investigation); *compare Salmon from Norway,* 62 FR 1430 (Jan. 10, 1997) (sales were included where there was no evidence of fabricated documents or other suspicious activity), or that the sales were not made at arm's length. Although Customs data generally provides a good basis for determining whether sales have been made at commercially reasonable prices we agree with Camesa in this instance that the price figure provided by the petitioner covers a range of products so broad that it cannot be meaningfully compared with Camesa's sales prices during the POR.

The petitioner's questioning of Camesa's customer's genuine interest in purchasing steel wire rope is not supported by the record. The only evidence on the record indicating the customer's motive for its purchase, while not elaborate, nevertheless indicates a genuine desire to become a customer of Camesa's and a purchaser of steel wire rope within the scope of the order. Please see Camesa's June 5, 1998 response, appendix A–6–B, document 1 for another explanation of the customer's motive, due to the proprietary nature of the explanation.

Because the petitioner has not provided sufficient evidence to demonstrate that the sales involved were fabricated or otherwise commercially unreasonable, and we have found no other evidence demonstrating that the sales were not bona fide transactions, we have continued to include these sales in our margin calculation in these final results of review.

Comment 2: Whether the Department Should Reject Camesa's Home Market Sales Data as Inaccurate and Inherently Unreliable and Instead Use Adverse Facts Available

In the Department's preliminary results of review, we rejected Camesa's second home market sales database, submitted on October 20, 1998, noting that it contained discrepancies with the original database, submitted on July 7, 1998. We concluded that these discrepancies constituted new information not requested by the Department.[1] Because this new information was not requested and was not submitted within the time period stipulated by 19 CFR 351.301(b)(2), we rejected the second database as untimely.

The petitioner argues that these discrepancies, which the Department described as "significant and unexplained," *see Memorandum to the File from Case Analyst* (March 2, 1999) at 2, raise serious questions about the accuracy of all home market data submitted by Camesa during the POR. The petitioner further argues that, by submitting new information in its second database, Camesa was admitting that its first submission was inaccurate. According to the petitioner, "submission of such significant adjustments in its supplemental filing is an overt and explicit admission that its

[1] On October 20, 1998, Camesa submitted its second home market sales database in response to our supplemental questionnaire, which requested that Camesa submit information on product characteristics and additional sales. In doing so, however, it did not simply submit an addendum to the first database, but instead, resubmitted the entire home market sales database, i.e., all data regarding home market sales were resubmitted. Some of the fields in this second database contained information conflicting with the first database, even though we had not requested Camesa to revise any of the previously submitted fields. We had only requested the inclusion of additional fields; i.e., product characteristics, and the inclusion of additional sales observations.

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initial database was inaccurate." The petitioner notes that the discrepancies affected the reporting of all sales that were contained in both databases and affected numerous fields reported for these sales, including gross unit price and several adjustments used by the Department in calculating normal value. The petitioner concludes that the Department should reject Camesa's home market data in favor of facts otherwise available.

Camesa argues that the discrepancies between its first and second databases do not constitute an admission that Camesa's first submission is inaccurate, but merely were the result of mistakes made under the pressure of meeting the Department's filing deadline. Camesa argues that these discrepancies are a result of mistakes made in compiling the second database, not a result of an attempt by Camesa to revise the data it reported in its first submission. These discrepancies, Camesa claims, do not call into question the accuracy of the underlying data.

Moreover, Camesa points to several expenses for which, in its July 7, 1998 response to the Department's first questionnaire, Camesa provided worksheets and other documents to explain and support the data reported in the July 7, 1998 database. Camesa attempts to explain some of the discrepancies found in three of the fields reported in its home market database. It argues that it could not resolve all of the discrepancies without placing new information on the record, which had been closed per § 351.301(b)(2). [2] The petitioner contends that Camesa's attempts at resolving the discrepancies are inadequate.

Finally, Camesa contends that, even if it had conceded there were errors in its initial sales listing, that fact alone would not justify the resort to an adverse inference, as Camesa has cooperated fully in this review.

DOC Position: We agree with Camesa. The record does not indicate that the original database is inaccurate or unreliable, and we do not find that Camesa failed to act to the best of its ability.

Under section 776(a) of the Act and 19 CFR 351.308, the Department will only rely on facts otherwise available when: (1) Necessary information is not on the record; or (2) the respondent has withheld information, fails to provide requested information, significantly impedes a proceeding, or provides information that cannot be verified. Furthermore, in accordance with section 776(b) of the Act, the Department will rely on adverse inferences only where the respondent has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information.

Although the Department did not conduct a verification of Camesa during the POR, we did, per Department policy, issue an extensive questionnaire to Camesa requesting support for all sales data provided to us. We found some deficiencies in Camesa's response to this initial questionnaire and thus issued a supplemental questionnaire. Camesa's responses to both questionnaires, in combination, provided the Department with sufficient explanations of how Camesa calculated the data it reported, along with support for the raw numbers underlying its response. Thus, the respondent did not withhold information or fail to provide requested information. As such, Camesa's responses were complete and provided all of the information necessary for margin calculations. We note that the petitioner did not comment on Camesa's response to either of our questionnaires or otherwise indicate that it was concerned with the quality of Camesa's reported data, until we had issued our preliminary results of review.

Moreover, it is important to note that we did not request the second database as the result of having found errors in the calculations or data used by Camesa in compiling the first database. We requested the second database because we had determined that Camesa needed to report a larger number of sales of similar merchandise, and to report physical characteristics for all sales. [3] Thus, our rejection of the second database did not leave unanswered concerns about the quality of Camesa's previously submitted data or calculations.

Finally, after having rejected Camesa's second database in our preliminary results of review, and thus having removed it from consideration, we cannot now use it for purposes of impugning the first database. Even if, however, the second database were available for our current analysis, we could not conclude that because the first database contained some inaccuracies, all of Camesa's submitted home market data must also be inaccurate. As explained above, the submissions on the record were timely filed and are complete and supported by documentation in the record. Therefore, we did not reject Camesa's home market sales data. As such, it is not necessary to rely on adverse facts available.

Comment 3: Whether The Department Must Affirm Its Preliminary Determination That Camesa Sold Products in the Home Market at Below Cost of Production

The petitioner argues that the Department correctly applied the sales-below-cost test to all products "under the consideration for the determination of normal value." The petitioner also argues that sales "under consideration for the determination of normal value" should include all home market sales reported.

Respondents did not comment on this issue.

DOC Position: We agree with the petitioner that a sales-below-cost test must be conducted on all home market sales reported, and affirm our preliminary finding that Camesa made sales below cost in its home market during the POR.

Comment 4: Whether the Department Should Summarily Reject All of the Petitioner's Contentions

In its rebuttal brief, Camesa argues that the petitioner did not raise its objections in a timely manner. Camesa notes that the petitioner did not submit comments on any of Camesa's questionnaire responses, and did not, until after publication of our preliminary results of review, indicate it had concerns with the bona fide nature of Camesa's sales to the United States or with the suitability of Camesa's home market data for review.

DOC Position: The Department disagrees with Camesa. Section 351.309(b) of the Department's regulations states that the Department will consider case and rebuttal briefs filed within stated time limits. An interested party is under no burden to provide another party with advance warning of the issues it plans to raise in its case brief. In fact, an interested party might very well have no idea what arguments it will need to make until the Department has issued its preliminary results of review. In this case, for example, the petitioner had no advance warning that the Department would reject Camesa's second submission of home market sales data (see the above discussion of *Comment 2*) until our preliminary results were issued.

Interested parties were given five days after the filing of case briefs in which to respond to the arguments of other parties, in accordance with § 351.309(d) of the Department's regulations.

Finally, the petitioner's comments did not raise unusually complex issues. Camesa did not indicate to the Department, prior to its April 13th submission, that it was having difficulty responding to the petitioner's arguments within the allotted time period, nor has it explained how in particular it was overburdened or denied a reasonable opportunity for responding.

We determine that the following dumping margins exist:

Manufacturer/exporter	Period	Margin (percent)
Aceros Camesa, S.A. de C.V.	3/1/97–2/28/98	0.00

The Department shall determine, and the customs service shall assess, antidumping duties on all appropriate entries. We will instruct customs to liquidate the entries made during the POR without regard to antidumping duties since no margins were determined to exist in this review. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective, upon publication of this notice of final results of review, for all shipments of steel wire rope from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for Camesa will be the rate stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and, (4) the cash deposit rate for all other manufacturers or exporters will continue to be 111.68 percent, the all others rate established in the less-than-fair-value (LTFV) investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with § 351.306 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 771(i) of the Act (19 U.S.C. 1677f(i)), and 19 CFR 351.213.

Dated: July 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19166 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–047]

Revocation of Antidumping Finding: Elemental Sulphur From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping finding: Elemental sulphur from Canada.

SUMMARY: Pursuant to section 751(c) of the Tariff Act from 1930, as amended ("the Act"), the United States International Trade Commission ("the Commission") determined that revocation of the antidumping finding on elemental sulphur from Canada is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 2232 (January 13, 1999)). Therefore, pursuant to 19 CFR 351.222(i)(1)(iii), the Department of Commerce ("the Department") is publishing notice of the revocation of the antidumping finding on elemental sulphur from Canada. Pursuant to section 751(c)(6)(A)(iv) of the Act, the effective date of revocation is January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: January 1, 2000.

Background

On August 3, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 41227 and 63 FR 41280, respectively) of the antidumping finding on elemental sulphur from Canada pursuant to section 751(c) of the Act. As a result of the review, the Department found that revocation of the antidumping finding would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the finding to be revoked (*see Final Results of Expedited Sunset Review: Elemental Sulphur from Canada*, 63 FR 67647 (December 8, 1998).

On January 13, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping finding on elemental sulphur would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Elemental Sulphur from Canada*, 64 FR 2232 (January 13, 1999) and USITC Pub. 3152, Inv. No. AA1921–127 (January 1999)).

Scope

The merchandise covered by this determination is elemental sulphur from Canada. This merchandise is classifiable under Harmonized Tariff Schedule

[2] The petitioner did not argue that Camesa submitted untimely information in the attempts, in its April 8, 1999 case brief, it made to resolve the discrepancies.

[3] The Department was able to reach its preliminary conclusions without the use of this expanded sales information. The initial, more limited sales information provided by Camesa included above-cost sales of identical products that were contemporaneous with all sales in the United States. We therefore did not need to examine sales of similar merchandise, and the necessary physical characteristics were taken from an appendix attached to the written, narrative portion of Camesa's October 20, 1998 submission. Thus, the second sales database was not ultimately necessary for our calculations.

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(HTS) subheadings 2503.10.00, 2503.90.00, and 2802.00.00. Although the HTS subheadings are provided for convenience and for customs purposes, the written description of the scope of this finding remains dispositive.

Determination

As a result of the determination by the Commission that revocation of this antidumping finding is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act, will revoke the antidumping finding on elemental sulphur from Canada. Pursuant to section 751(c)(6)(A)(iv) of the Act, this revocation is effective January 1, 2000. The Department will instruct the U.S. Customs Service to discontinue suspension of liquidation and collection of cash deposit rates on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: July 21, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19163 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–835]

Oil Country Tubular Goods, Other Than Drill Pipe From Japan: Notice of Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: July 27, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0648.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1998).

Extension of Time Limits for Preliminary Results

The Department of Commerce has received a request to conduct an administrative review of the antidumping duty order on oil country tubular goods from Japan. The Department initiated this antidumping administrative review for Sumitomo Metal Industries Ltd. on September 29, 1998 (63 FR 51893) and for Okura and Company on October 29, 1999 (63 FR 58009). The review covers the period August 1, 1997 through July 31, 1998.

Because of the complexity of certain issues, it is not practicable to complete these reviews within the time limits mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with that section, the Department is extending the time limits for the preliminary results to August 31, 1999 (*See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Re: Extension of Preliminary Results). This extension of time limits is in accordance with section 751(a)(3)(A) of the Act.

Dated: July 9, 1999.

Edward C. Yang,

Acting Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 99–19165 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–068]

Continuation of Antidumping Finding: Prestressed Concrete Steel Wire Strand From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping finding: Prestressed concrete steel wire strand from Japan.

SUMMARY: On December 30, 1998, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended ("the Act"), determined that revocation of the antidumping finding on prestressed concrete steel wire strand from Japan would be likely to lead to continuation or recurrence of dumping (64 FR 857 (January 6, 1999)). On January 27, 1999, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping finding on prestressed concrete steel wire strand from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 4123 (January 27, 1999)). Therefore, pursuant to 19 CFR 351.218(e)(4), the Department is publishing notice of the continuation of the antidumping finding on prestressed concrete steel wire strand from Japan.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 3, 1999.

Background

On September 1, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 46410 and 63 FR 46477, respectively) of the antidumping finding on prestressed concrete steel wire strand from Japan pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping finding would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the finding to be revoked (*see Final Results of Expedited Sunset Review: Steel Wire Strand from Japan*, 64 FR 857 (January 6, 1999)).

On January 27, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping finding on prestressed concrete steel wire strand from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Prestressed Concrete Steel Wire Strand from Japan*, 64 FR 4123 (January 27, 1999) and USITC Pub. 3156, Inv. No. AA1921–188 (Review) (February 1999)).

Scope

The merchandise covered by this determination is steel wire strand, other than alloy steel, not galvanized, which

is stress-relieved and suitable for use in prestressed concrete. Such merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 7312.10.30.12. The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping finding would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping finding on prestressed concrete steel wire strand from Japan. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this finding will be initiated not later than the fifth anniversary of the effective date of continuation of this finding.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(e)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this finding is February 3, 1999, seven days after the date of publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this finding not later than January 2004.

Dated: July 21, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19160 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–818, A–583–831 and A–580–834]

Notice of Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From United Kingdom, Taiwan and South Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Antidumping Duty Orders.

EFFECTIVE DATE: July 27, 1999.

FOR FURTHER INFORMATION CONTACT: Rick Johnson, Linda Ludwig or Jim Doyle, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at (202) 482–3818, (202) 482–0649 and (202) 483–0259 respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (April 1, 1998).

Scope of the Orders

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper

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valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

Antidumping Duty Orders

On July 19, 1999, the International Trade Commission (the Commission) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from United Kingdom, Taiwan and South Korea. Therefore, in accordance with section 736(a)(1) of the Tariff Act, the Department will direct Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of stainless steel sheet and strip in coils from United Kingdom, Taiwan and South Korea. These antidumping duties will be assessed on all unliquidated entries of stainless steel sheet and strip in coils from United Kingdom, Taiwan and South Korea entered, or withdrawn from warehouse, for consumption on or after January 4, 1999, the date on which the Department published its notices of preliminary determinations in the **Federal Register**, 64 FR 85–92, 101–108, 116–124, 137–147 (Jan 4, 1999). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping duty margins as noted below. The "All Others" rate applies to all exporters of subject stainless steel sheet and strip in coils not specifically listed. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
United Kingdom.	
Avesta Sheffield	14.84
All Others	14.84
Taiwan.	
Tung Mung/Ta Chen	14.95
Tung Mung	14.95
YUSCO/Ta Chen	34.95
YUSCO	34.95
Chang Mien	.0.00
All Others	12.61
South Korea.	
Pohang Iron & Steel Co., Ltd	12.12
Taihan Electric Wire Co., Ltd	58.79
Inchon Iron & Steel Co., Ltd	0.00
All Others	12.12

This notice constitutes the antidumping duty order with respect to stainless steel sheet and strip in coils from United Kingdom, Taiwan and South Korea. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect. This order is published in accordance with section 736(a) of the Tariff Act of 1930, as amended.

Dated: July 21, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–19124 Filed 7–26–99; 8:45 am]

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[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order.

EFFECTIVE DATE: July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Ranado, Stephanie Arthur, or Robert James, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at (202) 482–3518, (202) 482–6312, or (202) 482–5222, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (April 1, 1998).

Amendment to the Final Determination

On May 19, 1999, the Department determined that stainless steel sheet and strip in coils (stainless sheet in coil) from Germany are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735(a) of the Tariff Act. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 30710 (June 8, 1999) (Final Determination). On May 28, 1999, respondent Krupp Thyssen Nirosta, GmbH (KTN) timely filed an allegation that the Department had made several ministerial errors in its final determination. Petitioners (Allegheny Ludlum Corp., Armco, Inc. J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corp., United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization) also timely alleged two ministerial errors on June 2, 1999. Both interested parties requested that we correct the errors and publish a notice of amended final determination in the **Federal Register**. See 19 CFR 351.224(e). In addition, on June 8, 1999, petitioners filed comments in rebuttal of two of KTN's alleged errors.

KTN's submission alleges the following errors:

- In attempting to remove a third-country shipment from KTN's U.S. sales listing, the Department inadvertently deleted the wrong transaction;
- The Department used the incorrect interest rates for calculating home market credit expenses and in certain instances U.S. credit expenses and inventory carrying costs;
- For one of KTN's affiliated home market service centers, the Department inadvertently relied upon an outdated database superseded by a later submission;
- The Department erred in adjusting KTN's cost of production (COP) for certain products subjected to further processing by the affiliated home market service center, thus overstating the COP;
- The Department's attempt to revise KTN's variable cost of manufacture (VCOM) to reflect corrected nickel prices did not work due to a programming error;
- For an affiliated U.S. reseller to which we applied adverse facts available the weighted-average gross unit price set forth in the Department's May 19, 1999 analysis memorandum differs from that hand-entered into the margin program;
- For this same reseller, the Department inadvertently relied upon an outdated database superseded by a later submission;
- Finally, in applying adverse facts available to the affiliated U.S. reseller, the Department erred by failing to exclude putatively cut-to-length material (which is not included in the scope of this investigation).

See Letter, Hogan & Hartson, May 28, 1999 passim. In their submission petitioners note that the Department stated that it intended to apply adverse facts available for KTN's failure to report certain home market downstream sales made by its affiliates. To do this, petitioners aver, the Department intended to calculate the highest gross unit price for each product (i.e., control number) for sales between KTN and its affiliates and use this price as the basis for NV. However, petitioners allege, the Department inadvertently omitted the customer code for one of the home market affiliates to which we were applying facts available. In addition, petitioners argue that the Department's application of facts available for these unreported sales had no effect in certain cases because the Department inadvertently included the affiliated customers in its arm's-length test; when these customers subsequently failed the arm's-length test the transactions were excluded entirely from the margin calculation and not subjected to facts available, as clearly intended by the Department.

Petitioners' rebuttal addressed two of KTN's allegations. With respect to KTN's VCOM, petitioners argue that any correction to home market VCOM applies equally to both U.S. VCOM and U.S. total cost of manufacture. These latter two are both needed to calculate accurate adjustments for differences in physical characteristics of the home market and U.S. merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff

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Act. With respect to KTN's U.S. reseller, petitioners contend that the Department's decision not to attempt segregating cut-to-length stainless sheet and strip from the subject stainless sheet in coils is methodological, not ministerial. Furthermore, petitioners continue, the Department determined that the U.S. reseller's sales data were so replete with errors as to be unreliable in toto; in petitioners view, it would be inappropriate for the Department now to accept the reliability of selective portions of those data (i.e., the two specific variables KTN suggests using for this purpose). Because the Department rejected the entire database, petitioners aver, it would not make sense for the Department to then assume that these two fields were reported accurately and to use these as the basis for segregating cut-to-length products from products in coil form.

After reviewing both parties' allegations and petitioners rebuttal we have determined, in accordance with 19 CFR 351.224, that the Final Determination includes several ministerial errors. As to KTN's allegations, we agree with KTN that each of the points raised by KTN constitutes a ministerial error with the exception of the alleged "failure" to exclude cut-to-length merchandise. Our treatment of the U.S. reseller's reported sales represented a methodological choice, and not "an error in addition, subtraction, or other arithmetic function" or "other similar types of unintentional error." 19 CFR 351.224(e); see also Memorandum For Richard Weible; "Allegations of Ministerial Errors; Final Determination in the Investigation of Stainless Steel Sheet and Strip in Coils from Germany" (Ministerial Errors Memorandum), dated July 23, 1999, a public version of which is on file in room B–099 of the main Commerce building, and the Final Determination, 64 FR at 30739. We also agree with petitioners that the intended correction to KTN's home market VCOM applies equally to KTN's U.S. VCOM and U.S. TCOM, and have adjusted each accordingly for this amended final determination.

Finally, we also agree that the two errors alleged by petitioners represent ministerial errors and have corrected both for this final determination. For a detailed description of each of these allegations and, where applicable, our resultant corrections, see the Ministerial Errors Memorandum. Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of stainless steel sheet and strip in coils from Germany. The revised weighted-average dumping margins are in the "Antidumping Duty Order" section, below.

Scope of the Order

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III." [1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36." [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17." [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6". [5]

Antidumping Duty Orders

On July 19, 1999, the International Trade Commission (the Commission) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Germany. Therefore, in accordance with section 736(a)(1) of the Tariff Act, the Department will direct Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of stainless steel sheet and strip in coils from Germany. These antidumping duties will be assessed on all unliquidated entries of stainless steel sheet and strip in coils from Germany entered, or withdrawn from warehouse, for consumption on or after January 4, 1999, the date on which the Department published its notice of preliminary determination in the **Federal Register** (64 FR 92). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping duty margins as noted below. The "All Others" rate applies to all exporters of subject stainless steel sheet and strip in coils not specifically listed. The revised weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
Krupp Thyssen Nirosta GmbH	25.37
All Others	25.37

This notice constitutes the antidumping duty order with respect to stainless steel sheet and strip in coils from Germany. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Tariff Act of 1930, as amended.

Dated: July 21, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–19125 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order.

EFFECTIVE DATE: July 27, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Michael Heaney, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at (202) 482–2924 or (202) 482–4475, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (April 1, 1998).

Amendment to the Final Determination

On May 19, 1999, the Department determined that stainless steel sheet and strip in coils (stainless sheet in coil) from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735(a) of the Act. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Mexico, 64 FR 30790 (June 8, 1999) (Final Determination). On June 1, 1999, respondent Mexinox S.A. de C.V. (Mexinox) filed a timely allegation that the Department had made several ministerial errors in its Final Determination. We received no ministerial error allegations nor rebuttal comments from the petitioners (Allegheney Ludlum Corp., Armco, Inc. J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corp., United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization). Mexinox requested that we correct the ministerial errors pursuant to the Department's authority under 19 CFR 351.224.

Mexinox alleges the following ministerial errors:

- The Department erred by failing to calculate a separate weight-averaged net U.S. price for export price (EP) and constructed export price (CEP) sales, but instead collapsing EP and CEP calculations into a single weight-averaged figure which was then used to calculate the margin.
- The Department erred by including foreign exchange losses in the calculation of variable cost of manufacturing (VCOM), rather than including them in either general and administrative (G&A) expenses or as part of the net interest expenses.
- In calculating CEP profit, the Department erred by failing to include the U.S. indirect selling expenses of Mexinox's U.S. Krupp affiliate in the computation of the total U.S. selling expenses.

Section 735(e) of the Act and 19 CFR 351.224(f) define a ministerial error as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Department considers ministerial." We agree with Mexinox that the failure to calculate a separate weight-averaged U.S. price for EP and CEP transactions constituted a clerical error. We did not intend to collapse the calculation of net U.S. price into a single value for EP and CEP sales. We intended rather to calculate a separate net U.S. price for EP and CEP sales. We also agree that the failure to include the indirect selling expenses of the U.S. Krupp affiliate in the pool of total selling expenses constituted a clerical error. We did not intend to omit any incurred selling expenses from the computation of total selling expenses. We have corrected these errors in this amended final determination. However, we do not agree that the inclusion of foreign exchange losses in the calculation of VCOM constituted a clerical error. These foreign exchange losses relate to gains and losses incurred exclusively on purchases of raw materials and hence are a cost of materials. Therefore, the direct material foreign exchange losses are appropriately included in the calculation of VCOM. Thus, the inclusion of direct material foreign exchange losses in VCOM does not constitute a ministerial error.

Because we agree that our Final Determination contained two clerical errors, we are amending the Final Determination of the antidumping duty investigation of stainless steel sheet and strip in coils from Mexico in accordance with 19 CFR 351.224(e). The revised weighted-average dumping margins are in the "Antidumping Duty Order" section, below.

Scope of the Order

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

Antidumping Duty Order

On July 19, 1999, the International Trade Commission (the Commission) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

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merchandise from Mexico. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs Service officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of stainless steel sheet and strip in coils from Mexico. These antidumping duties will be assessed on all unliquidated entries of stainless steel sheet and strip in coils from Mexico entered, or withdrawn from warehouse, for consumption on or after January 4, 1999, the date on which the Department published its notice of preliminary determination in the **Federal Register** (64 FR 124). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping duty margins as noted below. The "All Others" rate applies to all exporters of subject stainless steel sheet and strip in coils not specifically listed. The revised weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percent
Mexinox S.A. de C.V.	30.85
All Others	30.85

This notice constitutes the antidumping duty order with respect to stainless steel sheet and strip in coils from Mexico. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR § 351.224(e).

Dated: July 21, 1999.

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–19126 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order.

EFFECTIVE DATE: July 27, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or James Doyle, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at (202) 482–3434, or (202) 482–0159, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (April 1, 1998).

Amendment to the Final Determination

On May 19, 1999, the Department determined that stainless steel sheet and strip in coils (stainless sheet in coil) from France are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735(a) of the Tariff Act. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France, 64 FR 308204 (June 8, 1999) (Final Determination). On June 1, 1999, respondents, Usinor and its home market and U.S. market affiliates (Ugine Division, Ugine Serive, Bernier, Uginox, Hague and Edgcomb Metals), timely alleged one ministerial error. Additionally, on June 4, 1999, Petitioners (Allegheney Ludlum Corp., Armco, Inc. J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corp., United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization) timely alleged three ministerial errors. See 19 CFR 351.224(e).

Comment 1: Respondents allege that the Department's model match program in its final determination failed to retain the product characteristics with respect to Usinor's sales to Ugine Service. Respondents noted that this error has the effect of ignoring these sales for matching purposes for control numbers sold only to Ugine Service. Respondents recommended that the Department add these characteristics to the "KEEP" statement in line 542 of its model match program.

Department's Position: After a review of respondents' allegation, we agree with respondents and have corrected our model match program at line 542 to account for the missing product characteristics (i.e., we added the variable &HMPHVARS) in the model match program. For the computer code we used to correct this ministerial error, please see the *Memorandum from Robert A. Bolling to Edward Yang* dated July 13, 1999 ("*Amended Final Calculation Memorandum*"), a public version of which is available in the Central Records Unit, Room B–099 of the Department of Commerce building, 14th Street and Constitution Ave, N.W., Washington, D.C.

Comment 2: Petitioners allege that in the final determination the Department tested sales from Usinor to Ugine Service and Bernier to determine if those sales were made at arm's length prices. Petitioners noted that while certain home market sales that did not pass the arm's length test were excluded from the dumping analysis, the Department failed to exclude sales from a second home market sales file that did not pass the arm's length test. Respondents did not comment on this issue.

Department's Position: After a review of petitioner's allegation, we agree with petitioners, and have corrected our model match program in order to exclude sales from the second home market sales file from our dumping analysis that failed the arm's length test. At line 537 of the model match program, we have included the dataset "ARMFAIL." For the computer code we used to correct this ministerial error, please see the *Amended Final Calculation Memorandum*, a public version of which is available in the Central Records Unit, Room B–099 of the Department of Commerce building, 14th Street and Constitution Ave, N.W., Washington, D.C.

Comment 3: Petitioners allege that the Department determined that the reported affiliated freight forwarder rates for U.S. sales were not at arm's length prices, and thus the Department decided to apply facts available to the reported affiliated freight forwarder rates for U.S. sales. As facts available, the Department used a simple average of Usinor's reported freight forwarder rates for all U.S. sales. Petitioners argue that the Department's application of facts available in the SAS programing had the result of lowering the affiliated freight forwarder rates for certain U.S. sales. Petitioners contend that for any sale where the reported freight forwarder rate exceeded the simple average of the reported freight forwarder rates, the Department's use of facts available provided a benefit to the respondent.

Respondents state that the Department's program correctly and accurately applied the average of reported freight forwarder rates as was determined in the final determination. Additionally, respondents note that the application of facts available may have lowered certain U.S. sales affiliated freight forwarder rates is irrelevant because the impact of the Department's approach was to increase the dumping margin. Further, respondents contend that the petitioners' allegation was not a ministerial error as defined by the Department's regulations. Finally, respondents argue that petitioners' allegation is an attempt to repeat their argument of applying adverse facts available, which the Department has previously rejected.

Department's Position: We disagree with petitioners. Petitioners' allegation does not meet the criteria for treatment as a ministerial error. A ministerial error is defined in 19 CFR section 351.224(f) as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial." We performed our calculation of averaging all of the freight forwarder expenses as we intended. See comment 6 of our final determination and our analysis memo. Thus, the Department's action was an intentional policy choice, and not a ministerial error. As we stated in our final determination, because Usinor was unable to provide the requested information, it would be inappropriate to use the rate proposed by petitioners, because use of such a rate would require an adverse assumption: "Because we find that Usinor has acted to the best of its ability with respect to this adjustment, as non-adverse facts available, we have used the average of Usinor's reported freight-forwarder rates." *See Notice of Final Determination of Sales at Less than Fair Value in the Investigation of Stainless Steel Sheet and Strip in Coils (SSSS) from France*, 64 FR 30820, 30830 (June 8, 1999). In selecting non-adverse facts available, the Department attempts to use neutral information which will not necessarily raise or lower the respondent's overall margin. In this case, in the absence of usable freight forwarder rates, the Department used an average freight rate which was not designed to have any pre-ordained effect on the margin. Thus, the Department's treatment of the affiliated freight forwarders expense was a policy decision and not an unintentional error of the kind covered by the ministerial error provision.

Comment 4: Petitioners allege that the Department restricted the universe of home market models when it performed the model matching. Petitioners contend that the Department restricted the model matching in that the Department used only one home market control number (CONNUM) at a certain level of trade (LOT) (i.e., when there are two levels of trade in the home market) which excluded the same CONNUM at the other level of trade. In order words, in instances where certain CONNUMS were sold at both levels of trade, the Department only performed matching for that CONNUM at one level of trade. Therefore, petitioners argue that matching U.S. sales to normal values is not correct because the data necessary to match across levels of trade were excluded. Petitioners state that the Department should have instead performed the matching process on the entire universe of home market models.

Respondents state that petitioners' allegation with regards to this issue is incoherent and fails to assert a ministerial error. First, respondents state that the Department's program did not disregard home market sales at levels of trades 2 and 3. Further, respondents contend that the Department's programming is correctly constructed to match sales where practicable at the nearest level of trade. Finally, respondents argue that petitioners' suggested programming language is incorrect because it results in a vast distortion and overstatement of the dumping margin.

Department's Position: After a review of petitioner's allegation, we agree with petitioners. In performing our model matching, the Department should have allowed matching of home market and U.S. models at the same level of trade when home market models were sold at both levels of trade. Thus, we have corrected our model match and margin calculation programs to allow for matching at different levels of trade. For the computer code we used to correct this ministerial error, please see the *Amended Final Calculation Memorandum*, a public version of which is available in the Central Records Unit, Room B–099 of the Department of Commerce building, 14th Street and Constitution Ave, N.W., Washington, D.C.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of stainless steel sheet and strip in coils from France. The revised weighted-average dumping margins are in the "Antidumping Duty Order" section, below.

Scope of the Order

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and

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7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

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Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Antidumping Duty Order

On July 19, 1999, the International Trade Commission (the Commission) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from France. Therefore, in accordance with section 736(a)(1) of the Tariff Act, the Department will direct Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of stainless steel sheet and strip in coils from France. These antidumping duties will be assessed on all unliquidated entries of stainless steel sheet and strip in coils from France entered, or withdrawn from warehouse, for consumption on or after January 4, 1999, the date on which the Department published its notice of preliminary determination in the **Federal Register** (64 FR 109). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping duty margins as noted below. The "All Others" rate applies to all exporters of subject stainless steel sheet and strip in coils not specifically listed. The revised weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin(percent)
Usinor	9.38
All Others	9.38

This notice constitutes the antidumping duty order with respect to stainless steel sheet and strip in coils from France. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Tariff Act of 1930, as amended.

Dated: July 21, 1999.

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–19127 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order.

EFFECTIVE DATE: July 27, 1999.

FOR FURTHER INFORMATION CONTACT: Karla Whalen, or Letitia Kress, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at (202) 482–1391, or (202) 482–3362, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (April 1, 1998).

Amendment to the Final Determination

On May 19, 1999, the Department determined that stainless steel sheet and strip in coils (stainless sheet in coil) from Japan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735(a) of the Tariff Act. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Japan, 64 FR 30574 (June 8, 1999) (Final Determination). On June 2, 1999, Petitioners (Allegheney Ludlum Corp., Armco, Inc. J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corp., United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization) timely alleged three ministerial errors. Petitioners requested that we correct the errors. See 19 CFR 351.224(e). Kawasaki Steel Corporation did not respond to the submitted ministerial error comments.

Petitioner's submission alleges the following errors:

- the Department improperly excluded certain home market sales as a result of applying the Department's scope exclusion language that did not distinguish based upon thickness;
- the Department intended to, but did not apply partial facts available for certain U.S. sales with inland insurance rates less than the verified minimum inland insurance rate;
- the Department did not use the verified duty drawback amounts in the margin analysis due to inconsistent variable names used in the Margin Program;

The Department agrees that the three errors alleged by petitioners represent ministerial errors and have corrected each for this amended final determination. For a detailed description of each of these allegations and, where applicable, our resultant corrections, see the Analysis of Clerical Errors Memorandum (Memo to Edward Yang, from Karla Whalen and Letitia Kress, dated July 9, 1999). Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of stainless steel sheet and strip in coils from Japan. The revised weighted-average dumping margins are in the "Antidumping Duty Order" section, below.

Scope of the Order

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44,

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Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Antidumping Duty Orders

On July 19, 1999, the International Trade Commission (the Commission) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Japan. Therefore, in accordance with section 736(a)(1) of the Tariff Act, the Department will direct Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of stainless steel sheet and strip in coils from Japan. These antidumping duties will be assessed on all unliquidated entries of stainless steel sheet and strip in coils from Japan entered, or withdrawn from warehouse, for consumption on or after January 4, 1999, the date on which the Department published its notice of preliminary determination in the **Federal Register** (64 FR 108). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping duty margins as noted below. The "All Others" rate applies to all exporters of subject stainless steel sheet and strip in coils not specifically listed. The revised weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
Kawasaki Steel Corporation	40.18
Nippon Steel Corporation	57.87
Nisshin Steel Co., Ltd	57.87
Nippon Yakin Kogyo	57.87
Nippon Metal Industries	57.87
All Others	40.18

This notice constitutes the antidumping duty order with respect to stainless steel sheet and strip in coils from Japan. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Tariff Act of 1930, as amended.

Dated: July 21, 1999.

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–19128 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order.

EFFECTIVE DATE: July 27, 1999.

FOR FURTHER INFORMATION CONTACT: Lesley Stagliano or Rick Johnson, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at (202) 482–6134, or (202) 482–3818, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to the regulations codified at 19 CFR Part 351 (April 1, 1998).

Amendment to the Final Determination

On May 19, 1999, the Department determined that stainless steel sheet and strip in coils (SSSS) from Italy are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735(a) of the Tariff Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 30750 (June 8, 1999) (*Final Determination*). On June 4, 1999, respondent Acciai Speciali Terni, SpA., (AST) filed an allegation that the Department had made several ministerial errors in its final determination. Petitioners (Allegheny Ludlum Corp., Armco, Inc. J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corp., United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization) also timely alleged ministerial errors on June 4, 1999. Both interested parties requested that we correct the errors and publish a notice of amended final determination in the **Federal Register**. See 19 CFR 351.224(e). In addition, on June 11, 1999, petitioners filed comments in rebuttal of three of AST's alleged errors.

AST's submission alleged the following errors:

- the Department overstated the value of AST's eighty-four rejected U.S. sales in its facts available margin calculation for these sales;
- the Department inadvertently used a previously reported insurance revenue amount based on a pending claim rather than revise AST's insurance revenue field to reflect AST's final settlement amount as it had intended to do;
- the Department inadvertently applied the mill edge discount to all products, rather than to products only sold with a mill edge;
- the Department failed to convert U.S. inventory carrying costs from a per-kilogram amount to a per-pound amount;
- finally, in applying adverse facts available to the affiliated U.S. reseller, the Department erred by failing to exclude sales identifiable as non-subject cut-to-length material (which is not included in the scope of this investigation).

See Letter, Hogan & Hartson, June 4, 1999 *passim*.

Petitioners' submission alleged the following errors:

- the Department inadvertently included AST's packing costs in the calculation of COP and CV in the margin program, and therefore, understated AST's overall profit and AST's CEP profit ratio;
- the Department inadvertently failed to convert U.S. values stated in lire per pound

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to values stated in lire per kilogram before adding them to home market values stated in lire per kilogram in order to calculate the CEP profit ratio;

• finally, the Department inadvertently excluded the value of AST's unreported U.S. sales and the value of the sales through AST's affiliated U.S. reseller from the denominator that the Department used to calculate the ratio for AST's U.S. insurance revenue.

See Letter, Collier, Shannon, Rill & Scott, June 4, 1999 *passim*.

Petitioners' rebuttal addressed three of AST's allegations. First, petitioners disagree with AST's allegation, that the Department overstated the value of the rejected eighty-four U.S. sales when it calculated the facts available margin for these sales. Due to the proprietary nature of this issue, please refer to the *Memorandum For Ed Yang from Lesley Stagliano; Allegations of Ministerial Errors; Final Determination in the Investigation of Stainless Steel Sheet and Strip in Coils from Italy* (*Ministerial Errors Memorandum*), dated July 21, 1999, for further information. With respect to AST's claim that the Department failed to use AST's revised insurance revenue in its calculations, petitioners argue that the INSUREVU field correctly refers to the transaction-specific insurance revenue that AST claimed it received for sales during the period of investigation, and therefore, should not be revised. Finally, with respect to AST's U.S. reseller, petitioners contend that the Department's decision not to attempt segregating cut-to-length stainless sheet and strip from the subject stainless sheet in coils is methodological, and not ministerial as AST claims. Furthermore, petitioners continue, the Department determined that the U.S. reseller's sales data were so replete with errors as to be unreliable *in toto*; and that therefore, it would be inappropriate for the Department now to accept the reliability of selective portions of those data (*i.e.*, the two specific variables AST suggests using for this purpose). Because the Department rejected the entire database, petitioners aver, it would not make sense for the Department to then assume that these two fields were reported accurately and to use these as the basis for segregating cut-to-length products from products in coil form.

After reviewing both parties' allegations and petitioners' rebuttal we have determined, in accordance with 19 CFR 351.224, that the *Final Determination* includes several ministerial errors. As to AST's allegations, we agree with AST that each of the points raised by AST constitutes a ministerial error with the exception of two: the alleged overstatement of the value of AST's eighty-four sales in the Department's facts available margin calculation for these sales; and the alleged "failure" to exclude cut-to-length merchandise. Our calculation of the facts available rate on eighty-four U.S. sales, and our treatment of the U.S. Reseller's reported sales represented a methodological choice, and not "an error in addition, subtraction, or other arithmetic function" or "error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial." Section 735(e) of the Act and 19 CFR 351.224(e) of the Department's regulations; *see also Ministerial Errors Memorandum*, and the *Final Determination*, 64 FR at 30757–58.

Finally, we also agree that the first two errors alleged by petitioners represent ministerial errors and have corrected both for this final determination. However, we disagree with petitioners that excluding the value of AST's unreported U.S. sales and the value of the sales through AST's affiliated U.S. reseller from the denominator the Department used to calculate the ratio for AST's U.S. insurance revenue was a clerical error as defined by the 735(e) of the Tariff Act of 1930, as amended ("the Act"), and Section 351.224 of the Department's regulations, as defined above. Therefore, we have made no adjustments to the final determination for this allegation. For a detailed description of each of these allegations and, where applicable, our resultant corrections, see the *Ministerial Errors Memorandum*. Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of stainless steel sheet and strip in coils from Italy. The revised weighted-average dumping margins are in the "Antidumping Duty Order" section, below.

Scope of the Order

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

Antidumping Duty Orders

On July 23, 1999, the International Trade Commission (the Commission) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Italy. Therefore, in accordance with section 736(a)(1) of the Tariff Act, the Department will direct Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of stainless steel sheet and strip in coils from Italy. These antidumping duties will be assessed on all unliquidated entries of stainless steel sheet and strip in coils from Italy entered, or withdrawn from warehouse, for consumption on or after January 4, 1999, the date on which the Department published its notice of preliminary determination in the **Federal Register** (64 FR 116). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

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normally deposit estimated, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping duty margins as noted below. The "All Others" rate applies to all exporters of subject stainless steel sheet and strip in coils not specifically listed. The revised weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
Acciai Speciali Terni, SpA	11.23
All Others	11.23

This notice constitutes the antidumping duty order with respect to stainless steel sheet and strip in coils from Italy. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Tariff Act of 1930, as amended.

Dated: July 21, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration

[FR Doc. 99–19129 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–601, A–583–603]

Final Results of Expedited Sunset Reviews: Top-of-the-Stove Stainless Steel Cookware From the Republic of Korea and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset reviews: top-of-the-stove stainless steel cookware from the Republic of Korea and Taiwan.

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping orders on top-of-the-stove stainless steel cookware ("cookware") from the Republic of Korea ("Korea") and Taiwan (64 FR 4840) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of notices of intent to participate and substantive comments filed on behalf of the domestic interested parties and inadequate response (in these cases, no response) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Final Results of Review* section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: July 27, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (*"Sunset Regulations"*). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*"Sunset Policy Bulletin"*).

Scope

The merchandise subject to these antidumping orders is top-of-the-stove stainless steel cookware from Korea and Taiwan. The subject merchandise is all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. The subject merchandise includes skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of the order are stainless steel oven ware and stainless steel kitchen ware. The Department has issued several scope clarifications for these two orders. For imports of the subject merchandise from Korea, certain stainless steel pasta and steamer inserts are within the scope (63 FR 41545, August 4, 1998), certain stainless steel eight-cup coffee percolators are within the scope (58 FR 11209, February 24, 1993), and certain stainless steel stock pots and covers are within the scope of the order (57 FR 57420, December 4, 1992). For imports of the subject merchandise from Taiwan, "universal pan lids" are not within the scope of the order (57 FR 57420, December 4, 1992) and Max Burton's StoveTop Smoker is within the scope of the order (60 FR 36782, July 18, 1995). Moreover, as a result of a changed circumstances review, the Department revoked the order on Korea in part with respect to certain stainless steel camping ware (1) made of single-ply stainless steel having a thickness no greater than 6.0 millimeters; and (2) consisting of 1.0, 1.5, and 2.0 quart saucepans without handles and with lids that also serve as fry pans (62 FR 3662, January 24, 1997). Such merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7323.93.00 and 9604.00.00. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

These reviews cover imports from all manufacturers and exporters of top-of-the-stove stainless steel cookware from the Republic of Korea and Taiwan.

Background

On February 1, 1999, the Department initiated sunset reviews of the antidumping orders on top-of-the-stove stainless steel cookware from the Republic of Korea and Taiwan (64 FR 4840), pursuant to section 751(c) of the Act. The Department received Notices of Intent to Participate on behalf of the Stainless Steel Cookware Committee, whose current members are Regal Ware, Inc., All-Clad Metalcrafters, Inc., and Vita Craft Corp. (collectively, the "Committee"), on February 16, 1999, within the deadline specified in § 351.218(d)(1)(i) of the *Sunset Regulations*. Pursuant to section 771(9)(E) of the Act, the Committee claimed interested party status as an association of U.S. manufacturers of a domestic like product. In addition, the Committee's individual members claimed domestic interested party status pursuant to section 771(9)(C) of the Act, as domestic producers of a like product. Moreover, the Committee stated that Regal Ware was a petitioner in the original investigation. The Department received complete substantive responses from the Committee on March 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under § 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct expedited, 120-day, reviews of these orders.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margins of dumping likely to prevail if the orders are revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, the Committee's comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In these reviews, the Department did not receive a substantive response from any respondent interested party. Pursuant to § 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The antidumping orders on top-of-the-stove stainless steel cookware from Taiwan and the Republic of Korea were published in the **Federal Register** on January 20, 1987 (52 FR 2138, 2139). Since that time, the Department has conducted several administrative reviews of the order with respect to cookware from Korea.[1] However, since the imposition of the order, no administrative reviews of the antidumping order on top-of-the-stove stainless steel cookware from Taiwan have been conducted. The orders remain in effect for all manufacturers and exporters of the subject merchandise from both countries.

In its substantive responses, the Committee argued that the actions taken by Korean and Taiwanese producers/exporters of stainless steel cookware during the life of the order indicate that the likely effect of revocation of the orders in these cases would be that dumping of cookware would continue at significant margins (*see* March 3, 1999, Substantive Response of the Committee at 8 (Taiwan) and 9–10 (Korea)). With respect to whether dumping continued at any level above de minimis after the issuance of the orders, the Committee pointed out that, regarding the subject merchandise from Korea, the Department has found in its administrative reviews margins of dumping above de minimis, with rates as high as 31.23 percent (*see* March 3, 1999, Substantive Response of the Committee at 10). With respect to the merchandise from Taiwan, the Department has not conducted any administrative reviews. Therefore, the Committee argued, because the margins that were determined in the original investigation remain in effect, all of the margins applicable to imports of stainless steel cookware from Taiwan are significantly above de minimis (*see* March 3, 1999, Substantive Response of the Committee at 9).

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. As pointed out above, dumping margins above de minimis continue to exist for shipments of the subject merchandise from both Korea and Taiwan.

Consistent with section 752(c) of the Act, the Department also considers the volume of imports before and after issuance of the order. The Committee argued that a significant decline in the volume of imports of the subject merchandise from both Korea and Taiwan since the imposition of the orders provides further evidence that dumping would continue if the orders were revoked. In their substantive responses, the Committee provided statistics demonstrating the decline in import volumes of stainless steel cookware from Korea and Taiwan (*see* March 3, 1999, Substantive Responses of the Committee at Attachment 1). The Department's statistics on imports of the subject merchandise from Taiwan and Korea confirm the Committee's arguments that imports of stainless steel cooking ware fell sharply after the orders were imposed. In fact, the volume of imports of cookware from Taiwan fell from approximately 15,208,000 units in 1986 to approximately 3,979,000 in 1987 and continued dropping to 1,774,000 in 1998.[2] As for the volume of imports from Korea, they also dropped dramatically after the imposition of the order, from approximately 35,540,000 units in 1986 to approximately 16,858,000 units in 1987 and continued dropping to 3,660,000 in 1998.[3]

As noted above, in conducting its sunset reviews, the Department considers the weighted-average dumping margins and volume of imports when determining whether revocation of an antidumping duty order would lead to the continuation or recurrence of dumping. Based on this

[1] *See Certain Stainless Steel Cooking Ware from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 56 FR 38114 (August 12, 1991); *Certain Stainless Steel Cooking Ware from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 58 FR 9560 (February 22, 1993); *Stainless Steel Cooking Ware from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 59 FR 10788 (March 8, 1994); *Certain Stainless Steel Cooking Ware from the Republic of Korea; Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 62 FR 3662 (January 24, 1997).

[2] *See* U.S. Census Bureau Report IM146 and the March 3, 1999, Substantive Response of the Committee at Attachment 1.

[3] *Id.*

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analysis, the Department finds that the existence of dumping margins above *de minimis* levels and a reduction in export volumes after the issuance of the orders is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above a de minimis level continues in effect for exports of the subject merchandise by all known Korean and all known Taiwanese producers/exporters. Therefore, given that dumping has continued over the life of the orders, import volumes declined significantly after the imposition of the orders, respondent parties waived participation, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the orders were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determinations of sales at less than fair value, published weighted-average dumping margins for five Korean producers/exporters of stainless steel cookware (51 FR 42873, November 26, 1986, amended in 51 FR 46889, December 29, 1986) and three Taiwanese producers/exporters (51 FR 42882, November 26, 1986). Moreover, the Department published an "all others" rate in both of these determinations. We note that, to date, the Department has not issued any duty absorption findings in either of these cases.

In their substantive responses, the Committee recommended that, consistent with the *Sunset Policy Bulletin*, the Department provide to the Commission the company-specific margins from the original investigations. Moreover, regarding companies not reviewed in the original investigation, the Committee suggested that the Department report the all others rates included in the original investigations.

The Department agrees with the Committee. The Department finds the margins calculated in the original investigation are probative of the behavior of Korean and Taiwanese producers/exporters if the orders were revoked as they are the only margins which reflect their actions absent the discipline of the order. Therefore, the Department will report to the Commission the company-specific and all-others rates from the original investigations as contained in the *Final Results of Review* section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping orders would likely lead to continuation or recurrence of dumping at the margins listed below:

Producer/exporter	Margin (percent)
Korea:	
Bum Koo	31.23
Dae Sung	6.11
Hai Dong	12.14
Kyung Dong	8.36
Namil	0.75
All Others	8.10
Taiwan:	
Golden Lion Metal Industry Co, Ltd.	15.08
Lyi Mean Industrial Co., Ltd.	26.10
Song Far Industry Co., Ltd.	25.90
All Others	22.61

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 21, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19162 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072099A]

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Surfclam and Ocean Quahog Committee, Comprehensive Management Committee, Squid-Mackerel-Butterfish Committee and Squid-Mackerel-Butterfish Monitoring Committee, and Executive Committee will hold public meetings.

DATES: The meetings will be held on Monday, August 9, 1999, to Thursday, August 12, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Sheraton Society Hill, One Dock Street, Philadelphia, PA; telephone: 215–238–6000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION:

Monday, August 9, 1999

10:00 a.m. until noon—Squid-Mackerel-Butterfish Monitoring Committee

10:00 a.m. until noon—Comprehensive Management Committee

1:00 p.m. until 3:00 p.m.—Surfclam and Ocean Quahog Committee

3:00 p.m. until 6:00 p.m.—Squid-Mackerel-Butterfish Committee

Tuesday, August 10, 1999

8:00 a.m. until 5:00 p.m.—Council will meet.

Wednesday, August 11, 1999

8:00 a.m. until 4:30 p.m.—Council will meet with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board

Thursday, August 12,1999

9:00 a.m. until noon—Council will meet with the ASMFC's Summer Flounder, Scup, and Black Bass Board

1:00 p.m. until 3:00 p.m.—Council will meet with the ASMFC's Bluefish Board

The full Council session will continue until 4:00 p.m.

Agenda items for this meeting include: Election of Chairman and Vice Chairman; review process for field program proposals; adoption of 2000 quota and commercial management measures for surfclams and ocean quahogs; development of recommendations for and adoption of 2000 quotas and commercial management measures for Atlantic mackerel, *Loligo* and *Illex* squids and butterfish; adoption of commercial quota, recreational harvest limit, and commercial management measures for summer flounder, scup, and black sea bass for 2000; adoption of bluefish management measures for 2000; and consideration of revised habitat sections for previously disapproved fishery management plans. Other items scheduled on the agenda include: Report of Stock Assessment Review Committee; receipt of committee reports and other fishery management issues.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, such issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 21, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–19169 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits and a Guaranteed Access Level for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

July 21, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits and a guaranteed access level.

EFFECTIVE DATE: July 27, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryover.

At the request of the Government of Guatemala, the U.S. Government has agreed to increase the current guaranteed access level for Categories 347/348.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 63032, published on November 10, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 21, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 27, 1999, you are directed to increase the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	1,567,006 dozen.
347/348	1,855,302 dozen.
448	50,286 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

Effective on July 27, 1999, you are directed to increase the guaranteed access level for Categories 347/348 to 1,800,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–19069 Filed 7–26–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, August 6, 1999.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–19278 Filed 7–23–99; 2:33 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, August 13, 1999.

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PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 99–19279 Filed 7–23–99; 2:33 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.
TIME AND DATE: 11:00 a.m., Friday, August 20, 1999.
PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A.Webb,
Secretary of the Commission.
[FR Doc. 99–19280 Filed 7–23–99; 2:33 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.
TIME AND DATE: 11:00 a.m., Friday, August 27, 1999.
PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 99–19281 Filed 7–23–99; 2:33 pm]
BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection of Information; Comment Request—Procurement of Goods and Services

AGENCY: Consumer Product Safety Commission.
ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval for a period of three years from the date of approval of a collection of information associated with the procurement of goods and services. Forms used by the Commission for procurement of goods and services request persons who quote, propose, or bid on contracts to provide information needed to evaluate quotes, proposals, and bids in accordance with applicable laws and regulations.

The Commission will consider all comments received in response to this notice before requesting reinstatement of approval of this collection of information from the Office of Management and Budget (OMB).

DATES: The Office of the Secretary must receive comments not later than September 27, 1999.

ADDRESSES: Written comments should be captioned "Procurement of Goods and Services; Paperwork Reduction Act," and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, Management and Program Analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0416, Ext. 2226.

SUPPLEMENTARY INFORMATION:

The Commission's procurement of goods and services is governed by the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 253 *et seq.*). That law requires the Commission to procure goods and services under conditions most advantageous to the government, considering cost and other factors.

A. Information Required by Procurement Forms

The Commission requires persons and firms to submit quotations, proposals, and bids for contracts to provide goods and services on standardized forms. These forms request information from offerors about costs or prices of goods and services to be supplied; specifications of goods and descriptions of services to be delivered; competence of the offeror to provide the goods or services; and other information about the offeror such as the size of the firm and whether it is minority owned. The Commission uses the information provided by offerors to determine the reasonableness of prices and costs and the responsiveness of potential contractors to undertake the work involved so that all bids may be awarded in accordance with Federal procurement laws.

OMB approved the collection of information requirements in the procurement forms used by the Commission under control number 3041–0059. OMB's most recent extension of approval will expire on October 31, 1999. The CPSC now proposes to request extension of approval for the information collection requirements in the forms used for procurement of goods and services. The Commission plans to use the Internet and the General Services Administration's (GSA) GSA Advantage! System for delivery order purchasing. The Internet provides small businesses access to information about the Commission's current needs for goods and services.

B. Information Collection Burden

During fiscal year 1998, approximately 2,457 firms spent about 4,574 hours responding to all Requests for Quotations (RFQ), Invitations for Bids (IFB), and Requests for Proposals (RFP) issued by the Commission. The time required by vendors to respond ranged from as little as 10 to 15 minutes per firm for a simple telephone, e-mail, fax, or Internet response concerning the purchase of a standard item or service, to as much as 250 hours per firm for a complex written offer prepared in response to an RFP. Firms spent an estimated 932 hours responding to oral, electronic, and written RFQs, and approximately 3,642 hours preparing bids and proposals in response to more complex IFBs and RFPs.

The cost of preparing a response to an oral, electronic, or written RFQ is estimated to be approximately $30 to $40 per hour. This estimate is based on the Commission staff's knowledge that responses to RFQs are usually prepared by sales support personnel with some participation by higher-level employees. The cost of preparing a response to an IFB or RFP is estimated to range from $50 to $60 an hour because higher-level employees are the ones who prepare these responses, with some clerical assistance.

The annual cost to all firms for responding to RFQs is estimated to be approximately $37,280. The annualized cost to all firms for responding to IFBs and RFPs is approximately $218,520. The total annual cost to all firms responding to all RFQs, IFBs, and RFBs issued by the Commission is estimated to be $255,000. The costs are accepted by firms as part of the cost of doing business with commercial and governmental customers.

The total cost to the government for all collections of information by the Commission related to procurement of goods and services is estimated to be about $366,324 a year. This estimate was made by reviewing the Commission's procurement activities in fiscal year 1998. During this period, the Commission processed 744 purchase requests, and performed 75 contract actions.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: July 21, 1999.

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.
[FR Doc. 99–19175 Filed 7–26–99; 8:45 am]
BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for National Provider of Training and Technical Assistance to State Commissions

AGENCY: Corporation for National and Community Service.
ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (Corporation) announces the availability of between $500,000 and $850,000 for an organization selected under this Notice to provide training and technical assistance to state commissions on national and community service. The Corporation will announce competitions to select other providers of training and technical assistance later this year.

DATES: Proposals must be received by the Corporation by 3:00 p.m. Eastern time on September 10, 1999.

ADDRESSES: All proposals should be submitted to the Corporation for National and Community Service, 1201 New York Avenue, NW, Washington, DC 20525, Attention: Cathy Harrison, Room 9814B.

FOR FURTHER INFORMATION CONTACT: Jim Eksirom at the Corporation for National and Community Service, (202) 606–5000, ext. 414, TDD (202) 565–2799. This Notice is available on the Corporations website, http://www.nationalservice.org/research.

SUPPLEMENTARY INFORMATION:

I. Background

The Corporation for National and Community Service was established in 1993 to engage Americans of all ages and backgrounds in service to their communities. The Corporation's national and community service programs provide opportunities for participants to serve full-time and part-time, with or without stipend, as individuals or as part of a team.

AmeriCorps*State/National, VISTA, and National Civilian Community Corps engage thousands of Americans on a full-or part-time basis at over 1,000 locations to help communities meet their toughest challenges. Learn and Serve America integrates service into the academic life of nearly one million youth in all 50 states. The National Senior Service Corps utilizes the skills, talents and experience of over 500,000 older Americans to help make communities stronger, safer, healthier and smarter.

The Corporation provides assistance to organizations that carry out AmeriCorps*State/National, Learn and Serve America, and National Senior Service Corps programs. AmeriCorps*State/National programs, which involve over 40,000 Americans each year in results-driven community service, are grant programs managed by (1) State commissions that select and oversee programs operated by local organizations; (2) national non-profit organizations that identify and act as parent organizations for operating sites across the country; (3) Indian tribes; or (4) U.S. Territories. Learn and Serve America awards grants to state education agencies; state commissions; schools, colleges and universities; and nonprofit organizations to carry out school-based, community-based and higher-education service-learning programs. The National Senior Service Corps operates through grants to local organizations for Retired Senior Volunteer Programs (RSVP), Foster Grandparents and Senior Companions to provide service to their communities. For additional information on the national service programs supported by the Corporation, go to http://www.nationalservice.org.

In addition, the Corporation supports the AmeriCorps*VISTA (Volunteers in Service to America) and AmeriCorps*NCCC (National Civilian Community Corps) programs. More than 4,000 AmeriCorps*VISTA members serve to develop grassroots programs, mobilize resources and build capacity for service programs across the nation. AmeriCorps*NCCC provides an opportunity for approximately 1,000 individuals between the ages of 18 and 24 to participate in a residential program located mainly on downsized military bases.

Responsibilities of the state commissions include, but are not limited to:

- Administering a competitive process to select national service programs to be included in requests to the Corporation for funding or education awards;
- Administering grants received from the Corporation and overseeing and monitoring the performance and progress of funded programs;
- Implementing comprehensive evaluation and monitoring systems;
- Providing training and technical assistance to sub-grantees on implementing and operating high quality programs; and
- Developing and updating a unified state plan for national service that is consistent with the Corporation's broad goals and includes input from Corporation state offices and state education agencies.

II. Eligibility

Public-sector agencies, non-profit organizations, institutions of higher education, Indian tribes, and for-profit companies are eligible to apply. Pursuant to the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), which engages in lobbying, is not eligible to apply. Organizations that operate or intend to operate Corporation-supported programs are eligible. The Corporation will consider proposals from single

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applicants, applicants in partnership and applicants proposing other approaches to meeting the requirement that are considered responsive to this Notice. Organizations may apply to provide training and technical assistance in partnership with organizations seeking other Corporation funds. Based on previous training and technical assistance competitions and the Corporation's estimate of potential applicants, the Corporation expects fewer than ten applications to be submitted in response to this Notice.

III. Period of Assistance and Other Conditions

A. Cooperative Agreements

Funding awarded under this Notice will be via cooperative agreement. Administration of cooperative agreements is controlled by the Corporation's regulations, 45 CFR part 2541 (for agreements with state and local government agencies) and 45 CFR part 2543 (for agreements with institutions of higher education, non-profit organizations and other entities). The awardee must comply with reporting requirements, including submitting quarterly financial reports and quarterly progress reports linking progress on deliverables to expenditures.

B. Use of Materials

To ensure that materials generated for training and technical assistance purposes are available to the public and readily accessible to grantees and sub-grantees, the Corporation retains royalty-free, non-exclusive, and irrevocable licenses to obtain, use, reproduce, publish, or disseminate products, including data produced under the agreement, and to authorize others to do so. To the extent practicable, the awardee will agree to make products available to the national service field as identified by the Corporation at no cost or at the cost of reproduction. All materials developed for the Corporation will be produced consistent with Corporation editorial and publication guidelines.

C. Time Frame

The Corporation expects that work under the agreement awarded through this Notice will commence on or about December 1, 1999, following the conclusion of the Corporation's selection and award process. The Corporation will make awards covering a period not to exceed three years. Applications must include a proposed budget and proposed activities for the entire award period. If the Corporation approves an application and enters into a multi-year award agreement, at the outset it will provide funding only for the first year of the award period. The Corporation has no obligation to provide additional funding in subsequent years. Funding for the second and third years of an award period is contingent upon satisfactory performance, the availability of funds and any other criteria established in the award agreement.

D. Other Corporation-Sponsored Training and Technical Assistance

In addition to supporting the training and technical assistance provider selected under this Notice, the Corporation currently supports training and technical assistance for national service programs through a network of national providers in the areas of conflict resolution, human relations and diversity, educational success, financial management, supervisory skills, training-materials development, resource center services, organizational development and program management, public safety, risk management, crew-based programming, member development and management, sustainability, and out-of-school time.

IV. Scope of Activities To Be Supported

The National and Community Service Act of 1990, as amended, states that the Corporation for National Service "shall provide training and technical assistance, where necessary, to * * * State Commissions * * * to enable them to apply for funding under one of the national service laws, to conduct high-quality programs, to evaluate such programs, and for other purposes." 42 U.S.C. 12653(e). The areas in which commissions need support services include identifying and developing plans to meet state commission technical assistance needs; strategic planning; monitoring and quality assurance; sustainability; collaborating and networking with other state agencies and national service entities; designing assessment, evaluation, communication and advisory processes; and using resources effectively.

In addressing the tasks listed below the provider will be expected to deliver training that is interactive, experiential, consistent with the principles of adult learning, and sensitive to audience diversity. Further, the provider will develop training activities that take into account the different levels of knowledge and skills on the part of those being trained. Finally, in accordance with Corporation policy, the provider will ensure that all training and technical assistance is accessible to persons with disabilities as required by law.

The Corporation expects the provider selected under this Notice to integrate the following requirements into its service delivery:

1. Developing protocols and other guidelines for delivering and documenting the training and technical assistance services provided to commissions. Examples of focus areas include developing commission training and technical assistance service strategies, planning and executing training and technical assistance interventions, and helping to organize and conduct retreats.

2. Developing and maintaining a network of geographically dispersed experts, that includes staff and commissioners from state commissions and/or Corporation-funded programs. The experts should be individuals who are well experienced in the services offered by the provider. They should be listed in, and their resumes made part of, the application package (see Section V, Application Guidelines, below) to permit review and discussion of their qualifications during the Corporation's selection process.

3. Orienting and training staff and consultants on the Corporation's background and objectives.

4. Developing a plan to promote its services to commissions.

5. Using electronic communication as much as possible to facilitate the delivery of training and technical assistance services and the exchange of information within and among commissions, e.g., via electronic networks and conference calls (the provider should budget for at least two, one-hour conference calls per month per state, each involving at least 15 commissions). The Corporation is especially interested in approaches that expedite service delivery, increase communication and are cost-efficient.

6. Assisting Corporation staff in orienting newly appointed state commissioners and executive directors.

7. Delivering service in a manner that enhances the capacity of state commissions to function effectively. As one approach to meeting this objective, the provider will be expected to use transfer-of-skills methods and train-the-trainer models in delivering its services. Potential focus areas include strategic planning; program monitoring and evaluation; training and technical assistance management, to include needs assessment and resource development; and cross-program collaboration.

8. Developing and managing a peer-to-peer system that makes use of the full range of service delivery, *i.e.*, phone consultations and other electronic communication, materials development and shipment and site visits (the provider will budget for at least 20 peer site visits per quarter). The provider will be expected to document the system's operation, to include the peer selection criteria, preparation process, and assignment procedure. To facilitate the peer-to-peer process, the provider will be expected to inventory the skills of commission executive directors and commissioners, and publish an annotated listing on the provider's website for review and use by potential commission customers. Following each peer intervention, the provider will require an after-action report outlining the issues addressed, actions taken, results achieved and follow-up actions required.

9. Developing annually, in coordination with the Corporation's program, training and technical assistance and grants staffs, and with commission executive directors, a strategic, training-and-technical-assistance plan for each state commission. The provider will be expected to deliver the services outlined in the plans in a sequence, determined through similar consultation, that provides assistance earliest to those commissions deemed to be in greatest need. This plan will be updated as needed. The provider will budget for at least 43 site visits per quarter.

10. Responding to requests for training and technical assistance from state commissions directly or by facilitating services through other training and technical assistance providers, to include the Corporation's National Service Leadership Institute. In devising responses to such requests, the provider will coordinate with the Corporation's program, training-and-technical-assistance and other staffs, as needed, as well as with commission staff, on the strategy, content, delivery mode, timing and cost-effectiveness of the response. Following delivery of the assistance, the provider will give written feedback to the Corporation and other planning entities on the outcome of the intervention and recommended follow-up action. The provider will also be expected to work with commissions to document the longer-term impact of each intervention.

11. Assisting state commissions in planning, organizing, coordinating and facilitating state-based and cluster-based (regional) training conferences designed to address training needs across service programs as well as those specific to a single service stream. The provider will budget to assist with the convening of at least one cluster-based training conference per year.

12. Assisting commissions in assessing their compliance with State Commission Administrative Performance Standards. (The performance standards, currently in draft form, are available on the Corporation's website, *http://www.nationalservice.org/research.*)

13. Developing and providing training and technical assistance designed to assist commissions in addressing areas of non-compliance with State Commission Administrative Performance Standards. The provider will budget for at least 12 interventions per year.

14. Developing curricula that commissions can request in support of one- to three-day, state-based or regional training conferences on strengthening state commissions. Potential topic areas include commission structure and function, commissioner and staff orientation and training, program support strategies, information flow, unified state planning, and identifying and applying effective practices.

15. Collaborating on training events organized by other training and technical assistance providers including the National Service Leadership Institute.

16. Soliciting an evaluation after each training and technical assistance event using an assessment instrument that is approved by the Corporation. The provider will maintain records of these evaluations and provide them to the Corporation or an authorized representative upon request. The provider will submit aggregate summaries of each training-and-technical-assistance event's evaluations as part of the required quarterly report to the Corporation. The Corporation may conduct independent assessments of the provider's performance at any time.

17. Researching and documenting, for dissemination, effective practices and lessons learned about the operation and technical elements of commissions.

18. Submitting a quarterly report that, at minimum, provides the information below. The provider will develop the capacity to submit this information electronically as stipulated by the Corporation.

a. A comparison of accomplishments with the goals and objectives for the period.

b. An annotated version of the approved budget that compares actual costs with budgeted costs by line item, and explains differences. The explanation should include, as appropriate, an analysis of cost overruns and high-cost units and a description of service requests not anticipated in your original budget.

c. A description of the services provided to include:

(1) Number of requests received by topic area and stream of service;

(2) The activity conducted to address each request (e.g., training, on-site technical assistance, phone consultation and other electronic communication and/or materials development and shipment) and mode of delivery (e.g., staff member, consultant, peer assistant and/or other provider);

(3) The number of participants in each training and technical assistance event;

(4) The cost of responding to each request based on the direct costs to the provider;

(5) Average cost per delivery mode (e.g. on-site consultations, conference calls, cluster meetings, and peer-to-peer interventions);

(6) Client feedback on the services rendered (including the aggregate evaluation of each training event);

(7) Problems encountered in delivering services with recommendations for addressing them.

d. A list of upcoming activities and events;

e. Recommended training and technical assistance focus areas as suggested by analyses of service activity and trends.

f. A discussion of developments that hindered, or may hinder, compliance with the cooperative agreement.

V. Application Guidelines

A. Proposal Content and Submission

Applicants are requested to submit one unbound, original proposal and four copies. Proposals may not be submitted by facsimile. Proposals must include the elements below. To ensure fairness to all applicants, the Corporation reserves the right to take remedial action, up to and including disqualification, in the event a proposal fails to comply with the requirements relating to page limits, line spacing, and font size.

1. A cover page listing: name, address, phone number, fax number, e-mail address and World Wide Web site (if available) of the applicant organization and contact person; a 50–75 word summary of the proposed training and technical assistance program or activity; and the total funding requested.

2. A narrative of no more than 25 double-spaced, single-sided, typed pages in no smaller than 12-point font describing:

a. Objectives, scope of activities being proposed, and deliverables projected in response to the scope-of-activities

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requirements outlined in Section IV of this Notice (e.g., number and duration of training events and number of participants; number of technical assistance visits; number and type of consultations; curricular modules and other materials, etc.).

b. Detailed work plan for accomplishing the objectives to include a timeline for implementing each objective.

c. A plan for regularly evaluating performance and reporting findings and proposed improvements to the Corporation.

3. A narrative of no more than four double-spaced, single-sided, typed pages in no smaller than 12-point font describing the organization's capacity to provide training and technical assistance services nationwide, including descriptions of recent work similar to that being proposed, references that can be contacted related to that work, organizational structure and staff strengths and backgrounds (lists and resumes, along with anticipated rates of pay, of proposed staff and expert consultants shall be included in an appendix; this information is not subject to the page limits that are otherwise applicable).

4. A detailed, line-item budget with hours and costs organized by personnel, task and sub-task and related to the activities and deliverables outlined in the introductory narrative.

a. Include staff and expert-consultant hours and pay rates being proposed by task and sub-task, and indicate by task and sub-task the types and quantities of other direct costs being proposed (for example, amounts of travel; volumes of other task-related resources, such as communications, postage, etc.). Costs in proposed budgets must consist solely of costs allowable under applicable cost principles found in OMB Circulars.

b. Provide a budget narrative that includes an explanation of the basis for the cost estimates. The organization of the budget narrative should parallel that of the line-item budget. Each of the elements and sub-elements that comprise the totals of the individual budget lines must be fully explained in the narrative. The narrative should show how each cost was derived, using equations to reflect all factors considered. The anticipated unit cost (with derivation) of the various deliverables (such as training events and technical assistance interventions) should be provided.

c. Identify other funding sources, if any, which will be used to support the proposed training and technical assistance services. Applicants should be mindful that a demonstrated commitment to providing services in the most cost-effective manner possible will be a major consideration in the evaluation of proposals. (Provider match is not required.)

B. Selection Criteria

The Corporation will assess applications based on the criteria listed below.

1. Quality (30%)

The Corporation will consider the quality of the proposed activities based on:

a. Demonstrated understanding of the needs of state commissions, Corporation-funded programs, and the Corporation itself.

b. Descriptions of proposed training and technical assistance techniques, including procedures for testing new curricula and training activities before offering them on a large scale.

c. The degree to which the objectives outlined in the proposal's introductory narrative are addressed through the work plan.

2. Organizational and Personnel Capacity (30%)

The Corporation will consider the organizational capacity of the applicant to deliver the proposed services based on:

a. Demonstrated organizational experience in delivering high-quality training and technical assistance, particularly in the area(s) under consideration, in a flexible, responsive, collaborative and creative manner.

b. Background of the organization's leadership and staff/consultants proposed for the project.

c. Demonstrated ability to manage a federal grant or apply sound fiscal management principles to grants and cost accounting.

d. Demonstrated ability to provide training and technical assistance services nationwide on a cost-effective basis.

3. Evaluation (10%)

The Corporation will consider how the applicant:

a. Proposes to assess its services and products delivered under the award.

b. Plans to use assessments of its services and products to modify and improve subsequent services and products.

4. Budget (30%)

The Corporation will consider the budget based on:

a. Scope of the proposed training and technical assistance activity (e.g., the number of states, programs and individuals the proposed activities are intended to reach);

b. Cost-effectiveness of the proposed activity, in part, in consideration of the scale and comprehensiveness of the services proposed for the funding requested.

Authority: 42 U.S.C. 12653(e).

CFDA No. 94.009 Training and Technical Assistance.

Dated: July 20, 1999.

William H. Bentley,

Director, Department of Evaluation and Effective Practices, Corporation for National and Community Service.

[FR Doc. 99–19140 Filed 7–26–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Officer of the Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with section 3506(c)(2) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announced the following proposed renewal of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 27, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Force Management Policy/Military Personnel Policy/Compensation), ATTN: Lt Col Joseph L. Brown, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 693–1068.

Title, Associated Form, and OMB Control Number: Validation of Public or Community Service Employment Performed by retired Personnel Retired Under the Temporary Early Retirement Authority (TERA) for Increased Retirement Compensation, DD Form 2676, 0704–0357.

Needs and Uses: This information collection requirement is necessary to validate and credit increased retirement compensation for qualifying public or community service employment performed by retired personnel of the Armed Forces who retired under the early retirement program.

Affected Public: Individuals and households; not-for-profit institutions; Federal Government; State, local or Tribal Government.

Annual Budget Hours: 333.

Number of Respondents: 2,000.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: Upon employment, annually, and at the end of employment.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Retired personnel employed by a public or community service employer, listed on the Registry of Public and Community Service Organizations, receive military service credit for all qualifying periods of employment during the enhanced retirement qualification period. This is the period beginning on the date of retirement and ending on the date the retired person would have attained 20 years of creditable service for retired pay purposes. Employers certify full-time, paid employment (full-time employment is defined by the organization concerned, but is typically at least 33 hours per week or 143 hours per month, including paid holidays and paid periods of leave or vacation). Retired personnel then mail the validation form to the Defense Manpower Data Center (DMDC) for review and processing in a data base designed for this purpose. For each qualifying period of employment, the amount of military service credit shall be computed by subtracting the date of the first day of employment or the first day of the enhanced retirement qualification period, whichever is later, from the date of the last day of employment or the last day of the enhanced retirement qualification period, whichever is earlier, and adding 1 day to account for inclusive dates. DMDC will then send retired personnel blank forms for future certification.

Dated: July 21, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–19060 Filed 7–26–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Ballistic Missile Defense Advisory Committee

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Ballistic Missile Defense (BMD) Advisory Committee will meet in closed session at the Consolidated Support Facility, 1901 North Moore Street, Suite 750, Arlington, Virginia, on August 5, 1999.

The mission of the BMD Advisory Committee is to advise the Secretary of Defense and Deputy Secretary of Defense, through the Under Secretary of Defense (Acquisition and Technology), on all matters relating to BMD acquisition, system development, and technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended by 5 U.S.C., Appendix II, it is hereby determined that this BMD Advisory Committee meeting concerns matters listed in 5 U.S.C., 552b(c)(1), and that accordingly this meeting will be closed to the public.

Dated: July 21, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–19059 Filed 7–26–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: August 11, 1999 from 0830 to 1700 and August 12, 1999 from 0830 to 1300.

Place: Holiday Inn Arlington at Ballston, 4610 North Fairfax Drive, Arlington, VA 22203.

Matters to be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Kelly, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2124.

Dated: July 21, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer; Department of Defense.

[FR Doc. 99–19057 Filed 7–26–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on August 3, 1999, August 10, 1999, August 17, 1999, August 24, 1999, and August 31, 1999 at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of the Pub. L. 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing

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to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: July 21, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–19058 Filed 7–26–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearing for a Joint Draft Environmental Impact Statement/ Environmental Impact Report for Disposal and Reuse of Marine Corps Air Station, Tustin, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy, United States Marine Corps and the City of Tustin, Orange County, California have prepared and filed with the U.S. Environmental Protection Agency, a Joint Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the disposal and reuse of Marine Corps Air Station (MCAS) Tustin, located in Tustin and Irvine, California. In accordance with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) Regulations (40 CFR parts 1500–1508) and the California Environmental Quality Act (CEQA) (Calif. Public Resources Code Sec. et seq. 21000), this notice announces the dates and locations of public hearings for the DEIS/EIR.

DATES: The meeting date is Thursday, August 11, 1999, at 7:00 p.m.

ADDRESSES: The meeting location will be held at the Tustin City Council Chambers, Tustin Civic Center, 300 Centennial Way, Tustin, California 92780.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this notice may be obtained by contacting Ms. Melanie Ault, Environmental Planner, Naval Facilities Engineering Command, Base Realignment and Closure Operations Office, 1220 Pacific Highway, San Diego, California 92132–5190, telephone (619) 532–4744.

SUPPLEMENTARY INFORMATION: The Draft EIS/EIR has been distributed to various Federal, state, and local agencies, as well as other interested individuals and organizations. In addition, copies of the Draft EIS/EIR have been distributed to the following libraries for public review: Tustin Library, 345 E. Main Street, Tustin, CA; Heritage Park Regional Library, 14361 Yale Avenue, Irvine, CA; and the University of California, Irvine, Government Information Department, Main Library, contact: Yvonne Wilson, (949) 824–7362. Additional copies may be requested by contacting Mr. Dana Ogdon at (714) 573–3116.

The federal action evaluated in the Draft EIS/EIR is the disposal and reuse of approximately 1585 acres, MCAS Tustin property which has been declared surplus. An approximate 17-acre parcel of MCAS Tustin was not declared surplus and will remain in federal ownership as an Army Reserve Center.

Under NEPA and Defense Base Closure and Realignment Act (DBCRA), the DON has two disposal options for MCAS Tustin; no action or disposal of the surplus 1585 acres.

Under the No Action Alternative, DON would retain ownership of the surplus federal property. DON properties have been closed, all mission-related activities have ceased, and all buildings are vacant. Site environmental cleanup would continue until completed. This caretaker condition would remain indefinitely.

The local action is the reuse of MCAS Tustin under an economically viable and balanced reuse plan that will provide housing and employment opportunities, solve existing community circulation and recreation parkland deficiencies, and generate sufficient revenue to support the investment in infrastructure required for reuse of the site. The City of Tustin, acting as the Local Redevelopment Authority (LRA), included the Army Reserve Center and a privately-owned parcel within the boundaries of the reuse plan in order to provide zoning and general plan designations. Therefore, the local action includes approximately 1602 acres, which includes 95 acres within the City of Irvine.

The City of Tustin, as the local lead agency may certify the EIS/EIR to implement a civilian reuse plan, i.e., amend the City of Tustin General Plan, amend its Zoning Ordinance, and adopt a Specific Plan and other discretionary actions. The City of Irvine has assigned lead agency responsibility for the preparation of the EIS/EIR to the City of Tustin as it affects MCAS Tustin property in Irvine. Under CEQA statute, the City of Irvine is considered a responsible agency, and may certify the EIS/EIR to adopt similar discretionary actions needed to implement the Reuse Plan for MCAS Tustin property located within Irvine's jurisdictional boundary.

Federal disposal would precede implementation of the reuse alternatives. Three reuse alternatives are evaluated in detail in the Draft EIS/EIR: LRA Reuse Alternative; Arterial Grid Pattern/No Core/High Residential; and Arterial Loop Pattern/Reserve Area/Low Residential.

The LRA Reuse Alternative would result in a maximum of 4,601 dwelling units; Transitional/Emergency Housing for the homeless; an Urban Regional Park developed around the northern blimp hangar; a large Community Core developed with mixed uses; and specialized educational, social service, and law enforcement facilities within a Learning Village; and a Golf Village with hotel and ancillary retail uses. It would permit reuse of some of the recreational facilities and 1537 housing units. Approximately 11.4 million square feet of non-residential uses such as commercial business, light industrial, public and recreation uses (approximately 2.2 million feet is existing floor area on the base and 9.2 million square feet is potential new floor area) would be developed. Both of the blimp hangars could be reused, if financially feasible. The project also will include the extension of major arterials through the base including Tustin Ranch Road to Von Karman, Warner Avenue from Red Hill Avenue to west of Jamboree Road and creation of a secondary interior loop roadway and local roadways to facilitate local circulation.

The Arterial Grid Pattern/No Core/ High Residential would result in a maximum of 6205 dwelling units; approximately 9.2 million square feet of commercial and business uses, Village Mixed-Uses, and Public Institutional/ Commercial functions (approximately 1.5 million square feet is existing floor area and 7.7 million square feet is potential new floor area). A large Cultural Center would be developed and the northern blimp hangar would be incorporated, if financially feasible, and be reused to support regional cultural activities in the form of special events center, museum, or other permitted uses. The southern blimp hangar would be demolished. The project also will include the extension of major arterials through the base including Tustin Ranch Road to Von Karman, Warner Avenue from Red Hill Avenue to west of Jamboree Road and creation of a secondary arterial grid pattern road network to facilitate local circulation.

The Arterial Loop Pattern/Reserve Area/Low Residential would result in a maximum of 4340 dwelling units, approximately 10.9 million square feet of commercial, institutional, and recreational uses (approximately 1.5 million square feet is existing floor area and 9.4 million square feet is potential new floor area). A large Cultural Center would be developed and would incorporate the northern blimp hangar, if financially feasible. It would also include a Reserve Area for residential, commercial/business, and institutional uses in large-scale development. A large golf course would also be developed. The project also will include the extension of major arterials through the base including Tustin Ranch Road to Von Karman, Warner Avenue from Red Hill Avenue to west of Jamboree Road and creation of a secondary interior loop roadway and local roadways to facilitate local circulation.

The Draft EIS/EIR analyses potential environmental impacts relating to land use; socioeconomics; utilities; public services and facilities; aesthetics; cultural and paleontological resources; biological resources; agricultural resources; soils and geology; water resources; hazardous wastes, substances, and materials; traffic/ circulation; air quality; and noise. Potentially significant and not mitigable impacts associated with the three reuse alternatives are related to conversion of Farmland, elimination of two historic districts, demolition of historic blimp hangars (possibly one or both hangars), air quality emissions, and traffic/ circulation.

The Marine Corps and the City of Tustin will conduct a public hearing on Thursday, August 11, at 7:00 p.m. for those individuals who would like to provide written or oral comments on the Draft EIS/EIR. A brief presentation will precede a request for public information and comments. Marine Corps and City representatives will be available at the hearing to receive information and comments regarding environmental issues of concern. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer. To assure accuracy of the record, all comments should also be submitted in writing. In the interest of time and to ensure all who wish to give an oral statement have the opportunity to do so, speakers are requested to limit their comments to three minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed or faxed to Mr. Dana Ogdon, Senior Project Manager, City of Tustin, 300 Centennial Way, Tustin, California 92780, telephone (714) 573–3116, fax (714) 573–3113.

Written comments must be postmarked by August 22, 1999. All comments, both oral and written, will become part of the public record in the EIS/EIR.

Dated: July 16, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–19090 Filed 7–26–99; 8:45 am]

BILLING CODE 3810–FF–P

DENALI COMMISSION

Denali Commission Work Plan for Federal Fiscal Year 1999 and 2000

ACTION: Notice and opportunity for public comment.

SUMMARY: The Denali Commission was established by The Denali Commission Act of 1998 (Pub. L. 105–277, 112 Stat. 2681–637) to deliver the services of Federal Government in the most cost-effective manner practicable to communities throughout rural Alaska, many of which suffer from unemployment rates in excess of 50%. Its purposes include, but are not limited to, providing necessary rural utilities and other infrastructure that promote health, safety and economic self-sufficiency.

The Denali Commission Act requires that the Commission develop proposed work plans for future spending. In accordance with the Act, the Commission solicited project proposals from local governments and other entities, and released its work plans for both Fiscal Year 1999 and Fiscal Year 2000. The Act further requires that the Commission publish the Fiscal Year 2000 work plan in the **Federal Register** for a 30-day period, providing an opportunity for public review and comment.

This **Federal Register** Notice serves to announce the 30-day opportunity for public comment on the Denali Commission Work Plan for Federal Fiscal Year 2000.

FOR FURTHER INFORMATION CONTACT: Jeffrey Staser, Federal Co-Chairman, Denali Commission, 510 L Street, Suite 410, Anchorage, Alaska 99501, Phone: (907) 271–1414, Fax: (907) 271–1415, Email: *JStaser@denali.gov http://www.denali.gov.*

SUPPLEMENTARY INFORMATION: Copies of the Denali Commission Work Plan can be obtained by contacting the Denali Commission as provided in the **FOR FURTHER INFORMATION CONTACT** section above.

Jeffrey Staser,

Federal Co-Chairman.

[FR Doc. 99–19141 Filed 7–26–99; 8:45 am]

BILLING CODE 3300–01–M

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.129C, 84.129D, 84.129E, 84.129F, 84.129H, 84.129J, 84.129N, 84.129P, 84.129Q, and 84.129R]

Rehabilitation Training: Rehabilitation Long-Term Training; Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Secretary;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages in rehabilitation as identified by the Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Eligible Applicants: State agencies and other public or nonprofit agencies and organizations, including Indian Tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Long-Term Training program.

Deadline for Transmittal of Applications: September 17, 1999.

Deadline for Intergovernmental Review: November 16, 1999.

Applications Available: July 23, 1999.

Estimated Available Funds: $3,600,000.

Estimated Range of Awards: $75,000 to $100,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 37.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 386.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria used by reviewers in evaluating

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the application. You must limit Part III to the equivalent of no more than 35 pages, using the following standards:

(1) A page is 8.5" x 11" on one side only with 1" margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font or an average character density greater than 18 characters per inch. If you use a nonproportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

If, in order to meet the page limit, you use print size, spacing, or margins smaller than the standards specified in this notice, we will not consider your application for funding.

Maximum Award: In no case does the Secretary make an award greater than the amount listed in the Maximum Level of Award column in the following chart for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount.

Project Period, Maximum Number of Awards, Maximum Level of Awards, and Absolute Priorities: The Secretary is conducting a single competition to select a total of 37 awards across the 11 priority areas of personnel shortages related to the public rehabilitation program (section 302(b)(1) of the Rehabilitation Act of 1973, as amended). The project period and maximum level of awards to be made in each priority area are listed in the following chart. The maximum number of awards to be made are listed in the parentheses following each priority area. Applicants must submit a separate application for each area in which they are interested. Under 34 CFR 75.105(c)(3) and 34 CFR 386.1, the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under this competition only applications that propose to provide training in one of the following areas of personnel shortages:

CFDA No.	Priority area (maximum number of awards in parentheses)	Project period	Maximum level of award
84.129C	Rehabilitation administration (1)	Up to 60 months	$100,000
84.129D1	Physical therapy (3)	Up to 60 months	100,000
84.129D2	Occupational therapy (3)	Up to 60 months	100,000
84.129E	Rehabilitation technology (2)	Up to 60 months	100,000
84.129F	Vocational evaluation and work adjustment (5)	Up to 60 months	100,000
84.129H	Rehabilitation of individuals who are mentally ill (5)	Up to 60 months	100,000
84.129J	Rehabilitation psychology (3)	Up to 60 months	100,000
84.129N	Speech pathology and audiology (2)	Up to 60 months	75,000
84.129P	Specialized personnel for rehabilitation of individuals who are blind or have vision impairments (8).	Up to 60 months	100,000
84.129Q	Rehabilitation of individuals who are deaf or hard of hearing (8)	Up to 60 months	100,000
84.129R	Job development and job placement services to individuals with disabilities (5).	Up to 60 months	100,000

Invitational Priority: Within the absolute priority for CFDA No. 84.129Q, Rehabilitation of individuals who are deaf or hard of hearing, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects that would offer training in the special skills and knowledge related to the effective rehabilitation of individuals who are deaf or hard of hearing and low functioning. These are individuals who, in addition to hearing loss, have other physical or mental impairments, learning, language, or educational deficits, and other related conditions that result in multiple ongoing functional limitations.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunication device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov).

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Service Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–9817. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Ellen Chesley, U.S. Department of Education, 400 Maryland Avenue, SW. (room 3318, Switzer Building), Washington, DC 20202–2649. Telephone (202) 205–9481. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 29 U.S.C. 774.

Dated: July 22, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–19117 Filed 7–26–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.264]

Rehabilitation Continuing Education Programs; Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: To support training centers that serve either a Federal region or another geographical area and provide for a broad, integrated sequence of training activities that focus on meeting recurrent and common training needs of employed rehabilitation personnel throughout a multi-State geographical area.

Eligible Applicants: States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

Deadline for Transmittal of Applications: September 17, 1999.

Deadline for Intergovernmental Review: November 16, 1999.

Applications Available: July 27, 1999.

Estimated Available Funds: $400,000.

Estimated Range of Awards: $90,000–$100,000.

Note: Applicants should apply for level funding for each project year. Also, applicants are subject to a 10 percent cost-share requirement on awards.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards:

84.264C (Independent living)—2
84.264D (Upgrading skills of State agency personnel)—2

Note: The Department is not bound by any estimates in this notice.

Maximum Award: In no case does the Secretary make an initial award greater than $100,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount.

Project Period: Up to 60 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than 45 pages, using the following standards:

(1) A page is 8.5 inches by 11 inches, on one side only with 1 inch margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font or an average character density greater than 18 characters per inch. If you use a nonproportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the résumés, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

If, in order to meet the page limit, you use print size, spacing, or margins smaller than the standards specified in this notice, we will not consider your application for funding.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 389.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities

Absolute Priority 1 (84.264C)

Under 34 CFR 75.105(c)(3) and 34 CFR 389.10(c) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that would develop and conduct training programs for staff of centers for independent living.

Absolute Priority 2 (84.264D)

Under 34 CFR 75.105(c)(3) and 34 CFR 389.10(b) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that would provide training opportunities for experienced State agency personnel at all levels of State agency practice to upgrade their skills and to develop mastery of new program developments dealing with significant issues and priorities and legislative thrusts of the public vocational rehabilitation program.

Invitational Priority—Rehabilitation Technology

Within Absolute Priority 2, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects that would offer certificate training to State vocational rehabilitation (VR) agency staff on matters regarding rehabilitation technology as it applies to the needs of customers of the public VR program.

Rehabilitation technology, as defined in section 7(30) of the Rehabilitation Act of 1973, as amended, means, "* * * the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas which include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services."

Selection Criteria: In evaluating an application for a new grant under these competitions, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for these competitions will be provided in the application package for these competitions.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov).

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FOR FURTHER INFORMATION CONTACT: Dr. Beverly Brightly, U.S. Department of Education, 400 Maryland Avenue, SW. (room 3318, Switzer Building), Washington, DC 20202–2649. Telephone (202) 205–9561. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 29 U.S.C. 774.

Dated: July 22, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–19118 Filed 7–26–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

(CFDA No.: 84.129W)

Rehabilitation Training: Rehabilitation Long-Term Training—Comprehensive System of Personnel Development; Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: To assist State vocational rehabilitation agencies in carrying out their Comprehensive System of Personnel Development (CSPD) plans.

Eligible Applicants: State agencies and other public or nonprofit agencies and organizations, including Indian Tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Training: Rehabilitation Long-Term Training program.

Deadline for Transmittal of Applications: September 17, 1999.

Deadline for Intergovernmental Review: November 16, 1999.

Applications Available: July 27, 1999.

Estimated Available Funds: $2,000,000.

Estimated Range of Awards: $75,000–$500,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than 45 pages, using the following standards:

(1) A page is 8.5″ x 11″ on one side only with 1″ margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font or an average character density greater than 18 characters per inch. If you use a nonproportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

If, in order to meet the page limit, you use print size, spacing, or margins smaller than the standards specified in this notice, we won't consider your application for funding.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 386.

Priority

The priority in the notice of final priority for this program published in the **Federal Register** on October 16, 1998 (63 FR 55764) applies to this competition.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunication device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov).

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Service Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–9817. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Beverly Steburg, U.S. Department of Education, Rehabilitation Services Administration, 61 Forsyth Street, SW, room 18T91, Atlanta, Georgia 30303. Telephone (404) 562–6336. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Program Authority: 29 U.S.C. 774.

Dated: July 22, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–19119 Filed 7–26–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.129B]

Rehabilitation Training: Rehabilitation Long-Term Training—Vocational Rehabilitation Counseling; Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Secretary;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages in rehabilitation as identified by the Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Eligible Applicants: State agencies and other public or nonprofit agencies and organizations, including Indian Tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Long-Term Training program.

Deadline for Transmittal of Applications: September 17, 1999.

Deadline for Intergovernmental Review: November 16, 1999.

Applications Available: July 27, 1999.

Estimated Available Funds: $2,100,000.

Estimated Range of Awards: $90,000 to $100,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 21.

Note: The Department is not bound by any estimates in this notice.

Maximum Award: In no case does the Secretary make an award greater than $100,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount.

Project Period: Up to 60 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than 35 pages, using the following standards:

(1) A "page" is 8.5″ x 11″, on one side only with 1″ margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font or an average character density greater than 18 characters per inch. If you use a nonproportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

If, in order to meet the page limit, you use print size, spacing, or margins smaller than the standards specified in this notice, we will not consider your application for funding.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 386.

Priorities

Absolute Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 386.1(b) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that would provide training in vocational rehabilitation counseling, which the Secretary has identified as an area of personnel shortage.

Invitational Priorities: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Master's Program

Projects that would offer training at the master's level through established graduate rehabilitation counseling programs that are accredited by the Council on Rehabilitation Education.

Invitational Priority 2—Doctoral Program

Projects that would offer training at the doctoral level through established graduate rehabilitation counseling programs.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunication device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov).

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FOR FURTHER INFORMATION CONTACT: Sylvia Johnson, U.S. Department of Education, 400 Maryland Avenue, SW. (room 3318, Switzer Building), Washington, DC 20202–2649. Telephone (202) 205–9312. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Program Authority: 29 U.S.C. 774.

Dated: July 22, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–19120 Filed 7–26–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

[FE Docket No. 99–1]

Proposed Open Access Requirement for International Electric Transmission Facilities and Delegation to the Federal Energy Regulatory Commission

AGENCY: Department of Energy.

ACTION: Notice of Proposed Amendment to Presidential Permits and Export Authorizations and Delegation and Assignment to the Federal Energy Regulatory Commission.

SUMMARY: Notice is given of the Department of Energy's (DOE or Department) intention to amend existing Presidential permits issued for the construction, operation, maintenance, or connection of facilities at the international border for the transmission of electric energy between the United States and foreign countries to require permit holders to provide non-discriminatory open access transmission services. The open access requirement would also be attached to the permit holder's authorization(s) to export electricity. Notice is also given of the delegation and assignment by the Secretary of Energy (Secretary) to the Federal Energy Regulatory Commission (Commission) of the authority to carry out functions of the Secretary related to the implementation and enforcement of this open access requirement. This delegation and assignment rescinds and supersedes a prior delegation of the Secretary to the Commission, which transferred the authority to effectuate open access over the United States portion of the international transmission lines of the El Paso Electric Company.

DATES: Comments, protests, or requests to intervene must be submitted on or before September 27, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary has the authority under the Department of Energy Organization Act (DOE Act) (Pub. L. 95–91) to approve or disapprove applications to transmit electricity to a foreign country pursuant to section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)). Moreover, the Secretary has the authority to approve or disapprove applications to construct, operate, maintain, or connect electric transmission facilities at the border between the United States and a foreign country through the issuance of a Presidential permit pursuant to Executive Order (EO) 10485, dated September 3, 1953, as amended by EO 12038, dated February 3, 1978. Under section 202(e) of the FPA, the Secretary may issue necessary or appropriate supplemental orders to modify the terms or conditions of authorizations to export electricity. The export authorizations themselves allow for modification or termination. Under the authority of the EO, the Secretary may attach to the Presidential permit, and the rights granted thereunder, such conditions as the public interest may require.

These functions were originally vested in the Federal Power Commission (FPC). Subsection 301(b) of the DOE Act transferred to, and vested in, the Secretary all the functions of the FPC not specifically vested by the DOE Act in the Commission. The FPC's functions with respect to transmission of electricity to a foreign country and electric transmission facilities at the border were not specifically vested in the Commission by the DOE Act. Furthermore, subsection 402(f) of the DOE Act provides that no function which regulates the export or import of electricity shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

In its Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities, FERC Stats. & Regs. ¶31,036 (1996)), the Commission required public utilities to provide comparable open access and non-discriminatory transmission service in interstate commerce in order to promote competition. In a later order in response to a request from Enron Power Marketing, Inc. (EPMI) for transmission access across the international transmission facilities of the El Paso Electric Company (EPE), the Commission expressed the opinion that cross-border electric trade ought to be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce (See Enron Power Marketing, Inc., 77 FERC ¶61,013 (1996)). However, the Commission determined that a gap existed in its authority to require open access from EPE's last substation within the United States up to the border. It further concluded that the Secretary, not the Commission, had the authority to regulate transmission access over the U.S. portion of international transmission lines under section 202(e) of the FPA and under the Executive Orders authorizing issuance of Presidential permits.

II. Discussion

The Department agrees with these conclusions. As a matter of policy, the Department strongly supports the emergence of a more competitive wholesale electricity market and considers comparable open access and non-discriminatory transmission service for both domestic and international transactions a critical factor in creating and sustaining a competitive market. Thus, the Department supports the application of the Commission's domestic open access policy to the U.S. international transmission facilities. Because the Commission regulates transmission access and the rates, terms, and conditions of transmission service for most of the transmission facilities owned by EPE, the Department concluded that the Commission was the appropriate agency to address the transmission access and related regulatory issues with respect to those cross-border transmission facilities. Therefore, on November 1, 1996, the Secretary delegated and assigned to the Commission the necessary authority to carry out the open access policy and, thus, authorized the Commission to take any further actions that might be necessary to effectuate open access over the United States portion of EPE's cross-border electric transmission lines. (Delegation Order No. 0204–163 (61 FR 56525, November 1, 1996)). In response to that delegation, the Commission ordered EPE to provide non-discriminatory open access transmission services over its international facilities. Consequently, it amended EPE's export authorization (EA–48–I) and EPE's Presidential permits for the lines connecting the Diablo and Ascarate substations in the United States with the Insurgentes and Riverena substations in Mexico (PP–48 and PP–92). (Enron Power Marketing, Inc., 83 FERC ¶61,213 (1998)).

Since the time of that delegation, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated this policy in export authorizations granted to entities requesting authority to export over international transmission facilities. In those authorizations, DOE indicated it expected transmitting utilities owning cross-border facilities constructed pursuant to Presidential permits to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in Commission Order No. 888, as amended.

III. Proposed Amendment to Presidential Permits and Export Authorizations

In furtherance of this policy, DOE now intends to condition existing and future Presidential permits issued for international electric transmission facilities appropriate for third party transmission on compliance with a requirement to provide non-discriminatory open access transmission services. This open access requirement would also be attached to the permit holder's authorization(s) to export electricity.

Notice is hereby being given that DOE proposes to amend the following Presidential permits (PP No.), and export authorizations (EA No.) to add the above open access requirement:

Permittee	PP No.[1]	Voltage	Location	EA No.[1]
CANADA:				
Avista Corporation (formerly Washington Water Power).	PP–86	230 kV	Northport, WA (not built)	EA–98 EA–101
Bangor Hydro-Electric Company	PP–89	345 kV	Baileyville, ME (not built)	
Basin Electric Power Cooperative	PP–64	230 kV	Tioga, ND	IE–78–5
Boise Cascade Corporation	PP–96	115 kV	International Falls, MN	
Bonneville Power Administration	PP–10	2–500 kV	Blaine, WA	
	PP–36	230 kV	Nelway, BC	
	PP–46	230 kV	Nelway, BC.	
Bradfield Electric Corporation	PP–87	69 kV	South Fork Craig River, AK.	
Burke-Divide Electric Cooperative	PP–177	12.47 kV	Burke County, ND	EA–177
Central Maine Power Company	PP–62	120/240 V	Coburn Gore, ME	
Citizens Utilities Company	PP–66	120 kV	Derby Line, VT	EA–66
	PP–80	25 kV	Cannan, VT	EA–80
		25 kV	Norton, VT	
Detroit Edison Company	PP–38	345 kV	St Clair, MI	EA–58
	PP–21	230 kV	Marysville, MI	
		230 kV	Detroit, MI	
	PP–58	345 kV	St. Clair, MI	
Eastern Maine Electric Cooperative	PP–20	6.9 kV	Forest City, ME	E–6853
	PP–32	69 kV	Calasis, ME	
Glacier Electric Cooperative, Inc	PP–18	120/240 V	Carway, Alberta	E–6446
		120/240 V	Del Bonita, Alberta	
Hill County Electric Cooperative	PP–118	69 kV	Wild Horse, Alberta	EA–118
Joint Owners of the Highgate Project	PP–82	120 kV (Built for 345 kV)	Franklin, VT	EA–82
Long Sault Inc.	PP–24	2–115 kV	Massena, NY	E–7022
Maine Electric Power Company	PP–43	345 kV	Houlton, ME	E–7534
Maine Public Service Company	PP–12	69 kV	Limestone, ME	E–6751
		69 kV	Fort Fairfield, MI	IE–78–10
	PP–29	138 kV	Aroostock County, ME	
		2–69 kV	Madawaska, ME	
	PP–81	7.2 kV	River-de-Chute, ME	
Marias River Electric Cooperative	PP–41	6.9 kV	Sweet Grass, MT	IT–6097
Minnesota Power, Inc.	PP–78	115 kV	International Falls, MN	EA–78 EA–196 E–9534

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Permittee	PP No.[1]	Voltage	Location	EA No.[1]
Minnkota Power Cooperative, Inc	PP–61	230 kV	Roseau County, MN	E–9535
	PP–70	12 kV	Lake of the Woods County, MN.	E–7482
Netley Corporation	PP–23	4.8 kV	Grindstone Island, NY	E–6616
New York Power Authority	PP–25	2–230 kV	Massena, NY	
	PP–30	230 kV	Devil's Hole, NY	
	PP–56	765 kV	Fort Covington, NY	
	PP–74	2–345 kV	Niagara Falls, NY.	
Niagara Mohawk Power Corporation	PP–13	4.8 kV	Hogansburg, NY	E–6796
	PP–190	230 kV	Devil's Hole, NY	PP–24–B
		115 kV	Buffalo, NY	
		115 kV	Lewiston, NY	
		69 kV (25 Hz)	Devil's Hole, NY	
		69 kV (25 Hz)	Lewiston, NY	
		38 kV (25 Hz)	Buffalo, NY	
		13–12 kV (25 Hz)	Rainbow Bridge, NY	
North Central Electric Cooperative	PP–67	12.5 kV	Dunseith, ND.	
Northern Electric Cooperative, Inc	PP–28	3–7.2 kV	Valley County, MT	E–6670
	PP–44	12.4 kV	St. Louis County, MN	
	PP–60	2–14.4 kV	St. Louis County, MN	
Northern States Power Company	PP–45	230 kV	Red River, ND	E–7482
	PP–63	500 kV	Roseau County, MN	IE–78–6
Public Utility District No. 1 of Pend Oreille County, WA.	PP–34	7.2 kV	Point Roberts, WA.	
Puget Sound Energy	PP–6	25 kV	Point Roberts, WA	EA–98
Roseau Electric Cooperative, Inc	PP–42	7.2 kV	Roseau County, MN	E–8361
	PP–55	25 kV	Roseau County, MN	
St. Clair Tunnel Company	PP–99	4.8 kV	St Clair, MI	EA–99
Vermont Electric Cooperative, Inc	PP–69	25 kV	Derby Line, VT	
		2–14.4 kV		
Vermont Electric Transmission Company, Inc	PP–76	±450 kV DC	Norton, VT	EA–76
		345 kV	Millbury, MA	
		345 kV	West Medway, MA	
MEXICO:				
Arizona Public Service Company	PP–106	34.5 kV	San Louis, AZ	EA–98
	PP–107	34.5 kV	Douglas, AZ	EA–104
	PP–108	34.5 kV	San Louis, AZ	EA–106
				EA–107
				EA–108
				EA–134
Central Power & Light Company	PP–94	69 kV	Brownsville, TX	EA–94[2]
		138 kV		
Citizens Utilities Company	PP–16	13 kV	Nogales, AZ	E–6431
	PP–40	2.3 kV		E–7370
		13.8 kV	Lochiel, AZ	
Comision Federal de Electricidad.[2]	PP–03	12.5 kV	Presidio, TX	
	PP–50	138 kV	Eagle Pass, TX	
	PP–51	7.2 kV	Redford, TX	
	PP–57	138 kV	Laredo, TX	
	PP–59	12 kV	Del Rio, TX	
	PP–75	7.2 kV	Comstock, TX	
El Paso Electric Company[3]	PP–48	115 kV	El Paso, TX	EA–48
	PP–92	115 kV	Sunland Park, NM	EA–98
Imperial Irrigation Districit	PP–90	34.5 kV	Calexico, CA	
	PP–174	2–34.5 kV	Calexico, CA	
NRG Energy, Inc.[4]	PP–192	500 kV	Calexico, CA	
Public Service Company of New Mexico.[4]	PP–197	345 kV AC, or + 400 kV DC.	Nogales or Sasabe, AZ	EA–98
Rio Grande Electric Cooperative, Inc	PP–33	14.4/24.9 kV	Health Crossing, TX	E–6868
	PP–53	14.4 kV	Lajitas, TX	E–7688
		14.4 kV	Castolon, TX	
		14.4 kV	Candelaria, TX	
San Diego Gas & Electric Co	PP–49	12 kV	Tijuana, MX	PP–49–A
		12 kV	Tecate, MX	PP–68EA
	PP–68	230 kV	Tijuana, MX	PP–79EA
	PP–79	230 kV (twinned)	La Rosita, MX	EA–100
Trico Electric Coop., Inc	PP–35	4.8 kV	Sasabe, AZ	E–7073

[1] These Presidential permit and export authorization numbers refer to the generic DOE number and are intended to include any subsequent amendments.

[2] CFE has a 138 kV line at Falcon Dam, Texas, that was authorized by a treaty. EA–94 authorized Central Power & Light to export over this line.

[3] As discussed herein, El Paso's Presidential permits and its export authorization have already been amended by the FERC to include an open access requirement.

[4] These Presidential permits have not been issued yet. Notices of the applications requesting the permits have appeared in the **Federal Register**. (PP–192—63 FR 46426, 9/1/98; PP–197—64 FR 2476, 1/14/99)

DOE has determined that the open access requirement will not be added to the following Presidential permits, because the lines authorized by those permits are not currently connected to the U.S. domestic electric power system and, thus, are not appropriate for third party transmission.

Permittee	PP No.[1]	Voltage	Location
Boise Cascade Corp.	PP–39	6.6 kV	International Falls, MN
British Columbia Hydro & Power Authority	PP–22	2–132 kV	Galiano Island. BC
		1–260 kV	
Dynegy Power Corporation[2]	PP–188	230 kV	Santa Teresa, NM
Fraser Paper Limited	PP–11	6.6 kV	Madawaska, ME
		69 kV	
Presley, E.T.	PP–54	4.8 kV	Wellesley Island, NY
Sumas Energy 2, Inc.[2]	PP–204	2–230 kV	Sumas, WA
Westmin Mines, Inc.	PP–85	35 kV	Hyder, AK
Frontera Generation LP	PP–206	2–230 kV	Hidalgo County, TX
Wilson-7 Energy Systems[2]	PP–195	±600 kV DC	Fort Hancock, TX

[1] These Presidential permit numbers refer to the generic DOE number and are intended to include any subsequent amendments.

[2] These Presidential permits have not been issued yet. Notices of the applications requesting the permits have appeared in the FEDERAL REGISTER. (PP–188—63 FR 37097, 7/9/98; PP–195—63 FR 68260, 12/10/98; PP–204—64 FR 9324, 2/25/99)

DOE is interested in public comments on the proposed action. Any permit holder that believes the open access requirement should not be applied to its facilities should specify in its comments why application of the requirement would not be appropriate or in the public interest. Any holders of Presidential permits that disagree with any of the above information regarding their permits, export authorizations, or international facilities should specify those areas of disagreement and provide any necessary documentation.

IV. Delegation Order

Section 642 of the DOE Act permits the Secretary to delegate any of the Secretary's functions to any officer or employee of the Department the Secretary may designate, including the Commission. Also, the Secretary's authority to regulate exports of electricity may be assigned in whole or in part to the Commission under subsections 402(e) and (f) of the DOE Act, after public notice of the assignment.

Pursuant to these provisions of the DOE Act, public notice is given that the Secretary delegates and assigns to the Commission the authority to carry out certain functions vested in the Secretary. The assignment is in the form of a delegation, which is effective upon publication of this notice. (see Attachment)

In order to permit uniform implementation and enforcement of the domestic and international open access policy, the Department believes the Commission is the appropriate agency to address the transmission access and related regulatory issues with respect to international transmission of electricity over cross-border facilities. Accordingly, the Secretary is delegating to the Commission the authority under the FPA and EO 10485, as amended by EO 12038, to implement and enforce the requirement imposed by the Department on those international electric transmission lines appropriate for third party transmission to provide non-discriminatory open access transmission services. Specifically, this delegation gives the Commission the authority to regulate access to, and the rates, terms, and conditions for, transmission services over those permitted international electric transmission facilities subject to that requirement to the extent the Commission finds it necessary and appropriate to the public interest. The delegation does not give the Commission authority to revoke, amend, or otherwise modify Presidential permits or electricity export authorizations issued by the Secretary. It also does not give the Commission authority to order expansion of international electric transmission facilities. However, DOE expects the Commission to advise DOE if it concludes that further action by DOE in a particular case is necessary.

This delegation rescinds and supersedes the Secretary's specific delegation to the Commission (Delegation Order No. 0204–163 mentioned above), which was limited to authority over the international transmission lines of EPE; however, it does not rescind, amend or supersede any orders issued by the Commission under that earlier delegation. This delegation amends to the limited extent, but does not otherwise rescind or supersede, the Secretary's prior delegation of authority to regulate exports of electricity to the Assistant Secretary for Fossil Energy (Delegation Order No. 0204–127, February 7, 1989), subdelegated to the Manager, Electric Power Regulation (Delegation Order dated February 7, 1997).

Procedural Matters

Any person desiring to become a party to this proceeding should file a petition to intervene at the address provided above in accordance with section 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Any person desiring to be heard regarding this proposed action to amend the Presidential permits or export authorizations may file written comments or protests at the address provided above in accordance with section 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Fifteen copies of such petitions and comments or protests should be filed with the DOE on or before the date listed above. Filings should be clearly marked with this docket number and reference the specific Presidential permit or export authorization to which the intervention, comment, or protest should be applied.

DOE has determined the proposed action is in the public interest and will not adversely impact on the reliability of the U.S. electric power supply system. However, a final decision on the proposed action will not be made until

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the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on amending the Presidential permits.

Issued in Washington, D.C., on July 21, 1999.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

Attachment—Department of Energy Delegation Order No. 0204–170 to the Federal Energy Regulatory Commission

Pursuant to the authority vested in me as the Secretary of Energy (Secretary) by sections 642 and 402(e) of the Department of Energy Organization Act (DOE Act) (42 U.S.C. 7252, 7172(e)), there is hereby delegated and assigned to the Federal Energy Regulatory Commission (Commission) the authority to carry out such functions as are necessary to implement and enforce the Secretary's policy requiring holders of Presidential permits authorizing the construction, operation, maintenance, or connection of facilities for the transmission of electric energy between the United States and foreign countries to provide non-discriminatory open access transmission services.

In exercising the authority delegated by this Order the Commission is specifically authorized to utilize the authority of the Secretary under Executive Order (EO) 10485, dated September 3, 1953, as amended by EO 12038, dated February 3, 1978, and section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and such other sections of the FPA vested in the Secretary as may be relevant, to regulate access to, and the rates, terms, and conditions for, transmission services over permitted international electric transmission facilities to the extent the Commission finds it necessary and appropriate to the public interest. This authority is delegated to the Commission for the sole purpose of authorizing the Commission to take actions necessary to implement and enforce non-discriminatory open access transmission service over the United States portion of those international electric transmission lines required by the Secretary to provide such service. Nothing in this delegation shall allow the Commission to revoke, amend, or otherwise modify Presidential permits or electricity export authorizations issued by the Secretary. The authority delegated to the Commission may be further delegated within the Commission, in whole or in part, as may be appropriate.

All actions taken pursuant to authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless and until rescinded, amended, or superseded.

Nothing in this Order shall preclude the Secretary from exercising or further delegating any of the authority hereby delegated, whenever, in the Secretary's judgment, the exercise or further delegation of such authority is necessary or appropriate to administer the functions vested in the Secretary.

This Order hereby rescinds and supersedes the previous Secretarial delegation and assignment to the Commission in Delegation Order No. 0204–163, dated November 1, 1996.

This Order is effective on July 27, 1999.

Bill Richardson,

Secretary of Energy.

[FR Doc. 99–19168 Filed 7–26–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–579–000, Docket No. CP99–580–000, Docket No. CP99–581–000, Docket No. CP99–58279–000]

Southern LNG Inc.; Notice of Applications for Section 7 Certificates and A Section 3 Authorization

July 21, 1999.

Take notice that on July 13, 1999, Southern LNG Inc. (Southern LNG), AmSouth-Sonat Tower, 1900 Fifth Avenue, North, Birmingham, Alabama 35203, filed applications for authority to re-commission its marine import terminal on Elba Island, Georgia (Elba Island Terminal). These proposals are fully set forth in the applications, which are on file with the Commission and open to public inspection in Washington, DC. These applications may be viewed on the Commission's website at http://ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Southern LNG has also made a complete copy of the application available to the Chatham-Effingham-Liberty Regional Library at the Savannah/Oglethorpe Mall branch (reference section, 912–925–5432). Further, the name, address, and telephone number of an authorized Southern LNG company contact person are: Patrick B. Pope, Associate General Counsel, Southern Natural Gas Company, PO Box 2563, Birmingham, Alabama 35202, (205) 325–7126.

Specifically, Southern LNG seeks several authorizations pursuant to Sections 7(c) and 3(a) of the Natural Gas Act. In Docket No. CP99–580–000, Southern LNG seeks a certificate of public convenience and necessity to construct certain new facilities at the Elba Island Terminal and to operate (re-commission) the entire Elba Island Terminal. In Docket No. CP99–581–000, Southern LNG requests a blanket certificate pursuant to Subpart F of Part 157 of the Commission's Regulations under which Southern LNG will perform routine activities and operations. In Docket No. CP99–582–000, Southern LNG seeks a blanket certificate pursuant to Subpart G of Part 284 of the Commission's Regulations under which Southern LNG will provide open-access terminal service to its customers. Finally, in Docket No. CP99–579–000, Southern LNG requests Section 3 authorization under Subpart B of Part 153 of the Commission's regulations for siting of natural gas import facilities. Southern LNG also requests any waivers that may be necessary to implement the proposal, and it makes a request for approval of; (i) certain specific accounting treatment of the original costs of the Elba Island Terminal; (ii) a revised depreciation rate for original and new facilities' costs; and, (iii) the definition of the new "in-service date".

Southern LNG proposes to re-commission the Elba Island Terminal to provide open-access service to shippers importing LNG. Southern LNG proposes to repair, improve and upgrade various control, LNG flow and safety systems, and renew dredging in LNG tanker docking and turn-around areas. Southern LNG states that it held an open-season in June 1999, and that it has executed a binding precedent agreement for a primary term of 22 years with the successful bidder, Sonat Energy Services Company (Sonat Energy Services) for 100% of the capacity of the Elba Island Terminal. Sonat Energy Services will be able to store up to 4 Bcf of natural gas in LNG form, and receive up to 330 MMcf per day of natural gas in vaporized form. Sonat Energy Services expects its source of imported LNG to be from Trinidad and Tobago, and Sonat Energy Services will sell such vaporized LNG to its customers.

Southern LNG estimates the total capital cost of re-commissioning the Elba Island Terminal will be about $26 million, and the annual cost-of-service will be about $23 million. Specific initial rates and charges based on these costs have been derived by Southern LNG, as shown in Exhibit P of its application. However, Southern LNG has also agreed to a limited 7- to 10-year rate moratorium with its customer, Sonat Energy Services, which Southern LNG says increases the risk that it will face cost-of-service increases with only limited rights to recover those costs. Southern LNG's proposes to place the Elba Island Terminal in service on the date of first commercial delivery of LNG, estimated to begin in the third quarter of 2002. Southern LNG requests that the Commission issue a preliminary determination on non-environmental issues no later than December 31, 1999, and final authorizations before March 31, 2000.

Any person desiring to be heard or to make any protest with reference to said applications should, on or before August 13, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status. Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 3, 7, and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificates and authorizations is required by the public convenience and necessity and the public interest. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern LNG to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–19075 Filed 7–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–606–001]

Texas Eastern Transmission Corporation; Notice of Fuel Calculation

July 21, 1999.

Take notice that on July 19, 1999, Texas Eastern Transmission Corporation (Texas Eastern) submitted a report detailing the amount of fuel to be used and setting forth an incremental fuel charge (Fuel Filing) pursuant to Ordering Paragraph (G) of the Commission's June 18, 1999 order (June 18 order) in Docket No. CP96–606–001. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Texas Eastern's Fuel Filing reflects the incremental fuel to be used in connection with capacity leased to CNG Transmission Corporation (CNG) which was approved in the June 18 order. Texas Eastern projects an annual average incremental fuel usage of 251 Mcf/d (or 1.28%) in connection with 19,500 Dth/d of capacity leased to CNG.

Any person desiring to be heard or to make any protest with reference to said filing should on or before July 29, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

David P. Boergers,

Secretary.

[FR Doc. 99–19074 Filed 7–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

July 21, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11779–000.

c. *Date filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi Lock and Dam #3 Hydroelectric Project.

f. *Location:* On the Mississippi River in Goodhue County, Minnesota. The project would utilize the Corp of Engineers' Mississippi Lock and Dam #3

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power

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Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, (202) 210–2806.

j. *Deadline for filing motions to intervene, protest and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would consist of the following facilities: (1) Four 80-foot-long and 96-inch-diameter steel penstocks at the outlet works; (2) a powerhouse with four turbine generator units with a total installed capacity of 5 megawatts; (3) a tailrace consisting of an exhaust apron; (4) 14.7–kV, 1,200-foot-long transmission lines, and (5) other appurtenances.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. a copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–19076 Filed 7–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 21, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11780–000.

c. *Date filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Pleasant Hill Dam Hydroelectric Project.

f. *Location:* On Clear Fork of Mohican River, Ashland County, Ohio. The project would utilize the U.S. Army Corps of Engineer's Pleasant Hill Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)-825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for filing motions to intervene, protest and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would use the U.S. Army Corps of Engineer's Pleasant Hill Dam and would consist of the following facilities: (1) A new 80-foot-long, 96-inch-diameter penstock at the outlet works; (2) a new powerhouse containing one generating unit with an installed capacity of 1.16 MW; (3) a new tailrace; (4) a new 500-foot-long, 14.7–KVtransmission line; and (5) other appurtenances.

The project would have an annual generation of 7,100 MWh and project power would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202)208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICAITON", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NW, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–19077 Filed 7–26–99; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Application Accepted For Filing and Soliciting Motions To Intervene, Protests, and Comments

July 21, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11781–000.

c. *Date filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi Lock and Dam #4.

f. *Location:* On Mississippi River, Buffalo County, Wisconsin. The project would utilize the U.S. Army Corps of Engineers' Mississippi Lock and Dam #4.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for filing motions to intervene, protest and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy

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Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would use the U.S. Army Corps of Engineers' Mississippi Lock and Dam #4 and would consist of the following facilities: (1) five new 80-foot-long, 96-inch-diameter penstock at the outlet works; (2) a new powerhouse containing 5 generating units having a total installed capacity of 5 MW; (3) a new tailrace; (4) a new 300-foot-long, 14.7-KV transmission line; and (5) other appurtenances.

The project would have an annual generation of 31,000 MWh and project power would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary

[FR Doc. 99–19078 Filed 7–26–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6408–2]

Proposed Administrative Penalty Assessments and Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed assessment of Clean Water Act Class I administrative penalty and opportunity To comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalty.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who without authorization discharges a pollutant to a navigable water, as those terms are defined in section 502 of the Act, 33 U.S.C. 1362, may be assessed a penalty in a "Class I" administrative penalty proceeding. Class I proceedings under section 309(g) are conducted in accordance with proposed consolidated rules of practice governing the administrative assessment of civil penalties, published at 63 FR 9464 (Feb. 25, 1998).

EPA is providing notice of the following proposed Class I penalty proceeding initiated by the Water Division, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105:

In the Matter of Arizona Dairy Co., Docket No. CWA–09–99–0002, filed July 14, 1999; proposed penalty, $18,000; for unauthorized discharge from Arizona Dairy Co., 19135 E. Elliot Rd., Higley, AZ 85236, on March 31 and April 14, 1998, to Warner Road Alignment Wash and the Eastern Maricopa Floodway.

Procedures by which the public may comment on a proposed Class I penalty or participate in a Class I penalty proceeding are set forth in the proposed consolidated rules. The deadline for submitting public comment on a proposed Class I penalty is thirty days after issuance of public notice. The Regional Administrator of EPA, Region 9 may issue an order upon default if the respondent in the proceeding fails to file a response within the time period specified in the proposed consolidated rules.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of the proposed consolidated rules, review the complaint, proposed consent order, or other documents filed in the proceeding, comment upon the proposed penalty, or participate in any hearing that may be held, should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, (415) 744–1391. Documents filed as part of the public record in the proceeding are available for inspection during business hours at the office of the Regional Hearing Clerk.

In order to provide opportunity for public comment, EPA will not take final action in the proceeding prior to thirty days after issuance of this notice.

Dated: July 16, 1999.

John Ong,

Acting Director, Water Division.

[FR Doc. 99–19157 Filed 7–26–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 21, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 27, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0362.

Title: Inspection of Radio Installation on Large Cargo and Small Passenger Ships.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and Federal, State, local, or Tribal government(s).

Number of Respondents: 11,318.

Estimate Time per Response: 4.48 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 44,478.

Total Annual Cost: None.

Needs and Uses: The FCC adopted Rules that privatized inspections of ships subject to the inspection requirements of the Telecommunications Act of 1996, as amended, and the International Convention for the Safety of Life at Sea, 1974 (Safety Convention). The Communications Act requires the Commission to inspect the radio installation of large cargo ships and certain passenger ships at least once a year to ensure that the radio installation is in compliance with the requirements of the Communications Act. Small passenger ships must be inspected at least once every five years. The Safety Convention (to which the United States is a signatory) also requires an annual inspection; however, the Safety Convention permits an Administration to entrust the inspections to either surveyors nominated for the purpose or to organizations recognized by it. The Rules require this inspection to be conducted by an FCC-licensed technician. This change reduces the administrative burden on the public and the Commission. To ensure that vessel safety is not adversely affected by this proposal, the FCC adopted Rules that private sector technicians certify that the ship passed an inspection and issue the ship a safety certificate. The Rules also state that the inspecting technician and the ship's owner, operator, or captain each certify in the ship's station log that the vessel has passed a safety inspection. Therefore, the United States can have other entities conduct the radio inspection of vessels for compliance with Safety Convention. The Commission adopted Rules that FCC-licensed technicians provide a summary of the results of the inspection in the ships's log and provide the vessel with a ship inspection safety certificate. This ensures that the inspection was successful so that passengers and crew members of certain United Sates ships have access to distress communications in an emergency.

Federal Communications Commission.

William F. Caton,

Assistant Secretary.

[FR Doc. 99–19064 Filed 7–26–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–98; DA 99–1380]

Public Utility Commission of Texas Petition Requesting Additional Authority To Implement Telecommunications Numbering Conservation Measures

AGENCY: Federal Communications Commission.

ACTION: Notice.

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SUMMARY: On July 14, 1999, the Commission released a public notice requesting public comment on a petition from the Public Utility Commission of Texas ("Petition") requesting additional authority to implement measures related to conservation of telecommunications numbering resources. The intended effect of this action is to make the public aware of, and to seek public comment on, this request.

FOR FURTHER INFORMATION CONTACT: Al McCloud at (202) 418–2320 or amccloud@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, SW, Suite 6–A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On September 28, 1998, the Federal Communications Commission ("Commission") released an order in the matter of a Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Memorandum Opinion and Order and Order on Reconsideration*, FCC 98–224, CC Docket No. 96–98, 63 FR 63613, NSD File No. L–97–42 (rel. September 28, 1998) ("Pennsylvania Numbering Order"). The Pennsylvania Numbering Order delegated additional authority to state public utility commissions to order NXX code rationing, under certain circumstances, in jeopardy situations and encouraged state commissions to seek further limited delegations of authority to implement other innovative number conservation methods.

The Public Utility Commission of Texas has filed a request for additional delegation of authority to implement number conservation methods in their state. *See* Common Carrier Bureau Seeks Comment on the Texas Public Utility Commission's Petition for Delegation of Additional Authority to Implement Number Conservation Measures, *Public Notice*, NSD File No. L–99–55, DA 99–1380 (rel. July 14, 1999).

Many of the additional authority measures sought by the Texas Commission relate to issues under consideration in the *Numbering Resource Optimization Notice*. Numbering Resource Optimization, *Notice of Proposed Rulemaking*, CC Docket No. 99–200, FCC 99–122 (rel. June 2, 1999), 64 FR 32471. Because the Texas Commission faces immediate concerns regarding the administration of telecommunication numbering resources in Texas, we find it to be in the public interest to address this petition as expeditiously as possible, prior to completing the rulemaking proceeding.

We hereby seek comment on the issues raised in the Texas Public Utility Commission's petition for delegated authority to implement various number conservation measures. A copy of this petition will be available during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, SW, Suite CY–A257, Washington, DC 20554, (202) 418–0267.

Interested parties may file comments concerning these matters on or before August 16, 1999. All filings must reference NSD File Number L–99–55 and CC Docket 96–98. Send an original and four copies to the Commission Secretary, Magalie Roman Salas, Portals II, 445 12th Street, SW, Suite TW–A325, Washington, DC 20554 and two copies to Al McCloud, Network Services Division, Portals II, 445 12th Street, SW, Suite 6A–320, Washington, DC 20554.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, including "get form <your e-mail address>" in the body of the message. A sample form and directions will be sent in reply. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

This is a "permit but disclose" proceeding for purposes of the Commission's *ex parte* rules. *See generally* 47 CFR 1.1200–1.1216. As a "permit but disclose" proceeding, *ex parte* presentations will be governed by the procedures set forth in section 1.1206 of the Commission's rules applicable to non-restricted proceedings. 47 CFR 1.1206.

Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2). Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well. For further information contact Al McCloud of the Common Carrier Bureau, Network Services Division, at (202) 418–2320 or amccloud@fcc.gov. The TTY number is (202) 418–0484.

Federal Communications Commission.

Blaise A. Scinto,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–19063 Filed 7–26–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act Systems of Records; Amendment to an Existing Routine Use

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of proposed amendments to the system purpose, and existing routine use with request for comments.

SUMMARY: In compliance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, we (FEMA) give notice of a proposed new routine use to be added to our existing system of records entitled, FEMA/REG–2, Disaster Recovery Assistance Files. This change will permit us to disclose information from these records to federal, state, and local governments to help develop hazard mitigation measures for community hazard mitigation planning, and to assure building practices consistent with hazard specific building codes, standards, and ordinances. Additionally, minor modifications include the simplification of routine use language for uses listed in Appendix A, and an update to regional office addresses listed in Appendix AA. We also clarify the format and language of the existing routine use related to eligibility to better distinguish the two eligibility-related uses.

EFFECTIVE DATE: The amended routine use and other minor modifications to this system are effective September 7, 1999.

ADDRESSES: We invite comments on this routine use. Please send any comments to the Rules Docket Clerk, Federal Emergency Management Agency, Office of General Counsel, room 840, 500 C Street SW., Washington, DC 20472, or (email) *rules@fema.gov*. Comments received will be available for public inspection at FEMA from 9 a.m. to 4 p.m., Monday through Friday (except for legal holidays).

FOR FURTHER INFORMATION CONTACT: Sandra Jackson, FOIA/Privacy Specialist, at (202) 646–3840, or (email) *sandra.jackson@fema.gov*.

SUPPLEMENTARY INFORMATION:

We published notices of systems of records on January 5, 1987, 52 FR 324; February 3, 1987, 52 FR 3344; March 5, 1987, 52 FR 6875, September 7, 1990, 55 FR 37182; and September 23, 1996, 61 FR 49777.

The altered system of records report, as required by 5 U.S.C. 552a(r), is being simultaneously submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix 1 to OMB Circular A–130.

We are making the following major modifications to this system:

Purpose of Collection

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (Stafford Act), encourages hazard mitigation measures to reduce losses from disasters, including hazard mitigation planning and enforcement of hazard-specific building codes, standards, and ordinances. By this notice we amend the "Purpose(s)" section of our system of records to reflect our statutory mandate to promote hazard mitigation.

Amended Routine Use

Since the 1993 Midwest Flooding, there has been a substantial increase in the number of requests to FEMA for information on applicants for disaster assistance. Such information is covered by the Privacy Act. Almost all requests are from State or local governments to evaluate disaster damages and their impacts on communities for planning purposes, and to ensure individuals' compliance with hazard-specific codes, standards, and ordinances when rebuilding after disaster damage. Although disclosure of information in such cases may benefit both FEMA and individuals receiving assistance, there is no current routine use permitting us to release applicant specific information for these purposes. By this notice we provide for such a routine use.

We amend the current routine use to permit disclosure of a record from the Disaster Recovery Assistance Files to Federal, State, and local government agencies that are charged with the implementation of hazard mitigation measures and the enforcement of hazard-specific provisions of building codes, standards, and ordinances. FEMA may disclose necessary information from this system of records for purposes of planning projects implemented under Federal, State, or local government hazard mitigation programs or to verify and enforce local buildings codes, standards, and ordinances.

Under this routine use FEMA may disclose this information for hazard mitigation planning purposes to assist States and communities in identifying high-risk areas and preparing mitigation plans that target those areas for future mitigation projects providing the most appropriate solution to the affected area. Hazard mitigation measures may include:

- The acquisition, relocation or elevation of structures;
- Storm water management or drainage improvement projects;
- Structural retrofitting projects to increase resistance to earthquake, wind, flood or other hazard, or other appropriate projects that will increase structures' disaster resistance.

Mitigation projects focusing on those areas or properties that sustain the greatest disaster damage on a repetitive basis have a high potential for cost-effectiveness and, therefore, may significantly reduce or eliminate repeated federal disaster relief and assistance payments.

Under this routine use, FEMA may also disclose this information for enforcement purposes to enable States and communities to ensure property owners repair or rebuild their structures in conformance with applicable hazard-specific building codes, standards, and ordinances. Rebuilding structures to conform to these requirements will increase the structures' disaster resistance and, thus, significantly reduce or eliminate repeated payments out of federal disaster relief and assistance funds.

Dated: July 21, 1999.

Ernest B. Abbott,

General Counsel.

The entire text of the system of records affected by this notice and Appendixes A and AA to FEMA/REG–2 follow:

FEMA/REG–2

SYSTEM NAME:

Disaster Recovery Assistance Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

FEMA National Processing Service Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply for disaster recovery assistance following Presidentially declared major disasters or emergencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Records of registration for assistance (FEMA Form 90–69, Disaster Assistance Registration/Application includes names, addresses, telephone numbers, social security numbers, insurance coverage information, household size and composition, type of damage incurred, income information, programs to which we refer applicants for assistance, flood zones, preliminary determinations of eligibility for disaster assistance).

(b) Inspection reports (FEMA Form 90–56, Inspection Report) contain identification information, and results of surveys of damaged property and goods.

(c) Temporary housing assistance eligibility determinations (FEMA Forms 90–11 through 90–13, 90–16, 90–22, 90–24 through 90–28, 90–31, 90–33, 90–41, 90–48, 90–57, 90–68 through 90–70, 90–71, 90–75 through 90–78, 90–82, 90–86, 90–87, 90–94 through 90–97, 90–99, and 90–101). These apply to approval and disapproval of temporary housing assistance; general correspondence, complaints, appeals, and resolutions, requests for disbursement of payments, inquiries from tenants and landlords, general administrative and fiscal information, payment schedules and forms, termination notices, and information shared with the temporary housing program staff from other agencies to prevent duplication of benefits, leases, contracts, specifications for repair of disaster damaged residences, reasons for eviction or denial of aid, sales information after tenant purchase of housing units, and status of disposition of applications of housing.

(d) Eligibility decisions from other agencies (for example, the disaster loan program administered by the Small Business Administration, and decisions of the State-administered Individual and Family Grant program) as they relate to

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determinations of eligibility for disaster assistance programs.

(e) State files containing related, but independently kept, records of persons who request Individual and Family Grants, and administrative files and reports FEMA requires. As to individuals, we keep the same type of information as described above under registration, inspection, and temporary housing assistance records. As to administrative and reporting requirements, we use FEMA Forms 76–27, 76–28, 76–30, 76–32, 76–34, 76–35, 76–38. We also use State administrative planning formats.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288 as amended; Reorganization Plan No. 3 of 1978.

PURPOSE(S):

To register applicants needing disaster assistance, to inspect damaged homes, to verify information provided by the applicant, to make eligibility determinations for that assistance, and to identify and implement measures to reduce future disaster damage.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) When an applicant seeks assistance from another Federal agency, a State government, local government, or volunteer agency charged with administering disaster relief programs, and FEMA receives a written request from that agency, we may disclose applicant information to that agency as necessary to prevent a duplication of efforts in determining eligibility. We may disclose only information from this system of records relevant to that agency's particular assistance program(s). The requesting agency is not permitted to change disclosed FEMA records.

(b) To the extent that eligibility, in whole or in part, for a disaster assistance program depends on eligibility for assistance from another program or receipt of benefits from another source for the same purpose, we may, in response to a written request, disclose information to relevant agencies, organizations, and institutions only as necessary to determine and prevent duplication of benefits (section 312 of the Stafford Act).

(c) In response to a written request, we may disclose information from this system of records to Federal, State, or local government agencies charged with the implementation of hazard mitigation measures and the enforcement of hazard-specific provisions of building codes, standards, and ordinances. We may disclose only information necessary for the following purposes:

• *For hazard mitigation planning purposes* to assist States and communities in identifying high-risk areas and preparing mitigation plans that target those areas for hazard mitigation projects implemented under Federal, State or local hazard mitigation programs; and

• *For enforcement purposes* to enable State and communities to ensure that owners repair or rebuild structures in conformance with applicable hazard-specific building codes, standards, and ordinances.

(d) Additional routine uses may include those uses identified at Nos. 1, 2, 3, 5, 6, and 8 of Appendix A.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Under 5 U.S.C. 552a(b)(12): We may make disclosures from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Debt Collection Act of 1982.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Interactive database; computer discs, records in file folders.

RETRIEVABILITY:

By name, address, social security number, case file numbers.

SAFEGUARDS:

Hardware and software computer security measures; paper files in locked file cabinets or rooms; buildings are secured during non-business hours by building guards.

RETENTION AND DISPOSAL:

Because of varying record schedules applicable to this system of records, we have broken down the paragraphs under the categories of records section for easy reference. Records covered by paragraphs (a) through (d) are covered by FEMA Records Schedule N1–311–86–1, Item 8b(l) and are destroyed 6 years and 3 months after the files are consolidated. Records covered by paragraph (e) are covered by FEMA Records Schedule N1–311–86–1, Item 7 and are destroyed 3 years after the disaster contract is terminated.

SYSTEM MANAGER(S) AND ADDRESS:

We list the addresses of Regional Directors of FEMA in Appendix AA; the Director, Human Services Division, Response and Recovery Directorate, 500 C Street SW., Washington, DC 20472.

NOTIFICATION PROCEDURES:

You should address Inquiries to the appropriate system manager. Written requests should be clearly marked, "Privacy Act Request" on the envelope and letter. Include full name of the individual, some type of appropriate personal identification, and current address.

For personal visits, you should be able to provide some acceptable identification, that is, driver's license, employing office's identification card, or other identification data.

RECORDS ACCESS PROCEDURES:

Same as notification procedure above.

CONTESTING RECORDS PROCEDURE:

Same as notification procedure above. The letter should state clearly and concisely what information you are contesting, the reasons for contesting it, and the proposed amendment to the information that you seek. FEMA Privacy Act regulations are at 44 CFR part 6.

RECORD SOURCE CATEGORIES:

Applicants for disaster recovery assistance; credit rating bureaus, financial institutions, insurance companies and agencies providing disaster relief.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

Introduction to Routine Uses: We have identified certain routine uses that are applicable to many of our systems of record notices. We will list the specific routine uses applicable to an individual system of record notice under the "Routine Use" section of the notice itself, which will correspond to the numbering of the routine uses published below. We are publishing these uses only once in the interest of simplicity and economy, rather than repeating them in every individual system notice.

1. *Routine Use—Law Enforcement:* We may disclose as a routine use a record from any of our system of records that indicates either by itself or in combination with other information that we have, a violation or potential violation of law, whether civil, criminal or regulatory, and whether arising by general statute, or by regulation, rule or order. We may disclose these records to the appropriate agency whether Federal, State, territorial, local or foreign, or foreign agency or professional organization, responsible for enforcing, implementing, investigating, or prosecuting such violation or for implementing the statute, rule, regulation or order.

2. *Routine Use—Disclosure When Requesting Information:* We may disclose as a routine use a record from our system of records to a Federal, State, or local agency maintaining civil, criminal, regulatory, licensing or other enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning hiring or retention of an employee, issuance of a security clearance, letting of a contract, or issuance of a license, grant, or other benefit.

3. *Routine Use—Disclosure of Requested Information:* We may disclose as a routine use a record from our system of records to a Federal agency in response to a written request in connection with hiring or retaining an employee, an investigation of an employee, letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision.

4. Routine Use—Grievance, Complaint, Appeal: We may disclose as a routine use a record from our system of records to an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official investigating or settling a grievance, complaint, or appeal filed by an employee. We may also disclose as a routine use a record from this system of records to the Office of Personnel Management under that agency's responsibility to evaluate Federal personnel management.

To the extent that official personnel records in our custody are covered within systems of records published by the Office of Personnel Management as government-wide records, we will consider those records as a part of that government-wide system. We may transfer as a routine use to the Office of Personnel Management under official personnel programs and activities other official personnel records covered by notices that we published and that we consider are separate systems of records.

5. *Routine Use—Congressional Inquiries:* If the individual subject of the record asks us to disclose the information, we may disclose as a routine use a record from our system of records to a Member of Congress or to a congressional staff member in response to an inquiry from the congressional office.

6. *Routine Use—Private Relief Legislation:* We may disclose as a routine use the information contained in our system of records to the Office of Management and Budget at any stage of the legislative coordination and clearance process set out in OMB Circular No. A–19.

7. *Routine Use—Disclosure to the Office of Personnel Management:* We may disclose as a routine use a record from our system of records to the Office of Personnel Management concerning information on pay and leave benefits, retirement deductions, and any other information concerning personnel actions.

8. *Routine Use—Disclosure to National Archives and Records Administration:* We may disclose as a routine use a record from our system of records to the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 12906.

9. *Routine Use—Grand Jury:* We may disclose as a routine use a record from our system of records to a grand jury agent under a Federal or State grand jury subpoena, or under a prosecution request that we release such record for introduction to a grand jury.

Appendix AA

Addresses for FEMA Regional Offices:

Region I—Regional Director, FEMA, room 442, J.W. McCormack Post Office and Courthouse Building, Boston, MA 02109–4595;

Region II—Regional Director, FEMA, 26 Federal Plaza, room 1338, New York, NY 10278–0002;

Region III—Regional Director, FEMA, Liberty Square Building (Second Floor), 105 South Seventh Street, Philadelphia, PA 19106–3316;

Region IV—Regional Director, FEMA, 3003 Chamblee-Tucker Road, Atlanta, GA 30341;

Region V—Regional Director, FEMA, 175 West Jackson Blvd., 4th Floor, Chicago, IL 60604–2698;

Region VI—Regional Director, FEMA, Federal Regional Center, 800 North Loop 288, Denton, TX 76201–3698;

Region VII—Regional Director, FEMA, 2323 Grand Boulevard, room 900, Kansas City, MO 64108–2670;

Region VIII—Regional Director, FEMA, Denver Federal Center, Building 710, Box 25267, Denver, CO 80225–0267;

Region IX—Regional Director, FEMA, Building 105, Presidio of San Francisco, CA 94129–1250;

Region X—Regional Director, FEMA, Federal Regional Center, 130 228th Street, SW, Bothell, WA 98021–9796;

[FR Doc. 99–19142 Filed 7–26–99; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY:

Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before September 27, 1999.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New

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Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. West, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, with revision the following report:

1. Report title: Application for a Foreign Organization to Become a Bank Holding Company.

Agency form number: FR Y-1f.

OMB control number: 7100-0119

Frequency: Event-generated.

Reporters: Foreign Banking Organizations.

Annual reporting hours: 280 hours.

Estimated average hours per response: 70 minutes.

Number of respondents: 4 foreign banking organizations.

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 1842(a) and 1844(a) and (c) and by Regulation Y (12 CFR 225.5(a) and 225.11(f)). The information provided in the application is not confidential unless the applicant specifically requests it and the Board approves the request.

Abstract: Under the Bank Holding Company Act (BHCA), submission of this application is mandatory for any company organized under the laws of a foreign country seeking initial entry into the United States through the establishment or acquisition of a U.S. subsidiary bank. Applicants provide financial and managerial information and must discuss the competitive effects of the proposed transaction and how the proposed transaction would enhance the convenience and needs of the community to be served.

2. Report title: Consumer Satisfaction Questionnaire.

Agency form number: FR 1379.

OMB control number: 7100-0135.

Frequency: Event-generated.

Reporters: Consumers.

Annual reporting hours: 60 hours.

Estimated average hours per response: 20 minutes.

Number of respondents: 180 consumers.

Small businesses are affected.

General description of report: This information collection is voluntary (15 U.S.C. 57 (a)(f)(1)) and is not given confidential treatment however, some respondents may provide information not specifically solicited on the form which may be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 (b)(4), (b)(6), and (b)(7)).

Abstract: The FR 1379 is used to determine whether complainants are satisfied with the way the Federal Reserve System handled their complaints and to solicit suggestions for improving the complaint-handling process. The proposed revised questionnaire has been designed to collect more details related to the information already requested in the current questionnaire and to capture information about the demographic characteristics of consumers who file complaints about state member banks. Currently, the questionnaire is sent to consumers whose complaints against state member banks were referred by the Board of Governors to the appropriate Federal Reserve Bank for resolution. The Board plans to extend distribution of the questionnaire to all consumers who have complaints against state member banks.

Board of Governors of the Federal Reserve System, July 21, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–19088 Filed 7–26–99; 8:45AM]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 10, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Daniel S. Buford, Stephen R. Buford, Sam D. Buford, and Sharon L. Buford, all of Tulsa, Oklahoma; to acquire voting shares of Pawnee Holding Company, Pawnee, Oklahoma, and thereby indirectly acquire The Pawnee National Bank, Pawnee, Oklahoma.

Board of Governors of the Federal Reserve System, July 21, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–19049 Filed 7–26–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 20, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Compass Bancshares, Inc., Birmingham, Alabama; to acquire 100 percent of the voting shares of Hartland Bank, National Association, Austin, Texas.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bern Bancshares, Inc., Bern, Kansas; to merge with Axtell Agency, Inc., Axtell, Kansas, and thereby indirectly acquire State Bank of Axtell, Axtell, Kansas.

Board of Governors of the Federal Reserve System, July 21, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–19048 Filed 7–26–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Region 10

Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: General Service Administration (GSA).

ACTION: The U.S. General Service Administration (GSA) hereby gives notice that it intends to prepare an Environmental Impact Statement (EIS) pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500–1508), for the construction of a new Port of Entry facility at Peace Arch in Blaine, Whatcom County, Washington.

PROCEDURES: This project is at the feasibility stage and has not been approved by Congress. The scoping meeting is being held at this time to ensure that all significant environmental issues are identified and thoroughly studied as part of the environmental analysis. When the prospectus for the project is submitted to Congress for approval and funding, it will take into consideration these significant issues. When the project is approved by Congress, the EIS will be prepared based upon the scoping report. The EIS will evaluate the proposed project, including all reasonable alternatives identified through the scoping process and a no-action alternative. Scoping will be accomplished through direct mailing correspondence to interested persons, agencies, and organizations and through a Public Scoping Meeting. The public scoping meeting will be held on August 11th, 1999 at the Peace Arch State Park, Kitchen Shelter meeting room, Blaine, WA, (tel. 360–332–8221) at 6:30 p.m. following an open house beginning at 6:00 p.m. GSA will publish a public notice of the meeting in Blaine newspapers approximately two weeks prior to the events.

Public meetings will be held after the release of the Draft Environmental Impact Statement and GSA will respond to all relevant comments received during the 45-day public comment period in the Final Environmental Impact Statement. After a minimum 30-day period following publication of the Final Environmental Impact Statement GSA will issue a Record of Decision that will identify the alternative selected.

SUPPLEMENTARY INFORMATION: GSA, assisted by Herrera Environmental Consultants, will prepared the Environmental Impact Statement to acquire land, design, and construct a new Peace Arch Port of Entry Facility. GSA will serve as the lead agency and scoping will be conducted consistent with NEPA regulations and guidelines. GSA invites interested individuals, organizations, and federal, state, and local agencies to participate in defining and identifying any significant impacts and issues to be studied in the EIS, including social, economic, or environmental concerns. Scoping will be limited to identifying significant issues to be analyzed in the environmental document and commenting on alternatives and the merit of the proposal.

Project Purpose, Historical Background, and Description

The US Customs, Immigration and Naturalization Service, and Dept. of Agriculture are currently located in the existing Peace Arch Port of Entry facility. The existing facility does not currently meet the tenant agencies space requirement due to the present configuration of the site. The existing facility cannot be adapted to accommodate the required space needs of the agency tenants.

Alternatives

The EIS will examine the short- and long-term impacts on the natural and physical environment. The impact assessment will include but not be limited to impacts such as social environment, changes in land use, aesthetics, changes in traffic and parking patterns, economic impacts, and consideration of city planning and zoning requirements.

The EIS will examine measures to mitigate significant adverse impacts resulting from the proposed action. Concurrent with NEPA implementation, GSA will also implement its consultation responsibilities under section 106 of the National Historical Preservation Act to identify potential impacts to existing historic or cultural resources.

The EIS will consider a no-action alternative and action alternatives. The no-action alternative would continue the occupancy in the existing Peace Arch Port of Entry facility in Blaine. The action alternatives will consist of three different configurations for construction of a new port of entry facility.

ADDRESSES: In addition to the public scoping process, you may send written comments on the scope of alternatives and potential impacts to the following address: Michael D. Levine: Regional Environmental Program Manager, 10PCB, General Service Administration, 400 15th Street SW, Auburn, WA, 98001, or fax: Michael D. Levine at 253–931–7308, or e-mail at *Michael.Levine@GSA.GOV*. Written comments should be received no later than September 10, 1999.

FOR FURTHER INFORMATION CONTACT: Peter Sparhawk at Herrera Environmental Consultants, 2200 Sixth Ave., Suite 601, Seattle, Washington, 98121 or call 206–441–9080; or Michael D. Levine, GSA (253) 931–7263.

MAILING LIST: If you wish to be placed on the project mailing list to receive further information at the EIS process develops, contact Peter Sparhawk at the address noted above.

Dated: July 13, 1999.

William Dubray,

Executive Director.

[FR Doc 99–18639 Filed 7–26–99; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–24]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the

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proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are Invited on

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

1. Proposed Project

Psychometric Study of the Youth Risk Behavior Survey (YRBS)—New—The National Center for Chronic Disease and Health Promotion, Division of Adolescent and School Health. The purpose of this study (1) the test-retest reliability of the questions contained on the YRBS questionnaire and (2) the validity of selected YRBS items. The YRBS is a biennial survey administered to students attending public and private schools in grades 9–12 nationwide. The questionnaire measures priority health risk behaviors related to the major preventable causes of mortality, morbidity, and social problems among both youth and adults in the U.S. OMB clearance to conduct the national YRBS will expire in January, 2000 (OMB No. 0920–0258, expiration 1/00). Data on the health risk of adolescents is the focus of at least 26 national health objectives in Healthy People 2000: Midcourse Review and 1995 Revisions. The YRBS is providing end-of-decade data to help measure these objectives as well as baseline data to measure many new national health objectives for 2010. A study of the test-retest reliability of the original YRBS questionnaire was conducted several years ago. In 1997–1998 an extensive review of the YRBS was undertaken and then a modified YRBS questionnaire was fielded nationally in 1999. This psychometric study will provide data on the test-retest reliability of the new modified questionnaire and provide data on the validity of selected questions (such as self-reported height and weight). The results will be used to improve the widely-used YRBS questionnaire. The total estimated cost to respondents is $43,048 assuming a minimum wage of $5.25 per hour for students and $34.00 per hour for administrators during the 1999–2000 school year.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
students—time 1 survey	5,280	1	0.75	3,960
students—height and weight measurement	5,280	1	0.05	264
students—time 2 survey	4,800	1	0.75	3,600
school administrators	116	1	0.50	58

Dated: July 21, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–19085 Filed 7–26–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, National Center for Environmental Health (NCEH): Teleconference

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following teleconference.

Name: Advisory Committee to the Director, NCEH.

Time and Date: 10:30 a.m.–11:30 a.m. (EST), August 12, 1999.

Place: The teleconference will originate at the Centers for Disease Control and Prevention in Atlanta, Georgia. Please see "Supplementary Information" for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by availability of telephone ports.

Purpose: The Secretary, the Assistant Secretary for Health, and by delegation, the Director, Centers for Disease Control and Prevention, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to (1) conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases, and other impairments; (2) assist States and their political subdivisions in the prevention of infectious diseases and other preventable conditions, and in the promotion of health and well being; and (3) train State and local personnel in health work.

Matters to be Discussed: The teleconference will consist of discussing the agenda for the November 22–23, 1999, Advisory Committee Meeting. Agenda items will include communication, research agenda, update on bioterrorism, and committee issues (i.e., Charter, increasing membership, subcommittees, etc.)

SUPPLEMENTARY INFORMATION: This teleconference is scheduled to begin at 10:30 am (EST). To participate in the teleconference, please dial 1–800–311–3437 and enter code 116484. You will then be automatically connected to the call.

CONTACT PERSON FOR MORE INFORMATION: Marilyn R. DiSirio, Designated Federal Official, CDC, 4770 Buford Highway, NE, M/S F–29, Atlanta, Georgia 30341–3724, telephone 770/488–7020, fax 770/488–7024, e-mail: mrd2@cdc.gov.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 21, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–19084 Filed 7–26–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Workshop; The National Vaccine Program Office, National Vaccine Advisory Committee Announces the Following Workshop.

Name: Thimerasol in Vaccines.

Times and Dates: 9 a.m.–5 p.m., August 11, 1999, 9 a.m.–1 p.m., August 12, 1999.

Place: National Institutes of Health, Lister Hill Auditorium, Bethesda, Maryland.

Status: Open to the public, limited only by the space available.

Purpose: The agenda will include discussions on thimerasol in vaccines and its reduction and elimination from vaccines. Agenda items are subject to change as priorities dictate.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the National Institutes of Health by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 and 8:30 a.m. or 12:30 and 1 p.m. so they can be escorted to the meeting. Entrance to the meeting at other times during the day cannot be assured.

Contact Person for More Information: Alicia Postema, National Vaccine Program Office, CDC, 1600 Clifton Road, NE, M/S A–11, Atlanta, Georgia 30333, telephone 404/639–4450.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: July 20, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–19086 Filed 7–26–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–99–6000]

Memorandum of Understanding Between the Food and Drug Administration and the Federal Aviation Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the Federal Aviation Administration (FAA). The purpose of the MOU is to act in cooperation to reduce the incidents of aircraft illumination by laser projections into navigable airspace.

DATES: The agreement became effective November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Casper E. Uldricks, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–4692.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20. 108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: May 11, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

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225-99-6000

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION AND THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES FOOD AND DRUG ADMINISTRATION

This interagency Memorandum of Understanding (MOU) is between the U.S. Department of Health and Human Services, Food and Drug Administration (FDA), and the U.S. Department of Transportation, Federal Aviation Administration (FAA).

WHEREAS, it is a purpose of the FDA to regulate electronic products pursuant to the Radiation Control for Health and Safety Act of 1968, as amended, 21 U.S.C. §§360hh-ss. The FDA Center for Devices and Radiological Health (CDRH) establishes and carries out an electronic product radiation control program designed to protect the public health and safety from electronic product radiation.

WHEREAS, it is a purpose of the FAA, Office of Airspace Management, to establish administrative policy, criteria, and procedures for managing the navigable airspace, and to regulate civil and military operations in that airspace in the interest of safety as provided in 49 U.S.C. Subtitle VII with designated responsibility to its FAA Regional Offices and, when necessary, its local FAA offices or facilities.

WHEREAS, laser projection into navigable airspace pose potential safety hazards to aviation in that such projections may have harmful or adverse effects on the vision of aircraft pilots, crewmembers, and passengers.

WHEREAS, FAA and FDA agree to act in cooperation to reduce the incidents of aircraft illumination by laser projections into navigable airspace.

NOW THEREFORE:

The FAA and the FDA have regulatory responsibilities concerning laser products that project into navigable airspace, including demonstration laser products such as laser light shows and displays, and other products used in scientific and research applications.

For their respective authorities, the agencies agree as follows:

I. Purpose and Scope

A. The purpose of this MOU is to coordinate existing FAA and FDA regulatory programs applicable to laser light shows and displays, as well as scientific or research operations, which may project laser light radiation into navigable airspace during any part of their operation. Regulatory programs include activities for evaluating the manufacture and production of laser products.

B. Laser products affected by this MOU include, but are not limited to: outdoor, unenclosed Class IIIb or IV laser light shows; permanent outdoor, unterminated laser displays; outdoor displays employing 'soft' diffusing objects such as smoke, clouds, water sprays, foliage, etc, which cannot provide well determined scattering effects; laser 'beacons'; and scientific, research, or other laser display configurations which could project lasers into navigable airspace.

II. Authority and Regulatory Program

A. FDA

FDA is responsible for establishing and carrying out an electronic product radiation control program designed to protect the public health and safety from electronic product radiation.

FDA/CDRH

FDA/CDRH regulates electronic products under the Radiation Control for Health and Safety Act of 1968, which is incorporated into the Food, Drug, and Cosmetic Act (FDCA) at 21 U.S.C. §§360hh.

21 U.S.C. §360hh defines "electronic product radiation" and "electronic product" as follows:

(1) "The term 'electronic product radiation' means --

(A) any ionizing or non-ionizing electromagnetic or particulate radiation, or
(B) any sonic, infrasonic, or ultrasonic wave, which is emitted from an electronic product as the result of the operation of an electronic circuit in such product;"

(2) "The term 'electronic product' means--

(A) any manufactured or assembled product which, when in operation,
(i) contains or acts as part of an electronic circuit and
(ii) emits (or in the absence of effective shielding or other controls would emit) electronic product radiation, or

(B) any manufactured or assembled article which is intended for use as a component, part, or accessory of a product described in clause (A) and which when in operation emits (or in the absence of effective shielding or other controls would emit) such radiation."

21 U.S.C. §360kk provides:

"The Secretary shall by regulation prescribe performance standards for electronic products to control the emission of electronic product radiation from such products if he/[she] determines that such standards are necessary for the protection of the public health and safety."

21 C.F.R. §5.10 delegates responsibility for the promulgation of performance standards to FDA.

Pursuant to 21 U.S.C §360kk, the FDA/CDRH promulgated the Federal laser product performance standard, 21 C.F.R. §1040.10 and §1040.11. This standard specifies certain performance, labeling, and information requirements suited to the degree of hazard that a laser product may present.

The terms "laser product" and "demonstration laser product" are defined in the laser product performance standard as follows:

> 21 C.F.R. §1040.10(b)(21) " 'Laser product' means any manufactured product or assemblage of components which constitutes, incorporates, or is intended to incorporate a laser or laser system. A laser or laser system that is intended for use as a component of an electronic product shall itself be considered a laser product."
>
> 21 C.F.R. §1040.10(b)(13) " 'Demonstration laser product ' means any laser product manufactured, designed, intended, or promoted for purposes of demonstration, entertainment, advertising display, or artistic composition."

FDA/CDRH programs intended to ensure compliance of laser products and of the operations of laser product manufacturers with all applicable regulations include, but are not limited to the following:

1. Review of product reports to assure that the products are designed and manufactured to be compliant with the laser product performance standard;

2. Review of requests for variances to deviate from specific requirements of the laser product performance standard to assure that suitable alternate means of radiation protection are provided in lieu of meeting the specific requirements identified in the variance request;

3. Requirements for holders of approved variances to provide written notice to the FAA of any outdoor laser shows or displays. The notices are to be submitted 30 days in advance of the activity to the FAA regional office where the show is to occur;

4. Technical assistance to FAA as requested in the analysis of proposed display(s) or scientific/research operations and the development of policies; and

5. General enforcement activities such as routine and directed inspections, field tests, surveillance, compliance testing program disapproval's, variance withdrawals, recalls, warning letters, other adverse findings letters, and case actions such as injunction and civil penalties.

B. FAA

FAA is responsible for establishing administrative policy, criteria, and procedures for management of navigable airspace and for the protections of users of the National Airspace System (NAS). The FAA's authority is set forth in 49 U.S.C. Subtitle VII - Aviation Programs, Part A - Air Commerce and Safety.

The Administrator of the FAA may prescribe standards and issue orders as necessary to carry out the duties and powers assigned to him/[her]in 49 U.S.C. Subtitle VII. 49 U.S.C. §§106 (g) (A), 40113.

> 49 U.S.C.§40102(a) defines the following terms:
>
> 49 U.S.C. §40102(a)(6) " 'aircraft' means any contrivance invented, used, or designed to navigate, or fly in the air."
>
> 49 U.S.C. §40102(a)(9) " 'airport' means a landing area used regularly by for receiving or discharging passengers or cargo."

> 49 U.S.C. §40102(a)(20) " 'Federal airway' means a part of navigable airspace that the Administrator designates as a Federal airway" (e.g., Jet route or Victor airway).
>
> 49 U.S.C.§40102(a)(28) " 'landing area' means a place on land or water including an airport or intermediate landing field, used, or intended to be used, for the takeoff and landing of aircraft, even when facilities are not provided for sheltering, servicing, or repairing aircraft, or for receiving or discharging passengers or cargo."
>
> 49 U.S.C. §40102(a)(30) " 'navigable airspace' means airspace above the minimum altitudes of flight prescribed by regulations under this subpart and subpart III of this part, including airspace needed to ensure safety in the takeoff and landing of aircraft."

FAA Order (FAAO) 7400.2, Procedure for Handling Airspace Matters, prescribes policy, criteria, and procedures for management of navigable airspace.

FAAO 7400.2, Miscellaneous Procedures, specifically addresses Outdoor Laser Operations, and terms associated with laser activities.

The FAA conducts an aeronautical study of all proposals received for outdoor laser activities to determine the potential effect upon aircraft operations. The FAA aeronautical study is intended to ensure adequate protection of users of the NAS. Specific requirements of the aeronautical studies can be found in FAA Order 7400.2.

FAA activities associated with aeronautical studies include but are not limited to the following:

1. providing the expertise and knowledge of known airport locations, flight paths, and traffic patterns in the areas surrounding the site of the laser display which may be in use during the time of the display;

2. coordination with the military liaisons stationed in the region or locale of the show to include consideration of the effects on military flight operations which may occur in the area of the display during the time of its operation;

3. review of proposed laser light show operations producing projections into airspace in accordance with FAAO 7400.2;

4. issuing the appropriate determination letter (OBJECTION or NON-OBJECTION, including any applicable conditions in the latter case) to the laser light show proponent; and

5. discussing the reasons for an objection with a laser light show proponent and negotiating possible suitable modifications or limitations of the proposed show with the goal of resolving the reasons for objection.

III. Elements of Coordination

A. Notifications of Proposed Outdoor Laser Light Shows

Variances from the FDA laser product performance standard for laser light shows and displays will contain a requirement to notify FAA in accordance with the effective FAAO 7400.2 and/or other FAA policy and guidance criteria for any laser light show or display which may project laser light into airspace at any time during its deployment (testing, installation, setup, rehearsals, and show operations.) An attachment to the variance will incorporate at least the content and processing parts of Miscellaneous Procedures of FAAO 7400.2.

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When processing a variance request for a permanent (i.e., of indefinite duration at one particular location) outdoor display, FDA will confirm FAA notification and response prior to granting any variance for a display in an airspace area. As part of the process of deciding whether to grant the variance, FDA may also directly request advice from the FAA regional office concerning the possible effects of such a laser display on airspace usage.

B. Technical Analysis of Laser Shows or Displays

Upon request, the FDA will assist the FAA to the fullest extent possible with the technical analysis of proposed laser operations. This analysis shall include confirmation of an alternate nominal ocular hazard distance analysis provided by the proponent for pulsed laser operations. The FDA will also advise FAA concerning the adequacy of the hazard analyses and control measures submitted for proposed scientific/research laser operations in navigable airspace.

Upon request, the FAA will assist and advise the FDA concerning the nature of airspace usage in the vicinity of a proposed laser light show. This information may be requested, when considered relevant, as part of the process of review of a variance application to determine whether it is appropriate to grant the variance.

C. Support for Research to Determine Suitable Visual Impairment Limits

FAA and FDA will provide support to the fullest extent possible for a research program led by FAA in cooperation with FDA and other governmental or private agencies to check the suitability of the limits adopted in FAAO 7400.2 for protection against temporary visual impairments such as flashblindness, afterimage, glare, etc.

D. Notification of Aircraft Illumination Incidents

FAA in cooperation with FDA and other governmental or private agencies will develop an appropriate incident reporting system to help pilots or other crew members provide information on aircraft illumination incidents.

FAA will provide information concerning illumination incidents from lasers and other high intensity light sources to FDA as it is received or extracted from the data in the reporting system.

FDA will in turn alert FAA to any reports it may receive, in case the information wasn't reported in the above reporting system.

E. Coordination of Investigations

Upon request, FDA and FAA will assist each other, to the fullest extent possible, in the investigation of incidents or complaints involving aircraft illuminations and the effects on the pilots, crewmembers, or passengers. For purposes of this MOU, investigations will be considered to include inspections in response to incidents or events, as well as formal investigations initiated in accordance with each agency's internal procedures. During the term of this agreement, joint inspections or observer invitations can be requested or extended by either agency, when deemed necessary, to ensure that information obtained from an investigation is collected, shared, and acted upon in a timely and coordinated manner. Both agencies will make every reasonable effort to accommodate joint inspection or observer requests depending upon availability of personnel and current FDA or FAA priorities. Each agency will assign one or more persons to assure that investigations are coordinated in a manner that maximizes regulatory efficiency and minimizes duplication of effort. Each agency will promptly notify the other when there is a change in an assigned contact person.

F. Investigation Information Exchange

Both agencies agree to an exchange of information with respect to investigations. The purpose of these exchanges is to provide expert technical assistance to either agency and to assist either agency by reducing or eliminating any duplication of effort. The sharing of information between FDA and FAA will be exercised to the extent authorized by law, and by FAA and FDA directives, and regulations, and will be consistent with the missions of both agencies.

Both agencies recognize the need to protect trade secret, confidential commercial or financial, and confidential personal or medical information from public disclosure. However, the agencies believe that an exchange of data and information to the extent allowed by law is necessary to achieve the ends of this agreement. Therefore, to the extent allowed under 21 U.S.C. §§331(j), §360ee(d), nn(e), and 360j(c), 18 U.S.C. §1905, 5 U.S.C. §552a(b), and 21 C.F.R. pt 20, the agencies agree to exchange information such as outlined below.

If FDA provides FAA with trade secret information, there shall be an exchange of letters between the appropriate liaison officers in accordance with 21 C.F.R. §20.85. If a request calls for a disclosure determination regarding proprietary information such as a Freedom of Information Act request, response to a Congressional inquiry, or in cases where either agency must comply with various regulatory or public information responsibilities for any such information obtained from the other agency, that agency will be notified of the request. The notified agency will be responsible for making any needed contact with the submitter of the protected information and accept the responsibility for evaluating the submitter's comments prior to rendering the disclosure determination.

To preserve the right of maximum control over actual disclosure of its own records, each agency shall retain legal authority and the commensurate responsibility over disclosure of those documents provided to the other agency.

Upon request, FDA and FAA will:

a. provide each other copies of Establishment or Field Test Inspection Reports;

b. provide each other copies of all analytical data and correspondence of significance related to investigations or activities associated with an illumination incident or event;

c. provide each other copies of official legal or compliance actions taken against firms or variance holders of mutual interest; and

d. participate in meetings with regulated industry covering issues of mutual regulatory concern.

G. Product Report and Variance Request Information Exchange

To the extent practicable, the two agencies will share information concerning new laser light show or display technology or methods under development or review, including laser projection systems, lasers, aircraft avoidance technologies for use with laser displays, etc., for which regulations have not yet been developed, or is related to the mission of the other agency. Both agencies agree to exchange proprietary information in accordance with applicable regulations. If FDA provides FAA with trade secret information, there shall be an additional written agreement in the form of an exchange of letters between the appropriate liaison officers in accordance with 21 C.F.R. §20.85.

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This information may include, but is not limited to:

a. the product reports covering the lasers, laser projection system, and the laser light show;

b. the variance request;

c. any related correspondence requesting additional information; and

d. product report supplements providing additional information.

H. Sharing of Other Information

FDA and FAA will offer each other the opportunity to comment on special notifications to laser light show product manufacturers, operators, variance holders, facility owners, etc. FDA and FAA will also offer each other the opportunity to comment on regulations, regulatory guides, or other communications that refer to activities, policies, or regulations of the other agency as appropriate. Either agency may request additional information when deemed necessary to complete its mission.

I. Advisory Committees

FAA and FDA will make the other agency aware of, and, to the extent possible, allow participation by a representative from the other agency in, any Advisory Committee which advises on issues related to the MOU (e.g., Society for Automotive Engineering, Flight Deck Hazards Safety Committee).

IV. Names and Addresses of Participating Agencies

Food and Drug Administration
5600 Fishers Lane
Rockville, MD 20857

Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591

V. Liaison Officers

Each liaison officer will establish and maintain a call list of the names and current work and home phone numbers of responsible persons within his or her organization. These call lists will designate specific persons for day-to-day contact on matters related to the MOU. The lists will be exchanged between the liaison officers. The lists will be updated every six months or whenever a liaison officer's or day-to-day contact person's phone number changes.

Liaison officers are as follows:

A. For the Food and Drug Administration

Director, Office of Compliance, HFZ-300
Ms. Lillian Gill
Center for Devices and Radiological Health
2098 Gaither Road
Rockville, MD 20850
Telephone: (301) 594-4692

B. For the Federal Aviation Administration

Program Director, Office of Airspace Management, ATA-1
Mr. John S. Walker
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591
Telephone: (202) 267-9205

VI. Annual Inter-Agency Meeting

The liaison officers shall meet at least annually to evaluate the activities related to the MOU and make reports to agency heads on its effectiveness. FDA and FAA will host the meeting on alternating years.

VII. Other Laws and Matters

Nothing in the Memorandum of Understanding shall be deemed to restrict, modify, or otherwise limit the application or enforcement of any laws of the United States with respect to matters specified herein, nor shall anything in the memorandum be construed as modifying the existing authority of either agency.

VIII. Effective Date, Modification and Termination of MOU

This MOU will take effect when it has been signed by the authorized representatives of FDA and FAA. It may be modified by mutual written consent or terminated by either agency upon a sixty (60) day advance written notice to the other agency. The agencies agree to evaluate the agreement every three (3) years, at which time either agency would have the option of renewing, modifying, or canceling the MOU.

APPROVED AND ACCEPTED FOR THE FEDERAL AVIATION ADMINISTRATION

BY Ronald E Myers

TITLE Director of Air Traffic, FAA

DATE November 25, 1998

APPROVED AND ACCEPTED FOR THE FOOD AND DRUG ADMINISTRATION

BY Lillian J. Gill

TITLE Director, Office of Compliance, CDRH/FDA

DATE July 24, 1998

[FR Doc. 99–19105 Filed 7–26–99; 8:45 am]
BILLING CODE 4160–01–C

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2214]

Antimicrobial Food Additives—Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food And Drug Administration (FDA) is announcing the availability of a guidance document entitled "Antimicrobial Food Additives—Guidance." This document is intended to clarify FDA's jurisdiction over antimicrobials that are used in or on food, including those used in or on edible food, in water that contacts edible food, and those used in the manufacture of, or in or on, food-contact articles, subsequent to the enactment of the Food Quality Protection Act of 1996 (FQPA), and the Antimicrobial Regulation Technical Corrections Act of 1998 (ARTCA).

DATES: Written comments concerning this guidance may be submitted at any time.

ADDRESSES: Written comments concerning this guidance may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit written requests for single copies of the guidance to the Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St. SW., Washington DC 20204, or by telephone to the Office of Premarket Approval at 202–418–3100 (voice), or FAX 202–418–3131. All requests should identify the guidance by its title of "Antimicrobial Food Additives—Guidance." See the **SUPPLEMENTARY INFORMATION** section for electronic access to this guidance.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 200 C St. SW., Washington DC 20204–0001, 202–418–3098.

SUPPLEMENTARY INFORMATION:

I. Background

The FQPA, enacted on August 3, 1996, changed, among other things, the definitions of "food additive" and "pesticide chemical" in the Federal Food, Drug, and Cosmetic Act (the act) (section 201(s) and (q) respectively (21 U.S.C. 321(s) and (q)). These changes had a significant impact on the regulatory authority for many antimicrobial products that are used in food-contact applications. ARTCA, enacted on October 30, 1998, further amended the definition of a "pesticide chemical," under section 201(q) of the act, and the transitional provisions under section 408(j) of the act (21 U.S.C. 340a(j)). ARTCA, in part, transferred authority for certain food-contact antimicrobials from the Environmental Protection Agency (EPA) back to FDA.

FDA is announcing availability of a guidance document entitled "Antimicrobial Food Additives—Guidance" that is intended to clarify FDA's jurisdiction over antimicrobials, subsequent to the passage of FQPA and ARTCA, that are used in food, or that may become components of food as a result of their intended use. The food-related uses of antimicrobial products that have been specifically excluded from FDA's regulatory authority by ARTCA are also discussed. In addition, this document provides guidance on the meaning of certain terms that are important in delineating the jurisdiction of FDA and EPA.

II. Significance of Guidance

This guidance document represents the agency's current thinking on the agency's regulatory authority over certain antimicrobials used in or on food, or as food-contact substances. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

The guidance document entitled "Antimicrobial Food Additives—Guidance" is a level 1 guidance under the agency's good guidance practices (62 FR 8961, February 27, 1997). Level 1 guidance documents are generally subject to public comment prior to finalizing. However, public comment prior to implementation of this guidance document is not required because there is a new statutory requirement that requires immediate implementation.

III. Comments

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments regarding the guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Such comments will be considered when determining whether to amend the guidance.

IV. Electronic Access

The guidance may also be accessed at the Center for Food Safety and Applied Nutrition home page on the World Wide Web at "http:// www.fda.gov/cfsan".

Dated: July 15, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–19061 Filed 7–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–194]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Medicare Disproportionate Share Adjustment Procedure and Criteria and Supporting Regulations in 42 CFR, Section 412.106;

Form No.: HCFA R–194;

Use: Regulation sets up an alternative process for hospitals that choose to have their disproportionate share adjustment statistics calculated based on their cost reporting periods rather than the Federal fiscal year.

Frequency: On occasion;

Affected Public: Business or other for-profit, and Not-for-profit institutions;

Number of Respondents: 100;

Total Annual Responses: 100;

Total Annual Hours Requested: 100.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 12, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–19050 Filed 7–26–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1999.

Name: Advisory Committee on Infant Mortality (ACIM).

Date and Time: September 23, 1999; 9:00 a.m.–5:00 p.m.; September 24, 1999; 8:30 a.m.–3:00 p.m.

Place: Holiday Inn at Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814, (301) 652–2000.

The meeting is open to the public.

Agenda: Topics that will be discussed include: Early Postpartum Discharge; Low-Birth Weight; Disparities in Infant Mortality; and the Healthy Start Program.

Anyone requiring information regarding the Committee should contact Peter C. van Dyck, M.D., M.P.H., Executive Secretary, ACIM, Health Resources and Services Administration (HRSA), Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone: (301) 443–2170.

Agenda items are subject to change as priorities dictate.

Dated: July 21, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–19104 Filed 7–26–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4527–N–01]

Notice of Proposed Information Collection: Comment Request Forms for Large-Scale Computer Matching Income Verification

AGENCY: The Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: September 27, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Wanda Funk, U.S. Department of Housing and Urban Development, Real Estate Assessment Center, 1280 Maryland Avenue, SW, Suite 800, Washington, DC 20224–2135; telephone Customer Service Center at 1–888–245–4860 (this is a toll-free number).

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from David Decker, U.S. Department of Housing and Urban Development, Real Estate Assessment Center, 451 Seventh Street, SW, Room 5156, Washington, DC 20410–5000.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond.

This notice also lists the following information:

Title of Proposal: Forms for Large-Scale Computer Matching Income Verification.

OMB Control Number, if applicable: Not Available.

Description of the need for information and proposed use: A notice, published December 9, 1998 (63 FR 68129), describes the computer matching program applicable to this information collection requirement. HUD has recently transferred the responsibility for the computer matching income verification program described in that notice to its Real Estate Assessment Center.

REAC has developed the Tenant Assessment Subsystem (TASS) to identify potential sources of income discrepancies between income reported by tenants and submitted by Public Housing Agencies and owners and agents (POAs) with Federal tax data provided by the Internal Revenue Service and the Social Security Administration. The process of comparing these two sources of income information is referred to as computer matching income verification (CMIV). TASS will be used to identify potential income discrepancies for tenants receiving assistance under HUD's Public Housing (Low Rent), Section 8 Tenant-Based, and Section 8 Project-Based programs. Through the use of CMIV, TASS will:

- Identify potential income discrepancies;
- Generate letters to be sent to tenants identifying possible income discrepancies;
- Prepare notifications of possible tenant income discrepancies for POA processing and resolution; and
- Track POA discrepancy resolution and recovery of excessive rental assistance provided to tenants due to underreported income.

POAs will be required to resolve potential discrepancies through the identification of both positive and false positive discrepancies, and to adjust or terminate tenant rental assistance for verified discrepancies. Recovery involves a prudent attempt by POAs to obtain full repayment of excess tenant rental assistance through repayment agreements or prospective adjustments to future rental assistance.

The REAC has developed three forms to help capture and summarize data concerning POA income discrepancy resolution and recovery of excessive

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rental assistance. The first form is a case tracking form to be used by POAs to report the status of discrepancy cases. The second form is a PHA recertification policy form to be used to gather data related to the PHA's interim recertification policies. The third form is a request to POAs for tenant source documentation for an annual sample of 1,000 randomly selected households.

These forms will be used by the two primary component processes of nationwide CMIV: (1) the nationwide large-scale matching of all tenants, and (2) the estimation of total excessive rental assistance paid annually through the use of a nationwide sample of tenant households. This second process is required by HUD's Office of Inspector General to satisfy financial reporting requirements.

Agency form numbers, if applicable: Not Available.

Members of the affected public: Public Housing Agencies (PHAs). Owner/Agents (O/As).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

REAC is requesting Paperwork Reduction Act approval on the three forms discussed above. The following parameters apply to the calculation of respondent burdens. Nationwide Large-Scale CMIV

- Number of PHAs—4,000.
- Number of OAs—20,000.
- Number of potential discrepancies at the thresholds agreed on by OMB and HUD—350,000.

Nationwide Sample CMIV:

- Sample size—1,000 households.
- Estimated number of households identified with potential income discrepancies for annual 1,000 household sample—300.

Shown below are the estimated burdens imposed on the respondents.

Status Report—Tenant Income Discrepancy Resolution and Funds Recovery.

- Time to complete each form—three minutes.
- Average number of tracking cycles before a case is resolved—three.
- Total time to complete the tracking form until case resolution—nine minutes.
- Total number of cases to be resolved annually—350,000.

The total annual nationwide respondent burden imposed will be 3,150,000 minutes or 52,500 hours. On average, the burden imposed per POA will be approximately 2¼ hours. This will vary significantly depending on the size of the POA.

PHA Interim Recertification Policies

- Number of PHAs—4,000.
- Time to complete form is 15 minutes.

The respondent burden imposed will be approximately 60,000 minutes or 1,000 hours for year one. The form needs to be completed once for each POA and, as such, the total burden per PHA for year one will be 15 minutes. Beyond year one, the respondent burden per POA will be directly related to the number of times the POA changes its interim recertification policy.

Request for POA Tenant Source Documentation

- Total number of source documents requested is approximately 300. There will be several documents for each household.
- Time to compile, photocopy, and mail documentation is 15 minutes.

The respondent burden imposed will be approximately 60,000 minutes or 1,000 hours for year one. The form needs to be completed once for each POA and, as such, the total burden per PHA for year one will be 15 minutes. Beyond year one, the respondent burden per POA will be directly related to the number of times the POA changes its interim recertification policy.

Status of the proposed information collection:

Has not started.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 19, 1999.

Barbara L. Burkhalter,

Deputy Director, Real Estate Assessment Center.

[FR Doc. 99–19135 Filed 7–26–99; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–39]

Submission for OMB Review: Request for Release of Documents, ACH Debit Authorization, Master Agreements for Servicer's P&I Custodial Account, Servicer's Escrow Account

AGENCY: Office of Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: This forms are used to provide Ginnie Mae evidence of an agreement between the issuer, banking institution, document custodian and Central Paying and Transfer Agent's responsibilities to maintain P&I and Escrow funds to pay securities holders.

DATES: Comments Due Date: August 26, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2503–0017) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 20, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Commitment to Guarantee Mortgage-Backed Securities.

Office: Government National Mortgage Association.

OMB Approval Number: 2503–0017.

Description of the Need for the Information and Its Proposed Use: This forms are used to provide Ginnie mae evidence of an agreement between the issuer, banking institution, document custodian and Central Paying and Transfer Agent's responsibilities to maintain P&I and Escrow funds to pay securities holders.

Form Number: HUD–11708, 11709, 11709–A, 11715 and 11720.

Respondents: Business or Other For-Profit and the Federal Government.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	556		1		.07		39

Total Estimated Burden Hours: 39.

Status: Extension.

Contact: Sonya K. Suarez, HUD, (202) 708–2772, Joseph F. Lackey, Jr., OMB, (202) 395–7316

[FR Doc. 99–19136 Filed 7–26–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–38]

Submission for OMB Review: Commitment To Guarantee Mortgage-Backed Securities

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: This form is used by Ginnie Mae's issuers to apply for commitment authority to guarantee mortgage-backed securities.

DATES: Comments Due Date: August 26, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2503–0001) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 20, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Commitment to Guarantee Mortgage-Backed Securities.

Office: Government National Mortgage Association.

OMB Approval Number: 2503–0001.

Description of the Need For The Information and Its Proposed Use: This form is used by Ginnie Mae's issuers to apply for commitment authority to guarantee mortgage-backed securities.

Form Number: HUD–11704.

Respondents: Business or Other For-Profit and the Federal Government.

Frequency of Submission: Quarterly.

Reporting Burden:

	Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
HUD–11704	625		4		.25		2,496

Total Estimated Burden Hours: 2,496.

Status: Extension.

Contact: Sonya K. Suarez, HUD, (202) 708–2772, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–19137 Filed 7–26–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To prepare Comprehensive Conservation Plans for Lower Suwannee and Cedar Keys National Wildlife Refuges

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare comprehensive conservation plans and environmental documents (environmental assessments) for Lower Suwannee National Wildlife Refuge in Dixie and Levy Counties, Florida, and Cedar Keys National Wildlife Refuge in Levy County, Florida. The Service is furnishing this notice in compliance with Service comprehensive conservation planning policy and the National Environmental Policy Act and implementing regulations.

Public scoping meetings will be held in the near future for both of these refuges. An announcement of the meeting will appear in the **Federal Register**.

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ADDRESSES: Comments and requests for information concerning either refuge may be addressed to: Refuge Manager, Lower Suwannee National Wildlife Refuge, 16450 NW 31st Place, Chiefland, Florida 32626–4874.

SUPPLEMENTARY INFORMATION: It is the policy of the Fish and Wildlife Service to have all lands within the National Wildlife Refuge System managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies refuge goals, objectives, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The plan will provide other agencies and the public with a clear understanding of the desired conditions of the refuge and how the Service will implement management strategies. Some of the issues to be addressed in the plan include the following:

(a) Public use management;

(b) Habitat management;

(c) Wildlife population management; and

(d) Cultural resource identification and protection.

Alternatives that address the issues and management strategies associated with these topics will be included in the environmental documents. A separate plan will be prepared for each refuge.

The Lower Suwannee National Wildlife Refuge was established on April 10, 1979, under the authority of the Fish and Wildlife Act to protect the lower Suwannee River ecosystem. The 52,935-acre refuge, which is predominantly wetlands, is bisected by 20 miles of Stephen Foster's famous Suwannee River and includes 26 miles of the Gulf Coast.

The Cedar Keys National Wildlife Refuge was established by Executive Order 5158 on July 16, 1929, as a breeding ground for migratory birds. The refuge supports one of the largest nesting colonies of pelicans, herons, egrets and ibis in north Florida, and consists of 12 islands ranging in size from 1 to 120 acres.

Dated: July 12, 1999.

Sam D. Hamilton,

Regional Director.

[FR Doc. 99–19053 Filed 7–26–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Assessment and Preliminary Finding of No Significant Impact, and Receipt of Applications for an Incidental Take Permit and an Enhancement of Survival Permit for a State-wide Conservation Plan for the Red-Cockaded Woodpecker on Private Lands in the State of Georgia

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice

SUMMARY: The Georgia Department of Natural Resources (GDNR) (Applicant) has applied for an Incidental Take Permit (ITP) and an Enhancement of Survival Permit (ESP) from the U.S. Fish and Wildlife Service (Service) pursuant to Section 10(a)(1)(B) and Section 10(a)(1)(A), respectively, of the Endangered Species Act of 1973 (Act), as amended. The proposed action would involve approval of the Applicant's Conservation Plan (CP) which will be administered by the Applicant to eligible landowners, which is defined in the Applicant's CP, and involves two conservation options termed the Mitigated Incidental Take (MIT) and Safe Harbor Management Agreement (SHMA) options. The subject permits would authorize take of the red-cockaded woodpecker (Picoides borealis) (RCW), a federally listed endangered species, on private lands in Georgia that (1) are isolated, remnant groups of RCWs (for ITP issuance) or (2) are new RCW groups created above SHMA baselines (for ESP issuance). Under the authority of the issued permits from the Service, the Applicant would encourage eligible landowners to participate in the two RCW conservation options via "Certificates of Inclusion" (or CI). Eligible landowners can be issued a CI in one or both of the CP's options with the goal to provide landowners with land management flexibility that balances each landowner's economic expectations with RCW conservation and recovery. The proposed taking would be incidental to otherwise lawful activities including typical forest management actions, land development activities, and other actions on private land and other non-federal lands in Georgia. The mitigation and minimization measures outlined in the Applicant's CP to address the effects of the CP to protected species are described further in the **SUPPLEMENTARY INFORMATION** section below.

This notice advises the public that the Service has opened the comment period on the permit applications, the draft environmental assessment (EA), and the preliminary Finding of No Significant Impact (FONSI). The permit applications include the Applicant's CP (with appendices). This notice is provided pursuant to Section 10(a) of the Act and National Environmental Policy Act of 1969 (NEPA) regulations (40 CFR 1506.6) and advises the public that the Service has made a preliminary determination that issuing the ITP and ESP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. The FONSI is based on information contained in the draft EA and CP. The final determination on this action will be made no sooner than 30 days from the date of this notice.

The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and Section 10(a) of the Act. If it is determined that the requirements are met, the requested permits will be issued for the incidental take of RCW groups subject to the provisions of the Applicant's CP. The final NEPA and permit determinations will not be completed until after the end of a 30-day comment period and will fully consider all comments received. The Service will also evaluate whether the issuance of the requested permits complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The resulting Section 7 biological opinion, in combination with the above types of evaluation requirements, will be used in the final analysis to determine whether or not to issue the requested permits.

DATES: Written comments on the permit applications, CP, and draft EA should be sent to the Service's Southeast Regional Office (see **ADDRESSES**) and should be received on or before August 26, 1999.

ADDRESSES: Persons wishing to review the permit applications, CP, draft EA, and preliminary FONSI may obtain a copy by writing the Service's Southeast Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 52560, Fort Benning, Georgia 31995–2560. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office. Written data or comments concerning the permit applications, CP, or EA should be submitted to the Regional Office. Comments or requests for the documentation must be in writing to be processed. Please reference permit number TE014977–0 in such comments, or in requests for the documents discussed herein. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public, subject to the requirements of the Privacy Act and Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Andrews, Supervisory Fish and Wildlife Biologist, at either address listed above (see **ADDRESSES**) or telephone (706) 544–6428.

SUPPLEMENTARY INFORMATION: The Georgia state-wide RCW CP is intended to establish mechanisms to allow incidental take of: (1) MIT option RCW groups that will minimize and mitigate loss of isolated RCW groups and (2) SHMA option RCW groups that represent population expansions resulting from voluntary RCW habitat development and maintenance. The Applicant's CP estimates that there are approximately 11 private landowners and 19 groups of RCWs occupying the habitat of those landowners that will be initially eligible for incidental take under the MIT option. However, it is important to note that all incidental take proposed under the Applicant's CP may or may not ever occur. While landowners will be permitted to carry out activities under this plan that could result in the incidental taking of RCWs, they may choose not to do so or not to do so for many decades. The Applicant and the Service believe that the implementation of this program will result in maintenance of the RCW population levels on private lands in Georgia and an increase in the amount of available and potentially-suitable RCW habitat. Further, all translocation of RCW groups will be to other suitable private or state lands.

The geographic scope of the Applicant's CP is the entire State of Georgia but would only authorize incidental take on specific lands enrolled in the CP for which a respective CI has been signed. Lands potentially eligible for inclusion in the CP include (1) all privately-owned lands and public lands owned by cities, counties, and municipalities where isolated, remnant groups of RCWs exist and (2) lands covered under the SHMA option of the CP. Priority will be placed on developing CIs with landowners where loss of RCW groups is likely due to isolation from other RCW populations and where development of SHMA CIs would enroll land that has potential to benefit RCWs; particularly land with abandoned or inactive clusters or land that is near existing RCW populations.

Landowners with RCWs on their property will apply to GDNR for inclusion under the permit. If a RCW group meets the criteria of isolation and non-viability described in the Applicant's CP, the landowner will be eligible to participate under the MIT option ITP. These landowners will select from several mitigation alternatives to minimize and mitigate the effects of incidental take, and, once all mitigation criteria have been met, the landowner will be allowed to commence with RCW habitat alterations. Any landowner with potentially suitable RCW habitat can participate in SHMA option.

The duration of the ITP is 30 years and it would allow incidental take of up to 19 RCW groups; the ESP will be valid for 99 years and would allow incidental take of up to 38 RCW groups. This CP may be amended in the future to cover a higher level of incidental take if additional RCW groups are located that are eligible for coverage in the CP, although it is unlikely that additional landowners will significantly add to the number of those already identified as eligible. Landowners who are identified as having RCWs in the future will have the option, if eligible under the CP, to be included through CP modification with Service approval, or landowners may elect to pursue the development of landowner-specific conservation plans.

The proposed RCW conservation options complement the ongoing development of an overall conservation strategy for RCW populations in Georgia by representatives from the Service, U.S. Forest Service, GDNR, and private industry. Implementation of this plan should alleviate many of the concerns about endangered species conservation efforts on private lands by providing private landowners with relief from potential regulatory burdens while promoting voluntary enhancement and restoration of RCW habitat. RCW groups determined to be isolated from other RCW populations will be used for augmentation of or translocation to non-federal mitigation sites. Among the minimization measures proposed by the Applicant are no take of RCWs during the breeding season, consolidation of small, isolated RCW populations at identified sites capable of supporting a viable RCW population, and measures to improve current and potential habitat for the species.

Several alternatives to the proposed action were evaluated by Service. The alternative of the Service paying landowners for desired management practices was evaluated and could be accomplished without incidental take occurring. However, such a program would be expensive, and funding is not currently available. An alternative where RCW mitigation would occur on federal lands was investigated but determined to be inappropriate, because federal lands are already mandated to recover the species. A no action alternative was also explored, but this alternative would not increase the probability of isolated RCW group survival nor would it alleviate landowner conflicts. Instead, the incentive proposed here, although it authorizes future incidental take, is expected to attract sufficient interest among Georgia landowners to generate significant benefits for the RCW. The Applicant's CP was developed in an adaptive management framework to allow changes in the program based on new scientific information including, but not limited to, biological needs and management actions proven to benefit the species or its habitat.

The CP was prepared by GDNR and sent to the Service for authorization of the CP's ITP and ESP as per Section 10(a)(1)(B) and Section 10(a)(1)(A), respectively, of the Act. Section 10(a)(1)(B), a 1982 Act amendment, was created to help resolve land use conflicts resulting from the presence of listed species on private land by issuance of a permit authorizing take for those species. As specified by the ESA, permitted take must be "incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." In order to obtain an ITP, the applicant must submit, in part, a conservation plan specifying "the impact which will likely result from such taking; what steps the applicant will take to minimize and mitigate such impacts; and the funding that will be available to implement such steps; what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and such other measures the Secretary {of the U.S. Department of the Interior} may require as being necessary or appropriate for purposes of the plan." These requirements are addressed in this document. Section 10(a)(1)(A) authorizes ESPs related to the Service's recently-implemented Safe Harbor policy (**Federal Register**, Vol. 64, No. 116, 32717–32726).

The Service continues to critically evaluate any potential or real biological costs and conservation benefits of current RCW management and research programs. This ensures continuation of

activities proven to directly benefit or contribute to species conservation and recovery. Currently acceptable management activities may be modified or eliminated based upon research findings and/or evaluation of the biological costs versus the conservation benefits. The 1985 Red-cockaded Woodpecker Recovery plan is currently undergoing revision to reflect advances in red-cockaded woodpecker management in the last 12 years. All interested agencies, organizations, and individuals are urged to provide comments on the permit applications and NEPA documents. All comments received by the closing date will be considered in finalizing NEPA compliance and permit issuance or denial. The Service will publish a record on its final action in the **Federal Register**.

Dated: July 21, 1999.

H. Dale Hall,

Deputy Regional Director.

[FR Doc. 99–19087 Filed 7–26–99; 8:45 am]

BILLING CODE 4310–55–P

UNITED STATES GEOLOGICAL SURVEY

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with Alden Research Laboratory, Inc. to jointly perform environmental hydraulics research at the Conte Anadromous Fish Research Center.

INQUIRES: If any other parties are interested in similar activities with the USGS, please contact: Dr. Mufeed Odeh, 413–863–8994 Ext. 43.

BUREAU CLEARANCE OFFICER: John Cordyack 703–648–7313.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: July 14, 1999.

Byron K. Williams,

Acting Chief Biologist

[FR Doc. 99–19055 Filed 7–26–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–9–1990–00 24–1A]

Extension of Currently Approved Information Collection, OMB Approval Number 1004–0114

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of approval to collect certain information from the owners of unpatented mining claims, mill sites, and tunnel sites to allow the BLM to record such claims and sites, determine the land status at the time of location, collect annual maintenance and location fees, process annual waiver from such fees, process annual affidavits of labor or notices of intent to hold a mining claim or site, process requests for deferments from assessment work, process transfers of interest, and generally adjudicate such claims and sites for compliance with the 1872 Mining Law, as amended and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended.

DATES: Comments on the proposed information collection must be received by September 27, 1999.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street, NW., Room 401 LS, Washington, DC 20240. Comments may be sent via Internet to: *WOComment@blm.gov*. Please include "Attn: 1004–0114" and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Roger A. Haskins, (202) 452–0355, roger__haskins@blm.gov.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d), BLM is required to provide 60-day notice in the **Federal Register** concerning a proposed collection of information to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information of those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will analyze any comments sent in response to this notice and include them with its request for extension of approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Recording Claims

Under sections 314 (a) and (b) of FLPMA (43 U.S.C. 1744), owners of unpatented mining claims, mill sites, and tunnel sites located on federal lands must notify BLM of the location of the claim or site within 90 days after it has been filed under State law. Under the implementing regulations at 43 CFR 3833.1–2, the claim owner must provide the name or number of the claim, the name and address of the claim owner(s), the type of claim, the date of location, and a description of the claim or mineral survey.

Maintenance Fee Waiver

Under 30 U.S.C. 28f (Pub. L. 105–277, 112 Stat. 2681–235), owners of unpatented mining claims, mill sites, and tunnel sites must pay an annual maintenance fee of $100 per claim or site, unless the fee is waived. The fee is in lieu of the requirement to perform and record annual assessment work. Under BLM's implementing regulations at 43 CFR 3833.1–7, owners of no more than ten mining claims can annually apply for and obtain from BLM a maintenance fee waiver by submitting the following information: (1) The mining claim and names and BLM serial numbers, (2) a declaration of owning no more than ten claims and sites, (3) a declaration of having complied with the assessment work requirements, (4) the names and addresses of all owners of the claims and sites, and (5) the owners' signatures. BLM uses Form 3830–2 to simplify the collection of the required information. Any interested member of the public may request and obtain, without charge, a copy of Form 3830–2 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

Annual Assessment Work

Under section 314(a) of FLPMA and 30 U.S.C. 28f, owners of unpatented mining claims, mill sites, and tunnel sites who qualify for a waiver of the maintenance fee must annually file either evidence of annual assessment work for each claim and site or a notice of intention to hold for each claim and site. Under BLM's implementing regulations at 43 CFR 3833.2–4, evidence of annual assessment work must be in the form of either (a) a copy of the evidence of work performed and filed under applicable State law, BLM serial number for each claim and site, and any changes in the owner's mailing address or (b) a copy of any geological, geochemical, and geophysical surveys filed according to State law, along with the BLM serial number of the claim or site, and any mailing address changes. Under 43 CFR 3851.2, the surveys must contain the location of the work performed in relation to the claim boundaries; the nature, extent, and cost of the work performed; the basic findings of the survey(s); and the name, address, and professional background of the person(s) performing the work.

Notice of Intent To Hold

Under BLM's implementing regulations at 3833.2–5, the notice of intention to hold one or more mining claims must be in the form of either (a) A copy of the document filed under applicable State law containing the BLM serial number(s) of the claim(s) and any change in the mailing address of the owner(s) of the claim(s), (b) a reference to the BLM decision deferring annual assessment work, or (c) a reference to a pending petition for deferment of annual assessment work. Under 43 CFR 3852, a claimant may request deferment of assessment work by filing with BLM a petition containing the names of the claims, dates of location, and the date of the beginning of the requested one-year deferment period. A notice of intention to hold one or more mill or tunnel sites must contain the BLM serial number assigned to each site and any change in the mailing address of the site owner(s).

Transfer of Interest

Under 43 CFR 3833.3, whenever the owner of an unpatented mining claim, mill site or tunnel site sells, assigns, or otherwise conveys any interest in a claim or site, the person receiving the claim site must file the following information with BLM: the BLM serial number of the claim, the name and address of the person receiving an interest in the claim, and a copy of the document transferring the interest under applicable State law. The same information must be submitted to BLM if someone inherits an interest in a claim or site.

Notice of Intent To Locate

In 1993, Congress amended section 9 of the Stock Raising Homestead Act (39 Stat. 864, 43 U.S.C. 299) to require anyone desiring to explore for or locate a mining claim on a stock raising homestead to file with BLM a notice of intent if the mineral activities related to the exploration cause no more than a minimal disturbance of surface resources and do not involve the use of heavy equipment, explosive, road construction, drill pads or hazardous materials (Pub. L. 103–23, 107 Stat. 60). Under BLM's implementing regulations at 43 CFR 3833.0–3(g) and 3833.1–2(c) and (d), the notice of intent must contain the name and mailing address of the person filing the notice and a legal description of the lands to which the notice applies. Those desiring to explore for or locate a mining claim must also provide the surface owner with a brief description of the proposed mineral activities; a map and legal description of the lands to be subject to mineral exploration; the name, address, and phone number of the person managing the activities; and the date(s) on which the activities will take place. BLM uses form 3830–3 (formerly 3814–4) to simplify the collection of the required information. Copies of the form may be obtained without charge by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

Use of Information

BLM will use all of the information collection described above to determine the number and location of unpatented mining claims, mill sites and tunnel sites located on federal lands to assist in the surface management of these lands and any minerals found there; to remove any cloud on the title to those lands due to abandoned mining claims; to provide information as to the location of active claims; and to keep informed about transfers of interest and ownership. If BLM did not collect this information, the rights of surface and mineral owners would not be protected, the government's ability to locate and control surface disturbance would be compromised, and opportunities for mineral exploration and development would be unnecessarily circumscribed.

Public Reporting Burden

Based on BLM's experience administering FLPMA and the general mining laws, BLM estimates the public reporting burden for this information collection to average 8 minutes per response. The respondents are owners of unpatented mining claims, mill sites, and tunnel sites located on the public domain and individuals or organizations who seek to explore for or locate a mining claim on lands subject to the Stock Raising Homestead Act, as amended. The frequency of response is once, upon recording, and annually thereafter, and in the case of lands subject of the Stock Raising Homestead Act, one per entry. The number of responses per year is estimated to be about 364,000. The estimated total annual burden on new respondents collectively is about 48,545 hours. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: July 20, 1999.

Carole J. Smith,

Information Collection Officer.

[FR Doc. 99–19052 Filed 7–26–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–61455]

Notice of Realty Action; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following described land in Elko County, Nevada has been examined and found suitable for classification for purchase under the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (43 U.S.C. 869 et. seq.). The lands will not be offered for purchase until at least 60 days after the date of publication of this Notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 34 N., R. 56 E.
Section 18, Lots 1–2, E½NW¼.
Containing 160.00 acres, more or less.

DATES: The land will become segregated on July 27, 1999. Comments are due in this office by September 10, 1999.

FOR FURTHER INFORMATION: Detailed information concerning this action is available for review at the Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, Nevada.

SUPPLEMENTARY INFORMATION: The City of Elko intends to use the land for a Class I landfill. The patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act, applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereof for ditches and canals constructed by the authority

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of the United States; Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable laws and regulations to be established by the Secretary of Interior.

The grant of herein described lands is subject to any other reservations, provisions or covenants provided by the Recreation and Public Purposes Act that the authorized officer deems appropriate, including the following provision:

A statement from the City of Elko indemnifying the United States harmless against any legal liability or future costs directly or indirectly attributable to the disposal of solid waste or release of hazardous substances on the subject land.

The land is not required for any Federal purpose. The classification and subsequent conveyance are consistent with the Bureau's planning for the area.

Upon publication of this Notice of Realty Action in the **Federal Register**, the subject lands will be segregated from all forms of appropriation under the public land laws, including locations under the mining laws, except for recreation and public purpose . The segregative effect shall terminate upon issuance of a patent or as specified in an opening order to be published in the **Federal Register**, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Elko Field Office, 3900 Idaho Street, Elko, NV 89801. Any objections will be evaluated by the State Director, who may sustain, vacate or modify this realty action. In the absence of timely filed objections, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Classification Comments

Interested parties may submit comments involving the suitability of the land for conveyance under the Recreation and Public Purposed Act. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a Class I landfill.

Dated: July 16, 1999.

David J. Vandenberg,

Acting Field Manager.

[FR Doc. 99–19051 Filed 7–26–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), DOI.

ACTION: Notice of Information Collection.

SUMMARY: Under the Paperwork Reduction Act of 1995, we are soliciting comments on two information collections—Safety Net Report (OMB Control Number 1010–0103) and Certification for not Performing Accounting for Comparison (OMB Control Number 1010–0104)—both expire on November 30, 1999.

FORM: MMS–4411, Safety Net Report; MMS–4410, Certification for not Performing Accounting for Comparison.

DATES: Written comments should be received on or before September 27, 1999.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; e-mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, e-mail Dennis.C.Jones@mms.gov.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency ". . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . . ." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The Department of the Interior (DOI) is the department within the Federal Government responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

OMB Control Number 1010–0103

The safety net calculation establishes the minimum value for royalty purposes. This requirement will assist the Indian lessor in receiving all the royalties that are due and aid MMS in its compliance efforts. The safety net price will be calculated using prices received for gas sold downstream of the index point. It will include only the lessee's or lessee's affiliate's arm's-length contracts and will not require detailed calculations for the costs of transportation. By June 30 of each calendar year, the lessee will be required to calculate for each month of the calendar year a safety net price. This must be calculated for each index zone where the lessee has an Indian lease. The safety net price will capture the significantly higher values for sales occurring beyond the first index pricing point. The lessee will submit its safety net price to MMS annually (by June 30) using the Safety Net Report, Form MMS–4411.

The Safety Net Report will allow MMS and the tribes to ensure that Indian mineral lessors receive the maximum revenues from mineral resources on their land consistent with the Secretary's trust responsibility and lease terms. In the safety net calculation, the lessee will only include sales under those arm's-length contracts that establish a delivery point beyond the first index pricing point to which the gas flows. Moreover, those contracts must include any gas produced from or allocable to one or more of the lessee's Indian leases in the index zone. Information provided on the form may be used by MMS auditors, the Royalty Valuation Division, and the Office of Indian Royalty Assistance.

There are 700 companies that pay royalties on approximately 4,511 tribal and allotted Indian leases; we estimate that 20 percent of the companies (140 companies) have sales beyond the first index pricing point. Therefore, 560 reports from 140 companies for 4 index zones will be required annually. We estimate that it will take a company 24 hours to report the data required at proposed 30 CFR 206.172(e) (reference 63 FR 7089) and a recordkeeping burden of 1 hour per report annually. Therefore, we estimate that the annual burden for this information collection is 14,000 hours (560 reports × 25 hours).

OMB Control Number 1010–0104

Accounting for comparison (dual accounting) is required by the terms of most Indian leases when gas produced from the lease is processed. To not perform dual accounting, a lessee must certify, on Form MMS–4410, Certification For Not Performing Accounting For Comparison, that the gas was never processed prior to entering the pipeline with an index located in an index zone or into a mainline pipeline not in an index zone. The lessee will be required to sign the certification form for each lease having production that is exempt from dual accounting. This is a one-time certification that will remain in effect until there is a change in lease status or ownership. This certification will allow MMS and the tribes to better monitor compliance with the dual accounting requirement of Indian leases.

In most cases, the lessee will directly know the disposition of the gas. If gas is sold at the wellhead, the lessee may have to consult with the purchaser of the gas to determine its disposition. Information provided on the form may be used by MMS auditors, the Royalty Valuation Division, and the Office of Indian Royalty Assistance.

There are approximately 4,511 tribal and allotted Indian leases and 700 payors comprising the Indian lease universe. We estimate that 30 percent of the Indian leases, or 1,353 leases, would not require accounting for comparison. A certification form will be required for each lease, and the certification will remain in effect until there is a change in lease status or ownership. This one-time filing as required by proposed 30 CFR 206.172(b)(ii) (reference 63 FR 7089) will require 3 hours per certification report to extract the data from company records or obtain the information from the purchasers and a recordkeeping burden of 1 hour per report annually. Therefore, we estimate that the total annual burden for this information collection is 5,412 hours (1,353 reports × 4 hours).

Dated: July 21, 1999.

Joan Killgore,

Acting Associate Director for Royalty Management.

[FR Doc. 99–19081 Filed 7–26–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 17, 1999. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by August 11, 1999.

Carol D. Shull,

Keeper of the National Register.

ILLINOIS

Cook County

Four Nineteen Building, 419 W. 83rd St., Chicago, 99000973

Northeast Evanston Historic District, Roughly bounded by Emerson St., Sherman Ave., Sheridan Pl., Lake Michigan, Sheridan Rd., and Orrington Ave., Evanston, 99000979

Wheeler—Kohn House, 2018 S. Calumet Ave., Chicago, 99000975

Macon County

Decatur and Macon County Welfare Home for Girls, 736 S. Martin Luther King Jr. Dr., Decatur, 99000982

Pike County

Griggsville Landing Lime Kiln, IL 490, N of Napoleon Hollow, Valley City vicinity, 99000974

Pulaski County

Illinois Central Railroad Depot, Jct. of Central Ave. and Ullin Ave., Ullin, 99000978

St. Clair County

Berger—Kiel House, 931 N. 6th St., Mascoutah, 99000977

Warren County

Pike—Sheldon House, 406 S. Third St., Monmouth, 99000976

Winnebago County

Rockford Morning Star Building, 127 N. Wyman St., Rockford, 99000972

LOUISIANA

Vermilion Parish

St. Mary Congregational Church, 213 S. Louisiana Ave., Abbeville, 99000983

MARYLAND

Washington County

Cedar Grove, 15435 Dellinger Rd., Williamsport, 99000984

Baltimore Independent City

Riviera Apartments, 901 Druid Park Lake Dr., Baltimore, 99000985

MISSISSIPPI

Lafayette County

Falkner, Maud Butler, House, 510 S. Lamar Blvd., Oxford, 99000986

MISSOURI

Cape Girardeau County

Wichterich, Robert Felix and Elma Taylor, House, 300 Good Hope St., Cape Girardeau, 99000987

MONTANA

Mineral County

Savenac Nursery Historic District, I–90, S of Haugan, Haugan vicinity, 99000988

NEW YORK

Allegany County

McKinney Stables of Empire City Farms, 105 South St., Cuba, 99001000

Fulton County

Chamberlain, Benjamin, House, 100 Market St., Johnstown, 99000989

St. Lawrence County

Wanakena Footbridge, Over Oswegatchie R., bet. Front St. and South Shore Rd., Fine, 99001001

Sullivan County

Jewish Community Center of White Sulphur Springs, Briscoe Rd., White Sulphur Springs, 99000991

Tefereth Israel Anshei Parksville Synagogue, Dead End St., Parksville, 99000990

Ulster County

Davis Stone House (Rochester MPS), 4652 NY 209, Rochester, 99000995

Sahler Stone House (Rochester MPS), Kyserike Rd., Rochester, 99000992

Sahler Stone House and Dutch Barn (Rochester MPS), Winfield Rd., Rochester, 99000998

Stilwell Stone House (Rochester MPS), 189 Old Kings Highway, Rochester, 99000996

Stilwill—Westbrook Stone House (Rochester MPS), 482 Old Kings Highway, Rochester, 99000997

Van Wagenen Stone House and Farm Complex (Rochester MPS), 2732 Lucas Turnpike, Rochester, 99000994

Van Wagenen, Jacobus, Stone House (Rochester MPS), 2659 Lucas Turnpike, Rochester, 99000999

Winfield Corners Stone House (Rochester MPS), Winfield Rd., Rochester, 99000993

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OREGON

Coos County

Gearhart, John Neal and Dora, House, Address Restricted, Myrtle Point vicinity, 99001003

Marion County

Witten, T.M., and Emma, Drug Store—House, 104 N. Main St., Jefferson, 99001002

UTAH

Washington County

Grafton Historic District, 1861 townsite of Grafton, Rockville, 99001007

VIRGINIA

Page County

Printz, Abram and Sallie, Farm, 597 Rosedale Ln., Luray vicinity, 99001006

Manassas Independent City

Cannon Branch Fort (Civil War Properties in Prince William County MPS), Address Restricted, Manassas vicinity, 99001004

Suffolk Independent City

Professional Building, 100 N. Main St., Suffolk vicinity, 99001005

WASHINGTON

Pierce County

Sandberg–Schoenfeld Buildings, 1411–1423 Pacific Ave., Tacoma, 99001008

Whatcom County

Pioneer Park, 2002 Cherry St., Ferndale, 99001009

A request for REMOVAL has been made for the following resources:

ALASKA

Dillingham County

Fishermen's Co-op 247 Main St. Dillingham, 95000400

TEXAS

Tom Green County

House at 410 Summit St. 410 Summit St. San Angelo, 88002591

[FR Doc. 99–19072 Filed 7–26–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 6, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. Nos. 303–TA–23 and 731–TA–566–570 and 641 (Final) (Reconsideration) (Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on August 20, 1999.)
5. Outstanding action jackets:
   (1.) Document No. GC–99–065: Regarding Inv. No. 337–TA–380 (Certain Agricultural Tractors Under 50 Power Take-Off Horsepower) (Enforcement Proceeding).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 22, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19277 Filed 7–23–99; 12:41 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 19, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Title: Quarterly Mine Employment and Coal Production Report.

OMB Number: 1219–0006.

Frequency: Quarterly.

Affected Public: Business or other for-profit.

Collection	Quarterly response	Total annual responses	Average time per response (in minutes)	Burden hours
7000–2 mailed	17,203	68,812	30	34,406
7000–2 faxed	1,912	7,646	30	3,823
7000–2 electronic	624	2,496	15	624
Verify Data Mailer	n/a	10,000	30	5,000
Correct Data Mailer	n/a	247	15	62
Totals		89,205		43,915

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $22,791.

Description: Requires mine operators to report to MSHA quarterly employment levels and coal production. Employment and production data when correlated with accident and injury data provide information for making decisions on improving safety and health enforcement programs, focusing education and training efforts, and establishing priorities in technical assistance activities in mine safety and health.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–19112 Filed 7–26–99; 8:45 am]

BILLING CODE 4510–13–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 21, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E–Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Title: Mine Accident, Injury, and Illness Report.

OMB Number: 1219–0007.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Regulatory reference	Responses	Frequency	Annual responses	Average time per response	Burden hours
50.10 Immediate Notification	91 fatals 2,156 other	One-time	2,247	30 minutes	1,124
50.11(b) Investigation of Accidents/Occupational Injuries.	48 fatals 20,670 nonfatal 1,611 other	One-time	22,329	80 hours 2 hours 3 hours	50,013
50.11(b) Separate Reports <20 employees.	43 fatals 545 other	One-time	588	40 hours 3 hours	3,355
50.20 Reports	22,997 initial 11,937 follow-up	One-time	34,934	30 minutes 20 minutes	15,438
Verify Data Mailer	10,000	Annually	10,000	30 minutes	5,000
Correct Data Mailer	246	Annually	246	15 minutes	62
Totals			70,344		74,992

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $19,199.

Description: Mine operators are required to submit Form 7000–1 to MSHA to report on accidents, injuries, and illnesses at their mines within 10 working days after an accident or injury has occurred or a work-related illness has been diagnosed. The use the form provides for uniform information gathering.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–19113 Filed 7–26–99; 8:45 am]

BILLING CODE 4510–13–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–29; Exemption Application No. D–10747]

Bankers Trust Co., New York, New York, BT Alex Brown Inc., and Deutsche Bank AG

AGENCY: Pension and Welfare Benefits Administration, Department of Labor

ACTION: Grant of Individual Exemption.

SUMMARY: This document contains a final exemption from certain of the

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prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and the Internal Revenue Code of 1986 (the Code). The final exemption, granted by the Department of Labor (the Department) to Bankers Trust Company, BT Alex Brown and Deutsche Bank AG, provides that those entities shall not be precluded from functioning as a "qualified professional asset manager" pursuant to Prohibited Transaction Exemption 84–14 (49 FR 9494, March 13, 1984)(PTE 84–14) solely because of a failure to satisfy section I(g) of PTE 84–14 as a result of Bankers Trust Company's conviction for felonies described in a March 11, 1999 felony information.

FOR FURTHER INFORMATION CONTACT: Ms. Allison Padams-Lavigne of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 7, 1999, the Department published a notice in the **Federal Register** of the pendency before the Department of a proposed exemption requested by Bankers Trust Company and Deutsche Bank AG. The Department proposed the exemption in response to an application dated March 12, 1999, which was submitted on behalf of Bankers Trust Company and its future affiliates pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart (55 FR 32836, 32847, August 10, 1990).[1]

The notice set forth a summary of the facts and representations contained in the application for exemption and also invited interested persons to submit comments or requests for a hearing on the pending exemption to the Department.

The applicants agreed to provide notice to interested persons within three days of the date that the proposal appeared in the **Federal Register**. The applicants have represented that notice was furnished to five interested persons two days later than that date. As a result, the comment period was extended for two additional days. The applicants represent that notice to all other interested persons was furnished in a timely manner. All comments and requests for hearing were due by July 12, 1999.

The Department received eleven comments from interested persons on the proposed exemption. The Department forwarded copies of the comments to the applicants and requested that the applicants address in writing the various concerns raised by the commentators. Most of the comments fell into broad categories that the applicants responded to in a general fashion. Where a single commentator raised a specific issue, such issue was responded to individually. A description of the comments and the applicants' responses are summarized below.

One commentator urged that the exemption not be granted because he had not received all of his benefits under a plan maintained by Bankers Trust Company. Bankers Trust Company notes that the former participant enclosed with his comment a copy of the check receipt that he had received at the time of the distribution. Bankers Trust Company believes that the participant received the full amount of his benefit at the time he received his check receipt.

Five comments urged denial of the exemption because of the commentators' belief that Bankers Trust Company has failed to meet the highest standard as a fiduciary. Deutsche Bank AG responded that it is committed to maintaining the highest fiduciary standards on which Bankers Trust Company was organized in 1903, and intends to bring together the best of the long traditions of service of each organization, building on the organizational changes described in the exemption application and the new policies and procedures put in place in the recent past.

One commentator suggested that not all employees have received certain ethics training. Deutsche Bank AG represents that it will verify that all Global Institutional Services (GIS) employees have received the appropriate training.[2] Another commentator was concerned that the legal protections of the Act and the Code would be eliminated if the exemption was granted. Deutsche Bank AG responded that it understands that all of the legal requirements of the Act and the Code continue to apply to the employee benefit plans of Bankers Trust Company and, as sponsor of those plans, represents that it will fully comply with all laws respecting its plans.

Two commentators opposed the granting of the exemption because they had unanswered questions about their pension benefits. While these comments did not relate to the terms of the exemption, Deutsche Bank represents that it will contact those commentators and attempt to resolve their questions.

Another commentator argued that the exemption ought to be denied because, in the commentator's view, Deutsche Bank AG discriminates against members of the Church of Scientology. Deutsche Bank AG states that it maintains strict policies against discrimination on the basis of sex, race, creed or national origin and believes that those policies have been adhered to. Another commentator argued that the exemption should be denied because, in the past, Bankers Trust Company merged two of its employee benefit plans inappropriately. Bankers Trust Company responds that its actions in merging its plans were fully in compliance with the law.

In addition to comments, questions and requests for a hearing, the Department also received a comment letter, dated July 13, 1999, from Deutsche Bank AG. Deutsche Bank AG notes that Paragraph 2 of the Facts and Representations of the Notice states that BT Alex Brown is a subsidiary of Bankers Trust Corporation. Deutsche Bank AG noted that while that fact was true as of the date of the proposed exemption, BT Alex Brown is now a subsidiary of Deutsche Bank Securities, Inc.

Two commentators also requested a hearing on the proposal. The Department believes that the issues raised by the commentators are outside the scope of the proposed exemption. Accordingly, the Department does not believe that any issues have been identified which would require the convening of a hearing and has determined not to hold a public hearing.

Accordingly, after giving full consideration to the entire record, including the comments by the commentators, and the responses of the applicants, the Department has determined to grant the exemption. In this regard, the comments submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5507, U.S. Department of Labor, 200 Constitution Ave. NW, Washington DC 20010.

[1] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of Treasury to issue exemptions of the type proposed to the Secretary of Labor.

[2] The March 11, 1999 felony information related to the conduct of certain employees in Bankers Trust Company's processing services business. This unit was subsequently restructured as part of GIS.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and/or 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act and/or the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary provisions of section 404 of the Act which, among other things, requires a fiduciary to discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption is supplemental to and not in derogation of any other provisions of the Act and/or Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete and accurately describe all material terms of the transaction which is the subject of this exemption.

Exemption

Section I. Bankers Trust Company

Bankers Trust Company shall not be precluded from functioning as a "qualified professional asset manager" pursuant to Prohibited Transaction Exemption 84–14 (49 FR 9494, March 13, 1994) (PTE 84–14) for the period beginning on the date of sentencing with respect to the charges to which Bankers Trust Company [3] pled guilty on March 11, 1999 and ending five years [4] from the date of publication of the final exemption in the **Federal Register**, solely because of a failure to satisfy section I(g) of PTE 84–14 as a result of the conviction of Bankers Trust Company for felonies described in the March 11, 1999 felony information (the Information) entered in the U.S. District Court for the Southern District of New York, provided that:

(a) This exemption is not applicable if Bankers Trust Company becomes affiliated with any person or entity convicted of any of the crimes described in section I(g) of PTE 84–14; and

(b) This exemption is not applicable if Bankers Trust Company is convicted of any of the crimes described in section I(g) of PTE 84–14, other than those felonies discussed in the Information;

(c) The custody operations that were part of Bankers Trust Company at the time of the March 11, 1999 information, and which have subsequently been reorganized as part of Global Institutional Services (GIS), are subject to an annual examination of its abandoned property and escheatment policies, procedures and practices by an independent public accounting firm. The examination required by this condition shall determine whether the written procedures adopted by Bankers Trust Company are properly designed to assure compliance with the requirements of ERISA. The annual examination shall specifically require a determination by the auditor as to whether the Bank has developed and adopted internal policies and procedures that achieve appropriate control objectives and shall include a test of a representative sample of transactions, fifty percent of which must involve ERISA covered plans, to determine operational compliance with such policies and procedures. The auditor shall issue a written report describing the steps performed by the auditor during the course of its examination. The report shall include the auditor's specific findings and recommendations. This requirement shall continue to be applicable to the custody operations that were part of Bankers Trust Company as of March 11, 1999, notwithstanding any subsequent reorganization of the custody operation function during the term of the exemption.

(d) With respect to the independent audit report described in section I(c) above:

(1) Bankers Trust Company shall provide notice to the Department of any instances of the Bank's noncompliance with the written policies and procedures reviewed by the auditor within 10 business days after such noncompliance is determined by the auditor notwithstanding the fact that the examination may not have been completed as of that date. Upon request, the auditor shall provide the Department with all of the relevant workpapers reflecting the instances of noncompliance. The workpapers should identify whether and to what extent the assets of ERISA plans were involved in the instances of noncompliance, and

(2) Any information relating to the Bank's noncompliance with the written policies and procedures that is required by Federal and/or state banking authorities to be reported to the state and/or Federal banking agencies shall also be reported by Bankers Trust Company to the Department within the same time frames that such information is otherwise required to be reported to those agencies.

(e) The annual examination described in section I(c) above will be provided to the Department not later than 90 days following the 12 month period to which it relates, and will be unconditionally available for examination by any duly authorized employee or representative of the Department, Internal Revenue Service, Securities and Exchange Commission or Department of Justice or other relevant regulators and any fiduciary of a plan for which Bankers Trust Company performs services.

Section II

BT Alex. Brown Incorporated and its subsidiaries and Deutsche Bank AG shall not be precluded from functioning as a "qualified professional asset manager" pursuant to PTE 84–14 for the period beginning on the date of sentencing with respect to the charges to which Bankers Trust Company pled guilty on March 11, 1999 and ending ten years from the date of publication of the final exemption in the **Federal Register**, solely because of a failure to satisfy section I(g) of PTE 84–14 as a result of an affiliation with Bankers Trust Company, provided that:

(a) This exemption is not applicable if BT Alex. Brown Incorporated, its subsidiaries or Deutsche Bank AG becomes affiliated with any person or entity convicted of any of the crimes described in section I(g) of PTE 84–14; and

(b) This exemption is not applicable if BT Alex. Brown Incorporated, its subsidiaries or Deutsche Bank AG is convicted of any of the crimes described in section I(g) of PTE 84–14.

Section III. Definitions

(a) For purposes of this exemption, the term "Bankers Trust Company" includes Bankers Trust Company and any entity that was affiliated with Bankers Trust Company prior to the

[3] On June 4, 1999, Bankers Trust Corporation, the parent of Bankers Trust Company, was acquired by Deutsche Bank AG. Bankers Trust Company, now a subsidiary of Deutsche Bank AG, continues to offer banking services to its clients.

[4] Prior to the expiration of this exemption, Bankers Trust Company may apply for an extension of the exemption.

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date of the acquisition of Bankers Trust Corporation by Deutsche Bank AG, other than BT Alex. Brown Incorporated and its subsidiaries.

(b) For purposes of this exemption, "Deutsche Bank AG" includes Deutsche Bank AG and any entity that was affiliated with Deutsche Bank AG prior to the date of the acquisition of Bankers Trust Corporation by Deutsche Bank AG, and any future affiliates, other than Bankers Trust Company, as defined in subsection (a).

(c) The term "affiliate" of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and,

(4) Any employee or officer of the person who—

(A) is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person) or,

(B) has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.

(d) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Signed at Washington, DC, this 22nd day of July, 1999.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–19152 Filed 7–26–99; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–30; Exemption Application No. D–10669, et al.]

Grant of Individual Exemptions; Premier Funding Group, Inc.; Employees Profit Sharing Plan, et al

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Premier Funding Group, Inc. Employees Profit Sharing Plan (the P/S Plan) and the Money Purchase Pension Plan for Employees of Premier Funding Group, Inc. (the M/P Plan, collectively; the Plans) Located in Arlington, Texas

[Prohibited Transaction Exemption 99–30; Exemption Application Nos. D–10669 and D–10670]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply as of February 1, 1999, to a lease (the Lease) of certain second-floor space (the Leased Premises) in a building by the Plans to LM Holdings, Inc., a party in interest with respect to the Plans; provided that the following conditions are satisfied:

(a) All terms and conditions of the Lease are at least as favorable to the Plans as those which the Plans could obtain in an arm's-length transaction with an unrelated party;

(b) The fair market rental amount for the Lease has been determined by an independent qualified appraiser;

(c) Each Plan's allocable portion of the fair market value of both the Leased Premises and the building where the Leased Premises are located represents no more than 20 percent (20%) of the total assets of each Plan throughout the duration of the Lease;

(d) The interests of the Plans under the Lease are represented by an independent, qualified fiduciary (the Independent Fiduciary);

(e) The fees received by the Independent Fiduciary, combined with any other fees derived from any related parties, will not exceed 1% of that person's annual income for each fiscal year that such person continues to serve in the independent fiduciary capacity with respect to the Lease;

(f) The Independent Fiduciary evaluated the Lease and deemed it to be administratively feasible, protective and in the best interest of the Plans;

(g) The Independent Fiduciary monitors the terms and the conditions of the exemption and the Lease throughout its duration, and takes whatever action is necessary to protect the Plans' rights;

(h) At the discretion of the Independent Fiduciary, the Lease can be extended for two additional five-year terms, provided that the Independent Fiduciary requires independent appraisals of the Leased Premises to be performed at the time of each extension of the Lease so as to ensure that LM Holdings continues to pay fair market rent, and such rent is not less that either the initial base rent or the amount paid during the most recent annual term; and

(i) Within 90 days of publication in the **Federal Register** of this exemption, LM Holdings files with the Internal Revenue Service (IRS) Form 5330 (Return of Initial Excise Taxes for Pension and Profit Sharing Plans) and pays all excise taxes applicable under section 4975(a) of the Code that are due by reason of the existence of the Lease as a prohibited transaction prior to February 1, 1999.

EFFECTIVE DATE: This exemption is effective as of February 1, 1999.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 3, 1999 at 64 FR 29906.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

The Unaka Company, Incorporated Employees' Profit Sharing Plan and Trust (the Plan) Located in Greenville, Tennessee

[Prohibited Transaction Exemption 99–31; Application No. D–10722]

Exemption

The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: [1]

(a) The assignment (the Assignment) by the Plan to the Unaka Company, Incorporated (Unaka), the sponsoring employer and a party in interest with respect to the Plan, of any and all claims, demands, and/or causes of action which the Plan may have against certain members of the Plan Administrative Committee (the PAC) and other involved parties (collectively, the Responsible Fiduciaries) for breach of fiduciary duty under the Act, during the period from July 1, 1996 to July 31, 1998;

(b) In exchange for the Assignment, described in paragraph (a), above, the interest-free, non-recourse loan (the Loan) by Unaka to the Plan in an amount equal to the difference between $413 and the fair market value per share for the common stock of Unaka (the Stock) held by the Plan, in connection with the sale of such Stock by the Plan to Unaka, pursuant to the statutory exemption, as set forth in section 408(e) of the Act; [2]

(c) The possible repayment of such Loan to Unaka from the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries;

(d) The interest-free, non-recourse extension of credit (the Extension of Credit) by Unaka to the Plan of certain expenses arising out of the litigation against the Responsible Fiduciaries, effective as of, May 1, 1999, the date when expenses incurred by the Plan in bringing such litigation were first paid by Unaka; and

(e) The possible receipt by Unaka of reimbursement of such litigation expenses from the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries; provided that the following conditions are satisfied:

(1) The Plan will pay no interest in connection with the Loan or the Extension of Credit;

(2) None of the assets of the Plan will be pledged to secure either the amount of the Loan or the amount of the Extension of Credit;

(3) Repayment to Unaka of the amount of the Loan and reimbursement to Unaka of the amount of the Extension of Credit shall be restricted solely to the cash proceeds of the recovery, if any, from a judgment or settlement of the litigation against the Responsible Fiduciaries;

(4) To the extent the amount of the cash proceeds, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries is equal to or less than the amount due to Unaka as repayment for the Loan and reimbursement of the Extension of Credit, the Plan shall not be liable to Unaka for any amount;

(5) To the extent the cash proceeds, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries exceeds the total amount of the Loan, plus the amount of the Extension of Credit, such excess amount will be allocated to the accounts of the participants of the Plan; with the exception that no such allocation will be made to the account of Robert Austin, Jr. in the Plan;

(6) The transactions which are the subject of this exemption do not involve any risk of loss either to the Plan or to any of the participants and beneficiaries of the Plan;

(7) The Plan will not incur any expenses as a result of the transactions which are the subject of this exemption;

(8) Notwithstanding the Assignment by the Plan of its rights against the Responsible Fiduciaries, the Plan does not release any claims, demands, and/or causes of action which it may have against Unaka and/or its affiliates;

(9) All of the terms of the transactions are at least as favorable to the Plan as those which the Plan could obtain in similar transactions negotiated at arm's-length with unrelated third parties;

(10) The Plan receives no less than the fair market value for the Assignment, as of the date of the closing on the transfer of the Assignment;

(11) Prior to the Plan's entering the transactions, an independent, qualified fiduciary (the I/F), who is acting on behalf of the Plan and who is independent of Unaka and its affiliates, reviews, negotiates, and approves the terms and conditions of the Loan, the Assignment, and the Extension of Credit and determines that such transactions are prudent, administratively feasible, in the interest of the Plan and its participants and beneficiaries, and protective of the participants and beneficiaries of the Plan;

(12) Throughout the duration of the transactions, the I/F monitors the prosecution of the lawsuit against the Responsible Fiduciaries, including but not limited to monitoring all costs and fees incurred in connection with any litigation related to the transactions, monitors the division of the recovery, if any, from any judgment or settlement of the litigation against the Responsible Fiduciaries to ensure that the Plan receives the portion to which it is entitled and that the Plan's interests are served, and monitors the terms and conditions of the transactions to ensure that such terms and conditions are at all times satisfied;

(13) The I/F, acting on behalf of the Plan, shall have final approval authority over any settlement of any legal proceedings against the Responsible Fiduciaries brought pursuant to the terms of the Assignment; and

(14) In the event the I/F resigns, is removed, or for any reason is unable to serve, including but not limited to the death or disability of such I/F, or if at any time such I/F does not remain independent of Unaka and its affiliates, such I/F will be replaced by a successor: (i) Who is appointed immediately upon the occurrence of such event; (ii) who is independent of Unaka and its affiliates; (iii) who is qualified to serve as the I/

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] The Department, herein, expresses no opinion as to the applicability of the statutory exemption provided by section 408(e) of the Act to the sale by the Plan of its Unaka Stock to Unaka or as to whether the conditions set forth in such statutory exemption are satisfied in the execution of such transaction. Further, the Department, herein, is offering no relief for transactions other than the transactions described in this exemption.

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F; and (iv) who assumes all the duties and responsibilities of the predecessor I/F.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on June 3, 1999. All comments and requests for a hearing were due by July 19, 1999.

During the comment period, the Department received no requests for a hearing. However, on June 16, 1999, the Department did receive a favorable comment letter from one commentator. In this regard, the commentator noted that the exemption would move the Plan away from the internal family lawsuits and the transactions posed no risk of loss to the Plan or any of the participants.

After giving full consideration to the entire record, including the written comment from the commentator, the Department has decided to grant the exemption. In this regard, the comment letter submitted to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–5638, U. S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on June 3, 1999, at 64 FR 29908.

FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of July, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–19153 Filed 7–26–99; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* August 2, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for University Teachers in Political Science, International Affairs, and Jurisprudence, submitted to the Division of Research Programs at the May 1, 1999 deadline.

2. *Date:* August 3, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for University Teachers in American History and Studies II, submitted to the Division of Research Programs at the May 1, 1999 deadline.

3. *Date:* August 4, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Music, Film, and Theater, submitted to the Division of Research Programs at the May 1, 1999 deadline.

4. *Date:* August 5, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Languages and Literatures II, submitted to the Division of Research Programs at the May 1, 1999 deadline.

5. *Date:* August 5, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Languages and Literatures I, submitted to the Division of Research Programs at the May 1, 1999 deadline.

6. *Date:* August 6, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Philosophy, submitted to the Division of Research Programs at the May 1, 1999 deadline.

7. *Date:* August 9, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for University Teachers in American Studies, Rhetoric, Communication, and Media, submitted to the Division of Research Programs at the May 1, 1999 deadline.

10. *Date:* August 9, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in History of Art and Architecture, submitted to the Division of Research Programs at the May 1, 1999 deadline.

11. *Date:* August 10, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for University Teachers in Modern European Languages, Literatures, and Criticism, submitted to the Division of Research Programs at the May 1, 1999 deadline.

12. *Date:* August 11, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Classical and Medieval Studies, submitted to the Division of Research Programs at the May 1, 1999 deadline.

13. *Date:* August 11, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for University Teachers in Classical, Medieval, and Renaissance Studies, submitted to the Division of Research Programs at the May 1, 1999 deadline.

14. *Date:* August 12, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for University Teachers in History of Art and Architecture, submitted to the Division of Research Programs at the May 1, 1999 deadline.

15. *Date:* August 12, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for University Teachers in American Literature, Linguistics, and Theory, submitted to the Division of Research Programs at the May 1, 1999 deadline.

16. *Date:* August 13, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for College Teachers and independent scholars in Sociology, psychology, and Education, submitted to the Division of Research Programs at the May 1, 1999 deadline.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 99–19121 Filed 7–26–99; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacturing, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act, (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacturing, and Industrial Innovation (#1194).

Date & Time: Augsut 4, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, and 31, 1999 8:30 a.m.–5 p.m.

Place: Rooms 340, 360, 370 and 380, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Joseph Hennessey, Program Manager, Small Business Innovation Research and Small Business Technology Transfers Programs, Room 590, Division of Design, Manufacturing, and Industrial Innovation, National Science Foundation, 4201 Wilson Boulevard, VA 22230, Telephone (703) 306–1395 x 5283.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 22, 1999.

[FR Doc. 99–19148 Filed 7–26–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences, Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geoscience (1755).

Date & Time: August 11, and 12, 1999—8:30 a.m.–5 p.m. each day.

Place: Rm. 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Part-Open (see Agenda, below).

Contact Person: Dr. Richard Behnke, Section Head for the Upper Atmospheric Research Section, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1518.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including program evaluation, GPRA assessments, and access to privileged materials.

Agenda

Closed: August 11 from 1 p.m.-5 p.m. and August 12 from 8:30 a.m.-5 p.m. To review the merit review processes covering funding decisions made during the immediately preceding three fiscal years of the Upper Atmospheric Research Section.

Open: August 11 from 8:30-12. To assess the results of NSF program investments in the Upper Atmospheric Research Section. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or other investments made in earlier years.

Reason for Closing: During the closed session, the Committee will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 22, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–19149 Filed 7–26–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (#1756)

Date and time: August 13, 1999; 8 a.m.to 5 p.m.

Place: Room 770: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Clifford Jacobs, Section Head, UCAR and Lower Atmosphere Facilities Oversight Section, Room 775, Division of Atmospheric Sciences, National Science Foundation, 4201 Wilson Blvd.,

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Arlington, VA 22230, telephone: (703) 306–1521.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the UNIDATA Equipment Proposals as part of the selection process for awards.

Reason for closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: July 22, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–19147 Filed 7–26–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee Social, Behavioral, and Economic Sciences; Notices of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Committee for Social Behavioral and Economic Sciences (#1171)

Date and Time: August 11–13, 1999; 9 a.m. to 5 p.m.

Place: Rooms 970, 920, and 130, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Steven J. Breckler, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone (703) 306–1728.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments and other privileged materials.

Agenda: To provide oversight review of the Programs of the Cognitive, Psychological and Language Sciences Cluster.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 22, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–19146 Filed 7–26–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

U.S. National Assessment Synthesis Team; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: U.S. National Assessment Synthesis Team (#5219).

Date and Time: August 10, 1999, 10 a.m. to 1 p.m.; August 11–19, 1999, 8:30 a.m. to 2:30 p.m. and 5 p.m. to 7 p.m. each day; August 20, 1999, 8:30 a.m. to 2 p.m.

Place: J. Erik Jonsson Woods Hole Center, National Academy of Science, Marine Biological Laboratory, Woods Hole, Massachusetts.

Type of Meeting: Open.

Contact Person: Melissa J. Taylor, Office of the U.S. Global Change Research Program (USGCRP), 400 Virginia Avenue, SW, Suite 750, Washington, DC 20024. Tel: 202–314–2230; Fax: 202–488–8681; Email: mtaylor@usgcrp.gov. Interested persons should contact Ms. Taylor as soon as possible to assure space provisions are made for all participants and observers.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the interagency Subcommittee on Global Change Research on the design and conduct of the national effort to assess the consequences of climate variability and climate change for the United States.

Agenda

Day 1 (August 10) Discussion of overview and goals of meeting and reading of revised documents.

Days 2–5 (August 11–14) Review and revision of Overview document.

Days 6–11 (August 15–20) Review and revision of Foundation document.

Dated: July 22, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–19150 Filed 7–26–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR Part 35, "Medical Use of Byproduct Material."

3. The form number if applicable: None.

4. How often the collection is required: Required reports are collected and evaluated on a continuing basis as needed due to a change in programs or as events occur.

5. Who will be required or asked to report: Physicians and medical institutions who are applicants for, or hold, an NRC license authorizing the administration of byproduct material, or its radiation to humans for medical use.

6. An estimate of the number of responses: 1,907,515 NRC licensee responses and 4,768,739 Agreement State responses annually.

7. The estimated number of annual respondents: 1,891 NRC licensees and 4,728 Agreement State licensees.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 369,916 hours for NRC licensees and 924,765 hours for Agreement State licensees, for a total burden of 1,294,681 hours (196 hours per licensee).

9. An indication of whether Section 3507(d), Public Law 104–13 applies: N/A

10. Abstract: 10 CFR Part 35, "Medical Use of Byproduct Material," contains requirements that apply to NRC licensees who are authorized to administer byproduct material or its radiation to humans for medical use. The information in the required reports and records is used by the NRC to ensure that the health and safety of the public is protected, and that the licensee's possession and use of byproduct material is in compliance with the license and regulatory requirements. The revision is a net decrease adjustment in burden resulting from a decrease in the number of affected licensees.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 25, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0010), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 21st day of July 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–19132 Filed 7–26–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–320]

GPU Nuclear, Inc., Three Mile Island, Unit 2; Exemption

I

GPU Nuclear, Inc. (the licensee), is the holder of Facility Operating License No. DPR–73, which authorizes the licensee to possess the Three Mile Island Nuclear Station, Unit 2 (TMI–2). The license states, in part, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a pressurized-water reactor located at the licensee's site in Dauphin County, Pennsylvania. The facility is permanently shut down and defueled and the licensee is no longer authorized to operate or place fuel in the reactor.

II

Section 50.54(w) of Title 10 of the Code of Federal Regulations, part 50 (10 CFR part 50) requires power reactors to maintain onsite property damage insurance coverage in the amount of $1.06 billion. The NRC may grant exemptions from the requirements of 10 CFR part 50 of the regulations, pursuant to 10 CFR 50.12(a), which (1) are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security and (2) present special circumstances. Special circumstances exist when application of the regulations in the particular circumstance would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule [10 CFR 50.12(a)(2)(ii)]. The underlying purpose of § 50.54(w) is to provide sufficient property damage insurance coverage to ensure funding for onsite post-accident recovery, stabilization, and decontamination costs in the unlikely event of an accident at a nuclear power plant.

III

On March 9, 1999, the licensee requested exemption from the financial protection requirement limits of 10 CFR 50.54(w). The licensee requested that the amount of insurance coverage that it is required to maintain be reduced to $50 million for onsite property damage. The licensee stated that special circumstances exist because of the permanently shutdown and defueled condition of TMI–2.

The financial protection limits of 10 CFR 50.54(w) were established to require a licensee to maintain sufficient insurance to cover the costs of a nuclear accident at an operating reactor. Those costs were derived from the consequences of a release of radioactive material from the reactor. Although the risk of an accident at an operating reactor is very low, the consequences can be large. In an operating plant, the high temperature and pressure of the reactor coolant system, as well as the large inventory of relatively short-lived radionuclides, contribute to both the risk and consequences of an accident. In a permanently shutdown and defueled reactor facility, the reactor coolant system will never be operated and contains no short-lived radionuclides, which eliminates the possibility of reactor accidents. A further reduction in risk occurs when fuel is shipped offsite as in the case at TMI–2, where over 99 percent of the fuel has been removed and shipped offsite.

Along with the reduction in risk, the consequences of potential releases decrease after a reactor permanently shuts down and defuels. The short-lived radionuclides contained in the fuel, particularly volatile components such as iodines and noble gases decay, thereby, reducing the inventory of radioactive materials that are readily dispersible and transportable in air.

Although the risk and consequences of radiological releases decline substantially after a plant permanently defuels the reactor, they are not completely eliminated. There are potential onsite and offsite radiological consequences that can be associated with storage of activated reactor components, contaminated materials, and the remaining fuel debris at TMI–2. In addition, an inventory of liquid and solid radioactive wastes can be created during the future decontamination phases of the TMI–2 decommissioning process. For the purposes of modifying the amount of insurance coverage maintained by the licensee, the potential consequences, despite the very low risk, are an appropriate consideration.

In order to determine the insurance coverage sufficient for a permanently defueled facility, the cost of recovery from potential accident scenarios must be evaluated. At TMI–2, greater than 99 percent of the fuel debris has been removed and transported offsite. The remaining fuel debris is stored dry with no need for forced cooling. Loss of spent fuel cooling water accident scenarios are not applicable to the TMI–2 plant condition. In SECY 96–256, "Changes to the Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors, 10 CFR 50.54(w) and 10 CFR 140.11," dated December 17, 1996, the NRC staff estimated the onsite cleanup costs of accidents considered to be the most costly at a permanently shut down reactor with spent fuel stored in the spent fuel pool. The staff found that the onsite recovery costs for a fuel handling accident could range up to $24 million. The estimated onsite cleanup costs to recover from the rupture of a large liquid radwaste storage tank could range up to $50 million. The licensee's proposed level of $50 million for onsite property insurance is sufficient to cover these estimated cleanup costs.

IV

The NRC staff has completed its review of the licensee's request to reduce financial protection limits to $50 million for onsite property insurance. The requested reductions are consistent with SECY 96–256. The Commission informed the staff in a staff requirements memo dated January 28, 1997, that it did not object to the insurance reductions recommended in SECY 96–256. The licensee's proposed financial protection limits will provide sufficient insurance to recover from the limiting hypothetical events, if they occur. Thus, the underlying purposes of the regulations will not be adversely affected by the reductions in insurance coverage.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption to reduce onsite property insurance to $50 million is

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authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Further, special circumstances are present, as set forth in 10 CFR 50.12(a)(2)(ii). Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.54(w).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant effect on the quality of the human environment (64 FR 39178). This exemption is effective immediately.

Dated at Rockville, MD., this 21st day of July 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–19161 Filed 7–26–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

Northeast Nuclear Energy Company, et al.; Millstone Nuclear Power Station, Unit 1; Notice of Public Meeting on the Post-Shutdown Decommissioning Activities Report

The U.S. Nuclear Regulatory Commission (NRC) staff will conduct a public meeting at the Waterford Town Hall, 15 Rope Ferry Road, Waterford, Connecticut, on August 25, 1999, to provide an opportunity for members of the public to raise issues and concerns related to the Millstone, Unit 1 Post-Shutdown Decommissioning Activities Report (PSDAR). The PSDAR was submitted to the NRC by Northeast Nuclear Energy Company (NNECO, the licensee) on June 14, 1999.

The PSDAR is available for public inspection at the Commission's Public Document Room located at The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut. The NRC has also placed the PSDAR on the Internet at

[http://www.nrc.gov/OPA/reports/ms1061499.htm] (cover letter) and [http://www.nrc.gov/OPA/reports/1061499a.htm] (attached report).

Millstone, Unit 1, is located at a three-unit site operated by NNECO near the town of Waterford, Connecticut. The PSDAR focuses on decommissioning activities for Unit 1 only. It does not provide information on the operating activities related to Millstone Units 2 and 3. The August 25, 1999, meeting will be limited to issues related to Millstone, Unit 1 and the PSDAR. The meeting is scheduled for 7 p.m.-10 p.m., and will be moderated by Mr. Tony Sheridan, First Selectman, Town of Waterford. This meeting is a formal part of the NRC decommissioning process. There will be an opportunity for members of the public to ask questions of the NRC staff and NNECO representatives and to make comments related to the PSDAR. The meeting will be transcribed.

For more information, contact Louis L. Wheeler, Project Directorate IV & Decommissioning, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1444.

Dated at Rockville, Maryland, this 21st day of July 1999.

For the Nuclear Regulatory Commission.

Louis L. Wheeler,

Senior Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–19131 Filed 7–26–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, August 5, 1999
Thursday, September 16, 1999
Thursday, September 23, 1999

The meetings will start at 10:00 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Public Law 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: July 21, 1999.

John F. Leyden,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 99–19046 Filed 7–26–99; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41634; File No. SR–NYSE–97–31]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Voluntary Delistings by Listed Companies

July 21, 1999.

I. Introduction

On November 17, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the procedures a NYSE-listed company must follow to voluntarily delist its securities from the Exchange. On December 3, 1997, the NYSE submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on December 10, 1997.[4] The Commission received 23 comment letters on the proposal.[5] On February 13, 1998, the NYSE submitted its response to the comment letters received by the Commission.[6] On November 9, 1998, the NYSE submitted Amendment No. 2 to the proposed rule change.[7] Amendment No. 2 was published for comment in the **Federal Register** on November 18, 1998.[8] The Commission received 16 comment letters on Amendment No. 2.[9] For the reasons discussed below, this order approves the proposed rule change, as amended.

II. Background

According to the Exchange, the NYSE adopted the existing Rule 500 in 1939 as a corporate governance safeguard. At that time, an issuer's decision to delist from the NYSE generally resulted in the loss of a public market for a security. NYSE Rule 500 requires supermajority shareholder approval (*i.e.*, , two-thirds of outstanding shares) before a listed company could delist its securities.[10] In addition, no more than ten percent of the issuer's shareholders may object to the delisting. The NYSE states that these provisions ensured that shareholders had a voice in a public company's decision to leave the NYSE.

With the development of other established securities markets, many of the concerns that gave rise to the adoption of Rule 500 were rendered obsolete. Indeed, over the past decade, a number of markets have challenged the NYSE for listings. One of these, the Nasdaq Stock Market, approaches, and by some measures, has surpassed the NYSE in the number of companies and annual share volume.[11] In this environment, the NYSE's Rule 500 has been challenged as a deterrent to intermarket competition rather than a necessary investor protection provision.

Over the past sixty years, only one issuer[12] has delisted its securities from the NYSE. Recognizing the potential anti-competitive impact of the rule, the Commission and its staff have repeatedly encouraged the NYSE to amend Rule 500 to enhance intermarket competition for listings. For example, in January 1994, Commission staff published a study that reviewed, among other things, market practices and

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated December 1, 1997 ("Amendment No. 1"). In Amendment No. 1, the NYSE proposed to amend the proposal to require an issuer to provide the Exchange with a copy of the notice provided to its shareholders and a copy of the delisting application submitted to the Commission.

[4] *See* Securities Exchange Act Release No. 39394 (December 3, 1997), 62 FR 65116.

[5] *See* Letters to Jonathan G. Katz, Secretary, Commission, from: Junius W. Peake, Monfort Distinguished Professor of Finance, University of Northern Colorado, dated December 12, 1997; Frank G. Zarb, Chairman, President and Chief Executive Officer, National Association of Securities Dealers, Inc., dated January 6, 1998 ("NASD I"); Sarah A.B. Teslik, Executive Director, Council of Institutional Investors, dated January 12, 1998 ("CII"); George B. Brunt, Vice President, Secretary and General Counsel, DSC Communications Corporation, dated January 20, 1998 ("DSC"); James J. Angel, Ph.D., Assistant Professor of Finance, Georgetown University School of Business, dated January 22, 1998; William G. Christie, Associate Professor of Management, Vanderbilt University, dated January 25, 1998; John Markese, Ph.D., President, American Association of Individual Investors, dated January 26, 1998 ("AAII"); John J. McConnell, Professor of Finance, Purdue University, dated January 21, 1998; Eric D. Roiter, Vice President and General Counsel, Fidelity Management and Research Company, dated January 30, 1998 ("Fidelity I"); Bernard W. Schotters, Senior Vice President and Treasurer, Tele-Communications, Inc., dated January 30, 1998 ("TCI"); Jim Tolonen, Chief Financial Officer, Novell, dated February 2, 1998 ("Novell"); John C. Wilcox, Esq., Chairman, and Dr. Richard A. Wines, Senior Managing Director, Georgeson & Company, Inc., dated February 6, 1998 ("Georgeson"); Richard H. Koppes, Jones, Day, Reavis & Pogue, dated February 17, 1998; Charles M. Leighton, Chair, and Peter N. Larson, Vice Chair, NYSE Listed Company Advisory Committee, dated February 19, 1998 ("NYSE Listed Company Advisory Committee"); Edward F. Green, Chairman, and Harvey J. Goldschmid, Chairman, NYSE Legal Advisory Committee, dated February 27, 1998 ("NYSE Legal Advisory Committee"); Myra R. Drucker, Chair, NYSE Pension Managers Advisory Committee, dated February 18, 1998 ("NYSE Pension Managers Advisory Committee"); James F. Rothenberg, President, Capital Research and Management Co., dated March 6, 1998 ("Capital Research"); Patrick J. Healy, President, The Issuer Network, dated March 16, 1998 ("Issuer Network"); Henry H. Hopkins, Managing Director and Chief Legal Counsel, T. Rowe Price Associates, Inc., dated March 25, 1998 ("T. Rowe Price"); and Eric D. Roiter, Vice President and General Counsel, Fidelity Management and Research Company, dated May 7, 1998 ("Fidelity II"). *See also* Letters to The Honorable Arthur Levitt, Chairman, Commission, from: Michael G. Oxley, Chairman, Subcommittee on Finance and Hazardous Materials, Committee on Commerce, United States House of Representatives, dated January 27, 1998; Senators Christopher J. Dodd and Alfonse M. D'Amato, Chairman, Committee on Banking, Housing, and Urban Affairs, United States Senate, dated February 9, 1998; and Congressman Edward J. Markey, United States House of Representatives, dated February 24, 1998.

[6] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated February 12, 1998 ("NYSE Response Letter").

[7] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard C. Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 6, 1998 ("Amendment No. 2"). For a discussion of Amendment No. 2, *see* text accompanying note 23.

[8] *See* Securities Exchange Act Release No. 40688 (November 9, 1998), 63 FR 65626.

[9] *See* Letter from Joan C. Conley, Vice President and Corporate Secretary, NASD, to Jonathan G. Katz, Secretary, Commission, dated January 13, 1999 ("NASD II"); Robert C. Pozen, President and Chief Executive Officer, Fidelity Management and Research Company, to Arthur C. Levitt, Chairman, Commission, dated January 21, 1999 ("Fidelity III"); Yi-Hsin Chang, dated January 20, 1999; Steve Aakhus, dated January 21, 1999; James C. Finn, dated January 21, 1999; Brook A. Mancinelli, dated January 21, 1999; Randy Goering, dated January 21, 1999; Thomas E. Chaddock, dated January 21, 1999; Peter Carucci, dated January 21, 1999; John Rice, dated January 21, 1999; Jon H. Halberg, English Education Department, Kangwon National University, dated January 22, 1999; Russell Peter, Packaging Engineer, Trim Systems, LLC, dated January 22, 1999; Gregory Cain, dated January 21, 1999; Robin Reagler, dated January 22, 1999; Carole A. Werling, dated January 23, 1999; Tom Purdy, dated January 23, 1999; and I.A. McCarthy, dated January 21, 1999.

[10] The Commission notes that the NYSE's current rules governing voluntary delisting are substantially more onerous than the rules adopted by most other U.S. securities markets. For example, the Nasdaq Stock Market requires only that written notice be sent to the NASD. *See* NASD Rule 4480. *See also* PCX Rule 3.4 and Phlx Rule 809 (generally requiring only that an issuer submit a certified copy of a resolution adopted by the issuer's Board of Directors authorizing withdrawal from listing and a statement detailing the reasons for the proposed withdrawal). Only the rules of the Chicago Stock Exchange ("CHX") are modeled on the NYSE's Rule 500. *See* CHX Article XXVIII, Rule 4. The Division of Market Regulation, by letter dated July 20, 1999, has requested the CHX submit a proposal amending its rule.

[11] *See 1998 Securities Industry Factbook*, Securities Industry Association, at 48–51 (1998).

[12] *See* Application of MacMillan Bloedel Limited (March 25, 1986) 51 FR 11129, (April 1, 1986), (File No. 1–7902). In contrast, in 1998 alone, the NYSE listed 66 companies that had voluntarily delisted from the Nasdaq Stock Market and 17 companies that had voluntarily delisted from the American Stock Exchange.

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structures.[13] In the Market 2000 Study, the staff stated that the NYSE's voluntary delisting provisions "represent a barrier to delisting that is too onerous."[14] The staff recommended that the NYSE submit a proposed rule change to modify NYSE Rule 500[15] to allow decisions about voluntary delisting to be made by the listed company's board of directors, rather than by its shareholders.[16]

By letter to the NYSE dated May 27, 1997, the Commission reiterated the staff's request that the Exchange reexamine Rule 500. The Commission requested that the NYSE determine whether the rule remained relevant in light of the current competitive environment in which the differences among the markets regarding the availability of quotation and transaction information, disclosure requirements, and listing criteria have been reduced.[17] In the May 1997 Letter, the Commission noted that NYSE Rule 500: may place an unnecessary limitation on competition for listings by imposing a significant barrier for issuers that wish to withdraw securities from listing on the NYSE. As a result, listed companies may find it difficult to move to another exchange or Nasdaq even though the companies believe that it is or would be in the best interest of their shareholders.

The Commission again urged the Exchange to consider possible modification to NYSE Rule 500 that could reduce potential anti-competitive effects.[18] In response, in November 1997, the Exchange submitted a proposed rule change to revise NYSE Rule 500.[19]

[13] Division of Market Regulation, *Market 2000: An Examination of Current Equity Market Developments* (January 1994) ("Market 2000 Study").

[14] *Id.*, at 31.

[15] The staff recommended that the NYSE modify, rather than rescind Rule 500 in its entirety. The Division recognized that "withdrawing securities from listing is an important corporate decision and that it is reasonable to ensure that careful management consideration is given to this decision." *See* market 2000 Study, *supra* note 13.

[16] *Id.* The Division suggested that "new standards could require approval by the board of directors and a majority of the independent directors, or it could require a review of the delisting decision by the board's audit committee." The Commission notes that the proposal initially filed by the NYSE would have approval of a majority of the issuer's *full* board of directors *and* its audit committee.

[17] *See* Letter from Jonathan G. Katz, Secretary, Commission, to Richard Grasso, Chairman and Chief Executive Officer, NYSE, dated May 27, 1997 ("May 1997 Letter").

[18] *Id.*

[19] According to the NYSE, beginning in May 1997, the Exchange consulted with two committees of its Board: its Public Policy Committee and its Quality of Markets Committee, as well as a number of NYSE advisory committees, including its Legal, Listed Company, Pension Managers, and Individual Investors Advisory Committees, about modifying NYSE Rule 500. The NYSE also consulted with other Exchange constitutents, including representatives of the Council of Individual Investors, the American Bar Association Task Force on Listing Standards, and various institutional investors. The NYSE represented to the Commission that these constituents overwhelmingly supported the revision, rather than the repeal, of Rule 500. *See* NYSE Response Letter, *supra* note 6, at 1–2.

[20] As initially proposed, domestic and non-U.S. issuers would be required to request Exchange members to transmit the notice of proposed delisting to beneficial stockholders. An issuer would be required to provide members with copies of the notice and to reimburse associated expenses. This requirement was subsequently deleted by the NYSE. *See* Amendment No. 2, *supra* note 7.

[21] *See* Amendment No. 1, *supra* note 3.

III. Description of the Proposal

The purpose of the proposed rule change, as amended, is to revise the procedures a NYSE-listed company must follow to voluntarily delist its securities from the Exchange. As discussed above, NYSE Rule 500 currently requires supermajority shareholder approval before a listed company can delist its securities from the Exchange: holders of 66⅔ percent of the securities must approve the delisting, and ten percent or more of the shareholders cannot object to the delisting .

The NYSE initially proposed, in November 1997, to require a listed company that wished to delist from the Exchange to obtain the approval of a majority of: (1) the company's full board of directors; and (2) the company's audit committee. The issuer would also have to provide its shareholders with between 45 and 60 calendar days written notice of the delisting. A non-U.S. issuer would only have to obtain board approval to delist its stock. A non-U.S. issuer also would have to provide holders with reasonable notice of its intention to delist, which would require the issuer to send written notice to U.S. holders and to follow home country practice to provide notice to non-U.S. holders.[20] An issuer's board of directors would be required to approve an application to delist listed bonds. Finally, the NYSE proposed to require an issuer to provide the Exchange with a copy of the notice provided to its shareholders and a copy of the delisting application submitted to the Commission.[21]

In response to the Commission's request for comment on the original proposal, the Commission received a number of comments, discussed below in Section IV, both for and against the proposal. As a result of those comments and discussions with Commission staff, the Exchange submitted Amendment No. 2 to the proposed rule change in November, 1998.[22]

Current Proposal

Amendment No. 2 modifies several aspects of the NYSE's initial filing. First, as amended, the proposal would require a listed company to obtain approval of its board of directors according to applicable state law requirements on majority votes, rather than requiring approval by a majority of the entire board. Generally, under states law, the majority of a quorum of a company's board of directors is sufficient for corporate decision.[23] The Exchange would continue to require audit committee approval. Second, the amended proposal would modify the proposed notice provision to require U.S. companies to provide actual written notice to no less than 35 of their largest record holders, rather than to all holders. A foreign issuer would have to provide such notice to its 35 largest U.S. shareholders. Third, the amended proposal would require both U.S. and foreign companies to issue a press release to inform shareholders generally of the proposed delisting. Finally, the minimum waiting period before a security could be delisted from the Exchange would be reduced from 45 calendar days to 20 business days after the later of the date the notice is sent or the press release is issued, and the maximum waiting period would be increased from 60 calendar days to 60 business days. Listed companies would have the right to request an extension of the waiting period, subject to approval by the Exchange.

IV. Summary of Comments

The Commission received 23 comment letters on the proposed rule change, as initially proposed.[24] The broad range of commenters included six corporations, two trade associations representing individual and institutional investors, two senators and two congressmen, four professors, three advisory committees to the NYSE, and the NASD. All commenters supported at least some change to the existing rule. Eight commenters generally supported the rule change as initially proposed, believing that it maintained a reasonable balance between providing companies with greater flexibility in listing decisions and ensuring sufficient

[22] *See* Amendment No. 2, *supra* note 7.

[23] *See e.g.*, DEL. CODE ANN. tit. 8, sec. 141 (1991).

[24] *See* note 5, *supra*. Comment received by the Commission on Amendment No. 2 are discussed at Part IV.B., below.

shareholder protection.[25] Two commenters stated that the proposal generally did not provide sufficient shareholder protection.[26]

As discussed below, many commenters expressed a number of concerns regarding the necessity and practicality of the requirements in the original proposal.[27] These commenters stated that the proposed requirements relating to the approval process, shareholder notification, and the mandatory waiting period were still anti-competitive, unduly burdensome, and costly for issuers.[28] Finally, four commenters expressed a desire to see all barriers to delisting removed and, therefore, advocated the repeal of NYSE Rule 500.[29]

A. Board of Directors Vote

Nine comment letters stated that the approval of a company's board of directors is reasonable because the decision to delist is within the purview of the issuer's business judgment.[30] Two commenters, however, contended that requiring a vote of a majority of the full board of directors is both unnecessary and inconsistent with the Exchange's listing standards, which require a simple vote of the board of directors to list on the Exchange.[31] One commenter further noted the disparate treatment between domestic and foreign issuers with respect to this requirement.[32]

In response, the Exchange proposes to modify its proposal to permit a listed company to obtain approval of its board of directors according to the applicable state law requirements on majority votes, rather than requiring approval by a majority of the entire board.[33]

B. Elimination of Shareholder Approval Requirements

While most commenters agreed that the current supermajority shareholder approval requirement is onerous and unnecessary, some commenters believed that the proposed approval process did not provide sufficient shareholder protection.[34] One commenter noted that the 45 to 60 day notice period is meaningless for listed companies that have eliminated their shareholders' right to call a special meeting protesting a delisting decision.[35] Three comment letters further expressed the concern that, under the proposal, the potential exists for issuers to delist in an attempt to circumvent shareholder voting rights under NYSE rules.[36] Accordingly, several commenters believed that majority shareholder approval requirements should be retained.[37]

The Exchange did not modify its proposal in response to these comments, noting that its proposal reflected its efforts to balance its competing interests by "provid[ing] appropriate protection for shareholders, while granting companies greater flexibility as they make decisions on the trading markets for their stock."[38]

C. Audit Committee Vote

Three commenters questioned the necessity of requiring the audit committee to approve the delisting of a stock.[39] One commenter stated that a company's audit committee is an unsuitable venue for reviewing external matters[40] and another commenter stated that board approval should be sufficient.[41] One commenter noted that this requirement could operate as a veto power over a full board majority vote to delist from the Exchange.[42]

While the Exchange considered these comments, it ultimately retained the requirement of audit committee approval.[43] The Exchange reasoned that an issuer's audit committee, composed entirely of independent directors, would be "the best possible proxy for shareholders" because the audit committee members could consider a proposed delisting "independently of any other reasons that may influence members of a company's board with closer ties to the company."[44] The NYSE Pension Managers Advisory Committee supported the NYSE's decision to require audit committee approval, stating that audit committee approval, combined with board approval, would "provide substantial and sufficient shareholder protection."[45]

D. Shareholder Notification Requirements

Seven comment letters supported requiring issuers to provide written notice of intent to delist to all shareholders of record.[46] Several commenters, however, believed that the proposed notification requirements would be anti-competitive, burdensome, and costly.[47] Two of these commenters believed that shareholder notification may wrongfully imply that delisting from the NYSE is harmful to investors.[48] One commenter noted that written notice to shareholders is not required under state law for ordinary business decisions,[49] and two commenters suggested some type of media notice would be a reasonable alternative.[50]

In response to the expressed concerns, the Exchange modified its proposal to require domestic issuers to provide written notice to no fewer than 35 of their largest record holders.[51] Foreign issuers would have to provide written notice to no fewer than 35 of their largest U.S. shareholders.[52] In addition, the Exchange modified its proposal to require all listed companies to issue a press release informing their shareholders of the proposed delisting.[53]

E. Waiting Period After Shareholder Notification

At one end of the spectrum, five commenters stated that the proposed 45 to 60 day waiting period would be insufficient, in certain circumstances, to

[25] *See* Letters from Professor Angel, Richard Koppes, Senators Dodd and D'Amato, NYSE Listed Company Advisory Committee, Congressman Markey, NYSE Legal Advisory Committee, NYSE Pension Managers Advisory Committee, and Issuer Network, *supra note 5*.

[26] *See* Letters from CII, and Fidelity I and II, supra note 5.

[27] *See* letters from Professor Peake, NASD I, DSC, Professor Christie, AAII, TCI, Novell, Congressman Oxley, Georgeson, Capital Research, and T. Rowe Price, *supra* note 5.

[28] *Id.*

[29] *See* Letters from TCI, Novell, and Georgeson, *supra* note 5. *See also* NASD II Letter, *supra* note 9.

[30] *See* Letters from DSC, Professor Christie, AAII, Professor McConnell, Fidelity I and II, TCI, Congressman Oxley, and NYSE Pension Managers Advisory Committee, *supra* note 5.

[31] *See* Letters from Professor Peake and NASD I, *supra* note 5.

[32] *See* Letter from Professor Peake, *supra* note 5.

[33] *See* Amendment No. 2, *supra* note 7.

[34] *See* Letters from CII, Fidelity I and II, and Senators Dodd and D'Amato, *supra* note 5.

[35] *See* CII Letter, *supra* note 5.

[36] *See* Letters from CII and Fidelity I and II, *supra* note 5.

[37] *See* Letters from CII and Senators Dodd and D'Amato, *supra* note 5.

[38] *See* NYSE Response Letter, *supra* note 6.

[39] *See* Letters from NASD I, Professor McConnell, and T. Rowe Price, *supra* note 5.

[40] *See* Letter from Professor McConnell, *supra* note 5.

[41] *See* Letter from T. Rowe Price, *supra* note 5.

[42] *See* Letter from NASD I, *supra* note 5.

[43] *See* NYSE Response Letter, *supra* note 6.

[44] *Id.* at 6.

[45] *See* NYSE Pension Managers Advisory Committee, *supra* note 6.

[46] *See* Letters from Professor McConnell, Richard Koppes, Senators Dodd and D'Amato, NYSE Listed Company Advisory Committee, Congressman Markey, NYSE Legal Advisory Committee, and NYSE Pension Managers Advisory Committee, *supra* note 5.

[47] *See* Letters from NASD I, DSC, TCI, and Congressman Oxley, *supra* note 5.

[48] *See* Letters from NASD I and DSC, *supra* note 5.

[49] *See* Letter from NASD I, *supra* note 5

[50] *See* Letters from NASD I and Congressman Oxley, *supra* note 5.

[51] *See* Amendment No. 2, *supra* note 7.

[52] *Id.*

[53] *Id.*

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protect shareholder interests.[54] Four of these commenters noted that the notice period would be sufficient if the issuer represents to the Exchange that it will list on a market that has comparable shareholder voting rights.[55] If the market is not comparable, the commenters recommended lengthening the notice period to six months to allow shareholders a reasonable time to convene a special meeting.[56] Four commenters further stated that the proposed waiting period would not provide sufficient time to allow institutional investors to liquidate portfolios without sizable and unnecessary losses.[57]

At the other end of the spectrum, several commenters opposed any waiting period on the grounds that it would be anti-competitive.[58] Some of these commenters contended that an issuer's decision to delist is an ordinary business decision and, therefore, does not require shareholder notification or a waiting period.[59] These commenters also noted that the Exchange does not have a similar requirement for companies that desire to list on the NYSE.[60]

In response, the Exchange modified its proposal to reduce the minimum waiting period before delisting from 45 calendar days to 20 business days, after actual written notice is sent or the press release is issued, whichever occurs later.[61] The Exchange also proposes to increase the maximum waiting period from 60 calendar days to 60 business days.[62] Finally, the amended proposal would allow companies to request an extension of the waiting period, subject to approval by the Exchange.[63]

F. Comments on Amendment No. 2 to the Proposed Rule Change

The Commission received 16 comment letters on the proposed modifications to the initial filing contained in Amendment No. 2 to the proposed rule change.[64] All but two[65] of the commenters generally supported the proposed modifications to NYSE rule 500. Specifically, Fidelity supported the amended proposal only under certain circumstances.[66] Fidelity reiterated its concern that, under the amended proposal, the potential exists for issuers to delist in an attempt to circumvent shareholder voting rights under the NYSE's rules.[67] Fidelity believed that the 20-day notice period would be sufficient if the issuer represents to the Exchange that it will list on a market that has comparable shareholder voting rights.[68] If the market is not comparable, Fidelity recommended, as a condition of delisting from the NYSE, that the issuer should be required to submit to the shareholders within the first year of delisting any proposal that would have been submitted to the shareholders within the first year under the NYSE's rules.[69]

Finally, the NASD opposed all aspects of the amended proposal and advocated the complete repeal of NYSE Rule 500.[70] The NASD contended that, even as amended, Rule 500 is anti-competitive and unduly burdensome in that it "significantly limits an issuer's discretion to delist from the NYSE, excludes competition from rival stock markets, harms investors, undermines the purposes of the Exchange Act, and discriminates among issuers." [71] The NASD reiterated its contention in an earlier comment letter that audit committee approval is unnecessary, hinders the delisting decision, and is inconsistent with most state law requirements.[72] The NASD further stated that a delisting decision is an ordinary business decision that warrants neither written shareholder notification nor a waiting period.[73]

V. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act[74] and the rules and regulations thereunder applicable to a national securities exchange.[75] In particular, the Commission believes that the proposed rule change is consistent with and furthers the objectives of Sections 6(b)(5) and 6(b)(8) of the Act.[76] Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.[77] Section 6(b)(5) also requires that the rules of an exchange must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[78] In addition, Section 6(b)(8) of the Act prohibits the rules of an exchange from imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the statute.[79]

As discussed above, over the last several years, the Commission and its staff have repeatedly expressed to the Exchange their concerns regarding the potentially anti-competitive effects of NYSE Rule 500. The commission's regulatory concerns centered upon its belief that the NYSE's rules governing voluntary delisting created nearly insurmountable obstacles to listed companies desiring to delist their securities from the Exchange, and as such, impeded competition between securities markets. The Commission believes that the amended proposal represents an important step toward easing the more onerous restrictions on voluntary delistings, while helping to ensure that shareholders will be given an opportunity to participate in the delisting decisionmaking process. As a result, the Commission believes that the NYSE's proposed revision of Rule 500 is consistent with the provisions of the Act discussed above. The voluntary delisting procedures proposed by the NYSE in Amendment No. 2 represent a significant and positive change over both the current delisting process and the delisting procedures proposed in the Exchange's initial filing, particularly with respect to the proposed approval

[54] *See* Letters from CII, Professor Angel, Fidelity I and II, and Congressman Markey, *supra* note 5.

[55] *See* Letters from Professor Angel, Fidelity I and II, and Congressman Markey, *supra* note 5.

[56] *Id.*

[57] *See* Letters from CII, Fidelity I and II, and Congressman Markey, *supra* note 5.

[58] *See* Letters from NASD I, DSC, AAII, TCI, Congressman Oxley, Capital Research, and T. Rowe Price, *supra* note 5.

[59] *See* Letters from NASD I, DSC, AAII, TCI, Congressman Oxley, and T. Rowe Price, *supra* note 5.

[60] *See* Letters from NASD I, Capital Research, and T. Rowe Price, *supra* note 5.

[61] *See* Amendment No. 2, *supra* note 7.

[62] *Id.*

[63] *Id.*

[64] *See* note 9, *supra*.

[65] *See* Letters from NASD II and Fidelity III, *supra* note 9.

[66] *See* Fidelity III Letter, *supra* note 9.

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *See* NASD II Letter, *supra* note 9. The Commission's consideration of the NYSE's amendments to Rule 500 under Section 19(b) of the Act, however, does not raise the question whether the Commission should take steps to remove NYSE Rule 500. In the matter before us, we consider only whether to approve or disapprove the proposed rule change, based on whether we find that the proposed rule change is consistent with the Act. 17 U.S.C. 19(b)(2).

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] 15 U.S.C. 78f.

[75] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[76] 15 U.S.C. 78f(b)(5) and (8).

[77] 15 U.S.C. 78f(b)(5).

[78] *Id.*

[79] 15 U.S.C. 78f(b)(8).

requirements, notification requirements, and mandatory waiting period.

A. Approval Process

The NYSE proposes to eliminate Rule 500's existing shareholder approval requirements.[80] Instead, the proposed amendment to NYSE Rule 500 would require the approval of a listed company's audit committee, as well as approval by an issuer's board of directors. The proposal, as amended, would allow the applicable state law to govern the issue of what constitutes a majority vote for corporate decisionmaking. The Commission anticipates that for the majority of listed companies, a proposal to delist could be approved by the majority of a quorum of the issuer's board.[81]

The Commission recognizes the significance of an issuer's decision regarding the appropriate market in which to list its securities. The Commission believes that issuers should carefully consider the best interests of their shareholders in both listing and delisting decisions, and that the NYSE's proposal should help to ensure that due consideration is given to a decision regarding whether to delist securities from the Exchange. While approval by the audit committee in addition to Board approval may not prove necessary to ensure careful decisonmaking, the Commission at this time does not believe that this requirement is unreasonably onerous. Moreover, these requirements are considerably less burdensome than either the existing supermajority shareholder approval requirements of the NYSE's initial proposal, which would have required a majority of the issuer's full board of directors. Ultimately, the Commission believes that the proposed requirements should ensure that careful consideration is given to the various factors influencing a company's decision regarding the appropriate market in which to list its securities. The Commission, however, expects the NYSE to continue to monitor the practical application of these requirements to ensure that they do not represent a significant and unnecessary impediment to delisting.

B. Shareholder Notification Requirements

Thge NYSE's proposal would eliminate the existing shareholder approval requirements, and instead, establish shareholder notification requirements. As initially proposed, the NYSE would have required issuers to provide actual written notice of their intent to delist their securities from the Exchange to all holders of record. Amendment No. 2 subsequently modified the proposal to require domestic issuers to provide actual written notice to no fewer than 35 of their largest record holders, rather than to all holders. Foreign issuers would have to provide such notice to no fewer than 35 of their largest U.S. shareholders. In addition, the amended proposal would require both U.S. and foreign companies to issue a press release to inform shareholders generally of the proposed delisting.

The Commission considers beneficial the proposed requirement that listed companies issue a press release to notify their shareholders of the proposed delisting. What is gained by mandating actual written notice to no less than the 35 largest holders of record is less clear, considering that such shareholders may be those most likely to keep abreast of the latest news regarding the issuer. The Commission believes that publishing a press release may achieve the same goal of informing an issuer's shareholders of the delisting decision without incurring the costs associated with actual written notice. Nonetheless, the Commission believes that the proposed shareholder notification requirement is a significant improvement over the original proposal and a reasonable means of addressing concerns raised by certain commenters.[82]

Therefore, although the Commission does not believe that the requirement of actual written notice to certain shareholders will prove necessary, we do not believe at this time that the requirement is inconsistent with the Act. That being said, however, the Commission urges the NYSE to review periodically the shareholder notification requirements of Rule 500 to determine whether the requirement of written notice to an issuer's largest shareholders continues to be warranted and consistent with the protection of investors.

C. Waiting Period After Shareholder Notification

Finally, the amended proposal would reduce the minimum waiting period before an issuer could apply to delist its securities from the Exchange, from 45 calendar days to 20 business days after the later of the date the written notice is sent or the press release is issued.[83] The amended proposal would also increase the maximum waiting period from 60 calendar days to 60 business days. The amended proposal would, however, permit NYSE-listed companies to request that the Exchange grant an extension of the waiting period.

The required waiting period following shareholder notification is designed to ensure that shareholders have a reasonable opportunity to communicate with a listed company's management regarding any concerns they may have regarding a proposed delisting. The Commission believes that reducing the minimum waiting period from 45 calender days to 20 business days is reasonable, as it should reduce the delay of the waiting period on listed companies that are anxious to delist their securities without significantly reducing the time period for investors to consider the implications of the delisting decision. In addition, the Commission believes that increasing the maximum waiting period and permitting listed companies to extend the period beyond that time frame is reasonable, as the proposed modification should provide listed companies with some flexibility in complying with the notification procedures. In particular, in those instances where it appeared that an issuer's decision to delist might face significant shareholder opposition, an issuer would be able to delay the delisting to ensure that shareholders are given an opportunity to play a meaningful role in the decisionmaking process.

VI. Conclusion

Because the proposed amendments to NYSE Rule 500 greatly ease the existing restrictions on NYSE-listed companies that wish to voluntarily delist their securities from the Exchange, the Commission believes that the proposal, as amended, is consistent with the Act.

[80] Although the proposal would eliminate the requirement that NYSE-listed companies obtain shareholder approval of a proposed delisting, the proposal would establish shareholder notification procedures to afford shareholders an opportunity to express their views on delisting decisions and take any action they deem necessary. *See* Section III for a detailed description of the proposed shareholder notification requirements.

[81] The requirements would, therefore, mirror those proposed by the NYSE for the voluntary delisting of listed bonds.

[82] *See* Letters from CII and Fidelity I, *supra* note 5.

[83] The proposal ties the date on which an issuer may delist to the later of the date the actual written "notice is sent or the press release is issued." Although this language may be interpreted to suggest that either the actual written notice or the press release may be issued first, the Commission cautions that notifying the largest shareholders of a decision to delist before issuing a press release may raise regulatory concerns regarding the fair access of information to all investors and may impose certain requirements on those shareholders that receive the notice before it is disseminated to the public. As a result, the Commission strongly urges the listed companies to issue the press release before sending written notice to the largest shareholders or to do both simultaneously.

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Although the Commission is approving the amended proposal because on balance the proposed changes represent a significant improvement over existing Rule 500, the Commission believes that the Exchange should continue to assess the rule's operation in order to determine whether it is appropriate to further eliminate impediments to voluntary delistings. We note that, even as amended, the NYSE's voluntary delisting rules continue to be more onerous than those of most other domestic markets.[84] Therefore, the Commission expects the NYSE to review the rule's restrictions on an ongoing basis to determine if they are necessary to protect investors, or whether they unnecessarily impede an issuer in changing marketplaces.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[85] that the proposed rule change (SR–NYSE–97–31), including Amendment Nos. 1 and 2, is approved.

By the Coommission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–19102 Filed 7–26–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3098]

United States—Egypt Science and Technology Joint Board; Public Announcement of a Science and Technology Program for Competitive Grants to Support International, Collaborative Projects in Science and Technology Between U.S. and Egyptian Cooperators

August 1, 1999.

AGENCY: Department of State.

ACTION: Notice.

EFFECTIVE DATE: August 1, 1999.

FOR FURTHER INFORMATION, CONTACT: Vickie Alexander, Program Administrator, U.S.—Egypt Science and Technology Grants Program, U.S. Embassy, Cairo/ECPO, Unit 64900, Box 6, APO AE 09839–4900; phone: 011-(20–2) 357–2925; fax: 011-(20–2) 354–8091; E-mail: alexanderva@state.gov

SUPPLEMENTARY INFORMATION:

Authority: This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt.

A solicitation for this program will begin August 1, 1999. This program will provide modest grants for successfully competitive proposals for binational collaborative projects and other activities submitted by U.S. and Egyptian experts. Projects must help the United States and Egypt utilize science and apply technology by providing opportunities to exchange ideas, information, skills, and techniques, and to collaborate on scientific and technological endeavors of mutual interest and benefit. Proposals which fully meet the submission requirements as outlined in the Program Announcement will receive peer reviews. Proposals considered for funding in Fiscal Year 2000 must be postmarked by October 31, 1999. All proposals will be considered; however, special consideration will be given to proposals that address priority areas defined/approved by the Joint Board.

These include priorities in the areas of information technology, environmental technologies, biotechnology, standards and metrology, and manufacturing technologies. More information on these priorities and copies of the Program Announcement/Application may be obtained by request.

Brooke Holmes,

Director, Office of Science and Technology Cooperation, Bureau of Oceans and International Environmental and Scientific Affairs and, Chair, U.S.—Egypt S&T Joint Board.

[FR Doc. 99–19151 Filed 7–26–99; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–62a]

Implementation of WTO Recommendations Concerning EC–Measures Concerning Meat and Meat Products (Hormones)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the imposition of 100 percent *ad valorem* duties on certain articles.

SUMMARY: The United States Trade Representative (USTR) has decided to suspend the application of tariff concessions and related obligations by imposing a 100% *ad valorem* rate of duty on three articles described in the Annex to this notice that are the products of certain member States of the European Communities (EC) as a result of the EC's failure to implement the recommendations and rulings of the World Trade Organization (WTO) Dispute Settlement Body (DSB) concerning the EC's ban on imports of U.S. meat from animals treated with certain hormones. This action constitutes the exercise of U.S. rights under Article 22 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and is taken pursuant to the authority granted to the USTR under section 301 of the Trade Act of 1974, as amended..

EFFECTIVE DATE: In accordance with U.S. rights under the DSU, effective July 29, 1999, a 100% *ad valorem* rate of duty shall be applied to the articles described in the Annex to this notice that are the products of one or more of the following EC member States—Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, or Sweden—and that are entered, or withdrawn from warehouse, for consumption on or after July 29, 1999. Any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after July 29, 1999 must be admitted as "privileged foreign status" as defined in 19 CFR 146.41. This action will follow authorization on July 26, 1999, by the DSB to suspend the application to the EC, and member States thereof, of concessions and related obligations under the General Agreement on Tariffs and Trade 1994 (GATT 1994).

ADDRESSES: 600 17th Street, NW., Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Sybia Harrison, Staff Assistant to the Section 301 Committee, (202) 395–3419, for questions concerning documents and USTR procedures; William Busis, Associate General Counsel, (202) 395–3150 or Ralph Ives, Deputy Assistant U.S. Trade Representative, (202) 395–3320, for questions concerning WTO developments regarding the EC's hormone ban; John Valentine, Attorney, International Agreements Staff, U.S. Customs Service, (202) 927–1219, for questions concerning classification; and Yvonne Tomenga, Program Officer, Office of Trade Compliance, U.S. Customs Service, (202) 927–0133, for questions concerning entries.

SUPPLEMENTARY INFORMATION: In December 1985, the EC adopted a directive on livestock production restricting the use of natural hormones to therapeutic purposes, banning the use of synthetic hormones, and prohibiting imports of animals, and meat from animals, to which hormones had been administered. That directive was later declared invalid by the European Court of Justice on procedural grounds and had to be re-adopted by the Council, unchanged, in 1988 ("the Hormone Director"). These measures, including the ban on the import of meat and meat products produced from animals to which certain hormones had been administered (the "hormone ban"), because effective January 1, 1989.

Following entry into force on January 1, 1995, of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"), the United States and, later, Canada, invoked formal WTO dispute settlement proceedings against the hormone ban. Prior to the establishment of the WTO panel, the EC replaced the Hormone Directive with another directive that re-codified and expanded the hormone ban. On May 20, 1996, the DSB established a dispute settlement panel ("the WTO panel") to examine the consistency of the hormone ban with the EC's WTO obligations.

On August 18, 1997, the WTO panel issued its report finding that the hormone ban is not based on scientific evidence, a risk assessment, or relevant international standards, in contravention in of the EC's obligations under the SPS Agreement. Upon an appeal to the WTO Appellate Body, on January 16, 1998, the Appellate Body affirmed that the hormone ban is not consistent with the EC's obligations under the SPS Agreement. At a meeting held on February 13, 1998, the DSB adopted the Panel and Appellate Body reports regarding the EC's hormone ban.

The EC subsequently requested four years to implement the DSB recommendations. The United States could not agree to this proposed implementation period, and the matter was referred to a WTO arbitrator. The arbitrator determined that the reasonable period of time for implementation was fifteen months, and would expire on May 13, 1999.

The EC did not implement the DSB recommendations and rulings regarding its hormone ban by May 13, 1999. Accordingly, on May 17, 1999, and in accordance with U.S. rights under Article 22 of the DSU, the United States requested authorization from the DSB to suspend the application to the EC, and member States thereof, of tariff concessions and related obligations under the GATT covering trade in an amount of $202 million. The EC objected to the level of suspension proposed by the United States, and claimed that the trade damage suffered by the United States was only $53 million. Pursuant to Article 22.6 of the DSU, the matter was referred to arbitration. The DSU provides that such arbitrations must be completed within 60 days of the end of the reasonable period of time for implementation, or in this case, by July 12, 1999.

The arbitrators issued their final decision on July 12, 1999, and determined that the level of nullification or impairment suffered by the United States as a result of the EC's WTO-inconsistent hormone ban was $116.8 million per year. Accordingly, upon DSB authorization, the United States is entitled under the DSU to suspend the application to the European Communities and its member States of tariff concessions and related obligations under the GATT covering trade up to that amount. A meeting of the DSB is scheduled for July 26, 1999, at which time the DSB, pursuant to Article 22.7 of the DSU, will grant authorization for such suspension of concessions.

Prior Notice and Comment

On March 25, 1999, the USTR announced preparations for exercising its right to request authorization to suspend tariff concessions on EC products if the EC failed to implement the DSB's recommendations and rulings concerning the EC's hormone ban by May 13, 1999. (64 FR 14,486). The March 25 notice sought public comment on a preliminary list of EC products with respect to which the United States was considering the suspension of tariff concessions. On April 19, 1999, USTR conducted a public hearing to receive testimony on the preliminary list.

Determination and Action

As a result of the EC's failure to implement the recommendations and rulings of the DSB concerning the EC's hormone ban, and pursuant to the WTO arbitrators' decision of July 12, 1999 and the authorization of the DSB on July 26, 1999, the USTR will suspend tariff concessions and related obligations under the GATT 1994 by imposing a 100% *ad valorem* rate of duty on the articles described in the Annex to this notice that are the products of certain EC member States. The amount of trade affected by this action, as measured by an average of 1996–1998 import values, is equivalent to the level of nullification or impairment ($116.8 million) determined by the WTO arbitrators in their decision of July 12, 1999.

This action exercises the rights of the United States under Article 22 of the DSU and is taken pursuant to the authority granted to the USTR under section 301 of the Trade Act. The articles affected by this determination were selected in light of the comments submitted to the Section 301 Committee in response to the March 25, 1999 notice and the testimony presented at the public hearing held on April 19, 1999.

Accordingly, effective July 29, 1999, with respect to articles that are the products of one or more of the following EC member States—Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, or Sweden—and that are entered, or withdrawn from warehouse, for consumption on or after July 29, 1999, the Harmonized Tariff Schedule of the United States is hereby modified in accordance with the Annex to this notice. Any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after July 29, 1999 must be admitted as "privileged foreign status" as defined in 19 CFR 146.41.

William L. Busis,

Chairman, Section 301 Committee.

BILLING CODE 3190–01–M

[84] *See* note 10, *supra.*

[85] 15 U.S.C. 78s(b)(2).

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Annex

The Harmonized Tariff Schedule of the United States (HTS) is modified by adding in numerical sequence the following superior text and subheadings to subchapter III of chapter 99 to the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", respectively.

	"Articles the product of Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, or Sweden:	
	Meat of bovine animals, fresh or chilled (provided for in heading 0201):	
9903.02.21	Articles of subheading 0201.10.05, 0201.10.10, 0201.20.02, 0201.20.04, 0201.20.06, 0201.20.10, 0201.20.30, 0201.20.50, 0201.30.02, 0201.30.04, 0201.30.06, 0201.30.10, 0201.30.30 or 0201.30.50	100%
9903.02.22	Articles of subheading 0201.10.50, 0201.20.80 or 0201.30.80	100%
	Meat of bovine animals, frozen (provided for in heading 0202):	
9903.02.23	Articles of subheading 0202.10.05, 0202.10.10, 0202.20.02, 0202.20.04, 0202.20.06, 0202.20.10, 0202.20.30, 0202.20.50, 0202.30.02, 0202.30.04, 0202.30.06, 0202.30.10, 0202.30.30 or 0202.30.50	100%
9903.02.24	Articles of subheading 0202.10.50, 0202.20.80 or 0202.30.80	100%
9903.02.25	Meat of swine, fresh or chilled (provided for in subheading 0203.11, 0203.12 or 0203.19)	100%
9903.02.26	Carcasses and half-carcasses of swine, frozen (provided for in subheading 0203.21)	100%
9903.02.27	Hams, shoulders and cuts thereof, with bone in, of swine, frozen (provided for in subheading 0203.22)	100%
9903.02.28	Edible offal of bovine animals, fresh or chilled (provided for in subheading 0206.10)	100%
9903.02.29	Edible offal of bovine animals, frozen (provided for in subheading 0206.21, 0206.22 or 0206.29)	100%
9903.02.30	Roquefort cheese (provided for in subheading 0406.40.20 or 0406.40.40)	100%
9903.02.31	Onions (other than onion sets or pearl onions not over 16 mm in diameter) and shallots, fresh or chilled (provided for in subheading 0703.10.40)	100%
9903.02.32	Truffles, fresh or chilled (provided for in subheading 0709.52)	100%
9903.02.33	Dried carrots, whole, cut, sliced, broken or in powder, but not further prepared (provided for in subheading 0712.90.10)	100%
9903.02.34	Other prepared or preserved meat, meat offal or blood, of liver of any animal (provided for in subheading 1602.20)	100%
9903.02.35	Rusks, toasted bread and similar toasted products (provided for in subheading 1905.40)	100%
9903.02.36	Juice of any other single fruit, not elsewhere specified or included, not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter (provided for in subheading 2009.80.60)	100%
9903.02.37	Roasted chicory and other roasted coffee substitutes and extracts, essences and concentrates thereof (provided for in subheading 2101.30)	100%
9903.02.38	Prepared mustard (provided for in subheading 2103.30.40)	100%

	Articles the product of France, the Federal Republic of Germany, or Italy:	
9903.02.39	Tomatoes prepared or preserved otherwise than by vinegar or acetic acid, whole or in pieces (provided for in subheading 2002.10)	100%
	Articles the product of France or the Federal Republic of Germany:	
9903.02.40	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof, fresh, chilled, frozen, salted, in brine, dried or smoked (provided for in heading 0504)	100%
9903.02.41	Soups and broths and preparations therefor (provided for in subheading 2104.10)	100%
9903.02.42	Single yarn (other than sewing thread), not put up for retail sale, containing 85 percent or more by weight of artificial staple fibers (provided for in subheading 5510.11)	100%
	Articles the product of France:	
9903.02.43	Hams, shoulders and cuts of meat of swine, with bone in, salted, in brine, dried or smoked (provided for in subheading 0210.11)	100%
9903.02.44	Wool grease (other than crude wool grease) and fatty substances derived from wool grease (including lanolin) (provided for in subheading 1505.90)	100%
9903.02.45	Chocolate and other food preparations containing cocoa, in blocks, slabs or bars, filled, weighing 2 kg or less each (provided for in subheading 1806.31)	100%
9903.02.46	Lingonberry and raspberry jams (provided for in subheading 2007.99.05)	100%
9903.02.47	Products suitable for use as glues or adhesives (other than animal glue, including casein glue, but not including fish glue) put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg (provided for in subheading 3506.10.50)	100%"

[FR Doc. 99–19174 Filed 6–26–99; 8:45 am]
BILLING CODE 3190–01–C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending July 16, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5950.
Date Filed: July 13, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 ME 0070 dated July 13, 1999
Mail Vote 019—Resolution 010u
TC2 Within Middle East Special Passenger Amending Resolution
Intended effective date: August 15, 1999.

Docket Number: OST–99–5963.
Date Filed: July 14, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 USA-EUR 0079 dated July 2, 1999
TC12 North Atlantic: USA-Europe Resolution r1–r29
PTC12 USA-Europe 0083 dated July 9, 1999—Minutes
PTC12 USA-Europe Fares 0036 dated July 13, 1999—Tables
Intended effective date: November 1, 1999.

Docket Number: OST–99–5988.
Date Filed: July 15, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 USA-EUR Fares 0033 dated July 16,1999
USA-UK Add-on Amounts
Intended effective date: October 1, 1999.

Docket Number: OST–99–5994.
Date Filed: July 15, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PAC/Reso/406A dated June 18, 1999
22nd PAC—Resolution 822
(Minutes, contained in PAC/Meet/160 dated June 18, 1999, are being filed this date with the non-U.S. portion of the agreement.)
Intended effective date: December 1, 1999.

Docket Number: OST–99–5995.
Date Filed: July 15, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PAC/Reso/406 dated June 18, 1999
22nd PAC—Finally Adopted Resolutions r1–22
PAC/Meet/160 dated June 18, 1999—Minutes
Intended effective date: December 1, 1999.

Andrea M. Jenkins,
Supervisory Dockets Officer.

[FR Doc. 99–19144 Filed 7–26–99; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending July 16, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–5948.
Date Filed: July 12, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 9, 1999.
Description: Application of Steven Wilson d/b/a Air Excursions, d/b/a Chilkat Aviation pursuant to 49 U.S.C. Section 41101 and Subpart Q, applies for a certificate of public convenience and necessity for an indefinite term to perform scheduled, interstate transportation of persons, property and mail.

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Docket Number: OST–99–5949.
Date Filed: July 12, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 9, 1999.
Description: Application of Aviation Ventures, Inc. d/b/a Vision Air pursuant to 49 U.S.C. Section 41101, Parts 201 and 204 and Subpart Q, applies for a certificate of public convenience and necessity to engage in interstate scheduled air transportation of passengers, property and mail using small aircraft.
Docket Number: OST–99–5965.
Date Filed: July 14, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 11, 1999.
Description: Application of Trans World Airlines, Inc. pursuant to 49 U.S.C. Section 41101 and Subpart Q, requests a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of persons, property and mail between St. Louis, on the one hand, and Mexico City, Acapulco, Cancun, Cozumel, Puerto Vallarta, Iztapa/Zihuatanejo, and Manzanillo, on the other hand, between New Orleans and Mexico City, and between New York and Cancun. TWA also requests that it be authorized to integrate its authority for the proposed route with its existing certificate and exemption authority.
Docket Number: OST–99–5998
Date Filed: July 16, 1999
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 13, 1999.
Description: Application of North American Airlines, Inc. pursuant to 49 U.S.C. Sections 41101(a) and 41102(a), (b), and, Subpart Q, applies for a new or amended certificate of public convenience and necessity for scheduled foreign air transportation of persons, property and mail between a point or points in the United States, on the one hand, and the terminal point of Georgetown, Guyana on the other hand.

Andrea M. Jenkins,
Supervisory Dockets Officer.
[FR Doc. 99–19145 Filed 7–26–99; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Anchorage International Airport, Anchorage, AK

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of Intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Anchorage International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 26, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ronnie V. Simpson, Manager, Alaskan Region Airports Division, Federal Aviation Administration; 222 West 7th, Box 14; Anchorage, AK 99513–7587.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Bill O'Leary, Controller, Alaska International Airport System, at the following address: State of Alaska Department of Transportation and Public Facilities, PO Box 196960, Anchorage, AK 99519–6960.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the State of Alaska Department of Transportation and Public Facilities under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Debbie Roth, Program Specialist, Alaskan Region Airport Division, Planning and Programming Branch, AAL–611A, 222 W 7th, Box 14, Anchorage, AK, 99513–7587, (907) 271–5443. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#99–01–C–00–ANC) to impose and use the revenue from a PFC at Anchorage International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 15, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the State of Alaska. Department of Transportation and Public Facilities, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 28, 1999.

The following is a brief overview of the application.

Application number: 99–01–C–00–ANC.
Level of the proposed PFC: $3.00.
Proposed charge effective date: January 1, 2000.
Proposed charge expiration date: April 1, 2003.
Total estimated PFC revenue: $15,000,000.
Brief description of proposed project: Terminal Redevelopment.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Passengers enplaned by any class of carrier or foreign air carrier if the passengers are enplaned on a flight to an airport serving a community which has a population of less than 10,000 and is not connected by a land highway to the land-based National Highway System (as defined by section 103(b)(5) of title 23).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** at the FAA, Alaska Region Airports Division, Anchorage, Alaska.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Anchorage International Airport, North Terminal, Room NB113A, 4600 Postmark Drive, Anchorage, Alaska, 99502.

Issued in Anchorage, Alaska on July 16, 1999.

Ronnie V. Simpson,
Manager, Airport Division, Alaskan Region.
[FR Doc. 99–18992 Filed 7–26–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 15, 1999

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

DATES: Written comments should be received on or before August 26, 1999 to be assured of consideration.

U.S. Customs Service (CUS)

OMB Number: 1515–0065.
Form Number: Customs Forms 7501 and 7501A.

Type of Review: Extension.
Title: Entry Summary and Continuation Sheet.
Description: Customs Form 7501 is used by Customs as a record of the import transaction, to collect proper duty, taxes, exactions, certifications and enforcement endorsements, and to provide copies to Census for statistical purposes.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents/Recordkeepers: 38,193.
Estimated Burden Hours Per Respondent/Recordkeepers: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 6,665,000 hours.
Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Room 3.2.C, Washington, DC 20229.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 99–19054 Filed 7–26–99; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Announcement of a General Test Regarding the International Trade Prototype

AGENCY: Customs Service, Department of the Treasury.
ACTION: General notice.

SUMMARY: This notice announces Customs plan to conduct the next phase in a series of prototypes collectively called the International Trade Prototype (ITP). This notice invites public comments concerning any aspect of the planned prototypes; informs interested members of the public of the eligibility requirements for voluntary participation in the second phase of the first prototype, called International Trade Prototype 1.2 (ITP1.2); and outlines the development and evaluation methodology to be used in the test.

This notice supersedes and replaces the **Federal Register** notice on the first phase of the first prototype, called International Trade Prototype 1.1 (ITP1.1), published by the U.S. Customs Service on June 3, 1998.

DATES: ITP1.2 will commence after June 30, 1999, and will run for at least 6 months with evaluations of the prototype occurring periodically. Comments concerning any aspect of this phase must be received on or before August 26, 1999. Operations under the procedures for ITP1.1 will cease upon implementation of ITP1.2.

ADDRESSES: Written comments regarding this notice and application - information submitted to be considered for voluntary participation in ITP1.2 should be addressed to the U.S. Customs Service, International Trade Prototype Team, Attn: Pamela McGuyer, 1300 Pennsylvania Avenue, NW., Room 5.4–129, Washington, DC 20229. Note that all comments received by U.S. Customs will be part of the public record.

FOR FURTHER INFORMATION CONTACT: For any prototype or participation questions, please contact Daniel Buchanan, U.S. Customs Service at (617) 565–6236, or Pamela McGuyer, U.S. Customs Service at (202) 927–0279, or Michael Coussins, United Kingdom, Her Majesty's Custom and Excise at 011 44 171 865 4728 in London, England.

SUPPLEMENTARY INFORMATION:

Background

The International Trade Prototype project has evolved from an international drive to streamline global trade. In both business and government, around the world, processes are being automated and reengineered. Trade and information are moving faster and more effectively all the time. Many international companies share critical data with business and trading partners around the world, and they expect government to maintain the leadership position it has taken in developing domestic electronic trade systems by moving into the global arena.

The ITP concept has been under consideration by both the U.S. Customs Service (USCS) and Her Majesty's Custom and Excise (HMCE) since 1996. The nucleus of this program is an extension of ideas developed in partnership with the trade community by various members of the Trans-Atlantic Team, which is primarily comprised of USCS and HMCE officers. The ITP concept also addresses issues raised by international traders, the World Customs Organization (WCO), the United Nations Conference on Trade and Development (UNCTAD), G–7 and other international organizations. The concept is intended to simplify and standardize customs processes and procedures in order to facilitate trade while maintaining effective and efficient control. Information on the ITP contained in an announcement published in the **Federal Register** (63 FR 30288) on June 3, 1998, is superseded by this notice.

In the United States Customs Service Annual Plan for Fiscal Year 1998, USCS states a number of objectives associated with increased cooperation and support of international trade automation. The plan's objectives include increased cooperation with other customs administrations at the multilateral, regional, and bilateral levels. The plan further states that USCS will work to promote standardized customs processing through implementation of "Customs Guidelines" and establishment of best practices. This is to be accomplished by working with the WCO and the international trade community to promote the development of international instruments to reduce customs procedural barriers to trade and to secure greater standardization, transparency, simplification, and automation worldwide.

USCS and HMCE have agreed that ITP will be delivered in a series of prototypes. Each prototype will be evaluated against predetermined success criteria. USCS and HMCE have conducted ITP1.1 since June 1998. USCS and HMCE have agreed that ITP1.1 operations will cease upon implementation of ITP1.2. Plans beyond ITP1.2 are also under consideration. Subsequent ITP prototypes will build on lessons learned in ITP1.2 and the need for enabling legislation will be evaluated.

If a subsequent ITP phase is planned following evaluation of ITP1.2, operations under ITP1.2 may be continued until implementation of the next phase. Future phases, prototypes, or participant expansion of this prototype will be announced in a **Federal Register** notice.

USCS will be testing ITP1.2 in accordance with section 101.9 of the Customs Regulations (19 CFR 101.9). By virtue of 19 CFR 101.9, USCS may impose requirements different than those specified in the Customs Regulations, but only to the extent that such different requirements do not affect the collection of revenue, public health, safety, or law enforcement.

Descripton of Proposed International Trade Prototype

The mission/vision of ITP is a standard customs regime that will facilitate the movement of goods internationally. This regime will operate within an electronic environment in which there will be automated systems using data that conform to

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internationally agreed upon standards. The amount of information supplied by business to customs will be minimized to the extent possible, consistent with the customs administrations' performance of their missions.

The goal of the project is to allow trade participants to supply their information only once (seamless transaction, i.e., exports equals imports) and will be restricted to the information that is essential to allow customs to effect the processing and clearance of goods.

More specifically, the mission/vision of the ITP is: "to deliver an automated system that utilizes internationally-accepted standard message formats and codes, streamlines data transmission, simplifies and facilitates global trade, and assists governments world-wide in enforcing their laws."

I. Goals, Principles and Scope of ITP1.2

The following goals, principles, and scope support USCS and HMCE missions and strategic plans and have guided development of ITP1.2.

Goals and Principles

• *Customs Administration Cooperation.* ITP will improve international trade practices that are best addressed through cooperative efforts between customs administrations, international traders, and international trade organizations.

• *International Trade Transactions.* This prototype will work toward the development of harmonized and simplified messages and procedures, based upon business practices, for transactions that support import, export, and transportation without the need for redundant entry or transmission of data.

• *Commercial and Enforcement Compliance Focus.* Each country will continue to use its own targeting and compliance measurement approaches and procedures to ensure that the legal requirements of all participating countries are met.

• *Account-Based Approach.* Both countries will work with prototype accounts, primarily importers and exporters, to better understand their systems, procedures, and levels of compliance, with mutual assistance between designated Customs Account Managers.

• *Automation and Information Sharing.* Automation will allow the sharing of information to enable the collection and exchange of standardized information mutually agreed to by both governments in a secured electronic environment.

• *Reduce the Burden on the Trade.* This prototype will work toward streamlining government reporting requirements placed upon the trade community.

Scope

The scope of ITP1.2 will include:

—Air and sea cargo shipments;
—Cargo release and supporting information;
—Merchandise restrictions and limitations agreed between customs administrations;
—Sharing of agreed standard data using various technological means accepted by both administrations;
—UN/EDIFACT message syntax between governments;
—Unique Consignment Reference Numbers (UCRN) to be used by USCS and HMCE in separate formats;
—A two-step import process in which data provided to the export customs administration is forwarded to the import customs administration and used, in conjunction with information supplied by the importer, to effect import cargo release;
—Acceptance of all participating traders being subject to compliance review;
—Risk assessment, anti-smuggling, and commercial compliance checks continuing to be applied to goods being moved under these simplified procedures; and,
—Development of agreed joint operational procedures to manage traders' accounts.

II. Development Methodology

ITP1.2 will be monitored by an Evaluation Task Force consisting of trade participants, the USCS Offices of Field Operations, Strategic Trade, Information and Technology, International Affairs, and other interested government agencies. This team will meet regularly throughout the prototype period in appropriate locations to set development milestones, monitor progress, resolve issues and evaluate program effectiveness. The development effort will be coordinated with National Customs Automation Program (NCAP) prototype programs such as the NCAP, Remote Location Filing, and Reconciliation Prototypes, and will be as consistent as possible with the overall direction of USCS development of the Automated Commercial Environment (ACE).

Potential participants should recognize that this is a prototype test of new processes. Data definitions, values and formats for electronic transmission of data will differ from those currently used in the Automated Export System (AES) and the Automated Commercial System (ACS). It is also important to note that development efforts undertaken for ITP1.2 may not meet the requirements for programs as they are finally implemented.

The public is invited to comment on any aspect of the ITP test as described by this notice. Public comments received that concern the methodology of the test program or procedures will be reviewed by both USCS and HMCE.

III. Description of Proposed ITP1.2

ITP1.2 will test an account-based declaration process that integrates preliminary export and preliminary import reporting. The number of U.S. participants will be limited. In order for a shipment to be eligible for processing under ITP1.2 procedures, both the exporter and the importer of the shipment must be ITP1.2 participants in their respective countries. ITP1.2 shipments must be exported from or entered at one of the following six U.S. ports: Baltimore, Chicago, Detroit, JFK, Newark, and San Francisco. Additional port selections may be considered upon request. For shipments processed under ITP1.2 procedures, export notification and import cargo examination decisions will be based primarily on pre-established account/entry information, minimizing the transaction data that needs to be transmitted to customs authorities prior to release of cargo. Cargo examinations will be performed mostly on the basis of selectivity criteria and for random compliance measurement sampling.

Information supplied by the trade participants concerning their ITP transactions will be shared between the USCS and HMCE customs administrations. The customs administrations will not further release this information unless specifically required or authorized by law.

U.S. Exports

While various automatic notifications and back-up procedures will also be supported, the basic declaration flow for U.S. exports in ITP1.2 will be as follows:

1. The exporter's application, including any amendments, will be used to assess the suitability of proposed export shipments for ITP1.2 processing.

2. Using an Internet web form provided by USCS, the exporter or an authorized agent will transmit a pre-departure export notification message to USCS for each ITP1.2 shipment exported from the U.S. The data elements of the pre-departure export notification message are:

—Universal Consignment Reference Number (to identify transactions)
—Country of Export
—Country of Import
—Mode of Transportation
—Port of Loading
—Shipping Reference (identification of Bill of Loading or Air Waybill)
—Shipping Quantity
—Exporter
—Importer

3. ITP1.2 shipments exported from the U.S. will be subject to physical inspections and compliance reviews by various federal agencies.

4. USCS will forward the data from the pre-departure export notification message to HMCE. Applicants should note that participants must agree to the transmission of these data between governments.

5. HMCE will use the forwarded data from the pre-departure export notification message to effect operational release of the cargo upon importation into the United Kingdom (U.K.)

6. All U.S. export reporting requirements for ITP1.2 shipments must be satisfied through existing export reporting procedures and systems.

U.S. Imports

While various automatic notifications, override, and back-up procedures will also be supported, the basic declaration flow for U.S. imports in ITP1.2 will be as follows. Note that data transmitted by participants to USCS with regard to imports into the U.S. will not routinely be forwarded to HMCE.

1. The importer's application, including any amendments, will serve as a pre-filed entry for each ITP1.2 shipment. USCS will assign an ITP Authorization Code to each participant who imports into the U.S. A participating importer or an authorized broker will provide USCS with timely and accurate notification of any proposed changes to the original application, e.g., changes in a participant's ITP1.2 business partners and merchandise imported under the prototype.

2. The U.K. exporter or an authorized agent will transmit a pre-departure export notification message to HMCE for each ITP1.2 shipment exported from the U.K. This will consist of the same data elements as the U.S. pre-departure export notification message which are listed under item 2 of the ITP1.2 export process, above. U.K. filers of pre-departure export notifications will transmit the U.S. importer's ITP Authorization Code to identify the importer.

3. Upon departure of the exporting conveyance, HMCE will forward the data from the pre-departure export notification message to USCS.

4. The USCS ITP1.2 system will assign, based upon the importer's request as provided in the application, an entry filer and entry number to each shipment. The entry filer, i.e., the importer or a licensed customs broker designated by the importer for ITP1.2 shipments, will be assigned to and responsible for the entry. The entry number will be assigned from the range of entry numbers provided in advance by each designated entry filer for that purpose.

5. The USCS ITP1.2 system will determine whether a physical examination of cargo will be performed for the shipment. An initial system determination that no physical examination of cargo will occur is subject to subsequent override by USCS.

6. If no physical examination of cargo is required, a record of the shipment is found in the USCS Automated Manifest System (AMS), and the ITP1.2 participant has indicated that it will enter ITP1.2 imports at the port of unloading reported for the shipment in AMS, the cargo will be released without additional data or documentation. Both the entry filer (through the USCS ITP1.2 system) and the carrier (through AMS) will receive automated cargo release notifications. The port of entry will be the port of unloading reported for the shipment in AMS.

7. If no physical examination of cargo is required, but no record of the shipment is found in the USCS Automated Manifest System (AMS), or the ITP1.2 participant has not indicated that it will enter ITP1.2 importations at the port of unloading reported for the shipment in AMS, the USCS ITP1.2 system will generate an e-mail message to the entry filer requesting supplemental shipment information. Using an Internet web form provided by USCS, the importer or broker must transmit the following data elements to USCS:

—Port of Unloading
—Port of Entry
—Estimated Date/Time of Arrival at Port of Entry
—Shipping Reference (if correct data is not provided in U.K. exporter's pre-departure export notification)
—Shipping Quantity (if correct data is not provided in U.K. exporter's pre-departure export notification)

If the Port of Unloading is different from the Port of Entry, movement of the cargo between ports must be accomplished under existing in-bond procedures.

8. If a physical examination of cargo is required, the USCS ITP1.2 system will generate an e-mail message to the entry filer requesting cargo exam data. Using either an Internet web form provided by USCS or an EDIFACT CUSDEC message, the entry filer must transmit the required data to USCS. Cargo exam data will include partial entry and commercial data, provided to the detailed line item level. Cargo will not be examined until these data are received by Customs.

9. The date of entry will be the latter of the date the merchandise arrives in the port where entry is made or the date the merchandise is released by U.S. Customs into the commerce of the United States. The release will obligate the continuous bond identified in the prototype application of the importer whose ITP Authorization Code is present in the pre-departure export notification data forwarded to USCS by HMCE.

10. Within 10 working days after the date of entry, U.S. entry summary reporting and payment requirements for ITP1.2 shipments must be satisfied through existing import reporting and payment procedures and systems.

IV. Remote Location Filing

Remote location filing allows U.S. Customs brokers to electronically file data for the entry of merchandise with USCS from any location in the United States. This feature of remote location filing will be supported in ITP1.2. A U.S. ITP participant or their customs broker who electronically transmits supplemental shipment information or cargo exam data for an ITP1.2 import shipment from a location other than the port where entry is made must meet the criteria for remote filing established in 19 U.S.C. 1414.

The designation of alternative locations for cargo examination will not be supported in ITP1.2. All cargo examinations will be conducted at the port where the cargo is entered, or at another location chosen by USCS.

V. Eligibility Requirements

Customs will select a limited number of participants for ITP1.2. In order to be eligible for participation in ITP1.2, a company operating in the United States must:

1. Be participating or approved for participation in the Importer Compliance Monitoring Program (see 63 FR 20442; April 24, 1998) or be scheduled for, be participating in, or, in the application, agree to undergo, and cooperate fully with, a Customs Compliance Assessment. At the time the application is filed, if a Customs Compliance Assessment or other type of Customs audit is in progress, the importer must be fully cooperating and

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providing timely and accurate information and the resources necessary for USCS to conduct the Compliance Assessment or audit. If the importer is subject to a compliance improvement plan, the importer must be abiding by the terms and conditions of the plan;

2. Export merchandise from the U.S. for importation into the U.K. and/or import into the U.S. merchandise exported from the U.K. Note that in order for a shipment to be eligible for processing under ITP1.2 procedures, both the exporter and the importer of the shipment must be ITP1.2 participants in their respective countries. It is therefore important that potential U.S. participants coordinate their participation with that of their U.K. trading partners;

3. For participants who wish to include U.S. export shipments in ITP1.2, provide or arrange for provision of timely and accurate electronic transmission to USCS of pre-departure export notification data for all included U.S. export shipments. If a participant does not transmit electronic data for a particular export shipment, USCS may exclude that shipment from ITP1.2 processing; and

4. For participants who wish to include U.S. import shipments in ITP1.2, commit in the application to file or maintain a continuous bond with sufficient liability coverage that will be obligated upon release of each ITP1.2 shipment.

Applications will be accepted from all volunteers; however, priority consideration will be given to:

1. ITP1.1 participants;

2. Companies within the top 463 U.S. importers ranked by entered value (the top 463 represent approximately 50 percent of all imports by value);

3. Companies within the top 250 U.S. importers within any of the USCS Primary Focus Industry (PFI) categories, which are:

a. Agriculture
b. Automotive
c. Communications—Telecommunications, Advanced Displays, Board Level Products
d. Critical Components—Bearings, Fasteners
e. Footwear
f. Production Equipment
g. Steel
h. Textiles—Textile Products, Wearing Apparel;

4. Companies that do not represent an unacceptable compliance risk; and

5. Companies that indicate they plan to maintain an average of at least 10 entries per month throughout the prototype period.

VI. Application

Importers and exporters who wish to participate in ITP1.2 must submit a written application within 30 days of this notice including the following information:

1. Participant name, address and designated contact person.

2. An e-mail address to be used by the USCS ITP1.2 system for automatic routing of ITP1.2 status notification messages.

3. For all exported cargo proposed for inclusion in the ITP1.2 test:

—Names and addresses of all U.K. importers;
—For each U.K. importer, a listing of all the six-digit HTS numbers in which the commodities to be exported are classified;
—Detailed explanation of any licenses or permits required for export of the listed commodities;
—Lists of all air and ocean freight carriers to be used;
—For each carrier, a listing of the trade routes (U.S. ports of loading and U.K. ports of unloading) for which the carrier will be used; and
—An estimate for the total number of export shipments per month the participant expects to include in the ITP1.2 test for each trade route.

4. For participants who wish to include U.S. export shipments in ITP1.2: the names and addresses of any agents who will provide ITP1.2 export data.

5. For all imported cargo proposed for inclusion in the ITP1.2 test:

—Names and addresses of all U.K. exporters;
—For each U.K. exporter, a listing of all the 6-digit HTS numbers in which the commodities to be imported are classified;
—Lists of all air and ocean freight carriers to be used;
—For each carrier, a listing of the trade routes (U.K. ports of loading and U.S. ports of unloading) for which the carrier will be used; and
—An estimate of the total number of import shipments per month the participant expects to include in the ITP1.2 test for each trade route.

6. For participants who wish to include U.S. import shipments in ITP1.2: a designated single import entry filer, i.e., the importer itself or a licensed customs broker, to file required import data for all ITP1.2 imports at U.S. ports of entry. Each entry filer designated by one or more participant importers must provide USCS with a range of entry numbers to be reserved for assignment by USCS to ITP1.2 shipments. Entry filers may not assign these numbers to non-ITP transactions.

7. For participants who wish to include U.S. import shipments in ITP1.2: the surety company and surety code and the number of the continuous surety bond that will cover all cargo processed under ITP1.2 procedures.

8. For applicants not participating in or approved for participation in the Importer Compliance Monitoring Program or not already scheduled for or participating in a Customs Compliance Assessment, a statement in which the applicant commits to undergo and cooperate fully with a Customs Compliance Assessment.

9. It is required that the following consent form be executed and filed with USCS:

Authorization to Provide ITP Data to UK Customs

I, _____, holding the position of

_____

at _____

(name of company)

being duly authorized to represent and bind said company, hereby authorize the United States Customs Service to provide Her Majesty's Custom and Excise of the United Kingdom all the information contained in our application for participation in the International Trade Prototype and the following export data related to shipments from the United States to the United Kingdom made pursuant to the International Trade Prototype:

a. Universal Consignment Reference Number
b. Country of Export
c. Mode of Transportation
d. Port of loading
e. Shipping reference (identification of bill of loading or air waybill)
f. Shipping quantity
g. Exporter
h. Importer

_____

(name of company)

unconditionally releases the United States Customs Service and its employees from any and all liability, and waives any and all legal action, claims and causes of action related to or concerning the release of the afore-listed data to Her Majesty's Custom and Excise for shipments made pursuant to the International Trade Prototype.

_____

Signature

_____

Date

ITP1.1 participants who wish to continue their participation must re-apply. These applications must contain all of the elements listed above, except that for items 3 and 4 they need provide only changes to the information provided in their applications for ITP1.1.

USCS will make import admissibility determinations on ITP1.2 shipments imported into the U.S. based on any cargo examinations and the information supplied with the application, which shall serve as a pre-filed entry for ITP1.2 purposes. Applications may be referred to HMCE and other government agencies for review. All ITP1.2 applicants will be notified in writing of their acceptance or rejection. USCS will assign an ITP Authorization Code to each accepted participant whose application indicates intent to include imports into the U.S. in the ITP1.2 test. USCS and HMCE will schedule meetings with each new participant to review the current prototype requirements, data elements, technologies, and evaluation criteria.

If an applicant is denied participation, the notification letter will include the reasons for that denial. The applicant may appeal such decision in writing within 15 days to the Director, Trade Programs. Applicants who are denied participation in ITP1.2 may re-apply if USCS subsequently opens participation to additional participants. USCS will publish a notice in the **Federal Register** if an expansion of participation is planned.

Applicants should note that participation is not confidential, and that lists of participants will be made available to the public. Additionally, all comments provided to U.S. Customs will be part of the public record.

VII. General Requirements and Restrictions

For ITP1.2, the following restrictions will be placed upon participants.

Participants who export ITP1.2 shipments from the United States:

A. Must export merchandise identified in the application as being from their typical commodities in their established lines of business to pre-identified U.K. importers;

B. Must export only the merchandise identified in the application as being within a range of pre-identified commodities (classified at the six-digit HTS level);

C. Must export merchandise using carriers pre-identified in the application;

D. Must export merchandise from a port selected by USCS for inclusion in the ITP1.2 test;

E. Must not include export shipments of used vehicles or of DEA essential and precursor chemicals for the manufacture of narcotics, shipments subject to State Department licensing or shipments destined to an embargoed nation;

F. Must not export any merchandise subject to export prohibitions or restrictions;

G. Must not export ITP1.2 merchandise under a transportation and exportation (T&E) entry;

H. Must ensure that ineligible merchandise is not included in ITP1.2 shipments. Customs will exclude ineligible shipments from ITP1.2 processing.

Participants who import ITP1.2 shipments into the United States:

A. Must enter merchandise identified in the application as being from their typical commodities in their established lines of business from pre-identified U.K. exporters;

B. Must enter only the merchandise identified in the application as being within a range of pre-identified commodities (classified at the six-digit HTS level);

C. Must enter merchandise transported by carriers pre-identified in the application;

D. Must enter merchandise for release into the commerce under a consumption entry, e.g., may not enter ITP1.2 merchandise into a warehouse or Foreign Trade Zone;

E. Must enter merchandise at a port selected by USCS for inclusion in the ITP1.2 test;

F. Must not enter merchandise in ITP1.2 if it is subject to antidumping or countervailing duty, absolute or tariff rate quota, visa requirements, or pre-release reporting requirements imposed by other federal agencies;

G. Must not import restricted or prohibited merchandise in prototype shipments; and,

H. Must ensure that ineligible merchandise is not included in ITP1.2 shipments. Customs will exclude ineligible shipments from ITP1.2 processing.

VIII. Maintenance of Account Information

Throughout the prototype period, participants must provide USCS with advance notification of any proposed changes to the information provided in the application. This notification must be provided to USCS at least 7 days before the effective date of a proposed change and will be considered a proposed amendment to the application. By notification of the participant, USCS may reject such an amendment or prohibit the participant's use of a particular carrier, U.K. importer or exporter, or the export or import of particular merchandise under this prototype. If USCS does not reject the proposed amendment within 7 days of the proposed amendment, it is accepted.

IX. Technical Requirements

ITP1.2 participants are required, at a minimum, to have the following hardware and software:

A. Pentium series PC with Windows 95, 98, or NT 4.0 operating system and an available serial port;

B. 28.8 Kbps or better modem;

C. Microsoft Internet Explorer 4.01 or higher (but not IE 5.0);

D. Established account with an Internet service provider; and,

E. Internet e-mail service and a valid e-mail address.

ITP1.2 will not support Netscape or Internet Explorer 5.0 Web browsers. Treasury Department and USCS automated information security requirements mandate the use of Data Encryption Standard III (DES III) for Internet security. For ITP 1.2, this will be accomplished using smart cards and serial readers. USCS will provide ITP1.2 participants with this equipment and supporting software. Up to three readers will be distributed to each ITP1.2 participant company. Although each user must have his/her own smart card and personal identification number, multiple users may access one reader. Smart cards will be initialized by USCS and sent to users in a separate package from the readers and software.

Users are encouraged to access ITP1.2 via the ITP Web site. Limited EDI support will be offered only for submission of cargo exam data and return of import release notification messages.

X. Misconduct under Prototype

All participants in ITP1.2 are required to abide by the terms and conditions of this notice.

A participant may be suspended from the prototype, subject to liquidated damages, penalties, and/or other administrative sanctions, and/or prevented from participation in future prototypes if the participant:

- Fails to cooperate fully in a Compliance Assessment or audit;
- Fails to provide timely and accurate data and adequate resources in support of a Customs Compliance Assessment or audit;
- Fails to comply fully with the terms of a Compliance Improvement plan;
- Exports or attempts to export goods to U.K. importers or conveyed by carriers not approved by USCS;
- Exports or attempts to export goods classified in commodity ranges not approved by USCS;
- Exports or attempts to export or submit data relating to prohibited or restricted merchandise or other non-eligible merchandise;

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- Enters or attempts to enter goods from U.K. exporters or conveyed by carriers not approved by USCS;
- Enters or attempts to enter goods classified in commodity ranges not approved by USCS;
- Files non-consumption import entries;
- Enters or attempts to enter or submit data relating to prohibited or restricted merchandise, merchandise subject to absolute or tariff rate quota or antidumping or countervailing duties, or other non-eligible merchandise;
- Fails to maintain sufficient continuous bond coverage;
- Files erroneous or untimely data;
- Makes late or inadequate payments;
- Fails to supply USCS with requested invoice data;
- Fails to maintain a sufficient level of compliance;
- Fails to exercise reasonable care in the execution of participant obligations; or,
- Fails to follow the procedures, terms, and conditions outlined herein, and applicable laws and regulations.

USCS has the discretion to suspend a prototype participant based on the determination that an unacceptable compliance risk exists. This suspension may be invoked at any time after acceptance in the prototype.

Any decision proposing suspension of a participant may be appealed in writing to the Director, Trade Programs, within 15 days of the decision date. Such proposed suspension will apprise the participant of the facts or conduct warranting suspension. Should the participant appeal the notice of proposed suspension, the participant should address the facts or conduct charges contained in the notice and state how he does or will achieve compliance. However, in the case of willfulness or where public health interests or safety are concerned, the suspension may be effective immediately.

XI. Regulatory Provisions Suspended

Certain provisions of parts 24, 111, 113, 141, 142, 143, and 159 of the Customs Regulations (19 CFR parts 24, 111, 113, 141, 142, 143, and 159) will be suspended during ITP1.2. Absent any specified alternate procedure, the current regulations apply.

XII. Prototype Evaluation

Once the participants are selected for ITP1.2, both the domestic Evaluation Task Force and the international Joint Evaluation Team will, during the initial 6 months of the test period, evaluate the effectiveness of the automation involved. Subsequent reviews will additionally consist of evaluating the data received from the participants, along with the internal and external process operations of ITP1.2. The intention of the evaluations is to enhance operational procedures and to develop the detailed data requirements that are needed for ITP.

Note that the fact of participation in ITP1.2 is not confidential information. Lists of participants, comments provided to U.S. Customs, and evaluation results may be made available to the public by means of the Customs Electronic Bulletin Board and the Customs Administrative Message System, and upon written request. The G–7 countries will participate in evaluation development and review. We stress that all interested parties are invited to comment on the design, conduct, and evaluation of ITP at any time during prototype.

Upon conclusion of the prototype, the final results will be published in the **Federal Register** and the Customs Bulletin as required by § 101.9(b) of the Customs Regulations and will be reported to Congress.

Dated: July 21, 1999.

Raymond W. Kelly,

Commissioner of Customs.

[FR Doc. 99–19071 Filed 7–26–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Changes Regarding Customs User Fees

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: On June 25, 1999, the Miscellaneous Trade and Technical Corrections Act of 1999 (the Act) was signed into law. The Act makes miscellaneous and technical changes to various trade laws, including 19 U.S.C. 58c pertaining to Customs user fees. While these changes are self-effectuating, Customs is announcing in this notice, for the convenience of the importing public, several changes affecting Customs administration of user fees. Appropriate amendments to the Customs Regulations will be published in due course.

EFFECTIVE DATE: The effective date for the statutory changes set forth in this document is July 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Matthews at (202) 927–0552.

SUPPLEMENTARY INFORMATION:

Background

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, codified at 19 U.S.C. 58c (section 58c), established user fees for certain inspectional services performed by the Customs Service. On June 25, 1999, the Miscellaneous Trade and Technical Corrections Act of 1999 (the Act) was signed into law (Pub. L. 106–36, 113 Stat. 127). The Act makes miscellaneous and technical changes to various trade laws, including 19 U.S.C. 58c.

Subtitle B (entitled "Trade Provisions") of Title II of the Act sets forth, in section 2418 (entitled "Customs User Fees"), several amendments to section 58c. These statutory amendments are self-effectuating and become effective before the Customs Regulations can be amended to reflect the changes. Regulatory amendments will be published as appropriate. In the meantime, Customs presents below those changes that affect the importing public.

Past Fees

Under 19 U.S.C. 58c(a), Customs is authorized to collect fees charged for certain Customs inspectional services. A schedule of such fees is set forth in paragraphs (1) through (10) of that section. Section 58c(a)(5) pertains to fees for passengers arriving in the United States aboard commercial vessels and commercial aircraft. The fees are collected from passengers by the companies involved in providing commercial vessel and aircraft travel and transportation and are remitted by such companies to the Secretary of the Treasury (see 19 U.S.C. 58c(d)).

Prior to enactment of the Act, section 58c(a)(5)(A) provided for a fee of $6.50 per passenger arriving in the United States aboard a commercial vessel or aircraft. The fee applied broadly to such passengers arriving in the United States from any place outside the customs territory of the United States. However, these provisions were effective only for fiscal years 1994 through 1997. Thus, after fiscal year 1997 (ending on September 30, 1997), the $6.50 fee was no longer in effect.

Prior to enactment of the Act, section 58c(a)(5)(B), applicable to fiscal year 1998 and each fiscal year following, provided for a fee of $5.00 per passenger arriving in the United States aboard a commercial vessel or aircraft. This fee, however, applied to such passengers arriving from places outside the United States with the following limitation: the fee did not apply to such passengers arriving from the places set forth in section 58c(b)(1)(A)(i): Canada, Mexico, and the territories, possessions, and adjacent islands of the United States. (See section 24.22(g)(2)(i)(B) of the Customs Regulations for the U.S. territories, possessions, and adjacent islands (19 CFR 24.22(g)(2)(i)(B)).)

The effect of these provisions was to impose a fee of $6.50 on all vessel and aircraft passengers arriving in the United States through September 30, 1997 (section 58c(a)(5)(A)), then to reduce that fee to $5.00 per such passenger for the following fiscal years, except for those passengers arriving from Canada, Mexico, or the United States territories, possessions, and adjacent islands (section 58c(a)(5)(B)). Thus, beginning with fiscal year 1998, there was no fee applicable under section 58c(a)(5) for vessel and aircraft passengers arriving from Canada, Mexico, or the United States territories, possessions, and adjacent islands.

New Fees

Paragraph (b)(1) of section 2418 of the Act amends sections 58c(a)(5)(A) and 58c(a)(5)(B) to modify this fee structure. The amendment accomplishes two things: (1) It maintains the $5.00 fee for passengers arriving in the United States aboard commercial vessels or aircraft from places outside the United States other than Canada, Mexico, and the United States territories, possessions, and adjacent islands; and (2) it imposes a fee of $1.75 per passenger arriving aboard commercial vessels (not commercial aircraft) from Canada, Mexico, and the United States territories, possessions, and adjacent islands. There is no fee under section 58c(a)(5) for passengers arriving aboard commercial aircraft from Canada, Mexico, or the United States territories, possessions, or adjacent islands. (The territories and possessions of the United States include American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. The adjacent islands of the United States include all of the islands in the Caribbean Sea, the Bahamas, Bermuda, St. Pierre, Miquelon, and the Turks and Caicos Islands.)

Procedures for Payment of Fees

Though not among the amendments set forth in the Act, the procedures for making payment to Customs of the fees provided for in sections 58c(a)(5)(A) and 58c(a)(5)(B) are here set forth for the benefit of affected parties. Under section 24.22(g)(3) of the Customs Regulations, it is the responsibility of the carriers, travel agents, tour wholesalers, or other parties issuing tickets or travel documents to collect the fee from all passengers who are subject to the fee (19 CFR 24.22(g)(3)). Under section 24.22(g)(4) of the Customs Regulations, these parties must make payment of the fees collected to Customs no later than 31 days after the close of the calendar quarter in which the fees are collected (19 CFR 24.22(g)(4)). Customs asks that remittances be made payable to the U.S. Customs Service and sent to: U.S. Customs Service, P.O. Box 198151, Atlanta, GA 30384.

Also under section 24.22(g)(4), the quarterly remittance must be accompanied by a statement that includes the following information: name, address, and taxpayer identification number of the party remitting the payment and the calendar quarter covered by the payment (19 CFR 24.22(g)(4)). Customs asks that the following additional information be provided in the statement: total number of tickets for which fees were collected, total amount of fees collected and remitted, and a breakdown of vessel fees collected and remitted under section 58c(a)(5)(A) (the $5.00 per passenger fee) and section 58c(a)(5)(B) (the $1.75 per passenger fee). This breakdown is requested to serve Customs need to separate and distinguish the amounts collected for these two fees. Affected parties are reminded of the record maintenance requirements of section 24.22(g)(6) (19 CFR 24.22(g)(6)).

Exemption From Fee

Enactment of the $1.75 per passenger fee provision of 19 U.S.C. 58c(a)(5)(B) (discussed in the section immediately above), applicable to commercial vessel passengers arriving in the United States from Canada, Mexico, or the United States territories, possessions or adjacent islands, necessitated an amendment to section 58c(b)(1)(A)(i). This latter section, prior to enactment of the Act (and since expiration of fiscal year 1997 (see section 58c(b)(1)(C))), has prohibited application of a fee under section 58c(a) to passengers arriving in the United States from Canada, Mexico, or the United States territories, possessions, and adjacent islands, whether such journey originated in one of the named places or originated in the United States and was limited to the named places. This provision, if left unmodified, would be in direct conflict with the $1.75 fee provision of section 58c(a)(5)(B), as amended by the Act.

In order to remove this conflict, paragraph (b)(2) of section 2418 of the Act simultaneously (with the amendment of subsection 58c(a)(5)(B) in paragraph (b)(1) of the Act) amends section 58c(b)(1)(A) to exclude from the prohibition of paragraph (i) fees imposed under section 58c(a)(5)(B). Thus, section 58c(b)(1)(A)(i) now prohibits application of a fee to passengers arriving in the United States from Canada, Mexico, or the territories, possessions, or adjacent islands of the United States unless those passengers arrive in the United States aboard commercial vessels.

Conforming Amendments to be Made to Customs Regulations

Appropriate regulatory amendments will be published in due course to reflect the changes necessitated by the above and other amendments to 19 U.S.C. 58c. As the above amendments to the statute are effective 30 days after the date of enactment of the Act, which occurred on June 25, 1999, the fees discussed in this document become effective on July 25, 1999.

Dated: July 21, 1999.

Wayne Hamilton,

Assistant Commissioner, Office of Finance.

[FR Doc. 99–19070 Filed 7–26–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0040]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information to determine a lender's and veteran's request for guaranty of a home loan to occupy incomplete property.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 27, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits

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Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to "OMB Control No. 2900–0040" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Postponement of Offsite or Exterior Onsite Improvements—Home Loan, VA Form 26–1847.

OMB Control Number: 2900–0040.

Type of Review: Extension of a currently approved collection.

Abstract: The form serves as the lender's and veteran's request for guaranty of a home loan for which offsite or exterior onsite improvements are incomplete to permit the veteran's occupancy of the property. Without this information, it would not be possible for loans to be guaranteed in such cases with adequate protection for the veterans and VA, and for veterans to occupy affected properties. The form provides basic information for VA determinations as to whether loan funds were properly disbursed as required by 38 CFR 36.4301 and 36.4303(d).

Affected Public: Individuals or households, Business or other for-profit.

Estimated Annual Burden: 2,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 5,000.

By Direction of the Secretary.

Dated: May 28, 1999.

Sandra McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–19089 Filed 7–26–99; 8:45 am]

BILLING CODE 8520–01–P

Corrections

Federal Register
Vol. 64, No. 143
Tuesday, July 27, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Opportunity for Licensing: Vasostatin, an Inhibitor of Endothelial Cell Growth and Angiogenesis

Correction

In notice document 99–18377, appearing on page 38686, in the issue of Monday, July 19, 1999, make the following corrections:

1. The subject line should appear as set forth above.

2. In the first column, under **SUMMARY**, in the tenth line, "at" should read "a".

[FR Doc. C9–18377 Filed 7–26–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-957-00-1420-00: GP9-0225]

Filing of Plats of Survey: Oregon/ Washington

Correction

In notice document 99–16271, appearing on page 34677 in the issue of Monday, June 28, 1999, make the following correction:

In the first column, in the **SUMMARY** section, in the list of plats filed under the Willamette Meridian, Oregon, the last entry "T. 8 S., R. 3 W." should read "T. 8 S., R. 3 E."

[FR Doc. C9–16271 Filed 7–26–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41572; File No. SR-CTA/CQ-99-01]

Consolidated Tape Association; Notice of Filing of Fourth Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan and the Third Charges Amendment to the Restated Consolidated Quotation Plan

Correction

In notice document 99–16953, beginning on page 36412, in the issue of Tuesday, July 6, 1999, make the following correction:

On page 36412, in the first column, the docket number is corrected to read as set forth above.

[FR Doc. C9–16953 Filed 7–26–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination; Alliance Assurance Company of America, American Mercury Insurance Company, Boston Old Colony Insurance Company, CIGNA Indemnity Insurance Company, CIGNA Insurance Company of the Midwest, Continental Reinsurance Corporation, European Reinsurance Company of America, Illinois National Insurance Company, Insurance Company of North America, Kansas City Fire and Marine Insurance Company, London Assurance of America, Inc. (The), Mid-Century Insurance Company, Phoenix Assurance Company of New York, Providence Washington Insurance Company, Sea Insurance Company of America (The), Sun Insurance Office of America Inc., Tokio Marine and Fire Insurance Company Limited (The), U.S. Branch, Transcontinental Insurance Company, Transportation Insurance Company and Valley Forge Insurance Company

Correction

In notice document 99–17012 appearing on page 36421 in the issue of Tuesday, July 6, 1999, make the following correction(s):

In the first column, in the heading, in the eighth line, "GIGNA" should read, "CIGNA".

[FR Doc. C9–17012 Filed 7–26–99; 8:45 am]

BILLING CODE 1505–01–D

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Part II

Department of Transportation

Office of the Secretary

14 CFR Parts 221, 250, and 293
Exemptions From Passenger Tariff-Filing Requirements in Certain Instances; Final Rule

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 221, 250, and 293

[Docket No. OST–97–2050]

RIN 2105–AC61

Exemptions From Passenger Tariff-Filing Requirements in Certain Instances

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: Pursuant to the notice procedures in new part 293, the Department is exempting U.S. and foreign air carriers from the statutory and regulatory duty to file international passenger tariffs with DOT in certain instances, subject to the reimposition of the duty in specific cases when consistent with the public interest. In addition, the Department is reissuing a new version of part 221 that eliminates most of the traditional paper format and filing procedures set forth in the present version of 14 CFR part 221.

Following the notice specified in new part 293, certain currently effective price tariffs are canceled as a matter of law, pending tariff applications covered by the exemption are dismissed, and new tariffs will generally not be accepted for filing. In response to comments, currently effective rules related to general "conditions of carriage" of each passenger, set forth in general governing rules tariffs, may continue in legal effect for 180 days from the date of effectiveness of the final rule, although carriers may elect to cancel them earlier and may also deviate from such rules through express agreement. This action is taken on the Department's initiative in order to streamline government operations and eliminate unjustified regulatory burdens.

DATES: This regulation is effective on September 10, 1999. However, the cancellation of certain general tariff rules will take place 180 days later as provided in § 293.10 of new part 293.

FOR FURTHER INFORMATION CONTACT: Mr. John H. Kiser or Mr. Keith A. Shangraw, Office of the Secretary, Office of International Aviation, X–43, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–2435.

SUPPLEMENTARY INFORMATION:

Background

Section 41504 of Title 49 of the United States Code (the Code), formerly section 403(a) of the Federal Aviation Act of 1958, as amended, requires every U.S. and foreign air carrier to file with the Department, and to keep open for public inspection, tariffs showing all prices for "foreign air transportation" between points served by that carrier, as well as all the rules relating to that transportation to the extent required by the Department. This requirement includes passenger fares, related charges and governing rules. 14 CFR part 221 establishes the detailed tariff-filing rules and authority for approvals, rejections and waivers. Once allowed to become effective by the Department, these tariffs become legally binding terms in the contract of carriage for international air transportation.

In his Regulatory Reinvention Initiative Memorandum of March 4, 1995, President Clinton directed Federal agencies to conduct a page-by-page review of all of their regulations and to "eliminate or revise those that are outdated or otherwise in need of reform." In response to that directive, the Department has undertaken a review of its aviation economic regulations contained in 14 CFR Chapter II to determine whether changes should be made to promote economic growth, create jobs, or eliminate unnecessary costs or other burdens on the economy. Among the regulations reviewed are those governing the filing of tariffs by airlines for their foreign air transportation, set forth in 14 CFR part 221.

In two recently completed rulemaking proceedings, the Department determined that the amount of tariff material filed by carriers exceeded our regulatory requirements in certain respects; that alternative methods existed for protecting consumers and other elements of the public interest which are more effective than filed tariffs; and that procedures should be developed to foster the electronic filing and the review of those tariffs which should continue to be filed. On November 30, 1995, the Department published a final rule exempting carriers from their regulatory duty to file tariffs for the foreign air transportation of cargo. On April 24, 1996, the Department published a final rule establishing procedures for the electronic filing of passenger rules tariffs.

In this, the third rulemaking proceeding involving the tariff system, undertaken as part of the President's directive, the Department has determined that the filing of certain tariffs with the Department for the foreign air transportation of passengers is no longer necessary or appropriate, and accordingly grants another exemption from the tariff-filing requirement set forth in part 221. Under the rule in new part 293, the Assistant Secretary will issue a notice specifying the terms of the exemptions for markets in Category A (no fare filing), Category B (normal economy fare filing only) or Category C (filing all fares), taking into account specific factors present in each market. After this first determination, the Assistant Secretary, acting on his own initiative or in response to petitions, may issue further notices transferring countries between categories. For example, the entry into force of an "open skies" air transport agreement would warrent moving a country into Category A where no fares will be filed. On the other hand, foreign government actions denying U.S. carrier pricing initiatives, could justify the re-institution of full tariff filing requirements in Category C.[1]

In addition, the Department has identified a substantial number of provisions in part 221 that are redundant, contain obsolete references, or are out-dated given present regulatory practices and needs. Accordingly, the Department is issuing a general revision of part 221 to eliminate redundancies, excess verbiage and obsolete provisions; to make necessary technical changes; and to reorganize the subparts in a more logical order.

Comments

We received comments on our proposal from Air Pacific Limited (Air Pacific); the Airline Tariff Publishing Company (ATPCO); the Air Transport Association of America (ATA); British Airways PLC (BA); Federal Express Corporation (FedEx); the International Air Transport Association (IATA); Korean Air Lines Co., Ltd. (KAL); Pakistan International Airlines Corporation (PIA); Qantas Airways Limited (Qantas); and United Air Lines, Inc. (UAL). Finally, on September 30, 1997, ATA filed a motion for leave to file supplemental comments.[2]

The carriers did not comment upon the proposed revisions to part 221 itself, except where expressing general approval. However, ATA expressed concern with our tentative decision to leave intact the existing Warsaw Convention notice requirements in part 221 until future needs in this area become clearer. While initially requesting only that the Department be prepared to make future changes to these requirements to reflect the new passenger liability limits agreed to by many carriers, ATA, in its supplemental comments, urges the Department to adopt herein "a more flexible notice requirement" that would permit carriers which have filed tariff revisions waiving the Warsaw passenger liability limits pursuant to DOT-approved agreements to devise, subject to DOT approval, a single ticket notice to replace both the detailed notice prescribed in current § 221.175 for services involving the United States and the separate, worldwide Warsaw liability notice appearing on standard ticket stock.

Comments regarding the proposed exemption from passenger tariff filing requirements were generally positive. For the most part, BA, FedEx, KAL, PIA and UAL, as well as ATA and ATPCO generally support the proposal. IATA takes no position on the proposal to exempt airlines from the requirement to file passenger fare tariffs in certain instances, but supports the proposal to exempt all airlines from the requirement to file general passenger rules tariffs. Air Pacific and Qantas oppose the proposed exemption from filing general passenger rules tariffs because they prefer to continue to rely on the presumed notice to passengers, stemming from the formal filing of these rules, as a defense against various kinds of passenger claims. ATA urges the Department to remove the word "conflicting", which it believes limits protection from preemption by state laws, in the proposed section 293.21(c). This section sets uniform disclosure requirements which preempt any conflicting State requirements on the incorporation of terms by reference into contracts of carriage for scheduled transportation of passengers in foreign air transportation.

Several parties express concerns or condition their support upon modifications to the proposal. ATA, BA and IATA support the exemption from the requirement to file general passenger rules provided that the cancellation of these rules tariffs is extended an additional 90 days (for a total transition period of 180 days following the Assistant Secretary's notice). ATPCO expresses concerns about the amount of time needed to adjust its electronic filing system to the new filing regime, but nevertheless states that the airlines should not be denied immediate relief from the burden of filing their tariffs. Accordingly, APTCO requests that the Department permit carriers or their agents to continue to file their tariffs electronically in the same manner as today without paying the Department's filing fees until ATPCO can reconfigure its electronic filing system (EFS). ATA requests that the Department not grant carriers of countries in Categories A or B an exemption from filing fares for travel between the United States and a third country (*i.e.*, on fifth and sixth freedom services) unless that carrier's home country has agreed bilaterally to a pricing regime which affords U.S. carriers the right to exercise price leadership in fifth and sixth freedom markets, as well as in third and fourth freedom markets. Finally, UAL takes issue with the categories in which the NPRM proposed to place certain countries and urges that the NPRM's country-category list and any future actions regarding categorization of countries be subject to the procedures for public notice and comment.

Decision

We have decided to adopt the NPRM essentially as proposed, with certain minor changes in response to the comments. First, we will grant the requests to extend the proposed transition period for cancellation of the general passenger rules tariffs in section 293.22 from 90 days to 180 days after the Assistant Secretary issues his notice containing the initial description of those general conditions of passenger carriage that must still be filed in tariffs. On the other hand, we will grant carriers the option to cancel their official general rules tariffs involving conditions of carriage before the end of the 180 day period, and to deviate from any rules on file by express agreement with the passenger, such as by ticket notation.

Second, while not adopting ATA's suggestion in its entirety, we will modify our category procedures to allow the Assistant Secretary the option to require carriers who are nationals of countries placed in Categories A and B nevertheless to continue to file their passenger tariffs for services between the U.S. and third countries if effective price leadership opportunities for U.S. carriers are not available between the foreign carrier's home country and third countries.

Finally, third, we will amend the language of section 293.21, as suggested by ATA, to avoid any confusion on the state of federal preemption law under Title 49.

Discussion of Comments and Issues

1. Transitional Period

Most of the responses concern the length of the transitional period. Consistent with our action on our final rule exempting carriers from filing their cargo tariffs, we proposed a 90-day phase-out schedule for passenger rules tariffs. ATA, BA and ATA feel that a 90-day transitional period would be too short, and that more time is needed to revise passenger travel documents and notice procedures. ATA argues that carriers need more time to assure a smooth transition to the new regime given the longstanding requirement to file passenger tariffs and the overall complexity of the foreign air transportation environment. BA asserts that continuation of that existing regime for another 180 days would cause no harm, and would benefit both passengers and carriers by reducing the possibility that the old tariff system for filing passenger rules will expire before the new section 221.177 notice system can be fully implemented.

We feel that the concerns expressed about the need for a longer period to facilitate a smooth transition to the new regime have merit; therefore, we have no problem with extending the transition period under section 293.22 to 180 days. While we did not extend the transitional period in the case of our cargo tariff filing exemption, in this case we believe that the diverse general rules involved may make the transition process more complicated, warranting a longer transition period. This 180-day transition period will begin after issuance of the Assistant Secretary's notice setting forth the initial list of exempted markets and the descriptions of those general rules relating to conditions of carriage that are being exempted from the filing requirement.

2. ATPCO EFS Reconfiguration

ATPCO is concerned not only about the time needed to reconfigure its electronic tariff filing system but also with the associated expense. Accordingly, while it will have to continue to file tariffs in the exempted markets until it completes reprogramming to segregate exempted and non-exempted markets, ATPCO suggests that the Department desist from collecting the usual filing fees on exempted fares and rules on the grounds that DOT will not have to review the exempted matter.

With regard to ATPCO's request for relief from paying our filing fees, we will continue to collect these fees for tariffs filed during the period it needs to reprogram its electronic tariff filing system to exclude exempted material. Until the Assistent Secretary's notice becomes effective, the exemption for certain markets and fares is not in force. Further, until ATPCO completes its reprogramming, the Department will continue to receive passenger tariff filings that include both required and

[1] However, adverse foreign government actions in areas not directly involving pricing, such as route and capacity issues, would not warrant re-institution of full Category C tariff filing requirements, except in the most unusual circumstances.

[2] We grant ATA's motion.

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exempted tariff material. Department analysts will have to continue to review each tariff filing during this period to ensure that no required tariff material is overlooked. In the short term, demands on the Department's limited resources will continue at the same level.

3. Comments on Country Categories

UAL voices concerns about the classification of certain countries. It disagrees with the tentative placement of one of the listed countries into Category A, rather than Category C, for reasons related to its alleged noncompliance with the terms of its bilateral agreement with the United States.

It appears that some commenters believe that the markets listed in the NPRM will be immediately exempted from our tariff filing requirements upon issuance of a final rule on Part 221. This is not so; these markets were included in the NPRM for illustrative purposes only based on the status of bilateral agreements and relations at that time. We would like to make it clear that a further notice from the Department is necessary before any markets are exempted from our tariff filing requirements. The final rule will merely put this mechanism into place.

We do not agree with United that it is appropriate to specify in this rule whether and when the Department may request comment on its categorization of countries or adjustments to fifth/sixth freedom filing requirements. As a general matter, the characterization of bilateral agreements and their implementation for regulatory purposes is a question of the international aviation policy judgment of the Department, and certainly that would be the case under part 293. Carriers experiencing significant bilateral problems usually keep the Department well informed of the circumstances. A case in point is the determination of "liberal" markets for SFFL purposes. Certainly, if a situation arises in which the Department believes that public comment would be helpful, it will provide specific notice and opportunity for comment. For this reason, we will amend subsection 293.10(c) to delete the implication of advance formal procedures for public comment.

4. Filing of Tariffs for Fifth and Sixth Freedom Markets

ATA is concerned that under the rule as proposed, foreign carriers from countries in Categories A and B could be exempt from filing fares for their fifth and sixth freedom services to and from U.S. points even though their government has not agreed bilaterally to a pricing regime which affords U.S. carriers the right to exercise price leadership on their fifth and sixth freedom services to/from that country. UAL generally supports ATA's concerns.

We find that this concern has merit. Such price leadership issues are certainly relevant to our stated category criteria. However, this is an area in which we have decided to allow for a more flexible response than that suggested by ATA. We have decided to add a new subparagraph (c) to section 293.10 of our proposal. Under that subparagraph, the Assistant Secretary may require carriers of countries placed in Categories A or B nevertheless to continue to file passenger tariffs for services they offer between the U.S. one or more third countries. In making this determination, the Assistant Secretary will take into consideration the bilateral rights or extra-bilateral opportunities of U.S. carriers to comparable price leadership initiatives, as well as their implementation by the foreign carrier's government.

Consequently, if there are countries in categories A or B that, in fact, restrict fifth and/or sixth freedom fare initiatives of U.S. carriers for services between that foreign country and a third country, we may consider either placing that country into a different category or nevertheless requiring its carriers to continue to file tariffs for their fifth and/or sixth freedom services with the Department.

Our determinations whether to apply a tariff filing requirement on foreign carriers' fifth and/or sixth freedom services will be based on the actual treatment by the foreign carrier's government of comparable U.S. carrier pricing initiatives as well as on the formal bilateral arrangements involved. The purpose of our rulemaking here is to lessen the burden of filing passenger tariffs on both carriers and the Department. ATA's proposal for a general requirement that the bilateral rights be explicit would affect a significant number of countries where we do not have formal fifth and/or sixth freedom price leadership rules in place but, nevertheless, where U.S. carriers in practice may set such prices without government interference. These additional filings would simply place an additional burden on the Department that could not be justified by the small advantage gleaned from requiring carriers from countries who do not actively regulate US carriers prices to file tariffs for their fifth and sixth freedom services.

5. Preemption

ATA requests that the word "conflicting" be deleted from section 293.21(c) arguing that such a qualification does not appear in the statement of federal preemption regarding the incorporation by reference of contract terms for domestic travel in 14 CFR 253.1, and that it suggests a legal standard that would be inconsistent with the settled state of the law on federal preemption under section 105(b) of the Airline Deregulation Act, now section 41713(b) of Title 49.

We will make the change that ATA recommends. It was not our intention to limit or confuse in any way the scope of preemption of state law under section 41713(b), interpreted in such cases as *Morales* v. *Trans World Airlines*, 112S. Ct. 2031 (1992), and *American Airlines* v. *Wolens*, 115S. St. 817 (1995). In both cases, the Supreme Court found that any state laws broadly "having a connection with or reference to airline rates, routes or services" are preempted, without the need for a "conflict of laws" analysis.

6. Warsaw Convention

ATA's initial comments acknowledged that the recently approved intercarrier agreements waiving Warsaw Convention passenger liability limits could require some changes to part 221, but concluded that it is premature to attempt to resolve these issues in this rulemaking proceeding. In its supplementary comments, however, ATA now requests that the Department make substantive changes to the Warsaw Convention requirements embodied in part 221. ATA's desire for a more flexible notice requirement is understandable. However, for the most part, our purpose in reissuing part 221 is to align our tariff-filing requirements with present regulatory needs and policies. We will deal with any substantive policy changes to the part 221 Warsaw notice requirements in a separate proceeding.

7. Filings as Constructive Notice

Only two carriers oppose the proposal, set out in the NPRM, to exempt all carriers from the requirement to file their general passenger conditions-of-carriage rules tariffs. Air Pacific and Qantas both argue that they rely on their filed passenger rules tariffs as a defense against various kinds of passenger claims. In our final cargo exemption rule, we addressed the issue of legal notice to consumers of contract terms, including general conditions of carriage. We concluded that the elimination of cargo rules tariffs in the context of our notice provisions would not impose significant economic or administrative burdens on carriers or shippers, and that any changes in procedure were justified by improvements in overall consumer fairness and system efficiency [3]. Air Pacific and Qantas have failed to provide any reasons as to why passenger rules tariffs should be treated differently than cargo rules tariffs or why relying on the tariff filing mechanism for passenger notice is better than relying on normal contract law.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Department has determined that this final rule is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures (44 CFR 11034–Feb. 26, 1979). The rule will reduce the paperwork and filing burden for all U.S. and foreign air carriers submitting international passenger tariffs to the Department. The Department anticipates that the final rule could save international scheduled service passenger airlines as much as $3.23 million in tariff-filing and preparation expenses, based on figures submitted to OMB under the Paperwork Reduction Act for reinstatement of the part 221 information collection. The Department does not expect there to be any additional costs associated with this rule.

Executive Order 12611

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"), and the Department has determined the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

I certify that this rule a will not have a significant economic impact on a substantial number of small entities, because the tariff filing requirements apply to scheduled service air carriers. The vast majority of the air carriers filing international ("foreign") air passenger tariffs are large operators with revenues in excess of several million dollars each year. Small air carriers operating aircraft with 60 seats or less and 18,000 pounds payload or less that offer on-demand air-taxi service are not required to file such tariffs.

[3] See 60 Fed. Reg. 61472 (November 30, 1995).

Paperwork Reduction Act

With respect to the Paperwork Reduction Act, the reissue of part 221 eliminates any residual paper tariff-format and filing procedures and replaces them with more efficient electronic filing procedures. In addition, the new part 293 exempts carriers from their statutory and regulatory duty to file international passenger tariffs in certain specific markets, subject to reimposition of this duty when required by the public interest. Thus, this rule will significantly reduce the paperwork and filing burden on government and industry, even though it does not totally eliminate information collection requirements that require the approval of the Office of Management and Budget pursuant to the Act. While not estimated, we expect that costs of governmental review, filing and archiving of paper tariff rule filing will be similarly reduced.

The reporting and recordkeeping requirement associated with this rule are being submitted to OMB for approval in accordance with The Paperwork Reduction Act of 1995 (Public Law 104–113) under OMB No. 2106–0009; Administration: Department of Transportation, TITLE: Exemption from Passenger Tariff-Filing Requirements in Certain Instances, and Mandatory Electronic Filing of Residual Passenger Tariffs; NEED FOR INFORMATION: Exempts carriers from their statutory and regulatory duty to file international passenger tariffs in certain specific markets, subject to reimposition of this duty when required by the public interest, and eliminates residual paper tariff format and filing procedures, replacing them with more efficient electronic filing procedures; PROPOSED USE OF INFORMATION: Exemption is based on evolution in regulatory circumstances, while elimination of residual paper tariff filing procedures is based on the need to extend the efficiencies of electronic data transmission and processing to the filing of all passenger tariffs; FREQUENCY: An initial passenger tariff rule filing is required of each respondent; changes are voluntary, whenever an air carrier elects.

Estimated Total Annual Burden Under Proposal: 650,000 hours;

Respondents: 230; FORM(S) 13,340 electronic filings or applications per annum;

Average Burden Hours Per Respondent: 2,826 hours.

For further information on paperwork reduction contact: The Special Authorities Requirements Division, X–57, Office of the Secretary of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–4534 or DOT Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

Any comments regarding the burden estimate or any aspect of these information requirements, including suggestions for reducing the burden, may be sent to: Director, Office of International Aviation, (X–40), U.S. Department of Transportation, Office of the Secretary, 400 Seventh Street, SW., Room 6402, Washington, DC 20090–0001 as well as the above contact.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

An electronic version of the document is available on the World Wide Web at "http://dms.dot.gov//reports/reports—aviation.asp".

List of Subjects

14 CFR Part 221

Air rates and fares, Agents, Reporting and recordkeeping requirements.

14 CFR Part 250

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

14 CFR Part 293

Air carriers, Airrates and fares, Air transportation, Reporting and recordkeeping requirements.

The final rule revisions and new parts 221 and 293 are being issued under the authority contained in 49 CFR 1.56(h)(2). For the reasons set forth herein, 14 CFR Chapter II is amended as follows:

1. Part 221 is revised to read as follows:

PART 221—TARIFFS

Subpart A—General

Sec.

221.1 Applicability of this part.
221.2 Carrier's duty.
221.3 Definitions.
221.4 English language.
221.5 Unauthorized air transportation.

Subpart B—Who Is Authorized to Issue and File Tariffs

221.10 Carrier.
221.11 Agent.

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Subpart C—Specifications of Tariff Publications

221.20 Specifications applicable to tariff publications.

Subpart D—Manner of Filing Tariffs

221.30 Passenger fares and charges.
221.31 Rules and regulations governing passenger fares and services.

Subpart E—Contents of Tariff

221.40 Specific requirements.
221.41 Routing.

Subpart F—Requirements Applicable to all Statements of Fares and Charges

221.50 Currency.
221.51 Territorial application.
221.52 Airport to airport application, accessorial services.
221.53 Proportional fares.
221.54 Fares stated in percentages of other fares; other relationships prohibited.
221.55 Conflicting or duplicating fares prohibited.
221.56 Applicable fare when no through local or joint fares.

Subpart G—Governing Tariffs

221.60 When reference to governing tariffs permitted.
221.61 Rules and regulations governing foreign air transportation.
221.62 Explosives and other dangerous or restricted articles.
221.63 Other types of governing tariffs.

Subpart H—Amendment of Tariffs

221.70 Who may amend tariffs.
221.71 Requirement of clarity and specificity.
221.72 Reinstating canceled or expired tariff provisions.

Subpart I—Suspension of Tariff Provisions by Department

221.80 Effect of suspension by Department.
221.81 Suspension supplement.
221.82 Reissue of matter continued in effect by suspension to be canceled upon termination of suspension.
221.83 Tariff must be amended to make suspended matter effective.
221.84 Cancellation of suspended matter subsequent to date to which suspended.

Subpart J—Filing Tariff Publications With Department

221.90 Required notice.
221.91 Delivering tariff publications to Department.
221.92 Number of copies required.
221.93 Concurrences or powers of attorney not previously filed to accompany tariff transmittal.
221.94 Explanation and data supporting tariff changes and new matter in tariffs.

Subpart K—Availability of Tariff Publications for Public Inspection

221.100 Public notice of tariff information.
221.101 Inspection at stations, offices, or locations other than principal or general office.
221.102 Accessibility of tariffs to the public.
221.103 Notice of tariff terms.
221.105 Special notice of limited liability for death or injury under the Warsaw Convention.
221.106 Notice of limited liability for baggage; alternative consolidated notice of liability limitations.
221.107 Notice of contract terms.
221.108 Transmission of tariff filings to subscribers.

Subpart L—Rejection of Tariff Publications

221.110 Department's authority to reject.
221.111 Notification of rejection.
221.112 Rejected tariff is void and must not be used.

Subpart M—Special Tariff Permission to File on Less Than Statutory Notice

221.120 Grounds for approving or denying Special Tariff Permission applications.
221.121 How to prepare and file applications for Special Tariff Permission.
221.122 Special Tariff Permission to be used in its entirety as granted.
221.123 Re-use of Special Tariff Permission when tariff is rejected.

Subpart N—Waiver of Tariff Regulations

221.130 Applications for waiver of tariff regulations.
221.131 Form of application for waivers.

Subpart O—Giving and Revoking Concurrences to Carriers

221.140 Method of giving concurrence.
221.141 Method of revoking concurrence.
221.142 Method of withdrawing portion of authority conferred by concurrence.

Subpart P—Giving and Revoking Powers of Attorney to Agents

221.150 Method of giving power of attorney.
221.151 Method of revoking power of attorney.
221.152 Method of withdrawing portion of authority conferred by power of attorney.

Subpart Q—Adoption Publications Required to Show Change in Carrier's Name or Transfer of Operating Control

221.160 Adoption notice.
221.161 Notice of adoption to be filed in former carrier's tariffs.
221.162 Receiver shall file adoption notices.
221.163 Agents' and other carriers' tariffs shall reflect adoption.
221.164 Concurrences or powers of attorney to be reissued.
221.165 Cessation of operations without successor.

Subpart R—Electronically Filed Tariffs

221.170 Applicability of the subpart.
221.180 Requirements for electronic filing of tariffs.
221.190 Time for filing and computation of time periods.
221.195 Requirement for filing printed material.
221.200 Content and explanation of abbreviations, reference marks and symbols.
221.201 Statement of filing with foreign governments to be shown in air carrier's tariff filings.
221.202 The filing of tariffs and amendments to tariffs.
221.203 Unique rule numbers required.
221.204 Adoption of provisions of one carrier by another carrier.
221.205 Justification and explanation for certain fares.
221.206 Statement of fares.
221.210 Suspension of tariffs.
221.211 Cancellation of suspended matter.
221.212 Special tariff permission.
221.300 Discontinuation of electronic tariff system.
221.400 Filing of paper tariffs required.
221.500 Transmission of electronic tariffs to subscribers.
221.550 Copies of tariffs made from filer's printer(s) located in Department's public reference room.
221.600 Actions under assigned authority and petitions for review of staff action.

Authority: 49 U.S.C. 40101, 40109, 40113, 46101, 46102, chapter 411, chapter 413, chapter 415 and chapter 417, subchapter I.

Subpart A—General

§ 221.1 Applicability of this part.

All tariffs and amendments to tariffs of air carriers and foreign air carriers filed with the Department pursuant to chapter 415 of the statute shall be constructed, published, filed, posted and kept open for public inspection in accordance with the regulations in this part and orders of the Department.

§ 221.2 Carrier's duty.

(a) *Must file tariffs.* (1) Except as provided in paragraph (d) of this section, every air carrier and every foreign air carrier shall file with the Department, and provide and keep open to public inspection, tariffs showing all fares, and charges for foreign air transportation between points served by it, and between points served by it and points served by any other air carrier or foreign air carrier, when through service and through rates shall have been established, and showing to the extent required by regulations and orders of the Department, all classifications, rules, regulations, practices, and services in connection with such foreign air transportation.

(2) Tariffs shall be filed, and provided in such form and manner, and shall contain such information as the Department shall by regulation or order prescribe. Any tariff so filed which is not consistent with chapter 415 of the statute and such regulations and orders may be rejected. Any tariff so rejected shall be void, and may not be used.

(b) *Must observe tariffs.* No air carrier or foreign air carrier shall charge or demand or collect or receive a greater or less or different compensation for foreign air transportation or for any service in connection therewith, than the fares and charges specified in its currently effective tariffs; and no air carrier or foreign air carrier shall, in any manner or by any device, directly or indirectly, or through any agent or broker, or otherwise, refund or remit any portion of the fares, or charges so specified, or extend to any person any privileges or facilities, with respect to matters required by the Department to be specified in such tariffs, except those specified in such tariffs.

(c) *No relief from violations.* Nothing contained in this part shall be construed as relieving any air carrier or foreign air carrier from liability for violations of the statute, nor shall the filing of a tariff, or amendment thereto, relieve any air carrier or foreign air carrier from such violations or from violations of regulations issued under the statute.

(d) *Exemption authority.* Air carriers and foreign air carriers, both direct and indirect, are exempted from the requirement of section 41504 of the statute and any requirement of this chapter to file, and shall not file with the Department, tariffs for operations under the following provisions:

(1) Part 291, Domestic Cargo Transportation;

(2) Part 296, Indirect Air Transportation of Property;

(3) Part 297, Foreign Air Freight Forwarders and Foreign Cooperative Shippers Association;

(4) Part 298, Exemption for Air Taxi Operations, except to the extent noted in § 298.11(b);

(5) Part 380, Public Charters;

(6) Part 207, Charter Trips and Special Services;

(7) Part 208, Terms, Conditions, and Limitations of Certificates to Engage in Charter Air Transportation;

(8) Part 212, Charter Trips by Foreign Air Carriers;

(9) Part 292, International Cargo Transportation, except as provided in part 292.

(10) Part 293 International Passenger Transportation, except as provided in part 293.

§ 221.3 Definitions.

As used in this part, terms shall be defined as follows:

Add-on means an amount published for use only in combination with other fares for the construction of through fares. It is also referred to as "proportional fare" and "arbitrary fare".

Add-on tariff means a tariff which contains add-on fares.

Area No. 1 means all of the North and South American Continents and the islands adjacent thereto; Greenland; Bermuda; the West Indies and the islands of the Caribbean Sea; and the Hawaiian Islands (including Midway and Palmyra).

Area No. 2 means all of Europe (including that part of the former Union of the Soviet Socialist Republics in Europe) and the islands adjacent thereto; Iceland; the Azores; all of Africa and the islands adjacent thereto; Ascension Island; and that part of Asia lying west of and including Iran.

Area No. 3 means all of Asia and the islands adjacent thereto except that portion included in Area No. 2; all of the East Indies, Australia, New Zealand, and the islands adjacent thereto; and the islands of the Pacific Ocean except those included in Area No. 1.

Bundled normal economy fare means the lowest one-way fare available for unrestricted, on-demand service in any city-pair market.

CRT means a video display terminal that uses a cathode ray tube as the image medium.

Capacity controlled fare means a fare for which a carrier limits the number of seats available for sale.

Carrier means an air carrier or foreign air carrier subject to section 41504 of 49 U.S.C. subtitle VII.

Charge means the amount charged for baggage, in excess of the free allowance, accompanying or checked by a passenger or for any other service ancillary to the passenger's carriage.

Conditions of carriage means those rules of general applicability that define the rights and obligations of the carrier(s) and any other party to the contract of carriage with respect to the transportation services provided.

Contract of carriage means those fares, rules, and other provisions applicable to the foreign air transportation of passengers or their baggage, as defined in the statute.

Department means the Department of Transportation.

Direct-service market means an international market where the carrier provides service either on a nonstop or single-flight-number basis, including change-of-gauge.

Electronic tariff means an international passenger fares or rules tariff or a special tariff permission application transmitted to the Department by means of an electronic medium, and containing fares for the transportation of persons and their baggage, and including such associated data as arbitraries, footnotes, routings, and fare class explanations.

Fare means the amount per passenger or group of persons stated in the applicable tariff for the air transportation thereof and includes baggage unless the context otherwise requires.

Field means a specific area of a record used for a particular category of data.

Filer means an air carrier, foreign air carrier, or tariff publishing agent of such a carrier filing tariffs on its behalf in conformity with this subpart.

Item means a small subdivision of a tariff and identified by a number, a letter, or other definite method for the purpose of facilitating reference and amendment.

Joint fare means a fare that applies to transportation over the joint lines or routes of two or more carriers and which is made and published by arrangement or agreement between such carriers evidenced by concurrence or power of attorney.

Joint tariff means a tariff that contains joint fares.

Local fare means a fare that applies to transportation over the lines or routes of one carrier only.

Local tariff means a tariff that contains local fares.

Machine-readable data means encoded computer data, normally in a binary format, which can be read electronically by another computer with the requisite software without any human interpretation.

On-line tariff database means the remotely accessible, on-line version, maintained by the filer, of:

(1) The electronically filed tariff data submitted to the Department pursuant to this part and Department orders, and

(2) The Departmental approvals, disapprovals, and other actions, as well as any Departmental notation concerning such approvals, disapprovals, or other actions, that subpart R of this part requires the filer to maintain in its database.

Original tariff refers to the tariff as it was originally filed exclusive of any supplements, revised records or additional records.

Passenger means any person who purchases, or who contacts a ticket office or travel agent for the purpose of purchasing, or considering the purchase of, foreign air transportation.

Passenger tariff means a tariff containing fares, charges, or governing provisions applicable to the foreign air transportation of persons and their baggage.

Publish means to display tariff material in either electronic or paper media.

Record means an electronic tariff data set that contains information describing one (1) tariff price or charge, or information describing one (1) related element associated with that tariff price or charge.

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SFFL means the Standard Foreign Fare Level as established by the Department of Transportation under 49 U.S.C. 41509.

Statute means subtitle VII of Title 49, United States Code.

Statutory notice means the number of days required for tariff filings in § 221.160(a).

Tariff publication means a tariff, a supplement to a tariff, or an original or revised record of a tariff, including an index of tariffs and an adoption notice (§ 221.161).

Through fare means the total fare from point of origin to destination. It may be a local fare, a joint fare, or combination of separately established fares.

Ticket office means a station, office or other location where tickets are sold or similar documents are issued, that is under the charge of a person employed exclusively by the carrier, or by it jointly with another person.

Unbundled normal economy fare means the lowest one-way fare available for on-demand service in any city-pair market which is restricted in some way, *e.g.*, by limits set and/or charges imposed for enroute stopovers or transfers, exclusive of capacity control.

United States means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the Territorial waters and the overlying air space thereof.

Warsaw Convention means the Convention for the Unification of Certain Rules Relating to International Transportation by Air, 49 Stat. 3000.

§ 221.4 English language.

All tariffs and other documents and material filed with the Department pursuant to this part shall be in the English language.

§ 221.5 Unauthorized air transportation.

Tariff publications shall not contain fares or charges, or their governing provisions, applicable to foreign air transportation which the issuing or participating carriers are not authorized by the Department to perform, except where the Department expressly requests or authorizes tariff publications to be filed prior to the Department's granting authority to perform the foreign air transportation covered by such tariff publications. Any tariff publication filed pursuant to such express request or authorization which is not consistent with chapter 415 and this part may be rejected; any tariff publication so rejected shall be void.

Subpart B—Who is Authorized To Issue and File Tariffs

§ 221.10 Carrier.

(a) *Local or joint tariffs.* A carrier may issue and file, in its own name, tariff publications which contain:

(1) Local fares of such carrier only, and provisions governing such local fares, and/or

(2) Joint fares which apply jointly via such issuing carrier in connection with other carriers (participating in the tariff publications under authority of their concurrences given to the issuing carrier as provided in § 221.140) and provisions governing such joint fares. Provisions for account of an individual participating carrier may be published to govern such joint fares provided § 221.40(a)(9) is complied with. A carrier shall not issue and file tariff publications containing local fares of other carriers, joint rates or fares in which the issuing carrier does not participate, or provisions governing such local or joint fares.

(3) Rules and regulations governing foreign air transportation to the extent provided by this part and/or Department order. Rules and regulations may be published in separate governing tariffs, as provided in subpart G.

(b) *Issuing officer.* An officer or designated employee of the issuing carrier shall be shown as the issuing officer of a tariff publication issued by a carrier, and such issuing officer shall file the tariff publication with the Department on behalf of the issuing carrier and all carriers participating in the tariff publication.

§ 221.11 Agent.

An agent may issue and file, in his or its own name, tariff publications naming local fares and/or joint fares, and provisions governing such fares, and rules and regulations governing foreign air transportation to the extent provided by this part and/or Department order, for account of carriers participating in such tariff publications, under authority of their powers of attorney given to such issuing agent as provided in § 221.150. The issuing agent shall file such tariff publications with the Department on behalf of all carriers participating therein. Only one issuing agent may act in issuing and filing each such tariff publication.

Subpart C—Specifications of Tariff Publications

§ 221.20 Specifications applicable to tariff publications.

(a) *Numerical order.* All items in a tariff shall be arranged in numerical or alphabetical order. Each item shall bear a separate item designation and the same designation shall not be assigned to more than one item.

(b) *Carrier's name.* Wherever the name of a carrier appears in a tariff publication, such name shall be shown in full exactly as it appears in the carrier's certificate of public convenience and necessity, foreign air carrier permit, letter of registration, or whatever other form of operating authority of the Department to engage in air transportation is held by the carrier, or such other name which has specifically been authorized by order of the Department. A carrier's name may be abbreviated, provided the abbreviation is explained in the tariff.

(c) *Agent's name and title.* Wherever the name of an agent appears in tariff publications, such name shall be shown in full exactly as it appears in the powers of attorney given to such agent by the participating carriers and the title "Agent" or "Alternate Agent" (as the case may be) shall be shown immediately in connection with the name.

(d) *Statement of prices.* All fares and charges shall be clearly and explicitly stated and shall be arranged in a simple and systematic manner. Complicated plans and ambiguous or indefinite terms shall not be used. So far as practicable, the fares and charges shall be subdivided into items or similar units, and an identifying number shall be assigned to each item or unit to facilitate reference thereto.

(e) *Statement of rules.* The rules and regulations of each tariff shall be clear, explicit and definite, and except as otherwise provided in this part, shall contain:

(1) Such explanatory statements regarding the fares, charges, rules or other provisions contained in the tariff as may be necessary to remove all doubt as to their application.

(2) All of the terms, conditions, or other provisions which affect the fares or charges for air transportation named in the tariff.

(3) All provisions and charges which in any way increase or decrease the amount to be paid by any passenger, or which in any way increase or decrease the value of the services rendered to the passenger.

(f) *Separate rules tariff.* If desired, rules and regulations may be published in separate governing tariffs to the extent authorized and in the manner required by subpart G.

(g) *Rules of limited application.* A rule affecting only a particular fare or other provision in the tariff shall be specifically referred to in connection with such fare or other provision, and such rule shall indicate that it is applicable only in connection with such fare or other provision. Such rule shall not be published in a separate governing rules tariff.

(h) *Conflicting or duplicating rules prohibited.* The publication of rules or regulations which duplicate or conflict with other rules or regulations published in the same or any other tariff for account of the same carrier or carriers and applicable to or in connection with the same transportation is prohibited.

(i) Each tariff shall include:

(1) A prominent D.O.T. or other number identifying the tariff in the sequence of tariffs published by the carrier or issuing agent;

(2) The name of the issuing carrier or agent;

(3) The cancellation of any tariffs superseded by the tariff;

(4) A description of the tariff contents, including geographic coverage;

(5) Identification by number of any governing tariffs;

(6) The date on which the tariff is issued;

(7) The date on which the tariff provisions will become effective; and

(8) the expiration date, if applicable to the entire tariff.

Subpart D—Manner of Filing Tariffs

§ 221.30 Passenger fares and charges.

(a) Fares tariffs, including associated data, shall be filed electronically in conformity with subpart R. Associated data includes arbitraries, footnotes, routing numbers and fare class explanations. See § 221.202(b)(8).

(b) Upon application by a carrier, the Department's Office of International Aviation shall have the authority to waive the electronic filing requirement in this paragraph and in Subpart R in whole or in part, for a period up to one year, and to permit, under such terms and conditions as may be necessary to carry out the purposes of this part, the applicant carrier to file fare tariffs in a paper format. Such waivers shall only be considered where electronic filing, compared to paper filing, is impractical and will produce a significant economic hardship for the carrier due to the limited nature of the carrier's operations subject to the requirements of this part, or other unusual circumstances. Paper filings pursuant to this paragraph shall normally conform to the requirements of § 221.195 and other applicable requirements of this part.

§ 221.31 Rules and regulations governing passenger fares and services.

(a) Tariff rules and regulations governing passenger fares and services other than those subject to § 221.30 may be filed electronically in conformity with subpart R. Such filings shall conform to criteria approved by the Department's Office of International Aviation as provided in § 221.180 and shall contain at a minimum the information required by § 221.202(b)(9).

(b) Applications for special tariff permission may be filed electronically, as provided in § 221.212.

(c) Tariff publications and applications for special tariff permission covered by paragraphs (a) and (b) of this section may be filed in a paper format, subject to the requirements of this part and Department orders.

Subpart E—Contents of Tariff

§ 221.40 Specific requirements.

(a) In addition to the general requirements in § 221.20, the rules and regulations of each tariff shall contain:

(1) *Aircraft and seating.* For individually ticketed passenger service, the name of each type of aircraft used in rendering such service by manufacturer model designation and a description of the seating configuration (or configurations if there are variations) of each type of aircraft. Where fares are provided for different classes or types of passenger service (that is, first class, coach, day coach, night coach, tourist, economy or whatever other class or type of service is provided under the tariff), the tariff shall specify the type of aircraft and the seating configuration used on such aircraft for each class or type of passenger service. When two or more classes or types of passenger service are performed in a single aircraft, the seating configuration for each type or class shall be stated and described.

(2) *Rule numbers.* Each rule or regulation shall have a separate designation. The same designation shall not be assigned to more than one rule in the tariff.

(3) *Penalties.* Where a rule provides a charge in the nature of a penalty, the rule shall state the exact conditions under which such charge will be imposed.

(4) *Vague or indefinite provisions.* Rules and regulations shall not contain indefinite statements to the effect that traffic of any nature will be "taken only by special arrangements", or that services will be performed or penalties imposed "at carrier's option", or that the carrier "reserves the right" to act or to refrain from acting in a specified manner, or other provisions of like import; instead, the rules shall state definitely what the carrier will or will not do under the exact conditions stated in the rules.

(5) *Personal liability rules.* Except as provided in this part, no provision of the Department's regulations issued under this part or elsewhere shall be construed to require the filing of any tariff rules stating any limitation on, or condition relating to, the carrier's liability for personal injury or death. No subsequent regulation issued by the Department shall be construed to supersede or modify this rule of construction except to the extent that such regulation shall do so in express terms.

(6) *Notice of limitation of liability for death or injury under the Warsaw Convention.* Notwithstanding the provisions of paragraph (a)(5) of this section, each air carrier and foreign air carrier shall publish in its tariffs a provision stating whether it avails itself of the limitation on liability to passengers as provided in Article 22(1) of the Warsaw Convention or whether it has elected to agree to a higher limit of liability by a tariff provision. Unless the carrier elects to assume unlimited liability, its tariffs shall contain a statement as to the applicability and effect of the Warsaw Convention, including the amount of the liability limit in dollars. Where applicable, a statement advising passengers of the amount of any higher limit of liability assumed by the carrier shall be added.

(7) *Extension of credit.* Air carriers and foreign air carriers shall not file tariffs that set forth charges, rules, regulations, or practices relating to the extension of credit for payment of charges applicable to air transportation.

(8) *Individual carrier provisions governing joint fares.* Provisions governing joint fares may be published for account of an individual carrier participating in such joint fares provided that the tariff clearly indicates how such individual carrier's provisions apply to the through transportation over the applicable joint routes comprised of such carrier and other carriers who either do not maintain such provisions or who maintain different provisions on the same subject matter.

(9) *Passenger property which cannot lawfully be carried in the aircraft cabin.* Each air carrier shall set forth in its tariffs governing the transportation of persons, including passengers' baggage, charges, rules, and regulations providing that such air carrier receiving as baggage any property of a person traveling in air transportation, which property cannot lawfully be carried by

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such person in the aircraft cabin by reason of any Federal law or regulation, shall assume liability to such person, at a reasonable charge and subject to reasonable terms and conditions, within the amount declared to the air carrier by such person, for the full actual loss or damage to such property caused by such air carrier.

(b) [Reserved]

§ 221.41 Routing.

(a) *Required routing.* The route or routes over which each fare applies shall be stated in the tariff in such manner that the following information can be definitely ascertained from the tariff:

(1) The carrier or carriers performing the transportation,

(2) The point or points of interchange between carriers if the route is a joint route (via two or more carriers),

(3) The intermediate points served on the carrier's or carriers' routes applicable between the origin and destination of the fare and the order in which such intermediate points are served.

(b) *Individually stated routings—Method of publication.* The routing required by paragraph (a) of this section shall be shown directly in connection with each fare or charge for transportation, or in a routing portion of the tariff (following the fare portion of the tariff), or in a governing routing tariff. When shown in the routing portion of the tariff or in a governing routing tariff, the fare from each point of origin to each point of destination shall bear a routing number and the corresponding routing numbers with their respective explanations of the applicable routings shall be arranged in numerical order in the routing portion of the tariff or in the governing routing tariff.

Subpart F—Requirements Applicable to All Statements of Fares and Charges

§ 221.50 Currency.

(a) *Statement in United States currency required.* All fares and charges shall be stated in cents or dollars of the United States except as provided in paragraph (b) of this section.

(b) *Statements in both United States and foreign currencies permitted.* Fares and charges applying between points in the United States, on the one hand, and points in foreign countries, on the other hand, or applying between points in foreign countries, may also be stated in the currencies of foreign countries in addition to being stated in United States currency as required by paragraph (a) of this section: Provided, that:

(1) The fares and charges stated in currencies of countries other than the United States are substantially equivalent in value to the respective fares and charges stated in cents or dollars of the United States.

(2) Each record containing fares and charges shall clearly indicate the respective currencies in which the fares and charges thereon are stated, and

(3) The fares and charges stated in cents or dollars of the United States are published separately from those stated in currencies of other countries. This shall be done in a systematic manner and the fares and charges in the respective currencies shall be published in separate records.

§ 221.51 Territorial application.

(a) *Specific points of origin and destination.* Except as otherwise provided in this part, the specific points of origin and destination from and to which the fares apply shall be specifically named directly in connection with the respective fares.

(b) *Directional application.* A tariff shall specifically indicate directly in connection with the fares therein whether they apply "from" and "to" or "between" the points named. Where the fares apply in one direction, the terms "From" and "To" shall be shown in connection with the point of origin and point of destination, respectively, and, where the fares apply in both directions between the points, the terms "Between" and "And" shall be shown in connection with the respective points.

§ 221.52 Airport to airport application, accessorial services.

Tariffs shall specify whether or not the fares therein include services in addition to airport-to-airport transportation.

§ 221.53 Proportional fares.

(a) *Definite application.* Add-on fares shall be specifically designated as "add-on" fares on each page where they appear.

(b) A tariff may provide that fares from (or to) particular points shall be determined by the addition of add-ons to, or the deduction of add-ons from, fares therein which apply from (or to) a base point. Provisions for the addition or deduction of such add-ons shall be shown either directly in connection with the fare applying to or from the base point or in a separate provision which shall specifically name the base point. The tariff shall clearly and definitely state the manner in which such add-ons shall be applied.

(c) *Restrictions upon beyond points or connecting carriers.* If an add-on fare is intended for use only on traffic originating at and/or destined to particular beyond points or is to apply only in connection with particular connecting carriers, such application shall be clearly and explicitly stated directly in connection with such add-on fare.

§ 221.54 Fares stated in percentages of other fares; other relationships prohibited.

(a) Fares for foreign air transportation of persons or property shall not be stated in the form of percentages, multiples, fractions, or other relationships to other fares except to the extent authorized in paragraphs (b), (c), and (d) of this section with respect to passenger fares and baggage charges.

(b) A basis of fares for refund purposes may be stated, by rule, in the form of percentages of other fares.

(c) Transportation rates for the portion of passengers' baggage in excess of the baggage allowance under the applicable fares may be stated, by rule, as percentages of fares.

(d) Children's, infants' and senior citizen's fares, may be stated, by rule, as percentages of other fares published specifically in dollars and cents (hereinafter referred to as base fares): Provided, that:

(1) Fares stated as percentages of base fares shall apply from and to the same points, via the same routes, and for the same class of service and same type of aircraft to which the applicable base fares apply, and shall apply to all such base fares in a fares tariff.

(2) Fares shall not be stated as percentages of base fares for the purpose of establishing fares applying from and to points, or via routes, or on types of aircraft, or for classes of service different from the points, routes, types of aircraft, or classes of service to which the base fares are applicable.

§ 221.55 Conflicting or duplicating fares prohibited.

The publication of fares or charges of a carrier which duplicate or conflict with the fares of the same carrier published in the same or any other tariff for application over the same route or routes is hereby prohibited.

§ 221.56 Applicable fare when no through local or joint fares.

Where no applicable local or joint fare is provided from point of origin to point of destination over the route of movement, whichever combination of applicable fares provided over the route of movement produces the lowest charge shall be applicable, except that a carrier may provide explicitly that a fare cannot be used in any combination or in a combination on particular traffic or under specified conditions, provided another combination is available.

Subpart G—Governing Tariffs

§ 221.60 When reference to governing tariffs permitted.

(a) *Reference to other tariffs prohibited except as authorized.* A tariff shall not refer to nor provide that it is governed by any other tariff, document, or publication, or any part thereof, except as specifically authorized by this part.

(b) *Reference by fare tariff to governing tariffs.* A fare tariff may be made subject to a governing tariff or governing tariffs authorized by this subpart: Provided, that reference to such governing tariffs is published in the fare tariff in the manner required by § 221.20(h).

(c) *Participation in governing tariffs.* A fare tariff may refer to a separate governing tariff authorized by this subpart only when all carriers participating in such fare tariff are also shown as participating carriers in the governing tariff: Provided, that:

(1) If such reference to a separate governing tariff does not apply for account of all participating carriers and is restricted to apply only in connection with local or joint fares applying over routes consisting of only particular carriers, only the carriers for whom such reference is published are required to be shown as participating carriers in the governing tariff to which such qualified reference is made.

(2) [Reserved]

(d) *Maximum number of governing tariffs.* A single fare tariff shall not make reference to conflicting governing tariffs.

§ 221.61 Rules and regulations governing foreign air transportation.

Instead of being included in the fares tariffs, the rules and regulations governing foreign air transportation required to be filed by §§ 221.20 and 221.30 and/or Department order which do not govern the applicability of particular fares may be filed in separate governing tariffs, conforming to this subpart. Governing rules tariffs shall contain an index of rules.

§ 221.62 Explosives and other dangerous or restricted articles.

Carriers may publish rules and regulations governing the transportation of explosives and other dangerous or restricted articles in separate governing tariffs, conforming to this subpart, instead of being included in the fares tariffs or in the governing rules tariff authorized by § 221.61. This separate governing tariff shall contain no other rules or governing provisions.

§ 221.63 Other types of governing tariffs.

Subject to approval of the Department, carriers may publish other types of governing tariffs not specified in this subpart, such as routing guides.

Subpart H—Amendment of Tariffs

§ 221.70 Who may amend tariffs.

A tariff shall be amended only by the carrier or agent who issued the tariff (except as otherwise authorized in subparts P and Q).

§ 221.71 Requirement of clarity and specificity.

Amendments to tariffs shall identify with specificity and clarity the material being amended and the changes being made. Amendments to paper tariffs shall be accomplished by reissuing each page upon which a change occurs with the change made and identified by uniform amendment symbols. Each revised page shall identify and cancel the previously effective page, show the effective date of the previous page, and show the intended effective date of the revised page. Amendments in electronic format shall conform to the requirements of § 221.202 and other applicable provisions of subpart R.

§ 221.72 Reinstating canceled or expired tariff provisions.

Any fares, rules, or other tariff provisions which have been canceled or which have expired may be reinstated only by republishing such provisions and posting and filing the tariff publications (containing such republished provisions) on lawful notice in the form and manner required by this part.

Subpart I—Suspension of Tariff Provisions by Department

§ 221.80 Effect of suspension by Department.

(a) *Suspended matter not to be used.* A fare, charge, or other tariff provision which is suspended by the Department, under authority of chapter 415 of the statute, shall not be used during the period of suspension specified by the Department's order.

(b) *Suspended matter not to be changed.* A fare, charge, or other tariff provision which is suspended by the Department shall not be changed in any respect or withdrawn or the effective date thereof further deferred except by authority of an order or special tariff permission of the Department.

(c) *Suspension continues former matter in effect.* If a tariff publication containing matter suspended by the Department directs the cancellation of a tariff or any portion thereof, which contains fares, charges, or other tariff provisions sought to be amended by the suspended matter, such cancellation is automatically suspended for the same period insofar as it purports to cancel any tariff provisions sought to be amended by the suspended matter.

(d) *Matter continued in effect not to be changed.* A fare, charge, or other tariff provision which is continued in effect as a result of a suspension by the Department shall not be changed during the period of suspension unless the change is authorized by order or special tariff permission of the Department, except that such matter may be reissued without change during the period of suspension.

§ 221.81 Suspension supplement.

(a) *Suspension supplement.* Upon receipt of an order of the Department suspending any tariff publication in part or in its entirety, the carrier or agent who issued such tariff publication shall immediately issue and file with the Department a consecutively numbered supplement for the purpose of announcing such suspension.

(b) The suspension supplement shall not contain an effective date and it shall contain the suspension notice required by paragraph (c) of this section.

(c) *Suspension notice.* The suspension supplement shall contain a prominent notice of suspension which shall:

(1) Indicate what particular fares, charges, or other tariff provisions are under suspension,

(2) State the date to which such tariff matter is suspended,

(3) State the Department's docket number and order number which suspended such tariff matter, and

(4) Give specific reference to the tariffs (specifying their D.O.T. or other identifying numbers), original or revised records and paragraphs or provisions which contain the fares, charges, or other tariff provisions continued in effect.

§ 221.82 Reissue of matter continued in effect by suspension to be canceled upon termination of suspension.

When tariff provisions continued in effect by a suspension are reissued during the period of such suspension, the termination of the suspension and the coming into effect of the suspended matter will not accomplish the cancellation of such reissued matter. In such circumstances, prompt action shall be taken by the issuing agent or carrier to cancel such reissued provisions upon the termination of the suspension in order that they will not conflict with the provisions formerly under suspension.

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§ 221.83 Tariff must be amended to make suspended matter effective.

(a) When the Department vacates an order which suspended certain tariff matter in full or in part, such matter will not become effective until the termination of the suspension period unless the issuing agent or carrier amends the pertinent tariffs in the manner prescribed in this subpart (except as provided in paragraph (b) of this section).

(b) If the Department vacates its suspension order prior to the original published effective date of the tariff provisions whose suspension is vacated, such provisions will become effective on their published effective date.

§ 221.84 Cancellation of suspended matter subsequent to date to which suspended.

(a) *Endeavor to cancel prior to expiration of suspension period.* When an order of the Department requires the cancellation of tariff provisions which were suspended by the Department and such cancellation is required to be made effective on or before a date which is after the date to which such tariff provisions were suspended, the issuing carrier or agent shall, if possible, make the cancellation effective prior to the date to which such tariff provisions were suspended.

(b) *When necessary to republish matter continued in effect by suspension.* If suspended tariff provisions become effective upon expiration of their suspension period and thereby accomplish the cancellation of the tariff provisions continued in effect by the suspension, the issuing agent or carrier shall republish and reestablish such canceled tariff provisions effective simultaneously with the cancellation of the suspended provisions in compliance with the Department's order. The tariff amendments which reestablish such canceled tariff provisions shall bear reference to this subpart and the Department's order.

Subpart J—Filing Tariff Publications With Department

§ 221.90 Required notice.

(a) *Statutory notice required.* Unless otherwise authorized by the Department or specified in a bilateral agreement between the United States and a foreign country, all tariff filings shall be made on the following schedule, whether or not they effect any changes:

(1) At least 30 days before they are to become effective, for tariffs stating a passenger fare within the zone created by section 41509(e) of the statute or stating a rule that affects only such a fare;

(2) At least 25 days before they are to become effective, for matching tariffs that are to become effective on the same date as the tariff to be matched and that meet competition as described in § 221.94(c)(1)(v); and

(3) At least 60 days before they are to become effective, for all other tariffs.

(b) *Computing number of days' notice.* A tariff publication shall be deemed to be filed only upon its actual receipt by the Department, and the first day of any required period of notice shall be the day of actual receipt by the Department.

(c) *Issued date.* All tariff publications must be received by the Department on or before the designated issued date.

§ 221.91 Delivering tariff publications to Department.

Tariff publications will be received for filing only by delivery thereof to the Department electronically, through normal mail channels, or by delivery thereof during established business hours directly to that office of the Department charged with the responsibility of processing tariffs. No tariff publication will be accepted by the Department unless it is delivered free from all charges, including claims for postage.

§ 221.92 Number of copies required.

Two copies of each paper tariff, tariff revision and adoption notice to be filed shall be sent to the Office of International Aviation, Department of Transportation, Washington, DC 20428. All such copies shall be included in one package and shall be accompanied by a letter of tariff transmittal.

§ 221.93 Concurrences or powers of attorney not previously filed to accompany tariff transmittal.

When a tariff is filed on behalf of a carrier participating therein under authority of its concurrence or power of attorney, such concurrence or power of attorney shall, if not previously filed with the Department, be transmitted at the same time such tariff is submitted for filing.

§ 221.94 Explanation and data supporting tariff changes and new matter in tariffs.

When a tariff is filed with the Department which contains new or changed local or joint fares or charges for foreign air transportation, or new or changed classifications, rules, regulations, or practices affecting such fares or charges, or the value of the service thereunder, the issuing air carrier, foreign air carrier, or agent shall submit with the filing of such tariff:

(a) An explanation of the new or changed matter and the reasons for the filing, including (if applicable) the basis of rate making employed. Where a tariff is filed pursuant to an intercarrier agreement approved by the Department, the explanation shall identify such agreement by DOT Docket number, DOT order of approval number, IATA resolution number, or if none is designated, then by other definite identification. Where a tariff is filed on behalf of a foreign air carrier pursuant to a Government order, a copy of such order shall be submitted with the tariff.

(b) Appropriate Economic data and/or information in support of the new or changed matter.

(c) Exceptions

(1) The requirement for data and/or information in paragraph (b) of this section will not apply to tariff publications containing new or changed matter which are filed:

(i) In response to Department orders or specific policy pronouncements of the Department directly related to such new or changed matter;

(ii) Pursuant to an intercarrier agreement approved by the Department setting forth the fares, charges (or specific formulas therefor) or other matter: Provided that the changes are submitted with the number of the DOT order of approval and fully comply with any conditions set forth in that order;

(iii) To the extent fares for scheduled passenger service are within a statutory or Department-established zone of fare flexibility; and

(iv) To meet competition: Provided, that

(A) Changed matter will be deemed to have been filed to meet competition only when it effects decreases in fares or charges and/or increases the value of service so that the level of the fares or charges and the services provided will be substantially similar to the level of fares or charges and the services of a competing carrier or carriers.

(B) New matter will be deemed to have been filed to meet competition only when it establishes or affects a fare or charge and a service which will be substantially similar to the fares or charges and the services of a competing carrier or carriers.

(C) When new or changed matter is filed to meet competition over a portion of the filing air carrier's system and is simultaneously made applicable to the balance of the system, such matter, insofar as it applies over the balance of the system, will be deemed to be within the exception in this paragraph (c)(1)(iv) of this section only if such carrier submits an explanation as to the necessity of maintaining uniformity over its entire system with respect to such new or changed matter.

(D) In any case where new or changed matter is filed to meet competition, the filing carrier or agent must supply, as part of the filing justification, the complete tariff references which will serve to identify the competing tariff matter which the tariff purports to meet. In such case the justification or attachment shall state whether the new or changed matter is identical to the competing tariff matter which it purports to meet or whether it approximates the competing tariff matter. If the new or changed matter is not identical, the transmittal letter or attachment shall contain a statement explaining, in reasonable detail, the basis for concluding that the tariff publication being filed is substantially similar to the competing tariff matter.

(2) [Reserved]

Subpart K—Availability of Tariff Publications for Public Inspection

§ 221.100 Public notice of tariff information.

Carriers must make tariff information available to the general public, and in so doing must comply with either:

(a) Sections 221.101, 221.102, 221.103, 221.104, 221.105, and 221.106, or

(b) Sections 221.105, 221.106 and 221.107 of this subpart.

§ 221.101 Inspection at stations, offices, or locations other than principal or general office.

(a) Each carrier shall make available for public inspection at each of its stations, offices, or other locations at which tickets for passenger transportation are sold and which is in charge of a person employed exclusively by the carrier, or by it jointly with another person, all tariffs applicable to passenger traffic from or to the point where such station, office, or location is situated, including tariffs covering any terminal services, charges, or practices whatsoever, which apply to passenger traffic from or to such point.

(b) A carrier will be deemed to have complied with the requirement that it "post" tariffs, if it maintains at each station, office, or location a file in complete form of all tariffs required to be posted; and in the case of tariffs involving passenger fares, rules, charges or practices, notice to the passenger as required in § 221.105.

(c) Tariffs shall be posted by each carrier party thereto no later than the filed date designated thereon except that in the case of carrier stations, offices or locations situated outside the United States, its territories and possessions, the time shall be not later than five days after the filed date, and except that a tariff which the Department has authorized to be filed on shorter notice shall be posted by the carrier on like notice as authorized for filing.

§ 221.102 Accessibility of tariffs to the public.

Each file of tariffs shall be kept in complete and accessible form. Employees of the carrier shall be required to give any desired information contained in such tariffs, to lend assistance to seekers of information therefrom, and to afford inquirers opportunity to examine any of such tariffs without requiring the inquirer to assign any reason for such desire.

§ 221.103 Notice of tariff terms.

Each carrier shall cause to be displayed continuously in a conspicuous public place at each station, office, or location at which tariffs are required to be posted, a notice printed in large type reading as follows:

Public Inspection of Tariffs

All the currently effective passenger tariffs to which this company is a party and all passenger tariff publications which have been issued but are not yet effective are on file in this office, so far as they apply to traffic from or to. (Here name the point.) These tariffs may be inspected by any person upon request and without the assignment of any reason for such inspection. The employees of this company on duty in this office will lend assistance in securing information from the tariffs.

In addition, a complete file of all tariffs of this company, with indexes thereof, is maintained and kept available for public inspection at. (Here indicate the place or places where complete tariff files are maintained, including the street address, and where appropriate, the room number.)

§ 221.105 Special notice of limited liability for death or injury under the Warsaw Convention.

(a)(1) In addition to the other requirements of this subpart, each air carrier and foreign air carrier which, to any extent, avails itself of the limitation on liability to passengers provided by the Warsaw Convention, shall, at the time of delivery of the ticket, furnish to each passenger whose transportation is governed by the Convention and whose place of departure or place of destination is in the United States, the following statement in writing:

Advice to International Passengers on Limitations of Liability

Passengers embarking upon a journey involving an ultimate destination or a stop in a country other than the country of departure are advised that the provisions of a treaty known as the Warsaw Convention may be applicable to their entire journey including the portion entirely within the countries of departure and destination. The Convention governs and in most cases limits the liability of carriers to passengers for death or personal injury to approximately $10,000.

Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier's liability under the Warsaw Convention. For further information please consult your airline or insurance company representative.

(2) Provided, however, That when the carrier elects to agree to a higher limit of liability to passengers than that provided in Article 22(1) of the Warsaw Convention, such statement shall be modified to reflect the higher limit. The statement prescribed herein shall be printed in type at least as large as 10-point modern type and in ink contrasting with the stock on:

(i) Each ticket;

(ii) A piece of paper either placed in the ticket envelope with the ticket or attached to the ticket; or

(iii) The ticket envelope.

(b) Each air carrier and foreign air carrier which, to any extent, avails itself of the limitation on liability to passengers provided by the Warsaw Convention, shall also cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to passengers whose transportation may be governed by the Warsaw Convention and whose place of departure or destination may be in the United States, a sign which shall have printed thereon the statement prescribed in paragraph (a) of this section: Provided, however, That an air carrier, except an air taxi operator subject to part 298 of this subchapter, or foreign air carrier which provides a higher limitation of liability than that set forth in the Warsaw Convention and has signed a counterpart of the agreement among carriers providing for such higher limit, which agreement was approved by the Civil Aeronautics Board by Order E–23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the alternate form of notice set forth in the proviso to § 221.106(a) of this chapter in full compliance with the posting requirements of this paragraph. And provided further, That an air taxi operator subject to part 298 of this subchapter, which provides a higher limitation of liability than that set forth in the Warsaw Convention and has signed a counterpart of the agreement among carriers providing for such higher limit, which agreement was

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approved by the Civil Aeronautics Board by Order E–23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the following notice in the manner prescribed by this paragraph in full compliance with the posting requirements of this paragraph. Such statements shall be printed in bold faced type at least one-fourth of an inch high.

Advice to International Passengers on Limitation of Liability

Passengers traveling to or from a foreign country are advised that airline liability for death or personal injury and loss or damage to baggage may be limited by the Warsaw Convention and tariff provisions. See the notice with your ticket or contact your airline ticket office or travel agent for further information.

§ 221.106 Notice of limited liability for baggage; alternative consolidated notice of liability limitations.

(a)(1) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations on liability for loss of, damage to, or delay in delivery of baggage shall cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in the charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to persons or accept baggage for checking, a sign which shall have printed thereon the following statement:

Notice of Limited Liability for Baggage

For most international travel (including domestic portions of international journeys) liability for loss, delay, or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared and an extra charge is paid. Special rules may apply for valuables. Consult your carrier for details.

(2) Provided, however, That an air carrier or foreign air carrier which provides a higher limitation of liability for death or personal injury than that set forth in the Warsaw Convention and has signed a counterpart of the agreement approved by the Civil Aeronautics Board by Order E–23680, dated May 13, 1966 (31 FR 7302, May 19, 1966), may use the following notice in full compliance with the posting requirements of this paragraph and of § 221.105(b):

Advice to Passengers on Limitations of Liability

Airline liability for death or personal injury may be limited by the Warsaw Convention and tariff provisions in the case of travel to or from a foreign country.

For most international travel (including domestic portions of international journeys) liability for loss, delay or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared and an extra charge is paid. Special rules may apply to valuable articles.

See the notice with your tickets or consult your airline or travel agent for further information.

(3) Provided, however, That carriers may include in the notice the parenthetical phrase "($20.00 per kilo)" after the phrase "$9.07 per pound" in referring to the baggage liability limitation for most international travel. Such statements shall be printed in bold-face type at least one-fourth of an inch high and shall be so located as to be clearly visible and clearly readable to the traveling public.

(b)(1) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations of liability for loss of, damage to, or delay in delivery of, baggage shall include on or with each ticket issued in the United States or in a foreign country by it or its authorized agent, the following notice printed in at least 10 point type:

Notice of Baggage Liability Limitations

For most international travel (including domestic portions of international journeys) liability for loss, delay, or damage to baggage is limited to approximately $9.07 per pound for checked baggage and $400 per passenger for unchecked baggage unless a higher value is declared in advance and additional charges are paid. Excess valuation may not be declared on certain types of valuable articles. Carriers assume no liability for fragile or perishable articles. Further information may be obtained from the carrier.

(2) Provided, however, That carriers may include in their ticket notice the parenthetical phrase "($20.00 per kilo)" after the phrase "$9.07 per pound" in referring to the baggage liability limitation for most international travel.

(c) It shall be the responsibility of each carrier to insure that travel agents authorized to sell air transportation for such carrier comply with the notice provisions of paragraphs (a) and (b) of this section.

(d) Any air carrier or foreign air carrier subject to the provisions of this section which wishes to use a notice of limited liability for baggage of its own wording, but containing the substance of the language prescribed in paragraphs (a) and (b) of this section may substitute a notice of its own wording upon approval by the Department.

(e) The requirements as to time and method of delivery of the notice (including the size of type) specified in paragraphs (a) and (b) of this section and the requirement with respect to travel agents specified in paragraph (c) of this section may be waived by the Department upon application and showing by the carrier that special and unusual circumstances render the enforcement of the regulations impractical and unduly burdensome and that adequate alternative means of giving notice are employed.

(f) Applications for relief under paragraphs (d) and (e) of this section shall be filed with the Department's Office of International Aviation not later than 15 days before the date on which such relief is requested to become effective.

(g) Notwithstanding any other provisions of this section, no air taxi operator subject to part 298 of this subchapter shall be required to give the notices prescribed in this section, either in its capacity as an air carrier or in its capacity as an agent for an air carrier or foreign air carrier.

§ 221.107 Notice of contract terms.

(a) *Terms incorporated in the contract of carriage.* (1) A ticket, or other written instrument that embodies the contract of carriage for foreign air transportation shall contain or be accompanied by notice to the passenger as required in paragraphs (b) and (d) of this section.

(2) Each carrier shall make the full text of all terms that are incorporated in a contract of carriage readily available for public inspection at each airport or other ticket sales office of the carrier: Provided, That the medium, *i.e.*, printed or electronic, in which the incorporated terms and conditions are made available to the consumer shall be at the discretion of the carrier.

(3) Each carrier shall display continuously in a conspicuous public place at each airport or other ticket sales office of the carrier a notice printed in large type reading as follows:

Explanation of Contract Terms

All passenger (and/or cargo as applicable) contract terms incorporated into the contract of carriage to which this company is a party are available in this office. These provisions may be inspected by any person upon request and for any reason. The employees of this office will lend assistance in securing information, and explaining any terms.

In addition, a file of all tariffs of this company, with indexes thereof, from which incorporated contract terms may be obtained is maintained and kept available for public inspection at. (Here indicate the place or places where tariff files are maintained, including the street address and, where appropriate, the room number.)

(4) Each carrier shall provide to the passenger a complete copy of the text of any/all terms and conditions applicable to the contract of carriage, free of charge, immediately, if feasible, or otherwise promptly by mail or other delivery service, upon request at any airport or other ticket sales office of the carrier. In addition, all other locations where the carrier's tickets may be issued shall have available at all times, free of charge, information sufficient to enable the passenger to request a copy of such term(s).

(b) *Notice of incorporated terms.* Each carrier and ticket agent shall include on or with a ticket or other written instrument given to the passenger, that embodies the contract of carriage, a conspicuous notice that:

(1) The contract of carriage may incorporate terms and conditions by reference; passengers may inspect the full text of each applicable incorporated term at any of the carrier's airport locations or other ticket sales offices of the carrier; and passengers, shippers and consignees have the right to receive, upon request at any airport or other ticket sales office of the carrier, a free copy of the full text of any/all such terms by mail or other delivery service;

(2) The incorporated terms may include, among others, the terms shown in paragraphs (b)(2) (i) through (iv) of this section. Passengers may obtain a concise and immediate explanation of the terms shown in paragraphs (b)(2) (i) through (iv) of this section from any location where the carrier's tickets are sold.

(i) Limits on the carrier's liability for personal injury or death of passengers (subject to § 221.105), and for loss, damage, or delay of goods and baggage, including fragile or perishable goods.

(ii) Claim restrictions, including time periods within which passengers must file a claim or bring an action against the carrier for its acts or omissions or those of its agents.

(iii) Rules about re-confirmations or reservations, check-in times, and refusal to carry.

(iv) Rights of the carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate carrier or aircraft, and rerouting.

(c) *Explanation of incorporated terms.* Each carrier shall ensure that any passenger can obtain from any location where its tickets are sold or any similar documents are issued, a concise and immediate explanation of any term incorporated concerning the subjects listed in paragraph (b)(2) or identified in paragraph (d) of this section.

(d) *Direct notice of certain terms.* A passenger must receive conspicuous written notice, on or with the ticket, or other similar document, of the salient features of any terms that restrict refunds of the price of the transportation, impose monetary penalties on customers, or permit a carrier to raise the price or impose more restrictive conditions of contract after issuance of the ticket.

§ 221.108 Transmission of tariff filings to subscribers.

(a) Each carrier required to file tariffs in accordance with this part shall make available to any person so requesting a subscription service as described in paragraph (b) of this section for its passenger tariffs issued by it or by a publishing agent on its behalf.

(b) Under the required subscription service one copy of each new tariff publication, including the justification required by § 221.94, must be transmitted to each subscriber thereto by first-class mail (or other equivalent means agreed upon by the subscriber) not later than one day following the time the copies for official filing are transmitted to the Department. The subscription service described in this section shall not preclude the offering of additional types of subscription services by carriers or their agents.

(c) The carriers or their publishing agents at their option may establish a charge for providing the required subscription service to subscribers: Provided, That the charge may not exceed a reasonable estimate of the added cost of providing the service.

Subpart L—Rejection of Tariff Publications

§ 221.110 Department's authority to reject.

The Department may reject any tariff which is not consistent with section 41504 of the statute, with the regulations in this part, or with Department orders.

§ 221.111 Notification of rejection.

When a tariff is rejected, the issuing carrier or agent thereof will be notified electronically or in writing that the tariff is rejected and of the reason for such rejection.

§ 221.112 Rejected tariff is void and must not be used.

A tariff rejected by the Department is void and is without any force or effect whatsoever. Such rejected tariff must not be used.

Subpart M—Special Tariff Permission To File on Less Than Statutory Notice

§ 221.120 Grounds for approving or denying Special Tariff Permission applications.

(a) *General authority.* The Department may permit changes in fares, charges or other tariff provisions on less than the statutory notice required by section 41505 of the statute.

(b) *Grounds for approval.* The following facts and circumstances constitute some of the grounds for approving applications for Special Tariff Permission in the absence of other facts and circumstances warranting denial:

(1) *Clerical or typographical errors.* Clerical or typographical errors in tariffs constitute grounds for approving applications for Special Tariff Permission to file on less than statutory notice the tariff changes necessary to correct such errors. Each application for Special Tariff Permission based on such grounds shall plainly specify the errors and contain a complete statement of all the attending facts and circumstances, and such application shall be presented to the Department with reasonable promptness after issuance of the defective tariff.

(2) *Rejection caused by clerical or typographical errors or unintelligibility.* Rejection of a tariff caused by clerical or typographical errors constitute grounds for approving applications for Special Tariff Permission to file on less than statutory notice, effective not earlier than the original effective dates in the rejected tariff, all changes contained in the rejected tariff but with the errors corrected. Each application for the grant of Special Tariff Permission based on such grounds shall plainly specify the errors and contain a complete statement of all the attending facts and circumstances, and such application shall be filed with the Department within five days after receipt of the Department's notice of rejection.

(3) *Newly authorized transportation.* The fact that the Department has newly authorized a carrier to perform foreign air transportation constitutes grounds for approving applications for Special Tariff Permission to file on less than statutory notice the fares, rates, and other tariff provisions covering such newly authorized transportation.

(4) The fact that a passenger fare is within a statutory or Department-established zone of fare flexibility constitutes grounds for approving an application for Special Tariff Permission to file a tariff stating that fare and any rules affecting them exclusively, on less than statutory notice. The Department's policy on approving such applications is set forth in § 399.35 of this chapter.

(5) *Lowered fares and charges.* The prospective lowering of fares or charges to the traveling public constitutes grounds for approving an application for Special Tariff Permission to file on less than statutory notice a tariff stating the lowered fares or charges and any rules affecting them exclusively. However, the Department will not approve the application if the proposed tariff raises

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significant questions of lawfulness, as set forth in § 399.35 of this chapter.

(c) *Filing notice required by formal order.* When a formal order of the Department requires the filing of tariff matter on a stated number of days' notice, an application for Special Tariff Permission to file on less notice will not be approved. In any such instance a petition for modification of the order should be filed in the formal docket.

§ 221.121 How to prepare and file applications for Special Tariff Permission.

(a) *Form.* Each application for Special Tariff Permission to file a tariff on less than statutory notice shall conform to the requirements of § 221.212 if filed electronically.

(b) *Number of paper copies and place of filing.* For paper format applications, the original and one copy of each such application for Special Tariff Permission, including all exhibits thereto and amendments thereof, shall be sent to the Office of International Aviation, Department of Transportation, Washington, DC 20590.

(c) *Who may make application.* Applications for Special Tariff Permission to file fares, or other tariff provisions on less than statutory notice shall be made only by the issuing carrier or agent authorized to issue and file the proposed tariff. Such application by the issuing carrier or agent will constitute application on behalf of all carriers participating in the proposed fares, or other tariff provisions.

(d) *When notice is required.* Notice in the manner set forth in paragraph (e) of this section is required when a carrier files an application for Special Tariff Permission:

(1) To offer passenger fares that would be outside a Department-established zone of price flexibility or, in markets for which the Department has not established such a zone, outside the statutory zone of price flexibility; or

(2) To file any price increase or rule change that the carrier believes is likely to be controversial.

(e) *Form of notice.* When notice of filing of a Special Tariff Permission application affecting passenger fares is required by paragraph (d) of this section, the carrier shall, when it files the application, give immediate telegraphic notice or other notice approved by the Office of International Aviation, to all certificated and foreign route carriers authorized to provide nonstop or one-stop service in the markets involved, and to civic parties that would be substantially affected. The application shall include a list of the parties notified.

§ 221.122 Special Tariff Permission to be used in its entirety as granted.

Each Special Tariff Permission to file fares, or other tariff provisions on less than statutory notice shall be used in its entirety as granted. If it is not desired to use the permission as granted, and lesser or more extensive or different permission is desired, a new application for Special Tariff Permission conforming with § 221.121 in all respects and referring to the previous permission shall be filed.

§ 221.123 Re-use of Special Tariff Permission when tariff is rejected.

If a tariff containing matter issued under Special Tariff Permission is rejected, the same Special Tariff Permission may be used in a tariff issued in lieu of such rejected tariff provided that such re-use is not precluded by the terms of the Special Tariff Permission, and is made within the time limit thereof or within seven days after the date of the Department's notice of rejection, whichever is later, but in no event later than fifteen days after the expiration of the time limit specified in the Special Tariff Permission.

Subpart N—Waiver of Tariff Regulations

§ 221.130 Applications for waiver of tariff regulations.

Applications for waiver or modification of any of the requirements of this part 221 or for modification of chapter 415 of the statute with respect to the filing and posting of tariffs shall be made by the issuing carrier or issuing agent.

§ 221.131 Form of application for waivers.

Applications for waivers shall be in the form of a letter addressed to the Office of International Aviation, Department of Transportation Washington, DC 20590, and shall:

(a) Specify (by section and paragraph) the particular regulation which the applicant desires the Department to waive.

(b) Show in detail how the proposed provisions will be shown in the tariff under authority of such waiver if granted (submitting exhibits of the proposed provision where necessary to clearly show this information).

(c) Set forth all facts and circumstances on which the applicant relies as warranting the Department's granting the authority requested. No tariff or other documents shall be filed pursuant to such application prior to the Department's granting the authority requested.

Subpart O—Giving and Revoking Concurrences to Carriers

§ 221.140 Method of giving concurrence.

(a) A concurrence prepared in a manner acceptable to the Office of International Aviation shall be used by a carrier to give authority to another carrier to issue and file with the Department tariffs which contain joint fares or charges, including provisions governing such fares or charges, applying to, from, or via points served by the carrier giving the concurrence. A concurrence shall not be used as authority to file joint fares or charges in which the carrier to whom the concurrence is given does not participate, and it shall not be used as authority to file local fares or charges.

(b) *Number of copies.* Each concurrence shall be prepared in triplicate. The original of each concurrence shall be filed with the Department, the duplicate thereof shall be given to the carrier in whose favor the concurrence is issued, and the third copy shall be retained by the carrier who issued the concurrence.

(c) *Conflicting authority to be avoided.* Care should be taken to avoid giving authority to two or more carriers which, if used, would result in conflicting or duplicate tariff provisions.

§ 221.141 Method of revoking concurrence.

(a) A concurrence may be revoked by filing with the Department a Notice of Revocation of Concurrence prepared in a form acceptable to the Office of International Aviation.

(b) *Sixty days' notice required.* Such Notice of Revocation of Concurrence shall be filed on not less than sixty days' notice to the Department. A Notice of Revocation of Concurrence will be deemed to be filed only upon its actual receipt by the Department, and the period of notice shall commence to run only from such actual receipt.

(c) *Number of copies.* Each Notice of Revocation of Concurrence shall be prepared in triplicate. The original thereof shall be filed with the Department and, at the same time that the original is transmitted to the Department, the duplicate thereof shall be sent to the carrier to whom the concurrence was given. The third copy shall be retained by the carrier issuing such notice.

(d) Amendment of tariffs when concurrence revoked. When a concurrence is revoked, a corresponding amendment of the tariff or tariffs affected shall be made by the issuing carrier of such tariffs, on not less than statutory notice, to become effective not later than the effective date stated in the Notice of Revocation of Concurrence. In the event of failure to so amend the tariff or tariffs, the provisions therein shall remain applicable until lawfully canceled.

§ 221.142 Method of withdrawing portion of authority conferred by concurrence.

If a carrier desires to issue a concurrence conferring less authority than a previous concurrence given to the same carrier, the new concurrence shall not direct the cancellation of such previous concurrence. In such circumstances, such previous concurrence shall be revoked by issuing and filing a Notice of Revocation of Concurrence in a form acceptable to the Office of International Aviation. Such revocation notice shall include reference to the new concurrence.

Subpart P—Giving and Revoking Powers of Attorney to Agents

§ 221.150 Method of giving power of attorney.

(a) *Prescribed form of power of attorney.* A power of attorney prepared in accordance with a form acceptable to the Office of International Aviation shall be used by a carrier to give authority to an agent and (in the case of the agent being an individual) such agent's alternate to issue and file with the Department tariffs which contain local or joint fares or charges, including provisions governing such fares or charges, applicable via and for account of such carrier. Agents may be only natural persons or corporations (other than incorporated associations of air carriers). The authority conferred in a power of attorney may not be delegated to any other person.

(b) *Designation of tariff issuing person by corporate agent.* When a corporation has been appointed as agent it shall forward to the Department a certified excerpt of the minutes of the meeting of its Board of Directors designating by name and title the person responsible for issuing tariffs and filing them with the Department. Only one such person may be designated by a corporate agent, and the title of such designee shall not contain the word "Agent". When such a designee is replaced the Department shall be immediately notified in like manner of his successor. An officer or employee of an incorporated tariff-publishing agent may not be authorized to act as tariff agent in his/her individual capacity. Every tariff issued by a corporate agent shall be issued in its name as agent.

(c) *Number of copies.* Each power of attorney shall be prepared in triplicate. The original of each power of attorney shall be filed with the Department, the duplicate thereof shall be given to the agent in whose favor the power of attorney is issued, and the third copy shall be retained by the carrier who issued the power of attorney.

(d) *Conflicting authority prohibited.* In giving powers of attorney, carriers shall not give authority to two or more agents which, if used, would result in conflicting or duplicate tariff provisions.

§ 221.151 Method of revoking power of attorney.

(a) A power of attorney may be revoked only by filing with the Department in the manner specified in this section a Notice of Revocation of Power of Attorney in a form acceptable to the Office of International Aviation.

(b) *Sixty days' notice required.* Such Notice of Revocation of Power of Attorney shall be filed on not less than sixty days' notice to the Department. A Notice of Revocation of Power of Attorney will be deemed to be filed only upon its actual receipt by the Department, and the period of notice shall commence to run only from such actual receipt.

(c) *Number of copies.* Each Notice of Revocation of Power of Attorney shall be prepared in triplicate. The original thereof shall be filed with the Department and, at the same time that the original is transmitted to the Department, the duplicate thereof shall be sent to the agent in whose favor the power of attorney was issued (except, if the alternate agent has taken over the tariffs, the duplicate of the Notice of Revocation of Power of Attorney shall be sent to the alternate agent). The third copy of the notice shall be retained by the carrier.

(d) *Amendment of tariffs when power of attorney is revoked.* When a power of attorney is revoked, a corresponding amendment of the tariff or tariffs affected shall be made by the issuing agent of such tariffs, on not less than statutory notice, to become effective not later than the effective date stated in the Notice of Revocation of Power of Attorney. In the event of failure to so amend the tariff or tariffs, the provisions therein shall remain applicable until lawfully canceled.

§ 221.152 Method of withdrawing portion of authority conferred by power of attorney.

If a carrier desires to issue a power of attorney conferring less authority than a previous power of attorney issued in favor of the same agent, the new power of attorney shall not direct the cancellation of such previous power of attorney. In such circumstances, such previous power of attorney shall be revoked by issuing and filing a Notice of Revocation of Power of Attorney in a form acceptable to the Office of International Aviation. Such revocation notice shall include reference to the new power of attorney.

Subpart Q—Adoption Publications Required To Show Change in Carrier's Name or Transfer of Operating Control

§ 221.160 Adoption notice.

(a) When the name of a carrier is changed or when its operating control is transferred to another carrier (including another company which has not previously been a carrier), the carrier which will thereafter operate the properties shall immediately issue, file with the Department, and post for public inspection, an adoption notice in a form and containing such information as is approved by the Office of International Aviation. (The carrier under its former name or the carrier from whom the operating control is transferred shall be referred to in this subpart as the "former carrier", and the carrier under its new name or the carrier, company, or fiduciary to whom the operating control is transferred shall be referred to in this subpart as the "adopting carrier".)

(b) The adoption notice shall be prepared, filed, and posted as a tariff. The adoption notice shall be issued and filed by the adopting carrier and not by an agent.

(c) *Copies to be sent to agents and other carriers.* At the same time that the adoption notice is transmitted to the Department for filing, the adopting carrier shall send copies of such adoption notice to each agent and carrier to whom the former carrier has given a power of attorney or concurrence. (See § 221.163.)

§ 221.161 Notice of adoption to be filed in former carrier's tariffs.

At the same time that the adoption notice is issued, posted, and filed pursuant to § 221.160, the adopting carrier shall issue, post and file with the Department a notice in each effective tariff issued by the former carrier providing specific notice of the adoption in a manner authorized by the Office of International Aviation and which shall contain no matter other than that authorized.

§ 221.162 Receiver shall file adoption notices.

A receiver shall, immediately upon assuming control of a carrier, issue and file with the Department an adoption notices as prescribed by §§ 221.160 and

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221.161 and shall comply with the requirements of this subpart.

§ 221.163 Agents' and other carriers' tariffs shall reflect adoption.

If the former carrier is shown as a participating carrier under concurrence in tariffs issued by other carriers or is shown as a participating carrier under power of attorney in tariffs issued by agents, the issuing carriers and agents of such tariffs shall, upon receipt of the adoption notice, promptly file on statutory notice the following amendments to their respective tariffs:

(a) Cancel the name of the former carrier from the list of participating carriers.

(b) Add the adopting carrier (in alphabetical order) to the list of participating carriers. If the adopting carrier already participates in such tariff, reference to the substitution notice shall be added in connection with such carrier's name in the list of participating carriers.

§ 221.164 Concurrences or powers of attorney to be reissued.

(a) Adopting carrier shall reissue adopted concurrences and powers of attorney. Within a period of 120 days after the date on which the change in name or transfer of operating control occurs, the adopting carrier shall reissue all effective powers of attorney and concurrences of the former carrier by issuing and filing new powers of attorney and concurrences, in the adopting carrier's name, which shall direct the cancellation of the respective powers of attorney and concurrences of the former carrier. The adopting carrier shall consecutively number its powers of attorney and concurrences in its own series of power of attorney numbers and concurrence numbers (commencing with No. 1 in each series if it had not previously filed any such instruments with the Department), except that a receiver or other fiduciary shall consecutively number its powers of attorney or concurrences in the series of the former carrier. The cancellation reference shall show that the canceled power of attorney or concurrence was issued by the former carrier.

(b) If such new powers of attorney or concurrences confer less authority than the powers of attorney or concurrences which they are to supersede, the new issues shall not direct the cancellation of the former issues; in such instances, the provisions of §§ 221.142 and 221.152 shall be observed. Concurrences and powers of attorney which will not be replaced by new issues shall be revoked in the form and manner and upon the notice required by §§ 221.141 and 221 151.

(c) *Reissue of other carriers' concurrences issued in favor of former carrier.* Each carrier which has given a concurrence to a carrier whose tariffs are subsequently adopted shall reissue the concurrence in favor of the adopting carrier. If the carrier which issued the concurrence to the former carrier desires to revoke it or desires to replace it with a concurrence conferring less authority, the provisions of §§ 221.141 and 221.142 shall be observed.

§ 221.165 Cessation of operations without successor.

If a carrier ceases operations without having a successor, it shall:

(a) File a notice in each tariff of its own issue and cancel such tariff in its entirety.

(b) Revoke all powers of attorney and concurrences which it has issued.

Subpart R—Electronically Filed Tariffs

§ 221.170 Applicability of the subpart.

(a) Every air carrier and foreign air carrier shall file its international passenger fares tariffs consistent with the provisions of this subpart, and part 221 generally. Additionally, any air carrier and any foreign air carrier may file its international passenger rules tariffs electronically in machine-readable form as an alternative to the filing of printed paper tariffs as provided for elsewhere in part 221. This subpart applies to all carriers and tariff publishing agents and may be used by either if the carrier or agent complies with the provisions of subpart R. Any carrier or agent that files electronically under this subpart must transmit to the Department the remainder of the tariff in a form consistent with part 221, Subparts A through Q, on the same day that the electronic tariff would be deemed received under § 221.190(b).

(b) To the extent that subpart R is inconsistent with the remainder of part 221, subpart R shall govern the filing of electronic tariffs. In all other respects, part 221 remains in full force and effect.

§ 221.180 Requirements for electronic filing of tariffs.

(a) No carrier or filing agent shall file an electronic tariff unless, prior to filing, it has signed a maintenance agreement or agreements, furnished by the Department of Transportation, for the maintenance and security of the on-line tariff database.

(b) No carrier or agent shall file an electronic tariff unless, prior to filing, it has submitted to the Department's Office of International Aviation, Pricing and Multilateral Affairs Division, and received approval of, an application containing the following commitments:

(1) The filer shall file tariffs electronically only in such format as shall be agreed to by the filer and the Department. (The filer shall include with its application a proposed format of tariff. The filer shall also submit to the Department all information necessary for the Department to determine that the proposed format will accommodate the data elements set forth in § 221.202.)

(2) The filer shall provide, maintain and install in the Public Reference Room at the Department (as may be required from time to time) one or more CRT devices and printers connected to its on-line tariff database. The filer shall be responsible for the transportation, installation, and maintenance of this equipment and shall agree to indemnify and hold harmless the Department and the U.S. Government from any claims or liabilities resulting from defects in the equipment, its installation or maintenance.

(3) The filer shall provide public access to its on-line tariff database, at Departmental headquarters, during normal business hours.

(4) The access required at Departmental headquarters by this subpart shall be provided at no cost to the public or the Department.

(5) The filer shall provide the Department access to its on-line tariff database 24 hours a day, 7 days a week, except, that the filer may bring its computer down between 6:00 a.m. and 6:00 p.m. Eastern Standard Time or Eastern Daylight Saving Time, as the case may be, on Sundays, when necessary, for maintenance or for operational reasons.

(6) The filer shall ensure that the Department shall have the sole ability to approve or disapprove electronically any tariff filed with the Department and the ability to note, record and retain electronically the reasons for approval or disapproval. The carrier or agent shall not make any changes in data or delete data after it has been transmitted electronically, regardless of whether it is approved, disapproved, or withdrawn. The filer shall be required to make data fields available to the Department in any record which is part of the on-line tariff database.

(7) The filer shall maintain all fares and rules filed with the Department and all Departmental approvals, disapprovals and other actions, as well as all Departmental notations concerning such approvals, disapprovals or other actions, in the on-line tariff database for a period of two (2) years after the fare or rule becomes inactive. After this period of time, the carrier or agent shall provide the Department, free of charge, with a copy of the inactive data on a machine-readable tape or other mutually acceptable electronic medium.

(8) The filer shall ensure that its on-line tariff database is secure against destruction or alteration (except as authorized by the Department), and against tampering.

(9) Should the filer terminate its business or cease filing tariffs, it shall provide to the Department on a machine-readable tape or any other mutually acceptable electronic medium, contemporaneously with the cessation of such business, a complete copy of its on-line tariff database.

(10) The filer shall furnish to the Department, on a daily basis, on a machine-readable tape or any other mutually acceptable electronic medium, all transactions made to its on-line tariff database.

(11) The filer shall afford any authorized Departmental official full, free, and uninhibited access to its facilities, databases, documentation, records, and application programs, including support functions, environmental security, and accounting data, for the purpose of ensuring continued effectiveness of safeguards against threats and hazards to the security or integrity of its electronic tariffs, as defined in this subpart.

(12) The filer must provide a field in the Government Filing File for the signature of the approving U.S. Government Official through the use of a Personal Identification Number (PIN).

(13) The filer shall provide a leased dedicated data conditioned circuit with sufficient capacity (not less than 28.8K baud rate) to handle electronic data transmissions to the Department. Further, the filer must provide for a secondary or a redundancy circuit in the event of the failure of the dedicated circuit. The secondary or redundancy circuit must be equal to or greater than 14.4K baud rate. In the event of a failure of the primary circuit the filer must notify the Chief of the Pricing and Multilateral Affairs Division of the Department's Office of International Aviation, as soon as possible, after the failure of the primary circuit, but not later than two hours after failure, and must provide the name of the contact person at the telephone company who has the responsibility for dealing with the problem.

(c) Each time a filer's on-line tariff database is accessed by any user during the sign-on function the following statement shall appear:

The information contained in this system is for informational purposes only, and is a representation of tariff data that has been formally submitted to the Department of Transportation in accordance with applicable law or a bilateral treaty to which the U.S. Government is a party.

§ 221.190 Time for filing and computation of time periods.

(a) A tariff, or revision thereto, or a special tariff permission application may be electronically filed with the Department immediately upon compliance with § 221.180, and anytime thereafter, subject to § 221.400. The actual date and time of filing shall be noted with each filing.

(b) For the purpose of determining the date that a tariff, or revision thereto, filed pursuant to this subpart, shall be deemed received by the Department:

(1) For all electronic tariffs, or revisions thereto, filed before 5:30 p.m. local time in Washington, DC, on Federal business days, such date shall be the actual date of filing.

(2) For all electronic tariffs, or revisions thereto, filed after 5:30 p.m. local time in Washington, DC, on Federal business days, and for all electronic tariffs, or revisions thereto, filed on days that are not Federal business days, such date shall be the next Federal business day.

§ 221.195 Requirement for filing printed material.

(a) Any tariff, or revision thereto, filed in paper format which accompanies, governs, or otherwise affects, a tariff filed electronically, must be received by the Department on the same date that a tariff or revision thereto, is filed electronically with the Department under § 221.190(b). Further, such paper tariff, or revision thereto, shall be filed in accordance with the requirements of subparts A through Q of part 221. No tariff or revision thereto, filed electronically under this subpart, shall contain an effective date which is at variance with the effective date of the supporting paper tariff, except as authorized by the Department.

(b) Any printed justifications, or other information accompanying a tariff, or revision thereto, filed electronically under this subpart, must be received by the Department on the same date as any tariff, or revision thereto, filed electronically.

(c) If a filer submits a filing which fails to comply with paragraph (a) of this section, or if the filer fails to submit the information in conformity with paragraph (b) of this section, the filing will be subject to rejection, denial, or disapproval, as applicable.

§ 221.200 Content and explanation of abbreviations, reference marks and symbols.

(a) *Content.* The format to be used for any electronic tariff must be that agreed to in advance as provided for in § 221.180, and must include those data elements set forth in § 221.202. Those portions that are filed in paper form shall comply in all respects with part 221, subparts A through Q.

(b) *Explanation of abbreviations, reference marks and symbols.* Abbreviations, reference marks and symbols which are used in the tariff shall be explained in each tariff.

(1) The following symbols shall be used:

R—Reduction
I—Increase
N—New Matter
X—Canceled Matter
C—Change in Footnotes, Routings, Rules or Zones
E—Denotes change in Effective Date only.

(2) Other symbols may be used only when an explanation is provided in each tariff and such symbols are consistent throughout all the electronically filed tariffs from that time forward.

§ 221.201 Statement of filing with foreign governments to be shown in air carrier's tariff filings.

(a) Every electronic tariff filed by or on behalf of an air carrier that contains fares which, by international convention or agreement entered into between any other country and the United States, are required to be filed with that country, shall include the following statement:

The rates, fares, charges, classifications, rules, regulations, practices, and services provided herein have been filed in each country in which filing is required by treaty, convention, or agreement entered into between that country and the United States, in accordance with the provisions of the applicable treaty, convention, or agreement.

(b) The statement referenced in § 221.201(a) may be included with each filing advice by the inclusion of a symbol which is properly explained.

(c) The required symbol may be omitted from an electronic tariff or portion thereof if the tariff publication that has been filed with any other country pursuant to its tariff regulations bears a tariff filing designation of that country in addition to the D.O.T. number appearing on the tariff.

§ 221.202 The filing of tariffs and amendments to tariffs.

All electronic tariffs and amendments filed under this subpart, including those for which authority is sought to effect changes on less than bilateral/statutory

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notice under § 221.212, shall contain the following data elements:

(a) A Filing Advice Status File—which shall include:

(1) Filing date and time;
(2) Filing advice number;
(3) Reference to carrier;
(4) Reference to geographic area;
(5) Effective date of amendment or tariff;
(6) A place for government action to be recorded; and
(7) Reference to the Special Tariff Permission when applicable.

(b) A Government Filing File—which shall include:

(1) Filing advice number;
(2) Carrier reference;
(3) Filing date and time;
(4) Proposed effective date;
(5) Justification text; reference to geographic area and affected tariff number;
(6) Reference to the Special Tariff Permission when applicable;
(7) Government control data, including places for:
(i) Name of the government analyst, except that this data shall not be made public, notwithstanding any other provision in this or any other subpart;
(ii) Action taken and reasons therefor.
(iii) Remarks, except that internal Departmental data shall not be made public, notwithstanding any other provision in this or any other subpart;
(iv) Date action is taken; and
(v) Personal Identification Number; and
(8) Fares tariff, or proposed changes to the fares tariffs, including:
(i) Market;
(ii) Fare code;
(iii) One-way/roundtrip (O/R);
(iv) Fare Amount;
(v) Currency;
(vi) Footnote (FN);
(vii) Rule Number, provided that, if the rule number is in a tariff, reference shall be made to that tariff containing the rule;
(viii) Routing (RG) Number(s), provided that the abbreviation MPM (Maximum Permissible Routing) shall be considered a number for the purpose of this file;
(ix) Effective date and discontinue date if the record has been superseded;
(x) Percent of change from previous fares; and
(xi) Expiration date.
(9) Rules tariff, or proposed changes to the rules tariffs.
(i) Rules tariffs shall include:
(A) Title: General description of fare rule type and geographic area under the rule;
(B) Application: Specific description of fare class, geographic area, type of transportation (one way, round-trip, etc.);
(C) Period of Validity: Specific description of permissible travel dates and any restrictions on when travel is not permitted;
(D) Reservations/ticketing: Specific description of reservation and ticketing provisions, including any advance reservation/ticketing requirements, provisions for payment (including prepaid tickets), and charges for any changes;
(E) Capacity Control: Specific description of any limitation on the number of passengers, available seats, or tickets;
(F) Combinations: Specific description of permitted/restricted fare combinations;
(G) Length of Stay: Specific description of minimum/maximum number of days before the passenger may/must begin return travel;
(H) Stopovers: Specific description of permissible conditions, restrictions, or charges on stopovers;
(I) Routing: Specific description of routing provisions, including transfer provisions, whether on-line or inter-line;
(J) Discounts: Specific description of any limitations, special conditions, and discounts on status fares, e.g. children or infants, senior citizens, tour conductors, or travel agents, and any other discounts;
(K) Cancellation and Refunds: Specific description of any special conditions, charges, or credits due for cancellation or changes to reservations, or for request for refund of purchased tickets;
(L) Group Requirements: Specific description of group size, travel conditions, group eligibility, and documentation;
(M) Tour Requirements: Specific description of tour requirements, including minimum price, and any stay or accommodation provisions;
(N) Sales Restrictions: Specific description of any restrictions on the sale of tickets;
(O) Rerouting: Specific description of rerouting provisions, whether on-line or inter-line, including any applicable charges; and
(P) Miscellaneous provisions: Any other applicable conditions.
(ii) Rules tariffs shall not contain the phrase "intentionally left blank".
(10) Any material accepted by the Department for informational purposes only shall be clearly identified as "for informational purposes only, not part of official tariff", in a manner acceptable to the Department.

(c) A Historical File—which shall include:

(1) Market;
(2) Fare code;
(3) One-way/roundtrip (O/R);
(4) Fare amount;
(5) Currency;
(6) Footnote (FN);
(7) Rule Number, provided that, if the rule number is in a tariff other than the fare tariff, reference shall be made to that tariff containing the rule;
(8) Rule text applicable to each fare at the time that the fare was in effect.
(9) Routing (RG) Number(s), provided that the abbreviation MPM (Maximum Permissible Routing) shall be considered a number for the purpose of this file;
(10) Effective Date;
(11) Discontinue Date;
(12) Government Action;
(13) Carrier;
(14) All inactive fares (two years);
(15) Any other fare data which is essential; and
(16) Any necessary cross reference to the Government Filing File for research or other purposes.

§ 221.203 Unique rule numbers required.

(a) Each "bundled" and "unbundled" normal economy fare applicable to foreign air transportation shall bear a unique rule number.

(b) The unique rule numbers for the fares specified in this section shall be set by mutual agreement between the filer and the Department prior to the implementation of any electronic filing system.

§ 221.204 Adoption of provisions of one carrier by another carrier.

When one carrier adopts the tariffs of another carrier, the effective and prospective fares of the adopted carrier shall be changed to reflect the name of the adopting carrier and the effective date of the adoption. Further, each adopted fare shall bear a notation which shall reflect the name of the adopted carrier and the effective date of the adoption, provided that any subsequent revision of an adopted fare may omit the notation.

§ 221.205 Justification and explanation for certain fares.

Any carrier or its agent must provide, as to any new or increased bundled or unbundled (whichever is lower) on-demand economy fare in a direct-service market, a comparison between, on the one hand, that proposed fare and, on the other hand, the ceiling fare allowed in that market based on the SFFL.

§ 221.206 Statement of fares.

All fares filed electronically in direct-service markets shall be filed as single factor fares.

§ 221.210 Suspension of tariffs.

(a) A fare, charge, rule or other tariff provision that is suspended by the Department pursuant to section 41509 of the statute shall be noted by the Department in the Government Filing File and the Historical File.

(b) When the Department vacates a tariff suspension, in full or in part, and after notification of the carrier by the Department, such event shall be noted by the carrier in the Government Filing File and the Historical File.

(c) When a tariff suspension is vacated or when the tariff becomes effective upon termination of the suspension period, the carrier or its agent shall refile the tariff showing the effective date.

§ 221.211 Cancellation of suspended matter.

When, pursuant to an order of the Department, the cancellation of rules, fares, charges, or other tariff provision is required, such action shall be made by the carrier by appropriate revisions to the tariff.

§ 221.212 Special tariff permission.

(a) When a filer submits an electronic tariff or an amendment to an electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and no related tariff material is involved, the submission shall bear a sequential filing advice number. The submission shall appear in the Government Filing File and the Filing Advice Status File, and shall be referenced in such a manner to clearly indicate that such changes are sought to be made on less than bilateral/statutory notice.

(b) When a filer submits an electronic tariff or an amendment to the electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and it contains related paper under § 221.195, the paper submission must bear the same filing advice number as that used for the electronic submission. Such paper submission shall be in the form of a revised tariff page rather than as a separate request for Special Tariff Permission. All material being submitted on a paper tariff page as part of an electronic submission will clearly indicate the portion(s) of such tariff page that is being filed pursuant to, and in conjunction with, the electronic submission on less than bilateral/statutory notice.

(c) Departmental action on the Special Tariff Permission request shall be noted by the Department in the Government Filing File and the Filing Advice Status File.

(d) When the paper portion of a Special Tariff Permission that has been filed with the Department pursuant to paragraph (b) of this section is disapproved or other action is taken by the Department, such disapproval or other action will be reflected on the next consecutive revision of the affected tariff page(s) in the following manner:

(1) Example of disapproval statement:

The portion(s) of ____ Revised Page ____ filed[1] under EFA No. ____ was/were disapproved by DOT.

(2) Example of other action:

The portion(s) ____ Revised Page ____ filed under EFA No. ____ was/were required to be amended by DOT.

(e) When the Department disapproves in whole or in part or otherwise takes an action against any submission filed under this part, the filer must take corrective action within two business days following the disapproval or notice of other action.

(f) All submissions under this section shall comply with the requirements of § 221.202.

§ 221.300 Discontinuation of electronic tariff system.

In the event that the electronic tariff system is discontinued, or the source of the data is changed, or a filer discontinues its business, all electronic data records prior to such date shall be provided immediately to the Department, free of charge, on a machine-readable tape or other mutually acceptable electronic medium.

§ 221.400 Filing of paper tariffs required.

(a) After approval of any application filed under § 221.180 of this subpart to allow a filer to file tariffs electronically, the filer in addition to filing electronically must continue to file printed tariffs as required by subparts A through Q of part 221 for a period of 90 days, or until such time as the Department shall deem such filing no longer to be necessary: Provided that during the period specified by this section the filed printed tariff shall continue to be the official tariff.

(b) Upon notification to the filer that it may commence to file its tariffs solely in an electronic mode, concurrently with the implementation of filing electronically the filer shall:

(1) Furnish the Department with a copy of all the existing effective and prospective records on a machine-readable tape or other mutually acceptable electronic medium accompanied by an affidavit attesting to the accuracy of such records; and

(2) Simultaneously cancel such records from the paper tariff in the manner prescribed by subparts A through Q of part 221.

§ 221.500 Transmission of electronic tariffs to subscribers.

(a) Each filer that files an electronic tariff under this subpart shall make available to any person so requesting, a subscription service meeting the terms of paragraph (b) of this section.

(b) Under the required subscription service, remote access shall be allowed to any subscriber to the on-line tariff database, including access to the justification required by § 221.205. The subscription service shall not preclude the offering of additional services by the filer or its agent.

(c) The filer at its option may establish a charge for providing the required subscription service to subscribers: Provided that the charge may not exceed a reasonable estimate of the added cost of providing the service.

(d) Each filer shall provide to any person upon request, a copy of the machine-readable data (raw tariff data) of all daily transactions made to its on-line tariff database. The terms and prices for such value-added service may be set by the filer: Provided that such terms and prices shall be non-discriminatory, *i.e.*, that they shall be substantially equivalent for all similarly-situated persons.

§ 221.550 Copies of tariffs made from filer's printer(s) located in Department's public reference room.

Copies of information contained in a filer's on-line tariff database may be obtained by any user at Departmental Headquarters from the printer or printers placed in Tariff Public Reference Room by the filer. The filer may assess a fee for copying, provided it is reasonable and that no administrative burden is placed on the Department to require the collection of the fee or to provide any service in connection therewith.

§ 221.600 Actions under assigned authority and petitions for review of staff action.

(a) When an electronically filed record which has been submitted to the Department under this subpart, is disapproved (rejected), or a special tariff permission is approved or denied, under authority assigned by the Department of Transportation's Regulations, 14 CFR 385.13, such actions shall be understood to include the following provisions:

(1) *Applicable to a record or records which is/are disapproved (rejected).* The record(s) disapproved (rejected) is/are void, without force or effect, and must not be used.

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(2) *Applicable to a record or records which is/are disapproved (rejected), and to special tariff permissions which are approved or denied.* This action is taken under authority assigned by the Department of Transportation in its Organization Regulations, 14 CFR 385.13. Persons entitled to petition for review of this action pursuant to the Department's Regulations, 14 CFR 385.50, may file such petitions within seven days after the date of this action. This action shall become effective immediately, and the filing of a petition for review shall not preclude its effectiveness.

(b) [Reserved]

PART 250—OVERSALES

2. The authority citation for part 250 continues to read as follows:

Authority: 49 U.S.C. chapters 401, 411, 413, 417.

§ 250.4 [Removed]

3. Section 250.4—Denied boarding compensation tariffs for foreign air transportation is removed.

4. A new part 293 is added as follows:

PART 293—INTERNATIONAL PASSENGER TRANSPORTATION

Subpart A—General

Sec.
293.1 Applicability.
293.2 Definitions.

Subpart B—Exemption From Filing of Tariffs

293.10 Exemption.
293.11 Required statement.
293.12 Revocation of exemption.

Subpart C—Effect of Exemption

293.20 Rule of construction.
293.21 Incorporation of contract terms by reference.
293.22 Effectiveness of tariffs on file.

Authority: 49 U.S.C. 40101, 40105, 40109, 40113, 40114, 41504, 41701, 41707, 41708, 41709, 41712, 46101; 14 CFR 1.56(j)(2)(ii).

Subpart A—General

293.1 Applicability.

This part applies to air carriers and foreign air carriers providing scheduled transportation of passengers and their baggage in foreign air transportation.

293.2 Definitions.

For purposes of this part the definitions in § 221.3 of this chapter apply.

Subpart B—Exemption From Filing Tariffs

293.10 Exemption.

(a) Air carriers and foreign air carriers are exempted from the duty to file passenger tariffs with the Department of Transportation, as required by 49 U.S.C. 41504 and 14 CFR part 221, as follows:

(1) The Assistant Secretary for Aviation and International Affairs will, by notice, issue and periodically update a list establishing the following categories of markets:

(i) In Category A markets, carriers are exempted from the duty to file all passenger tariffs unless they are nationals of countries listed in Category C, or are subject to the provisions of paragraph (c) of this section.

(ii) In Category B markets, carriers are exempted from the duty to file all passenger tariffs except those setting forth one-way economy-class fares and governing provisions thereto, unless they are nationals of countries listed in Category C, or are subject to the provisions of paragraph (c) of this section.

(iii) In Category C markets, carriers shall continue to file all passenger tariffs, except as provided in § 293.10(b);

(2) The Assistant Secretary will list country-pair markets falling in Categories A and C, taking into consideration the factors in paragraphs (a)(2) (i) through (iv) of this section. All country-pair markets not listed in Categories A or C shall be considered to be in Category B and need not be specifically listed.

(i) Whether the U.S. has an aviation agreement in force with that country providing double-disapproval treatment of prices filed by the carriers of the Parties;

(ii) Whether the country's Government has disapproved or deterred U.S. carrier price leadership or matching tariff filings in any market;

(iii) Whether the country's Government has placed significant restrictions on carrier entry or capacity in any market; and

(iv) Whether the country's government is honoring the provisions of the bilateral aviation agreement and there are no significant bilateral problems.

(b) By notice of the Assistant Secretary, new country-pair markets will be listed in the appropriate category, and existing country-pair markets may be transferred between categories.

(c) Notwithstanding a determination that a country is in Category A or B, if the Assistant Secretary finds that effective price leadership opportunities for U.S. carriers are not available between that country and any third country, carriers that are nationals of such country may be required to file tariffs, as provided under part 221 or as otherwise directed in the notice, for some or all of their services between the U.S. and third countries.

(d) Air carriers and foreign air carriers are exempted from the duty to file governing rules tariffs containing general conditions of carriage with the Department of Transportation, as required by 49 U.S.C. 41504 and 14 CFR part 221. A description of the general conditions of carriage will be included in the Assistant Secretary's initial notice.

(e) Notwithstanding paragraph (d) of this section, air carriers and foreign air carriers shall file and maintain a tariff with the Department to the extent required by 14 CFR 203.4 and other implementing regulations.

(f) Authority for determining what rules are covered by paragraph (d) of this section and for determining the filing format for the tariffs required by paragraph (e) of this section is delegated to the Director of the Office of International Aviation.

293.11 Required statement.

Each governing rules tariff shall include the following statements:

(a) "Rules herein containing general conditions of carriage are not part of the official U.S. D.O.T. tariff."

(b) "The rules and provisions contained herein apply only to the passenger fares and charges that the U.S. Department of Transportation requires to be filed as tariffs."

293.12 Revocation of exemption.

(a) The Department, upon complaint or upon its own initiative, may, immediately and without hearing, revoke, in whole or in part, the exemption granted by this part with respect to a carrier or carriers, when such action is in the public interest.

(b) Any such action will be taken in a notice issued by the Assistant Secretary for Aviation and International Affairs, and will identify the tariff matter to be filed, and the deadline for carrier compliance.

(c) Revocations under this section will have the effect of reinstating all applicable tariff requirements and procedures specified in the Department's Regulations for the tariff material to be filed, unless otherwise specified by the Department.

Subpart C—Effect of Exemption

293.20 Rule of construction.

To the extent that a carrier holds an effective exemption from the duty to file tariffs under this part, it shall not, unless otherwise directed by order of the Department, be subject to tariff posting, notification or subscription

requirements set forth in 49 U.S.C. 41504 or 14 CFR part 221, except as provided in § 293.21.

293.21 Incorporation of contract terms by reference.

Carriers holding an effective exemption from the duty to file tariffs under this part may incorporate contract terms by reference (*i.e.*, without stating their full text) into the passenger ticket or other document embodying the contract of carriage for the scheduled transportation of passengers in foreign air transportation, provided that:

(a) The notice, inspection, explanation and other requirements set forth in 14 CFR 221.107, paragraphs (a), (b), (c) and (d) are complied with, to the extent applicable;

(b) In addition to other remedies at law, a carrier may not claim the benefit under this section as against a passenger, and a passenger shall not be bound by incorporation of any contract term by reference under this part, unless the requirements of paragraph (a), of this section are complied with, to the extent applicable; and

(c) The purpose of this section is to set uniform disclosure requirements, which preempt any State requirements on the same subject, for incorporation of terms by reference into contracts of carriage for the scheduled transportation of passengers in foreign air transportation.

293.22 Effectiveness of tariffs on file.

(a) One hundred and eighty days after the date of effectiveness of the Assistant Secretary's notice, passenger tariffs on file with the Department covered by the scope of the exemption will cease to be effective as tariffs under 49 U.S.C. 41504 and 41510, and the provisions of 14 CFR part 221, and will be canceled by operation of law.

(b) One hundred and eighty days after the date of effectiveness of the Assistant Secretary's notice, pending applications for filing and/or effectiveness of any passenger tariffs covered by the scope of the exemption, will be dismissed by operation of law. No new filings or applications will be permitted after the date of effectiveness of the Assistant Secretary's notice except as provided under § 293.12.

Issued in Washington, D.C. on July 16, 1999.

A. Bradley Mims,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–18700 Filed 7–21–99; 9:52 am]

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Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Field-Initiated Research and Evaluation Program; Notice

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DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1239]

RIN 1121–ZB73

Field-Initiated Research and Evaluation Program

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

ACTION: Notice of funding availability.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to Public Law 105–277, October 19, 1998, the Omnibus Consolidated and Emergency Supplemental Appropriation Act of 1999, is issuing a solicitation for applications from public and private agencies, organizations, institutions, tribal and Alaskan Native communities, and individuals to conduct research and evaluation projects in four areas: Native American juvenile justice and delinquency prevention; evaluation of juvenile justice programs for female juvenile offenders; juvenile justice system operations, sanctions and treatments; and general research designed to inform and enhance the field of juvenile justice and delinquency prevention.

DATES: Applications under this program must be received no later than 5 p.m. ET on September 10, 1999.

ADDRESSES: Interested applicants must obtain an application kit from OJJDP's Juvenile Justice Clearinghouse at 800–638–8736. The application kit is also available online at the OJJDP Web site at www.ojjdp.ncjrs.org/grants/about.html#kit.

FOR FURTHER INFORMATION CONTACT: Charlotte Kerr, Deputy Division Director, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street NW., Washington, DC 20531; phone: 202–307–5929; e-mail: charlott@ojp.usdoj.gov.

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this program is to generate high-quality research and evaluation that will inform and enhance the field of juvenile justice and delinquency prevention. Applications are encouraged from researchers and evaluators representing multiple academic disciplines and using innovative methodological strategies. The ideal project will not only increase the knowledge base regarding juvenile delinquency, but also will have practical implications for juvenile justice policy and practice.

Background

Since its inception in 1974, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has been charged with sponsoring research on juvenile crime and victimization. Projects supported by OJJDP have advanced the understanding of juvenile crime and its impact on society and have suggested appropriate responses in the areas of prevention, early intervention, and graduated sanctions.

In general, OJJDP funds research activities that derive from congressional mandates or address statutory priority areas that are narrowly defined. However, many creative and important research ideas deserving support arise outside the Federal Government. The Field-Initiated Research and Evaluation Program allows OJJDP to provide flexible funding for innovative and rigorous research that supports its mission. In past years, OJJDP has supported field-initiated research on such topics as gangs in correctional institutions, mental health issues in the juvenile justice system, and juvenile sex offending.

This year, OJJDP seeks applications in four topical areas: (1) Juvenile justice and delinquency prevention in tribal or Alaskan Native communities (Native American research); (2) evaluation of juvenile justice programs for female delinquents; (3) juvenile justice system operations, sanctions, and treatments; and (4) general research on topics related to juvenile justice and delinquency prevention. The background, goals, and objectives for each area are described below.

Note: Although some applications may be appropriate for more than one topical area (e.g., an evaluation of a program for Native American girls could qualify for areas 1 and 2), each application should be submitted under only *one* category.

(1) Native American Juvenile Justice and Delinquency Prevention

Background

The U. S. Department of Justice is currently involved in multiple research and programmatic efforts to address justice issues in tribal and Alaskan Native communities. Recent findings from the Bureau of Justice Statistics (BJS) report American Indians and Crime highlight the importance of such efforts. Based on multiple sources, including the National Crime Victimization Survey (NCVS) and the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) data, the report contains various findings with specific relevance for the juvenile population:

- Rates of violent victimization in every age group are higher among American Indians than among all other races.
- From 1992 to 1995, American Indians and Asian Americans were the only racial or ethnic groups to experience increases in the rates of abuse or neglect of children under age 15.
- Native Americans under age 18 are arrested for alcohol-related violations at a rate twice the national average.

The BJS study is the most comprehensive national report on issues of crime and justice affecting Native Americans. In general, there is little research on juvenile justice and delinquency prevention in tribal and Alaskan Native communities. All too frequently, those studies that are conducted reflect limited knowledge of local cultures and indigenous justice systems. In the past year, the Office of Justice Programs has sought guidance from Native American practitioners and researchers around the country on such issues as crime and justice research in Indian country, Alaskan tribal justice policies and practices, and youth gangs in Indian country. Recommendations for researchers that emerged from these consultations included the following: (1) investigators should make greater efforts to involve indigenous people in the design and implementation of their research; (2) research findings should have clear practical implications for the community in which the study was conducted, as well as for Native American communities in general; and (3) methods of inquiry should be based on and sensitive to local customs and values.

These recommendations also apply to projects under this Field-Initiated Research and Evaluation Program. Thus, projects under this initiative should reflect efforts to involve local community participants in the design and implementation of any research or evaluation conducted in tribal and Alaskan Native communities. Projects should use culturally appropriate methods of inquiry and should offer practical implications with relevance to both the local community and broader audiences. OJJDP expects to use the results of these projects to provide empirically based guidance regarding juvenile justice and delinquency prevention policies and practices in tribal and Alaskan Native communities.

In addition, these projects should help to develop and guide culturally appropriate research practices with tribal and Alaskan Native populations. OJJDP encourages the pursuit of new avenues of inquiry and innovative approaches to the problem of juvenile crime and delinquency in tribal and Alaskan Native communities. Such approaches are also being supported through OJJDP's Tribal Youth Program. Copies of the program announcement for the Tribal Youth Program and its evaluation are available from the Juvenile Justice Clearinghouse (800–638–8736) and online at www.ojjdp.ncjrs.org/grants/current.html.

Goals

The goal of this section of the field-initiated research and evaluation program is to foster original, rigorous scientific research that uses innovative research methods to study juvenile delinquency and juvenile justice in tribal and Alaskan Native communities. This program seeks empirical research on delinquent and criminal behavior both by and against tribal youth, interventions with youthful offenders, tribal juvenile justice system policies and practices, and alcohol and drug use by tribal youth.

Objectives

- Conceptualize and investigate research questions dealing specifically with tribal or Alaskan Native juvenile justice and delinquency prevention.
- Develop methodological approaches that are culturally sensitive, relevant and appropriate.
- Expand and validate hypotheses on juvenile delinquency as they relate to tribal and/or Alaskan Native youth.
- Develop knowledge that will inform new hypotheses, techniques, approaches, or methods to improve juvenile justice and delinquency prevention efforts both within and outside tribal and Alaskan Native territories.

Award Period

The project period will be up to 2 years.

Award Amount

Up to $400,000 is available for research and evaluation related to Native American juvenile justice and delinquency prevention. Individual grant amounts, which will be subject to negotiation, will not exceed $200,000 per project.

(2) Evaluation of Juvenile Justice Programs for Female Juvenile Offenders

Background

The appropriate and effective treatment of female offenders by the juvenile justice system is a matter of increasing interest to policymakers, practitioners, and the public. Although males remain responsible for the majority of juvenile crime, females represented 25 percent of all juvenile arrests in the United States in 1996. Most female delinquents come to the attention of the juvenile court for status offenses or nonviolent crimes (e.g., shoplifting, forgery). However, females have become increasingly involved in more serious and violent delinquent behavior. Therefore, there is growing concern that the juvenile justice system be able to effectively address the special needs of this population.

Although male and female delinquents experience many of the same problems (e.g., chaotic home environments, poverty, substance abuse), female offenders have unique needs that challenge the ability of the justice system to provide appropriate treatment. Many female delinquents have been victims of childhood sexual and/or physical abuse. Some are involved in relationships with abusive partners. Some enter the justice system pregnant or having already given birth to one or more children. Research suggests that gender-specific programming is needed to encourage healthy attitudes and behavior and promote social competence.

Traditionally, the juvenile justice system has paid little attention to the special needs of female offenders. The 1992 reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDP Act) required all States applying for Federal formula grants under the JJDP Act to identify gaps in their provision of services to female juvenile offenders. As a result of this process, many States began to recognize the dearth of appropriate programs for this population. In the fall of 1998, OJJDP published *Juvenile Female Offenders: A Status of the States Report*. This report provides an inventory of State efforts to address the needs of at-risk girls and female juvenile offenders. Such efforts range from providing sensitivity training to correctional staff and probation officers to offering programs for teenage mothers.

Although the number of gender-specific programs for female offenders is increasing, little is known about their content, structure, or effectiveness. The purpose of this component of the Field-Initiated Research and Evaluation Program is to encourage researchers to evaluate specialized services for females in the juvenile justice system. Well-designed evaluations should demonstrate which approaches are most useful for this population, and provide findings so that policymakers and communities might replicate and implement programs found to be effective and cost-efficient.

Goals

The goal of this section of the field-initiated research and evaluation program is to stimulate high-quality process and impact (outcome) evaluations of juvenile justice programs for female juvenile offenders. The programs to be evaluated should be geared toward intervention within the different components of the juvenile justice system (e.g., assessment, detention, secure corrections, community-based treatment, aftercare). Programs that focus exclusively on prevention are not eligible under this initiative.

Considering the limited award period (a maximum of 2 years) and the amount of funding available (up to $300,000 per award), OJJDP expects that evaluations funded under this initiative will focus on process and/or short-term impact or outcome evaluations. Researchers are also encouraged to consider using this award to lay the groundwork for longer term evaluations, which may then be funded on an ongoing basis using funding from other sources. Ideally, investigators should collaborate with practitioners and program developers to build their evaluation into new or existing programs.

Objectives

- Conduct innovative evaluations of gender-specific programs for adolescent female offenders in the juvenile justice system.
- Identify promising programs and program models for meeting the needs of female juvenile delinquents.
- Improve the ability of the juvenile justice system to identify and meet the multiple needs of female offenders and increase the likelihood that female offenders will leave the juvenile justice system with an enhanced capacity to become responsible, productive citizens.
- Encourage collaborative working relationships among researchers, practitioners, and policymakers in the field of juvenile justice.
- Enhance the ability of community-based and institutional programs to conduct empirically based evaluations of their own effectiveness.

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Award Period

The project period will be up to 2 years.

Award Amount

Up to $600,000 is available for the evaluation of juvenile justice programs for female juvenile offenders. Individual grant amounts, which will be subject to negotiation, will not exceed $300,000 per project.

(3) Juvenile Justice System Operations, Sanctions, and Treatments

Background

Early in this decade, OJJDP created the Comprehensive Strategy for Serious, Violent and Chronic Juvenile Offenders. The Comprehensive Strategy identifies core principles for addressing juvenile crime at the national, State, and local level. Among these principles is the recognition that delinquency prevention is the most cost-effective approach to combating juvenile crime. However, the juvenile justice system must also be capable of responding immediately and effectively when delinquency does occur. Once youth have entered the juvenile justice system, graduated sanctions must be in place to allow the system to respond to offenders' individual needs while maintaining public safety.

Since 1993, the Balanced and Restorative Justice (BARJ) model has provided a framework for strengthening the juvenile justice system. The three objectives of the BARJ model reflect the principles of the Comprehensive Strategy. These objectives include: (1) Accountability; (2) competency; and (3) community protection. Accountability mandates that juvenile offenders receive appropriate sanctions for their offenses and requires that they make amends to the victim(s) and community they have harmed. Competency refers to the idea that contact with the juvenile justice system should increase the likelihood that offenders will become productive, responsible citizens. Finally, community protection means that the juvenile justice system has a duty to ensure public safety.

As the issue of accountability has received more emphasis within the juvenile justice system, the role of crime victims has expanded significantly. There has been a growing recognition that victims must play an active role in the juvenile justice process. State legislatures have passed laws mandating victims' rights and requiring restitution for the loss and inconvenience that victims experience. Some States have established a victims' bill of rights specifically for victims of juvenile crime, while others have added language that ensures that these victims are included under existing victims' rights legislation. Examples of rights accorded to victims of juvenile crime include the following: (1) Victims must be notified of relevant hearings and allowed to attend; (2) victims must be notified when offenders are released from custody; and (3) victim impact statements must be considered in sentencing, parole, and release decisions. In some communities, centralized victims' bureaus provide information, referral services, and supportive services such as victim advocacy, counseling, and financial compensation.

To accomplish the BARJ objectives of accountability, competency, and community protection, the juvenile justice system must combine graduated sanctions with increasingly intensive treatment and rehabilitative services. An effective system must include a broad range of available sanctions, from community programs to secure corrections. Risk and needs assessments should inform the placement of offenders in the system. Finally, aftercare is a critical, but often overlooked, component of the system. Juveniles who receive services while detained or incarcerated can quickly lose any treatment gains if such services are abruptly discontinued when the juvenile is released. The juvenile justice system must ensure that youth are smoothly reintegrated into the community and that the risk of their reoffending is greatly reduced.

The purpose of this background information is to provide a framework within which investigators might structure their research designs. Research is needed on such topics as: (1) Risk and need assessment measures; (2) ways to ensure accountability; (3) case management in the juvenile justice system; (4) implementation and appropriate targeting of graduated sanctions; (5) community-based approaches; (6) effective and innovative treatment strategies; (7) identification of gaps in the continuum of care; (8) the role of the victim in the juvenile justice system; (9) programming for specific subgroups of offenders, such as very young or serious and violent offenders; and (10) the development and evaluation of intensive aftercare approaches. Research proposals on additional topics relevant to juvenile justice system operations, sanctions, and treatments are, of course, welcome.

Goals

The goal of this section of the field-initiated research and evaluation program is to foster original, rigorous scientific research that will enhance the operations, sanctions, and treatments within the juvenile justice system. Research is sought that will not only increase the knowledge base, but also will provide empirical support for implementing specific juvenile justice policies and practices. Ideally, research funded under this initiative will improve the ability of the juvenile justice system to meet the needs of both juvenile offenders and the communities in which they reside.

Objectives

- Conceptualize and investigate new research questions related to operations, sanctions, and treatments in the juvenile justice system.
- Develop new methodological approaches to address important research questions.
- Generate and validate hypotheses regarding the nature and efficacy of the juvenile justice system's response to juvenile crime and delinquency.
- Develop knowledge that will lead to new hypotheses, techniques, methods, or approaches for improving the functioning of the juvenile justice system.
- Provide information that can be used by practitioners and policymakers who seek to improve the ability of the juvenile justice system to meet the needs of offenders and the public.
- Improve the ability of the juvenile justice system to identify and meet the multiple needs of juvenile offenders and improve the likelihood that youth will leave the juvenile justice system with an enhanced capacity for becoming responsible, productive citizens.

Award Period

The project period will be up to 2 years.

Award Amount

Up to $600,000 is available for research and evaluation of juvenile justice system operations, sanctions, and treatments. Individual grant amounts, which will be subject to negotiation, will not exceed $300,000 per project.

(4) General Research

Background

This component of the Field-Initiated Research and Evaluation Program provides flexible funding for research which, while it may not fit neatly under any of OJJDP's current initiatives, supports the agency's mission in significant and creative ways. The issues and problems currently confronting the juvenile justice system require strategies and solutions that cut across traditional juvenile justice boundaries. In addition to criminologists, sociologists, psychologists, social workers, medical professionals, educators, child welfare specialists, and others have important roles to play in addressing juvenile delinquency and victimization. Ideally, field-initiated research should have practical implications for juvenile justice policies and practices.

Early in this decade, OJJDP created the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. The general principles of the Strategy include (1) Strengthening the family; (2) supporting core social institutions; (3) promoting delinquency prevention; (4) intervening immediately and effectively when delinquent behavior occurs; (5) establishing a system of graduated sanctions for juvenile offenders; and (6) identifying and controlling the small group of serious, violent, and chronic juvenile offenders. Investigators applying under the general research component of the Field-Initiated Research and Evaluation Program may want to consider working in one of these areas.

Additionally, in November 1998, members of the Study Group on Serious and Violent Juvenile Offenders and the Study Group on Very Young Offenders were surveyed regarding their priorities for juvenile justice research. Their responses suggested that research is needed in the following areas: (1) risk and protective factors for juvenile offending; (2) risk and needs assessment instruments for courts and correctional facilities; (3) causes of early-onset offending; (4) characteristics and needs of very young offenders; (5) causes of desistance from offending; (6) causes of serious and violent offending; (7) successful and innovative intervention programs for specific subgroups of juvenile offenders (e.g., serious and violent offenders, very young offenders, girls, youth with prenatal exposure to drugs and alcohol); and (8) the impact of juvenile transfers to adult court.

Finally, investigators may want to consult OJJDP's Comprehensive Plan for Fiscal Year 1999, which is available on the OJJDP Web site at www.ojjdp.ncjrs.org. The Plan is based on the Comprehensive Strategy and contains the research and program initiatives that OJJDP plans to fund during this fiscal year. Applicants may want to develop projects that will complement the agency's proposed research and programs.

Goals

The goal of this section of the field-initiated research and evaluation program is to foster rigorous, original scientific research that uses innovative methods to further the agency's mission of enhancing the juvenile justice system and preventing juvenile delinquency. Research that demonstrates collaboration among multiple disciplines is strongly encouraged. Project results should be of practical use to practitioners and policymakers and increase the juvenile justice knowledge base.

Objectives

- Promote and support innovative research and evaluation in the field of juvenile justice and delinquency prevention.
- Conceptualize and investigate new research questions in the juvenile justice field.
- Develop new methodological approaches to addressing priority issues.
- Develop knowledge that can be used to craft effective programs, policies and strategies for reducing and preventing juvenile delinquency and victimization.
- Conduct research that will enhance the ability of the juvenile justice system to respond to the needs of both juvenile offenders and society at large.

Award Period

The project period will be up to 2 years.

Award Amount

Up to $600,000 is available for general research. Individual grant amounts, which will be subject to negotiation, will not exceed $300,000 per project.

Note: The information that follows applies to all four of the topical areas described above.

Products

Proposals should contain a description of all products that will originate from the project. At a minimum, each grantee will be required to produce a final report that provides an overview of the research project. This overview should contain the following: (1) The theory and hypotheses guiding the work; (2) a description of the research or evaluation methods; (3) research and evaluation results (both significant and nonsignificant); (4) any practical or policy implications of the results; and (5) recommendations for future study. If possible, grantees should indicate in their final report how their work might contribute to defining and/or implementing best practices in the field of juvenile justice. This final report should be publishable as an OJJDP research report. Applicants are also strongly encouraged to consider submitting their results for publication in a refereed journal.

Applicants must also indicate their willingness to provide at least one additional report suitable for publication as an OJJDP *Bulletin* or *Fact Sheet*. This report should be completed within 60 days of the grant's closing date.

Eligibility Requirements

OJJDP invites applications from public and private agencies, organizations, institutions, tribal and Alaskan Native communities, and individuals, or any combination of the above. Private, for-profit organizations must agree to waive any profit or fee. In the case of joint applications, one applicant must be clearly indicated as primary (for correspondence and award purposes) and the other(s) listed as coapplicant(s). OJJDP encourages collaborative relationships among researchers, practitioners, and tribal entities. If the research is of a collaborative nature, written assurances of the collaboration should be provided. Similarly, when specific programs or agencies are the subject of an applicant's research or evaluation, the application should include letters of commitment or cooperation from the relevant program or agency. Finally, applicants must demonstrate that they have experience or ability related to the type of research or evaluation that they are proposing to conduct.

Selection Criteria

Applications will be evaluated and rated by a peer review panel according to the criteria outlined below. In addition, the extent to which the project narrative makes clear and logical connections among the components listed below will be considered in assessing a project's merits.

Problem(s) To Be Addressed (20 points)

Applicants must include in the project narrative a clear description of the research questions to be addressed. Applicants should discuss how previous research supports and shapes these questions and should identify the relevance of these questions for the field of juvenile justice. The proposed research will be judged on its ability to contribute to knowledge and practice in the field of juvenile justice and delinquency prevention.

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Goals and Objectives (10 points)

The application must include goals and objectives that are clear, concrete, and relevant to the field of juvenile justice. Goals should derive directly from the problems to be addressed. Objectives should consist of clearly defined, measurable tasks that will enable the applicant to achieve the goals of the project.

Project Design (40 points)

The application should present in detail the design of the project. Design elements should follow directly from the project's goals and objectives. The data to be collected and/or analyzed should clearly support the project's goals and objectives The applicant should describe the research or evaluation methodology in detail and should demonstrate the validity and usefulness of the data that will be collected and/or analyzed.

The application must include a timeline that indicates when specific tasks will be initiated and completed. The timeline should be referenced as appropriate in the narrative, but should also be placed in appendix A of the application.

Management and Organizational Capability (20 points)

Applicants must demonstrate the existence of a management structure that will support the achievement of the project's goals and objectives in an efficient and cost-effective manner. In particular, applicants must ensure that the tasks delineated in the project timeline (see "Project Design" above) are adequately staffed. Résumés for key staff members should be included in appendix B.

Applicants should also demonstrate the organizational capacity to complete the work described in the "Project Design" section. The applicant should include a description of any similar projects it has undertaken previously. Applicants should also demonstrate knowledge and experience related to juvenile justice issues. In addition, applicants should provide evidence of their ability to work collaboratively with juvenile justice system practitioners or service providers, particularly in the project's area of study. Research that involves specific agencies, organizations, or programs, including those under governmental or tribal auspices, should submit appropriate letters of cooperation in appendix C.

Budget (10 points)

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost-effective in relation to the activities to be undertaken. All budgeted costs should be directly related to the achievement of project goals and objectives. A brief budget narrative should be included in this section.

Format

Proposals requesting awards of less than $50,000 will be considered "small grants." Applications for small grants must limit the program narrative to 15 pages. Applicants requesting $50,000 or more must submit a program narrative of no more than 30 pages. These page limits do not include the budget narrative, appendixes, application forms, or assurances. At the end of the program narrative, applicants should indicate which author(s) were responsible for each of the narrative sections. Appendix A should contain the project's timeline with dates for initiation and completion of critical project tasks. Appendix B should contain the résumés for the principal investigator and key staff members. Appendix C should include all necessary letters of cooperation or support.

The narrative portion of the application must be submitted on 8½-by 11-inch paper using a standard 12-point font. The application should be double-spaced and printed on one side of the paper only. The narrative should be preceded by an abstract with a maximum length of 300 words.

These requirements are necessary to maintain a fair and uniform set of standards among all applicants. If the application fails to conform to these standards, it will not be eligible for consideration.

Catalog of Federal Domestic Assistance (CFDA) Number

For all these programs *except Native American Juvenile Justice and Delinquency Prevention,* the CFDA number, required on Standard Form 424, "Application for Federal Assistance," is 16.542. *For Native American Juvenile Justice and Delinquency Prevention, the CFDA number is 16.731.* Standard Form 424 is included in OJJDP's Application Kit, which can be obtained by contacting the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to puborder@ncjrs.org. The Application Kit is also available online at www.ojjdp.ncjrs.org/grants/about.html#kit.

Under the "Descriptive Title" section of Standard Form 424, in addition to the project's title, applicants should indicate under which topical area they are applying (i.e., Native American research, evaluations of programs for female offenders, juvenile justice system operations, or general research).

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice is requesting applicants to provide information on the following: (1) Active Federal grant awards supporting this project or related efforts, including other awards from the Department of Justice; (2) any pending applications for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) and (2) with the funding requested in this application. For each Federal award, applicants must include the program or project title, the Federal granting agency, the amount of the award, and a brief description of its purpose.

"Related efforts" is defined for these purposes as one of the following:

- Efforts for the same purpose (i.e., the proposed project would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project (e.g., to implement a planning effort funded by other Federal monies or to provide a substance abuse treatment or educational component within an existing juvenile justice project).
- Services of some kind (e.g., technical assistance, research, or evaluation) to the program or project described in the application.

Delivery Instructions

All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535.

Note: In the lower left-hand corner of the envelope, the applicant must clearly write "*Field-Initiated Research and Evaluation Program*" and specify which topical area is addressed in the application (i.e., Native American research, evaluations of programs for female offenders, juvenile justice system operations, or general research).

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. ET on September 10, 1999.

Contact

For further information, contact Charlotte Kerr, Deputy Division Director, Research and Program Development Division, at 202–307–5929. Alternatively, e-mail inquiries can be sent to Charlott@ojp.usdoj.gov.

References

Bureau of Justice Statistics. 1999. *American Indians and Crime.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Community Research Associates. 1998. *Juvenile Female Offenders: A Status Report of the States.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Robin Lubitz,

Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention.

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Part IV

Department of Housing and Urban Development

Second Notice of Funding Availability; Family Self-Sufficiency (FSS) Program Coordinators for the Section 8 Rental Certificate and Rental Voucher Programs, Fiscal Year 1999; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4416–N–02]

Second Notice of Funding Availability; Family Self-Sufficiency (FSS) Program Coordinators for the Section 8 Rental Certificate and Rental Voucher Programs, Fiscal Year 1999

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for fiscal year (FY) 1999 for Section 8 Family Self-Sufficiency (FSS) program coordinators.

SUMMARY: *Purpose of Program.* The Section 8 FSS program is intended to promote the development of local strategies to coordinate the use of assistance under the Section 8 rental certificate and rental voucher programs with public and private resources to enable participating families to achieve economic independence and self-sufficiency. An FSS program coordinator assures that program participants are linked to the supportive services they need to achieve self-sufficiency.

Available Funds. This is the second NOFA issued under this program for FY 1999. The first NOFA was issued on March 8, 1999 (64 FR 11278). Because funding remains available under this program, HUD is issuing a second Section 8 FSS Program Coordinators NOFA (FSS Program Coordinators NOFA). This second FSS Program Coordinators NOFA announces the availability of approximately $9 million remaining in Fiscal Year (FY) 1999 to fund Section 8 FSS program coordinators. Housing agencies that applied for funding under the March 8, 1999 FSS Program Coordinators NOFA will not receive additional funding under this NOFA.

Eligible Applicants. Public housing agencies (HAs) eligible to receive funding under this NOFA are only those that did not apply for funding under the first FY 99 FSS Program Coordinators NOFA, published on March 8, 1999 (March 8, 1999 FSS Program Coordinators NOFA) that either (1) Received funding under the FY 98 NOFA for Section 8 FSS Program Coordinators; or (2) did not receive funds under the FY 98 Section 8 FSS Program Coordinators NOFA and are authorized through their HUD-approved FSS Action Plan to administer Section 8 FSS programs of at least 25 FSS slots. Under this NOFA, both the voluntary Section 8 FSS slots and the mandatory Section 8 FSS slots reflected in the HA's HUD-approved FSS Action Plan are counted in determining the HA's Section 8 FSS program size. HAs that did not apply for funding under the March 8, 1999 FSS Program Coordinators NOFA that have Section 8 FSS programs of fewer than 25 approved slots, also may receive funding under this NOFA, if they are applying jointly with one or more other HAs, so that between or among the HAs they have HUD approval to administer at least 25 Section 8 FSS slots. There is no maximum Section 8 program size limit for HAs eligible to apply for funding under this NOFA.

Indian Housing Authorities (IHAs) are not eligible for funding under this NOFA since the Native American Housing Assistance and Self Determination Act of 1996 does not allow HUD to enter into new Annual Contributions Contracts (ACCs) with IHAs after September 30, 1997.

Application Deadline. The application deadline for the FSS Programs Coordinators is August 26, 1999, at the time described under section I of Additional Information of this NOFA.

ADDITIONAL INFORMATION

I. Application Due Date, Application Kits, and Technical Assistance

Application Due Date. The application deadline for funding under this Section 8 FSS Programs Coordinators NOFA is August 26, 1999, at the time described in Section I of this NOFA. The application deadline is firm as to date and hour. In the interest of fairness to all competing HAs, HUD will treat as ineligible for consideration any application that is not received by the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent via facsimile (FAX) transmission.

Address for Submitting Applications. The original completed application should be submitted to the HA's local HUD Field Office HUB (Attention: HUB, Director of Public Housing) or local HUD Field Office Program Center (Attention: Program Center Coordinator). Throughout this NOFA, the Field Office HUBs and Program Centers will be referred to as the local HUD Field offices. Applicants should not submit any copies of their applications to HUD Headquarters.

Mailed Applications. Applications will be considered timely filed if postmarked on or before 12 midnight on the application due date and received by the HA's local HUD Field Office on or within ten (10) days of the application due date.

Applications Sent by Overnight/Express Mail Delivery. Applications sent by overnight delivery or express mail will be considered timely filed if received by the appropriate local HUD Field Office before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Hand Carried Applications. Applications must be delivered to the appropriate local HUD Field Office by 6:00 pm local time on the due date. Hand carried applications will be accepted during normal business hours before the application due date. On the application due date, business hours will be extended to 6:00 pm.

For Application Kits, Further Information and Technical Assistance: There is no application kit for this NOFA. For answers to your questions, you may contact either the Public and Indian Housing Resource Center at 1–800–955–2232 or the HUB Director of Public Housing or the Program Center Coordinator in the local HUD Field Office. Hearing- or speech-impaired individuals may call HUD's TTY number 1–800–877–8339 (the Federal Information Relay Service TTY). Information can be accessed via the Internet at http://www.hud.gov. Prior to the application deadline, staff at the numbers given above will be available to provide general guidance, but not guidance in actually preparing the application. Following selection, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of an award by HUD.

II. Amount Allocated

For this second NOFA, FY 1999 funding in the amount of approximately $9 million remains available for HA administrative fees for Section 8 FSS program coordinators.

III. Program Description; Eligible Applicants; Eligible Activities

(A) Program Description

In recent years, HUD provided funding for Section 8 FSS program coordinators to HAs with Section 8 programs of fewer than 1,000 units. The FY 1994 and FY 1995 funds were awarded to these HAs based on a request for funding, and all complete applications were funded. The FY 1996 funds were awarded based on a competitive NOFA. In FY 1996, state and regional HAs that administered more than 1,000 rental vouchers and certificates, but fewer than 1,000 mandatory FSS slots, were also eligible to apply, and some received funding. In FY 1997, HUD allocated funds for Section 8 FSS program coordinators to allow HAs that were previously funded to continue to pay a Section 8 FSS coordinator. Since funding for Section 8 FSS program coordinators was limited, HUD did not accept applications from HAs that were not previously funded. In FY 1998, HUD awarded funds to HAs that were funded for Section 8 FSS program coordinators in FY 1997 to continue to pay for an FSS coordinator for another year and was also able to fund additional eligible small HAs and state and regional HAs that did not receive Section 8 FSS program coordinator funding in the previous year.

HUD determined to make a sufficient amount available under the FY 99 Section 8 Program Coordinator NOFAs to enable HAs, including state and regional HAs, with approval to administer Section 8 FSS programs of at least 25 slots, to hire up to one Section 8 FSS program coordinator for one year at a reasonable cost, as determined by the HA and HUD based on salaries for similar positions in the locality. HUD approval to administer a Section 8 FSS program of a certain size is obtained when HUD approves the HA's Action Plan. In its Action Plan the HA indicates the number of families it will serve in its Section 8 FSS program, through both mandatory and voluntary slots. There is no maximum Section 8 rental certificate/voucher program size limit for HAs eligible to apply for funding under this NOFA. Each eligible HA is limited to an award of $46,350 under this NOFA, except that if HAs apply jointly, the maximum applies to the application as a whole, not to each HA. HAs that applied for funding under the March 8, 1999 FSS Program Coordinators NOFA will not receive additional funding under this NOFA.

(B) Eligible Applicants

(1) *HAs that received funding under the FY 98 FSS Program Coordinators NOFA.* All HAs that received funding under the FY 98 NOFA for Section 8 FSS program coordinators that did not apply for funding under the first Section 8 FSS Program Coordinators NOFA, the March 8, 1999 NOFA, will be funded in FY 1999 under this second NOFA to the extent funds are available, except those HAs submitting applications that are ineligible under Section VII(C) of this NOFA, provided the HA certifies on the required Attachment A certification of this NOFA, subject to HUD verification, that it has hired an FSS program coordinator with funding previously awarded for that purpose under the FY 98 Section 8 FSS Program Coordinators NOFA and has made progress in implementing the FSS program demonstrated by having completed activities in each of the categories in section 2 of the required Attachment A certification. The HAs funded in FY 98 will receive 103 percent of FY 98 funding (not to exceed $46,350) unless the HA submits a request for a higher or lower amount, subject to the $46,350 maximum. HUD will not provide FY 99 funding to any HA that received Section 8 FSS Program Coordinator funding in FY 98 that does not comply with all of the above requirements.

(2) *HAs that did not receive funding under the FY 98 Section 8 FSS program Coordinators NOFA.* HAs, including state and regional HAs, that did not receive FSS coordinator funding in FY 98 and did not apply for funding under the March 8, 1999 FSS Program Coordinators NOFA are eligible to apply under this NOFA if the HA has a HUD-approved FSS Action Plan authorizing the HA to administer a Section 8 FSS program of at least 25 Section 8 FSS slots. Both voluntary and mandatory Section 8 FSS slots are counted in determining the HAs Section 8 FSS Program size. HAs with HUD approval to administer Section 8 FSS programs of fewer than 25 slots may also apply if they apply jointly with one or more other HA so that between or among the HAs they have HUD approval to administer at least 25 Section 8 FSS slots. If HAs apply jointly, the $46,350 maximum amount that may be requested applies to the application as a whole, not to each HA separately. Joint applicants must specify a lead co-applicant which will receive and administer the FSS program coordinator funding.

HUD is opening eligibility for funding under this NOFA to HAs with larger Section 8 rental certificate/voucher programs because it believes that this action will support welfare reform activities across the nation. The FSS program has been found to be a critical element in welfare reform efforts in many communities.

HUD is requiring that applicants under this NOFA have HUD approval to administer Section 8 FSS programs of at least 25 FSS slots to ensure that the Section 8 FSS program coordinator funds are used in a cost-effective manner. The Department expects that Section 8 FSS programs of fewer than 25 FSS slots can be managed within HA resources.

(C) Eligible Activities

Funds are available under this NOFA to employ or otherwise retain the services of up to one Section 8 FSS program coordinator for one year. A part-time Section 8 FSS program coordinator may be retained where appropriate. Under the Section 8 FSS program, HAs are required to use Section 8 rental assistance together with public and private resources to provide supportive services to enable participating families to achieve economic independence and self-sufficiency. Effective delivery of supportive services is a critical element in a successful FSS program.

IV. Program Requirements

(A) Program Coordinator Role

HAs administering the FSS program use program coordinating committees (PCCs) to assist them to secure resources and implement the FSS program. The PCC is made up of representatives of local government, job training and employment agencies, local welfare agencies, educational institutions, child care providers, nonprofit service providers, and businesses.

An FSS program coordinator works with the PCC and with local service providers to assure that program participants are linked to the supportive services they need to achieve self-sufficiency. The FSS program coordinator may ensure, through case management, that the services included in participants' contracts of participation are provided on a regular, ongoing and satisfactory basis, and that participants are fulfilling their responsibilities under the contracts.

(B) Staffing Guidelines

Under normal circumstances, a full-time FSS program coordinator should be able to serve approximately 50 FSS participants, depending on the coordinator's case management functions.

(C) Eligible Applicants With HUD-Approved Exceptions to Mandatory Minimum Program Size

If HUD has approved either a full or partial exception to implementing a Section 8 FSS program of the mandatory minimum size for an eligible HA, solely because of lack of funds for reasonable administrative costs, the approval of the exception is hereby rescinded after funding for a Section 8 FSS program coordinator is awarded under this NOFA.

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(D) Other Requirements

(1) *Compliance With Fair Housing and Civil Rights Laws.* All applicants must comply with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). If an applicant: (a) has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) has received a letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, the applicant's application will not be evaluated under this NOFA if, prior to the application deadline, the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken necessary to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(2) *Additional Nondiscrimination Requirements.* Applicants must comply with the Americans with Disabilities Act, and Title IX of the Education Amendments Act of 1972. In addition to compliance with the civil rights requirements listed at 24 CFR section 5.105, each successful applicant must comply with the nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964, U.S.C. sections 2000e *et seq.*; the Equal Pay Act, 29 U.S.C. section 206(d); the Age Discrimination in Employment Act of 1967, 29 U.S.C. sections 621 *et seq.*, and Titles I and V of the Americans with Disabilities Act, 42 U.S.C. sections 12101 *et seq.*

(3) *Affirmatively Furthering Fair Housing.* Each successful applicant will have a duty to affirmatively further fair housing. After the application is approved, applicants will be required to identify the specific steps that they will take to (1) address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice; (2) remedy discrimination in housing; or (3) promote fair housing rights and fair housing choice. Further, applicants have a duty to carry out the specific activities cited in their responses in a manner which will affirmatively further fair housing.

V. Application Selection Process

The funds available under this NOFA are not being awarded on a competitive basis. The Department anticipates that there may be sufficient funds available under the NOFA to fund all applications that meet the NOFA requirements. Applications will be reviewed by the local HUD Field Office to determine whether or not they are technically adequate based on the NOFA requirements. Categories of applications that will not be funded are stated in Section VII(C) of this NOFA.

Upon completion of its review, each local HUD field office will prepare a listing of all technically adequate letters and certifications, which includes the total number of Section 8 rental certificates/rental vouchers administered by the HA, FSS program size reflected in the HA's HUD-approved Section 8 FSS Action Plan, and the amount of funding approved for each applicant. This listing will be forwarded to the Grants Management Center, 501 School Street, SW, Suite 800, Washington, DC 20024, which will then allocate the available funding among approvable applications. Approvable applications identified by each HUD field office will be grouped into two categories: *Category 1*—Applications from HAs that received Section 8 FSS program coordinator funding in FY 98; *Category 2*—Applications from HAs, including state and regional HAs, that did not receive Section 8 FSS program coordinator funding in FY 98. No applicant that applied for funding under the March 8, 1999 FSS Program Coordinators NOFA will be eligible for funding in either Category 1 or 2 under this second FSS Program Coordinators NOFA.

All technically adequate applications will be funded to the extent funds are available. If HUD receives applications for funding greater than the amount made available under this NOFA, HUD will first fund all eligible category 1 applications starting from the smallest HAs first (i.e., those HAs with the smallest combined rental voucher and certificate programs first). If funding remains, HUD will then fund eligible applicants in Category 2 in size order starting from the smallest HAs first. If there are not sufficient monies to fund all applications from HAs with the same combined Section 8 rental certificate voucher program size, funding will be provided based on the size of the HA's Section 8 FSS program, reflected in the HA's HUD-approved Section 8 FSS Action Plan, starting with the largest approved Section 8 FSS program.

VI. Application Submission Requirements

(A) Application Requirement for HAs that Received FY 98 FSS Program Coordinator Funding

(1) *Applications for Funding at 103 percent of FY 98 Funding.* Each HA that received funding for a Section 8 FSS program coordinator under the FY 98 NOFA, and that did not apply for funding under the March 8, 1999 FSS Program Coordinators NOFA that wishes to receive funding under this NOFA at 103 percent of the FY 98 funding subject to the $46,350 maximum, must complete a certification in the format shown as "Attachment A" of this NOFA and submit it to the appropriate local HUD field office by the due date. The completed Attachment A certification along with the Fair Housing Certification (Attachment C of this NOFA) and the Certification Regarding Lobbying (Attachment D of this NOFA) constitute the entire HA application for funding under this section.

(2) *Application for Funding Other than 103 Percent of their FY 98 Funding Amount.* Any HA that received Section 8 FSS Program Coordinator funding in FY 98 and that did not apply for funding under the March 8, 1999 FSS Program Coordinators NOFA that wishes to receive funding for FY 99 at an amount either higher or lower than 103 percent of the FY 98 funding (subject to the $46,350 maximum) must submit the completed Attachment A certification, the Attachment C Fair Housing Certification, the Attachment D Certification Regarding Lobbying, and the salary comparability information required in items 4 and 5 of the Attachment B letter required under Section VI(B) of this NOFA.

(B) Request for FSS Program Coordinator Funds by Eligible HAs That Were Not Funded in FY 98

The applications of all HAs that did not receive funding under the FY 98 NOFA and that did not apply for funding under the March 8, 1999 FSS Program Coordinators NOFA must contain the following information stated in a letter from the Executive Director of the HA to the HUB, Director of Public Housing, or the Program Center Coordinator in the local HUD field office (see sample letter format, Attachment B). That letter plus the Fair Housing and Equal Opportunity Certification which is Attachment C of this NOFA and the Certification Regarding Lobbying which is Attachment D of this NOFA constitute the entire HA application for funding under this section. The HA "Attachment B" letter must confirm that the HA did not apply for funding under the March 8, 1999 FSS NOFA and state:

(1) The total number of budgeted Section 8 rental certificates and rental vouchers from the most recent HUD-approved form HUD–52672, Supporting Data for Annual Contributions Estimates Section 8 Housing Assistance Payments Program.

(2) The total number of families currently enrolled in the HA's Section 8 FSS program.

(3) The total number of voluntary and mandatory Section 8 FSS slots reflected in the HUD-approved FSS Action Plan of the HA; *OR,* where HAs are applying jointly, the combined total HUD-approved Section 8 FSS program slots.

(4) The annual salary proposed for the Section 8 FSS program coordinator, plus any fringe benefits. Do not include costs of training, transportation, clerical support, equipment, supplies, or other administrative costs or overhead. The program coordinator salary should be set as follows:

(a) Determine the salary level, taking into consideration salaries for comparable jobs, modified by the hours worked.

(b) Set the annual salary, including any fringe benefits that pertain to the job.

(5) Evidence that demonstrates salary comparability with similar positions in the local jurisdiction.

(6) Joint applicants must indicate which HA will be the lead applicant and will receive and administer the FSS program coordinator funding.

(C) *Fair Housing Certification and Certification Regarding Lobbying*

All HAs applying for funding under this NOFA must submit the Certification Regarding Fair Housing and Equal Opportunity which is included as Attachment C of this NOFA and the Certification Regarding Lobbying which is Attachment D of this NOFA.

VII. Corrections to Deficient Applications

(A) Acceptable Applications

To be eligible for processing, an application must be received by the appropriate local HUD field office no later than the date and time specified in this NOFA. The local HUD field office will initially screen all applications and notify HAs of technical deficiencies by letter.

(B) *Correction of Deficient Applications*

After the application due date, HUD may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from an applicant. HUD may contact an applicant, however, to clarify an item in the application or to correct technical deficiencies. Applicants should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any selection criterion. In order not to unreasonably exclude applications from being rated and ranked, HUD may, however, contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. *Examples* of curable technical deficiencies include failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. In each case, HUD will notify the applicant in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. Applicants must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

(C) Unacceptable Applications

(1) After the 14-calendar day technical deficiency correction period, the local HUD field office will disapprove HA applications that it determines are not acceptable for processing. The HUD notification of rejection letter must state the basis for the decision.

(2) Applications from HAs that fall into any of the following categories are ineligible for funding under this NOFA and will not be processed:

(a) An HA application submitted after the deadline date for this NOFA.

(b) An application from an HA that is not an eligible HA under Section III(B) of this NOFA or an application that does not comply with the requirements of Section VI(A) or VI(B) of this NOFA.

(c) An application from an HA that does not meet the requirements of Section IV.D(1) of this NOFA, Compliance with Fair Housing and Civil Rights Laws.

(d) An application from an HA that has serious unaddressed, outstanding Inspector General audit findings, or HUD Office management review findings for one or more of the following programs: Rental Voucher, Rental Certificate or Moderate Rehabilitation.

(e) An applicant that applied for funding under the March 8, 1999 FSS Program Coordinators NOFA.

VIII. Findings and Certifications

(A) Paperwork Reduction Act

The Section 8 information collection requirements contained in this notice were submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0198. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(B) Environmental Requirements

In accordance with provisions of 24 CFR Part 50.19(c)(5)(ii), a finding of no significant impact is not required under this Notice. This NOFA provides funding under 24 CFR Part 984, which does not contain environmental review provisions because it concerns activities that are listed in 24 CFR 50.19(b) as categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 C.F.R. 4321) ("NEPA"). Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded from environmental review under NEPA. No environmental review is required in connection with the award of assistance under this NOFA, because the NOFA only provides funds for employing a coordinator that provides public and supportive services, which are categorically excluded under 24 CFR 50.19(b)(4) and (12).

(C) Catalog of Federal Domestic Assistance Numbers

The catalog of Federal Domestic Assistance number for the Section 8 rental certificate program is 14.855. The number for the Section 8 rental voucher program is 14.857.

(D) Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA makes funds available for HAs to employ or otherwise retain the services of up to one FSS program coordinator for one year. As such, there are no direct implications on the relationship between the national government and the states or on the distribution of power and

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responsibilities among various levels of government.

(E) Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate that basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(F) Section 103 HUD Reform Act

HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

(G) Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted. The certification and the SF–LLL are included as Attachment D of this NOFA.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995), which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

IX. Authority

The Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999 (Pub. L. No. 105–265, approved October 21, 1998) authorizes funding for program coordinators under the Section 8 FSS program. As a result, the Department determined to make a sufficient amount available under this NOFA, under 24 CFR part 984, in accordance with section 984.302(b), to enable HAs to hire up to one Section 8 FSS program coordinator for one year at a reasonable cost as determined by the HA and HUD, based on salaries for similar positions in the locality.

Dated: July 16, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

Attachment A.—Required Certification Format for HAs That Received FY 98 Section 8 FSS Program Coordinator Funding *

Dear HUD Field Office HUB Director of Public Housing or Field Office Program Center Coordinator:

In connection with the second FY 99 NOFA for Section 8 FSS program coordinators, [enter date of publication of this NOFA publication], I hereby certify for the _____ (enter name) HA that:

(1) The HA has hired a Section 8 FSS program coordinator using HUD funds provided for that purpose on _____ (enter the ACC effective date of FY 98 FSS program coordinator funding increment), and

(2) The HA has (check all that apply):

____ (a) Formed and convened an FSS program coordinating committee,

____ (b) Obtained HUD approval of its Section 8 FSS action plan,

____ (c) Executed contracts of participation with FSS participants.

(3) The HA has_____ (enter number) Section 8 families currently enrolled in its Section 8 FSS program.

(4) The total number of (both voluntary and mandatory) Section 8 FSS slots identified in the HA's HUD-approved action plan or, when HAs are applying jointly, the combined total of Section 8 FSS program slots in the HUD-approved Action Plan is _____.

(5) The total number of budgeted Section 8 rental certificates and rental vouchers from the most recent HUD-approved HUD 52672 form is _____.

(**Note:** For HAs applying jointly, provide the total for all HAs included in the application.)

(6) The HA did not apply for Section 8 Program Coordinator funding under the Section 8 FSS Program Coordinators NOFA published on March 8, 1999.

Sincerely,

Executive Director

* **Note:** To qualify for funding under this NOFA, HAs that received Section 8 FSS Program Coordinator funding in FY 98 must have hired an FSS program coordinator with funding awarded under that NOFA and demonstrate activities in each of the categories in section 2.(a), 2.(b) and 2(c) of this Attachment A certification.

Attachment B—New Requests for Section 8 FSS Program Coordinator Funds Sample Letter Format

Dear HUD Field Office HUB Director of Public Housing or Field Office Program Center Coordinator:

This is to request funds to pay the salary of a Section 8 Family Self-Sufficiency (FSS) program coordinator for one year, for the _____ housing agency (HA) Section 8 FSS program.

The __ HA did not apply for funding under the March 8, 1999 Section 8 FSS Program Coordinators NOFA.

1. Total number of budgeted Section 8 rental certificates and rental vouchers from the most recent HUD-approved form HUD–52672, Supporting Data for Annual Contributions Estimates Section 8 Housing Assistance Payments Program: _____.
2. Total number of families currently enrolled in the HA's Section 8 FSS program: _____.
3. Total number of Section 8 FSS program slots based on the number of (both voluntary and mandatory) FSS slots identified in the HA's HUD-approved Action Plan OR, when HAs are applying jointly, the combined total of Section 8 FSS program slots in the HUD-approved Action Plans of the HAs _____.
4. Section 8 FSS Program Coordinator Salary:
   a. *Salary level*, based on salaries for comparable jobs (modified by number of hours worked) _____
   b. *Annual Salary* plus Fringe Benefits: _____ Hours/Week; _____ $/Hour; _____ Fringe Rate(%)
   Annual Salary_____
5. Attachment: Evidence demonstrating salary comparability to similar positions in the local jurisdiction.
6. For joint applications: The lead applicant HA that will receive and administer the Section 8 FSS program coordinator funding is: _____.

If there are any questions, please contact _____ at _____.

Sincerely,

Executive Director.

Attachments

Attachment C—Fair Housing and Equal Opportunity Certifications

The housing agency (HA) certifies that in administering the funding for the Section 8 Family Self-Sufficiency program coordinators it will comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing. CDBG recipients also must certify to compliance with section 109 of the Housing and Community Development Act.

_____

Name of HA

_____

Signature and Title of HA Representative

_____

Date

Attachment D—Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1342, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature of HA Representative

_____

Name of Signatory (Print or Type)

_____

Name of HA

_____

Date signed

[FR Doc. 99–19122 Filed 7–22–99; 2:10 pm]

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Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 2 and 52
Federal Acquisition Regulation; Commercial Items—Nongovernmental Purposes; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2 and 52

[FAR Case 98–304]

RIN 9000–AI41

Federal Acquisition Regulation; Commercial Items—Nongovernmental Purposes

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to implement Section 803(a)(2)(D) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 by revising the definition of "commercial item" to provide specific guidance on the meaning and appropriate application of the term "purposes other than government purposes" at 41 U.S.C. 403(12)(A).

DATES: Comments should be submitted on or before September 27, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to: farcase.98–304@gsa.gov.

Please cite FAR case 98–304 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAR case 98–304.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the definition of "commercial item" at FAR 2.101 and the definition in the clause at FAR 52.202–1, DEFINITION, to provide specific guidance on the meaning and appropriate application of the term "purposes other than government purposes" at 41 U.S.C. 403(12)(A). This change implements Section 803(a)(2)(D) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261). Section 803(a)(2)(D), effective upon enactment, requires that the FAR be revised to provide this specific guidance.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies existing language and does not change existing policy. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 98–304), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2 and 52

Government procurement.

Dated: July 22, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR parts 2 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 2 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. In section 2.101(b), revise paragraph (a) of the definition "Commercial item" to read as follows:

PART 2—DEFINITION OF WORDS AND TERMS

2.101 Definitions.

* * * * *

(b) * * *

* * * * *

Commercial item means—

(a) Any item, other than real property, that—

(1) Has been sold, leased, or licensed to the general public (or has been offered for sale, lease, or license to the general public, with a likelihood that the offer will be accepted within a reasonable time); and

(2) Is of a type customarily used by the general public for purposes other than the performance of work for a Government entity.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. In section 52.202–1, revise the date of the clause and paragraph (c)(1) to read as follows:

52.202–1 Definitions.

* * * * *

Definitions (Date)

* * * * *

(c) *Commercial item* means—

(1) Any item, other than real property, that—

(i) Has been sold, leased, or licensed to the general public (or has been offered for sale, lease, or license to the general public, with a likelihood that the offer will be accepted within a reasonable time); and

(ii) Is of a type customarily used by the general public for purposes other than the performance of work for a Government entity.

* * * * *

[FR Doc. 99–19097 Filed 7–26–99; 8:45 am]

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Tuesday
July 27, 1999

Part VI

Environmental Protection Agency

40 CFR Part 262

Project XL Site-Specific Rulemaking for University Laboratories at the University of Massachusetts Boston, Boston, MA; the Boston College, Chestnut Hill, MA; and the University of Vermont, Burlington, VT; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[FRL–6408–4]

Project XL Site-Specific Rulemaking for University Laboratories at the University of Massachusetts Boston, Boston, MA; the Boston College, Chestnut Hill, MA; and the University of Vermont, Burlington, VT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; request for comments and draft final project agreement.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing this rule to implement a project under the Project XL program that would provide regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended for the University of Massachusetts-Boston, Boston, MA, Boston College, Chestnut Hill, MA and the University of Vermont, Burlington, VT (the Universities). The principal objective of this Laboratory XL Project is to pilot a flexible, performance-based system for managing laboratory waste. To achieve this, today's proposed rule would provide regulatory flexibility to allow the participating laboratories at the Universities to replace existing requirements for hazardous waste generators with a comprehensive Laboratory Environmental Management Plan designed for each University. The terms of the overall XL project are contained in the draft Final Project Agreement (FPA) on which EPA is also requesting comments. The draft Final Project Agreement (FPA) is available for public review and comment at the EPA Docket in Washington DC, in the EPA Region I library, at the Universities, and on the world wide web at http://www.epa.gov/projectxl/. Following a review of the public comments and appropriate changes, the FPA would be signed by delegates from the EPA, the Massachusetts Department of Environmental Protection (MADEP), the Vermont Department of Environmental Conservation (VTDEC) and the Universities.

DATES: Public Comments: Comments on the proposed rule and/or FPA must be received on or before August 26, 1999. All comments should be submitted in writing to the address listed below.

Public Hearing: Commenters may request a public hearing by August 10, 1999 during the public comment period. Commenters requesting a public hearing should specify the basis for their request. If EPA determines that there is sufficient reason to hold a public hearing, it will do so by August 17, 1999, during the last week of the public comment period. Requests for a public hearing should be submitted to the address below. If a public hearing is scheduled, the date, time, and location will be available through a **Federal Register** notice or by contacting Ms. Gina Snyder or Mr. George Frantz at the Region 1 office.

ADDRESSES: Request to Speak at Hearing: Requests for a hearing should be mailed to the RCRA Information Center Docket Clerk (5305G), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Please send an original and two copies of all comments, and refer to Docket Number F–1999–NEUP–FFFFF. A copy should also be sent to Ms. Gina Snyder at U.S. EPA Region I. Ms. Gina Snyder may be contacted at the following address: U.S. Environmental Protection Agency, Region I (SPE), 1 Congress St., Suite 1100, Boston, MA, 02114, (617) 918–1837.

Comments: Written comments should be mailed to the RCRA Information Center Docket Clerk (5305W), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Please send an original and two copies of all comments, and refer to Docket Number F–1999–NEUP–FFFFF.

Viewing Project Materials: A docket containing the proposed rule, draft Final Project Agreement, supporting materials, and public comments is available for public inspection and copying at the RCRA Information Center (RIC), located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9:00 am to 4:00 pm Monday through Friday, excluding federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA docket number F–1999–NEUP–FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page. Project materials are also available for review for today's action on the world wide web at http://www.epa.gov/projectxl/.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region I, 1 Congress Street, Suite 1100 (LIB), Boston, MA 02114–2023 during normal business hours. Persons wishing to view the duplicate docket at the Boston location are encouraged to contact Ms. Gina Snyder or Mr. George Frantz in advance, by telephoning (617) 918–1837 or (617) 918–1883.

FOR FURTHER INFORMATION CONTACT: Ms. Gina Snyder or Mr. George Frantz, U.S. Environmental Protection Agency, Region I (SPE), Assistance and Pollution Prevention Division, 1 Congress Street, Suite 1100, Boston, MA 02114–2023. Ms. Snyder can be reached at (617) 918–1837 and Mr. Frantz can be reached at (617) 918–1883. Further information on today's action may also be obtained on the world wide web at http://www.epa.gov/projectxl/.

SUPPLEMENTARY INFORMATION: The development and implementation of an Environmental Management Plan would be piloted at these three Universities in their laboratories at areas that are currently managed as satellite accumulation areas (see 40 CFR 262.34(c)). Hazardous waste managed at all other areas of each University would continue to be subject to current RCRA regulations. This pilot is intended to test the effectiveness of an integrated, flexible, performance-based approach for managing hazardous waste in university laboratories to determine whether this approach promotes better management of laboratory wastes than the current standards.

In an effort to more efficiently manage hazardous waste and minimize the volume of waste generated in the university laboratory setting, the proposed rule would provide for a "temporary conditional deferral" from two specific RCRA requirements that apply to generators of hazardous waste, 40 CFR 262.11—Hazardous Waste Determination, and 262.34(c)—Satellite Accumulation, which includes requirements for container management. Instead, laboratory waste would be managed in accordance with a Laboratory Environmental Management Plan until it reaches each University's on-site hazardous waste accumulation area where a determination would be made by Environmental Health and Safety personnel as to whether the waste can be redistributed and reused at the University or whether it must be managed as a RCRA hazardous waste. The proposed rule would define laboratory waste as a hazardous chemical that results from laboratory scale activities and includes the following: excess or unused hazardous chemicals that may or may not be reused outside their laboratory of origin; hazardous chemicals determined to be RCRA hazardous waste as defined in 40 CFR part 261; and hazardous chemicals that will be determined not to be RCRA hazardous waste pursuant to the new proposed rule at 40 CFR 262.106. Making a solid and hazardous waste determination at a central location would allow professionals within the Universities' Environmental, Health and Safety program to more easily manage the laboratory waste and to increase reuse opportunities.

The deferral of specified RCRA requirements is "temporary." It remains in effect only for the four-year term of this Laboratory XL project. The four-year term is based upon the date of promulgation of the final rule when the Universities will commence the development of their Laboratory Environmental Management Plans (EMP). Following review of its EMP, each University would notify the applicable state agency and EPA in writing of the date on which it intends to implement its EMP. The proposed rule would become effective in the designated participating laboratories only after such written notification. Section III.D.2. and IV.F.1. discuss the aspects of state implementation of the proposed rule.

The deferral of the specified RCRA requirements is also "conditional." It is conditioned upon each University's implementation and compliance with the Laboratory Environmental Management Standard set forth in 40 CFR part 262, subpart J of this proposed rule. The Laboratory Environmental Management Standard includes specific requirements for the management of laboratory waste that ensure protection of human health and the environment while providing some flexibility to encourage chemical reuse and waste minimization. These requirements are termed Minimum Performance Criteria. They are enforceable in the same way as current RCRA standards are enforceable to ensure that handling of laboratory waste would be protective of human health and the environment. During this XL project, the proposed requirements set forth in the proposed Subpart J (including the Environmental Management Plan requirements) would also be enforceable under RCRA section 3008.

The Environmental Management Standard (EMS) in subpart J contains requirements for each University to create and implement an Environmental Management Plan (EMP) to cover all of its participating laboratories. The elements of the EMP in the proposed rule are expected to function as an outline of the procedures that must be in place to manage laboratory waste in order to both minimize the amount of waste generated, while allowing for the maximum reuse of the waste that is generated. Although the EMP must describe how each laboratory will comply with the specific Minimum Performance Criteria, the Minimum Performance Criteria are requirements that stand on their own. The proposed deferral of the hazardous waste determination is conditioned on compliance with all of the requirements of the EMS, including the Minimum Performance Criteria. These criteria ensure that the handling of laboratory waste would be protective of human health and the environment by establishing how laboratory waste would be managed within the laboratory, and in transit to the on-site hazardous waste accumulation area for each University.

EPA has agreed to allow the Universities to undertake this XL project with the requested regulatory flexibility to determine if the proposed performance-based Environmental Management Plan approach would result in superior environmental performance and significant cost savings to the universities.

Today's proposed rulemaking, and the state actions described in section IV.F.1. of this preamble that parallel today's action, will not in any way affect the provisions or applicability of any other existing or future regulations.

EPA is soliciting comments on this rulemaking. EPA will publish responses to comments in a subsequent final rule. The XL Project will enter the implementation phase when, in addition to promulgation of the final rule, all signatories to the XL Project sign the Final Project Agreement. Implementation of the Environmental Management Plan(s) will occur after the individual EMPs have been developed by each university, and reviewed by EPA and the appropriate State agency to ensure adherence to the Environmental Management Standard, prior to commencement of the new system.

Outline of Today's Document

The information presented in this preamble is organized as follows:

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I. How Does this Rule Comply with Executive Order 13084: Consultation and Coordination with Indian Tribal Governments?
J. Does this Rule Comply with the National Technology Transfer and Advancement Act?

I. Authority

EPA is publishing this proposed regulation under the authority of sections 2002, 3001, 3002, 3003, 3006, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6912, 6921, 6922, 6923, 6926, 6930, 6937, 6938, and 6974).

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II. Overview of Project XL

The draft FPA sets forth the intentions of EPA and the Universities with regard to a project developed under Project XL, an EPA initiative to allow regulated entities to achieve better environmental results at less cost. The proposed regulation would facilitate implementation of the project. Project XL—"eXcellence and Leadership"—was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other Project XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance.

The XL program is intended to allow EPA to experiment with potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. As part of this experimentation, the EPA may try out approaches or legal interpretations that depart from or are even inconsistent with longstanding Agency practice, so long as those interpretations are within the broad range of discretion enjoyed by the Agency in interpreting statutes that it implements. The EPA may also modify rules, on a site-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, EPA expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (provided that the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing re-evaluation of environmental programs, is reflected in a variety of statutory provisions, such as section 8001 of RCRA.

XL Criteria

To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden. They must have full support of affected Federal, state and tribal agencies to be selected.

For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 "Principles for Development of Project XL Final Project Agreements" document. For further discussion as to how the University Laboratories XL project addresses the XL criteria, readers should refer to the Final Project Agreement available from the EPA RCRA docket or Region 1 library for this action (see **ADDRESSES** section of today's preamble).

XL Program Phases

The Project XL program is compartmentalized into four basic phases: the initial pre-proposal phase where the project sponsor comes up with an innovative concept that they would like to consider as an XL pilot, the second phase where the project sponsor works with EPA and interested stakeholders in developing an XL proposal, the third phase where EPA, local regulatory agencies, and other interested stakeholders review the XL proposal, the fourth phase where the project sponsor works with EPA, local regulatory agencies, and interested stakeholders in developing a Final Project Agreement and legal mechanism. After promulgation of the final rule (or other legal mechanism) for the XL pilot, and after the Final Project Agreement has been signed by all designated parties, the XL pilot proceeds into the implementation phase and evaluation phase.

Final Project Agreement

The Final Project Agreement (FPA) is a written agreement between the project sponsor and regulatory agencies. The FPA contains a detailed description of the proposed pilot project. It addresses the eight Project XL criteria, and the expectation of the Agency that this XL project will meet those criteria. The Final Project Agreement identifies performance goals and indicators (monitoring schedule) which will enable the laboratories to clearly illustrate the baseline quantities. The draft FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits. The FPA also discusses the administration of the agreement, including dispute resolution and termination. The Final Project Agreement is available for review in the docket for today's action, and also is available on the world wide web at http://www.epa.gov/projectxl/.

III. Overview of the University Laboratories XL Project

EPA is today requesting comments on the draft FPA and proposed rule to implement key provisions of this Project XL initiative. Today's proposed rule would facilitate implementation of the draft FPA (the document that embodies EPA's intent to implement this project) that has been developed by EPA, Massachusetts Department of Environmental Protection (MADEP), Vermont Department of Environmental Conservation (VTDEC), the Universities, and other stakeholders. After comments on the draft FPA have been considered, EPA, MADEP, VTDEC, and the three Universities expect to sign a final FPA. Today's proposed rule would not be effective in Massachusetts and Vermont until those states have made conforming changes.

A. To What Laboratories Would the Proposed Rule Apply?

The Proposed Rule would apply only to participating laboratories at the following three Universities:

- University of Massachusetts Boston, Boston, MA
- Boston College, Chestnut Hill, MA
- University of Vermont, Burlington, VT

Boston College is classified as a Small Quantity Generator (SQG). The University of Massachusetts Boston and the University of Vermont are classified as Large Quantity Generators (LQG). The University of Massachusetts Boston is an LQG solely as a generator of acute wastes in excess of the one kilogram per month threshold. Additionally, the University of Vermont operates a part B permitted facility for the storage of hazardous wastes. Participating laboratories at all the Universities currently generate and manage hazardous waste and the Universities fully expect that some of the laboratory wastes that would be generated and managed under the Environmental Management Plans would meet the definition of a RCRA hazardous waste.

The University laboratories that would be affected by this project are used for research and teaching purposes. A breakdown of the individual Universities' laboratories is shown in Table 1 below. The table also identifies each Universities' on-site hazardous waste accumulation areas which would continue to be regulated under existing federal and state RCRA regulation:

TABLE 1.—LABORATORY XL PROJECT PARTICIPANT INFORMATION

Institution	Student body	Number of labs	Departments participating	Location of current hazardous waste accumulation areas [1]
Boston College Chestnut Hill, MA	14,000	120	Chemistry, Biology, Geology, Physics, Psychology.	Merkert Chemistry Building, 2609 Beacon St., Boston MA; Higgins Building, 140 Commonwealth Ave., Chestnut Hill MA.
University of Massachusetts Boston Boston, MA.	13,000	150	Chemistry, Biology, Psychology, Anthropology, Geology and Earth Sciences, and Environmental, Coastal and Ocean Sciences.	Science Building (Bldg. #080), McCormack Building (Bldg. #020); and Wheatley Building (Bldg. #010) 100 Morrissey Blvd., Boston MA
University of Vermont Burlington, VT	10,000	400	Colleges of: Agriculture and Life Sciences; Arts and Sciences; Medicine; and Engineering and Mathematics; and Schools of: Nursing; Allied Heath Sciences; and Natural Resources.	Given Bunker, 89 Beaumont Ave., Burlington VT.

[1] **Note:** These accumulation areas would still be fully covered by the current federal and state RCRA regulations. This XL project, for example, would not allow any increased air emissions that would otherwise be controlled under the current RCRA regulations such as the subpart CC hazardous waste organic air emission standards that apply to large quantity generators who accumulate hazardous waste on-site.

B. What Problems Have the University Laboratories Identified?

To understand the problems faced by the Universities and the purpose behind the proposed rule, it is necessary to understand the context in which the proposed rule has arisen and to consider the experience of university laboratories as regulated entities under both the Occupational Safety and Health Act (OSHA) and RCRA. While both statutes have the common objective of protecting human health, RCRA makes a clear distinction between hazardous waste and hazardous chemicals in a laboratory setting. There are specific handling and management requirements for "hazardous wastes" under RCRA which do not apply to the larger universe of "hazardous chemicals" regulated by the Occupational Safety and Health Administration. Researchers are familiar with the specialized system developed for laboratory work by OSHA, which includes the requirement to develop and implement a Chemical Hygiene Plan (CHP). This systematic approach, incorporating a specific plan, can also be applied to the management of hazardous waste that sometimes results from the use of hazardous chemicals in the laboratory. However, under the current system, laboratories are required to implement and to track two parallel, and not always consistent chemical management systems within the laboratory setting.

The Universities have proposed streamlining the management of chemicals in the laboratory by having a single system addressing hazardous chemicals that will result in both better management and a reduction in the quantity of laboratory wastes that have to be disposed. This streamlining will result in a number of changes, which when combined in a single systematic approach to chemical management, are expected to provide results that are superior to those provided by the current regulatory framework.

An example of one area that will be streamlined is the process for training laboratory workers. OSHA's chemical standard requires that the employer provide employees with information and training on the hazards of chemicals present in their area. RCRA requires large quantity generators to ensure that facility personnel complete classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with applicable requirements. RCRA requires small quantity generators to ensure that all employees are familiar with proper waste handling and emergency procedures relevant to their responsibilities. The new system proposed in this rule would require the same standardized training for all laboratory workers, including: students, personnel in positions related to hazardous waste management, and laboratory employees. This systematic training approach can cover both safety

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and environmental concerns when performed through the integration of chemical hygiene planning and environmental management planning. This is expected not only to streamline but also to upgrade existing training, and to provide students—the laboratory workers of the future—with a better understanding of the environmental impacts of their work and how to minimize those impacts.

The university laboratory setting is decentralized, with various departments funding diverse types of research. The university community is also diverse and subject to the regular turnover of students and researchers. This decentralized setting, when combined with rules that vary from state to state (as discussed in sections D.2. and E., below) and between federal RCRA and federal OSHA standards, often leads to the unnecessary and premature disposal of chemicals after an individual laboratory has no use for them. This is true even for unused chemicals that may be reusable elsewhere at the University. A more centralized system should result in more effective decision making with regard to chemical disposition and should result in increased chemical reuse. Therefore, one of the larger changes to result from this proposed project would be the centralization of the system for managing chemical wastes. This would allow decisions regarding chemical disposition to more easily occur at a centralized area where knowledge of campus-wide needs for chemicals can be factored into decisions as to whether unused or used chemicals (formerly disposed as waste) can be reused within the University.

The implementation of the current system is further complicated by the structure of university laboratories which is different from industrial settings where RCRA has been quite effective. Industrial settings commonly have ongoing processes which generate a single waste at a fairly regular rate of generation. With potentially hundreds of small laboratories within one university, each producing small amounts of multiple wastes on a noncontinuous basis, the overall management of hazardous wastes becomes more difficult. For example, it can be difficult for universities to comply with the current requirements that result in 3 day removal timeframes for hazardous waste in excess of 55 gallons at their satellite areas (managed under 40 CFR 262.34(c) or equivalent state provisions). Waste generation in manufacturing settings is generally more uniform and continuous than it is in university research laboratories where the rate of waste generated is often unpredictable. This uncertainty makes it difficult for a university to predict when satellite accumulation limits may be exceeded and to arrange for removal of the waste within the required amount of time. This proposed alternative system for university laboratories attempts to address their atypical circumstances by allowing them to set up a monthly pick-up schedule for laboratory waste. With the ability to be proactive in setting up schedules for waste pickups, EH&S professionals at the Universities would be able to avoid a reactive mode of operation, to proactively develop a systematic approach for re-use of chemicals on-site, and to operate that system based on the schedule they could develop under this proposal.

The difficulty of managing laboratory wastes has been the subject of nation-wide discussions within the university and research community throughout the past decade. Many organizations including the Campus Safety, Health and Environmental Management Association, the National Research Council, and the American Chemical Society have all sought a better way to properly manage and handle hazardous chemicals in the laboratory, and to comply with the requirements of both OSHA and RCRA. In the New England area, the Laboratory Consortium for Environmental Excellence (LCEE) was formed to explore viable alternatives to the current parallel regulatory scheme and to promote best management practices for laboratories. As a result of exhaustive reviews and interviews with universities and research organizations across the country, a consensus was reached regarding the need to harmonize the RCRA and OSHA regulatory systems through a performance-based management system that would actively promote prudent practices, encourage chemical reuse and recycling, minimize costs, and increase efficiency.

The central purpose of this Laboratory XL project is to test the effectiveness of an integrated, performance-based environmental management system which is consistent with the objectives of RCRA and which would complement the applicable OSHA regulations.

C. What Solutions Are Proposed by the University Laboratory XL Project?

1. A New Integrated Performance-Based System

The University Laboratory XL project proposes to test the effectiveness of an integrated, flexible, performance-based system for managing hazardous wastes in laboratories which (1) would result in pollution prevention and streamlined procedures for managing hazardous wastes and hazardous chemicals at universities, (2) would meet the objectives of both the RCRA and OSHA regulatory programs combined and (3) would be at least as protective of human health and the environment as the current system.

This project would pilot an alternative approach to hazardous waste management in University laboratories which is more systematic and more centralized than the approach implemented by Universities under the current system. At the same time, the pilot integrates some of the current RCRA hazardous waste regulations with current OSHA regulations by proposing that universities develop a plan similar to the CHP but designed for the management of environmental aspects of their activities to facilitate the creation of an integrated and consistent system for managing laboratory waste in laboratories. As a result of the efficiencies gained from the harmonization of the OSHA CHP and the RCRA-oriented Laboratory Environmental Management Plan, the new system is expected to provide a better management approach for laboratories and to result in increased pollution prevention while still ensuring protection of human health and the environment.

To achieve this objective, the Universities would like to pursue a regulatory model of a Laboratory Environmental Management Standard (EMS) that identifies both the elements for the effective management of laboratory wastes, and the minimum performance requirements for handling wastes in each individual laboratory. The proposed Laboratory EMS sets out all the requirements for the proposed alternative system of managing laboratory waste. First and foremost, the Laboratory EMS would include Minimum Performance Criteria for the management of laboratory wastes within the laboratory and en route to the on-site hazardous waste accumulation area. These criteria are the requirements that would be an alternative to 40 CFR 262.34(c) in the laboratory. The Minimum Performance Criteria are a set of measurable requirements that are similar to the current RCRA requirements. Each of the elements of the Minimum Performance Criteria is described in full in today's proposed rule and is briefly explained below. In addition, the Laboratory EMS would also require the development of a Laboratory Environmental Management Plan (EMP). The EMP would be written by each University to document its specific procedures for how it would conform with the Laboratory EMS. The EMP would also describe the procedures each laboratory would follow in order to meet the Minimum Performance Criteria. The elements of the EMP are summarized below in Table 2.

2. Laboratory Environmental Management Standard (EMS)

Today's proposed rule is called the "Laboratory Environmental Management Standard". It would include a definition section (40 CFR 262.102), the requirements for waste management in the laboratory, or the Minimum Performance Criteria, (40 CFR 262.104) and the specific requirement that each University develop a Laboratory Environmental Management Plan (40 CFR 262.105). Proposed subpart J also contains requirements detailing the organizational responsibilities and the training requirements of each participating University laboratory (40 CFR 262.105). The Laboratory EMS would provide the umbrella framework for an effective system for the management of university laboratory waste. It would contain all the elements, from definitions through waste determination requirements (40 CFR 262.106), that would make up the new systematic approach proposed for university laboratories. The proposed Laboratory EMS was originally modeled after the general structure and format of the OSHA "Occupational Exposure to Hazardous Chemicals in Laboratories" standard which requires a Chemical Hygiene Plan.

3. Laboratory Environmental Management Plan (EMP)

The Laboratory EMS would require the development of a Laboratory EMP which would be the mechanism through which the Laboratory EMS is put into practice at each University. The Laboratory EMP, modeled on OSHA's Chemical Hygiene Plan, would be a comprehensive plan to be developed by each University. The EMP would document the procedures, practices and programs to (a) manage laboratory waste in a manner that is protective of human health and the environment and (b) that would be implemented to achieve compliance with the requirements of the Laboratory EMS and the Minimum Performance Criteria. It is through the Laboratory EMP that the Universities would have the opportunity and the obligation to design a performance-based system to complement the OSHA requirements, to encourage waste minimization, and the redistribution and reuse of laboratory waste. The Laboratory EMP would identify specific elements to be implemented by each University, including requirements for pollution prevention policies and procedures.

One of the objectives of the EMP and the overall XL project is to erase the distinction between unused chemicals and waste chemicals in the laboratory setting, so that the value in reusing chemicals can be realized. This would be accomplished by defining laboratory waste to include hazardous chemicals that result from laboratory scale activities and which may or may not constitute RCRA hazardous wastes. In the proposal, laboratory waste is defined as "a hazardous chemical that results from laboratory scale activities and includes the following: excess or unused hazardous chemicals that may or may not be reused outside their laboratory of origin; hazardous chemicals determined to be RCRA hazardous waste as defined in 40 CFR part 261; and hazardous chemicals that will be determined not to be RCRA hazardous waste pursuant to 40 CFR 262.106." Thus, all "laboratory waste" would be managed under a single standard while in the laboratory. The determination that a laboratory waste could not be reused and would be a RCRA solid waste, and as to whether such solid waste would be a RCRA hazardous waste, would be made at a centralized area, by Environmental Health and Safety professionals.

4. Minimum Performance Criteria

The proposed requirements for the laboratory EMP include a requirement that the EMP include procedures to assure compliance with certain Minimum Performance Criteria (MPC) specified in the proposed regulation. The proposed Minimum Performance Criteria set forth minimum requirements for the management of laboratory waste and have been designed to ensure that laboratory waste will be managed in a manner protective of human health and the environment. The requirements in the Minimum Performance Criteria include provisions which are consistent with current RCRA requirements, including labeling and container management. The criteria have a wider application than current RCRA requirements because the definition of laboratory waste includes some materials that are not RCRA hazardous waste.

5. How the New System Would Work

This new proposed system would help each University to centralize and coordinate its chemical management practices and demonstrate environmental performance beyond what would likely be achieved under the existing system.

Currently, there are two potential impediments to such centralization and coordination. The first is the hazardous waste determination requirement under 40 CFR 262.11. If this determination is made in the individual laboratory, decisions with regard to reuse are inevitably decentralized since the hazardous waste determination necessitates a prior solid waste determination. To the extent that these decisions are made by laboratory workers who do not have a complete sense of the chemical needs of the entire university, such decisions are often premature and do not maximize the potential for re-use. The second potential impediment under the current system is the requirement under 40 CFR 262.34(c) that hazardous waste in excess of 55 gallons be removed within three days of reaching the 55-gallon limit. Such a time constraint results in constant, unplanned, episodic pick-ups which are in themselves, time-consuming. In contrast, the extended accumulation period of 30 days should allow for a more coordinated and efficient pick-up and delivery system which would free up staff time, and allow for the development of infrastructure and training designed to increase waste minimization and an organized and coordinated campus-wide chemical reuse system.

The EMP and the Minimum Performance Criteria would work together to form the alternative system for the management of laboratory waste. The following outline presents a step-by-step overview of how the Laboratory Environmental Management Standard would work once this rule is finalized and conforming changes are adopted by Vermont and Massachusetts.

Development of the Environmental Management Plan

Step 1: Within six months, each University would develop its Environmental Management Plan (EMP) addressing all the elements required by 40 CFR 262.105, summarized in Table 2, below. Applicable RCRA requirements would remain in full effect in the laboratories prior to the EMP being written, reviewed, and implemented. For the purpose of this Laboratory XL project, each University would consult with EPA, and the state of Massachusetts (DEP) or Vermont (DEC) in the development of its EMP. The centerpiece of the new system would be the individual Laboratory Environmental Management Plan. The EMP would include detailed specific elements that would have to be

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included and implemented by each University. Each University would be expected to craft an Environmental Management Plan that is tailored to the structure and individual needs of the University and its laboratories. A summary of the elements in the Environmental Management Plans is outlined in Table 2. These are more fully detailed in the proposed rule at 40 CFR 262.105.

Step 2: Once completed, the EMP would be made available on each University's web site. So that EPA can continue to evaluate this XL project, EPA-Region I would review each EMP to confirm that it meets all of the requirements of 40 CFR 262.105. The relevant state agencies may also review the EMP. Each University would also be working on how it will implement its EMP, which would include training laboratory workers with regard to the requirements of the Minimum Performance Criteria pursuant to the procedures contained in the Environmental Management Plan.

TABLE 2.—SUMMARY OF MAJOR ELEMENTS REQUIRED IN LABORATORY ENVIRONMENTAL MANAGEMENT PLANS

General:
- The EMP must include a description of specific measures a University will take to protect human health and the environment from hazards associated with the management of laboratory wastes.

Administration:
1. An environmental policy, including commitments to regulatory compliance, waste minimization, risk reduction and continual improvement of the environmental management system.
2. A description of roles and responsibilities for the implementation and maintenance of the Laboratory Environmental Management Plan.
3. A pollution prevention plan.
4. Provisions for information dissemination and training.
5. Procedures for the development and approval of changes to the EMP.

Waste Management and Conformance Review:
6. Criteria that laboratory workers shall comply with for managing, containing and labeling laboratory wastes.
7. Procedures for inspecting a laboratory to assess conformance with the requirements of the Environmental Management Plan.
8. Procedures to assure compliance with the Minimum Performance Criteria (MPC).
9. Procedures for the identification of environmental management plan noncompliance and the assignment of responsibility, timelines and corrective actions to prevent their reoccurrence.
10. Criteria for the identification of physical and chemical hazards and the control measures to reduce the potential for releases to the environment of laboratory wastes.

Reporting/Recordkeeping:
11. The University's system for identifying and tracking legal and other requirements applicable to the management and disposal of designated laboratory wastes.
12. The University's system for conducting annual surveys of hazardous chemicals of concern.
13. The recordkeeping requirements to document conformance with the EMP.

Removal of Waste:
14. Procedures relevant to the timely and safe removal of laboratory wastes.
15. Procedures and work practices for safely transporting or moving laboratory wastes.

Maintenance:
16. Procedures for conducting laboratory clean-outs.

Emergency:
17. Emergency preparedness and response procedures.

Step 3: Following review of its EMP, each University would notify the relevant state agency in writing of the date on which it intends to implement its EMP. For purposes of this XL project, each University would also notify EPA Region I. The proposed rule would become effective in the laboratories only after such written notification.

Implementation of the Environmental Management Plan Including Procedures for Meeting the Minimum Performance Criteria

The EMP would cover the management requirements for laboratory waste until that waste reaches the designated on-site hazardous waste accumulation area, including emergency response requirements in the Minimum Performance Criteria while the waste is in transit to the accumulation area. The following steps outline procedures at a laboratory once the EMP would be in place and operational:

Step 4: Information and training would have been provided to laboratory workers to comply with the Minimum Performance Criteria as well as OSHA per the University's Laboratory Environmental Management Plan. Hazardous chemicals would be received at the University, distributed to the laboratory and placed in storage in the laboratory in accordance with any and all requirements imposed by OSHA, Fire Codes and/or building permits. If those chemicals pose a new or unique hazard for which a worker has not received prior training, the worker would receive new information and training so that they could understand and implement the relevant elements of the EMP.

Step 5: Hazardous chemicals would be used in the research or teaching laboratory under the direction of a trained individual, and laboratory waste would be generated from those laboratory scale activities.

Step 6: The laboratory waste would be managed in accordance with the Minimum Performance Criteria and the University's specific Laboratory EMP which would include the University-specific procedures for meeting those criteria. These procedures would include ensuring that the laboratory waste generated as a result of laboratory scale activities in Step 5 is placed in containers and labeled with a chemical name and hazard warning as per the Minimum Performance Criteria and the procedures for meeting those criteria as outlined in the Environmental Management Plan. For example, the Laboratory EMP may specify the type of label the University requires for each type of laboratory waste and how that label must be filled out.

Step 7: Each laboratory would be able to temporarily hold up to 55-gallons of laboratory waste (or up to 1 quart of acutely hazardous laboratory waste) prior to having to put a date on the waste. Upon reaching the 55 gallon or 1 quart limit in the laboratory, the laboratory waste container(s) would be marked with the date. Any laboratory waste held in excess of these limits before the dated laboratory waste is removed would also be managed as described in Step 6, and the excess would be limited in quantity to an additional 55 gallons (or an additional 1 quart of acutely hazardous laboratory waste). Excess waste accumulated before dated laboratory waste is removed would also have to be marked with the date it reaches the 55 gallon or 1 quart limit and would subsequently be removed from the laboratory as described in Step 8.

Step 8: Once laboratory waste is dated, the University EH&S staff would be immediately informed that the laboratory waste would have to be removed to the on-site hazardous waste accumulation area within 30 days of the label date.

Step 9: The laboratory waste referred to in Step 8 would be picked up (within thirty days of the dates referred to in Step 8) by EH&S department representatives and directly transferred to a designated on-site hazardous waste accumulation area (as defined in the definitions at proposed 40 CFR 262.102). Current hazardous waste accumulation areas at each of the Universities are shown in Table 1. Designated hazardous waste accumulation areas would be listed in the EMP.

Step 10: As soon as the laboratory waste is received at the on-site hazardous waste accumulation area, the University EH&S staff or designated trained professionals, would make a determination as to whether it is a solid waste under RCRA, and if it is a solid waste, the staff would determine whether it is a hazardous waste in accordance with 40 CFR 262.11, as required by proposed 40 CFR 262.106. Once the laboratory waste is received at the on-site hazardous waste accumulation area, the proposed "temporary conditional deferral" would no longer apply, and the laboratory waste that is determined to be hazardous waste would be managed in accordance with current RCRA requirements.

Step 11: If the laboratory waste could be reused, the University EH&S staff would arrange for its redistribution and reuse within the University. If EH&S staff determine that the laboratory waste is a solid waste and it is hazardous, it would be managed in accordance with all applicable RCRA requirements.

6. Comparison of Minimum Performance Criteria with Current RCRA Regulations

EPA intends that laboratory waste be managed safely. The Minimum Performance Criteria contained in proposed 40 CFR 262.104 have been developed by the University laboratories and EPA to ensure that laboratory waste is managed in a manner that is protective of human health and the environment. The following discussion demonstrates how specific provisions in the Minimum Performance Criteria would compare with RCRA provisions currently in effect. EPA is describing the current RCRA provisions as a point of comparison for the requirements proposed today, but is not proposing any changes to these current RCRA provisions.

(i) *Labeling:* Current RCRA regulations require that containers of hazardous waste in satellite accumulation areas be labeled either with the words "hazardous waste" or with other words that identify the contents. Today's rule would contain a requirement that laboratory waste would have to be labeled or tagged with the chemical name and general hazard class. Where a laboratory container is too small to be effectively labeled or where containers of like wastes are consolidated, such as where test tubes are stored in a rack or where similar wastes are being consolidated in a lab-pack shipping container, the secondary container (e.g. the rack containing the test tubes or the DOT shipping container) would have to be labeled. The Environmental Management Plan would include specific procedures that lab workers would have to follow to carry out the MPC requirements for labeling in the laboratories.

(ii) *Quantity Limitations:* Current federal RCRA regulations for satellite accumulation areas require that any hazardous waste accumulated at any point of generation in excess of 55 gallons (or one quart of acutely hazardous laboratory waste) be removed within three days. Current regulations do not limit the number of points of generation within an individual laboratory as long as hazardous waste is accumulated in accordance with all the requirements of 40 CFR 262.34(c). Thus, a given laboratory could potentially accumulate well over 55 gallons under the current rules. However, under the proposed rule, the Universities would be limited to temporarily holding 55 gallons of laboratory waste per laboratory, and no matter how many points of generation there are within a laboratory, any laboratory would be limited to 110 gallons. While this proposed restriction may prove to be more restrictive than the current system, this approach represents an experiment to be tested under this XL project. Although this approach could result in a limit that is considerably less than what a laboratory might be allowed to accumulate under current law, today's proposed rule would grant the Universities flexibility on the amount of time allowed to remove excess waste from the laboratory. (See (iv) below.)

(iii) *Quantity Limitation for Excess Laboratory Waste:* Current RCRA regulations do not place specific limits on the amount of "excess" hazardous waste, beyond 55 gallons, that a generator may accumulate in satellite areas during the three days prior to removal of such excess. Today's proposed rule specifically limits such excess in the laboratory setting to an additional 55 gallons of laboratory waste (or an additional 1 quart of acutely hazardous laboratory waste). Thus, the maximum amount of laboratory waste which may be held in a University laboratory at any time under today's proposed rule would be 110 gallons (or two quarts of acutely hazardous laboratory waste). While this requirement may prove to be more restrictive than the current system, this approach represents an experiment to be tested under this XL project, and it would ensure that there would not be excessive quantities of waste in the laboratories during the 30-day timeframe discussed below.

(iv) *Timing Limitations:* Current RCRA regulations state that a generator may accumulate up to 55 gallons of hazardous waste (or one quart of acutely hazardous waste) under 40 CFR 262.34(c) and within three days of exceeding that 55 gallons must comply with the requirements of 40 CFR 262.34(a) or other applicable requirements with respect to the excess over 55 gallons (or one quart). Under the proposed rule, all laboratory waste that has reached threshold amounts would have to be removed from the lab within 30 days, instead of three days. EPA is granting flexibility on the timing of removal to allow for a more efficient pick-up schedule which will in turn allow University staff to devote additional resources to make centralized decisions about the reuse of laboratory waste. As noted above, to ensure that large quantities of waste are not held in laboratories, today's proposal limits the excess to an additional 55 gallons of laboratory waste (or one additional quart of acutely hazardous laboratory waste).

(v) *Dating and Removal Requirements:* Current RCRA regulations require that a generator mark the container holding hazardous waste in excess of 55 gallons of hazardous waste (or one quart of acutely hazardous waste) with the date the excess amount began accumulating. Today's proposed rule would contain a requirement that

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when laboratory waste reaches the threshold of 55 gallons (or one quart of acutely hazardous laboratory waste) it must be dated. Once laboratory waste is dated, the laboratory would have 30 days to remove it from the laboratory to the on-site hazardous waste accumulation area.

(vi) *Hazardous Waste Accumulation Areas:* Once satellite accumulation quantity limits are met, current RCRA regulations require generators to comply (within 3 days) with 40 CFR 262.34(a) or other applicable provisions. Under today's proposed rule, the accumulated laboratory waste would be directly transferred to a designated on-site hazardous waste accumulation area. Once the laboratory waste is received at the on-site hazardous waste accumulation area, the proposed "temporary conditional deferral" would no longer apply, and the laboratory waste that is determined to be hazardous waste would be managed in accordance with § 262.34(a) or other applicable RCRA requirements. In this regard, the proposed alternative system is meant to work in the same way as the current system.

(vii) *Container Management:* Current RCRA regulations set forth at 40 CFR 265.173(a), as referenced by § 262.34(c)(1)(i), require that containers of hazardous wastes be closed at all times, except when it is necessary to add or remove wastes. Today's proposed rule would contain the same requirement but allows the University to make exceptions for in-line waste collection containers. Some experiments use a process for the "in-line collection" of waste, which is a system that automatically collects waste while an experiment is running. Such systems may collect waste through a physically connected apparatus, such as, for example, gas chromatographs. Gas chromatographs commonly carry the chemical sample through the instrument using tubing that leads from the instrument to waste collection bottles on the back of the instrument. Each tube commonly runs through a stopper set into each small collection bottle. Other types of equipment use in-line collection systems that, while not physically connected, are nevertheless a necessary part of the apparatus as a means to collect waste, such as distillation equipment. In these types of systems, the waste is collected in an otherwise uncovered container (e.g., waste drips from a tube into the container) while the experiment is running—although the entire apparatus would be covered or hooded to prevent the release of volatile hazardous vapors or fumes. The apparatus set-up provides the physical control otherwise provided by the laboratory worker, who ensures during an experiment that containers are closed, except when he or she needs to add or remove a chemical. The proposed rule for this XL project proposes that such systems for the in-line collection of waste would be a circumstance in which waste may be added, consistent with the requirement that containers containing waste be kept closed (i.e., when a container is permissibly "open" for the adding of waste). To be considered as in-line waste collection, the University would describe this arrangement for in-line waste collection in their EMP. This part of the proposed rule addresses the need for flexibility around the diverse conditions of research and experimentation that constitute the work of the University laboratories, while at the same time minimizing the potential for release. (Note that this rule does not change the meaning of "release" under RCRA.) This flexibility is limited to specific circumstances in order to address the unique configuration of some research and laboratory instrumentation such as gas chromatographs and DNA synthesizers. The flexibility is being proposed for in-line waste collection due to laboratory scale experimentation.

Today's proposed rule also specifies that containers be compatible with their contents, and be in good condition. These requirements are equivalent to the current requirements at 40 CFR 262.34(c)1(i) which reference section 265.171 and section 265.172 regulating the condition of containers and compatibility of waste in satellite accumulation areas.

(viii) *Inspections:* Current RCRA regulations require that satellite accumulation areas (those areas regulated by 40 CFR 262.34(c), at or near any point of generation where wastes accumulate) be under the control of the operator of the process. Although in each laboratory, laboratory waste could only be generated under the control of the trained laboratory workers, today's proposed rule would also contain a requirement for regular inspections of containers of laboratory wastes within the laboratory to ensure that the containers are meeting requirements for container management. The frequency of these inspections would be at least once per year and would otherwise be based on laboratory practices. Specific inspection schedules would be specified in the Environmental Management Plan.

Other Minimum Performance Criteria include

(ix) *Posting of Emergency Notification Procedures:* Today's proposed rule would contain a requirement that includes posting of emergency notification procedures and evacuation procedures for laboratory workers. Current RCRA regulations require facilities to include such information in a contingency plan (large quantity generators) or to ensure that all employees are thoroughly familiar with emergency procedures (small quantity generators). Today's proposed rule makes no changes to those requirements. Emergency response and notification procedures, under the proposed rule, would be required for participating laboratories that otherwise could be regulated under 40 CFR 262.34(c), and the EMPs must address all aspects of laboratory waste management, including emergencies (see Table 2 for an outline of EMP requirements and the proposed rule at 40 CFR 262.105).

(x) *Emergency Response:* Today's proposed rule would contain a requirement that emergency response equipment and procedures for emergency response be appropriate to the hazards in the laboratory. Current RCRA regulations require equipment appropriate to the hazards presented at a facility and specify procedures that must be followed for particular emergencies. The proposal also includes a requirement to comply with spill response provisions set forth in 40 CFR 263.30 and 263.31 for spills of laboratory waste that may occur while it is en route to the on-site hazardous waste accumulation area.

(xi) *Training Requirements:* Today's proposed rule would contain a requirement that laboratory workers receive training so that they can implement and comply with the Minimum Performance Criteria. Training under the EMP is required when a laboratory worker is first assigned to a laboratory and when a laboratory waste poses a new or unique hazard for which the worker has not received prior training.

(xii) *General Compliance:* Today's proposed rule would contain a statement that laboratory waste management must not result in the release of hazardous constituents into the land, air and water where such release would be prohibited by federal law.

As noted in Table 2, above, additional requirements for laboratories under this proposed system would be included in the Environmental Management Plan (EMP).

As previously mentioned, the proposed Minimum Performance Criteria described above would only apply to the management of laboratory waste within laboratories and while en route to an on-site hazardous waste accumulation area. Once received at an on-site hazardous waste accumulation area, the laboratory waste would be subject to all applicable RCRA requirements. A participating University could, for example, accumulate any laboratory waste that is determined to be hazardous waste at the hazardous waste accumulation area in accordance with the current requirements of 40 CFR 262.34 (for 90 or 180 day on-site accumulation). EPA is not proposing any changes to the requirements Universities would have to meet in order to accumulate waste on-site for 90 (large quantity generators) or 180 days (small quantity generators).

7. Comparison of the Proposed Rule With Current OSHA and RCRA Regulatory Requirements

The following discussion demonstrates how specific provisions in the proposal compare with current OSHA and RCRA requirements. EPA is describing the current RCRA provisions as a point of comparison for the requirements proposed today, but is not proposing any changes to these current RCRA provisions.

The OSHA Chemical Hygiene Plan (CHP) set forth at 29 CFR 1910.1450(e)(3) requires that the CHP address: (i) standard operating procedures, (ii) criteria used to determine when to implement control measures, (iii) fume hood functioning, (iv) employee training, (v) circumstances requiring prior approval, (vi) provisions for medical consultation, (vii) designation of responsible personnel, (viii) provisions for protection for work with particularly hazardous substances and (ix) annual review of the plan and its effectiveness.

Although current OSHA regulations may require a Chemical Hygiene Plan for laboratories, there is no parallel requirement under RCRA. No regulations currently require the Universities to implement a Laboratory Environmental Management Plan as would be required by today's proposed rule. Moreover, while many of the Minimum Performance Criteria delineated in the proposed requirements would be similar to current RCRA requirements for satellite accumulation of hazardous waste (in the laboratory areas which are currently regulated under 40 CFR 262.34(c)), some limitations have been proposed beyond what current RCRA requirements allow, such as limiting each laboratory to 55 gallons of laboratory waste.

Existing RCRA requirements for satellite accumulation (under 40 CFR 262.34(c)) require that containers: (i) be at or near the point of generation, (ii) be under the control of the operator, (iii) be marked with the words "hazardous waste" or the contents, (iv) be in good condition, (v) be compatible with their contents, and (vi) be kept closed except as necessary to add or remove waste. In addition, accumulation is limited to 55 gallons of hazardous waste per point of generation. Any excess waste over 55 gallons must within three days comply with 262.34(a) or other applicable provisions. Existing RCRA regulations also require that a generator make a hazardous waste determination. The current federal regulations do not require management plans for these areas.

The proposed Laboratory Environmental Management Standard has been drafted in an attempt to align RCRA requirements that would apply to hazardous wastes in laboratories with the OSHA requirements for hazardous chemical handling in laboratories, in order to provide for the more efficient management of laboratory waste. This would be accomplished by the crafting of an Environmental Management Plan that would implement standard operating procedures for managing laboratory waste, just as the CHP requires standard operating procedures relevant to safety and health considerations when working with hazardous chemicals.

While the Laboratory Environmental Management Plan proposed in this project is intended to function in the same way as the OSHA CHP, the requirements of the Laboratory Environmental Management Standard would be more effective at managing laboratory wastes. For example, the Laboratory Environmental Management Standard would require procedures for an annual review of high hazard chemicals (defined in the Environmental Management Standard under "hazardous chemicals of concern") in the laboratory, while no such requirement currently exists under RCRA or OSHA. In addition, the Laboratory Environmental Management Standard would require an institutional process that is not required by current regulations for (i) setting environmental objectives and targets, and (ii) the promotion of pollution prevention and environmental improvements.

The current RCRA system allows generators to accumulate hazardous waste at satellite accumulation areas under 40 CFR 262.34(c). The requirements under 40 CFR 262.34(c) set specific requirements for container management, labeling, and accumulation times. No written plans are currently required for a facility to set forth and document the procedures that they will use to comply with the requirements of § 262.34(c). In today's proposed rule, the Universities would be required not only to comply with proposed requirements on container management, labeling and holding times pursuant to proposed § 262.104, which offers some flexibility but still ensures protection of human health and the environment, they would also have to specifically document the procedures they will use to comply with proposed § 262.104. In addition, to documenting the procedures for complying with the Minimum Performance Criteria of § 262.104, the Universities would also have to develop and document the procedures for all of the elements in Table 2, i.e.: (i) their environmental policy, (ii) roles and responsibilities, (iii) a pollution prevention plan, (iv) their system for tracking requirements applicable to laboratory waste, (v) criteria for identifying physical and chemical hazards and control measures to reduce releases, (vi) a system for conducting surveys of hazardous chemicals of concern, (vii) procedures for cleaning out laboratories, (viii) criteria with which laboratory workers would be required to comply in managing laboratory waste according to the Minimum Performance Criteria, (ix) procedures for safe and timely removal of wastes from laboratories, (x) procedures for emergencies, (xi) procedures for training, (xii) procedures for safe transfer of waste to the accumulation areas, (xiii) procedures for regularly inspecting a laboratory to assess conformance with the requirements of the EMP, (xiv) procedures for identifying environmental management plan nonconformances and corrective actions, (xv) recordkeeping requirements to document conformance with their EMP. This Laboratory Environmental Management Plan would be an entirely new requirement imposed upon the Universities. (This proposed requirement doesn't change existing institutional RCRA requirements. For example any University that is currently required to have a Contingency Plan would still be required to have a Contingency Plan).

EPA envisions a three-part compliance assurance program to ensure that this proposed system

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adequately protects human health and the environment. First, because EPA expects the Minimum Performance Criteria to operate as an equivalent, alternative system to the current RCRA requirements in 40 CFR 262.34(c), EPA expects the first level of assurance to be similar to the inspection system currently in place. Thus, at the laboratory level, the first level: the management of laboratory waste would have to be in conformance with the Minimum Performance Criteria. The second level would be the documentation of procedures: the Laboratory EMP would have to be written in conformance with the requirements of the standard proposed at 40 CFR 262.105. The third level would be operational: the operations ongoing in all the laboratories that are participating would have to be in conformance with the procedures described in the EMP. Thus, this proposal provides two additional levels of review for satellite storage of hazardous waste, while allowing the Universities to be more centralized in their operations and to adopt a more coherent approach to management of laboratory wastes.

8. How the Laboratory XL Project Will Result in Superior Environmental Performance

The Laboratory XL Project is designed to achieve environmental results that are superior to what is currently achieved by the current RCRA regulatory system. The aim of the proposal is to enable the Universities to more easily manage all hazardous chemicals under a logical, integrated scheme. Under the proposed model, environmental professionals at the Universities would, at on-site hazardous waste accumulation areas, determine whether there are any opportunities, throughout the University, for reuse of laboratory waste or whether the laboratory waste is hazardous waste.

As a result, the Laboratory XL project is expected first and foremost to result in increased pollution prevention. In a 1996 survey of approximately 100 academic institutions conducted by the Campus Safety Health and Environmental Management Association, nearly 95 percent of respondents reported that they reused or recycled less than one percent of the hazardous chemical waste otherwise destined for disposal. In the FPA, the Universities have committed themselves to increased hazardous waste reduction. The Universities have set specific pollution prevention goals including (i) a 10 percent reduction in the overall amount of hazardous waste generated from participating laboratories (from baseline) and (ii) a 20 percent increase (from baseline) in reuse of laboratory waste over the life of the project. In accordance with the FPA for this project, the Universities participating in this XL project would report each year on their progress in meeting these goals.

Second, under this proposed rule, each University would implement their procedures for an annual assessment of those hazardous chemicals that they believe pose significant risks (based on physical or health hazards, or defined shelf-life) in an effort to minimize risks to human health and the environment and to monitor materials that might otherwise accumulate on the shelf or require disposal.

In addition, this XL project would promote the following:

- *Setting of Environmental Objectives and Targets and Pollution Prevention:* The systematic approach to environmental management would enable the University to organize waste management functions to achieve goal setting, better tracking, pollution prevention, and control. This process is outlined in more detail in the Final Project Agreement.
- *Streamlining of the Regulatory Process:* By setting up a complementary system that essentially attempts to integrate EPA and OSHA requirements, the project would streamline the overall regulatory process for laboratories, reducing the burden on the Universities and resulting in a more efficient and protective approach to chemical management.
- *Increased Environmental Awareness:* The implementation and continuous improvement of the Laboratory Environmental Management Standard for laboratories would enhance environmental awareness among researchers and students leading to a transfer of good environmental management practices to the larger community.

Finally, the implementation of the Laboratory Environmental Management Standard would achieve superior environmental performance because criteria would be set for the systematic management of all laboratory wastes. Some of the laboratory wastes would otherwise not be managed under the requirements of RCRA (such as ethidium bromide wastes and virgin or unused chemicals on the shelf and that haven't consistently been defined as hazardous waste.)

D. What Regulatory Changes Will Be Necessary to Implement This Project?

1. Federal Regulatory Changes

Today's proposal would provide the Universities with a temporary conditional deferral from two specific RCRA regulations: Hazardous Waste Determination: 40 CFR 262.11, and the Satellite Accumulation Provisions: 40 CFR 262.34(c). The site-specific rule necessary to allow for the temporary conditional deferral, and being proposed by EPA today, would add a paragraph (j) to 40 CFR 262.10 to clarify that the temporary holding of laboratory wastes within the participating University laboratories would be covered by a new section to 40 CFR part 262, subpart J. Proposed subpart J would fully describe the conditions to be met for each University's management of laboratory waste and by its Laboratory Environmental Management Plan as outlined above, in the sections C.2., C.3. and C.4 of this preamble.

(i) Hazardous Waste Determination: 40 CFR 262.11: Current regulation requires that generators make a determination as to whether a solid waste is a RCRA hazardous waste. The proposed rule would identify the specific point at which the Universities would make this determination. Under the proposed rule, the Universities would not make a hazardous waste determination until the laboratory waste is received at the on-site Hazardous Waste Accumulation Areas identified in Table 1 above. These areas would be the point where decisions would be made as to whether the laboratory waste would be reused within the University, accumulated for up to 90- or 180-days pursuant to 40 CFR 262.34, or sent to a RCRA permitted (or interim status) treatment, storage or disposal facility.

Because universities have such small and diverse waste streams and have large numbers of small laboratories, EPA recognizes the resource efficiency in making the hazardous waste determination at the on-site hazardous waste accumulation area. This approach would enable the university to determine whether laboratory waste can be reused on site at a central area, where the connections between departments and laboratories on a university-wide basis can be better made by the institution's professional environmental health and safety personnel. EPA also recognizes that while laboratory wastes remain in the laboratory, they would be managed pursuant to the Laboratory Environmental Management Standard as embodied in the proposed subpart J which includes Minimum Performance Criteria to ensure that they would be managed in a manner protective of human health and the environment.

(ii) Satellite Accumulation Provisions: 40 CFR 262.34(c): This regulation governs the satellite accumulation of hazardous waste. It states in paragraph (1) that a generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without complying with paragraph 262.34(a) provided the generator: (i) complies with sections 265.171, 265.172 and 265.173(a); and (ii) marks the containers with the words "Hazardous Waste" or with other words that identify the contents. Paragraph (2) states that a generator that accumulates in excess of the amounts in paragraph (1) must, with respect to the excess amount, comply within three days with 40 CFR 262.34(a) or other applicable provisions. This paragraph also requires that the generator must mark the container holding the excess accumulation with the date the excess began accumulating.

This proposed rule would allow the Universities to manage hazardous waste in the laboratories without complying with § 262.34(c). Specifically, the Universities would not be required to comply with the 3-day accumulation time limit that applies to hazardous waste in excess of 55 gallons. Instead, under the proposed rule, Universities would be allowed to take 30 calendar days to remove the waste in their laboratories once the 55 gallon (or one quart of acutely hazardous laboratory waste) threshold is reached, while complying with their Environmental Management Plans. The extension from 3 to 30 days would allow for University environmental, health and safety professionals to collect and remove laboratory wastes during planned, systematic and scheduled intervals rather than the current reactive and episodic pick-ups which, in an institution with over a hundred laboratories, can be extremely inefficient, diverting environmental, health and safety department staff time from more proactive measures. By providing additional time for waste pickups to be carefully scheduled, this proposed rule should enable university environmental professionals to provide additional training to students and other laboratory workers and to develop waste minimization, reuse and recycling opportunities for chemicals from the university laboratories. In addition, while laboratory waste is being held in the laboratory, the Universities would have to manage it in compliance with minimum performance criteria.

Thus, the result of today's rule is that 40 CFR 262.34(c) would no longer be the only alternative available to manage waste in the individual laboratories at the Universities. Another system would be available under the proposed rule at 40 CFR part 262, subpart J, which sets forth the requirements of the Laboratory Environmental Management Plan (proposed § 262.105), and the Minimum Performance Criteria (proposed § 262.104).

Proposed subpart J would only apply within the Universities' laboratories and while the laboratory waste is en route to an on-site hazardous waste accumulation area. Once the laboratory waste is received at the on-site hazardous waste accumulation area, subpart J would no longer apply and laboratory waste that is determined to be hazardous waste would be subject to all applicable RCRA requirements.

2. State Regulatory Changes

The state of Vermont and the Commonwealth of Massachusetts are authorized under section 3006 of RCRA to implement the federal RCRA program. Thus, these state programs operate in lieu of the federal program. Moreover, Vermont and Massachusetts hazardous waste management regulations, codified in Code of Vermont Regulations and 310 Code of Massachusetts Regulations (CMR) 30.00, respectively, contain equivalent or more stringent, requirements as compared to the Federal regulations at 40 CFR 262.10 and 262.34(c). The Universities are subject to the Vermont (for the University of Vermont) and the Massachusetts (for the University of Massachusetts Boston and Boston College) state regulations, which would include requirements that the hazardous waste in laboratories be handled according to the accumulation provisions of RCRA. Therefore, conforming state regulatory changes or legal mechanisms must be implemented in addition to the proposed federal changes to undertake this new system.

E. Why Is EPA Supporting This New Approach to Laboratory Waste Management?

EPA is supporting the regulatory model contained in today's rule because it provides for a degree of environmental protection that is at least as protective as that which existing RCRA regulations would provide for the participating laboratories. The model also promotes systemic, integrated cost-effective compliance which should increase opportunities for waste minimization through the centralization of waste determinations. EPA and the Universities anticipate that chemicals which would have been disposed of as waste should be redistributed and reused through the centralized hazardous waste determination process. In addition, by providing the Universities the flexibility to schedule regular waste pickups, professional resources can be redirected from reactive waste management to proactive waste management.

EPA hopes that this proposed rule will result in a successful innovative pilot of a new system for universities and research organizations as unique workplaces where researchers and students often move from one jurisdiction to another throughout the country. If this pilot is successful, EPA hopes that this system could be translated into a national program, to address the confusion regarding the RCRA rules that has been reported by the universities. By implementing a standard system for universities, laboratory workers would remain cognizant of the requirements for managing chemicals, and in particular, waste chemicals, no matter where in the U.S. they are performing their research. EPA recognizes that the proposed new system may not be appropriate or necessary for some institutions such as small colleges but may, at some point, depending on the results of this XL project, consider the possibility of offering it as a regulatory option.

Finally, for this pilot, the Universities would be implementing continuous improvement systems which would include training, planning, and self-inspections in ways that have never been tested before.

F. How Have Various Stakeholders Been Involved in This Project?

Stakeholder involvement during the project development stage was encouraged in several ways. The methods included communicating through the media (newspaper, e-mails, and the LCEE website); directly contacting interested parties and offering an educational program regarding the regulatory requirements impacted by the XL project. Stakeholders have been kept informed on the project status via mailing lists, newspaper articles, public meetings and the establishment of a website at URL: http://esf.uvm.edu/LabXL.

Representatives from Second Nature and Ecologia, national environmental interest groups (with members participating in the ISO14000 standard setting process), and the Tellus Institute (a nationally recognized nonprofit

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corporation providing research on, among other issues, environmental management performance and reporting) have participated in conference calls and meetings with the Project XL team and provided comments during the development of the proposed Final Project Agreement. A representative of the national environmental group, the Environmental Defense Fund, has also been a participant in commenting on this proposal. These representatives continue to be notified of project meetings and activities.

The university and research community is a diverse and busy one. Each University has held individual local stakeholder meetings in an effort to engage their surrounding communities. However, few local stakeholders other than employees of the facilities have expressed interest in actively participating in the development of the project. Copies of all comment letters, as well as EPA's response to comment letters, will be located in the rulemaking Docket (see the **ADDRESSES** section of today's preamble).

As this XL project continues to be implemented, the stakeholder involvement program would shift its focus to ensure that: (1) Stakeholders are apprised of the status of project implementation and (2) Stakeholders have access to information sufficient to judge the success of this Project XL initiative. Anticipated stakeholder involvement during the term of the project will likely include other general public meetings to present periodic status reports, availability of data and other information generated. In addition to the EPA, VTDEC, and MADEP reporting requirements of today's rulemaking, the FPA includes provisions whereby the University Laboratories will make copies of interim project reports available to all interested parties. A public file on this XL project has been maintained at the website http://esf.uvm.edu/labxl throughout project development, and the Universities have committed to continue to update it as the project is implemented. Additional information is available at EPA's website at http://www.epa.gov/projectxl.

A detailed description of this program and the stakeholder support for this project is included in the Final Project Agreement, which is available through the docket or through EPA's Project XL site on the Internet (see **ADDRESSES** section of this preamble).

G. How Will This Project Result in Cost Savings and Paperwork Reduction?

Laboratory waste management currently accounts for the most substantial expense for environmental, health and safety programs at the participating Universities. This XL Project would allow academic institutions to more effectively promote and implement waste minimization programs in laboratories which would reduce waste disposal costs and minimize chemical purchasing costs. The opportunity to develop a systematic, planned procedure for the pickup of laboratory wastes and centralization of waste management decisions would also enable Environmental Health and Safety Departments to more effectively utilize staff on proactive activities such as training and implementing chemical reuse and waste minimization programs.

Additionally, a certain amount of paperwork associated with RCRA compliance is likely to be reduced in the long term, while in the short term the requirement to write Environmental Management Plans would add additional paperwork. Once the Laboratory EMP is written, the annual review of the Chemical Hygiene Plans required by OSHA, and the review of the Environmental Management Plan could be accomplished in one step. The Universities do not expect significant paperwork reduction gains given the fact that the RCRA requirements would still be fully applicable once the laboratory waste reaches the on-site hazardous waste accumulation areas.

H. How Will EPA Ensure the Integrity and Comprehensiveness of Each University's Laboratory Environmental Management Plan?

EPA, along with MA DEP and VT DEC and designated stakeholders would have sufficient opportunity to review and comment on the Laboratory EMP's as they are being developed by the Universities. In this pilot project, once its Laboratory EMP is complete, each University would formally submit their own Laboratory EMP to EPA and the applicable state for a final review of its conformance with the requirements of the Laboratory Environmental Management Standard. Because the Universities would be working with the agencies in developing their EMP, it is expected that they would be able to respond quickly to any possible comments or concerns raised by the agencies.

I. How Will the Terms of the Laboratory XL Project and Proposed Rule Be Enforced?

All XL projects must include a legally enforceable mechanism to ensure accountability and superior environmental performance. EPA retains its full range of enforcement options under the proposed rule. The enforcement response on the part of EPA would vary depending upon the actual performance of each University and the severity of any violation. So that EPA can continue to evaluate this XL project, each University would be evaluated by EPA Region I through regular inspections based on the following four criteria:

1. Does the University have an Environmental Management Plan as required by the Laboratory Environmental Management Standard?
2. Does the University's Environmental Management Plan include the required policy and procedural elements specified in the Laboratory Environmental Management Standard?
3. Is the University in compliance with the Minimum Performance Criteria as set forth in the Laboratory Environmental Management Standard at 40 CFR 262.104?
4. To what degree do the University's environmental management practices in the laboratory conform to its Environmental Management Plan?

Today's proposed rule includes a termination provision, in addition to EPA's usual enforcement options, which authorizes EPA to remove from this XL project any University that does not comply with the Laboratory Environmental Management Standard as described in the rule. In the event of such removal, the temporary conditional deferral would be revoked and the Universities would be required to submit to EPA an implementation schedule setting forth how the Universities would plan to come into full compliance regulations within 90 days from such notice. The schedule would reflect the Universities' intent to use their best efforts to come into compliance as quickly as practicable within the 90 day transition period. During this 90 day transition period, the provisions of this proposed rule and the University's Environmental Management Plan would apply in full. At the conclusion of the 90 day period, the applicable RCRA regulations would again apply to the Universities in full.

The rationale for the 90-day transition period is to allow sufficient time for the Universities to reinstate the operational and administrative infrastructure necessary for proper RCRA compliance. Such a transition will likely require the dismantling of the Environmental Management Plan and its component parts. Retraining and reverting to the implementation of the current RCRA system would include, among other things, (1) the re-establishment of 3-day pick-ups of hazardous waste from the University laboratories, (2) making early hazardous waste determinations in the laboratories, and (3) the re-training of hundreds of laboratory workers. Most importantly, this transition might require the acquisition of funding and resources which were unnecessary under the streamlined Environmental Management Plan. For example, additional funding might be needed for the re-negotiation of contract terms with hazardous waste contractors who might be needed for additional hazardous waste pick-ups. Finally, the Universities may receive such a revocation notice during the summer or during a semester break when staff and graduate students are less available for re-training. For all of these reasons, and given the fact that the proposed rule and Environmental Management Plan would be fully applicable during this time, EPA is confident that the 90-day time frame is reasonable.

J. How Long Will This Project Last and When Will It Be Complete?

As with all XL projects testing alternative environmental protection strategies, the term of the University Laboratory XL project is one of limited duration. Today's proposed rule would set the term of the XL Project at four years after the effective date of this rule.

Because Project XL is a voluntary and experimental program, today's proposed rule contains provisions that allow the project to conclude prior to the end of the four years in the event that it is desirable or necessary to do so. For example, an early conclusion would be warranted if the project's environmental benefits do not meet the Project XL requirement for the achievement of superior environmental results. In addition, new laws or regulations may become applicable to the Universities' laboratories during the project term which might render the project impractical, or might contain regulatory requirements that supersede the superior environmental benefits that the University Laboratories are achieving under this project. Similarly, the Universities may also request that the temporary conditional deferral be revoked prior to the four years if the experimental project does not provide sufficient benefits for the Universities to justify continued participation.

If an early conclusion to the project is determined to be appropriate, today's rule provides a mechanism for EPA to legally conclude the project prior to the four years, through a notice of termination, which would trigger the 90-day transitional period described above in this preamble discussion. While EPA, the state environmental agencies and the Universities have broad discretion and latitude to initiate an early conclusion of the project, both expect to exercise their good faith and judgment in determining whether exercising this option is appropriate.

EPA reserves the discretion to terminate a project and an FPA in the event a University fails to comply with or meet its obligations in the proposed rule, or its supplementary commitments contained in the FPA. The FPA and the site specific rule also provide for the project sponsor's return to compliance with existing regulatory requirements following termination.

IV. Additional Information

A. How To Request a Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding this regulation in accordance with 40 CFR part 25. Persons wishing to make an oral presentation on the site specific rule to implement the University Laboratory XL project should contact Ms. Gina Snyder or Mr. George Frantz of the Region I EPA office, at the address given in the **ADDRESSES** section of this document. Any member of the public may file a written statement before the hearing, or after the hearing, to be received by EPA no later than August 10, 1999. Written statements should be sent to EPA at the addresses given in the **ADDRESSES** section of this document. If a public hearing is held, a verbatim transcript of the hearing, and written statements provided at the hearing will be available for inspection and copying during normal business hours at the EPA addresses for docket inspection given in the **ADDRESSES** section of this preamble.

B. How Does This Rule Comply With Executive Order 12866?

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this final rule will be significantly less than $100 million and will not meet any of the other criteria specified in the Executive Order, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited scope of today's rulemaking and the considerable public involvement in the development of the proposed Final Project Agreement, the EPA considers 30 days to be sufficient in providing a meaningful public comment period for today's action.

C. Is a Regulatory Flexibility Analysis Required?

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities because it only affects three institutions, the University of Massachusetts in Boston, Massachusetts, Boston College in Boston, Massachusetts, and the University of Vermont in Burlington, Vermont. These universities are not small entities. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

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D. Is an Information Collection Request Required for This Project Under the Paperwork Reduction Act?

This action applies only to three universities, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

E. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is applicable only to the three universities in Massachusetts and Vermont. The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. RCRA and Hazardous and Solid Waste Amendments of 1984

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program for hazardous waste within the state. (See 40 CFR part 271 for the standards and requirements for authorization.) States with final authorization administer their own hazardous waste programs in lieu of the federal program. Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA.

After authorization, federal rules written under RCRA (non-HSWA), no longer apply in the authorized state except for those issued pursuant to the Hazardous and Solid Waste Act Amendments of 1984 (HSWA). New federal requirements imposed by those rules do not take effect in an authorized state until the state adopts the requirements as state law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time they take effect in nonauthorized states. EPA is directed to carry out HSWA requirements and prohibitions in authorized states until the state is granted authorization to do so.

2. Effect on Massachusetts and Vermont Authorization

Today's proposed rule, if finalized, would be promulgated pursuant to non-HSWA authority, rather than HSWA. Massachusetts and Vermont have received authority to administer most of the RCRA program; thus, authorized provisions of each State's hazardous waste program are administered in lieu of the federal program. Massachusetts and Vermont have received authority to administer hazardous waste standards for generators. As a result, if today's proposed rule is finalized, it would not be effective in Massachusetts and Vermont until the State adopts equivalent legal mechanisms or requirements as state law. It is EPA's understanding that subsequent to the promulgation of this rule, Massachusetts and Vermont intend to propose rules or other legal mechanisms containing equivalent provisions. EPA may not enforce these requirements until it approves the State requirements as a revision to the authorized State program.

G. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?

The Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule, as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

H. Does This Rule Comply With Executive Order 12875: Enhancing Intergovernmental Partnerships?

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. How Does This Rule Comply With Executive Order 13084: Consultation and Coordination With Indian Tribal Governments?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. There are no communities of Indian tribal governments located in the vicinity of the university laboratories. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Does This Rule Comply With the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 262

Environmental protection, Accumulation time, Hazardous waste, Waste determination.

Dated: July 21, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 262 of Chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

Subpart A—General

1. Section 262.10 is amended by adding paragraph (j) to read as follows:

§ 262.10 Purpose, scope, and applicability.

* * * * *

(j)(1) Universities that are participating in the Laboratory XL project are the University of Massachusetts Boston in Boston, Massachusetts, Boston College in Chestnut Hill, Massachusetts, and the University of Vermont in Burlington, Vermont ("Universities"). The Universities generate laboratory wastes, (as defined in 40 CFR 262.102) some of which will be hazardous wastes. As long as the Universities comply with all the requirements of 40 CFR Part 262, Subpart J, the Universities' laboratories that are participating in the University Laboratories XL Project as identified in Table 1, are not subject to the provisions of 40 CFR 262.11, 262.34(c), 40 CFR Part 264, 40 CFR Part 265, and the permit requirements of 40 CFR Part 270 with respect to said laboratory wastes.

TABLE 1.—LABORATORY XL PROJECT PARTICIPANT INFORMATION

Institution	Approx. number of labs	Departments participating	Location of current hazardous waste accumulation areas
Boston College, Chestnut Hill, MA	120	Chemistry, Biology, Geology, Physics, Psychology.	Merkert Chemistry Building, 2609 Beacon St., Boston MA; Higgins Building, 140 Commonwealth Ave., Chestnut Hill, MA.
University of Massachusetts Boston, Boston, MA.	150	Chemistry, Biology, Psychology, Anthropology, Geology and Earth Sciences, and Environmental, Coastal and Ocean Sciences.	Science Building (Bldg. #080); McCormack Building (Bldg. #020); and Wheatley Building (Bldg. #010), 100 Morrissey Blvd., Boston, MA.
University of Vermont, Burlington, VT	400	Colleges of: Agriculture and Life Sciences, Arts and Sciences, Medicine, and Engineering and Mathematics; and Schools of: Nursing, Allied Heath Sciences, and Natural Resources.	Given Bunker, 89 Beaumont Ave., Burlington, VT.

(2) Each University shall have the right to change its respective departments or the on-site location of its hazardous waste accumulation areas listed in Table 1 upon written notice to the Regional Administrator for EPA—Region I and the appropriate state agency. Such written notice will be

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provided at least ten days prior to the effective date of any such changes.

2. Part 262 is amended by adding Subpart J to read as follows:

Subpart J—University Laboratories XL Project—Laboratory Environmental Management Standard

Sec.

262.100 To what organizations does this subpart apply?
262.101 What is in this subpart?
262.102 What special definitions are included in this subpart?
262.103 What is the scope of the laboratory environmental management standard?
262.104 What are the minimum performance criteria?
262.105 What must be included in the laboratory environmental management plan?
262.106 When must a hazardous waste determination be made?
262.107 Under what circumstances will a university's participation in this environmental management standard pilot be terminated?
262.108 When will this subpart expire?

§ 262.100 To what organizations does this subpart apply?

This Subpart applies to an organization that meets all three of the following conditions:

(a) It is one of the three following academic institutions: The University of Massachusetts Boston in Boston, Massachusetts, Boston College in Chestnut Hill, Massachusetts, or the University of Vermont in Burlington, Vermont ("Universities"); and

(b) It is a laboratory at one of the Universities (identified pursuant to § 262.105(a)(2)(ii)) where laboratory scale activities, as defined in § 262.102, result in laboratory waste; and

(c) It complies with all the requirements of this Subpart.

§ 262.101 What is in this subpart?

This Subpart provides a framework for a new management system for wastes that are generated in University laboratories. This framework is called the Laboratory Environmental Management Standard. The standard includes some specific definitions that apply to the University laboratories. It contains specific requirements for how to handle laboratory waste that are called Minimum Performance Criteria. The standard identifies the requirements for developing and implementing an environmental management plan. It outlines the responsibilities of the management staff of each participating university. Finally, the standard identifies requirements for training people who will work in the laboratories or manage laboratory waste. This Subpart contains requirements for RCRA solid and hazardous waste determination, and circumstances for termination and expiration of this pilot.

§ 262.102 What special definitions are included in this subpart?

For purposes of this Subpart, the following definitions apply:

Acutely Hazardous Laboratory Waste means a laboratory waste, defined in the Environmental Management Plan as posing significant potential hazards to human health or the environment and which must include RCRA "P" wastes, and may include particularly hazardous substances as designated in a University's Chemical Hygiene Plan under OSHA, or Extremely Hazardous Substances under the Emergency Planning and Community Right to Know Act.

Emergency means any occurrence such as, but not limited to, equipment failure, rupture of containers or failure of control equipment which results in the potential uncontrolled release of a hazardous chemical into the environment and which requires agency or fire department notification and/or reporting.

Environmental Management Plan (EMP) means a written program developed and implemented by the university which sets forth standards and procedures, responsibilities, pollution control equipment, performance criteria, resources and work practices that both protect human health and the environment from the hazards presented by laboratory wastes within a laboratory and between a laboratory and the hazardous waste accumulation area, and satisfies the plan requirements defined elsewhere in this Subpart. Certain requirements of this plan are satisfied through the use of the Chemical Hygiene Plan (see, 29 CFR § 1910.1450), or equivalent, and other relevant plans, including a waste minimization plan. The elements of the Environmental Management Plan must be easily accessible, but may be integrated into existing plans, incorporated as an attachment, or developed as a separate document.

Environmental Objective means an overall environmental goal of the organization which is verifiable.

Environmental Performance means results of the data collected pursuant to implementation of the Environmental Management Plan as measured against policy, objectives and targets.

Environmental Target means an environmental performance requirement of the organization which is quantifiable, where practicable, verifiable and designed to be achieved within a specified time frame.

Hazardous Chemical means any chemical which is a physical hazard or a health hazard. A physical hazard means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive. A health hazard means a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system and agents which damage the lungs, skin, eyes or mucous membranes.

Hazardous Chemical of Concern means a chemical that the organization has identified as having the potential to be of significant risk to human health or the environment if not managed in accordance with procedures or practices defined by the organization.

Hazardous Waste Accumulation Area means the on-site area at a University where the University will make a solid and hazardous waste determination with respect to laboratory wastes.

In-Line Waste Collection means a system for the automatic collection of laboratory waste which is directly connected to or part of a laboratory scale activity and which is constructed or operated in a manner which prevents the release of any laboratory waste therein into the environment during collection.

Laboratory means, for the purpose of this Subpart, an area within a facility where the laboratory use of hazardous chemicals occurs. It is a workplace where relatively small quantities of hazardous chemicals are used on a non-production basis. The physical extent of individual laboratories within an organization will be defined by the Environmental Management Plan. A laboratory may include more than a single room if the rooms are in the same building and under the common supervision of a laboratory supervisor.

Laboratory Clean-Out means an evaluation of the chemical inventory of a laboratory as a result of laboratory renovation, relocation or a change in laboratory supervision that may result in the transfer of laboratory wastes to the hazardous waste accumulation area.

Laboratory Environmental Management Standard means the

provisions of this Subpart and includes the requirements for preparation of Environmental Management Plans and the inclusion of Minimum Performance Criteria within each Environmental Management Plan.

Laboratory Scale means work with substances in which containers used for reactions, transfers and other handling of substances are designed to be safely and easily manipulated by one person. "Laboratory Scale" excludes those workplaces whose function is to produce commercial quantities of chemicals.

Laboratory Waste means a hazardous chemical that results from laboratory scale activities and includes the following: excess or unused hazardous chemicals that may or may not be reused outside their laboratory of origin; hazardous chemicals determined to be RCRA hazardous waste as defined in 40 CFR Part 261; and hazardous chemicals that will be determined not to be RCRA hazardous waste pursuant to 40 CFR 262.106.

Laboratory Worker means a person who is assigned to handle hazardous chemicals in the laboratory and may include researchers, students or technicians.

Legal and Other Requirements means requirements imposed by, or as a result of, governmental permits, governmental laws and regulations, judicial and administrative enforcement orders, non-governmental legally enforceable contracts, research grants and agreements, certification specifications, formal voluntary commitments and organizational policies and standards.

Senior Management means senior personnel with overall responsibility, authority and accountability for managing laboratory activities within the organization.

Universities means the following academic institutions; University of Vermont, Boston College, and the University of Massachusetts Boston, which are participants in this Laboratory XL project and which are subject to the requirements set forth in this Subpart I.

§ 262.103 What is the scope of the laboratory environmental management standard?

The Laboratory Environmental Management Standard will not affect or supersede any legal requirements other than those described in § 262.10(j). The requirements that continue to apply include, but are not limited to, OSHA, Fire Codes, wastewater permit limitations, emergency response notification provisions, or other legal requirements applicable to University laboratories.

§ 262.104 What are the minimum performance criteria?

The Minimum Performance Criteria that each University must meet in managing its Laboratory Waste are:

(a) Each University must label all laboratory waste with the chemical name and general hazard class. If the container is too small to hold a label, the label must be placed on a secondary container.

(b) Each University may temporarily hold up to 55 gallons of laboratory waste or one quart of acutely hazardous laboratory waste, or weight equivalent, in each laboratory, but upon reaching these thresholds, each University must mark that laboratory waste with the date when this threshold requirement was met (by dating the container(s) or secondary container(s)).

(c) Each university must remove all of the dated laboratory waste from the laboratory for direct delivery to the hazardous waste accumulation area within 30 days of reaching the threshold amount identified in paragraph (b) of this section.

(d) In no event shall the excess laboratory waste that a laboratory temporarily holds before dated laboratory waste is removed exceed an additional 55 gallons of laboratory waste (or one additional quart of acutely hazardous laboratory waste). No more than 110 gallons of laboratory waste total (or no more than two quarts of acutely hazardous laboratory waste total) may be temporarily held in a laboratory at any one time. Excess laboratory waste must be dated and removed in accordance with the requirements of paragraphs (b) and (c) of this section.

(e) Containers of laboratory wastes must be:

(1) Closed at all times except when wastes are being added to (including during in-line waste collection) or removed from the container;

(2) Maintained in good condition and stored in the laboratory in a manner to avoid leaks;

(3) Compatible with their contents to avoid reactions between the waste and its container; and must be made of, or lined with, materials which are compatible with the laboratory wastes to be temporarily held in the laboratory so that the container is not impaired; and

(4) Inspected regularly (at least annually) to ensure that they meet requirements for container management.

(f) The management of laboratory waste must not result in the release of hazardous constituents into the land, air and water where such release is prohibited under federal law.

(g) The requirements for emergency response are:

(1) Each University must post notification procedures, location of emergency response equipment to be used by laboratory workers and evacuation procedures;

(2) Emergency response equipment and procedures for emergency response must be appropriate to the hazards in the laboratory such that hazards to human health and the environment will be minimized in the event of an emergency;

(3) In the event of a fire, explosion or other release of laboratory waste which could threaten human health or the environment, the laboratory worker must follow the notification procedures under paragraph (g)(1) of this section.

(h) Each University must investigate, document, and take actions to correct and prevent future incidents of hazardous chemical spills, exposures and other incidents that trigger a reportable emergency or that require reporting under paragraph (g) of this section.

(i) Each University may only transfer laboratory wastes from a laboratory directly to an on-site designated hazardous waste accumulation area. Notwithstanding 40 CFR 263.10(a), each University must comply with requirements for transporters set forth in 40 CFR 263.30 and 263.31 in the event of a discharge of laboratory waste en route from a laboratory to an on-site hazardous waste accumulation area.

(j) Each University must provide laboratory workers with information and training so that they can implement and comply with these Minimum Performance Criteria.

§ 262.105 What must be included in the laboratory environmental management plan?

(a) Each University must include specific measures it will take to protect human health and the environment from hazards associated with the management of laboratory wastes and from the reuse, recycling or disposal of such materials outside the laboratory.

(b) Each University must write, implement and comply with an Environmental Management Plan that includes the following:

(1) The specific procedures to assure compliance with each of the Minimum Performance Criteria set forth in § 262.104.

(2) An environmental policy, or environmental, health and safety policy, signed by the University's senior management, which must include

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commitments to regulatory compliance, waste minimization, risk reduction and continual improvement of the environmental management system.

(3) A description of roles and responsibilities for the implementation and maintenance of the Laboratory Environmental Management Plan.

(4) A system for identifying and tracking legal and other requirements applicable to laboratory waste, including the procedures for providing updates to laboratory supervisors.

(5) Criteria for the identification of physical and chemical hazards and the control measures to reduce the potential for releases of laboratory wastes to the environment, including engineering controls, the use of personal protective equipment and hygiene practices, containment strategies and other control measures.

(6) A pollution prevention plan, including, but not limited to, roles and responsibilities, training, pollution prevention activities, and performance review.

(7) A system for conducting and updating annual surveys of hazardous chemicals of concern and procedures for identifying acutely hazardous laboratory waste.

(8) The procedures for conducting laboratory clean-outs with regard to the safe management and disposal of laboratory wastes.

(9) The criteria that laboratory workers must comply with for managing, containing and labeling laboratory wastes, including: an evaluation of the need for and the use of any special containers or labeling circumstances, and the use of laboratory wastes secondary containers including packaging, bottles, or test tube racks.

(10) The procedures relevant to the safe and timely removal of laboratory wastes from the laboratory.

(11) The emergency preparedness and response procedures to be implemented for laboratory waste.

(12) Provisions for information dissemination and training, provided for in paragraph (d) of this section.

(13) The procedures for the development and approval of changes to the Environmental Management Plan.

(14) The procedures and work practices for safely transferring or moving laboratory wastes from a laboratory to a hazardous waste accumulation area.

(15) The procedures for regularly inspecting a laboratory to assess conformance with the requirements of the Environmental Management Plan.

(16) The procedures for the identification of environmental management plan noncompliance, and the assignment of responsibility, timelines and corrective actions to prevent their reoccurrence.

(17) The recordkeeping requirements to document conformance with this Plan.

(c) Organizational responsibilities for each university. Each University must:

(1) Develop and oversee implementation of its Laboratory Environmental Management Plan.

(2) Identify the following:

(i) Annual environmental objectives and targets;

(ii) Those laboratories covered by the requirements of the Laboratory Environmental Management Plan.

(3) Assign roles and responsibilities for the effective implementation of the Environmental Management Plan.

(4) Determine whether laboratory wastes received at a hazardous waste accumulation area are solid wastes under RCRA and, if so, whether they are hazardous.

(5) Develop, implement, and maintain:

(i) Policies, procedures and practices governing its compliance with the Environmental Management Plan and applicable federal and state hazardous waste regulations.

(ii) Procedures to monitor and measure relevant conformance and environmental performance data for the purpose of supporting continual improvement of the Environmental Management Plan.

(iii) Policies and procedures for managing environmental documents and records applicable to this Environmental Management Standard.

(6) Ensure that:

(i) Its Environmental Management Plan is available to laboratory workers, vendors, employee representatives, visitors, on-site contractors, and upon request, to governmental representatives.

(ii) Personnel designated by each University to handle laboratory wastes and RCRA hazardous waste receive appropriate training.

(iii) The Environmental Management Plan is reviewed at least annually by senior management to ensure its continuing suitability, adequacy and effectiveness. The reviews may include, but not be limited to, a consideration of monitoring and measuring information, Laboratory Environmental Management Standard performance data, assessment and audit results and other relevant information and data.

(d) What are the Information and Training Requirements for Each University? (1) Each University must provide laboratory workers with information and training so that they understand and can implement the elements of each University's Environmental Management Plan that are relevant to the laboratory workers' responsibilities.

(2) Each University must provide the information and training to each laboratory worker when he/she is first assigned to a work area where laboratory wastes may be generated. Each University must retrain a laboratory worker when a laboratory waste poses a new or unique hazard for which the laboratory worker has not received prior training and as frequently as needed to maintain knowledge of the procedures of the Environmental Management Plan.

(3) Each University must provide an outline of training and specify who is to receive training in its Environmental Management Plan.

(4) Each University must ensure that laboratory workers are informed of:

(i) The contents of this Subpart and the Laboratory Environmental Management Plan(s) for the laboratory(ies) in which they will be performing work;

(ii) The location and availability of the Environmental Management Plan;

(iii) Emergency response measures applicable to laboratories;

(iv) Signs and indicators of a hazardous substance release;

(v) The location and availability of known reference materials relevant to implementation of the Environmental Management Plan; and

(vi) Environmental training requirements applicable to laboratory workers.

(5) Each University must train Laboratory workers in:

(i) Methods and observations that may be used to detect the presence or release of a hazardous substance;

(ii) The chemical and physical hazards associated with laboratory wastes in their work area;

(iii) The relevant measures a laboratory worker can take to protect human health and the environment; and

(iv) Details of the Environmental Management Plan sufficient to ensure they manage laboratory waste in accordance with the requirements of this Subpart.

(6) Requirements pertaining to Laboratory visitors:

(i) Laboratory visitors, such as on-site contractors or environmental vendors, that require information and training under this standard must be identified in the Environmental Management Plan.

(ii) Laboratory visitors identified in the Environmental Management Plan must be informed of the existence and location of the Environmental Management Plan.

(iii) Laboratory visitors identified in the Environmental Management Plan must be informed of relevant policies, procedures or work practices to ensure compliance with the requirements of the Environmental Management Plan.

(7) Each University must define methods of providing objective evidence and records of training and information dissemination in its Environmental Management Plan.

§ 262.106 When must a hazardous waste determination be made?

Each University must evaluate all laboratory wastes to determine whether they are solid wastes under RCRA and, if so, determine pursuant to 40 CFR 262.11(a) through (d) whether they are hazardous wastes, as soon as the laboratory wastes reach the University's Hazardous Waste Accumulation area(s). At this point each University must determine whether the laboratory waste will be reused or whether it must be managed as RCRA solid or hazardous waste. Laboratory waste that is determined to be hazardous waste is no longer subject to the provisions of this Subpart and must be managed in accordance with all applicable RCRA requirements.

§ 262.107 Under what circumstances will a university's participation in this environmental management standard pilot be terminated?

(a) EPA retains the right to terminate a University's participation in this Laboratory XL project if the University:

(1) Is in non-compliance with the Minimum Performance Criteria in § 262.104; or

(2) Has actual environmental management practices in the laboratory that do not conform to its Environmental Management Plan; or

(3) Is in non-compliance with the Hazardous Waste Determination requirements of § 262.106.

(b) In the event of termination, EPA will provide the University with 15 days written notice of its intent to terminate. During this period, which commences upon receipt of the notice, the University will have the opportunity to come back into compliance with the Minimum Performance Criteria, its Environmental Management Plan, or the requirements for making a hazardous waste determination at § 262.106 or to provide a written explanation as to why it was not in compliance and how it intends to return to compliance. If, upon review of the University's written explanation, EPA then re-issues a written notice terminating the University from this XL Project, the provisions of § 262.107(c) will immediately apply and the University shall have 90 days to come into compliance with the applicable RCRA requirements deferred by § 262.10(j). During the 90-day transition period, the provisions of this Subpart shall continue to apply to the University.

(c) If a University withdraws from this XL project, or receives a notice of termination pursuant to this section, it must submit to EPA and the state a schedule for returning to full compliance with RCRA requirements at the laboratory level. The schedule must show how the University will return to full compliance with RCRA within 90 days from the date of the notice of termination or withdrawal.

§ 262.108 When will this subpart expire?

This Subpart will expire on [INSERT DATE 4 YEARS FROM EFFECTIVE DATE OF FINAL RULE].

[FR Doc. 99–19123 Filed 7–26–99; 8:45 am]

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Part VII

Department of Justice

Bureau of Prisons

28 CFR Part 540

Correspondence: Inspection of Outgoing General Correspondence; Proposed Rule

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP 1094–P]

RIN 1120–AA89

Correspondence: Inspection of Outgoing General Correspondence

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to amend its regulations on correspondence to require that outgoing inmate general correspondence at all institutions may not be sealed and may be read and inspected by staff. This amendment is intended to provide for the continued efficient and secure operation of the institution and to protect the public. This amendment does not apply to special mail.

DATES: Comments due by September 27, 1999.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on correspondence (28 CFR part 540, subpart B). Current regulations on this subject were published in the **Federal Register** on October 1, 1985 (50 FR 40109) and were amended on February 1, 1991 (56 FR 4159), and on December 18, 1995 (61 FR 65204).

Current provisions on general correspondence specify that outgoing general mail from inmates in a minimum or low security level institution may be sealed by the inmate and sent out unopened and uninspected under certain circumstances. Outgoing general mail from inmates in medium, high, and administrative facilities may not be sealed by the inmate and is subject to inspection. As part of a general review of security measures at Bureau institutions, the Bureau is proposing to require that general mail from all inmates, regardless of institution security level, be sent out unsealed and subject to inspection. Special mail is unaffected by this amendment.

The Bureau believes that inspection of outgoing mail from inmates in minimum or low security level institutions is consistent with the application of other Bureau policies pertaining to contacts with the public. This amendment serves to ensure the secure operation of all institutions by reducing the potential for inmates to use sealed mail for criminal activity.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic at the address given above.

List of Subjects in 28 CFR Part 540

Prisoners.

Kathleen Hawk Sawyer,
Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 540 in subchapter C of 28 CFR, chapter V is proposed to be amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

Part 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

Authority: 5 U.S.C. 301, 551, 552A; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039, 28 U.S.C. 509, 510, 28 CFR 0.95–0.99.

2. In § 540.14, paragraph (b) is revised, paragraph (c) is removed, and paragraph (d) is redesignated as new paragraph (c).

§ 540.14 General correspondence.

* * * * *

(b) Except for "special mail," all outgoing mail from an inmate (whether sentenced or unsentenced) may not be sealed by the inmate and may be read and inspected by staff.

* * * * *

[FR Doc. 99–19067 Filed 7–26–99; 8:45 am]

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Part VIII

The President

Proclamation 7210—Imposition of Restraints on Imports of Certain Steel Products From the Russian Federation

Executive Order 13131—Further Amendments to Executive Order 12757, Implementation of the Enterprise for the Americas Initiative

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Presidential Documents

Title 3—

The President

Proclamation 7210 of July 22, 1999

Imposition of Restraints on Imports of Certain Steel Products From the Russian Federation

By the President of the United States of America

A Proclamation

1. Article XI of the June 1, 1990, Agreement between the United States of America and the Russian Federation on Trade Relations ("the 1990 Agreement"), which was entered into pursuant to title IV of the Trade Act of 1974, as amended ("the Trade Act"), provides that the Parties will consult with a view toward finding means of preventing market disruption, and authorizes the Parties to take action, including the imposition of import restrictions, to achieve this goal.

2. The Government of the United States and the Government of the Russian Federation ("Russia") have mutually agreed that the conditions of Article XI of the 1990 Agreement have been met with respect to U.S. imports of certain steel products from Russia described in the Annex to this proclamation. Further, the Governments have concluded an Agreement Concerning Trade in Certain Steel Products from the Russian Federation ("the 1999 Agreement") on remedial and preventative measures to address market conditions with respect to such products.

3. Section 125(c) of the Trade Act (19 U.S.C. 2135(c)) provides that whenever the United States, acting in pursuance of any of its rights or obligations under any trade agreement entered into pursuant to the Trade Act, withdraws, suspends, or modifies any obligation with respect to the trade of ar y foreign country or instrumentality, the President is authorized to proclaim increased duties or other import restrictions, to the extent, at such times, and for such periods as he deems necessary-or appropriate, in order to exercise the rights or fulfill the obligations of the United States.

4. In pursuance of its rights under the 1990 Agreement, the United States Government is withdrawing, suspending, or modifying its obligations under Article I of the 1990 Agreement with respect to the certain steel products described in the Annex to this proclamation by establishing import restrictions to address market conditions with respect to these products.

5. I have determined that, effective immediately and continuing so long as the 1999 Agreement remains in effect, it is appropriate to proclaim import restrictions as set forth in the Annex to this proclamation in order to exercise the rights and fulfill the obligations of the United States under the 1990 Agreement.

6. Section 125(f) of the Trade Act (19 U.S.C. 2135(f)) requires the President to provide an opportunity for interested parties to present views at a public hearing prior to taking action pursuant to section 125(b), (c), or (d) of the Trade Act (19 U.S.C. 2135(b), (c), or (d)). Interested parties presented their views at a hearing held on March 2, 1999.

7. Section 301 of title 3, United States Code, authorizes the President to delegate his authority to the head of any department or agency in the executive branch to perform without approval, ratification, or other action by the President any function that is vested in the President by law.

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NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to section 125(c) of the Trade Act (19 U.S.C. 2135(c)) and section 301 of title 3, United States Code, do proclaim that:

(1) Pursuant to U.S. rights under the 1990 Agreement and to implement and enforce the 1999 Agreement, imports of certain steel products from Russia are restricted as provided in the Annex to this proclamation.

(2) The Secretary of Commerce ("the Secretary") is authorized to exercise my authority to administer the import restrictions on certain steel products consistent with the 1999 Agreement as proclaimed herein. The Secretary shall provide instructions and any necessary interpretive guidance to the Commissioner, U.S. Customs Service, concerning the import restrictions set forth in this proclamation.

(3) Such restrictions shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date set forth in the Annex and shall remain in effect during the period of the 1999 Agreement.

(4) All provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of July, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

Billing code 3195-01-P

Annex

IMPORT RESTRICTIONS

Section A: Export Limits

Effective July 12, 1999, the United States Customs Service shall deny entry to any imports of certain steel products from Russia, in excess of the export limits established below, or which otherwise fail to comply with the instructions issued by the Secretary of Commerce.

The export limits for the certain steel products from Russia to the United States for the calendar year 1999 are as follows:

Certain Steel Product	Quantity (in metric tons)
Cold-Rolled Flat-Rolled Carbon Quality Steel	340,000
Certain Cold-Rolled Stainless, Alloy and Other Carbon Steel Products	15,356
Semifinished Steel Products	950,000
Galvanized Sheet Products	55,000
Other Metallic Coated Flat-Rolled Products	0
Certain Tin Mill Products	0
Electrical Sheet Products	15,356
Heavy Structural Shapes	65,000
Rails	0
Hot-Rolled Bars (hot-rolled bars, reinforcing bar, and light shapes)	85,000
Cold-Finished Bars	36,000
Pipe and Tube Products	40,000
Wire Rod Products	0
Hot-Rolled Steel Stainless and Alloy Prods.	25,073
Pig Iron	575,000

Section B: Definitions

References to the provisions of the Harmonized Tariff Schedule of the United States, annotated ("HTSUS"), as of June 30, 1999.

(1) Certain Cold-Rolled Stainless, Alloy and Other Carbon Steel Products are defined as the following:

Certain stainless, alloy, and iron or non-alloy cold-rolled (cold-reduced) flat-rolled steel products, of rectangular shape, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10

times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape, and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e. products which have been "worked after rolling") -- for example, products which have been beveled or rounded at the edges.

Specifically excluded from this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and motor lamination steels if in coils and of a width greater than 0.5 inches, regardless of thickness, and if less than 4.75 mm; if in straight lengths, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products to be excluded from the scope of this action, unless otherwise provided, regardless of definitions in the HTSUS, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are excluded from the scope of this action unless specifically included. The following products, by way of example, are included in the scope of this action:

I. SAE grades (formerly also called AISI grades) above 2300;

II. Ball bearing steels, as defined in the HTSUS;
III. Tool steels, as defined in the HTSUS;
IV. Silico-manganese steel, as defined in the HTSUS;
V. Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
VI. Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
VII. All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

The covered merchandise may be reported under the following HTSUS categories: 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7219.31.0010, 7219.31.0050, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.32.0045, 7219.32.0060, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.33.0045, 7219.33.0070, 7219.33.0080, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.34.0050, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.35.0050, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, 7220.90.0080, 7223.00.5000, 7225.11.0000, 7225.19.0000, 7225.99.0010, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8015, 7225.50.8085, 7225.90.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7005, 7226.92.7050, 7226.92.8005, 7226.92.8050, 7226.99.0000, 7229.90.1000.

Cold-rolled steel is equivalent to AISI categories 32 (cold-rolled sheet), 37 (cold-rolled strip), and 28 (black plate).

(2) Semifinished Steel Products are defined as the following:

Certain iron and steel products (whether or not stainless, other alloy, or non-alloy) in the following forms: ingots and other primary forms; semifinished products (whether or not of rectangular cross-section, and whether or not with a width measuring at least twice the thickness).

The merchandise is classified in the HTSUS at subheadings: 7206.10.0000, 7206.90.0000, 7207.11.0000, 7207.12.0010, 7207.12.0050, 7207.19.0030, 7207.19.0090, 7207.20.0025, 7207.20.0045, 7207.20.0075, 7207.20.0090, 7218.10.0000,

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7218.91.0015, 7218.91.0030, 7218.91.0060, 7218.99.0015, 7218.99.0030, 7218.99.0045, 7218.99.0060, 7218.99.0090, 7224.10.0005, 7224.10.0045, 7224.10.0075, 7224.90.0005, 7224.90.0015, 7224.90.0025, 7224.90.0035, 7224.90.0045, 7224.90.0055, 7224.90.0065, and 7224.90.0075.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

Semifinished steel is equivalent to AISI categories 1A (ingots and steel for castings) and 1B (blooms, billets, and slabs).

(3) Galvanized Sheet Products are defined as the following:

Hot-rolled or cold-rolled flat-rolled products, either in coils (regardless of dimension) or in straight flat-rolled lengths (if of a thickness less than 4.75 mm are of a width measuring at least 10 times the thickness or if of a thickness of 4.75 mm or more are of a width which exceeds 150 mm and measures at least twice the thickness), with a metallic coating of zinc, regardless of any additional coatings (e.g., paint, varnish, or plastics).

The merchandise subject to this action is classified in the HTSUS at subheadings: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.70.6030, 7210.70.6060, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7225.91.0000, 7225.92.0000, 7226.93.0000, and 7226.94.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under this action is dispositive.

Galvanized Sheet Products reflect AISI categories 33A (hot-dipped galvanized sheet/strip) and 33B (electrolytic galvanized sheet/strip).

(4) Other Metallic Coated Flat Rolled Products are defined as the following:

Hot-rolled or cold-rolled flat-rolled products, either in coils (regardless of dimension) or in straight lengths (if of a thickness less than 4.75 mm are of a width measuring at least 10 times the thickness or if of a thickness of 4.75 mm or more are of a width which exceeds 150 mm and measures at least twice the thickness), with a metallic coating (other than zinc, tin, chromium oxides, or chromium and chromium oxides), or clad, with metals such as aluminum, lead, aluminum-zinc alloys, and nickel, regardless of any additional coatings (e.g., paint, varnish, or plastics).

The merchandise subject to this action is classified in the HTSUS at subheadings: 7210.20.0000, 7210.61.0000, 7210.69.0000, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7225.99.0090, and 7226.99.0000.

Other Metallic Coated Flat-Rolled Products reflect AISI category 34 (metallic sheet and strip).

(5) Rails are defined as the following:

Rails, whether or not used, for railway and tramway construction and replacement. This includes load-bearing rails such as standard T, light, crane, and girder rails, and conductor or electrical rails.

The merchandise subject to this action is classified in the HTSUS at subheadings: 7302.10.1010, 7302.10.1015, 7302.10.1025, 7302.10.1035, 7302.10.1045, 7302.10.1055, 7302.10.1065, 7302.10.1075, 7302.10.5020, 7302.10.5040, and 7302.10.5060.

Rails reflect AISI categories 7 (standard rails), 8 (other rails), and 41 (used rails).

(6) Certain Tin Mill Products are defined as the following:

Hot-rolled or cold-rolled flat-rolled products, either in coils (regardless of dimension) or in straight lengths (if of a thickness less than 4.75 mm are of a width measuring at least 10 times the thickness or if of a thickness of 4.75 mm or more are of a width which exceeds 150 mm and measures at least twice the thickness), with a metallic plating of tin, chromium oxides, or chromium and chromium oxides, regardless of any additional coatings (e.g., paint, varnish, or plastics).

The merchandise subject to this action is classified in the HTSUS at subheadings: 7210.11.0000, 7210.12.0000, 7210.50.0000, and 7212.10.0000.

Certain Tin Mill Products reflect AISI categories 29 (tin plate) and 29A (tin-free sheet).

(7) Electrical Sheet Products are defined as the following:

Cold-rolled flat-rolled alloy steels, or that contain by weight at least 0.6 percent of silicon but not more than 6 percent of silicon and not more than 0.08 percent of carbon. They may also contain by weight not more than 1 percent of aluminum but no other element in a proportion that would give the steel the characteristics of another alloy steel.

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The merchandise subject to this action is classified in the HTSUS at subheadings: 7225.11.0000, 7225.19.0000, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, and 7226.19.9000. Electrical Sheet Products reflect AISI category 35 (electrical sheet).

(8) Heavy Structural Shapes are defined as the following:

Angles, shapes, and sections having a uniform cross section across their length, of alloy (other than tool steel as defined by the HTS) or non-alloy steel, whether hot-rolled, hot-formed, or hot-extruded, with a height of at least 80 mm. Included are shapes such as U, I, H, and T.

The merchandise subject to this action is classified in the HTSUS at subheadings: 7216.31.0000, 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.40.0010, 7216.40.0050, 7216.50.0000, 7216.99.0000, 7222.40.3020, 7222.40.3040, 7228.70.3020, 7228.70.3040, and 7301.10.0000.

Heavy Structural Shapes reflect AISI categories 4 (structural heavy shapes) and 5 (steel piling).

(9) Hot-Rolled Bars are defined as the following:

Hot-rolled products, not in coils, whether of alloy (other than tool steel as defined by the HTSUS) or non-alloy steel, with a uniform solid cross section along their whole length, that do not meet the definition for flat-rolled products outlined in the HTSUS, in the following shapes:

a. circles, segments of circles, ovals, rectangles (including squares), triangles, or other convex polygons, which do not include indentations, ribs, grooves or other deformations produced during the rolling process ("hot-rolled bars");

b. circles, segments of circles, ovals, rectangles (including squares), triangles, or other convex polygons, which include indentations, ribs, grooves or other deformations produced during the rolling process ("reinforcing bars" or "rebars");

c. angles, shapes, and sections such as U, I, H, L, and T with a height of less than 80 mm ("light shapes").

The merchandise subject to this action is classified in the HTSUS at subheadings: 7213.10.0000, 7213.20.0000, 7213.99.0060, 7214.10.0000, 7214.20.0000, 7214.30.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0015, 7214.99.0030, 7214.99.0045, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.1000, 7216.10.0010, 7216.10.0050, 7216.21.0000,

7216.22.0000, 7221.00.0005, 7221.00.0045, 7221.00.0075, 7222.11.0005, 7222.11.0050, 7222.19.0005, 7222.19.0050, 7222.40.3060, 7222.40.3080, 7227.20.0000, 7227.90.6005, 7227.90.6050, 7228.20.1000, 7228.30.8005, 7228.30.8050, 7228.40.0000, 7228.60.6000, 7228.70.3060, 7228.70.3080, and 7228.80.0000.

Hot-Rolled Bars reflect AISI categories 14 (hot-rolled bars), 15 (reinforcing bars), and 14A (light shapes).

(10) Cold Finished Bars are defined as the following:

Cold-finished (e.g. cold-rolled, cold-drawn, turned) products, not in coils, whether of alloy (other than tool steel as defined by the HTS) or non-alloy steel, with a uniform solid cross section along their whole length, that do not meet the definition for flat-rolled products outlined in the HTS, in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, or other convex polygons, regardless of whether they include indentations, ribs, grooves or other deformations produced during the rolling process (rebar).

The merchandise subject to this action is classified in the HTSUS at subheadings: 7215.10.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.3000, 7215.90.5000, 7222.20.0005, 7222.20.0045, 7222.20.0075, 7222.30.0000, 7228.20.5000, 7228.50.5005, 7228.50.5050, and 7228.60.8000.

Cold-Finished Bars reflect AISI category 16 (cold-finished bars).

(11) Pipe and Tube Products are defined as the following:

Hollow steel products of either circular or non-circular cross section, of alloy (e.g. stainless) or non-alloy steel, whether seamless or not seamless (e.g. welded, open seam), whether plain end or finished (e.g. upset, threaded, coupled), regardless of size.

The merchandise subject to this action is classified in the HTSUS at subheadings: 7304, 7305, and 7306.

Pipe and Tube Products reflect AISI categories 18 (standard), 19 (oil country tubular goods), 20 (line pipe), 21A (mechanical tubing), 21B (pressure tubing), 21C&D (stainless pipe and tubing), 21E (pipe and tube, not classified), 22A (structural pipe and tubing), and 22B (structural pipe and tubing for piling).

(12) Wire Rod Products are defined as the following:

Hot-rolled bars and rods, whether of alloy (other than tool steel as defined by the HTSUS) or non-alloy steel, in irregularly wound

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coils, which have a solid cross section, generally round in cross-sectional shape.

The merchandise subject to this action is classified in the HTSUS at subheadings: 7213.91.3000, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7221.00.0015, and 7221.00.0030.

Wire Rod Products reflect AISI category 3 (wire rod).

(13) Pig Iron is defined as the following:

Iron-carbon alloys that are not usefully malleable, containing more than 2% by weight of carbon.

The merchandise subject to this action is classified in the HTSUS at subheadings: 7201.10.0000, 7201.20.0000, 7201.50.3000, and 7201.50.6000.

Pig Iron is equivalent to AISI categories 65 (pig iron).

[FR Doc.99–19395]
Filed 7–26–99; 12:20 pm
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Presidential Documents

Executive Order 13131 of July 22, 1999

Further Amendments to Executive Order 12757, Implementation of the Enterprise for the Americas Initiative

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Agriculture Trade Development and Assistance Act of 1954 ("ATDA Act"), as amended, the Foreign Assistance Act of 1961 (FAA), as amended, the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1996 (Public Law 104–07), and the Tropical Forest Conservation Act of 1998 (Public Law 105–14), it is hereby ordered as follows:

Section 1. *Amendment of Executive Order 12757.* Executive Order 12757, "Implementation of the Enterprise for the Americas Initiative," as amended by Executive Orders 12823 and 13028, is further amended as follows:

(a) The Title is amended by adding at the end thereof "and the Tropical Forest Conservation Act of 1998".

(b) The Preamble is amended:

(1) by striking the comma (",") after Public Law 101–624, and inserting instead "and"; and

(2) by inserting "and Public Law 105–214" after "Public Law 102–549".

(c) Section 1 is amended:

(1) by striking "and" after "sections 703", and inserting instead a comma (",");

(2) by inserting ", 805(b), 806(a), 807(a), 808(a)(1)(A), 808(a)(2), 812 and 813" after "704";

(3) by inserting "and the corresponding determinations required by section 805(b) of the FAA," after "FAA" the second time it appears; and

(4) by inserting "sections 808(a)(1)(B) and (C), and 808(a)(4) of the FAA, and by" after "The functions vested in the President by" the second time it appears.

(d) Section 3(b) is amended:

(1) by striking "also" after "Enterprise for the Americas Board shall"; and

(2) by inserting at the end of the section "The Enterprise for the Americas Board, as constituted pursuant to section 811 of the FAA, shall also advise the Secretary of State and the Administrator of the United States Agency for International Development on the Secretary—s negotiation of Tropical Forest Agreements."

(e) Section 3(c) is amended:

(1) by striking "section 708(c)" after "the ATDA Act and", and inserting instead "sections 708(c) and 809(c)";

(2) by striking "and" after "environmental framework agreements" and inserting instead a comma (","); and

(3) by inserting "and the Tropical Forest Agreements, respectively" after "Americas Framework Agreements".

(f) Section 4(a) is amended by inserting at the end thereof "The two additional U.S. Government members of the Enterprise for the Americas Board appointed pursuant to section 811(b)(1)(A) of the FAA shall be a representative of the International Forestry Division of the United States Forest Service and a representative of the Council on Environmental Quality."

(g) Section 4(c)(1) is amended by striking "section 708(c)(3)(C)" and inserting instead "sections 708(c)(3)(C) and 811(c)(3)".

(h) Section 4(c)(2) is amended by striking "Part IV" and inserting instead "Parts IV and V".

(i) Section 4(d) is amended to read as follows: "(d) The five private non-governmental organization members of the Board appointed pursuant to section 610(b)(1)(B) of the ATDA Act and the two additional members appointed pursuant to section 811(b)(1)(B) of the FAA shall be appointed by the President."

Section 2. Judicial Review. This order is intended only to improve the internal management of the Federal Government, and is not intended to create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
July 22, 1999.

[FR Doc. 99–19396
Filed 7–26–99; 12:20pm]
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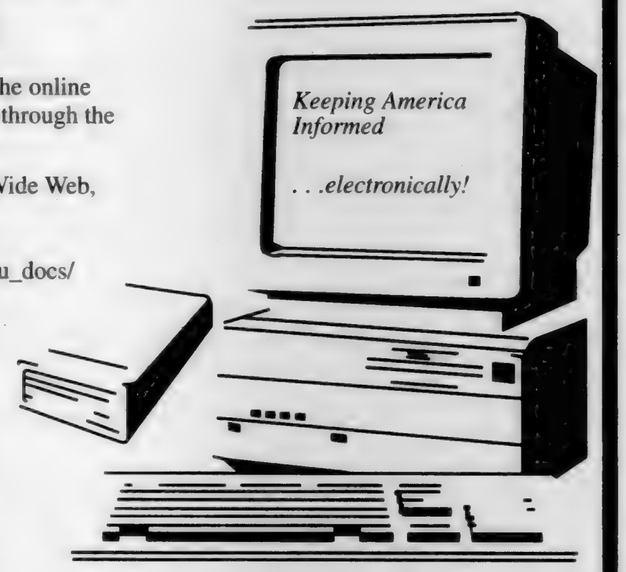

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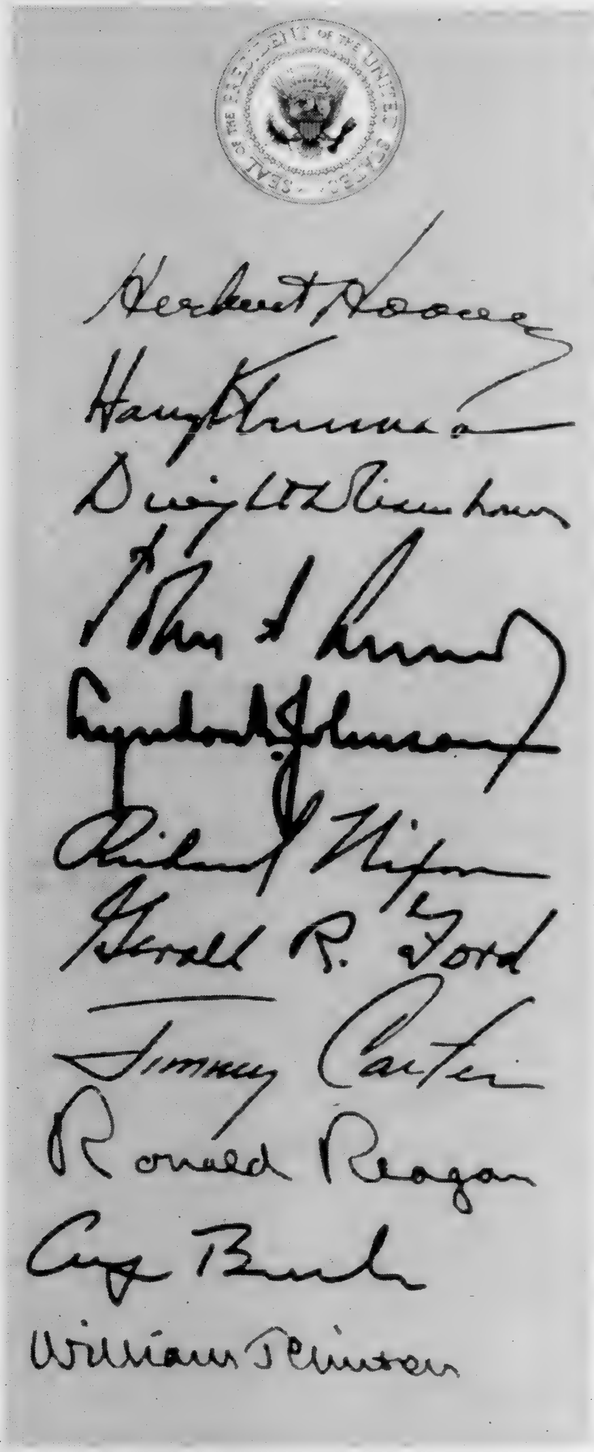

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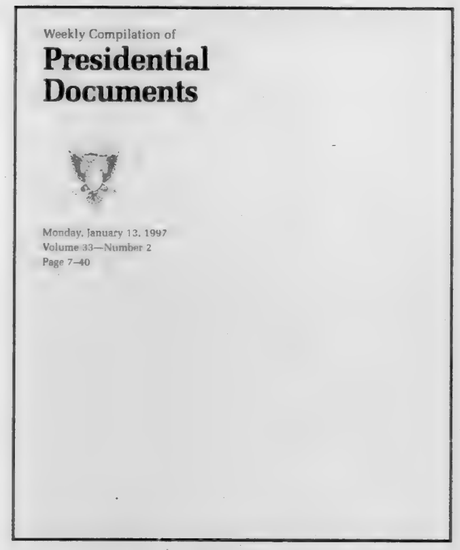

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Rules and Regulations

Federal Register
Vol. 64, No. 144
Wednesday, July 28, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Economic Research Service

7 CFR Part 3700

Revision of Delegations of Authority and Revision of Organizations and Functions

AGENCY: Office of the Secretary and Economic Research Service, Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department in order to delegate to the Chief Economist and the Director of Office of Energy Policy and New Uses, the authority to advise the Office of the Secretary on energy matters, to coordinate energy-related activities within the Department, to serve as liaison with other Departments on energy issues, and to conduct a program on the economic feasibility on new uses of agricultural products; and removes these authorities from the delegations made to the Under Secretary for Research, Education, and Economics, the Administrator of Economic Research Service, and the Director of the Office of Energy and New Uses.

EFFECTIVE DATE: Effective July 28, 1999.

FOR FURTHER INFORMATION CONTACT: Betty L. Ollila, Deputy Assistant General Counsel, General Law Division, Office of the General Counsel, Department of Agriculture, Room 1457–S, Washington, D.C. 20250, telephone 202–720–5824.

SUPPLEMENTARY INFORMATION: Pursuant to Title VI, Section 602 of the Agricultural Research, Extension, and Education Reform Act of 1998, Public Law 105–185, 112 Stat. 523, an Office of Energy Policy and New Uses was established. The Office of Energy Policy and New Uses provides policy advice for the Office of the Secretary on energy matters, coordinates energy-related activities within the Department, serves as liaison with other Departments on energy issues, and conducts a program on the economic feasibility on new uses of agricultural products.

The delegations of authority of the Department of Agriculture are amended to delegate to the Chief Economist the authority vested in the Secretary to provide policy advice for the Office of the Secretary on energy matters, to coordinate energy-related activities within the Department, to serve as liaison with other Departments on energy issues, and to conduct a program on the economic feasibility on new uses of agricultural products.

Prior delegations of authority by the Secretary to the Under Secretary for Research, Education, and Economics, and by the Under Secretary for Research, Education, and Economics to the Administrator, Economic Research Service, and by the Administrator, Economic Research Service to the Director, Office of Energy and New Uses to provide advice for the Office of the Secretary on energy matters, to coordinate energy-related activities within the Department, to serve as liaison with other Departments on energy issues, and to conduct a program on the economic feasibility on new uses of agricultural products are removed. These delegations exclude the energy management actions related to the internal operations of the Department as delegated to the Assistant Secretary for Administration.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required and good cause is found that this rule may be made effective upon publication in the **Federal Register.**

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12866 and 12988. In addition, this action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and thus is exempt from the provisions of that Act. Finally, this action is not a rule as defined in 5 U.S.C. 801, and thus does not require review by Congress.

List of Subjects

7 CFR Part 2

Authority delegations (Government agencies).

7 CFR Part 3700

Organization and functions (Government agencies).

Accordingly, 7 CFR parts 2 and 3700 are amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: Sec. 212(a), Pub. L. 103–354, 108 Stat. 3210, 7 U.S.C. 6912(1)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. Section 2.21, paragraph (a)(9) is removed and paragraph (a)(10) is redesignated as paragraph (a)(9).

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

3. Section 2.29 is amended by adding a new paragraph (a)(11) to read as follows:

§ 2.29 Chief Economist.

(a) * * *

(11) (*Related to energy.* (i) Advise the Secretary and other policy-level officials of the Department on energy policies and programs, including legislative and budget proposals.

(ii) Serve as or designate the Department representative at hearings, conferences, meetings and other contacts with respect to energy and energy-related matters, including liaison with the Department of Energy, the Environmental Protection Agency and other governmental agencies and departments.

(iii) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agriculture sciences (7 U.S.C. 3318).

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(iv) Enter into cost-reimbursable agreements relating to agricultural research (7 U.S.C. 3319a).

(v) Provide Department leadership in:

(A) Analyzing and evaluating existing and proposed energy policies and strategies, including those regarding the allocation of scarce resources;

(B) Developing energy policies and strategies, including those regarding the allocation of scarce resources;

(C) Reviewing and evaluating Departmental energy and energy-related programs and programs progress;

(D) Developing agricultural and rural components of national energy policy plans; and

(E) Preparing reports on energy and energy-related polices and programs required under Acts of Congress and Executive orders, including those involving testimony and reports on legislative proposals.

(vi) Provide Departmental oversight and coordination with respect to resources available for energy and energy-related activities, including funds transferred to USDA from other departments or agencies of the Federal Government pursuant to interagency agreements.

* * * * *

Subpart L—Delegations of Authority by the Chief Economist

4. Section 2.73 is added to read as follows:

§ 2.73 Director, Office of Energy Policy and New Uses.

(a) Delegations. Pursuant to § 2.29(a)(11), the following delegations of authority are made by the Chief Economist to the Director, Office of Energy Policy and New Uses:

(1) Providing Department leadership in:

(i) Analyzing and evaluating existing and proposed energy policies and strategies, including those regarding the allocation of scarce resources;

(ii) Developing energy policies and strategies, including those regarding the allocation of scarce resources;

(iii) Reviewing and evaluating Departmental energy and energy-related programs and program progress;

(iv) Developing agricultural and rural components of national energy policy plans;

(v) Preparing reports on energy and energy-related policies and programs required under Act of Congress and Executive Orders, including those involving testimony and reports on legislative proposals.

(2) Providing Departmental oversight and coordination with respect to resources available for energy and energy-related activities, including funds transferred to USDA from departments and agencies of the Federal government pursuant to interagency agreements.

(3) Representing the Chief Economist at conferences, meetings, and other contacts where energy matters are discussed, including liaison with the Department of Energy, the Environmental Protection Agency, and other governmental departments and agencies.

(4) Providing the Chief Economist with such assistance as requested to perform the duties delegated to the Director concerning energy and new uses.

(5) Working with the Office of the Assistant Secretary for Congressional Relations to maintain Congressional and public contacts in energy matters, including development of legislative proposals, preparation of reports on legislation pending in congress, appearances before Congressional committees, and related activities.

(6) These delegations exclude the energy management actions related to the internal operations of the Department as delegated to the Assistant Secretary for Administration.

(7) Conduct a program on the economic feasibility of new uses of agricultural products. Assist agricultural researchers by evaluating the economic and market potential of new agricultural products in the initial phase of development and contributing to prioritization of the Departmental research agenda.

(b) [Reserved]

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

5. In § 2.67, paragraphs (a)(11), (a)(12) and (a)(13) are removed. Paragraph (a)(14) is redesignated as paragraph (a)(11).

CHAPTER XXXVII—ECONOMIC RESEARCH SERVICE, DEPARTMENT OF AGRICULTURE

PART 3700—ORGANIZATION AND FUNCTIONS

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 301 and 552, and 7 CFR 2.67.

§ 3700.3 [Amended]

2. Section 3700.3 paragraph (g) is removed.

Dated: July 19, 1999.

Dan Glickman,

Secretary of Agriculture.

Dated: June 21, 1999.

Keith Collins,

Chief Economist.

Dated: June 14, 1999.

I.M. Gonzalez,

Under Secretary for Research, Education, and Economics.

[FR Doc. 99–19015 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 57

[Docket No. PY–99–003]

Rules of Practice Governing Proceedings Under the Egg Products Inspection Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is revising its regulations governing the mandatory shell egg surveillance program to add that the Administrator may enter into a stipulation, prior to the issuance of a complaint, with any person to resolve violation cases arising under the Egg Products Inspection Act (EPIA) or the regulations, without resort to formal disciplinary proceedings. In December 1998, regulations in 7 CFR part 59 administered by AMS were redesignated as a new part 57. AMS is amending 7 CFR part 57 to add regulations previously proposed to expedite the resolution of violations under the shell egg surveillance program.

EFFECTIVE DATE: August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Douglas C. Bailey, Chief, Standardization Branch, 202/720–3506.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB). In addition, pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA) (13 CFR 121.601) defines small entities that produce and process chicken eggs as those whose annual receipts are less than $9,000,000. Approximately 550,000 egg laying hens are needed to produce enough eggs to gross $9,000,000.

The Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*), enacted in 1970, authorizes the mandatory inspection of egg products operations and the mandatory surveillance of the disposition of shell eggs that are undesirable for human consumption. The EPIA regulations require that shell egg handlers and hatcheries register with the United States Department of Agriculture. The EPIA further authorizes inspections at least once each calendar quarter of egg packers that have 3,000 or more laying hens and pack eggs for the ultimate consumer. There are about 700 shell egg processors registered with the Department that have 3,000 or more laying hens. Of these 700 registered shell egg processors, we believe approximately 500 meet the definition of a small business.

The implementing regulations for the EPIA were originally contained in 7 CFR part 59. Congress added provisions for imposing civil penalties for certain EPIA violations as part of the Food, Agriculture, Conservation and Trade Act Amendments of 1991. To implement these 1991 EPIA amendments, the AMS proposed changes to 7 CFR part 59. Before AMS published a final rule, however, the Department consolidated food safety issues into FSIS. Egg products inspection functions in the EPIA were delegated to FSIS, while shell egg surveillance functions continued to be administered by AMS. In August 1998, FSIS promulgated a final rule to revise the regulations in 7 CFR part 59. In December 1998, those portions of part 59 pertinent to shell egg surveillance were redesignated as a new part 57. AMS is now revising the regulations in 7 CFR part 57 to set forth procedures for resolving compliance cases with civil penalties as provided in the 1991 EPIA amendments.

These regulations provide that USDA's uniform rules of practice will be applicable to formal administrative proceeding for civil penalties. These regulations also set forth procedures for expediting the resolution of violations before institution of formal administrative proceeding under the shell egg surveillance program through the use of stipulation agreements. Use of these procedures by alleged violators is optional. These regulations impose no new requirements on businesses.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Background

The Egg Products Inspection Act (EPIA) authorizes the mandatory inspection of egg products operations and the mandatory surveillance of the disposition of shell eggs that are undesirable for human consumption. From its enactment in 1970, AMS administered the EPIA and its regulations in 7 CFR part 59.

Congress amended the EPIA as part of the Food, Agriculture, Conservation and Trade Act Amendments of 1991 (Pub. L. 102–237) (hereafter referred to as "the 1991 EPIA amendments"). The 1991 EPIA amendments provided that civil penalties may be imposed for certain violations of the mandatory inspection regulations. These amendments become effective 12 months after promulgation of final regulations (21 U.S.C. 1034 note).

To implement the 1991 EPIA amendments, the AMS proposed changes to 7 CFR parts 56 and 59 (57 FR 48569, October 27, 1992). One proposed change added that the Administrator may enter into a stipulation, prior to the issuance of an administrative complaint, with any person to resolve violation cases arising under the EPIA or the regulations, without resorting to formal disciplinary proceedings. Before AMS published a final rule, however, the Department consolidated food safety issues into FSIS following enactment of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354; 7 U.S.C. 2204e). This included delegating responsibility for the EPIA egg products inspection functions to FSIS, while the shell egg surveillance functions remained with AMS. FSIS promulgated a final rule that implemented the 1991 EPIA amendments by revising 7 CFR part 59 (63 FR 45663, August 27, 1998; effective August 27, 1999).

To complete the Department reorganization, other regulatory changes have occurred to ensure that AMS and FSIS have the appropriate regulations they need to carry out their responsibilities. The AMS promulgated a final rule to duplicate and redesignate those portions of 7 CFR part 59 pertinent to shell egg inspection as a new 7 CFR part 57 (63 FR 69968, December 17, 1998; effective December 18, 1998). FSIS promulgated a final rule to redesignate the remaining portions of 7 CFR part 59 and transfer them to 9 CFR part 590 (63 FR 72351, December 31, 1998; effective December 31, 1998). AMS is now revising the regulations in 7 CFR part 57 to provide for the settlement of cases where civil penalties apply through a stipulation procedure, before instituting a formal disciplinary proceeding.

Stipulation Procedure for Assessing Penalties

The amended EPIA includes provisions for imposing civil penalties for certain violations of the mandatory inspection regulations. These penalty provisions are applicable to the egg and egg products inspection programs, with the exception of violations occurring in official egg products plants and violations for which criminal penalties have already been imposed. The Secretary of Agriculture has the authority under the Act to impose civil penalties through formal administrative proceedings. However, these regulations permit the AMS Administrator, prior to initiating a formal administrative proceeding, to enter into a written agreement or stipulation with a violator who agrees to waive a hearing and pay a civil penalty.

Under these stipulation procedures, the AMS Administrator would give the violator notice of the alleged violation and an opportunity for a hearing. The violator would have the option to waive the hearing and agree to pay a specified civil penalty within a prescribed period of time. In turn, the Administrator would agree to accept the civil penalty in settlement of the particular matter involved if the penalty is paid within the specified time. If, however, the violator does not pay the civil penalty within that period of time, the Department would institute a formal administrative proceeding. A civil penalty offered in a stipulation would have no bearing on the civil penalty that the Department might seek in a formal administrative proceeding.

A formal disciplinary proceeding can take a relatively long period of time to resolve, and can be costly for both the Department and the violator. The Department is implementing the use of stipulation agreements, where appropriate, to improve compliance with the EPIA. Accordingly, AMS is amending the regulations by adding a

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subpart on stipulation procedures. This procedure would enable AMS to better enforce the Act and regulations by expediting the resolution of compliance cases.

List of Subjects in 7 CFR Part 57

Eggs and egg products, Exports, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 57 is amended as follows:

PART 57—INSPECTION OF EGGS (EGG PRODUCTS INSPECTION ACT)

1. The authority citation for part 57 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

2. Sections 57.1 through 57.970 are designated as subpart A and the heading of subpart A is added to read as follows:

Subpart A—Regulations Governing the Inspection of Eggs

* * * * *

3. A new subpart B is added to read as follows:

Subpart B—Rules of Practice Governing Proceedings Under the Egg Products Inspection Act

Scope and Applicability of Rules of Practice

§ 57.1000 Administrative proceedings.

(a) The Uniform Rules of Practice for the Department of Agriculture promulgated in subpart H of part 1, subtitle A, title 7, Code of Federal Regulations, are the Rules of Practice applicable to adjudicating administrative proceedings under section 12(c) of the Egg Products Inspection Act (21 U.S.C. 1041).

(b) In addition to the proceedings set forth in paragraph (a) of this section, the Administrator, in his discretion, at any time prior to the issuance of a complaint seeking a civil penalty under the Act may enter into a stipulation with any person, in accordance with the following prescribed conditions:

(1) The Administrator gives notice of an apparent violation of the Act or the regulations issued thereunder by such person and affords such person an opportunity for a hearing regarding the matter as provided by the Act;

(2) Such person expressly waives hearing and agrees to a specified order including an agreement to pay a specified civil penalty within a designated time; and

(3) The Administrator agrees to accept the specified civil penalty in settlement of the particular matter involved if it is paid within the designated time.

(4) If the specified penalty is not paid within the time designated in such stipulation, the amount of the stipulated penalty shall not be relevant in any respect to the penalty that may be assessed after the institution of a formal administrative proceeding pursuant to the Uniform Rules of Practice, Subpart H, Part 1, Title 7, Code of Federal Regulations.

Dated: July 22, 1999.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 99–19290 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400 and 402

RIN 0563–AB68

General Administrative Regulations, Subpart U; and Catastrophic Risk Protection Endorsement; Regulations for the 1999 and Subsequent Reinsurance Years

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the General Administrative Regulations, subpart U—Ineligibility for Programs Under the Federal Crop Insurance Act (7 CFR part 400, subpart U) and the Catastrophic Risk Protection Endorsement (7 CFR part 402) to implement the statutory mandates of the Agricultural Research, Extension, and Education Reform Act of 1998 (1998 Research Act) and the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 (1999 Appropriations Act) enacted on October 19, 1998.

EFFECTIVE DATE: This rule is effective September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by OMB under control number 0563–0053 through April 30, 2001. This rule was amended to implement the statutory mandates of the 1998 Research Act which changed the administrative fee for CAT coverage from $50 per crop per county, not to exceed $200 per county, or $600 for all counties in which the producer elected to obtain limited coverage, to $60 per crop per county. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above-referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The regulation does not require any more action on the part of the small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment or an Environmental Impact Statement is needed.

Background

This rule finalizes revisions to part 400, subpart U and part 402 mandated by the 1998 Research Act, enacted June 23, 1998, and the 1999 Appropriations Act enacted on October 19, 1998. On Thursday, July 30, 1998, FCIC published an interim rule in the **Federal Register** at 63 FR 40630–40632 to amend subpart U and the Catastrophic Risk Protection Endorsement to implement the statutory mandates of the 1998 Research Act, which requires the provisions be implemented for the 1999 and subsequent reinsurance years. The 1999 Appropriations Act enacted after the publication of the interim rule waives the administrative fee of 10 percent of the premium that was enacted in the 1998 Research Act for the 1999 and subsequent reinsurance years. Changes in this rule, not made effective by the interim rule, are not in effect until the effective date of this rule.

Following publication of the interim rule, the public was afforded 60 days to submit written comments. A total of 11 comments was received from an insurance company and an insurance service organization. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization stated that private carriers are expected to complete forms, issue policies, adjust losses, audit policies, and now reprogram the computer systems to handle the change in the Basic Provisions procedures and perform the billing function for CAT policies in exchange for minimal reimbursement. The insurance service organization suggested that FCIC, through the Standard Reinsurance Agreement, allow companies to retain 50 percent of the fees, including flat fees or percentages based on premium computations.

Response: The 1998 Research Act specifies all administrative fees shall be deposited in the crop insurance fund to be available for the programs and activities of FCIC and specifically prohibits use of this fund to compensate insurance providers or agents for the delivery of services. Therefore, no change has been made.

Comment: An insurance service organization suggested the definitions for "additional coverage," "administrative fee," "catastrophic risk protection," "limited coverage," and "limited resource farmer" be deleted from the Catastrophic Risk Protection Endorsement since they are being added to the Basic Provisions. The insurance service organization suggested if they were not eliminated they should be revised to match those definitions in the Basic Provisions, unless additional information is needed in the Catastrophic Risk Protection Endorsement.

Response: FCIC has deleted the definitions for "additional coverage," "administrative fee," "catastrophic risk protection," "limited coverage," and "limited resource farmer" from the Catastrophic Risk Protection Endorsement and moved them to the Basic Provisions.

Comment: An insurance company and an insurance service organization stated the regulation references 10 percent of the premium subsidy and the law refers to this as 10 percent of the imputed premium. They asked if there was a reason for the difference in the wording. They stated the industry is now accustomed to the idea of "imputed premium."

Response: The 1998 Research Act refers to 10 percent of the premium. Section 6(b)(1) of the Catastrophic Risk Protection Endorsement refers to 10 percent of the premium subsidy because all of the CAT premium is subsidized by the Federal Government. However, this provision has been revised to remove all reference to 10 percent of the premium as required by the 1999 Appropriations Act.

Comment: An insurance company and an insurance service organization stated it was their understanding that for nursery, the billing date is at the beginning of the coverage period and this presumably would be the fee due date. The nursery program requires periodic inventory updates, thus the premium could vary depending on the inventory. They asked if the fee continually adjusts through the year depending on inventory and the corresponding imputed premium when the fee is 10 percent of the imputed premium.

Response: For the old nursery policy, the administrative fees will be paid with the premium. If there are more than one premium due dates, the administrative fee must be paid by the final due date. Since the provision regarding the administrative fee of 10 percent of the premium has been removed, inventory adjustments are no longer an issue.

Comment: An insurance company and an insurance service organization stated the pecan program is a two year coverage module. They asked whether a CAT pecan policy that has been in effect for one year under the previous administrative fee structure would keep that fee or if the new fees specified in section 7(b)(1) of the Catastrophic Risk Protection Endorsement apply for the second year.

Response: Since the pecan policy is a two year coverage module and the first year's sales closing date was prior to the effective date of this regulation, the administrative fee that applied for the 1998 crop year will also apply for the 1999 crop year.

In addition to these changes, the administrative fee for catastrophic coverage has been changed due to the 1999 Appropriations Act. The administrative fee for catastrophic coverage for each crop in the county has been changed from $10 plus the greater of either $50 or 10 percent of the premium subsidy to $60 per crop per county. Also, due to the Appropriations Act, paragraph 9(b) of the Catastrophic Risk Protection Endorsement has been revised to state that producers eligible for CAT coverage are also eligible for emergency loans.

List of Subjects in 7 CFR Parts 400 and 402

Administrative practice and procedure, Catastrophic risk protection endorsement, Claims, Crop insurance, Fraud, Insurance provisions, Reporting and recordkeeping requirements.

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Final Rule

Accordingly, as set forth in the preamble, the interim rule amending 7 CFR parts 400 and 402, published on July 30, 1998 at 63 FR 40630, is adopted as final with the following changes:

PART 402—CATASTROPHIC RISK PROTECTION ENDORSEMENT; REGULATIONS FOR THE 1999 AND SUBSEQUENT REINSURANCE YEARS

1. The authority citation for 7 CFR part 402 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

§ 402.4 [Amended]

2. Amend § 402.4 as follows:

a. Remove the definitions of "additional coverage," "administrative fee," "catastrophic risk protection," "limited coverage," and "limited resource farmer" in Section 1.

b. Revise Section 6 paragraph (b)(1).

c. Revise Section 9 paragraph (b). The revisions to § 402.4 read as follows:

§ 402.4 Catastrophic Risk Protection Endorsement Provisions.

6. Annual Premium and Administrative Fees.

* * * * *

(b) * * *

(1) The administrative fee owed for each crop in the county is $60.

* * * * *

9. Claim for Indemnity.

* * * * *

(b) If you are eligible to receive an indemnity under this endorsement and benefits compensating you for the same loss under any other USDA program, you must elect the program from which you wish to receive benefits. Only one payment or program benefit is allowed. However, if other USDA program benefits are not available until after you filed a claim for indemnity, you may refund the total amount of the indemnity and receive the other program benefit. Notwithstanding the first sentence of this subsection, farm ownership, operating, and emergency loans may be obtained from the USDA in addition to an indemnity under this endorsement.

* * * * *

Signed in Washington, DC, on July 20, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–19014 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400 and 457

RIN 0563–AB67

General Administrative Regulations, Subpart T—Federal Crop Insurance Reform, Insurance Implementation; Regulations for the 1999 and Subsequent Reinsurance Years; and the Common Crop Insurance Regulations; Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes subpart T in the General Administrative Regulations (7 CFR part 400, subpart T) and the Common Crop Insurance Regulations, Basic Provisions (7 CFR 457.8), to implement the statutory mandates of the Agricultural Research, Extension, and Education Reform Act of 1998 (1998 Research Act) and Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 (1999 Appropriations Act), enacted on October 19, 1998.

EFFECTIVE DATE: This rule is effective September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by OMB under control number 0563–0053 through April 30, 2001. This rule was amended to implement the statutory mandates of the 1998 Research Act which changed the administrative fee for additional coverage from $10 per crop to $20 per crop. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above-referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The regulation does not require any more action on the part of the small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions

published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule finalizes revisions to subpart T and the Basic Provisions mandated by the 1998 Research Act, enacted June 23, 1998, and subsequently amended by the 1999 Appropriations Act, enacted on October 19, 1998. On Thursday, July 30, 1998, FCIC published an interim rule in the **Federal Register** at 63 FR 40632–40635 to amend subpart T and the Basic Provisions to implement the statutory mandates of the 1998 Research Act, which required the provisions be implemented for the 1999 and subsequent reinsurance years. The 1999 Appropriations Act, which was enacted after publication of the interim rule, waives the administrative fee of 10 percent of the premium that was enacted in the 1998 Research Act for the 1999 and subsequent reinsurance years. Changes in this rule, not made effective by the interim rule, are not in effect until the effective date of this rule.

Following publication of the interim rule, the public was afforded 60 days to submit written comments. A total of 18 comments was received from an insurance company and an insurance service organization. The comments received and FCIC's responses are as follows:

Comment: An insurance company and an insurance service organization suggested the word "expected" be replaced with the word "projected" in the definitions of "additional coverage" and "limited coverage" in the Basic Provisions since that is the word used when market price elections are announced.

Response: Sections 508(b), (c), (d), and (e) of the Federal Crop Insurance Act all refer to the phrase "expected market price" and the regulations, procedures, and clarifications were written accordingly. When market price elections are announced, FCIC will also use the term "expected market price." Therefore, no change has been made.

Comment: An insurance service organization suggested revising the definition of "limited resource farmer" in the Basic Provisions by removing the words "notwithstanding the previous sentence" and adding two parts such as "A producer or operator of a farm or farms:

(a) With an annual gross income * * * each of the prior two years; or

(b) Of less than 25 acres * * * does not exceed $20,000."

Response: This definition of "limited resource farmer" is more clear. Therefore, this definition will be added to the Basic Provisions and the definition removed from Subpart T .

Comment: An insurance company and an insurance service organization suggested that exceptions for: (1) a producer who grows hybrid seed corn or hybrid sorghum seed with different companies; and (2) when the crop provisions allow for a crop to be insured at different levels and at multiple prices, should be added to section 3(f) of the Basic Provisions since this section identifies exceptions to the requirement that the producer must obtain the same level of coverage for all acreage of the crop in the county. The insurance service organization also suggested deleting the example of California grape varieties which only deals with one crop in one state.

Response: The Basic Provisions are intended to provide the terms that are general to all policies. Exceptions are provided in the Crop Provisions, which take precedence over the Basic Provisions. The Hybrid Sorghum Seed Crop Provisions and the Hybrid Seed Corn Crop Provisions have the exception to allow any of the insured crop under contract with different seed companies to be insured under separate policies with different insurance providers provided all acreage of the insured crop in the county is insured. Likewise, those Crop Provisions that allow the crop to be insured at different levels and multiple prices will also contain the exception to the Basic Provisions. The example of two grape varieties insured under CAT coverage and two varieties insured under limited coverage in California, which specifies that separate administrative fees will be due for each of the four varieties, adds clarity even though it is only for one crop in one state. Therefore, no change has been made.

Comment: An insurance company and an insurance service organization suggested the entire administrative fee for nursery be collected at one time and not at three different dates since 40 percent of the premium is due at the time of application, with the balance due at two other times during the year. They asked if section 7(e)(3) of the Basic Provisions should specify when the administrative fee is due since it is not accurate for nursery as written.

Response: With respect to section 7(e)(3) of the Basic Provisions, these provisions are intended to apply to all crops and the premium due date is not the same for each crop. Therefore, a fixed date cannot be included here. The new Nursery Crop Provisions (99–073), which are effective for the 1999 and succeeding crop years, will only have one premium due date specified in the Special Provisions, and this will be the date that all premium and administrative fees are due. For the 1999 crop year, for the old Nursery Crop Insurance Provisions (96–056), all administrative fees must be paid by the third billing date, which is not inconsistent with the Basic Provisions. This policy will not be effective after the 1999 crop year. Therefore, no change has been made.

Comment: An insurance service organization suggested revising section 7(e)(5) of the Basic Provisions to read "The administrative fee for limited coverage will be waived if you request it and qualify as a limited resource farmer."

Response: FCIC has made the requested change.

Comment: An insurance company and an insurance service organization asked if the phrase "is not refundable" should be deleted from section 7(e)(6) of the Basic Provisions since the administrative fee for additional coverage is not due until the premium is due, and this provision for CAT coverage was removed from the CAT provisions after the fee due date was changed.

Response: FCIC has removed the phrase.

Comment: An insurance company and an insurance service organization questioned what is meant by section 35(b) of the Basic Provisions and how it will be implemented, who will make the determination and the timing of the determination. They also asked if this provision should be added to the Crop Provisions instead of the Basic Provisions since not all crops have other USDA programs. They stated that section 35(c) of the Basic Provisions implies that crop insurance indemnity payments would always be done prior to any USDA payment. They asked if insurance companies would be in a position to determine the additional USDA amount due if non-crop insurance USDA benefits are distributed through the crop insurance delivery system. They do not think this will always be the case, which would add confusion and could reduce the perceived value of crop insurance to policyholders. The company also stated that it appears that due to the producers

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decision to purchase crop insurance other free benefits could be limited or reduced and this situation should be avoided.

Response: Section 508(n) of the Act specifies that a producer who purchases limited or additional coverage may also receive assistance for the same crop loss under other programs administered by the Secretary, except the amount received for the loss under the limited or additional coverage together with the amount received under the other programs may not exceed the amount of the actual loss of the producer. Section 35(b) of the Basic Provisions specifies how to determine the amount of the actual loss. Since a producer pays for crop insurance coverage, the indemnity will always be paid in accordance with the terms and conditions of the policy. FSA will determine and pay any additional amount due or collect any overpayment if such benefits are paid prior to the payment of any indemnity regardless of how such benefits are delivered. These provisions are only needed in the Basic Provisions. Therefore, no change has been made.

In addition to the changes described above, FCIC has made a few minor editorial changes.

List of Subjects in 7 CFR Parts 400 and 457

Administrative practice and procedure, Basic Provisions, Claims, Common Crop Insurance Regulations, Crop insurance, Reporting and record keeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the interim rule amending 7 CFR parts 400 and 457, published on July 30, 1998, at 63 FR 40632, is adopted as final with the following changes:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart T—Federal Crop Insurance Reform, Insurance Implementation; Regulations for the 1999 and Subsequent Reinsurance Years

1. The authority citation for 7 CFR part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

§ 400.651 [Amended]

2. Amend § 400.651 by removing the definition of "limited resource farmer."

3. Amend the definition of "linkage requirement," in § 400.651, the introductory text of § 400.653, and §§ 400.653(a), 400.654(b) and (c)(4) by removing the section designation of "§ 400.657" and adding in its place the section designation of "§ 400.655."

PART 457—COMMON CROP INSURANCE REGULATIONS

4. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

§ 457.8 [Amended]

5. Amend § 457.8 as follows:

a. Revise the definitions of "administrative fee," "catastrophic risk protection" and "limited resource farmer" in Section 1 of the Basic Provisions.

b. Revise Section 2 paragraph (i) of the Basic Provisions.

c. Revise Section 3 paragraph (f) of the Basic Provisions.

d. Revise Section 7 paragraphs (e)(1), (4), (5), and (6) of the Basic Provisions.

e. Revise Section 15 paragraph (d) of the Basic Provisions.

f. Remove Section 35 paragraph (d) of the Basic Provisions. The revisions to § 457.8 read as follows:

§ 457.8 The application and policy.

* * * * *

1. Definitions.

* * * * *

Administrative fee. An amount you must pay for catastrophic risk protection, limited, and additional coverage for each crop year as specified in section 7 and the Catastrophic Risk Protection Endorsement.

* * * * *

Catastrophic risk protection. The minimum level of coverage offered by FCIC that is required before you may qualify for certain other USDA program benefits unless you execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

* * * * *

Limited resource farmer. A producer or operator of a farm:

(a) With an annual gross income of $20,000 or less derived from all sources, including income from a spouse or other members of the household, for each of the prior two years; or

(b) With less than 25 acres aggregated for all crops, where a majority of the producer's gross income is derived from such farm or farms, but the producer's gross income from farming operations does not exceed $20,000.

* * * * *

2. Life of Policy, Cancellation, and Termination.

* * * * *

(i) When obtaining catastrophic, limited, or additional coverage, you must provide information regarding crop insurance coverage on any crop previously obtained at any other local FSA office or from an approved insurance provider, including the date such insurance was obtained and the amount of the administrative fee.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(f) You must obtain the same level of coverage (catastrophic risk protection, limited or additional) for all acreage of the crop in the county unless one of the following applies:

(1) The applicable Crop Provisions allow you the option to separately insure individual crop types or varieties. In this case, each individual type or variety insured by you will be subject to separate administrative fees. For example, if two grape varieties in California are insured under the Catastrophic Risk Protection Endorsement and two varieties are insured under a limited coverage policy, a separate administrative fee will be charged for each of the four varieties. Although insurance may be elected by type or variety in these instances, failure to insure a type or variety that is of economic significance may result in the denial of other farm program benefits unless you execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(2) If you have limited or additional coverage for the crop in the county and the acreage has been designated as "high risk" by FCIC, you will be able to obtain a High Risk Land Exclusion Option for the high risk land under the limited or additional coverage policies and insure the high risk acreage under a separate Catastrophic Risk Protection Endorsement, provided that the Catastrophic Risk Protection Endorsement is obtained from the same insurance provider from which the limited or additional coverage was obtained.

* * * * *

7. Annual Premium and Administrative Fees.

(e) * * *

(1) If you elect limited coverage, you must pay an administrative fee each crop year of $50 per crop per county, not to exceed $200 per county, or $600 for all counties in which you elected to obtain limited coverage.

* * * * *

(4) Payment of an administrative fee will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop. If you falsely file a zero acreage report you may be subject to criminal and administrative sanctions.

(5) The administrative fee for limited coverage will be waived if you request it and you qualify as a limited resource farmer.

(6) The administrative fee for additional coverage is not subject to any limits and may not be waived.

* * * * *

15. Production Included in Determining Indemnities.

* * * * *

(d) The amount of an indemnity that may be determined under the applicable provisions of your crop policy may be reduced by an amount, determined in accordance with the Crop Provisions or Special Provisions, to reflect out-of-pocket expenses that were not incurred by you as a result of not planting, caring for, or harvesting the crop. Indemnities paid for acreage prevented from being planted will be based on a reduced guarantee as provided for in the crop policy and will not be further reduced to reflect expenses not incurred.

* * * * *

Signed in Washington, DC, on July 20, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–19013 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–62–AD; Amendment 39–11236; AD 99–16–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A300–600 series airplanes, that currently requires repetitive high frequency eddy current inspections to detect cracks in bolt holes where parts of the main landing gear are attached to the rear spar, and repair, if necessary. This amendment requires repetitive ultrasonic inspections to detect cracking in certain bolt holes of the rear spar, and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct cracking of the rear spar of the wing, which could result in reduced structural integrity of the airplane.

DATES: Effective September 1, 1999.

The incorporation by reference of Airbus Industrie Service Bulletin A300–57–6017, Revision 3, dated November 19, 1997, as listed in the regulations is approved by the Director of the Federal Register as of September 1, 1999.

The incorporation by reference of Airbus Industrie Service Bulletin A300–57–6017, Revision 1 (includes Appendix 1), dated July 25, 1994, as listed in the regulations was approved previously by the Director of the Federal Register as of November 9, 1995 (60 FR 52618, October 10, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–20–02, amendment 39–9380 (60 FR 52618, October 10, 1995), which is applicable to certain Airbus Industrie Model A300–600 series airplanes, was published in the **Federal Register** on April 23, 1999 (64 FR 19942). The action proposed to require repetitive ultrasonic inspections to detect cracking in certain bolt holes of the rear spar, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 54 airplanes of U.S. registry that will be affected by this AD.

The new inspections that are required by this AD will take approximately 226 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $732,240, or $13,560 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

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PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9380 (60 FR 52618, October 10, 1995), and by adding a new airworthiness directive (AD), amendment 39–11236, to read as follows:

99–16–01 Airbus Industrie: Amendment 39–11236. Docket 98–NM–62–AD. Supersedes AD 95–20–02, Amendment 39–9380.

Applicability: Model A300–600 series airplanes, having manufacturer's serial numbers (MSN) 252 through 553 inclusive, certificated in any category; except those airplanes on which Airbus Industrie Production Modification No. 07601 has been accomplished prior to delivery.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the rear spar of the wing, which could result in reduced structural integrity of the airplane, accomplish the following:

Restatement of Requirements of AD 95–20–02:

Note 2: Accomplishment of the inspections and repair of cracking in accordance with Airbus Industrie Service Bulletin A300–57–6017, dated November 22, 1993, prior to November 9, 1995 (the effective date of AD 95–20–02, amendment 39–9380), is acceptable for compliance with the applicable action specified in this amendment.

(a) Perform a high frequency eddy current (HFEC) rototest inspection to detect cracks in certain bolt holes where the main landing gear (MLG) forward pick-up fitting and MLG rib 5 aft are attached to the rear spar, in accordance with Airbus Industrie Service Bulletin A300–57–6017, Revision 1 (includes Appendix 1), dated July 25, 1994.

Note 3: This service bulletin also references Airbus Industrie Service Bulletin A300–57–6020, dated November 22, 1993, as an additional source of service information.

(1) For airplanes that have accumulated 17,300 total landings or less as of November 9, 1995: Inspect prior to the accumulation of 17,300 total landings, or within 1,500 landings after November 9, 1995, whichever occurs later.

(2) For airplanes that have accumulated 17,301 or more total landings, but less than 19,300 total landings as of November 9, 1995: Inspect within 1,500 landings after November 9, 1995.

(3) For airplanes that have accumulated 19,300 or more total landings as of November 9, 1995: Inspect within 750 landings after November 9, 1995.

(b) If no crack is found during the inspection required by paragraph (a) of this AD, repeat that inspection thereafter at the time specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes on which Airbus Industrie Modification 07716 (as described in Airbus Industrie Service Bulletin A300–57–6020) has not been accomplished, inspect at the time specified in paragraph (b)(1)(i) or (b)(1)(ii) of this AD, as applicable.

(i) For airplanes having MSN 465 through 553 inclusive: Repeat the inspection at intervals not to exceed 13,000 landings, until the inspection required by paragraph (d)(2)(i)(A) has been accomplished.

(ii) For airplanes having MSN 252 through 464 inclusive: Repeat the inspection at intervals not to exceed 8,400 landings, until the inspection required by paragraph (d)(2)(i)(B) has been accomplished.

(2) For airplanes on which Airbus Industrie Modification 07716 has been accomplished, inspect at the time specified in either paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For airplanes having MSN 465 through 553 inclusive: Repeat the inspection at intervals not to exceed 11,800 landings, until the inspection required by paragraph (d)(2)(ii)(A) has been accomplished.

(ii) For airplanes having MSN 252 through 464 inclusive: Repeat the inspection within 10,700 landings following the initial inspection required by paragraph (a) of this AD, and thereafter at intervals not to exceed 7,500 landings, until the inspection required by paragraph (d)(2)(ii)(B) has been accomplished.

(c) If any crack is found during the inspection required by either paragraph (a) or (b) of this AD, prior to further flight, accomplish the requirements of either paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For airplanes on which Airbus Industrie Modification 07716 has not been accomplished: Oversize the bolt hole by 1/32 inch and repeat the HFEC inspection required by paragraph (a) of this AD, in accordance with Airbus Industrie Service Bulletin 300–57–6017, Revision 1, dated July 25, 1994. After accomplishing the oversizing and HFEC inspection, repeat the inspection as required by paragraph (b) of this AD at the applicable schedule specified in that paragraph, until the inspection required by paragraph (d)(2)(ii)(A) has been accomplished.

Note 4: For the purposes of this AD, airplanes that are repaired in accordance with Airbus Industrie Service Bulletin 300–57–6017, Revision 1, are considered to be subject to repetitive inspections at the same interval as those airplanes on which Airbus Industrie Modification 07716 has been accomplished.

(i) If no cracking is detected, install the second oversize bolt in accordance with the service bulletin.

(ii) If any cracking is detected, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(2) For airplanes on which Airbus Industrie Modification 07716 has been accomplished: Repair in accordance with a method approved by the Manager, International Branch, ANM–116. After repair, repeat the inspections as required by paragraph (b) of this AD at the applicable schedule specified in that paragraph, until the inspection required by paragraph (d)(2)(ii)(B) has been accomplished.

New Requirements of This AD

New Initial and Repetitive Inspections

(d) Perform an ultrasonic inspection to detect cracks in certain bolt holes where the MLG forward pick-up fitting and MLG rib 5 aft are attached to the rear spar, in accordance with Airbus Industrie Service Bulletin A300–57–6017, Revision 3, dated November 19, 1997; at the time specified in paragraph (d)(1) or (d)(2) of this AD, as applicable.

Note 5: Inspections accomplished prior to the effective date of this AD in accordance with Airbus Industrie Service Bulletin A300–57–6017, Revision 2, dated January 14, 1997, are considered acceptable for compliance with paragraph (d) of this AD.

(1) For airplanes not inspected prior to the effective date of this AD in accordance with Airbus Industrie Service Bulletin A300–57–6017, dated November 22, 1993, or Revision 1 (includes Appendix 1), dated July 25, 1994: Inspect at the time specified in paragraph (d)(1)(i), (d)(1)(ii), or (d)(1)(iii) of this AD, as applicable. Accomplishment of this inspection terminates the requirements of paragraph (a) of this AD.

(i) For airplanes that have accumulated 17,300 total landings or fewer as of the effective date of this AD: Inspect prior to the accumulation of 17,300 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later.

(ii) For airplanes that have accumulated 17,301 total landings or more but fewer than 19,300 total landings as of the effective date of this AD: Inspect within 1,500 landings after the effective date of this AD.

(iii) For airplanes that have accumulated 19,300 total landings or more as of the effective date of this AD: Inspect within 750 landings after the effective date of this AD.

(2) For airplanes on which an HFEC inspection was performed prior to the effective date of this AD in accordance with paragraph (a) of AD 95–20–02, or in accordance with Airbus Industrie Service Bulletin A300–57–6017, dated November 22, 1993: Inspect at the time specified in paragraph (d)(2)(i) or (d)(2)(ii), as applicable.

(i) If no cracking was detected during any HFEC inspection accomplished prior to the effective date of this AD, and if Airbus Industrie Modification 07716 has *not* been accomplished: Inspect at the time specified in paragraph (d)(2)(i)(A) or (d)(2)(i)(B) of this AD, as applicable.

(A) For airplanes having MSN 465 through 553 inclusive: Inspect within 13,000 landings after the most recent HFEC inspection, and thereafter at intervals not to exceed 8,900 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (b)(1)(i) of this AD.

(B) For airplanes having MSN 252 through 464 inclusive: Inspect within 8,400 landings after the most recent HFEC inspection, and thereafter at intervals not to exceed 5,500 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (b)(1)(ii) of this AD.

(ii) If any cracking was detected during any HFEC inspection performed prior to the effective date of this AD, regardless of the method of repair, or if Airbus Industrie Modification 07716 *has* been accomplished: Inspect at the time specified in paragraph (d)(2)(ii)(A) or (d)(2)(ii)(B) of this AD, as applicable.

(A) For airplanes having MSN 465 through 553 inclusive: Inspect within 11,800 landings after the most recent HFEC inspection, and thereafter at intervals not to exceed 8,200 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (c)(1) or (c)(2) of this AD, as applicable.

(B) For airplanes having MSN 252 through 464 inclusive: Inspect within 10,700 landings after the initial inspection in accordance with paragraph (a) of AD 95–20–02, or within 7,500 landings after the most recent HFEC inspection, whichever occurs later, and thereafter at intervals not to exceed 4,900 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (c)(1) or (c)(2) of this AD, as applicable.

(e) If no cracking is detected during the ultrasonic inspection required by paragraph (d)(1) of this AD, repeat that inspection thereafter at the time specified in paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) For airplanes having MSN 465 through 553 inclusive: Repeat the inspection at intervals not to exceed 8,900 landings.

(2) For airplanes having MSN 232 through 464 inclusive: Repeat the inspection at intervals not to exceed 5,500 landings.

Repair

(f) If any cracking is detected during any inspection performed in accordance with paragraph (d) or (e) of this AD: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the Direction Générale de l'Aviation Civile (or its delegated agent).

Terminating Action

(g) Accomplishment of Airbus Industrie Modification 11440 (Airbus Industrie Service Bulletin A300–57–6073, dated September 30, 1997) constitutes terminating action for the repetitive inspection requirements of paragraphs (d) and (e) of this AD, as applicable.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Except as provided by paragraphs (c)(1)(ii), (c)(2), (f), and (g) of this AD, the actions shall be done in accordance with Airbus Industrie Service Bulletin A300–57–6017, Revision 1 (includes Appendix 1), dated July 25, 1994, and Airbus Industrie Service Bulletin A300–57–6017, Revision 3, dated November 19, 1997. The incorporation by reference of Airbus Industrie Service Bulletin A300–57–6017, Revision 3, dated November 19, 1997 is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of Airbus Industrie Service Bulletin A300–57–6017, Revision 1 (includes Appendix 1), dated July 25, 1994, was approved previously by the Director of the Federal Register as of November 9, 1995 (60 FR 52618, October 10, 1995). Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 7: The subject of this AD is addressed in French airworthiness directive 94–031–155(B)R1, dated May 7, 1997.

(k) This amendment becomes effective on September 1, 1999.

Issued in Renton, Washington, on July 21, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–19155 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–8]

Correction of Class D Airspace, Bullhead City, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action will correct the Class D airspace ceiling at Laughlin/Bullhead International Airport, Bullhead City, AZ.

EFFECTIVE DATE: 0901 UTC September 9, 1999. *Comment date:* Comments for inclusion in the Rules Docket must be received on or before August 27, 1999.

ADDRESSES: Send comments on the direct final rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–8, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Division, Airspace Specialist, AWP–520.1, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION: The intended effect of this action is to correct the Class D airspace area ceiling associated with Laughlin/Bullhead International Airport. On January 4, 1996, the Class D airspace ceiling of Laughlin/Bullhead International Airport was published and chartered in error as 2,500 feet Above Ground Level (AGL). FAA Order 7400.9F requires all altitudes to be published in feet above Mean Sea Level (MSL). The corrected altitude of 3200 feet MSL will not change the boundaries or volume of Class D airspace area associated with Laughlin/Bullhead International Airport but will only correct the ceiling of existing Class D airspace area from an

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AGL height to reflect the same altitude using MSL. Class D airspace areas are published in paragraph 5000 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D airspace area designation listed in this document would be subsequently corrected in this order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on essentially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–AWP–8." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS.

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 comp., p. 389; 14 CFR 11.69.

§71.1 [Correction]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 500. Class D Airspace

* * * * *

AWP AZ D Bullhead City, AZ [Correction]

Laughlin/Bullhead International Airport, AZ
(Lat. 35°09'27" N, long. 114°33'34" W)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.2-mile radius of the Laughlin/Bullhead International Airport; excluding that airspace west of a line 1.8 miles west of and parallel to the north/south runway. This Class D airspace area is effective during the specific dates and time established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on June 17, 1999.

Charles A. Ullman,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–17173 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 514

[Docket No. 97N–0435]

Substantial Evidence of Effectiveness of New Animal Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA), as directed by the Animal Drug Availability Act of 1996 (ADAA), is amending its new animal drug regulations to further define the term "substantial evidence." The purpose of this final rule is to encourage the submission of new animal drug applications (NADA's) and supplemental NADA's for single ingredient and combination new animal drugs. The final rule also encourages dose range labeling.

EFFECTIVE DATE: August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Herman M. Schoenemann, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0220.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the ADAA (Pub. L. 104–250) on October 9, 1996. The purpose of the ADAA is to facilitate the approval and marketing of new animal drugs and medicated feeds. In furtherance of this purpose, section 2(a) of the ADAA amended section 512(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(d)(3)) to revise parts of the definition of "substantial evidence." Section 2(e) of the ADAA directs FDA to issue proposed regulations and final regulations to further define "substantial evidence" and to encourage dose range labeling. In the **Federal Register** of November 5, 1997 (62 FR 59830), FDA proposed to amend its regulations in part 514 (21 CFR part 514) to further define "substantial evidence" and to encourage dose range labeling. FDA provided 90 days for public comment on the proposed rule.

Before FDA can approve a new animal drug, FDA must find, among other things, that there is substantial evidence that the new animal drug is effective for its intended uses under the conditions of use prescribed, recommended, or suggested in the proposed labeling. The changes made to the definition of "substantial evidence" by the ADAA and by the further definition of that term in this final rule give FDA greater flexibility to make case-specific scientific determinations regarding the number and types of adequate and well-controlled studies that will provide, in an efficient manner, substantial evidence that a new animal drug is effective.

II. Comments on the Proposed Rule

FDA received nine letters, primarily from trade associations and manufacturers, commenting on the proposed definition of "substantial evidence." One comment stated a belief that the proposed definition of substantial evidence, particularly the provisions that allow FDA to exercise more flexibility in determining the most efficient and cost effective number and types of studies required and the provision that encourages dose range labeling, will benefit sponsors by reducing some costs to gain approvals of animal drugs, for both major and minor species. In general, however, the comments objected to the tone of the preamble to the proposed regulation. The comments raised specific objections to FDA's statement that a single adequate and well-controlled study frequently will not suffice to establish the effectiveness of a new animal drug, the definition of an antibacterial, and the perceived prejudice expressed by FDA against the use of published and foreign studies.

A. Substantial Evidence (§ 514.4)

1. Several comments objected to the tone of the preamble to the proposed rule. One comment noted that while the proposed language of the regulation seemingly is consistent with the flexibility envisioned by the ADAA, the preamble provides content and meaning, which appear to be inconsistent with the spirit of the ADAA and its legislative history. Specifically, the comment stated that the real focus of FDA's oversight should be to ensure that new animal drugs are safe and the effectiveness study(ies) is of sufficient quality to demonstrate substantial evidence of effectiveness. The comment alleged that the preamble departs from the notion that flexibility was intended to be utilized in a way that would minimize the burden on sponsors. The comment suggested the elimination of § 514.4(b)(3)(i) relating to the number of studies and the addition of the following sentence to proposed § 514.4(b)(3)(ii) relating to types of studies: "Every effort will be made to require the least burdensome type of study."

The definition of substantial evidence as revised by Congress continues to require a sponsor to submit substantial evidence of effectiveness, such that qualified experts can fairly and reasonably conclude that a new animal drug will have the effect it purports to have under the conditions of use prescribed, recommended, or suggested (hereinafter suggested) in the proposed labeling. As a comment notes, the proposed language of the regulation is consistent with the ADAA. The proposed regulation gives FDA the flexibility to make case-specific scientific determinations regarding the number and types of adequate and well-controlled studies that will provide, in an efficient manner, substantial evidence that a new animal drug is effective. It is FDA's intent to work with sponsors to identify the least burdensome appropriate means for demonstrating that a new animal drug is safe and effective. The number and types of adequate and well-controlled studies needed to demonstrate by substantial evidence that a new animal drug is effective will need to be sufficient to lead qualified experts to conclude that the new animal drug is effective. Thus, as proposed § 514.4(a) already states, "Substantial evidence shall include such adequate and well-controlled studies that are, as a matter of sound scientific judgment, necessary to establish that a new animal drug will have its intended effect." Addition of the language suggested by the comment is not necessary.

In the preamble to the proposed rule, the discussion regarding the number of studies focused on two sound scientific principles: Independent substantiation and inferential value. The goal of independent substantiation is to provide adequate assurance that an experimental finding is not the result of unanticipated, undetected, systematic biases or chance. Inferential value of data relates to the confidence with which the data relating to effectiveness of a new animal drug for an intended use under the conditions tested can be used to conclude that the new animal drug will be effective in the target animal population for the intended use and associated conditions of use suggested in the proposed labeling. FDA anticipates and welcomes further discussion of implementation of the regulation. The principles of independent substantiation and inferential value form a sound scientific basis upon which these discussions can proceed.

B. Intended Uses and Conditions of Use (§ 514.4(b)(2))

2. One comment suggested that FDA introduced in its discussion of dose range labeling the concept of risk-assessment. The comment criticized FDA's failure to further explain that term and suggests that FDA is making a safety assessment within the context of the substantial evidence determination. The comment further noted that with the elimination of the requirement for dose optimization it is unclear the extent to which FDA is requesting dose response information.

Proposed § 514.4(b)(2) requires that a sponsor demonstrate that a new animal drug is effective for each proposed intended use and associated conditions of use, including the dose or dose range. Before enactment of the ADAA, FDA could not approve a new animal drug for use at a particular dose or over a dose range that exceeded the dose reasonably required to accomplish the physical or other technical effect for

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which the new animal drug was intended, the optimum dose. This required that sponsors conduct adequate and well-controlled dose titration studies to characterize the critical aspects of the dose-response relationship. As part of the approval process, FDA used this information regarding effectiveness and weighed it against safety information to make a risk-benefit assessment of a new animal drug. Thus, the concept of a risk-benefit assessment is not new.

As explained in the preamble to the proposed rule, a risk-benefit assessment is a determination whether the effectiveness of a new animal drug outweighs the risks to the target animal at the dose or over the dose range prescribed in the proposed labeling. Thus, it is more accurately termed a risk-effect assessment. The application of a risk-effect assessment has always been a part of FDA's decision whether to approve a new animal drug. The risk-effect assessment is not made within the context of the substantial evidence determination but is made within the context of the approval decision.

While the ADAA modified the definition of substantial evidence and eliminated the requirement for dose titration, the other provisions of the act relating to approval of a new animal drug continue to be applicable. The act provides that FDA will refuse to approve an NADA or a supplemental NADA if, based on a fair evaluation of all material facts, the labeling for the new animal drug is false or misleading. Because before enactment of the ADAA, FDA could only approve a new animal drug at or below the optimum dose or over a dose range, the upper limit of which is at or below the optimum dose, there came to be the expectation that the dose suggested on a label is the optimum dose or that there is increasing effectiveness over the dose range suggested. Even though the requirement for dose optimization has been eliminated, there is still a need to sufficiently characterize the dose-response relationship so that the labeling is not false or misleading.

Sponsors should justify the dosage (i.e., dose or dose range, dosing frequency, and the dosing duration) and characterize for each intended use and associated conditions of use the critical aspects of the dose-response relationship relevant to the dose or dose range selected. While the sponsor must demonstrate by substantial evidence that the new animal drug is effective at the dose or over the dose range selected, the justification of the dosage and characterization of the dose-response relationship need not be demonstrated by substantial evidence. Nonetheless, a sponsor may in the interest of minimizing the number of studies conduct a single adequate and well-controlled study that both demonstrates that a new animal drug is effective at the dose or over the dose range recommended in the label and characterizes the dose-response relationship under the proposed conditions of use.

3. One comment expressed concern that FDA may use its general authority to prevent false and misleading labeling as a pretext for requiring more studies even as the definition of substantial evidence has become more flexible.

It is not FDA's intent to use the false and misleading provision to circumvent the spirit of the ADAA and require more than the number and types of studies needed by FDA to fairly and reasonably conclude that a new animal drug is effective. Nonetheless, one of the criteria for approval is that FDA find, based on a fair evaluation of all material facts, that the labeling for the new animal drug is not false or misleading (21 U.S.C. 512(d)(1)(H)). Therefore, as discussed in comment 2 of section II.B of this document, some studies may be necessary to justify the dosage and characterize the dose-response relationship so that a new animal drug can be labeled properly to inform the user about the effectiveness of the new animal drug at the suggested dose or over the suggested dose range. There may be other instances in which no additional studies are needed but FDA or the sponsor has knowledge about the effectiveness of the new animal drug that must be addressed in the labeling for the drug so that it is not false and misleading. For example, FDA or the sponsor may be aware that even though a combination new animal drug is approvable under 21 U.S.C. 512(d)(4), one active ingredient or animal drug in the combination may interfere with the effectiveness of another active ingredient or drug in the combination. In such an instance, the labeling for the combination new animal drug should indicate that the active ingredient or drug may be less effective for its intended use when used in combination than if it were applied or administered separately.

4. One comment suggested that § 514.4(b) (characteristics of substantial evidence) be revised. The comment suggested that the first word, "Studies," in § 514.4(b)(1) and (b)(2) be changed to "A study or studies." The comment also suggested that the sentence, "Sponsors should, to the extent possible, provide for a dose range because it increases the utility of the new animal drug by providing the user flexibility in the selection of a safe and effective dose." be changed to read as follows: "Sponsors should, at their discretion and to the extent possible, provide for a dose range because it increases the utility of the new animal drug by providing the user flexibility in the selection of a safe and effective dose."

Because substantial evidence can consist of one or more adequate and well-controlled studies, § 514.4(b)(1) has been changed in this final rule to read "Any study that is intended to be part of substantial evidence of the effectiveness * * *." Upon further consideration, FDA also has revised § 514.4(b)(2) to read as follows: "Substantial evidence of effectiveness of a new animal drug shall demonstrate that the new animal drug is effective for each intended use and associated conditions of use for, and under, which approval is sought." This revision clarifies the point that proposed § 514.4(b)(2) was intended to convey, whether one study or multiple studies are submitted as substantial evidence of effectiveness, FDA must be able to determine by substantial evidence that the new animal drug is effective for each of its intended uses and conditions of use.

FDA has not changed § 514.4(b)(2)(i) to add "at [the sponsor's] discretion and." Section 514.4(b)(2)(i) already states that dose range labeling should be utilized to the "extent possible." Dose range labeling always is at the discretion of the sponsor. Approval of new animal drugs for use over a dose range, however, gives the users greater flexibility and, therefore, increases the utility of new animal drugs. Thus, in the spirit of the ADAA and as directed by section 2(e)(2)(C) of the ADAA, this final regulation implies sponsor discretion as well as encourages the use of dose range labeling.

FDA has revised proposed § 514.4(b)(2)(i) to clarify that this section states the requirements that generally apply to demonstrating the effectiveness of a new animal drug over a dose range and to address dose range labeling by specific intended use to make it consistent with the other provisions of the regulation. Generally, substantial evidence for a new animal drug intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease must consist of at least one adequate and well-controlled study on the basis of which qualified experts could fairly and reasonably conclude that the new animal drug will be effective for that intended use at the lowest dose of the dose range suggested in the proposed labeling for that intended use. In many instances, there is a well-established scientific basis on which experts can conclude that effectiveness of a new animal drug, particularly those intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease caused by bacteria or other pathogenic organisms, will not decrease as the dose increases. In such instances, qualified experts can fairly and reasonably conclude that if a new animal drug is effective for an intended use at the lowest dose in the suggested dose range, the new animal drug will be effective over the entire suggested dose range for the intended use, the upper limit of which will generally be established based upon target animal safety, human food safety, or practicality. For new animal drugs intended to affect the structure or function of the body of an animal, scientific evidence does not generally exist to permit experts to conclude that the effectiveness of such a new animal drug will not decrease as the dose increases. In this case, substantial evidence to support the dose range for the intended use must consist of at least one adequate and well-controlled study on the basis of which qualified experts could fairly and reasonably conclude that the new animal drug will be effective for such intended use at all the doses within the dose range suggested on the proposed labeling. Similarly, for certain new animal drugs intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease other than that caused by bacteria or other pathogenic organisms, substantial evidence may need to consist of at least one adequate and well-controlled study on the basis of which qualified experts could fairly and reasonably conclude that the new animal drug will be effective for such intended use at all the doses within the dose range suggested on the proposed labeling. FDA intends to issue further guidance regarding the substantial evidence needed to demonstrate the effectiveness of new animal drugs over dose ranges.

C. Number of Studies (§ 514.4(b)(3)(i))

5. One comment suggested that § 514.4(b)(3)(i) (number of studies) be removed. No basis for the proposal to remove this section was provided.

Section 514.4(b)(3)(i) provides objective criteria for determining how many adequate and well-controlled studies are needed to demonstrate by substantial evidence that a new animal drug is effective for its intended uses under the conditions of use suggested in the proposed labeling. FDA believes these scientifically-based criteria provide sponsors considerable flexibility to work with FDA to design an approvable application. Therefore, FDA is not removing § 514.4(b)(3)(i). FDA is, however, changing "an intended use" to "each intended use" to make it clear that a sponsor must demonstrate that a new animal drug is effective for each proposed intended use and associated conditions of use.

6. Several comments objected to language in the preamble to the proposed rule that indicates that FDA believes that there will be limited instances in which it can rely on a single adequate and well-controlled study to determine the effectiveness of a new animal drug. Comments interpreted this language to mean that a drug sponsor's burden with respect to new animal drug development will not be lessened at all by the regulations implementing the ADAA and, therefore, believe such language is contrary to the spirit of the ADAA. The comments also referred to the discussion in the preamble that indicates that FDA is more likely to rely on a single adequate and well-controlled study if it is a multicenter study. Comments questioned the meaning of the term multicenter study. One comment urged FDA to retract the language in the preamble stating where only one study is to be accepted as substantial evidence of effectiveness, it would generally need to be a multicenter study. The comment also urged FDA to provide in the final rule and other appropriate guidance documents a detailed explanation of the underlying principles that should guide the design of a study.

When Congress made changes to the definition of substantial evidence under the ADAA, Congress did not change the standard that evidence must meet to constitute substantial evidence. The definition of substantial evidence, both before and after the ADAA, requires that the evidence provided must be such that qualified experts can fairly and reasonably conclude that the new animal drug would be effective for the intended uses and conditions of use suggested in the proposed labeling. Thus as amended by the ADAA, the act permits FDA to rely on a single adequate and well-controlled study if FDA can fairly and reasonably conclude from such a study that the new animal drug is effective. As discussed in the preamble to the proposed regulation, any study(ies) that supports a determination that a new animal drug is effective must provide independent substantiation that experimental findings of effectiveness are not the result of: unanticipated, undetected, or systematic biases or chance. As the preamble notes, independent substantiation can be achieved by conducting multiple adequate and well-controlled studies that corroborate the results of one another. However, the preamble also suggests characteristics of a single adequate and well-controlled study the presence of which can provide independent substantiation: The study involves prospective randomized stratifications or identified analytic subsets that each show a significant effect; the study includes multiple endpoints involving different events; the study provides highly reliable and statistically strong evidence of effectiveness; or the study is a multicenter study in which no single study site provides an unusually large fraction of the target animals and no single investigator or site is disproportionately responsible for the effects seen. A multicenter study is a study of a design in which a single study protocol, with allowance for minor site-specific modifications, is followed at multiple locations.

Experts must be able to fairly and reasonably conclude by substantial evidence that a new animal drug is effective for all the conditions of use prescribed, recommended or suggested in the proposed labeling. Thus, the second scientific principle enunciated in the proposed regulation is that the study(ies) that constitute substantial evidence must have sufficient inferential value. If the proposed conditions of use for a new animal drug vary widely (e.g., geographic conditions, husbandry practices, animal genetics), one adequate and well-controlled study conducted at a single location may not provide representative conditions of use from which experts can conclude that the new animal drug is effective for all of the conditions of use suggested in the proposed labeling. However, if a single adequate and well-controlled study can be designed which is representative of varied conditions of use, such a study may provide adequate inferential value upon which experts can determine whether there is substantial evidence that the drug is effective.

As FDA stated in the preamble to the proposed regulation, the number and types of studies needed to demonstrate that a new animal drug is effective will depend upon how narrowly or broadly the intended uses and conditions of use for the new animal drug are defined as well as existing knowledge about the new animal drug, similar compounds, or the disease to be treated or structure or function to be affected. It should not be assumed that a drug sponsor's burden with respect to new animal drug development will not be lessened at all

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by the regulations implementing the ADAA when FDA determines that a single adequate and well-controlled study will not suffice to establish the effectiveness of a new animal drug. In addition to giving FDA greater flexibility regarding the number of studies that are needed to demonstrate that a new animal drug is effective, the ADAA eliminated the requirement for a field study in some instances and listed many types of adequate and well-controlled studies that can be submitted to support a determination by FDA that a new animal drug is effective. Whether the burden on sponsors is lessened will be a function of the types of studies as well as the number of studies conducted. FDA reiterates that it is FDA's intent to work with sponsors to identify the least burdensome appropriate means for demonstrating that a new animal drug is safe and effective.

With the further explanation given in this response, FDA does not believe it necessary to retract its statement that where only one adequate and well-controlled study is to be accepted as substantial evidence of effectiveness, that single study should provide sufficient inferential value and independent substantiation of the results of the study to permit qualified experts to determine whether the new animal drug is effective. The underlying principles that govern the design of a study intended to demonstrate effectiveness are already set forth in the further definition of adequate and well-controlled study that published in the **Federal Register** of March 5, 1998 (63 FR 10765). FDA will, subject to public input, issue further guidance on how to determine the number and types of studies necessary to demonstrate by substantial evidence that a new animal drug is effective. FDA will consider various public forums, including workshops, for discussing the number and types of studies necessary to demonstrate by substantial evidence that a new animal drug, production or therapeutic, is effective. Use of single studies as substantial evidence of the effectiveness of a new animal drug intended for production purposes, among other issues, will be further discussed in a public forum.

7. Another comment expressed concern regarding how the presumption that for one study to be accepted as substantial evidence it would generally need to be a multicenter study applies to field studies. The comment noted that the specific intent of Congress in redefining substantial evidence was to eliminate the requirement that a field study be conducted in all instances to prove effectiveness and further that FDA move away from the longstanding notion that, where one or more field investigations are required, there must be three investigations in geographically distinct regions of the country. The comment also noted that there is no meaningful difference between multiple field studies and a single field study with multiple study centers and, therefore, FDA should have to justify requesting multiple sites just as it is required to justify a requirement for more than one field study.

As discussed in comment 6 of section II.C of this document, substantial evidence is predicated on the principles of independent substantiation and inferential value to meet the statutory requirement that the studies must be sufficient such that experts can fairly and reasonably conclude the drug is effective for the intended uses and conditions of use suggested in the proposed labeling. Studies conducted at more than one site provide a basis for satisfying these criteria, but FDA will consider alternative approaches. These underlying principles apply equally to laboratory and field studies. Whether a field study is needed to demonstrate effectiveness depends upon the new animal drug and the nature of its intended uses. The legislative history of the ADAA recognized this fact. "Assessing the safety and effectiveness of new animal drugs under conditions of use which closely approximate actual field use conditions will remain an important element of many new animal drug approvals." H. Rept. 104–823 at 15. However, there are situations, e.g., approval of anthelmintics, in which the effectiveness of the new animal drug can be demonstrated without a field study.

The act, as amended by the ADAA, entitles any person intending to file a request for investigational use of a new animal drug, an NADA, or a supplemental NADA to request one or more presubmission conferences. If it is decided during a presubmission conference that more than one field study is needed to demonstrate effectiveness, FDA is statutorily required to provide a written order setting forth a scientific justification for requiring more than one field study. In those instances in which FDA requires more than one field study, FDA will provide written scientific justification for such a requirement. One study can be a study at a single location or a study in which data are collected from multiple locations, and FDA agrees with the comments that the need for a multilocation field study falls within the spirit of the justification provision of the ADAA. Therefore, if FDA requires a field study to be conducted at multiple locations, FDA will provide a scientific justification for requiring the study to be conducted at multiple locations.

FDA plans to issue guidance or regulations to describe how to request a presubmission conference and to describe the procedures for the conduct of the presubmission conference. FDA also intends to issue guidance regarding the circumstances under which more than one field study may be necessary to demonstrate effectiveness. For example, FDA would require more than one field study when a single field study, although adequate and well-controlled, would not provide results from which valid inferences can be drawn regarding whether the new animal drug is effective under actual conditions of use for the intended uses suggested in the proposed labeling. In developing guidance on this issue, FDA will solicit public input.

8. Several comments criticized FDA's introduction of the terms "persuasiveness" and "sufficient quality" to describe the required characteristics of effectiveness studies. The comments noted that the statute requires that effectiveness studies be adequate and well-controlled.

Substantial evidence as defined in the act is evidence consisting of one or more adequate and well-controlled studies by experts qualified by scientific training and experience to evaluate the effectiveness of the drug, on the basis of which it could fairly and reasonably be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling. Thus, to maintain that the statute requires that effectiveness studies be adequate and well-controlled is to acknowledge only half of the statutory requirement. As stated earlier in this preamble, Congress did not change the standard that evidence must meet to be substantial evidence. Not only must the study(ies) that constitute substantial evidence be adequate and well-controlled, the study(ies) must also provide a basis upon which qualified experts can fairly and reasonably conclude that a new animal drug is effective.

FDA has by regulation further defined the characteristics of adequate and well-controlled studies (63 FR 10765); these characteristics relate primarily to the design of an adequate and well-controlled study. The terms "sufficient quality" and "persuasiveness" relate respectively to the conduct and results of the study.

The fact that a study is an adequate and well-controlled study does not mean that the results of such a study will support a finding that a new animal drug is effective. Whether experts can reasonably conclude from adequate and well-controlled studies that a new animal drug is effective will depend upon the quality of the studies, i.e., whether the study was actually conducted in accordance with the study design as described in the study protocol and in accordance with reasonable scientific practices for the conduct of studies. Whether experts can conclude that a new animal drug is effective will further depend upon whether the results of adequate and well-controlled studies persuade experts that the new animal drug is effective for its intended uses under the conditions of use suggested in the proposed labeling. Results of a study are likely to be persuasive if the parameters selected for measurement and the measured responses reliably reflect the effectiveness of the new animal drug, the results are likely to be repeatable, and valid inferences can be drawn to the target animal population.

Persuasiveness and sufficient quality are adjectives that describe those adequate and well-controlled studies that will lead qualified experts to conclude that a new animal drug is effective. Thus, § 514.4(b)(3)(i) continues to include reference to those terms.

9. Another comment asserted that effectiveness need not be demonstrated for all conceivable variations of genetic and environmental conditions because it is the intent of the ADAA to encourage the submission of NADA's and supplemental NADA's.

The purpose of the ADAA was to build needed flexibility into FDA's animal drug review processes to enable more efficient approval and more expeditious marketing of safe and effective animal drugs. The ADAA did not eliminate the requirement that sponsors demonstrate that a new animal drug has the effect it purports or is represented to have under the conditions of use suggested in the proposed labeling. FDA agrees that substantial evidence need not consist of a direct demonstration that a new animal drug is effective under all conceivable genetic and environmental conditions. However, a sponsor does need to demonstrate that a new animal drug is effective under genetic and environmental conditions sufficiently representative of the conditions of use suggested in the proposed labeling so that qualified experts can fairly and reasonably conclude that the new animal drug will be effective under those proposed conditions of use. If experts cannot so conclude, the evidence does not meet the statutory definition of substantial evidence.

10. One comment opposed FDA's proposal to consider how time may affect the inferential value of a particular set of data citing the fact that currently approved animal drugs in wide use today were approved on what could now be considered "aged data." Another comment questioned how FDA will evaluate whether data are sufficiently "current" for purposes of submitting an NADA.

Approval decisions are made at a specific point in time and FDA must be able to fairly and reasonably conclude from the data available at the time it makes its approval decision whether the new animal drug is effective. The act does, however, provide that if on the basis of new information, evaluated together with the evidence available at the time the application was approved there is a lack of substantial evidence that a new animal drug is effective, FDA must take steps to withdraw the approval. Therefore, the currency of data is relevant even with respect to approved new animal drugs.

FDA only stated that time may affect the inferential value of data. FDA recognizes that not all data are equally sensitive to time. FDA will need to make determinations regarding the currency of data on a case-by-case basis. FDA agrees with the comment that the test is whether the data provide a basis on which qualified experts could fairly and reasonably conclude that the new animal drug is effective. Currency is particularly meaningful in terms of the inferences that can be drawn from data. Therefore, there may be instances in which the age of the data limit or invalidate the usefulness of data in determining the effectiveness of a new animal drug just as the discovery of new data may give FDA reason to consider withdrawing an approval.

11. One comment objected to any intent of FDA to require a demonstration of effectiveness in multiple geographic locations or under multiple management practices.

As stated previously, the act provides that in order to meet the definition of substantial evidence, the evidence provided must be such that qualified experts can fairly and reasonably conclude that the new animal drug is effective for its intended uses under the conditions of use suggested in the proposed labeling. While a sponsor generally need not demonstrate effectiveness under every condition of use suggested in the proposed labeling, a sponsor will need to demonstrate that the new animal drug is effective under conditions such that FDA will be able to fairly and reasonably conclude that the new animal drug will be effective for its intended uses under the conditions of use suggested in the proposed labeling. If a single adequate and well-controlled study can be designed, which is representative of varied conditions of use, such as varied geographic conditions and management practices, such a study would provide adequate inferential value such that experts can fairly and reasonably conclude that the drug will be effective. FDA will develop guidance on this issue, soliciting public input, and will discuss this issue on a case-by-case basis with a sponsor during a presubmission conference.

12. One comment asserted that while effectiveness must be demonstrated for each intended use, substantial evidence should not require conducting studies in every conceivable subdivision of species of animals.

FDA agrees. Adequate and well-controlled studies need only be conducted in species and subspecies that are representative of the species for which the new animal drug is intended such that qualified experts can fairly and reasonably conclude by that the new animal drug is effective for its intended uses under the conditions of use suggested in the proposed labeling. It is reasonable to expect that studies in many different subspecies or breeds will not be needed if there is a scientific basis to conclude that there will be no difference in response or safety between subspecies or breeds respectively.

D. Types of Studies (§ 514.4(b)(3)(ii))

13. Comments strongly disagreed with FDA's comments in the preamble regarding the value of published studies, peer-reviewed studies, and foreign studies. Comments asserted that such studies are useful and that the preamble to the proposed rule reflects prejudice against the use of such studies as a basis of establishing efficacy. One comment acknowledged that there may be differences in animal genetics and husbandry represented in foreign studies that may justify FDA's requiring that foreign data be confirmed but also notes that such differences may have no impact on animals' response to a drug. Another comment suggested that FDA establish guidance relating to each of these types of studies.

In the preamble to the proposed regulation, FDA clearly stated that a published study, foreign study, or a study using a model may provide substantial evidence of effectiveness if it is an adequate and well-controlled

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study. Nonetheless, the utility of published studies, foreign studies, and studies using models, like studies conducted by or on behalf of sponsors, may vary because of the nature of the study. It was FDA's intent to provide in the preamble direction regarding the use of published studies, foreign studies, and studies using models.

With regard to foreign studies, the preamble noted that differences such as animal breeds, genetic composition within a breed, diseases, nutrition, and husbandry practices need to be addressed sufficiently. FDA did not preclude the use of foreign studies. Furthermore, FDA agrees that where these differences have no impact on an animal's response to a new animal drug, adequate and well-controlled foreign studies may support a finding by substantial evidence that a new animal drug is effective. FDA is willing and available to discuss with sponsors what information, if any, relating to foreign data is needed to address these kinds of differences. FDA anticipates issuing, subject to public input, guidance regarding this issue as expeditiously as resources permit.

14. One comment questioned why sponsors must disclose the source of funding for published studies asserting that the source of funding is irrelevant to the evaluation of the study.

FDA disagrees with the assertion that the source of funding is irrelevant to the evaluation of a published study. Knowledge regarding the funding of the study allows FDA to determine whether a sponsor owns, and can provide FDA access to, the study protocol, study documentation, and study data for purposes of evaluating the study. Additionally, if current and/or future funding depend upon the outcome of the study, there is a potential for bias and FDA will want to have available the study protocol, study documentation, and study data to scrutinize more closely.

Who funds the study and their purpose in sponsoring the study are also relevant because it may affect which studies are ultimately published with the result that published studies may represent a skewed subset of available information. That is, if a sponsor funds a study that supports their research, the sponsor may attempt to get the study published. But, if the study does not support their research, the sponsor may not pursue publication of the study. Thus, a search of the published literature may not accurately reflect the body of knowledge that actually exists.

15. One comment suggested that the definition of combination drugs should acknowledge that some combination drugs may be topical antibacterials which, under aquaculture conditions, might be applied in the water in which fish are raised.

Increasingly there are concerns that overuse or improper use of antibacterials may contribute unnecessarily to the development of antibacterial resistance. It is for this reason that the ADAA requires that applicants establish that nontopical antibacterials contribute to the effectiveness of a combination new animal drug. When used in aquaculture, antibacterials are applied or administered not "topically" in the sense that they are applied or administered to individual fish but they are applied or administered in a body of water through which fish swim. Because of the nature of the products and because of the added potential for the development and transfer of resistance in the bodies of water in which antibacterials are applied, FDA will for purposes of the application of § 514.4(c) consider aquaculture drugs administered in water to be nontopical antibacterials.

FDA has worked with the aquaculture industry to facilitate the approval of new animal drugs for use in aquaculture and recognizes that there is a vital need for the approval of more aquaculture drugs. FDA anticipates that proposals being made to facilitate the approval of new animal drugs intended for minor uses or use in minor species will provide additional tools to facilitate the approval of new animal drugs for use in aquaculture.

16. Comments relating to substantial evidence for combination drugs focused primarily on the definition of "antibacterial." The comments claimed that by defining "antibacterial" in a way that includes classes of drugs such as anticoccidials, ionophores, and arsenicals, FDA has rendered the streamlined approval provision for certain combination drugs meaningless. The comments stated that the intent of the streamlined combination approval provision was to speed up approval of feed use combination drugs and virtually all of the economically and medicinally important combinations of drugs for food animal feeds involve an ionophore and/or arsenical and an antibacterial. Therefore, the comments urged FDA to define "antibacterial" in a way that ensures the exemption of anticoccidials, ionophores, and arsenicals. One comment suggested that FDA can accomplish this by exempting from the definition of "antibacterial" any drug use which: (1) Has been determined by FDA to have met the criteria of § 558.15 (21 CFR 558.15), or (2) was exempted by FDA from compliance with § 558.15. The comment asserted that the term "antibacterial" should not include chemicals that have some antibiotic activity but which are not known or speculated to contribute to the development of resistance by bacterial pathogens to antibiotics in human medicine. Another comment attempted to provide justification for excluding the ionophore class of animal drugs from the general classification of "antibacterial" claiming ionophores are unlikely to contribute to the development of antibacterial resistance of importance to human or veterinary medicine.

The combination new animal drug provision of section 512(d)(4) the act, added by the ADAA treats antibacterial ingredients and drugs differently from other active ingredients and animal drugs intended for use in combination because increasingly there are concerns that overuse or improper use may contribute unnecessarily to the development of antibacterial resistance. The term antibacterial does not include any new animal drug that is intended for use only to kill or suppress organisms other than bacteria. For example, the term antibacterial does not include a new animal drug which is intended to kill or suppress coccidia unless such animal drug also has an approved use in the particular species that is attributable to its antibacterial properties. Therefore, new animal drugs approved solely as anticoccidials will not fall within the definition of antibacterial.

As enacted, the ADAA did not address how specific classes of animal drugs such as arsenicals and ionophores should fit within the term antibacterial. Drugs that achieve their effect by killing or suppressing the replication of bacteria are considered to be antibacterials. If an active ingredient or animal drug intended for use in combination can be shown to act through some other mechanism to achieve its intended effect in a particular species it will not be considered an antibacterial.

On October 21, 1998, Congress, as part of the agriculture appropriations in Pub. L. 105–277, amended the act to exclude ionophores and arsenicals from the definition of antibacterial for purposes of determining whether combination new animal drugs intended for use in drinking water or animal feed qualify for the modified combination drug approval process set forth in 21 U.S.C. 512(d)(4). Therefore, FDA is revising proposed § 514.4(c)(1)(ii), final 21 CFR 514.4(c)(1)(iii), to add at the end the following: "But, antibacterial does not include ionophores or arsenicals intended for use in combination in animal feed or drinking water."

17. Comments objected to the requirement in the proposed regulation that conditions treated by a combination new animal drug occur simultaneously with sufficient frequency in the intended target animal population. The comments argue that the objective of the ADAA is drug availability and, therefore, the frequency of conditions should not be considered. One comment suggested that drugs or active ingredients to be used in combination should be approved as long as there is credible medical evidence that the conditions to be treated do occur simultaneously.

As the comment suggests, the important principle that needs to be met in determining whether there is appropriate concurrent use is that there be evidence that any conditions to be treated or physiological effects intended to be achieved can occur simultaneously. Thus, FDA will find that appropriate concurrent use exists if there is credible evidence that the conditions for which the combination is intended can occur simultaneously. FDA has added a definition of appropriate concurrent use at § 514.4(c)(1)(iv) of these final rules. Because combination new animal drugs may contain animal drugs intended for therapeutic and/or production use, the definition does not adopt the comment's suggestion that there be credible "medical" evidence.

18. Comments objected to the provision in the proposed regulation that requires that sponsors demonstrate bioavailability as a mechanism to determine the physical compatibility and the compatibility of dosing regimens of separately approved animal drugs when used in combination. Comments assert that the ADAA clearly places the burden on FDA to make a scientifically based initial conclusion that there is reason to believe that incompatibility exists, rather than for sponsors to continue to demonstrate compatibility.

FDA has reconsidered the statutory basis for the proposed requirement that applicants demonstrate comparable bioavailability for some classes of combination new animal drugs. FDA agrees that bioavailability and compatibility are not completely correlative. However, just as the requirement to demonstrate compatibility is a recognition that under some circumstances use of an active ingredient or animal drug in a combination new animal drug may affect the effectiveness of that (or another) active ingredient or animal drug, the proposed requirement to demonstrate comparable bioavailability is a recognition that under some circumstances use of an active ingredient or animal drug in a combination new animal drug may affect the safety of that (or another) active ingredient or animal drug. Furthermore, the ADAA recognizes that this concern varies by class of combination new animal drug with dosage form new animal drugs, other than for use in drinking water, having the greatest potential to affect the effectiveness of the new animal drugs being combined, and animal drugs for use in feed having the least (see 21 U.S.C. 360b(d)(4)(C) and (d)(4)(D)). FDA believes similarly that combining dosage form new animal drugs, other than for use in drinking water, has the greatest potential to affect the safety of the new animal drugs being combined because many of these dosage form new animal drugs are indicated for serious or life-threatening conditions, have relatively narrow margins of safety, and/or have complex formulations.

Under the act, FDA may refuse to approve a combination new animal drug if there is a substantiated scientific issue specific to one or more of the animal drugs in the combination that cannot adequately be evaluated based on information in the application for the combination or there is a scientific issue raised by target animal observations contained in studies submitted to FDA as part of the application for the combination (21 U.S.C. 360b(d)(4)(B)). It is a well-accepted scientific principle that changes in formulation can affect the bioavailability and, thus, the safety and effectiveness of a new animal drug. FDA currently requires a demonstration of comparable bioavailability when a sponsor proposes to make significant formulation changes to a single active ingredient new animal drug and when a sponsor proposes to market a generic formulation of a new animal drug. In the latter case, comparable bioavailability is more formally defined as bioequivalence. Formulation changes necessitated by combining dosage form new animal drugs other than those intended for use in drinking water are considered to be significant changes that may similarly affect bioavailability and, thus, the safety of a combination new animal drug. Thus, FDA believes it is appropriate and in keeping with the spirit of the ADAA for FDA to determine that in the specific case of dosage form animal drugs intended for use in combination other than in drinking water there is a substantiated scientific issue relating to the formulation changes necessitated to combine such animal drugs that warrants the requirement for additional target animal safety data. FDA plans to issue a guidance or regulations setting forth further discussion on this issue.

Because the proposed requirement to demonstrate comparable bioavailability relates primarily to safety, FDA is eliminating proposed § 514.4(c)(2)(iv) and (c)(2)(v). New § 514.4(c)(2)(i)(C) and (c)(2)(ii)(D) will reflect that as part of demonstrating the effectiveness of certain combination new animal drugs, sponsors need only demonstrate that active ingredients or animal drugs intended for use in combination are physically compatible and/or do not have disparate dosing regimens where FDA, based on scientific information, has reason to believe there is a lack of physical compatibility or the dosing regimens are disparate.

19. One comment interpreted the preamble to the proposed regulation to require that entirely new studies with a combination new animal drug be conducted when an additional claim is added to a previously separately approved individual active ingredient or animal drug that is part of the combination new animal drug. The comment opposed such a requirement and suggested that label extensions for the combination new animal drug should be pursued at the discretion of the sponsor.

When an additional claim is approved for a single ingredient new animal drug that is part of a combination new animal drug that has been approved under the modified combination approval process provided by section 512(d)(4) of the act, the additional claim may not automatically become a claim for the combination new animal drug. A supplemental application may need to be submitted for the combination new animal drug. Otherwise, an applicant could attempt to circumvent effectiveness requirements for a combination new animal drug that qualifies for approval under the modified combination approval process by choosing to seek approval of certain claims for one of the single ingredient new animal drugs after the combination new animal drug containing it has been approved.

For example, assume that drug A is approved for indication X and drug B is approved for indication Y, and the combination new animal drug containing drug A and drug B qualifies for approval under the modified combination approval process. Because each new animal drug is intended for at least one use that is different from the

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other new animal drug in the combination, the application for the combination new animal drug would primarily need to include a demonstration that combination new animal drug AB represents appropriate concurrent use to establish that the combination is effective. If drug A had been approved for indications X and Y, the application would have had to include a demonstration that drug B contributed to the labeled effectiveness of the combination new animal drug with respect to indication Y. Therefore, if drug A is subsequently approved for indication Y after the combination new animal drug AB is approved, a supplemental application is needed to demonstrate that drug B contributes to the labeled effectiveness of the combination new animal drug. In no case will FDA require any more than FDA would have required had the applicant originally sought approval of a combination new animal drug that includes the animal drug with the additional claim.

20. One comment requested confirmation regarding the application of the combination new animal drug provision of the proposed regulation. In particular, the comment sought confirmation that sponsors need only show that each antibacterial in a combination new animal drug makes a contribution to a combination's effectiveness. The comment further sought confirmation that the contribution of nonantibacterials that have no overlapping claims need not be demonstrated.

Section 514.3(c) specifies the requirements for demonstrating that a combination new animal drug is effective. Because increasingly there are concerns that overuse or improper use of antibacterials may contribute unnecessarily to the development of antibacterial resistance, there are additional, specific requirements that relate to combination new animal drugs that contain antibacterial ingredients or animal drugs.

For those combinations that contain antibacterials and qualify for the modified combination approval process provided under section 512(d) of the act, a sponsor will need to show more than that each antibacterial makes a contribution to the combination's effectiveness. The sponsor will also have to demonstrate: (1) That each nonantibacterial active ingredient or animal drug that is intended only for the same use as another active ingredient or animal drug makes a contribution to effectiveness and (2) each antibacterial and nonantibacterial active ingredient or animal drug with a unique claim provides appropriate concurrent use. Furthermore, the sponsor may, under certain circumstances, need to demonstrate that the active ingredients or animal drugs are physically compatible and/or do not have disparate dosing regimens.

If each of the active ingredients or animal drugs intended for use in a combination that qualifies for the modified approval process has a unique claim, the sponsor must demonstrate that each active ingredient or animal drug provides appropriate concurrent use. The sponsor may, under certain circumstances, also need to demonstrate that the active ingredients or animal drugs are physically compatible and/or do not have disparate dosing regimens.

21. One comment criticized the length and complexity of proposed § 514.4(c)(2), which describes the substantial evidence required for the evaluation of combination new animal drugs with active ingredients or animal drugs that have previously been separately approved.

FDA has made some revisions to proposed § 514.4(c)(2) in an attempt to make the provision more understandable. Unfortunately the combination new animal drug provision of the act, section 512(d)(4), is complex. One of the revisions includes defining "dosage form combination new animal drug" at § 514.4(c)(1)(ii). FDA has also tried to simplify the provision, by describing in list form for dosage form combination new animal drugs and combination new animal drugs intended for use in animal feed or drinking water separately, what substantial evidence is needed to demonstrate that a combination of previously separately approved active ingredients or animal drugs is effective. The preamble to the proposed rule provides further explanation of the substantial evidence needed to demonstrate that a combination new animal drug is effective. FDA intends to issue guidance to further assist sponsors and interested parties in interpreting this very complex provision.

E. Responses to Remaining Comments

22. One comment urged FDA to make animal testing illegal.

The act requires that manufacturers of new animal drugs demonstrate prior to marketing that a new animal drug is safe to the animals administered the drug, safe to humans who may consume food derived from animals administered the drug, and effective. This final rule describes the numbers and types of studies needed to demonstrate that a new animal drug is effective. Depending upon the nature of the intended uses, which may include the alleviation of animal pain and suffering, and conditions of use of the new animal drug, substantial evidence of effectiveness may consist of one or more studies in the target animal, studies in laboratory animals, field studies, bioequivalence studies, or in vitro studies.

As stated repeatedly, FDA intends to work with sponsors to identify the least burdensome appropriate means for demonstrating that a new animal drug is safe and effective. With technological advances, the use of animals in testing has been in decline and FDA fully supports the use of alternative methodologies where appropriate. FDA balances the need for live animal testing of new animal drugs with the need to protect the welfare of the animals that would receive the new animal drug if it is approved. To the extent animal testing is used, there are in effect laws and regulations that provide for the humane care and use of animals in research, testing, and teaching environments. FDA advocates full observance of all applicable animal welfare laws, regulations, and guidelines.

23. Several comments referred to the efforts of the Center for Veterinary Medicine's ADAA Minor Use/Minor Species Working Group to propose regulatory and statutory changes to facilitate the approval of new animal drugs for minor uses or for use in minor species.

Section 2(f) of the ADAA required the Secretary of Health and Human Services to consider and announce legislative and regulatory options for facilitating the approval under section 512 of the act of animal drugs intended for minor species and for minor uses. Although the redefinition of substantial evidence by the ADAA and FDA's further definition of substantial evidence may have the indirect effect of facilitating approval of animal drugs intended for minor species and for minor uses, the charge from Congress to announce proposals for regulatory and statutory changes was not specifically addressed by FDA in redefining substantial evidence. Comments relating to proposals for facilitating the approval of animal drugs for minor use or minor species were addressed in the context of FDA's proposal for regulatory and statutory changes (63 FR 58056, October 29, 1998).

III. Conforming Changes

FDA has made conforming changes to §§ 514.1(b)(8) and 514.111.

IV. Environmental Impact

FDA has carefully considered the potential environmental impacts of this final rule. The agency has determined that this action is of a type that does not individually or cumulatively have a significant effect on the human environment (21 CFR 25.30(h)). Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities unless the rule is not expected to have a significant impact on a substantial number of small entities. Because this final rule will not impose significant new costs on any firms, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that the final rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

FDA, as directed by the ADAA, is further defining "substantial evidence," the standard by which a new animal drug is determined to be effective for its intended uses under the conditions of use represented in its labeling. The purpose of the final rule is to encourage the submission of NADA's, the submission of supplemental NADA's, and the use of dose range labeling. Accordingly, the final definition of substantial evidence, while not changing the standard of effectiveness, recognizes that "substantial evidence," as redefined under the ADAA, gives FDA greater flexibility to determine the number and types of studies that adequately demonstrate the effectiveness of any particular new animal drug. For example, under the new definition, sponsor companies are no longer required, in every instance, to submit a field study to establish the effectiveness of a new animal drug under investigation. Because the new definition gives FDA greater flexibility to work with sponsors to tailor the evidence needed to demonstrate effectiveness, this final rule is not expected to impose any new costs on the industry. Furthermore, because sponsors will have more options under this revised definition to design and conduct studies to demonstrate effectiveness, and because sponsors can be expected to choose the most efficient and cost effective option, the net effect of this provision will be a benefit to sponsors.

The final rule also applies to the submission and review of NADA's for new animal drugs intended for use over a dose range. The ADAA eliminated the statutory requirement to limit the use of a new animal drug to an amount no greater than that reasonably required to accomplish the physical or other technical effect of the drug for its intended use. The act, as amended by the ADAA, permits the use of a new animal drug at any level that is safe for the target animal, effective, and will not result in a residue of such drug in excess of a tolerance found to be safe. Because dose optimization will no longer be required, sponsors are no longer required to conduct adequate and well-controlled in vivo dose titration studies, but will need only to conduct such studies as may be needed to justify the dosage and characterize the critical aspects of the dose-response relationship relevant to the dose or dose range selected so that FDA can make a risk-effect assessment and ensure that the labeling for a new animal drug is not false or misleading. Because there will be greater flexibility in determining the studies needed to justify dosage and characterize the dose-response relationship, sponsors will realize a small cost savings.

Finally, the final rule further defines substantial evidence as it relates to combination new animal drugs. For certain combination new animal drugs that contain active ingredients or animal drugs that have previously been separately approved, sponsors will not be required to conduct additional studies to demonstrate that the combination new animal drug is effective. These changes will provide further cost savings to the sponsors of NADA's that meet the criteria for the streamlined approval process. Based on comments to the proposal, FDA has reconsidered and subsequently removed the requirement in this provision that would have required applicants to demonstrate comparable bioavailability as a mechanism for determining the physical compatibility and compatibility of dosing regimens of active ingredients or animal drugs intended for use in combination.

VI. Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 (2 U.S.C. 1532) requires that agencies prepare an assessment of the anticipated costs and benefits before proposing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an expenditure of $100 million or more in any one year.

VII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing each collection of information.

Title: Substantial Evidence of Effectiveness of New Animal Drugs.

Description: As directed by the ADAA, FDA is publishing a final rule to further define substantial evidence in a manner that encourages the submission of NADA's and supplemental NADA's and encourages dose range labeling. The final regulation implements the definition of "substantial evidence" in 21 U.S.C. 360b(d)(3) as amended by the ADAA. Substantial evidence is the standard that a sponsor must meet to demonstrate the effectiveness of a new animal drug for its intended uses under the conditions of use suggested in its proposed labeling. The final regulation, § 514.4, gives FDA greater flexibility to make case-specific scientific determinations regarding the number and types of adequate and well-controlled studies that will provide, in an efficient manner, substantial evidence that a new animal drug is effective. FDA estimated that the proposed regulation would reduce by approximately 10 percent the total annual burden associated with demonstrating the effectiveness of a new animal drug as part of an NADA or supplemental NADA submission.

Description of Respondents: Persons and businesses, including small businesses. In the **Federal Register** of November 5, 1997 (62 FR 59830), FDA requested comments on the proposed collection of information annual reporting burden estimate. As a result of comments received on the proposed regulation (see comment 18 in section II.D of this document), the requirement in the proposed regulation that sponsors demonstrate comparable bioavailability as a mechanism to determine the physical compatibility and the compatibility of dosing regimens of separately approved animal drugs intended for use in a dosage form combination new animal drug has been eliminated in the final rule. The final rule reflects that as part of demonstrating effectiveness of certain combination new animal drugs sponsors need only demonstrate that active ingredients or animal drugs intended for use in combination are physically compatible and/or do not have disparate dosing regimens where FDA, based on scientific information, has reason to believe there is a lack of physical compatibility or the dosing regimens are disparate. Because combinations that qualify for the modified approval process created by the ADAA represent a small portion of all NADA's and supplemental NADA's submitted to FDA and the majority of combinations that qualify for the modified approval process are expected to be combinations intended for use in animal feed, any reduction in paperwork burden resulting from the elimination of the requirement to demonstrate comparable bioavailability would be negligible. Therefore, FDA believes that the annual reporting burden estimate of 544,036 hours should remain unchanged.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
514.4(a)	190	4.5	860	632.6	544,036

[1] There are no capital costs or operating and maintenance costs associated with this collection.

Individuals and organizations may submit comments on this burden estimate or on any other aspect of these information collection provisions, including suggestions for reducing the burden, and should direct them to Herman M. Schoenemann, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

The information collection provisions in this final rule have been approved under OMB control number 0910–0356. This approval expires December 31, 2000. An agency may not conduct or sponsor, and a person is not required to provide, a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 21 CFR part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 514 is amended as follows:

PART 514—NEW ANIMAL DRUG APPLICATIONS

1. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 379e, 381.

2. Section 514.1 is amended by revising paragraphs (b)(8)(ii) and (b)(8)(v) to read as follows:

§ 514.1 Applications.

* * * * *

(b) * * *

(8) * * *

(ii) An application may be refused unless it includes substantial evidence of the effectiveness of the new animal drug as defined in § 514.4.

* * * * *

(v) If the new animal drug is a combination of active ingredients or animal drugs, an application may be refused unless it includes substantial evidence of the effectiveness of the combination new animal drug as required in § 514.4.

* * * * *

3. Section 514.4 is added to subpart A to read as follows:

§ 514.4 Substantial evidence.

(a) *Definition of substantial evidence.* Substantial evidence means evidence consisting of one or more adequate and well-controlled studies, such as a study in a target species, study in laboratory animals, field study, bioequivalence study, or an in vitro study, on the basis of which it could fairly and reasonably be concluded by experts qualified by scientific training and experience to evaluate the effectiveness of the new animal drug involved that the new animal drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof. Substantial evidence shall include such adequate and well-controlled studies that are, as a matter of sound scientific judgment, necessary to establish that a new animal drug will have its intended effect.

(b) *Characteristics of substantial evidence*—(1) *Qualifications of experts.* Any study that is intended to be part of substantial evidence of the effectiveness of a new animal drug shall be conducted by experts qualified by scientific training and experience.

(2) *Intended uses and conditions of use.* Substantial evidence of effectiveness of a new animal drug shall demonstrate that the new animal drug is effective for each intended use and associated conditions of use for and under which approval is sought.

(i) *Dose range labeling.* Sponsors should, to the extent possible, provide for a dose range because it increases the utility of the new animal drug by providing the user flexibility in the selection of a safe and effective dose. In general, substantial evidence to support dose range labeling for a new animal drug intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease must consist of at least one adequate and well-controlled study on the basis of which qualified experts could fairly and reasonably conclude that the new animal drug will be effective for the intended use at the lowest dose of the dose range suggested in the proposed labeling for that intended use. Substantial evidence to support dose range labeling for a new animal drug intended to affect the structure or function of the body of an animal generally must consist of at least one adequate and well-controlled study on the basis of which qualified experts could fairly and reasonably conclude that the new animal drug will be effective for the intended use at all doses within the range suggested in the proposed labeling for the intended use.

(ii) [Reserved]

(3) *Studies*—(i) *Number.* Substantial evidence of the effectiveness of a new animal drug for each intended use and associated conditions of use shall consist of a sufficient number of current adequate and well-controlled studies of sufficient quality and persuasiveness to permit qualified experts:

(A) To determine that the parameters selected for measurement and the measured responses reliably reflect the effectiveness of the new animal drug;

(B) To determine that the results obtained are likely to be repeatable, and that valid inferences can be drawn to the target animal population; and

(C) To conclude that the new animal drug is effective for the intended use at the dose or dose range and associated conditions of use prescribed, recommended, or suggested in the proposed labeling.

(ii) *Types.* Adequate and well-controlled studies that are intended to provide substantial evidence of the effectiveness of a new animal drug may include, but are not limited to, published studies, foreign studies, studies using models; and studies conducted by or on behalf of the sponsor. Studies using models shall be validated to establish an adequate relationship of parameters measured and effects observed in the model with one or more significant effects of treatment.

(c) *Substantial evidence for combination new animal drugs*—(1) *Definitions.* The following definitions of terms apply to this section:

(i) *Combination new animal drug* means a new animal drug that contains more than one active ingredient or animal drug that is applied or administered simultaneously in a single dosage form or simultaneously in or on animal feed or drinking water.

(ii) *Dosage form combination new animal drug* means a combination new animal drug intended for use other than in animal feed or drinking water.

(iii) *Antibacterial* with respect to a particular target animal species means an active ingredient or animal drug: That is approved in that species for the diagnosis, cure, mitigation, treatment, or prevention of bacterial disease; or that is approved for use in that species for any other use that is attributable to its antibacterial properties. But, antibacterial does not include ionophores or arsenicals intended for use in combination in animal feed or drinking water.

(iv) *Appropriate concurrent use* exists when there is credible evidence that the conditions for which the combination new animal drug is intended can occur simultaneously.

(2) *Combination new animal drugs that contain only active ingredients or animal drugs that have previously been separately approved.*

(i) For dosage form combination new animal drugs, except for those that contain a nontopical antibacterial, that contain only active ingredients or animal drugs that have previously been separately approved for the particular uses and conditions of use for which they are intended in combination, a sponsor shall demonstrate:

(A) By substantial evidence, as defined in this section, that any active ingredient or animal drug intended only for the same use as another active ingredient or animal drug in the combination makes a contribution to the effectiveness of the combination new animal drug;

(B) That each active ingredient or animal drug intended for at least one use that is different from all the other active ingredients or animal drugs used in the combination provides appropriate concurrent use for the intended target animal population; and

(C) That the active ingredients or animal drugs are physically compatible and do not have disparate dosing regimens if FDA, based on scientific information, has reason to believe the active ingredients or animal drugs are physically incompatible or have disparate dosing regimens.

(ii) For combination new animal drugs intended for use in animal feed or drinking water that contain only active ingredients or animal drugs that have previously been separately approved for the particular uses and conditions of use for which they are intended in combination, the sponsor shall demonstrate:

(A) By substantial evidence, as defined in this section, that any active ingredient or animal drug intended only for the same use as another active ingredient or animal drug in the combination makes a contribution to the effectiveness of the combination new animal drug;

(B) For such combination new animal drugs that contain more than one antibacterial ingredient or animal drug, by substantial evidence, as defined in this section, that each antibacterial makes a contribution to labeled effectiveness;

(C) That each active ingredient or animal drug intended for at least one use that is different from all other active ingredients or animal drugs used in the combination provides appropriate concurrent use for the intended target animal population; and

(D) That the active ingredients or animal drugs intended for use in drinking water are physically compatible if FDA, based on scientific information, has reason to believe the active ingredients or animal drugs are physically incompatible.

(3) *Other combination new animal drugs.* For all other combination new animal drugs, the sponsor shall demonstrate by substantial evidence, as defined in this section, that the combination new animal drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling and that each active ingredient or animal drug contributes to the effectiveness of the combination new animal drug.

4. Section 514.111 is amended by revising paragraph (a)(5) to read as follows:

§ 514.111 Refusal to approve an application.

(a) * * *

(5) Evaluated on the basis of information submitted as part of the application and any other information before the Food and Drug Administration with respect to such drug, there is lack of substantial evidence as defined in § 514.4.

* * * * *

Dated: July 21, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–19193 Filed 7–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Parts 1200 and 1205

[Docket No. NHTSA–99–6011]

RIN 2127–AH53

Uniform Procedures for State Highway Safety Programs

AGENCY: National Highway Traffic Safety Administration and Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule announces that amendments to the regulation establishing uniform procedures for

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State highway safety programs, published in an interim final rule, will remain in effect, with minor changes for clarification in response to comments. The amendments implemented the provisions of a two-year pilot highway safety program, providing a more flexible performance-based system for States to follow in conducting their highway safety programs.

EFFECTIVE DATE: August 27, 1999.

FOR FURTHER INFORMATION CONTACT: In NHTSA, Marlene Markison, Office of State and Community Services, 202–366–2121; John Donaldson, Office of the Chief Counsel, 202–366–1834. In FHWA, Daniel Hartman, Office of Highway Safety, 202–366-2131; Raymond Cuprill, Office of the Chief Counsel, 202–366–0834.

SUPPLEMENTARY INFORMATION:

A. Background

On June 26, 1997, the National Highway Traffic Safety Administration ("NHTSA") and the Federal Highway Administration ("FHWA") ("the agencies") published an interim final rule (62 FR 34397) establishing new procedures governing the implementation of State highway safety programs conducted under the authority of the Highway Safety Act of 1966 (23 U.S.C. 401 *et seq.*). The new procedures changed the submission and approval requirements for State highway safety plans in the regulation at 23 CFR part 1200, Uniform Procedures for State Highway Safety Programs, and simplified certain funding requirements in the regulation at 23 CFR part 1205, Highway Safety Programs; Determinations of Effectiveness.

Under the provisions of the interim final rule, States assumed a new role in the planning and direction of their highway safety programs. In lieu of the earlier regulatory requirement that States submit comprehensive documents for Federal review and approval, States were now charged with setting their own highway safety goals, accompanied by performance measures to chart progress. These new procedures were based on almost two years of successful experience with a pilot highway safety program conducted by the agencies during fiscal years 1996 and 1997. The interim final rule incorporated most of the pilot program's provisions into its requirements.

The agencies requested comments on the interim final rule from all interested parties, and provided a 45-day comment period. Thereafter, because Congress was considering various changes to the Section 402 program in the course of reauthorizing NHTSA and FHWA programs, the agencies decided to delay responding to comments until after Congress had completed the reauthorization process. In today's notice, we respond to the comments received, and issue a final rule.

B. Statutory Requirements

The Section 402 program is authorized under the Highway Safety Act of 1966 (23 U.S.C. 401 *et seq.*). It is a formula grant program that was established to improve highway safety in the States. As a condition of the grant, the Act provides that the States must meet certain requirements contained in 23 U.S.C. 402.

Section 402(a) requires each State to have a highway safety program, approved by the Secretary of Transportation, which is designed to reduce traffic crashes and the deaths, injuries, and property damage resulting from those crashes. Section 402(b) sets forth the minimum requirements with which each State's highway safety program must comply. For example, the Secretary may not approve a program unless it provides that the Governor of the State is responsible for its administration through a State highway safety agency which has adequate powers and is suitably equipped and organized to carry out the program to the satisfaction of the Secretary. Additionally, the program must authorize political subdivisions of the State to carry out local highway safety programs and provide a certain minimum level of funding for these local programs each fiscal year. The enforcement of these and other continuing requirements is entrusted to the Secretary and, by delegation, to the agencies.

When it was originally enacted in 1966, the Highway Safety Act required the agencies to establish uniform standards for State highway safety programs to assist States and local communities in implementing their highway safety programs. Eighteen such standards were established and, during the early years, the Section 402 program was directed principally toward achieving State and local compliance with these standards. Over time, State highway safety programs matured and, in 1976, the Highway Safety Act was amended to provide for more flexible implementation of the program. States were no longer required to comply with every uniform standard or with each element of every uniform standard. As a result, the standards became more like guidelines for use by the States, and management of the program shifted from enforcing standards to using the standards as a framework for problem identification, countermeasure development, and program evaluation. In 1987, Section 402 of the Highway Safety Act was amended, formally changing the standards to guidelines.

Another amendment to the Highway Safety Act required the Secretary to determine, through a rulemaking process, those programs "most effective" in reducing crashes, injuries, and deaths, taking into account "consideration of the States having a major role in establishing (such) programs." The Secretary was authorized to revise the rule from time to time. In accordance with this provision, the agencies have identified, over time, nine such programs, the "National Priority Program areas" (see discussion under Section C.2, below).

Until recently, the Act provided that only those programs established under the rule as "most effective" in reducing crashes, injuries and deaths (i.e., the National Priority Program areas) would be eligible for Federal financial assistance under the Section 402 program. However, the Transportation Equity Act for the 21st Century (Pub. L. 105–178) (TEA–21), enacted June 9, 1998, amended those provisions. The new requirement allows for periodic discretionary rulemaking to identify programs that are "highly effective" in reducing crashes, injuries, and deaths, and requires only that States "consider" these highly effective programs when developing their highway safety programs.

C. Regulations Prior to the Interim Final Rule

In recent years, the agencies have administered the Section 402 program in accordance with implementing regulations, the Uniform Procedures for State Highway Safety Programs (23 CFR part 1200) ("Part 1200") and Highway Safety Programs; Determinations of Effectiveness (23 CFR part 1205) ("Part 1205"). Part 1200 sets forth requirements concerning submission and approval of State highway safety plans, apportionment and obligation of Federal funds, and financial accounting and program administration. Part 1205 identifies the National Priority Program areas and provides for the funding of program areas.

1. Part 1200

Part 1200, portions of which were amended by the interim final rule, contained detailed procedures governing the content and Federal approval of a "Highway Safety Plan," to be submitted each fiscal year by the States. In particular, prior to its amendment, the regulation required each State's highway safety plan to contain a "problem identification summary," highlighting highway safety problems in the State, describing countermeasures planned to address those problems, and providing supporting statistical crash data. Additionally, in the highway safety plan, the State was required to describe and justify program areas to be funded, discuss planning and administration and training needs, and provide certain certifications and financial documentation.

Part 1200 required Federal approval for proposed expenditures within program areas, both under the State's initially submitted Highway Safety Plan and subsequently for any proposed changes in expenditures exceeding ten percent of the total amount in a given program area. Federal approval was also required, on a year-by-year basis, if a State sought to continue a NHTSA project beyond three years. Such approval was conditioned on a showing that the project had demonstrated great merit or the potential for significant long-range benefits, and was subject to increased cost assumption by the State. The regulation provided the agencies with broad discretion to approve, conditionally approve, or disapprove a highway safety plan or any portion of the document, and required the States to submit a comprehensive and detailed annual evaluation report.

2. Part 1205

Part 1205 lists each highway safety program area that the agencies have determined, in accordance with the Highway Safety Act, to be most effective in reducing crashes, injuries, and deaths. The agencies have, through a series of rulemaking actions over the years, identified these program areas as "National Priority Program Areas." There are currently nine National Priority Program Areas: Alcohol and Other Drug Countermeasures; Police Traffic Services; Occupant Protection; Traffic Records; Emergency Medical Services; Motorcycle Safety; Roadway Safety; Pedestrian and Bicycle Safety; and Speed Control.

Prior to its amendment by the interim final rule, part 1205 provided for expedited funding approval of programs developed in any of the National Priority Program Areas. Part 1205 provided that programs developed under other program areas could also be funded, but they were subject to a more detailed approval process. As further described under Section E, below, the amendments that the interim final rule made to part 1205 provided States with more flexibility with regard to their ability to fund these latter programs.

D. The Pilot Program

In the years since the original enactment of Section 402, States have developed the expertise necessary to conduct effective highway safety programs. Just as Congress earlier recognized the desirability of changing the mandatory standards to more flexible guidelines, the agencies recognized that the time was right to provide the States with added flexibility to set their own goals, define their own performance measures, and determine the best means of accomplishing their goals, subject to the existing statutory parameters requiring overall program approval.

Consistent with efforts to relieve burdens on the States under the President's regulatory reform initiative, the agencies took the first step in providing more flexibility for the States by establishing a pilot program in fiscal years 1996 and 1997 for highway safety programs conducted under section 402. The pilot program was announced in the **Federal Register** on September 12, 1995 (60 FR 47418) for fiscal year 1996 and on September 6, 1996 (61 FR 46895) for fiscal year 1997.

1. Procedures

The pilot program waived the requirement for State submission and Federal approval of the Highway Safety Plan required under then-existing part 1200 for those States that chose to participate, and instead provided for a benchmarking process by which the States set their own highway safety goals and performance measures. Under the benchmarking process, participating States were required to submit a planning document and a benchmark report, rather than the previously required highway safety plan. The planning document, which described how Federal funds would be used, consistent with the guidelines, priority areas, and other requirements of Section 402, was required to be approved by the Governor's Representative for Highway Safety.

The States were required to submit the benchmark report to the agencies for approval by August 1 prior to the fiscal year for which the highway safety program was to be conducted. The benchmark report was required to contain three components: a Process Description; Performance Goals; and a Highway Safety Program Cost Summary. Under the Process Description component, States were required to describe the processes used to identify highway safety problems, establish performance goals, and develop the programs and projects in their plans. Under the Performance Goals component, States were required to identify highway safety performance goals (developed through a problem identification process) and to identify performance measures to be used to track progress toward each goal. Under the Highway Safety Program Cost Summary component, States submitted HS Form 217, a financial accounting form that has been a longstanding requirement under part 1200.

The focus of the Federal review and approval process under the pilot program shifted away from a review of the substantive details of the program, on a project-by-project basis, as required under then-existing part 1200. Instead, the process focused on verification that the State had committed itself, through a performance-based planning document approved by the Governor's Representative for Highway Safety and a benchmark report, to a highway safety program that targeted identified State highway safety concerns. The agencies waived the requirement under then-existing part 1200 that States seek approval for changes in expenditures exceeding ten percent in a given program area.

Under the pilot program, the requirements governing the annual evaluation report were changed to accommodate the shift to a performance-based process. States were required to report on their progress toward meeting goals, using performance measures identified in the benchmark report, and the steps they took toward meeting goals. States were also required to describe State and community projects funded during the year.

In other respects, the pilot program followed the requirements of then-existing part 1200 without change. Provisions concerning the submission of certifications and assurances, the apportionment and obligation of Federal funds, financial accounting (including submission of vouchers, program income, and the like), and the closeout of each year's program continued to apply to the pilot program.

2. Experience Under the Pilot Program

Over the two-year period during which the pilot program was in place prior to issuance of the interim final rule, it received increasing support from States. Sixteen States participated in the pilot program during fiscal year 1996, and 41 States, the District of Columbia, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands participated during fiscal year

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1997. Most participating States expressed enthusiasm about the goal-setting process used in the pilot program, and felt a greater sense of "ownership" of their highway safety programs under the pilot procedures. Prior to their participation in the pilot program, many of these States already had adopted performance measures in their State budgeting and management processes, which eased the transition for these States to a performance-based process under the pilot program. The majority of participating States reported that the pilot program procedures resulted in reduced Federally-imposed burdens and increased State flexibility in administering their highway safety programs.

In December 1996, the 16 States that participated in the pilot program during its initial year submitted their annual reports regarding their highway safety accomplishments under the pilot program. Overall, the reports revealed improvements in data systems, goal-setting, and project selection. They also reported reductions in costs and time expended for the administration of the program, and a broadening of highway safety partnerships. In addition, the reports revealed that pilot States were making steady progress toward achieving established goals. Experience during that initial year confirmed that the pilot procedures resulted in the implementation of successful highway safety programs, consistent with national highway safety goals and Federal goals for regulatory reform, streamlining procedures, and improvements in performance.

In January 1997, during the second year of the pilot program, the agencies held a meeting that was attended by representatives of all States and territories. State representatives identified concerns and offered suggestions in an effort to make further improvements in the pilot program procedures. States generally expressed a desire for more flexibility, such as by extending the due date for submission of application documents, permitting a multi-year planning process, and accommodating short and long range goals in the goal-setting process. States generally agreed that, if progress toward meeting goals did not occur in a State, both State and Federal officials should cooperate to develop an improvement plan for the State.

E. Interim Final Rule

Based on the success of the pilot program during its first two years of operation, the agencies published an interim final rule on June 26, 1997, revising the regulations governing State highway safety programs to implement the pilot procedures. The interim final rule also addressed issues raised during the January 1997 meeting. It extended the due date for submission of application documents from August 1 to September 1 and accommodated the States' desire for flexibility to plan and set goals covering time periods that best meet State needs. It also provided for a joint effort by Federal and State officials to develop an improvement plan, where a State fails to progress to meet goals.

The interim final rule replaced the previously-existing procedures under part 1200 governing the preparation, submission, review, and approval of State Highway Safety Plans (discussed generally under Section C.1, above), with new procedures modeled after those used in the pilot program. The interim final rule required the States to submit information detailing their highway safety programs in the same format as required under the pilot program, but made some adjustments to the pilot program procedures, as noted above.

In addition, the interim final rule changed some of the terminology used in the pilot program. The more descriptive terms "performance plan" and "highway safety plan" replaced the terms "benchmark report" and "planning document," which were used in the pilot program to describe State highway safety goals and planned activities. However, the functions of these documents remained essentially unchanged from those existing under the pilot program, as described under Section D, above. In the preamble to the interim final rule, the agencies explained that States were free to prepare their Performance Plan and Highway Safety Plan as comprehensive documents which also included goals and activities for highway safety programs other than the Section 402 program. The agencies explained that, in such cases, the Highway Safety Plan should identify those programs or activities funded from other sources in a separate section or should identify them clearly in some other manner.

The interim final rule changed the nature of the Federal approval process, consistent with the procedures used during the pilot program. Instead of approving a highway safety plan based on a project-by-project justification, the interim final rule provided for review of the State's highway safety program as a whole, to verify that the State had developed a goal-oriented highway safety program that was approved by the Governor's Representative for Highway Safety, and that identified the State's highway safety problems, established goals and performance measures to effect improvements in highway safety, and described activities designed to achieve those goals.

The interim final rule left unchanged the requirement that States must submit an annual report. However, the contents of the annual report changed from those required under the previously-existing part 1200. Under the interim final rule, the States were required to describe their progress in meeting State highway safety goals, using performance measures identified in the Performance Plan, and the projects and activities funded during the fiscal year. They also were required to include in these reports an explanation of how these projects and activities contributed to meeting the State's highway safety goals. No substantive changes were made to provisions relating to the apportionment and obligation of Federal funds, financial accounting, and the like.

Finally, the interim final rule made conforming changes to the funding procedures for National Priority Program Areas and other program areas contained in Part 1205. These changes allowed States to pursue activities in program areas identified either by the agencies as National Priority Program areas or by the States as State priorities. In pursuing activities under the latter category, States were given more flexibility in the processes they could follow to identify program areas that were State priorities, and the level of Federal oversight was reduced.

A more detailed discussion of the changes appears in the preamble to the interim final rule (62 FR 34397).

F. Comments

The interim final rule solicited comments from all interested parties, and noted that the agencies would respond to all comments and, if appropriate, amend the provisions of the rule. The agencies received comments from State agencies in Florida, Maryland, Michigan, and Washington and from two organizations, the National Association of Governors' Highway Safety Representatives and Advocates for Highway and Auto Safety.

1. In General

Many commenters expressed general approval of the interim final rule. In the State of Washington, the Traffic Safety Commission and the Department of Transportation both supported the interim final rule without change. The Traffic Safety Commission lauded the "change in attitude and method," adding that it was certain to improve the already good working relationship

between NHTSA and the States. The Michigan Office of Highway Safety Planning (Michigan) identified the flexibility for quick response to changing issues, the outcome-based evaluation (which it noted was already being performed at the State level), the opportunity to offer programming flexibility to local communities, and the reduction in paperwork as welcome results of the interim final rule. The National Association of Governors' Highway Safety Representatives (NAGHSR) expressed strong support for the rule, commending the agencies for reflecting State concerns and codifying the flexibility desired by States in the interim final rule. NAGHSR was especially supportive of the change in submission date for the State's application documents from August 1 to September 1 of the fiscal year, stating that this would provide the States with time to obtain additional input from their safety constituencies and to refine their performance plans.

2. Specific Issues

Commenters raised a number of specific issues, all related to the interim final rule's changes to part 1200. The agencies received no comments concerning the interim final rule's changes to part 1205.

a. Federal Approval Procedures

The Florida Department of Transportation (Florida) sought clarification of Federal approval procedures. Noting the discussion that Federal approval of the annual Highway Safety Plan was no longer required, Florida asked why the interim final rule contained references to an "Approving Official" (§ 1200.3), "delayed approval" (§ 1200.12) if due dates are not met, and a "letter of Approval" (§ 1200.13).

The statute under which the Section 402 program operates requires each State to have a highway safety program "approved by the Secretary (of Transportation)," and further specifies certain conditions under which the Secretary may not approve a program. Consequently, some approvals continue to be required but, as the agencies explained in the preamble to the interim final rule, the nature of the Federal approval process changed. The interim final rule provided that the contents of the Highway Safety Plan no longer need to be approved on a project-by-project basis. Rather, the State's highway safety program is to be reviewed as a whole, to verify that the State has developed a goal-oriented highway safety program that is approved by the Governor's Representative for Highway Safety, and that identifies the State's highway safety problems, establishes goals and performance measures to effect improvements in highway safety, and describes activities designed to achieve those goals. The agencies believe that this new program level approval process was reflected in the interim final rule without ambiguity. Consequently, the agencies have made no change to the rule in response to this comment.

b. Financial Reporting

To effect a further reduction in paperwork burdens on State highway safety offices, Michigan recommended that changes in the allocation of funds, under § 1200.22, be reported on a quarterly basis rather than within 30 days of the change.

In the interim final rule, the agencies took the significant step of removing the requirement for prior approval of changes during program implementation. The agencies believe that removing the prior approval requirement, coupled with retention of the monthly reporting requirement, strikes the appropriate balance between alleviating burdens to the States and retaining the agencies' ability to monitor, on an ongoing basis, the expenditure of Federal funds. Consequently, the agencies have not adopted the suggestion for quarterly reporting of changes.

Florida noted that the interim final rule prescribes the use of HS Form 217 for financial reporting, despite the transition by some States (including Florida) to paperless electronic reporting through NHTSA's Grant Tracking System. Florida asked which format (i.e., hard copy or electronic) was intended by the interim final rule.

For many States, use of the electronic Grant Tracking System has replaced the use of paper forms to report grant finances. However, even with the electronic system, there is an "HS 217" screen for recording the information concerning allocations of federal and State funds to specific program areas, which is then transmitted electronically to NHTSA. This form, either in its electronic or hard copy format, would meet the requirements of the interim final rule. To clarify this point, the agencies have included language in appropriate places in the rule explaining that either HS Form 217 or its electronic equivalent is acceptable.

c. Goal-Setting and Program Evaluation

Advocates for Highway and Auto Safety (Advocates) submitted lengthy comments, expressing the view that the interim final rule "devolves all essential aspects of the 402 program to state authorities." According to Advocates, this more flexible approach will result in the selection of highly subjective safety program goals, the inability to assess cost-effectiveness properly, and the submission of State reports based on "anecdotal experience and generalized, amorphous information." Advocates questioned whether this approach satisfies the statutory requirement that State highway safety programs be based on "uniform guidelines [which] shall be expressed in terms of performance criteria."

In support of this concern, Advocates cited the report, "Evaluation of the section 402 Pilot Process, NHTSA (May, 1997)" and the separate reports submitted by the 16 original pilot States. According to Advocates, the NHTSA report elaborates only on positive information drawn from the State reports, ignoring the deficiencies. Among the deficiencies Advocates identified in the State reports are the lack of substantive information about goals and accomplishments; and the lack of data, or reliance on old or subjective data, or brushing aside of contradictory data in efforts to demonstrate progress toward meeting State goals. Advocates asserted that some State reports are "in essence, public relations documents," and concluded that if this continues, most State reports will be of no use in assessing the status of the individual State programs as well as the national 402 program as a whole. Advocates also asserted that, with a unique goal-selection process for each State, States might select easily achieved goals at the expense of safety issues that need to be addressed. Advocates questioned whether the new approach met the statutory goal of improving highway safety or provided a credible means for evaluating the effectiveness of the Section 402 program.

The agencies have described, above, the evolution of the Highway Safety Act of 1966, from a framework of enforcing standards to using standards for problem identification, countermeasure development, and program evaluation, and ultimately to using guidelines as an aid in fashioning highway safety programs. We have also noted, above, that since publication of the interim final rule, Congress further amended the Highway Safety Act, allowing the States to consider highly effective programs that may from time to time be identified in a rule by the agency, in lieu of requiring adherence to only those programs specifically designated as most effective in a rule by the agency. In short, the statutory framework has moved away from requiring a centralized, uniform program, with each

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State pursuing a set of common goals. Consequently, we do not agree with Advocates' criticism that a goal selection process that is unique to each State overlooks important safety issues. Rather, we believe that this new process provides States with the additional flexibility and ability to tailor their programs that was intended by the Congress.

The agencies agree with Advocates that there was variability in the quality and usefulness of data among the 16 initial annual reports submitted by the States under the pilot process. This is to be expected under any new process. However, for the first time, reports began to address performance goals in highway safety and measures of progress in reaching those goals. Under the previous procedures, this important goal-setting and tracking information was largely unavailable. The agencies fully expect that the process, the data, and the reports will improve over time (although there will always be a time-lag in the data). We believe that the annual reports under the new process will provide an effective means of evaluating progress under the Section 402 program, as more experience is developed. Should this not materialize, the agencies will consider necessary changes to the reporting process in a future action. The agencies do not believe that any change to the rule is necessary at this time to address this comment.

The agencies also do not believe that the concern that States may select only goals that are easy to achieve, overlooking other important areas of highway safety, is warranted. In the course of establishing goals and performance measures, the interim final rule requires a State to describe in its Performance Plan the problem identification process followed and the participants in that process. In addition, the State must issue a public report (the Annual Report) each year. With this public process, we do not believe that States will address only easily-achieved goals. A more likely limitation on the goal-setting process will be the initial absence of effective performance measures and data for certain problem areas. This limitation should be mitigated over time by improvement of the performance-based management process and the data upon which it depends. Consequently, we have made no change to the rule in response to this comment.

Florida questioned the value of the Annual Report (§ 1200.33). According to Florida, the requirement for an Annual Report (as well as the requirement for an Improvement Plan, discussed in the next section) assumes that projects from a Highway Safety Plan can be evaluated against the State's goals within three months of their completion, whereas data to support an evaluation are actually not likely to be available for a year or more after project completion. Florida also stated that it is unclear from § 1200.10 (Application) whether the intent is for the State to have short-term or longer-term safety goals for the program. Florida noted that short term goals exhibit data availability problems.

The agencies agree with Florida that many projects will not produce measurable results within the three-month period between the end of the fiscal year and the due date for submission of the Annual Report. However, the performance-based process implemented by the interim final rule recognizes that the Section 402 program is ongoing, as are the State highway safety programs that it supports. These State programs do not begin and end with the fiscal year, even if certain projects do. Progress toward meeting goals in major highway safety program areas will occur across fiscal years and be attributable to more than one project or activity. Therefore, in the Annual Report, States should report the most recent data available concerning each of their identified performance measures and describe the projects that have contributed to that progress. The agencies have made changes to the "Annual Report" section of the rule to clarify these points. With respect to Florida's concern about § 1200.10, that section specifies neither short-term nor long-term goals as requirements in the goal-setting process. Either approach or a mix of both approaches is acceptable, as deemed necessary or appropriate by the State. In all cases, the State should include the most recent and best available data in the annual report.

d. Improvement Plans

Two commenters expressed opposing views about the value of Improvement Plans. Florida recommended elimination of the interim final rule's requirement for an Improvement Plan where a State's broad goals are not met, reasoning that Federal highway safety funds provide only "seed money" for a few projects, and should not be assumed to have an "immediate quantifiable effect on a statewide problem." In contrast, NAGHSR supported the requirement for joint development of an Improvement Plan by Federal and State officials where a State has not made sufficient progress to meet goals (§ 1200.25). NAGHSR believed this approach to be a "reasonable and prudent one" if a State fails to make progress or does not act in good faith in implementing its plan.

The agencies agree with NAGHSR about the value of Improvement Plans. Florida's recommendation to eliminate the requirement stems from concerns about the lack of contemporaneous data to track progress. The agencies are mindful of these data limitations, and intend to exercise appropriate restraint in the use of Improvement Plans. For example, it is not the agencies' intent to require an Improvement Plan if, in a single year, some of a State's projects or activities do not appear to "have an immediate quantifiable effect on a statewide problem," based on available data. Rather, an improvement plan would be employed if a State demonstrates a pattern that indicates little or no progress toward meeting goals, taking account of all relevant circumstances. The agencies believe that this approach strikes an appropriate balance in ensuring that the expenditure of Section 402 funds ultimately results in measurable traffic safety benefits, and that no changes to the rule are necessary.

e. Use of the Term "Highway Safety Plan'

The Office of Traffic Safety of the Maryland State Highway Administration (Maryland) objected to the agencies' "preemption" of the title "Highway Safety Plan" for the program document required under the Section 402 program. Maryland explained that States have comprehensive, multi-year plans that set forth goals and strategies for addressing highway traffic safety problems, and that these State plans typically are called Highway Safety Plans or Strategic Highway Safety Plans. In Maryland's view, the Federally-prescribed Highway Safety Plan under the interim final rule cannot serve as a State's comprehensive Highway Safety Plan because it does not include goals, objectives, strategies, and performance measures and it covers only projects and activities that are supported by Section 402 funds or other Federal funds. Maryland recommends that the interim final rule be amended to redesignate the Highway Safety Plan as the "Implementation Plan."

In contrast, NAGHSR supported the name changes for the application documents (i.e., from "Benchmark Report" and "Planning Document" to "Performance Plan" and "Highway Safety Plan"), finding them to be less confusing.

As noted in the preamble to the interim final rule, the familiar term "Highway Safety Plan" was used for convenience, and many of those most involved in the Section 402 program continued to use it even during the pilot program. The agencies further explained that States were free to prepare both their Performance Plan and Highway Safety Plan as comprehensive documents that include goals and activities for highway safety programs other than the Section 402 Program. (In fact, since the enactment of the Transportation Equity Act for the 21st Century, Pub. L. 105–178, implementing regulations for a number of new highway safety grant programs have included provisions requiring States to document activities related to these other grant programs in the Highway Safety Plan.) Moreover, the interim final rule does not preclude a State from combining the elements of the Performance Plan and the Highway Safety Plan into one document called a Highway Safety Plan, as long as the substantive content requirements of the interim final rule are met. The interim final rule also does not restrict the amount of information or detail included in the Highway Safety Plan, and does not preclude the identification in the plan of projects or activities that do not receive Federal funds. The only requirement is that the source of funding for other projects or activities be identified, so that the agencies are able to distinguish clearly the programs for which Section 402 funds are being sought. The agencies have added language to the rule clarifying that this is permissible. Finally, a State may, for its own administrative purposes, choose to call the Highway Safety Plan required under this rule by another name, so long as the document satisfies the requirements of the rule. In view of the flexibility afforded by this process, the agencies have made no other change to the rule in response to these comments.

f. Effect of Interim Final Rule

Florida requested clarification of the discussion in the preamble to the interim final rule, which described the material as "guidance" for 1998 highway safety plans, but noted that "this regulation is fully in effect and binding upon its effective date." Florida believed that these statements led to confusion about the status of the interim final rule.

The Section 402 program is operated in accordance with published regulations, so that all States will have a clear understanding of the procedures and requirements that accompany the grant funds. When referring to the procedures of the interim final rule as providing "guidance" to the States, the agencies did not intend to convey that these procedures were optional or otherwise not fully in effect. As noted in the preamble to the interim final rule, that document (and hence the provisions contained therein) became effective and binding upon publication.

Advocates objected to the publication of an interim final rule to implement the new process, arguing that dispensing with prior public notice and comment is permissible only under the most extreme circumstances, and that no such circumstances existed here.

The agencies previously explained the need to provide prompt guidance to the States about impending grant procedures. We explained that States needed this information well in advance of the start of the fiscal year to which the highway safety program applied in order to comply with application procedures and to allow sufficient time for program planning activities. For these reasons, the agencies concluded that there was good cause for finding that providing notice and comment in connection with this action was impracticable, unnecessary, and contrary to the public interest. The agencies noted that the amendments made by the interim final rule were consistent with the provisions of a pilot program whose procedures were already known to the States. During the two years covered by the pilot programs, these procedures were also announced to the public, in two **Federal Register** notices (60 FR 47418 and 61 FR 46895). The agencies believe that the decision to issue an interim final rule was appropriate and in the public interest.

G. Regulatory Analyses and Notices

Executive Order 12612 (Federalism)

We have analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. This action increases the flexibility of the States by implementing a performance-based process under which the States bear the responsibility for setting highway safety goals, in accordance with their individual needs.

Executive Order 12778 (Civil Justice Reform)

This rule does not have any preemptive or retroactive effect. It merely revises existing requirements imposed on States to afford States more flexibility in implementing a grant program. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

We have determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. This rule does not impose any additional burden on the public, but rather reduces burdens and improves the flexibility afforded to States in implementing highway safety programs. This action does not affect the level of funding available in the highway safety program. Accordingly, neither a Regulatory Impact Analysis nor a full Regulatory Evaluation is required.

Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and it does not concern an environmental, health, or safety risk that may have a disproportionate effect on children.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we have evaluated the effects of this action on small entities. We hereby certify that this action will not have a significant economic impact on a substantial number of small entities. States are the recipients of any funds awarded under the Section 402 program. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) directs us to use voluntary consensus standards (i.e., technical standard concerning materials specifications, test methods, sampling procedures, and business practices) in regulatory activities unless doing so would be inconsistent with applicable law or otherwise impracticable. We have determined that no voluntary consensus standards apply to this action.

Unfunded Mandates Reform Act

This action does not impose any unfunded mandates under the Unfunded Mandates Reform Act of

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1995. It would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Accordingly, neither a written assessment of its costs, benefits, and other effects nor a consideration of regulatory alternatives is required.

Paperwork Reduction Act

The requirement relating to this action, that each State must submit certain documents to receive Section 402 grant funds, is considered to be an information collection requirement, as that term is defined by OMB. This information collection requirement has been previously submitted to and approved by OMB, pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The requirement has been approved through September 30, 2001; OMB Control No. 2127–0003.

National Environmental Policy Act

We have reviewed this action for the purpose of compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and have determined that it will not have a significant effect on the human environment.

Regulation Identifier Number

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 23 CFR Parts 1200 and 1205

Grant programs—transportation, Highway safety.

Accordingly, the interim final rule amending part 1205 of title 23 of the Code of Federal Regulations, published at 62 FR 34397, June 26, 1997, is adopted as final without change and the interim final rule amending part 1200 of title 23 of the Code of Federal Regulations, published at 62 FR 34397, June 26, 1997, is adopted as final with the following changes:

1. The authority citation for part 1200 continues to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

2. In § 1200.10, paragraphs (b) and (d) are revised to read as follows:

§ 1200.10 Application.

* * * * *

(b) A Highway Safety Plan, approved by the Governor's Representative for Highway Safety, describing the projects and activities the State plans to implement to reach the goals identified in the Performance Plan. The Highway Safety Plan must, at a minimum, describe one year of Section 402 program activities (and may include activities funded from other sources, so long as the source of funding is clearly distinguished).

* * * * *

(d) A Program Cost Summary (HS Form 217 or its electronic equivalent), completed to reflect the State's proposed allocations of funds (including carry-forward funds) by program area, based on the goals identified in the Performance Plan and the projects and activities identified in the Highway Safety Plan. The funding level used shall be an estimate of available funding for the upcoming fiscal year.

* * * * *

3. In § 1200.13, paragraph (b) is revised to read as follows:

§ 1200.13 Approval

* * * * *

(b) The approval letter identified in paragraph (a) of this section will contain the following statement:

We have reviewed (STATE)'s _____ fiscal year 19__ Performance Plan, Highway Safety Plan, Certification Statement, and Cost Summary (HS Form 217), as received on (DATE) _____. Based on these submissions, we find your State's highway safety program to be in compliance with the requirements of the Section 402 program. This determination does not constitute an obligation of Federal funds for the fiscal year identified above or an authorization to incur costs against those funds. The obligation of Section 402 program funds will be effected in writing by the NHTSA Administrator at the commencement of the fiscal year identified above. However, Federal funds reprogrammed from the prior-year Highway Safety Program (carry-forward funds) will be available for immediate use by the State on October 1. Reimbursement will be contingent upon the submission of an updated HS Form 217 (or its electronic equivalent), consistent with the requirements of 23 CFR 1200.14(d), within 30 days after either the beginning of the fiscal year identified above or the date of this letter, whichever is later.

* * * * *

4. In § 1200.33, paragraphs (a) and (b) are revised to read as follows:

§ 1200.33 Annual Report.

* * * * *

(a) The State's progress in meeting its highway safety goals, using performance measures identified in the Performance Plan. Both Baseline and most current level of performance under each measure will be given for each goal.

(b) How the projects and activities funded during the fiscal year contributed to meeting the State's highway safety goals. Where data becomes available, a State should report progress from prior year projects that have contributed to meeting current State highway safety goals.

§§ 1200.14 and 1200.22 [Amended]

In addition to the amendments set forth above, in 23 CFR part 1200, remove the words "HS Form 217" and add, in their place, the words "HS Form 217 (or its electronic equivalent)" in the following places:

(a) Section 1200.14(d)(1) and (d)(2); and

(b) Section 1200.22.

Issued on: July 23, 1999.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 99–19321 Filed 7–27–99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 256

RIN 1010–AC49

Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf—Bonus Payments With Bids

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule gives MMS the authority to require Federal offshore Outer Continental Shelf (OCS) lands lease bidders to use any single method for submitting ⅕ bonus payments with OCS bids.

EFFECTIVE DATE: The rule is effective August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Jan Arbegast, Program Analyst, at (703) 787–1227.

SUPPLEMENTARY INFORMATION: On March 31, 1999, we published a Notice of Proposed Rulemaking (64 FR 15320), titled "Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf—Bonus Payments with Bids," revising 30 CFR 256.46(b). Our 30-day comment period closed on April 30, 1999. We received four comments. This final rule amends the regulation at 30 CFR 256.46(b).

Since the mid-1950s, the Federal Government has received bonus bid payments to acquire leases offered at OCS lease sales. Prospective bidders submit the required ⅕ bonus payment in the form of a check or bank draft, which accompanies a sealed bid on a specific offshore tract of submerged land. Since August 1997, we have offered prospective bidders the option of using electronic funds transfer (EFT) to submit their ⅕ bonus payment rather than a check or bank draft. As technology has progressed and as banking transactions become routinely automated, we need to have in place a rule that allows us to require automated payment such as EFT or other methods that may be more efficient. This revision allows flexibility so that we can require the specific method of bonus payment that is most efficient and administratively advantageous to the Government and industry.

Comments on the Rule

We received comments from Pogo Producing Company, Murphy Exploration & Production Company, Texaco Exploration and Production, Inc., and the American Petroleum Institute. Generally, those who commented favored EFT as a method of submitting the ⅕ bonus bid amount.

Comments and Responses to Issues

• *Comment:* Concerning timing of the ⅕ bonus payment, prefer payment by the apparent high bidder on the day following the sale (as currently done) rather than a prepayment on or before the day of the sale.

Response: At this time, we have no plans to change the timing of the EFT bonus payment.

• *Comment:* The mandated use of EFT could cause problems for some companies under some circumstances. Request that MMS maintain highest level of confidentiality of bids and address any potential transmission and receipt problems.

Response: Regarding confidentiality, the bid submission process has not changed. The EFT transaction is completed only after public bid opening. A bidder needs only to complete one EFT transaction for all of its high bids instead of submitting separate cashier's checks for each bid. For a few companies, there may be initial start-up costs and problems, but the benefit to the Government and long-term benefit to the bidder outweigh any initial problems. We have used EFT as an optional method of bid submission in the last four Gulf of Mexico (GOM) OCS lease sales (since August 1997). Companies of various sizes have bid via EFT. The EFT transaction system has worked very efficiently with administrative savings for both bidders and the Government. In the two most recent GOM lease sales, over 90 percent of the ⅕ high bonus bid amounts were transmitted via EFT. The MMS continues to treat all submitted bids with appropriate security and will continue to assist bidders who experience any transmission problems.

• *Comment:* Because all companies may not find EFT convenient or always possible, EFT should remain an option for such payments.

Response: The final rule gives MMS the flexibility to specify the method of payment for bonus bids in the notice of sale. The MMS will carefully monitor each sale and will determine which method(s) of payment for bid submission is most advantageous to both the Government and industry for that particular sale. In certain circumstances, having EFT as a ⅕ bonus bid submission option may be desirable. However, maintaining EFT ⅕ bonus bid submission as an optional form of payment negates much of the administrative savings to the Government since a separate process and infrastructure must be in place to accept paper transactions. Eliminating this paper transaction process produces most of the cost savings to the Government.

• *Comment:* MMS should codify general guidelines for EFT payments in the regulations rather than publish them in each notice of sale.

Response: The MMS believes that the proposed and final sale notice packages are better vehicles for detailed administrative guidance for submitting bids via EFT or for other bid submission guidance, which may change as technology and business practices evolve.

Procedural Matters

Federalism (Executive Order (E.O.) 12612)

According to E.O. 12612, the rule does not have significant Federalism implications. A Federalism assessment is not required.

Takings Implications Assessment (E.O. 12630)

According to E.O. 12630, the rule does not have significant Takings Implications. A Takings Implication Assessment is not required.

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under E.O. 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Ultimately, this rule is administratively advantageous to prospective bidders on the OCS. It will save time and administrative burden in their bid-preparation paperwork process and will also use current technology, improving efficiency both for industry and the Government.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Using EFT is common practice in private industry. Through the use of electronic commerce, we reduce the number of transactions required by bidders. A bidder can initiate one EFT transaction for all of its high bids rather than individual checks for each high bid. This does not interfere with other agencies' actions.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule has no effect on these programs or rights of the programs' recipients.

(4) This rule does not raise novel legal or policy issues. As previously stated, the intent of this rule is to give the Government flexibility in requiring a specific form of bonus payment, including EFT. It is commonplace in private industry and creates no novel policy issues.

Civil Justice Reform (E.O. 12988)

According to E.O. 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA of 1969 is not required.

Paperwork Reduction Act (PRA) of 1995

This regulation does not require information collection, and a submission under the PRA is not required.

Regulatory Flexibility Act (RFA)

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This revised rule does not have a significant effect on a substantial number of small entities. We are revising this rule to allow us the flexibility to select the method for a prospective bidder at an OCS lease sale to submit a bonus payment. If we select EFT for the method of submitting bonus payments, it will be easy for small companies to submit bonus payments because any small company has access to a commercial bank that routinely uses EFT. All current lessees must transmit the remaining 80 percent of their bonus payment and their first year rental payment via EFT. The regulation has been effective since 1984. This should not be a significant burden. The cost for establishing an account for a small company should be nominal. The bank will charge a fee per wire transfer which may be as high as $30, but if a company has a large volume of wire transfers, the bank may only charge about a dollar or less per wire transfer. In the worst case scenario, if 30 small companies (average for recent sales) submit a bid during a lease sale, at $30 per EFT wire transfer, the total cost for *all* small companies for a typical sale is $900.

This rule only affects lessees on the OCS. We use Standard Industry Code 1381, Drilling Oil and Gas Wells, to characterize this group. There are 1,380 firms that drill oil and gas wells onshore and offshore. Of these, approximately 130 companies who are offshore lessees/operators need to follow our rule. According to Small Business Administration (SBA) estimates, 39 companies qualify as large firms and 91 as small firms. The SBA defines a small business as having either (a) annual revenues of $5 million or less for exploration service and field service companies, or (b) less than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

The rule gives us the flexibility to make adjustments to determine which method of bid submission is preferable (based on technological advances) for a bidder at an OCS lease sale to submit a bonus payment. We believe both bidders and MMS realize this efficiency. When using EFT, which is now commonplace, a bidder will need to advise its commercial bank to submit its bonus payment via EFT. When using EFT, the bidder will contact the MMS Royalty Management Office designated in the final sale notice for the proposed lease sale.

If EFT is used, overall lessee (prospective bidder's) costs will decrease as well as bid preparation time. This is not a major rule. The cost of implementation should be minimal, regardless of company size. Since *one* EFT transaction can be used per sale, and it costs $30 for the wire transfer compared to the administrative costs (e.g., fees charged to the companies by the bank to prepare cashier's check, staff time to cancel checks on bids a company does not win, and committing and estimating funds needed for cashier's check earlier in the bidding process compared to the immediacy of EFT transactions) of preparing a cashier's check for *each* individual bid, there is little doubt that using EFT is more cost effective and more efficient than writing a separate check for each high bid.

The rule should not affect the price that a company will charge for its product or service. It should increase efficiency and decrease administrative burden. The rule should not cause any company to go out of business. In fact, this rule will give MMS the ability to establish on a sale-by-sale basis, the most efficient and effective payment method for both MMS and industry. If EFT is used, hundreds of dollars in staff time may be saved by MMS and industry.

Some small companies may consider a change in the method by which they submit bids at lease sales to be significant (from paper check to EFT). Other companies may think the change is trivial. Several small companies may experience a short-term effect as they revise current business practices. The rule should not have a significant economic effect on any company qualified to participate in OCS lease sales.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under (5 U.S.C. 804(2)) the SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. This rule will increase the efficiency and reduce the administrative burden of both the Government and private industry.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule will decrease costs and time for prospective bidders preparing for bid submission. It will reduce the Government's administrative burden as well. If EFT is used, the Government and industry will save potentially hundreds of dollars in bid preparation time and administrative costs. Since *one* EFT transaction can be used per sale, and it costs $30 for the wire transfer compared to the administrative costs of preparing a cashier's check for *each* bid, there is little doubt that using EFT is more cost effective and more efficient.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or ability of U.S.-based enterprises to compete with foreign-based enterprises. The rule will increase productivity, innovation, and ability of U.S.-based enterprises.

Unfunded Mandate Reform Act (UMRA) of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 256

Administrative practice and procedure, Continental shelf, Environmental protection, Government contracts, Intergovernmental relations, Oil and gas exploration, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Dated: July 12, 1999.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, Minerals Management Service (MMS) amends 30 CFR part 256 as follows:

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 256 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. In § 256.46, revise paragraph (b) to read as follows:

§ 256.46 Submission of bids.

* * * * *

(b) MMS requires a deposit for each bid. The notice of sale will specify the bid deposit amount and method of payment.

* * * * *

[FR Doc. 99–19262 Filed 7–27–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region VII Tracking No. MO–076–1076; FRL–6408–3]

Finding of Failure To Submit a Revised State Implementation Plan (SIP) for Lead; Missouri; Doe Run-Herculaneum Lead Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today EPA is taking final action to find that the state of Missouri failed to submit a revised SIP required for the Doe Run-Herculaneum lead nonattainment area. The deadline for these SIP revisions was August 15, 1998.

The failure-to-submit finding triggers the 18-month time clock for the mandatory application of sanctions and a 2-year time clock for a Federal Implementation Plan (FIP) under the Clean Air Act (CAA). This action is consistent with the mechanism of the CAA for ensuring timely SIP submissions.

EFFECTIVE DATE: July 14, 1999.

FOR FURTHER INFORMATION CONTACT: Aaron J. Worstell, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7787.

SUPPLEMENTARY INFORMATION:

I. Background

What Is the Doe Run-Herculaneum Lead Nonattainment Area?

The Doe Run-Herculaneum lead nonattainment area is the area within the vicinity of the Doe Run primary lead smelter which fails to meet the national ambient air quality standards (NAAQS or standard) for lead. In 1991 the area was designated as nonattainment for lead pursuant to section 107(d) of the CAA. The nonattainment designation was codified in 40 CFR part 81 and became effective on January 6, 1992. See 56 FR 56694 (November 6, 1991). The nonattainment designation applies to that part of Jefferson County, Missouri, which is within the city limits of the town of Herculaneum. The Doe Run Company has operated a primary lead smelter in Herculaneum since 1892.

In response to the nonattainment designation for Doe Run-Herculaneum, the State of Missouri submitted a SIP intended to control lead emissions in the area and thereby attain compliance with the lead standard. The plan established June 30, 1995, as the date by which the Doe Run-Herculaneum area was to have attained compliance with the lead standard. However, the plan failed to provide for attainment of the standard, and observed lead concentrations in the Herculaneum area continue to violate the standard.

What Is the Air Quality Standard for Lead?

EPA established the NAAQS for lead on October 5, 1978 (43 FR 46246). The standard for lead is set at a level of 1.5 micrograms of lead per cubic meter of air ($\mu g/m^3$), averaged over a calendar quarter. In setting the standard, EPA considered that for a population of young children, the maximum safe blood lead level (as a geometric mean) was 15 micrograms per deciliter ($\mu g/dl$) and that of this amount, as much as 12 $\mu g/dl$ may be attributable to nonair sources. Therefore, the difference of 3 $\mu g/dl$ was estimated to be the maximum safe contribution to mean blood levels from lead in the air. Furthermore, EPA considered epidemiological evidence that the general relationship between air lead ($\mu g\ Pb/m^3$) and blood lead ($\mu g\ Pb/dl$) is 1 to 2; that is, every 1 $\mu g/m^3$ lead in the air results in an increase of 2 $\mu g/dl$ in blood lead for children. As a result, EPA determined that the lead standard should be 1.5 $\mu g/m^3$.

What Are the Adverse Health Effects of Lead?

Exposure to lead occurs mainly through the inhalation of air and the ingestion of lead in food, water, soil, or dust. It accumulates in the blood, bones, and soft tissues. Because it is not readily excreted, lead can also adversely affect the kidneys, liver, nervous system, and other organs. Excessive exposure to lead may cause neurological impairments such as seizures, mental retardation, and/or behavioral disorders. Even at low doses, lead exposure is associated with damage to the nervous systems of fetuses and young children, resulting in learning deficits and lowered IQ. Recent studies also show that lead may be a factor in high blood pressure and subsequent heart disease.

More detailed information on the adverse health effects of lead can be found in the rulemaking promulgating the lead standard.

Why Has EPA Made a Finding of Failure To Submit?

On August 15, 1997, after taking and responding to public comments, EPA published a document in the **Federal Register** providing notification that the Doe Run-Herculaneum nonattainment area had failed to attain the lead standard by the June 30, 1995, deadline (62 FR 43647). Pursuant to section 179(d) of the CAA, within 12 months of the publication of the failure-to-attain finding (i.e, by August 15, 1998), the state of Missouri was required to submit a revised SIP providing for attainment of the lead standard in the area. However, the state of Missouri failed to submit the required SIP revision by the deadline, and EPA is therefore making a finding of failure to submit. The Governor of Missouri was notified of the state's deficiency on February 25, 1999.

What Are the Consequences of Failure To Submit?

The Missouri Department of Natural Resources is currently working on a revised SIP to attain the lead standard in Herculaneum. If the state fails to submit a complete SIP revision within 18 months of July 14, 1999, then pursuant to section 179(a) of the CAA and 40 CFR 52.31, the offset sanction identified in section 179(b) of the CAA will be applied. If the state still has not made a complete submission six months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area in accordance with 40 CFR 52.31. In addition, section 110(c) of the CAA provides that EPA promulgate a FIP no later than two years after a finding under section 179(a) if prior to that time EPA has not approved the submission correcting the deficiency.

The 18-month clock will stop, and the section 179(b) sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the state has made a complete submittal. In addition, EPA will not promulgate a FIP if the state makes the required SIP submittal and EPA takes final action to approve the submittal within two years of the effective date of EPA's finding.

II. Final Action

What Action Is EPA Taking?

We find that the State of Missouri failed to submit SIP revisions for the

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Doe Run-Herculaneum lead nonattainment area as required by section 179(d) of the CAA for areas which fail to attain. The revised SIP for the Doe Run-Herculaneum lead nonattainment area was due by August 15, 1998.

This finding of failure to submit initiates the sanctions clock as described in section I of this document. The sanctions clock begins on the effective date of this rulemaking.

What Is the Effective Date for This Rule?

The effective date for this rule is July 14, 1999, the date this action was signed.

EPA is treating this action as a "rule." Under the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), agency rulemakings may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. This action concerns implementation plan submittals that are already overdue. On February 25, 1999, we sent a letter to the Governor of Missouri stating that we were planning to take the action we are taking today. Consequently, the state has been on notice that today's action was pending. The state and general public are aware of applicable provisions of the CAA that relate to failure to submit a required implementation plan. In addition, this action simply starts a sanctions clock that will not result in offset sanctions for 18 months and that the state may stop by submitting a revised SIP that is found complete by EPA under section 110(k) of the CAA. Furthermore, the FIP clock may be stopped if the revised SIP is found approvable under section 110 and part D of the CAA. These reasons support an effective date prior to 30 days after the date of publication.

Why Is EPA Taking This Action Without Proposing and Taking Comments First?

This action is a final agency action but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). We believe that, because of the limited time provided to make findings of failure to submit regarding SIP submittals, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, we invoke the good cause exception in the APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure-to-submit elements of an implementation plan required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the CAA for making such determinations.

Finally, notice and comment would be contrary to the public interest because it would divert our resources from the critical substantive review of submitted implementation plans. See 58 FR 51270, 51272, note 17 (October 1, 1993) and 59 FR 39832, 39853 (August 4, 1994).

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, a summary of the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on any of these entities. This action implements EPA's requirements to review SIPs for completeness under 40 CFR part 51, appendix V. The SIP submission requirements for stopping clocks are not judicially enforceable. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not establish a further health or risk-based standard because it implements a previously promulgated health-or safety-based standard.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes.

Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Since this final rule is not subject to notice-and-comment requirements under the APA, or any other statutes, it is not subject to sections 603 or 604 of the RFA. Furthermore, this action will not have a significant impact on a substantial number of small entities because these findings under section 110 and Subchapter I, Part D of the CAA do not, in and of themselves, directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc.* v. *FEC*, 773 F.2nd 327 (D.C. Cir. 1985) (agency's certification need only consider the impact of the rule on entities subject to the requirements of the rule). Instead, this action makes findings of failure to submit and establishes a schedule for Missouri to stop the clocks and does not directly regulate any entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

Sections 202 and 205 do not apply to this action because the findings that Missouri failed to submit the required SIP for the Doe Run'Herculaneum area do not, in and of themselves, constitute a Federal mandate because they do not impose any enforceable duty on any entity. In addition, the CAA does not permit EPA to consider the type of analyses described in section 205 in determining whether a state has failed to submit a required SIP. Finally, section 203 does not apply to the action because the SIP submittal schedule to stop the clocks would only affect the state of Missouri, which is not a small government.

G. Paperwork Reduction Act (PRA)

This rule does not contain any information requirements which require OMB approval under the PRA (44 U.S.C. 3501 *et seq.*).

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 14, 1999, the date of signature. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the U.S. Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Lead.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 14, 1999.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 99–19158 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300893; FRL–6090–9]

RIN 2070–AB78

Zinc Phosphide; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on timothy, alfalfa, and clover at 0.1 part per million (ppm) for an additional 1½ –year period. This tolerance will expire and is revoked on August 1, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on timothy, alfalfa, and clover. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective July 28, 1999. Objections and requests for hearings must be received by EPA, on or before September 27, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300893], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests

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filed with the Hearing Clerk identified by the docket control number, [OPP–300893], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300893]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9364, pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of August 25, 1998 (63 FR 45176) (FRL–6021–6), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for the residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay) at 0.1 ppm, with an expiration date of February 1, 2000. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of the rodenticide zinc phosphide on timothy, alfalfa, and clover for this year's growing season due to a continued emergency situation. The potential vole population would result in significant economic loss. The currently available methods of control are inadequate and impractical. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of the rodenticide zinc phosphide on timothy, alfalfa, and clover for control of voles in Nevada.

EPA assessed the potential risks presented by residues of phosphine resulting from the use of the rodenticide zinc phosphide in or on timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay). In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of August 25, 1998 (63 FR 45176). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 1½–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although these tolerance will expire and are revoked on August 1, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on timothy (seed, forage, hay), alfalfa (forage, hay), and clover (forage, hay) after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by September 27, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300893] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and

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the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 15, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.284 [Amended]

2. In § 180.284, by amending paragraph (b) by revising the date "02/01/00" wherever it appears to read "8/1/01".

[FR Doc. 99–19001 Filed 7–27–99; 8:45 am]
BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–42 and 101–43

[FPMR Amendment H–204]

RIN 3090–AG80

Excess Personal Property Reporting Requirements

AGENCY: Office of Governmentwide Policy, GSA

ACTION: Final rule.

SUMMARY: This final rule revises the Federal Property Management Regulations (FPMR) to remove the prohibition on donation of surplus Federal firearms to allow donations to State and local law enforcement activities. This rule also revises the FPMR to streamline and simplify the assignment of the disposal condition codes which Federal agencies use to report their excess personal property for utilization and donation.

EFFECTIVE DATE: July 28, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Martha Caswell, Director, Personal Property Management Policy Division (MTP), 202–501–3828.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule combines two proposed rules:

- Donation of Certain Federal Surplus Firearms to State or Local Law Enforcement Activities, published in the **Federal Register** on December 9, 1998 (63 FR 68136). Four comments were received and considered in the formulation of this final rule.
- Excess Personal Property Reporting Requirements, published in the **Federal Register** on December 29, 1998 (63 FR 71686). No comments were received.

B. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

GSA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose record keeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects

41 CFR Part 101–42

Government property management, Hazardous materials, Reporting and recordkeeping requirements, Surplus Government property.

41 CFR Part 101–43

Government property management, Surplus Government property.

For the reasons set forth in the preamble, 41 CFR Parts 101–42 and 101–43 are amended as follows:

1. The authority citation for parts 101–42 and 101–43 continues to read as follows:

Authority: Sec. 205 (c), 63 Stat. 390; 40 U.S.C. 486(c).

PART 101–42—UTILIZATION AND DISPOSAL OF HAZARDOUS MATERIALS AND CERTAIN CATEGORIES OF PROPERTY

2. Section 101–42.1102–10 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101–42.1102–10 Firearms.

(a) *Utilization requirements.* (1) In accordance with § 101–43.4801(c) of this chapter, reports of excess reportable firearms and requests for their transfer must be submitted to the:

General Services Administration (7FP–8), Denver, CO 80225–0506.

(2) Firearms may be transferred only to those Federal agencies authorized to acquire firearms for official use. Such transfers must be executed under § 101–43.309–5 of this chapter and, when applicable, § 101–42.1102–8(b). Additional written justification from the requesting agency may be required.

(b) *Donation requirements.* (1) Only handguns, rifles, shotguns, and individual light automatic weapons, all less than .50 caliber in FSC 1005, and rifle and shoulder fired grenade launchers in FSC 1010, assigned a disposal condition code of 4 or better, as defined in § 101–43.4801(e) of this chapter, may be offered by GSA (7FP–8) to State agencies for donation to eligible law enforcement entities for law enforcement purposes only. Donations are limited to only those eligible law enforcement entities whose primary function is the enforcement of applicable Federal, State, and/or local laws, and whose compensated law enforcement officers have powers to apprehend and arrest. Such donations must be executed under § 101–42.1102–8(c) as applicable.

(2) Each SF 123 submitted to GSA must be accompanied by a conditional transfer document, signed by both the intended donee and the State agency, and containing the special terms, conditions, and restrictions prescribed by GSA, and any other required forms or information.

(3) The restrictions on donated firearms shall be in perpetuity, and they may not be released by the State agency without prior written approval from GSA. The donee must notify the State agency when donated firearms are no longer needed. The State agency may, with GSA approval, reassign firearms from one donee to another donee within the state or to another SASP (see § 101–44.205(f) of this chapter); otherwise, firearms must be delivered directly to the place of destruction to be destroyed by either the donee or the State agency. Destruction must be such that each complete firearm is rendered completely inoperable and incapable of being made operable for any purpose except for the recovery of basic material content in accordance with paragraph (c) of this section. The donee and a representative from the State agency, or designee, must both state in writing that the firearms were so destroyed and the original signed statement must be maintained by the State agency.

(4) Surplus firearms approved for donation must be shipped or transported directly from the holding Federal agency to the donee, and may not be stored in the State agency warehouse; or, arrangements may be made by the State agency for the designated donee to make a direct pickup at the holding agency.

(5) Firearm ammunition may not be donated.

* * * * *

PART 101–43—UTILIZATION OF PERSONAL PROPERTY

3. Section 101–43.304–2 is amended by revising paragraph (b) to read as follows:

§ 101–43.304–2 Form and distribution of reports.

* * * * *

(b)(1) The SF 120 and SF 120A must be submitted in an original and three copies. Electronic reporting must be as specified and approved by GSA. Reports must be directed to the GSA regional office for the region in which the property is located (see § 101–43.4802). However, reports of fixed-wing and rotary-wing aircraft must be submitted to the:

General Services Administration (9FB), San Francisco, CA 94015.

(2) Reports of excess firearms must be submitted to the:

General Services Administration (7FP–8), Denver, CO 80225–0506.

4. Section 101–43.305 is amended by revising the section heading and paragraph (b)(2) to read as follows:

§ 101–43.305 Nonreportable property and property not subject to GSA screening.

* * * * *

(b) * * *

(2) Property dangerous to public health and safety, except the firearms identified in § 101–43.4801(c);

* * * * *

5. Section 101–43.4801 is revised to read as follows:

§ 101–43.4801 Excess personal property reporting requirements.

(a) The table shown in paragraph (d) of this section shows the excess personal property Federal supply groups (FSG) and classes (FSC) comprising reportable property. Property in these groups and classes must be reported to GSA when the following disposal condition code and dollar threshold criteria are met:

(1) With the exception of aircraft and firearms as described in paragraphs (b) and (c) of this section, the disposal condition code as defined in paragraph (e) of this section, is X or better; and

(2) The unit cost, measured in acquisition dollars, is $5,000 or more.

(b) With respect to aircraft and aircraft components and accessories:

(1) In accordance with § 101–43.304–2, and as indicated in the table in paragraph (d) of this section, line items in Federal supply classes 1510, 1520, 1560, 2810, 2840, or any class in FSG 16 must be reported regardless of disposal condition code. In agencies other than the Department of Defense (DOD), all line items in these classes must be reported regardless of disposal condition code when the dollar criteria in paragraph (a)(2) of this section are met. For the DOD, aircraft in FSC 1510 which are in the Cargo/Transport, Observation, Anti-sub, Trainer, or Utility series, all aircraft in FSC 1520, and line items in other classes which are components of these aircraft must be reported regardless of condition code when the dollar criteria in paragraph (a)(2) of this section are met.

(2) Items in Federal supply classes 1510 and 1520 held by DOD or other agencies must be reported to the:

General Services Administration (9FB), San Francisco, California 94102.

(c) With respect to firearms, executive agencies must report the following firearms, regardless of unit cost when assigned a disposal condition code of 4 or better as defined in paragraph (e) of this section, to the General Services Administration (7FP–8), Denver, CO 80225–0506:

(1) Handguns, rifles, shotguns, and individual light automatic weapons, all less than .50 caliber in FSC 1005; and

(2) Rifle and shoulder fired grenade launchers in FSC 1010.

(d) The following table shows Federal supply groups and classes which comprise reportable property:

FSG	FSC	Noun name
10	1005	Guns, through 30mm (Handguns, rifles, shotguns, and individual light automatic weapons, all less than .50 caliber only).
	1010	Guns, over 30 mm up to 75 mm (Rifle and shoulder fired grenade launchers only).
15	1510	Aircraft, fixed wing.
	1520	Aircraft, rotary wing.
	1560	Airframe structural components.
16	All	Aircraft component and accessories.
18	All	Space vehicles.
19	All	Ships, small craft, pontoons, and floating docks (All but vessels 1500 gross tons and over).
22	All	Railway equipment.
23	All	Ground effect vehicles, motor vehicles, trailers, and cycles.
24	All	Tractors.
28	2805	Gasoline reciprocating engines, except aircraft; and components.
	2810	Gasoline reciprocating engines, aircraft prime mover; and components.
	2815	Diesel engines and components.
	2840	Gas turbines and jet engines, aircraft, prime moving; and components.
32	All	Woodworking machinery and equipment.
34	All	Metalworking machinery.
35	All	Service and trade equipment.
36	All	Special industry machinery (All but 3690 Specialized ammunition and ordnance machinery and related equipment).
37	All	Agricultural machinery and equipment.
38	All	Construction, mining, excavating, and highway maintenance equipment.
39	All	Materials handling equipment.
42	All	Fire fighting, rescue, and safety equipment; and environmental protection equipment and materials.
43	All	Pumps and compressors.
49	4910	Motor vehicle maintenance and repair shop specialized equipment.

FSG	FSC	Noun name
	4920	Aircraft maintenance and repair shops specialized equipment.
	4930	Lubrication and fuel dispensing equipment.
	4935	Guided missile maintenance, repair, and checkout specialized equipment.
	4940	Miscellaneous maintenance and repair shop specialized equipment.
	4960	Space vehicle maintenance, repair, and checkout specialized equipment.
54	All	Prefabricated structures and scaffolding.
61	All	Electric wire, and power and distribution equipment.
66	All	Instruments and laboratory equipment.
70	All	Information technology equipment.
71	All	Furniture.
73	All	Food preparation and serving equipment.

(e) The appropriate disposal condition code from the following table must be assigned to each item record, report, or listing of excess personal property:

Disposal condition code	Expanded definition
1	Property which is in new condition or unused condition and can be used immediately without modifications or repairs.
4	Property which shows some wear, but can be used without significant repair.
7	Property which is unusable in its current condition but can be economically repaired.
X	Property which has value in excess of its basic material content, but repair or rehabilitation is impractical and/or uneconomical.
S	Property which has no value except for its basic material content.

Dated: July 20, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–19098 Filed 7–27–99; 8:45 am]

BILLING CODE 6820–24–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 3

[IB Docket No. 98–96, FCC 99–150]

Biennial Review

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document further streamlines the authorization and regulation of privately owned accounting authorities that settle accounts for maritime mobile, maritime satellite, aircraft and hand-held terminal radio services. The Commission concluded that there is no need for the Commission to act as an accounts clearinghouse for maritime and satellite communications and that the private authorities that the Commission has certified, acting under regulations prescribed by the Commission and under its oversight, can successfully settle all accounts for U.S. users of these radio services. The Commission also concluded that Commission withdrawal as an accounting authority will promote competition among private authorities. The Commission initiated this proceeding pursuant to the Telecommunications Act of 1996, which directs the Commission to undertake a review every even-numbered year of all regulations that apply to providers of telecommunications services to determine whether any such regulation is no longer necessary.

DATES: Effective August 27, 1999.

FOR FURTHER INFORMATION CONTACT: John Copes, Attorney-Advisor, Multilateral and Development Branch, Telecommunications Division, International Bureau, (202) 418–1478.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's R&O, FCC 99–150, adopted on June 21, 1999, and released on July 13, 1999. The full text of this R&O is available for inspection and copying during normal business hours in the Federal Communications Commission, Reference Information Center (Room CY–A257), 445 12th St., SW, Washington, DC 20554 The complete text of the R&O may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th St., NW, Washington, DC 20036, (202) 857–3800.

Summary of R&O

1. In July 1998, the Commission adopted a Notice of Proposed Rulemaking (63 FR 39800, July 24, 1998) (NPRM) to streamline further the regulations and authorization of privately owned accounting authorities that settle accounts in the maritime mobile and maritime mobile-satellite radio services. Maritime mobile satellites are also used to provide satellite-based aviation services and services to hand-held radio terminals. In that connection the Commission proposed to withdraw from performing the functions of an accounting authority and, instead, to rely solely upon the private accounting authorities to settle accounts for U.S. users of maritime and satellite communications. The Commission also proposed to amend its rules to make explicit the fact that certified accounting authorities are required, in settling accounts, to deal with the public on a reasonable and nondiscriminatory basis. The Commission also inquired into whether it should designate a new entity to perform the function of "accounting authority of last resort" the Commission has traditionally performed whereby it settles accounts for all users who have not designated an accounting authority at the time they made the radio communication.

2. On June 21, 1999, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking (FCC 99–150) to make final the proposals in its July 1999 NPRM and to institute a transition period leading to the handing over of its functions to private accounting authorities. A proposed rule relating to this proceeding is published elsewhere in this issue of the **Federal Register**. In the R&O portion of the document, the Commission affirmed its proposal to withdraw from performing the functions of an accounting authority and to rely solely upon the private accounting authorities to provide account-settlement services for maritime and satellite communications. The Commission made clear that it will continue to operate as administrator of all U.S.-certified accounting authorities and the basic rules and procedures for certifying accounting authorities and will continue to oversee the operation of all certified accounting authorities.

3. The Commission has also made final its proposal to amend section 3.10(e) of its rules (47 CFR 3.10(e)) to make clear that private accounting authorities are required to serve the public on a reasonable and nondiscriminatory basis in their performance of their accounts-settlement services. The rules had already required private accounting authorities to deal with their customers in a reasonable manner. The Commission concluded, however, that it would be desirable upon its withdrawal as an accounting authority to make explicit the fact that such reasonable treatment requires accounting authorities to offer their services to the public upon a reasonable request therefore, without undue discrimination against any customer or class of customer, and to charge reasonable and nondiscriminatory fees for service.

4. The Commission, however, concluded that, notwithstanding the general requirement for nondiscriminatory treatment, it should continue to exempt one "grandfathered" entity from the requirement to serve all comers. Prior to 1996, when the Commission adopted formal rules governing the certification and authorization of private accounting authorities, the Commission had certified a variety of such entities on an interim basis. Under those interim certification procedures, the Commission had allowed one entity to become an accounting authority to provide account-settlements services solely for its own ships. At the time the Commission adopted formal certification rules that imposed upon private authorities the requirement to treat all users in a reasonable manner (section 3.10(e)), the Commission decided to exempt that entity from the obligation of section 3.10(e) to allow it to continue to provide services only for its own ships. The Commission noted that the grandfathered entity had become an accounting authority solely to serve its own ships and had stated that it has no interest in providing account-settlement services as a business. The Commission concluded that, because it had become an accounting authority before there was a requirement to serve all users, it would be a hardship to require the entity to change its operation under the 1996 rules. Because it believes that the amendment of Section 3.10(e) does not substantively alter the obligations contained in the prior wording of Section 3.10(e), the Commission had proposed to continue the exemption under the amended rule section.

Regulatory Flexibility Act

5. As required by the Regulatory Flexibility Act, 5 U.S.C. 603, we prepared an Initial Regulatory Flexibility Analysis (IRA) of the possible impact on small entities of the proposals contained in the July 1999 NPRM in this proceeding. We received no comments on the IRFA. After reviewing comments on the proposals in the NPRM, we have prepared a Final Regulatory Flexibility Analysis (FRFA) on the rules adopted by the R&O. The FRFA is contained in Attachment B.

6. Accordingly, *it is ordered*, pursuant to Sections 4(i), 4(j), 11, 201–205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 161, 201–205 and 303(r), that this R&O *is hereby adopted*.

7. *It is further ordered* that section 3.10(e) is amended to read as shown in Attachment A.

8. *It is further ordered* that the Office of Public Affairs, Reference Operations Division, *shall send* a Copy of this R&O, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Final Regulatory Flexibility Analysis

9. As required by the RFA, 5 U.S.C, 603, the Commission included an Initial Regulatory Flexibility Analysis (IRFA) in the NPRM in this proceeding. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. This FRFA conforms to the RFA.

A. Need for, and Objectives of, the Rule Adopted Here

10. This R&O adopts an amendment to Section 3.10 of the Commission's Rules and Regulations to clarify that the section obligates private accounting authorities certified by the Federal Communications Commission to deal with the public on a non-discriminatory basis. We do not believe that this amendment changes the substance of the rule that the Commission adopted in 1996, which implicitly required such non-discriminatory treatment, but believe that it is desirable to make private accounting authorities' obligations as clear as possible.

11. The R&O also adopts the proposal in the NPRM to continue the exemption for one entity that had previously been certified as a private accounting authority on an interim basis that allows it to provide account-settlement services only for its own vessels. This entity had obtained interim certification before the Commission imposed an obligation for private accounting authorities to provide service to all customers requesting it, and the Commission believes that it would work an undue hardship to require it to change the scope of its operations. We believe that the public has adequate opportunity to obtain service from other private accounting authorities the Commission has certified and that there is no reason at this time to require this entity to serve all comers.

12. Finally, this R&O adopts the proposal in the NPRM that the Commission will cease to act as an accounting authority, leaving the settlement of maritime and satellite accounts to the private accounting authorities the Commission has certified. We believe that withdrawal of the Commission as an accounting authority will strengthen the system of private accounting authorities the Commission has created over the years and allow such private authorities to become more competitive. We do not see a need for a governmental body to perform account-settlement functions, because these functions have been performed without difficulty by a variety of private authorities, operating under FCC rules for many years. The Commission has concluded that there is no reason for the FCC to continue to settle the accounts for other U.S. government agencies. We find that the agencies have not argued that they have any special needs with respect to the settlement of their radio accounts that cannot be met by private accounting authorities. The Commission did, however, note that the agencies have relied upon the Commission to settle their accounts and conclude that the immediate withdrawal of the Commission as an accounting authority could cause some temporary disruption or curtailment of service to government users. The Commission, therefore, concluded to delay its departure and to institute a transition period. The Commission believes that such transition period will give that agencies time to make all preparations, including any budgetary adjustments, for shift to a private accounting authority. The nature of the transition period will be addressed by the FNPRM.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

13. There were no comments submitted in response to the IRFA. Because the proposed amendment of Section 3.10 made no substantive change to the current obligation of private accounting authorities, the adoption of the proposed amendment will have no significant impact upon any small business entities. Similarly, the proposal to continue to exempt one entity from the obligation to provide service to all users on a non-discriminatory basis does not make a change from the present situation, adoption of the proposal will not have

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a significant impact upon a small business. The entity that was exempted is not itself a small business. Because there are many other private accounting authorities who are obligated to serve users on a non-discriminatory basis, allowing the one entity to provide services only to its own vessels will not adversely affect any small businesses that are customers of private accounting authorities. Finally, the decision for the FCC to withdraw as an accounting authority should not have any significant impact upon small business entities. Even without the FCC to settle accounts for users, there will be a sizeable number of private accounting authorities to take over FCC functions.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

14. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.

15. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million. The Census report does not provide more precise data. The rules proposed in this Notice of Proposed Rulemaking, however, apply only to entities providing account-settlement services for maritime mobile and maritime mobile-satellite radio services. As noted, there are currently only 17 such entities. Small businesses may be able to become accounting clearinghouses, as the establishment of such a function does not appear to involve high implementation costs.

D. Description of Projected Recordkeeping and Other Compliance Requirements

16. The rule amendment adopted in this R&O merely clarifies an existing requirement imposed on accounting authorities. It, therefore, does not alter the reporting, recordkeeping or other compliance requirements of certified accounting authorities in the maritime mobile, maritime mobile-satellite, aeronautical and other satellite-based radio services. The decision to continue the exemption of one currently certified accounting authority from the requirement to serve the public on a non-discriminatory basis affects only that entity. Further, because it continues the current exemption, it will not alter that entity's recordkeeping or compliance activities. The decision of the Commission to withdraw as an accounting authority will affect both those now certified as accounting authorities and those who may apply for certification in the future. The withdrawal of the Commission will result in the transfer of the accounts that the Commission now settles to the private accounting authorities. This should give each such accounting authority the opportunity to compete for increased business. The withdrawal of the Commission , however, should not increase the recordkeeping and compliance efforts of private accounting authorities.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

17. Because the rule amendment adopted in this R&O did not alter the obligations of any present or future certified private accounting authority, there was no need to take any steps to minimize the impact of the rule. Similarly, the decision of the Commission to continue the exemption for one entity from the obligation to serve the public on a non-discriminatory basis did not change that entity's current obligations, there was no need to take steps to minimize the impact of the exemption on small entities. The decision of the Commission to withdraw as an accounting authority will increase the potential business of currently certified accounting authorities. It also may make additional entities decide that they would like to seek certification as a private accounting authority. Commission withdrawal as an accounting authority will require those who currently rely upon the FCC to settle their maritime and satellite radio accounts will be required to select new accounting authority from among certified accounting authorities. It is conceivable that selection of such an accounting authority may be more difficult for some small entities than others. Because the Commission has delayed the effectiveness of its withdrawal as an accounting authority until the completion of a transition plan, small entities will not have to choose a new authority immediately. Small entities will be able to bring any special needs to the attention of the Commission during the preparation of the transition plan that will be undertaken pursuant to the FNPRM.

Report to Congress

18. The Commission will send a copy of this R&O, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the R&O, including this FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the R&O and FRFA (or summaries thereof) will be Published in the **Federal Register**. See 5 U.S.C. 604(b).

List of Subjects in 47 CFR Part 3

Accounting.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

Part 3 of the Commission's Rules and Regulations Title 47 of the Code of Federal Regulations is amended as follows:

PART 3—AUTHORIZATION AND ADMINISTRATION OF ACCOUNTING AUTHORITIES IN MARITIME AND MARITIME MOBILE-SATELLITE RADIO SERVICES

1. The authority citation for Part 3 continues to read as follows:

Authority: 47 U.S.C. 154(i), 154(j) and 303(r).

2. Section 3.10 is amended by revising the first sentence of paragraph (e) to read as follows:

§ 3.10 Basic requirements.

* * * * *

(e) Applicants must offer their services to any member of the public making a reasonable request therefor, without undue discrimination against any customer or class of customer, and fees charged for providing such services shall be reasonable and non-discriminatory. * * *

* * * * *

[FR Doc. 99–19065 Filed 7–27–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–97–2095; Amdt. 195–66]

RIN 2137-AC 11

Pipeline Safety: Adoption of Consensus Standards for Breakout Tanks; Correction

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; correction of effective date.

SUMMARY: This document corrects the effective date of the final rule published on April 2, 1999, to comply with requirements of the Small Business Regulatory Enforcement Fairness Act of 1996.

DATES: The effective date of the April 2, 1999 rule is corrected to July 28, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Huriaux, OPS, (202) 366–4595.

SUPPLEMENTARY INFORMATION: RSPA published a final rule in the **Federal Register** on April 2, 1999 (63 FR 15926) to incorporate by reference various consensus standards for aboveground steel storage tanks used in the transportation of hazardous liquids by pipeline. The final rule amended the hazardous liquid pipeline safety regulations and specified an effective date of May 3, 1999. The Small Business Regulatory Enforcement Fairness Act of 1996 specifies that no rule can take effect until each house of Congress and the Comptroller General are provided a copy of the rule. A copy of this rule was not provided to these parties prior to publication of the final rule. Therefore the effective date for the final rule is now corrected to allow the final rule to be delivered to Congress and the Comptroller General. No other dates contained in the April 2, 1999 document are affected by publication of this document.

Correction of Publication

In the **Federal Register** issue of April 2, 1999 (63 FR 15926) make the following correction. On page 15926, in the third column, under the caption "DATES", correct the first sentence to read: "This final rule takes effect July 28, 1999. The incorporation by reference of certain publications listed in the rule is approved by the Director of Federal Register July 28, 1999."

Issued in Washington, DC, on July 19, 1999.

Kelly S. Coyner,

Administrator.

[FR Doc. 99–19143 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 583

[Docket No. NHTSA–98–5064, Notice 2]

RIN 2127–AH33

Motor Vehicle Content Labeling

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the regulation we issued to implement the American Automobile Labeling Act. That Act requires passenger motor vehicles to be labeled with information about their domestic and foreign parts content. Congress amended that Act last year to make a number of changes in the labeling requirement. This final rule makes the regulation consistent with those changes.

DATES: *Effective date:* The amendments made in this rule are effective June 1, 2000. Manufacturers may voluntarily comply with the amendments before that time.

Petitions for reconsideration: Petitions for reconsideration must be received not later than September 27, 1999.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Henrietta Spinner, Office of Planning and Consumer Programs, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590 (202–366–4802).

For legal issues: Edward Glancy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590 (202–366–2992).

SUPPLEMENTARY INFORMATION:

Background

On July 21, 1994, NHTSA published in the **Federal Register** (59 FR 37294) a new regulation, 49 CFR part 583, Automobile Parts Content Labeling, to implement the American Automobile Labeling Act (AALA). That Act, which is codified at 49 U.S.C. 32304, requires passenger motor vehicles to be labeled with information about their domestic and foreign parts content.

As part of the NHTSA Reauthorization Act of 1998,[1] Congress amended the AALA to make a number of changes in the labeling requirement. The changes are set forth in section 7106(d) of the NHTSA Reauthorization Act.

On February 8, 1999, we published in the **Federal Register** (64 FR 6021) a notice of proposed rulemaking (NPRM) to amend Part 583 to conform it to the amended AALA. We discussed each of the changes made by the Congress and the conforming amendments proposed for part 583.

Three of the changes made by Congress were of particular significance. One of these concerned the "roll-up, roll-down" provision. The original Act specified that, for purposes of determining percentage U.S./Canadian parts content, any equipment from outside suppliers that was at least 70 percent U.S./Canadian was rolled-up and treated as though it were 100 percent U.S./Canadian. Any equipment under 70 percent was rolled-down and treated by the Act as though it were zero percent U.S./Canadian.

The 1998 amendments eliminated the "roll-down" aspect of this provision. While equipment from an outside supplier that is at least 70 percent U.S./Canadian is still to be valued at 100 percent U.S./Canadian, any equipment under 70 percent is now valued to the nearest five percent. Thus, equipment whose calculated U.S./Canadian content is 63 percent is now to be valued at 65 percent, instead of zero percent.

The second of these changes concerned the origin of the engine and transmission. The original Act specified that the label must state the names of the countries of origin for the engine and for the transmission. The Act provided that the determinations of country of origin were to be based on the purchase price of materials received at individual engine/transmission plants, but were to exclude engine/transmission assembly costs. The 1998 amendments specified that assembly and labor costs incurred for the assembly of engines and transmissions are now to be included in making these country of origin determinations.

The third of these changes made permanent a limited, temporary

[1] This Act was part of the Transportation Equity Act for the 21st Century (TEA–21). The full text of TEA–21 and the conference report is available on the Web at http://www.fhwa.dot.gov/tea21/.

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provision in the part 583 content calculation procedures giving a vehicle manufacturer added flexibility in making content determinations in those instances in which outside suppliers have not responded to the manufacturer's requests for content information.

In addition to proposing specific changes to conform Part 583 to the amended AALA, we also proposed a change in the format of the messages on the label to make them easier to understand. Part 583 currently requires a brief explanatory note concerning parts content to be provided at the end of the label. We proposed to require that this note be moved to the middle of the label, directly below the items of information for which the note is relevant, i.e., below the specified U.S./Canadian Parts Content and Major Sources of Foreign Parts Content.

We proposed to apply the new requirements to all model year 2000 carlines that were first offered for sale to ultimate purchasers on or after June 1, 1999. Since the changes were relatively straightforward and the statutory amendments left us little discretion, we believed the vehicle manufacturers could implement the changes needed to comply with the new requirements quickly.

Public Comments

We received public comments from several vehicle manufacturers and their associations, and from the National Automobile Dealers Association (NADA). Also, pursuant to the Agreement on Technical Barriers to Trade, the World Trade Organization (WTO) Secretariat was notified of the proposed rule. The European Commission sent comments to the WTO Enquiry Point for the United States, which forwarded the comments to our Docket. A summary of the more significant comments follows.

Several of the commenters reraised previous criticisms of the basic program established by the AALA. However, these comments were not within the scope of the NPRM. Moreover, the criticisms were directed to the AALA itself.

Commenters representing nearly all motor vehicle manufacturers stated that the proposed effective date of June 1, 1999 provided insufficient lead time. The Alliance of Automobile Manufacturers (Alliance) stated that its members would face extreme difficulties in implementing the proposed changes in such a short period. It stated that the elimination of the "roll-down" provision will require new, detailed certifications from outside suppliers which cannot reasonably be prepared and obtained in such a short time frame. The Alliance also stated that its member companies may need to adapt their computer systems supporting the AALA parts content calculation. The Alliance recommended an effective date of June 1, 2000.

The Association of International Automobile Manufacturers, Inc. (AIAM) similarly stated that the proposed effective date was neither reasonable nor practicable. That organization stated that auto manufacturers and their suppliers require considerable lead time to prepare an AALA label. AIAM stated that these preparations can often require up to seven months lead time to complete. AIAM provided a chart showing a typical AALA compliance schedule, including specific details of activities manufacturers must undertake.

Commenters also made several recommendations to reduce costs. The Japan Automobile Manufacturers Association (JAMA) stated that while elimination of the "roll-down" provision will result in a more accurate picture of actual parts content, it will do so at increased cost to the outside supplier, and hence to the vehicle manufacturer and ultimately the consumer. JAMA stated that one means of addressing this cost burden would be to permit suppliers of parts with low U.S./Canadian content to report that such content is "minimal" or "negligible" without the burdensome certification requirements otherwise required.

JAMA noted that the agency had previously stated that it did not have authority to permit manufacturers to label vehicles with low U.S./Canadian content as "minimal," given the statutory requirement for manufacturers to provide a specific percentage. That organization stated that it believes the agency placed too much emphasis on its estimate on Congressional intent with respect to the issue.

JAMA stated that, at the very least, the agency should permit outside suppliers to employ the "minimal" concept, allowing vehicle manufacturers the option to state that all parts imported from a given overseas supplier are all "non-U.S./Canadian," without keeping records by the individual part. That organization stated that this would serve to reduce the burden and simplify the calculation without compromising the integrity of the statute.

AIAM and Volkswagen made a recommendation with respect to a change to the AALA which specifies that the costs of miscellaneous parts (e.g., nuts, bolts, windshield wiper fluid, etc.) are now allocated to the country where final assembly of the vehicle takes place. These parts previously were not considered in making parts content calculations. AIAM and Volkswagen stated that it is difficult to identify the value of the miscellaneous parts on a particular carline and asked that an averaging concept be permitted, e.g., permit manufacturers to calculate a total value for all of the miscellaneous parts used to produce vehicles at a particular assembly plant and then divide that total by the number of vehicles produced.

One commenter, DaimlerChrysler, objected to the proposal to move the explanatory note to the middle of the label. That company stated that any change to the content label involves a good deal of coordination and programming effort and substantial lead time, and that the change would add additional cost and burden with little or no tangible benefit.

Agency Decision

After carefully considering the comments, we have decided to make the proposed rule final, but with a later effective date.

We have decided to establish an effective date of June 1, 2000, as recommended by the Alliance, while permitting optional early compliance. The proposed effective date of June 1, 1999 was based on an assumption that vehicle manufacturers and suppliers had already begun to collect the information needed to make the revised calculations required by the NHTSA Reauthorization Act of 1998. However, since the comments indicated that this was not true in many cases, the agency has concluded that a significantly longer leadtime is needed.

By permitting optional early compliance, vehicle manufacturers which are able to comply with the new requirements earlier, including for some or all of their model year 2000 vehicles, can do so. We recognize that consumers comparing the labels on different model year 2000 vehicles may sometimes be faced with differing labels. However, the changes are sufficiently minor that we do not believe this will cause any significant confusion.

We note that the AALA and part 583 contemplate that U.S./Canadian parts content and major sources of foreign parts content are determined on a once-a-model-year basis for a particular carline. The June 1, 2000 effective date means that new model year carlines introduced to the public on or after that date must bear the revised labels. New model year carlines introduced before that date may continue to bear the old labels for the balance of the model year, even for vehicles manufactured after June 1, 2000.

While we have considered JAMA's request to permit suppliers of parts with low U.S./Canadian content to report such content as "minimal" or "negligible" rather than as a percentage (to the nearest five percent), we do not believe that such an exception from the express statutory requirements has been justified. Most significantly, JAMA has not shown that such an exception would not result in a loss of non-trivial benefits. The agency would not have authority to create such an exception, absent such a showing. Moreover, JAMA has not provided support for its contention that the requirement to provide a percentage is burdensome.

As to the AIAM/Volkswagen request that an averaging concept be permitted for calculating the value of miscellaneous parts, we note that the proposed rule did not include a procedure for calculating the value of these parts. It is our opinion that manufacturers need not identify the individual cost of each nut and bolt, but may simply make a good faith estimate of the overall value of miscellaneous parts. We do not believe it is necessary to state this in the regulatory text itself. One way of making such a good faith estimate might be to calculate a total value for all of the miscellaneous parts used to produce vehicles at a particular assembly plant and then divide that total by the number of vehicles produced. However, if substantially different vehicles were produced at the same plant, the vehicle manufacturer might need to make an adjustment so that the estimated value was reasonable for each individual carline.

While we have considered DaimlerChrysler's arguments against moving the explanatory note, we have decided to adopt this proposed change. As discussed in the NPRM, we believe that moving the note to the middle of the label, directly below the items of information for which the note is relevant, will make the label easier to read. While DaimlerChrysler stated that there is a cost to making any format change, it did not quantify the cost. Given that the label will have to be changed in other ways anyway, we believe that any cost impacts for moving the note will be negligible.

As noted earlier, several of the commenters criticized the basic requirements of the AALA. NADA stated that the rule is of little value to most consumers. AIAM stated that while Congress addressed some of its concerns in last year's amendments, it believes the law continues to provide misleading and inaccurate information. JAMA argued that the statute is costly to implement, burdensome to vehicle manufacturers and outside suppliers, and of little interest or use to vehicle purchasers in their buying decisions.

The EC submitted a comment stating:

> The EC thinks that the label is superfluous, it is getting harder and harder to determine the real origin of details. Many companies manufacture in several countries and they can also be owned by several large owners. The new procedure makes it even more cumbersome when additional details such as screws and clips must be taken into account when determining the origin. The vehicle manufacturers must also get a certificate from each large supplier.

While we understand that a number of parties continue to have objections to the current content labeling program, we note that the objections are with the underlying statute. Since most of the details of the content labeling program are set forth in the AALA, any significant changes could only come from the Congress. We do note, however, that the extended leadtime provided for today's rule and our interpretation that good faith estimates may be made concerning the value of miscellaneous parts will help minimize costs.

We also note that this agency is in the process of conducting an evaluation of the AALA. This evaluation is being conducted pursuant to Executive Order 12866, Regulatory Planning and Review, which requires agencies to conduct periodic evaluations of the effectiveness of its existing regulations and programs. This evaluation is listed in the April 1999 Semiannual Regulatory Agenda. See 64 FR 21706, April 26, 1999. We plan to publish the evaluation of the AALA in the summer of 2000 in the **Federal Register** and will solicit comments from all parties.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action has been determined not to be significant under the Department's regulatory policies and procedures.

This final rule amends 49 CFR part 583 to conform the agency's content labeling requirements and calculation procedures to recent statutory changes. The changes are so minor that they will not have any measurable effect on vehicle prices.

The change most likely to result in any cost impacts is the one requiring outside suppliers to make calculations of U.S./Canadian content, to the nearest five percent, for equipment with U.S./Canadian content below 70 percent. This will increase compliance costs for some outside suppliers. The agency notes that there are about 15,000 suppliers to vehicle manufacturers. However, many small suppliers procure all their materials and components from the same country, and will experience negligible costs. NHTSA believes that cost impacts for other suppliers will be small and will diminish over time. Somewhat higher costs are likely to be experienced the first year as suppliers become familiar with the new calculation procedures and incorporate them into their programming or other systems. While the agency has concluded that the cost impacts will be small, it does not have sufficient information to quantify such costs. No commenter quantified any of the cost impacts. Because the economic impacts of this proposal are so minimal, preparation of a full regulatory evaluation is not necessary.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I hereby certify that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Although certain small businesses, such as parts suppliers and some vehicle manufacturers, are affected by the regulation, the effect on them is minor. The requirements are strictly informational and, as discussed above, cost impacts small.

C. National Environmental Policy Act

We have analyzed this final rule for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism)

We have analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 12612. We have determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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E. Paperwork Reduction Act

Information collection requirements established in this final rule differ from those approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act (Pub. L. 96–511) and assigned OMB Control Number 2127–0573. The current approval will expire on June 30, 2001. Since NHTSA believes that the changes will result in a small increase in the paperwork burden of this reporting requirement, NHTSA will ask OMB for approval to amend OMB Control Number 2127–0573 to account for any additional information collection burdens imposed on the public.

F. Executive Order 12778 (Civil Justice Reform)

This final rule does not have any retroactive effect. States are preempted from promulgating laws and regulations contrary to the provisions of this rule. The rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 583

Imports, Motor vehicles, Labeling, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 583 is amended as follows:

PART 583—AUTOMOBILE PARTS CONTENT LABELING

1. The authority citation for part 583 continues to read as follows:

Authority: 49 U.S.C. 32304, 40 CFR 1.50, 501.2(f).

2. Section 583.4 is amended by revising paragraph (b)(7) to read as follows:

§ 583.4 Definitions.

* * * * *

(b) * * *

(7) *Passenger motor vehicle equipment* means any system, subassembly, or component received at the final assembly point for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer for sale to an ultimate purchaser. Passenger motor vehicle equipment also includes any system, subassembly, or component received by an allied supplier from an outside supplier for incorporation into equipment supplied by the allied supplier to the manufacturer with which it is allied.

* * * * *

3. Section 583.5 is amended by revising paragraph (a)(4), (a)(5), (b), and (i) to read as follows:

§ 583.5 Label requirements.

(a) * * *

(4) *Country of origin for the engine.* The country of origin of the passenger motor vehicle's engine (the procedure for making this country of origin determination is set forth in § 583.8);

(5) *Country of origin for the transmission.* The country of origin of the passenger motor vehicle's transmission (the procedure for making this country of origin determination is set forth in § 583.8);

* * * * *

(b) Except as provided in paragraphs (e), (f) and (g) of this section, the label required under paragraph (a) of this section shall read as follows, with the specified information inserted in the places indicated (except that if there are no major sources of foreign parts content, omit the section "Major Sources of Foreign Parts Content"):

Parts Content Information

For vehicles in this carline:
U.S./Canadian Parts Content: (insert number) %
Major Sources of Foreign Parts Content:
(Name of country with highest percentage): (insert number) %
(Name of country with second highest percentage): (insert number) %

Note: Parts content does not include final assembly, distribution, or other non-parts costs.

For this vehicle:
Final Assembly Point: (city, state, country)
Country of Origin:
Engine: (name of country)
Transmission: (name of country)

* * * * *

(i) *Carlines assembled in more than one assembly plant.* (1) If a carline is assembled in more than one assembly plant, the manufacturer may, at its option, add the following additional information at the end of the explanatory note specified in paragraph (a)(6) of this section, with the specified information inserted in the places indicated:

Two or more assembly plants produce the vehicles in this carline. The vehicles assembled at the plant where this vehicle was assembled have a U.S./Canadian parts content of [__]%.

(2) A manufacturer selecting this option shall divide the carline for purposes of this additional information into portions representing each assembly plant.

(3) A manufacturer selecting this option for a particular carline shall provide the specified additional information on the labels of all vehicles within the carline.

4. Section 583.6 is amended by revising paragraphs (a), (c)(1)(ii), (c)(3)(ii), and (c)(6) to read as follows:

§ 583.6 Procedure for determining U.S./Canadian parts content.

(a) Each manufacturer, except as specified in § 583.5 (f) and (g), shall determine the percentage U.S./Canadian Parts Content for each carline on a model year basis. This determination shall be made before the beginning of each model year. Items of equipment produced at the final assembly point (but not as part of final assembly) are treated in the same manner as if they were supplied by an allied supplier. All value otherwise added at the final assembly point and beyond, including all final assembly costs, is excluded from the calculation of U.S./Canadian parts content. The country of origin of nuts, bolts, clips, screws, pins, braces, gasoline, oil, blackout, phosphate rinse, windshield washer fluid, fasteners, tire assembly fluid, rivets, adhesives, grommets, and wheel weights, used in final assembly of the vehicle, is considered to be the country where final assembly of the vehicle takes place.

* * * * *

(c) * * *

(1) * * *

(ii) to otherwise have the actual percent of its value added in the United States and/or Canada, rounded to the nearest five percent.

* * * * *

(3) * * *

(ii) to otherwise have the actual percent of its value added in the United States and/or Canada, rounded to the nearest five percent.

* * * * *

(6) If a manufacturer or allied supplier requests information in a timely manner from one or more of its outside suppliers concerning the U.S./Canadian content of particular equipment, but does not receive that information despite a good faith effort to obtain it, the manufacturer or allied supplier may make its own good faith value added determinations, subject to the following provisions:

(i) The manufacturer or allied supplier shall make the same value added determinations as would be made by the outside supplier;

(ii) The manufacturer or allied supplier shall consider the amount of value added and the location in which the value was added for all of the stages that the outside supplier would be required to consider;

(iii) The manufacturer or allied supplier may determine that particular value is added in the United States and/or Canada only if it has a good faith basis to make that determination;

(iv) A manufacturer and its allied suppliers may, on a combined basis, make value added determinations for no more than 10 percent, by value, of a carline's total parts content from outside suppliers;

(v) Value added determinations made by a manufacturer or allied supplier under this paragraph shall have the same effect as if they were made by the outside supplier;

(vi) This provision does not affect the obligation of outside suppliers to provide the requested information.

* * * * *

5. Section 583.7 is amended by revising paragraph (a) to read as follows:

§ 583.7 Procedure for determining major foreign sources of passenger motor vehicle equipment.

(a) Each manufacturer, except as specified in § 583.5(f) and (g), shall determine the countries, if any, which are major foreign sources of passenger motor vehicle equipment and the percentages attributable to each such country for each carline on a model year basis, before the beginning of each model year. The manufacturer need only determine this information for the two such countries with the highest percentages. Items of equipment produced at the final assembly point (but not as part of final assembly) are treated in the same manner as if they were supplied by an allied supplier. In making determinations under this section, the U.S. and Canada are treated together as if they were one (non-foreign) country. The country of origin of nuts, bolts, clips, screws, pins, braces, gasoline, oil, blackout, phosphate rinse, windshield washer fluid, fasteners, tire assembly fluid, rivets, adhesives, grommets, and wheel weights, used in final assembly of the vehicle, is considered to be the country where final assembly of the vehicle takes place.

* * * * *

6. Section 583.8 is amended by revising paragraphs (b) and (d) to read as follows:

§ 583.8 Procedure for determining country of origin for engines and transmissions (for purposes of determining the information specified by §§ 583.5(a)(4) and 583.5(a)(5) only).

* * * * *

(b) The value of an engine or transmission is determined by first adding the prices paid by the manufacturer of the engine/transmission for each component comprising the engine/transmission, as delivered to the assembly plant of the engine/transmission, and the fair market value of each individual part produced at the plant. The assembly and labor costs incurred for the final assembly of the engine/transmission are then added to determine the value of the engine or transmission.

* * * * *

(d) *Determination of the total value of an engine/transmission which is attributable to individual countries.* The value of an engine/transmission that is attributable to each country is determined by adding the total value of all of the components installed in that engine/transmission which originated in that country. For the country where final assembly of the engine/transmission takes place, the assembly and labor costs incurred for such final assembly are also added.

* * * * *

7. Section 583.10 is amended by revising paragraph (a)(5) to read as follows:

§ 583.10 Outside suppliers of passenger motor vehicle equipment.

(a) * * *

(5) For equipment which has less than 70 percent of its value added in the United States and Canada,

(i) The country of origin of the equipment, determined under § 583.7(c); and

(ii) The percent of its value added in the United States and Canada, to the nearest 5 percent, determined under § 583.6(c).

* * * * *

Issued on: July 21, 1999.

Frank Seales, Jr.,

Acting Deputy Administrator.

[FR Doc. 99–19318 Filed 7–27–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 980519132–9004–02; I.D. 022498F]

RIN 0648–AK49

Magnuson-Stevens Act Provisions; List of Fisheries and Gear, and Notification Guidelines

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; delay of effectiveness.

SUMMARY: NMFS delays the effective date of a section of a final rule published January 27, 1999, from July 26, 1999, until December 1, 1999. The section dealt with the prohibitions on the use of nonauthorized fishing gear under the Magnuson-Stevens Act provisions. The delay will allow for revision of the section to add fishing gear currently in use in fisheries in the exclusive economic zone.

DATES: Effective July 23, 1999, the effective date of 50 CFR 600.725(v) that was published on January 27, 1999 (64 FR 4030) is delayed until December 1, 1999. Public comments are invited through September 13, 1999.

ADDRESSES: Submit comments on the final rule to Gary C. Matlock, Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mark Millikin, NMFS, (301) 713–2344.

SUPPLEMENTARY INFORMATION: On January 27, 1999, NMFS issued a final rule, in accordance with section 305(a) of the Magnuson-Stevens Fishery Conservation and Management Act (Act), listing fisheries and fishing gear used in those fisheries. After the effective date of § 600.725(v), no person or vessel may employ fishing gear or participate in a fishery not included in this list without giving 90 days' notice to the appropriate Regional Fishery Management Council, or to the Secretary of Commerce with respect to Atlantic highly migratory species within the U.S. exclusive economic zone (EEZ). Section 600.725(v) was to take effect on July 26, 1999.

NMFS has received information within the past few days that the January 27 list does not include all gears currently used in a number of EEZ fisheries. NMFS is therefore delaying until December 1, 1999, the effective date of § 600.725(v), and expects to revise the rule before that date to add other authorized gear to the list. NMFS welcomes suggestions for revisions to the list of authorized fisheries and gears (see **ADDRESSES**). After the effective date of the revised final rule, changes to the revised list may be made only by following the procedures specified in section 305(a)(4) and (5) of the Act.

Dated: July 23, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–19324 Filed 7–23–99; 4:53 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 071399A]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Harpoon category closure.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) Harpoon category annual quota for 1999 will be attained by July 23, 1999. Therefore, the 1999 Harpoon category fishery will be closed effective at 11:30 p.m. on July 23, 1999. This action is being taken to prevent overharvest of the Harpoon category quota.

DATES: Effective 11:30 p.m. local time on July 23, 1999, through May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27(a) subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

Harpoon Category Closure

NMFS is required, under § 635.28 (a)(1), to file with the Office of the Federal Register for publication notification of closure when a BFT quota, is reached, or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year or for a specified period as indicated in the notice, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

The 1999 BFT quota specifications issued pursuant to § 635.27 set a quota of 54 mt of large medium and giant BFT to be harvested from the regulatory area by vessels permitted in the Harpoon category during the 1999 fishing year (64 FR 29806, June 3, 1999). Based on reported landings and effort, NMFS projects that this quota will be reached by July 23, 1999. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT by vessels in the Harpoon category must cease at 11:30 p.m. local time July 23, 1999.

The intent of this closure is to prevent overharvest of the quota established for the Harpoon category.

Classification

This action is taken under §§ 635.27(a) and 635.28 (a)(1) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 22, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–19282 Filed 7–23–99; 4:23 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 144
Wednesday, July 28, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–98–007]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act (Act) of 1985 and the Pork Promotion, Research, and Consumer Information Order (Order) issued thereunder, this proposed rule would specify in the regulations requirements concerning paying and collecting feeder pig and market hog assessments. This proposed action would add a section to the regulations which implement the Order to provide that the producer who sells the animal must remit to the National Pork Board (Board) the assessment due if the purchaser of a feeder pig or market hog fails to collect and remit the assessment.

DATES: Written comments must be received by September 27, 1999.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627-S; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW; Washington, DC 20250–0251. Comments received may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. State that your comments refer to Docket No. LS–98–007.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and 12988 and Regulatory Flexibility Act and the Paperwork Reduction Act

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect.

The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an Order may file a petition with the Secretary stating that such Order, a provision of such Order or an obligation imposed in connection with such Order is not in accordance with law; and requesting a modification of the Order or an exemption from the Order. Such person is afforded the opportunity for a hearing on the petition. After the Hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which the person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*). The Administrator of AMS has considered the economic effect of this action on small entities and has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the December 29, 1998, issue of "Hogs and Pigs," USDA's National Agricultural Statistics Service estimates that in 1998 the number of operations with hogs in the United States totaled 114,380. The majority of these operations subject to the Order are considered small businesses under the criteria established by the Small Business Administration. The proposed rule imposes no new burden on the industry. The Act and Order have payment and collection provisions for assessments. This rule further specifies the responsibility for the collection and remittance of assessments on feeder pigs and market hogs in the regulations. This rule would add a section to the regulations to provide that the producer who sells the animal must remit to the Board the assessment due if the purchaser of a feeder pig or market hog fails to collect and remit the assessment.

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implements the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the information collection requirements contained in this part have been previously approved by OMB and were assigned OMB control number 0851–0093.

Background and Proposed Change

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. However, that rate was increased to 0.35 percent in 1991 (56 FR 51635) and to 0.45 percent effective September 3, 1995 (60 FR 29963). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383, and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, 56 FR 51635, 60 FR 29963, 61 FR 29002, and 62 FR 26205). Assessments began on November 1, 1986.

For purposes of paying, collecting, and remitting assessments under the Order, porcine animals are divided into three categories: (1) Feeder pigs, (2) market hogs, and (3) breeding stock. Section 1230.71(a) provides that producers producing in the United States a porcine animal raised as a feeder pig, market hog, or for breeding stock, that is sold are to pay an assessment on that animal unless the

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producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal in the same category. Section 1230.71(b)(1) provides that purchasers of feeder pigs and market hogs collect assessments on these animals from the producer. Under § 1230.71 producers selling their own breeding stock must remit assessments to the Board. The Order further provides that for the purpose of collecting and remitting assessments on feeder pigs and market hogs, persons engaged as a commission merchant, auction market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer are deemed to be the purchaser. Commission merchants, auction markets, or livestock markets who sell breeding stock on behalf of producers are required to collect and remit assessments.

Collection and remittance of assessments from sales transactions involving market hogs and breeding stock have been highly successful since the assessment collections became effective in 1986. For example, according to the Board's records, assessments are being collected and remitted on 99 percent of all market hogs slaughtered commercially in the United States each year.

Assessment collection and remittance on market hogs has been efficient and successful primarily because of the limited number of purchasers, i.e. meat packers, who purchase hogs from all sizes of production units. This centralization of collection points and their limited number facilitates remittance of assessments to the Board and reduces or eliminates compliance problems. However, in the marketing of feeder pigs, there are significantly greater numbers of purchasers which tend to complicate the collection and remittance process and increase the potential for compliance problems.

The Order contemplates that the producer (seller) will pay the assessment on feeder pigs and the purchaser, who also may be a producer, will collect the assessment due and remit it to the Board. For market hogs, the Order contemplates that the producer (seller) will pay the assessment and the purchaser will collect the assessment due and remit it to the Board.

Due to production and marketing changes within the feeder pig industry, an increasing number of high volume feeder pig production units (producers) are selling feeder pigs to large numbers of producers. Pursuant to § 1230.71(b)(1) each of these producers must collect assessments from the seller and remit them to the Board. According to the Board, many feeder pig producers, regardless of the size of their operation, simplify payment by remitting the assessment on all feeder pigs they sell to facilitate the collection and remittance of assessments. However, the large number of purchasers involved in feeder pig sales complicates the collection and remittance process and makes compliance difficult.

The primary focus concerning collection and remittance problems on feeder pigs are transactions commonly referred to as farm-to-farm sales of feeder pigs. These sales transactions typically involve two producers. Frequently, producers who purchase feeder pigs may not consider themselves to be purchasers under the Act and Order and consequently neither the seller nor the purchaser collects and/or remits assessments due. This is particularly the case in farm-to-farm feeder pig sales where producer purchasers may not consider themselves as purchasers in such transactions and therefore do not believe they are required to collect and remit assessments to the Board.

To clarify the meaning of a purchaser for the purpose of collection and remittance of assessments for the sale of feeder pigs and also for market hogs and to specify that each producer who sells an animal for the first time as a feeder pig or market hog is obligated to pay the required assessment, this proposed rule would add a new section § 1230.113 to the rules and regulations titled "Collection and Remittance of Assessments for the Sale of Feeder Pigs and Market Hogs." That section would provide that purchasers of feeder pigs or market hogs shall collect assessments from producers if an assessment is due and shall remit those assessments to the Board pursuant to the provisions of § 1230.71. Failure of the purchaser to collect such assessment from a producer shall not relieve the producer of the obligation to pay the assessment. If the purchaser fails to collect the assessment when an assessment is due pursuant to § 1230.71, the producer (seller) shall remit the total amount of assessments due to the Board as set forth in § 1230.111. This proposed change would facilitate enforcement of assessment collection in the Pork Promotion, Research, and Consumer Information Program.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1230 be amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Paragraph § 1230.113 would be added to read as follows:

§ 1230.113 Collection and Remittance of Assessments for the Sale of Feeder Pigs and Market Hogs.

Pursuant to the provisions of § 1230.71, purchasers of feeder pigs or market hogs shall collect assessments from producers if an assessment is due and shall remit those assessments to the Board. Failure of the purchaser to collect such assessment from a producer shall not relieve the producer of the obligation to pay the assessment. If the purchaser fails to collect the assessment when an assessment is due pursuant to § 1230.71, the producer (seller) shall remit the total amount of assessments due to the Board as set forth in § 1230.111.

Dated: July 20, 1999.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99–19291 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

[Docket No. PRM–40–26]

Chromalloy Tallahassee, a Division of Chromalloy Gas Turbine Corporation; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–40–26) submitted by Chromalloy Tallahassee, a division of Chromalloy Gas Turbine Corporation. The petitioner requested that the NRC amend its regulations regarding the exemption from licensing of source material found in 10 CFR 40.13(c)(8), so that the exemption would include finished parts containing nickel-thoria alloy from both aircraft engines and battle tank engines. However, after performing a regulatory analysis, no benefits of granting this petition could be identified. Also, it has not been persuasively shown that denying the petition would have a negative impact on Chromalloy since, as a Florida general licensee, Chromalloy currently could repair battle tank engines containing nickel-thoria alloy parts provided two possession limits are observed. Further, Chromalloy now indicates it has no definite plans to begin such repairs in the foreseeable future. But, to grant this petition the NRC would incur the cost of conducting a rulemaking. Moreover, before this action could have an effect on Chromalloy, the cost of an additional rulemaking to change the Florida Administrative Code would need to be incurred by the State of Florida. Thus, when viewed in terms of regulatory effectiveness and efficiency, the NRC can not justify the expenditure of resources to grant this petition.

ADDRESSES: Copies of the petition for rulemaking and the NRC's letter to the petitioner are available for public inspection or copying in the Nuclear Regulatory Commission's Public Document Room, 2120 L Street NW. (Lower Level), Washington DC. No public comments on this petition for rulemaking were received.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Telford, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6229, e-mail JLT@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Petition

The petition was submitted by Chromalloy Tallahassee (Chromalloy), a Federal Aviation Administration approved Overhaul and Repair facility located in Florida, a NRC Agreement State.[1] Chromalloy overhauls and repairs jet aircraft engine combustors (e.g., for the JT9D jet engine). These combustors are made of nickel-thoria. This use of thorium source material falls under the exemption from licensing found in 10 CFR 40.13(c)(8), and in the Florida Administrative Code in Paragraph 64E–5.202(3)(i).

Chromalloy stated that it was interested in overhauling and repairing the engine of the M1A1 ABRAMS Main Battle Tank. This tank's engine is the AGT 1500 gas turbine engine. The combustor of the AGT 1500 contains 15 splash rings and 15 fuel nozzles made of nickel-thoria alloy. The thorium content of this nickel-thoria alloy is less than 2% by weight. Moreover, the thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (i.e., thorium dioxide). Chromalloy stated that these splash rings and fuel nozzles meet all the technical requirements of the current licensing exemption, except that the exemption is limited to finished aircraft engine parts. Chromalloy requested that the NRC establish an exemption from licensing to include the AGT 1500 tank gas turbine engine.

In support of its petition, Chromalloy referenced a petition for rulemaking submitted to the Commission by E. I. du Pont de Nemours & Company (PRM–40–6) dated February 13, 1963. That petition requested that the Commission amend its regulations to establish an exemption from licensing for persons receiving, possessing, using, transferring, or importing any finished products containing nickel-thorium alloys with up to 4 percent thorium by weight. Chromalloy pointed out that the Commission's response had been:

> the Commission has found that the possession and use in the United States of thorium contained in thorium metal alloys in which the thorium does not exceed 4 percent by weight is not of significance to the common defense and security, and that such activities can be conducted without unreasonable hazard to life or property.

The proposed exemption was for "any finished product or part;" nowhere in PRM–40–6 do the words "aircraft engine parts" appear.

Chromalloy stated that the final exemption was not published until November 18, 1967 (32 FR 15872) and that the expression "jet aircraft engines" is mentioned for the first time in that notice.

After consulting with the NRC staff, Chromalloy believes that the material used for the experimental tests for the final exemption must have been from jet aircraft engines. At that time, the only use of nickel-thoria components was in aircraft engines. Chromalloy stated that this is possibly the reason the exemption specifies only finished aircraft engine parts. The production of the M1A1 Abrams Main Battle Tank was begun in 1985. This tank's engine, the AGT 1500, contains the same nickel-thoria alloy as is used in the JT9D jet aircraft engine. Therefore, Chromalloy stated that the alloy material in the AGT 1500 gas turbine engine would produce the same results, if put to the same experimental tests the Commission conducted in 1963–1967.

Chromalloy observed that in a **Federal Register** notice published by the Atomic Energy Commission on November 18, 1967 (32 FR 15872), the Commission considered that jet aircraft engine parts are not intended for public use.

> The Commission considers that finished aircraft engine parts containing nickel-thoria alloy are not products intended for use by the general public within the purview of § 150.15(a)(6) of 10 CFR Part 150. * * *

Finally, Chromalloy asserted that if the Commission does not view the presence of nickel-thoria in aircraft engine parts to be unsafe to the public, then the presence of nickel-thoria in tank engine parts should be viewed in the same light. Moreover, the public's exposure to tank engine parts is far less than the public's exposure to jet aircraft engine parts. Therefore, Chromalloy stated that the exemption in § 40.13(c)(8) should be applicable to both the JT9D aircraft gas turbine engine and the AGT 1500 tank gas turbine engine.

Public Comments on the Petition

The Notice of Receipt of the Petition was published in the **Federal Register** on December 10, 1997 (62 FR 65039). The comment period closed on February 23, 1998. No comments were received.

Reasons for Denial

In order to determine whether this petition should be granted or denied, the NRC performed a regulatory analysis. The details of the analysis are provided below.

Benefit

The NRC was unable to identify any benefits of granting this petition. Granting the petition would not improve the level of protection of public health and safety. If the petition were granted, radiation exposure of workers would be expected to either remain the same or increase modestly. Moreover, granting the petition would neither address a generic issue nor improve regulatory effectiveness and efficiency for either the NRC or the State of Florida. The NRC has a mechanism in § 40.14 to address a non-generic issue by providing a specific exemption, upon review of a request to possess additional source material. If Chromalloy desired to make such a request, the same mechanism exists in the Florida Administrative Code in Subsection 64E-5.102(1). In addition, granting the petition would not provide any practical benefits to Chromalloy since, it currently may overhaul and repair the AGT 1500 tank gas turbine engine as a general licensee under the Florida Administrative Code Subsection 64E–

[1] An Agreement State is one which has entered into an Agreement with NRC to assume regulatory authority over byproduct, source, and small quantities of special nuclear material.

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5.205(1), provided two possession limits are observed. Chromalloy may use and transfer up to 15 pounds of source material at any given time, and may receive up to 150 pounds of source material in any one calendar year. Since the 15 splash rings and 15 fuel nozzles in the AGT 1500 tank engine are 2 percent thorium by weight, Chromalloy could possess up to 750 pounds of such nickel-thoria alloy parts at any given time, and up to 7,500 pounds of such parts in any calendar year.

Impact

Denying the petition would have no negative impact on Chromalloy. As a Florida general licensee, Chromalloy could repair AGT 1500 tank gas turbine engines. However, contrary to its stated desires in the petition, Chromalloy now indicates it has no definite plans to begin such repairs in the foreseeable future. But, to grant this petition the NRC would incur the cost of conducting a rulemaking. Moreover, before this action could have an effect on Chromalloy, the cost of an additional rulemaking to change the Florida Administrative Code would need to be incurred by the State of Florida. Whether Florida would decide to change its Administrative Code is uncertain.

In summary, this petition is being denied because no benefits of granting the petition could be identified and the cost of granting the petition would include two rulemakings. Thus, when viewed in terms of regulatory effectiveness and efficiency, the NRC can not justify the expenditure of resources to grant this petition. For the reasons cited in this document, the NRC denies the petition.

Dated at Rockville, Maryland, this 16th day of July, 1999.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Executive Director for Operations.

[FR Doc. 99–19258 Filed 7–27–99; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The NCUA is proposing to amend its regulation regarding secondary capital accounts in low-income designated credit unions to specify that interest on these accounts may be accrued in the account, paid directly to the investor, or paid into a separate account from which an investor may make withdrawals. The NCUA believes that the proposed changes will clarify the permissible alternatives and provide additional flexibility for low-income designated credit unions.

DATES: Comments must be received on or before September 27, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may also fax comments to (703) 518–6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: Federal credit unions that serve predominantly low-income members may be designated by NCUA as low-income credit unions (LICUs). LICUs play an important role in providing financial services to low-income individuals and communities for whom these services are often unavailable. LICUs often find it difficult, however, to accumulate capital due to the limited resources of their members. In response to this, NCUA promulgated rules in 1996 to enhance LICUs' ability to build capital. 61 FR 3788 (February 2, 1996); 61 FR 50696 (September 27, 1996). Specifically, § 701.34 of NCUA's regulations permits LICUs to offer secondary capital accounts to nonnatural person members and nonnatural person nonmembers.

Section 701.34 provides that funds in the secondary capital account must be available to cover operating losses realized by the credit union that exceed its net available reserves and undivided earnings. This includes accrued interest that has been paid into the account. NCUA wishes to clarify, however, that although interest paid into the secondary capital account must remain there until account maturity, there are other permissible alternatives for disposing of accrued interest. Specifically, in addition to depositing accrued interest into the secondary capital account, a credit union may pay the interest directly to the investor or deposit it into a separate account from which the investor could make withdrawals.

Section 701.34 specifies that net available reserves and undivided earnings, as described above, are reserves and undivided earnings exclusive of allowance accounts for loan and investment losses. Allowance accounts for investment losses are no longer recognized by generally accepted accounting principles or NCUA's regulatory accounting practices. Accordingly, the proposed rule makes no reference to these accounts. Language in the rule pertaining to allowance accounts for loan losses remains unchanged.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The NCUA has determined and certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. It states that: "Federal action limiting the policy-making discretion of the states should be taken only where constitutional authority for the action is clear and certain, and the national activity is necessitated by the presence of a problem of national scope." This rule will not have a direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a significant regulatory action for purposes of the executive order.

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed amendment is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 701

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 22, 1999.

Becky Baker,

Secretary of the Board.

For the reasons set forth above, it is proposed that 12 CFR part 701 be amended as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Section 701.34 is amended by revising paragraph (b)(7) to read as follows:

§ 701.34 Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.

* * * * *

(b) * * *

(7) Funds deposited into the secondary capital account, including interest accrued and paid into the secondary capital account, must be available to cover operating losses realized by the credit union that exceed its net available reserves and undivided earnings (*i.e.*, reserves and undivided earnings exclusive of allowance accounts for loan losses), and to the extent funds are so used, the credit union shall under no circumstances restore or replenish the account. The credit union may, in lieu of paying interest into the secondary capital account, pay interest accrued on the secondary capital account directly to the investor or into a separate account from which the secondary capital investor may make withdrawals. Losses shall be distributed pro-rata among all secondary capital accounts held by the credit union at the time the losses are realized.

* * * * *

3. The appendix to § 701.34 is amended by revising the second to last paragraph to read as follows:

Appendix to § 701.34

* * * * *

The funds committed to the secondary capital account and any interest paid into the account may be used by _____ (name of credit union) to cover any and all operating losses that exceed the credit union's net available reserves and undivided earnings exclusive of allowance accounts for loan losses, and in the event the funds are so used _____ (name of credit union) will under no circumstances restore or replenish those funds to _____ (organization).

* * * * *

[FR Doc. 99–19252 Filed 7–27–99; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NCUA requests public comment on revisions to the rule governing corporate credit unions (corporates). As part of its regulatory review process, NCUA has identified provisions for further clarification or revision. Comments from interested parties on these issues will assist NCUA in its regulatory review process.

DATES: Comments must be received on or before November 26, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may fax comments to (703) 518–6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Robert F. Schafer, Director, Office of Corporate Credit Unions, at the above address or telephone (703) 518–6640; or Mary Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

On March 7, 1997, NCUA issued a final rule that completely revised part 704 of its regulations, the provisions governing corporates. 62 FR 12929 (March 19, 1997). The final rule noted that "[a] number of commenters strongly suggested that NCUA review the corporate regulation on an annual basis." *Id.* NCUA agreed that a periodic review was necessary, but that the frequency should be determined by circumstances and need. The NCUA Board directed the Office of Corporate Credit Unions (OCCU) to present a report on the rule within 18 months of publication. When the final regulation's compliance date was extended from January 1, 1998, to May 1, 1998, the completion date for the report to the NCUA Board was extended to provide adequate time to assess the impact of the rule.

In February 1999, OCCU provided its report to the NCUA Board. The report identified the major areas of the rule for revision or clarification. The report was based on informal comments from 12 corporates, the Association of Corporate Credit Unions, the National Association of State Credit Union Supervisors, OCCU staff, and Office of Investment Services staff.

This advance notice of proposed rulemaking requests comment on several issues raised as a result of OCCU's 18 month review. While NCUA welcomes comment on other sections of Part 704 not addressed in this advance notice, a proposed rule will be issued providing another opportunity to provide comments on all sections of Part 704.

B. Specific Areas for Review

Section 704.2 Definitions

Asset-Backed Securities

NCUA seeks comment on the definition of asset-backed security. There has been some confusion as to the types of securities that are permissible under the current, broad definition. For example, the definition does not specifically prohibit securities with foreign collateral. However, corporates are only permitted to make foreign investments if they have Part III Expanded Authority. NCUA is seeking recommendations on how to address this issue.

Membership Capital

A number of issues have been raised regarding the various capital accounts in part 704. Membership capital has been the most utilized source of additional capital for corporates.

The regulation allows for an adjustment period during which the membership capital account can be adjusted in relation to a specific measure. Although the regulation does not dictate the measure, many corporates utilize a member's asset size. NCUA seeks comment on whether the regulation should require a specific measure, such as, requiring the membership capital account to be adjusted in order to remain equivalent to at least one percent of the member credit union's assets as of December 31st of the prior year.

Additionally, the regulation does not state the frequency of the adjustment

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period. NCUA staff believes that either an annual or semi-annual adjustment period is appropriate. There have been suggestions that a more frequent adjustment period (such as monthly or quarterly) would be more appropriate due to the often significant fluctuation in corporate assets over a short period of time. NCUA invites comment on whether the regulation should require specific allowable adjustment periods (annually, quarterly, monthly, daily) or if this should be left to the corporate to establish as long as the adjustment period is fully disclosed to the member when the account is opened.

NCUA also seeks comment on whether a minimum capital level should be prescribed that, once reached, would prohibit readjusting downward an adjusted balance membership capital account.

Paid-In Capital

NCUA believes that the credit union system is adequately capitalized. The highest concentration of capital currently rests with natural person credit unions, while corporate credit unions are somewhat less capitalized. The current regulation differentiates between member and nonmember paid-in capital by requiring nonmember paid-in capital be approved by NCUA. Should the nonmember paid-in capital requirements apply if the nonmember is a credit union? NCUA welcomes comments on the benefits or disadvantages of this proposal, how the process might best be implemented, and the treatment of such accounts under Generally Accepted Accounting Principles (GAAP).

The current regulation provides that paid-in capital cannot exceed reserves and undivided earnings. NCUA seeks comment on whether this limitation should be eliminated or revised. If the limitation on paid-in capital is eliminated, should the various regulatory limitations that are tied to reserves and undivided earnings (RUDE) and paid-in capital be revisited?

Unmatched Embedded Options

Section 704.8(d)(2) requires corporates with unmatched embedded options in excess of 200 percent of reserves, undivided earnings, and paid-in capital to perform additional tests. NCUA believes a definition of unmatched embedded options may be necessary and welcomes comment on this issue.

Section 704.7 Lending

Section 704.7(g) permits a corporate to enter into a loan participation agreement only with another corporate. NCUA seeks comments on the expansion of loan participation authority for corporates. Issues to be considered include: (1) should participation loans with entities other than corporates be permitted; (2) the impact of participation loans with entities other than corporates on a corporate's banker's bank exemption from the Federal Reserve Board's Regulation D reserve requirements; (3) the impact of loan participations on a corporate's liquidity position; (4) whether making participation loans should require corporates to establish additional reserves; (5) should corporates be allowed to participate in business and/or consumer loans; and (6) whether corporates have the expertise to underwrite and participate in business and consumer loans.

Section 704.12 Services

NCUA requests comment on the advantages and disadvantages of eliminating this section of the regulation. If § 704.12 is eliminated, as a result, defined fields of membership would also be eliminated for federal corporates. NCUA encourages commenters to address any concerns or benefits to the credit union system from such an action.

A number of corporates have indicated the need for a clearer definition of what constitutes "correspondent services." NCUA believes clarification is warranted, and encourages commenters to provide specific examples of appropriate correspondent services and definition terminology.

Section 704.15 Audit Requirements

Statement of Auditing Standard (SAS) No. 70, Reports on the Processing of Transactions by Service Organizations, provides guidance: (1) on the factors an independent auditor should consider when auditing the financial statements of a corporate credit union that uses a service organization to process certain transactions; and (2) for independent service auditors who issue reports for a corporate credit union that functions as service organization for others. This report is primarily intended for the user organization's auditors.

NCUA is seeking comment on a number of specific questions regarding requirements for SAS 70 reports under the latter situation noted above. Should a corporate credit union, when processing transactions for others as a service organization, be required to obtain a SAS 70 report. NCUA is aware that user organization auditors, in seeking to comply with auditing standards, routinely appeal to the service organization to provide a SAS 70 report through its service auditor.

If regulation requires a SAS 70 report, should it only apply to corporate credit unions above a particular asset size?

Additionally, the Board seeks comment on the two types of SAS 70 reports a service auditor can provide the corporate credit union that functions as a service organization processing transaction for others. These are: (1) a report on controls placed in operation; and (2) a report on controls placed in operation and tests of operating effectiveness. Generally, the service organization determines which type of engagement needs to be performed. Should the regulation specify which type of report the corporate must obtain?

Section 704.18 Fidelity Bond Coverage

NCUA seeks public comment on whether fidelity bond coverage should be made optional for corporates. In lieu of a fidelity bond, what types of criteria (such as maintaining a specific capital level) should be utilized to determine appropriate protection exists for the corporate and its members?

Section 704.19 Wholesale Corporate Credit Unions

NCUA questions the need for separate regulatory requirements for wholesale corporates. NCUA invites comment on whether there is a need for separate regulatory requirements for wholesale corporates and, if such a need exists, whether the existing regulatory requirements are appropriate.

Appendix B—Expanded Authorities and Requirements

NCUA asks for comment on the existing investment authorities under each expanded authority section and recommendations for any additional investment powers. Any recommendations for additional investment authority should be consistent with the infrastructure and personnel expertise required by each of the four specific expanded authority levels.

NCUA believes it is necessary to review the permissible minimum credit ratings allowed under each authority level. For example, Part I and II provide authority to acquire asset-backed securities (ABS) rated no lower than AA. NCUA seeks comment on the existing minimum credit ratings allowed for Part I, Part II, and Part III expanded authority levels.

Part III

Part III authority allows corporates to make limited foreign investments. NCUA has been asked to expand the types of foreign investments that corporates with Part III authority can make. NCUA seeks comments on the advisability of allowing corporates with Part III expanded authority to invest specifically in foreign ABS and foreign corporate debt obligations. NCUA invites commenters to provide additional recommendations for foreign investments that should be considered for Part III corporates.

Part IV

Part IV expanded authority allows corporates to engage in derivatives transactions. NCUA is cognizant that the derivative market is complex and seeks comment on the need for additional guidance in this area. Further, it has been proposed to allow corporates without Part IV authority to utilize derivatives as a means of risk reduction. This would be accomplished through a contractual arrangement with a corporate that has Part IV authority. NCUA invites commenters to address this proposal.

By the National Credit Union Administration Board on July 22, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–19253 Filed 7–27–99; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–10–AD]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. TFE731 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain AlliedSignal Inc. high pressure compressor (HPC) impellers installed on TFE731 series turbofan engines. This proposal would require replacing the HPC impeller with a serviceable impeller that has been eddy-current inspected. This proposal is prompted by an incident of an uncontained impeller failure due to cracking in the seal relief area of the HPC impeller. The actions specified by the proposed AD are intended to prevent fatigue cracking of the HPC impeller, which could result in an uncontained failure of the impeller, an in-flight engine shutdown, and damage to the airplane.

DATES: Comments must be received by September 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No.99–NE–10–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov." Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Aerospace Services Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5246, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–10–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–10–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has determined that on May 10, 1998, a high pressure compressor (HPC) impeller, part number (P/N) 3073394–1, separated and exited from an AlliedSignal Inc. TFE731–3R–1D turbofan engine. This impeller had accumulated 9,080 engine cycles since new (CSN) and 5,829 engine cycles since rework of the seal relief area in November, 1982, performed in accordance with AlliedSignal Service Bulletin (SB) TFE731–72–3239 RWK. Fracture analysis revealed a subsurface primary origin in the area of the seal relief and that the crack propagated through the bore for about 1.0 inch. No melt or forging related discrepancies were found at the fatigue origin; however, localized alpha grain colonies with an unfavorable fracture plane orientation were present. Recent low-temperature fatigue testing with a sustained peak hold time (dwell) at higher than engine-operating stresses indicate that normal cyclic fatigue lives may be influenced by dwell times and an unfavorable titanium macrostructure. The FAA has determined that low-cycle fatigue (LCF) cracking in high stressed areas of the HPC impeller may lead to an uncontained impeller separation. This condition, if not corrected, could result in fatigue cracking of the HPC impeller, which could result in an uncontained failure of the impeller, an in-flight engine shutdown, and damage to the airplane.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Alert Service Bulletin (ASB) TFE731–A72–3641, dated November 24, 1998, that describes procedures for replacing the HPC impellers, P/Ns 3073393–1, 3073394–1, 3073433–1, and 3073434–1 with impellers that have been inspected using a specialized eddy

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current inspection. At present, only AlliedSignal is properly trained and equipped to perform this inspection that requires specialized training and tooling. Within the near future, the FAA expects to approve a revision to ASB TFE731–A72–3641 which will include a reference to the eddy-current procedure document and additional facilities that are properly trained and equipped to perform this specialized inspection. The Final Rule will incorporate the revised ASB.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent fatigue cracking of the HPC impeller, which could result in an uncontained failure of the impeller, an in-flight engine shutdown, and damage to the airplane. This AD requires replacing the HPC impeller with a serviceable impeller, which has been eddy-current inspected, at the next core zone inspection (CZI) or at the next access to the HPC module, and repetitive inspections at each subsequent CZI or each subsequent access to the HPC impeller for cause if the impeller has more than 1,000 cycles since the last eddy current inspection. These replacements must be done in accordance with the SB described previously.

There are approximately 2,105 engines of the affected design in the worldwide fleet. The FAA estimates that 1,537 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The FAA also estimates that some of the impellers will be replaced, and that the impeller will cost about $45,000. Based on these figures, the FAA estimates the total cost impact of the proposed AD on U.S. operators to be $996,660.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AlliedSignal Inc.: Docket No. 99–NE–10–AD.

Applicability: AlliedSignal Inc. TFE731 series turbofan engines with high pressure compressor (HPC) impeller part numbers (P/Ns) 3073393–1, 3073394–1, 3073433–1, and 3073434–1 installed on, but not limited to, Avions Marcel Dassault—Breguet Aviation (AMD/BA) Falcon 10, Dassault-Aviation Mystere-Falcon 50, and 900 series airplanes; Dassault Aviation Mystere-Falcon 20 series airplanes, Learjet Inc. Models 31, 35, 36, and 55 series airplanes; Lockheed-Georgia Corporation 1329–23 and -25 series airplanes; Israel Aircraft Industries Ltd. 1124 series and 1125 Westwind series airplanes; Cessna Aircraft Co. Model 650 Citation III, VI, and VII series airplanes; Raytheon Aircraft Co. HS–125 series airplanes; and Sabreliner Corporation NA–265–65 airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the HPC impeller, which could result in an uncontained failure of the impeller, an in-flight engine shutdown, and damage to the airplane, accomplish the following:

(a) Replace the HPC impeller, P/N's 3073393–1, 3073394–1, 3073433–1, and 3073434–1, in accordance with Section 2.A. of the Accomplishment Instructions of AlliedSignal Alert Service Bulletin (ASB) TFE731–A72–3641, dated November 24, 1998, at the earlier of the following:

(1) At the next core zone inspection (CZI) after the effective date of this AD, or

(2) At the next access to the HPC module after the effective date of this AD.

(b) Thereafter, replace the HPC impeller, P/N's 3073393–1, 3073394–1, 3073433–1, and 3073434–1, in accordance with Section 2.A. of the Accomplishment Instructions of AlliedSignal SB TFE731–A72–3641, dated November 24, 1998, whenever either of the following conditions are met:

(1) At every CZI, or

(2) When accessing the HPC module and the impeller has accumulated more than 1,000 cycles since the last ECI.

(c) This AD defines access to the HPC module as whenever the low pressure compressor case is removed from the compressor interstage diffuser.

(d) Installation of HPC impellers having P/N's 3073398–X, 3073435–X, and 3075171–X, where "X" represents any dash number, constitutes terminating action for the inspection requirements of this AD.

Note 2: Installation of HPC impellers having P/N's 3070274–1 and 3072639–1, which are subject to AD 82–23–03 R1, are not considered eligible parts for terminating action.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on July 22, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–19322 Filed 7–27–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91

[Docket No. FAA–1999–5925; Notice No. 99–15]

RIN 2120–AG82

Reduced Vertical Separation Minimum; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document contains a correction to the notice of proposed rulemaking, published in the **Federal Register** on July 8, 1999 (64 FR 37018). That proposed rulemaking to enable the implementation of Reduced Vertical Separation Minimum (RVSM) in Pacific oceanic airspace. The introduction of RVSM in Pacific oceanic airspace would make more fuel and time efficient flight levels and tracks available to operators and would enhance airspace capacity.

FOR FURTHER INFORMATION CONTACT: Roy Grimes, 202–267–3734.

Correction of Publication

In proposed rule FR Doc. 99–17360, beginning on page 37018 in the **Federal Register** issue of July 18, 1999, make the following correction:

1. On page 37018, in column 1, in the heading section, beginning in line 4, correct the "Notice No. 99–10" to read "Notice No. 99–15".

Issued in Washington, DC on July 21, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99–19179 Filed 7–27–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. FAA–1999–5924; Notice No. 99–13]

RIN 2120–AG83

Year 2000 Airport Safety Inspections; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: This document contains a correction to the notice of proposed rulemaking published in the **Federal Register** on July 8, 1999 (64 FR 37026). That NPRM proposed rulemaking to require certain airports to conduct a one-time readiness check of certain airfield equipment and systems starting January 1, 2000, and report the results of these checks to the FAA. In addition, that proposal temporarily revised the time period these airport operators have to repair or replace certain emergency equipment.

FOR FURTHER INFORMATION CONTACT: Robert E. David, Airport Safety and Operators Division (AAS–300), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8721.

Correction of Publication

In proposed rule FR Doc. 99–17359 beginning on page 37026 in the **Federal Register** issue of July 8, 1999, make the following corrections:

1. On page 37026, in column 1, in the heading, beginning in line 4, "SFAR No. 85–]" should read "Notice No. 99–13]".

2. In the **SUPPLEMENTARY INFORMATION:** Availability of NPRMs" section on page 37026, in column 2, the first paragraph, beginning in line 9, remove the last phrase", or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: (800) 322–2722 or (202) 267–5948)".

3. On page 37029, in column 1, 9 lines from top of column, add the following language "And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this rulemaking does not meet the standards for a 'significant regulatory action' under section 3(f) of Executive Order 12866 and under the Department of Transportation's Regulatory Policies and Procedures for Simplification, Analysis, and Review of Regulations (44 FR 11034, February 26, 1979) and, therefore, is not subject to review by the Office of Management and Budget. Additionally, this proposed rule would not have a significant impact on a substantial number of small entities; would not constitute a barrier to international trade, and does not contain a significant intergovernmental or private sector mandate.".

Issued in Washington, DC, on July 21, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99–19042 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP No. MT–001–0007, MT 001–0008, MT–001–0009 and MT–001–0010; FRL–6408–8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Billings/Laurel Sulfur Dioxide State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve, conditionally approve and partially disapprove the Billings/Laurel sulfur dioxide (SO2) State Implementation Plan (SIP) revisions submitted by the State of Montana in response to a SIP Call. EPA is also proposing a regulatory scheme for sanctions. The SIP revisions establish, and require seven sources to meet and monitor compliance with, emission limitations for SO2 emissions in the Billings/Laurel area. The intended effect of this action is to make federally enforceable those provisions that EPA is proposing to approve, to conditionally approve those provisions that the State has committed to correct, to disapprove those provisions that are not approvable, and to establish the sequence of sanctions if EPA's proposed disapproval becomes a final action. EPA is taking this action under sections 110 and 179 of the Clean Air Act (Act).

DATES: Written comments must be received by August 27, 1999.

ADDRESSES: Mail written comments (in duplicate if possible) to Richard R. Long, Director, Air Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202.

Docket: You can inspect the official docket concerning this action, docket #R8–99–01, at the Air Program Office, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202 (call Laurie Ostrand to make an appointment at (303) 312–6437). You also can review materials concerning this action (although not the official docket) at EPA

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Region VIII's Montana Office, Federal Building, 301 S. Park, Helena, Montana 59620 (call Betsy Wahl to make an appointment at (406) 441–1130, ext. 234) and at the Parmly Billings Library, 510 N. Broadway, Billings, Montana (406) 657–8391. Note that the materials at EPA's Montana Office and the Parmly Billings Library may not be as complete as the official docket at EPA's Denver Office.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region VIII, (303) 312–6437 or Dawn Tesorero, EPA, Region VIII, (303) 312–6883.

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I. Summary of EPA's Proposed Actions

Apart from those provisions we are proposing to disapprove or conditionally approve (see discussions below), we are proposing to approve all other aspects of the Billings/Laurel SO2 SIP, which the State of Montana submitted in response to our SIP Call. See Background section V.D. We caution that if we were to find it too difficult to enforce certain variable (or pro-rated) emission limitations at several of the sources or if data were not available to determine the emission limitations on a regular basis, we would reconsider our approval. Also, if we were to determine that the State-only provisions, as implemented, appeared to limit or constrain or otherwise have a chilling effect on the Montana Department of Environmental Quality's (MDEQ's) enforcement of the SIP, we would reconsider our approval or take other appropriate action under the Act. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act. We caution that if sources are subject to more stringent requirements under other provisions of the Act (e.g., section 111, part C, or SIP approved permit programs under part A), our approval of the SIP (including emission limitations and other requirements), would not excuse sources from meeting these other more stringent requirements. Also, our action on this SIP is not meant to imply any sort of applicability determination under other provisions of the Act (e.g., section 111, part C, or SIP approved permit programs under part A).

We are proposing to disapprove the following provisions of the Billings/Laurel SO2 SIP:

- The escape clause (paragraph 22 in the Exxon and Montana Sulphur & Chemical Company (MSCC) stipulations and paragraph 20 in the Cenex, Conoco, Montana Power, Yellowstone Energy Limited Partnership (YELP), and Western Sugar stipulations).
- The MSCC stack height credit and emission limitations on the sulfur recovery unit (SRU) 100-meter stack (paragraph 1 of the Exxon stipulation, paragraphs 1 and 2 of the MSCC stipulation, and section 3(A)(1)(a) and (b) and 3(A)(3) of the MSCC exhibit [1]).
- The emission limitation on MSCC's auxiliary vent stacks, section 3(A)(4) of MSCC's exhibit.
- The attainment demonstration because of the improper stack height credit and emission limitations at MSCC.
- The attainment demonstration for lack of flare emission limitations at Cenex, Conoco, Exxon, and MSCC.
- The attainment demonstration because of the proposed disapproval of the emission limitation for MSCC's auxiliary vent stacks.
- The Reasonably Available Control Measures (RACM) (including Reasonably Available Control Technology (RACT)) and Reasonable Further Progress (RFP) requirements for Cenex.
- The provisions that allow sour water stripper emissions to be burned in the flare at Cenex and Exxon (sections 3(E)(4) and 4(E) of Exxon's exhibit and sections 3(B)(2) and 4(D) of Cenex's exhibit, only as they apply to flares).

We are proposing to conditionally approve the following provisions of the Billings/Laurel SO2 SIP based on the State of Montana's commitment to adopt and submit adequate compliance monitoring methods:

- YELP's emission limitations (in sections 3(A)(1) through (3) of YELP's exhibit).
- Exxon's coker carbon monoxide (CO)-boiler emission limitation (in section 3(B)(1) of Exxon's exhibit).
- Exxon's F–2 crude/vacuum heater stack emission limitations and attendant compliance monitoring methods (in sections 3(E)(4) and 4(E) (only as they apply to the F–2 crude/vacuum heater stack), 3(A)(2), 3(B)(3), and attachment 2, of Exxon's exhibit).

[1] The SIP was submitted in the form of stipulations, exhibits and attachments for each source covered by the plan. The majority of the requirements are contained in the exhibits. Throughout this document when we refer to an exhibit, we mean the exhibit A to the stipulation for the specified source.

- Exxon's fuel gas combustion emission limitations and attendant compliance monitoring methods (in sections 3(A)(1), 3(B)(2), 4(B), and 6(B)(3) of Exxon's exhibit).
- Cenex's combustion sources emission limitations and attendant compliance monitoring methods (in sections 3(B)(2) and 4(D) (only as they apply to the main crude heater), 3(A)(1)(d), 4(B), and attachment 2, of Cenex's exhibit).

Finally, we are proposing that the regulatory scheme issued for sanctions generally, under 40 CFR 52.31, should also apply here if our proposed partial disapproval of the SIP becomes a final action or if EPA adopts final conditional approvals that later convert to disapprovals. We are also proposing to apply the sanction rule's provisions regarding the timing of sanctions to this action. We also ask for comment on whether we should impose sanctions under section 110(m) of the Act so that they become effective immediately upon the effective date of our partial disapproval or of a conversion from conditional approval to disapproval, and on the geographic scope of such discretionary sanctions should the Agency decide to impose them.

II. EPA's Action on the State of Montana's Submittals

Definitions

For the purpose of this document, we are giving meanings to certain words as follows:

(a) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.

(b) The words State or Montana mean the State of Montana, unless the context indicates otherwise.

Technical Support Document (TSD)

Our TSD for this action discusses our criteria for deciding whether to approve or disapprove the SIP and whether or not the State of Montana's submittals satisfy those criteria. The TSD also discusses most of the issues we raised on various drafts and final submittals of the Billings/Laurel SIP for SO2 and how the State of Montana addressed these issues. (See document #III.B–1.[2])

A. Why Is EPA Proposing To Approve Parts of the State of Montana's Plan?

Apart from those provisions we are proposing to disapprove or conditionally approve (see discussions below), we are proposing to approve all other aspects of the SIP. We are proposing to approve these other aspects of the SIP because we believe they meet our SIP approval criteria and provide enforceable emission limitations on sources in the Billings/Laurel area. We caution that if we were to find it too difficult to enforce certain variable (or pro-rated) emission limitations at several of the sources or if data were not available to determine the emission limitations on a regular basis, we would reconsider our approval. Also, if we were to determine that the State-only provisions, as implemented, appeared to limit or constrain or otherwise have a chilling effect on MDEQ's enforcement of the SIP, we would reconsider our approval or take other appropriate action under the Act. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act. Also, we caution that if sources are subject to more stringent requirements under other provisions of the Act (e.g., section 111, part C, or SIP approved permit programs under part A), our approval of the SIP (including emission limitations and other requirements), would not excuse sources from meeting these other more stringent requirements. Also, our approval of the SIP is not meant to imply any sort of applicability determination under other provisions of the Act (e.g., section 111, part C, or SIP approved permit programs under part A).

We evaluated the SIP submittals against the following provisions in sections 110(a)(2) and 172(c) of the Act that SIPs are required to meet:

- Notice and public hearing.
- Enforceable emission limitations.
- Ambient air quality data.
- Enforcement program and stationary source regulations.
- Interference with any other state.
- Assurance of adequacy of personnel, funding, authority.
- Emission monitoring.
- Emergency powers.
- SIP revisions.

Unless identified below in "Why Is EPA Proposing to Disapprove or Conditionally Approve Parts of the State of Montana's Plan," all other requirements of sections 110(a)(2) and 172(c) have been met. We are proposing to approve the SIP as satisfying those requirements or finding that no action is required because certain provisions have previously been approved into the Montana SIP. Refer to our TSD for a detailed discussion of the Act's requirements, how they have been satisfied, and our proposed actions.

Following is a discussion of the major issues we raised concerning the Billings/Laurel SIP for SO2 and how the State of Montana addressed those issues.

1. Quarterly Data Recovery Rate (QDRR)

In earlier SIP submittals (i.e., those submitted prior to the July 29, 1998 submittal), the exhibits required most sources to meet only a 90% QDRR for the continuous emission monitoring system (CEMS), or limited the number of hours in a calendar quarter when valid hourly SO2 emission rate data were unavailable to 192 hours. QDRR means the percentage of time in each quarter that the CEMS is up and running and generating data about SO2 emissions. We believed we could not propose to approve the SIP unless the State of Montana revised the exhibits to indicate that the exhibits do not preclude the MDEQ from taking enforcement action for a QDRR that is less than 100% but equal to or greater than 90%, and unless the State of Montana deleted the section of the exhibits pertaining to 192 hours. With the July 29, 1998 submittal of the SIP, the State of Montana has revised the QDRR requirements as we requested. Specifically, the exhibits now indicate that notwithstanding the numerical QDRR requirements, sources are to use best efforts to achieve the highest QDRR that is technically feasible. The State of Montana deleted the reference to the 192-hour short quarters. Instead, the exhibits now indicate that, for quarters in which operating hours are reduced (short quarters), a determination of whether a source violated the QDRR shall include consideration of whether the reduced operating hours made compliance with the numerical QDRR unreasonable.

The July 29, 1998 submittal of the SIP addresses our prior concerns. We interpret the submittal as requiring sources to achieve the highest data recovery that's technically feasible. Any loss of CEMS data will need to be adequately documented and justified by sources. We interpret the July 1998 submittal to allow the MDEQ, us, and citizens to take enforcement action for QDRR's that are between 90 and 100%, if CEMS data loss is not adequately documented and justified. We believe that the MDEQ shares our interpretation of the QDRR requirements. See transcripts of the June 12, 1998 hearing before the Board of Environmental Review, page 6, starting on line 14 where an MDEQ representative indicated "[W]e have revised that control plan such [that] it is clear now that obtaining data 100 percent of the time is indeed a requirement of the control plan." These transcripts are part

[2] All referenced documents are contained in the docket for this action, docket #R8–99–01.

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of the "Record of Adoption" material that was submitted by the Governor with the SIP revision on July 29, 1998. (See document #II.E–3.)

Based on the July 1998 submittal and our interpretation above, we are proposing to approve the SIP as it applies to the QDRR provisions in all the exhibits for all seven sources.

2. Hydrogen Sulfide (H2S) Continuous Emission Monitoring Systems (CEMS) at Cenex

H2S CEMS are used at some sources to monitor compliance with the SO2 emission limitations on fuel gas-fired units. H2S concentrations above 300 ppm would exceed the level at which the monitors could record (i.e., be off-scale) and would result in errors in estimating SO2 emissions. We believed we could not propose to approve the SIP unless the State of Montana revised the earlier exhibits (i.e., those submitted prior to the July 29, 1998 submittal) to restrict the H2S concentration to a value that could be monitored by the H2S CEMS. We believed the limitation must be established such that the CEMS used to monitor compliance with the limitation will meet the required performance specifications.

In lieu of restricting H2S concentrations to a range the CEMS can record, the July 29, 1998 submittal of the SIP requires Cenex to use an alternative method to monitor compliance when the CEMS are off-scale.

We believe the Cenex exhibit, submitted on July 29, 1998, provides an acceptable approach to determine H2S concentrations in the refinery fuel gas at Cenex. We are proposing to approve the SIP as it applies to Cenex's method for determining H2S in the refinery fuel gas.

3. Combined Emission Limitations

Several sources have combined emission limitations for heaters and boilers. We believed we could not propose to approve the SIP as written unless these limitations were justified under our Economic Incentive Program (EIP) or Emissions Trading Policy Statement. In our June 3, 1997 letter to MDEQ, we completed an evaluation of the stipulations in comparison with the discretionary EIP requirements contained in 40 CFR part 51, subpart U, which we promulgated on April 7, 1994 (59 FR 16690). (See document #II.C–8.) We believed the stipulations and exhibits met the discretionary EIP requirements. However, since our initial evaluation of the combined emission limitations under the discretionary EIP, we have come to believe that the compliance monitoring method for Exxon's refinery fuel-gas combustion emissions limitation (combined emission limitation) is not acceptable. See discussion below under section II.C.4., "Exxon's fuel gas combustion emission limitations and attendant compliance monitoring method" and in section III.C.(2)(d) of our TSD. In addition, we raised concerns with Cenex's method for measuring sour water stripper emissions when burned in the main crude heater. See discussion below under section II.C.5., "Cenex Sour Water Stripper (SWS)" and in section III.C(2)(l) of our TSD. The Governor has committed to address our concerns. (See document #II.E–5.) Therefore, we are proposing to conditionally approve Exxon and Cenex's combined emission limitation and proposing to fully approve the combined emission limitations for heaters and boilers at Conoco and Western Sugar as meeting the discretionary EIP requirements.

4. Montana Sulphur & Chemical Company (MSCC) 30-Meter Stack

We believe the earlier version of the MSCC exhibit (i.e., the exhibit submitted prior to the July 29, 1998 submittal) did not provide an adequate means to monitor compliance with the 30-meter stack emission limitation. With the July 29, 1998 submittal of the SIP, the MSCC exhibit now restricts the units that can exhaust to the SRU 30-meter stack. Specifically, MSCC's exhibit requires that only units burning low sulfur fuel gas or natural gas and only those units/boilers listed in MSCC's exhibit can be exhausted through the SRU 30-meter stack. MSCC's exhibit also provides that other units/boilers could be vented to the SRU 30-meter stack only if (1) they are "like-kind" boilers or simply replace the fuel burning potential of the listed boilers; (2) MSCC obtains the necessary permits or a determination by the MDEQ that a permit isn't necessary and the additional unit is fired exclusively on pipeline-quality natural gas, "LP" gas, or the equivalent in pounds of sulfur per BTU; or (3) the SO2 emissions from the SRU 30-meter stack are being monitored by parametric methods approved by the MDEQ and EPA, or by a CEMS. We confirmed with the MDEQ that the expression "'like-kind' boilers or simply replaces the fuel burning potential of the listed boilers" means that any replacement boiler must have the same or lower potential to emit SO2 as the boiler being replaced. A boiler having a greater potential to emit SO2 than an existing boiler could not be used to replace it.

MSCC's exhibit, contained in the July 1998 submittal of the SIP, does not provide any new means to determine compliance with the 12 lb/3-hr SO2 emission limitation for the SRU 30-meter stack. MSCC's exhibit requires MSCC to report the date and time period when emissions are exhausted through the SRU 30-meter stack, report which operating units are exhausted from the stack, and include engineering estimates of three-hour emissions and daily emissions from the stack.

MSCC's exhibit requires that only units burning low sulfur fuel gas or natural gas be exhausted through the 30-meter stack. MSCC's exhibit does not define "low sulfur fuel gas." We interpret "low sulfur fuel gas" to be properly sweetened fuel gas. Based on our interpretation, burning unsweetened refinery fuel gas in one of the named units when it is exhausting to the 30-meter stack would be considered a violation of the stipulation and SIP. MDEQ's September 3, 1998 letter indicates that MDEQ believes MSCC does not need further emissions monitoring for the 30-meter stack because, among other reasons, MSCC fires its boilers on the same sweetened refinery fuel gas that it provides to Exxon, and when the amine unit is working properly, the H2S concentration in the refinery fuel gas is less than 100 ppmv. We inferred from that discussion that MDEQ also interpreted "low sulfur fuel gas" to mean properly sweetened fuel gas. In a letter dated May 20, 1999, the MDEQ indicated that they interpret "low sulfur fuel gas" to be sweetened refinery fuel gas or its equivalent in pounds of sulfur dioxide per million British thermal units (lbs-SO2/MMBtu) of heat input. (See document #II.E–14.)

Because of our interpretations discussed above and MDEQ's confirmation of our interpretation in the letter dated May 20, 1999, we are proposing to approve the SIP as it applies to the emission limitation for the 30-meter stack at MSCC. Note, however, that we are concerned that there is no definition of "low sulfur fuel gas" in MSCC's exhibit. We may consider creating such a definition when we complete a Federal implementation plan (FIP) to fill in the gaps for the SIP provisions that we are proposing to disapprove.

5. Variable Emission Limitations[3]

Novel Control Strategy. The State of Montana has adopted a novel control strategy for three of the seven sources in the Billings/Laurel area. For MSCC and Montana Power, emission limitations vary depending on the "buoyancy flux" of the SO2 gas plume as it exits the stack. Buoyancy flux is a function of gas flow rate and gas temperature in the stack, which vary within certain parameters. To determine the emission limitation on a real-time basis for each three-hour and twenty-four hour compliance period, MSCC and Montana Power rely on data from continuous flow-rate monitors and in-stack thermometers. For the fluid catalytic cracking (FCC) unit at Exxon, emission limitations vary depending on the feed rate to the FCC unit. To determine the emission limitation on a real-time basis for each three-hour and twenty-four hour compliance period, Exxon relies on data from a continuous feed rate meter. To determine whether a unit is meeting the particular emission limitation for the relevant time period, actual emissions of SO2 will be monitored by continuous emission monitors located in the stacks.

This strategy is both complex and flexible. The strategy is complex, in that it is based on computer dispersion modeling involving many variables and it requires constant attention by plant operators not only to keep pollution within allowable limitations but also to determine what those limitations may be. The strategy is flexible, in that it allows sources to maximize emissions when favorable stack conditions enable the gas plume to rise and thus have less impact on ambient concentrations of SO2 near the ground. Our proposed approval of this novel strategy was carefully considered. It is based on MDEQ's assurances that the variable limitations can be enforced and that MDEQ has adequate resources to monitor compliance, including review of monitoring data.

Our Initial Concern. Our initial concern about the concept of a variable emission limitation focused on MDEQ's ability to model and enforce the limitation. After consulting with other Regional Offices and EPA's Office of Air Quality Planning and Standards (OAQPS), we believe that, while technically more difficult, it is feasible to model all the inputs and determine whether or not the NAAQS can be attained with variable emission limitations. With respect to whether variable limitations can be enforced, we believe they can be because all the stacks with variable limitations have continuous emission monitoring systems (CEMS). CEMS provide MDEQ and us with the level of information necessary to make a compliance determination at all times. However, we realize that enforcing a variable emission limitation may be more difficult than enforcing a fixed emission limitation. Since the State of Montana wants to pursue this innovative strategy, we are willing to propose approval of the SIP as it applies to these provisions. However, as discussed below, if variable limitations were to prove too difficult for MDEQ or us to enforce, we would reconsider our approval. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or take other appropriate action under the Act.

Our Follow-up Concern. Our follow-up concern about the variable emission limitations was how to determine the appropriate emission limitation if continuous monitors were not functioning (the variable emission limitations at MSCC and Montana Power are based on the stack flow rate and temperature; at Exxon, on the FCC feed rate). We believed we could not propose to approve the SIP unless the State of Montana revised the exhibits to indicate that when data needed to determine the appropriate emission limitation are missing, the most stringent limitation applicable to the source would apply. Additionally, we indicated that for those variable limitations that rely on temperature probes, the MDEQ needed to provide assurances that they were adequate.

To address our concerns about establishing emission limitations when data are missing, the State of Montana submitted a SIP revision on July 29, 1998. In the July 29, 1998 submittal, the exhibits require sources to install and maintain back-up monitoring systems. However, the back-up systems are not completely redundant. If the back-up system fails or fails to measure and record flow and temperature data, the exhibits specify a data substitution method to determine the applicable emission limitation.

We believe that the back-up monitoring systems should assure that data are available to determine the emission limitations and only in rare cases should the data substitution method be needed to determine the appropriate emission limitation. However, if we were to find that the back-up monitoring systems were not functioning properly and not assuring on a regular basis that data were available to determine the emission limitations, we would reconsider our approval. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or take other appropriate action under the Act.

In a letter dated May 20, 1999, MDEQ assured us that the temperature probes used to determine the buoyancy flux emission limitation are located in a representative location in the stack and that there are proper Quality Assurance/Quality Control (QA/QC) requirements for the temperature probes. (See document #II.E–14.)

Our Proposed Approval. Because the State of Montana has addressed our concerns about determining emission limitations when CEMS data are not available, we are proposing to approve the SIP as it applies to the variable emission limitations at Montana Power and Exxon. We are not proposing to approve the SIP as it applies to the variable emission limitation at MSCC due to the stack height issue discussed in section II.B.(2) below and in section III.C.(2)(q) of our TSD. Our proposed approval for Montana Power and Exxon has several caveats. As mentioned previously, we realize that the variable emission limitations may be more difficult to enforce than a fixed emission limitation. We believe that the back-up monitoring methods should generally assure that data will be available to determine the emissions limitations. However, we will perform close oversight as MDEQ implements this SIP, particularly the variable emission limitation control strategy. If we were to find that the variable limitations are not practically enforceable by the MDEQ or us, that the back-up monitoring systems are not sufficient to assure on a regular basis that data are available to determine the emission limitations, or that MDEQ is unable to adequately review and assure the quality of the monitoring data on which both limitations and compliance are based, we would reconsider our approval. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of

[3] We believe that the variable emission limitations are not a dispersion technique, as defined by 40 CFR 51.100(hh)(1), for the following reasons: First, the variable emission limitations are not based on atmospheric conditions or ambient concentrations of a pollutant, and are thus not dispersion techniques under 40 CFR 51.100(hh)(1)(ii). Second, with respect to Montana Power and MSCC, the SO2 emissions for each source are limited to 5,000 tons per year or less. Therefore, 40 CFR 51.100(hh)(1)(iii) does not apply. See 40 CFR 51.100(hh)(2)(v). With respect to Exxon, the emission limitation varies as throughput to the FCC unit varies. The variable emission limitation is based on historical source operations and stack data, not on manipulating process or exhaust gas parameters to increase final exhaust gas plume rise. Therefore, the variable emission limitation is not a dispersion technique as defined in 40 CFR 51.100(hh) and thus is not prohibited by section 123 of the Act.

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the Act or take other appropriate action under the Act.

6. Department Discretion

In our June 3, 1997 letter to MDEQ (see document #II.C–8), we raised a concern about places in the stipulations, exhibits and attachments where the Department has the discretion to modify existing provisions in the SIP, approve into the SIP future documents or compliance monitoring methods, or make other determinations that affect the SIP without obtaining our approval. The stipulations, exhibits and attachments were not clear whether any of these changes would be submitted as SIP revisions or through any other process for us to review and approve. We indicated that certain revisions to the SIP could occur through the Title V significant permit modification process if the SIP contained enabling language that would allow it to be revised through that process. We referenced our March 5, 1996 "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program" as guidance the State of Montana should follow when using the Title V permit process to revise the SIP.

Finally, we indicated that in places where the stipulations, attachments and exhibits allowed the Department to make certain decisions, the words "and EPA," must be added.

In our March 6, 1998 letter to MDEQ (see document #II.C–10), we provided further guidance on how the stipulations, exhibits and attachments must be revised to address the department discretion concerns.

With the July 29, 1998 submittal of the SIP, the State of Montana has revised the stipulations, exhibits and attachments to address our concerns. The stipulations describe a process that the State of Montana will follow when modifying the SIP by implementing alternative requirements or making text changes to the stipulations, exhibits and attachments.

We believe that the July 1998 submittal addresses our concern about department discretion to change the SIP. The stipulations contain the following language: "To the extent allowed under federal requirements, minor and clerical corrections may be made by mutual agreement of the parties, without the necessity for formal approval by EPA." We want to make clear that, once we approve the SIP, the federally approved SIP may only be revised with our approval. See section 110(i) of the Act, 42 U.S.C. 7410(i). The one exception is through the Title V permitting process consistent with EPA's March 5, 1996 "White Paper Number 2 for Improved Implementation of the part 70 Operating Permits Program." Thus, in proposing approval of portions of the SIP, we want to clarify that the "parties" to the stipulations may not make minor and clerical corrections to the federally effective SIP without our approval, or without following the Title V procedures described below.

Consistent with the foregoing, we interpret the stipulations to require the following process for modifying the SIP text and approving alternative requirements and methodologies: the State of Montana must submit to us all modifications to SIP text (including minor and clerical corrections or modifications) and all MDEQ approvals of alternative requirements and methodologies. If the modification to text or alternative requirement or methodology is proposed as a "minor modification" (or clerical correction) we will inform the State of Montana within 45 days from the date of submittal of our determination whether the modification or alternative is major or minor, and if it is minor, of our approval of the modification or alternative. (We caution that our failure to make such determination within 45 days does not mean that the modification or alternative is minor and is approved.) If we do not approve the modification of text or alternative requirement or methodology as minor, the State of Montana must adopt the modification as a SIP revision in accordance with section 110(a)(2) of the Act and submit it to us for approval. We will then act on the SIP revision in accordance with the provisions of Title I of the Act, pursuant to notice and comment rulemaking under the Administrative Procedure Act.

The stipulations provide for the possible use of Title V permit revision procedures to achieve certain types of SIP text modifications or approvals of alternative requirements or methodologies. Specifically, the modification or approval must pertain to testing, monitoring, recordkeeping, calculation, reporting, or operating requirements or methodologies. 40 CFR 70.6(a)(1)(iii) provides that the State of Montana may use Title V significant permit revision procedures to achieve the SIP revision if the following conditions have been met: the MDEQ has issued a Title V permit to the source, the State of Montana has adopted enabling regulatory language for making SIP changes through Title V procedures, we have approved such language in the Montana SIP, and we do not object to the specific modification at issue. In our March 5, 1996 "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program," we have described various criteria for such enabling regulatory language; in particular, such SIP language must require that any alternative SIP requirements established through a Title V permit be at least as stringent as the otherwise-applicable SIP requirement.

All changes to the SIP, whether minor or significant, must be reflected in the Title V permit for the source as "applicable requirements" under 40 CFR 70.2. Therefore, as changes are made to the SIP, MDEQ will need to modify the Title V permit through appropriate permit revision procedures.

Based on the July 1998 submittal of the SIP and our interpretation of the modification process, we are proposing to approve these provisions of the stipulations, exhibits and attachments.

7. Clarifying Interpretations

In a June 5, 1998 letter to MDEQ (see document #II.E–7), we identified several places where the State of Montana could make the stipulations and exhibits clearer. In a September 3, 1998 letter to us (see document II.E–9), the MDEQ agreed that, while it would be helpful to make the suggested changes, the stipulations had already been signed without the modifications we suggested. In the future the MDEQ will evaluate whether to make the suggested changes.

Because the SIP has not been modified as we had suggested in our June 5, 1998 letter to the MDEQ, we are providing our interpretations of several provisions in the stipulations. Based on the MDEQ's September 3, 1998 letter, we believe that the MDEQ agrees with our interpretations.

(a) Paragraph 16 of the Exxon and Montana Sulphur & Chemical Company (MSCC) stipulations and paragraph 14 of the other sources' stipulations contain this statement: "The Stipulation Requirements shall supersede any less stringent corresponding conditions pertaining to SO2 sources in any currently existing permit." The term "Stipulation Requirements" was defined and used in several places in prior versions of the stipulations. It appears to have been replaced by the phrase, "requirements in the Stipulation, Exhibit A, and Attachments," everywhere in the current stipulations except in paragraph 16 for Exxon and MSCC and paragraph 14 for the other sources. Additionally, paragraph (B) of section 9 of exhibit A appears to define "Stipulation Requirements" as a "limitation, condition, or other requirement contained herein." Therefore, we interpret "Stipulation Requirements" in paragraph 16 for Exxon and MSCC and paragraph 14 for the other sources to mean any "requirement in the Stipulation, Exhibit A, and Attachments."

(b) Paragraph 12 of the Exxon and MSCC stipulations and paragraph 10 of the other sources' stipulations use the word "revision" to describe a change made to an attachment. We understand that changes to attachments, like all other changes to SIP documents, are subject to the procedures for modification set forth in Paragraph 19 of the Exxon and MSCC stipulations and paragraph 17 of the other sources' stipulations.

(c) In Montana Power's exhibit, we interpret the reporting requirements of section 7(B)(1)(f), which read, "The electronic report shall contain daily calibration data from the CEMS required by section 6(B)(1) and (2), or if applicable, section 6(B)(3)," to mean, "The electronic report shall contain daily calibration data from CEMS required by section 6(B)(1) and (2), *and* if applicable, section 6(B)(3)."

In addition to (a), (b) and (c) above, in a January 15, 1999 letter to MDEQ, we requested that the MDEQ confirm our interpretations on several issues. (See document #II.E–10.) The MDEQ responded on May 20, 1999. (See document #II.E–14.) These issues are discussed below.

(d) We interpret the February 7, 1998 date in section 3(E)(3) of Exxon's exhibit to be February 7, 1997. This paragraph is referencing an order signed by the Montana Board of Environmental Review (MBER). Earlier information submitted by MDEQ indicates that the order referenced was dated February 7, 1997. We believe the February 7, 1998 date to be a typographical error. MDEQ confirmed this in its May 20, 1999 letter.

(e) We interpreted a parenthetical in section 3(A)(1) of the Exxon exhibit to mean that Exxon is prohibited from exhausting coker unit flue gas from the coker CO-boiler stack at the same time either or both of YELP's boilers are operating (except during startup and shutdown of YELP).[4] This prohibition does not appear in the exhibit, however, but in an air quality permit issued to Exxon by MDEQ on June 17, 1996, which states: "Exxon shall, *any time* the Yellowstone Energy Limited Partnership (YELP) facility is operating, send *all* of its coker process gas to either or both of YELP's boilers. During startup and shutdown conditions at YELP, Exxon shall supply the maximum amount of coker process gas that YELP can accept" (see document #II.F–12, paragraph A of Section II: Limitations and Conditions). We asked MDEQ to clarify this prohibition.

In the May 20, 1999 letter to us, MDEQ responded that "pursuant to the attainment demonstration modeling it is not necessary to prohibit coker unit flue gases from being exhausted from the coker CO-boiler stack at the same time that YELP is operating. The prohibition against simultaneous emissions was developed during prevention of significant deterioration of air quality (PSD) permitting of the YELP facility, and was necessary to obtain offsets allowing YELP into the airshed under PSD. Since the prohibition is not necessary for attainment of the NAAQS, it is the Department's position that the prohibition does not belong in Exxon's exhibit A, and the parenthetical should be deleted."

Because simultaneous emission from Exxon and YELP have been shown by modeling to demonstrate attainment of the NAAQS, we agree with the MDEQ that the prohibition in the parenthetical is not necessary for the Billings/Laurel SO2 SIP. However, if Exxon is subject to more stringent requirements under other provisions of the Act, such as the permit condition quoted above which appears in a permit issued under Montana's state-wide SIP, then our approval of this SIP would not excuse Exxon from meeting those other more stringent requirements.

(f) MSCC's exhibit indicates that units burning low sulfur fuel gas or natural gas can be exhausted through the 30-meter stack. MSCC's exhibit does not define "low sulfur fuel gas." We interpret "low sulfur fuel gas" to be properly sweetened fuel gas (e.g., fuel gas which has been treated in an amine unit to remove H2S). Based on our interpretation, burning unsweetened refinery fuel gas in one of the named units when it is exhausting to the 30-meter stack would be considered a violation of MSCC's exhibit and the SIP. The MDEQ's September 3, 1998, letter indicates that the Department believes MSCC does not need further emissions monitoring on the 30-meter stack because, among other reasons, MSCC fires its boilers on the same sweetened refinery fuel gas that it provides to Exxon and that when the amine unit is working properly, the H2S concentration in the refinery fuel gas is less than 100 ppmv. We inferred from that discussion that MDEQ also interpreted "low sulfur fuel gas" to mean properly sweetened fuel gas. In a letter dated May 20, 1999, the MDEQ indicated that they interpret "low sulfur fuel gas" to be sweetened refinery fuel gas or its equivalent in pounds of sulfur dioxide per million British thermal units (lbs-SO2/MMBtu) of heat input. (See document #II.E–14.) Note, however, that we are concerned that there is no definition of "low sulfur fuel gas" in MSCC's exhibit. We may consider creating such a definition when we complete a FIP to fill in the gaps for the SIP provisions that we are proposing to disapprove.

(g) Finally, we interpret our approval of the SIP, including emission limitations and other requirements, as not excusing sources from meeting other potentially more stringent requirements under other provisions of the Act (e.g., section 111, part C or SIP-approved permit program under part A). In a conversation on April 28, 1999, the MDEQ agreed with our interpretation. Also, our action on this SIP is not meant to imply any sort of applicability determination under other provisions of the Act (e.g., section 111, part C or SIP-approved permit program under part A).

B. Why Is EPA Proposing to Disapprove Parts of the State of Montana's Plan?

Certain provisions of the Billings/Laurel SO2 SIP do not satisfy our requirements for SIPS. In addition, the SIP lacks certain enforceable requirements necessary to demonstrate attainment and maintenance of the NAAQS. The parts of the Plan proposed for disapproval are the following:

1. Escape Clause

Each stipulation contains a paragraph which allows a source to withdraw its consent to the stipulation. The "escape clause" reads as follows:

Notwithstanding any other provision of this Stipulation, [the named source's] and the Department's consent to be bound by the terms of this Stipulation is conditioned upon the adoption of SO2 emission control strategies, for all the affected industries in this matter, which are in their common terms substantially similar to one another. This condition of substantial similarity extends only to the initial control strategies, adopted by the Board or by the U.S. EPA as a Federal Implementation Plan, and which are adopted in response to the EPA letter of March 4, 1993 calling for revision of the Billings/Laurel SO2 SIP. This condition of substantial similarity does not extend to subsequent revisions of such initial emissions control strategies, but does extend to and include any revisions of such initial emissions control strategies resulting from any challenge or appeal of the initial adopted emissions control strategies. In the event that an initial control strategy is finally adopted by the Board or EPA, for any of the affected industries in this matter, which is not

[4] The parenthetical states, "(fuel gas combustion emissions only since under this configuration coker unit flue gas is prohibited from exhausting through the stack)".

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substantially similar in its common terms to this Stipulation or Exhibit A, either [the named source] or the Department may, in writing delivered to the other party and to the other affected industries in this matter within 60 days of receiving written notice of the adoption, withdraw its consent to this Stipulation.

We are proposing to disapprove the SIP as it applies to the escape clause because, if sources invoke the escape clause, the MDEQ would no longer have a plan to implement. Specifically, we are proposing to disapprove the following: paragraph 22 in the Exxon and MSCC stipulations; paragraph 20 in the Cenex, Conoco, Montana Power, YELP, and Western Sugar stipulations. If sources invoke the escape clause after our final action on the SIP, we expect to address this scenario by issuing another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or taking other appropriate action under the Act. Additionally, if we disapprove the escape clause, the provisions of the SIP that we approve will remain federally enforceable even if one or more of the sources invoke the escape clause. While our proposed disapproval of the escape clause eliminates the risk of a source's future attempt to nullify the SIP, we do not believe our disapproval would render the SIP more stringent than the State of Montana intends, since it does not change the stringency of any of the substantive requirements the State of Montana has imposed and is currently able to enforce under the SIP.

2. MSCC Stack Height Credit and Emission Limitations on the Sulfur Recovery Unit (SRU) 100-Meter Stack

We are proposing to disapprove MSCC's stack height credit and emission limitations (paragraph 2 of the MSCC stipulation and sections 3(A)(1)(a) and (b) and 3(A)(3) of the MSCC exhibit) used in the attainment demonstration modeling for the Billings/Laurel area. We believe it is necessary to propose to disapprove MSCC's emission limitations because the State of Montana has set limits based on an amount of stack height credit for MSCC that is not supportable under section 123 of the Act or our stack height regulations.

(a) Introduction

In enacting section 123 of the Act, Congress recognized that stationary sources could reduce local concentrations of pollutants in the air either through source controls or through the use of tall stacks to disperse the pollutants. Congress chose to restrict the extent to which sources could use dispersion as a means to meet the NAAQS, because Congress was concerned with the potential negative impacts on downwind areas associated with long-range transport of pollutants.

To effect this restriction, Congress did not limit the height of stacks that sources may build, but instead limited the height that may be credited to stacks in dispersion modeling used to demonstrate attainment and maintenance of the NAAQS. Our regulations implement Congress's decision. By crediting too much of MSCC's stack height in the Billings attainment demonstration, the State of Montana is allowing MSCC to substitute dispersion for emissions reduction as a means to attain the SO2 NAAQS, in contravention of Congressional intent and our regulations.

(b) Stack Height Requirements

Section 123 of the Act provides that the "degree of emission limitation required for control of any air pollutant under an applicable implementation plan * * * shall not be affected in any manner by * * * so much of the stack height of any source as exceeds good engineering practice (as determined under regulations promulgated by the Administrator) * * * [G]ood engineering practice means, with respect to stack heights, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies and wakes which may be created by the source itself, nearby structures or nearby terrain obstacles * * *"

Section 123 of the Act required us to promulgate regulations to carry out the purposes of section 123. We first promulgated stack height regulations in February 1982. These regulations were challenged in *Sierra Club* v. *Environmental Protection Agency*, 719 F.2d 436 (D.C. Cir. 1983). In that case, the U.S. Court of Appeals for the D. C. Circuit reversed certain provisions, upheld other provisions, and ordered us to reconsider still other provisions of the stack height regulations.

We promulgated revised stack height regulations on July 8, 1985 (50 FR 27892). These revised regulations were challenged in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). The court's opinion affirmed the regulations in large part. The court remanded three provisions that are not relevant to this action.

Our stack height regulations, codified at 40 CFR 51.100 and 51.118, provide that the degree of emission limitation required for pollutant control under an applicable SIP shall not be affected by stack height in excess of good engineering practice (GEP) stack height. The central component of the regulations consists of a definition of the term "good engineering practice stack height." GEP stack height is the greater of (1) 65 meters (known as "de minimis" stack height), (2) the height calculated using a formula specified by the regulations ("formula height"), or (3) the height demonstrated using fluid modeling or a field study ("non-formula height" or "above-formula height"). 40 CFR 51.100(ii)(1)–(3).

We issued our SIP Call to the State of Montana to revise the Billings/Laurel SIP in 1993. Following the SIP Call, MSCC constructed its 100 meter stack and sought to gain credit in the Billings/Laurel SIP for the full height of the stack.

MSCC asserted various theories for gaining a 100 meter stack height credit. Among other things, MSCC argued that the 100 meter stack was grandfathered, that 100 meters represented the formula height based on the stack support structure, and that 100 meters represented the formula height based on nearby structures. The State of Montana rejected all of these arguments and they are therefore not relevant to this proposal.

Ultimately, MSCC performed fluid modeling to attempt to justify an above-formula stack height credit. *See* CPP Report 95–1235, entitled "Fluid Modeling for Good Engineering Practice Stack Height for the Montana Sulphur and Chemical Company Main Stack (SRU)," dated February 22, 1996 (document # II.F–1). Our stack height regulations, at 40 CFR 51.100(ii)(3), define GEP stack height for fluid modeling purposes as:

> The height demonstrated by a fluid model * * * approved by the EPA, State or local control agency, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

The regulations, at 40 CFR 51.100(kk)(1), go on to define "excessive concentrations" for purposes of above-formula fluid modeling demonstrations as follows:

> [A] maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard.

The regulations further specify that, "the allowable emission rate to be used in making demonstrations under this part shall be prescribed by the new source performance standard (NSPS) that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible." If the source successfully demonstrates that the applicable NSPS is infeasible, the regulations then provide that "an alternative emission rate shall be established in consultation with the source owner or operator." 40 CFR 51.100(kk)(1). The preamble to the regulations indicates that such an alternative emission rate is to be established under our Best Available Retrofit Technology guidance. *See* 50 FR 27898, fn. 6, July 8, 1985. (See document #II.A–16.)

We have consistently read the language of the regulations to require sources that wish to obtain above-formula stack height credit to actually adhere to the NSPS or alternative emission limit used in the fluid modeling demonstration. Sources must be well-controlled as a condition of obtaining above-formula stack height credit. *See, e.g.*, 50 FR 27898 (document #II.A–16); memorandum dated November 27, 1990 from John Calcagni to Irwin L. Dickstein regarding "Stack Height Questions" (document #II.F–13); letter dated April 20, 1989 from Gerald A. Emison to John P. Proctor (document #II.A–7); memorandum dated October 28, 1985 from Darryl D. Tyler, Director, Control Program Development Division, OAQPS, to Air Management Division Directors, Regions I–X, regarding "Implementation of Stack Height Regulations—Presumptive NSPS Emission Limit for Fluid Modeling Stacks Above Formula GEP Height" (document #II.A–3); Response to Comments on the November 9, 1984, Proposed Stack Height Rules, prepared July 1985 by EPA's Office of Air Quality Planning and Standards, at 29, 37, 61 (document #II.A–8); our Notice of denial of petitions for reconsideration of the stack height regulations, 51 FR 15885, at 15886 (document #II.A–9); Support Document for Response to Petitions for Reconsideration of the Stack Height Regulations, March 1986 (document #II.A–11); memorandum from Assistant Administrator for Air and Radiation to The Administrator regarding "Denial of Petitions for Reconsideration of the Stack Height Regulations—Action Memorandum" (document #II.A–10); Guideline for Determination of Good Engineering Practice Stack Height (Revised) (Technical Support Document For the Stack Height Regulations), EPA–450/4–80–023R, June 1985, Table 3.1, item G (document #II.A–12); memorandum dated June 19, 1985 from Eric O. Ginsburg, Policy Development Section, OAQPS, to Files, entitled "Conference Call With OMB to Discuss Concerns about the Stack Height Regulations," which was included in the docket for our stack height regulations (document #II.A–13); memorandum dated June 26, 1985 from D. H. Stonefield, Chief, Policy Development Section, OAQPS, to Docket A–83–49, entitled "Stack Height Regulation Discussions OMB" (document #II.A–14).

(c) MSCC's Fluid Modeling Analysis

Based on MSCC's fluid modeling demonstration, the State of Montana adopted SO2 emission limitations [5] for MSCC's main stack based on a stack height credit of 97.5 meters. *See* August 9, 1996 Order of the Montana Board of Environmental Review Concerning Montana Sulphur & Chemical Company, (contained in Vol. III, Chapter 25, Section 56.9.3.9, State of Montana Air Quality Control Implementation Plan), Findings of Fact, paragraph 3 (document #II.C–2).

While MSCC's contractor, CPP, used a scaled NSPS emission rate in the MSCC fluid modeling demonstration, the State of Montana's SIP revision does not require MSCC to meet the NSPS SO2 emission rate as an operating limit for its main stack. Instead, the SIP submission contains different SO2 limits for the main stack that are unrelated to, and significantly higher than, the NSPS emission rate.

In establishing MSCC's SIP limits for the main stack, the State of Montana did not follow 40 CFR 51.100(kk)(1)'s requirements for establishing an alternative to the NSPS limit: MSCC did not show the infeasibility of the NSPS limit, the State of Montana did not establish an alternative limit in accordance with our BART guidelines, MSCC did not use such BART limit in fluid modeling, and the State of Montana did not use such BART limit as an upper bound for MSCC's SIP emission limit. Thus, the SIP revision is inconsistent with section 123 of the Act and our stack height regulations. The TSD for this action discusses this more fully. (See document #III.B–1.)

In addition, the State of Montana approved the 97.5 meter stack height credit based on a flawed fluid modeling demonstration.

First, for purposes of its fluid modeling demonstration, MSCC's contractor treated the support structure for the stack as a "nearby structure." The fluid modeling demonstration evaluates the effect of the source, nearby structures, and nearby terrain ("nearby" is defined at 40 CFR 51.100(jj)) on downwash from the stack through a set of paired model runs, one in which the source and all nearby structures and terrain features are included, and one in which the source and all nearby structures and terrain features are removed from the scale mockup of the facility. The stack itself is included in both sets of model runs. Results of the two sets are then compared to determine the amount of downwash that is being created by the source, nearby structures, and nearby terrain features.

For the model runs in which nearby structures were removed from the scale mockup, MSCC's contractor also removed the stack's support structure from the scale mockup; i.e., MSCC's contractor modeled downwash from the support structure. The support structure is like a tin can, approximately eight feet in diameter, that surrounds the stack tube and supports it. MSCC has asserted that the support structure creates downwash and that it is appropriate to model for such downwash because the support structure is "nearby."

While the support structure is clearly within the distance that 40 CFR 51.100(jj) defines as "nearby" with respect to separate structures, our position is that the stack's support structure is integral to the stack itself, and that it is inappropriate to use part of the stack structure to justify a greater stack height credit. Otherwise, sources might purposefully design their stacks with support structures that create downwash as a means to avoid emissions control, in essence using a tall stack to justify itself.

To the extent MSCC designed a stack that creates excessive downwash, MSCC is obligated to address such effects through emissions control rather than dispersion. Thus, in conducting its fluid modeling, MSCC's contractor should have included the support structure as part of the scale mockup of the stack in both sets of model runs. We informed the MDEQ of our position on this issue in letters dated January 31, 1996, March 15, 1996, and July 18, 1996 [6] (see

[5] The State of Montana developed multiple SO2 limits for MSCC's main stack. The limit at any point in time is dependent on the temperature and flow rate of the gases in the stack.

[6] In a June 27, 1994 letter to Jeffrey T. Chaffee, we indicated that the support structure could not be used to determine formula stack height credit, but that its effects could be considered in a fluid modeling demonstration. That letter was issued without full consideration of regulatory

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document #'s II.F–19, II.F–20 and II.C–5, respectively).

Put another way, before MSCC erected the 100 meter stack, the support structure did not exist; it was creating no downwash, wakes, or eddy effects that necessitated the construction of the 100 meter stack. The construction of a new structure near a stack may allow a source to seek greater stack height credit, but it is contrary to Congressional intent to allow the construction of a new stack to create a downwash situation that did not previously exist and justify its own stack height credit.

Second, the portion of MSCC's fluid modeling that the State of Montana approved [7] only showed an exceedance of the annual Montana Ambient Air Quality Standard (MAAQS) for SO2, but not the annual NAAQS. *See* memorandum from John Coefield, Technical Services Unit, Montana Air Quality Division, to Files, regarding "Montana Sulphur and Chemical Company (MSCC) GEP stack height demonstration," dated March 1, 1996 (document #II.C–4); the State's Record of Adoption for the Billings/Laurel SO2 SIP, Transcript of Proceedings, August 9, 1996, pages 5, 6, Testimony of Bob Raisch (see document #II.C–3); August 9, 1996 Order of the Montana Board of Environmental Review Concerning Montana Sulphur and Chemical Company, (contained in Vol. III, Chapter 25, Section 56.9.3.9, State of Montana Air Quality Control Implementation Plan), Findings of Fact, paragraph 3 (see document #II.C–2). The annual MAAQS for SO2 is a more stringent standard (lower number) than the annual NAAQS for SO_2 (52 $\mu g/m^3$ rather than 80 $\mu g/m^3$). In a fluid modeling demonstration, use of a lower number makes it easier to show an excessive concentration and justify a higher stack height credit.

We do not believe it is proper to use a MAAQS exceedance to justify above-formula stack height credit. This is because we interpret the stack height regulations to require a showing of an exceedance of the NAAQS. This is consistent with Congressional intent that above-formula stack height credit only be given in rare circumstances.

Furthermore, even assuming for the sake of argument that it may sometimes be appropriate to use a standard in a fluid modeling demonstration that is more stringent than the NAAQS, the fluid modeling demonstration must at least show an exceedance of an ambient air quality standard that the SIP addresses and that is otherwise cognizable under the Act. The 52 $\mu g/m^3$ SO_2 MAAQS is not addressed by the State of Montana's Billings/Laurel SO2 SIP revision and is not otherwise cognizable under the Act. For purposes of the Billings/Laurel SO_2 SIP, the MDEQ conducted dispersion modeling to show attainment of the 80 $\mu g/m^3$ SO2 NAAQS only, not the lower MAAQS. In addition, assuming the MAAQS is exceeded in the Billings/Laurel area, we are unaware of any mechanism that would permit us to require additional source controls to ensure attainment or maintenance of the MAAQS.

The MDEQ's approach is logically inconsistent—in effect, the MDEQ has deemed the MAAQS important to protect when MSCC is seeking above-formula stack height credit, but has deemed the MAAQS irrelevant when MSCC's and other sources' emissions limitations are set in the SIP. We do not believe Congress intended sources to gain greater stack height credit and thereby avoid emissions controls in the SIP through such an artificial reduction in the benchmark used in fluid modeling, especially where the rest of the SIP is not designed in order to attain or maintain that benchmark. Therefore, although the MAAQS may in theory be a more protective standard, by allowing the use of the MAAQS for purposes of MSCC's fluid modeling demonstration, the MDEQ has applied the stack height requirements in a way that renders them less stringent than Congress intended.

(d) Conclusion

For the foregoing reasons, we are proposing to disapprove the 97.5 meter stack height credit the State of Montana has allowed MSCC for its 100-meter stack (paragraph 2 of the MSCC stipulation), the SO2 emissions limitations the State of Montana has included in the SIP for such stack (section 3(A)(1)(a) and (b) and section 3(A)(3) of MSCC's exhibit), and, consequently, the State of Montana's attainment demonstration.

3. Language in Exxon and MSCC's Stipulations Related to Incorporation of Earlier Stipulations and Apportionment of the Airshed

Paragraph 1 of the Exxon and MSCC stipulations discusses a contested case hearing and resultant February 2, 1996 stipulation and incorporates the February 2, 1996 stipulation by reference. We don't believe it is appropriate to incorporate the February 2, 1996 stipulation into the SIP because it discusses procedures and schedules for developing emission limitations for Exxon and MSCC which have subsequently been developed and which, for MSCC, are not approvable (see discussion on stack height issue at MSCC in section III.B.2. above, and in section III.C.(2)(q) of our TSD). Paragraph 1 of the Exxon and MSCC stipulations also contains a statement that the company enters into the stipulation "in part, to preserve [the company's] rights to apportionment of the airshed resulting from the present SIP revision." Insofar as this statement implies that the companies or other air pollution sources are entitled to a property interest in the ambient air in the Billings/Laurel area or enjoy a right to pollute the ambient air, this statement conflicts with the purpose and statutory obligations of the Act and has no basis under federal law. Therefore, we are proposing to disapprove paragraph 1 of the Exxon and MSCC stipulations.

4. MSCC Auxiliary Vent Stacks

It came to our attention that the Railroad Boiler and H–1, H1–A, H1–1 and H1–2 units (heaters) at MSCC all had auxiliary vent stacks to exhaust emissions. It was unclear whether these auxiliary vent stacks were still functional and allowed to be used under the stipulation; sections 3(B)(3) and (4) of the MSCC exhibit appear to provide an exemption for minor sources, which these sources could be considered to be.

The July 29, 1998 submittal of the SIP provided additional modeling showing that emissions from the auxiliary vent stacks would not impact the attainment demonstration when the emissions are limited to 12 lbs of SO2/3-hours. The July 29, 1998 submittal of the SIP includes the 12 lbs of SO2/3-hours limitation on the auxiliary vent stacks.

We were concerned, however, that this emission limitation might not be enforceable. There is no CEMS for these emission points. Instead, MSCC's exhibit requires MSCC to report the date and time period that emissions are exhausted from the auxiliary vent stacks, report the operating units whose emissions are exhausted from the auxiliary vent stacks, and include engineering estimates of the three-hour emissions and daily emissions from the auxiliary vent stacks. Based on discussions with MDEQ staff, we understand that there could be situations in which, if the fuel gas burned were high in H2S concentration and some or all of the boilers were exhausting from the auxiliary vent stacks, MSCC could not meet the emission limitation. See discussion of the 30-meter stack at MSCC in section II.A.4 above.

We are proposing to disapprove the MSCC auxiliary vent stacks emission limitation (section 3(A)(4) of MSCC's exhibit). We believe it is necessary to propose to disapprove this emission limitation because, unlike the 30-meter stack emission limitation, the exhibit does not require that only low sulfur fuel gas or natural gas be burned in the boilers and heaters that are exhausting from auxiliary vent stacks. Without a restriction on the fuel burned in the boilers and heaters when they are exhausting from auxiliary vent stacks, there is the potential for the emission limitation to be exceeded.

5. Attainment Demonstration [8]

For us to fully approve a SIP, the SIP must show that the NAAQS will not be violated, *i.e.*, that the area demonstrates attainment. Attainment demonstrations are usually carried out with computer models that are approved by us. The computer models take numerous factors into consideration to predict the effects that emissions from various sources will have on levels of pollutants in the air. Models consider the typical meteorology and topography of the area, as well as physical parameters at a plant site, *e.g.*, the height, temperature, and velocity at which pollutants are emitted. Based on these factors, as well as restrictions placed on sources to control their emissions, models are used to predict the highest pollution levels that can be expected to occur in the future.

a. Improper Stack Height Credit and Emission Limitation at MSCC

The MDEQ used EPA-approved dispersion models to demonstrate attainment of the SO2 NAAQS in the Billings/Laurel area. However, the modeling for the July 29, 1998 submittal of the SIP relied on emission limitations at MSCC that were established with a stack height credit that exceeded the good engineering practice (GEP) stack height. As discussed above, we are proposing to disapprove the emission limitations and stack height credit for the 100-meter stack at MSCC. We are also proposing to disapprove the attainment demonstration because it relies on improper emission limitations and stack height credit.

b. Lack of Flare Emission Limitations

With the July 29, 1998 submittal of the SIP, the State of Montana removed all reference to flare emission limitations from the exhibits submitted for Federal approval. In June 1998, the MBER adopted "Additional State Requirements" (hereinafter referred to as "State-only provisions") for each of the seven sources in the Billings/Laurel area. The State-only provisions include flare emission limitations and reporting requirements for the four sources that have flares (Exxon, Conoco, Cenex, and MSCC). Because the State-only provisions were not submitted for inclusion in the Billings/Laurel SO2 SIP, they may be enforced only by the MDEQ. We believe we cannot propose to approve the SIP as it applies to the attainment demonstration without federally enforceable emission limitations on flares, for several reasons.

First, the attainment demonstration is based on limited emissions from flares. To account for non-emergency use of flares, the computer modeling assumed a limit of 150 pounds of SO2/3 hours for each source for flaring. Our SIP requirements, 40 CFR part 51, subpart G, discuss control strategy requirements for SIPs. "Control strategy," defined at 40 CFR 51.100(n), "means a combination of measures designated to achieve the aggregate reduction of emissions necessary for attainment and maintenance of national standards * * *." Subpart G, at section 51.112, indicates that each plan must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for timely attainment and maintenance of the national standards that it implements. These demonstrations are usually performed through modeling. Further, 40 CFR 51.281 indicates that all emission limitations and other measures necessary for attainment and maintenance of any national standard must be adopted as rules and regulations enforceable by the State agency. Finally, copies of all such rules and regulations must be submitted with the plan. Therefore, because attainment of the NAAQS in the Billings/Laurel area, as demonstrated through modeling, assumes that flare emissions are limited, we believe that the SIP must include enforceable emission limitations for flares.

Second, based on MDEQ correspondence and ongoing discussions, we understand that emissions other than emissions from upsets and malfunctions (i.e., otherwise routine emissions) occur at the flares. (See document #'s II.B–18 and II.E–9.) Because routine emissions occur at the flares, we believe it is appropriate to establish enforceable emission limitations for flares.

Finally, without emission limitations on flares, it appears that sources could direct emissions from other process units to the flares to avoid violating an emission limitation or other requirement. It does not appear that sources could be penalized through the SIP if such circumvention occurred.

Since flare emissions were considered part of the attainment demonstration and since there appear to be routine emissions from flares, we believe the SIP should contain enforceable emission limitations for these emission points. Therefore, we are proposing to disapprove the SIP as it applies to the attainment demonstration for lack of enforceable emission limitations for flares.

c. Proposed Disapproval of MSCC Auxiliary Vent Stacks Emission Limitation

As indicated above, we are proposing to disapprove the emission limitation on the auxiliary vent stacks in MSCC's exhibit because MSCC's exhibit does not require that only low sulfur fuel gas or natural gas be burned in the boilers and heaters that are exhausting from auxiliary vent stacks. The attainment demonstration relies on the auxiliary vent stacks emission limitation at MSCC. Since we are proposing to disapprove the limit, we believe it is also necessary to propose to disapprove the attainment demonstration.

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requirements and was superseded by our later letters to the State of Montana. It is inappropriate to consider the effects of the support structure in determining stack height credit, whether it is through application of the formula or through fluid modeling, because part of the stack cannot be used to justify the need for the stack.

[7] MSCC used a number of approaches in its fluid modeling study to attempt to demonstrate above-formula stack height credit. The State of Montana approved only one of those approaches, and rejected the others. Because the State of Montana rejected MSCC's other approaches to fluid modeling, those other approaches are not before us as part of the Billings/Laurel SO_2 SIP revision and are not relevant to this proposal. Even for the approach the State of Montana approved, MDEQ had to redo a portion of the analysis because CPP, MSCC's contractor, did not follow the guidance MDEQ provided. *See* letter from John A. Coefield, Supervisor, Technical Services Unit, to Larry Zink, MSCC, and memorandum from John Coefield, Technical Services Unit, to Files, regarding "Montana Sulphur and Chemical Company (MSCC) GEP stack height demonstration," both documents dated March 1, 1996 (document #II.C–4).

[8] We recently learned that an improper stack height was used for the flare stack at Exxon for both the State of Montana's and our modeling. These modeling efforts used a stack height of 60.4 meters when in fact the actual stack height is 50.3 meters. Any future modeling done for the Billings/Laurel airshed, including modeling for the FIP, should use the correct flare stack height at Exxon. Finally, we have learned that there may be some other minor emission points at sources that were not considered in the MDEQ's attainment demonstration modeling (or our confirmation of the modeling) or that were not limited by the SIP. We may evaluate the need to model and/or limit these other minor emission points when we complete our FIP. We believe it is appropriate to proceed with the actions laid out in this document in spite of the recently discovered concerns with the Exxon flare height and other minor sources because we are proposing to disapprove the attainment demonstration.

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6. Burning of Sour Water Stripper (SWS) Emissions in the Flare at Cenex and Exxon

With the July 29, 1998 submittal of the SIP, Cenex and Exxon's exhibits now allow SWS emissions to be burned in the flare. As discussed above, flare emission limitations were deleted from the July 1998 submittal. Therefore, SWS emissions, if burned in the flare, are unregulated. We believe that unless flares have an enforceable emission limitation, it is unacceptable to allow SWS emissions to be burned in the flare. Because we believe that allowing SWS emissions to be burned in the unregulated flare is not an acceptable approach, we are proposing to disapprove the SIP as it applies to those provisions of the Cenex exhibit (i.e, sections 3(B)(2) and 4(D), only as they apply to flares) and the Exxon exhibit (i.e., sections 3(E)(4) and 4(E), only as they apply to flares).

7. Reasonably Available Control Measures (RACM) Including Reasonably Available Control Technology (RACT) and Reasonable Further Progress (RFP) at Cenex

As indicated earlier, we are proposing to disapprove the attainment demonstration for the SIP. Because we are proposing to disapprove the attainment demonstration, we are proposing to conclude that the RACM (including RACT) and RFP requirements have not been met in the Laurel SO2 nonattainment area. See discussion in sections III.C.(15) and (16) of our TSD for further information.

C. Why Is EPA Proposing To Conditionally Approve Parts of the State of Montana's Plan?

Under section 110(k)(4) of the Act, we may conditionally approve a plan based on a commitment from the State of Montana to adopt specific enforceable measures by a specified date certain that does not exceed one year from our final conditional approval. If the State of Montana fails to meets its commitment, the approval is automatically converted to a disapproval. Specifically, if the State of Montana fails to adopt and submit any of the provisions for the commitments identified below, we will issue a letter to the State of Montana which informs the State that the conditional approval, for the specific provisions identified below, will automatically convert to a limited approval/limited disapproval. We will not institute notice-and-comment rulemaking before issuing the letter because we are now notifying the public that our conditional approval of any of the SIP provisions identified below will convert to limited approval/limited disapproval if the State of Montana fails to meet a commitment for a specified provision. Subsequently, a notice to that effect will be published in the **Federal Register** and appropriate language will be inserted into the Code of Federal Regulations.

If the State of Montana makes a complete submittal by the specified timeframe or before we finalize this conditional approval, we will evaluate that submittal to determine if it may be approved and take final rulemaking action on that submittal.

1. YELP's Emission Limitations

a. Re-written Emission Limitation

With the exhibits submitted by the State of Montana in 1995, 1996 and 1997, several emission limitations varied at Exxon during the startup and shutdown of YELP. Basically, Exxon is subject to a higher emission limitation (at the FCC Coker CO-boiler stack and the FCC CO-boiler stack) when YELP is starting up, shutting down, or not operating than when YELP is operating. We were concerned that the initial attainment demonstration modeling did not accurately represent the relationship between Exxon and YELP.

With the July 29, 1998 submittal of the SIP, the MDEQ remodeled and revised YELP's exhibit to address this issue. The modeling showed that there could be simultaneous emissions at Exxon and YELP without exceeding the NAAQS, except during the hours between 9:00 pm and 6:00 am. Therefore, the YELP exhibit contains time-of-day restricted emission limitations that YELP must achieve during periods when the Exxon coker CO-boiler is burning coker gas. See discussion under modeling, section III.C.12 of our TSD.

We believe the revised strategy is acceptable for the following reasons:

- The MDEQ's dispersion modeling and our confirmation of the modeling (see modeling discussion in section III.C.12 of our TSD) show that with the time-of-day restrictions the area can still show attainment of the NAAQS. We believe that the modeling was performed appropriately. The modeling report, entitled "Simultaneous Emissions Modeling Sulfur Dioxide Exxon Coker and YELP," was submitted with the July 1998 submittal (see document #II.E–3).
- We do not consider time-of-day restrictions to be a dispersion technique as defined by 40 CFR 51.100(hh)(1)(ii) because the time-of-day restricted emission limitations are based on historical meteorological data and do not vary according to atmospheric conditions or ambient concentrations of a pollutant.
- We believe the emission limitations are enforceable because YELP is required to operate CEMS. Specifically, SO2 concentration and flow CEMS are required on the stack that is subject to the time-of-day restrictions. The CEMS will be able to determine the SO2 emissions at all times. Additionally, a flow CEM is required to measure flow from the Exxon coker unit process stream. The latter flow monitor will provide information to determine whether or not YELP is receiving Exxon's coker unit flue gas.

Additionally, in a March 2, 1999 letter to MDEQ (see document # II.E–11), we raised the concern that the YELP emission limitations may not be practically enforceable. Specifically, the YELP emission limitations in section 3 of YELP's exhibit are based on whether or not Exxon's coker CO-boiler is burning coker gas. It is our understanding that there is no monitor to record whether or not the Exxon coker CO-boiler is burning coker gas. We believe that the YELP emission limitations must be written in the same format as the emission limitations in Exxon's exhibit. Thus, YELP's emission limits must be expressed in terms of whether or not YELP is receiving Exxon coker unit flue gas because there is a monitor that can record this condition.

In a letter dated March 24, 1999, the Governor committed to address our concerns with YELP's emission limitations by March 31, 2000. (See document #II.E–5.)

Because the State of Montana has committed to revise YELP's exhibit to rewrite the emission limitations to make them practically enforceable, we are proposing to conditionally approve the July 29, 1998 submittal of the SIP as it applies to YELP's emission limitations at sections 3(A)(1) and (2) of YELP's exhibit. We realize, however, that the time-of-day restricted emission limitations may be somewhat more difficult to enforce than a simple fixed limitation. If we were to find that the time-of-day restricted emission limitations were too difficult for the MDEQ or us to enforce, we would reconsider our approval. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or take other appropriate action under the Act.

b. Pro-Rated Emission Limitation

The YELP exhibit provides that for any 3-hour period during the course of a calendar day when both the time-of-day restricted emission limitation and the unrestricted emission limitation apply (time-of-day and unrestricted emission limitations discussed above), a new emission limitation for the 3-hour period will apply. The new limitation will be determined by pro-rating, on an hourly basis, the time-of-day restricted emission limitation and the unrestricted emission limitation. We do not believe that YELP's exhibit adequately addresses how the emission limitation will be pro-rated in practice or what emission limitations will be pro-rated. In a letter dated March 24, 1999, the Governor of Montana committed to revise the YELP stipulation to address this concern by March 31, 2000. (See document #II.E–5.)

Because the State of Montana has committed to revise YELP's exhibit to more clearly define how and what limitations will be pro-rated, we are proposing to conditionally approve the July 29, 1998 submittal of the SIP as it applies to YELP's emission limitations in section 3(A)(3) YELP's exhibit. We realize, however, that the pro-rated emission limitations may be somewhat more difficult to enforce than a simple fixed limitation. If we were to find that the pro-rated emission limitations were too difficult for the MDEQ or us to enforce, we would reconsider our approval. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act or take other appropriate action under the Act.

2. Exxon's Coker Carbon Monoxide (CO)-Boiler Emission Limitation

In the July 29, 1998 submittal, Exxon's exhibit has *not* been revised to provide a method to monitor emissions from the coker CO-boiler. In a letter dated March 24, 1999, the Governor provided a commitment to develop and submit a compliance method for this emission point by March 31, 2000.[9] (See document #II.E–5.)

We are proposing to conditionally approve the SIP as it applies to the coker CO-boiler stack emission limitation, section 3(B)(1) of Exxon's exhibit, based on the Governor's commitment to adopt a compliance monitoring method for the coker CO-boiler stack emission limitation.

[9] Note that the Governor initially submitted a commitment with the July 29, 1998 submittal of the SIP to develop the necessary compliance monitoring method by December 31, 1998. Due to difficulties in developing the method, on October 26, 1998, the Governor revised his commitment, with a deadline of June 30, 1999 (see document # II.E–4). Again, on March 24, 1999, the Governor revised his commitment with a deadline of March 31, 2000. See document # II.E–5.) We believe that since we had not taken action on the initial commitment, it was acceptable for the Governor to revise the commitment.

3. Exxon's F–2 Crude/Vacuum Heater Stack Emission Limitations and Attendant Compliance Monitoring Methods

The July 29, 1998 submittal of the SIP revised attachment 2 of Exxon's exhibit, which describes the analytical method used to determine the H2S concentration in the sour water. The H2S concentration in the sour water is needed to determine compliance with the F–2 crude/vacuum heater stack emission limitations. In a letter dated January 15, 1999, we identified concerns with the revised attachment 2. In a letter dated March 24, 1999, the Governor committed to revise attachment 2 to address our concerns by March 31, 2000. (See document #'s II.E–10 and II.E–5, respectively.) We are proposing to conditionally approve the SIP as it applies to the F–2 crude/vacuum heater stack emission limitation and the attendant compliance monitoring methods, sections 3(E)(4) and 4(E) [only as they apply to the F–2 crude/vacuum heater stack], 3(A)(2), 3(B)(3), and attachment 2, of Exxon's exhibit, based on the Governor's commitment to revise attachment 2 of Exxon's exhibit, which provides the method used to monitor compliance with the F–2 crude/vacuum heater stack emission limitation.

4. Exxon's Fuel Gas Combustion Emission Limitations and Attendant Compliance Monitoring Method

The July 29, 1998 SIP submittal does not completely address earlier concerns we raised regarding the compliance monitoring method for Exxon's fuel gas combustion emission limitations. In a letter dated January 15, 1999, we indicated that we still believed the compliance monitoring method for the fuel gas combustion emission limitation at Exxon was inadequate because H2S concentration in the refinery fuel-gas fired units could exceed the levels which the H2S CEMS could monitor. (See document #II.E.10)

On March 24, 1999, the Governor submitted a commitment to address our concerns with the H2S CEMS at Exxon by March 31, 2000. (See document #II.E–5.)

We are proposing to conditionally approve the SIP as it applies to Exxon's refinery fuel-gas combustion emission limitations and attendant compliance monitoring methods, in sections 3(A)(1), 3(B)(2), 4(B), and 6(B)(3) of Exxon's exhibit, because of the Governor's commitment to address our concerns with the method for monitoring compliance with the emission limitation.

5. Cenex Sour Water Stripper (SWS)

The earlier Cenex exhibits (i.e., those submitted prior to the July 29, 1998 submittal) did not provide a means to monitor compliance with the combined boiler/heater emissions limitation if emissions from the existing SWS unit were directed to the main crude heater since compliance with the combined emissions limitation was monitored by fuel usage and sulfur content of the fuel. In the July 29, 1998 submittal of the SIP, the State of Montana has incorporated into attachment 2 a method for monitoring compliance when SWS emissions are burned in the main crude heater. This method is similar to the method used by Exxon to determine SWS emissions. We expressed concerns about the method used to determine SWS emissions in a letter dated January 15, 1999. (See document #II.E–10.) In a letter dated March 24, 1999, the Governor of Montana committed to revise Cenex's SWS test method to address our concerns by March 31, 2000. (See document #II.E–5.) We are proposing to conditionally approve the SIP as it applies to the combustion sources emission limitations and attendant compliance monitoring method in sections 3(B)(2) and 4(D) (only as they apply to the main crude heater), 3(A)(1)(d), 4(B), and attachment 2, of Cenex's exhibit.

D. What Happens When EPA Approves Parts of the State of Montana's Plan?

Once we approve a SIP, it is legally enforceable by us and citizens under the Act.

E. What Happens When EPA Disapproves Parts of the State of Montana's Plan?

Once we disapprove a SIP, it is still enforceable at the State level but not at the Federal level. By disapproving parts of the plan, we are determining that the requirements necessary to demonstrate attainment have not been met and we may develop a plan or parts of a plan to assure that attainment will be achieved in the area. Also, in some cases, once we disapprove a plan, sanctions may be imposed.

III. Other Issues Pertaining to State Authority

A. How Do the State-Only Provisions Affect EPA's Actions?

In June 1998, the MBER adopted "Additional State Requirements" for each of the seven sources in the Billings/Laurel area. These requirements (hereinafter referred to as the "State-only provisions") were not submitted for inclusion in the SIP and are

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enforceable only by the State of Montana. Among the State-only provisions are requirements for the affected companies to develop and submit to the MDEQ the following documents: Corrective Action Plan, Alternative Monitoring Plan, Quality Assurance Project Plans, and Standard Operating Procedures document. By the terms of the State-only provisions, these documents will affect how the MDEQ makes certain compliance determinations. For example, for purposes of monitoring whether a source has satisfied the quarterly data recovery rate (QDRR) requirement of the Billings/Laurel SO2 SIP, the MDEQ will rely on a source's Standard Operating Procedures manual to specify what is an "adequate spare parts inventory." What is "timely and appropriate action to correct a failure in the CEMS" will be outlined in the source's Corrective Action Plan, Quality Assurance Project Plan, and Standard Operating Procedures document. "Short-term corrective measures" and "long-term corrective measures" for CEMS failure will be specified in a similar fashion. When a CEMS fails, the source will correct or replace the CEMS "as expeditiously as practicable and within a period not to exceed six months" according to a schedule already established in the source's Corrective Action Plan.

Since the State-only provisions were not included in the Billings/Laurel SO2 SIP, we are not acting to propose to approve or disapprove these provisions nor are we relying on these provisions in proposing to approve or disapprove other provisions in the submitted SIP. Nothing in this action should be construed as making any determination or expressing any position regarding the State-only provisions or their impact on the SIP. State-only provisions can affect only State enforcement of the SIP and cannot have any impact on federal enforcement authorities. We may at any time invoke our authority under the Act, including, for example, sections 113, 114, or 167, to enforce the requirements of the Billings/Laurel SO2 SIP independent of any State enforcement effort. We may take action to enforce the SIP regardless of any State compliance determination or any constraint on State enforcement discretion which the State-only provisions may impose. In addition, citizen enforcement under section 304 of the Act is likewise unaffected by the State-only provisions.

If we were to determine that the State-only provisions, as implemented, appeared to limit, constrain, or otherwise have a chilling effect on state enforcement of the SIP, we would reconsider our approval or take other appropriate action under the Act. Our reconsideration could occur under section 110(k)(6) of the Act or we could complete another SIP Call under sections 110(a)(2)(H) and 110(k)(5) of the Act.

B. How Does Montana's Environmental Audit Act Affect EPA's Actions?

On May 5, 1997, the Governor of Montana signed a bill enacted by the legislature that creates immunity under State law from penalties for violations discovered during a voluntary environmental audit and creates a judicial privilege under State law for information contained in an environmental audit report. This bill has not been submitted to EPA as part of Montana's SIP.

Nothing in our proposed action should be construed as making any determination or expressing any position regarding the State of Montana's audit privilege and penalty immunity law, the Voluntary Environmental Audit Act, 75–1–101 *et seq.*, M.C.A. (H.B. 293, effective October 1, 1997), or its impact upon any provision in the SIP including the proposed revision at issue here. Our proposed action does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of the State of Montana's audit privilege and immunity law. The State of Montana's audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. We may at any time invoke our authority under the Act, including for example, sections 113, 114, or 167, to enforce the requirement or prohibitions of the State of Montana's plan, independent of any state enforcement effort. In addition, citizen enforcement under section 304 of the Act is likewise unaffected by a state audit privilege or immunity law.

IV. Other Rulemaking Actions

A. How Does This Proposed Rulemaking Relate to EPA's SIP Call?

Our March 4, 1993 SIP Call letter (see document # II.G–1) stated that the SIP Call was not final Agency action subject to judicial review, and that a final Agency action would occur when we made a binding determination regarding the State's response to the SIP Call. With this document we are proposing action on the State of Montana's response to the March 4, 1993 SIP Call; we will make a binding determination regarding Montana's response to the SIP Call if and when we take final rulemaking action based on this proposal.

B. Why Is EPA Proposing Sanctions?

Under section 179(a)(3)(B) of the Act, if we disapprove in whole or in part a submission of a SIP revision required under the Act, one of the sanctions specified in section 179(b) applies, unless the deficiency has been corrected within 18 months after our disapproval. Section 179(b) specifies two sanctions available to the Administrator: (1) withholding of certain highway funding under section 179(b)(1); and (2) application of a 2:1 offset ratio to new or modified stationary sources of emissions for which a new source review permit is required under part D of title I.

We have promulgated final regulations to implement section 179 of the Act. See 59 FR 39832 (August 4, 1994); 40 CFR 52.31 (the "sanctions rule"). The regulations specify the order in which sanctions will apply when states do not submit a part D SIP or SIP revision or implement an approved part D SIP or SIP revision, or we disapprove a part D SIP or SIP revision. The sanctions rule does not, however, address the imposition of sanctions in the case of state failure to submit or implement a SIP in response to a SIP Call under section 110(k)(5) of the Act, or where we disapprove such a SIP. Since we are proposing to partially disapprove the SIP revision the State of Montana has submitted in response to our SIP Call, which would render our SIP Call binding, we believe it is appropriate to propose the order of sanctions for the State of Montana's failure to comply with the SIP Call, in the event that we finalize our proposal to disapprove portions of the SIP. We believe that the regulatory scheme promulgated for sanctions generally, under 40 CFR 52.31, should also apply here, for the same reasons as discussed in the sanctions rule (see 59 FR 39832). Thus, we are proposing to apply the 2:1 offset sanction within 18 months of the effective date of a final partial disapproval of the SIP and the highway sanction six months after the imposition of the offset sanction. We believe that the rationale for this approach in the sanctions rule (see 59 FR 39832) applies with equal force here. In addition, we're considering whether the particular circumstances here—namely that the State of Montana submitted the required SIP revision in September 1995 one year after our SIP Call's deadline for submittal, and subsequently amended the submission in 1996, 1997, and 1998 without ever establishing a fully approvable SIP—may merit acceleration of sanctions. That is, we request comment on whether we should provide for the immediate application of sanctions under section 110(m) of the Act if we finalize our proposal to partially disapprove the SIP or if a conditional approval converts to disapproval. In addition, we request comment on whether we should provide for application of sanctions in other areas of the State, outside the Laurel nonattainment area, under section 110(m) of the Act, if we finalize our proposal to partially disapprove the SIP or if a conditional approval converts to disapproval.

V. Background

A. What Is a State Implementation Plan (SIP)?

The 1970 Act established the air quality management process as a basic philosophy for air pollution control in this country. Under this system, we establish air quality goals (NAAQS) for common pollutants. States develop control programs (termed SIPS) to attain and maintain these NAAQS. We approve SIPS if they adequately accomplish the following:

- Demonstrate attainment and maintenance of the applicable NAAQS.
- Describe a control strategy.
- Contain legally enforceable regulations.
- Include an emissions inventory.
- Include procedures for new source review.
- Outline a program for monitoring.
- Show adequate resources.
- Meet other requirements specific to the pollutant being considered.
- Are adopted according to the State's and our procedural requirements, including public input.

Under this air quality management process, we do not dictate to the States the control strategies that are needed to demonstrate attainment and maintenance. States are provided the flexibility to determine what is appropriate in terms of controlling a particular pollutant. We provide technical assistance when needed.

B. What Are the Sulfur Dioxide (SO2) National Ambient Air Quality Standards (NAAQS)?

On April 30, 1971, we issued primary and secondary NAAQS for sulfur oxides (SO_x) (measured as sulfur dioxide (SO2)) (40 CFR 50.4). The primary standards were set at 365 micrograms per cubic meter ($\mu g/m^3$) (0.14 parts per million (ppm)), averaged over a 24-hour period and not to be exceeded more than once per year, and 80 $\mu g/m^3$ (0.03 ppm) annual arithmetic mean. The secondary standard was set at 1,300 $\mu g/m^3$ (0.5 ppm) averaged over a period of 3 hours and not to be exceeded more than once per year. See our TSD to this action for more information on the SO2 NAAQS.

C. What Is the Regulatory History in Billings/Laurel, Montana?

The SO2 problems in the Billings/Laurel area go back over twenty years. On July 8, 1976 (41 FR 28002), we announced in the **Federal Register** that the SIP for the Billings air quality maintenance area (AQMA) was inadequate to provide for the maintenance of the SO2 NAAQS. The Billings AQMA encompasses Carbon, Stillwater, Sweet Grass, Yellowstone and Big Horn (excluding the Northern Cheyenne Indian Reservation) counties.

The Governor of Montana submitted a SIP revision on January 26, 1978, which included a stipulation (discussed below). (The January 26, 1978 SIP can be found in our docket for our action taken on September 6, 1979, 44 FR 51977.) However, the SIP revision did not include a demonstration that the known NAAQS violations would be corrected.

In the interim, the Act was amended in 1977, changing our approach for areas not attaining the NAAQS. Section 107 required us to officially designate areas violating the NAAQS as nonattainment.

On March 3, 1978 (43 FR 8962), Laurel was designated as nonattainment for the primary SO2 NAAQS. See also 40 CFR 81.327. The nonattainment area consists of an area with a two-kilometer radius around the Cenex Petroleum Refinery. This designation was based on measured and modeled violations of the NAAQS. We reaffirmed this nonattainment designation on September 11, 1978 (43 FR 40412).

On September 6, 1979 (44 FR 51977), we approved the revisions to the Montana SIP submitted on January 26, 1978. The revision included a stipulation between the Montana Department of Health and Environmental Science and Cenex. Other companies that were parties to the stipulation include Exxon, Conoco, Montana Power, Western Sugar and Montana Sulphur & Chemical Company. Since the January 26, 1978 SIP submittal did not include a demonstration that the NAAQS violations in Laurel would be corrected, we contracted with Pacific Environmental Science (PES) to quantify the emission reductions expected from Cenex. Based on an October 1978 report by PES and diffusion modeling performed by the State of Montana, we believed that the NAAQS would be attained in Laurel after full implementation of the control program proposed at Cenex. (PES's October 1978 report and the State of Montana's diffusion modeling report can be found in our docket for our action taken on September 6, 1979, 44 FR 51977.)

On January 10, 1980 (45 FR 2034), we approved the Laurel plan, submitted in 1978, as meeting the part D requirements of the Act.

D. Why Did EPA Call for a SIP Revision?

The 1990 Act maintains the requirement that states revise SIPs once inadequacies have been identified. Section 110(k)(5) of the Act states that "whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant NAAQS, * * * the Administrator shall require the state to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the state of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions."

Results from two different dispersion modeling studies—the study for the Billings Gasification, Inc. (BGI) (now YELP) permit and the GeoResearch, Inc. (GRI) study commissioned by the Billings City Council and subsequently refined by the State of Montana—both showed projected violations of the NAAQS for sulfur dioxide (SO2) at various receptor points in the Billings and Laurel area. In the Laurel area, the receptor points were outside the existing nonattainment area boundary. (See document #'s III.G–12 and III.G–13 for copies of the GRI and BGI study reports.)

In both the BGI and GRI modeling studies, the analysis was performed using the modeling techniques and data bases recommended in our "Guideline on Air Quality Modeling (Revised)," found in 40 CFR part 51, appendix W. Major sources of SO2 in the Billings/Laurel area (the Conoco, Exxon, and Cenex refineries, Montana Power, Montana Sulfur and Chemical Company, and Western Sugar) all contributed to high ambient concentrations of SO2. The modeling studies predicted violations using actual emissions from these sources, allowable emissions (the higher levels allowed under then-current permits), and potential emissions (maximum capacity, at the time, of a stationary source to emit a pollutant under its physical and operational design). These results led us to believe that the SIP was inadequate

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and should be revised. Therefore, on March 4, 1993, we issued a letter to the Governor of Montana calling for the State of Montana to revise its SIP for the Billings/Laurel area to assure attainment and maintenance of the SO2 NAAQS. (See 58 FR 41430, August 4, 1993, and document #'s II.G–1 and II.G–3.)

E. What Did the State of Montana Submit in Response to EPA's SIP Call?

Our 1993 SIP Call called for the State of Montana to submit a SIP revision for the Billings/Laurel area by September 4, 1994. On September 6, 1995, the Governor of Montana submitted a SIP revision in response to the SIP Call (see document # II.B). The SIP was later amended with revisions submitted on August 27, 1996, April 2, 1997 and July 29, 1998 (see document #'s II.C., II.D., and II.E., respectively).

F. What Sources Does the SIP Affect?

The major SO2 emitting industries in the Billings area are the Conoco and Exxon Petroleum Refineries, Western Sugar Company, the Montana Power Company J.E. Corette Plant, Montana Sulphur & Chemical Company, and Yellowstone Energy Limited Partnership. The major SO2 emitting industry in the Laurel area is the Cenex Petroleum Refinery. Although Laurel and Billings are 15 miles apart, the industries in Billings have some impact on the air quality in Laurel and the industry in Laurel has some impact on the air quality in Billings.

The Billings/Laurel SO2 SIP regulates most of the SO2 emission points at the above-mentioned sources.

VI. Request for Public Comment

We are soliciting public comment on all aspects of this proposed SIP rulemaking action. Send your comments in duplicate to the address listed in the front of this Notice. We'll consider your comments in deciding our final action if your letter is received before August 27, 1999.

VII. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create a mandate on state, local or tribal governments. The proposed rule does not impose any enforceable duties on these entities. This proposed rule, if made final, will have the effect of making existing, state-enforceable requirements federally enforceable against seven industrial sources of air pollution. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to E.O. 13045 because it partly approves a state rule implementing a Federal standard.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's proposed rule does not create a mandate on tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed approval and conditional approval rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the proposed conditional approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of a state submittal does not affect its state-enforceability. Moreover, EPA's proposed disapproval of a submittal will not have a significant impact on a substantial number of small entities because the disapproval action only affects seven industrial sources of air pollution: Cenex, Conoco, Inc., Exxon Company, USA, Montana Power Company, Montana Sulphur & Chemical Company, Western Sugar Company, and Yellowstone Energy Limited Partnership. Only a limited number of sources are impacted by this action. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action being proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. Accordingly, no budgetary impact statement is required.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 20, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

40 CFR Part 52, subpart BB of chapter I, title 40 is proposed to be amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart A—General Provisions

2. Section 52.32 is amended by designating the existing text as (a) and by adding paragraph (b) to read as follows:

§ 52.32 Sanctions following findings of SIP inadequacy.

* * * * *

(b) By letter dated March 4, 1993, pursuant to sections 110(a)(2)(H) and 110(k)(5) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H) and 7410(k)(5), EPA informed the Governor of Montana that the Sulfur Dioxide State Implementation Plan (SIP) for the Billings-Laurel area was substantially inadequate to attain and maintain the sulfur dioxide National Ambient Air Quality Standards (NAAQS) and called for the State of Montana to revise the SIP as necessary to assure attainment and maintenance of the sulfur dioxide NAAQS. The Governor of Montana submitted sulfur dioxide SIP revisions for the Billings-Laurel area to EPA on September 6, 1995, August 27, 1996, April 2, 1997, and July 29, 1998. EPA partially disapproved these SIP revisions on [Effective date of disapproval] (see 40 CFR 52.1370(c)(47)). By virtue of EPA's partial disapproval, sanctions, as described in section 179(b) of the Clean Air Act, 42 U.S.C. 7509(b), apply to the Billings-Laurel area pursuant to section 179(a)(3)(B) of the Clean Air Act, 42 U.S.C. 7509(a)(3)(B). These sanctions shall apply to the Billings-Laurel area in the sequence set forth in § 52.31(d)(1) and in accordance with the terms of § 52.31. [Effective date of disapproval] shall be deemed the date of the finding described in §§ 52.31(d) and (e).

Subpart BB—Montana

3. Section 52.1370 is amended by adding paragraph (c)(47) To read as follows:

§ 52.1370 Identification of plan

* * * * *

(c) * * *

(47) The Governor of Montana submitted sulfur dioxide SIP revisions for Billings/Laurel on September 6, 1995, August 27, 1996, April 2, 1997 and July 29, 1998. On March 24, 1999, the Governor submitted a commitment to revise the SIP.

(i) Incorporation by Reference

(A) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Cenex Harvest Cooperatives including the stipulation and exhibit A and attachments to the stipulation except for paragraph 20 of the stipulation and the portions of sections 3(B)(2) and 4 (D), of exhibit A that apply to flares.

(B) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Conoco including the stipulation and exhibit A and attachments to the stipulation, except for paragraph 20 of the stipulation.

(C) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Exxon including the stipulation and exhibit A and attachments to the stipulation, except for paragraphs 1 and 22 of the stipulation, and the portions of sections 3(E)(4) and 4(E) of exhibit A that apply to flares.

(D) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Montana Power Company including the stipulation and exhibit A and attachments to the stipulation, except for paragraph 20 of the stipulation.

(E) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Montana Sulphur & Chemical Company including the stipulation and exhibit A and attachments to the stipulation, except for paragraphs 1, 2 and 22 of the stipulation, and sections 3(A)(1)(a) and (b), 3(A)(3), and 3(A)(4) of exhibit A.

(F) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Western Sugar Company including the stipulation and exhibit A and attachment to the stipulation,

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except for paragraph 20 of the stipulation.

(G) Board Order issued on June 12, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and Yellowstone Energy Limited Partnership including the stipulation and exhibit A and attachments to the stipulation except for paragraph 20 of the stipulation.

(ii) Additional Material.

(A) All portions of the September 6, 1995 Billings/Laurel SO2 SIP submittal other than the stipulations and exhibit A's and attachments to the stipulations.

(B) All portions of the August 27, 1996 Billings/Laurel SO2 SIP submittal other than the stipulations and exhibit A's and attachments to the stipulations.

(C) All portions of the April 2, 1997 Billings/Laurel SO2 SIP submittal other than the stipulations and exhibit A's and attachments to the stipulations.

(D) All portions of the July 29, 1998 Billings/Laurel SO2 SIP submittal that are not covered in section 52.1370(c)(47) above other than the stipulations and exhibit A's and attachments to the stipulations.

(E) April 28, 1997 letter from Mark Simonich, Director, Montana Department of Environmental Quality, to Richard R. Long, Director, Air Program, EPA Region VIII.

(F) January 30, 1998 letter from Mark Simonich, Director, Montana Department of Environmental Quality to Richard R. Long, Director, Air Program, EPA Region VIII.

(G) August 11, 1998 letter from Mark Simonich, Director, Montana Department of Environmental Quality, to Kerrigan G. Clough, Assistant Regional Administrator, EPA Region VIII.

(H) September 3, 1998 letter from Mark Simonich, Director, Montana Department of Environmental Quality, to Richard R. Long, Director, Air Program, EPA Region VIII.

(I) March 24, 1999 commitment letter from Marc Racicot, Governor of Montana, to William Yellowtail, EPA Regional Administrator.

(J) May 20, 1999 letter from Mark Simonich, Director, Montana Department of Environmental Quality, to Richard R. Long, Director, Air and Radiation Program, EPA Region VIII.

[FR Doc. 99–19270 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 3

[IB Docket No. 98–96, FCC 99–150]

Biennial Review

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document examines the development of a transition plan to ensure that the transition from the Commission to privately owned accounting authorities in the settlement of accounts for maritime mobile, maritime satellite, aircraft and hand-held terminal radio services. The Commission seeks further comment in this proceeding on how best to implement this privatization. The Commission initiated this proceeding pursuant to the Telecommunications Act of 1996, which directs the Commission to undertake a review every even-numbered year of all regulations that apply to providers of telecommunications services to determine whether any such regulation is no longer necessary.

DATES: Comments are due on or before August 23, 1999; and reply comments are due on or before September 8, 1999. Written comments by the public on the proposed information collections are due September 27, 1999.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th St., SW, Washington, DC 20554. A copy of any comments on the proposed information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th St., SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Copes, Attorney-Advisor, Multilateral and Development Branch, Telecommunications Division, International Bureau, (202) 418–1478. For additional information concerning the proposed information collection contained in the FNPRM contact John Copes at (202) 418–1478, or via the Internet at jcopes@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's FNPRM, FCC 99–150, adopted on June 21, 1999, and released on July 13, 1999. The full test of the FNPRM is available for inspection and copying during normal business hours in the Federal Communications Commission, Reference Information Center (Room CY–A257), 445 12th St., SW, Washington, DC 20554 The complete text of the FNPRM may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th St., NW Washington, DC 20036, (202) 857–3800. The FNPRM contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Summary of FNPRM

1. In July 1998, the Commission adopted a Notice of Proposed Rulemaking (63 FR 39800, July 24, 1998) (NPRM) to streamline further the regulations and authorization of privately owned accounting authorities that settle accounts in the maritime mobile and maritime mobile-satellite radio services.

2. On June 21, 1999, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking (FCC 99–150) to make final the proposals in its July 1999 NPRM and to institute a transition period leading to the handing over of its functions to private accounting authorities. A final rule relating to this proceeding is published elsewhere in this issue of the **Federal Register**. In the Report and Order (R&O) portion of the document, the Commission affirmed its proposal to withdraw from performing the functions of an accounting authority and to rely solely upon the private accounting authorities to provide account-settlement services for maritime and satellite communications.

3. In the FNPRM, the Commission declined to appoint another accounting authority to take over the function of "accounting authority of last resort" that the Commission has traditionally performed. The Commission has traditionally not required U.S. users of maritime and satellite communications to designate a specific accounting authority to settle its accounts with foreign cost stations. Rather, the Commission has been willing to accept accounts from such foreign coast stations and to attempt to locate the user, send them the bill and remit their payment. The Commission noted that, upon the Commission's withdrawal as an accounting authority, there would be no one to accept such accounts and that it would be necessary to designate someone as the new accounting authority of last resort or to provide some other alternative, such as a formula to divide undesignated accounts among certified authorities or to require customers to designate an accounting authority at the time they send the communications. No one volunteered to perform the function, though the Commission concluded that it would not designate anyone as the accounting authority of last resort. The Commission also concluded that a formula would require someone to administer it and would probably be difficult to administer. The Commission concluded that it would be better to require users to designate an accounting authority for each call. Such a requirement would eliminate undesignated calls or the need to designate someone to handle them. The Commission noted that another way to accomplish the same end would be to require users to presubscribe to the services of an accounting authority in the same manner that users are now required to presubscribe to a carrier to handle their long-distance telephone calls.

4. In the FNPRM the Commission also tentatively concluded to delay its withdrawal as an accounting authority for three years and to institute a transition period to ensure an orderly transition to reliance solely upon private accounting authorities. The Commission was responding to arguments by the Federal governmental agencies for which it provides account-settlement services, who argued that they need three years to budget for the increased costs that they will face once the Commission withdraws as an accounting authority. The Commission now settles accounts for government agencies at no charge. Because private accounting authorities typically charge a fee for service, the agencies will need to budget for money to pay the fees. The Commission noted that during the transition period it would notify other users of their need to find an alternative accounting authority. Finally, the Commission asks interested persons to identify any areas where they believe Commission withdrawal would cause problems, so that they may be addressed and resolved.

Regulatory Flexibility Act

5. As required by the Regulatory Flexibility Act, 5 U.S.C. 603, we are required to prepare an Initial Regulatory Flexibility Analysis (IRFA) for the proposals contained in the FNPRM, unless we certify that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The purpose of this FNPRM is to seek comment on how best to implement the proposals adopted in the R&O. The proposals in the FNPRM do not impose any additional compliance burden on small entities dealing with the Commission. Rather, the FNPRM seeks comment on a proposed transition period and any problem areas that should be addressed during this transition period. The transition period is intended to ensure that the Commission's withdrawal as an accounting authority shall be as smooth as possible. We anticipate that the proposals will reduce any regulatory and procedural burdens on small entities. Accordingly, we certify, pursuant to Section 605(b) of the Regulatory Flexibility Act, that the rules proposed in this FNPRM will not, if promulgated, have a significant economic impact upon a substantial number of small business entities, as that term is defined by the Regulatory Flexibility Act. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this document, including this certification, to the Chief Counsel for Advocacy of the Small Business Administrations in accordance with the Regulatory Flexibility Act. We shall analyze the information submitted during the comment period and, if we determine at the time that we issue a final rule that such final rule changes will have a significant economic impact on a significant number of small business entities, we shall prepare a Final Regulatory Flexibility Analysis.

Copies to Private Accounting Authorities and Governmental Users

6. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this FNPRM, including the Initial Regulatory Flexibility Analysis, to the current U.S.-certified private accounting authorities (Mackay Communications Inc.; Radio-Holland Communications, Inc.; Seven Seas Communications, Inc.; KFS World Communications (d/b/a Globe Wireless); 7 Cs Ltd; Mobile Marine Radio, Inc.; EXXON Communications Company; Raytheon Service Company; and Global Communications Corporation) and to the current governmental users (U.S. Coast Guard, Department of Defense). A list of those agencies is in an Attachment to this summary.

Initial Paperwork Reduction Act of 1995 Analysis

7. The FNPRM contains a proposed information collection. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the proposed information collections contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due on September 27, 1999. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Persons wishing to comment on the proposed and/or modified information collections should file written comments on or before August 23, 1999. The Office of Management and Budget (OMB) must submit its written comments on the proposed and/or modified information collections, if any, on or before 60 days after the date of publication of the summary of this FNPRM in the **Federal Register**. In addition to filing comments with the Secretary, they should also submit a copy of any comments on the information collections contained herein to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW, Washington, DC 20503.

8. Parties in this proceeding may file comments and replies on paper or electronically. Under Section 1.419 of the Commission's Rules, 47 CFR 1.419, parties filing comments on paper must file an original and four copies of all comments, reply comments, and supporting documents. If parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Persons who wish to participate informally may submit two copies of their comments, stating thereon the docket number of this proceeding. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 445 12th St., SW, Washington, DC 20554. Those filing written pleadings in person should file them at the counter TW–A325 located in the lobby of 445 12th Street, SW. Additionally, parties must file a copy of their comments, replies and supporting documents with the Commission's copy contractor, International Transcription Service, Inc., 1231 20th St., NW, Washington, DC 20036. Comments and reply comments

will be available for public inspection during regular business hours in the FCC Reference Information Center (Room CY–A257) at 445 12th St. SW. For additional information about this proceeding, please contact John Copes at (202) 418–1478.

Supplementary Information Regarding Paperwork Reduction Act Analysis

OMB Control Number: 3060–XXXX.

Title: Designation of Accounting Authority for Maritime Mobile and Maritime Mobile-Satellite Radio Communications.

Form Number: N/A.

Respondents: Federal Government; State, local or tribal governments; businesses or other for profit entities; individuals or households.

Number of Respondents: 2,600.

Estimated Time per Response: 1.0 hour.

Frequency of Response: One-time reporting requirement; Third Party Disclosure.

Total Annual Burden: 2,600 hours.

Total Annual Cost: None.

Needs and Uses: When the Commission withdraws as an accounting authority, it will be necessary for those users who rely upon the Commission to settle their maritime and satellite radio accounts. As a result of this FNPRM, the Commission may decide the best way to accomplish this is to require all users to designate a particular accounting authority to settle their radio accounts.

Electronic Filing of Comments

9. Pursuant to Section 1.49(f) of the Commission's Rules, 47 CFR 1.49(f), Parties may file their comments, replies and supporting documents in electronic form via the Internet. Such parties should use the Commission's Electronic Comment Filing System, which they can access using the following Internet address: <http://www.fcc.gov/e-file/ecfs.html>

Further information on the process of submitting comments electronically is available at <http://www.fcc.gov/e-file/>. Pursuant to Section 1.419(d) of the Commission's Rules, 47 CFR 1.419(d). Parties need file only one copy of an electronic submission. In completing the transmittal screen, a party filing a comment, reply or supporting document should include his or her full name, U.S. Postal Service mailing address and the lead Docket number for this proceeding, which is IB Docket No. 98–96. The Commission will consider electronically filed comments that conform to the guidelines of this section part of the record in this proceeding and accord them the same treatment as comments filed on paper.

10. Parties filing comments, replies and supporting documents on paper must also file their submissions on diskette. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format, using MS DOS and Word Perfect 5.1 for Windows or compatible software. The diskette should be submitted in "read only" mode. The diskette should be clearly marked with the party's name, the proceeding to which it is addressed (in this case, IB Docket No. 98–96), the type of pleading (comment or reply) and the date of submission. The diskette should be accompanied by a cover letter setting forth the same information. Each diskette should contain only one party's pleading, preferably in a single electronic file. The party should submit one copy of the diskette to John Copes, International Bureau, Telecommunications Division, 445—12th St., SW, Room 6–C847, Washington, DC 20554. The party should file an exact copy of the diskette, identically marked, with the Commission's copy contractor, International Transcription Service, Inc., at 1231 20th St., NW, Washington, DC 20036.

Conclusion

11. *It is ordered* pursuant to Sections 4(i), 4(j), 11, 201–205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 161, 201–205 and 303(r), that this FNPRM *Is hereby adopted* and comments *Are requested* as described above.

12. *It is further ordered* that the Office of Public Affairs, Reference Operations Division, *Shall send* a Copy of this FNPRM, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 3

Accounting.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Attachment—Government Agencies Who Use the Federal Communications Commission as an Accounting Authority

Department of Agriculture
Department of Air Force
Department of the Army
Coast Guard
Department of Commerce
Defense Information Systems Agency
Department of Energy
Federal Aviation Administration
Federal Emergency Management Agency
Department of Health and Human Services
Department of the Interior
Department of Justice
Department of the Navy
Department of Navy—Command
National Aeronautics and Space Administration
National Science Foundation
Office of Secretary of Defense
On-Site Inspection Agency
Department of State
Department of Treasury
United States Information Agency
U.S. Postal Service
Department of Veteran Affairs

[FR Doc. 99–19066 Filed 7–27–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 174, 175, 176, and 177

[Docket No. RSPA–98–4952 (HM–223)]

RIN 2137–AC68

Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Supplemental advance notice of proposed rulemaking; extension of comment period.

SUMMARY: On April 27, 1999, the Research and Special Programs Administration (RSPA, "we") published a supplemental advance notice of proposed rulemaking (ANPRM) inviting public comment on the applicability of the Hazardous Materials Regulations to loading, unloading, and storage of hazardous materials. In response to a petition filed by the Transportation Trades Department of the AFL–CIO, we are extending until August 25, 1999, the period for filing comments to the supplemental ANPRM.

DATES: Submit comments by August 25, 1999. To the extent possible, we will consider comments received after this date in making our decision on whether to proceed to develop a proposed rule.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify Docket Number RSPA–98–4952 and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System web site at "http://dms.dot.gov/" and following the instructions for filing a document electronically.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at "http://dms.dot.gov/."

FOR FURTHER INFORMATION CONTACT: Susan Gorsky (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration; or Nancy Machado (202) 366–4400, Office of the Chief Counsel, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION: On April 27, 1999 (64 FR 22718), we published a supplemental ANPRM seeking comments on the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to loading, unloading, and storage of hazardous materials. The supplemental ANPRM summarized comments received in response to an earlier ANPRM, outlined commenters' three most commonly suggested approaches for applying the HMR to activities incidental to transportation, and asked a number of questions focused on the details of each suggested approach.

As of July 23, 1999, we have received only eight comments in response to the supplemental ANPRM. The Transportation Trades Department (TTD) of the AFL–CIO has petitioned for an extension to the comment period, stating that an extension of 60 days will enable it to work with its affiliates to present a sound, comprehensive response to the questions posed in the supplemental ANPRM. In addition to the TTD petition, several persons wishing to comment have asked if we have considered extending the comment period. We agree that the comment period should be extended. However, we believe that an extension of 30 days should be sufficient to accommodate commenters' need for additional time. Accordingly, the closing date of the comment period is extended to August 25, 1999.

Issued in Washington, DC on July 23, 1999, under authority delegated in 49 CFR part 106.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 99–19260 Filed 7–27–99; 8:45 am]

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Notices

Federal Register
Vol. 64, No. 144
Wednesday, July 28, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

The 64-Acre Tract Intermodal Transit Center, Lake Tahoe Basin Management Unit (LTBMU), Placer County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice, intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to address issuing a permit to authorize construction and operation of an Intermodal Transit Center on a portion of the tract known as the "64-Acres". This site is located to the west of California State Route 89 just south of Fanny Bridge over the Truckee River, in Tahoe City, California.

ADDRESSES: Written comments concerning the Draft EIS should be sent to the responsible official, Forest Supervisor, attention: 64-Acre Tract Intermodal Transit Center, LTBMU, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, California 96150.

FOR FURTHER INFORMATION CONTACT: Direct questions concerning the proposed action to Joe Oden, Forest Planner, at (530) 573–2653 or at the above address.

DECISION TO BE MADE: The decision to be made for this EIS is whether to issue a Special Use Permit authorizing the construction and operation of an Intermodal Transit Center on the 64-Acres Tract. If a permit is issued, what conditions, requirements and mitigations should be included to protect the environment?

PURPOSE AND NEED: The proposal's purpose is to provide an Intermodal Transit Center in the Tahoe City area to support existing and future transit operations. Traffic congestion has long been considered a problem in the Tahoe Basin and numerous planning efforts have been undertaken to reduce dependence on automobile travel and to enhance transit as an effective alternative. One of the constraints to effective transit in the Tahoe Basin is that there have been limited facilities to support their operation and to provide safe transfer points for transit riders, especially during periods of inclement weather. This facility will transport visitors to the Lake of the Sky Interpretive Center, also to be built on the 64-Acres tract.

PROPOSED ACTION AND ALTERNATIVES: The proposed action includes issuing a permit authorizing the construction and operation of a transit center and associated parking facilities to be located on the northwest portion of the tract. Associated with the transit center would be roadway system improvements and recreation trail alterations necessary to accommodate the new facility. The proposed transit center would provide parking for six buses at a time. The facility would also provide an enclosed structure with a heated waiting area to serve 40 patrons. A parking area is to be provided with 130 spaces to support the Intermodal Transit Center. Intermodal transportation includes bicycling, roller blading and walking as well as bus, shuttle and taxi transportation. The transit center and parking will support all of these uses. This proposal is consistent with Forest Service multiple use plans and it does not violate the section 4(f) of the Department of Transportation Act. In addition to the proposed action and no action, various parking and traffic circulation alternatives may be evaluated in the EIS.

ISSUES: Traffic impacts, parking, and the need for a transit center on this site are likely to be the main issues. Air quality, water quality, visual, noise, recreation, and biological resources will also be addressed.

SUPPLEMENTARY INFORMATION: The Tahoe City Community Plan and the TRPA Regional Transportation Plan/Air Quality Plan both recognize the need for a transit facility in the Tahoe City area to support existing and potential transit operations. The tract has been identified in adopted plans and policies as the location for the facility because of the proximity of the site to Tahoe City and because the location provides an effective transfer point for transit serving the north shore, west shore and the Truckee River area including the town of Truckee.

An Environmental Assessment (EA) for this proposal was distributed for public review and comment February 11, 1999. The EA was tiered to the Lake of the Sky environmental Impact Statement. Other documents that contributed to the preparation of the EA include the Tahoe City Community Plan, the Sixty-four Acres Tract Multimodal Transportation Center Study Final Report May, 1994, and the LTBMU Forest Plan. A scoping meeting for the EA was held on May 1, 1998, in Tahoe City. There were two noticed public hearings on the EA: Tahoe City on February 24, 1999 and San Francisco on April 8, 1999. The project was discussed at the North Tahoe Advisory Council meeting August 13, 1998. Scoping meetings for the EIR/TRPA EIS were held July 14 (Tahoe City) and July 15, 1999 (Incline Village Nevada). Scoping letters inviting input on the EIS/EIS are being sent to all those who expressed an interest in this project. Scoping input and public comments that were received on the EA, as well as additional written comments and suggestions postmarked by August 31, 1999 will be addressed in the EIS/EIR. No additional scoping meetings are planned at this time.

Implementation of the management proposal would require several permits or licenses from other agencies including the Tahoe Regional Planning Agency, Placer County, and Caltrans. Compliance with the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) is required. Placer County is the lead for the EIR and TRPA will also take action on the EIR/EIS in conformance with the Agency's Code of Ordinances.

The decision will be made by Lake Tahoe Basin Management Unit Forest Supervisor, as the Forest Service is the lead agency under NEPA. Placer County is the lead state agency under the California Environmental Quality Act (CEQA).

The draft EIS is anticipated to be filed with the Environmental Protection Agency and made available to the public for comment in November 1999. The final EIS and Record of Decision is expected in April 2000. The decision will be appealable under Forest Service regulations found at 36 CFR part 217.

The comment period for the draft EIS will be at least 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Circut, 1986) and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Linda Massey,

Acting Forest Supervisor.

[FR Doc. 99–19294 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Chalk Creek Timber Sales, Willamette National Forest, Lane County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a Proposal Action to harvest and regenerate timber and thin young stands created by past regeneration harvest. The proposal also calls for the construction, reconstruction, and decommissioning of roads within the Chalk Creek, McKinley Creek, and Hamner Creek drainages of the North Fork of the Middle Fork of the Willamette River watershed. The planning area is bounded by the North Fork of the Middle Fork of the Willamette River on the east, Alpine River to the west and north (the watershed boundary between the North Fork and the Fall Creek watershed) and an unnamed ridge to the south which separates Hamner Creek and High Creek. The area is approximately 40 air miles east of the City of Eugene and 12 air miles northeast of the City of Oakridge. The Forest Service proposal will be in compliance with the 1990 Willamette National Forest Land and Resource Management Plan as amended by the 1994 Northwest Forest Plan, which provides the overall guidance for management of this area. These proposals are tentatively planned for implementation in fiscal year 2001 and 2002. The Willamette National Forest invites written comments and suggestions on the scope of the analysis. The agency will also give notice of the full environmental analysis and decision-making process so that interested and affected people are made aware as to how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of the analysis should be received in writing by September 1, 1999.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Rick Scott, District Ranger, Middle Fork Ranger District, Willamette National Forest, P.O. Box 1410, Oakridge, Oregon 97463.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and the scope of analysis to Kristie Miller, Planning Resource Management Assistant or Tim Bailey, Project Coordinator, Middle Fork Ranger District, phone 541–782–2283.

SUPPLEMENTARY INFORMATION: The Chalk Creek Planning area is entirely within the North Fork of the Middle Fork of the Willamette River watershed, which is designated as a Tier 2 Key watershed by the Northwest Forest Plan (ROD, C–7). Tier 2 Key watersheds contain important sources of high quality water. A Watershed Analysis was completed for the North Fork of the Middle Fork of the Willamette River in September, 1995.

The purpose of this project is to harvest timber in a manner that implements the management objectives, and to implement various resource restoration activities to meet Key Watershed objectives.

The proposed actions include harvesting timber in one to several commercial thinning timber sales over the next five years, and one regeneration harvest timber sale to be sold in the year 2001. Both thinning and regeneration timber sale proposals involve temporary road construction, system road reconstruction, and system road decommissioning. This analysis will evaluate alternative ways of addressing the Forest Service proposal to harvest approximately 15 million board feet. Approximately 3 million board feet would be from thinning about 600 acres of young stands created by past clearcut harvest. Approximately 12 million board feet would from regeneration harvest on about 200 acres. All the above proposed harvest would require some temporary road construction and reconstruction of existing system roads

The Chalk Creek planning area comprises about 9,500 acres, all of which is National Forest System lands. Of the 9,500 acres about 4,200 acres (44%) have been previously harvested and regenerated. Of the remaining acres, approximately 1,450 acres (15%) is in a late-successional stand condition [ranging in ages from 80 to 170 years], and 3,500 acres (37%) is in an old-growth stand condition [stand ages exceeding 200 years]. The planning area contains about 200 acres (2%) of non-forest vegetation types. Management areas that provide for programmed timber harvest are Scenic (11c) and General Forest (14a). Other land allocations in this planning area are Late-Successional Reserves, Riparian Reserves, Wild and Scenic River Corridor, Special Wildlife Habitats, and one Old-Growth Grove.

Preliminary issues identified for this analysis include water and stream quality, habitat fragmentation, economic benefit, reduction of habitat considered critical for the northern spotted owl, and road management.

The Forest Service will be seeking information, comments and assistance from Federal, State, local agencies, tribes, and other individuals or organizations who may be interested or affected by the proposed project. This information will be used to determine the issues significant to the development and analysis of alternatives, to determine the appropriate range of alternative ways of implementing the proposed action, and to guide the analysis of effects. This input will be used in preparation of the draft EIS.

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The scoping process will include the following:

- Identification of potential issues;
- Identification of issues to be analyzed in depth;
- Elimination of insignificant issues or those which have been covered by a relevant previous environmental process;
- Exploration of alternative ways to implement the proposed actions based on the issues identified during the scoping process; and
- Determination of environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December 1, 1999. the comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The final EIS is scheduled to be completed in November, 2000. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Rick Scott, District Ranger, is the responsible official and as responsible official, he will document the chalk Creek Timber Sales project decision and rationale in a record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: July 12, 1999.

Rick Scott,

District Ranger.

[FR Doc. 99–19233 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Subcommittee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee will meet on August 5, 1999, at the Embassy Suites Portland Downtown, 319 SW Pine Street, Portland, Oregon 97204–2726. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:30 a.m. and continue until 3:30 p.m. Agenda items to be discussed include, but are not limited to: information sharing on salmon restoration and recovery from the Soil and Water Conservation District perspective; a presentation of the Regional Community Economic Revitalization Team Report; and progress reports on ongoing implementation issues. The IAC meeting will be open to the public and is fully accessible for people with disabilities. Interpreters are available upon request in advance. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowels, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–808–2180).

Dated: July 20, 1999.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 99–19234 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Comments on Information Collection Package

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Proposed collection: Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intent to request approval of an Information Collection Package in support of the program for servicing the Agency's Community Programs loans and grants.

DATES: Comments on this notice must be received by August 27, 1999 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: For inquiries on the Information Collection Package, contact Tracy Gillin, Regulations and Paperwork Management Branch, at (202) 692–0039. For program content, contact Beth Jones, Senior Loan Specialist, Community Programs Servicing and Special Authorities Branch, RHS, USDA, 1400 Independence Ave., Mail Stop 0787, SW, Washington, DC 20250–0787, Telephone (202) 720–1498, E-mail epjones@rdmail.rural.usda.gov. Comments should be submitted to Ms. Gillin at USDA—Rural Development, 1400 Independence Ave., SW, Mail Stop 0742, Washington, DC 20250–0742.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 3570–E, Servicing of Community Programs Loans and Grants.

Type of Request: New information collection.

Abstract: The Rural Housing Service (RHS) is a credit agency within the Rural Development mission area of the United States Department of Agriculture. Rural Development is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes through the Community Facilities program for the development of essential community facilities primarily serving rural residents. The information will be collected by Rural Development field offices from applicants, borrowers, consultants, lenders, and attorneys. This information is used to determine applicant/borrower eligibility and project feasibility for various servicing actions. This information enables field staff to ensure that borrowers operate on a sound basis and use loan and grant funds for authorized purposes. RHS is combining the applicable portions of seven regulations affecting the servicing of Community Programs (CP) loans and grants into one regulation. The administrative portion has been removed from the published regulation. Agency field personnel will receive an instruction which will include the administrative portion and the published regulation. This action is being taken as part of the National Partnership for Reinventing Government program to eliminate unnecessary regulations and improve those that remain in force. This effort will streamline the published regulations, improve efficiency and effectiveness, and increase the level and quality of customer service. The regulation is being published as a final rule because there are no policy or procedural changes.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 46 minutes per response.

Respondents: Not-for-profit institutions, State, Local, or Tribal Government.

Estimated Number of Respondents: 266.

Estimated Number of Responses per Respondent: 15.

Estimated Total Annual Burden on Respondents: 1,783.

Copies of this information collection can be obtained from Tracy Gillin, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Gillin, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0743, 1400 Independence Ave. SW, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 21, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–19293 Filed 7–27–99; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Pollution Abatement Costs and Expenditures

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 27, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Ron Taylor, Bureau of the Census, Room 2135 FB–4, Washington, DC 20233, on (301) 457–4683.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau, prior to 1995, conducted the Survey of Pollution Abatement Costs and Expenditures, MA–200. Due to budget limitations the survey was suspended. In response to the need for data to assess the cost of environmental regulations on private business, the Census Bureau, with support from the Environmental Protection Agency, plans to reinstate the survey. The survey form will collect, from plants that produce goods or provide services classified in manufacturing, mining and electric utility industries, data on the operating costs of pollution abatement, including hazardous pollutants, payments to government agencies for pollution removal and new capital expenditures for pollution abatement structures and equipment each by the media: air pollution control, water pollution control and solid waste management. These data are similar to that collected previously in this survey. The survey results will be used to track costs of regulatory programs and rules. Results will also be used for monitoring economic impact and promoting growth of environmental programs.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect the data. Companies will be asked to respond to the survey within 60 days of the initial mailing. Letters encouraging participation will be mailed to companies that have not responded by the designated time.

III. Data

OMB Number: 0607–0176.

Form Number: MA–200.

Type of Review: Regular.

Affected Public: Businesses or other for profit organizations.

Estimated Number of Respondents: 20,000.

Estimated Time Per Response: 2.5 hours.

Estimated Total Annual Burden: 50,000 hours.

Estimated Total Annual Cost: $649,000.

Respondents' Obligation: Mandatory.

Legal Authority: Title 13 USC, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

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Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 21, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–19231 Filed 7–27–99; 8:45 a.m.]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Establishment of the Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis (BEA), Commerce.

ACTION: Notice of the establishment of the Bureau of Economic Analysis Advisory Committee.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR part 101–6, the Secretary of Commerce has determined that the establishment of the Bureau of Economic Analysis Advisory Committee (the "Committee") is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will advise the Director of the Bureau of Economic Analysis (BEA) on matters related to the development and improvement of BEA's national, regional, and international economic accounts

The Committee will consist of thirteen members appointed by the Director of BEA and will be balanced to include members from business, academic, research, government, and international organizations who are acknowledged experts in relevant fields, such as economics, statistics, and economic accounting. Persons interested in being considered for membership on the Committee should contact J. Steven Landefeld, Director of BEA, at the address below.

The Committee will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act.

DATES: The charter will be filed under the Act, August 12, 1999.

ADDRESSES: BEA Advisory Committee, BE–1, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: J. Steven Landefeld, Director, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone: 202–606–9600.

Authority: Federal Advisory Committee Act: 5 U.S.C. App. 2 and General Services Administration Rule: 41 CFR Part 101–6.

Dated: July 22, 1999.

J. Steven Landefeld,

Director.

[FR Doc. 99–19320 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Number 99–BXA–01]

Action Affecting Export Privileges; Fawzi Mustapha Assi; Decision and Order

In the Matter of: Fawzi Mustapha Assi, 7706 Middlepoint Street, Dearborn, Michigan 48126, Respondent.

On January 7, 1999, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), issued a charging letter initiating an administrative proceeding against Fawzi Mustapha Assi (hereinafter "Assi"). The charging letter alleged that Assi committed three violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999)) (hereinafter the "Regulations"), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1999)) (hereinafter the "Act").[1]

Specifically, the charging letter alleged that, on or about July 13, 1998, Assi attempted to export from the United States to Lebanon a thermal imaging camera without the export license that he knew or had reason to know was required by Sections 742.4 and 742.6 of the Regulations. BXA alleged that, by attempting to violate the Act, the Regulations, or any order, license, or authorization issued thereunder, Assi violated Section 764.2(c) of the Regulations. BXA also alleged that, by selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, the Regulations, or any order, license, or authorization issued thereunder occurred, was about to occur, or was intended to occur with respect to the transaction, Assi violated Section 764.2(e) of the Regulations.

Finally, BXA also alleged that, in connection with the attempted export described above, Assi failed to file with the U.S. Customs Service, at the time of the attempted export, the Shipper's Export Declaration (SED), an export control document as defined in Part 772 of the Regulations, required by Section 758.1(e) of the Regulations. BXA alleged that, by failing to file the SED, Assi concealed material facts from a United States agency for the purpose of or in connection with effecting an export from the United States, and, in so doing, violated Section 764.2(g) of the Regulations.

Thus, BXA alleged that Assi committed one violation of Section 764.2(c), one violation of Section 764.2(e), and one violation of Section 764.2(g), for a total of three violations of the Regulations.

BXA presented evidence that the charging letter was served on Assi in accordance with Section 766.3 of the Regulations but that he failed to answer it, as required by 766.7 of the Regulations, and is therefore in default. Thus, pursuant to Section 766.7 of the Regulations, BXA moved that the Administrative Law Judge (hereinafter in the ALJ) find the facts to be as alleged in the charging letter and render a Recommended Decision and Order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letter, and concluded that those facts constitute one violation of Section 764.2(c), one violation of Section 764.2(e), and one violation of Section 764.2(g), for a total of three violations of the Regulations by Assi, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for that violation is a denial, for a period of 20 years, of all of Assi's export privileges. As provided by Section 766.22 of the Regulations, the Recommended Decision and Order has been referred to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

Accordingly, it is therefore ordered,

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)), and August 13, 1998 (3 CFR, 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701–1706 (1991 & supp. 1999)).

First, that, for a period of 20 years from the date of this Order, Fawzi Mustapha Assi, 7706 Middlepoint Street, Dearborn, Michigan 48126, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations.

B. Take any action that facilities the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on Assi and on BXA, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: July 12, 1999.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 99–19250 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Dmitry N. Chernyshenko; Decision and Order

In the Matters of: Dmitry N. Chernyshenko, Director, SFT Advertising Agency, 35 Altufievskoe Avenue, Moscow, 127410, Russia, and SFT Advertising Agency, 35 Altufievskoe Avenue, Moscow, 127410, Russia, Respondents.

On May 14, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), issued separate charging letters initiating administrative proceedings against Dmitry N. Chernyshenko and SFT Advertising Agency, (hereinafter) "Chernyshenko" and "SFT").[1] The charging letters alleged that Chernyshenko and SFT each committed three violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999)) (hereinafter the "Regulations"),[2] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1998)) (hereinafter the "Act").[3]

Specifically, the charging letters alleged that, beginning in March 1993 and continuing through September 1993, Chernyshenko and SFT engaged in a scheme to cause the export of a Hewlett-Packard Apollo Model 735 Workstation with a 99 MHz PA RISC processor chip (hereinafter collectively referred to as "HP-Workstation") from the United States through Germany to Russia, the ultimate destination, without first obtaininig the authorizations that Chernyshenko and SFT knew or had reason to know were required. BXA alleged that, by ordering commodities exported or to be exported from the United States, and that, by financing that transaction, with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended to occur with respect to the transaction, both Chernyshenko and SFT violated Section 787.4(a) of the former Regulations.

Furthermore, the charging letters alleged that, in connection with that transaction, on or about May 14, 1993, using a German business affiliate's stationery and signing that affiliate's president's name without his permission, Chernyshenko, acting in his capacity as Director of SFT, drafted a letter of assurance which stated, among other things, that the HP-Workstation would not be shipped outside GCT-eligible countries, without prior authorization from the appropriate national authorities and, in particular, that "this workstation [will not be reexported] from Germany to Russia or any other portion of the former Soviet Union without the permission of the U.S. Commerce Department." BXA alleged that, by falsifying information in

[1] In light of the fact that the enforcement proceedings against Chernyshenko and SFT arose out of the same transaction, and as the evidence supporting BXA's allegations in both cases is the same, BXA has consolidated the proceedings and filed a single default submission.

[2] The violations at issue occurred in 1993. The Regulations governing those violations are found in the 1993 version of the Code of Federal Regulations (15 CFR Parts 768–799 (1993)) and referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures and apply to these matters.

[3] The Act expired on August 20, 1994. The Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)), and August 13, 1998 (3 CFR, 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1999)).

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the letter of assurance, both Chernyshenko and SFT (through Chernyshenko, its Director) concealed material facts directly or indirectly from a United States agency for the purpose of or in connection with effecting an export from the United States, and thereby violated Section 787.5(a) of the former Regulations.

Finally, the charging letters alleged that, in connection with the transaction and the activities described above, on or about July 20, 1993, both Chernyshenko and SFT caused, counseled or induced a third party to state on a Shipper's Export Declaratio, an export control document as defined in Section 770.2 of the former Regulations, that the shipment of the HP–Workstation was authorized for export from the United States to Germany under General License GCT, when in fact the shipment required a validated license, as the HP–Workstation was ultimately destined for Russia. BXA alleged that, in so doing, both Chernyshenko and SFT caused, counseled, or induced the making of a false statement of material fact either directly or indirectly to a United States agency on an export control document, an act prohibited by Section 787.5(a) of the former Regulations, and thereby violated Section 787.2 of the former Regulations.

BXA presented evidence that the changing letters were served on Chernyshenko and SFT. Neither Chernyshenko nor SFT has answered the charging letters, as required by Section 766.7 of the Regulations, and each respondent is therefore in default. Thus, pursuant to Section 766.7 of the Regulations, BXA moved that the Administrative Law Judge (hereinafter the "ALJ") find the facts to be as alleged in the charging letters and render a Recommended Decision and Order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letters, and concluded that those facts constitute three violations of the former Regulations by both Chernyshenko and SFT, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for those violations is that Chernyshenko and SFT each be denied all U.S. export privileges for a period of 10 years. As provided by Section 766.22 of the Regulations, the Recommended Decision and Order has been referred to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

Accordingly, it is therefore ordered,

First, that, for a period of 10 years from the date of this Order, Dmitry N. Chernyshenko, Director, SFT Advertising Agency, 35 Altufievskoe Avenue, Moscow, 127410 Russia, and SFT Advertising Agency, 35 Altufievskoe Avenue, Moscow, 127410 Russia, and all of SFT's successors, assigns, officers, representatives, agents and employees when acting for or on behalf of SFT, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of either denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by either denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby either denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from either denied person or any item subject to the Regulations that has been exported from the United States;

D. Obtain from either denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by either denied person, or service any item, of whatever origin, that is owned, possessed or controlled by either denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to either denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on both Chernyshenko and SFT, as well as on BXA, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: July 21, 1999.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 99–19248 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Order Denying Permission To Apply For or Use Export Licenses

Action Affecting Export Privileges; James Michael Clark, also known as Brother Michael, Jack, Christopher Michael Glanz, Edward, and The Professor.

In the Matter of: James Michael Clark, also known as Brother Michael, Jack, Christopher Michael Glanz, Edward, and The Professor; currently incarcerated at: Federal Correctional Institution, Register #422–87–083, River Road, P.O. Box 1000, Petersburg, Virginia 23804; and with an address at: 904 prospect Avenue, Takoma, Maryland 20912.

On December 4, 1998, James Michael Clark, also known as Brother Michael, Jack, Christopher Michael Glanz, Edward, and The Professor (Clark), was convicted in the United States District Court for the Eastern District of Virginia of violating Sections 794 (a) and (c) of the Espionage Act (18 U.S.C.A. 792–799 (1976 & Supp. 1999)). Specifically, Clark was convicted of unlawfully and knowingly combining, conspiring, confederating and agreeing with other persons, both known and unknown, to knowingly and unlawfully communicate, deliver, and transmit writings and information relating to the national defense of the United States, with intent and reason to believe that the same would be used to the injury of the United States and to the advantage of the following governments: the German Democratic Republic, the Union of Soviet Socialist Republics, the Russian Federation and the Republic of South Africa.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2420 (1991 & Supp. 1999)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating Sections 793, 794, or 798 of the Espionage Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating Sections 793, 794, or 798 of the Espionage Act, the Director, Office of Exporter Services, in consultation with the Director, Office of export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Clark's conviction for violating Section 794 (a) and (c) of the Espionage Act, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Clark permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on December 4, 2008. I have also decided to revoke all licenses issued pursuant to the Act in which Clark had an interest at the time of his conviction.

Accordingly, it is hereby *ordered*:

I. Until December 4, 2008, James Michael Clark, also known as Brother Michael, Jack, Christopher Michael Glanz, Edward, and The Professor, currently incarcerated at: Federal Correctional Institution, Register # 422–87–083, River Road, P.O. Box 1000, Petersburg, Virginia 23804, and with an address at: 904 Prospect Avenue, Takoma, Maryland 20912, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Clark by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until December 4, 2008.

VI. A copy of this Order shall be delivered to Clark. This Order shall be published in the **Federal Register.**

Dated: July 19, 1999.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 99–19214 Filed 7–27–99; 8:45 am]

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[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)), and August 13, 1998 (3 CFR, 1998 Comp. 294 (1999)), continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991 & Supp. 1999)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Number 98–BXA–09]

Action Affecting Export Privileges; Export Materials, Inc.; Decision and Order

In the Matter of: Export Materials, Inc., 3227 Greenbrier Drive, No. 108, Stafford, Texas 77477, Respondent.

On August 12, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), issued a charging letter initiating an administrative proceeding against Export Materials, Inc. (hereinafter "Export Materials"). The charging letter alleged that Export Materials committed 112 violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999)) (hereinafter the "Regulations"),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1999)) (hereinafter the "Act").[2]

Specifically, the charging letter alleged that, beginning in June 1994 and continuing through about July 1996, Export Materials conspired with Thane-Coat, Inc., Jerry Vernon Ford, Preston John Engebretson, and TIC Ltd. to bring about acts that constituted violations of the Act, or any regulation, order, or license issued thereunder. The purpose of the conspiracy was for Export Materials and the others to export U.S.-origin commodities to Libya, a country subject to a comprehensive economic sanctions program. To accomplish their purpose, the conspirators devised and employed a scheme to export U.S.-origin items from the United States through the United Kingdom to Libya, without applying for and obtaining the export authorizations that the conspirators knew or had reason to know were required under U.S. law, including the Regulations. *See* 15 CFR § 746.4, previously codified at 15 CFR § 785.7 of the former Regulations, and 15 CFR § 772.1 of the former Regulations. BXA alleged that, by conspiring or acting in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the Act, or any regulation, order or license issued thereunder, Export Materials violated Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996) of the former Regulations.

BXA alleged that, in furtherance of the conspiracy described above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, Export Materials, as a co-conspirator, exported polyurethane (isocyanate/polyol) and polyether polyurethane (hereinafter collectively referred to as "pipe coating materials") from the United States to Libya, without obtaining from the Department the validated export licenses that Export Materials knew or had reason to know were required under Section 772.1(b) (redesignated as Section 772A.1(b) on March 25, 1996) of the former Regulations. BXA alleged that, by exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act, or any regulation, order, or license issued thereunder, Export Materials, as a co-conspirator, violated Section 787.6 or Section 787A.6 of the former Regulations in connection with each shipment. Specifically, BXA alleged that Export Materials, as a co-conspirator, committed 32 violations of Section 787.6 and five violations of Section 787A.6 of the former Regulations, for a total of 37 violations.

BXA also alleged that, by selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended to occur with respect to the transactions, Export Materials, as a co-conspirator, violated Section 787.4(a) or Section 787A.4(a) of the former Regulations in connection with each shipment. Specifically, BXA alleged that Export Materials committed 32 violations of Section 787.4(a) and five violations of Section 787A.4(a) of the former Regulations, for a total of 37 violations.

Finally, BXA also alleged that, in furtherance of the conspiracy described above and to effect the 37 exports described above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, Export Materials used Shipper's Export Declarations or Bills of Lading, export control documents as defined in Section 770.2 (redesignated as Section 770A.2 on March 25, 1996) of the former Regulations, on which it represented that the commodities described thereon, pipe coating materials, were destined for ultimate end-use in the United Kingdom. In fact, the pipe coating materials were ultimately destined for Libya. BXA alleged that, by making false or misleading statements of material fact directly or indirectly to a United States agency in connection with the use of export control documents to effect exports from the United States, Export Materials, as a co-conspirator, violated Section 787.5(a) or Section 787A.5(a) of the former Regulations in connection with each shipment. Specifically, BXA alleged that Export Materials committed 32 violations of Section 787.5(a) and five violations of Section 787A.5(a)[3] of the former Regulations, for a total of 37 violations.

Thus, BXA alleged that Export Materials committed one violation of Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996); 32 violations of Section 787.4(a), five violations of Section 787A.4(a), 32 violations of Section 787.5(a); five violations of Section 787A.5(a), 32 violations of Section 787.6, and five violations of Section 787A.6, for a total of 112 violations of the former Regulations.

BXA presented evidence that the charging letter was served on Export Materials in accordance with Section 766.3 of the Regulations but that Export Materials failed to answer it, as required by 766.7 of the Regulations, and is therefore in default. Thus, pursuant to Section 766.7 of the Regulations, BXA moved that the Administrative Law Judge (hereinafter the ALJ) find the facts to be as alleged in the charging letter and render a Recommended Decision and Order.

[1] The alleged violations occurred during 1994, 1995, and 1996. The Regulations governing the violations at issue are found in the 1994, 1995 and 1996 versions of the Code of Federal Regulations (15 CFR Parts 786–799 (1994 and 1995) and 15 CFR Parts 768–799 (1996), as amended (61 FR 12714, March 25, 1996)) (hereinafter the "former Regulations"). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the existing Regulations as 15 CFR Parts 768A–799A. In addition, the March 25, 1996 **Federal Register** publication restructured and reorganized the Regulations, designating them as an interim rule at 15 CFR Parts 730–774, effective Aprl 24, 1996. The former Regulations define the violations that BXA alleges occurred. The reorganized and restructured Regulations establish the procedures that apply to this matter.

[2] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR., 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR., 1996 Comp. 298 (1997), August 13, 1997 (3 CFR., 1997 Comp. 306 (1998)), and August 13, 1998 (3 CFR., 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1999)).

[3] BXA noted in its motion that, because of a typographical error, the charging letter incorrectly cites to Section 785A.4(a) and requested that the ALJ authorize an amendment to the charging letter to provide the correct citation to the regulatory provision that spells out the false statement violation, Section 787A.5(a). The ALJ granted BXA's request and amended the charging letter to correct the citation to Section 787A.5(a).

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letter, and concluded that those facts constitute one violation of Section 787.3(b) (redesignated as Section 787A.3(b) March 25, 1996); 32 violations of Section 787.4(a); five violations of Section 787A.4(a); 32 violations of Section 787.5(a); five violations of Section 787A.5(a); violations of Section 787.6, and five violations of Section 787A.6, for a total of 112 violations of the former Regulations by Export Materials, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for that violation is a denial, for a period of 20 years, of all of Export Materials's export privileges. As provided by Section 766.22 of the Regulations, the Recommended Decision and Order has been referred to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

Accordingly, it is therefore ordered,

First, that, for a period of 20 years from the date of this Order, Export Materials Inc., 3727 Greenbrier Drive, No. 108, Stafford, Texas 77477, and all of its successors or assigns, officers, representatives, agents, and employees when acting for or on behalf of Export Materials may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on Export Materials and on BXA, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: July 12, 1999.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 99–19246 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 98–BXA–08]

Action Affecting Export Privileges; Nancy Ann Harvey; Decision and Order

In the Matter of: Nancy Ann Harvey, 4542 Indian Earth Court NE, Salem, Oregon 97305, Respondent.

On August 3, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), issued a charging letter initiating an administrative proceeding against Nancy Ann Harvey (formerly known as Nancy Ann Mahler (nee Reamer)) (Harvey). The charging letter alleged that Harvey committed three violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999) (the Regulations),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1999)) (the Act).[2]

Specifically, the charging letter alleged that, on or about August 4, 1993, Harvey exported U.S.-origin shotguns (with barrel lengths of 18 inches and over) and shotgun shells to the Republic of South Africa, concealing them in a 40 foot container and representing on a bill of lading that the items in the container were "used household goods and personal effect," without obtaining from BXA the validated export license Harvey knew or had reasons to know was required by Section 772.1(b) of he former Regulations. BXA alleged that, by exporting U.S.-origin commodities to any person or to any destination in violation or contrary to the provisions of the Act or any regulation, order or

[1] The violations at issue occurred in 1993. The Regulations governing those violations are found in the 1993 version of the Code of Federal Regulations (15 CFR Parts 768–799 (1993)) and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to his matter.

The Act expired on August 20, 1994. Executive Order 12924 (3 CFR 1994 Comp. 917 (1995)), extended by Presidential Notice of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)) August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)) and August 13 1998 (CFR, 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A §§ 1701–1706 (1991 & Supp.1999)).

license issued thereunder, Harvey violated Section 787.6 of the former Regulations. BXA also alleged that, by selling, transferring, or forwarding commodities export or to be exported from the United States with knowledge of reason to know that a violation of the Act, or any regulation, order or license issued thereunder occurred, was about to occur, or was intended to occur with respect to the shipment, Harvey violated Section 787.4(a) of the former Regulations.

Further, the charging letter alleged that, in connection with the August 4, 1993 transaction, Harvey represented on a bill of lading, an export control document as defined in Section 770.2 of the former Regulations, that the container that she was shipping to the Republic of South Africa held "used household goods and personal effects." In fact, the container also held shotguns (with barrel lengths of 18 inches and over) and shotgun shells that she had concealed among the household items. BXA alleged that, by making false or misleading representations of material fact directly or indirectly to a United States government agency in connection with the preparation, submitted or use of an export control document, Harvey violated Section 787.5(a) of the former Regulations.

BXA presented evidence that Harvey received the charging letter but failed to answer the charging letter, as required by Section 766.7 of the Regulations, and is therefore in default. Thus pursuant to Section 766.7 of the Regulations, BXA moved that the Administrative Law Judge (hereinafter the ALJ) find he facts to be alleged in the charging letter and render a Recommended Decision and Order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letter, and concluded that those facts constituted three violations of the former Regulations by Harvey, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for those violations is a denial, for a period of three years, of all of Harvey's export privileges. As provided by Section 766.22 of The Regulations, the Recommended Decision and Order has been referred to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

Accordingly, it is therefore ordered,

First, that, for a period of three years from the date of this Order, Nancy Ann Harvey, 4542 Indian Earth Court NE, Salem, Oregon, 97305, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subjects to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the uses of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provision of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on Harvey and on BXA, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effectively immediately.

Dated: July 12, 1999.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 99–19249 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Order Denying Permission To Apply For or Use Export Licenses

Action Affecting Export Privileges; Theresa Marie Squillacote, also known as Tina, Mary Teresa Miller, Schwan, The Swan, Margaret, Margrit, Margret, Margrit, Lisa Martin Resi, Anne.

In the Matter of: Theresa Marie Squillacote, also known as Tina, Mary Teresa Miller, Schwan, The Swan, Margaret, Margit, Marget, Margrit, Lisa Martin, Resi, Anne; currently incarcerated at: Federal Correctional Institution, Register #422–90–083, 501 Capital Cricle, NE, Tallahassee, Florida 32301; and with an address at: 3809 13th Street, N.E., Washington, D.C. 20017.

On January 22, 1999, Theresa Marie Squillacote, also known as Tina, Mary Teresa Miller, Schwan, The Swan, Margaret, Margit, Margaret, Margrit, Lisa Martin, Resi, and Anne (Squillacote), was convicted in the United States District Court for the Eastern District of Virginia of violating Sections 793(b) and 794(a) and (c) of the Espionage Act (18 U.S.C.A. 792–799 (1976 & Supp. 1999)). Specifically, Squillacote was convicted of: (1) unlawfully and knowingly combining, conspiring, conferating and agreeing with other persons, both known and unknown, to knowingly and unlawfully communicate, deliver, and transmit writings and information relating to the national defense of the United States, with intent and reason to believe that the same would be used the injury of the United States and to the advantage of the following governments: the German Democratic Republic, the Union of Soviet Socialist Republics, the Russian Federation and the Republic of South Africa: (2) knowingly and unlawfully attempting to communicate, deliver, and transmit classified secret documents pertaining to the national defense of the United States, directly or indirectly, from the Pentagon, with reason to believe that they were to be used to the injury of the United States and to the advantage of the Republic of South Africa; (3) and of knowingly and unlawfully copying, making, taking, and obtaining classified secret documents and writings connected with the national defense of the United States, directly or indirectly, from the Pentagon, with reason to believe that they were to be used to the injury of the United States.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app 2401–2420 (1991 & Supp. 1999)) (the Act) [1] provides that, at the discretion of the Secretary of Commerce, [2] no person convicted of violating Sections 793, 794, or 798 of the Espionage Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating Sections 793, 794, or 798 of the Espionage Act, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Squillacote's conviction for violating Sections 793(b) and 794(a) and (c) of the Espionage Act, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Squillacote permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of her conviction. The 10-year period ends on January 22, 2009. I have also decided to revoke all licenses issued pursuant to the Act in which Squillacote had an interest at the time of her conviction.

Accordingly, it is hereby *ordered*:

I. Until January 22, 2009, Theresa Marie Squillacote, also known as Tina, Mary Teresa Miller, Schwan, The Swan, Margaret, Margit, Margret, Margrit, Lisa Martin, Resi and Anne, currently incarcerated at: Federal Correctional Institution, Register #422–90–083, 501 Capital Circle, NE, Tallahassee, Florida 32301, and with an address at: 3809 13th Street, NE Washington, DC 20017, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the regulations.

II. No person may, directly or indirectly, do nay of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations:

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to known that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Squillacote by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This order is effective immediately and shall remain in effect until January 22, 2009.

VI. A copy of this Order shall be delivered to Squillacote. This Order shall be published in the **Federal Register**.

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR 1997 Comp. 306 (1998)), and August 13, 1998 (3 CFR 1998 Comp. 294 (1999)), continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991 & Supp. 1999)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

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Dated: July 19, 1999.
Eileen M. Albanese,
Director, Office of Exporter Services.
[FR Doc. 99–19216 Filed 7–27–99; 8:45 am]
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DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Kurt Alan Stand, Also Known as Ken, Junior, and Alan David Jackson; Order Denying Permission To Apply for or Use Export Licenses

On January 22, 1999, Kurt Alan Stand, also known as Ken, Junior, and Alan David Jackson (Stand), was convicted in the United States District Court for the Eastern District of Virginia of violating Sections 793(b) and 794(a) and (c) of the Espionage Act (18 U.S.C.A. §§ 792–799 (1976 & Supp. 1999)). Specifically, Stand was convicted of: (1) unlawfully and knowingly combining, conspiring, confederating and agreeing with other persons, both known and unknown, to knowingly and unlawfully communicate, deliver, and transmit writings and information relating to the national defense of the United States, with intent and reason to believe that the same would be used to the injury of the United States and to the advantage of the following governments: the German Democratic Republic, the Union of Soviet Socialist Republics, the Russian Federation and the Republic of South Africa; (2) knowingly and unlawfully attempting to communicate, deliver, and transmit classified secret documents pertaining to the national defense of the United States, directly or indirectly, from the Pentagon, with reason to believe that they were to be used to the injury of the United States and to the advantage of the Republic of South Africa; (3) and of knowingly and unlawfully copying, making, taking, and obtaining classified secret documents and writings connected with the national defense of the United States, directly or indirectly, from the Pentagon, with reason to believe that they were to be used to the injury of the United States.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1999)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating Sections 793, 794, or 798 of the Espionage Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating Sections 793, 794, or 798 of the Espionage Act, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Stand's conviction for violating Sections 793(b) and 794(a) and (c) of the Espionage Act, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Stand permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on January 22, 2009. I have also decided to revoke all licenses issued pursuant to the Act in which Stand had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered:*

I. Until January 22, 2009, Kurt Alan Stand, also known as Ken, Junior, and Alan David Jackson, currently incarcerated at: Federal Transfer Center, Register #422–89–083, P.O. Box 898801, Oklahoma City, Oklahoma 73189–8801, and with an address at: 3809 13th Street, NE., Washington, DC 20017, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilities the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Stand by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until January 22, 2009.

VI. A copy of this Order shall be delivered to Stand. This Order shall be published in the **Federal Register.**

Dated: July 19, 1999.
Eileen M. Albanese,
Director, Office of Exporter Services.
[FR Doc. 99–19215 Filed 7–27–99; 8:45 am]
BILLING CODE 3510–DT–M

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)), and August 13, 1998 (3 CFR, 1998 Comp. 294 (1999)), continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1999)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–851–802, A–588–850, A–588–851, A–201–827, A–791–808, A–485–805]

Initiation of Antidumping Duty Investigations: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Mexico; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From the Czech Republic, Japan, the Republic of South Africa and Romania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 28, 1999.

FOR FURTHER INFORMATION CONTACT: Steven Presing or Kris Campbell at (202) 482–0194 and (202) 482–3813, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (1998).

The Petitions

On June 30, 1999, the Department of Commerce ("the Department") received petitions on large diameter carbon and alloy seamless standard, line and pressure pipe ("large diameter pipe") filed in proper form by U.S. Steel Group, (a unit of USX Corp.-Fairfield Seamless Pipe Mill), USS/Kobe Steel Company. Also that day, the Department received petitions on small diameter carbon and alloy seamless standard, line and pressure pipe ("small diameter pipe") filed in proper form from Koppel Steel Corporation, Sharon Tube company, U.S. Steel Group, USS/Kobe Steel Company and Vision Metals, Inc.(Gulf States Tube Division). On June 30, 1999, the United Steel Workers of America joined as co-petitioners in all of the cases. The Department received supplemental information to the petitions throughout the 20-day initiation period.

In accordance with section 732(b) of the Act, the petitioners allege that imports of certain large and small diameter pipe from the above-mentioned countries are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations they are requesting the Department to initiate (*see Determination of Industry Support for the Petitions* below).

Scopes of Investigations

Scope of Large Diameter Investigations

The scope of these investigations includes large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials ("ASTM") A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the American Petroleum Institute ("API") 5L specifications and meeting the physical parameters described below, regardless of application. The scope of these investigations also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of these investigations are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to these investigations are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.31.60.50, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.60, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers ("ASME") code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at

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elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

The scope of these investigations includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of these investigations. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of these investigations.

Specifically excluded from the scope of these investigations are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished oil country tubular goods ("OCTG") are excluded from the scope of these investigations, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

Scope of Small Diameter Investigations

The scope of these investigations includes small diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the American Society for Testing and Materials ("ASTM") A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the American Petroleum Institute ("API") 5L specifications and meeting the physical parameters described below, regardless of application. The scope of these investigations also include all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of these investigations are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to these investigations are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the HTSUS.

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers ("ASME") code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes is in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or "hollow profiles" of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A-335, ASTM A–589, ASTM A–795, and API 5L specifications.

The scope of these investigations includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of these investigations. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of these investigations.

Specifically excluded from the scope of these investigations are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of these investigations, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise under investigation is dispositive.

During our review of the petitions, we discussed the scope with the petitioners to ensure that the scope in the petitions accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by August 10, 1999. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

There are two domestic like products, one for small diameter pipe and one for large diameter pipe. These domestic like products, as referred to in the petitions, are the domestic like products defined in the "Scopes of Investigation" section, above. The Department has no basis on the record to find the petitioners' definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petitions.

Moreover, the Department has determined that the petitions (and subsequent amendments) and supplemental information obtained through the Department's research contain adequate evidence of industry support; therefore, polling is unnecessary (*see Attachment to the Initiation Checklist, Re: Industry Support*, July 20, 1999). For both large and small diameter, the petitioners established industry support representing over 50 percent of total production of the domestic like product. Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department's decision to initiate these investigations is based.

The petitioners, in determining normal value ("NV") for Japan, Mexico and South Africa relied upon price data contained in confidential market research reports filed with the

[1] *See Algoma Steel Corp. Ltd.*.. v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

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Department. At our request, the petitioners arranged for the Department to contact the authors of the reports to verify the accuracy of the data, the methodology used to collect the data, and the credentials of those gathering the market research. The Department's discussions with the authors of the market research reports are summarized in *Memorandum to the File: Re—Foreign Market Research Reports*, dated July 20, 1999. For a more detailed discussion of the deductions and adjustments relating to home market price, U.S. price and factors of production and sources of data for each country named in the petition, *see Initiation Checklist*, dated July 20, 1999. Should the need arise to use as facts available under section 776 of the Act any of this information in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Czech Republic

The petitioners based EP on a U.S. price for a sale to an unaffiliated purchaser, and calculated net U.S. price by subtracting from gross price unloading and wharfage charges, international shipping charges, U.S. customs duties, and an industry standard U.S. trading company mark-up.

The petitioners noted that the Department has never had occasion to determine whether the Czech Republic is a non-market economy (NME) country to the extent that sales or offers for sale of the foreign like product in the Czech Republic do not permit calculation of NV under 19 CFR 351.404. In previous investigations, however, the Department has determined that Czechoslovakia, the predecessor of both the Slovak Republic and the Czech Republic, was an NME. *See e.g., Carbon Steel Wire Rod from Czechoslovakia; Preliminary Negative Countervailing Duty Determination*, 49 FR 6773 (February 23, 1984). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the Czech Republic has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, pursuant to section 773(c) of the Act, the petitioners constructed NV of the product based on factors of production valued in a surrogate market economy country. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the Czech Republic's NME status and the granting of separate rates to individual exporters. *See e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC*, 59 FR 22585 (May 2, 1994).

The petitioners selected Brazil as the most appropriate surrogate market economy. The petitioners stated that: (1) Brazil is ranked third in proximity to the Czech Republic with respect to a similar per capita GNP; (2) Brazil is a significant producer of the subject merchandise; and (3) the petitioners have been able to secure detailed financial statements for Brazil's major seamless pipe producer. The petitioners believe Brazil is the most appropriate surrogate market economy because it is a significant producer of comparable merchandise (in accordance with section 773(c)(4) of the Act). Based on the information provided by the petitioners, we believe their use of Brazil as a surrogate country is appropriate for purposes of initiation of this investigation.

For the NV calculation, the petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, and energy), for small diameter pipe on the same basic billet round input used by the petitioners, adjusted to reflect unit factor costs in the surrogate. The petitioners asserted that detailed information is not available regarding the Czech producers' actual usage rates. Thus, the petitioners have assumed, for purposes of the petition, that Czech producers of subject merchandise use the same basic billet round input as the petitioners. Specifically, the petitioners have used one U.S. producer's factors of production through the heating, piercing, rolling, and finishing of a billet round into finished pipe.

In accordance with section 773(c)(4) of the Act, the petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. The petitioners estimate Czech producers' unit factor cost for billet rounds by utilizing Brazilian import/export statistics as published in the 1997 reports of the United Nations Statistical Division. Labor was valued using a regression-based wage rate for the Czech Republic provided by the Department in accordance with 19 CFR 351.408(c)(3). This value was multiplied by the usage rate of the U.S. steel company to calculate total cost of labor. Electricity rates were taken from *Energy, Prices and Taxes*, Fourth Quarter 1998. The petitioners determine depreciation for Czech producers by drawing from the 1997 annual report of a major Brazilian producer of seamless pipe. In addition, petitioners have calculated selling, general and administrative expenses as well as a net financial expense based on expenses reported in the 1998 financial statements of Brazil's major pipe producer. The necessary financial information to determine factory overhead (including all indirect labor, materials, and utilities) was not available for the major pipe producer in Brazil. The Brazilian producer's financial statements group all direct and indirect costs into cost of goods sold, and provide no means by which to segregate these items. Therefore, the petitioners instead utilized the financial statements of a South African pipe producer and relied upon the factory overhead incurred by this producer as a surrogate for the Czech Republic. (South Africa, like Brazil, is at a level of economic development comparable to that of the Czech Republic.) In determining an amount of profit for constructed value, the petitioners could not use Brazil's major pipe producer as a surrogate because this producer reported a net loss in 1998. Therefore, the petitioners have used the financial statements of two Brazilian steel companies, neither of which produce pipe, to estimate a profit percentage to be used as surrogate for the Czech producer. However, given that the petitioners did not capture correctly the Brazilian producers' profit, we recalculated the profit rate and the overall estimated dumping margins accordingly. *See Memorandum to the File: Re—Recalculation of Brazilian Surrogate Profit Rate*, dated July 20, 1999.

Based on the information provided by the petitioners, we believe that their surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiation of this investigation.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated dumping margins for small diameter pipe from the Czech Republic range from 161.18 to 167.42 percent.

Japan (Both Large and Small Diameter Pipe)

For both small and large diameter pipe, the petitioners based EP on a price quote from a Japanese trading company to an unaffiliated customer.

The petitioners calculated a net U.S. price by subtracting estimated costs for the trading company mark-up, foreign inland freight, brokerage and port charges, international freight, unloading and wharfage, U.S. movement, U.S. discount and U.S. customs duties.

NV is based upon prices for products which are identical to the products used as the basis for the U.S. price. The petitioners calculated the net ex-factory price by deducting foreign movement charges. In addition, the petitioners deducted domestic packing expenses, added U.S. packing expenses and adjusted for differences in credit expenses between the U.S. and Japanese market.

In addition, the petitioners provided information demonstrating reasonable grounds to believe or suspect that large and small diameter pipe sold in the home market were made at prices below the fully absorbed cost of production ("COP"), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing ("COM"), selling, general, and administrative expenses ("SG&A") and packing. To calculate COP, petitioners based COM on their own production experience, adjusted for known differences between costs incurred to produce certain seamless pipe products in the United States and in Japan using market research and publicly available data.

To calculate SG&A and financial expenses, petitioners relied upon the fiscal year 1998 audited financial statements of a Japanese steel producer. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, petitioners also based NV for sales in Japan on constructed value ("CV"). For this initiation, we are accepting CV as the appropriate basis for NV. The petitioners calculated CV using the same COM, SG&A and financial expense figures used to compute Japanese home market costs. Consistent with section 773(e)(2) of the Act, the petitioners also added to CV an amount for profit. Profit was based upon a Japanese producer's fiscal year 1998 financial statements. We adjusted the CV for differences in circumstances of sales by subtracting home market credit expenses and adding U.S. credit and packing expenses.

The margin calculations based on price to CV, as revised, indicate dumping margins ranging from 74.17–106.07 percent for small diameter pipe and 64.00–107.80 percent for large diameter pipe. The estimated dumping margins, based on price-to-price comparisons range from 50.42–51.07 percent for small diameter pipe and 50.21–53.52 percent for large diameter pipe.

Mexico

The petitioners based EP on an offer for sale of a range of products from a distributor which is affiliated with the one known Mexican producer.

The petitioners calculated a net U.S. price by deducting estimated values for U.S. inland freight, U.S. port charges, customs duty, ocean freight, insurance, foreign inland freight, loading and warehousing charges.

With respect to NV the petitioners obtained gross unit prices for products offered for sale in Mexico which are identical to those sold in the United States. The petitioners deducted from the gross price foreign inland freight charges and domestic packing expenses, added export packing expenses and adjusted for differences in U.S. and Mexican credit expenses.

The estimated dumping margins in the petition based on a comparison of TAMSA's U.S. and home market prices range from 26.07–27.42 percent.

Romania

The petitioners based EP on U.S. price offers for sale to an unaffiliated purchaser. Because the offers were from trading companies to unrelated purchasers in the United States prior to importation of the merchandise, the petitioners treated the sales as export price (EP) sales.

To determine net U.S. price, the petitioners deducted from gross price U.S. port charges including unloading and wharfage, international shipping charges, U.S. Customs duties, and a trading company mark-up.

With respect to NV, the petitioners assert that Romania is an NME country and pursuant to 19 U.S.C. 1677(18)(C)(i) (section 771(18)(C)(i) of the act), "any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority." Because Romania's status as an NME has not been revoked, the petitioners' allocation is based upon a nonmarket economy analysis. In previous investigations, the Department has determined that Romania is an NME. *See e.g., Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and United Kingdom*, 64 FR 8790, 8796 (February 23, 1999) (Preliminary Results) and *Tapered Roller Bearings and Parts Thereof From Romania*, 63 FR 36390 (July 6, 1998) (Final Results). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for Romania has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of Romania's NME status and the granting of separate rates to individual exporters. *See e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC*, 59 FR 22585 (May 2, 1994).

For the NV calculation, the petitioners assert that Indonesia is the most suitable among the potential surrogates, because: (1) It is the most significant producer of comparable merchandise among those countries economically similar to Romania; and (2) the financial statements of the leading Indonesian steel producer are available (in contrast, the petitioners state that financial statements are not reasonably available with respect to steel producers in Egypt, Algeria, and the Philippines, other countries economically comparable to Romania). Egypt, Algeria, and the Philippines have a higher comparability ranking by per capita GNP than Indonesia as calculated from data from the World Bank, *World Development Report 1998/99*. However, the petitioners assert that none of those potential surrogates (including Indonesia) is a significant producer of the subject merchandise. The petitioners point to *Antifriction Bearings from Romania*, in which the Department made clear that the surrogate need not be a significant producer of the identical merchandise. The petitioners further assert that the Department has used surrogate countries which did not produce merchandise identical to the subject merchandise. They cite *Sebacic Acid from the PRC*, in which the Department chose India as the surrogate for China despite the fact that India did not produce the subject merchandise. Accordingly, the petitioners submit that for the purpose of identifying a surrogate, steel in general may be considered "comparable" to seamless pipe. Indonesia is the most significant steel manufacturer, producing over 3.8 million MT of crude steel. Based on the

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information on the record, we believe that the petitioners' use of Indonesia as a surrogate country is appropriate for the purposes of initiation.

For the NV calculation, the petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, and energy), for small diameter carbon and alloy seamless standard, line, and pressure pipe on Indonesian import statistics. Since none of the principal Romanian producers are integrated steel producers (*i.e.*, they do not make their own steel from raw materials, rather they purchase billet rounds from other countries), the petitioners have used the factors of production of a U.S. steel producer for the heating, piercing, rolling, and finishing of a billet round into finished pipe.

In accordance with section 773(c)(4) of the Act, the petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. For the purposes of determining Indonesian unit factor costs, the petitioners utilize the most recent information reasonably available and substitute such costs for those of the U.S. producer. The petitioners use company specific data in the form of financial statements from an Indonesian steel producer to calculate depreciation, factory overhead, SG&A, financial expense, and profit. Labor was valued using a regression-based wage rate for Romania provided by the Department in accordance with 19 CFR 351.408(c)(3). This value was multiplied by the usage rate of the U.S. steel company to calculate total cost of labor. For electricity, the usage rate of the U.S. steel company was used. Petitioners valued electricity using the rates for Indonesia as published in a news article. For natural gas, petitioners applied the usage rate of the U.S. steel company in conjunction with the Indonesian unit factor cost for natural gas, as determined from the financial statement of YPF, a large Indonesian provider of natural gas.

The estimated dumping margins in the petition are based on a comparison of U.S. price and constructed value. These comparisons reveal estimated dumping margins ranging from 30.83—42.36 percent.

South Africa

The petitioners used prices from two sources as the basis for EP. For two sizes of pipe, they used prices from a price list for South African products obtained from a trading company. For a third size of pipe, petitioners provided a price quote for South African pipe from an international trading company to an unaffiliated U.S. customer.

The petitioners calculated a net U.S. price by subtracting estimated costs for domestic inland freight, international freight, loading and wharfage and U.S. customs duty.

NV is based upon prices for products offered for sale in South Africa which are identical to the products used as the basis for the U.S. price. The petitioners calculated NV by subtracting estimated costs for inland freight. Additionally, the petitioners made adjustments for differences in credit and packing.

The estimated dumping margins in the petition range from 36.82–43.51 percent.

Initiation of Cost Investigations

As noted above, pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the Japanese home market were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct country-wide sales-below-COP investigations in connection with the requested antidumping investigations for Japan. The Statement of Administrative Action ("SAA"), of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA at 833 (1994). The SAA at 833 states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation."

Further, the SAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their costs of production, we find the existence of "reasonable grounds to believe or suspect" that sales of these foreign like products in Japan were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigations.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of small and large diameter pipe from the above-referenced countries are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like products are being materially injured, and is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The petitioners explained that the industry's injured condition is evident in the declining trends in (1) U.S. market share, (2) average unit sales values, (3) share of domestic consumption, (4) operating profits, (5) employment, (6) output, (7) sales, (8) return on investment, (9) capacity utilization, (10) hours worked, and (11) wages paid.

The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Attachments to Initiation Checklist, Re: Material Injury*, July 20, 1999).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on large and small diameter pipe, we find that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of certain small diameter carbon and alloy seamless standard, line and pressure pipe from the Czech Republic, Japan, the Republic of South Africa and Romania, and certain large diameter carbon and alloy seamless standard, line and pressure pipe from Japan and Mexico are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the Czech Republic, Japan, Mexico, Romania and the Republic of South Africa. We will attempt to provide a copy of the public versions of each petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, by no later than September 3, 1999, whether there is a reasonable indication that imports of certain small diameter carbon and alloy seamless standard, line and pressure pipe from the Czech Republic, Japan, the Republic of South Africa and Romania, and certain large diameter carbon and alloy seamless standard, line and pressure pipe from Japan and Mexico are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: July 20, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19307 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China; Notice of recission of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Recission of New Shipper Review.

SUMMARY: On December 7, 1998, in response to a request by Zunyi Titanium Plant, an exporter and producer, the Department of Commerce initiated a new shipper review concerning the antidumping duty order on silicon metal from the People's Republic of China (PRC). The period of review was June 1, 1998 through November 30, 1998. This review has now been rescinded as a result of the withdrawal of the request for review by Zunyi Titanium Plant, the only party that requested the review.

EFFECTIVE DATE: July 28, 1999.

FOR FURTHER INFORMATION CONTACT: Sarah Ellerman or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4106 and (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 1991, the Department of Commerce (the Department) published an antidumping duty order on silicon metal from the PRC (56 FR 26649). On December 7, 1998, Zunyi Titanium Plant, an exporter and a producer, requested a new shipper review in reference to the antidumping duty order on silicon metal from the PRC. In accordance with 19 CFR 351.214(d), we published the initiation of the review on February 1, 1999 (64 FR 4842) covering the period of June 1, 1998 through November 30, 1998. On May 11, 1999, Zunyi Titanium Plant withdrew its request for review.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations refer to 19 CFR part 351 (1998).

Recission of Review

The Department's regulations at 19 CFR 351.214(f)(1) provide that the Department "may rescind a new shipper review * * * if a party that requested a review withdraws its request no later than 60 days after the date of publication of notice of initiation of the requested review." Zunyi Titanium Plant withdrew its request for new shipper review on May 11, 1999.

Although this date is more than 60 days from the date of initiation, consistent with the Department's past practice in the context of administrative reviews conducted under section 751(a) of the Act, the Department has discretion to extend the time period for withdrawal on a case-by-case basis. (See *e.g. Iron Construction Casings from Canada: Notice of Recission of Antidumping Duty Administrative Review*, 63 FR 45797 (August 27, 1998).) In this case, the Department has determined to grant the request to rescind this new shipper review based on the fact that the Department has not yet devoted considerable time and resources to this proceeding. Moreover, rescission of this review would not prejudice any party in this proceeding, as Zunyi Titanium Plant would continue to be included in the PRC-wide rate to which it was subject at the time of its request for this new shipper review.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: July 21, 1999.

Barbara E. Tillman,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 99–19306 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–856]

Initiation of Antidumping Duty Investigation: Synthetic Indigo From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: July 28, 1999.

FOR FURTHER INFORMATION CONTACT: Dinah McDougall or David J. Goldberger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3773 or (202) 482–4136, respectively.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act

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(URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (1998).

The Petition

On June 30, 1999, the Department received a petition filed in proper form by Buffalo Color Corporation ("BCC") and the United Steel Workers of America, AFL–CIO/CLC, which represents BCC's production workers, collectively referred to hereinafter as "the petitioners." In accordance with section 732(b) of the Act, the petitioners allege that imports of indigo from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring or threatening to injure an industry in the United States. The petitioners filed supplemental information to the petition on July 9, 1999 and July 13, 1999.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they represent, at a minimum, the required proportion of the United States industry (*see* Determination of Industry Support for the Petition section below).

Scope of Investigation

The products subject to this investigation are the deep blue synthetic vat dye known as synthetic indigo and those of its derivatives designated commercially as "Vat Blue 1." Included are Vat Blue 1 (synthetic indigo), Color Index No. 73000, and its derivatives, pre-reduced indigo or indigo white (Color Index No. 73001) and solubilized indigo (Color Index No. 73002). The subject merchandise may be sold in any form (*e.g.*, powder, granular, paste, liquid, or solution) and in any strength. Synthetic indigo and its derivatives subject to this investigation are currently classifiable under subheadings 3204.15.10.00, 3204.15.40.00 or 3204.15.80.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties: Final Rule* (62 FR 27296, 27323) (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period for scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of investigation.

To the best of the Department's knowledge, the petitioner is the sole U.S. producer of the domestic like product. *See* memorandum to file dated July 13, 1999, "Industry Support and Petitioner Buffalo Color Corporation's Sole Producer Claim". Additionally, no person who would qualify as an interested party pursuant to sections 771(9)(C), (D), (E) or (F) of the Act has expressed opposition to the petitioner on the record. Thus, the petitioner accounts for more than 50 percent of the production of the domestic like product. Therefore, in accordance with section 732(c)(4) of the Act, we determine that the petition has been filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Initiation Checklist dated July 20, 1999 (public version on file in the Central Records Unit of the Department of Commerce, Room B–099) (Initiation Checklist).

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which our decision to initiate this investigation is based. Should the need arise to use any of this information in our preliminary or final determination for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

The petitioners identified eleven potential PRC exporters and exporter/producers of indigo. The petitioners based export price on offers for sale of the subject merchandise to U.S. purchasers by one of the PRC exporters in November 1998 and May 1999. From these starting prices, the petitioners deducted international freight, marine insurance, and foreign brokerage and handling charges. The petitioners based international freight on an actual ocean freight invoice from a market economy shipping company for a shipment of indigo from the PRC. Marine insurance fees were based on a quote from a market economy supplier. The foreign brokerage and handling charges, which were based on the Department's "Index of Factor Values for Use in Antidumping Duty Investigations Involving Products From the PRC" ("Index of Factor Values"), were adjusted for inflation using the Wholesale Price Index (WPI) published in the International Monetary Fund's *International Financial Statistics*.

Because the PRC is considered a non-market economy (NME) country under section 771(18) of the Act, the petitioners based normal value (NV) on the factors of production valued in a surrogate country, in accordance with section 773(c)(3) of the Act. For purposes of the petition, the petitioners selected India as the most appropriate surrogate market economy. The petitioners calculated NV using publicly available Indian prices to value all unit costs associated with the factors of production. The petitioners established estimates for per-unit consumption based on BCC's production experience adjusted for differences in the PRC production process according to information reasonably available to the petitioners.

Materials were valued based on Indian prices obtained from publicly available information and published price lists, principally chemical prices in the Indian publications *Chemical Weekly* and *Monthly Statistics of the Foreign Trade of India*, and adjusted using the WPI published in the *International Financial Statistics*, where appropriate. Labor was valued using the regression-based wage rate for the PRC provided by the Department, in accordance with 19 CFR 351.408(c)(3). The values for water and electricity were obtained from international publications containing the prices applicable to India, and adjusted using the WPI published in the *International Financial Statistics*. The fuel oil and natural gas values were based on the Department's Index of Factor Values, and adjusted using the WPI published in the *International Financial Statistics*. To determine factory overhead, selling, general and administrative expenses, and profit, the petitioners relied on data from an Indian producer of hydrogen peroxide, which experiences similarly high fixed costs relative to direct manufacturing costs, as those incurred by producers of synthetic indigo. The valuation of packing factors was based on the Department's Index of Factor Values and international publications containing the prices applicable to India, and adjusted using the WPI published in the *International Financial Statistics*, where appropriate.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of indigo from the PRC are being, or are likely to be, sold at less than fair value. Based on a comparison of EP to NV, the petitioners' calculated dumping margins ranging from 124.69 percent to 129.60 percent.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with further material injury, by reason of the imports of the subject merchandise sold at less than NV. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import statistics, lost sales, trade and financial data, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation.

Initiation of Antidumping Investigation

Based on our examination of the petition, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of indigo from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination by December 7, 1999.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of the PRC.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by August 16, 1999, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of indigo from the PRC. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published in accordance with section 777(i) of the Act.

Dated: July 20, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19299 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: Natinal Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Wednesday, August 4, 1999. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the stage I process and selection of applicants for the consensus stage of the evaluation. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene August 4, 1999 at 9:00 a.m. and adjourn at 4:30 p.m. on August 4, 1999. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standard and Technology, Administration Building Tenth Floor Conference Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on April 26, 1999, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, P.L. 94–409. The meeting which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code.

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since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: July 7, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–19244 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072099B]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a public meeting with the limited access permit holders in the golden crab fishery in the South Atlantic region.

DATES: The meeting will be held on Tuesday, August 17, 1999, from 7:30 p.m. until all business is concluded.

ADDRESSES: The meeting will be held at the Best Western-Miami Airport, 1550 NW LeJuene Road, Miami, FL; telephone: 305–871–2345.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Robert Mahood, Executive Director; telephone: (843) 571–4366; fax: (843) 769–4520; email: robert.mahood@noaa.gov

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for Council staff to meet with the limited access permit holders in the golden crab fishery to gather information on fishing areas and discuss current issues in the fishery.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by August 10, 1999.

Dated: July 22, 1999.

Bruce C. Morehead,

Acting Director, Office of Suatainable Fisheries, National Marine Fisheries service.

[FR Doc. 99–19311 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072099C]

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council's (Council) Marine Reserves Advisory Panel (AP) will hold a meeting.

DATES: The meeting will be held on Tuesday, August 24, 1999, from 1:00 p.m. until 5:30 p.m., Wednesday, August 25, 1999, from 8:30 a.m. until 5:30 p.m., and Thursday, August 26, 1999, from 8:30 a.m. until 12:00 noon.

ADDRESSES: The meeting will be held at the Town and Country Inn, 2001 Savannah Highway, Charleston, SC; telephone: 843–571–1000.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Robert Mahood, Executive Director; telephone: (843) 571–4366; fax: (843) 769–4520; email: robert.mahood@noaa.gov

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the AP to hear presentations on the status of snapper grouper stocks in the southeast, to discuss the Council's Habitat Plan and Comprehensive Amendment, to review the Revised Marine Reserves Discussion Document, and to discuss, revise and take action on the document "The Use of Marine Reserves in the South Atlantic Council's Area of Authority." The AP will also make recommendations to the Council regarding these issues.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by August 17, 1999.

Dated: July 22, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–19312 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072099D]

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council's (Council) Joint Executive/Finance Committee (Committee) will hold a public meeting.

DATES: The meeting will be held on Monday, August 23, 1999, from 1:30 p.m. until 5:00 p.m., and Tuesday, August 24, 1999, from 9:00 a.m. until 12:00 noon.

ADDRESSES: The meeting will be held at the Town and Country Inn, 2001 Savannah Highway, Charleston, SC; telephone: 843–571–1000.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Robert Mahood, Executive Director; telephone: (843) 571–4366; fax: (843) 769–4520; email: robert.mahood@noaa.gov

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Committee to discuss the status of calendar year 1999 Council activities schedule and budget, to review and approve proposed changes to the 1999 activities schedule and budget, and to review and approve the proposed 2000 activities schedule and budget.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by August 17, 1999.

Dated: July 22, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–19313 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071599D]

Marine Mammals; File Nos. 684–1458 and 738–1454

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for amendment.

SUMMARY: Notice is hereby given that the following Permit Holders have requested an amendment to their scientific research Permit: Dr. Donald Siniff, University of Minnesota, Department of Ecology, Evolution and Behavior, 100 Ecology Bldg., 1987 Upper Buford Circle, St. Paul, MN 55108, Permit No. No. 684–1458; and Ms. Carole Conway, University of California, Davis, One Shields Avenue, Davis, CA 95616–8521, Permit No. 738–1454.

DATES: Written or telefaxed comments must be received on or before August 27, 1999.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Permit No. 738–1454 - Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001);

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendments to Permits No. 684–1458 and 738–1454 issued on August 11, 1998 (63 FR 43914) and July 9, 1998 (63 FR 38391), respectively, are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1541 *et seq.*), and the regulations governing endangered and treatened species (50 CFR parts 222–226).

Permit No. 684–1458 authorizes the permit holder to capture, tag, sample and lavage adult Weddell seals on McMurdo Sound in the Antarctica. The permit holder requests authorization to increase the number of adult females from 400 to 600, adult males from 200 to 300 and pups from 80 to 180 animals per season.

Permit No. 738–1454 authorizes the importation of 50 blue whales samples from Canada. The Holder requests authority to increase the samples to 100 annually.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 20, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–19310 Filed 7–27–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Supplement, Part 216, Types of Contracts, and Related Clauses in Part 252.216; OMB Number 0704–0259.

Type of Request: Revision.

Number of Respondents: 153.

Responses per Respondent: 2.

Annual Responses: 302.

Average Burden Per Response: 4 hours.

Annual Burden Hours: 1,212.

Needs and Uses: The clauses at DFARS 252.216–7000, 252.216–7001, and 252.216–7003 require contractors with fixed-price adjustment contracts to submit information to the contracting officer regarding changes in established material prices or wage rates. The contracting officer uses this information to make appropriate adjustments to contract prices.

Affected Public: Business or Other For-Profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 21, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–19183 Filed 7–27–99; 8:45 am]

BILLING CODE 5001–10–M

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Dated: July 21, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–19183 Filed 7–27–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–22]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–22, with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 22, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

12 JUL 1999

In reply refer to:
I-99/07937

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-22, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $50 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

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Transmittal No. 99-22

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 28 million
Other	$ 22 million
TOTAL	$ 50 million

(iii) Description of Articles or Services Offered: Six AN/TPQ-36(V)7 FIREFINDER radar sets, 16 AN/VRC-90E SINCGAR radio systems, six commercial M1097A2 HMMWV trucks, a U.S. Government Quality Assurance Team, support and test equipment, spare and repair parts, publications and technical data, personnel training and training equipment, technical assistance, U.S. Government and contractor technical and logistics personnel services and other related elements of program support.

(iv) Military Department: Army (USN)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(vii) Date Report Delivered to Congress: 12 JUL 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - AN/TPQ-36(V)7 FIREFINDER Radar Sets

The Government of Egypt has requested a possible sale of six AN/TPQ-36(V)7 FIREFINDER radar sets, 16 AN/VRC-90E SINCGAR radio systems, six commercial M1097A2 HMMWV trucks, a U.S. Government Quality Assurance Team, support and test equipment, spare and repair parts, publications and technical data, personnel training and training equipment, technical assistance, U.S. Government and contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $50 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale of the AN/TPQ-36 short range mortar radar will be used in conjunction with their long range, artillery locating, AN/TPQ-37 radar purchased and delivered under a prior FMS case and provides a modest increase in counter-mortar capability. Egypt needs these SINCGARS radio systems to fulfill their strategic commitments for complete communicative interoperability and standardization of equipment and to be able to communicate with their various vehicles and the U.S. forces. Egypt, which already has AN/TPQ-37 radar sets in its inventory, will have no difficulty absorbing these radar sets.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Systems Company, El Segundo, California. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Egypt. A Quality Assurance team consisting of four persons will be required in-country for two weeks to assist in de-processing and inspecting the equipment upon delivery.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

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Transmittal No. 99-22

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The following components of the AN/TPQ-36(V)7 radar contain critical technology: The signal processor unit and related software of the operations control group; the antenna array group, receiver, transmitter, and electronic counter-countermeasures of the antenna transceiver group. Certain operating characteristics of the radar are classified Confidential. The radar system is highly susceptible to the development of countermeasures (CMs) in a short period of time if both the hardware and software were acquired by a potential adversary.

2. A determination has been made that Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 99–19185 Filed 7–27–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–23]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–23, with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 22, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–01–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

12 JUL 1999

In reply refer to:
I-99/07938

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-23, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $38 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

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Transmittal No. 99-23

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 22 million
Other	$ 16 million
TOTAL	$ 38 million

(iii) Description of Articles or Services Offered: Two UH-60L VIP BLACKHAWK Utility helicopters, two spare GE turbine engines with containers, spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services and other related elements of logistics support.

(iv) Military Department: Army (USP)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 12 JUL 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - UH-60L VIP BLACKHAWK Utility helicopters

The Government of Egypt has requested a possible sale of two UH-60L VIP BLACKHAWK Utility helicopters, two spare GE turbine engines with containers, spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services and other related elements of logistics support. The estimated cost is $38 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle Eastern region.

The Government of Egypt will use these helicopters to expand their intra-country transportation requirements, including the movement of their National Command Authority. Egypt, which already has BLACKHAWK helicopters in its inventory, will have not difficulty absorbing the additional helicopters.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be United Technologies Sikorsky Aircraft, Stratford, Connecticut and General Electric Company, Lynn, Massachusetts. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require the assignment of two U.S. Government personnel and two contractor representatives for one week to Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

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Transmittal No. 99-23

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vi

(vi) Sensitivity of Technology:

1. The UH-60L BLACKHAWK helicopter is a twin turbine engine, semimonocoque fuselage, rotary wing aircraft capable of transporting cargo, 11 combat troops, and weapons during day, night, visual, and instrument conditions. The cargo hook is capable of carrying up to 8000 pounds of equipment in support of tactical sling load missions. The UH-60L possesses essentially the same capabilities as the UH-60A, with enhanced high altitude/hot temperature and one engine inoperative performance engine power provided by the T700-GE-701C engines. These aircraft will be sold in a VIP configuration.

2. The UH-60L BLACKHAWK helicopter will include the following classified or sensitive components:

a. AN/APR-39(V)(1) Radar Detecting Set is a light weight receiver for general aircraft application. The system provides warning of radar directed threats to allow appropriate evasive maneuvers and deployment of active countermeasures. The system has the capability of detecting all pulse radar normally associated with hostile Surface-to-Air, airborne intercept, or anti-aircraft weapons. The hardware is classified Confidential, technical performance data is Secret. Reverse engineering and development of countermeasures are concerns if the hardware and releasable technical data are compromised to a competent adversary.

b. AN/ALQ-144A(V)3 Radar Warning System (Export Version) is a light weight passive device which alerts the air crew to radar threats from Surface-to-Air Missile and Airborne Intercept Missiles. The alert is provided by aural warning through the intercom system and visual indicator light. This system provides coverage for Continuous Wave Radar Illuminators of upper and lower hemisphere threats. The hardware is classified Confidential, technical performance data is Secret. Reverse engineering and development of countermeasures are concerns if the hardware and releasable technical data are compromised to a competent adversary.

c. M-130 Chaff-flare Dispenser is a multi-purpose system which dispenses decoys to confuse threat radar and missile IR seekers. Radar cross section and frequency coverage are sensitive elements. Hardware is Unclassified. Technical publications for operation and maintenance are Unclassified. Reverse engine is not a major concern.

d. Hover Infrared Suppressor Subsystem (HIRSS) is a special function engine exhaust subsystem which replaces the standard engine and the standard engine exhaust subsystem modules. The HIRSS function is to suppress engine exhaust system infrared radiation by cooling visible surfaces. Exhaust gases are cooled by dilution. The HIRRS is comprised of two main component groups: (1) the composite firings group and (2) the sheet metal core group. The core group has four stages: (1) the first or inlet stage, (2) the second or mixing stage, (3) the third or diffusion stage, and (4) the fourth or exhaust stage. All four are sized so as to provide optimum cooling at minimum exhaust system back pressure (i.e., power loss and weight).

3. A determination has been made that Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 99–19186 Filed 7–27–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–24]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–24, with attached transmittal and policy justification.

Dated: July 22, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

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DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

19 JUL 1999
In reply refer to:
I-99/08326

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-24 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $18 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-24

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

Major Defense Equipment*	$ 17 million
Other	$ 1 million
TOTAL	$ 18 million

(iii) Description of Articles or Services Offered: Forty-two AIM-120B Advanced Medium Range Air-to-Air Missiles (AMRAAM), missile containers, spare and repair parts, support and test equipment, maintenance and pilot training, software support, publications and technical documentation, U.S. Government and contractor technical assistance and other related elements of logistics and program support.

(iv) Military Department: Air Force (YEO, Amd 2)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover

(vii) Date Report Delivered to Congress: 19 JUL 1999

* as defined in Section 47(6) of the Arms Export Control Act.

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POLICY JUSTIFICATION

Israel - AIM-120B Advanced Medium Range Air-to-Air Missiles

The Government of Israel has requested a possible sale of 42 AIM-120B Advanced Medium Range Air-to-Air Missiles (AMRAAM), missile containers, spare and repair parts, support and test equipment, maintenance and pilot training, software support, publications and technical documentation, U.S. Government and contractor technical assistance and other related elements of logistics and program support. The estimated cost is $18 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Israel needs these missiles to enhance the air-to-air self defense capability of its F-15 aircraft and provide for an increase in interoperability with U.S. forces. Israel will have no difficulty absorbing these additional missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Systems Company, Tucson, Arizona. Under this sale, the contractor will incur offset obligations under an existing industrial cooperation agreement.

Implementation of this proposed sale will not require the assignment of any U.S. Government personnel or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 99–19187 Filed 7–27–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–25]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–25, with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 22, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

16 JUL 1999
In reply refer to:
I-99/08328

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-25, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $564 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-25

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 418 million
Other	$ 146 million
TOTAL	$ 564 million

(iii) Description of Articles or Services Offered: A coproduction program for the possible sale of 100 M1A1 Abrams tanks to include 100 M256 Armament Systems, 100 M2 .50 caliber machine guns, 200 M240 7.62mm machine guns, 12 M16A2 rifles, spare and repair parts, support and test equipment, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services, technical assistance and support, and other related elements of logistics support.

(iv) Military Department: Army (NFM, NFO, and JBP)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 16 JUL 1999

* as defined in Section 47(6) of the Arms Export Control Act.

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POLICY JUSTIFICATION

Egypt - M1A1 Abrams Tanks Coproduction

The Government of Egypt has requested a coproduction program for the possible sale of 100 M1A1 Abrams tanks to include 100 M256 Armament Systems, 100 M2 .50 caliber machine guns, 200 M240 7.62mm machine guns, 12 M16A2 rifles, spare and repair parts, support and test equipment, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services, technical assistance and support, and other related elements of logistics support. The estimated cost is $564 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

This proposed sale will increase the quantity of the Abrams tank coproduction program, started in 1988 with a quantity of 530 tanks, to 630 tanks. Egypt, which already co-produced the M1A1 Abrams tanks, will have no difficulty absorbing the additional tanks.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be General Dynamics, Sterling Heights, Michigan. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require the assignment of up to 20 U.S. contractor representatives in-country up to three years. The four U.S. Government personnel already in Egypt on HERCULES coproduction will also manage this program for production and fielding. One additional U.S. Government personnel may be required during the overlap of the two programs.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-25
Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. Components considered to contain sensitive technology in the proposed coproduction program are special armor, 120mm gun and ammunition, gas turbine propulsion system, Night Vision Forward Looking Infra Red, and compartmentation.

a. M1A1 Tank Special Armor:

(1) FMS armor and other special armors used in the hull and turret are classified at the Secret level. Major components of special armor are fabricated in sealed modules and in serialized removable subassemblies. Special armor components and associated vulnerability data for both chemical and kinetic energy rounds are classified Secret, SPECIAL ACCESS. The track skirts have been formally declassified but still considered to be sensitive items and their dissemination is controlled.

(2) Release of classified information can be used by potential adversaries to develop improved munitions to defeat U.S. armor systems. The consequences would be the capabilities neutralize or defeat the armor. The armor in question has been previously sold to Egypt as a part of the M1A1 Abrams Tank coproduction program delineating obligations and measures for the protection of special armor.

b. M1A1 Tank 120mm Gun and Ammunition:

(1) The 120mm system is composed of a smooth bore gun manufactured at Watervliet Arsenal; "long rod" APFSDS penetrators; and combustible cartridge case ammunition also made in the United States. The gun and ammunition are produced under license from the Federal Republic of Germany.

(2) Gun production and design technology are generally well known. Ammunition technology is much more sensitive and includes the design criteria for long rod penetration warheads, new kinds of higher energy propellants. Evidence indicates that the United States and its allies have technological advantages in these areas. Technology for the weapons has been previously released to Egypt as a part of the M1A1 Abrams Tank Coproduction Program.

c. M1A1 Tank Gas Turbine Propulsion System:

(1) The use of a gas turbine propulsion system in the Abrams tank is a unique application of armored vehicle power pack technology. The hardware is composed of the AGT 1500 engine and X1100-3B transmission, and is not classified. Manufacturing processes associated with the production of turbine blades, recuperator, bearings, and shafts, and hydrostatic pump and motor, are proprietary and therefore commercially competition sensitive.

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(2) Unauthorized release and exploitation of sensitive propulsion system information would adversely impact U.S. technology advantages. Acquisition of production data by a potential enemy could enhance their capability to design and produce gas turbine propulsion systems with application to land and air vehicles.

d. Night Vision Forward Looking Infra Red (FLIR):

(1) First Generation (GEN) FLIR can be used for target acquisition such as IR missile target acquisitions or air defense. It is classified as Confidential.

(2) First GEN FLIR is a fairly mature technology and this capability can be obtained in the marketplace. The First GEN FLIR has been previously sold to Egypt as a part of the M1A1 Abrams Tank Coproduction program.

e. Compartmentation:

(1) A major survivability feature of the Abrams Tank is the compartmentation of fuel and ammunition. Compartmentation is the positive separation of the crew and critical components from combustible materials. In the event that the fuel or ammunition is ignited or deteriorated by an incoming threat round, the crew is fully protected by the compartmentation. Sensitive information includes the performance of the ammunition compartments as well as the compartment design parameters.

(2) The U.S. Army has invested millions of dollars in the design, development, and integration of compartmentation in the Abrams Tank. Although the concept of compartmentation is not new and design principles are known, the U.S. currently has the advantage in the design and integration of compartmentation into combat vehicles. The design of the compartments cannot be protected. However, the guidelines, parametric inductions, and test data used to develop the compartments do not have to be disclosed to permit a sale.

2. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this proposed sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 99–19188 Filed 7–27–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Closed Meeting of the Board of Visitors for the Department of Defense Centers for Regional Security Studies.

AGENCY: Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice of a meeting of the Board of Visitors for Department of Defense Centers for Regional Security.

The Board will meet in closed session at the Pentagon on July 27, 1999 from 0930 to 1330.

The purpose of the meeting is to allow the Board of Visitors to provide advice on the role the Centers for Regional Security play in the broader U.S. national security context. The Board will hold classified discussions on various national security policies to be handled by the regional centers. This notice is being published less than fifteen days prior to the meeting because of a scheduling oversight.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. § 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Fred Smith, (703) 693–0482.

Dated: July 22, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–19184 Filed 7–27–99; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 27, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 22, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Secretary's Annual Report on the Quality of Teacher Preparation Programs.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 58.

Burden Hours: 464.

Abstract: This is a Congressionally-mandated annual report (P.L. 105–244, Section 207; 20 USC 1027) of state teacher certification and licensure requirements and teacher preparation program pass rates. Information is due from state certification authorities to the Secretary by October 7 of each year, starting October 7, 2000; data are due from institutions to the states by April 7 of each year, starting April 7, 2000. The Secretary's first report to Congress is due by April 7, 2001, and annually thereafter.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Vivian_Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joe Schubart at 202–708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–19229 Filed 7–27–99; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 27, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purposes of the information collection, violate State or

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Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 22, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.
Title: Teacher Quality in U.S. Public Schools in 2000.
Frequency: One time.
Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 7,300.
Burden Hours: 4,950.
Abstract: The survey , Teacher Quality in U.S. Public Schools in 2000, is designed to provide NCES and the Office of the Secretary with timely data to monitor changes in key indicators of teacher quality. It is the second in a proposed series of biennial reports on the preparation and qualifications of public school teachers. In addition, the survey will provide some early estimates for data that will be provided in the Schools and Staffing Survey (SASS) to be conducted 1999–2000. The issues addressed in the proposed survey have been the focus of a growing concern of the condition of education, challenging U.S. teachers to adequately prepare students for competing in an increasingly complex international marketplace. Thus, the data will provide a national profile of teacher quality, representing an important device for tracking the nation's progress toward the goal of raising educational standards and ensuring high levels of student competence.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Vivian Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Kathy Axt at 202–708–9902. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–8339.

[FR Doc. 99–19228 Filed 7–27–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Awards Program for Model Professional Development

AGENCY: Department of Education.

ACTION: Notice of proposed eligibility and selection criteria.

SUMMARY: The Secretary proposes eligibility and selection criteria to govern competitions under the National Awards Program for Model Professional Development for fiscal year (FY) 2000 and future years. Under these criteria, the National Awards Program would recognize a variety of schools and school districts with model professional development activities in the pre-kindergarten through twelfth grade levels that have led to increases in student achievement.

DATES: We must receive your comments on or before August 27, 1999.

ADDRESSES: Address all comments about these proposed eligibility and selection criteria to Sharon Horn, Office of Educational Research and Improvement, US Department of Education, 555 New Jersey Avenue, NW, room 506E, Washington, DC 20208–5644. If you prefer to send your comments through the Internet, use the following address: sharon__horn@ed.gov.

You may also fax your comments to Sharon Horn at (202) 219–2198.

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this notice. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Sharon Horn. Telephone: (202) 219–2203. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed eligibility and selection criteria.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed eligibility and selection criteria. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed eligibility and selection criteria in room 506E, 555 New Jersey Avenue, NW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed eligibility and selection criteria. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

General Information

Through this notice the Secretary proposes definitions and criteria to govern applications for recognition submitted under the National Awards Program for Model Professional Development. This Program began in 1996, in coordination with a wide range of national education organizations, to highlight and recognize schools and school districts whose professional development activities are well aligned with the statement of the Mission and Principles of Professional Development that the Department developed in 1994. The National Awards Program to be conducted during FY 2000 and future years would be implemented in ways similar to prior years' programs (see, for example, the Notice of Final Eligibility and Selection Criteria published in the

Federal Register on October 30, 1997 (62 FR 58870). However, as explained more fully in the Proposed Eligibility and Selection Criteria section of this notice, the program's selection criteria would be slightly revised to identify information applicants will need to provide to demonstrate a strong link between their professional development efforts and increased student achievement, to address circumstances in which applications are received from both a school and its local educational agency (LEA), and to require certification of compliance with the Individuals with Disabilities Education Act (IDEA). The Secretary plans to publicly honor and recognize successful applicants, and to pay the costs incurred in enabling them to make presentations about their professional development activities at national and regional meetings.

The reasons for wanting to continue the National Awards Program are clear. Schools and school districts throughout the Nation are undertaking efforts to raise academic standards and to improve the academic achievement of all students. Research indicates that for these efforts to be successful they must include strategies for permitting teachers and other school and LEA staff to obtain the skills and knowledge they need to enable all students to achieve to high standards. Indeed, teachers are at the core of any school reform initiative. However, teachers need access to new knowledge and skills to enable them to continue to teach to higher standards and to respond to the challenges facing education today.

The public has expressed great interest in this program. In the first two years of the program, the Department received over 200 applications and recognized 13 schools and school districts in Arizona, California, Colorado, Connecticut, Georgia, Kansas, Massachusetts, New York, and Texas for the high quality of their professional development activities and the link between those activities and improved student learning. Moreover, the National Awards Program has helped educators at all levels to learn both how teachers and others in these sites have succeeded in implementing high-quality professional development activities, and what educators in other locations can do to better evaluate the effectiveness of their own professional development efforts.

Currently, the Department and its outside panels of reviewers are evaluating the quality of the nearly 65 applications submitted for FY 1999 national recognition. The importance of encouraging even more schools and LEAs to implement high-quality professional development that is tied to increased student achievement, and having even greater numbers of exemplary sites as models for others, demands that this awards program be continued. Therefore, the Secretary is pleased to propose definitions and criteria to govern the FY 2000 and future year National Awards Program.

The Secretary will announce the final eligibility and selection criteria in a notice in the **Federal Register**. The final eligibility and selection criteria will be determined by responses to this notice and other considerations of the Department.

Note: This notice does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final eligibility and selection criteria.

Proposed Eligibility and Selection Criteria

Eligible Applicants

As with previous years' programs, eligible applicants would be schools and school districts in the States (including schools located on Indian reservations, and in the District of Columbia, Puerto Rico, and the outlying areas) that provide educational programs in the pre-kindergarten through twelfth grade levels.

Selection Criteria

Subject to the three changes described in the next three items, the Secretary also proposes to use in the FY 2000 and future year competitions both the eligibility and application selection criteria and the selection procedures as published in the **Federal Register** on October 30, 1997 (59 FR 63773). Similarly, the Secretary would retain the relatively simple application format that has been used to date. Those wishing to review a copy of the FY 1999 application package, which incorporates the criteria and procedures the Department will continue to use, may do so by calling or writing the Department contact identified in the **FOR FURTHER INFORMATION** section of this notice. Those with access to the Internet also may view the document at the following URL web site: *http://www.ed.gov/inits/TeachersWeb/*

1. The application criteria would be revised to better identify information that applicants would need to present to demonstrate the link between their professional development activities and increased student achievement. Specifically, Criterion D ("Objective Evidence of Success") in the application package for the FY 1999 competition required that applicants present evidence that teacher effectiveness and student learning improved as a direct result of the implementation of the school's or LEA's professional development activities. While the application package observed that the highest-quality applications were likely to be those which include evidence drawn from multiple assessment measures and cover a period of three years or more, the selection criteria did not require applicants to present evidence of this kind. In the fourth and succeeding years of the National Awards Program, the Secretary believes that it is time that these recommended measures of exemplary quality be required components of all professional development activities that would receive national recognition. Accordingly, the Secretary proposes that for the FY 2000 and future year competitions Criterion D include the following additional language: "Applicants here must provide and discuss data that indicate the connection between needs assessments, improvement plans, professional development activities, and teacher and student outcomes. In order to confirm that student achievement has increased, data on student achievement must reflect multiple measures and cover a period of three years or more."

2. Existing selection criteria for the National Awards Program do not address how the Department responds if a school that applies for national recognition is located in the area served by an LEA that applies on its own. This situation occurred in a prior competition, and the Department had established no criteria for addressing it. Accordingly, there is a need now to clarify this matter.

The Department's peer reviewers cannot assess the degree to which professional development activities at a school are independent of the support provided by the school district in which it is located. Therefore, in order to promote fairness in the application process, the Secretary proposes that a school that applies for national recognition must apply on its own or as part of its LEA's application. A school would not be able to apply through both applications. Moreover, should the Department receive an application from a school and the LEA in which the school is located, it will review only the LEA's application. Since a school's professional development activities are linked, to some degree, to the support of the LEA in which it is located, the proposal to consider the LEA's application but not the school's seems

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the most appropriate response to this problem.

3. It is important that schools and LEAs that would receive national recognition support the rights of all students, including those with disabilities, to an appropriate education. Therefore, the Secretary proposes that those applying for National Awards Program recognition be required to certify that there are no outstanding findings of violations of IDEA in a Department monitoring report or, if findings do exist, the findings either have been corrected or are part of an agreement for corrective action.

In all other respects, subject to minor editing that does not affect the program's eligibility or selection criteria, the Secretary proposes to retain for the FY 2000 and future year competitions the application package used for the FY 1999 National Awards Program competition, and the eligibility and selection criteria and selection procedures published in the **Federal Register** on October 30, 1997.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed eligibility and selection criteria would address the National Education Goal that the Nation's teaching force will have the content knowledge and teaching skills needed to instruct all American students for the next century.

Paperwork Reduction Act of 1995

This notice and the proposed application packet contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this notice and the application packet to the Office of Management and Budget (OMB) for its review.

Collection of Information: National Awards Program.

Schools and school districts that operate programs for children in the pre-kindergarten through twelfth grade levels are eligible to apply for national recognition of the quality of their professional development activities. Information in the application would include: (1) A description of the applicant's professional development activities in terms of specific criteria designed to clarify the kinds of activities that would align with the Department's statement of the Mission and Principles of Professional Development, (2) basic identifying and demographic information about the applicant school or school district, and (3) a certification of compliance with requirements of the Individuals with Disabilities Education Act. Applications also would be limited in page number and have to meet basic formatting requirements. The Department would use this information to select the highest-quality applicants through a review of responses to the criteria and site visits that can confirm the accuracy of information contained in the application.

All information is to be collected once only from each applicant. Annual reporting and record keeping burden for this collection of information is estimated to average 30 hours for each response for 200 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. For the 20 applicants selected for site reviews, there will be an additional annual reporting and record keeping burden that is estimated to average 20 hours for each response. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 6,400 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for US Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this notice.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this notice of proposed eligibility and selection criteria between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the notice of proposed eligibility and selection criteria.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document is intended to provide early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 8001.

Dated: July 23, 1999.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 99–19309 Filed 7–27–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Notice to guaranty agencies of invitation to participate in Voluntary Flexible Agreements.

SUMMARY: The Secretary invites Federal Family Education Loan (FFEL) guaranty agencies to submit an application to participate under a Voluntary Flexible Agreement. This notice specifies the criteria that the Secretary will use to select not more than six guaranty agencies (initial guaranty agencies) that will be invited to negotiate a Voluntary Flexible Agreement (VFA). Although the Higher Education Act limits the Secretary to entering into not more than six VFAs, a guaranty agency with which the Secretary has a VFA may provide the benefits derived through that agreement to other guaranty agencies. The Secretary encourages a guaranty agency submitting a VFA proposal to identify, in its application, other guaranty agencies that may benefit from the agreement. In addition, a guaranty agency is urged to consult with schools and lenders that participate in its program in developing its proposal.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: August 27, 1999.

ADDRESSES: All guaranty agencies are invited to apply. Applications may be sent to: Mr. George Harris, U.S. Department of Education, 400 Maryland Avenue, SW., room 3045, ROB–3, Washington, DC 20202–5449. If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1998, President Clinton signed the Higher Education Amendments of 1998 (Pub. L. 105–244, referred to as the "1998 Amendments"), which amended the Higher Education Act of 1965 (the "HEA"). The 1998 Amendments added a new section 428A to the HEA, authorizing the Secretary to enter into VFAs during fiscal years 1999, 2000, and 2001 with up to six guaranty agencies. Beginning in fiscal year 2002, any guaranty agency or consortium thereof may enter into a VFA with the Secretary.

Scope of the VFA

A VFA incorporates and modifies the guaranty agreements under sections 428 (b) and (c) of the HEA, and is intended to enhance program integrity, increase cost efficiencies, and improve the availability and delivery of student financial aid. Each VFA will be developed by the Secretary, in consultation with the agency, on a case-by-case basis, and, in accordance with the HEA, may include provisions concerning—

- The issuance of insurance on FFEL loans;
- Monitoring FFEL insurance commitments;
- Default aversion activities;
- Review of default claims from lenders;
- Payment of default claims;
- Collection of defaulted loans;
- Adoption of internal systems of accounting and auditing, and reporting the result thereof to the Secretary in a timely manner, and on an accurate, and auditable basis;
- Timely and accurate collection and reporting of such other data as the Secretary may require to carry out the purposes of the Title IV programs;
- Monitoring schools and lenders participating in the FFEL Program;
- Informational outreach to schools and students in support of access to higher education; and
- Such other provisions as the Secretary may determine to be necessary to protect the United States from the risk of unreasonable loss and to promote the purposes of the FFEL Program.

It is not the intent of the Secretary to use VFAs to redistribute market share among guaranty agencies or lenders. Accordingly, the Secretary would have serious reservations about a proposal where a redistribution of market share appears to be the primary goal.

Information To Be Included With the Application

An agency wishing to enter into a VFA with the Secretary should submit a short (not to exceed 10 pages) written application that describes the substance of the proposal and addresses the following criteria:

- *Transferability*—Explain how the agency's proposed VFA could be extrapolated and easily used by other FFEL participants.
- *Customer/partner benefits*—Explain how the proposal would improve the "system" for delivery and servicing of loans for borrowers and schools. What impact would it have on delinquencies and defaults? Who would benefit from the proposal and how?
- *New technology*—Explain if and how the proposal uses new technology.
- *Efficiency*—Explain the impact the proposal would have on overall operating costs for the agency and its partners, including the Department. Would the proposed VFA encourage standardization? How would efficiency and customer satisfaction be measured?
- *Inducements waiver*—Include a description of any proposed waiver of the prohibited inducement restrictions contained in section 428(b)(3) of the HEA.

Other Information That the Secretary Will Consider

Based upon an evaluation of the applications received, the Secretary will select the initial guaranty agencies with which to negotiate VFAs. Those negotiations will include:

- The fees the Secretary will pay, in lieu of revenues that the agency may otherwise receive, and other funds that the agency may receive or retain under the VFA.
- The use of net revenues for other activities in support of postsecondary education.
- The standards by which the agency's performance of the agency's responsibilities under the VFA will be assessed, and the consequences for an agency's failure to achieve a specified level of performance on one or more performance standards.
- The circumstances in which an agency's VFA may be ended in advance of its expiration date.
- The involvement of other businesses, previously purchased or developed with reserve funds, that relate to the FFEL Program, and in which the Secretary permits the agency to engage.
- The uniform ability of lenders to participate in the agency's program.
- The ability for borrowers to select a lender of their choice, subject to the prohibitions and restrictions under the HEA.
- Other provisions that the Secretary may determine to be necessary to protect the United States from the risk of unreasonable loss and to promote the purposes of the FFEL Program.

Outline of Planned Evaluation and Selection Process

The following outline identifies the general sequence of activities and projected target dates that will be followed by the Department in negotiating agreements:

- *By September 10, 1999:* Evaluate proposals received in response to this notice and invite promising candidates to make oral presentations to a Department of Education evaluation panel. (Guaranty agencies are encouraged to include school and lender representatives, and other parties in support of their proposals). After the oral presentations, up to six VFA

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proposals will be selected for further development.

• *September 10 to October 1, 1999:* Negotiate tentative agreements with the six initial agencies and publish the tentative agreements on the Department's web site for two weeks.

• *By November 1, 1999:* Modify agreements as necessary to reflect public comments and notify congressional committees of proposed agreements.

• *December 1, 1999:* Sign agreements.

If the Secretary and an initial guaranty agency are unable to reach agreement on the terms and conditions of a VFA, the Secretary may select another guaranty agency with which to enter negotiations.

FOR FURTHER INFORMATION CONTACT: Mr. George Harris at the address listed in the **ADDRESSES** section of this notice. Telephone: (202) 708–8242.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the **ADDRESSES** section of this notice.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ifap.ed.gov/csb_html/fedlreg.htm

To use the PDF, you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.032 Federal Family Education Loan Program)

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: July 22, 1999.

Richard W. Riley,

Secretary of Education.

[FR Doc. 99–19116 Filed 7–27–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–444–000]

Carnegie Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 22, 1999.

Take notice that on July 19, 1999, Carnegie Interstate Pipeline Company (CIPCO), tendered for filing as part of its FERC Gas Tariff Original Volume No. 1, the following tariff sheets, to be effective August 1, 1999:

Third Revised Sheet No. 102
First Revised Sheet No. 105A
Second Revised Sheet No. 106
Second Revised Sheet No. 146

CIPCO states that this filing is being made in compliance with Commission Order No. 587–K, issued by the Commission on April 2, 1999. CIPCO requests a waiver of the Commission's regulations to allow the filing to become effective on less than thirty-days' notice.

Any person desiring to be heard or to protest such filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19220 Filed 7–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–152–015]

Kansas Pipeline Company; Notice of Revised Tariff Filing

July 22, 1999.

Take notice that on July 1, 1999, Kansas Pipeline Company (Applicant) tendered for filing corrections to the FERC Gas Tariff, Original Volume No. 1 to be effective May 11, 1999.

Applicant states that the corrected tariff includes changes directed by the Commission's April 2, 1999, order in the above-captioned docket (87 FERC ¶ 61,020 (1999)). Applicant further states that a copy of this filing is available for public inspection during regular business hours at Applicant's offices located at 8325 Lenexa Drive, Lenexa 66214. Applicant indicates that copies of this filing are being served on all parties to the proceeding in Docket No. CP96–152.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or comments should be filed on or before August 2, 1999. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This application may be viewed on the Commission's web site at http://ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19222 Filed 7–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–117–006]

K N Interstate Gas Transmission Co.; Notice of Revised Compliance Filing To Place Tariff Sheets Into Effect

July 22, 1999.

Take notice that on July 20, 1999, K N Interstate Gas Transmission Co. (KNI) moved into effect certain rates and revised sheets to its FERC Gas Tariff, Third Revised Volume No. 1–A and First Revised Volume No. 1–C, as follows:

The following tariff sheets to become effective August 1, 1998:

Third Revised Volume No. 1–A
Third Sub. Second Revised Sheet No. 4A
Third Sub. Second Revised Sheet No. 4C
Third Sub. Fifth Revised Sheet No. 4D

The following tariff sheets to become effective January 1, 1999:

Third Revised Volume No. 1–A
Second Sub. Sixth Revised Sheet No. 4D

The following tariff sheets to become effective June 1, 1999:

Third Revised Volume No. 1–A
Substitute Third Revised Sheet No. 4A
Substitute Third Revised Sheet No. 4C
Substitute Seventh Revised Sheet No. 4D
First Revised Volume No. 1–C
Substitute Twelfth Revised Sheet No. 4

KNI states that such revised tariff sheets reflect changes in rates and tariff provisions pursuant to the Commission's orders issued on March 3, 1999, and June 21, 1999, in this proceeding, 86 FERC ¶ 61,229 (1999), and 87 FERC ¶ 61,340 (1999), respectively.

KNI has served copies of this filing upon all jurisdictional customers, interested State Commissions, and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 29, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19218 Filed 7–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Petal Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

July 22, 1999.

Take notice that on July 16, 1999, Petal Gas Storage Company (Petal) tendered for filing, as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets with a proposed effective date of August 16, 1999:

First Revised Title Page
First Revised Sheet No. 1
First Revised Sheet No. 2
First Revised Sheet No. 6
Second Revised Sheet No. 9
Original Sheet No. 75
Second Revised Sheet No. 101
Second Revised Sheet No. 102
Second Revised Sheet No. 103
First Revised Sheet No. 104
First Revised Sheet No. 105
First Revised Sheet No. 108
First Revised Sheet No. 109
First Revised Sheet No. 110
Second Revised Sheet No. 123
First Revised Sheet No. 126
Second Revised Sheet No. 127
Original Sheet Nos. 200–214

Petal States that the tariff sheets are being filed in order to: (1) update its tariff to reflect name, address and telephone number changes resulting from Crystal Gas Storage Inc.'s acquisition of Petal; (2) make miscellaneous clarifying tariff changes by adding needed definitions, correcting typographical errors, and including a Form of Service Agreement for each class of service that Petal offers; and (3) implement its blanket authority to make unbundled sales of natural gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19219 Filed 7–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3426–000]

San Diego Gas & Electric Company; Notice of Filing

July 20, 1999.

Take notice that on July 1, 1999, San Diego Gas & Electric Company, tendered for filing a signature page of William H. Hieronymus (Attachment B) inadvertently omitted from the tariff filed with the Federal Energy Regulatory Commission on June 30, 1999, in the above referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission. 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 29, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–19221 Filed 7–27–99; 8:45 am]

BILLING CODE 6717–01–M

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–420–000]

Southern Natural Gas Company; Notice of Report Following Technical Conference

July 22, 1999.

Take notice that on June 30, 1999, in compliance with the schedule established at the April 15, 1999 technical conference held in the above-referenced proceeding, Southern Natural Gas Company (Southern) tendered for filing the results of its working sessions with shippers regarding the use of certain operational flow orders (OFOs) on Southern's system.

Reply comments on Southern's June 30, 1999 filing are due on or before August 2, 1999.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19217 Filed 7–27–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00275; FRL–6091–4]

Toxic Chemical Release Reporting; Request for Comment on Renewal Information Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment and information on the following Information Collection Request (ICR): Toxic Chemical Release Reporting (EPA ICR No. 1363.07, OMB No. 2070–0093). This ICR involves a collection activity that is currently approved and scheduled to expire on April 30, 2000. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number "OPPTS–00275" and administrative record number 214, must be received on or before September 27, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section of this notice.

FOR FURTHER INFORMATION CONTACT: For general information contact: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–554–1404; TDD: 202–554–0551; e-mail: TSCA-Hotline@epa.gov. For technical information contact: Amy Newman, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–1846; Fax: 202–401–8142; e-mail: newman.amy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

You may be potentially affected by this notice if you own or operate certain facilities that manufacture, process, or otherwise use certain specified toxic chemicals and chemical categories and are required under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) to report annually on the environmental releases and transfers of and waste management activities for such chemicals. Potentially affected categories and entities may include, but are not limited to the following:

Type of Business	Standard Industrial Classification (SIC) Code
Metal mining	10 (except 1011, 1081, and 1094)
Coal mining	12 (except 1241)
Food	20
Tobacco	21
Textiles	22
Apparel	23
Lumber and wood	24
Furniture	25
Paper	26
Printing/publishing	27
Chemicals	28
Petroleum	29
Rubber and plastics	30
Leather	31
Stone, clay, and glass	32
Primary metals	33
Fabricated metals	34
Machinery (except electrical)	35
Electrical/electronic equipment	36
Transportation equipment	37
Instruments	38
Miscellaneous manufacturing	39
Electric utilities (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce)	4911, 4931, and 4939
Commercial hazardous waste treatment (limited to facilities regulated under the Resource Conservation and Recovery Act (RCRA) Subtitle C, 42 U.S.C. section 6921 *et seq.*)	4953
Chemical allied products-wholesale	5169
Petroleum bulk terminals and plants-wholesale	5171
Solvent recovery services (limited to facilities primarily engaged in solvents recovery)	7389

This table is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions at 40 CFR part 372 and in section 3(a) of the Supporting Statement of the information collection. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. Electronic Availability

Electronic copies of this ICR are available from the EPA website at the "**Federal Register**-Environmental Documents" entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/). You can follow the menu to find this **Federal Register** notice using the publication date or the **Federal Register** citation for this notice. Although a copy of the ICR is posted with the **Federal Register** notice, you can also access a copy of the ICR by going directly to http://www.epa.gov/icr. You can then follow the menu to locate this ICR by the EPA ICR number, the OMB control number, or the title of the ICR.

B. Fax-on-Demand

You may request to receive a faxed copy of the ICR by using a faxphone to call 202–401–0527 and selecting item 4068. You may also follow the automated menu.

C. In Person or By Phone

If you have any questions or need additional information about this notice or the ICR referenced, please contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

In addition, the official record for this notice, including the public version, has been established under docket control number "OPPTS–00275" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is 202– 260–7099.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number "OPPTS–00275" and administrative record number 214 in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Document Control Office in Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC, Telephone: 202–260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: oppt.ncic@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPPTS–00275" and administrative record number 214. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person, listed in the "FOR FURTHER INFORMATION CONTACT" section.

C. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(a) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

In addition, EPA is requesting comment on two minor changes to Reporting Form R in this ICR. The first change is to section 4.5 of the form, which requests that facilities identify their SIC code. EPA is proposing to add the term "primary" in the first SIC code box in order to make clear that the first SIC code entered should be the facility's primary SIC code. The Form R instructions directs reporters to enter the primary SIC code first, but this is not clear on the form itself. EPA has found that many facilities do not enter their primary SIC code first even though they are so directed in the instructions. This change should help rectify that problem and enable the Agency to conduct more accurate analyses on an industry sector-specific basis.

The second proposed change is in Section 7A of the Form R: On-site waste treatment methods and efficiency. In order to eliminate the need for facilities to repeat the section 7 data for every waste stream, EPA is proposing to add a column f which asks, "How many individual waste streams does this apply to?" This should slightly reduce the burden of reporting, particularly for the treatment, storage, and disposal facilities.

D. What Should I Consider When I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document on which you are commenting. You can do this by providing the docket control number assigned to the notice, along with the name, date, and **Federal Register** citation, or by using the appropriate EPA or OMB ICR number.

IV. To What Information Collection Activity or ICR Does This Notice Apply?

EPA is seeking comments on the following ICR:

Title: Toxic Chemical Release Reporting.

ICR numbers: EPA ICR No. 1363.07, OMB No. 2070–0093.

ICR status: This ICR is currently scheduled to expire on April 30, 2000. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: EPCRA section 313 requires owners or operators of certain facilities that manufacture, process, or otherwise use any of over 600 listed toxic chemicals and chemical categories in excess of applicable threshold quantities to report annually to the Environmental Protection Agency and to the states in which such facilities are located on their environmental releases and transfers of and waste management activities for such chemicals. In addition, section 6607 of the Pollution Prevention Act (PPA) requires that facilities provide information on the quantities of the toxic chemicals in waste streams and the efforts made to reduce or eliminate those quantities.

Annual reporting under EPCRA section 313 of toxic chemical releases and other waste management information provides citizens with a more complete picture of the total disposition of chemicals in their communities and helps focus industries' attention on pollution prevention and source reduction opportunities. EPA believes that the public has a right to know about the disposition of chemicals within communities and the management of such chemicals by facilities in industries subject to EPCRA section 313 reporting. This reporting has been successful in providing communities with important information regarding the disposition of toxic chemicals and other waste management information on toxic chemicals from manufacturing facilities in their areas.

EPA collects, processes, and makes available to the public all of the information collected. The information gathered under these authorities is stored in a database maintained at EPA and is available through the Internet. This information, commonly known as the Toxics Release Inventory (TRI), is used extensively by both EPA and the public sector. Program offices within EPA use TRI data, along with other sources of data, to establish priorities, evaluate potential exposure scenarios, and undertake enforcement activities. Environmental and public interest groups use the data in studies and reports, making the public more aware of releases of chemicals in their communities.

Comprehensive publicly-available data about releases, transfers, and other waste management activities of toxic chemicals at the community level are generally not available, other than under the reporting requirements of EPCRA section 313. Permit data are often difficult to obtain, are not cross-media and present only a limited perspective on a facility's overall performance. With TRI, and the real gains in understanding it has produced, communities and governments know what toxic chemicals industrial facilities in their area release, transfer, or otherwise manage as waste. In addition, industries have an additional tool for evaluating efficiency and progress on their pollution prevention goals.

Responses to the collection of information are mandatory (see 40 CFR part 372). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

V. What are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 52.1 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Entities potentially affected by this action are owners or operators of certain facilities that manufacture, process, or otherwise use certain specified toxic chemicals and chemical categories and are required to report annually on the environmental releases and transfers of waste management activities for such chemicals.

Estimated total number of potential respondents: 25,159.

Frequency of response: Annual.

Estimated total/average number of responses for each respondent: 4 (average).

Estimated total annual burden hours: 6,133,055 hours.

Estimated total annual burden costs: $417.1 million.

VI. Are There Changes in the Estimates from the Last Approval?

The major change from the information collection most recently approved by OMB is a significant decrease in the estimated burden hours to respondents, from an estimated annual total burden of 7,340,524 hours currently approved to an average annual total burden of 6,133,055 hours in this request. This decrease reflects two different adjustments. One, EPA has revised downward its estimates of the number of respondents reporting annually under this information collection, based on experience since the last approval of this collection. Two, EPA has also revised downward the unit burden hour cost for certain facilities that were required for the first time to report due to amendments to the TRI reporting rule, as of the time of the most recent approval of this collection. The burden of complying with TRI reporting is higher in the first year than in subsequent years. The first year of reporting for these facilities was covered by the currently approved ICR. This request covers subsequent year reporting, so the burden for these facilities reflects a decrease from the first year burden hour estimates.

VII. What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

List of Subjects

Environmental protection, Information collection requests, Reporting and recordkeeping requirements.

Dated: July 13, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–19272 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00272; FRL–6084–1]

TSCA Existing Chemical Test Rules, Consent Orders, Exemptions and Voluntary Test Data Submissions; Request for Comment on Renewal Information Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 *et seq.*), EPA is seeking public comment and information on the following Information Collection Request (ICR): TSCA Existing Chemical Test Rules, Consent Orders, Exemptions and Voluntary Test Data Submissions (EPA ICR No. 1139.06, OMB No. 2070–0033). This ICR involves a collection activity that is currently approved and scheduled to expire on September 30, 1999. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number "OPPTS–00272" and administrative record number 212, must be received on or before September 27, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section of this notice.

FOR FURTHER INFORMATION CONTACT: For general information contact: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–554–1404; TDD: 202–554–0551; e-mail: TSCA-Hotline@epa.gov. For technical information contact: Keith Cronin, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–8157; Fax: 202–260–1096; e-mail: cronin.keith@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

You may be potentially affected by this notice if you manufacture, distribute, process, import, use or dispose of chemical substances or mixtures. Potentially affected categories and entities may include, but are not limited to the following:

Type of Business	Standard Industrial Classification (SIC) Code
Industrial organic chemicals	2819
Adhesives and sealants	2891
Paints and allied products	2851
Textile goods	2299
Petroleum products	5172

This table is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions at 40 CFR 790.2 and in section 4(a) of the Supporting Statement of the information collection. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. Electronic Availability

Electronic copies of this ICR are available from the EPA website at the "**Federal Register**-Environmental Documents" entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/). You can follow the menu to find this **Federal Register** notice using the publication date or the **Federal Register** citation for this notice. Although a copy of the ICR is posted with the **Federal Register** notice, you can also access a copy of the ICR by going directly to http://www.epa.gov/icr. You can then follow the menu to locate this ICR by the EPA ICR number, the OMB control number, or the title of the ICR.

B. Fax-on-Demand

You may request to receive a faxed copy of the ICR by using a faxphone to call (202) 401–0527 and selecting item 4067. You may also follow the automated menu.

C. In Person or By Phone

If you have any questions or need additional information about this notice or the ICR referenced, please contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

In addition, the official record for this notice, including the public version, has been established under docket control number "OPPTS–00272" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is 202– 260–7099.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number "OPPTS–00272" and administrative record number 212 in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Document Control Office in Rm. G–099, Waterside Mall,

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401 M St., SW., Washington, DC. Telephone: 202–260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: oppt.ncic@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPPTS–00272" and administrative record number 212. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person, listed in the "FOR FURTHER INFORMATION CONTACT" section.

C. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(a) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document on which you are commenting. You can do this by providing the docket control number assigned to the notice, along with the name, date, and **Federal Register** citation, or by using the appropriate EPA or OMB ICR number.

IV. To What Information Collection Activity or ICR Does This Notice Apply?

EPA is seeking comments on the following ICR:

Title: TSCA Existing Chemical Test Rules, Consent Orders, Exemptions and Voluntary Test Data Submissions.

ICR numbers: EPA ICR No. 1139.06, OMB No. 2070–0033.

ICR status: This ICR is currently scheduled to expire on September 30, 1999. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: Section 4 of the Toxic Substances Control Act (TSCA) is designed to assure that chemicals that may pose serious risks to human health or the environment undergo testing by manufacturers or processors, and that the results of such testing is made available to EPA. EPA uses the information collected under the authority of TSCA section 4 activity to assess risks associated with the manufacture, processing, distribution, use or disposal of a chemical, and to support any necessary regulatory action with respect to that chemical.

EPA must assure that appropriate tests are performed on a chemical if it decides: (1) That a chemical being considered under TSCA section 4(a) may pose an "unreasonable risk" or is produced in "substantial" quantities that may result in substantial or significant human exposure or substantial environmental release of the chemical; (2) that additional data are needed to determine or predict the impacts of the chemical's manufacture, processing, distribution, use or disposal; and (3) that testing is needed to develop such data. Rules and consent orders under TSCA section 4 require that one manufacturer or processor of a subject chemical perform the specified testing and report the results of that testing to EPA. TSCA section 4 also allows a manufacturer or processor of a subject chemical to apply for an exemption from the testing requirement if that testing will be or has been performed by another party.

Responses to the collection of information are mandatory (see 40 CFR part 790). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

V. What are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 133 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Entities potentially affected by this action are persons in the United States who manufacture, distribute, process, import, use or dispose of chemical substances or mixtures.

Estimated total number of potential respondents: 40.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 235 (average).

Estimated total annual burden hours: Approximately 1,110,800 hours.

Estimated total annual burden costs: Approximately $263.5 million.

VI. Are There Changes in the Estimates from the Last Approval?

The major change from the information collection most recently approved by OMB is a significant increase in the estimated burden hours to respondents, from an average annual total burden of 76,450 hours currently approved to an average annual total burden of 1,110,782 hours in this request. This increase reflects the addition of a proposed High Production Volume (HPV) test rule that will review 3,000 chemicals over a 3 year period, or 1,000 chemicals annually, and a children's health test rule that will review 44 chemicals in the first year of this ICR. EPA assumes that half the chemicals targeted for these TSCA section 4 rulemakings will be enrolled in the voluntary testing program. Only those costs and burdens associated with the voluntary program are considered in this ICR. EPA is particularly interested in receiving comments on these changes.

VII. What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

List of Subjects

Environmental protection, Information collection requests, Reporting and recordkeeping requirements.

Dated: July 13, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–19274 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6408–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; General Administrative Requirements for Assistance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: General Administrative Requirements for Assistance Programs, EPA ICR No. 0938.07, OMB Control No. 2030–0020, expiration date September 30, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260-2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0938.07.

SUPPLEMENTARY INFORMATION:

Title: General Administrative Requirements for Assistance Programs (OMB Control No. 2030–0020; EPA ICR No. 0938.07, expiration date September 30, 1999). This is a request for an extension of a currently approved collection.

Abstract: The information is collected from applicants/recipients of EPA assistance and is used to make awards, pay recipients and collect information on how Federal funds are being spent. EPA needs the information to meet its Federal stewardship responsibilities. Recipient responses are required to obtain a benefit (Federal funds) under 40 CFR part 30, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations' and 40 CFR part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 03/25/99 (64 FR 14441). No comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 31 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Not-for-profit institutions, individuals; state, local or tribal governments.

Estimated Number of Respondents: 4,623.

Frequency of Response: as required; varies.

Estimated Total Annual Hour Burden: 142,435 hours.

Estimated Total Annualized Cost (non-labor) Burden: $0.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0938.07 and

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OMB Control No. 2030–0020 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 22, 1999.

Joseph Retzer, Director,

Regulatory Information Division.

[FR Doc. 99–19268 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6409–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; EPA Office of Site Remediation Enforcement Program Evaluation ICR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: EPA Office of Site Remediation Enforcement Program Evaluation ICR, EPA ICR Number 1890.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1890.01.

SUPPLEMENTARY INFORMATION:

Title: EPA Office of Site Remediation Enforcement Program Evaluation ICR, EPA ICR Number 1890.01. This is a new collection.

Abstract: During the last 3–5 years, EPA's Office of Site Remediation Enforcement (OSRE), in conjunction with EPA's Office of Emergency and Remedial Response (OERR), has been implementing a series of Administrative Reforms in the Superfund program. These reforms are an effort to make Superfund a faster, fairer, and more efficient program for all parties involved. With 3–5 years of implementation past for a number of these reforms, OSRE is interested to learn how well these Administrative Reforms have worked and whether they have achieved their stated intentions in the eyes of the external stakeholders whom the reforms were intended to impact. The purpose of this ICR is to enable OSRE to collect data on the effectiveness of Superfund Administrative Reforms so that we can understand which of the reforms are most effective, as well as to obtain anecdotal and statistically valid information on the outcomes of the reforms.

With each of the information collections described in this ICR, OSRE will be measuring whether or not the Administrative Reform is meeting its intended goal, such as speeding site study and cleanup and reducing private party transaction costs. Typical goals of the Administrative Reforms include: increasing the efficiency of reaching settlements with parties at Superfund sites; reducing transaction costs for parties at Superfund sites; increasing the fairness of enforcement actions at Superfund sites; and facilitating the reuse of Superfund sites.

OSRE is planning to conduct program evaluations of up to 15 Superfund policies and Superfund reform initiatives. Eight of these reform initiatives are known and listed below. An additional seven program evaluations will take place as part of these information collections, but the exact topics are not known at this time. The eight known program evaluations are:

(1) Orphan Share Compensation
(2) Unilateral Administrative Order Administrative Reform
(3) Effective Oversight Management Administrative Reform
(4) Expedited Settlements Reform
(5) De Minimis Settlements
(6) PRP Response Costs and PRP Transaction Costs
(7) Reuse of Superfund and Brownfield Sites
(8) Disbursement of Response Costs to PRPs Performing Work from Special Accounts.

Information will be collected through a series of mail, telephone, and on-line survey questionnaires. Responses to these information collection requests are voluntary and one-time efforts.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 19, 1999 (64 FR 13573); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.86 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Businesses; State, Local or Tribal Governments.

Estimated Number of Respondents: 10,520.

Frequency of Response: One time only.

Estimated Total Annual Hour Burden: 9,994 hours.

Estimated Total Annualized Capital, Operating/ Maintenance Cost Burden: $0.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1890.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 22, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–19269 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00615; FRL–6093–1]

Notice of Public Meeting; EPA/USDA Workshop on Bacillus thuringiensis Crop Resistance Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA and United States Department of Agriculture (USDA) will conduct a 1–day joint public workshop on managing the emergence of insect populations that are resistant to *Bacillus thuringiensis* (Bt) plant-pesticides. The workshop will provide the two Agencies with information to help them develop and implement plans related to managing resistance.

DATES: The meeting will be held on Thursday August 26, 1999 from 8:00 am to 5:30 pm.

ADDRESSES: The meeting will be held at Sheraton Four Points Hotel, Memphis International Airport, 2240 Democrat Road, Memphis, TN, telephone number: (901) 332–1130.

FOR FURTHER INFORMATION CONTACT: By mail: Sharlene R. Matten, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 605–0514; e-mail address: matten.sharlene@epa.gov; fax: (703) 308–7026. For questions specifically about registration for the workshop, contact the person listed in Unit II B of this document.

SUPPLEMENTARY INFORMATION:

I. GENERAL INFORMATION

A. Does this Notice Apply to Me?

This notice applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this notice. If you have any questions regarding the applicability of this notice to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information or Copies of Any Documents Discussed in this Notice?

1. *Electronically.* You may obtain electronic copies of this document and related supporting materials from the EPA internet Biopesticides Home Page at http://www.epa.gov/pesticides/biopesticides/btworkshop826.htm. Electronic copies of this document, a draft agenda, and an EPA/USDA Position Paper for the workshop are currently available; a list of panelists and draft questions for panelists will be available by August 1, 1999. You can also go to the EPA internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/homepage/fedrgstr/.

2. *In person.* If you have any questions or need additional information about this action, you may contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

In addition, the official record for this notice, including the public version, has been established under docket control number [OPP–00615]. This official record not only includes the documents that are physically located in the docket, but also includes all the documents that are referenced in those documents. A public version of this official record, which includes printed, paper versions of any electronic comments, but does not include any information claimed as CBI, is available for inspection in Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, you must identify docket control number [OPP–00615] in the subject line on the first page of your response. Comments on the EPA/USDA position paper, especially on Bt cotton, should be forwarded to the Agency no later than September 30, 1999.

1. *By mail.* Submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epamail.epa.gov. Do not submit any information electronically that you consider to be Confidential Business Information (CBI). Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption, or in WordPerfect 5.1/6.1. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–00615]. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

You may claim information that you submit in response to this document as Confidential Business Information (CBI) by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider As I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

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1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide solid technical information and/or data to support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate.
5. Tell us what you support, as well as what you disagree with.
6. Provide specific examples to illustrate your concerns.
7. Offer alternative ways to improve this activity.
8. Make sure to submit your comments by the deadline in this notice.
9. At the beginning of your comments, be sure to properly identify the document you are commenting on. To ensure proper receipt by EPA, it is imperative that you identify docket control number [OPP–00615] in the subject line on the first page of your response. You may also provide the name, date, **Federal Register** citation, and/or the appropriate EPA or OMB ICR number.

II. BACKGROUND

A. What Issues Will the Workshop Address?

On Thursday, August 26, 1999, the EPA/USDA will conduct a joint public workshop on Bt crops to discuss specific insect resistance management issues focusing on Bt cotton. Three preselected panels will explore: Refuge Design and Deployment; Monitoring and Remedial Action; and Education and Compliance Issues. The workshop will begin with introductory comments from representatives of EPA and USDA. Panelists will be selected beforehand from the various stakeholder groups: industry, academia, USDA, conventional and organic growers, public interest groups, Arizona Cotton Research & Protection Council, and the National Cotton Council. Each panel's presentation will be followed by approximately 30–60 minutes of open discussion. Proceedings will be sent to all attendees and posted on the Biopesticides website: (http://www.epa.gov/pesticides/biopesticides).

EPA believes that managing insect resistance to Bt toxins is important because of the threat that resistance poses to the high benefits and low risk of using Bt toxins in transgenic crops and in microbial spray formulations. With use of Bt-crops increasing, EPA recognizes the value of ensuring that Bt crops and microbial Bts remain effective against target pests for as long as possible. To this end, EPA has worked with stakeholders (e.g., industry, public sector research and extension, growers, user groups, public interest groups, and government agencies) to address resistance management for Bt crops.

B. What Should I Do if I Want to Attend the Workshop?

EPA strongly requests all persons planning on attending the workshop to preregister. This information is needed to ensure adequate space for attendees. There is no registration fee. To register, please visit the workshop website at http://www.epa.gov/pesticides/biopesticides/btworkshop826.htm and fill out the registration form there. As an alternative, you may provide the following registration information directly to Teresa Bullock by e-mail or fax: Name(s); Organization; Mailing Address; Phone; Fax; E-mail. Teresa Bullock can be reached by: E-mail: tbullock@niu.edu; Fax: (815) 753–9348; telephone: (815) 753–9347; Mailing Address: Teresa Bullock, American Farmland Trust, P.O. Box 987, DeKalb, IL 60115.

A block of rooms has been reserved at the workshop hotel at a special rate. Please make your reservation early to ensure you get a room at that rate. Make your reservation by calling: Sheraton Four Points Hotel, 2240 Democrat Road, Memphis, TN 38132; Phone: (901) 332–1130; Fax: (901) 398–5206.

List of Subjects

Environmental protection, Bt cotton, Bt crops, pesticides, plant-pesticides, biopesticides, resistance management.

Dated: July 14, 1999.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–19273 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30478; FRL–6080–3]

Bayer Inc.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to amend the pesticide products Folicur 3.6 F and Elite 45 DF involving a changed use pattern of the active ingredient pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 249, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–308–9354; e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copy of this document is available from the EPA home page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

EPA received applications from Bayer Inc., 8400 Hawthorne Road, P.O. Box 4913, Kansas City, MO 64120–0013, to amend the pesticide products Folicur 3.6 F and Elite 45 DF, foliar fungicides (EPA Registration Numbers 3125–394 and 3125–388), containing the active ingredient tebuconazole, α-[2-(4-chlorophenyl)-ethyl]-α-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol at 38.7% and 45% respectively, an active ingredient which involves a changed use pattern of the products. However, since the notice of receipt of these applications to register the products as required by section 3(c)(4) of FIFRA, as amended did not publish in the **Federal Register**, interested parties may submit written comments within 30 days from the date of publication of this notice for these products. Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov.

These applications were approved on January 8, 1999; in addition to the currently registered uses, these two products will be used as listed below:

1. Folicur 3.6 F for control of specified diseases on grasses grown for seed (EPA Registration Number 3125–394).
2. Elite 45 DF for control of specified diseases on grapes (EPA Registration Number 3125–388).

The Agency has considered all required data on risks associated with the proposed use of tebuconazole, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of tebuconazole when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: July 20, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–19275 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00597; FRL–6078–6]

Proposed Test Guidelines; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: EPA has established a unified library for test guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS) for use in testing chemical substances to develop data for submission to EPA under the Toxic Substances Control Act (TSCA), the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These test guidelines represent an Agency effort that began in 1991 to harmonize the test guidelines within OPPTS, as well as to harmonize the OPPTS test guidelines with those of the Organization for Economic Cooperation and Development (OECD). The process for developing and amending these test guidelines includes public participation and the extensive involvement of the scientific community, including peer review by the Scientific Advisory Panel and the Scientific Advisory Board (SAB) and other expert scientific organizations. With this notice, EPA is announcing the availability of a combined chronic toxicity and carcinogenicity test guideline for the Series 870–Health Effects Test Guidelines for use in the testing of fibrous particles in the development of test data (OPPTS 870.8355). Natural and synthetic fibers are one group of substances that have been identified to be of potential health concern to humans. An EPA SAB meeting to review the proposed test guideline will be scheduled after incorporation of public comments. Complete details of this meeting will be announced in a subsequent **Federal Register** notice.

DATES: Comments, identified by docket control number OPP–00597, must be received by EPA on or before September 27, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00597 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: David Lai, Risk Assessment Division, Office of Pollution Prevention and Toxics (7403), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone number: (202) 260–6222; e-mail address: lai.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

A. Electronically

You may obtain copies of this document and certain other available documents from the EPA Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

You may also obtain copies of test guidelines from the EPA Internet Home Page by selecting "Researchers and Scientists/Test Methods and Guidelines/OPPTS Harmonized Test Guidelines" at http://www.epa.gov/epahome/research.htm.

B. In Person

The Agency has established an official record for this proposed guideline under docket control number OPP–00597. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

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III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00597 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit your comments electronically by e-mail to: "opp-docket@epa.gov," or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be Confidential Business Information (CBI). Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–00597. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

IV. What Action is EPA Taking?

EPA is announcing the availability of and seeking comment on proposed test guidelines for developing a combined chronic toxicity and carcinogenicity test guideline for use in the testing of respirable fibrous substances (OPPTS 870.8355). Natural and synthetic fibers are one group of substances that have been identified to be of potential health concern to humans. For many of these fibers there are limited, inconclusive, or virtually no information about their health effects. As a result, EPA has added a "respirable fibers" category as priority substance for health effects and exposure testing to obtain the necessary data to evaluate the extent and magnitude of health risks to exposed individuals and populations. However, the Agency's current test guidelines for chronic inhalation toxicity and/or carcinogenicity studies of chemical substances are not sufficiently specific for the testing of fibrous particles, and there is no general agreement upon test protocols for chronic inhalation toxicity and carcinogenicity testing of fibers for regulatory purposes. On May 8–10, 1995, EPA, in collaboration with National Institute of Environmental Health Sciences (NIEHS), the National Institute for Occupational Safety and Health (NIOSH), and the Occupational Safety and Health Administration (OSHA), conducted a workshop to obtain input from the scientific community on a number of issues related to fiber testing. The proposed test guideline has been developed based largely on the recommendations from the workshop expert panel and participants.

All interested parties are encouraged to submit comments on this proposed guideline. Specific comments should reference the specific number and paragraph or subparagraph of the related provision in the proposed test guidelines. Recommended technical or scientific changes/modifications should be supported by current scientific/technical knowledge and include supporting references. References may be to the published literature, studies submitted to OPPTS, or to unpublished data. Citations must be sufficiently detailed to allow OPPTS to access and evaluate the published information, original documents submitted, or unpublished data.

V. Are There Any Applicable Voluntary Consensus Standards That EPA Should Consider?

This notice of availability does not involve a proposed regulatory action that would require the Agency to consider voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide an explanation to Congress, through OMB, when the Agency decides not to use available and applicable voluntary consensus standards when the NTTAA directs the Agency to do so.

In the future, these test guidelines could be incorporated into regulatory actions taken by EPA under TSCA, i.e., with regard to the section 4 testing program. Although the NTTA requirements do not specifically apply to the issuance of these particular test guidelines today, EPA invites your comment on whether or not there are any voluntary consensus standards that should be considered during the development of the final test guidelines or any future regulatory action that may be taken under TSCA. Future regulatory actions under TSCA section 4 may involve notice and comment rulemaking or negotiated voluntary testing enforcement consent agreements/orders/decrees. Nevertheless, the Agency is interested in whether or not there are any voluntary consensus standards that EPA should considered either as part of the development of the test guidelines themselves or in leu of these test guidelines when the Agency develops any future regulatory action that incorporates these test guidelines. Any comments provided will assist the Agency in complying with the NTTAA by facilitating the Agency's identification of voluntary consensus standards that should be addressed in the test guideline or considered during the development of a proposed regulatory action that incorporates any standards included in the final test guidelines. Please submit your comments as directed in Unit III. of this document.

List of subject

Environmental protection, Chemical testing, Test guideline.

Dated: July 13, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–19271 Filed 7–27–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, July 27, 1999, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider matters relating to the Corporation's corporate and supervisory activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: July 23, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–19354 Filed 7–26–99; 10:11 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Advisory Committee for the National Urban Search and Rescue Response System

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Cancellation of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C. App.), announcement is made of the cancellation of the following committee meeting:

NAME: Advisory Committee for the National Urban Search and Rescue Response System.

DATE OF MEETING: July 29, 1999.

PLACE: Federal Emergency Management Agency, Cavanaughs Olympus Hotel, 161 West 600 South, Salt Lake City, UT 84101.

TIME: 9:00 a.m.–5:00 p.m.

The meeting which was to be held on July 29, 1999, at the Cavanaughs Olympus Hotel in Salt Lake City, Utah, is cancelled. It is expected that the next meeting will be held in October 1999. Members of the public that need information about this meeting should contact Mark R. Russo, at 202–646–2701.

Lacy E. Suiter,

Executive Associate Director, Response & Recovery Directorate.

[FR Doc. 99–19434 Filed 7–27–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 20, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Kercheval Limited Partnership, Largo, Florida; to become a bank holding company by acquiring 34.166 percent of the voting shares of Montezuma State Bank, Montezuma, Iowa.

Board of Governors of the Federal Reserve System, July 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–19189 Filed 7–27–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 11, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin; to acquire a majority of the voting shares of Customers Forever, LLC, Milwaukee, Wisconsin, and thereby engage in data processing activities, pursuant to § 225.28(b)(14) of Regulation Y.

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Board of Governors of the Federal Reserve System, July 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–19190 Filed 7–27–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Nutritional Biochemistry Cooperative Agreements for Innovative Technology Development Grant for Detection and Monitoring of Diabetic Hypoglycemia by Non- or Minimally-Invasive Techniques

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Nutritional Biochemistry Cooperative Agreements for Innovative Technology Development Grant for Detection and Monitoring of Diabetic Hypoglycemia by Non-or Minimally-Invasive Techniques, Program Announcement #99151.

Times and Dates: 8:30 a.m.–9 a.m., August 12, 1999 (Open); 9 a.m.–5 p.m., August 12, 1999 (Closed); 9 a.m.–4 p.m., August 13, 1999 (Closed).

Place: Atlanta Marriott North Central, 2000 Century Boulevard NE, Atlanta, Ga. 30345–3377. Telephone 404/325–0000.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99151.

Contact Person for More Information: Dayton T. Miller, Ph.D., Chief, Nutritional Biochemistry Branch, NCEH, CDC, 4770 Buford Hwy., m/s F18, Atlanta, Ga. 30341–3724. Telephone 770/488–4579, e-mail dtm1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 22, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–19235 Filed 7–27–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–99–8000]

Memorandum of Understanding Between the Food and Drug Administration and People's Republic of China

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and People's Republic of China. The purpose of the MOU is to establish a certification system that will increase the likelihood that daily-use ceramicware manufactured in the People's Republic of China and offered for import into the United States will comply with U.S. law.

DATES: The agreement became effective May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Frank M. MacKeith, Center for Food Safety and Applied Nutrition (HFS–585), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4045.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: July 20, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

BILLING CODE 4160–01–F

225–99–8000

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

FOOD AND DRUG ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES OF THE UNITED STATES OF AMERICA

AND THE

STATE ADMINISTRATION OF ENTRY-EXIT INSPECTION AND QUARANTINE OF THE PEOPLE'S REPUBLIC OF CHINA

COVERING CERAMICWARE INTENDED FOR USE IN THE PREPARATION, SERVING OR STORAGE OF FOOD OR DRINK AND OFFERED FOR EXPORT TO THE UNITED STATES OF AMERICA

PREAMBLE

The Parties to this Memorandum of Understanding (MOU), the Food and Drug Administration (FDA), Department of Health and Human Services of the United States of America, and the State Administration of Entry-Exit Inspection and Quarantine of the People's Republic of China (SAIQ), hereinafter referred to as the "Parties,"

RECOGNIZING that SAIQ is the government agency in charge of unified supervision and administration of the China's export and import commodity inspections,

RECOGNIZING that the China Import and Export Commodity Inspection Bureaus (CCIB), under the authority of SAIQ, are authorized by SAIQ to conduct the inspections, and collect and examine representative samples of all exports of ceramicware from China to ensure that qualified daily-use ceramicware from SAIQ/CCIB certified factories intended for export to the United States is safe for use in the preparation, serving, or storage of food or drink, and

RECOGNIZING that the Food and Drug Administration (FDA), Department of Health and Human Services of the United States of America is charged with the enforcement of, among other laws, the Federal Food, Drug, and Cosmetic Act, and the Fair Packaging and Labeling Act,

AGREE as follows:

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I. PURPOSE

The mutual goals of FDA and SAIQ, in entering into this MOU, are to:

A. Establish a certification system that will increase the likelihood that daily-use ceramicware manufactured in the People's Republic of China and offered for import into the United States will comply with United States law. To that end, this MOU sets forth the Criteria for Certification (the Criteria) of: 1) ceramicware to be exported directly from the People's Republic of China or from the People's Republic of China via Hong Kong to the United States, as indicated by those involved in the trade (ceramicware manufacturers or importers/exporters), and intended for use in the preparation, serving, or storage of food; and 2) firms in the People's Republic of China manufacturing such ceramicware.

B. Enable the FDA to reduce the frequency of its sampling of daily-use ceramicware from factories in the People's Republic of China certified by the China Import and Export Commodity Inspection Bureaus (CCIBs) of SAIQ and offered for import into the United States, in accordance with FDA's confidence in the effectiveness of the SAIQ/CCIB factory certification system.

C. Provide for the cooperative exchange of scientific and regulatory information, technical assistance, and research to help ensure the safety, quality, and proper labeling of ceramicware exported from the People's Republic of China and offered for entry into the United States, under the terms of this MOU.

II. DEFINITIONS

For the purposes of this MOU, both Parties agree to the following definitions:

A. Action Level - means the concentration of an adulterant in or on a commodity at which FDA may take regulatory action against the commodity. The action level is non-discriminatory, applies without distinction to domestic and imported products, and reflects FDA's current thinking on the concentration of the adulterant in or on the commodity at which regulatory action is appropriate.

B. Audit Sample - means a sample collected to verify analytical results provided through a certification system or private laboratory analysis that purports to show that a product complies with the Food, Drug, and Cosmetic Act and/or regulations.

C. Certified Delivery Lot - means a quantity of ceramicware offered for entry into the United States at one time, that is produced by a factory certified by a CCIB, and is in compliance with the CRITERIA FOR CERTIFICATION FOR EXPORT OF CERAMICWARE set forth in Attachment B this MOU (Criteria). A certified delivery lot may consist of one or more factory lots or production lots. All shipping cartons and retail cartons in the lot are identified by a CCIB sticker/logo that is imprinted with the standardized factory code of the CCIB-certified factory.

D. Daily Use Ceramicware - means ceramic dinnerware intended for use in the preparation, serving, or storage of food or drink that usually are inexpensive, more durable items that have the expectation of being commonly used by the consumer.

E. Detention Without Physical Examination - means FDA's administrative act of detaining an import entry of a specified article without physical examination on the basis of information regarding its past history of violation of the Food, Drug, and Cosmetic Act or other information whereby there is an appearance that the product may be violative.

F. Electronic Entry Processing System - means an automated FDA import entry processing system which allows for a pre-determined percentage of import entries to be cleared by electronic means for entry into commerce in the United States. The pre-determined percentage of such cleared entries, referred to as a "may proceed rate," depends upon, among other things, the demonstrated degree of compliance of the commodity/country/firm combination with the laws enforced by FDA and their implementing regulations, and FDA's level of confidence that the commodity/country/firm combination will comply with such laws and regulations.

G. Factory Code - means an alpha-numeric code consisting of three parts with a total of six characters (five figures and one letter) for a particular plant. The first two figures represent the province or city, followed by the letter "T" for ceramicware, and followed by a set of three figures that SAIQ/CCIB uses to designate the factory number within each province or city.

H. Factory Lot or Production Lot - means a unit of ceramicware that is uniform and that represents ceramicware from no more than one homogeneously milled slip from the same materials. The factory lot or production lot must be uniform in the time and temperature of firing and the composition and application of the decorations and glazes.

I. Factory Lot Number or Production Lot Number - means a number assigned by the factory that relates to both the date and period of manufacture and denotes a distinct group of conditions (manufacturing date, kiln conditions, materials, patterns, etc.) that may affect the quality of the ceramicware.

J. Flatware - means ceramic articles that have an internal depth, as measured from the lowest point to the horizontal plane passing through the upper rim, that does not exceed 25 millimeters.

K. Hollowware - means ceramic articles having an internal depth, as measured from the

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lowest point to the horizontal plane passing through the upper rim, greater than 25 millimeters. The two categories of hollowware and their sub-categories are:

1. Large hollowware - Ceramic articles with a capacity of 1.1 liter or more:

   a. Pitchers - Large ceramic hollowware vessels (sometimes known as jugs) commonly used for storage and dispensing of fruit and vegetables juices or other acidic beverages at or below room temperature. Pitchers are generally manufactured without a lid but with a handle and lip spout. Creamers, coffeepots and teapots are not considered to be pitchers. Depending upon capacity, creamers, coffeepots and teapots will be considered small or large hollowware.

   b. Other (not including pitchers) - Ceramic vessels with a capacity of 1.1 liter or more. (Note that different action levels apply to pitchers than to large hollowware other than pitchers under the Criteria.)

2. Small hollowware - Ceramic articles with a capacity of less than 1.1 liter.

   a. Cups and Mugs - Small ceramic hollowware vessels commonly used for consumption of beverages, for example, coffee or tea, at or above room temperature. Cups and mugs usually, but not exclusively, have a capacity of about 240 milliliters (240 mL) or 8 fluid ounces (8 fl. oz.) and are manufactured with a handle. Cups generally have a base and curved sides while a mug has cylindrical sides.

   b. Other (not including cups and mugs) - Ceramic vessels with a capacity of less than 1.1 liter. (Note that different action levels apply to cups and mugs than to small hollowware other than cups and mugs under the Criteria.)

L. May Proceed Rate - means the rate of import entries entered into domestic commerce without FDA physical examination or sampling that varies from a high near 100% for commodity/country/firm combinations for which FDA has a high confidence of compliance (e.g., particular firms have demonstrated a good compliance history and are certified by a foreign government), to a low of 0% for commodity/country/firm combinations for which FDA has a low confidence of compliance (e.g., firms with a history of noncompliance with the Food, Drug, and Cosmetic Act).

M. Sample - means portion of a certified delivery lot being offered for entry into the United States that is intended to be representative of that lot. It will consist of a number of units or subsamples, collected as specified in Article V, governing SAMPLE COLLECTION.

N. Shipping Carton - means a box that contains one or more retail cartons of daily-use

ceramicware produced by a CCIB-certified factory, has the CCIB sticker/logo with the CCIB factory code imprinted on it, and has the factory name and code, the year of production of the factory lot and the factory lot number printed on its exterior surface.

O. Traditional Ceramicware - means the ceramic dinnerware, spoons and other ware that might be used to contain or store foods and beverages. Such items are usually porcelain items, hand-painted with soft lead-containing enamels, and highly decorated with vivid colors and intricate patterns, which have been found to leach unacceptable levels of lead. The patterns are of red, yellow, and green, and referred to as "Longevity," "Flowers on Black," and "One Thousand Flowers," for example.

III. BASIC OBLIGATIONS

A. THE STATE ADMINISTRATION OF ENTRY-EXIT INSPECTION AND QUARANTINE OF THE PEOPLE'S REPUBLIC OF CHINA

SAIQ shall ensure that daily-use ceramicware products that are intended for export to the United States comply with the provisions of this MOU. SAIQ agrees to direct the CCIBs to inspect and certify factories, and inspect and analyze samples, to ensure that ceramicware intended to be exported to the United States complies with these requirements and provisions.

To carry out its responsibilities, SAIQ agrees to:

1. Implement and oversee a daily-use ceramicware factory certification system;

2. a. Provide, on a continuing basis, FDA's Center for Food Safety and Applied Nutrition with a nationally standardized listing of factory names, addresses and codes of CCIB-certified daily-use ceramicware factories that export such daily-use ceramicware to the United States;

   b. Authorize the export of qualified daily-use ceramicware to the United States only from CCIB-certified factories;

3. a. Affix to each shipping carton and retail carton containing daily-use ceramicware that meets the Criteria a CCIB "H" (for Health) sticker/logo that is imprinted with the factory code of the CCIB-certified factory;

   b. Require that the factory lot or production lot number be on each shipping carton of the daily-use ceramicware that is to be exported to the United States;

4. Inspect and analyze factory lots or production lots of daily-use ceramicware to be

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exported to the United States at a rate commensurate with the compliance history of the CCIB-certified factory and sufficient to provide a high degree of confidence that the daily-use ceramicware exported to the United States is in compliance with the Criteria;

5. Ensure that the CCIB laboratories that test daily-use ceramicware to determine its compliance with the Criteria follow the analytical procedures as described in the ANALYTICAL METHODOLOGY set forth in Attachment A;

6. Authorize the export of and issue export certificates for daily-use ceramicware intended for export to the United States, as indicated by either directly or transshipped through Hong Kong or other countries either by the manufacturer or by the importer/exporter, only for those delivery lots that are in compliance with the Criteria;

7. Require that all shipments of daily-use ceramicware intended to be exported to the United States via Hong Kong or other countries, as indicated by either the daily-use ceramicware manufacturer or the importer/exporter, be sealed by the CCIBs in such a way as to help prevent opening during transit;

8. a. Work with manufacturers and CCIBs to find solutions to any problems found when daily-use ceramicware from a CCIB-certified factory and covered by this MOU are determined by FDA not to meet the Criteria;

b. Conduct an investigation if a daily-use ceramicware product from a CCIB-certified factory is detained by FDA because of an analytical finding of excessive levels of leachable lead or cadmium, to determine the cause of the technical defect that led to the violation and how it was remedied. SAIQ will provide FDA with a full report, in English, within three months of notification, on the findings of the investigation and the corrective measures taken to ensure future compliance;

9. Furnish FDA, upon request, with a copy, in both Chinese and English, of the current procedures and regulations relevant to daily-use ceramicware production/export and of the procedures/quality control plans used to ensure that each production lot of daily-use ceramicware is in compliance with United States FDA requirements;

10. Encourage the development and use of lead-free and cadmium-free decals, glazes and pigments in daily-use ceramicware and Chinese traditional ceramicware production; and,

11. Prevent, to the extent practicable, the export to the United States of ceramicware which is not produced in a CCIB-certified factory, such as Chinese traditional ceramicware.

It is recognized by FDA and SAIQ that a period of four (4) months from date of signature will be necessary for SAIQ to complete certification procedures and logistical arrangements for all ceramicware factories which qualify for participation under the terms of this MOU. Therefore, SAIQ will provide FDA will the names, addresses and codes, as specified in Section III, A., as they are certified by SAIQ during the initial four-month implementation period.

B. THE FOOD AND DRUG ADMINISTRATION OF THE UNITED STATES OF AMERICA

FDA intends to:

1. Sample and analyze certified delivery lots of daily-use ceramicware produced in CCIB-certified factories, and offered for entry into the United States to ensure that such lots exported from the People's Republic of China and offered for entry into the United States comply with the laws of the United States administered by the FDA;

2. Adjust its electronic entry processing system and conduct surveillance monitoring of daily-use ceramicware from CCIB-certified factories at a rate consistent with the Agency's confidence in the effectiveness of the SAIQ/CCIB factory certification system, so that the may proceed rate can be substantially higher for daily-use ceramicware firms identified/certified by SAIQ/CCIB as consistently producing and exporting daily-use ceramicware in accordance with this MOU than the may proceed rate for other Chinese daily-use ceramicware firms not so identified and certified;

3. Sample and analyze delivery lots of daily-use ceramicware from manufacturers not on the list of factories certified by the CCIB at a relatively high review and sampling rate consistent with the FDA's concern about possible lead and cadmium contamination of daily-use ceramicware from these uncertified factories, and place such firms on detention without physical examination when it appears that the firms do not meet FDA's requirements;

4. Detain, at FDA discretion, without physical examination, subsequent delivery lots of daily-use ceramicware from a CCIB-certified factory whose products appear to be, through previous analysis, in violation of the United States laws administered by the FDA. All daily-use ceramicware from a CCIB-certified factory that produces violative daily-use ceramicware may remain subject to detention without physical examination until such time as the SAIQ provides assurance to FDA's satisfaction that appropriate corrective actions have been implemented, and that

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future daily-use ceramicware products from that factory will be in compliance with the Criteria. This assurance includes the report of Section III., A., 8., b., above. FDA may then resume review of ceramicware from the CCIB-certified factory, consistent with the provisions in III.B.2, above;

5. Promptly notify SAIQ and the First Secretary (Commercial) of the Embassy of the People's Republic of China in the United States of any delivery lot or portion thereof of ceramicware covered by this MOU that is detained for failure to comply with United States law. This notification, by the International Activities Staff of FDA's Center for Food Safety and Applied Nutrition, should include:

   a. The CCIB-certified factory number;

   b. A copy of the accompanying CCIB certificate or certificate number;

   c. Production Lot number;

   d. Quantity of daily-use ceramicware detained;

   e. Commodity or the name of the product and the style number or pattern name;

   f. FDA's sample number;

   g. Date sample collected;

   h. Reason for detention, including the technical defect, e.g., defective color in decal, if known;

   i. Date of detention;

   j. FDA's District Office that detained the product and Port of Entry;

   k. Manufacturer/shipper name (Factory code, name and address); and

6. Provide advice to SAIQ concerning approaches or actions that may be taken by the manufacturer/shipper of the detained product to help ensure that subsequent shipments will not be detained.

7. On an annual basis, provide SAIQ with results of any FDA analyses of daily-use and other ceramicware offered for import into the United States from the People's Republic of China.

IV. TECHNICAL INFORMATION EXCHANGE

The Parties agree to share expertise, provide assistance, and exchange information. Such mutual cooperation may include, but shall not be limited to:

A. Sharing current, new, and improved methods of sampling and testing of daily-use ceramicware for lead and cadmium;

B. Sharing current, proposed, or modified regulations or legislation related to daily-use ceramicware;

C. As resources permit, the exchange of administrative, regulatory, and scientific personnel knowledgeable about daily-use ceramicware;

D. The exchange of information about daily-use ceramicware quality control operations, plans, and procedures, including summaries of inspections, samples and analytical results; and

E. The exchange of data and research related to major food-caused health concerns that may be attributed to lead and cadmium.

V. SAMPLE COLLECTION

Whenever practicable, FDA intends to use the same representative sample to determine adherence with the Criteria. A representative sample will generally consist of:

Six (6) units of identical size, shape, color, decoration, and glaze collected from each sampled delivery lot.

VI. ADMINISTRATIVE PROCEDURES

The Parties shall mutually agree on the ways and means of giving instruction and guidance for the practical implementation and application of this MOU. All travel and per diem expenses incurred by one of the Parties in the course of providing technical assistance or other non-regulatory activities requested by the other Party in accordance with this MOU will be borne by the requesting Party, upon receipt from the providing party of an itemized statement of account.

The Parties shall designate points of contact under this MOU. The Parties shall notify each other of the points of contact by letter.

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VII. PERIOD OF AGREEMENT AND TEXTUAL VERSIONS

This MOU will enter into force upon signature by both Parties and will continue for five (5) years. The Parties agree to evaluate the MOU during the five-year period. It may be extended or amended by written consent of the Parties. It may be terminated by either Party upon 30-days written notice to the other.

This MOU is done in duplicate, in the Chinese and English languages, both being equally authentic.

Signed at:

WASHINGTON, DISTRICT OF COLUMBIA

ON May 20, 1999

FOR THE STATE ADMINISTRATION OF ENTRY-EXIT INSPECTION AND QUARANTINE OF THE PEOPLE'S REPUBLIC OF CHINA:

Shi Jianxin
Minister-Counselor (Commercial)
Embassy of the People's Republic of China

and

WASHINGTON, DISTRICT OF COLUMBIA

ON May 20, 1999

FOR THE FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES OF THE UNITED STATES OF AMERICA:

Sharon S. Holston
Deputy Commissioner for International and Constituent Relations

ATTACHMENT A

ANALYTICAL METHODOLOGY

Compliance with the Criteria in Attachment B will be determined by using the analytical method Standard Method for Lead and Cadmium Extracted from Glazed Ceramic Surfaces described in the latest edition of *Annual Book of ASTM Standards*, of the American Society for Testing and Materials (ASTM, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959), currently volume 15.02 (1996), designation C738-94.

The method also appears in the March 1996 Supplement to the 16th Edition of *Official Methods of Analysis* (AOAC International, 481 N. Frederick Avenue, Suite 500, Gaithersburg, MD 20877-2417). Method 973.32 is used for high levels, Method 973.82 is used for low levels.

The levels of lead and cadmium are to be determined by analyzing each unit at the same time, individually, according to the above cited method.

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ATTACHMENT B

CRITERIA FOR CERTIFICATION FOR EXPORT OF DAILY-USE CERAMICWARE

SAIQ agrees not to certify ceramicware factories that produce daily-use ceramicware for export to the United States that contain levels of lead or cadmium that exceed the following United States Food and Drug Administration guidance that is non-discriminatory, and applies without distinction to domestic and imported products:

A. LEAD

Category	Action Basis	Maximum Level* micrograms/mL
Flatware	Average of 6 units	3.0
Small Hollowware other than cups, mugs and pitchers	Any one of 6 units	2.0
Cups and mugs	Any one of 6 units	0.5
Large Hollowware other than pitchers	Any one of 6 units	1.0
Pitchers	Any one of 6 units	0.5

B. CADMIUM

Category	Action Basis	Maximum Level* micrograms/mL
Flatware	Average of 6 units	0.5
Small Hollowware	Any one of 6 units	0.5
Large Hollowware	Any one of 6 units	0.25

* Micrograms of element per milliliter of four percent (4%) acetic acid leaching solution as per cited analytical method.

[FR Doc. 99–19106 Filed 7–17–99; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0017]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Guidance on Validation of Analytical Procedures: Definition and Terminology; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a final guidance for industry entitled "Validation of Analytical Procedures: Definition and Terminology." This guidance has been adapted for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH) from an identically titled guidance adopted by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) and published in the **Federal Register** of March 1, 1995 (60 FR 11260). The document provides guidance on characteristics that should be considered during the validation of analytical procedures included as part of registration applications for approval of veterinary medicinal products submitted to the European Union, Japan, and the United States.

DATES: Submit written comments at any time.

ADDRESSES: Copies of the final guidance document entitled "Validation of Analytical Procedures: Definition and Terminology" may be obtained on the Internet within the CVM home page at "http://www.fda.gov/cvm/fda/TOCs/guideline.html". Persons without Internet access may submit written requests for single copies of the final guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the final guidance document to the Policy and Regulations Team (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: William G. Marnane, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6966, e-mail "wmarnane@cvm.fda.gov".

Regarding VICH: Sharon R. Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e-mail "sthompso@cvm.fda.gov".

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seeking scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies.

FDA has actively participated in the ICH for several years to develop harmonized technical requirements for the approval of human pharmaceutical products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary pharmaceutical products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary pharmaceutical products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Epizooties (OIE). During the initial phase of the VICH, an OIE representative chairs the VICH Steering Committee. The VICH Steering Committee is composed of member representatives from the European Commission, the European Medicines Evaluation Agency; the European Federation of Animal Health; the U.S. Food and Drug Administration; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/ New Zealand, one representative from the industry in Australia/ New Zealand, one representative from MERCOSUR (Argentina, Brazil, Uruguay, and Paraguay), and one representative from Federacion Latino–Americana de la Industria para la Salud Animal. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confederation Mondiale de L'Industrie de la Sante Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

In the **Federal Register** of January 27, 1998 (63 FR 3907), FDA published this guidance in draft form, giving interested persons until March 30, 1998, to submit comments. After consideration of comments received, a final draft guidance was submitted to the VICH steering committee.

At a meeting held from October 20 through 22, 1998, the VICH Steering Committee endorsed the draft guidance entitled "Validation of Analytical Procedures: Definition and Terminology." This guidance discusses the characteristics that should be considered during the validation of the analytical procedures included in an application for registration of veterinary medicinal products in the European Union, Japan, and the United States. It is not intended to cover testing requirements or procedures, rather it is to serve as a collection of terms and definitions. These common definitions such as "analytical procedures," "specificity," "precision," "accuracy," etc., are meant to bridge the differences that often exist among various compendia and requirements of the European Union, Japan, and the United States. The final guidance will be implemented in October of 1999.

The final guidance represents the agency's current thinking on characteristics for consideration during the validation of the analytical procedures included as part of applications. It does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternate approach may be used if it satisfies the requirements of applicable statutes, regulations, or both.

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

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Dated: July 21, 1999.
Margaret M. Dotzel,
Acting Associate Commissioner for Policy.
[FR Doc. 99–19194 Filed 7–27–99; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0273]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Community Mental Health Center Site Visit Assessment Tool and Supporting Regulations in 42 CFR 410.2; *Form No.:* HCFA–R–0273 (OMB# 0938–0770); *Use:* This information collection tool is essential for the Health Care Financing Administration (HCFA) to ensure that existing Community Mental Health Centers (CMHC), as well as CMHC applicants to the Medicare program are incompliance with Medicare provider requirements, as well as all applicable Federal and State requirements. The collection tool will be completed and used by HCFA and or its contractors to collect patient records, other CMHC operational information, and to verify CMHC compliance as determined by the HCFA regional office. CMHCs will be required to sign the completed form, provide medical records, and other operational information to be copied by the HCFA contractor representative on-site at the CMHC during the site visit.; *Frequency:* Upon initial application or re-enrollment into the Medicare program; *Affected Public:* Business or other for profit, Not for profit institutions, and State, Local, or Tribal Government; *Number of Respondents:* 850; *Total Annual Responses:* 850; *Total Annual Hours:* 3,400.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 19, 1999.
John P. Burke III,
HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.
[FR Doc. 99–19210 Filed 7–27–99; 8:45 am]
BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

2000 National Household Survey on Drug Abuse—(0930–0110, Revision)

The National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, noninstitutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

For the 2000 NHSDA, additional questions in the following substantive areas are planned: mental health; mental health service utilization; industry and occupation; youth access to tobacco products and the cost of the last cigarettes purchased for adults as well as youth; and, substance abuse and treatment need. The remaining modular components of the NHSDA questionnaire will remain essentially unchanged except for minor modifications to wording and selective elimination of sufficient questions to allow for the additional burden of the questions and modules listed above.

As in 1999, the sample size of the survey for 2000 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. The total annual burden estimate is 81,626 hours as shown below:

	Number of Respondents	Responses per respondent	Average burden per response (hrs.)	Total burden hours
Household Screener	210,000	1	0.050	10,500
NHSDA Questionnaire and interview verification	70,000	1	1.016	71,126
Total				81,626

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 21, 1999.
Richard Kopanda,
Executive Officer, SAMHSA.
[FR Doc. 99–19236 Filed 7–27–99; 8:45 am]
BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

State Treatment Outcomes and Performance Pilot Studies Enhancement (TOPPS II)—New

The Center for Substance Abuse Treatment (CSAT) will develop a standardized approach that systematically measures the treatment outcomes of clients as they progress through State substance abuse treatment systems funded by the Substance Abuse Prevention and Treatment Block Grant (SAPT BG). The goal underlying TOPPS II is to enable Single State Authorities (SSAs) to collect information on SAPT BG funded treatment services and to monitor common substance abuse treatment effectiveness data measures across their State management information systems (MISs). The TOPPS II program supports initiatives to design or enhance State MISs or outcomes monitoring systems (OMS) which assess treatment outcomes measures. Nineteen SSAs are planning to conduct and pilot test studies of specific components of substance abuse treatment systems by incorporating common data measures across all nineteen States on an inter-State (i.e., with the States acting mutually together) basis. The TOPPS II study furthers the work begun by CSAT under TOPPS I. Ten of the nineteen TOPPS II States had received TOPPS I funding. Most of these States are now using the treatment outcomes assessment instruments developed during the TOPPS I project. All such instruments received OMB approval (OMB control number 0930–0182).

During TOPPS II initial project implementation, a consensus-derived core data set has been designed to identify key performance measures in two domains: Effectiveness and efficiency. Within these domains, data will be collected that will permit States and CSAT to assess client outcomes (improvement) for indicators such as confinement in a controlled environment, frequency of overnight hospitalizations and emergency room visits, pregnancy status, child care responsibilities, employment patterns, participation in vocational training or educational programs, arrests, living arrangements, and drug use patterns. These data will be collected through completion of the client-oriented core data set.

The inter-State evaluation design for TOPPS II participants will be a pre-test/post-test design that collects standardized data at client intake, discharge, and again at follow-up. This time frame is necessary to allow treatment providers the opportunity to assess the complex causal links between program processes and client outcomes and to monitor common substance abuse treatment effectiveness data measures across their State MISs. In addition, all State-specific designs will incorporate measures of client satisfaction at selected intervals, which is essential to assessing the quality, efficiency and efficacy of services.

This initiative is crucial to support CSAT in developing State substance abuse treatment accountability measures. The inter-State data base will incorporate standardized outcome measures which will be voluntarily reported on by States in their Fiscal Year 2000 SAPT BG applications. It will also comply with GPRA reporting requirements to establish measurable performance goals for SAPT BG recipients. Through these efforts, TOPPS II will contribute to the future development of a standardized national approach that measures the effectiveness and efficiency of public substance abuse treatment systems. The estimated annualized burden for TOPPS II core data set collection for the inter-State evaluation design, over the next three years is presented in the following table.

State	Number of respondents	Number of responses/ respondents	Total responses	Hours per response	Total hour burden
AZ*	556	4	2,224	0.12	267
AR	1,125	3	3,375	0.12	405
CA	2,700	3	8,100	0.12	972
CT	600	3	1,800	0.12	216
IL	2,000	3	6,000	0.12	720
IO	300	3	900	0.12	108
KY**	600	4	2,400	0.12	288
MA	1,370	3	4,110	0.12	493
MO	500	3	1,500	0.12	180
NH	657	3	1,971	0.12	237
NJ	1,200	3	3,600	0.12	432
NY	1,875	3	5,625	0.12	675
RI	1,200	3	3,600	0.12	432
TX	1,750	3	5,250	0.12	630
UT	1,050	3	3,150	0.12	378
VA	1,600	3	4,800	0.12	576
Total 3-Year Burden	19,083		63,405		7,009
Annualized Burden	6,361		21,135		2,336

* Arizona has elected to conduct two follow-up assessments: at 6 months post-discharge and at 12 months post-discharge.
** Kentucky is legislatively required to conduct a 12-month follow-up assessment in addition to the three data collection points required by the TOPPS II study.

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Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 21, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–19237 Filed 7–27–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA); Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Center for Mental Health Services (CMHS) National Advisory Council on August 13, 1999.

The meeting will include the review, discussion, and evaluation of individual grant applications. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, § 10(d).

A summary of the meeting and a roster of Council members may be obtained from: Patricia Gratton, Committee Management Officer, CMHS National Advisory Council, 5600 Fishers Lane, Room 11C–26, Rockville, Maryland 20857. Telephone: (301) 443–7987.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Mental Health Services National Advisory Council.

Meeting Date: August 13, 1999.

Place: Center for Mental Health Services, 5600 Fishers Lane, Room 15C–94, Rockville, MD 20857.

Closed: August 13, 1999, 10:00 a.m.–11:30 a.m.

Contact: Anne Mathews-Younes, Ed.D., 5600 Fishers Lane, Room 17C–05. Telephone: (301) 443–0554 and FAX: (301) 443–7912.

Dated: July 22, 1999.

Sandi Stephens,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–19245 Filed 7–27–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment, Preliminary Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for a 32,400-Unit Residential Community To Be Built in Phases on 5,690 Acres Over a 32-Year Period, in Marion County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: On Top of the World, Inc., of Ocala, Florida (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of four families of the threatened Florida scrub-jay, *Aphelocoma coerulescens* and the threatened eastern indigo snake, *Drymarchon corais couperi*, in Marion County, Florida, for a period of thirty-two (32) years. The proposed taking is incidental to land clearing activities and residential development on a 32,400-acre project site (Project). The Project contains about 334 acres of occupied Florida scrub-jay habitat, and only one eastern indigo snake has been seen onsite, despite extensive surveys. The mitigation and minimization measures outlined in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species are described further in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The preliminary Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to section 10 of the Act and NEPA regulations (40 CFR 1506.6). The Service specifically requests comment on the appropriateness of the "No Surprises" assurances should the Service determine that an ITP will be granted and based upon the submitted HCP. Although not explicitly stated in the HCP, the Service has, since August 1994, announced its intention to honor a "No Surprises" Policy for applicants seeking ITPs. Copies of the Service's "No Surprises" Policy may be obtained by making a written request to the Regional Office (see **ADDRESSES**). The Service is soliciting public comments and review of the applicability of the "No Surprises" Policy to this application and HCP.

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before August 27, 1999.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, US Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments or requests for the documentation must be in writing to be processed. Please reference permit number TE010099–0 in such comments, or in requests for the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David A. Dell, Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Mr. Jay Herrington, Fish and Wildlife Biologist, Jacksonville Field Office, (see **ADDRESSES** above), telephone: 904/232–2580, extension 114.

SUPPLEMENTARY INFORMATION:

Aphelocoma coerulescens is geographically isolated from other subspecies of scrub-jays found in Mexico and the western United States. The Florida scrub-jay is found exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub-jay population has been reduced by at least half in the last 100 years. Surveys have indicated that eleven families of Florida scrub-jays inhabit the Project site. Construction of the Project's infrastructure and individual home sites will likely result in death of, or injury to, *Aphelocoma coerulescens* incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

The EA considers the environmental consequences of four alternatives. The no action alternative may result in continued loss of habitat for *Aphelocoma coerulescens* (through lack of fire management activity) or exposure of the Applicant under section 9 of the Act, should he decide to proceed with the Project without incidental take authorization. The on-site scrub habitat restoration alternative would require an ITP and would result in three scrub-jay territories being maintained where they are. In addition, habitat would be restored and/or created to provide for an additional seven FSJ families. However, this alternative would be the riskiest, in that little success has been achieved in the creation of scrub habitat. The off-site mitigation alternative would result in the loss of all eleven families of FSJs on the project site and would provide funds to the state of Florida to allow management activities to take place on the nearby Ross Prairie site specifically for the scrub-jays. The Applicant rejected this alternative because he wishes to maintain scrub-jays on the Project site as an amenity to future residents. In addition, providing funds to public agencies to conduct management activities would only be useful to scrub-jays in the event there were no plans for the state to manage the site properly. The Service is currently working closely with the state agencies to ensure that such activities will take place without additional funding being provided by the Service. The proposed action alternative is issuance of the ITP with on-site mitigation. To mitigate for the 122 acres of occupied habitat that would be eliminated on-site, the applicant will preserve and manage 273.1 acres of occupied scrub-jay habitat in addition to 32.2 acres of habitat already preserved as a result of previous coordination of a smaller project within the boundaries of this permit application. To buffer human-related impacts to the proposed preserves, buffers will be placed around them as outlined in the Environmental Assessment. Activities within the refuge areas will be limited to passive recreational activities on designated walkways. These preserves will provide habitat for any eastern indigo snakes occupying the site, as well. In addition, no clearing of scrub vegetation would occur during the nesting season of the Florida scrub-jay. The HCP provides a funding mechanism for these mitigation measures.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: July 21, 1999.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 99–19238 Filed 7–27–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Information Collection; Request for Comments; AmerAlia, Inc. Proposed Sodium Solution Mine

AGENCY: Bureau of Land Management, USDI.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act of 1978, the Bureau of Land Management (BLM) intends to complete an Environmental Assessment for AmerAlia, Inc.'s proposed experimental pilot plant nahcolite solution mine. Information will be collected to determine the level of environmental analysis necessary to fulfill BLM's mandate for the environmental protection of lands under their jurisdiction. Copies of this mine plan are available from AmerAlia, Inc., P.O. Box 1330, Rifle, CO 81650, Telephone (970) 625–9134.

DATES: Comments must be received by close of business on or before September 3, 1999.

ADDRESSES: All comments should be addressed to Larry M. Shults, Natural Resource Specialist, Bureau of Land Management, White River Field Office, 73544 Highway 64, Meeker, CO 81641, faxed to (970) 878–5717, or sent via e-mail to larry_shults@co.blm.gov.

FOR FURTHER INFORMATION CONTACT: Larry M. Shults at (970) 878–3601.

SUPPLEMENTARY INFORMATION:

Background

AmerAlia, Inc., phase one experimental mine plan involves the construction and operation of an experimental pilot plant nahcolite solution mine and associated surface facilities to produce up to 50,000 tons per year (tpy) of sodium bicarbonate for up to a 5 year period. Multiple wells may be used to solution mine the nahcolite. The mining plan being considered involves initially solution mining from alternate production wells. The objectives of the pilot plant are to develop the methods of solution mining and to develop the surface process. If successful, the project could proceed to the commercial phase two operation.

Comment Is Invited

The White River Field Office invites comments on the proposed experimental test mine to determine (a) what environmental issues are considered important by the commentor; (b) if an environmental assessment contains sufficient detail for a project of this scope; (c) if an environmental impact statement is necessary for the proposed project.

Use of Comment

All comments, including name and address when provided, will become a matter of public record. Comments received in response to this notice will be summarized and used to determine the level of environmental analysis to be conducted on this project.

John J. Mehlhoff,

Resource Area Manager, White River Field Office.

[FR Doc. 99–19295 Filed 7–27–99; 8:45 am]

BILLING CODE 4310–JB–M

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–094–09–6650–00; GP9–0260]

Temporary Closure of a road: Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary Closure of a road in Lane County, Oregon.

SUMMARY: Notice is hereby given that a certain road in Lane County, Oregon is temporarily closed to all public use, including vehicular traffic, from July 30, 1999 through September 22, 1999. The closure is made under the authority of 43 CFR 8364.1.

The road affected by this closure is specifically identified as a portion of the Siuslaw Access Road (Road No. 19–7–25/18–8–34) located as follows:

Willamette Meridian, Oregon

Beginning at a point 50 feet west of the junction of the Siuslaw Access Road (Road No. 19–7–25/18–8–34) and Clay Creek Campground, located in the E½, Section 19, T. 19 S., R. 7 W.; then west along the Siuslaw Access Road (Road No. 19–7–25/18–8–34), 5.4 miles to a point approximately 500 feet west of Fawn Creek, located in the NE¼ NE¼ of Section 10, T. 19 S., R. 8 W.

SUPPLEMENTARY INFORMATION: The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Federal employees; state, local and federal law enforcement and fire protection personnel; Raymond Fischer of 89985 Poodle Creek Road; Marion and Alyssa Shepard of 18008 Siuslaw River Road; the contractor authorized to replace culverts along the road and any of their subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which includes a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months.

The road temporarily closed to public use under this order will be posted with signs at the points of closure.

The purpose of this temporary closure is to provide for public safety, facilitate replacement of culverts along the Siuslaw Access Road, and protection of property and equipment during the mobilization, culvert replacement and de-mobilization phases of the project.

DATES: This closure is effective from July 30, 1999 through September 22, 1999.

ADDRESSES: Copies of the closure order and maps showing the location of the closed road are available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Diane Chung, Coast Range Field Manager, Eugene District Office, at (541) 683–6600 or 1–888–442–3061.

Dated: July 21, 1999.

Dan Howells,

Acting Coast Range Field Manager.

[FR Doc. 99–19283 Filed 7–27–99; 8:45 am]

BILLING CODE 4310–33–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–46521]

Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The land was originally part of a 320-acre Recreation & Public Purpose Lease issued to Clark County on January 12, 1993. The County relinquished 10 acres on April 25, 1995. Clark County requests a lease amendment to add these 10 acres to the existing lease. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County proposes to use the lands for a public park.

Mount Diablo Meridian, Nevada

T. 32 S., R. 66 E., M.D.M., sec. 14, E½ W½ NE¼ NE¼

Containing 10.00 acres, more or less, located at Big Bend Drive and Edison Way in Laughlin, NV.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for road purposes which have been granted to Clark County by Permit No. N–50978 under the Act of October 21, 1976 (43 U.S.C. 1761). Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Office Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a park site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a park site.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: July 16, 1999.

Rex Wells,

Assistant Field Office Manager, Las Vegas, NV.

[FR Doc. 99–19276 Filed 7–27–99; 8:45 am]

BILLING CODE 4310–HC–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: To comply with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), we are notifying you that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Written comments should be received on or before August 27, 1999.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0073), 725 17th Street, NW, Washington, DC 20503; telephone (202) 395–7340. Copies of these comments should also be sent to us. The U.S. Postal Service address is Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; the courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225; and the e:Mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: For questions concerning this collection of information, please contact Larry Barker, RIK Study Team, telephone (303) 231–3157. You may also obtain copies of this collection of information at no cost by contacting MMS's Information Collection Clearance Officer at (202) 208–7744.

SUPPLEMENTARY INFORMATION:

Title: Royalty-in-Kind Pilot Program—Directed Third Party Communications Between Operators and Purchasers of Federal Royalty Oil and Gas.

OMB Control Number: 1010–0126.

Abstract: The Secretary of the Interior, under the Mineral Leasing Act (30 U.S.C. 192) and the Outer Continental Shelf Lands Act (43 U.S.C. 1353), is responsible for the management of royalties on minerals produced from leased Federal lands. MMS carries out these responsibilities for the Secretary. Most royalties are now paid in value—when a company or individual enters into a contract to develop, produce, and dispose of minerals from Federal lands, that company or individual agrees to pay the United States a share (royalty) of the full value received for the minerals taken from leased lands. MMS has undertaken several pilot programs to study the feasibility of taking the Government's royalty in the form of production, that is, as RIK.

Collection of RIK requires communication between the operators of a lease and the purchaser of RIK from that lease to assure accurate and timely delivery of MMS' royalty share of production volumes. On January 29, 1999, OMB granted emergency approval for MMS to instruct lessees (or their operators), through a letter to operators which contains reporting requirements, to conduct all necessary communications with RIK purchasers during RIK pilot activities.

The three kinds of directed communication between operators and purchasers of RIK are: (1) Information about the volumes made available as RIK; (2) information about transportation of the RIK; and (3) information about correcting volumes made available as RIK. Experience with the Wyoming and Texas 8(g) Pilots demonstrates that the directed communication requirements differ according to the needs of each pilot situation. For example, in the Wyoming Pilot, RIK is delivered to the purchaser at the lease. Therefore, the direction to make transportation arrangements was not included in letters issued to those operators. For these reasons, we are not requesting approval of specific letters to operators but, instead, approval for the three kinds of reporting requirements concerning communications between operators and purchasers of RIK. By obtaining approval for these three kinds of reporting requirements, MMS will be able to select the types of directed communications needed for each pilot and include only those types in a letter appropriate to the operation of that pilot.

The types of communication and supporting data MMS will require operators to use in setting up the monthly delivery of RIK to the purchaser are standard business practices in the oil and gas industry. The information in the directed communication is essential to the delivery and acceptance of verifiable quantities and qualities of oil and gas and is exchanged as a normal part of the conduct of those business activities, even when operators are not directed to do so. Failure of lessees/operators and purchasers to timely communicate volumetric, delivery, and transportation information concerning MMS' RIK volumes will result in storage costs being incurred due to lack of pipeline space being reserved to move MMS' royalty production. Monetary penalties would also be incurred for failure to meet delivery due dates. Additionally, failure to communicate data from balancing accounts would severely impair MMS' ability to verify that it is receiving the full and accurate volume of its royalty share of production.

No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected. The requirement to respond is mandatory.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 26, 1999 (64 FR 20321).

Estimated Number and Type of Respondents/Affected Entities: Approximately 80 lessees or operators of Federal oil or gas leases participating in RIK pilot programs.

Frequency of Response: Monthly.

Burden Statement and Estimated Annual Reporting and Recordkeeping "Hour" Burden: We estimate the respondent burden to average 2 minutes per response for a total of 285 hours. We estimate no additional recordkeeping burden.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no paperwork cost burdens for this collection.

Comments: Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the

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burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 27, 1999.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: July 21, 1999.

Joan Killgore,

Acting Associate Director for Royalty Management.

[FR Doc. 99–19261 Filed 7–27–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Privacy Act of 1974, as Amended; Revisions to Existing System of Records

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of the Interior is issuing public notice of its intent to amend the existing system of records managed by the Bureau of Reclamation (Reclamation) entitled "Inventions and Patents, LBR–12."

The notice is published in its entirety below.

DATES: Persons wishing to comment on the proposed revisions must do so by August 27, 1999.

Effective date: The proposed revised system of records will become effective without further notice on September 7, 1999, unless comments received result in a contrary determination. Reclamation will publish a new notice if changes are made based on review of comments received.

ADDRESSES: Interested individuals may comment on this publication by writing to the Reclamation Privacy Act Officer, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007, or comments may be sent by facsimile transmission to fax No. 1–800–822–7651. Comments will be available for inspection at the Bureau of Reclamation, Denver Federal Center, Sixth Avenue and Kipling Street, Building 67, Room 112, Denver, Colorado, from 7:30 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding "Inventions and Patents, WBR–12" contact Ms. Lisa Henthrone, Research Program Coordinator, Research Office, at (303) 445–2136. For general information regarding Reclamation's Privacy Act program, call Mr. Casey Snyder at (303) 445–2048.

SUPPLEMENTARY INFORMATION: Recent Privacy Act Compilations list this system of records as Reclamation-12. When originally published in the **Federal Register** this system of records was identified as LBR–12. The content of the system of records is the same; the prefix on the system was changed to reflect organizational changes.

This system of records notice was previously published in the **Federal Register** on April 11, 1977 (42 FR 19098). This publication revises the system location; increases the categories of records in the system to include home address and telephone number, date of birth, and social security number; a purpose has been added which was not included in the original notice; and the system managers and addresses have been updated. All other changes proposed are editorial in nature.

Rayleen Cruz,

Manager, Property and Facilities Group.

INTERIOR/WBR–12

SYSTEM NAME:

Inventions and Patents.

SYSTEM LOCATION:

(1) Department of the Interior, Bureau of Reclamation, Attention: W–6700, 1849 C Street, NW, Washington, DC 20240. (2) Bureau of Reclamation, Attention: D–6700, PO Box 25007, Denver, CO 80225–0007.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Bureau of Reclamation (Reclamation) employees who have been granted patents or who are seeking patents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, home address and telephone number, date of birth, social security number, and organizational segment of the inventor. Contains a thorough description and/or drawings of invention in original application for patent.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3101, 43 U.S.C. 373, 373a, 1457, 44 U.S.C. 3101.

PURPOSE(S):

The purpose of maintaining this system of records for the Bureau of Reclamation is to have a retrievable system of information for pending patents and patents that have been secured (granted). When the patents are submitted to the U.S. Patent Office, the first monetary award is granted to the inventor. Once the patent is granted, the second monetary award is granted along with the patent certificate. The patent is awarded for a certain amount of years and must be renewed before it expires, if deemed necessary, by the inventor/Reclamation. The records must be maintained on a continual basis for these purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to administer internal program for determining rights of employee to invention and status of securing patent for invention. Disclosures outside the Department of the Interior (Department) may be made to: (1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains; (2) The Department of Justice, or to a court, adjudicative, or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (i) The Department or any component of the Department; (ii) Any Departmental employee acting in his or her official capacity; (iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (iv) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (i) Relevant and necessary to the proceedings; and (ii) Compatible with the purpose for which we compiled the information; (3) The appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license; (4) A congressional office in response to an inquiry to that office by the individual to whom the records pertain.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files maintained in manual form in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

In accordance with approved retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Department of the Interior, Bureau of Reclamation, Attention: W–6700, 1849 C Street, NW, Washington, DC 20240. (2) Bureau of Reclamation, Attention: D–6700, PO Box 25007, Denver, CO 80225–0007.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the records are maintained.

[FR Doc. 99–19239 Filed 7–27–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–389 (Review)]

3.5″ Microdisks From Japan

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in May 1999 to determine whether revocation of the existing antidumping duty order would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On July 1, 1999, the Department of Commerce published notice that it was revoking the order because no domestic interested party responded with a complete substantive response to its notice of initiation by the applicable deadline (64 FR 35588, July 1, 1999). Accordingly, pursuant to § 207.69 of the Commission's rules of practice and procedure (19 CFR 207.69), the subject review is terminated.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: July 21, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19286 Filed 7–27–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–162 (Review)]

Melamine From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping finding on melamine from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted this review on August 3, 1998 (63 FR 41282) and determined on November 5, 1998 that it would conduct a full review (63 FR 63747, November 16, 1998). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 13, 1999 (64 FR 2233). The hearing was held in Washington, DC, on May 20, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 21, 1999. The views of the Commission are contained in USITC Publication 3209 (July 1999), entitled Melamine from Japan: Investigation No. AA1921–162 (Review).

Issued: July 21, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19284 Filed 7–27–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–841 (Preliminary)]

Certain Non-Frozen Concentrated Apple Juice From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured [3] by reason of imports from China of concentrated apple juice, other than

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Vice Chairman Miller and Commissioner Askey dissenting.

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Chairman Bragg not participating.

[3] Commissioner Crawford determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from China that are allegedly sold at LTFV.

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frozen,[4] provided for in subheading 2009.70.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On June 7, 1999, a petition was filed with the Commission and Commerce by counsel on behalf of Coloma Frozen Foods, Inc., Coloma, MI; Green Valley Packers, Arvin, CA; Knouse Foods Cooperative, Inc., Peach Glen, PA; Mason County Fruit Packers, Ludington, MI; and Tree Top, Inc., Selah, WA., alleging that an industry in the United States is materially injured by reason of LTFV imports of non-frozen concentrated apple juice from China. Accordingly, effective June 7, 1999, the Commission instituted antidumping investigation No. 731–TA–841 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 16, 1999 (64 FR 32256). The conference was held in Washington, DC, on June 28, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 22, 1999. The views of the Commission are contained in USITC Publication 3216 (July 1999), entitled Certain Non-frozen Concentrated Apple Juice from China: Investigation No. 731–TA–841 (Preliminary).

By order of the Commission.

Issued: July 23, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19287 Filed 7–27–99; 8:45 am]

BILLING CODE 7020–02–P

[4] For purposes of this investigation, non-frozen concentrated apple juice is defined as having a Brix value of 40 or greater, whether or not containing added sugar or other sweetening matter, not fortified with vitamins or minerals, unfermented and not containing added spirits.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–380–382 (Final) and 731–TA–797–804 (Final)]

Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, The Republic of Korea, Mexico, Taiwan, and The United Kingdom

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from France, Italy, and the Republic of Korea (Korea) of certain stainless steel sheet and strip [2] that have been found by the Department of Commerce to be subsidized by the Governments of France, Italy, and Korea.[3] The Commission also determines, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom of certain stainless steel sheet and strip that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[4] The Commission further determines that critical circumstances do not exist with respect to imports of subject merchandise from Nisshin Steel Co. Ltd., Nippon Yakin Kogyo, Nippon Metal Industries, and Nippon Steel Corp. of Japan and Taihan of Korea.[4]

Background

The Commission instituted these investigations effective June 10, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by Allegheny Ludlum Corporation, Pittsburgh, PA; Armco, Inc.,[5] Pittsburgh, PA; J&L Specialty Steel, Inc.,[6] Pittsburgh, PA; Washington Steel Division of Bethlehem Steel Corporation, Washington, PA; the United Steelworkers of America, AFL–CIO/CLC; Butler Armco Independent Union; and Zanesville Armco Independent Organization, Inc. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain stainless steel sheet and strip from France, Italy, and Korea were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports of certain stainless steel sheet and strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 14, 1999 (64 FR 2504). The hearing was held in Washington, DC, on May 25, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 19, 1999. The views of the Commission are contained in USITC Publication 3208 (July 1999), entitled Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, The Republic of Korea, Mexico, Taiwan, and The United Kingdom: Investigations Nos. 701–TA–380–382 and 731–TA–797–804 (Final).

Issued: July 20, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19285 Filed 7–27–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] The merchandise subject to these investigations is stainless steel sheet and strip in coils and is currently classified in the following subheadings of the Harmonized Tariff Schedule of the United States (HTS): 7219.13.00, 7219.14.00, 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00, 7219.90.00, 7220.12.10, 7220.12.50, 7220.20.10, 7220.20.60, 7220.20.70, 7220.20.80, 7220.20.90, and 7220.90.00.

[3] Commissioner Askey dissenting.

[4] Commerce made affirmative determinations of critical circumstances with respect to these companies and negative determinations with respect to all other producers in Japan and Korea and all producers in Germany, Italy, and Taiwan. Critical circumstances were not alleged with respect to imports from France, Mexico, and the United Kingdom.

[5] Armco, Inc., Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. are not petitioners in the antidumping investigation relating to Mexico.

[6] J&L Specialty Steel, Inc. is not a petitioner in the countervailing duty and antidumping investigations relating to France.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–539–A (Final)]

Uranium From Kazakhstan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Kazakhstan of uranium, provided for in subheadings 2612.10.10, 2844.10.10, 2844.10.20, 2844.10.50, and 2844.20.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 8, 1991, following receipt of a petition filed with the Commission and the Department of Commerce by the Ad Hoc Committee of Domestic Uranium Producers and the Oil, Chemical and Atomic Workers International Union (which has since become the Paper, Allied-Industrial-Chemical Union (PACE)). The Commission's investigation was suspended on October 21, 1992, following Commerce's notification that it was entering into a suspension agreement with Kazakhstan. The final phase of the investigation was continued on January 15, 1999, when Commerce notified the Commission that it was resuming its antidumping investigation with respect to Kazakhstan as a result of the Government of Kazakhstan's termination of its suspension agreement. Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 3, 1999 (64 FR 10317). The hearing was held in Washington, DC, on June 9, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 23, 1999. The views of the Commission are contained in USITC Publication 3213 (July 1999), entitled "Uranium from Kazakhstan: Investigation No. 731–TA–539–A (Final)."

Issued: July 23, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19288 Filed 7–27–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and the Resource Conservation and Recovery Act ("RCRA")

Under 28 CFR 50.7, notice is hereby given that on July 6, 1999, a proposed consent decree in *United States* v. *Burgess Brothers, Inc.*, 2:99 Civil Action No. 194, was lodged with the United States District Court for the District of Vermont.

The proposed consent decree is a Remedial Design/Remedial Action ("RD/RA") consent decree under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. 9673, for implementation of the remedy selected by the United States Environmental Protection Agency ("EPA") in the Record of Decision ("ROD") issued September 25, 1998, for reimbursement of certain past response costs, for reimbursement of future oversight and response costs, and for payment of natural resource damages related to the Burgess Brothers Superfund Site between Bennington and Woolford, Vermont. The proposed consent decree requires three defendants—Burgess Brothers, Inc., operator at the Site, Eveready Battery Company, a generator of wastes at the Site, and Clyde Burgess, Jr., the owner of the Site, to perform the cleanup of the Site as selected by the September 25, 1998 ROD, pay the United States $374,143.51 in unreimbursed past response costs incurred by EPA, reimburse all future response and oversight costs incurred by EPA and future response and oversight costs up to $90,000 incurred by the State of Vermont, and pay the United States $100,000 in natural resource damages for restoration of wetlands at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Burgess Brothers, Inc.*, D.J. Ref. 90–11–3–1454. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The consent decree may be examined at the Office of the United States Attorney, District of Vermont, 11 Elmwood Avenue, Burlington, VT 05402, at U.S. EPA Region I, One Congress Street, Suite 1100, Boston, MA 02114, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $62.50 (25 cents per page reproduction cost) payable to the Consent Decree Library. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $10.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–19206 Filed 7–27–99; 8:45 am]

BILLING CODE 4410–15–M

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DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States and State of New York* v. *Occidental Chem. Corp. and Olin Corp.*, Civil No. 79–987C was lodged with the United States District Court for the Western District of New York on July 19, 1999. The decree resolves claims against Occidental Chemical Corporation and Olin Corporation under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") for injunctive relief, cost recovery and natural resource damages in connection with the 102nd Street Site in Niagara Falls, New York. Pursuant to the decree, defendants will compensate the Superfund for $6.075 million, plus interest, for past United States' response costs, and reimburse future costs. Defendants are required to complete implementation of the remedial action at the Site and thereafter, perform operation and maintenance at the Site. The decree also requires the defendants to pay $518,864 for past assessment costs and natural resource damages.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of New York* v. *Occidental Chem. Corp. and Olin Corp.*, DOJ Ref. #90–11–2–951.

A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. In requesting copies please refer to the referenced case, specify the decree you would like to receive, and enclose a check payable to the Consent Decree Library in the amount of $23.25 (25 cents per page reproduction costs).

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–19207 Filed 7–27–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that a consent decree in *United States of America and the Commonwealth of Pennsylvania* v. *Borough of Schuylkill Haven and Schuylkill Haven Municipal Authority*, Civil Action No. 97–4815 (E.D. Pa.) was lodged with the court on June 18, 1999.

The proposed decree resolves claims of the United States and the Commonwealth against defendants Borough of Schuylkill Haven and Schuylkill Haven Municipal Authority for violations of the Clean Water Act, 33 U.S.C. 1251 et seq. The decree requires defendants (1) to pay a civil penalty of $60,000, half to the United States and half to the Commonwealth, and (2) to achieve and maintain compliance with the effluent limits in the discharge permit for the Schuylkill Haven sewage treatment plant.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America and the Commonwealth of Pennsylvania* v. *Borough of Schuylkill Haven and Schuylkill Haven Municipal Authority*, Civil Action No. 97–4815 (E.D. Pa.), DOJ Ref. # 90–5–1–1–3721A.

The proposed Consent Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 99–19204 Filed 7–27–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Safe Drinking Water Act

Notice is hereby given that on July 13, 1999 a proposed consent decree in *United States* v. *Tafton Water Company, et al.*, Civil Action No. 33: CV 99–263, was lodged with the United States District Court for the Middle District of Pennsylvania.

In this action, the United States and Pennsylvania Department of Environmental Protection sought civil penalties, injunctive relief, and preliminary injunctive relief for violations of the Safe Drinking Water Act and its implementing regulations at the Tafton water system which serves the Wilson Hill development in Hawley, Pennsylvania. The proposed consent decree would resolve certain claims against one defendant, Richard M.S. Freeman, by requiring Richard Freeman to make modifications and repairs to the Tafton Water system to ensure long-term adequate disinfection of the water supply. Richard Freeman will also be obligated to provide personal financial information to the United States for determination of a civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Tafton Water Company, et. al., DOJ* #90–1–1–06424.

The proposed consent decree may be examined at the offices of the United States Attorney, Middle District of Pennsylvania, Federal Building 228 Walnut Street, Second Floor, P.O. Box 11754, Harrisburg, PA 17108; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–19203 Filed 7–21–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

On July 12, 1999, the United States lodged a proposed consent decree in the case of *United States* v. *Tomkins Industries, Inc., and Lasco Bathware, Inc.*, Civil Action No. CV–S–99–0665–JBR–LRL (D. Nevada), with the United States District Court for the District of Nevada.

The proposed consent decree resolves claims that the United States asserted against Tomkins Industries, Inc. and Lasco Bathware, Inc. in a civil lawsuit filed concurrently with the lodging of the consent decree on July 12, 1999. The compliant in this case alleges that defendants constructed and then operated two production lines at their Lasco Bathware facility located in the Hidden Valley Industrial Park in Moapa, Nevada, without complying with the Clean Air Act, the State Implementation Plan, or permits issued by the Clark County Board of Health, Air Pollution Control Division. Resins containing styrene used in the manufacture of bathtubs and shower stalls emit Volatile Organic Compounds ("VOCs") into the atmosphere, which create ground level ozone and smog. Among other things, the United States' lawsuit alleges that defendants operated without valid permits, failed to limit VOC emissions with Best Available Control Technology ("BACT"), and failed to comply with permit requirements.

The proposed Consent Decree requires defendants to pay a civil penalty of $575,000. In addition, Defendants are required to install a Regenerative Thermal Oxidizer on Line 1 at the Lasco Bathware facility, and to cease operating any equipment on Line 2 at the Lasco Bathware facility that would cause the emission of air contaminants within eight months of the effective date of the Consent Decree.

The Department of Justice will accept comments relating to this Consent Decree for a period of thirty (30) days from the date of this publication. *See* 28 CFR 50.7. Address your comments to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and send a copy to the Environmental Enforcement Section, U.S. Department of Justice, 301 Howard Street, Suite 870, San Francisco, CA 94105. Your comments should refer to *United States* v. *Tomkins Industries, Inc., and Lasco Bathware, Inc.*, Civil Action No. CV–S–99–0865–JBR–LRL (D. Nevada), and DOJ No. 90–5–2–1–2128.

You may examine the proposed consent decree at the office of the United States Attorney, District of Nevada, 701 East Bridger Avenue, Suite 600, Las Vegas, Nevada 89101; or at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. You may also obtain a copy of the consent decree in person or by mail from the Consent Decree Library. Your request for a copy of the consent decree should refer to *United States* v. *Tomkins Industries, Inc., and Lasco Bathware, Inc.*, Civil No. CV–S–99–0865–JBR–LRL (D. Nevada), and DOJ No. 90–5–2–1–2128, and must include a check for $9.50 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–19205 Filed 7–27–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Extension of Public Comment Period Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

Notice is hereby given that the Department of Justice, in response to a request from citizens, has decided to extend the public comment period on the proposed consent decree in *United States* v. *Tucson Airport Authority, et al.*, Civil No. CIV–99–313–TUC–WDB, which was lodged on June 17, 1999, with the United States District Court for the District of Arizona ("Airport Property Decree"). Notice of the initiation of a 30-day comment period was published in the **Federal Register** on June 23, 1999. *See* 64 FR 33515–33516 (June 23, 1999). The Department of Justice will receive, for a period of 90 days from the June 23, 1999, date of publication of notice, comments relating to the proposed Airport Property Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* versus *Tucson Airport Authority, et al.*, D. Ariz., Civil No. CIV–99–313–TUC–WDB, DOJ Ref. #90–11–3–369/2.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources division.

[FR Doc. 99–19195 Filed 7–27–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–8]

Mark L. Beck, D.D.S.; Revocation of Registration

On November 17, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Mark L. Beck, D.D.S. (Respondent) of Washington, DC. The Order to Show Cause notified Dr. Beck of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BB3603114 pursuant to 21 U.S.C. 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the District of Columbia.

On December 3, 1998, Respondent, through counsel, filed a request for a hearing and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On December 8, 1998, Judge Bittner issued an Order for Prehearing Statements. In lieu of filing a prehearing statement, the Government filed a Motion for Summary Disposition on December 14, 1998, alleging that Respondent is currently registered with DEA to handle controlled substances in the District of Columbia, however he is currently without state authority to handle controlled substances in the District of Columbia. Although given an opportunity to file a response to the Government's motion, Respondent did not do so.

On January 15, 1999, Judge Bittner issued her Opinion and Recommended Ruling, finding that Respondent lacks authorization to handle controlled substances in the District of Columbia; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on February 17, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that in its Motion for Summary Disposition, the Government asserted that Respondent's District of Columbia controlled substances registration

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expired on March 30, 1997, and his license to practice dentistry in the District of Columbia expired on December 31, 1997. According to the Government neither of these licenses were renewed.

The Deputy Administrator further finds that while there is no documentation in the record to support the Government's assertions, Respondent did not dispute that his licenses to practice dentistry and to handle controlled substances in the District of Columbia both expired without being renewed. Therefore, the Deputy Administrator finds that Respondent is not currently authorized to handle controlled substances in the District of Columbia, where he is registered with DEA.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. *See Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Respondent is not licensed to handle controlled substances in the District of Columbia. Since Respondent lacks this authority, he is not entitled to a DEA registration there.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in the District of Columbia. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. *See Philip E. Kirk, M.D.*, 48 FR 32,887 (1983), *aff'd sub nom Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); *See also NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines & Smelting Co.*, 44 F.2d 432 (9th Cir. 1971).

According, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificates of Registration BB3603114, previously issued to Mark L. Beck, D.D.S., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective August 27, 1999.

Dated: June 23, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–19181 Filed 7–27–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; reinstatement, with change, of a previously approved collection for which approval has expired; National Instant Criminal Background Check System (NICS) Federal Firearms Licensee Enrollment Form.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the procedures of the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** on January 27, 1999 at 64 FR 4125, allowing for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until August 27, 1999.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Room 10235, Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate to the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* National Instant Criminal Background Check System (NICS) Federal Firearms Licensee Enrollment Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit (Federally licensed firearms dealers, manufacturers, or importers). Secondary: None. Brief Abstract: The Brady Handgun Violence Prevention Act of 1994, required the Attorney General to establish a national instant criminal background check system that any Federal Firearm Licensee may contract, by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm to a prospective purchaser would violate federal or state law. Information pertaining licensees who may contact the NICS is collected to manage and control access to the NICS, to ensure appropriate resources are available to support the NICS, and also to ensure the privacy and security of NICS information. Additionally, the FFLS are requested to sign a legal document in order to ensure the privacy and security of NICS information.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 6,000 Federal Firearms Licensees at 18 minutes per respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,800 annual burden hours.

Public comment on this proposed information collection is strongly encouraged. If additional information is required, contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1001 G Street NW, Suite 850, Washington, DC 20530.

Dated: July 22, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–19197 Filed 7–27–99; 8:45 am]

BILLING CODE 4410–02–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–100]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13: 44 U.S.C. 3506(c)(2)(A)). This information is used to determine whether the requested license should be granted.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before September 27, 1999.

ADDRESSES: All comments should be addressed to Ms. Michele Hull, National Aeronautics and Space Administration, Washington, DC 20546. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports

Title: Required Central Contractor Registration.

OMB Number: 2700–

Type of review: New.

Need and Uses: NASA is requiring it's vendors to register in DoD's Central contractor Registration Database. This requirement will be applicable for all awards excluding purchases with a Government purchase card.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Number of Respondents: 10,120.

Responses Per Respondent: 1.

Annual Responses: 10,120.

Hours Per Request: ½ hr.

Annual Burden Hours: 5,060.

Frequency of Report: Annually.

David B. Nelson,

Acting Chief Information Officer, Office of the Administrator.

[FR Doc. 99–19182 Filed 7–27–99; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review and approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 592, "NRC's Handling of Your Concerns".

2. *Current OMB approval number:* None.

3. *How often the collection is required:* One time, as allegations are closed.

4. *Who is required or asked to report:* Individuals who have submitted an allegation to the NRC.

5. *The number of annual respondents:* 240.

6. *The number of hours needed annually to complete the requirement or request:* 240 hours (one hour per response).

7. *Abstract:* NRC Form 592 is used to conduct a voluntary survey of allegers who bring health and safety concerns to the NRC. The survey is used to determine the level of satisfaction or dissatisfaction with NRC's handling of their allegation. The survey will be sent to allegers in various categories (allegers whose allegations were resolved but not substantiated, resolved and substantiated, or resolved and partially substantiated) whose allegations were filed in each of the four NRC regional offices and the two major program offices, the Office of Nuclear Reactor Regulation and the Office of Nuclear Material Safety and Safeguards. The results of this survey will be used by NRC management to gauge the effectiveness of its existing program and to develop programmatic revisions, as needed, to improve its handling of allegations.

Submit, by September 27, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 22nd day of July 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–19255 Filed 7–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corp.; Oconee Nuclear Station, Units 1, 2, and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is

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considering issuance of an exemption from certain requirements of Title 10 of the Code of Federal Regulations (10 CFR) part 50, § 50.60(a) to the Duke Energy Corporation (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Seneca, Oconee County, South Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from certain provisions of 10 CFR part 50, § 50.60(a) and 10 CFR part 50, appendix G. The NRC has established requirements in 10 CFR part 50 to protect the integrity of the reactor coolant pressure boundary (RCPB) in nuclear power plants. As part of these requirements, 10 CFR part 50, appendix G requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR part 50, appendix G states that "[t]he appropriate requirements * * * on pressure-temperature limits and minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Code, Section XI, Appendix G limits.

Pressurized water reactor licensees have installed cold overpressure mitigation systems/low temperature overpressure protection (LTOP) systems in order to protect the RCPB from being operated outside of the boundaries established by the P–T limit curves and to provide pressure relief on the RCPB during low temperature overpressurization events. The licensee is required by the Oconee Units 1, 2, and 3 Technical Specifications (TS) to update and submit the changes to its LTOP setpoints whenever the licensee is requesting approval for amendments to the P–T limit curves in the Oconee Unit 1, 2, and 3 TS.

Therefore, in order to address provisions of amendments to the TS P–T limits and LTOP curves, the licensee requested in its submittal dated May 11, 1999, that the staff exempt Oconee Units 1, 2, and 3 from application of specific requirements of 10 CFR part 50, § 50.60(a) and 10 CFR part 50, appendix G, and substitute use of three ASME Code Cases as follows:

1. N–514 as an alternate methodology for determining the low temperature overpressure protection system enable temperature,

2. N–588 for determining the reactor vessel P–T limits derived from postulating a circumferentially-oriented reference flaw in a circumferential weld, and

3. N–626 as an alternate reference fracture toughness for reactor vessel materials for use in determining the P–T limits. (As a result of recent ASME code committee action, the designation for Code Case N–626 was changed to N–640. Therefore, Code Case N–640 will be discussed below rather than Code Case N–626, the designation referenced in the submittal.)

The proposed action is in accordance with the licensee's application for exemption contained in a submittal dated May 11, 1999, and is needed to support the TS amendments that are contained in the same submittal and are being processed separately. The proposed amendments will revise the P–T limits of TS 3.4.3 for Oconee Units 1, 2, and 3 related to the heatup, cooldown, and inservice test limitations for the Reactor Coolant System of each unit to a maximum of 33 Effective Full Power Years (EFPY). It will also revise TS 3.4.12, Low Temperature Overpressure Protection System, to reflect the revised P–T limits of the reactor vessels.

The Need for the Proposed Action

During staff review of this submittal, the staff determined that granting of an exemption for the use of Code Case N–514 was not necessary.

ASME Code Case N–588 and Code Case N–626 (which is now Code Case N–640) are needed to revise the method used to determine the RCS P–T limits, since continued use of the present curves unnecessarily restricts the P–T operating window. Application of the code cases will, therefore, relax the LTOP operating window and reduce potential challenges to the reactor coolant system power operated relief valves. In addition, the present restrictions require that, under certain low temperature conditions, only one reactor coolant pump in a reactor coolant loop may be operated. The licensee has found from experience that the effect of this restriction is degradation of the reactor coolant pump impellers from cavitation sustained when either one pump or one pump in each loop is operating. Application of the Code Cases will allow operation of two reactor coolant pumps in a single loop, which will eliminate this condition.

In the associated exemption, the staff has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served by the implementation of these Code Cases.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the exemption described above would provide an adequate margin of safety against brittle failure of the Oconee Units 1, 2, and 3 reactor vessels.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological environmental impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, there are no significant nonradiological impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Oconee Nuclear Station, Units 1, 2, and 3, dated March 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on July 15, 1999, the staff consulted with the South Carolina State official, Mr. Virgil Autry of the Division of Radioactive Waste Management, Bureau of Land and Waste Management, Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 11, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Street, Walhalla, South Carolina.

Dated at Rockville, MD, this 23rd day of July 1999.

For the Nuclear Regulatory Commission.

Richard L. Emch, Jr.,

Section Chief, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–19256 Filed 7–27–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Thursday, July 29, 1999.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Thursday, July 29

2:00 p.m.
Briefing on Implementation of the License Termination Rule and Program on Complex Decommissioning Cases (Public Meeting)
(Contact: Larry Camper, 301–415–7231)

4:00 p.m.
Affirmation Session (Public Meeting)
*(PLEASE NOTE: This item will be affirmed immediately following the conclusion of the preceding meeting.)
a: Final Rule: Certification Renewal and Amendment Processes, 10 CFR Part 76

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1969).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: July 22, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–19361 Filed 7–26–99; 10:30 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 26, August 2, 9, and 16, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of July 26

Thursday, July 29

2:00 p.m.
Briefing on Implementation of the License Termination Rule and Program on Complex Decommissioning Cases (Public Meeting)
Contact: Larry Camper, 301–415–7231)

4:00 p.m.
Affirmation Session (Public Meeting)
* PLEASE NOTE: This item will be affirmed immediately following the conclusion of the preceding meeting.)
a: Final Rule: Certification Renewal and Amendment Processes, 10 CFR Part 76

Friday, July 30

9:30 a.m.
Briefing on Performance Assessment Progress in LLW, HLW, and SDMP (Public Meeting) (Contact: Norman Eisenberg, 301–415–7285)

Week of August 2—Tentative

Thursday, August 5

10:00 a.m.
Briefing on EEO Program (Public Meeting)
(Contact: Irene Little, 301–415–7380)

3:30 p.m.
Affirmation Session (Public Meeting) (If needed)

Week of August 9—Tentative

Thursday, August 12

11:30 a.m.
Affirmation Session (Public Meeting) (If needed)

Week of August 16—Tentative

There are no meetings scheduled for the Week of August 16.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/sm:/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to received it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: July 23, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–19362 Filed 7–26–99; 10:31 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any

* The Schedule for Commission Meetings is Subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

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amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 3, 1999, through July 16, 1999. The last biweekly notice was published on July 14, 1999 (64 FR 38022).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 27, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which much include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, Docket No. 50–261, H.B. Robinson Stream Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: March 26, 1999.

Description of amendment request: The proposed change provides a Required Action and Completion Time for the Ultimate Heat Sink (UHS) in the event that service water temperature exceeds the current 95°F surveillance limit. It involves an allowance to continue operation for a period of 8 hours with the UHS at a temperature greater than the temperature limits provided in Technical Specification (TS) Limiting Condition of Operation 3.7.8, "Ultimate Heat Sink (UHS)" and provides an upper UHS temperature limit beyond which plant shutdown is required.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Carolina Power & Light (CP&L) Company has evaluated the proposed Technical Specification change and has concluded that it does not involve a significant hazards consideration. The conclusion is in accordance with the criteria set forth in 10 CFR 50.92. The bases for the conclusion that the proposed change does not involve a significant hazards consideration are discussed below.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components. The proposed change will allow plant operation for a short period of time when the service water temperature exceeds 95°F. If the service water temperature is restored within the allowed time, a plant shutdown is not required. This minimizes plant transients, which reduces the probability of a reactor trip and the resulting challenges to mitigating systems. A service water temperature of up to 99°F does not increase the failure rate of systems, structures or components because the systems, structures, and components are designed for higher temperatures than at which they operate.

The Service Water (SW) System temperature is not assumed to be an initiating condition of any accident evaluated in the safety analysis report. Therefore, the allowance of a limited time for service water temperature to be in excess of 95°F does not involve an increase in the probability of an accident previously evaluated in the safety analysis report (SAR). The SW System supports operability of safety related systems used to mitigate the consequences of an accident. The service water temperature is not expected to increase significantly beyond 95°F due to the limited time allowed by the proposed change in conjunction with the generally slow rate of temperature increase experienced from thermal changes in Lake Robinson. The capability of components to perform their safety related function is not affected up to a service water temperature of 99°F with the exception of the Containment Air Recirculation Fan Coolers. The heat removal capacity of the Containment Air Recirculation Fan Coolers is not expected to be significantly reduced by a small increase in service water temperature. If heat removal is not significantly reduced, containment pressure and leakage will not be significantly increased, and the doses from containment leakage will not be significantly increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the SAR.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components. A service water temperature of up to 99°F does not introduce new failure mechanisms of systems, structures or components not already considered in the SAR because the systems, structures, and components are designed for higher temperatures than at which they operate. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will allow a small increase in service water temperature above the design basis limit for the SW System and delay by 8 hours the requirement to shutdown the plant when the service water system design limit is exceeded. There are design margins associated with systems, structures and components that are cooled by the service water system that are affected. The capability of components to perform their safety related function is not affected up to a service water temperature 99°F with the exception of the Containment Air Recirculation Fan Coolers. The Containment Air Recirculation Fan Coolers remove heat from containment to mitigate containment pressure and temperature following a MSLB (main streamline break) inside containment or a Large Break LOCA (loss-of-coolant accident) inside containment. An increase in service water temperature in excess of the design limit due to hot weather conditions is expected to be small due to the limited time allowed by the proposed change in conjunction with the generally slow rate of temperature increase experienced from thermal changes in Lake Robinson. Therefore, the effect on the Containment Air Recirculation Fan Coolers' heat removal capacity and the resulting containment pressure and temperature is expected to be small. Therefore, there is no significant reduction in margin of safety associated with this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Sheri R. Peterson.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: June 29, 1999.

Description of amendment request: This amendment request proposes to increase the notch testing surveillance interval of partially withdrawn control rods in Technical Specification Surveillance Requirement 3/4.3.C.

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"Reactivity Control—Control Rod Operability," from an interval of once in 7 days to once in 31 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed change extends the Surveillance Frequency for partially withdrawn control rods. The change does not affect equipment design or operation. The affected Surveillance is not considered to be an accident initiator. Therefore, this change will not significantly increase the probability of an accident previously evaluated. Furthermore, extension of the Surveillance Frequency will not impact the ability to perform its function following an accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The extension of the Surveillance Frequency does not involve physical modification to the plant and does not introduce a new mode of operation.

Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The change in the Surveillance Frequency only provides a minor reduction in the probability of finding an inoperable control rod. Most of the control rods will continue to be tested on the current Frequency. However, if one stuck rod is identified, all rods must be checked promptly.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposed to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: April 1, 1999.

Description of amendment request: The proposed license amendment would modify the Technical Specifications (TSs) to incorporate certain improvements from the Revised Standard Technical Specifications for B&W Plants (NUREG–1430) that would add limiting conditions for operation action statements, make surveillance requirements more consistent with the revised standard TSs, correct conflicts or inconsistencies from earlier TS revisions, correct administrative errors, and revise the spent fuel pool sampling from monthly and after adding chemicals to weekly.

The staff's proposed no significant hazards determination below does not address the licensee's proposed changes with respect to a high pressure injection system operation in a low temperature overpressure environment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The proposed amendment makes administrative corrections, adds conditions to the limiting conditions of operation [LCOs], revises selected time clocks and surveillance requirements consistent with NUREG 1430, and adds a time clock to a unique LCO. These changes have no effect on the plant design or operation. The reliability of systems and components relied upon to prevent or mitigate the consequences of accidents previously evaluated is not degraded by proposed changes. Therefore, operation in accordance with the proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated, because no new accident initiators would be created.

3. Operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of safety because no changes to plant operating limits or limiting safety system settings are proposed.

The NRC staff has reviewed the licensee's analysis and based on the review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 22037.

NRC Section Chief: S. Singh Bajwa.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 4, 1999.

Description of amendment request: This application for amendment to the Indian Point 3 Technical Specifications (TSS) proposes to revise the definition of operating personnel in section 6.2.2.g to make it consistent with the Standard Technical Specifications and to remove a footnote.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licenses has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No, these TS changes are administrative in nature. Removing the statement in section 6.2.2.g that defines on shift operating personnel and adding a new paragraph consistent with the Standard Technical Specifications is an administrative line item change that follows NRC guidance. The current statement is not needed because TS Table 6.2.1 defines the minimum operations shift crew composition and commitments to Table B–1 of NUREG–0654 defines the minimum staffing requirements for each function area.

The change to TS 6.2.2.i is administrative in nature. The statement that reads, "For the period ending three years after restart from the 1993/1994 Performance Improvement Outage, the Operations Manager will be permitted to have held a SRO [senior reactor operator] license at a Pressurized Water Reactor other than Indian Point Unit 3", was a relaxation of the requirements of 6.2.2i.

Therefore, these changes will not increase the probability or consequences of an accident previously evaluated, because they are administrative and affect neither accident initiation or mitigation.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No, these TS changes are administrative in nature. Removing the statement in section 6.2.2.g that defines on shift operating personnel and adding a new paragraph consistent with the Standard Technical Specifications is an administrative line item change that follows NRC guidance. The current statement is not needed because TS Table 6.2–1 defines the minimum operations shift crew composition and commitments to Table B–1 of NUREG–0654 defines the minimum staffing requirements for each function area.

The change to TS 6.2.2.i is administrative in nature. The statement that reads, "For the period ending three years after restart from the 1993/1994 Performance Improvement Outage, the Operations Manager will be permitted to have held a SRO license at a Pressurized Water Reactor other than Indian Point Unit 3", was a relaxation of the requirements of 6.2.2.i.

These changes are administrative, and do not affect how the plant is operated. They also follow the guidance of the Standard Technical Specifications. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No, these TS change is administrative in nature. Removing the statement in section 6.2.2.g that defines on shift operating personnel and adding a new paragraph consistent with the Standard Technical Specification is an administrative line item change that follows NRC guidance. The current statement is not needed because TS Table 6.2–1 defines the minimum operations shift new composition and commitments to Table B–1 of NUREG–0654 defines the minimum staffing requirements for each function area.

The change to TS 6.2.2.i is administrative in nature. The statement that reads, "For the period ending three years after restart from the 1993/1994 Performance Improvement Outage, the Operations Manager will be permitted to have held a SRO license at a Pressurized Water Reactor other than Indian Point Unit 3", was a relaxation of the requirements of 6.2.2.i.

These changes are administrative, and do not affect how the plant is operated. They also follow the guidance of the Standard Technical Specifications. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposed to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for Licensee; Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: S. Singh Bajwa.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Description of amendment requests: The licensee proposed changes to Technical Specification (TS) 3.3.5 "ESFAS Instrumentation" to include restrictions on operation with a channel of the refueling water storage tank level-low input to the recirculation actuation signal (RAS) and the steam generator pressure-low input or steam generator pressure difference-high input to the emergency feedwater actuation signal (EFAS) in the tripped condition. The current TS allows plant operation in this condition indefinitely. The licensee has determined that unacceptable consequences could result from a spurious trip of RAS or EFAS due to operation with a channel in trip condition. The licensee states that the proposed TS changes would improve plant operational safety and, thereby, reduce plant risk.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change provides limits for operating with a channel of the Refueling Water Storage Tank (RWST) Level-Low input in the Recirculation Actuation Signal (RAS) or the Steam Generator (SG) Pressure-Low or SG Pressure Difference (SGPD)-High input to the Emergency Feedwater Actuation Signal (EFAS) in trip.

As a result of this change, the potential for an inadvertent actuation of either of these two signals is reduced. The proposed Completion Times are based on Probabilistic Risk Assessment (PRA) considerations, and are conservative compared to the current unlimited Completion Times.

The consequences of an inadvertent actuation of EFAS or RAS are unaffected by this change.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed change provides additional time limits on operation with a channel of the RWST Level-Low input to RAS or the SG Pressure-Lower SGPD-High inputs to EFAS in trip. Operation in this condition is currently allowed indefinitely. The proposed restrictions reduce the possibility of an inadvertent actuation of RAS or EFAS, and do not allow operation in any configuration not currently allowed by the Technical Specifications (TSs).

Therefore, this proposed change will not create the possibility of a new or different kind of accident from any accident that has been previously evaluated.

(3) Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change provides additional time limits on operation with a channel of the RWST Level-Low input to RAS or the SG Pressure-Low or SGPD-High inputs to RAS or EFAS in trip. The proposed limits are conservative compared to the current requirements, where the time limit is unrestricted. The overall impact of the change will be [an] increase in the margin of safety.

Therefore, there will be no significant reduction in a margin of safety as a result of this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendments: June 7, 1999 (TS 99–09).

Brief description of amendments: The proposed amendment would change the Sequoyah Unit 2 Technical Specification (TS) requirements by adding a new temporary Figure 3.4–1a and temporary footnotes to TS 3.4.8, "Specific Activity," Table 4.4–4, and to corresponding Bases in order to raise the reactor coolant specific activity limit to 1.0 microcurie per milligram Dose Equivalent iodine-131 for the remainder of Unit 2 Cycle 10 operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority, the licensee, has provided its analysis of the issue of no significant hazards

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consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change increases the allowed reactor coolant specific activity for iodine-131 and decreases the leakage quantity that would be postulated to occur at the faulted steam generator (SG) during a main steam line break (MSLB) accident. The described changes will return these parameters to the same values under which the plant operated prior to the implementation of TS Change 98–02 submitted on June 26, 1998. The June 26, 1998 submittal was a voluntary change that allowed for a greater leakage quantity during an MSLB accident as described in Generic Letter 95–05. Returning these parameters to their previous values does not affect or increase the probability of any accidents previously evaluated.

An increase in the consequences of an accident would not occur because the proportional increase in reactor coolant specific activity, while proportionally decreasing the allowable primary-to-secondary leakage during a postulated MSLB accident to values under which the plant was previously operated, was evaluated in [Topical Report No.] WCAP–13990 during the establishment of the original primary-to-secondary leak limits. No changes to the physical plant, to the plant operation, or maintenance practices have been implemented that would invalidate the limits defined in WCAP–13990.

The control room dose, the low population zone dose, and the dose at the exclusion area boundary remain bounded by the acceptance criteria of the Updated Final Safety Analysis Report. Therefore, the proposed TS change does not result in an increase in the consequences of an accident previously analyzed.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change does not alter the configuration of the plant. The changes do not directly affect plant operation. The change will not result in the installation of any new equipment or systems or the modification of any existing equipment or systems. No new operating procedures, conditions, or modes will be created by this proposed change. SG tube structural integrity, as defined in draft Regulatory Guide 1.121, remains unchanged. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

Raising the allowed reactor coolant specific activity, while decreasing the allowed primary-to-secondary leakage during a postulated MSLB accident, keeps the amount of activity released to the environment unchanged. Design basis and offsite dose calculation assumptions remain satisfied. Therefore, the proposed change does not result in a significant reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Sheri R. Peterson.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Somervell County, Texas

Date of amendment request: May 24, 1999, as supplemented by letter dated July 9, 1999.

Brief description of amendments: The proposed license amendments would remove several cycle-specific parameter limits from the Technical Specifications (TSs). These parameter limits would be added to the Core Operating Limits Report (COLR). Appropriate references to the COLR would be inserted in the affected TSs. In addition, the core safety limit curves would be replaced with safety limits more directly applicable to the fuel and fuel cladding fission product barriers. The affected Technical Specifications are: (1) TS 2.0, "Safety Limits (SLs)," (2) TS 3.3.1, "Reactor Trip System Instrumentation Setpoints," (3) TS 3.4.1, "RCS pressure temperature and flow from Nucleate Boiling (DNB) Limits," and (4) TS 5.6.5, "Core Operating Limits Report." The May 24, 1999, application was previously noticed and published in the **Federal Register** on June 30, 1999 (64 FR 53213).

The July 9, 1999, supplement provided proposed additional information that would: (a) Add the Reactor Core Safety Limit figures to the COLR, (b) clarify that the overpower N–16 setpoint remains in the TSs, and (c) reflect NRC approval of the topical reports used to determine the core operating limits presented in the COLR. The supplemental information is being noticed herein to address the issue of no significant hazards consideration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes remove cycle-specific parameter limits from the Technical Specifications, add them to the list of limits contained in the Core Operating Limits Report (COLR), and revise the Administrative Controls section of the Technical Specifications. The proposed changes also insert the original minimum RCS flow limits into the Technical Specifications. The changes do not, by themselves, alter any of the parameter limits. The changes are administrative in nature and have no adverse effect on the probability of an accident or on the consequences of an accident previously evaluated. The removal of parameter limits from the Technical Specifications does not eliminate the requirement to comply with the parameter limits.

The parameter limits in the COLR may be revised without prior NRC approval. However, [Technical] Specification 5.6.5c continues to ensure that the parameter limits are developed using NRC-approved methodologies and that applicable limits of the safety analyses are met. While future changes to the COLR parameter limits could result in event consequences which are either slightly less or slightly more severe than the consequences for the same event using the present parameter limits, the differences would not be significant and would be bounded by the requirement of specification 5.6.5c to meet the applicable limits of the safety analysis.

Based on the above, addition of the minimum RCS flow limit into the Technical Specifications, removal of the parameter limits the Technical Specifications and the addition of the described limits in the COLR, thus allowing revision of the parameter limits without prior NRC approval, has no significant effect on the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes add the minimum RCS flow limit into the Technical Specifications, remove certain parameter limits from the Technical Specifications and add these limits to the list of limits in the COLR, thus removing the requirements for prior NRC approval of revisions to those parameters. The changes do not add new hardware or change plant operations and therefore cannot initiate an event nor cause an analyzed event to progress differently. Thus, the possibility of a new or different kind of accident is not created.

3. Do the proposed changes involved a significant reduction in a margin of safety?

The margin of safety is the difference between the acceptance criteria and the associated failure values. The proposed changes do not affect the failure values for any parameter. Though the accident analyses, all applicable limits (i.e., relevant event acceptance criteria as described in the NRC-approved analysis methodologies) are shown to be satisfied; therefore, there is no impact on event acceptance criteria. Because neither the failure values nor the acceptance criteria are affected, the proposed change has no effect on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont.

Date of amendment request: May 26, 1999.

Description of amendment request: The licensee proposed revising the suppression pool water temperature surveillance requirements to specify monitoring the temperature every 5 minutes when performing testing that adds to the suppression pool. In addition, the licensee proposed revising the requirement to check the suppression chamber water level and temperature from "once per shift" to "daily" and specify that it is the average temperature that is checked.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided the NCR its analysis of the issue of no significant hazard consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Vermont Yankee has determined that the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change revises the surveillance frequency for "once per shift" suppression pool water level and temperature monitoring. Additionally, the surveillance requirement for suppression pool water temperature monitoring when there are indications of relief valve operation that add heat to the suppression pool is also revised. The proposed change will revise the surveillance wording such that routine suppression pool monitoring will be "daily" and an operator will verify pool temperature every 5 minutes only during testing that adds heat to the suppression pool. Also clarified, is that the parameter being monitored is "average" suppression pool water temperature.

The consequence of an accident previously evaluated is not significantly increased since the initial suppression pool water temperature limit, which is an input valve for accident analyses, is not changed.

The proposed change affects only surveillance requirements and does not require any hardware or equipment modification. Equipment operation, plant limiting conditions for operation, and accident analyses will be unchanged. Therefore, the proposed change does not involve a significant increase in the probability or consequences of accidents.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Vermont Yankee has determined that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change involves revision of Technical Specification surveillance requirements. There are no hardware modifications or equipment changes involved and operation of plant equipment will be unchanged. Thus, no new or different accident precursors will be created by this change.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not involve a significant reduction in a margin or safety. VY has determined that the proposed change does not involve a significant reduction in a margin of safety. The proposed change involves revision of Technical Specification surveillance requirements. There are no hardware modifications or equipment changes involved and plant operation and accident analyses are unchanged. The initial suppression pool water temperature limit, which is an input value for accident analyses, is not changed. Therefore, the proposed change will not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: June 29, 1999.

Description of amendment request: The licensee proposed revising the leak rate requirements of Technical Specifications 3.7.A.4 and 4.7.A.4 for the main steam line isolation valves. Specifically, a total leakage rate allowable value for the sum of the four main steam lines is proposed that is equal to four times the current individual main steam line isolation valve leakage rate allowable value. The individual main steam line isolation valve leakage rate allowable value is proposed to be one half of the total leakage rate allowable value.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that contribute to the initiation of any accidents previously evaluated. Thus, the proposed change cannot increase the probability of any accident previously evaluated.

The proposed change does not affect the leak-tight integrity of the containment structure that is designed to mitigate the consequences of a loss-of-coolant accident (LOCA). The primary containment must maintain functional integrity during and following the peak transient pressures and temperatures that result from any LOCA, thereby limiting fission product leakage following the accident. Because the proposed change does not alter any of the fission product lead rate assumptions used in the design basis LOCA analysis, the analyzed consequences of the Loss of Coolant Accident are not changed.

The control room radiological habitability analysis uses as an input assumption main steam line leakage rate at four times the current Technical Specifications limit. An allowable value for total main steam line

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leakage rate equivalent to four times the current Technical Specifications limit for a single main steam line isolation valve is being added by this change. Thus, there is no effect on the main control room radiological habitability calculation.

Based on the above VY [Vermont Yankee] has concluded that the proposed change will not result in a significant increase in the probability or consequences of any accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any parameters or conditions that could contribute to the initiation of any accident The methods of performing the tests are not changed. No new accident modes are created. No safety-related equipment or safety functions are altered as a result of this change. Restating the acceptance criteria while maintaining the assumptions of all affected calculations has no influence over nor does it contribute to, the possibility of a new or different kind of accident or malfunction from those previously evaluated.

Based on the above VY has concluded that the proposed change will not create the possibility of a new or different kind of accident from those previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Restating the acceptance criteria for the main steam line isolation valve leakage rate while maintaining the assumptions of all affected calculations does not impact the margin of safety. The $0.6L_a$ maximum and minimum pathway leakage rate acceptance criteria provide the previously analyzed margin of safety. The testing method for determining the leak-tightness of the main steam line isolation valves has not changed. The leak rate test results are presently added to the Types B and C tests summation. The $0.6L_a$ maximum and minimum pathway leak rate acceptance criteria and the proposed Technical Specifications requirements provide assurance that component degradation does not impact the assumptions used to determine, nor provide a reduction in, and the analyzed margin of safety.

Based on the above VY has concluded that the proposed change will not cause a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trobridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont.

Date of amendment request: July 12, 1999.

Description of amendment request: **The amendment would revise the value for the Safety Limit Minimum Critical Power Ratio (SLMCPR) and delete the wording specifying these as Cycle 20 values.**

Basis for proposed no significant hazards consideration determination: As required by to CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The basis of the SLMCPR is to ensure no mechanistic fuel damages is calculated to occur if the limit is not violated. The new SLMCPR values preserve the existing margin to transition boiling and probability of fuel damage is not increased. The derivation of the revised SLMCPR for Vermont Yankee for incorporation into the Technical Specifications, and its use to determine plant and cycle-specific thermal limits, have been performed using NRC approved methods. These plant-specific calculations are performing each operating cycle and if necessary, will require future changes to these values based upon revised core designs. The revised SLMCPR values do not change the method of operating the plant and have no effect on the probability of an accident initiating event or transient.

Based on the above, Vermont Yankee has concluded that the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes result only from a specific analysis for the Vermont Yankee core reload design and deletion of a cycle specific reference for the values. These changes do not involve any new or different method for operating the facility and do not involve any facility modifications. No new initiating events or transients result from these changes.

Based on the above, Vermont Yankee has concluded that the proposed change will not create the possibility of a new or different kind of accident from those previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The new SLMCPR is calculated using NRC approved methods with plant and cycle specific parameters for the current core design. The SLMCPR value remains high enough to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. The operating MCPR limit is set appropriately above the safety limit value to ensure margin when the cycle specific transients are evaluated.

As a result, Vermont Yankee has determined that the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: June 22, 1999 (TSCR 210).

Description of amendment request: **The proposed amendments reflect changes to the Point Beach Nuclear Plant (PBNP) Units 1 and 2 Technical Specifications (TSs) in order to incorporate the Westinghouse 422V+ fuel assemblies into the PBNP reactor cores. Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:**

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The accidents which are potentially affected by the parameters and assumptions associated with this amendment have been evaluated/analyzed and all design standards and applicable safety criteria are met. The consideration of these changes does not result in a situation where the design and construction standards that were applicable prior to the change are altered. Therefore, the changed occurring with this amendment will not result in any additional challenges to plant equipment that could increase the probability of any previously evaluated accident.

The proposed changes associated with this amendment do not affect plant systems such that their function in the control of

radiological consequences is adversely affected. The safety evaluation (included in Attachment 2 of this submittal) documents that the design standards and applicable safety criteria limits continue to be met and therefore fission barrier integrity is not challenged. The proposed changes have been shown not to adversely affect the response of the plant to postulated accident scenarios. Existing system and component redundancy and operation is not being changed by these proposed changes. These changes will therefore not affect the mitigation of the radiological consequences of any accident described in the FSAR [final safety analysis report].

In some cases, the results of the revised radiological analyses are greater than those of the current FSAR analysis. In other cases, the new and old analyses are not directly comparable because the radiological bases for the new analyses have been upgraded to meet more current NRC requirements. However, in all cases, the calculated doses are well within the regulatory acceptance criteria and do not constitute an unacceptable significant increase in consequences. Since the actual plant configuration, performance of systems, and initiating event mechanisms are not being changed as a result of this evaluation, the probability or consequences of an accident previously evaluated is not significantly increased.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility for a new or different type of accident from any accident previously evaluated is not created as a result of this amendment. The changes described in the amendment are supported by the analyses and evaluations described in Attachment 2 (safety evaluation). The evaluation of the effects of the proposed changes indicate that all design standards and applicable safety criteria limits are met. These changes therefore do not cause the initiation of any new or different accident nor create any new failure mechanisms.

All equipment important to safety will continue to operate as designed. Component integrity is not challenged. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in more adverse conditions or result in any increase in the challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in the margin of safety. Existing component redundancy is not being changed by these proposed changes. There are no new or significant changes to the initial conditions contributing to accident severity or consequences. The margin of safety is maintained by assuring compliance with acceptance limits reviewed and approved by the NRC. Since all of the appropriate acceptance criteria for the various analyses and evaluations have been met as discussed in Attachment 2 [Safety Evaluation) of this submittal and provided for information in Attachment 4 (PBNP FSAR Chapter 14 "Safety Analysis" changes required as a result of the analyses performed for the upgraded fuel) of this submittal, by definition there has not been a significant reduction of any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: July 1, 1999 (TSCR 214).

Description of amendment request: **The proposed amendments reflect a change to Point Beach Nuclear Plant (PBNP) Units 1 and 2 Technical Specification (TS) Section 15.5.4. The amendment request proposes to remove one of the two separate methods for verifying the acceptability of reactor fuel for placement and storage in the spent fuel pool.**

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative only in that they remove the ability to use the reference K_∞ method for determining the acceptability of fuel for placement and storage in the spent fuel pool and new fuel storage vault at the Point Beach Nuclear Plant. Use of the remaining approved method and requirements ensure that fuel placed or stored in the spent fuel pool and new fuel storage vault continues to be in accordance with their respective design and licensing basis. That is, fuel in the storage array will continue to meet the design basis requirement that K_{eff} remain less than 0.95. No modifications are being made to the spent fuel pool and its cooling system or to the new or spent fuel storage racks. Since the design basis of the fuel and storage racks continue to be met, operation in accordance with the proposed amendments cannot create a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

No physical modifications are being made to the spent fuel pool and cooling system or to the new or spent fuel storage racks. All design basis requirements for ensuring the safe storage of fuel in the spent fuel pool continue to be met. Therefore, operation in accordance with the proposed amendments cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not create a significant reduction in a margin of safety.

Technical Specification requirements for placing and storing fuel in the spent fuel pool continue to ensure that the design basis requirement, K_{eff} for the fuel array in the spent fuel pool and new fuel storage remains less than 0.95, is maintained. The existing margin of safety established by this design requirement is maintained. Therefore, operation in accordance with the proposed amendments cannot create a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Attorney for license: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

Previously Published Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

Texas Utilities Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: May 27, 1999, as supplemented by letter dated May 28, 1999

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Description of amendment request: The proposed amendments would add a footnote to Technical Specification (TS) 4.8.2.1e, "D.C. Sources-Operating," which would, on a one-time basis for Unit 1 Battery BT1ED2, allow the licensee to substitute a performance discharge test "* * *" in lieu of the battery service test required by Specification 4.8.2.1d, twice within a 60 month interval."

Date of publication of individual notice in **Federal Register:** June 14, 1999. (64 FR 31881).

Expiration date of individual notice: July 14, 1999.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: December 21, 1998, as supplemented on January 28, February 18, April 2, April 15, and April 16, 1999.

Brief description of amendment: This amendment makes changes to Facility Operating License No. DPR–35, the Technical Specifications, and Materials License No. 20–07626–04 to reflect the transfer of the licenses from Boston Edison Company to Entergy Nuclear Generation Company.

Date of issuance: July 13, 1999.

Effective date; As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 181.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** January 26, 1999 (64 FR 3984). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: March 3, 1999.

Brief description of amendment: The amendment modified Technical Specification Table 4.6–3, "Reactor Vessel Material Surveillance Program Withdrawal Schedule." The amendment changed the withdrawal schedule for the upcoming reactor vessel surveillance capsule pull from approximately 15 effective full power years to approximately 18 effective full power years.

Date of issuance: July 15, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 182.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 19, 1999 (64 FR 27316). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St Lucie County, Florida

Date of application for amendments: December 1, 1997, supplemented August 26, 1998.

Brief description of amendments: Revised the Technical Specifications (TS), Appendix B, Environmental Protection Plan (Non-Radiological), to implement the terms and conditions of the incidental Take Statement included in the Biological Opinion issued by the National Marine Fisheries Service, regarding endangered sea turtles.

Date of Issuance: July 2, 1999.

Effective Date: July 2, 1999.

Amendment Nos.: 162 and 103.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the TS.

Date of initial notice in **Federal Register:** December 31, 1997 (62 FR 68305). The supplemental letter dated August 26, 1998, provided clarifying information that did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 2, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New Location County, Connecticut

Date of application for amendment: June 5, 1998, as supplemented January 13, 1999.

Brief description of amendment: The proposed revision to the Millstone Unit 3 licensing basis would address a recent steam generator tube rupture (SGTR) analysis that was determined to be an unreviewed safety question. The SGTR analyses described in the Final Safety Analysis Report (FSAR) include an offside dose analysis and a margin to overfill analysis. Both of the analyses have been updated. The offsite dose analysis was updated to reflect a larger capacity for the steam generator atmospheric dump valve (ADV) and a decrease in the operator response time to close the ADV block valve. The margin to overfill analysis was updated to reflect a new single failure.

Date of issuance: July 2, 1999.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 172.

Facility Operating License Nos. DPR–49: Amendments authorizes revisions to the FSAR,

Date of initial notice in **Federal Register:** July 1, 1998 (63 FR 35992).

The January 13, 1999, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 2, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Northeast Nuclear Energy Company, et al., Docket No. 50–335, Millstone Nuclear Power Station, Unit No. 2, New Location County, Connecticut

Date of application for amendment: March 19, 1999.

Brief description of amendment: The amendment relocated Technical Specifications Sections 3.3.3.2, "Instrumentation, Incore Detectors," 3.3.3.3, "Instrumentation, Seismic Instrumentation," and 3.3.3.4, "Instrumentation, Meteorological Instrumentation," to the Millstone, Unit No. 2, Technical Requirements Manual. Index page V and TS Bases have been revised to reflect the above relocations.

Dated of issuance: July 13, 1999.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 237.

Facility Operating License Nos. DPR–65: Amendment Revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 21, 1998 (64 FR 19560).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

PP&L, Inc., Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendment: November 26, 1999, which was superseded by letter dated June 1, 1998, as supplemented by letters dated October 30, 1998, March 29, 1999, April 20, 1999, and May 28, 1999.

Brief description of amendment: These amendment would replace the current ultimate heat sink average water temperature limit for all combination of plant operations.

Dated of issuance: July 6, 1999.

Effective date: Both units, effective as of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 182 and 156.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 20, 1998 (63 FR 27764). The October 30, 1998, March 29, 1999, April 20, 1999, and May 28, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 6, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilker-Barre, PA 18701.

PP&L, Inc., Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendment: November 23, 1999.

Brief description of amendments: The amendments modified the Susquehanna Steam Electric Station, Units 1 and 2, Technical Specifications limiting condition for operation, 3.8.3, and surveillance requirements, 3.8.3.1, to increase the minimum fuel oil storage tank volume ranges.

Dated of issuance: July 7, 1999.

Effective date: Units 1 and 2, as of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 183 and 157.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 27, 1999 (64 FR 4160).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 7, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference, Department, 71 South Franklin Street, Wikes-Barre, PA 18701.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: October 17, 1997, as supplemented March 2 and November 28, 1998.

Brief description of amendments: These amendments authorize changes to the updated Final Safety Analysis Report (FSAR) to permit installation of digital radiation monitors for both the containment purge isolation and the control room isolation signals.

Date of issuance: July 12, 1999.

Effective date: July 12, 1999; implementation shall include submission by the licensee of the revised description authorized by these amendments with the next update of the FSAR in accordance with 10 CFR 50.71(e).

Amendment Nos.: Unit 2–154; Unit 3–145.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the FSAR.

Date of initial notice in **Federal Register:** January 28, 1998 (63 FR 4324).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of application for amendments: January 12,1999, as supplemented by letters dated May 11, and June 30, 1999.

Brief description of amendments: The amendment revised Technical Specification 3/4.7.5, Ultimate Heat Sink, by adding a new action statement to be used in the event the plant inlet water temperature exceeds 90° F. The amendment is effective only through September 30, 1999, and is only for the current TSs. The amendment is also limited to a maximum plant inlet water temperature of 94° F. The proposal to raise this temperature to 95° F will be addressed in a future letter.

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Date of issuance: July 8, 1999.

Effective date: July 8, 1999, shall be implemented within 30 days of the date of issuance.

Amendment No.: 125.

Facility Operating License No. NPF–42: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1999 (64 FR 9203). The May 11 and June 30, 1999, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed and did not change the staff's original proposed no significant hazards consideration determination, except that the licensee proposed a maximum plant inlet water temperature of 95° F. where the letters of January and May 11, 1999, proposed only 94° F. The amendment is limited to a maximum temperature of 94° F.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 21st day of July 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 99–19133 Filed 7–27–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Correction to Biweekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

On July 14, 1999 (64 FR 38040), the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses. On page 38040, the line that reads "Amendment No.: 179." should read "Amendment No.: 180."

Dated at Rockville, Md., this 22nd day of July 1999.

For the Nuclear Regulatory Commission,

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–19257 Filed 7–27–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments Are Invited On

(a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Application for Survivor Death Benefits: OMB 3220–0031.

Under Section 6 of the Railroad Retirement Act (RRA), lump-sum death benefits are payable to surviving widow and widowers, children and certain other dependents. Lump-sum death benefits are payable after the death of a railroad employee *only* if there are no qualified survivors of the employee immediately eligible for annuities. With the exception of the residual death benefit, eligibility for survivor benefits depend on whether the employee was "insured" under the RRA at the time of death. If a decreased employee was not so insured, jurisdiction of any survivor benefits payable is transferred to the Social Security Administration and survivor benefits are paid by that agency instead of the RRB. The collection obtains the information required by the RRB to determine entitlement to and amount of the survivor death benefits applied for.

The RRB currently utilizes Form(s) AA–11a (Designation for Change of Beneficiary for Residual Lump-Sum), AA–21 (Application for Lump-Sum Death Payment and Annuities Unpaid at Death), G–131 (Authorization of Payment and Release of All Claims to a Death Benefit or Accrued Annuity Payment), and G–273a (Funeral Director's Statement of Burial Charges), to obtain the necessary information. One response is requested of each respondent. Completion is required to obtain benefits.

The RRB is proposing the addition of an electronic version of Form AA–21 to the collection. The information collected will mirror that obtained on the manual Form AA–21. Upon completion of the electronic AA–21, the applicant will receive Form AA–21cert for review and signature. The AA–21cert will summarize information provided by/or verified by the applicant. In addition, the RRB is proposing editorial and formatting changes to Form AA–11a, manual Form AA–21, G–131, and G–273a.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form #(s)	Annual responses	Time (min)	Burden (hrs)
AA–11A	400	10	67
Electronic AA–21 (with assistance)	9,700	20	3,230
Manual AA–21 (without assistance)	300	40	200
G–131	600	5	50
G–273A	9,600	10	1,600
Total	20,600		5,147

Additional Information or Comments

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–19211 Filed 7–27–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23917; 812–11628]

Deutsche Bank Securities Inc.; Notice of Application

July 21, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1) of the Act, under section 6(c) of the Act for an exemption from section 14(a) of the Act, and under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Deutsche Bank Securities Inc. ("Deutsche Securities") requests an order with respect to the METS trusts ("METS Trusts" [1] and future trusts that are substantially similar to the METS Trusts and for which Deutsche Securities will serve as a principal underwriter (collectively, the "Trusts") that would (i) permit other registered investment companies, and companies excepted from the definition of investment company under section 3(c)(1) or (c)(7) of the Act, to own a greater percentage of the total outstanding voting stock (the "Securities") of any Trust than that permitted by section 12(d)(1), (ii) exempt the Trusts from the initial net worth requirements of section 14(a), and (iii) permit the Trusts to purchase U.S. government securities from Deutsche Securities at the time of a Trust's initial issuance of Securities.

FILING DATE: The application was filed on May 19, 1999. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Deutsche Securities with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 16, 1999, and should be accompanied by proof of service on Deutsche Securities, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicant, 1 South Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 9420634, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. Each Trust will be a limited-life, grantor trust registered under the Act as a non-diversified, closed-end management investment company. Deutsche Securities will serve as a principle underwriter (as defined in section 2(a)(29) of the Act) of the Securities issued to the public by each Trust.

2. Each Trust will, at the time of its issuance of Securities, (i) enter into one or more forward purchase contracts (the "Contracts") with a counterparty to purchase a formulaically-determined number of a specified equity security or securities (the "Shares") of one specified issuer,[2] and (ii) in some cases, purchase certain U.S. Treasury securities ("Treasuries", which may include interest-only or principal-only securities maturing at or prior to the Trust's termination. The Trusts will purchase the Contracts from counterparties that are not affiliated with either the relevant Trust or Deutsche Securities. The investment objective of each Trust will be to provide to each holder of Securities ("Holder") (i) periodic cash distributions from the proceeds of any Treasuries, and (ii) participation in, or limited exposure to, changes in the market value of the underlying Shares.

3. In all cases, the Shares will trade in the secondary market and the issuer of the Shares will be a reporting company under the Securities Exchange Act of 1934. The number of Shares, or the value of the Shares, that will be delivered to a Trust pursuant to the Contracts may be fixed (e.g., one Share per Security issued) or may be determined pursuant to a formula, the product of which will vary with the price of the Shares. A formula generally will result in each Holder of Securities receiving fewer Shares as the market value of the Shares increases, and more Shares as their market value decreases.[3] At the termination of each Trust, each Holder will receive the number of Shares per Security, or the value of the Shares, as determined by the terms of the Contracts, that is equal to the Holder's pro rata interest in the Shares or amount received by the Trust under the Contracts.[4]

4. Securities issued by the Trusts will be listed on a national securities exchange or traded on the Nasdaq National Market System. Thus, the Securities will be "national market system" securities subject to public price quotation and trade reporting requirements. After the Securities are issued, the trading price of the Securities is expected to vary from time to time based primarily upon the price of the underlying Shares, interest rates, and other factors affecting conditions and prices in the debt and equity markets. Deutsche Securities currently intends, but will not be obligated, to

[1] "METS" is an acronym for Mandatory Exchangeable Trust Securities.

[2] Initially, no Trust will hold Contracts relating to the Shares of more than one issuer. However, if certain events specified in the Contracts occur, such as the issuer of Shares spinning-off securities of another issuer to the holders of the Shares, the Trust may receive shares of more than one issuer at the termination of the Contracts.

[3] A formula is likely to limit the Holder's participation in any appreciation of the underlying Shares, and it may, in some cases, limit the Holder's exposure to any depreciation in the underlying Shares. It is anticipated that the Holders will receive a yield greater than the ordinary dividend yield on the Shares at the time of the issuance of the Securities, which is intended to compensate Holders for the limit on the Holders' participation in any appreciation of the underlying Shares. In some cases, there may be an upper limit on the value of the Shares that a Holder will ultimately receive.

[4] The Contracts may provide for an option on the part of a counterparty to deliver Shares, cash, or a combination of Shares and cash to the Trust at the termination of each Trust.

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make a market in the Securities of each Trust.

5. Each Trust will be internally managed by three trustees and will not have a separate investment adviser. The trustees will have limited or no power to vary the investments held by each Trust. A bank or banks qualified to serve as a trustee under the Trust Indenture Act of 1939, as amended, will act as custodian for each Trust's assets and as administrator, paying agent, registrar, and transfer agent with respect to the Securities of each Trust. Any such bank will have no other affiliation with, and will not be engaged in any other transaction with, any Trust. The day-to-day administration of each Trust will be carried out by Deutsche Securities or by the bank.

6. The Trusts will be structured so that the trustees are not authorized to sell the Contracts or Treasuries under any circumstances or only upon the occurrence of certain events under a Contract. The Trusts will hold the Contracts until maturity or any earlier acceleration, at which time they will be settled according to their terms. However, in the event of the bankruptcy or insolvency of any counterparty to a Contract with a Trust, or the occurrence of certain other events provided for in the Contract, the obligations of the counterparty under the Contract may be accelerated and the available proceeds of the Contract will be distributed to the Holders.

7. The trustees of each Trust will be selected initially by Deutsche Securities, together with any other initial Holders, or by the grantors of the Trust. The Holders of each Trust will have the right, upon the declaration in writing or vote of more than two-thirds of the outstanding Securities of the Trust, to remove a trustee. Holders will be entitled to a full vote for each Security held on matters to be voted on by Holders and will not be able to cumulate their votes in the election of trustees. The investment objectives and policies of each Trust may be changed only with the approval of a "majority of the Trust's outstanding Securities" [5] or any greater number required by the Trust's constituent documents. Unless Holders so request, it is not expected that the Trusts will hold any meetings of Holders, or that Holders will ever vote.

8. The Trusts will not be entitled to any rights with respect to the Shares until any Contracts requiring delivery of the Shares to the Trust are settled, at which time the Shares will be promptly distributed to Holders. The Holders, therefore, will not be entitled to any rights will respect to the Shares (including voting rights or the right to receive any dividends or other distributions) until receipt by them of the Shares at the time the Trust is liquidated.

9. Each Trust will be structured so that its organizational and ongoing expenses will not be borne by the Holders, but rather, directly or indirectly, by Deutsche Securities, the counterparties, or another third party, as will be described in the prospectus for the relevant Trust. At the time of the original issuance of the Securities of any Trust, there will be paid to each of the administrator, the custodian, and the paying agent, and to each trustee, a one-time amount in respect of such agent's fee over its term. Any expenses of the Trust in excess of this anticipated amount will be paid as incurred by a party other than the Trust itself (which party may be Deutsche Securities).

Applicant's Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A)(i) of the Act prohibits (i) any registered investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any other investment company, and (ii) any investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any registered investment company. A company that is expected from the definition of investment company under section 3(c)(1) or (c)(7) of the Act is deemed to be an investment company for purposes of section 12(d)(1)(A)(i) of the Act under sections 3(c)(1) and (c)(7)(D) of the Act. Section 12(d)(1)(C) of the Act similarly prohibits any investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies from owning more than 10% of the total outstanding voting stock of any closed-end investment company.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1), if, and to the extent, the exemption is consistent with the public interest and protection of investors.

3. Deutsche Securities states that, in order for the Trusts to be marketed most successfully, and to be traded at a price that most accurately reflects their value, it is necessary for the Securities of each Trust to be offered to large investment companies and investment company complexes. Deutsche Securities states that these investors seek to spread the fixed costs of analyzing specific investment opportunities by making sizable investments in those opportunities. Conversely, Deutsche Securities asserts that it may not be economically rational for the investors, or their advisers, to take the time to review an investment opportunity if the amount that the investors would ultimate be permitted to purchase is immaterial in light of the total assets of the investment company or investment company complex. Therefore, Deutsche Securities argues that these investors should be able to acquire Securities in each Trust in excess of the limitations imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C). Deutsche Securities requests that the SEC issue an order under section 12(d)(1)(J) exempting the Trusts from the limitations.

4. Deutsche Securities states that section 12(d)(1) was designed to prevent one investment company from buying control of other investment companies and creating complicated pyramidal structures. Deutsche Securities also states that section 12(d)(1) was intended to address the layering of costs to investors.

5. Deutsche Securities asserts that the concerns about pyramiding and undue influence generally do not arise in the case of the Trusts because neither the trustees nor the Holders will have the power to vary the investments held by each Trust or to acquire or dispose of the assets of the Trusts. To the extent that Holders can change the composition of the board of trustees or the fundamental policies of each Trust by vote, Deutsche Securities argues that any concerns regarding undue influence will be eliminated by a provision in the charter documents of the Trusts that will require any investment companies owning voting stock of any Trust in excess of the limits imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C) to vote their Securities in proportion to the votes of all other Holders. Deutsche Securities also states that the concern about undue influence through a threat to redeem does not arise in the case of the Trusts because the Securities will not be redeemable.

6. Section 12(d)(1) also was designed to address the excessive costs and fees that may result from multiple layers of investment companies. Deutsche Securities states that these concerns do not arise in the case of the Trusts because of the limited ongoing fees and expenses incurred by the Trusts and because generally these fees and expenses will be borne, directly or indirectly, by Deutsche Securities or another third party, not by the Holders. In addition, the Holders will not, as a practical matter, bear the organizational expenses (including underwriting expenses) of the Trusts. Deutsche Securities asserts that the organizational expenses effectively will be borne by the counterparties in the form of a discount in the price paid to them for the Contracts, or will be borne directly by Deutsche Securities, the counterparties, or other third parties. Thus, a Holder will not pay duplicative charges to purchase securities in any Trust. Finally, there will be no duplication of advisory fees because the Trusts will be internally managed by their trustees.

7. Deutsche Securities asserts that the investment product offered by the Trusts serves a valid business purpose. The Trusts, unlike most registered investment companies, are not marketed to provide investors with either professional investment asset management or the benefits of investment in a diversified pool of assets. Rather, Deutsche Securities asserts that the Securities are intended to provide Holders with an investment having unique payment and risk characteristics, including an anticipated higher current yield than the ordinary dividend yield on the Shares at the time of the issuance of the Securities.

8. Deutsche Securities believes that the purposes and policies of section 12(d)(1) are not implicated by the Trusts and that the requested exemption from section 12(d)(1) is consistent with the public interest and the protection of investors.

B. Section 14(a)

1. Section 14(a) of the Act requires, in pertinent part, that an investment company have a net worth of at least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a–3 exempts from section 14(a) unit investment trusts that meet certain conditions in recognition of the fact that, once the units are sold, a unit investment trust requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a–3 provides that a unit investment trust investing a eligible trust securities shall be exempt from net worth requirement, provided that the trust holds at least $100,000 of eligible trust securities at the commence of a public offering.

2. Deutsche Securities argues that, while the Trusts are classified as management companies, they have the characteristics of unit investment trusts. Investors in the Trusts, like investors in a unit investment trust, will not be purchasing interests in a managed pool of securities, but rather in a fixed a disclosed portfolio that is held until maturity. Deutsche Securities believes that the make-up of each Trust's assets, therefore, will be "locked-in" for the life of the portfolio, and there is no need for an ongoing commitment on the part of the underwriter.

3. Deutsche Securities states that, in order to ensure that each Trust will become a going concern, the Securities of each Trust will be publicly offered in a firm commitment underwriting, registered under the Securities Act of 1933, resulting in net proceeds to each Trust of at least $10,000,000. Prior to the issuance and delivery of the Securities of each Trust to the underwriters, the underwriters will enter into an underwriting agreement pursuant to which they will agree to purchase the Securities subject to customary conditions to closing. The underwriters will not be entitled to purchase less than all of the Securities of each Trust. Accordingly, Deutsche Securities states that either the offering will not be completed at all or each Trust will have a net worth substantially in excess of $100,000 on the date of the issuance of the Securities. Deutsche Securities also does not anticipate that the net worth of the Trusts will fall below $100,000 before they are terminated.

4. Section 6(c) of the Act provides that the SEC may exempt persons or transactions if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Deutsche Securities request that the SEC issue an order under section 6(c) exempting the Trusts from the requirements of section 14(a). Deutsche Securities believes that the exemption is appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act.

C. Section 17(a)

1. Sections 17(a)(1) and (2) of the Act generally prohibit the principal underwriter, or any affiliated person of the principal underwriter, of a registered investment company from selling or purchasing any securities to or from that investment company. The result of these provisions is to preclude the Trusts from purchasing Treasuries from Deutsche Securities.

2. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act. Deutsche Securities requests an exemption from sections 17(a)(1) and (2) to permit the Trusts to purchase Treasuries from Deutsche Securities.

3. Deutsche Securities states that the policy rationale underlying section 17(a) is the concern that an affiliated person of an investment company, by virtue of this relationship, could cause the investment company to purchase securities of poor quality from the affiliated person or to overpay for securities. Deutsche Securities argues that it is unlikely that it would be able to exercise any adverse influence over the Trusts with respect to purchases of Treasuries because Treasuries do not vary in quality and are traded in one of the most liquid markets in the world. Treasuries are available through both primary and secondary dealers, making the Treasury market very competitive. In addition, market prices on Treasuries can be confirmed on a number of commercially available information screens. Deutsche Securities argues that because it is one of a limited number of primary dealers in Treasuries, it will be able to offer the Trusts prompt execution of their Treasury purchases at very competitive prices.

4. Deutsche Securities states that it is only seeking relief from section 17(a) with respect to the initial purchase of the Treasuries and not with respect to an ongoing course of business. Consequently, investors will know before they purchase a Trust's Securities the Treasuries that will be owned by the Trust and the amount of the cash payments that will be provided periodically by the Treasuries to the Trust and distributed to Holders. Deutsche Securities also asserts that whatever risk there is of overpricing the Treasuries will be borne by the counterparties and not by the Holders because the cost of the Treasuries will be calculated into the amount paid on the Contracts. Deutsche Securities argues that, for this reason, the counterparties will have a strong incentive to monitor the price paid for the Treasuries, because any overpayment could result in a reduction in the amount that they would be paid on the Contracts.

[5] A "majority of the Trust's outstanding Securities" means the lesser of (i) 67% of the Securities represented at a meeting at which more than 50% of the outstanding Securities are represented, and (ii) more than 50% of the Outstanding Securities.

5. Deutsche Securities believes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person, that the proposed transaction is consistent with the policy of each of the Trusts, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policies and provisions of the Act.

Applicant's Conditions

Deutsche Securities agrees that the order granting the requested relief will be subject to the following conditions:

1. Any investment company owning voting stock of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by the Trust's charter documents, or will undertake, to vote its Trust shares in proportion to the vote of all other Holders.

2. The trustees of each Trust, including a majority of the trustees who are not interested persons of the Trust, (i) will adopt procedures that are reasonably designed to provide that the conditions set forth below have been complied with; (ii) will make and approve such changes as rare deemed necessary; and (iii) will determine that the transactions made pursuant to the order were effected in compliance with such procedures.

3. The Trusts (i) will maintain and preserve in an easily accessible place a written copy of the procedures (and any modifications to the procedures), and (ii) will maintain and preserve for the longer of (a) the life of the Trusts and (b) six years following the purchase of any Treasuries, the first two years in an easily accessible place, a written record of all Treasuries purchased, whether or not from Deutsche Securities, setting forth a description of the Treasuries purchased, the identity of the seller, the terms of the purchase, and the information or materials upon which the determinations described below were made.

4. The Treasuries to be purchased by each Trust will be sufficient to provide payments to Holders of Securities that are consistent with the investment objectives and policies of the Trust as recited in the Trust's registration statement and will be consistent with the interests of the Trust and the Holders of its Securities.

5. The terms of the transactions will be reasonable and fair to the Holders of the Securities issued by each Trust and will not involve overreaching of the Trust or the Holders of Securities of the Trust on the part of any person concerned.

6. The fee, spread, or other remuneration to be received by Deutsche Securities will be reasonable and fair compared to the fee, spread, or other remuneration received by dealers in connection with comparable transactions at such time, and will comply with section 17(e)(2)(C) of the Act.

7. Before any Treasuries are purchased by the Trust, the Trust must obtain such available market information as it deems necessary to determine that the price to be paid for, and the terms of, the transaction are at least as favorable as that available from other sources. This will include the Trust obtaining and documenting the competitive indications with respect to the specific proposed transaction from two other independent government securities dealers. Competitive quotation information must include price and settlement terms. These dealers must be those who, in the experience of the Trust's trustees, have demonstrated the consistent ability to provide professional execution of Treasury transactions at competitive market prices. They also must be those who are in a position to quote favorable prices.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19223 Filed 7–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (IAT Resources Corporation (Formerly The Producers Entertainment Group Ltd.), Common Stock, Par Value $.001; Redeemable Common Stock Purchase Warrants Expiring June 11, 2001; and Series A 8½% Convertible Preferred Stock) File No. 1–12015

July 21, 1999.

IAT Resources Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Boston Stock Exchange, Incorporated ("BSE" or "Exchange").

The Securities of the Company have been listed for trading on the BSE and have been designated for quotation on the Nasdaq SmallCap Market ("Nasdaq"). In making its decision to withdraw its Securities from listing and registration on the BSE, the Company considered the direct and indirect costs and expenses attached to maintaining the listing of such Securities on the BSE simultaneously with their designation for quotation on the Nasdaq. Moreover, the Company does not see any particular advantage in having its Securities trade in two markets.

The Company has complied with the rules of the BSE by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Securities from listing on the BSE and by setting forth in detail to the Exchange the reasons for the proposed withdrawal and the facts in support thereof.

The BSE has informed the Company that it has no objection to the withdrawal of the Company's Securities from listing on the Exchange.

The Company's application relates soley to the withdrawal of the Securities from listing and registration on the BSE and shall have no effect upon their continued designation for quotation on the Nasdaq. By reason of Section 12(g) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file with the Commission any reports required under Section 13 of the Act.

Any interested person may, on or before August 11, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–19227 Filed 7–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23915; 812–11012]

IDS Bond Fund, Inc., et al.; Notice of Application

July 21, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of an application for an order under section 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered management investment companies to deposit their uninvested cash balances in joint accounts investing in short-term investments.

APPLICANTS: IDS Bond Fund, Inc., IDS Discover Fund, Inc., IDS Equity Select Fund, Inc., IDS Global Series, Inc., IDS International Fund, Inc., IDS Market Advantage Series, Inc., IDS Money Market Series, Inc., IDS Precious Metals Fund, Inc., IDS Progressive Fund, Inc., IDS Strategy Fund, Inc., IDS Tax-Exempt Bond Fund, Inc., IDS Tax-Free Money Fund, Inc., IDS Utilities Income Fund, Inc., IDS California Tax-Exempt Trust, IDS Special Tax-Exempt Series Trust, Growth Trust, Growth and Income Trust, Income Trust, Tax-Free Income Trust, orld Trust, IDS Life Investment Series, Inc., IDS Life Managed Fund, Inc., IDS Life Moneyshare Fund, Inc., IDS Life Special Income Fund, Inc., IDS Life Series Fund, Inc., IDS Life Variable Annuity Fund A, and IDS Life Variable Annuity Find B (the "investment Companies"), and American Express Financial Corporation ("AEFC").

FILING DATES: The application was filed on February 18, 1998 and amended on October 26, 1998 and June 28, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 16, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certifiate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: c/o Christopher R. Long, AEFC, IDS Tower 10, Law Department, T–27/52 Minneapolis, MN 55440–0010.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investmnt Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Each Investment Company is registered under the Act as an open-end management investment company. AEFC, registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"), serves as investment adviser to the Investment Companies. AEFC also provides investment advisory services to other clients, including employee benefit plans and accounts (collectively, with any account advised by another registered investment adviser controlling, controlled by, or under common control with AEFC ("AEFC Adviser"), the "Private Accounts").[1]

2. At the end of each trading day, applicants expect that the Investment Companies and the Private Accounts (collectively, the "Participants") will have uninvested cash balances in their accounts with their custodians that would not otherwise be invested in portfolio securities. Applicants propose to deposit these uninvested cash balances into one or more joint trading accounts ("Joint Accounts") and to invest the daily balance of the Joint Accounts in repurchase agreements, commercial paper, and/or other short term investments that will have, with rare exceptions, an overnight, over-the-weekend or over-the-holiday maturity, and in no event will have a maturity of more than seven days ("Short Term investments"). Repurchase agreements will be "collateralized fully," as defined in rule 2a–7 under the Act.[2] A Joint Account would consist of a separate cash custodial account established at a custodian bank.

3. Participants would only invest through a Joint Account to the extent that the investments made through the Joint Account are consistent with their respective investment objectives, policies, and restrictions. A Participant's decision to use the Joint Accounts will be based on the same factors as its decision to make any short-term investment.

4. AEFC will administer the investment of the cash balances in and operation of the Joint Accounts as part of its duties under the general terms of each Participant's investment management agreement and will not collect any additional or separate fees for the management of the Joint Account. AEFC will be responsible for investing amounts in the Joint Account, establishing accounting and control procedures, and ensuring the equal treatment of each Participant.

5. Any repurchase agreements entered into through the Joint Accounts will comply with the standards and guidelines of Investment Company Act Release No. 13005 (February 2, 1983) and any other applicable future positions of the SEC or its staff regarding repurchase agreements. In the event the SEC or its staff sets forth guidelines with respect to other Short Term Investments, all such investments made through the Joint Accounts will company with those guidelines.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, from participating in any joint enterprise or arrangement in which such investment company is a participant, unless an application regarding the joint arrangement has been filed with and approved by the SEC. In passing on such applications, the SEC considers whether the participation of the registered investment company in the proposed joint arrangement is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person directly or indirectly owing, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, as well as any person directly or indirectly controlling,

[1] Applicants request that the relief also apply to all other registered management investment companies that in the future are advised or sub-advised by an AEFC Adviser ("Future Funds"). Any Future Fund and Private Account that relies on the requested order will do so only in accordance with the terms and conditions of the application.

[2] A Joint Account will not enter into hold-in-custody repurchase agreements, whereby the counterparty retains custody of the securities that are the subject of the repurchase transaction.

controlled by, or under common control with, the other person, and in the case of an investment company, its investment adviser. Applicants state that, under section 2(a)(3) of the Act, the Participants may be deemed "affiliated persons" because they may be deemed to be under the common control of AEFC. Applicants state that the Participants, by participating in the Joint Accounts, and AEFC, by managing the Joint Accounts, could be deemed to be "joint participants" in a transaction within the meaning of section 17(d)(1) of the Act. In addition, applicants state that the Joint Accounts could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d–1 under the Act.

3. Applicants believe that no Participant will receive fewer relative benefits from the operation of the Joint Accounts than any other Participant. Applicants also believe that the operation of the Joint Accounts will not result in any conflicts of interest among Participants. Applicants state that each Participant's liability on any Short Term Investment held in a Joint Account will be several in proportion to its pro rata interest in the total assets in the Joint Account and not joint.

4. Applicants believe that the proposed Joint Accounts could result in certain benefits to Participants. The Participants may earn a higher return on investments through the Joint Accounts relative to the returns they could earn individually. Applicants state that, under most market conditions, it is possible to negotiate a higher rate of return on larger Short Term Investments than the rate available on smaller Short Term Investments. Applicants also assert that each Participant will have the opportunity to benefit from the fact that an institution entering into a larger investment transaction is more likely to be able and willing to increase the amount covered by the transaction near the end of the day, thus reducing the possibility a Participant might have cash uninvested, which possibly may not exist with smaller transactions. Applicants state that the Joint Accounts also may result in savings in transaction fees.

5. For the reasons set forth above, applicants submit that the proposed Joint Accounts meet the criteria of rule 17d–1 for issuance of an order.

Applicants' Conditions

Applicants will comply with the following as conditions to any order granted by the SEC:

1. A separate custodial account will be established for each Joint Account into which a participant may transfer some or all of its uninvested cash balances after the conclusion of its daily trading activity. In the event that any Participant has a custodian different from the custodian at which the Joint Account is maintained and elects to participate, the Participant will appoint the custodian of the Joint Account as a sub-custodian. Each Investment Company that appoints such a custodian will have taken all necessary actions to authorize the custodian as its legal custodian, including all actions required under the Act. The Joint Accounts will be the same as other custodial accounts maintained by the Participant except that monies of the Participant will be deposited on a commingled basis. The Joint Accounts will be structured to avoid any indicia of separate legal existence. The sole function of the Joint Accounts will be to provide a convenient way to manage uninvested cash balances.

2. Cash in a Joint Account will be invested in one or more Short Term Investments that will have, with rare exceptions, an overnight, over-the-weekend or over-the-holiday maturity and in no event will have a maturity of more than seven days as calculated in accordance with rule 2a–7 under the Act.

3. Each Participant will participate in a Joint Account only to the extent consistent with its investment objectives, policies, and restrictions.

4. Each Participant, through AEFC Adviser and/or custodian, will document daily its investments through such Joint Accounts. Such records will be maintained in conformity with section 31 of the Act and the rules and regulations thereunder documenting, for any given day, such Participant's aggregate investment in a joint account and its pro rate share of each investment made though the joint account. Each Participant that is not a registered investment company or registered investment adviser will make available to the SEC, upon request, such books and records with respect to its participation in a Joint Account.

5. Repurchase agreements in the Joint Account will be "collateralized fully" as defined in rule 2a–7 under the Act.

6. No Participant will be allowed to create a negative balance in a Joint Account for any reason, although it will be permitted to draw down its entire balance at any time. No Participant will be obligated either to invest in the Joint Accounts or to maintain any minimum balance in the Joint Accounts. In addition, each Participant will retain the sole rights of ownership to any of its assets invested in the Joint Accounts, including interest payable on such assets invested in the Joint Accounts.

7. AEFC will administer the investment of the cash balances in and operation of the Joint Accounts as part of its duties under the general terms of each Participant's existing or any future investment management agreement and will not collect any additional or separate fees for the management of the Joint Accounts.

8. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 under the Act.

9. The board of directors or trustees of each Investment Company (the "Board") participating in a Joint Account will adopt procedures pursuant to which the Joint Account will operate. The procedures will be consistent with the requirements of the application and no change shall be made in the procedures without prior approval of the Board. AEFC will be responsible for operating the Joint Account in accordance with such procedures and shall provide to the Board such reports as are necessary for the Board to determine that the procedures have been followed. In addition, each Board will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with the procedures adopted and will only permit an Investment Company to continue to participate therein if it determines that there is a reasonable likelihood that the Investment Company and its shareholders will benefit from continued participation.

10. All assets held in the Joint Accounts will be valued on an amortized cost basis to the extent permitted by applicable SEC releases, rules or orders.

11. Each Participant valuing its net assets in reliance on rule 2a–7 under the Act will use the average maturity of the instruments in the Joint Accounts in which such Participant has an interest (determined on a dollar weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in a Joint Account on that day.

12. Every Participant in the Joint Accounts will not necessarily have its cash invested in every Short Term Investment. However, to the extent that a Participant's cash is applied to a particular Short Term Investment, the Participant will participate in and own its proportionate share of such Short Term Investment, and any income earned or accrued thereon, based upon the percentage of such investment purchased with money contributed by the Participant.

13. Each Short Term Investment held in a Joint Account generally will be held to maturity, except if: (i) AEFC believes the investment no longer presents minimal credit risks; (ii) the investment no longer satisfies the investment criteria of all Participants in the investment because of a credit downgrade or otherwise; or (iii) the counterparty to a repurchase agreement defaults. AEFC may, however, sell any Short Term Investment (or any fractional portion thereof) on behalf of some or all Participants prior to the maturity of the Short Term Investment if the cost of such transaction will be borne solely by the selling Participants and the transaction will not adversely affect other Participants participating in that Joint Account. In no case will an early termination by less than all Participants be permitted if it would reduce the principal amount or yield received by other Participants in a particular Joint Account or otherwise adversely affect the other Participants. Each Participant in a Joint Account will be deemed to have consented to such sale and partition of the investment in the Joint Account.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19224 Filed 7–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23916; 812–11542]

Nuveen Unit Trusts and John Nuveen & Co., Inc.; Notice of Application

July 21, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants Nuveen Unit Trusts ("Trust") and John Nuveen & Co., Inc. (the "Sponsor") request an order (a) under section 12(d)(1)(J) of the Act that would permit each series of the Trust and any future trusts sponsored by the Sponsor ("Series") to offer its shares to the public with a sales load that exceeds the 1.5% limit of section 12(d)(1)(F)(ii) and (b) under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act to permit the Trust to invest in affiliated registered investment companies within the limits of section 12(d)(1)(F) of the Act.

APPLICANTS: Nuveen Unit Trusts and John Nuveen & Co., Inc.

FILING DATES: The application was filed on December 4, 1998, and amended on June 16, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 16, 1999 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street NW, Washington, DC 20549–0609. Applicants, 333 West Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Attorney-Adviser, at (202) 942–0526, or Mary Kay Frech, Branch Chief at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is a unit investment trust ("UIT") registered under the Act. The Sponsor, a broker-dealer registered under the Securities Exchange Act of 1934 and member of the National Association of Securities Dealers, Inc. ("NASD"), is the sponsor for each Series. Each Series will be created under state law pursuant to a trust agreement that will contain information specific to that Series, and will incorporate by reference a master trust agreement between the Sponsor and a financial institution that satisfies the criteria in section 26(a) of the Act (the "Trustee"). The trust agreement and the master trust agreement are referred to collectively as the "Trust Agreement."

2. Each Series will contain a portfolio of shares of registered investment companies or series thereof (the "Funds"). Applicants anticipate that certain of the Funds selected may be advised and/or distributed by the Sponsor or one of its affiliates ("Affiliated Funds"). However, applicants anticipate that most of the Funds selected will be unaffiliated with the Sponsor ("Unaffiliated Funds"). Applicants state that the Trust's investments in Affiliated Funds and Unaffiliated Funds will comply with section 12(d)(1)(F) of the Act in all respects except for the sales load restriction in section 12(d)(1)(F)(ii). Applicants believe that the proposed structure of the Series will provide investors with a cost-effective means of investing in a diversified pool of securities of registered investment companies that has been professionally selected by the Sponsor.

3. Each of the Funds will be registered as a closed-end investment company, an open-end investment company, or a UIT. In addition, certain of the Funds may be either an open-end investment company or a UIT that has received exemptive relief under the Act to sell its shares at negotiated prices on an exchange ("Exchange Funds"). The shares of the Funds will be deposited in each Series at net asset value,[1] or, if the Fund shares are listed on a national securities exchange or traded on the Nasdaq National Market System ("Nasdaq-NMS"), at their market value.[2] Market value will be determined by an evaluator, and will be based on the closing sale prices (or, if unavailable, the closing ask prices) for the securities traded on an exchange or on the Nasdaq-NMS.

4. Simultaneously with the deposit of Fund shares into a Series, the Trustee will deliver to the Sponsor registered certificates for units ("Units") that represent the entire ownership of the Series. During the initial public offering, these Units will be offered at prices based on the aggregate underlying value of the Fund shares, plus a sales charge. The sales charge (either a front end or a deferred sales load, or a combination thereof)[3] shall not, when aggregated

[1] Funds eligible for inclusion in a Series will either be no-load Funds or Funds which, although they offer shares with a front-end sales charge to the public, agree to waive any otherwise applicable front-end sales load with respect to all shares sold or deposited in any Series.

[2] Applicants state that a Series will purchase and sell shares of Exchange Funds through market transactions on a securities exchange or on the Nasdaq-NMS.

[3] The Trust has received exemptive relief to assess a sales load on a deferred basis. *See John*

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with any sales charge or service fees paid by the Series with respect to shares of the Funds, exceed the limits set forth in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers ("NASD Conduct Rules").

5. No Series will invest in a Fund with a rule 12b–1 plan, unless the Fund limits the plan fees to a maximum annual rate of .25% of the Fund's average daily net assets. If the Trustee receives service fees under a rule 12b–1 plan from the Funds to compensate it for providing servicing and sub-accounting functions with respect to Fund shares held by a Series, the Trustee will reduce its regular fee to the Series directly by the fees it receives from the Funds and rebate any excess fees it receives to the Series. Any fees so rebated will be utilized by the Series to absorb other bona fide Series expenses. To the extent that these fees exceed the total Series expenses, the excess will be distributed along with other income earned by the Series.

Applicants' Legal Analysis

Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) shall not apply to an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, the section provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote is acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company. The Series will invest in the Funds in reliance on section 12(d)(1)(F).

3. Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) of the Act from section 12(d)(1)(F) to permit a Series to offer and sell Units to the public with a sales load that exceeds 1.5%.

4. Applicants have agreed, as a condition to the relief, that any sales charges, distribution-related fees, and service fees relating to Units, when aggregated with any sales charges, distribution-related fees, and service fees paid by the Trust relating to its acquisition, holding, or disposition of shares of the Funds, will not exceed the limits set forth in Rule 2830 of the NASD Conduct Rules. Applicants believe that it is appropriate to apply the NASD's Rule to the proposed arrangement in place of the sales load limitation in section 12(d)(1)(F) because the proposed limit would cap the aggregate sales charges of the Units and the underlying Funds, and because the proposed limit is consistent with the limit recently adopted in section 12(d)(1)(G) of the Act. Applicants assert that the NASD's specific sales charge rules more accurately reflect today's regulatory environment with respect to the methods by which investment companies finance sales expenses. Applicants contend that section 12(d)(1)(F), on the other hand, was adopted more than a quarter of a century ago and does not reflect the changes in the pricing practices of the industry.

5. Applicants state that, with respect to shares of closed-end Funds and Exchange Funds held by a Series, no front-end sales loads, contingent deferred sales charges or redemption fees will be charged in onnection with the purchase or sale of these Funds by a Series. Additionally, applicants state that with respect to closed-end Funds, no rule 12b–1 fees, or other distribution fees will be charged. Applicants state that, although the Series likely will incur brokerage commissions in connection with its market purchases of shares of closed-end Funds and Exchange Funds, these commissions will not differ materially from commissions otherwise incurred in connection with the purchase or sale of comparable portfolio securities.

6. Applicants also agree as a condition to the requested relief that no Series will invest in any underlying Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

Section 17(a) of the Act

7. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants submit that the Series and Affiliated Funds may be deemed to be affiliated persons of one another by virtue of being under common control of the Sponsor. Applicants state that purchases and redemptions of shares of the Affiliated Funds by the Series could be deemed to be principal transactions between affiliated persons under section 17(a).

8. Section 17(b) provides that the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

9. Section 6(c) of the Act provides that the Commission may exempt persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under sections 6(c) and 17(b) to permit the Series to purchase and redeem shares of the Affiliated Funds.

10. Applicants state that the terms of the proposed transactions will be reasonable and fair and will not involve overreaching because shares of Affiliated Funds will be sold and redeemed at their net asset values or, if traded on an exchange or on NASDAQ–NMS, at their market value. Applicants also state that the investment by the Series in the Affiliated Funds will be effected in accordance with the investment restrictions of the Series and will be consistent with the policies as set forth in the registration statement of the Series.

Nuveen & Co. Inc., Investment Company Act Rel. Nos. 22492 (Feb. 4, 1997) (notice) and 22545 (Mar. 5, 1997) (order).

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges, distribution-related fees, and service fees relating to Units of a Series, when aggregated with any sales charges, distribution-related fees, and service fees paid by the Series relating to its acquisition, holding, or disposition of securities of the underlying Funds, shall not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

3. No Series will acquire securities of any Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. No Series will terminate within thirty days of the termination of any other Series that holds shares of one or more common Funds.

5. The prospectus of each Series and any sales literature or advertising that mentions the existence of an in-kind distribution option will disclose that holders of Units who elect to receive Fund shares will incur any applicable rule 12b–1 fees.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19226 Filed 7–27–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23918; 812-11270]

Smith Breeden Trust, et al.; Notice of Application

July 21, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from section 12(d)(1)(G)(i)(II) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit funds of funds relying on section 12(d)(1)(G) of the Act of invest in securities and other instruments.

APPLICANTS: Smith Breeden Trust ("Trust"), Smith Breeden Series Fund ("Series Fund"), and Smith Breeden Associates, Inc. ("SBA").

FILING DATES: The application was filed on August 25, 1998 and amended on December 22, 1998 and April 16, 1999. Applicants have agreed to file an amendment, the substance of which is included in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 16, 1999 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants 100 Europa Drive, Suite 200 Chapel Hill, NC 27514.

FOR FURTHER INFORMATION CONTACT: Rachel H. Graham, Senior Counsel, at (202) 942–0583, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Each of the Trust and the Series Fund is organized as a Massachusetts business trust and registered under the Act as an open-end management investment company. The Trust currently offers five series, including Smith Breeden U.S. Equity Market Plus Fund ("Equity Fund"), Smith Breeden European Market Fund ("Europe Fund"), and Smith Breeden Asian/Pacific Market Fund ("Asia Pacific Fund") (collectively, the "Index Plus Funds"). The series Fund currently offers two series, one of which is Smith Breeden Short Duration U.S. Government Fund ("Short Fund"). SBA, as investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser for each series of the Trust and of the Series Fund (each a "Fund"). Applicants request that the relief also apply, to any existing or future open-end management investment company or series thereof advised by SBA (together with the Index Plus Funds, the "Upper Tier Funds") that wishes to invest in a registered open-end management investment company or series thereof that is advised by SBA and is part of the same "group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the Act) (together with the series of the trust and of the Series Fund, excluding the Index Plus Funds, the "Underlying Funds") as the investing Upper Tier Fund.[1]

2. The Equity Fund seeks to provide a total return greater than that of the Standard & Poor's 500 Composite Stock Price Index. To achieve this objective, the Equity Fund proposes to invest in shares of the Short Fund while also investing in futures and options, equity swap contracts, and other investments (collectively, "Index Securities"). Similarly, the Europe Fund and the Asia Pacific Fund each propose to invest in both shares of the Short Fund and Index Securities in order to obtain a total return greater than that of indices reflecting, respectively, the major equity markets of Europe and of the Asia/Pacific region. The Short Fund seeks to provide a high level of current income by investing primarily in mortgage-backed securities issued by the U.S. Government, its agencies, and instrumentalities. Applicants state that, by purchasing shares of the short Fund, each Index Plus Fund will avoid the need to duplicate the strategies and positions of the Short Fund and will lower the transaction cost incurred by the Index Plus Funds. The Index Plus Funds and other Upper Tier Funds also want the flexibility to invest in other securities and financial instruments, including financial futures and options, swaps, and reverse repurchase agreements ("Other Securities").

3. Applicants state that it is SBA's practice to reduce its advisory fees and bear certain expenses to the extent that a Fund's total annual operating expenses (excluding extraordinary expenses) exceed a specified percentage of net assets. Applicants represent that

[1] All existing entities that currently intend to rely on the order are named as applicants. Any Upper Tier Fund that may rely on this order in the future will do so only in accordance with the terms and conditions of the application.

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SBA will waive the duplicative portion of an Index Plus Fund's advisory fee to the extent that an Index Plus invests in shares of the Short Fund. Applicants further represent that the Index Plus Funds will not pay any sales charges or distribution fees in connection with their investment in shares of the Short Fund.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934 or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1) (F) or (G). Applicants state that the proposed arrangement would comply with the provisions of section 12(d)(1)(G), but for the fact that each Index Plus Fund's policies contemplate that it will invest in Index Securities and Other Securities while also investing in shares of the Short Fund.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants assert that permitting the Index Plus Funds and other Upper Tier Funds to invest in securities as described in the application would not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before approving any advisory contract under section 15 of the Act, the board of trustees of an Index Plus or other Upper Tier Fund, including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act, will find that advisory fees, if any, charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract. This finding, and the basis upon which it was made, will be recorded fully in the minute books of the Index Plus Fund or Upper Tier Fund.

2. Applicants will comply with all provisions of section 129d)(1)(G), except for section 12(d)(1)(G)(i)(II) to the extent that it restricts an Index Plus Fund or Other Upper Tier Fund from investing in Index Securities and Other Securities as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19225 Filed 7–27–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41625; File No. SR–CBOE–99–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Market-Maker Surcharge Fee Schedule

July 19, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to make changes to its fee schedule pursuant to CBOE rule 2.40, *Market-Maker Surcharge for Brokerage.*[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to CBOE Rule 2.40, the Equity Floor Procedure Committee ("Committee") approved the following fees for the following option classes:

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract)[4]
AboveNet Communications	$0.08	$0.00
Prodigy Communications Corp.	0.03	0.00

The fees for AboveNet will be effective retroactive to May 10, 1999, and the fees for Prodigy will be effective retroactive to May 18, 1999.[5] Both fees will remain in effect until such time as the Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

These fees are being implemented mid-month because both of these fees are for new options classes, which have not traded before. As a result, changes had to be made to the billing program to account for these new classes in the middle of the month.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4)[7] of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii)[8] and paragraph (f)(2) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–25 and should be submitted by August 18, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–19264 Filed 7–27–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41640; File No. SR–DTC–99–18]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding a Year 2000 Compliance Acknowledgment

July 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 6, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, DTC will require that its participants who provide settlement information solely through DTC's proprietary Participant Terminal System (PTS) submit to DTC, no later than September 15, 1999, a Year 2000 compliance acknowledgment demonstrating their operational capability.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 1, 2000, we will experience the first century change since the advent of computers and related technology. Because certain computer programs may misinterpret the Year 2000 as 1900, the U.S. financial industry has undertaken efforts to prepare for the impending date change. As the new millennium approaches, DTC must assess its own Year 2000 readiness, as well as seek comfort as to the Year 2000 readiness of all its participants.

Under the proposed rule change, DTC is setting forth a policy statement with respect to DTC's Rule 2. That rule provides the standards and obligations that entities must meet to become DTC participants and to retain their status as participants. Pursuant to Rule 2, a participant must furnish to DTC, upon DTC's request, information that

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 11523 (March 9, 1999) (order approving CBOE Rule 2.40).

[4] The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate from $0.20 in the relevant option classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

[5] At its May 20, 1999, meeting, the Committee approved these fees retroactive to the respective dates the fees began. Although the fees are planned to be calculated for activity that occurred as of the dates referred to above, the actual bills for payment will be sent in June.

[6] Through miscommunication, certain Exchange Staff believed these fees could be instituted in mid-month and presented in a filing at the end of the month since the actual charges would not be invoiced until that point. However, CBOE has instituted procedures to ensure that a filing be done prior to the fees being implemented, regardless of whether the fees are being implemented mid-month or at the beginning of the next month. Telephone conversation between Michael Walinskas, Associate Director, Division of Market Regulation, Commission, and Timothy Thompson, Director, Regulatory Affairs, CBOE, on May 27, 1999.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

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demonstrates the participant has satisfactory operational capability.

DTC's Rule 2 has been interpreted to require participants who provide settlement input to DTC through a computer to computer link to conduct a Year 2000 validation test with DTC at some point during the first nine months of 1999.[3] The validation test requires participants to process a series of scripted transactions and to balance with DTC's position and settlement statements. Each participant is being required to provide DTC with a standard testing acknowledgment signed by a senior internal auditor stating that it has balanced to the position and settlement statements and had done so in a Year 2000 compliance environment.[4] The validation test is designed to test the Year 2000 compliance of the computer to computer interface between DTC and the participant. The Year 2000 testing acknowledgment confirms the successful completion of the validation test and provides some comfort as to the ability of the participant to transact business with DTC in a Year 2000 compliant manner.

Participants who provide settlement information solely through DTC's PTS[5] are not required to perform validation testing as DTC has already tested PTS and found it to be Year 2000 compliant. Although DTC is comfortable that the interface used to communicate with PTS-only participants is Year 2000 compliant, under the proposed rule filing these participants will be required to submit to DTC, no later than September 15, 1999, a Year 2000 compliance acknowledgement which relates to their organization as a whole. The Year 2000 compliance acknowledgment is identical to that required from participants who are subject to the validation testing requirement except that the language regarding testing has been deleted.

In DTC's view a participant's failure to provide DTC with a standard Year 2000 compliance acknowledgment will constitute a failure to demonstrate the sufficient operational capability required by DTC's Rule 2. DTC recognizes the importance in obtaining assurances that participants are individually prepared to operate normally before, during, and after the first few days of Year 2000. DTC believes that the industry as a whole has an interest in assuring itself that each participant (and/or participant's processing agent) can interact with and complete the depository's settlement process throughout the day in terms of both the participant's connectivity to the depository and also its internal processing systems and capabilities. Considering the potential for the widespread and detrimental consequences of a participant's failure to be adequately prepared for the impending date change, DTC believes that its rules can be reasonably interpreted as requiring an assurance that the participant is prepared for the Year 2000 as set forth in the Year 2000 compliance acknowledgment.

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because the Year 2000 compliance acknowledgement will help ensure that DTC participants have sufficient operational capability.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The language contained in the Year 2000 testing acknowledgment, relating to DTC's validation testing requirement, was reviewed without comment by the Securities Industry Association's Legal and Compliance subcommittee, as well as the New York Clearing House Year 2000 Committee. The Year 2000 compliance acknowledgment is identical to the Year 2000 testing acknowledgment except that the language regarding testing has been deleted.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with this obligation because the Year 2000 compliance acknowledgment should allow DTC to address any potential problems associated with the participants' Year 2000 readiness. As a result, DTC should be able to continue to provide for the prompt and accurate clearance and settlement of securities transactions before, on, and after Year 2000 without interruption.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice should allow DTC to implement its requirement of a Year 2000 compliance acknowledgment in a timely manner.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–99–18 and should be submitted by August 18, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–DTC–99–18) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19263 Filed 7–27–99; 8:45 am]

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[3] Securities Exchange Act Release No. 40696 (November 20, 1998), 63 FR 65829 [File No. SR–DTC–98–18].

[4] If a participant does not have an internal auditor, the testing acknowledgment may be executed by a senior compliance officer or other equivalent officer.

[5] References to PTS also include PTS Jr. PTS Jr. is a dial-up system (*i.e.*, utilizing a PC, modem, and non-dedicated phone line) that offers all of the functionary (at reduced speed) of a regular, dedicated PTS terminal. PTS Jr. is designed for low-volume users or those participants who choose not to utilize a more costly, dedicated PTS terminal.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41635; File No. SR–DTC–99–10]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Adding a New Service for the Deposit of Securities Subject to Transfer Restrictions

July 21, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 30, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–99–10) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule filing is to allow for the deposit and processing of restricted securities using DTC's Restricted Deposit Service ("RDS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's proposed RDS will: (i) Allow participants to deposit restricted securities in a participant's segregated account within DTC's existing Custody Service, (ii) facilitate the processing of a transfer of all or a portion of the securities once the restriction is lifted, (iii) subsequently register the unrestricted securities (or portion thereof) in the name of Cede & Co., DTC's nominee, and (iv) if requested, deliver the restricted portion of the securities as directed by the depositing participant.[3]

Under the proposed rule change, a participant may deposit restricted securities into the participant's segregated account until the applicable restriction has been lifted and the full or partial sale of the securities is complete. Securities credited to this account will not be registered in the name of Cede & Co. and therefore will not be available for book-entry transfer.

The process will be initiated when a participant enters and transmits restricted securities deposit information to DTC through the new Restricted Deposit Service by Participant ("RDSP") function on DTC's Participant Terminal System ("PTS").[4] This information will include the CUSIP number, quantity and certificate number of each certificate to be deposited, deposit type (*e.g.*, partial sale), the sold and unsold quantities of the securities, registration instructions for the restricted and unsold portion of the securities, and whether the issuer's opinion of counsel will accompany the deposit or will be sent directly to the transfer agent. After DTC reviews the deposit information,[5] an RDS deposit ticket will be transmitted to the participant's PTS printer. The RDS deposit ticket and the securities will then be delivered to DTC.

After receiving and examining the deposited securities, DTC will credit the participant's segregated account for the quantity of the deposit. DTC will use two subaccounts in the process. One subaccount will be used for the quantity of unrestricted (sold) securities and the other for the quantity of restricted (unsold) securities. At this stage, no positions in either subaccount will be available for book-entry transfer by the participant. The securities and detailed transfer instructions will then be sent to the transfer agent for processing.[6] The transfer agent will continue to approve the transfers contemplated by the new service based on the same requirements that exist today (*e.g.*, receipt of opinion from issuer's counsel).

An inquiry option of the RDSP PTS function will enable the depositing participant to view the current status of the securities, including information DTC has received from the transfer agent as to when the transfer is expected to be completed. DTC believes that this option will give the participant greater control over the processing of the securities than that which exists today.

For deposited securities in DTC-eligible issues, the sold and unrestricted portion of the transferred securities will be registered in DTC's nominee name, Cede & Co. When the transfer is completed and the newly transferred securities are returned to DTC, the quantity of unrestricted securities registered in DTC's nominee name, Cede & Co., will be removed from the participant's segregated account and added to the participant's general free account. The quantity of restricted securities, if any, will also be removed from the participant's segregated account. At the same time the restricted portion of the securities will be sent to the destination specified by the depositing participant in its original RDSP instruction. That is, the restricted securities will either be made available for pick-up by the participant, mailed directly to the registered holder, or deposited into DTC's Custody Service for the account of the depositing participant.

Additionally, DTC believes that the service will accommodate certificate denomination breakdowns for restricted securities, transfer agent approval reregistrations of restricted securities (*e.g.*, "gifting" transactions, where the restricted security may be reregistered into the name of the spouse of the original owner), and reregistrations of unrestricted securities into Cede & Co.'s name once the restriction is lifted.

The proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder applicable to DTC because it will facilitate the efficient processing of partial and full sale of restricted securities where the applicable restriction has been lifted by or on behalf of the issuer by streamlining the mechanics of the physical process that currently occurs outside of DTC. Under the proposed rule change, the current control on the transfer of restricted securities will remain with the transfer agent. The proposed rule change will improve the safeguarding of securities and funds in

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] DTC will charge its customary fee for restricted transfers of $45.48.

[4] In the future DTC plans to enhance the Custody Service to provide participants with the capability to transmit RDS instructions via the "CUST" function on PTS and via computer-to-computer transmissions.

[5] DTC will review the deposit information entered by the participant to make sure that the security in question is DTC-eligible and that all appropriate fields have been populated.

[6] While the securities are still at the agent, the participant may enter and transmit amended transfer instructions through the RDSP PTS function (*e.g.*, the sold portion of the deposit has been increased). DTC will then communicate the amended transfer instructions to the transfer agent.

[7] 15 U.S.C. 78q–1.

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DTC's custody or control or for which it is responsible because it will give participants greater control over the processing of full or partial sales of restricted securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The substance of the proposed rule change is supported by and was developed in conjunction with a group of participants and transfer agents. Additionally, the substance of the proposed rule change was presented to and endorsed by DTC's Operations Advisory Committee.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change or;

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–99–10 and should be submitted by August 18, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–19265 Filed 7–27–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41626; File No. SR–NYSE–99–19]

Self-Regulatory Organization; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt a New Interpretation of Rule 35 ("Floor Employees To Be Registered")

July 20, 1999.

I. Introduction

On May 14, 1999, the New York Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new interpretation of Exchange Rule 35 ("Floor Employees to be Registered"). The proposed rule change was published for comment in the **Federal Register** on June 18, 1999.[3] The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The purpose of the proposed new interpretation of Rule 35 is to prescribe the qualification requirements (*i.e.*, training and examination) for Front Line Specialist Clerks ("FLS Clerks"). In addition to dictating the terms under which employees of members or member organizations may be admitted to the Exchange Trading Floor, Rule 35 mandates compliance by both employer and employee with such requirements as the Exchange may determine. The proposed interpretation of Rule 35 will require FLS Clerks to pass a new examination, developed by the Exchange in cooperation with a committee of Floor representatives (members, Specialists, and FLS Clerks) called the Front Line Specialist Clerk Qualification Examination ("Series 21"). The examination is intended to ensure that FLS Clerks have the basic knowledge and skills necessary to perform their duties, which include assisting Floor Specialists.

The Series 21 examination is a 90-minute test consisting of 65 questions. The examination covers such topics as preparing for the market opening, opening the display book, preparing for the market close, and generating trade reports. Though the requirement to take and pass the proposed Series 21 examination will apply to all prospective and current FLS Clerks, qualification requirements will differ as follows:

Prospective FLS Clerks

Individuals not currently functioning as FLS Clerks will be required to pass the Series 25 qualifying examination as a prerequisite to taking the Series 21 examination. Upon passing the Series 25, the prospective FLS Clerk must complete a training program to become eligible for the Series 21 examination. The training program shall consist of a minimum of six months of "on-the-job" experience with a Specialist under a supervisory program to be determined by the Specialist. All candidates must pass the Series 21 examination before functioning as an unsupervised FLS Clerk, *i.e.*, functioning without the specialized supervision require during the training period.

Current FLS Clerks

Individuals who are currently functioning as FLS Clerks will be required to pass the Series 21 examination within one year of its implementation. The Series 25 examination (Trading Assistant Qualification Examination) is a prerequisite to taking the Series 21 examination, but no training program will be required for these individuals since they already are acting in the capacity of FLS Clerks.

III. Discussion

The Commission finds that the require is consistent with the requirements of the Act and the rules and required thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41514 (June 10, 1999), 64 FR 32912 (June 18, 1999).

[4] In approving the proposed rule change, the Commission also has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

6(c)(3)(B) of the Act,[5] which provides that the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience, and competence as are prescribed by the rules of the Exchange. The Commission finds that requiring the FLS Clerks to take the Series 21 examination and to under on-the-job training is consistent with Section 6(c)(3)(B) because it provides the Exchange with a means to measure an FLS Clerk's ability and qualifications and to ensure that the Clerks are trained in an on-the-job setting. The Series 21 Examination covers such topics as preparing for the market opening, operating the display book, preparing for the market close, and generating trade reports, all topics designed to measure the Clerk's ability to perform his or her assigned tasks. Requiring all current and future FLS Clerks to pass the Series 21 Examination will help ensure that they are adequately trained and qualified to perform their duties competently.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NYSE–99–19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–19266 Filed 7–27–99; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intention to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before September 27, 1999.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Micheal J. Murray, Financial Operations Analyst, Office of Field Operations, Small Business Administration, 409 3rd Street SW., Suite 7125, Washington, DC 20416

FOR FURTHER INFORMATION CONTACT: Michael J. Murray, Financial Operations Analyst, 202–205–6598 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Pre-qualification Loan Application."

Form No: 2114.

Description of Respondents: New Market Customers.

Annual Responses: 5,965.

Annual Burden: 14,912.

Dated: July 23, 1999.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–19319 Filed 7–27–99; 8:45 am]

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[5] 15 U.S.C. 78f(c)(3)(B).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5996]

National Boating Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Boating Safety Advisory Council (NBSAC). NBSAC advises the Coast Guard on matters relating to recreational boating safety.

DATES: Application forms must reach us on or before September 30, 1999.

ADDRESSES: You may request an application form by writing to Commandant (G–OPB–1), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–267–0950; or by faxing 202–267–4285. Send you application form to the same address. This notice and the application form are available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mr. A. J. Marmo, Executive Director of NBSAC, telephone 202–267–0950, fax 202 267–4285.

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council (NBSAC) is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Coast Guard regarding regulations and other major boating safety matters. NBSAC members are drawn equally from the following sectors of the boating community: State officials responsible for State boating safety programs; recreational boat and associated equipment manufacturers; and national recreational boating organizations and the general public. Members are appointed by the Secretary of Transportation.

NBSAC normally meets twice each year at a location selected by the Coast Guard. When attending meetings of the Council, members are provided travel expenses and per diem.

We will consider applications for the following eight positions that expire or become vacant in December 1999: Four representatives of State officials responsible for State boating safety programs; two representatives of recreational boat and associated equipment manufacturers; and two representatives of the national recreational boating organizations. Applicants are considered for membership on the basis of their particular expertise, knowledge, and experience in recreational boating safety. Each member serves for a term of 3 years unless filling an unexpired term. Some members may serve consecutive terms.

In support of the policy of the Department of Transportation on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected, we may require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: July 19, 1999.

Terry M. Cross,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Operations.

[FR Doc. 99–19178 Filed 7–27–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted

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below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 6, 1999, (64 FR, page 24447).

DATES: Comments must be submitted on or before August 27, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Financial Responsibility for Licensed Launch Activities.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0601.

Form(s): N/A.

Affected Public: Respondents are all licensees authorized to conduct licensed launch activities. We estimate 7.

Abstract: The information will be used to determine if licensees have complied with financial responsibility requirements (including maximum probable loss determination,) as set forth in regulations and in license orders issued by the Office of the Associate Administrator for Commercial Space Transportation.

Estimated Annual Burden Hours: 1827 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 22, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–19315 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Federal Contract Tower Cost-Sharing Program

AGENCY: Federal Aviation Administration DOT.

ACTION: Notice of cost-sharing program.

SUMMARY: This notice announces the creation of the Federal Contract Tower Cost-Sharing program. Cost-Sharing is a federally funded program that incorporates an airport's Benefit/Cost (B/C) Ratio, utilizes that B/C as a percentage, and provides qualified control towers that percentage of federal funds for the operation of their air traffic services. The airports are responsible for the remaining percentage of air traffic funding. Applying for this program is the same process as applying for the fully funded contract tower program. If you are interested in participating in this program, contact the FAA Regional Headquarters responsible for your area and request an application package.

Issued in Washington, DC on July 22, 1999.

Eric Harrell,

Manager Enroute/Terminal Operations & Procedures Division, Contract Tower Program.

[FR Doc. 99–19314 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–13–U–00–CHO) To Use the Revenue From a Passenger Facility Charge (PFC) at Charlottesville-Albemarle Airport, Charlottesville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: This correction revises information from the previously published notice.

In notice document 99–15123 beginning on page 32094 in the issue of Tuesday, June 15, 1999, under Supplementary Information, last paragraph, the Class or classes of air carriers which the public agency has requested not be required to collect PFCs should read, "Air Taxi Commercial Operators filing FAA form 1800–31 and Charters".

DATES: Comments must be receive on or before August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Art Winder, Washington Airports District Office, PO Box 16780, Washington, DC 20041–65780. The application may be reviewed in person at this same location.

Issued in Washington, DC on July 19, 1999.

Laurence Schaefer,

Acting Manager, Planning & Programming, Eastern Region.

[FR Doc. 99–19317 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 99–04–C–00–ABE To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lehigh Valley International Airport, Allentown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lehigh Valley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 27, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Roxane Wren, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1100, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael C. Burris, Director of Finance and Administration of the Lehigh Northampton Airport Authority at the following address: Lehigh Northampton Airport Authority, 3311 Airport Road, Allentown, PA 18103.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Lehigh Northampton Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Roxane Wren, Administrative Support Assistant, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1100, 717–730–2830. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lehigh Valley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 2, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by Lehigh Northampton Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 2, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–04–C–00–ABE.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1999.

Proposed charge expiration date: February 1, 2001.

Total estimated PFC revenue: $1,500,000.00.

Brief description of proposed project(s):

—Renovate Original Satellite.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Fitzgerald Federal Building #111, Airports Division, AEA–610, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lehigh Northampton Airport Authority.

Issued in Camp Hill, PA on July 6, 1999.

Sharon A. Daboin,

Manager, Harrisburg ADO, Eastern Region.

[FR Doc. 99–19180 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Carter, Reynolds, Wayne, Bollinger, and Cape Girardeau Counties, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for proposed improvements to the transportation system in Carter, Reynolds, Wayne, Bollinger, and Cape Girardeau Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Donald Neumann, Programs Engineer, FHWA Division Office, 209 Adams Street, Jefferson City, MO 65101, Telephone: (573) 636–7104 or Scott Meyer, District Engineer, Missouri Department of Transportation, P.O. Box 160, Sikeston, MO 63801, Telephone: (573) 472–5333.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare an EIS for a proposed project to improve the transportation system in the vicinity of Route 34 in Carter, Reynolds, Wayne, Bollinger and Cape Girardeau Counties, Missouri. The proposed project will involve the examination of transportation improvements to Route 34, including improvements to Route 21 from the intersection of Route 21 and U.S. Route 60 to the intersection of Routes 21 and 34, extending eastward to the intersection of Routes 34 and 72 in Cape Girardeau County. The proposed project will include the study of a terminus of Route 34 at I–55 in the vicinity of Jackson, Missouri.

The proposed location study and accompanying EIS are the result of MoDOT's identification of Route 34 in southeast Missouri for improvement as part of the current and ongoing transportation program. Given the current and projected traffic volumes, and the existing geometric deficiencies and substandard bridges, improvements to the corridor are considered necessary to provide for a safe, efficient, and economical transportation network that will meet traffic demands in the area. The proposed improvements should also be environmentally sound. System improvements will be examined based on the purposes of addressing roadway deficiencies, improving safety, reducing traffic congestion, and enhancing system linkage.

Alternatives under consideration include: (1) Taking no action, (2) transportation system management, (3) upgrading and improving the existing roadways, and (4) constructing a two-lane highway on new or partially-new location. Design variations of grade and alignment will be incorporated into and studied for the various build alternatives.

A coping process has been initiated that involves all appropriate federal, state, and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal. Several public meetings have been held to engage the regional community in the decision making process and to obtain public comment. Subsequent public meetings will be conducted as the location study process progresses. In addition, a public hearings will be held to present the findings of the draft EIS (DEIS) and the location study. Public notice has been, and will be given concerning the time and place of informational meetings and the public hearing. The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or MoDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12373 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 15, 1999.

Donald L. Neumann,

Programs Engineer, Jefferson City.

[FR Doc. 99–19202 Filed 7–27–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. FRA–1999–5685, Notice No. 2]

Federal Transit Administration

RIN 2130—AB33

Proposed Joint Statement of Agency Policy Concerning Shared Use of the General Railroad System by Conventional Railroads and Light Rail Transit Systems

AGENCY: Federal Railroad Administration (FRA), Federal Transit Administration (FTA), DOT.

ACTION: Extension of comment period.

SUMMARY: By notice of a proposed policy statement published on May 25, 1999 (64 FR 28238), FRA and FTA proposed how they intend to coordinate use their respective safety authorities to

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address safety issues related to light rail transit operations that take place, or are planned to take place, on the general railroad system of transportation. The proposal also summarized how the process of obtaining waivers of FRA's safety regulations may work, particularly where the light rail and conventional rail operations occur at different times of day. In that notice, FRA established a deadline for the submission of written comments of July 30, 1999. Due to the need to ensure that all interested parties have sufficient amount of time to fully develop their comments, and because FRA has not yet seperately issued a proposed statement of agency policy concerning its safety jurisdiction over railroad passenger operations, this document announces an extension of the deadline for the submission of written comments.

DATES: Written comments must be received by October 29, 1999. Comments received after that date will be considered to the extent possible without incurring additional expenses or delay.

ADDRESSES: Procedures for written comments: Submit one copy to the Department of Transportation Central Docket Management Facility located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. All docket material on the proposed statement will be available for inspection at this address and on the Internet at http://doms.dot.gov. (Docket hours at the Nassif Building are Monday-Friday, 10:00 a.m. to 5:00 p.m., excluding Federal holidays.) Persons desiring notification that their comments have been received should submit a stamped, self-addressed postcard with their comments. The postcard will be returned to the addressee with a notification of the date on which the comments were received.

FOR FURTHER INFORMATION CONTACT: Gregory B. McBride, Deputy Chief Counsel, FTA, TCC–2, Room 9316, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: (202) 366–4063); and Daniel C. Smith, Assistant Chief Counsel for Safety, FRA, RCC–10, 1120 Vermont Avenue, N.W., Mail Stop 10, Washington, D.C. 20590 (telephone: (202) 493–6029).

SUPPLEMENTARY INFORMATION: In the proposed joint policy statement issued on May 25, 1999 by FRA and FTA, the agencies explained that the proposal is intended to delineate the nature of the most important safety issues related to shared use of the general railroad system by conventional and rail transit equipment and summarize the application of FRA safety rules to such shared-use operations. The proposal will help transit authorities, railroads, and other interested parties understand how the respective safety programs of the two agencies will be coodinated. The proposed statement noted that FRA soon intended to issue its own proposed statement of agency policy concerning its safety jurisdiction over railroad operations, which would discuss the extent and exercise of FRA's jurisdiction, provide guidance on which would discuss the extent and exercise of exercise of FRA's jurisdiction, provide guidance on which of FRA's safety rules are likely to apply in particular operational situations, and summarize how the process of obtaining waivers of FRA's safety regulations may work. The expectation of the two agencies was that commenters would then have the ability to study and analyze FRA's proposed policy statement before July 30, 1999, the deadline for sumbitting written comments on the proposed joint statement.

While FRA still intends to issue a separate proposed policy statement, regrettably that document will not be published before the close of the comment period for the proposed joint statement. Due to the complexity and importance of adopting a joint policy concerning shared use of the general railroad system by conventional railroads and light rail transit systems, especially to communities that are planning or developing light rail systems, FRA and FTA do not wish to inhibit the ability of any party to fully develop its comments and seek to provide sufficient time for all interested parties to gather necessary information. Consequently, FRA and FTA believe it is in the best interest of all parties involved to extend the period for the submission of written comments in this proceeding to October 29, 1999. It should be noted that since FRA expects to issue its proposed policy statement before the October 29, 1999 deadline, FRA and FTA do not anticipate any futher extension of the comment period in this proceeding. The two agencies will consider comments submitted after October 29, 1999, only to the extent possible without causing additional expense or delay.

Jolene M. Molitoris,
Federal Railroad Administrator.
Gordon J. Linton,
Federal Transit Administrator.

[FR Doc. 99–19369 Filed 7–27–99; 8:45 am]
BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–58]

Cancellations of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Brokers' Licenses Cancellations.

I, the Commissioner of Customs, pursuant to section 641(f) Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 111.51(a)), hereby cancel the following Customs brokers' licenses without prejudice.

Port	Individual	License No.
Ogdensburg	F. W. Myers & Co., Inc.	0729

Dated: July 22, 1999.
Raymond W. Kelly,
Commissioner.

[FR Doc. 99–19241 Filed 7–27–99; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99-59]

Treasury Decisions; Retraction of Revocations of Customs Brokers' Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Brokers' licenses revocations retraction.

The following Customs brokers' licenses were erroneously included on a list of revoked Customs brokers' licenses published in the **Federal Register**. The licenses listed below are valid.

Port	Individual	License No.
San Francisco	Lawrence George Johnson	09413
Miami	Lincoln Blackwood	11262
New York	Norman Isacoff	04970
Buffalo	Cynthia Kavanaugh	10495
Miami	Cynthia Metcalf	09612

Dated: July 22, 1999.
Raymond W. Kelly,
Commissioner.

[FR Doc. 99–19242 Filed 7–27–99; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Engraving and Printing within the Department of the Treasury is soliciting comments concerning the Owner's Affidavit of Partial Destruction of Mutilated Currency.

DATES: Written comments should be received on or before September 20, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Department of Treasury, Bureau of Engraving and Printing, Pamela V. Grayson, 14th & C Streets, SW, Washington, DC 20228, (202) 874–2212.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Department of Treasury, Bureau of Engraving and Printing, Lorraine Robinson, 14th & C Streets, SW., Washington, DC 20228, (202) 874–2532.

SUPPLEMENTARY INFORMATION:

Title: Owner's Affidavit of Partial Destruction of Mutilated Currency.

OMB Number: 1520–0001.

Form Number: BEP 5283.

Abstract: The Office of Currency Redemption and Destruction Standards, Bureau of Engraving and Printing, requests owners of partially destroyed U.S. currency to complete a notarized affidavit (form BEP 5283) for each claim submitted when substantial portions of notes are missing.

Type of Review: Reinstatement (without change).

Affected Public: Individuals or households.

Estimated Number of Respondents: 300.

Estimated Total Annual Burden Hours: 180.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: July 14, 1999.
Pamela V. Grayson,
Management Analyst.

[FR Doc. 99–19212 Filed 7–27–99; 8:45 am]
BILLING CODE 4840–01–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Engraving and Printing within the Department of the Treasury is soliciting comments concerning the Claim for Amounts Due in the Case of a Deceased Owner of Mutilated Currency.

DATES: Written comments should be received on or before September 20, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Department of Treasury, Bureau of Engraving and Printing, Pamela V. Grayson, 14th & C Streets, SW, Washington, DC 20228, (202) 874–2212.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Department of Treasury, Bureau of Engraving and Printing, Lorraine Robinson, 14th & C Streets, SW, Washington, DC 20228, (202) 874–2532.

SUPPLEMENTARY INFORMATION:

OMB Number: 1520–0002.

Form Number: BEP 5287.

Abstract: Treasury is required to determine ownership in cases of a deceased owner of damaged or mutilated currency.

Type of Review: Reinstatement (without change).

Affected Public: Individuals or households, Business or other for-profit/ Not-for-profit institutions and State, Local or Tribal Government].

Estimated Number of Respondents: 180.

Estimated Total Annual Burden Hours: 165.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: July 14, 1999.
Pamela V. Grayson,
Management Analyst.

[FR Doc. 99–19213 Filed 7–27–99; 8:45 am]
BILLING CODE 4840–01–P

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5305–SEP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5305–SEP, Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

DATES: Written comments should be received on or before September 27, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

OMB Number: 1545–0499.

Form Number: 5305–SEP.

Abstract: Form 5305–SEP is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in Internal Revenue Code section 408(k). This form is not to be filed with the IRS but is to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions to the SEP.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 4 hr., 57 min.

Estimated Total Annual Burden Hours: 495,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–19198 Filed 7–27–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2120

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2120, Multiple Support Declaration.

DATES: Written comments should be received on or before September 27, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW, Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Multiple Support Declaration.

OMB Number: 1545–0071.

Form Number: 2120.

Abstract: A taxpayer who pays more than 10%, but less than 50%, of the support for an individual may claim that individual as a dependent for tax purposes provided the taxpayer attaches declarations from anyone else providing at least 10% support stating that they will not claim the dependent. This form is used to show that the other contributors have agreed not to claim the individual as a dependent.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 11,000.

Estimated Time Per Respondent: 27 min.

Estimated Total Annual Burden Hours: 4,950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–19199 Filed 7–27–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Request for Nominations for Members of Public Advisory Committee; Internal Revenue Service Advisory Council (IRSAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Internal Revenue Service (IRS) is requesting nominations for members to serve on the Internal Revenue Service Advisory Council (IRSAC). Nominations will be accepted for current vacancies and vacancies that will or may occur during the next 12 months. To ensure appropriate balance of membership, final selection from among qualified candidates will be determined based on experience, qualifications, and other expertise.

DATES: The deadline for submitting applications is Tuesday, August 31, 1999.

ADDRESSES: Send all applications to—Merci del Toro, Office of Public Liaison and Small Business Affairs, CL:PL, Room 7559 IR, 1111 Constitution Avenue, NW, Washington, DC 20224, Fax: 202–622–5886, E-mail: Public-Liaison@m1.irs.gov. The application package will be uploaded to the IRS web site with fill in the blank capabilities at the following addresses: Tax Professionals Corner—http://www.irs.ustreas.gov/prod/bus_info/tax_pro/index.html; and the Small Business Corner—http://www.irs.ustreas.gov/prod/bus_info/sm_bus/index.html.

FOR FURTHER INFORMATION CONTACT: Lorenza Wilds, Telephone: 202–622–6440, not a toll-free number.

SUPPLEMENTARY INFORMATION: IRS is requesting nominations for members to serve on the advisory committee listed below.

Internal Revenue Service Advisory Council (IRSAC)

The IRSAC provides an organized public forum for discussion of relevant tax administration issues between IRS officials and representatives of the public. Through the years, IRSAC has focused on broad tax administration policy matters. Various groups have suggested operational improvements, offered constructive observations about IRS' current or proposed policies, programs, and procedures, and advised the Commissioner of Internal Revenue on particular issues having substantive effect on Federal Tax Administration. It is important that IRSAC membership continue to represent the range and make-up of broad and diverse taxpayer and key stakeholder base.

Criteria for Members

Applicants shall be well-rounded, with excellent communication skills, bring years of practical experience and knowledge to the group, and able to interact well in a diversified environment. Applicant's background should include several of the following experiences: developing and implementing customer service initiatives and tools, systems management and improvement, and change management; small business owners and entrepreneurs; those who have established successful strategic partnerships; as well as those who have the ability to examine situations and issues from a "macro" viewpoint.

Nomination Procedures

Interested persons may nominate themselves and/or one or more qualified persons for membership on the IRSAC. Application packages are available on the IRS' Internet Site, on the Tax Professionals Corner—http://www.irs.ustreas.gov/prod/bus_info/tax_pro/index.html; or the Small Business Corner—http://www.irs.ustreas.gov/prod/bus_info/sm_bus/index.html.

Applicants may also request an application package by calling Lorenza Wilds at 202–622–6440 (not a toll-free number). Federal income tax, FBI, and practitioner checks (if applicable), are required of all applicants. This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 15, 1999.

Susanne M. Sottile,

National Director, Public Liaison and Small Business Affairs.

[FR Doc. 99–19199 Filed 7–27–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Pacific Northwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Pacific-Northwest District Citizen Advocacy Panel will be held in Anchorage, Alaska.

DATES: The meeting will be held Saturday, August 14, 1999.

FOR FURTHER INFORMATION CONTACT: Deborah A. Diamond at 1–888–912–1227 or 206–220–6099.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Saturday, August 14, 1999, 9:00 a.m. to noon at the Hampton Inn, 4301 Credit Union Drive, Anchorage, AK. Due to limited conference space, notification of intent to attend the meeting must be made with Deborah Diamond. Ms. Diamond can be reached at 1–888–912–1227 or 206–220–6099. The public is invited to make oral comments from 9:30 a.m. to 11:30 a.m. Saturday, August 14, 1999. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 206–220–6099, or write Deborah Diamond, CAP Office, 915 2nd Avenue; M/S W–406, Seattle, WA 98174.

The Agenda will include the following: subcommittee reports and various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: July 20, 1999.

John J. Mannion,

Chief, Special Projects.

[FR Doc. 99–19200 Filed 7–27–99; 8:45 am]

BILLING CODE 4830–01–P

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UNITED STATES INFORMATION AGENCY

Culturally Significant Object Imported for Exhibition Determination: "Comtesse de la Rue"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the object "Comtesse de la Rue" to be included in the exhibit "Portraits by Ingres: Image of an Epoch", imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. This object is imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit object at The Metropolitan Museum of Art, New York, NY., from on or about September 27, 1999, until on or about January 2, 2000, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For information, contact Neila Sheahan Assistant General Counsel, Office of the General Counsel at 202/619–5030. The address is Room 700, US Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: July 22, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–19240 Filed 7–27–99; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 64, No. 144

Wednesday, July 28, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Committee Meeting Notice

Correction

In notice document 99–18740, appearing on page 39494, in the issue of Thursday, July 22, 1999, in the second column, under **FOR FURTHER INFORMATION CONTACT:**, in the fifth line, "Office" should read "Official".

[FR Doc. C9–18740 Filed 7–27–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

ARMS Initiative Implementation: Meeting

Correction

In notice document 99–18741, beginning on page 39493, in the issue of Thursday, July 22, 1999, make the following correction:

On page 39494, in the first column, the paragraph that begins, "**FOR FURTHER INFORMATION CONTACT:**" is corrected to read as follows:

FOR FURTHER INFORMATION CONTACT: Mr. Elwood H. Weber, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, Virginia 22333; Phone (703) 617–9788.

[FR Doc. C9–18741 Filed 7–27–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board (AFEB); Meeting

Correction

In notice document 99–18744, appearing on page 39494, in the issue of Thursday, July 22, 1999, make the following correction:

In the second column, a paragraph is added after the fourth line to read as follows:

"2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee."

[FR Doc. C9–18744 Filed 7–27–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

Correction

In notice document 99–18707 beginning on page 39503 in the issue of Thursday, July 22, 1999, make the following correction:

On page 39503, in the second column, in the application description, line "b. *Project No.:* 1171-000" should read "b. *Project No.:* 11761-000".

[FR Doc. C9–18707 Filed 7–27–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Correction

In notice document 99–18579 beginning on page 39134 in the issue of Wednesday, July 21, 1999, make the following correction:

On page 39134, in the third column, in the third line, "b. Project No. P-11730-000" should read,"b. Project No. P-11739-000".

[FR Doc. C9–18579 Filed 7–27–99; 8:45 am]

BILLING CODE 1505–01–D

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Part II

Environmental Protection Agency

40 CFR Part 90

Phase 2 Emission Standards for New Nonroad Spark-Ignition Handheld Engines At or Below 19 Kilowatts; Proposed Rule

federal register

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 90

[FRL–6374–7]

RIN 2060–AE29

Phase 2 Emission Standards for New Nonroad Spark-Ignition Handheld Engines At or Below 19 Kilowatts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: In this action, EPA is reproposing a second phase of emission regulations to control emissions from new nonroad spark-ignition handheld engines at or below 19 kilowatts (25 horsepower). The engines covered by this proposal are used principally in handheld lawn and garden equipment applications such as trimmers, leaf blowers and chainsaws. EPA originally proposed standards for these engines in January 1998, however, recent dramatic advancements in small engine emission control technology have led EPA to repropose significantly more stringent standards for handheld engines than originally proposed. The newly proposed standards are expected to result in an estimated 78 percent reduction of emissions of hydrocarbons plus oxides of nitrogen from those achieved under the current Phase 1 standards applicable to handheld engines. The proposed standards for handheld engines are scheduled to be phased in beginning with the 2002 model year. The standards would result in important reductions in emissions which contribute to excessively high ozone levels in many areas of the United States.

Today's action also includes two provisions that would affect Phase 2 nonhandheld engines. EPA is proposing standards for two additional classes of nonhandheld engines that would apply to engines below 100 cubic centimeters displacement used in nonhandheld equipment applications. EPA is also proposing an option that allows manufacturers to certify engines greater than 19 kilowatts and less than or equal to one liter in displacement to the small engine Phase 2 standards. EPA recently adopted Phase 2 regulations for small SI engines used in nonhandheld equipment generally, and today's proposed standards for additional classes of nonhandheld engines and the option to include engines greater than 19 kilowatts and less than or equal to one liter in displacement would partially modify the scope of the recent final rule.

DATES: Written comments on this SNPRM must be submitted on or before September 17, 1999. EPA will hold a public hearing on August 17, 1999 starting at 10:00 a.m.; requests to present oral testimony must be received on or before August 13, 1999.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: EPA Air and Radiation Docket, Attention Docket No. A–96–55, Room M–1500 (mail code 6102), 401 M Street, SW, Washington, DC 20460, and to the EPA contact person listed below. Materials relevant to this supplemental proposed rulemaking are contained in this docket and may be viewed from 8:00 a.m. until 5:30 p.m. weekdays. The docket may also be reached by telephone at (202) 260–7548. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying. The public hearing will be held in Ann Arbor, MI at the National Vehicle and Fuel Emission Laboratory, 2000 Traverwood; call (734) 214–4270 for further information.

For further information on electronic availability of this supplemental proposed rulemaking, see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Philip Carlson, U.S. EPA, Office of Mobile Sources, Engine Programs and Compliance Division, (734) 214–4270; carlson.philip@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those that manufacture or introduce into commerce new small spark-ignition handheld or nonhandheld nonroad engines or equipment. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers or importers of new nonroad small (at or below 19 kW) spark-ignition handheld or nonhandheld engines and equipment.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria in § 90.1 of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Obtaining Electronic Copies of the Regulatory Documents

The preamble, proposed regulatory language and Supplemental Draft Regulatory Impact Analysis are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost already incurred for Internet connectivity. The electronic version of this supplemental proposed rule is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

1. http://www.epa.gov/docs/fedrgstr/EPA–AIR/(either select desired date or use Search feature).

2. http://www.epa.gov/OMSWWW/ (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

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I. Introduction

A. Background

On January 27, 1998, EPA issued a Notice of Proposed Rulemaking (NPRM) proposing a second phase of regulations to control emissions from new handheld and nonhandheld nonroad SI engines at or below 19 kilowatts (25 horsepower) hereafter referred to as "small SI engines" (63 FR 3950). This action was preceded by a March 27, 1997, Advance Notice of Proposed Rulemaking (62 FR 14740). EPA solicited comment on all aspects of the January 1998 NPRM. EPA held a public hearing on February 6, 1998, and the public comment period for the January 1998 NPRM closed March 13, 1998. EPA finalized Phase 2 standards and compliance program requirements for Class I and Class II nonhandheld engines on March 30, 1999 (64 FR 15208). In the final rule for nonhandheld engines, EPA noted that it planned to address the Phase 2 program for handheld engines in future **Federal Register** documents. The purpose of today's supplemental proposal is to propose revised Phase 2 standards and compliance program requirements for handheld engines. Today's supplemental proposal also includes proposed standards and compliance program requirements for two newly designated classes of nonhandheld engines with displacements below 100 cubic centimeters (cc), hereafter referred to as Class I-A and Class I-B engines.

Today's proposed action is taken in response to section 213(a)(3) of the Clean Air Act which requires EPA's standards for nonroad engines and vehicles to achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available, giving appropriate consideration to cost, lead time, noise, energy and safety factors. The standards and other compliance program requirements being proposed today are intended to satisfy this Clean Air Act mandate.

The January 1998 NPRM contained lengthy discussion of the first set of proposed standards, the expected costs of their implementation, the technologies that EPA expected manufacturers would use to meet the standards, and the potential costs and benefits of adopting more stringent standards such as those that were then under consideration by the California Air Resources Board (ARB). In the January 1998 NPRM, EPA explicitly asked for comment regarding the level of the proposed standards and the impacts and timing for implementing more stringent standards, so as to allow EPA to establish the most appropriate standards in the final rule. In particular, EPA requested comment on the impacts and timing for implementing emission standards that would require the same types of technology as anticipated by proposed rules under consideration at that time by the California ARB.

After the close of the comment period and upon reviewing the information supplied during and after the comment period, EPA determined that it was desirable to get further details regarding the technological feasibility, cost and lead time implications of meeting standards more stringent than those contained in the January 1998 NPRM. EPA's January 1998 NPRM already contained estimates of the costs and feasibility of more stringent standards. Some commenters had charged that, based on these 1998 NPRM discussions, EPA's proposed standards would not be stringent enough to satisfy the stringency requirements of Clean Air Act section 213(a)(3). For the purpose of gaining additional information on feasibility, cost and lead time implications of more stringent standards, EPA had several meetings, phone conversations, and written correspondence with specific engine manufacturers, with industry associations representing engine and equipment manufacturers, with developers of emission control technologies and suppliers of emission control hardware, with representatives of state regulatory associations, and with members of Congress. EPA also sought information relating to the impact on equipment manufacturers, if any, of changes in technology potentially required to meet more stringent standards than were contained in the January 1998 NPRM. Additionally, EPA received numerous comments on the January 1998 NPRM requesting closer harmonization with the compliance program provisions that were ultimately adopted by the State of California. In some cases, EPA also discussed these harmonization issues with manufacturers and industry association representatives to improve the Agency's understanding of the needs and benefits to the industry of such harmonization.

As stated on prior occasions, in adopting final Phase 2 requirements for small SI engines, EPA wished to consider all relevant information that became available during the rule development process. This includes information received during the comment period on the January 1998 NPRM, and, to the extent possible, important information which became available after the formal comment period had concluded on the January 1998 NPRM. To the extent that post-NPRM information has expanded or updated the knowledge of the Agency regarding technological feasibility, production lead time estimates for incorporating improved designs, costs to manufacturers, costs to consumers and similar factors, it is reasonable to expect that the improved information may result in changing assessments of how a pending rule can best achieve regulatory goals compared to what had been expected at the time of the January 1998 NPRM. This is especially true in the case of a rulemaking concerning an industry, like the small SI engine industry, that is undergoing relatively rapid technological innovation.

EPA published a Notice of Availability on December 1, 1998 highlighting the additional information gathered in response to the January 1998 NPRM (see 63 FR 66081). After analyzing this information, the Agency concluded that more stringent standards for Class I nonhandheld engines, used in applications such as lawn mowers,

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consistent with those adopted by California were indeed achievable on the national scale with existing, well-understood overhead valve technology. EPA had discussed issues regarding the use of this technology in nonhandheld equipment in the January 1998 NPRM. In response to the additional information and to the comments on the NPRM, EPA adopted a final rule for nonhandheld engines that included emission standards considerably more stringent than those proposed for Class I nonhandheld engines in the January 1998 NPRM. In the same final rule, EPA also adopted standards for Class II engines at the levels proposed in the January 1998 NPRM that were based on the use of the same overhead valve technology.

However, since the publication of the January 1998 NPRM, there have been rapid and dramatic advances in emission reduction technologies for handheld engines used in applications such as trimmers, brush cutters, and chainsaws. EPA had not been able to fully evaluate these technologies or discuss their possible availability at the time of the January 1998 NPRM. Having reviewed the available information regarding these new technologies, EPA now believes this new information supports proposed Phase 2 standards for handheld engines that are significantly more stringent than those proposed in the January 1998 NPRM. In light of this information, and in the interest of providing an opportunity for public comment on the stringent levels being considered for the Phase 2 handheld engine emission standards and the technologies available for meeting these standards, EPA is reproposing the Phase 2 regulations for handheld engines in this Supplemental Notice of Proposed Rulemaking (SNPRM).

With today's SNPRM, EPA is also proposing standards for two new classes of small displacement nonhandheld engines. EPA requested comment on the need for such standards in the January 1998 preamble and received comments from a number of engine manufacturers supporting such standards. Originally, the Agency did not propose different standards for small displacement nonhandheld engines citing the availability of the averaging, banking and trading program as a reason for not proposing separate standards. However, because the standards EPA recently finalized for nonhandheld Class I engines are more stringent than originally proposed in the January 1998 NPRM and because it is technologically more difficult to meet a given level of emissions as the engine displacement is decreased, manufacturers who would likely produce such small displacement engines would not likely be able to meet the Phase 2 Class I standards recently finalized and would not be able to produce such small displacement nonhandheld engines even if they could take advantage of the averaging, banking and trading program. Therefore, EPA is proposing standards for two classes of small displacement nonhandheld engines. The first small displacement class would cover nonhandheld engines with displacements below 66 cc and would be referred to as Class I-A engines. The second small displacement class would cover nonhandheld engines at or above 66 cc and below 100 cc and would be referred to as Class I-B engines.

In response to a request from small SI engine manufacturers, today's SNPRM is proposing to allow manufacturers the option of certifying engines greater than 19 kW and less than or equal to one liter in displacement to the small SI engine Phase 2 regulations for nonhandheld engines beginning with the 2001 model year. Because of their size, these engines would not need to be certified under the current Phase 1 small SI engine program. However, because there are a small number of these engines that are primarily derivatives of other certified small SI engines at or below 19 kW, EPA believes it would be appropriate for manufacturers to have the option to certify these engines to the Phase 2 requirements for small SI engines. Engines certified under this option would be required to certify for the longest useful life period of 1,000 hours. This requirements of this option would be consistent with a recently adopted requirement by the California ARB that allows engines above 19 kW and less than or equal to one liter in displacement to certify as small SI engines with a useful life of 1,000 hours.

EPA is also proposing a number of changes to the compliance program for handheld engines originally proposed in the January 1998 NPRM. Most of these proposed changes are to make the Phase 2 handheld engine compliance program the same as the compliance program requirements recently finalized for Phase 2 nonhandheld engines. The proposed requirements for handheld engines are intended to establish a consistent approach to the compliance program for all nonroad small SI engines.

The reader is referred to the March 1999 final rule for nonhandheld engines, the December 1998 Notice of Availability, the January 1998 NPRM, as well as to the docket for this rulemaking, for the range of information upon which the Agency has relied in reproposing Phase 2 standards and compliance program requirements for small SI handheld engines, and for proposing standards for Class I–A and I–B nonhandheld engines.

B. Overview of Re-Proposed Program

The following provides an overview of the reproposed Phase 2 provisions for handheld engines and the proposed provisions for Class I–A and Class I–B nonhandheld engines. Additional detail explaining the program as well as discussion of information and analyses which led to the selection of these proposed requirements is contained in subsequent sections. The reader should note there are a number of provisions contained in the January 1998 NPRM that EPA is not revising in this SNPRM. Thus, those proposed provisions remain as part of EPA's proposed Phase 2 program for handheld engines. Such provisions may not be addressed in detail in this SNPRM, but they could become part of the final program for Phase 2 handheld engines and will be addressed in the final rulemaking document that establishes the Phase 2 requirements for handheld engines, as appropriate.

Consistent with Phase 1 rules, the recently finalized Phase 2 program for nonhandheld engines and this SNPRM distinguish between engines used in handheld equipment and those used in nonhandheld equipment. In today's action, Phase 2 emission standards are proposed for distinct engine size categories referred to as "engine classes" within the handheld engine equipment designation. Table 1 summarizes the re-proposed hydrocarbon plus oxides of nitrogen (HC+NOx) emission standards for Class III, Class IV, and Class V handheld engines in grams per kilowatt-hour (g/kW-hr) and when these standards are proposed to take effect under this SNPRM. For comparison purposes, Table 2 contains the Phase 2 standards for handheld engines originally proposed in the January 1998 NPRM. The standards originally proposed in the January 1998 NPRM would have required manufacturers to certify a specified percentage of their sales to the proposed Phase 2 standards during the 2002 to 2005 model years. (The proposed percentages were 20 percent in 2002, 40 percent in 2003, 70 percent in 2004, and 100 percent in 2005.) Table 2 also lists the effective standards factoring in the mix of Phase 1 and Phase 2 engines assuming the proposed phase in schedule contained in the January 1998 NPRM.

TABLE 1.—RE-PROPOSED PHASE 2 HC+NOx EMISSION STANDARDS FOR HANDHELD ENGINES

Engine Class	Re-Proposed HC+NOx Standards (g/kW-hr) by Model Year						
	2002	2003	2004	2005	2006	2007	2008 and later
Class III	226	200	150	100	50	50	50
Class IV	187	168	129	89	50	50	50
Class V	.....	.....	138	129	110	91	72

TABLE 2.—ORIGINALLY PROPOSED PHASE 2 HC+NOx EMISSION STANDARDS FOR HANDHELD ENGINES AND EFFECTIVE DATES

Engine Class	Originally Proposed HC+NOx Standards (g/kW-hr) in January 1998 NPRM*	Effective HC+NOx Standards (g/kW-hr) by Model Year			
		2002	2003	2004	2005 and later
Class III	210	282	264	237	210
Class IV	172	231	217	194	172
Class V	116	156	146	131	116

*The originally proposed Phase 2 standards were to be phased in at 20% in 2002, 40% in 2003, 70% in 2004 and 100% in 2005 and later model years.

After complete phase-in, the re-proposed emission standards contained in this SNPRM for handheld engines (see Table 1) are considerably more stringent than the proposed standards included in the January 1998 NPRM (see Table 2). In addition, except for Class V, the reproposed standards are more stringent during all years of the phase-in than were originally proposed in the January 1998 NPRM. For Class V, the reproposed standards have been delayed until 2004 to allow manufacturers additional time to comply with the significantly more stringent standards included in today's SNPRM. EPA believes that the limited emission reductions forfeited in the short term with the delayed implementation date for Class V engines would be offset in the long term by significantly greater emission reductions once the reproposed standards take effect due to the increased stringency of the reproposed Phase 2 standards.

The more stringent reproposed standards reflect the Agency's analysis of the information received in direct response to the questions posed in the January 1998 NPRM concerning the desirability and feasibility of more stringent standards than the levels first proposed, as well as other information made available to the Agency since the January 1998 NPRM. When fully phased in, these newly proposed Phase 2 standards are expected to result in an estimated 78 percent annual reduction in combined HC+NO_x emissions from small SI handheld engines compared to the Phase 1 emission requirements for such engines. The HC+NO_x reductions expected from the standards contained in today's SNPRM represent more than a 100 percent increase in reductions over the standards proposed in the January 1998 NPRM once the Phase 2 standards are fully phased in.

One feature of the newly proposed Phase 2 handheld standards is that they would decline over a number of model years, allowing manufacturers to transition orderly and efficiently from their existing Phase 1 engine designs and technologies to those necessary to meet the new Phase 2 requirements. In addition, as described later, EPA is proposing a certification averaging, banking and trading (ABT) program that would include handheld engines. As an example, under today's proposal, a manufacturer of Class III engines would be required to meet a gradually decreasing standard on average for this segment of its product line during model years 2002 through 2006. During this time frame, EPA anticipates that a manufacturer would begin selling engine designs certified to meet the California ARB's Tier 2 HC+NO_x standard of 72 g/kW-hr nationwide while continuing to change more and more of its Class III engine designs to designs capable of meeting a 50 g/kW-hr standard, averaging emission performance with older designs and thus meeting on average the declining standard in effect for that model year as noted in Table 1. Finally, EPA expects that the manufacturer would have had sufficient time and resources to change the remainder of its engine designs and production tooling to meet a 50 g/kW-hr standard on average for all of its Class III engines by 2006 or shortly thereafter. Because the reproposed standards are a fleet average standard, a manufacturer could continue selling Class III engines certified above the 50 g/kW-hr HC+NO_x standard even after the 2006 model year provided it has sufficient ABT credits from engines certified below the standard in the same model year, credits banked from previous model years, and/or credits obtained from another small SI engine manufacturer.

As noted earlier, EPA is also proposing to add two new classes of small SI nonhandheld engines that were not proposed in the January 1998 NPRM. As proposed, Class I–A would cover engines with displacement less than 66 cc that are installed in nonhandheld equipment. Class I–B would cover engines equal to or greater than 66 cc but less than 100 cc that are installed in nonhandheld equipment. Table 3 contains the proposed HC+NO_x standards for Class I–A and Class I-B engines. Without these added classes and their specific standards, all engines less than 225 cc would be included in Class I and would have to meet the recently finalized Phase 2 standard adopted for Class I engines (also noted in Table 3).

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TABLE 3.—PROPOSED PHASE 2 HC+NO_x Emission Standards for Class I–A and Class I–B Engines and the Final Phase 2 HC+NO_x Emission Standard for Class I Engines

Engine Class	HC+NO_x Standard g/kW-hr	Time frame
Class I–A	50	2000
Class I–B	40	2000
Class I	16.1	2007

EPA is proposing the Class I–A and Class I–B designations in response to comments submitted on the January 1998 NPRM indicating that new applications for nonhandheld equipment were being developed which would use engines in these displacement ranges. Because it is generally more technically difficult to control emissions of smaller engines, at this time EPA believes it is too costly to require manufacturers to design engines under 100 cc for use in nonhandheld equipment to achieve the Phase 2 Class I HC+NO_x standard of 16.1 g/kW-hr and still have the power and performance capabilities to be useful in powering such equipment. Although EPA does not anticipate that significant numbers of equipment in this category will be produced in comparison to the other engine classes, EPA believes it is reasonable to provide the opportunity to market such equipment since, if sold, such equipment will have reasonably demonstrated consumer value. Further, at the low production volumes anticipated, the contribution to the emissions inventory from such small engines would be extremely small.

As noted above, EPA is proposing to allow manufacturers the option of certifying engines greater than 19 kW and less than or equal to one liter in displacement to the small SI engine Phase 2 regulations beginning with the 2001 model year. Because of their power rating, these engines are currently unregulated by EPA and therefore are not required to meet any emission standards at the federal level. EPA recently issued a Notice of Proposed Finding (see 64 FR 6008) which announced EPA's intent to propose regulations for "large nonroad SI engines." EPA is expecting to issue a NPRM for large nonroad SI engines sometime in 2000. Based on information released along with the Notice of Proposed Finding, EPA expects to propose that engines greater than 19 kW and less than one liter in displacement would be required to comply with the small SI nonroad engine requirements. Therefore, allowing manufacturers to optionally elect to certify engines above 19 kW with displacement less than or equal to one liter is consistent with the program EPA expects to propose for large SI nonroad engines. If for some reason, EPA does not finalize such a requirement for engines above 19 kW and less than or equal to one liter in displacement as part of the large SI nonroad engine program, EPA would expect to consider reasonable approaches to minimize disruption to the affected engine industry. In addition, interested parties would be able to suggest any approaches they believed were appropriate in comments on the large SI nonroad engine NPRM.

To offer an incentive for the early introduction of clean engines and to provide engine manufacturers with additional flexibility in meeting the reproposed Phase 2 handheld standards, EPA is proposing to make the recently adopted ABT program for Phase 2 nonhandheld engines also available to handheld engines, as well as to Class I–A and Class I–B engines. EPA did not originally propose an ABT program for handheld engines in the January 1998 NPRM. However, because of the increased stringency of the proposed handheld engine standards contained in this SNPRM, and after manufacturers have indicated an interest in such a program, EPA believes that an ABT component can be an integral part of the Phase 2 standards being proposed for Classes III, IV, and V as well as Classes I–A and I–B.

The standards and the compliance program elements being reproposed today also consider expected in-use deterioration. In contrast to the Phase 1 rules which only regulate the emission performance of engines when new, the Phase 2 standards being proposed today would require manufacturers to account for expected deterioration in emission performance as an engine is used. Manufacturers would be required to evaluate the emission deterioration performance of their engine designs and certify their designs to meet the proposed standards after factoring in the anticipated emission deterioration of a typical in-use engine over its useful life. As contained in today's SNPRM, a handheld engine manufacturer would select from one of three different useful life categories based on the type of engine and equipment in which the engine is installed. Under the proposed program, handheld engines would be certified to the emissions standards for a period of 50, 125, or 300 hours of use based on design features and the intended use of the installation. (A high priced piece of industrial equipment would more likely be equipped with an engine with design features intended to make it most durable and thus certified to the emission standards assuming a useful life period of 300 hours, for example.) For Class I–A engines, EPA is proposing the handheld engine useful life periods of 50, 125, and 300 hours. For Class I–B engines, EPA is proposing that a manufacturer would choose to certify for a useful life period of 125, 250, or 500 hours.

The proposed certification program would require manufacturers to determine an appropriate methodology for accumulating hours of operation to "age" an engine in a manner which duplicates the same type of wear and other deterioration mechanisms expected under typical consumer use which could affect emission performance. EPA expects bench testing would be used to conduct this aging operation because this can save time and perhaps money, but actual in-use operation (e.g., trimming grass) would also be encouraged. Emission tests would be conducted when the engine is new and when it has finished accumulating the equivalent of its useful life. The engine would have to pass standards both when it is new and at the end of its designated useful life to qualify for certification. Additionally, the new engine and fully aged engine emission test levels would be compared to determine the expected deterioration in emission performance for other engines of this design; such engines could be tested as they come off the end of a production line, in which case their new engine emission levels would be adjusted by the deterioration factor determined from the certification engine to predict the emission performance or the engine at the end of its useful life.

Selection of engines for testing as they come off the production line would be conducted according to the provisions of the proposed Production Line Testing (PLT) program. This program is explained in more detail in a following section but, briefly, its intent is to allow a sampling of production line engines to be tested for emission performance to assure that the design intent as certified prior to production has been successfully transferred by the manufacturer to mass production. The volume of PLT testing required by the manufacturer would depend on how close the test results from the initial engines tested are to the standards; if these test engines indicate the design is particularly low emitting, few engines would need to be tested, while those designs with emission levels very close to the standards would need additional tests to make sure the design is being produced with acceptable emission performance.

While the proposed compliance program would not require the manufacturer to conduct any in-use testing to verify continued satisfactory emission performance in the hands of typical consumers, an optional program for such in-use testing is being proposed. EPA believes it is important for manufacturers to conduct in-use testing to assure the success of their designs and to factor back into their design and/or production process any information suggesting emission problems in the field. While not proposing to mandate such a program, the proposal would encourage such testing by allowing a manufacturer to avoid the cost of the PLT program for a portion of its product line by instead supplying data from in-use engines. Under this voluntary in-use testing program, up to twenty percent of the engine families certified in a year could be designated for in-use testing by the manufacturer. For these families, no PLT testing would be required for two model years including that model year. Instead, the manufacturer would select a minimum of three engines off the assembly line or from another source of new engines and emission test them when aged to at least 75 percent of their useful life under typical in-use operating conditions for this engine. The information relating to this in-use testing program would be shared with EPA. If any information derived from this program indicates a possible substantial in-use emission performance problem, EPA anticipates the manufacturer would seek to determine the nature of the emission performance problem and what corrective actions might be appropriate. EPA would offer its assistance in analysis of the reasons for unexpectedly high in-use emission performance and what actions might be appropriate for reducing these high emissions.

As proposed in the January 1998 NPRM, EPA could choose to conduct its own in-use compliance program whether or not a manufacturer chose to conduct such a voluntary in-use testing program. If EPA were to determine that an in-use noncompliance investigation was appropriate, the Agency expects it would conduct its own in-use testing program, separate from any voluntary manufacturer testing program, to determine whether a specific class or category of engines is complying with applicable standards in use.

All of the general provisions of this proposed compliance program have been adopted as part of California's compliance program for these classes of small engines.[1] Importantly, the testing and data requirements, engine family descriptors, compliance statements and similar testing and information requirements of these proposed federal Phase 2 handheld regulations are, to the best of EPA's knowledge, the same general compliance program requirements adopted by the California ARB. This will be advantageous to manufacturers marketing the same product designs in California as in the other states, as they would need to prepare only one set of certification application information, supplying one copy to the California ARB for certification in the State of California and one copy to EPA for federal certification. This similar treatment under the regulations would also extend to the proposed PLT program and would also likely extend to the proposed optional in-use testing program, such that any test data and related information developed for the California ARB should also satisfy the federal regulatory requirements being proposed today.

In addition to the regulatory provisions outlined above, this proposal includes special provisions for small volume engine manufacturers, small volume engine families produced by other engine manufacturers, small volume equipment manufacturers who rely on other manufacturers to supply them with these small SI handheld engines, and small volume equipment models. These special small volume handheld provisions are intended to lessen the demonstration requirements and in some cases delay the effective dates of the standards so as to smooth the transition to these Phase 2 requirements. This is especially important for small volume applications because the eligible manufacturers involved may not have the resources to ensure that engines complying with the proposed Phase 2 standards will be available within the time frames otherwise envisioned under these regulations. Since these proposed flexibility provisions are limited to small volume applications, the risk to air quality should be negligible. However, without these provisions, the economic impacts to small volume manufacturers could be increased and the possibility of reduced product offering would be greater, especially for those products intended to serve niche markets which satisfy special needs. The proposed small volume flexibilities are explained more fully in section II.D. of today's SNPRM and are detailed in the proposed regulations.

[1] While the voluntary in-use test program has not been codified in the California ARB Tier 2 rules for these engines, EPA has discussed the program with the California ARB. EPA expects that the California ARB would consider allowing manufacturers to participate in the voluntary in-use test program and receive the same decreased PLT testing as contained in this proposal.

II. Content of the Supplemental Proposed Rule

The following sections provide additional detail on the provisions of the supplemental proposed rule outlined above.

A. Emission Standards and Related Provisions

1. Class Structure

This SNPRM retains the same basic class structure for small SI engines as implemented in the Phase 1 regulations and proposed in the January 1998 NPRM with the addition of the proposed designations of Class I–A and Class I–B engines. The Phase 1 rules established separate classes based on engine size in recognition of the greater difficulty in controlling emissions from smaller displacement engines compared to larger displacement engines. The Phase 1 program also separated engine classes into those intended for use in equipment typically carried by the operator during its use such as chain saws or string trimmers (referred to as handheld equipment) and those engines normally used in equipment which is not carried by the operator such as lawnmowers and generators (referred to as nonhandheld equipment). These usage distinctions seemed appropriate because the small engine industry is for the most part split between these two categories, with very few manufacturers making both handheld engines and nonhandheld engines. In addition, the nature of these two industry segments is quite different. For example, handheld engine manufacturers produce engines primarily for use in equipment they also manufacture. In contrast, nonhandheld engine manufacturers typically supply engines to separate nonhandheld equipment manufacturers and do not make their own equipment.

As noted above, EPA is proposing standards for two new classes of nonhandheld engines in this SNPRM. Under the existing Phase 1 program, Class I includes all nonhandheld engines with displacements below 225 cc. EPA received several comments on the January 1998 NPRM supporting the adoption of standards for additional nonhandheld categories below 225 cc. EMA requested the creation of a new class of small displacement nonhandheld engines in order to fill a void in the equipment market left by

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products that would no longer be able to utilize 2-stroke engines if the proposed Phase 2 Class I standards were adopted. They noted that production of some 4-stroke side valve (SV) engines under 76 cc had already been discontinued with the advent of Phase 1 standards due to practicality, and that with the more stringent standards proposed for Phase 2, even greater numbers of these engines would be eliminated from the market. EMA also noted that the California ARB had proposed an HC+NO_X standard of 72 g/kW-hr for engines below 60 cc, recognizing that engines below 60 cc are designed for functionally different types of equipment than those above 60 cc. Honda commented that the Phase 1 standards and the proposed Phase 2 standards for Class I are not appropriate for the smallest engines in the class because of the increased difficulty in reducing emissions with small displacement engines. Honda recommended the addition of a small displacement nonhandheld engine class with the emission standard harmonized with the California ARB's standard for 0–60 cc engines. Suzuki recommended the addition of a small displacement nonhandheld class of 100 cc and less, arguing that overhead valve (OHV) engines in this size already have difficulty meeting the Phase 1 HC+NO_X standards because of large combustion chamber surface-to-volume ratios. They commented that the addition of a new class of small displacement nonhandheld engines would allow the use of lightweight 4-strokes in applications that require mobility but do not qualify as multi-positional under the handheld classification. Suzuki recommended that the HC+NO_X standard should be 40 g/kW-hr, with the same durability classes and in-use programs as proposed for Class I engines. Tecumseh noted that they foresee a need for 4-stroke engines in the 50–100 cc range, which would not be able to meet the proposed Phase 2 Class I standard. They commented that an additional class below 225 cc was needed and they also suggested a 40 g/kW-hr HC+NO_X standard for 50–100 cc engines.

Based on the fact that it is more difficult for smaller displacement engines to meet the same emission standards as larger displacement engines, EPA believes that a standard which is technically feasible and economically viable for the larger displacement Class I 4-stroke engines (which have displacements typically above 125 cc and are primarily used in lawnmowers), could be too costly for manufacturers to be achievable for smaller displacement engines that manufacturers would need to use in new equipment applications requiring the use of much smaller displacement nonhandheld engines. Therefore, it appears that the span of engine displacements within Class I is too large to allow for a technologically appropriate engine standard for both the larger and smaller engines in that class. Although this has not significantly affected manufacturers' ability to produce engines for applications under the Phase 1 rules, EPA believes this may not be the case in the future based on the comments noted above. If EPA were to retain the broader Class I category, products like those noted by manufacturers in their comments above would need to be dropped or could not be introduced. Thus, to allow for the marketing of a wide range of nonhandheld products, including applications that could be powered by the smallest displacement engines, EPA is proposing to subdivide the Class I engine category by adding two new nonhandheld engine classes and redesignating the span of displacements covered by Class I. Under today's proposal, Class I–A would include nonhandheld engines below 66 cc, Class I–B would include nonhandheld engines equal to or greater than 66 cc but less than 100 cc, and Class I would cover engines equal to or greater than 100 cc but less than 225 cc. The proposed displacement range for Class I–A would harmonize the requirements with those adopted by the California ARB. Based on the comments submitted by manufacturers, EPA believes the proposed displacement range for Class I–B is appropriate and should not compromise the emissions benefits of the recently finalized Phase 2 program for Class I engines since more than 99 percent of the currently certified Class I engines (based on estimated production levels submitted by manufacturers to EPA) have displacements greater than 100 cc. EPA requests comments on EPA's proposal for Class I–A and I–B engines and new information regarding manufacturer's plans to develop and market such engines.

If the proposed Class I–A and I–B standards are adopted, EPA would not expect that manufacturers would shift significant production from Class I to the smaller displacement engines. In addition, EPA would not expect that manufacturers would certify 2-stroke engines to the proposed Class I–A and I–B standards and use such engines in popular Class I equipment applications such as walk-behind mowers. If such a change in the market were to occur, the benefits of the recently finalized Phase 2 program for Class I engines which anticipates a turnover to clean 4-stroke OHV technology would be seriously compromised. EPA requests comments on the potential for 2-stroke engines to meet the proposed Class I–A and I–B standards and the potential for such engines to be used in existing nonhandheld applications such as mowers.

As noted above, EPA is proposing an option that would allow manufacturers to certify engines above 19 kW and less than one liter in displacement to the small SI engine program beginning with the 2001 model year. Such engines would need to be certified to the Phase 2 requirements for the appropriate class of nonhandheld engines, which is expected to be the Class II requirements (i.e., engines above 225 cc in displacement), for a useful life period of 1,000 hours. EPA requests comment on the requirements of this proposed option.

2. Emission Standards

As noted earlier, EPA is proposing more stringent HC+NO_X emission standards for all three classes of handheld engines than were originally proposed in the January 1998 NPRM. The Clean Air Act at section 213(a)(3) requires the Agency to adopt standards that result in the greatest emission reductions achievable through the application of technology which the Administrator determines will be available, giving appropriate consideration to cost, lead time, noise, energy and safety factors. As a result of information now available, much of it in the form of comments received during and after the comment period on the January 1998 NPRM, and due to the rapid technological advances the industry is making in an effort to design engines which are more environmentally friendly, EPA believes that standards more stringent than those originally proposed are achievable during the next decade. Extensive discussions over several months with several manufacturers of handheld engines and equipment have provided EPA with information to decide on the standards and phase in schedules being proposed today. (Records of these discussions have been included in the docket for this rule.) Specific advances for 2-stroke engines include stratified scavenged engines and novel approaches to improve fuel metering, both of which should allow 2-stroke engines to have substantially lower emissions and remain viable

powerplants for handheld equipment. In addition, there have been recent technical advances for handheld engines including the feasibility of catalysts and the expanded application of the mini 4-stroke design.

While not all technologies under consideration have been fully proven on a production engine operated under typical in-use conditions, EPA is confident that these and other technologies will be proven in the near future providing the industry with several alternatives for emission control. Certification or manufacturer prototype information as listed in Chapter 3 of the Supplemental Draft RIA, demonstrates that currently available technology can achieve lower emission levels than the standards set by the California ARB, especially if one considers the use of a low-efficiency catalyst. For low engine out emissions, prototypes of the LE Engine technology developed by John Deere and the stratified scavenging design developed by Komatsu Zenoah have shown the ability for 2-stroke engines to achieve very low emission levels in the range of 36 g/kW-hr to 66.8 g/kW-hr with the John Deere technology [2] (assuming a emissions deterioration factor of 1.1 over the useful life of the engine) and 67 g/kW-hr with the Komatsu Zenoah technology (based on California ARB certification information for the 2000 model year). A low efficiency catalyst could lower these emission levels by 20 g/kW-hr and result in emission levels of 16 g/kW-hr to 47 g/kW-hr HC+NO_X. In addition, mini 4-stroke engines in Class IV have been certified to a range of new engine values from 15.7 g/kW-hr to 37.6 g/kW-hr. With an assumed emissions deterioration factor of 1.5 over the useful life of the engine, the mini 4-stroke engines would yield emissions at a full useful life of 23.6 g/kW-hr to 56.4 g/kW-hr. Use of a catalyst that achieves a 20 g/kW-hr reduction on the highest emitting 4-stroke engine would yield an emissions level of 36.4 g/kW-hr HC+NO_X. These stringent emission levels show that very low emission standards for handheld engines are feasible especially given the inherently low deterioration of 2-stroke emissions, and the ability to use a low efficiency catalyst or thermal reactor on some engine families.[3] EPA requests comment on the ability of the John Deere LE technology, the Komatsu Zenoah stratified scavenging design, or mini 4-stroke technologies to accommodate a catalyst. Specific areas on which EPA is requesting comment include the ability to provide sufficient engine and muffler cooling with each of the technologies, catalyst conversion efficiencies, and engine or equipment design changes needed to accommodate a catalyst specifically in response to the U.S. Department of Agriculture (USDA) Forest Service requirements for equipment used on Federal land.

The emissions information cited above is from engines designed for use in Class III or Class IV applications. In most cases, EPA believes similar designs should be able to be designed for Class V applications as well. However, because most Class V engines are used in higher power commercial applications, the ability to utilize a "low" efficiency catalyst (and the related muffler skin and exhaust plane temperatures that result from the throughput of exhaust emissions through the catalyst) may be inhibited due to the USDA Forest Service requirements for equipment used on Federal land. In addition, the high power equipment in Class V requires additional cooling compared to the amount of cooling typically required in Class III and IV engines. Cooling may be achieved by directing more of the fuel/oil mixture through the crankcase. For the John Deere LE technology, this will result in higher level of emissions than for Class IV engines, since more fuel/oil will be scavenged. These factors may affect the ability of some designs to be applied to the largest of Class V applications or for such designs to meet a 50 g/kW-hr HC+NO_X standard. EPA therefore believes that a HC+NO_X standard of 72 g/kW-hr is most appropriate for Class V engines. EPA requests comment on the ability of 4-stroke engines, redesigned 2-stroke engines, or other technologies, such as electronic fuel injection or the application of catalysts, to achieve a 50 g/kW-hr HC+NO_X standard.

Based on the information noted above, EPA is proposing emission standards that require handheld engines in Class III and Class IV, on average, to meet an HC+NO_X standard of 50 g/kW-hr and handheld engines in Class V, on average, to meet an HC+NO_X standard of 72 g/kW-hr by the end of the applicable phase-in period. For a full discussion of the technologies EPA believes could be employed to achieve the proposed handheld engine standards, the reader is directed to Chapters 3 and 4 of the Supplemental Draft RIA.

A number of issues have been raised by various parties regarding the technologies noted above which could affect the potential for manufacturers to use these technologies to achieve the proposed standards. A list of the most important issues is noted below. While EPA believes that a number of important issues have been highlighted and would need to be addressed before successful introduction of these technologies, EPA also believes that given the amount of leadtime before manufacturers would be required to certify their entire product range to the proposed HC+NO_X standards, the variety of technology options available, and the work manufacturers have already performed in anticipation of the California ARB Tier 2 regulations, that the reproposed set of standards are achievable, especially given the provisions of the proposed ABT program which allow for early credits generation and the exchange of credits across engine classes and the proposed flexibilities for small volume engine families and small volume engine manufacturers. Specifically, manufacturers are anticipated to sell in the initial years of the program engine families with emission levels substantially below the phase in standards. Many could accumulate a large number of banked credits by, for example, offering their designs certified to the California ARB standards for sale in the other 49 states. EPA requests comments on these assumptions and on the issues listed below, including the potential for addressing these concerns and any resulting impact on manufacturers' ability to meet the standards contained in this SNPRM which, as noted earlier, allow for the use of the ABT program.

With regard to the John Deere LE technology, a number of concerns have been raised including the ability of the design to provide adequate lubrication to the crankcase, the ease of use and operation of the fuel system in real world conditions, the potential for increased PM emissions, the need for redesign of equipment to incorporate the technology, durability due to the potential for carbon buildup in the transfer ports (as described in the Supplemental RIA, Chapter 2, section 3.2.5), and the applicability to Class V engines, especially professional chainsaws, which have unique operating characteristics (e.g., cold weather operation) and cooling requirements. However, John Deere has made substantial progress toward resolving such potential problems as

[2] The reader is directed to items IV–G–30, IV–G–32, and IV–B–05 of Docket A–96–55 for further information on the John Deere technology.

[3] In addition to the technologies described in today's notice other potential emission control technologies have been examined by EPA. Two of these technologies, a spark ignition technology by Pyrotek and a vaporizing carburetor technology by Boswell, are described in further detail in Chapter 3 of the Draft Supplemental RIA.

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adequate performance across the range of operating conditions and speeds. Indeed, EPA expects John Deere to market in California handheld equipment (Class IV trimmers and chainsaws) using this technology beginning with the 2000 model year. Comments are requested on the likelihood that cost-effective solutions can be made available over the next two to three years across the full range of handheld engines and applications.

In addition to these technically related concerns, a number of engine manufacturers have raised concerns about the level of the licensing fees that John Deere has stated that it would charge for use of the patented equipment designs. The fees noted by John Deere in their literature to other handheld engine manufacturers noted a minimum licensing fee of $7.50 per engine with fees ranging as high as 5% of the wholesale price of the equipment for an application costing above $300 with a sales volume less than 50,000 units per year, which is a typical cost for Class V commercial applications. These manufacturers have suggested that the fees are higher than typically paid for patented technologies and noted that the fees suggested by John Deere may, in some cases, be as high as the profit margin on the equipment currently being sold.[4] EPA specifically requests comments on the licensing fees suggested by John Deere, the impact such fees would have on competition given the cost for other technology options, and the level of licensing fee necessary to allow this licensed technology to be a cost effective option for other manufacturers.

For the stratified scavenging engine technology, a number of concerns have been raised about the technology. These issues include the ability to design engines that achieve the amount of power necessary for all applications, the feasibility of providing additional cooling which may be required by the design, as well as the ability for all applications to provide sufficient cooling for a low efficiency catalyst. In fact, Komatsu has already certified a model year 2000 Class IV engine with both EPA and the California ARB at levels meeting the California ARB's Phase 2 standard. EPA expects Komatsu to market their stratified scavenging engine technology nationwide in certain handheld equipment (Class IV trimmers) using this technology beginning with the 2000 model year.

[4] "Meetings with Husqvarna/Frigidaire Home Products on Small Engine Phase 2 Handheld Regulations." EPA memo from Phil Carlson to Docket A–96–55, June 29, 1999.

With regard to the mini 4-stroke technology, a number of concerns have been raised primarily regarding the application to Class V engines. These issues primarily relate to the limited ability to apply such technology because of the power, weight, and acceleration requirements of Class V handheld equipment applications. It can be noted that both Ryobi and Honda have introduced 4-stroke engines for Class IV handheld applications weighing about seven pounds which are comparable to the weight of 2-stroke engines used in similar handheld applications. Although these 4-stroke engines were once thought to be limited to trimmer type applications only, EPA is aware of developments of the use of 4-stroke engines to higher speed applications. Therefore, EPA believes that 4-stroke engines could be used for the majority of Class IV applications. Request comments on this assumption. As noted later in section III.B.2 of today's document, EPA has assumed that 4-stroke technology would likely only be applicable to the smallest of Class V engine designs.

However, to the extent that 4-stroke engines might replace some 2-stroke engines in certain applications, EPA is interested in receiving additional information to better compare their expected performance. EPA is specifically requesting information on the following areas: the durability of 4-stroke engines and how this might impact the certified useful life of such engines, the amount and cost of maintenance required to maintain performance, and the likelihood such maintenance would be performed (including a comparison to maintenance requirements and in-use maintenance experience for 2-stroke engines) and how the relative cost of the handheld piece of equipment might affect these considerations (e.g., is it more likely that maintenance will be performed on the engine of a more expensive piece of equipment than on the engine installed in a less expensive piece of similar equipment, even if the engines are certified to the same useful life?). Other information relevant to a comparison of 4-stroke engines versus 2-stroke engines such as weight and performance differences is also requested.

For the application of catalysts to handheld equipment, the concerns raised include user safety due to potential excessive heat generated by the catalyst, which may influence engine operation and durability, and the ability to provide additional cooling of the exhaust gas and catalyst area which may be necessary for operator safety or for manufacturers to meet the USDA Forestry Service requirements that apply to equipment used on Federal land. EPA is aware that manufacturers have been researching and developing catalyst technology for handheld engine applications and have already been working to address the issues noted above through innovative catalyst designs, use of low efficiency catalysts and more engine improvements, catalyst shielding, and catalyst placement. In addition, one handheld engine manufacturer, Husqvarna, is currently using low-efficiency catalysts on several of their 1999 model year Class IV engine families used primarily in commercial trimmer/edger applications. A second manufacturer, Tanaka, has publicized their PureFire technology which includes engine improvements and a catalyst. EPA requests comment on the status of catalyst technology development for handheld engine applications and the likelihood that catalysts will be able to be applied to the full range of handheld engine applications to meet the proposed standards and appropriate safety requirements.

As noted earlier, the proposed standards would be phased in through a set of declining average in-use standards by model year. For Classes III and IV, the standards would be phased in between the 2002 and 2006 model years. For Class V, the proposed Phase 2 standards would be phased in between the 2004 and 2008 model years. (Table 1, presented earlier, contains the actual emission standards by model year of the proposed Phase 2 standards for handheld engines.) EPA believes the proposed leadtime before the standards are scheduled to take effect is appropriate based on the fact that the proposed $HC+NO_X$ standards for Class III and Class IV are more stringent than the California ARB's $HC+NO_X$ standards for these engines (i.e., 72 g/kW-hr for engines 0–65cc with the exception of exempted applications), on which industry had been focusing and developing technologies over the past few years, and because many of the Class V engine families are used in certain farm and construction equipment applications which are exempted from meeting the California ARB standards as discussed below. In addition, EPA had been discussing standards similar in stringency to the California ARB's standards with the handheld industry in the time since the January 1998 NPRM through December 1998. EPA believes that industry needs sufficient time in the near term to finish developing products for the California market that meet the California ARB

emission standards which take effect on January 1, 2000. However, not all engines will necessarily be redesigned to meet the California ARB standards due to the farm and construction equipment exemption noted above, and because some manufacturers have told EPA that they expect to provide a limited lineup of engines for the California market. Furthermore, EPA believes the proposed schedule of standards will allow manufacturers to sell their engines designed to meet the California ARB Tier 2 standards nationwide for a number of years, recouping the investments made for such designs, while redesigning their product offerings to meet the proposed $HC+NO_X$ standards on average.

Although the standards contained in today's SNPRM envision that manufacturers will phase in engines meeting a 50 g/kW-hr $HC+NO_X$ level in Class III and Class IV and a 72 g/kW-hr $HC+NO_X$ level in Class V, manufacturers of handheld engines would be required to certify all of their engine families in a given engine class (unless they qualify for some type of small volume provision as described later) for a specific useful life period in the first year of the applicable phase-in. (As noted earlier, EPA's Phase 1 program only requires compliance for new engines.) Manufacturers need enough time to perform the useful life tests on each of the engine families, with the exception of those already certified for California (since California also requires full useful life compliance) which the manufacturer is planning to sell outside of California, as well as to research, develop and adopt low emitting technology on engine families such that each manufacturer meets the average emission standards through the final year of the phase-in schedule.

EPA is proposing a two year delay in the effective date for the Class V engines. This delay is based on an analysis of EPA's Phase 1 certification database shows that a significant proportion of Class V engine production is likely to be exempted from California ARB regulation because of the type of equipment in which the engines are used. Manufacturers of these products, which have a long list of certified engine families, have not had to address these engines for California, and therefore will need additional time to comply with EPA's proposed Phase 2 standards. In addition, this delay takes into consideration leadtime concerns raised by the two major engine manufacturers in this class who manufacture professional high quality equipment in light of their extensive product development process. EPA requests comment on the appropriateness of the proposed two year delay for Class V engines.

For all categories of handheld engines, the $HC+NO_X$ standards being proposed today represent significant increases in stringency and will require virtually all of the currently certified Phase 1 engines to be redesigned. Under the proposed $HC+NO_X$ standards, EPA expects emissions from handheld engines on average will be reduced by approximately 78 percent compared to Phase 1 engines. Under this proposal, the nation should continue to benefit from improved emission performance for handheld engines at least through 2011 as these standards take effect and fleet turnover to cleaner engines occurs.

As noted earlier, the standards being proposed today are more stringent than the California ARB's Phase 2 standard. (California's Phase 2 standard for small SI engines is 72 g/kW-hr $HC+NO_X$, except for engines used in exempted farm and construction applications). EPA requests comments on the costs, feasibility, and other effects of complying nationwide with a 72 g/kW-hr $HC+NO_X$ standard for all three classes of handheld engines versus the standards being reproposed today.[5] Specific areas on which EPA is requesting comments include the engine designs and technologies that would be used to comply with a 72 g/kW-hr $HC+NO_X$ standard, the cost of adopting such technologies (both relative to engines currently certified under the Phase1 program and as an extension of production of California compliant engines), and the potential for such Class III and Class IV engines to be modified to meet a 50 g/kW-hr $HC+NO_X$ standard. Recently, a number of handheld engine manufacturers indicated to EPA that they would prefer the following alternative set of $HC+NO_X$ standards: 72 g/kW-hr for Classes III and IV phased in between 2002 and 2007, and 87 g/kW-hr for Class V phased in between 2004 and 2007. These manufacturers do not presently employ the kinds of technology EPA expects would be used to meet EPA's reproposed standards, and they specifically raised questions regarding the applicability of light-weight 4-stroke technology and the developmental state of John Deere's LE technology. In addition to the information requested above, EPA requests comment on the alternative standard set nominated by this segment of the handheld industry. EPA is particularly interested in receiving information about the costs associated with this alternative set of standards. As part of the final rulemaking, EPA plans to consider this cost information and use it, as appropriate, in an analysis of the potential costs and emission reductions of these alternative standards for comparison with the additional emission reductions (and presumably higher costs) of the proposed standards. This information will be useful as the Agency determines the appropriate level of standards consistent with Clean Air Act section 213(a)(3).

[5] Commenters are asked to consider energy, noise, and safety impacts in their comments.

EPA is not proposing tighter CO standards for handheld engines in this SNPRM. This proposal would maintain the same CO emission standards contained in the January 1998 NPRM. At this time, it does not appear that additional reductions in CO emissions from these engines will be needed to allow most areas of the country to attain the CO ambient air quality standard. Absent this air quality need, EPA does not believe that requiring manufacturers to achieve additional reductions in CO emissions by a more stringent standard is necessary. It should be noted that many of the emission control techniques likely to be adopted to meet the proposed Phase 2 $HC+NO_X$ standards on 2-stroke engines, including for example the use of improved fuel metering and combustion chamber improvements, have shown lower CO emissions than Phase 1 engines. Although EPA is not proposing tighter CO standards, EPA expects some CO emission reduction will occur as a result of the technologies likely to be adopted to meet the proposed Phase 2 $HC+NO_X$ standards. EPA is not able at this time, however, to quantify the expected level of CO reductions to a sufficiently precise degree that the Agency believes it can confidently propose a more stringent standard than that contained in the January 1998 NPRM.

Neither EPA's Phase 1 rule for small SI nonroad engines nor the recent Phase 2 rule for nonhandheld engines included particulate matter (PM) standards and today's proposal continues the same approach. EPA is not proposing PM standards for Phase 2 handheld engines. EPA believes that the types of technologies expected to be used to meet the proposed Phase 2 gaseous emission standards will result in reduced PM levels from handheld engines. EPA requests information on PM emissions from handheld engines and the need for PM standards for small SI nonroad engines in general. Relevant information might include PM emission rates from small SI engines, loading contributions to ambient PM concentrations from these engines, user

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health effects from direct exposure to PM contained in engine exhaust from small SI engines, and contribution from small SI engine PM emissions to visibility impairment.

For Class I–A engines (i.e., nonhandheld engines with displacement less than 66 cc), because these new nonhandheld equipment applications are expected to use engines with much the same displacement and design as their handheld Class IV counterparts, EPA is proposing to apply the Class IV standards of 50 g/kW-hr for $HC+NO_X$ and 610 g/kW-hr for CO. Although the California ARB's standards are less stringent than the standards contained in today's SNPRM, the addition of this class harmonizes the use of these engine sizes within this rulemaking between EPA and the California ARB. Because the Class I–A engines will be designs that are not currently certified as nonhandheld engines, EPA is proposing that the standards for Class I–A engines take effect immediately upon the effective date of finalization of these proposed standards, which EPA expects would occur during the 2000 model year. With regard to the test procedure manufacturers use for certification testing of Class I–A engines, EPA is proposing to adopt the handheld engine test procedure, typically referred to as cycle "C". EPA requests comment on the proposed requirements for Class I–A engines.

For Class I–B engines (i.e., nonhandheld engines with displacement from 66 cc to less than 100 cc), 4-stroke engines have certain disadvantages which make it more difficult for them to meet the recently adopted Phase 2 $HC+NO_X$ standard for nonhandheld engines compared to their larger size counterparts (i.e., nonhandheld engines with displacement above 100 cc in Class I and Class II). EPA recognized this difference when it adopted the Phase 2 $HC+NO_X$ emission standards for engines less than 225 cc (i.e., Class I where the standard is 16.1 g/kW-hr) and engines greater than 225 cc (i.e., Class II where the standard is 12.1 g/kW-hr). The current set of engines certified to EPA's Phase 1 standards includes three Class I engines (1 OHV engine and 2 SV engines) below 100 cc that are certified at new engine levels close to the Phase 1 $HC+NO_X$ standard (i.e., 16.1 g/kW-hr) ranging from 13.3 to 15.9 g/kW-hr. Assuming an in-use $HC+NO_X$ deterioration factor of 1.5, the Phase 2 emission values of the engines would be 19.9 and 23.9 g/kW-hr, respectively, which is above the Phase 2 standard of 16.1 g/kW-hr. In the January 1998 NPRM, EPA made the assumption that averaging of emission credits would allow these smaller size engines to utilize credits from an engine manufacturer's larger size engines. Comments on the NPRM suggested that this was not the case for all engine manufacturers. Comments from one of these manufacturers suggested that EPA establish a standard of 40 g/kW-hr because they produced a side valve engine under 100 cc which required this value to be able to certify. Due to the very small production estimates of engines in this size range (i.e., 0.1% of Class I), EPA is proposing standards for Class I–B engines of 40 g/kW-hr for $HC+NO_X$ and 610 g/kW-hr for CO. As proposed for Class I–A engines, EPA is proposing that the standards for Class I–B engines take effect immediately upon the effective date of finalization of these proposed standards, which EPA expects will occur during the 2000 model year. For the test procedure manufacturers use for certification testing, EPA is proposing to adopt the nonhandheld engine test procedures, typically referred to as cycle "A" and cycle "B".

Based on comments from manufacturers, EPA is establishing the Class I–B category to allow for the production of engines to meet niche markets. The Agency would not expect a migration into this category of current 4-stroke Class I engines, almost all of which are above 125 cc, because of the minimum size apparently necessary to meet the power demands of typical current applications such as walk behind lawnmowers. However, EPA is concerned that the relatively higher performance of 2-stroke engines could allow 2-stroke engines in the high end of the Class I–B category (e.g., between 90 cc and 100 cc) to meet the 40 g/kW-hr standard and create interest in using them in such current applications as small walk behind lawnmowers. EPA would not want to proliferate the use of such higher emitting engines in current applications and does not intend to allow migration of 2-stroke engines into nonhandheld applications. EPA requests comment on these assumptions and on ways to prevent this proliferation from occurring. EPA also requests comment on the level of the proposed Class I–B standards and the feasibility of achieving lower emission standards with OHV, SV, and 2-stroke engines.

3. $NMHC+NO_X$ Standard for Class I–B Natural Gas-Fueled Engines

In the recent final rule for small SI Phase 2 nonhandheld engines, EPA adopted separate standards for small spark ignition engines fueled by natural gas which manufacturers could certify to in lieu of the otherwise applicable $HC+NO_X$ standards. Because EPA believes it is possible that there could be Class I–B applications designed to run on natural gas, EPA is proposing similar separate standards for Class I–B spark ignition engines fueled by natural gas which could be certified to in lieu of the $HC+NO_X$ standards. EPA believes this option is necessary because the methane portion for gasoline fueled engines is around 5 to 10 percent of total hydrocarbons, whereas for engines fueled with natural gas, the methane portion can be around 70 percent. Because the methane from these engines has a very low ozone forming potential compared to the other hydrocarbons in the engine's exhaust, EPA believes it is appropriate to provide an alternative set of emission standards for engines fueled with natural gas. Otherwise, requiring such engines to meet the same HC standard as gasoline-fueled applications would result in a more stringent standard for natural gas-fueled engines. The proposed $NMHC+NO_X$ standard of 37 g/kW-hr for Class I–B natural gas-fueled applications would provide equivalent stringency to the $HC+NO_X$ standards for gasoline-fueled engines being proposed today. EPA is proposing standards for Class I–B only, as EPA does not expect that natural gas-fueled handheld engines or Class I–A engines might be built. EPA requests comment on the need to establish standards for Class I–A engines operated on natural gas. Aside from having the option to certify to $NMHC+NO_X$ standards, all other aspects of this proposal would pertain equally to engines fueled with natural gas as with gasoline-fueled engines.

4. Useful Life Categories

In the January 1998 NPRM, EPA proposed two useful life categories of 50 and 300 hours for handheld engines. EPA received several comments supporting the addition of a mid-range useful life category for handheld engines, with one manufacturer supporting a level of 125 hours. While EPA believes that 50 hours is appropriate for most of the products targeted at the home consumer, some engines targeted for home consumer use (including some new engines which are expected to enter the market in the next few years) are expected to have designs which tend to be more durable than the 50 hour level yet are not as durable as the commercial grade of 300-hour equipment. As a result, EPA is proposing to add a midrange to the useful life categories for handheld engines of 125 hours as recommended by one manufacturer. Therefore, under today's proposal, a manufacturer would choose between three useful life categories for handheld engines of 50, 125, and 300 hours. A manufacturer would be responsible for demonstrating compliance with the proposed standards described above in section II.A.2. at whichever useful life level it designated for its engine families.

For the newly proposed category of Class I–A engines, EPA is proposing the handheld engine useful life categories of 50, 125 and 300 hours. EPA believes the engine designs in Class I–A will be similar to handheld engines in terms of durability of design. It should be noted that the proposed useful life designations for Class I–A engines are the same as those established by the California ARB in its Tier 2 rule for engines of this size range. For Class I–B engines, EPA is proposing the useful life categories of 125, 250 or 500 hours recently finalized for nonhandheld engines. EPA believes the engines designs in Class I–B will be similar to Class I nonhandheld engines in terms of durability of design. The proposed useful life designations for Class I–B engines are the same as those established by the California ARB in its Tier 2 rule for engines of this size range.

5. Selection of Useful Life Category

In the January 1998 NPRM, EPA proposed that the engine manufacturers would be responsible for assuring that the correct useful life was used for certification demonstration and labeling purposes. Specific criteria were proposed which the manufacturers would have had to evaluate and use in documenting their determinations of useful life category selection. Comments received suggested such a requirement was overly rigid and unnecessary. Given the comments received, EPA is still very concerned that manufacturers select the most appropriate useful life category for each engine to assure it is properly evaluated during certification. In addition, because EPA is proposing to include all handheld engines and Class I–A and Class I–B engines in the ABT program which allows the exchange of emission credits across engine families in different useful life categories, the proper selection of the useful life period is important to ensure that the credit program is fair and environmentally sound. However, so as not to add potentially unnecessary burden on the industry, today's SNPRM proposes a less rigid methodology for determining useful life categories that EPA recently finalized for Phase 2 nonhandheld engines. Rather than mandating a fixed set of criteria, this proposal rests the responsibility with the industry to make their best, most conscientious selection. For manufacturers of handheld engines, virtually all engines are placed in specific equipment also manufactured by the engine manufacturer or, in those cases where engines are supplied to another equipment manufacturer, into equipment well known by the engine manufacturer. Class III, IV and V engine manufacturers know the design features and performance characteristics of both their engines and the equipment in which they are installed, and understand the expected in-use operation of this equipment and thus the expected useful life of the engine. Additionally, based on design features these manufacturers build into their engines, they have a good idea of the expected useful life in such applications. Similarly, EPA expects that manufacturers of Class I–A and Class I–B engines will have a good idea of the types of equipment their engines are expected to be used in and, from their marketing information, a reasonably accurate projection of the relative volumes in such applications. Given that these engines will be used in new applications, manufacturers should have an even clearer understanding of these projections. Relying on this information, manufacturers should be able to make good selections of appropriate useful life categories for their engines. While this proposal leaves that responsibility to the manufacturer, EPA expects it would periodically review the manufacturers' decisions to ensure this regulation is being properly implemented and to determine whether modifications to the rules were appropriate. This proposed approach would result in the same regulatory requirement as the State of California, eliminating any extra burden in this regard due to federal rules.

B. Averaging, Banking, and Trading

In today's SNPRM, EPA is proposing to make the comprehensive certification averaging, banking, and trading (ABT) program recently adopted for nonhandheld Phase 2 engines available for Phase 2 handheld engines, Class I–A, and Class I–B engines. Averaging means the exchange of emission credits among engine families within a given engine manufacturer's product line. Averaging allows a manufacturer to certify one or more engine families to Family Emissions Limits (FELs) above the applicable emission standard. However, the increased emissions would have to be offset by one or more engine families certified to FELs below the same emission standard, such that the average emissions in a given model year from all of the manufacturer's families (weighted by various parameters including engine power, useful life, and number of engines produced) are at or below the level of the emission standard. Banking means the retention of emission credits by the engine manufacturer generating the credits for use in future model year averaging or trading. Trading means the exchange of emission credits between engine manufacturers which then can be used for averaging purposes, banked for future use, or traded to another engine manufacturer.

The following section describes the proposed ABT program for handheld engines, Class I–A engines, and Class I–B engines. The basic framework of the ABT program is the same as that recently finalized for nonhandheld engines. The proposed program would be the first ABT program for handheld engines, since the Phase 1 rule did not include an ABT program. The January 1998 NPRM included an ABT program, however, the proposed program was limited to nonhandheld engines only. Given the level of the standards contained in the January 1998 NPRM for handheld engines, EPA did not believe an ABT program was necessary for handheld engines. However, because EPA is now proposing significantly more stringent Phase 2 standards for handheld engines, EPA believes an ABT program is an important element in making the stringent Phase 2 emissions standards proposed today achievable with regard to technological feasibility, lead time, and cost. The proposed ABT program is intended to enhance the flexibility offered to engine manufacturers that will be needed in transitioning their product lines to meet the stringent $HC+NO_X$ standards being proposed. The proposed ABT program would also encourage the early introduction of cleaner engines certified under the Phase 2 requirements, thus securing earlier emission benefits. EPA requests comments on the proposed ABT program as well as alternative programs that would provide incentives for manufacturers to achieve emission reductions earlier than required by the proposed standards.

EPA believes that the new ABT program is consistent with the statutory requirements of section 213 of the Clean Air Act. Although the language of section 213 is silent on the issue of averaging, it allows EPA considerable discretion in determining what regulations are most appropriate for implementing section 213. The statute does not specify that a specific standard or technology must be implemented, and it requires EPA to consider costs, lead time, and other factors in making

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its determination of "the greatest degree of emissions reduction achievable through the application of technology which the Administrator determines will be available." Section 213(a)(3) also indicates that EPA's regulations may apply to nonroad engine classes in the aggregate, and need not apply to each nonroad engine individually.

As noted above, the proposed ABT program would apply to all classes of handheld engines as well as Class I–A and Class I–B engines. The ABT program would be available for $HC+NO_X$ emissions but will not be available for CO emissions. The ABT program would also apply to natural gas-fueled engines. All credits for natural gas-fueled engines would be determined against the standards to which the engine certified (either the $HC+NO_X$ standard or the optional $NMHC+NO_X$ standards noted earlier). Under the proposal, manufacturers would be allowed to freely exchange $NMHC+NO_X$ credits with $HC+NO_X$ credits.

The ABT program contained in the January 1998 NPRM proposed some restrictions on cross-class averaging for nonhandheld engines. However, the recent final rule eliminated most of those restrictions. Given the level of the standards recently finalized for nonhandheld engines and the level of the standards contained in today's proposal, EPA is far less concerned that credits from one class could result in delays in technology improvement for other classes, and does not believe that any cross-class restrictions are necessary beyond those retained in the final nonhandheld Phase 2 rulemaking. Therefore, today's SNPRM proposes no additional restrictions on credit exchanges across any of the classes of small SI engines. Under the proposed program, manufacturers would be allowed to exchange credits from handheld engines to nonhandheld engines. EPA specifically requests comment on the cross-class exchange of credits between handheld and nonhandheld engines.

Under an ABT program, a manufacturer establishes a family emission limit (FEL) for an engine family that takes the place of the emission standard for all compliance determinations. As part of the ABT program, EPA is proposing upper limits on the FEL values that may be declared by manufacturers under the Phase 2 standards. For Classes III, IV and V, EPA is proposing FEL upper limits based on the Phase 1 standards, adjusted to account for expected average deterioration over the useful life period of these engines. The proposed $HC+NO_x$ FEL upper limits are 300 g/kW-hr for Class III engines, 246 g/kW-hr for Class IV engines, and 166 g/kW-hr for Class V engines. For the newly proposed categories of Class I–A and Class I–B engines, EPA is proposing $HC+NO_x$ FEL upper limits of 94 g/kW-hr and 50 g/kW-hr, respectively. The Class I–A level is based on the maximum certification level of current Phase 1 engines similar in size to those expected to be certified as Class I–A engines (a 26 cc Class IV engine certified to a new engine level of 37.6 g/kW-hr $HC+NO_x$), adjusted to account for an estimated maximum deterioration factor of 2.5 over the useful life of the engine. The Class I–B level is based on the maximum new engine emissions level expected from Class I–B engines (estimated to be 20 g/kW-hr $HC+NO_x$) adjusted to account for an estimated maximum deterioration factor of 2.5 over the useful life of the engine.

EPA is proposing that all credits should be calculated based on the difference between the manufacturer-established FEL and the Phase 2 $HC+NO_x$ standard for the applicable model year using the following equation.

Credits = (Standard—FEL) × Production × Power × Useful life × Load Factor

At the time of certification, manufacturers would be required to supply information to EPA on the terms used in the above noted equation. "Production" represents the manufacturer's U.S. production of engines for the given engine family, excluding exported engines and engines that will be sold in California. "Power" represents the maximum modal power of the certification test engine over the certification test cycle. "Useful Life" is the regulatory useful life established by the manufacturer for the given engine family. "Load Factor" is a constant that is dependent on the test cycle over which the engine is certified.

Under the proposed ABT program, credits would have an unlimited credit life for the duration of the Phase 2 program and would not be discounted in any manner.

Under the proposed ABT program, manufacturers of handheld engines would be allowed to use portions of the ABT program prior to implementation of the Phase 2 standards to provide an incentive to accelerate introduction of cleaner technologies into the marketplace. The Agency believes that making bankable credits available prior to the effective date of the new standards would reward those manufacturers who take on the responsibility of complying with the Phase 2 requirements sooner than required and would also result in early environmental benefits.

Under the proposed early banking provisions for handheld engines, manufacturers would be allowed to begin using the averaging and banking portions of the ABT program beginning with the 2000 model year for engines certified to the Phase 2 requirements and produced after the effective date of this action. Manufacturers would be allowed to generate early credits from those engine families with FELs below the initial Phase 2 $HC+NO_x$ standards for the appropriate engine class (i.e., 226 g/kW-hr for Class III engines, 187 g/kW-hr for Class IV engines, and 131 g/kW-hr for Class V engines). This proposed approach for early credits from handheld engines is different than the approach recently finalized for nonhandheld engines. Under the recently finalized Phase 2 rule for nonhandheld engines, early credits are only available for engines with FELs below the final standards, not the initial phase in standards. EPA believes a different approach is appropriate for handheld engines because the proposed Phase 2 handheld engine standards represent such dramatic reductions from the Phase 1 standards that will require the complete redesign of nearly every handheld engine currently produced. In contrast for nonhandheld engines, there are already a significant number of engines being produced that EPA believes would already meet the recently finalized Phase 2 standards. Because of the increased effort engine manufacturers will need to expend to meet the proposed Phase 2 handheld standards, EPA believes it is appropriate to allow manufacturers to generate early credits from engines certified with FELs below the initial Phase 2 standards rather than the final Phase 2 standards. If the final Phase 2 handheld engine standards were used for the determination of early credits, the ability of engine manufacturers to generate early credits would be so severely constrained as to make this option not useful; neither the manufacturer nor the environment would benefit from the such an early credit program design. Because the proposed Phase 2 standards for Class I–A and Class I–B engines are scheduled to take effect with the 2000 model year, there is no need to provide manufacturers with the ability to earn early credits from such engines.

All engines for which a manufacturer generates early credits would have to comply with all of the proposed requirements for Phase 2 engines (e.g., the Production Line Testing program

requirements). Manufacturers of handheld engines would not be allowed to trade their early engine credits to other manufacturers until the first effective model year of the Phase 2 standards for the applicable engine class. EPA requests comments on the design of the early credits provisions contained in today's proposal.

As discussed in section II.D. of today's document, EPA is proposing several compliance flexibility provisions for engine manufacturers and equipment manufacturers that allow the limited use of Phase 1 engines in the Phase 2 time frame. Phase 1 engines sold by engine manufacturers under the flexibility provisions would be excluded from the ABT program. In other words, engine manufacturers would not have to use credits to certify Phase 1 engines used for the flexibility provisions even though they would likely exceed the proposed Phase 2 standards.

As noted elsewhere in today's document, EPA is proposing a number of provisions that address post-certification compliance aspects of the proposed standards. In one specific case, EPA would allow manufacturers to use credits from the certification ABT program to address excess emissions situations determined after the time of certification. As noted in the discussion on compliance, EPA does not believe that the typical type of enforcement action that could be taken when a substantial nonconformity is identified (i.e., an engine family recall order) would generally be workable for small SI engines given the nature of the market. Instead, for the purposes of implementing the PLT program, EPA is proposing provisions to allow manufacturers to use engine certification ABT credits to offset limited emission performance shortfalls for past production of engines determined through the PLT program as described in section II.C. of today's SNPRM. Under the proposed provisions, manufacturers would be allowed to use small SI engine certification ABT credits available to them to offset such emission performance shortfalls.

Under today's proposal, EPA would not allow manufacturers to automatically use ABT credits to remedy a past production nonconformance situation in the Selective Enforcement Audit (SEA) program. As described in today's SNPRM, EPA expects to primarily rely on the PLT program to monitor the emissions performance of production engines. However, EPA expects that SEAs may be conducted in certain cases. Therefore, as discussed in section II.C., if EPA were to determine that an engine family is not complying with the standards as the result of an SEA, EPA would work with the manufacturer on a case-by-case basis to determine an appropriate method for dealing with such a nonconformity. The option(s) agreed upon by EPA and the engine manufacturer might, or might not, include the use of ABT credits to make up for any "lost" emission benefits uncovered by the SEA.

All of these aspects of the proposed handheld ABT program are consonant with the final ABT program recently adopted for nonhandheld Phase 2 engines.

C. Compliance Program

The compliance program being proposed today is comprised of three parts: a pre-production certification program during which the manufacturer would evaluate the expected emission performance of the engine design including the durability of that emission performance; an assembly line test program which would sample products coming off the assembly line to assure the design as certified continues to have acceptable emission performance when put into mass production; and a voluntary in-use test program during which participating manufacturers would evaluate the in-use emission performance of their product under typical operating conditions. EPA would also have the option to run an SEA program and its own in-use testing for small SI engines.

Under the proposed compliance programs for small handheld SI engines, a manufacturer would divide its product offering based upon specific design criteria which have a potential for significantly different emission performance; these subdivisions are called engine families. Each engine family would be required to meet the standard applicable for the class in which that engine resides unless the manufacturer chooses to participate in the ABT program also being proposed today. (See section II.B. of today's SNPRM for discussion of the proposed ABT program.) The other provisions of the compliance program are explained in more detail below. In all cases, to the best of EPA's knowledge, the requirements of this proposed federal compliance program would be sufficiently similar to the requirements of the California ARB program for these engines such that for engine families sold in both the State of California and federally, the engines selected for testing, the test procedures under which they are tested and the data and other information required to be supplied by regulations can be the same under both programs. Thus, EPA expects that a manufacturer would be able to compile one application for certification satisfying the information needs of both programs, saving the manufacturer time and expense. Similarly, EPA and the California ARB expect to share information from their compliance programs such that any production line testing or in-use testing conducted for one agency would satisfy the similar needs of the other agency, again minimizing the burden on the manufacturers.

1. Certification

This section addresses the proposed certification program for engine manufacturers covered by today's proposal. The certification process as required in the Act is an annual process and requires that manufacturers demonstrate that regulated engines will meet appropriate standards throughout their useful lives. The Act prohibits the sale, importation or introduction into commerce of regulated engines when not covered by a certificate.

Under the January 1998 proposal, manufacturers of handheld engines would have been required to establish deterioration factors for each engine family based on an analysis of technically appropriate data. This data could have included results from the proposed field/bench adjustment program, the proposed handheld engine in-use testing program, as well as other appropriate testing data. The proposed certification requirements for handheld engines were different than those proposed for nonhandheld engines.

Based on comments received on the January 1998 NPRM and EPA's further evaluation of the originally proposed certification program, EPA is revising the proposed certification program for Phase 2 handheld engines significantly. EPA received a significant number of comments regarding the complexity of the proposed certification program, the prohibitive expense of field aging engines, and the advantages of harmonizing EPA's final certification program with that of the California ARB. EPA now believes the complexity of the originally proposed program would make it difficult to manage and organize the certification program for both industry and EPA. EPA also believes that harmonizing its programs with the California ARB would allow the industry to more efficiently comply with the reproposed emission standards and requirements. Additionally, EPA is concerned the field/bench adjustment program may not be statistically reliable enough to establish appropriate

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deterioration factors. (In an effort to control the cost of this program, only a minimum amount of data was proposed to be required; this small amount of data would hurt the statistical reliability of any resulting decision.)

In light of these comments and concerns, EPA is reproposing a significantly less complex certification program that would harmonize the handheld Phase 2 program with the requirements of the California ARB's Regulations for 1995 and Later Small Off-Road Engines, amended January 29, 1999. In the reproposed program, the requirements for manufacturers of handheld engines would be the same as those recently finalized for nonhandheld engines. Under today's proposal, manufacturers of handheld engines would be required to demonstrate that their regulated engines comply with appropriate emission standards throughout the engines' useful lives. To account for emission deterioration over time, manufacturers would need to establish deterioration factors for each regulated pollutant for each engine family. This proposal allows manufacturers to establish deterioration factors by using bench aging procedures which appropriately predict the in-use emission deterioration expected over the useful life of an engine or an in-use evaluation which directly accounts for this deterioration. As is the case with many EPA mobile source regulations, the multiplicative deterioration factors could not be less than one. Additionally, where appropriate and with suitable justification, deterioration factors could be carried over from one model year to another and from one engine family to another.

Today's proposal also provides flexibility for small volume engine manufacturers and small volume engine families. Under the proposed provisions, handheld engine manufacturers would be allowed the option of using assigned deterioration factors established by the Agency. The deterioration factors, either assigned or generated, would be used to determine whether an engine family complies with the applicable emission standards in the certification program, the production line testing program, and the Selective Enforcement Auditing program.

As in Phase 1, manufacturers would be allowed to submit certification applications to the Agency electronically, either on a computer disk or through electronic mail, making the certification application process efficient for both manufacturers and the Agency. Also, EPA and the California ARB expect to have a common application format allowing manufacturers to more easily apply for certification.

In today's SNPRM, EPA is also proposing a method by which manufacturers can separately certify configurations for use at high altitude. Manufacturers are currently required by the Phase 1 rule to certify engines for use at any altitude, but the rule does not specifically address separate high altitude and low altitude configuration testing. The existence of, and the need for the high altitude modifications has been a topic of recent discussions between EPA and manufacturers. To allow an engine to perform properly and meet emission standards while being operated at high altitudes, many manufacturers have developed special high altitude carburetor jets or high altitude kits. However, if an engine with such a kit installed is removed from high altitude, the kit would have to be removed and the engine returned to its original configuration for the engine to continue to perform properly and meet emission standards.

Today's proposal would allow manufacturers of both handheld and nonhandheld engines to certify an engine for separate standard and high altitude configurations. All engines would be required to meet, under all altitude conditions, the emission standards proposed today. The proposed method would be available for both Phase 1 and Phase 2 handheld and nonhandheld engines. Without such a certification option, installation of an altitude kit and other associated modifications might be considered tampering by EPA. No test data on engines with high altitude modifications performed would be required as a condition of certification, as this would add significantly to the manufacturer's certification compliance testing cost. Furthermore, no testing seems necessary since the altitude kits and associated modifications are intended to compensate for the change in air density when moving to high altitude by returning the engine to approximately the same operating point as evaluated during required certification testing. Similarly, no special labeling would be required for engines which have such altitude kits certified or for those in-use engines which have had altitude modifications performed. Consumers have a natural incentive to have the high altitude kit installed and adjustments performed when using an engine at altitude as this greatly improves performance; for the same reason EPA expects the modifications to be removed when returning the engine to low altitude. However, EPA believes some additional assurance is needed that the high altitude modifications are designed to provide good emission control and that the instructions for making these modifications are clear and readily available and thus likely to be performed correctly.

To provide this assurance, this proposal would require a manufacturer to list these altitude kits with their appropriate part numbers along with all the other certified parts in the certification application. In the application, the manufacturer would have to declare the altitude ranges at which the appropriate kits would be installed on or removed from an engine for proper emission and engine performance. The manufacturer would also be required to include a statement in the owner's manual for the engine or engine/equipment combination (and other maintenance-related literature intended for the consumer) that also declared the altitude ranges at which the appropriate kits must be installed or removed. Finally, the manufacturer, using appropriate engineering judgement which, at the manufacturer's option, could also include test data, would be required to determine that an engine with the altitude kit installed would meet each emission standard throughout its useful life. The rationale for this assessment would need to be documented and provided to the Agency as part of the certification application.

2. Production Line Testing—Cumulative Summation Procedure

This section addresses the proposed production line testing (PLT) program for engines covered by today's SNPRM. The proposed PLT program contained is the same as that adopted recently for nonhandheld engines and would require manufacturers to conduct manufacturer-run testing programs using the Cumulative Summation Procedure (CumSum).[6] The CumSum program, as proposed today, would require manufacturers to conduct testing on each of their engine families (unless they were relieved of this requirement under provisions granting flexibility). The maximum sample size that would be required for each engine family is 30 engines or 1 percent of a family's projected production, whichever is smaller. However, the actual number of tests ultimately required would be determined by the results of the testing. With the proposed program, the EPA PLT program and the corresponding California ARB program would be harmonized, requiring manufacturers to use the same CumSum procedure for testing production engines for both agencies. Manufacturers would be able to submit PLT reports to EPA electronically, either on a computer disk or through electronic mail, which should save both the industry and EPA time and money.

As mentioned in the discussion of the proposed ABT program, above, manufacturers could, for a limited amount of production, use ABT credits to offset the estimated excess emissions of previously produced noncomplying engine designs as determined in the PLT program. (The amount of excess emissions would be determined based on the difference between the new FEL established by the manufacturer as a result of the PLT program and the original FEL established prior to the PLT program.) Under today's proposal, a manufacturer could raise the FEL for one engine family per model year. If a PLT program failure required a manufacturer to raise the FEL for more than one engine family per model year, the manufacturer could do so only if the applicable engine family represented no more than ten percent of the manufacturer's production for that model year. For any additional engine families that were found to be in noncompliance as a result of the PLT program, the engine manufacturer would need to conduct projects approved by EPA that were designed to offset the excess emissions from those engines.

With regard to future production of engines identified to be in noncompliance as a result of PLT testing, the manufacturer would be expected to correct the noncompliance problem causing the emission noncompliance either by changing the production process, changing the design (which would require recertification) or raising the FEL to compensate for the higher emissions (also requiring recertification). In the event a manufacturer raised an FEL as a result of a PLT failure, it could do so for future production as well as past production as described above which would require a calculation of credits the manufacturer would need to obtain for the past production engines. EPA expects few instances in which the manufacturer would need to correct a PLT failure through raising the FEL since that would imply the manufacturer incorrectly set the initial FEL for that family. Frequent use of this remedy would suggest the manufacturer was incapable of correctly setting the FELs for its product, in which case EPA would have to reconsider allowing a manufacturer to participate in the ABT program at its option. It should also be noted that compliance with the applicable standard (or the applicable FEL) will be required of every covered engine. Thus, every engine that failed a PLT test would be considered in noncompliance with the standards and must be brought into compliance. EPA's rules allowing the use of the average of tests to determine compliance with the PLT program is intended only as a tool to decide when it is appropriate to suspend or revoke the certificate of conformity for that engine family, and is not meant to imply that not all engines have to comply with the standards or applicable FEL.

As discussed in the flexibilities section, EPA is proposing that small volume manufacturers and small volume engine families need not be included in the PLT program at the manufacturer's option.

3. Voluntary In-Use Testing

This section addresses the proposed voluntary in-use testing program. The January 1998 proposal would have required manufacturers of handheld engines to conduct in-use testing on a maximum of 25 percent of their engine families each model year. The proposal would also have allowed these handheld engine manufacturers to fulfill the in-use testing requirements by testing bench-aged engines, provided the manufacturer has successfully completed the field/bench adjustment program. Finally, under the January 1998 proposal, handheld engine manufacturers would have been allowed to participate in an in-use averaging, banking, and trading program.

The foundation of the in-use compliance program for manufacturers of handheld engines in the January 1998 proposal was the Field/Bench Adjustment Program. Based on a thorough evaluation of the proposed program, EPA does not believe the Field/Bench Adjustment Program would be statistically reliable enough on which to build an in-use testing compliance program due to the relatively small amount of data which would have been required. Additionally, in developing this SNPRM, EPA has attempted to harmonize this proposal as closely as possible with the California ARB's Regulations for 1995 and Later Small Off-Road Engines, amended January 29, 1999, allowing the industry to more efficiently comply with the standards and requirements. Based on these factors, as well as industry comments regarding the prohibitive expense of conducting field aged in-use tests, EPA is not including the in-use program contained in the January 1998 NPRM as part of today's reproposal.

However, EPA still desires meaningful in-use data so that it can more appropriately assess the actual emissions inventory of this industry. Therefore, EPA is proposing a voluntary in-use testing program. The proposed voluntary in-use testing program for engines covered by today's SNPRM is the same as the voluntary in-use testing program recently finalized by the Agency for nonhandheld engines. The proposed voluntary in-use testing program would give engine manufacturers the option of using a portion of their PLT resources to generate field aged emissions data. At the start of each model year, manufacturers could elect to place up to 20 percent of their engine families in this voluntary program. For those families in this program, manufacturers would not be required to conduct PLT for two model years, the current year and the subsequent year. (The California ARB has indicated that they would also exempt families in such an in-use testing program from their PLT requirements.) Instead, manufacturers would place a minimum of three randomly selected production engines in existing consumer-owned, independently-owned, or manufacturer-owned fleets. Manufacturers would install the engines in equipment that represents at least 50 percent of the production for an engine family and age the engine/equipment combination in actual field conditions to at least 75 percent of each engine's useful life. Once an engine in this program had been sufficiently field aged, the manufacturer would conduct an emissions test on that engine. Manufacturers would have three calendar years from the date they notified the Agency of their intent to include a family in the program to complete testing.

While the compliance program proposed today would not require a manufacturer to conduct any in-use testing to verify continued satisfactory emission performance in the hands of typical consumers, EPA believes it is worthwhile to have an optional program for such in-use testing. EPA believes it is important for manufacturers to conduct in-use testing to assure the success of their designs and to factor back into their design and/or production process any information suggesting emission problems in the field. If any

[6] The CumSum procedure has been promulgated for marine engines in EPA's spark-ignition marine rule at 40 CFR part 91 (61 FR 52088, October 4, 1996). In this section, "PLT" refers to the manufacturer-run CumSum procedure. "PLT" does not include Selective Enforcement Auditing (SEA), which is addressed separately in section II.C.4. of this preamble.

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information derived from this program indicates a substantial in-use emission performance problem, EPA anticipates the manufacturer would seek to determine the nature of the emission performance problem and what corrective actions might be appropriate. EPA would offer its assistance in analysis of the reasons for unexpectedly high in-use emission performance and what actions might be appropriate for reducing such high emissions. Whether or not a manufacturer chose to conduct a voluntary in-use testing program, EPA could always choose to conduct its own in-use compliance program. If EPA were to determine that an in-use noncompliance investigation was appropriate, the Agency expects it would conduct its own in-use testing program, separate from this voluntary manufacturer testing program, to determine whether a specific class or category of engines is complying with applicable in-use standards.

4. Selective Enforcement Auditing

As noted in the January 1998 proposal, the SEA program is not the Agency's preferred production line testing program for small engines. The CumSum procedures, described above, are being proposed as the production line program that manufacturers would conduct. The SEA program is included in today's SNPRM as a "backstop" to the CumSum program and would be used in cases where EPA believes there is evidence of improper testing or of a nonconformity that is not being addressed by the CumSum program. The SEA program, as proposed, would also apply to engine families optionally certified to the small volume manufacturer provisions and the small volume engine family provisions, in cases where manufacturers elect not to conduct PLT testing for such families. However, as for other families, EPA does not expect families certified under the small volume provisions would be routinely tested through an SEA program.

Under today's SNPRM and in contrast to the PLT program, manufacturers who fail an SEA would not have the automatic option of using ABT credits to remedy noncomplying engines already introduced into commerce. The proposed PLT program is designed to allow a manufacturer to continually evaluate its entire production and quickly respond to the results throughout the model year. EPA believes that allowing a manufacturer to use credits, for a limited amount of engines, to remedy past production emission failures is consistent with the continual evaluation provided by the PLT program. The SEA program, in contrast, is designed to be a one time, unannounced inspection of a manufacturer's production line with definitive passing or failing results. EPA believes that in this type of a compliance program, where at most only a few engine families might be tested each year, manufacturers must place more emphasis on the transition from certification to the production line and must set initial FELs accurately. To encourage accurate FEL settings at the time of certification, the proposed SEA program would not allow manufacturers to automatically remedy SEA failures by retroactively adjusting FELs. EPA is proposing that remedies for an SEA failure would be best determined on a case-by-case basis which might or might not include the use of ABT credits depending upon EPA's assessment of the specific case.

D. Flexibilities

In the January 1998 NPRM, EPA proposed a number of flexibilities to ease the transition from the Phase 1 to the Phase 2 program, to ensure that the Phase 2 standards are cost-effective and achievable, and to reduce the compliance burden while maintaining the environmental benefits of the rule. Several comments were received on the flexibilities proposed, some supporting the proposals and others offering recommended changes. In addition, the need for modifications to the proposed set of flexibilities evolved out of the investigations which led to other changes to the proposal including the more stringent handheld engine standards, the addition of Class I–A and Class I–B engine classes, and the expanded ABT program provisions being proposed. The following section summarizes the revised flexibilities proposed with today's SNPRM. EPA requests comments on the proposed flexibilities.

1. Carry-Over Certification

Consistent with other mobile source emission certification programs, EPA is proposing to allow a manufacturer to use test data and other relevant information from a previous model year to satisfy the same requirements for the existing model year certification program as long as the data and other information are still valid. Such "carry-over" of data and information is common in mobile source programs where the engine family being certified in the current model year is identical to the engine family previously certified.

2. Flexibilities for Small Volume Engine Manufacturers and Small Volume Engine Families

EPA proposed a number of compliance flexibilities for small volume engine manufacturers and small volume engine families in the January 1998 NPRM. With today's SNPRM, EPA is proposing a slightly revised set of flexibilities for handheld engines that would be available to both small volume engine families and small volume engine manufacturers. The three proposed flexibilities that would be available to manufacturers of small volume engine families and small volume engine manufacturers are as follows: (1) The eligible family or manufacturer could certify to Phase 1 standards and regulations until the third year after the end of the proposed Phase 2 schedule (i.e., the 2009 model year for Classes III and IV and the 2011 model year for Class V engines); such engines would be excluded from the ABT program until they are certified to the Phase 2 standard, (2) the eligible family or manufacturer could certify using assigned deterioration factors, and (3) the eligible family or manufacturer could elect to not participate in the PLT program, however, the SEA program would still be applicable.

With regard to Class I–A and Class I–B, EPA is proposing only one of the flexibilities for small volume engine families and small volume engine manufacturers noted above. EPA is proposing to allow eligible Class I–A and Class I–B small volume engine families or manufacturers to elect to not participate in the PLT program, however, the SEA program would still be applicable. As noted earlier, the proposed Class I–A and Class I–B designations are new, and therefore there are no engine families currently certified as Class I–A or Class I–B engines. Because the engines that will be designated as Class I–A or Class I–B engines will be new designs or existing designs that are expected to be able to meet the proposed standards, EPA does not believe there is a need to offer delayed implementation of the proposed standards or allow manufacturers to use assigned deterioration factors. Therefore, EPA is not proposing either the delayed implementation flexibility or use of assigned deterioration factors flexibility for Class I–A or Class I–B.

EPA originally proposed allowing small volume engine manufacturers to continue producing Phase 1 engines until the last year of the phase in of the Phase 2 standard applicable to the engine's class. (For handheld engines, the final year of the phase in would have been 2005 under the January 1998 NPRM.) However, since the proposed standards contained in today's SNPRM are significantly more stringent than the standards upon which the original proposed flexibility was based, the number of engine families expected to be modified and, especially, the degree of modification necessary has increased. This is expected to add significantly to the technical and resource burden on the engine manufacturers. As anticipated in the January 1998 proposal, EPA still expects the major engine manufacturers would choose to modify their small volume engine families last as these represent niche markets. Additionally, these niche applications may represent some of the more difficult engine applications due to their unique requirements. The experience gained in designing, producing and getting in-use feedback on their larger engine family designs should be helpful in minimizing the cost and assuring the performance of the small volume engines. Similarly, the design challenges for the small volume engine manufacturer because of the more stringent proposed Phase 2 standards are expected to increase, suggesting more time to accomplish the transition to Phase 2 standards would be warranted. EPA expects manufacturers would take advantage of the extra time being proposed today to smooth the transition to Phase 2 standards by bringing the small volume engines into compliance throughout this time period. Due to the fact that circumstances vary greatly from one manufacturer to another, EPA believes it would be inappropriate to mandate a percent phase-in schedule or some other mandatory rate of phase-in for these small volume engine families and small volume engine manufacturers. Therefore, EPA is proposing only a final compliance requirement that is effective three years after the end of the proposed Phase 2 phase-in schedule. EPA believes that a three year delay is appropriate based on discussions with manufacturers and given the number of engine families expected to be eligible for the proposed flexibilities. EPA has also considered the air quality impact of this proposed flexibility and believes that, under the reproposed provisions, less than two percent of the total small engine production would likely take advantage of this option to delay compliance with the Phase 2 standards with only a negligible impact on the emission benefits expected from the program.

3. Small Volume Engine Manufacturer Definition

As described earlier, EPA proposed a number of flexibilities for engine manufacturers defined as small volume engine manufacturers in the January 1998 NPRM (see section II.D.2.). EPA continues to believe flexibilities aimed at the small volume handheld engine manufacturer are appropriate and is retaining the proposed definition of small volume handheld engine manufacturers in this SNPRM. To qualify as a small volume engine manufacturer, a handheld engine manufacturer would need to produce no more than 25,000 handheld engines annually. In addition, for manufacturers of Class I–A and Class I–B nonhandheld engine families, where EPA is also proposing limited small volume engine manufacturer flexibility, a manufacturer of such engines would need to produce no more than 10,000 nonhandheld engines annually.

4. Small Volume Engine Family Definition

In the January 1998 NPRM, EPA proposed that manufacturers of small volume engine families also be provided the same flexibilities as small volume engine manufacturers (see section II.D.2.). To qualify as a small volume engine family, EPA proposed that a handheld engine family would need to have an annual production level of no more than 2,500 engines. Without such flexibilities, EPA believes the cost and other difficulties of modifying these small volume engine families to comply with the Phase 2 standards may be difficult enough that the manufacturer might either be unable to complete the modification of the engine design in time or may choose for economic reasons to discontinue production of the small volume engine family. The impact of such a scenario would of course fall on the engine manufacturer through reduced engine sales, but would also fall perhaps even more significantly on small volume equipment applications, the most typical use for these small volume engine families. Due to the unique character of these small volume equipment applications, it is quite possible that some equipment manufacturers might not be able to find a suitable replacement engine. In such a case, that equipment manufacturer would also be significantly impacted through lost sales, and consumers would be harmed through the loss in availability of the equipment.

In response to the January 1998 NPRM, the Portable Power Equipment Manufacturers Association (PPEMA) requested a "slight upward adjustment" of the proposed 2,500 unit cap for handheld engines. Based on PPEMA's comments, EPA has re-examined the production limits for small volume engine families and believes that the interests of preserving the availability of small volume engine families would be better served by revising the annual production cap to 5,000 units for handheld engine families. (The recent final rule for nonhandheld engines also adopted a production cap of 5,000 units for nonhandheld engines.) EPA believes this proposed change to the definition would allow a larger number of niche equipment applications to be served and the risk of loss in engine availability should be reduced. At the same time, EPA believes the potential for adverse emission impacts remains very small. Based on the higher cutoffs, EPA estimates that 98 percent of handheld engines would still be covered by the full compliance program and subject to the earliest practical implementation of the proposed rule.

Class I–A and Class I–B engine families would also be subject to a cap of 5,000 engines (the same level recently adopted for nonhandheld engines) in order to qualify as a small engine family and be eligible for the proposed small volume engine family flexibility described earlier.

5. Flexibilities for Equipment Manufacturers and Small Volume Equipment Models

In the January 1998 NPRM, EPA proposed three flexibilities aimed at assuring the continued supply under the Phase 2 regulations of engines for unique, typically small volume equipment applications. First, EPA proposed that small volume equipment manufacturers could continue using Phase 1 compliant engines through the third year after the last applicable phase-in date of the final Phase 2 standards for that engine class if the equipment manufacturer was unable to find a suitable Phase 2 engine before then. Second, EPA proposed to allow individual small volume equipment models to continue using Phase 1 compliant engines throughout the time period the Phase 2 regulation is in effect if no suitable Phase 2 engine was available and the equipment was in production at the time these Phase 2 rules were adopted. If the equipment is "significantly modified" then this exemption would end, since design accommodations could be made during such a modification to accept an engine meeting Phase 2 standards. Third, EPA proposed a hardship provision that would allow any equipment

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manufacturer, regardless of size, for any of its applications, regardless of size, to continue using a Phase 1 engine for up to one more year beyond the last phase-in of the final standard for that engine class if the requirement to otherwise use a Phase 2 compliant engine would cause substantial financial hardship. For today's SNPRM, EPA is retaining the proposed flexibilities, except that the criteria for determining whether someone is a small volume equipment manufacturer is being revised (see section II.D.6. below).

Because the applications expected to use Class I–A or Class I–B engines will be new engines and equipment designs or designs that use engines that already exist under the Phase 1 program (and are expected to meet the proposed Phase 2 standards), EPA does not believe there is a need to provide flexibilities for small volume equipment manufacturers and small volume equipment models in the newly proposed engine classes which would allow delayed introduction of engines certified to the proposed Phase 2 standards. Therefore, no such flexibilities are being proposed for Class I–A or Class I–B.

6. Small Volume Equipment Manufacturer Definition

As part of the January 1998 NPRM, EPA proposed that small volume equipment manufacturers would be defined as those whose annual production for sale in the U.S. across all models was 5,000 or fewer pieces of equipment utilizing handheld engines.

EPA has reexamined the production cutoff level for handheld equipment manufacturers. EPA believes there would be advantages to increasing the production cutoff included in the definition for small volume handheld equipment manufacturers. (EPA's recently finalized rule for nonhandheld engines expanded the cutoff level for the definition of small volume nonhandheld equipment manufacturer to 5,000 units.) Such a change would expand the flexibilities to slightly larger manufacturers who are still, compared to the rest of the industry, among the smallest. Therefore, EPA is proposing a revised definition for small volume handheld equipment manufacturer that is based on an annual production cutoff of 25,000 or fewer units. EPA estimates that this limit would cover approximately two percent of the annual sales in the handheld category. Providing the proposed flexibilities described in the previous section should allow significant relief to these smallest equipment manufacturers while at the same time assuring the vast majority of equipment uses the lowest emitting engines available.

7. Small Volume Equipment Model Definition

EPA is retaining the small volume equipment model definition proposed in the January 1998 NPRM for today's SNPRM. As proposed, the small volume equipment model definition would cover handheld models of 2,500 or less annual production. Providing the proposed flexibilities described in the section on flexibilities for small volume equipment models should allow significant relief to equipment manufacturers while at the same time assuring the vast majority of equipment uses the lowest emitting engines available.

E. General Provisions and Recommendations

In the January 1998 NPRM, EPA discussed a number of general provisions that would impact Phase 2 engines. EPA received comments on several of these issues, as well as recommendations on other general issues. A number of these issues, including the handheld engine definition, use of engines in recreational equipment, engine labeling, and emissions warranty affect some or all of the engines covered by today's SNPRM. These general provisions and other recommendations are discussed in this section of the preamble.

1. Definition of Handheld Engine

With today's SNPRM, EPA is retaining the same definition for handheld engine as was in effect for Phase 1 and is not proposing a new definition for handheld engine, except as discussed below. It should be noted that in response to comments from Honda and others, EPA recently proposed modifications to criteria for determining whether an engine could be classified as handheld that, if finalized, would be applicable for the remainder of Phase 1 and also apply for the Phase 2 program (64 FR 5251, February 3, 1999). Under the proposed modification, a manufacturer would be permitted to exceed the weight limits (14 kg for generators or pumps, or 20 kg for one-person augers) in cases where the manufacturer could demonstrate that the extra weight was the result of using a 4-stroke engine or other technology cleaner than the otherwise allowed two stroke engine. Today's reproposed program would incorporate the Agency's decision reached in the rulemaking addressing the proposed modifications to the handheld definition.

2. Engines Used in Recreational Vehicles and Applicability of the Small SI Regulations to Model Airplanes

Today's SNPRM does not propose any revisions to the provisions relating to engines used in recreational vehicles established in the Phase 1 program, except as discussed below. It should be noted that EPA recently issued a proposal that addresses the applicability of the small SI regulations to engines used in model airplane applications (64 FR 5251). Under this recent proposal, EPA has proposed to consider engines that serve "only to propel a flying vehicle * * * through air" to be recreational engines provided they also meet the other existing criteria that apply to that term. As "recreational" engines they would be effectively excluded from the small SI program. Today's reproposed program would incorporate the Agency's decision reached in the rulemaking addressing the proposed modifications to the recreational vehicle definition.

3. Engine Labeling

Under the January 1998 NPRM, EPA proposed that manufacturers would be required to state the useful life hours on the engine label. For nonhandheld engines only, EPA proposed an alternative to this engine labeling requirement. Under the alternative proposal, nonhandheld engine manufacturers could use a designator of useful life hours (e.g., A, B, or C) and then include words on the label which would direct the consumer to the owner's manual for an explanation of the meaning of the useful life designator.

As indicated in the January 1998 NPRM, EPA believes that requiring manufacturers to include on the engine label the number of hours of emission compliance for which the engine is properly certified would provide an important tool to consumers in making their purchase decisions between competing engines. In addition, EPA anticipates manufacturers will use the useful life hours of the engine as a marketing tool. EPA originally included the alternative option noted above based on the concern expressed by nonhandheld engine manufacturers that consumers could be confused by the meaning of the useful life period if the specific number of hours was included on the label. However, as indicated in the preamble to the January 1998 NPRM, EPA was concerned that an alternative designation, such as "A, B, or C" may not provide the same useful information to the consumer as including the useful life hours directly on the label. EPA is also aware of labeling options being considered by California that would allow removing the actual hours of operation from the engine label and including additional information on the product, perhaps not permanently affixed to the engine, which would satisfy the need to properly inform consumers. Allowing such labeling would also serve the goal of harmonization which was supported by PPEMA in their comments on the January 1998 NPRM.

With today's SNPRM, EPA is proposing to extend the alternative labeling option contained in the January 1998 NPRM, as noted above, to handheld engines. The Agency sees no reason why consumers would react differently to labeling information whether it is affixed to a handheld engine or a nonhandheld engine. Additionally, this SNPRM proposes to allow other labeling options provided the Administrator determines that such options satisfy the information intent of the label. This proposed option is intended to allow for the nationwide use of the California labeling system. In evaluating the adequacy of an alternative label, EPA would consider the extent to which the manufacturer's alternative engine label combined with other readily accessible consumer information adequately informs the consumer of the emission performance of the engine. The reproposed labeling requirements would be the same as those recently adopted in the final Phase 2 nonhandheld rulemaking.

It should be noted that EPA expects to work in partnership with the industry in developing consumer outreach material to better inform consumers of the emission improvements available through purchase of equipment using Phase 2 engines. EPA expects such outreach material will better serve the informational needs of consumers than just relying on any of the proposed labeling options.

4. Emission Warranty

Under the current regulations, the base emission performance warranty extends for a period of two years of engine use from the date of sale. However, since the January 1998 NPRM was issued, manufacturers of handheld engines have indicated to EPA that there are applications, particularly for commercial equipment, in which the useful life hours of the entire piece of equipment can be surpassed in one year of typical in-use operation. Therefore, EPA is proposing an option whereby manufacturers of handheld engines could request approval from EPA to adopt an emission warranty period of one year if they can demonstrate such a shorter warranty period would be appropriate for that engine/equipment combination. In addition, EPA is dropping the proposed warranty provisions from the January 1998 NPRM which would have required a different Phase 2 warranty statement compared to the Phase 1 warranty statement. Therefore, the Phase 2 provisions specifying what manufacturers must warrant, would remain unchanged from the existing Phase 1 program, and would match those contained in the recently adopted final Phase 2 nonhandheld rulemaking.

III. Projected Impacts

A. Environmental Benefit Assessment

National Ambient Air Quality Standards (NAAQS) have been set for a number of criteria pollutants, including ozone (O_3), which adversely affect human health, vegetation, materials and visibility. Concentrations of ozone are impacted by HC and NO_X emissions. EPA believes that the standards proposed in this rule would reduce emissions of HC and NO_X and help most areas of the nation in their progress towards attainment and maintenance of the NAAQS for ozone. The following section provides a summary of the roles of HC and NO_X in ozone formation. The following section also addresses the estimated emissions impact of this rule, and the health and welfare effects of ozone, CO, and hazardous air pollutants.

1. Roles of HC and NO_X in Ozone Formation

Both HC and NO_X contribute to the formation of tropospheric ozone through a complex series of reactions. EPA's primary reason for controlling emissions from small SI handheld engines is the role of their HC emissions in forming ozone. Of the major air pollutants for which NAAQS have been designated under the CAA, the most widespread problem continues to be ozone, which is the most prevalent photochemical oxidant and an important component of smog. Ozone is a product of the atmospheric chemical reactions involving oxides of nitrogen and volatile organic compounds. These reactions occur as atmospheric oxygen and sunlight interact with hydrocarbons and oxides of nitrogen from both mobile and stationary sources.

A critical part of this problem is the formation of ozone both in and downwind of large urban areas. Under certain weather conditions, the combination of NO_X and HC has resulted in urban and rural areas exceeding the national ambient ozone standard by as much as a factor of three. Thus it is important to control HC over wider regional areas if these areas are to come into and maintain compliance with the ozone NAAQS.

2. Health and Welfare Effects of Tropospheric Ozone

Ozone is a powerful oxidant causing lung damage and reduced respiratory function after relatively short periods of exposure (approximately one hour). The oxidizing effect of ozone can irritate the nose, mouth, and throat causing coughing, choking, and eye irritation. In addition, ozone can also impair lung function and subsequently reduce the respiratory system's resistance to disease, including bronchial infections such as pneumonia.

Elevated ozone levels can also cause aggravation of pre-existing respiratory conditions such as asthma.[7] Ozone can cause a reduction in performance during exercise even in healthy persons. In addition, ozone can also cause alterations in pulmonary and extra pulmonary (nervous system, blood, liver, endocrine) function. Elevated ozone levels have also been shown to affect vegetation, including reduced agricultural and commercial forest yields, reduced growth and decreased survivability of tree seedlings, increased tree and plant susceptibility to disease, pests, and other environmental stresses, and potential long-term effects on forests and ecosystems.

High levels of ozone have been recorded even in relatively remote areas, since ozone and its precursors can travel hundreds of miles and persist for several days in the lower atmosphere. Ozone damage to plants, including both natural forest ecosystems and crops, occurs at ozone levels between 0.06 and 0.12 ppm.[8] Repeated exposure to ozone levels above 0.04 ppm can cause reductions in the yields of some crops above ten percent.[9] The value of crops lost to ozone damage, while difficult to estimate precisely, has been estimated to be on the order of $2 billion per year in the United States.[10] The effect of ozone on complex ecosystems such as forests is even more difficult to quantify. However, there is evidence that some forest types are negatively affected by

[7] United States Environmental Protection Agency. Review of the National Ambient Air Quality Standards for Ozone—Assessment of Scientific and Technical Information: OAQPS Staff Paper. EPA–450/2–92–001. June 1989. pp. VI–11 to 13.

[8] U.S. EPA, *Review of NAAQS for Ozone*, p. X–10.

[9] U.S. EPA, *Review of NAAQS for Ozone*, p. X–10.

[10] U.S. EPA, *Review of NAAQS for Ozone*, p. X–22.

ambient levels of ozone.[11] Specifically, in the San Bernardino Mountains of southern California, ozone is believed to be the agent responsible for the slow decline and death of ponderosa pine trees in these forests since 1962.[12]

Finally, by trapping energy radiated from the earth, tropospheric ozone may contribute to heating of the earth's surface via the "greenhouse effect," thereby contributing to global warming,[13] although tropospheric ozone is also known to reduce levels of UVB radiation reaching the earth's surface, the increase of which is expected to result from depletion of stratospheric ozone.[14]

3. Estimated Emissions Impact of the Supplemental Proposed Regulations

The emission standards contained in today's proposal are expected to reduce average in-use exhaust HC+NO_X emissions from small SI handheld engines by approximately 78 percent beyond Phase 1 standards for handheld engines by the year 2027, by which time a complete fleet turnover is expected. This translates into an annual nationwide reduction of roughly 264,000 tons of exhaust HC+NO_X in the year 2027 over that expected from Phase 1. Reductions in CO levels beyond Phase 1 levels, due to improved technology, are also to be expected but have not been estimated because EPA does not believe it can accurately quantify the expected benefit.

Along with the control of all hydrocarbons, the proposed standards should be effective in reducing emissions of hydrocarbons considered to be hazardous air pollutants (HAPs), including benzene and 1,3-butadiene. However, the magnitude of reduction would depend on whether the control technology reduces the individual HAPs in the same proportion as total hydrocarbons.

These emission reduction estimates are based on in-use population projections using growth estimates, engine attrition (scrappage), activity indicators and new and in-use engine emission factors. Data on activity indicators were based on the Phase 1 nonroad small SI regulation. Estimates of engine populations were based on population data available from the PSR databases[15], data provided by small SI engine and equipment manufacturers to EPA, and on a study done for the California Air Resources Board by Booz Allen & Hamilton. Population projections into the future are based on a linear growth assumption. Attrition rates (based on the probability that an engine remains in service into a specific calendar year) for all engines included in this analysis are developed on the assumption that the equipment attrition function may be represented by a cumulative Normal distribution function. The in-use emission factors are based on a multiplicative deterioration factor which is a function of the cumulative hours of equipment usage.

Table 4 presents the emission inventories for the handheld engines covered by this proposed rule which were developed using EPA's NONROAD Model. The total annual nationwide HC and NO_X emissions from small SI handheld engines included in this proposal were estimated for both the baseline scenario (i.e., with Phase 1 controls applied) and the controlled scenario (i.e., the proposed Phase 2 controls). Because there are so few engines expected to be certified under the proposed Class I-A and Class I-B standards, EPA has not included any emissions from such engines in the inventory or benefit projections. The reader is directed to Chapter 6 of the Supplemental Draft RIA for a complete description of the inventory modeling analysis.

TABLE 4.—PROJECTED ANNUAL EXHAUST HC+NO_X EMISSIONS FROM HANDHELD EQUIPMENT (TONS/YEAR)

Year	With Phase 1 Controls only	With the Proposed Phase 2 Program	Tons Reduced due to the Proposed Phase 2 Program	Percentage Reduction (percent)
2000	207,257	207,257	.....	.....
2005	227,039	126,602	100,437	44.2
2010	250,390	60,992	189,398	75.6
2015	274,072	61,583	212,489	77.5
2020	297,967	66,276	231,691	77.8
2025	321,400	71,436	249,964	77.8

4. Health and Welfare Effects of CO Emissions

CO is a colorless, odorless gas which can be emitted or otherwise enters into ambient air as a result of both natural processes and human activity. Although CO exists as a trace element in the troposphere, much of human exposure resulting in elevated levels of carboxyhemoglobin (COHb) in the blood is due to incomplete fossil fuel combustion, as occurs in small SI engines.

The concentration and direct health effect of CO exposure are especially important for small SI handheld engines because the operator of a handheld application is close to the equipment as it functions. In some applications, the operator must be adjacent to the exhaust outlet and is in the direct path of the exhaust as it leaves the engine.

The toxicity of CO effects on blood and tissues, and how these effects manifest themselves as organ function changes, have also been topics of substantial research efforts. Such studies provided information for establishing the National Ambient Air Quality Standard for CO. The current primary and secondary NAAQS for CO are 9 parts per million for the one-hour average and 35 parts per million for the eight-hour average.

5. Health and Welfare Effects of Hazardous Air Pollutant Emissions

The focus of today's proposal is reduction of HC emissions as part of the solution to the ozone nonattainment problem. However, direct health effects

[11] U.S. EPA, *Review of NAAQS for Ozone*, p. X–27.

[12] U.S. EPA, *Review of NAAQS for Ozone*, p. X–29.

[13] NRC, *Rethinking the Ozone Problem*, p. 22.

[14] *The New York Times*, September 15, 1992, p. C4.

[15] Power Systems Research, Engine Data and Parts Link data bases, St. Paul, Minnesota, 1992.

are also a reason for concern due to direct human exposure to emissions from small SI handheld engines during the operation of handheld equipment. Of specific concern is the emission of hazardous air pollutants (HAPs). In some applications, the operator must be adjacent to the exhaust outlet and is in the direct path of the exhaust as it leaves the engine. Today's regulatory proposal should be effective in reducing HAPs such as benzene and 1,3-butadiene, in so far as these are components of the HC emissions being reduced by the Phase 2 standards.

Benzene is a clear, colorless, aromatic hydrocarbon which is both volatile and flammable. Benzene is present in both exhaust and evaporative emissions. Health effects caused by benzene emissions differ based on concentration and duration of exposure. The International Agency for Research on Cancer (IARC), classified benzene as a Group I carcinogen, namely an agent carcinogenic to humans. Occupational studies continue to provide the bulk of evidence of benzene's carcinogenicity. Workers are exposed at much higher levels than is the general public. Human epidemiologic studies of workers in highly exposed occupations have demonstrated that exposure to benzene can cause acute nonlymphocytic leukemia and other blood disorders, that is, preleukemia and aplastic anemia. Additionally, changes in blood and bone marrow consistent with hematotoxicity are recognized in humans and experimental animals. Benzene has also been linked with genetic changes in humans and animals.

1,3-butadiene is a colorless, flammable gas at room temperature. This suspected human carcinogen is insoluble in water and its two conjugated double bonds make it highly reactive. 1,3-butadiene is formed in internal combustion engine exhaust by the incomplete combustion of the fuel and is assumed not present in evaporative and refueling emissions. The Health Risk Assessment of 1,3-Butadiene (EPA/600/P–98/001A, February 1998), concludes that 1,3-butadiene is a known human carcinogen, based on three types of evidence: (1) Excess leukemia in workers occupationally exposed to 1,3-butadiene (by inhalation), (2) occurrence of a variety of tumors in mice and rats by inhalation, and (3) evidence in animals and humans that 1,3-butadiene is metabolized into genotoxic metabolites. Other health effects due to very high levels of exposure include heart, blood and lung diseases.

Because air toxic levels generally decrease in proportion to overall emissions once emission control technology is applied, the amount of benzene and 1,3-butadiene produced by new small SI engines should diminish once the proposed program becomes effective. Consequently, exposure to HAPs from new handheld engines would be reduced, as would associated health and environmental effects. Although there is little data on direct health effects of small SI engines, one Swedish study concluded that benzene emissions from chainsaw engines were rather high.[16]

B. Cost and Cost-Effectiveness

EPA has calculated the cost-effectiveness of this proposed rule by estimating costs and emission benefits for these engines. EPA made best estimates of the combination of technologies that an engine manufacturer might use to meet the proposed standards, best estimates of resultant changes to equipment design, engine manufacturer compliance program costs, and engine fuel savings in order to assess the expected economic impact of the proposed Phase 2 emission standards for handheld engines. Emission benefits are taken from the results of the environmental benefit assessment (see section III.A. above). The resulting cost-effectiveness result of the proposed Phase 2 standards is approximately $2,146 per ton of HC+$NO_X$ if fuel savings are not taken into account. If fuel savings are considered as a credit against cost, the cost-effectiveness calculation results in approximately $1,911 per ton of HC+$NO_X$. This section describes the background and analysis behind these results.

The analysis for this proposal is based on data from engine families certified to EPA's Phase 1 standards, and information on the latest technology development and related emission levels that the Agency obtained prior to and since the publication of the January 1998 NPRM. The analysis does not include any production volumes that are covered by the California ARB's standards. The California ARB will implement emission standards for many of these engines prior to the proposed federal Phase 2 regulations. Therefore, this analysis only accounts for costs for each engine sold outside California and those engines sold in California that are not covered by the California ARB rules, such as those that California determined are used in farm and construction equipment. EPA assumed that any Phase 1 engine design that would need to be modified to meet Phase 2 standards was assumed to incur the full cost of that modification, including design cost. Similarly, the cost to equipment manufacturers was assumed to be fully attributed to this federal rule even if an equipment manufacturer would have to make the same modifications in response to the California ARB regulations. The details of EPA's cost and cost-effectiveness analyses can be found in Chapters 4 and 7 of the Supplemental Draft RIA for this rule. EPA requests comment on its cost effectiveness analysis and requests any relevant information that would assist the Agency in revising the analysis as appropriate.

1. Class I–A and Class I–B

No costs for Class I–A are included in this Phase 2 regulation. This is due to several factors. First, costs for research and development for engines in Class I–A are included in the research and development of handheld engine families (Classes III–V) since they are the same engine families, but would just be allowed to be used in nonhandheld applications. Second, certification and PLT testing for these engine families for use to handheld applications (Classes III–V) will likely be used toward certification for this class. In regards to benefits, no benefits for Class I–A engine families were estimated due to the anticipated limited use (i.e., small niche markets) of these engines in nonhandheld applications. Because no Class I engine families currently exist in this displacement range, EPA would not expect a loss in the Phase 2 Class I emission benefits from the adoption of the proposed Class I–A standards.

The costs for Class I–B include only certification to the Phase 2 regulation. The EPA Phase 1 certification database (as of September 1998) indicates there are only three engine families (two of these meet the proposed small volume engine family cutoff) that would be certified to this class, two are SV engines and one is an OHV engine, all with similar emission results for HC+NO_X. The engine families can currently meet the proposed emission standards for this class and therefore no additional variable costs or fixed costs were included for research and development or production. In addition, the Phase 2 program allows small volume engine families and manufacturers an option to perform PLT. No benefits are included for it is not known if all of the engine families in this newly proposed displacement

[16] "Occupational Exposure to Chain Saw Exhausts in Logging Operations," American Industrial Hygiene Association, J48, 1987.

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category will utilize the new class due to the fact that these engines must be certified to the California ARB standards (16.1 g/kW-hr HC+NO_X for engines between 60 cc and 225 cc) if they are to be sold in California. Also, the low production estimates for engine families in this class are a very small fraction of the overall engine sales in this category which make up the benefits for the Phase 2 nonhandheld engine rulemaking and therefore should have no appreciable impact on the emission benefits of the Phase 2 rule for nonhandheld engines.

2. Handheld Engine Technologies

Table 5 lists the technologies that have been considered in the cost estimation for Class III–V engines in this proposed rulemaking. Additional detail regarding the impact of these modifications can be found in Chapter 3 of the Supplemental Draft RIA.

TABLE 5.—Potential Technology Improvements Per Class and Engine Design

Technologies	Class	Engine design
Compression Wave Technology with Catalyst	III	2-stroke
Compression Wave Technology with Catalyst Stratified scavenging with catalyst 4-stroke engine	IV	2-stroke
None	IV	4-stroke
Compression Wave Technology Stratified scavenging	V	2-stroke
Likely only applicable to the smallest Class V engines	V	4-stroke

3. Handheld Engine Costs

The engine cost increase is based on incremental purchase prices for new engines and is comprised of variable costs (for hardware, assembly time and compliance programs), and fixed costs (for R&D and retooling). Variable costs were applied on a per engine basis and fixed costs were amortized at seven percent over five years. Engine technology cost estimates were based on a study performed by ICF and EF&EE in October 1996 entitled "Cost Study for Phase Two Small Engine Emission Regulations" and cost estimates provided by industry in confidence. Details of the assumed costs and analysis can be found in Chapters 3 and 4 of the Supplemental Draft RIA.

Analysis of the EPA Phase 1 certification database, as of September 1998, was conducted to determine a potential impact of the proposed Phase 2 standards on each manufacturer assuming the proposed ABT program would be available to engine manufacturers. While the proposed ABT program would allow credit exchanges across classes, this analysis considered only ABT within each class since some manufacturers produce substantially in only one handheld class. The choice of technologies for emission improvement of these engine families was based on the engine family that would be most influential in reducing a manufacturer's overall average emission level within that class. The cost analysis was updated with consideration of cost information submitted in confidence by several engine manufacturers in order to most accurately reflect expected costs.

For Class III, review of EPA's Phase 1 database showed that 78 percent of the engine families would need to incorporate at least some of the technologies listed in Table 5. For Class IV, review of EPA's Phase 1 certification database shows that 84 percent of the engine families would need to incorporate emission improvements from amongst those listed in Table 5. For Class V, review of EPA's Phase 1 database showed that 65 percent of the engine families would need to incorporate at least some of the technologies listed in Table 5. (It should be noted that a small number of the engine families in Class V are lawnmowers or snowblowers which either have their own schedule for meeting emission standards from Phase 1 (existing handheld equipment with 2-stroke engines, such as some lawnmowers) or do not have to meet the HC+NO_X standards due to sole wintertime use (such as snowblowers)). The incorporation of such technologies would require both variable and fixed expenditures.

The proposed Phase 2 emission standards for this diverse industry would impact companies differently depending on a company's current product offering and related deteriorated emission characteristics used in establishing FELs for use in averaging emissions across engine families. Some companies may improve the emission characteristics of their large volume engine families to provide credits for their smaller volume families. The real world impact on engine manufacturers would also be influenced by a manufacturer's ability to reduce the emissions from its major impact engine family in light of competition with others in the marketplace.

4. Handheld Equipment Costs

In most cases, the companies that manufacture engines for use in handheld equipment also manufacture the equipment. There are a small number of independent equipment manufacturers which do not make their own engines (ref: 1996 PSR EOLINK). Due to the overwhelming number of equipment models manufactured by engine/equipment manufacturers compared to the small number of independent equipment manufacturers, information for the analysis was taken from the known data in EPA's Phase 1 certification database which contains information from the engine/equipment manufacturers. Additional information was added from the auger equipment manufacturers who have been in touch with EPA throughout the Phase 2 process. Due to the degree of estimation used in the analysis, it is assumed that any equipment manufacturers not included in the analysis would not have a significant impact on the analysis. The costs for equipment conversion for handheld equipment was derived from the ICF/EF&EE cost study [17] which contained estimates based on the engine technology being utilized. Full details of EPA's cost analysis can be found in Chapter 4 of the Supplemental Draft RIA. EPA has assumed that capital costs would be amortized at seven percent over ten years.

This rulemaking assumes that the majority of Class III through V engines would be converted to using some form of compression wave technology with catalyst, mini 4-stroke or stratified scavenging with catalyst. The split in equipment impact was dependent on the split in technologies assumed amongst engines in each engine class. This was due to the vertical integration of this industry. The engine design impacts with the compression wave technologies with catalyst are assumed to be one injection mold design change for the engine shroud to accommodate cooling patterns for the engine and the muffler/exhaust gas temperatures. For stratified scavenging with a catalyst, the equipment must assure that it can house the new engine which may be slightly larger than its predecessor due to power loss. In addition, as with the compression wave technology, the equipment must allow for adequate cooling and protection of the user from the hot muffler. Several engine shroud changes are necessary along with added

[17] ICF and Engine, Fuel and Emissions Engineering, Incorporated; "Cost Study for Phase Two Small Engine Emission Regulations", Draft Final Report, October 25, 1996, in EPA Air Docket A- 93–29, Item #II–A–04.

heat shields and air flow path modifications due to the use of the catalyst. Mini 4-strokes require a total redesign of the engine shroud, tank placements, etc. due to the new design of the engine. For this rulemaking, the analysis assumes that most Class III engines will utilize compression wave technology with a catalyst and some engines using stratified scavenging with a catalyst. The majority of Class IV engines are assumed to use compression wave technology with a catalyst and a small number of engines are assumed to use stratified scavenging with a catalyst or mini 4-stroke technologies. The majority of Class V engines are assumed to utilize compression wave technology and a small number are assumed to use stratified charge.

5. Handheld Operating Costs

The total life-cycle operating costs for this proposal include any expected decreases in fuel consumption. Life cycle fuel cost savings have been calculated per class using the NONROAD emission model. The model calculates fuel savings from the years of implementation to 2027 and takes into account factors including equipment scrappage, projected yearly sales increase per equipment type, and engine power. Details on the assumptions and calculations on fuel savings are included in Chapters 4 and 7 of the Supplemental Draft RIA.

Based on information described in Chapter 3 of the Draft Supplemental RIA (see section 3.2), a fuel consumption savings of 30 percent has been assumed from the two stroke engines as they are converted to compression wave, mini 4-stroke, or stratified scavenging design. The designs are expected to result in improved fuel economy since the engine designs may run on a leaner air/fuel mixture with or without improved combustion efficiency and reduce or altogether eliminate scavenging with fuel/oil mixture.

6. Cost Per Engine and Cost-Effectiveness

a. Cost Per Engine

Total costs for this proposal would vary per year as engine families are phased-in to compliance with the proposed Phase 2 standards over several years, as capital costs are recovered, and as compliance programs are conducted. The term "uniform annualized cost" is used to express the cost of this proposal over the years of this analysis.

The methodology used for estimating the uniform annualized cost per unit is as follows. Cost estimates from 1996 and 1997 model years, for technology and compliance programs respectively, were estimated and increased to 1998 dollars using the GDP Implicit Price deflator (1.9% in 1996, 1.9% in 1997 and 1.0% in 1998).[18] While a number of technologies are potentially possible for these engines, only the costs for one technology were chosen in order to simplify the estimates of the technologies manufacturers will choose to implement in the future years. Engine technology costs for all engine designs in Classes III and IV were based on compression wave (John Deere LE) with catalyst (cost information from MECA and ICF). The most detailed cost information was available from these sources and it is believed that the technology will prove to be most applicable to the broad range of engines. Engine technology costs for engine designs in Class V were also based on the John Deere LE technology, however no catalyst cost was applied for it is assumed that the standard does not require catalysts. While the technology is not yet proven in Class V engines, it is believed that it may likely be applicable. The cost estimates, including licensing fee, are assumed to allow room for expected costs from other technologies. EPA's Phase 1 database was then analyzed to determine the number of engine families per class that would likely incorporate the emission reduction technologies taking into consideration the availability of the proposed ABT program. The estimated costs per year were then calculated by multiplying the number of engine families and corresponding production volume by the fixed and variable costs per technology grouping, respectively. Since the majority of equipment manufacturers are also engine manufacturers in this market, retail markups used are 16 percent by the engine/equipment manufacturer and 5 percent by the mass merchandiser. All markups are based on industry-specific information from the Phase 1 program. For compliance program costs, the costs for certification bench aging were estimated based on the number of engine families in EPA's Phase 1 database and the expected certification date under the phase in of the proposed Phase 2 standards. To complete the calculation of the uniform annualized cost per unit, all of these costs are summed per year and then discounted seven percent to the first year of Phase 2 regulation. The yearly costs are summed and a uniform annualized cost is calculated. The uniform annualized cost is then divided by production at two points in time, the first full year of implementation of the proposed Phase 2 standards (2006 for Classes III and IV and 2008 for Class V), and the last year of this analysis (2027), to obtain two separate uniform annualized costs per unit. The average of these two values is then presented as the uniform annualized cost per unit in Table 6.

[18] Information obtained from the Bureau of Economic Analysis' website (www.bea.doc.gov/bea/dn/niptbl-d.htm#).

The yearly fuel savings (tons/yr) per class were calculated from the NONROAD model. The yearly fuel savings (tons/yr) were converted to savings (1998$) through conversion to gallons per year multiplied by $0.765 (a 1995 average refinery price of gasoline to end user, without taxes) increased to 1998 using the GDP deflator for 1996, 1997 and 1998. The yearly fuel savings were then discounted by 7 percent to the first year of Phase 2 regulation, for each engine class. The yearly results were totaled and then divided by an annualized factor to yield the uniform annualized fuel savings. The fuel savings for each class was calculated for the production years of 2006, 2008 and 2027. The average of these two values was utilized as the average fuel savings per unit per class per year as shown in Table 6.

The average resultant cost per unit class is calculated by subtracting the average fuel savings from the average cost, see Table 6. The reader is directed to Chapter 7 of the Supplemental Draft RIA for more details of this analysis.

TABLE 6.—ENGINE YEARLY FUEL SAVINGS AND RESULTANT COST PER UNIT COSTS BASED ON UNIFORM ANNUALIZED COSTS (1998$)

Class	Cost Per Unit	Savings Per Unit	Resultant Cost Per Unit
III	$17.35	$0.50	$16.85
IV	22.84	1.02	21.82
V	53.42	3.04	50.38

Note: Nearly all of the handheld industry is vertically integrated and therefore it is most appropriate to acknowledge cost/unit rather than cost/engine for the engine and equipment manufacturers are the same in nearly all cases.

b. Cost-Effectiveness

EPA has estimated the cost-effectiveness (i.e., the cost per ton of emission reduction) of the proposed HC+NOx standards over the typical lifetime of the handheld, Class I–A and Class I–B equipment that would be covered by today's proposal. EPA has examined the cost-effectiveness by

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performing a nationwide cost-effectiveness analysis in which the net present value of the cost of compliance per year is divided by net present value of the HC+NOx benefits. The resultant discounted cost-effectiveness is $2,146 cost/ton HC+NOx without fuel savings factored in, and $1,911 with fuel savings taken into consideration. Chapter 7 of the Supplemental Draft RIA contains a more detailed discussion of the cost-effectiveness analysis. The overall cost-effectiveness of this proposed rule on HC+NOx emission reductions, with fuel savings, is shown in Table 7 compared to the cost effectiveness of other nonroad rulemakings, which also reflect fuel savings.

TABLE 7.—COST-EFFECTIVENESS OF THE PROPOSED PHASE 2 HANDHELD, CLASS I–A AND CLASS I–B ENGINE STANDARDS (WITH FUEL SAVINGS) COMPARED TO OTHER NONROAD PROGRAMS

Nonroad Program	Cost-effectiveness	Pollutants
Proposed Phase 2 Small SI Handheld Engines	$1,911/ton	HC+NOx.
Phase 2 Small SI Nonhandheld Engines	$507/ton	HC+NOx.
Phase 1 Small SI Engines	$217/ton	HC+NOx.
Recreational Marine SI Engines	$1,000/ton	HC.
Tier 2/3 Standards for Nonroad CI Engines	$410–$650/ton	HC+NOx.

IV. Public Participation

The process for developing this supplemental proposed rule provided several opportunities for formal public comment. EPA published an Advance Notice of Proposed Rulemaking (ANPRM) on March 27, 1997 (62 FR 14740) which announced the signing of two Statements of Principles (SOPs) with the small engine industry and several other interested parties. The ANPRM and included SOPs outlined possible programs which would increase the stringency of the small engine regulations compared to Phase 1 rules. Comments were received in response to this ANPRM which, in combination with the programs outlined in the ANPRM, formed the basis of the Notice of Proposed Rulemaking (NPRM) for Phase 2 standards which was published on January 27, 1998 (63 FR 3950). A public hearing was held on February 11, 1998 during which oral testimony was received on the proposal. Written comments were received during the formal comment period for the proposal and some additional written comments were received after the formal comment period closed. To expand upon comments received during the comment period and to address specific questions EPA had of the industry regarding technical feasibility and cost of some options for Phase 2 standards, EPA received additional information after the close of the formal comment period and participated in a number of phone conversations and meetings with industry representatives for this purpose. All of this information that is germane to Phase 2 handheld small SI standards, including documentation of phone calls and meetings, has been included in the docket for this supplemental proposed rule. Since considerable information was received after the formal comment period closed, a Notice of Availability highlighting the supplemental information was also published on December 1, 1998 (63 FR 66081) alerting interested parties to the availability of this supplemental information. Much of this information was relied upon in support of the recently finalized Phase 2 nonhandheld small SI program. All relevant information received, regardless of the date of receipt, was, to the maximum extent possible, considered in the development of this supplemental proposed rule for the Phase 2 handheld small SI program.

V. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, the Agency must assess whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order (58 FR 51735, Oct. 4, 1993). The order defines "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this rulemaking is a "significant regulatory action" because the proposed standards and other regulatory provisions, are expected to have an annual effect on the economy in excess of $100 million. A Supplemental Draft RIA has been prepared and is available in the docket associated with this rulemaking. This proposal was submitted to OMB for review as required by Executive Order 12866. Any written comments from OMB are in the public docket for this rulemaking.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For the reasons set out below, this proposed rule would not have a significant economic impact on a substantial number of entities.

EPA has identified industries that would be subject to this rule and has contacted small entities and small entity representatives to gain a better understanding of the potential impacts of the proposed Phase 2 handheld engine program on their businesses. This information was useful in estimating potential impacts of this proposal on affected small entities, the details of which are more fully discussed in Chapter 8 of the Supplemental Draft RIA. Small not-for-profit organizations and small governmental jurisdictions are not expected to be impacted by this proposal. Thus EPA's impact analysis focuses on small businesses. For purposes of the impact analysis, "small business" is defined by number of employees, according to published Small Business Administration (SBA) definitions. Since handheld equipment manufacturers also tend to be the engine manufacturers, which also tend to be larger businesses, there are few small business entities involved in the analysis.

However, the Agency desires to minimize, to the extent appropriate, impacts on those companies which may be adversely affected, and to ensure that the emissions standards are achievable. Thus, flexibility provisions for the rule (discussed earlier in section II.D.) were developed based on analysis of information gained through discussions with potentially affected small entities as well as analysis of other sources of information, as detailed in Chapters 8 and 9 of the Supplemental Draft RIA. Many of the flexibilities in today's proposal should benefit the engine and equipment manufacturers that do qualify as small business entities.

The economic impact of the proposed rule on small entity engine and equipment manufacturers was evaluated using a "sales test" approach which calculates annualized compliance costs as a percent of sales revenue. The ratio is an indication of the severity of the potential impacts. EPA expects that, at worst, 3 small entity engine manufacturers and 6 small entity equipment manufacturers would be impacted by more than one percent of their sales revenue. Also, no more than 4 entities would be impacted by more than three percent of their annual sales revenue, as indicated by the analysis. This base case analysis assumes that manufacturers do not take advantage of the flexibilities being offered, but that they would be able to pass through most necessary price increases to the ultimate consumer. EPA would thus expect today's proposed rule to have a minimal impact on small business entities.

However, EPA is proposing a number of flexibilities to further reduce the burden of compliance on any small-volume engine manufacturers, small volume equipment manufacturers and manufacturers of small-volume engine families and small-volume equipment models. The Agency received a number of comments from engine and equipment manufacturers, which were generally supportive of the flexibilities initially proposed, but which suggested changes in production caps and other provisions. EPA has incorporated many of these suggested changes to the extent possible in this proposal, keeping in mind equity and air quality considerations. Given these flexibilities being afforded to the engine and equipment manufacturers, the results of the analysis suggest that of those small entities analyzed, only one small business engine manufacturer and none of the small business equipment manufacturers would likely experience an impact of greater than one percent of their sales revenue. Other outreach activities have also indicated that the impact of today's proposed rule could be minimized given sufficient lead time to incorporate the new technology with normal model changes. Again, the Agency has not attempted to quantify the beneficial impact on small volume manufacturers of the lead time provided (which can include delaying the impact of these rules up until the 2009 model year for Classes III and IV and up until the 2011 model year for Class V).

Although EPA believes that the above-mentioned flexibility provisions will minimize any adverse impact on small entities (see Chapter 8 of the Supplemental Draft RIA), the Agency has already adopted a hardship relief provision for nonhandheld engines that would also apply to handheld engines. This was developed to further ensure that standards can be achieved without undue hardship on the business entities involved. While it is difficult to project utilization of such a provision, EPA expects that it could further reduce any possible adverse economic impact of the proposed rule.

The results of the impact analysis show minimal impacts on small businesses. EPA expects that such impacts will be negligible if small companies take advantage of the above-mentioned flexibilities. Most of the small companies contacted considered it likely that they would be able to pass most of their cost increases through to their customers. Many of these entities are also involved in filling niche markets, and are thus in a particularly good position to pass these costs along to the ultimate consumers. Finally, the ample lead time contained by today's proposed rule should also allow for an orderly transition to the more advanced technology. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities and therefore a regulatory flexibility analysis for this proposal has not been prepared. The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes additional comments during the rulemaking process on issues related to such impacts. In spite of the expected minimal impacts on small entities, EPA will continue its efforts to notify small business engine and equipment manufacturers of this proposed rule and to inform them of their opportunities for providing feedback to the Agency.

C. Paperwork Reduction Act

The information collection requirements in this supplemental proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., SW, Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr.

The information planned to be collected via this supplemental proposed rule is necessary to assure that the engine manufacturers required to seek certification of their engines have fulfilled all the essential requirements of these proposed regulations. In particular, this information will document the design of the engine for which certification is sought, the type(s) of equipment in which it is intended to be used and the emission performance of these engines based upon testing performed by or on behalf of the engine manufacturer. Additional, essential information is necessary to document the results of testing performed by the manufacturer under a proposed production line testing program to determine that the engines, as manufactured continue to have acceptable emission performance. Finally, if the manufacturer elects to conduct testing of in-use engines under a voluntary in-use testing program contained in the proposed regulations, information is necessary to document the results of that in-use testing program.

Table 8 provides a listing of the information collection requirements associated with the proposed Phase 2 program for nonroad SI handheld engines at or below 19 kW along with the appropriate OMB control numbers. The cost of this burden has been incorporated into the cost estimate for this rule. The Agency has estimated that the public reporting burden for the collection of information required under this supplemental proposed rule would average approximately 87,120 hours annually for the industry at an estimated annual cost of $5,360,000. The hours spent by an individual manufacturer on information collection activities in any given year would be highly dependent upon manufacturer specific variables, such as the number of

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engine families, production changes, emission defects etc.

TABLE 8.—PUBLIC REPORTING BURDEN

Type of Information	OMB Control No.
Certification	2060–0338
Averaging, banking and trading	2060–0338
Production line testing	N/A
Pre-certification and testing exemption	2060–0007
Engine exclusion determination	2060–0124
Emission defect information	2060–0048
Importation of nonconforming engines	2060–0294

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to Director, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, SW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked "Attention: Desk Office for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 28, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by August 27, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this supplemental proposal.

D. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local and tribal governments or the private sector of greater than $100 million in any one year, the Agency has prepared a budgetary impact statement and has addressed the selection of the least costly, most cost-effective or least burdensome alternative. While this proposed rule does not impose enforceable obligations on State, local, and tribal governments, because they do not produce small SI handheld engines or equipment, EPA has estimated the proposed rule to cost the private sector an annualized cost of $359 million per year (over the 20 year period from 2002 to 2021). However, the Agency has appropriately considered cost issues in developing this proposed rule as required by section 213(a)(3) of the Clean Air Act, and has designed the proposed rule such that it will in EPA's view be a cost-effective program. Because small governments would not be significantly or uniquely affected by this proposed rule, the Agency is not required to develop a plan with regard to small governments.

The impact statement under section 202 of the Unfunded Mandates Act must include: (1) A citation of the statutory authority under which the rule is adopted; (2) an assessment of the costs and benefits of the rule including the effect of the mandate on health, safety and the environment; (3) where feasible, estimates of future compliance costs and disproportionate impacts upon particular geographic or social segments of the nation or industry; (4) where relevant, an estimate of the effect on the national economy; and (5) a description of the EPA's consultation with State, local, and tribal officials. Because this proposed rule is estimated to impose costs to the private sector in excess of $100 million per year, it is considered a significant regulatory action. Therefore, EPA has prepared the following statement with respect to sections 202 through 205 of the Unfunded Mandates Act.

1. Statutory Authority

This rule proposes standards for emissions of $HC+NO_X$ and CO from small nonroad SI handheld engines pursuant to section 213 of the Clean Air Act. Section 216 defines the terms "nonroad engine" and "nonroad vehicle." Section 213(a)(3) requires these standards to achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. Section 213(b) requires the standards to take effect at the earliest possible date considering the lead time necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period and energy and safety. Section 213(d) provides that the standards shall be subject to sections 206, 207, 208 and 209 of the CAA, with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under section 202. Therefore, the statutory authority for this rule is as follows: sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended. Moreover, this proposed rule is being issued pursuant to a court order entered in *Sierra Club* v. *Browner*, No. 93–0124 and consolidated cases (D.D.C.).

2. Social Costs and Benefits

The social costs and benefits of this proposed rule are discussed in sections III.A. and III.B. of this notice, and in Chapters 6 through 7 of the Supplemental Draft RIA. Those discussions are incorporated into this statement by reference.

3. Effects on the National Economy

As stated in the Unfunded Mandates Act, macroeconomic effects tend to be measurable, in nationwide economic models, only if the economic effect of the regulation reaches 0.25 to 0.5 percent of gross domestic product (in the range of $15 billion to $30 billion). A regulation with a smaller aggregate effect is highly unlikely to have any measurable impact in macroeconomic terms unless it is highly focused on a particular geographic region or economic sector. Because the economic impact of the proposed Phase 2 rule for small SI handheld engines is expected to be far less than these thresholds, no estimate of this proposed rule's effect on the national economy has been conducted.

4. Consultation With Government Officials

Today's proposed rule would not create a mandate on State, local or tribal governments, since it would not impose any enforceable duties on these entities who do not produce small SI handheld engines or equipment. Thus, EPA did not consult with State, local or tribal governments in the context of discussing mandated costs that would apply to such governments. However, EPA did consult with state governmental representatives, and with representatives of associations representing state air regulatory agencies, in the contexts of developing the most stringent achievable regulations and of addressing state ozone attainment needs. The consulted entities include the California ARB and the Northeast States for Coordinated Air Use Management (NESCAUM). These consultations are documented in the record for this rule, and are reflected and discussed in the SOPs, the March 1997 ANPRM, the January 1998 NPRM, the December 1998 Notice of Availability, the recently finalized Phase 2 rule for nonhandheld small SI engines and equipment, and today's SNPRM.

5. Regulatory Alternatives Considered

To ensure the cost-effectiveness of this proposed rule and still fulfill the intent of the Clean Air Act, EPA has proposed numerous flexibility provisions that EPA expects would reduce the burden of the Phase 2 program for small volume manufacturers and manufacturers of small volume models and families. The flexibility provisions are discussed in section II.D. of today's document. Moreover, the technological options considered for the proposed rule's standards and related provisions are discussed in section II.A. of the document. EPA specifically requests comment on the standards contained in today's reproposal and the alternative set of standards (described in section II.A.) supported by a number of handheld engine manufacturers. Section II.B. discusses the proposed ABT program, and section II.C. discusses the proposed compliance program for Phase 2 handheld engines.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule involves technical standards. While commenters suggested the use of ISO 8178 test procedures for measuring emissions, the Agency has decided not to propose the ISO procedures in this SNPRM. The Agency believes that these procedures would be impractical because they rely too heavily on reference testing conditions. Since the test procedures in these proposed regulations would need to be used not only for certification, but also for production line testing, selective enforcement audits, and voluntary in-use testing, EPA believes they must be broadly based. In-use testing is best done outside tightly controlled laboratory conditions so as to be representative of in-use conditions. EPA believes that the ISO procedures are not sufficiently broadly usable in their current form for this proposed program, and therefore should not be adopted by reference. EPA has instead proposed to continue relying on the procedures outlined in 40 CFR Part 90. EPA is hopeful that future ISO test procedures will be developed that are usable for the broad range of testing needed, and that such procedures could be adopted by reference at that point.

F. Executive Order 13045: Protection of Children's Health

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Was initiated after April 21, 1997 or for which a Notice of Proposed Rulemaking was published after April 21, 1998; (2) is determined to be "economically significant" as defined under Executive Order 12866; and (3) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets all three criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045, because substantive actions were initiated before April 21, 1997 and EPA published a Notice of Proposed Rulemaking before April 21, 1998. The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This supplemental proposed rulemaking is based on technology performance and not health or safety risks. Therefore, EPA does not have reason to believe this proposed action involves environmental health and safety risks that present a disproportionate risk to children.

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments,

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and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule would not create a mandate on State, local or tribal governments. The proposed rule would not impose any enforceable duties on these entities, because they do not produce small SI handheld engines or equipment. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected tribal governments and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule would not significantly or uniquely affect the communities of Indian tribal governments because it would not impose any enforceable obligations on them. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

VI. Statutory Authority

Authority for the actions set forth in this proposed rule is granted to EPA by Sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

List of Subjects in 40 CFR Part 90

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: June 30, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES

1. The authority citation for part 90 is revised to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).

Subpart A—General

1a. Section 90.1 is proposed to be amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 90.1 Applicability.

(a) * * * To the extent permitted by other parts of this chapter, this Part may, at the engine manufacturer's option, apply to engines with gross power output greater than 19 kW that have an engine displacement of less than or equal to one liter.

* * * * *

2. Section 90.3 is proposed to be amended by adding the words "handheld and" immediately preceding the word "nonhandheld" in the definition of "Phase 2 engine," by adding the words "any handheld engine family or" immediately preceding the words "any nonhandheld engine family" in the definition of "Small volume engine family," and by adding a sentence to the end of the definitions of "Small volume engine manufacturer," "Small volume equipment manufacturer," and "Small volume equipment model" to read as follows:

§ 90.3 Definitions.

* * * * *

Small volume engine manufacturer * * *. For handheld engines, the term *small volume engine manufacturer* means any engine manufacturer whose total eligible production of handheld engines are projected at the time of certification of a given model year to be no more than 25,000 handheld engines.

Small volume equipment manufacturer * * *. For handheld equipment, the term *small volume equipment manufacturer* has the same meaning except that it is limited to 25,000 pieces of handheld equipment rather than 5,000 pieces of nonhandheld equipment.

Small volume equipment model * * *. For handheld equipment, the term *small volume equipment model* has the same meaning except that it is limited to 2,500 pieces of handheld equipment, rather than 500 pieces of nonhandheld equipment.

* * * * *

Subpart B—Emission Standards and Certification Provisions

3. Section 90.103 is proposed to be amended in paragraph (a) introductory text, by revising the heading for Table 2, adding two new entries to the beginning of Table 2, and adding Table 4, to read as follows:

§ 90.103 Exhaust emission standards.

(a) * * *

TABLE 2.—PHASE 2 CLASS I–A, CLASS I–B, AND CLASS I ENGINE EXHAUST EMISSION STANDARDS

[Grams per kilowatt-hour]

Engine class	$HC+NO_X$	$NMHC+NO_X$	CO	Effective date
I–A	50	.....	610	2000 Model Year.
I–B	40	37	610	2000 Model Year.

* * * * *

TABLE 4.—PHASE 2 HANDHELD EXHAUST EMISSION STANDARDS BY MODEL YEAR

[Grams per kilowatt-hour]

Engine class and emission requirement	Model year						
	2002	2003	2004	2005	2006	2007	2008 and later
Class III:							
HC+NOx	226	200	150	100	50	50	50
CO	805	805	805	805	805	805	805
Class IV:							
HC+NOx	187	168	129	89	50	50	50
CO	805	805	805	805	805	805	805
Class V:							
HC+NOx	.....	.....	138	129	110	91	72
CO	.....	.....	603	603	603	603	603

* * * * *

4. Section 90.103 is proposed to be amended by revising the first and last sentences of paragraph (a)(6) and the first and last sentences of paragraph (a)(7) to read as follows:

* * * * *

(a) * * *

(6) In lieu of certifying to the applicable Phase 2 standards, small volume engine manufacturers as defined in this part may, at their option, certify their engine families as Phase 1 engines until the 2010 model year for nonhandheld engine families excluding Class I–A and Class I–B engine families, until the 2009 model year for Class III and Class IV engine families, and until the 2011 model year for Class V engine families. * * * Beginning with the 2010 model year for nonhandheld engine families, the 2009 model year for Class III and Class IV engine families, and the 2011 model year for Class V engine families, these engines must meet the applicable Phase 2 standards.

(7) In lieu of certifying to the applicable Phase 2 standards, manufacturers of small volume engine families, as defined in this part may, at their option, certify their small volume engine families as Phase 1 engines until the 2010 model year for nonhandheld engine families excluding Class I–A and Class I–B engine families, until the 2009 model year for Class III and Class IV engine families, and until the 2011 model year for Class V engine families. * * * Beginning with the 2010 model year for nonhandheld engine families, the 2009 model year for Class III and Class IV engine families, and the 2011 model year for Class V engine families, these engines must meet the applicable Phase 2 standards.

* * * * *

5. Section 90.104 is proposed to be amended by adding a sentence to the end of paragraph (g)(1), by redesignating paragraph (g)(3) as paragraph (g)(4), by adding new paragraph (g)(3), and by revising the introductory text of paragraph (h)(2) to read as follows:

§ 90.104 Compliance with emission standards.

* * * * *

(g)(1) * * * The provisions of this paragraph do not apply to Class I–A and Class I–B engines.

* * * * *

(3) Table 2 follows:

TABLE 2.—HANDHELD ENGINE $HC+NO_x$ and CO Assigned Deterioration Factors for Small Volume Manufacturers and Small Volume Engine Families

Engine class	Two-stroke engines		Four-stroke engines		Engines with aftertreatment
	$HC+NO_x$	CO	$HC+NO_x$	CO	
Class III	1.1	1.1	1.5	1.1	Dfa must be calculated using the formula in § 90.104(g)(4)
Class IV	1.1	1.1	1.5	1.1	Do.
Class V	1.1	1.1	1.5	1.1	Do.

* * * * *

(h) * * *

(2) For engines not using assigned dfs from Table 1 or Table 2 of paragraph (g) of this section, dfs shall be determined as follows:

* * * * *

6. Section 90.105 is proposed to be amended by adding a sentence to the end of paragraph (a)(1), by adding two entries to the beginning of Table 1 of paragraph (a)(2), and adding new paragraphs (a)(3) and (a)(4) to read as follows:

§ 90.105 Useful life periods for Phase 2 engines.

(a) * * *

(1) * * * Engines with gross power output greater than 19 kW that have an engine displacement less than or equal to one liter that optionally certify under this part as allowed in § 90.1(a), must certify to a useful life period of 1,000 hours.

(2) Table 1 follows:

TABLE 1.—USEFUL LIFE CATEGORIES FOR NONHANDHELD ENGINES (HOURS)

Class I–A	50	125	300

TABLE 1.—USEFUL LIFE CATEGORIES FOR NONHANDHELD ENGINES (HOURS)—Continued

Class I–B	125	250	500
.	.	.	.
.	.	.	.

(3) For handheld engines: Manufacturers shall select a useful life category from Table 2 of this paragraph (a) at the time of certification.

(4) Table 2 follows:

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TABLE 2.—USEFUL LIFE CATEGORIES FOR HANDHELD ENGINES (HOURS)

Class III	50	125	300
Class IV	50	125	300
Class V	50	125	300

* * * * *

7. Section 90.107 is proposed to be amended by removing the word "and" at the end of paragraph (d)(6)(iv), adding the word "and" at the end of paragraph (d)(6)(v), and adding a new paragraph (d)(6)(vi) to read as follows:

§ 90.107 Application for certification.

* * * * *

(d) * * *

(6) * * *

(vi) Information relating to altitude kits to be certified, including: a description of the altitude kit; appropriate part numbers; the altitude ranges at which the kits must be installed on or removed from the engine for proper emissions and engine performance; statements to be included in the owner's manual for the engine/equipment combination (and other maintenance related literature) that declare the altitude ranges at which the kit must be installed or removed and that state that the operation of the engine/equipment at an altitude different from what it was certified at, for extended periods of time, and may increase emissions; and a statement that an engine with the altitude kit installed will meet each emission standard throughout its useful life (the rationale for this assessment must be documented and retained by the manufacturer, and provided to the Administrator upon request);

* * * * *

8. Section 90.114 is proposed to be amended by revising paragraph (f)(1), by adding a new paragraph (f)(2), and by revising paragraph (f)(3) to read as follows:

§ 90.114 Requirement of certification—engine information label.

* * * * *

(f) * * *

(1) For nonhandheld engines: The Emissions Compliance Period referred to on the Emissions Compliance label indicates the number of operating hours for which the engine has been shown to meet Federal emission requirements. For engines less than 66 cc, Category C = 50 hours, B = 125 hours, and A = 300 hours. For engines equal to or greater than 66 cc but less than 225 cc displacement, Category C = 125 hours, B = 250 hours, and A = 500 hours. For engines of 225 cc or more, Category C = 250 hours, B = 500 hours, and A = 1000 hours.

(2) For handheld engines: The Emissions Compliance Period referred to on the Emissions Compliance label indicates the number of operating hours for which the engine has been shown to meet Federal emission requirements. Category C = 50 hours, B = 125 hours, and A = 300 hours.

(3) The manufacturer must provide, in the same document as the statement in paragraph (f)(1) or (f)(2) of this section, a statement of the engine's displacement or an explanation of how to readily determine the engine's displacement. The Administrator may approve alternate language to the statement in paragraph (f)(1) or (f)(2) of this section, provided that the alternate language provides the ultimate purchaser with a clear description of the number of hours represented by each of the three letter categories for the subject engine's displacement.

9. Section 90.116 is proposed to be amended by redesignating paragraphs (b)(1) through (b)(5) as paragraphs (b)(3) through (b)(7), respectively, and by adding new paragraphs (b)(1) and (b)(2), and revising newly designated paragraph (b)(3) to read as follows:

§ 90.116 Certification procedure—determining engine displacement, engine class, and engine families.

* * * * *

(b) * * *

(1) Class I–A—engines less than 66 cc in displacement,

(2) Class I–B—engines greater than or equal to 66 cc but less than 100 cc in displacement,

(3) Class I—engines greater than or equal to 100 cc but less than 225 cc in displacement,

* * * * *

10. Section 90.119 is proposed to be amended by revising paragraphs (a)(1)(i) and (a)(1)(ii) to read as follows:

§ 90.119 Certification procedure—testing.

(a) * * *

(1) * * *

(i) Class I, I–B, and II engines must use Test Cycle A described in Subpart E of this part, except that Class I, I–B, and II engine families in which 100 percent of the engines sold operate only at rated speed may use Test Cycle B described in Subpart E of this part.

(ii) Class I–A, III, IV, and V engines must use Test Cycle C described in Subpart E of this part.

* * * * *

Subpart C—Certification Averaging, Banking, and Trading Provisions

11. Section 90.203 is proposed to be amended by revising paragraph (f) to read as follows:

§ 90.203 General provisions.

* * * * *

(f) No Phase 2 engine family may have a HC + NO_x FEL that is greater than 32.2 g/kW-hr for Class I engines, 94 g/kW-hr for Class I–A engines, 50 g/kW-hr for Class I–B engines, 26.8 g/kW-hr for Class II engines, 300 g/kW-hr for Class III engines, 246 g/kW-hr for Class IV engines, or 166 g/kW-hr for Class V engines.

* * * * *

§ 90.204 [Amended]

12. Section 90.204 is proposed to be amended by removing the word "nonhandheld" in paragraph (b).

13. Section 90.205 is proposed to be amended by adding new paragraphs (a)(2), (a)(4), (a)(5) and (b)(3), (b)(4), and (b)(5) to read as follows:

§ 90.205 Banking.

(a) * * *

(2) Beginning with the 2000 model year, a manufacturer of a Class I–A or Class I–B engine family with an FEL below the applicable emission standard for a given model year may bank credits in that model year for use in averaging and trading.

* * * * *

(4) Beginning with the 2002 model year, a manufacturer of a Class III or Class IV engine family with an FEL below the applicable emission standard for a given model year may bank credits in that model year for use in averaging and trading.

(5) Beginning with the 2004 model year, a manufacturer of a Class V engine family with an FEL below the applicable emission standard for a given model year may bank credits in that model year for use in averaging and trading.

* * * * *

(b) * * *

(3) Beginning with the 2000 model year and prior to the applicable date listed in paragraph (a) of this section for Class III engines, a manufacturer may bank early credits for all Class III engines with HC+NOx FELs below 226 g/kW-hr. All early credits for Class III engines shall be calculated against a HC+NOx level of 226 g/kW-hr.

(4) Beginning with the 2000 model year and prior to the applicable date listed in paragraph (a) of this section for Class IV engines, a manufacturer may bank early credits for all Class IV engines with HC+NO_X FELs below 187 g/kW-hr. All early credits for Class IV engines shall be calculated against a HC+NO_X level of 187 g/kW-hr.

(5) Beginning with the 2000 model year and prior to the applicable date listed in paragraph (a) of this section for Class V engines, a manufacturer may bank early credits for all Class V engines with HC+NO_X FELs below 131 g/kW-hr. All early credits for Class V engines shall be calculated against a HC+NO_X level of 131 g/kW-hr.

* * * * *

14. Section 90.207 is proposed to be amended in paragraph (a) by revising the first sentence in the definition of "load factor" following the equation to read as follows:

§ 90.207 Credit calculation and manufacturer compliance with emission standards.

(a) * * *

Load Factor = 47 percent (i.e., 0.47) for Test Cycle A and Test Cycle B, and 85 percent (i.e., 0.85) for Test Cycle C. * * *

* * * * *

Subpart D—Emission Test Equipment Provisions

15. Section 90.301 is proposed to be amended by revising the first and second sentences of paragraph (d) to read as follows:

§ 90.301 Applicability.

* * * * *

(d) For Phase 2 Class I, Phase 2 Class I–B, and Phase 2 Class II natural gas fueled engines, the following sections from 40 CFR part 86 are applicable to this subpart. The requirements of the following sections from 40 CFR part 86 which pertain specifically to the measurement and calculation of non-methane hydrocarbon (NMHC) exhaust emissions from otto cycle heavy-duty engines must be followed when determining the NMHC exhaust emissions from Phase 2 Class I, Phase 2 Class I–B, and Phase 2 Class II natural gas fueled engines. * * *

Subpart E—Gaseous Exhaust Test Procedures

16. Section 90.401 is proposed to be amended by revising the first and second sentences of paragraph (d) to read as follows:

§ 90.401 Applicability.

* * * * *

(d) For Phase 2 Class I, Phase 2 Class I–B, and Phase 2 Class II natural gas fueled engines, the following sections from 40 CFR part 86 are applicable to this subpart. The requirements of the following sections from 40 CFR part 86 which pertain specifically to the measurement and calculation of non-methane hydrocarbon (NMHC) exhaust emissions from otto cycle heavy-duty engines must be followed when determining the NMHC exhaust emissions from Phase 2 Class I, Phase 2 Class I–B, and Phase 2 Class II natural gas fueled engines. * * *

17. Section 90.404 is proposed to be amended by revising paragraph (b) to read as follows:

§ 90.404 Test procedure overview.

* * * * *

(b) The test is designed to determine the brake-specific emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen and fuel consumption. For Phase 2 Class I–B, Class I, and Class II natural gas fueled engines the test is also designed to determine the brake-specific emissions of non-methane hydrocarbons. The test consists of three different test cycles which are application specific for engines which span the typical operating range of nonroad spark-ignition engines. Two cycles exist for Class I–B, I and II engines and one is for Class I–A, III, IV, and V engines (see § 90.103(a) and § 90.116(b) for the definitions of Class I–A, I–B, and I–V engines). The test cycles for Class I–B, I, and II engines consist of one idle mode and five power modes at one speed (rated or intermediate). The test cycle for Class I–A, III, IV, and V engines consists of one idle mode at idle speed and one power mode at rated speed. These procedures require the determination of the concentration of each pollutant, fuel flow, and the power output during each mode. The measured values are weighted and used to calculate the grams of each pollutant emitted per brake kilowatt hour (g/kW-hr).

* * * * *

18. Section 90.408 is proposed to be amended by revising the table in paragraph (b)(2) to read as follows:

§ 90.408 Pre-test procedures.

* * * * *

(b) * * *

(2) * * *

Engine class	Test cycle	Operating mode
I, I–B, II	A	B
I, I–B, II	B	1
I–A, III, IV, V	C	1

* * * * *

19. Section 90.409 is proposed to be amended by revising the last sentence of paragraph (a)(3) and by revising paragraph (b)(6) to read as follows:

§ 90.409 Engine dynamometer test run.

(a) * * *

(3) * * * For Phase 2 Class I, Phase 2 Class I–B, and Phase 2 Class II engines equipped with an engine speed governor, the governor must be used to control engine speed during all test cycle modes except for Mode 1 or Mode 6, and no external throttle control may be used that interferes with the function of the engine's governor; a controller may be used to adjust the governor setting for the desired engine speed in Modes 2–5 or Modes 7–10; and during Mode 1 or Mode 6 fixed throttle operation may be used to determine the 100 percent torque value.

(b) * * *

(6) For Class I, I–B, and II engines, during the maximum torque mode calculate the torque corresponding to 75, 50, 25, and 10 percent of the maximum observed torque (see Table 2 in Appendix A to this subpart).

* * * * *

20. Section 90.410 is proposed to be amended by revising paragraph (a), the first and third sentences of paragraph (b), and the first sentence of paragraph (c) to read as follows:

§ 90.410 Engine test cycle.

(a) Follow the appropriate 6-mode test cycle for Class I, I–B and II engines and 2-mode test cycle for Class I–A, III, IV, and V engines when testing spark-ignition engines (see Table 2 in Appendix A of this subpart).

(b) For Phase 1 engines and Phase 2 Class I–A, III, IV, and V, and Phase 2 Class I and II engines not equipped with an engine speed governor, during each non-idle mode, hold both the specified speed and load within ± five percent of point. * * * For Phase 2 Class I, I–B, and II engines equipped with an engine speed governor, during Mode 1 or Mode 6 hold both the specified speed and load within ± five percent of point, during Modes 2–3, or Modes 7–8 hold the specified load with ± five percent of point, during Modes 4–5 or Modes 9–10, hold the specified load within the larger range provided by +/−0.27 Nm (+/−0.2 lb-ft), or +/− ten (10) percent of point, and during the idle mode hold the specified speed within ± ten percent of the manufacturer's specified idle engine speed (see Table 1 in Appendix A to this Subpart for a description of test Modes). * * *

(c) If the operating conditions specified in paragraph (b) of this section for Class I, I–B, and II engines using Mode Points 2, 3, 4, and 5 cannot be maintained, the Administrator may authorize deviations from the specified load conditions. * * *

* * * * *

21. Appendix A to Subpart E of Part 90 is proposed to be amended in Table 2 by revising the table heading and by removing the last entry and adding two

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new entries in its place to read as follows:

Appendix A to Subpart E of Part 90—Tables

* * * * *

TABLE 2.—TEST CYCLES FOR CLASS I–A, I–B, AND CLASS I–V ENGINES

Mode	1	2	3	4	5	6	7	8	9	10	11
Speed				Rated Speed				Intermediate Speed			Idle
. . .											
Weighting for Phase 1 Engines	90%	.....	.....	.....	.....	.....	.....	.....	.....	.....	10%
Weighting for Phase 2 Engines	85%	.....	.....	.....	.....	.....	.....	.....	.....	.....	15%

Subpart H—Manufacturer Production Line Testing Program

§ 90.701 [Amended]

22. Section 90.701 is proposed to be amended by adding the words "handheld and" immediately preceding the word "nonhandheld" in paragraph (a).

Subpart K—Prohibited Acts and General Enforcement Provisions

23. Section 90.1003 is proposed to be amended by revising the first sentence of paragraph (b)(6)(i) and adding a new sentence to the end of paragraph (b)(6)(i), by revising the first two sentences of paragraph (b)(6)(ii) and adding a new sentence to the end of paragraph (b)(6)(ii), by revising paragraph (b)(6)(iii) introductory text, and by adding a new paragraph (b)(7) to read as follows:

§ 90.1003 Prohibited acts.

* * * * *

(b) * * *

(6)(i) Regulations elsewhere in this part notwithstanding, for three model years after the phase-in of each set of Class I through Class V Phase 2 standards; i.e. through August 1, 2010 for Class I engines, through model year 2008 for Class II engines, through model year 2009 for Class III and Class IV engines, and through model year 2011 for Class V engines, small volume equipment manufacturers as defined in this part, may continue to use, and engine manufacturers may continue to supply, engines certified to Phase 1 standards (or identified and labeled by their manufacturer to be identical to engines previously certified under Phase 1 standards), provided the equipment manufacturer has demonstrated to the satisfaction of the Administrator that no certified Phase 2 engine is available with suitable physical or performance characteristics to power a piece of equipment in production prior to the initial effective date of Phase 2 standards, as indicated in § 90.103(a). * * * These provisions do not apply to Class I–A and Class I–B engines.

(ii) Regulations elsewhere in this part notwithstanding, for the duration of the Phase 2 rule in this part, equipment manufacturers that produce small volume equipment models, as defined in this part, for a Class I model in production prior to August 1, 2007, or a Class II model in production prior to the 2001 model year, or a Class III or Class IV model in production prior to the 2002 model year, or a Class V model in production prior to the 2004 model year, may continue to use in that small volume equipment model, and engine manufacturers may continue to supply, engines certified to Phase 1 requirements (or identified and labeled by their manufacturer to be identical to engines previously certified under Phase 1 standards). To be eligible for this provision, the equipment manufacturer must have demonstrated to the satisfaction of the Administrator that no certified Phase 2 engine is available with suitable physical or performance characteristics to power the small volume equipment model. * * * These provisions do not apply to Class I–A and Class I–B engines.

(iii) An equipment manufacturer which is unable to obtain suitable Phase 2 engines and which can not obtain relief under any other provision of this part, may, prior to the date on which the manufacturer would become in noncompliance with the requirement to use Phase 2 engines, apply to the Administrator to be allowed to continue using Phase 1 engines, through August 1, 2008 for Class I engines, through the 2006 model year for Class II engines, through the 2007 model year for Class III and Class IV engines, and through the 2009 model year for Class V engines, subject to the following criteria (These provisions do not apply to Class I–A and Class I–B engines.):

* * * * *

(7) Actions for the purpose of installing or removing altitude kits and performing other changes to compensate for altitude change as described in the application for certification pursuant to § 90.107(d) and approved at the time of certification pursuant to § 90.108(a) are not considered prohibited acts under paragraph (a) of this section.

Subpart L— Emission Warranty and Maintenance Instructions

24. Section 90.1103 is proposed to be amended by adding two sentences to the end of paragraph (a) to read as follows:

§ 90.1103 Emission warranty, warranty period.

(a) * * * Manufacturers of handheld engines subject to Phase 2 standards may apply to the Administrator for approval for a one year warranty period for handheld engines that are subject to severe service in seasonal equipment and are likely to run their full useful life hours in one year. Such an application must be made prior to certification.

* * * * *

Subpart M—Voluntary In-Use Testing

§ 90.1201 [Amended]

25. Section 90.1201 is proposed to be amended by adding the words "handheld and" immediately preceding the word "nonhandheld".

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federal register

Wednesday
July 28, 1999

Part III

Department of Commerce

Bureau of the Census

15 CFR Part 30

Amendment to Foreign Trade Statistics Regulations: Provisions for Filing Shipper's Export Data Electronically Using the Automated Export System (AES); Final Rule

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DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 980929251–9148–03]

RIN 0607–AA19

Amendment to Foreign Trade Statistics Regulations: Provisions for Filing Shipper's Export Data Electronically Using the Automated Export System (AES)

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: The U.S. Census Bureau (Census Bureau) is amending the Foreign Trade Statistics Regulations (FTSR) to add provisions for filing shipper's export data electronically using the Automated Export System (AES). The AES is an export information gathering and processing system developed through cooperative efforts between the U.S. Customs Service (Customs), the Census Bureau, other federal agencies, and the export community. The AES is a completely voluntary system that provides an alternative to filing the paper Shipper's Export Declaration (SED) and manifest data, and will greatly streamline and improve the exporting process. Export information is collected electronically and edited immediately, and errors are detected and corrected at the time of filing. AES is a nationwide system operational at all ports and for all methods of transportation. Customs also is revising appropriate sections of its Customs Regulations in a final rule published elsewhere in this issue of the **Federal Register**. The Customs regulations will conform to the electronic filing provisions and requirements contained in this final rule.

EFFECTIVE DATE: This rule will become effective July 28, 1999.

FOR FURTHER INFORMATION CONTACT: C. Harvey Monk, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, Room 2104, Federal Building 3, Washington, DC 20233–6700, by telephone on (301) 457–2255, by fax on (301) 457–2645, or by E-mail at: c.h.monk.jr@ccmail.census.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1998, Customs and the Census Bureau published a joint notice in the **Federal Register** (63 FR 54438) that informed the public of the current status of the Automated Export System (AES). The AES is an electronic reporting system jointly developed by the Census Bureau and Customs that allows exporters or their authorized agents to transmit commodity Shipper's Export Declaration (SED) information, and carriers to transmit transportation (outbound manifest) information. That notice also informed the public of other developments affecting the implementation of the AES and announced that the Census Bureau and Customs would be developing regulations to implement provisions and requirements for filing export information electronically through the AES. Since the background information contained in that notice fully recounts the development of the AES to date, it is incorporated here by reference.

The Census Bureau published a Notice of Proposed Rulemaking in the **Federal Register** (64 FR 7412) on Friday, February 12, 1999, proposing to add regulations to 15 CFR Part 30 for filing Shipper's export data electronically using the AES. Customs also published a Notice of Proposed Rulemaking in the **Federal Register** (64 FR 7422) on Friday, February 12, 1999, proposing to revise appropriate sections of its Customs Regulations, 19 CFR, Chapter 1, to reference Census Bureau regulations that will provide for electronic filing requirements using the AES to provide for certain procedural safeguards regarding applicant's and participant's rights vis-a-vis Customs actions and to provide for a Sea Carriers Manifest Module for the submission of manifest information in the ocean environment.

The AES is a joint venture between Customs, the Census Bureau, and other federal agencies that will provide a seamless Government export information processing system to allow the trade community to report export data electronically. The AES also is the cornerstone of Customs' and the Census Bureau's reinvestment strategy to support and facilitate the movement of exports. Automation will help remove the time consuming paper processing barriers that now hinder the flow of trade. The AES will greatly improve the accuracy of the export data provided to the Census Bureau and will allow the Census Bureau, in turn, to provide more accurate export data and a wider range of export data needed by businesses to stay competitive in the global trade market today. The AES is in alignment with the global shift to the electronic movement of all business information.

The AES will result in the elimination of redundant reporting of export data to multiple agencies. It brings savings in both human resources and paper handling. It greatly increases the accuracy of trade statistics, which will allow for improvement in public and private sector decision making. Under AES, increased accuracy of trade information, the prohibition of illegal exports, and effective enforcement of license requirements can all be achieved while the flow of trade is facilitated. Although paper filing of the SED and manifest documents will still be permitted, it is anticipated that electronic filing through the AES will be the preferred method of export reporting by the trade community in the near future.

General Description of the AES Process

The export process begins when the exporter decides to export merchandise as specified in § 30.1. Once the exporter makes this decision, the exporter or their authorized forwarding agent makes shipping arrangements with the carrier. The exporter or an authorized filing agent transmits the shipper's export information using the AES. This information can come directly from the exporter or his authorized filing agent or indirectly from the aforementioned through a service center or port authority. The shipper's export data are transmitted in a timely manner in accordance with the provisions contained in electronic filing Options 2, 3, and 4 (see § 30.61, *Electronic Filing options*). The AES validates the data against editing tables and U.S. Government agency requirement files and generates either a confirmation message or a fatal error message. The carrier or an authorized filing agent transmits the export manifest data using the AES. The AES validates the transportation data then generates either a confirmation message or an error message. The exporter, carrier, or an authorized filing agent must attend to any errors generated by the AES. The AES allows the exporter, carrier, or an authorized filing agent to transmit corrections.

Response to Comments

The Census Bureau received three comments on the proposed rule. The comments and our responses are as follows:

1. *Comment:* This comment questioned: (a) the difference in reporting full export information within 5 business days from the date of exportation for Option 3 filers, and within 10 business days from the date of exportation for Option 4 filers; (b) the requirement that licensed shipments be filed using filing Option 2 or 3; and (c) concern over the operational integrity of the AES in light of the questions raised in a previous General Accounting Office report and the recent hardware problems with the Automated Commercial Environment (ACE) computer system.

Response: The Census Bureau responded to these comments as follows: (a) the reporting provisions for Option 3 and Option 4 filers were based on the certification requirements and related filing privileges associated with the two filing options; (b) Option 4 was developed for qualified exporters to file certain export data post departure. The AES regulations allow for the filing of licensed shipments using Option 4, if the exporter has approval of the specific licensing agency to do so; and (c) the AES is fully capable of processing all export data submitted electronically for the modules developed so far for using the AES, and the Census Bureau and Customs will support all AES filers to the greatest extent possible. The AES operates on separate hardware from the ACE system, and although the AES currently uses the same communication lines, we do not anticipate hardware problems with the AES computer and communication system. No revision will be made to the proposed rule as a result of this comment.

2. *Comment:* This comment generally questioned the operational integrity of the AES and its functional compatibility with the International Trade Data System (ITDS) and suggested that the Automated Export Reporting Program (AERP) remain operational as filing Option 5 until the AES is fully operational.

Response: The AES is currently operational and processing data electronically for a substantial number of exporters. The AES is compatible with the functional requirements of the ITDS and could be incorporated into that system for the collection and tabulation of export data. The Census Bureau does not anticipate expensive or unwanted conversion problems if and when that transition occurs. The Census Bureau and Customs have been informing the trade community since 1995 that the AERP would expire on December 31, 1999. Currently, over 50 percent of AERP companies have submitted Letters of Intent to participate in the AES, and the Census Bureau has offered full assistance in making this transition. The AERP will not be extended past the December 31, 1999, deadline. No revision will be made to the proposed rule as a result of this comment.

3. *Comment:* This comment concerned the restriction that the export of used self-propelled vehicles be reported predeparture using filing Options 2 and 3 only, in lieu of also allowing this information to be filed post departure using filing Option 4.

Response: The provision that export data for used self-propelled vehicles as defined in 19 CFR 192.1, be transmitted predeparture using filing Options 2 or 3, is based on Customs requirements and conditions on the exportation and validation of such vehicles. As such, this comment was referred to Customs for review and evaluation. Based on the Customs response, no revision will be made to the proposed rule as a result of this comment.

Changes to the Proposed Rule

As a result of new record format requirements and administrative/functional adjustments, minor revisions were made to the proposed rule. These revisions are not substantial and reflect changes required to enhance the electronic reporting process. The changes to the proposed rule are as follows:

(1) In § 30.60(a), we added the term "consolidators" to the list of AES participants to be more inclusive and to ensure that air consolidators were included in the participant list.

(2) In § 30.61(a), Option 2 filing requirements, we included an exception from Option 2 filing restrictions for used self-propelled vehicles exported between the United States and Puerto Rico. Because shipments of used self-propelled vehicles between the United States and Puerto Rico do not require the normal Customs validation, that data can be filed using AES filing options 3 or 4. Appropriate language indicating this filing provision also is included in §§ 30.61(b), Option 3 filing requirements, and 30.61(c), Option 4 filing requirements.

(3) In § 30.63(a)(1)(i), Exporter/exporter identification, the text is revised to refer the user to the appropriate sections in the FTSR for a detailed description of exporter responsibilities.

(4) In § 30.63(a)(18), we added the term "Shipment" to the term "reference number" to provide a more accurate description of that record field.

(5) In § 30.63(a)(22), we added "License code" as a separate field in the mandatory data elements. This item was previously listed in § 30.63(b)(5) as part of the conditional data element for "License number/CFR citation/license code'.

(6) In § 30.63(b)(5), we removed the reference to license code and included it as part of the mandatory data elements in § 30.63(a)(22).

(7) In § 30.63(b)(11), the term "Booking number" is retitled to read "Transportation reference number" as a more generic description of the field and to be consistent with the record format field.

(8) In § 30.63(b)(12), we included "Equipment number" as a conditional data element. This was previously listed as an optional data element.

(9) In § 30.63(b)(13), we added the field "Filing option indicator" as a new record format field under the conditional data elements.

(10) In Appendix A, Format for Letter of Intent, we added "e-mail address" to items 2 and 3 of the contents and added "(Monthly SED volume)" as a unit of measure to items 8 and 9 of the contents.

(11) In Appendix C, Part I, Method of Transportation Codes, we added codes 21, 31, and 41 for rail containerized, truck containerized, and air containerized shipments as a result of record format changes.

(12) In Appendix C, Part II, Export Information Codes, we added code RP for AERP, and AE for AES, to the record format fields.

Program Requirements

In order to include provisions for the electronic filing of shipper's export information, the Census Bureau is: (a) amending existing sections of the FTSR, 15 CFR Part 30, and (b) adding a new Subpart E to the FTSR to include provisions for the electronic filing of shipper's export data.

The Census Bureau is amending appropriate sections of the FTSR to include provisions for the electronic reporting of export data using the AES.

The Census Bureau is amending § 30.1, *"General statement of requirements for Shipper's Export Declarations,"* to add a reference that requirements for filing shipper's export data electronically can be found in the new subpart on electronic filing requirements.

The Census Bureau is amending the introductory text of § 30.7, *"Information required on Shipper's Export Declarations,"* to specify that the information in this section only applies to the paper SED and referring users to the new subpart for information required for electronic filing of shipper's export data.

The Census Bureau is amending § 30.39, *"Authorization for reporting statistical information other than by means of individual Shipper's Export Declarations filed for each shipment,"* to replace existing electronic filing programs with the AES and to reflect current Census Bureau authority to authorize alternative methods of filing shipper's export data.

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The Census Bureau is amending § 30.91, *"Confidential information, Shipper's Export Declarations,"* item (a) *"Confidential status"* to clarify that confidentiality provisions apply to all export information supplied to the Census Bureau whether filed electronically or in any other approved format.

To include new provisions and requirements for the electronic filing of shipper's export information using the AES, the Census Bureau is adding a new subpart (Subpart E) in the current FTSR on electronic filing requirements for submitting shipper's export information. To accomplish this, the current Subpart E—General Requirements-Importers—is redesignated to read Subpart F, and Subpart E is renamed and reserved for "Electronic Filing Requirements-Shippers Export Information." The current Subpart F is redesignated Subpart G—Special Provisions for Particular Types of Import Transactions. The current Subpart G is redesignated Subpart H—General Administrative Provisions.

The new Subpart E—Electronic Filing Requirements-Shipper's Export Information—will consist of §§ 30.60 through 30.66 to include:

§ 30.60 General requirements for filing export and manifest data electronically using the Automated Export System (AES)
§ 30.61 Electronic filing options
§ 30.62 AES Certification, qualifications and standards
§ 30.63 Information required to be reported electronically through AES (data elements)
§ 30.64 Transmitting and correcting AES information
§ 30.65 Annotating the proper exemption legends for shipments transmitted electronically
§ 30.66 Recordkeeping and documentation requirements

The revisions contained in this rule are consistent with the provisions of the Customs Regulations. The U.S. Customs Service, Department of the Treasury, concurs with the provisions contained in this final rule.

Rulemaking Requirements

This rule is exempt from all requirements of Section 553 of the Administrative Procedures Act because it deals with a foreign affairs function (5 U.S.C. 553(a)(1)).

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required by 5 U.S.C. 553 or any other law, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603(a)).

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications sufficient to warrant preparation of the federalism assessment under Executive Order 12612.

Paperwork Reduction Act

Notwithstanding any other provisions of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule covers collections of information subject to the provisions of the PRA, which were cleared by OMB under OMB Control Number 0607–0152.

This rule will have no impact on the current reporting-hour burden requirements as approved under OMB Control Number 0607–0152 under provisions of the PRA of 1995, Public Law 104–13.

List of Subjects in 15 CFR Part 30

Economic statistics, Exports, Foreign trade, Reporting and recordkeeping requirements.

Amendments to 15 CFR Part 30

For the reasons set out in the preamble, the Census Bureau is amending 15 CFR chapter I, part 30, as follows:

PART 30—FOREIGN TRADE STATISTICS

1. The authority citation for 15 CFR Part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan No. 5 of 1950 (3 CFR 1949–1953 Comp., 1004); Department of Commerce Organization Order No. 35–2A. August 4, 1975, 40 FR 42765.

Subpart A—General Requirements—Exporters

2. Section 30.1 is amended by adding paragraph (c) to read as follows:

§ 30.1 General statement of requirements for Shipper's Export Declarations.

* * * * *

(c) In lieu of filing paper Shipper's Export Declarations as provided elsewhere in this section, exporters or their authorized agents have the option to file shipper's export information electronically, as provided in subpart E of this part. The Electronic filing requirements for filing shipper's export declaration information are contained in subpart E of this part, Electronic Filing Requirements-Shipper's Export Information.

3. Section 30.7 is amended by revising the introductory text to read as follows:

§ 30.7 Information required on Shipper's Export Declarations.

The following information shall be furnished in the appropriate spaces provided on the paper copy of the Shipper's Export Declaration and shall conform to the requirements set forth in this section. (See § 30.92 for information as to the statistical classification Schedules C and D referred to in this section. Also, see § 30.8 for information required on Form 7513 in addition to these requirements.) For information required to be filed electronically see § 30.63.

* * * * *

Subpart C—Special Provisions Applicable Under Particular Circumstances

4. Section 30.39 is revised to read as follows:

§ 30.39 Authorization for reporting statistical information other than by means of individual Shipper's Export Declarations filed for each shipment.

(a) The Census Bureau, with the concurrence of appropriate government agencies, may authorize exemptions from the requirement of § 30.6 that a separate Shipper's Export Declaration be filed for each shipment.

(b) Application for certification and approval to file shipper's export data electronically using the Automated Export System (AES) can be made directly to the Census Bureau in accordance with the provisions specified in § 30.60. Certification and approval procedures and qualification standards for filing shipper's export data electronically are contained in § 30.62.

(c) Authorization for other alternative methods of filing shipper's export information will be issued only when, in the judgment of the Census Bureau, complete and accurate information will be available on a prescribed basis from the records of the applicant and where the alternate filing method for shipments represents a reduction of reporting cost or burden. Where export control is a consideration, such authorizations will be granted only when, in the judgment of the appropriate controlling government agency, the applicant has demonstrated that it has established adequate internal operating procedures and has taken other satisfactory safeguards to assure compliance with export control

regulations of the appropriate government agency or agencies.

Subparts E through G [Redesignated as Subparts F Through H]

5. Subparts E through G are redesignated as subparts F through H, respectively.

6. A new Subpart E, consisting of §§ 30.60 through 30.66, is added to read as follows:

Subpart E—Electronic Filing Requirements—Shipper's Export Information

Sec.
30.60 General requirements for filing export and manifest data electronically using the Automated Export System (AES).
30.61 Electronic filing options.
30.62 AES Certification, qualifications, and standards.
30.63 Information required to be reported electronically through AES (data elements).
30.64 Transmitting and correcting AES information.
30.65 Annotating the proper exemption legends for shipments transmitted electronically.
30.66 Recordkeeping and documentation requirements.

Subpart E—Electronic Filing Requirements—Shipper's Export Information

§ 30.60 General requirements for filing export and manifest data electronically using the Automated Export System (AES).

The Automated Export System (AES) transmissions by exporters or their authorized filing agents that meet the requirements of this subpart constitute the Shipper's Export Declaration (SED) for purposes of this part. This section outlines the general requirements for participating in the AES. Several filing options are available for transmitting shipper's export data. The first option is the standard paper filing of the SED. The AES also provides AES participants with three electronic filing options for submission of shipper's export data.

(a) *Participation.* Participation in the AES is voluntary and is designed to use technology available to both large and small businesses. Companies that are not automated can submit data through a service center or port authority that provides the capability to communicate with the Customs Data Center in the same way as automated companies. Companies may also buy a software package designed by an AES certified software vendor. Certified trade participants (filing agents) can transmit to and receive data from the AES pertaining to merchandise being exported from the United States. Participants in the AES process, who may apply for AES certification, include exporters or their authorized forwarding agents, carriers, non-vessel operating common carriers (NVOCC), consolidators, port authorities, software vendors, or service centers. Once becoming certified, an AES filer (filing agent) must agree to stay in complete compliance with all export rules and regulations.

(b) *Letter of Intent.* The first requirement for all participation in AES, including approval for Option 4 filing privileges, is to submit a complete and accurate Letter of Intent to the Census Bureau. The Letter of Intent is a written statement of a company's desire to participate in AES. It must set forth a commitment to develop, maintain, and adhere to Customs and Census Bureau performance requirements and operations standards. Once the Letter of Intent is received, a U.S. Customs Client Representative and a Census Bureau Client Representative will be assigned to work with the company. The Census Bureau will forward additional information to prepare the company for filing export data using the AES. The format and content for preparing the Letter of Intent is provided in Appendix A of this part.

(c) *General filing and transmission requirements.* The data elements required for filing shipper's export data electronically are contained in § 30.63. For AES, the difference is that the certified filer must transmit the shipper's export information electronically using the AES, rather than delivering the paper SED to the carrier. When transmitting export information electronically, the AES filers must comply with the data transmission procedures determined by Customs and the Census Bureau (See § 30.62 for AES certification, qualifications, and standards).

(d) *General responsibilities of exporters, filing agents, and sea carriers.—(1) Exporter and authorized filing agent responsibilities.* The exporter and/or their authorized agents, certified for AES filing, are responsible for:

(i) Transmitting complete and accurate information to the AES (see § 30.4 (a) and § 30.7 (d)(1), (2), and (e) for a delineation of responsibilities of exporters and authorized forwarding agents);

(ii) Transmitting information to the AES in a timely manner in accordance with the provisions and requirements contained in this subpart;

(iii) Responding to messages identified as fatal error, warning, verify, or reminder generated by AES in accordance with the provisions contained in this subpart;

(iv) Providing the exporting carrier with the required exemption statements or citations when an item or shipment is exempt from SED filing requirements in accordance with provisions contained in this subpart;

(v) Transmitting corrections or cancellations to information transmitted to the AES as soon as the need for such changes is determined in accordance with provisions contained in this subpart; and

(vi) Maintaining all necessary and proper documentation related to the AES export transaction in accordance with provisions contained in this subpart.

(2) *Sea carrier responsibilities.* The exporting sea carrier also is responsible for transmitting timely, accurate, and complete manifests and bills of lading information to AES for all cargo being shipped. The exporting sea carrier is also responsible for transmitting booking, receipt of booking, departure, and manifest messages to AES. Customs and Census Bureau officials, with written agreement of the exporting sea carrier, can provide for alternative methods of filing manifest and SED information to that found in this Subpart. For exporting carrier responsibilities, see Subpart B, of this part, General Requirements—Exporting Carriers. For electronic filing of manifest information using the AES, see 19 CFR 4.76, *Procedures and responsibilities for electronic filing of sea manifests through AES.*

§ 30.61 Electronic filing options.

As an alternative to filing paper Shipper's Export Declaration forms (Option 1), three electronic filing options for transmitting shipper's export information are available to exporters or their authorized filing agents. Two of the electronic filing options (Options 3 and 4) take into account that complete information concerning export shipments is not always available at the time of shipment. The available AES electronic filing options are as follows:

(a) *AES with full information transmitted prior to exportation (Option 2).* Option 2 provides for the electronic filing of *all* information required for exports to AES prior to exportation (see § 30.63 for information required to be reported electronically). Full predeparture information is always required to be transmitted to AES for the following specific types of shipments:

(1) Used self-propelled vehicles (except those shipped between the United States and Puerto Rico) as defined in 19 CFR 192.1

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(2) Essential and precursor chemicals requiring a permit from the Drug Enforcement Administration;

(3) Shipments defined as "sensitive" by Executive Order; and

(4) Shipments where full export information is required prior to exportation by a federal government agency.

(b) *AES with partial information transmitted prior to exportation (Option 3).* Option 3 provides for the electronic filing of *specified* data elements to the AES prior to exportation (see Appendix B of this part for a list of specified data elements). Filing Option 3 is available for all methods of transportation. Used self-propelled vehicles shipped between the United States and Puerto Rico may be shipped using filing Option 3. Option 3 is designed for those shipments for which full data are not available prior to exportation. No prior approval from the Census Bureau or Customs is required for certified AES filers to use Option 3. However, full predeparture information must be transmitted to the AES for certain specified transactions (as specified in Option 2). For shipments that require an export license, the exporter must file using Option 2 or 3, unless the licensing agency specifically approves the exporter for Option 4 filing for the licensed shipment under its jurisdiction. Where partial information is provided under Option 3, complete export information must be transmitted as soon as it is known, but no later than five (5) working days from the date of exportation. The exporter or their authorized filing agent must provide the exporting carrier with a unique shipment reference number prior to exportation.

(c) *AES with no information transmitted prior to exportation (Option 4).* Option 4 is only available for approved exporters and requires *no* export information to be transmitted electronically using AES prior to exportation. For approved Option 4 filers, all shipments (other than those requiring an export license, unless specifically approved by the licensing agency for Option 4 filing, and those specifically required under electronic filing Options 2 or 3) by all methods of transportation may be exported with no information transmitted prior to exportation. Used self-propelled vehicles, shipped between the United States and Puerto Rico, by an Option 4 approved exporter, may be shipped using filing Option 4. Certified AES authorized filing agents or service centers may transmit information post departure on behalf of approved Option 4 exporters. All exporters filing a Letter of Intent for Option 4 filing privileges will be cleared through a formal review process by Customs, the Census Bureau, and other federal government agencies participating in the AES (partnership agencies) in accordance with provisions contained in § 30.62. Where exportation is made with no prior AES filing, complete export information should be transmitted as soon as it is known, but no later than ten (10) working days from the date of exportation. The exporter or their authorized agent must provide the exporting carrier with the exporter's Option 4 AES identification number prior to exportation.

§ 30.62 AES Certification, qualifications, and standards.

(a) *AES certification process.* Certification for AES filing will apply to any exporter, authorized forwarding agent, carrier, non-vessel operating common carriers (NVOCC), consolidator, port authority, software vendor, or service center transmitting export information electronically using the AES. Applicants interested in AES filing must submit a Letter of Intent to the Census Bureau in accordance with the provisions contained in § 30.60. Customs and the Census Bureau will assign client representatives to work with the applicant to prepare them for AES certification. The AES applicant must perform an initial two-part communication test to ascertain whether the applicant's system is capable of both transmitting data to and receiving data from the AES. The applicant must demonstrate specific system application capabilities. The capability to correctly handle these system applications is the prerequisite to certification for participation in the AES. The applicant must successfully transmit the AES certification test. Assistance is provided by the Customs' and Census Bureau's client representatives during certification testing. These representatives make the sole determination as to whether or not the applicant qualifies for certification. Upon successful completion of certification testing, the applicant's status is moved from testing mode to operational mode. Upon certification, the filer will be required to maintain an acceptable level of performance in AES filings. The certified AES filer may be required to repeat the certification testing process at any time to ensure that operational standards for quality and volume of data are maintained.

(1) *Filing agent certification.* Once an authorized filing agent has successfully completed the certification process, the exporter(s) using that agent need no further AES certification of their own. The certified filing agent must have a properly executed power of attorney, a written authorization from the exporter, or a SED signed by the exporter to transmit the exporter's data electronically using the AES. The exporter or authorized agent that utilizes a service center or port authority must complete certification testing, unless the service center or port authority has a formal power of attorney or written authorization from the exporter to submit the export information on behalf of the exporter.

(2) *AES certification letter.* The Census Bureau will provide the certified AES filer with a certification letter after the applicant has been approved for operational status. The certification letter will include:

(i) The date that filers may begin transmitting "live" data electronically using AES;

(ii) Reporting instructions; and

(iii) Examples of the required AES exemption legends.

(3) *AES filing standards.* The certified AES filer's data will be monitored and reviewed for quality, timeliness, and coverage. The Census Bureau will notify the AES filer in writing if they fail to maintain an acceptable level of quality, timeliness, and coverage in the transmission of export data or fail to maintain compliance with Census Bureau regulations contained in this chapter. The Census Bureau will direct that appropriate action to correct the specific situation(s) be taken.

(b) *Criteria for denial of applications requesting Option 4 filing status; appeal procedure.* Approval for Option 4 filing privileges will apply only to exporters. However, forwarding agents may apply for Option 4 filing privileges on behalf of an individual exporter. Option 4 applicants must submit a Letter of Intent to the Census Bureau in accordance with the provisions contained in § 30.60.

(1) *Option 4 approval process.* The Census Bureau will distribute the Letters of Intent for Option 4 filing privileges to Customs and the other partnership agencies participating in the AES Option 4 approval process. Failure to meet the standards of the Census Bureau, Customs, or one of the partnership agencies is reason for nonselection or denial of the application for Option 4 filing privileges. Each partnership agency will develop its own internal Option 4 acceptance standards, and each agency will notify the Census Bureau of the applicant's failure to meet that agency's acceptance standards. If the Census Bureau does not receive either notification of denial, or a request for extension from the partnership

agency within thirty (30) calendar days after the date of referral of the Letter of Intent to the partnership agency, the applicant is deemed to be approved by that agency. The Census Bureau will provide the Option 4 applicant with an approval or denial letter. If a denial letter is issued, the Census Bureau will indicate the partnership agency that denied the application. The applicant must contact the denying partnership agency for the specific reason(s) for denial.

(2) *Grounds for denial of Option 4 filing status.* The Census Bureau may deny an exporter's application for Option 4 filing privileges for any of the following reasons:

(i) Applicant is not an established exporter, as defined in this chapter, with regular operations;

(ii) Applicant has failed to submit SEDs to the Census Bureau for processing in a timely and accurate manner;

(iii) Applicant has a history of noncompliance with Census Bureau export laws and regulations contained in this chapter;

(iv) Applicant has been indicted, convicted, or is currently under investigation for a felony involving a violation of federal export laws or regulations and the Census Bureau has evidence of probable cause supporting such violation, or the applicant is in violation of Census Bureau laws or regulations contained in this chapter; and

(v).Applicant has made or caused to be made in the Letter of Intent a false or misleading statement or omission with respect to any material fact.

(3) *Notice of nonselection and appeal procedures for Option 4 filing.* The Census Bureau will notify applicants in writing of the decision to either deny or approve the applicant for Option 4 filing privileges within thirty (30) days of receipt of the Letter of Intent by the Census Bureau, or if a decision cannot be reached at that time, the applicant will be notified of an expected date for a final decision as soon as possible after the thirty (30) calendar days. Applicants for Option 4 filing privileges denied Option 4 status by other partnership agencies must contact those agencies regarding the specific reason(s) for nonselection and for their appeal procedures. Applicants denied Option 4 status by the Census Bureau will be provided with a specific reason for nonselection and a Census Bureau point of contact in the notification letter. Option 4 applicants may appeal the Census Bureau's nonselection decision by following the appeal procedure and reapplication restriction provided in paragraph (b) (5) of this section.

(4) *Revocation of Option 4 filing . privileges.* The Census Bureau may revoke Option 4 filing privileges of approved Option 4 exporters for the following reasons:

(i) The exporter has made or caused to be made in the Letter of Intent a false or misleading statement or omission with respect to material fact;

(ii) The exporter submitting the Letter of Intent is indicted, convicted, or is currently under investigation for a felony involving a violation of federal export laws or regulations and the Census Bureau has evidence of probable cause supporting such violation, or the applicant is in violation of Census Bureau laws or regulations contained in this chapter;

(iii) The exporter has failed to substantially comply with existing Census Bureau or other agency export regulations; or

(iv) The Census Bureau determines that continued participation in Option 4 by an exporter would pose a significant threat to national security interests such that their continued participation in Option 4 should be terminated.

(5) *Notice of revocation; appeal procedure.* Approved Option 4 filers whose Option 4 filing privileges have been revoked by other agencies must contact those agencies for their specific revocation and appeal procedures. When the Census Bureau makes a determination to revoke an approved Option 4 filer's AES Option 4 filing privileges, the exporter will be notified in writing of the reason(s) for the decision. The exporter may challenge the Census Bureau's decision by filing an appeal within thirty (30) calendar days of receipt of the notice of decision. In most cases, the revocation shall become effective when the exporter has either exhausted all appeal proceedings, or thirty (30) calendar days after receipt of the notice of revocation, if no appeal is filed. However, in cases when required by national security interests, revocations will become effective immediately upon notification. Appeals should be addressed to the Chief, Foreign Trade Division, Bureau of the Census, Washington, DC 20233. The Census Bureau will issue a written decision to the exporter within thirty (30) calendar days from the date of receipt of the appeal by the Census Bureau. If a written decision is not issued within thirty (30) calendar days, a notice of extension will be forwarded within that time period. The exporter will be provided with the reasons for the extension of this time period and an expected date of decision. Approved Option 4 exporters who have had their Option 4 filing status revoked may not reapply for this status for one year following written notification of the revocation. Such applications will not be considered before the one-year time period.

§ 30.63 Information required to be reported electronically through AES (data elements).

The information (data elements) listed in this section is required for shipments transmitted electronically through AES. The data elements as they pertain to electronic reporting are defined as paragraphs (a), (b), and (c) of this section. Those data elements that are defined in more detail in other sections of the FTSR are so noted. The data elements identified as "mandatory" must be reported for each transmission. The data elements identified as "conditional" must be reported if they are required for or apply to the specific shipment. The data elements identified as "optional" may be reported at the discretion of the exporter.

(a) Mandatory data elements are as follows:

(1) *Exporter/exporter identification.*

(i) *Name and address of the exporter.* For details on the reporting responsibilities of exporters, see § 30.4 and § 30.7 (d)(1), (2), and (e).

(ii) *Exporter's profile.* The exporter's Employer Identification Number (EIN) or Social Security Number (SSN) and exporter name, address, contact, and telephone number must be reported with the initial shipment. Subsequent shipments may be identified by either EIN, SSN, or DUNS (Dunn and Bradstreet) number. If no EIN, SSN, or DUNS number is available for the exporter, as in the case of a foreign entity being shown as exporter as defined in § 30.7(d), the border crossing number, passport number, or any other number assigned by Customs is required to be reported. (See § 30.7(d)(2) for a detailed description of the EIN.)

(2) *Date of exportation/date of arrival.* The exporter or the authorized forwarding or other agent in the export transaction must report the date the merchandise is scheduled to leave the United States for all modes of transportation. If the actual date is not known, report the best estimate of departure. The estimated date of arrival must be reported for shipments to Puerto Rico. (See § 30.7(r) for additional information.)

(3) *Ultimate consignee.* The ultimate consignee is the person, party, or designee on the export license who is located abroad and actually receives the export shipment. The ultimate consignee known at the time of export

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must be reported. For goods sold en route, report "SOLD EN ROUTE" and report corrected information as soon as it is known. (See § 30.7(f) for more information.)

(4) *U.S. state of origin.* Report the 2-character postal abbreviation for the state in which the merchandise begins its journey to the port of export. (See § 30.7(t)(1) and (2) for more information.)

(5) *Country of ultimate destination.* Report the 2-character International Standards Organization (ISO) code for the country of ultimate destination. The country of ultimate destination, as shown on the export license, or the country as known to the exporter or principal party in interest in the export transaction at the time of export is the country in which the merchandise is to be consumed or further processed or manufactured. For goods sold en route, report the country of the first port of call and then report corrected information as soon as it is known. (See § 30.7(i) for more information.)

(6) *Method of transportation.* The method of transportation is defined as that by which the goods are exported or shipped. Report one of the codes listed in Part I of Appendix C of this part. (See § 30.7(b) for detailed information on method of transportation.)

(7) *Conveyance name.* The name of the carrier (sea—vessel name; others—carrier name) must be reported by the exporter or the exporter's agent as known at the time of shipment for all shipments leaving the country by sea, air, truck, or rail. Terms such as "airplane," "train," "truck," or "international footbridge" are not acceptable and will generate an error message. (See § 30.7(c) for more information.)

(8) *Carrier identification.* Report the 4-character Standard Carrier Alpha Code (SCAC) for vessel, rail, and truck shipments and the 2-or 3-character International Air Transport Association (IATA) Code for air shipments to identify the carrier actually transporting the merchandise out of the United States.

(9) *Port of export.* Report the code of the Customs port of export in terms of Schedule D, "Classification of Customs Districts and Ports." (See §§ 30.7(a) and 30.20(c) and (d) for more information on port of export.)

(10) *Related/nonrelated indicator.* Indicate if the shipment is between related parties. Report the information as defined in § 30.7(v).

(11) *Domestic or foreign indicator.* Indicate if the commodities are of domestic or foreign production. Report the information as defined in § 30.7(p).

(12) *Commodity classification number.* Report the 10-digit commodity classification number as provided in Schedule B, "Statistical Classification of Domestic and Foreign Commodities Exported from the United States" (Schedule B). The 10-digit commodity classification number provided in the Harmonized Tariff Schedule (HTS) may be reported in lieu of the Schedule B Commodity classification number except as noted in the headnotes of the HTS. (See § 30.7(l) for detailed information.)

(13) *Commodity description.* Report the commercial description in sufficient detail to permit the verification of the commodity classification number. (See § 30.7(l) for more information regarding reporting the description.)

(14) *First net quantity/unit of measure.* Report the primary net quantity in the specified unit of measure and the unit of measure as prescribed in the Schedule B or HTS or as specified on the export license.

(15) *Gross shipping weight.* Report the gross shipping weight in kilograms for vessel, air, truck, and rail shipments. Include the weight of containers, but exclude the weight of carrier equipment. (See § 30.7(o) for more information.)

(16) *Value.* The value shall be the selling price or cost if not sold, including inland freight, insurance, and other charges to the U.S. port of export. Report the value in U.S. currency. (See § 30.7(q) for more information.)

(17) *Export information code.* Report the appropriate 2-character export information code as provided in Part II of Appendix C of this part.

(18) *Shipment reference number.* The filer of the export shipment provides a unique shipment reference number that allows for the identification of the shipment in their system. This shipment reference number must be unique for five years.

(19) *Line item number.* Report a line number for each commodity for a unique identification of the commodity.

(20) *Hazardous material indicator.* This is a "Yes" or "No" indicator identifying the shipment as hazardous as defined by the Department of Transportation.

(21) *In-bond code.* Report one of the 2-character in-bond codes listed in Part IV of Appendix C of this part to indicate the type of In-Bond or Not In-Bond shipment.

(22) *License code.* Report the 3-character code listed in Part III of Appendix C of this part to indicate the type of license, permit, license exemption, or no license required.

(b) Conditional data elements are as follows:

(1) *Forwarding agent/forwarding agent identification.* (i) *Name and address of the forwarding agent.* The forwarding agent is any person in the United States or under jurisdiction of the United States who is authorized by the exporter to perform the services required to facilitate the export of merchandise out of the United States or the person named in the validated export license. (See §§ 30.4(a) and 30.7(e) for details on responsibilities of forwarding agents).

(ii) *Forwarding agent's profile.* The forwarding agent's identification number, EIN, DUNS, or SSN and name and address must be reported with the initial shipment. Subsequent shipments may be identified by the identification number.

(2) *Intermediate consignee.* The intermediate consignee is the intermediary (if any) who acts in a foreign country as an agent for the exporter or the principal party in interest or the ultimate consignee for the purpose of effecting delivery of the export shipment to the ultimate consignee or the person named on the export license. (See § 30.7(g) for more information.)

(3) *Foreign Trade Zone number.* Report the unique 5-character code assigned by the Foreign Trade Board that identifies the Foreign Trade Zone from which merchandise is withdrawn for export. (See § 30.7(t)(3) for more information.)

(4) *Foreign port of unloading.* For sea shipments only, the code of the foreign port of unloading should be reported in terms of the 5-digit codes designated in Schedule K, "Classification of Foreign Ports by Geographic Trade Area and Country." For air shipments from the United States to Puerto Rico, report the Puerto Rico port of unloading. For air shipments from Puerto Rico to the United States, report the United States port of unloading. Report the code of the port of unloading in terms of Schedule D, "Classification of Customs Districts and Ports." (See § 30.7(h) for more information on port of unloading.)

(5) *License number/Code of Federal Regulations (CFR) citation.* For licensable commodities, report the license number of the license issued for the merchandise. If no license is required, report the regulatory citation exempting the merchandise from licensing or the conditions under which the merchandise is being shipped that make it exempt from licensing.

(6) *Export Control Classification Number.* Report the Export Control Classification Number for merchandise as required by the Bureau of Export Administration (BXA) Regulations (15 CFR Parts 730 through 774).

(7) *Second net quantity/unit of measure.* When Schedule B requires two units of quantity to be reported, report the second net quantity in the specified unit of measure and the unit of measure as prescribed in the Schedule B or HTS. (See § 30.7(n) for more information.)

(8) *Used self-propelled vehicles.* Report the following items of information for used self-propelled vehicles as defined in 19 CFR 192.1:

(i) *Vehicle Identification Number.* Report the unique Vehicle Identification Number (VIN) in the proper format;

(ii) *Product Identification Number.* Report the Product Identification Number (PIN) for those used self-propelled vehicles for which there are no VINs;

(iii) *Vehicle title number.* Report the unique title number issued by the Motor Vehicle Administration; and

(iv) Vehicle title state. Report the 2-character postal abbreviation for the state or territory of the vehicle title.

(9) *Entry number.* Report the Import Entry Number when the export transaction is to be used as proof of export for import transactions such as In-Bond, Temporary Import Bond, Drawback, and so forth.

(10) *Wavier of prior notice.* This is a "Yes" or "No" indicator to determine if the person claiming drawback received a waiver of prior notice for the exported merchandise.

(11) *Transportation reference number.* Report the booking number for all sea shipments. The booking number is the reservation number assigned by the carrier to hold space on the vessel for the cargo being exported.

(12) *Equipment number.* Report the container number for containerized shipments. This number may be reported in conjunction with the booking number.

(13) *Filing option indicator.* Report the 1-character filing option that indicates Option 3 or Option 4 filing, or the AES-Post Departure Authorized Special Status (PASS) standard or expanded IOU's, if applicable.

(c) Optional data elements are as follows:

(1) *Marks and numbers.* The exporter or the authorized forwarding agent in the export transaction may opt to report any special marks or numbers that appear on the physical merchandise or its packaging that can identify the shipment or a portion thereof. (See § 30.7(j) for more information.)

(2) *Seal number.* Report the security seal number of the seal placed on the equipment.

§ 30.64 Transmitting and correcting AES information.

(a) The exporter or their authorized filing agent is responsible for electronically transmitting corrections, cancellations, or amendments to shipment information previously transmitted using the AES. Corrections, cancellations, or amendments should be made as soon as possible after exportation when the error or omission is discovered.

(b) For shipments where the exporter or their authorized filing agent has received an error message from AES, the corrections must take place as required. A fatal error message will cause the shipment to be rejected. This error must be corrected prior to exportation of the merchandise. For shipments where a warning message is received, the correction must be made within four (4) working days of receipt of the transmission, otherwise AES will generate a reminder message to the filer. For shipments with a verify message, corrections when warranted, should be made as soon as possible after notification of the error by the AES.

§ 30.65 Annotating the proper exemption legends for shipments transmitted electronically.

The exporter or their authorized forwarding agent is responsible for annotating the proper exemption legend on the bill of lading, airway bill, or other commercial loading document for presentation to the carrier, either on paper or electronically prior to export. The exemption legend will identify that the shipment information has been transmitted electronically using the AES. The exemption legend will include the statement "NO SED REQUIRED—AES" followed by the filer's identification number and a unique shipment reference number or the returned confirmation number. For exporters who have been approved to participate in Filing Option 4, the exemption statement, "NO SED REQUIRED—AES," should include the exporter's identification number and the filer's identification number if other than the exporter. The exemption legend must appear on the first page of the bill of lading, airway bill, or other commercial loading document and must be clearly visible.

§ 30.66 Recordkeeping and documentation requirements.

All parties to the export transaction (owners and operators of the exporting carriers and exporters and their authorized agents) must retain documents or records verifying the shipment for five (5) years from the date of export. Customs, the Census Bureau, and other participating agencies may require that these documents be produced at any time within the 5-year time period for inspection or copying. These records may be retained in an elected format including electronic or hard copy as provided in the applicable agency's regulations. Acceptance of the documents by Customs or the Census Bureau does not relieve the exporter or their authorized agent from providing complete and accurate information after the fact.

Subpart H—General Administrative Provisions

7. In newly redesignated subpart H, § 30.91 is amended by revising paragraph (a) to read as follows:

§ 30.91 Confidential information, Shipper's Export Declarations.

(a) *Confidential status.* The Shipper's Export Declaration is an official Department of Commerce form, prescribed jointly by the Bureau of the Census and the Bureau of Export Administration. Information required thereon is confidential, whether filed electronically or in any other approved format, for use solely for official purposes authorized by the Secretary of Commerce. Use for unauthorized purposes is not permitted. Information required on the Shipper's Export Declarations may not be disclosed to anyone except the exporter or his agent by those having possession of or access to any copy for official purposes, except as provided in paragraph (e) of this section.

* * * * *

8. Appendixes A, B, and C are added to part 30 to read as follows:

Appendix A to Part 30—Format for Letter of Intent, Automated Export System (AES)

A. Letters of Intent should be on company letterhead and must include:

1. Company Name, Address (no P.O. Boxes), City, State, Postal Code
2. Company Contact Person, Phone Number, Fax Number, E-mail Address
3. Technical Contact Person, Phone Number, Fax Number, E-mail Address
4. Corporate Office Address, City, State, Postal Code
5. Computer Site Location Address, City, State, Postal Code
6. Type of Business—Exporter, Freight Forwarder/Broker, Carrier, NVOCC, Port Authority, Software Vendor, Service Center, etc. (Indicate all that apply.)

(i) Are you currently an AERP Participant? What is the AERP symbol?

(ii) Freight Forwarder/Brokers indicate the number of exporters for whom you file export information (AERP and SEDs).

(iii) Exporters indicate whether you are applying for AES, Option 4 filing, or both.
7. U.S. Ports of Export Currently Utilized
8. Average Monthly Volume of Export Shipments (Monthly SED volume)
9. Average Monthly Value of Export Shipments (Monthly SED volume)
10. Filer Code—EIN, DUNS, SSN, or SCAC (Indicate all that apply.)
11. Software Vendor Name, Contact, and Phone Number (if using vendor provided software)
12. Look-a-Like Remote to Copy (as provided by vendor)
13. Modes of Transportation used for export shipments (Air, Vessel, Truck, Rail, etc.)
14. Types of Merchandise exported
15. Types of Licenses or Permits
16. Anticipated Implementation Date

B. The following self-certification statement, signed by an officer of the company, must be included in your letter of intent: "I hereby certify that *Company Name* is, and will continue to be, in compliance with all applicable laws and regulations."

C. Send AES Letter of Intent to: Chief, Foreign Trade Division, U.S. Census Bureau, Washington, DC 20233. Or, the copy can be faxed to: 301–457–1159.

Appendix B to Part 30—Required Pre-Departure Data Elements for Filing Option 3

(1) Identifier of Exporter—EIN, etc.
(2) Forwarding Agent I.D.—EIN, etc.
(3) Carrier I.D. (SCAC or IATA).
(4) Country of Ultimate Destination—ISO code.
(5) Name of Ultimate Consignee.
(6) (a) Commodity description or (b) Optional—Schedule B No. or HTS code
(7) Shipment reference number (17 characters or less). The filer of the export shipment provides a unique shipment reference number that allows for the identification of the shipment in their system. This shipment reference number must be unique for five years.
(8) Intended U.S. Port of Export
(9) Estimated Date of Export
(10) Transportation Reference Number, e.g., vessel booking number
(11) Method of Transportation (MOT) code
(12) HAZMAT—Y/N
(13) License code
(14) Export License Number

Appendix C to Part 30—Electronic (AES) Filing Codes

Part I—Method of Transportation Codes

10 Sea
11 Sea Containerized
12 Sea (Barge)
20 Rail
21 Rail Containerized
30 Truck
31 Truck Containerized
32 Auto
33 Pedestrian
34 Road, Other
40 Air
41 Air Containerized
50 Mail
60 Passenger, Hand Carried
70 Fixed Transport (Pipeline and Powerhouse)

Part II—Export Information Codes

LC Shipments valued $2,500 or less per classification number that are required to be reported
TP Temporary exports of domestic merchandise
IP Shipments of merchandise imported under a Temporary Import Bond for further manufacturing or processing
IR Shipments of merchandise imported under a Temporary Import Bond for repair
DB Drawback
CH Shipments of goods donated for charity
FS Foreign Military Sales
OS All other exports
HV Shipments of personally owned vehicles
HH Household and personal effects
SR Ship's stores
TE Temporary exports to be returned to the United States
TL Merchandise leased for less than a year
IS Shipments of merchandise imported under a Temporary Import Bond for return in the same condition
CR Shipments moving under a carnet
GP U.S. government shipments
LV Shipments valued $2,500 or less that are not required to be reported
SS Carriers' stores for use on the carrier
MS Shipments consigned to the U.S. Armed Forces
GS Shipments to U.S. government agencies for their use
DP Diplomatic pouches
HR Human remains
UG Gift parcels under Bureau of Export Administration License Exception GFT
IC Interplant correspondence
SC Instruments of international trade
DD Other exemptions:
Currency
Airline tickets
Bank notes
Internal revenue stamps
State liquor stamps
Advertising literature
Shipments of temporary imports by foreign entities for their use
RJ Inadmissible merchandise

(For Manifest Use Only by AES Carriers)

RP Shipment information filed through Census Bureau's AERP
AE Shipment information filed through AES

(See §§ 30.50 through 30.58 for information on filing exemptions.)

Part III—License Codes

Department of Commerce, Bureau of Export Administration (BXA) Licenses

C30 BXA Licenses
C31 SCL
C32 NLR (CCL/NS Column 2)
C33 NLR (All Others)
C34 Future Use
C35 LVS
C36 GBS
C37 CIV
C38 TSR
C39 CTP
C40 TMP
C41 RPL
C42 GOV
C43 GFT
C44 TSU
C45 BAG
C46 AVS
C47 APR
C48 KMI
C49 TAPS
C50 ENC

Nuclear Regulatory Commission (NRC) Codes

N01 NRC Form 250/250A
N02 NRC General License

Department of State, Office of Defense Trade Controls (ODTC) Codes

SAG Agreements
S00 License Exemption Citation
S05 DSP–5
S61 DSP–61
S73 DSP–73
S85 DSP–85

Department of Treasury, Office of Foreign Assets Control (OFAC) Codes

T10 OFAC Specific License
T11 OFAC General License

Other License Types

OPA Other Partnership Agency Licenses not listed above

Part IV—In-Bond Codes

70 Not-In-Bond
36 Warehouse Withdrawal for Immediate Exportation
37 Warehouse Withdrawal for Transportation and Exportation
62 Transportation and Exportation
63 Immediate Exportation
67 Immediate Exportation from a Foreign Trade Zone
68 Transportation and Exportation from a Foreign Trade Zone

Dated: July 1, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–19176 Filed 7–23–99; 9:55 am]

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July 28, 1999

Part IV

Department of the Treasury

Customs Service

19 CFR Parts 4, 101, 178, and 192

Automated Export System (AES); Final Rule

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 101, 178, and 192

[T.D. 99–57]

RIN 1515–AC42

Automated Export System (AES)

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to make provision for the Automated Export System (AES)—an electronic reporting system jointly developed by the Bureau of the Census (Census) and Customs that allows exporters to transmit commodity information contained on Shipper's Export Declarations and sea carriers to transmit outbound vessel manifest information. These amendments generally describe the AES, cross-referencing the applicable Census Regulations that will provide for the AES. They also set forth the criteria by which Customs will determine whether to approve an exporter for the option to transmit commodity information through AES after the carrier has left the United States (post-departure) and the appeal procedures for AES exporters if Customs denies the exporter the post-departure option; or, if Customs approves the post-departure option for the AES exporter, the grounds for revocation of the use of the option and the appeal procedures if Customs revokes the use of that option. This document also provides for the Sea Carrier's Module in the AES.

These regulatory changes are designed to help exporters that utilize the AES realize the benefits of fewer delays in the processing of export information by Customs due to missing paperwork, and to provide for fewer and faster inspections of export shipments as well as reduced administration costs due to automation.

EFFECTIVE DATE: July 28, 1999.

FOR FURTHER INFORMATION CONTACT: Maritza Castro, (202) 927–0724, Office of Field Operations, Outbound Programs.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1999, Customs—in conjunction with the Bureau of the Census (Census)—published a document in the **Federal Register** (64 FR 7422) that proposed to amend the Customs Regulations to allow for the Automated Export System (AES), an electronic reporting system jointly developed by Census and Customs that allows exporters to transmit commodity information contained on Shipper's Export Declarations (SEDs) and sea carriers to transmit outbound vessel manifest information. In that document, Customs proposed to add a new subpart B in part 192 of the Customs Regulations, which pertains to Export Control, to generally describe the AES, cross-referencing proposed Census Regulations providing for the AES which were published in the same issue of the **Federal Register** (64 FR 7412). The document also proposed criteria by which Customs would determine whether to approve an exporter for the AES option to transmit commodity information after the carrier has left the United States (post-departure) and the appeal procedures for AES exporters if Customs denies the exporter the post-departure option, or, if Customs has approved the post-departure option for an AES exporter, the grounds for revocation of the use of the option and the appeal procedures if Customs revokes the use of the option.

The document also proposed to create a new § 4.76 in the Customs Regulations (19 CFR 4.76) providing for the Sea Carrier's module in the AES.

Customs also proposed to revise the authority citation for part 192 to more clearly show the statutory basis of Customs authority to collect and examine manifest and export data information.

Customs also used the notice document as the vehicle to propose an amendment to the general provisions of part 101 of the Customs Regulations to include a definition of the term "business day." While the term "business days" was used in that document in reference to filing times for sea carriers, the proposed definition would be applicable wherever the term is used throughout the Customs Regulations (19 CFR).

These regulatory changes were proposed to help exporters that utilize the AES realize the benefits of fewer delays in the processing of export information by Customs due to missing paperwork, and to provide for fewer and faster inspections of export shipments as well as reduced administration costs due to automation. Comments were solicited on the proposed regulations in general and on the economic impact of transmitting booking information on small carriers in particular.

The comment period closed April 13, 1999; three comments were received, one being forwarded from Census. The comments and Customs responses are set forth below.

Analysis of Comments

All of the comments received concern the general requirements for the AES proposed by the Census Regulations in their document; none of the comments received concern the Sea Carrier's Module in AES, which was the thrust of the subject matter proposed in the Customs document. No comments were received on the economic impact on small carriers of transmitting booking information.

Time Frame for Submitting Outstanding Data

Comment: One commenter questions why Option 3 filers are given only 5 days to submit outstanding data required to be filed when Option 4 filers are allowed 10 days and inquiries of the compelling reason for this disparity. Although the commenter states that the AES proposed rules—published by Census—accurately represented the four options agreed upon in the Interest Based Negotiations (IBN) between Census, Customs, and the trade community, the commenter goes on to state that Option 3 filers have the same invoicing and documentation problems as Option 4 filers and that the two filing classes should have the same time frames for submitting outstanding data required to be filed. This comment concerns §§ 30.61(b) and (c) of the proposed Census Regulations.

Customs Response: The reason Option 4 filers are allowed an additional 5 days to submit outstanding export data required to be filed is because Option 4 privileges are granted only to pre-approved exporters who have provided approving agencies with basic business information, such as type of merchandise, method of operation, and volume. Since this business data is on file prior to departure, the risk factor for Option 4 shipments is minimized. Filers with Option 3 status, on the other hand, do not have such business data on file, nor do they require any prior approval from an agency. Since Option 3 filing status is available to any AES commodity filer, the risk factor for Option 3 shipments is greatly increased. The tighter time frame for reporting full data is designed to provide a level of control, minimizing the risk for shipments which might require redelivery, or for which subsequent data is filed late or not at all. It should also help ensure a better workflow and more timely submission of crucial trade data.

Census has indicated that no change will be made to their regulations based on their analysis of this comment. Customs agrees with Census.

Option 4 Privileges and Shipments Required To Be Filed With Full Predeparture Information

Comment: Two commenters question why filers who are approved for Option 4 to transmit all export information post-departure should be required to transmit any export information predeparture under Option 2 or 3. Option 4 is not permitted for specific types of shipments, such as those requiring export licenses. These commenters believe that Option 4 was conceived as a "blanket" process for an exporter to submit all data post-departure and do not see the need, even when an export requires an export license, for predeparture reporting for Option 4 filers, since the license itself is permission to export. (Emphasis in comment). This comment concerns §§ 30.61(a) and (c) of the proposed Census Regulations.

Customs Response: This comment reflects confusion concerning the scope of Option 4 privileges. Option 4 filing privileges extend only to pre-approved filers, and then only for qualified shipments. An exporter's status as an approved Option 4 filer under § 30.61(c) of the Census Regulations does not negate the restrictions imposed when exporting specifically exempted shipments, identified under § 30.61(a) of the Census Regulations, or shipments requiring an export license. The specific types of shipments requiring full predeparture information under AES Option 2 are: (1) Used, self-propelled vehicles; (2) essential and precursor chemicals requiring a permit from the Drug Enforcement Administration; (3) shipments defined as "sensitive" by Executive Order; and (4) shipments where full export information is required prior to exportation by a Federal government agency. It would be the responsibility of that government agency to approve filers to use Option 4 for those shipments.

Census has indicated that no change will be made to their regulations based on their analysis of this comment. Customs agrees with Census.

Option 4 Filing Status & the Export of Used, Self-Propelled Vehicles

Comment: One commenter requests that § 30.61 of the Census Regulations be modified to allow approved exporters to report the export of used, self-propelled vehicles in AES under Option 4.

Customs Response: Customs disagrees. As discussed above in the second comment response, certain specific types of export shipments require that full predeparture information be filed under Option 2. These are high-risk shipments. Used, self-propelled vehicles are one of these type of shipments. Predeparture information is required for shipments of used, self-propelled vehicles because they are subject to the regulatory requirements of Subpart A of Part 192 of the Customs Regulations (19 CFR part 192, subpart A), which were promulgated pursuant to specific statutes aimed at stopping the export of stolen vehicles. Law enforcement concerns to counter this threat of exporting stolen vehicles require that the original title for the vehicle be physically presented to Customs before the export of the used, self-propelled vehicle. See, T.D. 99–34 (64 FR 16635; published April 6, 1999). Accordingly, because full predeparture information is considered necessary before the exportation of used, self-propelled vehicles, Customs is not asking Census to change the regulations on this matter.

It is noted that new self-propelled vehicles (those for which the title has not been transferred to an ultimate purchaser) may be reported in the AES by an approved filer using Option 4. It is also noted that used, self-propelled vehicles shipped between the United States and Puerto Rico are not subject to the regulatory requirements of Subpart A of Part 192 of the Customs Regulations and are approved commodities that may be reported in the AES by an approved filer using Option 4. The Census Regulations have been amended to reflect this.

Comment: Two commenters suggest that the Census Bureau program, the Automated Export Reporting Program (AERP), should be retained. One of these commenters further suggests that AES data formats do not conform to the Treasury Department's International Trade Data System (ITDS), which will replace the AES.

Customs Response: Census and Customs have been informing the trade community since 1995 that the AERP would expire on December 31, 1999. Again, in a notice published in the **Federal Register** (63 FR 54438) on October 9, 1998, it was announced that the AERP would expire on December 31, 1999. This time frame was established to allow sufficient time for AERP participants to convert to AES. The AES is able to process trade data for all AERP companies. The AERP will not be extended past December 31, 1999.

In response to the comment regarding AES compatibility with ITDS, it should be noted that AES is compatible with the functional requirements of the ITDS and may be incorporated into that system in the future.

Conclusion

After careful consideration of all the comments received and further review of the matter, Customs has decided to adopt as a final rule, with one substantive change and minor changes for clarity, the proposed amendments published February 12, 1999, in the **Federal Register** (64 FR 7422). The one substantive change involves the definition of the term "business day."

In the proposal, Customs proposed to amend the general provisions of Part 101 of the Customs Regulations to include a definition of the term "business day" and the term "business days" was used in §§ 4.76(b), (c)(3), and (c)(4). While the definition of "business day" is adopted in this final rule document because of its use at § 4.76(b), Customs has determined that the term is not appropriate at §§ 4.76 (c)(3) and (4) because AES programming only allows for calculation of calendar days.

Accordingly, the term "business days" is replaced with "calendar days" at § 4.76(c)(4).

It is noted that in a separate document published in today's **Federal Register**, the Bureau of the Census is publishing its final rule document setting forth the general requirements for the AES in the Census Regulations (chapter I of title 15 of the Code of Federal Regulations) at new subpart E of part 30 (15 CFR part 30).

The Regulatory Flexibility Act and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Booking information is already collected in the ordinary course of business by sea carriers and the cost of transmitting the information electronically to Customs through AES, even if the carrier is not a certified AES participant, is not substantial. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. These amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Inapplicability of Delayed Effective Date

Pursuant to 5 U.S.C. 553(d)(1) and (3), a delayed effective date is not required for this rule. For purposes of 5 U.S.C. 553(d)(1), this rule reflects a grant of an exemption from the normal export manifest reporting requirements to AES

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participants using the Sea Carrier's module. A complete outbound cargo manifest is generally required to be delivered to a Customs port director not later than the fourth business day after clearance of the vessel from each port. According to this rule, a carrier can file the manifest information with Customs via AES for each booking loaded on a departed vessel within ten calendar days after the departure of the vessel from each port. Because the ability to file export manifest information electronically benefits the public, pursuant to 5 U.S.C. 553(d)(3), good cause exists for not delaying the effective date of this rule.

Paperwork Reduction Act

The collection of information contained in these final regulations has been revised, reviewed, and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1515–0221. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this final rule is at § 4.76. This information is required to determine which export shipments are high risk. This information will be used to screen shipments for enforcement targeting. The likely respondents are sea carriers that engage in foreign commerce and trade with the United States and are required to submit outbound vessel manifest data. The estimated average burden associated with the collection of information in this final rule is one to seventy-two hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Ave., NW, Washington, DC 20229; and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Part 178 of the Customs Regulations is amended to reflect this paperwork requirement.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Cargo vessels, Common carriers, Customs duties and inspection, Declarations, Exports, Foreign commerce and trade statistics, Freight, Inspection, Maritime carriers, Merchandise, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Foreign trade statistics, Harbors, Imports, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Shipments, Vessels.

19 CFR Part 178

Reporting and recordkeeping requirements.

19 CFR Part 192

Customs duties and inspection, Electronic filing, Export control, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

For the reasons stated above, parts 4, 101, 178, and 192 of the Customs Regulations (19 CFR parts 4, 101, 178, and 192) are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

2. A new § 4.76 is added to read as follows:

§ 4.76 Procedures and responsibilities of carriers filing outbound vessel manifest information via the AES.

(a) *The sea carrier's module.* The Sea Carrier's Module is a component of the Automated Export System (AES) (*see*, part 192, subpart B, of this chapter) that allows for the filing of outbound vessel manifest information electronically (*see*, 15 CFR part 30). All sea carriers are eligible to apply for participation in the Sea Carrier's Module. Application and certification procedures for AES are found at 15 CFR 30.60. A sea carrier certified to use the module that adheres to the procedures set forth in this section and the Census Regulations (15 CFR part 30) concerning the electronic submission of an outbound vessel manifest information meets the outward cargo declaration filing requirements (CF 1302–A) of §§ 4.63 and 4.75, except as otherwise provided in §§ 4.75 and 4.84.

(b) *Responsibilities.* The performance requirements and operational standards and procedures for electronic submission of outbound vessel manifest information are detailed in the AES Trade Interface Requirements handbook (available on the Customs internet web site (www.customs.gov)). Carriers and their agents are responsible for reporting accurate and timely information and for responding to all notifications concerning the status of their transmissions and the detention and release of freight in accordance with the procedures set forth in the AES Trade Interface Requirements handbook. Customs will send messages to participant carriers regarding the accuracy of their transmissions. AES participants are required to comply with the recordkeeping requirements contained at § 30.66 of the Census Regulations (15 CFR 30.66) and any other applicable recordkeeping requirements. Where paper SEDs have been submitted by exporters prior to departure, participant carriers will be responsible for submitting those SEDs to Customs within four (4) business days after the departure of the vessel from each port, unless a different time requirement is specified by §§ 4.75 or 4.84. Upon written agreement with participant sea carriers, Customs and Census can provide for an alternative to the location filing requirement for paper SEDs set forth in § 4.75(b) by which the participant carriers are otherwise bound.

(c) *Messages required to be filed within the sea carrier's module.* Participant carriers will be responsible for transmitting and responding to the following messages:

(1) *Booking.* Booking information identifies all the freight that is scheduled for export. Booking information will be transmitted to Customs via AES for each shipment as far in advance of departure as practical, but no later than seventy-two hours prior to departure for all information available at that time. Bookings received within seventy-two hours of departure will be transmitted to Customs via AES as received;

(2) *Receipt of booking.* When the carrier receives the cargo or portion of the cargo that was booked, the carrier will inform Customs so that Customs can determine if an examination of the cargo is necessary. Customs will notify the carrier of shipments designated for examination. Customs will also notify the carrier when the shipment

designated for inspection is released and may be loaded on the vessel;

(3) *Departure.* No later than the first calendar day following the actual departure of the vessel, the carrier will notify Customs of the date and time of departure; and

(4) *Manifest.* Within ten (10) calendar days after the departure of the vessel from each port, the carrier will submit the manifest information to Customs via AES for each booking loaded on the departed vessel. However, if the destination of the vessel is a foreign port listed in § 4.75(c), the carrier must transmit complete manifest information before vessel departure. Time requirements for transmission of complete manifest information for carriers destined to Puerto Rico and U.S. possessions are the same as the requirement for the submission of the complete manifest as found in § 4.84.

(d) All penalties and liquidated damages that apply to the submission of paper manifests (*see*, applicable provisions in this part) apply to the electronic submission of outbound vessel manifest information through the Sea Carrier's Module.

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

2. In § 101.1, add, in appropriate alphabetical order, the definition of "business day" to read as follows:

§ 101.1 Definitions.

* * * * *

Business day. A "business day" means a weekday (Monday through Friday), excluding national holidays as specified in § 101.6(a).

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding, in appropriate numerical order, a listing for § 4.76 to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
.	.	.
§ 4.76	Booking information for the Sea Carrier's Module of the AES.	1515–0221
.	.	.

PART 192—EXPORT CONTROL

1. The authority citation for part 192 is revised to read as follows:

Authority: 19 U.S.C. 66, 1624, 1646c. Subpart A also issued under 19 U.S.C. 1627a, 1646a, 1646b; Subpart B also issued under 13 U.S.C. 303; 46 U.S.C. App. 91.

2. In § 192.0, a sentence is added at the end of the section to read as follows:

§ 192.0 Scope.

* * * This part also makes provision for the Automated Export System (AES), implemented by the Census Regulations at part 30, subpart E (15 CFR part 30, subpart E), and provides the grounds under which Customs, as one of the reviewing agencies of the government's export partnership, may deny an application for post-departure filing status or revoke a participant's privilege to use such filing option, and provides for the appeal procedures to challenge such action by Customs.

3. A new subpart B, consisting of §§ 192.11 through 192.13, is added to read as follows:

Subpart B—Filing of Export Information Through the Automated Export System (AES)

Sec.
192.11 Description of the AES.
192.12 Criteria for denial of applications requesting AES post-departure (Option 4) filing status; appeal procedures.
192.13 Revocation of participant's AES post-departure (Option 4) filing privileges; appeal procedures.

Subpart B—Filing of Export Information Through the Automated Export System (AES)

§ 192.11 Description of the AES.

AES is a voluntary program that allows all exporters required to report commodity export information (*see*, 15 CFR 30.16) to submit such information electronically, rather than on paper, and sea carriers to report required outbound vessel information electronically (*see*, §§ 4.63, 4.75, and 4.76 of this chapter). Eligibility and application procedures are found at subpart E of part 30 of the Census Regulations (15 CFR part 30, subpart E), denominated Electronic Filing Requirements—Exporters. These Census Regulations (15 CFR part 30, subpart E) provide that exporters may choose to submit export information through AES by any one of three electronic filing options available. Only Option 4, the complete post-departure submission of export information, requires prior approval by participating agencies before it can be used by AES participants.

§ 192.12 Criteria for denial of applications requesting AES post-departure (Option 4) filing status; appeal procedures.

(a) *Approval process.* Applications for the option of filing export commodity information electronically through AES after the vessel has departed (Option 4 filing status) must be unanimously approved by Customs, Census and other participating government agencies. Disapproval by one of the participating agencies will cause rejection of the application.

(b) *Grounds for denial.* Customs may deny a participant's application for any of the following reasons:

(1) The applicant is not an exporter, as defined in the Census Regulations (15 CFR 30.7(d));

(2) The applicant has a history of non-compliance with export regulations (*e.g.*, exporter has a history of late electronic submission of commodity records or a record of non-submission of required export documentation);

(3) The applicant has been indicted, convicted, or is currently under an investigation, wherein Customs has developed probable cause, for a felony involving any Customs law or any export law administered by another government agency; or

(4) The applicant has made or caused to be made in the "Letter of Intent," a false or misleading statement or omission with respect to any material fact.

(c) *Notice of denial; appeal procedures.* Applicants will be notified of approval or denial in writing by Census. (Applicants whose applications are denied by other agencies must contact those agencies for their specific appeal procedures.) Applicants whose applications are denied by Customs will be provided with the specific reason(s) for non-selection. Applicants may challenge Customs decision by following the appeal procedure provided at § 192.13(b).

§ 192.13 Revocation of participants' AES post-departure (Option 4) filing privileges; appeal procedures.

(a) *Reasons for revocation.* Customs may revoke Option 4 privileges of participants for the following reasons:

(1) The exporter has made or caused to be made in the "Letter of Intent," a

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false or misleading statement or omission with respect to any material fact;

(2) The exporter submitting the "Letter of Intent" is indicted, convicted, or is currently under an investigation, wherein Customs has developed probable cause, for a felony involving any Customs law or any export law administered by another government agency;

(3) The exporter fails to substantially comply with export regulations; or

(4) Continued participation in AES as an Option 4 filer would pose a threat to national security, such that continued participation in Option 4 should be terminated.

(b) *Notice of revocation; appeal procedures.* When Customs has decided to revoke a participant's Option 4 filing privileges, the participant will be notified in writing of the reason(s) for the decision. The participant may challenge Customs decision by filing an appeal within thirty (30) calendar days of receipt of the notice of decision. Except as stated elsewhere in this paragraph, the revocation will become effective when the participant has either exhausted all appeal proceedings or thirty (30) calendar days after receipt of the notice of revocation if no appeal is filed. However, in cases of intentional violations of any Customs law on the part of the program participant or when required by the national security, revocations will become effective immediately upon notification. Appeals should be addressed to the Director, Outbound Programs, U.S. Customs, Ronald Reagan Building, 1300 Pennsylvania Ave, NW, Room 5.4c, Washington, DC 20229. Customs will issue a written decision or notice of extension to the participant within thirty (30) calendar days of receipt of the appeal. If a notice of extension is forwarded, the applicant will be provided with the reason(s) for extension of this time period and an expected date of decision. Participants who have had their Option 4 filing privileges revoked and applicants not selected to participate in Option 4 of AES may not reapply for this filing status for one year following written notification of rejection or revocation.

Raymond W. Kelly,

Commissioner of Customs.

Approved: July 22, 1999.

Timothy G. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–19177 Filed 7–23–99; 9:55 am]

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July 28, 1999

Part V

Department of Labor

Office of Labor–Management Standards

29 CFR Part 215

Amendment to Section 5333(b) Guidelines To Carry Out New Programs Authorized by the Transportation Equity Act for the 21st Century (TEA 21); Final Rule

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DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 215

RIN 1215–AB25

Amendment to Section 5333(b) Guidelines To Carry Out New Programs Authorized by the Transportation Equity Act for the 21st Century (TEA 21)

AGENCY: Office of Labor-Management Standards, Labor.

ACTION: Final guidelines.

SUMMARY: The Department of Labor (the Department) is providing notice of an amendment to its procedural guidelines for certification of certain projects of the Department of Transportation, Federal Transit Administration (FTA), in satisfaction of the requirements of Title 49 U.S.C., Chapter 53, Section 5333(b) (commonly referred to as "Section 13(c)"). This notice is necessitated by the introduction of three new programs under the Transportation Equity Act for the 21st Century (TEA–21), and the need to identify appropriate procedures for the Department's required certification of employee protections in connection with these projects.

The section 5333(b) guidelines, as amended, are reprinted in their entirety in this document for the convenience of the reader. These guidelines replace those currently published at 29 CFR part 215. For a discussion of issues raised during the comment process for the earlier guidelines, see the final guidelines published on December 7, 1995 (60 FR 62964).

DATES: These guidelines become effective August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Kelley Andrews, Director, Statutory Programs, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–5603, Washington, DC 20210; telephone (202) 693–0126; facsimile (202) 693–1342.

SUPPLEMENTARY INFORMATION:

I. Background

The Transportation Equity Act for the 21st Century (TEA–21), signed into law by President Clinton on June 9, 1998, provides for three new transportation programs which require employee protections under section 5333(b). These are the Job Access and Reverse Commute Program (section 3037), the Over-the-Road Bus Accessibility Program (section 3038), and the State Infrastructure Bank Program (section 1511). As a condition of the release of Federal funds for these programs, applicants must comply with section 5333(b), administered under the Department's mass transit employee protection program. These employee protections include the preservation of rights, privileges, and benefits under existing collective bargaining agreements, the continuation of collective bargaining rights, the protection of individual employees against a worsening of their positions related to employment, assurances of employment to employees of acquired mass transportation systems, priority of reemployment, and paid training or retraining.

For most mass transit programs funded by the FTA, the Department processes the employee protection certifications required under section 5333(b) in accordance with procedural guidelines published at 29 CFR 215.3. The Department does not apply these procedures to the processing of section 5310, Elderly and Handicapped grants which do not require section 5333(b) certification, or section 5311 Non-Urban formula grants which are specifically exempted from processing under the guidelines. Section 5311 grants are certified through the application of a warranty without referral to the affected parties. Other grants are certified following the referral procedures established in the guidelines affording the interested parties an opportunity to provide their views on substantive protections.

The Department's Office of Labor-Management Standards' Notice of Proposed Rulemaking (NPRM), issued March 30, 1999 (64 FR 15276), proposed to amend the guidelines to identify the certification processes which will be applicable for the Job Access and Reverse Commute Program, the Over-the-Road Bus Accessibility Program, and the State Infrastructure Bank Program.

Comments addressing the proposed modifications to the guidelines were submitted by six interested parties. The Department has carefully reviewed these comments in the context of the amended guidelines to ensure that the requirements of the statute continue to be satisfied and that the Department will meet its goal of providing efficient and predictable certification of employee protections. The Department's review of the interested parties' comments has not resulted in any changes to the proposed guideline amendments. However, the specific points raised by the parties are discussed in Section II, Summary and Discussion of Comments.

Therefore, for the newly authorized programs under TEA–21, the Department will provide for processing as follows. For Job Access and Reverse Commute grants, the Department will differentiate between grants to applicants serving populations under 200,000 and those applicants serving populations of 200,000 or more. The Department will develop procedures and apply appropriate protections without a referral for "under 200,000" grants and will utilize the guidelines procedures for "200,000 and over" grants. For State Infrastructure Bank (SIB) activities, the Department will develop procedures and ensure that employees are appropriately protected without a referral for the initial capitalization of SIBs and will utilize the guidelines procedures for subsequent projects receiving assistance from the SIB. Finally, for the Over-the-Road Bus Accessibility Program, the Department will utilize the guidelines procedures.

II. Summary and Discussion of the Comments

Six comments from various interested parties throughout the transit industry were submitted and considered.

Comments were received from one public transit provider:

—New Jersey Transit Corporation

Four labor organizations provided comments:

—Amalgamated Transit Union
—Transportation Trades Department, AFL–CIO
—Transportation-Communications International Union
—United Transportation Union

Finally, one public transit association provided comments:

—American Public Transit Association

The Department has carefully reviewed and considered all of the comments in developing these guidelines. The following provides a summary of the comments and the Department's response.

A. Job Access Certification Procedures for Applicants Serving Populations Under 200,000

Two comments supported the Department's proposal not to apply the existing guidelines procedures for Job Access and Reverse Commute grants in areas under 200,000. However, they expressed disappointment that projects for grants to applicants serving populations of 200,000 and over would be covered by the existing guidelines procedures. Concern was expressed that, because "non-traditional transportation providers are going to be involved, and given the unique types of transportation services to be funded under this new program, it is likely that grants will be subject to inordinate delays under the referral process." The Department, however, does not believe that such non-traditional providers will experience substantial delays under the certification procedures which were put in place in 1996. The Department's existing procedures provide for certifications to be issued within 60 days after referral of a grant application.

Four comments opposed the Department's proposed procedures for processing Job Access and Reverse Commute grants for applicants serving populations under 200,000. One comment indicated that there was no basis in the statute or the legislative history to justify a warranty procedure for Job Access and Reverse Commute Program grants to applicants serving populations under 200,000. Another indicated that the Department's expectation that this program will have a greater impact on employees of larger transit systems does not justify its proposal not to apply the existing guidelines to grants serving populations under 200,000. It was suggested that the existing procedures should be applicable to the Job Access and Reverse Commute grants serving populations under 200,000 because "the Department already acknowledges that the existing Section 13(c) guidelines are the appropriate means by which to certify employee protective terms for grants disbursed to urbanized areas with populations under 200,000 who receive "pass-through" funds from their respective states."

The Job Access program established under TEA–21 distinguishes between grants serving differing populations by requiring that Metropolitan Planning Organizations will select applicants in areas serving populations of 200,000 or greater, and the states will select applicants in areas with populations under 200,000. Section 3037(j) of TEA–21 specifies that "[a] grant under this section shall be subject to . . . all of the terms and conditions to which a grant made under section 5307 of title 49, United States Code, is subject". However, neither the statute nor the legislative history for the Job Access and Reverse Commute Program specify how such grants are to be processed. Therefore, the Department has flexibility to develop and implement procedures appropriate to carry out its section 5333(b) responsibilities. In addition, with regard to "pass-through" grants, the legislative history indicates that negotiations are the appropriate process for the development of protections for application to those grants.

The Job Access and Reverse Commute grants serving populations under 200,000 will have much in common with grants processed under the section 5311 small urban and rural transportation program. For example, both types of grants will be selected and administered through the States and many grants will be made to non-traditional transportation providers. Because grants serving populations of under 200,000 are less likely to interface with traditional transportation providers which tend to be represented by organized labor, the Department believes it is not necessary to use a referral process here. Accordingly, the Department believes there is adequate justification for utilizing a process which does not require a referral for certification of Job Access and Reverse Commute Program grants to applicants serving populations under 200,000. The Department will ensure that the protections applied to Job Access and Reverse Commute grants serving populations under 200,000 satisfy the requirements of section 5333(b).

Several comments assumed that the Department would process Job Access and Reverse Commute grants for applicants serving populations under 200,000 using the warranty certification process applicable to non-urban formula grants. As noted in the NPRM, the Department intends to "establish procedures *similar* to those for section 5311(f)." (Emphasis added.) Another comment noted that "the Department intends to apply as yet unspecified arrangement(s)" but "the proposed amendment to the Section 5333(b) guidelines fails to include any discussion and/or provisions prescribing how such an arrangement would be established."

The Department has the authority and responsibility to develop appropriate procedures and statutorily sufficient protective arrangements for the section 5333(b) certification program. These may need to be adjusted periodically to reflect developments in transit programs, including the Job Access and Reverse Commute program, or to formulate the necessary terms and conditions for specific projects. The Department must retain the flexibility to apply appropriate protections in the circumstances presented. Therefore, it is not appropriate to publish the protective arrangements which will be applied for grants under this program.

The Department will establish appropriate procedures for processing of "under 200,000" Job Access and Reverse Commute grants similar to those for section 5311(f) grants, coordinating with the Federal Transit Administration on mass transit issues, issues relating to the interface of our procedures, and various issues relating to the applications themselves.

B. State Infrastructure Bank Certification Procedures

One comment indicated that, in addition to the initial capitalization, the SIB program should be administered through "more flexible and streamlined warranty procedures in lieu of the lengthy referral process" for grants made subsequent to the initial capitalization. The Department, however, anticipates that many of the projects assisted by the SIBs will be similar to projects currently requiring certification under the existing guidelines procedures. Accordingly, the existing certification process is appropriate for SIB projects and it will not unduly burden the efficient delivery of program services.

One comment indicated that the proposed guidelines did not make it sufficiently clear that transit projects receiving assistance subsequent to a SIB capitalization would be subject to the referral procedures under section 215.3. Another comment noted that the initial capitalization might also include specific projects which should be processed in accordance with the existing guidelines procedures. These comments suggested that the final guidelines be amended to address these issues. The Department, however, does not believe that such modifications are necessary. As drafted, the amended guidelines only exempt from the existing procedures those grants which capitalize SIB accounts. If a specific project were to be applied for at the same time as the capitalization grant, the Department would apply the certification procedures of the existing guidelines for that project.

It was also suggested that the Department include in its guidelines "the procedures and/or standards to be applied for developing the 'standard protections' for initial SIB capitalization grants where no specific projects are identified." As previously indicated, the Department has the authority and responsibility to develop appropriate procedures and statutorily sufficient protective arrangements, and these may need to be adjusted periodically to reflect developments in transit programs, including the SIB program. In order for the Department to retain the flexibility necessary in the circumstances presented, it is not appropriate to publish the specific language which will be applied for SIB

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capitalization grants. The Department will certify initial capitalization grants made by FTA to the SIBs by specifying that the SIB may not release funds for specific projects in the absence of a subsequent certification for those projects.

As with other programs, the Department will establish appropriate procedures for processing of SIB capitalization grants, coordinating with the Federal Transit Administration on issues relating to the interface of our procedures and various issues relating to the applications themselves.

C. Second and Subsequent Generations of Funds Under the State Infrastructure Bank Program

One comment indicated that SIB "funds are repaid to the state account from non-federal sources after their first use, which means the federal nexus becomes attenuated and there remains no real basis for ongoing application of federal DOL Guidelines—which at that point should no longer apply." Another comment, however, noted that "Section 1511(h)(2)(i)(2) [of TEA–21] mandates the application of Section 5333(b) requirements . . . to transit projects assisted by 'repayments' to the SIB resulting from any financial transactions undertaken by the bank." That comment indicated that "[t]he Department's final regulation should acknowledge and incorporate these obligations for so-called 'second generation' grants to insure the proper application of transit employee protections to *all* transit projects assisted by an infrastructure bank."

TEA–21 does specify that "[t]he requirements of titles 23 and 49, United States Code, shall apply to repayments from non-Federal sources to an infrastructure bank from projects assisted by the bank. Such a repayment shall be considered to be Federal funds." It is not necessary to modify the Department's proposed amendment to address either of these comments. The Department will include language in its certifications for the capitalization of SIBs which ensures that the requirements of TEA–21 with respect to second and subsequent generations of funds are appropriately satisfied.

D. Over-the-Road Bus Accessibility Program

Two comments expressed support for the Department's proposed certification approach for processing grants under the Over-the-Road-Bus Accessibility Program. Another comment, however, indicated that "the Secretary of Labor appears to have the authority to waive section 5333(b) certification requirements" for the program, and recommended that the final rule address this authority.

In addressing the Over-the-Road-Bus Accessibility Program, section 3038(f) of TEA–21 provides that "[a] grant under this section shall be subject to all of the terms and conditions applicable to subrecipients who provide intercity bus transportation under section 5311(f) of title 40, United States Code, and such other terms as the Secretary [of Transportation] may prescribe." This language establishes that the *requirements* of section 5333(b) must be applied for Over-the-Road-Bus Accessibility Program grants, but neither the statute nor the legislative history specify the *procedures* for processing these grants. Therefore, the Department has flexibility to develop and implement procedures appropriate to carry out its section 5333(b) responsibilities. Section 5311(j) provides that "the Secretary of Labor may waive the application of section 5333(b)" for projects under section 5311. However, the criteria for such a waiver requires that "there are no employees of the Recipient or of any other public transportation providers in the transportation service area of the Project who could be potentially affected." The Department believes it is unlikely that intercity bus services would meet that criteria. Therefore, the Department did not include waiver procedures for this program.

III. Regulatory Procedures

Executive Order

This final rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

Regulatory Flexibility Act

This final rule addresses the procedural steps for obtaining the Department's certification that employee protection arrangements under the Federal Transit law are in place as required for three new programs funded under TEA–21. The amendment will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 605(b)) is not required. The Assistant Secretary for Employment Standards has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration.

Unfunded Mandates Reform

Executive Order 12875—This rule will not create an unfunded Federal mandate upon any State, local or tribal government.

Unfunded Mandates Reform Act of 1995—This rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

Paperwork Reduction Act

These guidelines contain no information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Small Business Regulatory Enforcement Fairness Act of 1996

A. This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

B. Consistent with the Small Business Regulatory Enforcement Fairness Act of 1996, the Department will submit to Congress a report regarding the issuance of today's final rule prior to the Effective Date set forth in the outset of this document. The report will note the Office of Management and Budget's determination that this rule does not constitute a "major rule" under that Act. 5 U.S.C. 801, 805.

List of Subjects in 29 CFR Part 215

Grant administration; Grants—transportation; Labor-management relations; Labor unions; Mass transportation.

Accordingly, Part 215 in Chapter II of Title 29 of the *Code of Federal Regulations* is amended by removing the last sentence in paragraph (a)(3) of § 215.3, by adding a new paragraph (a)(4) in § 215.3 to read as set forth below, and by revising § 215.8 to read as set forth below. For the convenience of the reader, the entire part is being republished in full.

PART 215—GUIDELINES, SECTION 5333(b), FEDERAL TRANSIT LAW

Sec.
215.1 Purpose.
215.2 General.
215.3 Employees represented by a labor organization.
215.4 Employees not represented by a labor organization.
215.5 Processing of amendatory applications.
215.6 The Model Agreement.
215.7 The Special Warranty
215.8 Department of Labor contact.

Authority: Secretary's Order No. 5–96, 62 FR 107, January 2, 1997.

PART 215—GUIDELINES, SECTION 5333(b), FEDERAL TRANSIT LAW

§ 215.1 Purpose.

(a) The purpose of these guidelines is to provide information concerning the Department of Labor's administrative procedures in processing applications for assistance under the Federal Transit law, as codified at 49 U.S.C. chapter 53.

(b) Section 5333(b) of title 49 of the United States Code reads as follows:

Employee protective arrangements.—(1) As a condition of financial assistance under sections 5307–5312, 5318(d), 5323(a)(1), (b), (d), and (e), 5328, 5337, and 5338(j)(5) of this title, the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. The agreement granting the assistance under sections 5307–5312, 5318(d), 5323(a)(1), (b), (d), and (e), 5328, 5337, and 5338(j)(5) shall specify the arrangements.

(2) Arrangements under this subsection shall include provisions that may be necessary for—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

(B) the continuation of collective bargaining rights;

(C) the protection of individual employees against a worsening of their positions related to employment;

(D) assurances of employment to employees of acquired mass transportation systems;

(E) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

(F) paid training or retraining programs.

(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11326 of this title.

§ 215.2 General.

Upon receipt of copies of applications for Federal assistance subject to 49 U.S.C. 5333(b), together with a request for the certification of employee protective arrangements from the Department of Transportation, the Department of Labor will process those applications, which may be in either preliminary or final form. The Federal Transit Administration will provide the Department with the information necessary to enable the Department to certify the project.

§ 215.3 Employees represented by a labor organization.

(a)(1) If affected employees are represented by a labor organization, it is expected that where appropriate, protective arrangements shall be the product of negotiation/discussion, pursuant to these guidelines.

(2) In instances where states or political subdivisions are subject to legal restrictions on bargaining with employee organizations, the Department of Labor will utilize special procedures to satisfy the Federal statute in a manner which does not contravene state or local law. For example, employee protective terms and conditions, acceptable to both employee and applicant representatives, may be incorporated into a resolution adopted by the involved local government.

(3) If an application involves a grant to a state administrative agency which will pass assistance through to subrecipients, the Department of Labor will refer and process each subrecipient's respective portion of the project in accordance with this section. If a state administrative agency has previously provided employee protections on behalf of subrecipients, the referral will be based on those terms and conditions.

(4) These procedures are not applicable to grants under section 5311; grants to applicants serving populations under 200,000 under the Job Access and Reverse Commute Program; or grants to capitalize SIB accounts under the State Infrastructure Bank Program.

(b) Upon receipt of an application involving affected employees represented by a labor organization, the Department of Labor will refer a copy of the application to that organization and notify the applicant of referral.

(1) If an application involves only a capital grant for routine replacement of equipment of like kind and character and/or facilities of like kind and character, the procedural requirements set forth in paragraphs 215.3(b)(2) through 215.3(h) of these guidelines will not apply absent a potentially material effect on employees. Where no such effect is found, the Department of Labor will certify the application based on the terms and conditions as referenced in paragraphs 215.3(b)(2) or 215.3(b)(3)(ii).

(2) For applicants with previously certified arrangements, the referral will be based on those terms and conditions.

(3) For new applicants and applicants for which previously certified arrangements are not appropriate to the current project, the referral will be based on appropriate terms and conditions specified by the Department of Labor, as follows:

(i) For operating grants, the terms and conditions will be based on arrangements similar to those of the Model Agreement (referred to also as the National Agreement);

(ii) For capital grants, the terms and conditions will be based on arrangements similar to those of the Special Warranty applied pursuant to section 5311.

(c) Following referral and notification under paragraph (b) of this section, and subject to the exceptions defined in § 215.5, parties will be expected to engage in good faith efforts to reach mutually acceptable protective arrangements through negotiation/discussion within the time frames designated under paragraphs (d) and (e) of this section.

(d) As part of the Department of Labor's review of an application, a time schedule for case processing will be established by the Department of Labor and specified in its referral and notification letters under paragraph 215.3(b) or subsequent written communications to the parties.

(1) Parties will be given fifteen (15) days from the date of the referral and notification letters to submit objections, if any, to the referred terms. The parties are encouraged to engage in negotiations/discussions during this period with the aim of arriving at a mutually agreeable solution to objections any party has to the terms and conditions of the referral.

(2) Within ten (10) days of the date for submitting objections, the Department of Labor will:

(i) Determine whether the objections raised are sufficient; and

(ii) Take one of the two steps described in paragraphs (d)(5) and (6) of this section, as appropriate.

(3) The Department of Labor will consider an objection to be sufficient when:

(i) The objection raises material issues that may require alternative employee protections under 49 U.S.C. 5333(b); or

(ii) The objection concerns changes in legal or factual circumstances that may materially affect the rights or interests of employees.

(4) The Department of Labor will consult with the Federal Transit

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Administration for technical advice as to the validity of objections.

(5) If the Department of Labor determines that there are no sufficient objections, the Department will issue its certification to the Federal Transit Administration.

(6) If the Department of Labor determines that an objection is sufficient, the Department, as appropriate, will direct the parties to commence or continue negotiations/discussions, limited to issues that the Department deems appropriate and limited to a period not to exceed thirty (30) days. The parties will be expected to negotiate/discuss expeditiously and in good faith. The Department of Labor may provide mediation assistance during this period where appropriate. The parties may agree to waive any negotiations/discussions if the Department, after reviewing the objections, develops new terms and conditions acceptable to the parties. At the end of the designated negotiation/discussion period, if all issues have not been resolved, each party must submit to the Department its final proposal and a statement describing the issues still in dispute.

(7) The Department will issue a certification to the Federal Transit Administration within five (5) days after the end of the negotiation/discussion period designated under paragraph (d)(6) of this section. The certification will be based on terms and conditions agreed to by the parties that the Department concludes meet the requirements of 49 U.S.C. 5333(b). To the extent that no agreement has been reached, the certification will be based on terms and conditions determined by the Department which are no less protective than the terms and conditions included in the referral pursuant to §§ 215.3(b)(2) and 215.3(b)(3).

(8) Notwithstanding that a certification has been issued to the Federal Transit Administration pursuant to paragraph (d)(7) of this section, no action may be taken which would result in irreparable harm to employees if such action concerns matters subject to the steps set forth in paragraph (e) of this section.

(e) If the certification referred to in paragraph (d)(7) of this section is not based on full mutual agreement of the parties, the Department of Labor will take the following steps to resolve outstanding differences:

(1) The Department will set a schedule that provides for final resolution of the disputed issue(s) within sixty (60) days of the certification referred to in paragraph (d)(7) of this section.

(2) Within ten (10) days of the issuance of the certification referred to in paragraph (d)(7) of this section, and after reviewing the parties' descriptions of the disputed issues, the Department will define the issues still in dispute and set a schedule for final resolution of all such issues.

(3) The Department may establish a briefing schedule, usually allowing no more than twenty (20) days for opening briefs and no more than ten (10) days for reply briefs, when the Department deems reply briefs to be beneficial. In either event, the Department will issue a final certification to the Federal Transit Administration no later than thirty (30) days after the last briefs are due.

(4) The Department of Labor will decide the manner in which the dispute will be resolved. In making this decision, the Department may consider the form(s) of dispute resolution employed by the parties in their previous dealings as well as various forms of third party dispute resolution that may be appropriate. Any dispute resolution proceedings will normally be expected to commence within thirty (30) days of the certification referred to in paragraph (d)(7) of this section, and the Department will render a final determination, including the bases therefor, within thirty (30) days of the commencement of the proceedings.

(5) The Department will make available final decisions it renders on disputed issues.

(f) Nothing in these guidelines restricts the parties from continuing to negotiate/discuss over final terms and conditions and seeking a final certification of an agreement that meets the requirements of the Act prior to the issuance of a final determination by the Department.

(g) If, subsequent to the issuance of the certification referred to in paragraph (d)(7) of this section, the parties reach an agreement on one or more disputed issues that meets the requirements of the Act, and/or the Department of Labor issues a final decision containing revised terms and conditions, the Department will take appropriate steps to substitute the new terms and conditions for those previously certified to the Federal Transit Administration.

(h) Notwithstanding the foregoing, the Department retains the right to withhold certification where circumstances inconsistent with the statute so warrant until such circumstances have been resolved.

§ 215.4 Employees not represented by a labor organization.

(a) The certification made by the Department of Labor will afford the same level of protection to those employees who are not represented by labor organizations.

(b) If there is no labor organization representing employees, the Department of Labor will set forth the protective terms and conditions in the letter of certification.

§ 215.5 Processing of amendatory applications.

When an application is supplemental to or revises or amends in immaterial respects an application for which the Department of Labor has already certified that fair and equitable arrangements have been made to protect the interests of mass transit employees affected by the subject project the Department of Labor will on its own initiative apply to the supplemental or other amendatory application the same terms and conditions as were certified for the subject project as originally constituted. The Department of Labor's processing of these applications will be expedited.

§ 215.6 The Model Agreement.

The Model (or National) Agreement mentioned in paragraph (b)(3)(i) of § 215.3 refers to the agreement executed on July 23, 1975 by representatives of the American Public Transit Association and the Amalgamated Transit Union and Transport Workers Union of America and on July 31, 1975 by representatives of the Railway Labor Executives' Association, Brotherhood of Locomotive Engineers, Brotherhood of Railway and Airline Clerks and International Association of Machinists and Aerospace Workers. The agreement is intended to serve as a ready-made employee protective arrangement for adoption by local parties in specific operating assistance project situations. The Department has determined that this agreement provides fair and equitable arrangements to protect the interests of employees in general purpose operating assistance project situations and meets the requirements of 49 U.S.C. 5333(b).

§ 215.7 The Special Warranty.

The Special Warranty mentioned in paragraph (b)(3)(ii) of § 215.3 refers to the protective arrangements developed for application to the small urban and rural program under section 5311 of the Federal Transit statute. The warranty arrangement represents the understandings of the Department of Labor and the Department of Transportation, reached in May 1979, with respect to the protections to be applied for such grants. The Special Warranty provides fair and equitable arrangements to protect the interests of employees and meets the requirements of 49 U.S.C. 5333(b).

§ 215.8 Department of Labor contact.

Questions concerning the subject matter covered by this part should be addressed to Director, Statutory Programs, U.S. Department of Labor, Suite N5603, 200 Constitution Avenue, N.W., Washington, DC 20210; phone number 202–693–0126.

Signed at Washington, DC this 21st day of July, 1999.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

[FR Doc. 99–19111 Filed 7–27–99; 8:45 am]

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Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 47 and 52
Federal Acquisition Regulation; Contractor Liability for Loss of and/or Damages to Household Goods; Withdrawal of Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 47 and 52

[FAR Case 98–603]

RIN 9000–AI28

Federal Acquisition Regulation; Contractor Liability for Loss of and/or Damages to Household Goods

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are withdrawing a proposed rule published in the **Federal Register** on February 16, 1999 (64 FR 7736), under FAR case 98–603, Contractor Liability for Loss of and/or Damages to Household Goods. The rule proposed to amend the Federal Acquisition Regulation (FAR) to standardize the method of calculating contractor liability for loss of and/or damage to shipments of household goods to conform to International Through Government Bill of Lading (ITGBL) procedures.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAR case 98–603, Contractor Liability for Loss of and/or Damages to Household Goods; Withdrawal.

SUPPLEMENTARY INFORMATION:

A. Background

The rule proposed to amend the clause at FAR 52.247–23 with regard to the method of calculating contractor liability for loss of and/or damage to shipments of household goods.

Presently, when contracting for the transportation of household goods, the contracting officer inserts the clause at 52.247–23, Contractor Liability for Loss of and/or Damage to Household Goods, in solicitations and contracts. This clause requires the contractor to indemnify the owner of the goods at a rate per pound determined to be appropriate to the specific situation. The Councils intended to provide standardization for liability on shipments of household goods and a more equitable compensation for loss of individual items that conforms with commercial industry standards by calculating liability, as found in the ITGBL, at a rate of $5.00 per pound times the total net shipment weight. Respondents to the **Federal Register** notice expressed several concerns with regard to the adoption of the increased liability to $5.00 per pound. One major concern was whether this increased liability reflected a commercial industry standard. A second concern was that the proposed rule did not reflect a demonstrated benefit to the Government or industry. After review of the public comments, the Councils have decided to withdraw the proposed rule and retain the current clause at 52.247–23, Contractor Liability for Loss of and/or Damage to Household Goods, requiring the contractor to indemnify the owner of the goods at a rate per pound determined to be appropriate to the specific situation.

List of Subjects in 48 CFR Parts 47 and 52

Government procurement.

Dated: July 22, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–19251 Filed 7–27–99; 8:45 am]

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federal register

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Part VII

The President

Proclamation 7211—Parents' Day

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Title 3—

The President

Proclamation 7211 of July 23, 1999

Parents' Day, 1999

By the President of the United States of America

A Proclamation

Parents are the foundation of the family and a cornerstone of community life in America. They instill the values, attitudes, and guidance children need to become strong individuals and caring citizens; we turn to our parents for the unconditional love and encouragement we need to make the most of our lives and to contribute to the life of our Nation. On Parents' Day, we pay tribute to the millions of parents whose care has nurtured us, whose vigilance has protected us, and whose selfless devotion has blessed our lives.

The challenges of parenthood have changed as our society has changed. In many American families, both parents work outside the home and struggle to balance the competing demands of job, home, and family. In others, a single parent bears these responsibilities.

My Administration continues to support parents through initiatives such as the Children's Health Insurance Program and Head Start and by advocating child care, adoption, and child welfare expansion. We have worked hard to help parents support their families financially by creating new jobs, raising the minimum wage, expanding the Earned Income Tax Credit, preserving the national guarantee of health care for poor children, and increasing child support collections to record heights. We have helped parents balance work and family by enacting the Family and Medical Leave Act and releasing funds for after-school grants so that parents do not have to choose between keeping their jobs and ensuring that their children receive quality care and supervision.

Though helping parents do their job has always been a top priority of my Administration, we recognize that government programs alone cannot solve all the problems that families face today. For example, I am heartened by the passionate commitment of parents across America in response to our call for a national campaign to prevent youth violence. This campaign will ask all sectors of society to focus on this crucial issue, to discover what measures work, and to share that knowledge with other families in communities across our country.

There is no single cause or solution to ending the violence that has cut short too many young lives. But, by working together, we can change the values of our culture and influence the marketing strategies of media industries so that our children are not continually exposed to violent or other inappropriate materials in the games they play, the programs and movies they watch, or the music they hear. We also must continue our efforts to ensure that our young people do not gain unauthorized access to guns. Parents play a crucial role in all of these endeavors by remaining involved in the lives of their sons and daughters.

The First Lady and I have issued a challenge to our Nation to celebrate the coming of the new millennium by honoring the past and imagining the future. As we prepare to enter the 21st century, let us remember that, just as parents remain a treasured link to our past, they also influence the future by raising their children to become the responsible citizens of tomorrow. On this day and throughout the year, let us honor the millions

of devoted mothers and fathers who have fulfilled this solemn responsibility with extraordinary compassion, generosity, and love.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States and consistent with Public Law 103-362, do hereby proclaim Sunday, July 25, 1999, as Parents' Day. I invite the States, communities, and the people of the United States to join together in observing this day with appropriate ceremonies and activities to honor our Nation's parents.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of July, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

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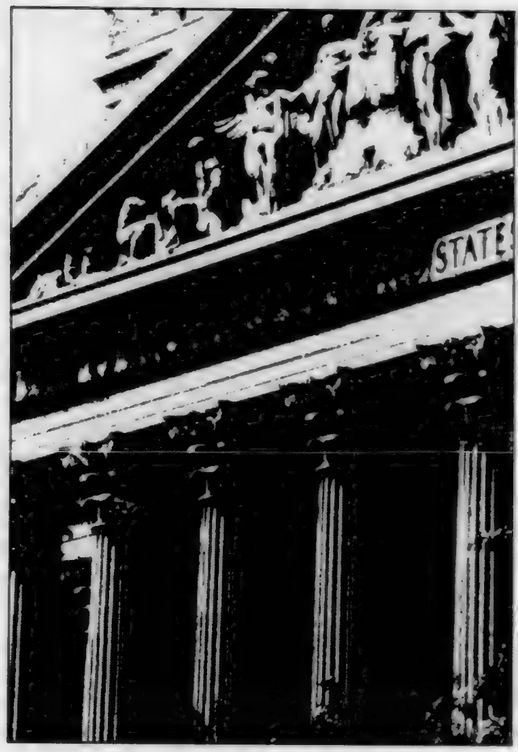

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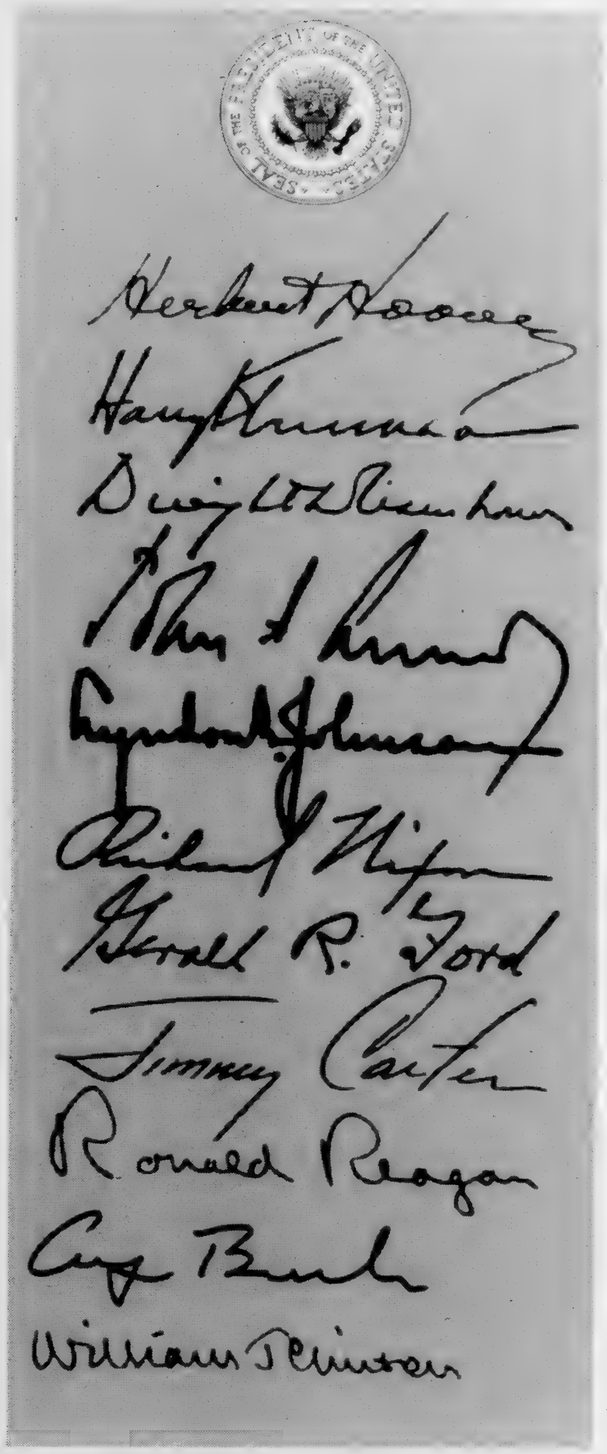

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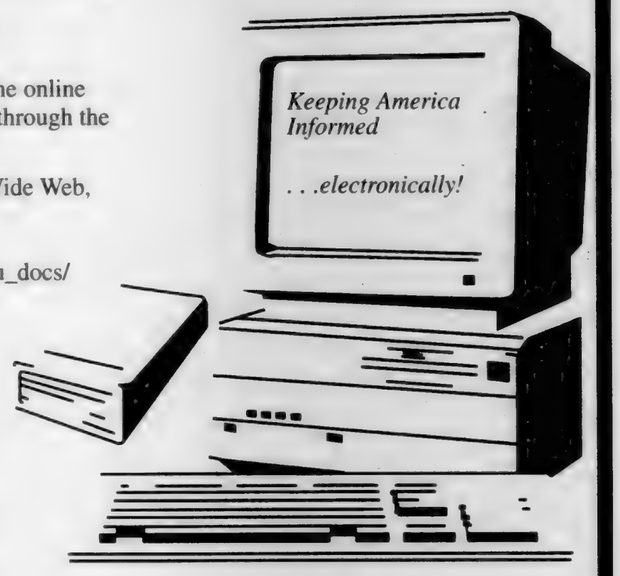

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Presidential Documents

Title 3—

The President

Proclamation 7212 of July 26, 1999

25th Anniversary of the Legal Services Corporation, 1999

By the President of the United States of America

A Proclamation

The Bill of Rights guarantees that no American shall be "deprived of life, liberty, or property, without due process of law." This promise lies at the heart of our free society and reflects our reverence for impartial justice and the rule of law. In a few simple words, it cements the fundamental covenant between our government and the people it serves.

Our Nation's founders understood that true justice cannot exist unless it is accessible to all. In this same spirit, Congress established the Legal Services Corporation (LSC) 25 years ago to secure equal access to justice under the law for all Americans by making available high-quality legal assistance in civil matters to citizens who otherwise would be unable to afford it.

Designed as a private, nonprofit, independent entity, the LSC focuses its efforts on funding local legal services programs that are rooted in and accountable to the communities they serve. The dedicated staffs of these programs, and the many private attorneys who donate their time and expertise, strive to protect and defend the interests of their clients and to maintain the highest standards of the legal profession. In recent years, the LSC has provided grants to legal services programs serving every county in our Nation, as well as the U.S. territories. Each year, almost 60 thousand private attorneys participate by performing pro bono legal services, and almost 2 million people benefit from LSC-funded efforts.

The extraordinary success of the LSC highlights the importance of the legal profession's long-standing tradition of community service. It also reminds us of how much our society has been strengthened by the conscience and conviction of lawyers standing up for what is right. As part of my Call to Action to the American Legal Community, I hope to build on this tradition of service by challenging all attorneys across our Nation to donate some of their time and apply their skills to help those among us who cannot afford to pay for the representation they need.

As we mark the 25th Anniversary of the Legal Services Corporation, I salute the dedicated members of the Board of Directors, attorneys, paralegals, support staff, and volunteers associated with the LSC who have worked with talent, generosity, and determination to uphold America's fundamental commitment to justice for all.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 25, 1999, as the 25th Anniversary of the Legal Services Corporation. I urge all Americans to join me in recognizing the contributions that the Legal Services Corporation, and the local programs that it supports, have made in fulfilling the promise of equal justice under the law.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of July, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 99–19599
Filed 7–28–99; 8:45 am]
Billing code 3195–01–P

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Presidential Documents

Proclamation 7213 of July 26, 1999

National Korean War Veterans Armistice Day, 1999

By the President of the United States of America

A Proclamation

In 1950, North Korea invaded its free neighbor to the south, raising the specter of armed communist expansion as a threat to democracies around the world. During the next 3 years of bitter struggle, more than 54,000 Americans gave their lives for the cause of freedom. With the signing of a negotiated armistice in 1953, the Korean War became for a time the "Forgotten War." But each year on National Korean War Veterans Armistice Day, we pledge never to forget the lessons of that savage and costly conflict nor the members of our Armed Forces who risked their lives to defend democracy, human dignity, and the right to self-determination.

The Korean War taught us that we have many allies in our ongoing crusade for human freedom and democratic rule. Under the auspices of the United Nations, 22 countries joined the United States and South Korea in resisting communist aggression by sending troops and providing medical support. Etched in stone on the Korean War Veterans Memorial in our Nation's capital, the names of these countries remind us that free nations everywhere share a profound responsibility to assist those who seek to defend themselves from the aggression of brutal and oppressive regimes. The Korean War also taught us the importance of vigilance in recognizing threats to freedom and the need for vigorous and decisive action in resisting such encroachments. Though the dark shroud of the Cold War has lifted from our world, new regional and ethnic conflicts remain a threat to international peace and human rights. Whether in Iraq, Bosnia, Kosovo, or elsewhere, we will continue to defend the same eternal values for which so many courageous Americans fought in Korea.

The Congress, by Public Law 104–19 (36 U.S.C. 127), has designated July 27, 1999, as "National Korean War Veterans Armistice Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 27, 1999, as National Korean War Veterans Armistice Day. I call upon all Americans to observe this day with appropriate ceremonies and activities that honor and give thanks to our distinguished Korean War veterans. I also ask Federal departments and agencies and interested groups, organizations, and individuals to fly the flag of the United States at half-staff on July 27, 1999, in memory of the Americans who died as a result of their service in Korea.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of July, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 99–19600
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 360

[Docket No. 98–091–1]

Noxious Weeds; Permits and Interstate Movement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the noxious weed regulations to clearly state that a permit is required for the movement of noxious weeds interstate, as well as into or through the United States. The regulations currently provide for the issuance of permits for movements into or through the United States, but do not explicitly address interstate movements. This action is necessary to help prevent the artificial interstate spread of noxious weeds into noninfested areas of the United States.

DATES: This interim rule is effective July 29, 1999. We invite you to comment on this docket. We will consider all comments that we receive by September 27, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–091–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–091–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Randy Westbrooks, Invasive Plant Liaison, Interagency Field Office for Invasive Species, 233 Border Belt Drive, PO Box 279, Whiteville, NC 28472; (910) 648–6762.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 7 CFR part 360 (referred to below as the regulations) list Federal noxious weeds and require persons wishing to move a Federal noxious weed into or through the United States to obtain a permit. The regulations were established in 1976 under the authority of the Federal Noxious Weed Act (FNWA) of 1974 (7 U.S.C. 2801 *et seq.*).

Until 1994, the FNWA prohibited the movement of any noxious weed listed in the regulations into or through the United States, or interstate, unless the movement was authorized by a permit and was made in accordance with any conditions in the permit and the regulations. In 1994, Congress amended the FNWA (Pub. L. 103–465, section 431(f)). As amended, the FNWA provides that no person may import or enter any noxious weed listed in the regulations into or through the United States, or move any noxious weed interstate, unless the movement is in accordance with regulations promulgated under the FNWA.

As noted above, the regulations specifically require a permit for the movement of any Federal noxious weed into or through the United States, but do not specifically address interstate movements. In the past, the Animal and Plant Health Inspection Service has not required a permit for interstate movements originating within the United States unless a quarantine, in conjunction with a control and eradication program, was first established in the area of the United States where the noxious weed existed.

Upon review of this policy, especially in circumstances where adequate funds are not available for control and eradication programs, or where such programs do not appear necessary or appropriate (for example, where a Federal noxious weed previously imported under permit is being grown in a controlled area for a specific approved use), we no longer believe that this policy provides adequate protection against the spread of Federal noxious weeds within the United States.

Therefore, we are amending the regulations to specifically require a permit for the interstate movement of Federal noxious weeds. We believe that this action is necessary to prevent the spread of Federal noxious weeds within the United States.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the artificial interstate movement of noxious weeds to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, set forth below, regarding the impact of this interim rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the economic effects of this rule on small entities.

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Therefore, we are inviting comments concerning potential economic impacts. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from implementation of this interim rule. The discussion below also serves as the cost-benefit analysis required by Executive Order 12866.

In accordance with 7 U.S.C. 2803 and 2809, the Secretary of Agriculture is authorized to promulgate regulations to prevent the dissemination of any noxious weed into the United States, or interstate. Further, under 7 U.S.C. 2803, no person shall import or enter any noxious weed listed in the regulations into or through the United States, or interstate, unless the movement is in accordance with regulations.

This interim rule amends the regulations by specifically requiring a permit for the interstate movement of Federal noxious weeds. In the past, the Animal and Plant Health Inspection Service has not required a permit for interstate movements originating within the United States unless a quarantine, in conjunction with a control and eradication program, was first established in the area of the United States where the noxious weed existed.

Upon review of this policy, especially in circumstances where adequate funds are not available for control and eradication programs, or where such programs do not appear necessary or appropriate (for example, where a Federal noxious weed previously imported under permit is being grown in a controlled area for a specific approved use), we no longer believe that this policy provides adequate protection against the spread of Federal noxious weeds within the United States.

As part of our analysis of the economic effects of this action, we compared the expected benefits of restricting the interstate movement of Federal noxious weeds with the expected costs to the private sector associated with the new restrictions.

Effects of Noxious Weeds

Noxious weeds affect both crops and native plant species in the same way—by out-competing for light, water, and soil nutrients. Noxious weeds cause estimated crop losses of $2 to $3 billion annually. These losses are attributed to: (1) Decreased quality of agricultural products due to high levels of competition from noxious weeds; and (2) decreased quantity of agricultural products due to noxious weed infestations.

Further, noxious weeds can negatively affect livestock and dairy producers by making forage unpalatable to livestock, thus decreasing livestock productivity and potentially increasing producers' feed costs. Increased costs to producers are eventually borne by consumers.

Noxious weeds also grow in aquatic habitats and may clog waterways and block irrigation and drainage canals, thus negatively affecting fish and wildlife resources and recreational use of these areas.

Infestations of noxious weeds can have a potentially disastrous impact on biodiversity and natural ecosystems, as evidenced by the case of the Mediterranean clone of *Caulerpa taxifolia*, a listed aquatic Federal noxious weed. The clone was introduced into the Mediterranean in 1984 and has since spread along the French and Italian coasts, covering 10,000 acres of the coastal sea floor, and crowding out many native seaweeds, sea grasses, and invertebrates such as coral, sea fans, and sponges.

In order to combat the negative effects of noxious weeds on crop lands, grazing lands, and waterways, herbicidal and other weed control strategies can be implemented at further costs to producers and government agencies. Such costs would then likely be passed down to consumers, who would pay more for products due to increased producer costs.

This rule could potentially benefit any entities referred to above by curbing the spread of Federal noxious weeds and thereby eliminating potential new costs resulting from infestations.

Entities Potentially Affected by the Interim Rule

Any person involved in moving Federal noxious weeds interstate will be affected by this rule because they will now have to obtain a permit prior to the interstate movement. Those likely to be affected are nursery stock catalog firms and individual backyard producers who distribute Federal noxious weeds.

We have found that at least 61 nursery stock catalog companies list some Federal noxious weeds, either in the form of seeds or plants, in their inventory of available products. Available data suggests, however, that sales of Federal noxious weeds (and seeds) make up a small fraction of the total receipts for these businesses. We invite any persons engaged in the sale of Federal noxious weeds, including seeds, to provide us with additional economic data regarding revenue generated by those sales. (The list of Federal noxious weeds is contained in 7 CFR 360.200, and can be found on the APHIS web site at http://www.aphis.usda.gov/ppq/bats/fnwsbycat-e.html. Copies of the list may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.)

Also, there are entities in some States that import noxious weed seeds under permit and grow them under conditions specified in permits granted by APHIS. We are aware that, in isolated cases, entities that import Federal noxious weeds and seeds under permit may also wish to move them interstate. Under this rule, those entities will be required to obtain another permit from APHIS for any movement of noxious weeds that is not authorized in the original permit. Further, APHIS has the authority to deny such a permit if it determines that the movement of such Federal noxious weeds may cause dissemination of the weed into noninfested areas of the United States. This means that, based on the risk of dissemination, APHIS may grant a permit for the movement of a Federal noxious weed into one State, but not into another, or may grant a permit for the movement of one species of Federal noxious weed, but not another.

Also among the entities potentially affected by this rule are individual backyard producers. Some listed Federal noxious weeds are known to be valued among certain groups as vegetable crops and are grown in small garden plots for personal use and sale at informal markets. Since these producers are not registered with APHIS, the total number of such entities is not available. However, since most of these entities probably do not depend upon the production of noxious weeds for their livelihood, this rule should have a very limited economic effect on them. We invite the public to submit any available data on such entities that are affected by this rule.

We are also aware that there are producers of *Ipomoea aquatica* (Chinese water spinach—a listed Federal noxious weed and a food valued by some groups) in some counties in Florida, California, and Hawaii who raise the weed as a cash crop for interstate sale to metropolitan and other markets. The exact number of such farms and their size is not available, but most holdings are said to be as small as an acre or less. Under this rule, persons wishing to move *I. aquatica* interstate will be required to obtain a permit from APHIS. We realize that this may result in a new burden on sellers and purchasers of *I. aquatica*, and we intend to address the situation in an upcoming rulemaking. In the near future, we plan to publish an advance notice of proposed rulemaking (ANPR) in the **Federal Register**, in which we will request the public to comment on potential changes to our weed classification system. The weed classification system to be considered in the ANPR could eliminate the need for sellers of *I. aquatica* to obtain permits prior to shipping the weed interstate.

Alternatives Considered

The only significant alternative to this interim rule that we considered was to make no changes in the regulations, i.e., to not restrict the interstate movement of noxious weeds. We have rejected this alternative because of the potential economic and ecological consequences that we believe could result if listed Federal noxious weeds are disseminated into noninfested areas of the United States.

This interim rule contains new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), which are described below under the heading "Paperwork Reduction Act."

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0054 to the information collection and recordkeeping requirements.

Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–091–1. Please send a copy of your comments to: (1) Docket No. 98–091–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this interim rule.

This interim rule amends the noxious weed regulations to clearly state that a permit is required for the movement of noxious weeds interstate, as well as into or through the United States. Prior to the effective date of this rule, the regulations provided for the issuance of permits for movements into or through the United States, but did not explicitly address interstate movements. This action is necessary to help prevent the artificial interstate spread of noxious weeds into noninfested areas of the United States.

Under this interim rule, persons wishing to move listed Federal noxious weeds interstate must first apply for a permit. We are asking OMB to approve this information collection in connection with our efforts to ensure that listed Federal noxious weeds are not disseminated into noninfested areas of the United States.

We are soliciting comments from the public (as well as affected agencies) concerning this information collection activity. We will use these comments to help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .166 hours per response.

Respondents: Researchers, owner/operators of nursery stock firms, and backyard producers who engage in the interstate distribution of plants (for consumption, ornamental use, or other purposes) that are listed Federal noxious weeds.

Estimated annual number of respondents: 50.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 50.

Estimated total annual burden on respondents: 8 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Transportation, Weeds.

Accordingly, 7 CFR part 360 would be amended as follows:

PART 360—NOXIOUS WEED REGULATIONS

1. The authority citation for part 360 would continue to read as follows:

Authority: 7 U.S.C. 2803 and 2809; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 360.300 is amended as follows:

a. By revising the section heading to read as set forth below.

b. By redesignating paragraphs (a), (b), (c), and (d) as paragraphs (b), (c), (d), and (e), respectively.

c. By adding a new paragraph (a) to read as set forth below.

d. By revising the newly redesignated paragraphs (b) and (e) to read as set forth below.

§ 360.300 General prohibitions and restrictions on the movement of noxious weeds; permits.

(a) No person may move a Federal noxious weed into or through the United States, or interstate, unless:

(1) He or she obtains a permit for such movement in accordance with paragraphs (b) through (e) of this section; and

(2) The movement is consistent with the specific conditions contained in the permit.

(b) The Deputy Administrator will issue a written permit for the movement of a noxious weed into or through the United States, or interstate, if application is made for such movement and if the Deputy Administrator determines that such movement, under conditions specified in the permit, would not involve a danger of dissemination of the noxious weed in the United States, or interstate; otherwise such a permit will not be issued.

* * * * *

(e) The Deputy Administrator may revoke any outstanding permit issued

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under this section, and may deny future permit applications, if the Deputy Administrator determines that the issuee has failed to comply with any provision of the Act or this section, including conditions of any permit issued. Upon request, any permit holder will be afforded an opportunity for a hearing with respect to the merits or validity of any such revocation involving his or her permit.

(Approved by the Office of Management and Budget under control number 0579–0054)

Done in Washington, DC, this 23rd day of July 1999.

Alfonso Torres,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–19420 Filed 7–28–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV98–920–4 FR]

Kiwifruit Grown in California; Changes in Minimum Size, Pack, Container, and Inspection Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the minimum size, pack, container, and inspection requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule specifies minimum size requirements for all kiwifruit as a maximum of 55 pieces of fruit in an 8-pound sample regardless of pack style; requires that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; and makes minor changes to clarify pack and container marking requirements for several containers. In addition, this rule continues, for the 1999–2000 season, the suspension of minimum net weight requirements for kiwifruit tray packs scheduled to expire at the end of the 1998–1999 season. Also, continued for the 1999–2000 season is the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates. These changes clarify the minimum size, pack, and container requirements, and are expected to reduce handler packing costs, increase producer returns, and enable handlers to compete more effectively in the marketplace.

EFFECTIVE DATE: This final rule becomes effective August 1, 1999. The suspension of §§ 920.302(a)(4)(iii), and 920.155 expires on August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the minimum size, pack, container, and inspection requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Committee.

This rule specifies the minimum size requirements for all kiwifruit as a maximum of 55 pieces of fruit in an 8-pound sample regardless of pack style; requires that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; and makes minor changes to clarify pack and container marking requirements for several containers.

In addition, this rule continues, for the 1999–2000 season, the suspension of the minimum net weight requirements in § 920.302 (a)(4)(iii) for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays scheduled to expire at the end of the 1998–1999 season. This suspension action was implemented by an interim final rule published last September (63 FR 46861; September 3, 1998). No comments were received pursuant to the request for comments in the interim final rule. A final rule published last August suspended the requirement in § 920.155 that fruit must be reinspected if it has not been shipped by specified dates for the 1998–1999 season (63 FR 41390; August 4, 1998). This rule also continues the suspension of this requirement for the 1999–2000 season. These changes were unanimously recommended by the Committee. Clarification of the minimum size, pack, and container requirements are expected to reduce handler packing costs, increase producer returns, and enable handlers to compete more effectively in the marketplace.

The interim final rule published last September also increased the size variation tolerance, from 10 percent, by count, in any one container, to 25 percent, by count, for Size 42 kiwifruit, and the maximum number of fruit per 8-pound sample for Sizes 42, 39, 36, 33, and 30 of kiwifruit packed in bags, volume fill, or bulk containers for the 1998–1999 and future seasons. This action does not change these provisions.

In early November 1998, the Department determined that suspending the minimum net weight requirements as specified in § 920.302(a)(4)(iii) without redefining the size designation definition in § 920.302 (b)(2) had inadvertently limited application of the minimum size requirements to volume fill packs.

The Committee met on November 19, 1998, and clarified that its original intent had been to maintain the minimum size requirement on all kiwifruit regardless of pack style. The Committee discussed changing the regulatory language so that minimum size applied to all pack styles for the remainder of the 1998–1999 season, but concluded that it would be unfair to growers and handlers to change this requirement in mid-season. The Committee believed that orderly marketing would continue as harvest was nearly completed at the time of the November 1998 meeting and because a small amount of minimum size kiwifruit had been packed in trays.

The Committee met again on January 13, 1999, to discuss industry issues and to make preliminary recommendations for the 1999–2000 season. The Committee concluded that the recommended changes made for the 1998–1999 season had benefitted the industry. Both small and large handlers were able to reduce packing costs and compete more effectively in the marketplace because of the relaxations made to the requirements.

The Committee made the following preliminary recommendations for the 1999–2000 season: (1) Specify that minimum size requirements apply to all kiwifruit regardless of pack style and define Size 45 in terms of weight and not pack requirements; (2) make minor changes to clarify pack and container marking requirements for several containers; (3) continue the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates for the 1999–2000 season; and (4) continue the suspension of the minimum net weight requirements for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays for the 1999–2000 season.

Later in January, the kiwifruit industry held meetings in Northern and Southern California to further study the minimum size issue. Studies showed that while Size 45 fruit filled Size 45 cell cups well during the 1998–1999 season, the fruit packed would not have met the suspended minimum net weight requirement of 6.5 pounds because of the cup size used in the Size 45 tray, and also because the shape and density of fruit varies from year to year. A Size 45 tray of kiwifruit weighing a minimum of 6.5 pounds is equivalent to a maximum of 55 pieces of fruit in an 8-pound sample. Based on these findings, the Committee determined that the minimum net weight requirements for Size 45 should be studied further.

The Committee met on February 25, 1999, and unanimously recommended the following changes and clarifications for the 1999–2000 season: (1) Specify that the minimum size requirements be defined as a maximum of 55 pieces of fruit in an 8-pound sample and that the minimum size requirements should apply to all kiwifruit regardless of pack style; (2) require that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; (3) make minor changes to clarify pack and container marking requirements for several containers; (4) continue the suspension of the minimum net weight requirements for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays for the 1999–2000 season; and (5) continue the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates for the 1999–2000 season. The Committee further recommended that all rule and regulation changes begin as soon as possible to enable handlers to make operational decisions in time for the 1999–2000 harvest and shipping season.

Revisions for the 1999–2000 Season

Clarification of the Minimum Size Requirements

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Section 920.52 authorizes the establishment of minimum size, pack, and container requirements. Section 920.302(a)(2) of the order's rules and regulations outlines the minimum size requirements for fresh shipments of California kiwifruit and provides that such kiwifruit shall be at least a minimum Size 45.

Section 920.302(a)(4)(iii) specifies minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Section 920.302(b)(2) of the order's rules and regulations defines size designation to mean the same as defined in the table in paragraph (a)(4)(iii) of this section.

As previously mentioned, the Committee unanimously recommended suspending the minimum net weight requirements specified in § 920.302(a)(4)(iii) for the 1998–1999 season. This recommendation was implemented through an interim final rule published September 3, 1998 (63 FR 46861).

In early November 1998, the Department determined that suspending § 920.302(a)(4)(iii) without redefining the size designation definition in § 920.302(b)(2) had inadvertently limited application of the minimum size requirements to bulk bins, bags, consumer packs, master containers, and volume fill containers.

The Committee members attended a meeting in November 1998 and again in January 1999 wherein they clarified their initial intent, and set preliminary recommendations for the 1999–2000 season.

The Committee met on February 25, 1999, unanimously recommended that kiwifruit be at least a minimum Size 45, and that Size 45 be defined in terms of weight and not pack requirements. Size 45 was defined as a maximum of 55 pieces of fruit in an 8-pound sample. This recommendation reflected the Committee's original intent to apply uniform minimum size requirements to all kiwifruit regardless of pack style. To further clarify its intent, the Committee recommended adding the size definition to the size requirements in § 920.302(a)(2), deleting the size designation definition in § 920.302(b)(2), and defining Size 45 in terms of weight and not pack.

The Committee considered establishing a count of 58 or 59 pieces of slightly smaller fruit for the Size 45 trays, but concluded that the count should remain a maximum of 55 pieces of fruit per 8-pound sample because the current minimum size continues to prevent shipments of low-quality, undersized fruit, and because repacking problems during the 1998–1999 season resulted from an outdated cup size in the Size 45 tray and not from the current minimum size.

Over the years, the size designation for Size 45 has changed, but the tray inserts for this size fruit have not changed. In 1989, the size designation for Size 45 was changed to 57 pieces of fruit per 8-pound sample and remained there until 1994, when Size 45 became the minimum size and was defined as 55 pieces of fruit per 8-pound sample.

Kiwifruit was not packed in Size 45 trays during the three seasons preceding the 1998–1999 season as it was not

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profitable for growers. A small amount of kiwifruit of this size was packed during the 1998–1999 season. The Committee believes the molded trays utilized during the 1998–1999 season were manufactured prior to 1994, that the cell cups of these molded trays were designed to fit smaller fruit, and that the size of the cups contributed to the packing problems associated with Size 45 trays during the 1998–1999 season.

Tray manufacturers attending Committee meetings in January and February 1999 expressed interest in working with the industry in developing molded tray inserts with slightly larger cell cups for Size 45 trays. These slightly larger cell cups allow slightly larger fruit to be packed and thus enable the minimum size requirements to be met.

As a result, the Committee unanimously recommended that the minimum size for all pack styles be established as a maximum of 55 pieces of fruit in an 8-pound sample. These changes will not impact the kiwifruit import regulation implemented under section 8e of the Act, because this recommendation will only clarify that the minimum size requirements apply to all shipments.

The Committee further recommended that all rules and regulation changes begin as soon as possible to enable handlers to make operational decisions in time for the 1999–2000 harvest and shipping season.

Lot Stamp Requirement

Section 920.303 of the order's rules and regulations outlines container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(d) requires all exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector. Individual consumer packages and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service are not subject to these requirements.

Prior to the 1998–1999 season, handlers did not place individual consumer packages directly on pallets for shipping. Individual consumer packages were placed in master containers and the master containers bore the container marking requirements.

During the 1998–1999 season, new individual consumer packages that interlock and fit on a pallet were utilized. These individual consumer packages are stacked six packages by six packages on a pallet resulting in 36 individual consumer packages per layer. Pallets are normally stacked 8–10 layers high. The Committee determined that this style of container will not meet the current marking requirements of not less than 75 percent of the total containers on a pallet being plainly marked with the lot stamp number. Due to the size and configuration of the interlocking individual consumer packages, approximately 57 percent of the individual consumer packages will be marked if all exposed or outside containers are marked with the lot stamp number.

Therefore, when the Committee met on February 25, 1999, they unanimously recommended adding language to § 920.303(d) to require individual consumer packages placed directly on a pallet to have all exposed containers plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or that a total of four placards be applied to the pallet of kiwifruit. The Committee believes that relaxing the requirement to have all exposed or outside containers and at least 75 percent of the containers on the pallet marked with the lot stamp number, will allow handlers to ship individual consumer packages without incurring the additional costs of marking containers that are not exposed, and slowing down the packing line to mark the containers.

Changes To Clarify Pack and Container Marking Requirements

Section 920.303 of the order's rules and regulations outlines container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(c)(3) establishes how the quantity shall be marked on bulk bins and requires the quantity to be indicated in terms of the size designation and net weight, or in terms of the size designation, net weight, and count.

Section 920.303(c)(5) establishes how the quantity shall be marked on individual consumer packages and requires that the quantity shall be indicated in terms of either net weight or count (or both) for individual consumer packages. It further requires that if count is used, it must be accompanied by the size designation.

At the February 25, 1999, meeting, the Committee recommended the following changes to pack requirements in §§ 920.302(a)(4)(ii) and (iv): (1) Change language in the first table of § 920.302(a)(4)(ii) as follows: Change "Sizes" to "Count," change "30 or larger" to "30 or less," and change "39 or smaller" to "39 or more'; (2) add language to § 920.302(a)(4)(ii) to exclude individual consumer packages from the list of containers that utilize the size variation tolerance table for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays; (3) change language in the second table of § 920.302(a)(4)(ii) from "Sizes" to "Size Designation'; (4) change language in § 920.302(a)(4)(ii) to add individual consumer packages to the list of containers which specifies size variation tolerances for kiwifruit packed in bags, volume fill, or bulk containers; and (5) change language in § 920.302(a)(4)(iv) by adding "individual consumer packages" to the list of containers in the table specifying the numerical size and maximum number of fruit per 8-pound sample; delete the word "numerical" when describing size; and delete the words "Column 1," "Column 2," and "Numerical Count" from the size designation table in § 920.302(a)(4)(iv) as they are not necessary.

These changes will: (1) Reflect current industry practices; (2) clarify that the size variation tolerances which are applied to fruit packed in volume fill containers are also applied to individual consumer packages; (3) clarify that the size designation chart is utilized to determine the maximum number of fruit per 8-pound sample for individual consumer packages; and (4) delete unnecessary language.

The Committee also recommended the following changes to container requirements in §§ 920.303(c)(3) and (5) as follows: (1) Change language in § 920.303(c)(3) by adding "individual consumer packages not within a master container" to the list of containers in the size designation table specifying the size and maximum number of fruit per 8-pound sample; (2) delete the word "bins" and replace it with "containers'; (3) delete the words "net weight" as they are not necessary; and (4) change language in § 920.302(a)(5) by adding "within a master container" after individual consumer packages.

These changes will ensure that marking requirements are clearly defined for individual consumer packages placed directly on a pallet as well as those packed within a master container.

Continuation of 1998–1999 Season Suspended Actions for the 1999–2000 Season

Continued Suspension of Minimum Net Weight Requirements for Trays

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iii) specifies minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Prior to the 1989–1990 season, there were no minimum tray weight requirements although 73.5 percent of the crop was packed in trays. During the 1989–1990 season, minimum tray weights were mandated, as there were many new packers involved in the kiwifruit packing process and stricter regulations were viewed as necessary to provide uniform container weights for each size. However, since that season the proportion of the crop packed in trays has steadily declined.

During the 1997–1998 season, only 15.5 percent of the crop was packed into molded trays and less than 1 percent of this fruit was rejected for failure to meet minimum tray weights. As a consequence, the Committee believed that minimum tray weight requirements might no longer be necessary to maintain uniformity in the marketplace.

Prior to the 1998–1999 season handlers were required to meet the minimum net weight requirements as shown in the following chart:

Count designation of fruit	Minimum net weight of fruit (Pounds)
34 or larger	7.5
35 to 37	7.25
38 to 40	6.875
41 to 43	6.75
44 and smaller	6.5

The Committee met on July 8, 1998, and unanimously recommended suspension of the minimum net weight requirements for kiwifruit packed in cell compartments, cardboard fillers, or molded trays for the 1998–1999 season. Section 920.302(a)(4)(iii) was suspended for the 1998–1999 season by an interim final rule published September 3, 1998 (63 FR 14861).

As previously mentioned, both small and large handlers were able to reduce packing costs and to compete more effectively in the market during the 1998–1999 season because of the relaxation in packing requirements. The industry continued to pack well filled trays without having to spend the extra time weighing them. There was no reduction in the uniform appearance of fruit packed into trays.

Therefore, when the Committee met on January 13, 1999, to consider its preliminary recommendations for the season, it concluded that minimum net weight requirements for trays should continue to be suspended for the 1999–2000 season.

The Committee met on February 25, 1999, and unanimously recommended continuing the suspension of § 920.302(a)(4)(iii) for the 1999–2000 season. The 1999–2000 season ends July 31, 2000. The Committee plans to further evaluate the benefits during the 1999–2000 season.

Continued Suspension of Reinspection Requirement

Section 920.55 of the order requires that prior to handling any variety of California kiwifruit, such kiwifruit shall be inspected by the Federal or Federal-State Inspection Service (inspection service) and certified as meeting the applicable grade, size, quality, or maturity requirements in effect pursuant to § 920.52 or § 920.53.

Section 920.55(b) provides authority for the establishment, through the order's rules and regulations, of a period prior to shipment during which inspections must be performed.

Prior to its suspension for the 1998–1999 season, § 920.155 of the order's rules and regulations specified that the certification of grade, size, quality, and maturity of kiwifruit pursuant to § 920.52 or § 920.53 during each fiscal year is valid until December 31 of such year or 21 days from the date of inspection, whichever is later. Any inspected kiwifruit to be shipped after the certification period lapses was required to be reinspected and recertified before shipment.

Section 920.155 was suspended for the 1998–1999 season by a final rule published August 1, 1998 (63 FR 41390). The Committee recommended this suspension to lessen the expenses upon the many kiwifruit growers who had either lost money or merely recovered their production costs in recent years. It concluded that the cost of reinspecting kiwifruit was too high to justify requiring it in view of the limited benefit reinspection provides. The Committee also believed it was no longer necessary to have fruit reinspected to provide consumers with a high quality product because storage and handling operations had improved in the industry.

During the 1998–1999 season, handlers voluntarily checked stored fruit prior to shipment to ensure that the condition of the fruit had not deteriorated. This enabled handlers to ship quality kiwifruit during the 1998–1999 season without the necessity for reinspection and recertification and the costs associated with such requirements. The Committee had estimated that handlers would save $50,000 by conducting their own reinspection during the 1998–1999 season.

At the February 25, 1999, meeting, the Committee unanimously recommended suspending § 920.155 for the 1999–2000 season. The Committee still believes that handlers saved $50,000 by conducting their own reinspection during the 1998–1999 season even though the marketed crop was less than projected, more fruit was in-line inspected than projected, and shipments had started later during the 1998–1999 season than anticipated.

Although freezing temperatures and winds during the spring have reduced the size of the 1999–2000 crop, the Committee believes the industry will continue to benefit from conducting its own reinspection.

The Committee plans to evaluate this suspension one more season before making a decision to permanently remove this requirement from the rules and regulations. Thus, the Committee unanimously recommended suspending § 920.155 for the 1999–2000 season. The 1999–2000 season ends July 31, 2000.

Maintaining Current Regulatory Changes

Maintaining the Current Size Variation Tolerance for Size 42 Kiwifruit

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(ii) specifies size variation ranges in terms of fruit diameter for each size of kiwifruit and size variation tolerances.

Section 920.302(a)(4)(ii) was revised by an interim final rule published September 3, 1998 (63 FR 46861) to include a provision to increase the size variation tolerance for Size 42 kiwifruit from 10 percent, by count, to 25 percent, by count.

During the 1998–1999 season a significantly smaller amount of kiwifruit was packed into the 40 series sizes than anticipated. Only 7 percent of the fruit was packed into Size 42 containers, and only 15.3 percent was packed into Size 42 and 45 containers. This is significantly less than the previous two years when 35 percent of the fruit was packed into the 40 series sizes.

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In addition, size variation was not a problem for Size 42 fruit during the 1998–1999 season, as the majority of the fruit was round and short and not a mixture of round and flat fruit. A typical crop has a mixture of round and flat fruit. A mixture of round and flat fruit is difficult to pack and slows down the packing line.

The Committee believes that maintaining the increased size variation tolerance for Size 42 kiwifruit for the 1999–2000 season will continue to benefit the industry by easing the packing burden and reducing costs, while maintaining uniform looking boxes of fruit desired by customers.

Maintaining the Current Maximum Number of Fruit per 8-Pound Sample for Kiwifruit Packed in Bags, Volume Fill, or Bulk Containers

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iv) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume fill, or bulk containers.

Section 920.302(a)(4)(iv) was revised by an interim final rule published September 3, 1998 (63 FR 46861) to include a provision that increased the maximum number of fruit per 8-pound sample for Sizes 42 through 30. Size 42 fruit is smaller than Size 30 fruit. The size designation chart below depicts these changes:

Size designation	Maximum number of fruit per 8 pound sample
21	22
25	27
27/28	30
30	33
33	36
36	42
39	48
42	53
45	55

Currently, under the rules and regulations, kiwifruit packed in bags, volume fill, or bulk containers, must not exceed the maximum number of fruit per an 8-pound sample for each size designation.

Under the current regulations, handlers are better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. California handlers are applying weight standards that are similar to those used by importers, thereby lessening confusion in the marketplace and facilitating the marketing of California kiwifruit.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 60 handlers of California kiwifruit subject to regulation under the marketing order and approximately 450 producers in the production area. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. One of the 60 handlers subject to regulation has annual kiwifruit receipts of at least $5,000,000. This figure excludes receipts from any other sources. The remaining 59 handlers have annual receipts less than $5,000,000, excluding receipts from other sources. In addition, 10 of the 450 producers subject to regulation have annual sales of at least $500,000, excluding receipts from any other sources. The remaining 440 producers have annual sales less than $500,000, excluding receipts from any other sources. Therefore, a majority of the kiwifruit handlers and producers may be classified as small entities.

This final rule changes minimum size, pack, container, and inspection requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Committee.

This rule specifies the minimum size requirements for all kiwifruit as a maximum of 55 pieces of fruit in an 8-pound sample regardless of pack style; requires that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; and makes minor changes to clarify pack and container marking requirements for several containers.

In addition, this rule continues, for the 1999–2000 season, the suspension of the minimum net weight requirements in § 920.302 (a)(4)(iii) for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays scheduled to expire at the end of the 1998–1999 season. This suspension action was implemented by an interim final rule published last September (63 FR 46861; September 3, 1998). A final rule published last August suspended, for the 1998–1999 season, the requirement in § 920.155 that fruit must be reinspected if it has not been shipped by specified dates (63 FR 41390; August 4, 1998). This rule also continues the suspension of this requirement for the 1999–2000 season.

These changes were unanimously recommended by the Committee. Clarification of the minimum size and changes to the pack and container requirements are expected to reduce handler packing costs, increase producer returns, and enable handlers to compete more effectively in the marketplace.

The interim final rule published last September also increased the size variation tolerance for Size 42 kiwifruit and the maximum number of fruit for the 8-pound sample for the 1998–1999 and future seasons. No changes are being made to these provisions by this action.

In early November 1998, the Department determined that suspending the minimum net weight requirements as specified in § 920.302(a)(4)(iii) without redefining the size designation definition in § 920.302(b)(2) had inadvertently limited application of the minimum size requirements to volume fill packs.

The Committee met on November 19, 1998, and clarified that the intent of its July 8, 1998, recommendation had been to maintain the minimum size requirement on all kiwifruit regardless of pack style. The Committee discussed changing the regulatory language so that minimum size applied to all pack styles for the remainder of the 1998–1999 season, but concluded that it would be unfair to growers and handlers to change this requirement in mid-season. The Committee believed that orderly marketing would continue as harvest was nearly completed at the time of the November 1998 meeting and because a small amount of minimum size kiwifruit had been packed in trays.

The Committee met again on January 13, 1999, to discuss industry issues and to make preliminary recommendations for the 1999–2000 season. The Committee concluded that the recommended changes made for the season had benefitted the industry. Both small and large handlers were able to reduce packing costs and compete more effectively in the marketplace in the 1998–1999 season because of the relaxations made to the requirements.

The Committee made the following preliminary recommendations for the 1999–2000 season: (1) Specify that minimum size requirements apply to all kiwifruit regardless of pack style and define Size 45 in terms of weight and not pack requirements; (2) make minor changes to clarify pack and container marking requirements for several containers; (3) continue the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates for the 1999–2000 season; and (4) continue the suspension of the minimum net weight requirements for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays for the 1999–2000 season.

Later in January the kiwifruit industry held meetings in Northern and Southern California to further study the minimum size issue. Studies showed that while Size 45 fruit filled Size 45 cell cups well during the 1998–1999 season, the fruit packed would not have met the suspended minimum net weight requirement of 6.5 pounds because of the cup size used in the Size 45 tray, and also because the shape and density of fruit varies from year to year. A Size 45 tray of kiwifruit weighing a minimum of 6.5 pounds is equivalent to a maximum of 55 pieces of fruit in an 8-pound sample. Based on these findings, the Committee determined that the minimum net weight requirements for Size 45 should be further evaluated.

The Committee met on February 25, 1999, and unanimously recommended the following changes and clarifications for the 1999–2000 season: (1) Specify that the minimum size requirements be defined as a maximum of 55 pieces of fruit in an 8-pound sample and that the minimum size requirements should apply to all kiwifruit regardless of pack style; (2) require that individual consumer packages placed directly on a pallet be stamped with the applicable inspection lot number; (3) make minor changes to clarify pack and container marking requirements for several containers; (4) continue the suspension of the minimum net weight requirements for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays for the 1999–2000 season; and (5) continue the suspension of the requirement that fruit must be reinspected if it has not been shipped by specified dates for the 1999–2000 season. The Committee further recommended that all rule and regulation changes begin as soon as possible to enable handlers to make operational decisions in time for the 1999–2000 harvest and shipping season.

Revisions for the 1999–2000 Season

Clarification of the Minimum Size Requirement

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Section 920.52 authorizes the establishment of minimum size, pack, and container requirements. Section 920.302(a)(2) of the order's rules and regulations outlines the minimum size requirements for fresh shipments of California kiwifruit and provides that such kiwifruit shall be at least a minimum Size 45.

Section 920.302(a)(4)(iii) specifies minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Section 920.302(b)(2) of the order's rules and regulations defines size designation to mean the same as defined in the table in paragraph (a)(4)(iii) of this section.

Prior to the 1998–1999 season, the minimum size for kiwifruit was defined as a maximum of 55 pieces of fruit in an 8-pound sample regardless of pack style. As previously mentioned, a change of pack requirements recommended by the Committee last summer and implemented by an interim final rule published on September 3, 1998 (63 FR 46861) unintentionally limited application of minimum size requirements to kiwifruit packed in bulk bins, bags, consumer packs, master containers and volume fill containers. The Committee members attended a meeting in November 1998 and again in January 1999 wherein they clarified their initial intent, and set preliminary recommendations for the 1999–2000 season.

On February 25, 1999, the Committee unanimously recommended that kiwifruit be at least a minimum Size 45, and that Size 45 be defined in terms of weight and not pack requirements. The Committee recommended that Size 45 be defined as a maximum of 55 pieces of fruit in an 8-pound sample. This recommendation reflected the Committee's original intent to apply uniform minimum size requirements to all kiwifruit regardless of pack style. To further clarify its intent, the Committee recommended adding the size definition to the size requirements in § 920.302(a)(2), deleting the size designation definition in § 920.302(b)(2), and defining Size 45 in terms of weight and not pack.

The Committee considered other alternatives to maintaining Size 45, defined as a maximum of 55 pieces of fruit in an 8-pound sample, as the minimum size, but determined that these alternatives will not adequately address the industry's problems. The Committee discussed establishing two minimum net weight requirements, a lower net weight requirement for Size 45 fruit packed into trays and a higher net weight requirement for Size 45 kiwifruit packed into volume fill containers. This suggestion was not acceptable as the Committee believed pack style should not be the deciding factor in what size fruit is acceptable and that lower weights on trays would discriminate against Size 45 kiwifruit packed into containers other than trays. In addition, members commented that packers of volume fill containers might then have to meet a more restrictive minimum size requirement than importers of kiwifruit, and that two different minimum size requirements could cause confusion in the marketplace and result in disorderly marketing.

The Committee also considered establishing a count of 58 or 59 pieces of fruit for the Size 45 trays, but concluded that the count should remain a maximum of 55 pieces of fruit per 8-pound sample because the current minimum size continues to prevent shipments of low-quality, undersized fruit, and because repacking problems during the 1998–1999 season resulted from the cup size in the Size 45 tray and the variance in the shape and density of the fruit from year to year, and not from the current minimum size.

Over the years, the size designation (pieces of fruit) for Size 45 has changed, but the tray inserts for this size fruit have not changed. In 1989, the size designation for Size 45 was changed to 57 pieces of fruit per 8-pound sample and remained there until 1994, when Size 45 became the minimum size and was defined as 55 pieces of fruit per 8-pound sample.

Kiwifruit was not packed in Size 45 trays during the three seasons preceding the 1998–1999 season as it was not profitable for growers. A small amount of kiwifruit was packed during the 1998–1999 season. The Committee believes that the molded trays utilized during the 1998–1999 season were manufactured prior to 1994, that the cell cups of these molded trays were

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designed to fit smaller fruit, and that the size of the cups contributed to the packing problems associated with Size 45 trays during the 1998–1999 season.

Tray manufacturers attending Committee meetings in January and February 1999 expressed interest in working with the industry in developing molded tray inserts with slightly larger cell cups for Size 45 trays. These slightly larger cell cups would allow slightly larger fruit to be packed and thus enable the minimum size requirements to be met.

As a result, the Committee unanimously recommended that the minimum size for all pack styles be established as a maximum of 55 pieces of fruit in an 8-pound sample. These changes would not impact the kiwifruit import regulation implemented under section 8e of the Act, because this recommendation would only clarify that the minimum size requirement applies to all shipments regardless of pack style.

The Committee further recommended that all rule and regulation changes begin as soon as possible to enable handlers to make operational decisions in time for the 1999–2000 harvest and shipping season.

Lot Stamp Requirement

Section 920.303 of the order's rules and regulations outlines container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(d) requires all exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector. Individual consumer packages and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service are not subject to this requirement.

Prior to the 1998–1999 season, handlers did not place individual consumer packages directly on pallets for shipping. Individual consumer packages were placed in master containers and the master containers bore the container marking requirements.

During the 1998–1999 season, new individual consumer packages that interlock and fit on a pallet were utilized. These individual consumer packages are stacked six packages by six packages on a pallet resulting in 36 individual consumer packages per layer. Pallets are normally stacked 8–10 layers high. The Committee determined that this style of container would not meet the current marking requirements of not less than 75 percent of the total containers on a pallet being plainly marked with the lot stamp number. Due to the size and configuration of the interlocking individual consumer packages, approximately 57 percent of the individual consumer packages would be marked if all exposed or outside containers are marked with the lot stamp number.

Therefore, when the Committee met on February 25, 1999, it unanimously recommended adding language to § 920.303(d) that would require individual consumer packages placed directly on a pallet to have all exposed containers plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or that a total of four placards be applied to the pallet of kiwifruit. The Committee believes that relaxing the requirement to have all exposed or outside containers and at least 75 percent of the containers on the pallet marked with the lot stamp number, would allow handlers to ship individual consumer packages without incurring the additional costs of marking containers that are not exposed, and slowing down the packing line to mark the containers.

The Committee considered other alternatives to the requirement to stamp all exposed or outside containers, or to attach four placards to the pallet, but determined that these suggestions would not adequately address the positive lot identification requirements.

One suggestion was to utilize one or two placards, but the industry believed that four placards (one on each side) would be a more adequate means of ensuring that the pallet met the positive lot identification (PLI) requirements.

Another suggestion was to identify each package in such a way that it could be traced back to the original inspection certificate. Placing date codes or other types of codes on every container prior to palletizing and using that as PLI on the inspection certificate was discussed. The Committee did not adopt this suggestion as it believed that all containers, including those in the center stacks would have to be marked with a special code, and that this would be more restrictive than current requirements for other containers placed on pallets. The Committee also believed that this might slow down the packing process, thus resulting in increased packing costs.

After considering the alternatives, the Committee unanimously recommended that individual consumer packages placed directly on a pallet have all exposed containers plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or that a total of four placards be applied to the pallet of kiwifruit.

Changes To Clarify Pack and Container Marking Requirements

Section 920.303 of the order's rules and regulations outlines container marking requirements for fresh shipments of California kiwifruit.

Section 920.303(c)(3) establishes how the quantity shall be marked on bulk bins and requires the quantity to be indicated in terms of the size designation and net weight, or in terms of the size designation, net weight, and count.

Section 920.303(c)(5) establishes how the quantity shall be marked on individual consumer packages and requires that the quantity shall be indicated in terms of either net weight or count (or both) for individual consumer packages. It further requires that if count is used, it must be accompanied by the size designation.

At the February 25, 1999, meeting, the Committee recommended the following changes to pack requirements in §§ 920.302(a)(4)(ii) and (iv): (1) Change language in the first table of § 920.302(a)(4)(ii) as follows: Change "Sizes" to "Count," change "30 or larger" to "30 or less," and change "39 or smaller" to "39 or more"; (2) add language to § 920.302(a)(4)(ii) to exclude individual consumer packages from the list of containers that utilize the size variation tolerance table for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays; (3) change language in the second table of § 920.302(a)(4)(ii) from "Sizes" to "Size Designation"; (4) change language in § 920.302(a)(4)(ii) to add individual consumer packages to the list of containers which specifies size variation tolerances for kiwifruit packed in bags, volume fill, or bulk containers; and (5) change language in § 920.302(a)(4)(iv) by adding "individual consumer packages" to the list of containers that utilize the table which specifies the numerical size and maximum number of fruit per 8-pound sample; delete the word "numerical" when describing size; and delete the words "Column 1," "Column 2," and "Numerical Count" from the size designation table in § 920.302(a)(4)(iv) as they are not necessary.

These changes will: (1) Reflect current industry practices; (2) clarify that the size variation tolerances which are applied to fruit packed in volume fill containers are also applied to individual consumer packages; (3) clarify that the

size designation chart is utilized to determine the maximum number of fruit per 8-pound sample for individual consumer packages; and (4) delete unnecessary language.

The Committee also recommended the following changes to container requirements in §§ 920.303(c)(3) and (5) as follows: (1) Change language in § 920.303(c)(3) by adding "individual consumer packages not within a master container" to the list of containers in the size designation table specifying the size and maximum number of fruit per 8-pound sample; (2) delete the word "bins" and replace it with "containers"; (3) delete the words "net weight" as they are not necessary; and (4) change language in § 920.302(a)(5) by adding "within a master container" after individual consumer packages.

These changes clearly define marking requirements for individual consumer packages placed directly on a pallet as well as those packed within a master container.

Continuation of 1998–1999 Season Suspended Actions for the 1999–2000 Season

Continued Suspension of Minimum Net Weight Requirements for Trays

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Before the suspension action last September, § 920.302(a)(4)(iii) specified minimum net weight requirements for fruit of various sizes packed in containers with cell compartments, cardboard fillers, or molded trays.

Prior to the 1989–1990 season, there were no minimum tray weight requirements although 73.5 percent of the crop was packed in trays. During the 1989–1990 season, minimum tray weights were mandated, as there were many new packers involved in the kiwifruit packing process and stricter regulations were viewed as necessary to provide uniform container weights for each size. However, since that season the proportion of the crop packed in trays has steadily declined.

During the 1997–1998 season, only 15.5 percent of the crop was packed into molded trays and less than 1 percent of this fruit was rejected for failure to meet minimum tray weights. As a consequence, the Committee believed that minimum tray weight requirements might no longer be necessary to maintain uniformity in the marketplace.

Prior to the 1998–1999 season handlers were required to meet the minimum net weight requirements as shown in the following chart:

Count designation of fruit	Minimum net weight of fruit (Pounds)
34 or larger	7.5
35 to 37	7.25
38 to 40	6.875
41 to 43	6.75
44 and smaller	6.5

The Committee met on July 8, 1998, and unanimously recommended suspension of the minimum net weight requirements for kiwifruit packed in cell compartments, cardboard fillers, or molded trays for the 1998–1999 season. Section 920.302(a)(4)(iii) was suspended for the 1998–1999 season by an interim final rule published September 3, 1998 (63 FR 46861).

As previously mentioned, both small and large handlers were able to reduce packing costs and to compete more effectively in the market during the 1998–1999 season because of the relaxation in packing requirements. The industry continued to pack well filled trays without having to spend the extra time weighing them. There was no reduction in the uniform appearance of fruit packed into trays.

Therefore, when the Committee met on January 13, 1999, to consider its preliminary recommendations for the season, it concluded that minimum net weight requirements for trays should continue to be suspended for the 1999–2000 season.

The Committee met on February 25, 1999, and unanimously recommended continuing the suspension of § 920.302(a)(4)(iii) for the 1999–2000 season. The 1999–2000 season ends July 31, 2000. The Committee plans to further evaluate the benefits during the 1999–2000 season.

Continued Suspension of Reinspection Requirements

Section 920.55 of the order requires that prior to handling any variety of California kiwifruit, such kiwifruit shall be inspected by the Federal or Federal-State Inspection Service (inspection service) and certified as meeting the applicable grade, size, quality, or maturity requirements in effect pursuant to § 920.52 or § 920.53.

Section 920.55(b) provides authority for the establishment, through the order's rules and regulations, of a period prior to shipment during which inspections must be performed.

Prior to the 1998–1999 season, § 920.155 of the order's rules and regulations prescribed that the certification of grade, size, quality, and maturity of kiwifruit pursuant to § 920.52 or § 920.53 during each fiscal year was valid until December 31 of such year or 21 days from the date of inspection, whichever was later. Any inspected kiwifruit to be shipped after the certification period lapses was required to be reinspected and recertified before shipping.

Section 920.155 was suspended for the 1998–1999 season by a final rule published August 4, 1998 (63 FR 41390). The Committee recommended this suspension to lessen the expenses upon the many kiwifruit growers who had either lost money or merely recovered their production costs in recent years. It concluded that the cost of reinspecting kiwifruit was too high to justify requiring it in view of the limited benefit reinspection provides. The Committee also believed it was no longer necessary to have fruit reinspected to provide consumers with a high quality product because storage and handling operations had improved in the industry.

During the 1998–1999 season, handlers voluntarily checked stored fruit prior to shipment to ensure that the condition of the fruit had not deteriorated. This enabled handlers to ship quality kiwifruit during the 1998–1999 season without the necessity for reinspection and recertification and the costs associated with such requirements. The Committee had estimated that handlers will save $50,000 by conducting their own reinspection during the 1998–1999 season.

At the February 25, 1999, meeting, the Committee unanimously recommended suspending § 920.155 for the 1999–2000 season. The Committee still believes that handlers saved $50,000 by conducting their own reinspection during the 1998–1999 season even though the marketed crop was less than projected, more fruit was in-line inspected than projected, and shipments had started later during the 1998–1999 season than anticipated.

Although freezing temperatures and winds during the spring have reduced the 1999–2000 crop estimate, the Committee believes the industry will continue to benefit from conducting its own reinspection.

The Committee plans to evaluate this suspension one more season before making a decision to permanently remove this requirement from the rules and regulations. Thus, the Committee unanimously recommended suspending § 920.155 for the 1999–2000 season. The 1999–2000 season ends July 31, 2000.

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Maintaining Current Regulatory Changes

Maintaining the Current Size Variation Tolerance for Size 42 Kiwifruit

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(ii) specifies size variation ranges in terms of fruit diameter for each size of kiwifruit and size variation tolerances.

Section 920.302(a)(4)(ii) was revised by an interim final rule published September 3, 1998 (63 FR 46861) to include a provision to increase the size variation tolerance for Size 42 kiwifruit from 10 percent, by count, to 25 percent, by count.

During the 1998–1999 season, a significantly smaller amount of kiwifruit was packed into the 40 series sizes than anticipated. Only 7 percent of the fruit was packed into Size 42 containers, and only 15.3 percent was packed into Size 42 and 45 containers. This is significantly less than the previous two years when 35 percent of the fruit was packed into the 40 series sizes.

In addition, size variation was not a problem for Size 42 fruit during the 1998–1999 season, as the majority of the fruit was round and short and not a mixture of round and flat fruit. A typical crop has a mixture of round and flat fruit. A mixture of round and flat fruit is difficult to pack and slows down the packing line.

The Committee believes that maintaining the increased size variation tolerance for Size 42 kiwifruit for the 1999–2000 season will continue to benefit the industry by easing the packing burden and reducing costs, while maintaining uniform looking boxes of fruit desired by customers.

Maintaining the Current Maximum Number of Fruit Per 8-Pound Sample for Kiwifruit Packed in Bags, Volume Fill, or Bulk Containers

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iv) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume fill, or bulk containers.

Section 920.302(a)(4)(iv) was revised by an interim final rule published September 3, 1998 (63 FR 46861) to include a provision that increased the maximum number of fruit per 8-pound sample for Sizes 42 through 30. Size 42 fruit is smaller than Size 30 fruit. The size designation chart below depicts these changes:

Size designation	Maximum number of Fruit per 8 pound sample
21	22
25	25
27/28	30
30	33
33	36
36	42
39	48
42	53
45	55

Currently, under the rules and regulations, kiwifruit packed in bags, volume fill, or bulk containers, must not exceed the maximum number of fruit per an 8-pound sample for each size designation.

Under the current regulations, handlers are better able to meet the needs of buyers, because kiwifruit sells by the piece, and buyers desire as much fruit in each container as the container can comfortably hold. California handlers are applying weight standards that are similar to those used by importers, thereby lessening confusion in the marketplace and facilitating the marketing of California kiwifruit.

These changes address the marketing and shipping needs of the kiwifruit industry and are in the interest of handlers, producers, buyers, and consumers. The impact of these changes on producers and handlers is expected to be beneficial for all levels of business.

This action will not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the February 25, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 12 members. Three of these members are handlers and producers, eight are producers only, and one is a public member. The majority of the industry are small entities.

A proposed rule covering this action was published in the **Federal Register** on June 25, 1999 (64 FR 34144). Copies of the rule were mailed or sent via facsimile to all Committee members on June 25, 1999. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 20-day comment period was provided to allow interested persons to respond to this proposal. No comments were received. The interim final rule suspending, for the 1998–1999 season, the minimum net weight requirements in § 920.302(a)(4)(iii) for kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays was published last September (63 FR 46861; September 3, 1998). No comments were received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes pack and inspection requirements; (2) this rule continues to suspend for one more season, the pack and inspection requirements which were suspended from August 1, 1998 to July 31, 1999; (3) the 1999–2000 harvest is expected to begin the end of September, and this rule should be in effect before that time so producers and handlers can make plans to operate under the relaxed requirements; and (4) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 920.155 [Suspended]

2. In part 920, § 920.155 is suspended in its entirety effective August 1, 1999, through July 31, 2000.

3. Section 920.302 is amended:

A. By revising paragraphs (a)(2), (a)(4)(ii), and (a)(4)(iv)to read as set forth below;

B. By suspending paragraph (a)(4)(iii) effective August 1, 1999, through July 31, 2000;

C. By removing par. graph (b)(2) and redesignating paragraph (b)(1) as the text of paragraph (b).

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *

(2) *Size Requirements.* Such kiwifruit shall be at least a minimum Size 45. Size 45 is defined as a maximum of 55 pieces of fruit in an 8-pound sample.

* * * * *

(4) * * *

(ii) (A) Kiwifruit packed in cell compartments, cardboard fillers or molded trays (excluding individual consumer packages) may not vary in diameter more than:

Count	Diameter
30 or less	½-inch (12.7 mm).
31–38	⅜-inch (9.5 mm).
39 or more	¼-inch (6.4 mm).

(B) Kiwifruit packed in individual consumer packages, bags, volume fill, or bulk containers, fruit may not vary more than:

Size designation	Diameter
30 or larger	½-inch (12.7 mm).
33, 36, 39, and 42	⅜-inch (9.5 mm).
45 or smaller	¼-inch (6.4 mm).

(C) Not more than 10 percent, by count of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container, (except that for Sizes 42 and 45 kiwifruit, the tolerance, by count, in any one container, may not be more than 25 percent) may fail to meet the requirements of this paragraph.

* * * * *

(iv) When kiwifruit is packed in individual consumer packages, bags, volume fill or bulk containers, the following table specifying the size designation and maximum number of fruit per 8-pound sample is to be used.

Size designation	Maximum number of fruit per 8-pound sample
21	22
25	27
27/28	30
30	33
33	36
36	42
39	48
42	53
45	55

* * * * *

4. In § 920.303, paragraphs (c)(3), (c)(5), and (d) are revised to read as follows:

§ 920.303 Container marking regulations.

(c) * * *

(3) For bulk containers or individual consumer packages not within a master container, the quantity shall be indicated in terms of the size designation and net weight, or in terms of the size designation and count.

* * * * *

(5) The quantity shall be indicated in terms of either net weight or count (or both) for individual consumer packages within a master container. If count is used, it must be accompanied by the size designation.

* * * * *

(d) All exposed or outside containers of kiwifruit, but not less than 75 percent of the total containers on a pallet, shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except for individual consumer packages within a master container and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service. Individual consumer packages of kiwifruit placed directly on a pallet shall have all outside or exposed packages on a pallet plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector or have one inspection label placed on each side of the pallet.

* * * * *

Dated: July 22, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–19092 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV99–979–1 FIR]

Melons Grown in South Texas; Change in Container Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule changing the handling regulation currently prescribed under the South Texas melon (cantaloupes and honeydews) marketing order. The marketing order regulates the handling of melons grown in South Texas and is administered locally by the South Texas Melon Committee (committee). This rule continues in effect changes to the dimensions of bulk containers used for shipping honeydew melons, requirements that these containers be octagonal or rectangular in shape, and the addition of a dimension tolerance for that container. It also continues the provisions allowing the committee to approve the use of experimental containers and melon shipments for experimental purposes, and the removal of two experimental containers that have not been used by the industry for several years. These changes were unanimously recommended by the committee and will enable handlers to compete more effectively in the marketplace.

EFFECTIVE DATE: August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail:

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Jay.Guerber@usda.gov. You may also view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988 Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect changes to the dimensions of bulk containers used for shipping honeydew melons, specifications for the shapes of these bulk containers, the addition of a dimension tolerance for that container, the addition of procedures that allow the committee to approve the use of experimental containers and melon shipments for experimental purposes, and the removal of two experimental containers that have not been used by the industry for several years. The changes will enable handlers to compete more effectively in the marketplace, better meet market needs, and prevent confusion in the industry. A subcommittee met on January 28, 1999, and unanimously recommended that the committee approve these changes to the regulation. The committee met and unanimously recommended the changes on March 30, 1999.

Section 979.52 authorizes the issuance of regulations for grade, size, maturity, quality, and pack of any or all varieties of melons during any period. Section 979.54 authorizes the issuance of regulations that modify, suspend, or terminate requirements issued under §§ 979.42, 979.52, or 979.60 to facilitate the handling of melons for special purposes. Section 979.55 requires adequate safeguards to ensure that melons handled under § 979.54 are used for the stated purposes.

Changes to the Bulk Container Requirements for Honeydew Melons

Section 979.304 of the order's rules and regulations sets container requirements for both cantaloupes and honeydew melons. Only honeydews are authorized to be packed in bulk containers. Thus, these changes to bulk container requirements do not apply to cantaloupes.

Prior to the issuance of the interim final rule, § 979.304(b)(4) authorized the use of a bulk container for honeydew melons and specified that the container be 48 inches long by 40 inches wide by 24 inches deep or similar dimensions. The phrase "or similar dimensions" was included to provide flexibility recognizing that the dimensions of containers sometimes are a little less or more than those specified in the regulation. The committee determined that the provisions were too flexible, and that the lack of specificity could result in administrative, compliance, and enforcement problems.

It now believes that a more precise tolerance is needed so there is no room for misinterpretation by the industry. The committee, therefore, recommended removing the phrase "or similar dimensions" and adding in its place provisions establishing a dimension tolerance of 1½ inch for each dimension. The 1½ inch tolerance for each dimension for this container will allow handlers to pack honeydew melons in containers with dimensions slightly different from the sizes specified in the regulation. Identifying a specific dimension tolerance in the regulation will prevent misunderstandings, and provide handlers the flexibility to use bulk containers with slight dimension variations when packing honeydew melons.

The committee also recommended allowing the depth of the bulk container to range between 24 and 36 inches to permit melon handlers to pack larger or a greater number of honeydew melons in the container, if they desire. The industry's need to pack larger or a greater number of honeydews in the bulk container, depending on buyer or retailer needs, led to this committee recommendation for increased container flexibility.

The committee further recommended that the shape of bulk containers used for honeydew melons be rectangular or octagonal. Currently, these are the only shapes used by handlers, and the limitation will not impose an added burden on handlers. The change is expected to foster compliance and simplify enforcement. Last season a total of 1,727 bulk containers were shipped by the industry, compared to 1,655 containers in 1997. Demand for bulk containers has increased in recent years because their use results in reduced costs to receivers. Bulk bins can be re-used, whereas other containers cannot. The cost of disposing of used containers has increased.

Addition of Provisions Allowing the Committee To Approve the Use of Experimental Containers and Melon Shipments for Experimental Purposes

The market for both cantaloupes and honeydew melons continues to undergo rapid changes. Buyers, retailers, and consumers continually demand flexibility in container availability. The committee is always looking for ways to strengthen and expand the market for melons. Except for an experimental honeydew pony carton that was removed by the interim final rule, there were no provisions in place allowing the committee to approve melon shipments for experimental purposes nor in experimental containers unless informal rulemaking was initiated. There are times during the melon shipping season when the trade is interested in receiving melons in containers other than those authorized by the regulations. The industry has been using only fiberboard containers, and they are interested in experimenting with plastic bins.

Not being able to respond quickly to market demands for testing different types of melon containers could have caused the South Texas melon industry to lose sales to competing melon-producing areas. Competition from other melon production areas demands that the Texas melon industry have the ability to quickly respond to buyer, retailer, and consumer demands for new containers. The committee may become aware of the need for new containers during the shipping season. The shipping season normally runs from May 1 through June 20 each year. For the committee to respond quickly to market needs for containers, it should have flexibility to approve the use of experimental containers whenever the need arises. Also, melon-producing areas without marketing orders are not bound by container restrictions and have the flexibility to use different types and sizes of containers as needed by consumers and retailers. The added flexibility allows handlers to better meet buyers' needs.

In addition, the committee recommended that provisions be added to the regulations to permit it to approve shipments for experimental purposes to allow the industry to test different types of melon shipments whenever needed to meet competition from other growing areas, and buyers' needs. Some handlers have expressed an interest in experimenting with the shipment of cantaloupe and honeydew melons in the same container.

Establishing provisions in the regulations to allow the committee to approve the use of experimental containers will allow the industry to respond quickly to market needs for containers not approved under the order's container regulations. Establishing provisions in the regulations to allow the committee to approve shipments for experimental purposes will allow the industry to test different types of melon shipments when needed.

Safeguards for these types of shipments are currently specified in paragraph (f) of § 979.304. A handler wanting an exemption for an experimental container or experimental use would apply to the committee for a Certificate of Privilege. The Certificate would be issued by the committee after consideration of the application. Handlers using a Certificate of Privilege are required to report each exempt shipment to the committee. This enables the committee to easily track such shipments, and ensure compliance with the order's rules and regulations.

Once the committee approves the use of experimental containers or experimental shipments, the industry will be able to determine the benefits and market acceptance of the containers and other types of shipments. Also, allowing handlers to ship melons in test containers enables the committee to determine whether such containers should be added to the permanent list of approved containers in the regulations.

Removal of Two Experimental Containers

An experimental honeydew pony carton added in 1985 to paragraph (e)(3) and a cantaloupe carton added in 1990 to paragraph (e)(4) in § 979.304 have not been used for several years. The committee, therefore, recommended that they be removed from the handling regulation.

Other Changes in the Regulations

Prior to the issuance of the interim final rule, the name of one of the designated inspection offices and the telephone area codes of the designated inspection offices in § 979.304(c)(4) were incorrect. To correct these references, the committee recommended that the name of the inspection office be changed to "Texas Cooperative Inspection Program" office and the telephone area codes be changed from "210" to "956."

In addition, in § 979.180 and § 979.304, the word "cantaloup" was misspelled. To correct the misspelling, all references to "cantaloup" were changed to "cantaloupe" by the interim final rule.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 14 handlers of South Texas melons who are subject to regulation under the marketing order and approximately 33 melon growers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural growers are defined as those having annual receipts of less than $500,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing melons. For the 1997–98 marketing year, 6,770 acres of production were shipped by the industry's 14 handlers; the average acreage and median acreage handled totaled 484 acres and 417 acres, respectively. In terms of production value, total revenues from the 14 handlers were estimated to be $16.4 million.

The Rio Grande Valley melon industry is characterized by growers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of melons. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the melon production season is complete. For this reason, typical melon growers and handlers either double-crop melons during other times of the year or produce alternate commodities, like onions.

Based on the SBA's definition of small entities, the committee estimates that a majority of the 14 handlers regulated by the order would be considered small entities if only their spring melon revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. Of the 33 growers within the production area, few have sufficient acreage to generate sales in excess of $500,000; therefore, the majority of growers may be classified as small entities.

This rule continues the changes to the container regulation to accurately identify the shapes and dimensions of bulk containers handlers use for shipping honeydew melons, the addition of procedures allowing the committee to approve use of experimental containers and melon shipments for experimental purposes, the removal of two experimental containers that have not been used by the industry for several years, and several minor modifications to update the regulations. These changes will enable handlers to compete more effectively in the marketplace, better meet market needs, and prevent confusion. A subcommittee met on January 28, 1999, and unanimously recommended that the committee approve these changes to the regulation. The committee met and unanimously recommended the changes on March 30, 1999.

Section 979.52 authorizes the issuance of regulations for grade, size, maturity, quality, and pack for any or all varieties of melons during any period. Section 979.54 authorizes the issuance of regulations that modify, suspend, or

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terminate requirements issued under §§ 979.42, 979.52, or 979.60 to facilitate handling of melons for special purposes. Section 979.55 requries adequate safeguards to ensure that melons handled under § 979.54 are used for the stated purpose.

At its meeting on March 30, 1999, the committee unanimously recommended revising § 979.304 as follows:

(1) Modify the bulk container requirements to accurately identify the shapes and dimensions of bulk containers used for shipping honeydew melons;

(2) Add provisions to allow the committee to approve the use of experimental containers and melon shipments for experimental purposes;

(3) Remove two experimental containers that have not been used by the industry for several years; and

(4) Make several minor modifications to update the regulations.

Changes in the Bulk Container Requirements for Honeydew Melons

Prior to the issuance of the interim final rule, § 979.304(b)(4) authorized the use of a bulk container for honeydew melons and specified that the container be 48 inches long by 40 inches wide by 24 inches deep or similar dimensions. The committee recommended that the regulation specify that the bulk containers be rectangular or octagonal, the types of containers currently being used by the industry, in order to help administer the program. Making the regulation more specific will foster compliance and simplify enforcement. Last season 1,727 of these bulk containers were shipped by the industry. Specifying the shape of the bulk container in the regulation cleared up any misunderstanding that any shape bulk container could be used for shipping honeydew melons.

The former regulation did not provide specific tolerances on the container dimensions, and the committee did not know exactly how "similar dimensions" was being interpreted. Differences in interpretation among handlers and the industry regarding the phrase "or similar dimensions" could have caused problems enforcing the marketing order program. A more precise tolerance was needed so that there was no room for misinterpretation by the industry. To clarify the industry's intentions, the committee recommended removing the phrase "or similar dimensions" and adding in its place, "A tolerance of 1½ inch for each dimension shall be permitted." The committee believes the recommendation to provide a 1½ inch tolerance for each dimension on this container has provided handlers some flexibility to pack honeydew melons in containers with slightly different dimensions from the sizes specified in the regulation. Identifying specific dimension tolerances in the regulation also has prevented possible misunderstandings on authorized container dimensions.

The committee also recommended increasing the depth allowance of the bulk container by 12 inches to permit melon handlers to pack larger or a greater number of honeydew melons in the container.

Adding tolerances to the dimensions of the approved bulk container and increasing the depth allowance has allowed the melon industry to accept containers with slight dimension variations from box manufacturers. This has given handlers additional flexibility in making container purchases.

The industry's need to pack larger or a greater number of honeydews in the bulk container, depending on buyer or retailer needs, led to the committee's recommendation to increase the depth allowance of the container by an additional 12 inches to permit a range from 24 to 36 inches deep.

Addition of Provisions Allowing the Committee To Approve the Use of Experimental Containers and Melon Shipments for Experimental Purposes

The marketplace continues to undergo rapid changes. Buyers, retailers, and consumers continually demand flexibility in container availability. The committee is always looking for ways to strengthen and expand the market for melons. Except for an experimental honeydew pony carton provision that was removed by the interim final rule, there were no procedures in place to allow the committee to approve melon shipments for experimental purposes nor in experimental containers unless they initiated informal rulemaking. There are times during the melon shipping season when the trade is interested in receiving melons in containers other than those authorized by the regulations. The industry has been using only fiberboard containers, and they are interested in experimenting with plastic bins. The committee did not have the flexibility to react quickly to the need for containers not approved for South Texas melon shipments. Not being able to respond quickly to market demands for testing different types of melon containers could have caused the South Texas melon industry to lose sales to competing melon-producing areas.

Competition from other melon production areas demands that the Texas melon industry be able to quickly respond to buyer, retailer, and consumer demands for new containers. Because the melon regulatory period begins May 1 each year and runs through June 20, the committee is not able to meet, approve regulatory changes, and promptly complete the rulemaking process in order to approve various types of experimental containers. The industry may not be aware of the need for new containers until it is in the middle of its shipping season. For the committee to respond quickly to market needs for containers which were not currently authorized, it needed the flexibility to approve the use of experimental containers whenever the need arose. Also, melon-producing areas without marketing orders are not bound by container restrictions and have the flexibility to use different types and sizes of containers as needed by consumers and retailers. The added flexibility will allow handlers to meet the competition from other areas and better meet buyers' needs. In addition, the committee recommended that provisions be added to the regulations to permit it to approve shipments for experimental purposes to allow the industry to test different types of melon shipments whenever needed. As mentioned before, some handlers have expressed an interest in experimenting with the shipment of cantaloupes and honeydew melons in the same container.

Establishing provisions to allow the committee to approve the use of experimental containers will allow the industry to respond quickly to market needs for containers not approved under the orders's container regulations, and establishing provisions to authorize the committee to approve shipments for experimental purposes will allow the industry to test different types of melon shipments when needed. Because the committee has established safeguard for these types of experimental containers or experimental shipments, the industry will be able to determine the benefits and market acceptance of the containers or other types of shipments. Also, allowing handlers to ship melons in test containers will enable the committee to determine whether such containers should be added to the permanent list of approved containers.

Removal of Two Experimental Containers

Two experimental containers in (e)(3) (a honeydew pony carton added in 1985) and (e)(4) (a cantaloupe carton added in 1990) of § 979.304 are obsolete and have not been used for several years, and the committee recommended that they be removed from the handling regulation. The interim final rule removed these containers from the regulation.

Other Changes in the Regulations

Prior to the interim final rule, the name and telephone area codes of an inspection office in § 979.304(c)(4) were incorrect. To correct these references, the committee recommended that the name of the inspection office be changed to "Texas Cooperative Inspection Program" office and the telephone area codes be changed from "210" to "956."

In Marketing Order No. 979 the correct spelling of "cantaloupe" is used, and in §§ 979.180 and 979.304, "cantaloup" was misspelled. To correct the misspelling and for consistency, all references to "cantaloup" were changed to "cantaloupe" by the interim final rule.

This rule will continue to permit the South Texas melon industry to experiment with different types of containers prior to adding them to their approved container list. The committee believes this will allow handlers to more effectively accommodate retailer and customer needs.

The committee recommended these changes to assist the consuming public in receiving Texas melons in containers they desire. Permitting the South Texas melon industry to experiment with different types of containers without the need for rulemaking and adding tolerance to the approved honeydew bulk container have small entity orientation.

An alternative to the recommended changes would have been to keep the regulations as they are, however:

(1) It was the committee's desire to come up with a more workable bulk honeydew container regulation to make it more precise and eliminate potential problems. Not permitting a 1½ inch tolerance for each dimension on the bulk container could have prevented the industry from marketing honeydew melons in containers which might be manufactured slightly different from the sizes specified in the regulation.

(2) Not permitting the committee to quickly approve shipments for experimental purposes exempt from regulations or in experimental containers without rulemaking could have hindered the industry's ability to respond to market needs and prevented it from marketing more melons. Not providing the committee the flexibility to quickly respond to market demands for test containers or shipments could have resulted in the industry losing sales to other melon producing areas.

(3) The two permanent experimental containers were no longer needed because the containers have not been used for a number of years, and a new section was added to make it possible for the committee to quickly approve the use of experimental containers.

(4) Not updating the name and telephone numbers of the inspection office to accurately reflect the correct information could have caused confusion in the industry.

Although authorizing melon shipments for experimental purposes and the use of experimental containers will impose some additional reporting and recordkeeping requirements on melon handlers, this will be minimal. Currently, handlers making shipments of melons for special purposes, including experimental, are required to obtain a Certificate of Privilege to notify the committee of their intent to ship melons for these purposes. Also, handlers must prepare a special purpose shipment report on each shipment and forward it to the committee. The committee estimates that approximately two or four handlers might request approval for the use of experimental containers, which will increase the total reporting and recordkeeping burden by approximately .1 to .2 hours, and this time to currently approved under OMB No. 0581–0178 by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules and duplicate, overlap or conflict with this rule.

Further, the committee's meeting was publicized throughout the melon industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the March 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The committee itself is composed of 10 members, of which 9 are growers and handlers, and one represents the public. Also, the committee has a subcommittee to review certain issues and make recommendations to the committee. The subcommittee met on January 28, 1999, and discussed this issue in detail. The meeting was a public meeting and both large and small entities were able to participate and express their views.

An interim final rule concerning this action was published in the **Federal Register** on May 4, 1999. Copies of the rule were mailed by the committee's staff to all committee members and melon handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended July 6, 1999. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing an interim final rule, without change, was published in the **Federal Register** (64 FR 23754, May 4, 1999) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Marketing agreements, Melons, Reporting and recordkeeping requirements.

PART 979—MELONS GROWN IN SOUTH TEXAS

Accordingly, the intermin final rule amending 7 CFR part 979 which was published at 64 FR 23754 on May 4, 1999, is adopted as a final rule without change.

Dated: July 23, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–19353 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV99–981–2 FR]

Almonds Grown in California; Revisions to Requirements Regarding Credit for Promotion and Advertising Activities

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the requirements regarding credit for promotion and advertising activities prescribed under the administrative rules and regulations of the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of

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California (Board). The order is funded through the collection of assessments from almond handlers. Under the terms of the order's regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule revises the requirements regarding the activities for which handlers may receive such credit. The changes make the promotion program more effective and efficient, clarify the regulations, and improve program administration.

EFFECTIVE DATE: This final rule becomes effective August 1, 1999.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the requirements regarding credit for promotion and advertising activities prescribed under the administrative rules and regulations of the order. The order is funded through the collection of assessments from almond handlers. Under the terms of the order's regulations, handlers may receive credit towards their assessment obligation for certain expenditures for marketing promotion activities, including paid advertising. This rule revises the requirements regarding the activities for which handlers may receive such credit. It provides for more effective promotion programs and improved clarity to the regulations, resulting in improved program administration and more efficient and effective use of industry promotion funds. This rule was unanimously recommended by the Board at meetings on December 2, 1998, and March 5, 1999.

The order provides authority for the Board to incur expenses for administering the order and to collect assessments from handlers to cover these expenses. Section 981.41(a) provides authority for the Board to conduct marketing promotion projects, including projects involving paid advertising. Section 989.41(c) allows the Board to credit a handler's assessment obligation with all or a portion of his or her direct expenditures for marketing promotion, including paid advertising, that promotes the sale of almonds, almond products, or their uses. Section 981.41(e) allows the Board to prescribe rules and regulations regarding such credit for market promotion, including paid advertising activities. Those regulations are prescribed in § 981.441. The Board recommended the following changes to those regulations. These changes apply only to promotional activities conducted during the 1999–2000 and future crop years.

Revising Time Frames for Submitting Documentation

Section 981.441(a) provides that, in order for handlers to receive credit against their assessment obligation for their own promotional expenditures, the Board must determine that such expenditures meet applicable requirements. Currently, credit may be granted in the form of a payment from the Board, or as an offset to the Board's assessment if activities are conducted and documented to the satisfaction of the Board at least 2 weeks prior to assessment billings. This 2-week period is also currently specified in § 981.441(b) and 981.441(e)(6)(ii). Assessments are typically billed in four installments for a crop year near the end of the following months—November, January, April, and August.

Based on past experience with the program, the majority of handlers file claims for credit for their promotional activities during the later months of a crop year. The vast majority of claims are thus received at the Board's office near the third and fourth filing deadlines. Because of this, the Board's staff has found that it needs more time to review and process handler documentation for promotional claims submitted during this time to grant credit against handlers' assessment obligations at the time assessment notices are issued. Thus, the Board recommended that, in order for handlers to receive credit for their promotional activities on their third and fourth assessment billings (April and August), the documentation for such activities must be submitted to the Board 3 weeks, rather than 2 weeks, prior to those billings. However, this requirement should not apply to documentation submitted prior to the fourth assessment billing for activities conducted during the 1998–99 crop year. Handlers conducted activities and operated under program parameters in place throughout the 1998–99 crop year. They should be allowed to continue to follow those parameters for activities conducted during the 1998–99 crop year. Thus, the two week timeframe should apply to submission of documentation prior to the fourth assessment billing of the 1998–99 crop year. Appropriate changes are made to paragraphs (a), (b), and (e)(6)(ii) of § 981.441.

Section 981.441(e)(6)(iv) currently provides that final claims for credit-back advertising be submitted to the Board within 105 days after the close of the crop year, in situations when handlers have filed a statement of credit-back commitments outstanding as of the close of the crop year. The Board recommended changing this 105-day time frame for several reasons. First, the deadline can cause confusion among handlers because it overlaps with the time frame for filing the first claims of the new crop year. In addition, the overlap creates program administration problems for Board staff with regard to reviewing claims and applying credit for two separate years during the same time period. Finally, the current deadline causes a delay in completion of the Board's year-end accounting practices and annual financial audit. Thus, the Board recommended that this deadline be reduced from 105 to 76 days after the close of the end of the crop year. This will eliminate confusion and program administration problems associated with the overlap period for filing claims, and allow the Board's end-of-year financial audit to be completed by December or earlier of the following crop year, as opposed to January or later. However, for reasons discussed in the preceding paragraph, the deadline should remain at 105 days for activities conducted during the 1998–99 crop year. Section 981.441(e)(6)(iv) is modified accordingly.

When handlers have not filed a statement of credit-back commitments outstanding at the close of a crop year, the deadline for filing final promotional claims with the Board is 2 weeks prior to the final assessment notice (mid-August). However, this deadline date is not clearly specified in the current regulations and has caused some confusion in the past. Therefore, the Board recommended establishing August 15 as the deadline for filing final claims in this situation. This will provide more clarity and reduce confusion regarding the deadline for filing final claims. Section 981.441(e)(6)(iv) is modified accordingly.

Redefining Growing Region

Section 981.441(e)(3) currently does not generally allow handlers to receive credit against their assessment obligation for outdoor advertising or sponsorships that are conducted in the major growing regions of California. The major growing regions currently listed in the regulation are the following 11 almond-growing counties: Butte, Colusa, Fresno, Glenn, Kern, Madera, Merced, Sacramento, San Joaquin, Stanislaus, and Tulare counties. The rationale for this exclusion is that historically, much of the outdoor advertising and sponsorship activities in the major growing areas have been to encourage growers to do business with specific handlers rather than encouraging consumption of almonds. This is contrary to the intent of this program, which is to promote the sale, consumption, or use of almonds.

The Board recommended removing this list of counties from the regulations and adding substitute language. Production and new acreage planted in the almond industry have increased significantly in recent years, and production areas have been shifting within the State. The current regulations do not take this into account, and the aforementioned list of counties no longer accurately reflects the major growing areas.

The Board believes a more effective approach will be to revise the regulations to specify that no credit be given for outdoor advertising activities conducted in any California county with more than 1,000 bearing acres of almonds. This approach will adequately define the major growing regions, and accommodate production shifts in the future. This, in effect, removes Sacramento County as a major growing area and thus allows outdoor advertising in that county. Sacramento County contains a major metropolitan area, which lends itself to the use of outdoor advertising, and is a minor almond growing area, with only 110 acres compared to an industry total of over 400,000 acres. The other 10 counties listed above continue to be regions ineligible for this type of credit. Other counties with significant almond acreage such as Kings, San Luis Obispo, Solano, Sutter, Tehama, Yolo, and Yuba are classified as major almond growing areas, and outdoor advertising in those counties, thus, will be considered ineligible for credit-back.

The Board further believes that modifying the regulations in this manner will better reflect the original intent of the regulation, and allow more flexibility for shifts in production within the growing area. Section 981.441(e)(3) is modified accordingly. The Board also recommended that sponsorship be completely eliminated as a credit-back activity; this recommendation is discussed below.

Revisions to List of Credit-Back Activities

Section 981.441(e)(4)(ii) lists 13 other market promotion activities for which credit may be granted. These activities currently include marketing research (except pre-testing and test-marketing of paid advertising); trade and consumer product publicity; printing costs for promotional material; direct mail printing and distribution; retail in-store demonstrations; point-of-sale materials (not including packaging); sales and marketing presentation kits; trade fairs and exhibits; trade seminars; 50/50 advertising with retailers; couponing (printing, distribution, and handling costs only); purchase of Board-produced promotional materials; and sponsorships.

The Board recommended revising the requirements regarding trade and consumer product publicity. Trade and consumer product publicity includes disseminating information through various communications media to attract public attention. Handlers often hire an outside agency to conduct such activities. Usually, such an agency charges a fee for its work. In the past, this agency fee has been included as part of the credit-back activity, as agency fees for paid advertising are. However, in the case of trade and consumer product publicity, the Board has encountered difficulties in associating agency fees to particular credit-back activities, and determining whether this fee is appropriate, because there is no standard fee or guidelines for such fees. For paid advertising, this does not pose a problem because there is a standard agency fee that can easily be associated directly to a particular activity. Thus, the Board recommended that agency fees for publicity no longer be included as a credit-back activity. All of the other allowable activities associated with publicity (such as materials) which can be directly tied to a specific publicity campaign will still be eligible for credit.

The Board also recommended that trade seminars be removed from this list of credit-back activities. Trade seminars include special events designed to educate the trade about the almond industry and its products. Although Board records indicate there has been no use of this area as a credit-back activity by handlers, the Board believes that there is a high possibility of misuse in this area. Trade seminars are not well defined and standardized activities; thus, lavish entertainment or elaborate sales meetings are characterized as trade seminars. Trade shows will remain as a credit-back activity, however. These events are widely used and the activities are well-defined and standardized, such as setting up booths to exhibit merchandise to customers. Thus, the Board recommended that trade seminars be removed from the list of credit-back activities.

The Board also recommended that handlers' purchases of Board-produced promotional materials be removed from the list of credit-back activities. Board funds are used to develop various

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promotional materials that are made available to handlers. In the past, handlers purchased such materials from the Board and received promotion credit. However, the Board has recently developed an allocation system whereby handlers may receive a certain percentage of promotional material produced by the Board free of charge. Each handler's allocation for a crop year is based on the percentage of almonds handled during the prior year. Handlers may purchase additional material at cost. This new system, not covered by the credit-back regulations, allows Board staff to plan more effectively and to purchase materials more cost effectively, while maintaining a promotional tool for handlers. Since this new system was developed, the Board determined that continuing to allow credit for purchase of Board-produced promotional material results in overlap of two similar programs. Therefore, the Board recommended that purchase of such material be removed from the list of credit-back activities.

In addition, the Board recommended that sponsorship be removed from the list of credit-back activities. Sponsorship includes the financial support of an event or person carried out by another group or person. Sponsorship can be targeted towards consumers, the trade, or may be undertaken for general goodwill. A review of sponsorship claims submitted in the past indicates several claims appear to fall into the category of general goodwill rather than to promote the sale and consumption of almonds as the primary purpose. Further, Board staff has had difficulty in determining a reasonable rate for crediting some of the activities due to a lack of an industry standard. Finally, Board staff has found that many of the most effective activities typically claimed as sponsorship can be applicable under other credit-back areas in the regulations. Thus, the Board recommended that sponsorship be removed from the list of credit-back activities.

The Board also recommended that a new credit-back activity be added to the regulations concerning use of the Internet. Several handlers have or are developing web-sites to promote their almonds. This is a rapidly developing communication medium becoming widely recognized as a valuable promotional tool. Thus, the Board believes handlers should be allowed credit for development and use of the Internet for promotional purposes. Because of the vast array of uses of the Internet, however, the Board believes guidelines should be implemented regarding crediting handlers' expenditures in this area. Thus, the Board recommended that handlers be allowed up to $5,000 credit against their assessment obligation for the development and use of a web-site on the Internet for advertising and public relations purposes. No credit is given for costs regarding E-commerce (which is equivalent to opening a store), Extranet (private web sites within the Internet), or portions of a web-site that target the farming or grower trade. The Board believes these types of activities lend themselves to potential abuses and do not necessarily advance the intent of the program, which is to promote the sale, use, and consumption of almonds.

Appropriate changes have been made to the list of credit-back activities specified in § 981.441(e)(4)(ii) to incorporate all of these changes.

Recommendation Regarding Credit-Back for Almond Products

Section 981.441(a) specifies that handlers may be granted credit against their assessment obligation for an amount not to exceed 66⅔ percent of a handler's proven expenditures for qualified activities. Section 981.441(e)(iv) provides that when products containing almonds are promoted, the amount allowed for credit-back shall reflect that portion of the product weight represented by almonds, or the handler's actual payment, whichever is less. For example, if a handler paid $1,000 in advertising costs to promote a product which contained 60 percent almonds by weight, such handler is able to file a claim for credit against his or her assessment obligation of 60 percent of $1,000, or $600. The amount of credit is 66⅔ percent of $600, or $400. If the product contained 70 percent almonds by weight, the handler is eligible to receive a credit against his or her assessment of 66⅔ percent of the 70 percent, or $467.

The Board recommended adding an exception to this portion of the regulations. Specifically, handlers who own almond-containing "unique" or "non-traditional" products would be allowed to request that the Board grant them a one-year exemption from this "percentage rule." Thus, in the above example, a handler could request from the Board an exemption and receive credit for 66⅔ percent of his or her advertising costs for the product, or $667, regardless of the weight of the almonds in the product. The Board believes that this special exception would provide handlers incentive to produce and advertise unique almond products, resulting in increased almond sales for the industry. Board members would be responsible for reviewing such requests from handlers and determining whether an exception would be granted on a case-by-case basis.

The Department has concerns with this recommendation. Although there was support for this concept at the industry meetings which led to the recommendations, those participating in the meetings were not able to develop criteria to define a "unique" or "non-traditional" product. Thus, there are no specific parameters for Board staff to review claims against. Because of this, the recommendation calls for the Board itself, rather than staff, to determine what products would qualify (Board staff currently reviews all promotion claims). It is unclear how the Board would make such determinations. The lack of criteria could potentially lead to subjective decision-making and Board members reviewing claims could create potential conflicts of interest. The purpose of these regulations is to provide a clear set of guidelines that can be applied uniformly by Board staff to avoid these situations. While the Department supports the concept of providing incentive for new product development, it is not proceeding with this recommendation at this time because of the aforementioned concerns.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of California almonds who are subject to regulation under the order and approximately 6,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Based on the most current data available, about 54 percent of the handlers ship under $5,000,000 worth of almonds and 46 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue is approximately $195,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

This final rule revises § 981.441 of the order's administrative rules and regulations regarding credit-back promotion and advertising. Under the terms of the regulations, handlers may receive credit towards their assessment obligation for certain of their direct expenditures for marketing promotion activities, including paid advertising. This rule makes several revisions to the requirements regarding the activities for which handlers may receive such credit. These revisions include: Revising the time frames and clarifying deadlines for when handlers must submit documentation to the Board on activities conducted; redefining the growing region eligible for credit for certain types of outdoor advertising; revising the list of creditable activities by eliminating credit for fees charged by advertising and public relations agencies for publicity, trade seminars, purchase of Board-produced promotional material, and sponsorships; and adding use of the Internet as a promotional tool as a new, credit-back activity.

Regarding the impact of this rule on affected entities, the changes specified herein are designed to provide for a more effective and efficient use of the industry's advertising and promotion funds, and to improve program administration. Requiring handlers to submit documentation to the Board 3 weeks, as opposed to 2 weeks, prior to the Board's April and August assessment billings changes the timing, but not the frequency, of the filings submitted by handlers. This change is not expected to increase the reporting burden on handlers, but rather provide the Board's staff sufficient time to review the material and credit handlers' accounts in a more timely manner. Clarifying the deadline for filing claims at the end of a crop year will eliminate confusion among handlers and allow the Board to complete its year-end accounting practices more timely. Redefining the growing region eligible for credit for outdoor advertising to include only counties with less than 1,000 bearing acres of almonds will help ensure that credit only be given for outdoor advertising that encourages consumers to buy almonds (as opposed to such advertising done in larger bearing counties directing growers to specific handlers). This change also adds flexibility to the regulations to accommodate production shifts in the future. Adding the Internet as a credit-back activity will allow handlers to take advantage of a new communication medium and provide them with a new promotional opportunity that can be used to offset a portion of their assessment obligation. Removing certain activities available for credit-back is not expected to negatively impact handlers, as numerous promotional activities remain for them to offset a portion of their assessment obligation. The activities removed have received little use in the past, and in some cases lend themselves to potential abuses that result in ineffective use of promotional funds. The changes are expected to be equally beneficial to all handlers who conduct their own promotional activities and to the industry as a whole.

Several alternatives to the changes were considered. The first alternative in all cases was to leave the regulations as they currently exist. However, this does not address the changes in the industry, technology, or promotional practices. Nor does it address the administrative inefficiencies and the potential program abuses that have been identified. Alternatives to the recommendations concerning removing certain activities from the list of credit-back activities included leaving the activities in the regulations, with further definition and clarification added. However, it was determined that this would lead to increased regulations and guidelines, with no assurance of solving the problems. In addition, most of the activities being removed have been used very infrequently by handlers. The removal of credit for purchase of Board-produced promotional materials was replaced by an alternative system whereby handlers are provided a free allocation of such materials, with the option of purchasing additional materials at cost.

Regarding the changing of dates for submitting documents to the Board, different dates were considered. However, it was determined that the dates ultimately recommended allow the minimum amount of time necessary for Board staff to review documents, apply credit to handlers' assessment accounts, and to complete year-end accounting practices in a timely manner. Alternatives to changing the growing region definition included using a different acreage number as a threshold to defining a producing county. However, the industry agreed for purposes of the credit-back program, 1,000 acres was appropriate. Another alternative considered was to remove the restriction of outdoor advertising in almond growing counties, but that does not address the problem of handlers advertising to growers.

It was determined that the changes herein are the best way to address the situation at this time. These regulations were designed to reflect the industry's practices, and these revisions are intended to respond to an evolving marketplace and changing promotional practices. Changes have been and will continue to be recommended based on industry and program experiences.

This rule imposes no additional reporting or recordkeeping requirements on either small or large almond handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0071. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Additionally, the Board's meetings were widely publicized throughout the almond industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, the December 2, 1998, and March 5, 1999, meetings were public meetings and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of 10 members, of which 5 are producers and 5 are handlers.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board formed a task force in July 1998 to review its credit-back advertising program. The task force met periodically during the following months to review the program and consider appropriate changes. The task force presented its recommendations to the Board's Public Relations and Advertising Committee on November 13, 1998, and that committee presented its recommendations to the Board on December 2, 1998. The March 5, 1999, meeting was held to finalize the Board's recommendations. All of these meetings were open to the public, and both large

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and small entities were able to participate and express their views.

A proposed rule concerning this action was published in the **Federal Register** on June 10, 1999 (64 FR 31153). Copies of the rule were mailed to all Board members and almond handlers. The proposal was also made available through the Internet by the Office of the Federal Register. A 30-day comment period was provided for interested persons to respond to the proposal. The comment period ended July 12, 1999. No comments were received.

The Department made some changes to the amendatory language as stated in the proposed rule for clarity and conformity between provisions. These changes include a change pertaining to the development and use of web-sites on the Internet for advertising and public relations purposes. The words "for such activities" were added to the proviso in paragraph (e)(4)(ii)(K) of § 981.441 to clarify that handlers may be allowed up to $5,000 credit against their assessment obligation for activities concerning web-sites and the Internet. Another change conforms language in paragraph (b) of § 981.441 to be consistent with the change requiring handlers to submit documentation to the Board three weeks prior to the third and fourth assessment billings in order to offset a portion of the assessment obligation. Language was added to paragraphs (a), (e)(6)(ii), and (e)(6)(iv) to clarify that the changes do not apply to promotional activities conducted prior to the 1999–2000 crop year.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) This rule should be in effect by August 1, the beginning of the 1999–2000 crop year; (2) these changes were unanimously recommended by the Board and interested persons had an opportunity to provide input; (3) handlers are aware of these changes which were recommended at public meetings; and (4) a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 981.441 is amended by revising the second sentence in paragraph (a), paragraphs (b), (e)(3), (e)(4)(ii), the first sentence in paragraph (e)(6)(ii), and paragraph (e)(6)(iv) to read as follows:

§ 981.441 Credit for market promotion activities, including paid advertising.

(a) * * * Credit will be granted either in the form of a payment from the Board, or as an offset to that portion of the assessment if activities are conducted and documented to the satisfaction of the Board at least 2 weeks prior to the Board's first and second assessment billings, and at least 3 weeks prior to the Board's third and fourth assessment billings in a crop year: *Provided*, That promotional activities conducted during the 1998–99 crop year must be conducted and documented at least 2 weeks prior to the Board's fourth assessment billing in order to receive credit in the form of a payment from the Board, or as an offset to that portion of the assessment. * * *

(b) The portion of the handler assessment for which credit may be received under this section will be billed, and is due and payable, at the same time as the portion of the handler assessment used for the Board's administrative expenses, unless the handler(s) conduct and document activities at least 2 weeks prior to the first and second assessment billings and 3 weeks prior to the third and fourth assessment billings: *Provided*, That promotional activities conducted during the 1998–99 crop year must be conducted and documented at least 2 weeks prior to the Board's fourth assessment billing in order to receive credit. If the handler(s) conduct activities and submit documentation according to applicable provisions in this section, their advertising assessment obligation will be reduced according to the amount of proven activities approved by the Board.

* * * * *

(e) * * *

(3) No Credit-Back will be given for advertising placed in publications that target the farming or grower trade. No Credit-Back shall be given for any outdoor advertising in California almond growing counties with more than 1,000 bearing acres: *Provided*, That outdoor advertising in these counties which specifically directs consumers to a handler-operated outlet offering direct purchase of almonds will be eligible for Credit-Back.

(4) * * *

(ii) *Other market promotion activities.* Credit-Back shall be granted for market promotion other than paid advertising, for the following activities:

(A) Marketing research (except pre-testing and test-marketing of paid advertising);

(B) Trade and consumer product publicity: *Provided*, That no Credit-Back shall be given for related fees charged by an advertising or public relations agency;

(C) Printing costs for promotional material;

(D) Direct mail printing and distribution;

(E) Retail in-store demonstrations;

(F) Point-of-sale materials (not including packaging);

(G) Sales and marketing presentation kits;

(H) Trade fairs and exhibits;

(I) 50/50 advertising with retailers;

(J) Couponing (printing, distribution, and handling costs only); and

(K) Development and use of web-site on the Internet for advertising and public relations purposes: *Provided*, That Credit-Back shall be limited to $5,000 per year for such activities, and no credit shall be given for costs for E-commerce (mail ordering through the Internet), Extranet (restricted web sites within the Internet), or portions of a web-site that target the farming or grower trade.

* * * * *

(6) * * *

(ii) Handlers may receive credit against their assessment obligation up to the advertising amount of the assessment installment due: *Provided*, That handlers submit the required documentation for a qualified activity at least 2 weeks prior to the mailing of the Board's first and second assessment notices, and at least 3 weeks prior to the mailing of the Board's third and fourth assessment notices in a crop year: *Provided further*, That promotional activities conducted during the 1998–99 crop year must be conducted and documented at least 2 weeks prior to the mailing of the Board's fourth assessment notice in order to receive credit. * * *

(iii) * * *

(iv) A statement of the Credit-Back commitments outstanding as of the close of a crop year must be submitted in full to the Board within 15 days after the close of that crop year. Final claims pertaining to such commitments outstanding must be submitted within 76 days after the close of that crop year: *Provided*, That for activities conducted during the 1998–99 crop year, final claims pertaining to such commitments outstanding must be submitted within 105 days after the close of the crop year. All other final claims for which no statement of Credit-Back commitments outstanding has been filed must be submitted by August 15 of that calendar year.

* * * * *

Dated: July 22, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–19091 Filed 7–28–99; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 715 and 741

Supervisory Committee Audits and Verifications

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The Credit Union Membership Access Act amended certain audit and financial reporting requirements of the Federal Credit Union Act. The National Credit Union Administration has received and reviewed public comments on its proposed rule implementing those amendments. As revised to reflect commenters' suggestions and to enhance clarity, the final rule specifies the minimum annual audit a credit union is required to obtain according to its charter type and asset size, the licensing authority required of persons performing certain audits, the auditing principles that apply to certain audits, and the accounting principles that must be followed in reports filed with the NCUA Board.

DATES: Effective January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Kelbly, Program Officer, Office of Examination and Insurance at (703) 518–6360, or Steven W. Widerman, Trial Attorney, Office of General Counsel, at (703) 518–6557, National Credit Union Administration Board, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION:

I. Background

A. Credit Union Membership Access Act

Section 201(a) of the Credit Union Membership Access Act (CUMAA), Public Law 105–219, 112 Stat. 918 (1998), added two new subsections to section 202(a)(6) of the Federal Credit Union Act (FCUA), 12 U.S.C. 1782(a)(6)(C) and (D). Subsection (C) addresses accounting principles, generally requiring credit unions having assets of $10 million or more to follow generally accepted accounting principles (GAAP) in all reports or statements filed with the NCUA Board.[1] 12 U.S.C. 1782(a)(6)(C). The NCUA Board, and State credit union supervisors under applicable statutes, are given the authority to require credit unions having less than $10 million in assets to follow GAAP. 12 U.S.C. 1782(a)(6)(C)(iii).

Subsection (D) imposes audit requirements for large federally-insured credit unions—those having assets of $500 million or more. A credit union at or above that level of assets, whether State-or Federally-chartered, is required to obtain an annual independent audit of its financial statements performed in accordance with generally accepted auditing standards (GAAS)—hereinafter referred to as a "financial statement audit." Furthermore, that audit must be performed by an independent certified public accountant or public accountant licensed to do so by the appropriate State or jurisdiction. 12 U.S.C. 1782(a)(6)(D)(i). For a breakdown of State-licensing requirements for persons who perform audits, see proposed rule, 64 FR 777n.2.

A federally-chartered credit union having total assets of less than $500 million but more than $10 million is subject to only one requirement under subsection (D). If that credit union elects to obtain the financial statement audit required of a credit union having assets of $500 million or more, the audit must be performed consistent with the accountancy laws and licensing requirements of the appropriate State or jurisdiction. 12 U.S.C. 1782(a)(6)(D)(ii). The appropriate State or jurisdiction normally is the State in which the credit union is principally located.

Subsection (D) imposes no minimum audit requirements at all on federally-chartered credit unions having total assets of less than $500 million but more than $10 million that do not voluntarily elect to obtain a financial statement audit performed in accordance with GAAS (as credit unions having assets of $500 million or more must obtain under subsection (D)(i)). *See* § 715.2(f) (GAAS definition). Only in the case of a financial statement audit performed in accordance with GAAS, whether by choice or by law, do State accountancy laws and licensing requirements apply.[2] Subsection (D) is silent regarding audits of federally-chartered credit unions having assets of $10 million or less, and Federally-insured State-chartered credit unions (FISCUs) having assets of less than $500 million.

With respect to financial statement audits, the threshold set by subsection (D) at $500 million for requiring a financial statement audit puts federally-insured credit unions in parity with other federally-insured depository institutions. The institutions supervised by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Office of Comptroller of the Currency and the Federal Reserve Board are required to obtain a financial statement audit if they have assets of $500 million or more.[3] 12 CFR 363. For institutions having assets of less than $500 million, the Federal Financial Institutions Examination Council (FFIEC) has proposed audit options similar to two of those which this final rule prescribes for credit unions. FFIEC, *Policy Statement on External Auditing Programs of Banks and Savings Associations*, 63 FR 7796 (Feb. 17, 1998) (*FFIEC Policy Statement*).

B. Proposed Rule

On January 6, 1999, NCUA published a Notice of Proposed Rule, 64 FR 776 (Jan. 6, 1999), establishing new part 715 to implement the statutory minimum audit requirements imposed by

[1] In lieu of GAAP, the NCUA Board may prescribe "an accounting principle * * * that is no less stringent than [GAAP]." 12 U.S.C. 1782(a)(6)(c)(ii).

[2] FCUA section 202(a)(6)(D)(ii), 12 U.S.C. 1782(a)(6)(D)(ii), provides: If a Federal credit union that is not required to conduct and audit under clause (i), and that has total assets of more than $10,000,000 conducts such an audit for any purpose, using an independent auditor who is compensated for his or her audit services with respect to that audit, the audit shall be performed consistent with the accountancy laws of the appropriate State or jurisdiction, including licensing requirements." (emphasis added.) "Such an audit" refers back to "an audit under clause (i)" of section 1782(a)(6)(D). A clause (i) audit is a financial statement audit performed in accordance with GAAS. The clause (ii) requirement to follow State accountancy and licensing laws is triggered only when a credit union voluntarily chooses a financial statement audit.

[3] The statute authorizing 12 CFR 363, originally established a $150 million asset floor for requiring a financial statement audit. 12 U.S.C. 1831m(j)(2). However, the banking agencies exercised their statutory authority to increase the asset floor to $500 million, thereby exempting two-thirds of all institutions required under § 1831m to obtain a financial statement audit. 12 CFR 363.1(a) 58 FR 31332 (June 2, 1993).

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CUMAA, 12 U.S.C. 1782(a)(6) (C) and (D); to provide supervisory committee audit alternatives for credit unions which are not required to obtain a financial statement audit; and to retain in substance the current rules relating to Supervisory Committee audit responsibilities, verification of accounts, independence of outside auditors, the requirement of an engagement letter, audit report and workpaper maintenance and access, and sanctions and remedies for inadequate audits. §§ 701.12 and 701.13. In addition, the proposed rule revised section 741.6 [financial and statistical and other reports] to change certain Call Report filing dates and to introduce the use of GAAP in Call Reports filed by credit unions having $10 million or more in assets. Finally, the proposed rule conformed the citations in section 741.202 to apply part 715 to Federally-insured State-chartered credit unions. *See* 12 U.S.C. 1781(b)(9), 1789(a)(11) (authority for application to FISCUs).

By the comment deadline of March 8, 1999, NCUA received thirty-one comments in response to the Notice of Proposed Rule. Comments were submitted by eleven Federal credit unions, seven credit union industry trade associations, seven certified public accounting or auditing firms, two auditing industry trade associations, two unlicensed credit union auditors, an association of state credit union supervisors, and one banking industry trade association.

Except for the latter group, the comments generally support NCUA's interpretation of the statutory "financial statement audit" requirement and, in concept if not in detail, all three of the audit engagements proposed in the rule as alternatives to a financial statement audit—a balance sheet audit; a "review and evaluation of internal controls over Call Reporting" (renamed and redefined in the final rule); and an audit pursuant to NCUA's *Supervisory Committee Guide*.[4] Predictably, licensed individuals opposed provisions of the rule allowing unlicensed persons a role in the credit union auditing process. Conversely, unlicensed individuals were grateful that NCUA preserved their role in the process. The comments are analyzed generally in section II. immediately below, except that comments of the internal auditing industry and banking industry trade associations are addressed separately in section II.I.

[4] NCUA anticipates issuing the revised *Supervisory Committee Guide* in late 1999.

II. Section-Within-Subject Analysis of Comments

A. Definitions

Section 715.2 establishes definitions for the terms that are used in part 715, nearly all of which are virtually identical in form and substance to their predecessors in current § 701.12(a). Several commenters suggested revisions to the proposed definitions as follows.

"Balance sheet audit." One commenter suggested that the "balance sheet audit" definition, § 715.2(a), should prescribe GAAP as a basis of accounting for this engagement. The definition has been revised to provide that a credit union which obtains a "balance sheet audit" engagement shall use as a basis of accounting the same basis of accounting used in its Call Reports. Effectively, this means that credit unions which have $10 million or more in assets will be required to use GAAP as a basis of accounting for this engagement. *See* § 741.6(b) (requiring credit unions having assets of $10 million or greater to follow GAAP in Call Reports).

"Compensated person." Two commenters objected to the definition of a "compensated person," § 715.2(b), because it expressly omits individuals or firms who are compensated to perform only one supervisory committee audit per year. The omission is intentionally designed to exempt from this rule persons who are not in the business of auditing credit unions, but who are modestly compensated by a single credit union to perform its annual supervisory committee audit. NCUA remains committed to ensuring that such one-time audit engagements do not trigger the requirements of this rule.

"Financial statement ." One commenter strongly urged deleting the "statement of assets and liabilities that does not include members" equity accounts" from the definition of "financial statement" § 715.2(c), because that statement is rarely used and is of little benefit to the financial statement reader. NCUA agrees and has amended the proposed definition accordingly.

"Independent person." Two commenters pointed out that the interchangeable use of the terms "independent person" and "independent auditor" throughout the proposed rule was confusing. Thus, the final rule retains "independent person" and omits "independent auditor." Two commenters urged that the terms "independent" and "independence" be redefined either to parallel the GAAS definition of "independence" as it applies to State-licensed persons, or to otherwise incorporate the GAAS definition to some extent.[5] To define "independence" as GAAS does would have the unintended effect of limiting the auditing of Federal credit unions to State-licensed individuals. NCUA is committed to enabling both licensed and unlicensed persons to satisfy its "independence" definition, so that both may have a role in auditing credit unions. Regardless of NCUA's definition, licensed persons already would be required under State law to comply with GAAS independence rules. The proposed definition of "independence," § 715.2(g), is no less stringent than the GAAS definition, and may in certain circumstances be more stringent.

"Qualified person." Although not defined in the proposed rule, the term "qualified person" is used throughout as the minimum standard for persons who may perform certain audit engagements although they are not State-licensed. Four commenters suggested expressly defining a "qualified person." NCUA declines to add such a definition because the proposed rule already identifies persons who would be qualified to perform an audit under the *Supervisory Committee Guide*, e.g., a certified public accountant, public accountant, league auditor, credit union auditor consultant, retired financial institutions examiner. § 715.7(c). It is the responsibility of the Supervisory Committee to apply its judgment within given guidance to determine who is a "qualified person."

"Report on examination of internal control over Call Reporting." The proposed rule referred to this engagement as a "review and evaluation of internal controls over Call Reporting." An auditing industry trade association suggested that the proper term of art for this engagement is an "examination," not a "review," and should be subject to attestation standards. NCUA agrees and has renamed this engagement a "Report on the examination of internal control over Call Reporting" and is redefining it consistent with attestation standards.[6] § 715.2(j). *See* discussion of § 715.7(b) *infra*.

"State-licensed person." The proposed definition of "State-licensed person" refers to a "person who is licensed by the State or jurisdiction where the credit union is located . . . ."

[5] *See* 1 AICPA, *AICPA Professional Standards* AU§ 220.02 (1997) (GAAS definition of "independence").

[6] In the final rule, 715.7(b) provides that a "Report on examination of internal control over Call Reporting" may be performed only by a "State-licensed per." *See* discussion of § 715.7(b) *infra*.

§ 715.2(k). One commenter insists that this definition departs from CUMAA because it is not as specific or restrictive as the statute provides. In fact, the definition in the rule mirrors the language of CUMAA. *Compare* § 715.2(k) *and* 12 U.S.C. 1786(a)(2)(D). Another commenter suggested replacing the word "located" with the word "headquartered" to address instances where a credit union has multiple branches and overseas locations. This point is well taken. To eliminate confusion as to where a person must be licensed, NCUA is replacing the term "located" with the term" principally located" throughout the final rule. *See, e.g.*, §§ 715.4(b), 715.5(a), 715.6(a) and (b), 715.7(a) and (b).

"Supervisory committee audit." One commenter objected that the last sentence of the proposed definition of a "supervisory committee audit"—which had provided that a financial statement audit "fulfills the requirements of a 'supervisory committee audit' "—is redundant and outside the scope of a definition. § 715.2(m). This sentence has been eliminated in view of the fact that the point it makes is expressed elsewhere in the rule. *See, e.g.*, § 715.4(b).

"Working papers." NCUA staff determined that the phrase "by the independent, compensated auditor" at the end of the definition of "working papers," § 715.2(n), unintentionally excluded uncompensated auditors from that definition. Therefore, that phrase has been eliminated.

B. Supervisory Committee Responsibilities

Section 715.3—General Responsibilities of the Supervisory Committee

Under this section, a principal duty of the Supervisory Committee is to "establish practices and procedures sufficient to safeguard members' assets" against "error, conflict of interest, self-dealing and fraud." § 715.3(a) and (b)(4). The sole commenter addressing this section, who generally supported the rule, interpreted this language as improperly creating a duty to prevent acts which constitute error, conflict of interest, self-dealing and fraud. NCUA disagrees with that interpretation; the rule clearly mandates a duty to establish practices and procedures designed to "safeguard members" assets" against such misconduct, but imposes no absolute liability on the board of directors or management to prevent such misconduct. Therefore, NCUA retains the original language of paragraph (a). Although there were no further substantive comments on this section, paragraph (b) is modified in form to improve clarify and parallelism.

Section 715.4—Audit Responsibility of the Supervisory Committee

This section restates the Supervisory Committee's annual audit responsibility under 12 U.S.C. 1761d, § 715.4(c); provides that a financial statement audit will always satisfy that responsibility, § 715.4(b); and that other options to satisfy that responsibility are available to credit unions which do not choose to obtain a financial statement audit. § 715.4(c). For the convenience of the reader, the minimum audit requirements according to charter type and asset size are summarized in a diagram preceding § 715.5. NCUA received no comments directly addressing this section. To eliminate ambiguity in determining asset size, NCUA has added a sentence indicating that "asset size is the amount of total assets reported in the Call Report for the year-end immediately preceding and outside of the period under audit." § 715.4(c).

C. Minimum Audit Requirements

The proposed rule was organized primarily according to asset size—$500 million and above, less than $500 million but more than $10 million, and $10 million or less—rather than by charter type. An association of state credit union supervisors urged reorganization of part 715 primarily by charter type, and then by asset size, so that audit requirements which apply to FISCUs are consolidated according to asset size in one section and those which apply to federally-chartered credit unions (FCUs) are consolidated according to asset size in a separate section. NCUA believes that the benefits of such a reorganization—namely, improved clarity and accessibility—outweigh the minimal duplication that results. Accordingly, in the final rule, § 715.5 addresses audit requirements exclusive to federal charters, and § 715.6 addresses audit requirements exclusive to State charters. The substance of the applicable audit requirements remains unchanged in both sections.

Section 715.5—Audit of Federal Credit Unions

This section sets forth the minimum requirements for the audit of federal credit unions (FCUs) according to asset size. As CUMAA mandates, 12 U.S.C. 1782(a)(6)(D), an FCU having assets of $500 million or greater must obtain a financial statement audit. § 715.5(a). For FCUs having less than $500 million in assets, § 715.5(b) reflects NCUA's interpretation that CUMAA allows credit unions the choice of obtaining a financial statement audit under § 715.6(a)—as credit unions having $500 million or more in assets must do—or one of three alternative audit engagements set forth in § 715.7. *See* 12 U.S.C. 1782(a)(6)(D)(ii). NCUA received eight comments expressly agreeing with NCUA's interpretation of CUMAA; four opposing the interpretation; and eighteen which did not comment on the matter. One supporter enclosed a legal opinion concurring with NCUA's interpretation. Another pronounced the rule clear and concise and the interpretation appropriate.

The four commenters opposing NCUA's interpretation of CUMAA consist of licensed auditing professionals and an auditing industry trade association, all of whom favored an interpretation of CUMAA limiting auditing of credit unions above $10 million in assets exclusively to State-licensed individuals like themselves. In stark contrast, another commenter who is an unlicensed auditor insisted that, compared to current § 701.12, the proposed rule is a concession to the auditing profession and is contrary to the best interests of the credit unions, even though it maximizes audit choice for credit unions.

Consistent with its interpretation of CUMAA, NCUA stands by section 715.5 as proposed, except to add a final paragraph (d) indicating that FCUs must meet applicable requirements elsewhere in part 715 regardless of which audit engagement they choose under § 715.5. *See* §§ 715.8, 715.9(b) through (e), 715.10.

Section 715.6—Audit of Federally-insured, State-chartered Credit Unions

This section sets forth the minimum requirements for the audit of FISCUs according to asset size. As in the case of FCUs, CUMAA mandates that FISCUs having assets of $500 million or greater must obtain a financial statement audit. § 715.6(a). For FISCUs having less than $500 million in assets, § 715.6 gives FISCUs the choice of obtaining a financial statement audit per § 715.6(a), or one of three alternative audit engagements set forth in § 715.7. The rule provides, however, that if the State or jurisdiction in which the credit union is principally located prescribes an audit engagement which is more stringent than the alternative engagements offered in § 715.7, the FISCU must comply with the State-mandated audit. § 715.6(b).[7] As in the

[7] NCUA does not define "stringent" except to suggest that it might involve enhanced audit scope

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case of FCUs, a new subsection (c) has been added to indicate that FISCUs must meet applicable requirements elsewhere in part 715 regardless of which engagement they choose under § 715.6. *See* §§ 715.8, 715.9(b) through (e), 715.10. NCUA received no comments on the predecessor provision to this section.

Section 715.7—Supervisory Committee Audit Alternatives To a Financial Statement Audit

This section establishes alternative supervisory committee audit engagements for federally-insured credit unions that are not required by virtue of asset size to obtain a financial statement audit, and that otherwise do not voluntarily elect to obtain a financial statement audit.

"Opinion on the balance sheet." Like a financial statement audit, this engagement, also known as a "balance sheet audit," must be performed in accordance with GAAS by a person who is licensed under State law to do so. § 715.7(a). This engagement consists of an examination of assets, liabilities and equity and requires an opinion by the auditor on the fairness of the balance sheet only. Apart from the basis of accounting required, *see* § 715.2(a), this option is identical to that of the same name proposed for other federally-insured financial institutions by the FFIEC. *FFIEC Policy Statement*, 63 F.R. at 7797, 7800.

Five commenters addressed the "balance sheet audit" option. One commenter fully supported the option. One characterized it as a step backwards due to insufficient testing of the internal control structure and less assurance than in current § 701.12. Three commenters were cautious—one suggesting this engagement should incorporate supplemental analytic procedures, one criticizing the limited scope and limited assurance of this option, and one urging mandatory linkage to a basis of accounting consistent with GAAP. NCUA believes that these generally are matters of judgment which, to the extent possible, should be left to the supervisory committee. Thus, the "opinion on the balance sheet" is modified only to require the same basis of accounting as that which is reflected in the credit union's Call Reports. *See* discussion of § 715.2(a) *supra*.

"Report on examination of internal control over Call Reporting." This engagement was originally proposed as a "review and evaluation of internal controls over Call Reporting," consisting of an examination of management's written assertions concerning the effectiveness of internal controls over data reported in Call Reports (NCUA Form 5300) which addresses high risk areas. In this engagement, the auditor produces a report on the written assertions of management. *See* § 715.2(j).

Ten commenters addressed the originally proposed "review and evaluation of internal controls over Call Reporting. One commenter fully supported this option as written; one commenter believed it would confuse credit unions and should be clarified; and a third opposed it outright. The latter commenter argued that this engagement is too limited, does not consider many areas of the financial structure, and does not identify problems that may exist with account balances. As a remedy, this commenter recommended that the "review and evaluation" be subject to attestation standards of the auditing profession—thus allowing only licensed individuals to perform this examination—and be increased in scope.

Seven commenters supported this audit option in a revised form. Five argued that only external, licensed certified public accountants under the attestation standards of the profession should be allowed to perform this engagement. One of these commenters suggested that attestation standards demand use of the nomenclature "examination," rather than "review," as these terms have different ascribed meanings under auditing standards. This same commenter strongly recommended that the rule clearly define the scope and level of work for this engagement, specify the criteria for the evaluation of internal controls, and define a "complex" credit union. Another commenter argued that small credit unions lack sound internal controls and that this engagement will not be helpful to them. This commenter also contended that it would be difficult for credit union management to document its internal control assertions,[8] and that the engagement would not yield a particularly reduced fee. This commenter joined two others in opposing the use of differing levels of expertise for performing this engagement—a "State-licensed person" if performed for a credit union defined as "complex," but only a "qualified person" if not. NCUA found these comments generally persuasive and has revised the final rule as follows.

First, the final rule renames this engagement a "report on the examination of internal control over Call Reporting" and requires it to satisfy the attestation standards of the auditing profession. § 715.7(b). Second, whereas the proposed rule was silent about the criteria on which the review of internal controls is based, the final rule assigns credit union management the responsibility of "specif[ying] the criteria on which it based its evaluation of internal controls."[9]

Third, whereas the proposed rule prescribed the "high risk areas" on which this engagement concentrates—loans, investments, and cash and deposit activity—the final rule gives management the responsibility of designating the areas it considers high risk. However, the NCUA Board still believes that high risk areas should most often include: lending activities, investing activities, and cash-handling and deposit-taking activities.

Finally, the final rule abandons the proposed two-tier approach to the expertise required to perform this engagement, in favor of a single, higher level of expertise. The final rule now provides that only State-licensed persons under attestation standards of the auditing profession may perform a "report and examination of internal control over Call Reporting" regardless whether the credit union is defined as "complex" for prompt corrective action purposes. *See* CUMAA § 301(d)(2)(B) and (e)(2) (requirement to adopt definition of "complex" credit union).

As modified in the final rule, the "report on examination of internal control over Call Reporting" is comparable to the FFIEC-proposed option of an "attestation report on internal control assertions." 63 FR at 7797, 7800.

"Supervisory Committee Guide audit." This engagement follows an audit program prescribed in NCUA's *Supervisory Committee Guide (Guide)*, as revised to conform to part 715, and is similar to a "Directors' Examination" used by some Federally-insured banks. The *Guide* engagement is the only audit alternative under the final rule that can be performed either by a "State-licensed person" or by a "qualified person" who is not licensed. As revised, the *Guide* will provide guidance regarding the minimum scope and procedures of the engagement, and clearly distinguish a *Guide* engagement from a financial statement audit engagement.

Eleven comments addressed the *Guide* option. Two advocated limiting performance of the *Guide* engagement to "State-licensed persons." The NCUA Board disagrees because this is directly contrary to the objective of providing a supervisory committee audit option that can be performed by individuals who are not "State-licensed." The *Guide* engagement accomplishes this objective.

Five of the commenters asked that NCUA issue the proposed *Guide* for public comment before finalizing it. Because it is likely that the *Guide* will be revised periodically, NCUA has decided to issue the *Guide* as a manual rather than as a rule. As such, the *Guide* will not be issued for public comment. Three commenters strongly encouraged NCUA to write the Guide so that it conforms to auditing standards governing an "agreed-upon procedures" engagement, thereby permitting "State-licensed persons" to perform this engagement. To achieve this objective in revising the *Guide*, and in lieu of soliciting public comment, NCUA is seeking the assistance of the Credit Unions Committee of the American Institute of Certified Public Accountants in identifying appropriate minimum procedures to append to the *Guide*.

A commenter suggested that the *Guide* audit be available only to credit unions under $50 million in assets, and another encouraged NCUA to tailor the *Guide* audit program according to asset size. NCUA declines both suggestions. Although NCUA prefers to make the *Guide* audit universally available to all credit unions regardless of asset size, experience indicates that it is the option most often chosen by credit unions which are relatively small in asset size. NCUA also prefers to offer a uniform audit program regardless of asset size. NCUA believes that an audit program which varies by asset size is unworkable and would substitute the regulator's judgment for that which is properly reserved to the supervisory committee.

Choice among audit options. One commenter suggested that the final rule should provide guidance as to which audit option is appropriate for a credit union which is not required to obtain a financial statement audit—a voluntary-chosen "financial statement audit," a "balance sheet audit," a "report on examination of internal controls over Call Reporting," or a "*Supervisory Committee Guide* audit." The NCUA Board declines to provide such guidance, believing instead that it is the supervisory committee's responsibility to obtain the highest level of supervisory committee audit service that is consistent with the credit union's size, the nature and scope of its activities, and any compensating internal controls. Cost of service alone should not be the deciding factor in this decision. Cost should be one among many factors the supervisory committee thoughtfully considers when weighing the purpose and benefit of each audit alternative. A supervisory committee which is unfamiliar with distinctions among the different types of audits should seek the advice of an independent accountant in choosing among them.

December 1998 NCUA Call Report data shows that 80% of Federally-insured credit unions above $50 million in assets already obtain a financial statement audit voluntarily. NCUA encourages all credit unions, regardless of asset size, to obtain financial statement audits, but recognizes that financial statement audits may not be practical for all credit unions. Accordingly, the final rule seeks to preserve less burdensome audit alternatives for credit unions that do not obtain financial statement audits, without compromising the Supervisory Committee's ability to carry out its oversight responsibilities.

D. Verification of Accounts

Section 715.8—Requirements for Verification of Accounts and Passbooks

As mandated by 12 U.S.C. 1761d, this section requires the Supervisory Committee to conduct a verification of the passbooks and accounts of the members against the records of the credit union at least once every two years. One commenter urged removing proposed language requiring the auditor to "provide assurance" or draw conclusions in reference to both the statistical and non-statistical methods of verification. NCUA agrees with regard to the statistical sampling methods under § 715.8(b)(2), but disagrees with regard to the non-statistical methods under § 715.8(b)(3).

Consistent with State licensing requirements, NCUA prohibits persons who are not "State-licensed" from providing assurance services in connection with a verification. § 715.7(c). Because a "controlled verification," § 715.8(b)(1), and statistical sampling methods, § 715.8(b)(2), may be performed by persons who are not "State-licensed," the "assurance" language has been removed from § 715.8(b)(2)(iv). Because non-statistical sampling methods consistent with GAAS, § 715.8(b)(3), may be performed only by a "State-licensed person," who is authorized to provide assurance services, the "assurance" language remains intact in § 715.8(b)(3)(i).

E. Other Audit Requirements

Section 715.9—Assistance From Outside Compensated Person

This section sets the independence and engagement letter requirements that are triggered when the Supervisory Committee engages an outside person who is compensated to perform, or to assist in the performance of, a supervisory committee audit under this part. Paragraph (a) concerns the auditor's independence from credit union officials. Although NCUA received no comments on this provision, it has determined that the definition of persons "unrelated to officials" of the credit union (i.e., persons who qualify as independent of credit union officials) was too narrow with respect to relatives of credit union employees. This made the category of persons not sufficiently independent of credit union officials overinclusive. Accordingly, the final rule provides that a compensated auditor "shall not be related by blood or marriage to any management employee * * * of the credit union," and eliminates as redundant the list of blood and marital relations. § 715.9(a) (emphasis added).

Paragraph (b) sets forth the general requirement for an engagement letter between the Supervisory Committee and the outside auditor memorializing the terms and conditions of the audit engagement. Two commenters sought clarification of the requirement that "the engagement must be contracted with the supervisory committee," § 715.9(b), suggesting the possibility that the supervisory committee may not have the authority to contract for the audit. The NCUA Board disagrees, believing that the supervisory committee's authority to contract for the credit union's audit is clear from the language of the FCUA,

and depth. "Stringent" is not defined in 12 U.S.C. 1782(a)(6)(C)(iii), which refers to an accounting principle that is "no less stringent" than GAAP.

In comparison to NCUA's current supervisory committee audit rule, § 701.12, State-prescribed audits for credit unions generally fall into three categories: (1) States which prescribe audits substantially similar to 12 U.S.C. 1761d and/or § 701.12; (2) States which prescribe audits which differ in some respects from 12 U.S.C. 1761d and/or § 701.12, but which are not necessarily "more stringent," including four States which determine the type of audit by asset size, e.g., Mich. Comp. Laws § 490.11(2); and (3) States in which a financial statement audit is prescribed for certain credit unions.

[8] In the case of a small credit union which lacks the expertise to develop management's written assertions and is unable to gain such expertise, this engagement would not be a viable alternative for fulfilling its supervisory committee audit responsibility.

[9] For example, *Internal Control—Integrated Framework* published by the Committee of Sponsoring Organizations of the Treadway Commission identifies an entity's internal control as consisting of five components: control environment, risk assessment, control activities, information and communication, and monitoring.

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which provides that "the supervisory committee shall make or cause to be made an annual audit." 12 U.S.C. 1761d.

Paragraph (c) sets forth the required contents of an engagement letter. Proposed paragraph (c)(6) required the engagement letter to "specify a target date of delivery" for the audit report. At the suggestion of an auditing industry trade association, this provision has been revised to prescribe a fixed target date of delivery "not to exceed 120 days from date of calendar or fiscal year-end under audit (period covered), unless the supervisory committee obtains a waiver from the supervising NCUA Regional Director." § 715.9(c)(6). NCUA believes that prescribing a uniform fixed date of delivery, rather than allowing the date to be set on an engagement-by-engagement basis, will improve the consistency and efficiency of the auditing process.

To avert post-engagement disputes between the credit union and its outside auditor, proposed paragraphs (d) and (e) together mirrored the current rule, § 701.12(d)(2)–(3), in requiring an auditor to certify in the engagement letter when all items within the scope of a supervisory committee audit will be addressed in the engagement, and conversely, to identify any items that will be excluded from the engagement. The final rule is revised to reflect that certification of complete scope is redundant with respect to three types of audit engagements under part 715—the financial statement audit, the balance sheet audit, and the report on examination of internal control over Call Reporting—because reporting standards under GAAS and attestation standards, respectively, for those engagements already would require any excluded items to be reflected in the level of assurance the independent accountant provides in rendering an opinion. In contrast, the *Supervisory Committee Guide* audit engagement available under part 715 does not by definition include all items within the scope of the engagement. Therefore, with regard to that engagement only, the final rule still requires the auditor to certify the completeness of scope or, conversely, to specify the exclusions from the scope of the engagement. § 715.9(d) and (e).

In the case of a *Guide* engagement, for example, the auditor and the supervisory committee may by agreement exclude the allowance for loan losses from the scope of the engagement. In that event, paragraph (e) would require the engagement letter to specify the excluded items.

Section 715.10—Audit Report and Working Paper Maintenance and Access

This section addresses the procedure for distributing the audit report produced either by the Supervisory Committee or by an outside person who performed the audit, and the responsibility for maintenance of, and access to, the auditor's "working papers" once the engagement is complete. Whereas the proposed rule expressly stated that credit union members must be provided with "a report of the results of an audit at the next annual meeting," the final rule provides that members must be provided with a "summary" of the results of the audit, "orally or in writing". § 715.10(a). The purpose of this revision is to indicate that credit unions need not provide members a written, abridged version of the audit report itself.

One commenter suggested that NCUA specify minimum information to be included in a report (or summary) of the results of the audit. Although NCUA has not experienced problems of insufficient disclosure of audit results, the final rule nonetheless includes a remedy: "If a member so requests, the Supervisory Committee shall provide the member access to the full audit report," § 715.10(b), although the member would not necessarily have a right to a copy of the report.

Paragraph (b) concerns maintenance of, and access to, audit working papers. § 701.10(e)(2). Two commenters sought a commitment from NCUA, either by rule or otherwise, to maintain the confidentiality of working papers to which it is given access under this section. Such a commitment is not necessary because audit workpapers fall within the scope of confidential, commercial and financial information protected from disclosure by NCUA regulations, except to other government agencies and as required by law. 12 CFR 792.11(a)(4) and (8), 792.30, 792.60.

F. Sanctions and Remedies

Section 715.11—Sanctions for Failure To Comply With This Part

This section authorizes NCUA to reject an audit or to impose formal administrative sanctions when a Supervisory Committee or its independent compensated auditor violates a provision of this part or a provision of an engagement letter prescribed by this part. Although NCUA received no substantive comments on this section, the final rule has been revised in two ways. First, to provide that when a regional director rejects an audit, he or she must "provide a reasonable opportunity to correct the deficiencies." § 715.11(a)(1). Second, to clarify that this section applies to FISCUs, the final rule cites section 741.202 of chapter VII as authority. § 715.11(b).

Section 715.12—Statutory Audit Remedies for Federal Credit Unions

This section provides the NCUA Board with a pair of additional remedies which, if certain conditions are met, apply to federally-chartered credit unions by statute, 12 U.S.C. 1782(a)(6)(A), and to State-chartered credit unions by regulation. 12 CFR 701.13(a)(2). The remedies are the authority to compel a credit union in this category to have its audit performed by a State-licensed person, § 715.12(a), or to compel the credit union to obtain a financial statement audit even when it is not otherwise required to do so. § 715.12(b). NCUA received a single comment on this section, cautioning that these sanctions alone, when imposed against a small credit union, could drive that credit union into liquidation. NCUA emphasizes in response its commitment to chartering and continued growth of small credit unions when feasible, and to considering all circumstances in imposing lawful sanctions and remedies under this section. Finally, this section has been modified in the last sentence to indicate that, in addition to a "adverse opinion," a "disclaimer of opinion" should be an exception to the objective of producing an unqualified opinion. § 71512(b).

G. Appropriation for Non-conforming Investments

Section 741.3—Criteria

Although not raised in the proposed rule, § 741.3(a)(3) is revised in the final rule to conform to a change in the technical nomenclature used in NCUA's Call Report (NCUA Form 5300). The phrases "Investment Valuation Reserve Account" and "Investment Valuation Reserve" both are renamed the "Appropriation for Non-conforming Investments". This account receives appropriated funds from undivided earnings in amounts by which investment fair value exceeds book value in FISCUs that hold investments which would be impermissible investments for an FCU to hold, i.e., non-conforming investments. As the auditing industry trade association suggested, this change more appropriately reflects the function and composition of the account under GAAP.

H. Call Reporting Requirements

Section 741.6—Financial and Statistical and Other Reports

This section sets deadlines for filing Call Reports with NCUA and implements the statutory mandate that Call Reports filed by credit unions having assets of $10 million or more must be consistent with GAAP. 12 U.S.C. 1782(a)(6)(C)(i). The proposed rule required that such Call Reports "reflect measurement principles consistent with GAAP." An auditing industry trade association encouraged NCUA to specify other principles of GAAP in addition to "measurement principles." Instead of identifying specific principles of GAAP, however, NCUA has concluded that it is consistent with CUMAA to simply require Call Reporting to "reflect GAAP" without further specification. § 741.6(b). Because NCUA received no other comments on this section, it is otherwise unchanged.

I. Comments of Principal Trade Associations

Internal Auditing Industry

The principal trade association of the internal auditing industry agreed with the intent of the proposed rule but disagreed with its implementation, advocating that certain requirements of the rule can be met only by internal auditors. The association urged the NCUA to relieve untrained, unpaid supervisory committee volunteers of the burden of meeting those requirements. Seeking a niche for internal auditors, the trade association further proposed to replace the regulatory scheme in part 715 with a hierarchy of both mandatory internal and external audit requirements based on six asset size categories. Depending on the category in which a credit union falls, the hierarchy prescribes an examination period ranging between 12 and 36 months, the option or requirement to conduct an internal audit, and different supervisory committee audit alternatives available in each category.

While NCUA appreciates the constructive input of the internal auditing industry trade association, it is not prepared at this juncture to tailor auditing requirements by asset size, to prescribe examination periods of varying lengths, to mandate an internal audit function, or to designate particular types of audits available under different asset categories. Rather, the NCUA's objective in part 715 is to implement the auditing requirements of CUMAA and to establish for federally-insured credit unions having less than $500 million in assets a uniform structure of universally available alternatives to fulfill the supervisory committee audit responsibility. All but one of these alternatives may be performed only by State-licensed auditors.

Principal Banking Industry Trade Association

In sum, the principal banking industry trade association contends that while the proposed rule fulfills the requirements of CUMAA, those requirements still are much less stringent than those to which banks are held. Many of the points raised by the trade association were raised by other commenters and are addressed earlier in this preamble. Apart from these points, the trade association complains that even though part 715 complies with CUMAA, it still is less stringent than audit requirements imposed on banks; that although not required to do so, NCUA should require the Call Reports of credit unions having less than $10 million in assets to reflect GAAP; that the statutory minimum audit requirements should be addressed in a rule which is entirely separate from part 715, which as proposed purportedly is "missing critical elements"; that many of the definitions in part 715 are deficient and many terms used in the rule are undefined; that the Supervisory Committee's responsibilities need to be "clarified and strengthened"; and that the standards and scope provisions of the current rule, § 701.12(c)(2) and (3), should be retained in part 715 and in the *Supervisory Committee Guide*.

In general, the trade association's views are fundamentally contrary to NCUA's objectives in part 715. Whereas NCUA wishes to faithfully implement the minimum audit requirements of CUMAA, the trade association apparently wants to hold credit unions to a standard approaching that which applies to the institutions which are its members. To do so would impose an unwarranted burden on credit unions. Rather, NCUA's objective in part 715 is to serve the distinctive needs of credit unions for simplicity, choice and flexibility in the auditing process, consistent with the supervisory committee's oversight responsibility and NCUA's duty to protect the National Credit Union Share Insurance Fund.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Thus, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The final rule imposes no additional information collection requirements beyond those in the current rule it replaces. Therefore, no Paperwork Reduction Act analysis is required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of rights and responsibilities among the various levels of government.

List of Subjects

12 CFR Parts 710 and 741

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 715

Audits, Credit unions, Reporting and recordkeeping requirements, Supervisory committee.

By the National Credit Union Administration Board on July 22, 1999.

Becky Baker,

Secretary of the Board.

Accordingly, 12 CFR parts 701, 715 and 741 are amended as set forth below:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and 1798. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§§ 701.12 and 701.13 [Removed]

2. Sections 701.12 and 701.13 are removed.

3. Part 715 is added to read as follows:

PART 715—SUPERVISORY COMMITTEE AUDITS AND VERIFICATIONS

Sec.
715.1 Scope of this part.
715.2 Definitions used in this part.

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715.3 General responsibilities of the Supervisory Committee.
715.4 Audit responsibility of the Supervisory Committee.
715.5 Audit of Federal Credit Unions.
715.6 Audit of Federally-insured State-chartered credit unions.
715.7 Supervisory Committee audit alternatives to a financial statement audit.
715.8 Requirements for verification of accounts and passbooks.
715.9 Assistance from outside, compensated person.
715.10 Audit report and working paper maintenance and access.
715.11 Sanctions for failure to comply with this part.
715.12 Statutory audit remedies for Federal credit unions.

Authority: 12 U.S.C. 1761d, 1782(a)(6)

§ 715.1 Scope of this part.

This part implements section 202(a)(6)(D) of the Federal Credit Union Act, 12 U.S.C. 1782(a)(6)(D), as added by section 201(a) of the Credit Union Membership Access Act, Pub. L. No. 105–219, 112 Stat. 918 (1998). This part prescribes the responsibilities of the Supervisory Committee to obtain an annual audit of the credit union according to its charter type and asset size, and to conduct a verification of members' accounts.

§ 715.2 Definitions used in this part.

As used in this part:

(a) *Balance sheet audit* refers to the examination of a credit union's assets, liabilities, and equity under generally accepted auditing standards (GAAS) by an independent public accountant for the purpose of opining on the fairness of the presentation on the balance sheet. Credit unions required to file call reports consistent with GAAP should ensure the audited balance sheet is likewise prepared on a GAAP basis. The opinion under this type of engagement would not address the fairness of the presentation of the credit union's income statement, statement of changes in equity (including comprehensive income), or statement of cash flows.

(b) *Compensated person* refers to any accounting/auditing professional, excluding a credit union employee, who is compensated for performing more than one supervisory committee audit and/or verification of members' accounts per calendar year.

(c) *Financial statements* refers to a presentation of financial data, including accompanying notes, derived from accounting records of the credit union, and intended to disclose a credit union's economic resources or obligations at a point in time, or the changes therein for a period of time, in conformity with GAAP, as defined herein, or regulatory accounting procedures. Each of the following is considered to be a financial statement: a balance sheet or statement of financial condition; statement of income or statement of operations; statement of undivided earnings; statement of cash flows; statement of changes in members' equity; statement of revenue and expenses; and statement of cash receipts and disbursements.

(d) *Financial statement audit* (also known as an "opinion audit") refers to an audit of the financial statements of a credit union performed in accordance with GAAS by an independent person who is licensed by the appropriate State or jurisdiction. The objective of a financial statement audit is to express an opinion as to whether those financial statements of the credit union present fairly, in all material respects, the financial position and the results of its operations and its cash flows in conformity with GAAP, as defined herein, or regulatory accounting practices.

(e) *GAAP* is an acronym for "generally accepted accounting principles" which refers to the conventions, rules, and procedures which define accepted accounting practice. GAAP includes both broad general guidelines and detailed practices and procedures, provides a standard by which to measure financial statement presentations, and encompasses not only accounting principles and practices but also the methods of applying them.

(f) *GAAS* is an acronym for "generally accepted auditing standards" which refers to the standards approved and adopted by the American Institute of Certified Public Accountants which apply when an "independent, licensed certified public accountant" audits financial statements. Auditing standards differ from auditing procedures in that "procedures" address acts to be performed, whereas "standards" measure the quality of the performance of those acts and the objectives to be achieved by use of the procedures undertaken. In addition, auditing standards address the auditor's professional qualifications as well as the judgment exercised in performing the audit and in preparing the report of the audit.

(g) *Independent* means the impartiality necessary for the dependability of the compensated auditor's findings. Independence requires the exercise of fairness toward credit union officials, members, creditors and others who may rely upon the report of a supervisory committee audit report.

(h) *Internal control* refers to the process, established by the credit union's board of directors, officers and employees, designed to provide reasonable assurance of reliable financial reporting and safeguarding of assets against unauthorized acquisition, use, or disposition. A credit union's internal control structure consists of five components: control environment; risk assessment; control activities; information and communication; and monitoring. Reliable financial reporting refers to preparation of Call Reports (NCUA Forms 5300 and 5310) that meet management's financial reporting objectives. Internal control over safeguarding of assets against unauthorized acquisition, use, or disposition refers to prevention or timely detection of transactions involving such unauthorized access, use, or disposition of assets which could result in a loss that is material to the financial statements.

(i) *Reportable conditions* refers to a matter coming to the attention of the independent, compensated auditor which, in his or her judgment, represents a significant deficiency in the design or operation of the internal control structure of the credit union, which could adversely affect its ability to record, process, summarize, and report financial data consistent with the representations of management in the financial statements.

(j) *Report on Examination of Internal Control over Call Reporting* refers to an engagement in which an independent, licensed, certified public accountant or public accountant, consistent with attestation standards, examines and reports on management's written assertions concerning the effectiveness of its internal control over financial reporting in its most recently filed semiannual or year-end Call Report, with a concentration in high risk areas. For credit unions, such high risk areas most often include: lending activity; investing activity; and cash handling and deposit-taking activity.

(k) *State-licensed person* refers to a certified public accountant or public accountant who is licensed by the State or jurisdiction where the credit union is principally located to perform accounting or auditing services for that credit union.

(l) *Supervisory committee* refers to a supervisory committee as defined in Section 111(b) of the Federal Credit Union Act, 12 U.S.C. 1786(r). For some federally-insured state chartered credit unions, the "audit committee" designated by state statute or regulation is the equivalent of a supervisory committee.

(m) *Supervisory committee audit* refers to an engagement under either § 715.5 or § 715.6 of this part.

(n) *Working papers* refers to the principal record, in any form, of the work performed by the auditor and/or supervisory committee to support its findings and/or conclusions concerning significant matters. Examples include the written record of procedures applied, tests performed, information obtained, and pertinent conclusions reached in the engagement, proprietary audit programs, analyses, memoranda, letters of confirmation and representation, abstracts of credit union documents, reviewer's notes, if retained, and schedules or commentaries prepared or obtained in the course of the engagement.

§ 715.3 General responsibilities of the Supervisory Committee.

(a) *Basic.* The supervisory committee is responsible for ensuring that the board of directors and management of the credit union—

(1) Meet required financial reporting objectives;

(2) And establish practices and procedures sufficient to safeguard members' assets.

(b) *Specific.* To carry out the responsibilities set forth in paragraph (a) of this section, the supervisory committee must determine whether:

(1) Internal controls are established and effectively maintained to achieve the credit union's financial reporting objectives which must be sufficient to satisfy the requirements of the supervisory committee audit, verification of members' accounts and its additional responsibilities;

(2) The credit union's accounting records and financial reports are promptly prepared and accurately reflect operations and results;

(3) The relevant plans, policies, and control procedures established by the board of directors are properly administered; and

(4) Policies and control procedures are sufficient to safeguard against error, conflict of interest, self-dealing and fraud.

(c) *Mandates.* In carrying out the responsibilities set forth in paragraphs (a) and (b) of this section, the Supervisory Committee must:

(1) Ensure that the credit union adheres to the measurement and filing requirements for reports filed with the NCUA Board under § 741.6 of this chapter;

(2) Perform or obtain a supervisory committee audit, as prescribed in § 715.4 of this part;

(3) Verify or cause the verification of members' passbooks and accounts against the records of the credit union, as prescribed in § 715.8 of this part;

(4) Act to avoid imposition of sanctions for failure to comply with the requirements of this part, as prescribed in § 715.11 and § 715.12 of this part.

§ 715.4 Audit responsibility of the Supervisory Committee.

(a) *Annual audit requirement.* A federally-insured credit union is required to obtain an annual supervisory committee audit which occurs at least once every calendar year (period of performance) and must cover the period elapsed since the last audit period (period effectively covered).

(b) *Financial statement audit option.* Any federally-insured credit union, whether Federally- or State-chartered and regardless of asset size, may choose to fulfill its Supervisory Committee audit responsibility by obtaining an annual audit of its financial statements performed in accordance with GAAS by an independent person who is licensed to do so by the State or jurisdiction in which the credit union is principally located. (A "financial statement audit" is distinct from a "supervisory committee audit," although a financial statement audit is included among the options for fulfilling the supervisory committee audit requirement. *Compare* § 715.2(c) and (j).)

(c) *Other audit options.* A federally insured credit union which does not choose to obtain a financial statement audit as permitted by subsection (b) must fulfill its supervisory audit responsibility under either of § 715.5 or § 715.6 of this part, whichever is applicable. *See* Table 1. For purposes of this part, a credit union's asset size is the amount of total assets reported in the year-end Call Report (NCUA form 5300) filed for the calendar year-end immediately preceding the period under audit.

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Type of Charter	Asset Size	Minimum Audit Required to Fulfill Supervisory Committee Audit Responsibility[1]	Part 715 section
Federal charter	$500 Million or more	Financial statement audit per GAAS by independent, State-licensed person	§ 715.5
	Less than $500 Million but greater than $10 Million	Either financial statement audit or other supervisory committee audit options	
	$10 Million or less	Either of three supervisory committee audit options	
State charter	$500 Million or more	Financial statement audit per GAAS by independent, State-licensed person	§ 715.6
	Less than $500 Million	Either of three supervisory committee audit options unless audit prescribed by State law is more stringent.	

[1] The Supervisory Committee audit responsibility under Part 715 can always be fulfilled by obtaining a financial statement audit. § 715.4(b).

§ 715.5 Audit of Federal Credit Unions.

(a) *Total assets of $500 million or greater.* To fulfill its Supervisory Committee audit responsibility, a federal credit union having total assets of $500 million or greater must obtain an annual audit of its financial statements performed in accordance with GAAS by an independent person who is licensed to do so by the State or jurisdiction in which the credit union is principally located.

(b) *Total assets of less than $500 million but more than $10 million.* To fulfill its Supervisory Committee audit responsibility, a Federally-chartered credit union having total assets of less than $500 million but more than $10 Million which does not choose to obtain an audit under § 715.5(a), must obtain an annual supervisory committee audit as prescribed in § 715.7.

(c) *Total assets of $10 million or less.* To fulfill its Supervisory Committee audit responsibility, a Federally-chartered credit union having total assets of $10 million or less must obtain an annual Supervisory Committee audit as prescribed in § 715.7.

(d) *Other requirements.* A federally chartered credit union, regardless of which audit it is required to obtain under this section, must meet other applicable requirements of this part.

§ 715.6 Audit of Federally-insured State-chartered credit unions.

(a) *Total assets of $500 million or greater.* To fulfill its Supervisory Committee audit responsibility, a federally-insured State-chartered credit union having total assets of $500 million or greater must obtain an annual audit of its financial statements performed in accordance with GAAS by an independent person who is licensed to do so by the State or jurisdiction in which the credit union is principally located.

(b) *Total assets of less than $500 million.* To fulfill its Supervisory Committee audit responsibility, a federally-insured State-chartered credit union having total assets of less than $500 million must obtain either an annual supervisory committee audit as prescribed under either § 715.6(a) or § 715.7, or an audit as prescribed by the State or jurisdiction in which the credit union is principally located, whichever audit is more stringent.

(c) *Other requirements.* A federally-insured, state-chartered credit union, regardless of which audit it is required to obtain under this section, must meet other applicable requirements of this part except §§ 715.5 and 715.12.

§ 715.7 Supervisory Committee audit alternatives to a financial statement audit.

A credit union which is not required to obtain a financial statement audit may fulfill its supervisory committee responsibility by any one of the following engagements:

(a) *Balance sheet audit.* A balance sheet audit, as defined in § 715.2(a), performed by a person who is licensed to do so by the State or jurisdiction in which the credit union is principally located; or

(b) *Report on Examination of Internal Control over Call Reporting.* An engagement and report on management's written assertions concerning the effectiveness of internal control over financial reporting in the credit union's most recently filed semiannual or year-end call report (NCUA Form 5300), as defined in § 715.2(j), performed by a person who is licensed to do so by the State or jurisdiction in which the credit union is principally located, and in which management specifies the criteria on which it based its evaluation of internal control; or

(c) *Audit per Supervisory Committee Guide.* An audit performed by the supervisory committee, its internal auditor, or any other qualified person (such as a certified public accountant, public accountant, league auditor, credit union auditor consultant, retired financial institutions examiner, etc.) in accordance with the procedures prescribed in NCUA's *Supervisory Committee Guide.* Qualified persons who are not State-licensed cannot provide assurance services under this subsection.

§ 715.8 Requirements for verification of accounts and passbooks.

(a) *Verification obligation.* The Supervisory Committee shall, at least once every two years, cause the passbooks (including any book, statements of account, or other record approved by the NCUA Board) and accounts of the members to be verified against the records of the treasurer of the credit union.

(b) *Methods.* Any of the following methods may be used to verify members' passbooks and accounts, as appropriate:

(1) *Controlled verification.* A controlled verification of 100 percent of members' share and loan accounts;

(2) *Statistical method.* A sampling method which provides for:

(i) Random selection:

(ii) A sample which is representative of the population from which it was selected;

(iii) An equal chance of selecting each dollar in the population;

(iv) Sufficient accounts in both number and scope on which to base conclusions concerning management's financial reporting objectives; and

(v) Additional procedures to be performed if evidence provided by confirmations alone is not sufficient.

(3) *Non-statistical method.* When the verification is performed by an Independent person licensed by the State or jurisdiction in which the credit union is principally located, the auditor may choose among the sampling methods set forth in paragraphs (b)(1) and (2) of this section and non-statistical sampling methods consistent with GAAS if such methods provide for:

(i) Sufficient accounts in both number and scope on which to base conclusions concerning management's financial reporting objectives to provide assurance that the General Ledger accounts are fairly stated in relation to the financial statements taken as a whole;

(ii) Additional procedures to be performed by the auditor if evidence provided by confirmations alone is not sufficient; and

(iii) Documentation of the sampling procedures used and of their consistency with GAAS (to be provided to the NCUA Board upon request).

(c) *Retention of records.* The supervisory committee must retain the records of each verification of members' passbooks and accounts until it completes the next verification of members' passbooks and accounts.

§ 715.9 Assistance from outside, compensated person.

(a) *Unrelated to officials.* A compensated auditor who performs a Supervisory Committee audit on behalf of a credit union shall not be related by blood or marriage to any management employee, member of either the board of directors, the Supervisory Committee or the credit committee, or loan officer of that credit union.

(b) *Engagement letter.* The engagement of a compensated auditor to perform all or a portion of the scope of a financial statement audit or supervisory committee audit shall be evidenced by an engagement letter. In all cases, the engagement must be contracted directly with the Supervisory Committee. The engagement letter must be signed by the compensated auditor and acknowledged therein by the Supervisory Committee prior to commencement of the engagement.

(c) *Contents of letter.* The engagement letter shall:

(1) Specify the terms, conditions, and objectives of the engagement;

(2) Identify the basis of accounting to be used;

(3) If a Supervisory Committee Guide audit, include an appendix setting forth the procedures to be performed;

(4) Specify the rate of, or total, compensation to be paid for the audit;

(5) Provide that the auditor shall, upon completion of the engagement, deliver to the Supervisory Committee a written report of the audit and notice in writing, either within the report or communicated separately, of any internal control reportable conditions and/or irregularities or illegal acts, if any, which come to the auditor's attention during the normal course of the audit (i.e., no notice required if none noted);

(6) Specify a target date of delivery of the written reports, such target date not to exceed 120 days from date of calendar or fiscal year-end under audit (period covered), unless the supervisory committee obtains a waiver from the supervising NCUA Regional Director;

(7) Certify that NCUA staff and/or the State credit union supervisor, or designated representatives of each, will be provided unconditional access to the complete set of original working papers, either at the offices of the credit union or at a mutually agreed upon location, for purposes of inspection; and

(8) Acknowledge that working papers shall be retained for a minimum of three years from the date of the written audit report.

(d) *Complete scope.* If the engagement is to perform a *Supervisory Committee Guide* audit intended to fully meet the requirements of § 715.7(c), the engagement letter shall certify that the audit will address the complete scope of that engagement;

(e) *Exclusions from scope.* If the engagement is to perform a *Supervisory Committee Guide* audit which will exclude any item required by the applicable section, the engagement letter shall:

(1) Identify the excluded items;

(2) State that, because of the exclusion(s), the resulting audit will not, by itself, fulfill the scope of a supervisory committee audit; and

(3) Caution that the supervisory committee will remain responsible for fulfilling the scope of a supervisory committee audit with respect to the excluded items.

§ 715.10 Audit report and working paper maintenance and access.

(a) *Audit report.* Upon completion and/or receipt of the written report of a financial statement audit or a supervisory committee audit, the Supervisory Committee must verify that the audit was performed and reported in accordance with the terms of the engagement letter prescribed herein. The Supervisory Committee must submit the report(s) to the board of directors, and provide a summary of the results of the audit to the members of the credit union orally or in writing at the next annual meeting of the credit union. If a member so requests, the Supervisory Committee shall provide the member access to the full audit report. If the National Credit Union Administration ("NCUA") so requests, the Supervisory Committee shall provide NCUA a copy of each of the audit reports it receives or produces.

(b) *Working papers.* The supervisory committee shall be responsible for preparing and maintaining, or making available, a complete set of original working papers supporting each supervisory committee audit. The supervisory committee shall, upon request, provide NCUA staff unconditional access to such working papers, either at the offices of the credit union or at a mutually agreeable location, for purposes of inspecting such working papers.

§ 715.11 Sanctions for failure to comply with this part.

(a) *Sanctions.* Failure of a supervisory committee and/or its independent compensated auditor or other person to comply with the requirements of this section, or the terms of an engagement letter required by this section, is grounds for:

(1) The regional director to reject the supervisory committee audit and provide a reasonable opportunity to correct deficiencies;

(2) The regional director to impose the remedies available in § 715.12, provided

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any of the conditions specified therein is present; and

(3) The NCUA Board to seek formal administrative sanctions against the supervisory committee and/or its independent, compensated auditor pursuant to section 206(r) of the Federal Credit Union Act, 12 U.S.C. 1786(r).

(b) *State Charters.* In the case of a federally-insured state chartered credit union, NCUA shall provide the state regulator an opportunity to timely impose a remedy satisfactory to NCUA before exercising it authority under § 741.202 of this chapter to impose a sanction permitted under paragraph (a) of this section.

§ 715.12 Statutory audit remedies for Federal credit unions.

(a) *Audit by alternative licensed person.* The NCUA Board may compel a federal credit union to obtain a supervisory committee audit which meets the minimum requirements of § 715.5 or § 715.7, and which is performed by an independent person who is licensed by the State or jurisdiction in which the credit union is principally located, for any fiscal year in which any of the following three conditions is present:

(1) The Supervisory Committee has not obtained an annual financial statement audit or performed a supervisory committee audit; or

(2) The Supervisory Committee has obtained a financial statement audit or performed a supervisory committee audit which does not meet the requirements of part 715 including those in § 715.8.

(3) The credit union has experienced serious and persistent recordkeeping deficiencies as defined in paragraph (c) of this section.

(b) *Financial statement audit required.* The NCUA Board may compel a federal credit union to obtain a financial statement audit performed in accordance with GAAS by an independent person who is licensed by the State or jurisdiction in which the credit union is principally located (even if such audit is not required by § 715.5), for any fiscal year in which the credit union has experienced serious and persistent recordkeeping deficiencies as defined in paragraph (c) of this section. The objective of a financial statement audit performed under this paragraph is to reconstruct the records of the credit union sufficient to allow an unqualified or, if necessary, a qualified opinion on the credit union's financial statements. An adverse opinion or disclaimer of opinion should be the exception rather than the norm.

(c) "*Serious and persistent recordkeeping deficiencies.*" A recordkeeping deficiency is "serious" if the NCUA Board reasonably believes that the board of directors and management of the credit union have not timely met financial reporting objectives and established practices and procedures sufficient to safeguard members' assets. A serious recordkeeping deficiency is "persistent" when it continues beyond a usual, expected or reasonable period of time.

PART 741—REQUIREMENTS FOR INSURANCE

4. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, and 1781–1790. Section 741.4 is also authorized by 31 U.S.C. 3717.

§ 741.3 [Amended]

5. Section 741.3 is amended to change both the phrase "Investment Valuation Reserve Account" and the phrase "Investment Valuation Reserve" in paragraph (a)(3) to "Appropriation for Non-conforming Investments".

6. Section 741.6 is amended to change the phrase in paragraph (a) from "before January 31 and on or before July 31" to "before January 22 and on or before July 22"; and to redesignate paragraph (b) as paragraph (d) and to add paragraphs (b) and (c) to read as follows:

§ 741.6 Financial and statistical and other reports.

* * * * *

(b) *Consistency with GAAP.* The accounts of financial statements and reports required to be filed quarterly or semiannually under paragraph (a) of this section must reflect GAAP if the credit union has total assets of $10 million or greater, but may reflect regulatory accounting principles other than GAAP if the credit union has total assets of less than $10 million (except that a Federally-insured State-chartered credit union may be required by its state credit union supervisor to follow GAAP regardless of asset size).

(c) *GAAP sources.* GAAP means generally accepted accounting principles, as defined in § 715.2(e) of this chapter. GAAP is distinct from GAAS, which means generally accepted auditing standards, as defined in § 715.2(f) of this chapter. Authoritative sources of GAAP include, but are not limited to, pronouncements of the Financial Accounting Standards Board (FASB) and its predecessor organizations, the Accounting Standards Executive Committee (AcSEC) of the American Institute of Certified Public Accountants (AICPA), the FASB's Emerging Issues Task Force (EITF), and the applicable AICPA Audit and Accounting Guide.

* * * * *

§ 741.202 [Amended]

7. Section 741.202 is amended to change: the references in paragraph (a) from "requirements set forth in §§ 701.12 and 701.13" to "applicable requirements set forth in part 715"; to add at the ending of paragraph (a) after "of this chapter" the phrase "or applicable state law, whichever requirement is more stringent."; and to change references in paragraph (b) from "§§ 701.12(e) and 701.13" to "§ 715.8".

[FR Doc. 99–19254 Filed 7–28–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–2]

Establishment of Class E Airspace; Taylor, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates and removes an airport header of a Final Rule that was published in the **Federal Register** on June 21, 1999 (64 FR 33014), Airspace Docket No. 97–AWP–2.

EFFECTIVE DATE: 0901 UTC September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 99–15592, Airspace Docket No. 97–AWP–2, published on June 21, 1999 (64 FR 33014), revised the geographic coordinates for the Taylor Municipal Airport and removes the Show Low airport header of the Class E airspace area at Taylor, AZ. A typographical error was discovered in the geographic coordinates of the Taylor Municipal Airport and removes the Show Low airport header for the Taylor, AZ, Class E airspace area. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the Show Low airport header is removed and the geographic coordinates for the Taylor Municipal Airport for the Class E airspace area at Taylor, AZ, as published in the **Federal Register** on June 21, 1999 (64 FR 33014), (**Federal Register** Document 99–15592), are corrected as follows:

71.1 [Corrected]

* * * * *

AWP AZ E5 Taylor, AZ [Corrected]

On page 33015, column 2, line 1, the Taylor Municipal Airport, AZ, airspace area, correct (lat. 34°27′17″ N, Long. 110°06′89″ W), to read (lat. 34°27′10″ N, long. 110°06′53″ W).

* * * * *

Issued in Los Angeles, California, on July 19, 1999.

John Clancy,

Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 99–19370 Filed 7–28–99; 8:45 am]

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 103

Extension of Grant of Conditional Exception

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Extension of a Grant of Conditional Exception.

SUMMARY: The Financial Crimes Enforcement Network ("FinCEN") extends for two years a conditional exception to a provision of the Bank Secrecy Act. The exception, which would otherwise expire on May 31, 1999, permits financial institutions to comply more efficiently with requirements for inclusion of certain information in orders for transmissions of funds.

EFFECTIVE DATE: June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Peter Djinis, Associate Director, FinCEN, (703) 905–3930; Charles Klingman, Financial Institutions Policy Specialist, Office of Program Development, FinCEN, (703) 905–3602; Stephen R. Kroll, Chief Counsel, FinCEN, and Cynthia L. Clark, Deputy Chief Counsel, Office of Chief Counsel, FinCEN, (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Background.

FinCEN Issuance 98–1, 63 FR 3640 (January 26, 1998), contains two "conditional exceptions" to the strict operation of 31 CFR 103.33(g) (the "Travel Rule"). The Travel Rule requires a financial institution to include certain information in transmittal orders relating to transmittals of funds of $3,000 or more. The first (the "CIF Exception") of the two conditional exceptions addressed computer programming problems in the banking and securities industries; it relaxed a requirement that a customer's true name and street address be included in a funds transmittal order, so long as alternate steps, described in the issuance and designed to prevent avoidance of the Travel Rule, were satisfied. By its terms, that exception to the Travel Rule was to expire on May 31, 1999, for transmittals of funds initiated after that date. However, the rationale for the CIF Exception remains valid, and Treasury wishes to avoid any change in Travel Rule requirements that might entail changes in the computer programming of financial institutions at this time.

II. FinCEN Issuance 99–1

By virtue of the authority contained in 31 CFR 103.45 (a) and (b), which has been delegated to the Director of FinCEN, the effective period of the CIF Exception, as such Exception is set forth (as part of FinCEN Issuance 98–1, 63 FR 3640 (January 26, 1998) under the heading "Grant of Exceptions" (63 FR 3641) is extended so that the CIF Exception will expire, on May 31, 2001, for transmittals of funds initiated after that date, if not revoked or modified with respect to such expiration date prior to that time.

Signed this 28th day of May, 1999.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 99–19259 Filed 7–28–99; 8:45 am]

BILLING CODE 4820–03–P

FEDERAL MARITIME COMMISSION

46 CFR Part 530

[Docket No. 99–12]

Termination of Dial-Up Service Contract Filing System

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This final rule implements the Federal Maritime Commission's full transition to the internet-based service contract filing system and removes all references to the dial-up filing system.

DATES: Effective date October 1, 1999.

FOR FURTHER INFORMATION CONTACT:

Austin L. Schmitt, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573–0001, (202) 523–5796

Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573–0001, (202) 523–5740

SUPPLEMENTARY INFORMATION: In Docket No. 98–30, *Service Contracts Subject to the Shipping Act of 1984*, the Federal Maritime Commission ("FMC" or "Commission") implemented new rules governing the filing of service contracts to reflect changes made to the Shipping Act of 1984, 46 U.S.C. app. sec. 1701 *et seq.*, by the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902. In that rulemaking, the Commission adopted an internet-based service contract filing system effective May 1, 1999. The Commission also retained its dial-up system for service contract filing for a limited time to allow for a smooth transition to the internet-based system.

In the interim final rule in Docket No. 98–30, effective March 1, 1999, and published in the **Federal Register** March 8, 1999, the Commission stated:

> Interactive internet filing of service contracts with the Commission will be provided, and while the dial-up system will be available, the Commission expects to phase it out as soon as possible, but certainly no later than the end of Fiscal Year 1999.

64 FR 11186, 11195. Accordingly, the purpose of this final rule is to implement the anticipated requirement that all service contracts be filed through the Commission's internet-based service contract filing system no later than October 1, 1999. The dial-up system will be shut down and no service contract filings will be accepted in the dial-up system after September 30, 1999. Users who currently use the dial-up system for filing service contracts must, on a timely basis, submit an amendment to their Form FMC–83 (Registration) to obtain the new log-on IDs and passwords necessary to file in the internet system.

Notice and an opportunity for public comment are not necessary prior to the issuance of this final rule inasmuch as both were provided previously in the course of the rulemaking for Docket No. 98–30. *See* Notice of Proposed Rulemaking, 63 FR 71062 (December 23, 1998); Interim Final Rule, 64 FR 11186

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(March 8, 1999); and Final Rule, 64 FR 23782 (May 4, 1999).

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant impact on a substantial number of small entities. The affected universe of the parties is limited to vessel-operating common carriers. The Commission has determined that these entities do not come under the programs and policies mandated by the Small Business Regulatory Enforcement Fairness Act as they typically exceed the threshold figures for number of employees and/or annual receipts to quality as a small entity under Small Business Administration guidelines.

This regulatory action is not a "major rule" under 5 U.S.C. 804(2).

List of Subjects for 46 CFR part 530

Freight, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, the FMC amends 46 CFR part 530 as follows:

PART 530—SERVICE CONTRACTS

1. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. App. 1704, 1705, 1707, 1716.

2. Amend § 530.3 to revise paragraph (k) as follows:

§ 530.3 Definitions.

* * * * *

(k) *File* or *filing* (of service contracts or amendments thereto) means the use of the Commission's electronic filing system for receipt of a service contract or an amendment thereto by the Commission, consistent with the method set forth in Appendix A of this part, and the recording of its receipt by the Commission.

* * * * *

3. Amend § 530.5 to revise paragraph (c)(1) and remove paragraphs (c)(3), (c)(4) and (c)(5) to read as follows:

§ 530.5 Duty to file.

* * * * *

(c) *Registration.* (1) *Application.* Authority to file or delegate the authority to file must be requested by a responsible official of the service contract carrier in writing by submitting to BTCL the Registration Form (FMC–83) in Exhibit 1 to this part.

* * * * *

4. Amend § 530.8 to revise paragraphs (a) and (c) to read as follows:

§ 530.8 Service contracts.

(a) Authorized persons shall file with BTCL, in the manner set forth in Appendix A of this part, a true and complete copy of every service contract or amendment to a filed service contract before any cargo moves pursuant to that service contract or amendment.

* * * * *

(c) *Certainty of terms.* The terms described in paragraph (b) of this section may not:

(1) Be uncertain, vague or ambiguous; or

(2) Make reference to terms not explicitly contained in the service contract itself unless those terms are contained in a publication widely available to the public and well known within the industry.

* * * * *

§ 530.11 [Removed and Reserved]

5. Remove and reserve § 530.11.

6. Revise Appendix A to part 530 to read as follows:

Appendix A to Part 530—Instructions for the Filing of Service Contracts

Service contracts shall be filed in accordance with the instructions found on the Commission's home page, http://www.fmc.gov.

A. Registration, Log-on ID and Password

To register for filing, a carrier, conference, agreement or publisher must submit the Service Contract Registration Form (Form FMC–83) to BTCL. A separate Service Contract Registration Form is required for each individual that will file service contracts. BTCL will direct OIRM to provide approved filers with a log-on ID and password. Filers who wish a third party (publisher) to file their service contracts must so indicate on Form FMC–83. Authority for organizational filing can be transferred by submitting an amended registration form requesting the assignment of a new log-on ID and password. The original log-on ID will be canceled when a replacement log-on ID is issued. Log-on IDs and passwords may not be shared with, loaned to or used by any individual other than the individual registrant. The Commission reserves the right to disable any log-on ID that is shared with, loaned to or used by parties other than the registrant.

B. Filing

After receiving a log-on ID and a password, a filer may log-on to the service contract filing area on the Commission's home page and file service contracts. The filing screen will request such information as: filer name, Registered Persons Index ("RPI") number and carrier RPI number (if different); Service Contract and amendment number; and effective date. The filer will attach the entire service contract file and submit it into the system. When the service contract has been submitted for filing, the system will assign a filing date and an FMC control number, both of which will be included in the acknowledgment/confirmation message.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–19325 Filed 7–28–99; 8:45 am]

BILLING CODE 6730–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1509

[FRL–6409–6]

Acquisition Regulation: Contractor Performance Evaluations

AGENCY: Environmental Protection Agency

ACTION: Final rule; technical amendment.

SUMMARY: The Environmental Protection Agency is revising its EPA Acquisition Regulation (48 CFR Chapter 15) concerning contractor performance evaluations to clarify that contractor performance evaluations will be completed after each 12 month period from the effective date of contract. The final rule dated April 26, 1999 (64 FR 20201) indicated that contractor performance evaluations will be completed each 12 months after contract award. Because an EPA contract award date may commence prior to the contract effective date, EPA's regulation will be technically amended to reflect that contractor performance evaluations will be completed each 12 months after the effective date of contract.

DATES: This amendment was effective as of May 26, 1999.

FOR FURTHER INFORMATION CONTACT: Frances Smith, U.S. Environmental Protection Agency, Office of Acquisition Management, (3802R), 401 M Street, SW, Washington, D.C. 20460, Telephone: (202) 564–4368.

SUPPLEMENTARY INFORMATION:

A. Background

The final rule for contractor performance evaluations was published in the **Federal Register** on April 26, 1999 (64 FR 20201). The final rule indicated that contractor performance evaluations will be completed each 12 months after contract award. EPA contracts often have a contract award date and a contract effective date which may or may not be the same date. As such, this technical amendment provides a revision to the EPA Acquisition Regulation to clarify that contractor performance evaluations will be completed each 12 months after the effective date of contract. The effective date of contract denotes the beginning of contractor performance.

B. Executive Order 12866

This action is a technical amendment to the final rule concerning contractor performance evaluations (April 26, 1999, 64 FR 20201). This technical amendment is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget.

C. Paperwork Reduction Act

This technical amendment merely changes the wording in the final rule (April 26, 1999, 64 FR 20201) to reflect that contractor performance evaluations will be completed each 12 months after the effective date of contract. Reference the final rule for an analysis pertaining to the Paperwork Reduction Act.

D. Regulatory Flexibility Act

This technical amendment does not exert a significant economic impact on a substantial number of small entities. The final rule (April 26, 1999, 64 FR 20201) for contractor performance evaluations provides supporting rationale.

E. The National Technology Transfer and Advancement Act

As referenced in the final rule (April 26, 1999, 64 FR 20201), section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This technical amendment does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

F. Executive Order 12875: Enhancing the Intergovernmental Partnership

This technical amendment does not create a mandate on State, local or tribal governments. Reference the final rule (April 26, 1999, 64 FR 20201) for an analysis concerning Executive Order 12875.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

This technical amendment does not significantly or uniquely affect the communities of Indian tribal governments. Reference the final rule (April 26, 1999, 64 FR 20201) for a complete analysis.

H. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and tribal governments, and the private sector. This technical amendment does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in one year. This technical amendment is not subject to the requirements of sections 202 and 205 of the UMRA. Reference the final rule (April 26, 1999, 64 FR 20201).

I. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. Reference the final rule (April 26, 1999, 64 FR 20201).

This technical amendment is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety.

J. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This finding must be supported by a brief statement (5 U.S.C. 808(2)). We are making a good cause finding for this rule under 5 U.S.C. 553(b) that notice and comment are unnecessary because this rule is a minor technical clarification as described earlier. In light of this finding, we have established an effective date of May 26, 1999. EPA will submit a report containing this technical amendment and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This technical amendment is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 48 CFR Part 1509

Environmental protection, Government procurement.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

1. The authority citation for part 1509 continues to read as follows:

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended.

2. Section 1509.170–4 is amended by revising paragraph (b) to read as follows:

§ 1509.170–4 Definitions.

* * * * *

(b) *Interim Report* refers to a Contractor Performance Report that covers each 12 month period after the effective date of contract.

* * * * *

3. Section 1509.170–5 is amended by revising paragraph (d) to read as follows:

§ 1509.170–5 Policy.

* * * * *

(d) The contracting officer must complete interim Reports covering each 12 month period after the effective date of contract for all contracts in excess of $100,000, except those acquisitions identified in 1509.170–3, Applicability. In addition to interim Reports, the contracting officer must complete a final Report which covers the last 12 months (or less) of contract performance.

* * * * *

Pat Patterson,

Acting Director, Office of Acquisition Management.

[FR Doc. 99–19435 Filed 7–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980406085–8164–01; I.D. 031998C]

RIN 0648–AJ27

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Management Measures for Nontrawl Sablefish; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correcting amendments.

SUMMARY: This document corrects the Pacific coast groundfish regulations at 50 CFR part 660, subpart G. The effect of this correction is to remove redundant language that "Gear endorsements may not be transferred separately from the limited entry permit." in § 660.333(f)(3), because it is included in § 660.333(f)(2) as follows: "Gear endorsements, sablefish endorsements, and sablefish tier assignments may not be transferred separately from the limited entry permit."

DATES: Effective July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Yvonne de Reynier, NMFS, 206–526–6120.

Need for Correction

As published, the final rule document 98–18751 on page 38114, in the **Federal Register** issue of Wednesday, July 15, 1998, implementing management measures for nontrawl sablefish contained an incorrect amendatory instruction 3. for § 660.333(f)(2).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: July 23, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

Accordingly, 50 CFR 660.333(f) is corrected by making the following correcting amendments:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.333, paragraph (f)(3) is removed, and paragraph (f)(4) is redesignated as paragraph (f)(3).

[FR Doc. 99–19429 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 971208294–8154–02; I.D. 103097B]

RIN 0648–AJ20

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correcting amendments.

SUMMARY: This document corrects the Pacific Coast groundfish regulations at 50 CFR part 660, subpart G. The effect of this correction is to reinstate the following sentence to introductory paragraph (d) in § 660.333: "A permit holder applying to register a limited entry permit has the burden to submit evidence to prove that registration requirements are met."

DATES: Effective July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Yvonne de Reynier, NMFS, 206–526–6120.

Need for Correction

In correction document 98–20011, on page 40067, in the **Federal Register** issue of Monday, July 27, 1998, contained an incorrect amendatory instruction 3. for § 660.333(d), which improperly removed a sentence reading, "A permit holder applying to register a limited entry permit has the burden to submit evidence to prove that registration requirements are met."

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: July 23, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

Accordingly, 50 CFR part 660 is corrected by making the following correcting amendments:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.333, paragraph (d) introductory text is revised to read as follows:

§ 660.333 Limited entry fishery-general.

* * * * *

(d) Evidence and burden of proof. A vessel owner (or persons holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, transfer, or registration of a limited entry permit has the burden to provide evidence that qualification requirements are met. The owner of a permit endorsed for longline or trap (or pot) gear applying for a sablefish endorsement or a tier assignment under § 660.336, paragraph (c) or (d) has the burden to submit evidence to prove that qualification requirements are met. A permit holder applying to register a limited entry permit has the burden to submit evidence to prove that registration requirements are met. The following evidentiary standards apply:

* * * * *

[FR Doc. 99–19428 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 145
Thursday, July 29, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV99–993–3 PR]

Dried Prunes Produced in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would decrease the current assessment rate from $3.28 to $2.00 per ton of salable dried prunes established for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 1999–2000 and subsequent crop years. The Committee is responsible for local administration of the marketing order which regulates the handling of dried prunes grown in California. Authorization to assess dried prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The assessment rate decrease is possible because the 1999–2000 assessable tonnage is expected to total 173,700 salable tons (74 percent higher than last crop year). The $2.00 assessment rate would allow the Committee to meet its 1999–2000 expenses. The crop year begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 30, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (559) 487–5901; Fax (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable dried prunes beginning on August 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would decrease the assessment rate established for the Committee for the 1999–2000 and subsequent crop years from $3.28 per ton to $2.00 per ton of salable dried prunes.

The California dried prune marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dried prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–99 and subsequent crop years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 29, 1999, and unanimously recommended to

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increase its 1999–2000 budget from $327,180 to $347,400 and decrease the current assessment rate from $3.28 to $2.00 per ton of salable dried prunes. Even with the increased budget, the $1.28 per ton decrease in the assessment rate to $2.00 per ton would allow the Committee to meet its 1999–2000 expenses. The California Agricultural Statistical Service estimates a 180,000 ton crop during the 1999–2000 crop year, of which 6,300 tons are not expected to be salable because of size or quality, leaving a balance of 173,700 salable tons. This is a 74 percent increase in salable tonnage from last year and allows the Committee to recommend lowering its assessment rate.

The following table compares major budget expenditures recommended by the Committee on June 29, 1999, and major budget expenditures in the revised budget recommended on December 1, 1998.

Budget expense categories	($1,000)	
	1998–99	1999–2000
Salaries, Wages and Benefits	189.7	201.265
Research and Development	0	30
Office Rent	23	24
Travel	18.5	21
Reserve (Contingencies)	50.93	16.735
Equipment Rental	9	9.5
Data Processing	3.85	5
Stationary and Printing	5	5.5
Office Supplies	5	5
Postage and Messenger	5	7

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by the estimated salable tons of California dried prunes. Production of dried prunes for the year is estimated at 173,700 salable tons which should provide $347,400 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses. Interest income also would be available if assessment income is reduced for some reason. The Committee is authorized to use excess assessment funds from the 1998–99 crop year (currently estimated at $51,857) for up to 5 months beyond the end of the crop year to meet 1999–2000 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,250 producers of dried prunes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Currently the prune industry profile shows that 8 of the 20 handlers (40 percent) shipped over $5,000,000 of dried prunes and could be considered large handlers by the Small Business Administration. Twelve of the 20 handlers (60 percent) shipped under $5,000,000 of dried prunes and could be considered small handlers. An estimated 90 producers, or about 7 percent of the 1,250 total producers, would be considered large growers with annual income over $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule would decrease the current assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent crop years from $3.28 per ton to $2.00 per ton of salable dried prunes. The Committee unanimously recommended 1999–2000 expenditures of $347,400 and an assessment rate of $2.00 per ton of salable dried prunes. The proposed assessment rate of $2.00 is $1.28 lower than the current 1998–99 rate (64 FR 3621, January 25, 1999). The quantity of assessable dried prunes for the 1999–2000 crop year is now estimated at 173,700 salable tons. Thus, the $2.00 rate should provide $347,400 in assessment income and be adequate to meet this year's expenses. Interest income also would be available to cover budgeted expenses if the 1999–2000 expected assessment income falls short.

The following table compares major budget expenditures recommended by the Committee on June 29, 1999, with major budget expenditures in the revised budget recommended on December 1, 1998.

Budget expense categories	($1,000)	
	1998–99	1999–2000
Salaries, Wages and Benefits	189.7	201.265
Research and Development	0	30
Office Rent	23	24
Travel	18.5	21
Reserve (Contingencies)	50.93	16.735
Equipment Rental	9	9.5
Data Processing	3.85	5
Stationery and Printing	5	5.5
Office Supplies	5	5
Postage and Messenger	5	7

The Committee reviewed and unanimously recommended 1999–2000 expenditures of $347,400. The assessment rate of $2.00 per ton of salable dried prunes was then determined by dividing the total recommended budget by the estimated salable dried prunes. The Committee is authorized to use excess assessment funds from the 1998–99 crop year (currently estimated at $51,857) for up to 5 months beyond the end of the crop year to fund 1999–2000 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)). Anticipated assessment income and interest income during 1999–2000 would be adequate to cover authorized expenses.

Recent price information indicates that the grower price for the 1999–2000 season should average above $850 per salable ton of dried prunes. Based on estimated shipments of 173,700 salable tons, assessment revenue during the 1999–2000 crop year is expected to be less than 1 percent of the total expected grower revenue.

This action would decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate would reduce the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 29, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 1999–2000 crop year begins on August 1, 1999, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dried prunes handled during such crop year; (2) the proposed rule would decrease the assessment rate for assessable prunes beginning with the 1999–2000 crop year; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and Recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is proposed to be amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 993.347 is revised to read as follows:

§ 993.347 Assessment rate.

On and after August 1, 1999, an assessment rate of $2.00 per ton is established for California dried prunes.

Dated: July 23, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–19352 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[DA–99–02]

Milk in the Iowa Marketing Area; Termination of Proceeding

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of Proceeding.

SUMMARY: This document terminates the proceeding that was initiated to consider a proposal to reduce the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order for the months of July and August 1999, and to further reduce the percentage for June 1999.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357, e-mail address connie.brenner@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Proposed Rule: Issued April 14, 1999; published April 19, 1999 (64 FR 19071).

Final Rule: Issued May 5, 1999; published May 11,1999 (64 FR 25193).

Notice of Reopening and Extension of Time for Filing Comments: Issued May 7, 1999; published May 13, 1999 (64 FR 25851).

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the

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Agricultural Marketing Service considered the economic impact of the action on small entities and certified that it would not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of February 1999, 3,788 dairy farmers were producers under the Iowa order. Of these, 3,714 producers (i.e., 98 percent) were considered small businesses, having monthly milk production under 326,000 pounds. A further breakdown of the monthly milk production of the producers on the order during February 1999 was as follows: 2,804 produced less than 100,000 pounds of milk; 776 produced between 100,000 and 200,000 pounds; 134 produced between 200,000 and 326,000 pounds; and 74 produced over 326,000 pounds. During the same month, 11 handlers were pooled under the order. Five were considered small businesses.

Because this termination of the proceeding concerning the proposed revision results in no change in regulation, the economic conditions of small entities will remain unchanged. Also, it does not change reporting, record keeping, or other compliance requirements.

Based on the comment received in response to the initial proposed revision from Anderson-Erickson Dairy Company, the later comment from Swiss Valley Farms, Co., a cooperative organization in Davenport, Iowa, and on our analysis of relevant information connected with the proposed rulemaking, we have determined that the revision request should not be granted. While reduction of the pool supply plant shipping standards may have made qualification for pool status more easily obtainable for one supply plant operator, the order should assure that adequate supplies of milk are available to meet the fluid milk needs of the Iowa market. The current level of supply plant shipping percentages should meet those needs without preventing producers whose milk historically has been associated with the order from maintaining their pool status.

Preliminary Statement

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Iowa marketing area.

Notice of reopening and extension of time for filing comments was published in the **Federal Register** on May 13, 1999 (64 FR 25851). The time for filing comments on the proposed reduction of the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order for the months of July and August 1999, and a further reduction for June 1999, was extended through June 14, 1999. Interested persons were afforded opportunity to file written data, views and arguments thereon.

One comment opposing the reduction of supply plant shipping requirements was received.

Statement of Consideration

This document terminates the proceeding that was initiated to consider a proposal to reduce the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order for the months of July and August 1999, and to further reduce the percentage for June 1999.

The original request for a reduction in the percentage of a supply plant's shipping percentage requirements came from Beatrice Cheese, Inc., (Beatrice), a proprietary manufacturer of dairy products in Fredericksburg, Iowa. Beatrice requested a decrease in the applicable percentage of 10 percentage points from 20 percent to 10 percent for the months of April through August 1999. This request was based on Beatrice's contention that the action would allow the milk of dairymen who historically had supplied the market to continue to be pooled under the Federal order and also would prevent uneconomic milk movements. Beatrice stated that the 10 percent decrease for April through August 1999 was warranted due to the fact that current raw milk supplies available for fluid use from outside of Iowa's traditional procurement area exceeded the needs of the fluid milk plants pooled under Federal Order 79 and that these available supplies had replaced milk formerly shipped by Beatrice producers. Beatrice contended that if the pool supply plant shipping percentages remained unchanged, the milk of dairymen who historically had supplied the Iowa market would not be able to continue to be pooled under the Federal Order or Beatrice would be forced to move milk uneconomically to qualify it for pooling.

A comment filed by Anderson-Erickson Dairy Company, a pool distributing plant operator regulated under Order 79, did not oppose the proposed reduction for the months of April and May, but proposed a reduction of no more than 5 percentage points for June and opposed any reduction at that time for the months of July and August 1999. Anderson-Erickson stated that the summer could likely lead to a different marketing scenario than that projected by Beatrice due to a volatile milk supply situation in Iowa.

As a result of Beatrice's request and Anderson-Erickson's comments, the Iowa order supply plant shipping percentages were reduced for April and May by 10 percentage points, and for June by 5 percentage points. In addition, a notice of reopening and extension of time for filing comments through June 14, 1999, was issued to consider a further 5-percent reduction for June and a continuation of the 10-percentage point reduction for July and August.

Comments from Swiss Valley Farms, Co., a cooperative organization in Davenport, Iowa, recommend termination of the proceeding due to indications that Iowa milk production during the traditionally short supply months may be lower than normal. Swiss Valley also states that shipping percentages, once properly set, should be changed based only on changes in the supply-demand factors in the market. The cooperative association contends that such factors would represent only emergency situations beyond the control of the producers or processors in a market. Swiss Valley argues that these emergency situations are not currently in existence.

After consideration of all relevant material, including the proposal in the notice, the comment received from the cooperative organization, and other information connected with the rulemaking, it is hereby found and determined that the proposed revision action be terminated.

List of Subjects in 7 CFR Part 1079

Milk marketing orders.

The authority citation for 7 CFR part 1079 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Dated: July 23, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99–19351 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Office of Operations

7 CFR Part 2812

RIN 0599–AA03

Priorities and Administrative Guidelines for Donation of Excess Research Equipment

AGENCY: Office of Procurement and Property Management, Office of Operations, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Procurement and Property Management of the Department of Agriculture (USDA) proposes to amend its procedures for the donation of excess research equipment for technical and scientific education and research activities to educational institutions and nonprofit organizations under section 11(I) of the Stevenson-Wydler Technology Act (15 U.S.C. 3710(I)). This amendment would expand the list of entities eligible to receive such equipment, establish a priority list for eligible entities seeking transfer of such equipment, and clarify administrative rules regarding equipment transfer.

DATES: Comments must be submitted by August 30, 1999.

ADDRESSES: Comments should be sent to USDA, OPPM, PMD, 1400 Independence Ave., S.W., Mail Stop 9304, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Kathy Fay on 202–720–9779.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Order Number 12866.
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act.
III. Electronic Access Addresses

I. Background

USDA regulations for the donation of excess research equipment for technical and scientific educational and research activities under section 11(I) of the Stevenson-Wydler Technology Act (15 U.S.C. 3710(I)) were promulgated at 7 CFR part 2812 on July 3, 1995. USDA has determined that the eligibility of organizations to receive excess research equipment under this part is not clear.

The President signed Executive Order (EO) 12999 on April 17, 1996, requiring Federal agencies, when donating educationally useful Federal research equipment under section 11(I) of the Stevenson-Wydler Technology Act and other laws, to give the highest preference to schools (including pre-kindergarten through twelfth grade) and nonprofit organizations (including community-based educational organizations) with particular preference to such schools and nonprofit organizations located in Federal enterprise communities and empowerment zones designated pursuant to the Omnibus Reconciliation Act of 1993, Public Law 103–66. USDA is taking action in this rule-making to implement EO 12999.

Further, consistent with the EO 12999 and other authorities available to USDA for transfer of excess personal property (such as that implemented in 7 CFR part 3200), USDA desires to establish a preference list for those eligible entities seeking to receive property donated under this part.

II. Procedural Requirements

A. Executive Order Number 12866

This proposed rule was reviewed under EO 12866, and it has been determined that it is not a significant regulatory action because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This proposed rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

B. Regulatory Flexibility Act

USDA certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, for the reason that this regulation imposes no new requirements on small entities.

C. Paperwork Reduction

The information collection and record keeping requirements to implement these procedures have been cleared by the Office of Management and Budget (OMB), under 0505–0019, in accordance with the Paperwork Reduction Act (44 U.S.C. ch. 35).

III. Electronic Access Addresses

You may send electronic mail (E-mail) to kathy.fay@usda.gov or contact us via fax at (202) 720–3747.

List of Subjects in 7 CFR part 2812

Government property management.

For the reasons set forth in the preamble, 7 CFR part 2812 is proposed to be amended as set forth below:

PART 2812—DEPARTMENT OF AGRICULTURE GUIDELINES FOR THE DONATION OF EXCESS RESEARCH EQUIPMENT UNDER 15 U.S.C. 3710(I)

1. The authority citation for part 2812 is revised to read as follows:

Authority: 5 U.S.C. 301; E.O. 12999, 61 FR 17227, 3 CFR, 1997 Comp., p. 180.

2. Amend § 2812.3 by removing paragraph (b), redesignating paragraphs (c), (d), and (e) as (e), (h), and (i), respectively, and adding new paragraphs (b), (c), (d), (f) and (g) to read as follows:

§ 2812.3 Definitions.

* * * * *

(b) *Community-based educational organization* means nonprofit organizations that are engaged in collaborative projects with pre-kindergarten through twelfth grade educational institutions or that have education as their primary focus. Such organizations shall qualify as nonprofit educational institutions for purposes of section 203(j) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(j)).

(c) *Educational institution* means a public or private, non-profit educational institution, encompassing pre-kindergarten through twelfth grade and two- and four-year institutions of higher education, as well as public school districts.

(d) *Educationally useful Federal equipment* means computers and related peripheral tools (e.g., printers, modems, routers, and servers), including telecommunications and research equipment, that are appropriate for use in prekindergarten, elementary, middle, or secondary school education. It shall also include computer software, where the transfer of licenses is permitted.

* * * * *

(f) *Federal empowerment zone or enterprise community (EZ/EC)* means a

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rural area designated by the Secretary of Agriculture under 7 CFR part 25.

(g) *Non-profit organization* means: (1) Any corporation, trust association, cooperative, or other organization which—

(i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(ii) Is not organized primarily for profit; and

(iii) Uses its net proceeds to maintain, improve, or expand its operations.

(2) For the purposes of this part, "non-profit organizations" may include entities affiliated with institutions of higher education, or with state and local governments and federally recognized Indian tribes.

* * * * *

4. Amend § 2812.4 by removing and reserving paragraph (a), and revising paragraphs (c) and (d) to read as follows:

§ 2812.4 Procedures.

(a) [Reserved]

* * * * *

(c) After USDA screening has been accomplished, excess personal property targeted for donation under this part will be made available on a first-come, first-served basis. If there are competing requests, donations will be made to eligible recipients in the following priority order:

(1) Educationally useful Federal equipment for pre-kindergarten through twelfth grade educational institutions and community-based educational organizations in rural EZ/EC communities;

(2) Educationally useful Federal equipment for pre-kindergarten through twelfth grade educational institutions and community-based educational organizations not in rural EZ/EC areas;

(3) All other eligible organizations.

(d) Upon reporting property for excess screening, if the pertinent USDA agency has an eligible organization in mind for donation under this part, it shall enter "Public Law 102–245" in the note field. The property will remain in the excess system approximately 30–45 days, and if no USDA agency or cooperator requests it during the excess cycle, Departmental Excess Personal Property Coordinator will send the agency a copy of the excess report stamped, "DONATION AUTHORITY TO THE HOLDING AGENCY IN ACCORDANCE WITH PUBLIC LAW 102–245." The holding USDA agency may then donate the excess property to the eligible organization.

* * * * *

5. Appendix A to part 2812 is removed.

Done at Washington, D.C., this 12th day of July, 1999.

W.R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 99–19289 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–PA–P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Release of Solid Materials at Licensed Facilities: Postponement of Public Meeting Currently Scheduled for August 4–5, 1999, in Chicago, Illinois

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of postponement of public meeting scheduled for Chicago, Illinois, on August 4–5, 1999.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering a rulemaking that would set specific requirements on releases of solid materials in order to establish a regulatory framework more consistent with existing NRC requirements on air and liquid releases. The NRC previously announced its intent to conduct a public meeting on August 4 and 5 in Chicago, Illinois, to discuss those issues, however that meeting is being postponed to allow additional time for participants to familiarize themselves with the issues involved.

FOR FURTHER INFORMATION CONTACT: Chip Cameron; e-mail fxc@nrc.gov, telephone: (301) 415–1642; Office of the General Counsel, USNRC, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION: The NRC previously announced in a **Federal Register** Document (FRD) dated June 30, 1999 (64 FR 35090), that it is considering a rulemaking that would set specific requirements for release of solid materials. That notice also indicated that NRC is supplementing its standard rulemaking process by conducting enhanced public participatory activities including facilitated public meetings, before the start of any formal rulemaking process, to solicit early and active public input on major issues associated with release of solid materials, including whether the NRC should proceed with such a rulemaking. The FRD noted that four public meetings were planned from August through November 1999, in Chicago, San Francisco, Atlanta, and Washington, DC.

The first public meeting planned was to be held in Chicago, Illinois, on August 4 and 5, 1999. However the NRC has decided to postpone the Chicago meeting and reschedule it. The postponed meeting will still be held in Chicago on a date to be announced soon. We decided to postpone this meeting because several stakeholder groups indicated that the short time frame between publication of the June 30, 1999, FRD and the August 4–5 meeting did not allow for adequate preparation and participation. Since NRC is looking for substantive reactions and discussions based on the June 30 FRD, it was felt that postponing the first of the four workshops to a later date would allow all stakeholders to adequately prepare for the discussions and obtain the participation of their key leaders knowledgeable about these issues.

The enhanced participatory rulemaking process will begin with the San Francisco meeting on September 15–16, 1999. As noted in the June 30 FRD, the meeting in San Francisco will take place at the Radisson Miyako Hotel, 1625 Post St., San Francisco, California. As also noted in the June 30 FRD, the meetings in Atlanta and Washington DC will take place as scheduled on October 5–6, 1999, and November 1–2, 1999, respectively.

The NRC regrets any inconvenience this postponement may cause those that planned to attend the Chicago meeting. However, we believe that a balance of stakeholders familiar with the issues and alternatives associated with potential release of solid materials is critical to conducting a comprehensive discussion.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 23rd day of July, 1999.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety.

[FR Doc. 99–19366 Filed 7–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG19

List of Approved Spent Fuel Storage Casks; Revision, NUHOMS 24–P and NUHOMS 52–B

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations containing the list of approved spent fuel storage cask designs to add an amended version of Certificate of Compliance Number (CoC No.) 1004 to this list. The amended version reflects a change of ownership of this certificate from VECTRA Technologies, Inc. to Transnuclear West, Inc., (TN West) as well as an amendment to the certificate. This rulemaking also implements a Director's Decision, in response to a petition filed by the Toledo Coalition for Safe Energy, *et al.*, regarding the cask design, approved by CoC No. 1004, in which the Director determined that a rulemaking should be conducted to require a fabrication inspection of dry shielded canister (DSC) shell welds.

DATES: The comment period expires October 12, 1999. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC's home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail cag@nrc.gov.

Certain documents related to this rulemaking, including comments received by the NRC, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20003–1527. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Stan Turel, telephone (301) 415–6234, e-mail, spt@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires, ". . . for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within Part 72, entitled "Approval of Spent Fuel Storage Casks," that contains procedures and criteria for obtaining NRC approval of dry storage cask designs.

The NRC subsequently issued a final rule to amend Part 72 by adding to the list of approved spent fuel storage cask designs CoC No. 1004 to VECTRA Technologies, Inc., of San Jose, California, for the standardized NUHOMS–24P and NUHOMS–52B spent fuel storage cask designs (59 FR 65898; December 22, 1994). The NUHOMS design consists of a sealed, dry shielded canister (DSC), which contains the spent fuel assemblies. A loaded DSC is stored inside a ventilated, horizontal, concrete vault (i.e., storage module).

The Petition

The Toledo Coalition for Safe Energy, *et al.*, filed a petition with the NRC on December 5, 1995, pursuant to 10 CFR 2.206. The petitioners raised concerns on the safety of the NUHOMS–24P spent fuel storage cask design regarding a reduction in the thickness of the welds in the walls of three DSCs fabricated for use at the Davis-Besse nuclear power plant. In addition, the petitioners questioned the NRC's administrative process by which VECTRA was permitted to deliver the DSCs containing wall thinning to the Davis-Besse facility and by which the licensee for Davis Besse was permitted to use these casks. The petitioners claimed that an NRC rulemaking or some other public proceeding was necessary to grant permission for the transfer and use of these spent fuel storage casks.

The Petition was referred to the Director of the NRC's Office of Nuclear Material Safety and Safeguards (NMSS) for action under the NRC's regulations in 10 CFR 2.206. On February 5, 1997, the Director of NMSS issued Director's Decision 97–03 (DD–97–03) that granted the Petition, in part. The decision found that the minimum wall thickness measured by VECTRA in the three DSCs was 0.581 inch, less than the original design wall thickness of 0.625 inch specified in the Safety Analysis Report (SAR). VECTRA performed calculations demonstrating that a DSC with a 0.500 inch uniform minimum wall thickness still met the American Society of Mechanical Engineers, Boiler and Pressure Vessel Code (ASME Code), allowable stress values and satisfied the NRC's design criteria. VECTRA submitted these calculations in a letter dated September 5, 1995. In a Safety Evaluation (SE), dated October 5, 1995, the NRC accepted VECTRA's wall thickness calculation as meeting the ASME Code allowable stress values. However, the NRC indicated that because of the limited experience in performing weld thickness measurements, it was reasonable for VECTRA to establish a fabrication margin of 0.063 inch above the 0.500 inch minimum design wall thickness. The decision stated, in part, "while VECTRA failed to comply with its SAR commitment of 0.625 inch, its failure resulted in no compromise of safety. Nonetheless, the failure raised an issue of poor control during the fabrication process." The decision also found that existing NUHOMS–24P casks remained acceptable for continued use. The decision further found that VECTRA had no procedure to measure the final wall thickness in the area of the welds, after grinding or in any subsequent steps in the fabrication process, which would provide an adequate level of control in maintaining minimum acceptable wall thickness. VECTRA failed to comply with the NRC's requirement under § 72.150 to have procedures that include appropriate qualitative and quantitative acceptance criteria for determining that important activities have been satisfactorily accomplished. The decision indicated that CoC No. 1004 should be modified to require a fabrication inspection procedure to assure that DSC weld-grinding operations do not result in wall thinning below acceptable levels. Accordingly, the petitioners' request was granted, in part. The decision is available for review in the NRC Public Document Room as "Director's Decision Under 10 CFR 2.206, DD # 97–03."

Discussion

The NRC is proposing to revise information contained in § 72.214 under

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CoC No. 1004 to reflect Amendment No. 1 to CoC No. 1004 and to address four administrative issues in the current language in § 72.214. These four administrative issues include (1) correcting the expiration date of CoC No. 1004 from the present "(20 years after the final rule effective date)" to "January 23, 2015;" (2) correcting the title and revision number of the standardized NUHOMS SAR to be consistent with the approach the NRC proposed for CoC SARs in a new § 72.248 (see proposed rule in 63 FR 56098; October 21, 1998); (3) revising the CoC to reflect the transfer of the CoC from VECTRA Technologies, Inc. to Transnuclear West, Inc., (TN West); and (4) specifying the applicability of Amendment No. 0 and Amendment No. 1 to this CoC.

Change 1 keeps the certificate expiration date consistent with the NRC's policy for Part 72 CoCs, which is to use 20 years from the date the final rule is effective. The final rule adding CoC No. 1004 to § 72.214 was effective on January 23, 1995; consequently, the expiration date for this CoC is January 23, 2015.

Change 2 keeps CoC No. 1004 consistent with other proposed changes to Part 72. The SAR Title will be changed from "Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel, Revision 2" to "Final Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel." In the new § 72.248, a final SAR is to be submitted to the Commission within 90 days after approval of the cask design and then will be updated periodically. Replacement pages will be provided to the Commission, but FSAR revision numbers will not be used.

Change 3 recognizes the transfer of the CoC from VECTRA to TN West. NRC received letters dated December 18, 1997, from both VECTRA and TN West describing the purchase of VECTRA's intellectual properties and assets associated with NUHOMS technology by TN West. In its December 18, 1997, letter, TN West described that it planned to conduct fabrication activities in accordance with the quality assurance program described in Section 11 of the NUHOMS SAR. TN West further described that it had acquired the composite records of casks manufactured under CoC No. 1004 and that it had records associated with changes to the NUHOMS design implemented after issuance of the CoC.

Change 4 describes how general licensees would continue to use spent fuel storage casks manufactured under CoC No. 1004, Amendment No. 0 (i.e., the initial CoC), if the cask being used was fabricated before [insert effective date of the final rule]. After [insert effective date of the final rule], casks must be manufactured in accordance with CoC No. 1004, Amendment No. 1.

This proposed rule would issue Amendment No. 1 to CoC No. 1004. Amendment No. 1 would revise and reformat the CoC to be consistent with the NRC's current format and layout for Part 72 certificates. Conditions No. 1 through 8 would be renumbered and Condition No. 9 would remain the same. Additionally, Condition No. 4 (previously Condition No. 6) would be revised to implement DD–97–03. Because the Director granted the Petition, in part, and to ensure future compliance with § 72.150 with respect to DSC shell-weld thickness, the revised Condition No. 4 to CoC No.1004 would require inspection of DSC shell welds and specify a minimum shell-weld thickness. Condition No. 4 would be revised to read as follows:

Fabrication activities shall be conducted in accordance with a quality assurance program as described in Section 11.0 of the SAR. All fabrication acceptance tests and procedures shall be performed in accordance with detailed written procedures. TN West shall ensure that 100 percent of the full penetration longitudinal and circumferential butt welds used for the DSC shell are inspected using radiographic examination. Inspections shall be performed on each shell weld after the weld is ground flush with surrounding surfaces, and the weld and the base metal wall thickness shall be greater than or equal to 0.500 inch.

VECTRA's analysis indicated that a wall design of 0.500 inch would satisfy NRC design criteria. In a letter dated August 7, 1995, VECTRA described plans to perform measurements of shell-weld thickness during the DSC fabrication process. By letter dated September 5, 1995 (NRC document Accession Number 9509110095), VECTRA submitted an analysis, NUH004.0213, "Standardized NUHOMS–24P DSC Shell Minimum Acceptable Uniform Thickness," Revision 1, which evaluated the structural acceptability of a standardized NUHOMS–24P DSC with a minimum shell thickness of 0.500 inch. [1] In a Safety Evaluation (SE) dated October 5, 1995, (Accession Number 9512200130) the NRC staff concluded that the structural capability of the DSC would not be compromised with a shell-weld thickness of 0.500 inch. In a letter dated December 11, 1998 (Accession Number 9812300347), VECTRA [TN West] submitted an analysis, NUH004.0218, "Standardized NUHOMS–52B DSC Shell Minimum Acceptable Uniform Thickness," Revision 1, that evaluated the structural acceptability of a standardized NUHOMS–52B DSC with a minimum shell thickness of 0.500 inch. In a safety evaluation dated January 22, 1999 (Accession Number 9902110261), the NRC staff concluded that with a wall thickness of 0.500 inch, the NUHOMS–52B DSC can acceptably meet structural design codes.

The Director, in his Decision, specifically proposed amending CoC No. 1004 to require that, in the fabrication of the DSC, the shell and basket assembly must be inspected to ensure that structural design margins, associated with the ASME Code Section III allowable stress values, are not compromised. VECTRA established fabrication inspection procedures, including fabrication margins to ensure that the DSC shell welds are not reduced to a thickness less than 0.500 inch. VECTRA established an "administrative" minimum fabrication limit of 0.563 inch. This limit would allow for uncertainties in weld thickness measurements, weld shrinkage, and weld grinding operations and would ensure that the weld and base metal are not reduced less than the analyzed wall thickness of 0.500 Inch. Because the safety evaluation supporting the Director's Decision relied on a 0.500 inch weld thickness, proposed Amendment No 1 to CoC No. 1004 requiring a 0.500 inch weld thickness is consistent with DD–97–03.

Based on the October 1995 and January 1999 safety evaluations, the newly established fabrication inspection procedures, and the proposed Amendment No. 1 to CoC No. 1004, the NRC staff has concluded that the NUHOMS–24P and -52B cask design when used in accordance with the conditions specified in the CoC as amended, and NRC regulations, will meet the requirements of Part 72 and thus ensure adequate protection of the public health and safety. Furthermore, as indicated in DD–97–03, NUHOMS–24P casks previously manufactured before DD–97–03 was issued will continue to adequately protect public health and safety.

The proposed Amendment No. 1 to CoC No. 1004, the VECTRA safety analyses, and the NRC staff safety evaluations are available for inspection and comment at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20003–1527. Single copies of the proposed Amendment No. 1 to CoC No. 1004 may be obtained from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6234, email spt@nrc.gov.

[1] The Standardized NUHOMS system includes two versions: the NUHOMS–24P which stores up to 24 pressurized-water reactor assemblies and the NUHOMS–52B which stores up to 52 boiling-water reactor assemblies. The staff examined minimum weld thickness issues for the NUHOMS–24P in a safety evaluation dated October 5, 1995. For completeness, the staff examined minimum weld thickness issues for the NUHOMS–52B in a safety evaluation dated January 22, 1999.

Discussion of Proposed Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

The text in § 72.214 for Certificate No. 1004 would be revised as follows:

(1) The name of person that submitted the SAR (i.e., name of the certificate holder) would be changed to "Transnuclear West, Inc.";

(2) The title of the SAR would be changed to "Final Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel";

(3) The expiration date for the certificate would be changed to "January 23, 2015"; and

(4) A new line on the applicability of Amendment No. 0 and Amendment No. 1 would be added.

In addition to the changes to the rule language in § 72.214, the text for Condition No. 4 of CoC No. 1004 would be revised as described above.

Applicability

Amendment No. 1 to CoC No. 1004 would apply to TN West's manufacture of NUHOMS–24P or –52B DSCs, or to a general licensee using the NUHOMS–24P or –52B cask system, where the manufacture of the DSC was completed after [insert effective date of the final rule]. General licensees who possess a NUHOMS–24P or –52B DSC, whose fabrication was completed before [insert effective date of the final rule], would continue to use the original version [Amendment No. 0] of CoC No. 1004 in implementing the requirements of § 72.212 for the operation of an independent spent fuel storage installation.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. It would not change safety requirements and would not have significant environmental impacts. The proposed rule would revise the listing of approved spent fuel storage casks contained in § 72.214 by correcting certain information listed under this certificate and by issuing Amendment No. 1 which revises Condition No. 4 to CoC No. 1004 for the Standardized NUHOMS–24P and –52B cask system. The NRC has concluded that Standardized NUHOMS–24P and –52B cask system designs, as modified by Amendment No. 1 to the CoC, can continue to be used to safely store spent fuel. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6234, email spt@nrc.gov.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995, (Pub. L. 104–113), requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would issue Amendment No. 1 to CoC No. 1004 for the NUHOMS–24P and –52B cask system, which is currently listed in § 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Commission amended 10 CFR Part 72 to provide regulations for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any civilian nuclear power reactor licensed under 10 CFR Part 50 was issued a general license under Part 72 to use NRC-approved cask designs to store spent nuclear fuel if: (1) They notify the NRC in advance, (2) the spent fuel is stored under the conditions specified in the CoC, and (3) the conditions of the general license are met. In that rulemaking, four spent fuel storage cask designs were approved for use at reactor sites, and were listed in § 72.214. That rulemaking envisioned that storage cask designs approved in the future would be added to the listing in § 72.214 through the rulemaking process. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in Part 72, Subpart L. The NRC subsequently amended Part 72 and authorized issuance of CoC No. 1004 to VECTRA Technologies, Inc., of San Jose, California, for the standardized NUHOMS–24P and –52B spent fuel storage cask designs (59 FR 65898; December 22, 1994).

This proposed rule would issue Amendment No. 1 to CoC No. 1004. Amendment No. 1 would revise and reformat the CoC to be consistent with the NRC's current format and layout for Part 72 certificates. Conditions No. 1 through 8 would be renumbered and Condition No. 9 would remain the same. Additionally, Condition No. 4 (previously Condition No. 6) would be revised to implement the direction of DD–97–03. The NRC has deemed necessary the changes to CoC No. 1004 to ensure compliance with Part 72 quality assurance requirements. On August 29, 1995, the NRC issued an enforcement action in the form of a Notice of Nonconformance to VECTRA regarding VECTRA's failure to comply with the quality assurance regulations in § 72.150. Specifically, VECTRA failed to ensure that adequate wall thickness was maintained in DSCs manufactured

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under CoC No. 1004. Subsequently, the Director, NMSS, in response to a petition from the Toledo Coalition for Safe Energy, et al. found, in Director's Decision 97–03, that an inspection procedure requiring the performance of minimum wall thickness measurements would be reasonable and directed that CoC No. 1004 be amended to include such a requirement. Consequently, the NRC considers this rule, in part, to be an administrative action taken to implement DD–97–03.

General licensees would continue to use spent fuel storage casks manufactured under CoC No. 1004, Amendment No. 0, if the cask was fabricated before [insert effective date of the final rule]. After [insert effective date of the final rule], casks must be manufactured in accordance with CoC No. 1004, Amendment No. 1.

The alternative to this proposed action would be to allow outdated information to remain in CoC No. 1004 and to withhold Amendment No. 1 to CoC No. 1004 and forgo inclusion of an explicit requirement for measuring DSC shell-weld thickness. However, based on the concerns identified with VECTRA's control of the fabrication process described in the Notice of Nonconformance, the NRC deemed that addition of an explicit requirement for measuring wall thickness in CoC No. 1004 is necessary.

Approval of the proposed rule would provide both the NRC staff and the public additional assurance that DSCs manufactured under CoC No. 1004 are fabricated in accordance with the approved design and Part 72 quality assurance requirements, and would have no adverse effect on public health and safety.

This proposed rule has no significant identifiable impact or benefit on other Government agencies. Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the proposed rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the operation of nuclear power plants, independent spent fuel storage facilities, and Transnuclear West, Inc. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The backfit rule (§§ 50.109 or 72.62) does not apply to certificate holders. Moreover, this proposed rule does not involve any provisions that would impose backfits as defined in those regulations because the amended version of CoC No. 1004 is applicable only to casks to be fabricated after the effective date of the final rule. General licensees who currently possess these casks may operate under the original CoC No. 1004 (Amendment No. 0) which remains on the list of approved cask designs at § 72.214. Therefore, a backfit analysis is not required.

List of Subjects In 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. Section 72.214, Certificate of Compliance Number 1004, is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004
Amendment Number: 0 and 1
Amendment Applicability:

Amendment No. 0 is applicable for casks manufactured before [insert effective date of final rule].

Amendment No. 1 is applicable for casks manufactured after [insert effective date of final rule].

SAR Submitted by: Transnuclear West, Inc.
SAR Title: Final Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel
Docket Number: 72–1004
Certificate Expiration Date: January 23, 2015
Model Numbers: Standardized NUHOMS–24P and NUHOMS–52B

* * * * *

Dated at Rockville, Maryland, this 7th day of July, 1999.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 99–19130 Filed 7–28–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–4]

Proposed Modification of Class E Airspace; Sedona, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace area at Sedona, AZ. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 3 at Sedona Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 3 SIAP to Sedona Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Sedona Airport, Sedona, AZ.

DATES: Comments must be received on or before September 17, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–4, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AWP–4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Santa Rosa, AZ. The establishment of a GPS RWY 3 SIAP at Sedona Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS approach procedure at Sedona Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 3 SIAP at Sedona Airport, Sedona, AZ. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 39.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Sedona, AZ [Revised]

Sedona Airport, AZ
(Lat. 34°50′55″ N. long. 111°47′19″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Sedona Airport, excluding the portion within the Flagstaff, AZ, Class E airspace area.

* * * * *

Issued in Los Angeles, California, on July 19, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–19371 Filed 7–28–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–41544, International Series Release No. 1200, File No. S7–18–99]

RIN 3235–AH76

Exemption of the Securities of the Republic of Portugal Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes for comment an amendment to Rule 3a12–8 under the Securities Exchange Act of 1934 that would designate debt obligations issued by the Republic of Portugal as "exempted securities" for the purpose of the marketing and trading of futures contracts on those securities in the United States. The proposed amendment is intended to permit futures trading on the sovereign debt of Portugal.

DATES: Comments should be submitted on or before August 30, 1999.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comments should refer to File No. S7–18–99; this file number should be included on the subject line if e-mail is used. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will also be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Kenneth M. Rosen, Attorney, Office of Market Supervision (OMS), Division of Market Regulation (Division), Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001, at (202) 942–0096.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act (CEA),[1] it is unlawful to trade a futures contract on any individual security unless the security in question is an exempted security (other than a municipal security) under the Securities Act of 1933 (Securities Act)[2] or the Securities Exchange Act of 1934 (Exchange Act).[3] Debt obligations of foreign governments are not exempted securities under either of these statutes.

The Securities and Exchange Commission (SEC or Commission), however, has adopted Rule 3a12–8[4] (Rule) under the Exchange Act to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of the marketing and trading futures contracts on those securities in the United States. The foreign governments currently designated in the Rule are the United Kingdom of Great Britain and Northern Ireland, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, the Republic of Ireland, Italy, Spain, Mexico, Brazil, Argentina, Venezuela, Belgium, and, most recently, Sweden (the Designated Foreign Governments). As a result, futures contracts on the debt obligations of these countries may be sold in the United States, as long as the other terms of the Rule are satisfied.

The Commission is soliciting comments on a proposal to amend Rule 3a12–8 to add the debt obligations of the Republic of Portugal (Portugal) to the list of Designated Foreign Governments whose debt obligations are exempted by Rule 3a12–8. To qualify for the exemption, futures contracts on the debt obligations of Portugal would have to meet the existing requirements of the Rule.

II. Background

Adopted in 1984 pursuant to the exemptive authority contained in Section 3(a)(12) of the Exchange Act,[5] Rule 3a12–8 provides a limited exception from the CEA's prohibition on futures overlying individual securities.[6] As originally adopted, the Rule provided that the debt obligations of the United Kingdom of Great Britain and Northern Ireland and Canada would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of "qualifying foreign futures contracts" on such securities. The securities in question were not eligible for the exemption if they were registered under the Securities Act or were the subject of any American depositary receipt so registered. A futures contract on the covered debt obligation under the Rule is deemed to be a "qualifying foreign futures contract" if the contract is deliverable outside the United States and is traded on a board of trade.[7]

The conditions imposed by the Rule were intended to facilitate the trading of futures contracts on foreign government securities in the United States while requiring offerings of foreign government securities to comply with the federal securities laws. Accordingly, the conditions set forth in the Rule were designed to ensure that, absent registration, a domestic market in unregistered foreign government securities would not develop, and that markets for futures on these instruments would not be used to avoid the securities law registration requirements. In particular, the Rule was intended to ensure that futures on exempted sovereign debt did not operate as a surrogate means of trading the unregistered debt.[8]

Subsequently, the Commission amended the Rule to include the debt securities issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, Ireland, Italy, Spain, Mexico, Brazil, Argentina, Venezuela, Belgium, and, most recently, Sweden.[9]

[1] 7 U.S.C. 1 *et seq.*

[2] 15 U.S.C. 77a *et seq.*

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 240.3a12–8.

[5] *See* Securities Exchange Act Release No. 20708 (Original Adopting Release) (March 2, 1984) 49 FR 8595 (March 8, 1984); Securities Exchange Act Release No. 19811 (Original Proposing Release) (May 25, 1983) 48 FR 24725 (June 2, 1983).

[6] In approving the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the Commodity Futures Trading Commission (CFTC) had intended to bar the sale of futures on debt obligations of the United Kingdom of Great Britain and Northern Ireland to U.S. persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. *See* Original Proposing Release, *supra* note 5, 48 FR at 24725 (citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)).

[7] As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987. *See* Securities Exchange Act Release No. 24209 (March 12, 1987) 52 FR 8875 (March 20, 1987).

[8] The CFTC regulates the marketing and trading of foreign futures contracts. CFTC rules provide that any person who offers or sells a foreign futures contract to a U.S. customer must be registered under the CEA, unless otherwise specifically exempted.

[9] In 1986, the Rule was amended to include Japanese government securities. *See* Securities Exchange Act Release No. 23423 (July 11, 1986) 51 FR 25996 (July 18, 1986). In 1987, the Rule was amended to include debt securities issued by Australia, France and New Zealand. *See* Securities Exchange Act Release No. 25072 (October 29, 1987) 52 FR 42277 (November 4, 1987). In 1988, the Rule was amended to include debt securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. *See* Securities Exchange Act Release No. 26217 (October 26, 1988) 53 FR 43860 (October 31, 1988). In 1992, the Rule was again amended to (1) include debt securities offered by the Republic of Ireland and Italy; (2) change the country designation of "West Germany" to the "Federal Republic of Germany;" and (3) replace all references to the informal names of the countries listed in the Rule with references to their official names. *See* Securities Exchange Act Release No. 30166 (January 8, 1992) 57 FR 1375 (January 14, 1992). In 1994, the Rule was amended to include debt securities issued by the Kingdom of Spain. *See* Securities Exchange Act Release No. 34908 (October 27, 1994) 59 FR 54812 (November 2, 1994). In 1995, the Rule was amended to include the debt securities of Mexico. *See* Securities Exchange Act Release No. 36530 (November 30, 1995) 60 FR 62323 (December 6, 1995). In 1996, the Rule was amended to include debt securities issued by the Federative Republic of Brazil, the Republic of Argentina, and the Republic of Venezuela. *See* Securities Exchange Act Release No. 36940 (March 7, 1996) 61 FR 10271 (March 13, 1996). In 1999, the Rule was amended to include debt securities issued by the Kingdom of Belgium and the Kingdom of Sweden. *See* Securities Exchange Act Release No. 41116 (February 26, 1999) 64 FR 10564 (March 5, 1999); Securities Exchange Act Release No. 41453 (May 26, 1999) 64 FR 29550 (June 2, 1999).

III. Discussion

The Bolsa de Derivados do Porto (BDP) has proposed that the Commission amend Rule 3a12–8 to include the sovereign debt of Portugal. The BDP has stated that futures contracts on Portuguese "OT 10" Fixed Rate Bonds have traded on the BDP since 1996, and that its Petition for Rulemaking to amend Rule 3a12–8 is made principally to permit the lawful marketing of those contracts to U.S. investors.[10] The BDP further represents that the Instituto de Gestão do Crédito Público (IGCP)—a body established by the Portuguese government that possesses the authority to issue and manage all of Portugal's direct public debt—supports the BDP's request for the amendment of Rule 3a12–8.[11]

Under the proposed amendment, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States, the futures contracts require delivery outside the United States, and the contracts be traded on a board of trade) would continue to apply. The BDP has represented that the securities underlying the futures contracts it intends to list are not registered in the United States,[12] that delivery will occur through book entry registration in the Central de Valores Mobiliarios (the Portuguese Central Depositary System), and that the BDP is a "board of trade" as defined by the CEA.[13]

When amending the Rule to include Belgium, the Commission stated that it would consider two types of evidence about whether there was an active and liquid secondary trading market for the security—credit rating (as indirect evidence) and trading data.[14] Earlier, when amending the Rule to include Mexico, Brazil, Argentina, and Venezuela, the Commission considered primarily whether market evidence indicated that an active and liquid secondary trading market exists for the sovereign debt of those countries.[15] Prior to the addition of those countries to the Rule, the Commission considered principally whether the particular sovereign debt had been rated in one of the two highest rating categories [16] by at least two nationally recognized statistical rating organizations (NRSROs).[17]

Portugal's long-term local and foreign currency ratings meet the credit rating standard. Moody's has assigned Portugal a long-term local currency credit rating of Aa2 and a long-term foreign currency credit rating of Aa2. S&P has assigned Portugal a long-term local currency credit rating of AA and a long-term foreign currency credit rating of AA.

The Commission also observes that market data indicates that there exists an active and liquid trading market for Portuguese issued debt instruments. At the end of 1998, the total Portuguese direct public debt outstanding was equivalent to approximately US$66.35 billion (11.70 trillion Portuguese escudo (PTE)).[18] As of January 31, 1999, the largest portion of this debt, Fixed Rate Bonds (OT) denominated in Portuguese escudo or euro, amounted to approximately US$29.26 billion.[19] Floating Rate Notes (FIP and OTRV) amounted to approximately US$7.38 billion.[20] Treasury Bills (BT) amounted to approximately US$2.12 billion.[21] Other non-escudo and non-euro foreign currency-denominated debt amounted to in excess of approximately US$14.1 million.[22]

The BDP has submitted data indicating that secondary market trading in OT Fixed Rate Bonds amounted to approximately US$71.7 billion (PTE 12.637 trillion) in 1997, approximately US$125 billion (PTE 22.005 trillion) in 1998, and approximately US$15.9 billion (PTE 2.809 trillion) in the first month of 1999.[23] The average daily trading volume was US$290 million (PTE 51.195 billion) in 1997, US$505 million (PTE 88.959 billion) in 1998, and US$797 million (PTE 140.450 billion) for the first month of 1999.[24] The BDP adds that there were 44,873

[10] *See* BDP Petition, *supra* note 10. All U.S. dollar equivalents set forth in this release are based on a conversion rate of PTE 176.31 for US$1.00 in effect as of January 29, 1999. The BDP calculated this rate used for its representations by taking the January 29, 1999 noon buying rate in The City of New York for cable transfers in euro as certified for customs purposes by the Federal Reserve Bank of New York ($1.1371=1 euro) multiplied by the European Monetary Union's official determination of the number of Portuguese escudo per euro (1 euro=PTE 200.482). *See id.*

[11] *See* BDP Petition, *supra* note 10.

[12] A number of Portuguese government debt securities have been registered under the Securities Act. *See* BDP Petition, *supra* note 10. The Rule does not exempt futures contracts on those securities.

[13] *See* BDP Petition, *supra* note 10.

[14] *See* Securities Exchange Act Release No. 41116 (February 26, 1999) 64 FR 10564 (March 5, 1999).

[15] *See, e.g.*, Securities Exchange Act Release No. 36530 (November 30, 1995) 60 FR 62323 (December 6, 1995) (amending the Rule to add Mexico because the Commission believed that as a whole, the market for Mexican sovereign debt was sufficiently liquid and deep for the purposes of the Rule); Securities Exchange Act Release No. 36940 (March 7, 1996) 61 FR 10271 (March 13, 1996) (amending the Rule to add Brazil, Argentina and Venezuela because the Commission believed that the market for the sovereign debt of those countries was sufficiently liquid and deep for the purposes of the Rule).

[16] The two highest categories used by Moody's Investor Services (Moody's) for long-term debt are "Aaa" and "Aa." The two highest categories used by Standard and Poor's (S&P) for long-term debt are "AAA" and "AA."

[17] *See, e.g.*, Securities Exchange Act Release No. 30166 (January 6, 1992) 57 FR 1375 (January 14, 1992) (amending the Rule to include debt securities issued by Ireland and Italy—Ireland's long-term sovereign debt was rated Aa3 by Moody's and AA– by S&P, and Italy's long-term sovereign debt was rated Aa by Moody's and AA+ by S&P); and Securities Exchange Act Release No. 34908 (October 27, 1994) 59 FR 54812 (November 2, 1994) (amending the Rule to include Spain, which had long-term debt ratings of Aa2 from Moody's and AA from S&P); *see also* Securities Exchange Act Release No. 36213 (September 11, 1995) 60 FR 48078 (September 18, 1995) (proposal to add Mexico to list of countries encompassed by the Rule); Securities Exchange Act Release No. 24428 (May 5, 1987) 52 FR 18237 (May 14, 1987) (proposed amendment, which was not implemented, that would have extended the Rule to encompass all countries rated in one of the two highest categories by at least two NRSROs).

[18] *See* BDP Petition, *supra* note 10. All U.S. dollar equivalents set forth in this release are based on a conversion rate of PTE 176.31 for US$1.00 in effect as of January 29, 1999. The BDP calculated this rate used for its representations by taking the January 29, 1999 noon buying rate in The City of New York for cable transfers in euro as certified for customs purposes by the Federal Reserve Bank of New York ($1.1371=1 euro) multiplied by the European Monetary Union's official determination of the number of Portuguese escudo per euro (1 euro=PTE 200.482). *See id.*

[19] *See* BDP Petition, *supra* note 10.

[20] *See* BDP Petition, *supra* note 10.

[21] *See* BDP Petition, *supra* note 10. Other escudo-denominated and euro-denominated tradable Portuguese domestic debt securities amounted to US$35.6 million.

[22] *See* BDP Petition, *supra* note 10.

[23] *See* BDP Petition, *supra* note 10. The BDP states that the statistics about secondary market trading in Portuguese debt were derived from information supplied by Sistema de Informacão de Bolsa do Porto (SIBOP). SIBOP is an electronic market information system managed by the BDP and is used by market members and institutional investors. The SIBOP system provides market participants with securities and futures real time data, historical information for securities and derivatives, daily and monthly trading volume information, market news, and file transfer capabilities. *Id.*

[24] *See* BDP Petition, *supra* note 10. The BDP represents that the activity and liquidity of the OT Fixed Rate Bond secondary market has increased substantially during the past two years. The BDP believes that the increase in average daily and monthly trading volumes for OT Fixed Rate Bonds reflects both Portugal's decision to issue a greater number of OT fixed Rate Bonds in lieu of other classes of securities and increased market interest in Portugal's securities. *See id.*

transactions in OT Fixed Rate Bonds in 1997, 45,676 transactions in 1998, and 3,835 transactions in the first month of 1999.[25]

The BDP also submitted data stating that secondary market trading in FIP Floating Notes amounted to approximately US$3.6 billion (PTE 640 billion) in 1997, approximately US$0.01 billion (PTE 2.4 billion) in 1998, and approximately US$0.00007 billion (PTE 0.01 billion) in the first month of 1999.[26] The average daily trading volume was US$14.2 million (PTE 2.501 billion) in 1997, US$0.05 million (PTE 9.3 million in 1998), and US$0.003 million (PTE 0.6 million) for the first month of 1999.[27] The BDP adds that there were 2,414 transactions in FIP Floating Notes in 1997, 1,777 transactions in 1998, and 74 transactions in the first month of 1999.[28]

The BDP further submitted data stating that secondary market trading in ORTV Floating Notes amounted to approximately US$4.7 billion (PTE 827 billion) in 1997, approximately US$4.2 billion (PTE 739 billion) in 1998, and approximately US$0.4 billion (PTE 72.7 billion) in the first month of 1999.[29] The average daily trading volume was US$19.6 million (PTE 3.477 billion) in 1997, US$17.3 million (PTE 3.047 billion in 1998), and US$20.6 million (PTE 3.633 billion) for the first month of 1999.[30] The BDP adds that there were 2,679 transactions in FIP Floating Notes in 1997, 2,284 transactions in 1998, and 127 transactions in the first month of 1999.[31]

In light of the above data, the Commission preliminarily believes that the debt obligations of Portugal should be subject to the same regulatory treatment under the Rule as the debt obligations of the Designated Foreign Governments.

IV. General Request for Comments

The Commission seeks comments on the desirability of designating the debt securities of Portugal as exempted securities under Rule 3a12–8. Comments should address whether the trading or other characteristics of Portugal's sovereign debt warrant an exemption for purposes of futures trading. Commentators may wish to discuss whether there are any legal or policy reasons for distinguishing between Portugal and the Designated Foreign Governments for purposes of the Rule. The Commission also requests information regarding the potential impact of the proposed rule on the U.S. economy on an annual basis. If possible, commenters should provide empirical data to support their views. The Commission also seeks comments on the general application and operation of the Rule given the increased globalization of the securities markets since the Rule was adopted.

V. Costs and Benefits of the Proposed Amendments

The Commission has considered the costs and benefits of the proposed amendment to the Rule and preliminarily believes that the proposed amendment offers potential benefits for U.S. investors, with no direct costs. If adopted, the proposed amendment would allow U.S. and foreign boards of trade to offer in the United States, and U.S. investors to trade, a greater range of futures contracts on foreign government debt obligations. Consistent with Congressional support for futures on foreign sovereign debt securities, the trading of futures on the sovereign debt of Portugal should provide U.S. investors with a vehicle for hedging the risks involved in the trading of the underlying sovereign debt of Portugal. The Commission does not anticipate that the proposed amendment would result in any direct cost for U.S. investors or others because the proposed amendment would impose no recordkeeping or compliance burdens, and merely would provide a limited purpose exemption under the federal securities laws. The restrictions imposed under the proposed amendment are identical to the restrictions currently imposed under the terms of the Rule and are designed to protect U.S. investors.

The Commission requests comments on the costs and benefits of the proposed amendment to Rule 3a12–8. In particular, the Commission requests commentators to address whether the proposed amendment would generate the anticipated benefits, or impose any costs on U.S. investors or others.

VI. Effect of the Proposed Amendment on Competition, Efficiency and Capital Formation

Section 23(a)(2) of the Exchange Act[32] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effect of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furthering the purposes of the Exchange Act. Moreover, Section 3 of the Exchange Act,[33] as amended by the National Securities Markets Improvement Act of 1996,[34] provides that whenever the Commission is engaged in a rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission must consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

In light of the standards cited in Sections 3 and 23(a)(2) of the Exchange Act, the Commission preliminarily believes that the proposed amendment to the Rule will promote efficiency, competition and capital formation. The proposal is intended to expand the range of financial products available in the United States, and will make available to U.S. investors an additional product to use to hedge the risks associated with the trading of the underlying sovereign debt of Portugal. Insofar as the proposed amendment contains limitations, they are designed to promote the purposes of the Exchange Act by ensuring that futures trading on government securities of Portugal is consistent with the goals and purposes of the federal securities laws by minimizing the impact of the Rule on securities trading and distribution in the United States.

The Commission requests comments as to whether the amendment to the Rule will have any anti-competitive effects.

VII. Administrative Requirements

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release as Appendix A. We encourage written comments on the Certification. Commentators are asked to describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

The Paperwork Reduction Act does not apply because the proposed amendment does not impose recordkeeping or information collection requirements, or other collections of information that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

[25] *See* BDP Petition, *supra* note 10.
[26] *See* BDP Petition, *supra* note 10.
[27] *See* BDP Petition, *supra* note 10.
[28] *See* BDP Petition, *supra* note 10.
[29] *See* BDP Petition, *supra* note 10.
[30] *See* BDP Petition, *supra* note 10.
[31] *See* BDP Petition, *supra* note 10.

[32] 15 U.S.C. 78w(a)(2).

[33] 15 U.S.C. 78c.
[34] Pub. L. 104–290, 110 Stat. 3416 (1996).

VIII. Statutory Basis

The amendment to Rule 3a12–8 is being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly Sections 3(a)(12) and 23(a), 15 U.S.C. 78c(a)(12) and 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendment

For the reasons set forth in the preamble, the Commission is proposing to amend Part 240 of Chapter II, Title 17 of the *Code of Federal Regulations* as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.3a12–8 is amended by removing the word "or" at the end of paragraph (a)(1)(xx), removing the period at the end of paragraph (a)(1)(xxi) and adding "; or" in its place, and adding paragraph (a)(1)(xxii), to read as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *
(1) * * *
(xxii) The Republic of Portugal.
* * * * *

Dated: July 23, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A

Regulatory Flexibility Act Certification

I, Arthur Levitt, Jr., Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendment to Rule 3a12–8 (Rule) under the Securities Exchange Act of 1934 (Exchange Act), which would define the government debt securities of the Republic of Portugal (Portugal) as exempted securities under the Exchange Act for the purpose of trading futures on such securities, will not have a significant economic impact on a substantial number of small entities for the following reasons. First, the proposed amendment imposes no record-keeping or compliance burden in itself and merely allows, in effect, the marketing and trading in the United States of futures contracts overlying the government debt securities of Portugal. Second, because futures contracts on the twenty-one countries whose debt obligations are designated as "exempted securities" under the Rule, which already can be traded and marketed in the United States, still will be eligible for trading under the proposed amendment, the proposal will not affect any entity currently engaged in trading such futures contracts. Third, because those primarily interested in trading such futures contracts are large, institutional investors, neither the availability nor the unavailability of these futures products will have a significant economic impact on a substantial number of small entities, as that term is defined for broker-dealers in 17 CFR 240.0–10.

Dated: July 21, 1999.

Arthur Levitt, Jr.,

Chairman.

[FR Doc. 99–19415 Filed 7–28–99; 8:45 am]

BILLING CODE 8010–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 22, 24, 26, 27, 73, 74, 80, 87, 90, 95, 97, and 101

[WT Docket No. 99–87, RM–9332, RM–9405; DA 99–1431]

Comments Requested on Licensing of PMRS Channels in the 800 MHz Band for Use In Commercial SMR Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for additional comments.

SUMMARY: This document supplements the *Notice of Proposed Rule Making* ("*NPRM*") published in the **Federal Register** of May 3, 1999, regarding Revised Competitive Bidding Authority. This document requests comment on whether the Commission should amend its licensing rules for the 800 MHz band to allow the incorporation of Private Mobile Radio Service channels into a Commercial Mobile Radio Service system.

DATES: Comments must be filed on or before August 2, 1999 and reply comments must be filed on or before September 16, 1999.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, S.W., Room TW–A325, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Gary D. Michaels, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660, or Ramona Melson, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of a *Public Notice* (DA 99–1431) released on July 21, 1999. The full text of the *Public Notice* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C. 20554, and may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. The *Public Notice* is also available on the Internet at the Commission's web site: http://www.fcc.gov/wtb/documents.html.

Synopsis of Document

1. On July 21, 1999, the Wireless Telecommunications Bureau ("Bureau") issued an *Order* (DA 99–1404) conditionally granting in part and denying in part 50 Requests for Waiver submitted by Nextel Communications, Inc. ("Nextel") in conjunction with applications seeking the Commission's consent to assignment of Part 90 Private Mobile Radio Service ("PMRS") Business channels from various entities to Nextel ("*Nextel Order*"). In its waiver requests, Nextel indicated that it desired to utilize these PMRS frequencies for Commercial Mobile Radio Service ("CMRS") operation in its 800 MHz Specialized Mobile Radio ("SMR") systems. Nextel sought waiver of Sections 90.617 and/or 90.619 of the Commission's rules, 47 CFR 90.617 and 90.619, because these rules do not permit the authorization of SMR systems on Business Radio Category and Industrial/Land Transportation Category channels.

2. In the *Nextel Order*, the Bureau conditionally granted Nextel's waiver requests to the extent that Nextel will use the PMRS frequencies predominantly to relocate incumbent licensees on the upper 200 channels of the 800 MHz band. However, the Bureau denied Nextel's waiver requests to the extent that Nextel sought a waiver for the purpose of incorporating PMRS Business channels in its CMRS system.

3. In the *Nextel Order*, the Bureau concluded that the practical effect of granting Nextel's waiver requests would have been to establish a policy of general applicability for all Private Land Mobile Radio ("PLMR") channels. Thus, the Bureau determined that the issue of incorporating PMRS channels into CMRS systems was better addressed in a rulemaking proceeding than in a rule waiver proceeding. The Bureau noted

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that the Commission recently adopted a *Notice of Proposed Rule Making*, seeking comment on the impact of the Balanced Budget Act of 1997 on the Commission's licensing schemes for private radio services. *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, WT Docket No. 99–87, RM–9332, RM–9405, *Notice of Proposed Rule Making*, 64 FR 23571, May 3, 1999 (*"Balanced Budget Act NPRM"*). In light of the ongoing proceeding examining licensing issues concerning private spectrum in the 800 MHz band, as well as other bands, the Bureau decided that it would not grant a broad waiver of existing licensing rules for the 800 MHz band.

4. In the *Balanced Budget Act NPRM*, the Commission noted Nextel's pending waiver requests in seeking comment on whether it should consider the purpose for which spectrum is used or allocated in deciding whether to implement geographic area licensing. The Bureau issues this *Public Notice* as a supplement to the *Balanced Budget Act NPRM*. The Bureau specifically incorporates the record gathered in response to Nextel's waiver requests into WT Docket No. 99–87 and seeks comment on the underlying issues raised by Nextel's waiver requests. Specifically, the Bureau seeks comment on whether the Commission should amend its licensing rules for the 800 MHz band to allow the incorporation of PMRS channels into a CMRS system. The Bureau seeks comment on whether the licensing of PMRS frequencies in the 800 MHz band for commercial SMR use would serve the public interest. If parties believe it would be in the public interest to allow PMRS channels in the 800 MHz band to be incorporated into a CMRS system, but only under certain conditions, they should describe these conditions and address how they should be implemented and enforced.

5. Comments and reply comments submitted in response to this Public Notice will be incorporated as part of the record in WT Docket No. 99–87, and addressed by the Commission in that proceeding. Interested parties may file comments on or before August 2, 1999. Parties interested in submitting reply comments must do so on or before September 16, 1999. Parties should limit their comments to the issue of licensing PMRS spectrum in the 800 MHz band for commercial SMR use.

6. All comments should reference WT Docket No. 99–87 and should be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW–A325, Washington, DC 20554. In addition, courtesy copies of each filing should be sent to Gary D. Michaels, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, and Ramona Melson, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Washington, DC 20554. A copy of each filing should also be sent to International Transcription Services, Inc., 445 Twelfth Street, S.W., Room CY–B400, Washington, DC 20554.

7. Copies of comments and reply comments will be available for inspection and duplication during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, DC 20554. Copies also may be obtained from International Transcription Services, Inc., 445 Twelfth Street, S.W., Room CY–B400, Washington, DC 20554, (202) 314–3070.

8. This is a permit-but-disclose proceeding. *Ex-parte* presentations are permitted provided that they are disclosed as specified in the Commission's rules. *See generally*, 47 CFR 1.1202, 1.1203, and 1.1206.

Federal Communications Commission.

Mark R. Bollinger,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 99–19496 Filed 7–28–99; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 201 and 213

[DFARS Case 99–D002]

Defense Federal Acquisition Regulation Supplement; Overseas Use of the Purchase Card

AGENCY: Department of Defense (DoD).

ACTION: Proposed a rule; extension of comment period.

SUMMARY: This extends the public comment period for the proposed rule published in the **Federal Register** at 64 FR 28134 on May 25, 1999. The rule proposed amendments to the Defense Federal Acquisition Regulation Supplement to permit use of the Governmentwide commercial purchase card for purchases valued at or below $25,000, that are made outside the United States for use outside the United States and are for commercial items. The end of the comment period is extended from July 26, 1999, to August 25, 1999.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 25, 1999, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 99–D002 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 99–D002 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Schneider, (703) 602–0326. Please cite DFARS Case 99–D002.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 99–19393 Filed 7–28–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Junaluska Salamander as Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the Fish and Wildlife Service, announce a 12-month finding for a petition to list the Junaluska salamander (*Eurycea junaluska*) under the Endangered Species Act of 1973, as amended (Act). After reviewing all available scientific and commercial information, we have determined that listing is not warranted for the Junaluska salamander at this time.

The status of the Junaluska salamander is more secure than indicated by the petitioners, in a large part because the number of populations is more than twice the number previously known to exist. Further, many of the factors the petitioners identified as those threatening the species are merely conjecture or have been lessened by the finding of additional populations. The species occurs in North Carolina and Tennessee.

DATES: The finding announced in this document was made on July 14, 1999.

ADDRESSES: Send questions, comments, data, or information concerning this petition to the State Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 160 Zillicoa Street, Asheville, North Carolina 28801. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. J. Allen Ratzlaff at the above address or telephone 828/258–3939, ext. 229.

SUPPLEMENTARY INFORMATION:

Background

Under section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), for any petition to revise the Federal List of Endangered and Threatened Wildlife and Plants that presents substantial scientific and commercial information, we are required to make a finding within 12 months of the date of receipt of the petition as to whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority.

On March 31, 1998, we received a petition dated March 30, 1998, from Appalachian Voices and the Biodiversity Legal Foundation. The petition requested that we list the Junaluska salamander (*Eurycea junaluska*) as an endangered species and designate critical habitat under 16 U.S.C. 1533(a)(3)(A) of the Act. The petition identified timber harvesting, predation by nonnative trout, exposure to acid-bearing rock, siltation, genetic drift, the inadequacy of current laws, and random events as immediate threats to the species' continued existence. We made a 90-day finding that the petition presented substantial information indicating that the requested action may be warranted. We announced the 90-day finding and the initiation of a status review in the **Federal Register** on October 28, 1998 (63 FR 57640).

The processing of this petition conforms with our final listing priority guidance for fiscal years 1998 and 1999, published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance calls for giving highest priority to handling emergency situations (Tier 1); second highest priority to resolving the listing status of outstanding proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions, and processing a limited number of delistings and reclassifications (Tier 2); and third priority to processing proposed and final designations of critical habitat (Tier 3). The processing of this petition falls under Tier 2.

We reviewed the petition, the literature cited in the petition, and other available literature and information, and consulted with biologists and researchers familiar with the Junaluska salamander. Based on the best available scientific and commercial information, we find that listing the Junaluska salamander (*Eurycea junaluska*) as endangered or threatened is not warranted at the present time.

The Junaluska salamander is an aquatic to semi-aquatic lungless (*plethodontid*) salamander known from a portion of the Blue Ridge Mountains in southwestern North Carolina and southeastern Tennessee. Bruce and Ryan (1995) described the habitat of the Junaluska salamander at three sites in North Carolina as relatively low-elevation and wide-basin streams, with sand-gravel substrates and numerous large rocks that serve as refugia and brooding sites.

Prior to receiving the petition, we had some knowledge of the status of the Junaluska salamander, principally from North Carolina. Consequently, we had already initiated a status survey for the Tennessee portion of the species' range. Through this survey and surveys being conducted by the National Park Service in the Great Smoky Mountains National Park, biologists observed the Junaluska salamander in 11 additional streams, for a total of 17 inhabited streams. Many of these streams are on National Park Service land, where the species receives considerable protection. The discovery of additional populations also lessens the potential impacts that any particular project or random event could have on the species. We do not expect any of the other threats outlined by the petitioner to occur so quickly or extensively as to pose substantial immediate threats to the Junaluska salamander's continued existence. There is no direct evidence of any population decline and no populations are known to have been lost since the species was described, though it is likely that reservoir impoundment negatively affected some populations. While small populations are inherently more vulnerable to extirpation, many of the reservoirs in the salamander's range have been in place for more than 60 years, and there is no evidence that the smaller populations are suffering from genetic problems. Additionally, there is no evidence to suggest that predation by nonnative trout is a significant threat to the species. Trout feeding studies conducted in western North Carolina show that salamanders are a rare food item for trout (Tebo and Hassler 1963).

We now consider threats to the Junaluska salamander to be low. Listing this species as either threatened or endangered is not appropriate at this time because it is not presently in danger of extinction or likely to become so in the foreseeable future. However, in the event that conditions change and the species becomes imperiled due to the factors discussed in this finding, or other unforseen factors, we could propose to list the species under the Act or, if circumstances warranted, invoke the emergency listing provisions of the Act.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Asheville Field Office (See **ADDRESSES** section).

Author: The primary author of this document is Mr. J. Allen Ratzlaff (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: July 14, 1999.

Marshall P. Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. 99–19425 Filed 7–28–99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC91

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List the Least Chub as Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We withdraw the September 29, 1995, proposed rule to list the least chub (*Iotichthys phlegethontis*), a fish, as an endangered species with critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act). After reviewing all available scientific and commercial information we find that the least chub is no longer likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

Habitat loss and degradation were significant threats to the least chub at

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the time of the proposed rule and a major causes of the least chub's decline. Conservation activities implemented in the last several years have significantly reduced these threats. Enhancement, maintenance, and protection projects implemented over the last several years have focused on those specific factors that have contributed to habitat degradation. Extensive monitoring of the status of the least chub indicate that the status of the species has improved. The known range of the least chub was enlarged by the inclusion of three previously unknown populations discovered during surveys in historical habitats.

The State of Utah, other cooperating agencies and stakeholders continue as active participants in the effort to reduce or eliminate threats to the least chub through the implementation of the Least Chub Conservation Agreement and Strategy (Perkins *et al.* 1997). This Agreement calls for enhancement, maintenance, and protection of least chub habitat, as well as the development of mitigation protocols for proposed water development and future habitat alteration. Conservation actions implemented since the publication of the proposed rule include extensive surveys, habitat protection and enhancement activities, the acquisition of wetland habitat, genetic studies and the introduction of the least chub onto Fish Spring National Wildlife Refuge.

ADDRESSES: The complete administrative file for this rule is available for inspection, by appointment, during normal business hours at the Utah Field Office, Ecological Services, U.S. Fish and Wildlife Service, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115.

FOR FURTHER INFORMATION CONTACT: Mr. Reed E. Harris, Field Supervisor, Utah Field Office, at the above address, telephone (801)524–5001.

SUPPLEMENTARY INFORMATION:

Background

The least chub is a small monotypic (the sole member of its genera) minnow (Family Cyprinidae), less than 2.5 inches long, that is endemic to the Bonneville Basin of Utah, an area within the Great Basin of southwestern North America. The least chub has a very oblique or upturned mouth, large scales, and lacks a lateral line (rarely with one or two pored scales). It has a deeply compressed body and a slender caudal peduncle (the narrowest section of the rear of the body just anterior to the caudal fin). A colorful fish, the least chub has a gold stripe along its blue sides with white to yellow fins. Males are olive-green above, steel-blue on the sides, and have a golden stripe behind the upper end of the gill opening. The fins are lemon-amber, and the paired fins are sometimes bright golden-amber. Females and young are pale olive above, silvery on the sides and have watery white fins. Their eyes are silvery with only a little gold coloration, rather than golden as in the males (Sigler and Miller 1963).

Historically, the least chub was widely distributed within the Bonneville Basin of northwestern Utah. The species occupied a variety of aquatic habitats including springs, streams, and ponds and was classified as excessively common in its preferred habitats (Jordan and Evermann 1896). The species was historically found in the Beaver River, ponds near the mouth of the Provo River, tributaries of the Great Salt Lake and Sevier Lake, Utah Lake, Parawan Creek, Clear Creek, the Provo River, Gandy Salt Marsh, and the Leland Harris Spring complex (Cope and Yarrow 1875; Jordan 1891, cited in Jordan and Evermann 1896; Sigler and Miller 1963; Hickman 1989).

The proposed rule to list the least chub as endangered with critical habitat (60 FR 50518, September 29, 1995) was based on the decline of the species' occupied range, its relative abundance, and the continued threats to the species' survival. A decline in distribution and abundance of the least chub was first noted in the 1940's and 1950's (Baugh 1980; Holden *et al.* 1974). The decline of the species has been attributed to predation and competition from nonnative species, and habitat loss and alteration. The known distribution of the species at the time it was proposed for listing was limited to the Snake Valley in northwestern Utah, where the species inhabits springs, marshes, pools and stream habitats. Since the proposed rule to list the species as endangered with critical habitat was published, the existing range of the species has expanded to include two newly discovered populations along Utah's Wasatch Front, one newly discovered population at Lucin Pond in Box Elder County, and a new population at the Fish Springs National Wildlife Refuge (FSNWR) where the least chub has been introduced into two springs. Additional introductions at the Refuge are planned for the spring of 1999.

Conservation actions implemented since publication of the proposed rule to reduce the threats to the least chub and conserve the species include—

(1) *Extensive surveys throughout least chub historical habitat.* Surveys have identified three previously unknown populations; one at Lucin Pond in Box Elder County, Utah, where a 1989 least chub introduction effort was thought to have failed; and two populations discovered along Utah's Wasatch Front, one at a spring complex in Juab County and another in the Sevier River drainage in Mills Valley.

(2) *Habitat protection and enhancement activities.* In 1995, the Bureau of Land Management (BLM) constructed a second cattle exclosure (a barrier for the exclusion of cattle) on part of the Gandy Salt Marsh Complex in order to protect occupied least chub habitat. BLM has also entered into an extension agreement with a private landowner to fund an additional cattle exclosure, a small dam to control water releases, and fencing materials at and surrounding a spring head in least chub occupied habitat in the Utah's West Desert. The fencing material will be used to implement a rotational grazing system to decrease grazing pressure at this least chub occupied spring head and adjacent marsh habitat. The project will be completed in the summer of 1999. Plans to implement an additional rotational grazing system at a nearby spring source are being negotiated with a private landowner. BLM has also declined a request from Juab County, Utah, to implement a mosquito control spraying operation in marsh and spring areas on BLM lands occupied by least chub. The State of Utah has further begun discussions with Juab County to protect occupied least chub habitats on private lands from this threat. BLM conducted several years of intensive habitat use studies in least chub occupied springs to better define the habitat needs of the species. The Utah Reclamation Mitigation and Conservation Commission (URMCC) also acquired 85.5 acres (ac) (34.6 hectares (ha)) of wetland habitat occupied by least chub along Utah's Wasatch Front. Negotiations are currently underway with the landowner to acquire either a conservation easement or fee title for an additional 20 ac to protect this sensitive habitat. A management plan for these acquired habitats and fencing projects to exclude cattle are scheduled for completion by the summer of 1999.

(3) *Range expansion activities.* In addition to expanding the known range of the species by locating three additional populations, two introductions were completed at FSNWR after removal of nonnative species was completed. Introductions of least chub in two additional springs at the Refuge will be completed in the spring of 1999 after nonnative species were removed last fall. An interpretive sign will be posted at these sites to inform visitors to the Refuge of the life history and presence of this sensitive species. Negotiations are also underway to introduce the least chub to a suitable spring on lands managed by Hill Air Force Base. To assist with range expansion activities and the development of least chub brood stock, as well as other native species, feasibility studies were done at Gandy and Goshen Warm Springs for a native aquatic/warm water species hatchery. To further assist with range expansion activities, potential survey and reintroduction sites were identified from historic least chub habitat using aerial photography.

(4) *Nonnative interactions.* To remove the threat to least chub and other native species from competition and predation by nonnative species, in 1997 the State of Utah enacted a new policy for Fish Stocking and Transfer Procedures that specifically protects native species, including the least chub. Additionally, nonnative species were removed from springs at the FSNWR prior to introducing least chub. Nonnative species will also be removed from any new introduction or reintroduction sites. Selective removal of nonnative species will continue at occupied least chub habitats.

(5) *Genetic analysis.* Utah State University is conducting genetic characterization of all known least chub populations and is expected to complete this effort by the fall of 1999. This information will be used for developing broodstock for the planned warmwater fish hatchery and for reintroduction efforts.

Previous Federal Action

We have conducted three status reviews and prepared two status reports on the least chub. In 1980, we reviewed all existing information on the least chub and determined that insufficient data was available to warrant listing as either endangered or threatened. On December 30, 1982, we classified the least chub as a category 2 candidate species (47 FR 58454). We included this species again as a category 2 candidate in the revised vertebrate notice of review of September 18, 1985 (50 FR 37958). Category 2 comprised taxa for which there was available biological information in our possession indicating that listing was possibly appropriate, but the information was insufficient to support listing the species as endangered or threatened. After preparation of a 1989 status report, we reclassified the least chub as a category 1 candidate species (54 FR 554; January 6, 1989).

We included this species as a Category 1 candidate in the Animal Candidate notice of review of November 21, 1991 (56 FR 58804), and maintained it as a Category 1 species in the subsequent Animal Candidate notice of review of November 15, 1994 (59 FR 58982). Category 1 comprised taxa for which sufficient information was on file to support proposals for endangered and threatened status. On February 28, 1996, we published a notice of review in the **Federal Register** (61 FR 7596) that discontinued the use of different categories of candidate species. Candidate species are now those species for which sufficient information is on file detailing biological vulnerability and threats to support issuance of a proposed rule, but issuance of the proposed rule is precluded by other listing actions.

On September 29, 1995, after reviewing available information, we proposed the least chub as an endangered species with critical habitat (60 FR 50518). We solicited public comment on the proposal and informed the public of the availability of a public hearing upon request. Several requests for a public hearing were made in writing to our Utah Field Supervisor. However, due to the moratorium on listing actions imposed by Congress in 1995, we postponed further actions regarding the least chub proposal.

A serious backlog of listing actions resulted from decreases in the listing budget beginning in Fiscal Year 1995 and as a result of a moratorium on certain listing actions during parts of Fiscal Year 1995 and Fiscal Year 1996. The enactment of Public Law 104–6 in April 1995 rescinded $1.5 million from our budget for carrying out listing activities through the remainder of Fiscal Year 1995. Public Law 104–6 also prohibited the expenditure of the remaining appropriated funds for final determinations to list species, whether foreign or domestic, or designate critical habitat; thus placing a moratorium on those activities. During the first half of Fiscal Year 1996, the moratorium continued while a series of continuing resolutions provided little or no funding for listing activities. The net effect of the moratorium and reductions in funding resulted in a suspension of all listing activities. The moratorium on final listings and the immediate budget constraints remained in effect until April 26, 1996, when President Clinton approved the Omnibus Budget Reconciliation Act of 1996 and exercised the authority that the Act gave him to waive the moratorium. By that time a backlog of proposed listings for 243 domestic and foreign species had accrued.

To deal with this considerable backlog, we developed and published the Interim (61 FR 9651) and Final Listing Priority Guidelines for Fiscal Year 1996 (61 FR 24722). Using a multi-tiered approach, we prioritized listing activities giving priority to the processing emergency listing actions for species that faced an imminent risk of extinction. During this period, on June 7, 1996, we reopened the comment period on the least chub proposed listing and announced that a public hearing would be held on the proposal on June 27, 1996 in Wendover, Utah (61 FR 29047). At the public hearing numerous individuals expressed an interest in meeting with us to discuss the proposed listing of the least chub and other options available to conserve the species, in particular, the idea of a conservation agreement. In response to this interest our staff scheduled and attended a public informational meeting in Partoun, Utah on July 17, 1996.

On December 5, 1996, we published a Final Listing Priority Guidance for Fiscal Year 1997 (61 FR 64475) that maintained a four tiered listing priority process, identifying the processing of final decisions on proposed listings as the tier two activity. However, the effort required to update status information on the least chub and our work on other higher priority species delayed publication of a final rule to list the least chub.

On September 25, 1997, we announced the availability of a draft conservation agreement for the least chub and comment on the draft document from the public was solicited (62 FR 50394). On May 8, 1998, we published in the **Federal Register** the Final Listing Priority Guidance for Fiscal Years 1998 and 1999 (63 FR 25502). This new guidance adopted the existing three-tiered approach and further identified that during Fiscal Years 1998 and 1999 we will concurrently undertake: tier 1 emergency listing actions and; tier 2, the processing of final decisions on proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions to add species to the lists and petitions to delist or reclassify species, and a limited number of delisting or reclassifying actions. Tier 3 encompasses the processing of critical habitat determinations. This final listing decision for the least chub is a tier 2 activity under the current listing priority guidance.

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Summary of Comments and Recommendations

In the September 29, 1995, proposed rule and the associated notifications, we invited all interested parties to submit comments or suggestions concerning biological information and potential threats to the least chub that might contribute to the development of a final rule to list the least chub as an endangered species with critical habitat. We requested comments directly from appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties. We also published a notice inviting general public comment on the proposed listing in the following newspapers— Salt Lake Tribune/Deseret News, Millard County Chronicle, Fillmore Chronicle Progress, Tooele Transcript Bulletin, Nephi Times News, and the Wendover Times. We received no public comments in response.

We received requests to hold a public hearing on the proposed listing from three separate parties, all landowners within the Snake Valley of western Utah. On June 7, 1996, we published a notice in the **Federal Register** reopening the comment period on the least chub proposed listing until July 15, 1996, and also announced that a public hearing would be held on the proposal on June 27, 1996, in Wendover, Utah (61 FR 29047). In addition to the announcement in the **Federal Register** and in local newspapers, we sent a letter to all interested parties announcing the date of the public hearing and the extended closing date for public comment. Six parties presented testimony at a public hearing held on June 27, 1996, in Wendover, Utah. At the public hearing many individuals expressed an interest in meeting with us to discuss the proposed listing of the least chub and other options available to conserve the species, the idea of a conservation agreement was of particular interest. In light of the above request, we held a second public informational meeting in Partoun, Utah on July 17, 1996, that was attended by nineteen individuals.

During the comment period we received written and oral comments from 17 parties, including the testimony presented at the public hearing. We received comments from two State agencies, two environmental organizations, nine private individuals or groups, and four representatives of the petroleum and energy industry. Of the 17 comments received, 1 supported the listing, 11 opposed the listing, 2 were neutral, and 3 recommended the development of a conservation agreement. We have combined written and oral statements from both the public hearing and the comment period in the following discussion. Comments and other information submitted by respondents are incorporated into this notice of withdrawal and organized into specific issue topics. These issues and our response to each are summarized as follows—

Issue 1: Several respondents suggested that listing was not warranted given the current conservation efforts on behalf of the least chub, including the conservation agreement being developed by the State of Utah. These comments generally supported efforts in behalf of the agreement rather than listing the species.

Service Response: We actively participated in the development of the conservation agreement and believe that its continued implementation will facilitate the recovery of the species. The implementation of the conservation measures outlined in the agreement has reduced the actual and potential threats to the species. These efforts are directed at restoring and maintaining least chub populations throughout its historic range to ensure its continued existence. For a list of conservation actions completed to date, please refer to the Background discussion of this rule.

Issue 2: Several respondents opposed the listing due to direct economic impacts to the local livestock industry, petroleum and energy industries from the proposed listing and designation of critical habitat.

Service Response: Under the Act, the Secretary must make determinations on the listing of species solely on the basis of the best available scientific and commercial information without reference to economic or other social impacts. The listing of the least chub could indirectly affect some industry sectors by modifying the allowable land use practices on certain Federal lands. However, we believe that if the least chub became listed in a final rule there would be no significant impact upon either the livestock, petroleum, or energy industries. The Act requires that Federal agencies consult on any action they undertake, authorize or fund which may affect a proposed or listed species. However, in the majority of cases consultation neither slows or halts project planning or construction. In fact, the likelihood that any implementation or enforcement actions resulting from a species listing under the Act would result in economic impacts is minimal, given the ready availability of conservation tools and balancing mechanisms such as incidental take permits, habitat conservation plans, and safe harbor agreements.

Issue 3: One respondent suggested that a more proactive approach be taken in working with Snake Valley citizens to assure adequate habitat restoration, species reintroduction, and recovery of the least chub.

Service Response: In response to considerable local concern regarding the listing of the least chub, we held a public hearing on June 27, 1996, and a second public informational meeting on July 17, 1996, for the citizens of Snake Valley, Utah. During these meetings issues such as the development of a conservation agreement, the possibility of Safe Harbor Agreements, and the local involvement of the public, especially school children, in the conservation of the species were discussed.

We are actively working in a cooperative effort with the State of Utah and with private landowners located within Miller Springs and Leland Harris Spring Complex, to protect populations of least chub through the Partners for Wildlife Program. To support this effort, Federal and State funds were disbursed for such conservation measures as the purchase of fencing materials to exclude cattle from the spring heads and to allow for implementation of a rotational grazing regime to lessen cattle impacts at the spring complexes.

Issue 4: One respondent raised the issue of reintroducing the least chub onto the FSNWR which is already under our management and within the historical range of the species.

Service Response: On July 11, 1997, we entered into a Challenge Cost Share Agreement with the State of Utah under the authority of the U.S. Fish and Wildlife Coordination Act (16 U.S.C. 661–667) and the provisions of the Interior and Related Agencies Appropriation Act (Public Law 104–208, 110 STAT. 3009). The purpose of this agreement is to facilitate the reintroduction of the least chub onto the FSNWR. FSNWR is located within the historical range of least chub and offers high potential for creating refugia for additional populations to aid recovery. Funds have already been disbursed pursuant to this agreement to implement structural changes at the Refuge, eliminate nonnative mosquitofish, and to introduce least chub into two springs on the refuge. There are also plans for the introduction of least chub into two additional springs on the Refuge and the construction of an educational bulletin board alongside one of these springs.

Issue 5: One respondent suggested that since there are no recent studies assessing least chub population status, that such studies be initiated as soon as possible to ascertain its occurrence, genetic purity, and habitat condition.

Service Response: Through the combined effort of the Utah Division of Wildlife Resources, BLM, and ourselves the yearly monitoring of least chub populations was expanded to include extended surveys for least chub within historical habitat. These extended surveys have resulted in the identification of two previously unknown populations of least chub along Utah's Wasatch Front, where the species was previously considered extirpated (no longer present), and an additional population in Box Elder County.

Researchers at Utah State University have initiated the genetic analysis of all known least chub populations with completion of this analysis scheduled by Spring of 1999. In separate research efforts, least chub habitat condition, availability and use are being analyzed in several different ways. BLM is conducting an extensive habitat use survey of all known least chub populations in the Snake Valley. The State of Utah also has conducted aerial photography in Utah's West Desert and Wasatch Front to identify potential least chub habitat.

Issue 6: One respondent noted that the greatest factor in the decrease of the least chub population is the 10 years of extended drought, and suggested that because the least chub has endured drought in the past that their numbers will again increase when conditions become wetter and additional springs begin flowing.

Service Response: Researchers have identified nonnative fish predation and competition (Hickman 1989; Osmundson 1985) and direct physical habitat loss and habitat degradation (Holden et al. 1974; Hickman 1989; Crist 1990) as factors in the decline of the least chub. While drought may play a role in the current reduced numbers of the species, historically, the species has been able to recover from such drought-induced declines. Presently, however, other factors such as habitat loss and degradation, and nonnative fish predation and competition, may be contributing to slower species recovery.

Issue 7: One respondent noted that cattle have coexisted with least chub for over 100 years and explained that livestock grazing practices have improved considerably and that ranchers are no longer mismanaging pasture land with continuous grazing as in the past.

Service Response: Livestock grazing practices have improved. However, in the proposed rule to list the least chub as endangered (60 FR 50518), we identified habitat degradation caused by livestock trampling as a significant threat to the species. Additionally, large influxes of organic material to springheads as a result of livestock activities may result in the extirpation of least chub from these habitats. Local ranchers are working with us in an effort to secure funding and manpower for fencing projects on private lands to provide for rotational grazing practices and/or exclusion of cattle from least chub occupied springheads.

Issue 8: One respondent expressed the opinion that there are unsurveyed spring complexes that probably contained least chub and suggested that these areas had not been surveyed because they were on the military's test and training range where access has been denied.

Service Response: Cooperating staff biologists for the military continue to periodically advise us of the status of the species and of the availability of habitat on military lands. Presently there are no known populations of least chub on military lands. However, we have joined with staff of the military's test and training range and the State of Utah to begin discussions with the goal of introducing least chub into unoccupied springs on military lands in Utah's West Desert.

Issue 9: One respondent, who supported the listing and critical habitat designation, suggested that BLM needed greater inducements to abate or prevent habitat degradation than are presently provided under BLM's current stipulations or activity plan objectives.

Service Response: If the least chub became listed under the Act, BLM would have an affirmative obligation under section 7(a)(1) of the Act to utilize its authorities in furtherance of the purposes of the Act and to carry out programs for the conservation of endangered and threatened species. BLM has been a participating member of both the Least Chub Conservation Technical Team and the Bonneville Basin Conservation and Recovery Team since the inception of both teams. BLM is also involved in several fencing projects designed to exclude cattle from spring heads occupied by least chub and is currently involved in evaluating habitat preferences of least chub in the West Desert. Furthermore, BLM is a signatory to the Least Chub Conservation Agreement and, as such, has agreed to protect and conserve the species.

Issue 10: One respondent expressed the opinion that although human activity has had an impact on the welfare of the least chub, it is endangered primarily because Lake Bonneville has dried up. The respondent anticipated, therefore, that the endangerment of this fish was inevitable.

Service Response: Ancient Lake Bonneville has undergone at least ten separate cycles of desiccation and flooding. The most recent desiccation occurred approximately 10,000 years ago and the Great Salt Lake has remained relatively stable since that time. Least chub were abundant until the 1940's and 1950's at which time a decline in their distribution and abundance was noted (Baugh 1980). This decline can be attributed to human intervention through habitat loss and alteration and the introduction of nonnative species.

Issue 11: One respondent identified that some oil and gas leases have been denied in anticipation of the least chub endangered species designation.

Service Response: We proposed the least chub as an endangered species in September 29, 1995. Prior to this, it was a candidate species for listing under the Act. As a precautionary measure Federal agencies proposing projects that may affect sensitive species would take the sensitive status of the species into consideration, whether or not it is actually listed under the Act. The protection and conservation of sensitive species is cost effective for project proponents as well, for it may preclude the need to list a species as federally endangered or threatened pursuant to the Act. When a species is proposed, Federal agencies are required under section 7(a)(4) of the Act to confer on any action which is likely to jeopardize the continued existence of the species.

Issue 12: Several respondents suggested that the economic impacts of critical habitat designation be minimized by defining the needed critical habitat as narrowly as possible and restricting it to areas immediately adjacent to springs where the least chub has been identified. One respondent was concerned that the designation of critical habitat would eliminate family operated ranches.

Service Response: In determining what areas to propose as critical habitat, we must consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such features include but are not limited to the following: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover,

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shelter; (4) sites for breeding, reproduction, rearing of offspring; and generally; (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species. In making this critical habitat determination, areas can only be excluded from the designated critical habitat if the economic or other benefits of exclusion outweighed the benefits of designating the area, unless such exclusion would result in extinction of the species. Critical habitat plays more than an informational role only through section 7 consultations in which the Service reviews proposed Federal actions. Activities on private or state-owned lands that do not involve Federal permits, funding, or other Federal actions are not restricted by the designation of critical habitat, although the "take" provisions of sections 9 and 10 of the Act still apply. If no Federal agency is involved in management, funding, or by other means on non-Federal areas with critical habitat, activities on private lands are not subject to the section 7 consultation process for critical habitat. Thus, activities on private or state-owned lands that do not involve Federal permits, funding, or other Federal actions are not restricted by the designation of critical habitat.

Peer Review

In accordance with policy promulgated July 1, 1994 (59 FR 34270), we solicited the expert opinions of independent specialists. In a letter dated October 20, 1995, we requested review and comments on the proposed listing rule from knowledgeable parties. This letter further identified that such advice would be helpful in the decision as to the proposed rule and specifically requested assistance in—(1) providing any factual data concerning the conservation of the species; (2) advising of any special consideration that should be taken into account prior to our final decision of the species status; (3) advice as to whether it would be prudent and determinable to designate critical habitat for the species at this time and; (4) providing any other relevant advice or guidance. We received no additional comments or information in response to this request.

Summary of Factors Affecting the Species

We must consider five factors described in section 4(a)(1) of the Act when determining whether to list a species. These factors, and their effects on the decision to withdraw the proposal to list the least chub, are as follows—

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Historically, least chub were widely distributed within the Bonneville Basin of northwestern Utah and occupied many streams, springs, and ponds (Cope and Yarrow 1875; Jordan 1891, cited by Jordan and Evermann 1896; Sigler and Miller 1963; Hickman 1989). At the time of the proposed listing of the species, least chub surveys and monitoring had indicated a steady decline in their distribution and numbers. Extensive monitoring in pre-established sites conducted in the three marsh complexes which comprise the majority of least chub habitat in Utah's West Desert indicated that in 1993, 51.4 percent of springs sampled contained least chub while in 1994, 43.8 percent contained least chub and in 1995, 40.5 percent were occupied by least chub. Habitat loss and degradation have been indicated as major causes of the least chub's decline (Holden *et al.* 1974; Hickman 1989; Crist 1990). Conservation activities implemented over the last several years have reduced the threats to the least chub from habitat loss and degradation. The downward trend in least chub occupied springs in the Utah's West Desert was slowed and in 1998 reversed. Monitoring data from 1996 identified that 40.0 percent of springs sampled contained least chub while in 1997, 38.4 percent were occupied and in 1998, 43.1 percent were occupied by least chub.

Enhancement, maintenance, and protection projects implemented over the last several years have focused on those specific factors that have contributed to habitat degradation such as livestock trampling and grazing, water development and mining activities. Many activities are already underway. In 1995, BLM constructed a second cattle exclosure on part of the Gandy Salt Marsh Complex in order to protect occupied least chub habitat. An extension agreement is being developed with a private landowner to fund an additional cattle exclosure around a springhead in least chub occupied habitat in Utah's West Desert. In addition, plans to implement a rotational grazing system to decrease grazing pressure at sensitive least chub occupied springs are in negotiation with a private landowner. The Utah Division of Wildlife Resources has completed aerial photography mapping of all least chub potential habitat, in part, to assist in the identification of private and public lands available for conservation easements and exclosures, acquisition, wetland revegetation, and water quality improvements. The State of Utah has also developed plans, in conjunction with the BLM, for the dredging of springheads to alleviate accelerated succession of spring complexes. BLM further declined a request from Juab County, Utah, to implement a mosquito control spraying operation in marsh and spring areas on BLM lands occupied by least chub. The State of Utah has initiated discussions with the County to protect occupied least chub habitats on private lands from this threat. BLM, in addition to the annual habitat surveys conducted during least chub monitoring, has conducted several years of intensive habitat use studies in least chub occupied springs to better define the habitat needs of the species. Acquisition of wetland habitat occupied by least chub along Utah's Wasatch Front is underway, with the purchase of approximately 85.5 ac (34.6 ha) completed by the end of 1998 and additional purchases under negotiations. This habitat will then be enhanced by removal of cattle, re-opening springheads that have been impacted by cattle, reseeding with native vegetation, and selective removal of nonnative species.

In addition to the above completed and planned conservation activities, the development of the Least Chub Conservation Agreement, a multi-agency cooperation effort, has established a means to curtail future habitat loss and degradation. The Agreement calls for enhancement, maintenance, and protection of least chub habitat, as well as the development of a mitigation protocol for proposed water development and future habitat alteration. The Agreement requires: (1) enhancement and/or restoration of habitat conditions in designated areas throughout the historical range of least chub, including bank stabilization, riparian/spring fencing, and sustainable grazing practices; and (2) maintaining and restoring, where possible, the natural hydrologic characteristics and water quality.

B. *Over utilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not presently a factor in the decline of the species. Although some least chub specimens have been collected for scientific and educational purposes (Sigler and Workman 1975; Workman *et al.* 1979; Crawford 1979; Osmundson 1985), such collections do not presently present a significant threat. No commercial or recreational uses for the least chub are known at this time.

C. *Disease or predation.* The introduction of nonnative species into least chub habitat has contributed to the decline of the least chub (Workman *et al.* 1979; Hickman 1989; Osmundson 1985). Predation by nonnative fishes has been a major factor in the decline and extirpation of desert fishes in southwestern North America (Shoenherr 1981; Meffe 1985; Minckley *et al.* 1991). Surveys of spring complexes indicate that where nonnative fishes have been introduced, few if any least chub remain (Osmundson 1985). To reduce this threat to the least chub the following conservation activities have been implemented. In 1997, the State of Utah enacted a new policy for Fish Stocking and Transfer Procedures that specifically protects native species, including the least chub. The new policy puts the protection of native aquatic species above the enhancement of recreational fisheries providing for fish stocking and transfer in a manner that does not adversely affect the long term viability of native aquatic species or their habitat and, among other things, aiding native species conservation. Additional activities completed to remove the threat of competition and predation by nonnative species include the removal of all nonnatives from two springs at FSNWR prior to introducing least chub, and at two additional springs in the fall of 1998 prior to reintroductions proposed for 1999. Nonnative species will be removed from any future introduction or reintroduction sites. Selective removal of nonnative species has and will continue to occur at occupied least chub habitats. To educate the public on the adverse effects of introducing nonnative species to previously unoccupied habitats, an interpretive billboard has been developed and will be installed at FSNWR.

In addition to the conservation activities already implemented and in the planning stages, future threats from disease and predation are directly addressed in the conservation agreement for the Least Chub. The selective control of nonnative species is one of the seven conservation actions to be implemented by the Agreement. Management and control of nonnative species will focus on—(1) determining where detrimental interactions, such as predation, competition, hybridization, or disease occur or could occur; (2) control or modification of stocking, introductions, and spread of nonnative aquatic species where appropriate; and (3) eradication of detrimental nonnative fish where feasible, and control to the maximum extent possible where eradication is not possible. Several species targeted for control and/or eradication include mosquitofish, killifish, and in some cases, nonnative sportfish and forage fish. In addition, in an effort to reduce such threats, we have planned a public education and outreach campaign to explain the benefits of ecosystem integrity, the detrimental effects of nonnative introductions, and the potential for disease transmission from such introductions.

D. *Inadequacy of existing regulatory mechanisms.* While the land ownership of occupied and potential least chub habitat is divided among Federal, State and private landowners, cooperation among the various groups is helping to protect the least chub. The establishment by the State of Utah, in 1997, of a new Fish Stocking and Transfer Procedures Policy established a regulatory mechanism that has and will afford the least chub greater protection from the threats to the species from introductions of nonnative species. Furthermore, the status of the least chub in Utah has changed, for it is now identified as a conservation species. This status identifies the species as one which is currently receiving special management under a conservation agreement. Signatory parties to the conservation agreement include the Utah Department of Natural Resources, BLM, Utah Reclamation Mitigation and Conservation Commission, the U.S. Bureau of Reclamation, the Confederated Tribes of the Goshute Reservation, the Central Utah Water Conservancy District and the Service. The conservation agreement was developed to expedite conservation measures needed for the continued existence and recovery of the least chub. It focuses on two objectives: (1) To eliminate or significantly reduce threats to least chub and its habitat to the greatest extent possible, and (2) to restore and maintain a minimum number of least chub populations throughout its historical range to ensure the continued existence of least chub. These objectives will be met through: determining baseline least chub population, life history, and habitat needs; determining and maintaining genetic integrity; enhancing, maintaining and protecting habitat; selectively controlling nonnative species; expanding least chub populations and range through introduction or reintroduction; monitoring populations and habitat; and developing a mitigation protocol for proposed water development and future habitat alteration that may affect least chub. When the agreement is fully implemented it will provide for the recovery of the least chub by establishing a framework for interagency cooperation and coordination on conservation efforts and setting recovery priorities. In addition to the Agreement, other partnerships will continue to be developed on specific actions within the least chub's range involving other interested agencies or groups. In light of the change in the State status of the least chub, the adoption of the conservation agreement and of a new State stocking policy affording greater protection to the least chub, we conclude that the existing regulatory mechanisms are adequate to address significant threat to the species.

E. *Other natural or human caused factors affecting its continued existence.* Competition and hybridization are identified factors contributing to the decline of the least chub (Lamarra 1981; Sigler and Sigler 1987; Crawford 1979). We expect the control of nonnative species identified in the Least Chub Conservation Agreement as identified in C and D above, to significantly reduce such threats.

A proposed mosquito abatement program for Juab County, Utah, is also a potential threat to least chub. BLM has declined the county's request to implement a mosquito control spraying project on Federal lands. Because spraying by the county may still occur on privately held lands, the Division of Wildlife Resources for the State of Utah has begun negotiations with the Juab County mosquito abatement program to ensure that their activities do not result in additional declines of least chub.

Due to the small number of populations of least chub, they are very susceptible to stochastic (random or naturally occurring) events. The likelihood of such events was identified as a possible threat to the species in the proposed rule. A single catastrophic event could destroy a significant portion of remaining chub habitat, or one or more of their populations. Extensive surveys throughout least chub historical habitat have been conducted over the last six years, and such efforts will continue to identify the known range and populations of least chub. These survey efforts identified three previously unknown populations; one at Lucin Pond in Box Elder County, Utah, where a 1989 least chub introduction effort was thought to have failed; and two populations along Utah's Wasatch Front, one at a spring complex in Juab County and another in the Sevier River drainage in Mills Valley. In addition to expanding the known range of the species by locating three additional populations, FSNRW completed two introductions after removal of nonnative

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species, with the introductions of least chub in two additional springs in the spring of 1999. Negotiations are also underway to introduce the least chub to a suitable spring on lands managed by Hill Air Force Base. These additional populations reduce the likelihood of a single catastrophic event affecting a major portion of the population. To assist with range expansion activities and the development of least chub brood stock, as well as other native species, feasibility studies were conducted at Gandy and Goshen Warm Springs for a native aquatic/warm water species hatchery. To further assist with range expansion activities, all least chub historical habitats were aerial photographed to identify potential survey and reintroduction sites.

The expansion in the range of least chub is identified in the Least Chub Conservation Agreement as a necessary action to conserve the species. To expand the range of the least chub, the conservation agreement calls for: (1) Establishing additional populations through introductions or reintroductions from either transplanted (wildstock) or brood stock least chub raised in a designated hatchery; (2) identifying and developing broodstock sources, including identification and taking of wild sources, and hatching and rearing facilities; and (3) restoring least chub populations into appropriate areas.

Finding and Withdrawal

Section 4(b)(1)(a) of the Act provides that the Secretary shall make listing decisions solely on the basis of the best scientific and commercial data available and after taking into account those efforts being made by any State or foreign nation to protect such species. In accordance with this requirement we have evaluated the species on the basis of each of the five listing factors discussed above; the current improved status of the least chub, and the efforts being made by the State of Utah, other signatories to the Least Chub Conservation Agreement and other private entities; to protect the species. Based on our evaluation of the above information, completed and ongoing actions and protective measures have substantially reduced the threats to the least chub such that the species is not likely to become endangered in the foreseeable future and, therefore, listing is not warranted at this time. We consequently withdraw the proposed rule to list the least chub as endangered with critical habitat.

Endangered Species Act Oversight

We will continue to monitor the status of the least chub throughout the term of the conservation agreement and maintain oversight. If it is deemed necessary, an emergency listing of the least chub would not be precluded by the 60-day written notice required to withdraw from the conservation agreement. We will initiate the process for listing the least chub if—(1) an emergency which poses a significant threat to the least chub is identified and not immediately and adequately addressed; (2) the biological status of the least chub becomes such that it is in danger of extinction throughout all or a significant portion of its range; or (3) the biological status of the least chub becomes such that it is likely to become endangered in the foreseeable future throughout all or a significant portion of its range. Appropriate notice will be given to signatory members of the Least Chub Conservation Agreement should we find that it is necessary to reinitiate the listing process.

References Cited

A complete list of all references cited is available upon request from the Salt Lake City Field Office (see **ADDRESSES** above)

Authors: The primary author of this document is Janet A. Mizzi (see **ADDRESSES** above).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 8, 1999.

John G. Rogers, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 99–19360 Filed 7–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 072199B]

Fisheries of the Exclusive Economic Zone Off Alaska; Halibut Bycatch Mortality Allowance in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed reapportionment of Pacific halibut bycatch mortality allowance specified for the nontrawl fishery categories; request for comments.

SUMMARY: NMFS proposes the reapportionment of the 1999 halibut bycatch mortality allowance specified for the Pacific cod hook-and-line fishery category to the "other nontrawl" fishery category in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of species constrained by the other nontrawl halibut bycatch mortality allowance, in particular Greenland turbot, while not further restricting the hook-and-line Pacific cod fishery. This action is intended to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutians Islands Area (FMP).

DATES: Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., August 12, 1999.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801. The final environmental assessment and final regulatory flexibility analysis prepared for the final 1999 total allowable catch (TAC) specifications may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP are codified at Subpart H of 50 CFR part 600 and 50 CFR part 679.

The BSAI halibut prohibited species catch (PSC) limit for nontrawl gear is an amount of halibut equivalent to 900 mt of halibut mortality (§ 679.21(e)(2)(i)). The Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the apportionment of the nontrawl halibut PSC limit for bycatch allowances for the Pacific cod hook-and-line and "other nontrawl" fisheries as 748 mt and 84 mt respectively. As of July 3, 1999, 480 mt remained of the total 1999 halibut bycatch mortality allowance for the hook-and-line Pacific cod fishery. The "other nontrawl" fishery has exceeded its halibut bycatch mortality allowance by 6 mt and is closed for the remainder of the year unless its halibut bycatch mortality allowance is increased.

The hook-and-line fishery for Pacific cod will reopen on September 15, 1999, and is projected to take as much as 250 mt of halibut mortality for the remainder of 1999. The directed fishery for Greenland turbot, a constituent and primary fishery of the "other nontrawl" category, would require an estimated 150 mt of halibut mortality to fully harvest the remaining directed fishing allowance of Greenland turbot.

NMFS has determined, therefore, that a reapportionment of 150 mt of halibut bycatch mortality allowance from the hook-and-line Pacific cod to the "other nontrawl" fishery category is necessary to achieve the optimum yield harvest of the BSAI nontrawl fisheries. This reapportionment is based on the best available scientific information pertaining to bycatch rates reported by NMFS-certified observers.

In order to provide greater opportunity to harvest the BSAI Greenland turbot TAC, while not jeopardizing the opportunity to harvest the amount of the Pacific cod TAC allocated to hook-and-line vessels, NMFS proposes to increase the halibut bycatch mortality allowance specified for the other nontrawl fishery category by 150 mt and reduce the halibut bycatch mortality allowance specified for the Pacific cod hook-and-line fishery by the same amount. The halibut bycatch mortality specifications for the 1999 BSAI nontrawl fisheries are listed in Table 7 of the final 1999 harvest specifications (64 FR 12103, March 11, 1999). To accommodate the proposed action, the 1999 BSAI final harvest specifications would be amended by adding the following Table 7A.

TABLE 7A.—1999 BSAI PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI NON-TRAWL FISHERIES

Non-trawl fisheries	Halibut mortality (mt) BSAI
Pacific cod—Total	598.
Jan. 1–April 30	457.
May 1–Sept. 14	0.
Sept.15–Dec. 31	141.
Other non-trawl—Total	234.
May 1–Aug. 31 [1]	42.
Sept.1–Dec.31	192.
Groundfish pot & jig	exempt.
Sablefish hook-and-line	Exempt.

[1] Consistent with § 679.21(e)(5)(iv)(A), any portion of the first seasonal allowance of the Pacific cod halibut bycatch mortality allowance that is not harvested by the end of the first season will become available on September 15, the beginning of the third season.

NMFS invites public comments on its proposal to reallocate the projected unused amount of halibut mortality from the hook-and-line Pacific cod fishery to the other nontrawl fishery category.

Classification

This action is authorized under 50 CFR 679.21(e)(4) and is exempt from OMB review under E.O. 12866.

NMFS prepared an environmental assessment (EA) and final regulatory flexibility assessment (FRFA) for the 1999 harvest specifications (See **ADDRESSES**). The proposed reapportionment of the BSAI nontrawl halibut PSC limit is intended to provide fuller opportunity to conduct the fishing activities considered in the EA/FRFA and is fully within the scope of these analyses.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: July 23, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–19427 Filed 7–28–99; 8:45 am]

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Notices

Federal Register
Vol. 64, No. 145
Thursday, July 29, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 23, 1999.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: 7 CFR Part 235, State Administrative Expense Funds.
OMB Control Number: 0584–0067.
Summary of Collection: Because the Food and Nutrition Service (FNS) is accountable for State Administrative Expense (SAE) funds by fiscal year, State Agencies (SAs) are requested to report their SAE budget information on that basis. If the State budgets coincide with a fiscal year other than that used by the Federal government, the SA must convert its State budget figures to amounts to be used during the applicable Federal fiscal year for this purpose. Under 7 CFR Part 235, State Administrative Expense Funds, there are five reporting requirements which necessitate the collection of information. They are as follows: SAE Plan, Reallocation Report, Coordinated Review Effort (CRE) Data Base Update, Report of SAE Funds Usage, and Responses to Sanctions. SAs also must maintain records pertaining to SAE. These include Ledger Accounts, Source Documents, Documentation of 10 Percent Transfer Limitation, and Equipment Records. FNS will collect information using forms FCS–74 and 525.
Need and Use of the Information: FNS will collect information on the total SAE cost the SA expects to incur in the course of administering the Child Nutrition Programs (CNP); the indirect cost rate used by the SA in charging indirect cost to SAE, together with the name of the Federal agency that assigned the rate and the date the rate was assigned; breakdown of the current year's SAE budget between the amount allocated for the current year and the amount carried over from the prior year; and the number and types of personnel currently employed in administering the CNPs. The information is used to determine whether SA intends to use SAE funds for purposes allowable under OMB Circular A–87, Cost Principles for State and Local Governments; does SA's administrative budget provides for sufficient funding from State sources to meet the Maintenance of Effort requirement; and is SA's staff adequate to effectively administer the programs covered by the SA's agreement with FNS.
Description of Respondents: State, Local or Tribal Government.
Number of Respondents: 87.
Frequency of Responses: Recordkeeping; Reporting: Annually.
Total Burden Hours: 20,912.

Rural Housing Service

Title: 7 CFR 3575–A, Community Program Guaranteed Loans.
OMB Control Number: 0575–0137.
Summary of Collection: The Rural Housing Service (RHS) is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes for the development of essential community facilities primarily serving rural residents. The Community Facilities Division of the RHS is considered Community Programs under the 7 CFR, part 3575, subpart A. Implementation of the Community Programs guaranteed loan program was effected to comply with the Appropriations Act of 1990 when Congress allocated funds for this authority. The guaranteed loan program encourages lender participation and provides specific guidance in the processing and servicing of guaranteed community facilities loans. RHS will collect information using several forms.
Need and Use of the Information: RHS will collect information to determine applicant borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan funds for authorized purposes. Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.
Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.
Number of Respondents: 125.
Frequency of Responses: Reporting: Quarterly.
Total Burden Hours: 76,977.

Agricultural Marketing Service

Title: Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement.
OMB Control Number: 0581–0163.
Summary of Collection: Public Law 101–220, enacted December 12, 1989, amended 608(b) of the Agricultural Agreement Act of 1937 (Act) to require all peanuts handled by persons who have not entered into the Peanut Marketing Agreement (Agreement) to be subject to the same quality and inspection requirements as are in effect under the Agreement. The Agreement, a contract between handlers and the Secretary of Agriculture, requires inspection of peanuts coming from the farm to a handler (incoming inspection) and inspection of peanuts sold by the handler in commercial outlets (outgoing) inspection. Quality requirements include sizing and tolerances for damage, minor defects, moisture, and foreign material. Aflatoxin testing is also required. The Agricultural Marketing Service (AMS) will collect information using forms FV–117, Handlers Monthly Report of Farmers' Stock and FV–117–1, Monthly Report of Dispositions of Peanuts.
Need and use of the Information: AMS will collect information on a farmers' stock of their own production; a farmer's stock received form others and from the USDA loan program; the month of which peanuts are received, the source of the peanuts (farmer's name and address), whether the peanuts are custom shelled, remilled or blanched, or crushed for oil, and disposition of residuals. AMS will also collect information on total inedible peanut inventory yet the end of the month and total edible processed inventory at the end of the month; the shipping date of the disposed peanuts, and the location shipped to; lot number; milled certificate number; aflatoxin certification number; aflatoxin test results; and allowed a determination of the type of disposal-remilling or blanching, crushing for oil, animal feed, seed residuals, or exported. The information will be used for administrative assessing billing and compliance purposes as well as being input into the Non-Signer Peanut Program Databases. Without these forms, AMS will not be able to accurately assess each handler.
Description of Respondents: Business or other for-profit.
Number of Respondents: 33.
Frequency of Responses: Recordkeeping; Reporting; Weekly; Monthly.
Total Burden Hours: 264.

National Agricultural Statistics Service

Title: Agricultural Labor Survey.
OMB Control Number: 0535–0109.
Summary of Collection: The 1938 Agricultural Adjustment Act, as amended in 1948, requires wage rate data for computation of an index component. This component is used in calculation of parity prices. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. Agricultural labor statistics are an integral part of National Agricultural Statistics Service (NASS) primary function of collecting, processing, and disseminating current state, regional, and national agricultural statistics. Comprehensive and reliable agricultural labor data are also needed by the Department of Labor in the administration of that H–2A program (non-immigrants who enter the United States for temporary or seasonal agricultural labor) and for setting Advance Effect Wage Rates. The Agricultural Labor Survey is the only timely and reliable sources of information on the size of the farm worker population. NASS will collect information using survey.
Need and Use of the Information NASS will collect information on wage rate estimates and the year-to-year changes in these rates and how change in wage rates help measure the changes in costs of production of major farm commodities. NASS will also collect information on data to measure the availability of national farm workers. The information is used by farm worker organizations to help set wage rates and negotiate labor contracts as well as determine the need for additional workers and help ensure federal assistance for farm worker assistance programs supported with government funding.
Description of Respondents: Farm.
Number of Respondents: 12,425.
Frequency of Responses: Reporting; Quarterly.
Total Burden Hours: 10,608.

Farm Service Agency

Title: Tobacco Marketing Quota Referenda Ballot—7 CFR 717.
OMB Control Number: 0560–0182.
Summary of Collection: The Agricultural Adjustment Act of 1938, as amended, (1938 Act) requires the proclamation of national marketing quotas for tobacco and requires the Secretary of Agriculture to conduct referenda to determine whether producers favor or oppose marketing quotas. Section 312 of the 1938 Act requires the Secretary of Agriculture to proclaim national marketing quotas for tobacco and to conduct a referendum of the farmers who are engaged in the production of the crop of tobacco harvested immediately prior to the referendum to determine whether such farmers are in favor of, or opposed to, national marketing quotas for the next succeeding marketing years. The Farm Service Agency (FSA) will collect information using voting ballots.
Need and Use of the Information: FSA will collect information to determine whether marketing quotas will be in effect for certain kinds of tobacco and voters eligibility. Without conducting a referendum, the Secretary would be unable to administer statutory requirements regarding tobacco marketing quotas. If no referendum were held and approved by eligible voters, tobacco producers would not have the benefits of a marketing quota and thereby a price support program.
Description of Respondents: Individuals or households; Farms.
Number of Respondents: 51,666.
Frequency of Responses: Reporting: Other (every 3 yr).
Total Burden Hours: 4,300.

Rural Business-Cooperative Service

Title: Mid-To Upper Level Management and Sales/Field Representative Compensation.
OMB Control Number: 0570–NEW.
Summary of Collection: The Rural Business-Cooperative Service (RBS) provides technical assistance, research, and education to all types of agricultural cooperatives. RBS has been mandated the responsibility to acquire and disseminate information pertaining to cooperatives under the Cooperative Marketing Act of 1926; 7 U.S.C. 451–457, and Public Law No. 450. Section 3(b). RBS receives an increasing number of inquiries from cooperatives, farm organizations (NCFC, University extension agents, etc.), and other interested clientele asking for updated data on employee compensation and comparable salary information for various job categories; with an added interest for cooperative directors' compensation. The changing agricultural markets, services, and new farming techniques/technology available to cooperatives requires them to closely examine better methods to identify, attract, and retain the employment of competent, productive employees. To attract competent employees, salaries and benefits must be comparable to the skills they bring to the job and what other industries can offer them. RBS will collect information using a study.
Need and use of the Information: RBS will collect information to do a comparison of their present salary/benefits base; to evaluate perspective employees' educational and/or work experience and backgrounds in order to formulate an adequate benefit/compensation package. The information will be used by cooperative managers to set their cooperative's salary levels, used as a recruiting tool for new employees, used to analyze the cost effectiveness of their own employee

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expenses, use for management planning-staffing costs for future activities, and to reevaluate their salary/benefits base in case of mergers and reorganizations. If the study is not undertaken, the salary and compensation structures adopted by many cooperatives will continue to be diverted from that necessary to attract and hold the quality and type of employees crucial to their ongoing economic success.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Farms; Individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 300.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 300.

Agricultural Marketing Service

Title: Handling of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida.

OMB Control Number: 0581–0094.

Summary of Collection: Mrketing Order No. 905 (7 CFR Part 905), covering handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, is authorized under the Agricultural Marketing Agreement Act of 1937 (Act) (7 U.S.C. 601–674). The Act authorizes the regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and to improve returns to growers. Regulatory provisions apply to varieties of citrus fruit grown in Florida shipped out of the production area to any market, except those specifically exempt. The Agricultural Marketing Service (AMS) will collect information using several forms.

Need and Use of the Information: AMS will collect information on the issuance of grade, size, quality, maturity, pack container, inspection, and reporting requirements. The Order is administered by an 18-member Florida Citrus Administrative Committee. The Committee has developed forms as a convenience to persons who are required to file information with the Committee relating to Florida Citrus fruit production, shipments, inspection and export. This information is needed to effectively carry out the administration of the program.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 1,729.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Weekly; Annually.

Total Burden Hours: 334.

Agricultural Marketing Service

Title: Livestock & Meat Market News.

OMB Control Number: 0581–0154.

Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621), Section 203(q), directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization. Livestock and Meat Market News provides a timely exchange of accurate and unbiased information on current marketing conditions (supply, demand, prices, trends. movement. and other information) affecting trade in livestock, meats, grain, and wool. Administered by the U.S. Department of Agriculture's Agricultural Marketing Service (AMS), this nationwide market news program is conducted in cooperation with 30 state departments of agriculture. AMS will collect information using market reports.

Need and Use of the Information: AMS will collect information on price, supply, and movement of livestock, meat carcasses, meat and pork cuts, and meat byproducts. The information collected is used by several agencies, agricultural universities and colleges to keep appraised of the current market conditions and movement of livestock and meat in the United States and also to determine available supplies and current pricing.

Description of Respondents: State, Local or Tribal Government; Farm; Individuals or households; Business or other for-profit.

Number of Respondents: 450.

Frequency of Responses: Reporting: Other (Daily).

Total Burden Hours: 7,020.

Rural Utilities Service

Title: 7 CFR Part 1724, Electric Engineering Architectural Services and Design Policies.

OMB Control Number: 0272–NEW.

Summary of Collection: The Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 et seq., as amended provides authorities for the Rural Utilities Service (RUS) for carrying out its obligations and responsibilities. RUS is a credit agency of the U.S. Department of Agriculture. It makes loans (direct and guaranteed) to finance electric, telecommunications, and water and waste water facilities in rural areas. RUS's electric program is a leader in lending to upgrade, expand, maintain, and replace the vast rural American electric infrastructure. As a condition of a loan or loan guarantee under the RE Act, borrowers are normally required to enter into RUS loan agreements, whereby the borrowers agree to use RUS standard forms of contracts for construction, procurement, engineering services and architectural services financed in whole or in part by the RUS loan. RUS will collect information using RUS Forms 211, 220, and 236.

Need and Use of the Information: RUS will collect information on detailed contractual obligations and services to be provided and performed relating to construction, project design, construction management, compensation, and related information. The information is used by RUS electric borrowers, their engineering and architectural contractors, and RUS. The information is used to comply with the RUS standard loan contract and RUS regulations.

Description of Respondents: Business or other for-profit.

Number of Respondents: 75.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 153.

Agricultural Marketing Service

Title: Cranberries Grown in the States of MA, RI, CT, NJ, WI, MN, OR, WA, and Long Island in the State of NY—Marketing Order No. 929.

OMB Control Number: 0581–0103.

Summary of Collection: Marketing Order No. 929 (7 CFR Part 929), regulates the handling of cranberries grown in 10 states and emanates from enabling legislation (the Agricultural Marketing Agreement Act of 1937, §§ 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674). The act was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to growers. The objective of the marketing agreement and order is to correlate the supply of cranberries available for sale in the various trade channels with the demand in those outlets. The Agricultural Marketing Service will collect information using forms FV–53, –259, –260, and –263.

Need and Use of the Information: AMS will collect information from the form on cranberry production, shipments, inspection, and export. The Cranberry Marketing Committee, which represents growers and locally administers the order are responsible for keeping information on individual handlers' inventories and receipt confidential. Information gathered by the committee would only be reported in the aggregate, along with other pertinent cranberry data. If information was not collected, data needed to keep the cranberry industry and the Secretary abreast of changes at the State and local level would not be available

Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 1,306.

Frequency of Responses: Recordkeeping; reporting: quarterly; annually.

Total Burden Hours: 874.

Food and Nutrition Service

Title: Food Stamp Program—Store Applications.

OMB Control Number: 0584–0008.

Summary of Collection: The Food Stamp Program (FSP) is designed to promote the general welfare and safeguard the health and well being of the Nation's population by raising levels of nutrition among low-income households. Section 2 of the Food Stamp Act of 1977, as amended states in part, that a Food Stamp Program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation. Section 9(a) of the Act requires that regulations provide for an application to be submitted by retailers and wholesalers to request approval for authorization to accept and redeem food coupons. The need to collect information is established under the Act to determine the eligibility of retail food stores, wholesale food concerns, and food service organizations applying for authorization to accept and redeem food stamp benefits, to monitor these firms for continued eligibility, to sanction stores for non-compliance with the Act, and for program management. The Food and Nutrition Service (FNS) will collect information using forms FNS–252, Food Stamp Application for Store, FN252–R, Food Stamp Program Application for Stores—Reauthorization, and FNS 252–2, Application to Participate in the Food Stamp Program for Communal Dining Facility/Others.

Need and Use of the Information: FNS will collect information to determine a firm's eligibility for participation in the Food Stamp Program, program administration, compliance monitoring and investigations, and for sanctioning stores found to be violating the program. FNS is also responsible for requiring updates to application information and reviewing that information to determine whether or not the retail food store, wholesale food concern, or food service organization continues to meet eligibility requirements. Owners Employer Identification Numbers (EIN) and Social Security Numbers (SSN) may be disclosed to and used by Federal agencies or instrumentalities that otherwise gave access to EINs and SSNs. FNS and other Federal Government agencies examine such information during compliance review, audit review, special studies or evaluation efforts.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; Farms; Federal Government.

Number of Respondents: 68,770.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 15,777.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 99–19350 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Agricultural Research, Extension, Education, and Economics Advisory Board, Southern Regional Listening Session

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of Listening Session.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a Southern Regional Listening Session of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 3918 South Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127), will send representatives of its membership (11 members, the Executive Director, and a USDA administrative support person) to the Southern Region to hold a Southern Regional Listening Session, 8:00 a.m. until 3:00 p.m. on August 2, 1999.

The Southern Regional Listening Session will engage southern stakeholders (small farmers, producers/ranchers, academia including 1890 and 1994 institutions, the private sector, and other stakeholder groups) in panel sessions to present statements to Advisory Board members on agricultural research and education priorities and other issues of significant concern to the South. Findings of this Listening Session will be presented to the full Advisory Board for consideration in its ongoing effort to advise USDA on future agricultural research and education priorities. Time will be allowed at the end of Listening Session panels for open discussion and audience participation.

Dates: Southern Regional Listening Session, August 2, 1999, 8:00 a.m. until 3:00 p.m.

Place: Alcorn State University, Lorman, MS.

Type of Meeting: Open to the public.

Comments: The public may file written comments before or within 2 weeks after the meeting with the contact person. All statements will become a part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Office of the Advisory Board; Research, Education, and Economics; U.S. Department of Agriculture; Washington, D.C. 20250–2255.

Done at Washington, D.C. this 26th day of July 1999.

Eileen Kennedy,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. 99–19419 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99–040N]

Codex Alimentarius Commission: Forty-sixth Session of the Executive Committee of the Codex Alimentarius Commission (Codex) and Twenty-third Session of the CODEX

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comment.

SUMMARY: The Office of Under Secretary for Food Safety, United States Department of Agriculture (USDA) is sponsoring a public meeting on August

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17, 1999. The purpose of this meeting is to provide information about decisions on issues considered at the Forty-sixth Session of the Executive Committee of the Codex Alimentarius Commission and the Twenty-third Session of the Codex Alimentarius Commission which were held in Rome, Italy June 24–25, 1999, and June 28–July 3, 1999, respectively, and to take comments on the future direction of U.S. efforts in Codex.

DATES: The public meeting is scheduled for Tuesday, August 17, 1999, from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in Room 107A, Jamie L. Whitten Building, 12th Street and Jefferson Drive, SW, Washington, DC. Send an original and two copies of comments to: FSIS Docket Clerk, Docket #99–040N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Ph.D., U.S. Manager for Codex Alimentarius, Room 4861, South Building, U.S. Department of Agriculture, 14th and Independence Avenue SW, Washington, DC 20250; Telephone (202) 205–7760.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the principal international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. Codex meets biennially. The Executive Committee serves as the executive body of Codex between the biennial meetings.

Issues To Be Discussed at the Public Meeting

The following items will be discussed during the public meeting on August 17, 1999.

1. Election of Officers of the Commission and Appointment of Regional Coordinators.
2. Report on the Forty-sixth Session of the Executive Committee.
3. Report of the financial situation of the Joint FAO/WHO Food Standards Programme for 1998/99 and 2000/01.
4. Consideration of the Draft Medium-term Plan for 1998 to 2002 (This plan identifies work to be conducted by the Commission by program area and describes the medium-term objectives of that work.)
5. Consumers' involvement in the work of the Codex Alimentarius Commission.
6. Principles of Risk Analysis.
7. Consideration of Amendments to the Procedure Manual of the Codex Alimentarius Commission.(These are matters that pertain to the operations of the Commission.)
8. Consideration of Draft Standards and Related Texts. (These are items considered at Step 5 or Step 8 of the Codex Procedure for the elaboration of Codex Standards and Related Texts.)
9. Consideration of Proposals to Elaborate New Standards and/or Related Texts.
10. Matters Arising from Reports of Codex Committees.
11. Designation of Host Governments for Codex Committees.

Public Meeting

The public meeting is scheduled for August 17, 1999, in Room 107A, Jamie L. Whitten Building, 12th Street and Jefferson Drive, SW, Washington, DC. Attendees will hear brief descriptions of the issues and the outcome of Commission deliberations and will have the opportunity to pose questions and offer comments.

Done at Washington, DC on: July 23, 1999.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 99–19422 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on Wednesday, August 11, 1999, at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Avenue, Willows, California. The meeting will consist of a field trip, starting from the office at 7:00 a.m. and adjourning at 5:00 p.m. The main agenda item for this meeting and the objective of the field trip is to view the Upper Stoney Creek and discuss the grant proposal for completing the watershed analysis for this watershed. Public comment periods will be held throughout the field trip. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530–841–4468; TDD (530) 841–4573; email: chendryx/r5_klamath@fs.fed.us.

Dated: July 23, 1999.

Nancy J. Gibson,

Administrative Officer.

[FR Doc. 99–19356 Filed 7–28–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Economic Development Administration.

Title: Proposal and Application for Federal Assistance, and Civil Rights Guidelines.

Agency Form Number: ED–900P and ED–900A.

OMB Approval Number: 0610–0094.

Type of Request: Extension of a currently approved collection.

Burden: 47,350 hours (7,350 for ED–900P and 40,000 for ED–900A).

Average Hours Per Response: ED–900P Proposal for Federal Assistance—7 hours. ED–900A Application for Federal Assistance and Civil Rights Guidelines—50 hours.

Number of Respondents: Approximately 1,850 respondents.

Needs and Uses: The information in the application is needed to determine conformance to statutory and regulatory requirements, the quality of the scope of work proposed to address the pressing needs and other economic problem(s) of the area, the merits of the activity for which funding is requested and the ability of the prospective applicants to carry out the proposed activities successfully. Those interested in obtaining a grant are to first submit a preapplication and then be invited to submit an application. The Civil Rights Guidelines are required by the Department of Justice Regulations at 28 CFR 42.404, which directs Federal agencies to publish (Title VI of the Civil Rights Act of 1964, as amended) guidelines for each type of program to which they extend financial assistance, where such guidelines would be appropriate to provide detailed information of the requirements of Title VI. To responsibly administer its programs, EDA must obtain certain data on the jobs to be created and saved, by those that apply for and receive its assistance (applicants and recipients), and by those that create or save 15 or more jobs as a result of EDA's assistance.

Affected Public: State, local or Tribal Government and not-for profit organizations.

Frequency: One time for preapplication and application, and on occasion for the Civil Rights Guidelines for post approval and monitoring compliance.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DoC Forms Clearance Officer, (202) 482–3272, US Department of Commerce, Room 5033, 14th and Constitution Avenue, N.W., Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 23, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–19348 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part.

EFFECTIVE DATE: July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Holly Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on tapered roller bearings and parts thereof from the People's Republic of China and polyethylene terephthalate film, sheet and strip (Pet Film) from the Republic of Korea.

Initiation of Reviews

In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2000.

Antidumping duty proceedings	Period to be reviewed
Hungary: Tapered Roller Bearings A–437–601	06/01/98–05/31/99
Daewoo–MGM Rt.	
Netherlands: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide ("PPD–T") A–421–805	06/01/98–05/31/99
Twaron Products V.O.F.	
Republic of Korea: Polyethylene Terephthalate Film, Sheet and Strip (Pet Film) A–580–807	06/01/98–05/31/99
SKC Limited	
H.S. Industries Co., Ltd.	
Hyosung Corporation	
Sweden: Stainless Steel Plate A–401–040	06/01/98–05/31/99
Uddeholms AB	
Taiwan: Certain Stainless Steel Butt-Weld Pipe Fittings A–583–816	06/01/98–05/31/99
Ta Chen Stainless Steel Pipe, Ltd.	
The People's Republic of China: Sparklers* A–570–804	06/01/98–05/31/99
Gaungxi Native Produce Import & Export Corp.	
Benai Fireworks and Firecrackers Branch	
Hunan Provincial Firecrackers & Fireworks Import & Export (Holding) Corp.	
Jiangxi Native Produce Import & Export Corp.	
Guangzhou Fireworks Company	
*If one of the above named companies does not qualify for a separate rate, all other exporters of sparklers from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.	
The People's Republic of China: Tapered Roller Bearings* A–570–601	06/01/98–05/31/99
Zhejiang changsan (Bearing) Group Co. Ltd.	
Yantai CMC Bearing Co., Ltd. Louyang Bearing Factory	
Wafangdian Bearing Factory	
Wafangdian Bearing Industry Co.	
Wafangdian Bearing Factory, Liaoning Province	
China National Machinery & Equipment Import and Export Corporation, Beijing	
China National Machinery and Equipment Import and Export Corporation (CMEC), Beijing	

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Antidumping duty proceedings	Period to be reviewed
Henan Machinery and Equipment Import and Export Corporation	
The China National Machinery and Equipment Import and Export Corporation, Henan Co., Ltd.	
Guizhou Machinery Import and Export Corporation	
Liaoning Machinery Import and Export Corporation	
The China National Machinery and Equipment Import and Export Corporation, Liaoning Co., Ltd.	
Liaoning MEC Group Co., Ltd.	
Jilin Machinery Import and Export Corporation	
China National Machinery Import and Export Corporation of Jilin Province	
The China National Machinery and Equipment Import and Export Corporation, Guizhou Branch	
China National Machinery and Equipment Import and Export Company (CMEC), Zhejiang	
Guizhou Machinery Import and Export Corporation Guiyang, Guizhou China	
China National Automotive Industry Import & Export Corporation	
China National Automotive Industry Import & Export Corporation, Guizhou China	
China National Automotive Industry Guizhou Import/Export Corp.	
Xiangfan Machinery Import & Export (Group) Corp.	
Xiangfan Machinery Foreign Trade Corporation	
Xiangfan International Trade Corp.	
Wanxiang Group Corporation	
Shandong Machinery and Equipment Import & Export Corporation	
Shandong Machinery and Equipment Import & Export Group Corporation	
Hangzhou Metals, Minerals, Machinery & Chemical Import Export Corporation	
China Metals, Minerals, Machinery & Chemicals Import Export Corporation	
China Great Wall Industry Company	
Premier Bearing & Equipment, Ltd.	
Chin Jun Industrial, Ltd.	
China National Machinery Import/Export Corporation, Yantai	
China National Machinery and Equipment Corp., Changsha	
China National Machinery and Equipment Import Export Company (CMEC), Hunan	
Shanghai Machinery & Equipment Import & Export Corp.	
Shanghai Machinery Import/Export Corp.	
Hubei Provincial Machinery Import & Export Corp.	
Zhejang Machinery Import/Export Corp.	
Tianshui Hailin Import & Export Corporation	
Heilongjang Machinery Import/Export	
Shandong Machinery Import/Export Corp.	
Shanghai Pacific Machinery Import & Export Corp.	
Shaanxi Machinery & Equipment I/E Corp.	
Guangdong Machinery and Equipment Import & Export	
Guangdong Machinery and Equipment Import & Export (Group) Corporation	
East Sea Bearing Co., Ltd.	
Shanghai General Bearing Co., Ltd.**	
Direct Source International	
Goldhill International Trading & Services Co.	
Bilop International	
China Aeolus Automotive Industries Import Export Corporation	
Flying Dragon Machinery	
Harbin Bearing Factory	
Luoyang Bearing Research Institute of the Ministry of Machinery & Electronics Industry	
The Tenth Institute of Machinery Project Planning & Research of the Ministry of Machinery & Electronics Industry	
Shanghai Rolling Bearing Factory	
Xiangyang Bearing Factory	
Shanghai Miniature Bearing Factory	
Suzhou Bearing Factory	
Chengdu General Bearing Factory	
Hailin Bearing Factory	
Hongshan Bearing Factory	
Guiyang Bearing Factory	
Haihong Bearing Factory	
Lanzhou Bearing Factory	
Xibei Bearing Factory	
Beijing Bearing Research Institute	
Changzhi People Factory	
Beijing People Bearing Factory	
Handan Bearing Factory	
Jining Bearing Factory	
Shenyang Bearing Factory	
Chaoyang Bearing Factory	
Shenyang Steel Ball Plant	
Gongzhuling Bearing Factory	
Wuxi Miniature Bearing Factory	
Jiamusi Bearing Factory	
Shanghai Bearing Technology Research Institute	
Zhongguo Bearing Factory	
Xiamen Bearing Factory	

Antidumping duty proceedings	Period to be reviewed
Shanghai Hongxing Bearing Factory	
Shanghai Steel Ball Plant	
Wuxi Bearing Factory	
Hangzhou Bearing Factory	
Hefei Bearing Factory	
Huainan Bearing Factory	
Longxi Bearing Factory	
Jiangxi Bearing Factory	
Liangshan Bearing Factory	
Jinan Bearing Factory	
Qingdao Steel Ball Plant	
Huangshi Bearing Factory	
Hubei Steel Ball Plant	
Changsha Bearing Factory	
Guangzhou Bearing Factory	
Guangxi Bearing Factory	
Chongqing General Bearing Factory	
Chongqing Steel Ball Plant	
Yunnan Bearing Factory	
Baoji Bearing Factory	
Tianshui Bearing Instrument Plant	
Beijing Needle Roller Bearing Factory	
Tianjin Miniature Bearing Factory	
Datong Bearing Factory	
Hebei Rolling Mill Bearing Factory	
Hebei Bearing Factory	
Chengde Bearing Factory	
The Third Bearing Factory of Shanxi	
Anshan Bearing Factory	
Yingkou Bearing Factory	
Xingcheng Bearing Factory	
Hunijang Bearing Factory	
Daan Bearing Factory	
Shanghai Hunan Bearing Factory	
Shanghai Pujiang Bearing Factory	
Shanghai Changning Bearing Factory	
Shanghai Needle Roller Bearing Factory	
Xuzhou Revolving Support Factory	
Taian Bearing Factory	
Changshu Bearing Factory	
Northwest Bearing Plant	
Huangshi Bearing Factory	
Guangxi Bearing Factory	
Chongqing Bearing Factory	
Yunnan Bearing Factory	
Baoji Bearing Factory	
Xiangtan Bearing Factory	
Shaoguan Bearing Factory	
Xinjiang Bearing Factory	
The Second Bearing Factory of Xuzhou	
Houzhou Bearing Factory	
Yuxi Bearing Factory	
Chifeng Bearing Factory	
Huangyian Bearing Factory	
Xingchang Bearing Factory	
Liuan Bearing Factory	
Zibo Bearing Factory	
Jining Bearing Factory (Shandong)	
Luoyang Dongfeng Bearing Factory	
Kaifeng Bearing Factory	
Ghangge Bearing Factory	
The Second Machine Tools Electric Apparatus Plant of Anyang	
Shashi Bearing Factory	
Wuhan Bearing Factory	
Changde Bearing Factory	
Hengyang Bearing Factory	
Hubei Bearing Factory	
Yueyang Bearing Factory	
Zhuzhou Bearing Factory	
Fanchang Bearing Factory	
Dongguan Bearing Factory	
Chengdu Bearing Factory	
Sichuan Small Size Bearing Factory	
Leshan Bearing Factory	

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Antidumping duty proceedings	Period to be reviewed
Honghe Bearing Factory	
Shaanxi Bearing Factory	
Shijiazhuang Bearing Factory	
Shanxi Bearing Factory	
Xiangtan Bearing Factory	
Shaoguan Bearing Factory	
Xinjiang Bearing Factory	
Beijing-Pinggu Bearing Factory	
Huhhot Bearing Factory	
Dalian Bearing Instrument Plant	
Nantong Bearing Factory	
Qingjiang Bearing Factory	
Wuhu Bearing Factory	
Yiyang Bearing Factory	
Zhongshan Bearing Factory	
Handan Bearing Factory	
Xingcheng Bearing Factory	
China National Automotive Import & Export Corporation	
China National Automotive Industry Import & Export Corporation	
China National Automotive Industry Xiamen Import/Export Corporation/Shanghai	
China National Automotive Industry Xiamen Import/Export Corporation	
China National Machinery/Equipment Corp., Harbin Branch	
Kenwa Shipping Co., Ltd.	
Far East Enterprising Co. (H.K.) Ltd.	
Far East Enterprising (H.K.) Co.	
Pantainer Express Line Co.	
Intermodal Systems Ltd.	
China Ningbo Int'l Economic & Technical Cooperation Corp.	
China Ningbo Cixi Import/Export Corp.	
Ningbo Xing Li Bearing Co., Ltd.	
Ningbo Yinxian Import/Export Corp., China	
Ningbo Yinxian Import/Export Corp., Hong Kong	
Santoh HK Ltd.	
Huuzhou Import and Export Corp.	
Ideal Consolidators Ltd.	
Cargo Services Far East Ltd.	
China Resources Transportation & Godown Co., Ltd.	
China Travel Service (HK) Ltd.	
Fortune Network Ltd.	
China Jiangsu Technical Import/Export Corp.	
Kaitone Shipping Co., Ltd.	
Profit Cargo Service Co., Ltd.	
United Cargo Management, Inc.	
Zhejang Expanded Bearing Co., China	
Zhejang Expanded Bearing Co., Hong Kong	
Zhejang Yongtong Company, China	
Zhejang Yongtong Company, Hong Kong	
Wafangdian Hyatt Bearing Manufacturing Co., Ltd.	
China National Bearing Joint Export Corp.	
PFL Pacific Forwarding, Ltd.	
Sui Jun International Ltd.	
Wah Shun Shipping Co., Ltd.	
Aempac System, Inc.	
Xinguang Ind. Prod. Import/Export Corp. of Sichuan Province	
Sunway Line, Inc.	
Trans-Ocean Bridge Services, Ltd.	
Scanwell Container Line Ltd.	
Scanwell Consolidators & Forwarders Ltd.	
China Machine-Bearing International Corp.	
Hyaline Shipping (HK) Co., Ltd.	
Long Trend Ltd.	
Waiwell Shipping Ltd.	
Special Line Ltd.	
YK Shipping International, Inc.	
Blue Anchor Line Co.	
Onan Shipping Ltd.	
Shanghai Bearing Corporation	
Wing Tung Wei (China) Ltd.	
China Merchants S & E Co., Ltd.	
Zhejiang Huangli Bearing Co., Ltd.	
China Ningbo International Economic & Technical Cooperation Corporation	
Ningbo Free Trade Zone	
China National Machinery Imp. & Exp. Corp., Chongquing Branch	
China-East Resources International	

Antidumping duty proceedings	Period to be reviewed
Distribution Services Ltd.	
Inteks Inc. N.V.O.C.C.	
Shaanxi Machinery & Equipment Imp. & Exp. Corp.	
United Cargo Management Inc., Dalian Office	
China Tiancheng Jiangsu China., Nanjing	
China Tiancheng Jiangsu China., Shanghai	
Zhejiang East Sea Bearing Co., Ltd.	
Mayer Shipping Ltd., HK	
Wholelucks Industrial Lim.	
Peko Incorporation	
O/B Manfred Development Co., (HK) Ltd.	
Asia Stone Company Limited	
Asia (USA) Inc. (Shanghai)	
Xiamen Special Economic Zone Trade Co., Ltd.	
SEC Line Ltd.	
Jebsin Shipping Ltd.	
Heika Express International Ltd.	
J.P. Freight, Inc., Shanghai, PRC	
Brilliant Ocean Ltd Corp (USA)	
Transunion International Company, Hong Kong	
Roson Express Int'l Co., Ltd.	
Streamline Shippers Association, Hong Kong	
Laconic Freight Forwarding Co., Ltd.	
Mitrans Shipping Co., Ltd.	
Distribution Services Ltd.	
The Ultimate Freight Management (H.K.) Ltd.	
Ideal Consolidators Ltd.	
Luoyang Bearing Research Institute	
Burlington Air Express Ltd.	
Janco Int'l Freight Ltd.	
Phoenix Shanghai China	
Shanghai Dong Yu Materials Co., Ltd.	
Guandong Lingnan Industrial Products	
Guandong Lingnan Industrial Products, Import & Export Corporation	
Sunrise Industrial Technology Co.	
Dongguan Industry Development Corp.	
Hi Light Int'l, Inc.	
Ever Concord Ltd.	
Kin Bridge Express (USA) Inc.	
Wice Marine Services Ltd.	
Welley Shipping, Ltd.	
WSA Lines, Ltd.	
Triumph Express Service Int'l Ltd.	
World Pacific Container Line Ltd.	
Hellman Int'l Forwarders, Ltd.	
Sino Eagle Co.	
Ever Concord Ltd. (Guangzhou)	
Ideal Ocean Lines, Ltd.	
MSAS Cargo Int'l (Far East) Ltd.	
Ocean Navigator Express Line	
Sunrise Industries Technology Co.	
China Mudanjiang Heading Factory	
Apex Maritime Co., Inc.	
Apex Maritime Co., Inc. (Dalian)	
Dalian Machine Tool Accessories	
Everich Shipping, Ltd.	
Eternity Int'l Freight Forwarder	
Ningbo Tiansheng Bearing Corp.	
Trans-Am Sea Freight (HK) Ltd.	
Zhong Shan Transportation Co., Ltd.	
Shenzhen Rising Sun Bearing	
Goldline Ltd.	
Leader Express International (HK)	
Transnation Shipping Ltd.	
Mayer Shipping Ltd.	
Shenzhen Jinyuan Industrial	
Transunion International Co., Ltd.	
Orient Star Consolidating	
Capital Distribution Services	
Buyers Consolidators Ltd.	
Versatile Int'l Corp.	
Panalpina China, Ltd.	
Trust Freight Services, Inc.	
Wah Hing Trading Co.	

Antidumping duty proceedings	Period to be reviewed
China North Industries	
Point Talent International Ltd.	
Votainer Far East BV	
Seatop Shipping Ltd.	
AEL Asia Express (HK). Ltd.	
Kenwa Shipping Co., Ltd.	
Wuxi Viking General	
Exbo Shipping Co., Ltd.	
Cots Shipping Co., Ltd.	
Shenzhen South China International	
Oceanic Bridge International Inc.	
Streamline Shippers Association	
China Jiansu Technical Import & Export Corp.	
Ever Concord Ltd.	
Air Sea Container Line, Inc.	
CL Consolidator Services Ltd.	
OAG International, Inc.	
Zhejiang Xinchang Foreign Economic	
Heicone Jiang Machinery Import & Export	
Wenling Foreign Trading Corporation	
Scanwell Freight Express Co., Ltd.	
C.U. Transport, Inc.	
Shanghai Dongyu Materials Co.	
EAS International	
EAS International Transportation Co., Ltd.	
Ensign Freight (China) Ltd.	
Amec International Co., Inc.	
China Dong Feng Motor	
Rong Shang International Corp.	
Air Sea Transport, Inc.	
Air Sea Transport, Inc., Yantai Office	
Air Sea Transport, Inc., Dalian	
Wuhan Machinery & Equipment	
STS Machinery, Inc.	
USA International Business	
Hang Cheong Shipping Co., Ltd.	
Deckwell Sky Express, Inc.	
China Machinery Equipment Import & Export Wuxi Co., Ltd.	
China Machinery & Equipment Import & Export Co., Ltd. (Jiangying Bearing Works)	
China Xian Import & Export Corporation	
China Jiangsu Machinery and Equipment Import & Export Wuxi Co., Ltd.	
China Jiangsu Machinery Import and Export (Group) Corp.	
China National Packaging Import & Export Nanjing Corporation	
China National Machinery and Equipment Import And Expert Corporation (CEMEC)	
CMEC Sichan	
CMEC Henan	
CMEC Shandong	
CMEC Jiangsu	
CMEC Guangdong	
CMEC Hebei	
CMEC Hunan	
CMEC Anhui	
CMEC Hubei	
CMEC Zhejiang	
CMEC Liaoning	
CMEC Jiangxi	
CMEC Yunnan	
CMEC Heilongjiang	
CMEC Shaanxi	
CMEC Guizhou	
CMEC Fujian	
CMEC Shanxi	
CMEC Jilin	
CMEC Gansu	
CMEC Hainan	
CMEC Qinghai	
CMEC Chengdu	
CMEC Zengzhou	
CMEC Tsinan	
CMEC Nanjing	
CMEC Guangzhou	
CMEC Shijiazhuang	
CMEC Changsha	
CMEC Hefei	

Antidumping duty proceedings	Period to be reviewed
CMEC Wuhan	
CMEC Hangzhou	
CMEC Shenyang	
CMEC Nanchang	
CMEC Kunming	
CMEC Harbin	
CMEC Xian	
CMEC Guiyang	
CMEC Fuzhou	
CMEC Taiyuan	
CMEC Changchun	
CMEC Lanzhou	
CMEC Haikou	
CMEC Xining	
CMEC Guangxi Zhuang	
CMEC Nei Monggol	
CMEC Xinjiang Uygur	
CMEC Ningxia Hui	
CMEC Xizang	
CMEC Nanning	
CMEC Hohhot	
CMEC Urumqi	
CMEC Yinchuan	
CMEC Lhasa	
CMEC Shanghai	
CMEC Beijing	
CMEC Tianjin	
China National Machinery Import and Export Corporation (CMC)	
Sichuan CMC	
Henan CMC	
Shandong CMC	
Jiangsu CMC	
Guangdong CMC	
Hebei CMC	
Hunan CMC	
Anhui CMC	
Hubei CMC	
Zhejiang CMC	
Liaoning CMC	
Jiangxi CMC	
Yunnan CMC	
Heilongjiag CMC	
Shannxi CMC	
Guizhou CMC	
Fujian CMC	
Shanxi CMC	
Jilin CMC	
Gansu CMC	
Hainan CMC	
Qinghai CMC	
Chengdu CMC	
Zengzhou CMC	
Tsinan CMC	
Nanjing CMC	
Guangzhou CMC	
Shijiazhuang CMC	
Changsha CMC	
Hefei CMC	
Wuhan CMC	
Hangzhou CMC	
Shenyang CMC	
Nanchang CMC	
Kunming CMC	
Harbin CMC	
Xian CMC	
Guiyang CMC	
Fuzhou CMC	
Taiyuan CMC	
Changchun CMC	
Lanzhou CMC	
Haikou CMC	
Xining CMC	
Guangxi Zhuang CMC	
Nei Monggol CMC	

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Antidumping duty proceedings	Period to be reviewed
Xinjiang Uygur CMC Ningxia Hui CMC Xizang CMC Nanning CMC Hohhot CMC Urumqi CMC Yinchuan CMC Lhasa CMC Shanghai CMC Beijing CMC Tianjin CMC	
*If one of the above named companies does not qualify for a separate rate, all other exporters of tapered roller bearings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.	
**With respect to Shanghai General Bearing Co., Ltd., this initiation notice only applies with respect to subject merchandise entered or sold during the period by Shanghai General Bearing Co., Ltd., but not produced by Shanghai General Bearing Co., Ltd.	
Venezuela: Ferrosilicon A–307–807 Ferroatlantica de Venezuela S.A.	06/01/98–05/31/99

	Period/class or kind
Anti-Friction Bearings Proceeding and Firm	
Japan: A–588–804	05/01/98–04/30/99
SNR Roulements*	All
*Inadvertently omitted from previous initiation notice.	
Countervailing Duty Proceedings	
Italy: Grain-Oriented Electrical Steel C–475–812 Acciai Speciali Terni S.p.A.	01/01/98–12/31/98
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, we will determine, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: July 23, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Group II, AD/CVD Enforcement.

[FR Doc. 99–19443 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–601]

Preliminary Results of Full Sunset Review: Malleable Cast Iron Pipe Fittings From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of Full Sunset Review: Malleable cast iron pipe fittings from Thailand.

SUMMARY: On January 4, 1999 the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on malleable cast iron pipe fittings from Thailand (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive comments filed on behalf of both domestic and respondent interested parties, the Department is conducting a full review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: July 29, 1999.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and 19 CFR 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

Imports covered by this review are shipments of certain malleable cast iron pipe fittings, other than grooved, from Thailand. In the original order, these products were classified in the Tariff Schedules of the United States, Annotated, (TSUSA) under item numbers 610.7000 and 610.7400. These products are currently classifiable under item numbers 7307.19.90.30, 7307.19.90.60, and 7307.19.90.80 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

This order applies to all imports of certain malleable cast iron pipe fittings from Thailand.

History of the Order

The Department issued a final determination of sales at less than fair value on July 6, 1989, finding a weighted-average margin of 1.70 percent for Siam Fittings Ltd. ("Siam") and for all others (52 FR 25282). The antidumping duty order on malleable cast iron pipe fittings from Thailand was published in the **Federal Register** on July 6, 1987 (52 FR 25282), as amended (52 FR 37351, October 6, 1987). Since that time the Department has not conducted an administrative review of this order.

Background

On January 4, 1999, the Department initiated a sunset review of the antidumping duty order on malleable cast iron pipe fittings from Thailand (64 FR 364) pursuant to section 751(c) of the Act. On January 19, 1999, the Department received a Notice of Intent to Participate on behalf of the Cast Iron Pipe Fittings Committee and its members, Grinnell Corporation and Ward Manufacturing (collectively "CIPFC"), within the applicable deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The CIPFC claimed interested party status under section 771(9)(F) of the Act as an *ad hoc* trade association consisting entirely of U.S. manufacturers of malleable cast iron pipe fittings.

We received a complete substantive response to the notice of initiation on February 3, 1999, on behalf of CIPFC. In its substantive response, CIPFC stated that both itself and its two current members have been participants in this proceeding since the Department's original investigation. We received a complete substantive response on behalf of Thai Malleable Iron and Steel Co., Ltd, BIS Pipe Fitting Industry Co., Ltd., and Siam (collectively respondent interested parties) on February 3, 1999. In their substantive response, each company claimed interested party status under section 771(9) of the Act, as a foreign manufacturer of malleable cast iron pipe fittings. Further, respondent interested parties claimed that although only Siam participated in the Department's original investigation, each company participated in the injury determination conducted by the International Trade Commission ("the Commission").

On February 8, 1999, we received rebuttal comments from CIPFC and respondent interested parties.

Respondent interested parties stated that they are the only known exporters of subject merchandise from Thailand to the United States and they claimed to account for more than 50 percent of imports of the subject merchandise over the most recent five years. Because the Department determined that respondent interested parties accounted for significantly more than 50 percent of the value of total exports of the subject merchandise over the five calendar years preceding the initiation of the sunset review, their response constituted an adequate response to the notice of initiation. Thus, the Department is conducting a full (240 day) review in accordance with section 351.218(e)(2)(i) of the *Sunset Regulations*.

The Department determined that the sunset review of the antidumping duty order on malleable cast iron pipe fittings from Thailand is extraordinarily complicated. In accordance with section 751(c)(6)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on May 3, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than July 23, 1999, in accordance with section 751(c)(5)(B) of the Act.[1]

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the original investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and shall provide to the Commission the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's preliminary determinations concerning continuation or recurrence of dumping and magnitude of the margin likely to prevail are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin likely to prevail are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Party Comments

In its substantive response, CIPFC argued that revocation of the antidumping duty order would likely result in the continuation or resumption of dumping of malleable cast iron pipe fittings from Thailand. CIPFC asserted that, in accordance with the *Sunset Policy Bulletin*, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where dumping continued at any level above de minimis after the issuance of the order. Further, CIPFC cited to the SAA and noted that continuation of dumping at any level above de minimis after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Based on these policies, the CIPFC asserts that the estimated weighted-average dumping margin of 1.70 percent as determined in the original investigation has remained unchanged since the imposition of the antidumping duty order.

[1] *See Malleable Cast Iron Pipe Fittings From Brazil and Thailand: Extension of Time Limit for Preliminary Results of Five-Year Reviews*, 64 FR 23598 (May 3, 1999).

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In their substantive response, respondent interested parties asserted that the likely effects of revocation are that the trade will continue as it has for the last ten years, with the Thai exporters shipping to the United States when there is sufficient demand. Further, respondent interested parties argued that exports of pipe fittings from Thailand have fluctuated during the last five years while the dumping margin has remained constant. In conclusion, the respondent interested parties asserted that the fact that revocation is unlikely to have any effect is supported by the fact that no member of the domestic industry has requested an administrative review of the order.

In its rebuttal comments CIPFC argued that the respondent interested parties failed to apply, or even identify, the test used by the Department to determine whether revocation of an order is likely to lead to continuation or recurrence of dumping. Rather, respondent interested parties proffered arguments that speak to the issues that may be relevant to the Commission. CIPFC asserted that dumping was not eliminated after the issuance of the order and, based on statistics provided by respondent interested parties, exports over the past five years have decreased. Therefore, CIPFC asserted that the evidence on the record justifies a determination that revocation would be likely to lead to continuation or recurrence of dumping.

In their rebuttal comments, respondent interested parties referred to the language of the SAA that specifies that declining (or no) dumping margins accompanied by steady or increasing imports may indicate that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked. Citing to the volume of exports prior to the issuance of the order, as reported in their substantive response, and using import statistics CIPFC relied on in contemporaneous sunset reviews of other antidumping duty orders on pipe fittings, respondent interested parties argued that exports from Thailand after the issuance of the dumping order actually increased over three-fold. In conclusion, respondent interested parties argued that the Department must conclude that dumping is not likely to resume if the order were revoked given that exports from Thailand to the United States increased after the issuance of the order, that the 1.70 percent ad valorem margin would be deemed de minimis under the 1995 WTO standards, and that the domestic industry never requested an administrative review of the order.

Department's Determination

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of a antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3.a of the *Sunset Policy Bulletin*).

Although respondent interested parties argue that the 2.0 percent is the de minimis standard of Article 5.8 of the Antidumping Agreement should apply, we disagree. Both the statute and regulations clearly provide that in reviews of orders, the Department will treat as de minimis any weighted average dumping margin that is less than 0.5 percent ad valorem (*see* section 752(c)(4)(B) of the Act and 19 CFR 351.106(c)(1)). Further, the SAA specifies that the requirements of Article 5.8 apply only to investigations, not to reviews of antidumping duty orders or suspended investigations (*see* SAA at 845).

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, the existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were revoked. Deposit rates above de minimis remain in effect for exports of malleable cast iron pipe fittings from Thailand.

Therefore, since dumping margins have continued over the life of the order, the Department preliminarily determines that dumping is likely to continue if the order were revoked.

Magnitude of the Margin

Party Comments

In its substantive response, CIPFC argued that the Department should determine that the margin likely to prevail if the antidumping duty order were to be revoked is the Siam-specific and all other rates from the original investigation, 1.70 percent. CIPFC asserted that they would be consistent with the provisions of the statute, SAA, and *Sunset Policy Bulletin*.

In their substantive response, the respondent interested parties asserted that Article 5.8 of the Antidumping Agreement approved by the WTO in 1995 provides that any dumping margin of less than 2 percent ad valorem is to be treated as de minimis. Further, respondent interested parties asserted that de minimis margins are regarded as zero margins and referred to the language of the SAA (at 844) for support. In conclusion, the respondent interested parties argued that given that the only margin ever calculated was 1.70 percent ad valorem, there has never been any sales in the United States with dumping margins. Further, because there is no factual information available upon which to forecast a dumping margin were the order to be revoked, the Department should assume a margin of zero.

In its rebuttal comments, CIPFC argued that respondent interested parties' reliance on the Antidumping Agreement Article 5.8 de minimis standard of 2 percent ad valorem is misplaced. CIPFC noted that 19 U.S.C. 1675a(c)(4)(B) and 19 CFR 351.106(c)(1) provide that the de minimis standard in sunset reviews is margins less than 0.5 percent ad valorem. Thus, CIPFC argued that the Department should provide the Commission with a magnitude of dumping margin of 1.7 percent for all Thai producers.

As noted above, in their rebuttal comments, the respondent interested parties asserted that the margin determined by the Department in the original investigation was only 1.70 percent ad valorem, a rate that would be deemed de minimis under the 1995 WTO standards. As such, respondent interested parties asserted that the Department must conclude that dumping is not likely to resume if the order were to be revoked.

Department's Determination

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department normally will provide to the Commission a margin from the investigation, because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. *See* Section II.B.1 of the *Sunset Policy Bulletin*. Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations.

As noted above, in its final determination, the Department published a weighted-average dumping margin of 1.70 percent for SIAM and applied that same rate to all other producers/exporters of malleable cast iron pipe fittings from Thailand. This is the only margin of dumping determined by the Department over the life of this order. For the reasons stated above, we agree with CIPFC that respondent interested parties' reliance on a 2 percent de minimis standard is misplaced. Therefore, the Department preliminarily determines that the weighted-averaged dumping margin likely to prevail if the order were to be revoked is 1.70 percent margin from the original investigation.

Preliminary Results of Review

As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The magnitude of the margin that is likely to prevail is 1.70 percent for Siam and all others.

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on September 22, 1999. Interested parties may submit case briefs no later than September 13, 1999, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than September 20, 1999. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than November 30, 1999.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 23, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19445 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–505]

Preliminary Results of Full Sunset Review: Malleable Cast Iron Pipe Fittings From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of full sunset review: malleable cast iron pipe fittings from Brazil.

SUMMARY: On January 4, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on malleable cast iron pipe fittings from Brazil (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and subsequent adequate responses from both domestic and respondent interested parties, the Department is conducting a full review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of a dumping at the levels indicated in the Preliminary Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: July 29, 1999.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"), and 19 C.F.R. Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

Imports covered by this review are shipments of certain malleable cast iron pipe fittings, other than grooved, from Brazil. In the original order, these products were classified in the Tariff Schedules of the United States, Annotated (TSUSA), under item numbers 610.7000 and 610.7400. These products are currently classifiable under item numbers 7307.19.90.30, 7307.19.90.60, and 7307.19.90.80 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

This order applies to all imports of certain malleable cast iron pipe fittings from Brazil.

History of the Order

The Department issued a final determination of sales at less than fair value on March 31, 1986, finding a weighted-average margin of 5.64 percent for Industria de Fundicao Tupy, S.A. ("Tupy"), and for all others (51 FR 10897). The antidumping duty order on malleable cast iron pipe fittings from Brazil was published in the **Federal Register** on May 21, 1986 (51 FR 18640). Since that time the Department has conducted one administrative review of this order, which covered the period from May 1, 1993, to April 30, 1994.[1]

Background

On January 4, 1999, the Department initiated a sunset review of the antidumping duty order on malleable cast iron pipe fittings from Brazil (64 FR 364) pursuant to section 751(c) of the Act. On January 19, 1999, the Department received a Notice of Intent to Participate on behalf of the Cast Iron Pipe Fittings Committee and its members, Grinnell Corporation and Ward Manufacturing (collectively "CIPFC"), within the applicable deadline specified in section 351.218(d)(1)(i) of the *Sunset*

[1] *See Malleable Cast Iron Pipe Fittings, Other Than Grooved, From Brazil; Final Determination of Sales at Less Than Fair Value*, 51 FR 10897 (May 31, 1986); *Antidumping Duty Order: Malleable Cast Iron Pipe Fittings From Brazil*, 51 FR 18640 (May 21, 1986); and *Malleable Cast Iron Pipe Fittings From Brazil; Final Results of Antidumping Duty Administrative Review*, 60 FR 41876 (August 14, 1995).

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Regulations. The CIPFC claimed interested party status under section 771(9)(F) of the Act as an *ad hoc* trade association consisting entirely of U.S. manufacturers of malleable cast iron pipe fittings.

We received a complete substantive response to the notice of initiation on February 3, 1999, on behalf of CIPFC. In its substantive response, CIPFC stated that both it and its two current members have been participants in both the Department's original investigation and in the sole administrative review conducted by the Department.[2] We received a complete substantive response on behalf of Tupy on February 4, 1999. In its substantive response, Tupy claimed interested party status under section 771(9) of the Act, as a foreign producer of malleable cast iron pipe fittings. Tupy also asserted that, to the best of its knowledge, it has always accounted for 100 percent of the exports to the United States of pipe fittings from Brazil, both before and after the issuance of the order.

On February 8, 1999, we granted an extension to all parties to the deadline for filing rebuttal comments. We received rebuttal comments from Tupy and from CIPFC on February 11 and 12, 1999, respectively.

Both Tupy and CIPFC claim that Tupy was, and remains, the only producer of malleable cast iron pipe fittings from Brazil. Therefore, Tupy accounted for significantly more than 50 percent of the value of total exports of the subject merchandise over the five calendar years preceding the initiation of the sunset review and the response of Tupy constituted an adequate response to the notice of initiation. Thus, because the Department received adequate responses from both domestic and foreign interested parties, we are conducting a full (240 day) review in accordance with section 351.218(e)(2)(i) of the *Sunset Regulations*.

The Department determined that the sunset review of the antidumping duty order on malleable cast iron pipe fittings from Brazil is extraordinarily complicated. In accordance with section 751(c)(6)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on May 3, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than July 23, 1999, in accordance with section 751(c)(5)(B) of the Act.[3]

[2] CIPFC's current members are Grinnell Corporation and Ward Manufacturing. The Committee previously consisted of five members, including Grinnell and Ward. The other three members have since gone out of business. CIPFC's members represent "virtually" all domestic production of malleable cast iron pipe fittings, other than grooved.

[3] *See Malleable Cast Iron Pipe Fittings From Brazil and Thailand: Extension of Time Limit for Preliminary Results of Five-Year Reviews*, 64 FR 23598 (May 3, 1999).

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the weighted-averaged dumping margins determined in the original investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's preliminary determinations concerning continuation or recurrence of dumping and magnitude of the margin likely to prevail are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin likely to prevail are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Party Comments

In its substantive response, CIPFC argued that revocation of the antidumping duty order would likely result in the continuation or resumption of dumping of malleable cast iron pipe fittings from Brazil.[4] CIPFC asserted that, since the imposition of the antidumping duty order in 1986, Tupy has continued dumping at margins well over a *de minimis* level. As support for this assertion, CIPFC argued that the Department's revision of Tupy's margin in the sole administrative review of this order, from 5.64 percent to 34.64 percent is evidence that there is likelihood of continuation or recurrence of dumping as Tupy has continued dumping with the discipline of an order in place.[5]

[4] *See* CIPFC substantive response of February 3, 1999, page 6.

[5] *See* CIPFC substantive response of February 3, 1999, page 8.

With respect to whether imports of the subject merchandise have either fallen dramatically or ceased following the imposition of the antidumping duty order, CIPFC argued that import volumes dropped significantly after the order was put into place. CIPFC contended that, in 1984, prior to the imposition of the order, imports of the subject merchandise totaled 3,274,000 pounds. In 1985, imports decreased significantly, to 476,000 pounds, and then rose slightly in 1986 and 1987 to 816,000 pounds and 762,000 pounds, respectively.[6] According to CIPFC, these data represent total imports of malleable cast iron pipe fittings from Brazil, but, since Tupy is the only known Brazilian exporter of the subject merchandise, it is reasonable to assume that these numbers represent Tupy's exports to the United States during those calendar years.

CIPFC also argued that import volumes in subsequent years gradually began to rise, although never managing to come close to the peak volume of 1984. In 1991, the total volume of imports of the subject merchandise was 721,385 pounds. This volume subsequently increased in 1992, 1993, and 1994 to a range between 1.3 million pounds in 1992 and 1.7 million pounds in 1994.[7] CIPFC asserted that, following the 1995 administrative review in which the Department found that Tupy was dumping at a rate of 34.64 percent, imports of the subject merchandise from Brazil (and, accordingly, Tupy's exports of the subject merchandise) fell dramatically to 818 pounds and have only now begun to start again.

CIPFC concluded by arguing that the data, showing a decline in import volumes of malleable cast iron pipe fittings from Brazil accompanied by the continued existence of dumping margins after the order, provide a strong indication that Tupy will continue or resume dumping if the order is revoked.[8] Therefore, CIPFC asserted that the Department should determine that there is a likelihood of continuation or recurrence of dumping if the order is revoked.

Tupy, in its substantive response of February 4, 1999, argued that the likely effects of revocation of the order on pipe fittings from Brazil would not be a continuation or recurrence of dumping by Tupy. Accordingly, because there is no other Brazilian producer and exporter of pipe fittings, Tupy asserted that there is no other reason to expect that pipe fittings from Brazil will be dumped in the United States in the event the order is revoked.[9]

[6] *See* Table 1 in CIPFC's substantive response of February 3, 1999, page 9.

[7] *See* Table 2 of CIPFC substantive response, page 10.

[8] *See* CIPFC substantive response, page 10.

Tupy explained in its substantive response that following the imposition of the incorrect and prohibitive best information available (BIA) rate of 34.64 percent in the administrative review, Tupy ceased exports of the subject merchandise to the United States in favor of other markets and other product lines. Tupy also asserted that it has recently begun to resume exports of pipe fittings to the United States. Tupy claims that it has no intention of dumping because it can now compete in the United States without dumping.

In its rebuttal response of February 11, 1999, CIPFC argued that Tupy is still interested in the U.S. market and that Tupy's statement that it has no intention of dumping is nothing more than an unsubstantiated, self-serving statement and should be disregarded as such.[10] According to CIPFC, Tupy has presented no credible basis for the Department to find that revocation of the antidumping duty order is not likely to lead to continuation or recurrence of dumping.[11]

Tupy did not address the issue of whether dumping was likely to continue were the order to be revoked in its rebuttal comments.

Department's Determination

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3.a of the *Sunset Policy Bulletin*).

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, the existence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the order were revoked. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping. Since deposit rates above *de minimis* remain in effect for exports of malleable cast iron pipe fittings from Brazil, evidence suggests that exporters cannot sell in the U.S. market without dumping.

With respect to whether imports of the subject merchandise ceased following the imposition of the original antidumping duty order, the Department preliminarily finds that imports of the subject merchandise to the United States declined dramatically from a high point of 3,274,437 pounds (1485.28 metric tons) in 1984 to 761,050 pounds (345.21 metric tons), in 1987. Imports increased dramatically in 1988, exceeding 3 million pounds (1400 metric tons) and then fell again. However, following the 1995 issuance of the final results of the sole administrative review conducted by the Department, imports subsequently ceased and only in 1998 began to resume. Since Tupy is the only Brazilian producer of malleable cast iron pipe fittings, as stated in the substantive responses of both parties, it is reasonable to assume that these numbers accurately reflect Tupy's exports to the United States. Therefore, since dumping margins have continued over the life of the order, the Department preliminarily determines that dumping is likely to continue if the order were revoked.

Magnitude of the Margin

Party Comments

In its February 3, 1999, substantive response, CIPFC argued that the Department should determine that the margin likely to prevail if the antidumping duty order were to be revoked is the more recent rate of 34.64 percent. According to CIPFC, the more recently calculated margin of 34.64 percent is more representative of Tupy's likely behavior if the Department revokes the order than the original rate of 5.64 percent.[12]

CIPFC argued that, since the imposition of the antidumping duty order in 1986, Tupy has been attempting to increase its share of the U.S. market for malleable pipe fittings. According to CIPFC, in 1986 Tupy accounted for approximately 0.67 percent of the U.S. market or 0.8 million pounds. CIPFC also argues that, by 1994, when the Department found a margin of 34.64 percent, Tupy had exported 1.75 million pounds or approximately twice the volume of its exports in 1986. Thus, according to the CIPFC, Tupy had been trying to gain a greater percentage of market share in what CIPFC termed a mature low-growth or no-growth market.[13]

Additionally, CIPFC argued that Tupy attempted to secure the 5.64 percent rate of the original investigation by not participating in the administrative review and forcing the Department to use BIA in determining the margin. Since the Department's normal procedure is to limit the BIA rate to the highest rate determined in the original investigation and since Tupy was the only company investigated, CIPFC asserted that Tupy believed that it could secure the 5.64 percent rate when it did not participate in the administrative review. Therefore, CIPFC contended that the use of the 5.64 percent rate in the context of this sunset review would permit Tupy to benefit from the very behavior that the Department sought to sanction in 1995. Therefore, the CIPFC concluded, the Department should find that a dumping margin of 34.64 percent is a more accurate rate than the original rate, that it better reflects Tupy's likely dumping in the event of revocation, and that, therefore, it is the legally correct rate to provide to the Commission.[14]

In its substantive response of February 4, 1999, Tupy argued that, pursuant to the *Sunset Policy Bulletin*, the correct margin to be applied to Tupy in the event of revocation of the antidumping duty order is the rate that was determined in the original investigation. Tupy asserted that the Department may not choose the higher margin from the final results of review issued in 1995 simply because that rate was determined more recently. Tupy

[9] *See* Tupy substantive response of February 4, 1999, page 4.

[10] *See* CIPFC rebuttal response oi February 11, 1999, page 3, to Tupy's substantive response of February 4, 1999.

[11] *See* CIPFC rebuttal response of February 11, 1999, page 4.

[12] *See* CIPFC substantive response of February 3, 1999, page 11.

[13] *See* CIPFC substantive response of February 3, 1999, page 12.

[14] *See* CIPFC substantive response of February 3, 1999, page 13–14.

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also argued that the record of this case does not justify the higher rate because Tupy asserts that it has not attempted to increase market share since the imposition of the order. Tupy argued, therefore, that the Department should follow its standard practice of determining that the margin likely to prevail if the order were revoked would be the margin from the original investigation, 5.64 percent.

In its rebuttal, CIPFC argued that, since U.S. imports from Brazil increased while at the same time Tupy's margin also increased, it is reasonable to infer that Tupy was attempting to increase its market share between 1986 and 1995.[15] Thus, CIPFC asserted that Tupy increased exports by dumping in the mid-1980s and then, following the imposition of the order, decreased its imports to the United States substantially. CIPFC argued that, in the early 1990s, Tupy again attempted to gain market share and began increasing its exports to the United States by dumping at higher margins only to cease exporting when the Department determined that there was a new, higher dumping margin. Therefore, CIPFC asserted that the margin of dumping that will prevail if the order is revoked will be the higher margin of 34.64 percent.

In its rebuttal comments Tupy continued to argue that the Department should use the 5.64 percent margin from the original investigation. Tupy asserted that this is consistent with the Department's policy and practice. Citing to the final results of the expedited sunset review on the antidumping duty order on roller chain from Japan, Tupy asserted that, in order for the Department to consider a margin other than one determined in an original investigation, the domestic parties have the burden of affirmatively demonstrating that higher, more recent margins reflect a consistent pattern of behavior by respondents to obtain or increase market share. Tupy asserted the CIPFC has not met this burden. Further, Tupy asserted that it has never held a commercially significant share of the U.S. market. Tupy disputed the statistics concerning market share provided by CIPFC but argued nonetheless that, even if CIPFC's statistics were used, Tupy's share of the U.S. market was its highest in 1984 at 2.3 percent and that its market share was 1.18 percent and 1.28 percent in 1993 and 1994, respectively. Tupy asserted that the slight increase of 0.67 percent in its 1993 and 1994 market share over its 1986 market share hardly warrants selecting the 34.64 percent BIA rate.

Department's Determination

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department normally will provide to the Commission a margin from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place.[16] Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations.

In its substantive response, CIPFC urged the Department to determine that the magnitude of the margin likely to prevail if the order were revoked is 34.64 percent, which is the rate that was determined in the sole administrative review and the one that is currently in effect. CIPFC argued, in both its substantive response and in its rebuttal, that the Department may choose a higher, more recent margin. Specifically, the *Sunset Policy Bulletin*, at section II.B.2 states that a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order. Therefore, the Department may, in response to an argument from an interested party, provide to the Commission a more recently calculated margin for a particular company where, for that particular company, dumping margins increased after the issuance of the order, even if the increase was a result of the use of BIA.

As discussed in Final Results of Expedited Sunset Review: Stainless Steel Plate From Sweden, 63 FR 67658 (December 8, 1998), the Department intended to establish a policy of using the margin from the original investigation as a starting point, thus providing interested parties the opportunity and incentive to present data which would support a different estimate. Additionally, in *Barium Chloride From the People's Republic of China*, 64 FR 5633, 5635 (February 4, 1999), the Department determined that where there is an increase in imports corresponding to the increase in the dumping margin, the Department may determine that the higher rate is more representative of the behavior of the company without the discipline of an order in place.

In the instant case, however, the Department finds that annual import volumes for the subject merchandise have fluctuated during the life of the order and no consistent pattern of behavior by Tupy can be discerned. From 1986, the year of the imposition of the order, through the period prior to the conclusion of the 1993–94 administrative review, the Department finds no pattern of consistently increasing imports of subject merchandise associated with increasing dumping margins. Imports fluctuated during this period, increasing and decreasing during a period when the deposit rate was constant. Imports of subject merchandise during this period were both above and below pre-order levels. In addition, estimates provided by Tupy concerning its U.S. market share during this period also indicate that there were fluctuations in its share of the U.S. market.

Given the fluctuations over the life of the order, the Department finds no reason to believe that Tupy attempted to increase its U.S. market share through the increased dumping of subject merchandise. Because of this, the Department preliminarily finds that the use of a more recently calculated margin in its report to the Commission would be inappropriate. Therefore, we determine that the margins calculated in the original investigation best reflect the behavior of producers/exporters without the discipline of the order and we find that the margins calculated in the original investigation are probative of the behavior of Brazilian producers/exporters of the malleable cast iron pipe fittings if the order were revoked. As such, if these results are adopted for the Department's final determination, we will report to the Commission the rate established for Tupy (as well as for all other producers/exporters of the subject merchandise) in the original investigation as contained in the Preliminary Results of Review section of this notice.

Preliminary Results of Review

As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The magnitude of the margin that is likely to prevail is 5.64 percent.

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on September 22, 1999. Interested parties may submit case briefs no later than September 13, 1999, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than September 20, 1999. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than November 30, 1999.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 23, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19446 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–DS–P

[15] *See* CIPFC rebuttal response of February 11, 1999, page 6.

[16] *See* section II.B.1 of the *Sunset Policy Bulletin*.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–333–401]

Preliminary Results of Full Sunset Review: Cotton Shop Towels From Peru

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of full Sunset Review: Cotton shop towels from Peru.

SUMMARY: On January 4, 1999, the Department of Commerce ("the Department") initiated a sunset review of the suspended countervailing duty investigation on cotton shop towels from Peru (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of the domestic industry and adequate substantive comments filed on behalf of both the domestic industry and respondent interested parties, the Department is conducting a full review. As a result of this review, the Department preliminarily finds that termination of the suspended countervailing duty investigation would not likely lead to continuation or recurrence of a countervailable subsidy.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: July 29, 1999.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (*"Sunset Regulations"*) and in 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*"Sunset Policy Bulletin"*).

Scope

The merchandise subject to this suspended countervailing duty investigation is cotton shop towels from Peru. Shop towels are absorbent industrial wiping cloths made from a loosely woven fabric. Shop towels are currently classifiable under item numbers 6307.10.2005 and 6307.10.2015 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

History of the Order

On June 21, 1984, the Department issued an affirmative preliminary determination in the countervailing duty investigation on cotton shop towels from Peru (49 FR 26273). The Department preliminarily found a net bounty or grant of 44 percent *ad valorem* based on the certificate of tax rebate (CERTEX) and non-traditional export fund (FENT).

On September 12, 1984, the Department suspended the countervailing duty investigation on the basis of an agreement between the Department and Fabrica de Tejidos La Union Limitada, S. A. ("La Union") and Santa Cecilia Compania Textil, S.A. ("Santa Cecilia") to cease exports of the subject merchandise to the United States (49 FR 35835). No final determination was issued in this case and the Department has not conducted an administrative review.

Beginning in 1989, the Department began publishing notices of intent to terminate the suspended investigation. However, on the basis of objections by Milliken & Company ("Milliken"), the Department has not terminated the suspended investigation.[1]

Background

On January 4, 1999, the Department initiated a sunset review of the suspended countervailing duty investigation on cotton shop towels from Peru (64 FR 364), pursuant to section 751(c) of the Act. The Department received an Entry of Appearance from Milliken on January 19, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*.

The Department received complete substantive responses from the Government of Peru, the Comite Textil—Sociedad Nacional de Industrias ("Comite Textil") and from Milliken on February 10, 1999, within the deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i).[2]

In its substantive response, Milliken claimed interested party status under section 19 U.S.C. 1677(9)(C), as a domestic producer of shop towels. Further, Milliken stated that it was the sole petitioner in the original investigation of shop towels from Peru and had participated as a domestic producer interested party in the proceeding since 1984.

In its substantive response, the Comite Textil stated that it is a Peruvian trade association whose members are textile manufacturers, producers, and exporters. The Comite Textil claimed interested party status under section 771(9) of the Act. Moreover, two of the Comite Textil's members, La Union and Santa Cecilia, are the two Peruvian

[1] *See Cotton Shop Towels from Peru; Intent to Terminate Suspended Investigation*, 54 FR 38262 (September 15, 1989); *Cotton Shop Towels from Peru; Determination Not to Terminate Suspended Investigation*, 54 FR 43977 (October 30, 1989); *Cotton Shop Towels from Peru; Intent to Terminate Suspended Investigation*, 55 FR 35921 (September 4, 1990); *Cotton Shop Towels from Peru; Determination Not to Terminate Investigation*, 55 FR 43994 (October 29, 1990); *Cotton Shop Towels from Peru; Intent to Terminate Suspended Investigation*, 57 FR 39391 (August 31, 1992); *Cotton Shop Towels from Peru; Determination Not to Terminate Suspended Investigation*, 57 FR 52614 (November 4, 1992); *Cotton Shop Towels from Peru; Intent to Terminate Suspended Investigation*, 59 FR 45261 (September 1, 1994); *Cotton Shop Towels from Peru; Intent to Terminate Suspended Investigation*, 61 FR 40408 (August 2, 1996); *Cotton Shop Towels from Peru; Intent to Terminate Suspended Investigation*, 61 FR 41128 (August 7, 1996); *Cotton Shop Towels from Peru; Determination Not to Terminate Suspended Investigation*, 61 FR 47885 (September 11, 1996).

[2] On February 3, 1999, the Department received and granted a request from the Government of Peru for a five working-day extension of the deadline for filing substantive responses in this sunset review. This extension was granted for all participants eligible to file substantive comments in this review. The deadline for filing rebuttals to the substantive comments therefore became February 10, 1999.

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companies that signed the suspension agreement. In addition, the Government of Peru claimed interested party status under section 771(9)(B) of the Act, as a government of the country where subject merchandise is produced and from which it is exported. The Peruvian government stated that it has, in the past, submitted responses to the Department with regard to this suspended countervailing duty investigation.

Because the responses of the Comite Textil and the Peruvian government constituted an adequate response to the notice of initiation, the Department is conducting a full (240 day) review in accordance with section 351.218(e)(2) of the *Sunset Regulations*.

On February 19, 1999, the Department received rebuttal comments from both Milliken and the Comite Textil.[3]

The Department determined that the sunset review of the suspended countervailing duty investigation on cotton shop towels from Peru is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on April 26, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than July 23, 1999, in accordance with section 751(c)(5)(B) of the Act.[4]

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether termination of the suspended countervailing duty investigation would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the net countervailable subsidy likely to prevail if the suspended investigation is terminated. In addition, consistent with section 752(a)(6), the Department shall provide the Commission information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

The Department's preliminary determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the suspended investigation is terminated, and nature of the subsidy are discussed below. In addition, parties' comments with respect to each of these issues are addressed within the respective sections.

Continuation or Recurrence of a Countervailable Subsidy

Parties' Comments

In its substantive response, Milliken argued that termination of the suspended investigation on cotton shop towels from Peru would likely result in the recurrence of a countervailable subsidy on the subject merchandise from Peru (*see* Substantive Response of Milliken, February 10, 1999, at 3). Milliken maintained that, to the best of its knowledge, there is no evidence that the programs in question (the CERTEX and FENT programs) have been suspended or terminated beyond the partial termination announced by the Peruvian Ambassador in the original proceedings (*see* Substantive Response of Milliken, February 10, 1999, at 5).[5]

Additionally, Milliken maintained that the cessation of imports into the U.S. of cotton shop towels from Peru indicates that the Peruvian exporters cannot export to the U.S. without the benefit of countervailable subsidies (*see* Substantive Response of Milliken, February 10, 1999, at 5). According to Milliken, the most recent information reflects the continued non-existence of imports into the United States of cotton shop towels from Peru.

Milliken argued, therefore, that on the basis of the principles set out in the *Sunset Policy Bulletin* and the SAA, there is a clear case for a determination of likelihood of continuation or recurrence of a countervailable subsidy.

The Comite Textil argued in its substantive response that the subsidy programs at issue—indeed all countervailable subsidy programs—have been eliminated by the Government of Peru and there is neither need nor justification for the suspension agreement (*see* Substantive Response of the Comite Textil, February 10, 1999, at 3). The Comite Textil stated that support for the statement that all countervailable subsidies have been eliminated was presented during the 1994 verification conducted in Peru by the Department in the administrative review of *Cotton Yarn from Peru* (C–333–002), a countervailing duty order that was subsequently revoked on August 9, 1995 (*see* Substantive Response of the Comite Textil, February 10, 1999, at 2). The Comite Textil stated that Legislative Decree No. 622, published November 30, 1990, eliminated the CERTEX program. The Comite Textil further stated that a directive from the Central Reserve Bank of Peru to all other banks (Circular No. 032–91–EF/90, dated September 13, 1991) eliminated all FENT lines of credit as of January 1, 1992, and thereby ended the FENT program. The Comite Textil and the Peruvian government included in their substantive responses a copy of the decree, with translation of relevant excerpts and circular (*see* Substantive Response of the Comite Textil, February 10, 1999, the Declaration of the Ambassador of Peru, and attachments 1–3).

Furthermore, the Comite Textil stated that independent confirmation of the elimination of these programs was part of a larger permanent change in Peruvian Government policy can be found in the 1994 report prepared by the World Bank. The full report of the World Bank's 1994 independent audit of two Peruvian loans was provided in the substantive response. Finally, the Comite Textil provided a copy of Peru's Constitution, adopted December 29, 1993, and stated that the Constitution establishes the strict policy of commercial openness and free competition as a critical part of the economic framework of the country.

Parties' Rebuttal Comments

In its rebuttal comments, Milliken argued that although the respondents asserted that the CERTEX and FENT programs have been eliminated, they did not submit specific evidence that all subsidy programs from which Peruvian exporters of shop towels can potentially benefit have been eliminated or that Peruvian shop towel manufacturers are not eligible for such programs. Milliken asserted that this is important because

[3] On February 11, 1999, the Department received and granted a request from the Comite Textil for a five working-day extension of the deadline for filing rebuttal comments in this sunset review. This extension was granted for all participants eligible to file rebuttal comments in this review. The deadline for filing rebuttals to the substantive comments therefore became February 19, 1999.

[4] *See Sugar From the European Community: Extension of Time Limit for Preliminary Results of Five-Year Review*, 64 FR 3683 (January 25, 1999).

[5] During the original investigation, the Peruvian Ambassador to the United States informed the Department that on June 17, 1984, the Peruvian government promulgated Supreme Decree No. 251–84-EFC eliminating cotton shop towel exports to the U.S. from eligibility for the CERTEX and FENT programs (*see* 49 FR 26273 at 26275).

the Department has found that a number of other Peruvian programs confer countervailable subsidies in other countervailing duty investigations. Specifically, Milliken referred to the granting of tax incentives for investments outside the Department of Lima or the Province of Callao under the 1982 Industrial Law, as well as an employment benefit for decentralized companies under Article 8 of Decree 22836.[6] Additionally, Milliken stated that the Government of Peru acknowledged the existence of an export insurance program (SECREX) in its July 28, 1994, response to Supplementary Questionnaire in the countervailing duty proceeding on cotton yarn from Peru.

In their rebuttal comments, the Comite Textil stated that its substantive response included clear-cut documentary evidence of the complete repeal of the countervailable subsidy programs identified in the suspended investigation of cotton shop towels from Peru. Further, the Comite Textile asserted that the February 10, 1999, Declaration of Ambassador Ricardo Luna (also attached to its substantive response) makes clear that the Peruvian Government's commitment to nonintervention in its free market economy and rejection of subsidy programs has continued without interruption for nearly a decade to the present. Finally, the Comite Textile stated that these principles, which are embedded in the Constitution, are also integral to Peru's international undertakings with the International Monetary Fund on economic and fiscal policy and the domestic adoption of the Agreement establishing the World Trade Organization and the Multilateral Agreements contained in the Final Act of the Uruguay Round of the GATT.

Department's Determination

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that termination of a suspended countervailing duty investigation is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the *Sunset Policy Bulletin*). Exceptions to this policy are provided where a company has a long record of not using a program (*see* section III.A.3.b of the *Sunset Policy Bulletin*).

In this review, the Government of Peru and the Comite Textile asserted that the two programs preliminarily found in the original investigation to confer subsidies have both been completely eliminated. As noted in the *Sunset Policy Bulletin*, where a foreign government has eliminated a subsidy program, the Department will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program. As noted above, the respondents submitted copies of the legislative decree and directive supporting their assertion that these programs have been terminated. We note that Milliken did not argue that these programs have not been terminated or that these programs could easily be reinstated. Given the evidence submitted by the respondents, we preliminarily determine that both the CERTEX and FENT programs have been eliminated and cannot easily be reinstated.

Referring to section 752(b)(2) of the Act, the *Sunset Policy Bulletin* provides that if the Department determines that good cause is shown, the Department will consider programs determined to provide countervailable subsidies in other investigations or reviews, but only to the extent that such programs (a) can potentially be used by the exporters or producers subject to the sunset review and (b) did not exist at the time that the suspension agreement was accepted (*see* section III.C.1). Additionally, the *Sunset Policy Bulletin* provides that if the Department determines that good cause is shown, the Department will also consider programs newly alleged to provide countervailable subsidies, but only to the extent that the Department makes an affirmative countervailing duty determination with respect to such programs and with respect to the exporters or producers subject to the sunset review (*see* section III.C.2). Both sections specify that the burden is on interested parties to provide information or evidence that would warrant consideration of the subsidy program in question. As noted above, Milliken merely stated that the Department has found in other countervailing duty investigations that a number of other Peruvian programs confer countervailable subsidies.

With respect to the tax incentive for investments outside the Department of Lima or the Province of Callao under the 1982 Industrial Law, we note that this program existed at the time the suspension agreement was accepted. Further, we note that both signatories to the suspension agreement, La Union and Santa Cecilia have Lima, Peru addresses which would appear to make them ineligible for this program.[7]

With respect to the employment benefit for decentralized companies under Article 8 of Decree 22836, we note that such program was also in effect at the time the suspension agreement was accepted.[8] Additionally, the Lima, Peru addresses of the suspension agreement signatories appear to make them ineligible for this program.

Finally, with respect to the SECREX program, Milliken did not provide any information other than to state that the Government of Peru had acknowledged the existence of the program.

On the basis of the above analysis, we preliminarily find that termination of the suspended investigation is not likely to result in the continuation or recurrence of a countervailable subsidy.

Net Countervailable Subsidy

Parties' Comments

In its substantive response, Milliken argued that based on an application of the principles expressed in the *Sunset Policy Bulletin*, the Department should provide to the Commission a net countervailable subsidy rate of 44 percent ad valorem, the country-wide rate of bounty or grant determined in the original preliminary determination. Milliken stated that this represents the only calculation of the net countervailable subsidy and, since the Department has conducted no administrative reviews since the

[6] Milliken cites to *Deformed Steel Concrete Reinforcing Bar from Peru*, 50 FR 48819, and *Certain Textile Mill Products and Apparel from Peru*, 50 FR 9871.

[7] *See Cotton Shop Towels From Peru; Suspension of Countervailing Duty Determination*, 49 FR 35835 (September 12, 1984).

[8] The program was determined to provide an estimated bounty or grant of 0.008 percent *ad valorem* during 1983 in *Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Textile Mill Products and Apparel From Peru; and Rescission of Initiation of Investigations With Respect to Hand-Made Alpaca Apparel and Hand-Made Carpets and Tapestries*, 50 FR 987, 9876 (March 12, 1985).

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preliminary determination, the *Sunset Policy Bulletin* dictates that the Department should not make any adjustments to this rate. Moreover, Milliken argued that since the Peruvian Government modified the CERTEX and FENT programs to eliminate exports to the United States from eligibility, rather than the programs in their entirety, no adjustment should be made.

In its substantive response, the Comite Textil stated that the net countervailable subsidy that would prevail if the suspended investigation were terminated would be zero, bcause, as discussed above, there are no countervailable programs in place.

Department's Determination

Because we preliminarily determine that a countervailable subsidy is not likely to continue or recur were the suspended investigation to be terminated, there is no net countervailable subsidy to report to the Commission.

Nature of the Subsidy

Parties' Comments

Neither party addressed this issue.

Department's Position

Because we preliminarily determine that a countervailable subsidy is not likely to continue or recur were the suspended investigation to be terminated, there is no nature of the subsidy to report to the Commission.

Preliminary Results of Review

As a result of this review, the Department preliminarily finds that termination of the suspended countervailing duty investigation would not be likely to lead to continuation or recurrence of a countervailable subsidy. As a result of this determination, the Department, pursuant to section 751(d)(2) of the Act, preliminarily intends to terminate the suspended countervailing duty investigation on cotton shop towels from Peru. Pursuant to section 751(c)(6)(A)(iv) of the Act, this termination would be effective January 1, 2000.

Consistent with section 351.218(f)(2)(i) of the *Sunset Regulations* we intend to verify the factual information relied on in making this determination because we preliminarily determine that termination of the suspended investigation is not likely to lead to continuation or recurrence of a countervailable subsidy and our preliminary results are not based on countervailing duty rates determined in the investigation or subsequent reviews.

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on September 20, 1999. Interested parties may submit case briefs no later than September 13, 1999, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than September 16, 1999. The Department will issue a notice of final results of this *Sunset Review*, which will include the results of its analysis of issues raised in any such comments, no later than November 30, 1999.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 23, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19444 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 84–10A12."

Northwest Fruit Exporters' ("NFE") original Certificate was issued on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); August 16, 1994 (59 FR 43093, August 22, 1994); November 4, 1996 (61 FR 57850, November 8, 1996); October 22, 1997 (62 FR 55783, October 28, 1997); and November 2, 1998 (63 FR 60304, November 9, 1998). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Northwest Fruit Exporters, 105 South 18th Street, #227, Yakima, Washington 98901.

Contact: James R. Archer, Manager, Telephone: (509) 576–8004.

Application No.: 84–10A12.

Date Deemed Submitted: July 22, 1999.

Proposed Amendment: Northwest Fruit Exporters seeks to amend its Certificate to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of § 325.2(l) of the Regulations (15 CFR 325.2(l)): Chief Orchards L.L.C., Yakima, Washington; J.C. Watson Co., Parma, Idaho; Jenks Bro. Cold Storage, Inc., Royal City, Washington; Naumes, Inc., Chelan, Washington; The Apple House, Brewster, Washington; Valicoff Fruit Company, Inc., Wapato, Washington; and Washington Cherry Growers, Wenatchee, Washington (controlling entities: Blue Bird, Inc. and Dovex Fruit Company); and

2. Delete the following companies as "Members" of the Certificate: Crisp'n Spicy Growers, Inc., Pateros, Washington; D & G Packing Inc., Plymouth, Washington; Fox Orchards, Mattawa, Washington; Nickell Orchards, Pateros, Washington; and Rolling Hills Orchards, Emmett, Idaho.

Dated: July 23, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–19399 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071999B]

American Fisheries Act Reports

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 27, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy Bearden, NMFS-Alaska Region, PO Box 21668, Juneau, AK 99802,(907) 586–7465.

SUPPLEMENTARY INFORMATION:

I. Abstract

The American Fisheries Act (AFA), signed into law in October 1998, established a complex system that allocates the pollock catch in the Bering Sea and Aleutian Islands management area to entities composed of groups of specific fishing vessels and processors. Under the AFA, groups of vessels delivering to a specific shoreside processor may form a cooperative and receive a direct allocation of pollock catch to be exclusively harvested by that cooperative. At the same time, the AFA restricts the ability of pollock fishing vessels and processors from expanding their level of participation in other (non-pollock) fisheries. To implement the provisions of the AFA, NMFS will need to monitor the catch of these various entities, including newly established fishery cooperatives, for inseason management of directed fisheries and for managing catch limits by AFA-qualified vessels in other fisheries. Timely reports will be necessary for NMFS to determine catch and bycatch taken by AFA-qualified vessels.

The new reports proposed by NMFS include a Shoreside Electronic Delivery Report that is the equivalent of existing Alaska Department of Fish and Game (ADF&G) fish ticket reports. A report would be submitted for each delivery on a daily basis. As an alternative to this new electronic report, processors would have the option to fax ADF&G fish tickets to NMFS. A daily report of pollock catch by vessel also would be required from each of up to eight shoreside fishery cooperatives.

The AFA also lists the 20 catcher/processors and three motherships that may participate in the pollock fisheries, and requires that all AFA-listed catcher/processors carry two observers and weigh all groundfish catch on scales approved by NMFS. The Council has recommended that NMFS extend these observer and scale requirements to the three AFA-listed motherships. The Council also recommended that NMFS require that AFA-listed catcher/processors and motherships provide observer sampling stations. These observer coverage, scale, and sampling station requirements would be identical to existing requirements for catcher/processors participating in the Community Development Quota (CDQ) fisheries. Nine of the 23 AFA-listed catcher/processors and motherships are not currently equipped with NMFS-approved scales and observer sampling stations and would be required to install scales and observer sampling stations to comply with the AFA. The other 14 vessels participate in the CDQ fisheries and, as a consequence, their facilities already meet the new standards established in the AFA. The information collection requirements associated with scales and weighing catch at-sea in the CDQ program have been approved by the OMB under control number 0648–0330. The information collection requirements associated with observer sampling stations have been approved under OMB control number 0648–0269. These requirements include requesting an annual scale and observer sampling station inspection, maintaining scale and observer sampling station approval documents on board the vessel, conducting a daily at-sea scale test, producing a scale audit trail when requested and producing and maintaining printed output from the scale.

II. Method of Collection

A. *Shoreside Electronic Delivery Reports.* Shoreside electronic delivery reports would be submitted electronically by each shoreside processor via modem or Internet connection using software provided by NMFS. These daily reports would be in lieu of existing daily production logbooks and weekly production reports which currently must be faxed to NMFS or submitted electronically.

B. *Shoreside Pollock Catch Report.* Each of up to eight shoreside catcher vessel cooperatives would be required to submit daily pollock catch reports to NMFS over the Internet using a NMFS Home Page established for this purpose that will provide a Web-based reporting form. As an alternative for cooperatives lacking Internet access, reports could be sent to NMFS via fax. The regulations establishing the inshore pollock co-op program will require each catcher vessel cooperative to appoint a designated representative or cooperative manager who will report cooperative activity to NMFS. NMFS anticipates that cooperative managers will operate out of shore-based offices and will therefore have the capability to report cooperative activity to NMFS through normal phone lines and Internet accounts. Consequently, this catcher vessel co-op reporting requirement does not contain an at-sea reporting requirement.

C. *Scale and observer sampling station requirements for AFA-listed Catcher/Processors and Motherships.* All 23 AFA-listed catcher/processors and motherships will be required to submit a written request for scale and observer sampling station inspection annually. Scales must be tested daily

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when in use. Test results are maintained on the vessel and not reported to NMFS. The total weight of each haul or set must be printed out daily and maintained on board the vessel for inspection by the observer.

III. Data

OMB Number: None

Form Number: None

Type of Review: Regular submission

Affected public: Business or other for-profit

Estimated Number of Respondents: 39 (8 shoreside processors, 8 catcher vessel cooperatives, 20 catcher/processors and 3 motherships)

Estimated Time Per Response: 30 minutes for a daily catch report from a cooperative; 5 minutes for electronically submitting or faxing a delivery report or fish ticket; 2 minutes for a scale inspection request; 1 minute to retain an annual scale inspection report; 45 minutes for an at-sea scale test report; 5 minutes per day for a printed record of haul weight; 3 minutes to retain a scale audit trail print-out; and 2 hours for requesting an observer sampling station inspection and maintaining the inspection report.

Estimated Total Annual Burden Hours: 7,775

Estimated Total Annual Cost to Public: $6,368

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 20, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 99–19426 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072699B]

Commercial Harvesters and Recreational Party and Charter Boats Sociocultural and Economic Data Collection Pilot Study

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 27, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Witzig, Chief, Fishery Statistics Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, 978–281–9232.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a pilot study sponsored by the Atlantic Coast Cooperative Statistics Program (ACCSP)and conducted by the National Marine Fisheries Service. This study is designed to develop sociocultural and economic information systems for commercial and recreational fisheries. Three specific arenas will be addressed during this pilot study. One is to identify and address potential problems with the mechanics of implementing the system. These include all data gathering, entry, and storage activities as well as the ability to link the data to all other ACCSP data. The second is to carry out a field test of the survey instrument across the different cultural and socioeconomic contexts in which the data gathering system must eventually be implemented. Field testing questions and instruments is standard procedure in preparing for any survey research. The third arena is to verify the economic model. Initial data gathering in two specific fisheries, summer flounder and blue crab, will be carried out and the data used for test runs of several standard economic models.

II. Method of Collection

The study will collect social, cultural, and economic data from commercial and recreational party/charter fishing vessels' owners, captains and crew via face-to-face interviews. Time series of this information will be collected over a three-year period from the same people. Subsequent interviews with respondents will use telephone interviews.

III. Data

OMB Number: None

Form Number: None

Type of Review: Regular submission

Affected public: Businesses and other for-profit, individuals (fishing boat owners, captains, and crew members)

Estimated Number of Respondents: 1,743 (343 vessels owners/captains and approximately 1,400 crew members)

Estimated Time Per Response: 1 hour for owners, 30 minutes for crew members

Estimated Total Annual Burden Hours: 1,386

Estimated Total Annual Cost to Public: $0

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 21, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 99–19430 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Testing and Recordkeeping Requirements for Carpets and Rugs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval, through November 30, 2002, of information collection requirements for manufacturers and importers of carpets and rugs. The collection of information is in regulations implementing the Standard for the Surface Flammability of Carpets and Rugs (16 CFR Part 1630) and the Standard for the Surface Flammability of Small Carpets and Rugs (16 CFR Part 1631). These regulations establish requirements for testing and recordkeeping for manufacturers and importers who furnish guaranties for products subject to the carpet flammability standards. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

DATES: The Office of the Secretary must receive comments not later than September 27, 1999.

ADDRESSES: Written comments should be captioned "Carpets and Rugs; Paperwork Reduction Act," and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, Management and Program Analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0416, Ext. 2226.

SUPPLEMENTARY INFORMATION:

A. The Standards

Carpets and rugs that have one dimension greater than six feet, a surface area greater than 24 square feet, and are manufactured for sale in or imported into the United States are subject to the Standard for the Surface Flammability of Carpets and Rugs (16 CFR Part 1630). Carpets and rugs that have no dimension greater than six feet and a surface area not greater than 24 square feet are subject to the Standard for the Surface Flammability of Small Carpets and Rugs (16 CFR Part 1631).

Both of these standards were issued under the Flammable Fabrics Act (FFA) (15 U.S.C. 1191 *et seq.*). Both standards require that products subject to their provisions must pass a flammability test that measures resistance to a small, timed ignition source. Small carpets and rugs that do not pass the flammability test comply with the standard for small carpets and rugs if they are permanently labeled with the statement that they fail the standard and should not be used near sources of ignition.

Section 8 of the FFA (15 U.S.C. 1197) provides that a person who receives a guaranty in good faith that a product complies with an applicable flammability standard is not subject to criminal prosecution for a violation of the FFA resulting from the sale of any product covered by the guaranty. Section 8 of the FFA requires that a guaranty must be based on "reasonable and representative" tests. Many manufacturers and importers of carpets and rugs issue guaranties that the products they produce or import comply with the applicable standard. Regulations implementing the carpet flammability standards prescribe requirements for testing and recordkeeping by firms that issue guaranties. See 16 CFR Part 1630, Subpart B, and 16 CFR Part 1631, Subpart B. The Commission uses the information compiled and maintained by firms that issue these guaranties to help protect the public from risks of injury or death associated with carpet fires. More specifically, the information helps the Commission arrange corrective actions if any products covered by a guaranty fail to comply with the applicable standard in a manner that creates a substantial risk of injury or death to the public. The Commission also uses this information to determine whether the requisite testing was performed to support the guaranties.

The Office of Management and Budget (OMB) approved the collection of information in the regulations under control number 3041–0017. OMB's most recent extension of approval expires on November 30, 1999. The Commission now proposes to request an extension of approval without change for the collection of information in the regulations.

B. Estimated Burden

The Commission staff estimates that the enforcement rules result in an industry expenditure of a total of 63,840 hours for testing and recordkeeping. However, the Commission is unable to estimate the total dollar cost incurred by the industry. The Commission staff estimates that 120 firms are subject to the information collection requirements because the firms have elected to issue a guaranty of compliance with the FFA. The number of tests that a firm issuing a guaranty of compliance would be required to perform each year varies, depending upon the number of carpet styles and the annual volume of production. The staff estimates that the average firm issuing a continuing guaranty under the FFA is required to conduct a maximum of 200 tests per year. The actual number of tests required by a given firm may vary from 1 to 200, depending upon the number of carpet styles and the annual production volume. For example, if a firm manufactures 100,000 linear yards of carpet each year, and has obtained consistently passing test results, only one test per year is required. The time required to conduct each test is estimated by the staff to be 2½ hours plus the time required to establish and maintain the test record.

The estimated annual cost of the information and collection requirements to the Federal government is approximately $15,000. This sum includes three staff months and travel costs expended for examination of the records required to be maintained.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

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—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: July 22, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–19343 Filed 7–28–99; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for El Rancho Road Bridge Replacement Project, Vandenberg Air Force Base, California

In accordance with the National Environmental Policy Act of 1969, the United States Air Force (USAF) is issuing this notice to advise the public that the USAF intends to prepare an Environmental Impact Statement (EIS) to assess potential environmental impacts of the proposed actions and possible alternatives for the El Rancho Road Bridge Replacement Project at Vandenberg Air Force Base, California. The proposed action is to construct a causeway bridge on El Rancho Road that will span the entire San Antonio Creek floodplain. Identified alternatives are to build a system of elevated culverts spanning the entire stream and bridge area, or to take no action and continue regular debris and sedimentation clearing in the affected area.

A scoping meeting is planned in Lompoc, California for the purpose of identifying environmental concerns that need to be addressed in the EIS. Notice of the time and location of the meeting will be made available to the community using the local news media. The schedule for the scoping meeting is as follows:

Date	Location	Time
18 Aug 99	Lompoc City Council	6:30 p.m.

The purpose of this meeting is to identify the environmental issues and concerns that should be analyzed in developing the EIS. Public input and comments are solicited concerning the environmental aspects of the proposed program. To assure the USAF will have sufficient time to fully consider public inputs on issues, written comments should be mailed to ensure receipt no later than September 1, 1999.

Please direct written comments or request for further information concerning El Rancho Road Bridge Replacement Project to: James L. Johnston, 30 CES/CEV, 806 13th Street, Suite 116, Vandenberg AFB, CA 93437–5242, (805) 605–0633.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–19414 Filed 7–28–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Inland Waterways Users Board

AGENCY: Department of the Army, DoD.

ACTION: Notice (Request for nominations).

SUMMARY: Section 302 of Public Law (PL) 99–662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. Its 11 members are appointed by the Secretary of the Army. This notice is to solicit nominations for four (4) appointments or reappointments to two-year terms that will begin January 1, 2000 .

ADDRESSES: Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, DC 20310–0103. Attention: Inland Waterways Users Board Nominations Committee.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph W. Westphal, Assistant Secretary of the Army (Civil Works), (703) 697–8986.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of Board members are covered by provisions of Section 302 of PL 99–662. The substance of those provisions is as follows:

a. Selection

Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterborne commerce as determined by commodity ton-miles statistics.

b. Service

The board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

c. Appointment

The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92–463, as amended) and departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable. The considerations specified in section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

(1) Carriers and Shippers

The law uses the terms "primary users and shippers." Primary users has been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user.

(2) Geographical Representation

The law specifies "various" regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in Pub. L. 95–502, as amended, have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake Rivers System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways.

(3) Commodity Representation

Waterway commerce has been aggregated into six commodity categories based on "inland" ton-miles shown in Waterborne Commerce of the United States. These categories are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

d. Nomination

Reflecting preceding selection criteria, the current representation by the four (4) Board members whose terms expire December 31, 1999, is one member representing region 1, two members representing region 2, and one member representing region 3. Also, these Board members represent two shippers and two carriers.

Two (2) of the four members whose terms expire December 31, 1999, are eligible for reappointment. Nominations to replace Board members whose terms expire December 31, 1999, may be made by individuals, firms or associations. Nominations will:

(1) state the region to be represented;

(2) state whether the nominee is representing carriers, shippers or both;

(3) provide information on the nominee's personal qualifications;

(4) include the commercial operations of the carrier and/or shipper with whom the nominee is affiliated. This commercial operations information will show the actual or estimated ton-miles of each commodity carried or shipped on the inland waterways system in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to last year's **Federal Register** notice, published on July 16, 1998, have been retained for consideration. Renomination is not required but may be desirable.

e. Deadline for Nominations

All nominations must be received at the address shown above no later than August 31, 1998.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–19456 Filed 7–28–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant an Exclusive or Partially Exclusive License to BONTEX

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: In compliance with 37 CFR 404 *et seq.*, the Department of the Army hereby gives notice of its intent to grant to BONTEX, a corporation having its principle place of business at One BONTEX Drive, Buena Vista, VA 24416–0751, an exclusive or partially exclusive license relative to an ARL patented elastomeric compound U.S. patent no. 5,264,290). Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 433, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–19455 Filed 7–28–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant an Exclusive or Partially Exclusive License to M.A. Hanna Company

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: In compliance with 37 CFR *et seq.*, the Department of the Army hereby gives notice of its intent to grant to M.A. Hanna Company, a corporation having its principle place of business at 200 Public Square, Suite 36–5000, Cleveland, OH 44114, an exclusive or partially exclusive license relative to an ARL patented elastomeric company (U.S. patents no. 4,843,114 and 5,264, 290). Anyone wishing to object to the granting of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 433, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–19454 Filed 7–28–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB Review; Comment Request; Notice.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 30, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5)

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Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 23, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Distance Education Demonstration Program Annual Evaluation.

Frequency: Annually.

Affected Public: Not-for-profit institutions; individuals or households; businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 13,515

Burden Hours: 1,485

Abstract: The Distance Education Demonstration Program is a new program designed to test the quality and viability of expanded distance education programs that are currently restricted by provisions of the Higher Education Act (HEA). The HEA requires the Department to report to Congress annually on the results and specifies the areas which must be addressed.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *vivian_reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joe Schubart at 202–708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–19349 Filed 7–28–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC99–716A–000, FERC–716A]

Proposed Information Collection and Request for Comment

July 23, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before September 27, 1999.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Abstract: The information collected under the requirements of FERC–716A "Application for Transmission Services Under Section 211 of the Federal Power Act" (OMB No. 1902–0168) is used by the Commission to implement the statutory provisions of the Section 211 of the Federal Power Act (FPA), 16 U.S.C. 824j as amended by the Energy Policy Act of 1992 (Pub. L. 102–486) 106 Stat. 2776. Under Section 211, the Commission may order transmission services if it finds that such action would be in the public interest and would not unreasonably impair the continued reliability of systems affected by the order. Section 211 allows any electric utility, Federal power marketing agency or any other person generating electric energy for sale or resale to apply for an order requiring a transmitting utility to provide transmission services to the applicant. The applicant is required to provide a form of notice suitable for publication in the **Federal Register**, and notify the affected parties. The Commission uses the information to carry out its responsibilities under Part II of the Federal Power Act. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 36.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
10	1	2.5	25

Estimated cost burden to respondents: 25 hours/2,080 hours per year × $109,889 per year=$1,321. The cost per respondent is equal to $132.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Linwood A. Watson,Jr.,

Acting Secretary.

[FR Doc. 99–19380 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC99–716–000, FERC–716]

Proposed Information Collection and Request for Comments

July 23, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comments on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before September 27, 1999.

ADDRESSES: Copies of the proposed collection of information can be obtained and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425 and by e-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Abstract: The information collected under the requirements of FERC–716 (OMB No. 1902–0170) "Good Faith Request for Transmission Service and Response by Transmitting Utility under Sections 211(a) and 213)(a) of the Federal Power Act" (Policy Statement) is used by the Commission to implement the statutory provisions of Sections 211 and 213 of the Federal Power Act (FPA) as amended and added by the Energy Policy Act of 1992. The information is not filed with the Commission, however, the request and response may be analyzed as part of a Section 211 proceeding. This collection of information covers the information that must be contained in the request and the response. The Energy Policy Act of 1992 amended Section 211 of the FPA and expanded the Commission's authority to order transmission service. Under the revised Section 211, the Commission may order transmission services if it finds that such action would be in the public interest, would not unreasonably impair the continued reliability of electric systems affected by the order, and would meet the requirements of amended section 211 of the FPA.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
10	1	100	1,000

Estimated total cost burden to respondents: 1,000 hours/2,080 hours per year×$109,889 per year=$52,832. The cost per respondent is equal to $2,642.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19381 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EI99–62–002]

Aquila Energy Marketing Corporation v. Niagara Mohawk Power Corporation, Niagara Mohawk Energy Marketing Corporation; Filing

July 23, 1999.

Take notice that on July 20, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing its Second Compliance Report in the

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above-referenced docket. Niagara Mohawk states that this filing was submitted to comply with the Commission's June 18, 1999 Order, 87 FERC ¶ 61,328 (1999), in the above-referenced docket.

Niagara Mohawk states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 5, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.)

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19378 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–152–016]

Kansas Pipeline Company; Revised Tariff Filing

July 23, 1999.

Take notice that on July 21, 1999, Kansas Pipeline Company (Applicant) tendered for filing, revisions and corrections to its FERC Gas Tariff, Original Volume No. 1. The tariff sheets and their effective dates are listed in Appendix A to Applicant's filing.

Applicant states that the corrected tariff includes changes directed by the Commission's June 18, 1999, order in the above-captioned docket (87 FERC ¶ 61,329 (1999)) and corrections to Applicant's July 1, 1999 compliance filing made pursuant to the Commission's April 2, 1999, order in this proceeding (87 FERC ¶ 61,020 (1999)). Applicant requests waiver of Section 154.201, 18 CFR 154.201, of the Commission's Regulations which requires that a marked version of tariff changes be submitted with a tariff filing. Applicant further sates that a copy of this filing is available for public inspection during regular business hours at Applicant's offices located at 8325 Lenexa Drive, Lenexa, Kansas, 66214. Applicant indicates that copies of this filing are being served on all parties to the proceeding in Docket No. CP96–152.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations before August 2, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public reference Room. This application may be viewed on the Commission's website at http://ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). For questions regarding this filing, contact Michael A. Stosser at (202) 785–6262.

Linwood A. Watson, Jr.,

Acting Secretary.

Appendix A—Tariff Sheets Submitted With July 21, 1999, Compliance Filing by Kansas Pipeline Company in Docket No. CP96–152–016

Effective May 11, 1998

Substitute Original Sheet No. 16
Substitute Original Sheet No. 16A
Substitute Original Sheet No. 21
Substitute Original Sheet No. 22
Substitute Original Sheet No. 22B
Substitute Original Sheet No. 28
Substitute Original Sheet No. 29
Substitute Original Sheet No. 30
Substitute Original Sheet No. 31
Substitute Original Sheet No. 31A
Substitute Original Sheet No. 31B
Substitute Original Sheet No. 31C
Substitute Original Sheet Nos. 267 Through 279 (Reserved)

Effective June 1, 1998

Second Substitute Sheet No. 16A
Second Substitute Sheet No. 22B
Second Substitute Sheet No. 22C

Effective July 1, 1998

Third Substitute Original Sheet No. 22B
Third Substitute Original Sheet No. 22C

Effective August 1, 1998

Fourth Substitute Original Sheet No. 22B
Fourth Substitute Original Sheet No. 22C

Effective September 1, 1998

Fifth Substitute Original Sheet No. 22B
Fifth Substitute Original Sheet No. 22C

Effective October 1, 1998

Sixth Substitute Original Sheet No. 22B
Sixth Substitute Original Sheet No. 22C

Effective November 1, 1998

Seventh Sub Original Sheet No. 22B
Seventh Sub Original Sheet No. 22C
Second Sub First Revised Sheet No. 28
Second Sub First Revised Sheet No. 30
Second Substitute Original Sheet No. 31A
Second Substitute Original Sheet No. 31B
Second Substitute Original Sheet No. 31C

Effective December 1, 1998

Eighth Substitute Original Sheet No. 22B
Eighth Substitute Original Sheet No. 22C

Effective January 1, 1999

Ninth Substitute Original Sheet No. 22B
Ninth Substitute Original Sheet No. 22C

Effective February 1, 1999

Tenth Substitute Original Sheet No. 22B
Tenth Substitute Original Sheet No. 22C

Effective March 1, 1998

Eleventh Substitute Original Sheet No. 22B
Eleventh Substitute Original Sheet No. 22C

Effective April 1, 1999

Substitute Third Revised Sheet No. 15
Substitute Third Revised Sheet No. 21
Twelfth Sub Original Sheet No. 22B
Twelfth Sub Original Sheet No. 22C
Substitute Second Revised Sheet No. 26
Substitute Second Revised Sheet No. 28
Substitute Second Revised Sheet No. 30
Third Substitute Original Sheet No. 31A
Third Substitute Original Sheet No. 31B
Third Substitute Original Sheet No. 31C

Effective May 1, 1999

Thirteenth Sub Original Sheet No. 22B
Thirteenth Sub Original Sheet No. 22C

Effective June 1, 1999

Fourteenth Sub Original Sheet No. 22B
Fourteenth Sub Original Sheet No. 22C

Tariff Sheets Withdrawn by July 21, 1999 Filing

Third Revised Sheet No. 15
First Revised Sheet No. 16
Third Revised Sheet No. 21

[FR Doc. 99–19379 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–591–000]

National Fuel Gas Supply Corporation; Request Under Blanket Authorization

July 23, 1999.

Take notice that on July 22, 1999, National Fuel Gas supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP99–591–000 a request pursuant to Sections 157.205, 157.208 and 157.214 of the Commission's Regulations (18 CFR 157.205, 157.208 and 157.214) under the Natural Gas Act (NGA) for authorization to increase the storage capacity at the Galbraith Storage Field, located in Jefferson County, Pennsylvania and to raise the maximum allowable operating pressure (MAOP) of Line G–24(S) under National Fuel's blanket certificate issued in Docket No. CP83–4–000, pursuant to Section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

National Fuel requests authorization to increase the maximum storage capacity of the Galbraith Storage Field from 1,620,000 Mcf to 2,620,000 Mcf, and to increase the maximum storage pressure from 620 psig (surface) to 910 psig (surface). National Field is needed to support storage services to be offered to shippers using National Fuel's facilities. National Fuel asserts that the increase in capacity and pressure at the Galbraith Storage Field will not require the construction of any additional facilities.

National Fuel also requests authorization to increase the NAOP on Line G–24(S) from 620 psig to 910 psig. It is stated that Line G–24(S) is the lateral used to fill and withdraw gas from Galbraith Storage Field. National Fuel explains that it is seeking this authorization because Line G–24(S) was replaced pursuant to Commission authorization in Docket No. CP86–629–000, and pursuant to that order further Commission authorization is required to increase the MAOP of Line G–24(S).

Any questions regarding the application may be directed to David W. Rietz at (716) 857–7949.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19377 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2216–000]

New York Power Authority; Public Notice; Public Information Meetings

July 23, 1999.

The Federal Energy Regulatory Commission (Commission) will hold two public information meetings to familiarize the public with the Commission's hydropower licensing program. The Commission staff will give an overview of the Commission and its licensing and post-licensing procedures. There will be an opportunity for questions and answers. A significant number of hydroelectric projects' licenses will expire between 2000 and 2010, including the New York Power Authority's Robert Moses Niagara Project (Project No. 2216), located in Niagara County, New York. The license for the Robert Moses Niagara Project expires in August 2007.

Interested persons are invited to attend either or both sessions scheduled as follows:

Thursday, August 12, 1999

1:00 to 3:30 p.m., Niagara County Community College, Building E, Room E140, 3111 Saunders Settlement Road, Sanborn, NY 14132

Thursday, August 12, 1999

6:30 to 9:00 p.m., Niagara University, Dunlevy Hall, Room 127, 3100 Lewiston Road, Niagara University, NY 14109

Please direct any questions regarding these meetings either to Theresa Gibson, Commission staff, Outreach Support Coordinator, (202) 219–2793 or Assemblyman Robert A. Daly, 138th District, Niagara Falls Office, 1700 Pine Avenue, Niagara Falls, NY 14301, (716) 282–6062.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19376 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 477–000–OR]

Portland General Electric Company; Scoping Meetings Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment

July 23, 1999.

Pursuant to the Energy Policy Act of 1992, the Portland General Electric Company (PGE) has been using a third party contractor, alternative process, to prepare an Environmental Impact Statement to file along with a relicensing application, with the Federal Energy Regulatory Commission (Commission) for the Bull Run Project, Project No. 477. The license for the project expires on November 16, 2004. PGE will continue with the alternative process but now intends to file an Applicant Prepared Environmental Assessment (APEA) in connection with an application to surrender its license for the project.

In October 1997, state and federal agencies, local interests, and nongovernmental organizations, undertook a collaborative effort for the relicensing of the Bull Run Project. The process involved identification of environmental issues associated with the relicensing of the Bull Run Project, including public meetings in March 1999, to solicit comments on the Initial Consultation Document. In September 1998, PGE requested use of an alternative procedure, involving a third-party contractor, in filing an application for a new license for the Bull Run Project. On December 10, 1998, the Commission approved the use of an alternative licensing procedure in the preparation of the Bull Run relicensing application.

In May 1999, PGE decided to pursue a surrender of its operating license and to decommission the Bull Run Project. PGE obtained support from the parties involved in the collaborative effort to pursue the APEA procedure for the decommissioning of the Bull Run Project. As part of the APEA procedure, PGE with the Commission has prepared a Scoping Document I (SDI), which provides information on the scoping process, APEA schedule, background information, environmental issues, and proposed project alternatives.

The purpose of this notice is to: (1) advise all parties as to the proposed scope of the environmental analysis, including cumulative effects, and to seek additional information pertinent to

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this analysis; and (2) advise all parties of their opportunity for comment.

Scoping Process

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be addressed in the document to be prepared pursuant to the National Environmental Policy Act of 1969 (NEPA). The SDI will be circulated to enable appropriate federal, state, and local resource agencies, Indian tribes, NGOs, and other interested parties to participate in the scoping process. SDI provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of a cumulative effects analysis, and a list of issues.

Scoping Meetings

PGE and FERC staff will conduct two scoping meetings. All interested individuals, organizations, and agencies are invited to attend and assist in identifying the scope of environmental issues that should be analyzed in the APEA.

The agency/public scoping meeting will be held on Wednesday September 1, 1999, from 9:00 am until noon, at Two World Trade Center, Bridge Level Conference Rooms A and B, 121 SW Salmon Street, Portland, Oregon. The public scoping meeting will be held on Wednesday September 1, 1999, from 7:00 p.m. until 9:00 p.m. at U.S. Forest Service Mount Hood National Forest Headquarters Office, First Floor Conference Room, 16400 Champion Way, Sandy, Oregon. For more details, interested parties should contact Julie Keil, PGE, (503) 464–8864 before the meeting date.

Objectives

At the scoping meetings, PGE and FERC staff will: (1) summarize the environmental issues identified for analysis in the APEA; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the APEA. Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist in defining and clarifying the issues to be addressed.

Meeting Procedures

The meeting will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping meeting, the Commission will not conduct another scoping meeting when the surrender application and APEA are filed with the Commission in Spring 2000.

The meetings will be recorded by a stenographer or audio tape and become a part of the formal record of the Commission proceeding on the Bull Run Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the public record no later than August 30, 1999.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should clearly show the following captions on the first page, Bull Run Project, FERC No. 477. A copy of each filing should also be sent to Julie Keil, Portland General Electric Company, 121 SW Salmon Street, 3WTC–BRHL, Portland, OR 97204.

Based on all written comments, a Scoping Document II (SDII) may be issued. SDII will include a revised list of issues, based on the scoping sessions.

For further information regarding the APEA scoping process, please contact Jim Hastreiter, Federal Energy Regulatory Commission, 101 SW Main St., Suite 905 Portland, OR, 97204 at (503) 944–6760, or Julie Keil, Portland General Electric Company, at (503) 464–8864.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19382 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 23, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11783–000.

c. *Date Filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Commission.

e. *Name of Project:* Fulton Lock and Dam 3 Hydroelectric Project.

f. *Location:* On the Tombigbee River in Itawamba County, Mississippi. The project would utilize the Corp of Engineers' Fulton Lock and Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Hector M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, (202) 210–2806.

j. *Deadline for Filing Motions to Intervene, Protest and Comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would consist of the following facilities: (1) a 300-foot-long and 72-inch-diameter steel penstocks at the outlet works; (2) a powerhouse with a turbine generator unit with an installed capacity of 1.125 megawatts; (3) a tailrace consisting of an exhaust apron; (4) 14.7-kV, 300-foot-long transmission lines; and (5) other appurtenances.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19383 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 23, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11782–000.

c. *Date Filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Paint Creek Dam Hydroelectric Project.

f. *Location:* On Paint Creek, Highland County, Ohio. The project would utilize the U.S. Army Corps of Engineers' Paint Creek Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for Filing Motions to Intervene, Protest and Comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure required all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would use the U.S. Army Corps of Engineer's Paint Creek Dam and would consist of the following facilities: (1) two new 80-foot-long, 96-inch-diameter penstocks at the outlet works; (3) a new powerhouse containing 2 generating units having a total installed capacity of 2.14 MW; (4) a new Tailrace; (5) a new 500-foot-long, 14.7-KV transmission line; and (6) other appurtenances.

The project would have an annual generation of 13,100 MWh and project power would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit

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comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19384 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 23, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11773–000.

c. *Date Filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Beltzville Lake Dam Hydroelectric Project.

f. *Location:* On Pohopoco Creek, Carbon County, Pennsylvania. the project would utilize the U.S. Army Corps of Engineers' Beltzville Lake Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for Filing Motions to Intervene, Protest and Comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would use the U.S. Army Corps of Engineer's Beltzville Lake Dam would consist of the following facilities: (1) a new 100-foot-long, 84-inch-diameter penstock at the outlet works; (2) a new powerhouse containing one generating unit with an installed capacity of 1.77 MW; (3) a new tailrace; (4) a new one-mile-long, 14.7-KV transmission line; and (5) other appurtenances.

The project would have an annual generation of 11,000 Mwh and project power would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19385 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 23, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11772–000.

c. *Date Filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Blue Marsh Lake Dam Hydroelectric Project.

f. *Location:* On the Tulpehocken Creek, Berks County, Pennsylvania. The project would. utilize the U.S. Army Corps of Engineers' Blue Marsh Lake Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for Filing Motions to Intervene, Protests and Comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would use the U.S. Army Corps of Engineers' Blue Marsh Lake Dam and would consist of the following facilities: (1) new 200-foot-long, 96-inch-diameter penstock at the outlet works; (2) a new powerhouse containing one generating unit with an installed capacity of 430 kW; (3) a new tailrace; (4) a new 0.25-mile-long, 14.7-KV transmission line; and (5) other appurtenances.

The project would have an annual generation of 2,600 Mwh and the project power would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

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agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19386 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 23, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11771–000.

c. *Date Filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project;* Delaware Dam Hydroelectric Project.

f. *Location:* On the Olentangy River, Delaware County, Ohio. The project would utilize the U.S. Army Corps of Engineer's Delaware Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for Filing Motions To Intervene, Protest and Comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would use the U.S. Corps of Engineer's Delaware Dam and would consist of; (1) a 100-foot-long, 9-inch-diameter penstock at the outlet works; (2) a powerhouse having one generating unit with an installed capacity of 760 kW; (3) a new tailrace; (4) a new 300-foot-long, 14.7-KV transmission line; and (5) other appurtenances.

The project would have an annual generation of 4,660 Mwh and the project power would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19387 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Temporary Variance Request and Soliciting Comments, Motions To Intervene, and Protests

July 23, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Temporary Variance.

b. *Project No.:* 2716–033.

c. *Date Filed:* July 19, 1999.

d. *Applicant:* Virginia Electric Power Company.

e. *Name of Project:* Bath County Project.

f. *Location:* On Back Creek, in Bath County, Virginia. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Sara S. Bell, Bath County Pumped Storage Station, HRC–01, Box 280, Warm Springs, VA 24484–9714, (540) 279–3068.

i. *FERC Contact:* Robert Fletcher, robert.fletcher@ferc.fed.us, 202–219–1206.

j. *Deadline for Filing Comments, Motions to Intervene and Protest:* 14 days from the issuance date of this notice. Please include the project number (2716–033) on any comments or motions filed. All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

k. *Description of Application:* On June 15, 1999, the Commission approved a short-term variance (which will expire on August 12, 1999) to reduce the minimum flow requirements of article 42 to conserve the conservation pool at the project. The licensee continues to consult with the various resource agencies. The current situation is similar to that which existed last year for the project whereby the conservation pool was depleted, then the minimum flow was reduced. The license proposes to begin reducing flow releases proportional to the depleted volume of the conservation pool. Normal operating discharges will resume once the conservation pool is refilled.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19388 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2364–000; 2365–000]

Madison Paper Industries Maine; Madison Paper Industies' Request To use Alternative Procedures in Filing Hydroelectric License Applications

July 23, 1999.

By letter dated July 12, 1999, Madison Paper Industries (Madison), asked for Commission approved to use an alternative procedures in a filing application for the 9-megawatt (MW) Anson Project, No. 2365, and the 17-MW Abenaki Project, No. 2364.[1] Madison has demonstrated that it made a reasonable effort to contact the resource agencies, Indian tribes, non-governmental organizations (NGOs), and others who may be affected by their proposal, and has submitted a communication protocol governing how participants in the proposed process communicate with each other. Madison believes there is a consensus on using the alternative process, and it appears that the use of an alternative procedure may be appropriate in this case.

The purpose of this notice is to invited comments on Madison's request to use the alternative procedure, as required by section 4.34(i)(5) of the Commission's regulations. Additional notices seeking comments on specific project proposals, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedure combines the prefiling consultation process with the environmental review process and allows the applicant to file an Applicant-Prepared Environmental Assessment (APEA) in lieu of Exhibit E of the license applications. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedure is intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants. The alternative procedure can be tailored to the project under consideration.

Alternative Process and the Anson and Abenaki Projects

Madison intends on preparing an APEA for the projects to: consolidate and streamline the licensing process; provide for the early identification of environmental impacts; take into account cumulative project impacts and evaluate alternatives for addressing those impacts; and promote early, comprehensive settlement discussions.

On February 12, 1999, Madison distributed an Initial Stage Consultation Document for the projects to state and federal resource agencies, Indian tribes, and NGOs. Madison scheduled a meeting for all interested parties on Feburary 24 and 25, 1999, respectively. During spring 1999, Madison developed and consulted on survey plans for ambient water quality, benthic macroinvertebrates, and fisheries. These surveys are being conducted during summer and early fall, 1999. Public

[1] The projects are located on the Kennebec River in the towns of Anson and Madison, Somerset County, Maine. The Anson impoundment encompasses about 7 miles of the Kennebec River and 0.5 mile of the Carrabassett River. The Abenaki impoundment encompasses about 0.5 mile of the Kennebec River immediately below the Anson Project.

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scoping meetings and a site visit are planned for Fall 1999, when additional study requests will be requested. The applications, including the applicant-prepared EA, would be filed with the Commission before May 1, 2002, the expiration date of Madison's current licenses. Each application would include a common multi-project APEA, adapted, as necessary, to the individual application.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on Madison's proposal to use the altenative procedures to file applications for the Anson and Abenaki Projects.

Filing Requirements

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comments filings must bear the heading "Comments on the Alternative Procedure," and include the names and numbers of the projects:

Abenaki Hydro Project, No. 2364
Anson Hydro Project, No. 2365

For further information, please contact Nan Allen of the Federal Energy Regulatory Commission at 202–219–2938, or E-mail at Nan.Allen@ferc.fed.us.

Lindwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19389 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment to License and Soliciting Comments, Motions To Intervene, and Protests

July 23, 1999.

Take notice that the following application to amend the project license has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Amendment to License.

b. *Project Name:* Catawba-Wateree Project.

c. *Project No.:* FERC Project No. 2232–393.

d. *Date Filed:* May 28, 1999.

e. *Applicant:* Duke Energy Corporation.

f. *Location:* Counties and lakes affected in North Carolina: *Counties:* Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell, and Mecklenburg. *Lakes:* James, Rhodiss, Hickory, Lookout Shoals, Norman, and Mountain Island. Counties and Lakes affected in South Carolina: *Counties:* Chester, Fairfield, Kershaw, Lancaster, and York. *Lakes:* Wylie, Fishing Creek, Great Falls, Rocky Creek, and Wateree.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

i. *FERC Contact:* Brian Romanek, brian.romanek@ferc.fed.us, (202) 219–3076.

j. *Deadline for filing motions to intervene, protest and comments:* September 7, 1999.

k. *Description of the filing:* Pursuant to Commission's Order Approving and Modifying Shoreline Management Plan for the Catawba-Wateree Hydroelectric Project, the licensee filed, for Commission approval, revised Shoreline Management Plan (SMP) Maps on September 30, 1998 (based, in part, on results of a Shallow Water Fish Habitat Study). Subsequently, the licensee requested additional time to conduct field verification of the maps and additional consultation with the resource agencies and other interested parties to refine and modify these maps. On May 28, 1999, the licensee filed the updated version of the Shoreline Management Plan maps and associated information.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19390 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Comments, Motions, To Intervene, and Protests

July 24, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 1786–000.

c. *Date Filed:* July 2, 1999.

d. *Applicant:* Unversal Electric Power Corporation.

e. *Name of Project:* Independence Dam Hydroelectric Project.

f. *Location:* On the Maumee River near the tows of Defiance and Independence, in Defiance, County, Ohio. The dam is owned by the Ohio Department of Natural Resources.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, 202–219–2778.

j. *Deadline for filing comments, motions to intervene, and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The project would consist of the following facilities: (1) the existing 10-foot-high Independence Dam; (2) an existing 545-acre reservoir with a water surface elevation of 660 feet msl; (3) five new 12-foot-long, 32-inch-diameter penstocks; (4) a new powerhouse on the downstream side of the dam housing five turbine generating units with a total installed capacity of 1.03 MW; (5) a new tailrace discharge apron; (6) a new 600-foot-long, 14.7 kV transmission line; and (7) other appurtenances. The dam is owned by the Ohio Department of Natural Resources.

Applicant estimates that the average annual generation would be 6,300 MWh and that the cost of the studies under the permit would be $800,000.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by http://www.ferc.fed.us/online/rims.htm (call 208–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Individual desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which as already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service to Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTESTS", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the fling refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19391 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 23, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11736–000.

c. *Date filed:* April 26, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Red River Lock and Dam No. 3 Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 3 on the Red River, near the Town of Colfax, Natchitoches and Grant Parishes, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio, 44301, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing U.S.

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Army Corps of Engineers' Red River Lock and Dam No. 3, and would consist of the following facilities: (1) six new steel penstocks, each about 100-foot-long and 10.5-foot-in-diameter; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 49,000 kilowatts; (3) a new 500-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 300 gigawatthours. The cost of the studies under the permit will not exceed $5,000,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19392 Filed 7–28–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6409–9]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Emission Standards for Hazardous Air Pollutants for the Printing and Publishing Industry, EPA ICR No. 1739.02, and OMB Control Number 2060–0335, expiration date July 31, 1999. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 27, 1999.

ADDRESSES: U.S. Environmental Protection Agency, 401 M Street SW, Mail code 2224A, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ginger Gotliffe at (202) 564–7072, fax (202) 564–0009, or e-mail (*gotliffe.ginger@epamail.epa.gov*).

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those owners or operators of publication rotogravure, product and packaging rotogravure, or wide-web flexographic printing presses who are covered by 40 CFR part 63, subpart KK. The compliance date for an owner or operator of an existing affected source subject to the provisions of this subpart is May 30, 1999. The compliance date for an owner or operator of a new affected source subject to the provisions of this subpart is immediately upon start up of the affected source or May 30, 1996, whichever is later.

Title: MACT Subpart KK, National Emission Standards for Hazardous Air Pollutants for the Printing and Publishing Industry; OMB No. 2060–0335.

Abstract: Owners or operators of the affected facilities described make the following one-time only reports of start of construction, anticipated and actual startup dates, and physical or operational changes to existing facilities. Respondents using control devices other than incinerators or solvent recovery systems must submit a request for approval of the control device to EPA. The General Provisions also require that an affected source with an initial startup date before the effective date of the relevant standard under Part 63 submit a one-time initial notification. This notification must be submitted one year before the compliance deadline. For sources constructed or reconstructed after the effective date of the relevant standard, the General Provisions require that the source submit an application for approval of construction or reconstruction. The application is required to contain information on the air pollution control device that will be used for each potential HAP emission point. The information in the initial notification and the application for construction or reconstruction will enable enforcement personnel to identify the sources subject to the standards and to identify those sources that are already in compliance.

The General Provisions also require that affected sources submit a notification of compliance status. This notification must be signed by a responsible company official who certifies its accuracy and certifies that the source has complied with the relevant standards. Performance test results also are included in the compliance status report. The notification of compliance status must be submitted within 60 days after the compliance date for the affected source.

In addition, affected sources demonstrating compliance through the operation of continuous monitoring systems (CMS) are required by the General Provisions to conduct a performance evaluation of the CMS. A report of the performance evaluation results is required to be submitted to EPA. Respondents operating a control device who do not operate a continuous emissions monitoring system must monitor incinerator temperatures as well as a parameter representing the performance of the capture system. Excess emissions and CMS performance reports documenting excess emissions and parameter monitoring exceedances are also required to be submitted to the Agency semiannually.

Respondents operating solvent recovery systems who do not operate a continuous emissions monitoring system must conduct monthly material balances and keep records of these material balances as well as organic HAP and volatile matter usage. Respondents complying with the regulation through the use of low HAP materials , or through the use of a control device in combination with low HAP materials must keep records of monthly HAP use, materials use, and solids contents of materials applied. HAP use reports are required annually by sources using the provisions of the rule to establish area source status.

The General Provisions require owners or operators that comply by means of control devices to develop startup, shutdown, and malfunction plans, documenting procedures that will be followed in the case of these events. Startup, shutdown and malfunction reports also are required to be submitted, demonstrating the actions taken by an owner or operator in the event of a startup, shutdown, or malfunction. When actions taken are consistent with the plan, reports are required semiannually. When actions taken are inconsistent with the plan, reports must be submitted within two working days.

All reports and records must comply with the General Provisions for 40 CFR part 63. All records must be maintained by the affected source for a period of 5 years. The information collected will be used by the Administrator to determine that all sources subject to the NESHAP are achieving the standards.

All requests, applications, and reports are submitted to the respondent's State agency, if it has an approved title V permit program implementation authority. Otherwise, this information is submitted to the appropriate Regional Office of the Environmental Protection Agency (EPA) as indicated in section 63.13 of the General Provisions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g.; permitting electronic submission of responses.

Burden statement: The average annual burden hours for each respondent is as follows: Performance testing, notification and reporting is 282 hours, CMS testing and installing is 500 hours, CMS maintenance, records, and reporting is 398 hours, and all other reporting and recordkeeping is 325 hours. There are 180 affected facilities. Because the performance testing and CMS testing and installation may be a one time occurrence and because the "other recordkeeping" category includes hours that would only be used if the facility is not using a CMS, the hours are not totaled into one value. The average total annual cost for reporting for the first three years is $9186.00 per facility. Total annualized capital/startup costs for monitoring equipment purchases to comply with this rule are estimated at $20,000 per respondent using CMS. Costs for operation and maintenance of this equipment are estimated at $9,000 per year per respondent for the first three years after promulgation.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposed of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 22, 1999.

Elliott Gilberg,

Division Director, CCSMD, OC.

[FR Doc. 99–19438 Filed 7–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6409–5]

Accidental Release Prevention Requirements: Risk Management Programs Under Section 112(r)(7) of the Clean Air Act as Amended; Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

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ACTION: Notice of intent to disclose information.

SUMMARY: The purpose of this document is to inform submitters of risk management plans (RMPs) containing information claimed or designated as confidential business information (CBI) that EPA will be distributing RMPs, including the confidential information they may contain, to another federal agency, the Chemical Safety and Hazard Investigation Board (the "Chemical Safety Board" (CSB) or "Board"), according to the requirements of 40 CFR 2.209(c).

DATES: RMPs, including the CBI they may contain, will be distributed to the CSB 10 days after publication of this document in the **Federal Register**.

ADDRESSES: Comments or questions on this document should be mailed or submitted to the address noted in the following **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Dorothy McManus, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, 401 M St. SW (5104), Washington, DC 20460, (202) 260–8606.

SUPPLEMENTARY INFORMATION: Section 112(r) of the Clean Air Act (CAA) establishes a program for the prevention and mitigation of accidental releases of extremely hazardous substances at chemical plants and other stationary sources. As required by section 112(r)(7)(B), EPA has issued regulations (40 CFR part 68) requiring sources with more than a threshold quantity of extremely hazardous substances listed by EPA to develop and implement a risk management program and submit a RMP describing that program to the Agency. Under section 112(r)(7)(B)(iii), all RMPs must also be submitted to the Chemical Safety and Hazard Investigation Board. The Board is an independent federal agency established under section 112(r)(6) of the CAA to investigate serious accidental releases of extremely hazardous substances and to take other specified actions regarding the prevention of accidental releases.

EPA established procedures for claiming, substantiating, and protecting CBI in submitted RMPs in Accidental Release Prevention Requirements; Risk Management Programs Under Clean Air Act Section 112(r)(7), Amendments; Final Rule (see 64 FR 964, January 6, 1999). Further, EPA stated in the preamble of that rule that any information claimed or designated as CBI in RMPs will be provided to the CSB in accordance with EPA's existing CBI regulations at 40 CFR 2.209(c), Disclosure to other Federal agencies (see 64 FR 964, January 6, 1999). Under that provision, "EPA may disclose business information to another Federal agency if—(1) EPA receives a written request for disclosures of the information from a duly authorized officer or employee of the other agency * * * (2) The request * * * sets forth the official purpose for which the information is needed; and (3) When the information has been claimed as confidential or has been determined to be confidential, the responsible EPA office provides notice to each affected business of the type of information to be disclosed and to whom it is to be disclosed. At the discretion of the office, such notice may be given by notice published in the **Federal Register** at least 10 days prior to disclosure * * *"

EPA and the CSB entered into a Memorandum of Understanding (MOU) in March of this year. The MOU notes that CSB has responsibilities under section 112(r)(6) of the CAA with respect to risk management plans (RMPs) submitted pursuant to EPA's regulations implementing section 112(r)(7) of the CAA. In order to fulfill its responsibilities, the CSB needs to have access to all submitted RMPs, including any information contained in RMPs that is claimed or designated as CBI. In accordance with the terms of 40 CFR 2.209(c), the CSB in the MOU indicated its need for access to all RMPs, including any CBI in RMPs. In the MOU, EPA indicated it would notify RMP submitters via a **Federal Register** document that it will provide the CSB with access to all RMPs, including any CBI in RMPs. In addition, with respect to submitted RMPs, EPA will advise the CSB of any unresolved business confidentiality claims and any determinations that information is entitled to confidential treatment. Further, the CSB will protect from disclosure any information in RMPs that is subject to an unresolved business confidentiality claim or that has been designated by EPA as CBI.

Given the foregoing, this **Federal Register** document serves to notify owners or operators of sources covered by the risk management program that all submitted RMPs, including any CBI in RMPs, will be disclosed by EPA to the CSB.

Jim Makris,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 99–19436 Filed 7–28–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[PF–884; FRL–6095–6]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–884, must be received on or before August 30, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–884 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Thomas Harris, Insecticide-Rodenticide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9423; and e-mail address: harris.thomas@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–884. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–884 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–884. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the rule or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 23, 1999.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical

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residues or an explanation of why no such method is needed.

Novartis Crop Protection, Inc.

1. EPA has received a request from Novartis Crop Protection, Inc., PO Box 18300, Greensboro, NC 27419 referencing pesticide petitions PP 8F3592, 7F3500, 4E4419 and 5F4508, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.449 by establishing permanent tolerances for residues of abamectin (avermectin B_1) and its delta 8,9-isomers in or on the agricultural commodities cattle, fat at 0.015 parts per million(ppm); cattle, meat byproducts at 0.02 ppm; cattle, meat at 0.02 ppm; citrus, dried pulp at 0.10 ppm; citrus, oil at 0.10 ppm; citrus, whole fruit at 0.02 ppm; cottonseed at 0.005 ppm; cotton gin by-products at 0.15 ppm; hops, dried at 0.20 ppm; milk at 0.005 ppm; and potatoes at 0.005 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The subject tolerances, except for cotton gin by-products, were established as time-limited tolerances with an expiration date of September 1, 1999 (62 FR 13833–13839, March 24, 1997) (FRL–5597–7). Three issues identified in the referenced **Federal Register** document were the cause of the subject tolerances only being extended as time-limited tolerances. The three issues (cotton gin by-product residue data, review of the Monte Carlo dietary risk assessment, indoor residential risk assessment) are now resolved. The present petition proposes that these time-limited tolerances be converted to permanent tolerances.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of abamectin in plants and animals is adequately understood and the residues of concern include the parent insecticide, abamectin or avermectin B_1 (which is a mixture of a minimum of 80% avermectin B_{1a} and a maximum of 20% avermectin B_{1b}) and the delta 8,9-isomer of the B_{1a} and of the B_{1b} components of the parent insecticide. Under photolytic conditions in the laboratory and in the field, abamectin undergoes isomerization around the 8,9-double bond to produce small amounts of the delta-8,9 isomer. The photo-oxidative half-life of the delta-8,9 isomer is 4.5 hours and that of avermectin B_{1a} is 6.5 hours.

2. *Analytical method.* The analytical method involves homogenization, filtration, partition and cleanup with analysis by high performance liquid chromatography fluorescence detection. The methods are sufficiently sensitive to detect residues at or above the tolerances proposed. All methods have undergone independent laboratory validation as required by PR Notice 88–5.

3. *Magnitude of residues.* Data to support the new and proposed conversion of the present time-limited tolerances to full tolerances with no expiration date have been previously submitted under Pesticide Petitions PP 7F3500, 8F3592, 4E4419, 5F4508, 5E4566, and Food Additive Petition 8H5550.

B. Toxicological Profile

1. *Acute toxicity.* The database includes the following studies: A rat acute oral study with a LD_{50} of 4.4 to 11.8 milligrams/kilogram (mg/kg) (males) and 10.9 to 14.9 mg/kg (females). An acute oral toxicity in the CF-1 mouse with the delta 8,9-isomer has LD_{50} greater than 80 mg/kg. A rabbit acute dermal study with a $LD_{50} > 2,000$ mg/kg. A rat acute inhalation study with a $LC_{50} > 5.73$ milligrams/liter (mg/L). A primary eye irritation study in rabbits which showed irritation. A primary dermal irritation study in rabbits which showed no irritation. A primary dermal sensitization study in guinea pigs which showed no skin sensitization potential. An acute oral toxicity study in monkeys with a no observed adverse effects level (NOAEL) of 1.0 mg/kg based upon emesis at 2.0 mg/kg.

2. *Genotoxicty.* The Ames assays conducted with and without metabolic activation were both negative. The V-79 mammalian cell mutagenesis assays conducted with and without metabolic activation did not produce mutations. In an alkaline elution/rat hepatocyte assay, abamectin was found to induce single strand DNA breaks without significant toxicity in rat hepatocytes treated in vitro at doses greater than 0.2 mM. This *in vitro* dose of 0.2 mM is biologically unobtainable *in vivo*, due to the toxicity of the compound. However, at these potentially lethal doses, *in vivo* treatment did not induce DNA single strand breaks in hepatocytes. In the mouse bone marrow assay, abamectin was not found to induce chromosomal damage. There are also many studies and a great deal of clinical and follow-up experience with regard to ivermectin, a closely similar human and animal drug.

3. *Reproductive and developmental toxicity.* The following reproductive and developmental tixocity studies were conducted:

i. A 2–generation study in rats with a NOAEL of 0.12 mg/kg/day in pups based upon retinal folds, decreased body weight, and mortality. The NOAELs for systemic and reproductive toxicity were 0.4 mg/kg/day. In the 2–generation reproduction study in rats with the delta 8,9-isomer, the NOAEL was 0.4 mg/kg/day and the lowest observed adverse effect level (LOAEL) was greater than 0.4 mg/kg/day (the highest dose tested).

ii. An oral teratology study in the CF-1 mouse with a maternal NOAEL of 0.05 mg/kg/day based upon decreased body weights and tremors. The fetal NOAEL was 0.20 mg/kg/day based upon cleft palates. An oral teratology study with the delta 8,9-isomer in CF-1 mice with a maternal NOAEL of 0.10 mg/kg/day based upon decreased body weights. The fetal NOAEL was 0.06 mg/kg/day based upon cleft palate. An oral teratology study in rabbits with a maternal NOAEL of 1.0 mg/kg/day based upon decreased body weights and tremors. The fetal NOAEL was 1.0 mg/kg/day based upon clubbed feet. An oral teratology study in rats with a maternal and fetal NOAEL at 1.6 mg/kg/day, the highest dose tested. An oral teratology study with the delta 8,9-isomer with a maternal NOAEL in CF-1 mice that expressed P-glycoprotein greater than 1.5 mg/kg/day, the highest and only dose tested. No cleft palates were observed in fetuses that expressed normal levels of P-glycoprotein, but fetuses with low or no levels of P-glycoprotein had increased incidence of cleft palates.

4. *Subchronic toxicity.* A rat 8–week feeding study with a NOAEL of 1.4 mg/kg/day based upon tremors. A rat 14–week oral toxicity study with a NOAEL of 0.4 mg/kg/day, the highest dose tested. A dog 12–week feeding study with a NOAEL of 0.5 mg/kg/day based upon mydriasis. A dog 18–week oral study with a NOAEL of 0.25 mg/kg/day based upon mortality. A CD-1 mouse 84–day feeding study with a NOAEL of 4 mg/kg/day based upon decreased body weights.

5. *Chronic toxicity.* A rat 53–week oncogenicity feeding study, negative for oncogenicity, with a NOAEL of 1.5 mg/kg/day based upon tremors. A CD-1 mouse 94–week oncogenicity feeding study, negative for oncogenicity, with a NOAEL of 4 mg/kg/day based upon decreased body weights. A dog 53–week chronic feeding study, negative for oncogenicity, with a NOAEL of 0.25 mg/kg/day based upon mydriasis.

6. *Animal metabolism.* Rats were given oral doses of 0.14 or 1.4 milligrams/kilogram of bodyweight (mg/kg bw) per day of abamectin or 1.4 mg/kg bw per day of the delta-8,9 isomer. Over 7 days, the percentages excreted in urine were 0.3–1% of the administered dose of abamectin and 0.4% of the dose of the isomer. The animals eliminated 69–82% of the dose of abamectin and 94% of the dose of isomer in feces. In rats, goats and cattle, unchanged parent compound accounted for up to 50% of the total radioactive residues in tissues. The 24-hydroxymethyl derivative of abamectin was found in rats, goats and cattle treated with the compound and in rats treated with the delta-8,9 isomer, and the 3′-*O*-demethyl derivative was found in rats and cattle administered abamectin and in rats administered the isomer.

7. *Metabolite toxicology.* There are no metabolites of concern based on a differential metabolism between plants and animals. The potential hazard of the 24-hydroxymethyl or the 3′-*O*-demethyl animal metabolites was evaluated in thorough toxicology studies with abamectin, photolytic break-down product, the delta 8,9-isomer.

8. *Endocrine disruption.*There is no evidence that abamectin is an endocrine disrupter. Evaluation of the rat multigenerational study demonstrated no effect on the time to mating or on the mating and fertility indices, suggesting no effects on the estrous cycle, on mating behavior, or on male or female fertility at doses up to 0.4 mg/kg/day, the highest dose tested. Furthermore, the range finding study demonstrated no adverse effect on female fertility at doses up to 1.5 mg/kg/day, the highest dose tested. Similarly, chronic and subchronic toxicity studies in mice, rats, and dogs did not demonstrate any evidence of toxicity to the male or female reproductive tract, or to the thyroid or pituitary (based upon organ weights and gross and histopathologic examination). In the developmental studies, the pattern of toxicity observed does not seem suggestive of any endocrine effect. Finally, experience with ivermectin in breeding animals, including sperm evaluations in multiple species, shows no adverse effects suggestive of endocrine disruption.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* The acute dietary Reference Dose (aRfD) is 0.0025 mg/kg/day from a 1–year dog study. The NOAEL is 0.25 mg/kg/day, and the LOAEL is 0.50 mg/kg/day based on mydriasis (pupil dilation) which was observed after 1 week of dosing. An uncertainty factor of 100 to account for interspecies extrapolation (10x) and intraspecies variability (10x) was recommended. EPA has also retained the 10X safety factor for infants and children resulting in an aRfD of 0.00025 mg/kg for appropriate populations. EPA has determined that the studies conducted with the CF-1 mouse are not relevant to human safety assessment. A Monte Carlo acute dietary exposure analysis predicted the percent population adjusted dose (PAD) used for the general population is 35% at the 99.9 percentile. Children 1–6 years old constitute the sub-population with the highest predicted exposure. The predicted percent PAD utilization for this subgroup is 70% for 99.9% of the individuals.

EPA has established the RfD for abamectin at 0.0012 mg/kg/day from a 2–generation reproduction study in rats. The developmental NOAEL is 0.12 mg/kg/day, and the developmental LOAEL is 0.40 mg/kg/day based on decreased pup body weight and viability during lactation, and increased incidence of retinal rosettes in F2b weanlings. An uncertainty factor of 100 to account for interspecies extrapolation (10x) and intraspecies variability (10x) was recommended. EPA has also retained the 10X safety factor for infants and children resulting in an aRfD of 0.00012 mg/kg/day for appropriate populations dietary exposure analysis for abamectin in the most exposed population (non-nursing infants <1 year old) shows the percent PAD utilization to be only 19%. For average U.S. populations (48 states), dietary exposure for abamectin shows a minimal utilization of 7% of the PAD.

ii. Drinking water. EPA modeling data (Generic expected environmental concentration/Screening concentration In Ground Water indicated worst case estimated environmental concentrations (EEC) of 0.485 micrograms/liter (µg/L) avermectin for acute and 0.239 µg/L for chronic exposure, both in surface water from the same use of abamectin on strawberries (the maximum use rate on the label). Refined modeling data Pesticide Root Zone Model-Exposure Analysis Modeling System (PRZM--EXAM) indicate a worst case EEC of 0.88 µg/L for acute and 0.57 µg/L for chronic, both calculated for an abamectin use on strawberries grown on black plastic mulch. EPA noted and Novartis agrees that the certainty of the concentrations estimated for strawberries is low, due to uncertainty on the amount of runoff from plant beds covered in plastic mulch and uncertainty on the amount of degradation of abamectin on black plastic compared to soil.

EPA and Novartis believe the estimates of abamectin exposure in water derived from the PRZM-EXAMS model are significantly overstated for several reasons. The PRZM-EXAMS model was designed to estimate exposure from ecological risk assessments and thus uses a scenario of a body of water approximating the size of a 1 hectare (2.5 acres) pond. This tends to overstate drinking water exposure levels for the following reasons. First, surface water source drinking water generally comes from bodies of water that are substantially larger than a 1 hectare (2.5 acres) pond. Second, the modeled scenario also assumes that essentially the whole basin receives an application of the pesticide. Yet in virtually all cases, basins large enough to support a drinking water facility will contain a substantial fraction of the area which does not receive pesticide. Third, there is often at least some flow (in a river) or turnover (in a reservoir or lake) of the water so the persistence of the pesticide near the drinking water facility is usually overestimated. Fourth, even assuming a reservoir is directly adjacent to an agricultural field, the agricultural field may not be used to grow a crop on which the pesticide in question is registered for use. Fifth, the PRZM-EXAMS modeled scenario does not take into account reductions in residue loading due to applications of less than the maximum application rate or no treatment of the crop at all (percent crop treated data). Although there is a high degree of uncertainty to this analysis, these are the best available estimates of concentrations of abamectin in drinking water. Although the peak EEC of 0.88 µg/L slightly exceeds the acute drinking water level of concern, 0.76 µg/L, considering the uncertain nature of the modeling estimate, EPA does not expect aggregate acute exposure to avermectin will pose an unacceptable risk to human health.

2. *Non-dietary exposure.* Avermectin's registered residential uses include indoor crack/crevice and outdoor application to lawns. For lawn uses, EPA conducted a risk assessment for adult applicators and postapplication exposure to avermectin using the EPA's Draft SOPs for Residential Exposure Assessments. The highest predicted exposure, oral hand to mouth for children, resulted in a calculated margin of exposure of 14,000. For children's postapplication exposure to avermectin from indoor crack/crevice products, valid exposure studies demonstrate there is no exposure and therefore no risk for indoor residential

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scenarios. Chronic exposures for the residential uses are not expected. Short- and intermediate-term risk for the registered uses do not exceed EPA's level of concern.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The EPA stated in an FR notice published on April 7, 1999 (64 FR 16843–16850) (FRL–6070–6) that it does not have, at this time, available data to determine whether avermectin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment.

E. Safety Determination

1. *U.S. population.* Using the exposure assumptions described above and based on the completeness and reliability of the toxicity data base, Novartis has calculated aggregate exposure levels for this chemical. The calculations show that chronic exposure is below 100 percent of the RfD and the predicted acute exposure is below 100% of the acute RfD for all subpopulations. Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to abamectin residues.

2. *Infants and children.* The FQPA authorizes the employment of an additional safety factor of up to 10X to guard against the possibility of prenatal or postnatal toxicity, or to account for an incomplete data base on toxicity or exposure. EPA has chosen to retain the FQPA 10X safety factor for abamectin based on several reasons including evidence of neurotoxicity, susceptibility of neo-natal rat pups, similarity to ivermectin, lack of a developmental neurotoxicity study, and concern for exposure to infants and children.

It is the opinion of Novartis that a 3X safety factor is more appropriate for abamectin at this time. EPA has evaluated abamectin repeatedly since its introduction in 1985 and has found repeatedly that the level of dietary exposure is sufficiently low to provide ample margins of safety to guard against any potential adverse effects of abamectin. In addition, valid exposure studies demonstrate there is no exposure via indoor applications of abamectin products. Novartis states that the database for abamectin is complete and that the developmental neurotoxicity study is a new and not yet initially required study. Additionally, there is much more information regarding human risk potential than is the case with most pesticides, because of the widespread animal-drug and human-drug uses of ivermectin, the closely related analog of abamectin.

It is the opinion of Novartis that the use of a full 10X safety factor to address risks to infants and children is not necessary. The established chronic endpoint for abamectin in the neonatal rat is overly conservative. Similar endpoints for ivermectin are not used by the Food and Drug Administration to support the allowable daily intake for ivermectin residues in food from treated animals. No evidence of toxicity was observed in neonatal rhesus monkeys after 14 days of repeated administration of 0.1 mg/kg/day (highest dose tested) and in juvenile rhesus monkeys after repeated administration of 1.0 mg/kg/day (highest dose tested). The comparative data on abamectin and ivermectin in primates also clearly demonstrate the dose response for exposure to either compound is much less steep than that seen in the neonatal rat. Single doses as high as 24 mg/kg of either abamectin or ivermectin in rhesus monkeys did not result in mortality; however, this dose was more than two times the LD_{50} in the adult rat and more than 20 times the LD_{50} in the neonatal rat. The absence of a steep dose-response curve in primates provides a further margin of safety regarding the probability of toxicity occurring in infants or children exposed to avermectin compounds. The significant human clinical experience and widespread animal drug uses of ivermectin without systemically toxic, developmental, or postnatal effects supports the safety of abamectin to infants and children.

F. International Tolerances

The Codex residue definition for MRLs is consistent with that of the United States. Codex MRLs for abamectin include cattle fat 0.1 mg/kg; cattle kidney 0.05 mg/kg; cattle liver 0.1 mg/kg; citrus fruits 0.01 mg/kg; cottonseed 0.01 mg/kg; hops, dry 0.1 mg/kg; cattle milk 0.005 mg/kg; goat milk at 0.005 mg/kg; and potato 0.01 mg/kg.

[FR Doc. 99–19440 Filed 7–28–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6409–8]

Proposed Modifications to the Policy on Compliance Incentives for Small Businesses and Request for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment on proposed revisions.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to modify the *Policy on Compliance Incentives for Small Businesses* to expand the options allowed under the Policy for discovering violations and to establish a time period for disclosure. This Policy is intended to promote environmental compliance among small businesses by providing incentives for voluntary discovery, disclosure, and prompt correction of violations. The Policy accomplishes this in two ways: by setting forth guidelines for the Agency to reduce or waive penalties for small businesses that come forward to disclose and make good faith efforts to correct violations, and by deferring to States, Tribes, and local governments that offer these incentives.

DATES: Comments must be received on or before September 27, 1999.

ADDRESSES: Mail written comments to the Enforcement and Compliance Docket and Information Center (2201A), Docket Number EC–P–1999–009, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. In person, deliver comments to Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW, Washington, DC. Copies of the existing Policy and Fact sheet are available at that location as well. Persons interested in reviewing these materials must make advance arrangements to do so by calling 202–564–2614. Comments may also be faxed to 202–501–1011 or submitted electronically to: *docket.oeca@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Ginger Gotliffe, Office of Compliance, telephone 202–564–7072; fax (202) 564–0009; e-mail: gotliffe.ginger@epa.gov.

SUPPLEMENTARY INFORMATION: Five years ago, EPA reorganized its compliance programs. This reorganization was undertaken by Administrator Browner with a goal of making EPA's enforcement and compliance programs more effective in protecting public health and the environment. The reorganization also improved and enhanced our abilities to reach out to small business sectors with information to help them comply. At this five year anniversary, EPA has been conducting outreach efforts to obtain feedback on compliance and enforcement activities issues, on ways to further improve public health and the environment through compliance efforts, and on the actions the Agency has taken over the past five years. Recently, EPA held two national conferences entitled "Protecting Public Health and the Environment through Innovative Approaches to Compliance." As part of this effort, the Office of Enforcement and Compliance Assurance (OECA) also published a **Federal Register** document soliciting comments on how EPA can further protect and improve public health and the environment through new compliance and enforcement approaches (see 64 FR 10144, March 2, 1999). Conference summaries and a copy of the **Federal Register** document are available at OECA's website at *http://www.epa.gov/oeca/polguid/oeca5sum.html.* From outreach efforts such as the conferences held earlier this year and from meetings and conference calls with interested stakeholder groups specifically concerning small business issues such as the Small Business Policy, OECA received feedback that improvements to the Policy could be made. In response to that feedback, OECA has been looking at ways to improve the Policy, and is now proposing modifications to the Small Business Policy and requesting additional comments on the Policy.

Under the Policy, EPA will waive or mitigate civil penalties whenever a small business makes a good faith effort to comply with environmental requirements by discovering violations, promptly disclosing the violations, and correcting them. Assuming the facility meets all the criteria in the policy, including those on violation history, corrections period, and lack of harm, EPA will waive 100% of the civil penalty. Moreover, EPA will defer to State and Tribal actions that are consistent with the criteria set forth in this Policy.

These proposed changes would modify the Final Policy issued in June 1996. See 61 FR 27984, June 3, 1996. The Agency would like comments from the public on the following proposed changes and on any other issues concerning the Policy.

1. Expand Options for Discovery of Violations. One proposed change is to allow small businesses to obtain penalty relief by using any means of voluntary discovery as well as on-site compliance assistance or environmental audits. Voluntary discovery could include compliance management systems (CMS), pollution prevention assessments, participation in mentoring programs, training classes, use of on-line compliance assistance centers, and use of checklists. The Agency wants to encourage participation in those programs or activities that could increase compliance, improve efficiency, and reduce pollution. These programs and activities need not be associated with environmental regulatory agencies, but may be associated with trade associations, professional associations, universities, and the like. EPA will consider application of this Policy to violations discovered through activities required in "partnership" programs on a project-by-project basis.

There are a variety of activities and sources of information that a small business can use to learn more about the regulatory requirements. EPA and the States provide various forms of compliance assistance. Some State assistance programs are run as confidential services to the small business community. If a small business wishes to obtain a corrections period after receiving compliance assistance from a confidential program, the business must promptly disclose the violations to the appropriate regulatory agency and comply with the other provisions of this Policy.

2. Penalty Reduction. Penalties are made up of two components: gravity and economic benefit. The gravity component mitigation typically involves the nature of the violations, the duration of the violations, the environmental or public health impacts of the violations, good faith efforts by the small business to promptly remedy the violation, and the facility's overall record of compliance with environmental requirements. Under this Policy, the Agency will grant 100% mitigation of (completely eliminate) the gravity component of the penalty for violations found through any method provided all the other criteria in the policy are met. The Agency believes the incentive of 100% gravity mitigation should encourage small businesses to disclose violations and correct them within the specified time period.

The Policy provides that EPA may seek the economic benefit portion of the penalty if a small business has obtained a significant economic benefit from the violations, for example, if a business significantly reduced its expenses by not purchasing and installing an emission control device to meet its regulatory requirements. Prompt disclosure and correction of violations discovered often results in no economic benefit having been accrued. To date, the vast majority of the disclosures under the Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations Policy (Audit Policy) and all of the disclosures under the Small Business Policy have not necessitated recovery of economic benefit. The Audit Policy is another EPA policy that provides penalty mitigation for discovering, disclosing, and correcting violations. The main differences between it and the Small Business Policy are that the Audit policy may be used by businesses of any size, it provides two different levels of penalty mitigation based upon how the violation was discovered, and the correction period is shorter.

3. Clarify and Lengthen the Disclosure Period. Another proposed change is to require that the business fully disclose a violation within 21 calendar days regardless of how the violation was discovered. Currently, the Policy requires "prompt disclosure" for compliance assistance discovery and 10 day disclosure for discoveries made through an environmental audit. This modification will clarify the definition of discovery period. It is critical for EPA to get timely reporting of violations in order that it might have a clear notice of the violations and the opportunity to respond if necessary, as well as an accurate picture of a given facility's compliance record. Lengthening the disclosure period will give small businesses more opportunity to make use of the policy and will be consistent with the proposed modification to the Audit Policy. That modification was a result of the Audit Policy evaluation that showed that the 10-day period was unduly restrictive.

4. Implementation of the Policy. The Policy has also been modified in format and language to provide the information in a more understandable manner. To increase the usefulness of the Policy, EPA will provide a fact sheet, contacts list, and other information about the Policy at the EPA web site (*http://www.epa.gov/oeca/polguid*), at the Compliance Assistance Centers web sites (all 9 Centers available through *http://www.epa.gov/oeca/mfcac.html*), through EPA Headquarters and Regional contacts and as part of targeted compliance assistance activities and initiatives.

Enhanced implementation of the Policy also involves improved procedures and coordination within EPA. EPA Headquarters and Regional staff working on the Audit Policy as

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well as this Small Business Policy are coordinating on issues and procedures to insure national consistency and to improve the timeliness of the Agency's review of each disclosure. EPA will commit to responding to a small business within 60 days of disclosure of a violation.

To date the Small Business Policy has not been used very much. As reported to Congress approximately 150 small entities applied for penalty relief under EPA disclosure policies. Many of these small entities (which include small businesses as defined under this Policy) used the Audit Policy. EPA knows through conversations with State officials that there are many small businesses using State disclosure policies for violations discovered under State regulations. To increase the usage of the Policy once it is finalized, EPA is planning a marketing effort for the Policy. Public comments on effective marketing techniques for small business sectors are encouraged.

5. *Compliance Incentives Issues and Comments.* EPA recently announced the results of its evaluation of the effectiveness of the Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations Policy (Audit Policy) of December 1995, and solicited public comments on proposed changes (see 64 FR 26745, May 17, 1999). To the extent that results from that evaluation and comments to that **Federal Register** document address small business issues with compliance incentives policies such as the Small Business Policy, the Agency will consider that information. Small entities (those businesses that meet the definition of small entity under SBREFA) have used the Audit Policy, so comments about their usage of a compliance incentive policy would be pertinent.

As part of the Agency's evaluations of the two policies and given the similarities between the two Policies, EPA asks for comments in this Notice on the advisability of combining the Audit Policy with the Small Business Policy. In particular, the Agency is interested in whether small businesses would be more likely to audit and self-disclose violations (or seek compliance assistance) if the two policies were merged. EPA is particularly interested in hearing the comments of small businesses on this point.

Dated: July 20, 1999.

Elaine Stanley,

Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

Policy on Compliance Incentives for Small Businesses

A. Introduction and Purpose

The Policy on Compliance Incentives for Small Businesses is intended to promote environmental compliance among small businesses by providing incentives for them to make use of compliance assistance programs, environmental audits, compliance management systems (CMS), or to participate in any activities that may increase the business's understanding of the environmental requirements with which they must comply. The Policy accomplishes this in two ways: by waiving or mitigating civil penalties, and by deferring to States and local governments who offer these incentives consistent with the criteria established in this Policy.

EPA will waive or mitigate civil penalties, whenever a small business makes a good faith effort to comply with environmental requirements by:

(1) Discovering a violation,

(2) Disclosing the violation, and

(3) Correcting the violation within the proper timeframe.

To use the Policy, the facility must meet criteria on violation history, corrections period, lack of harm, and criminal conduct.

B. Background

This Policy implements section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996, signed into law by the President on March 29, 1996.

C. Applicability

This Policy applies to facilities owned by small businesses as defined here. A small business is a person, corporation, partnership, or other entity who employs 100 or fewer individuals (across all facilities and operations owned by the entity).[1] Facilities that are operated by municipalities or other local governments may be covered under the Small Communities Policy (see http://es.epa.gov/oeca/polguid/polguid1.html).

This Policy supersedes the previous version of the policy which became effective on June 10, 1996. To the extent that this Policy may differ from the terms of applicable enforcement response policies (including penalty policies) under media-specific programs, this document supersedes those policies.

D. How Small Businesses Can Qualify for Penalty Mitigation

EPA will eliminate or mitigate civil penalties against small businesses based on the following criteria:

1. Discovery Is Voluntary

The small business discovers a violation on their own before an EPA or State inspection. Violations might be discovered after receiving compliance assistance, conducting an environmental audit or participating in mentoring programs. Other activities that may be useful in discovering violations include establishing compliance management systems (CMS), using compliance checklists, reading materials on complying with environmental requirements, using compliance assistance center web sites, and attending training classes.

The violation must be identified voluntarily, and not through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement. These include emissions violations detected through a continuous emissions monitor (or alternative monitor established in a permit), violations of National Pollutant Discharge Elimination System (NPDES) discharge limits detected through required sampling or monitoring; or violations discovered through a compliance audit required to be performed by terms of a consent order or settlement order.

2. Disclosure Period Is Met

a. The small business must fully disclose a specific violation in writing to EPA or the State within 21 days after it has discovered that the violation has occurred, or may have occurred. Prompt disclosure is evidence of the regulated entity's good faith in wanting to achieve or return to compliance as soon as possible. The time at which discovery that a violation may have occurred begins when any officer, director, employee or agent of the facility becomes aware of any facts that constitute a possible violation. Where there is some doubt about whether a violation has occurred, the recommended course is for the facility to disclose and allow the regulatory authorities to make a definitive determination. This will insure that the facility meets the disclosure period requirement.

b. The disclosure of the violation must occur before the violation was otherwise discovered by, or reported to EPA, the appropriate state or local regulatory agency. See section F.1 of the Policy below. Good faith also requires that a small business cooperate with EPA and provide such information requested by EPA to determine applicability of this Policy.

c. If a small business wishes to obtain a corrections period after receiving compliance assistance from a confidential assistance program, the business must disclose the violations to the appropriate regulatory agency within 21 days of discovery.

3. This is the small business's first violation of this requirement in three years. This Policy applies unless the business has:

a. Previously been subject to a warning letter, notice of violation, field citation, citizen suit, or any other enforcement action by a government agency for a violation of the same requirement within the past three years.

b. Used this Policy for a violation of the same or a similar requirement within the past three years.

c. Been subject to two or more enforcement actions for violations of environmental requirements in the past five years, even if this is the first violation of this particular requirement.

4. The business corrects the violation within the corrections period set forth below.

Small businesses are expected to remedy the violations within the shortest practicable period of time. Correcting the violation includes remediating any environmental harm associated with the violation, as well as implementing procedures to prevent a recurrence of the violation.

a. For any violation that cannot be corrected within 90 days of detection, the small business should submit a written schedule, or the agency should issue a compliance order with a schedule, as appropriate. The corrections are to be completed not more than 180 days following the date that the violation was detected.

b. If the small business intends to correct the violation by implementing pollution prevention measures, they may take an additional period of 180 days, *i.e.*, up to a period of one year from the date the violation is detected, only if necessary.

5. The Policy does not apply if:

a. The violation has caused actual serious harm to public health, safety, or the environment;

b. The violation is one that may present an imminent and substantial endangerment to public health or the environment; or

c. The violation involves criminal conduct. Businesses wishing to pursue penalty mitigation for a violation that does involve criminal conduct should refer to the Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations Policy of December 1995 (60 FR 66706, 12/22/95).

E. Penalty Mitigation Guidelines That EPA Will Follow

EPA will exercise its enforcement discretion to eliminate or mitigate civil penalties as follows.

1. EPA will waive the civil penalty if a small business satisfies all of the criteria in section D. If, however a small business has obtained a significant economic benefit from the violation(s), EPA will waive 100% of the gravity component of the penalty, but may seek the full amount of the significant economic benefit associated with the violations.[2] EPA anticipates that such a significant economic benefit will occur infrequently. However, EPA retains this discretion to ensure that small businesses that comply with public health protections are not put at a serious marketplace disadvantage by those who have not complied.

2. If a small business does not fit within the guideline immediately above, this Policy does not provide any special penalty mitigation. However, if a small business has otherwise made a good faith effort to comply, EPA has discretion, pursuant to its applicable enforcement response or penalty policies, to waive or mitigate civil penalties.[3]

3. Further, these policies allow for mitigation of the penalty where there is a documented inability to pay all or a portion of the penalty, thereby allowing the small business to continue operations and to finance compliance. See Guidance on Determining a Violator's Ability to Pay a Civil Penalty of December 1986. Penalties also may be mitigated pursuant to the Final EPA Supplemental Environmental Projects Policy of May 1998 (63 FR 24796, 5/5/98) and Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations Policy of December 1995 (60 FR 66706, 12/22/95).

4. This Policy sets forth how the Agency expects to exercise its enforcement discretion in deciding on an appropriate enforcement response and determining an appropriate civil penalty for violations by small businesses. It states the Agency's views as to the proper allocation of enforcement resources. This Policy is not final agency action and is intended as guidance. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties.

F. Enforcement

To ensure that this Policy enhances and does not compromise public health and the environment, the following conditions apply:

1. Violations detected through inspections, field citations, reported to a federal, state or local agency by a member of the public or a "whistleblower" employee, identified in notices of citizen suits, previously reported to an agency, or required to be reported to an agency by applicable regulations or permits, remain subject to enforcement.

2. A business is subject to all applicable enforcement response policies (which may include discretion whether or not to take formal enforcement action) for all violations that were not remedied within the corrections period. The penalty in such action may include the time period before and during the correction period.

G. Applicability to States and Tribes

EPA recognizes that states and tribes are partners in enforcement and compliance assurance. Therefore, EPA will defer to state and tribal actions in delegated or approved programs that are consistent with the criteria set forth in this Policy. Whenever a State agency or Tribe provides a correction period to a small business pursuant to this Policy or a similar policy, the agency should notify the appropriate EPA Region. This notification will enable EPA to apply this Policy in coordination with similar state policies. Similarly, EPA will notify the appropriate State agency whenever EPA applies this policy and requests that such States defer to EPA's action under the Policy. Regional contacts will be listed at the EPA web page with this Policy.

H. Public Accountability

Within three years of the effective date of this Policy, EPA will compile data on the use of this Policy in promoting compliance among small businesses. EPA will make this data available to the public.

[FR Doc. 99–19437 Filed 7–28–99; 8:45 am]

BILLING CODE 6560–50–P

[1] The number of employees should be considered as full-time equivalents on an annual basis, including contract employees. Full-time equivalents means 2,000 hours per year of employment. For example, see 40 CFR 372.3.

[2] The "gravity component" of the penalty includes everything except the economic benefit amount.

[3] For example, in some media specific penalty policies, the penalty calculation is reduced to account for good faith efforts to comply.

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FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 22, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 27, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0740.
Title: Section 95.1015 Disclosure Policies.
Form Number: N/A.
Type of Review: Extension of existing collection.
Respondents: Business or other for-profit.
Number of Respondents: 3.
Estimated Time Per Response: 1 hour.
Total Annual Burden: 3 hours.
Total Annual Cost: 0.
Needs and Uses: This collection of information is made necessary by the amendments of the Commission's Rules regarding the Low Power Radio and Automated Maritime Telecommunications System (AMTS) operations in the 216–217 MHz band. The reporting requirement is necessary to ensure that televisions stations that may be affected by harmful interference from AMTS operations are notified. The information will be used by Commission staff and affected television stations in order to be aware of the location of potential harmful interference from AMTS operations.

OMB Control Number: 3060–XXXX.
Title: Annual DTV Report.
Form Number: FCC 317.
Type of Review: New collection.
Respondents: Business or other for-profit.
Number of Respondents: 45.
Estimated time per response: 2.5 hours (2 hour respondent; 0.5 hours contract attorney).
Frequency of Response: Reporting, annually.
Total annual burden: 90.
Total annual costs: $4,500.
Needs and Uses: On November 19, 1998, the Commission adopted a Report and Order in MM Docket No. 97–247 in the matter of Fees for Ancillary or Supplementary Use of Digital Television Spectrum Pursuant to Section 336(e)(1) of the Telecommunications Act of 1996. This Report and Order established a program for assessing and collecting fees for the provision of ancillary or supplementary services by commercial digital television licensees. Licensees are required to report whether they provided ancillary or supplementary services, which services were provided, the services provided which are subject to a fee, gross revenues received from all feeable ancillary and supplementary services, and the amount of bitstream used to provide ancillary or supplementary service. The Commission has developed an FCC 317 to collect this data annually from commercial digital television licensees. Licensees providing services subject to a fee will additionally be required annually to file FCC Form 159 (3060–0589) in remittance of the fee. Each licensee will be required to retain the records supporting the calculation of the fees due for three years from the date of remittance of fees. The data is used by FCC staff to ensure that DTV licensees comply with the requirements of Section 336(e) of the Communication's Act.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 99–19330 Filed 7–28–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

July 22, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 27, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0219.
Title: Section 90.49(b) Communications standby facilities "Special eligibility showing".
Form Number: N/A.
Type of Review: Extension of existing collection.
Respondents: Business or other for-profit.
Number of Respondents: 200.
Estimated Time Per Response: 0.75 hours.
Total Annual Burden: 150 hours.
Total Annual Cost: None.
Needs and Uses: The reporting requirement contained in Section 90.49(b) is necessary to ensure that a communications common carrier requesting private radio service frequencies to be used as a standby facility for carrying safety-related communications when normal common carrier circuits are inoperative due to circumstances beyond the control of the carrier are necessary for the protection of life and property. This information is collected only once, upon initial application for a license.

OMB Control Number: 3060–0435.
Title: Section 80.361 Frequencies for Narrow-Band Direct-Printing (NB–DP) and data transmissions.
Form Number: N/A.
Type of Review: Extension of existing collection.
Respondents: Individuals, business or other for-profit.
Number of Respondents: 2.
Estimated Time Per Response: 2 hours.
Total Annual Burden: 4 hours.
Total Annual Cost: None.
Needs and Uses: The reporting requirement contained in Section 80.361 is necessary to require applicants to submit a showing of need to obtain new or additional narrow-band direct-printing (NB-DP) frequencies. Applicants for new or additional NB-DP frequencies are required to show the schedule of service of each currently licensed or proposed series of NB-DP frequencies and to show a need for additional frequencies based on at least a 40% usage of existing NB-DP frequencies. The information is used to determine whether an application for a NB-DP frequency should be granted. If the collection of this information was not conducted, the FCC would have no information available regarding the use of NP-DP frequencies by public coast stations, and, therefore would be handicapped in determining whether the frequencies were being hoarded and not put into use by public coast stations.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 99–19331 Filed 7–28–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to all Interested Parties of the Termination of Certain Receiverships by the FDIC in the Third and Fourth Quarters of 1999

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: Notice is hereby given that the FDIC, for itself or as successor in interest to the Resolution Trust Corporation, in its capacity as Receiver for the Institutions set forth below (the Receiver) intends to terminate these receiverships during the third and fourth calendar quarters of 1999.

FOR FURTHER INFORMATION CONTACT: Division of Resolutions and Receiverships, Terminations Section, 1–800–568–9161.

SUPPLEMENTARY INFORMATION:

Financial institution number and name	City	State
1215 Investors Federal Savings Bank	Richmond	VA.
1269 Southern Federal Savings Association of Georgia	Atlanta	GA.
1286 John Hanson Federal Savings Bank	Beltsville	MD.
1302 Second National Federal Savings Association	Salisbury	MD.
2170 First Federal Savings Association of Raleigh	Raleigh	NC.
2195 TrustBank Federal Savings Bank	Tysons Corner	VA.
4251 Continental Bank	Dallas	TX.
4358 The First National Bank of Toms River	Toms River	NJ.
4460 First Security Bank of Anaconda	Anaconda	MT.
4553 Heritage Bank for Savings	Holyoke	MA.
4562 1st National Bank of Vermont	Bradford	VT.
4610 Bank of Hartford	Hartford	CT.
6938 University Federal Savings Association	Houston	TX.
6940 Pacific Savings Bank	Costa Mesa	CA.
6998 Platte Valley Savings, a Federal Savings and Loan Association	Gering	NE.
7018 American Savings of Colorado, a Federal Savings and Loan Association	Colorado Springs	CO.
7118 Gibralter Savings Bank, F.S.B.	Seattle	WA.
7203 Midwest Savings Association, F.A.	Minneapolis	MN.
7282 Horizon Savings Bank, F.S.B.	Wilmette	IL.
7917 Investors Savings Bank, F.S.B.	Richmond	VA.
7980 Second National Federal Savings Bank	Salisbury	MD.
8227 Horizon Federal Savings Bank	Wilmette	IL.

The liquidation of the assets of these receiverships is expected to be completed no later than December 31, 1999. To the extent permitted by available funds and in accordance with law, the Receiver for these institutions will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of such receiverships will serve no useful purpose. Consequently, notice is given that the receiverships will be terminated, as soon as practicable but no sooner than thirty (30) days after the date this Notice is published.

If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date this Notice is published to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention:

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Terminations Department, 1910 Pacific Avenue, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: July 23, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–19329 Filed 7–28–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. App. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Brighten Freight, Inc., 800 S. Hindry Avenue, Suite A–1, Inglewood, CA 90301, Officer: Frank Fon-Yu Liu, President (Qualifying Individual)

Certified Express, 333 S. 6th Street, Las Vegas, NV 89101, Officers: Timothy O. Hannon, Assistant Secretary (Qualifying Individual), Patrick Mak, Director

China United Transport, Inc., 2063 South Atlantic Blvd., Suite 2–B, Monterey Park, CA 91754, Officers: Xuexiang Li, President (Qualifying Individual), Jie Gu, Treasurer

Everstrong, Inc., 22 Smith Street, 2/F, Jersey City, NJ 07303, Officer: Shulin Chen, President (Qualifying Individual)

Exim Services, Inc., 13836 Bora Bora Way, Suite B112, Marina Del Rey, CA 90292, Officer: Mary Patricia Yust, President (Qualifying Individual)

International Freight Consolidators, Inc., 1160 N.W. 21st Terrace, Miami, FL 33127, Officer: John Collins, President (Qualifying Individual)

Han Kyu Lim DBA Important Cargo Express Co., 1681 Grandview Drive, S. San Francisco, CA 94080, Officer: Han Kyu Lim, President (Qualifying Individual)

Navigation Network, Inc., 5620 Tchoupitoulas Street, New Orleans, LA 70115, Officer: Jack Fong, President (Qualifying Individual)

NZS Worldwide, Inc., 1250 35th Avenue, San Francisco, CA 94122, Officers: Nikolay V. Snigorenko, Chief Executive Officer (Qualifying Individual), Zinaida S. Snigorenko, Chief Financial Officer

Takase Add System, Inc., 2420 W. Carson Street, Suite 200, Torrance, CA 90501, Officers: Motonubu Akiyama, Director (Qualifying Individual), Tadashi Hirashima, Chairman of the Board

TDC International Express, Inc., 2118 Sunny Ridge Place, Fullerton, CA 92833, Officers: Susan Cha, President (Qualifying Individual), Benson Mao, Vice President Sales and Marketing

Transtainer Costa Rica Corp. 3550 NW 33 Street, Miami, FL 33142, Officers: Jose M. Wolf, President (Qualifying Individual), Manuel Sola III, Secretary

Trident Transport International, Inc., 215 W. Diehl Road, Naperville, IL 60563, Officers: Richard Turek, Vice President (Qualifying Individual), Robert H. Henry, Secretary and Director

Value-Plus Express, Inc., 118 W. Hazel Street, Suite #C, Inglewood, CA 90302, Officer: Man Heup Kim, President (Qualifying Individual)

Dated: July 23, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–19326 Filed 7–28–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 99–11]

Notice of Investigation

Notice is given that the Commission, on July 21, 1999, served an Order of Investigation and Hearing on Expeditors International of Washington, Inc. ("Expeditors"), a licensed, tariffed and bonded non-vessel-operating common carrier. The Order institutes a formal investigation to determine whether Expeditors violated sections 10(a)(1) and (b)(1) of the Shipping Act of 1984, 46 U.S.C. App. Sections 1709(a)(1) and (b)(1), by misdescribing the commodity on numerous shipments from Hong Kong between January 1, 1997 through December 1, 1998, and assessing and collecting rates different from its applicable tariff. Moreover, should violations be found, the proceeding will determine whether to impose civil penalties, suspend Expeditors' tariff, suspend or revoke its license, and issue a cease and desist order. The full text of the Order may be viewed on the Commission's home page at www.fmc.gov, or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW, Washington, DC. Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–19327 Filed 7–28–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 12, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Marshall Truman Reynolds, Huntington, West Virginia; to acquire voting shares of FBT Bancorp, Baton Rouge, Louisiana, and thereby indirectly acquire voting shares of Fidelity Bank & Trust Company, Baton Rouge, Louisiana.

Board of Governors of the Federal Reserve System, July 23, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–19341 Filed 7–28–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 23, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Norway Bancorp, MHC, Norway, Maine, and Norway Bancorp, Inc., Norway, Maine; to become bank holding companies by acquiring 100 percent of the voting shares of Norway Savings Bank, Norway, Maine.

B. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Boiling Springs, MHC, and Boiling Springs Bancorp, both of Rutherford, New Jersey; to become bank holding companies by acquiring 100 percent of the voting shares of Boiling Springs Savings Bank, Rutherford, New Jersey.

C. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. BCC Bankshares, Inc., Phenix, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Charlotte County, Phenix, Virginia.

D. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. First Security Group, Inc., Dalton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Dalton Whitfield Bank, Dalton, Georgia (in organization).

2. FLAG Financial Corporation, LaGrange, Georgia; to merge with Abbeville Capital Corporation, Abbeville, South Carolina, and thereby indirectly acquire Bank of Abbeville, Abbeville, South Carolina.

Board of Governors of the Federal Reserve System, July 23, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–19342 Filed 7–28–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Notice of Availability (NOA); Final Environmental Impact Statement (FEIS) for the Proposed Disposal of the Volunteer Army Ammunition Plant (VAAP); Chattanooga, TN

Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500–1508), as implemented by General Services Administration (GSA), this Notice of Availability (NOA) for FEIS is announced. The proposed action is the disposal of all of real property associated with this government owned facility. The property consists of about 6,500 acres of land including buildings, industrial facilities and equipment, roadways, utilities, specialized facilities, easements, rights of way, and natural undeveloped land.

The FEIS addresses impacts of two alternatives considered: Disposal and No-Action (Continued Federal Ownership). The FEIS examined the short and long-term impacts to both natural environment and impacts to the surrounding community. The Disposal Alternative is further refined into a series of land use scenarios. These were developed with the input from the local community and through the scoping process. GSA has addressed comments on the Draft EIS in the FEIS.

The FEIS release date is July 30, 1999. After a 30-day period for final comment, GSA will issue a Record of Decision (ROD). The decision on the proposed Disposal will be made 30 days after the release of the FEIS. GSA anticipates this decision will be rendered on August 30, 1999.

GSA solicits final comments in writing at the following address: Mr. Phil Youngberg, Regional Environmental Officer (4PT), General Services Administration (GSA), 401 West Peachtree Street, NW, Suite 3015, Atlanta, GA 30365; Fax: Mr. Phil Youngberg at 404–331–4540.

Dated: July 23, 1999.

Phil Youngberg,

Regional Environmental Officer (4PT).

[FR Doc. 99–19423 Filed 7–28–99; 8:45 am]

BILLING CODE 6820–23–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR H–75]

Utilization and Disposal

To: Heads of Federal agencies

Subject: Reporting requirements for firearms

1. *What is the purpose of this bulletin?* This bulletin announces detailed reporting requirements for firearms.

2. *When does this bulletin expire?* This bulletin will remain in effect until specifically cancelled.

3. *What is the background?* The Federal Property Management Regulations (FPMR) were amended at 41 CFR 101–43.4801(c) to add new reporting requirements for firearms. The purpose of this bulletin is to alert Federal agencies of the need to provide certain descriptive information when submitting excess property reports of firearms to GSA.

4. *How should firearms be reported?* Each firearm will be reported as a single item per report to include serial number, make and model.

5. *Who should you contact for further information?* Martha Caswell, Director, Personal Property Management Policy Division (MTP), Office of Governmentwide Policy, General Services Administration, Washington, DC 20405; telephone, (202) 501–3846; e-mail, martha.caswell@gsa.gov.

Dated: July 23, 1999.

Joan Steyaert,

Acting Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 99–19367 Filed 7–28–99; 8:45 am]

BILLING CODE 6820–34–P

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00012]

Grants for Education Programs in Occupational Safety and Health To Prepare Health Services Researchers; Availability of Funds for Fiscal Year 2000

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for training grants in occupational safety and health. This program addresses the "Healthy People 2000" priority area of Occupational Safety and Health. The purpose of this program is to train health services researchers in the field of occupational safety and health.

B. Eligible Applicants

Any public or private educational or training agency or institution that has demonstrated competency in the occupational safety and health field and/or health services research and is located in a State, the District of Columbia, or U.S. Territory, is eligible to apply for a training grant.

For existing Educational Resource Centers (ERC) or Training Project Grants (TPG) that will be requesting supplemental funding, it is imperative to include the present grant number, so it may be processed as a supplement.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $500,000 is expected to be available in FY 2000 to fund three awards. It is expected that the average award will be $ 165,000, ranging from $150,000 to $200,000. It is expected that the awards will begin on July 1, 2000 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

The following are intended to serve as applicant requirements:

1. Programs should train researchers to examine the impact of the organization, financing, and management of preventive, clinical, and rehabilitative occupational health services and indemnity policies on the delivery, quality, cost, access to, and outcomes of such services.

2. Programs should establish training that comprises the following two components: (a) Health services research curricula and expertise; (b) occupational health and safety training, research curricula and expertise. Programs could be established through the following approaches: (i.) Programs within a University Department including these two components; (ii) linkages between programs addressing these two components, either within the University (linking separate Departments) or between Universities.

3. Applicants should address the need for preparing health services researchers in this field. Justification should be provided supporting the degree levels requested.

4. A plan should be provided outlining collaborative relationships between Departments and/or Universities, addressing institutional roles, goals and objectives, proposed curriculum, faculty and policies and administrative measures to establish appropriate coordination.

5. A program for education and research training in occupational health services research should be established. Programs may be at the Masters, Doctoral and Post-doctoral levels. Doctoral programs presently will be given higher priority to address the dearth of senior researchers evaluating occupational health services.

Curricula and research training plans must be structured and clearly identified for each level of training as well as the number of full and part time students proposed.

6. Course work should contain, as a minimum, training in (a) health services research methodologies, such as: epidemiology, biostatistics, health economics, frameworks for analysis (e.g., decision sciences, benefit-cost and cost-effectiveness analyses), health policy, program evaluation, performance measurement, survey design and implementation and, data systems for health services research; and, (b) occupational safety and health topic areas, such as: organization, finance and management of occupational health services, workers' compensation/disability systems administration and policy, occupational health prevention services (industrial hygiene, safety and ergonomics, occupational health and safety policy, labor economics), industrial relations, and data systems in occupational safety and health. Required core and elective courses should be outlined. Flexibility in structuring curricula is acceptable, e.g., specific tracks may be established focusing on select program area emphases, such as, economic analysis or performance measurement.

7. A plan should be provided to incorporate research experience (as principal or co-investigators) in original occupational health services research for students at all degree levels. The plan should also document ongoing funded research and faculty publications and how the school intends to expand and strengthen existing research efforts. The plan should also include items such as strategies for obtaining student and faculty funding.

8. Programs are strongly encouraged to incorporate collaborative relationships with external agencies and institutions that can serve as resources for the program, to coordinate research with public and private policy needs, and to provide sources of data for research. Some examples of potential collaborating organizations include the following: State agencies managing workers' compensation and State workers' compensation funds, private insurance carriers in health care, disability insurance and workers' compensation; managed care organizations; large employers; and, private health research institutes and foundations.

9. The Program Director should be a full-time faculty member and have education and experience in training health services researchers and/or occupational safety and health professionals. If the Program Director is from a Health Services research background, a Co-Director should be designated with an Occupational Health and Safety background. The Director should have currently funded research grants in occupational safety and health and/or health services research. He/she should be responsible for the coordination of the program across Departments or Universities.

10. Key faculty and research advisors should be full-time faculty with documented expertise and education in their appropriate fields. Qualifications include having current research grants in the field of health services research and/or research in the field of occupational safety and health. Research advisors should have recent research experience in health services research, preferably addressing occupational health services.

11. The applicant should develop a plan for student recruitment, including entrance requirements.

12. The applicant should develop a plan for evaluation of the program, including placement of graduates and tracking of graduates.

13. An Advisory Committee should be established representing stakeholders for occupational health services, including, labor, industry, and government.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 15 single-spaced pages per program, printed on one side, with one-inch margins, and unreduced font.

Note: Please consult the detailed Recommended Outline for Preparation of Competing New/Supplemental Training Grant Applications to prepare Health Services Researchers provided in the application kit. (CDC 2.145 A).

F. Submission and Deadline

1. Letter of Intent

Although not a prerequisite of application (optional), a non-binding letter of intent-to-apply is requested from potential applicants. The letter should identify the announcement number, name and address of principal investigator, brief description of the program proposed, and the names of the participating institutions. The letter of intent does not influence review or funding decisions, but it will enable CDC to determine the level of interest in the announcement and to plan the review more efficiently. Please submit on or before September 24, 1999, the letter of intent to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

2. Application

Submit the original and two copies of CDC 2.145 A (OMB Number 0920–00261) Forms are in the application kit. On or before November 30, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement. Please be reminded that for existing ERC or TPG that will be requesting supplemental funding, it is imperative to include the present grant number, so it may be processed as a supplement.

Deadline: Applications should be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks should not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Evidence of a plan to satisfy the need for training in the area outlined by the application, including projected enrollment, recruitment and job opportunities. Indicators of need may include measures utilized by the Program such as previous record of training and placement of graduates. Indicate the potential contribution of the project toward meeting the need for this specialized training.

2. Extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve the program requirements.

3. Evidence of a plan describing the academic and research training the program proposes. This should include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

4. Extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve degree, course descriptions, course sequence, additional related courses open to students, time devoted to lecture, and clinical and research experience addressing the relationship with didactic programs in the educational process.

5. The extent to which the program effort is capable of supporting the number and type of students proposed.

6. Extent to which the program has initiated collaborative relationships with external agencies and institutions to expand and strengthen its research capabilities by providing student and faculty research opportunities.

7. Evidence of previous record of training in health services research and occupational safety and health, including placement of graduates and employment history.

8. The extent to which the program documents methods in use or proposed methods for evaluating the effectiveness of the training, including the use of feedback mechanisms from graduates and employers, placement of graduates in research positions, research accomplishments of graduates and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

9. Competence, experience and training of the Program Director, faculty and advisors in relation to the type and scope of research training and education involved.

10. Degree of institutional commitment to Program goals.

11. Adequacy of the academic and physical environment in which the training will be conducted, including access to appropriate occupational health research resources.

12. The extent to which the budget is reasonable, adequately justified, and consistent with the intended use of the grant funds.

13. Evidence of a plan for establishment of an Advisory Committee, including meeting times, roles and responsibilities.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Progress reports (annual).

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions

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I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 21(a) of the Occupational Safety and Health Act [29 U.S.C. 670 (a)]. The Catalog of Federal Domestic Assistance number is 93.263.

J. Where To Obtain Additional Information

You may obtain Program Announcement 00012 from the CDC home page address on the Internet, <*http://www.cdc.gov*>. To receive additional written information and to request an application kit, call 1–888–GRANTS (1–888–472–6874).

You will be asked to leave your name and address and will be instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from: Sonia Phelix, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00012, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2724, Email address: svp1@cdc.gov.

For program technical assistance, contact: Bernadine Kuchinski, Occupational Health Consultant, Office of Extramural Coordination and Special Projects, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, N.E., Mailstop D–40, Atlanta, Georgia 30341, telephone (404) 639–3342, Email address: bbk@cdc.gov.

Dated: July 23, 1999.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–19358 Filed 7–28–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Energy-Related Epidemiologic Research, Subcommittee for Management Review of the Chernobyl Studies: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Energy-Related Epidemiologic Research (ACERER), Subcommittee for Management Review of the Chernobyl Studies.

Time and Date: 9 a.m.–5 p.m., August 12, 1999.

Place: Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, D.C. 20001, telephone: (202) 628–2100, fax: (202) 879–7918.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 30 people.

Purpose: This subcommittee is charged with providing guidance to the scientific reviewers and staff, and reporting back to the full ACERER on the charge from the Department and Congress to assess the management, goals, and objectives of the National Cancer Institute (NCI) Chernobyl studies.

Matters To Be Discussed: Agenda items will include: a review of the National Cancer Institute's Management of Radiation Studies Hearing of September 16, 1998; a discussion of the approach to a site visit; and a review of the time line.

Agenda items are subject to change as priorities dictate.

The notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

For More Information Contact: Michael J. Sage, Deputy Director, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 4770 Buford Highway, NE, (F–28), Atlanta, Georgia 30341–3724, M/S F35 telephone 770/488–7300, fax 770/488–7310.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 26, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–19495 Filed 7–28–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee (INEEL).

Times and Dates: 8:30 a.m.–5 p.m., September 14, 1999; 8 a.m.–5:15 p.m., September 15, 1999.

Place: Boise State University, Boise State Student Union Building, 1910 University Drive, Boise, Idaho 83725–1335, telephone 208/426–1677, fax 208/426–5222.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with the Department of Energy (DOE) and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS has delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction, and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: Agenda items include a presentation from ATSDR on the preliminary public health assessment progress, and an update on the progress of current activities from the National Institute for Occupational Safety and Health. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Arthur J. Robinson, Jr., Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724, telephone 770/488–7040, fax 770/488–7044.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: July 21, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–19357 Filed 7–28–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4529–N–01]

Proposed Information Collection: Comment Request; Applicant/Recipient Disclosure/Update Report—HUD 2880

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting pubic comments on the subject proposal.

DATES: *Comments due date:* September 27, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and or OMB Control Number and should be sent to: Patricia A. Wash, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 10245, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Assistant General Counsel, Ethics Law Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 2158, Washington, DC 20410 telephone (202–708–3815) (this is not a toll-free number) for copies of the proposed form and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other offers of information technology, e.g., permitting electronic submission of response.

This Notice also lists the following information:

Title of Proposal: Applicant/recipient disclosure/Update Report

OMB Control Number, if applicable: 2510–0011

Description of the need for the information and proposed use: Section 102 of the HUD Reform Act of 1989 requires the Department to ensure greater accountability and integrity in the provision of assistance administered by the Department. One feature of the statute requires certain disclosure by applicants seeking assistance from HUD. The disclosure includes the financial interests of persons involved in the activities, the sources of funds to be made available for the activities, and the proposed uses of the funds.

Each applicant who submits an application for assistance, within the jurisdiction of the Department, to HUD, to a State, or to a unit of general local government for a specific project or activity, must disclose this information whenever the dollar threshold is met ($200,000 during the Fiscal Year in which the application is submitted). This information must be kept updated during the application review process and while the assistance is being provided.

Agency form numbers, if applicable: HUD–2880.

Members of affected public: Applicants for HUD competitive assistance.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of disclosures (including updates)	Burden hours	Frequency of response	Total burden hours
16,900	2.0	1.2	40,560

Status of the proposed information collection: Reinstatement, revision.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 23, 1999.

Gail W. Laster,

General Counsel.

[FR Doc. 99–19345 Filed 7–28–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–40]

Submission for OMB Review: Community Urban County/New York Towns Qualification/Requalification Process

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The urban county/New York towns qualification/requalification process obtains information each year that establishes the participating population that is used by HUD in calculating the final grant allocation of CDBG funds for all entitlement (which includes metro cities and urban counties) and State CDBG grantees for the next fiscal year.

DATES: *Comments Due Date:* August 30, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget,

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Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 22, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Community Development Block Grant Urban County/New York Towns Qualification/ Requalification Process.

Office: Community Planning and Development.

OMB Approval Number: 2506--XXXX.

Description of the Need for the Information and Its Proposed Use: The urban county/New York towns qualification/requalification process obtains information each year that establishes the participating population that is used by HUD in calculating the final grant allocations of CDBG funds for all entitlement (which includes metro cities and urban counties) and State CDBG grantees for the next fiscal year.

Form Number: None.

Respondents: State, Local or Tribal Government.

Frequency of Submission: Recordkeeping Report Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping Report Annually	53		1		57		3,305

Total Estimated Burden Hours: 3,305.

Status: Existing Collection.

Contact: Deirdre Maguire-Zinni, HUD, (202) 708–1577; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–19344 Filed 7–28–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–018–1620–00]

Closure of Public lands; Colorado

AGENCY: Bureau of Land Management, Dept. of the Interior.

ACTION: Closure order.

SUMMARY: Notice is hereby given that specific land administered by the BLM in the North Sand Hills Special Recreation Management Area will be closed to motorized use. This notice is in accordance with 43 CFR 8364.1 Closure and Restriction Orders and the Federal Land Policy and Management Act of 1976. The closure is necessary to prevent further resource damage to Government Creek.

DATES: This closure is effective July 22, 1999 and shall remain in effect unless revised, revoked or amended by the Authorized Officer.

ADDRESSES: Details of the closure and a map of the affected area can be obtained from the Field Office Manager, Kremmling Field Office, 1116 Park Ave., P.O. Box 68, Kremmling, CO 80459.

FOR FURTHER INFORMATION CONTACT: Field Office Manager at the above address, or call (970) 724–3437.

SUPPLEMENTARY INFORMATION: The public lands affected by this closure are located:

North Sand Hills Special Recreation Management Area

Sixth Principal Meridian, Colorado

T. 11N., R. 79W.,
Sec. 35, NW¼ three routes crossing Government Creek

This closure does not apply to emergency, law enforcement, and federal or other government vehicles while being used for official or emergency purposes, or to any vehicle whose use is expressly authorized or otherwise officially approved by BLM. A copy of this **Federal Register** notice and a map showing the closure area is posted in the Kremmling Field Office. Violation of this order is punishable by fine and/or imprisonment at defined by 18 USC 3571.

Dated: July 22, 1999.

Linda M. Gross,

Field Office Manager.

[FR Doc. 99–19409 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–99–1990–00)]

Immediate Closure of Area to the Discharge of all Weapons, Including Firearms and Bow and Arrow, In and Around Prairie Dog Towns Along the East Side of Beartooth Road Which Parallels the East Side of Holter Lake, Located 31 Miles Northeast of Helena, MT

AGENCY: Butte Field Office, Bureau of Land Management, DOI.

ACTION: Notice of closure.

SUMMARY: Notice is hereby given that effective immediately all public lands administered by the Bureau of Land Management (BLM) that contain populations of prairie dogs along the Beartooth Road on the east side of Holter Lake are closed to the discharge of weapons in portions of:

Principal Meridian, Montana

T. 14 N., R. 3 W.,
Sec. 15, NW¼.

This closure is yearlong and will remain in effect until further notice.

The reason for the closure is to provide protection for the black-tailed prairie dog, a BLM-sensitive species. Shooting prairie dogs is a popular recreational activity and probably contributes to the species' sensitive status. People with firearms have been observed in the vicinity of the Beartooth Road prairie dog town.

This action is taken under the authority of 43 CFR part 8364 and is in support of BLM Manual Policy (6840.02B) to ensure that actions authorized on BLM-administered lands do not contribute to the need to list any other Special Status Species under the provisions of the Endangered Species Act. On March 25, 1999, the U.S. Fish and Wildlife Service (USFWS) published a 90-day notice finding that substantial information indicates that listing the black-tailed prairie dog may be warranted (64 FR 144424). The USFWS is currently reviewing the status of the black-tailed prairie dog to determine if it should be listed as a threatened species.

FOR FURTHER INFORMATION CONTACT: Wildlife Biologist Bill Dean at the BLM Butte Field Office, 106 North Parkmont, Butte, Montana 59701, or telephone 406–494–5059.

Dated: July 20, 1999.

Merle Good,

Butte Field Manager.

[FR Doc. 99–19402 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–99–1610–00]

Proposed Management Plan/Final Environmental Impact Statement; Grand Staircase-Escalante National Monument, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with Section 102 of the National Environmental Policy Act of 1969 (NEPA), section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA), and 43 CFR part 1610, the Proposed Management Plan and Final Environmental Impact Statement (FEIS) has been prepared for Grand Staircase-Escalante National Monument (GSENM), Utah. This notice announces the availability of the Proposed Management Plan, which may be protested for a 30 day period to the Director of the Bureau of Land Management (BLM). The Proposed Management Plan provides decisions for management of approximately 1,870,765 acres of public lands in Kane and Garfield Counties in south-central Utah. The Proposed Management Plan: (a) Draws upon elements of each of the five alternatives analyzed in the Draft Management Plan/Draft EIS to formulate the Proposed Management Plan, (b) reflects consideration given to public comments on, and corrections to, the Draft Management Plan/Draft EIS, as well as rewording for clarification, and (c) incorporates a refined environmental impact analysis section. The FEIS is also being made available for 30 days prior to making any decision in accordance with 40 CFR 1506.10(a)(2).

FOR FURTHER INFORMATION CONTACT: Chris Killingsworth, Planning Coordinator, Bureau of Land Management, Grand Staircase-Escalante National Monument, 335 South Main Street, Suite 010, Cedar City, Utah 84720, telephone 435–865–5100.

ADDRESSES: Protests must be addressed to the Director (WO–210), Bureau of Land Management, Attn: Ms. Brenda Williams, Protests Coordinator, 1849 C Street, NW., Department of the Interior, Washington, DC 20240, within 30 days after the date of publication of the notice for the Proposed Management Plan.

DATES: The Proposed Management Plan may be protested. The protest period will commence with the date of publication of a Notice of Filing by the Environmental Protection Agency, which is expected to be on July 30, 1999. Protests must be submitted in writing and must be postmarked on or before August 30, 1999.

SUPPLEMENTARY INFORMATION: The Proposed Management Plan presents objectives and decisions for managing public lands for the following resource categories or uses: Geology; Paleontology; Archaeology; History; Soils and Biological Soil Crusts; Vegetation and Vegetation Management; Riparian; Special Status Plant Species; Fish and Wildlife; Special Status Animal Species; Water; Air Quality; Recreational Facilities, Activities, and Uses; Rights-of-Way; Commercial Uses (Filming, Outfitter and Guides, Vending); Forestry Products; Valid Existing Rights; Livestock Grazing; Water Related Developments; Wildfire Management; Wildlife Services; Visual Resource Management; and Wild and Scenic Rivers. The BLM has concluded that 223 miles of river segments would be recommended as suitable for Congressional designation under the Wild and Scenic Rivers Act. This Proposed Management Plan promotes opportunities for community based partnerships and collaborative processes for successful and effective management of public lands into the future.

The Draft Management Plan/Draft EIS was released for public review and comment in November of 1998 and was followed by a four month comment period. The draft management plan/ draft EIS analyzed five alternative management strategies for public lands in GSENM, Utah.

The Monument Planning Office received over 6,500 comment letters on the draft management plan/draft EIS from local, State and Federal governments, interest groups, and the public at large. Since the release of the draft management plan/draft EIS, public meetings, workshops, mailings, and briefings have been conducted to solicit comments, new information, and ideas for the Proposed Management Plan.

The Proposed Management Plan responds to public comments received on the draft management plan/draft EIS. The Proposed Management Plan also corrects errors in the draft management plan/draft EIS identified through the public comment process and internal BLM review. The Proposed Management Plan and associated analysis presents a refined and modified version of the Preferred Alternative and the accompanying impact analysis contained in the draft management plan/draft EIS. The Proposed Management Plan can be used in conjunction with the draft management plan/draft EIS to facilitate review of the initial five alternatives. The description of the affected environment and detailed descriptions of the alternatives contained in the draft management plan/draft EIS, as well as some of the appendices, are referenced but not reproduced in the Proposed Management Plan.

Copies of the Proposed Management Plan are available from GSENM Planning Office, 335 South Main Street, Suite 010, Cedar City, Utah, 84720, 435–865–5100. Public reading copies will be available for review at all government-document depository libraries, and at the following BLM locations: Office of Public Affairs, Main Interior Building, 18th and C Streets N.W., Washington, DC 20240; Information Access Center (4th Floor), Utah BLM State Office, 324 S. State Street, Salt Lake City, Utah, 84111; Cedar City District Office, 176 East DL Sargent Drive, Cedar City, Utah 84720; Kanab Field Office, 318 North First East, Kanab, Utah 84741; and GSENM Field Office, Escalante, Utah

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84726. Background information and reference materials used in developing the Proposed Management Plan are available for review, upon request, in Cedar City at the GSENM Planning Office.

Written protests on the Proposed Management Plan will be accepted for 30 days following the date the Environmental Protection Agency published the Notice of Filing of this document in the **Federal Register**. It is anticipated that the filing date will be on July 30, 1999, thus ending the public review/protest period on August 30, 1999, and the Governor's 60-day consistency review on September 28, 1999. Any part of this Proposed Management Plan may be protested by parties who participated in the planning process. Protests must pertain to issues that were identified in the draft management plan/draft EIS or through the public comment process.

Protests must be addressed to the BLM Director at the address listed under **ADDRESSES.** The protest must be specific and contain the following information (43 CFR 1610.5–2):

—The name, mailing address, telephone number and interest of the person filing the protest;

—A statement of the issue(s) being protested;

—A statement of the part(s) of the proposed amendment being protested, and a citing of pages, paragraphs, maps, etc., of the Proposed Management Plan, where practical.;

—A copy of all documents addressing the issue(s) that were submitted by the protestor during the planning process or an indication of the date the issue or issues were discussed for the record; and

—A concise statement explaining why the proposed decision is believed to be in error.

At the end of the 30-day protest period, the 30-day NEPA administrative period, and the 60-day Governor's review period a Record of Decision will be issued approving the Plan. Approval will be withheld on any portion of the plan under protest until final action has been completed on such protest.

Dated: July 23, 1999.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 99–19332 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–1310; WYW115103]

Proposed Reinstatement of Terminated Oil and Gas Lease

July 19, 1999.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW1115103 for lands in Crook County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirments for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW115103 effective March 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela. J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 99–19335 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–01; AA–81880]

Order Providing for Opening of Land Subject to Section 24 of the Federal Power Act; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order opens, subject to the provisions of Section 24 of the Federal Power Act, approximately 61 acres of public land reserved for the Federal Energy Regulatory Commission (FERC) Connelly Lake Hydroelectric Project No. 11715–000 (formerly known as the Upper Chilkoot Hydroelectric Project No. 11319–001). This action will permit conveyance of the land to the State of Alaska, if such land is otherwise available.

EFFECTIVE DATE: July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5049.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination by the FERC in DVAK–153–000, it is ordered as follows:

Subject to valid existing rights, existing withdrawals, or other segregations of record, and the requirements of applicable law, at 8:00 a.m., on July 29, 1999, the following described public land is hereby opened to allow for conveyance of the land to the State of Alaska, subject to the provisions of Section 24 of the Federal Power Act:

The FERC Power Project No. 11715 (Connelly Lake Hydroelectric Project (AA–81880)) located within secs. 22, 26, 27, 34, 35, and 36, T. 28 S., R. 57 E., and secs. 4, 5, 9, 10, 14, 15, 22, 23, 25, and 26, T. 29 S., R. 58 E., Copper River Meridian. The area affected by this order contains approximately 61 acres.

The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1994), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1994), becomes effective without further action by the State upon publication of this order in the **Federal Register**, if such land is otherwise available.

The land described herein will continue to be subject to the provisions of the FERC Power Project No. 11715, pursuant to the authority set forth in Section 24 of the Federal Power Act, as amended, 16 U.S.C. 818 (1994).

Dated: July 15, 1999.

Susan J. Lavin,

Acting Supervisor, Lands and Minerals Group, Division of Lands, Minerals, and Resources.

[FR Doc. 99–19410 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–00; AA–58199, F–85667]

Public Land Order No. 7403; Partial Revocation of Air Navigation Site No. 102 and Modification of Public Land Order No. 5184, as Amended; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Departmental order insofar as it affects 36.75 acres of public land withdrawn for Air Navigation Site No. 102 at Medfra, Alaska. The land is no longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. This action also modifies a public land order insofar as it affects one acre of the land to open it for disposal under the Federal Land Policy and Management Act of 1976. Any land described herein that is not conveyed will continue to be subject to the terms and conditions of Public Land Order No. 5184, as amended, and any other withdrawal or segregation of record.

EFFECTIVE DATE: July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5049.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1994), it is ordered as follows:

1. The Departmental Order dated January 24, 1936, which withdrew public lands for Air Navigation Site 102, is hereby revoked insofar as it affects the following described land at Medfra:

Kateel River Meridian, Alaska

T. 27 S., R. 22 E., U.S. Survey No. 10551, lots 1 and 2.

The area described contains 36.75 acres.

2. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1994), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1994), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available.

3. Public Land Order No. 5184, as amended, is hereby modified to allow for sale under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1994), insofar as it affects U.S. Survey 10551, lot 2. Except as provided, this order does not otherwise change any provisions of Public Land Order No. 5184.

4. Any land not conveyed will continue to be subject to the terms and conditions of Public Land Order No. 5184, as amended, and any other withdrawal or segregation of record.

Dated: July 15, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–19336 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–935–1430–01; COC–28608, COC–38740]

Public Land Order No. 7404; Opening of Land Under Section 24 of the Federal Power Act and Partial Revocation of Power Site Reserve No. 426; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens, subject to the provisions of Section 24 of the Federal Power Act, 42.99 acres of National Forest System land withdrawn by the Federal Energy Regulatory Commission Power Project No. 2829, and an Executive order which established Bureau of Land Management Power Site Reserve No. 426. This action will permit consummation of a pending Forest Service land exchange and retain the waterpower rights to the United States. This order also partially revokes the Executive order which established Power Site Reserve No. 426 as to 2,146.18 acres of National Forest System lands which are no longer needed for waterpower purposes. All of the lands have been and will continue to be open to mineral leasing and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

By virtue of the authority vested in the Secretary of the Interior by the act of June 20, 1920, Section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination of the Federal Energy Regulatory Commission in DVCO–551–000, it is ordered as follows:

1. At 9 a.m. on August 30, 1999, the following described National Forest System lands withdrawn by Federal Energy Regulatory Commission Power Project No. 2829, and the Executive Order dated March 21, 1914, which established Power Site Reserve No. 426, will be opened to disposal subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission determination DVCO–551–000, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Sixth Principal Meridian

Roosevelt National Forest

T. 5 N., R. 71 W.,
Sec. 2, lot 9.

The area described contains 42.99 acres in Mineral County.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

2. Executive Order dated March 21, 1914, which established Power Site Reserve No. 416, is hereby revoked insofar as it affects the following described National Forest System lands:

Sixth Principal Meridian

Roosevelt National Forest

T. 5 N., R. 71 W.,
Sec. 10, NE¼SE¼;
Sec. 11, lots 3 and 4, N½SE¼, and SW¼;
Sec. 12, N½NE¼, SW¼NE¼, S½NW¼, and NW¼SW¼;
Sec. 15, NW¼NE¼, NE¼NW¼, and S½NW¼;
Sec. 19, lots 2 and 3, E½NE¼, SW¼NE¼, SE¼NW¼, and NE¼SW¼;
Sec. 20, NW¼NE¼ and NW¼;
Sec. 21, NW¼NE¼ and N½NW¼.
T. 5 N., R. 72 W.,
Sec. 22, SE¼SW¼ and S½SE¼;
Sec. 23, lots 5 to 8, inclusive, and S½SW¼;
Sec. 24, lot 2, SE¼NE¼, and N½S½;
Sec. 27, NW¼NE¼ and N½NW¼;
Sec. 28, N½NE and NE¼NW¼.

The areas described aggregate 2,164.18 acres in Larimer County.

3. At 9 a.m. on August 30, 1999, the lands described in paragraph 2 shall be opened to such forms of disposition as may by law be made of National Forest System lands subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: July 15, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–19408 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–JB–P

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–942–1430–01; UTU 75302]

Public Land Order No. 7402; Transfer of Jurisdiction, Arches National Park Expansion; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order transfers jurisdiction of 3,140 acres of public land from the Bureau of Land Management to the National Park Service for the expansion of Arches National Park. This transfer of jurisdiction is directed by the Arches National Park Expansion Act of 1998 (Pub. L. 105–329).

EFFECTIVE DATE: July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Mary von Koch, BLM Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532, 435–259–2128.

By virtue of the authority vested in the Secretary of the Interior by Public Law 105–329, it is ordered as follows:

1. Subject to valid existing rights, jurisdiction of the following described public land, depicted on the map entitled "Boundary Map, Arches National Park, Lost Spring Canyon Addition", numbered 138/60,000–B, and dated April 1997, is hereby transferred to the National Park Service for the expansion of Arches National Park:

Salt Lake Meridian

Those lands, within the indicated lots and aliquot parts, lying below the 4600-foot contour line, except as noted:

T. 23 S., R. 21 E.,
Sec. 13, E½SW¼ and W½SE¼;
Sec. 23, SE¼SE¼NE¼;
Sec. 24, W½NE¼, SE¼NE¼, E½NE¼NW¼, S½NW¼, and S½.
T. 23 S., R. 22 E.,
Sec. 18, lots 1, 2, and 3, lots 5 to 8, inclusive, NE¼SW¼, N½SE¼SW¼, and W½NW¼SE¼;
Sec. 19, lots 1 to 8, inclusive, SW¼NE¼NW¼, NW¼SE¼NW¼, S½SE¼NW¼, NE¼SW¼, SE¼SW¼, SW¼NW¼SE¼, SW¼SE¼, and E½SE¼SE¼;
Sec. 20, N½NE¼, NE¼SW¼NE¼, NW¼SE¼NE¼, and W½, deviating on the east from the 4600-foot contour line;
Sec. 30, lots 1 to 8, inclusive, E½W½, and E½.

Those lands, within the indicated aliquot parts, lying below the 4800-foot contour line:

T. 23 S., R. 22 E.,
Sec. 20, SE¼;
Sec. 21, N½N½NW¼, S½N½SW¼, SW¼SW¼, and W½SE¼SW¼;
Sec. 28, NW¼NE¼, N½NW¼, N½S½NW¼, and N½NW¼SW¼;
Sec. 29.

The area described contains approximately 3,140 acres in Grand County.

2. The following described State land is adjacent to Arches National Park:

Salt Lake Meridian

T. 23 S., R. 22 E.,
Sec. 16.

The area described contains 640 acres in Grand County.

In the event the land described above returns to Federal ownership, jurisdiction of the land would automatically be transferred to the National Park Service, upon acquisition, for expansion of Arches National Park.

3. Future use of the land described in Paragraph 1 and the land described in Paragraph 2, if acquired by the United States, shall be in accordance with and subject to the provisions of Public Law 92–155, as amended by Public Law 105–329.

Dated: July 15, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–19337 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–01; WYW 83356–04]

Public Land Order No. 7405; Partial Revocation of Secretarial Orders dated February 2, 1924, and April 30, 1938, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes two Secretarial orders insofar as they affect 40 acres of public land withdrawn for stock driveway purposes. The land is no longer needed for the purpose for which it was withdrawn, and the revocation is needed to permit disposal of the land through exchange. This action will open the land to surface entry unless closed by overlapping withdrawals or temporary segregations of record. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders of February 2, 1924, and April 30, 1938, which withdrew public land for Stock Driveway No. 128 (Wyoming 13), are hereby revoked insofar as they affect the following described land:

Sixth Principal Meridian

T. 43 N., R. 86 W.,
Sec. 21, NE¼NE¼.
The area described contains 40 acres in Washakie County.

2. At 9 a.m. on August 30, 1999, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on August 30, 1999, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: July 15, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–19333 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–050–09–1430–01; AA–58926, AA–58927]

Lease of Public Land; Paxson Lake, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice of realty action involves a proposal for two non-competitive 5 year renewable commercial leases to Roger Butler, Standing Bear Guide Service. The leases are intended to resolve the unintentional occupancy trespass involving two existing commercial recreational facilities related to guiding and outfitting activities on public land.

DATES: Comments and an application must be received on or before September 13, 1999.

ADDRESSES: Comments and an application must be submitted to the Glennallen District Management Team, P.O. Box 147, Glennallen, Alaska 99588–0147.

FOR FURTHER INFORMATION CONTACT: David Mushovic (907) 822–3217.

SUPPLEMENTARY INFORMATION: The two one acre sites examined and found suitable for leasing under the provision of Sec. 302 of the Federal Land Policy and Management Act of 1976, and 43 CFR part 2920, are described as within:

Sec. 26, T. 22 S., R. 11 E., Fairbanks Meridian.
Sec. 23, T. 13 N., 3 W., Copper River Meridian.

An application will only be accepted from Roger Butler, who owns Standing Bear Guide Service, and all existing improvements. The comments and application must include a reference to this notice. Fair market rental as determined by appraisal will be collected for the use of these lands, and reasonable administrative and monitoring costs for processing the lease. A final determination will be made after completion of an environmental assessment.

Dated: July 21, 1999.

David Mushovic,

Realty Specialist.

[FR Doc. 99–19359 Filed 7–28; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–24–1A]

Use Authorizations; Special Recreation Permits, Other Than on Developed Recreation Sites; Proposed Adjustment in Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Public notice-specific fee adjustment for competitive and organized group activities or events, special recreation permits.

SUMMARY: The Bureau of Land Management (BLM) hereby gives notice it is adjusting certain special recreation permit fees for various recreation activities on BLM administered Public Lands and related waters. BLM is adjusting the minimum fee for competitive and organized group activities or events.

Effective October 1, 1999, fee adjustments will be made automatically every 3 years using 1984 as the base year. These fees will be calculated and adjusted based on the change in the Implicit Price Deflator Index (IPDI). The fees will be rounded up to the nearest $1.00. This notice establishes the special recreation permit minimum fee for both competitive and organized group activities or events at $4.00 per person per day. Notice of the fee increase in the future will be announced in conjunction with the BLM and Forest Service minimum annual commercial fee and per site reservation fee. The next adjustment is scheduled for March 1, 2002. The intended effect is to ensure fees cover administrative costs of permit issuance, a fair return to the U.S. government for use of the public lands, and approach free market value in certain cases.

The IPDI is published every February as a part of the "Economic Report of the President" to Congress. The IPDI is also cited monthly in the "Survey of Current Business," a periodical available in most regional, university, and local government depository libraries.

EFFECTIVE DATE: October 1, 1999.

ADDRESSES: Inquires or suggestions should be directed to—Director (100), Room 5660, Main Interior Building, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lee V. Larson, National Recreation Group, (202) 452–5168.

SUPPLEMENTARY INFORMATION: In 1984 (49 FR 5300 and 49 FR 34332), the Bureau of Land Management announced its final regulations and policy concerning special recreation permits for individuals or organizations conducting commercial, competitive, and other uses. BLM established the minimum fee for competitive events at $2.00 per user day or 3% of gross receipts, whichever is greater, and group activities or events, other uses, at $1.50 per user day. These flat fees have not changed since the 1984 **Federal Register**. The above **Federal Register** notices and 43 CFR 8372.4(a)(1) states "Fees for Special Recreation Permits shall be established and maintained by the Director, Bureau of Land Management, and may be adjusted from time to time to reflect changes in costs. The fee schedule shall be incorporated in the Manual of the Bureau of Land Management, published periodically in the **Federal Register** and otherwise made generally available to the public." Since 1984, inflation has devalued these fixed fee amounts. Therefore, it is necessary to adjust the minimum competitive and organized group activities and event fees and provide a mechanism for the fees to be self-adjusting based on inflation.

Tom Fry,

Director, Bureau of Land Management.

[FR Doc. 99–19457 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 78501]

Proposed Withdrawal and Opportunity for Public Meeting; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior, Central Utah Project Completion Act Office, proposes to withdraw 2,795 acres of National Forest System lands, for a period of 20 years to protect the Diamond Fork System, Bonneville Unit of the Central Utah Project. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands.

DATES: Comments should be received on or before October 27, 1999.

ADDRESSES: Comments should be sent to the Program Director, CUP Completion Act Office, 302 East 1860 South, Provo, Utah 84606–7317.

FOR FURTHER INFORMATION CONTACT: Reed Murray, CUP Completion Act Office, 801–379–1237.

SUPPLEMENTARY INFORMATION: On July 13, 1999, a petition was approved allowing the Department of the Interior, Central Utah Project Completion Act Office, to file an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Salt Lake Meridian

Uinta National Forest

T. 8 S., R. 5 E.,
Sec. 1;
Sec. 2, lots 1, 2, 7, and 8;
Sec. 12, E½SE¼;
Sec. 14, S½SE¼;
Sec. 20, E½NE¼SE¼ and SE¼SE¼;
Sec. 21, S½NE¼, E½SW¼NW¼, SE¼NW¼, SW¼, N½SE¼, and SW¼SE¼;
Sec. 22, NE¼, NE¼NW¼, S½NW¼, N½SW¼, and N½SE¼;
Sec. 28, NW¼NW¼;
Sec. 29, NE¼, SE¼NW¼, and S½;
Sec. 33, SW¼NW¼.

The areas described aggregate approximately 2,795 acres in Utah County.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to

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the Program Director, CUP Completion Act Office.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Program Director, CUP Completion Act Office, within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: July 22, 1999.

Roger Zortman,

Deputy State Director, Division of Operations.

[FR Doc. 99–19403 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boundary Revision, Proposed Land Exchange, and Opportunity for Public Comment, Mission San Jose y San Miguel de Aguayo Unit, San Antonio Missions National Historical Park

DATES: The effective date of this Order shall be the date of the **Federal Register** publication in which this Order appears.

SUMMARY: Title II, section 201 of the Act of November 10, 1978, Public Law 95–629, 92 Stat. 3636, codified as amended at 16 U.S.C. 410ee (1994), authorizes the Secretary of the Interior, after advising the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives, in writing, to make minor revisions to the boundaries of San Antonio Missions National Historical Park (hereinafter SAAN) when necessary by publication of a revised drawing or other boundary description in the **Federal Register**. That statute also authorizes the Secretary of the Interior to acquire by donation, purchase with donated or appropriated funds, or exchange, lands and interests therein constituting the area generally described as Mission San Jose y San Miguel de Aguayo and such lands and interests therein which the Secretary determines are necessary or desirable to provide for public access to, and interpretation and protection of, Mission San Jose y San Miguel de Aguayo.

The boundary revision would add to the park boundary a 0.02-acre parcel of land known as SAAN Tract 102–18, owned by L & H Packing Co. of San Antonio, Texas. The National Park Service then proposes to exchange a 0.02-acre parcel of land known as SAAN Tract 102–19, which is located outside the park boundaries for said SAAN Tract 102–18. The boundary revision and exchange are required to provide safe access to the Mission San Jose y San Miguel de Aguayo Unit of SAAN by enlarging the view area for vehicular and pedestrian traffic at the intersection on New Napier Avenue and San Jose Drive.

Appraisals have been completed and approved on all the tracts involved in the exchange. Both parties have determined that the lands and interests therein to be exchanged are of equal value.

Tract 102–18 and Tract 102–19 are depicted on SAAN land acquisition status map segment 102, drawing number 472/80,026–D, prepared by Land Resources Program Center, Intermountain Region. This map is on file and available for inspection in the office of the National Park Service, Land Resources Program Center, Intermountain Region and the Office of the Superintendent, San Antonio Missions National Historical Park.

Notice is hereby given that the boundary of the San Antonio Missions National Historical Park has been revised pursuant to the above cited statute, to include the lands depicted as Tract 102–18 on said map having drawing number 472/80,026–D.

COMMENTS AND FURTHER INFORMATION: The comment period on the proposed exchange ends 45 days from the date of this publication. Information may be obtained from or comments pertaining to this exchange should be addressed to the Superintendent, San Antonio Missions National Historical Park, 2202 Roosevelt Avenue, San Antonio, Texas 78210–4919.

Dated: June 7, 1999.

John E. Cook,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. 99–19449 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Glacier Bay National Park, Alaska; Dungeness Crab Commercial Fishery Interim Compensation Program for Processors

AGENCY: National Park Service, Interior.

ACTION: Glacier Bay National Park application procedures for the Dungeness crab commercial fishery interim compensation program for processors.

SUMMARY: Section 123(c) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 ("the Act"), as amended by Section 501 of the 1999 Emergency Supplemental Appropriations Act, Pub. L. 106–31 (05/21/99), authorizes compensation for fish processors, fishing vessel crew members, communities, and others negatively affected by congressionally-directed restrictions on commercial fishing in the marine waters of Glacier Bay National Park. The National Park Service (NPS) and the State of Alaska recently announced a framework for completing the compensation program within the next 2 years. The closure of designated wilderness areas to commercial fishing (implemented by NPS on June 15, 1999) and the pending closure of Glacier Bay proper to commercial fishing for Dungeness crab (September 30, 1999) will adversely affect some Dungeness crab fishermen and processors this year, before the compensation program can be completed. NPS is a currently compensating qualifying Dungeness crab commercial fishermen under a specific compensation program authorized by Section (b) of the Act (See 64 FR 32888 [June 18, 1999.]) To address 1999 economic impacts to Dungeness crab processors, NPS, with concurrence of the State of Alaska, intends to provide interim compensation to those processors who meet qualifying criteria similar to those described for commercial fishermen under Section (b) of the Act. An interim compensation payment will be made to Dungeness crab processors who have purchased Dungeness crab harvested from either the Beardslee Island or Dundas Bay wilderness areas in the park for at least six years during the period 1987–1998. This interim payment is intended to mitigate 1999 income losses for qualifying Dungeness crab processors until the compensation program under Section (c) of the Act—and appropriate eligibility criteria, priorities and levels of compensation for processors—can be developed and implemented. This **Federal Register** notice serves to provide application instructions for licensed Dungeness crab buyer/processors who believe they qualify for interim compensation. Applications must be provided to the Superintendent, Glacier Bay National Park and Preserve, on or before October 1, 1999.

DATES: Applications for the Dungeness crab commercial fishery processor interim compensation program will be accepted on or before October 1, 1999.

ADDRESSES: Applications for the Dungeness crab commercial fishery processor interim compensation program should be submitted to the Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826. A delivery address is located at 1 Park Road, in Gustavus.

FOR FURTHER INFORMATION CONTACT: For information regarding the Dungeness crab commercial fishery compensation program, please contact Tomie Lee, Glacier Bay National Park and Preserve, P. O. Box 140, Gustavus, Alaska 99826. Phone: (907) 697–2230.

SUPPLEMENTARY INFORMATION: The Act, as amended, requires Dungeness crab fishermen to provide certain information sufficient to determine their eligibility for compensation. NPS will require similar corroborating documentation from Dungeness crab buyers/processors making application to NPS for 1999 interim compensation as described in this notice. Dungeness crab processors must provide the following information to the Superintendent: (1) Full name, mailing address, and a contact phone number. (2) A sworn and notarized personal affidavit from the owner of the processing business attesting to the applicant's history of buying Dungeness crab harvested from either the Beardslee Island or Dundas Bay wilderness areas of the park as a licensed buyer/processor for at least 6 of 12 years during the period of 1987 through 1998. (3) A copy of the business's current State of Alaska license for buying/processing Dungeness crab. (4) Any available corroborating information—including documentation of Dungeness crab landed/purchased from the Alaska Department of Fish and Game shellfish statistical units that include wilderness areas in the Beardslee Islands or Dundas Bay and/or sworn and notarized affidavits of witnesses—that can assist in a determination of eligibility for compensation. The Superintendent, with the concurrence of the State of Alaska, will make a written determination on eligibility for compensation based on the documentation provided by the applicant. The Superintendent, with the concurrence of the State of Alaska, will also make a written determination on the amount of 1999 interim compensation to be paid to an eligible applicant. NPS intends to complete payment of interim compensation to processors meeting the above eligibility criteria by December 1, 1999. Receipt of compensation for 1999 losses will not prejudice any opportunity the applicant may have to seek any additional compensation that may be provided for in the Act, as amended.

If an application for compensation is denied, the Superintendent will provide the applicant the reasons for the denial in writing. Denial of interim compensation as a Dungeness crab processor will not affect consideration for future compensation for processors under the Act, as amended.

Dated: July 20, 1999.

Paul R. Anderson,

Acting Regional Director, Alaska.

[FR Doc. 99–19450 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Draft Principles of Agreement Regarding the Disposition of Culturally Unidentifiable Human Remains—Extended Date for Comments

AGENCY: National Park Service

ACTION: Notice

Section 8 (c)(5) of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3006 (c)(5)) requires the Review Committee to recommend specific actions for developing a process for the disposition of culturally unidentifiable Native American human remains. The Review Committee has developed the following draft principles of agreement for comment and discussion. The document is intended for wide circulation to elicit comments from Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and national scientific and museum organizations.

Anyone interested in commenting on the review committee's draft principles of agreement should send written comments to:

The NAGPRA Review Committee
c/o Departmental Consulting Archeologist
National Park Service (2275)
1849 C St. NW. (NC340)
Washington DC, 20240

Comments received by **September 3, 1999** will be considered by the committee at its next scheduled meeting. For additional information, please contact Dr. C. Timothy McKeown at (202) 343-4101.

Note: We will not accept any comments in electronic form.

Dated: July 23, 1999.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

DRAFT PRINCIPLES OF AGREEMENT

At its June 25-27, 1998 meeting, the NAGPRA Review Committee examined the legislative history of NAGPRA and discussed both the law's intent and how to proceed with one of the Committee's most pressing tasks-- making recommendations on the disposition of culturally unidentifiable human remains. One result was a set of principles. Working from these, the Review Committee offers the following draft principles of agreement as a next step for discussion. The Committee wishes to underscore the preliminary nature of these principles and their placement as a beginning point for consideration of this topic.

A. Intent of NAGPRA.

1. The legislative intent of NAGPRA is stated by the statute's title, the "Native American Graves Protection and Repatriation Act".

2. Specifically, the statute mandates:

a. The disposition of all Native American human remains and cultural items excavated on Federal lands after November 16, 1990,

b. The repatriation of culturally affiliated human remains and associated funerary objects in Federal agency and museum collections,

c. The development of regulations for the disposition of unclaimed remains and objects (under 25 U.S.C. 3002) and culturally unidentified human remains in Federal agency and museum collections (under 25 U.S.C. 3006).

3. The legal standing of funerary objects associated with culturally unidentifiable human remains is not addressed by NAGPRA and is beyond the Review Committee's charge.

4. While the statute does not always specify disposition, it is implicit that:

a. The process be primarily in the hands of Native people (as the nearest next of kin),

b. Repatriation is the most reasonable and consistent choice.

5. Additionally, a fundamental tension exists within the statute

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between the legitimate and long denied need to return control over ancestral remains and funerary objects to Native people, and the legitimate public interest in the educational, historical and scientific information conveyed by those remains and objects. (25 U.S.C. 3002 (c); 25 U.S.C. 3005 (b))

B. Culturally Unidentifiable Human Remains.

1. Federal agencies and museums must make a decision as to whether all Native American human remains are related to lineal descendants, culturally affiliated with a present day Federally recognized Indian tribe, or are culturally unidentifiable. This determination must be made through a good faith evaluation of all relevant, available documentation and consultation with any appropriate Indian tribe.

2. A determination that human remains are culturally unidentifiable may change as additional information becomes available.

3. Human remains can be identified as "culturally unidentifiable" for different reasons. At present, four categories are recognized:

a. Those which are culturally affiliated, but with a non-Federally recognized Native American group.

b. Those which represent a defined past population, but for which no present day Indian tribe exists.

c. Those for which some evidence exists, but insufficient for a Federal agency or museum to make a determination of cultural affiliation.

d. Those for which no information exists.

C. Guidelines for the disposition of culturally unidentifiable human remains.

1. Four principles must serve as the foundation for any regulations on the disposition of culturally unidentifiable human remains. They must be:

a. *Respectful.* Culturally unidentifiable human remains are no less deserving of respect than those for which culturally affiliation can be established. While the Review Committee is aware that the term 'culturally unidentifiable' is inherently offensive to many Native people, it is the term used in the statute.

b. *Equitable.* Regulations must be perceived as fair and within the intent of the statute.

c. *Doable.* Regulations must propose a process that is possible for Federal agencies, museums, and claimants and worth the effort to implement.

d. *Enforceable.* There is no point in making regulations that can not or will not be enforced.

2. Since human remains may be determined to be culturally unidentifiable for different reasons, there will be more than one appropriate disposition/repatriation solution. Examples:

a. Human remains that are, technically, culturally unidentifiable because the appropriate claimant is not federally recognized [section B(3)(a.) above], may be repatriated once federal recognition has been granted, or if the claimant works with another culturally affiliated, federally recognized Indian tribe (example—the Titicut site / Mashpee case).

b. Human remains for which there is little or no information [section B(3)(c. and d.) above] should be speedily repatriated since they have little educational, historical or scientific value.

3. Documentation.

a. Since documentation is required (25 U.S.C. 3003 (b)(2)), it is appropriate that it be conducted in accordance with defined standards.

b. Documentation should be proportional to the importance of the information conveyed. For example, remains from a defined past population for which no present-day Indian tribe exists [section B(3)(b.) above] are of far greater educational, historical and scientific importance than those for which there is little or no information [section B(3)(c) and (d) above].

c. Appropriate documentation includes non-invasive techniques such as measurement, description and photography.

d. Invasive testing is not required for statutory documentation. Such testing may be performed if agreed upon by the parties in consultation.

e. Documentation prepared for compliance with the statute is a public record.

D. Models for the disposition of culturally unidentifiable human remains.

1. Joint recommendations by institutions, Federal agencies, or states and appropriate claimants. The Review Committee has recommended the repatriation of culturally unidentifiable human remains in those cases where:

a. All the relevant parties have agreed in writing,

b. Statutory requirements have been met,

c. The guidelines listed above have been followed.

These cases have included institutions (University of Nebraska, Lincoln), units of the National Park Service (Carlsbad Caverns NP and Guadalupe Mountains NM), and states (Minnesota and Iowa).

2. Regional consultations

Historical and cultural factors, and therefore issues concerning the definition and disposition of culturally unidentifiable human remains, vary significantly across the United States. For example, issues in the Southeast, where most Indian tribes were forcibly removed during the 19th century, are very different from those in the Southwest where many Indian tribes remain on their ancestral lands. Similarly, issues in the Northeast and California differ significantly from those in the Great Plains. Therefore, it is reasonable to look for regional solutions that best fit regional circumstances.

The Review Committee recommends a process in which the Federal agencies, institutions and Indian tribes within a region consult together and propose the most appropriate disposition solutions for that region.

As with joint recommendations, any proposed regional disposition must meet both statutory requirements and the guidelines listed above.

[FR Doc. 99–19452 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Kansas in the Possession of the Department of Anthropology, University of Tennessee, Knoxville, TN

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Department of Anthropology, University of Tennessee, Knoxville, TN.

A detailed assessment of the human remains was made by Department of Anthropology professional staff in consultation with representatives of the Pawnee Indian Tribe of Oklahoma.

At an unknown date, human remains representing two individuals were recovered from the Kansas Monument site (14RP1), Republic County, KS by person(s) unknown. At an unknown date, these human remains were donated to the Department of Anthropology by person(s) unknown. No known individuals were identified. No associated funerary objects are present.

Based on material culture and village organization, the Kansas Monument site has been identified as an historic Pawnee cemetery and village (c. 1820-1830s AD). Based on this information, these human remains are believed to be affiliated with the Pawnee Indian Tribe of Oklahoma.

Based on the above mentioned information, officials of the University of Tennessee have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the University of Tennessee have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Pawnee Indian Tribe of Oklahoma.

This notice has been sent to officials of the Pawnee Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Jan Simek, Department of Anthropology, University of Tennessee, Knoxville, TN 37996-0720; telephone: (423) 974-4408, before August 30, 1999. Repatriation of the human remains to the Pawnee Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 21, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–19451 Filed 7–28–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Loging of Consent Decree Under the Asbestos NESHAP

Under 28 CFR 50.7, notice is hereby given that on July 16, 1999, a proposed Consent Decree in *United States* v. *American Asbestos Control Company, Inc.*, Civil Action No. 4:99 CV 597, was lodged with the United States District Court for the Northern District of Ohio.

In this action, the United States sought penalties and injunctive relief for claims under the asbestos National Emissions Standard for hazardous Air pollutants ("NESHAP"), 40 CFR Part 61, Subpart M, promulgated under section 112 of the Clean Air Act ("Act"), 42 U.S.C. 7412, for inspection, notice, and work practice violations. The claim arose in connection with American Asbestos Control Company's asbestos renovation projects at WCI Inc.'s steelmaking facilities located in Warren, Ohio, and at North Star Steel, located in Youngstown, Ohio. Under the Consent Decree, American Asbestos Control Company will pay a civil penalty of $50,000 in two equal installments, will comply with the Asbestos NESHAP, and will undertake other injunctive actions, including appointing an Asbestos Program Manager, designating a liaison designee, training all supervisors, inspectors, and workers, and ensuring that a thorough inspection has occurred at a facility or part of a facility prior to commencement of any asbestos demolition and/or renovation activity.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *American Asbestos Control Company, Inc.*, D.J. Ref. No. 90–5–2–1–06168.

The Consent Decress may be examined at the Office of the United States Attorney, 208 Fed. Bldg., 2 S. Main St., Akron, Ohio, 44308, at the Region 5 Office of the United States environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3590, and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. A copy of the Consent Decree may be obtained in person or by mail from the consent Decree Library, 1120 G Street, NW 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the above-referenced case and enclose a check in the amount of $5.50 ($.25 per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–19412 Filed 7–28–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Extension of Public Comment Period Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that the Department of Justice, in response to a request from an interested party, has decided to extend the public comment period on the proposed consent decree in *United States* v. *Horsehead Industries, Inc.*, Civil Action No. CV. 98–654, which was lodged on June 10, 1999, with the United States District Court for the Middle District of Pennsylvania. Notice of initiation of a 30-day comment period was published in the **Federal Register** on June 23, 1999. *See* 64 F.R. 33910. The Department of Justice will receive comments relating to the consent decree until August 25, 1999. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Horsehead Industries, Inc.*, D.J. Ref. 90–11–2–271M.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–19411 Filed 7–28–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information Collection Under Review; Joint Employment Verification Pilot (JEVP).

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until September 27, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

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(1) *Type of Information Collection:* Reinstatement without change of previously approved collection.

(2) *Title of the Form/Collection:* Joint Employment Verification Pilot (JEVP).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–963. SAVE Program, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The information collection will be used by the Immigration and Naturalization Service and the Social Security Administration to verify employment authorization for all new employees regardless of citizenship for those companies participating in the Joint Employment Verification Pilot.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000 responses at 3.5 hours per response and 400,000 responses (queries) at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 36,700 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room, 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: July 23, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–19328 Filed 7–28–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1241]

RIN 1121–ZB75

Announcement of the Availability of the National Institute of Justice Solicitation for Forensic DNA Research and Development

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice "Solicitation for Forensic DNA Research & Development."

DATES: Proposals must be received by 4 p.m. (EST) on August 30, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS at 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center at 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The intent of this solicitation is to stimulate all areas of research or development that can enhance or increase the capacity, capability, applicability, and/or reliability of DNA for forensic uses. Proposals that build or improve upon existing technologies, methods, or approaches as well as proposals based on new or novel technologies, methods, or approaches are encouraged to meet the goal of maximizing the value of DNA evidence to the criminal justice system.

In order to most effectively and efficiently use DNA to its maximum value for the criminal justice system, the forensic DNA community, now comprised of more than 150 public and private crime laboratories, will need faster, less costly, and fundamentally reliable technical tools and innovations that can be appropriately validated, quality-controlled, and quality-assured for forensic use.

Research demonstrating the reliability of existing, impending or future methods is also encouraged. Emphasis is placed on developing methods or technologies that address the needs of databasing for CODIS application and/or methods that can be used for the analysis of crime scene samples, which are often limited in quality and quantity.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Solicitation for Forensic DNA Research & Development" (refer to document No. SL000369). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htmnij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–19459 Filed 7–28–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act and Workforce Investment Act; Migrant and Seasonal Farmworker Employment Training Advisory Committee: Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) as amended, notice is hereby given of the scheduled meeting of the Migrant and Seasonal Farmworker Employment and Training Advisory Committee.

Time and Date: The meeting will begin at 1 p.m. on August 26, 1999, and continue until approximately 4:30 p.m., and will reconvene at 9 a.m. on August 27, 1999, and adjourn at close of business that day. Time is reserved from 1:30 to 3 p.m. on August 26, 1999 for participation and presentations by members of the public.

Place: August 26, 1999-Holiday Inn on the Hill, 415 New Jersey Avenue NW, Federal Ballroom North, Washington, DC. August 27, 1999-U.S. Department of Labor, 200 Constitution Avenue NW, Frances Perkins Building, Conference Room 4, C5521, Washington, DC 20210.

Status: The meeting will be open to the public. Persons with disabilities, who need special accommodations should contact the telephone number provided below no less than ten days before the meeting.

Matters to be Considered: The agenda will focus on the following topics:

Brief report of meeting of January 7 and 8, 1999
Public Comment Session
Advisory Committee Discussion on Membership
Division of Seasonal Farmworker Program Report and Update
Workforce Investment Act Implementation
Election of Committee Chairperson

For Further Information Contact: Alicia Fernandez-Mott, Chief, Division of Migrant and Seasonal Farmworker Programs, Office of National Programs, Employment and Training Administration, Room N–4641, 200 Constitution Ave., NW, Washington, DC 20210. Telephone: (202) 219–5500.

Signed at Washington, DC, this 22nd day of July, 1999.

Anna W. Goddard,

Director, Office of National Programs, Employment and Training Administration.

[FR Doc. 99–19398 Filed 7–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Canyon Fuel Company, LLC

[Docket No. M–1999–049–C]

Canyon Fuel Company, LLC, PO Box 1029, Wellington, Utah 84542 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Dugout Canyon Mine (I.D. No. 42–01890) located in Carbon County, Utah. The petitioner proposes to use belt air to ventilate faces in areas of the mine where two entry mining system is not used. The petitioner proposes to install a low-level carbon monoxide monitoring system as an early warning fire detection system in all belt entries used as intake air courses. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

2. Coal Miners, Inc.

[Docket No. M–1999–050–C]

Coal Miners, Inc., 999 Barrett Cemetery Road, Equality, Illinois 62934 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Eagle Valley Mine (I.D. No. 11–02846) located in Gallatin County, Illinois. The petitioner requests a modification of the mandatory standard to permit the use of air coursed through belt haulage entries to ventilate active working places. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in the supply road with branches extended to the beltline at certain locations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

3. Meadow Branch Mining Corporation

[Docket No. M–1999–051–C]

Meadow Branch Mining Corporation, PO Box 2560, Wise, Virginia 24293 has filed a petition to modify the application of 30 CFR 75.1710–1 (canopies or cabs; self-propelled diesel-powered and electric face equipment; installation requirements) to its Low Splint No. 1 Mine (I.D. No. 44–06883) located in Wise County, Virginia. The petitioner proposes to operate electric face equipment without canopies in coal seam heights of 37 to 43 inches. The petitioner states that: (i) Mining conditions cause the canopies to come in contact with the roof, damaging the canopy and destroying roof support; (ii) canopies restrict the visibility of the equipment operators, creating a hazard in the operation of the equipment and for the people crawling and walking on the section; and (iii) the relief requested would not result in a diminution of safety to the miners.

4. West Ridge Resources, Inc.

[Docket No. M–1999–052–C]

West Ridge Resources, Inc., PO Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1101–8 (water sprinkler system; arrangement of sprinklers) to its West Ridge Mine (I.D. No. 42–02233) located in Carbon County, Utah. The petitioner requests a variance from the mandatory standard to permit a different arrangement of water sprinkler systems than established by the standard. The petitioner proposes to: (i) Use a single overhead pipe system with ½-inch orifice automatic sprinklers located on 10-foot centers rather than every 8 feet, to cover 50 feet of fire-resistant belt or 150 feet of non-fire resistant belt with actuation temperatures between 200 and 230 degrees Fahrenheit and with water pressure equal to or greater than 10 psi; and (ii) have the automatic sprinklers located not more than 10 feet apart so that the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard and will not result in a diminution of safety to the miners.

5. West Ridge Resources, Inc.

[Docket No. M–1999–053–C]

West Ridge Resources, Inc., PO Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its West Ridge Mine (I.D. No. 42–02233) located in Carbon County, Utah. The petitioner proposes to use a nominal voltage of longwall power circuits not to exceed 2,400 volts to supply power to the permissible longwall mining equipment. The petitioner has listed in this petition specific terms and conditions for using its proposed alternative method. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as would the mandatory standard and will not result in a diminution of safety to the miners.

6. Consolidation Coal Company

[Docket No. M–1999–054–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Rend Lake Mine (I.D. No. 11–00601) located in Jefferson County, Illinois. The petitioner requests a modification of the mandatory standard so that individual service brakes would not be required on all grader wheels of the diesel grader. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

7. Consolidation Coal Company

[Docket No. M–1999–055–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its Shoemaker Mine (I.D. No. 46–01436) located in Marshall County, West Virginia. Due to deteriorating roof and rib conditions, the petitioner proposes to establish check points to examine the affected area instead of traveling the area in its entirety. The petitioner states that: (i) A weekly examination would be made for methane and a smoke tube would be used to verify direction of air flow; (ii) the persons making examinations and tests would place his/her initials, the date and time in a record book provided on the surface and made available for inspection for interested parties; and (iii) checks points and all approaches to the check points would be maintained in safe condition. The petitioner asserts that the proposed alternative method would provide at least the same

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measure of protection as the mandatory standard.

8. Monterey Coal Company

[Docket No. M–1999–056–C]

Monterey Coal Company, 14300 Brushy Mound Road, Carlinville, Illinois 62626 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its No. 1 Mine (I.D. No. 11–00726) located in Macoupin County, Illinois. The petitioner requests a modification of the mandatory standard for its grader. The petitioner states that to add brakes on the grader would result in loss of machine control for the operators and the weight, size, and location of the front brakes would subject repair personnel to injury. As an alternative method, the petition proposes to lower the blade to stop and control the grader. The petitioner asserts that its alternative method will provide no less than the same measure of protection provided by the mandatory standard.

9. Canyon Fuel Company, LLC

[Docket No. M–1999–057–C]

Canyon Fuel Company, 397 South 800 West, Salina, Utah 84654 has filed a petition to modify the application of 30 CFR 75.360(b)(9) (preshift examination) to its SUFCO Mine (I.D. No. 42–00089) located in Sevier County, Utah. The petitioner proposes to install an Atmospheric Monitoring System (AMS) that would continuously monitor the electrical installations for carbon monoxide and methane instead of conducting a preshift examination. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

10. Knott County Mining Company

[Docket No. M–1999–058–C]

Knott County Mining Company, P.O. Box 2805, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.900 (low-and medium-voltage circuits serving current equipment; circuit breakers) to its Panther Lick Mine (I.D. No. 15–16808) located in Knott County, Kentucky. The petitioner requests a modification of the mandatory standard to permit use of contactors for undervoltage protection as an alternative to using circuit breakers. The petitioner has outlined in this petition specific procedures, including personnel training, that would be implemented when using the proposed alternative method. The petitioner asserts that safety of miners would not be compromised and that proposed alternative method would provide at least the same measure of protection as the mandatory standard.

11. Independence Coal Company, Inc.

[Docket No. M–1999–059–C]

Independence Coal Company, Inc., HC 78, Box 1800, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Cedar Grove Mine No. 1 (I.D. No. 46–08603) located in Boone County, West Virginia. The petitioner proposes to use 4,160 volts to supply power to the permissible longwall face equipment, using specific terms and conditions listed in this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

12. Peabody Coal Company

[Docket No. M–1999–060–C]

Peabody Coal Company, 1951 Barrett Court, PO Box 1990, Henderson, Kentucky 42430 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Marissa Mine (I.D. No. 11–02440) located in Washington County, Illinois. The petitioner proposes to: (i) Use its grader underground with rear wheel brakes only; (ii) limit the diesel grader speed to a maximum of 10 miles per hour; and (iii) train grader operators to drop the grader blade in the event the brakes fail instead of using front wheel brakes on the grader. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

13. Performance Coal Company

[Docket No. M–1999–061–C]

Performance Coal Company, PO Box 69, Naoma, West Virginia 25140 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Upper Big Branch Mine-South (I.D. No. 46–08436) located in Raleigh County, West Virginia. The petitioner proposes to use a nominal voltage of power circuits not to exceed 2,400 volts to supply power to high-voltage continuous miner located inby the last open crosscut or within 150 feet from pillar workings. The petitioner has listed in this petition specific terms and conditions for using its proposed alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 30, 1999. Copies of these petitions are available for inspection at that address.

Dated: July 22, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 99–19404 Filed 7–28–99; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 13, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, Census Bureau (N1–29–99–5, 3 items, 1 temporary item). Electronic copies of documents created using electronic mail and word processing associated with annual reports and update reports of prisoners under sentence of death. Recordkeeping copies of the annual and update reports, which list the prisoner's name, state, sex, race, date of birth, marital status, educational level, the capital offense for which the prisoner was convicted, date of conviction, date of sentence, and inmate status, are proposed for permanent retention.

2. Department of Defense, Office of the Inspector General (N1–509–99–5, 6 items, 6 temporary items). Congressional staff briefings and subject files relating to the President's Council on Integrity and Efficiency. Records consist of briefings of Congressional staff by agency staff and correspondence with the President's Council and its committees regarding meetings, including meeting notices and agenda items. Also included are electronic copies of documents created using electronic mail and word processing.

3. Department of Energy, Agency-wide (N1–434–98–15, 4 items, 4 temporary items). Department of Energy, Agency-wide (N1–434–98–15, 4 items, 4 temporary items). Mail delivery locator records and telecommunications master files and data bases that supplement or replace telecommunications operational files, which were previously approved for disposal. Also included are electronic copies of these records created using electronic mail and word processing.

4. Department of Justice, Office of Legal Counsel (N1–60–98–9, 4 items, 1 temporary item). Correspondence related to the appointment, service, and separation of volunteer hearing officers for conscientious objector cases under the Selective Service Acts of 1940 and 1948. Docket cards, abstracts, and indices are proposed for permanent retention.

5. Department of Justice, Agency-wide (N1–60–99–2, 3 items, 1 temporary item). Time and summary sheets submitted by Department lawyers from March to August 1969. Budget submissions, 1939 to 1949, and the correspondence of the Assistant Attorney General for the Land and Natural Resources Division for the period 1963–1973 are proposed for permanent retention.

6. Department of Justice, Immigration and Naturalization Service (N1–85–99–5, 3 items, 3 temporary items). Electronic copies of documents created using electronic mail and word processing that are included in Forensic Document Laboratory Case Files. This schedule also increases the retention period for the recordkeeping copies of these files, which were previously approved for disposal.

7. Department of the Treasury, Internal Revenue Service (N1–58–99–5, 3 items, 3 temporary items). IRS Tax Form 8863, Education Credits (Hope and Lifetime Learning Credits) filed with individual tax return forms.

8. General Services Administration, Public Building Service (N1–121–99–1, 1 item, 1 temporary item). Miscellaneous design and construction files consisting of correspondence, payments of claims, cost estimates, and preliminary planning records dating from 1974 to 1976.

9. Panama Canal Commission, Agency-wide (N1–185–98–2, 5 items, 5 temporary items). Expenditure accounting records used to determine rates for marine and longshore services, fire protection services, transportation, utilities, and health and education services. Also included are records documenting the payment of disability benefits.

10. Panama Canal Commission, Agency-wide (N1–185–99–1, 14 items, 14 temporary items). Electronic systems and related paper records used to control, track, and monitor electronic files created by the agency's mainframe computer system. Included are records pertaining to such matters as the labeling of tapes, tape storage locations, and the formatting of computer-generated reports.

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11. Panama Canal Commission, Office of the Inspector General (N1–185–99–3, 4 items, 4 temporary items). Investigations of fraud, abuse, and violations of laws or regulations, external and internal agency audits, and records relating to allegations and complaints.

Dated: July 22, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–19397 Filed 7–28–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office; National Industrial Security Program Policy Advisory Committee: Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.2) and implementing regulation 41 CFR 101.7, announcement is made for the following committee meeting:

Name of Committee: National Industrial Security Program Policy Advisory Committee (NISPPAC).

Date of meeting: Wednesday, August 25, 1999.

Time of Meeting: 10:00 am to noon.

Place of Meeting: National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Room 105, Washington, DC 20408.

Purpose: To discuss National Industrial Security Program policy matters.

This meeting will be open to the public. However, due to space limitations and access procedures, the names and telephone numbers of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than August 18, 1999. ISOO will provide additional instructions for gaining access to the location of the meeting.

FOR FURTHER INFORMATION CONTACT: Steven Garfinkel, Director, Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, NW, Room 100, Washington, DC 20408, telephone (202) 219–5250.

Dated: July 23, 1999.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 99–19394 Filed 7–28–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Central Liquidity Facility

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice with request for comments.

SUMMARY: NCUA's Central Liquidity Facility (CLF) has in place form documents that reflect the repayment, security, and credit reporting (RSCR) terms applicable to all CLF liquidity loans. The NCUA Board is updating and revising these terms and forms and, in addition, issuing two new forms. These modifications are intended to ensure that CLF will efficiently meet the liquidity needs of credit unions through Year 2000 and beyond. NCUA regulations require publishing any modifications to these terms and forms in the **Federal Register**. Also, the NCUA is requesting comments on the collection of information burden imposed by these modifications in compliance with the Paperwork Reduction Act of 1995.

DATES: Comments must be received on or before August 18, 1999.

FOR FURTHER INFORMATION CONTACT: Herbert S. Yolles, President, CLF, at the above address or telephone (703) 518–6360 or Frank S. Kressman, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: The CLF is a mixed-ownership government corporation within the NCUA. It is managed by the NCUA Board and is owned by its member credit unions. CLF's purpose is to improve the general stability of credit unions by meeting their liquidity needs. CLF recognizes that credit unions' liquidity needs may increase dramatically and temporarily as a result of Year 2000 circumstances. Accordingly, CLF has revised the RSCR terms governing all CLF liquidity loans and has taken measures to ensure that all credit unions have full access to CLF services. These actions will help ensure that CLF will be able to meet increased liquidity demand related to Year 2000.

The Request for Funds Form and the Liquidity Need Loan Application have been newly created to reflect revisions to the RSCR terms. The CLF Agent Member Application Form, Agent Member RSCR Agreement and Agent Group Representative RSCR Agreement have been revised to reflect revisions to the RSCR terms. These five documents are published for notice and comment. A brief summary of the purposes of these documents follows and the full text of each can be found in Appendix "A" below. The Request for Funds Form serves as the official request for a liquidity loan from the CLF. It is submitted by a corporate credit union that is an agent member of the CLF (Agent Member) or an agent group representative (Agent Group Representative), as those terms are defined in part 725. This form provides information necessary to process a liquidity loan including the identity of the natural person credit union borrower, the loan amount and the purpose for the loan. The Liquidity Need Loan Application contains the terms and conditions of the relationship between an Agent Member, its natural person credit union member, and its Agent Group Representative in the context of requesting liquidity loans. The CLF Agent Member Application Form is to be used by corporate credit unions that wish to apply for Agent Member status. The Agent Member RSCR Agreement contains the terms and conditions of the relationship between an Agent Member and the CLF in the context of transacting CLF liquidity loans. The Agent Group Representative RSCR Agreement contains the terms and conditions of the relationship between an Agent Group Representative and the CLF in the context of transacting CLF liquidity loans.

Regulatory Procedures

Paperwork Reduction Act

The NCUA Board has determined that the requirements of the above documents constitute a collection of information under the Paperwork Reduction Act (PRA). NCUA has submitted these documents to OMB with a request for emergency clearance and expedited review within 20 days. If approved, regularly applicable PRA public notice requirements will be inapplicable and OMB will issue OMB Control Numbers valid for not more than 180 days.

The NCUA Board estimates that it will take an average of ¼ hour to comply with the requirements of the Request for Funds Form. The NCUA Board also estimates that 40 credit unions will use this form 3 times each for a total estimated annual collection burden of approximately 30 hours.

The NCUA Board estimates that it will take an average of ¼ hour to comply with the requirements of the Liquidity Need Loan Application. The NCUA Board also estimates that 7,000 credit unions will use this form 1 time each for a total estimated annual collection burden of approximately 1,750 hours.

The NCUA Board estimates that it will take an average of 1 hour to comply with the requirements of the CLF Agent Member Application Form. The NCUA Board also estimates that 5 credit unions will use this form 1 time each for a total estimated annual collection burden of approximately 5 hours.

The NCUA Board estimates that it will take an average of 1 hour to comply with the requirements of the Agent Member RSCR Agreement. The NCUA Board also estimates that 5 credit unions will use this form 1 time each for a total estimated annual collection burden of approximately 5 hours.

The NCUA Board estimates that it will take an average of 1 hour to comply with the requirements of the Agent Group Representative RSCR Agreement. The NCUA Board also estimates that 1 credit union will use this form 1 time for a total estimated annual collection burden of approximately 1 hour. The estimated aggregate annual collection burden for all of the above forms is 1,791 hours.

The Paperwork Reduction Act of 1995 and OMB regulations require that the public be provided an opportunity to comment on information collection requirements, including an agency's estimate of the burden of the collection of information. The NCUA Board invites comment on: (1) Whether the collection of information is necessary; (2) the accuracy of NCUA's estimate of the burden of collecting the information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information. Comments should be sent to: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503; Attention: Alex T. Hunt, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB to: Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

By the National Credit Union Administration Board on July 22, 1999.

Becky Baker,

Secretary of the Board.

BILLING CODE 7535–01–P

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Appendix A

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NATIONAL CREDIT UNION CENTRAL LIQUIDITY FACILITY
AGENT REQUEST FOR FUNDS

(For Internal Use Only)
Application Number: _____
Date/Time Received: _____
Received By: _____

1. Complete the appropriate borrower information (see form instructions on page two):

1-A) Request submitted by Agent Group Member:
Approved By: _____ (authorized representative signature of Member of Agent group) (date)
_____ (name of CLF Agent)

Through Agent Group Representative (AGR):
Approved By: _____ (authorized representative signature of AGR) (date)
_____ (name of AGR)
1-C) Application date: _____ (date submitted to CLF)

Or:

1-B) Request submitted by Agent Member directly to the CLF
Approved By: _____ (authorized representative signature of Agent Member) (date)
_____ (name of CLF Agent)

2. Complete the following liquidity-need loan information table (attach additional tables as necessary):
Underlying Liquidity-Need Loan(s) To Natural Person Credit Union Members Serving As The Basis For The Request For Funds

A	B	C	D	E	F	G	H	I	J	K	L	M	N
	Name of Natural Person Credit Union Member	ID #: Charter, Insurance, or Other	Liquidity Loan Need Type (A, B or C)	Amount of Existing Loan Being Converted to an Agent Loan ($)	Amount of Any New Agent Loan ($)	Total Amount of Funds Requested (E+F)	Est. Collateral Amt. ($000)	Collateral: Securities-A Shares-B Loans-C Other-D Blanket-E	Have you perfected a security interest (Y/N)?	Date Funds Needed	Maturity Date of Loan	Term of Loan (days)	*Liquidity Need Loan Application* Date
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													
					Total Funds								

3. Complete the appropriate funds delivery information:
Money Transfer Instructions For Approved Advance:

	Routing & Transit # (ABA)	Depository Institution's Name	Account Number
A) Standard delivery instructions for Agent Group Representative			
B) Delivery instructions for CLF Agent			

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NATIONAL CREDIT UNION CENTRAL LIQUIDITY FACILITY
AGENT REQUEST FOR FUNDS

FORM INSTRUCTIONS:

AGENT MEMBER INSTRUCTIONS:

1. Provide the name of the CLF Agent (corporate credit union) that is requesting funding for a loan and have an authorized representative of the institution sign/date the form on the applicable "approved by" line. Use line 1-A if you are a member of an Agent group or 1-B otherwise. If you are submitting the request directly to CLF, complete the date information on line 1-C.
2. Complete the Agent loan information table (column descriptions below). You may batch the underlying loans (the liquidity-need loans to natural person credit union members that serve as the basis for the request) into one request-for-funds amount. You may submit an extended form by attachment when the number of underlying loans exceeds the 10 lines provided in this table. Please ensure that attached extended forms contain the same detailed information and presentation format as this table.

Column	Instructions For Completion of Liquidity Loan(s) Information Table
A	Number given to the respective underlying loan making up the total request for funds.
B	Provide the name of the natural person credit union member requesting the liquidity loan from the CLF Agent.
C	Provide the Federal charter number, the insurance number (or other identifier if non-federally insured) of the natural person credit union member requesting the liquidity loan from the CLF Agent.
D	Provide the type of liquidity need as set forth in 12 U.S.C. §302 (1) and 12 C.F.R. §725.2 (i) with the letter code of A, B or C. "A" relates to a short-term adjustment credit; "B" relates to a seasonal credit ; and "C" relates to protracted adjustment credit available in the event of unusual or emergency circumstances of a longer term nature.
E	If applicable, provide the amount of existing loan(s) previously funded by the corporate that is being converted to funding from an Agent loan or Agent Group loan.
F	If applicable, provide the amount of any new liquidity-need loan to be funded by an Agent or Agent Group loan.
G	Provide the total amount of funds requested (add the amounts of column E and F).
H	Provide the par/book amount of collateral supporting the Agent loan (leave blank if using a blanket lien).
I	Provide the specific type(s) of collateral pledged by the natural person credit union member to the Agent member to secure the liquidity-need loan. Use any of the letter codes that apply. A= investment securities; B= member shares at the corporate; C= natural person credit union loans to members; D= other assets; and, E= blanket lien on the assets.
J	Indicate, with a Yes or No, whether you have perfected a security interest in the collateral.
K	Provide the date that the funds are needed (the advance date).
L	Provide the maturity date of the requested Agent or Agent Group loan (the date the funds will be repaid to CLF).
M	Indicate the exact number of days the Agent or Agent Group loan is outstanding (the term of the advance).
N	Provide the date of the signed *Liquidity Need Loan Application* (completed by the natural person credit union member) on file with the CLF Agent. This form must be signed and in full force and effect at the time a Facility advance is made. If a natural person credit union member rescinds this agreement the Facility may not advance funds to the Agent to be relent to that institution.

3. Provide the CLF Agent's funds delivery information on line 3B.

Upon completion, deliver the Agent Request For Funds form to your Agent Group Representative (if applicable) or directly to the Central Liquidity Facility for further processing. If you are not submitting an Agent Request For Funds through an AGR, forward the signed original of each Agent Request For Funds form directly to the Facility and maintain a copy for your records.

AGENT GROUP REPRESENTATIVE INSTRUCTIONS:

1. Complete the information for lines 1-A and 1-C.
2. Check the liquidity-need loan information table on line 2 and the funds delivery information on line 3-B for completeness.
3. Complete the appropriate funds delivery information on line 3-A.

You may batch individual Agent Request For Funds forms from different CLF Agents into one request for funds amount but you must include the underlying Agent Request For Funds form(s) that serve as the basis for the AGR request with *your* application. Forward all Agent Request For Funds form(s) to the Central Liquidity Facility for final processing. Send a signed copy of each Agent Request For Funds form to the Agent member, maintain a copy for your records and forward the original to the Facility.

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LIQUIDITY NEED LOAN APPLICATION
(Multi-Source Funding)

This Liquidity Need Loan Application is made this ___ day of _____, ___ , by _____ (Credit Union, we, us, or our) a (circle one): federal state-chartered credit union primarily serving natural persons. In support of this application, Credit Union represents and agrees as follows:

1. Credit Union is a member of _____, a corporate credit union (Corporate).

2. Credit Union has one or more written credit or loan agreements, promissory notes, and security agreements (collectively, Credit Agreements) with Corporate. From time to time, Credit Union may request an advance under a Credit Agreement to meet liquidity needs as that term is defined in Section 302(1) of the Federal Credit Union Act, 12 U.S.C. §1795a(1).

3. We understand that Corporate, either as a member of the National Credit Union Administration Central Liquidity Facility (CLF or Facility) or as a member of an Agent Group (also called, Group) that is a member of the CLF, may request a Facility advance from the CLF to fund an Agent loan to meet our liquidity needs. We understand that the terms Facility advance and Agent loan used in this application have the meanings provided in §725.2(c) of NCUA's regulations.

4. We understand and agree that Corporate, in its sole discretion, may access one or more sources of funding to provide a requested credit extension to meet our liquidity needs, including but not limited to, a Facility advance.

5. We agree to provide Corporate with any information needed to support a request for a Facility advance to fund an Agent loan to us.

6. If a Facility advance is made to fund a credit extension to us, we understand and agree that the requested credit extension will be an Agent loan. We also understand and agree that any such Agent loan will be subject to the repayment, security and credit reporting terms prescribed by the CLF for Agent loans and that all parties to the Facility advance have consented and agreed to be bound by these terms. A copy of these terms, to which we also consent and agree to be bound, is attached as Exhibit A to this application.

_____ _____ _____
Signature of Authorized Representative of Credit Union | Title | Date

EXHIBIT A

Repayment, Security and Credit Reporting Terms Applicable to Facility Advances for an Agent Loan to a Natural Person Credit Union

Definitions. Terms used in this exhibit have the same meaning as used in the Liquidity Need Loan Application unless otherwise defined in this exhibit.

Acknowledgment and Consent. Credit Union agrees to be bound by the terms in this exhibit if an extension of credit under a Credit Agreement with Corporate is made in the form of an Agent loan for liquidity needs.

We also agree that the terms of this exhibit are supplemental to the provisions of the Credit Agreements. In the event of any inconsistency between the terms of the Credit Agreements and the terms in this exhibit, we agree the terms of this exhibit will control. Credit Union acknowledges that the terms of this exhibit may be changed by the National Credit Union Administration from time to time as provided in §§ 725.20 and 725.21 of NCUA's regulations. Any changes will apply to Facility Advances made after the effective date of the publication of the changes in the Federal Register as provided in §725.21 of NCUA's regulations.

Confirmation. In connection with each Agent loan, Corporate must send a confirmation of credit to the Credit Union. The confirmation must specify that the advance is made for liquidity needs and subject to the repayment, security and credit reporting terms prescribed by the CLF for Agent loans. The confirmation must also disclose all material terms of the Agent loan.

Repayment Obligation. In connection with each Agent loan and as specified in the confirmation, Credit Union agrees that we are obligated:

(1) to pay to Corporate on each principal repayment date an amount equal to the principal amount then due; and

(2) to pay to Corporate on each interest payment date an amount equal to unpaid interest from the date of the Agent loan through such interest payment date; and

(3) to pay to Corporate on the maturity date an amount equal to the unpaid balance of the amount of the Agent loan, if any, plus unpaid interest from the date of the advance through the maturity date; and

(4) if the principal amount due on any principal repayment date is not paid on or before such date, to pay Corporate, as may be provided in the Credit Agreement:

(A) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, if any; plus
(B) late principal payment charges, if any; plus
(C) interest after such date through the maturity date on the unpaid balance of such principal amount at the interest rate specified in the confirmation, if any; and

(5) if the unpaid interest due on any interest payment date or the maturity date is not paid on or before such date, to pay Corporate, as may be provided in the Credit Agreement:

(A) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, if any; plus
(B) a late interest payment charge, if any; and

(6) if the amount due on the maturity date is not paid on or before the maturity date, to pay Corporate, as may be provided in the Credit Agreement:

(A) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, if any, and a late principal payment charge, if any; plus
(B) interest after the maturity date on the unpaid balance of the overdue principal amount at the rate specified in the confirmation.

Security Obligation and Collateral. As security for all repayment obligations to Corporate for Agent loans, the Credit Union has granted a first priority security interest in favor of Corporate in certain property, whenever acquired (Collateral), as described in and in accordance with the Credit Agreements. Credit Union acknowledges and agrees that the value of Collateral for all Agent loans will be at all times at least equal to 110% of the outstanding amount of such Agent loans. Corporate will have the right at any time to perfect any security interest granted in the Collateral. As security for all repayment obligations to CLF for Agent loans made to Credit Union, Corporate has granted a security interest in the Collateral in favor of CLF.

Enforcement. If Credit Union defaults under any Agent loan and at any time while a default continues, Corporate will have all the rights and remedies provided under the Credit Agreements and the Uniform Commercial Code, including acceleration.

Credit Reporting Obligation. Credit Union agrees to file such reports and provide such information as may be required by Corporate or CLF from time to time.

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INSTRUCTIONS FOR COMPLETING THE APPLICATION AND AGREEMENTS FOR AGENT MEMBERSHIP IN THE NCUA CENTRAL LIQUIDITY FACILITY

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PART A

Item No.	Instructions/Remarks
4	Enter your corporate credit union's charter number if federally chartered or National Credit Union Share Insurance Fund (NCUSIF) certificate number if federally insured. Leave blank if your credit union is neither federally chartered nor insured by the NCUSIF.
5,6	Enter the name and telephone number (including area code) of the individual to be contacted regarding Central Liquidity Facility (the Facility) matters. The individual named should be a person authorized to transact business with the Facility.
7	Enter the date this application is prepared.
8	Check the appropriate block to indicate insurance status of your corporate credit union. If member shares are insured by the NCUSIF, check block (a). If member shares are insured by a share insurance program other than NCUSIF, check block (b). If member shares in your credit union are uninsured, check block (c).
9	If block 8(b) is checked, enter the name of the share insurance program which insures your members' shares.
10	Enter the name and address and ABA routing number of the financial institution used by the corporate credit union as its depository and record corporate credit union's account number at that depository.
11	Using the list of member natural person credit unions which is furnished by the applicant, the Facility shall determine the amount of paid-in and unimpaired capital and surplus using an arithmetic average of the data from the two year ends prior to the date of application, for all such members who are not Regular members of the Facility. The amount of paid-in and unimpaired capital and surplus for each natural person credit union will be that amount reported to the National Credit Union Administration (NCUA) in the natural person credit union's filing of NCUA Form 5300-Call Report. Where the above report has not been filed, the Facility will use other data obtained from the affected natural person credit union or its state supervisory authority. The capital stock subscription for this corporate credit union or credit union group is equal to one half of one percentum of the average paid-in and unimpaired capital and surplus determined above. The amount of the required Facility stock subscription is determined by multiplying the average paid-in and unimpaired capital and surplus from above by .005 and rounding the resultant answer to the nearest whole dollar. For example, using $505,004,500 average Paid-in and Unimpaired Capital and surplus, the Facility capital stock subscription would be computed as follows: $505,004,500 X .005 $2,525,022.50 ($2,525,022.50 rounded to the nearest whole dollar equals $2,525,023.) The amount of funds that must accompany this application when it is submitted to the Facility is computed by dividing the dollar amount of the stock subscription reported in item 11 by 2. In our foregoing example where the stock subscription was $$2,525,023, the credit union would be required to enclose with its application $1,262,511 ($2,525,023 ÷ 2). Checks should be made payable to the "Central Liquidity Facility".

PART B

Indicate by checking the appropriate box whether your corporate credit union is seeking Agent membership individually, or as part of a corporate credit union group. If you are joining as a part of a group, identify the group and the Agent Group Representative by name in item 2.

PART C

The Facility is permitted to lend to credit unions primarily serving natural persons to meet liquidity needs as specified in the CLF ACT. To ensure that Facility loans are used only for those purposes permitted by the CLF Act, the Facility will need to have access to certain records of the Agent member and will require certain recordkeepung. This section contains a series of agreements that will provide the Facility with the necessary access to information.

PART D

Any supporting documents submitted with this application are to be identified by schedule number beginning with 1 and numbered consecutively. All schedules should be listed in Part D.

Prior to submitting this application, the resolutions contained in Part D must be adopted by the board of directors.

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APPLICATION AND AGREEMENTS FOR AGENT MEMBERSHIP IN THE NATIONAL CREDIT UNION CENTRAL LIQUIDITY FACILITY

PART A - GENERAL INFORMATION

Items 1 thru 10 are designed for computer data entry. Please do not use more than the allotted number of characters. (The number in parenthesis after each title block of each item is the total number of allowed characters including spaces for that item.)

1. _____ Credit Union Name (35)
4. _____ Charter/Insurance Certificate Number (5)
2. _____ Street Address (35)
5. _____ Contact Person (30)
3. _____ City (20) State (2) Zip Code (5)
6. _____ Telephone Number (10)

8. Insurance Status: a. ☐ Federally Insured b. ☐ State Program c. ☐ Uninsured
9. _____ Name of Share Insurance Program — NCUA Use Only
10. Local Depository Information

a. _____ Depository Name (35)
d. _____ ABA Routing Number (9)
b. _____ Street Address (35)
e. _____ Account Number (15)
c. _____ City (20) State (2) Zip Code (5)

11. Computation of six month arithmetic average of paid-in and unimpaired capital and surplus of member credit unions shall be accomplished by the Facility using the method described in the instructions. The Facility will inform the applicant of its required stock subscription at the time the applicant is approved as an Agent member.

PART B - TYPE OF MEMBERSHIP DESIRED

☐ **Direct Agent Membership**

(1) The above named corporate credit union hereby applies for direct Agent membership in the NCUA Central Liquidity Facility (the "Facility").

(2) We hereby subscribe to capital stock in an amount equal to one-half of one percent of the paid-in and unimpaired capital and surplus of all natural person credit unions which are members of this corporate credit union and are not Regular members of the Facility. The amount of this capital stock subscription is based upon an arithmetic average of the paid-in and unimpaired capital and surplus over the six months preceding the date of this application. Upon approval of this application, we will remit to the Facility funds equal to one-half of this initial stock subscription.

☐ **Agent Group Membership**

(1) The above named corporate credit union hereby applies for Agent membership in the Facility as part of the below listed corporate credit union group:

_____
Corporate Credit Union Group Name

(2) We hereby subscribe to capital stock in an amount equal to one-half of one percent of the paid-in and unimpaired capital and surplus of all natural person credit unions which are members of this corporate credit union and are not Regular members of the Facility. The amount of this capital stock subscription is based upon an arithmetic average of the paid-in and unimpaired capital and surplus over the six months preceding the date of this application. Upon approval of this application, we will remit to the Facility funds equal to one-half of this initial stock subscription.

_____
Agent Group Representative Name

(3) We have informed the above named Agent Group Representative of our intent to seek Agent membership as part of it and have furnished the group with a listing of all the natural person credit unions that are members of this corporate credit union.

(4) We hereby subscribe to capital stock of the Facility in an amount equal to one-half of one percent of the paid-in and unimpaired capital and surplus of all natural person credit unions which are members of a corporate credit union belonging to the corporate credit union group and are not Regular members of the Facility or have access to the Facility through another Agent member. The amount of this capital stock subscription is based upon an arithmetic average of the paid-in and unimpaired capital and surplus over the six months preceding the date of this application. Upon approval of this application funds equal to one-half of this initial stock subscription shall be forwarded to the Facility by the agent group representative.

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PART C - AGENT MEMBERSHIP AGREEMENTS AND SUPPORTING DOCUMENTS

1. The above named corporate credit union hereby applies for Agent membership in the Central Liquidity Facility (the "Facility") as provided in Title III of the Federal Credit Union Act, and in consideration of the granting of Agent membership hereby agrees:

   a. To comply with the requirements of Title III of the Federal Credit Union Act and any regulations and reporting requirements which are prescribed for Agent members by the NCUA Board pursuant thereto.
   b. To permit such examinations as in the judgment of the NCUA Board may from time to time be deemed necessary.
   c. To permit the NCUA Board or its designee to have access to any information or report with respect to any examination made by or for any public regulatory authority, including any commission, board, or authority having supervisory responsibility over this corporate credit union, and furnish such additional information with respect thereto as the NCUA Board may require.
   d. To permit the NCUA Board or its designee to have access to all records and information concerning the affairs of this corporate credit union related to Facility activity and to furnish such information pertinent thereto that the Board may require.
   e. To cause to be made, on an annual basis, a third party independent audit of corporate credit union's books and records and provide the Facility with copies of such audit, if requested.
   f. To maintain records related to Facility activity in conformance with requirements prescribed by the NCUA Board from time to time.
   g. To hold in confidence all information furnished by the Facility and to disclose such information only when and to the extent authorized by the Facility.
   h. To hold in confidence all information furnished to the corporate credit union or credit union group in its role as an Agent of the Facility by any state regulatory authority or share insurance agent and to disclose such information only when and to the extent authorized by the Facility.

2. The following required supporting documents are attached.
   a. Copies of our financial and statistical reports for the most recent month-end, including but not limited to:
      1. Balance Sheet (The number and dollar amount of shares and loans to member credit unions must be disclosed separately from the number and dollar amounts of shares and loans to natural person credit unions.)
      2. Statement of Income and Expense
      3. Delinquent loan report showing the number and dollar amount of delinquent loans by delinquent categories (2 months to less than 6 months, 6 months to less than 12 months, 12 months and over, or such other categories as may be required by the state regulatory authority.)
   b. A listing of all those natural person credit unions that are members of this corporate credit union (or in the case of a credit union group, members of a corporate credit union belonging to the group), the charter/insurance number, the name and address of the natural person credit union.
   c. A copy of our credit union's charter and bylaws (not required for Federal credit unions).

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PART D - CERTIFICATIONS AND RESOLUTIONS

We, the undersigned, certify to the correctness of the information submitted. In support of this application we submit the Schedules described below:

Schedule No.	Title

(Signature) Chief Elected Official

(Print or Type Officers Name)

(Signature) Treasurer

(Print or Type Treasure's Name)

CERTIFICATIONS AND RESOLUTIONS

(Corporate Name of Credit Union)

(City) (State)

We certify that we are the duly elected and qualified president (chief elected official) and secretary of said credit union and that at a properly called regular or special meeting of its board of directors, at which a quorum was present, the following resolutions were passed and recorded in its minutes:

"Be it resolved that this credit union apply for Agent membership in the National Credit Union Central Liquidity Facility as provided in Title III of the Federal Credit Union Act."

"Be it further resolved that the president (chief elected official) and treasurer be authorized and directed to execute the APPLICATION AND AGREEMENTS FOR AGENT MEMBERSHIP IN THE NCUA CENTRAL LIQUIDITY FACILITY and any other papers and documents required in connection therewith and to pay all expenses and do all such things necessary or proper to secure and continue such membership."

"Be it further resolved that the president/chairman or vice president/vice chairman and treasurer or assistant treasurer (or their successors as authorized by resolution) are authorized to execute notes and applications for advances from the National Credit Union Central Liquidity Facility in such amounts as may be authorized from time to time by the board of directors of this credit union."

(Signature) Chief Elected Official

(Print or Type Officers Name)

(Signature) Secretary, Board of Directors

(Print or Type Secretary's Name)

(Note: **A WILLFULLY FALSE CERTIFICATION IS A CRIMINAL OFFENSE. U.S. CODE, TITLE 18, SEC. 1001.**)

NCUA CENTRAL LIQUIDITY FACILITY REPAYMENT, SECURITY AND CREDIT REPORTING AGREEMENT
(Agent Member)

(Corporate Credit Union Name) Charter /Insurance Certificate Number

City State

PARTIES

(1) **Effective date.** This agreement is between the National Credit Union Central Liquidity Facility (hereinafter "the Facility") and a corporate credit union which is an Agent member of the Facility (hereinafter "the Agent"). This agreement becomes effective when signed by the Agent and the Facility. This agreement shall remain in effect as long as the Agent is a member of the Facility or there is any unpaid repayment obligation created hereunder between the Agent and the Facility.

(2) **Facility rules and regulations, etc.** All advances of Facility funds to the Agent are subject to this agreement and to all applicable terms and conditions in the National Credit Union Central Liquidity Facility Act, rules and regulations prescribed by the NCUA Board on behalf of the Facility, and operating circulars issued by the Facility, including all amendments and supplements thereto. The Agent shall perform each of the obligations imposed on it by any such term or condition.

REPAYMENT

(3) **Confirmation.** In connection with each advance of Facility funds to the Agent, the Facility shall issue a confirmation of credit (hereinafter the "confirmation") which shall be sent to the Agent. The confirmation may be issued before or after the date of the advance and shall be in such form and sent in such manner as may be determined by the Facility. The confirmation shall specify:

(i) the date of the advance;
(ii) the amount of the advance;
(iii) the interest rate;
(iv) the principal repayment date or dates, if any;
(v) the principal amount due on each such principal repayment date (excluding interest);
(vi) the interest payment date or dates, if any;
(vii) the maturity date; and
(viii) the pending and outstanding loans from the Agent to its member natural person credit unions which are the basis for the Facility advance (hereinafter "Agent loans"), including the principal amount or principal balance of each such loan, the name of the natural person credit union which has applied for or received the loan, and the type or types of liquidity needs that are being met by the loan (i.e., short-term adjustment credit, seasonal credit, or protracted adjustment credit.) [1]

The confirmation may also specify the method of payment that must be used by the Agent to pay the Facility on each principal payment date, each interest payment date, and the maturity date. A confirmation may be combined with other information, including other confirmations, in a listing or other form of communication. More than one advance of Facility funds may be included, with or without other funds, in a single transfer of funds from the Facility to the Agent. The principal repayment dates, the principal amount due on each such principal repayment date, and the interest payment dates may be specified in the confirmation by reference to other dates or amounts. [2]

(4) **Repayment obligation.** When the Agent receives an advance of Facility funds, a repayment obligation is created (herein a "repayment obligation created hereunder") whereby the Agent, for value received, agrees:

(i) to pay to the Facility on each principal repayment date an amount equal to the principal amount due on such principal repayment date; and
(ii) to pay the Facility on each interest payment date an amount equal to unpaid interest from the date of the advance through such interest payment date; and
(iii) to pay the Facility on the maturity date an amount equal to the unpaid balance of the amount of the advance, if any, plus unpaid interest from the date of the advance through such maturity date; and
(iv) if the principal amount due on any principal repayment date is not paid on or before such a date, to pay the Facility:
(a) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, plus
(b) a late principal payment charge equal to 2% of such principal amount, plus
(c) interest after such date through the maturity date on the unpaid balance of such principal

[1] An advance of Facility funds may be based on a single pending or outstanding loan. A pending or outstanding loan becomes an "Agent loan", as that term is used herein, when the Agent receives a Facility advance which is based in full or in part on such loan. It ceases to be an Agent loan, as that term is used herein, when the repayment obligation created hereunder by the advance is paid in full to the Facility.

[2] For example, a confirmation may specify dates and amounts as follows: "principal repayment dates" are eight business days after each date on which the Agent receives one or more principal payments on Agent loans listed in the confirmation; the "principal amount due on each such principal payment date" is the aggregate amount of such principal payments received by the Agent on the Agent loans; and "interest payment dates" are twelve business days after the end of each calendar month.

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amount at the interest rate specified on the confirmation, [3] and

(v) if the unpaid interest due on any interest payment date or the maturity date is not paid on or before such date, to pay the corporate credit union:
  (a) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, plus
  (b) a late interest payment charge equal to 20% of such unpaid interest; and

vi. if the amount due on the maturity date is not paid on or before the maturity date, to pay the Facility
  (a) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, plus
  (b) a late principal payment charge equal to 2% of the unpaid balance of the amount of the advance, as due on the maturity date, plus
  (c) interest after the maturity date on the unpaid balance of the overdue principal amount at the overdue interest rate specified in this agreement.

As used herein, unless the context otherwise requires, the date and amount of the advance, the interest rate, the principal repayment dates, the principal amount due on each such principal repayment date, the interest payment dates, and the maturity date are the dates, amount and rate specified as such in the confirmation issued by the Facility in connection with the advance; the overdue principal amount used for determining interest after the maturity date is equal to the unpaid balance of the amount of the advance, as due on the maturity date, plus unpaid interest from the date of the advance through the maturity date plus the unpaid balance of any late principal and interest payment charges payable through the day after the maturity date; and the overdue interest rate is the higher of the following two rates, namely, the interest rate specified in the confirmation or the highest interest rate set by the Facility for Facility advances to any party on the maturity date. Interest from the date of the advance through the maturity date shall be determined hereunder as follows, using the interest rate specified in the confirmation: interest shall accrue each day on the unpaid balance of the amount of the advance, and the unpaid interest from the date of the advance through any date shall be equal to all accrued interest through such date less the portion of such accrued interest that has been paid prior to such date.[4]

The Agent may make a prepayment in any amount at any time. When the unpaid balance of the amount of the advance is reduced as a result of a prepayment, the principal amount due on the next succeeding principal repayment shall be reduced by an amount equal to the reduction in the unpaid balance of the amount of the advance. If any amount due on any interest payment date or the maturity date includes an amount that has previously been subjected to a late principal payment charge or a late interest payment charge under subparagraphs (4)(iv) or(4)(v) hereof, the amount used for computing any late interest payment charge or late principal payment charge on the amount due on such date shall exclude the amount that has previously been subjected to such a charge under subparagraphs (4)(iv) or(4)(v) hereof. The Facility may waive any part or all of the interest, late principal payment charge, late interest payment charge or overdue interest. Each payment on a repayment obligation created hereunder, including a prepayment thereon, shall be applied as follows to the amounts payable under the repayment obligation: if the payment is made on or before the maturity date, it shall be applied first to the unpaid balance of any late principal and interest payment charges payable through the time of the payment, then to any unpaid interest that was not paid when due, then to the unpaid balance of any principal amount that was not paid when due, then to any unpaid interest that is due at the time of the payment, then to the unpaid balance of any principal amount that is due at the time of the payment, then to the remaining unpaid balance of the amount of the advance, and then to the remaining unpaid interest; if the payment is made after the maturity date, it shall be applied first to unpaid interest on the overdue principal amount and then to the unpaid balance of the overdue principal amount. If the amounts owed to the Facility on all repayment obligations created hereunder become immediately due and payable under the terms of paragraph (11) hereof, the maturity date of each such repayment obligation, us used herein, is the earlier of the following two dates, namely

- the date such amounts became immediately due and payable, or
- the date specified as the maturity date in the confirmation issued by the Facility in connection with the advance that created the repayment obligation.

RELENDING

(5) **Basis for Facility advance.** In connection with each advance of Facility funds to the Agent:

(i) The Agent's application for the Facility advance must be filed on a Facility-approved application form, or pursuant to any other method approved by the Facility, and must be based on the following:
  (a) one or more applications to the Agent by its member natural person credit unions for pending loans to meet liquidity needs; or
  (b) one or more outstanding loans previously made by the Agent to its member natural person credit unions to meet liquidity needs; or
  (c) such other demonstrable liquidity needs as the NCUA Board may specify; or
  (d) a combination of such applications, loans and other liquidity needs. [5]

Unless approved by the Facility, the Agent shall not file an application for a Facility advance based on any application, outstanding loan or liquidity need of any credit union which became a member natural person credit union of the Agent after February 23, 1980, until such credit union has been a member natural person credit union of the Agent for six months. The restriction in the preceding sentence does not apply to any credit union which was chartered within six months before becoming a natural person credit union of the Agent or which had access to the Facility either as a Regular member or through another Agent within six months before becoming a member natural person credit union of the Agent.

(ii) Each such application to the Agent by a member natural person credit union for a pending loan (hereinafter a "pending loan") must have been submitted to the Agent on a Facility-approved application form, or pursuant to any other method approved by the Facility, and must have been approved by the Agent, provided that the Agent's approval may be conditioned on the Facility's approval of the Agent's application to the Facility.

(iii) Each such outstanding loan previously made by the Agent to a member natural person credit union (hereinafter an "outstanding loan") must have been applied for on a Facility-approved application form, or pursuant to any other method approved by the Facility, and must have been approved by the Agent.

(iv) In determining whether to approve each such pending or outstanding loan, the Agent must have given due consideration to the creditworthiness of the member natural person credit union in accordance with the requirements prescribed in the regulations and operating circulars of the Facility.

(v) The aggregate principal amount of such pending loans plus the aggregate principal balance of such outstanding loans must be equal or exceed the amount of the Facility advance requested in the Agent's application to the Facility.

(vi) Except as otherwise approved by the Facility, the Agent's application for the Facility advance must contain the following information with respect to each pending or outstanding loan:
  (a) the name of the member natural person credit union which has applied for or received the pending or outstanding loan;
  (b) the type or types of liquidity needs that are being met by the pending or outstanding loan (i.e., short-term adjustment credit, seasonal credit, or protracted adjustment credit);
  (c) the principal amount if the pending loan, or the principal balance of the outstanding loan;
  (d) if a pending loan, the date or dates the pending loan is expected to be advanced to the member natural person credit union, and the amount that is expected to be advanced on each such date;[6]
  (e) the interest rate on the pending loan or outstanding loan;
  (f) the type of repayment requirement that applies to the pending or outstanding loan (i.e., fixed term or scheduled repayment), and the date and amount of each principal payment that is required to be paid to the Agent on the pending or outstanding loan;
  (g) a description of any security interest which the Agent has granted in the pending or outstanding loan to any party other than the Facility, including the name of the party, the amount secured, the other types of assets, if any, that are also subject to the security interest, and a statement as to whether the security interest is perfected or unperfected; and
  (h) such additional information as may be required by the Facility or in the Facility-approved application form.

The information required with respect to each such pending or outstanding loan may be combined with other information, including information relating to other loans, in copies of the Agent's records, in a listing, or in such other form as may be approved by the Facility.

(vii) Each such pending or outstanding loan must be subject to an agreement between the Agent and the member natural person credit union whereby the member natural person credit union agrees to the repayment, security and credit reporting terms prescribed by the Facility for Agent loans.[7]

(viii) If the amount of any advance on any such pending loan is not advanced to the member natural person credit union on or before the date the amount was expected to be advanced, as stated in the Agent's application for the Facility advance or in any subsequent report to the Facility, the Agent shall submit a report to the

[3] Under paragraph (11) of this agreement, the full amount owed to the Facility at maturity will become immediately due and payable, unless otherwise determined by the Facility, if the Agent fails to pay the amount due on any principal; repayment date or any interest payment date. In such case, the late payment charges and overdue interest rate specified in subparagraphs (4)(v) and (4)(vi) hereof would apply to the full amount owed to the Facility.

[4] The number of days used for computing accrued interest shall exclude the date of the advance and shall include the date through which the accrued interest is being computed.

[5] Each such pending or outstanding loan must be a "qualified liquidity loan" subject to the repayment, security and credit reporting terms prescribed by the Facility for Agent loans. See subparagraph (5)(vii) of this agreement.

[6] Ordinarily, a pending loan should be fully advanced to the member natural person credit union within ten (10) business days after the Agent receives the Facility advance.

[7] A copy of such terms is attached to this agreement. A pending or outstanding loan is subject to such terms if the credit union has signed or agreed to such terms and if the loan was made solely to meet liquidity needs and was specified by the Agent as a "qualified liquidity loan" at the time the loan was made. "Agent loans' are defined as subparagraph (3)(viii) of this agreement.

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Facility not later than five business days after such date. The report shall state the reason the amount was not advanced on such date and shall specify the date the amount was advanced or is expected to be advanced. Within eight business days after the Agent receives any principal payment on an Agent loan, the Agent shall report such principal payment to the Facility. The report shall identify the Agent loan and shall show the date and amount of the principal payment.

(ix) The Agent shall promptly notify the Facility of any default on any Agent loan.

(x) All Agent loans shall have the status of general intangibles under the Uniform Commercial Code, and no promissory note or similar writing shall be signed or apply with respect to any such loan.[8]

(xi) Except as otherwise permitted by the Facility, the principal amounts owed to the Agent on all Agent loans shall, at all times, equal or exceed the principal amounts owed by the Agent to the Facility on all repayment obligations created hereunder. If the principal amounts owed to the Agent on Agent loans to any one natural person credit union at any time exceed 10% of the subscribed capital stock and surplus of the Facility, the security interests granted to the Agent as security for such Agent loans shall be perfected by the Agent to the extent necessary to maintain a perfected security interest in collateral having a value equal to or greater than such excess.

(6) Records. The Agent shall maintain a separate account or record for each member natural person credit union to which Agent loans have been made. The separate account or record shall identify each Agent loan and show all amounts advanced and repaid on such loan. If records maintained by the Facility for Agent loans are used by the Agent as its record of such loans, no additional account or record needs to be maintained by the Agent with respect to such loans.

(7) Agent loan agreement. The Agent shall comply with all terms and conditions imposed on the Agent in the repayment, security and credit reporting terms prescribed by the Facility for Agent loans.

SECURITY

(8) Collateral. As security for all repayment obligations created hereunder, whenever created, the Agent grants a security interest in favor of the Facility in the following property, whenever acquired (hereinafter "the collateral"):

(i) All repayment obligations from member natural person credit unions to the Agent, whenever created, arising out of loans that constitute Agent loans to such credit unions; and

(ii) the security interests granted to the Agent by such credit unions as security for such repayment obligations.

(9) Perfection. The Facility shall have the right at any time to perfect the security interest granted hereunder with respect to any part or all of the collateral. Perfection shall be by filing in accordance with the filing requirements for general intangibles under the Uniform Commercial Code and other applicable laws. The Agent shall sign a financing statement and such other papers as may be appropriate for filing and shall pay all necessary filing fees. To the extent requested by the Facility, the Agent shall perfect the security interests granted to the Agent by natural person credit unions as security for Agent loans.

(10) **Transfer Restriction**. Except as approved or permitted by the Facility, the Agent shall not sell or otherwise transfer the collateral or grant a security interest in the collateral to any party other than the Facility. The Facility may subordinate or terminate its security interest in any part or all of the collateral subject to such terms and conditions as the Facility may impose.

(11) **Acceleration and default**. Except as otherwise determined by the Facility, the amounts owed to the Facility on all repayment obligations created hereunder shall become immediately due and payable to the Facility, without any demand or notice, upon:

(i) the failure of the Agent to perform any of its obligations under this agreement, including failure to pay the amount due on any principal repayment date, interest payment date or maturity date under any repayment obligation created hereunder; or

(ii) the failure of the Agent to pay any other obligation to the Facility when due; or

(iii) the failure of the Agent to comply with the terms of any undertaking, statement or representation made by the Agent to the Facility in any application, certification or other communication; or

(iv) the insolvency of, or appointment of a trustee or receiver for, the Agent; or

(v) an assignment for the benefit of creditors of the Agent, or

(vi) the closing or suspension or revocation of the charter of the Agent, or the taking possession of its business, by any governmental authority; or

(vii) the withdrawal of the Agent from membership in the Facility.

The occurrence of any of the events described in subparagraphs (11)(i) through (11)(vii) hereof shall constitute a default under this agreement. The term "insolvency" in subparagraph (11)(iv) hereof has the same meaning as in 12 CFR 700.1(j)(1). The facility may waive a default under this agreement and may reinstate the maturity date or any principal payment date, or interest payment date on any repayment obligation created hereunder which becomes immediately due and payable as a result of any such default.

[8] Under subparagraph (5)(vii) of this agreement, the repayment, security and credit reporting terms prescribed by the Facility for Agent loans must apply to all Agent loans, and they do not constitute a "promissory note or similar writing", as those terms are used herein.

(12) **Enforcement**. Upon the occurrence of a default under this agreement, or at any time thereafter, the Facility shall have all the rights and remedies provided under the Uniform Commercial Code and under this agreement, including but not limited to any one or more of the following: the Facility may, in its own name, or in the name of the Agent.

(i) notify member natural person credit unions to make payments to the Facility on any one or more of the repayment obligations of such credit unions which constitute the collateral under this agreement;

(ii) collect the amounts due on any one or more of such repayments obligations of such credit unions by any available judicial procedure;

(iii) enforce the security interests granted by any such credit unions as security for such repayment obligations;

(iv) exercise all the rights and remedies of the Agent with respect to such security interests, including enforcement of such security interests by any available judicial procedure; and

(v) sell or otherwise dispose of any one or more of such repayment obligations of such credit unions, together with the security interests securing such repayment obligations, at public or private proceedings.

The proceeds of such repayment obligations of such credit unions, including the proceeds of the sale or other disposition thereof, shall be applied by the Facility first to the reasonable expenses of collecting such proceeds and of selling such repayment obligations of such credit unions, including the reasonable attorneys' fees and legal expenses incurred, and then to the payment of amounts due on all repayment obligations created hereunder. Any surplus then remaining shall be paid or returned to the Agent. If there is a deficiency, the Agent shall be liable for the deficiency. If the Facility is indebted to the Agent, the Facility shall have the right to set-off such indebtedness against all amounts due the Facility on all repayment obligations created hereunder, without regard to when such indebtedness may be due and payable.

CREDIT REPORTING

(13) **Required reports**. The Agent shall file such reports and provide such information as may be required by the Facility from time to time.

CONSTRUCTION, MODIFICATION AND MISCELLANEOUS

(14) **Governing law**. This agreement shall be construed under and governed by the law of the Commonwealth of Virginia, including the Uniform Commercial Code as adopted and amended from time to time by the Commonwealth of Virginia. All references to the Uniform Commercial Code in this agreement are to such Code as adopted and amended from time to time by the Commonwealth of Virginia. Unless the context of this agreement requires otherwise, the terms used in such Code shall have the same meaning when used in this agreement. Unless the Uniform Commercial Code or the context of this agreement requires otherwise, the terms defined in the rules and regulations prescribed by the NCUA Board on behalf of the Facility shall have the same meanings when used in this agreement.

(15) **Modification procedures**. This agreement may be modified from time to time by the NCUA Board. Any such modifications shall be published in the Federal Register and shall be mailed to the Agent at the address shown for the Agent in the records of the Facility. The modification shall become a part of this agreement as of the effective date specified in the Federal Register, provided that the effective date specified in the Federal register shall not be less than 30 days after the required publication and mailing unless

(i) the modification is limited to the reduction or elimination of any one or more of the obligations imposed on the Agent by any term or condition of this agreement, or

(ii) the NCUA Board makes a finding that an earlier effective date is necessary, and the finding is included in the require publication and mailing.

Written data, views or arguments concerning the modification may be submitted by the Agent to the Facility at any time up to five days before the effective date specified in the Federal Register. The modification shall apply to all advances of Facility funds after such effective date. All such modifications are a part of this agreement, including modifications that occurred prior to the signing of this agreement. Operating circulars issued by the Facility may include interpretive rules and statements of policy with respect to the terms and conditions of this agreement but may not modify any such terms or condition. Without modification of this agreement, the Facility may waive any part or all of any obligation imposed on the Agent by any term or condition of this agreement, and the Facility may reinstate any part of all of any such obligation previously waived by the Facility.

(16) **Filing Location**. Unless otherwise directed by the Facility, all applications, reports, notifications and other communications from the Agent to the Facility shall be filed with a Facility lending officer.

(17) **Disclaimer of agency relationship**. Except as specifically authorized by the Facility, no agency relationship exists between the Facility and the Agent, and the term "Agent" is not intended to imply any such relationship.

(18) **Agent compensation**. The Facility shall compensate the Agent for the services it performs for the Facility as a result of the obligations imposed on the Agent by this agreement. Compensation shall be determined and provided by the Facility in accordance with any rules and regulations prescribed by the NCUA Board on behalf of the Facility and in accordance with operating circulars issued by the Facility. Subject to such rules and regulations and operating circulars, the following factors shall be taken into account by the Facility in determining and providing compensation to the Agent:

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(i) the additional expenses that are incurred by the Agent as a result of the obligations imposed on the Agent by this;,

(ii) the income that is earned by the Agent on Agent loans; and

(iii) such other factors, if any, as the NCUA Board may deem relevant.

(19) **Delegation restriction**. Except as authorized or permitted in this agreement by the Facility, the rights and obligations of the Agent under this agreement may not be transferred or delegated by the Agent. The Agent is permitted to use the data processing services of other parties to process the accounts and records that they are required to maintain under this agreement.

(20) **Severability**. This agreement shall be severable. The invalidity of any term of condition of this agreement shall not invalidate the remainder of this agreement, and each term and condition of this agreement shall be fully enforceable regardless of the validity of any other term or condition of this agreement.

NATIONAL CREDIT UNION ADMINISTRATION
CENTRAL LIQUIDITY FACILITY

Accepted by:

_____
(Signature)

Date Accepted:

_____

_____
Print or Type Corporate Credit Union Name

by*

_____
(Signature) **Chief Elected Official**

_____
(Print or Type Official's Name and Title)

*

_____
(Signature) **Treasurer**

_____
(Print or Type Treasurer's Name)

_____
(Date of Execution of this Agreement)

***Must be signed by both the Chief Elected Official and the Treasurer**

OMB Control #: **Expiration Date:**

NCUA CENTRAL LIQUIDITY FACILITY REPAYMENT, SECURITY AND CREDIT REPORTING AGREEMENT
(Agent Group Representative)

_____ _____
(Corporate Credit Union Name) Charter /Insurance Certificate Number

_____ _____
City State

PARTIES

(1) **Effective date; representative capacity** . This agreement is between the National Credit Union Central Liquidity Facility (hereinafter "the Facility") and a corporate credit union (hereinafter "the Agent Group Representative"). The Agent Group Representative is one of the corporate credit unions in a group of corporate credit unions (hereinafter "the Agent Group") which is a member of the Facility. The Agent Group Representative has been designated as the Agent Group Representative by the other corporate credit unions in the Agent Group. In their applications for membership in the Facility as part of the Agent Group, the corporate credit unions in the Agent Group have authorized the Agent Group Representative to transact business with the Facility on behalf of the Agent Group or any corporate credit union in the Agent Group. This agreement becomes effective when signed by the Agent Group Representative and the Facility. This agreement shall remain in effect as long as the Agent Group is a member of the Facility or there is any unpaid repayment obligation created hereunder between the Agent Group Representative and the Facility.

(2) **Facility rules and regulations, etc**. All advances of Facility funds to the Agent Group Representative are subject to this agreement and to all applicable terms and conditions in the National Credit Union Central Liquidity Facility Act, rules and regulations prescribed by the NCUA Board on behalf of the Facility, and operating circulars issued by the Facility, including all amendments and supplements thereto. The Agent Group Representative shall perform each of the obligations imposed on it by any such term or condition.

REPAYMENT

(3) **Confirmation**. In connection with each advance of Facility funds to the Agent Group Representative, the Facility shall issue a confirmation of credit (hereinafter the "confirmation") which shall be sent to the Agent Group Representative. The confirmation may be issued before or after the date of the advance and shall be in such form and sent in such manner as may be determined by the Facility. The confirmation shall specify:

(i) the date of the advance;

(ii) the amount of the advance;

(iii) the interest rate;

(iv) the principal repayment date or dates, if any;

(v) the principal amount due on each such principal repayment date (excluding interest);

(vi) the interest payment date or dates, if any;

(vii) the maturity date;

(viii) the pending and outstanding loans from the corporate credit unions in the Agent Group to their member natural person credit unions which are the basis for the Facility advance (hereinafter "Agent loans"), including the principal amount or principal balance of each such loan the name of the natural person credit union which has applied for or received the loan, and the type or types of liquidity needs that are being met by the loan (i.e.. short-term adjustment , seasonal credit, or protracted adjustment credit); and

(ix) the loans from the Agent Group Representative to corporate credit unions in the Agent Group which are the basis for the Facility advance (hereinafter "Agent Group Representative Loans"), including the principal amount or principal balance of each such loan and the name of the corporate credit union to which the loan is made. [1]

The confirmation may also specify the method of payment that must be used by the Agent Group Representative to pay the Facility on each principal repayment date, each interest payment date, and the maturity date. A confirmation may be combined with other information, including other confirmations, in a listing or other form of communication. More than one advance of Facility funds may be included, with or without other funds, in a single transfer of funds from the Facility to the Agent Group Representative. The principal repayment dates, the principal amount due on each such principal repayment date, and the interest payment dates may be specified in the confirmation by reference to other dates or amounts. [2]

[1] An advance of Facility funds may be based on a single pending or outstanding loan to a member natural person credit union and a single loan from the Agent Group Representative to a corporate credit union. A pending or outstanding loan to a member natural person credit union becomes an "Agent loan", and a loan from the Agent Group Representative to a corporate credit union becomes an "Agent Group Representative Loan", as those terms are used herein, when the Agent Group Representative receives a Facility advance which is based in full or in part on such loans. The loans cease to be an Agent loan and an Agent Group Representative loan, as those terms are used herein, when the repayment obligation created hereunder by the advance is paid in full to the Facility.

[2] For example, a confirmation may specify dates and amounts as follows: "principal repayment dates" are ten business days after each date on which any corporate credit union in the Agent Group receives one or more principal payments on Agent loans listed in the confirmation; the "principal amount due on each such principal payment date" is the aggregate amount of such principal payments received by the corporate credit union on the Agent loans; and "interest payment dates" are twelve business days after the end of each calendar month. As a further example, a confirmation may specify additional dates and amounts as follows: additional "principal repayment dates" are two business days after each date on which the Agent Group Representative receives one or more principal payments on Agent Group Representative loans listed in the confirmation; and the "principal amount due on each such [additional] principal repayment date" is the aggregate amount

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(4) **Repayment obligation.** When the Agent Group Representative receives an advance of Facility funds, a repayment obligation is created (herein a "repayment obligation created hereunder") whereby the Agent Group Representative, for value received, agrees:

(i) to pay to the Facility on each principal repayment date an amount equal to the principal amount due on such principal repayment date; and

(ii) to pay the Facility on each interest payment date an amount equal to unpaid interest from the date of the advance through such interest payment date; and

(iii) to pay the Facility on the maturity date an amount equal to the unpaid balance of the amount of the advance, if any, plus unpaid interest from the date of the advance through maturity date; and

(iv) if the principal amount due on any principal repayment date is not paid on or before such a date, to pay the Facility -

(a) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, plus

(b) a late principal payment charge equal to 2% of the principal amount, plus

(c) interest after such date through the maturity date on the unpaid balance of such principal amount at the interest rate specified on the confirmation, [3] and

(v) if the unpaid interest due on any interest payment date or the maturity date is not paid on or before such date, to pay the Facility:

(a) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, plus

(b) a late interest payment charge equal to 20% of the unpaid interest, and

(vi) if the amount due on the maturity date is not paid on or before the maturity date, to pay the Facility -

(a) reasonable expenses of collection, including the reasonable attorney's fees and expenses incurred, plus

(b) a late principal payment charge equal to 2% of the unpaid balance of the amount of the advance, as due on the maturity date, plus

(c) interest after the maturity date on the unpaid balance of the overdue principal amount at the overdue interest rate specified in this agreement.

As used herein, unless the context otherwise requires, the date and amount of the advance, the interest rate, the principal repayment dates, the principal amount due on each such principal repayment date, the interest payment dates, and the maturity date are the dates, amount and rate specified as such in the confirmation issued by the Facility in connection with the advance; the overdue principal amount used for determining interest after the maturity date is equal to the unpaid balance of the amount of the advance, as due on the maturity date, plus unpaid interest from the date of the advance through the maturity date plus the unpaid balance of any late principal and interest payment charges payable through the day after the maturity date; and the overdue interest rate is the higher of the following two rates, namely, the interest rate specified in the confirmation or the highest interest rate set by the Facility for Facility advances to any party on the maturity date. Interest from the date of the advance through the maturity date shall be determined hereunder as follows, using the interest rate specified in the confirmation: interest shall accrue each day on the unpaid balance of the amount of the advance, and the unpaid interest from the date of the advance through any date shall be equal to all accrued interest through such date less the portion of such accrued interest that has been paid prior to such date.[4]

The Agent Group Representative may make a prepayment in any amount at any time. When the unpaid balance of the amount of the advance is reduced as a result of a prepayment, the principal amount due on the next succeeding principal repayment shall be reduced by an amount equal to the reduction in the unpaid balance of the amount of the advance. If any amount due on any interest payment date or the maturity date includes an amount that has previously been subjected to a late principal payment charge or a late interest payment charge under subparagraphs (4)(iv) or(4)(v) hereof, the amount used for computing any late interest payment charge or late principal payment charge on the amount due on such date shall exclude the amount that has previously been subjected to such a charge under subparagraphs (4)(iv) or(4)(v) hereof. The Facility may waive any part or all of the interest, late principal payment charge, late interest payment charge or overdue interest. Each payment on a repayment obligation created hereunder, including a prepayment thereon, shall be applied as follows to the amounts payable under the repayment obligation: if the payment is made on or before the maturity date, it shall be applied first to the unpaid balance of any late principal and interest payment charges payable through the time of the payment, then to any unpaid interest that was not paid when due, then to the unpaid balance of any principal amount that was not paid when due, then to any unpaid interest that is due at the time of the payment, then to the unpaid balance of any principal amount that is due at the time of the payment, then to the remaining unpaid balance of the amount of the advance, and then to the remaining unpaid

of such principal payments received by the Agent Group Representative on the Agent Group Representative loans.

[3] Under paragraph (11) of this agreement, the full amount owed to the Facility at maturity will become immediately due and payable, unless otherwise determined by the Facility, if the Agent Group Representative fails to pay the amount due on any principal; repayment date or any interest payment date. In such case, the late payment charges and overdue interest rate specified in subparagraphs (4)(v) and (4)(vi) hereof would apply to the full amount owed to the Facility.

[4] The number of days used for computing accrued interest shall exclude the date of the advance and shall include the date through which the accrued interest is being computed.

interest; if the payment is made after the maturity date, it shall be applied first to unpaid interest on the overdue principal amount and then to the unpaid balance of the overdue principal amount. If the amounts owed to the Facility on all repayment obligations created hereunder become immediately due and payable under the terms of paragraph (11) hereof, the maturity date of each such repayment obligation, us used herein, is the earlier of the following two dates, namely,

- the date such amounts become immediately due and payable, or
- the date specified as the maturity date in the confirmation issued by the Facility in connection with the advance that created the repayment obligation.

RELENDING

(5) **Basis for Facility advance.** In connection with each advance of Facility funds to the Agent Group Representative:

(i) The application of the Agent Group Representative for the Facility advance must be filed on a Facility-approved application form, or pursuant to any other method approved by the Facility, and must be based on the following:

(a) one or more applications to one or more corporate credit unions in the Agent Group by their member natural person credit unions for pending loans to meet liquidity needs; or

(b) one or more outstanding loans previously made by one or more corporate credit unions in the Agent Group to their member natural person credit unions to meet liquidity needs; or

(c) such other demonstrable liquidity needs as the NCUA Board may specify; or

(d) a combination of such applications, loans and other liquidity needs. [5]

(e) one or more loans from the Agent Group Representative to one or more corporate credit unions in the Agent Group, whether pending or outstanding, which are based on such applications, loans and other liquidity needs.[6]

Unless approved by the Facility, the Agent Group Representative shall not file an application for a Facility advance based on any application, outstanding loan or liquidity need of any credit union which became a member natural person credit union of a corporate credit union in the Agent Group after February 23, 1980, until such credit union has been a member natural person credit union of the Agent for six months. The restriction in the preceding sentence does not apply to any credit union which was chartered within six (6) months before becoming a natural person credit union of such corporate credit union or which has access to the Facility either as a Regular member or through an Agent member corporate credit union in the Agent Group within six (6) months before becoming a member natural person credit union of such corporate credit union.

(ii) Each such application by a member natural person credit union for a pending loan (hereinafter a "pending loan") must have been submitted to a corporate credit union in the Agent Group on a Facility-approved application form, or pursuant to any other method approved by the Facility, and must have been approved by the corporate credit union, provided that the approval of the corporate credit union may be conditioned on the Facility's approval of the application filed with the Facility by the Agent Group Representative.

(iii) Each such outstanding loan previously made to a member natural person credit union (hereinafter an "outstanding loan") must have been applied for on a Facility-approved application form, or pursuant to any other method approved by the Facility, and must have been approved by the corporate credit union in the Agent Group which made the loan.

(iv) In determining whether to approve each such pending or outstanding loan, the corporate credit union must have given due consideration to the creditworthiness of the member natural person credit union in accordance with the requirements prescribed in the regulations and operating circulars of the Facility.

(v) The aggregate principal amount of such pending loans plus the aggregate principal balance of such outstanding loans must be equal or exceed the amount of the Facility advance requested in the application of the Agent Group Representative to the Facility.

(vi) Except as otherwise approved by the Facility, the application of the Agent Group Representative for the Facility advance must contain the following information with respect to each pending or outstanding loan:

(a) the name of the member natural person credit union which has applied for or received the pending or outstanding loan;

(b) the type or types of liquidity needs that are being met by the pending or outstanding loan (i.e., short-term adjustment credit, seasonal credit, or protracted adjustment credit);

(c) the principal amount of the pending loan, or the principal balance of the outstanding loan;

(d) if a pending loan, the date or dates the pending loan is expected to be advanced to the member natural person credit union, and the amount

[5] Each such pending or outstanding loan must be a "qualified liquidity loan" subject to the repayment, security and credit reporting terms prescribed by the Facility for Agent loans. See subparagraph (5)(vii) of this agreement.

[6] Each such loan to a corporate credit union in the Agent Group must be a "qualified AGR loan" subject to the repayment, security and credit reporting terms prescribed by the Facility for Each such pending or outstanding loan must be a "qualified liquidity loan" subject to the repayment, security and credit reporting terms prescribed by the Facility for Agent loans. See subparagraph (5)(xii) of this agreement

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that is expected to be advance on each such date;[7]

(e) the interest rate on the pending loan or outstanding loan;

(f) the type of repayment requirement that applies to the pending or outstanding loan (i.e., fixed term or scheduled repayment), and the date and amount of each principal payment that is required to be paid to the corporate credit union on the pending or outstanding loan;

(g) a description of any security interest which the central credit union has granted in the pending or outstanding loan to any party other than the Agent Group Representative, including the name of the party, the amount secured, the other types of assets, if any, that are also subject to the security interest, and a statement as to whether the security interest is perfected or unperfected; and

(h) such additional information as may be required by the Facility or in the Facility-approved application form.

The information required with respect to each such pending or outstanding loan may be combined with other information, including information relating to other loans, in copies of the Agent's records, in a listing, or in such other form as may be approved by the Facility.

(vii) Each such pending or outstanding loan must be subject to an agreement between the central credit union and the member natural person credit union whereby the member natural person credit union agrees to the repayment, security and credit reports terms prescribed by the Facility for Agent loans.[8]

(viii) If the amount of any advance on any such pending loan is not advance to the member natural person credit union on or before the date the amount was expected to be advanced, as stated in the application of the Agent Group Representative for the Facility advance or in any subsequent report to the Facility, the Agent Group Representative shall submit a report to the Facility not later than ten business days after such date. The report shall state the reason the amount was not advanced on such date and shall specify the date the amount was advanced or is expected to be advanced. Within ten business days after any corporate credit union in the Agent Group receives any principal payment on an Agent loan, the Agent Group Representative shall report such principal payment to the Facility. The report shall identify the Agent loan and shall show the date and amount of the principal payment.

(ix) Each such loan from the Agent Group Representative to a corporate credit union in the Agent Group must have been applied for on a Facility-approved application form, or pursuant to any other method approved by the Facility, and must have been approved by the Agent Group Representative, provided that the approval of the Agent Group Representative may be conditioned on the Facility's approval of the application of the Agent Group Representative to the Facility.

(x) The aggregate principal amount of such loans, if pending, plus the aggregate principal balance of such loans, if outstanding, from the Agent Group Representative to corporate credit unions in the Agent Group must equal or exceed the amount of the Facility advance requested in the application of the Agent Group Representative to the Facility.

(xi) Except as otherwise approved by the Facility, the application of the Agent Group Representative for the Facility advance must contain the following information with respect to each such loan from the Agent Group Representative to a corporate credit union in the Agent Group:

(a) the name of the corporate credit union to which the loan is made;

(b) the principal amount of the loan, if pending, or the principal balance of the loan, if outstanding;

(c) if, pending, the date or dates the loan is expected to be advanced to the corporate credit union, and the amount that will be advanced on each such date.[9]

(d) the interest rate on the loan;

(e) the type of repayment requirement that applies to the loan (i.e., fixed term or scheduled repayment), and the date and amount of each principal payment that is required to be paid to the Agent Group Representative on the loan;

(f) a description of any security interest which the Agent Group Representative has granted in the loan to any party other than the Facility, including the name of the party, the amount secured, the other types of assets, if any, that are also subject to the security interest, and a statement as to whether the security interest is perfected or unperfected; and

(g) such additional information as may be required by the Facility or in the Facility-approved application form.

The information required with respect to each such pending or outstanding loan may be combined with other information, including information relating to other loans, in copies of the Agent Group Representative's records, in a listing, or in such other form as may be approved by the Facility.

(xii) Each such loan from the Agent Group Representative to a corporate credit union in the Agent group must be subject to an agreement between the Agent Group Representative and the corporate credit union whereby the corporate credit union agrees to the repayment, security and credit reports terms prescribed by the Facility for the Agent Group Representative loans.[10]

(xiii) If the amount of any advance on any such pending loan is not advanced to the corporate credit union on or before the date the amount was expected to be advanced, as stated in the application of the Agent Group Representative for the Facility advance or in any subsequent report to the Facility, the Agent Group Representative shall submit a report to the Facility not later than five business days after such date. The report shall state the reason the amount was not advanced on such date and shall specify the date the amount was advanced or is expected to be advanced. Within two business days after the Agent Group Representative receives any principal payment on an Agent Group Representative loan, the Agent Group Representative shall report such principal payment to the Facility. The report shall identify the Agent Group Representative loan and shall show the date and amount of the principal payment.

(xiv) A report or notification to the Facility under subparagraphs (5)(viii) or (5)(xv) hereof may be delayed beyond the specified deadline if the reason for the delay is the failure of a corporate credit union in the Agent Group to report the necessary information to the Agent Group Representative at least two (2) business days before the specified deadline. If a report or notification is delayed because of such failure, it shall be submitted to the Facility within two (2) business days after the Agent Group Representative receives a report of the necessary information. The Agent Group Representative shall take such steps as may be reasonable necessary to obtain the information from the corporate credit union in time to submit the required reports and notifications to the Facility on or before the specified deadlines. The Agent Group Representative shall also take such steps as may be reasonable necessary to determine compliance by corporate credit unions in the Agent Group with the requirements of subparagraphs (5)(ii), (5)(iii), (5)(iv) and (5)(vii) hereof. In the absence of any knowledge indicating noncompliance, the Agent Group Representative may determine compliance by relying on statements, representations and other information in applications, certifications and other communications from such corporate credit unions.

(xv) The Agent Group Representative shall promptly notify the Facility or any default on any Agent loan or Agent Group Representative loan.

(xvi) All Agent loans shall have the status of general intangibles under the Uniform Commercial Code, and no promissory note or similar writing shall be signed or apply with respect to any such loan.[11]

(xvii) Except as otherwise permitted by the Facility, the principal amounts owed to each corporate credit union on Agent loans shall, at all times, equal or exceed the principal amounts owed by such corporate credit unions to the Agent Group Representative on Agent Group Representative loans, and the principal amounts owed to the Agent Group Representative on all Agent Group Representative loans shall at all times, equal or exceed the principal amounts owed by the Agent Group Representative to the Facility on all repayment obligations created hereunder. If the principal amounts owed to a corporate credit union on Agent loans to any one natural person credit union at any time exceeds 10% of the subscribed capital stock and surplus of the Facility, the Agent Group Representative shall request the corporate credit union to perfect security interests granted to the corporate credit union as security for such Agent loans. The security interests must be perfected to the extent necessary to maintain a perfected security interest in collateral having a value equal to or greater than such excess.

(6) **Records.** The Agent Group Representative shall maintain a separate account or record for each corporate credit union in the Agent Group to which Agent Group Representative loans have been made. The separate account or record shall identify each Agent Group Representative loan and show all amounts advanced and repaid on such loan. If records maintained by the Facility for Agent Group

[7] Ordinarily, a pending loan should be fully advanced to the member natural person credit union within ten business days after the Agent Group Representative receives the Facility advance.

[8] A copy of such terms is attached to this agreement. A pending or outstanding loan is subject to such terms if the credit union has signed or agreed to such terms and if the loan was made solely to meet liquidity needs and was specified by the Agent as a "qualified liquidity loan" at the time the loan was made. "Agent loans' are defined as subparagraph (3)(viii) of this agreement.

[9] Ordinarily, the loan should be fully advanced to the borrowing corporate credit union within ten business days after the Agent group Representative receives the Facility advance.

[10] A copy of such terms is attached to this agreement. A loan is subject to such terms if the corporate credit union has signed or agreed to such terms and if the loan was based solely on qualified liquidity loans or eligible liquidity needs and was specified by the Agent Group Representative as a "qualified AGR loan" at the time the loan was made. "Agent Group Representative loans' are defined as subparagraph (3)(ix) of this agreement.

[11] Under subparagraph (5)(xii) of this agreement, the repayment, security and credit reporting terms prescribed by the Facility Group Representative loans, and they do not constitute a "promissory note or similar writing", as those terms are used herein.

Representative loans are used by the Agent Group Representative as its records of such loans, no additional account or record needs to be maintained by the Agent with respect to such loans.

(7) **Agent Group Representative agreement**. The Agent Group Representative shall comply with all terms and conditions imposed on the Agent Group Representative in the repayment, security and credit reporting terms prescribed by the Facility for Agent Group Representative loans.

SECURITY

(8) **Collateral.** To secure the repayment obligations created by an advance of funds pursuant to this agreement, the Agent Group Representative grants a security interest in favor of the Facility in the following property, whenever acquired (hereinafter "the collateral"):

(i) All repayment obligations from corporate credit unions in the Agent Group to the Agent Group Representative, whenever created, arising out of loans that constitute Agent Group Representative loans to such corporate credit unions;

(ii) the security interests granted to the Agent Group Representative by such corporate credit unions as security for such repayment obligations.

(9) **Perfection**. The Facility shall have the right at any time to perfect the security interest granted hereunder with respect to any part or all of the collateral. Perfection shall be by filing in accordance with the filing requirements for general intangibles under the Uniform Commercial Code and other applicable laws. The Agent Group Representative shall sign a financing statement and such other papers as may be appropriate for filing and shall pay all necessary filing fees. To the extent requested by the Facility, the Agent Group Representative shall perfect the security interests granted to the Agent Group Representative by corporate credit unions as security for Agent Group Representative loans.

(10) **Transfer Restriction**. Except as approved or permitted by the Facility, the Agent Group Representative shall not sell or otherwise transfer the collateral or grant a security interest in the collateral to any party other than the Facility. The Facility may subordinate or terminate its security interest in any part or all of the collateral subject to such terms and conditions as the Facility may impose.

(11) **Acceleration and default**. Except as otherwise determined by the Facility, the amounts owed to the Facility on all repayment obligations created hereunder shall become immediately due and payable to the Facility, without any demand or notice, upon:

(i) the failure of the Agent Group Representative to perform any of its obligations under this agreement, including failure to pay the amount due on any principal repayment date, interest payment date or maturity date under any repayment obligation created hereunder; or

(ii) the failure of the Agent Group Representative to pay any other obligation to the Facility when due; or

(iii) the failure of the Agent Group Representative to comply with the terms of any undertaking, statement or representation made by the Agent Group Representative to the Facility in any application, certification or other communication; or

(iv) the insolvency of, or appointment of a trustee or receiver for, the Agent Group Representative; or

(v) an assignment for the benefit of creditors of the Agent Group Representative, or

(vi) the closing or suspension or revocation of the charter of the Agent Group Representative, or the taking possession of its business, by any governmental authority; or

(vii) the withdrawal of the Agent Group Representative from membership in the Facility.

The occurrence of any of the events described in subparagraphs (11)(i) through (11)(vii) hereof shall constitute a default under this agreement. The term "insolvency" in subparagraph (11)(iv) hereof has the same meaning as in 12 CFR 700.1(j)(1). The Facility may waive a default under this agreement and may reinstate the maturity date or any principal payment date, or interest payment date on any repayment obligation created hereunder which becomes immediately due and payable as a result of any such default.

(12) **Enforcement**. Upon the occurrence of a default under this agreement, or at any time thereafter, the Facility shall have all the rights and remedies provided under the Uniform Commercial Code and under this agreement, including but not limited to any one or more of the following: the Facility may, in its own name, or in the name of the Agent Group Representative:

(i) notify corporate credit unions in the Agent group to make payments to the Facility on any one or more of the repayment obligations of such corporate credit unions which constitute the collateral under this agreement;

(ii) collect the amounts due on any one or more of such repayments obligations of such corporate credit unions by any available judicial procedure;

(iii) enforce the security interests granted by such corporate credit unions as security for such repayment obligations;

(iv) exercise all the rights and remedies of the Agent Group Representative with respect to such security interests, including enforcement of such security interests by any available judicial procedure; and

(v) sell or otherwise dispose of any one or more of such repayment obligations of such corporate credit unions, together with the security interests securing such repayment obligations, at public or private proceedings.

The proceeds of such repayment obligations of such corporate credit unions, including the proceeds of the sale or other disposition thereof, shall be applied by the Facility first to the reasonable expenses of collecting such proceeds and of selling such repayment obligations of such corporate credit unions, including the reasonable attorney's fees and legal expenses incurred, and then to the payment of amounts due on all repayment obligations created hereunder. Any surplus then remaining shall be paid or returned to the Agent Group Representative. If there is a deficiency, the Agent Group Representative shall be liable for the deficiency. If the Facility is indebted to the Agent Group Representative, the Facility shall have the right to set-off such indebtedness against all amounts due the Facility on all repayment obligations created hereunder, without regard to when such indebtedness may be due and payable.

CREDIT REPORTING

(13) **Required reports**. The Agent Group Representative shall file such reports and provide such information as may be required by the Facility from time to time.

CONSTRUCTION, MODIFICATION AND MISCELLANEOUS

(14) **Governing law**. This agreement shall be construed under and governed by the law of the Commonwealth of Virginia, including the Uniform Commercial Code as adopted and amended from time to time by the Commonwealth of Virginia. All references to the Uniform Commercial Code in this agreement are to such Code as adopted and amended from time to time by the Commonwealth of Virginia. Unless the context of this agreement requires otherwise, the terms used in such Code shall have the same meaning when used in this agreement. Unless the Uniform Commercial Code or the context of this agreement requires otherwise, the terms defined in the rules and regulations prescribed by the NCUA Board on behalf of the Facility shall have the same meanings when used in this agreement.

(15) **Modification procedures**. Thus agreement may be modified from time to time by the NCUA Board. Any such modifications shall be published in the Federal Register and shall be mailed to the Agent at the address shown for the Agent Group Representative in the records of the Facility. The modification shall become a part of this agreement as of the effective date specified in the Federal Register, provided that the effective date specified in the Federal register shall not be less than 30 days after the required publication and mailing unless

(i) the modification is limited to the reduction or elimination of any one or more of the obligations imposed on the Agent Group Representative by any term or condition of this agreement, or

(ii) the NCUA Board makes a finding that an earlier effective date is necessary, and the finding is included in the require publication and mailing.

Written data, views or arguments concerning the modification may be submitted by the Agent Group Representative to the Facility at any time up to five days before the effective date specified in the Federal Register. The modification shall apply to all advances of Facility funds after such effective date. All such modifications are a part of this agreement, including modifications that occurred prior to the signing of this agreement. Operating circulars issued by the Facility may include interpretive rules and statements of policy with respect to the terms and conditions of this agreement but may not modify any such terms or condition. Without modification of this agreement, the Facility may waive any part or all of any obligation imposed on the Agent Group Representative by any term or condition of this agreement, and the Facility may reinstate any part of all of any such obligation previously waived by the Facility.

(16) **Filing Location**. Unless otherwise directed by the Facility, all applications, reports, notifications and other communications from the Agent Group Representative to the Facility shall be filed with a Facility lending officer.

(17) **Disclaimer of agency relationship**. Except as specifically authorized by the Facility, no agency relationship exists between the Facility and the Agent Group Representative, and the term "Agent" is not intended to imply any such relationship.

(18) **Agent compensation**. The Facility shall compensate the Agent Group Representative for the services it performs for the Facility as a result of the obligations imposed on the Agent Group Representative by this agreement. Compensation shall be determined and provided by the Facility in accordance with any rules and regulations prescribed by the NCUA Board on behalf of the Facility and in accordance with operating circulars issued by the Facility. Subject to such rules and regulations and operating circulars, the following factors shall be taken into account by the Facility in determining and providing compensation to the Agent Group Representative:

(i) the additional expenses that are incurred by the Agent Group Representative as a result of the obligations imposed on the Agent Group Representative by this agreement;

(ii) the income that is earned by the Agent Group Representative on Agent Group Representative loans;

(iii) such other factors, if any, as the NCUA Board may deem relevant.

(19) **Delegation restriction**. Except as authorized or permitted in this agreement by the Facility, the rights and obligations of the Agent Group Representative under this agreement may not be transferred or delegated by the Agent Group Representative. The Agent Group Representative is permitted to use the data processing services of other parties to process the accounts and records that they are required to maintain under this agreement.

(20) **Severability**. This agreement shall be severable. The invalidity of any term of condition of this agreement shall not invalidate the remainder of this agreement, and each term and condition of this agreement shall be fully enforceable regardless of the validity of any other term or condition of this agreement.

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NCUA CENTRAL LIQUIDITY FACILITY REPAYMENT, SECURITY AND CREDIT REPORTING AGREEMENT
(Agent Group Representative)

(Corporate Credit Union Name) _____ Charter /Insurance Certificate Number _____

City _____ State _____

NATIONAL CREDIT UNION ADMINISTRATION
CENTRAL LIQUIDITY FACILITY

Accepted by:

(Signature) _____

Date Accepted: _____

Print or Type Corporate Credit Union Name _____

by* _____
(Signature) Chief Elected Official

(Print or Type Official's Name) _____

*
(Signature) Treasurer

(Print or Type Official's Name) _____

(Date of Execution of this Agreement) _____

*Must be signed by both the Chief Elected Official and the Treasurer

OMB Control #: Expiration Date:

CLF-8706
(Revised 5/25/99)

[FR Doc. 99–19355 Filed 7–28–99; 8:45 am]
BILLING CODE 7535–01–C

NATIONAL LABOR RELATIONS BOARD

Privacy Act of 1974; Publication of Revised System of Records Notice

AGENCY: National Labor Relations Board (NLRB).

ACTION: Revised publication of System of Records Notice NLRB–3, Biographical Data File—Presidential Appointees.

SUMMARY: The Privacy Act of 1974, as amended, requires that each agency publish a notice of a proposed new System of Records, as well as proposals to revise existing Systems of Records. This notice alters an existing Privacy Act System of Records Notice NLRB–3, Biographical Data File—Presidential Appointees, by deleting one routine use, amending the language of three routine uses, updating the addresses of system locations, and updating the citations referring to 29 CFR 102.117; as well as making several insignificant administrative language revisions.

All persons are advised that in the absence of submitted comments, views, or arguments considered by the NLRB as warranting modification of the notice as herewith to be published, it is the intention of the NLRB that the notice shall be effective upon expiration of the comment period without further action by this Agency.

DATES: The amended System of Records Notice will become effective without further notice 30 days from the date of the publication (August 27, 1999) unless comments are received on or before that date which result in a contrary determination.

ADDRESSES: All persons who desire to submit written comments, views, or arguments for consideration by the NLRB in connection with the proposed revised System of Records Notice shall file them with the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570–0001.

Copies of all such communications will be available for examination by interested persons during normal business hours in the Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570–0001.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570–0001.

SUPPLEMENTARY INFORMATION: The following changes have been made to the existing NLRB System of Records Notice NLRB–3, Biographical Data File—Presidential Appointees:

1. Routine use 1 has been deleted because the specified "need to know" in it is authorized by 5 U.S.C. 552a(b)(1)(5).
2. The language of routine use 3 has been amended to specify that on disclosure to an inquiring congressional office, the subject individual must be a constituent about whom the records are maintained.
3. Routine use 4 has been amended by changing reference from "Agency" to "NLRB" for more specificity.
4. Routine use 5 has been amended to specify more exactly the information that may be disclosed to a court or an adjudicative body in the course of presenting evidence or argument including disclosure to opposing counsel or witnesses in the course of civil discovery.
5. The address of system location in NLRB–2 has been changed from "NLRB, 1717 Pennsylvania Avenue, NW, Washington, DC 20570–0001" to "NLRB, 1099 14th Street, NW, Washington, DC 20570–001."
6. Reference to 29 CFR 102.117 citations have been changed to read as follows for the paragraphs in Notifications Procedures, 29 CFR 102.117(f); Records Access Procedures, 29 CFR 102.117(g) and (h); and Contesting Records Procedures, 29 CFR 102.117(i).

A report of the proposal to revise this system of records was filed pursuant to 5 U.S.C. 552(r) with Congress and the Office of Management and Budget.

Dated: Washington, D.C., July 2, 1999.

John J. Toner,
Executive Secretary.

NLRB–3

SYSTEM NAME:

Biographical Data File—Presidential Appointees.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Information, NLRB, 1099 14th Street, NW, Washington, DC 20570–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Presidential appointees to NLRB positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include biographical sketches; news releases, news articles or speeches and other newsmaking activities; photographs, and related materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 153(a) and (d), 54(a); 44 U.S.C. 3101.

PURPOSE:

These records document pertinent aspects of the personal and professional history of NLRB's most senior officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records, or information contained therein may be disclosed to:

1. Individuals who need the information in connection with the processing of an appeal, grievance, or complaint.
2. The public, upon demonstrated interest.
3. A Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the records are maintained.
4. The Department of Justice for use in litigation when either (a) the NLRB or any component thereof, (b) any employee of the NLRB in his or her official capacity, (c) any employee of the NLRB in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States Government where the NLRB determines that litigation is likely to affect the NLRB or any of its components, is a party to litigation or has interest in such litigation, and the use of such records by the Department of Justice is deemed by the NLRB to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.
5. A court, a magistrate, administrative tribunal, or other adjudicatory body in the course of presenting evidence or argument, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings, when: (a) The NLRB or any component thereof; or (b) any employee of the NLRB in his or her official capacity; or (c) any employee of the NLRB in his or her individual capacity where the NLRB has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has interest in such litigation, and determines that such disclosure is relevant and necessary to the litigation and that the use of such

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records is therefore deemed by the NLRB to be for a purpose that is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on original sources or related papers in file folders.

RETRIEVABLE:

Alphabetically by name.

SAFEGUARDS:

Maintained in file cabinets within the Division of Information. During duty hours, cabinets are under the surveillance of office personnel charged with custody of the records, and after duty hours are behind locked doors.

RETENTION AND DISPOSAL:

Permanently retained.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Information, NLRB, 1099 14th Street, NW, Washington, DC 20570–0001.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

RECORD ACCESS PROCEDURES:

An individual seeking to gain access to records in this system pertaining to him or her should contact the System Manager in accordance with the procedures set forth in 29 CFR 102.117(g) and (h).

CONTESTING RECORD PROCEDURES:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the System Manager in accordance with the procedures set forth in 29 CFR 102.117(i).

RECORD SOURCE CATEGORIES:

Information in this system is submitted by the individual, written by Agency staff and approved by the individual, and obtained from general news sources.

[FR Doc. 99–19405 Filed 7–28–99; 8:45 am]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Establish an Information Collection

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 64 FR 8144 (February 18, 1999), and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the qualify, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW, Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

DATES: Comments regarding this information collection are best assured of having their full effect if received on or before August 30, 1999. Copies of the submission(s) may be obtained by calling 703–306–1125 x 2017.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 306–1125 x 2017; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instruments from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Impact of the International Institute for Applied Systems Analysis Programs on Scientific Knowledge, Career Development of US Scientists, and US Institutional Capabilities for Research and Policy Development.

OMB Number: 3145–New.

Type of Request: Intent to seek approval to carry out a new information collection for one year.

Abstract: "Outcomes and Impacts of Research Programs of the International Institute for Applied Systems Analysis (IIASA)".

Proposed Project: The International Institute for Applied Systems Analysis (IIASA) in Laxenburg, Austria, is a non-governmental, multilateral research institution created in 1972. IIASA's most recent 10-year strategic plan, adopted in 1992, focuses on research in three thematic areas: (1) Global Environmental Change; (2) Global Economic and Technological Transitions; and (3) Systems Methods for the Analysis of Global Issues. Its core research programs are funded by annual contributions from member countries. Since 1989 the US contribution has been funded by a series of grants from the National Science Foundation's Division of International Programs (NSF/INT). NSF is seeking to identify (1) the impacts of IIASA's research programs on scientific knowledge and on the education and careers of US scientists, and (2) the impacts of the information and options resulting from IIASA's research on public and private policy-related institutions in the United States.

To achieve these objectives, data will be collected from senior US scientists who have conducted research at IIASA since the current strategic plan went into effect in 1992, and from US scientists who have been participants in IIASA's Young Summer Scientists Program from 1992 through the time the data is collected. Respondents will be asked to respond to questions relevant to such factors as: (1) The impacts of their experience at IIASA on their future scientific work and career development; the impacts of IIASA's research on conceptual developments in their disciplines; and the impacts of the results of IIASA's research on US institutional capabilities for research and policy analysis.

Use of the Information: The information will be used by NSF to assess the extent to which the results of research that has been supported at IIASA involving US researchers are consistent with the specific outcome goals defined in the context of the NSF Strategic Plan approved by OMB and the Congress, as required by the General Performance and Results Act (GPRA) of 1993. Among NSF's five approved outcome goals, the three that are most relevant to its investments in research at IIASA are: Promoting discoveries at and across the frontier of science and engineering; facilitating connections between discoveries and their use in service to society; developing a diverse, globally oriented workforce of scientists and engineers.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 60 minutes per response.

Respondents: Individuals.

Estimated Number of Responses per Form: 125.

Estimated Total Annual Burden of Respondents: 125 hours, broken down by 125 respondents at 1 hour per response.

Frequency of Responses: One time.

Dated: July 26, 1999.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc 99–19400 Filed 7–28–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[IA 99–019]

Richard A. Speciale; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Richard A. Speciale (Mr. Speciale) was formerly Director, and Radiation Safety Officer of Special Testing Laboratories, Inc. (Special Testing or Licensee). Special Testing is the holder of Byproduct Nuclear Material License No. 06–30361–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of Troxler Electronics Laboratories, Campbell Pacific Nuclear, Humbolt Scientific, Seamen Nuclear, or Soiltest nuclear gauges. The license was issued on August 6, 1997, and is due to expire on August 31, 2007.

Mr. Speciale was also the Director of Testwell Craig Laboratories of Connecticut, Inc. (Testwell Craig), which previously held License No. 06–19720–01 authorizing possession and use of portable nuclear density gauges. This license was suspended on July 1, 1996, due to non-payment of fees.

II

On October 14, 15, and 16, 1998, and November 9–10, 1998, an NRC Region I inspector, accompanied by an investigator from the NRC Office of Investigations, conducted an inspection/investigation at the Licensee's facility in Bethel, Connecticut. During the inspection/investigation, the NRC determined that: (1) Portable gauges containing NRC-licensed material were routinely used by some Licensee employees who had not received the required training; (2) some Licensee employees were using the gauges without being provided the required personnel dosimeters; and (3) leak tests of the gauges were not being performed at the required frequency.

During the October inspection/investigation, Mr. Speciale was interviewed by the inspector and investigator. In that interview, Mr. Speciale, when questioned concerning the scope of the Licensee's program, informed the NRC that the Licensee possessed four Troxler portable gauges that were used by three or four authorized users, including himself. He also stated that he did not believe any of his field technicians were operating gauges without training.

The NRC inspector and investigator returned to the facility on November 9–10, 1998, to complete the inspection/investigation, at which time the NRC was provided records indicating that nine individuals had received manufacturer's training on October 29, 1998, which was subsequent to the NRC's October 1998 visit. Mr. Speciale was questioned as to why nine individuals had received such training when he had previously stated that gauges were used by three or four users. Although Mr. Speciale initially maintained that only three individuals were using four gauges, he subsequently stated, and available records showed, that Speciale Testing possessed 13 gauges, and these gauges were used by as many as 14 individuals. Also, during the November inspection/investigation, seven gauge users stated that they used portable gauges without formal training for periods ranging from several weeks to four years prior to October 29, 1998. The NRC also learned, based on discussions with Mr. Speciale, that there were periods when gauge users were not provided personnel dosimeters. Further, three gauge users stated that they operated portable gauges without wearing "film badges" for periods ranging from one to several months prior to October 1998. When questioned as to why individuals were using gauges without training or personnel dosimeters, Mr. Speciale indicated that the required training and dosimeters were not previously provided due to financial considerations, even though he continued to direct the individuals to use the gauges.

During a subsequent interview with the OI investigator on November 19, 1998, Mr. Speciale admitted that he "never stopped using nuclear gauges" after the Testwell Craig license was suspended for non-payment of fees and before the Special Testing license was issued. He stated that he failed to do so because Testwell Craig had "job commitments to finish." Thus, on numerous occasions between July 1, 1996, and August 6, 1997, Mr. Speciale continued to use these gauges without an NRC license.

As a result, prior to completion of the investigation, the NRC issued to Special Testing an Order Suspending License on December 23, 1998. The suspension order was rescinded on January 22, 1999, after Special Testing consented to issuance of a Confirmatory Order Modifying License that required, in part: (1) Mr. Speciale not be involved in NRC-licensed activities at Special Testing; and (2) Special Testing take corrective actions to prevent recurrence of the violations.

III

The NRC's requirements in 10 CFR 30.10(a)(1) prohibit an individual from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission. In addition, 10 CFR 30.10(a)(2) prohibits an individual from deliberately submitting to the NRC information that the individual submitting the information knows to be incomplete or inaccurate in some respect material to

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the NRC. 10 CFR 30.9 requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

Based on the inspection/investigation, the NRC has concluded that Mr. Speciale violated 10 CFR 30.10. Specifically, Mr. Speciale violated 10 CFR 30.10(a)(1) in that he deliberately caused the Licensee to violate NRC requirements by: (1) Allowing untrained individuals to use gauges, contrary to License Condition 11.A of Special Testing's license; (2) not providing these individuals with the necessary dosimetry while they were using the gauges, contrary to License Condition 19 of Special Testing's license; (3) providing to the NRC inaccurate information concerning the number of gauges possessed and used by the Licensee and concerning the training of gauge users, contrary to 10 CFR 30.9; and (4) while in the position of Director of Testwell Craig, directing the use of gauges even though Testwell Craig's license had been suspended for nonpayment of fees and Special Testing's license had not yet been issued, contrary to Section III.A of the Order Suspending License issued to Testwell Craig. Mr. Speciale also violated 10 CFR 30.10(a)(2) by deliberately providing to the NRC inaccurate information concerning the number of gauges possessed and used by the Licensee and concerning the training of gauge users.

IV

Deliberately violating NRC requirements is of significant concern because the NRC must be able to rely on the integrity of Licensee employees to comply with NRC requirements. Directing untrained individuals to conduct NRC-licensed activities and not providing dosimetry is significant because misuse of gauges (which contain NRC-licensed material) could result in unnecessary radiation exposures to workers and members of the public. Moreover, deliberately providing false information to the NRC is significant because the Commission must be able to rely on its licensees to provide complete and accurate information. Given the above, it appears that Mr. Speciale is either unwilling or unable to comply with the Commission's requirements.

The NRC must be able to rely on the Licensee, and the Licensee employees, to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Speciale's action in deliberately violating Commission regulations, raises serious questions as to whether he can be relied upon to comply with NRC requirements and to provide or maintain complete and accurate information to the NRC, and raises questions about his trustworthiness and reliability.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Richard A. Speciale were permitted at this time to be involved in NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that Richard A. Speciale be prohibited from any involvement in NRC-licensed activities for a period of five years. If Richard A. Speciale is currently involved in NRC-licensed activities, Mr. Speciale must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Speciale is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Speciale's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *it is hereby ordered*, effective immediately, that:

1. Richard A. Speciale is prohibited from engaging in NRC licensed activities for five years from the date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Richard A. Speciale is currently involved in NRC-licensed activities, Mr. Speciale must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of one year after the five year period of prohibition has expired, Mr. Speciale shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Speciale shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Speciale of good cause.

VI

In accordance with 10 CFR 2.202, Richard A. Speciale must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Speciale or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Speciale if the answer or hearing request is by a person other than Mr. Speciale. If a person other than Mr. Speciale requests a hearing, that person shall set forth with particularity the manner in which that person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Speciale or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), Mr. Speciale may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 21st day of July, 1999.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 99–19365 Filed 7–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Software Reliability Models for Digital Safety Critical Systems

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: The NRC has committed through its Strategic Plan to incorporate risk insights, conduct anticipatory research on issues of potential regulatory and safety significance, engage in cooperative research agreements, and provide timely information to our stakeholders. As part of this commitment, a workshop has been established to assess software models which could be used to determine the software reliability of digital systems. This research is conducted through a cooperative agreement between academia and the government. The objective of this workshop is to evaluate software reliability models and the associated software metrics to determine which would be most effective in determining the software reliability of digital safety systems.

Date: August 16–17, 1999—The workshop will begin at 8:30 a.m. and end at 6:00 p.m.

Location: Nuclear Regulatory Commission, White Flint II, 11545 Rockville Pike, Rockville, MD 20852.

Contact:

Registration—Sandra George, Phone: 301–405–6659; E-mail: *sgeorge@eng.umd.edu*

General—

Carol S. Smidts, Phone: 301–405–7314; E-mail: *csmidts@eng.umd.edu*

Ming Li, Phone: 301–405–1071; E-mail: *mli@eng.umd.edu*

Robert Brill, Phone: 301–415–6760; E-mail: *rwb2@nrc.gov*

Attendance: This workshop is free and open to the general public. All individuals planning to attend should pre-register with Ms. Sandra George by telephone or e-mail and provide their name, affiliation, phone number, and e-mail address.

Program: The workshop will be a mix of presentations and working group discussions. During the first day, the challenges of finding software reliability models for safety critical applications will be examined. A preliminary study identifying practical potential candidate models and their associated software metrics will be discussed by a panel of eminent researchers and practitioners in the fields of software engineering, software reliability engineering and software-based digital systems. During the second day, the panel will divide into working groups to evaluate each of the models and recommend the best models which could be used to evaluate the software reliability of digital systems. As part of this effort, the working groups will explore the need for any additional software metrics to strengthen the models chosen.

Dated in Rockville, Maryland this 23rd day of July, 1999.

For the Nuclear Regulatory Commission.

John W. Craig,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 99–19364 Filed 7–28–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41643; SR–DTC–99–16]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Amendment to Proposed Rule Change Relating to Profile Modification Feature of the Direct Registration System

July 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 22, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") an amendment as described in Items, I, II, and III below, which items have been prepared primarily by DTC, to its proposed rule change SR–DTC–99–16.[2] Notice of the proposed rule change as originally filed was published in the **Federal Register** on June 23, 1999.[3] The Commission is publishing this notice of the amendment to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of DTC's amendment is to add a fourth option on how to resolve the impasse in the implementation of the Profile Modification System ("Profile") feature of the Direct Registration System ("DRS") and to clarify DTC's description of the Profile.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] DTC filed SR–DTC–99–16 on June 17, 1999.

[3] Securities Exchange Act Release No. 41535 (June 17, 1999), 64 FR 33539 [File No. SR–DTC–99–16] (notice relating to the profile modification feature of the DRS).

[4] The Commission has modified the text of the summaries prepared by DTC.

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(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to amend DTC's proposed rule change regarding the implementation of the Profile feature[5] of DRS.[6] The amendment adds a fourth option to the three options initially proposed as ways to resolve the impasse in implementing the Profile feature. The amendment also provides technical clarification of DTC's description of the Profile feature.

In its proposed rule change, DTC has requested the guidance of the Commission staff in resolving the impasse between members of the Securities Transfer Association ("STA") and the Securities Industry Association ("SIA") relating to the implementation of the Profile feature of DRS. Because there is no industry consensus on whether DRS should continue to operate as it does today or whether use of DRS should be restricted in some manner until the Profile feature is implemented, DTC initially proposed three options on making additional securities issues eligible for inclusion in DRS.[7]

Since publication of the proposed rule change, several "DRS limited participants" have indicated that they may be operationally able to implement the Profile feature by the proposed deadline of August 31, 1999, or shortly thereafter. In addition, the SIA has submitted a comment letter supporting the concept of permitting any "DRS limited participant" capable of using the Profile Feature by the August 31, 1999, deadline to be able to do so and to allow that "DRS limited participant" to make additional issues eligible.[8]

As a result of these developments, DTC is adding the following additional option on making new issues eligible for DRS:

(4) If a "DRS limited participant" is able to implement Profile by September 13, 1999, either through DTC's Participant Terminal System ("PTS") or its Computer-to-Computer Facility ("CCF"), that "DRS limited participant" will be allowed to continue to make securities eligible for inclusion in DRS. Any "DRS limited participant" unable to implement Profile either through PTS or CCF by September 13, 1999, will not be allowed to make additional securities eligible for DRS until such time as it is able to implement Profile after January 15, 2000.

Due to the delay caused by the filing of this amendment, DTC is concerned about the shortened amount of time "DRS limited participants" will have to become operationally prepared to meet the August 31, 1999, deadline initially imposed in option (1) of the proposed rule change. Therefore, DTC is amending its proposed rule change so that the deadline in option (1) is September 13, 1999, and not August 31, 1999.[9]

DTC is also amending the proposed rule change to clarify its description of Profile. DTC is adding the following sentence to footnote 4 of Exhibit 1 ("completed notice of the proposed rule change for publication in the **Federal Register**") to its proposed rule change: "Profile was developed to incorporate the use of an electronic medallion guarantee."[10]

DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F)[11] the requirements of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change is designed to further the perfection of the mechanism for the national system for the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the amendment to the proposed rule change were solicited by DTC. DTC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve the proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–99–16 and should be submitted by August 19, 1999.

[5] Profile is an electronic communication system through DTC which allows participants and DRS Limited Participants to send instructions to each other regarding the movement of DRS shares.

[6] Securities Exchange Act Release No. 35038 (December 1, 1994), 59 FR 643652 (concept release relating to the direct registration system); Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (File No. SR–DTC–96–15) (order relating to the establishment of DRS).

[7] DTC's original three options included:

(1) if all "DRS limited participants" are not able to implement Profile by August 31, 1999, no additional securities issues would be made eligible after August 31, 1999, for inclusion in DRS until sometime in the first quarter of 2000 when all "DRS limited participants" are able to implement Profile using either PTS or CCF;

(2) securities issues would continue to be made eligible for inclusion in DRS in the manner in which they are currently made eligible for inclusion; or

(3) securities would continue to be made eligible for inclusion in DRS provided that each "DRS limited participant" could be the "DRS limited participant" for no more than two new issues per month. If all "DRS limited participants" are not able to implement Profile by using PTS or CCF by March 31, 2000, no additional securities issues would be made eligible for inclusion in DRS until such time as all "DRS limited participants" are ready to use Profile.

[8] Letter from Jerome Clair, Chair, SIA Operations Committee, and John Cirrito, Chair, Subcommittee on DRS, to Jonathan Katz, Secretary, Commission (July 14, 1999).

[9] DTC established a September 13, 1999, cutoff for all DTC systems changes due to Year 2000 concerns.

[10] See footnote 4 of Securities Exchange Act Release No. 41535 (June 7, 1999); 64 FR 33539 (File No. SR–DTC–99–16) (notice relating to the profile modification feature of the DRS).

[11] 15 U.S.C. 78q–1(b)(3)(F).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19416 Filed 7–28–99; 8:45 am]

BILLING CODE 8070–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collection listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collection would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Public Understanding Measurement System—0960–NEW. SSA has contracted with the Gallup Organization to conduct surveys to gather data on the public's level of knowledge about Social Security programs. The 1998 Public Understanding Measurement System (PUMS) survey indicated that 45 percent of the population has a lack of understanding of the major Social Security program areas. The 1999 and future Public Understanding Measurement System (PUMS II) surveys will enable SSA to build upon the 1998 PUMS quantitative baseline measure of public understanding.

An annual survey will provide tracking data of public understanding of SSA programs against which the outcomes of SSA performance improvement efforts can be assessed. Eight quarterly targeted surveys will test the effectiveness of several specific communications and public information outreach efforts.

PUMS II is essential to SSA's goal of strengthening public understanding about Social Security programs. The relevant Agency goal contained in SSA's strategic plan is that by the year 2005, 90 percent of all American adults will be knowledgeable about Social Security programs in five broad areas: basic program facts; the financial value of programs to individuals; the economic and social impact of SSA programs; how the programs are financed today; and financing issues. The respondents will be randomly selected adults residing in the United States.

	Annual survey	Quarterly surveys
Number of Respondents	4,000	12,000.
Frequency of Response	1	1.
Average Burden Per Response	12 minutes	12 minutes.
Estimated Annual Burden	800 hours	2,400 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Supplemental Security Income Notice of Interim Assistance Reimbursement (two forms)—0960–0546. Please note that these forms were previously approved under 2 OMB numbers, form SSA–8125, 0960–0546 and SSA–L8125–F6, 0960–0563. However, because these forms are interrelated SSA is combining them under 0960–0546. Form SSA–8125 and SSA–L8125–F6, previously 0960–0563, collect interim assistance reimbursement (IAR) information from the States that provide such assistance. Form SSA–8125 is used in situations where IAR can be distributed directly to the recipient after the State has deducted the amount of assistance it provided. Form SSA–L8125–F6 is used in situations where a recipient entitled to underpayments has received IAR from a State and SSA will control the benefit through the installment process. The respondents are States that provide IAR to SSI claimants.

	SSA–8125	SSA–L8125–F6
Number of Respondents	50,000	50,000.
Frequency of Response	1	1.
Average Burden Per Response	10 minutes	10 minutes.
Estimated Annual Burden	8,333 hours	8,333 hours.

2. Request for Information—0960–0607. The information collected through this form letter will be used by SSA's Office of the Inspector General (OIG) to conduct periodic eligibility reviews of beneficiaries residing in foreign countries. The form is designed to replace the current time-consuming and expensive method of conducting these reviews by selecting sample cases and conducting in person interviews. The form will permit OIG to review all beneficiary residents of the foreign country under study, thereby narrowing the scope of the beneficiaries requiring

[12] 17 CFR 200.30–3(a)(12).

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in person visits to those who do not respond or to those who provide questionable evidence. The respondents are Social Security beneficiaries residing in foreign countries.

Number of Respondents: 900.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 450 hours.

(Please note that this information collection received emergency approval from OMB on July 19, 1999. Emergency consideration was requested due to the time constraints associated with the normal clearance process, which conflicted with OIG's mission of combating fraud waste and abuse of SSA programs. Notice of the emergency request was published in the **Federal Register** on June 21, 1999. SSA plans to conduct eligibility reviews of beneficiaries residing in foreign countries on a scheduled basis and is therefore continuing to seek normal clearance of this collection.)

3. Application for Parent's Insurance Benefits—0960–0012. The information collected on form SSA–7 is used by the Social Security Administration to determine entitlement of an individual to parent's insurance benefits. The respondents are parents who were dependents of the worker for at least one-half of their support.

Number of Respondents: 1,400.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 350 hours.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

(OMB Address)

Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, D.C. 20503

Dated: July 21, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–19101 Filed 7–28–99; 8:45 am]

BILLING CODE 4190–29–U

DEPARTMENT OF STATE

[Public Notice No. 3096]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the five (5) letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political Military Affairs, Department of State ((703) 875–6644).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: July 16, 1999.

Rose M. Biancaniello,

Chief, Arms Licensing Division, Office of Defense Trade Controls.

BILLING CODE 4710–21–P

United States Department of State

Washington, D.C. 20520

JUN 30 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed Technical Assistance Agreement for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export for manufacture in the United Kingdom, technical information and defense services supporting the Joint United States/United Kingdom, Tracer/Future Scout Combat Support Armored Vehicle Program with a Directed Missile Countermeasure Device as a solution to guided missile threats.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 118-98

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

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United States Department of State

Washington, D.C. 20520

JUL 1 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of an A2100 commercial communications satellite to Japan for a launch from French Guiana.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 67-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

JUN 30 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to The Netherlands in support of the manufacture of F110 aircraft engine Flaps, Seals and Ejector Nozzles as part of the USG co-production program with European participating governments.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 65-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

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United States Department of State

Washington, D.C. 20520

JUN 30 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense equipment to be sold to Japan relating to the manufacture of the Tracking Adjunct System for use with the Hawk Missile System.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 48-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

JUL 13 1999

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical information, defense services and defense articles to the United Kingdom, for the manufacture of various hydraulic products and controls for military aircraft, marine and defense system applications.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 49-99

The Honorable
J. Dennis Hastert,
Speaker of the House of Representatives.

[FR Doc. 99-19424 Filed 7-28-99; 8:45 am]
BILLING CODE 4710-21-C

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TENNESSEE VALLEY AUTHORITY

Meeting of the Land Between the Lakes Advisory Committee

AGENCY: Tennessee Valley Authority (TVA.

ACTION: Notice of meeting.

SUMMARY: The Land Between The Lakes Advisory Committee (LBLAC) will hold its second meeting to consider hearing public perspectives and consider various issues identified by Committee members. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

The meeting agenda includes the following:

(1) Approval of Agenda
(2) Review/Approve Meeting 1 Minutes
(3) Update on LBL Funding for FY00
(4) Presentations by invited Organizations
(5) 1999 Meeting Issues Clarification, Additions, and Process
(6) Issue Deliberation
- Original LBL Mission Statement
- Types and Scope of Visitor Facilities and Services
- Youth Station Lease

(7) Public Listening Session
(8) Chairman's Summary

The meeting is open to the public. Some organizational representatives will be invited to address the committee during agenda item #4. Other members of the public who wish to make oral public comments should register with the DFO, in writing, at least 24 hours in advance of the meeting or register at the meeting site at least 15 minutes prior to the meeting. A written copy of the statement must be submitted at the registration desk prior to the meeting. One hour will be allotted for the Public Listening Session; each speaker will have 5 minutes to address the Committee. Public Listening Session time is available on a first-come, first-served basis. Written comments are also invited and may be mailed to Ann W. Wright, LBL General Manager and Advisory Committee DFO, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, or faxed to 270–924–2060.

DATES: The meeting will be held on August 18, 1999, from 8:30 a.m. to 5:30 p.m., CDT.

ADDRESSES: The meeting will be held at Paris Landing State Park in Buchanan, Tennessee, and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Kathy Coursey, LBLAC Administrative Officer, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, 270/924/2272, kccoursey@tva.gov.

Dated: July 23, 1999.

Ann W. Wright,

General Manager, TVA's Land Between The Lakes.

[FR Doc. 99–19413 Filed 7–28–99; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5952]

Chemical Transportation Advisory Committee; Charter Renewal

AGENCY: Coast Guard, DOT.

ACTION: Notice of charter renewal.

SUMMARY: The Secretary of Transportation has renewed the charter for the Chemical Transportation Advisory Committee (CTAC) for 2 years from May 27, 1999 until May 27, 2001. CTAC is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Coast Guard on safe transportation and handling of hazardous materials in bulk on U.S.-flag vessels and barges in U.S. ports and waterways.

ADDRESSES: You may request a copy of the charter by writing to Commandant (G–MSO–3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–1217; or by faxing 202–267–4570. This notice and the charter are available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Commander Robert Corbin, Executive Director of CTAC, or Ms. Sara Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

Dated: July 20, 1999.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–19373 Filed 7–28–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4920]

Navigation Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications; reopening of application period.

SUMMARY: The Coast Guard reopens the application period for membership on the Navigation Safety Advisory Council (NAVSAC). NAVSAC advises the Coast Guard on the prevention of vessel collisions, rammings, and groundings; Inland Rules of the road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems.

DATES: Application forms and any supporting information must reach us on or before August 15, 1999.

ADDRESSES: You may request an application form by writing to Commandant (G–MW), U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593–0001; or by calling 202–267–6164; by faxing 202–267–4700; or by e-mail *Jshort@comdt.uscg.mil.* Send your application form to the same address. This notice and the application form are available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Margie Hegy, Executive Director of NAVSAC at (202) 267–0415, fax (202) 267–4700.

SUPPLEMENTARY INFORMATION: On January 5, 1999, we published a request in the **Federal Register** (64 FR 562) for applications for membership in the Navigation Safety Advisory Council (NAVSAC). The application period closed on February 28, 1999. We are reopening the application period until August 15, 1999. If you applied in response to the January 5 notice, you do not need to send another application form.

NAVSAC is a Federal advisory council under 5 U.S.C. App. 2. It advises the Secretary of Transportation, via the Commandant of the Coast Guard, on the prevention of vessel collisions, rammings, and groundings; Inland Rules of the road; International Rules of the road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems.

NAVSAC meets at least twice a year at various locations in the continental United States. It may also meet for extraordinary purposes. Its committees and working groups may meet to consider specific problems as required.

We will consider applications for eight positions that expired or become vacant on June 30, 1999. To be eligible, you should have expertise in the above mentioned subject areas. To assure balanced representation of subject matter expertise, members are chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety; (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry; (3) individuals with an interest in maritime law; and (4) Federal and State officials with responsibility for vessel and port safety.

Each member serves for a term of 3 years. A few members may serve consecutive terms. All members serve without compensation from the Federal Government, although travel reimbursement and per diem may be provided.

In support of the policy of the Department of Transportation on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected, we may require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: July 19, 1999.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–19374 Filed 7–28–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 12, 1999, (FR 64, page 12399).

DATES: Comments must be submitted on or before August 30, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Exemptions for Air Taxi and Commuter Air Carrier Operations.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0633.

Form(s) N/A.

Affected Public: The respondents are an estimated 1559 air taxi operators and commuter air carriers.

Abstract: This collection is used to expedite the FAA's issuance of operating authority for small charter air carriers, and protect the competitive interests of these carriers and relieve the safety concerns of the traveling public with regard to the operations of these carriers. Under 14 CFR, Part 298 both air taxi operators and commuters are required to register with DOT and provide proof of liability insurance for all of the aircraft used by the operator.

Estimated Annual Burden Hours: 793 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, N.W., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 23, 1999.

Patricia W. Carter,

Acting Manager, Standards and Information Division, APF–100.

[FR Doc. 99–19372 Filed 7–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Jefferson, Cleveland, Lincoln, Bradley, and Drew Counties, Arkansas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Arkansas Counties of Jefferson, Cleveland, Lincoln, Bradley, and Drew.

FOR FURTHER INFORMATION CONTACT: Elizabeth Romero, Environmental Specialist, Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas 72201–3298, telephone: (501) 324–5625; or Dale Loe, Consultant Coordinator, Assistant Chief Engineer for Design, Arkansas State Highway and Transportation Department, P.O. Box 2261, Little Rock, Arkansas 72203, telephone: (501) 569–2301.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arkansas State Highway and Transportation Department, will prepare an environmental impact statement (EIS) on a proposal to construct a four-lane, divided, fully controlled access highway facility located on new alignment. Several alternatives and locations will be considered, including the "no-action" alternative in which roads are constructed in accordance with the Statewide Transportation Improvement Plan, with the exception of the proposed facility. The approximate length of the project is 50 miles.

The proposed transportation facility, also known as the "Southeast Arkansas I–69 Connector", would improve regional travel, safety, intermodal connectivity, and economic development by providing a north-south interstate-quality highway connecting Interstates 30 and 40 in Little Rock, Arkansas via U.S. 65 (Future Interstate Route I–530), to the proposed I–69 near the Monticello and Warren, Arkansas vicinity. The I–69 corridor is identified as a "high priority corridor" on the National Highway System that would provide a NAFTA transportation corridor of national significance from Sarnia, Ontario, Canada through Port Huron, Michigan and Indianapolis, Indiana to Memphis, Tennessee and would continue southward to Houston, Texas and end at the border with Mexico.

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The northern terminus of the project will connect to the U.S. 65 (Future I–530) Bypass near Pine Bluff, Arkansas and the southern terminus will have an interim connection to U.S. 278 in the Monticello and Warren, Arkansas vicinity. The proposed connector was identified in Section 1211(h) of the Transportation Equity Act for the 21st Century (TEA–21), as amended.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, state, and local agencies and to private organizations and citizens who have previously expressed or are known to have an interest in this project. A series of public meetings will be held within the study area beginning in the fall of 1999, with on-going public involvement activities. The draft Environmental Impact Statement (EIS) will be available for public and agency review and comment prior to a formal public hearing. Public notice will be given of the time and place for all meetings and hearings.

To ensure that the full range of issues related to this project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Issued on: July 20, 1999.

Elizabeth Romero,

Environmental Specialist, FHWA, Little Rock, Arkansas.

[FR Doc. 99–19338 Filed 7–28–99 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Burlington Northern Sante Fe Railway

[Docket Number FRA–1999–5895]

Burlington Northern Sante Fe Railway (BNSF) seeks a permanent waiver of compliance from certain provisions of the Safety Appliances Standards, 49 CFR part 231, and Power Brakes and Drawbars regulations, 49 CFR part 232, concerning RoadRailer® train operations over their railroad system. Specifically, BNSF requests relief from the requirements of: 49 CFR part 231, which specifies the number, location and dimensional specifications for handholds, ladders, sill steps, uncoupling levers, and handbrakes; and § 232.2, which regulates drawbar height.

The RoadRailer® units, by design, cannot be subjected to traditional switching or classification procedures, since they do not have the required safety appliance arrangement and their coupler assembly will only couple to another RoadRailer® unit or to a special designed adapter vehicle. In consideration of the unique way RoadRailer® units are assembled, there is no necessity for a person to ride on this equipment. Furthermore, this vehicle has a spring based parking brake (which has replaced the conventional manually operated handbrake) that operates automatically in conjunction with the train air brake system, so there is no need for an individual to mount the vehicle to apply a handbrake. The spring activates the parking brake when air pressure is reduced below a predetermined value and remains applied until air pressure is restored. The drawbar height is not within the prescribed limits of 31½ to 34½ inches.

BNSF states that they will provide adequate training and familiarization for their operating personnel and emphasize the fact that employees must not attempt to mount or dismount RoadRailer trailers because there are no safety appliances. BNSF would also advise the FRA of any incidents or in-service problems with the RoadRailer equipment. BNSF would restrict the trains to 125 RoadRailer units, excluding the adapter unit, with a maximum of 4800 trailing tons. The adapter unit, CouplerMate, will be used between the hauling locomotive and the first RoadRailer unit in the train. BNSF would only haul hazardous materials listed in Table 2 of 49 CFR 172.504, in RoadRailer vehicles. Brake cylinder piston travel limits for the Mark V RoadRailer equipment would be 1¼ to 3½ inches at initial terminal, with 3⅝ inches being an ineffective brake.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1999–5895) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW, Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at http://dms.dot.gov.

Issued in Washington, DC, on July 22, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–19407 Filed 7–28–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–1999–5517.

Applicant: Fox Valley and Western Limited, Mr. Glenn J. Kerbs, Vice President, engineering, 3000 Minnesota Avenue, Stevens Point, Wisconsin 54481.

The Fox Valley and Western Limited seeks approval of the proposed discontinuance and removal of the signal system at Bridge U–104, milepost 112.10, Denmark Subdivision, near Green Bay, Wisconsin, associated with the installation of shore control panels on each side of the bridge, for train crew operation.

The reason given for the proposed changes is that the track has minimal usage and the changes will eliminate the need for train crews to call an operator to open and close the bridge.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at http://dms.dot.gov.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on July 22, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–19406 Filed 7–28–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Support Innovative Programs To Increase Booster Seat and Seat Belt Use Among Children

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Amendment of agency announcement published June 30, 1999, Volume 64, No. 125, and correction published July 8, 1999 Volume 64, No. 130.

SUMMARY: The date for receipt of applications (July 30, 1999, as stated in the July 8, 1999 correction) is hereby extended to 2:00 p.m. E.S.T. on August 13, 1999. Applications must be received by that time and date. Applications postmarked, but not received, by that time and date will not be accepted for evaluation.

Dated: July 23, 1999.

James L. Nichols,

Acting Associate Administrator for Traffic Safety Programs.

[FR Doc. 99–19375 Filed 7–28–99; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4683; Notice 02]

RIN 2127–AH35

Final Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of final theft data.

SUMMARY: This document publishes the final data on thefts of model year (MY) 1997 passenger motor vehicles that occurred in calendar year (CY) 1997. The final 1997 theft data indicate a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1996. The final theft rate for MY 1997 passenger vehicles stolen in calendar year 1997 (3.05 thefts per thousand vehicles produced) decreased by 7 percent from the theft rate for CY/MY 1996 vehicles (3.28 thefts per thousand vehicles produced). Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data and publish the information for review and comment. The data were calculated for informational purposes only.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing and affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data and publish the data for review and comment. To fulfill this statutory mandate, NHTSA has published theft data annually beginning with MYs 1983/84. Continuing to fulfill the section 33104(b)(4) mandate, this document reports the final theft data for CY 1997, the most recent calendar year for which data are available.

In calculating the 1997 theft rates, NHTSA followed the same procedures it used in calculating the MY 1996 theft rates. (For 1996 theft data calculations, see 63 FR 36478, July 6, 1998.) As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 1997 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 1997 vehicles of that line stolen during calendar year 1997 by the total number of vehicles in that line manufactured for MY 1997, as reported to the Environmental Protection Agency (EPA).

The final 1997 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1996. The final theft rate for MY 1997 passenger vehicles stolen in CY 1997 decreased to 3.05 thefts per thousand vehicles produced, a decrease

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of 7 percent from the rate of 3.28 thefts per thousand vehicles experienced by MY 1996 vehicles in CY 1996. For MY 1997 vehicles, out of a total of 205 vehicle lines, 66 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994.) Of the 66 vehicle lines with a theft rate higher than 3.5826, 56 are passenger car lines, 9 are multipurpose passenger vehicle lines, and one is a light-duty truck line.

On Monday, February 17, 1999, NHTSA published the preliminary theft rates for CY 1997 passenger motor vehicles in the **Federal Register** (64 FR 7945). The agency tentatively ranked each of the MY 1997 vehicle lines in descending order of theft rate. The public was requested to comment on the accuracy of the data and to provide final production figures for individual vehicle lines. The agency received written comments from Mercedes-Benz of North America (Mercedes) and Ford Motor Company (Ford). The agency used all written comments to make the necessary adjustments to its data. As a result of the adjustments, some of the final theft rates and rankings of vehicle lines changed from those published in the February 1999 notice.

Mercedes informed the agency that the production volume for the Mercedes 129 vehicle line (SL-Class) was erroneously listed. After further analysis of the production volumes, it was confirmed with Mercedes that the production volume listed by the agency was not in error. Therefore, the production volume and the theft rate for this line will remain unchanged. Mercedes also informed the agency that the production volume for the Mercedes 202 (C-Class) was incorrect. After further review of the final production volumes Mercedes reported to the EPA, it was confirmed that the production volume submitted by Mercedes in its initial comment was incorrect. As a result of Mercedes comments to the docket, the production volume for the 202 (C-Class) has been corrected and the final theft list has been revised accordingly.

Further reanalysis of the theft rate data revealed that the listing did not include the Ford F150 Pickup truck or the Mercury Mountaineer. NHTSA is correcting the final theft data to include the production volumes for the Ford F150 Pickup truck and the Mountaineer. As a result of these corrections, the Ford F150, previously not listed, is now ranked No. 125 with a theft rate of 2.0269. Additionally, the Mercury Mountaineer, previously not listed, is now ranked No. 108 with a theft rate of 2.2910.

The following list represents NHTSA's final calculation of theft rates for all 1997 passenger motor vehicle lines. This list is intended to inform the public of calendar year 1997 motor vehicle thefts of model year 1997 vehicles and does not have any affect on the obligations of regulated parties under 49 U.S.C. Chapter 331, Theft Prevention.

THEFT RATES OF MODEL YEAR 1997 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1997

Manufacturer	Make/model (line)	Thefts 1997	Production (Mfr's) 1997	1997 theft rate (per 1,000 vehicles produced)
1. SUZUKI	SWIFT	16	1,724	9.2807
2. HONDA	ACURA INTEGRA	277	30,046	9.2192
3. CHRYSLER CORP	PLYMOUTH NEON	749	82,880	9.0372
4. MITSUBISHI	MIRAGE	497	58,218	8.5369
5. CHRYSLER CORP	DODGE NEON	926	115,456	8.0204
6. TOYOTA	SUPRA	13	1,629	7.9804
7. HYUNDAI	TIBURON	37	4,758	7.7764
8. SUZUKI	ESTEEM	55	7,116	7.7291
9. MITSUBISHI	MONTERO SPORT	202	26,592	7.5963
10. BMW	8	6	791	7.5853
11. TOYOTA	LEXUS SC	41	5,570	7.3609
12. CHRYSLER CORP	DODGE STRATUS	711	97,227	7.3128
13. NISSAN	MAXIMA	949	131,602	7.2111
14. CHRYSLER CORP	STRATUS [1]	3	429	6.9930
15. MITSUBISHI	MONTERO	82	12,249	6.6944
16. CHRYSLER CORP	INTREPID [1]	4	616	6.4935
17. NISSAN	STANZA ALTIMA	1,157	179,501	6.4456
18. CHRYSLER CORP	PLYMOUTH BREEZE	423	70,699	5.9831
19. MITSUBISHI	3000GT	38	6,399	5.9384
20. GENERAL MOTORS	GEO METRO	374	64,933	5.7598
21. MITSUBISHI	ECLIPSE	439	77,556	5.6604
22. MITSUBISHI	GALANT	282	50,259	5.6109
23. TOYOTA	TERCEL	277	49,527	5.5929
24. CHRYSLER CORP	NEW YORKER/LHS	203	36,622	5.5431
25. FORD MOTOR CO	MERCURY MYSTIQUE	126	23,321	5.4029
26. FORD MOTOR CO	MERCURY TRACER	354	65,867	5.3745
27. SUBARU	SVX	2	384	5.2083
28. MERCEDES BENZ	140 (S–CLASS)	85	16,348	5.1994
29. CHRYSLER CORP	DODGE INTREPID	775	151,603	5.1120
30. MERCEDES BENZ	129 (SL–CLASS)	36	7,172	5.0195
31. CHRYSLER CORP	SEBRING CONVERTIBLE	280	56,004	4.9996
32 HYUNDAI	SONATA	90	18,035	4.9903
33 HONDA	ACURA SLX	5	1,003	4.9850
34 SUZUKI	SIDEKICK	110	22,312	4.9301
35 TOYOTA	COROLLA	1,091	222,055	4.9132
36 GENERAL MOTORS	CHEVROLET CAMARO	270	55,037	4.9058
37 FORD MOTOR CO	MUSTANG	490	100,259	4.8873
38 HYUNDAI	ACCENT	174	37,755	4.6087
39 NISSAN	PATHFINDER	382	83,550	4.5721

THEFT RATES OF MODEL YEAR 1997 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1997—Continued

Manufacturer	Make/model (line)	Thefts 1997	Production (Mfr's) 1997	1997 theft rate (per 1,000 vehicles produced)
40 GENERAL MOTORS	GEO PRIZM	285	62,800	4.5382
41 BMW	M3	35	7,976	4.3882
42 CHRYSLER CORP	CIRRUS	121	28,008	4.3202
43 CHRYSLER CORP	JEEP GRAND CHEROKEE	1,122	259,946	4.3163
44 GENERAL MOTORS	PONTIAC FIREBIRD/FORMULA	133	30,819	4.3155
45 FORD MOTOR CO	ASPIRE	161	37,398	4.3050
46 ASTON MARTIN	DB7	1	234	4.2735
47 ISUZU	HOMBRE PICKUP TRUCK	52	12,177	4.2703
48 HONDA	ACCORD	1,604	375,973	4.2663
49 CHRYSLER CORP	SEBRING COUPE	140	33,163	4.2216
50 SUZUKI	X–90	9	2,182	4.1247
51 NISSAN	240SX	15	3,655	4.1040
52 FORD MOTOR CO	CONTOUR	327	79,945	4.0903
53 NISSAN	SENTRA/200SX	628	154,689	4.0598
54 GENERAL MOTORS	OLDSMOBILE ACHIEVA	201	49,879	4.0298
55 CHRYSLER CORP	NEON [1]	3	751	3.9947
56 TOYOTA	4-RUNNER	512	128,659	3.9795
57 HYUNDAI	ELANTRA	178	44,936	3.9612
58 GENERAL MOTORS	PONTIAC GRAND AM	834	211,009	3.9524
59 FORD MOTOR CO	ESCORT	1,264	323,413	3.9083
60 MAZDA	626/MX–6	320	82,223	3.8919
61 GENERAL MOTORS	GMC JIMMY S–15	284	73,493	3.8643
62 HONDA	DEL SOL	25	6,719	3.7208
63 FORD MOTOR CO	PROBE	62	16,823	3.6854
64 GENERAL MOTORS	BUICK SKYLARK	212	57,716	3.6732
65 CHRYSLER CORP	EAGLE TALON	36	9,827	3.6634
66 ISUZU	RODEO	190	52,937	3.5892
67 CHRYSLER CORP	EAGLE VISION	21	5,888	3.5666
68 GENERAL MOTORS	CHEVROLET CORVETTE	32	9,072	3.5273
69 MAZDA	MILLENIA	58	17,130	3.3859
70 MITSUBISHI	DIAMANTE	95	28,208	3.3678
71 NISSAN	INFINITI I30	92	27,606	3.3326
72 FORD MOTOR CO	TAURUS	1,322	398,720	3.3156
73 NISSAN	INFINITI QX4	54	16,558	3.2613
74 ISUZU	TROOPER	34	10,616	3.2027
75 FORD MOTOR CO	LINCOLN TOWN CAR	328	104,969	3.1247
76 CHRYSLER CORP	DODGE AVENGER	101	32,698	3.0889
77 GENERAL MOTORS	CHEVROLET CAVALIER	969	316,265	3.0639
78 TOYOTA	TACOMA PICKUP TRUCK	333	109,056	3.0535
79 CHRYSLER CORP	JEEP WRANGLER	382	125,276	3.0493
80 KIA	SEPHIA	130	42,709	3.0439
81 FORD MOTOR CO	MERCURY SABLE	340	114,227	2.9765
82 MAZDA	MX–5 MIATA	55	18,536	2.9672
83 GENERAL MOTORS	CHEVROLET BLAZER S10/T10	624	212,327	2.9389
84 FORD MOTOR CO	LINCOLN MARK VIII	48	16,339	2.9378
85 HONDA	PRELUDE	48	16,584	2.8944
86 GENERAL MOTORS	PONTIAC SUNFIRE	305	105,493	2.8912
87 GENERAL MOTORS	CADILLAC DEVILLE	274	95,151	2.8796
88 VOLVO	960	52	18,140	2.8666
89 PORSCHE	911	18	6,289	2.8621
90 HONDA	PASSPORT	62	21,693	2.8581
91 HONDA	CIVIC	933	335,167	2.7837
92 MAZDA	PROTEGE	159	57,153	2.7820
93 FORD MOTOR CO	EXPLORER	1,105	398,992	2.7695
94 FORD MOTOR CO	WINDSTAR VAN	98	36,315	2.6986
95 JAGUAR	XJ6	21	7,899	2.6586
96 VOLKSWAGEN	GOLF/GTI	59	22,684	2.6010
97 ACURA	TL	55	21,441	2.5652
98 TOYOTA	CAMRY	935	365,752	2.5564
99 GENERAL MOTORS	PONTIAC BONNEVILLE	186	74,182	2.5073
100 TOYOTA	PASEO	8	3,194	2.5047
101 TOYOTA	PREVIA VAN	12	4,840	2.4793
102 CHRYSLER CORP	PLYMOUTH PROWLER	1	404	2.4752
103 BMW	7	43	17,788	2.4174
104 FORD MOTOR CO	THUNDERBIRD	178	73,812	2.4115
105 GENERAL MOTORS	OLDSMOBILE CUTLASS SUPREME	127	53,434	2.3768
106 TOYOTA	LEXUS ES	138	59,344	2.3254
107 GENERAL MOTORS	CHEVROLET LUMINA/MONTE CARLO	696	304,270	2.2874
108 FORD MOTOR CO	MERCURY MOUNTAINEER	149	65,322	2.2810

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THEFT RATES OF MODEL YEAR 1997 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1997—Continued

	Manufacturer	Make/model (line)	Thefts 1997	Production (Mfr's) 1997	1997 theft rate (per 1,000 vehicles produced)
109	MERCEDES BENZ	210 (E-CLASS)	114	50,101	2.2754
110	VOLKSWAGEN	PASSAT	261	1,437	2.2733
111	VOLKSWAGEN	JETTA	208	91,809	2.2656
112	NISSAN	PICKUP TRUCK	286	130,665	2.1888
113	BMW	3	93	42,643	2.1809
114	HONDA	ACURA CL	98	44,955	2.1800
115	CHRYSLER CORP	PLYMOUTH VOYAGER	325	149,874	2.1685
116	GENERAL MOTORS	GMC SAFARI VAN	683	1,673	2.1469
117	GENERAL MOTORS	CHEVROLET ASTRO VAN	213	100,116	2.1275
118	NISSAN	INFINITI J30	23	10,817	2.1263
119	TOYOTA	LEXUS LS	381	7,900	2.1229
120	GENERAL MOTORS	GMC SONOMA PICKUP TRUCK	823	8,759	2.1156
121	JAGUAR	XJR	1	473	2.1142
122	TOYOTA	RAV4	154	73,321	2.1004
123	BMW	5	86	41,665	2.0641
124	TOYOTA	T100 PICKUP TRUCK	62	30,389	2.0402
125	FORD MOTOR CO	F–150 PICKUP TRUCK	1,265	624,093	2.0269
126	TOYOTA	CELICA	26	12,901	2.0153
127	GENERAL MOTORS	GEO TRACKER	49	24,400	2.0082
128	GENERAL MOTORS	OLDSMOBILE BRAVADA	54	27,722	1.9479
129	CHRYSLER CORP	CONCORDE	99	51,119	1.9367
130	CHRYSLER CORP	DODGE CARAVAN	559	290,007	1.9275
131	GENERAL MOTORS	PONTIAC GRAND PRIX	275	144,767	1.8996
132	KIA	SPORTAGE	44	23,500	1.8723
133	JAGUAR	XK8	15	8,242	1.8199
134	TOYOTA	AVALON	132	73,991	1.7840
135	GENERAL MOTORS	CADILLAC ELDORADO	34	19,307	1.7610
136	GENERAL MOTORS	BUICK RIVIERA	31	18,175	1.7056
137	VOLVO	850	72	42,596	1.6903
138	SAAB	9000	9	5,449	1.6517
139	PORSCHE	BOXSTER CONVERTIBLE	9	5,459	1.6487
140	BMW	Z3	34	20,636	1.6476
141	CHRYSLER CORP	JEEP CHEROKEE	141	86,303	1.6338
142	FORD MOTOR CO	RANGER PICKUP TRUCK	478	296,746	1.6108
143	VOLKSWAGEN	CABRIO	15	9,473	1.5834
144	GENERAL MOTORS	CHEVROLET S–10 PICKUP TRUCK	298	190,835	1.5616
145	AUDI	A6	12	7,736	1.5512
146	MERCEDES BENZ	202 (C–CLASS)	44	28,388	1.5500
147	CHRYSLER CORP	DODGE DAKOTA PICKUP TRUCK	195	128,661	1.5156
148	FORD MOTOR CO	AEROSTAR VAN	78	53,721	1.4519
149	NISSAN	INFINITI Q45	18	12,398	1.4518
150	MAZDA	MPV	19	13,302	1.4284
151	FORD MOTOR CO	MERCURY COUGAR	50	35,273	1.4175
152	MAZDA	B SERIES PICKUP TRUCK	50	35,496	1.4086
153	NISSAN	QUEST	73	52,071	1.4019
154	GENERAL MOTORS	CADILLAC SEVILLE	52	37,187	1.3983
155	GENERAL MOTORS	CHEVROLET MALIBU	136	100,661	1.3511
156	FORD MOTOR CO	LINCOLN CONTINENTAL	43	32,204	1.3352
157	CHRYSLER CORP	TOWN & COUNTRY MPV	103	78,662	1.3094
158	GENERAL MOTORS	CADILLAC CATERA	34	26,109	1.3022
159	SUBARU	IMPREZA	34	26,817	1.2679
160	GENERAL MOTORS	SATURN SC	84	66,456	1.2640
161	GENERAL MOTORS	SATURN SL	251	199,018	1.2612
162	VOLKSWAGEN	EUROVAN	2	1,602	1.2484
163	SUBARU	LEGACY	115	92,310	1.2458
164	FORD MOTOR CO	MERCURY VILLAGER MPV	64	61,417	1.0421
165	GENERAL MOTORS	OLDSMOBILE EIGHTY-EIGHT	68	65,879	1.0322
166	GENERAL MOTORS	OLDSMOBILE AURORA	26	25,579	1.0165
167	GENERAL MOTORS	PONTIAC TRANS SPORT VAN	47	47,627	0.9868
168	AUDI	A4	16	16,400	0.9756
169	FORD MOTOR CO	MERCURY GRAND MARQUIS	124	127,973	0.9690
170	SAAB	900	22	23,152	0.9502
171	HONDA	ACURA RL	15	16,377	0.9159
172	FORD MOTOR CO	CROWN VICTORIA	107	123,814	0.8642
173	AUDI	A8	2	2,377	0.8414
174	GENERAL MOTORS	SATURN SW	20	27,129	0.7372
175	GENERAL MOTORS	BUICK LESABRE	155	211,904	0.7315
176	GENERAL MOTORS	OLDSMOBILE CUTLASS	13	18,112	0.7178
177	HONDA	ODYSSEY	14	22,243	0.6294

THEFT RATES OF MODEL YEAR 1997 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1997—Continued

	Manufacturer	Make/model (line)	Thefts 1997	Production (Mfr's) 1997	1997 theft rate (per 1,000 vehicles produced)
178	ISUZU	OASIS	1	1,602	0.6242
179	HONDA	CR-V	44	73,948	0.5950
180	GENERAL MOTORS	OLDSMOBILE SILHOUETTE VAN	12	20,927	0.5734
181	GENERAL MOTORS	CHEVROLET VENTURE VAN	38	71,649	0.5304
182	GENERAL MOTORS	BUICK CENTURY	27	53,706	0.5027
183	GENERAL MOTORS	BUICK PARK AVENUE	28	59,549	0.4702
184	GENERAL MOTORS	BUICK REGAL	7	21,828	0.3207
185	AUDI	CABRIOLET	0	1,201	0.0000
186	CHRYSLER CORP	DODGE VIPER	0	1,537	0.0000
187	FERRARI	F355	0	622	0.0000
188	FERRARI	456	0	70	0.0000
189	FERRARI	550	0	94	0.0000
190	GENERAL MOTORS	BUICK FUNERAL COACH/HEARSE	0	546	0.0000
191	GENERAL MOTORS	CADILLAC LIMOUSINE	0	445	0.0000
192	GENERAL MOTORS	SATURN EV1	0	2,000	0.0000
193	HONDA	ACURA NSX	0	322	0.0000
194	JAGUAR	VANDEN PLAS	0	2,536	0.0000
195	LAMBORGHINI	DB132/DIABLO	0	74	0.0000
196	LOTUS	ESPRIT	0	121	0.0000
197	ROLLS-ROYCE	BENTLEY AZURE	0	81	0.0000
198	ROLLS-ROYCE	BENTLEY BROOKLANDS	0	135	0.0000
199	ROLLS-ROYCE	BENTLEY CONTINENTAL T	0	40	0.0000
200	ROLLS-ROYCE	BENTLEY TURBO R	0	54	0.0000
201	ROLLS-ROYCE	SILVER DAWN	0	21	0.0000
202	ROLLS-ROYCE	SILVER SPUR	0	113	0.0000
203	ROLLS-ROYCE	PARK WARD LIMOUSINE	0	1	0.0000
204	TOYOTA	LEXUS GS	0	187	0.0000
205	VECTOR AUTO	AVTECH SC/M12	0	4	0.0000

[1] These vehicles were manufactured for sale only in U.S. territories under the Chrysler nameplate.

Issued on: July 23, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–19448 Filed 7–28–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 21, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 30, 1999 to be assured of consideration.

Departmental Offices/International Portfolio Investment Data Systems

OMB Number: 1505–0149.

Form Number: None.

Type of Review: Extension.

Title: Reporting of International Capital and Foreign Currency Transactions and Positions, 31 CFR Part 128.

Description: 31 CFR Part 128 establishes general guidelines for reporting on United States claims on and liabilities to foreigners; on transactions in securities with foreigners; and on monetary reserves of the United States. It also establishes guidelines for reporting on the foreign currency transactions of U.S. persons. It includes a recordkeeping requirement, § 128.5.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 2,000.

Estimated Burden Hours Per Recordkeeper: 3 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 6,000 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 99–19339 Filed 7–28–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 19, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

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DATES: Written comments should be received on or before August 30, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0216.
Form Number: IRS Form 5713, Schedules A, B, and C.
Type of Review: Extension.
Title: International Boycott Report.

Description: Form 5713 and related Schedules A, B, and C are used by any entity that has operations in a "boycotting" country. If that entity cooperates with or participates in an international boycott it loses a portion of the foreign tax credit, or deferral of Foreign Sales Corporation (FSC) and Interest Charge-Domestic International Sales Corporation (IC–DISC) benefits. The IRS uses Form 5713 to determine if any of the above benefits should be lost. The information is also used as the basis for a report to the Congress.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 3,875.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
5713	21 hr., 31 min	2 hr., 3 min	3 hr., 26 min.
Sch. A (5713)	3 hr., 7 min	12 min	16 min.
Sch. B (5713)	3 hr., 21 min	1 hr., 59 min	2 hr., 8 min.
Sch. C (5713)	4 hr., 32 min	1 hr., 47 min	1 hr., 56 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 100,178 hours.
OMB Number: 1545–1201.
Regulation Project Number: PS–52–88 (Final) (T.D. 8455).
Type of Review: Extension.
Title: Election to Expense Certain Depreciable Business Assets.
Description: The regulations provide rules on the election described in section 179(b)(4); the apportionment of the dollar limitation among component members of a controlled group; and the proper order for deducting the carryover of disallowed deduction. The recordkeeping and reporting is necessary to monitor compliance with the section 179 rules.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 20,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 45 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 15,000 hours.
OMB Number: 1545–1295.
Regulation Project Number: CO–111–90 Final and Temporary.
Type of Review: Extension.
Title: Revision of Section 338 Consistency Regulations.
Description: The regulations require corporations that make elections under section 338 to provide certain information. The information is used to determine tax liability that results when elections are made and to facilitate collections of the tax.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 45.
Estimated Burden Hours Per Respondent: 34 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 25 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 99–19340 Filed 7–28–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 19, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 30, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1309.
Form Number: IRS Form 1040PC.
Type of Review: Extension.
Title: U.S. Individual Income Tax Return 1040PC Format.

Description: Form 1040PC is a computer-generated tax return answer sheet format prepared by tax preparation software. Form 1040PC is an alternative method of filing Form 1040. It will offer direct deposit for taxpayers to have their refunds deposited into their personal savings or checking accounts by electronic funds transfer. It will also generate a pre-printed payment voucher for use when payment is due to the IRS.
Respondents: Individuals or households.
Estimated Number of Respondents: 7,502,722.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1,875,681 hours.
OMB Number: 1545–1488.
Regulation Project Number: REG–209837–96 Final.
Type of Review: Extension.
Title: Requirements Respecting the Adoption or Change of Accounting Method; Extensions of Time To Make Elections.
Description: The regulations provide the standards the Commissioner will use to determine whether to grant an extension of time to make certain elections.
Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, Farms.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 10 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 5,000 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 99–19401 Filed 7–28–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Electronic License Application Form

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the Office of Foreign Assets Control's Electronic License Application Form information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 27, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Dennis P. Wood, Chief, Compliance Programs Division, or William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Annex-2nd Floor, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to Dennis P. Wood, Chief, Compliance Programs Division, (tel.: 202/622–2490), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Annex-2nd Floor, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: Electronic Form for OFAC License Applications.
OMB Number: 1505–0170.
Abstract: Transactions prohibited pursuant to the Trading With The Enemy Act, 50 U.S.C. App. 1–44, and the International Emergency Economic Powers Act, 50 U.S.C. 1701, may be authorized by means of specific licenses issued by the Office of Foreign Assets control (OFAC). Such licenses are issued in response to applications submitted by persons or institutions whose property has been blocked or who wish to engage in transactions that would otherwise by prohibited. This form—which provides a standardized method for all applicants and is available in electron form on our website—was new upon OMB's initial approval in December 1998. Applicants are not required to use the form. However, its use greatly facilitates and speeds applicants' submissions and OFAC's processing of applications and obviates the need for applicants to write lengthy letters to OFAC, thus reducing the overall burden of the application process.
Current Action: Extension.
Type of Review: Extension.
Affected Public: Individuals/ businesses and other for-profit institutions/ banking institutions.
Estimated Number of Respondents: 2,751.
Estimated Time Per Respondent: 30 minutes.
Estimated Annual Burden Hours: 1,376.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 14, 1999.

Dale A. Morgan,

Departmental Reports Management Officer, Department of the Treasury.

[FR Doc. 99–19208 Filed 7–28–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Cuba Travel Declaration

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the Office of Foreign Assets Control's Cuba Travel Declaration information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 27, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Dennis P. Wood, Chief, Compliance Programs Division, or William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Annex-2nd Floor, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to Dennis P. Wood, Chief, Compliance Programs Division, (tel.: 202/622–2490), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Annex-2nd Floor, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: Electronic Form for OFAC License Applications.
OMB Number: 1505–0118.
Abstract: Declarations are to be completed by persons traveling from the United States to Cuba. The declarations will provide the United States Government with information to be used in administering and enforcing economic sanctions imposed against Cuba pursuant to the Cuban Assets Control Regulations, 31 C.F.R. part 515.
Current Action: Extension.
Type of Review: Extension.
Affected Public: Individuals.
Estimated Number of Respondents: 70,000.
Estimated Time Per Respondent: 2.5 minutes.
Estimated Annual Burden Hours: 175,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the

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agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 14, 1999.

Dale A. Morgan,

Departmental Reports Management Officer, Department of the Treasury.

[FR Doc. 99–19209 Filed 7–28–99; 8:45 am]

BILLING CODE 4810–25–P

UNITED STATES INFORMATION AGENCY

International Education and Cultural Activities—Open Grant Program

AGENCY: United States Information Agency (USIA).

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. For applicants' information, on October 1, 1999, the Bureau will become part of the U.S. Department of State. The integration will not affect the content of this announcement or the nature of the program described. Public or private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop projects that link their international exchange interests with counterpart institutions/groups in ways supportive of the aims of the Bureau of Educational and Cultural Affairs. Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright Hays Act.

The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." Proposals for exchange projects that address issues of crucial importance to the United States and to proposed partner countries but that do not respond specifically to themes included below will also be considered. Programs and projects must conform with Bureau requirements and guidelines outlined in the Application Package. Bureau projects and programs are subject to the availability of funds.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until after the Bureau program and project review process has been completed.

ANNOUNCEMENT NAME AND NUMBER: All communications concerning this announcement should refer to the Annual Open Grant Program. The announcement number is *E/P–00–1*. Please refer to title and number in all correspondence or telephone calls to the Office of Citizen Exchanges.

Deadline for Proposals: All copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m., Washington, D.C. time on Friday, October 15, 1999. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. This action is effective from the publication date of this notice through October 15, 1999, for projects where activities will begin between March 1, 2000 and December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen Exchanges, E/PL, Room 216, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619–5348, to request detailed application packets which include award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package via Internet: The Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before beginning to download.

ADDRESSES: Applicants must follow all instructions given in the Application Package and send only complete applications with 15 copies to: U.S. Information Agency (until October 1, 1999) or U.S. Department of State (effective October 1, 1999) REF: E/P–00–1 Annual Open Grant Competition Bureau of Educational and Cultural Affairs Office of Grants Management (E/XE) 301—4th Street, SW, Room 336, Washington, DC 20547.

Applicants must also submit to E/XE the "Executive Summary" and "Narrative" sections of each proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to U.S. embassies overseas for their review, with the goal of reducing the time it takes to get the respective Embassy's comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, projects must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal, in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000(Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly. The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years. Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Overview

The Office of Citizen Exchanges works with U.S. private sector, non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' social, economic, and political structures, and international interests. The Office supports international projects in the United States or overseas involving leaders or potential leaders in the following fields and professions: urban planners, jurists, specialized journalists (specialists in economics, business, political analysis, international affairs), business professionals, NGO leaders, environmental specialists, parliamentarians, educators, economists, and other government officials.

Guidelines

Applicants should carefully note the following restrictions/recommendations for proposals in specific geographical areas:

Central and Eastern Europe (CEE) and the newly Independent States (NIS)

Requests for proposals involving the following countries will be announced in separate competitions: CEE—Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Slovak Republic, and Slovenia; NIS—Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkemenistan, Ukraine, and Uzbekistan. Proposals involving these regions will not be accepted under this competition.

Western Europe (WEU)

Proposals involving this region will not be accepted under this competition.

East Asia and the Pacific (EA)

For all of EA: We welcome proposals that track closely with the following suggestions and for the following countries:

For China: We welcome proposals (1) That strengthen the role of NGOs in Chinese society and PRC government cooperation with NGOs through an exchange of representatives from NGOs and public-sector organizations cutting across fields such as legal aid, consumerism, family issues, and environmental protection to examine the role of NGOs and public-private sector cooperation in the U.S.; and (2) the help China learn to keep the social costs of economic reform tolerable through an exchange involving officials from the PRC Ministry of Labor and Social Security, Ministry of Health, local re-employment centers, and other relevant health and social welfare professionals, working with U.S. public- and private sector representatives in those fields, to take a comprehensive look at the American social welfare system.

For Indonesia: We welcome proposals focused on democracy and human rights, especially in the specific areas of (1) Civil society/educational reform, working with reform-minded leaders in the Department of Education and Culture and with NGOs to support a major overhaul of national curricula and teaching practices, especially one that emphasizes civic education, and (2) rule of law/freedom of the press, working with a national NGO of independent journalists and/or legal aid institute to provide training in defending human rights and producing a more independent and honest judiciary.

For Korea: We welcome proposals that would (1) Assist NGO development, through teaching practical management and relevant administrative skills—increasing citizen participation and particularly the role of women in politics and (2) would promote the development of local autonomy by exposing those local government officials whose work will have lasting community impact to ideas and concepts about U.S. local government that they can actually use within the political, economic and social realities of Korea.

For Hong Kong: We welcome proposals that would promote democratic development in the Hong Kong Legislative Council via a two-way exchange on legislative practices and procedures between the Council's Secretariat staff and counterparts in the U.S. Congress or appropriate state legislatures.

For Mongolia: We welcome proposals that, through work with a Mongolian business organization or ad hoc consortium assembled by USIS Ulaanbaatar, would serve as the catalyst for the development of a private-sector, business-oriented, anti-corruption sector. Activities would demonstrate to the Mongolian people that, under the free-market system, the private sector in its own self-interest naturally takes the lead on anti-corruption issues and supports the rule of law in the marketplace and broader society.

For Vietnam: We welcome proposals that would (1) Assist in the critical institution-building effort towards the development of a comprehensive safety program for injury and disability prevention under the auspices of a new national safety board in Vietnam and (2) assist in the development of Vietnam's economic legal framework to support the implementation of the U.S.-Vietnam bilateral trade agreement.

For Japan: We welcome proposals that would foster greater cooperation between media and citizen action groups in Japan by developing cooperative strategies to improve coverage of NGO issues.

E/P contact for EA programs: Bill Dawson, 202/260–5485; E-Mail [WDawson@USIA.GOV]

Western Hemispheric Affairs (WHA)

The Office of Western Hemispheric Affairs includes the countries of Canada, Mexico, Central and South America, and the Caribbean. For all of WHA: We welcome proposals which contribute to strengthening democratic institution building, economic reform, environmental education, public administration, and municipal government for all countries in the region. For the countries mentioned below, some preference may be given to proposals that track closely the following suggestions:

For Central America: We welcome proposals in the field of environmental education. Deforestation and the results of Hurricane Mitch have raised public awareness of the need for environmental education throughout Central America.

Competitive proposals should involve participants in developing pilot environmental education programs in schools and/or with selected municipalities, capitalizing on the new interest of fledgling NGO environmental groups. For example, successful proposals might create regional "Centers of Excellence" that would serve all of Central America in fields such as disaster preparation/relief and local empowerment.

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For Mexico: We welcome proposals for projects that would create opportunities for Mexican and U.S. public administration practitioners and academicians to work together. Project activities might focus on such local government issues as responding to the needs of the people it serves; interacting with other levels of government, implementing experimental ideas, and how city administrators communicate with each other. Participants should have opportunities to meet with academics, practitioners, and with NGOs dedicated to improving governance.

For Argentina: We welcome projects that examine capacity building in State (provincial) legislatures. Successful proposals should include two-way exchanges that would include Argentine regional legislators and staff members involved in training, consulting, or legislative information. A U.S. study tour should acquaint Argentines with institutions that will help them understand interrelationship and technical assistance among state legislatures; channels for effective citizen participation in the design of public policies; training and consulting resources; standards and techniques for drafting legislation; and a study of mechanisms that strengthen citizen participation in the formation of public policy such as popular referenda, voter initiatives, public hearings and lobbying.

For Costa Rica: We welcome projects that would explore and strengthen the role of municipal government. Proposals might include an exchange for local mayors to see innovations in city government and citizen participation in municipal affairs; and a return visit by a group of U.S. mayors and city managers and municipal experts to hold larger workshops on the same theme.

For Haiti: We welcome proposals focusing on compromise and conflict resolution training sessions for members of political parties, unions, advocacy groups, civic organizations and police. The most competitive proposals will build on earlier conflict resolution pilot programs in Haiti and make an attempt to institutionalize such training.

For Peru: We welcome proposals on decentralization and resource management issues for local government.

Competitive proposals should include an exchange for a group of local mayors and other decentralization specialists who would meet with U.S. local government representatives, businesses and neighborhood groups in order to gain a more in-depth understanding of local government in the U.S. E/P contact for WHA programs: Laverne Johnson, 202/619–5337; E-Mail [LJohnson@USIA.GOV].

Africa (AF)

Proposals are requested for projects that would advance sustainable democracy by building human capital in Africa and strengthening partnerships between the United States and Africa in the thematic categories delineated below. Projects that foster networking across political as well as government-civil society divisions are encouraged. Proposals that respond to the following suggested themes and organizational approaches will receive priority consideration in the awarding of grants for exchange activity in Sub-Saharan Africa. While not all countries suggested as participants for each project must be included in the exchange, projects which bring together representatives from multiple countries will be given preference. Proposals for exchange projects that address issues of crucial importance to the United States and to proposed partner countries, without responding specifically to the themes included below, also will be considered. Proposed activities may take place only in those countries in which there is a Public Diplomacy Officer (U.S. Mission). Currently there is no USIA presence in Guinea Bissau, Cape Verde, Gambia, Burundi, Central African Republic, Equatorial Guinea, Gabon, Sao Tome and Principe, Djibouti, Lesotho, Somalia, Sudan, and Mauritania.

Civic Education and Community Life

(Requested by U.S. Missions in Ethiopia, Cote d'Ivoire, Kenya, Nigeria, Tanzania, Uganda, Zambia; proposals welcome throughout region)—Proposals should encourage the effective engagement of citizens in their country's political life. Preference will be given to projects that focus on organizations whose aim is to motivate citizens to exercise their rights and to meet their civic responsibilities, or through projects that assist key institutions of civil society (e.g., women's groups, grassroots/community organizations, youth-oriented organizations, professional associations, other NGOs) in contributing to democracy through volunteerism. Successful proposals will expose NGO leaders to democratic, team-centered approaches to organizational management appropriate to democratic, civil societies. Related themes might include building values of tolerance, pragmatism, cooperation and compromise; building skills and institutions for constructive non-violent change; addressing cultural and other obstacles to civic participation; inculcating a commitment to rule of law; and teaching and encouraging citizens to participate fully in community and national development. Priority will be given to projects that encourage the development of networks or coalitions to address the advancement of civic society.

Community Dialogue and Inter-Ethnic Understanding: Seeking Common Ground

(Requested by U.S. Missions in Cote d'Ivoire, Benin, Tanzania)—We welcome proposals focusing on inter-ethic compromise and conflict resolution training sessions for members of political parties, university student/teacher/trade unions, advocacy groups, civic organizations and other stakeholders. The most competitive proposals will build on earlier conflict resolution pilot programs undertaken in recent years and make an attempt to institutionalize such training in partner countries.

Democratic Governments

(Requested by U.S. Missions in Angola, Cote d'Ivoire, Tanzania)—Proposals should work to strengthen institutions of government whose work has a direct impact on the quality of a country's democracy and to increase their transparency, accountability, responsiveness, and effectiveness of operations. Especially welcome would be proposals that address anti-corruption methods. Projects might focus on local government or elements of executive branches, legislatures, or judicial systems.

Professionalism in Media and Strengthening Journalistic Independence

(Requested by U.S. Missions in Ethiopia, Angola, Benin, Niger, Senegal, Tanzania, Togo, Zambia; proposals welcome on a regional basis)—Proposals are sought to improve professionalism, independence, and good management in the media of Sub-Saharan Africa. African journalists would benefit greatly from partnership with U.S. institutions for a wide variety of journalism education, including reporting, writing and editing techniques, and media ethics. Proposals also are welcome for projects that focus on newspapers as a business. Successful proposals should focus on capacity building and networking among journalists and media professionals. Projects could link a U.S. organization of journalists to facilitate training and networking of African participants through visits to the U.S., and follow-up consultations by American journalists to host countries to solidify linkages and assist in efforts to train media professionals and organize associations in the participating countries. Using the Internet as a tool might be a component of the proposal.

U.S.-Africa Partnership in the 21st Century: Economic Development and Private Sector Reform

(Requested by U.S. Missions in Cote 'd Ivoire, Ethiopia, Benin, Botswana, Zambia, Togo, Tanzania)—Proposals in the area of economic development and private sector expansion should address either the creation of free trade areas *or* the empowerment of women entrepreneurs.

Free Trade Areas: Following the recent inaugural US–SADC Forum which focused on trade, USIA welcomes proposals which would encourage the creation of free trade areas through reduced tariff and non-tariff barriers. Such a project might be carried out with regional chambers of commerce and/or the Southern African Development Community (SADC) Secretariat. Proposals on free trade areas also would be of interest to posts in West and East Africa. Projects should foster an understanding of and commitment to policies and practices that support economic growth in a democratic framework through the private sector and international trade. Especially encouraged are proposals that focus on creating an "enabling environment" supportive of these goals. Related issues might include intellectual property rights, trade liberalization (e.g., tax and investment laws, along with other incentives), mechanisms of transparency and accountability, the role of business associations, and regional economic cooperation/integration.

Women as Economic Partners in Nation Building: In many countries in Africa, women are the backbone of the economy and yet they remain relatively unorganized and unconnected from one another. The organizations for business women that do exist currently have the capacity to effect little systemic change, but have the potential to have a profound impact on the economy. Priority will be given to proposals that offer African business women the opportunity to interact with U.S. women-owned businesses and interest groups, and to see first hand the work they do to enable business women to network and profit from relationships they create, both domestically and internationally. Successful proposals will expose business leaders to democratic, team-centered approaches to organizational management appropriate to democratic, civil societies. Proposals may also encourage the development of self-help/micro-enterprise programs for women in disadvantaged communities. Contact for AF programs: Orna Tamches, 202/260–2754; E-mail [OTamches@USIA.GOV]

Near East, North Africa and South Asia (NEA)

Proposals that respond to the following suggested themes and organizational approaches will receive priority consideration in the awarding of grants for exchange activity in the Near East, North Africa, and South Asia. While not all countries suggested as participants for each project must be included in the exchange, projects bringing together representatives from three or more countries will be given preference. Proposals for exchange projects that address issues of crucial importance to the United States and to proposed partner countries but that do not respond specifically to the themes included below will also be considered.

The countries/entities comprising the NEA AREA are listed below. Currently there is no USIA presence in Afghanistan, Iran, Iraq, Libya, or Mauritania. Please consider countries listed as potential exchange partners in projects that address the theme.

Countries/Entities of the Near East, North Africa, and South Asia—Afghanistan; Algeria; Bahrain; Bangladesh; Egypt; India; Iran; Iraq; Israel; Jordan; Kuwait; Lebanon; Libya; Mauritania; Morocco; Nepal; Oman; Pakistan; the Palestinian Authority; Qatar; Saudi Arabia; Sri Lanka; Sudan; Syria; Tunisia; the United Arab Emirates (UAE); Yemen.

Citizen Participation and Advocacy (Building and Strengthening Non-governmental Organizations) Region-wide (any country or group of countries). Of specific interest for Bangladesh; Egypt; Pakistan; the Palestinian Authority; Syria; Saudi Arabia Social and political activism, encouraged, focussed, and channeled through non-governmental organizations, is a basic underpinning of democratic society. Strengthening NGO advocacy skills, management, grassroots support, recruitment and motivation of volunteers, fundraising and financial management, media relations, and networking for mutual support and reinforcement will reinforce democratic trends in the region. Among other emphases, this project should focus on computer training and on developing cooperation between educators and NGO's for community action. It is essential that organizations submitting proposals in this category recognize that democratic activism is viewed with distrust by a number of governments in the area and that foreign involvement with local NGO's must be carefully thought out and approached with subtlety, as such involvement is viewed with suspicion. Close consultation with American Embassy/Consulate officers is critical.

Women's Activism and Political Leadership Region-wide (any country or group of countries). Of specific interest for Pakistan; Egypt; Israel. Throughout the region, women exercise disproportionately little political and social influence. While some women's groups have organized themselves and actively campaign for equal rights and a greater say in local issues, women need to learn how to mobilize support and raise money at the municipal, state, and national levels and how to win elections. Once elected, how can they most effectively represent the interests of their constituents? What can women activists do, in the political realm on issues of health care, education, domestic violence, and equal treatment under the law?

Professionalism in Media and the Strengthening of Journalistic Independence

Region-wide (any country or group of countries). Of specific interest for Jordan; Tunisia; Morocco The development of professionalism in media—gaining an appreciation for the importance of objective reporting; developing subject specialization; applying rational management techniques to newspaper publishing; etc.—remains an area in which serious efforts must be expended if the fourth estate is to fulfill its potential as a pillar of democratic society. Concomitantly, laws throughout the region constrain press freedoms, and journalists, editors, and publishers are forced to self-censor, lest governments punish the media for having conveyed the message. Projects are needed to address professionalism and to focus on training and advice to individuals and organizations devoted to the protection of press freedoms and to the defense of journalists and their right to practice their profession with integrity.

Judicial Reform and the Administration of Justice

Egypt; Morocco; Tunisia; Oman; Israel; Pakistan. A well trained, independent judiciary is fundamental to a democratic political and social system. The integrity of the judicial process and, by extrapolation, public confidence in the ability of the judicial process to deliver justice, is threatened in diverse

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countries by political interference in legal proceedings and by public perception of unequal and unfair treatment before the bench of women, members of ethnic minority communities, and the poor. Even well qualified and well intentioned judges are obstructed in their efforts to deliver justice by case backlog, by procedural delay, and by insufficient authority to exercise judicial discretion in court management. It is important that judges of both lower and higher courts be introduced to the principles and practices of U.S. jurisprudence and that such fundamental procedures as alternative dispute resolution, early neutral evaluation, case management, the acceptance of guilty pleas, continuous trial proceedings, and arbitration/mediation be familiar to them.

Anti-Incitement and Conflict Resolution

Egypt; Israel; Jordan; the Palestinian Authority. The Wye Memorandum, signed by the representatives of Israel and the Palestinian Authority in November 1998, mandates that the problems of incitement to hatred and violence, as well as the ethnic/religious stereotyping that has plagued the region, be addressed. If peace is to have meaning, citizens of the region must begin to address one another in new ways, overcoming the fears and resentments that have built up over generations. A project that includes Israelis, Palestinians, Jordanians, and Egyptians is solicited in an effort to expand the dialogue of coexistence that must accompany formal peace agreements. Two major components of any effort to focus on anti-incitement are the media and the educational establishment. One of the most important areas for the promotion of dialogue and mutual respect as well as the management of conflict is the media. Any effort in this area would need to involve expertise in conflict resolution as well as in professional journalism ethics and the addressing of problems of prejudice, discrimination, and outright incitement to violence. Incitement via curriculum and teacher prejudice is also a legitimate focus. A regional project to examine how contentious historical events are treated, how former enemies are portrayed, and how curricula can help advance tolerance and peace is a high priority.

Civic Education: Educating for Democracy

Region-wide (any country or group of countries). Of specific interest for Egypt; Israel; Pakistan. Enhanced citizen awareness of and increased participation in those activities that support democratic goals are a high priority. Regional or single-country exchange projects should be designed to assist educators, community activists, and journalists teach about and demonstrate the efficacy of civic responsibility, citizens' initiative, and tolerance while avoiding direct political advocacy for the establishment of "liberal democracy." The importance of active citizenship and the potent role of democratically oriented institutions in social change should be highlighted, with emphasis on average citizens sharing a sense of responsibility for their national future, voluntarism, and promoting community initiatives for change. Participants might include teachers, administrators, curriculum planners, Ministry of Education policy-makers, community activists, journalists, etc.

Young Leaders and the Building of Civil Society

Region-wide (any country or group of countries). Of specific interest for Jordan and the Palestinian Authority.

Proposals should focus on the role young leaders should and can play in building civil society. Participants would be emergent leaders—recent graduates—who appear to be on a trajectory to prominent positions in their societies and/or work with youth organizations and non-governmental organizations. Issues to be addressed would include the meaning of civil society, the role of a responsible citizenry, the separation of powers, the role of non-governmental organizations, components of democracy, the centrality of human rights, issues of national identity, etc. The exchange should encompass both the theoretical and the experiential, with participants working with and learning from American young leaders active in the development and strengthening of civil society.

International Confidence Building

India and Pakistan

The stability of any international relationship complicated by weapons of mass destruction depends on the willingness and ability of states to understand the dynamic of mutual vulnerability, to recognize the potential for disaster if deterrence fails, and to assume the responsibilities of nuclear ownership. South Asia is becoming increasingly militarized, and regional disputes continue to escalate. Confidence building measures appropriate to the region must be devised through dialogue among South Asians, and this might best be accomplished with a third-party facilitator.

Strategy sessions across borders, led by young, independent thinkers—political scientists and peace activists who are not political stakeholders—could be based on research papers commissioned for the purpose. Ideally these sessions would widen the discussion, build toward consensus, and sow the seeds for the group to develop into an independent institution of new thinkers with influence and credibility. An independent, American institution with South Asian specialists ready to help build a South Asian institution of new thinkers on strategic issues should be prepared to identify central issues and develop a framework for dialogue in the context of South Asia.

Economic Policy, Investment, and the Norms of International Commerce

Tunisia; Morocco; Algeria

The countries of North Africa would welcome proposals to strengthen ongoing efforts to establish a degree of regional economic integration, to stimulate serious thinking about transnational trade and investment, and to link North African business groups with American counterparts. Relevant issues to be incorporated into an exchange would be decentralization of commercial regulation, support for privatization, and competitiveness.

E/P contact for NEA programs: Tom Johnston, 202/619–5325; E-Mail [TJohnston@USIA.GOV]

The Office of Citizen Exchanges strongly encourages the coordination of activities with respected universities, professional associations, and major cultural institutions in the U.S. and abroad, but particularly in the U.S. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; *i.e.*, clerical work, auto maintenance, etc., and other occupations requiring less than two years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, scholarship programs are ineligible for support.

The Office does not support proposals limited to conferences or seminars (*i.e.*, one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are part of a larger project in duration and scope that is receiving Bureau funding from this competition. Bureau-supported projects may include internships; study tours; short-term, non-technical training; and extended, intensive workshops taking place in the United States or overseas. The themes addressed in exchange programs must be of long-term importance rater than focused exclusively on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project, including, where applicable, the expected yield of any associated conference. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. The Office of Citizen Exchanges strongly recommends that applicants consult with host country U.S. Embassies *prior* to submitting proposals.

Selection of Participants

All grant proposals should clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that programs in support of U.S. internships include letters tentatively committing host institutions to support the internships. In the selection of foreign participants, the Bureau and U.S. Embassies abroad retain the right to nominate all participants and to accept or deny participants recommended by grantee institutions. However, grantee institutions are often asked by the Bureau to suggest names of potential participants. The grantee institution will also provide the names of American participants and brief (two pages) biographical data on each American participant to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously traveled to the United States.

Additional Guidance

The Office of Citizen Exchanges offers the following additional guidance to prospective applicants:

1. The Office of Citizen Exchanges encourages project proposals involving more than one country. Pertinent rationale which links countries in multi-country projects should be included in the submission. Single-country projects that are clearly defined and possess the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome.

2. Proposals for bilateral programs are subject to review and comment by the Embassy representative in the relevant country, and pre-selected participants will also be subject to Embassy review.

3. Bilateral programs should clearly identify the counterpart organization and provide evidence of the organization's participation.

4. The Office of Citizen Exchanges will consider proposals for activities that take place exclusively in other countries when U.S. Embassies are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

5. Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical or vocational subjects, or for research projects, for publications funding, for student and/or teacher/faculty exchanges, for sports and/or sports related programs. Nor does this office provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register.**

For projects that would begin after December 31, 2000, competition details will be announced in the **Federal Register** on or about June 1, 2000. Inquiries concerning technical requirements are welcome prior to submission of applications.

Funding

Although no set funding limit exists, proposals for less than $135,000 will receive preference. Organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000. Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate Bureau decisions on funding. While an all-inclusive budget must be provided with each proposal, separate component budgets are optional. Competition for Bureau funding support is keen.

The selection of grantee institutions will depend on program substance, cross-cultural sensitivity, and ability to carry out the program successfully. Since Bureau grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. Proposals with substantial private sector support from foundations, corporations, other institutions, et al. will be deemed highly competitive. The Recipient must provide a minimum of 33 percent cost sharing of the total project cost.

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $160/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used.

Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at [www.usia.gov/agency/ebur-ref.html].

3. Interpreters: if needed, interpreters for the U.S. program are provided by the State Department's Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. Bureau grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $160/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance: Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

9. A return travel allowance of $70 for each participant which is to be used for

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incidental expenditures incurred during international travel.

10. All Bureau-funded delegates will be covered under the terms of a Bureau-sponsored health insurance policy. The premium is paid by the Bureau directly to the insurance company.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

Note: The 20 percent limitation of "administrative costs" included in previous announcements does not apply to this RFP. Please refer to the Application Package for complete budget guidelines.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Packet. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. All eligible proposals will also be reviewed by the program office, as well as the U.S. Embassy officers for advisory review, where appropriate. Proposals may also be reviewed by the Office of the Legal Advisor or by other offices in the Department of State. Funding decisions will made at the discretion of the Assistant Secretary of State for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) will reside with a contracts officer with competency for Bureau programs.

Review Criteria

The Bureau will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to the Agency mission.

2. *Program Planning/Ability to Achieve Program Objectives:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

3. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. *Support of Diversity:* Proposals should demonstrate the substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue, and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials, and follow-up activities

5. *Institutional Capacity/Reputation/Ability:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's or project's goal. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by USIA's Office of Contracts. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. *Follow-up Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) which ensures that Bureau-supported programs are not isolated events.

7. *Evaluation Plan:* Proposals should provide a plan for a thorough and objective evaluation of the program/project by the grantee institution.

8. *Cost-Effectiveness/Cost Sharing:* The overhead and administration components of the proposals, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the need of the program and the availability of funds. Organizations will be expected to cooperate with the Bureau in evaluating their programs under the principles of the Government Performance and Results Act of 1993, which requires federal agencies to measure and report on the results of their programs and activities.

Notification

Final awards cannot be made until funds have been fully appropriated by the Congress, allocated, and committed through internal Bureau procedures. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: July 21, 1999.

William B. Bader,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 99–19460 Filed 7–28–99; 8:45 am]

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Thursday
July 29, 1999

Part II

Department of Commerce

International Trade Administration

Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products From France; India; Indonesia; Italy; Japan and the Republic of Korea; Notice

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–816]

Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Terpstra or Frank Thomson, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3965 or (202) 482–4793, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

Preliminary Determination

We preliminarily determine that certain cut-to-length carbon-quality steel plate products ("CTL plate") from France are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from Czech Republic, France, India, Indonesia, Italy, Japan, Republic of Korea, and Former Yugoslav Republic of Macedonia* (64 FR 12959, March 16, 1999)) ("*Initiation Notice*"), the following events have occurred:

In their petition, the petitioners [1] identified Usinor S.A. ("Usinor") and its affiliates, Creusot Loire Industrie ("CLI"), and GTS Industries S.A. ("GTS") as possible exporters of CTL plate from France. We requested on March 12, 1999, data on all producers and exporters of the subject merchandise during the period of investigation ("POI") from the American Embassy in Paris. Based on information on the record we issued antidumping questionnaires to Usinor, CLI and GTS on March 17, 1999. [2]

In April 1999, the United States International Trade Commission ("ITC") issued an affirmative preliminary injury determination in this case (*see* ITC Investigation No. 731–TA–815–822).

On May 10, 1999, Usinor submitted a consolidated response to sections A, B, and C of the questionnaire on behalf of GTS and Sollac S.A. ("Sollac") (collectively referred to as "Usinor"). Usinor identified Sollac in its questionnaire responses as an affiliated producer of subject merchandise during the POI. Usinor submitted a response to section D of the questionnaire on May 14, 1999, and a response to section E on May 21, 1999.

On April 12, 1999, Usinor requested that it be allowed not to report information for the following entities that are affiliated with Usinor: 1) Eurodecoupe, a maker of precision-cut specialty shapes that sold subject merchandise in the home market; 2) CLI, a maker of specialty steel intended for nuclear and high pressure applications; and 3) certain affiliated downstream service centers/reprocessors. Based on the reasons and factual representations outlined in Usinor's request, on May 14, 1999, we granted this request and allowed Usinor to exclude these sales from its response. However, we indicated that we would review this matter at verification.

We issued a supplemental questionnaire for Sections A, B, and C to Usinor in May 1999 and received a response to this questionnaire along with revised home market and U.S. sales listings in June 1999. We issued a supplemental questionnaire for Sections D and E to Usinor in June 1999 and received a response to this questionnaire in June 1999. We received revised home market and U.S. sales listings, along with revised cost of production, constructed value, and further manufacturing cost tapes in July 1999.

In May and June 1999, Usinor submitted additional clarifications to its responses. Also, on July 9, 1999, petitioners submitted comments for the Department's consideration in the preliminary determination.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. In particular, we sought comments on the specific levels of alloying elements set out in the description above, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage.

On March 29, 1999, Usinor, a respondent in the French antidumping and countervailing duty investigations and Dongkuk Steel Mill Co., Ltd. and Pohang Iron and Steel Co., Ltd., respondents in the Korean antidumping and countervailing duty investigations (collectively the Korean respondents), filed comments regarding the scope of the investigations on CTL plate and the Department's model matching criteria. On April 14, 1999, the petitioners filed comments regarding Usinor's and the Korean respondents' comments regarding model matching. In addition, on May 17, 1999, ILVA S.p.A. (ILVA), a respondent in the Italian antidumping and countervailing duty investigations, requested guidance on whether certain products are within the scope of these investigations.

Usinor requested that the Department modify the scope to exclude: (1) Plate that is cut to non-rectangular shapes or that has a total final weight of less than 200 kilograms; and (2) steel that is 4" or thicker and which is certified for use in high-pressure, nuclear or other technical applications; and (3) floor plate (*i.e.*, plate with "patterns in relief") made from hot-rolled coil. Further, Usinor requested that the Department provide clarification of scope coverage with respect to what it argues are over-inclusive HTSUS subheadings included in the scope language.

The Department has not modified the scope of these investigations because the current language reflects the product coverage requested by the petitioners, and Usinor's products meet the product description. With respect to Usinor's clarification request, we do not agree that the scope language requires further elucidation with respect to product coverage under the HTSUS. As indicated in the scope section of every Department antidumping and countervailing duty proceeding, the HTSUS subheadings are provided for convenience and Customs purposes only; the written description of the merchandise under investigation or review is dispositive.

The Korean respondents requested confirmation whether the maximum alloy percentages listed in the scope language are definitive with respect to covered HSLA steels.

At this time, no party has presented any evidence to suggest that these maximum alloy percentages are inappropriate. Therefore, we have not adjusted the scope language. As in all proceedings, questions as to whether or not a specific product is covered by the scope and, hence, must be reported, should be timely raised with Department officials.

ILVA requested guidance on whether certain merchandise produced from billets is within the scope of the current CTL plate investigations. According to ILVA, the billets are converted into wide flats and bar products (a type of long product). ILVA notes that one of the long products, when rolled, has a thickness range that falls within the scope of these investigations. However, according to ILVA, the greatest possible width of these long products would only slightly overlap the narrowest category of width covered by the scope of the investigations. Finally, ILVA states that these products have different production processes and properties than merchandise covered by the scope of the investigations and therefore are not covered by the scope of the investigations.

As ILVA itself acknowledges, the particular products in question appear to fall within the parameters of the scope and, therefore, we are preliminarily treating them as covered merchandise.

Period of Investigation

The POI is January 1, 1998 through December 31, 1998.

Fair Value Comparisons

To determine whether sales of CTL plate from France to the United States were made at less than fair value, we compared the constructed export price ("CEP") to the Normal Value ("NV"), as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs for comparison to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Usinor covered by the description in the "Scope of Investigation" section, above, and sold in France during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance (which are identified in Appendix V of the questionnaire): Painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling.

Because Usinor had no sales of non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise in our product comparisons (*see, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire*

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

[2] Section A of the questionnaire requested general information concerning the company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of that merchandise in all markets. Sections B and C of the questionnaire requested home market sales listings and U.S. sales listings. Section D of the questionnaire requested information regarding the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E of the questionnaire requested information regarding the cost of further manufacture or assembly performed in the United States.

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Rod from Sweden (63 FR 40449, 40450, July 29, 1998) ("*SSWR*")).

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. With respect to U.S. price and CEP transactions, the LOT is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level, and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

Usinor reported three customer categories (*i.e.*, steel service centers/resellers, pipe makers and original equipment manufacturers) and five channels of distribution in the home market (*i.e.*, sales made by Usinor's affiliated producer Sollac, through its affiliated sales network Sollac Vente France (SVF), directly to unaffiliated service centers or end users (Channel 1), sales from Sollac, through SVF, to its affiliated steel service center, SLPM, together with subsequent resales by SLPM to unaffiliated end users (Channel 2), sales made by Usinor's affiliated producer GTS Industries (GTS) directly to its affiliated customer Europipe (Channel 3), sales made by GTS, through SVF, directly to unaffiliated service centers or end users (Channel 4), and sales from GTS, through SVF, to its affiliated steel service center, SLPM, together with subsequent resales by SLPM to unaffiliated end users (Channel 5)).

We determined that Usinor sold merchandise at two LOTs in the home market during the POI. The first LOT involved sales through Channels 1, 3 and 4. The second LOT involved Usinor's sales through its affiliated steel service center, SLPM, in Channels 2 and 5. We found significant distinctions in selling activities and associated expenses between the sales through Channels 2 and 5 and those through Channels 1, 3 and 4. Based on these differences, we conclude that two LOTs existed in the home market. From our analysis of the marketing process for these sales, we also determined that sales through Channels 2 and 5 were made at a more remote marketing stage than that for sales through Channels 1, 3 and 4. Because the large number of channels of distribution and selling expenses involved in this analysis presents difficulty in providing an adequate summary in this notice, see the *LOT/CEP Memorandum* for a detailed explanation of the above, dated July 19, 1999, on file in Import Administration's Central Records Unit ("CRU"), Room B–099, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Usinor reported three customer categories (*i.e.*, steel service centers/resellers, pipe makers and original equipment manufacturers) and three channels of distribution in the United States: 1) CEP sales made by Sollac, through its affiliated U.S. importer Francosteel, to unaffiliated service centers or end users (Channel 6), 2) CEP sales made by GTS, through its affiliated U.S. importer Francosteel, to unaffiliated service centers or end users (Channel 7), and 3) CEP sales from GTS directly to its affiliate Berg Steel, who further manufactured the subject merchandise into non-subject merchandise, pipe, and resold it to unaffiliated end users (Channel 8).

In order to determine whether separate LOTs actually existed between the U.S. and home market, we reviewed the selling activities associated with each channel of distribution. We determined that fewer and different selling functions were performed for Usinor's CEP sales than for sales at either of the home market LOTs and these differences constitute differences in LOT. Therefore, we examined whether a LOT adjustment was appropriate. The Department makes this adjustment when it is demonstrated that a difference in LOTs affects price comparability. *See* The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994) (hereinafter, the "SAA") at 829–830. However, where the available data do not provide an appropriate basis upon which to determine a LOT adjustment, and where the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). Because the LOT of the U.S. sales is different than either home market LOTs, there is no reliable basis for quantifying a LOT adjustment in accordance with section 773(a)(7)(A) of the Act. Further, we found that the home market sales were at a more advanced stage of distribution compared to sales at either U.S. LOT. Therefore, a CEP offset was applied to NV for the NV–CEP comparisons. Because the large number of channels of distribution and selling expenses involved in this analysis presents difficulty in providing an adequate summary in this notice, see the *LOT/CEP Memorandum* for a detailed explanation of our analysis.

Constructed Export Price

Usinor reported as CEP transactions the resales of its subject merchandise by Francosteel to unaffiliated customers in the United States (channels 6 and 7). We calculated CEP, in accordance with subsection 772(b) of the Act, based on those sales to the first unaffiliated purchaser that took place after importation into the United States.

In addition, Usinor reported as CEP transactions sales of pipe products which were further manufactured from CTL plate (subject merchandise) by one of its affiliates in the United States (channel 8). For these sales we used the price to the first unaffiliated customer and deducted the costs of further manufacturing, in accordance with section 772(d)(2) of the Act. We used the information in Usinor's Section E response to calculate further manufacturing costs, except in the following instances where the data were not properly quantified or valued: (1) We increased the reported further manufacturing costs because we disallowed an adjustment made to coating costs, (2) we revised the reported further manufacturing G&A expense rate to reflect the change we made to coating costs, and (3) we revised the reported further manufacturing interest expense to reflect the interest expenses incurred by Berg Steel Pipe Corporation ("Berg"), Usinor's affiliate that further manufactures the plate in the United States. For further information *see Memorandum to Neal Halper*, dated July 19, 1999.

We based CEP on the packed FOB or delivered prices to unaffiliated purchasers in the United States. We made adjustments to the starting price, where appropriate, for freight revenue, interest revenue, and billing adjustments. We made deductions for early payment discounts and rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. brokerage and handling, foreign trade zone fees, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and U.S. inland freight expenses (freight from warehouse to the customer). In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs, warranty expenses, and other direct selling expenses), inventory carrying costs, other indirect selling expenses, and commissions. We also deducted an amount for further-manufacturing costs, where applicable, in accordance with section 772(d)(2) of the Act and made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Normal Value

After testing (1) home market viability, (2) whether sales to affiliates were at arm's-length prices, and (3) whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparisons" sections of this notice.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Usinor's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Usinor's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for Usinor.

2. Affiliated-Party Transactions and Arm's-Length Test

We have applied the arm's-length test to affiliated-party transactions by comparing them to sales of identical merchandise from Usinor to unaffiliated home market customers. If these affiliated-party sales satisfied the arm's-length test, we used them in our analysis. Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102.

To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and rebates, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c) and 62 FR at 27355. In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. Where the exclusion of such sales eliminated all sales of the identical or most similar comparison product, we made a comparison to the next most similar model. *See*, (e.g., SSWR).

3. Cost of Production Analysis

In their petition, the petitioners submitted an allegation pursuant to section 773(b)(1) of the Act that Usinor had made sales in the home market at less than the cost of production ("COP"). Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that Usinor sold CTL plate in the home market at prices less than the COP. Accordingly, we initiated COP investigations with respect to Usinor to determine whether sales were made at prices less than the COP pursuant to section 773(b) of the Act (*see Initiation Notice*, 64 FR 12959, 12962).

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Usinor's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses ("SG&A"), interest expense, and packing costs.

We relied on the COP data Usinor submitted in its Section D questionnaire responses, without adjustment, to calculate weighted-average COPs for the POI.

B. Test of Home Market Sales Prices

We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we do not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Alternatively, where 20 percent or more of a respondent's sales of a given product during the POI (normally equal to one year, but not less than six months) are at prices less than the COP, we determined that such sales have been made in "substantial quantities" in accordance with sections 773(b)(2)(B) and (C) of the Act. In such cases, because we compared prices to POI average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Therefore, in such instances, we disregarded the below-cost sales.

In this investigation, we found that, for certain products, more than 20 percent of Usinor's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining above-cost sales as the basis for determining NV where such sales existed, in accordance with section 773(b)(1) of the Act.

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D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Usinor's cost of materials, fabrication, SG&A, interest, U.S. packing costs, and profit. We made similar adjustments as those described above for COP. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses.

Price-to-Price Comparisons

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length prices. We made adjustments to the starting price, where appropriate, for billing adjustments. We made deductions, where appropriate, from the starting price for early payment discounts, other discounts, rebates, and inland freight. We made circumstance of sale (COS) adjustments, in accordance with section 773(a)(6)(c)(iii) of the Act, for direct selling expenses, including warranty expenses, credit expenses, and other direct selling expenses. In addition, we made adjustments for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses and added U.S. selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions* (61 FR 9434, March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the French franc did not undergo a sustained movement.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Usinor	29.88
All Others	29.88

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 25, 1999, and rebuttal briefs no later than September 1, 1999. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 7, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: July 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19300 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–817]

Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 29, 1999.

FOR FURTHER INFORMATION CONTACT: James Terpstra, Timothy Finn, or Lyman Armstrong, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3965, (202) 482–0065, and (202) 482–3601, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

Preliminary Determination

We preliminarily determine that certain cut-to-length carbon-quality steel plate products ("CTL plate") from India are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from Czech Republic, France, India, Indonesia, Italy, Japan, Republic of Korea, and Former Yugoslav Republic of Macedonia*), 64 FR 12959 (March 16, 1999) ("*Initiation Notice*"), the following events have occurred:

In their petition, the petitioners [1] identified the Steel Authority of India ("SAIL") as the sole exporter of CTL plate from India. Based on the petition and information provided by the U.S. embassy in New Delhi indicating that SAIL was the sole exporter of subject merchandise from January 1, 1998 through December 31, 1998, the period of investigation ("POI"), we issued an antidumping questionnaire to SAIL on March 17, 1999.[2]

In April 1999, the United States International Trade Commission ("ITC") issued an affirmative preliminary injury determination in this case (*see* ITC Investigation No. 731–TA–815–822).

Between April 12, and May 11, 1999, SAIL submitted responses to all applicable sections of the questionnaire. On May 20, 1999, SAIL submitted certain clarifications which supplemented its Section A response.

On May 24, 1999, petitioners submitted comments regarding SAIL's questionnaire responses, and on May 27, 1999, we issued a supplemental questionnaire covering Sections A–D of SAIL's response.

On June 1, 1999, petitioners submitted additional comments on SAIL's April 12, 1999 and May 10, 1999 questionnaire responses.

On June 3 and 8, 1999, SAIL submitted certain clarifications supplementing SAIL's May 10, 1999 response.

On June 11, 1999, we issued a further supplemental questionnaire covering Sections A–C of SAIL's questionnaire response.

On June 16, 1999, SAIL submitted a revised electronic database. *See* also *Facts Available* section below.

On June 18, 1999, we issued a further supplemental questionnaire concerning SAIL's Section D response, which SAIL had supplemented on June 8, 1999. Also on June 18, 1999, SAIL submitted certain data supplementing its previous submissions.

On June 29, 1999, SAIL made three submissions. The first two submissions were due on June 28 and responded to the Department's letter of June 18, 1999 to SAIL. The third submission responded to the Department's May 27, 1999 supplemental questionnaire, which was due June 18, 1999. On July 2, 1999, we returned all three of these submissions to SAIL as untimely. *See* also the *Facts Available* section below.

On July 6, 1999, petitioners submitted comments regarding deficiencies in SAIL's questionnaire responses.

Finally, on July 12, 1999, we issued a letter to SAIL providing it with a final opportunity to submit a reliable electronic database and information on product-specific costs. On July 16, 1999, SAIL provided this information. *See* also *Facts Available* section below.

Facts Available

We have determined that the use of facts available is appropriate for SAIL for purposes of this preliminary determination. Although SAIL filed a questionnaire response, it contained numerous errors. Moreover, because of the problems with the electronic databases that SAIL submitted, its questionnaire response cannot be used to calculate a reliable margin at this time. Section 776(a)(2)(B) of the Act provides that the administering authority shall use facts otherwise available when an interested party "fails to provide such information by the deadlines for the submission of the information or in the form and manner requested." Therefore, the use of facts available is warranted in this case.

Section 776(b) of the Act provides that adverse inferences may be used in selecting from the facts available if a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. As explained in more detail below, SAIL was provided with numerous opportunities and (effective) extensions of time to fully respond to the Department's original and supplemental questionnaires. However, even with several opportunities to remedy problems, SAIL failed to provide, *inter alia*, a reliable electronic database. Therefore, the Department preliminarily finds that SAIL did not act to the best of its ability to provide the information requested. As a consequence, we have used an adverse inference in selecting the facts available to determine SAIL's margin.

As we discuss below, there are three inter-related problems with SAIL's questionnaire response: (1) technical errors in its electronic databases; (2) lateness and incompleteness of certain narrative portions of its questionnaire response; and (3) the lack of product-specific costs. However, our decision to use facts available for the preliminary determination is based primarily on our inability to use the electronic databases that SAIL submitted.

The problems with the electronic databases began with SAIL's first electronic submission which was formatted incorrectly and was substantially incomplete. As much of the underlying problems with these data involve proprietary information, there is a detailed discussion of these problems in a *Memorandum to the File regarding Problems with SAIL's Questionnaire Response*, dated July 19, 1999 ("SAIL memo"). From the time these electronic databases were submitted on May 11, 1999, until the submission of its revised electronic tapes on July 16, 1999, the Department repeatedly requested that SAIL revise and correct various sections of these databases. However, SAIL never

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

[2] Section A of the questionnaire requested general information concerning the company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of that merchandise in all markets. Sections B and C of the questionnaire requested home market sales listings and U.S. sales listings. Section D of the questionnaire requested information regarding the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E of the questionnaire requested information regarding the cost of further manufacture or assembly performed in the United States.

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resolved all of the ongoing technical problems to a point where the databases could be used reliably in our preliminary determination. SAIL argued that it is a large, decentralized steel producer with 3 plants, 6 regional sales offices, and 42 local service centers which is not fully automated, making the preparation of consolidated electronic databases extremely difficult. On July 12, 1999, we gave SAIL one final opportunity to supply reliable electronic databases to the Department.

Furthermore, certain portions of SAIL's original questionnaire response were substantially incomplete. Throughout its original response, SAIL either failed to provide information, or stated that certain information would be submitted at a later date, effectively granting itself an extension of time for the submission of factual information. After several such submissions, we returned SAIL's information as untimely. *See* our letter of July 2, 1999. Although we have issued several supplemental questionnaires and SAIL responded to them, we have been unable to evaluate adequately the firm's selling practices because of problems with the electronic databases discussed above. On July 16, 1999 SAIL submitted one final electronic database. We intend to issue a final supplemental questionnaire to SAIL after reviewing this electronic data.

Regarding the lack of product-specific costs, SAIL claims that its cost accounting records do not track costs on the product-specific basis required by the questionnaire. Instead, SAIL records cost on a more aggregated level. However, in its questionnaire response, SAIL reported different costs for different products using certain cost allocations. SAIL claimed that the allocation method it used was the only one available given the limitations of its accounting system. However, it is not clear whether SAIL's reported costs are reliable for margin calculation purposes, or that they are based on the most reasonable method available from its accounting records. Because a decision on this issue necessarily requires a detailed analysis of SAIL's accounting system, we have determined that it is necessary to examine this issue exhaustively at verification. *See* also the SAIL memo for a more detailed discussion.

For the preliminary determination, we assigned SAIL the average of the margins in the petition, which is 58.50 percent. Although we find that SAIL did not fully cooperate to the best of its ability, SAIL tried to provide the Department with the data requested in the antidumping questionnaire. Recognizing SAIL's attempts to respond to the Department's information requests, and in light of its claimed difficulties, we do not believe that it is appropriate to assign the highest margin alleged in the petition at this time. *See e.g., Krupp Stahl AG* v. *U.S.*, 822 F. Supp. 789, 793 (Court of International Trade 1993), which referenced a Court of Appeals' opinion sanctioning the Department's practice of taking into account the level of respondent's cooperation, and *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Germany*, 63 FR 8953, 8955 (February 23, 1998).)

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316, (1994) (hereinafter, the "SAA") states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870.

In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics and foreign market research reports). *See Initiation Notice*.

For purposes of the preliminary determination, we attempted to corroborate the information in the petition. The petition margins were based on both price-to-price and price-to-constructed value comparisons. Petitioners calculated export price was based on U.S. price offerings, with deductions taken for international movement charges. We compared this with information from U.S. Customs and found them consistent. Petitioners based normal value on prices for comparable products sold in the home market obtained from market research. Petitioners calculated constructed value based on their own production experience adjusted for known differences. We compared the petition information with reliable information obtained during the investigation, primarily SAIL's financial statements and other published materials from the questionnaire response and found them consistent. Given the problems with the data submitted by SAIL, as discussed above, this was the only information in the questionnaire response that was reliable for these purposes, the actual reported prices and costs being difficult to adequately evaluate at this time. Consequently, we find that information in the petition continues to be of probative value. *See Corroboration Memo*, July 19, 1999.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. In particular, we sought comments on the specific levels of alloying elements set out in the description below, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage.

On March 29, 1999, Usinor, a respondent in the French antidumping and countervailing duty investigations and Dongkuk Steel Mill Co., Ltd. and Pohang Iron and Steel Co., Ltd., respondents in the Korean antidumping and countervailing duty investigations (collectively the Korean respondents), filed comments regarding the scope of the investigations on CTL plate and the Department's model matching criteria. On April 14, 1999, the petitioners filed comments regarding Usinor's and the Korean respondents' comments regarding model matching. In addition, on May 17, 1999, ILVA S.p.A. (ILVA), a respondent in the Italian antidumping and countervailing duty investigations, requested guidance on whether certain products are within the scope of these investigations.

Usinor requested that the Department modify the scope to exclude: (1) plate that is cut to non-rectangular shapes or that has a total final weight of less than 200 kilograms; and (2) steel that is 4" or thicker and which is certified for use in high-pressure, nuclear or other technical applications; and (3) floor plate (*i.e.*, plate with "patterns in relief") made from hot-rolled coil. Further, Usinor requested that the Department provide clarification of scope coverage with respect to what it argues are over-inclusive HTSUS subheadings included in the scope language.

The Department has not modified the scope of these investigations because the current language reflects the product coverage requested by the petitioners, and Usinor's products meet the product description. With respect to Usinor's clarification request, we do not agree that the scope language requires further elucidation with respect to product coverage under the HTSUS. As indicated in the scope section of every Department antidumping and countervailing duty proceeding, the HTSUS subheadings are provided for convenience and Customs purposes only; the written description of the merchandise under investigation or review is dispositive.

The Korean respondents requested confirmation whether the maximum alloy percentages listed in the scope language are definitive with respect to covered HSLA steels.

At this time, no party has presented any evidence to suggest that these maximum alloy percentages are inappropriate. Therefore, we have not adjusted the scope language. As in all proceedings, questions as to whether or not a specific product is covered by the scope and, hence, must be reported, should be timely raised with Department officials.

ILVA requested guidance on whether certain merchandise produced from billets is within the scope of the current CTL plate investigations. According to ILVA, the billets are converted into wide flats and bar products (a type of long product). ILVA notes that one of the long products, when rolled, has a thickness range that falls within the scope of these investigations. However, according to ILVA, the greatest possible width of these long products would only slightly overlap the narrowest category of width covered by the scope of the investigations. Finally, ILVA states that these products have different production processes and properties than merchandise covered by the scope of the investigations and therefore are not covered by the scope of the investigations.

As ILVA itself acknowledges, the particular products in question appear to fall within the parameters of the scope and, therefore, we are preliminarily treating them as covered merchandise.

Period of Investigation

The period of investigation is January 1, 1998 through December 31, 1998.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average margin, as indicated in the chart below. We will adjust the deposit requirements to account for any export subsidies found in the companion countervailing duty investigation. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
SAIL	58.50
All Others [3]	58.50

[3] The Act normally prohibits inclusion in the "All Others" rate of any margins determined entirely on the basis of facts available, pursuant to section 776. Where the estimated weighted-average margin (s) is based entirely on facts available, we must use any reasonable method to establish the estimated "All Others" rate for exporters and producers nor individually investigated. *See* section 733(d)(1)(ii); 735(c)(5)(B). In this case, we have determined that the only reasonable method is to use the 58.50 percent simple average of the margins alleged in the petition which was also the source of our facts available margin for SAIL.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final

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determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 25, 1999, and rebuttal briefs no later than September 1, 1998. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 8, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: July 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19301 Filed 7–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–805]

Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara Wojcik-Betancourt or Brian C. Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0629 or (202) 482–1766, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

Preliminary Determination

We preliminarily determine that certain cut-to-length carbon-quality steel plate products ("CTL plate") from Indonesia are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from Czech Republic, France, India, Indonesia, Italy, Japan, Republic of Korea, and Former Yugoslav Republic of Macedonia* (64 FR 12959, March 16, 1999))("*Initiation Notice*"), the following events have occurred:

In their petition, the petitioners [1] identified PT Gunawan Dianjaya Steel ("Gunawan"), PT Jaya Pari Steel Corporation ("Jaya Pari"), and PT Krakatau Steel ("Krakatau") as possible exporters of CTL plate from Indonesia. Though we requested on March 8, 1999, data on all producers and exporters of the subject merchandise during the period of investigation ("POI") from the U.S. Embassy in Jakarta, the U.S. Embassy was unable to provide any additional information on producers or exporters of the subject merchandise to the United States. Based on information contained in the petition, the Department issued antidumping questionnaires to Gunawan, Jaya Pari and Krakatau in March 1999.[2]

In April 1999, the United States International Trade Commission ("ITC") issued an affirmative preliminary injury determination in this case (*see* ITC Investigation No. 731–TA–815–822). Also, the Department received a response to all applicable sections of the questionnaire from Gunawan and Jaya Pari.

On April 7, 1999, Krakatau, a *pro se* company, notified the Department that it did not have the resources available to respond to the Department's questionnaire because of the economic hardship caused by the Indonesian financial crisis. Krakatau filed its letter within the deadline specified for notifying the Department of difficulties faced in responding to the questionnaire in accordance with section 782(c)(1) of the Act and section 351.301(c)(2) of the Department's regulations. On April 20, 1999, the Department informed Krakatau that it was still required to submit a full questionnaire response. However, recognizing Krakatau's claimed difficulties, the Department informed Krakatau that it would grant Krakatau an extension of time to respond to the questionnaire, if requested, and in accordance with section 782(c)(2) of the Act, would provide assistance to Krakatau, to the extent practicable, in preparing its response.

On April 26, 1999, Krakatau requested that the Department reconsider its April 20, 1999, decision and excuse it from the reporting requirement because of its relatively small shipments of the subject merchandise to the United States during the POI and because the Department in

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

[2] Section A of the questionnaire requested general information concerning the company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of that merchandise in all markets. Sections B and C of the questionnaire requested home market sales listings and U.S. sales listings. Section D of the questionnaire requested information regarding the cost of production ("COP") of the foreign like product and the constructed value ("CV") of the merchandise under investigation. Section E of the questionnaire requested information regarding the cost of further manufacture or assembly performed in the United States.

past cases has excused companies under similar circumstances. On the same day, the Department informed Krakatau that although the cover letter to the questionnaire mentioned that if the number of exporters and producers was large, the Department might find it necessary, due to resource constraints, to limit the number of companies subject to the investigation, the Department had determined that it now had sufficient resources to examine all Indonesian exporters and producers of the subject merchandise which were served with a questionnaire in accordance with section 351.204(c) of the Department's regulations. However, recognizing the fact that Krakatau was experiencing difficulties in responding to the questionnaire, the Department again provided Krakatau with an opportunity to respond to the questionnaire by extending the deadline until May 10, 1999. In response to an April 28, 1999, letter from Krakatau requesting assistance on compiling its home market and U.S. sales, the Department on April 30, 1999, provided Krakatau with formatted lotus spreadsheets containing the data fields listed in the questionnaire.

On May 6, 1999, the Department sent Krakatau a letter which provided the *pro se* company with guidelines to follow for submitting documents in antidumping duty proceedings. On May 7, 1999, Krakatau requested an extension of the deadline for submitting its questionnaire response. Due to the statutory time constraints in this case and fairness considerations with respect to other companies participating in the CTL plate proceedings, we granted Krakatau only a partial extension of the deadline until May 14, 1999. On May 13, 1999, we received a response from Krakatau which was significantly incomplete in that it contained no narrative explanation of the documentation submitted or electronic media for its sales, cost and expense data. Recognizing its effort to attempt to respond to the Department's questionnaire, we allowed Krakatau until May 21, 1999, to provide the requested information. We also reminded Krakatau of the instructions contained in the Department's May 6, 1999, letter, which outlined how to properly file questionnaire responses. After receiving Krakatau's questionnaire response on May 24, 1999, we informed Krakatau on May 27, 1999, that the Department was rejecting its response because (1) Krakatau missed the extended deadline date within which to submit its response; (2) Krakatau did not properly file its response in accordance with the Department's instructions; and (3) Krakatau did not fully respond to the Department's questionnaire. In an effort to provide Krakatau with a final opportunity to provide the requested data for use in the preliminary determination given its previous effort to respond to the questionnaire, and based on our decision to require the Indonesian respondents to respond to additional questions based on our determination that the Indonesian economy underwent high inflation during the POI,[1] we granted Krakatau additional time until June 11, 1999, to remedy its deficiencies, which were enumerated in the attachment to our letter dated, May 27, 1999. In our May 27, 1999, letter, we again furnished Krakatau with filing instructions and also provided Krakatau with a section D questionnaire for high-inflation economies.

We issued supplemental section A, B, C and D questionnaires to Gunawan and Jaya Pari in May 1999, including questions related to high-inflation economies, and received responses to these questionnaires along with revised home market and U.S. sales listings in June 1999.

In June 1999, in accordance with section 782(c)(2) of the Act, the Department provided Krakatau additional assistance, upon the company's request, by sending a member of its staff to Jakarta to answer any questions Krakatau had with respect to the Department's questionnaire requirements. Based on the company's request for an extension of time to respond to the supplemental questionnaire subsequent to the Department's visit, the Department on June 10, 1999, granted Krakatau a final extension until June 25, 1999, to file a complete questionnaire response, including monthly production cost data in accordance with its high-inflation methodology. We also stated in the June 10, 1999, letter that we may be unable to use Krakatau's response, if filed by June 25, 1999, in the preliminary determination given the proximity of the final extended response deadline date to the Department's preliminary determination deadline date. While Krakatau's response was received by the Department on the deadline date, it continued to contain major deficiencies and omissions of data despite the Department's previous instructions. For example, Krakatau provided neither calculation worksheets for its reported per-unit charges and adjustments, nor monthly packing and COP amounts on a control-number-specific basis in accordance with the Department's high-inflation methodology. Krakatau also provided no historical shipment data for use in the Department's critical circumstances determination.

On July 2, 1999, the petitioner submitted comments dealing with the Department's high-inflation methodology for consideration in the preliminary determination. On July 7 and 8, 1999, Gunawan and Jaya Pari submitted revised cost data. Also on July 8, 1999, the Department issued Krakatau a supplemental questionnaire and advised Krakatau that it would have to respond fully to the supplemental questionnaire in a timely manner before the Department could consider conducting verification of its response for use in the final determination.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically

[1] Based on our analysis of Indonesia's consumer price and wholesale price indices, we determined that the Indonesian economy was experiencing high inflation during the POI (see 1999 issues of the International Monetary Fund's *International Financial Statistics*). "High inflation" is a term used to refer to a high rate of increase in price levels. Investigations and reviews involving exports from countries with highly inflationary economies require special methodologies for comparing prices and calculating CV and COP. Generally, a 25 percent inflation rate has been used as a general guide for assessing the impact of inflation on AD investigations and reviews (*see* Antidumping Manual, Chapter 8, Section XV, updated February 10, 1998; *see* also Policy Bulletin No. 94.5, entitled "Differences in Merchandise Calculations in Hyperinflationary Economies," dated March 25, 1994).

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included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from this investigation: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to this investigation is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. In particular, we sought comments on the specific levels of alloying elements set out in the description above, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage.

On March 29, 1999, Usinor, a respondent in the French antidumping and countervailing duty investigations and Dongkuk Steel Mill Co., Ltd. and Pohang Iron and Steel Co., Ltd., respondents in the Korean antidumping and countervailing duty investigations (collectively "the Korean respondents"), filed comments regarding the scope of the investigations on CTL plate and the Department's model matching criteria. On April 14, 1999, the petitioners filed comments regarding Usinor's and the Korean respondents' comments regarding model matching. In addition, on May 17, 1999, ILVA S.p.A. ("ILVA"), a respondent in the Italian antidumping and countervailing duty investigations, requested guidance on whether certain products are within the scope of these investigations.

Usinor requested that the Department modify the scope to exclude: (1) plate that is cut to non-rectangular shapes or that has a total final weight of less than 200 kilograms; and (2) steel that is 4" or thicker and which is certified for use in high-pressure, nuclear or other technical applications; and (3) floor plate (*i.e.*, plate with "patterns in relief") made from hot-rolled coil. Further, Usinor requested that the Department provide clarification of scope coverage with respect to what it argues are over-inclusive HTSUS subheadings included in the scope language.

The Department has not modified the scope of these investigations because the current language reflects the product coverage requested by the petitioners, and Usinor's products meet the product description. With respect to Usinor's clarification request, we do not agree that the scope language requires further elucidation with respect to product coverage under the HTSUS. As indicated in the scope section of every Department antidumping and countervailing duty proceeding, the HTSUS subheadings are provided for convenience and Customs purposes only; the written description of the merchandise under investigation or review is dispositive.

The Korean respondents requested confirmation whether the maximum alloy percentages listed in the scope language are definitive with respect to covered HSLA steels.

At this time, no party has presented any evidence to suggest that these maximum alloy percentages are inappropriate. Therefore, we have not adjusted the scope language. As in all proceedings, questions as to whether or not a specific product is covered by the scope and, hence, must be reported, should be timely raised with Department officials.

ILVA requested guidance on whether certain merchandise produced from billets is within the scope of the current CTL plate investigations. According to ILVA, the billets are converted into wide flats and bar products (a type of long product). ILVA notes that one of the long products, when rolled, has a thickness range that falls within the scope of these investigations. However, according to ILVA, the greatest possible width of these long products would only slightly overlap the narrowest category of width covered by the scope of the investigations. Finally, ILVA states that these products have different production processes and properties than merchandise covered by the scope of the investigations and therefore are not covered by the scope of the investigations.

As ILVA itself acknowledges, the particular products in question appear to fall within the parameters of the scope and, therefore, we are preliminarily treating them as covered merchandise for purposes of these investigations.

Period of Investigation

The POI is January 1, 1998, through December 31, 1998.

Facts Available

We did not receive a full questionnaire response from Krakatau in time to analyze Krakatau's information for the preliminary determination. Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." Although Krakatau provided the Department with a questionnaire response on June 25, 1999, that response contained numerous deficiencies and omissions of data which rendered the submission unusable for the preliminary determination. Therefore, in accordance with section 776(a) of the Act, we have determined that use of facts available is appropriate for Krakatau at this time. We have issued Krakatau another supplemental questionnaire and, pending receipt of a timely and adequate supplemental response, intend to verify all of Krakatau's submitted data for use in the final determination.

Section 776(b) of the Act provides that adverse inferences may be used in selecting from the facts available if a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. As explained in the "Case History" section above, Krakatau, a *pro se* company, had requested the Department's assistance in responding to the questionnaire. In response to Krakatau's request for assistance, the Department helped Krakatau to understand the reporting requirements. The Department's assistance in this regard included sending staff to Krakatau's facilities in Jakarta, Indonesia to clarify and elaborate on the Department's reporting requirements contained in the questionnaire and subsequent Departmental letters. Krakatau was provided numerous opportunities and extensions of time to fully respond to the Department's questionnaire. However, even with the assistance of the Department's staff, Krakatau failed to provide a questionnaire response that addressed the most important deficiencies identified by the Department in the attachment to its May 27, 1999, letter. Therefore, the Department preliminarily finds that Krakatau did not act to the best of its ability to provide the information requested, despite the extent of assistance it received from the Department. Therefore, we have used an adverse inference in selecting the facts available to determine Krakatau's preliminary margin.

For the preliminary determination, we assigned Krakatau the simple average of the margins in the petition, 35.01 percent, rather than the highest margin, 52.42 percent. Although we find that Krakatau did not fully cooperate to the best of its ability, Krakatau, on a *pro se* basis, tried to provide the Department in a timely manner with the data requested in the antidumping questionnaire. Recognizing Krakatau's effort to comply with the Department's information requests, and in light of its claimed difficulties, we do not believe it is appropriate to assign the highest margin alleged in the petition. (*See e.g., Krupp Stahl AG* v. *U.S.*, 822 F. Supp. 789, 793 (Ct. Int'l Trade 1993), which referenced a Court of Appeals' opinion sanctioning the Department's practice to take into account the level of respondents' cooperation; and *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Germany*, 63 FR 8953, 8955 (February 23, 1998).)

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No.316, 103d Cong., 2d Sess. (1994) (hereinafter, the "SAA") states that "corroborate" means to determine that the information used has probative value. See SAA at 870.

In this proceeding, we considered the petition as the most appropriate information on the record to form the basis for a dumping calculation for an uncooperative respondent. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics and foreign market research reports). *See Initiation Notice.*

For purposes of the preliminary determination, we attempted to corroborate the information in the petition. We reexamined the export price, home market price, and CV data provided for the margin calculations in the petition in light of information obtained during the investigation and, to the extent practicable, found that it has probative value (*see* Memorandum to the File regarding the Facts Available Rate and Corroboration of Secondary Information dated July 19, 1999).

Fair Value Comparisons

To determine whether sales of CTL plate from Indonesia to the United States were made at less than fair value, we compared the export price ("EP") to the Normal Value ("NV"), as described in the "Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs. Indonesia experienced significant inflation during the POI, as measured by the Wholesale Price Index, published in the June 1999 issue of *International Financial Statistics*. Accordingly, to avoid distortions caused by the effects of significant inflation on prices, we calculated EPs and NVs on a monthly average basis, rather than on a POI average basis.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Gunawan and Jaya Pari covered by the description in the "Scope of Investigation" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate, within the same month. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade and in the same month to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade within the same month. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling.

Collapsing

Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, the Department will consider (1) the level of common ownership, (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (3) whether the operations of the affiliated firms are intertwined (*see Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden*, 63 FR 40449, 40452 (July 29, 1999)). Based on a totality of the circumstances, the Department will collapse affiliated producers and treat them as a single entity where the criteria of 19 CFR 351.401(f) are met.

We find that Gunawan and Jaya Pari satisfy the first criterion in that they are affiliated with each other. Under section

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771(33)(F) of the Act, persons are deemed to be affiliated where such persons, directly or indirectly, are under the common control of any other person. In this instance, the respondents stated in their questionnaire response that the Gunawan family controls both Gunawan and Jaya Pari (*see* page 5 of Gunawan's June 11, 1999, supplemental questionnaire response). The Gunawan family owns a significant number of shares in both Jaya Pari and Gunawan (*see* page 5 of Gunawan's June 11, 1999, supplemental questionnaire response). In addition, as more fully discussed below, members of the Gunawan family sit on the board of directors of both Gunawan and Jaya Pari. These facts indicate that the Gunawan family controls both Gunawan and Jaya Pari. Thus, we find Gunawan and Jaya Pari to be affiliated.

Moreover, pursuant to 19 CFR 351.401(h), we find that Gunawan and Jaya Pari are both producers of the subject merchandise. The merchandise each produces is identical or similar to merchandise produced by the other, and no retooling would be required to restructure manufacturing priorities. Accordingly, we find the first and second collapsing criteria to have been met in that Gunawan and Jaya Pari are affiliated parties, each of which is a producer of identical or similar subject merchandise.

Finally, we also find that the operations of Gunawan and Jaya Pari are so intertwined that there exists a significant potential for manipulation of price or production if these affiliated producers were not collapsed. *See* 19 CFR 351.401(f)(2). In particular, the level of common control is substantial as the Gunawan family holds a significant number of shares in both Gunawan and Jaya Pari. Additionally, certain executive management positions in Gunawan and Jaya Pari are jointly occupied by members of the Gunawan family. For example, Mr. Gwie Gunawan of the Gunawan family is the President Director of both Gunawan and Jaya Pari. Also, Mr. Gwie Gunawan's son, Mr. Gunadi Gunawan, is a director of Jaya Pari and vice-president director of Gunawan (*see* page 6 of Gunawan's June 11, 1999, supplemental response). Further, Gunawan and Jaya Pari also share information concerning sales, production, and pricing (*see* page 6 of the Gunawan's June 11, 1999, supplemental response). All of these facts indicate that there is significant potential for price manipulation between these two respondents. Therefore, based on the totality of the facts on the record, we have collapsed Gunawan and Jaya Pari under 19 CFR 351.401(f), for purposes of our margin analysis.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

Gunawan and Jaya Pari reported two customer categories (*i.e.*, trading companies and original equipment manufacturers) and one channel of distribution (*i.e.*, direct sales) for their home market sales. Gunawan and Jaya Pari only reported EP sales in the U.S. market. For EP sales, Gunawan and Jaya Pari reported one customer category (*i.e.*, trading companies) and one channel of distribution (*i.e.*, direct sales to trading companies). Gunawan and Jaya Pari did not claim that their sales to home market customers are at a different LOT than their sales to U.S. customers and, therefore, did not claim a LOT adjustment.

In determining whether separate LOTs actually existed in the home market and U.S. market, we examined whether Gunawan's and Jaya Pari's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories and selling functions. As noted above, Gunawan's and Jaya Pari's sales to their unaffiliated customers were made through the same channel of distribution, albeit to different categories of customer, with no significant differences in selling functions. Based on these factors, we find that Gunawan's and Jaya Pari's home market sales comprise a single LOT.

In analyzing Gunawan's and Jaya Pari's selling activities for their EP sales, we noted that their sales involved essentially the same selling functions associated with the home market LOT described above. The selling activities include: (1) sales representative visits to the customer; (2) freight and delivery; and (3) pre-delivery inspection. Therefore, based upon this information, we have determined that the LOT for all EP sales is the same as that in the home market.

Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted.

Export Price

We calculated EP, in accordance with section 772(a) of the Act because the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted, based on the facts of record. We based EP on the packed CNF delivered price to unaffiliated purchasers in the United States. We made deductions to the starting price for discounts granted through credit notes and rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling charges, ocean freight, marine insurance, and stevedoring charges at the U.S. port.

Normal Value

After testing (1) home market viability, and (2) whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparisons" sections of this notice. We note that we did not conduct an arm's length test on affiliated party transactions for the reasons stated in the "Affiliated-Party Transactions" section below.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondents' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondents.

2. Affiliated-Party Transactions

We have not used Gunawan's home market sales to Jaya Pari or Jaya Pari's home market sales to Gunawan in our analysis because we find that Gunawan and Jaya Pari meet the criteria for collapsing affiliated companies, and are, therefore, treating them as a single entity for purposes of our analysis. *See* "Collapsing" section above for further discussion. Gunawan and Jaya Pari reported no other affiliated party sales during the POI.

3. Cost of Production Analysis

Based on data contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of CTL plate in the home market were made at prices below the COP. Accordingly, we initiated a country-wide COP investigation to determine whether sales were made at prices less than the COP pursuant to section 773(b) of the Act (*see Initiation Notice* at 64 FR 12959, 12963).

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Gunawan's and Jaya Pari's cost of materials and fabrication for the foreign like product, plus an amount for home market SG&A, interest expenses, and packing costs. As noted above, we determined that the Indonesian economy experienced significant inflation during the POI. Therefore, in order to avoid the distortive effect of inflation on our comparison of costs and prices, we computed monthly costs based on the weighted average of all monthly costs as indexed for inflation over the POI (*see* Antidumping Manual, Chapter 8, Section XV, updated February 10, 1998).

We used the information from Gunawan's and Jaya Pari's Section D questionnaire responses to calculate COP. We used the respondents' monthly COP amounts, adjusted as discussed below, and the IMF's *International Financial Statistics* to compute monthly weighted-average COPs for the POI. We made the following adjustments to the respondents' reported costs:

1. We revised Jaya Pari's reported per-unit variable and fixed overhead amounts to include year-end adjustments which had not been included in the reported costs.

2. We computed the respondents' G&A and interest expense ratios on a constant currency basis using monthly inflation indices. We recalculated the reported G&A expense ratios to include the expenses incurred in January 1998 which had been excluded. In addition, we adjusted Gunawan's cost of sales figure to reflect the cost in the income statement.

3. We allocated total foreign exchange gains attributable to accounts payable as a percentage of cost of sales.

4. We calculated the price of slab for those months where there were no purchases using the most recent prior month average purchase price and indexed that price for inflation.

5. For months in which there was no production for Jaya Pari, we have allocated the conversion costs incurred in these months to the remaining months with production.

6. We calculated consolidated weighted-average COPs and CVs for the two companies.

B. Test of Home Market Sales Prices

We compared the monthly weighted-average COP figures to the home market sales prices of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that, for certain grades of CTL plate, more than 20 percent of Gunawan's and Jaya Pari's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining above-cost sales as the basis for determining NV if such sales existed, in accordance with section 773(b)(1) of the Act. For those U.S. sales of CTL plate for which there were no comparable home market sales in the ordinary course of trade, we compared EPs to CV in accordance with section 773(a)(4) of the Act.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Gunawan's and Jaya Pari's cost of materials, fabrication, SG&A, interest, and U.S. packing costs. We made adjustments similar to those described above for COP. In accordance with sections 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses.

Price-to-Price Comparisons

We calculated NV based on delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for early payment discounts, discounts granted through credit notes, inland freight, and "billing error" rebates. We made adjustments for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In addition, we made

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adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale for imputed credit expenses, warranties and commissions. In this case, respondents incurred commissions only in the home market. Therefore, we offset home market commissions by the lesser of U.S. indirect selling expenses and home market commissions. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses in accordance with section 773(a)(6)(C)(iii) of the Act. We offset home market commissions in the manner described above in the "Price-to-Price Comparisons" section.

Critical Circumstances

In their February 16, 1999, petition, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of CTL plate from the Indonesia. In a preliminary determination of critical circumstances finding published on April 26, 1999, we stated that because there was insufficient evidence on the record to make a finding whether importers, exporters, or producers knew or should have known, at some time prior to the filing of the petition, that a proceeding concerning Indonesia was likely, we would make our preliminary critical circumstances finding by the date of the preliminary determination (*see Preliminary Determination of Critical Circumstances: Certain Cut-To-Length Carbon-Quality Steel Plate from Japan*, 64 FR 20251, 20252 (April 26, 1999)). Therefore, in accordance with 19 CFR 351.206(c)(2)(i), we are issuing our preliminary critical circumstances determination.

Section 733(e)(1) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and

(B) There have been massive imports of the subject merchandise over a relatively short period.

We are not aware of any existing antidumping order in any country on CTL plate from Indonesia. Therefore, we examined whether there was importer knowledge. In determining whether an importer knew or should have known that the exporter was selling the subject merchandise at less than its fair value and thereby causing material injury, the Department normally considers margins of 25 percent or more for EP sales sufficient to impute knowledge of dumping (*see Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China*, 62 FR 9160 (February 28, 1997); and *Notice of Final Determination of Sales at Less Than Fair Value: Steel Sheet and Strip in Coils from Japan*, 64 FR 30574 (June 8, 1999) (*Steel Sheet and Strip in Coils from Japan*)). All respondents in this proceeding have made EP sales to the United States.

The Department's margin for Gunawan and Jaya Pari exceeds 25 percent (*see* "Suspension of Liquidation" section below). Therefore, we determine that importers knew or should have known that Gunawan and Jaya Pari made sales of the subject merchandise at prices below fair value. As to the knowledge of injury from such dumped imports, in the present case, the ITC preliminarily determined that there is reasonable indication that the U.S. CTL plate industry is experiencing present material injury. Therefore, we find that the "importer knowledge of dumping and material injury" criterion is met with respect to CTL plate from Indonesia.

Because we have found that the first statutory criterion is met with regard to Gunawan and Jaya Pari, we must consider the second statutory criterion: whether imports of the merchandise have been massive over a relatively short period. According to 19 CFR 351.206(h), we consider the following to determine whether imports have been massive over a relatively short period of time: (1) volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Under 19 CFR 351.206(h), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been "massive." The Department examines shipment information submitted by the respondent or import statistics when respondent-specific shipment information is not available.

To determine whether imports of subject merchandise have been massive over a relatively short period, we compared Gunawan's and Jaya Pari's export volume for the four months subsequent to the filing of the petition (March–June 1999) to that during the four months prior to the filing of the petition (November 1998-February 1999). These periods were selected based on the Department's practice of using the longest period for which information is available from the month that the petition was submitted through the date of the preliminary determination.

Based on our analysis, we preliminarily find that the increase in imports was not greater than 15 percent with respect to Gunawan and Jaya Pari, as these companies reported that they had no exports of subject merchandise to the United States during the period March-June 1999 (*see* July 9, 1999, submission). In addition, U.S. Customs import data indicate that Gunawan and Jaya Pari accounted for the vast majority of imports of subject merchandise into the United States during the POI. Moreover, since the filing of the petition, U.S. Customs import data does not evidence massive imports of subject merchandise from Indonesia (*see* July 19, 1999, Memorandum to the File Regarding Import Statistics Used for Preliminary Critical Circumstances Determination).

Because the margin we have assigned to Krakatau is 35.01 percent, and thus exceeds 25 percent, we have imputed knowledge of dumping to Krakatau. However, information on the record sufficiently establishes that Krakatau's exports of subject merchandise to the United States have not increased massively since the filing of the petition. U.S. Customs import data does not show such an increase, and we preliminarily do not find massive imports for the two companies responsible for the majority of such exports. Thus, we preliminarily determine that no critical circumstances exist for Krakatau.

Because the margin for all other Indonesian exporters/producers of the subject merchandise is 32.20 percent, and thus exceeds 25 percent, we have imputed knowledge of dumping to "All Others." However, we considered that the increase in imports was not greater than 15 percent with respect to Gunawan and Jaya Pari. We also considered U.S. Customs data on overall imports from Indonesia of the products at issue. Based on our review of Gunawan's and Jaya Pari's data on massive imports and the U.S. Customs import data, we find that imports from all non-investigated exporters (*i.e.*, "all others") were also not massive during the relevant comparison periods. Given these factors, the Department determines that there are no critical circumstances with regard to "all other" imports of CTL Plate from Indonesia (*see Steel Sheet and Strip in Coils from Japan* at 64 FR 30585).

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Gunawan Dianjaya Steel/PT Jaya Pari Steel Corporation	32.20
PT Krakatau Steel	35.01
All Others	32.20

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 25, 1999, and rebuttal briefs no later than September 1, 1999. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 9, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 75 days after the date of this preliminary determination.

This determination is published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: July 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19302 Filed 7–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–826]

Preliminary Determinations of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Maisha Cryor, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5193 or (202) 482–5841, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are reference to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

Preliminary Determination

We preliminarily determine that certain cut-to-length carbon-quality steel plate products ("CTL plate") from Italy are being, or are likely to be, sold the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "*Suspension of Liquidation*" section of this notice.

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from Czech Republic, France, India, Italy, Japan, Republic of Korea, and Former Yogoslav Republic of Macedona*, 64 FR 12959 (March 16, 1999) ("*Initiation Notce*), the following events have occurred:

In their petition, the petitioners [1] identified Ferriera Siderscal SpA ("FS"), ILVA SpA ("ILVA"), Palini & Bertoli SpA ("P&B"), and Siderurgica Villalvernia SpA ("SV"), as possible exporters of CTL plate from Italy. On March 15, 1999, we requested data on all producers and exporters of the subject merchandise during the period of investigation ("POI") from the U.S. embassy in Rome. The U.S. embassy informed us that only ILVA and P&B are manufacturers and exporters to the United States of carbon steel plate. Based on this information, and information contained in the petition, the Department issued antidumping questionnaires to ILVA and P&B in March 1999. According to the U.S.

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., PPSCO Steel Inc., the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation)

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embassy, SV closed its mill in 1995 and FS is only a manufacturer of cold finished bars and hot-rolled billets and bars. However, based upon information contained in the petition, the Department also issued antidumping questionnaires to FS and SV in March 1999.[2]

On March 26, 1999, ILVA requested that it be excused from reporting certain home market sales of foreign like product. Specifically, ILVA sought to be excused from reporting all home market sales of CTL plate produced from plate-in-coil as well as affiliated resellers' sales of quarto plate (universal mill plate). Because ILVA only sold quarto plate in the United States, it maintained that it should not be required to report home market sales of CTL plate produced from coil since the Department would not compare such sales to ILVA's U.S. sales for purposes of calculating a dumping margin. Furthermore, ILVA claimed that its affiliated resellers' sales of quarto plate constituted an insignificant percentage of its total home market sales of foreign like product and, thus, it should be excused from reporting these downstream sales. On May 3, 1999, the Department denied ILVA's requests with one exception. Based on ILVA's relationship with one affiliated reseller, the nature of which is proprietary, the Department allowed ILVA to report sales of foreign like product to the reseller, rather than sales by the reseller.

On May 17, 1999, ILVA further requested that it be excused from reporting home market sales of certain products that are commercially identified as bar products. However, the Department found these products to be within the scope of the current CTL investigations and, thus, required ILVA to report all of its home market sales of such products. For further information regarding this issue, see the "*Scope Comments*" x section of this notice.

In April 1999, the United States International Trade Commission ("ITC") issued an affirmative preliminary injury determination in this case (*see* Investigation No. 731–TA–815–822). In April and May 1999, The Department received a response to all applicable sections of the questionnaire from ILVA and P&B. On March 28, 1999, and May 3, 1999, respectively, SV and FS submitted letters to the Department stating that they did not produce the merchandise under investigation, nor did they export such merchandise to the United States. In letter dated May 14, 1999, the Department informed FS and SV that their claims are subject to verification and that if the Department finds that they should have responded to the antidumping questionnaire, the Department would rely on facts available in making its determination with respect to FS and/or SV.

We issued supplemental questionnaires for Sections A, B, C and D to ILVA and P&B in May and June 1999 and received responses to these questionnaires along with revised home market and U.S. sales listings in June 1999.

In June and July 1999, the petitioners submitted comments for the Department's consideration in its preliminary determination. Also, in July 1999, ILVA submitted sales and cost listings containing additional information requested by the Department.

Partial Facts Available

Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

The Department resorted to the use of facts available in adjusting the reported cost of certain affiliated supplier inputs under the "transactions-disregarded" and the "major input rule" of section 773(f)(2) & (3) of the Act. For a detailed discussion of this topic see the "*Cost of Production Analysis—Calculation of COP*" section of this notice.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but no exceeding 1250 mm, and of a nominal or actual thickness of not less then 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of cooper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (i.e., USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S. or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.000, 7208.90.000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.90.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. In particular, we sought comments on the specific levels of alloying elements set out in the description above, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage. On March 29, 1999, Usinor, a respondent in the French antidumping and countervailing duty investigations and Dongkuk Steel Mill Co., Ltd. and Pohang Iron and Steel Co., Ltd., respondents in the Korean antidumping and countervailing duty investigations (collectively "the Korean respondents"), filed comments regarding the scope of the investigations on CTL plate and the Department's model matching criteria. On April 14, 1999, the petitioners filed comments regarding Usinor's and the Korean respondents' comments regarding model matching. In addition, on May 17, 1999, ILVA SpA ("ILVA"), a respondent in the Italian antidumping and countervailing duty investigations, requested guidance on whether certain products are within the scope of these investigations.

Usinor requested that the Department modify the scope to exclude: (1) plate that is cut to non-rectangular shapes or that has a total final weight of less than 200 kilograms; and (2) steel that is 4" or thicker and which is certified for use in high-pressure, nuclear or other technical applications; and (3) floor plate (*i.e.* plate with "patterns in relief") made from hot-rolled coil. Further, Usinor requested that the Department provide clarification of scope coverage with respect to what it argues are over-inclusive HTSUS subheadings included in the scope language.

The Department has not modified the scope of these investigations because the current language reflects the product coverage requested by the petitioners, and Usinor's products meet the product description. With respect to Usinor's clarification request, we do not agree that the scope language requires further elucidation with respect to product coverage under the HTSUS. As indicated in the scope section of every Department antidumping and countervailing duty proceeding, the HTSUS subheadings are provided for convenience and Customs purposes only; the written description of the merchandise under investigation or review is dispositive.

The Korean respondents requested confirmation whether the maximum alloy percentages listed in the scope language are definitive with respect to covered HSLA steels.

At this time, no party has presented any evidence to suggest that these maximum alloy percentages are inappropriate. Therefore, we have not adjusted the scope language. As in all proceedings, questions as to whether or not a specific product is covered by the scope and, hence, must be reported, should be timely raised with Department officials.

ILVA requested guidance on whether certain merchandise produced from billets is within the scope of the current CTL plate investigations. According to ILVA, the billets are converted into wide flats and bar products (a type of long products). ILVA notes that one of the long products, when rolled, has a thickness range that falls within the scope of these investigations. However, according to ILVA, the greatest possible width of these long products would only slightly overlap the narrowest category of width covered by the scope of the investigations. Finally, ILVA states that these products have different production processes and properties than merchandise covered by the scope of the investigations, and therefore are not covered by the scope of the investigations.

As ILVA itself acknowledges, the particular products in question appear to fall within the parameters of the scope and, therefore, we are preliminary treating them as covered merchandise for purposes of these investigations.

Period of Investigation

The POI is January 1, 1998, through December 31, 1998.

Fair Value Comparisons

To determine whether sales of CTL plate from Italy to the United States were made at less than fair value, we compared the export price ("EP") to the Normal value ("NV"), as described, in the "*Export Price* and "*Normal Value*" sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by ILVA and P&B covered by the description in the "*Scope of Investigation*" section, above and sold in Italy during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance (which are identified in Appendix V of the questionnaire: painting, quality, grade specification, heat treatment, normal thickness, nominal width, patterns in relief, and descaling.

In addition, we compared U.S. sales of prime merchandise only with home market sales of prime merchandise. Because neither ILVA nor P&B sold non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise in our product comparisons, (*see Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden*, 63 FR 40449, 40450 (July 29, 1998) ("*SSWR*")).

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive

[2] Section A of the questionnaire requested general information concerning the company's corporate structure, business practices, and sales and production of the merchandise under investigation. Section B and C of the questionnaire requested home market sales listings and U.S. sales listings. Section D of the questionnaire requested information regarding the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E of the questionnaire requested information regarding the cost of further manufacture or assembly performed in the United States.

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selling, general and administrative ("SG&A") expenses and profit. With respect to U.S. price and EP transactions, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

P&B reported home market sales to three customer categories through one channel of distribution. For its U.S. sales, P&B reported EP sales to one customer category through one channel of distribution. ILVA reported home market sales to two customer categories through four channels of distribution. For its U.S. sales, ILVA reported EP sales to two customer categories through one channel of distribution. In their responses, neither ILVA nor P&B claimed that their sales to home market customers were made at a different LOT than their sales to U.S. customers. Therefore, neither company claimed a LOT adjustment.

In determining whether separate LOTs actually existed in the home market and U.S. market for each respondent, we examined whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories and selling functions. Based on an analysis of the selling functions performed in the home market channel of distribution, we find that each respondent's home market sales comprise a single LOT. In analyzing each company's selling activities for EP sales, we noted that the sales involved basically the same selling functions as those associated with the home market LOT described above. Therefore, based upon this conclusion, we have determined that the LOT for each respondent's EP sales is the same as that of its home market sales. *See* the July 19, 1999, memoranda to the file regarding *Palini and Bertoli (P&B): Level of Trade Analysis*, and *Ilva SpA (ILVA): Level of Trade Analysis*.

Export Price

ILVA and P&B reported as EP transactions their sales of subject merchandise sold to unaffiliated U.S. customers prior to importation.

We calculated EP, in accordance with section 772(a) of the Act, because the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted, based on the facts of record. We based EP on the price to unaffiliated purchasers in the United States. We made deductions to the starting price for billing adjustments and, in accordance with section 772(c)(2)(A) of the Act, movement expenses. Movement expenses included, where appropriate, foreign inland freight, foreign brokerage and handling charges, ocean freight, and marine insurance.

Normal Value

After testing (1) home market viability, (2) whether sales to affiliates were at arm's-length prices, and (3) whether home market sales were at below-cost prices, we calculated NV as noted in the "*Price-to-Price Comparisons*" and "*Price-to-CV Comparisons*" sections of this notice.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its respective aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for each respondent.

2. Affiliated-Party Transactions and Arm's-Length Test

Both respondents reported home market sales to affiliated parties. Therefore, we have applied the arm's-length test to these sales by comparing them to sales of identical merchandise from the respondent to its unaffiliated home market customers. If these affiliated-party sales satisfied the arm's-length test, we used them in our analysis. Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102.

To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c) and 62 FR at 27355, *Preamble—Department's Final Antidumping Regulations* (May 19, 1997). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis (*see, e.g., SSWR* at 63 FR 40451). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

3. Cost of Production Analysis

In their petition, the petitioners submitted an allegation pursuant to section 773(b) of the Act that ILVA and P&B made sales in the home market at less than the cost of production ("COP"). Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that each Italian exporter sold CTL plate in the home market at prices less than the COP. Accordingly, we initiated COP investigations with respect to the two Italian exporters to determine whether sales were made at prices below the COP pursuant to section 773(b) of the Act (*see Initiation Notice* at 64 FR 12959, 12963).

We conducted the COP analysis as described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, for each respondent we calculated COP based on the sum of the respondent's materials and fabrication cost for the foreign like product, plus an amount for home market SG&A, interest expenses, and packing costs.

Except for the following adjustments to ILVA's costs reported by the respondents' to calculate COP:

1. During the POI, ILVA produced slabs which it sold to its wholly owned subsidiary, ILVA Lamiere e Tubi S.p.A. (ILT). ILT rolled the slabs into quarto plate to ILVA. During the POI, ILT only sold quarto plate to ILVA, which resold the plate to affiliated and unaffiliated customers in the U.S. and home markets. For cost reporting purposes, ILVA treated itself and ILT as one company and thus reported ILT's rolling cost as part of the COP. Because ILVA "collapsed" itself with ILT it did not value the inputs that it purchased from ILT in accordance with section 773(f)(2) of the Act or use the major input rule of section 773(f)(3) of the Act. Section 351.401(f) of the Department's regulations stipulates that the Department will treat two or more affiliated producers as a single entity where, among other things, the department concludes there is a significant potential for the manipulation of price or production in order to evade antidumping duties. However, in the instant situation, based upon the information on the record, the details of which are proprietary, the Department has preliminary determined that it is not appropriate to collapse ILVA and ILT because there is not a significant potential for the manipulation of price or production in order to evade antidumping duties. *See ILVA Collapsing Memorandum* (July 19, 1999). Because the Department has not collapsed ILVA and ILT, and the rolling performed by ILT is a major input to the production of plate sold by ILVA, the major input role should be applied to value the input that ILVA obtained from ILT (*see Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Certain Pasta From Italy*, 64 FR 6615, 6621 (February 10, 1999)). The major input rule of section 773(f)(3) of the Act provides that the Department may value inputs obtained from affiliated parties at the highest of the transfer price, market price, or the affiliated supplier's costs. The petitioners' maintain that the major input rule should be used to value the slabs that ILT purchased from ILVA. However, the Department has treated ILVA as the producer and viewed ILT as an affiliate who provides services to the producer. Thus, the Department used the major input rule to value the rolling services provided by ILT, but found no basis to apply it in valuing the slabs produced by ILVA. In the absence of a market price or a transfer price for rolling slabs, for this preliminary determination, the Department has constructed a transfer price by increasing the reported rolling costs for quarto plate by ILT's general and administrative (G&A) expenses and profit.

2. ILVA included ILT's G&A expenses in its reported G&A expense because it treated ILVA and ILT as one entity for cost reporting purposes. Because the Department has treated ILVA and ILT as separate entities, the Department reduced ILVA's reported G&A expense by the amount of ILT's G&A expenses included therein.

3. The Department excluded extraordinary gains and losses from ILVA's reported G&A expenses because ILVA failed to adequately explain how these expenses were related to its operations.

4. ILVA uses iron pellets to produce the merchandise under investigation. During the POI, ILVA purchased iron pellets from two suppliers, one of which ILVA identified as an affiliated party. In order to satisfy the requirements of section 773(f)(2) of the Act (transactions between affiliated parties disregarded), ILVA compared the price that it paid to purchase iron pellets from the affiliated party to the price that it paid to purchase iron pellets from the "unaffiliated" supplier. However, the record shows that ILVA and the "unaffiliated" supplier jointly own and control the affiliated supplier. Therefore, in accordance with section 771(33)(F) of the Act, the Department has preliminary determined that ILVA and the supplier which ILVA identified as an unaffiliated party (*i.e.*, the joint venture partner) are in fact affiliated, pursuant to section 771(33)(F). Furthermore, the iron pellets ILVA purchased from its joint venture partner were in fact produced by ILA's affiliated supplier. Thus, for all these transactions, ILVA purchased iron pellets, either directly or indirectly, from its affiliated supplier. Therefore, we have preliminarily determined to disregard these sales, unless ILVA can show that such sales reflect market value as required under section 773(f)(2). In the absence of such evidence, for the preliminary determination, the Department has adjusted the cost of iron pellets included in the reported costs using the information available as to what the price of iron pellets would have been if the iron pellets had been purchased from parties who are not affiliated with ILVA, in accordance with section 773(f)(2). For this preliminary determination, as facts available for this information, we used the weighted-average Italian import values of iron ore as provided by the petitioners in their July 8, 1999 submission.

5. The Department reduced ILVA's reported costs for models sold in the United States by the cost of foreign transportation and port loading expenses for U.S. sales, which were reclassified as movement expenses.

B. Test of Home Market Sales Prices

We compared the weighted-average COP figures to home market sale prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a given product were at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that, for certain grades of CTL plate, 20 percent of more of ILVA's and P&B home market sales within an extended period of time were at prices below the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used for remaining sales as the basis for determining NV if such sales existed, in accordance with section 773(b)(1) of the Act.

Price-to-Price Comparisons

We calculated NV based on delivered prices to unaffiliated customers to prices to affiliated customers that we determined to be at arm's length prices. We made adjustments, where appropriate, from the starting price for discounts and rebates, billing adjustments, inland freight, shipping revenue, freight insurance, and

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warehousing expenses. We made adjustments for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale involving imputed credit expenses (less interest revenue) warranties and commissions, where appropriate. We also made adjustments for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset), pursuant to 19 CFR 351.410(e). Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act. In both its narrative response to the Department's questionnaire and in its home market sales listing, P&B described the terms of certain home market sales as F.O.B. plant. However, P&B reported freight expenses for these sales in its home market sales database. For home market sales transactions where this discrepancy occurs, we did not reduce P&B's home market sales price by the reported freight expense.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determined a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions* 61 FR 9434 (March 9, 1996).) The use of an adjustment period was not warranted in this case because of lira did not undergo a sustained movement.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customers Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
ILVA SpA	3.67
Palini & Bertoli SpA	6.35
All Others	5.78

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 25, 1999, and rebuttal briefs no later than September 1, 1999. A list of authorities used and executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 10, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: July 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19303 Filed 7–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–847]

Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Wendy J. Frankel, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3936 or (202) 482–5849, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

Preliminary Determination

We preliminarily determine that certain cut-to-length carbon-quality steel plate products ("CTL plate") from Japan are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "*Suspension of Liquidation*" section of this notice.

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from Czech Republic, France, India, Italy, Japan, Republic of Korea, and Former Yugoslav Republic of Macedonia* (64 FR 12959, March 16, 1999)) ("*Initiation Notice*"), the following events have occurred:

In their petition, the petitioners [1] identified Kawasaki Steel Corporation ("Kawasaki"), Kobe Steel, Ltd. ("Kobe"), Nippon Steel Corporation ("Nippon"), NKK Corporation ("NKK"), and Sumitomo Metal Industries, Ltd. ("Sumitomo") as possible exporters of CTL plate from Japan. Though we requested on March 12, 1999, data on all producers and exporters of the subject merchandise during the period of investigation ("POI") from the U.S. embassy in Tokyo, the U.S. embassy was unable to provide us with any additional information on producers or exporters of the subject merchandise to the United States. Based on information contained in the petition, the Department issued antidumping questionnaires to Kawasaki, Kobe, Nippon, NKK, and Sumitomo on March 17, 1999. [2]

In April 1999, the United States International Trade Commission ("ITC") issued an affirmative preliminary injury determination in this case (*see* ITC Investigation No. 731–TA–815–822). Also, the Department received a response to all applicable sections of the questionnaire from Kawasaki and responses to question 1.a.1. of Section A from Kobe, NKK, and Sumitomo. On April 12, 1999, Nippon submitted a letter stating that it would not be responding to the Department's antidumping questionnaire. On April 26, 1999, Sumitomo submitted a letter to the Department stating that it would not be providing any further questionnaire responses with respect to this antidumping investigation. Kobe and NKK did not respond further to the Department's requests for information.

On April 26, 1999, the Department published its preliminary determination of critical circumstances for certain cut-to-length carbon-quality steel plate from Japan. In that determination, we preliminarily found that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of CTL plate from Japan. *See Preliminary Determination of Critical Circumstances: Certain Cut-To-Length Carbon-Quality Steel Plate From Japan* (April 26, 1999), 64 FR 2025.

On April 26, 1999, Kawasaki requested that it be allowed to exclude certain home market sales made during the period of investigation ("POI"), of merchandise produced at Kawasaki's universal mill at Mizushima and its hot-strip mill at Chiba, from its home market sales listing. Kawasaki further requested that it be excused from reporting the costs associated with producing this same merchandise.

Kawasaki stated that these sales constitute an insignificant amount of its total home market sales, that subject merchandise produced at these two mills was not sold in the United States, and that no merchandise identical to that produced at these mills was sold in the United States. Kawasaki stated that it would be very difficult and burdensome to report the costs associated with the production of subject merchandise at these facilities, especially in light of the fact that the relevant sales represent such an insignificant portion of sales during the POI. On May 14, 1999, the Department denied Kawasaki's request with respect to the sales of subject merchandise produced at the universal mill at Mizushima and the hot-strip mill at Chiba, and instructed Kawasaki to include these sales in its home market sales listing. However, on June 15, 1999, the Department granted Kawasaki's request not to report costs of producing merchandise associated with these two facilities. In granting this request, the Department notified Kawasaki that the Department reserves the right to request additional information concerning these costs and that in the event that we find that there is a need to use the cost data, we may rely on the facts available, as required by section 776 of the Act, including, if appropriate, adverse inferences.

We issued supplemental questionnaires for Sections A, B, C and D to Kawasaki in May 1999 and received responses to these questionnaires along with revised home market and U.S. sales listings in June 1999. In June 1999, Kawasaki submitted clarifications to its responses and the petitioners submitted comments for the Department's consideration in the preliminary determination. In July 1999, Kawasaki submitted additional clarifications to its responses. Also, the petitioners submitted further comments for the Department's consideration in the preliminary determination.

Facts Available

Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Moreover, section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its abilities to comply with a request for information. Kobe, Nippon, NKK, and Sumitomo all declined to respond to the Department's antidumping questionnaire. Because these respondents have withheld requested information, we must use facts available, in accordance with section 776(a) of the Act. We have also determined that these respondents have not cooperated to the best of their abilities. Therefore, pursuant to 776(b) of the Act, we used an adverse inference in selecting a margin from the facts available. As facts available, the Department has applied a margin rate of 59.12 percent, the highest alleged margin in the petition.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

[2] Section A of the questionnaire requested general information concerning the company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of that merchandise in all markets. Sections B and C of the questionnaire requested home market sales listings and U.S. sales listings. Section D of the questionnaire requested information regarding the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E of the questionnaire requested information regarding the cost of further manufacture or assembly performed in the United States.

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accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994) (hereinafter, the "SAA") states that "corroborate" means to determine that the information used has probative value. See SAA at 870.

In this proceeding, we considered the petition information the most appropriate record information to use to establish the dumping margins for these uncooperative respondents. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics and foreign market research reports). *See Initiation Notice.*

For purposes of the preliminary determination, we attempted to corroborate the information in the petition. We reexamined the export price and CV data which formed the basis for the highest margin in the petition in light of information obtained during the investigation and, to the extent practicable, found that it has probative value (*see* the July 19, 1999, memorandum to the file regarding *Corroboration of the Petition Data*, on file in the Central Records Unit (CRU) of the Main Commerce Department building).

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (i.e., USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. In particular, we sought comments on the specific levels of alloying elements set out in the description above, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage.

On March 29, 1999, Usinor, a respondent in the French antidumping and countervailing duty investigations and Dongkuk Steel Mill Co., Ltd. and Pohang Iron and Steel Co., Ltd., respondents in the Korean antidumping and countervailing duty investigations (collectively "the Korean respondents"), filed comments regarding the scope of the investigations on CTL plate and the Department's model matching criteria. On April 14, 1999, the petitioners filed rebuttal comments regarding model matching. In addition, on May 17, 1999, ILVA SpA ("ILVA"), a respondent in the Italian antidumping and countervailing duty investigations, requested guidance on whether certain products are within the scope of these investigations.

Usinor requested that the Department modify the scope to exclude: (1) Plate that is cut to non-rectangular shapes or that has a total final weight of less than 200 kilograms; and (2) steel that is 4" or thicker and which is certified for use in high-pressure, nuclear or other technical applications; and (3) floor plate (*i.e.*, plate with "patterns in relief") made from hot-rolled coil. Further, Usinor requested that the Department provide clarification of scope coverage with respect to what it argues are over-inclusive HTSUS subheadings included in the scope language.

The Department has not modified the scope of these investigations because the current language reflects the product coverage requested by the petitioners, and Usinor's products meet the product description. With respect to Usinor's clarification request, we do not agree that the scope language requires further elucidation with respect to product coverage under the HTSUS. As indicated in the scope section of every Department antidumping and countervailing duty proceeding, the HTSUS subheadings are provided for convenience and Customs purposes only; the written description of the merchandise under investigation or review is dispositive.

The Korean respondents requested confirmation whether the maximum alloy percentages listed in the scope language are definitive with respect to covered HSLA steels.

At this time, no party has presented any evidence to suggest that these maximum alloy percentages are inappropriate. Therefore, we have not adjusted the scope language. As in all proceedings, questions as to whether or not a specific product is covered by the scope and, hence, must be reported, should be timely raised with Department officials.

ILVA requested guidance on whether certain merchandise produced from billets is within the scope of the current CTL plate investigations. According to ILVA, the billets are converted into wide flats and bar products (a type of long product). ILVA notes that one of the long products, when rolled, has a thickness range that falls within the scope of these investigations. However, according to ILVA, the greatest possible width of these long products would only slightly overlap the narrowest category of width covered by the scope of the investigations. Finally, ILVA states that these products have different production processes and properties than merchandise covered by the scope of the investigations and therefore are not covered by the scope of the investigations.

As ILVA itself acknowledges, the particular products in question appear to fall within the parameters of the scope and, therefore, we are preliminarily treating them as covered merchandise for purposes of these investigations.

Period of Investigation

The POI is January 1, 1998, through December 31, 1998.

Fair Value Comparisons

To determine whether sales of CTL plate from Japan to the United States were made at less than fair value, we compared the export price ("EP") or constructed export price ("CEP") to the Normal Value ("NV"), as described in the "*Export Price and Constructed Export Price*" and "*Normal Value*" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Kawasaki covered by the description in the "*Scope of Investigation*" section, above, and sold in Japan during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance (which are identified in Appendix V of the questionnaire): painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling.

Because Kawasaki had no sales of non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise in our product comparisons (*see, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden* (63 FR 40449, 40450, July 29, 1998) ("*SSWR*")).

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. With respect to U.S. price or EP transactions, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, the LOT is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

Kawasaki reported two customer categories (*i.e.*, trading companies and original equipment manufacturers) and what it claimed were three channels of distribution (*i.e.*, sales to unaffiliated trading companies, direct sales to original equipment manufacturers, and sales to an affiliated trading company, Kawasho Corporation ("Kawasho Japan")) for its home market sales. Kawasaki reported EP and CEP sales in the U.S. market. For EP sales, Kawasaki reported one customer category and one channel of distribution (*i.e.*, direct sales to unaffiliated Japanese trading companies, for sale to the U.S. market). Kawasaki claimed in its response that its EP sales were made at the same LOT as home market sales to unaffiliated trading companies. For this reason, Kawasaki has not asked for a LOT adjustment to NV for comparison to its EP sales. For CEP sales, Kawasaki reported one customer category and one channel of distribution (*i.e.*, Kawasaki sales through Kawasho International ("KI"), which is the U.S. affiliate of Kawasho Japan, Kawasaki's affiliated trading company that sells in the home market and, for U.S. sales purposes, to KI). Kawasaki stated that there is no LOT in the home market that is comparable to the CEP LOT in the United States. Kawasaki claims that when comparing the selling activities of Kawasaki's affiliated trading company, Kawasho Japan, for home market sales (channel three) and for CEP sales, Kawasho provides a higher level of selling services in home market than for CEP sales. Kawasaki asserts that because Kawasho performs greater selling activities in the home market, Kawasho incurs higher selling expenses for home market sales. In addition, Kawasaki argues that the home market LOTs are more remote (further from production) than the CEP LOT. Kawasaki stated that since there is no comparable LOT in the home market, it could not demonstrate a pattern of consistent differences in price due to sales at different LOTs in the home market and therefore did not claim a LOT adjustment. Kawasaki has requested a CEP offset instead.

In determining whether separate LOTs actually existed in the home market and U.S. market, we examined whether Kawasaki's sales involved different marketing stages (or their

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equivalent) based on the channel of distribution, customer categories and selling functions.

For sales in the home market we found that Kawasaki performed essentially the same selling activities for each of the three channels of distribution. These include: technical advice, warranty service, advertising, marketing services, freight and delivery, warehousing, inputting a specification control number, sales processing, rebate administration, and demand forecasting. Based on our analysis of these factors, we found that Kawasaki's home market sales comprise a single LOT.

In analyzing Kawasaki's selling activities for its EP sales, we noted that the sales involved basically the same selling functions associated with the home market LOT described above. These selling activities include technical advice, warranty service, advertising, marketing services, inputting a specification control number, sales processing, rebate administration, and demand forecasting. Therefore, based upon this information, we have determined that the LOT for all EP sales is the same as that in the home market.

Kawasaki failed to provide any factual support for its argument that the LOT of its home market sales is more remote than the LOT of its CEP sales. Our analysis indicates that the selling functions performed at the CEP level are essentially the same as those performed in the home market. Specifically, after having excluded selling functions of its U.S. affiliate from our analysis, in accordance with sections 772(d) and 773(a)(7)(A) of the Act, we determined that Kawasaki and/or Kawasho Japan performed the following selling activities for its CEP sales: technical advice, warranty service, advertising, marketing services, freight and delivery, inputting a specification control number, sales processing, and demand forecasting. Therefore, based upon this analysis, we determine that Kawasaki's CEP and home market sales are made at the same LOT.

Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) and no CEP offset pursuant to 773(a)(7)(B) of the Act are warranted.

Export Price and Constructed Export Price

Kawasaki reported as EP transactions sales of subject merchandise sold to unaffiliated U.S. customers prior to importation through multiple unaffiliated Japanese trading companies. Kawasaki reported as CEP transactions sales of subject merchandise to an affiliated trading company, Kawasho Japan, which resold the merchandise to KI (Kawasho Japan's U.S. affiliate), which then resold the subject merchandise to unaffiliated customers in the United States.

We calculated EP, in accordance with section 772(a) of the Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted, based on the facts of record. We based EP on the packed FOB stowed and trimmed or FAS price to unaffiliated purchasers in the United States, as appropriate. We made deductions to the starting price for rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling charges, and foreign insurance.

We calculated CEP, in accordance with subsection 772(b) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on the packed ex-dock, duty paid, U.S. port prices to unaffiliated purchasers in the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, foreign insurance, ocean freight, marine insurance, and U.S. customs duties. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs, technical service costs and advertising expenses) and indirect selling expenses (including inventory carrying costs). We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Normal Value

After testing (1) home market viability, (2) whether sales to affiliates were at arm's-length prices, and (3) whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" section of this notice.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Kawasaki's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Kawasaki's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for Kawasaki.

2. Affiliated-Party Transactions and Arm's-Length Test

Kawasaki is affiliated with two home market trading companies—Kawasho Japan and a second trading company, which we will refer to as company X. Kawasaki stated in its questionnaire responses that company X, who purchases both Kawasaki-produced subject merchandise and subject merchandise produced by other manufacturers, is unable to link its sales of subject merchandise to unaffiliated home market customers with its purchases of Kawasaki-produced subject merchandise. For this reason, Kawasaki states that it is unable to report the downstream sale from company X to the first unaffiliated home market customer. Therefore, Kawasaki has reported only its sales to company X.

Kawasaki also stated that Kawasho sells subject merchandise to several affiliated processors and resellers in the home market. According to Kawasaki, these affiliated processors and resellers purchase both Kawasaki-produced subject merchandise and subject merchandise produced by other manufacturers. Kawasaki states that it cannot report the downstream sales by these affiliates because these companies do not link the original subject merchandise produced with the product sold. For this reason, Kawasaki has reported only sales from Kawasho to the affiliated processors and resellers.

Because Kawasaki is affiliated with company X and Kawasho's affiliated processors and resellers, we applied the arm's-length test to sales from Kawasaki to company X, and to sales made by Kawasho to its affiliated processors and resellers, by comparing them to sales of identical merchandise from Kawasaki to its unaffiliated home market customers. If these affiliated party sales satisfied the arm's-length test, we used them in our analysis. Sales to affiliated customers in the home market which were not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102.

To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, rebates, direct selling expenses, and home market packing. We added interest revenue and billing adjustments to the gross unit price in the amounts reported by Kawasaki. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c) and 62 FR at 27355, *Preamble—Department's Final Antidumping Regulations* (May 19, 1997). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See SSWR* at 63 FR 40451. Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

3. Cost of Production Analysis

In their petition, the petitioners submitted an allegation pursuant to section 773(b) of the Act that Kawasaki and the other named respondents had made sales in the home market at less than the cost of production ("COP"). Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that Kawasaki had sold CTL plate in the home market at prices at less than the COP. Accordingly, we initiated a COP investigation with respect to each respondent to determine whether sales were made at prices less than the COP pursuant to section 773(b) of the Act (*see Initiation Notice* at 64 FR 12959, 12963).

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Kawasaki's cost of materials and fabrication for the foreign like product, direct and indirect selling expenses, plus an amount for home market SG&A, interest expenses, and packing costs.

Kawasaki produced a small quantity of subject merchandise at its universal mill at Mizushima and its hot-strip mill at Chiba. According to Kawasaki, both of these mills primarily produce non-subject merchandise. For this reason, Kawasaki claimed that it would be burdensome to calculate actual production costs for the subject merchandise originating at these mills. After examining this issue, we granted Kawasaki's request not to report the actual costs from both mills, but required Kawasaki to report the standard costs for subject merchandise produced at these mills. We made the following adjustments to respondents' reported costs:

1. For certain models of merchandise produced at both the hot-strip mill at Mizushima and the hot-strip mill at Chiba, we calculated CONNUM-specific weighted-average total costs of manufacture (TOTCOM) using the quantities produced at the respective mills and the actual TOTCOMs from the Mizushima hot-strip facility and the standard costs from the hot-strip mill at Chiba.

2. For certain CONNUMs of merchandise produced only at the universal mill at Mizushima, and for additional other models of merchandise produced only at the hot-strip mill at Chiba, we used as the TOTCOM the standard costs for each product, as reported by Kawasaki.

3. The Department requested in the antidumping questionnaire that Kawasaki provide CONNUM-specific variable cost of manufacturing ("VCOMH") data for home market sales. For certain home market sales, Kawasaki failed to provide this information. Therefore, we applied the CONNUM-specific variable cost of manufacturing data that Kawasaki reported in its cost of production database as the VCOMH for these sales in Kawasaki's home market sales database.

4. Kawasaki failed to provide cost information for a small number of home market sales. Our analysis of these sales indicates that none are of a specification that would be considered identical or similar to any specification sold in the U.S. market during the POI. For this reason, none of these sales are eligible to be matched to a U.S. sale. Consequently, we have not included them in our analysis.

B. Test of Home Market Sales Prices

We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges and rebates.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that, for certain grades of CTL plate, more than 20 percent of Kawasaki's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining above-cost sales as the basis for determining NV if such sales existed, in accordance with section 773(b)(1) of the Act.

Price-to-Price Comparisons

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length prices, where appropriate. We added to the starting price the amount Kawasaki reported for interest revenue and billing adjustments. We made deductions, where appropriate, from the starting price for rebates, inland freight, warehousing, and inland freight insurance. We made adjustments for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In its questionnaire responses, Kawasaki reported a certain fee it regularly incurs as a rebate. We reclassified this fee as a direct expense because the amount Kawasaki reported

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under this category is for the fees Kawasaki paid to a service provider rather than a rebate Kawasaki paid to its customers. We made adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale for imputed credit expenses, advertising, warranty expenses, technical service expenses, and the above-referenced fee. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions* (61 FR 9434, March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the yen did not undergo a sustained movement.

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In April 1999, the Department made an early determination of critical circumstances with respect to imports of subject merchandise from Japan. *See Preliminary Determination of Critical Circumstances: Certain Cut-To-Length Carbon-Quality Steel Plate From Japan* (April 26, 1999), 64 FR 2025. Thus, in accordance with section 733(e)(2) of the Act, the Department will direct the U.S. Customs Service to suspend liquidation of all entries of CTL plate from Japan, that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determination of sales at LTFV.

We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Kawasaki Steel Corporation	11.70
Kobe Steel, Ltd	59.12
Nippon Steel Corporation	59.12
NKK Corporation	59.12
Sumitomo Metal Industries, Ltd	59.12
All Others	11.70

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 25, 1999, and rebuttal briefs no later than September 1, 1999. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 13, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: July 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19304 Filed 7–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–836]

Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 29, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Thomson or Howard Smith, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4793, or (202) 482–5193, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

Preliminary Determination

We preliminarily determine that certain cut-to-length carbon-quality steel plate products ("CTL plate") from the Republic of Korea ("Korea") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from Czech Republic, France, India, Korea, Italy, Japan, Republic of Korea, and Former Yugoslav Republic of Macedonia* (64 FR 12959, March 16, 1999)) ("*Initiation Notice*"), the following events have occurred:

In their petition, the petitioners [1] identified Daekyung Corporation ("Daekyung"), Dongkuk Steel Mill Co., Ltd ("Dongkuk"), Korea Iron & Steel ("KISCO"), and Pohang Iron & Steel Co., Ltd ("POSCO") as possible exporters of CTL plate from Korea. We requested on March 12, 1999, data on all producers and exporters of the subject merchandise during the period of investigation ("POI") from the U.S. Embassy in Seoul. Based on information contained in the petition and received from the Embassy, the Department issued antidumping questionnaires to Daekyung, Dongkuk, KISCO, and POSCO on March 17, 1999.[2]

In April 1999, the United States International Trade Commission ("ITC") issued an affirmative preliminary injury determination in this case (*see* ITC Investigation No. 731–TA–815–822).

On April 27, 1999, POSCO and Dongkuk submitted responses to section A of the questionnaire. On May 5, 1999, Daekyung submitted a letter to the Department stating that it did not export the subject merchandise to the United States during the POI, with a request that it be excluded from further participation in the investigation. We subsequently informed Daekyung that these facts are subject to verification. POSCO and Dongkuk submitted responses to sections B and C on May 11, 1999, and responses to section D on May 14, 1999.

Petitioners filed comments on POSCO's section A through D responses on May 20, 1999, and May 28, 1999, and on Dongkuk's section A response on May 20, 1999 and on Dongkuk's sections B through D on May 27, 1999.

On May 28, 1999, we issued supplemental questionnaires for sections A, B, and C to POSCO and Dongkuk, and for section D to POSCO and Dongkuk on June 8, and 3, 1999 respectively. POSCO responded to our May 28, 1999, supplemental questionnaire on June 22, 1999; Dongkuk responded to our May 28, 1999, supplemental questionnaire on June 22,1999 and on June 29 for the Section D supplemental questionnaire. Petitioners commented on POSCO's and Dongkuk's supplemental questionnaire on June 30, 1999. On July 2, 1999 we issued an additional supplemental questionnaire to POSCO.

In letters dated June 2, 8, and 14, 1999, Dongkuk requested that it be excused from reporting sales for its affiliate Korean Iron & Steel Co. Ltd. ("KISCO"). Dongkuk stated that KISCO had ceased production of subject merchandise early in the POI and had only an insignificant quantity of home market sales, and no U.S. sales of subject merchandise. Dongkuk argued that the Department should not collapse Dongkuk and KISCO. On June 4, 1999 petitioners argued that the Department should collapse Dongkuk and KISCO and require that its sales and costs be reported. On June 24, 1999, for the reasons outlined in its letters, we granted Dongkuk's request to be excused from reporting KISCO's sales and cost.

On June 11, 1999 we instructed POSCO to report downstream sales through five of its affiliated resellers. POSCO, in its Section A response and in subsequent submissions dated May 17, and June 1, 1999, had requested to be excused from reporting any sales through affiliated resellers. After reviewing certain supplemental information provided by POSCO, we selected the five resellers identified in the June 11, 1999 letter, and requested POSCO to provide a questionnaire response for these affiliated resellers. *See Affiliated Reseller Sales* section below.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (i.e., USS AR 400, USS

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc.,IPSCO Steel Inc., Tuscaloosa Steel Corporation, United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

[2] Section A of the questionnaire requested general information concerning the company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of that merchandise in all markets. Sections B and C of the questionnaire requested home market sales listings and U.S. sales listings. Section D of the questionnaire requested information regarding the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E of the questionnaire requested information regarding the cost of further manufacture or assembly performed in the United States.

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AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Comments

As stated in our notice of initiation, we set aside a period for parties to raise issues regarding product coverage. In particular, we sought comments on the specific levels of alloying elements set out in the description below, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage.

On March 29, 1999, Usinor, a respondent in the French antidumping and countervailing duty investigations and Dongkuk Steel Mill Co., Ltd. and Pohang Iron and Steel Co., Ltd., respondents in the Korean antidumping and countervailing duty investigations (collectively the Korean respondents), filed comments regarding the scope of the investigations on CTL plate and the Department's model matching criteria. On April 14, 1999, the petitioners filed comments regarding Usinor's and the Korean respondents' comments regarding model matching. In addition, on May 17, 1999, ILVA S.p.A. (ILVA), a respondent in the Italian antidumping and countervailing duty investigations, requested guidance on whether certain products are within the scope of these investigations.

Usinor requested that the Department modify the scope to exclude: (1) Plate that is cut to non-rectangular shapes or that has a total final weight of less than 200 kilograms; and (2) steel that is 4" or thicker and which is certified for use in high-pressure, nuclear or other technical applications; and (3) floor plate (*i.e.*, plate with "patterns in relief") made from hot-rolled coil. Further, Usinor requested that the Department provide clarification of scope coverage with respect to what it argues are over-inclusive HTSUS subheadings included in the scope language.

The Department has not modified the scope of these investigations because the current language reflects the product coverage requested by the petitioners, and Usinor's products meet the product description. With respect to Usinor's clarification request, we do not agree that the scope language requires further elucidation with respect to product coverage under the HTSUS. As indicated in the scope section of every Department antidumping and countervailing duty proceeding, the HTSUS subheadings are provided for convenience and Customs purposes only; the written description of the merchandise under investigation or review is dispositive.

The Korean respondents requested confirmation whether the maximum alloy percentages listed in the scope language are definitive with respect to covered HSLA steels.

At this time, no party has presented any evidence to suggest that these maximum alloy percentages are inappropriate. Therefore, we have not adjusted the scope language. As in all proceedings, questions as to whether or not a specific product is covered by the scope and, hence, must be reported, should be timely raised with Department officials.

ILVA requested guidance on whether certain merchandise produced from billets is within the scope of the current CTL plate investigations. According to ILVA, the billets are converted into wide flats and bar products (a type of long product). ILVA notes that one of the long products, when rolled, has a thickness range that falls within the scope of these investigations. However, according to ILVA, the greatest possible width of these long products would only slightly overlap the narrowest category of width covered by the scope of the investigations. Finally, ILVA states that these products have different production processes and properties than merchandise covered by the scope of the investigations and therefore are not covered by the scope of the investigations.

As ILVA itself acknowledges, the particular products in question appear to fall within the parameters of the scope and, therefore, we are preliminarily treating them as covered merchandise.

Period of Investigation

The POI is January 1, 1998, through December 31, 1998.

Fair Value Comparisons

To determine whether sales of CTL plate from Korea to the United States were made at less than fair value, we compared the export price ("EP") or constructed export price ("CEP") to the Normal Value ("NV"), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by POSCO and Dongkuk covered by the description in the "Scope of Investigation" section, above, and sold in Korea during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance (which are identified in Appendix V of the questionnaire): painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling.

Because respondents had no sales of non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise in our product comparisons (*see, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden* (63 FR 40449, 40450, July 29, 1998) ("SSWR")).

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive

selling, general and administrative ("SG&A") expenses and profit. With respect to U.S. sales and EP transactions, the LOT is the level of the starting price sale, which is usually from the exporter to the importer. For CEP, the LOT is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

POSCO

POSCO reported that it sells at the same LOT in both markets. In order to determine whether NV was established at a different LOT than EP sales, we examined stages in the marketing process and selling functions along the chains of distribution between POSCO and its home market and U.S. customers. Based on our analysis of the chains of distribution and selling functions performed for EP sales in the U.S. market, we preliminarily determine that POSCO and its subsidiaries POSCO Steel Sales and Service Co., Ltd. ("POSTEEL") and POSAM (for EP sales) provided a sufficiently similar degree of services on sales to all channels of distribution, and that the sales made to the United States constitute one LOT.

Based on a comparison of the selling activities performed in the U.S. market to the selling activities in the home market, we preliminarily determine that there is not a significant difference in the selling functions performed in both markets. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted. *See LOT Memo* dated July 19, 1999. *See also Affiliated Reseller Sales* section below.

Dongkuk

In the home market, Dongkuk reported one channel of distribution involving sales to distributors and affiliated and unaffiliated end-users. Dongkuk reported few selling activities for its home market sales. We examined the selling functions and found no appreciable difference between types of customers. Because there are no appreciable differences between the selling functions on sales made to different customers in the home market, sales to these customers represent a similar stage of marketing. Therefore, we preliminarily conclude that all Dongkuk's sales to end-users constitute one LOT in the home market.

For its EP and CEP sales in the U.S. market, Dongkuk reported four sales channels: (1) Dongkuk's sales through Dongkuk Industries Co., Ltd. ("DKI"), Dongkuk's affiliated trading company in Korea, to Dongkuk International, Inc. (DKA), Dongkuk's affiliate located in the United States, to unaffiliated customers; (2) Dongkuk's sales through DKI, to unaffiliated customers; (3) Dongkuk's sales to DKA, to an unaffiliated customer; and (4) Dongkuk's sales to an unaffiliated customer. We examined the selling functions performed for each of the four U.S. sales channels. These selling functions included freight and delivery arrangements, credit services, and post-sale warehousing. With the exception of freight and delivery arrangements for sales in channel 1, selling functions performed in the four sales channels were identical. Thus, sales to these customer categories represent a similar stage of marketing. Therefore, we preliminarily determine that the sales made to the United States constitute one LOT.

Further, because we preliminarily conclude that the U.S. LOT and the home market LOT included similar selling functions, we conclude that these sales are made at the same LOT. Therefore, a LOT adjustment for Dongkuk is not appropriate.

Export Price and Constructed Export Price

The Department considers several factors in making its determination concerning whether sales made prior to importation through a U.S. affiliate to an unaffiliated customer in the United States are EP sales. These factors are: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer without being introduced into the physical inventory of the affiliated selling agent; (2) whether this is the customary commercial channels between the parties involved; and (3) whether the functions of the U.S. sales affiliates are limited to those of a "processor of sales-related documentation" and a "communication link" with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. sales affiliate are ancillary to the sale, we treat the transactions as EP sales. Where the U.S. sales affiliate has a significant role in the sales process, we treat the transactions as CEP sales (*e.g. See Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review, 62 FR 18389, 18391* (April 15, 1997); *Mitsubishi Heavy Industries* versus *United States, Slip Op.* 98–82 at 6 (CIT, June 23, 1998)).

POSCO

POSCO reported four channels of distribution for U.S. sales. In channel 1 POSCO sold the subject merchandise directly to the United States. In channel 4 POSCO sold the subject merchandise directly to unaffiliated Korean trading companies for resale of subject merchandise to the United States. In channel 2, POSTEEL, which is POSCO's affiliated trading company, sold to a U.S. customer with the assistance of another affiliate, POA. In channel 3, POSTEEL sold to a U.S. customer through its U.S. affiliate POSAM . We classified the sales made through channel 2 as EP sales, since POA had no involvement in the selling process.

In channel 3, the U.S. affiliate, POSAM, was involved in all the sales made to unaffiliated U.S. customers. POSCO reported these sales as EP transactions in its responses. However, because POSAM is involved in the U.S. selling activities for these sales to some degree, we examined whether these sales should be properly classified as EP or CEP transactions.

We examine several factors to determine whether sales made prior to importation through an affiliated sales agent to an unaffiliated customer in the United States are EP sales. Based on our review of the selling activities of POSCO's U.S. affiliate, we preliminarily determine that EP is appropriate for POSTEEL's sales to the United States through POSAM. The customary commercial channel between POSCO and its unaffiliated customers is that POSCO ships the EP merchandise directly to the unaffiliated U.S. customers without having the merchandise enter into the inventory of the U.S. affiliates, and the U.S. affiliates' activities are limited to that of a "processor of sales-related

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documentation" and a "communication link" with the unaffiliated U.S. buyers. Accordingly, for purposes of the preliminary determination, we are treating the sales in question as EP transactions. We will examine this issue further at verification.

We calculated EP in accordance with section 772(a) of the Act. We based EP on the relevant terms of delivery price to unaffiliated purchasers in the United States. We made deductions to the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling charges, ocean freight, U.S. brokerage and wharfage charges and U.S. Customs duty, where appropriate. Finally, we added to the U.S. price an amount for duty drawback pursuant to section 772 (c)(1) (B) of the Act.

Dongkuk

For U.S. sales channels two and four, which are defined in the *Level of Trade* section above, we based our calculation on EP, in accordance with section 772 (a) of the Act, because the subject merchandise was sold by the producer or exporter to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise indicated. For U.S. sales channels one and three, which are defined in the *Level of Trade* section above, we based our calculation on CEP, in accordance with section 772 (b) of the Act, because the merchandise was sold by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

We have preliminarily determined that the affiliated purchaser in the United States, Dongkuk International, Inc. (DKA), did more than merely act as a "processor of sales-related documentation and a communication link with the unrelated U.S. buyer." (*i.e.*, channels 1 and 3 sales) Where a U.S. affiliate is involved in making a sale, we normally consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary. The record demonstrates that Dongkuk International, Inc.'s role exceeds that of an incidental or ancillary role. *See LOT/CEP Memo* July 19, 1999

We based EP on the price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign wharfage and loading, foreign brokerage, international freight, marine insurance, domestic inland freight, and U.S. brokerage and wharfage. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

We calculated CEP, in accordance with subsections 772(b), (c), and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on the prices to unaffiliated purchasers in the United States. We made deductions for discounts and rebates. Additionally we made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign wharfage and loading, foreign brokerage, international freight, marine insurance, domestic inland freight, U.S. brokerage and wharfage, U.S. duty and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (e.g., commissions, credit costs, bank charges, and warranty expenses), and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

Normal Value

After testing (1) home market viability, (2) whether sales to affiliates were at arm's-length prices, and (3) whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparisons" sections of this notice.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because each of the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for both respondents.

2. Affiliated-Party Transactions and Arm's-Length Test

POSCO

POSCO reported sales to affiliated parties in the home market. For sales to affiliated parties we applied the arm's-length test by comparing them to sales of identical merchandise from POSCO to unaffiliated home market customers. If these affiliated-party sales satisfied the arm's-length test, we used them in our analysis. Sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102.

To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses and packing. We added to the starting price interest revenue and duty drawback. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c) and 62 FR at 27355. In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See SSWR* at 63 FR 40451. Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Dongkuk

Dongkuk also reported sales to affiliated parties in the home market. We applied the arm's-length test as described above.

Affiliated Reseller Sales

POSCO asked to be excused from reporting downstream sales through its numerous affiliated service centers. While we denied POSCO's request, we limited the number of service centers that POSCO would have to report. POSCO submitted its narrative questionnaire response on July 8, and its electronic database, along with certain supplemental information, on July 12, 1999. However, there are a number of problems associated with these data that made it difficult to reflect these reseller sales in our preliminary margin calculations. Most important is the fact that two of these resellers sell subject merchandise which they purchase from both POSCO and other unaffiliated suppliers. According to POSCO, these resellers cannot distinguish the producer of the subject merchandise. This makes it impossible to determine whether any given sale by these resellers was produced by POSCO and should be included in our analysis. In addition, petitioners have raised a number of issues regarding the proper treatment of these sales and accompanying adjustments. However, there is insufficient information on the record regarding these issues to make a satisfactory determination concerning the use of these sales in our antidumping analysis at this time. While we have not used these sales for purposes of the preliminary determination, we intend to address these issues in a supplemental questionnaire and determine whether and in what way to use this information in the final determination.

3. Cost of Production Analysis

In their petition, the petitioners submitted a countrywide allegation pursuant to section 773(b)(1) of the Act that Korean producers and exporters had made sales in the home market at less than the cost of production ("COP"). Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that each Korean exporter sold CTL plate in the home market at prices at less than the COP. Accordingly, we initiated COP investigations with respect to the two Korean exporters to determine whether sales were made at prices less than the COP pursuant to section 773(b) of the Act (*see Initiation Notice* at 64 FR 12959, 12965).

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, for each respondent we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product plus amounts for home market selling, general and administrative expenses ("SG&A"), interest expense, and packing costs. We relied on the COP data submitted by POSCO and Dongkuk in their section D questionnaire responses to calculate each company's weighted-average COPs for the POI, except for the following instances where the information was improperly quantified or valued: (1) We increased Dongkuk's reported material cost for slabs purchased from affiliated suppliers to account for an understatement of the affiliated supplier's costs reflected in the transfer prices; (2) we increased Dongkuk's reported depreciation expense as a result of our disallowance of the extension of the useful lives for fixed assets; (3) we recalculated general and administrative expenses to exclude certain items which were unrelated to general operations; and (4) we recalculated interest expense to ensure consistency between this basis for this expense and the basis for the other reported costs. *See Memo To Neal Halper,* July 19, 1999. In addition, we analyzed Dongkuk's treatment of certain start-up costs as recorded in its accounting records in accordance with Korean GAAP. We have allowed this treatment for purposes of the preliminary determination as it appears to reasonably state Dongkuk's production costs. However, we will continue to probe this issue at verification and in the final determination.

B. Test of Home Market Sales Prices

We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

For both Dongkuk and POSCO, we found that, for certain grades of CTL plate, more than 20 percent of these firm's sales within an extended period of time were at prices less than COP.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of POSCO's and Dongkuk's cost of materials, fabrication, SG&A, interest, U.S. packing costs and profit. We made similar adjustments as those described above for COP. In accordance with sections 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses.

Price-to-Price Comparisons

We calculated NV based on prices to affiliated (where appropriate) and unaffiliated customers. We made deductions, where appropriate, from the starting price for inland freight, and also added duty drawbacks and interest revenue. We made adjustments for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale for imputed credit expenses, warranties, and commissions. In the case of Dongkuk, we recalculated it's credit expenses in the home market because of inconsistencies in its sales response regarding this expense. *See Dongkuk Calculation Memo from Analyst to the File.* Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of the foreign like product. We made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

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Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. *See POSCO Calculation Memo from Analyst to the File* for an explanation of our treatment of currency conversion for the POI in this case.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions* (61 FR 9434, March 8, 1996).)

Verification

As provided in section 782(i) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, except those entries produced by POSCO.

We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. We will adjust the deposit requirements to account for any export subsidies found in the companion countervailing duty investigation. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exported/manufacturer weighted-average	Margin percentage
Dongkuk Steel Mill Co. Ltd ...	6.15
Pohang Iron & Steel Co., Ltd	.05
All Others Rate	6.15

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 157 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments and at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 25, 1999, and rebuttal briefs no later than September 1, 1999. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 14, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: July 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19305 Filed 7–28–99; 8:45 am]

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federal register

Thursday
July 29, 1999

Part III

Department of Education

34 CFR Part 674

Federal Perkins Loan Program; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 674

RIN 1840–AC70

Federal Perkins Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Perkins Loan Program regulations. These proposed regulations are needed to implement the changes to the Higher Education Act of 1965, as amended (the HEA), resulting from the Higher Education Amendments of 1998 (the 1998 Amendments). The proposed regulations reflect the provisions of the 1998 Amendments that affect the institutions that participate in, and borrowers who have loans made under, the Federal Perkins Loan Program. These proposed regulations would expand borrower benefits under the Federal Perkins Loan program by increasing loan limits, expanding borrower eligibility for deferments and cancellations, establishing a loan rehabilitation program for borrowers in default on their Federal Perkins Loans, establishing an incentive repayment program, and providing a closed school discharge.

DATES: We must receive your comments by September 15, 1999.

ADDRESSES: Address all comments about these proposed regulations to Ms. Gail McLarnon, Program Specialist, Policy Development Division, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3042, Regional Office Building 3, Washington, DC 20202–5449. If you prefer to send your comments through the Internet, use the following address: perkinsnprm@ed.gov

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Ms. Gail McLarnon, Program Specialist, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building 3, Washington, DC 20202–5449. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday, of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

General

Background

On October 7, 1998, President Clinton signed into law the Higher Education Amendments of 1998 (the 1998 Amendments), Pub. L. 105–244, that amended the Higher Education Act of 1965, as amended (the HEA). This notice of proposed rulemaking (NPRM) addresses the changes that affect the Federal Perkins Loan Program.

Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, D.C., Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals' website (http://www.ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, they met to develop proposed regulations over the course of several months, beginning in January.

Proposed regulations contained in this NPRM reflect the final consensus of negotiating Committee II, which was made up of the following members:

- American Association of Community Colleges.
- American Association of Cosmetology Schools.
- American Association of State Colleges and Universities.
- American Council on Education.
- Career College Association.
- Coalition of Associations of Schools of the Health Professions.
- Coalition of Higher Education Assistance Organizations.
- Consumer Bankers Association.
- Education Finance Council.
- Education Loan Management Resources.
- Legal Services Counsel (a coalition).
- National Association of College and University Business Officers.
- National Association for Equal Opportunity in Higher Education.
- National Association of Graduate/Professional Students.
- National Association of Independent Colleges and Universities.
- National Association of State Student Grant and Aid Programs/National Council of Higher Education Loan Programs.
- National Association of State Universities and Land-Grant Colleges.
- National Association of Student Financial Aid Administrators.
- National Association of Student Loan Administrators.
- National Council of Higher Education Loan Programs.
- National Direct Student Loan Coalition.
- Sallie Mae, Inc.
- Student Loan Servicing Alliance.
- The College Board.
- The College Fund/United Negro College Fund.
- United States Department of Education.
- United States Student Association.
- U.S. Public Interest Research Group.

Under committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

The Secretary will publish a technical correction package at a later date that replaces all references to "Direct Loan" in the Federal Perkins Loan Program and Student Assistance General Provisions regulations with "National Direct Student Loan Program" or the acronym "NDSL." The negotiators agreed that such a change would eliminate confusion between the National Direct Student Loan Program and the William D. Ford Federal Direct Student Loan Program.

Summary of Proposed Regulatory Changes

We propose to amend the following sections of the regulations:

Section 674.2 Definitions

We propose to amend § 674.2 by adding a definition of the term "satisfactory repayment arrangement" in accordance with changes made to the 1998 Amendments. The 1998 Amendments define "satisfactory repayment arrangements" as the return of Title IV HEA eligibility to a defaulted Federal Perkins Loan borrower, to the extent the borrower is otherwise eligible, if the borrower makes six on-time, consecutive, monthly payment of amounts owed on the loan. As specified in the 1998 Amendments, the proposed regulations would authorize the restoration of the borrower's Title IV eligibility only once on a defaulted Federal Perkins loan.

Section 674.5 Federal Perkins Loan Program Default Rate and Penalties

Effective with the 2000–2001 award year, the 1998 Amendments eliminate the requirement that an institution file a default reduction plan with the Secretary if the institution's cohort default rate equals or exceeds 15 percent. The 1998 Amendments also eliminate the series of graduated default penalties imposed on institutions with cohort default rates that equal or exceed 20, 25, or 30 percent or more in favor of one default penalty of zero if an institution's cohort default rate equals or exceeds 25 percent. A default rate penalty of zero eliminates an institution's Federal Capital Contribution. We are proposing to amend § 674.5 to reflect these changes.

For award years that precede award year 2000–2001, the 1998 Amendments also contain a provision that exempts an institution from the default reduction plan filing requirement if the institution has less than 100 students who have Federal Perkins Loans in that academic year and a cohort default rate that is equal to or greater than 15 percent but less than 20 percent. The negotiators agreed not to develop proposed regulations that reflect this change because the final regulations that implement this provision would be outdated immediately upon taking effect on July 1, 2000. However, because the 1998 Amendments were enacted on October 7, 1998, the Secretary will not require an institution that meets the statutory criteria to file a default reduction plan for award years 1998–99 and 1999–2000.

The proposed regulations would further amend this section to reflect a new default penalty established by the 1998 Amendments that terminates the eligibility to participate in the Federal Perkins Loan Program if an institution has a cohort default rate of 50 percent or higher for the three most recent years for which data are available. An institution would be ineligible to participate for the award year in which the determination is made and the two succeeding award years. Under the proposed regulations, the new ineligibility default penalty would become effective with the cohort default rate calculated as of June 30, 2001. The negotiating committee agreed that the cohort default rate calculated as of this date will represent the last of the three most recent years of available cohort default rate data used by the Secretary to make a determination of ineligibility. Thus, the cohort default rates calculated as of June 30, 2001, June 30, 2000, and June 30, 1999 would be the three years used by the Department to make the initial determination of ineligibility under the proposed regulations.

The proposed regulations would allow an institution to appeal a determination of ineligibility, within 30 days of notification by the Secretary, based on an inaccurate calculation of its cohort default rate if a recalculation using corrected data would reduce the institution's cohort default rate to below 50 percent for any of the three award years used to make the determination. This appeal is discussed more fully in the next paragraph. An institution may also appeal if, on average, 10 or fewer borrowers enter repayment for the three most recent award years used to make a determination of ineligibility. For example, an institution might have 5 borrowers entering repayment in the first year, 15 borrowers entering repayment in the second year and 10 borrowers entering repayment in the third year, for an average of 10 borrowers entering repayment per year over the three-year period used to make an eligibility determination. The Secretary has 45 days to issue a decision following the institution's timely submission of a complete and accurate

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appeal, during which time the institution may continue to participate in the program. If an institution's appeal is denied by the Secretary, the institution must liquidate its revolving student loan fund in accordance with section 466A of the HEA and assign any outstanding loans to the Secretary in accordance with § 674.50 of the Federal Perkins Loan Program regulations.

In the Federal Perkins Loan Program, an institution's cohort default rate is calculated based on data submitted to the Secretary by the institution on its Fiscal Operations Report and through the edit process used by the institution to adjust the data on its Fiscal Operations Report. We recognize that in order to appeal a notice of ineligibility based on an inaccurate calculation of this data, the institution must correct its own data submission. We consider the complete and timely re-submission of corrected data, both in writing and through the edit process, to be the mechanism an institution uses to affect an appeal. The negotiating Committee agreed that this procedure provided adequate due process since the school submits the actual data used to calculate its Federal Perkins Loan Program cohort default data.

We recognize that the process used to calculate an institution's cohort default rate is unique to the Federal Perkins Loan Program. If, at any time in the future, the National Student Loan Data System (NSLDS) or another method is used to calculate an institution's Federal Perkins Loan Program cohort default rate, we will revisit and revise accordingly the regulations that govern the appeal process under this section.

We are also proposing to amend this section of the regulations to reflect provisions in the 1998 Amendments that allow an institution to exclude loans from its cohort default rate calculation. These exclusions include loans on which the borrower has voluntarily made six consecutive payments, voluntarily made all payments currently due, repaid the loan in full, received a deferment or forbearance based on a condition that predates the borrower reaching a 240/270-day past due status, or rehabilitates the loan after becoming 240/270 past due. The proposed regulations would also allow an institution to remove a loan that is canceled due to death or permanent and total disability, discharged in bankruptcy, forgiven due to a closed school situation, or repaid in full under the compromise repayment provisions contained in § 674.33(e) of the Federal Perkins Loan program regulations.

The 1998 Amendments require that the payments a borrower makes when making six consecutive payments or bringing the loan current be "voluntary" payments in order for a school to exclude the borrower from its cohort default rate calculation. In order to clarify the proposed regulations and avoid confusion when a school calculates its cohort default rate, we are proposing that "voluntary" payments exclude payments obtained by income tax offset, wage garnishment, income or asset execution, or pursuant to a judgment. Generally, payments obtained by these methods are automatically deducted from the borrower's tax return, wages or assets and the borrower has no control or choice in the payment process. Payments made pursuant to a judgment, although not always automatic, are payments made as the result of a court order and represent last resort due diligence efforts on the part of the school to obtain payment from the borrower. For this reason, the negotiators agreed that payments obtained by judgment also should not be considered voluntary for the purposes of calculating the Federal Perkins Loan Program cohort default rate.

We are also proposing to add the requirement that the six consecutive voluntary payments that a borrower makes on a defaulted loan be "monthly" payments in order for a school to remove that borrower from its cohort default rate calculation. We are proposing the addition of the word monthly to provide consistency in interpreting the timeframe in which the payments must be made. We are also proposing to require monthly payments to maintain regulatory consistency in this area. The Federal Perkins Loan Program regulations, as currently written, allow schools to remove a borrower from its cohort default rate calculation if the borrower has made six, consecutive, monthly payments on a defaulted loan.

In accordance with the 1998 Amendments, the proposed regulations would eliminate an institution's authority to exclude improperly serviced loans from its cohort default rate.

Lastly, the paragraphs in this section that describe satisfactory arrangements to repay the loan and loan rehabilitation have been deleted and relocated for administrative ease. The 1998 Amendments modified the definition of satisfactory repayment arrangements and authorized a loan rehabilitation program in the Federal Perkins Loan Program. These provisions are reflected in §§ 674.2 and 674.39 of the proposed regulations.

Section 674.6 Default Reduction Plan

For award year 2000–2001 and succeeding award years, the 1998 Amendments eliminate the requirement that an institution with a cohort default rate that equals or exceeds 15 percent establish and implement a default reduction plan. Therefore, we are proposing to remove the default reduction plan provisions contained in § 674.6 from the Federal Perkins Loan Program regulations.

Section 674.7 Expanded Lending Option

Effective October 1, 1998, the 1998 Amendments eliminated the Expanded Lending Option in the Federal Perkins Loan Program. This option previously allowed participating institutions to lend at higher limits after depositing an Institutional Capital Contribution equal to 100 percent of their Federal Capital Contribution into their Perkins Loan Revolving Fund. The proposed regulations would eliminate the expanded lending option provisions in § 674.7 to reflect this statutory change.

Section 674.9 Student Eligibility

The 1998 Amendments authorize the use of the same criteria that remove a borrower from an institution's cohort default rate in § 674.5 to re-establish a borrower's eligibility for additional Federal Perkins Loans. Accordingly, we are proposing to revise § 674.9 by adding a new paragraph that re-establishes a borrower's eligibility for a Perkins Loan if the borrower voluntarily makes six consecutive monthly payments, voluntarily makes all payments currently due, repays the loan in full, receives a deferment or forbearance based on a condition that predates the borrower reaching a 240/270-day past due status, or rehabilitates the loan after becoming 240/270 days past due. A borrower's eligibility for a Perkins Loan is also re-established if the borrower's loan is discharged due to permanent and total disability, discharged in bankruptcy, forgiven due to a closed school situation, or repaid in full in accordance with § 674.33 of the Federal Perkins Loan Program regulations.

For the purpose of a borrower re-establishing eligibility for a Perkins Loan under this section, the proposed regulations would define "voluntary" payments as those payments made directly by the borrower, including payments made over and above a payment made pursuant to a judgment. We are proposing to define payments made over and above the payments required on a judgment as voluntary because the borrower is freely choosing to make a payment of this nature. Payments made over and above those required on a judgement are not automatic nor are they required. The negotiators agreed that a borrower who opts to make payments over and above payments made pursuant to a judgment is making a good faith effort to repay the debt and should not lose the benefit of Federal Perkins Loan eligibility.

For the purpose of re-establishing a borrower's eligibility for a Federal Perkins Loan, the proposed definition of voluntary payments excludes payments made under the following conditions because a borrower has no control or choice in making these types of payments:

- Payments obtained by income tax offset.
- Payments obtained through wage garnishment.
- Payments obtained through income or asset execution.
- Payments made pursuant to a judgment.

Section 674.12 Loan maximums

The 1998 Amendments increase annual maximum loan amounts and increase the aggregate maximum loan amounts allowable for an eligible student to the levels formerly authorized for schools that participated in the Expanded Lending Option. The proposed regulations reflect the following increased annual loan limits for all eligible borrowers: $4,000 for a student who has not successfully completed a program of undergraduate education and $6,000 for a graduate or professional student. The proposed regulations would require that aggregate loan limits not exceed $40,000 for graduate and professional students, $20,000 for a student who has successfully completed two years of a program of education leading to a bachelor's degree but who has not completed his or her degree work, and $8,000 in the case of students who have not completed the first two years of undergraduate work.

During the negotiated rulemaking discussions on this section, the Committee discussed whether this proposed change would create the potential for the inadvertent overaward of Federal Perkins Loans in excess of the new statutory aggregate maximum of $8,000, especially on loans made on or about the date of enactment. Loan maximums in effect prior to enactment of the 1998 Amendments did not tie aggregate loan limits to the completion of two years of undergraduate education. We are aware of this potential problem and will not require resolution of an overaward made prior to the publication of this proposed regulation if a Federal Perkins Loan borrower was inadvertently awarded an amount in excess of the new statutory aggregate maximum of $8,000 and did not complete two years of undergraduate work.

The 1998 Amendments also changed the definition of aggregate loan limits to include only unpaid principal as is the case in the Federal Family Education Loan and Federal Direct Loan Programs. This change allows a borrower who has borrowed the maximum cumulative amount as an undergraduate or professional student to re-establish eligibility for further Perkins loans up to the principal amount the borrower has repaid. Our proposed amendments to § 674.12 of the regulations reflect this change as well.

Section 674.16 Making and Disbursing Loans

The proposed regulations would amend this section, in accordance with the 1998 Amendments, to clarify the credit bureau reporting requirements with which an institution must comply after making and disbursing a Federal Perkins Loan. The proposed regulations would amend § 674.16 to require that an institution report to at least one national credit bureau information concerning the repayment and collection of the loan until the loan is paid in full, including the date the loan was repaid, canceled or discharged for any reason. The proposed regulations would also add a new paragraph that requires an institution to report promptly any changes to information previously reported on a loan to the same credit bureaus to which the information was previously reported. The negotiators agreed that reporting a change of information on a loan to the same credit bureaus to which it was previously reported was an important protection for the borrower should the school decide to contract with a different credit bureau at a later date. Reporting changes of information on a loan to the same credit bureaus provides a consistent picture of the borrower's credit history and eliminates the risk that negative credit history might remain on the borrower's record when, in fact, it should have been removed or updated.

Section 674.31 Promissory Note

The proposed regulations would amend § 674.31, in accordance with the 1998 Amendments, to exclude from a Federal Perkins Loan Program borrower's initial grace period any period, not to exceed three years, during which a borrower who is a member of the Armed Forces reserve component is called or ordered to active duty for a period of more than 30 days. The proposed regulations would require that any single excluded period may not exceed three years and must include the time necessary for the borrower to resume enrollment at the next available regular enrollment period. We are also proposing that any borrower in a grace period when called or ordered to active duty be entitled to another full six or nine-month grace period upon completion of the excluded period of service.

Discussion of this provision at the negotiated rulemaking sessions focused on the valuable service that these borrowers are providing to our country as members of the Armed Forces reserve component and the care that must be taken not to penalize borrowers returning from active duty. In this regard, we would like to clarify that the time period in which a borrower must re-enroll in the "next available enrollment period" after returning from active duty service in the Armed Forces may be longer for some borrowers than others, especially if the borrower is pursuing a non-traditional program. Additionally, the possibility exists that borrowers may not re-enroll in the same program in which they were enrolled at the time they were called to active duty. It was the consensus of the negotiating team that the proposed regulations should provide flexibility in the administration of these aspects of a borrower's grace period.

The proposed regulations would also amend § 674.31 by requiring an institution to disclose to at least one national credit bureau the amount of the loan made to the borrower, along with other relevant information, so as to not restrict an institution from reporting to more than one credit bureau should the institution desire to do so. Previously, this section required an institution to report to any one national credit bureau.

Section 674.33 Repayment

The proposed regulations would amend § 674.33 to reflect a new provision of the 1998 Amendments that authorizes an institution to establish an incentive repayment program to reduce defaults and replenish its Federal Perkins Loan revolving fund. The proposed regulations would authorize an institution to offer a reduction of no more than one percent of the interest rate on a loan on which the borrower has made 48 consecutive, monthly payments; a discount of no more than five percent on the balance owed on a loan if the borrower pays in full prior to the end of the repayment period; and,

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with the Secretary's approval, any other incentive an institution determines will reduce defaults and replenish its fund. The proposed regulations reflect the requirement in the 1998 Amendments that an institution not use Federal funds, including Federal funds from its Federal Perkins Loan revolving fund, or institutional funds from the fund to pay for any repayment incentive. In this regard, the proposed regulations require an institution to reimburse its Fund, on at least a quarterly basis, for any money lost to its Fund that otherwise would have been paid by the borrower if the borrower had not received the repayment incentive. The negotiators agreed that unless a school reimburses its Federal Perkins Loan revolving fund for the money lost to incentives, funding for future Federal Perkins Loan borrowers might be jeopardized.

The proposed regulations would also amend § 674.33 by adding a new section that implements a closed school discharge for Federal Perkins Loan borrowers as authorized by the 1998 Amendments. Prior to passage of the 1998 Amendments, the Secretary lacked the statutory authority to discharge a Federal Perkins Loan due to a closed school situation. The proposed regulations would authorize the holder of the loan to discharge a borrower's total liability on any loan made under the Federal Perkins Loan Program on or after January 1, 1986, if the borrower is unable to complete the program of study in which the borrower is enrolled due to the institution's closure. The proposed regulations would require that the borrower be reimbursed for any amounts the borrower paid on a discharged loan either voluntarily or through enforced collection. A borrower who has defaulted on a loan that is discharged is no longer considered to be in default and is eligible to receive further Title IV aid. The holder of the loan is required to report the discharge of the loan to all credit bureaus to which the status of the loan was previously reported.

Program regulations that authorize the discharge of a loan made under both the Federal Direct Student Loan (Direct Loan) and Federal Family Education Loan (FFEL) Program have been in effect since July 1, 1995. The proposed regulations include closed school discharge provisions for the Federal Perkins Loan Program that are based largely on the regulations in existence for these programs.

The proposed regulations would authorize a closed school discharge by either the Secretary or the institution. This reflects the possibility that an institution may continue to hold a loan that is eligible for a closed school discharge due to the closure of a location or branch campus of the school, and not the closure of the school itself. However, in order to protect the borrower, the proposed regulations would require a school that denies a borrower's request for a closed school discharge to submit the materials that support such a determination for review and an independent determination of the dischargeability of the loan by the Secretary.

The proposed regulations would also allow the Secretary to discharge a loan based on a school closure without an application from the borrower. The Secretary may discharge a loan without an application if it were determined that the borrower qualified for and received a discharge on his or her FFEL or Direct Loan and was unable to secure a discharge on his or her Federal Perkins Loan only because the Secretary lacked the statutory authority. The proposed regulations would also authorize the Secretary to discharge a Federal Perkins Loan without an application from the borrower based on information in the Secretary's possession that qualified the borrower for a discharge.

Lastly, the proposed regulations contain a provision that would disallow a closed school discharge if the borrower secured his or her Federal Perkins Loan through fraudulent means as determined by the ruling of a court or an administrative tribunal. The negotiators agreed that the discharge of a fraudulently obtained loan would constitute an inappropriate use of federal tax dollars and compromise the integrity of the Federal Perkins Loan Program.

Section 674.34 Deferment of Repayment—Federal Perkins Loans, Direct Loans and Defense Loans

The proposed regulations would amend § 674.34, in accordance with changes made in the Amendments, to extend the deferment benefits described in this section to all borrowers with loans made before July 1, 1993, regardless of the terms of the borrower's promissory note. Current regulations authorize the deferments in this section only for an eligible borrower with a loan made on or after July 1, 1993. The extension of the deferments in this section to borrowers with a loan made before July 1, 1993, is effective October 7, 1998.

The proposed amendments to this section would also authorize a deferment for any borrower with a loan made under the program, including National Direct and Defense Loans, during any period in which the borrower is engaged in service that subsequently qualifies the borrower for cancellation of his or her loan. Prior to passage of the 1998 Amendments, if the borrower had a loan under the Federal Perkins Loan Program that was made before July 1, 1993, the borrower was eligible for a postponement of his or her repayment while doing service that qualified the borrower for cancellation. Because all borrowers are now eligible for a deferment in anticipation of cancellation, the postponement provisions in § 674.39 would be removed. Deferments in anticipation of cancellation authorized by this section may not be granted retroactively to cover any period of time prior to October 7, 1998.

Section 674.39 Loan rehabilitation

The 1998 Amendments authorize institutions that participate in the Federal Perkins Loan Program to establish a loan rehabilitation program for all defaulted Federal Perkins Loan borrowers. The proposed regulations in § 674.39 would define rehabilitation as the making of an on-time, monthly payment, as defined by the institution, each month for twelve consecutive months by the defaulted borrower. As specified in the 1998 Amendments, a borrower may rehabilitate a loan only once. The proposed regulations would require an institution to notify a defaulted borrower of the option and consequences of rehabilitating a defaulted loan. The consequences of rehabilitating a defaulted loan include returning the borrower to regular repayment status, treating the first payment made under the twelve consecutive payments as the first payment in a new ten-year repayment period, and instructing any credit bureau to which the default was reported to remove the default from the borrower's credit history.

The proposed regulations would limit collection costs that can be assessed a borrower on a rehabilitated loan to 24 percent. However, the proposed regulations would also allow an institution to charge any collection costs that exceed 24 percent on a rehabilitated loan, and that may not be passed along to the borrower, to their Federal Perkins Loan Revolving Fund until July 1, 2002. This would give institutions a chance to renegotiate contracts and service agreements with third-party collection agencies that currently provide for higher collection percentages.

There was much discussion among the negotiators regarding the limit on collection costs that can be charged to the borrower of a rehabilitated Federal Perkins loan. A proposal to limit the collection costs that may be charged to a Federal Perkins Loan borrower on a rehabilitated loan to 18.5 percent, in order to be consistent with the FFEL and Federal Direct Loan Programs, did not receive the full support of the negotiators. Several negotiators noted that a Federal Perkins Loan borrower might have accrued collection costs in excess of 18.5 percent on a rehabilitated loan, and that institutions would have to cover the spread between an 18.5 percent cap and actual collection costs incurred. Several negotiators suggested that the competitive marketplace should determine the collection costs assessed to the borrower, not an arbitrary cap, and that collection agencies would not agree to contract with schools, especially small schools with low volume business, for such a low fee. However, other negotiators felt that borrowers faced with added marketplace collection costs of 30 to 40 percent when repaying a loan are pushed to the extreme financially. Also, several negotiators felt that, to the extent feasible, collection costs assessed on rehabilitated loans should be consistent across the Title IV loan programs. FFEL and Federal Direct Loan borrowers are not subject to further collection costs beyond the maximum 18.5 percent after rehabilitating their loan.

Several negotiators noted that in the FFEL and Federal Direct Loan programs, collection costs that are charged to a borrower are included in the "new outstanding principal balance" of the loan after it has been rehabilitated and returned to current status. That is, the collection costs of up to 18.5 percent are capitalized. This results in an actual higher charge to the borrower as he or she repays the new, higher balance, over time and with interest charged on the full amount. They noted that capitalizing an 18.5 percent collection cost on an FFEL or Federal Direct Loan is equal to assessing approximately a 24 percent fee on a Federal Perkins Loan, since collection costs are not capitalized in the Federal Perkins Loan Program. A proposal to limit the collection costs to 24 percent did not yield immediate consensus. However, negotiators reviewed data and confirmed that a capitalized 18.5 percent collection cost on an FFEL and Federal Direct Loan increases the balance of the loan, which in turn increases the amount of interest that accrues on that balance over the repayment of the loan. The difference in the borrower's monthly payment needed to cover both the collection cost and the interest accruing on an increased principal balance, yields an amount equal to 24 percent of the original principal and interest due on the loan after it has rehabilitated.

For example, on an FFEL or Federal Direct Loan with an outstanding balance of $1,000 after rehabilitation, capitalizing an 18.5 percent collection cost will add an additional $185.00 to the loan, yielding a new outstanding balance of $1,185.00. The borrower's payment will increase by $.46 per month over the life of the loan because of the added $185.00. Over 10 years, the borrower makes 120 payments. The extra $55.20 (120 monthly payments × $.46) added to the original $185.00 in collection costs that were added to the loan balance (capitalized) means that the borrower will repay $240.00 in collection costs over the life of the rehabilitated loan. Therefore, the negotiators felt that a cap of 24 percent on the collection costs that may be charged on a rehabilitated Federal Perkins Loan was comparable to the 18.5 percent cap on FFEL and Federal Direct Loans. They reached consensus on the 24 percent cap with the understanding that, as the example presented illustrates:

- No further collection costs are assessed the borrower. That is, payments are not treated on a "fee on fee" basis which is often used by collection agencies.
- The uncapitalized collection costs of 24 percent of the principal and interest due after the loan is rehabilitated is treated as a separate cost.
- The borrower's monthly payment reflects an amount that spreads the collection costs over the life of the loan.

Finally, the proposed regulations would return the benefits and privileges of the promissory note to the rehabilitated borrower as they applied prior to the borrower's default and authorizes institutions to offer flexible repayment options following the borrower's return to regular repayment status. This flexibility was noted in the regulation to assure schools that they can work with rehabilitated borrowers to establish realistic repayment plans in order to avoid a return to a default status.

Section 674.41 Due Diligence—General Requirements

The 1998 Amendments provide for the establishment of a Student Loan Ombudsman's office in order to provide timely assistance to borrowers with loans made under Title IV of the HEA. The 1998 Amendments also require that information about the availability and functions of the Ombudsman be made available to all borrowers in the Title IV student loan programs. The proposed regulations would amend § 674.41 to comply with this new requirement. The proposed regulations would require that institutions participating in the Federal Perkins Loan Program, as part of the general due diligence requirements, provide the borrower with information on the availability of the Student Loan Ombudsman's office if the borrower disputes the terms of the loan in writing and the institution does not resolve the dispute.

Section 674.42 Contact With the Borrower

The 1998 Amendments modified section 486(b) of the HEA by eliminating the requirement that institutions conduct exit counseling individually or in groups and by encouraging institutions to use electronic means in providing personalized exit counseling. The proposed regulations in § 674.42 would facilitate these changes and make exit counseling requirements in the Federal Perkins Loan Program consistent with those in the Federal Direct Loan and the Federal Family Education Loan Programs.

Specifically, the proposed regulations would reorganize this section by first describing the disclosures that an institution is required to make to a Federal Perkins Loan borrower under section 463A(b) of the HEA, either as part of the promissory note or in another written statement provided to the borrower. The disclosure requirements have not changed. However, the proposed regulations would provide that the institution must make these disclosures either shortly before the borrower ceases at least half-time study at the institution, during the exit interview, or immediately by mail, if the borrower enters repayment without the institution's knowledge. As currently written, the regulations stipulate that the institution must make these disclosures during exit counseling.

The proposed regulations would require an institution to provide exit counseling to each borrower either in person, by audiovisual presentation, or by interactive electronic means before the student ceases at least half-time study. The proposed regulations would provide alternative written and electronic counseling options for borrowers engaged in study-abroad or correspondence study, and for borrowers who have left school without the institution's knowledge. In conducting exit counseling, the proposed regulations would require that an institution inform the borrower of the anticipated monthly repayment amount, review repayment options, suggest debt

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management strategies, emphasize the seriousness of the repayment obligation and the consequences of default, review deferment and cancellation benefits of the loan, require the borrower to provide corrections to the institution's records, and review with the borrower information on the availability of the Student Loan Ombudsman's office. They would also propose that institutions that provide exit counseling by electronic means take reasonable steps to ensure that each borrower receives the counseling materials and actively participates in and completes the exit counseling. If, for example, a school sends counseling materials by electronic mail or other electronic means, not including the U.S. mail, the school must obtain documentation through return receipt or some other mechanism that the student received the materials and completed them.

Lastly, in order to facilitate the use of electronic exit counseling, the proposed regulations would eliminate the requirements that a school, as part of exit counseling, have the borrower sign a copy of the repayment schedule and provide a copy of the signed repayment schedule and the signed promissory note to the borrower. The institution would still have to provide the borrower with a copy of the borrower's repayment schedule and the promissory note as part of the disclosure requirements listed in § 674.42(a).

Section 674.45 Collection Procedures

The 1998 Amendments clarify an institution's credit bureau reporting responsibilities by requiring that a school promptly disclose changes to any information it has reported on a borrower's Federal Perkins Loan. As currently written, § 674.45 requires a school to report changes on a defaulted loan to the same credit bureau to which it originally reported the default. Section 674.45 also currently requires an institution to respond within one month of its receipt to any inquiry from any credit bureau regarding the information reported on the loan amount. In order to prevent the borrower from suffering the negative consequences that may result from the existence of an inaccurate credit history, the proposed regulation amends the collection procedures in § 674.45 to require that an institution report changes to the account status of a defaulted loan to any national credit bureau to which it reported the default. The regulation also proposes, in accordance with provisions in the Fair Credit Reporting Act, that an institution be required to resolve, within 30 days of its receipt, any inquiry from any credit bureau that disputes the completeness or accuracy of information reported on the loan. This would protect the borrower from the negative impact of a protracted resolution in disputes involving the accuracy of his or her credit history.

The 1998 Amendments require an institution to disseminate information regarding the Student Loan Ombudsman to borrowers who are unable to resolve a dispute over the terms of their loan with the loan holder. A new paragraph is proposed for § 674.45 that would require an institution, as part of the collection activities contained in this section, to provide the borrower with information on the availability of the Student Loan Ombudsman's office.

Section 674.47 Costs Chargeable to the Fund

The proposed regulations would amend § 674.47, in accordance with the loan rehabilitation provisions in § 674.39 of the proposed regulations. The proposed change would authorize an institution, until July 1, 2002, to charge its Fund for any collection costs assessed on a rehabilitated loan that are in excess of the 24 percent maximum limit that may be passed along to the borrower. This authority is necessary to give institutions time to renegotiate contracts with collection agencies if current contracts call for the assessment of collection fees in excess of 24 percent of outstanding principal, interest and late fees due on defaulted loans.

Section 674.49 Bankruptcy of Borrower

The proposed regulations would amend § 674.49 in order to reflect changes made to section 523(a)(8) of title 11 of the United States Bankruptcy Code by the Amendments. Effective October 8, 1998, the 1998 Amendments eliminated a borrower's ability to have a student loan automatically discharged due to bankruptcy if the loan has been in repayment for seven years or more. The proposed regulations would also clarify that the seven-year repayment period on bankruptcies filed before October 8, 1998, excludes any applicable suspension of the repayment period as defined by 34 CFR 682.402(m) of the Federal Family Education Loan Program regulations. Lastly, the proposed regulations would amend this section to require institutions to use due diligence and assert any defense consistent with its status under applicable law to avoid discharge of a Federal Perkins Loan in a bankruptcy proceeding.

Section 674.52 Cancellation Procedures

The proposed regulations would amend this section to clarify that a borrower whose defaulted loan has not been accelerated may qualify for any cancellation authorized by section 465 of the HEA and Subpart D of the Federal Perkins Loan Program regulations by complying with the requirements of this section. In current regulations, the wording in this paragraph erroneously states that borrowers whose defaulted loans have not been accelerated could qualify only for teaching, volunteer, or military service cancellations by complying with the requirements of this section.

The proposed regulations also would amend paragraph (d) of this section to clarify that a Federal Perkins loan, Direct loan or Defense loan borrower's deferment under § 674.34(c) runs concurrently with any period for which cancellation under §§ 674.53–674.60 is granted.

Section 674.53 Teacher cancellation—Federal Perkins, Direct and Defense Loans.

Effective October 7, 1998, the 1998 Amendments extended the Federal Perkins Loan Program cancellation benefits in section 465(a)(2) of the HEA to all borrowers with outstanding loan balances who perform qualifying service regardless of when the loans were made or any contrary provisions of the borrowers' promissory notes. Prior to the addition of this language to the HEA, the benefits were based upon when the loan was made and the provisions of the borrower's promissory note. The proposed regulations would amend § 674.53 to extend the following teaching cancellation benefits to all borrowers, regardless of when their loan was made or the terms of the borrower's promissory note:

- teaching in a low-income school,
- full-time teaching in special education, and
- full-time teaching in fields of expertise.

These teaching benefits would be extended to any borrower with an outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the borrower's promissory note. We would like to emphasize that cancellation benefits may not be granted retroactively for teaching service performed prior to October 7, 1998.

Section 674.56 Employment Cancellation—Federal Perkins Loan, Direct and Defense Loans

The 1998 Amendments amended the HEA to extend all cancellations in section 465(a)(2) to all borrowers with outstanding balances as of October 7, 1998. The proposed regulations would amend § 674.56 to extend the following cancellation benefits to all borrowers with an outstanding balance on Federal Perkins, Direct or Defense loans made before July 23, 1992, for employment in these areas on or after October 7, 1998, regardless of when their loan was made or the terms of the borrower's promissory note:

- full-time employment as a nurse or medical technician,
- full-time employment in a public or private nonprofit child or family service agency, and
- full-time employment as a qualified professional provider of early intervention services.

Only periods of qualifying service performed on or after October 7, 1998, are eligible for cancellation benefits if the borrower was not previously eligible due to the date the loan was made.

Section 674.57 Cancellation for Law Enforcement or Corrections Officer Service—Federal Perkins, Direct and Defense Loans

The proposed regulations would amend § 674.57 to extend the cancellation for full-time service as a law enforcement or corrections officer for an eligible employing agency to any borrower with an outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to November 29, 1990, for law enforcement or correction officer service performed on or after October 7, 1998, in accordance with changes to the HEA by the Amendments. Cancellation benefits may not be granted retroactively for qualifying service performed before October 7, 1998.

Section 674.58 Cancellation for Service in a Head Start Program

The proposed regulations would amend § 674.58 to extend cancellation for service as a full-time staff member in a "Head Start" program to any borrower with an outstanding balance on a Defense loan for service performed on or after October 7, 1998, in accordance with changes made to the HEA by the Amendments. Federal Perkins and Direct loan borrowers have always been eligible for this cancellation and would not be affected by this regulatory change.

Section 674.60 Cancellation for Volunteer Service—Perkins Loans, Direct Loans and Defense Loans

The proposed regulations would amend § 674.60 to extend cancellation for service as a volunteer under The Peace Corps Act or The Domestic Volunteer Service Act of 1973, to any Direct loan borrower with a loan made on or after October 7, 1998, and any borrower with an outstanding balance on a Direct or Defense loan for service as a volunteer under the above Acts performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the borrower's promissory note, in accordance with the Amendments.

Executive Order 12866

1. *Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently. There is a detailed discussion of the cost implications associated with the rehabilitation of a Federal Perkins Loan under the heading *Sec. 674.39 Loan rehabilitation* in the preamble of this NPRM.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We note that, as these proposed regulations were subjected to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by the negotiators. The resultant consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or to increase any potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the title IV, HEA programs.

2. *Clarity of the Regulations*

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 674.41 *Due diligence—general requirements.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?
- Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The parties affected by these proposed regulations are institutions of higher education that participate in the Federal Perkins Loan Program, and individual Federal Perkins Loan borrowers. Federal Perkins Loan borrowers are not considered small entities under the Regulatory Flexibility Act. Institutions of higher education are defined as small entities, according to the U.S. Small Business Administration, if they are: for-profit or nonprofit entities with total revenue of $5,000,000 or less; and entities controlled by governmental entities with populations of 50,000 or less. Of the institutions of higher education that participate in the Federal Perkins Loan program, approximately 12 percent would be considered small entities under the definition. Those small institutions receive approximately three percent of new Federal Capital Contributions.

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These proposed regulations would not impose a significant economic impact on a substantial number of small entities. The proposed regulations would expand borrower benefits, and provide additional flexibility in the administration of the Federal Perkins Loan Program to both large and small institutions without requiring significant changes to current institutional system operations.

The Secretary invites comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

Sections 674.6, 674.16, 674.31, 674.33, 674.34, 674.39, 674.41, 674.42, 674.45, 674.47, and 674.49 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Federal Perkins Loan Program

Section 674.6 Default reduction plan. The Department currently has this section approved under OMB control number 1840–0535. The Amendments eliminated the requirement that institutions with a cohort default rate that equals or exceeds 15 percent submit a default reduction plan to the Secretary. Therefore, we are proposing to remove the required default reduction plan measures from the regulations. The total annual recordkeeping and reporting burden hours for § 674.6 equals 579 hours. The proposed regulation will therefore eliminate 579 hours from the 12,719 total recordkeeping and burden hours contained in the information collection requirements under OMB control number 1840–0535.

Section 674.16 Making and disbursing loans. The Department currently has this section approved under OMB control number 1840–0535. We are proposing to clarify the credit bureau reporting requirements with which a school must comply when making and disbursing loans in accordance with the changes made to the HEA by the Amendments. Because credit bureau reporting is considered to be a normal business practice in the administration of the Federal Perkins Loan program, there is no additional burden associated with this section.

Section 674.31 Promissory Note. The Department currently has this section approved under OMB control number 1840–0535. We are proposing to exclude any period during which a borrower who is a member of the reserve component of the Armed Forces is called or ordered to active duty for a period of more than 30 days from the borrower's initial grace period. This exclusion will be contained in the terms of the borrower's Federal Perkins Loan promissory note. Because institutional use of the Secretary's promissory note in the Federal Perkins Loan program is considered part of normal business practice in administering the Federal Perkins Loan program, there are no burden hours calculated for this section. We are also proposing to require an institution to disclose to at least one national credit bureau the amount of the loan made to the borrower, along with other relevant information. Previously, the institution was required to report to "any" national credit bureau. This proposed change does not increase or decrease the frequency or amount of credit bureau reporting required by an institution. Additionally, credit bureau reporting is considered to be a normal business practice associated with the administration of the Federal Perkins Loan program and no burden hours are associated with this section.

Section 674.33 Repayment. The Department currently has this section approved under OMB control number 1840–0535. We are proposing to authorize institutions to establish repayment incentives for borrowers by reducing by no more than 1 percent the interest rate on a loan on which the borrower has made 48 consecutive, monthly repayments; discounting by no more than 5 percent the balance owed on a loan which the borrower pays in full prior to the end of the repayment period; or, by offering any other incentive, with the Secretary's approval, that the institution determines will reduce defaults and replenish its revolving fund. The establishment of repayment incentives is not mandatory nor are institutions required to notify borrowers of the existence of repayment incentives. Institutions are currently required to retain a repayment history on each Federal Perkins Loan borrower that includes the frequency, timeliness, and number of repayments made by the borrower under the information collection requirements contained in § 674.19 and currently approved under OMB control number 1840–0073. Because institutions are already collecting the information needed to implement repayment incentives, there is no change to the information collection contained in this section.

We are also proposing a closed school discharge in this section for Federal Perkins Loan borrowers who did not complete the program of study for which the loan was made because the school at which the borrower was enrolled closed. This proposed change is retroactive to loans made on or after January 1, 1986. The proposed regulations would allow for a closed school discharge by an institution, as well as the Secretary. The proposed regulations would authorize the Secretary to discharge a loan based on a school closure without an application from the borrower if the borrower qualified for and received a discharge on his or her FFEL or Federal Direct Loan and was unable to secure a discharge on his or her Federal Perkins Loan only because the Secretary lacked the statutory authority. The proposed regulations would also authorize the Secretary to discharge a Federal Perkins Loan without an application from the borrower based on information in the Secretary's possession that qualifies the borrower for a discharge. The proposed regulations would also provide for an application process in the case of loans that the Secretary cannot discharge based on the above two criteria. Under the proposed regulations, the information the borrower is asked to provide in order to obtain the discharge of a debt based on the closure of a school is consistent with the information required under the application process currently in place for the FFEL and Federal Direct Loan programs. However, the application used in the FFEL and Federal Direct Loan Program does not currently apply to the discharge of loans made under the Federal Perkins Loan program. The current form will require revision or, alternately, a new form will be developed for the Federal Perkins Loan Program. Until such time as we are able to develop an application for borrowers seeking a closed school discharge of a Federal Perkins Loan, we cannot accurately project the number of burden hours contained in this section, although we expect the completion of such a form to be no more burdensome to applicants than the form used in the FFEL and Federal Direct Loan Programs. The burden hours associated with completing the closed school discharge form in the FFEL and Direct Loan Programs is currently 30 minutes or .5 hours per response.

Section 674.34 Deferment of repayment—Federal Perkins Loans, Direct Loans and Defense Loans. The Department currently has this section approved under OMB control number 1840–0535. We are proposing, in accordance with the Amendments, to extend the deferment benefits in this section to borrowers who were formerly ineligible because of when their loans were made or the terms of their promissory notes. This change offers greater flexibility to both the borrower and the institution in defining the circumstances in which a deferment of repayment is appropriate. This proposed change does not affect the deferment process nor does it change the eligibility requirements with which a borrower must comply. Therefore, this provision would not add burden hours to the current information collection requirements associated with this section.

Section 674.39 Loan Rehabilitation. The Department currently has this section approved under OMB control number 1840–0535. We are proposing a new section that requires an institution to establish a loan rehabilitation program. A loan is considered rehabilitated when the borrower makes an on-time, monthly payment, as determined by the institution, each month for twelve consecutive months. The institution must notify a defaulted borrower of the option and consequences of rehabilitating a loan under these proposed regulations. Once the loan is rehabilitated, the borrower is returned to regular repayment status, the first payment made under the 12 consecutive payments is treated as the first payment under a new 10-year repayment period and any adverse credit bureau history related to the default is removed from the borrower's credit report. Under § 674.16 and § 674.42 of current and proposed regulations, respectively, institutions are required to disclose to the borrower the definition of default and the consequences of defaulting on a Federal Perkins Loan, along with information on any cost that may be assessed to the borrower in the collection of the loan, including late charges and collection costs. The institution is required to provide this information in writing as part of the written application material, as part of the promissory note or on a separate written form before making and disbursing a Federal Perkins Loan to the borrower. The institution is again required to disclose information on the consequences of default to the borrower before he or she ceases at least half-time study at the institution, during the exit interview or immediately, in writing, if the borrower enters repayment without the institution's knowledge. There is ample opportunity for a school to disclose information to the borrower regarding the availability and consequences of loan rehabilitation when making the disclosures currently required under § 674.16 and § 674.42. Disclosures made under § 674.16 are considered part of normal business practice under OMB control number 1840–0535. Further calculation of burden hours under § 674.42 for providing notice of the option and consequences of rehabilitation would duplicate hours already calculated and cleared under OMB 1840–0535 that account for the disclosures that an institution is currently required to make that section. Because any burden associated with notifying a borrower of the option and consequences of rehabilitation is burden associated with or accounted for under other sections of the regulations, there are no new burden hours contained in this section.

Section 674.41 Due diligence—general requirements. The Department is adding this section as a new section approved under OMB control number 1840–0581. The proposed regulation would require institutions to provide a Federal Perkins Loan Program borrower with information on the availability of the Student Loan Ombudsman's office if the borrower disputes the terms of the loan in writing and the institution does not resolve the dispute. A total of 1,049,216 Federal Perkins Loan borrowers were in repayment as of June 30, 1998. The Department estimates that 5,246 (.5 percent) borrowers in repayment may require information on the availability of the Student Loan Ombudsman's office after failing to resolve a dispute regarding the terms of the loan with the institution. The Department further estimates that providing information on the availability of the Student Loan Ombudsman's office will average 5 minutes per response. The 437 hours and 10 minutes of burden associated with this section.

Section 674.42 Contact with the borrower. The Department currently has this section approved under OMB control number 1840–0581. The proposed regulation reorders the provisions in § 674.42 by moving the disclosure requirements with which an institution must comply under section 463A(b) of the HEA, either as part of the promissory note or in another written statement, to paragraph § 674.42(a). The disclosures have not changed. However, the proposed regulations give a school additional flexibility in the timing of the disclosures. Therefore, the information collection requirements remain unchanged for this section.

In accordance with the Amendments, this proposed change also authorizes an institution to use electronic means to facilitate exit counseling in the Federal Perkins Loan program. Previously, an institution was required to offer the borrower exit counseling in person or in groups. Exit counseling provisions are contained in § 674.42(b) of the proposed regulation. The proposed regulation provides consistency across the title IV, HEA loan programs in describing the disclosures that an institution is required to make during exit counseling. Because the authority to use electronic means in offering exit counseling does not change the nature of the information disseminated, there are no additional information collections that result from this change.

Lastly, in order to facilitate the use of electronic exit counseling, we are proposing regulations that would eliminate the requirement that a school, as part of exit counseling, have the borrower sign a copy of the repayment schedule and provide a copy of the signed repayment schedule and the signed promissory note to the borrower. However, because an institution must still provide the borrower with a copy of the borrower's repayment schedule and the promissory note as part of the disclosures required by § 674.42(a) of this section, the information collection burden contained in this section does not change.

Section 674.45 Collection procedures. The Department currently has this section approved under OMB control number 1840–0581. We are proposing to clarify that an institution must report any changes regarding a defaulted borrower to any national credit bureau to which it reported the default. The institution must also resolve, within 30 days of its receipt, any inquiry from any credit bureau that disputes the completeness or accuracy of information reported on the loan. Institutions are currently reporting information to credit bureaus that reflect the recent changes made to the HEA by the Amendments. The Amendments merely codify standard business practice as it relates to credit bureau reporting. This provision does not change the information collection contained in this section. We are also proposing that as part of the collection activities provided for in this section, the institution provide the borrower with information on the availability of the Student Loan Ombudsman. The information collection contained in this section takes into account more intensive efforts an institution must make to recover amounts owed from defaulted borrowers. Information on the availability of the Student Loan Ombudsman is easily incorporated into the existing due diligence efforts required of institutions. Any further calculation of burden hours for this

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requirement would duplicate hours already calculated and cleared under OMB 1840–0581.

Section 674.47 Costs chargeable to the Fund. The Department has this section approved under OMB control number 1840–0581. We are proposing to amend this section, in accordance with the loan rehabilitation provisions in § 674.39 of the proposed regulations. The proposed change would authorize an institution, until July 1, 2002, to charge its Fund for any collection costs assessed on a rehabilitated loan that are in excess of the maximum 24 percent limit that may be passed along to the borrower. This authority spares an institution any out-of-pocket expense that it may incur in complying with the terms of existing contracts with collection agencies that call for collection fees in excess of 24 percent. The proposed regulation would provide a transition period during which an institution could, in the normal course of business, renegotiate or renew existing contracts in order to accommodate the 24 percent limit on collection costs. The proposed regulations authorizing an institution to charge collection costs in excess of 24 percent to its Fund does not substantially change the information collection contained in this section.

Section 674.49 Bankruptcy of borrower. The Department currently has this section approved under OMB control number 1840–0581. We are proposing to amend this section in order to reflect changes made to the U.S. Bankruptcy Code that eliminate the automatic discharge of a student loan if the loan was in repayment for seven years or more. The fact that a federal student loan cannot be automatically discharged in a bankruptcy filing does not change the due diligence efforts required of an institution in collecting on a loan, defaulted or otherwise. The institution's collection responsibilities remain as a matter of normal business practice and the proposed regulations would not change the information collection contained in this section.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number: 84.037 Federal Perkins Loan Program)

List of Subjects in 34 CFR Part 674

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

Dated: July 12, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons stated in the preamble, the Secretary proposes to amend part 674 of title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.2(b) is amended by adding, in alphabetical order, the following definition:

§ 674.2 Definitions.

* * * * *

(b) * * *

Satisfactory repayment arrangement: For purposes of regaining eligibility for grant, loan, or work assistance under Title IV of the HEA, to the extent that the borrower is otherwise eligible, the making of six (6) on-time, consecutive, monthly payments on a defaulted loan. A borrower may obtain the benefit of this paragraph with respect to renewed eligibility once on a defaulted loan.

* * * * *

3. Section 674.5 is amended as follows:

A. By revising paragraphs (a)(1) and (a)(2).

B. By removing paragraphs (a)(3) and (a)(4).

C. By removing paragraph (b)(2) and redesignating paragraph (b)(3) as paragraph (b)(2).

D. By removing paragraph (c)(4); and redesignating paragraph (c)(3)(ii) as paragraph (c)(4) and by removing "; and" at the end of the sentence in the new paragraph (c)(4) and adding, in its place, a period; and by revising paragraph (c)(3).

E. By removing paragraphs (e) and (f).

§ 674.5 Federal Perkins Loan Program cohort default rate and penalties.

(a) * * *

(1) *FCC reduction.* If the institution's cohort default rate equals or exceeds 25 percent, the institution's FCC is reduced to zero.

(2) *Ineligibility.* For award year 2000–2001 and succeeding award years, an institution with a cohort default rate that equals or exceeds 50 percent for each of the three most recent years for which cohort default rate data are available is ineligible to participate in the Federal Perkins Loan Program. Following a review of that data and upon notification by the Secretary, an institution is ineligible to participate for the award year in which the determination is made and the two succeeding award years. An institution may appeal a notification of ineligibility from the Secretary within 30 days of its receipt.

(i) *Appeal procedures.*—(A) *Inaccurate calculation.* An institution may appeal a notice of ineligibility based upon the submission of erroneous data by the institution, the correction of which would result in a recalculation that reduces the institution's cohort default rate to below 50 percent for any of the three award years used to make a determination of ineligibility. The Secretary considers the edit process, by which an institution adjusts the cohort default rate data that it submits to the Secretary on its Fiscal Operations Report, to constitute the procedure to appeal a determination of ineligibility based on a claim of erroneous data.

(B) *Small number of borrowers entering repayment.* An institution may appeal a notice of ineligibility if, on average, 10 or fewer borrowers enter repayment for the three most recent award years used by the Secretary to make a determination of ineligibility.

(C) *Decision of the Secretary.* The Secretary issues a decision on an appeal within 45 days of the institution's submission of a complete, accurate, and timely appeal. An institution may continue to participate in the program until the Secretary issues a decision on the institution's appeal.

(ii) *Liquidation of an institution's Perkins Loan portfolio.* Within 90 days of receiving a notification of ineligibility or, if the institution appeals, within 90 days of the Secretary's decision to deny the appeal, the institution must—

(A) Liquidate its revolving student loan fund by making a capital distribution of the liquid assets of the Fund according to section 466(c) of the HEA; and

(B) Assign any outstanding loans in the institution's portfolio to the Secretary in accordance with § 674.50.

(iii) *Effective date.* The provisions of paragraph (a)(2) of this section are effective beginning with the cohort default rate calculated as of June 30, 2001.

* * * * *

(c) * * *

* * * * *

(3)(i) In determining the number of borrowers who default before the end of the following award year, a loan is excluded if the borrower has—

(A) Voluntarily made six consecutive monthly payments;

(B) Voluntarily made all payments currently due;

(C) Repaid the full amount due, including any interest, late fees, and collection costs that have accrued on the loan;

(D) Received a deferment or forbearance based on a condition that predates the borrower reaching a 240- or 270-day past due status; or

(E) Rehabilitated the loan after becoming 240- or 270-days past due.

(ii) A loan is considered canceled and also excluded from an institution's cohort default rate calculation if the loan is—

(A) Discharged due to death or permanent and total disability;

(B) Discharged in bankruptcy;

(C) Discharged due to a closed school; or

(D) Repaid in full in accordance with § 674.33(e).

(iii) For the purpose of this section, funds obtained by income tax offset, garnishment, income or asset execution, or pursuant to a judgment are not considered voluntary.

* * * * *

674.6 [Removed and Reserved]

4. Section 674.6 is removed and reserved.

674.7 [Removed and Reserved]

5. Section 674.7 is removed and reserved.

6. Section 674.9 is amended by redesignating paragraph (i) as paragraph (j) and adding new paragraph (i) to read as follows:

§ 674.9 Student eligibility.

* * * * *

(i) In the case of a borrower who is in default on a Federal Perkins Loan, NDSL or Defense loan, satisfies one of the conditions contained in § 674.5(c)(3)(i) or (ii) except that—

(1) For the purposes of this section, voluntary payments made by the borrower under paragraph (i) of this section are those payments made directly by the borrower, including payments made over and above payments made pursuant to a judgment; and

(2) Voluntary payments do not include payments obtained by income tax offset, garnishment, income or asset execution or pursuant to a judgment.

* * * * *

7. Section 674.12 is amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 674.12 Loan maximums.

(a) The maximum annual amount of Federal Perkins Loans and Direct Loans an eligible student may borrow is—

(1) $4,000 for a student who is enrolled in a program of undergraduate education; and

(2) $6,000 for a graduate or professional student.

(b) The aggregate unpaid principal amount of all Federal Perkins Loans and Direct Loans received by an eligible student may not exceed—

(1) $20,000 for a student who has successfully completed two years of a program leading to a bachelor's degree but who has not received the degree;

(2) $40,000 for a graduate or professional student; and

(3) $8,000 for any other student.

* * * * *

(d) For each student, the maximum annual amounts described in paragraphs (a) and (c) of this section, and the aggregate maximum amounts described in paragraphs (b) and (c) of this section, include any amounts borrowed previously by the student under title IV, part E of the HEA at any institution.

* * * * *

8. Section 674.16 is amended by revising paragraph (i) to read as follows:

§ 674.16 Making and disbursing loans.

* * * * *

(i)(1) An institution must report to at least one national credit bureau—

(i) The amount and the date of each disbursement;

(ii) Information concerning the repayment and collection of the loan until the loan is paid in full; and

(iii) The date the loan was repaid, canceled or discharged for any reason.

(2) An institution must promptly report any changes to information previously reported on a loan to the same credit bureaus to which the information was previously reported.

* * * * *

9. Section 674.31(b)(2)(i) is amended by redesignating paragraphs (C) and (D) as (D) and (E), respectively; by adding new paragraph (b)(2)(i)(C); and by revising paragraph (b)(10)(i) to read as follows:

§ 674.31 Promissory note.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) For purposes of establishing the beginning of the repayment period for Direct or Perkins loans, the 6- and 9-

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month grace periods referenced in paragraph (b)(2)(i) of this section exclude any period during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of Title 10, United States Code is called or ordered to active duty for a period of more than 30 days. Any single excluded period may not exceed three years and includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any Direct or Perkins loan borrower who is in a grace period when called or ordered to active duty as specified above is entitled to a new 6- or 9-month grace period upon completion of the excluded period.

* * * * *

(10) * * *

(i) The institution must disclose to at least one national credit bureau the amount of the loan made to the borrower, along with other relevant information.

* * * * *

10. Section 674.33 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 674.33 Repayment.

* * * * *

(f) *Incentive repayment program.* (1) An institution may establish the following repayment incentives:

(i) A reduction of no more than one percent of the interest rate on a loan on which the borrower has made 48 consecutive, monthly repayments.

(ii) A discount of no more than five percent on the balance owed on a loan which the borrower pays in full prior to the end of the repayment period.

(iii) With the Secretary's approval, any other incentive the institution determines will reduce defaults and replenish its Fund.

(2) *Limitation on the use of funds.* (i) The institution must reimburse its Fund, on at least a quarterly basis, for interest lost to its Fund that otherwise would have been paid by the borrower as a result of establishing a repayment incentive under paragraph (f)(1)(i) and (ii) of this section.

(ii) An institution may not use Federal funds, including Federal funds from the student loan fund, or institutional funds from the student loan fund to pay for any repayment incentive authorized by this section.

(g) *Closed school discharge.* (1) *General.* (i) The holder of an NDSL or a Federal Perkins Loan discharges the borrower's (and any endorser's) obligation to repay the loan if the borrower did not complete the program of study for which the loan was made because the school at which the borrower was enrolled closed.

(ii) For the purposes of this section—

(A) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary;

(B) "School" means a school's main campus or any location or branch of the main campus; and

(C) The "holder" means the Secretary or the school that holds the loan.

(2) *Relief pursuant to discharge.* (i) Discharge under this section relieves the borrower of any past or present obligation to repay the loan and any accrued interest or collection costs with respect to the loan.

(ii) The discharge of a loan under this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on the loan.

(iii) A borrower who has defaulted on a loan discharged under this section is not considered to be in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the HEA.

(iv) The Secretary or the school, if the school holds the loan, reports the discharge of a loan under this section to all credit bureaus to which the status of the loan was previously reported.

(3) *Determination of borrower qualification for discharge by the Secretary.* The Secretary may discharge the borrower's obligation to repay an NDSL or Federal Perkins Loan without an application if the Secretary determines that—

(i) The borrower qualified for and received a discharge on a loan pursuant to 34 CFR 682.402(d) (Federal Family Education Loan Program) or 34 CFR 685.213 (Federal Direct Loan Program), and was unable to receive a discharge on an NDSL or Federal Perkins Loan because the Secretary lacked the statutory authority to discharge the loan, or

(ii) Based on information in the Secretary's possession, the borrower qualifies for a discharge.

(4) *Borrower qualification for discharge.* Except as provided in paragraph (g)(3) of this section, in order to qualify for discharge of an NDSL or Federal Perkins Loan, a borrower must submit to the holder of the loan a written request and sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement the borrower must—

(i) State that the borrower—

(A) Received the proceeds of a loan to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 90 days before the school closed (or longer in exceptional circumstances); and

(C) Did not complete and is not in the process of completing the program of study through a teachout at another school as defined in 34 CFR 602.2 and administered in accordance with 34 CFR 602.207(b)(6), by transferring academic credit earned at the closed school to another school, or by any other comparable means.

(ii) State whether the borrower has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower or credited to the borrower's loan obligation; and

(iii) State that the borrower—

(A) Agrees to provide to the holder of the loan upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary, in the case of a discharged loan held by the Secretary, in enforcement actions in accordance with paragraph (g)(6) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (g)(7) of this section.

(5) *Fraudulently obtained loans.* A borrower who secured a loan through fraudulent means, as determined by the ruling of a court or an administrative tribunal of competent jurisdiction, is ineligible for a discharge under this section.

(6) *Cooperation by borrower in enforcement actions.*

(i) In order to obtain a discharge under this section, a borrower must cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower must—

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge;

(B) Provide any documents reasonably available to the borrower with respect to those representations; and

(C) If required by the Secretary, provide a sworn statement regarding those documents and representations.

(ii) The holder denies the request for a discharge or revokes the discharge of a borrower who—

(A) Fails to provide the testimony, documents, or a sworn statement required under paragraph (g)(6)(i) of this section; or

(B) Provides testimony, documents, or a sworn statement that does not support the material representations made by the borrower to obtain the discharge.

(7) *Transfer to the Secretary of borrower's right of recovery against third parties.* (i) In the case of a loan held by the Secretary, upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(ii) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section limits or forecloses the borrower's right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged NDSL or Federal Perkins Loan.

(8) *Discharge procedures.* (i) After confirming the date of a school's closure, the holder of the loan identifies any NDSL or Federal Perkins Loan borrower who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 90 days prior to the closure date.

(ii) If the borrower's current address is known, the holder of the loan mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The holder of the loan also promptly suspends any efforts to collect from the borrower on any affected loan. The holder of the loan may continue to receive borrower payments.

(iii) In the case of a loan held by the Secretary, if the borrower's current address is unknown, the Secretary attempts to locate the borrower and determine the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school or representatives of the closed school's third-party billing and collection servicers, the school's licensing agency, the school accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (g)(8)(ii) of this section.

(iv) In the case of a loan held by the school, if the borrower's current address is unknown, the school attempts to locate the borrower and determine the borrower's potential eligibility for a discharge under this section by taking steps required to locate the borrower under § 674.44.

(v) If the borrower fails to submit the written request and sworn statement described in paragraph (g)(4) of this section within 60 days of the holder of the loan's mailing the discharge application, the holder of the loan resumes collection and grants forbearance of principal and interest for the period during which collection activity was suspended.

(vi) If the holder of the loan determines that a borrower who requests a discharge meets the qualifications for a discharge, the holder of the loan notifies the borrower in writing of that determination.

(vii) In the case of a loan held by the Secretary, if the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower, in writing, of that determination and the reasons for the determination.

(viii) In the case of a loan held by a school, if the school determines that a borrower who requests a discharge does not meet the qualifications for discharge, the school submits that determination and all supporting materials to the Secretary for approval. The Secretary reviews the materials, makes an independent determination, and notifies the borrower in writing of the determination and the reasons for the determination.

(ix) In the case of a loan held by an school and discharged by either the school or the Secretary, the school must reimburse its Fund for the entire amount of any outstanding principal and interest on the loan, and any collection costs charged to the Fund as a result of collection efforts on a discharged loan. The school must also reimburse the borrower for any amount of principal, interest, late charges or collection costs the borrower paid on a loan discharged under this section.

* * * * *

11. Section 674.34 is amended by revising the section heading; and revising paragraphs (a) and (c) to read as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans, Direct loans and Defense loans.

(a) The borrower may defer making a scheduled installment repayment on a Federal Perkins loan, a Direct loan, or a Defense loan, regardless of contrary provisions of the borrower's promissory note and regardless of the date the loan was made, during periods described in this section.

* * * * *

(c) The borrower of a Federal Perkins loan, a Direct loan, or a Defense loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in §§ 674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60.

* * * * *

12. Section 674.39 is revised to read as follows:

§ 674.39 Loan rehabilitation.

(a) Each institution must establish a loan rehabilitation program for all borrowers for the purpose of rehabilitating defaulted loans made under this part. The institution's loan rehabilitation program must provide that—

(1) A defaulted borrower is notified of the option and consequences of rehabilitating a loan; and

(2) A loan is rehabilitated if the borrower makes an on-time, monthly payment, as determined by the institution, each month for twelve consecutive months.

(b) Within 30 days of receiving the borrower's last on-time, consecutive, monthly payment, the institution must—

(1) Return the borrower to regular repayment status;

(2) Treat the first payment made under the 12 consecutive payments as the first payment under the 10-year repayment maximum; and

(3) Instruct any credit bureau to which the default was reported to remove the default from the borrower's credit history.

(c) Collection costs on a rehabilitated loan—

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(1) If charged to the borrower, may not exceed 24 percent of the unpaid principal and accrued interest; and

(2) That exceed the amounts specified in paragraph (c)(1) of this section may be charged to an institution's Fund until July 1, 2002, in accordance with § 674.47(e)(5).

(d) After rehabilitating a defaulted loan and returning to regular repayment status, the borrower regains all of the benefits and privileges of the promissory note as applied prior to the borrower's default on the loan. Nothing in this paragraph prohibits an institution from offering the borrower flexible repayment options following the borrower's return to regular repayment status on a rehabilitated loan.

(e) The borrower may rehabilitate a defaulted loan only one time.

* * * * *

13. Section 674.41 is amended by adding a new paragraph (a)(3) to read as follows:

§ 674.41 Due diligence—general requirements.

(a) * * *

* * * * *

(3) Provide the borrower with information on the availability of the Student Loan Ombudsman's office if the borrower disputes the terms of the loan in writing and the institution does not resolve the dispute.

* * * * *

14. Section 674.42 is amended by redesignating paragraph (b) as paragraph (c), revising paragraph (a) and adding a new paragraph (b) to read as follows:

§ 674.42 Contact with the borrower.

(a) Disclosure of repayment information. The institution must disclose the following information in a written statement provided to the borrower either shortly before the borrower ceases at least half-time study at the institution or during the exit interview. If the borrower enters the repayment period without the institution's knowledge, the institution must provide the required disclosures to the borrower in writing immediately upon discovering that the borrower has entered the repayment period. The institution must disclose the following information—

(1) The name and address of the institution to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent.

(2) The name and address of the party to which payments should be sent.

(3) The estimated balance owed by the borrower on the date on which the repayment period is scheduled to begin.

(4) The stated interest rate on the loan.

(5) The repayment schedule for all loans covered by the disclosure including the date the first installment payment is due, and the number, amount, and frequency of required payments.

(6) An explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan, and a statement that the borrower has the right to prepay all or part of the loan at any time without penalty.

(7) A description of the charges imposed for failure of the borrower to pay all or part of an installment when due.

(8) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or the institution to collect on the loan.

(9) The total interest charges which the borrower will pay on the loan pursuant to the projected repayment schedule.

(10) A copy of the borrower's signed promissory note.

(b) *Exit interview.* (1) An institution must conduct exit counseling with each borrower either in person, by audiovisual presentation, or by interactive electronic means. The institution must conduct this counseling shortly before the borrower ceases at least half-time study at the institution. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program that the school approves for credit, the school may provide written counseling materials by mail within 30 days after the borrower completes the program. If the borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must provide exit counseling through either interactive electronic means or by mailing counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to complete exit counseling as required.

(2) In conducting the exit counseling, the school must—

(i) Inform the student as to the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Perkins loans for attendance at that school or in the borrower's program of study;

(ii) Review for the borrower available repayment options (e.g. loan consolidation and refinancing);

(iii) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(iv) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(v) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation;

(vi) Emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower has not completed the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school;

(vii) Review with the borrower the conditions under which the borrower may defer repayment or obtain partial cancellation of a loan;

(viii) Require the borrower to provide corrections to the institution's records concerning name, address, social security number, references, and driver's license number, the borrower's expected permanent address, the address of the borrower's next of kin, as well as the name and address of the borrower's expected employer; and

(ix) Review with the borrower information on the availability of the Student Loan Ombudsman's office.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials set forth in appendix D to 34 CFR part 668.

(4) An institution that conducts exit counseling through interactive electronic means must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

(5) The institution must maintain documentation substantiating the school's compliance with this section for each borrower.

* * * * *

15. Section 674.45 is amended by revising paragraph (b) and adding a new paragraph (h) to read as follows:

§ 674.45 Collection procedures.

* * * * *

(b)(1) An institution must report to any national credit bureau to which it reported the default, according to the reporting procedures of the national credit bureau, any changes to the account status of the loan.

(2) The institution must resolve within 30 days of its receipt, any inquiry from any credit bureau that disputes the completeness or accuracy of information reported on the loan.

* * * * *

(h) As part of the collection activities provided for in this section, the institution must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

* * * * *

16. Section 674.47 is amended by redesignating paragraphs (e)(5) and (e)(6) as (e)(6), and (e)(7), respectively, and by adding new paragraph (e)(5) to read as follows:

§ 674.47 Costs chargeable to the Fund.

* * * * *

(e) * * *

(5) Until July 1, 2002 on loans rehabilitated pursuant to § 674.39, amounts that exceed the amounts specified in § 674.39(c)(1) but are less than—

(i) 30 percent if the loan was rehabilitated while in a first collection effort; or

(ii) 40 percent if the loan was rehabilitated while in a second collection effort.

* * * * *

17. Section 674.49 is amended as follows:

A. By redesignating paragraphs (f)(2)(ii)(A) and (f)(2)(ii)(B) as paragraphs (f)(2)(ii)(B) and (f)(2)(ii)(C), respectively; and adding a new paragraph (f)(2)(ii)(A).

B. By redesignating paragraphs (f)(3)(ii)(A) and (f)(3)(ii)(B) as paragraphs (f)(3)(ii)(B) and (f)(3)(ii)(C), respectively; and adding a new paragraph (f)(3)(ii)(A).

C. By revising paragraphs (c)(1), (c)(2) and (c)(3); paragraph (e)(4)(i); newly redesignated paragraphs (f)(2)(ii)(B) and (f)(3)(ii)(B); and paragraph (g).

§ 674.49 Bankruptcy of borrower.

* * * * *

(c) * * *

(1) The institution must use diligence and may assert any defense consistent with its status under applicable law to avoid discharge of the loan. The institution must follow the procedures in this paragraph to respond to a complaint for a determination of dischargeability under 11 U.S.C. 523(a)(8) on the ground that repayment of the loan would impose an undue hardship on the borrower and his or her dependents, unless discharge would be more effectively opposed by avoiding that action.

(2) If the petition for relief in bankruptcy was filed before October 8, 1998 and more than seven years of the repayment period on the loan (excluding any applicable suspension of the repayment period defined in 34 CFR 682.402(m)) have passed before the borrower filed the petition, the institution may not oppose a determination of dischargeability requested under 11 U.S.C. 523(a)(8)(B) on the ground of undue hardship.

(3) In any other case, the institution must determine, on the basis of reasonably available information, whether repayment of the loan under either the current repayment schedule or any adjusted schedule authorized under subpart B or D of this part would impose an undue hardship on the borrower and his or her dependents

* * * * *

(e) * * *

* * * * *

(4)(i) The institution must monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the institution determines that the debtor has not made the payments required under the plan, or has filed a request for a "hardship discharge" under 11 U.S.C. 1328(b), the institution must determine from its own records and information derived from documents filed with the court—

* * * * *

(f) * * *

(2) * * *

(ii)(A) The petition for relief was filed before October 8, 1998;

(B) The loan entered the repayment period more than seven years (excluding any applicable suspension of the repayment period as defined by 34 CFR 682.402(m)), and

(3) * * *

(ii)(A) The petition for relief was filed before October 8, 1998;

(B) The loan entered the repayment period more than seven years (excluding any application suspension of the repayment period as defined by 34 CFR 682.402(m)) before the filing of the petition, and

* * * * *

(g) *Termination of collection and write-off.* (1) An institution must terminate all collection action and write off a loan if it receives a general order of discharge—

(i) In a bankruptcy in which the borrower filed for relief before October 8, 1998, if the loan entered the repayment period more than seven years (exclusive of any applicable suspension of the repayment period defined by 34 CFR 682.402(m)) from the date on which a petition for relief was filed; or

(ii) In any other case, a judgment that repayment of the debt would constitute an undue hardship and that the debt is therefore dischargeable.

(2) If an institution receives a repayment from a borrower after a loan has been discharged, it must deposit that payment in its Fund.

* * * * *

18. Section 674.52 is amended by revising paragraphs (c)(1) and (d) to read as follows:

§ 674.52 Cancellation procedures.

* * * * *

(c) *Cancellation of a defaulted loan.* (1) Except with regard to cancellation on account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation by complying with the requirements of paragraph (a) of this section.

* * * * *

(d) The Secretary considers a Perkins loan, Direct loan or Defense loan borrower's loan deferment under § 674.34(c) to run concurrently with any period for which cancellation under §§ 674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60 is granted.

* * * * *

19. Section 674.53 is amended by redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) as (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7), respectively; by revising the heading of the section; by adding a new paragraph (a)(2); by revising paragraph (a)(1), paragraph (b), and paragraph (c) to read as follows:

§ 674.53 Teacher cancellation—Federal Perkins, Direct and Defense loans.

(a)(1) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.*

(i) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or a Direct loan made on or after July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school.

(ii) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(2) The borrower must be teaching full-time in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualified for funds, in that year, under title I of the Elementary and Secondary Education Act of 1995, as amended; and

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(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of title I children.

(b) *Cancellation for full-time teaching in special education.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time special education teacher of infants, toddlers, children, or youth with disabilities, in a public or other nonprofit elementary or secondary school system.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

(c) *Cancellation for full-time teaching in fields of expertise.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for full-time teaching in mathematics, science, foreign languages, bilingual education, or any other field of expertise where the State education agency determines that there is a shortage of qualified teachers.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

20. Section 674.56 is amended by revising the section heading and paragraphs (a), (b) and (c) to read as follows:

§ 674.56 Employment cancellation—Federal Perkins, Direct and Defense loans.

(a) *Cancellation for full-time employment as a nurse or medical technician.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for full-time employment as a nurse or medical technician providing health care services.

(2) An institution must cancel up to 100 percent of the outstanding balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for full-time service as a nurse or medical technician performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the borrower's promissory note.

(b) *Cancellation for full-time employment in a public or private nonprofit child or family service agency.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency who is providing, or supervising the provision of, services to high-risk children who are from low-income communities and the families of such children.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992, for employment in a child or family service agency on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(c) *Cancellation for service as a qualified professional provider of early intervention services.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 676(b)(9) of the Individual with Disabilities Act.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to July 23, 1992 for early intervention service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

21. Section 674.57 is amended by redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) as (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), and (a)(8), respectively; by revising the section heading and paragraph (a)(1); and adding a new paragraph (a)(2) to read as follows:

§ 674.57 Cancellation for law enforcement or corrections officer service—Federal Perkins, Direct and Defense loans.

(a)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct Loan made on or after November 29, 1990, for full-time service as a law enforcement or corrections officer for an eligible employing agency.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, Direct or Defense loan made prior to November 29, 1990, for law enforcement or correction officer service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

* * * * *

22. Section 674.58 is amended by revising paragraph (a) to read as follows:

§ 674.58 Cancellation for service in a Head Start Program.

(a)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Direct or Federal Perkins loan, for service as a full-time staff member in a "Head Start" program.

(2) An institution must cancel up to 100 percent of the outstanding balance on a Defense loan for service as a full-time staff member in a "Head Start" program performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(3) The Head Start program in which the borrower serves must operate for a complete academic year, or its equivalent.

(4) In order to qualify for cancellation, the borrower's salary may not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start program.

* * * * *

23. Section 674.60 is amended by revising the section heading and paragraph (a) to read as follows:

§ 674.60 Cancellation for volunteer service—Perkins loans, Direct loans and Defense loans.

(a)(1) An institution must cancel up to 70 percent of the outstanding balance on a Perkins loan, and 70 percent of the outstanding balance of an NDSL made on or after October 7, 1998, for service as a volunteer under The Peace Corps Act or The Domestic Volunteer Service Act of 1973 (ACTION programs).

(2) An institution must cancel up to 70 percent of the outstanding balance on a Direct or Defense loan for service as a volunteer under The Peace Corps Act or The Domestic Volunteer Service Act of 1973 (ACTION programs) performed on or after October 7, 1998, if the cancellation benefits provided under

this section are not included in the terms of the borrower's promissory note.

* * * * *

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Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1216
Peanut Promotion, Research, and Information Order; Final Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[FV–98–702–FR]

Peanut Promotion, Research, and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a Peanut Promotion, Research, and Consumer Information Order (Order) under the Commodity Promotion, Research, and Information Act of 1996. Under the order, producers will pay an assessment of 1 percent of the price of farmers stock peanuts sold to first handlers. First handlers and marketing associations will remit the assessments to the National Peanut Board (Board). The Board will use the funds collected to conduct a generic program of promotion, research, consumer information, and industry information to maintain and expand markets for peanuts. The U.S. Department of Agriculture (USDA or the Department) conducted a referendum among eligible peanut producers to determine whether they favor the implementation of the Order. The order was approved by a majority of those voting in the referendum.

DATES: July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel R. Williams II, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, S.W., Room 2535 South Building, Washington, D.C. 20250–0244; telephone (202) 720–9916 or fax (202) 205–2800.

SUPPLEMENTARY INFORMATION: This Order is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. 7401–7425; Public Law 104–127, enacted April 4, 1996, hereinafter referred to as the Act.

Previous documents in this proceeding: Proposed Rule Number 1 (November 1998 proposed rule) on the Order published in the November 6, 1998, issue of the **Federal Register** [63 FR 59893]; a proposed rule on referendum procedures published in the November 6, 1998, issue of the **Federal Register** [63 FR 59907]; Proposed Rule Number 2 (April 1999 proposed rule) on the Order, which included a Referendum Order, published in the April 23, 1999, issue of the **Federal Register** [64 FR 20107]; a final rule on referendum procedures published in the April 23, 1999, issue of the **Federal Register** [64 FR 20102]; and an amendment to the Referendum Order published in the June 14, 1999, issue of the **Federal Register** [64 FR 31736].

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary of Agriculture (Secretary) will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Executive Order 12866

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has examined the impact of the rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

This program is intended to develop and finance an effective and coordinated program of promotion, research, and consumer information to maintain and expand the markets for peanuts. A proposal was submitted by the American Farm Bureau Federation (proponent), working in cooperation with 20 state and regional peanut grower organizations representing the nine primary peanut-producing states and other states. The proponent proposed that peanut producers approve the program in a referendum in advance of its implementation and that producer members would serve on the 10-member National Peanut Board (Board) that would administer the program under USDA's supervision. In addition, any person subject to the program may file with the Secretary a petition stating that the program or any provision under it is not in accordance with law and requesting a modification of the Order or an exemption from the Order.

While the Order will impose certain recordkeeping requirements on first handlers, information required under the Order can be compiled from records currently maintained. First handlers and area marketing associations—for peanuts placed under loan with the Commodity Credit Corporation (CCC) in the price support program administered for CCC by USDA's Farm Service Agency (FSA)—will collect and remit all assessments to the Board. Their responsibilities will include accurate recordkeeping and accounting of all peanuts purchased or contracted for, including the number of pounds handled, price paid to the producer, and when peanuts are purchased. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Order and the Act. Such records shall be retained for at least two years. These requirements are either already being conducted as a normal business practice or are required by other USDA peanut regulations. The added burden to first handlers and area marketing associations for a peanut promotion, research, and information program is therefore expected to be minimal.

There is also a minimal burden on producers. The burden relates to those producers who seek nomination to serve on the Board and those who vote in referenda. In addition, the Order requires producers to keep records and

to provide information to the Board or the Secretary when requested. However, it is not anticipated that producers will be required to submit forms to the Board. Most likely, the information will be obtained through an audit of a producer's records to confirm information provided by a first handler or if a first handler did not file the required reports as part of the Board's compliance operation.

The estimated annual cost of providing the information to the Board by an estimated 98 respondents (21 producers, 57 first handlers, and 20 producer organizations) is be $4,059.85 or $5.00 per producer, $66.05 per first handler, and $9.50 per producer organization.

The Department will oversee program operations and will conduct a referendum: (1) Every five years to determine whether peanut producers support continuation of the program, as requested by the proponent, (2) at the request of the Board established under the Order, or (3) at the request of 10 percent or more of the number of persons eligible to vote in referenda. Additionally, the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by those eligible to vote in referenda.

There are approximately 25,000 producers and 57 first handlers of peanuts that will be subject to the program. Most of the producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.601). Most first handlers would not be classified as small businesses. The SBA defines small agricultural handlers as those whose annual receipts are less than $5 million, and small agricultural producers are defined as those having annual receipts of not more than $500,000 annually.

According to USDA's National Agricultural Statistics Service (NASS), the nine major peanut-producing states in the United States account for 99 percent of the peanuts grown in this country. The combined production from these states totaled 3.5 billion pounds in 1997. The farm value of peanuts in 1997 reached $932 million. NASS reports that Georgia was the largest producer (38 percent of the total), followed by Texas (23 percent), Alabama (11 percent), North Carolina (9 percent), Florida (6 percent), Virginia (5 percent), Oklahoma (5 percent), New Mexico (1 percent), and South Carolina (1 percent). According to 1992 Census of Agriculture (Census) data, small amounts of peanuts were also grown in seven other states.

According to the proponent, based on Census data for these nine states, 36 percent of the peanut-producing counties in the United States acquired 35 percent or more of their total crop income from peanuts. Twenty-four percent of the counties had 50 percent or more of their crop income from peanuts. From a state perspective, 70 percent of the crop income in Alabama's peanut-producing counties is generated from peanuts. For Virginia, the percentage is 48 percent. In addition, 16,194 farms harvested peanuts in 1992. Of these, 15,914 were located in the nine primary peanut-producing states.

Three main types of peanuts are grown in the United States: Florunners, Virginia, and Spanish. The southeast growing region grows mostly the medium-kernel Runner peanuts. The southwest growing region once grew two-thirds Spanish and one-third Runner peanuts, but now more Runners than Spanish are grown. Virtually all of the Spanish peanut production is in Oklahoma and Texas. In the Virginia-Carolina region, mainly large-kernel Virginia peanuts are grown. New Mexico grows a fourth type of peanut, the Valencia.

Peanut manufacturers produce three principal peanut products: peanut butter, packaged nuts (including salted, unsalted, flavored, and honey-roasted nuts), and peanut candies. In most years, half of all peanuts produced in the United States for edible purposes are used to manufacture peanut butter. Packaged nuts account for almost one-third of all processed peanuts. Some of these (commonly referred to as "ballpark" peanuts) are roasted in the shell, while a much larger quantity is used as shelled peanuts packed as dry-roasted peanuts, salted peanuts, and salted mixed nuts. Some peanuts are ground to produce peanut granules and flour. Other peanuts are crushed to produce oil.

According to USDA's Foreign Agricultural Service, U.S. exports of peanuts (including peanut meal, oil, and peanut butter) totaled 880 million in-shell equivalent pounds in 1997, with a value of $285 million (U.S. point of departure for the foreign country). Of the total quantity, 60 percent was shelled peanuts used as nuts, 11 percent was blanched or otherwise prepared or preserved peanuts, 10 percent was in-shell peanuts, 7 percent was peanut butter, 4 percent was shelled oil stock peanuts, 4 percent was crude peanut oil, and 3 percent was refined peanut oil.

The major destinations for domestic shelled peanuts for use as nuts are Canada, Mexico, the United Kingdom, and the Netherlands. Blanched or otherwise prepared peanuts are sent mainly to Western Europe, especially the Netherlands, France, and Spain. In-shell peanuts are mainly exported to Canada and various countries in Western Europe. Peanut butter is sent to many countries, with the largest amounts going to Canada and Saudi Arabia. Peanut oil and oil stock peanuts are exported world-wide, but major destinations can vary from year to year.

Approximately 250 million in-shell equivalent pounds of peanuts and processed peanuts (including oil and peanut butter) were imported in 1997 with a combined value (f.o.b. country of origin) of $73 million. Most of the imports (45 percent) were shelled peanuts for use as nuts. The major U.S. supplier is Argentina, but several other countries export shelled peanuts to the United States, including Mexico, Nicaragua, and South Africa.

Peanut butter imports are also significant and accounted for about 32 percent of the total quantity of nuts (in-shell basis) imported in 1997. Most peanut butter imports come from Canada and Argentina. The other major import category—crude and refined peanut oil—is shipped mainly from Argentina and Nicaragua and account for approximately 18 percent of total imports (in-shell equivalent basis). In-shell peanuts, primarily from Mexico, accounted for nearly 3 percent of total imports in 1997. About 3 percent of total imports consisted of blanched or other processed peanuts, mainly from China. Imports of oil stock shelled peanuts were negligible.

Most peanuts produced in other countries are crushed for oil and protein meal. The United States is the main producer of peanuts used in such edible products as peanut butter, roasted peanuts, and peanut candies. Peanuts are one of the world's principal oilseeds, ranking fourth behind soybeans, cottonseed, and rapeseed. India and China usually account for half of the world's peanut production.

According to the "Agricultural Statistics Report" published by USDA, during the 1995–96 season, the average annual production per U.S. producer was 144,228 pounds of peanuts. Peanuts produced during this growing season provided average annual gross sales of $42,222 per peanut producer. The value of the 1995–96 crop was approximately $1.013 billion. During the same period, per capita consumption in the United States was 5.7 pounds of peanuts.

The Order establishes a fixed assessment paid by producers (to be collected by first handlers) at a rate of

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1 percent of the price paid for all farmers stock peanuts, regardless of whether the peanuts are sold commercially or placed under loan with CCC in the price support program administered for CCC by FSA.

Section 516(a)(1) of the Act provides authority to the Secretary to exempt from the Order any de minimis quantity of an agricultural commodity otherwise covered by the Order. At the recommendation of the proponent, this program does not include a de minimis exemption.

At the assessment rate of 1 percent of farm value, the Board is expected to collect approximately $10 million annually, assuming 1 billion pounds of peanuts are produced. It is anticipated that the 1 percent rate of assessment will represent approximately 1 percent of producers' average return. During the 1995–96 crop year, the average price for peanuts was $0.293 per pound.

Each primary producing state will have one member on the Board, and the minor peanut-producing states will be represented collectively by one member on the Board. Each member will have an alternate. Therefore, the Board will have 10 members and 10 alternates.

Primary peanut-producing states are defined in the Order as Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, provided that these states maintain 3-year average production of at least 10,000 tons of peanuts each. Minor peanut-producing states are defined in the Order as all peanut-producing states other than the primary peanut-producing states. Currently, the following states are considered minor states: Arizona, California, Louisiana, Mississippi, and Tennessee.

Peanut producers or producer organizations will nominate producers to serve as members on the Board. USDA will ensure that the nominees represent the peanut industry in accordance with the Order and the Act.

After the Board is appointed by the Secretary, the Board will recommend programs and projects, a budget, and any rules and regulations that might be necessary for the administration of the program.

The recordkeeping and reporting requirements for the Order are designed to minimize the burden on first handlers. They are designed to collect as much of the necessary information as possible from forms already submitted to another USDA agency. In addition, any information collection that cannot occur through forms already in use will pose a minimal additional burden.

The estimated annual cost of providing the information to the Board by an estimated 98 respondents (21 producers, 57 first handlers, and 20 producer organizations) is $4,059.85, which represents $5.00 per producer, $66.05 per first handler, and $9.50 per producer organization.

With regard to alternatives to this rule, the Act itself provides authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an Order in Section 516 of the Act, and other sections provide for alternatives. For example, Section 514 of the Act provides for programs applicable to: (1) Producers; (2) first handlers and other persons in the marketing chain as appropriate; and (3) importers (if imports are subject to assessment). Section 516 authorizes a program to provide for: the exemption of *de minimis* quantities of an agricultural commodity; different payment and reporting schedules; types of research, promotion, and information activities in both domestic and foreign markets; reserve funds; credits for generic and branded activities; and the assessment of imports. In addition, Section 518 of the Act provides for referenda to ascertain approval of program to be conducted either prior to its going into effect or within three years after assessments first begin under the program. A program also may provide for its approval in a referendum to be based upon: (1) A majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. Section 515 of the Act provides for the establishment of a board from among producers, first handlers and others in the marketing chain as appropriate, and importers, if importers are subject to assessment.

The proponent's proposal included provisions for both domestic and foreign market expansion and improvement; reserve funds; and an initial referendum to be conducted prior to the Order going into effect, with approval based upon a majority of those persons voting in a referendum.

In order to conduct the Regulatory Flexibility Analysis regarding the impact of the Order on small entities, the November 1998 proposed rule invited comments concerning the potential effects of the Order. One comment was received concerning the paperwork burden on first handlers. As a result of the comment, changes were made in the order, as discussed in the April 1999 proposed rule.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation (5 CFR part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by this Order were submitted to OMB for approval and were approved under OMB control number 0581–0093.

Title: National Research, Promotion, and Consumer Information Programs.

OMB No. for background form (number 1 below): 0505–0001.

Expiration date of approval: November 30, 1999.

OMB No. for other information collections: 0581–0093.

Expiration date of approval: November 30, 2000.

Type of request: Revision of currently approved information collections for advisory committees and boards and for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Order and the Act.

In addition, there will be the additional burden on the producers who vote in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, was addressed in the final rule on referendum procedures.

Under this program, first handlers are required to collect assessments from producers and file reports with and submit assessments to the Board. While the Order imposes certain recordkeeping requirements on first handlers, information required under the Order can be compiled from records currently maintained. Such records shall be retained for at least two years beyond the marketing year of their applicability. The estimated annual cost of providing the information to the Board by an estimated 98 respondents (21 producers, 57 first handlers, and 20 producer organizations) is $4,059.85, which represents $5.00 per producer, $66.05 per first handler, and $9.50 per producer organization.

The Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other peanut programs administered by the Department.

Most of the forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Order and the Act. Much information can be supplied from the FSA Form 1007 without data processing equipment or outside technical expertise. FSA Form 1007 Inspection Certificate and Sales Memorandum is a standard form used within the peanut industry to collect peanut crop characteristics and value of the load from the producer to the first handler. This form contains the information that is needed in order to complete the first handlers form for the Board. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms will be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information monthly coincides with normal industry business practices. Reporting other than monthly will impose an additional and unnecessary recordkeeping burden on first handlers. The timing and frequency of collecting information is intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports.

As discussed in the RFA section of this rule and in the April 1999 proposed rule, the paperwork burdens on first handlers were modified as a result of a comment received in response to the November 1998 proposed rule.

Information collection requirements that are included in this rule include:

(1) *A background information form to be completed by candidates nominated by certified producer organizations for appointment to the Board.*

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each producer.

Respondents: Producers.

Estimated Number of Respondents: 21 (average of 40 for the initial nominations to the Board and approximately 12 respondents annually thereafter for each 3-year period).

Estimated Number of Responses per Respondent: 1 every 3 years.

Total Estimated Annual Burden on Respondents: 20 hours for the initial nominations to the Board and 6 hours annually thereafter.

(2) *A monthly report by each first handler of peanuts.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per each first handler reporting on peanuts handled.

Respondents: First handlers.

Estimated Number of Respondents: 57.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 342 hours.

(3) *Nomination information by which certified producer organizations will nominate producers for membership on the Board.*

Estimate of Burden: Public reporting burden for this collecting of information is estimated to average 0.5 hours per response.

Respondents: Certified producer organizations.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1 per year.

Estimated Total Annual Burden on Respondents: 10 hours.

(4) *An application for peanut producer organizations for certification of eligibility to nominate Board members.*

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each organization.

Respondents: Peanut producer organizations.

Estimated Number of Respondents: 9.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 9 hours.

(5) *A requirement to maintain records sufficient to verify reports submitted under the Order.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Recordkeepers: First handlers.

Estimated Number of Recordkeepers: 57.

Estimated Total Recordkeeping Hours: 28.5 hours.

Background

The Act authorizes the Secretary, under a generic authority, to establish agricultural commodity research and promotion programs. Section 516 of the Act provides permissive terms for programs, and other sections provide alternatives. For example, Section 514 of the Act provides for orders applicable to: (1) Producers, (2) first handlers and others in the marketing chain as appropriate; and (3) importers (if importers are subject to assessment). Section 516 authorizes an order to provide for: the exemption of *de minimis* quantities of an agricultural commodity; different payment and reporting schedules; different types of research, promotion, and information activities in domestic and foreign markets; reserve funds; credits for generic and branded activities; and the assessment of imports. In addition, Section 518 of the Act provides for referenda to ascertain approval of a program to be conducted either prior to its going into effect or within three years after assessments first begin under the program. A program also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

On June 15, 1998, the proponent, working in cooperation with 20 state and regional peanut industry organizations representing the nine primary peanut-producing states, submitted a proposal for a national peanut promotion, research, and information Order pursuant to the Act.

The Department published the proponent's proposal, with modifications, for public comment in the November 1998 proposed rule. Fourteen comments were received by the January 5, 1999, deadline. These comments, and related changes to the Order, were discussed in the April 1999 proposed rule, which included a Referendum Order.

The Order is summarized as follows: Sections 1216.01 through 1216.29 of the Order define certain terms, such as peanuts, minor peanut-producing states, primary peanut-producing states, producer, and quota peanuts, which are used in the Order.

Sections 1216.40 through 1216.49 include provisions relating to the Board establishment and membership, nominations, selections and acceptance, term of office, vacancies, alternate members, and compensation and reimbursement; procedures for conducting Board business; and powers and duties of the Board, which is the governing body authorized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about peanuts, subject to oversight by the Secretary. These sections also include maintenance of books and records by the Board and prohibited activities of the Board, its employees, and agents.

In order to ensure support throughout the production area for all Board votes, § 1216.46 (b) provides that all Board members' votes will be weighted by the value of production represented by each member. The votes of members from

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primary peanut-producing states will represent their respective states' three-year running average of total gross farm income derived from all peanut sales. The votes of the at-large Board member will equal the collective value of production from all minor peanut-producing states' three-year running average of total gross farm income from all peanut sales. Any Board action will require the concurring votes of members collectively representing more than 50 percent of the total U.S. gross farm income derived from all peanut sales plus an additional two votes from other Board members, provided a minimum of five members concur. Therefore, regardless of the volume voted by the members, no Board action will be approved unless at least five members vote in favor of it. Similarly, if five members vote in favor of a motion and those five members do not represent more than 50 percent of the total U.S. gross farm income derived from all peanut sales, the motion will not be approved.

Sections 1216.50 through 1216.55 cover budget review and approval; authorize the collection of assessments; use of assessments, including reimbursement of necessary expenses incurred by the Board for the performance of its duties, including expenses incurred for the Department's oversight responsibilities; specify who pays the assessment and how; authorize the imposition of a late-payment charge on past-due assessments; address programs, plans, and projects; require the Board to conduct periodically an independent review of its overall program; specify a program operating reserve; and cover the investment of assessment funds.

There will be an assessment rate of 1 percent of the price paid for all farmers stock peanuts sold. Peanut producers may sell their peanuts commercially or put them in a government loan program. For peanuts sold commercially, the first handler will remit the assessment to the Board. The assessment will be 1 percent of the price paid for the peanuts. Under a loan program administered by FSA, a peanut producer also has the option of delivering the peanuts to an area marketing association and receiving payment for the peanuts from CCC. The area association will deduct 1 percent of the payment from the producer's proceeds and remit that amount to the Board as the producer's initial assessment payment on the peanuts. After the association sells the peanuts, the area association reimburses CCC the amount of the payment to the producer and deducts its expenses from the selling price. If there is any profit from the sale of the peanuts, the association will deduct 1 percent of the profit, remit that amount to the Board to pay the producer's assessment, and pay the balance to the producer.

The Board may raise or lower the rate of assessment with the approval of the Secretary and a producer referendum.

The federal debt collection procedures referenced in § 1216.51 (g) include those set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by AMS (60 FR 12533, March 7, 1995).

Sections 1216.60 through 1206.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information from such books, records, or reports.

Section 1216.70 describes the certification requirements for peanut-producer organizations to be eligible to nominate Board members and submit requests for funds from the Board.

Sections 1216.80 through 1216.88 describe the rights of the Secretary; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after suspension or termination; address personal liability, separability, and amendments; and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

In preparing this rule, AMS made editorial changes to three sections. First, AMS revised the definitions of "suspend" (§ 1216.27) and "terminate" (§ 1216.29) to cover any part of the Order, in addition to the entire Order. This is consistent with other national programs. The third section which was modified slightly was § 1216.70(e)(2), in keeping with the government's policy of plain language in regulations. The phrase "proportion of total such active membership accounted for by producers" was changed to "proportion of the organization's active membership accounted for by producers." In addition, in the same section, the word "such" was removed.

General Findings

The Department conducted a referendum among peanut producers from May 14 through July 2, 1999, to determine whether the Order would become effective. The representative period for establishing voter eligibility was from August 1, 1997, through July 31, 1998 (1997 crop year). All peanut producers who produced peanuts during the 1997 crop year and at the time of the referendum (1998 crop year) were eligible to vote.

It is determined that a majority of the eligible peanut producers voting favored implementation of the Order. After consideration of all relevant material presented, including the initial proposal, comments received, and the referendum results, it is found that the Order is consistent with and effectuate the declared policy and purpose of the Act.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action implements a program requested by the nation's peanut producers to begin with the 1999 crop year; (2) interested parties were allowed 60 days to comment on the program and a referendum was held among peanut producers—who will bear the cost of this program; (3) in the referendum a majority of the eligible peanut producers who voted favored implementation of the program; (4) the 1999 crop year begins on August 1, 1999; (5) domestic peanuts are marketed mainly between August 1 and December 31 of each year; (6) it is important that the 1999 crop be covered by the program; and (3) no useful purpose would be served by a delay of the effective date.

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Consumer Information, Marketing agreements, Peanut promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7 of Chapter XI of the Code of Federal Regulations is amended as follows:

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

1. The authority citation for part 1216 continues to read as follows:

Authority: 7 U.S.C. 7401–7425.

2. Subpart A is added to part 1216 to read as follows:

Subpart A—Peanut Promotion, Research, and Information Order

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National Peanut Board

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Subpart A—Peanut Promotion, Research, and Information Order

Definitions

§ 1216.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7401–7425; Public Law 104–127, 110 Stat. 1029), or any amendments thereto.

§ 1216.2 Additional peanuts.

Additional peanuts means peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

§ 1216.3 Area marketing association.

Area marketing association means an association selected and approved by the Secretary to conduct activities under regulations of the Department's Farm Service Agency. Under an interagency agreement, area marketing associations may assist in the collection of assessments under this subpart. The approved area marketing associations and the areas served by such associations are as follows:

(a) *GFA Peanut Association of Camilla, Georgia (GFA).* GFA serves the southeastern area consisting of Puerto Rico, the U.S. Virgin Islands, and the states of Alabama, Florida, Georgia, Mississippi, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers;

(b) *Peanut Growers Cooperative Marketing Association of Franklin, Virginia (PGCMA).* PGCMA serves the Virginia-Carolina area consisting of the District of Columbia, and the states of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers; and

(c) *Southwestern Peanut Growers Association of Gorman, Texas (SWPGA).* SWPGA serves the southwestern area consisting of the states of Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming, and all other territories of the United States not listed in paragraph (a) or (b) of this section.

§ 1216.4 Board.

Board means the administrative body referred to as the National Peanut Board established pursuant to § 1216.40.

§ 1216.5 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1216.6 Contract export additional peanuts.

Contract export additional peanuts are additional peanuts for exportation, including peanuts for crushing for exportation, for which a contract has been entered into between a first handler and a producer.

§ 1216.7 Department.

Department means the U.S. Department of Agriculture.

§ 1216.8 Farm Service Agency.

Farm Service Agency or FSA means the U.S. Department of Agriculture's Farm Service Agency.

§ 1216.9 Farmers stock peanuts.

Farmers stock peanuts means picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels that are removed from farmers stock peanuts before such farmers stock peanuts are marketed.

§ 1216.10 First handler.

First handler means any person who handles peanuts in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman, or other intermediary between the producer and the person handling.

§ 1216.11 Fiscal year.

Fiscal year is synonymous with crop year and means the 12-month period beginning with August 1 of any year and ending with July 31 of the following year, or such other period as determined by the Board and approved by the Secretary.

§ 1216.12 Handle.

Handle means to engage in the receiving or acquiring, cleaning and shelling, cleaning in-shell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned in-shell or shelled peanuts, or other activity causing peanuts to enter the current of commerce: *Provided*, that this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s) and: *Provided further*, that this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler.

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§ 1216.13 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increased market efficiency, and activities that are designed to enhance the image of peanuts on a national or international basis. These include:

(a) *Consumer information*, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of peanuts; and

(b) *Producer information*, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the peanut industry, and activities to enhance the image of the peanut industry.

§ 1216.14 Market.

Market means to sell or otherwise dispose of peanuts into interstate, foreign, or intrastate commerce by buying, marketing, distributing, or otherwise placing peanuts into commerce.

§ 1216.15 Minor peanut-producing states.

Minor peanut-producing states means all peanut-producing states with the exception of Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia.

§ 1216.16 Order.

Order means an Order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1216.17 Part and subpart.

Part means the Peanut Promotion, Research, and Information Order and all rules, regulations, and supplemental Orders issued pursuant to the Act and the Order. The Order shall be a "subpart" of such part.

§ 1216.18 Peanuts.

Peanuts means the seeds of the legume *arachis hypogaea* and includes both in-shell and shelled peanuts other than those marketed by the producer in green form for consumption as boiled peanuts.

§ 1216.19 Peanut producer organization.

Peanut producer organization means a state-legislated peanut promotion, research, and education commission or organization. For states without a state-legislated peanut promotion, research, and education commission or organization, "peanut producer organization" means any organization which has the primary purpose of representing peanut producers and has peanut producers as members.

§ 1216.20 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1216.21 Primary peanut-producing states.

Primary peanut-producing states means Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, *Provided*, these states maintain three-year average production of at least 10,000 tons of peanuts.

§ 1216.22 Producer.

Producer means any person engaged in the production and sale of peanuts and who owns, or shares the ownership and risk of loss of the crop. This does not include quota holders who do not share in the risk of loss of the crop.

§ 1216.23 Promotion.

Promotion means any action taken by the Board under this Order, including paid advertising, to present a favorable image of peanuts to the public to improve the competitive position of peanuts in the marketplace, including domestic and international markets, and to stimulate sales of peanuts.

§ 1216.24 Quota peanuts.

Quota peanuts means peanuts which are:

(a) Eligible for domestic edible uses; and

(b) Marketed or considered marketed from a farm as quota peanuts pursuant to the provisions of 7 CFR Part 729 and are not in excess of the effective farm poundage quota established for the farm on which such peanuts were produced.

§ 1216.25 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of peanuts, including research relating to nutritional value and cost of production.

§ 1216.26 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1216.27 Suspend.

Suspend means to issue a rule under section 553 of title 5, United States Code, to temporarily prevent the operation of an Order, or part thereof, during a particular period of time specified in the rule.

§ 1216.28 State.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 1216.29 Terminate.

Terminate means to issue a rule under section 553 of title 5, United States Code, to cancel permanently the operation of an Order, or part thereof, beginning on a date certain specified in the rule.

§ 1216.30 United States.

United States means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

National Peanut Board

§ 1216.40 Establishment and membership.

(a) Establishment of a National Peanut Board. There is hereby established a National Peanut Board, hereinafter called the Board, composed of no more than 10 peanut producers and alternates, appointed by the Secretary from nominations as follows:

(1) Nine members and alternates. One member and one alternate shall be appointed from each primary peanut-producing state, who are producers and whose nominations have been submitted by certified peanut producer organizations within a primary peanut-producing state.

(2) The minor peanut-producing states shall collectively have one at-large member and one alternate, who are producers, to be appointed by the Secretary from nominations submitted by certified peanut producer organizations within minor peanut-producing states or from other certified farm organizations that include peanut producers as part of their membership.

(b) Adjustment of membership. At least once in each five-year period, but not more frequently than once in each three-year period, the Board, or a person or agency designated by the Board, shall review the geographical distribution of peanuts in the United States and make recommendation(s) to the Secretary to continue without change, or whether changes should be made in the number of representatives on the Board to reflect changes in the geographical distribution of the production of peanuts.

§ 1216.41 Nominations.

(a) All nominations authorized under § 1216.40 shall be made within such a period of time as the Secretary shall prescribe. Eligible peanut producer organizations within each state as certified pursuant to § 1216.70 shall nominate two qualified persons for each member and each alternate member. The nominees shall be elected at an open meeting among peanut producers eligible to serve on the Board. Any certified peanut producer organization representing a minor peanut-producing state may nominate two eligible persons for each member and two eligible persons for each alternate member.

(b) As soon as practicable after this subpart becomes effective, the Secretary shall obtain nominations for appointment to the initial promotion Board from certified nominating organizations. In any subsequent year in which an appointment to the Board is to be made, nominations for positions whose terms will expire shall be obtained from certified nominating organizations by the Board's staff and submitted to the Secretary by May 1 of such year, or other such date as approved by the Secretary.

(c) Except for initial Board members, whose nomination process will be initiated by the Secretary, the Board shall issue the call for nominations by March 1 of each year.

(d) The nomination meeting shall be announced 30 days in advance:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as deemed advisable.

(e) At nominations meetings, Department personnel will be present to oversee and to verify eligibility and count ballots.

§ 1216.42 Selection.

From the nominations, the Secretary shall select the members of the Board and alternates for each primary peanut-producing state. The Secretary shall select one member and one alternate from all nominations submitted by certified peanut producer organizations representing minor peanut-producing states.

§ 1216.43 Term of office.

All members and alternates of the Board shall each serve for terms of three years, except that the members and alternates appointed to the initial Board shall serve proportionately for two-, three-, and four-year terms, with the length of the terms determined at random. No member or alternate may serve more than two consecutive three-year terms. An alternate, after serving two consecutive three-year terms, may serve as a member for an additional two consecutive three-year terms. A member, after serving two consecutive three-year terms, may serve as an alternate for an additional two consecutive three-year terms. Each member and alternate shall continue to serve until a successor is selected and has qualified.

(a) Those members serving initial terms of two or four years may serve one successive three-year term.

(b) Any successor serving one year or less may serve two consecutive three-year terms.

§ 1216.44 Vacancies.

To fill any vacancy resulting from the failure to qualify of any person selected as a member or as an alternate member of the Board, or in the event of death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and selected in the manner specified in § 1216.40.

§ 1216.45 Alternate members.

An alternate member of the Board, during the absence of the member for the primary peanut-producing state or at-large member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any member, the alternate for that state or at-large member shall act for the member until a successor for such member is selected and qualified. In the event that both a producer member of the Board and the alternate are unable to attend a meeting, the Board may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

§ 1216.46 Procedure.

(a) A majority of the members of the Board, including alternate members acting for members, shall constitute a quorum.

(b) At assembled meetings, all votes shall be cast in person. Board actions shall be weighted by value of production as determined by a primary peanut-producing state's three-year running average of total gross farm income derived from all peanut sales. The at-large Board member's vote shall be weighted by the collective value of production from all minor peanut-producing states' three-year running average of total gross farm income derived from all peanut sales. Any Board action shall require the concurring votes of members or alternates from states representing more than 50 percent of total U.S. gross farm income derived from all peanut sales, plus an additional two votes from any other Board members, provided a minimum of five votes concur.

(c) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not time to call an assembled meeting of the Board, the Board may also take action as prescribed in this section by mail, facsimile, telephone, or any telecommunication method appropriate for the conduct of business, but any such action shall be confirmed in writing within 30 days.

(d) There shall be no voting by proxy.

(e) The chairperson shall be a voting member.

§ 1216.47 Compensation and reimbursement.

The members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board members.

§ 1216.48 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines to be appropriate;

(d) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for

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the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and make such other reports available as the Board or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor;

(f) To prepare and submit for approval of the Secretary fiscal year budgets in accordance with § 1216.50;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(i) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board to the Secretary;

(j) To act as intermediary between the Secretary and any producer or first handler;

(k) To furnish to the Secretary any information or records that the Secretary may request;

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary such amendments to the Order as the Board considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the peanut industry's position in the marketplace; maintain and expand existing markets and uses for peanuts; and to carry out programs, plans, and projects designed to provide maximum benefits to the peanut industry.

§ 1216.49 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, including local, state, national, and international, other than recommending to the Secretary amendments to the Order; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the Order, that is false or misleading or disparaging to another agricultural commodity.

Expenses and Assessments

§ 1216.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(d) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal year an amount that exceeds 10 percent of the assessments and other income received by the Board for that fiscal year. Reimbursements to the Secretary required under paragraph (g) of this section are excluded from this limitation on spending.

(i) The Board shall allocate, to the extent practicable, no less than 80 percent of the assessments collected on all peanuts available for any fiscal year on national and regional promotion, research, and information activities. The Board shall allocate, to the extent practicable, no more than 20 percent of assessments collected on all peanuts available for any fiscal year for use in

state or regional research programs. Specific percentages and amounts shall be determined annually by the Board, with the approval of the Secretary.

(j) Certified peanut producer organizations may submit requests for funding for research and/or generic promotion projects. Amounts approved for each state shall not exceed the pro rata Share of funds available for that State as determined by the Board and approved by the Secretary. Amounts allocated by the Board for state research or promotion activities will be based on requests submitted to the Board when it is determined that they meet the goals and objectives stated in the Order.

(k) Assessments collected, less pro rata administrative expenses, from the gross sales of contract export additional peanuts shall be allocated by the Board for the promotion and related research of export peanuts.

(l) The Board shall determine annually how total funds shall be allocated pursuant to paragraphs (i), (j), and (k) of this section, with the approval of the Secretary.

§ 1216.51 Assessments.

(a) The funds to cover the Board's expenses shall be acquired by the levying of assessments upon producers in a manner prescribed by the Secretary.

(b) Each first handler, at such times and in such manner as prescribed by the Secretary, shall collect from each producer and pay assessments to the Board on all peanuts handled, including peanuts produced by the first handler, no later than 60 days after the last day of the month in which the peanuts were marketed.

(c) Such assessments shall be levied at a rate of 1 percent of the price paid for all farmers stock peanuts sold. Price paid is the value of segment entry on the FSA 1007 form.

(d) For peanuts placed under loan with the Department's Commodity Credit Corporation, each area marketing association shall remit to the Board the following:

(1) One (1) percent of the initial price paid for either quota or additional peanuts no more than 60 days after the last day of the month in which the peanuts were placed under loan; and

(2) One (1) percent of the profit from the sale of the peanuts within 60 days after the final day of the area association's fiscal year.

(e) All assessments collected under this section are to be used for expenses and expenditures pursuant to this Order and for the establishment of an operating reserve as prescribed in the Order.

(f) The Board shall impose a late payment charge on any person who fails to remit to the Board the total amount for which the person is liable on or before the payment due date established under this section. The late payment charge will be in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(g) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(h) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

(i) The assessment rate may not be increased unless the new rate is approved by a referendum among eligible producers.

§ 1216.52 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to peanuts; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing of peanuts and peanut products, and the creation of new products thereof, to the end that marketing and use of peanuts may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of peanuts.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or consumer information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or consumer information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project shall make any false claims on behalf of peanuts or use unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product. Peanuts of all domestic origins shall be treated equally.

§ 1216.53 Independent evaluation.

The Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this section.

§ 1216.54 Operating reserve.

The Board shall establish an operating monetary reserve and may carry over to subsequent fiscal years excess funds in a reserve so established; *Provided*, that funds in the reserve shall not exceed any fiscal year's anticipated expenses.

§ 1216.55 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency of the United States; general obligations of any state or any political subdivision of a state; interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve system; or obligations that are fully guaranteed as to principal and interest by the United States.

Reports, Books, and Records

§ 1216.60 Reports.

(a) Each producer and first handler subject to this part shall be required to report to the employees of the Board, at such times and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(1) Number of pounds of peanuts produced or handled;

(2) Price paid to producers (entry in value of segment section on the FSA 1007 form); and

(3) Total assessments collected.

(b) First Handlers shall submit monthly reports to the Board. These reports shall accompany the payment of the collected assessments and shall be due 60 days after the last day of the month in which the peanuts were marketed.

§ 1216.61 Books and records.

Each first handler and producer subject to this subpart shall maintain and make available for inspection by the

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Secretary and employees and agents of the Board such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall include but are not limited to the following: copies of FSA 1007 forms, the names and address of producers, and the date the assessments were collected. Such records shall be retained for at least two years beyond the marketing year of their applicability.

§ 1216.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, producers, importers, exporters, or handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Certification of Peanut Producer Organizations

§ 1216.70 Certification.

(a) Organizations receiving certification from the Secretary will be entitled to submit nominations for Board membership to the Secretary for appointment and to submit requests for funding to the Board.

(b) For major peanut-producing states, state-legislated peanut promotion, research, and information organizations may request certification, provided the state-legislated promotion program submits a factual report that shall contain information deemed relevant and specified by the Secretary for the making of such determination pursuant to paragraph (e) of this section.

(c) If a state-legislated peanut promotion, research and information organization in a major peanut-producing state does not elect to seek certification from the Secretary within a specified time period as determined by the Secretary, or does not meet eligibility requirements as specified by the Secretary, then any peanut producer organization whose primary purpose is to represent peanut producers within a primary peanut-producing state, or any other organization which has peanut producers as part of its membership, may request certification. Certification shall be based, in addition to other available information, upon a factual report submitted by the organization that shall contain information deemed relevant and specified by the Secretary for the making of such determination pursuant to paragraph (e) of this section.

(d) For minor peanut-producing states, any organization that has peanut producers as part of its membership may request certification.

(e) The information required for certification by the Secretary may include, but is not limited to, the following:

(1) The geographic distribution within the state covered by the organization's active membership;

(2) The nature and size of the organization's active membership in the state, proportion of the organization's active membership accounted for by producers, a map showing the peanut-producing counties in the state in which the organization has members, the volume of peanuts produced in each county, the number of peanut producers in each county, and the size of the organization's active peanut producer membership in each county;

(3) The extent to which the peanut producer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organization's operating funds are derived;

(6) Functions of the organization;

(7) The organization's ability and willingness to further the aims and objectives of the Act and Order; and,

(8) Demonstrated experience administering generic state promotion and research programs.

(f) The Secretary's determination as to eligibility or certification of an organization shall be final.

Miscellaneous

§ 1216.80 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1216.81 Implementation of the Order.

The Order shall not become effective unless:

(a) The Secretary determines that the Order is consistent with and will effectuate the purposes of the Act; and

(b) The Order is approved by a simple majority of the peanut producers as defined in § 1216.21 voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production of peanuts.

§ 1216.82 Suspension and termination.

(a) The Secretary shall suspend or terminate this subpart or a provision thereof if the Secretary finds that this subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) Every five years, the Secretary shall hold a referendum to determine whether peanut producers favor the continuation of the Order. The Secretary will also conduct a referendum if 10 percent or more of all eligible peanut producers request the Secretary to hold a referendum. In addition, the Secretary may hold a referendum at any time.

(c) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a simple majority of the producers voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production of peanuts.

(d) If, as a result of the referendum conducted under paragraph (b) of this section, the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an Orderly manner.

§ 1216.83 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than three of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to the peanut producer organizations, certified pursuant to § 1216.70, in the interest of continuing peanut promotion, research, and information programs.

§ 1216.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1216.85 Personal liability.

No member or alternate member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or alternate, except for acts of dishonesty or willful misconduct.

§ 1216.86 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1216.87 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1216.88 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1216.82 shall apply to determine disposition of all such property.

Dated: July 26, 1999.

Barbara C. Robinson,

Acting Administrator, Agricultural Marketing Service.

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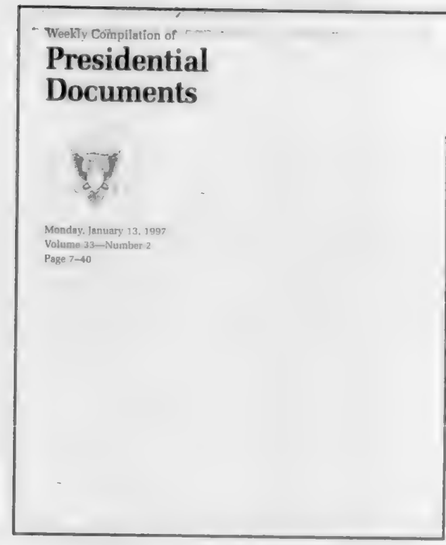

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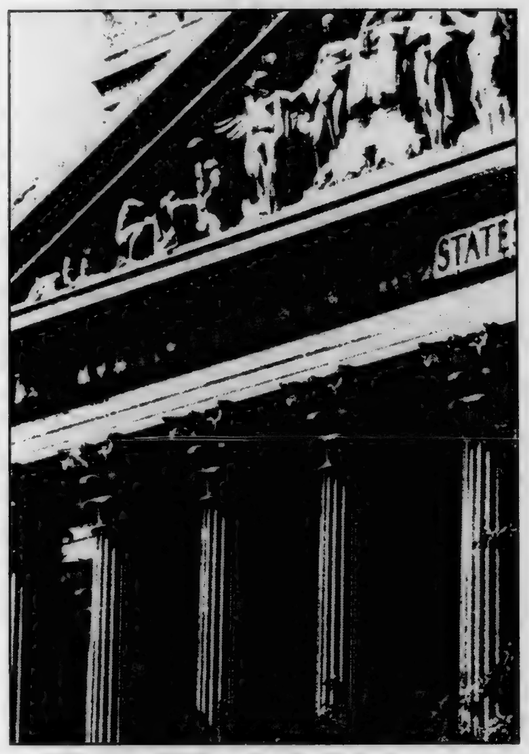

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Rules and Regulations

Federal Register
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Friday, July 30, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 72

[Docket No. 96–067–2]

Texas (Splenetic) Fever in Cattle; Incorporation by Reference

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Texas (splenetic) fever in cattle regulations by removing the section that describes the area of Texas quarantined because of ticks and replacing it with an incorporation by reference of the Texas Animal Health Commission's regulations that describe the same area. Because the quarantined area in Texas is defined and established by the Texas Animal Health Commission and an up-to-date description of the quarantined area is provided in the commission's regulations in the Texas Administrative Code, we do not believe that it is necessary to reproduce that description in our regulations. This change in the regulations will eliminate the need for us to maintain a description of the Texas quarantined area in our regulations, which will reduce the volume of material included in those regulations while continuing to provide for the treatment and inspection of cattle moved from the area of Texas quarantined for ticks.

EFFECTIVE DATE: August 30, 1999. The incorporation by reference provided for by this rule is approved by the Director of the Federal Register as of August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Dave Wilson, Senior Staff Veterinarian, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073; or e-mail: Dave.D.Wilson@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 72, "Texas (Splenetic) Fever in Cattle" (referred to below as the regulations), restrict the interstate movement of cattle from areas quarantined because of the presence of ticks that are vectors of bovine babesiosis. This disease is referred to in the regulations as splenetic or tick fever. Splenetic or tick fever is a contagious, infectious, and communicable disease of cattle that causes cattle to become weak and dehydrated and can cause death. The areas quarantined because of ticks include all of Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, as well as portions of Texas. These quarantined areas are described in §§ 72.3 and 72.5 of the regulations.

On April 12, 1999, we published in the **Federal Register** (64 FR 17573–17574, Docket No. 96–067–1) a proposed rule to amend the regulations by removing the description of the quarantined area in Texas from § 72.5 and replacing it with an incorporation by reference of the Texas Animal Health Commission's (TAHC's) regulations in title 4 of the Texas Administrative Code that describe the same area.

We solicited comments concerning our proposed rule for 60 days ending on June 11, 1999. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the Texas (splenetic) fever in cattle regulations to incorporate by reference the description of fever tick eradication areas contained in the Texas Administrative Code. Incorporating the TAHC's description of fever tick eradication areas by reference rather than continuing to reproduce the description in our regulations eliminates the need for the Animal and Plant Health Inspection Service (APHIS) to maintain an up-to-date description of the quarantined area in Texas and reduces the volume of material included in our regulations while continuing to provide for the treatment and inspection of cattle moved from the tick eradication area in Texas.

Our incorporation by reference of the Texas Administrative Code's description of fever tick eradication areas in Texas is not expected to have an economic impact on any entities, large or small, because it is the TAHC that defines and establishes the boundaries of the tick eradication areas in Texas; that description has merely been reproduced in APHIS' regulations in part 72. There will be no change in the quarantined area in Texas as a result of its description being removed from part 72, so no livestock or property owners in Texas will be affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary

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regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 9 CFR Part 72

Animal diseases, Cattle, Incorporation by reference, Quarantine, Transportation.

Accordingly, we are amending 9 CFR part 72 as follows:

PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

1. The authority citation for part 72 continues to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 72.5 is revised to read as follows:

§ 72.5 Area quarantined in Texas.

The area quarantined in Texas is the permanent quarantined area described in the regulations of the Texas Animal Health Commission (TAHC) contained in § 41.2 of title 4, part II, of the Texas Administrative Code (4 TAC 41.2), effective July 22, 1994, which is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of 4 TAC 41.2 may be obtained from the TAHC at 2105 Kramer Lane, Austin, TX 78758, and from area offices of the TAHC, which are listed in local Texas telephone directories. The TAHC also maintains a copy of its regulations on its Internet homepage at http://www.tahc.state.tx.us/. Copies may be inspected at the Animal and Plant Health Inspection Service, Veterinary Services, Emergency Programs, Suite 3B08, 4700 River Road, Riverdale, MD, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Done in Washington, DC, this 23rd day of July 1999.

Alfonso Torres,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–19421 Filed 7–29–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 98–078–2]

Ports Designated for Exportation of Horses; New Jersey and New York

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On June 4, 1999, the Animal and Plant Health Inspection Service published a direct final rule. (See 64 FR 29947–29949, Docket No. 98–078–1.) The direct final rule notified the public of our intention to amend the "Inspection and Handling of Livestock for Exportation" regulations by changing the lists of approved ports of embarkation and export inspection facilities for horses in New Jersey and New York. In New Jersey, we are removing Deep Hollow Farm in Woodstown, NJ, as the export inspection facility for horses exported from the ocean port of Salem, NJ, and adding Mannington Meadows Farm in Woodstown, NJ, in its place. We are adding Elizabeth and Newark International Airport, NJ, as ports of embarkation, and Tolleshunt Horse Farm in Whitehouse, NJ, and the U.S. Equestrian Team's headquarters in Gladstone, NJ, as export inspection facilities for horses for those ports. We are also adding Tolleshunt Horse Farm and the U.S. Equestrian Team's headquarters as export inspection facilities for horses for the currently approved port of New York, NY. These actions update the regulations by adding two ports of embarkation and three export inspection facilities through which horses may be processed for export. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

EFFECTIVE DATE: The effective date of the direct final rule is confirmed as: August 3, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231; (301) 734–8354.

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 466a and 466b; 49 U.S.C. 1509(d); 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 26th day of July 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–19563 Filed 7–29–99; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 114

[Notice 1999–12]

Definition of "Member" of a Membership Organization

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Commission has revised its rules governing who qualifies as a "member" of a membership organization. An incorporated membership organization or labor organization can solicit contributions from its members to a separate segregated fund ("SSF") established by the organization, and can include express electoral advocacy in communications to its members. Unincorporated membership organizations can similarly make internal communications to their members but cannot establish SSF's. The revisions largely address the internal characteristics of an organization that, when coupled with certain financial or organizational attachments, are sufficient to confer membership status.

DATES: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Acting Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street N.W., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Although the Federal Election Campaign Act of 1971 as amended ("FECA" or "Act"), 2 U.S.C. 431 *et seq.*, prohibits direct corporate contributions in connection with federal campaigns, 2 U.S.C. 441b(a), it permits corporations, including incorporated membership organizations, to solicit contributions from their restricted class to a separate segregated fund. In the case of incorporated membership organizations, the restricted class consists of the

members of each association, their executive and administrative personnel, and their families. These contributions can be used for federal political purposes. The Act also allows membership organizations to communicate with their members on any subject, including communications that include express electoral advocacy. 2 U.S.C. 441b(b)(2)(A), 441b(b)(4)(C). The Commission's implementing regulations defining who is a "member" of a membership organization are found at 11 CFR 100.8(b)(4)(iv) and 11 CFR 114.1(e).

The Commission's original "member" rules, which had been adopted in 1977, were the subject of a 1982 United States Supreme Court decision, *FEC* v. *National Right to Work Committee* ("*NRWC*"), 459 U.S. 196 (1982). In 1993, following a series of advisory opinions in this area, the Commission revised the text of the rules to reflect that decision. 58 FR 45770 (Aug. 30, 1993), effective Nov. 10, 1993. 58 FR 59640. The revised rules were held to be unduly restrictive by the United States Court of Appeals for the District of Columbia Circuit in *Chamber of Commerce of the United States ("Chamber")* v. *FEC*, 69 F.3d 600 (D.C. Cir. 1995), *amended on denial of rehearing*, 76 F.3d 1234 (D.C. Cir. 1996). This rulemaking followed.

History of the Rulemaking

On February 24, 1997, the Commission received a Petition for Rulemaking from James Bopp, Jr., on behalf of the National Right to Life Committee, Inc. The Petition urged the Commission to revise its member rules to reflect the *Chamber* decision. The Commission published a Notice of Availability ("NOA") in the **Federal Register** on March 29, 1997, 62 F.R. 13355, and received two comments in response.

On July 31, 1997, the Commission published in the **Federal Register** an Advance Notice of Proposed Rulemaking ("ANPRM") addressing these rules. 62 FR 40982. Because the *Chamber* decision, the petition for rulemaking, and the comments received in response to the NOA provided few specific suggestions as to how the rules should be amended to comport with the decision, the Commission did not propose specific amendments to the rules. Rather, it sought general guidance on the factors to be considered in determining the existence of this relationship. The Commission received 14 comments in response to the ANPRM.

On December 22, 1997, the Commission published a Notice of Proposed Rulemaking ("NPRM") on this matter, 62 FR 66832, and received 22 comments in response. On April 29, 1998, the Commission held a public hearing on this rulemaking at which 10 witnesses testified.

The 1997 NPRM sought comments on three alternative proposals, referenced as Alternatives A, B, and C. None of the alternatives proposed any changes to the three preliminary requirements, or to the provisions in the current rules that recognize as members persons who have a stronger financial interest in an organization than the payment of annual dues, such as those who own or lease seats on stock exchanges or boards of trade. 11 CFR 100.8(b)(4)(iv)(B)(1), 114.1(e)(2)(i), AO 1997–5.

Under Alternative A, all persons who paid $50 in annual dues or met specified organizational attachments would be considered members. The NPRM suggested such attachments as the voting rights contained in the current rules; the right to serve on policy-making boards of the organization; eligibility to be elected to the governing positions in the organization; and the possibility of disciplinary action against the member by the organization. A lesser dues obligation coupled with weaker organizational attachments would also be sufficient for this purpose.

Alternative B distinguished between the types of organizations addressed by the *Chamber* decision, i.e., those formed to further business or economic interests or to implement a system of self-discipline or self-regulation within a line of commerce; and ideological, social welfare, and political organizations. Persons paying any amount of annual dues would be considered members of the first category of organizations, while annual dues of $200 or more would be required for membership in the second category, unless the purported members had the same voting rights required by the current rule.

Under Alternative C, an organization that qualified as a membership organization by meeting the three preliminary requirements could consider as members all persons who paid the amount of annual dues set by the organization, regardless of amount.

The 1997 NPRM also proposed that direct membership in any level of a multi-tiered organization be construed as membership in all tiers of the organization for purposes of these rules.

As was the case with the ANPRM, the comments and testimony received in response to the NPRM expressed a wide range of views—there was no consensus on how best to address this situation. After further consideration, the Commission sought comments on a slightly different approach, one that would address more fully the attributes of membership organizations, in addition to members' required financial or organizational attachments. The Commission accordingly published a second NPRM that focused primarily on characteristics of membership organizations. 63 F.R. 69224 (Dec. 16, 1998).

The Commission received 25 comments in response to the second NPRM. Commenters included the Alliance for Justice; the American Federation of Labor and Congress of Industrial Organizations ("AFL–CIO"); the American Federation of State, County and Municipal Employees ("AFSCME"); the American Hotel and Motel Association ("AH&MA"); the American Medical Association; the Americans Back in Charge Foundation; the American Society of Association Executives ("ASAE"); Peter A. Bagatelos; Camille Bradford; the Hon. Thomas M. Davis; the Free Speech Coalition; Harmon, Curran, Spielberg & Eisenberg; the Internal Revenue Service; the James Madison Center for Free Speech; the National Association of Business Political Action Committees ("NABPAC"); the National Association of Realtors; the National Citizens Legal Network ("NCLN"); the National Education Association ("NEA"); the National Lumber and Building Material Dealers Association ("NLBMDA"); the National Right to Work Committee; the National Rural Electric Cooperative Association; the National Telephone Cooperative Association; Vigo G. Nielsen, Jr.; Daniel M. Schember; and the United States Chamber of Commerce.

The Commission held a hearing on this NPRM on March 17, 1999, at which 13 witnesses testified. Witnesses included representatives of the Alliance for Justice; the AFL–CIO; AFSCME; AH&MA; the Americans Back in Charge Foundation; ASAE; the Free Speech Coalition; the James Madison Center for Free Speech; NABPAC; NCLN; NEA; Ms. Bradford; and Mr. Schember.

Explanation and Justification

Background

In its *NRWC* decision, the Supreme Court rejected an argument by a nonprofit, noncapital stock corporation, whose articles of incorporation stated that it had no members, that it should be able to treat as members individuals who had at one time responded, not necessarily financially, to an NRWC advertisement, mailing, or personal contact. The Supreme Court rejected

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this definition of "member," saying that to accept it "would virtually excise from the statute the restriction of solicitation to 'members.'" 459 U.S. at 203. The Court determined that "members" of nonstock corporations should be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions. Viewing the question from this perspective meant that "some relatively enduring and independently significant financial or organizational attachment is required to be a 'member'" for these purposes. *Id.* at 204. The NRWC's asserted members did not qualify under this standard because they played no part in the operation or administration of the corporation, elected no corporate officials, attended no membership meetings, and exercised no control over the expenditure of their contributions. *Id.* at 206. The 1993 revisions to the Commission's rules were intended to incorporate this standard.

The Current Rules

The current rules require an organization to meet three preliminary requirements before it can qualify as a membership organization. These requirements are that it (1) expressly provide for "members" in its articles and by-laws; (2) expressly solicit members; and (3) expressly acknowledge the acceptance of membership, such as by sending a membership card or including the member on a membership newsletter list. 11 C.F.R. 100.8(b)(4)(iv)(A), 114.1(e)(1). If these preliminary requirements are met, a person may qualify as a member either by having a significant financial attachment to the membership organization (not merely the payment of dues), or the right to vote directly for all members of the organization's highest governing body. However, in most instances a combination of regularly-assessed dues and the right to vote directly or indirectly for at least one member of the organization's highest governing body is required. The term "membership organization" includes membership organizations, trade organizations, cooperatives, corporations without capital stock, and local, national and international labor organizations that meet the requirements set forth in these rules.

The Chamber of Commerce Decision

The United States District Court for the District of Columbia held that the current rules were not arbitrary, capricious or manifestly contrary to the statutory language, and therefore deferred to what the court found to be a valid exercise of the Commission's regulatory authority. *Chamber of Commerce of the United States* v. *FEC*, Civil Action No. 94–2184 (D.D.C. Oct. 28, 1994) (1994 WL 615786). However, the Court of Appeals for the D.C. Circuit reversed this ruling.

The case was jointly brought by the Chamber of Commerce and the American Medical Association ("AMA"), two organizations that do not provide their asserted "members" with the voting rights necessary to confer this status under the current rules. The appellate court held that the ties between these members and the Chamber and the AMA are nonetheless sufficient to comply with the Supreme Court's *NRWC* criteria, and therefore concluded that the Commission's rules are invalid because they define the term "member" in an unduly restrictive fashion. 69 F.3d at 604.

The Chamber is a nonprofit corporation whose members include 3,000 state and local chambers of commerce, 1,250 trade and professional groups, and 215,000 "direct business members." The members pay annual dues ranging from $65 to $100,000 and may participate on any of 59 policy committees that determine the Chamber's position on various issues. However, the Chamber's Board of Directors is self perpetuating (that is, Board members elect their successors); so no member entities have either direct or indirect voting rights for any members of the Board.

The AMA challenged the exclusion from the definition of member 44,500 "direct" members, those who do not belong to a state medical association. Direct members pay annual dues ranging from $20 to $420; receive various AMA publications; and participate in professional programs put on by the AMA. They are also bound by and subject to discipline under the AMA's Principles of Medical Ethics. However, since state medical associations elect members of the AMA's House of Delegates, that organization's highest governing body, direct members do not satisfy the voting criteria set forth in the current rules.

The *Chamber* court, in an Addendum to the original decision, noted that the Commission "still has a good deal of latitude in interpreting" the term "member." 76 F.3d at 1235. However, in its original decision, the court held the rules to be arbitrary and capricious as applied to the Chamber, since under the current rules even those paying $100,000 in annual dues cannot qualify as members. As for the AMA, the rule excludes members who pay up to $420 in annual dues and, among other organizational attachments, are subject to sanctions under the Principles of Medical Ethics. The court explained that this latter attachment "might be thought, [] for a professional, [to be] the *most* significant organizational attachment." 69 F.3d at 605 (emphasis in original).

Section 100.8(b)(4) Membership Organizations

First, the Commission has replaced the term "membership association" wherever it appears in this section with the term "membership organization." The Commission believes it is appropriate to refer to the covered entities as "membership organizations" because that is the term used in the Act. *See*, 2 U.S.C. 431(9)(B)(iii) and 441b(b)(4)(C). "Membership organization" is also referred to in 11 CFR 100.8(b)(4), which describes the entities entitled to the "internal communication" exception to the Act's definition of expenditure.

The NPRM proposed adding unincorporated associations to the definition of membership organizations, for purposes of 11 CFR 100.8 only. The comments on this proposal were mixed. Some supported the idea, while others argued against it, saying that it might exceed the Commission's authority by blurring the statutory distinction between corporations and other entities contained in the FECA.

The Commission is expanding the definition of membership organization to include unincorporated associations because it believes this is consistent with congressional intent. It is clear from the placement of the exception at 2 U.S.C. 431(9)(B)(iii), i.e., in the Act's "definition" section, that Congress intended to allow noncorporate and non-labor union organizations to avail themselves of the internal membership communication exception. By including the internal communications exception in the definition of "expenditure," the statute allows noncorporate and non-union membership organizations to communicate with their members without subjecting them to the normal prohibitions and reporting requirements.

Paragraph (b)(4) lists the types of entities entitled to the expenditure exemption and the types of communications (i.e., express advocacy) that an exempted organization may engage in without those communications being classified as an expenditure. It currently states that entities "organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office" are not entitled to the membership communications exemption.

The Commission has decided to move this language to new paragraph 11 CFR 100.8(b)(4)(iv)(A)(*6*), the provision in 11 CFR 100.8 that explicitly defines a "membership organization." This change insures that organizations primarily organized to influence a Federal election cannot, by definition, be classified as membership organizations under the Act.

The NPRM proposed further revising this section to include only communications "subject to the direction and control of [the membership organization] and not any other person." Several commenters expressed concern that this provision could infringe on constitutionally protected free speech rights, and lead to unwarranted Commission intrusion into an organization's internal workings. The Commission is not including this language in the final rule because it has determined that the current language, which encompasses "[a]ny cost incurred for any communication by a membership organization to its members," sufficiently addresses its concern that an organization not be used as a conduit by a candidate or other outside entity seeking to influence unlawfully a Federal election.

Section 100.8(b)(4)(iv)(A) Attributes of Membership Organizations

Paragraph (b)(4)(iv)(A) of this section addresses the attributes of membership organizations. Since the purpose of the Act's "membership communications" exception is to allow *bona fide* membership organizations to engage in political communications with their members, these rules are intended to prevent individuals from establishing "sham" membership organizations in an effort to circumvent the Act's contribution and expenditure limits. For this reason, the Commission believes it is appropriate to focus on the structure of the membership organization as well as on who qualifies as a member.

Accordingly, revised paragraph (A)(1) states that a membership organization shall be composed of members vested with the power and authority to operate or administer the organization pursuant to the organization's articles, bylaws, constitution or other formal organizational documents. The Commission believes it is axiomatic that membership organizations should be composed of members, and that members should have the power to operate or administer the organization. This language is a combination of that contained in proposed paragraphs (A)(*1*) and (A)(*3*) of the December, 1998 NPRM (63 F.R. 69224). Proposed paragraph (A)(*3*) of the December, 1998 NPRM required that the organization "be self governing, such that the power and authority to direct and control the organization is vested in some of all members." The phrases "self-governing" and "direct and control" were removed in favor of the revised language noted above. The Commission notes that organizations would be able to delegate administrative and related responsibilities to smaller committees or other groups of members; the new rule does not require that all members approve all organization actions. Additionally, membership organizations with self-perpetuating boards of directors will be considered to have met this requirement if all members of the board are themselves members of the organization, as long as the organization has chosen this structure and it meets all other requirements of these regulations.

With regard to the requirement in paragraph (A)(*2*) that the qualifications and requirements for membership be expressly stated, the Commission notes that this provision would not preclude the organizational documents from delegating the responsibility to set specific requirements, such as the amount of dues or other qualifications or requirements, to the board of directors or other committees or groups of members.

The term "constitution" was also added to paragraphs (A)(1), (A)(2) and (A)(3) as a "formal organizational document" in response to several comments noting that many membership organizations considered constitutions to be their primary organizing document.

One commenter asked the Commission to drop the requirement that membership organizations "shall be composed of members," arguing that some membership organizations include non-members and might find it difficult to distinguish between the two. Since the FECA specifically refers to "members," and limits communications and solicitations to members, the Commission believes it is appropriate to include this requirement in the rules. Please note, this does not mean that organizations that permit non-members to participate in certain aspects of their operations will lose their status as a membership organization pursuant to the FECA, although they cannot solicit from or send express advocacy communications to such non members.

Some commenters pointed out that covered organizations may have to amend their bylaws to comply with these new requirements; and that this can be a lengthy process for those organizations which, for example, must approve the proposed changes at consecutive annual meetings. The Commission may consider such organizations to be in compliance with these rules while steps are underway, in accordance with the organization's rules, to come into compliance, assuming that the other requirements of the rules are met, as long as necessary changes are made at the first opportunity available under the organization's rules.

Revised paragraph (A)(*3*) states that membership organizations shall make their articles, bylaws or other formal organizational documents available to their members. As noted above, the Supreme Court's language in the *NRWC* decision, 459 U.S. at 204, pointed to the need for members of membership organizations to have "relatively enduring and independently significant financial or organizational attachments" to the organization. Those attachments can hardly be meaningful if the members are unaware of their rights and obligations. This requirement is therefore a corollary to that found at revised paragraph (A)(*1*), that members constitute the organization.

The NPRM proposed that such documents be made "freely" available to members, a term some commenters thought implied that the documents would have to be provided free of charge. They argued that this could prove costly for small organizations with lengthy organizational documents.

The Commission did not intend by its use of the word "freely" to indicate that the documents would have to be made available "free of charge." Rather, organizations may impose reasonable copying and delivery fees for this service. They may also make these documents available at their headquarters or other offices, where members choosing to do so may consult and copy them.

Labor organizations also asserted that the Commission has no authority to impose requirements in addition to those contained in the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA") and other Federal labor laws. The Commission believes that the revised rules largely comport with the LMRDA's requirements. However, the FECA and the Federal labor laws were enacted for different purposes, and the Commission cannot be bound by other statutes that would limit its authority in enforcing and interpreting the FECA.

New paragraphs (A)(*4*) and (*5*) contain the two preliminary requirements that formerly appeared in paragraphs (A)(*2*)

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and (*3*). These paragraphs state that membership organizations shall expressly solicit members, and expressly acknowledge the acceptance of membership, such as by sending a membership card or including the member on a membership newsletter list. New paragraph (A)(4) has been revised slightly to clarify that an organization must expressly solicit persons to become members of the organization.

New paragraph (A)(*6*) contains the language moved from the introductory text of 11 CFR 100.8(b)(4), *supra*. It states that organizations primarily organized for the purpose of influencing the nomination for election, or election, of any individual for Federal office cannot qualify as membership organizations for purposes of these rules.

Section 100.8(b)(4)(iv)(B) Definition of "member" of a membership organization

The Commission interprets the Supreme Court's requirement in the *NRWC* decision that members of membership organizations have a "relatively enduring and independently significant financial or organizational" attachment, *supra*, to mean that members must have a long term and continuous bond with the organization itself. The new rules define this as either a meaningful ownership or investment stake; the payment of dues on a regular basis; or direct participatory rights in the governance of the organization.

The introductory language of paragraph (b)(4)(iv)(B), which states that members must satisfy the requirements for membership in a membership organization and affirmatively accept the organization's invitation to become a member, has not been changed. Nor has paragraph (B)(*1*), which confers membership on those having some significant financial attachment to the organization, such as a significant investment or ownership stake.

One commenter objected to this provision, saying that it would allow wealthy individuals and other entities to purchase memberships, and that the payment of dues should be sufficient for this purpose. However, this provision addresses the situation where a member may pay several hundred thousand dollars to purchase a seat on a stock exchange, for example, but does not pay dues.

Paragraph (B)(*2*) requires members to pay membership dues at least annually, of a specific amount predetermined by the organization. Commenters largely agreed with the Commission's proposal not to set any minimum amount of dues, because this varies so widely from organization to organization. The term "at least" has been added to the language proposed in the NPRM to address situations where dues are paid more frequently, i.e., bi-weekly or monthly, as is true of most labor organizations.

Several commenters expressed concern over the annual dues requirement, noting that, despite an organization's best efforts, not all members renew their memberships within a twelve-month period. These commenters raised the question of whether the annual dues standard would require organizations to exclude, for FECA purposes, any members who are late in paying dues. As long as organizations maintain and enforce an annual (or more frequent) dues requirement, payments within a flexible window or subject to a reasonable grace period would meet this requirement.

Paragraph (B)(*3*) defines significant organizational attachment to include (i) the affirmation of membership on at least an annual basis, and (ii) direct participatory rights in the governance of the organization. The regulation cites as examples of such rights the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization's annual budget; or the right to participate directly in similar aspects of the organization's governance.

The Commission notes that these requirements apply only to those members who do not pay annual dues, or whose financial attachment to the organization is not a significant investment or ownership stake. This allays the concern of some commenters that, as the proposal was originally drafted, members might be required to annually affirm their membership in addition to paying annual dues.

As with the annual dues requirement, the Commission intends to give organizations some flexibility in interpreting the phrase "annual affirmation." For example, such activities as attending and signing in at a membership meeting or responding to a membership questionnaire would satisfy this requirement. The organization would not have to send out a mailing form for this purpose unless a member did not pay dues and had no other significant contact with the organization over the period in question.

Several commenters objected to the annual affirmation requirement proposed in the NPRM, and the Commission has substantially loosened this in an effort to address their concerns. It has not eliminated it entirely, however, because the Commission is bound by the Supreme Court's requirement that there be a significant or relatively enduring attachment between the member and the organization.

Section 100.8(b)(4)(iv)(C) Case-by-case Determinations

The Commission is revising paragraph (b)(4)(iv)(C) of this section, which provides for case-by-case determinations of membership status through the advisory opinion ("AO") process for those who do not precisely meet the requirements set forth in paragraph (B), to specifically state that it applies to retired members, in addition to the student and lifetime members addressed in the former version.

The NPRM proposed adding new paragraph (b)(4)(iv)(D) to address the status of retired union members who had paid dues for a period of at least ten years. Some unions commented that they could not easily determine which retired members met this criterion. Other commenters urged the Commission to treat all retired members the same, regardless of whether they had retired from a union or from some other organization.

It is apparent from these comments that membership organizations have a wide range of relationships with their retired members. For this reason the Commission has decided that it is best to address this situation through the advisory opinion process, as is true of student, lifetime, honorary and similar member categories. In addition, please note that the Commission has addressed the question of retired members in AOs 1995–14, 1995–13, and 1987–5, which continue to provide guidance to similarly-situated organizations.

For instance, the most permissive advisory opinion, AO 1987–5, approved a life membership policy including members who had paid dues for ten years and reached age 65. That opinion also involved the retention of voting rights, which would not be essential under the new rules. These new rules include separate annual dues and organizational attachment tests as alternatives. Members who possess the requisite voting rights and affirm membership at least annually would qualify as members regardless of whether they ever paid dues.

Section 100.8(b)(4)(iv)(D) Labor Organizations

This provision, which has not been revised, states that, notwithstanding the requirements of paragraphs (b)(4)(iv)(B)(*1*) through (*3*) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

The NPRM proposed deleting this language and replacing it with the provision relating to retired union members that has now been incorporated into the case-by-case determination process. At the time the NPRM was published, the Commission believed that unions with several organized levels would fall within the provisions relating to multi-tiered organizations contained in new paragraph 100.8(b)(4)(iv)(E) of this section, *infra*. However, some of the labor organizations that commented pointed out that their particular organizational structure did not precisely fit this model. The Commission is therefore retaining the current language to insure that unions continue to be treated as Congress intended in drafting this portion of the FECA. *See FEC* v. *Sailors' Union of the Pacific Political Fund*, 824 F. Supp. 492, 495 (N.D. Cal. 1986), *aff'd* 828 F.2d 502 (9th Cir. 1987).

Section 100.8(b)(4)(iv)(E) Multi-tiered Organizations

This provision, which was originally proposed in the 1997 NPRM, states that, in the case of a membership organization which has a national federation structure or has several levels, including, for example, national, state and/or local affiliates, a person who qualifies as a member of any entity within the federation or of any affiliate by meeting the requirements of paragraphs (b)(4)(iv)(B) (*1*), (*2*), (*3*), or (*4*) of this section, shall also qualify as a member of all affiliates for purposes of these rules. It further states that the factors set forth in the Commission's affiliation rules at 11 CFR 100.5(g)(2), (3) and (4) shall be used to determine whether entities are affiliated for purposes of this paragraph.

The commenter who first recommended this approach noted that a person who joins one tier of a multi-tiered organization clearly demonstrates an intention to associate with the entire organization. This new approach will also make enforcement easier and prevent what could otherwise be a large number of requests for advisory opinions from multi-tiered organizations. No comments were received opposing this change.

Section 100.8(b)(4)(iv)(F) Inapplicability of State Law

Paragraph (b)(4)(iv)(F) provides that, for purposes of these rules, the status of a membership organization shall be determined pursuant to paragraph (b)(4)(iv) of this section and not by provisions of State law governing unincorporated associations, trade associations, cooperatives, corporations without capital stock or labor organizations. Several commenters objected to this proposal, arguing that the Commission should defer to State law in this area.

Where an organization does not have "members" under that definition of state law, the right to vote for directors, and to exercise other rights normally given to members, is typically vested in the directors themselves. The board of directors thus elects its own successors, and in that sense is a self-perpetuating, autonomous board.

State law, however, also typically gives an organization that elects not to have "members" as defined by state law the right to have other persons affiliated with the organization under such terms and conditions as the organizational documents or directors provide, and to call those persons "members" if the organization wishes to do so. In that circumstance, if the terms and conditions of membership satisfied these regulations, those persons would be "members" for purposes of the FECA, even if they were not "members" as defined under state law.

The Commission does not believe that the vagaries of state law should determine whether or not an organization has members for purposes of the FECA. Therefore, the regulations make it clear that the determination of whether an organization has members for purposes of the FECA will be determined under these regulations, and not by the definitions of state law that may either include or exclude persons as members of an organization for reasons unrelated to the FECA.

Section 114.1(e) Definition of Membership Organization for Purposes of Corporate and Labor Organization Activity

Revised section 114.1(e) is identical to revised section 100.8(b)(4)(iv). Please note, however, that the reference to unincorporated associations which appears in revised 11 CFR 100.8(b)(4) applies only to Part 100 and not to Part 114, since part 114 addresses only activities by corporations and labor organizations.

Section 114.8(g) Federations of Trade Associations

As was the case with rural cooperatives, the 1998 NPRM proposed the repeal of 11 CFR 114.8(g), relating to federations of trade associations, because it believed these provisions would be encompassed by the proposed multi-tier language. While no commenter addressed this change, the Commission notes that parts of this section address additional issues that are beyond the scope of the present rulemaking. For example, there is a difference in the trade association context between the groups that can be solicited for contributions to the trade association's SSF and those who can get other election-influencing messages that are not SSF solicitations. For this reason, the Commission is retaining the current language without revision.

Other Issues

Rural Cooperatives

The Commission's rules at 11 CFR 114.7(k) allow certain rural cooperatives to, *inter alia*, solicit from and make express advocacy electoral communications to not only their own members, but the members of the cooperative's regional, state or local affiliates. The 1998 NPRM proposed repealing this provision and addressing this situation through 11 CFR 100.8(b)(4)(iv)(E), the general multi-tiered organization provision discussed above. However, one of the rural electric cooperatives that commented stated that the structure of most rural cooperatives does not readily correspond to the multi-tiered model envisioned in that section. The Commission is therefore retaining 11 CFR 114.7(k), to insure continued coverage of rural cooperatives under these rules.

Advisory Opinions Superseded

AO 1991–24 addressed the efforts of the Credit Union National Association, Inc. ("CUNA") and the Wisconsin Credit Union League to make partisan communications across multiple tiers of the organization. While the Commission approved the proposed procedures, these rules increase the options available to these and comparably situated multi tiered organizations. In AO 1993–24, the Commission determined that certain persons were not members of the National Rifle Association for purposes of the former rules because they did not have the required voting rights. The new rules supersede that portion of the AO that

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requires voting rights to establish membership.

The Regulatory Flexibility Act

One commenter disputed the Commission's certification under the Regulatory Flexibility Act, 5 U.S.C. 605(b), in the NPRM that the proposed rule would not have a significant economic impact on a substantial number of small entities. While the Commission does not concur with that assessment, it nevertheless has taken steps to allay this commenter's concerns by clarifying that (1) organizations may charge reasonable copying and mailing fees for making their organizational documents available to their members; and (2) organizations may follow their usual procedures in revising their bylaws or other documents, if these rules require this action.

Certification of no Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

These rules do not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the rules would broaden the current definition of who qualifies as a member of a membership association, thus expanding the opportunity for such associations to send electoral advocacy communications and solicit contributions to their separate segregated funds. The increased costs of such activity, if any, do not qualify as "significant" for purposes of this requirement.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 114

Business and industry, Elections, Labor.

For the reasons set out in the preamble, Subchapter A, Chapter I of Title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for Part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. Section 100.8 is amended by revising paragraphs (b)(4) introductory text and (b)(4)(iv) to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * *

(4) Any cost incurred for any communication by a membership organization, including a labor organization, to its members, or any cost incurred for any communication by a corporation to its stockholders or executive or administrative personnel, is not an expenditure, except that the costs directly attributable to such a communication that expressly advocates the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed $2,000 per election, be reported to the Commission on FEC Form 7 in accordance with 11 CFR 104.6.

* * * * *

(iv) (A) For purposes of paragraph (b)(4) of this section *membership organization* means an unincorporated association, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

(*1*) Is composed of members, some or all of whom are vested with the power and authority to operate or administer the organization, pursuant to the organization's articles, bylaws, constitution or other formal organizational documents;

(*2*) Expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents;

(*3*) Makes its articles, bylaws, constitution or other formal organizational documents available to its members;

(*4*) Expressly solicits persons to become members;

(*5*) Expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list; and

(*6*) Is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual for Federal office.

(B) For purposes of paragraph (b)(4) of this section, the term *members* includes all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, and either:

(*1*) Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake; or

(*2*) Pay membership dues at least annually, of a specific amount predetermined by the organization; or

(*3*) Have a significant organizational attachment to the membership organization which includes: affirmation of membership on at least an annual basis and direct participatory rights in the governance of the organization. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization's annual budget; or the right to participate directly in similar aspects of the organization's governance.

(C) Notwithstanding the requirements of paragraph (b)(4)(iv)(B) of this section, the Commission may determine, on a case-by-case basis, that persons who do not precisely meet the requirements of the general rule, but have a relatively enduring and independently significant financial or organizational attachment to the organization, may be considered members for purposes of this section. For example, student members who pay a lower amount of dues while in school, long term dues paying members who qualify for lifetime membership status with little or no dues obligation, and retired members may be considered members of the organization.

(D) Notwithstanding the requirements of paragraphs (b)(4)(iv)(B)(*1*) through (*3*) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

(E) In the case of a membership organization which has a national federation structure or has several levels, including, for example, national, state, regional and/or local affiliates, a person who qualifies as a member of any entity within the federation or of any affiliate by meeting the requirements of paragraphs (b)(4)(iv)(B)(*1*), (*2*), or (*3*) of this section shall also qualify as a member of all affiliates for purposes of paragraph (b)(4)(iv) of this section. The factors set forth at 11 CFR 100.5(g)(2), (3) and (4) shall be used to determine whether entities are affiliated for purposes of this paragraph.

(F) The status of a membership organization, and of members, for purposes of paragraph (b)(4) of this section, shall be determined pursuant to paragraph (b)(4)(iv) of this section and not by provisions of state law governing unincorporated associations, trade associations, cooperatives, corporations without capital stock, or labor organizations.

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

3. The authority citation for Part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

4. Section 114.1 is amended by revising paragraph (e) to read as follows:

§ 114.1 Definitions.

* * * * *

(e)(1) For purposes of this part *membership organization* means a trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

(i) Is composed of members, some or all of whom are vested with the power and authority to operate or administer the organization, pursuant to the organization's articles, bylaws, constitution or other formal organizational documents;

(ii) Expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents;

(iii) Makes its articles, bylaws, constitution, or other formal organizational documents available to its members upon request;

(iv) Expressly solicits persons to become members;

(v) Expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list; and

(vi) Is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office.

(2) For purposes of this part, the term *members* includes all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, and either:

(i)Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake; or

(ii) Pay membership dues at least annually, of a specific amount predetermined by the organization; or

(iii) Have a significant organizational attachment to the membership organization which includes: affirmation of membership on at least an annual basis; and direct participatory rights in the governance of the organization. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote directly for organization officers; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization's annual budget; or the right to participate directly in similar aspects of the organization's governance.

(3) Notwithstanding the requirements of paragraph (e)(2) of this section, the Commission may determine, on a case-by-case basis, that persons who do not precisely meet the requirements on the general rule, but have a relatively enduring and independently significant financial or organizational attachment to the organization, may be considered members for purposes of this section. For example, student members who pay a lower amount of dues while in school, long term dues paying members who qualify for lifetime membership status with little or no dues obligation, and retired members of the organization may be considered members for purposes of these rules.

(4) Notwithstanding the requirements of paragraphs (e)(2)(i) through (iii) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

(5) In the case of a membership organization which has a national federation structure or has several levels, including, for example, national, state, regional and/or local affiliates, a person who qualifies as a member of any entity within the federation or of any affiliate by meeting the requirements of paragraphs (e)(2)(i), (ii), or (iii) of this section shall also qualify as a member of all affiliates for purposes of this part. The factors set forth at 11 CFR 100.5 (g)(2), (3) and (4) shall be used to determine whether entities are affiliated for purposes of this paragraph.

(6) The status of a membership organization, and of members, for purposes of this part, shall be determined pursuant to paragraph (e)(1) of this section and not by provisions of state law governing trade associations, cooperatives, corporations without capital stock, or labor organizations.

* * * * *

Dated: July 27, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–19515 Filed 7–29–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–21–AD; Amendment 39–11233; AD 98–23–07 R1]

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; rescission; request for comments.

SUMMARY: This amendment rescinds Airworthiness Directive (AD) 98–23–07, which is applicable to certain Pratt & Whitney (PW) JT9D series turbofan engines. That AD requires a one-time acid etch inspection of the turbine exhaust case (TEC) wall between and on either side of the "3R" and "S" rails in the engine mount lug area (top quadrant of the case) for the presence of weld material, and if weld material is detected, removal from service and replacement with serviceable parts. The requirements of that AD were intended to prevent TEC structural failure under abnormal operating conditions, which could result in reduced main mount load capability, engine separation from the wing and subsequent loss of control of the airplane. Since the issuance of that AD, the FAA received reports from the manufacturer that describe a new safety analysis that determines the acid etch inspection for weld material is unnecessary.

DATES: Effective July 30, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 28, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–21–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9–ane–adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England

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Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On November 5, 1998, the Federal Aviation Administration (FAA) issued Airworthiness Directive (AD) 98–23–07, amendment 39–10872 (63 FR 63393, November 13, 1998), applicable to certain Pratt & Whitney (PW) Models JT9D–7, –7A, –7H, –7AH, –7F, –7J, –20, –20J, –7Q, –7Q3, –59A, –70A, and –7R4D turbofan engines. That AD requires a one-time acid etch inspection of the turbine exhaust case (TEC) wall between and on either side of the "R" and "S" rails in the engine mount lug area (top quadrant of the case) for the presence of weld material, and if weld material is detected, removal from service and replacement with serviceable parts. That action was prompted by reports of weld rework performed in the outer case wall of the TEC, in the mount lug fillet area, during original production to address local under minimum wall thickness conditions which at the time was considered to have left the TEC's structural capability compromised. That condition, if not corrected, was considered to have the potential to result in TEC structural failure under abnormal operating conditions, which could result in reduced main mount load capability, engine separation from the wing and subsequent loss of control of the airplane.

Since the issuance of that AD, the FAA has reviewed detailed analyses for PW JT9D engine installations (excluding the JT9D–7R4 bulged low pressure turbine/TEC configurations). The analyses show that sufficient margin exists for TECs installed in JT9D–3A, –7, –7A, –7H, –7AH, –7F, –7J, –20, –20J, –7Q, –7Q3, –59A, –70A, and –7R4D engine configurations under abnormal operating conditions. The results also show that there are no flight safety issues resulting from weld rework in the outer case wall of the TEC in the mount lug fillet area.

Welding in the mount lug area of the TEC was performed on several PW JT9D series TECs during original manufacture in order to address case wall thickness that was below the minimum. Since original type certification and at present, cracking and welding are prohibited in the mount lug area in accordance with the Engine Manual, because of concern for structural integrity during abnormal operating conditions. The results of the analyses show that the area where welding is prohibited in the Engine Maintenance Manual can be redefined, such that welding would only be prohibited on the mount pads.

The FAA has reviewed the analytical results and has determined that welding in the fillets at the base of the "R" and "S" rails and the shell wall does not compromise the structural integrity of the TEC. Therefore, the FAA has determined that it is necessary to rescind AD 98–23–07 in order to prevent operators from performing an unnecessary action. The current AD requires a one-time inspection of the TEC to be performed at the next shop visit. Operators are currently facing the requirement to perform this unnecessary inspection; therefore, it is impractical to provide prior notice and opportunity for public comment before rescinding the current AD.

In addition, since this action rescinds a requirement to perform an unnecessary action, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are impractical and the rescission may be made effective upon publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–21–AD." The postcard will be date stamped and returned to the commenter.

The Rescission

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10872 and adding 98–23–07 R1 to read as follows:

98–23–07 R1: Amendment 39–11233. Docket No. 98–ANE–21–AD. Rescinds AD 98–23–07, Amendment 39–10872.

Applicability: Pratt & Whitney (PW) Models JT9D–7, –7A, –7H, –7AH, –7F, –7J, –20, –20J, –7Q, –7Q3, –59A, –70A, and –7R4D turbofan engines. These engines are installed on but not limited to Boeing 747 and 767 series, McDonnell Douglas DC–10 series, and Airbus Industrie A300 and A310 series airplanes.

This rescission is effective July 30, 1999.

Issued in Burlington, Massachusetts, on July 15, 1999.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Engine Certification Office.

[FR Doc. 99–19296 Filed 7–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29678; Amdt. No. 417]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South Macarthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of the route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjuction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on July 23, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, September 9, 1999.

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 401113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

PART 95—[AMENDED]

Revisions to IFR Altitudes & Changeover Points

[Amendment 417 effective date, September 9, 1999]

From	To	MEA
§ 95.6004 VOR Federal Airway 4 Is Amended to Read in Part		
Topeka, KS VORTAC	Kansas City, MO VORTAC	2700
Kansas City, MO VORTAC	Hallsville, MO VORTAC	2500
§ 95.6010 VOR Federal Airway 10 Is Amended to Read in Part		
Emporia, KS VORTAC	Johnson County, MO VOR/DME	2700
Johnson County, KS VOR/DME	Napoleon, MO VORTAC	3000
§ 95.6012 VOR Federal Airway 12 Is Amended to Read in Part		
Emporia, KS VORTAC	Johnson County, KS VOR/DME	2700
Johnson County, KS VOR/DME	Napoleon, MO VORTAC	3000
§ 95.6013 VOR Federal Airway 13 Is Amended to Read in Part		
Napoleon, MO VORTAC	Lamoni, IA VORTAC	2600
§ 95.6014 VOR Federal Airway 14 Is Amended to Read in Part		
Buffalo, NY VOR/DME	Geneseo, NY VOR/DME	*6000
*4000—MOCA		
§ 95.6017 VOR Federal Airway 17 Is Amended To Read In Parts		
Milet, TX Fix	Somer, TX Fix	*4000
*2200—MOCA		
Somer, TX FIX	San Antonio, TX VORTAC	*3500
*2400—MOCA		

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[Amendment 417 effective date, September 9, 1999]

From	To	MEA
San Antonio, TX VORTAC	Centex, TX VORTAC	3500
§ 95.6029 VOR Federal Airway 29 Is Amended To Read in Part		
Pager, NY FIX	Watertown, NY VORTAC	*2600
*2000—MOCA		
Watertown, NY VORTAC	*Letus, NY FIX	*3000
*4000—MRA		
*1800—MOCA		
Letus, NY FIX	Massena, NY VORTAC	*3000
§ 95.6044 VOR Federal Airway 44 Is Amended to Read in Part		
Pawling, NY VOR/DME	Group, NY FIX	3000
Group, NY FIX	Albany, NY VORTAC	*2800
§ 95.6061 VOR Federal Airway 61 Is Amended to Read in Part		
Pawnee City, NE VORTAC	Robinson, KS VOR/DME	2800
Robinson, KS VOR/DME	Bowler, KS FIX	2600
§ 95.6061 VOR Federal Airway 61 Is Amended to Delete		
Bowler, KS FIX	Goldn, MO FIX	*4500
*2500—MOCA		
§ 95.6065 VOR Federal Airway 65 Is Amended to Delete		
Lamoni, IA VORTAC	Goldn, MO FIX	2900
§ 95.6070 VOR Federal Airway 70 Is Amended to Read in Part		
Lafayette, LA VORTAC	*Rosey, LA FIX	2000
*5000—MRA		
Rosey, LA FIX	Baton Rouge, LA VORTAC	2000
§ 95.6071 VOR Federal Airway 71 Is Amended to Read in Part		
Hot Springs, AR VOR/DME	Ollas, AR FIX	*3600
*3100—MOCA		
Ollas, AR FIX	Haawk, AR FIX	*4500
*2400—MOCA		
Haawk, AR FIX	Harrison, AR VOR/DME	*4500
§ 95.6084 VOR Federal Airway 84 Is Amended to Read in Part		
Buffalo, NY VOR/DME	Geneseo, NY VOR/DME	*6000
§ 95.6099 VOR Federal Airway 99 Is Amended to Read in Part		
LaGuardia, NY VOR/DME	Outte, CT FIX	4000
Outte, CT FIX	Sorry, CT FIX	10000
§ 95.6116 VOR Federal Airway 116 Is Amended to Read in Part		
Excel, MO FIX	Macon, MO VOR/DME	*3000
*2300—MOCA		
§ 95.6123 VOR Federal Airway 123 Is Amended to Read in Part		
Robbinsville, NJ VORTAC	Minks, NJ FIX	2000
Minks, NJ FIX	La Guardia, NY, VOR/DME	5000
La Guardia, NY VOR/DME	Famma, NY FIX	2000
Famma, NY FIX	Haarp, NY FIX	3000
Haarp, NY FIX	*Rymes, NY FIX	**5000
*5000—MRA.		
**2000—MOCA		
Rymes, NY FIX	Carmel, NY VOR/DME	2500
Carmel, NY VOR/DME	*Wigan, NY FIX	3000
*4500—MRA		
Wigan, NY FIX	Group, NY FIX	3000
Group, NY FIX	Albany, NY VORTAC	*2800
*2300—MOCA		

Revisions to IFR Altitudes & Changeover Points—Continued

[Amendment 417 effective date, September 9, 1999]

From	To	MEA
Albany, NY VORTAC	*Cambridge, NY VOR/DME	#**4000
*4500—MCA Cambridge VOR/DME N BND		
**3000—MOCA		
#ALB R–067 Unusable, Use CAM R–248.		
Cambridge, NY VOR/DME	Glens Falls, NY VORTAC	4500
§ 95.6157 VOR Federal Airway 157 Is Amended to Read in Part		
Robbinsville, NJ VORTAC	Minks, NJ FIX	2000
Minks, NJ FIX	La Guardia, NY VOR/DME	5000
La Guardia, NY VOR/DME	Famma, NY FIX	2000
Famma, NY FIX	Haarp, NY FIX	3000
Haarp, NY FIX	Kingston, NY VOR/DME	*4000
*2700—MOCA		
Kingston, NY VOR/DME	*Wigan, NY FIX	3000
*4500—MRA		
Wigan, NY FIX	Group, NY FIX	3000
Group, NY, FIX	Albany, NY VORTAC	*2800
*2300—MOCA		
§ 95.6159 VOR Federal Airway 159 Is Amended to Read in Part		
Napoleon, MO VORTAC	Lasso	2600
Lasso	St Joseph, MO VORTAC	2500
§ 95.6161 VOR Federal Airway 161 Is Amended to Read in Part		
Napoleon, MO VORTAC	Lamoni, IA VORTAC	2600
§ 95.6165 VOR Federal Airway 165 Is Amended to Read in Part		
Olympia, WA VORTAC	Carro, WA FIX	*4000
*1900—MOCA		
Carro, WA FIX	Arpee, WA FIX	*6000
*5200—MOCA		
§ 95.6165 VOR Federal Airway 165 Is Amended by Adding		
Arpee, WA FIX	Diggn, WA FIX	*5000
*2700—MOCA		
Diggn, WA FIX	Penn Cove, WA VOR/DME	*5000
*2100—MOCA		
Penn Cove, WA VOR/DME	Islnd, WA FIX	*5000
*1500—MOCA		
Islnd, WA FIX	Candl, WA FIX	*5000
*2800—MOCA		
Candl, WA FIX	Bellingham, WA VORTAC	*4000
*1900—MOCA		
§ 95.6194 VOR Federal Airway 194 Is Amended to Read in Part		
Lafayette, LA VORTAC	*Rosey, LA FIX	2000
*5000—MRA		
Rosey, LA FIX	Baton Rouge, LA VORTAC	2000
Liberty, NC VORTAC	Raleigh/Durham, NC VORTAC	3000
§ 95.6205 VOR Federal Airway 205 is Amended to Read in Part		
Bradley, CT VORTAC	Putnam, CT VOR/DME	3000
§ 95.6267 VOR Federal Airway 267 is Amended to Read in Part		
Craig, FL VORTAC	*Baxley, GA FIX	3000
*3000—MRA		
§ 95.6287 VOR Federal Airway 287 is Amended to Read in Part		
Olympia, WA Vortac	Carro, WA Fix	*4000
*1900—MOCA		
Carro, WA FIX	*Arpee, WA FIX	**6000
*4700—MCA Arpee FIX S Bnd		
**5200—MOCA		

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[Amendment 417 effective date, September 9, 1999]

From	To	MEA
§ 95.6287 VOR Federal Airway 287 is Amended to Read in Part		
Arpee, WA FIX	Lofal, WA FIX	4000
Lofal, WA FIX	Paine, WA VOR/DME	*3000
*1800—MOCA		
Paine, WA VOR/DME	Penn Cove, WA VOR/DME	*3000
*1800—MOCA		
§ 95.6323 VOR Federal Airway 323 is Amended to Read in Part		
Montgomery, AL VORTAC	Peech, AL FIX	2400
§ 95.6409 VOR Federal Airway 409 is Amended to Read in Part		
Liberty, NC VORTAC	Raleigh/Durham, NC VORTAC	3000
§ 95.6423 VOR Federal Airway 423 is Amended to Read in Part		
Pager, NY FIX	Watertown, NY VORTAC	*2600
*2000—MOCA.		
§ 95.6441 VOR Federal Airway 441 is Amended to Read in Part		
Monia, FL FIX	Brunswick, GA VORTAC	3000
§ 95.6451 VOR Federal Airway 451 is Amended to Read in Part		
Nessi, CT FIX	Keyed, NY FIX	2500
Keyed, NY FIX	Cream, NY FIX	2000
Cream, NY FIX	Groton, CT VOR/DME	6000
§ 95.6483 VOR Federal Airway 483 is Amended to Read in Part		
Rymes, NY FIX	Carmel, NY VOR/DME	2500
§ 95.6502 VOR Federal Airway 502 is Amended to Read in Part		
Emporia, KS VORTAC	Kansas City, MO VORTAC	3100
Kansas City, MO VORTAC	Braymer, MO VOR/DME	2600
Braymer, MO VOR/DME	Kirskville, MO VOTAC	2900
§ 95.6508 VOR Federal Airway 508 Is Amended to Read in Part		
Topeka, KS VORTAC	Rugbb, KS FIX	2800
Rugbb, KS FIX	Johnson County, KS VOR/DME	2600
§ 95.6534 VOR Federal Airway 534 is Amended to Read in Part		
Little Rock, AR VORTAC	Bibbs, AR FIX	3500
Bibbs, AR FIX	Haawk, AR FIX	*4500
*2500—MOCA		
Haawk, AR FIX	*Scran, AR FIX	**4500
*3300—MRA		
**3100—MOCA		
SCRAN, AR FIX	*Drano, AR FIX	**3500
*3000—MRA		
**3000—MOCA		
DRANO, AR FIX	Fort Smith, AR VORTAC	*2600
*2100—MOCA		
§ 95.6401 1 Hawaii VOR Federal Airway is Amended to Read in Part		
Rowin, HI FIX	Jessi, HI FIX	*7000
*1200—MOCA		
Jessi, HI FIX	*Lavas, HI FIX	**7000
*7000—MRA		
**1200—MOCA	Maken, HI FIX	*7000
Lavas, HI FIX.		
*5000—MOCA		
Maken ,HI FIX	Harpo, HI FIX	5000
Harpo, HI FIX	Maui, HI VORTAC	6000
§ 95.6402 2 Hawaii VOR Federal Airway is Amended to Read in Part		
Lanai, HI VORTAC	Keiki, HI FIX	5000
Keiki, HI FIX	Camps, HI FIX	*5000
*1200—MOCA		
Camps, HI FIX	Harpo, HI FIX	*5000

Revisions to IFR Altitudes & Changeover Points—Continued

[Amendment 417 effective date, September 9, 1999]

From	To	MEA
*1200 MOCA		
Harpo, HI FIX	Maken, HI FIX	5000
Maken, HI FIX	Upolu Point, HI vortac	5000
§ 95.6403 3 Hawaii VOR Federal Airway is Amended to Read in Part		
Mynah, HI FIX	*Jason, HI FX	
*4700—MCA Jason FIX NE BND	3500.	
Jason, HI FIX	Kamuela, VOR/DME	6500
§ 95.6405 5 Hawaii VOR Federal Airway is Amended to Read in Part		
Kona HI VORTAC	*Mynah, HI FIX	5000
*3500—MCA Mynah FIX SE BND		2000
Mynah, HI FIX	Hefti, HI FIX	2000
Hefti, I FIX	Maken, HI FIX	
NW BND		*6000
SE BND		*7000
*5500—MOCA		
§ 95.6406 6 Hawaii VOR Federal Airway is Amended to Read in Part		
Blush, HI FIX	Plumb, HI FIX	*5000
*1200—MOCA		
Plumb, HI FIX	Maui, HI VOTAC	5000
§ 95.6408 8 Hawaii VOR Federal Airway is Amended to Read in Part		
Molokai, HI Vortac	Blush, HI FIX	5000
Blush, HI FIX	Pishe, HI FIX	*4000
*1200—MOCA		
§ 95.6411 11 Hawaii VOR Federal Airway is Amended to Read in Part		
Reefs, HI FIX	Mynah, HI FIX	2000
Mynah, HI FIX	*Flitt, HI FIX	2000
*4500—MCA FLITT N BND		
Barby, HI FIX	Sweep, HI FIX	*5000
*3000—MOCA		
Sweep, HI FIX	Opana, HI FIX	*5000
*3000—MOCA		
Opana, HI FIX	Maui, HI VORTAC	5000
§ 95.6415 15 Hawaii VOR Federal Airway is Amended to Read in Part		
*Molokai, HI VORTAC	Loret, HI FIX	7000
*5000—MCA MOLOKAI VORTAC E BND		
*Loret, HI FIX	**Maui, HI VORTAC	8000
*7800—MCA LORET FIX E BND		
**6800—MCA Maui, VORTAC W BND		
Maui, HI FIX	Barby, HI FIX	7000
Barby, HI FIX	*Rabat, HI FIX	**10000
*1000—MRA		
*1200—MOCA		
§ 95.6416 16 Hawaii VOR Federal Airway is Amended to Read in Part		
Lanai, HI.		
*7000—MRA VORTAC	*Lavas, HI FIX	4300
§ 95.6417 17 Hawaii VOR Federal Airway is Amended to Read in Part		
Harpo, HI FIX	Maui, HI VORTAC	6000
Stait, HI FIX	Fredi, HI FIX	*17000
*1200—MOCA		
Fredi, HI FIX	Rexie, HI FIX	*28000
*1200—MOCA		
§ 95.6420 20 Hawaii VOR Federal Airway is Amended to Read in Part		
Typho, HI FIX	Andes, HI FIX	*3000
*1200—MOCA		
Andes, HI FIX	*Robyn, HI FIX	3000

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[Amendment 417 effective date, September 9, 1999]

From	To	MEA
*3800—MCA ROBYIN FIX SE BND		
§ 95.6421 21 Hawaii VOR Federal Airway is Amended to Read in Part		
Lana1, HI VORTAC	Keiki, HI FIX	5000
Keiki, HI FIX	Camps, HI FIX	*5000
*1200—MOCA		
Camps, HI FIX	*Harpo, HI FIX	**5000
*8100—MCA HARPO FIX E BND		
**1200—MOCA		
Harpo, HI FIX	Funki, HI FIX	*10000
*9000—MOCA		
Funki, HI FIX	*Pumic, HI FIX	10000
*10000—MRA		
§ 95.6422 22 Hawaii VOR Federal Airway is Amended to Read in Part		
*Molokai, HI VORTAC	Plumb, HI FIX	7000
*5000—MCA Molokai VORTAC E BND		
Plumb, HI FIX	Maui, HI FIX	5000
Maui, HI VORTAC	*Barby, HI FIX	7000
*10500—MCA Barby FIX SE BND		
§ 95.6423 23 Hawaii VOR Federal Airway is Amended to Read in Part		
Upolu Point, HI VORTAC	Jessi, HI FIX	*6000
*5000—MOCA		
Jessi, HI FIX	Fires, HI FIX	6000
§ 95.6424 24 Hawaii VOR Federal Airway is Amended to Read in Part		
*Lanai, HI VORTAC	**Maui, HI VORTAC	***9000
*5100—MCA Lanai VORTAC NE BND		
**6700—MCA Maui VORTAC SW BND		
***7800—MOCA		
§ 95.6425 25 Hawaii VOR Federal Airway is Amended to Read in Part		
Coddy, HI FIX	Arrow, HI FIX	26000
Arrow, HI FIX	Cluts, HI FIX	*26000
**1200—MOCA		

From	To	MEA	MAA
§ 95.7078 Jet Route No. 78 is Amended to Read in Part			
Farmington, MO VORTAC	Pocket City, IN VORTAC	18000	45000
Pocket City, IN VORTAC	Louisville, KY VORTAC	18000	45000
§ 95.7112 Jet Route No. 112 is Amended to Read in Part			
Farmington, MO VORTAC	Pocket City, IN VORTAC	18000	45000
Pocket City, IN VORTAC	Louisville, KY VORTAC	18000	45000

From	To	Changeover points	
		distance	from
§ 95.8003 VOR Federal Airway Changeover Points Airway Segment			
V–12 is Amended to Add Changeover Point			
Emporia, KS VORTAC	Johnson County, MO VOR/DME.	49	Emporia
V–13 is Amended to Add Changeover Point			
Napoleon, MO VORTAC	LaMonia, IA VORTAC	40	Napoleon
V–123 is Amended to Add Changeover Point			
Woodstown, NJ VORTAC	Robbinsville, NJ VORTAC	19	Woodstown
V–157 is Amended to Add Changeover Point			
Woodstown, NJ VORTAC	Robbinsville, NJ VORTAC	19	Woodstown
V–161 is Amended to Add Changeover Point			
Napoleon, MO VORTAC	Lamoni, IA VORTAC	40	Napoleon
V–534 is Amended to Add Changeover Point			
Little Rock, AR VORTAC	Fort Smith, AR VORTAC	58	Little Rock

[FR Doc. 99–19619 Filed 7–29–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29666; Amdt. No. 1942]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availabilitiy of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on July 23, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

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Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

Date	State	City	Airport	FDC No.	SIAP
7/07/99	MT	Great Falls	Great Falls Intl	9/4734	VOR or GPS Rwy 3, amdt 16...
7/07/99	MT	Great Falls	Great Falls Intl	9/4735	ILS Rwy 3, Amdt 2...
7/08/99	MT	Great Falls	Great Falls Intl	9/4776	HI–VOR/DME or TACAN Rwy 3, Amdt 2...
7/08/99	MT	Great Falls	Great Falls Intl	9/4777	HI–ILS Rwy 3, Orig...
7/08/99	NE	Crete	Crete Muni	9/4797	VOR/DME Rwy 35, Amdt 3...
7/09/99	CT	Chester	Chester	9/4823	VOR/DME RNAV or GPS Rwy 35 Amdt 1...
7/09/99	MA	Provincetown	Provincetown Muni	9/4824	ILS Rwy 7 Amdt 7...
7/09/99	VA	South Boston	William M. Tuck	9/4817	VOR or GPS–A Amdt 7...
7/09/99	VA	South Boston	William M. Tuck	9/4818	GPS Rwy 36 Orig...
7/12/99	TN	Memphis	Memphis Intl	9/4875	ILS Rwy 36L (CAT I, II, III), Amdt 13A...
7/13/99	AL	Birmingham	Birmingham Intl	9/4910	ILS Rwy 23, Orig...
7/13/99	AL	Birmingham	Birmingham Intl	9/4911	NDB Rwy 23, Amdt 16...
7/13/99	AL	Birmingham	Birmingham Intl	9/4912	ILS Rwy 5, Amdt 41A...
7/13/99	AL	Birmingham	Birmingham Intl	9/4913	GPS Rwy 23, Orig...
7/13/99	AL	Birmingham	Birmingham Intl	9/4914	HI–ILS Rwy 5, Amdt 6...
7/13/99	AL	Birmingham	Birmingham Intl	9/4915	NDB or GPS Rwy 5, Amdt 30...
7/13/99	AL	Birmingham	Birmingham Intl	9/4916	Radar-1, Amdt 19A...
7/13/99	NV	Reno	Reno/Tahoe Intl	9/4896	GPS Rwy 16R Orig...
7/13/99	PA	Monongahela	Rostraver	9/4922	GPS Rwy 25 Orig-A...
7/13/99	VA	Hot Springs	Ingalls Field	9/4918	ILS Rwy 24 Amdt 2B...
7/14/99	MS	Columbus-West Point-Starkville.	Golden Triangle Regional	9/4954	GPS Rwy 18, Orig...
7/14/99	OH	Columbus	Port Columbus Intl	9/4942	ILS Rwy 28L, Amdt 27...
7/15/99	CO	Fort Collins/Loveland	Fort Collins-Loveland Muni	9/4999	VOR/DME or GPS–B, Amdt 1...
7/15/99	CO	Fort Collins/Loveland	Fort Collins-Loveland Muni	9/5000	ILS Rwy 33, Amdt 5A...
7/15/99	GA	Toccoa	Toccoa RG Letour-Neau Field	9/5037	VOR/DME Rwy 2, Orig-A...
7/15/99	NJ	Teterboro	Teterboro	9/5012	ILS Rwy 6 Amdt 29...
7/15/99	NJ	Teterboro	Teterboro	9/5013	COPTER ILS Rwy 6 Amdt 1...
7/15/99	NJ	Teterboro	Teterboro	9/5014	FMS/ILS Rwy 6 Orig-A...
7/15/99	SC	Greer	Greenville-Spartanburg	9/4991	ILS Rwy 22, Amdt 3...
7/15/99	WA	Ellensburg	Bowers Field	9/5032	GPS Rwy 25, Orig...
7/15/99	WA	Ellensburg	Bowers Field	9/5033	VOR or GPS–B, Amdt 1...
7/15/99	WA	Ellensburg	Bowers Field	9/5034	VOR or GPS–A, Amdt 2...
7/15/99	WV	Point Pleasant	Mason County	9/5031	GPS Rwy 25 Orig...
7/16/99	CA	Salinas	Salinas Muni	9/5090	VOR Rwy 13 Amdt 11
7/16/99	CA	Salinas	Salinas Muni	9/5091	ILS Rwy 31 Amdt 5...
7/16/99	CA	Salinas	Salinas Muni	9/5172	LOC/DME Rwy 31 Amdt 4...
7/16/99	KY	Louisville	Bowman Field	9/5079	NDB or GPS Rwy 32 Amdt 15...
7/16/99	KY	Louisville	Bowman Field	9/5080	VOR Rwy 32 Amdt 14...
7/16/99	KY	Louisville	Bowman Field	9/5081	VOR Rwy 24 Amdt 7...
7/16/99	KY	Louisville	Bowman Field	9/5082	VOR or GPS Rwy 14 Amdt 9...
7/16/99	KY	Louisville	Bowman Field	9/5083	GPS Rwy 24 Orig-A...
7/16/99	MD	Cumberland	Greater Cumberland Regional	9/5084	NDB–A Amdt 8...
7/16/99	MO	St Louis	Lambert-St Louis Intl	9/5055	TACAN Rwy 30L, Orig...
7/16/99	MO	St Louis	Lambert-St Louis Intl	9/5056	TACAN Rwy 12 R, Orig...
7/16/99	NJ	Caldwell	Essex County	9/5062	NDB or GPS Rwy 22 Amdt 5...
7/16/99	NJ	Caldwell	Essex County	9/5076	LOC Rwy 22 Amdt 1B...
7/16/99	NJ	Caldwell	Essex County	9/5077	NDB or GPS–A Amdt 5A...
7/16/99	RI	Westerly	Westerly State	9/5050	LOC Rwy 7 Amdt 5...
7/16/99	TN	Jacksboro	Campbell County	9/5067	GPS Rwy 23 Orig...
7/16/99	TN	Smyrna	Smyrna	9/5069	NDB Rwy 32 Amdt 8A...
7/19/99	FL	Tallahasse	Tallahasse Regional	9/5165	ILS Rwy 27 Amdt 6 (CAT I and II)...
7/19/99	NV	Reno	Reno/Tahoe Intl	9/5152	LOC–2 Rwy 16R Amdt 6A...
7/21/99	CA	Hayward	Hayward Air Terminal	9/5254	VOR/DME or GPS–B Amdt. 1A
7/21/99	CA	Hayward	Hayward Air Terminal	9/5255	GPS Rwy 28L Orig...
7/21/99	CA	Hayward	Hayward Air Terminal	9/5256	LOC/DME Rwy 28L Amdt 1...
7/21/99	CA	Hayward	Hayward Air Terminal	9/5257	VOR or GPS–A Amdt 6A...

[FR Doc. 99–19621 Filed 7–29–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29667; Amdt. No. 1943]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of the new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW, Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS or FMS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove "or GPS or FMS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on July 23, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

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PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's effective at 0901 UTC on the dates specified:

** * * Effective September 9, 1999*

Fort Yukon, AK, Fort Yukon, VOR/DME or TACAN or GPS Rwy 3, Amdt 1A, Canceled
Fort Yukon, AK, Fort Yukon, VOR/DME or TACAN Rwy 3, Amdt 1A
Fort Yukon, AK, Fort Yukon, VOR/DME or TACAN or GPS Rwy 21, Amdt 1A, Canceled
Fort Yukon, AK, Fort Yukon, VOR/DME or TACAN Rwy 21, Amdt 1A
Redding, CA, Redding Muni, VOR or GPS Rwy 34, Amdt 10C, Canceled
Redding, CA, Redding Muni, VOR Rwy 34, Amdt 10C
Akron, CO, Akron-Washington County, VOR or GPS Rwy 29 Orig, Canceled
Akron, CO, Akron-Washington County, VOR Rwy 29 Orig
Fort Myers, FL, Southwest Florida Intl, NDB or GPS Rwy 6, Amdt 4A, Canceled
Fort Myers, FL, Southwest Florida Intl, NDB Rwy 6, Amdt 4A
Fort Myers, FL, Southwest Florida Intl, VOR/DME or TACAN or GPS Rwy 24, Amdt 1, Canceled
Fort Myers, FL, Southwest Florida Intl, VOR/DME or TACAN Rwy 24, Amdt 1
St. Petersburg-Clearwater, FL, St. Petersburg-Clearwater Intl, VOR or GPS Rwy 17L, Amdt 11B, Canceled
St. Petersburg-Clearwater, FL, St. Petersburg-Clearwater Intl, VOR Rwy 17L, Amdt 11B
Paducah, KY West Kentucky Airpark, VOR or GPS Rwy 4, Amdt 16A, Canceled
Paducah, KY, West Kentucky Airpark, VOR Rwy 4, Amdt 16A
Paducah, KY, West Kentucky Airpark, NDB or GPS Rwy 22 Amdt 2, Canceled
Paducah, KY, West Kentucky Airpark NDB Rwy 22, Amdt 2
Van Wert, Van Wert County, NBD or GPS Rwy 9, Amdt 1, Canceled
Van Wert, OH, Van Wert County, NBD Rwy 9, Amdt 1
Van Wert, OH, Van Wert County. NBD or GPS Rwy 27, Orig, Canceled
Van Wert, OH, Van Wert County, NBD Rwy 27, Orig
Norman, OK, University of Oklahoma Westheimer, VOR/DME or RNAV or GPS Rwy 3, Orig-C, Canceled
Norman, OK, University of Oklahoma Westheimer, VOR/DME or RNAV Rwy 3, Orig-C
Tahlequah, OK, Tahlequah Muni, NDB or GPS Rwy 17, Amdt 1, Canceled
Tahlequah, OK, Tahlequah Muni, NDB Rwy 17, Amdt 1
Jackson, TN, McKeller-Sipes Regional, NDB or GPS Rwy 2, Amdt 6, Canceled
Jackson, TN, McKeller-Sipes Regional, NDB Rwy 2, Amdt 6

[FR Doc. 99–19622 Filed 7–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29665; Amdt. No. 1941]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporatioin by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form Documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on July 23, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective August 12, 1999*

Escanaba, MI, Delta County, ILS/DME RWY 9, Amdt 4A, CANCELLED
Escanaba, MI, Delta County, ILS RWY 9, Orig
Iron Mountain/Kingsford, MI, Ford, VOR OR GPS RWY 31, Amdt 15
Iron Mountain/Kingsford, MI, Ford, LOC/DME BC RWY 19, Amdt 12
Iron Mountain/Kingsford, MI, Ford, NDB RWY 1, Orig
Iron Mountain/Kingsford, MI, Ford, ILS RWY 1, Amdt 11
Newark, NJ, Newark Intl, ILS RWY 22R, Amdt 2
Memphis, TN, Memphis International, ILS RWY 9, Amdt 26
Nashville, TN, John C. Tune, LOC/DME RWY 19, Amdt 2A, CANCELLED
Nashville, TN, John C. Tune, ILS/DME RWY 19, Orig

** * * Effective September 9, 1999*

Atqasuk, AK, Atqasuk Edward Burnell Sr. Memorial NDB RWY 6, Orig
Atqasuk, AK, Atqasuk Edward Burnell Sr. Memorial NDB RWY 24, Orig
Cold Bay, AK, Cold Bay, VOR/DME OR TACAN–A, Amdt 2
Cold Bay, AK, Cold Bay, MLS RWY 32, Amdt 1
Palmer, AK, Palmer Muni, GPS–A, Orig
Arcata-Eureka, CA, Arcata, GPS RWY 2, Orig
Arcata-Eureka, CA, Arcata, GPS RWY 14, Orig
Arcata-Eureka, CA, Arcata, GPS RWY 32, Orig
Colusa, CA, Colusa County, GPS RWY 13, Orig
Colusa, CA, Colusa County, GPS RWY 31, Orig
Washington, DC, Ronald Reagan Washington National, VOR RWY 1, Amdt 12
Washington, DC, Ronald Reagan Washington National, VOR/DME OR GPS RWY 19, Amdt 9
Washington, DC, Ronald Reagan Washington National, LDA/DME RWY 19, Amdt 2
Washington, DC, Ronald Reagan Washington National, ROSSLYN LDA RWY 19, Amdt 15
Washington, DC, Ronald Reagan Washington National, NDB OR GPS RWY 1, Amdt 11
Washington, DC, Ronald Reagan Washington National, ILS RWY 1, Amdt 40
Emporia, KS, Emporia Muni, VOR OR GPS–A, Amdt 13
Emporia, KS, Emporia Muni, VOR/DME RNAV RWY 19, Amdt 8
Emporia, KS, Emporia Muni, GPS RWY 19, Orig
Fort Leavenworth, KS, Sherman AAF, VOR/DME–A, Orig
Somerset, KY, Somerset-Pulaski County-J.T. Wilson Field, GPS RWY 4, Orig
Shreveport LA, Shreveport Regional, NDB OR GPS RWY 14, Amdt 20
Shreveport LA, Shreveport Regional, ILS RWY 14, Amdt 22
Augusta, ME, Augusta State, GPS RWY 8, Orig
Augusta, ME, Augusta State, GPS RWY 17, Orig
Augusta, ME, Augusta State, GPS RWY 35, Orig
Frederick, MD, Frederick Muni, VOR OR GPS–A, Amdt 2
Frederick, MD, Frederick Muni, ILS RWY 23, Amdt 4
Frederick, MD, Frederick Muni, GPS RWY 5, Amdt 1
Palmer, MA, Metropolitan, GPS RWY 4, Orig
Glencoe, MN, Glencoe Muni, NDB RWY 31, Orig
Rushford MN, Rushford Muni, GPS RWY 34, Orig
Silver Bay, MN, Silver Bay Muni, GPS RWY 25, Amdt 1
Butler, MO, Butler Memorial, VOR–A, Amdt 4
Kansas City, MO, Kansas City Intl, VOR OR GPS RWY 27, Amdt 14, CANCELLED
Kansas City, MO, Kansas City Intl, VOR/DME OR TACAN RWY IL, Orig
Kansas City, MO, Kansas City Intl, VOR/DME OR TACAN RWY 19R, Orig
Kansas City, MO, Kansas City Intl, VOR/DME OR TACAN RWY 27, Orig
Kansas City, MO, Kansas City Intl, GPS RWY 1R, Orig
Kansas City, MO, Kansas City Intl, GPS RWY 9, Orig
Kansas City, MO, Kansas City Intl, GPS RWY 19R, Orig
Kansas City, MO, Kansas City Intl, GPS RWY 27, Orig
Minden, NV, Minden-Tahoe, GPS–A, Orig
Minden, NV, Minden-Tahoe, GPS–B, Orig
Waverly, OH, Pike County, GPS RWY 7, Orig
Waverly, OH, Pike County, GPS RWY 25, Orig
Grants Pass, OR, Grants Pass, GPS–A, Amdt 1
Allendale, SC, Allendale County, GPS RWY 17, Orig
Allendale, SC, Allendale County, GPS RWY 35, Orig
Britton, SD, Britton Muni, NDB OR GPS RWY 13, Amdt 1
Britton, SD, Britton Muni, GPS RWY 31, Amdt 1
Alice, TX, Alice Intl, VOR–A, Amdt 1

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Alice, TX, Alice Intl, VOR RWY 31, Amdt 12
Alice, TX, Alice Intl, LOC RWY 31, Amdt 6
Alice, TX, Alice Intl, GPS RWY 13, Orig
Alice, TX, Alice Intl, GPS RWY 31, Amdt 1
Bremerton, WA, Bremerton National, NDB RWY 1, Amdt 1
Bremerton, WA, Bremerton National, ILS RWY 19, Amdt 13
Bremerton, WA, Bremerton National, GPS RWY 1, Amdt 1
Burlington/Mount Vernon, WA, Skagit Regional NDB RWY 10, Amdt 3
Burlington/Mount Vernon, WA, Skagit Regional GPS RWY 10, Amdt 1
Friday Harbor, WA, Friday Harbor, NDB RWY 34, Amdt 1
Friday Harbor, WA, Friday Harbor, GPS RWY 34, Amdt 1
Shelton, WA, Sanderson Field, NDB OR GPS–A, Amdt 2
Shelton, WA, Sanderson Field, GPS RWY 5, Amdt 1
Shelton, WA, Sanderson Field, GPS RWY 23, Amdt 1
Tacoma, WA, Tacoma Narrows, NDB RWY 35, Amdt 7
Tacoma, WA, Tacoma Narrows, GPS RWY 17, Orig
Tacoma, WA, Tacoma Narrows, GPS RWY 35, Orig

[FR Doc. 99–19620 Filed 7–29–99; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 98–7C]

Notice and Recordkeeping for Making and Distributing Phonorecords

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations.

SUMMARY: The Copyright Office is announcing interim regulations which specify notice and recordkeeping requirements associated with the making of digital phonorecord deliveries. The Digital Performance Right in Sound Recordings Act of 1995 requires the Librarian of Congress to establish these regulations to insure proper payment to copyright owners for the use of their works.

EFFECTIVE DATE: The interim regulations shall become effective on August 30, 1999.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel ("CARP"), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 ("DPRA"), Pub. L. 104–39 (1995). Among other things, this law clarifies that the compulsory license for making and distributing phonorecords includes the distribution of a phonorecord of a nondramatic musical work by means of a digital phonorecord delivery. 17 U.S.C. 115(c)(3).

The DPRA requires the Librarian of Congress to "establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept and made available by persons making digital phonorecord deliveries." 17 U.S.C. 115(c)(3)(D).

The Copyright Office initiated the process to promulgate regulations on the subject of the notice and recordkeeping requirements on September 4, 1998, with the publication of a Notice of Inquiry. 63 FR 47215 (September 4, 1998). The notice sought comment on whether the existing regulations, 37 CFR 201.18 and 201.19, governing the administration of the section 115 compulsory license, could be amended to accommodate the additional notice and recordkeeping requirements. Comments were due on October 19, 1998, and reply comments were due on November 18, 1998.

On October 19, 1998, the Recording Industry Association of America ("RIAA") and the National Music Publishers' Association of America, Inc. ("NMPA") filed a joint petition with the Copyright Office. The petition requested a six-month extension of the filing period in order to allow these parties additional time to work out a joint proposal that would address the complex technical and business issues involved in the making of digital phonorecord deliveries ("DPDs"). In response to the parties' concerns expressed in the petition and a second request for additional time, the Copyright Office reopened the comment period twice. 63 FR 65567 (November 27, 1998); 63 FR 69251 (December 16, 1998).

The Commenters

The Copyright Office received five comments from six parties: NMPA and the Songwriters Guild of America ("SGA"), jointly; RIAA; Digital Media Association ("DiMA"); Broadcast Music, Inc. ("BMI"), and the American Society of Composers, Authors, and Publishers ("ASCAP").

The Scope of This Proceeding

BMI and ASCAP filed comments to underscore their understanding that the DPRA does not in any way diminish the right of public performance and that the current rulemaking does not involve the right of public performance, but rather is limited to the right of reproduction and the right of distribution. BMI's and ASCAP's assessment as to the scope of this proceeding is correct. It implicates only the rights of reproduction and distribution in the making and distribution of phonorecords, and not the right of public performance.

A Request for Interim Regulations

NMPA/SGA, RIAA, and DiMA indicate a strong preference for delaying the adoption of final regulations on notice and recordkeeping because the industry is in its infancy and business models to handle the transactions involved in making DPDs are still evolving. These commenters encourage the Office to adopt interim regulations for a period of between six months to two years in order to allow continued negotiations among industry representatives. BMI and ASCAP also have no objections to adopting interim regulations so long as such amendments do not apply to the right of public performance. The Copyright Office agrees with the commenters and is adopting interim regulations for a period of two years; however, a party with a substantial interest in notice and recordkeeping requirements for DPDs may petition the Office to reopen the rulemaking for good cause before the expiration of this period. The interim regulations are promulgated without prejudice to the parties who, at the appropriate time, may propose final regulations that may differ significantly from the interim rules based upon the developing business trends in the industry.

Proposed Amendments to 37 CFR 201.18 and 201.19

Section 115(b)(1) of the Copyright Act, title 17 of the United States Code, requires "[a]ny person who wishes to obtain a compulsory license under this section . . . [to] serve notice of intention to do so on the copyright owner." This section also requires the Copyright Office to prescribe regulations specifying the form, content, and manner of service of the notice of intention. Section 201.18 of title 37 of the Code of Federal Regulations meets this requirement. Similarly, the regulations in § 201.19 address the requirement that each compulsory licensee file monthly and annual

statements of account for each section 115 compulsory license in accordance with 17 U.S.C. 115(c)(5).

NMPA/SGA, RIAA, and DiMA proposed amendments to §§ 201.18 and 201.19 that would adapt these rules to digital phonorecord deliveries at least for purposes of filing notices of intention to use the license and statements of account. However, NMPA and SGA do not believe that amending the current regulations will be sufficient to address the requirements of section 115(c)(3)(D), of title 17 of the United States Code, relating to notice and recordkeeping. They contend that the requirements of section 115(c)(3)(D) are separate and distinct from the requirements to file a notice of intention to use the license and statements of account specified in sections 115(b)(1) and (c)(5), respectively, but acknowledge that the requirements share some common ground. On the other hand, RIAA states that it believes the proposed amendments would fulfill the notice and recordkeeping requirements set out in 17 U.S.C. 115(c)(3)(D), in addition to the traditional requirements for filing a notice of intention to use the license and statements of account set out in 17 U.S.C. 115(b)(1) and (c)(5). Reply comments of RIAA at 5 n.1.

While acknowledging the potential need to draft additional amendments, for purposes of the interim regulations the Copyright Office accepts RIAA's analysis on this point. The interim regulations will require those users who avail themselves of the section 115 license for the purpose of making DPDs to file a notice of intention to use the license and statements of account with the copyright owner in those cases where the public records of the Copyright Office identify the owner. Certainly, direct notice to the copyright owner fulfills the section 115(c)(3)(D) requirement for notice, and the detailed statements of account filed with the copyright owner should provide sufficient information to document the use of the copyrighted works to meet the recordkeeping requirement. Nevertheless, the Office supports NMPA/SGA's suggestion for further discussion on these issues, especially as to whether the current regulations, as amended herein, go far enough to prescribe how "records of such use shall be kept and made available by persons making digital phonorecord deliveries." 17 U.S.C. 115(c)(3)(D).

As to the actual amendments proposed, we note that each party proposed modest changes to the existing rules that would allow a user to take advantage of the compulsory license, but that the commenters differed in their view on whether the traditional concepts of "relinquished from possession," "phonorecord reserves," or "returns" applied to DPDs. NMPA/SGA contend that the terms, "voluntarily distributed," "reserves," and "returns" do not properly apply to DPDs as used in the current regulations. "NMPA and SGA are not aware of any 'returns' of DPDs or even how such returns could technically be accomplished. Accordingly, we see no basis to provide for 'reserves' with respect to such 'returns' of DPDs." Further comments of NMPA and SGA at 4 n.3.

RIAA and DiMA, however, have less trouble applying these same concepts to DPDs. Citing the possibility of a failed transmission or an incomplete reproduction, RIAA and DiMA foresee a need to be able to offer DPD recipients credits or replacements. RIAA argues that "(w)hen the relevant commercial arrangements provide for a credit or replacement and generally accepted accounting principles require such treatment, RIAA believes that a maker of DPDs should have the opportunity to make mechanical royalty payments reflecting such credits or replacements and any corresponding reserve." Reply comments of RIAA at 4; *see also* DiMA at 3. Similarly, DiMA foresees a business model that allows a distributor to prepay for a preset number of DPDs in conjunction with the right to return the unsold portion for a credit or as an offset. Both approaches incorporate the concepts of "reserves" and "returns," and require that the rules define the term "voluntarily distributed" as it relates to a DPD. Under either model, the user must be able to account for and receive credit for the "returns" and the "reserves."

The Copyright Office has weighed the arguments of the commenting parties and agrees with RIAA that a distributor should be allowed to provide a replacement DPD in order to rectify a problem on the receiving end of the transmission, or to account for a failed transmission or an incomplete reproduction. However, the Office has found no basis for adopting the concept of "reserves" to DPDs. Therefore, the interim regulations require accounting for all DPDs, both attempted and completed, but at the same time, provide a mechanism whereby a distributor may adjust for failed transmissions and replacement DPDs made for the purpose of delivering a complete and usable DPD to an intended recipient. We also adopt DiMA's suggestion to add the term, "digital phonorecord delivery," to the list of phonorecord configurations in §§ 201.18(c)(1)(vi) and 201.19(e)(3)(ii)(D).

To effect the proposed scheme, it is necessary to ascertain when a DPD is made, manufactured, or distributed for purposes of the section 115 license such that the obligation to pay the royalty fee attaches. RIAA and NMPA/SGA define the point as the "date the digital delivery is completed," but neither commenter offered any insight on how to ascertain the date of completion. The answer to this question is of critical import, because royalties will be paid only for those DPDs which are completed. In anticipation of this problem, DiMA suggests amending § 201.19(a)(5) to define the concept of "voluntarily and permanently part(ing) with," a DPD as "the time when the delivery and making of the digital phonorecord can be confirmed as completed." DiMA at 3. According to DiMA, the transmitting entity could confirm "that the transmission arrived intact," DiMA at 3, but it need not do so. Instead, DiMA proposes a presumption in favor of a successful transmission in the absence of a notification from the intended recipient that the transmission or reproduction failed.

The Copyright Office finds that DiMA's approach sets the mark too far down the line when determining the point at which delivery is complete because it leaves the resolution of when the DPD actually occurs in the hands of the intended recipient. This approach fails to account for a misdirected DPD or for a successful transmission to a recipient who, for whatever reason, cannot access and utilize the phonorecord. Therefore, for purposes of the interim regulations, the Office will start with a rebuttable presumption that a DPD is complete on the date the transmission is made. However, the Office recognizes that if a transmission fails or results in an incomplete reproduction, as determined by means within the sole control of the distributor, no delivery has occurred and no copyright liability accrues. In such cases, the distributor may overcome the presumption by explaining when and why the transmission failed and deduct one unit DPD from the monthly total. A distributor may also deduct a unit DPD from the monthly tally for a retransmission of a sound recording to an intended recipient in the case where although the initial transmission to the intended recipient resulted in a specifically identifiable reproduction of that sound recording, for some reason it remained inaccessible to the intended recipient.

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This interpretation comports with the statutory definition of a digital phonorecord delivery. Section 115(d)(1) defines a digital phonorecord delivery as "each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient." The statutory definition requires only that transmission of an identifiable reproduction of a sound recording be successfully completed. It does not require that the intended recipient actually receive and verify receipt of a usable reproduction. The key factor is the delivery of a specifically identifiable reproduction of a sound recording and not verification by an intended recipient. Consequently, receipt of an identifiable, but unusable reproduction still will require payment of an initial copyright royalty fee. Under such circumstances, the distributor may retransmit a phonorecord of the same sound recording and treat the retransmission as a replacement for the initial phonorecord.

The Office takes this approach because it accounts for every transaction without imposing additional liability on the distributor in those cases where replacements need to be supplied to a customer. While it is arguable that each transmission constitutes a separate DPD, the Office has determined that it is unreasonable to impose additional costs for replacements on a distributor, since retransmissions are not likely to increase the risk of further copying at the expense of the copyright owner. A recipient who wishes to make further copies can do so easily from a single reproduction of the sound recording. Such is the nature of the digital environment. Therefore, the Copyright Office can see no reason to prevent a distributor from making multiple transmissions to the same recipient for the sole purpose of completing the DPD of a particular sound recording, nor can it see any reason why a customer would request a second transmission once he or she has received a complete and usable file. Consequently, the interim regulations will allow a maker of DPDs to adjust the total monthly count of DPDs to account for subsequent transmissions of a sound recording made to an intended recipient in an attempt to complete delivery of the initial request. However, this does not mean that the distributor can avoid payment on an initial transmission which results in a specifically identifiable reproduction, or extend a credit to a customer for a different sound recording because the customer was unable to make use of the initial DPD.

The Office rejects RIAA's proposal to adopt a regulatory scheme that would allow a distributor of DPDs to offer credits to a consumer in the event of a purported faulty or incomplete transmission, because the potential for abuse is too high. This is true because there is no apparent means to verify whether a request for a credit is legitimate. Nothing would prevent a customer from claiming a credit upon the mere assertion that the DPD was incomplete, even though the initial DPD was properly made. The intended recipient could then use the credit to order a different DPD, ultimately receiving two DPDs for the price of one. Such a result is contrary to the purpose of the compulsory license and must be avoided. For purposes of the compulsory license, the royalty obligation accrues upon the initial transmission of the phonorecord. Corrections for defective transmissions or for replacement DPDs are made as adjustments to the total number of transmissions. Such offsets benefit the distributor only, and may not be extended to the consumer directly under the auspices of the statutory license. Of course, a distributor may decide to grant a credit to a consumer who does not receive a complete reproduction or cannot access a file, but that decision does not alter how the distributor meets his obligations under the statutory license.

The Copyright Office also rejects DiMA's concept of reserves. Under its model, a distributor would prepay for the right to deliver a preset number of DPDs, and consequently, would have need of a system that allowed the distributor to receive a credit or offset for the authorized DPDs that never occurred. Yet, under section 115, the distributor incurs no copyright liability until the DPD is completed. For this reason, the Office can see no rationale for prepaying a copyright owner for DPDs which may not occur, when all that is needed is an accurate accounting mechanism for registering those that do. Of course, a distributor may enter into a contractual relationship with a copyright owner which calls for prepayment. In such cases, the parties could provide for additional credits or offsets.

In addition, the Office has not adopted the suggested language that would require the recipient to delete or destroy an original DPD before a second transmission is made, since such actions cannot be verified nor do they seem calculated to alleviate any identifiable problem. However, if the technology develops to the point where such actions prove useful in controlling the distribution of sound recordings by means of a digital transmission, an interested party may petition for reconsideration of the regulations on this point.

We adopt these amendments on an interim basis in order to adapt the existing regulatory framework to the immediate needs of the compulsory licensee who wishes to make DPDs in today's marketplace. Nevertheless, we acknowledge that the developing technologies associated with making DPDs may require a different system for notice and recordkeeping and will consider any new proposals, suggestions, or adjustments when we revisit the issue before finalizing regulations governing the notice and recordkeeping requirements associated with making DPDs.

Regulatory Flexibility Act

Although the Copyright Office, as a department of the Library of Congress and part of the legislative branch, is not an "agency" subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Register of Copyrights has considered the effect of these interim regulations on small businesses. The Register has determined that the regulations would not have a significant economic impact on a substantial number of small entities that would require provision of special relief for small entities in the regulations. The interim regulations are designed to minimize any significant economic impact on small entities.

List of Subjects in 37 CFR Part 201

Copyright.

Interim Regulations

For the reasons set forth in the preamble, part 201 of title 37 of the Code of Federal Regulations is amended as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.18 is amended as follows:

(a) By adding a new paragraph (a)(4); and

(b) In paragraph (c)(1)(vi), by adding the phrase "a digital phonorecord delivery," in the parenthetical clause before the words "or a combination of them".

The new paragraph (a)(4) reads as follows:

§ 201.18 Notice of intention to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works.

(a) * * *

(4) For the purposes of this section, a digital phonorecord delivery shall be treated as a type of phonorecord configuration, and a digital phonorecord delivery shall be treated as a phonorecord manufactured, made, and distributed on the date the phonorecord is digitally transmitted.

* * * * *

3. Section 201.19 is amended as follows:

(a) By redesignating paragraphs (a)(5), (a)(6) and (a)(7) as (a)(6), (a)(8) and (a)(9) respectively;

(b) By adding a new paragraph (a)(5);

(c) By revising the first sentence of newly designated paragraph (a)(6);

(d) By adding new paragraphs (a)(7), (a)(10), and (a)(11);

(e) In paragraph (e)(3)(i)(A), by adding the phrase ", including digital phonorecord deliveries," after the phrase "The number of phonorecords";

(f) In paragraph (e)(3)(i)(B), by removing the word "or" after the fourth undesignated clause "Returned to the compulsory licensee for credit or exchange;" and adding two new clauses to the end of the section;

(g) By revising paragraph (e)(3)(ii)(D);

(h) By adding a new paragraph (e)(3)(ii)(E); and

(i) In paragraph (e)(4)(ii), by adding paragraphs (d) and (e) to Step 4.

The additions and revisions to § 201.19 read as follows:

§ 201.19 Royalties and statements of account under compulsory license for making and distributing phonorecords of nondramatic musical works.

(a) * * *

(5) For the purposes of this section, a digital phonorecord delivery shall be treated as a type of phonorecord configuration, and a digital phonorecord delivery shall be treated as a phonorecord, with the following clarifications:

(i) A digital phonorecord delivery shall be treated as a phonorecord made and distributed on the date the phonorecord is digitally transmitted; and

(ii) A digital phonorecord delivery shall be treated as having been *voluntarily distributed* and *relinquished from possession*, and a compulsory licensee shall be treated as having *permanently parted with possession* of a digital phonorecord delivery, on the date that the phonorecord is digitally transmitted.

(6) Except as provided in paragraph (a)(5), a phonorecord is considered *voluntarily distributed* if the compulsory licensee has voluntarily and permanently parted with possession of the phonorecord.

* * * * *

(7) To the extent that the terms *reserve*, *credit* and *return* appear in this section, such provisions shall not apply to digital phonorecord deliveries.

* * * * *

(10) An *incomplete transmission* is any digital transmission of a sound recording which, as determined by means within the sole control of the distributor, does not result in a specifically identifiable reproduction of the entire sound recording by or for any transmission recipient.

(11) A *retransmission* is a subsequent digital transmission of the same sound recording initially transmitted to an identified recipient for the purpose of completing the delivery of a complete and usable reproduction of that sound recording to that recipient.

* * * * *

(e) * * *
(3) * * *
(i) * * *
(B) * * *

Never delivered due to a failed transmission; or

Digitally retransmitted in order to complete a digital phonorecord delivery.

* * * * *

(ii) * * *

(D) Each phonorecord configuration involved (for example: single disk, long-playing disk, cartridge, cassette, reel-to-reel, digital phonorecord delivery, or a combination of them).

(E) The date of and a reason for each incomplete transmission.

* * * * *

(4) * * *
(ii) * * *
Step 4: * * *

(d) Incomplete transmissions. If, in the month covered by the Monthly Statement, there are any digital transmissions of a sound recording which do not result in specifically identifiable reproductions of the entire sound recording by or for any transmission recipient, as determined by means within the sole control of the distributor, the number of such phonorecords is subtracted from the Step 3 subtotal.

(e) Retransmitted digital phonorecords. If, in the month covered by the Monthly Statement, there are retransmissions of a digital phonorecord to a recipient who did not receive a complete and usable phonorecord during an initial transmission, and such transmissions are made for the sole purpose of delivering a complete and usable reproduction of the initially requested sound recording to that recipient, the number of such retransmitted digital phonorecords is subtracted from the Step 3 subtotal.

* * * * *

Dated: July 15, 1999.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 99–19458 Filed 7–29–99; 8:45 am]

BILLING CODE 1410–30–P

POSTAL SERVICE

39 CFR Parts 261, 262, 263, 264, 265, 266, and 267

Release of Information and Records Management

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule revises organizational names and titles contained in Postal Service regulations relating to policies for the release of information and records management. These names and titles changed as a result of agency restructuring. The revisions reflect to whom the public should address issues relating to the release of information and records management.

This rule also updates composition of the Postal Service's Data Integrity Board which oversees agency computer matching.

EFFECTIVE DATE: August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Susie Travers, Administration and FOIA, (202) 268–3362.

SUPPLEMENTARY INFORMATION: As a result of an agency restructuring, Postal Service regulations governing the release of information and records management contain outdated organizational names and titles. This rule revises those names and titles to show the current organization and officials responsible for release of information and records management functions.

List of Subjects

39 CFR Parts 261, 262, 263, and 264

Archives and records.

39 CFR Part 265

Freedom of information.

39 CFR Part 266

Privacy.

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39 CFR Part 267

Archives and records, Classified information.

For the reasons set out in the preamble, 39 CFR parts 261 through 267 are amended as set forth below.

PART 261—RECORDS AND INFORMATION MANAGEMENT

1. The authority citation for part 261 continues to read as follows:

Authority: 39 U.S.C. 401.

2. Section 261.4 is revised to read as follows:

§ 261.4 Responsibility.

(a) The manager, Administration and FOIA, under the Chief Financial Officer and Senior Vice President, administers the Postal Service release of information and privacy of information programs with the assistance of FOIA coordinators in the finance function of area and district offices.

(b) The manager, Corporate Accounting, under the Vice President, Finance, Controller, administers the Postal Service records maintenance and disposition program.

(c) Postal Service managers are responsible for administering records and information management policies and for complying with all handbooks, directives, and instructions in support of this policy.

PART 262—RECORDS AND INFORMATION MANAGEMENT DEFINITIONS

3. The authority citation for part 262 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552, 552a.

4. In § 262.2 paragraph (b) is revised and paragraph (d) is added to read as follows:

§ 262.2 Officials.

* * * * *

(b) *Manager, Administration and FOIA.* The official responsible for the issuance of policy on the protection of privacy and the release of Postal Service records with the power to authorize the disclosure of such records and to delegate or take appropriate action if that policy is not adhered to or if questions of interpretation or procedure arise.

* * * * *

(d) *Manager, Corporate Accounting.* The official responsible for the issuance of policy on the maintenance and disposition of Postal Service records and information, and to delegate or take appropriate action if such policy is not adhered to or if questions of interpretation or procedure arise.

§ 262.4 [Amended]

5. In Section 262.4 paragraph (a) is amended by removing the words "USPS Records Office" and adding, in their place, the words "office of Corporate Accounting" and paragraph (b) is amended by removing the words "Records Office" and adding "office of Corporate Accounting" in their place.

§ 262.5 [Amended]

6. Section 262.5(d)(2) is amended by removing the words "Records Office" and adding, in their place, the words "office of Administration and FOIA."

PART 263—RECORDS RETENTION AND DISPOSITION

7. The authority citation for part 263 continues to read as follows:

Authority: 39 U.S.C. 401.

§ 263.3 [Amended]

8. Section 263.3(a) is amended by removing the words "Records Office" and adding, in their place, the words "office of Corporate Accounting."

8a. Section 263.4 is removed and section 263.5 is redesignated as § 263.4.

§ 263.4 [Amended]

9. Newly redesignated § 263.4 is amended by removing the words "the Records Office" and adding, in their place, the words "Corporate Accounting."

10. Section 263.6 is redesignated as § 263.5 and revised to read as follows:

§ 263.5 Inquiries.

Inquiries regarding records maintenance and disposition should be directed to the Manager, Corporate Accounting, United States Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260–5240, or, by telephone, to the Records Specialist, (202) 268–4869.

PART 264—VITAL RECORDS

11. The authority citation for part 264 continues to read as follows:

Authority: 39 U.S.C. 401.

12. In § 264.3 paragraphs (a) and (b) are revised to read as follows:

§ 264.3 Responsibility.

(a) *Manager, Corporate Accounting.* The Manager, Corporate Accounting, is responsible for categorizing records as vital, and in conjunction with the Chief Postal Inspector/Emergency Coordinator shall establish and maintain the vital records program, and ensure compliance with supportive procedures.

(b) Chief Postal Inspector. As the Postal Service's Emergency Coordinator, the Chief Postal Inspector shall establish and maintain a program to ensure that vital records are available at predesignated off-site locations for use during a national emergency.

* * * * *

§ 264.4 [Amended]

13. Section 264.4 is amended by removing the words "USPS Records Office" and adding, in their place, the words "office of Corporate Accounting."

PART 265—RELEASE OF INFORMATION:

14. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 39 U.S.C. 401, 403, 410, 1001, 2601; 5 U.S.C. App. 3.

15. In § 265.3 paragraph (b) is revised to read as follows:

§ 265.3 Responsibility.

* * * * *

(b) *Freedom of Information/Privacy Acts Officer.* The USPS Freedom of Information/Privacy Acts Officer, under the Manager, Administration and FOIA, is responsible for the overall administration of this part, including the issuance of detailed instructions to custodians.

* * * * *

§ 265.4 [Amended]

16. Section 265.4 is amended by removing the words "Washington, DC 20260–5243, telephone (202) 268–2608" and adding, in their place, "Washington, DC 20260–5202, telephone (202) 268–2608."

§§ 265.6 and 265.9 [Amended]

17. In the following places, remove the words "Records Office" or "USPS Records Office" and add, in their place, the words "office of Administration and FOIA:"

(a) Section 265.6(b) introductory text;
(b) Section 265.9(b)(2)(ii); and
(c) Section 265.9(g)(4).

§ 265.7 [Amended]

18. Section 265.7(a)(2) is amended as follows:

(a) By removing the words "USPS Records Officer, USPS Freedom of Information/Privacy Acts Officer, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–5243, telephone (202) 268–2608" and adding, in their place, the words "USPS Freedom of Information/Privacy Acts Officer, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–5202, telephone (202) 268–2608;" and

(b) By removing the words "USPS Records Office is deemed" and adding, in their place, the words "office of Administration and FOIA is deemed."

§ 265.12 [Amended]

19. Section 265.12(b)(7) is amended by removing the words "Records Office, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–5243, telephone (202) 268–2608" and adding, in their place, the words "Freedom of Information/Privacy Acts Officer, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–5202, telephone (202) 268–2608."

PART 266—PRIVACY OF INFORMATION

20. The authority citation for part 266 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

21. In Section 266.3 paragraphs (a), (c), and (d)(2) are revised to read as follows:

§ 266.3 Responsibility.

(a) *Freedom of Information/Privacy Acts Officer.* The USPS Freedom of Information/Privacy Acts Officer, under the Manager, Administration and FOIA, will ensure Postal Service-wide compliance with this policy.

* * * * *

(c) Information System Executive. These managers are responsible for reporting to the office of Administration and FOIA the existence or proposed development of Privacy Act systems of records. They also must report any change that would alter the systems description as published in the **Federal Register**. They establish the relevancy of the information within those systems.

* * * * *

(d) * * *

(2) *Composition.* The Privacy Act requires that the senior official responsible for implementation of agency Privacy Act policy and the Inspector General serve on the Board. The Manager, Administration and FOIA, as administrator of Postal Service Privacy Act policy, serves as Secretary of the Board and performs the administrative functions of the Board. The Board is composed of these and other members designated by the Postmaster General, as follows:

(i) Chief Financial Officer and Senior Vice President (Chairman).
(ii) Chief Postal Inspector.
(iii) Inspector General.
(iv) Vice President, Human Resources.
(v) Senior Vice President, General Counsel.
(vi) Manager, Administration and FOIA.

§ 266.4 [Amended]

22. In Section 266.4 paragraph (b)(6)(i) is amended by removing the words "USPS Records Officer" and adding, in their place, the words "Freedom of Information/Privacy Acts Officer," and paragraphs (b)(6)(iii) and (iv) are amended by removing "Records Officer" and adding "Freedom of Information/Privacy Acts Officer" in their place.

§ 266.5 [Amended]

23. Section 266.5(d) is amended by removing the words "Records Office" and adding, in their place, the words "office of Administration and FOIA."

§ 266.6 [Amended]

24. Section 266.6(a)(1) is amended by removing the words "Washington, DC 20260–5243, telephone (202) 268–2608" and adding, in their place, the words "Washington, DC 20260–5202, telephone (202) 268–2608."

§ 266.7 [Amended]

25. Section 266.7 is amended by removing, in paragraph (a)(4), the words "Records Office" and adding, in their place, the words "office of Administration and FOIA."

§ 266.10 [Amended]

26. Section 266.10(b) is amended by removing the words "Washington, DC 20260–5243" and adding, in their place, the words "Washington, DC 20260–5202."

PART 267—PROTECTION OF INFORMATION

27. The authority citation for part 267 continues to read as follows:

Authority: 39 U.S.C. 401; Pub. L. 93–579, 88 Stat. 1896.

§ 267.5 [Amended]

28. Section 267.5(e)(3)(i) is amended by removing the words "Manager, Payroll Accounting and Records, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–5243" and adding, in their place, the words "Manager, Administration and FOIA, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–5202."

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–19465 Filed 7–29–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket# WA–1–0001; FRL–6408–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Washington

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) approves the sections 111(d)/129 State Plan submitted by the State of Washington, Department of Ecology (WADOE) on January 4, 1999, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing large Municipal Waste Combustors (MWCs) with capacity to combust more than 250 tons/day of municipal solid waste (MSW). *See* 40 CFR part 60, subpart Cb.

DATES: This action is effective on September 28,1999 unless significant, material, and adverse comments are received by August 30, 1999. If significant, material, and adverse comments are received by the above date, this direct final rule will be withdrawn, and timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Catherine Woo, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docl.et and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of materials related to this action may be examined during normal business hours. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit. These documents can be viewed at: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and at Washington State Department of Ecology, P.O. Box 47600, Olympia, Washington 98504–7600.

FOR FURTHER INFORMATION CONTACT: Catherine Woo, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101,(206) 553–1814.

SUPPLEMENTARY INFORMATION:

I. What action is being taken by EPA today?

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II. Why do we need to regulate MWCs emissions?
III. What is a State Plan?
IV. What does the Washington State Plan contain?
V. Is my MWC subject to these regulations?
VI. What steps do I need to take?
VII. Administrative Requirements.

I. What Action Is Being Taken by the EPA Today?

We are approving the Washington State Plan, as submitted on January 4, 1999, for the control of air emissions from large MWC's, except for those large MWCs located in Indian Country. When we developed our New Source Performance Standards (NSPS) for large MWC's, we also developed an EG to control air emissions from older, existing MWC's. See 60 FR 65387 (December 19, 1995), and as subsequently amended, 62 FR 45116 and 45124 (August 25, 1997). The WDOE developed a State Plan, as required by sections 111(d)/129 of the Clean Air Act (the Act), 42 U.S.C. 4211(d)/ 4229, to adopt the EG into their body of regulations, and we are acting today to approve it.

This approval action will supercede the requirements of the EPA's Federal Plan, developed for sources in States which did not have an approved State Plan by December 19, 1996. In the review of the State of Washington's Plan, EPA determined that the requirements were at least as protective as the emission guidelines as well as the requirements promulgated into 40 CFR part 60, subpart FFF, which is the Federal Plan for Large Municipal Waste Combustors. As of the effective date of this action, September 28, 1999, the Federal Plan will no longer apply to the sources in the State of Washington. Sources must comply with the requirements found within this State Plan.

We are publishing this action without prior proposal because we view this as a noncontroversial approval and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision, should significant, material and adverse comments be filed. This action is effective September 28, 1999, unless we received any significant, material or adverse comments by August 30, 1999. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

II. Why Do We Need To Regulate MWC Emissions?

When burned, municipal waste emits various air pollutants, including dioxin/furan, sulfur dioxide, hydrogen chloride and toxic metals (lead, cadmium and mercury.) Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through our food sources. Serious developmental effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury.

Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

For a more detailed background related to the hazards of exposure to the air emissions from large MWC's, contact the EPA's Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, 27711.

III. What Is a State Plan?

Sections 111(d)/129 of the Act require that pollutants controlled under the NSPS must also be controlled at older, existing sources in the same source categories. Section 129 of the Act provides additional requirements for incineration sources. Once an NSPS is promulgated for a specific source category, we then publish an EG applicable to the control of the same pollutants from the existing (designated) facilities. States with designated facilities must then develop a State Plan to adopt the EG into their body of regulations. States must also include in this State Plan other elements, such as emission inventories, legal authority, and public participation documentation, and demonstration of the ability to enforce the State Plan.

IV. What Does the Washington State Plan Contain?

The WADOE submitted regulations, as promulgated by the Spokane County Air Pollution Control Agency (SCAPCA) and adopted into State regulations on June 4, 1999. The WADOE adopted and submitted local regulations, because there is only one identified existing source for this specific category. This designated source, located in Spokane, Washington, is directly regulated by the local authority, SCAPCA. When the State adopted the local regulation, these requirements also became State-enforceable. Any additional existing designated sources identified at a later date must also comply with the requirements of the SCAPCA rule, as adopted by the State, unless the State revises its regulation and resubmits its revised State Plan to the EPA for approval. The Washington State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan;
2. SCAPCA rule, Regulation I, section 6.17 (Amending WSR 98–01–037), as adopted by reference by WADOE;
3. An inventory of the known, designated facility, along with estimates of their toxic air emissions;
4. Emission limits that are as protective as the EG;
5. A compliance date 1 year from the date of SCAPCA's rule effective date;
6. Testing, monitoring, reporting and recordkeeping requirements for the designated facility;
7. Records from the public hearing; and
8. Provisions for progress report to EPA.

The Washington State Plan was reviewed for approval against the following criteria: 40 CFR 60.23 through 60.26, *subpart B—Adoption and Submittal of State Plans for Designated Facilities*; and, 40 CFR 60.30b through 60.39b, *subpart Cb—Emission Guidelines and Compliance Times for Municipal Waste Combustors*. Based upon our review of the submission, EPA has determined that the Washington State Plan for existing large MWC's satisfies all the requirements for section 111(d) of the Clean Air Act approval. Accordingly, we are approving this State Plan. A detailed discussion of our evaluation of the Washington State Plan is included in our technical support document, located in the official file for this action.

V. Is My MWC Subject to These Regulations?

The EG for existing MWCs affect any MWC built on or before September 20, 1994 and which combust at least 250 tons of municipal solid waste a day. If your facility meets this criterion, you are subject to these regulations.

VI. What Steps Do I Need To Take?

If you are a designated source, as defined under 40 CFR part 60, subpart Cb, you must comply with the all the requirements as adopted under SCAPCA regulations, section 6.17. In general, you must comply with all the requirements of regulations listed within the State Plan within one year from the date we approve it; however, there are provisions to extend your compliance date. See 40 CFR 60.39b.

VII. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable rules on any of these entities. This action does not create any new requirements but simply approves requirements that the State is already imposing. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Pursuant to section 605(b) of the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This Federal action approves pre-existing requirements under federal, State or local law, and imposes no new requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted on by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

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of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective September 28, 1999.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 28, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Municipal Waste Combustors, Reporting and recordkeeping requirements.

Dated: July 19, 1999.

Randall F. Smith,

Acting Regional Administrator, Region 10.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

40 CFR Part 62 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart WW—Washington

2. Sections 62.11860 and 62.11870 are added, along with undesignated centerheads, to subpart WW, reading as follows:

Plans for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

§ 62.11860 Identification of Plan.

(a) *Identification of Plan.* Washington State Designated Facility Plan (Section 111(d) Plan).

(b) The plan was officially submitted as follows:

(1) Control of metals, acid gases, organic compounds and nitrogen oxide emissions from existing municipal waste combustors was submitted by State of Washington Department of Ecology on January 4, 1999.

(2) RESERVED.

(c) *Designated Facilities.* The plan applies to existing facilities in the following category of sources:

(1) Existing municipal waste combustors.

(2) [RESERVED]

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustors With the Capacity to Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.11870 Identification of sources.

The plan applies to existing facilities at the following municipal waste combustor sites:

(1) Spokane Regional Solid Waste System, Spokane, WA.

(2) [RESERVED]

[FR Doc. 99–19431 Filed 7–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300899; FRL–6093–3]

RIN 2070–AB78

Propiconazole; Extension of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for combined residues of the fungicide propiconazole and its metabolites in or on blueberries, cranberries and raspberries at 1.0 part per million (ppm) for an additional 1–year period. The tolerance for cranberries will expire and is revoked on July 31, 2000; the tolerances for blueberries and raspberries will expire and are revoked on December 31, 2000. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on blueberries, cranberries and raspberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective July 30, 1999. Objections and requests for hearings must be received by EPA, on or before September 28, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300899], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300899], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300899]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 271, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9362, schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of April 11, 1997 (62 FR 17710) (FRL–5600–5), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the combined residues of propiconazole and its metabolites in or on cranberries at 41.0 ppm, with an expiration date of July 31, 1998. The tolerance level was corrected to be 1.0 ppm in the **Federal Register** of May 2, 1997 (62 FR 24045) (FRL–5714–5). EPA extended the expiration date of this tolerance to July 31, 1999, in a **Federal Register** notice published April 20, 1998 (63 FR 19408) (FRL–5783–5). EPA also issued a final rule, published in the **Federal Register** of January 20, 1999 (64 FR 2995) (FRL–6049–8), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170) it established time-limited tolerances for the combined residues of propiconazole and its metabolites in or on blueberries and raspberries at 1.0 ppm, with an expiration date of December 31, 1999. EPA established these tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received requests to extend the use of propiconazole on blueberries and cranberries for this year's growing season due to the continued emergency situation facing blueberry and cranberry growers due to the cancellation of the fungicide triforine, which was the only product registered to control cottonball disease in cranberries or mummy berry disease in blueberries. Raspberry growers in Oregon and Washington requested the use of propiconazole be extended due to the continued unfavorable weather conditions which result in severe disease pressure from yellow rust. After having reviewed the submissions, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the uses of propiconazole on blueberries for control of mummy berry disease, on cranberries for control of cottonball disease, and on raspberries for control of yellow rust.

EPA assessed the potential risks presented by residues of propiconazole in or on blueberries, cranberries and raspberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rules of April 11, 1997 (62 FR 17710), and January 20, 1999 (64 FR 2995). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 1–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although the tolerance on cranberries will expire and is revoked on July 31, 2000, and the tolerances on blueberries and raspberries will expire and are revoked on December 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on blueberries, cranberries and raspberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by September 28, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential

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may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300899] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 20, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.434 [Amended]

2. In § 180.434, by amending the table in paragraph (b) by revising the date for "Cranberries" from "7/31/99" to read "7/31/00" and by revising the date for "Blueberries" and "Raspberries" from "12/31/99" to read "12/31/00".

[FR Doc. 99–19596 Filed 7–29–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300881; FRL 6087–2]

RIN 2070–AB78

Diuron; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of diuron in or on catfish. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide in catfish ponds. This regulation establishes a maximum permissible level for residues of diuron in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on June 30, 2001.

DATES: This regulation is effective July 30, 1999. Objections and requests for hearings must be received by EPA on or before September 28, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300881], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300881], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300881]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 286, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–9358; e-mail: deegan.dave@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for combined residues of the herbicide diuron and its metabolites, convertible to 3,4-dichloroaniline in or on catfish at 2.0 parts per million (ppm). This tolerance will expire and is revoked on June 30, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA)(Public Law 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

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Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Diuron on Catfish and FFDCA Tolerances

EPA has authorized, under FIFRA section 18, the use of diuron in and on catfish ponds for control of algae in Mississippi, Louisiana, and Arkansas. After having reviewed the submissions, EPA concurs that emergency conditions exist in these States. The three applicants requested use of diuron in catfish ponds to control unwanted growth of blue-green algae. The rapid spread of the blue-green algae makes it a secondary food source—albeit undesirable—for the catfish. If algae is present in the ponds, the catfish consume large quantities of it, resulting in an undesirable flavor in the catfish fillet, when the fish are harvested and eaten. Fish with this off flavor are less marketable for producers.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of diuron in or on catfish. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on June 30, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on catfish after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether diuron meets EPA's registration requirements for use on catfish or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of diuron by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Mississippi, Louisiana, and Arkansas to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for diuron, contact the Agency's Registration Division at the address provided under the "ADDRESSES" section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of diuron and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of diuron on catfish at 2.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by diuron are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity.* Acute reference dose (RfD) 0.16 milligram/kilogram/day (mg/kg/day). For acute dietary risk assessment, EPA has identified the no observed adverse effect level (NOAEL) of 16.0 mg/kg/day, based on decreased body weight (beginning at gestation day 9) and food consumption (during gestation days 6–10) at the lowest observed adverse effect level (LOAEL) of 80 mg/kg/day, from the developmental study in the rat. EPA's risk assessment has evaluated acute dietary risk to all population subgroups.

2. *Chronic toxicity.* EPA has established the RfD for diuron at 0.003 mg/kg/day. This RfD is based on a 2–year chronic feeding/oncogenicity study in the rat with a LOAEL of 1.02 mg/kg/day and an uncertainty factor (UF) of 300 (additional UF of 3 for the use of a LOAEL) based on decreased erythrocyte count in females, increased hemosiderin in the spleen, increased spleen weight, bone marrow activation, increased hematopoietic marrow, decreased fat marrow (% surface area of fat marrow in bone marrow) and thickened urinary bladder wall in males.

3. *Carcinogenicity.* Diuron has been classified as a "known/likely" human carcinogen by all routes, based on urinary bladder carcinomas in both sexes of the Wistar rat, kidney carcinomas in the male rat (a rare tumor), and mammary gland carcinomas in the female NMRI mouse. A Q_1^*(mg/kg/day)$^{-1}$ of 1.91×10^{-2} in human equivalents has been calculated based on the male rat urinary bladder carcinomas.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.106) for the combined residues of diuron (3-(3,4-dichlorophenyl)-1,1-dimethylurea), in or on a variety of raw agricultural commodities at levels ranging from 0.1 ppm in nuts and peaches to 7 ppm in bermuda grass. The residues of concern for diuron in plant commodities are the parent compound and all metabolites convertible to 3,4-dichloroaniline (DCA). Although the Code of Federal Regulations (CFR) only mentions diuron in the tolerance expression, the analytical methods determine all metabolites convertible to 3,4-dichloroaniline. The parent compound usually comprises only a small portion of the total residue or of the DCA-containing residues. For both the acute and chronic dietary risk assessments it was assumed that total residues of the closely related herbicides, linuron and propanil will contribute to the toxicological effects of concern (with the acute dietary analysis, there were two exceptions: residues of linuron on potatoes and soybeans where metabolism studies were examined to determine which metabolites are common to those from diuron). It was also assumed that the tolerances for linuron and propanil represent total residues convertible to 3,4-dichloroaniline, although petition files and residue data were not examined for linuron to confirm this. The propanil residue studies which were reviewed for chronic anticipated residues did involve determination of total base-released 3,4-dichloroaniline. Risk assessments were conducted by EPA to assess dietary exposures and risks from diuron as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. For this risk assessment of the section 18 requests to use diuron, EPA has identified an acute RfD of 0.16 mg/kg/day. In conducting this acute dietary risk analysis, EPA used partially refined, i.e., percent crop treated data. In those cases where data indicated <1% crop treated, a value of 1% was used for the analysis. For those crops where information was not available to EPA, a default value of 100% crop treated was used for this risk assessment, EPA assumed that 100% of catfish would contain residues of diuron. At the time the anticipated residues (ARs) were developed for the acute dietary risk assessment, percent crop treated data were not available for linuron and propanil; therefore, it was assumed that 100% of the crop was treated for commodities having tolerances for those herbicides. The Novigen DEEM (Dietary Exposure Evaluation Model) system was used for the acute dietary exposure analysis, utilizing mixtures of tolerances/anticipated residues and percent crop treated data for diuron, linuron and propanil. With respect to fruit juices, the default concentration factors in the DEEM run were used except for grape juice and pineapple juice.

The population subgroup with the highest acute dietary exposure (food only) is non-nursing infants. With a high-end anticipated residue contribution (ARC) exposure estimate of 0.03810 mg/kg/day, it was estimated that only 24% of the acute RfD population adjusted dose (PAD) would be utilized for this population subgroup. This acute dietary risk estimate (food only) should be viewed as a partially refined risk estimate (the diuron assessment was highly refined); further refinement using additional anticipated residue values and percent crop treated data for linuron and propanil in conjunction with another Monte Carlo analysis would result in a lower acute dietary exposure estimate. To arrive at this conclusion, EPA determined that for this tolerance action only, the FQPA Safety Factor be removed (1x) in assessing the risk posed by diuron (see aggregate risk section for infants and children). Therefore, the acute RfD is identical to the acute PAD.

ii. *Chronic exposure and risk.* For this risk assessment, EPA has identified a chronic RfD of 0.003 mg/kg/day. For this risk assessment, EPA has utilized the Novigen DEEM system for the chronic dietary exposure analysis. In conducting the chronic dietary risk analysis, EPA used highly refined data. As stated previously, EPA included percent crop treated data for diuron (see acute risk section, above). Percent crop treated data for linuron uses were taken from the dietary risk evaluation system (DRES) run conducted in 1995 and propanil uses (1995–98) were also utilized by EPA in this risk assessment. For those crops where EPA did not have information, a default value of 100% crop treated was used. Anticipated residues of diuron have been developed previously for numerous commodities. These anticipated residues were used with the following additions: 0.03 ppm for alfalfa sprouts (1% crop treated) and 0.92 ppm for fish-finfish/freshwater (76% crop treated). For the purposes of the present section 18 use, an updated analysis of linuron residues in food was not conducted; therefore, the most recent percent crop treated data for linuron (1995–97) was not used. Chronic exposures from linuron for various populations were taken from the DRES analysis conducted in 1995 in support of the increase in the asparagus tolerance. That analysis used anticipated residues (mean field trial values) and percent crop treated available at that time for numerous crops. For propanil, the chronic anticipated residues and percent crop treated have also been calculated by EPA. The chronic dietary risk analysis includes monitoring data for residues in drinking water. Therefore, in this document EPA summarizes risk of exposure for both food and water in the aggregate risk section.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of crop treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

As detailed above, in conducting both the acute and chronic dietary risk analyses, EPA used PCT data. In order to conduct such a refined analysis, EPA utilized the Novigen DEEM system for the dietary exposure analysis, with which EPA calculated mixtures of tolerances/anticipated residues and percent crop treated data for diuron, linuron uses taken from the DRES run conducted in 1995, and propanil uses (1995–98). With respect to fruit juices, the default concentration factors in the DEEM run were used except for grape juice and pineapple juice. Processing studies indicated that residues did not concentrate in the latter two juices. In those cases where data indicated <1% crop treated, a value of 1% was used for the analysis. For those crops where information was not available to EPA, a default value of 100% crop treated was used. At the time the anticipated residues were developed for the acute dietary risk assessment, percent crop treated data were not available for linuron and propanil; therefore, it was assumed that 100% of the crop was treated for commodities having tolerances for those herbicides.

Anticipated residues of diuron have been developed previously for numerous commodities. These anticipated residues were used with the following additions: 0.03 ppm for alfalfa sprouts (1% crop treated) and 0.92 ppm for fish-finfish/freshwater (76% crop

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treated). For the purposes of the present action, an updated analysis of linuron residues in food was not conducted; therefore, the most recent percent crop treated data for linuron (1995–97) was not used. Chronic exposures from linuron for various populations were taken from EPA's Dietary Risk Evaluation System (DRES) analysis conducted in 1995 in support of the increase in the asparagus tolerance. That analysis used anticipated residues (mean field trial values) and percent crop treated available at that time for numerous crops. For propanil, the chronic anticipated residues and percent crop treated have also been calculated by EPA. The chronic dietary risk analysis includes monitoring data for residues in drinking water.

The Agency believes that the three conditions, discussed in section 408(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which diuron may be applied in a particular area.

2. *From drinking water.* EPA conducted an analysis of the contribution of residues of diuron from drinking water based upon monitoring data for water with emphasis on the US Geological Survey (USGS) National Water Quality Assessment Program (NAWQA) surface water sampling in central California. The NAWQA program analyzed 3,417 samples of surface water for diuron throughout the United States. Approximately 13% of the samples (429) contained detectable diuron residues (only parent compound analyzed) ranging from 0.001 to 14 parts per billion (ppb). The average value for the detectable samples was 0.8 ppb. The 95th percentile value for the surface water samples was 0.2 ppb. For ground water there were 2,726 samples analyzed and about 2% (51) contained diuron residues with values ranging from 0.002 to 2 ppb.

However, EPA's analysis has concluded that the above data may underestimate or under represent concentrations of diuron to be expected in surface water, due to low recovery rates and incomplete sampling in some areas. Furthermore, estimates for diuron degradates in drinking water could not be provided due to the small amount of data and the data not being representative of drinking water. In light of these factors, EPA has concluded that the highest value of 14 ppb of all surface water samples having detectable residues should be used for acute risk assessment and that the average value of 0.8 ppb of all the surface water samples having detectable residues should be used for chronic risk assessment. By using these upper end values of diuron parent in surface water as the estimates, at least some compensation can be made for the poor recoveries of the analytical method and the lack of sufficient data to predict levels of diuron degradates, many of which are likely to be formed by linuron and propanil as well. For the acute dietary aggregate risk analysis, 14 ppb was used as a value for comparison in calculating a drinking water level of comparison (DWLOC). When the acute DEEM run was conducted, it was determined at that point that the percentage of the acute RfD (PAD) taken up by residue exposure in food only was sufficiently low such that a DWLOC could be calculated in lieu of conducting a probabilistic analysis with inclusion of water. However, for the chronic dietary aggregate risk analysis, 0.8 ppb was incorporated into the DEEM assessment as a value taken from monitoring data.

The above risk assessment is sufficient for the purposes of the related section 18 emergency exemption authorized by the Agency. However, EPA expects that for it to take action on a registration and establishment of a permanent tolerance for the catfish pond use, a more thorough analysis would be undertaken to determine which degradates of diuron, linuron and propanil would be included in drinking water residue estimates.

3. *From non-dietary exposure.* Diuron is currently not registered for use on any residential sites.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Diuron is a member of the phenylurea class of pesticides. Other members of this class include fluometuron, fenuron-TCA, linuron, siduron and tebuthiuron. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical-specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include those that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Diuron shares a common metabolite with linuron and propanil. The non-cancer dietary risk assessments take this into consideration. For the purposes of this section 18, residues from linuron and propanil were not taken into consideration for the carcinogenicity risk assessment because the target organs (i.e., the tumors) for diuron versus linuron and propanil are of different origins and because metabolism and mechanistic data indicate that the mechanism of action for tumor induction are different for diuron when compared to linuron and propanil.

The residues of concern for diuron are the parent compound and all metabolites convertible to 3,4-dichloroaniline (DCA). There are two closely related herbicides which are also metabolized to DCA and/or other residues convertible to DCA (linuron and propanil). Therefore, it was assumed that residues from the use of these two pesticides will contribute to the toxicological effects of concern for the dietary risk analyses (for further explantion, see exposure discussion in section III. C. below). The toxicological data bases for these two pesticides were examined to see if there are similar target organs. For the acute dietary risk analysis, the toxicological endpoint, decreased bodyweight and food consumption, is not specific enough for comparison. Nevertheless, it was still assumed that residues from all three herbicides will contribute to the same acute effects. For chronic exposure, these three pesticides share a similar toxicological endpoint: hematological effects, particularly methemoglobinemia. These effects were observed in chronic feeding studies, in either the rat, dog or mouse. The target organs for carcinogenicity may be similar for linuron and propanil, but not for diuron. Diuron induces urinary bladder carcinomas in rats (both sexes) and mammary gland carcinomas in female mice. In addition, an increase in the incidence of a rare kidney tumor was observed in male rats. Linuron induces testicular interstitial cell adenomas in rats and hepatocellular adenomas in mice. Available mechanistic and metabolism data indicate that linuron and diuron may be inducing tumors through different mechanisms of action. Propanil has not been reviewed by the Office of Pesticide Programs Cancer Assessment Review Committee (CARC). However, two new studies have been received which indicate that it may induce malignant lymphomas of the spleen in female mice, testicular interstitial cell tumors in male rats and hepatocellular adenomas in female rats, the latter at a dose level which probably exceeds the maximum tolerated dose. Therefore, since the target organs for tumor induction for diuron are different than those for linuron and propanil, and data are available which indicate that the mechanism of action may be different for diuron, for the purpose of this tolerance action, the estimated dietary carcinogenic risk will not include residues from linuron and propanil. However, for any future permanent tolerance requests, a detailed analysis of any potential contribution of residues from linuron and propanil to the dietary carcinogenic risk will be conducted, including examination of available toxicological and mechanistic data.

EPA does not have, at this time, available data to determine whether diuron has a common mechanism of toxicity with any other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, therefore, EPA has not assumed that diuron has a common mechanism of toxicity with substances other than linuron and propanil. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The acute dietary risk analysis estimated that the acute dietary exposure (food only) for the U.S. Population will utilize 17% of the acute RfD, which, because there is no FQPA 10x Safety Factor added to this risk assessment, is identical to the acute population adjusted dose (PAD). All other adult population subgroups have acute risk estimates (food only) below that of the U.S. population. As stated previously, the acute dietary risk analysis used partially refined ARC exposure estimates and percent crop treated values. The analysis included total residues convertible to the diuron metabolite, DCA from food. Residue contributions from diuron, linuron and propanil uses were taken into account. For DCA-convertible residues from diuron, linuron and propanil, it was determined that an acute dietary exposure (food plus water) of 100% or less of the acute RfD (PAD) is acceptable to protect the safety of all population subgroups. The estimated exposures at the 99.9th percentile for all population subgroups utilize less than 100% of the acute RfD (PAD).

Monitoring data were available for drinking water for the acute aggregate risk estimate. However, since the percentage of the acute RfD (PAD) taken up by exposure to DCA residues from food only was sufficiently low, it was decided that a DWLOC would be calculated. Therefore, for this tolerance, the estimated maximum concentration of 14 ppb from the monitoring data was used for comparison to the back calculated human health DWLOC for the acute endpoint. The DWLOCs for the specific population subgroups are calculated as follows:

The maximum water exposure (acute) (mg/kg/day) = acute PAD - food exposure (mg/kg/day) from acute DEEM run.

The DWLOC (μg/L) = max. water exposure (mg/kg/day) x body wt (kg) ÷ (10^{-3} mg/μg) x water consumption (L/day).

EPA used the following default body weights in these calculations: General U.S. population, 70 kg; males (13+ years old), 70 kg; females (13+ years old), 60 kg; and other adult populations, 70 kg.

EPA's default daily drinking rates are 2L/day for adults.

The DWLOCs are between 4,300 and 5,000 ppb for acute dietary risk. Based on a comparison of the calculated DWLOCs and the estimated exposure to diuron in drinking water (14 ppb), EPA does not expect the aggregate exposure to exceed 100% of the Acute RfD for any of the U.S. population. The DWLOCs are at least 100 times higher than the maximum value observed in monitoring studies. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population from acute aggregate exposure to diuron residues.

2. *Chronic risk.* EPA determined that for this tolerance, the FQPA Safety Factor can be removed (1x) in assessing the risk posed by diuron. Therefore, because there is not a FQPA 10x Safety Factor added to this risk assessment, the chronic RfD is identical to the chronic PAD. EPA has calculated that chronic dietary exposure to diuron alone from food and water will utilize 4.7% of the chronic RfD (PAD) for the U.S. population. When residues from linuron and propanil are included, the dietary exposure to residues convertible to the metabolite (DCA) from food and water will utilize 12% of the chronic RfD (PAD) for the U.S. population and 15% of the chronic RfD (PAD) for the non-hispanic, non-white, non-black U.S. population.

As stated previously, the chronic dietary risk analysis used highly refined

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ARC exposure estimates and percent crop treated values. EPA generally has no concern for exposures below 100% of the chronic RfD (PAD) because the chronic RfD (PAD) represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. There are no registered residential uses for diuron. Therefore, EPA concludes that there is a reasonable certainty that no harm to adults will result from chronic aggregate exposure to DCA-convertible residues from diuron, linuron and propanil.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus non-dietary, non-occupational exposures. Since there are no registered uses of diuron that would result in such exposures, short- and intermediate-term aggregate risk estimates were not conducted.

. 4. *Aggregate cancer risk for U.S. population.* The dietary cancer risk for the U.S. population is calculated by multiplying the Q_1* by the dietary exposure value. The Q_1*(mg/kg/day)$^{-1}$ for diuron is 1.91×10^{-2}. The dietary exposure value for registered food crops for the U.S. population is 0.000092 mg/kg/day. This highly refined value does not include either the drinking water exposure value or the catfish exposure that was included in the exposure values described above in the discussion on chronic aggregate risk. Multiplying the Q_1* by the dietary exposure value for the U.S. population, the cancer risk for the U.S. population is 1.76×10^{-6} for all registered foods. Adding in calculated risks from catfish and the average monitoring value of 0.8 ppb diuron parent in all drinking water, the total estimation of cancer risk for the U.S. population is 2.71×10^{-6}. This value does not include contributions from linuron and propanil metabolites because, as explained in the toxicological endpoints section, the tumor target organs are different for diuron when compared to linuron and propanil and because mechanistic and metabolism data indicate that diuron may be inducing tumors through a different mechanism of action. Metabolites in water are also not included; however, EFED's upper end value of diuron parent in surface water partially compensates for not including metabolites in water.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to diuron residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children— i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of diuron, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies—Rats.* In the developmental study in rats, the maternal (systemic) NOAEL was 16 mg/kg/day, based on reduction in body weight and food consumption at the LOAEL of 80 mg/kg/day. The developmental (fetal) NOAEL was 80 mg/kg/day, based on increases in delayed ossification of vertebrae and sternebrae as well as decreased fetal weights at the LOAEL of 400 mg/kg/day.

Rabbits. In the developmental toxicity study in rabbits, the maternal (systemic) NOAEL was 10 mg/kg/day, based on decreased body weight and food comsumption at the LOAEL of 50 mg/kg/day. The developmental (pup) NOAEL was 50 mg/kg/day, the highest dose tested. There were no developmental effects.

iii. *Reproductive toxicity study—Rats.* In the 2–generation reproductive toxicity study in rats, the parental (systemic) NOAEL was 16.9 (males) and 20.3 (females) mg/kg/day, based on decreased body weight, body weight gain and food consumption in both sexes at the LOAEL of 120 (males) and 144 (females) mg/kg/day. The developmental (pup) NOAEL was 20.3 mg/kg/day, based on decreased pup body weight during the lactation period for both sexes and generations at the LOAEL of 144 mg/kg/day. The reproductive NOAEL was 120 (males) and 144 (females) mg/kg/day, the highest dose tested. There were no reproductive effects.

iv. *Pre- and postnatal sensitivity.* The toxicological data base for evaluating pre- and postnatal toxicity for diuron is complete with respect to current data requirements. Based on the developmental and reproductive toxicity studies discussed above for diuron, there does not appear to be an extra sensitivity for pre- or postnatal effects. EPA has concluded that the FQPA Safety Factor can be removed (1x) in assessing the risk posed by this chemical. The decision applies only to this tolerance action.

v. *Conclusion.* There is a complete toxicity data base for diuron and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* The acute dietary risk analysis using partially refined data estimated that the acute dietary exposure (food only) for the population subgroup, non-nursing infants will utilize 24% of the acute RfD (PAD). All other infant and children population subgroups have acute risk estimates (food only) below that of non-nursing infants (see discussion on residue contributions in the Acute Aggregate Risk section for the U.S. population). For DCA-convertible residues from diuron, linuron and propanil, it was determined that an acute dietary exposure (food plus water) of 100% or less of the acute RfD (PAD) is acceptable to protect the safety of all infant and children population subgroups. The estimated exposures at the 99.9th percentile for all infant and children population subgroups utilize less than 100% of the Acute RfD, which, because there is no FQPA 10x Safety Factor, is identical to the acute PAD.

As stated in the aggregate risk section for the U.S. population, for purposes of risk assessment, the estimated maximum concentration of 14 ppb from the monitoring data will be used for comparison to the back-calculated human health DWLOC for the acute endpoint. For the DWLOC calculations, the EPA default body weights are:

Females (13+ years old), 60 kg and all infants/children, 10 kg.

EPA has used daily drinking rates of 2L/day for adults and 1L/day for children.

The DWLOCs are between 1,200 and 4,300 ppb for acute dietary risk. Based on a comparison of the calculated DWLOCs and the estimated exposure to diuron in drinking water (14 ppb), EPA does not expect the aggregate exposure to exceed 100% of the Acute RfD for either infants or children. The DWLOCs are approximately 100 times higher than the maximum value observed in monitoring studies. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to either infants or children from acute aggregate exposure to diuron residues.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to diuron from food will utilize 28% of the chronic RfD for non-nursing infants, which is the highest exposed population subgroup. All other infant and children population subgroups have lower chronic dietary exposure. EPA generally has no concern for exposures below 100% of the chronic RfD (PAD) because the chronic RfD (PAD) represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. There are no registered residential uses for diuron. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from chronic aggregate exposure to DCA residues from diuron, linuron and propanil. Despite the potential for exposure to diuron in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD/PAD.

4. *Short- or intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus non-dietary, non-occupational exposures. Since there are no registered uses of diuron which would result in such exposures, short- and intermediate- term aggregate risk estimates were not conducted.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to diuron residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in plants is adequately understood. The parent compound usually comprises only a small portion of the total residue. Significant residues formed by demethylation include dichlorophenylmethylurea (DCPMU) and dichlorophenylurea (DCPU). Although tolerances in 40 CFR 180.106 are expressed simply as "residues of the herbicide diuron," as part of the reregistration process EPA has noted that the residue to be regulated in plants is diuron and its related compounds convertible to 3,4-dichloroaniline as determined by the enforcement and data collection methods. The tolerance expression should be revised in this manner when reregistration eligibility decisions are made for diuron. For the purposes of the current action, the tolerance will be based on the combined residues of diuron and its metabolites convertible to 3,4-dichloroaniline.

EPA addressed the residues of concern in livestock commodities. While DCPMU and DCPU are also formed in livestock, five hydroxylated metabolites are found that are not observed in plants. EPA concluded these residues are not of concern in livestock tissues and eggs as the DCA method determined 80% or more of the total radioactive residue in these commodities. In milk the DCA method recovered only 10% of the TRR and EPA concluded that while the remaining 90% of the residue need not be quantified using a different method, the diuron residues observed in milk (by conversion to DCA) in the feeding study will be multiplied by 10 for purposes of risk assessment. Although livestock are not directly involved in this tolerance action, a tolerance is being established for residues in catfish. For the purposes of this tolerance, the residue of concern in catfish will be considered the same as in plants and livestock tissues (i.e., diuron and it metabolites convertible to DCA).

B. Analytical Enforcement Methodology

Adequate enforcement methodology (example - gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

Residue data were provided for four different application schemes to catfish ponds. In all cases, the application rate or concentration (0.01 ppm) in the water was the same as that authorized in the section 18 exemptions. In three ponds, the treatments were made every 5 days (versus proposed 7–day interval) with the total number of applications being 7, 13 or 19 (for total treatment periods of 30, 60 or 90 days). The maximum DCA-containing residues in catfish fillets for the three treatment patterns were 0.90, 1.76 and 1.52 ppm, respectively. The values apparently reflect averages of triplicate analyses. The highest residue from an individual analysis is 1.88 ppm. The fourth pond (described as an efficacy study) more closely resembled the proposed emergency use in that the 0.01 ppm water treatments were made every 7 days, although more applications were made (17 over 112 days versus maximum of 9 requested in the section 18). Fillets were collected after the final treatment and found to contain 0.59–1.16 ppm total DCA-containing residues. Based on these data, EPA concludes that a 2.0 ppm time-limited tolerance should be established for residues of diuron and its metabolites convertible to 3,4-dichloroaniline in catfish fillets.

There are no livestock feed items associated with the proposed use in catfish ponds. Therefore, tolerances are not required for residues of diuron and metabolites in meat, milk, poultry and eggs. Tolerances of 1 ppm are established for residues of diuron in the meat, fat and meat byproducts of cattle, goats, hogs, horses and sheep (40 CFR 180.106) in conjunction with registered uses of the herbicide.

D. International Residue Limits

There are no Codex, Canadian, or Mexican tolerances or maximum residue limits for diuron in catfish. Therefore, harmonization with international tolerances is not an issue for this tolerance.

E. Rotational Crop Restrictions

Since the requested use is for catfish ponds, which are essentially permanent structures, there are no rotational crops that would be planted in the treated areas. Thus, no plantback intervals need to be specified for rotational crops.

V. Conclusion

Therefore, the tolerance is established for combined residues of diuron and its metabolites convertible to 3,4-dichloroaniline in catfish fillets at 2.0 ppm.

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VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by September 28, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300881] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 14, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section §180.106, is amended by adding new paragraph (b) to read as follows.

§180.106 Diuron; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for combined residues of the herbicide diuron and its metabolites convertible to 3,4-dichloroaniline in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. These tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/ Revocation date
Catfish fillets	2.0	06/30/01

* * * * *

[FR Doc. 99–19591 Filed 7–29–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AC35

National Flood Insurance Program (NFIP); Group Flood Insurance Policy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (FEMA) adopt as our final rule the interim rule that we published establishing the Group Flood Insurance Policy (GFIP); however, we are changing the term of the policy from thirty-six to thirty-seven months.

EFFECTIVE DATE: July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, (202)646–3422, (facsimile) (202)646–4327, or (email) *charles.plaxico@fema.gov.*

SUPPLEMENTARY INFORMATION: On May 1, 1996, we published in the **Federal Register** (Vol. 61, page 19197) an interim final rule that establishes a Group Flood Insurance Policy (GFIP) and authorizes its use for recipients of grant awards under the IFG Program as authorized under § 411 of the Stafford Act (42 U.S.C. 5178). The purpose of that interim final rule was to provide a temporary mechanism for the recipients of IFG grants—often low-income persons or those on fixed incomes—to have flood insurance coverage for a period of three years following a flood loss so that they would have time to recover from the disaster and be in a better position to buy flood insurance for themselves after the expiration of their three-year policy term. We received no comments during the comment period for the interim final rule.

Under § 582 of the National Flood Insurance Reform Act of 1994, disaster victims must buy and maintain flood insurance in order to be eligible for future disaster aid to repair damages for flood losses. Toward that end, we contacted those States that have current GFIPs offering information and our assistance to help current GFIP certificate holders transition from group coverage to an individual policy. We are aware that at least one State needs more time to work with its GFIP certificate holders so that they will continue to be eligible for future Federal disaster assistance flood damages to their property.

This final rule will give both State governments and the GFIP certificate

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holders an additional month to make arrangements to buy and maintain flood insurance beyond the current term for the GFIP of thirty-six months.

National Environmental Policy Act

The requirements of 44 CFR Part 10, Environmental Consideration, categorically exclude this final rule. We have not prepared an environmental impact assessment.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The Office of Management and Budget has not reviewed this final rule under E.O. 12866.

Paperwork Reduction Act

This final rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

This final rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

Congressional Review of Agency Rulemaking.

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. The rule is not a "major rule" within the meaning of that Act. It is an administrative action in support of normal day-to-day activities. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, we adopt the interim rule amending 44 CFR Part 61, which was published at 61 FR 19197 on May 1, 1996, as the final rule with the following change:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 61.17 is revised to read as follows:

§ 61.17 Group Flood Insurance Policy.

(a) A Group Flood Insurance Policy (GFIP) is a policy covering all individuals named by a State as recipients under § 411 of the Stafford Act (42 U.S.C. 5178) of an Individual and Family Grant (IFG) program award for flood damage as a result of a major disaster declaration by the President.

(b) The premium for the GFIP, initially, is a flat fee of $200 per policyholder. Thereafter, the premium may be adjusted to reflect NFIP loss experience and any adjustment of benefits under the IFG program.

(c) The amount of coverage will equal the maximum grant amount established under § 411 of the Stafford Act (42 U.S.C. 5178).

(d) The term of the GFIP will be 37 months and will begin 60 days from the date of the disaster declaration.

(e) Coverage for individual grantees begins on the thirtieth day after the NFIP receives the required data for individual grantees and their premium payments.

(f) A Certificate of Flood Insurance will be sent to each individual insured under the GFIP.

(g) The GFIP is the Standard Flood Insurance Policy Dwelling Form (a copy of which is included in Appendix A(1) of this part), except that:

(1) The GFIP provides coverage for losses caused by land subsidence, sewer backup, or seepage of water without regard to the requirement in paragraph B.3. of Article 3 that the structure be insured to 80 percent of its replacement cost or the maximum amount of insurance available under the NFIP.

(2) Article 7, Deductibles, does not apply to the GFIP. Instead, a special deductible of $200 (applicable separately to any building loss and any contents loss) applies to insured flood-damage losses sustained by the insured property in the course of any subsequent flooding event during the term of the GFIP. The separate deductible applicable to Article 3 B.3 does not apply.

(3) Article 9 E., Cancellation of Policy by You, does not apply to the GFIP.

(4) Article 9 G., Policy Renewal, does not apply to the GFIP.

(h) A notice will be sent to the GFIP certificate holders approximately 60 days before the end of the 3-year term of the GFIP. The notice will:

(1) Encourage them to contact a local insurance agent or producer or a private insurance company selling NFIP policies under the Write Your Own program of the NFIP to apply for a conventional NFIP Standard Flood Insurance Policy; and

(2) Advise them as to the amount of coverage they must maintain in order not to jeopardize their eligibility for future disaster assistance. The amount of flood insurance coverage to be maintained by certificate holders will be provided to the NFIP by the IFG program or the State with its own fully funded disaster assistance program.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance"; No. 83.516, "Disaster Assistance")

Dated: July 21, 1999.

Jo Ann Howard,

Administrator, Federal Insurance Administration.

[FR Doc. 99–19417 Filed 7–29–99; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7292]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3. are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Pima	Unincorporated Areas.	May 6, 1999, May 13, 1999, *Arizona Daily Star.*	The Honorable Sharon Bronson, Chairperson, Pima County, Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	Apr. 8, 1999	040073
Arizona: Pima	Unincorporated Areas.	May 11, 1999, May 18, 1999, *Arizona Daily Star.*	The Honorable Sharon Bronson, Chairperson, Pima County, Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	Apr. 6, 1999	040073
Arizona: Pima	City of Tucson	May 11, 1999, May 18, 1999, *Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	Apr. 6, 1999	040076
Arizona: Navajo	City of Winslow	May 19, 1999, May 26, 1999, *Winslow Mail.*	The Honorable James L. Boles, Mayor, City of Winslow, 21 Williamson Avenue, Winslow, Arizona 86047.	Apr. 28, 1999	040072
Arkansas: Craighead.	City of Jonesboro	May 28, 1999, June 4, 1999, *Jonesboro Sun.*	The Honorable Hubert Brodell, Mayor, City of Jonesboro, P.O. Box 1845, Jonesboro, Arkansas 72403–1845.	Apr. 22, 1999	050048

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State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California:					
Sonoma	City of Cotati	May 20, 1999, May 27, 1999, *Sonoma County Independent.*	The Honorable Harold Berkmeier, Mayor, City of Cotati, 201 West Sierra Avenue, Cotati, California 94931.	Apr. 21, 1999	060377
Riverside	City of Lake Elsinore.	May 21, 1999, May 28, 1999, *Lake Elsinore Valley Sun Tribune.*	The Honorable Genie Kelley, Mayor, City of Lake Elsinore, 130 South Main Street, Lake Elsinore, California 92530.	Apr. 22, 1999	060636
Riverside	Unincorporated Areas.	May 21, 1999, May 28, 1999, *Lake Elsinore Valley Sun-Tribune.*	The Honorable John Tavaglione, Chairman, Riverside County, Board of Supervisors, P.O. Box 1646, Riverside, California 92502.	Apr. 22, 1999	060245
San Diego	Unincorporated Areas.	May 21, 1999, May 28, 1999, *San Diego Daily Transcript.*	The Honorable Pam Slater, Chairperson, San Diego County, Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101.	Apr. 30, 1999	060284
Colorado:					
Boulder	Unincorporated Areas.	June 4, 1999, June 11, 1999, *Daily Camera.*	The Honorable Ron Stewart, Chairman, Boulder County, Board of Commissioners, P.O. Box 471, Boulder, Colorado 80306–0471.	May 14, 1999	080023
Boulder	City of Longmont	June 4, 1999, June 11, 1999, *Longmont Daily Times Call.*	The Honorable Leona Stoecker, Mayor, City of Longmont, 350 Kimbark Street, Longmont, Colorado 80501.	May 14, 1999	080027
Adams and Jefferson.	City of Westminster.	May 20, 1999, May 27, 1999, *Westminster Window.*	The Honorable Nancy M. Heil, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80030.	Apr. 23, 1999	080008
Kansas: Sedgwick	City of Wichita	May 13, 1999, May 20, 1999, *Wichita Eagle.*	The Honorable Bob Knight, Mayor, City of Wichita, City Hall, 455 North Main Street, Wichita, Kansas 67202.	Apr. 8, 1999	200328
Louisiana: Catahoula Parish.	Unincorporated Areas.	May 19, 1999, May 26, 1999, *Catahoula News Booster.*	The Honorable Emmitt Taylor, President, Catahoula Parish Police Jury, P.O. Box 258, Harrisonburg, Louisiana 71340.	Apr. 13, 1999	220047
Missouri:					
St. Louis	City of Florissant	May 21, 1999, May 28, 1999, *Watchman Advocate.*	The Honorable James J. Egan, Mayor, City of Florissant, City Hall, 955 Rue St. Francois, Florissant, Missouri 63031.	Apr. 16, 1999	290352
St. Louis	Unincorporated Areas.	May 21, 1999, May 28, 1999, *St. Louis Countian.*	The Honorable Buzz Westfall, St. Louis County Executive, 41 South Central Avenue, Clayton, Missouri 63105.	Apr. 16, 1999	290327
New Mexico: Bernalillo.	City of Albuquerque.	May 21, 1999, May 28, 1999, *Albuquerque Journal.*	The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.	Apr. 15, 1999	350002
Texas:					
Bell	City of Belton	May 6, 1999, May 13, 1999, *The Belton Journal.*	The Honorable Charley Powell, Mayor, City of Belton, P.O. Box 120, Belton, Texas 76513.	Apr. 1, 1999	480028
Comal	Unincorporated Areas.	May 7, 1999, May 14, 1999, *The Herald Zeitung.*	The Honorable Danny Shell, County Judge, Comal County, 150 North Seguin Avenue, New Braunfels, Texas 78130.	Apr. 1, 1999	485463
Dallas	City of Dallas	May 5, 1999, May 12, 1999, *Dallas Morning News.*	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla, Dallas, Texas 75201.	Aug. 10, 1999	480171
Denton	Town of Flower Mound.	May 19, 1999, May 26, 1999, *Denton Record-Chronicle.*	The Honorable Lori De Luca, Mayor, Town of Flower Mound, 2121 Cross Timbers Drive, Flower Mound, Texas 75028.	Apr. 12, 1999	480777
Tarrant	City of Hurst	June 3, 1999, June 10, 1999, *Fort Worth Star-Telegram.*	The Honorable Bill Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, Texas 76054.	Apr. 28, 1999	480601

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Collin	City of Plano	May 5, 1999, May 12, 1999, *Plano Star Courier.*	The Honorable John Longstreet, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	Aug. 10, 1999	480140

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 20, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–19567 Filed 7–29–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7293]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

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State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Jefferson.	Unincorporated Areas.	May 12, 1999, May 19, 1999, *Birmingham News.*	Mr. Gary White, President of the Jefferson County Board of Commissioners, Courthouse, Room A–360, Birmingham, Alabama 35263.	Aug. 17, 1999	010217 E
Connecticut:					
Fairfield	Town of Wilton	June 17, 1999, June 24, 1999, *Wilton Bulletin.*	Mr. Robert H. Russell, First Selectman of the Town of Wilton, Wilton Town Hall, 238 Danbury Road, Wilton, Connecticut 06897.	Sept. 22, 1999	090020 C
New Haven	Town of Madison	March 16, 1999, March 23, 1999, *Shoreline Times.*	Mr. Thomas Rylander, First Selectman for the Town of Madison, 8 Campus Drive, Madison, Connecticut 06443.	Mar. 1, 1999	090079 C
Florida:					
Orange	City of Ocoee	June 24, 1999, July 1, 1999, *The Orlando Sentinel.*	The Honorable S. Scott Vandergrift, Mayor of the City of Ocoee, City Hall, 150 North Lakeshore Drive, Ocoee, Florida 34761–2258.	June 17, 1999	120185 C
Orange	Unincorporated Areas.	June 24, 1999, July 1, 1999, *The Orlando Sentinel.*	Dr. M. Krishnamurthy, P.E., Manager, Orange County Public Works Division, Stormwater Management Department, 4200 South John Young Parkway, Orlando, Florida 32839–9205.	June 17, 1999	120179 C
Sarasota	City of Sarasota	March 23, 1999, March 30, 1999, *Sarasota Herald-Tribune.*	Mr. David R. Sollenberger, Manager of the City of Sarasota, P.O. Box 1058, Sarasota, Florida 34236.	Mar. 17, 1999	125150 B
Georgia: Cherokee.	City of Canton	March 5, 1999, March 12, 1999, *Cherokee Tribune.*	The Honorable Cecil Pruett, Mayor of the City of Canton, 687 Marietta Highway, Canton, Georgia 30114.	June 10, 1999	130039 C
Illinois:					
Will	City of Crest Hill	March 25, 1999, April 1, 1999, *The Herald-News.*	The Honorable Donald R. Randich, Mayor of the City of Crest Hill, 1610 Plainfield Road, Crest Hill, Illinois 60435.	June 30, 1999	170699 D
McHenry	Village of Cary	February 26, 1999, March 5, 1999, *The Northwest Herald.*	The Honorable Donald Huffer, Mayor of the Village of Cary, 255 Stonegate Road, Cary, Illinois 60013.	June 3, 1999	170475
Henderson	Village of Gulfport	March 31, 1999, April 7, 1999, *Oquawka Current.*	Mr. Ed Ronner, President of the Village of Gulfport, Rural Route 1, Box G84, Carmen, Illinois 61425.	Mar. 22, 1999	170280 C
Lake	Village of Gurnee	January 21, 1999, February 3, 1999, *Daily Herald.*	The Honorable Richard A. Welton, Mayor of the Village of Gurnee, 325 North O'Plaine Road, Gurnee, Illinois 60031.	Jan. 24, 1999	170365 F
Kane	Village of Hampshire.	April 28, 1999, May 5, 1999, *Hampshire Register-News.*	Mr. William Schmidt, Hampshire Village President, P.O. Box 457, 234 South State Street, Hampshire, Illinois 60140.	July 27, 1999	170327 C
Henderson	Unincorporated Areas.	March 31, 1999, April 7, 1999, *Oquawka Current.*	Mr. Marion Brown, Henderson County Chairman, P.O. Box 308, Oquawka, Illinois 61469.	Mar. 22, 1999	170277
Kane	Unincorporated Areas.	February 26, 1999, March 5, 1999, *Kane County Chronicle.*	Dr. Michael W. McCoy, Chairman of the Kane County Board of Commissioners, 719 South Batavia Avenue, Geneva, Illinois 60134.	Feb. 19,1999	170896
Lake	Unincorporated Areas.	May 13, 1999, May 20, 1999, *The News Sun.*	Mr. Jim LaBelle, Chairman of the Lake County Board, 18 North County Street, 10th Floor, Waukegan, Illinois 60085.	Aug. 18, 1999	170357 F
McHenry	Unincorporated Areas.	February 26, 1999, March 5, 1999, *The Northwest Herald.*	Mr. Michael Tryon, McHenry County Board Chairperson, McHenry County Government Center, 220 North Seminary Avenue, Woodstock, Illinois 60098.	June 3, 1999	170732
Cook	Village of South Barrington.	May 11, 1999, May 18, 1999, *Daily Herald.*	The Honorable Patricia Graft, Mayor of the Village of South Barrington, 30 South Barrington Road, South Barrington, Illinois 60010.	Aug. 16, 1999	170161 C

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Lake	City of Waukegan	May 14, 1999, May 21, 1999, *The News-Sun.*	The Honorable Bill Durkin, Mayor of the City of Waukegan, 106 North Utica, Waukegan, Illinois 60085.	May 7, 1999	170397 F
Will	Unincorporated Areas.	May 17, 1999, May 24, 1999, *Herald-News.*	Mr. Charles R. Adelman, Will County Executive, 302 North Chicago Street, Joliet, Illinois 60432.	May 10, 1999	170695 E
Indiana: Allen	City of New Haven.	February 25, 1999, March 4, 1999, *The Journal Gazette.*	The Honorable Lynn Shaw, Mayor of the City of New Haven, City Administration Building, P.O. Box 570, New Haven, Indiana 46774.	June 2, 1999	180004 D
Kentucky: Fayette	Lexington-Fayette Urban County Government.	June 23, 1999, June 30, 1999, *Lexington Herald.*	The Honorable Pam Miller, Mayor of the Lexington-Fayette Urban County Government, 200 East Main Street, 12th Floor, Lexington-Fayette Government Building, Lexington, Kentucky 40507.	June 16, 1999	210067 C
Massachusetts: Middlesex.	Town of Billerica	May 10, 1999, May 17, 1999, *Lowell Sun.*	Mr. Richard A. Montuori, Billerica Town Manager, Billerica Town Hall, 365 Boston Road, Billerica, Massachusetts 01821.	Aug. 15, 1999	250183 C
Minnesota: Anoka	City of Coon Rapids.	April 9, 1999, April 16, 1999, *Coon Rapids Herald.*	The Honorable Lonni McCauley, Mayor of the City of Coon Rapids, 11155 Robinson Drive, Coon Rapids, Minnesota 55433.	July 15, 1999	270011 A
New Jersey: Mercer.	Township of Hamilton.	April 14, 1999, April 21, 1999, *The Times.*	The Honorable John Sacchinelli, Mayor of the Township of Hamilton, 6101 13th Street, Mays Landing, New Jersey 08330.	Apr. 1, 1999	340246
New York:					
Monroe	Town of Brighton	May 12, 1999, May 19, 1999, *Brighton-Pittsford Post.*	Ms. Sandra L. Frankel, Supervisor of the Town of Brighton, 2300 Elmwood Avenue, Rochester, New York 14618.	Nov. 8, 1999	360410 B
Rockland	Village of Sloatsburg.	June 15, 1999, June 22, 1999, *Rockland Journal-News.*	The Honorable Samuel J. Abate, Mayor of the Village of Sloatsburg, Village Hall, 96 Orange Turnpike, Sloatsburg, New York 10974.	Dec. 1, 1999	36090 C
North Carolina:					
Durham	Unincorporated Areas.	May 24, 1999, *The Herald-Sun.*	Mr. David F. Thompson, Durham County Manager, County Administration Complex, 2nd Floor, 200 East Main Street, Durham, North Carolina 27701.	June 16, 1999	370085 G
Forsyth	Unincorporated Areas.	March 15, 1999, March 22, 1999, *Winston-Salem Journal.*	Mr. Graham Pervier, County Manager, Hall of Justice, Room 700, Winston-Salem, North Carolina 27101.	June 20, 1999	37549 H
Guilford	City of Greensboro.	May 25, 1999, June 1, 1999, *News and Record.*	The Honorable Carolyn S. Allen, Mayor of the City of Greensboro, One Governmental Plaza, P.O. Box 3136, Greensboro, North Carolina 27402.	May 17, 1999	375351 C
Ohio: Lake	Village of Madison	March 30, 1999, April 6, 1999, *The News-Herald.*	The Honorable David G. Reed, Jr., Mayor of the Village of Madison, 126 West Main Street, Madison, Ohio 44057–0007.	Mar. 23, 1999	390316 B
Pennsylvania:					
Lancaster	Township of East Donegal.	April 28, 1999, May 5, 1999, *Lancaster Newspaper.*	Mr. Allen D. Esbenshade, President, Board of Supervisors, Township Municipal Office, 190 Rock Point Road, Marietta, Pennsylvania 17547.	Apr. 16, 1999	421768 B
Dauphin	Township of Lower Paxton.	March 2, 1999, March 9, 1999, *The Patriot News.*	Mr. George Wolfe, Lower Paxton Township Manager, 75 South Houcks Road, Suite 207, Harrisburg, Pennsylvania 17109.	Feb. 23, 1999	420384 B
Berks	Township of Maidencreek.	April 23, 1999, April 30, 1999, *Reading Eagle/Reading Times.*	Mr. Karl A. Bolognese, Chairman of the Maidencreek, Township Board of Supervisors, P.O. Box 529, Blandon, Pennsylvania 19510.	July 29, 1999	421078 E

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State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Lebanon	Township of North Londonderry.	March 29, 1999, April 5, 1999, *Londonderry Daily News.*	Mr. Paul Garber, Township of North Londonderry Manager, 655 East Ridge Road, Palmyra, Pennsylvania 17078.	Sept. 22, 1999	420577 B
Lancaster	Township of Rapho.	April 28, 1999, May 5, 1999, *Lancaster Newspapers.*	Ms. Nancy Hawliwell, Rapho Town Manager, 971 North Colebrook Road, Manheim, Pennsylvania 17545.	Apr. 16, 1999	421781 B
South Carolina:					
Anderson	Unincorporated Areas.	June 3, 1999, June 10, 1999, *Anderson Independent-Mail.*	Mr. Joey Preston, Anderson County Administrator, P.O. Box 8002, Anderson, South Carolina 29622.	Sept. 8, 1999	450013 B
Charleston	Unincorporated Areas.	March 3, 1999, March 10, 1999, *The Post and Courier.*	Mr. Roland H. Windham, Jr., Charleston County Administrator, 2 Court House Square, Room 401, Charleston, South Carolina 29401.	Feb. 24, 1999	455413
Tennessee:					
Sullivan	City of Bristol	May 21, 1999, May 28, 1999, *Bristol Herald-Courier.*	The Honorable Elmer Doak, Mayor of the City of Bristol, P.O. Box 1189, Bristol, Tennessee 37621.	May 14, 1999	470182 B
Madison	City of Jackson	March 16, 1999, *The Jackson Sun.*	The Honorable Charles Farmer, Mayor of the City of Jackson, Jackson City Hall, 121 East Main Street, Suite 301, Jackson, Tennessee 38302.	Apr. 9, 1999	470113 D
Madison	Unincorporated Areas.	March 16, 1999, *The Jackson Sun.*	The Honorable Dr. J. Alex Leech, Mayor of Madison County, 100 East Main Street, Suite 302, Jackson, Tennessee 38301.	Apr. 9, 1999	470112 D
Shelby	Unincorporated Areas.	May 31, 1999, June 7, 1999, *The Commercial Appeal.*	The Honorable Jim Rout, Mayor of Shelby County, 160 North Main Street, Suite 850, Memphis, Tennessee 38103.	May 24, 1999	470214 E
Virginia: Arlington	Unincorporated Areas.	January 21, 1999, January 28, 1999, *The Arlington Journal.*	Mr. William T. Donahue, County Manager, 2100 Clarendon Boulevard, Suite 813, Arlington, Virginia 22201.	Apr. 28, 1999	515520
Wisconsin:					
Oconto	City of Oconto	April 28, 1999, May 5, 1999, *Oconto County Review.*	The Honorable Joseph Bralick, Mayor of the City of Oconto, 1210 Main Street, Oconto, Wisconsin 54153.	Aug. 3, 1999	550297 B
Oconto	Unincorporated Areas.	April 28, 1999, May 5, 1999, *Oconto County Review.*	Mr. Kevin Hamann, Oconto County Administrative Coordinator, 301 Washington Street, Oconto, Wisconsin 54153.	Aug. 3, 1999	550294 A

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 19, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–19566 Filed 7–29–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements. Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

BILLING CODE 6718–04–P

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Pima (FEMA Docket No. 7276).	Unincorporated Areas.	January 20, 1999, January 27, 1999, *Arizona Daily Star.*	The Honorable Mike Boyd, Chairperson, Pima County, Board of Supervisors, 130 West Congress, Fifth Floor, Tucson, Arizona 85701.	Jan. 5, 1999	040073
California: Riverside (FEMA Docket No. 7280).	City of Murrieta	February 23, 1999, March 2, 1999, *The Press-Enterprise.*	The Honorable Chuck Washington, Mayor, City of Murrieta, 26442 Beckman Court, Murrieta, California 92562.	Feb. 8, 1999	060751
Colorado:					
Pitkin (FEMA Docket No. 7280).	City of Basalt	February 10, 1999, February 17, 1999, *Snowmass Sun.*	The Honorable Rick Stevens, Mayor, Town of Basalt, 101 Midland Avenue, Basalt, Colorado 81621.	Jan. 7, 1999	080052
Pitkin (FEMA Docket No. 7280).	Unincorporated Areas.	February 12, 1999, February 19, 1999, *Aspen Times.*	The Honorable Dorothea Farris, Chairperson, Pitkin County, Board of Commissioners, 530 East Main Street, Third Floor, Aspen, Colorado 81611.	Jan. 7, 1999.	080287
Nevada: Clark (FEMA Docket No. 7280).	Unincorporated Areas.	February 5, 1999, February 12, 1999, *Las Vegas Review-Journal.*	The Honorable Yvonne Atkinson Gates, Chairperson, Clark County Board of Supervisors,.	Jan. 12, 1999	320003
Oklahoma: Oklahoma (FEMA Docket No. 7280).	City of Edmond	February 16, 1999, February 23, 1999, *Edmond Evening Sun.*	The Honorable Robert Rudkin, Mayor, City of Edmond, P.O. Box 2970, Edmond, Oklahoma 73083–2970.	Jan. 19, 1999	400252
Oregon:					

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State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Marion (FEMA Docket No. 7276).	Unincorporated Areas.	January 22, 1999, January 29, 1999, *Statesman Journal.*	The Honorable Randy Franke, Chairman, Marion County, Board of Commissioners, County Courthouse, 100 High Street, Northeast, Salem, Oregon 97301.	Dec. 22, 1998	410154
Marion (FEMA Docket No. 7276).	City of Salem ...	January 22, 1999, January 29, 1999.	The Honorable Michael Swaim, Mayor, City of Salem, 555 Liberty Street, Room 220, Salem, Oregon 97301.	Dec. 22, 1998	410167
Texas Travis (FEMA Docket No. 7280.	City of Austin ...	February 19, 1999, February 26, 1999, *Austin American-Statesman.*	The Honorable Kirk P. Watson, Mayor, City of Austin, 124 West Eighth Street, Austin, Texas 78701.	Jan. 22, 1999	480624
Brazos (FEMA Docket No. 7280).	City of College Station.	February 23, 1999, March 2, 1999, *Bryan-College Station Eagle.*	The Honorable Lynn McIlaney, Mayor City of College Station, P.O. Box 9960, College Station, Texas 77842–0960.	May 31, 1999	480083
Tarrant (FEMA Docket No. 7280).	City of Fort Worth.	February 5, 1999, February 12, 1999, *Fort Worth Star-Telegram.*	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102–6311.	Jan. 8, 1999	480596
Tarrant (FEMA Docket No. 7280).	City of Hurst	February 10, 1999, February 17, 1999, *Dallas Morning News.*	The Honorable Bill Souder, Mayor, City of Hurst, 1505 Percinct Line road, Hurst, Texas 76054.	Jan. 12, 1999	480601
Denton (FEMA Docket No. 7280).	City of Lewisville.	February 19, 1999, February 26, 1999, *Lewisville News.*	The Honorable Bobbie J. Mitchell, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, Texas 75029–9002.	Jan. 22, 1999	480195
Tarrant (FEMA Docket No. 7280).	City of North Richland Hills.	February 10, 1999, February 17, 1999, *Forth Worth Star-Telegram.*	The Honorable Charles Scoma, Mayor, City of North Richland Hills, P.O. Box 82069, North Richland Hills, Texas 76182–0609.	Jan. 12, 1999	480607
Harris (FEMA Docket No. 7280).	City of Pasadena.	February 17, 1999, February 24, 1999, *Pasadena Citizen.*	The Honorable Johnny Isbell, Mayor, City of Pasadena, P.O. Box 672, Pasadena, Texas 77501–0672.	Jan. 22, 1999	480307
Bexar (FEMA Docket No. 7276).	City of San Antonio.	January 22, 1999, January 29, 1999 *San Antonio Express-News.*	The Honorable Howard Peak, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	Dec. 21, 1998	480045
Ellis (FEMA Docket No. 7280).	City of Waxahachie.	February 12, 1999, February 19, 1999, *Waxahachie Daily Light.*	The Honorable Chuck Beatty, Mayor, City of Waxahachie, P.O. Box 757, Waxahachie, Texas 75165.	May 20, 1999	480211
Washington:					
Grays Harbor (FEMA Docket No. 7276).	Unincorporated Areas.	January 22, 1999, January 29, 1999, *Aberdeen Daily World.*	The Honorable Dick Dickson, Chairman, Board of Commissioners, Grays Harbor County, 100 West Broadway, Suite 1, Montesano, Washington 98563.	Jan. 6, 1999	530057
King (FEMA Docket No. 7280).	City of Kent	February 2, 1999, February 9, 1999, *Seattle Times.*	The Honorable Jim White, Mayor, City of Kent, 220 Fourth Avenue South, Kent, Washington 98032–5895.	Jan. 11, 1999	530080
King (FEMA Docket No. 7280).	Unincorporated Areas.	February 2, 1999, *Seattle Times.*	The Honorable Ron Simms, King County Courthouse, 516 Third Avenue, Room 400, Seattle, Washington 98104–2312.	Jan. 11, 1999	530071

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 20, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–19565 Filed 7–29–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground *Elevation in feet (NGVD)
ALASKA	
Kenai Peninsula Borough (FEMA Docket No. 7278)	
Kenai River Study:	
Approximately 6.1 miles downstream of confluence with Shikok Creek	*18.5
Approximately 4,500 feet downstream of confluence with Shikok Creek	*35.6
Maps are available for inspection at the Kenai Peninsula Borough Planning and Zoning Office, 210 Fidalgo Avenue, Suite 200, Kenai, Alaska.	
LOUISIANA	
Ball (Town), Rapides Parish (FEMA Docket No. 7278)	
Kitchen Creek:	
At confluence with Flagon Bayou	*132
Approximately 250 feet upstream of confluence of Lateral 1	*151
City Drainage Ditch:	
Approximately 250 feet downstream of Kerlin Road	*124
At Louisiana Highway 1204	*162
Haw Creek Tributary 4:	
Approximately 600 feet upstream of confluence with Haw Creek	*133
Approximately 3,400 feet upstream of confluence with Haw Creek	*161
Haw Creek Lateral 2A:	
At confluence with Lateral 2	*150
Approximately 1,400 feet upstream of Burma Road	*177
Haw Creek Lateral 2:	
Approximately 200 feet upstream of confluence with Haw Creek	*145
Approximately 1,275 feet upstream of Burma Road	*168
Haw Creek Lateral 1:	
Just upstream of confluence with Haw Creek	*140
Approximately 1,700 feet upstream of Hollingsworth Road	*151
Flagon Bayou Tributary 8:	
Approximately 1,480 feet downstream of U.S. Highway 165	*117
Just upstream of U.S. Highway 165	*118
Flagon Bayou:	
Approximately 11,000 feet downstream of confluence of Flagon Bayou Tributary 3	*120

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Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD).
Approximately 250 feet upstream of Kansas City Southern Railroad	*141
Haw Creek:	
Approximately 300 feet downstream of confluence of Haw Creek Lateral 1	*138
Approximately 4,100 feet upstream of Burma Road	*169
Kitchen Creek Lateral 1:	
Approximately 700 feet downstream of Missouri Pacific Railroad	*141
Approximately 700 feet upstream of Kitchen Creek Road	*155
Maps are available for inspection at 100 Municipal Lane, Ball, Louisiana.	
Farmerville (Town), Union Parish (FEMA Docket No. 7279)	
Bayou D'Arbonne Lake:	
Approximately 12,400 feet (2.35 miles) downstream of State Routes 15 and 33	*90
At State Routes 15 and 33	*90
Middle Fork Bayou d'Arbonne:	
At State Routes 15 and 33	*90
At confluence of Corney Bayou (located in Union Parish)	*90
Corney Bayou:	
At confluence with Middle Fork Bayou D'Arbonne (located in Union Parish)	*90
Approximately 3,400 feet upstream of confluence with Middle Fork Bayou D'Arbonne	*90
Bayou D'Arbonne Lake Tributary 1:	
Approximately 5,300 feet downstream of Sterlington Highway	*90
Approximately 4,350 feet downstream of Sterlington Highway	*90
Approximately 4,400 feet downstream of Sterlington Highway	*90
Bayou D'Arbonne Lake Tributary 2:	
Approximately 750 feet downstream of Barrom Road	*90
Approximately 475 feet downstream of Barrom Road	*90
Approximately 500 feet downstream of Barrom Road	*90
Maps are available for inspection at 407 South Main Street, Farmerville, Louisiana.	
* The shoreline elevation within the Town of Farmerville is now 90 feet NGVD.	
Lincoln Parish (Unincorporated Areas) (FEMA Docket No. 7278)	
Middle Fork Bayou D'Arbonne:	
Approximately 26,000 feet downstream of State Route 823	*96
Just upstream of U.S. Highway 167	*101
Maps are available for inspection at 100 West Texas Street, Ruston, Louisiana.	
LOUISIANA	
Union Parish (Unincorporated Areas) (FEMA Docket No. 7278)	
Corney Bayou:	
At confluence with Middle Fork Bayou D'Arbonne	*90
Approximately 400 feet upstream of U.S. Highway 167	*109
Middle Fork Bayou d'Arbonne:	
At State Routes 15 and 33	*90
Approximately 340 feet upstream of U.S. Highway 167	*111
Ouachita River:	
Approximately 6,150 feet (1.16 miles) downstream of confluence of Bayou DeLoure	*87
Approximately 1,550 feet upstream of confluence of Cypress Bayou	*88
Stowe Creek:	
At State Route 15	*90
Approximately 140 feet upstream of State Route 151	*114
Bayou D'Arbonne Lake:	
At downstream spillway/dam	*90
At State Routes 15 and 33	*90
Maps are available for inspection at the 911 Office, 100 East Bayou, Room 206, Farmerville, Louisiana.	
MISSOURI	
Foristell (City), St. Charles County (FEMA Docket No. 7279)	
Peruque Creek:	
Approximately 10,570 feet (2 miles) downstream of Stringtown Road [1]	*630
Approximately 5,250 feet downstream of Stringtown Road [1]	*646
Stringtown Road is located in Warren County (Unincorporated Areas), Missouri.	
Maps are available for inspection at the City of Foristell City Hall, 10 Highway T, Foristell, Missouri.	
Lee's Summit (City), Cass and Jackson Counties (FEMA Docket No. 7282)	
Raintree Lake: Just west of Ward Road	*960
Maps are available for inspection at the Community Development Office, 207 Southwest Market, Lee's Summit, Missouri.	
NEBRASKA	
Howard County (Unincorporated Areas) (FEMA Docket No. 7278)	
Oak Creek:	
Aproximately 7,200 feet downstream of Union Pacific Railroad	*1,842
Approximately 1,200 feet upstream of Naper Road	*1,871
Middle Loup River:	
Approximately 7,000 feet downstream of County Road	*1,899
Approximately 4,700 feet upstream of County Road	*1,914
Maps are available for inspection at the Howard County Roads Department, 408 Elm Street, St. Paul, Nebraska.	
NEVADA	
Douglas County (and Incorporated Areas) (FEMA Docket No. 7274)	
Clear Creek:	
At Douglas County boundary, approximately 200 feet downstream from Center Drive	*4,715
Approximately 200 feet upstream from R19E/R20E line	*4,824
Maps are available for inspection at Douglas County Planning, 1594 Esmeralda Avenue, Room 202, Minden, Nevada.	
OKLAHOMA	
Lincoln County (Unincorporated Areas) (FEMA Docket No. 7278)	
West Captain Creek Tributary 1:	
Approximately 8,000 feet upstream of confluence with West Captain Creek	*940
At Oklahoma—Lincoln County boundary	*950
Maps are available for inspection at the Lincoln County Commissioners Office, 811 Manvel Avenue, #4, Chandler, Oklahoma.	
Newcastle (City), McClain County (FEMA Docket No. 7279)	
Pond Creek:	
Approximately 1,450 feet upstream from confluence with the Canadian River	*1,131
Approximately 800 feet upstream from confluence withTributary 1 of Pond Creek	*1,141
Approximately 100 feet upstream from U.S. Route 62 (Main Street)	*1,182
Approximately 5,225 feet upstream from confluence of Tributary 10 of Pond Creek	*1,243
Tributary 4 of Pond Creek:	
At confluence with Pond Creek	*1,148
Approximately 400 feet upstream of Fifth Street	*1,241
Tributary 5.0 of Pond Creek:	
At confluence with Pond Creek	*1,156
Approximately 3,100 feet upstream of confluence with Tributary 5.3 of Pond Creek	*1,244
Tributary 5.1 of Pond Creek:	
At confluence with Tributary 5.0 of Pond Creek	*1,190
Approximately 2,750 feet upstream of State Highway 130 (Fox Lane)	*1,260
Tributary 5.1.1 of Pond creek:	
At confluence with Tributary 5.1 of Pond Creek	*1,200
Approximately 400 feet upstream from State Highway 130 (Fox Lane)	*1,270
Tributary 5.3 of Pond Creek:	
At confluence with Tributary 5.0 of Pond Creek	*1,237
Approximately 710 feet upstream of South 16th Street	*1,265
Tributary 6.0 of Pond Creek:	
At confluence with Pond Creek	*1,160
Approximately 500 feet upstream of North 16th Street	*1,211
Tributary D of Canadian River:	
At confluence with Canadian River	*1,169
Approximately 50 feet upstream of Northwest 16th Street	*1,315
Tributary D1 of Canadian River:	
At confluence with Tributary D of Canadian River	*1,198
Approximately 150 feet downstream from intersection with Long Drive	*1,206
At intersection with Long Drive	*1,207
Maps are available for inspection at 5 North Main, Newcastle, Oklahoma.	
UTAH	
Santa Clara (City), Washington County (FEMA Docket No. 7282)	
Lava Flow Wash:	
Approximately 1,100 feet downstream of Red Mountain Drive	*2,846
Approximately 5,300 feet upstream of Red Mountain Drive	*2,947
Sand Hollow Wash:	
Approximately 2,200 feet downstream of Pearl Rose Drive (extended)	*2,690
Approximately 2,100 feet upstream of Pearl Rose Drive (extended)	*2,728
Santa Clara River:	
Approximately 7,500 feet downstream of Chapel Street	*2,685
Just upstream of Old Barn Road	*2,789
Tuacahn Wash:	
Just upstream of Santa Clara Dike	*2,778
Approximately 7,200 feet upstream of confluence with Lava Flow Wash	*2,934
Maps are available for inspection at the City of Santa Clara City Hall, 2721 Santa Clara Drive, Santa Clara, Utah.	
WASHINGTON	
Bothell (City), King and Snohomish Counties (FEMA Docket No. 7246)	
North Creek:	
At confluence with Sammamish River	*22
At 208th Street Southeast	*123
Maps are available for inspection at the City of Bothell Department of Community Development, 9654 Northeast 182nd Street, Bothell, Washington.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 20, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–19571 Filed 7–29–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the

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National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD).
MICHIGAN	
Nashville (Village), Barry County (FEMA Docket No. 7283)	
Thornapple River:	
Approximately 2,800 feet downstream of the confluence of Quaker Brook Creek	*813
Approximately 4,050 feet upstream of Main Street	*817
Maps available for inspection at the Nashville Village Office, 206 North Main Street, Nashville, Michigan.	
Northville (City), Wayne and Oakland Counties (FEMA Docket No. 7275)	
Middle River Rouge:	
Approximately 150 feet upstream of 8 Mile Road	*820
Downstream side of Old Novi Road	*824
Thornton Creek Overflow:	
At confluence with Middle River Rouge	*823
Approximately 30 feet upstream of corporate limits	*823
Maps available for inspection at the Northville City Hall, 215 West Main Street, Northville, Michigan.	
MINNESOTA	
Sauk Rapids (City), Benton County (FEMA Docket No. 7279)	
Mississippi River:	
Downstream corporate limits	*991
Approximately 1.42 miles upstream of State Highway 152 (1st Street South)	*999
County Ditch No. 3: At confluence with Mississippi River	*992
Maps available for inspection at the Sauk Rapids City Hall, 115 North 2nd Avenue, Sauk Rapids, Minnesota 56379–1660.	
NORTH CAROLINA	
Leggett (Town), Edgecomb County (FEMA Docket No. 7287)	
Swift Creek:	
Approximately 1.4 miles downstream of State Route 97	*53
Approximately 2.1 miles upstream of State Route 97	*61
Maps available for inspection at the Leggett Town Hall, Intersection of Highway 33 and 97, Edgecomb, North Carolina.	
OHIO	
Bay Village (City), Cuyahoga County (FEMA Docket No. 7255)	
Wischmeyer Creek:	
Approximately 120 feet downstream of West Lake Road	*605
At the upstream City of Bay Village corporate limits	*651
Maps available for inspection at the Bay Village City Hall, 350 Dover Center Road, Bay Village, Ohio.	
PENNSYLVANIA	
Smithfield (Township), Monroe County (FEMA Docket No. 7259)	
Delaware River:	
Approximately 250 feet upstream of downstream corporate limits	*315
Approximately 1.5 miles downstream of upstream corporate limits	*331
Shawnee Creek:	
At the confluence with the Delaware River	*325
Approximately 80 feet upstream of River Road	*326
Sambo Creek: Approximately 0.9 mile west of the intersection of Valhalla Drive and State Route 209, within the corporate limits of the Township of Smithfield	*452
Cherry Creek: Approximately 500 feet south of the intersection of Broad Street and Interstate 80, within the corporate limits at the Township of Smithfield	*322
Maps available for inspection at the Smithfield Township Municipal Building, Route 209, East Stroudsburg, Pennsylvania.	
RHODE ISLAND	
North Providence (Town), Providence County (FEMA Docket No. 7259)	
Centerdale Brook:	
Upstream side of Woonasquatucket Avenue	*120
Approximately 100 feet upstream of South Locust Avenue	*140
Cranberry Brook:	
At confluence with Woonasquatucket River	*81
Downstream side of Humbert Street	*110
West River:	
At downstream corporate limits	*78
Approximately 700 feet downstream of Douglas Pike	*86
Upper Canada Pond Brook:	
Downstream at corporate limits	*58
Approximately 1,080 feet upstream of corporate limits	*60
Centerdale Brook (Culvert-zone AO): From Woonasquatucket Avenue to approximately 720 feet downstream of Woonasquatucket Avenue	#1
Maps available for inspection at the Building Inspector's Office, 2000 Smith Street, North Providence, Rhode Island.	
SOUTH CAROLINA	
Hollywood (Town), Charleston County (FEMA Docket No. 7287)	
Mellichamp Branch:	
Approximately 600 feet from the upstream side of a breached dam	*8
Approximately 0.63 mile upstream of Towles Road bridge	*811
Maps available for inspection at the Hollywood Town Hall, 6316 Highway 162, Hollywood, South Carolina.	
Ravenel (Town), Charleston County (FEMA Docket No. 7283)	
Mellichamp Branch:	
At downstream side of New Road	*27

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD).
Approximately 1.3 miles downstream of State Route 165	*11
Maps available for inspection at the Ravenel Town Hall, 5962 Highway 165, Suite 100, Ravenel, South Carolina.	
TENNESSEE	
Cheatham County (Unincorporated Areas) (FEMA Docket Nos. 7279 and 7259)	
Harpeth River:	
Approximately 0.45 mile upstream of Old Pinnacle Road	*498
Approximately 4.1 miles upstream of East Kingston Springs Road	*519
South Harpeth River:	
At the confluence with the Harpeth River	*516
Approximately 0.38 mile downstream of Anderson Road	*516
Sycamore Creek:	
At upstream side of Nashville and Ashland City Railroad	*401
At U.S. Route 41A	*491
Sams Creek:	
Approximately 0.9 mile downstream of most downstream crossing of Sams Creek Road	*404
Approximately 0.8 mile upstream of Deerfoot Drive	*515
Dry Creek:	
Approximately 220 feet upstream of Sams Creek Road	*404
Approximately 300 feet upstream of Dry Creek Road	*425
Pond Creek:	
Approximately 1,700 feet upstream of River Road	*404
At Natier Road	*536
West Fork Pond Creek:	
At confluence with Pond Creek	*413
Approximately 1.17 miles upstream of Pond Creek Road	*456
Maps available for inspection at the Cheatham County Building Commissioner's Office, 210 South Main Street, Ashland City, Tennessee.	
Fayetteville (City), Lincoln County (FEMA Docket No. 7287)	
Wells Creek:	
At the confluence of the Elk River	*673
Approximately 2,000 feet upstream of confluence with the Elk River	*674
Elk River:	
Approximately 350 feet downstream of confluence of Wells Creek	*673
Approximately 4.73 miles upstream of confluence of Stuart Creek	*686
Maps available for inspection at the Fayetteville City Hall, 110 South Elk Avenue, Fayetteville, Tennessee.	
Kingston Springs (Town), Cheatham County (FEMA Docket No. 7259)	
Buffalo Gap Cutoff:	
At the confluence with the Harpeth River	*499
Approximately 0.40 mile upstream of East Kingston Springs Road	*513
Harpeth River:	
Approximately 0.45 mile upstream of Old Pinnacle Road	*498
Approximately 0.03 mile upstream of Interstate Route 40	*513
Maps available for inspection at the Kingston Springs Town Hall, 396 Spring Street, Kingston Springs, Tennessee.	
Lincoln County (Unincorporated Areas) (FEMA Docket No. 7287)	
Norris Creek:	
Approximately 1,450 feet downstream of Old Marrs Road	*680
Approximately 40 feet upstream of Old Marrs Road	*682
Cotton Mill Branch:	
Approximately 600 feet downstream of Brookside Drive	*681
Approximately 0.71 mile upstream of Cedarwood Street	*711
Boonshill Road Branch:	
At confluence with the Elk River	*665
At Old Boonshill Road	*674
Wells Creek:	
At confluence with Elk River	*673
Approximately 898 feet upstream of Private Road	*693
Elk River:	
Approximately 1.1 miles downstream of the confluence with Boonshill Road Branch	*663
Approximately 5.0 miles upstream of the confluence of Stuart Creek	*686
Maps available for inspection at the Lincoln County Courthouse, County Executive's Office, 112 Main Avenue, South, Fayetteville, Tennessee.	
Pegram (Town), Cheatham County (FEMA Docket No. 7259)	
Harpeth River:	
Approximately 0.21 mile upstream of Riveview Drive	*527
Approximately 0.1 mile downstream of East Kingston Springs Road	*508
Maps available for inspection at the Pegram City Hall, 482 Thompson Road, Pegram, Tennessee.	
VERMONT	
Bellows Falls (Village), Windham County (FEMA Docket No. 7283)	
Connecticut River:	
At a point approximately 0.85 mile upstream from Bellows Falls Dam	*299
At a point approximately 500 feet upstream of Bellows Falls Dam	*296
Maps available for inspection at the Town of Rockingham, Town Clerk's Office, Village Square, Rockingham, Vermont.	
Rockingham (Town), Windham County (FEMA Docket No. 7283)	
Connecticut River:	
Approximately 0.77 mile upstream of NEPCO dam	*299
Approximately 1.34 miles upstream of confluence of Commissarry Brook	*306
Williams River:	
At the confluence with Connecticut River	*303
Approximately 1,350 feet upstream of U.S. Route 5 bridge	*303
Maps available for inspection at the Town of Rockingham, Town Clerk's Office, Village Square, Rockingham, Vermont.	
Springfield (Town), Windsor County (FEMA Docket No. 7283)	
Connecticut River:	
At a point approximately 2.2 miles downstream from Cheshire Bridge (State Route 11)	*306
At a point approximately 4.2 miles upstream from Cheshire Bridge (State Route 11)	*308
Black River:	
At the confluence with Connecticut River	*306
Approximately 550 feet downstream of Old State Route 11 bridge	*306
Maps available for inspection at the Springfield Town Hall, Zoning Administrator's Office, 96 Main Street, Springfield, Vermont.	
Thetford (Town), Orange County (FEMA Docket No. 7283)	
Abbott Brook:	
At confluence with West Branch Ompompanoosuc River	*692

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Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD).
Approximately 280 feet upstream of State Route 132	*705
Ompompanoosuc River:	
At downstream corporate limits	*412
At upstream corporate limits	*684
West Branch Ompompanoosuc River:	
Approximately 100 feet upstream of Gove Hill Road	*576
At confluence with Abbott Brook	*692
Lake Fairlee:	
At Lake Fairlee Dam	*681
Approximately 700 feet upstream of corporate limits	*681
Maps available for inspection at the Thetford Town Office, Route 113, Thetford Center, Vermont.	
WISCONSIN	
Grant County (Unincorporated Areas) (FEMA Docket No. 7283)	
Wisconsin River:	
Approximately 1.4 miles upstream of Burlington Northern Railroad	*628
At upstream county boundary	*680
Crooked Creek:	
Confluence with the Wisconsin River	*654
At a point approximately 600 feet upstream of the confluence with the Wisconsin River	*655
Maps available for inspection at the Grant County Zoning Office, 125 South Monroe, Lancaster, Wisconsin.	
Ozaukee County (Unincorporated Areas) (FEMA Docket No. 7283)	
Lake Michigan:	
Approximately 2,200 feet east of the intersection of Sandy Beach Road and Sunny Ridge Road	*587
Approximately 1,900 feet east of the intersection of Silver Beach Road and Sauk Trail Road	*588
Maps available for inspection at the Ozaukee County Department of Environmental Health, 121 West Main Street, Room 223, Port Washington, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 19, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–19570 Filed 7–29–99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 52, 54, and 64

[FCC 99–175]

1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission combined four reporting requirements so that carriers need only file one worksheet to satisfy the contributor reporting requirements associated with: the universal service support mechanisms; telecommunications relay services; cost recovery mechanism for numbering administration; and cost recovery mechanism for shared costs of long-term local number portability. The Commission also made other modifications designed to rationalize requirements, including changing the revenue measure for assessing contributions to the TRS Fund and numbering administration cost recovery so that contributions will be based on end-user telecommunications revenues.

DATES: Effective August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Scott K. Bergmann, Industry Analysis Division, Common Carrier Bureau, at (202) 418–7102; or Jim Lande, Industry Analysis Division, Common Carrier Bureau at (202) 418–0948.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order released July 14, 1999 (FCC 99–175). The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, S.W., Washington, D.C. 20554. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 1231 20th St., NW, Washington, D.C. 20036.

I. Summary of the Report and Order

1. In the Report and Order summarized here, the Commission acted to simplify its filing requirements for communications service providers by replacing several different—but largely duplicative—forms with one consolidated form, the Telecommunications Reporting Worksheet. At present, telecommunications carriers and certain telecommunications service providers must comply with separate reporting requirements for their contributions to finance interstate Telecommunications Relay Services Fund, federal universal service support mechanisms, administration of the North American Numbering Plan (NANP), and the shared costs of long-term local number portability.[1] We act here to harmonize these multiple contributor reporting requirements and to minimize the administrative burdens for carriers and service providers. Thus, in lieu of making four separate filings in the spring of 2000, reporting carriers will simply file one copy of the new worksheet on April 1, 2000.[2] We emphasize that we are not imposing new reporting requirements in this proceeding; rather, our goal is to simplify the requirements to the greatest extent possible while continuing to ensure the efficient administration of the support and cost recovery mechanisms.

II. Background

2. In a series of separate proceedings, the Commission has established procedures to finance interstate telecommunications relay services,[3] universal service support mechanisms,[4] administration of the North American Numbering Plan,[5] and shared costs of local number portability.[6] To

[1] See 47 U.S.C. 151, 225, 251, 254. The Communications Act of 1934, as amended, (the Communications Act or the Act) is codified at 47 U.S.C. 151 *et seq.*

[2] The Common Carrier Bureau will release, by Public Notice, the worksheet and instructions to be used for the September 1999 universal service filing. See, infra, paragraph 32.

[3] See Public Law 101–336, § 401, 104 Stat. 327, 366–69 (adding section 225 to the Communications Act of 1934, as amended, 47 U.S.C. 225). See also *Telecommunications Relay Services and the Americans With Disabilities Act of 1990*, Third Report and Order, FCC 93–357, CC Docket No. 90–571, 8 FCC Rcd 5300, 58 FR 39671 (July 26, 1993) (*TRS Third Report and Order*) ("recovering interstate relay costs from all common carriers who provide interstate service on the basis of their interstate revenues will accomplish this goal").

[4] See 47 U.S.C. 254. See also *Federal-State Joint Board on Universal Service*, Report and Order, FCC 97–157, CC Docket No. 96–45, 12 FCC Rcd 8776, 62 FR 32862 (June 17, 1997) (*Universal Service Order*).

[5] See 47 U.S.C. 251(e)(2). *Administration of the North American Numbering Plan, Toll Free Service Access Codes*, Third Report and Order and Third Report and Order, FCC 97–372, CC Docket No. 92–237, 95–155, 12 FCC Rcd 23040, 62 FR 55179 (October 23, 1997).

[6] See 47 U.S.C. 251(e)(2). See also *Telephone Number Portability*, Third Report and Order, FCC 98–82, CC Docket 95–116, 63 FR 35150 (June 29, 1998) (*LNP Cost Recovery Order*). This Report and Order is limited to the cost recovery mechanism for the shared costs of long-term local number portability.

[7] See 47 CFR 64.604(c)(4)(iii)(B). See also *Telecommunications Relay Services and the Americans With Disabilities Act of 1990*, Order, DA 98–2481, CC Docket No. 90–571 (rel. Dec. 2, 1998) (*1999 TRS Fund Worksheet Order*).

[8] See 47 CFR 54.711. *Common Carrier Bureau Announces Release of Revised Universal Service Worksheet (FCC Form 457) To Reflect Change in Reporting of Revenues From Inside Wiring Maintenance*, Public Notice, DA 99–432, CC Docket No. 96–45 (rel. Mar. 5, 1999) (*1999 Universal Service Worksheet Notice*).

[9] See 47 CFR 52.16. See also *Common Carrier Bureau Announces Release of 1999 North American Numbering Plan Funding Worksheet*, FCC Form 496, Public Notice, 13 FCC Rcd 17888, DA 98–1865 (rel. Sept. 15, 1998) (*1999 NANP Funding Worksheet Notice*).

[10] See 47 CFR 52.32. See also *All Telecommunications Carriers Must Begin Contributing To the Regional Database Costs for Long-Term Number Portability in 1999*, Public Notice, DA 99–544, CC Docket No. 95–116 (rel. Mar. 15, 1999) (*1999 LNP Worksheet Notice*).

[11] See 47 CFR 0.459.

[12] See 47 U.S.C. 413; 47 CFR 1.47(h).

[13] *Contributor Reporting Requirements Notice*, 13 FCC Rcd 19295, 63 FR 54090 (October 8, 1998).

accomplish each of these goals, contributions are collected from telecommunications carriers and certain other providers of telecommunications services. As currently structured, our rules require telecommunications carriers having interstate revenues to file, at different times throughout the year, a number of contributor reporting worksheets that reflect often duplicative reporting requirements. Such carriers must file four forms (Form 431, TRS Fund Worksheet;[7] Form 457, Universal Service Worksheet;[8] Form 496, NANPA Funding Worksheet;[9] and Form 487, LNP Worksheet[10]) containing revenue and other data on which contributions to support or cost recovery mechanisms are based. For each of these forms, with the exception of the Universal Service Worksheet, carriers seeking confidential treatment of the data submitted in these forms must also file separate requests for nondisclosure with the Commission.[11] In addition to these contributor reporting requirements, all carriers must also file data concerning contact information for an agent for service of process located in the District of Columbia.[12]

3. On September 25, 1998, the Commission released a Notice of Proposed Rulemaking and Notice of Inquiry, 63 FR 54090 (October 8, 1998), to initiate this proceeding.[13] Twenty-eight parties filed comments and ten parties filed reply comments to the Notice.

III. Streamlining Contributor Reporting Requirements

A. Use of a Consolidated Worksheet

4. We adopt a new Telecommunications Reporting Worksheet to replace the four existing worksheets used to collect contributor data. The new worksheet will also be used by carriers to identify agents for service of process, as required by section 413 of the Act. We note that carriers and administrators were nearly unanimous in their support of this proposal, indicating that it would result in tangible administrative savings. We also conclude that adopting one worksheet to satisfy these obligations will reduce confusion for carriers and should increase compliance, particularly by smaller carriers. Finally, we believe that adopting a consolidated worksheet and granting administrators the ability to share revenue data will reduce the costs for administrators and, thereby, further effect savings overall.

5. To consolidate the worksheets, we amend the corresponding sections of the Commission's rules for universal service, TRS, local number portability, and numbering administration, so that those rule sections now refer to the Telecommunications Reporting Worksheet.[14] To the same end, we also amend our rules concerning agents for service of process in section 1.47 to provide for the use of the worksheet.[15] Attached, as Appendix D to the Report and Order, is the initial Telecommunications Reporting Worksheet (including both the April and the streamlined September versions) that will be used for the September 1, 1999 filing.[16] The new Telecommunications Reporting Worksheet will provide the necessary information while reducing to the lowest possible level the burden for carriers and service providers.

6. We do not adopt, however, the Commission's proposal to use the Telecommunications Reporting Worksheet to collect revenue and plant data required under section 43.21(c) of the Commission's rules.[17]

B. Timing Issues

1. Uniform Filing Date

7. Consolidating the multiple existing filings into the Telecommunications Reporting Worksheet will reduce the number of times that carriers will need to assemble data and report it. We direct the Bureau to utilize a single filing date for the Telecommunications Reporting Worksheet for the purposes of universal service, TRS, NANP, and local number portability.[18] Our decision to adopt a single filing date is bolstered by all of the commenters to address this proposal. Since we adopt the first iteration of the Telecommunications Reporting Worksheet in this order, we direct that, for the first year's filing, the Telecommunications Reporting Worksheet should be filed on April 1st.

8. We clarify that the new Telecommunications Reporting Worksheet will become effective upon approval by the Office of Management and Budget (OMB), but not less than thirty days from publication in the **Federal Register**. It is our intention that contributors to the universal service support mechanisms should use the streamlined Form 499–S version (FCC Form 499S) to satisfy the September 1, 1999 universal service filing. However, because we are required to seek approval from the Office of Management and Budget for this revised information collection, it is possible that the new form may not be available for use for the September 1999 filing. We direct the Bureau to announce by Public Notice whether contributors should file the new September version or whether contributors should file, for a final time, the existing Universal Service Worksheet. For the purposes of TRS, NANP, LNP, universal service, the Form 499–A version of the worksheet will be used to satisfy the April 1, 2000 filing. In addition, the worksheet will be available to be used by carriers to satisfy their section 413 obligations concerning agents for service of process,[19] as soon as it is approved by OMB, but not less than thirty days after publication in the **Federal Register**. This timeframe should give administrators sufficient time to prepare their systems for the new worksheet and should give filers sufficient time to become familiar with the new worksheet.

2. September 1st Filing Date for Universal Service Support Mechanisms

9. We conclude that a more streamlined form is acceptable for the September 1st filing. Accordingly, we adopt a "short form" for purposes of the

[14] See Attachment to this Summary (Rules Changes).

[15] See Attachment to this Summary (Rules Changes).

[16] See Section III. B. of this Summary (concerning Timing Issues).

[17] See *Contributor Reporting Requirements Notice*, 13 FCC Rcd 19295, 19309, 63 FR 54090 (October 8, 1998); 47 CFR 43.21(c).

[18] Agent for service of process data required pursuant to section 413 of the Act is not necessarily filed at one time of the year, but at the time the carrier changes its agent for service of process in the District of Columbia. This requirement will remain unchanged. See 47 CFR 1.47(h).

[19] See Section III. B. of the Order.

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September 1st filing that will omit data that is not essential for the mid-year calculation of universal service contributions.

E. Filing Location(s)

10. We conclude that subject carriers and service providers need only file one copy of their completed Telecommunications Reporting Worksheet, rather than separate copies with each administrator. We facilitate a single filing location by instructing the administrators to develop procedures for collecting, validating, and distributing the contributor data provided in the new Telecommunications Reporting Worksheet.[20]

F. Procedures for Future Changes to the Telecommunications Reporting Worksheet

11. We adopt our proposal and delegate authority to make future changes to the Telecommunications Reporting Worksheet to the Chief of the Common Carrier Bureau.[21] The Bureau already has broad authority to waive, reduce, or eliminate the contributor reporting requirements for universal service, and the Bureau has latitude with respect to the administration of the NANP, LNP, and TRS contributor reporting requirements. These delegations extend to administrative aspects of the requirements, e.g., where and when worksheets are filed, incorporating edits to reflect Commission changes to the substance of the mechanisms, and other similar details.

12. So that these delegations are consistent, we amend the Commission's rules to grant the Common Carrier Bureau delegated authority, in keeping with the current delegation for universal service purposes, to waive, reduce, modify, or eliminate the contributor reporting requirements for the TRS, LNP, and NANP mechanisms, as necessary to preserve the sound and efficient administration of these support and cost recovery mechanisms.[22] We specify that the Bureau has the authority to "modify" these reporting requirements as a matter of clarification, because we believe that this authority is implied within the existing grant. We reaffirm that this delegation extends only to making changes to the administrative aspects of the reporting requirements, not to the substance of the underlying programs.

G. Information Sharing and Delegation of Data Entry Functions Between Administrators

13. We amend our rules to allow the administrators to share confidential contributor information with one another for the purposes of comparing individual contributors' revenue, contact, and payment history information. Based on our experience with the limited sharing provisions currently allowed under our rules and on the record in this proceeding, we conclude that the ability to share contributor data will assist the administrators in monitoring compliance with the contribution requirements by revealing inconsistencies between revenue data reported to the different administrators. This sharing of information will also enhance the administrators' performance of their collection functions and thereby better ensure the integrity and efficient administration of the support and cost recovery mechanisms. Moreover, we amend our rules to ensure that such information cannot be used for purposes unrelated to the administration of the mechanisms; thus, ensuring proper treatment of confidential contributor information.[23]

14. Starting with the April 2000 filing of the consolidated worksheet, the administrators will have a practical need to share carrier-provided information because we direct in this order that filers need only submit one copy of their completed worksheets.[24] Rather than mandate particular data sharing procedures, we order the administrators to develop efficient and effective procedures for collecting, validating, and distributing the centrally-filed contributor data amongst themselves. We expect, for example, that it might be more cost effective to have one administrator perform the data entry and preliminary verification functions for more than one of the support and cost recovery mechanisms. Whatever their decision, we direct the administrators to file with the Bureau, within 90 days after release of this order, a summary of their proposed procedures for distributing the data from the worksheet.

15. We conclude that the costs of collecting, validating, and distributing the carrier-provided information—and, any savings derived from consolidating redundant administrative tasks—should be allocated equitably among the administrators. Accordingly, we order the administrators to include in their filed summary a description of how related costs will be equitably apportioned. We delegate to the Bureau the authority to review the administrators' summary, including the proposed cost allocation plan.

16. To preserve the integrity of the support and cost recovery mechanisms, it is important to ensure that all contributor data is collected. We thus expect that the summarized procedures should reflect the administrators' commitment to ensuring that all required data is collected and validated.

H. Additional Confidentiality Issues

17. We adopt our proposal to permit carriers filing the Telecommunications Reporting Worksheet to certify that the revenue data contained in their submissions are privileged or confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the entity filing the worksheet.[25] As proposed, we amend our rules so that filers will be able to make this certification on their Telecommunications Reporting Worksheet and request Commission nondisclosure of information contained in the worksheet simply by checking a box on the worksheet, in lieu of submitting a separate request pursuant to section 0.459 of the Commission's rules.

18. We make clear, however, that simply requesting confidential treatment by means of this check-box does not necessarily entitle the filer to nondisclosure. Indeed, if the Commission is to receive a request for disclosure of the information on the worksheets, or if the Commission proposes to disclose the information, the filer would be required to make the full showing required under our rules.[26]

[20] See Section III. G. (discussing data entry of the Telecommunications Reporting Worksheet) of the Order. The Bureau will announce by Public Notice the location for filing the April 2000 Telecommunications Reporting Worksheet.

[21] See *Contributor Reporting Requirements Notice*, 13 FCC Rcd 19295, 19319–20, 63 FR 54090 (October 8, 1998).

[22] See Appendix B, Rules Amended.

[23] See Section III.H. (concerning Confidentiality Issues) of the Order.

[24] See Section III.E. (discussing the filing location for the consolidated worksheet) of the Order. The Bureau will announce by Public Notice the location for filing the April 2000 Telecommunications Reporting Worksheet.

[25] See Appendix D, Telecommunications Reporting Worksheet. We note that Blooston requests that the Commission grant confidential treatment for other information on the worksheet, such as the facsimile numbers and e-mail addresses of the contact persons. Any such request for confidential treatment would have to be separately pleaded pursuant to section 0.459. 47 CFR 0.459. We note, however, that the Commission does not plan to routinely release this information.

[26] See 47 CFR 0.459. See also *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, FCC 98–184, GC Docket No. 96–55, 63 FR 44161 (August 18, 1998) (listing the showings required in a request that information be withheld and stating that the Commission may defer action on such requests until a formal request for public inspection has been made).

For example, we expect that the Commission would be disinclined to withhold information related to the size of an individual carrier's contribution (information which third parties could potentially use to estimate that carrier's revenues) in an enforcement action against a carrier for failure to make a required contribution to one of the support or cost recovery mechanisms.

19. In light of our decision to allow administrators to share contributor revenue data, we take additional measures to ensure the nondisclosure of confidential submissions. We accordingly modify our rules to extend each administrator's confidentiality obligations to the data obtained from other funds. Moreover, we amend our rules to ensure that the administrators shall only use contributor data—whether obtained directly from contributors or from administrators—for the purpose administering the support and cost recovery mechanisms.[27]

I. Electronic Filing

20. We conclude, based on our experience in other proceedings, that making available an electronic filing system for the Telecommunications Reporting Worksheet may allow filers and administrators to reduce costs and improve accuracy. Accordingly, we take initial steps in this proceeding to develop and move to an electronic filing system. We expect, however, that the costs and benefits of an electronic filing system can vary significantly depending on the design of the system. Indeed, in light of the complexities raised in the record by both carriers and administrators, we conclude that it is imperative for the development of and the transition to an eventual electronic filing system to be conducted with great involvement from the administrators and carriers.[28]

21. As an initial step, we direct the administrators to assess and report to the Bureau, within 180 days of the release of this order, on the feasibility of implementing electronic filing. We expect the administrators to address the potential start-up and on-going operating costs to the administrators and carriers of an electronic system. The administrators should also address measures and costs associated with ensuring the accuracy and security of filed contributor data. We agree with those commenters that state that any proposal for electronic filing should not require expensive start-up costs for filers.[29] Moreover, we conclude that any electronic filing proposal must satisfy a cost-benefit analysis and instruct the administrators to conduct such an analysis. Finally, we restate our commitment to making electronic filing and other electronic applications accessible to persons with disabilities to the fullest extent possible.[30] Therefore, the administrators' report should address their ability—both now and on a continuing basis—to make electronic systems accessible to persons with disabilities.

IV. Contributions to TRS and NANPA Mechanisms

A. Overview

22. We adopt our proposals to alter the revenue bases for the TRS and NANP mechanisms so that end-user telecommunications revenues will be used to calculate contributions for all four mechanisms. In addition, we also alter the current practices for assessing minimum contributions to the TRS and NANP mechanisms to lessen regulatory burdens on small carriers and telecommunications service providers.

23. As a preliminary matter, we reject MCI's procedural argument that the Commission may not alter the revenue base or minimum contributions rules because it did not give adequate notice of these changes. Section 553(b) of the Administrative Procedures Act (APA) requires that an agency afford interested parties adequate notice of, and an opportunity to comment on, the provisions that appear in the agency's final regulations.[31] Courts have interpreted this to require that an agency provide "sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully."[32] The *Contributor Reporting Requirements Notice*, 63 FR 54090 (October 8, 1998), appeared in the **Federal Register**, and it contained adequate, indeed explicit, notice of the provisions we adopt today. We also observe that the caption to this docket specifically references the four underlying mechanisms; a point which we believe is not essential to satisfy the requirements of the APA, but that further undercuts MCI's claim that it did not have adequate notice of these proposals. Moreover, MCI cannot claim any actual lack of notice, as it has participated fully in this proceeding, filing both initial and reply comments. Accordingly, we believe that no further notice is required to comply with the notice provisions of the APA.

B. Basis for Assessing Contributions

24. In light of the Commission's experience since adopting revenue bases for TRS and NANP and in light of our efforts to streamline contributor reporting requirements, we modify our rules for contributions to the TRS and NANP mechanisms so that contributions will be based on end-user telecommunications revenues. Basing contributions to these mechanisms on end-user telecommunications revenue will effectively carry out the statutory mandates in section 225 and 251 for financing of TRS and NANP.[33] In addition to fulfilling the statutory directives, moving to an end-user telecommunications revenue basis will reduce carriers' administrative expenses associated with these reporting requirements. Indeed, given our proposal to create a unified contributor collection worksheet, we believe that changing the funding basis to end-user telecommunications revenue will appreciably reduce administrative burdens overall for carriers.

25. Basing contributions on end-user telecommunications revenues is consistent with the statutory language of section 225 and its requirement that "costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service."[34] Recovering interstate relay costs from all common carriers that provide interstate service on the basis of their interstate revenues will accomplish this goal. End users are a reasonable proxy for subscribers, so collecting contributions from carriers based on revenue derived from end users satisfies section 225.

26. Similarly, collecting contributions to the NANP cost recovery on the basis of end-user telecommunications satisfies the requirements of section 251(e). Section 251(e) of the Act directs that "[t]he cost of establishing

[27] We note that the TRS rules enable the TRS administrator to use data obtained from contributors to be used for calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. We do not alter these provisions.

[28] See, e.g., MCI Comments at 5; GTE Comments at 4; Blooston Reply Comments at 7–9.

[29] See, e.g., Blooston Comments at 15–16; MCI Comments at 5.

[30] Electronic filing is subject to the program accessibility requirements of section 1.850 of our rules. 47 CFR 1.850. See also Workforce Investment Act of 1998, Public Law 105–220, 112 Stat. 936 (Aug. 7, 1998).

[31] 5 U.S.C. 553.

[32] *Florida Power & Light Co. v. United States*, 846 F.2d 765, 771 (D.C. Cir. 1988), cert. denied, 490 U.S. 1045 (1989).

[33] See 47 U.S.C. 225, 251(e).

[34] 47 U.S.C. 225(d)(3)(B).

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telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." [35] The end-user telecommunications revenue basis satisfies the section 251 directive that contributions be assessed on a competitively neutral basis. In particular, the Commission found this basis to be competitively neutral because it does not give one service provider an appreciable, incremental cost advantage when competing for a subscriber. Further, basing contributions on end-user telecommunications revenues will prevent contributions to the NANP administration cost recovery from disparately affecting the ability of carriers to earn a normal return. We affirm this analysis and conclude that collecting contributions to the NANP administration cost recovery based on end-user telecommunications revenues will be competitively neutral.[36]

27. In the case of NANP, we note that section 251(e)(2) requires that the "cost of establishing telecommunications numbering administration arrangements . . . shall be borne by all telecommunications carriers on a competitively neutral basis. . . ." [37] Given the statutory directive that contributions be collected from "all telecommunications carriers," we require carriers that provided telecommunications service during the base year and that have no end-user telecommunications revenue to make a fixed contribution of twenty-five dollars ($25) to the NANP cost recovery mechanism.[38] We conclude that assessing this sum will satisfy the statutory language of section 251(e)(2) and at the same time will not be economically burdensome for these primarily-large wholesale carriers. Finally, we observe that although an end-user telecommunications revenue basis would otherwise relieve pure wholesalers, which have no end-user revenue, from directly bearing costs of number administration, the end-user method does not exclude wholesale revenues from the revenue base that determines carriers' contributions. As the Commission explained in the *Universal Service Order*, 62 FR 32862 (June 17, 1997), wholesale charges are built into retail rates, and thus the revenue basis still reflects wholesale revenue.[39]

28. To minimize confusion for contributors and the administrators, we wish to make the transition to contributions based on end-user telecommunications revenues as soon as possible. For purposes of TRS, we recognize that many contributors are still making monthly installment payments toward their funding year 1999 contribution (which covers the April 26, 1999 through March 26, 2000 period) and we make clear that those contributions to the TRS Fund for the current funding period will continue to be based on gross telecommunications revenues. Because the contributor data needed to calculate TRS contributions for the funding year 2000 will not be available until April 2000, we will extend the current TRS funding period, so that contributions to the TRS Fund will continue to be based on gross telecommunications revenues and the current fund factor through the end of June 2000.[40] As of July 1, 2000 contributions to the TRS Fund will be based on end-user telecommunications revenues. A new factor will be developed in time for contributions in July 2000 and we will shift the fiscal year for TRS, so that the funding period will run from July 1st of each year through June 30th of the following year.

29. Indeed, we will shift the fiscal years for both TRS and NANP, so that the funding periods for these mechanisms will be more closely timed with the receipt of annual contributor data in the April filing of the new consolidated worksheet. We also make clear that contributions to the NANP cost recovery will continue to be based on net telecommunications revenues through the end of the current funding year, which covers fund administration from March 1999 through February 2000. The NANP Billing and Collection Agent will begin collecting contributions based on end-user telecommunications revenues for the funding year 2000. So that we may transition the NANP funding period to run from July 1st of each year through June 30th of the following year, we direct that the funding year 2000 will cover the sixteen month period from March 2000 through June 2001. We direct that, for purposes of the NANP funding year 2000, the Billing and Collection Agent will use contributor data filed in the September consolidated worksheet to develop the fund factor and should use the contributor data filed in the April consolidated worksheet to perform a "true-up" for the contributions in July 2000.[41] Thereafter, the NANP funding period will return to the twelve month cycle from July to June with contributions based on the April filing of the worksheet.

C. Minimum and Fixed Annual Contributions to TRS and NANPA Mechanisms

30. We modify our proposals and amend our rules to reduce substantially the one hundred dollar minimum contributions to a twenty-five dollar minimum. Our experience with the TRS and NANP mechanisms persuades us that it is possible to lower the one hundred dollar minimum while protecting the administrative integrity and efficiency of the TRS and NANP mechanisms.

V. Procedural Matters

A. Final Paperwork Reduction Act Analysis

31. As required by the Paperwork Reduction Act of 1995, the *Contributor Reporting Requirements Notice*, 63 FR 54090 (October 8, 1998), invited the general public and the Office of Management and Budget (OMB) to comment on the proposed information collection requirements contained in the Notice, in particular, the Telecommunications Reporting Worksheet. On December 9, 1998, OMB approved the proposed information collection, as submitted to OMB.[42] In this Report and Order, we adopt the proposed Telecommunications Reporting Worksheet, but modify our proposal to reflect comments received from OMB and other commenters. The revised Telecommunications Reporting Worksheet is subject to approval by OMB. The worksheet that we adopt in this Order reflects our efforts to collect the information necessary to implement the congressional directives, while reducing to the lowest possible level the burden on carriers and service providers.[43]

B. Final Regulatory Flexibility Act Analysis

32. As required by the Regulatory Flexibility Act (RFA),[44] the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules adopted in this Order. A copy of this FRFA is set forth as part of this summary. The Office of Public Affairs, Reference Operations Division, will send a copy of this Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Ordering Clauses

33. *Accordingly, it is ordered*, pursuant to sections 1, 4(i), 4(j), 11, 201–205, 210, 214, 218, 225, 251, 254, 303(r), 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 161, 201–205, 210, 214, 218, 225, 251, 254, 303(r), 332 and 403 that this Order is hereby Adopted.

34. *It is further ordered* that the rule changes set forth in Appendix B are hereby *adopted*, effective thirty (30) days from the date of publication in the **Federal Register**. The information collection adopted herein is contingent upon approval by the Office of Management and Budget, but, in any event, will not become effective before thirty (30) days after publication in the **Federal Register**.

35. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this *order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Final Regulatory Flexibility Act Analysis

36. In compliance with the Regulatory Flexibility Act (RFA),[45] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Contributor Reporting Requirements Notice*, 63 FR 54090 (October 8, 1998). The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[46]

I. Need for, and Objectives of, the Contributor Reporting Requirements Order:

37. The Commission undertakes this examination of its contributor reporting requirements [47] as a part of its 1998 biennial review of regulations as required by section 11 of the Communications Act, as amended.[48] This Order simplifies the Commission's filing requirements by consolidating several different forms currently filed under our existing rules associated with the Telecommunications Relay Services (TRS) Fund,[49] federal universal service support mechanisms,[50] the cost recovery mechanism for the North American Numbering Plan (NANP) administration,[51] and the cost recovery mechanism for long-term local number portability (LNP) administration.[52] This Order also establishes end-user telecommunications revenues as the basis for contributions to the NANP and TRS mechanisms—making consistent the revenue bases for all four support and cost recovery mechanisms. Our objective is to reduce or eliminate unnecessary or duplicative regulatory requirements, consistent with section 11 of the Act,[53] and the Telecommunications Act of 1996.[54]

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

38. Only one party filed comments addressing the Commission's compliance with the RFA,[55] but many parties commented on the Commission's proposals to streamline the Commission's reporting requirements. As noted above, the record provided by all of these commenting parties clearly supports the Commission's efforts to reduce the amount of paperwork required by the current contributor reporting requirements.[56] Consistent with those comments, this Order reduces significantly the amount of paperwork required of telecommunications carriers.

39. In comments to the Notice, GST argues that the proposed Telecommunications Reporting Worksheet is particularly burdensome for small carriers because it assumes that small carriers have developed sophisticated accounting infrastructure.[57] We disagree with GST's assessment and note that the worksheet provides flexibility for carriers that do not have sophisticated accounting systems. In contrast to GST's portrayal, the categories of revenue sought in the worksheet correspond to major categories of service, reflecting our expectation that most carriers track the relative magnitudes of their major product offerings for internal management reporting and cost accounting purposes. GST offers no evidence to the contrary. The worksheet collects the minimum amount of information necessary to ensure that individual carriers and segments of the industry are contributing on a fair and equitable basis. Further, the worksheet and its instructions incorporate alternative, less burdensome approaches where it has been determined that supplying certain information is particularly burdensome for certain carriers. Thus, for example, the worksheet permits carriers to use good

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[35] 47 U.S.C. 251(e)(2). Even though there is no explicit statutory requirement to do so in section 225, we conclude that the principle of competitive neutrality is consistent with section 225 and that basing contributions to the TRS Fund on a competitively neutral mechanism would advance the intent embodied in the Congressional goal of "a pro-competitive, de-regulatory national policy framework." See Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996).

[36] See, e.g., BellSouth Comments at 4–5; IDT Comments at 16; Star Comments at 2–4. We note that several Bell Operating Companies argued to the United States Court of Appeals for the 8th Circuit that the net telecommunications revenue methodology would not be competitively neutral if states do not permit carriers to flow through their numbering administration costs in the prices that they charge their competitors for telecommunications services and facilities. *California* v. *FCC*, 124 F.3d 934 (8th Cir., 1997). The Court of Appeals ruled that petitioners' contentions were speculative and not ripe for review because no state had concluded that carriers could not include numbering administration charges in the prices for services or facilities sold to other telecommunications service providers. Id. at 944. Adoption of an end-user telecommunications revenue basis should moot this issue.

[37] 47 U.S.C. 251(e)(2).

[38] While the Commission proposed in the Notice a fixed contribution of $100 for carriers with no end-user telecommunications revenues, we believe that the $25 contribution will be easier to administer, since it is consistent with the $25 minimum contribution rule that we adopt for contributors with end-user telecommunications revenues. See Section IV. C. of the Order.

[39] See *Universal Service Order*, 12 FCC Rcd 8776, 9207, 62 FR 32862 (June 17, 1997).

[40] See *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Order, DA 98–2481, CC Docket No. 90–571 (rel. Dec. 2, 1998) (determining contribution factor for the April 26, 1999 through March 26, 2000 period).

[41] A "true-up" will be necessary because the September worksheet reports only half year revenue data and because it may not collect data from all NANP contributors, e.g., some telecommunications carriers that are de minimis for universal service purposes will not file the September worksheet. We nevertheless expect that the revisions performed in the "true-up" will be minor in terms of contributors added and contributions adjusted.

[42] In its approval of the proposed worksheet, OMB requests that the Commission address several issues. See Section V.A. of the Order for a discussion of those issues.

[43] See Sections III.B. of the Order (discussing data requested in the worksheet); and V.A. of the Order (discussing comments on the proposed information collections).

[44] See 5 U.S.C. 604. The RFA, see 5 U.S.C. 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[45] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[46] See 5 U.S.C. 604.

[47] See 47 CFR 64.601 et seq.; 47 CFR 54.1 et seq.; 47 CFR 52.1 et seq.; 47 CFR 52.21 et seq.

[48] 47 U.S.C. 161.

[49] 47 CFR 64.601 et seq.

[50] 47 CFR 54.1 et seq., 69.1 et seq.

[51] 47 CFR 52.1 et seq.

[52] 47 CFR 52.21 et seq.

[53] 47 U.S.C. 161.

[54] Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996 Act), codified at 47 U.S.C. 151 et seq. See Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996) (Joint Explanatory Statement).

[55] See GST Comments at 15.

[56] See Section III.B. (discussing use of a consolidated worksheet) of the Order.

[57] See GST Comments at 7, 9, 15.

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faith estimates to determine interstate and international revenues where these figures cannot be directly determined from corporate books of account or subsidiary records. Similarly, we adopt a streamlined version of the worksheet to satisfy the September universal service filing and to reduce costs for carriers.

40. While not in direct response to the IRFA, both NECA and Blooston encourage the Commission not to implement an electronic filing system that would require costly investments by small carriers.[58] We agree that proposals for electronic filing of the Telecommunications Reporting Worksheet should not require expensive start-up costs for filers, so that all carriers, including small entities, should be able to utilize a more efficient system.[59]

IV. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply:

41. The Commission's contributor reporting requirements apply to a wide range of entities, including all telecommunications carriers and other providers of interstate telecommunications that offer telecommunications for a fee.[60] Thus, we expect that the rules adopted in this Order will have a positive economic impact on a substantial number of small entities. Based on the number of carriers that file the existing forms—and this Order does not increase the number of entities that must comply with these requirements—we predict that not more than 5,000 entities, total, will file the worksheet. Of those 5,000 potential filers, we do not know how many are small entities, but we offer below a detailed estimate of the number of small entities within each of several major carrier-type categories. We state, again, that the economic impact of these proposals is, of course, a positive and beneficial impact, in the form of reduced regulatory burdens and recordkeeping requirements, for these entities.

42. To estimate the number of small entities that would benefit from this positive economic impact, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction."[61] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[62] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[63] The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.[64] We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

43. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS).[65] According to data in the most recent report, there are 3,604 interstate carriers.[66] These carriers include, inter alia, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

44. Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns."[67]

45. Total Number of Telephone Companies Affected. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[68] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."[69] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rule changes adopted in this Order.

46. Wireline Carriers and Service Providers. SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[70] According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[71] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rule changes adopted in this Order.

47. Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers. Neither the Commission nor SBA has developed a definition of small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[72] The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS).[73] According to our most recent data, there are 1,410 LECs, 151 IXCs, 129 CAPs, 32 OSPs, and 351 resellers.[74] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs or small incumbent LECs, 151 IXCs, 129 CAPs, 32 OSPs, and 351 resellers that may be affected by the decisions and rule changes adopted in this Order.

48. Wireless (Radiotelephone) Carriers. SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.[75] According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons.[76] The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rule changes adopted in this Order.

49. Cellular, PCS, SMR and Other Mobile Service Providers. In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules adopted herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under SBA rules—which, for both categories, is for telephone companies other than radiotelephone (wireless) companies.[77] To the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions below. According to our most recent TRS data, 732 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services.[78] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described below, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 732 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the decisions and rule changes adopted in this Order.

50. Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[79] For Block F, an additional classification for "very small business" was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[80] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA.[81] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small

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[58] NECA Comments at 4; Blooston Reply Comments at 9.

[59] See Section III.I. (discussing electronic filing) of the Order.

[60] 47 CFR 52.17 (applying to all telecommunications carriers), 52.32 (applying to all telecommunications carriers), 54.703 (applying to every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and certain payphone providers), 64.604(c)(4)(iii)(A) (applying to every carrier providing interstate telecommunications services). We note that the Commission's rules for universal service exempt certain small contributors, i.e., contributors that have revenue below a stated threshold. 47 CFR 54.705.

[61] 5 U.S.C. 601(6).

[62] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

[63] 15 U.S.C. 632. See, e.g., *Brown Transport Truckload, Inc.* v. *Southern Wipers, Inc.*, 176 B.R. 82 (N.D. Ga. 1994).

[64] 13 CFR 121.201.

[65] FCC, *Carrier Locator: Interstate Service Providers*, Figure 1 (Jan. 1999) (*Carrier Locator*). See also 47 CFR 64.601 *et seq.*

[66] *Carrier Locator* at Fig. 1.

[67] See 13 CFR 121.201, Standard Industrial Classification (SIC) 4813. Since the time of the Commission's 1996 decision, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (August 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

[68] United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1–123 (1995) ("1992 Census").

[69] 15 U.S.C. 632(a)(1).

[70] 1992 Census, supra, at Firm Size 1–123.

[71] 13 CFR 121.201, SIC Code 4813.

[72] 13 CFR 121.210, SIC Code 4813.

[73] See 47 CFR 64.601 et seq.; *Carrier Locator* at Fig. 1.

[74] *Carrier Locator* at Fig. 1. The total for resellers includes both toll resellers and local resellers.

[75] United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1–123 (1995) ("1992 Census").

[76] 13 CFR 121.201, SIC Code 4812.

[77] Id.

[78] *Carrier Locator* at Fig. 1.

[79] See *Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, FCC 96–278, WT Docket No. 96–59, ¶¶ 57–60 (June 24, 1996), 61 FR 33859 (July 1, 1996); see also 47 CFR 24.720(b).

[80] Id., at ¶ 60.

[81] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93–253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–84, 59 FR 63210 (December 7, 1994).

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and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commissioner's auction rules.

51. SMR Licensees. Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. The definition of a "small entity" in the context of 800 MHz SMR has been approved by the SBA,[82] and approval for the 900 MHz SMR definition has been sought. The rules proposed in this FRFA may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, that may be affected by the decisions and rule changes adopted in this Order.

52. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees that may be affected by the decisions and rule changes adopted in this Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who may be affected by the decisions and rule changes adopted in this Order.

53. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHZ Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies.[83] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[84] Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

54. 220 MHz Radio Service—Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. The Commission has adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.

55. Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services.[85] Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.[86] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Carrier Locator* data, 137 carriers reported that they were engaged in the provision of either paging or messaging services, which are placed together in the data.[87] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 137 small paging carriers that may be affected by the decisions and rule changes adopted in this Order. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

56. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

57. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[88] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[89] We will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.[90] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

58. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[91] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.[92] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

59. Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities.[93] These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

60. The Commission is unable at this time to estimate the number of, if any, small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs[94] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact every small business in the United States.

61. Fixed Microwave Services. Microwave services include common carrier,[95] private-operational fixed,[96] and broadcast auxiliary radio services.[97] At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with no more than 1,500 persons.[98] We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

62. Offshore Radiotelephone Service. This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[99] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small entities under the SBA's definition for radiotelephone communications.

63. Wireless Communications Services. This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the decisions and rule changes adopted in this Order includes these eight entities.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements:

64. The decisions and rule changes adopted in this Order will reduce the reporting and recordkeeping requirements on telecommunications service providers regulated under the Communications Act. As currently structured, telecommunications carriers and other service providers having interstate revenues are required to file, at different times throughout the year, a number of contributor reporting worksheets that often reflect duplicative reporting requirements. In this Order, the Commission reduces these regulatory burdens by combining the multiple worksheets into one unified Telecommunications Reporting Worksheet. In addition, the Commission

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[82] See *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool*, PR Docket No. 89–583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693–702, 60 FR 48913 (September 21, 1995); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93–144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463, 61 FR 06212 (February 16, 1996).

[83] 13 CFR 121.201, SIC Code 4812. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.

[84] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC code 4812 (issued May 1995).

[85] See 47 CFR 20.9(a)(1) (noting that private paging services may be treated as common carriage services).

[86] 13 CFR 121.201, SIC Code 4812.

[87] *Carrier Locator* at Fig. 1.

[88] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[89] BETRS is defined in sections 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757, 22.759.

[90] 13 CFR 121.201, SIC Code 4812.

[91] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[92] 13 CFR 121.201, SIC Code 4812.

[93] See 47 CFR 20.9(a)(2) (noting that certain Industrial/Business Pool service may be treated as common carriage service).

[94] Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at 116.

[95] 47 CFR 101 *et seq.* (formerly, Part 21 of the Commission's rules).

[96] Persons eligible under Parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[97] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 CFR 74 et seq. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[98] 13 CFR 121.201, SIC Code 4812.

[99] This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 CFR 22.1001–22.1037.

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further reduces carrier filing burdens by allowing carriers to use the proposed Telecommunications Reporting Worksheet to designate agents for service of process pursuant to section 413 of the Communications Act of 1934, as amended.[100] We expect that, by adopting these proposals, telecommunications service providers will experience an appreciable reduction in reporting, recordkeeping, and other compliance burdens.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:

65. In the *Contributor Reporting Requirements Notice*, 63 FR 54090 (October 8, 1998), the Commission sought comment on ways to simplify its contributor reporting requirements and, in particular, whether a unified worksheet would reduce regulatory and administrative burden on reporting carriers.[101] Commenters were nearly unanimous in their support of the Commission's proposals in the Notice. In response to numerous proposals to modify the data collected in the worksheet, the Commission developed the final Telecommunications Reporting Worksheet so that it will collect the minimum information necessary to ensure the equitable and efficient funding of the support and cost recovery mechanisms.[102] Accordingly, we conclude that the impact of this proceeding should be beneficial to small businesses because the decisions and rule changes adopted in this Order will reduce the reporting or recordkeeping requirements on all communications common carriers.

Report to Congress: The Commission will send a copy of the *Contributor Reporting Requirements Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[103] In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.[104]

[100] 47 U.S.C. 413.

[101] See *Contributor Reporting Requirements Notice*, 13 FCC Rcd 19295, 19304, 63 FR 54090 (October 8, 1998).

[102] See Sections III. B. of the Order (discussing the use of a consolidated worksheet), and III.D.2.b. of the Order (discussing the September universal service filing).

[103] See 5 U.S.C. 801(a)(1)(A).

[104] See 5 U.S.C. 604(b).

List of Subjects

47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 52

Communications common carriers, Numbering administration, Number portability, Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone, Universal service.

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone, Universal service.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telecommunications relay services, Telephone.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

Rule Changes

Parts 1, 52, 54, and 64 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r), 309.

2. Section 1.47(h) is revised to read as follows:

§ 1.47 Service of documents and proof of service.

* * * * *

(h) Every common carrier subject to the Communications Act of 1934, as amended, shall designate an agent in the District of Columbia, and may designate additional agents if it so chooses, upon whom service of all notices, process, orders, decisions, and requirements of the Commission may be made for and on behalf of said carrier in any proceeding before the Commission. Such designation shall include, for both the carrier and its designated agents, a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address. The carrier shall additionally list any other names by which it is known or under which it does business, and, if the carrier is an affiliated company, the parent, holding, or management company. Within thirty (30) days of the commencement of provision of service, each carrier shall file such information with the Formal Complaints and Investigations Branch of the Common Carrier Bureau. Carriers may file a hard copy of the relevant portion of the Telecommunications Reporting Worksheet, as delineated by the Commission in the **Federal Register**, to satisfy this requirement. Each Telecommunications Reporting Worksheet filed annually by a common carrier must contain a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address for its designated agents, regardless of whether such information has been revised since the previous filing. Carriers must notify the Commission within one week of any changes in their designation information by filing revised portions of the Telecommunications Reporting Worksheet with the Formal Complaints and Investigations Branch of the Common Carrier Bureau. A paper copy of this designation list shall be maintained in the Office of the Secretary of the Commission. Service of any notice, process, orders, decisions or requirements of the Commission may be made upon such carrier by leaving a copy thereof with such designated agent at his office or usual place of residence. If a carrier fails to designate such an agent, service of any notice or other process in any proceeding before the Commission, or of any order, decision, or requirement of the Commission, may be made by posting such notice, process, order, requirement, or decision in the Office of the Secretary of the Commission.

PART 52—NUMBERING

3. The authority citation for part 52 continues to read as follows:

Authority: Sec. 1, 2 , 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–205, 207–209, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–205, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

4. Section 52.16 is amended by revising paragraphs (b) and (c) to read as follows:

§ 52.16 Billing and Collection Agent.

* * * * *

(b) Distribute to carriers the "Telecommunications Reporting Worksheet," described in § 52.17(b).

(c) Keep confidential all data obtained from carriers and not disclose such data in company-specific form unless authorized by the Commission. Subject to any restrictions imposed by the Chief of the Common Carrier Bureau, the B & C Agent may share data obtained from carriers with the administrators of the universal service support mechanism (See 47 CFR 54.701 of this chapter), the TRS Fund (See 47 CFR 64.604(c)(4)(iii)(H) of this chapter), and the local number portability cost recovery (See 47 CFR 52.32). The B & C Agent shall keep confidential all data obtained from other administrators. The B & C Agent shall use such data, from carriers or administrators, only for calculating, collecting and verifying payments. The Commission shall have access to all data reported to the Administrator. Contributors may make requests for Commission nondisclosure of company-specific revenue information under § 0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information.

* * * * *

5. Section 52.17 is revised to read as follows:

§ 52.17 Costs of number administration.

All telecommunications carriers in the United States shall contribute on a competitively neutral basis to meet the costs of establishing numbering administration.

(a) Contributions to support numbering administration shall be the product of the contributors' end-user telecommunications revenues for the prior calendar year and a contribution factor determined annually by the Chief of the Common Carrier Bureau; such contributions to be no less than twenty-five dollars ($25). The contribution factor shall be based on the ratio of expected number administration expenses to end-user telecommunications revenues. Carriers that have no end-user telecommunications revenues shall contribute twenty-five dollars ($25). In the event that contributions exceed or are inadequate to cover administrative costs, the contribution factor for the following year shall be adjusted by an appropriate amount.

(b) All telecommunications carriers in the United States shall complete and submit a "Telecommunications Reporting Worksheet" (as published by the Commission in the **Federal Register**), which sets forth the information needed to calculate contributions referred to in paragraph (a) of this section. The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the B & C Agent at the discretion of the Commission. The Chief of the Common Carrier Bureau may waive, reduce, modify, or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the number administration cost recovery.

6. Section 52.32 is amended by revising paragraphs (b) and (c) and by adding paragraph (d) to read as follows:

§ 52.32 Allocation of the shared costs of long-term number portability.

* * * * *

(b) All telecommunications carriers providing service in the United States shall complete and submit a "Telecommunications Reporting Worksheet" (as published by the Commission in the **Federal Register**), which sets forth the information needed to calculate contributions referred to in paragraph (a) of this section. The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. The Chief of the Common Carrier Bureau may waive, reduce, modify, or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of long-term number portability.

(c) Local number portability administrators shall keep all data obtained from contributors confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. Subject to any restrictions imposed by the Chief of the Common Carrier Bureau, the local number portability administrators may share data obtained from carriers with the administrators of the universal service support mechanism (See 47 CFR 54.701 of this chapter), the TRS Fund (See 47 CFR 64.604(c)(4)(iii)(H) of this chapter), and the North American Numbering Plan cost recovery (See 47 CFR 52.16). The local number portability administrators shall keep confidential all data obtained from other administrators. The administrators shall use such data, from carriers or administrators, only for purposes of administering local number portability. The Commission shall have access to all data reported to the Administrator. Contributors may make requests for Commission nondisclosure of company-specific revenue information under § 0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information.

(d) Once a telecommunications carrier has been allocated, pursuant to paragraph (a)(1) or (a)(2) of this section, its portion of the shared costs of long-term number portability attributable to a regional database, the carrier shall treat that portion as a carrier-specific cost directly related to providing number portability.

PART 54—UNIVERSAL SERVICE

7. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

8. Section 54.708 is revised to read as follows:

§ 54.708 De minimis exemption.

If a contributor's contribution to universal service in any given year is less than $10,000 that contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year unless it is required to do so to by our rules governing Telecommunications Relay Service (47 CFR 64.601 *et seq.* of this chapter), numbering administration (47 CFR 52.1 *et seq.* of this chapter), or shared costs of local number portability (47 CFR 52.21 *et seq.* of this chapter). If a contributor improperly claims exemption from the contribution requirement, it will subject to the criminal provisions of sections 220(d) and (e) of the Act regarding willful false submissions and will be required to pay the amounts withheld plus interest.

9. Section 54.709 is amended by revising paragraphs (a) introductory text, (a)(2), and (d) to read as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

(a) Contributions to the universal service support mechanisms shall be based on contributors' end-user telecommunications revenues and contribution factors determined quarterly by the Commission.

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(2) The quarterly universal service contribution factors shall be based on the ratio of total projected quarterly expenses of the universal service support programs to total end-user telecommunications revenues. The Commission shall determine two contribution factors, one of which shall be applied to interstate and international end-user telecommunications revenues and the other of which shall be applied to interstate, intrastate, and international end-user telecommunications revenues. The Commission shall approve the Administrator's quarterly projected costs of universal service support programs, taking into account demand for support and administrative expenses. The total subject revenues shall be compiled by the Administrator based on information contained in the Telecommunications Reporting Worksheets described in § 54.711(a).

* * * * *

(d) If a contributor fails to file a Telecommunications Reporting Worksheet by the date on which it is due, the Administrator shall bill that contributor based on whatever relevant data the Administrator has available, including, but not limited to, the number of lines presubscribed to the contributor and data from previous years, taking into consideration any estimated changes in such data.

10. Section 54.711 is revised to read as follows:

§ 54.711 Contributor reporting requirements.

(a) Contributions shall be calculated and filed in accordance with the Telecommunications Reporting Worksheet which shall be published in the **Federal Register**. The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator on a semi-annual basis. The Commission shall announce by Public Notice published in the **Federal Register** and on its website the manner of payment and dates by which payments must be made. An officer of the contributor must certify to the truth and accuracy of the Telecommunications Reporting Worksheet, and the Commission or the Administrator may verify any information contained in the Telecommunications Reporting Worksheet at the discretion of the Commission. Inaccurate or untruthful information contained in the Telecommunications Reporting Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code. The Administrator shall advise the Commission of any enforcement issues that arise and provide any suggested response.

(b) The Commission shall have access to all data reported to the Administrator. Contributors may make requests for Commission nondisclosure of company-specific revenue information under § 0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information. The Administrator shall keep confidential all data obtained from contributors, shall not use such data except for purposes of administering the universal service support programs, and shall not disclose such data in company-specific form unless directed to do so by the Commission. Subject to any restrictions imposed by the Chief of the Common Carrier Bureau, the Universal Service Administrator may share data obtained from contributors with the administrators of the North American Numbering Plan administration cost recovery (See 47 CFR 52.16 of this chapter), the local number portability cost recovery (See 47 CFR 52.32 of this chapter), and the TRS Fund (See 47 CFR 64.604(c)(4)(iii)(H) of this chapter). The Administrator shall keep confidential all data obtained from other administrators and shall not use such data except for purposes of administering the universal service support mechanisms.

(c) The Bureau may waive, reduce, modify, or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the universal service support mechanisms.

11. Section 54.713 is revised to read as follows:

§ 54.713 Contributors' failure to report or to contribute.

A contributor that fails to file a Telecommunications Reporting Worksheet and subsequently is billed by the Administrator shall pay the amount for which it is billed. The Administrator may bill a contributor a separate assessment for reasonable costs incurred because of that contributor's filing of an untruthful or inaccurate Telecommunications Reporting Worksheet, failure to file the Telecommunications Reporting Worksheet, or late payment of contributions. Failure to file the Telecommunications Reporting Worksheet or to submit required quarterly contributions may subject the contributor to the enforcement provisions of the Act and any other applicable law. The Administrator shall advise the Commission of any enforcement issues that arise and provide any suggested response. Once a contributor complies with the Telecommunications Reporting Worksheet filing requirements, the Administrator may refund any overpayments made by the contributor, less any fees, interest, or costs.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

12. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 10, 201, 218, 226, 228, 332, unless otherwise noted.

13. Section 64.604 is amended by revising paragraphs (c)(4)(iii)(A), (B), and (I) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(4) * * *

(iii) * * *

(A) *Contributions.* Every carrier providing interstate telecommunications services shall contribute to the TRS Fund on the basis of its relative share of interstate end-user telecommunications revenues as described herein. Contributions shall be made by all carriers who provide interstate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services.

(B) *Contribution computations.* Contributors' contribution to the TRS Fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to interstate end-user telecommunications revenues. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years contributions. Each subject carrier must contribute at least $25 per year. Carriers whose annual contributions total less than $1,200 must pay the entire contribution at the beginning of the contribution period. Carriers whose contributions total $1,200 or more may divide their contributions into equal monthly payments. Carriers shall complete and submit, and contributions shall be based on, a "Telecommunications Reporting Worksheet" (as published by the Commission in the **Federal Register**). The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions. The Chief of the Common Carrier Bureau may waive, reduce, modify, or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the TRS Fund.

* * * * *

(I) *Information filed with the administrator.* The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. Subject to any restrictions imposed by the Chief of the Common Carrier Bureau, the TRS Fund administrator may share data obtained from carriers with the administrators of the universal service support mechanisms (See 47 CFR 54.701 of this chapter), the North American Numbering Plan administration cost recovery (See 47 CFR 52.16 of this chapter), and the long-term local number portability cost recovery (See 47 CFR 52.32 of this chapter). The TRS Fund Administrator shall keep confidential all data obtained from other administrators. The administrator shall not use such data, from carriers or administrators, except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers. Contributors may make requests for Commission nondisclosure of company-specific revenue information under § 0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information.

* * * * *

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Proposed Rules

Federal Register
Vol. 64, No. 146
Friday, July 30, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 317

RIN 3206–AI75

Employment in the Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its regulations governing career and limited appointments to the Senior Executive Service (SES) and Qualifications Review Board (QRB) certification. The proposed regulations emphasize the importance of executive leadership qualifications in agency SES selection criteria; strengthen merit principles; increase SES staffing flexibilities to help agencies recruit the brightest and most diverse executive cadre possible; and provide for delegating QRB administration to agencies via individual delegation agreements. In addition, there will be procedural modifications to streamline the SES application process, reduce paperwork requirements, and improve the QRB certification process.

DATES: Comments on the proposed regulations must be received on or before September 28, 1999.

ADDRESS: Send or deliver written comments to Ms. Joyce Edwards, Director, Office of Executive Resources Management, Room 6484, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Marcia K. Staten at 202–606–1832, FAX 202–606–2126, or email to mkstaten@opm.gov.

SUPPLEMENTARY INFORMATION: The success of the Senior Executive Service (SES) rests in the ability of agencies to employ highly competent, motivated, and diverse professionals dedicated to public service with the requisite leadership expertise to meet the challenges facing the Government and the Nation into the next century.

In April 1998, OPM widely circulated a "Draft Framework for Improving the Senior Executive Service" to focus attention on the importance of executive leadership and to stimulate discussion about the SES. OPM wanted stakeholders to think about whether the way the senior executive cadre is selected, developed, and managed today will produce the kind of executives equipped to meet the leadership challenges of the 21st century. The Framework was an outline of ideas in four broad areas: SES structure, staffing flexibility, performance management and accountability, and development and continuing learning.

From April through November, OPM held briefings and discussions with nearly 40 different groups of stakeholders, including senior executives and candidates, the human resources community, public administration organizations, and professional associations. OPM also received over 50 written comments from departments and agencies, individual executives and other interested persons, and various organizations. Although stakeholder views varied widely, there was consensus on many ideas, including increasing agency flexibility for SES staffing. Specifically, there was general support for improving the SES selection process to ensure that leadership and executive qualifications are the major selection criteria, reducing the paperwork burden on applicants and agencies, considering options for delegating QRB administration, and increasing agency authority to make limited term appointments.

OPM formed a work group of agency human resources professionals, who administer executive resources programs, to help identify solutions to the staffing issues raised by the Framework initiative. OPM also sought the views of senior executives who have served as members of QRBs. Some solutions will require changes to OPM regulations, while others may be accomplished administratively through procedural or process changes. These regulatory proposals are the result of the comments and suggestions from the senior executives and the work group. The proposed regulations require agency selection criteria to address executive leadership expertise, provide for delegating QRB administration on an agency-by-agency basis via written delegation agreements, clarify current restrictions on converting noncareer appointees in their current or successor positions, increase agency focus on performance during the probationary period, and expand the pool of limited appointment authorities currently delegated to agencies.

In addition to the improvements achieved through regulatory change, OPM will make modifications to internal procedures and other requirements to streamline the SES application process, reduce paperwork requirements, and improve the QRB certification process. These modifications will include alternative methods for documenting executive qualifications for presentation to QRBs, improved guidance and instructions to QRBs to ensure that members fully understand their role and responsibilities, and more specific and detailed feedback to agencies on QRB disapprovals.

These flexibilities were designed to facilitate agency efforts to hire a diverse and talented cadre of senior executives.

Emphasis on Executive Leadership

The law at 5 U.S.C. 3393 requires agency Executive Resources Boards to conduct the merit staffing process for career entry into the SES, including reviewing the executive qualifications of each career SES candidate. During the discussions of the Framework on improving the SES, it was confirmed that, in many agencies, the selection criteria focus primarily on candidates' professional or technical qualifications, and therefore consideration of executive qualifications is not getting the full attention intended by the legislation. The key characteristics of an SES position are the executive leadership responsibilities, and therefore selection criteria should focus primarily on these qualifications. In order to strengthen that focus and encourage agencies to fully integrate consideration of executive leadership qualifications into their selection processes, the proposed regulations incorporate the statutory requirements. Agency latitude to design the merit staffing process, including how to consider executive qualifications in the merit staffing process, is unchanged.

In addition to the regulatory change, OPM is modifying procedural requirements for documenting executive qualifications for presentation to QRBs to provide alternative methods and options for agency use. These changes are intended to give agencies additional flexibility, reduce the paperwork burden on applicants, and improve the QRB certification process.

Delegating QRB Administration

The law at 5 U.S.C. 3393 requires OPM to establish QRBs to certify the executive qualifications of candidates for initial career appointment to the SES. In enacting this provision, Congress indicated that this would provide an independent peer review, which would ensure that appointments to the SES are based primarily on executive qualifications, rather than on technical or professional qualifications. While OPM's broad statutory authority at 5 U.S.C. 1104 includes the authority to delegate QRB administration to agencies, OPM has traditionally held that OPM-convened QRBs assured that the focus of the certification is on the executive qualifications and safeguarded Congressional intent. However, as we have moved in recent years toward increasing agencies' flexibility to manage their executive resources, OPM has agreed to consider delegating QRB administration to agencies, on an agency-by-agency basis via individual delegation agreements; provided that the focus on leadership and executive expertise is maintained and merit system principles are preserved. The proposed regulation authorizes delegated agreements, under specific conditions. The agreements will be designed to ensure an independent peer review, set the scope of the delegation, address agency QRB operations, prescribe reporting requirements, and provide for OPM oversight.

In addition to this regulatory change, OPM is modifying procedures and paperwork associated with QRB administration to address concerns that the process focuses on paper over substance and to provide more specific and detailed feedback to agencies on QRB disapprovals.

Noncareer Conversion Restriction

The current regulation at 5 CFR 317.502(e) precludes QRB certification of a noncareer SES employee for career appointment in the employee's current position or a successor to that position, because there is no bona-fide vacancy for which to hold competition. This regulation was intended to preserve the merit principle of fair and open competition in merit selections. Since the regulation was promulgated, however, questions have arisen about the definition of "noncareer SES employee." The proposed regulation strengthens and clarifies the intent of the current regulation by expanding coverage to noncareer-type employees, including noncareer SES appointees and Schedule C appointees, or the equivalent.

SES Probationary Period

Performance Assessment

The SES statute (Pub. L. 95–454) establishes a 1-year probationary period for new career SES appointees. It requires that an individual's initial appointment as a career SES appointee could not become final until that individual completes one year of service as a career appointee (5 U.S.C. 3393(d)). OPM has long held that the probationary period is an extension of the examining process to be used to determine an individual's ability to actually perform as an executive. The law also includes provisions to facilitate removal of appointees during probation for unacceptable performance or conduct (5 U.S.C. 3592).

During the Framework discussions, stakeholders expressed concern about the lack of attention that agencies have given to SES probation and explored options for making more effective use of the probationary period as the vehicle for assessing whether or not the new appointees are performing as executives. The proposed regulation requires agencies to assess the performance of career appointees before the end of the probationary period and make an official determination that the appointee is performing at the level of excellence expected of a senior executive.

Training and Development.

By law (5 U.S.C. 3393(c)(2)), OPM prescribes criteria for establishing executive qualifications for career appointment, but these criteria must provide for consideration of demonstrated executive experience, successful participation in an OPM-approved candidate development program, and possession of special or unique qualities that indicate a likelihood of executive success. In support of candidates with special or unique qualities, OPM requires a detailed development plan for obtaining the full complement of executive qualifications. Stakeholders indicated that stronger oversight is needed in cases where the QRB certifies candidates on the basis of special and unique qualifications to verify that the executive development activities promised by the agency are accomplished. The proposed regulation requires agencies to address the executive development activities outlined in the development plans during the appointee's probationary period.

Pool of Limited Appointment Authorities

Under 5 CFR 317.601, agencies currently have been provided a pool of limited appointment authorities equal to 2 percent of their total SES space allocation that they may use without prior OPM approval. Use of these pool authorities is restricted to appointments of individuals with career or career-type appointments outside the SES. Agencies have found this flexibility very helpful. Many have made full use of the delegated pool of authorities and have expressed a need for increased authorities. The proposed regulation increases the delegated pool of limited authorities from 2 percent to 3 percent.

In exercising these authorities, agencies must continue to comply with all other statutory and regulatory provisions affecting limited appointments, e.g., that an appointment be made only to a general position; that the appointee must meet the qualifications required for the position; and that the appointment is to a non-continuing, project-type position. OPM will continue to monitor use of this appointment to ensure compliance with the statutory 5 percent limit on SES limited appointments Governmentwide and that appointments are being made in accordance with statutory and regulatory provisions.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

List of Subjects in 5 CFR Part 317

Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM proposes to amend 5 CFR part 317 as follows:

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

1. The authority citation for part 317 continues to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593 and 3596.

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Subpart E—Career Appointments

2. Amend § 317.501 by revising the first sentence of paragraph (c)(2) and paragraph (c)(6), to read as follows:

§ 317.501 Recruitment and selection for initial SES career appointment.

* * * * *

(c) * * *

(2) Provide that the ERB consider the executive and technical qualifications of each candidate, other than those found ineligible because they do not meet the requirements of the vacancy announcement. * * *

* * * * *

(6) Provide that the appointing authority select from among the candidates identified as best qualified by the ERB and certify the candidate's executive and technical qualifications.

* * * * *

3. Section 317.502 is revised to read as follows:

§ 317.502 Qualifications Review Board certification.

(a) This section covers Qualifications Review Boards convened by:

(1) The Office of Personnel Management (OPM); or

(2) An agency, under a written delegation agreement with OPM.

(b) General Provisions:

(1) A Qualifications Review Board (QRB) must certify the executive/managerial qualifications of a candidate before initial career appointment may be made to an SES position. More than one-half of the members of a QRB must be SES career appointees.

(2) Requests for certification of a candidate by a QRB must contain such information as prescribed by OPM, including evidence that merit staffing procedures were followed and that the appointing authority certified the candidate's executive and technical qualifications for the position.

(3) Qualifications Review Board certification of executive qualifications must be based on demonstrated executive experience; successful completion of an OPM-approved candidate development program; or possession of special or unique qualities that indicate a likelihood of executive success. Any existing time limit on a previously approved certification is removed.

(4) OPM may determine the disposition of requests for QRB certification if the QRB has not yet acted when:

(i) The agency head leaves office or announces an intention to leave office;

(ii) The President has nominated a new agency head; or

(iii) There is a Presidential transition.

(5) An action to convert a "noncareer-type" employee to a career SES appointment in the employee's current position or a successor to that position will not be forwarded to a QRB. A "noncareer-type" employee includes a noncareer SES appointee, a Schedule C appointee, or equivalent.

(6) A new QRB certification is required for an individual to be reappointed as an SES career appointee following separation of the individual from an SES career appointment if:

(i) The individaul was removed during the SES probationary period for performance or disciplinary reasons; or

(ii) The individual completed an SES probationary period, or did not have to serve one, and was removed for a reason that made the individual ineligible for reinstatement to the SES under subpart G of this part.

(c) Agencies may request the authority to convene Qualifications Review Boards. OPM may delegate such authority via written delegation agreement on an individual agency-by-agency basis. The delegation agreement will:

(1) Delegate the authority to the head of the agency;

(2) Provide for QRB operations that result in certification of candidates on the basis of executive qualifications and in the preservation of merit principles.

(3) Address the composition of the Boards to ensure an independent peer review.

(4) Prescribe documentation, reporting, and record retention requirements.

(5) Provide for OPM oversight.

4. Amend § 317.503 by revising paragraph (a); redesignating paragraphs (b) through (f) as paragraphs (c) through (g), respectively; adding a new paragraph (b); and revising the last sentence in newly redesignated paragraph (f) to read as follows:

§ 317.503 Probationary period.

(a) An individual's initial appointment as an SES career appointee becomes final only after the individual has served a 1-year probationary period as a career appointee; there has been an assessment of the appointee's performance during the probationary period; and the appointing authority has certified that the appointee performed at the level of excellence expected of a senior executive during the probationary period.

(b) When a career appointee's executive qualifications have been certified by a Qualifications Review Board on the basis of special or unique qualities, as described in § 317.502(b)(3), the probationary assessment must address any executive development activities the agency identified in support of the request for QRB certification.

* * * * *

(f) * * * The individual, however, need not be recertified by a QRB unless the individual was removed for performance or disciplinary reasons.

* * * * *

5. In subpart F, the heading for the subpart is revised to read as follows:

Subpart F—Noncareer and Limited Appointments

6. Amend § 317.601, paragraph (c)(1), by revising the first sentence to read as follows:

§ 317.601 Authorization.

* * * * *

(c) * * *

(1) Agencies are provided a pool of limited appointment authorities equal to 3 percent of their Senior Executive Service (SES) position allocation, or one authority, whichever is greater. * * *

[FR Doc. 99–19487 Filed 7–29–99; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Potato Crop Insurance Certified Seed Endorsement

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes to amend the Potato Crop Insurance Certified Seed Endorsement. The intended effect of this action is to improve the insurance coverage to better meet the needs of the insured.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business September 28, 1999 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Comments may also be sent via the Internet to DIRECTORPDD@RM.FCIC.USDA.GOV. A copy of each response will be available for public inspection and copying from 7:00 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: For further information, contact Rob Coultis, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by the Office of Management and Budget (OMB) under control number 0563–0053 through April 30, 2001. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above-referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.145, Potato Crop Insurance Certified Seed Endorsement, effective for the 2000 and succeeding crop years. The principal changes to the provisions for insuring seed potatoes are as follows:

1. Paragraph 5—Clarify to indicate that the certified seed production guarantee per acre is the same as the per acre production guarantee used under the terms of the Northern Potato Crop Provisions. (Reductions for acreage increases above certain levels remain in place.)

2. Paragraph 8—Revise the claim computation so that an indemnity can be paid when seed production meets the standards of the state in which it is grown, but the actual amount of production is lower than the production guarantee. Current provisions provide a payment only when production fails to meet applicable state standards for certified seed potatoes and do not take into account the actual amount of production from the insured acreage.

3. Paragraph 9—Revise to include the notice requirements when production fails certification.

4. A new paragraph 10 is added to specify that acreage covered under the revised endorsement will be insured using the same unit structure as is in place for the coverage provided under the Basic Provisions and the Northern Potato Crop Provisions. In the event certified seed acreage is not grown in the same optional or basic units as acreage covered under the Basic Provisions and the Northern Potato Crop Provisions, certified seed units will be established in accordance with the unit division provisions contained in the Basic Provisions and the Northern Potato Crop Provisions. Examples are provided for clarity.

5. A new paragraph 11 is added and includes provisions regarding uninsured causes of loss that are currently contained in section 8.

List of Subjects in 7 CFR Part 457

Crop insurance, Certified seed potatoes.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p).

2. Amend § 457.145 as follows:

a. Revise the introductory text and paragraph 5.

b. Revise paragraph 8.

c. Revise paragraph 9.

d. Add a new paragraph 10.

e. Add a new paragraph 11.

g. The revisions and additions to § 457.145 read as follows:

§ 457.145 Potato crop insurance Certified Seed Endorsement.

The pota o Certified Seed Endorsement provisions for the 2000 and succeeding crop years are as follows:

* * * * *

5. Your certified seed production guarantee per-acre will be the per-acre

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production guarantee used to cover the same acreage under the terms of the Northern Potato Crop Provisions. However, unless a written agreement provides otherwise, if the total amount of insurable certified seed acreage you have for the current crop year is greater than 125 percent of your average number of acres entered into and passing certification in the potato certified seed program in the three previous calendar years, your certified seed production guarantee for each unit will be reduced as follows:

* * * * *

8. If, due to insurable causes occurring within the insurance period, the amount of certified seed you produce is less than your certified seed production guarantee, we will settle your claim by:

(a) Multiplying the insured acreage by its respective certified seed production guarantee;

(b) Multiplying each result in section 9(a) by the dollar amount per hundredweight contained in the Special Provisions for production covered under this endorsement;

(c) Totaling the results of section 9(b);

(d) Multiplying the number of hundredweight of production that qualify as certified seed and any amount of production lost due to uninsured causes, or that does not qualify as certified seed due to uninsured causes, by the dollar amount per hundredweight contained in the Special Provisions for production covered under this endorsement;

(e) Subtracting the result of section 9(d) from the result of section 9(c); and

(f) Multiplying the result of section 9(e) by your share.

9. You must notify us of any loss under this endorsement not later than 14 days after you receive notice from the state certification agency that any acreage or production has failed certification.

10. Acreage covered under the terms of this endorsement will have the same unit structure as provided under the Basic Provisions and the Northern Potato Crop Provisions. For example, if you have two optional units (00101 and 00102) for Northern Potato Crop coverage and you elect this endorsement, you will also have two optional units (00201 and 00202) for certified seed coverage provided that certified seed is grown in both units 00101 and 00102. Or, if you have two basic units (0100 and 0200) for Northern Potato Crop coverage and you elect this endorsement, you will also have two basic units (00300 and 00400) for certified seed coverage provided that certified seed is grown in both units 00100 and 00200. In the event certified seed acreage is not grown in the same optional or basic units as acreage covered under the Basic Provisions and the Northern Potato Crop Provisions, certified seed units will be established in accordance with the unit division provisions contained in the Basic Provisions and the Northern Potato Crop Provisions. For example, if a basic unit is divided into two optional units for potato acreage covered under the Basic Provisions and the Northern Potato Crop Provisions, but certified seed is grown in only one of those optional units, the certified seed acreage will be insured as one basic unit.

11. Any production that does not qualify as certified seed because of varietal mixing or your failure to follow the standard practices and procedures required for certification will be considered as lost due to uninsured causes.

Signed in Washington, DC, on July 26, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–19562 Filed 7–29–99; 8:45 am]

BILLING CODE 3410–08–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

RIN 3150–AF22

Domestic Licensing of Special Nuclear Material; Possession of a Critical Mass of Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the domestic licensing of special nuclear material (SNM) for licensees authorized to possess a critical mass of SNM, that are engaged in one of the following activities: enriched uranium processing; fabrication of uranium fuel or fuel assemblies; uranium enrichment; enriched uranium hexafluoride conversion; plutonium processing; fabrication of mixed-oxide fuel or fuel assemblies; scrap recovery of special nuclear material; or any other activity involving a critical mass of SNM that the Commission determines could significantly affect public health and safety or the environment. The proposed amendments would identify appropriate consequence criteria and the level of protection needed to prevent or mitigate accidents that exceed these criteria; require affected licensees to perform an integrated safety analysis (ISA) to identify potential accidents at the facility and the items relied on for safety necessary to prevent these potential accidents and/or mitigate their consequences; require the implementation of measures to ensure that the items relied on for safety are available and reliable to perform their function when needed; require the inclusion of the safety bases, including a summary of the ISA, with the license application; and allow for licensees to make certain changes to their safety program and facilities without prior NRC approval.

DATES: The comment period expires October 13, 1999. Comments received after this date will be considered if it is practical to do so, but, the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). From the home page, select "Rulemaking" from the tool bar at the bottom of the page. The interactive rulemaking website can then be accessed by selecting "Rulemaking Forum." This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher by telephone at (301) 415–5905 or e-mail cag@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Theodore S. Sherr, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, telephone (301) 415–7218; e-mail tss@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background
II. Description of Proposed Action

I. Background

A near-criticality incident at a low enriched fuel fabrication facility in May 1991 prompted NRC to review its safety regulations for licensees that possess and process large quantities of SNM. [See NUREG–1324, "Proposed Method for Regulating Major Materials Licensees" (U.S. Nuclear Regulatory Commission, 1992) for additional details on the review.] As a result of this review, the Commission and the staff recognized the need for revision of the regulatory base for these licensees, especially for those possessing a critical mass of SNM. Further, the NRC staff concluded that to increase confidence in the margin of safety at a facility possessing this type and amount of material, a licensee should perform an ISA. An ISA is a systematic analysis that identifies:

(1) Plant and external hazards and their potential for initiating accident sequences;

(2) The potential accident sequences, their likelihood, and consequences; and

(3) The structures, systems, equipment, components, and activities of personnel relied on to prevent or mitigate potential accidents at a facility.

NRC held public meetings with the nuclear industry on this issue during May and November 1995. The Nuclear Energy Institute (NEI) explained, to the Commission, industry's position on the need for revision of NRC regulations, in 10 CFR Part 70, at a July 2, 1996, meeting, and in a subsequent filing of a Petition for Rulemaking (PRM–70–7) in September 1996. NRC published in the **Federal Register** a notice of receipt of the PRM and requested public comments on August 21, 1996 (61 FR 60057). The PRM requested that NRC amend Part 70 to:

(1) Add a definition for a uranium processing and fuel fabrication plant;

(2) Require the performance of an ISA, or acceptable alternative, at uranium processing, fuel fabrication, and enrichment plants; and

(3) Include a requirement for backfit analysis, under certain circumstances, within Part 70.

In SECY–97–137, dated June 30, 1997, the staff proposed a resolution to the NEI PRM and recommended that the Commission direct the staff to proceed with rulemaking. The staff's recommended approach to rulemaking included the basic elements of the PRM, with some modification. In brief, staff's proposed resolution was to revise Part 70 to include the following major elements:

(1) Performance of a formal ISA, that would form the basis for a licensee's safety program. This requirement would apply to all licensed facilities or activities, subject to NRC regulation, that are authorized to possess SNM in quantities sufficient to constitute a potential for nuclear criticality (except power reactors and the gaseous diffusion plants regulated under 10 CFR Part 76);

(2) Establishment of criteria to identify the adverse consequences that licensees must protect against;

(3) Inclusion of the safety bases in a license application (i.e., the identification of the potential accidents, the items relied on for safety to prevent these accidents and/or mitigate their consequences, and the measures needed to ensure the availability and reliability of these items);

(4) Ability of licensees, based on the results of an ISA, to make certain changes without NRC prior approval; and

(5) Consideration by the Commission, after licensees' initial conduct and implementation of the ISA, of a qualitative backfitting mechanism to enhance regulatory stability.

In an SRM dated August 22, 1997, the Commission ". . . approved the staff's proposal to revise Part 70" and directed the NRC staff to ". . . submit a draft proposed rule . . . by July 31, 1998."

A draft proposed rule was provided to the Commission in SECY–98–185, "Proposed Rulemaking—Revised Requirements for the Domestic Licensing of Special Nuclear Material," dated July 30, 1998. The draft proposed rule reflected the approach recommended in SECY–97–137. In particular, the safety basis for a facility, including the ISA results, would be submitted as part of an application to NRC, for review, and incorporated in the license. Also in SECY 98–185, the staff recommended that a qualitative backfit mechanism should be considered for implementation only after the safety basis, including the results of the ISA, is established and incorporated in the license, and after licensees and staff have gained experience with the implementation of the ISA requirement.

In response to SECY–98–185, the Commission issued an SRM dated December 1, 1998, which directed the staff not to publish the draft proposed rule for public comment. Instead, the Commission directed the staff to obtain stakeholder input and revise the draft proposed rule. In that SRM, the Commission also directed the staff to:

(1) Decide what is fundamental for NRC's regulatory purposes for inclusion as part of the license or docket and what can be justified from a public health and safety and cost-benefit basis, and assure that Part 70 captures for submittal those few significant changes that currently would require license amendments;

(2) Require licensees/applicants to address baseline design criteria and develop a preliminary ISA for new processes and new facilities;

(3) Justify, on a health and safety or cost-benefit basis, any requirement to conduct a decommissioning ISA;

(4) Require that any new backfit pass a cost-benefit test, without the "substantial" increase in safety test;

(5) Require the reporting of certain significant events because of their potential to impact worker or public health and safety;

(6) Clarify the basis for use of chemical safety and chemical consequence criteria, particularly within the context of the Memoranda of Understanding with the Occupational Safety and Health Administration (OSHA) and other government agencies;

(7) Critically review the Standard Review Plan (SRP) to ensure that by providing specific acceptance criteria, it does not inadvertently prevent licensees or applicants from suggesting alternate means of demonstrating compliance with the rule; and

(8) Request input on how applicable ISA methodologies should be employed in the licensing of new technologies for use within new or existing facilities.

As directed in the SRM, stakeholder input was solicited and obtained at public meetings held in December 1998 and January and March 1999. A website was established to facilitate communication with stakeholders and to solicit further input. The nuclear industry submitted comments by letters and postings on the website. This revised proposed rule incorporates much of the December 1, 1998 SRM direction and reflects language responsive to many of the comments received. It appears that most of the major concerns with the earlier draft proposed rule have been resolved.

II. Description of Proposed Action

The proposed rule grants the NEI September 1996 PRM in part and modifies the petitioner's proposal as indicated in the following discussion.

The Commission is proposing to modify Part 70 to provide increased confidence in the margin of safety at certain facilities authorized to process a critical mass of SNM. The Commission believes that this objective can be best accomplished through a risk-informed and performance-based regulatory approach that includes:

(1) The identification of appropriate risk levels, considering consequence criteria and the level of protection needed to prevent accidents that could exceed such criteria;

(2) The performance of an ISA to identify potential accidents at the

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facility and the items relied on for safety;

(3) The implementation of measures to ensure that the items relied on for safety are available and reliable to perform their function when needed;

(4) The inclusion of the safety bases, including the ISA summary, in the license application; and

(5) The allowance for licensees to make certain changes to their safety program and facilities without prior NRC approval.

The Commission's approach agrees in principle with the NEI petition. However, in contrast to the petition's suggestion that the ISA requirement be limited to ". . . uranium processing, fuel fabrication, and uranium enrichment plant licensees," the Commission would require the performance of an ISA for a broader range of Part 70 licensees that are authorized to possess a critical mass of SNM. The Part 70 licensees that would be affected include licensees engaged in one of the following activities: enriched uranium processing; fabrication of uranium fuel or fuel assemblies; uranium enrichment; enriched uranium hexafluoride conversion; plutonium processing; fabrication of mixed-oxide fuel or fuel assemblies; scrap recovery of special nuclear material; or any other activity involving a critical mass of SNM that the Commission determines could significantly affect public health and safety. The proposed rule would not apply to licensees authorized to possess SNM under 10 CFR Parts 50, 60, 72, and 76.

Furthermore, the Commission is not currently proposing, as suggested in the NEI petition, to include a backfit provision in Part 70. Based on the discussions at public meetings held on May 28, 1998, and March 23, 1999, the purpose of the NEI-proposed backfit provision is to ensure that NRC staff does not impose safety controls that are not necessary to satisfy the performance requirements of Part 70, unless a quantitative cost-benefit analysis justifies this action. The Commission believes that once the safety basis, including the ISA summary, is incorporated in the license application, and the NRC staff has gained sufficient experience with implementation of the ISA requirements, a qualitative backfit mechanism could be considered. Without a baseline determination of risk, as provided by the initial ISA process, it is not clear how a determination of incremental risk, as needed for a backfit analysis, would be accomplished. Furthermore, although NEI previously stated that a quantitative backfit approach is currently feasible, it would appear that a quantitative determination of incremental risk would require a Probabilistic Risk Assessment, to which the industry has been strongly opposed. The Commission requests public comment on its intent to defer consideration of a qualitative backfit provision in Part 70; any specific suggestions for backfit provisions that would specifically address fuel cycle backfit needs and the information that would be available to conduct the associated analysis; and what would constitute a reasonable period of time, including supporting rationale, before a backfit provision should be implemented.

The majority of the proposed modifications to Part 70 are found in a new Subpart H, "Additional Requirements for Certain Licensees Authorized to Possess a Critical Mass of Special Nuclear Material," that consists of 10 CFR 70.60 through 70.74. These proposed modifications to Part 70, discussed in detail below, are required to increase confidence in the margin of safety and are in general accordance with the approach approved by the Commission in its SRMs of August 22, 1997, and December 1, 1998.

Section 70.4 Definitions

Definitions of the following 12 terms would be added to this section to provide a clear understanding of the meaning of the new Subpart H: "Acute", "Available and reliable to perform their function when needed", "Configuration management", "Critical mass of SNM", "Double contingency", "Hazardous materials produced from licensed materials", "Integrated safety analysis", "Integrated safety analysis summary", "Items relied on for safety", "Management measures", "Unacceptable performance deficiencies", and "Worker."

Section 70.14 Foreign Military Aircraft

This paragraph reflects an administrative change to renumber the paragraph from 70.13a.

Section 70.17 Specific Exemptions

This paragraph reflects an administrative change to renumber the paragraph from 70.14.

Section 70.50 Reporting Requirements

Paragraph (c) would be reworded to include information to be transmitted when making verbal or written reports to NRC. The new information derives from the specifics of the new Subpart H, such as sequence of events and whether the event was evaluated in the ISA. To the extent the new information is also applicable to licensees not subject to Subpart H, the information was added with no differentiation noted. The new information that would only apply to Subpart H licensees is noted.

Section 70.60 Applicability

This section lists the types of NRC licensees or applicants who would be subject to the new Part 70, Subpart H. The Commission has decided that the new requirements should not apply to all licensees authorized to possess critical masses of SNM. Instead, the Commission has identified a subset of these licensees that, based on the risk associated with operations at these facilities, should be subject to the new requirements. This change would exclude certain facilities (e.g., those authorized only to store SNM or use SNM in sealed form for research and educational purposes) from the new requirements, because of the relatively low level of risk at these facilities. In general, the new Subpart is intended to ensure that the significant accidents that are possible at fuel fabrication facilities (and the other listed facility types) have been analyzed in advance, and that appropriate controls or measures are established to ensure adequate protection of workers,[1] public, and the environment. The requirements and provisions in Subpart H are in addition to, and not a substitute for, other applicable requirements, including those of the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Labor, OSHA. The requirements being added by NRC only apply to NRC's areas of responsibility (radiological safety and chemical safety directly related to licensed radioactive material). In this regard, the requirements for hazards and accident analyses that NRC is adding are intended to complement and be consistent with the parallel OSHA and EPA regulations.

The regulation states that Subpart H does not apply to decommissioning activities. NRC notes that the existing regulation [§ 70.38(g)(4)(iii)] requires an approved decommissioning plan (DP) that includes "a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning." Because the DP is submitted for NRC approval before initiation of ". . . procedures and activities necessary to carry out decommissioning of the site or

[1] A worker, in the context of this rulemaking, is defined as an individual whose assigned duties in the course of employment involve exposure to radiation and/or radioactive material from licensed and unlicensed sources of radiation (i.e., an individual who is subject to an *occupational* dose as in 10 CFR 20.1003).

separate building or outdoor area," the DP will continue to be the vehicle for regulatory approval of the licensee's practices for protection of health and safety during decommissioning. The ISA should provide valuable information with respect to developing the DP and the use of the ISA in this manner is encouraged.

Section 70.61 Performance Requirements

In the past, the regulation of licensees authorized to possess SNM, under 10 CFR Parts 20 and 70, has concentrated on radiation protection for persons involved in nuclear activities conducted under normal operations. The proposed amendments to Part 70 would explicitly address potential exposures to workers or members of the public and environmental releases as a result of accidents. Part 20 continues to be NRC's standard for protection of workers and public from radiation during normal operations, anticipated upsets (e.g., minor process upsets that are likely to occur one or more times during the life of the facility), and accidents. Although it is the Commission's intent that the regulations in Part 20 also be observed to the extent practicable during an emergency, it is not the Commission's intent that the Part 20 requirements apply as the design standard for all possible accidents at the facility, irrespective of the likelihood of those accidents. Because accidents are unanticipated events that usually occur over a relatively short period of time, the Part 70 changes seek to assure adequate protection of workers, members of the public, and the environment by limiting the risk (combined likelihood and consequence) of such accidents.

There are three risk-informed performance requirements for the rule, each of which is set out in 10 CFR 70.61: (1) Section 70.61(b) states that high-consequence events must meet a likelihood standard of highly unlikely; (2) section 70.61(c) requires that intermediate-consequence events must meet a likelihood standard of unlikely; and (3) section 70.61(d) requires that risk of nuclear criticality be limited by assuring that all processes must remain subcritical under any normal or credible abnormal conditions. The term "performance requirements" thus considers together consequences and likelihood. For regulatory purposes, each performance requirement is considered an equivalent level of risk. For example, the acceptable likelihood of intermediate-consequence events is allowed to be greater than the acceptable likelihood for high-consequence events.

A risk-informed approach must consider not only the consequences of potential accidents, but also their likelihood of occurrence. As mentioned above, the performance requirements rely on the terms "unlikely" and "highly unlikely" to focus on the risk of accidents. However, the Commission has decided not to include quantitative definitions "unlikely" and "highly unlikely" in the proposed rule, because a single definition for each term, that would apply to all the facilities regulated by Part 70, may not be appropriate. Depending on the type of facility and its complexity, the number of potential accidents and their consequences could differ markedly. Therefore, to ensure that the overall facility risk from accidents is acceptable for different types of facilities, the rule requires applicants to develop, for NRC approval (see § 70.65), the meaning of "unlikely" and "highly unlikely" specific to their processes and facility. To accommodate this development, the Commission believes that the SRP is the appropriate document to include guidelines for licensees to use. A draft "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility" has been developed. The draft SRP provides one acceptable approach for the meaning of "unlikely" and "highly unlikely" that can be applied to existing fuel cycle facilities.

The general approach for complying with the performance requirements is that, at the time of licensing, each hazard (e.g., fire, chemical, electrical, industrial) that can potentially affect radiological safety is identified and evaluated, in an ISA, by the licensee. The impact of accidents, both internal and external, associated with these hazards is compared with the three performance requirements. Any (and all) structures, systems, components, or human actions, for which credit is taken in the ISA for mitigating (reducing the consequence of) or preventing (reducing the likelihood of) the accident such that all three performance requirements are satisfied, must be identified as an "item relied on for safety." "Items relied on for safety" is a term that is defined in 10 CFR 70.4, and in this approach, the applicant has a great deal of flexibility in selecting and identifying the actual "items." For example, they can be defined at the systems-level, component-level, or sub-component-level. "Management measures" [see discussion in 10 CFR 70.62(d)] are applied to each item in a graded fashion to ensure that it will perform its safety function when needed. The combination of the set of "items relied on for safety" and the "management measures" applied to each item will determine the extent of the licensee's programmatic and design requirements, consistent with the facility risk, and will ensure that at any given time, the facility risk is maintained safe and protected from accidents (viz., satisfies the performance requirements).

The proposed performance requirements also address certain chemical hazards that result from the processing of licensed nuclear material. The question of the extent of NRC's authority to regulate chemical hazards at its fuel cycle facilities was raised after an accident in 1986 at a Part 40 licensed facility, in which a cylinder of uranium hexafluoride ruptured and resulted in a worker fatality. The cause of the worker's death was the inhalation of hydrogen fluoride gas, which was produced from the chemical reaction of uranium hexafluoride and water (humidity in air). Partly as a result of the coordinated Federal response and resulting Congressional investigation into that accident, NRC and the OSHA entered into an MOU, in 1988, that clarified the agencies' interpretations of their respective responsibilities for the regulation of chemical hazards at nuclear facilities. The MOU identified the following four areas of responsibility. Generally, NRC covers the first three areas, whereas OSHA covers the fourth area:

(1) Radiation risk produced by radioactive materials;

(2) Chemical risk produced by radioactive materials;

(3) Plant conditions that affect the safety of radioactive materials; and

(4) Plant conditions that result in an occupational risk, but do not affect the safety of licensed radioactive materials.

One goal of the performance requirements in § 70.61 is to be consistent with the NRC–OSHA MOU. Therefore, the performance requirements in § 70.61 include explicit standards for the MOU's first two areas of responsibility. In addition, the third MOU area of responsibility is specifically evaluated by licensees under the ISA requirements of § 70.62(c)(1)(iii). As an example of the third MOU area, if the failure of a chemical system adjacent to a nuclear system could affect the safety of the nuclear system such that the radiation dose (and associated likelihood of that accident) exceeded a performance requirement, the chemical system failure would be within the scope of the ISA and the means to prevent the chemical system failure from impacting

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the nuclear system would be within NRC's regulatory purview.

OSHA provided comments, by a letter dated February 1, 1999, on a draft of the rule that had been revised to be consistent with the MOU. In that letter, OSHA expressed concerns that the rule language would preempt OSHA from enforcing any of its standards, rules or other requirements with respect to chemical hazards at the facilities covered by the NRC draft rule. This concern is based on case law under the OSH Act. The pertinent provision in the OSH Act states:

"(b)(1) Nothing in this chapter shall apply to working conditions of employees with respect to which other Federal agencies, and State agencies acting under section 2021 of title 42, exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health." [29 U.S.C. 653(b)(1)]

NRC staff subsequently met with OSHA officials on February 25, 1999, and some clarifications and further information were provided at that meeting. As a result of the meeting discussions, some changes were made to the rule language to more clearly specify the scope of NRC involvement. However, these changes do not fully resolve the basic preemption issue. The problems identified with the rule are not unique, i.e., the preemption issue is generic and may already exist for any NRC-licensed facilities where there are requirements to analyze hazards. At the February 25 meeting, OSHA confirmed that the rule language is consistent with the October 21, 1988 MOU; indicated that they have no suggested changes to the MOU; and indicated that they are not opposed to the proposed rule. The Commission's view is that the proposed rule is consistent with NRC responsibilities and authority under the Atomic Energy Act, and consistent with the OSHA MOU. The only resolution of the preemption issue appears to be a legislative modification of the OSH Act. Public comments would be appreciated on any options that may have been overlooked.

Within each performance requirement, NRC recognizes that the proposed radiological standards are more restrictive, in terms of acute health effects to workers or the public, than the chemical standards for a given consequence (high or intermediate) and that this is consistent with current regulatory practice. The choice of each criterion is discussed below in a paragraph-by-paragraph discussion of § 70.61.

The use of any of the performance requirements is not intended to imply that the specified worker or public radiation dose or chemical exposure constitutes an acceptable criterion for an emergency dose to a worker or the public. Rather, these values have been proposed in this section as a reference value, to be used by licensees in the ISA (a forward-looking analysis) to establish controls (i.e., items relied on for safety and associated management measures) necessary to protect workers from potential accidents with low or exceedingly low probabilities of occurrence that are not expected to occur during the operating life of the facility.

Section 70.61(b). This section addresses performance requirements for high-consequence events.

The consequences identified in § 70.61(b) of the proposed rule are referred to as "high-consequence events" and include accidental exposure of a worker or an indlvidual located outside of the controlled area to high levels of radiation or hazardous chemicals. These accidents, if they occurred, would represent radiation doses to a worker or an individual located outside of the controlled area at levels with clinically observable biological damage or concentrations of hazardous chemicals produced from licensed material at which death or life-threatening injury could occur. The goal is to ensure an acceptable level of risk by limiting the combination of the likelihood of occurrence and the identified consequences. Thus, high-consequence events must be sufficiently mitigated to a lower consequence or prevented such that the event is highly unlikely (or lower). The application of "items relied on for safety" provides this prevention or mitigation function.

Section 70.61(b)(1). An acute exposure of a worker to a radiation dose of 1 Sv (100 rem) or greater total effective dose equivalent (TEDE) is considered to be a high-consequence event. According to the National Council on Radiation Protection and Measurements (NCRP, 1971), life-saving actions—including the "* * * search for and removal of injured persons, or entry to prevent conditions that would probably injure numbers of people"—should be undertaken only when the "* * * planned dose to the whole body shall not exceed 100 rems." This is consistent with a later NCRP position (NCRP, 1987) on emergency occupational exposures, that states "* * * when the exposure may approach or exceed 1 Gy (100 rad) of low-LET [linear energy transfer] radiation (or an equivalent high-LET exposure) to a large portion of the body, in a short time, the worker needs to understand not only the potential for acute effects but he or she should also have an appreciation of the substantial increase in his or her lifetime risk of cancer."

Section 70.61(b)(2). The exposure of an individual located outside of the controlled area to a radiation dose of 0.25 Sv (25 rem) or greater TEDE is considered a high-consequence event. This is generally consistent with the criterion established in 10 CFR 100.11, "Determination of exclusion area, low population zone, and population center distance," and 10 CFR 50.34, "Contents of applications; technical information," where a whole-body dose of 0.25 Sv (25 rem) is used to determine the dimensions of the exclusion area and low-population zone required for siting nuclear power reactors.

Section 70.61(b)(3). The intake of 30 mg of soluble uranium by an individual located outside of the controlled area is considered a high-consequence event. This choice, which is based on a review of the available literature [Pacific Northwest Laboratories (PNL), 1994], is consistent with the selection of 30 mg of uranium as a criterion that was discussed during the Part 76 rulemaking, "Certification of Gaseous Diffusion Plants." In particular, the final rule that established Part 76 (59 FR 48944; September 23, 1994) stated that "The NRC will consider whether the potential consequences of a reasonable spectrum of postulated accident scenarios exceed * * * uranium intakes of 30 milligrams. * * *" The final rule also stated that "The Commission's intended use of chemical toxicity considerations in Part 76 is consistent with its practice elsewhere [e.g., 10 CFR 20.1201(e)], and prevents any potential regulatory gap in public protection against toxic effects of soluble uranium."

Section 70.61(b)(4). An acute chemical exposure to hazardous chemicals produced from licensed material at concentrations that either (1) could cause death or life-threatening injuries to a worker; or (2) could cause irreversible health effects to an individual located outside of the controlled area, is considered a high-consequence event. Chemical consequence criteria corresponding to anticipated adverse health effects to humans from acute exposures (i.e., a single exposure or multiple exposures occurring within a short time—24 hours or less) have been developed, or are under development, by a number of organizations. Of particular interest, the National Advisory Committee for Acute Guideline Levels for Hazardous Substances is developing Acute Exposure Guideline Limits (AEGLs) that

will eventually cover approximately 400 industrial chemicals and pesticides. The committee, which works under the auspices of the EPA and the National Academy of Sciences, has identified a priority list of approximately 85 chemicals. Consequence criteria for 12 of these have currently been developed and criteria for approximately 30 additional chemicals per year are expected. Another set of chemical consequence criteria, the Emergency Response Planning Guidelines (ERPGs), has been developed by the American Industrial Hygiene Association to provide estimates of concentration ranges where defined adverse health effects might be observed because of short exposures to hazardous chemicals. ERPG criteria are widely used by those involved in assessing or responding to the release of hazardous chemicals including "* * * community emergency planners and response specialists, air dispersion modelers, industrial process safety engineers, implementers of environmental regulations such as the Superfund Amendment and Reauthorization Act, industrial hygienists, and toxicologists, transportation safety engineers, fire protection specialists, and government agencies. * * *" (*DOE Risk Management Quarterly,* 1997). Despite their general acceptance, there are currently only approximately 80 ERPG criteria available, and some chemicals of importance (e.g., nitric acid) are not covered.

The qualitative language in the performance requirement allows the applicant/licensee to propose and adopt an appropriate standard, which may be an AEGL or ERPG standard, or where there is no AEGL or ERPG value available, the applicant may develop or adopt a criterion that is comparable in severity to those that have been established for other chemicals. For example, for the worker performance requirement, existing criteria that can be used by licensees to define appropriate concentration levels to satisfy the performance requirement are the AEGL–3 and ERPG–3. AEGL–3 is defined as "The airborne concentration (expressed in ppm or mg/m^3) of a substance at or above which it is predicted that the general population, including susceptible, but excluding hypersusceptible, individuals, could experience life-threatening effects or death." ERPG–3 is defined as "The maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing or developing life-threatening health effects." Similarly, for the public, AEGL–2 is defined as "The airborne concentration (expressed in ppm or mg/m^3) of a substance at or above which it is predicted that the general population, including susceptible, but excluding hypersusceptible, individuals, could experience irreversible or other serious, long-lasting effects or impaired ability to escape," and ERPG–2 is defined as "The maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing or developing irreversible or other health effects or symptoms that could impair an individual's ability to take protective action."

Section 70.61(c). This section addresses performance requirements for intermediate-consequence events.

The consequences identified in § 70.61(c) of the proposed rule are referred to as "intermediate-consequence events" and include accidental exposure of a worker or an individual outside of the controlled area to levels of radiation or hazardous chemicals that generally correspond to permanent injury to a worker, transient injury to a non-worker, or significant releases of radioactive material to the environment. The goal is to ensure an acceptable level of risk by limiting the combination of the likelihood of occurrence and the identified consequences. Thus, "intermediate-consequence events" must be sufficiently mitigated to a lower consequence or prevented such that the event is unlikely (or lower). The application of "items relied on for safety" provides this prevention or mitigation function.

Section 70.61(c)(1). A worker radiation dose between 0.25 Sv (25 rem) and 1 Sv (100 rem) TEDE is considered an intermediate-consequence event [over 1 Sv (100 rem) is a high-consequence event]. This value was chosen because of the use of 0.25 Sv (25 rem) as a criterion in existing NRC regulations. For example, in 10 CFR 20.2202, "Notification of incidents," immediate notification is required of a licensee if an individual receives ". . . a total effective dose equivalent of 0.25 Sv (25 rem) or more." Also, in 10 CFR 20.1206, "Planned special exposures," a licensee may authorize an adult worker to receive a dose in excess of normal occupational exposure limits if a dose of this magnitude does not exceed 5 times the annual dose limits [i.e., 0.25 Sv (25 rem)] during an individual's lifetime. In addition, EPA's Protective Action Guides (U.S. Environmental Protection Agency, 1992) and NRC's regulatory guidance (Regulatory Guide 8.29, 1996) identify 0.25 Sv (25 rem) as the whole-body dose limit to workers for life-saving actions and protection of large populations. NCRP has also stated that a TEDE of 0.25 Sv (25 rem) corresponds to the once-in-a-lifetime accidental or emergency dose for workers.

Section 70.61(c)(2). A dose to any individual located outside of the controlled area between 0.05 Sv (5 rem) and 0.25 Sv (25 rem) is considered an intermediate-consequence event. NRC has used a 0.05-Sv (5-rem) exposure criterion in a number of its existing regulations. For example, 10 CFR 72.106, "Controlled area of an ISFSI or MRS," states that "Any individual located on or beyond the nearest boundary of the controlled area shall not receive a dose greater than 5 rem to the whole body or any organ from any design basis accident." In addition, in the regulation of the above-ground portion of the geologic repository, 10 CFR 60.136, states that ". . . for [accidents], no individual located on or beyond any point on the boundary of the preclosure controlled area will receive . . . a total effective dose equivalent of 5 rem. . . ." A TEDE of 0.05 Sv (5 rem) is also the upper limit of EPA's Protective Action Guides of between 0.01 to 0.05 Sv (1 to 5 rem) for emergency evacuation of members of the public in the event of an accidental release that could result in inhalation, ingestion, or absorption of radioactive materials.

Section 70.61(c)(3). The release of radioactive material to the environment outside the restricted area in concentrations that, if averaged over a period of 24 hours, exceed 5000 times the values specified in Table 2 of Appendix B to Part 20, is considered an intermediate-consequence event. In contrast to the other consequences criteria that directly protect workers and members of the public, the intent of this criterion is to ensure protection of the environment from the occurrence of accidents at certain facilities authorized to process greater than critical mass quantities of SNM. This implements NRC's responsibility for protecting the environment, in accordance with the Atomic Energy Act of 1954, *et seq.*, and the National Environmental Policy Act of 1969, *et seq.*

The value established for the environmental consequence criterion is identical to the NRC Abnormal Occurrence (AO) criterion that addresses the discharge or dispersal of radioactive material from its intended place of confinement (Section 208 of the Energy Reorganization Act of 1974, as amended, requires that AOs be reported

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to Congress annually). In particular, AO reporting criterion 1.B.1 requires the reporting of an event that involves ". . . the release of radioactive material to an unrestricted area in concentrations which, if averaged over a period of 24 hours, exceed 5000 times the values specified in Table 2 of Appendix B to 10 CFR Part 20, unless the licensee has demonstrated compliance with 10 CFR 20.1301 using 10 CFR 20.1302(b)(1) or 10 CFR 20.1302(b)(2)(ii)" [December 19, 1996; 61 *FR* 67072]. The concentrations listed in Table 2 of Appendix B to Part 20 apply to radioactive materials in air and water effluents to unrestricted areas. NRC established these concentrations based on an implicit effective dose equivalent limit of 0.5 mSv/yr (50 mrem/yr) for each medium, assuming an individual were continuously exposed to the listed concentrations present in an unrestricted area for a year.

If an individual were continuously exposed for 1 day to concentrations of radioactive material 5000 times greater than the values listed in Appendix B to Part 20, the projected dose would be about 6.8 mSv (680 mrem), or 5000 × 0.5 mSv/yr × 1 day × 1 yr/365 days. In addition, a release of radioactive material, from a facility, resulting in these concentrations, would be expected to cause some environmental contamination in the area affected by the release. This contamination would pose a longer-term hazard to the environment and members of the public until it was properly remediated. Depending on the extent of environmental contamination caused by such a release, the contamination could require considerable licensee resources to remediate. For these reasons, NRC considered the existing AO reporting criterion for discharge or dispersal of radioactive material as an appropriate consequence criterion in this rulemaking.

Section 70.61(c)(4). An acute chemical exposure to hazardous chemicals produced from licensed material at concentrations that either; (a) to a worker, could cause irreversible health effects (but at concentrations below those which could cause death or life-threatening effects); or (b) to an individual located outside of the controlled area, could cause notable discomfort (but at concentrations below those which could cause irreversible effects), is considered an intermediate-consequence event. Chemical consequence criteria corresponding to anticipated adverse health effects to humans from acute exposures (i.e., a single exposure or multiple exposures occurring within a short time—24 hours or less) have been developed, or are under development, by a number of organizations. Of particular interest, two existing standards, AEGL–2 and ERPG–2, can be used to define the concentration level for irreversible health effects, and two existing standards, AEGL–1 and ERPG–1, can be used to define the concentration level for notable discomfort. The qualitative language in the performance requirement allows the applicant/licensee to adopt and propose an appropriate standard, which may be an AEGL or ERPG standard, or where there is no AEGL or ERPG value available, the applicant may develop or adopt a criterion that is comparable in severity to those that have been established for other chemicals.

Section 70.61(d). This section addresses performance requirements for an accidental nuclear criticality.

The third performance requirement states that the risk of nuclear criticality accidents must be limited by assuring that under normal and credible abnormal conditions, all nuclear processes are subcritical, including use of an approved margin of subcriticality for safety. It also requires that preventive controls and measures shall be the primary means of protection against nuclear criticality accidents. Although detecting and mitigating the consequences of a nuclear criticality are important objectives (e.g., for establishing alarm systems), the prevention of a criticality is a primary NRC objective.

The basis for this provision is the NRC strategic plan (NUREG–1614, Vol. 1), which, for nuclear materials safety, states NRC's performance goal of ". . . no accidental criticality involving licensed material." The language chosen for this performance requirement closely follows the language of the applicable industry standard, ANSI/ANS Standard 8.1–1983, "Nuclear Criticality Safety in Operations with Fissionable Materials Outside Reactors."

Section 70.61(e). This section addresses items relied on for safety and management measures.

Paragraph 70.61(e) would require that each engineered or administrative control or control system that is needed to meet the performance requirements be designated as an item relied on for safety. This means that any control or control system that is necessary to maintain the acceptable combination of consequence and likelihood for an accident is designated an item relied on for safety. The importance of this section is that, once a control is designated as an item relied on for safety, it falls into the envelope of the safety program required by section 70.62. For example, records will be kept regarding the item, and management measures such as the configuration control program are applied to the item and to changes that affect the item, to ensure that the item will be available and reliable to perform its function when needed.

The failure of an item relied on for safety does not necessarily mean that an accident will occur which will cause one of the consequences listed in the performance requirements to be exceeded. Some control systems may have parallel (redundant or diverse) control systems that would continue to prevent the accident. The need for such defense-in-depth and single-failure resistance would ideally be based on the severity and likelihood of the potential accident. In other cases, the failure of an item may mean that the particular accident sequence is no longer "highly unlikely", or "unlikely." In these cases, the performance requirement is not met, and the expectation would be that a management measure would exist (possibly in the form of an operating procedure) that ensured that the facility would not operate in a condition that exceeds the performance requirement. For example, a facility that relies on emergency power could not operate for an extended time in the absence of an emergency power source even if grid power is available. In this manner, the items relied on for safety and the management measures complement each other to ensure adequate protection from accidents at any given time.

Section 70.61(f). This section addresses the term "controlled area" used in the performance requirements.

Section 70.61(f) requires licensees to identify a controlled area consistent with the use of that term in Part 20, and provides clarification regarding the activities that may occur inside the controlled area. The function of this term is to delimit an area over which the licensee exercises control of activities. Control includes the power to exclude individuals, if necessary. The size of the controlled area is not specified in the regulation because it will be dependent upon the particular activities that are conducted at the site and their relationship to the licensed activities. [Within the controlled area will be a restricted area (as defined in § 20.1003), access to which is controlled by the licensee for purposes of radiation safety.]

Individuals who do not receive an occupational dose (as that term is used in Part 20) in the controlled area will be subject to the dose limits for members of the public in 10 CFR 20.1301.

However, the Commission recognizes that certain licensees may have ongoing activities at their site (i.e., within the controlled area) that are not related to the licensed activities. For example, a non-nuclear facility may be adjacent to the nuclear facility but both are within the controlled area (which may be defined similar to the site boundary). This raises a question regarding the appropriate accident standard for these individuals. Protection of the individuals at the non-nuclear facility must consider that the nature of many potential accidents at a fuel cycle facility is such that there may not be sufficient time during which to take action to exclude individuals from the controlled area. Therefore, for purposes of the ISA accident evaluation, the rule explicitly contains two options for these individuals (as well as an implicit third option). In the first option, the licensee evaluates, in the ISA, the risk at its location (as opposed to that at any point at or beyond the controlled area boundary) and determines that it meets the performance requirements for members of the public. In the second option, performance requirements for workers may be applied to individuals in the controlled area if the provisions of § 70.61(f)(2) are satisfied. These conditions ensure that the individuals are aware of the risks to them from the potential accidents at the nuclear facility and have received appropriate training and access to information. This parallels and is consistent with the use of the term, "Exclusion area", by 10 CFR Parts 50 and 100, which states, "Activities unrelated to operation of the reactor may be permitted in an exclusion area under appropriate limitations, provided that no significant hazards to the public health and safety will result." The implied third option is to define (or redefine) a controlled area such that within it only activities associated with the licensed nuclear facility are permitted.

The Commission's intent is that the ISA does not evaluate compliance with the accident standards for individuals who make infrequent visits to the controlled area and restricted area (e.g., visitors). Use of the ISA to determine the risks to these individuals would need to consider second-order effects such as the probability of the individual being present at the time that the unlikely (or highly unlikely) accident occurred. This level of detail is unnecessary to accomplish the purpose of this rule (viz., to document and maintain the safety basis of the facility design and operations). Application of the Part 20 regulations provides adequate protection for these individuals. In addition, the provisions (i.e., performance requirements) to protect workers and non-workers during accidents should, implicitly, provide a degree of protection to the infrequently present individuals.

Section 70.62 Safety Program and Integrated Safety Analysis

This paragraph addresses the safety program, that includes process safety information, ISA, and management measures. The performance of an ISA, and the establishment of measures to ensure the availability and reliability of items relied on for safety when needed, are the means by which licensees demonstrate an adequate level of protection at their facilities. The ISA is a systematic analysis to identify plant and external hazards and their potential for initiating accident sequences; the potential accident sequences and their consequences; and the site, structures, systems, equipment, components, and activities of personnel relied on for safety. As used here, "integrated" means joint consideration of, and protection from, all relevant hazards, including radiological, criticality, fire, and chemical. The structure of the safety program recognizes the critical role that the ISA plays in identifying potential accidents and the items relied on for safety. However, it also recognizes that the performance of the ISA, by itself, will not ensure adequate protection. Instead, an effective management system is needed to ensure that the items relied on for safety are available and reliable to perform their function when needed. Detailed requirements for each part of the safety program are included in this section.

Section 70.62(a). Each licensee would be required to establish and maintain a safety program that demonstrates compliance with the performance requirements of § 70.61. Although the ISA would be the primary tool in identifying the potential accidents requiring consequence mitigation and accident prevention, process safety information would be used to develop the ISA, and management measures would be used to ensure the availability and reliability of items relied on for safety identified through the ISA. The management measures may be graded according to the risk importance associated with an item relied on for safety.

The licensee is also required to establish and maintain records demonstrating that it has, and continues to meet, the requirement of this section. These records serve two major purposes. First, they can supplement information that has been submitted as part of the license application. Second, records are often needed to demonstrate licensee compliance with applicable regulations and license commitments. It is important, therefore, that an appropriate system of recordkeeping be implemented to allow easy retrieval of required information.

Finally, each licensee would also be required to establish and maintain a log documenting each discovery that an item relied on for safety has failed to perform its function either in the context of the performance requirements of § 70.61 or on demand. The phrase "* * * in the context of the performance requirements of § 70.61" means that items relied on for safety that fail would require logging even if their failures did not result in process upsets or accidents but could have resulted in the accident conditions they are protecting against, had all conditions been optimum for the accident. This would not include failures during times, such as routine maintenance on an item, when the item or measure was clearly documented to not be available. The log must contain: (a) The identity of the item that failed and the safety function affected; (b) date of discovery of the failure; (c) duration of time that the item was unable to perform its function; (d) any other affected items relied on for safety and their safety function; (e) affected processes; (f) the cause of the failure; (g) whether the failure was in the context of performance requirements, or on demand, or both; and (h) any corrective or compensatory actions taken. The log should be initiated at the time of discovery and updated promptly at the completion of each investigation of a failure of an item relied on for safety. The purpose of the log is to assist NRC in determining whether items relied on for safety are, in fact, available and reliable and in detecting system problems that may impact ISA evaluations.

Section 70.62(b). This paragraph would require the licensee to maintain process-safety information pertaining to the hazards of the materials used or produced in the process, the technology of the process, and the equipment in the process. NRC confidence in the margin of safety at its licensed facilities depends, in part, on the ability of licensees to maintain a set of current, accurate, and complete records available for NRC inspection. The process-safety information should be used in support of development of an ISA.

Section 70.62(c). This paragraph proposes requirements for conducting

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an ISA. There are four major steps in performing an ISA:

(1) Identify all hazards at the facility, including both radiological and non-radiological hazards. Hazardous materials, their location, and quantities, should be identified, as well as all hazardous conditions, such as high temperature and high pressure. In addition, any interactions that could result in the generation of hazardous materials or conditions should be identified.

(2) Analyze the hazards to identify how they might result in potential accidents. These accidents could be caused by process deviations or other events internal to the plant, or by credible external events, including natural phenomena such as floods, earthquakes, etc. To accomplish the task of identifying potential accidents, the licensee needs to ensure that detailed and accurate information about plant processes is maintained and made available to the personnel performing the ISA.

(3) Determine the consequences of each accident that has been identified. For an accident with consequences at a "high" or "intermediate level," as defined in 10 CFR 70.61, the likelihood of such an accident must be shown to be commensurate with the consequences, as required in 10 CFR 70.61.

(4) Identify the items relied on for safety (i.e., those items that are relied on to prevent accidents or to mitigate their consequences, identified in the ISA). These items are needed to reduce the consequences or likelihood of the accidents to acceptable levels. The identification of items relied on for safety is required only for accidents with consequences at a high or intermediate level, as defined in 10 CFR 70.61.

It is expected that the licensee or applicant would perform the ISA using a "team" of individuals with expertise in engineering and process operations related to the system being evaluated; the team should include persons with experience in nuclear criticality safety, radiation safety, fire safety, and chemical process safety, as warranted by the materials and potential hazards associated with the process being evaluated. At least one member of the ISA team should be an individual who has experience and knowledge that is specific to the process being evaluated. Finally, at least one individual in the team must be knowledgeable in the specific ISA methodology being used.

Current Part 70 licensees, for whom the rule applies, would be required to develop plans and submit them to NRC within 6 months of the effective date of the rule. Each plan would identify the processes that would be subject to an ISA, the ISA approach that would be implemented for each process, and the schedule for completing the analysis of each process. Licensees would be expected to complete their ISA within 4 years of the effective date of the rule; correct any unacceptable vulnerabilities identified; and submit the results to NRC for approval in the form of an ISA summary that contains the information required by 10 CFR 70.65(b). Pending the correction of any unacceptable vulnerabilities, licensees would be expected to implement appropriate compensatory measures to ensure adequate protection until the vulnerability can be more appropriately corrected.

Applicants for licenses to operate new facilities or new processes at existing facilities would be expected to design their facilities or processes to protect against the occurrence of the adverse consequences identified in 10 CFR 70.61, using the baseline design criteria 10 CFR 70.64(a). Before operation, applicants would be expected to update their ISAs, based on as-built conditions and submit the results to NRC as ISA summaries, along with the applications, following the requirements in 10 CFR 70.65(b).

The Commission believes that sufficient flexibility is permitted in the ISA methodology chosen to be able to accommodate a wide range of technologies. However, to assure that sufficient flexibility exists, the Commission is requesting comments on this matter.

Section 70.62(d). Although the ISA would play a critical role in identifying potential accidents and the items relied on for safety, the performance of an ISA would not, by itself, ensure adequate protection. In addition, as would be provided for in 10 CFR 70.62(d), an effective management system would be needed to ensure that the items relied on for safety are available and reliable to perform their function when needed. As stated before, management measures may be graded to better implement the results of the ISA.

Management measures are functions performed by the licensee, in general on a continuing basis, that are applied to items relied on for safety. Management measures include: (a) Configuration management; (b) maintenance; (c) training and qualifications; (d) procedures; (e) audits and assessments; (f) incident investigations; (g) records management; and (h) other quality assurance elements. Changes in the configuration of the facility need to be carefully controlled to ensure consistency among the facility design and operational requirements, the physical configuration, and the facility documentation. Maintenance measures must be in place to ensure the availability and reliability of all hardware, identified as items relied on for safety, to perform their function when needed. Training measures must be established to ensure that all personnel relied on for safety are appropriately trained to perform their safety functions. Periodic audits and assessments of licensee safety programs must be performed to ensure that facility operations are conducted in compliance with NRC regulations and protect the worker and the public health and safety and the environment. When abnormal events occur, investigations of those events must be carried out to determine the root cause and identify corrective actions to prevent their recurrence and to ensure that they do not lead to more serious consequences. Finally, to demonstrate compliance with NRC regulations, records that document safety program activities must be maintained for the life of the facility.

This section also would require that the safety program ensure that each item relied on for safety would perform its intended function when needed and in the context of the performance requirements of this section. The utility of the two modifying requirements, "when needed," and "in the context of the performance requirements of this section," is clarified as follows:

The phrase "when needed" is used to acknowledge that a particular safety control need not be continuously functioning. For example, it may not be operational during maintenance or calibration testing, or may not be required when the process is not operational or when special nuclear material is not present. However, the phrase, when needed, does not relieve a licensee from compliance with the performance requirements. For example, if a particular component is out for maintenance, the licensee must consider credible event sequences in developing the ISA and identifying items relied on for safety—a high-consequence event sequence still has to be highly unlikely. Compliance with the performance requirements in these cases can be established by various means including identification of additional items relied on for safety (and application of safety program management measures to them), or by limiting operations or placing the plant in a different operating mode during the maintenance of the item relied on for safety.

To illustrate, a loss of offsite power during a one-week maintenance outage of the emergency diesel generator that is relied on for safety would still be a credible event sequence. If the loss of power, combined with the generator's inoperable status, could result in a combination of dose and likelihood that exceeds a performance requirement, then the licensee would not be in compliance with the performance requirements of § 70.61. A licensee cannot claim, after the maintenance, that since the power was not lost, the generator was available when needed. The concept is that the ISA is used as a risk-informed, forward-look at the credible facility hazards and their effects on plant systems and modes of operation. The rule would require that each item necessary to comply with the performance requirements be identified as important to safety and placed under the safety program management controls. In identifying each item, the ISA must consider various modes of operation and the likelihood that a given safety control will be inoperable (e.g., because of being off-line for maintenance) during credible event sequences.

The section would also require that the safety control perform its function "* * *in the context of the performance requirements of this section." This phrase indicates that the function of interest is the one credited in the ISA to meet certain consequence criteria with a certain frequency. Second, this phrase would require that additional safety controls be defined in cases where one control does not result in compliance with the performance requirement or has periods when it is inoperable. Using the loss of offsite power example again, a licensee would still be required to meet the risk-informed performance requirements of the rule when an emergency diesel generator used as an item relied on for safety is not operable or out of service for maintenance.

Section 70.64 Requirements for New Facilities or New Processes at Existing Facilities

This section deals with baseline design criteria for new facilities or new processes at existing facilities.

A major feature of the proposed amendments to Part 70 is the requirement that licensees and applicants for a license perform an ISA and use the ISA process to develop risk-informed decisions regarding facility safety. The ISA process is applied to existing designs to identify risk insights on those areas that warrant additional preventive or mitigative measures. For new facilities, the proposed rule would require the performance of the ISA before construction [see the existing § 70.21(f) and § 70.23(a)(7)], and the updating of the ISA before beginning operations. For new processes and facilities, the Commission recognizes that good engineering practice dictates that certain minimum requirements be applied as design and safety considerations for any new nuclear process or facility. In addition, a fundamental element of NRC's safety philosophy is that designs and operations should provide for defense-in-depth protection against accidents. Therefore, the Commission has specified baseline design criteria in § 70.64 that are similar in use to the general design criteria in Part 50 Appendix A; Part 72, Subpart F; and 10 CFR 60.131. The baseline design criteria identify 10 initial safety design considerations, including: (a) Quality standards and records; (b) natural phenomena hazards; (c) fire protection; (d) environmental and dynamic effects [2]; (e) chemical protection; (f) emergency capability; (g) utility services; (h) inspection, testing, and maintenance; (i) criticality control; and (j) instrumentation and controls. The baseline design criteria do not provide relief from compliance with the safety performance requirements of § 70.61. The baseline design criteria are generally an acceptable set of initial design safety considerations, which may not be sufficient to ensure adequate safety for all new processes and facilities. The ISA process is intended to identify additional safety features that may be needed. On the other hand, the Commission recognizes that there may be processes or facilities for which some of the baseline design criteria may not be necessary or appropriate, based on the results of the ISA. For these processes and facilities, any design features that are inconsistent with the baseline design criteria should be identified and justified.

Using the baseline design criteria and considering defense-in-depth practices in the design should result in a new facility design that is based on providing successive levels of protection such that health and safety will not be wholly dependent on any single element of the design, construction, maintenance, or operation of the facility. The net effect of incorporating defense-in-depth practices is a conservatively designed facility and system that will exhibit greater tolerance for failures and external challenges. The risk insights obtained through performance of the ISA can be then used to supplement the final design by focusing attention on the prevention and mitigation of the potential accidents having higher-risk.

Section 70.65 Additional Content of Applications

In addition to the information that currently must be submitted to NRC, under § 70.22, for a license application, this section requires additional information to be submitted to demonstrate compliance with the proposed new subpart. In particular, this additional information would need to include a description of the applicant's safety program established under § 70.62, a description of the management measures, and an ISA summary.

The ISA summary would contain: (a) A description of the site and the facility; (b) a description of the team qualifications and ISA methodology; (c) the processes analyzed in the ISA and the maximum consequences of each; (d) a demonstration of how the licensee meets the requirements for criticality monitoring and alarms in § 70.24; (e) a demonstration of how the licensee meets the performance requirements of § 70.61 and, if applicable, § 70.64; (f) a list of items relied on for safety and a description of their safety function; (g) a description of the proposed standards used to assess the consequences from acute chemical exposures; and (h) the definitions of "likely", "unlikely", "highly unlikely", and "credible" as used in the ISA.

The plant and process descriptions, ISA team qualifications and methods, and definitions of terms used in the ISA, are all needed to fully understand the facility and the ISA and how it was developed. Although some of the facility information is also requested in § 70.22, there may be information about the facility which would be too detailed for inclusion in the general site description, but would be needed to be included here to understand the ISA and ISA results. The demonstration of how the licensee meets §§ 70.24, 70.61, and 70.64 is a critical element in determining whether the applicant understands and complies with the regulations and can operate the facility safely. Another critical element is the applicant's identification of the items relied on for safety. Through the ISA

[2] Environmental and dynamic effects are effects that could be caused by ambient conditions. For example, an item relied on for safety will need to function within its expected environment (i.e., under normal operating conditions, expected accident conditions, etc.). These conditions could include high temperatures, or a corrosive environment. It could also include dynamic changes in surrounding conditions caused by an accident (e.g., the bursting of a high-pressure pipe).

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process, the applicant should have identified potential accidents that can occur in individual processes and in the facility as a whole. As discussed earlier, these accidents are prevented or their consequences mitigated using controls that are identified in the ISA summary as items relied on for safety. It is important for NRC staff to review the items relied on for safety, that were identified as such by the applicant or licensee, to determine whether potential accidents are adequately prevented or mitigated. Since items relied on for safety play a key role in assuring that the performance requirements are met, and because the applicant has great flexibility in selecting and identifying what the actual "items" are (as discussed in relation to § 70.61), the items relied on for safety would be clearly and unambiguously identified on a list. This list of items is then managed and controlled by the applicant through the management measures in § 70.61 to ensure that they continue to perform the safety function required. By evaluating the ISA methodology, and the ISA summary, supplemented by reviewing the ISA and other information, as needed, at the licensee's facility, the staff can better understand the potential hazards at the facility, how the applicant plans to address these hazards, and thereby have confidence in the safety basis on which the license will be issued.

The ISA summary would be required to be submitted on the docket in conjunction with the license application but would not be considered part of the license. The ISA, on which the ISA summary is based, would be maintained current at the licensee's facility and available for NRC review, but it would not be submitted and docketed. The information and commitments contained in the license application that are incorporated into the license conditions cannot be changed without prior review and approval of NRC staff, at which time a license amendment is issued. Although the ISA summary will be on the docket, since it is not part of the license it can be changed without a license amendment, unless it reflects a change that cannot be made without prior approval per § 70.72(c). However, the information used to perform the ISA, and the ISA summary, both form integral parts of the safety basis for issuance of the license and therefore must be maintained to adequately represent the current status of the facility. So that NRC knows the current status of the facility, changes to these documents, on which NRC based its safety conclusion, are to be submitted to NRC, as discussed in § 70.72.

Section 70.66 Additional Requirements for the Approval of License Applications

In addition to the requirements found in the existing rule (i.e., 10 CFR 70.23), the Commission must determine that the requirements in the new subpart, 10 CFR 70.60 through 70.66, will be satisfied.

Section 70.72 Facility Changes and Change Process

This section deals with changes to site, structures, systems, equipment, components, and activities of personnel after a license application has been approved.

Past incidents at fuel cycle facilities have often resulted from changes not fully analyzed, not authorized by licensee management, or not adequately understood by facility personnel. Therefore, effective control of changes to a facility's site, structures, systems, equipment, components, and activities of personnel is a key element in assuring safety at that facility. This section would require the licensee to establish and use a system to evaluate changes and the potential impacts of those changes before implementing them. By using this system to evaluate, implement and track changes to the facility, the licensee can make certain changes without NRC pre-approval. If the change affects information contained in the ISA summary, the licensee would be required to notify NRC within 90 days of the change by submitting updated ISA summary pages in that time. For changes that affect the on-site documentation, such as the ISA, management measures or process-safety information, the licensee would be required to notify NRC within 12 months of the change. This update frequency would allow NRC staff to review the changes being made to the facility in enough time to ensure that the licensee's evaluations of potential impacts to health and safety were accurate. It also allows NRC staff to maintain relatively current facility and safety information on the docket at all times. In addition, maintaining the license and ISA summary so that they reflect the current configuration of the facility would facilitate a relatively simple, cost-effective license renewal process. The Commission is particularly interested in comments concerning the 90 day time period for submitting updated ISA summary pages that reflect changes to a facility's site, structures, systems, equipment, components, and activities of personnel.

Some changes, however, would require NRC pre-approval before they can be implemented. These are changes that are considered major and could have a significant impact on health and safety. The staff considered two options for the types of changes that would require NRC pre-approval. Option 1 is consistent with the types of changes that have required pre-approval at Part 70 licensees in the past, and which the staff believes would require NRC pre-approval for only a relatively few significant changes. Option 2 is consistent with the change control process required for Part 50 licensees (power reactors) and which the staff believes would require more requests for NRC pre-approval.

The advantages of Option 1 are that it focuses on the most significant changes to the facility and is equivalent to looking at the highest risk changes. It contains very little subjective criteria and is therefore easier to implement and inspect. It also would likely only result in a few license amendments a year which is generally consistent with the past practice at these facilities. Since Option 1 would permit more changes without NRC pre-approval, a relatively short timeframe (90 days) for submitting updated ISA summary pages is required in order for NRC to have information that reflects the current status of the facility and to be confident that adequate protection is still provided with the changes, as reflected in the ISA summary. The advantages of Option 2 are that NRC would have more control over the changes at the facilities, i.e., staff expects that more changes would be reviewed by the staff before being implemented; thus, it would be less likely that NRC would have a concern with a change after the fact; and it is consistent with the change control process at power reactors, where changes are reported only after 12 months.

The proposed rule language reflects Option 1.

Section 70.73 .Renewal of Licenses

Under the proposed amendments to Part 70, changes to site, structures, systems, equipment, components, and activities of personnel made by the licensee pursuant to § 70.72 would be documented on a continuing basis on-site. A description of those changes would also be sent to NRC periodically. This process is intended to keep the documents, which support the license, current and thereby establish a "living" license. In the past, the license renewal process was burdensome to NRC and the licensee because all changes made to the facility since the last license renewal would be reviewed at one time. However, with the proposed "living license," changes to the facility will be reviewed by NRC either before changes are made, or relatively shortly thereafter. As a result, review of the license renewal application is expected to be performed with minimal additional review of the licensee's safety program. This approval would be contingent on the licensee satisfying any requirements associated with the National Environmental Policy Act of 1969 as implemented in 10 CFR Part 51.

Section 70.74 Additional Reporting Requirements

The new requirements that would be incorporated in the proposed amendments to Part 70 would revise the reporting of events to NRC. This new approach, based on consideration of the risk and consequences established in 10 CFR 70.61(b) is intended to replace and expand on the approach licensees have currently been using for reporting criticality events under Bulletin 91–01. The new approach would cover all types of events, not just criticality events, and establish a timeframe for reporting that is scaled according to risk. The new reporting requirements are intended to supplement the requirements in the existing Parts 20 and 70 and elsewhere in the regulations. A more detailed discussion of the new requirements is found in the following discussion of Appendix A to Part 70.

Appendix A Reportable Events

The reporting of events supports NRC's need to be aware of conditions that could result in an imminent danger to the worker or to public health and safety or to the environment. In particular, NRC needs to be aware of licensee efforts to address potential emergencies. Further, once safe conditions have been restored after an event, NRC has an interest in disseminating information on the event to the nuclear industry and other interested parties, to reduce the likelihood that the event will occur in the future. Also, in the event of an accident, NRC must be able to respond accurately to requests for information by the public and the media. Finally, NRC must evaluate the performance of individual licensees and the industry as a whole to fulfill its statutory mandate to protect the health and safety of the worker and the public and the environment.

Licensee reporting of events would consist of two reporting classes based on the hazard—reports that must be made in 1 hour and those to be reported within 24 hours. According to this approach, licensees would report events based on two criteria: (1) Whether actual consequences have occurred or whether a potential for such consequences exists; and (2) the seriousness of the consequences. The events that must be reported within the shortest timeframe (1 hour) are high-consequence events. These events encompass unintended criticalities and loss of criticality controls, and loss of chemical controls or the occurrence of chemical exposures that exceed the performance requirements in § 70.61(b).

Less serious events or failure to meet the performance requirements for reasons not otherwise specifically stated, that have occurred shall be reported within 24 hours. These include chemical exposure to licensed material or hazardous chemicals that exceed the lower threshold limits in § 70.61(c)(4), and events that were dismissed in the ISA based on likelihood.

Events that could potentially lead to exceeding the performance requirements in § 70.61 should also be reported. External events, such as a hurricane, tornado, earthquake, flood, or fire, either internal or external to the plant, that affected or could have affected a facility, must be reported within 24 hours. This reporting requirement would capture, for example, a tornado that strikes a facility, an earthquake motion experienced by a facility, or any type of fire. Since these events could have affected a facility, NRC would want to know about such events to assess a licensee's conclusion of whether any detrimental effects did in fact occur, or could have occurred in the absence of controls that were present but not part of the safety basis. Another category of potential events that would be reported is one that involves the existence of an unsafe condition that is not identified in the ISA. This condition could be caused by a deviation from established safe operating conditions, by an unanticipated and unanalyzed set of circumstances, or by an improper analysis. This type of event would be reported within 24 hours.

The proposed rule also would require concurrent reporting of events when a news release is made or if other Government agencies are notified, as is done under 10 CFR Part 50.72, to support NRC's ability to be responsive to questions concerning the safety of NRC-licensed facilities.

References

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U.S. Nuclear Regulatory Commission, "Proposed Methods for Regulating Major Materials Licensees," NUREG–1324, Washington, DC, February 1992.

U.S. Nuclear Regulatory Commission/ Occupational Safety and Health Administration (OSHA), "Memorandum of Understanding Between NRC and OSHA; Worker Protection at NRC-Licensed Facilities" (53 FR 43950; October 31, 1988).

U.S. Nuclear Regulatory Commission, "Certification of Gaseous Diffusion Plants" (59 FR 48944; September 23, 1994).

U.S. Nuclear Regulatory Commission, "Abnormal Occurrence Reports: Implementation of Section 208 of Energy Reorganization Act of 1974" (61 FR 67072; December 19, 1996).

U.S. Nuclear Regulatory Commission, "Site Decommissioning Management Plan," NUREG–1444, Washington, DC, October 1993.

U.S. Nuclear Regulatory Commission, "Strategic Plan, Fiscal Year 1997—Fiscal Year 2002," NUREG–1614, Washington, DC, September 1997.

U.S. Environmental Protection Agency, "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents," EPA–400–R–92–001, May 1992.

U.S. Nuclear Regulatory Commission, "Instruction Concerning Risks from Occupational Radiation Exposure," Regulatory Guide 8.29, Rev. 1, February 1996.

Theide, L., "Emergency Information Where It's Needed," DOE Risk Management Quarterly, Vol 5, No 2, Richland, WA, May 1997.

These documents are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington DC 20555–0001.

Copies of NUREG–1324, NUREG–1614, and NUREG–1444 may also be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington DC 20402–9328. Copies are also available

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from the National Technical Information Service, 5285 Port Royal Road, Springfield VA 22161.

Regulatory Guide 8.29 may be purchased from the Government Printing Office (GPO) at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington DC 20402–9328. Issued guides may also be purchased from the National Technical Information Service on a standing-order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Copies of the following draft regulatory guidance documents may be requested by writing to U.S. Nuclear Regulatory Commission, Reproduction and Distribution Services, Washington, DC 20555–0001: "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility" (Draft NUREG–1520); and "Integrated Safety Analysis Guidance Document" (Draft NUREG–1513).

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Federal government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed above.

Finding of No Significant Environmental Impact: Availability

The Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required.

The proposed amendments to Part 70 are intended to provide increased confidence in the margin of safety at certain facilities that possess a critical mass of SNM. To accomplish this objective, the amendments: (1) Identify appropriate consequence criteria and the level of protection needed to prevent or mitigate accidents that exceed such criteria; (2) require affected licensees to perform an integrated safety analysis (ISA) to identify potential accidents at the facility and the items relied on for safety; (3) require the implementation of measures to ensure that the items relied on for safety are available and reliable to perform their function when needed; and (4) require the inclusion of the safety bases, as reflected in the ISA summary, in the license application. The language, in the proposed rule, that defines an environmental consequence of concern, is relevant to the question of environmental impact. Licensees would be required to provide an adequate level of protection against a "* * * release of radioactive material to the environment outside the restricted area in concentrations that, if averaged over 24 hours, exceed 5000 times the values specified in Table 2 of Appendix B to 10 CFR Part 20." Implementation of the new amendments, including the requirement to protect against events that could damage the environment, is expected to result in a significant improvement in licensees' (and NRC's) understanding of the risks at their facilities and their ability to ensure that those risks are acceptable. For existing licensees, any deficiencies identified in the ISA would need to be promptly addressed. For new licensees, operations would not begin unless licensees demonstrated an adequate level of protection against potential accidents identified in the ISA. As a result, the safety and environmental impact of the new amendments is positive. There will be less adverse impact on the environment from operations carried out in accordance with the proposed rule than if those operations were carried out in accordance with the existing Part 70 regulation.

The determination of this Environmental Assessment is that there will be no significant offsite impact on the public from this action. However, the general public should note that NRC welcomes public participation. NRC has also committed to complying with Executive Order (EO) 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," dated February 11, 1994, in all its actions. Therefore, NRC has also determined that there are no disproportionate, high, and adverse impacts on minority and low-income populations. In the letter and spirit of EO 12898, NRC is requesting public comment on any environmental justice considerations or questions that the public thinks may be related to this proposed rule, but somehow were not addressed. Comments on any aspect of the Environmental Assessment, including environmental justice, may be submitted to NRC, as indicated under the **ADDRESSES** heading.

NRC has sent a copy of the Environmental Assessment and this proposed rule to all State Liaison Officers and requested their comments on the Environmental Assessment. The Environmental Assessment is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC and the Part 70 website. Single copies of the environmental assessment are available from Barry Mendelsohn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, telephone (301) 415–7262; e-mail: btm1@nrc.gov.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). This rule has been submitted to the Office of Management and Budget (OMB) for review and approval of the paperwork requirements.

The public reporting burden for this information collection is estimated to average 99 hours per *response*, and the recordkeeping burden is estimated to average 560 hours per licensee, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. NRC is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of NRC's function? Will the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed information collection, including suggestions for reducing the burden, to the Records Management Branch (T–6–F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at bjs1@nrc.gov; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0009), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by August 30, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct nor sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The Commission has prepared a draft Regulatory Analysis on this proposed regulation. The analysis examines the benefits and costs of the alternatives considered by the Commission. The draft Regulatory Analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC and the Part 70 website. Single copies of the analysis may be obtained from Barry T. Mendelsohn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC, telephone (301) 415–7262, e-mail: btm1@nrc.gov.

The Commission requests public comment on the draft Regulatory Analysis. Comments on the draft analysis may be submitted to NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, as amended, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect facilities that are authorized to possess a critical mass of SNM and who are engaged in one of the following activities: (a) enriched uranium processing; (b) fabrication of uranium fuel or fuel assemblies; (c) uranium enrichment; (d) enriched uranium hexafluoride conversion; (e) plutonium processing; (f) fabrication of mixed-oxide fuel or fuel assemblies; (g) scrap recovery of special nuclear material; or (h) any other activity involving a critical mass of SNM that the Commission determines could significantly affect public health and safety or the environment. These licensees do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, nor the size standards published by NRC (10 CFR 2.810).

Voluntary Consensus Standards

The National Technology Transfer Act of 1995, Pub. L. 104–113, requires that Federal Agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC proposes to use the following voluntary consensus standard, ANSI/ANS Standard 8.1–1983, "Nuclear Criticality Safety in Operations with Fissionable Material Outside Reactors," developed by the American Nuclear Society. Portions of the standard were used in the definition of double contingency and in § 70.61(d). The NRC invites comment on the applicability and use of other standards.

Backfit Analysis

NRC has determined that the backfit rule does not apply to this proposed rule; therefore, a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I.

List of Subjects in 10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, NRC is proposing to adopt the following amendments to Part 70.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

2. The undesignated center heading "GENERAL PROVISIONS" is redesignated as "Subpart A—General Provisions."

3. In § 70.4, the definitions of Acute, Available and reliable to perform their function when needed, Configuration management, Critical mass of special nuclear material, Double contingency: Hazardous chemicals produced from licensed material, Integrated safety analysis (ISA), Integrated safety analysis summary, Items relied on for safety, Management measures, Unacceptable performance deficiencies, and Worker are added, in alphabetical order, as follows:

§ 70.4 Definitions.

* * * * *

Acute as used in this part means a single radiation dose or chemical exposure event or multiple radiation dose or chemical exposure events occurring within a short time (24 hours or less).

* * * * *

Available and reliable to perform their function when needed as used in subpart H of this part means that, based upon the analyzed, credible conditions in the integrated safety analysis, items relied on for safety will perform their intended safety function when needed and management measures will be implemented that ensure continuous compliance with the performance requirements of § 70.61 of this part, considering factors such as necessary maintenance, operating limits, common cause failures, and the likelihood and consequences of failure or degradation of the items and measures.

* * * * *

Configuration management (CM) means ensuring, as part of the safety program, oversight and control of design information, safety information, and modifications (both temporary and permanent) that might impact the ability of items relied on for safety to perform their function when needed.

* * * * *

Critical mass of special nuclear material (SNM) means special nuclear material in a quantity exceeding 700 grams of contained uranium-235; 520 grams of uranium-233; 450 grams of plutonium; 1500 grams of contained uranium-235, if no uranium enriched to more than 4 percent by weight of uranium-235 is present; 450 grams of any combination thereof; or one-half such quantities if massive moderators or reflectors made of graphite, heavy water, or beryllium may be present.

* * * * *

Double contingency means a process design that incorporates sufficient factors of safety to require at least two

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unlikely, independent, and concurrent changes in process conditions before a criticality accident is possible.

* * * * *

Hazardous chemicals produced from licensed materials means substances having licensed material as precursor compound(s) or substances that physically or chemically interact with licensed materials; that are toxic, explosive, flammable, corrosive, or reactive to the extent that they can endanger life or health if not adequately controlled. These include substances commingled with licensed material, and include substances such as hydrogen fluoride that is produced by the reaction of uranium hexafluoride and water, but do not include substances prior to process addition to licensed material or after process separation from licensed material.

Integrated safety analysis (ISA) means a systematic analysis to identify plant and external hazards and their potential for initiating accident sequences, the potential accident sequences, their likelihood and consequences, and the items relied on for safety. As used here, *integrated* means joint consideration of, and protection from, all relevant hazards, including radiological, nuclear criticality, fire, and chemical. However, with respect to compliance with the regulations of this part, the NRC requirement is limited to consideration of the effects of all relevant hazards on radiological safety, prevention of nuclear criticality accidents, or chemical hazards directly associated with NRC licensed radioactive material.

Integrated safety analysis summary means the document submitted with the license application, license amendment application, or license renewal application that provides a synopsis of the results of the integrated safety analysis and contains the information specified in § 70.65(b).

Items relied on for safety means structures, systems, equipment, components, and activities of personnel that are relied on to prevent potential accidents at a facility that could exceed the performance requirements in § 70.61 or to mitigate their potential consequences. This does not limit the licensee from identifying additional structures, systems, equipment, components, or activities of personnel (i.e., beyond those in the minimum set necessary for compliance with the performance requirements) as items relied on for safety.

* * * * *

Management measures mean the functions performed by the licensee, generally on a continuing basis, that are applied to items relied upon for safety, to ensure the items are available and reliable to perform their functions when needed. Management measures include configuration management, maintenance, training and qualifications, procedures, audits and assessments, incident investigations, records management, and other quality assurance elements.

* * * * *

Unacceptable performance deficiencies mean deficiencies in the items relied on for safety or the management measures that need to be corrected to ensure an adequate level of protection as defined in 10 CFR 70.61(b), (c), or (d).

* * * * *

Worker means an individual whose assigned duties in the course of employment involve exposure to radiation and/or radioactive material from licensed and unlicensed sources of radiation (i.e., an individual who is subject to an *occupational* dose as in 20 CFR 20.1003).

4. In § 70.8 paragraph (b) is revised to read as follows.

§ 70.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 70.9, 70.17, 70.19, 70.20a, 70.20b, 70.21, 70.22, 70.24, 70.25, 70.32, 70.33, 70.34, 70.38, 70.39, 70.42, 70.50, 70.51, 70.52, 70.53, 70.57, 70.58, 70.59, 70.61, 70.62, 70.64, 70.65, 70.72, 70.73, 70.74 and Appendix A.

* * * * *

5. The undesignated center heading "EXEMPTIONS" is redesignated as "Subpart B—Exemptions."

§§ 70.13a and 70.14 [Redesignated]

6. Sections 70.13a and 70.14 are redesignated as §§ 70.14 and 70.17, respectively.

7. The undesignated center heading "GENERAL LICENSES" is redesignated as "Subpart C—General Licenses."

8. The undesignated center heading "LICENSE APPLICATIONS" is redesignated as "Subpart D—License Applications."

9. The undesignated center heading "LICENSES" is redesignated as "Subpart E—Licenses."

10. The undesignated center heading "ACQUISITION, USE AND TRANSFER OF SPECIAL NUCLEAR MATERIAL, CREDITORS' RIGHTS," is redesignated as "Subpart F—Acquisition, Use, and Transfer of Special Nuclear Material, Creditors' Rights."

11. The undesignated center heading "SPECIAL NUCLEAR MATERIAL CONTROL RECORDS, REPORTS AND INSPECTIONS" is redesignated as "Subpart G—Special Nuclear Material Control Records, Reports, and Inspections."

12. In § 70.50 paragraph (c) is revised and paragraph (d) is added to read as follows.

§ 70.50 Reporting requirements.

* * * *

(c) Preparation and submission of reports. Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees shall make reports required by paragraphs (a) and (b) of this section, and by § 70.74 and appendix A of this part if applicable, by telephone to the NRC Operations Center.[3] To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) Caller's name, position title and call back telephone number;

(ii) Date, time, and exact location of the event;

(iii) Description of the event, including;

(A) Radiological or chemical hazards involved including isotopes, quantities, and chemical and physical form of any material released;

(B) Actual or potential health and safety consequences to the workers, the public, and the environment, including relevant chemical and radiation data for actual personnel exposures to radiation or radioactive materials or chemicals (e.g., level of radiation exposure, concentration of chemicals, and duration of exposure);

(C) The sequence of occurrences leading to the event, including degradation or failure of structures, systems, equipment, components, and activities of personnel relied on to prevent potential accidents or mitigate their consequences; and

(D) Whether the remaining structures, systems, equipment, components, and activities of personnel relied on to prevent potential accidents or mitigate their consequences are available and reliable to perform their function.

(iv) External conditions affecting the event;

(v) Additional actions taken by the licensee in response to the event;

(vi) Status of the event (e.g., whether the event is on-going or was terminated);

(vii) Current and planned site status, including any declared emergency class;

[3] The commercial telephone number for the NRC Operations Center is (301) 816–5100.

(viii) Notifications related to the event that were made or are planned to any local, State, or other Federal agencies;

(ix) Status of any press releases related to the event that were made or are planned.

(2) Written report. Each licensee who makes a report required by paragraph (a) or (b) of this section, or by § 70.74 and appendix A of this part if applicable, shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the report contains all of the necessary information and the appropriate distribution is made. These written reports must be sent to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, with a copy to the appropriate NRC regional office listed in appendix D of 10 CFR part 20. The reports must include the following:

(i) Complete applicable information required by § 70.50(c)(1);

(ii) The probable cause of the event, including all factors that contributed to the event and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(iii) Corrective actions taken or planned to prevent occurrence of similar or identical events in the future and the results of any evaluations or assessments; and

(iv) For licensees subject to subpart H of this part, whether the event was identified and evaluated in the Integrated Safety Analysis.

(d) The provisions of § 70.50 do not apply to licensees subject to § 50.72. They do apply to those part 50 licensees possessing material licensed under part 70 who are not subject to the notification requirements in § 50.72.

13. The undesignated center heading "MODIFICATION AND REVOCATION OF LICENSES" is redesignated as "Subpart I—Modification and Revocation of Licenses."

§§ 70.61 and 70.62 [Redesignated]

14. Sections 70.61 and 70.62 are redesignated as §§ 70.81 and 70.82, respectively.

15. The undesignated center heading "ENFORCEMENT" is redesignated as "Subpart J—Enforcement."

§§ 70.71 and 70.72 [Redesignated]

16. Sections 70.71 and 70.72 are redesignated as §§ 70.91 and 70.92, respectively.

17. In part 70, a new subpart H (§§ 70.60–70.74) is added to read as follows:

Subpart H—Additional Requirements for Certain Licensees Authorized to Possess a Critical Mass of Special Nuclear Material

Sec.

70.60 Applicability.
70.61 Performance requirements.
70.62 Safety program and integrated safety analysis.
70.64 Requirements for new facilities or new processes at existing facilities.
70.65 Additional content of applications.
70.66 Additional requirements for approval of license application.
70.72 Facility changes and change process.
70.73 Renewal of licenses.
70.74 Additional reporting requirements.

§ 70.60 Applicability.

The regulations in § 70.61 through § 70.74 apply, in addition to other applicable Commission regulations, to each applicant or licensee that is or plans to be: authorized to possess greater than a critical mass of special nuclear material, and engaged in enriched uranium processing, fabrication of uranium fuel or fuel assemblies, uranium enrichment, enriched uranium hexafluoride conversion, plutonium processing, fabrication of mixed-oxide fuel or fuel assemblies, scrap recovery of special nuclear material, or any other activity that the Commission determines could significantly affect public health and safety. The regulations in § 70.61 through § 70.74 do not apply to decommissioning activities performed pursuant to other applicable Commission regulations including § 70.25 and § 70.38 of this Part. Also, the regulations in § 70.61 through § 70.74 do not apply to activities that are certified by the Commission pursuant to Part 76 of this chapter or licensed by the Commission pursuant to other parts of this chapter.

§ 70.61 Performance requirements.

(a) Each applicant or licensee shall evaluate, in the integrated safety analysis performed in accordance with § 70.62, its compliance with the performance requirements in paragraphs (b), (c), and (d) of this section.

(b) The risk of each credible high-consequence event must be limited, unless the event is highly unlikely, through the application of engineered controls, administrative controls, or both, that reduce the likelihood of occurrence of the event or its consequence. Application of additional controls is not required for those high-consequence events demonstrated to be highly unlikely. High-consequence events are those internally or externally initiated events that result in:

(1) An acute worker dose of 1 Sv (100 rem) or greater total effective dose equivalent;

(2) An acute dose of 0.25 Sv (25 rem) or greater total effective dose equivalent to any individual located outside the controlled area identified pursuant to paragraph (f) of this section;

(3) An intake of 30 mg or greater of uranium in soluble form by any individual located outside the controlled area identified pursuant to paragraph (f) of this section; or

(4) An acute chemical exposure to an individual from licensed material or hazardous chemicals produced from licensed material that:

(i) Could endanger the life of a worker, or

(ii) Could lead to irreversible or other serious, long-lasting health effects to any individual located outside the controlled area identified pursuant to paragraph (f) of this section. If an applicant possesses or plans to possess quantities of material capable of such chemical exposures, then the applicant shall propose appropriate quantitative standards for these health effects, as part of the information submitted pursuant to § 70.65 of this part.

(c) The risk of each credible intermediate-consequence event must be limited, unless the event is unlikely, through the application of engineered controls, administrative controls, or both, that reduce the likelihood of occurrence of the event or its consequence. Application of additional controls is not required for those intermediate-consequence events demonstrated to be unlikely. Intermediate-consequence events are those internally or externally initiated events, that are not high-consequence events, that result in:

(1) An acute worker dose of 0.25 Sv (25 rem) or greater total effective dose equivalent;

(2) An acute dose of 0.05 Sv (5 rem) or greater total effective dose equivalent to any individual located outside the controlled area identified pursuant to paragraph (f) of this section;

(3) A 24-hour averaged release of radioactive material outside the restricted area in concentrations exceeding 5000 times the values in table 2 of appendix B to 10 CFR part 20; or

(4) An acute chemical exposure to an individual from licensed material or hazardous chemicals produced from licensed material that:

(i) Could lead to irreversible or other serious, long-lasting health effects to a worker, or

(ii) Could cause mild transient health effects to any individual located outside the controlled area as specified in

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paragraph (f) of this section. If an applicant possesses or plans to possess quantities of material capable of such chemical exposures, then the applicant shall propose appropriate quantitative standards for these health effects, as part of the information submitted pursuant to § 70.65 of this part.

(d) In addition to complying with paragraphs (b) and (c) of this section, the risk of nuclear criticality accidents must be limited by assuring that under normal and credible abnormal conditions, all nuclear processes are subcritical, including use of an approved margin of subcriticality for safety. Preventive controls and measures must be the primary means of protection against nuclear criticality accidents.

(e) Each engineered or administrative control or control system necessary to comply with paragraphs (b), (c), or (d) of this section shall be designated as an item relied on for safety. The safety program, established and maintained pursuant to § 70.62 of this part, shall ensure that each item relied on for safety will be available and reliable to perform its intended function when needed and in the context of the performance requirements of this section.

(f) Each licensee must establish a controlled area, as defined in § 20.1003, in which the licensee retains the authority to determine all activities, including exclusion or removal of personnel and property from the area. For the purpose of complying with the performance requirements of this section, individuals who are not workers, as defined in § 70.4, may be permitted to perform ongoing activities (e.g., at a facility not related to the licensed activities) in the controlled area, if the licensee:

(1) Demonstrates and documents, in the integrated safety analysis, that the risk for those individuals at the location of their activities does not exceed the performance requirements of paragraphs (b)(2), (b)(3), (b)(4)(ii), (c)(2), and (c)(4)(ii) of this section; or

(2) Provides: training in accordance with 10 CFR 19.12(a)(1)–(5) to these individuals to ensure that they are aware of the risks associated with accidents involving the licensed activities as determined by the integrated safety analysis, and conspicuously posts and maintains notices stating where the information in 10 CFR 19.11(a) may be examined by these individuals. Under these conditions, the performance requirements for workers specified in paragraphs (b) and (c) of this section may be applied to these individuals.

§ 70.62 Safety program and integrated safety analysis.

(a) Safety program. (1) Each licensee shall establish and maintain a safety program that demonstrates compliance with the performance requirements of § 70.61. The safety program may be graded such that management measures applied are commensurate with the reduction of the risk attributable to that item. The three elements of the safety program; namely, process safety information, integrated safety analysis, and management measures, are described in paragraphs (b) through (d) of this section.

(2) Each licensee shall establish and maintain records that demonstrate compliance with the requirements of paragraphs (b) through (d) of this section.

(3) Each licensee shall establish and maintain a log, available for NRC inspection, documenting each discovery that an item relied on for safety or management measure has failed to perform its function either in the context of the performance requirements of § 70.61 or upon demand. This log must identify the item relied on for safety or management measure that has failed and the safety function affected, the date of discovery, date (or estimated date) of the failure, duration (or estimated duration) of the time that the item was unable to perform its function, any other affected items relied on for safety or management measures and their safety function, affected processes, cause of the failure, whether the failure was in the context of the performance requirements or upon demand or both, and any corrective or compensatory action that was taken. The log must be initiated at the time of discovery and updated promptly upon the conclusion of each investigation of a failure of an item relied on for safety or management measure.

(b) Process safety information. Each licensee or applicant shall maintain process safety information to enable the performance of an integrated safety analysis. This process safety information must include information pertaining to the hazards of the materials used or produced in the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.

(c) Integrated safety analysis. (1) Each licensee or applicant shall conduct an integrated safety analysis, that is of appropriate detail for the complexity of the process, that identifies:

(i) Radiological hazards related to possessing or processing licensed material at its facility;

(ii) Chemical hazards of licensed material and hazardous chemicals produced from licensed material;

(iii) Facility hazards which could affect the safety of licensed materials and thus present an increased radiological risk;

(iv) Potential accident sequences caused by process deviations or other events internal to the plant and credible external events, including natural phenomena;

(v) The consequence and the likelihood of occurrence of each potential accident sequence identified pursuant to paragraph (c)(1)(iv) of this section, and the methods used to determine the consequences and likelihoods; and

(vi) Each item relied on for safety identified pursuant to § 70.61(e) of this part, the characteristics of its preventive, mitigative, or other safety function, and the assumptions and conditions under which the item is relied upon to support compliance with the performance requirements of § 70.61.

(2) Integrated safety analysis team qualifications. In order to assure the adequacy of the integrated safety analysis, the analysis must be performed by a team with expertise in engineering and process operations. The team shall include at least one person who has experience and knowledge specific to each process being evaluated, and persons who have experience in nuclear criticality safety, radiation safety, fire safety, and chemical process safety. One member of the team must be knowledgeable in the specific integrated safety analysis methodology being used.

(3) Requirements for existing licensees. Notwithstanding other provisions regarding the effective date for part 70, subpart H, requirements, licensees shall comply with the provisions in paragraphs (c)(3)(i), (ii), and (iii) of this section beginning on [the date of publication of the final rule]. Individuals holding an NRC license on [the date of publication of the final rule] shall, with regard to existing licensed activities:

(i) Within 6 months of the effective date of the rule, submit for NRC approval, a plan that describes the integrated safety analysis approach that will be used, the processes that will be analyzed, and the schedule for completing the analysis of each process.

(ii) Within 4 years of the effective date of the rule, complete an integrated safety analysis, correct all unacceptable performance deficiencies, and submit an integrated safety analysis summary in accordance with § 70.65 or the approved plan submitted under paragraph (c)(3)(i) of this section.

(iii) Pending the correction of unacceptable performance deficiencies identified during the conduct of the integrated safety analysis, the licensee shall implement appropriate compensatory measures to ensure adequate protection.

(d) Management measures. Each applicant or licensee shall establish management measures to provide continuing assurance of compliance with the performance requirements of § 70.61. The measures applied to a particular engineered or administrative control or control system may be commensurate with the reduction of the risk attributable to that control or control system. The management measures shall ensure that engineered and administrative controls and control systems that are identified as items relied on for safety pursuant to § 70.61(e) of this part are designed, implemented, and maintained, as necessary, to ensure they are available and reliable to perform their function when needed, in the context of compliance with the performance requirements of § 70.61 of this part.

§ 70.64 Requirements for new facilities or new processes at existing facilities.

(a) Baseline design criteria. Each prospective applicant or licensee shall address the following baseline design criteria in the design of new facilities. Each existing licensee shall address the following baseline design criteria in the design of new processes at existing facilities that require a license amendment under § 70.72. The baseline design criteria must be applied to the design of new facilities and new processes, but do not require retrofits to existing facilities or existing processes (e.g., those housing or adjacent to the new process); however, all facilities and processes must comply with the performance requirements in § 70.61. Licensees shall maintain the application of these criteria unless the evaluation performed pursuant to paragraph (c) of this section demonstrates that a given item is not relied on for safety or does not require adherence to the specified criteria.

(1) *Quality standards and records.* The design must be developed and implemented in accordance with management measures, to provide adequate assurance that items relied on for safety will be available and reliable to perform their function when needed. Appropriate records of these items must be maintained by or under the control of the licensee throughout the life of the facility.

(2) *Natural phenomena hazards.* The design must provide for adequate protection against natural phenomena with consideration of the most severe documented historical events for the site.

(3) *Fire protection.* The design must provide for adequate protection against fires and explosions.

(4) *Environmental and dynamic effects.* The design must provide for adequate protection from environmental conditions and dynamic effects associated with normal operations, maintenance, testing, and postulated accidents that could lead to loss of safety functions.

(5) *Chemical protection.* The design must provide for adequate protection against chemical risks produced from licensed material, plant conditions which affect the safety of licensed material, and hazardous chemicals produced from licensed material.

(6) *Emergency capability.* The design must provide for emergency capability to maintain control of:

(i) Licensed material;

(ii) Evacuation of personnel; and

(iii) Onsite emergency facilities and services that facilitate the use of available offsite services.

(7) *Utility services.* The design must provide for continued operation of essential utility services.

(8) *Inspection, testing, and maintenance.* The design of items relied on for safety must provide for adequate inspection, testing, and maintenance, to ensure their availability and reliability to perform their function when needed.

(9) *Criticality control.* The design must provide for criticality control including adherence to the double contingency principle.

(10) *Instrumentation and controls.* The design must provide for inclusion of instrumentation and control systems to monitor and control the behavior of items relied on for safety.

(b) Facility and system design and plant layout must be based on defense-in-depth practices.[4] The design process must incorporate, to the extent practicable:

(1) Preference for the selection of engineered controls over administrative controls to increase overall system reliability; and

(2) Features that enhance safety by reducing challenges to items relied on for safety.

[4] As used in § 70.64, defense-in-depth practices means a design philosophy, applied from the outset and through completion of the design, that is based on providing successive levels of protection such that health and safety will not be wholly dependent upon any single element of the design, construction, maintenance, or operation of the facility. The net effect of incorporating defense-in-depth practices is a conservatively designed facility and system that will exhibit greater tolerance to failures and external challenges. The risk insights obtained through performance of the integrated safety analysis can be then used to supplement the final design by focusing attention on the prevention and mitigation of the higher-risk potential accidents.

§ 70.65 Additional content of applications.

(a) In addition to the contents required by § 70.22, each application must include a description of the applicant's safety program established under § 70.62, including the integrated safety analysis summary and a description of the management measures.

(b) The integrated safety analysis summary must be submitted with the license or renewal application (and amendment application as necessary), but shall not be incorporated in the license. However, changes to the integrated safety analysis summary shall meet the conditions of § 70.72. The integrated safety analysis summary must contain:

(1) A general description of the site with emphasis on those factors that could affect safety (i.e., meteorology, seismology);

(2) A general description of the facility with emphasis on those areas that could affect safety, including an identification of the controlled area boundaries;

(3) A description of each process (defined as a single reasonably simple integrated unit operation within an overall production line) analyzed in the integrated safety analysis in sufficient detail to understand the theory of operation; and, for each process, the hazards that were identified in the integrated safety analysis pursuant to § 70.62(c)(1)(i)–(iii) and a general description of the types of accident sequences;

(4) Information that demonstrates the licensee's compliance with the performance requirements of § 70.61; the requirements for criticality monitoring and alarms in § 70.24; and, if applicable, the requirements of § 70.64;

(5) A description of the team, qualifications, and the methods used to perform the integrated safety analysis;

(6) A list briefly describing all items relied on for safety which are identified pursuant to § 70.61(e) in sufficient detail to understand their functions in relation to the performance requirements of § 70.61;

(7) A description of the proposed quantitative standards used to assess the consequences from acute chemical

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exposure to licensed material or chemicals produced from licensed materials which are on-site, or expected to be on-site as described in § 70.61(b)(4) and (c)(4);

(8) A descriptive list that identifies all items relied on for safety that are the sole item preventing or mitigating an accident sequence that exceeds the performance requirements of § 70.61; and

(9) A description of the definitions of likely, unlikely, highly unlikely, and credible as used in the evaluations in the integrated safety analysis.

§ 70.66 Additional requirements for approval of license application.

An application for a license from an applicant subject to subpart H will be approved if the Commission determines that the applicant has complied with the requirements of § 70.21, § 70.22, § 70.23 and § 70.60 through § 70.65.

§ 70.72 Facility changes and change process.

(a) The licensee shall establish a configuration management system to evaluate, implement, and track each change to the site, structures, processes, systems, equipment, components, computer programs, and activities of personnel. This system must be documented in written procedures and must assure that the following are addressed prior to implementing any change:

(1) The technical basis for the change;

(2) Impact of the change on safety and health or control of licensed material;

(3) Modifications to existing operating procedures including any necessary training or retraining before operation;

(4) Authorization requirements for the change;

(5) For temporary changes, the approved duration (e.g., expiration date) of the change; and

(6) The impacts or modifications to the integrated safety analysis, integrated safety analysis summary, or other safety program information, developed in accordance with § 70.62.

(b) Any change to site, structures, processes, systems, equipment, components, computer programs, and activities of personnel must be evaluated by the licensee as specified in paragraph (a) of this section, before the change is implemented. The evaluation of the change must determine, before the change is implemented, if an amendment to the license is required to be submitted in accordance with § 70.34.

(c) The licensee may make changes to the site, structures, processes, systems, equipment, components, computer programs, and activities of personnel, without prior Commission approval, if the change:

(1) Does not:

(i) Create new types [5] of accident sequences that, unless mitigated or prevented, would exceed the performance requirements of § 70.61 and that have not previously been described in the integrated safety analysis summary; or

(ii) Use new processes, technologies, or control systems for which the licensee has no prior experience;

(2) Does not remove, without at least an equivalent replacement of the safety function, an item relied on for safety that is listed in the integrated safety analysis summary;

(3) Does not alter any item relied on for safety, listed in the integrated safety analysis summary, that is the sole item preventing or mitigating an accident sequence that exceeds the performance requirements of § 70.61; and

(4) Is not otherwise prohibited by this section, license condition, or order.

(d)(1) For any changes that affect the integrated safety analysis summary, as submitted in accordance with § 70.65, but do not require NRC pre-approval, the licensee shall submit revised pages to the integrated safety analysis summary, to NRC, within 90 days of the change.

(2) For changes that require pre-approval under § 70.72, the licensee shall submit an amendment request to the NRC in accordance with § 70.34 and § 70.65.

(3) A brief summary of all changes to the records required by § 70.62(a)(2) of this part, that are made without prior Commission approval, must be submitted to NRC every 12 months.

(e) If a change covered by § 70.72 is made, the affected on-site documentation must be updated promptly.

(f) The licensee shall maintain records of changes to its facility carried out under this section. These records must include a written evaluation that provides the bases for the determination that the changes do not require prior Commission approval under paragraph (c) or (d) of this section. These records must be maintained until termination of the license.

[5] Any change in the defining characteristics of the elements of an accident sequence may change the "type" of the accident sequence for a given process. For example, a new type of accident could involve a different initiator, significant changes in the consequence, or a change in the safety function of a control (e.g., temperature limiting device versus a flow limiting device).

§ 70.73 Renewal of licenses.

Applications for renewal of a license must be filed in accordance with §§ 2.109, 70.21, 70.22, 70.33, 70.38, and 70.65. Information contained in previous applications, statements, or reports filed with the Commission under the license may be incorporated by reference, provided that these references are clear and specific.

§ 70.74 Additional reporting requirements.

(a) *Reports to NRC Operations Center.* (1) Each licensee shall report to the NRC Operations Center the events described in appendix A to part 70.

(2) Reports must be made by a knowledgeable licensee representative and by any method that will ensure compliance with the required time period for reporting.

(3) The information provided must include a description of the event and other related information as described in § 70.50(c)(1).

(4) Follow-up information to the reports must be provided until all information required to be reported in § 70.50(c)(1) of this part is complete.

(5) Each licensee shall provide reasonable assurance that reliable communication with the NRC Operations Center is available during each event.

(b) Written reports. Each licensee who makes a report required by paragraph (a)(1) of this section shall submit a written follow-up report within 30 days of the initial report. The written report must contain the information as described in § 70.50(c)(2).

18. Appendix A to part 70 is added to read as follows:

Appendix A to Part 70—Reportable Safety Events

As required by 10 CFR 70.74, licensees subject to the requirements in subpart H of part 70, shall report:

(a) One hour reports. Events to be reported to the NRC Operations Center within 1 hour of discovery, supplemented with the information in 10 CFR 70.50(c)(1) as it becomes available, followed by a written report within 30 days:

(1) An inadvertent nuclear criticality.

(2) An acute intake by an individual of 30 mg or greater of uranium in a soluble form.

(3) An acute chemical exposure to an individual from licensed material or hazardous chemicals produced from licensed material that exceeds the quantitative standards established to satisfy the requirements in § 70.61(b)(4).

(4) An event or condition such that no items relied on for safety, as documented in the Integrated Safety Analysis summary, remain available and reliable, in an accident sequence evaluated in the Integrated Safety Analysis, to perform their function:

(i) In the context of the performance requirements in § 70.61(b) and § 70.61(c), or

(ii) Prevent a nuclear criticality accident (i.e., loss of all controls in a particular sequence).

(5) Loss of controls such that only one item relied on for safety, as documented in the Integrated Safety Analysis summary, remains available and reliable to prevent a nuclear criticality accident, and has been in this state for greater than eight hours.

(b) Twenty-four hour reports. Events to be reported to the NRC Operations Center within 24 hours of discovery, supplemented with the information in 10 CFR 70.50(c)(1) as it becomes available, followed by a written report within 30 days:

(1) Any event or condition that results in the facility being in a state that was not analyzed, was improperly analyzed, or is different from that analyzed in the Integrated Safety Analysis. and which results in failure to meet the performance requirements of § 70.61.

(2) Loss or degradation of items relied on for safety that results in failure to meet the performance requirement of § 70.61.

(3) An acute chemical exposure to an individual from licensed material or hazardous chemicals produced from licensed materials that exceeds the quantitative standards that satisfy the requirements of § 70.61(c)(4).

(4) Any natural phenomenon or other external event, including fires internal and external to the facility, that has affected or may have affected the intended safety function or availability or reliability of one or more items relied on for safety.

(5) An occurrence of an event or process deviation that was considered in the Integrated Safety Analysis and:

(i) Was dismissed due to its likelihood; or

(ii) Was categorized as unlikely and whose associated unmitigated consequences would have exceeded those in § 70.61(b) had the item(s) relied on for safety not performed their safety function(s).

(c) Concurrent Reports. Any event or situation, related to the health and safety of the public or onsite personnel, or protection of the environment, for which a news release is planned or notification to other government agencies has been or will be made, shall be reported to the NRC Operations Center concurrent to the news release or other notification.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 23rd day of July, 1999.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–19363 Filed 7–29–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–14]

Proposed Establishment of Class E Airspace; Kalskag, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Kalskag, AK. The establishment of Global Positioning System (GPS) instrument approach procedures at Kalskag Airport have made this action necessary. The Kalskag Airport status will change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). Adoption of this proposal would result in adequate controlled airspace for aircraft flying IFR procedures at Kalskag, AK.

DATES: Comments must be received on or before September 13, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 99–AAL–14, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AAL–14." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by establishing Class E airspace at Kalskag, AK, due to the establishment of two GPS instrument approach procedures. The intended effect of this proposal is to provide controlled

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airspace for IFR operations at Kalskag, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kalskag, AK [New]

Kalskag Airport
(Lat. 61°32′11″N., long. 160°20′29″W.)

That airspace extending upward from 700 feet above the surface within 6.8-mile radius of the Kalskag Airport, excluding that airspace within the St. Marys, AK, Class E airspace area.

* * * * *

Issued in Anchorage, AK, on July 23, 1999.

Trent S. Cummings,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–19618 Filed 7–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–12]

Proposed Revision of Class E Airspace; Point Lay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Point Lay, AK. This establishment of a Nondirectional Radio Beacon (NDB) instrument approach to runway (RWY) 5 and Global Positioning System (GPS) instrument approach procedures to RWY 5 and RWY 23 at Point Lay Airport have made this action necessary. Adoption of this proposal would result in adequate controlled airspace for aircraft flying IFR procedures at Point Lay, AK.

DATES: Comments must be received on or before September 13, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 99–AAL–12, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AAL–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising Class E airspace at Point Lay, AK, due to the establishment of three new instrument approach procedures: GPS and NDB instrument approach procedures to RWY 5 and a GPS instrument approach to RWY 23. The intended effect of this proposal is to provide additional controlled airspace for IFR operations at Point Lay, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace. Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Point Lay, AK [Revised]

Point Lay Airport
(Lat. 69° 43′ 56″ N., long. 163° 03′ 40″ W.)

That airspace extending upward from 700 feet above the surface within 8-mile radius of the Point Lay Airport; and that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 69° 50′ 30″ N long. 161° 41′ 30″ W, to lat. 69° 28′ 45″ N long. 163° 32′ 30″ W, to lat. 69° 42′ 35″ N long. 163° 57′ 30″ W, to lat. 70° 05′ 20″ N long. 162° 04′ 35″ W, to the beginning point; and that airspace 4 miles either side of a line from lat. 69° 47′ 37″ N long. 162° 33′ 03″ W to lat. 69° 05′ 17″ N long. 159° 59′ 43″ W; and that airspace within 6 miles radius of lat. 68° 51′ 00″ N long 166° 00′ 00″ W; and that airspace 6 miles either side of a line from of lat. 68° 51′ 00″ N long 166° 00′ 00″ W to lat 69° 36′ 45″ N long. 163° 30′ 00″ W.

* * * * *

Issued in Anchorage, AK, on July 23, 1999.

Trent S. Cummings,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–19617 Filed 7–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–11]

Proposed Establishment of Class E Airspace; Platinum, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Platinum, AK. The establishment of a Global Positioning System (GPS) instrument approach procedure at Platinum Airport has made this action necessary. The Platinum Airport status will change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). Adoption of this proposal would result in adequate controlled airspace for aircraft flying IFR procedures at Platinum, AK.

DATES: Comments must be received on or before September 13, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 99–AAL–11, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic,

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environmental, and energy-related aspects of the proposal.
Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99-AAL-11." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by establishing Class E airspace at Platinum, AK, due to the establishment of two GPS instrument approach procedures. The intended effect of this proposal is to provide additional controlled airspace for IFR operations at Platinum, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Platinum, AK [New]

Platinum Airport
(Lat. 59°00′41″ N., long. 161°49′11″ W.)
Togiak NDB
(Lat. 59°03′50″ N., long. 160°22′27″ W.)
Kipnuk VOR
(Lat. 59°56′34″ N., long. 164°01′51″ W.)
Oscarville NDB
(Lat. 60°47′29″ N., long. 161°52′22″ W.)

That airspace extending upward from 700 feet above the surface within 5.5-mile radius of the Platinum Airport; and that airspace extending upward from 1,200 feet above the surface 4 miles either side of a line from the Togiak NDB to lat. 59°19′00″ N. long. 161°52′00″ W., and 4 miles either side of a line from Kipnuk VOR to lat. 59°19′00″ N. long. 161°52′00″ W., and 4 miles either side of a line from Oscarville NDB to lat. 59°19′00″ N. long. 161°52′00″ W., and 4 miles either side of a line extending from lat. 59°19′00″ N. long. 161°52′00″ W. to lat. 59°09′58″ N. long 161°57′39″ W. to lat. 59°05′27″ N. long. 161°53′31″ W.

* * * * *

Issued in Anchorage, AK, on July 23, 1999.

Trent S. Cummings,
Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–19616 Filed 7–29–99; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–10]

Proposed Establishment of Class E Airspace; St. Michael, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at St. Michael, AK. The establishment of Global Positioning System (GPS) instrument approach procedures at St. Michael Airport has made this action necessary. The St. Michael Airport status will change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). Adoption of this proposal would result in adequate controlled airspace for aircraft flying IFR procedures at St. Michael, AK.

DATES: Comments must be received on or before September 13, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 99–AAL–10, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.
Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AAL–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the Federal Register's web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT SECTION.**

The Proposal

The FAA proposes to amend 14 CFR part 71 by establishing Class E airspace at St. Michael, AK, due to the establishment of two GPS instrument approach procedures. The intended effect of this proposal is to provide additional controlled airspace for IFR operations at St. Michael, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 St. Michael, AK [New]

St. Michael Airport
(Lat. 62°29′24″ N., long. 162°06′37″ W.)
Fort Davis NDB
(Lat. 64°29′41″ N., long. 165°18′50″ W.)
North River NDB
(Lat. 63°54′28″ N., long. 160°48′43″ W.)

That airspace extending upward from 700 feet above the surface within 5.8-mile radius of the St. Michael Airport; and that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 63°54′30″ N long. 161°44′20″ W. to lat. 63°41′00″ N long. 161°04′30″ W. to lat. 63°02′00″ N long. 162°23′05″ W. to lat. 62°50′00″ N long. 164°00′00″ W. to lat. 63°05′00″ N long. 164°00′00″ W. to the beginning point; and that airspace 4 miles northwest of a line from North River NDB to lat. 63°35′44″ N long. 161°44′03″ W; and that airspace 4 miles either side of a line from Fort Davis NDB to lat 63°22′14″ N long.

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162°33'13" W; and that airspace 4 miles either side of a line from Fort Davis NDB to lat. 63°41'11" N long. 162°02'50" W; excluding that airspace within the Nome, AK, Class E airspace area.

* * * * *

Issued in Anchorage, AK, on July 23, 1999.

Trent S. Cummings,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–19615 Filed 7–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–9]

Proposed Establishment of Class E Airspace; Mountain Village, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Mountain Village, AK. The establishment of Global Positioning System (GPS) instrument approach procedures at Mountain Village Airport has made this action necessary. The Mountain Village Airport status will change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). Adoption of this proposal would result in adequate controlled airspace for aircraft flying IFR procedures at Mountain Village, AK.

DATES: Comments must be received on or before September 13, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 99–AAL–9, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AAL–9." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the Federal Register's web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by establishing Class E airspace at Mountain Village, AK, due to the establishment of two GPS instrument approach procedures. The intended effect of this proposal is to provide additional controlled airspace for IFR operations at Mountain Village, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Mountain Village, AK [New]

Mountain Village Airport
(Lat. 62°05'43" N., long. 163°40'55" W.)

That airspace extending upward from 700 feet above the surface within 6.3-mile radius of the Mountain Village Airport and that airspace extending upward from 1,200 feet above the surface within 35 miles southeast of the airport extending clockwise from the 139° radial to the 310° radial, excluding that airspace within the St. Marys, AK, Class E airspace area.

* * * * *

Issued in Anchorage, AK, on July 23, 1999.

Trent S. Cummings,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–19614 Filed 7–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–7]

Proposed Establishment of Class E Airspace; Aniak, AK; Proposed Establishment of Class E Airspace; St. Mary's, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E (surface area) airspace at Aniak, AK, and St. Mary's, AK. This action is at the request of air taxi operators with flight operations at these airports. Adoption of this proposal would result in additional Class E airspace for aircraft flying Instrument Flight Rules (IFR) procedures at Aniak, AK, and St. Mary's, AK.

DATES: Comments must be received on or before September 13, 1999.

ADDRESSES: Send comments on the proposal in triplicate to:

Manager, Operations Branch, AAL–530, Docket No. 99–AAL–7, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert van-Haastert@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99-AAL–7." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

Background

On March 16, 1999, the FAA initiated Airspace Study 99-AAL–022-NR, Proposal to Establish Surface Areas at Aniak and St. Mary's Airports, at the request of Pen Air, Northern Air Cargo, and Arctic Transportation Services to consider the establishment of additional controlled Class E Airspace. This additional controlled Class E airspace would provide surface areas for aircraft flying IFR at the Aniak and St. Mary's airports.

Concerns expressed included: (1) it is disconcerting to be on an IFR approach knowing that Visual Flight Rule (VFR) aircraft may be in close proximity when the transition is made from IFR to VFR for landing; (2) aircraft are not required to talk on the Common Traffic Advisory Frequency (CTAF); (3) aircraft on instrument approach must mix with VFR aircraft in weather conditions as low as 'clear of clouds' and 'one-mile flight visibility'; and (4) an aircraft on an IFR approach could descend through the clouds and find themselves on a

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collision course with uncontrolled VFR traffic.

Changes that would result for VFR pilots with the proposed establishment of these surface areas include: (1) a requirement to maintain basic VFR weather minimums as detailed in 14 CFR part 91 section 155 (§ 91.155) established for Class E airspace to the surface, consisting of three (3) statute miles visibility and cloud clearance of 500 feet below, 1,000 feet above, and 2,000 feet horizontal distance from clouds; (2) if the basic VFR weather minimums (§ 91.155) can not be maintained, then a pilot would be required to fly in accordance with the Special VFR weather minimums contained in § 91.157, i.e., have an Air Traffic Control (ATC) clearance.

Comments were received from Tatonduk Outfitters Limited, Tanana Air Service, and one pilot. Based on the comments received during the airspace study, the FAA decided to proceed with the rulemaking process to establish surface areas at Aniak, AK, and St. Mary's, AK.

The Proposal

The FAA proposes to amend 14 CFR part 71 by establishing Class E airspace at Aniak, AK, and St. Mary's, AK, at the request of air taxi operators with flight operations at these airports. The intended effect of this proposal is to provide additional controlled airspace for IFR operations.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas are published in paragraph 6002 in FAA Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is to be amended as follows:

* * * * *

Paragraph 6002 Class E airspace designated as surface areas

* * * * *

AAL AK E2 Aniak, AK [New]

Aniak Airport
(Lat. 61°34′54″ N., long. 159°32′35″ W.)
Aniak NDB
(Lat. 61°35′25″ N., long. 159°35′53″ W.)

Within a 4-mile radius of the Aniak Airport and within 1.5 miles each side of the 300° bearing and the 112° bearing from the Aniak NDB, extending from the 4-mile radius to 6.5 miles and within 2.8 miles each side of the Aniak NDB 229° bearing, extending from the 4-mile radius to 6.5 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AAL E2 St. Mary's, AK [New]

St. Mary's Airport, AK
(Lat. 62°03′38″ N., long. 163°18′08″ W.)
St. Mary's NDB
(Lat. 62°03′30″ N., long. 163°17′30″ W.)

Within a 4.1-mile radius of the St. Mary's Airport and within 1.5 miles either side of the 339° bearing and 1.5 miles either side of the 001° bearing from the St. Mary's NDB, extending from the 4.1 mile radius to 6.7 miles north of the airport and within 1.5 miles either side of the 197° bearing and 1.5 miles either side of the 185° bearing from the St. Mary's NDB, extending from the 4.1-mile radius to 6.7 miles south of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Anchorage, AK, on July 23, 1999.

Trent S. Cummings,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–19613 Filed 7–29–99; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket No. #WA–1-0001; FRL–6408–7]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the section 111(d)/129 State Plan submitted by the State of Washington on January 4, 1999. The State Plan was submitted by Washington to satisfy certain Federal Clean Air Act requirements. In the Final Rules section of this **Federal Register**, the EPA is approving the State's Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by August 30, 1999.

ADDRESSES: Written comments should be addressed to Catherine Woo, Environmental Protection Specialist, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101.

The State of Washington, Department of Environmental Quality, P.O. Box 47600, Olympia, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Catherine Woo, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules section of this **Federal Register** and incorporated by reference herein.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Municipal Waste Combustors, Reporting and recordkeeping requirements.

Dated: July 19, 1999.

Randall F. Smith,

Acting Regional Administrator, Region 10.

[FR Doc. 99–19432 Filed 7–29–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7294]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
California	Avenal (City) Kings County.	Arroyo Del Caminc	Approximately 250 feet downstream of Shasta Street.	None	*801

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State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		.....	Approximately 550 feet upstream of Skyline Boulevard.	None	*861

Maps are available for inspection at City Hall, 919 Skyline Boulevard, Avenal, California.
Send comments to The Honorable Ray Elliott, Mayor, City of Avenal, 919 Skyline Boulevard, Avenal, California 93204.

Idaho	Blaine County (Unincorporated Areas).	Little Wood River	Approximately 1.5 miles downstream of Santa Rosa Lane.	None	*4,754
			Approximately 1.2 miles upstream of Highway 26/93 (Main Street).	None	*4,805
		Middle Branch of Little Wood River.	Approximately 50 feet upstream of Griffin Loop Road.	None	*4,761
			At confluence with Little Wood River, approximately 1,700 feet upstream of Highway 25/93 (Main Street).	None	*4,786

Maps are available for inspection at the Planning & Zoning Department, 206 First Avenue South, Suite 310, Hailey, Idaho 83333.
Send comments to The Honorable Mary Ann Mix, Chairman, County Board of Commissioners, 206 First Avenue South, Suite 300, Hailey, Idaho 83333.
Maps are available for inspection at the City of Carey, 20516 Main Street, Carey, Idaho.
Send comments to The Honorable Richard Baird, Mayor, City of Carey, P.O. Box 6, Carey, Idaho 83320.

Louisiana	Caddo Parish and Incorporated areas.	Logan Bayou	Approximately 500 feet downstream of Kansas City Southern Railroad.	None	*180
			Approximately 800 feet upstream of Kansas City Southern Railroad.	None	*188
			At Roy Road	None	*193
			Approximately 3,000 feet upstream of Shreveport Blanchard Highway (State Route 173).	None	*200
		Red River	Approximately 5.3 miles downstream of 70th Street (just east of the intersection of Flourney Lucas Road and Youree Drive).	None	*160
			Approximately 8,300 feet upstream of Interstate 220.	None	*174
		Choctaw Bayou	Approximately 7,800 feet downstream of Blanchard Furr Road (tributary backwater area near Kansas City Southern Railroad.	None	*193
			Approximately 100 feet downstream of Blanchard Furr Road.	None	*208
		Caddo Lake	Along shoreline of Caddo Lake, including tributary backwater.	None	*184

Maps are available for inspection at the Caddo Parish Courthouse, 525 Marshall Street, Suite 200, Shreveport, Louisiana.
Send comments to The Honorable Michael Williams, Caddo Parish President, Caddo Parish Courthouse, 525 Marshall Street, Suite 200, Shreveport, Louisiana 71101.
Maps are available for inspection at the Town of Blanchard Town Hall, 110 Main Street, Blanchard, Louisiana.
Send comments to The Honorable Larry Permenter, Mayor, Town of Blanchard, P.O. Box 428, Blanchard, Louisiana 71009.
Maps are available for inspection at the Town of Mooringsport Town Hall, 122 West Croom Street, Mooringsport, Louisiana.
Send comments to The Honorable Douglas Elder, Mayor, Town of Mooringsport, P.O. Box 9, Mooringsport, Louisiana 71060.
Maps are available for inspection at the City of Shreveport City Hall, 1234 Texas Avenue, Shreveport, Louisiana.
Send comments to The Honorable Keith Hightower, Mayor, City of Shreveport, P.O. Box 31109, Shreveport, Louisiana 71130.

Missouri	Independence (City) Jackson County.	Sugar Creek	At Independence Avenue	*818	*816
			At Park Avenue	*916	*914
		Mill Creek	Approximately 250 feet downstream from Kentucky Road.	None	*810
			Approximately 950 feet upstream of South Park Road.	None	*960
		Spring Branch	Approximately 7,500 feet downstream of Missouri State Highway 78.	*750	*750
			At Kiger road	*884	*886
		South Fork, Spring Branch	At confluence with Spring Branch	*813	*823
			Approximately 80 feet upstream of Lee's Summit Road.	*858	*864

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Bundschu Creek	At confluence with the Little Blue River ...	*739	*739
			Approximately 450 feet downstream from the Union Pacific Railroad.	*749	*748
			At Powell Road	*770	*777
		Crackerneck Creek	At confluence with the Little Blue River ...	*754	*754
			Approximately 3,750 feet upstream from confluence with the Little Blue River.	*756	*754
			Just upstream of Partridge Drive	*956	*958
		North Fork Crackerneck Creek.	At confluence with Crackerneck Creek	*756	*754
			Approximately 2,500 feet upstream of Viking Road.	*872	*859
		Adair Creek	At confluence with the Little Blue River ...	*762	*763
			At Noland Road	*908	*911
		Adair Creek Tributary No. 1.	At confluence with Adair Creek	None	*813
			Approximately 40 feet downstream of Interstate 70.	None	*844
		Adair Creek Tributary No. 2.	At confluence with Adair Creek	None	*857
			Approximately 190 feet downstream from Interstate 70.	None	*895
		Rock Creek	Approximately 140 feet downstream from Kentucky Road.	None	*746
			At 32nd Street	*900	*902

Maps are available for inspection at the City of Independence, Department of Public Works (Engineering), 111 East Maple, Independence, Missouri.
Send comments to The Honorable Ron Stewart, Mayor, City of Independence, 111 East Maple, Independence, Missouri 64050.

Montana	Yellowstone County (Unincorporated Areas).	Alkali Creek	Approximately 960 feet above confluence with Yellowstone River.	*3,096	*3,096
			Just upstream of Main Street (U.S. Highway 87 and 312).	*3,159	*3,153
			Approximately 2,200 feet downstream of Black Pine Street.	*3,162	*3,159
			Approximately 1,100 feet downstream of Black Pine Street.	*3,166	*3,166

Maps are available for inspection at the Yellowstone County Emergency and General Services Department, 217 North 27th, Room 309, Billings, Montana.
Send comments to The Honorable Bill Kennedy, Chairperson, Yellowstone County Board of Commissioners, P.O. Box 35000, Billings, Montana 59107.

North Dakota	Jamestown (City) Stutsman County.	James River	Approximately 1.87 miles (9,875 feet) downstream of Midland Continental Railroad.	*1,378	*1,379
			Approximately 1.64 miles (8,675 feet) upstream of 4th Avenue Northwest.	*1,397	*1,398
			At confluence with James River	*1,392	*1,392
		Pipestem Creek	Approximately 0.21 mile (1,100 feet) above confluence with James River.	*1,392	*1,393
			Approximately 1.04 miles (5,475 feet) upstream of Burlington Northern Railroad.	*1,404	*1,407

Maps are available for inspection at the City of Jamestown, City Hall, 102 3rd Avenue Southeast, Jamestown, North Dakota.
Send comments to The Honorable Charlie Kourajian, Mayor, City of Jamestown, City Hall, 102 3rd Avenue Southeast, Jamestown, North Dakota 58401.

Texas	Edinburg (City) Hidalgo County.	North Main Drain	Approximately 2,735 feet downstream of Davis Road.	None	*82
			At downstream side of Chapin Street (formerly part of Hidalgo County).	None	*95
			At confluence of West Main Drain	*95	*95

Maps are available for inspection at 1304 South 25th Street, Edinburg, Texas.
Send comments to The Honorable Joe Ochoa, Mayor, City of Edinburg, P.O. Box 1079, Edinburg, Texas 78540.

Texas	Hidalgo County (Unincorporated Areas).	East Lateral Drain	Approximately 2,620 feet downstream of Mile 2 West Road.	None	*59
			Approximately 595 feet upstream of Mile 11 North Road.	None	*70

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State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		North Main Drain	At confluence with Donna Drain	None	*74
			Approximately 1,175 feet upstream of Mile 17 2 Road (Russell Road).	*94	*93
			At Chaplin Road	*95	*95
		West Main Drain	Approximately 2 feet downstream of a drop structure located approximately 1,000 feet downstream of Taylor Road.	None	*124
			Approximately 2,095 feet upstream of Brushliner Road.	None	*202
Maps are available for inspection at 1304 South 25th Street, Edinburg, Texas.					
Send comments to The Honorable Jose E. Pulido, Judge, Hidalgo County, 100 East Cano Street, Edinburg, Texas 78540.					
Texas	Seguin (City) Guadalupe County.	Walnut Branch	Approximately 400 feet downstream of West Kein Street.	*484	*484
			Just upstream of University Lane	*528	*527
			Approximately 200 feet downstream of Interstate 10.	*545	*546
Maps are available for inspection at 210 East Gonzales Street, Seguin, Texas.					
Send comments to The Honorable Mark Stautzenberger, Mayor, City of Seguin, P.O. Box 591, Seguin, Texas 78156.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 20, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–19569 Filed 7–29–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7291]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127. 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Minnesota	Brown County (Unincorporated Areas).	Minnesota River	Approximately 2.15 miles downstream of Chicago and Northwestern Railroad.	*804	*805
		Cottonwood River	Downstream side of U.S. Highway 14	*810	*809
			At confluence with Minnesota River	*806	*807
			Approximately 1,000 feet downstream of Chicago & Northwestern Railroad Bridge.	*806	*807
		Backwater Effects of the Minnesota River.	Downstream side of the upstream County boundary.	None	*823
Maps available for inspection at the Brown County Planning and Zoning Office, Brown County Courthouse, New Ulm, Minnesota.					
Send comments to Mr. Charles Enter, Brown County Administrator, P.O. Box 248, New Ulm, Minnesota 56073–0248.					
Minnesota	Lake City (City), Wabasha County.	Mississippi River	At downstream corporate limits	*681	*682
			At upstream corporate limits	*681	*682
		Gilbert Creek	Confluence with Mississippi River	*681	*682
			Downstream of U.S. 61 bridge	*681	*682
		Miller Creek	Confluence with Mississippi River	*681	*682
			Approximately 300 feet upstream from U.S. 61 bridge.	*681	*682
Maps available for inspection at the Lake City Hall, 205 West Center Street, Lake City, Minnesota.					
Send comments to The Honorable Willard Bremer, Mayor of the City of Lake City, Lake City City Hall, 205 West Center Street, Lake City, Minnesota 55041.					
Minnesota	Minneota (City), Lyon County.	South Branch Yellow Medicine River.	At downstream corporate limits	None	*1,146
			Approximately 0.93 mile upstream of 1st Street.	None	*1,170
Maps available for inspection at the Minneota City Hall, 129 East 1st Street, Minneota, Minnesota.					
Send comments to The Honorable Joanne Myrvik, Mayor of the City of Minneota, 129 East 1st Street, Minneota, Minnesota 56264.					
Mississippi	Shubuta (Town), Clarke County.	Chickasawhay River	Approximately 2,900 feet downstream of First Street (County Route 612).	None	*191
			Approximately 1.3 miles upstream of First Street (County Route 612).	None	*197
Maps available for inspection at the Shubuta Town Hall, 156 Eucutta Street, Shubuta, Mississippi.					
Send comments to The Honorable Clyde Brown, Mayor of the Town of Shubuta, P.O. Box 416, Shubuta, Mississippi 39360.					
New York	Lowville (Town), Lewis County.	Black River	At approximately 1,080 feet downstream of corporate limits.	None	*738
			Approximately 1.2 miles upstream of Number Four Road.	None	*745
Maps available for inspection at the Lowville Town Hall, 5533 Bostwick, Lowville, New York.					
Send comments to Mr. Arleigh D. Rice, Lowville Town Supervisor, Route 3, Box 8T, Lowville, New York 13367.					
New York	Lowville (Village), Lewis County.	Mill Creek	At downstream corporate limits	None	*744
			Approximately 500 feet upstream of Cedar Street.	None	*873
Maps available for inspection at the Village of Lowville Municipal Building, Code Enforcement Office, 5402 Dayan Street, Lowville, New York.					
Send comments to The Honorable Danny Salmon, Mayor of the Village of Lowville, Municipal Building, 5402 Dayan Street, Lowville, New York 13367.					
New York	New York Mills (Village), Oneida County.	Sauquoit Creek	Approximately 190 feet downstream of Oriskany Boulevard.	None	*422
			Approximately 610 feet upstream of State Route 5A.	*461	*462

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the New York Mills Village Clerk's Office, 1 Maple Street, New York Mills, New York.					
Send comments to The Honorable Michael F. Dubiel, Mayor of the Village of New York Mills, 1 Maple Street, New York Mills, New York 13417.					
New York	Whitesboro (Village), Oneida County.	Sauquoit Creek	At downstream corporate limits	*415	*414
			Approximately 1,760 feet upstream of Oriskany Boulevard.	*426	*428
		Mohawk River	At confluence of Sauquoit Creek	*415	*415
			Approximately 1,000 feet upstream side of Mohawk Street.	*415	*414
Maps available for inspection at the Whitesboro Village Hall, 10 Moseley Street, Whitesboro, New York.					
Send comments to The Honorable Joseph G. Malecki, Mayor of the Village of Whitesboro, 10 Moseley Street, Village Hall, Whitesboro, New York 13492.					
New York	Whitestown (Town), Oneida County.	Sauquoit Creek	Upstream side of CONRAIL bridge	*417	*418
			Upstream side of State Route 5A	*459	*461
		Mud Creek	At confluence with Sauquoit Creek	*449	*450
			Approximately 365 feet upstream side of confluence with Sauquoit Creek.	*449	*450
Maps available for inspection at the Whitestown Town Hall, 8 Park Avenue, Whitesboro, New York.					
Send comments to Mr. Matthew Shannon, Whitestown Town Supervisor, 8 Park Avenue, Whitestown Town Hall, Whitesboro, New York 13492–1310.					
New York	Yorkville (Village), Oneida County.	Sauquoit Creek	At upstream side of CONRAIL bridge	*416	*418
			Approximately 310 feet upstream of Oriskany Boulevard.	None	*427
Maps available for inspection at the Yorkville Village Hall, 7 7th Street, Yorkville, New York.					
Send comments to The Honorable Michael A. Mahoney, Mayor of the Village of Yorkville, 69 Cross Street, Yorkville, New York 13495.					
Pennsylvania	Freeport (Borough), Armstrong County.	Buffalo Creek	At confluence with Allegheny River	*769	*768
			Approximately 1,160 feet upstream of CONRAIL spur.	*769	*768
		Allegheny River	At downstream corporate limits/confluence of Buffalo Creek.	*769	*768
			Approximately 0.77 mile upstream of confluence of Buffalo Creek corporate limits.	*770	*769
Maps available for inspection at the Freeport Borough Council Chambers, 414 Market Street, Freeport, Pennsylvania.					
Send comments to Mr. James M. Seagriff, Jr., President of the Freeport Borough Council, 414 Market Street, Freeport, Pennsylvania 16229.					
Pennsylvania	Gilpin (Township), Armstrong County.	Allegheny River	Approximately 1,420 feet downstream of Lock and Dam No. 5.	*772	*771
			Approximately 150 feet upstream of Lock and Dam No. 5.	*772	*771
		Kiskiminetas River	At confluence with the Allegheny River	*772	*771
			Approximately 1,400 feet upstream of the confluence with the Allegheny River.	*772	*771
Maps available for inspection at the Gilpin Township Municipal Building, Route 66, Leechburg, Pennsylvania.					
Send comments to Mr. Dennis Wolfe, Chairman of the Gilpin Township Board of Supervisors, R.D. 1, Box 269, Leechburg, Pennsylvania 15656.					
Pennsylvania	South Buffalo (Township), Armstrong County.	Allegheny River	Approximately 900 feet downstream of CONRAIL.	None	*770
			Approximately 50 feet downstream of Lock and Dam No. 5.	*773	*774

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the South Buffalo Township Municipal Office, 384 Iron Bridge Road, Freeport, Pennsylvania.					
Send comments to Mr. Robert L. Van Dyke, Chairman of the South Buffalo Township Board of Supervisors, 384 Iron Bridge Road, Freeport, Pennsylvania 16229.					
Pennsylvania	South Londonderry (Township), Lebanon County.	Spring Creek	Approximately 480 feet downstream of Yorkshire Road.	None	*411
			Approximately 650 feet upstream of Lawn Road.	None	*466
		Tributary to Spring Creek	At the confluence with Spring Creek	None	*441
			Approximately 1,600 feet upstream from the confluence with Spring Creek.	None	*453
Maps available for inspection at the South Londonderry Township Hall, 101 Center Street, Campbell, Pennsylvania.					
Send comments to Mr. Raymond Phillippy, Chairman of the South Londonderry Board of Supervisors, 101 Center Street, Box 3, Campbell, Pennsylvania 17010.					
Rhode Island	Providence (City), Providence County.	Ponding Area 4–1A	Entire shoreline within the City of Providence.	None	*78
		Ponding Area 4–1B	Entire shoreline within the City of Providence.	None	*73
		Ponding Area 4–3	Entire shoreline within the City of Providence.	None	*71
		Ponding Area 4–4	Entire shoreline within the City of Providence.	None	*85
Maps available for inspection at the Providence City Hall, Planning and Development Building, 400 Westminster Street, 5th Floor, Providence, Rhode Island.					
Send comments to The Honorable Vincent Cianci, Mayor of the Town of Providence, 25 Dorrance Street, Providence, Rhode Island 02903.					
Vermont	Wolcott (Town), Lamoille County.	Wild Branch	At the upstream side of Lamoille Valley Railroad.	*676	*677
			Approximately 625 feet upstream of a private drive (approximately 225 feet downstream of upstream corporate limits).	*926	*927
Maps available for inspection at the Wolcott Town Hall, 4186 Vermont Route 15, Wolcott, Vermont.					
Send comments to Mr. Robert D. Harris, Town of Wolcott Selectman, P.O. Box 100, Wolcott, Vermont 05680.					
Virginia	Buena Vista (City), Rockbridge County.	Maury River	Approximately 100 feet upstream from Columbia Mills Dam.	*847	*850
			Approximately 2 miles downstream of 10th Street.	None	*806
			Just downstream of West 29th Street	None	*851
Maps available for inspection at the Buena Vista Municipal Building, 2039 Sycamore Avenue; Buena Vista, Virginia.					
Send comments to The Honorable Harold Kidd, Mayor of the City of Buena Vista, Municipal Building, 2039 Sycamore Avenue, Buena Vista, Virginia 24416.					
Virginia	Glasgow (Town), Rockbridge County.	Maury River	Just upstream of CSX Transportation	*721	*724
			Approximately 1.75 miles upstream from State Route 130.	*730	*737
Maps available for inspection at the Glasgow Town Hall, 1100 Blue Ridge Road, Glasgow, Virginia.					
Send comments to Mr. William S. Knick, Glasgow Town Manager, P.O. Box 326, Glasgow, Virginia 24555.					
Virginia	Lexington (City), Rockbridge County.	Maury River	Approximately 2,600 feet downstream of U.S. Route 11.	*907	*916
			Approximately 3,200 feet upstream of U.S. Route 11.	*916	*926
		Woods Creek	Confluence with Maury River	*912	*920
			Approximately 1,150 feet upstream from Stone Lane.	*916	*920

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State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Lexington City Hall, 300 East Washington Street, Lexington, Virginia. Send comments to The Honorable Homer Derrick, Jr., Mayor of the City of Lexington, 300 East Washington Street, Lexington, Virginia 24450.					
Virginia	Rockbridge County (Unincorporated Areas).	Irish Creek	At confluence with South River	*1,019	*1,024
			Approximately 450 feet upstream from State Route 608.	*1,023	*1,024
		Maury River	Just upstream of CSX Railway	*723	*724
			Approximately 0.6 mile upstream of U.S. Route 11.	*916	*926
		South River	Approximately 1,250 feet downstream from CSX Transportation.	None	*878
			Approximately 1,750 feet upstream of State Route 56.	None	*1,469
Maps available for inspection at the Rockbridge Zoning Office, 150 South Main Street, Lexington, Virginia. Send comments to Mr. Donald G. Austin, Rockbridge County Administrator, 150 South Main Street, Lexington, Virginia 24450					
Wisconsin	Fond du Lac County (Unincorporated Areas).	Sevenmile Creek	Approximately 845 feet upstream of the confluence with East Branch Fond du Lac River.	None	*839
			Upstream side of County Route Y	None	*879
		De Neveu Creek	Approximately 1,380 feet downstream of U.S. Highway 45.	*811	*810
			Approximately 1,900 feet upstream of confluence of Unnamed Tributary to De Neveu Creek.	*829	*826
		Unnamed Tributary to Unnamed Tributary to De Neveu Creek.	At confluence with Unnamed Tributary to De Neveu Creek.	None	*826
			At outlet of Lake De Neveu	None	*824
		Lake De Neveu	Entire shoreline within county	None	*864
		Kettle Moraine Lake	Entire shoreline within county	None	*1,025
		Unnamed Tributary to De Neveu Creek.	At confluence with De Neveu Creek	None	*822
			Just upstream of County Route UU	None	*957
Maps available for inspection at the Code Enforcement Office, 160 South Macy Street, Fond du Lac, Wisconsin. Send comments to Mr. Allen Buechel, Fond du Lac County Executive, 160 South Macy Street, Fond du Lac, Wisconsin 54935.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 19, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–19568 Filed 7–29–99; 8:45 am]

BILLING CODE 6718–04–P

Notices

Federal Register

Vol. 64, No. 146

Friday, July 30, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service NRCS).

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue a revised conservation practice standards Section IV of the FOTG. The revised standards are Pond Sealing or Lining, Flexible Membrane (Code 521A), Pond Sealing or Lining, Soil Dispersant, Code 521B and Pond Sealing or Lining, Bentonite Sealant, Code 521C. These practices may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received on or before August 30, 1999.

ADDRESSES: Address all requests and comments to Robert L. Eddleman, State conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to joe.gasperi@in.usda.gov.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: July 19, 1999.

Robert L. Eddleman,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 99–19441 Filed 7–29–99; 8:45 am]

BILLING CODE 3410–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

Comments must be received on or before: August 30, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Addition

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to Procurement List for production by the nonprofit agency listed:

Janitorial/Custodial

Buildings 115, 985, 995, 2525, 2765, 2766, P600T and R–19, Naval Air Station, Whidbey Island, Washington

NPA: New Leaf, Inc., Oak Harbor, Washington

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Ladder, Straight (Wood)
5440–00–242–7151

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5440–00–814–5084

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–19532 Filed 7–29–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 30, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 9, May 14, and June 18, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 F.R. 17312, 26360 and 32844) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Computer Screen (CRT) Wipes
7930–01–454–1138
Phone Wipes, Sanitary
7930–01–454–1139
Hand Cleaner, Heavy Duty Wipes
8520–01–454–1144

Services

Base Supply Center and Operation of Individual Equipment Element Store, Holloman Air Force Base, New Mexico
Grounds Maintenance, Manchester AFRC, 64 Harvey Road, Londonderry, New Hampshire
Grounds Maintenance, Naval and Marine Corps Reserve Center, 5101 North Assembly Street, Spokane, Washington

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–19533 Filed 7–29–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

"Additions to Procurement List" Correction

The Committee has combined and redesignated as JWOD Staffing Services the two services currently on the Committee's Procurement List as Administrative/General Support Services (GSA/FSS Region 7), (Up to 50% of the Government's requirement) which was added to the Procurement List on August 30, 1996 (61 FR 45934) and Temporary Administrative/General Support Services for GSA Regions 1, 2, 3, 4, 5, 6, 8, 9, 10 and National Capitol Region (Up to 50% of the Government's requirement) which was added to the Procurement List on February 28, 1997 (62 FR 9158).

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–19534 Filed 7–29–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 37–99]

Foreign-Trade Zone 143—Sacramento, California Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Sacramento-Yolo Port District, grantee of FTZ 143, requesting authority to expand its zone to include a site in Chico, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 16, 1999.

FTZ 143 was approved on August 6, 1987 (Board Order 360, 52 FR. 30698, 8/17/87) and expanded on December 15, 1997 (Board Order 944, 62 FR 67043, 12/23/97). The zone project currently consists of the following sites: Site 1 (686 acres)—within the Port of Sacramento, Industrial Blvd. and Boatman Ave., West Sacramento; and, Site 2 (1,280 acres)—Lincoln Airport Business Park, Aviation Boulevard, Lincoln, some 25 miles northeast of Sacramento.

This application is requesting authority to further expand the general-purpose zone to include an additional site: (Proposed Site 3—1,574 acres)—Chico Municipal Airport complex and adjacent industrial development area, city of Chico, County of Butte. The proposed zone site is divided into three parcels as follows: East Area (300 acres)—east of Cohasset Road on mostly vacant land, Chico; West Area (250 acres)—adjacent to and west of the Chico Municipal Airport, under the jurisdiction of the County of Butte and the city of Chico; and, the Airport Area (1,024 acres)—Chico Municipal Airport complex, Chico, including the Airport Industrial Park (but excluding airport runways and public terminal area). No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

Section 2422 of the Miscellaneous Trade and Technical Correction Act of 1999 (P.L. 106–36) directs the Foreign-Trade Zones Board to expand FTZ 143 to include a site in Chico in accordance with the application described above.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to review the application and report to the Board.

Public comment on the application may be submitted to the Board's Executive Secretary at the address below. The closing period for their receipt is August 16, 1999.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, Sacramento-Yolo Port District, 3251 Beacon Boulevard, Suite 210, West Sacramento, CA 95691

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: July 19, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–19607 Filed 7–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 38–99]

Foreign-Trade Zone 72—Indianapolis, Indiana; Application for Subzone; SMC Pneumatics, Inc.; (Pneumatic Automation Products); Indianapolis, IN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indianapolis Airport Authority, grantee of FTZ 72, requesting special-purpose subzone status for the manufacturing and warehousing facilities of SMC Pneumatics, Inc. (SMC), located in Indianapolis, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 16, 1999.

SMC Pneumatics, Inc. has one site with 391 employees in Indianapolis, Indiana. The site (18.6 acres) is located at 3011 N. Franklin Road in Indianapolis, Indiana. The SMC plant is used for the manufacturing, processing, packaging and distributing of pneumatic automation products and components (primarily HTS 8412, 8413, 8481 and 9026, duty rate ranges from duty-free to 5.3%). Components and materials sourced from abroad (representing about 95% of all parts consumed in manufacturing) include: screws, bolts, engine and motor parts, centrifuges, valves, bearings, electromagnets, insulated cables, and gauges (HTS 7318, 8412, 8421, 8481, 8482, 8505, 8544, 9026, duty rate ranges from duty-free to 9.9%). Some 2.3 percent of the plant's shipments are exported. FTZ procedures would exempt SMC from Customs duty payments on the foreign components used in export production. On its domestic sales, SMC would be able to choose the duty rates during Customs entry procedures that apply to finished pneumatic automation products (duty free to 5.3%) for the foreign inputs noted above. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 28, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 13, 1999).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Customs Port of Entry—Indianapolis, Arms Comb Bldg #3, Rm. 30, Indianapolis, In 46251

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230

Dated: July 21, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–19608 Filed 7–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–852]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Creatine Monohydrate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv, Rosa Jeong, Annika O'Hara or Marian Wells, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4207, (202) 482–3853, (202) 482–3798, and (202) 482–6309, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR Part 351 (April 1, 1998).

Preliminary Determination

We preliminarily determine that creatine monohydrate ("creatine") from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 10, 1999 (64 FR 11835), the following events have occurred:

On March 29, 1999, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination in this case.

On March 30, 1999, the Department requested comments on the scope of this investigation from the petitioner, the respondents, the PRC's Embassy in Washington, D.C., and the PRC Ministry of Foreign Trade and Economic Cooperation ("MOFTEC"). On April 2, April 5, and April 19, 1999, we received comments on the scope from the petitioner and the respondents. Based on the parties' comments, the Department has revised the description of the scope of this investigation. Specifically, the Department removed from the scope language the Chemical Abstracts Service ("CAS") registry number for anhydrous creatine, which is chemically distinguishable from creatine monohydrate, the product produced and sold by the petitioner. As described in the June 25, 1999 memorandum from the Team to Deputy Assistant Secretary Richard W. Moreland ("Comments on Scope") which is on file in Import Administration's Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, this change clarifies that the relief requested by petitioner is only with

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respect to creatine monohydrate. The revised scope appears in the "Scope of Investigation" section, below.

On April 7, 1999, the Department issued an antidumping questionnaire to MOFTEC with instructions to forward the questionnaire to all producers/exporters of the subject merchandise and that these companies must respond by the due dates.

On April 28, 1999, the Department asked the China Chamber of Commerce of Medicines & Health Products Importers & Exporters ("the Chamber") to identify any producers/exporters of the subject merchandise in addition to the producers/exporters who had contacted the Department and the producers/exporters identified by the petitioner. We received a response from the Chamber on May 11, 1999.

On April 29, 1999, the Department invited interested parties to provide publicly available information for valuing the factors of production and for surrogate country selection. We received responses on June 7 and June 16, 1999, and additional comments on June 14 and June 22, 1999.

On May 10, and June 1, 1999, the Department received questionnaire responses from (1) Tianjin Tiancheng Pharmaceutical Co., Ltd. ("Tiancheng"); (2) Suzhou Sanjian Fine Chemical Co., Ltd. ("Sanjian"); (3) Blue Science International Trading (Shanghai) Co., Ltd. and Technical Sourcing International ("Blue Science"); (4) Nantong Medicines and Health Products Import and Export Co., Ltd. d/b/a Nantong Foreign Trade Corporation Medicine and Health Products Department ("Nantong"); (5) Shanghai Freemen International Trading Co., Ltd. and Shanghai Greenmen International Trading Co., Ltd. ("Freemen"); and (6) Jiangsu Shuang Qiang Chemical Co. and Wuxian Agricultural Chemical Factory ("SQ"). Tiancheng and Sanjian both produce and export the subject merchandise to the United States, whereas Blue Science, Nantong, and Freemen are exporters and SQ is solely a producer. We issued supplemental questionnaires on June 15, June 16, June 21, and June 22, 1999, to which we received responses on June 22, June 28, and July 6, 1999.

On May 20, 1999, Shanghai Desano International Trading Co., Ltd. ("Desano") requested that it be considered a respondent in this investigation. On May 26, 1999, we sent an antidumping questionnaire to Desano to which we received a response on June 30, 1999. Desano is solely an exporter of the subject merchandise.

On April 8, 1999, and May 12, 1999, pursuant to the allegation of critical circumstances contained in the petition, the Department requested information regarding shipments of creatine from all respondents participating in this investigation. We received the requested information on May 13 and May 14, 1999. The critical circumstances analysis for the preliminary determination is discussed below under "Critical Circumstances."

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on July 19 and July 21, 1999, several respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination after the date of the publication of an affirmative preliminary determination in the **Federal Register**. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of this investigation, the product covered is creatine monohydrate, which is commonly referred to as "creatine." The chemical name for creatine monohydrate is N-(aminoiminomethyl)-N-methylglycine monohydrate. The Chemical Abstracts Service registry number for this product is 6020–87–7. Creatine monohydrate in its pure form is a white, tasteless, odorless powder, that is a naturally occurring metabolite found in muscle tissue. Creatine monohydrate is provided for in subheading 2925.20.90 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of this investigation ("POI") comprises each exporter's two most recent fiscal quarters prior to the filing of the petition, *i.e.*, July 1 through December 31, 1998.

Nonmarket Economy Country and Market Oriented Industry Status

The Department has treated the PRC as a nonmarket economy ("NME") country in all past antidumping investigations (*see, e.g., Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998) ("*Mushrooms*")). A designation as an NME remains in effect until it is revoked by the Department (see section 771(18)(C) of the Act).

The respondents in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as an NME.

Separate Rates

All the respondents, except SQ (which is not an exporter), have requested a separate company-specific rate. Blue Science has stated that it is a trading company which is wholly-owned by persons in Hong Kong. Therefore, in accordance with our past practice, we preliminarily determine that this exporter qualifies for a separate rate and that no separate rates analysis is required for Blue Science (*see, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996) ("*Bicycles from the PRC*")). The other respondents which have requested a separate rate have stated that they are privately owned companies with no element of government ownership or control.

The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value*, 60 FR 14725, 14726 (March 20, 1995) ("*Honey*").

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) and *Mushrooms*. Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of *De Jure* Control

The respondents have placed on the record a number of documents to demonstrate absence of *de jure* government control, including the "Foreign Trade Law of the People's Republic of China" ("Foreign Trade Law") and the "Company Law of the People's Republic of China" ("Company Law").

In prior cases, the Department has analyzed the Foreign Trade Law and found that it establishes an absence of *de jure* control. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472 (October 24, 1995); *see also Mushrooms*.) We have no new information in this proceeding which would cause us to reconsider this determination. For the purposes of this investigation and in prior cases, the Department has also analyzed the Company Law and found that this law establishes mechanisms for private control of companies which indicate an absence of *de jure* control. *See Notice of Preliminary Results of New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China*, 64 FR 8543, 8544 (February 22, 1999).

According to the respondents, creatine exports are not affected by quota allocations or export license requirements. The producers/exporters claim to have the autonomy to set the price at whatever level they wish through independent price negotiations with their foreign customers without government interference.

Accordingly, we preliminarily determine that, within the creatine industry, there is an absence of *de jure* government control over export pricing and marketing decisions of firms.

2. Absence of *De Facto* Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (*See Mushrooms*.) Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Mushrooms*).

Tiancheng, Sanjian, Nantong, Freemen, and Desano have each asserted the following: (1) they establish their own export prices; (2) they negotiate contracts without guidance from any governmental entities or organizations; (3) they make their own personnel decisions; and (4) they retain the proceeds of their export sales and use profits according to their business needs without any restrictions. Additionally, these five respondents have stated that they do not coordinate or consult with other exporters regarding their pricing. This information supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of these companies. Consequently, we preliminarily determine that all responding exporters have met the criteria for the application of separate rates.

Use of Facts Available

PRC–Wide Rate

Information on the record of this investigation indicates that there may be producers/exporters of the subject merchandise in the PRC in addition to the companies participating in this investigation. Also, U.S. import statistics indicate that the total quantity of U.S. imports of creatine from the PRC is greater than the total quantity of creatine exported to the U.S. as reported by all PRC creatine exporters that submitted responses in this investigation. Given this discrepancy, it appears that not all PRC exporters of creatine responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the PRC-wide rate—to all exporters in the PRC, other than those specifically identified below under "Suspension of Liquidation," based on our presumption that the export activities of the companies that failed to respond to the Department's questionnaire are controlled by the PRC government (*see, e.g., Bicycles from the PRC*).

As explained below, this PRC-wide antidumping rate is based on adverse facts available. Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The exporters that decided not to respond in any form to the Department's questionnaire failed to act to the best of their ability in this investigation. Further, absent a response, we must presume government control of these and all other PRC companies for which we cannot make a separate rates determination. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted.

As adverse facts available, we are assigning the highest margin in the petition, 153.7 percent, which is higher than any of the calculated margins.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) (SAA), states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870.

The petitioner's methodology for calculating export price ("EP") and normal value ("NV") is discussed in the

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Notice of Initiation. To corroborate the petitioner's EP calculations, we compared the prices in the petition for the product to the prices submitted by respondents for the same product in similar volumes. To corroborate the petitioner's NV calculations, we compared the petitioner's factor consumption and surrogate value data for the product to the data reported by the respondents for the most significant factors—chemical inputs, factory overhead, and selling, general, and administrative expenses—and the surrogate values for these factors in the petition to the values selected for the preliminary determination, as discussed below. Our analysis showed that, in general, the petitioner's data was reasonably close to the data submitted by the respondents or to the surrogate values chosen by the Department. (*See* memorandum to the file dated July 22, 1999 ("Corroboration Memo").) Based on our analysis, we find that the calculations set forth in the petition have probative value.

Company-Specific Rates—Partial Facts Available

Freemen claims that despite its repeated demands, one of its suppliers has refused to provide factors of production data to Freemen. According to Freemen, this supplier, who supplied a relatively small percentage of creatine sold by Freemen, has indicated that it will not participate in any way in this investigation. Freemen has provided all factors of production data from its other suppliers. Similarly, Blue Science asserts that one of its suppliers, which accounts for a small percentage of creatine sold by Blue Science, only produced the subject merchandise on a trial basis and has since terminated production. As such, the supplier was not able to provide complete factors of production data to Blue Science.

We preliminarily determine that the use of adverse facts available is warranted where the factors of production are missing or unusable. Because certain producers of the subject merchandise neither provided complete and accurate factors of production information nor demonstrated satisfactorily why this is not possible, we find that these interested parties have not cooperated to the best of their abilities. Accordingly, as adverse facts available, we have applied a margin of 153.70 percent, the highest margin from the petition, to those sales for which we did not have complete factors of production.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Tiancheng, Sanjian, Blue Science, Nantong, Freemen, and Desano to the United States were made at LTFV, we compared the EP to the NV, as described in the "Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to weighted-average NVs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and CEP methodology was not otherwise appropriate. We calculated EP based on packed CIF or C&F prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for billing adjustments, inland freight from the plant/warehouse to port of exit, brokerage and handling in the PRC, marine insurance and ocean freight. Because certain domestic brokerage and handling, marine insurance, and inland freight were provided by NME companies, we based those charges on surrogate rates from India. (*See* "Normal Value" section for further discussion.)

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Sri Lanka, Egypt, Indonesia, and the Philippines are countries comparable to the PRC in terms of overall economic development (*see* memorandum from Jeff May, Director, Office of Policy, to Susan Kuhbach, Senior Director, AD/CVD Enforcement, Office 1, March 26, 1999). According to the available information on the record, we have determined that both India and Indonesia are significant producers of comparable merchandise. Although we have no information to indicate that India and Indonesia produce creatine, they do produce other products within the same customs heading and produce other fine chemicals with nutritional characteristics. Of these two countries, India produces and exports more merchandise than Indonesia under United National Standard International Trade Classification Revised number 514.82, "carboxyamide-function compounds (including saccharin and its salts) and imine-function compounds," the heading which includes creatine. Accordingly, we have calculated NV using mainly Indian values, and in some cases Indonesian values, for the PRC producers' factors of production. We have obtained and relied upon publicly available information wherever possible.

2. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the companies in the PRC which produced creatine for the exporters that sold creatine to the United States during the POI. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian and Indonesian values.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. Where a producer did not report the distance between the material supplier and the factory, as facts available, we used either the distance to the nearest seaport (if an import value was used as the surrogate value for the factor) or the farthest distance reported for a supplier. Where distances were reported, we added to Indian CIF surrogate values a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the CAFC's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed.Cir. 1997). For those values not contemporaneous with the POI and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics.

Many of the inputs in the production and packing of creatine are considered business proprietary data by the respondents. Due to the proprietary nature of this data, we are unable to discuss many of the inputs in this preliminary determination notice. For a complete analysis of surrogate values, see the memorandum from the Team to the file ("Factors of Production Memorandum"), dated July 22, 1999.

We valued labor using the method described in 19 CFR 351.408(c)(3).

To value electricity, we used the 1995 electricity rates reported in the publication *Energy Prices and Taxes*, 4th quarter 1998. We based the value of coal on prices reported in *Energy Prices and Taxes*, 2nd quarter 1998.

We based our calculation of factory overhead, SG&A, and profit on 1992–93 data from the "Expenditures and Appropriations" section of the accounts of "Processing and Manufacturing, Chemicals and products thereof" from the *Reserve Bank of India Bulletin*, January 1997.

To value truck freight rates, we used a 1994 rate from *The Times of India*. For inland water transportation, we valued boat and barge transportation using the surrogate values found in an August 1993 cable from the US Embassy Bombay. With regard to rail freight, we based our calculation on information from the *Indian Railway Conference Association*.

For packing materials we used import values from the *Monthly Foreign Trade Statistics of India; Volume II Imports*.

Critical Circumstances

In the February 12, 1999 petition, the petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of creatine from the PRC. In addition, the petitioner requested that the Department issue its preliminary critical circumstances finding on an expedited basis because importers, exporters and producers had an early warning of the proceeding prior to the filing of the petition. The basis for petitioner's contention was that PRC parties had advance knowledge of the petition through a press release dated January 25, 1999, from a public relations firm's website. The press report stated that the petitioner would be filing an antidumping petition with the Department and the ITC in order to seek the imposition of substantial, triple digit dumping duties on all importers of creatine from China.

We examined whether conditions in the industry and published reports and statements provided a basis for inferring knowledge that a proceeding was likely. We preliminarily determine that the January 25, 1999 press report cited by the petitioner is insufficient to show that such information was widely available. Our research of Lexis-Nexis and Internet inquiries revealed nothing to indicate that the press release was reported by any publication. Moreover, the petitioner did not provide the Department with further documentation to support its allegation. Therefore, because there is insufficient evidence on the record indicating the likelihood of a proceeding concerning imports of creatine from the PRC, we have not made an expedited critical circumstances determination.

On April 8, 1999, the Department requested information regarding shipments of creatine for the period September 1998 to June 1999 from all respondents participating in this investigation. On May 13, May 14, May 20 and July 6, 1999, we received the requested information from Tiancheng, Sanjian, Blue Science, Nantong, Freemen and Desano. The information submitted by Desano was limited to shipment data for the period August 1998 to December 1998. Despite our subsequent request for shipment data for the remaining time period (*i.e.*, January 1999 to June 1999), Desano did not provide any additional information. On May 25, 1999, the petitioner argued that, based on the information submitted, critical circumstances existed with respect to imports by Freemen.

Section 733(e)(1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

With respect to the first criterion, we are not aware of any antidumping order in any country on creatine from the PRC. Therefore, we examined whether there was importer knowledge. In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling creatine at less than fair value and thereby causing material injury, the Department must rely on the facts before it at the time the determination is made. The Department normally considers margins of 25 percent or more and a preliminary ITC determination of material injury sufficient to impute knowledge of dumping and the likelihood of resultant material injury.

On April 7, 1999, the ITC preliminary determination found that there was a reasonable indication that the U.S. industry is materially injured. *See, Creatine Monohydrate from the People's Republic of China*, 64 FR 16998 (April 7, 1999). Therefore, with respect to the PRC, we preliminarily determine that there is a reasonable basis to believe or suspect that importers knew or should have known that material injury from the dumped merchandise was likely.

In determining whether there are "massive imports" over a "relatively short time period", the Department ordinarily bases its analysis on import data for at least the three months preceding (the "base period") and following (the "comparison period") the filing of the petition. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. The Department examines respondent-specific shipment information or aggregate import statistics when respondent-specific shipment information is not available.

To determine whether imports of subject merchandise have been massive over a relatively short period, we compared each respondent's export volume for five months prior to the filing of the petition (September 1998 to January 1999) to that during the five months subsequent to the filing of the petition (February 1999 to June 1999). These periods were selected based on the Department's practice of using the longest period for which information is available from the month that the petition was submitted through the date of the preliminary determination. For all other exporters, we performed the analysis using import statistics.

Based on our analysis, we preliminarily determine that the increase in imports was greater than 15 percent for Freemen and for all producers/exporters of subject merchandise who were not analyzed or who failed to submit a response. As explained above, one respondent—Desano—did not comply with our request for shipment data for the period January 1999 to June 1999. Accordingly, we find that the information Desano submitted is so incomplete that it cannot serve as a reliable basis for reaching a determination regarding massive imports in this investigation. Therefore, pursuant to section 782(e) of the Act, we preliminarily determine that there were massive imports with respect to Desano based on adverse facts available. With regard to the other four respondents, Tiancheng, Nantong, San Jian, and Blue Science, we find that the increase in imports was not greater than 15 percent. *See* Memorandum from Team to Richard W. Moreland, Deputy Assistant Secretary, AD/CVD Enforcement Group I ("Critical

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Circumstances Determination"), dated July 22, 1999.

On this basis, we preliminarily determine that critical circumstances exist for Freemen, Desano and all other PRC exporters except Tiancheng, Nantong, San Jian, and Blue Science.

We will make a final determination concerning critical circumstances when we make our final determination of this investigation.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In addition, for Desano and Freemen, as well as for companies subject to the PRC-wide rate, we are directing Customs to suspend liquidation of any unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage	Critical circumstances
Blue Science International Trading (Shanghai) Co., Ltd	121.36	No.
Nantong Medicines and Health Products Import and Export Co., Ltd	1.63	No.
Shanghai Desano International Trading Co., Ltd	58.82	Yes.
Shanghai Freemen International Trading Co., Ltd., and Shanghai Greenmen International Trading Co., Ltd	139.15	Yes.
Suzhou Sanjian Fine Chemical Co., Ltd	152.67	No.
Tianjin Tiancheng Pharmaceutical Co., Ltd	3.54	No.
PRC-wide Rate	153.70	Yes.

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters/factories that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in six copies must be submitted to the Assistant Secretary for Import Administration no later than November 17, 1999, and rebuttal briefs no later than November 22, 1999. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on November 29, 1999 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination not later then 135 days after the publication of this notice in the **Federal Register**.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: July 22, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19609 Filed 7–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip From Korea: Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty New Shipper Review.

SUMMARY: In response to a request from one respondent, the Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period July 1, 1998 through December 31, 1998. We preliminary determine that Hyosung Corporation (Hyosung) did not sell subject merchandise below normal value (NV) during the period of review. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess no antidumping duties for Hyosung for the period covered by this new shipper review.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of issues and (2) a summary of the arguments (no longer than five pages, including footnotes).

EFFECTIVE DATE: July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4475–0649, respectively.

APPLICABLE STATUTE: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are the regulations codified at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1998, the Department received a request from Hyosung for a new shipper review pursuant to section 751(a)(2) of the Act and § 351.214(b) of the Department's regulations. On February 2, 1999, we published the notice of initiation for this new shipper review (64 FR 5030).

Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The review covers the period July 1, 1998 through December 31, 1998. The Department is conducting this review in accordance with section 751(a)(2)(B) of the Act.

Fair Value Comparisons

To determine whether sales of PET film in the United States were made at less than fair value, we compared U.S. Price NV, as described in the "United States Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

United States Price (USP)

In calculating USP, the Department treated Hyosung's sales as export price (EP) sales, because the merchandise was sold to unaffiliated U.S. purchasers prior to the date of information and constructed export price (CEP) methodology was not otherwise indicated. *See* section 772(a) of the Act.

EP was based on the delivered price to unaffiliated purchasers in the United States. We made adjustments, where applicable, for Korean inland freight, Korean brokerage charges, ocean freight, marine insurance, U.S. brokerage charges, U.S. inland freight, and U.S. customs duties. We made an addition to EP for duty drawback pursuant to section 772(c)(1)(B) of the Act.

Normal Value (NV)

In order to determine whether there were sufficients sales of PET film in the home market (HM) to serve as a viable basis for calculating NV, we compared the volume of HM sales of PET film to the volume of PET film sold in the United States, in accordance with section 773(a)(1)(C). Hyosung's aggregate volume of HM sales of the foreign like product was greater than five percent of its respective aggregate volume of U.S. sales of the subject merchandise. Therefore, we have based NV on HM sales.

In accordance with section 773(a)(6) of the Act, we adjusted NV, where appropriate, by deducting home market packing expenses and adding U.S. packing expenses. We also adjusted NV for differences in credit expenses, warehousing expenses, and postage fees. We made a deduction from NV for inland freight.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sales from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). (*See e.g.*, Certain Carbon Steel Plate from south Africa, Final Determination of Sales at Less Than Fair Value, 62 FR 61731 (November 19, 1997).)

In implementing these principles in this review, we asked Hyosung to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing in the home market and the United States. Hyosung identified one channel of distribution in the home market: sales to end-users. Hyosung performed a similar level of order processing, delivery arrangement, and customer liaison on each of its HM sales. Therefore, we determine that one LOT exists for all of Hyosung's HM sales.

For the U.S. market Hyosung reported one LOT, EP sales made directly to its U.S. customers. When we compared EP sales to HM sales, we determined that sales in both markets were made at the same LOT. For both EP and HM transactions Hyosung sold directly to the customer and provided similar levels of order processing, delivery arrangement, and customer liaison. Based upon the foregoing, we determined that Hyosung sold at the same LOT in the United States as it did in its home market, and consequently no LOT adjustment is warranted.

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Preliminary Results of Review

We preliminarily determine that a margin of 0.00 percent exists for Hyosung for the period July 1, 1998 through December 31, 1998. We will disclose calculations performed in connection with these preliminary results of review within 10 days after the date of any public announcement, or, if there is no public announcement, within 5 days of publication of this notice. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 5 days after the deadline for filing case briefs. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 2 days after the deadline for filing rebuttal briefs unless the Secretary alters the date. The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in any such written comments, within 90 days after the date of these preliminary results.

Upon completion of this new shipper review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific *ad valorem* duty assessment rates based on the total amount of antidumping duties calculated for the examined sales as a percentage of the total value of those sales. These rates will be assessed uniformly on all entries made during the POR. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Upon completion of this review, the posting of a bond, or security in lieu of cash deposit, pursuant to section 751(a)(2)(B)(iii) of the Act and § 351.214(e) of the Department's regulations, will no longer be permitted and, should the final results yield a margin of dumping, a cash deposit will be required for each entry of the merchandise.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this new shipper review for all shipments of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Hyosung will be the rate established in the final results of this new shipper review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21.5%, the "all others" rate established in the LTFV investigation.

This notice also services as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d).

Dated: July 23, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–19606 Filed 7–29–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–815]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Welded ASTM A–312 Stainless Steel Pipe From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: July 30, 1999.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review of the antidumping order on Welded ASTM A–312 Stainless Steel Pipe from Taiwan, covering the period December 1, 1997 through November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Karla Whalen or Letitia Kress, AD/CVD Enforcement Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230, telephone (202) 482–1391, or (202) 482–3362, respectively.

SUPPLEMENTARY INFORMATION: Under section 751(a)(3)(A) of the Tariff Act, as amended (the Act), the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 245 days after the last day of the anniversary month for the relevant order. In the instant case, the Department has determined that it is not practicable to complete the review within that statutory time limit. *See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa, dated July 20, 1999. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results until November 1, 1999.

Dated: July 21, 1999.

Barbara E. Tillman,

Acting Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–19605 Filed 7–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 990713191–9191–01]

RIN 0640–ZA05

Identification of Currently Funded Projects Eligible to be Extended for an Additional Year of Funding in Light of MBDA's Intent to Revise Its Client Service-Delivery Programs

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: This notice announces the Minority Business Development Agency's (MBDA) identification of certain currently funded Minority Business Development Centers (MBDC) and Native American Business Development Centers (NABDC) which will be eligible for an additional year of funding beyond the normal three years allowed between competitions. Providing an additional year of funding will permit MBDA needed time to develop a revision of the work requirements for its client service-delivery programs. It is MBDA's intent to revise the methods and scope of its client service-delivery programs to include use of extensive state-of-the-art information technology to collect and disseminate information for and about minority businesses and markets.

DATES: July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Berry at (202) 482–3262.

SUPPLEMENTARY INFORMATION: Under Executive Order 11625, MBDA provides business development services to persons who are members of groups determined by MBDA to be socially or economically disadvantaged, and to business concerns owned and controlled by such individuals. To deliver these services, MBDA intends to broaden the work requirements under its client service-delivery programs. Such programs include the MBDC, NABDC, and the Native American Business Consultant (NABC) programs, all of which are funded through cooperative agreements. The work requirements under these programs will include a less labor-intensive approach with more electronic/digital business information centers for providing business development services. The scope of work for MBDA's broadened client service-delivery programs will include an extensive state-of-the-art information technology to collect and disseminate information for and about minority businesses and markets. The focus of this business information will be in such areas as effective public/private sector partnership strategies; sources of information and their acquisition; organization of information for and about minority business; and operation of on-line business information centers. MBDA intends to implement the new work requirements for its client service-delivery programs through a competition published in the **Federal Register** in the Summer/Fall of 2000, with new cooperative agreements effective 1/1/2001. Consequently, there will be no new competition for MBDCs, NABDCs, and the NABC during 1999.

As part of the transition to the revised client service-delivery programs, MBDA intends to provide an additional year of funding, on a non-competitive basis, to current, eligible MBDCs and NABDCs which will be completing the third year or more of operation on 12/31/99. Such additional funding will be at the total discretion of MBDA based on such factors as the MBDCs' and NABDCs' performance, the availability of funds and Agency priorities. Normally, such Centers would undergo a new competition after three years of operation; however these Centers were funded beyond that period of time in order to establish their 12-month award cycles on a calendar year basis. The additional year of funding, as announced in this Notice, will allow MBDA the necessary time to develop its revised programs and to apply the new work requirements to all MBDCs and NABDCs, effective 1/1/2001. Therefore, the following MBDCs and NABDCs are affected by this notice and will be eligible for an additional year (1/1/2000 through 12/31/2000) of funding on a non-competitive basis: the Alaska MBDC, 60 FR 8636 (February 15, 1995); the New Mexico NABDC, 60 FR 9665 (February 21, 1995); the Mississippi Statewide MBDC, 61 FR 19046 (April 30, 1996); the Newark MBDC, 61 FR 28851 (June 6, 1996); the East Los Angeles, the Cincinnati, the West Los Angeles, and the Oklahoma City MBDCs, 61 FR 29731 (June 12, 1996); the Arizona and the California NABDCs and the Hampton Roads MBDC, 61 FR 43043 (August 20, 1996); the Louisville and the South Carolina Statewide MBDCs, 61 FR 48128 (September 12, 1996); and the New Mexico Statewide MBDC, 61 FR 28850 (June 6, 1996). In conjunction with the eligibility for an additional year of funding, the Ventura County MBDC, 61 FR 29733 (June 12, 1996, under the name Oxnard) will be eligible for a two-month extension (11/1/99 through 12/31/99) in order to establish its 12-month award cycle on a calendar year basis. In addition, the MBDCs located in Miami/Ft. Lauderdale, 60 FR 8639 (February 15, 1995) and in Raleigh/Durham, 60 FR 37877 (June 24, 1995), will be eligible for another year of funding, for the same reasons described above. These MBDCs had previously received an additional year (1/1/99 through 12/31/99) after competitions for the Centers were unsuccessful.

This notice also amends MBDA's prior notices, 63 FR 14900 (March 27, 1998), and 63 FR 14903 (March 27, 1998), in which it was indicated that, after their first year of funding, MBDC and NABDC operators may be eligible to receive up to two additional twelve-month budget periods. In view of MBDA's transition to revise its client service-delivery programs, MBDCs and NABDCs receiving new cooperative agreement awards, which were effective 1/1/99, under the aforementioned **Federal Register** solicitations, will be eligible to receive only one additional budget period (1/1/2000 through 12/31/2000). Such additional funding will also be at the total discretion of MBDA based on such factors as the MBDC's and NABDCs' performance, the availability of funds and Agency priorities. Limiting the eligibility of such Centers to two years of operation will allow MBDA to include all MBDCs and NABDCs and the NABC in the competition under the revised programs which are planned for implementation by 1/1/2001. Accordingly, the following MBDCs and NABDCs are affected by this notice and will be limited to two years of eligibility for operation of Centers: the El Paso, the Philadelphia, the Williamsburg, and the San Jose MBDCs, and the Minnesota, the North Dakota and the Oklahoma NABDCs.

Executive Order 12866

This notice was determined to be not significant for purposes of E.O. 12866.

Administrative Procedure Act

The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this notice is a matter relating to public property, loans, grants, benefits, or contracts (5 U.S.C. 553(a)(2)).

Regulatory Flexibility Act

Because a notice of proposed rulemaking and opportunities for public comments are not required to be given for this notice by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, are inapplicable.

Executive Order 12612

This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive order 12612.

Authority: 15 U.S.C. 1512 and Executive Order 11625.

Dated: July 23, 1999.

Juanita E. Berry,

Federal Register Liaison Officer, Minority Business Development Agency.

Courtland Cox,

Director, Minority Business Development Agency.

[FR Doc. 99–19516 Filed 7–29–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040799A]

Taking and Importing of Marine Mammals; Offshore Seismic Activities in the Beaufort Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of bowhead whales and other marine mammals by harassment incidental to conducting seismic surveys in the Western Beaufort Sea in state and Federal waters has been issued to Western Geophysical/Western Atlas International of Houston, Texas (Western Geophysical).

DATES: Effective from July 20, 1999, until November 1, 1999, unless extended.

ADDRESSES: The application, authorization, monitoring plan, environmental assessment (EA), and a list of references used in this document are available by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055, Brad Smith, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and if the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations under section 101(a)(5)(D) of the MMPA in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to that document.

Summary of Request

On March 24, 1999, NMFS received an application from Western Geophysical requesting an authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in the Beaufort Sea between western Camden Bay and Harrison Bay off northern Alaska. Weather permitting, the survey is expected to take place between approximately July 1 and mid- to late-October, 1999. However, only a small portion of the area between western Camden Bay and Harrison Bay will be surveyed this year. A detailed description of the work proposed for 1999 is contained in the application (Western Geophysical, 1999) and is available upon request (see **ADDRESSES**).

Disturbance by seismic noise is the principal means of taking by this activity. Support vessels and aircraft will provide a potential secondary source of noise. The physical presence of vessels and aircraft could also lead to non-acoustic effects on marine mammals involving visual or other cues.

Seismic surveys are used to obtain data about geological formations several thousands of feet deep. The proposed seismic operation is an ocean bottom cable (OBC) survey. For this activity, OBC surveys involve dropping cables from a ship to the ocean bottom, forming a patch consisting of 4 parallel cables 8.9 kilometers (km) (4.8 nautical miles (nm)) long, separated by approximately 600 meters (m) (1,968 feet (ft)) from each other. Hydrophones and geophones, attached to the cables, are used to detect seismic energy reflected back from underground rock strata. The source of this energy is a submerged acoustic source, called a seismic airgun array, that releases compressed air into the water, creating an acoustical energy pulse that is directed downward toward the seabed. The source level planned for this project - a maximum of 247 dB re 1 μPa-m or 22.3 bar-meters (zero to peak), or a maximum of 252 dB re 1 μPa-m or 39 bar-meters (peak-to-peak) - will be from an airgun array with a air discharge volume of 1,210 in^3. This compares to the 1,500 in^3 array used on Western Geophysical's primary source vessel in 1998 and will be the only airgun array used by Western Geophysical in the Beaufort Sea this year.

It is anticipated that 34 seismic lines will be run for each patch, covering an area 5.0 km by 15.7 km (2.7 nm by 8.1 nm), centered over the patch. Source lines for one patch will overlap with those for adjacent patches.

After sufficient data have been recorded to allow accurate mapping of the rock strata, the cables are lifted onto the deck of a cable-retrieval vessel, moved to a new location (ranging from several hundred to a few thousand feet away), and placed onto the seabed again. For a more detailed description of the seismic operation, please refer to the 1999 application from Western Geophysical.

Depending upon ambient noise conditions and the sensitivity of the receptor, underwater sounds produced by open water seismic operations may be detectable a substantial distance away from the activity. Any sound that is detectable is (at least in theory) capable of eliciting a disturbance reaction by a marine mammal or of masking a signal of comparable frequency (Western Geophysical, 1999). An incidental harassment take is presumed to occur when marine mammals in the vicinity of the seismic source, the seismic vessel, other vessels, or aircraft react to the generated sounds or to visual cues.

Seismic pulses are known to cause strong avoidance reactions by many of the bowhead whales occurring within a distance of several kilometers and may sometimes cause avoidance or other changes in bowhead behavior at considerably greater distances (Richardson *et al.*, 1995; Rexford, 1996; MMS, 1997). It is also possible that seismic pulses may disturb some other marine mammal species occurring in the area.

Although some limited masking of low-frequency sounds (e.g., whale calls) is a possibility, the intermittent nature of seismic source pulses (<1 second in duration every 16 to 24 seconds) will limit the extent of masking. Bowhead whales are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (LGL and Greeneridge, 1997, 1998, 1999a; Richardson *et al.*, 1986). Masking effects are expected to

be absent in the case of belugas, given that sounds important to them are predominantly at much higher frequencies than are airgun sounds (Western Geophysical, 1999).

Hearing damage is not expected to occur during the project. It is not positively known whether the hearing systems of marine mammals very close to an airgun might be subject to temporary or permanent hearing impairment (Richardson *et al.*, 1995). However, planned monitoring and mitigation measures (described later in this document) are designed to avoid sudden onsets of seismic pulses at full power, to detect marine mammals occurring near the array, and to avoid exposing them to sound pulses that have any possibility of causing hearing impairment.

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations, and seasons. Behavioral changes may be subtle alterations in surface, respiration, and dive cycles. More conspicuous responses include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors, such as feeding, socializing, or mating, are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening.

Bowhead Whales

Various studies (Reeves *et al.*, 1984, Fraker *et al.*, 1985, Richardson *et al.*, 1986, Ljungblad *et al.*, 1988) have reported that, when an operating seismic vessel approaches within a few kilometers, most bowhead whales exhibit strong avoidance behavior and changes in surfacing, respiration, and dive cycles. In studies prior to 1996, bowheads exposed to seismic pulses from vessels more than 7.5 km (4.0 nm) away rarely showed observable avoidance of the vessel, but their surface, respiration, and dive cycles appeared altered in a manner similar to that observed in whales exposed at a closer distance (Western Geophysical, 1999).

Within a 6– to 99–km (3.2 to 53.5 nm) range, it has not been possible to determine a specific distance at which subtle behavioral changes no longer occur (Richardson and Malme, 1993), given the high variability observed in bowhead whale behavior (Western Geophysical, 1999). However, in three studies of bowhead whales and one of gray whales, surfacing-dive cycles have been unusually rapid in the presence of seimic noise, with fewer breaths per surfacing and longer intervals between breaths (Richardson *et al.*, 1986; Koski and Johnson, 1987; Ljungblad *et al.*, 1988; Malme *et al.*, 1988). This pattern of subtle effects was evident among bowheads 6 km to at least 73 km (3.2 to 39 nm) from seismic vessels. However, in the pre–1996 studies, active avoidance usually was not apparent unless the seismic vessel was closer than about 6 to 8 km (3.2 to 4.3 nm)(Western Geophysical, 1999).

Inupiat whalers believe that migrating bowheads are sometimes displaced at distances considerably greater than 6 to 8 km (3.3 to 4.3 nm)(Rexford, 1996). Also, whalers have mentioned that bowheads sometimes seem more "skittish" and more difficult to approach when seismic exploration is underway in the area. Results from the 1996–1998 BP Exploration (Alaska)(BP) and Western Geophysical seismic monitoring program indicate that most bowheads avoided an area within about 20 km (12.4 mi) of nearshore seismic operations (Miller *et al.*, 1998, 1999). The received levels of the seismic pulse at 20 km range were about 115–130 dB re 1 μPa_{rms} @ 1 m). It is possible that, when additional data are available and analyzed, it may be demonstrated that isolated bowheads avoid seismic vessels at distance beyond 20 km (10.8 nm). Also, the "skittish" behavior may be related to the observed subtle changes in the behavior of bowheads exposed to seismic pulses from distant seismic vessels (Richardson *et al.*, 1986).

Gray Whales

The reactions of gray whales to seismic pulses are similar to those of bowheads, but apparently are limited to animals exposed to higher levels of seismic pulses. Migrating gray whales along the California coast were noted to slow their speed of swimming, turn away from seismic noise sources, and increase their respiration rates. Malme *et al.* (1983, 1984, 1988) concluded that approximately 50 percent showed avoidance when the average received pulse level was 170 dB (re 1 μPa). By some behavioral measures, clear effects were evident at average pulse levels of 160+dB; less consistent results were suspected at levels of 140–160 dB. Recent research on migrating gray whales showed responses similar to those observed in the earlier research when the source was moored in the migration corridor 2 km (1:1 nm) from shore. However, when the source was placed offshore (4 km (2.2 nm) from shore) of the migration corridor, the avoidance response was not evident on track plots (Tyack and Clark, 1998).

Beluga

The beluga is the only species of toothed whale (Odontoceti) expected to be encountered in the Beaufort Sea. Because the beluga hearing threshold at frequencies below 100 Hz (where most of the energy from airgun arrays is concentrated) is poor (125 dB re 1 μPa) or more depending upon frequency (Johnson *et al.*, 1989; Richardson *et al.*, 1991, 1995), beluga are not predicted to be strongly influenced by seismic noise. However, because of the high source levels of seismic pulses, airgun sounds sometimes may be audible to beluga at distances of 100 km (54 nm)(Richardson and Wursig, 1997). The reaction distance for beluga, although presently unknown, is expected to be less than that for bowheads, given the presumed poorer sensitivity of belugas than that of bowheads for low-frequency sounds (Western Geophysical, 1999).

Ringed, Largha and Bearded Seals

No detailed studies of reactions by seals to noise from open water seismic exploration have been published (Richardson *et al.*, 1995). However, there are some data on the reactions of seals to various types of impulsive sounds (LGL and Greeneridge, 1997, 1998, 1999a; J. Parsons as quoted in Greene, *et al.* 1985; Anon., 1975; Mate and Harvey, 1985). These studies indicate that ice seals typically either tolerate or habituate to seismic noise produced from open water sources.

Underwater audiograms have been obtained using behavioral methods for three species of phocinid seals: ringed, harbor, and harp seals (*Pagophilus groenlandicus*). These audiograms were reviewed in Richardson *et al.* (1995) and Kastak and Schusterman (1998). Below 30–50 kHz, the hearing threshold of phocinids is essentially flat down to at least 1 kHz and ranges between 60 and 85 dB (re 1 μPa @ 1 m). There are few data on hearing sensitivity of phocinid seals below 1 kHz. NMFS considers harbor seals to have a hearing threshold of 70–85 dB at 1 kHz (60 FR 53753, October 17, 1995), and recent measurements for a harbor seal indicate that, below 1 kHz, its thresholds deteriorate gradually to 96 dB (re 1 μPa @ 1 m) at 100 Hz (Kastak and Schusterman, 1998).

Recent studies have provided some data are available on the reactions of seals to various types of impulsive sounds (see LGL and Greeneridge, 1997.

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1998, 1999a; Thompson *et al.* 1998). These references indicate that it is unlikely that pinnipeds would be harassed or injured by low frequency sounds from a seismic source unless they were within relatively close proximity of the seismic array. For permanent injury, pinnipeds would likely need to remain in the high-noise field for extended periods of time. Existing evidence also suggests that, while seals may be capable of hearing sounds from seismic arrays, they appear to tolerate intense pulsatile sounds without known effect once they learn that there is no danger associated with the noise (see, for example, NMFS/Washington Department of Wildlife, 1995). In addition, they will apparently not abandon feeding or breeding areas due to exposure to these noise sources (Richardson *et al.*, 1991) and may habituate to certain noises over time. Since seismic work is fairly common in Beaufort Sea waters, pinnipeds have been previously exposed to seismic noise and may not react to it after initial exposure.

For a discussion on the anticipated effects of ships, boats, and aircraft, on marine mammals and their food sources, please refer to the application (Western Geophysical, 1999). Information on these effects is incorporated in this document by citation.

Numbers of Marine Mammals Expected to be Taken

Western Geophysical estimates that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

Species	Population Size	Harassment Takes in 1999	
		Possible	Probable
Bowhead	9,900		
160 dB criterion	-	1,000	<500
20 km criterion	-	2,500	1,250
Gray whale	26,600	<10	0
Beluga	39,258	250	<150
Ringed seal*	1-1.5 million	400	<200
Spotted seal*	>200,000	10	<2
Bearded seal*	>300,000	50	<15

*Some individual seals may be harassed more than once.

Effects of Seismic Noise and Other Activities on Subsistence Needs

The disturbance and potential displacement of marine mammals by sounds from seismic activities are the principle concerns related to subsistence use of the area. The harvest of marine mammals (mainly bowhead whales, ringed seals, and bearded seals) is central to the culture and subsistence economies of the coastal North Slope communities. In particular, if migrating bowhead whales are displaced farther offshore by elevated noise levels, the harvest of these whales could be more difficult and dangerous for hunters. The harvest could also be affected if bowheads become more skittish when exposed to seismic noise.

Nuiqsut is the community closest to the area of the proposed activity, and it harvests bowhead whales only during the fall whaling season. In recent years, Nuiqsut whalers typically take two to four whales each season (Western Geophysical, 1999). Nuiqsut whalers concentrate their efforts on areas north and east of Cross Island, generally in water depths greater than 20 m (65 ft). Cross Island, the principal field camp location for Nuiqsut whalers, is located within the general area of the proposed seismic area. Thus, the possibility and timing of potential seismic operations in the Cross Island area requires Western Geophysical to provide NMFS with either a Plan of Cooperation with North Slope Borough residents or to identify measures that have been or will be taken to avoid any unmitigable adverse impact on subsistence needs. Western Geophysical's application has identified those measures that will be taken to minimize any adverse effect on subsistence. In addition, the timing of seismic operations in and east of the Cross Island area has been addressed in a Conflict and Avoidance Agreement (C&AA) with the Nuiqsut whalers and the Alaska Eskimo Whaling Commission (AEWC).

Whalers from the village of Kaktovik search for whales east, north, and west of the village. Kaktovik is located 60 km (32.4 nm) east of the easternmost end of Western Geophysical's planned 1999 seismic exploration area. The westernmost reported harvest location was about 21 km (11.3 nm) west of Kaktovik, near 70°10'N, 144°W (Kaleak, 1996). That site is approximately 40 km (21.6 nm) east of the closest part of Western Geophysical's planned seismic exploration area for 1999 (Western Geophysical, 1999).

Whalers from the village of Barrow search for bowhead whales much further from the planned seismic area, >200 km (>108 nm) west (Western Geophysical, 1999).

The location of the proposed seismic activity is south of the center of the westward migration route of bowhead whales, but there is some overlap. Seismic monitoring results from 1996–1998 indicate that most bowheads avoid the area within about 20 km (11 nm) around the array when it is operating. In addition, bowheads may be able to hear the sounds emitted by the seismic array out to a distance of 50 km (27 nm) or more, depending on the ambient noise level and the efficiency of sound propagation along the path between the seismic vessel and the whale (Miller *et al.*, 1997). Western Geophysical (1999) believes it is unlikely that changes in migration route will occur at distances greater than 25 km (13 nm) from an array of maximum volume of 1,210 in^3 operating in water less than 30 m (100 ft) deep. However, subtle changes in behavior might occur out to longer distances. Inupiat whalers believe that bowheads begin to divert from their normal migration path more than 35 miles (56 km) away (MMS, 1997).

It is recognized that it is difficult to determine the maximum distance at which reactions occur (Moore and Clark, 1992). As a result, Western Geophysical are participating in a C&AA with the whalers to reduce any potential interference with the hunt. Also, it is believed that the monitoring plan proposed by Western Geophysical (1999; also see LGL Ltd. and Greeneridge Sciences Inc, 1999b) will provide information that will help resolve uncertainties about the effects of seismic exploration on the accessibility of bowheads to hunters.

Many Nuiqsut hunters hunt seals intermittently year-round. However, during recent years, most seal hunting has been during the early summer in open water. In summer, boat crews hunt ringed, spotted and bearded seals. The most important sealing area for Nuiqsut hunters is off the Colville delta, extending as far west as Fish Creek and as far east as Pingok Island. This area overlaps with the westernmost portion of the planned seismic area. In this area, during summer, sealing occurs by boat when hunters apparently concentrate on bearded seals. However, these subsistence hunters have not perceived any interference from recent open-water seismic activities in the Alaskan Beaufort Sea. Therefore, because Western Geophysical is proposing similar mitigation and consultation procedures this year, it is unlikely that seismic activities would have more than a negligible impact on Nuiqsut seal hunting.

Comments and Responses

A notice of receipt of the application and proposed authorization was published on May 28, 1999 (64 FR 28992), and a 30-day public comment period was provided on the application and proposed authorization. During the comment period, comments regarding this application were received from the Marine Mammal Commission (MMC), LGL Ltd. environmental research associates on behalf of the applicant, and Greenpeace Alaska (Greenpeace).

MMPA Concerns

Comment 1: LGL Ltd provided information updating and correcting the **Federal Register** notice that Western has no intention to use an array larger than 1,210 in^3 during 1999.

Response: Thank you for providing this information.

Comment 2: LGL Ltd questioned the statement in the **Federal Register** document that the proposed seismic activity occurs in waters generally too shallow and distant from the edge of the pack ice for most marine mammals, and that this statement is not consistent with the IHA Application and the EA. LGL notes that 5 of the 6 marine mammal species requested for taking occur within the seismic area; only the beluga remains (with a few exceptions) far offshore near the ice edge.

Response: NMFS agrees.

Comment 3: Greenpeace believes that NMFS and Western Geophysical have failed to provide the evidence necessary to justify issuance of the IHA by relying on outdated, incomplete and inaccurate information on the zone of influence of seismic operations on bowhead whales.

Response: To make a determination of negligible impact on marine mammal stocks or a finding of not having an unmitigable adverse impact on subsistence uses of marine mammals, NMFS relies on the best scientific information available. The latest scientific information has been obtained through a 3-year program of data collection and analysis, including aerial surveys and acoustic monitoring. Greenpeace does not identify any additional sources of information not already considered by NMFS or Western Geophysical. Western Geophysical's IHA application and the notice of proposed authorization note that, in addition to the known responses of bowhead whales out to a distance of several kilometers, less conspicuous and/or less frequent effects may extend to greater distances. The draft final monitoring report describing the 1996 through 1998 monitoring results (Richardson [ed.], 1999) shows that (1) 1996, 1997 and 1998 seismic programs did not greatly influence the position of the overall migration corridor; (2) the aerial surveys showed avoidance of the area within 20 km (12 mi) of seismic operations, plus partial avoidance of the area 20–30 km (12–19 mi) away, and (3) based on 1998 research, there is no evidence that bowhead disturbance extended 37 km (23 mi) offshore of the northern edge of the seismic exploration area. For additional information on the estimated zones that seismic airgun noise may have an effect on bowhead whales, please refer to the proposed authorization notice mentioned in this document.

Scientists, at least, recognize that it is difficult (for to determine the maximum distance at which disturbance and avoidance reactions may have an adverse impact on subsistence needs (Moore and Clark, 1992). Inupiat whalers, on the other hand, believe that whales exhibit avoidance reactions as far as 30 miles (48 km) away (MMS, 1997). As a result, Western Geophysical has developed a C&AA with the whalers to reduce any potential interference with the hunt.

Also, it is believed that the monitoring plan proposed by Western Geophysical (LGL Ltd., LGL Alaska Research Associates, and Greeneridge, 1999), revised on the basis of comments received during this public comment period and at the Peer-Review Workshop, will provide information that will help resolve uncertainties about the effects of seismic exploration on the bowhead whales and the accessibility of bowheads to hunters.

Comment 4: Greenpeace believes the scientific evidence remains inadequate to determine whether hearing or behavior of marine mammals may be damaged temporarily or permanently by seismic operations. This makes it impossible to put adequate mitigation measures into place when there is inadequate knowledge about the impacts of seismic operations on cetaceans' hearing and behavior.

Response: The impact of airguns on bowhead hearing and behavior has been addressed in several documents, including Western Geophysical's application, the supporting EA, and in LGL Ltd and Greeneridge Sciences (1998) and most recently in LGL Ltd, LGL Alaska Research Associates, and Greeneridge Sciences (1999). Without an ability to collect empirical information on physical impacts from airguns on large marine mammals, scientists must rely on surrogate species and make conservative assumptions based upon findings for those species. For bowhead and beluga whales, NMFS and Western Geophysical use the best scientific information available which indicates that a safety zone set at the 180 dB (re 1 μPa) isopleth will protect bowhead and beluga whales from potential serious injury. Furthermore, the avoidance reactions by bowheads and the offshore migration corridor of belugas minimize the number of bowheads and belugas entering or approaching the 180 dB zone. Only one bowhead and no belugas have been seen in that zone during the 1996, 1997, and 1998 monitoring projects (Richardson *et al.*, 1999). Because there are potential behavioral effects on bowhead whales by seismic activities, an IHA is warranted. Under the IHA, NMFS will require Western Geophysical to incorporate mitigation and monitoring measures approved by the 1999 Peer Review Workshop participants to reduce potential impacts on whales and seals to the lowest level practicable.

Comment 5: Greenpeace notes that NMFS fails to place restrictions on seismic operations during times of limited or zero visibility.

Response: Observers monitor the safety zones and zones of potential harassment around the seismic source whenever visibility permits, and the source is either on or within 30 minutes of powering up. This year observers will be aided by high-intensity lighting for monitoring the safety zone at night. Assessments of takes by harassment will be made based upon the percentage of time spent observing in relation to the total time for seismic operations. Because: (1) relatively few marine mammals are expected in the area during the time of the survey, (2) the vessels are underway at low speeds while conducting seismic surveys, theoretically allowing animals sufficient time to move away from any

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annoyances, and (3) documented observations indicate that bowhead whales avoid active seismic survey areas, few marine mammals, and no bowheads, are expected to approach the vessel. Therefore, terminating surveys at night and during inclement weather is not warranted, in part since to do so could extend the seismic season into the peak bowhead migration period resulting in an increased level of harassment of that species.

Comment 6: Greenpeace states that the issuance of an IHA will result in significant and unmitigable impacts to subsistence communities and the Arctic marine environment.

Response: Section 101(a)(5)(D)(i)(II) of the MMPA requires NMFS to ensure that any taking will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. NMFS relies on two factors in determining if there will be an unmitigable adverse impact on subsistence uses: First, the impact resulting from the specified activity must be likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (1) causing the marine mammals to abandon or avoid hunting areas, (2) directly displacing subsistence users, or (3) placing physical barriers between the marine mammals and subsistence hunters. Second, it must be an impact that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met (50 CFR 216.103). This standard of determining impact does not require the elimination of adverse impacts, but it does require mitigation sufficient to meet subsistence requirements. However, the MMPA also requires that, where applicable, the measures will ensure the least practicable impact on the availability of marine mammals for taking for subsistence uses. In previous years, these conditions were met through the AEWC/oil industry's C&AA which required seismic operations to move west of Cross Island no later than September 1 or when whalers commenced the bowhead hunting season, whichever was earlier. A signed C&AA allows NMFS to conclude that there will not be an unmitigable adverse impact on the subsistence needs of the Arctic Slope whalers this year due to seismic activities.

Comment 7: LGL Limited notes that the mitigation section of the **Federal Register** document does not mention that Western Geophysical plans to participate in a C&AA with the whalers in order to avoid interference with the autumn bowhead hunt. While the C&AA is mentioned in the previous section (regarding impacts on subsistence uses), Western Geophysical and LGL Ltd view the C&AA as one of the primary mitigation measures, as it addresses the requirement to identify measures to ensure the "least practicable adverse impact on ...availability for subsistence uses."

Response: Thank you for the comment.

Comment 8: Greenpeace contends that Western Geophysical's proposed marine mammal monitoring program fails to adequately monitor the impact of seismic operations on marine mammals.

Response: NMFS disagrees. Section 101(a)(5)(D)(ii)(II) of the MMPA requires authorizations issued under this section to prescribe, where applicable, requirements pertaining to the monitoring and reporting of such taking by harassment, including requirements for independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence purposes.

Western Geophysical's proposed monitoring plan for 1999 and the results from Western Geophysical's 1998 Beaufort Sea research were the subject of a scientific peer-review workshop held in Seattle, WA, on June 30 and July 1, 1999. As a result of that workshop, Western Geophysical is amending its monitoring plan and will submit that plan to NMFS for approval prior to commencement of the bowhead season. Modifications to the original plan for monitoring during the bowhead season (if seismic surveys are continuing at that time) include (1) an extension of the aerial survey grid by an extra 15 km (8 nm) east and west to approximately 65 km (35 nm) westward and 65 km eastward of the seismic survey; this will address the issues (a) how far west of the seismic area do bowhead whales remain farther offshore than usual if bowheads are displaced offshore by seismic and (b) where the bowhead whale deflection from the migration track due to seismic noise begins; (2) an increase in the number of aerial survey track lines from 14 to 18; and (3) commencing the aerial surveys on September 1, rather than September 4; and (4) additional autonomous seafloor acoustic recorders offshore from the area of seismic operations.

Comment 9: The MMC recommends that the peer-review group established to review the proposed monitoring and mitigation programs be asked to consider the following questions: (1) Whether continuation of the marine mammal observations in association with seismic surveys in the nearshore waters of the Alaska Beaufort Sea beyond 1999 is likely to produce significant new information on either the short- or long-term effects of seismic surveys on marine mammals that occur in the area, (2) whether the types of site-specific monitoring programs conducted to date are sufficient to verify that seismic surveys and related activities have negligible effects on the distributions, sizes, and populations, and (3) if the answer to either issue is no, how should the monitoring requirements be revised to better meet the intent and provisions of the MMPA?

Response: NMFS believes that at a minimum, shipboard monitoring of the safety zone must continue to implement mitigation measures to protect marine mammals from potential serious injury. The Scientific Peer Review Workshop participants concluded that the current research and monitoring proposed here by Western Geophysical and by BPX for oil development at Northstar (see 64 FR 9965, March 1, 1999), coupled with existing projects to monitor bowhead population abundance (trends in abundance) should provide information necessary to determine overall cumulative impacts on bowhead whales. Existing projects include those by the North Slope Borough (spring bowhead census), the MMS autumn aerial survey, and the MMS-funded photo-identification of bowhead whales being conducted as part of an on-going (1998–2000) bowhead feeding study. Provided trends in bowhead abundance continue to be positive, NMFS presumes industrial development on the North Slope is not adversely affecting the bowhead population. Similar work is underway for ringed seals.

Comment 10: Greenpeace believes that NMFS ignores cumulative impacts from oil exploration and development in the Arctic on subsistence communities, the bowhead whale, other marine mammals, and the Arctic marine environment.

Response: Information on the cumulative impacts on the marine environment from Beaufort Sea oil and gas leasing and development activities, including seismic, in the area under discussion has been addressed previously in several environmental impact statements (EIS) prepared by the Minerals Management Service (MMS) (Final EISs for Lease Sale 124 and 144 completed in 1990 and 1996). More recently, cumulative impacts from oil exploration and development were extensively discussed and evaluated in the U.S. Army Corps of Engineer's Final Environmental Impact Statement (FEIS) on the Northstar Oil Development Project (Corps, 1999). NMFS was a cooperating agency under the National Environmental Policy Act (NEPA) in the preparation of that document. Additional discussion on cumulative impacts from seismic activities in conjunction with offshore oil and gas exploration and development can be found in the EA prepared for this action (NMFS, 1999). NMFS notes that because the Northstar Project construction has been delayed until after the 1999 open water season, other than commercial barge traffic, there are no identified activities that might cause a cumulative impact on the whales, seals or subsistence needs of the North Slope this season.

Comment 11: Noting that the activity for which an IHA authorization is requested is part of an effort likely to be continued in subsequent years and to eventually lead to drilling and other activities associated with oil and gas exploration and production, the MMC questions whether there is sufficient basis for concluding that this year's activities, coupled with past and possible future activities will not have a non-negligible cumulative effects on any of the potentially affected marine mammal species or their availability to Alaska Natives for subsistence uses. As a result, the MMC recommends that NMFS, if it has not already done so, assess whether the monitoring required as a condition of this and possible future IHAs will be adequate to detect possible non-negligible cumulative effects and, if not, what needs to be done to ensure that any such effects will be detected before they reach significant levels and could be irreversible.

Response: Please see response to comment 9.

Comment 12: Greenpeace noted that the results of Western Geophysical's 1998 marine mammal monitoring program are not available for review along with its 1999 IHA application. The results of the 1998 monitoring program should be available for public review prior to the close of the public comment period.

Response: The preliminary results of the 1998 monitoring program are contained in the 90-day report, which was issued in January 1999, and in the IHA application. The draft final report for 1998 was due on April 30, 1999. Because the draft final report was expanded to contain an analysis of several previous years' data, the availability of this report was delayed until late May, when it was reviewed by NMFS scientists and participants at the peer review workshop. While monitoring reports are available to the public for review, there is no requirement for these documents to be made available for formal public review and comment. Reviewers are encouraged to rely on the 90-day report and reports from prior years if they wish to analyze the previous years' data. As noted by Greenpeace in their letter, the 1996 and 1997 monitoring reports have been reviewed by them.

Endangered Species Act (ESA) Concerns

Comment 13: Without clarification, Greenpeace believes that issuance of the IHA would violate the ESA.

Response: NMFS disagrees, noting that the issuance of an IHA to Western Geophysical triggers section 7 of the ESA, as the issuance of the IHA is a Federal action (please refer to the section titled ESA later in this document). However, the major Federal agency for offshore oil and gas lease activities is the MMS. Consultation under section 7 for lease sale 144 was concluded on November 16, 1995 with a finding that the action was not likely to jeopardize the continued existence of listed species under the jurisdiction of NMFS. This finding is consistent with the conclusions and recommendations contained within the Arctic Region Biological Opinion issued to MMS under section 7 of the ESA by NMFS on November 23, 1988.

Reinitiation of formal consultation under section 7 is warranted only when there is new scientific information that has the potential to call into question the scientific and commercial data used in the previous biological opinion. At this time, NMFS does not consider the recent findings on impacts to listed marine species from the disturbance from seismic surveys sufficient to reinitiate consultation.

NEPA Concerns

Comment 14: Greenpeace believes that the EA fails to adequately analyze the full scope and cumulative impacts of current and proposed offshore exploration and development activities in the Beaufort Sea. Greenpeace maintains that the impacts from seismic operations cannot be assessed separately from cumulative impacts from offshore exploratory drilling, development and transportation activities that may follow or are already occurring. This includes the impact of global warming on the Arctic environment.

Response: Please see response to comment 10.

Mitigation

This year, Western Geophysical will reduce its airgun array from the 1,500 in^3 used in 1998 to 1,210 in^3 and investigate whether it is practical to modify the design to reduce horizontal propagation of sound. These changes are expected to result in lower received levels and, therefore, smaller safety ranges and reduced takes by harassment than in 1998. However, because the 1,210 in^3 array is a subset (with some minor variations) of the 1,500 in^3 array (with 4 guns not firing), NMFS is limiting the IHA authorization for a taking by harassment to no more than 12 airguns totaling 1,210 in^3 during the 1999 open water seismic survey. Vessel-based observers will monitor marine mammal presence in the vicinity of the seismic array throughout the seismic program. To avoid the potential for serious injury to marine mammals, Western Geophysical will power down the seismic source if pinnipeds are sighted within the area delineated by the 190 dB isopleth or 240 m (787.4 ft) from the array operating at 5 m (16.4 ft) depth or 80 m (262.5 ft) from the array operating at 2 m (6.6 ft) depth. Western Geophysical will power down the seismic source if bowhead, gray, or beluga whales are sighted within the area delineated by the 180 dB isopleth or within 750 m (2,460.6 ft) of the array operating at 5 m (16.4 ft) depth or 360 m (1,181.1 ft) of the array operating at 2 m (6.6 ft) depth. However, because these safety zones were based on measurements near the 1998 seismic array plus theoretical adjustments for the smaller array size in 1999, within the first 10 days of Beaufort Sea operations in 1999, Western Geophysical will measure and analyze the sounds from Western's 1999 array operating at both 5 m (16.4 ft) and 2 m (6.6 ft) depths. This information will be provided to NMFS, along with the contractor's recommendation as to whether any adjustments in the safety radii are needed to meet the 190 and 180 dB_{rms} shutdown criteria.

In addition, Western Geophysical will ramp-up the seismic source to operating levels at a rate no greater than 6 dB/min anytime the array has not been firing for 1–2 minutes (depending upon vessel speed). Ramp-up will begin with an air volume discharge not exceeding 80 in^3 with additional guns added at intervals appropriate to limit the rate of increase to 6 dB/min.

Monitoring

As part of its application, Western Geophysical provided a monitoring plan for assessing impacts to marine mammals from seismic surveys in the Beaufort Sea. This monitoring plan is described in Western Geophysical (1999) and in LGL Ltd., LGL Alaska Research Associates, and Greeneridge Sciences (1999). This monitoring plan

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has been peer-reviewed by NMFS, AEWC and industry scientists and others at a workshop held in Seattle, WA on June 30 and July 1, 1999. Suggested modifications to the monitoring plan as a result of the workshop (most notably those summarized previously in the response to comment 8) will need to be incorporated into the Plan prior to formal acceptance by NMFS. During the 1999 open-water season, Western Geophysical will conduct the following:

Vessel-based Visual Monitoring

One or two biologist-observers aboard the seismic vessel will search for and observe marine mammals whenever seismic operations are in progress, and for at least 30 minutes prior to planned start of shooting. These observers will scan the area immediately around the vessels with reticle binoculars during the daytime supplemented with night-vision equipment during the night (prior to mid-August, there are no hours of darkness). In addition, Western Geophysical will experiment with illumination of the safety zone with high-intensity lighting.

A total of four observers (three trained biologists and one Inupiat observer/communicator) will be based aboard the seismic vessel. Use of four observers is an increase over 1998 and will allow two observers to be on duty simultaneously for up to 50 percent of the active airgun hours. Use of two observers will increase the probability of detecting marine mammals and two observers will be required to be on duty whenever the seismic array is ramped up. Individual watches will normally be limited to no more than 4 consecutive hours.

When mammals are detected within or about to enter the safety zone designated to prevent injury to the animals (see Mitigation), the geophysical crew leader will be notified so that shutdown procedures can be implemented immediately.

Aerial Surveys

If the seismic program continues after August 31, Western Geophysical will conduct daily aerial surveys, weather permitting, from September 1, 1999, for a period of 13–14 days, or, if seismic work ends before September 13, until one day after seismic work ends. The primary objective will be to document the occurrence, distribution, and movements of bowhead and (secondarily) beluga and gray whales in and near the area where they might be affected by the seismic pulses. These observations will be used to estimate the level of harassment takes and to assess the possibility that seismic operations affect the accessibility of bowhead whales for subsistence hunting. Pinnipeds will be recorded when seen. Aerial surveys will be at an altitude of 300 m (1,000 ft) above sea level. Western Geophysical will fly at 457 m (1500 ft) altitude over areas where whaling is occurring on that date to avoid direct overflights of whaleboats and Cross Island, where whalers from Nuiqsut are based during their fall whale hunt.

The daily aerial surveys are proposed to cover a grid of 18 north-south lines spaced 8 km (4.3 nm) apart and will extend seaward to about the 100 m (328 ft) depth contour (typically about 65 km (35 nm) offshore. This grid will extend from about 65 km (35 nm) east to 65 km (35 nm) west of the area in which seismic operations are underway on that date. This design will provide extended coverage to the west to determine the westward extent of the offshore displacement of whales by seismic. In 1999, the additional "intensive" grid survey will not be conducted as in previous years.

Detailed information on the survey program can be found in Western Geophysical (1999) and in LGL Ltd., LGL Alaska Research Associates, and Greeneridge Sciences Inc. (1999), which are incorporated in this document by citation.

Acoustical Measurements

The acoustic measurement program for 1999 is designed to continue the acoustic work conducted in 1996 through 1998 (see LGL and Greeneridge Sciences Inc., 1997, 1998, 1999). The acoustic measurement program is planned to include (1) vessel-based acoustic measurements, (2) OBC-based acoustic measurements, and, if seismic operations continue into September, (3) use of air-dropped sonobuoys and (4) bottom-mounted acoustical recorders.

(1) A vessel-based acoustical measurement program will be conducted for a few days early in the seismic program. The objectives of this survey will be as follows: (a) to measure the levels and other characteristics of the horizontally propagating seismic survey sounds from the type of airgun array to be used in 1999 as a function of distance and aspect relative to the seismic source vessel and in relation to the operating depth of the airguns, and (b) to measure the levels and frequency composition of the vessel sounds emitted by vessels used regularly during the 1999 program in those cases when these vessels have not previously been measured adequately.

(2) Western Geophysical and Greeneridge Sciences will use recorded signals from Western's OBC system to help document horizontal propagation of the seismic survey pulses.

(3) Sonobuoys will be dropped and monitored from bowhead survey aircraft during September 1 through 13, 1999 (if the seismic operations are continuing at that time). Sonobuoys will provide data on characteristics of seismic pulses (and signal-to-ambient ratios) at offshore locations, including some of those places where bowhead whales are observed.

(4) Autonomous seafloor acoustic recorders will be placed on the sea bottom at two locations offshore of the seismic operation area, and at one location about 40 km (25 mi) to the east, to record low-frequency sounds nearly continuously for up to 3 weeks at a time during September (if seismic operations are continuing at that time). Information includes characteristics of the seismic pulses, ambient noise, and bowhead calls.

For a more detailed description of planned monitoring activities, please refer to the application and supporting document (Western Geophysical, 1999; LGL Ltd., LGL Alaska Research Associates, and Greeneridge Sciences, 1999).

Estimates of Marine Mammal Take

Estimates of takes by harassment will be made through vessel and, if seismic operations continue into September, aerial surveys. Western Geophysical will estimate the number of (a) marine mammals observed within the area ensonified strongly by the seismic vessel; (b) marine mammals observed showing apparent reactions to seismic pulses (e.g., heading away from the seismic vessel in an atypical direction); (c) marine mammals subject to take by type (a) or (b) when no monitoring observations were possible; and (d) bowheads displaced seaward from the main migration corridor.

Reporting

Western Geophysical will provide an initial report on 1999 activities to NMFS within 90 days of the completion of the seismic program. This report will provide dates and locations of seismic operations, details of marine mammal sightings, estimates of the amount and nature of all takes by harassment, and any apparent effects on accessibility of marine mammals to subsistence users.

A final technical report will be provided by Western Geophysical within 20 working days of receipt of the document from the contractor, but no later than April 30, 2000. The final technical report will contain a description of the methods, results, and interpretation of all monitoring tasks. This report will be subject to review and comment by NMFS. Any recommendations made by NMFS will need to be addressed in the final report prior to formal acceptance by NMFS.

Consultation

Under section 7 of the ESA, NMFS has completed consultation on the issuance of this authorization.

NEPA

In conjunction with the 1996 notice of proposed authorization (61 FR 26501, May 28, 1996) for open water seismic operations in the Beaufort Sea, NMFS released an EA that addressed the impacts on the human environment from issuance of the authorization and the alternatives to the proposed action. No comments were received on that document and, on July 18, 1996, NMFS concluded that neither implementation of the proposed authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in the U.S. Beaufort Sea nor the alternatives to that action would significantly affect the quality of the human environment. As a result, the preparation of an EIS on this action is not required by section 102(2) of NEPA or its implementing regulations.

While this year's activity is a continuation of the seismic work conducted between 1996 and 1998, NMFS determined that a new EA was warranted based on the proposed construction of the Northstar project, the collection of data from 1996 through 1998 on Beaufort Sea marine mammals and the impacts of seismic activities on these mammals, and the analysis of scientific data indicating that bowheads avoid nearshore seismic operations by up to about 20 km (10.8 nm). Accordingly, a review of the impacts expected from the issuance of an IHA has been assessed in detail in the EA and in this document, and NMFS has determined that there will be no more than a negligible impact on marine mammals from the issuance of the harassment authorization and that there will not be any unmitigable impacts to subsistence communities, provided the mitigation measures required under the authorization are implemented. As a result, NMFS has again determined that neither implementation of the authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in the U.S. Beaufort Sea nor the alternatives to that action would significantly affect the quality of the human environment. As a result, the preparation of an EIS on this action is not required by section 102(2) of NEPA or its implementing regulations.

Conclusions

Based on the evidence provided in the application, the EA, and this document, and taking into consideration the comments submitted on the EA, application, and proposed authorization notice, NMFS has determined that there will be no more than a negligible impact on marine mammals from the issuance of the harassment authorization to Western Geophysical and that there will not be any unmitigable adverse impacts to subsistence communities, provided the mitigation measures required under the authorization are implemented. NMFS has determined that the short-term impact of conducting seismic surveys in the U.S. Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of cetaceans and possibly pinnipeds. While behavioral and avoidance reactions may be made by these species in response to the resultant noise, this behavioral change is expected to have a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of seismic operations, the number of potential harassment takings is estimated to be small. In addition, no take by death and/or serious injury is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the mitigation measures mentioned in this document and required by the authorization. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Because bowhead whales are east of the seismic area in the Canadian Beaufort Sea until late August/early September, seismic activities are not expected to impact bowhead whales or the subsistence hunting of bowhead whales prior to that date. After September 1, 1999, if seismic activities continue beyond that date, aerial survey flights for bowhead whale assessments will be initiated. Depending upon the date of cessation of seismic activities (expected to be no later than September 10, 1999), NMFS estimates that fewer than 750 bowheads will be harassed incidental to seismic-related activities.

Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs have been the subject of consultation between Western Geophysical and subsistence users. This C&AA, which consists of three main components: (1) Communications, (2) conflict avoidance, and (3) dispute resolution, has been concluded for the 1999 open-water seismic season.

Also, while open-water seismic exploration in the U.S. Beaufort Sea has some potential to influence seal hunting activities by residents of Nuiqsut, because (1) the peak sealing season is during the winter months, (2) the main summer sealing is off the Colville Delta, and (3) the zone of influence by seismic sources on seals and beluga is fairly small, NMFS believes that Western Geophysical's seismic survey will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

Since NMFS is assured that the taking would not result in more than the incidental harassment (as defined by the MMPA Amendments of 1994) of small numbers of certain species of marine mammals, would have only a negligible impact on these stocks, would not have an unmitigable adverse impact on the availability of these stocks for subsistence uses, and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Authorization

Accordingly, NMFS has issued an IHA to Western Geophysical for the herein described seismic survey during the 1999 open water season provided the mitigation, monitoring, and reporting requirements described in this document and in the IHA are undertaken.

Dated: July 20, 1999.

Art Jeffers,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–19462 Filed 7–29–99; 8:45 am]

BILLING CODE 3510–22–F

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No: 990406087–9087–01]

RIN 0651–ZA03

Interim Supplemental Examination Guidelines for Determining the Applicability of 35 U.S.C. 112 ¶6

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The Patent and Trademark Office (PTO) requests comments from the public regarding interim supplemental examination guidelines to be used by office personnel in their review of patent applications to determine when 35 U.S.C. 112 ¶6 should be applied to a given claim limitation.

DATES: The interim supplemental examination guidelines are effective July 30, 1999.

Written comments on the interim supplemental examination guidelines will be accepted by the PTO until September 28, 1999.

ADDRESSES: Written comments should be addressed to the attention of Magdalen Greenlief, Box Comments, Assistant Commissioner for Patents, Washington, DC 20231 or to Ray Chen, Office of the Solicitor, P.O. Box 15667, Arlington, Virginia 22215, or by facsimile transmission to (703) 305–8825, or by electronic mail at *magdalen.greenlief@uspto.gov* or *ray.chen@uspto.gov*.

Written comments will be made available for public inspection in Suite 910, Crystal Park 2, 2121 Crystal Drive, Arlington, Virginia 22202. In addition, comments provided in machine readable format will be available through the PTO's Website at *http://www.uspto.gov*.

FOR FURTHER INFORMATION CONTACT: Magdalen Greenlief, Box Comments, Assistant Commissioner for Patents, Washington, DC 20231 or Ray Chen, Office of the Solicitor, P.O. Box 15667, Arlington, Virginia 22215, or by facsimile transmission to (703) 305–8825, or by electronic mail at *magdalen.greenlief@uspto.gov* or *ray.chen@uspto.gov*.

SUPPLEMENTARY INFORMATION: The following interim supplemental examination guidelines are being published for public comment. In May 1994, the PTO issued guidelines implementing the change in examination practice necessitated by the Federal Circuit's decision in *In re Donaldson Co.*, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994)(en banc). Since *Donaldson*, several decisions by the Federal Circuit have analyzed: (1) When a particular claim limitation invokes 35 U.S.C. 112 ¶6; and (2) the duty of the applicant to describe the corresponding structure, material, or acts that perform the function recited in a means-plus-function limitation. In order to clarify these issues, the PTO is issuing these interim supplemental examination guidelines to assist PTO personnel in the examination of patent applications to determine: (1) Whether a claim limitation invokes 35 U.S.C. 112 ¶6; and (2) whether the written description adequately describes the corresponding structure, material, or acts needed to support a claim limitation under 35 U.S.C. 112 ¶6.

It has been determined that these interim supplemental examination guidelines are not a significant rule for purposes of Executive Order 12866. Because these supplemental examination guidelines are interpretive rules and general statements of policy, they are exempt from notice and comment rulemaking under 5 U.S.C. 553(b)(A). The collection of information for the filing and processing of a patent application has been reviewed and previously approved by the Office of Management and Budget under the following control numbers: 0651–0031 and 0651–0032. These supplemental examination guidelines involve no additional collection of information subject to the Paperwork Reduction Act, 44 U.S.C. ch. 35. Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Members of the public may present written comments on these supplemental examination guidelines. Written comments should include the following information:

—Name and affiliation of the individual responding; and

—An indication of whether the comments offered represent views of the respondent's organization or are the respondent's personal views.

The PTO is particularly interested in comments relating to the 3-prong analysis as to when a claim limitation will be interpreted by PTO personnel to invoke 35 U.S.C. 112 ¶6. The PTO is also interested in comments relating to the analysis as to when a "means-" (or "step-") plus-function claim limitation satisfies the requirements of 35 U.S.C. § 112 ¶ 2.

I. Interim Supplemental Examination Guidelines for Claims Subject to 35 U.S.C. 112 ¶6

In February 1994, the Court of Appeals for the Federal Circuit (Federal Circuit) held in an *en banc* decision that "the 'broadest reasonable interpretation' that an examiner may give means-plus-function language is that statutorily mandated in [35 U.S.C. 112 ¶6] * * * [T]he PTO may not disregard the structure disclosed in the specification corresponding to such language when rendering a patentability determination." *In re Donaldson Co.*, 16 F.3d 1189, 1194–95, 29 USPQ2d 1845, 1850 (Fed. Cir. 1994) (en banc). In May 1994, the PTO issued guidelines implementing changes in examination practice in response to *Donaldson*. *See Means or Step Plus Function Limitation Under 35 U.S.C. § 112, ¶6;* Notice, 1162 *Off. Gaz. Pat. Office* 59 (May 17, 1994) ("1994 Guidelines").

The 1994 Guidelines note that there is no "magic" language that invokes 35 U.S.C. 112 ¶6.[1] However, to establish uniformity to the extent possible, in view of the recent case law, and to make the prosecution record clear, these interim guidelines supplement the 1994 Guidelines in assisting examiners to determine when 35 U.S.C. 112 ¶6 should be applied. To the extent these supplemental guidelines are inconsistent with the 1994 Guidelines, the supplemental guidelines are controlling.

The PTO must apply 35 U.S.C. 112 ¶6 in appropriate cases, and give claims their broadest reasonable interpretation, in light of and consistent with the written description of the invention in the application.[2] Thus, a claim limitation will be interpreted to invoke 35 U.S.C. 112 ¶6 if it meets the following 3-prong analysis:

(1) the claim limitations must use the phrase "means for" or "step for";[3]

(2) the "means for" or "step for" must be modified by functional language;[4] and

(3) the phrase "means for" or "step for" must not be modified by structure, material or acts for achieving the specified function.[5]

With respect to the first prong of this analysis, a claim element that does not include the phrase "means for" or "step for" will not be considered to invoke 35 U.S.C. 112 ¶6. If an applicant wishes to have the claim limitation treated under 35 U.S.C. 112 ¶6, applicant must either: (1) Amend the claim to include the phrase "means for" or "step for" in accordance with these interim guidelines; or (2) show that even though the phrase "means for" or "step for" is not used, the claim limitation is written as a function to be performed and does not provide any structure, material, or acts which would preclude application of 35 U.S.C. 112 ¶6.[6]

Accordingly, these interim guidelines provide applicants with the opportunity to either invoke or not invoke 35 U.S.C. 112 ¶6 based upon a clear and simple set of criteria.

II. Procedures for Determining Whether the Written Description Adequately Describes the Corresponding Structure, Material, or Acts Necessary To Support a Claim Limitation Which Invokes 35 U.S.C. 112 ¶6

If a claim limitation invokes 35 U.S.C. 112 ¶6, it must be interpreted to cover the corresponding structure, materials, or acts in the specification and "equivalents thereof."[7] If the written description fails to set forth the supporting structure, material or acts corresponding to the means- (or step-) plus-function, the claim may not meet the requirement of 35 U.S.C. 112 ¶2:

> Although [35 U.S.C. 112 ¶6] statutorily provides that one may use means-plus-function language in a claim, one is still subject to the requirement that a claim 'particularly point out and distinctly claim' the invention. Therefore, if one employs means-plus-function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by [35 U.S.C. 112 ¶2].[8]

Whether a claim reciting an element in means- (or step-) plus-function language fails to comply with 35 U.S.C. 112 ¶2 because the specification does not disclose adequate structure (or material or acts) for performing the recited function is closely related to the question of whether the specification meets the description requirement in 35 U.S.C. 112 ¶1.[9] However, 35 U.S.C. 112 ¶6 does not impose any requirements in addition to those imposed by 35 U.S.C. 112 ¶1.[10] Conversely, the invocation of 35 U.S.C. 112 ¶6 does not exempt an applicant from compliance with 35 U.S.C. 112 ¶¶1 and 2.[11]

The written description does not have to explicitly describe the structure (or material or acts) corresponding to a means- (or step-) plus-function limitation to particularly point out and distinctly claim the invention as required by 35 U.S.C. 112 ¶2.[12] Rather, disclosure of structure corresponding to a means-plus-function limitation may be implicit in the written description if it would have been clear to those skilled in the art what structure must perform the function recited in the means-plus-function limitation.[13] However, the claims must still be analyzed to determine whether there exists corresponding adequate support for such claim under 35 U.S.C. 112 ¶1.[14]

Therefore, a means-(or step-) plus-function claim limitation satisfies 35 U.S.C. 112 ¶2 if: (1) The written description links or associates particular structure, materials, or acts to the function recited in a means-(or step-) plus-function claim limitation; or (2) it is clear based on the facts of the application that one skilled in the art would have known what structure, materials, or acts perform the function recited in a means- (or step-) plus-function limitation.

37 CFR 1.75(d)(1) provides, in part, that "the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description." In the situation in which the written description only implicitly or inherently sets forth the structure, materials, or acts corresponding to a means- (or step-) plus-function, and the examiner concludes that one skilled in the art would recognize what structure, materials, or acts perform the function recited in a means- (or step-) plus-function, the examiner should either: (1) Have the applicant clarify the record by amending the written description such that it expressly recites what structure, materials, or acts perform the function recited in the claim element;[15] or (2) state on the record what structure, materials, or acts perform the function recited in the means- (or step-) plus-function limitation.

In implementing the change in examination practice necessitated by *Donaldson*, the PTO set forth a two-step process for making a *prima facie* case of equivalence of a prior art element during *ex parte* examination. First, the examiner must find that the prior art element performs the function specified in the claim element, and, second, the examiner must find that the prior art element is not excluded by any explicit definition provided in the specification for an equivalent.[16] This two-step process is not superseded by these interim supplemental guidelines, and is consistent with the requirement that the PTO give claims their broadest reasonable interpretation.[17] The specification need not describe the equivalents of the structures, materials, or acts corresponding to the means- (or step-) plus-function claim element.[18] Where, however, the specification is silent as to what constitutes equivalents, the burden is placed upon the applicant to show that a prior art element which performs the claimed function is not an equivalent of the structure, material, or acts disclosed in the specification.[19]

Endnotes

[1] *See* 1994 Guidelines at 59.

[2] *See In re Donaldson Co.*, 16 F.3d 1189, 1194, 29 USPQ2d 1845, 1850 (Fed. Cir. 1994) (en banc) (stating that 35 U.S.C. 112 ¶6 "merely sets a limit on how broadly the PTO may construe means-plus-function language under the rubric of 'reasonable interpretation' "). The Federal Circuit has held that applicants (and reexamination patentees) before the PTO have the opportunity and the obligation to define their inventions precisely during proceedings before the PTO. *See In re Morris*, 127 F.3d 1048, 1056–57, 44 USPQ2d 1023, 1029–30 (Fed. Cir. 1997) (35 U.S.C. 112 ¶2 places the burden of precise claim drafting on the applicant); *In re Zletz*, 893 F.2d 319, 322, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (manner of claim interpretation that is used by courts in litigation is not the manner of claim interpretation that is applicable during prosecution of a pending application before the PTO); *Sage Products Inc. v. Devon Industries Inc.*, 126 F.3d 1420, 1425, 44 USPQ2d 1103, 1107 (Fed. Cir. 1997) (patentee who had a clear opportunity to negotiate broader claims during prosecution but did not do so, may not seek to expand the claims through the doctrine of equivalents, for it is the patentee, not the public, who must bear the cost of its failure to seek protection for this foreseeable alteration of its claimed structure). Thus, applicants and reexamination patentees before the PTO have an opportunity and obligation to specify, consistent with these supplemental guidelines, when a claim limitation invokes 35 U.S.C. 112 ¶6.

[3] *Cf. Seal-Flex, Inc.* v. *Athletic Track and Court Construction*, 172 F.3d 836, 849–50, 50 USPQ2d 1225, 1233–34 (Fed. Cir. 1999) (Radar, J., concurring) (use of the phrase "step for" in a method claim raises a presumption that 35 U.S.C. 112 ¶6 applies, whereas, use of the word "step" by itself or the phrase "step of" does not invoke a presumption that 35 U.S.C. 112 ¶6 applies); *Ethicon, Inc.* v. *United States Surgical Corp.*, 135 F.3d 1456, 1463, 45 USPQ2d 1545, 1550 (Fed. Cir. 1998) ("use of the word 'means' gives rise to 'a presumption that the inventor used the term advisedly to invoke the statutory mandates for means-plus-function clauses' "); *O.I. Corp.* v. *Tekmar*, 115 F.3d 1576, 1583, 42 USPQ2d 1777, 1782 (Fed. Cir. 1997) (method claim that paralleled means-plus-function apparatus claim but lacked "step for" language did not invoke 35 U.S.C. 112 ¶6). Thus, absent an express recitation of "means for" or "step for" in the limitation, the broadest reasonable interpretation will not be limited to "corresponding structure * * * and equivalents thereof." *Cf. Morris*, 127 F.3d at 1055, 44 USPQ2d at 1028 ("no comparable mandate in the patent statute that relates the claim scope of non-§ 112 ¶6

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claims to particular matter found in the specification").

[4] *See York Prod., Inc.* v. *Central Tractor Farm & Family Center*, 99 F.3d 1568, 1574, 40 USPQ2d 1619, 1624 (Fed. Cir. 1996) (holding that a claim limitation containing the term "means" does not invoke 35 U.S.C. 112 ¶ 6 if the claim limitation does not link the term "means" to a specific function).

[5] *See Seal-Flex*, 172 F.3d at 849, 50 USPQ2d at 1234 (Radar, J., concurring) ("Even when a claim element uses language that generally falls under the step-plus-function format, however, 112 ¶ 6 still does not apply when the claim limitation itself recites sufficient acts for performing the specified function"). *Cf. Rodime PLC* v. *Seagate Technology, Inc.*, 174 F.3d 1294, 1303–04, 50 USPQ2d 1429, 1435–36 (Fed. Cir. 1999) (holding "positioning means for moving" does not invoke 35 U.S.C. 112, ¶ because the claim further provides a list of the structure underlying the means and the detailed recitation of the structure for performing the moving function removes this element from the purview of 35 U.S.C. 112, ¶ 6); *Cole* v. *Kimberly-Clark Corp.*, 102 F.3d 524, 531, 41 USPQ2d 1001, 1006 (Fed. Cir. 1996) (holding "perforation means * * * for tearing" does not invoke 35 U.S.C. 112 ¶ 6 because the claim describes the structure supporting the tearing function (i.e., perforation)). In other cases, the Federal Circuit has held otherwise. *See Unidynamics Corp.* v. *Automatic Prod. Int'l*, 157 F.3d 1311, 1319, 48 USPQ2d 1099, 1104 (Fed. Cir. 1998) (holding "spring means" does invoke 35 U.S.C. 112 ¶ 6). During examination, however, applicants have the opportunity and the obligation to define their inventions precisely, including whether a claim limitation invokes 35 U.S.C. 112 ¶ 6. Thus, if the phrase "means for" or "step for" is modified by structure, material or acts for achieving the specified function, the PTO will not apply 35 U.S.C. 112 ¶ 6 until such modifying language is deleted from the claim limitation. See also *supra* note 1.

[6] While traditional "means for" or "step for" language does not automatically make an element a means-(or step-) plus-function element, conversely, lack of such language does not prevent a limitation from being construed as a means-(or step-) plus-function limitation. *See Signtech USA, Ltd.* v. *Vutek, Inc.*, 174 F.3d 1352, 1356, 50 USPQ2d 1372, 1374–75 (Fed. Cir. 1999) ("ink delivery means positioned on * * *" invokes 35 U.S.C. 112 ¶ 6 since the phrase "ink delivery means" is equivalent to "means for ink delivery"); *Al-Site Corp.* v. *VSI International Inc.*, 174 F.3d 1308, 1318, 50 USPQ2d 1161, 1166–67 (Fed. Cir. 1999) (although the claim elements "eyeglass hanger member" and "eyeglass contacting member" include a function, these claim elements do not invoke 35 U.S.C. 112 ¶ 6 because the claims themselves contain sufficient structural limitations for performing those functions); *Seal-Flex*, 172 F.3d at 849, 50 USPQ2d at 1234 (Radar, J., concurring) ("claim elements without express step-plus-function language may nevertheless fall within 112 ¶ 6 if they merely claim the underlying function without recitation of acts for performing that function * * * In general terms, the 'underlying function' of a method claim element corresponds to what that element ultimately accomplishes in relationship to what the other elements of the claim and the claim as a whole accomplish. 'Acts,' on the other hand, correspond to how the function is accomplished."); *Personalized Media Communications LLC* v. *ITC*, 161 F.3d 696, 703–04, 48 USPQ2d 1880, 1886–87 (Fed. Cir. 1998); *Mas-Hamilton Group* v. *LaGard Inc.*, 156 F.3d 1206, 1213, 48 USPQ2d 1010, 1016 (Fed. Cir. 1998) ("lever moving element for moving the lever" and "movable link member for holding the lever * * * and for releasing the lever" were construed as means-plus-function limitations invoking 35 U.S.C. 112 ¶ 6 since the claimed limitations were described in terms of their function not their mechanical structure).

[7] *See* 35 U.S.C. 112 ¶ 6. *See also B. Braun Medical, Inc.* v. *Abbott Lab.*, 124 F.3d 1419, 1424, 43 USPQ2d 1896, 1899 (Fed. Cir. 1997).

[8] *See Donaldson*, 16 F.3d at 1195, 29 USPQ2d at 1850; *see also B. Braun Medical*, 124 F.3d at 1425, 43 USPQ2d at 1900; *and In re Dossel*, 115 F.3d 942, 946, 42 USPQ2d 1881, 1884–85 (Fed. Cir. 1997).

[9] *See In re Noll*, 545 F.2d 141, 149, 191 USPQ 721, 727 (CCPA 1976) (unless the means-plus-function language is itself unclear, a claim limitation written in means-plus-function language meets the definiteness requirement in 35 U.S.C. 112 ¶ 2 so long as the specification meets the written description requirement in 35 U.S.C. 112 ¶ 1).

[10] *See In re Knowlton*, 481 F.2d 1357, 1366, 178 USPQ 486, 492–93 (CCPA 1973).

[11] *See Donaldson*, 16 F.3d at 1195, 29 USPQ2d at 1850; *Knowlton*, 481 F.2d at 1366, 178 USPQ at 493.

[12] *See Dossel*, 115 F.3d at 946, 42 USPQ2d at 1885. Under proper circumstances, drawings may provide a written description of an invention as required by 35 U.S.C. ¶ 112. *Vas-Cath, Inc.* v. *Mahurkar*, 935 F.2d 1555, 1565, 19 USPQ2d 1111, 1118 (Fed. Cir. 1991).

[13] *See Dossel*, 115 F.3d at 946–47, 42 USPQ2d at 1885 ("Clearly, a unit which receives digital data, performs complex mathematical computations and outputs the results to a display must be implemented by or on a general or special purpose computer (although it is not clear why the written description does not simply state 'computer' or some equivalent phrase.)").

[14] In considering whether there is 35 U.S.C. 112 ¶ 1 support for the claim limitation, the examiner must consider not only the original disclosure contained in the summary and detailed description of the invention portions of the specification, but also the original claims, abstract, and drawings. *See In re Mott*, 539 F.2d 1291, 1299, 190 USPQ 536, 542–43 (CCPA 1976) (claims); *In re Anderson*, 471 F.2d 1237, 1240, 176 USPQ 331, 333 (CCPA 1973) (claims); *In re Armbruster*, 512 F.2d 676, 678–79, 185 USPQ 152, 153–54 (CCPA 1975) (abstract); *Anderson*, 471 F.2d at 1240, 176 USPQ at 333 (abstract); *Vas-Cath Inc.* v. *Mahurkar*, 935 F.2d at 1564, 19 USPQ2d at 1117 (drawings); *In re Wolfensperger*, 302 F.2d 950, 955–57, 133 USPQ 537, 541–43 (CCPA 1962) (drawings).

[15] Even if the disclosure implicitly sets forth the structure, materials, or acts corresponding to a means-(or step-) plus-function claim element in compliance with 35 U.S.C. 112 ¶¶ 1 and 2, the PTO may still require the applicant to amend the specification pursuant to 37 CFR 1.75(d) and MPEP 608.01(o) to explicitly state, with reference to the terms and phrases of the claim element, what structure, materials, or acts perform the function recited in the claim element. *See* 35 U.S.C. 112 ¶ 6 ("An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts *described in the specification* and equivalents thereof." (emphasis added)); *see also B. Braun Medical*, 124 F.3d at 1424, 43 USPQ2d at 1900 (holding that "pursuant to this provision [35 U.S.C. 112 ¶ 6], structure disclosed in the specification is 'corresponding' structure only if the specification or prosecution history clearly links or associates that structure to the function recited in the claim. This duty to link or associate structure to function is the quid pro quo for the convenience of employing 112, paragraph 6."); *Wolfensperger*, 302 F.2d at 955, 133 USPQ at 542 (just because the disclosure provides support for a claim element does not mean that the PTO cannot enforce its requirement that the terms and phrases used in the claims find clear support or antecedent basis in the written description).

[16] *See Means or Step Plus Function Limitation Under 35 U.S.C. 112, ¶6*; 1162 Off. *Gaz. Pat. Office* at 59–60.

[17] *See Donaldson*, 16 F.3d at 1194, 29 USPQ2d at 1850 (stating that 35 U.S.C. 112 ¶ 6 "merely sets a limit on how broadly the PTO may construe means-plus-function language under the rubric of 'reasonable interpretation'").

[18] *See Noll*, 545 F.2d at 149–50, 191 USPQ at 727 (the meaning of equivalents is well understood in patent law, and an applicant need not describe in his specification the full range of equivalents of his invention) (citation omitted). *Cf. Hybritech Incorporated* v. *Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384, 231 USPQ 81, 94 (Fed. Cir. 1986) ("a patent need not teach, and preferably omits, what is well known in the art").

[19] *See* 1994 Guidelines at 60; *see also In re Mulder*, 716 F.2d 1542, 1549, 219 USPQ 189, 196 (Fed. Cir. 1983).

Dated: July 21, 1999.

Q. Todd Dickinson,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 99–19368 Filed 7–29–99; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Regulations to Prevent Circumvention of Textiles and Textile Products Agreements

July 27, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs directing Customs to issue regulations regarding the denial of entry of shipments from companies determined to be illegally transshipping.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; Executive Order 12475 of May 9, 1984, as amended.

Under Title 19, Section 12.130 of the Code of Federal Regulations, U.S. Customs is required to make a country of origin determination of textiles and textile products. Such determination may be made on the basis of information provided by the importer or, at the discretion of U.S. Customs, on the best information available. In order to develop such information, U.S. Customs often has conducted on-site verification of production in foreign countries.

The Chairman of CITA has authorized U.S. Customs to deny entry of certain textiles and textile products subject to Section 204 of the Agricultural Act of 1956 if U.S. Customs on-site verification of production is not permitted (see **Federal Register** notice 61 FR 33793, published on June 28, 1996). Based on information obtained, including through on-site verifications, U.S. Customs reports that some companies have been found to be illegally transshipping, have been closed, or have been unable to produce records to verify production. In order to secure compliance with U.S. law, including Section 204 and U.S. customs law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, CITA directs the Commissioner of Customs as soon as possible to issue regulations permitting U.S. Customs to deny entry to textiles and textile products where the declared manufacturer has been named in a CITA directive as a company found to be illegally transshipping, closed or unable to produce records to verify production.

In future directives, the Chairman of CITA may direct U.S. Customs to deny entry to textiles and textile products allegedly manufactured in companies found to be illegally transshipping, closed, or unable to produce records to verify production. CITA will publish such directives, including the names of such companies, in the Federal Register.

Troy H. Cribb

Chairman, Committee for the implementation of Textile Agreements

Committee for the Implementation of Textile Agreements

July 27, 1999.

Commissioner of Customs
Department of Treasury, Washington, DC 20229

Dear Commissioner: Under Title 19, Section 12.130 of the Code of Federal Regulations, U.S. Customs is required to make a country of origin determination of textiles and textile products. Such determination may be made on the basis of information provided by the importer or, at the discretion of U.S. Customs, on the best information available. In order to develop such information, U.S. Customs has often conducted on-site verification of production in foreign countries.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA) has authorized the Commissioner of Customs to deny entry of certain textiles and textile products subject to Section 204 of the Agricultural Act of 1956 if U.S. Customs on-site verification of production is not permitted (see 61 FR 33793, dated June 24, 1996). Based on information obtained, including through on-site verifications, U.S. Customs reports that some companies have been found to be illegally transshipping, have been closed, or have been unable to produce records to verify production. In order to secure compliance with U.S. law, including Section 204 and U.S. customs law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, CITA directs the Commissioner of Customs, as soon as possible, to issue regulations permitting U.S. Customs to deny entry to textiles and textile products where the declared manufacturer has been named in a CITA directive as a company found to be illegally transshipping, closed or unable to produce records to verify production.

In future directives, the Chairman of CITA may direct U.S. Customs to deny entry to textiles and textile products allegedly manufactured in companies found to be illegally transshipping, closed, or unable to produce records to verify production. CITA will publish such directives, including the names of such companies, in the Federal Register.

CITA has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb

Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 99–19610 Filed 7–29–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denying Entry to Textiles and Textile Products Allegedly Produced in Certain Companies in Macau

July 27, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs directing Customs to deny entry to shipments allegedly manufactured in certain companies in Macau.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 12475 of May 9, 1984, as amended.

The U.S. Customs Service has conducted on-site verification of textile and textile product production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, U.S. Customs has informed CITA that certain companies were illegally transshipping, were closed, or were unable to produce records to verify production. The Chairman of CITA has directed the U.S. Customs Service to issue regulations regarding the denial of entry of shipments from such companies (see related notice concerning regulations to prevent circumvention published elsewhere in this issue of the **Federal Register**). In order to secure compliance with U.S. law, including Section 204 and U.S. customs law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA is directing the U.S. Customs Service to deny entry to textiles and textile products allegedly manufactured by the companies listed in the attached directive; Customs has informed CITA that these companies were found to have been illegally

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transshipping, closed, or unable to produce records to verify production.

Should CITA determine that this list should be amended, such amendments will be published in the Federal Register.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 27, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The U.S. Customs Service has conducted on-site verification of textile and textile product production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, U.S. Customs has informed CITA that certain companies were illegally transshipping, were closed, or were unable to produce records to verify production. The Chairman of CITA has directed the U.S. Customs Service to issue regulations regarding the denial of entry of shipments from such companies (see related directive concerning regulations to prevent circumvention published elsewhere in this issue of the **Federal Register**). In order to secure compliance with U.S. law, including Section 204 and U.S. customs law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA directs the U.S. Customs Service, effective for goods exported on and after September 1, 1999, to deny entry to textiles and textile products allegedly manufactured by the Macau companies listed below; Customs has informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production:

1. Artistica, Fabrica
2. Broadwell Garment Factory
3. Chan Chan, Fabrica de Artigos de Vestuario
4. Cheong Long, Fabrica de Art de Vestuario
5. Chi Fat, Fabrica de Vestuario
6. Chi Fung Garment Factory
7. Cidade Nova
8. E. Tin Chong Ou, Fabrica de Fia. Vestuario
9. Ever Long, Fabrica de Art de Vestuario (AKA Wan Long, Wing Long)
10. Fok Seng
11. Harvest Garment Factory
12. Henford, Fabrica de Art de Vestuario
13. Heng Tai, Fabrica de Vestuario
14. Hip Seng
15. Iu Fai
16. Ka Fung
17. Kai Fu
18. Kai Son, Fabrica de Vestuario
19. Kai Tak, Fabrica de Vestuario
20. Kai Vai Hung
21. Kin Cheong, Fabrica de Artigos de Vestuario
22. King Cheong, Fabrica de Vestuario
23. Knitsway, Fabrica de Artigos de Vestuario
24. Kong Lei
25. Kuck Chon
26. Kun Cheong
27. Lai Kong, Fabrica de Artigos de Vestuario
28. Leon Garment Factory Limited
29. Ling Chu, Fabrica de Artigos de Vestuario
30. Luen Tai
31. Macau Ltd., Fabrica de Artigos de Vestuario
32. Man Heng
33. Man Ka
34. Manway Lda., Fabrica de Artigos de Vestuario
35. Mao Cheong Limited, Fabrica de Artigos Vestuario
36. Mei I, Fabrica de Artigos de Vestuario
37. Ming Tak
38. Nam Pan Garment Factory
39. Nation Garment
40. Ngan Wu
41. Ou Ion
42. Pak Seak
43. Perfect Garments
44. Po Che
45. Richness, Fabrica de Artigos de Vestuario
46. Sai Land Garment Factory
47. Sam Yu Garment Factory
48. San Fu Lai, Fabrica de Artigos de Vestuario
49. San Hoi Seng
50. Seng Wai, Fabrica de Malhas
51. Seng Yee
52. Shan Lee, Fabrica de Artigos de Vestuario
53. Shing Un, Fabrica de Artigos de Vestuario
54. Sing Wai, Fabrica de Artigos de Vestuario
55. Strong Billion
56. Sufficient
57. Tai Ku, Fabrica de E. Artigos de Vestuario
58. Tak Mei
59. Tak Weng Heng
60. Tim Pou, Fabrica de Artigos de Vestuario
61. Tin Sin Overseas
62. Tong Heng, Fabrica de Vestuario
63. Tong Hoi Garment Factory
64. Tong Lee, Fabrica de Artigos de Vestuario
65. Uni-Leader, Fabrica de Vestuario
66. Va Tai, Fabrica de Vestuario
67. Vang Tak, Fabrica de Vestuario
68. Veng Fat Tak
69. Veng Kuong Meng
70. Vo Wong
71. Wai Dai Meng
72. Wai Lung Garment Factory
73. Wai Wa
74. Weng Iat, Fabrica de Artigos de Vestuario
75. Weng Wa Garment Factory Limited
76. Wigton Garment Factory
77. World Wide Knitting Factory

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–19611 Filed 7–29–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

New York Mercantile Exchange, Comex Division, Amendment To Petition for Exemption From the Dual Trading Prohibition In Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of amendment and update to a petition for exemption from the prohibition on dual trading in an affected contract market.

SUMMARY: The New York Mercantile Exchange ("NYMEX" or "Exchange"), Comex Division ("Comex"), has submitted to the Commodity Futures Trading Commission ("Commission") an additional update to the Commodity Exchange, Inc., October 21, 1993 petition for exemption from the prohibition against dual trading in two contract markets. The additional amendment requests an exemption for a new affected contract market. Copies of the entire file, including any future submissions, will be available to the public upon request, except to the extent the Exchange has requested confidential treatment.

ADDRESSES: Copies of the file are available from the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Reference should be made to the Comex dual trading exemption petition file.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION: Pursuant to sections 4j(a)(1) and (3) of the Commodity Exchange Act ("Act") and Commission Regulation 155.5 thereunder, a board of trade may submit a petition to the Commission to exempt any of its affected contract markets (markets with an average daily trading volume equal to or in excess of 8,000 contracts for four consecutive quarters) from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by section 4j(a)(5) of the Act.

Comex originally submitted a petition for dual trading exemptions for its gold, silver, and copper futures contracts and options on gold future contracts on October 21, 1993. After the Commission requested additional information, Comex submitted a corrected petition on November 30, 1993. That petition was made available to the public by a notice of availability published in the **Federal Register** on December 22, 1993.[1] On January 21, 1997, in response to a Commission letter offering the opportunity to update its petition, Comex submitted an updated petition. On May 6, 1997, the Commission issued an Order granting dual trading exemptions to Comex for its gold and silver futures contracts, the only affected contract markets as of that date. This Order provided that if other Comex contracts become affected contract markets after the date of the Order, the Commission may expand the Order in response to an updated petition that includes those contracts. Pursuant to that provision, Comex submitted an update to its petition dated June 25, 1999, requesting an exemption from the dual trading prohibition for the copper futures contract market.

Copies of the file containing all these materials and any future submissions, except to the extent the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, and may be obtained by mail at that address or by telephone at (202) 418–5100.

Petition materials subject to Comex's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act ("FOIA") (5 U.S.C. § 552) and the Commission's regulations thereunder (17 CFR Part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Request for copies of such materials should be made to FOIA, Privacy, and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.87.

Comex timely submitted its amended petition before June 30, 1999, the effective date of the dual trading prohibition in the newly affected contract market. Therefore, application of the prohibition to the contract market covered by the petition amendment has been suspended in accordance with Commission Regulation 155.5(d)(5) and will remain suspended until the petition is acted upon.

[1] 58 FR 67777 (December 22, 1993).

Issued in Washington, DC, on July 27, 1999.

Alan L. Seifert,

Deputy Director, Division of Trading and Markets.

[FR Doc. 99–19573 Filed 7–29–99; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection of Information Under OMB Review; Mouthing Behavior Study

AGENCY: Consumer Product Safety Commission (CPSC).

ACTION: Notice.

SUMMARY: As the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires, the U.S. Consumer Product Safety Commission (CPSC or Commission) announces that the Information Collection Request (ICR) described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The proposed collection of information consists of a study to observe 200 children ages 3 months through 35 months to record what items they put in their mouths and for how long. The study also includes a telephone survey of the parents of about 400 children between 36 and 72 months old to estimate the mouthing behavior of these children. The information will help the Commission assess the risks associated with children mouthing products containing potentially harmful substances. Comments on the study should be submitted to OMB and CPSC.

DATES: Written comments must be received on or before August 30, 1999.

ADDRESSES: Written comments should be captioned "Mouthing Behavior Study" and mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CPSC, 725 17th Street, NW, Washington, DC 20503. Copies of comments also may be: mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland, telephone (301) 504–0800; or filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION OR A COPY CONTACT: Celestine T. Kiss, Engineering Psychologist, Consumer Product Safety Commission, Washington, D.C. 20207; 301–504–0468 ext. 1284 or by email to ckiss@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The U.S. Consumer Product Safety Commission staff is investigating the potential exposure and health risks to children from teethers, rattles, and toys that are made of polyvinyl chloride (PVC) that contains various dialkyl phthalate (DAP) plasticizers, especially diisononyl phthalate (DINP). Manufacturers use plasticizers to soften the PVC. Tests using animals exposed to high levels of certain DAP plasticizers have caused concerns that PVC children's products might present a risk of liver or other organ toxicity to children. Whether DINP would cause toxic effects in humans depends on the amount of DINP that is ingested. Thus, determining the amount of time children have DINP-containing products in their mouths is one important component of the risk assessment.

The CPSC staff recently released a report, *The Risk of Chronic Toxicity Associated with Exposure to Diisononyl Phthalate (DINP) in Children's Products (Dec. 1998)*, which concluded that, based on the best available information, few, if any, children are at risk of liver or other organ toxicity from PVC toys that contain DINP. This was based on estimates of the amount of DINP ingested, which indicated that DINP exposure did not reach a potentially harmful level. However, the staff believes that there are a number of uncertainties in this assessment, particularly regarding the types of toys that children are mouthing and how long they typically mouth these toys. In addition, the staff at that time did not address the potential carcinogenic risk from DINP, which is being investigated by a Chronic Hazard Advisory Panel (CHAP) appointed by the Commission. After the CHAP provides advice on the carcinogenic risk of DINP, accurate exposure data will be needed in order to perform a risk assessment. Therefore, CPSC will perform this study to gather better data on which to base the health-risk assessment.

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to the agency or a third party. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information

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unless it displays a currently valid OMB control number.

Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on March 11, 1999 (64 FR 12153) (corrected comment submission date published March 22, 1999 (64 FR 13854)). One comment was received, from the Toy Manufacturers of America, Inc. (TMA). The points raised in that comment are addressed in the request for approval of this collection of information that was submitted to OMB.

B. Description of the Collection of Information

This extensive exposure study is intended to obtain a better estimate of the amount of time children mouth products that could contain phthalates. The CPSC is also interested in how mouthing time varies with age, gender, and socioeconomic strata. The Commission also can use information from this study to assess potential hazards associated with other children's products, such as exposure to lead. The title of this collection of information is "Mouthing Behavior Study."

The observation portion of the study involves 200 children between 3 and 35 months old. The observations will be conducted over 2 days for 3 hours per day. For 20 continuous minutes out of each half-hour, the child's mouthing activities will be recorded. This will include (1) the specific object being mouthed, (2) the length of the mouthing episode and (3) whether the object was placed to the lips, or put into the mouth. Mouthing is defined, for purposes of this study, as placing any item to the child's lips, tongue, and/or into the mouth.

In addition to the observations, a contractor will conduct a telephone survey to determine mouthing behaviors of 400 children from 36 to 72 months old, as reported by the parent. This age group will not be observed.

The Commission will use all this information to estimate the frequency and duration of children's mouthing activities, by age. Interested persons may obtain a copy of the request to OMB for approval, containing a more detailed description of the intended study, from the Commission's Office of the Secretary.

C. Burden on Respondents

Two hundred subjects will be used for the observation portion of the study. Each subject's total participation time will be approximately 13 hours. For most of this time, however, the child and the caregiver will be engaged in their regular activities. (Time spent in the normal course of a respondent's activities does not count as part of the burden of a collection of information. 5 CFR 1320.3(b)(2).)

The Commission's staff estimates that each child in the observation study, and the persons associated with that child (including parents and other caregivers), will spend an average total of about 4.5 hours among them in reacting specifically to the observer. This is calculated by estimating 15 minutes for one person to participate in the telephone interview, 1 hour for one person to observe the subject and fill out the questionnaire, 15 minutes for that person to report the results to the contractor, 1 hour each for two persons during the in-home interview/habituation period (2 hours total), and an average of 30 person-minutes of interaction relating to the study for each of the 2 observation sessions (1 hour total). Therefore, the total burden hours for these respondents will be about 900 hours (200 x 4.5 hours).

The number of subjects required for the older children telephone survey portion of the study is 400. Each subject's total time will be approximately 1.5 hours. This is calculated by estimating 15 minutes for the initial phone interview, 1 hour observing the subject and filling out the questionnaire, and 15 minutes for reporting the results to the contractor by telephone. Therefore, the total burden hours for the telephone survey will be about 600 hours. Thus, the estimated one-time reporting burden for this collection is 1500 hours.

D. Requests for Comments

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses given at the beginning of this notice.

Dated: July 27, 1999.

Sadye E. Dunn,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 99–19624 Filed 7–29–99; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 28, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personal and Readiness) (Force Management Policy/Military Personnel Policy/Armed Forces Chaplains Board), ATTN: CAPT Russell Gunter, CHC, UNS, 4000 Defense Pentagon, Room 1B652, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 697–9015.

Title, Associated Form, and OMB Number: Appointment of Chaplains for the Military Services; DD Form 2088 and DD Form 2741; OMB Control Number 0704–0190.

Needs and Uses: This information collection requirement is necessary to ensure that religious organizations seeking to endorse chaplains are eligible and that applicants qualified for the military chaplain services are endorsed by those religious organizations. Two forms are associated with this program to collect the necessary information. The DD Form 2741, "Ecclesiastical Endorsing Organization Verification/Reverification Information," requests basic demographic information about the religious denominations seeking to supply chaplains. It requests the name of an official authorized to represent the organization to the Military Services, and it requires the organization to certify that it is authorized by its membership to act as the sole agency for the purpose of certifying and endorsing clergy to serve as military chaplains. The DD Form 2088, "Ecclesiastical Endorsing Agent Certification," is used by religious denominations to certify that a member of their clergy is professionally qualified to become a chaplain. It requests information about name, address, professional experience, and previous military experience to be used in determining grade, date or rank, and eligibility for promotion for appointees to the chaplain services.

Affected Public: Not-for-profit institutions.

Annual Burden Hours: 1,187.

Number or Respondents: 724.

Responses per Respondent: 1.

Average Burden per Respondent: 20 minutes.

Frequency: On occasion/annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The DD Form 2741, "Ecclesiastical Endorsing Organization Verification/Reverification Information," requests basic demographic information about the religious denominations seeking to supply chaplains. It requests the name of an official authorized to represent the organization to the Military Services, and it requires the organization to certify that it is authorized by its membership to act as the sole agency for the purpose of certifying and endorsing clergy to serve as military chaplains. The DD Form 2088, "Ecclesiastical Endorsing Agent Certification," is used by religious denominations to certify that a member of their clergy is professionally qualified to become a chaplain. It requests information about name, address, professional experience, and previous military experience to be used in determining grade, date of rank, and eligibility for promoting for appointees to the chaplain services.

Dated: July 26, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–19467 Filed 7–29–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Kosovo C3ISR Operations and Lessons Learned Meeting

AGENCY: Task Force on Kosovo C3ISR Operations and Lessons Learned.

ACTION: Notice of closed meeting.

SUMMARY: The Task Force on Kosovo C3ISR Operations and Lessons Learned will meet in closed session on 28–30 July 1999. The purpose of the meeting is to review information collected during site visits and prepare a briefing and report on lessons learned from the Kosovo operations. Much of the information at issue is highly classified.

The Task Force serves as a senior advisory board that will provide recommendations to the Assistant Secretary of Defense (Command, Control and Intelligence) (ASD(C3I) and the Secretary of Defense on improving the application of intelligence and other supporting information to the battlefield. Towards that end, the Task Force will determine both near term and longer term technical and operational improvements to command, control, communications, intelligence, surveillance and reconnaissance (C3ISR) systems that provided and/or are still providing support to NATO operations in the Balkans. This notice is being published less than 15 days prior to the scheduled meeting due to the need for expedited completion of the Quick Look Assessment.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–453, as amended (5 U.S.C. App II (1988), it has been determined that this meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that, accordingly, this meeting will be closed to the public. It is anticipated that classified matters of national security will be discussed throughout the meeting.

DATES: 28–30 July 1999, 0800–1700 hrs.

ADDRESSES: 1001 N 19th Street, Suite 800, Rosslyn, VA.

FOR FURTHER INFORMATION: Contact Colonel David M. Komar, 703–607–0591.

Dated; July 26, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–19468 Filed 7–29–99; 8:45 am]

BILLING CODE 5001–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on August 30, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 14, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 26, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

S161.50 DLA-I

SYSTEM NAME:

Traffic Violations File *(February 22, 1993, 58 FR 10854).*

Reason: These files are being consolidated into the system of records, S161.40 DLA-I, Vehicle Accident Investigation Files.

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ALTERATION

S161.40 DLA-I

SYSTEM NAME:

Vehicle Accident Investigation Files *(February 22, 1993, 58 FR 10854).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S500.41 CAAS'.

SYSTEM NAME:

Delete entry and replace with 'Vehicle/Traffic Incident Files.'

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Any person involved in a vehicle traffic accident or traffic incident on property controlled by the Defense Logistics Agency (DLA), and individuals involved in traffic incidents while operating or occupying a DLA-controlled vehicle.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'The file includes name, addresses, social security number, telephone numbers, vehicle description and data, vehicle license data, operator license data, insurance data, emergency contact and similar data. The file also includes reports, sketches, photographs, medical reports and related papers concerning traffic accident investigation and case disposition, traffic tickets, documents relating to withdrawal of driving privileges, substance influence reports, and reports of corrective or disciplinary action taken.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; National Highway Safety Act of 1966 (23 U.S.C. 401, Highway Safety, et seq.); and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'The files are maintained to monitor and correct vehicle accidents and traffic incidents. Information is maintained for the purpose of accident cause identification and to formulate accident prevention programs for improvement in traffic patterns and for preparation of statistical reports required by higher authority. Information is also maintained to identify traffic offenders, to initiate corrective or disciplinary action against the offenders, to enforce applicable traffic regulations, and to promote safety. Information is used by personnel offices for processing of workers' compensation cases and similar claims and by medical and emergency personnel to make medical and safety determinations about individuals involved in accidents.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Replace the second and third paragraphs with 'To medical and emergency personnel to make medical and safety determinations about individuals involved in accidents.'

Add a new paragraph 'To the Department of Labor, Office of Workers' Compensation for the purpose of processing workers' compensation claims.'

* * * * *

S500.41 CAAS

SYSTEM NAME:

Vehicle/Traffic Incident Files.

SYSTEM LOCATION:

Heads of Defense Logistics Agency Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person involved in a vehicle traffic accident or traffic incident on property controlled by the Defense Logistics Agency (DLA), and individuals involved in traffic incidents while operating or occupying a DLA-controlled vehicle.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file includes name, addresses, social security number, telephone numbers, vehicle description and data, vehicle license data, operator license data, insurance data, emergency contact and similar data. The file also includes reports, sketches, photographs, medical reports and related papers concerning traffic accident investigation and case disposition, traffic tickets, documents relating to withdrawal of driving privileges, substance influence reports, and reports of corrective or disciplinary action taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; National Highway Safety Act of 1966 (23 U.S.C. 401, Highway Safety, et seq.); and E.O. 9397 (SSN).

PURPOSE(S):

Information is maintained for purposes of accident cause identification and to formulate accident prevention programs for improvement in traffic patterns and for preparation of statistical reports required by higher authority.

Information is used by Security Officers and DLA Police to determine actions required to correct the cause of the accident. In cases involving personal injury, to provide verification in processing workmen's compensation cases.

Claims Officers to determine validity of clams against U.S. Government, when such are filed by a person involved in an accident.

DoD Medical personnel to make medical determinations about individuals involved in accidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To medical and emergency personnel to make medical and safety determinations about individuals involved in accidents.

To the Department of Labor, Office of Workers' Compensation for the purpose of processing workers' compensation claims.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form.

RETRIEVABILITY:

Retrieved by name of person involved, Social Security Number, ticket or police report number.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Destroy after 2 years; however, where the possibility for a claim exists, the record will be destroyed after 6 years, 3 months.

SYSTEM MANAGER(S) AND ADDRESS:

Heads of PLFAs who are responsible for the DLA installation or vehicle involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual must provide full name, date of incident, and the location of the incident.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer of the PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual must provide full name, date of incident, and the location of the incident.

For personal visits, the individual should be able to provide some acceptable identification, such as, driver's license or employing agency identification card. Some verbal information may be required to verify the file.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Individuals involved in accidents, traffic offenders, witnesses, security and police force personnel, law enforcement agencies, and medical and emergency personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–19470 Filed 7–29–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Navy proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration adds a routine use to an existing system of records.

DATES: This action will be effective on August 30, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on July 15, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: July 26, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05813–1

SYSTEM NAME:

Ethics File *(February 22, 1993, 58 FR 10775).*

CHANGES:

* * * * *

SYSTEM NAME:

Add 'Professional Responsibility/' to beginning of entry.

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Judge Advocate General (Code 13), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

Judge Advocate Division, Research and Civil Law Branch, 2 Navy Annex, Washington, DC 20380-1775.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Civilian and military lawyers who have practiced, or are practicing, in proceedings conducted under the supervision and cognizance of the Judge Advocate General of the Navy (JAG), and whose professional or personal conduct has been the subject of a professional responsibility/ethics complaint or investigation.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Reports of investigation, correspondence, and court papers relating to the professional responsibility/ethics complaint brought against attorneys.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 826, 827; 32 CFR part 776; Rule for Courts-Martial 109, Manual for Courts-Martial; and Judge Advocate General Instruction 5803.1.'

PURPOSE(S):

Delete entry and replace with 'To record the disposition of professional responsibility/ethics complaints; to provide a record of individual lawyers who are not authorized to practice as legal assistance attorneys before courts-martial or other proceedings conducted under the Uniform Code of Military Justice (UCMJ), or in Navy and Marine Corps administrative proceedings, and to document professional responsibility/ethics violations and corrective action taken.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph 'To attorney licensing and/or disciplinary authorities as required to support professional responsibility investigations and proceedings.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are maintained in office for a minimum of two years. Records are retained for as long as an attorney remains subject to JAG-imposed limitations on practice. Records pertaining to unsubstantiated complaints, or to attorneys who are no

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longer subject to limitations on practice, are destroyed after 10 years.'

* * * * *

N05813–1

SYSTEM NAME:

Professional Responsibility/Ethics File.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 13), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

Judge Advocate Division, Research and Civil Law Branch, 2 Navy Annex, Washington, DC 20380-1775.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and military lawyers who have practiced, or are practicing, in proceedings conducted under the supervision and cognizance of the Judge Advocate General of the Navy (JAG), and whose professional or personal conduct has been the subject of a professional responsibility/ethics complaint or investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigation, correspondence, and court papers relating to the professional responsibility/ethics complaint brought against attorneys.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 826, 827; 32 CFR part 776; Rule for Courts-Martial 109, Manual for Courts-Martial; and Judge Advocate General Instruction 5803.1.

PURPOSE(S):

To record the disposition of professional responsibility/ethics complaints; to provide a record of individual lawyers who are not authorized to practice as legal assistance attorneys before courts-martial or other proceedings conducted under the Uniform Code of Military Justice (UCMJ), or in Navy and Marine Corps administrative proceedings, and to document professional responsibility/ethics violations and corrective action taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To attorney licensing and/or disciplinary authorities as required to support professional responsibility investigations and proceedings.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept in alphabetical order according to the last name of the attorney concerned.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for a minimum of two years. Records are retained for as long as an attorney remains subject to JAG-imposed limitations on practice. Records pertaining to unsubstantiated complaints, or to attorneys who are no longer subject to limitations on practice, are destroyed after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066.

Director, Judge Advocate Division, 2 Navy Annex, Washington, DC 20380-1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066; or in the case of USMC attorneys, Judge Advocate Division, Research and Civil Law Branch, 2 Navy Annex, Washington, DC 20380-1775.

The written request should include the full name of the individual concerned and must be signed.

Personal visits may be made to the Deputy Assistant Judge Advocate General (Administrative Law), Suite 7000, Presidential Towers, Arlington, Virginia, or in the case of USMC attorneys, Room 5E588, The Pentagon, Arlington, Virginia, during normal working hours, Monday through Friday, 8 a.m. to 4:30 p.m. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Deputy Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066; or in the case of USMC attorneys, Judge Advocate Division, Research and Civil Law Branch, 2 Navy Annex, Washington, DC 20380-1775.

The written request should include the full name of the individual concerned and must be signed.

Personal visits may be made to the Deputy Assistant Judge Advocate General (Administrative Law), Suite 7000, Presidential Towers, Arlington, Virginia, or in the case of USMC attorneys, Room 5E588, The Pentagon, Arlington, Virginia, during normal working hours, Monday through Friday, 8 a.m. to 4:30 p.m. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces identification card, driver's license, etc.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence from individuals, military judges, staff judge advocates, and other military personnel; correspondence from the Judge Advocate General of other branches of the Armed Forces; investigative reports from Naval Criminal Investigative Service and other offices, correspondence from other military and civilian authorities and copies of court papers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–19469 Filed 7–29–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 28, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 26, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Reporting Instructions and Forms for the National Resources and Foreign Language and Area Studies Fellowship Program.
Frequency: Annually.
Affected Public: Individuals or households; Not-for-profit institutions.
Reporting and Recordkeeping Burden:
Responses: 1,267.
Burden Hours: 1,491.
Abstract: These instructions and forms provide the U.S. Department of Education the information needed to determine whether grantees have made substantial progress toward meeting their objectives, and to monitor and evaluate these programs.

Requests for copies of this information collection should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address Vivian_Reese@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or by e-mail at joe_schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–19491 Filed 7–29–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 28, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 27, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.
Title: Early Implementation Survey of Gaining Early Awareness and Readiness for Undergraduate Program (GEAR UP) Grantees.
Frequency: One time.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 300.
Burden Hours: 300.
Abstract: This study will provide information necessary for selecting sites for the in-depth evaluation of Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) grantees and information on the early implementation of the grants.

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Requests for copies of this information collection should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the Internet address *Vivian_Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or electronically at his Internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–19517 Filed 7–29–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No. 84:031]

William D. Ford Federal Direct Loan Program; Correction

ACTION: Correction notice.

SUMMARY: On July 6, 1999, a notice was published in the **Federal Register** (64 FR 36542–36546) announcing the annual update to the income percentage factors for 1999 which are used to calculate the borrower's monthly payment amount under the income contingent repayment plan in the William D. Ford Direct Loan Program. This information is revised annually to reflect changes in the consumer price index.

On page 36542, the last sentence in the summary paragraph, the notice incorrectly stated that "these updates are effective from July 1, 2000 to June 30, 2001." This notice corrects the sentence to read "These updates are effective from July 1, 1999 to June 30, 2000."

FOR FURTHER INFORMATION CONTACT: Donald Watson, U.S. Department of Education, Room 3045, ROB–3, 400 Maryland Avenue, SW, Washington, DC 20202–5400. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF, you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

(Program Authority: 20 U.S.C. 1087 *et seq.*)

Dated: July 27, 1999.

Greg Woods,

Chief Operating Officer.

[FR Doc. 99–19627 Filed 7–29–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Availability of the Draft Environmental Impact Statement (EIS) for the Treatment and Management of Sodium-Bonded Spent Nuclear Fuel

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy announces the availability of the "Draft Environmental Impact Statement for the Treatment and Management of Sodium-Bonded Spent Nuclear Fuel" (DOE/EIS–0306D) for public review and comment. This draft EIS, prepared under the National Environmental Policy Act (NEPA), assesses the potential environmental impacts associated with the treatment and management of the Department's sodium-bonded spent nuclear fuel in one or more spent nuclear fuel management facilities: Argonne National Laboratory-West at the Idaho National Engineering and Environmental Laboratory (near Idaho Falls, Idaho) and either the F-Canyon or Building 105–L at the Savannah River Site (near Aiken, South Carolina). The Department is considering ways to prepare the sodium-bonded spent nuclear fuel for disposal in a geologic repository. Such treatment would remove or stabilize the chemically reactive sodium in the fuel. The EIS evaluates reasonable alternatives for treatment of the Department's sodium-bonded spent nuclear fuel and a no-action alternative. The Department has no preferred alternative at this time.

DATES: The Department invites the general public, other Federal agencies, Tribal, State and local Governments to provide comments on this draft EIS. The 45-day comment period extends through September 13, 1999. To ensure consideration in the preparation of the final EIS, comments should be transmitted or postmarked by September 13, 1999. Comments submitted after that date will be considered to the extent practicable. The information obtained during the comment period will assist the Department in preparing the final EIS, which is scheduled to be completed by December 31, 1999.

During the review period, the Department will hold public hearings to discuss the proposed action and to receive oral and written comments on the draft EIS. The hearings are scheduled for the following dates, times, and locations.

August 17, 1999, (6:00 p.m. to 9:00 p.m.), North Augusta Community Center, 495 Brookside Avenue, North Augusta, South Carolina 29842, (803) 441–4290

August 24, 1999, (6:00 p.m. to 9:00 p.m.), Owyhee Plaza Hotel, 1109 Main Street, Boise, Idaho 83702, (208) 343–4611

August 26, 1999, (6:00 p.m. to 9:00 p.m.), Shilo Inn, 780 Lindsay Boulevard, Idaho Falls, Idaho 83402, (208) 523–0088

August 31, 1999, (2:00 p.m. to 5:00 p.m.), Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia 22202, (703) 418–1234

The format for the hearings will include an opportunity for informal discussions with project personnel before and after the formal presentation. After the presentation, there will be an opportunity to provide comments on the draft EIS to Departmental representatives. The Department encourages those providing oral comments at the hearings to also submit them in writing. Comment forms will be available at the hearings for those who prefer to submit their comments in writing.

The Department will make transcripts of the draft EIS hearings, copies of background documents, and other materials related to the proposed project and development of the EIS available for public review in the following reading rooms:

Washington, D.C.: U. S. Department of Energy, Freedom of Information Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0117, 202–586–3142

Idaho Falls, Idaho: Idaho National Engineering and Environmental Laboratory, DOE-Idaho Operations Office Public Reading Room, 1776 Science Center Drive, Idaho Falls, Idaho 83415, 208–526–0271

Richland, Washington: DOE Public Reading Room, 2770 University Drive, CIC, Room 101L, Richland, Washington 99352, 509–372–7443

Albuquerque, New Mexico: University of New Mexico, Government Information Department, Zimmerman Library, Albuquerque, New Mexico 87131, 505–277–0582

Aiken, South Carolina: University of South Carolina-Gregg Graniteville Library, 471 University Parkway, Aiken, South Carolina 29803, 803–648–6851

Oak Ridge, Tennessee: DOE Public Reading Room, 230 Warehouse Road, Building 1916–T–2, Suite 300, Oak Ridge, Tennessee 37831, 423–241–4780 and the DOE Information Resource Center, 105 Broadway Avenue, Oak Ridge, Tennessee 37830, 423–241–4582

ADDRESSES: Written comments on the draft EIS, requests for special arrangements to enable participation in the hearings (e.g., an interpreter for the hearing impaired), requests to be placed on the EIS distribution list, and questions concerning the project should be sent to: Ms. Susan M. Lesica, EIS Document Manager, Office of Nuclear Facilities Management, Office of Nuclear Energy, Science and Technology, U.S. Department of Energy, NE–40, 19901 Germantown Road, Germantown, Maryland 20874–1290.

Comments and requests may also be submitted by toll free facsimile to (877) 621–8288 or telephone (877) 450–6904. Comments and requests may also be submitted by electronic mail to emtEIS@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: For general information on the Department's National Environmental Policy Act (NEPA) process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), Office of Environment, Safety and Health, U.S. Department of Energy, 1000 Independence Avenue, SW Washington, DC 20585–0119; or telephone (202) 586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The Department is responsible for the safe and efficient management of several types of spent nuclear fuel including its ultimate disposition (that is expected to be disposal in a geologic repository). Some Departmental spent fuels may be suitable for disposal with little or no stabilizing treatment. Other spent fuel types may not be suitable for disposal without significant treatment or stabilization.

One type of spent nuclear fuel that may not be suitable for disposal without treatment is sodium-bonded spent nuclear fuel. Sodium-bonded spent nuclear fuel contains metallic sodium, a highly chemically reactive material. Metallic sodium reacts vigorously with water or moist air producing heat, potentially explosive hydrogen gas, and sodium hydroxide, a corrosive substance. Sodium metal was used as a heat transfer medium within the stainless steel cladding of sodium-bonded fuel and as coolant in the nuclear reactors in which these fuels were used. To the extent possible, the highly reactive sodium has been removed from external surfaces of these fuels after their use, but a portion remains bonded to the uranium metal alloy fuel within the cladding and cannot be removed without further treatment. The presence of reactive or pyrophoric material such as metallic sodium, could complicate the process of qualifying and licensing such spent fuel for disposal, which would require data and predictive analyses sufficient to demonstrate that emplacement of the spent fuel would not adversely affect a repository's ability to protect the environment and public health.

The Department believes that treatment to remove metallic sodium and convert this spent nuclear fuel into a compact waste form would facilitate disposal qualification of this fuel. Technologies for spent nuclear fuel treatment that might facilitate such qualification should, therefore, be considered in deciding how to manage Department-owned sodium-bonded fuels. The EIS analyzes, under the proposed action, six reasonable alternatives that employ one or more of the following technology options: electrometallurgical treatment; the plutonium-uranium extraction process; packaging in high-integrity cans; and the melt and dilute treatment process. The EIS also evaluates a no action alternative, under which the sodium-bonded spent nuclear fuel would continue to be stored indefinitely; The Department would pursue research and development of a new treatment technology or would directly dispose of the sodium-bonded spent nuclear fuel in high-integrity cans without treatment.

The Department has not identified a preferred alternative in the draft EIS. Environmental analysis in this EIS, public comments, the findings of an independent cost study and a nonproliferation report that are being prepared concurrently with the EIS, as well as other program policy factors, will be considered in determining a preferred alternative in the final EIS. A Record of Decision will be issued no sooner than 30 days after the final EIS has been distributed.

Issued in Washington, D.C., this 22. day of July 1999.

William D. Magwood, IV,

Director, Office of Nuclear Energy, Science and Technology.

[FR Doc. 99–19522 Filed 7–29–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under section 3507(a)(1)(D)of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations, which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE). Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response × proposed frequency of response per year × estimated number of likely respondents.)

DATES: Comments must be filed on or before August 30, 1999. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also,

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please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mrs. Sutherland may be reached by telephone at (202) 426-1068; by FAX at (202) 426–1083; or e-mail at grace.sutherland@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collections submitted to OMB for review were:

1. EIA–14, 182, 782A/B/C, 821, 856, 863, 877, 878, and 888, "Petroleum Marketing Program."

2. Energy Information Administration, OMB No. 1905–0174, Extension, Mandatory.

3. The Petroleum Marketing Program surveys collect information on costs, sales, prices, and distribution for crude oil and petroleum products. Data are published in petroleum publications and in multifuel reports.

4. Respondents are refiners, first purchasers, gas plant operators, resellers/retailers, motor gasoline wholesalers, suppliers, distributors and importers.

5. 138,729 hours (1.2 hrs. × 3.4 responses per year × 34,876 respondents).

Statutory Authority: 44 U.S.C. 3506(a)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, July 26, 1999.

Lynda T. Carlson,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 99–19521 Filed 7–29–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–584–000]

Koch Gateway Pipeline Company; Notice of Application

July 26, 1999.

Take notice that on July 16, 1999, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77521–1478, filed in Docket No. CP99–584–000 under section 7(c) of the Natural Gas Act, for authority to construct and operate 3.9 miles of 24-inch loop pipeline in Mobile County, Alabama, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm. Call 202–208–2222 for assistance. The name, address, and telephone number of the person to whom correspondence and communications concerning this application should be addressed is: Kyle Stephens, Director of Certificates, Koch Gateway Pipeline Company, P.O. Box 1478 Houston, Texas 77251–1478, Tel: (713) 544–7309, Fax: (713) 544–4818.

Koch states that the cost of the proposed facilities is $6,095,000. Koch is proposing this construction so that it can transport 15,000 Dth per day (Dth/d) for Southern Services, Inc., (SCS) acting as agent for Alabama Power Company (APC). This gas will be used by APC to fuel gas fired electric generation facilities being constructed at Plant Barry. Gas will be provided to Koch for APC's account at primary receipts points by APC's upstream suppliers, these volumes will then be shipped by Koch to an interconnection with Bay Gas on Koch's Index 301–8–10 line. Bay Gas will then transport the volumes on its intrastate line to APC's Plant Barry. Koch states that the proposed looping will allow it to inject the additional 15,000 Dth/d into the system of Bay Gas for delivery to Plant Barry. Service on Koch's system for APC will be provided under its Rate Schedule FTS.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before August 16, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protest to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Any person obtaining intervener status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the interveners. An intervener can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervener must submit copies of comments or any other filing it makes with the Commission to every other intervener in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meeting associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervener status.

Take further notice that, pursuant to the authority contained in an subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required therein, if the Commission on its own review of the matter finds that grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Koch to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–19524 Filed 7–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Order Granting Rehearing for Purpose of Further Consideration, Granting Late Motions To Intervene and Establishing Procedures for Additional Late Motions To Intervene and Answers

Issued July 26, 1999.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

In the matter of Docket Nos.: ER96–2573–003, ER94–24–030, ER98–13–010, ER99–1751–002, ER97–654–010, ER95–428–019, ER96–25–016, ER94–968–027, ER98–1005–006, ER95–1615–018, ER99–1004–002, ER93–730–013, ER96–2921–015, ER95–1625–020, ER99–1714–001, ER98–830–005, ER98–4400–002, ER95–1007–013, ER98–6–007, ER98–107–007, ER97–2261–010, ER94–1384–023, ER96–2408–013, ER94–1685–025, ER95–892–043, ER96–2652–031, ER99–894–002, ER99–893–002, ER99–892–002, ER99–892–002, ER99–891–002, ER95–393–023, ER99–1722–001, ER97–4587–001, ER99–1801–002, ER99–2082–001, ER99–2080–001, ER99–2081–001, ER99–2083–001, ER99–2079–001, ER98–4540–001, ER94–1188–028, ER99–2108–001, ER99–1125–002, ER98–1278–004; Southern Company Services, Inc., Enron Power Marketing, Inc., Enron Energy Services, Inc., Aquila Energy Marketing Corporation, Engage Energy US, L.P., El Paso Power Services Company, Coral Power, L.L.C., Electric Clearinghouse, Inc., Merchant Energy Group of the Americas, Entergy Power Marketing Corp., Entergy Nuclear Generation Company, Cinergy Capital & Trading, Inc., Duke Energy Trading and Marketing, L.L.C., PG&E Energy Trading Power, L.P., Lake Road Generating Company, L.P., Millenium Power Partners, L.P., Pittsfield Generating Company, L.P., Logan Generating Company, L.P., USGen New England, Inc., Sithe Power Marketing, Inc., Constellation Power Source, Inc., Morgan Stanley Capital Group Inc., Avista Energy, Inc., Citizens Power Sales, CL Power Sales (1–5), L.L.C., CL Power Sales (6–10), L.L.C., CL Power Sales 11, L.L.C., CL Power Sales 12, L.L.C., CL Power Sales 13, L.L.C., CL Power Sales 14, L.L.C., CL Power Sales 15, L.L.C., Hartford Power Sales, L.L.C., Williams Energy Marketing & Trading Company, Williams Generation CompanyHazelton, Reliant Energy Services, Inc., Reliant Energy Coolwater, L.L.C., Reliant Energy Mandalay, L.L.C., Reliant Energy Ellwood, L.L.C., Reliant Energy Etiwanda, L.L.C., Reliant Energy Ormond Beach, L.L.C., Louisville Gas and Electric Company and Kentucky Utilities Company, LG&E Energy Marketing Inc., LG&E Capital Corp., LG&E Westmoreland Renssalaer, Western Kentucky Energy Corp.

Southern Company Services, Inc. and Southern Company Energy Marketing L.P.; Electricity Consumers Resource Council and American Iron & Steel Institute (Industrial Customers); Virginia Electric and Power Company (Virginia Power); Enron Power Marketing, Inc. and Enron Energy Services, Inc.; Aquila Energy Marketing Corporation; Engage Energy US, L.P. (Engage Energy); El Paso Power Services Company; Coalition for a Competitive Electricity Market and National Energy Marketers Association (CCEM); the Ad Hoc Marketing and Power Producer Group; PG&E Energy Trading Power, L.P., Lake Road Generating Company, L.P., Millennium Power Partners, L.P., Pittsfield Generating Company, L.P., Logan Generating Company, L.P., USGen New England, Inc., Sithe Power Marketing, Inc., and Constellation Power Source, Inc.; Electric Power Supply Association (EPSA); Morgan Stanley Capital Group Inc. and Avista Energy, Inc.; Edison Electric Institute (EEI); Citizens Power Marketing Affiliates; Williams Energy Marketing & Trading Company and Williams Generation Company-Hazelton; and Reliant Energy Services, Inc., Reliant Energy Coolwater, L.L.C., Reliant Energy Mandalay, L.L.C., Reliant Energy Ellwood, L.L.C., Reliant Energy Etiwanda, L.L.C., and Reliant Energy Ormond Beach, L.L.C. filed timely requests for rehearing of the Commission's order issued in this proceeding. *Southern Company Services, Inc., et al.*, 87 FERC ¶ 61,214 (1999) (*Southern*). Louisville Gas and Electric Company and Kentucky Utilities Company (LG&E and Kentucky Utilities), LG&E Energy Marketing Inc., LG&E Capital Corp., LG&E Westmoreland Renssalaer, and Western Kentucky Energy Corp. filed a late request for rehearing.

In the absence of Commission action within 30 days, the requests for rehearing would be deemed denied. 18 CFR § 385.713. In order to allow additional time for consideration of the matters raised, rehearing of the order is hereby granted for the limited purpose of further consideration.

In addition, Virginia Power, Engage Energy, CCEM, EPSA, EEI, Industrial Customers, LG&E and Kentucky Utilities filed motions for late intervention. The *Southern* order was an exception to the Commission's general practice of not permitting late interventions for the purpose of filing requests for rehearing; the order delayed the effectiveness of the new reporting requirements announced therein pending Commission action on the requests for rehearing of that order and the order also stated that the Commission would entertain late motions to intervene in this proceeding for the purpose of filing requests for rehearing. In view of the aforementioned exception to the Commission's general practice, no undue prejudice or delay would result from granting the late interventions. Accordingly, we grant the motions for late intervention for good cause shown.

We will also make an exception to the Commission's general practice of not allowing answers to requests for rehearing. Accordingly, we will allow parties to file answers to the requests for rehearing, and we will entertain late motions to intervene from other interested persons for the purpose of filing answers to the requests for rehearing. Such answers and late motions to intervene should be filed on or before 30 days from the date of this order.

By the Commission.

David P. Boergers,

Secretary.

[FR Doc. 99–19527 Filed 7–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–585–000]

Texas Eastern Transmission Corporation Transcontinental Gas Pipe Line Corporation; Notice of Application

July 26, 1999.

Take notice that on July 19, 1999, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, and Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251–1396 filed, in Docket No. CP99–585–000, a joint application pursuant to Sections 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment of transportation service, as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Specifically, Texas Eastern and Transco request permission to abandon transportation service as described in Texas Eastern's Gas Transportation Agreement under Rate Schedule X–96 and Transco's Rate Schedule X–201. Texas Eastern and Transco state that the transportation service rendered under these rate schedules should be abandoned as it is no longer needed and all the parties have agreed to terminate the service.

Any questions regarding this application should be directed to S.E.

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Tillman, Director of Regulatory Affairs for Texas Eastern, P.O. Box 1642, Houston, Texas 77251–1642 at (713) 627–5113 or Alfred E. White, Jr., Senior Attorney for Transco, P.O. Box 1396, Houston Texas 77251–1396 at (713) 215–2000.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 16, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no protest or motion to intervene is filed within the time required herein. At that time, the Commission on its own review of the matter will determine whether granting permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern or Transco to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–19526 Filed 7–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2769–001, et al.]

Foote Creek III L.L.C., et al.; Electric Rate and Corporate Regulation Filings

July 20, 1999.

Take notice that the following filings have been made with the Commission:

1. Foote Creek III, LLC

[Docket No. ER99–2769–001]

Take notice that on July 15, 1999, Foote Creek III, LLC tendered for filing its compliance filing, Supplement No. 1, to the Foote Creek III, LLC, FERC Electric Tariff, Original Volume No. 1, revising its FERC Electric Tariff, Original Volume No. 1 to allow sales to any purchaser.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. AES Alamitos, L.L.C., AES Huntington Beach, L.L.C. and AES Redondo Beach, L.L.C.

[Docket Nos. ER98–2184–004, ER98–2185–004, ER98–2186–004, ER98–2184–004, ER98–2185–004, and ER98–2186–004]

Take notice that on July 15, 1999, AES Alamitos, L.L.C., AES Huntington Beach, L.L.C. and AES Redondo Beach, L.L.C. (AES Companies), tendered for filing under Section 205 of the Federal Power Act an executed long-term electric service agreement, as amended, between the AES Companies and Williams Energy Services Company.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER99–2884–001]

Take notice that on July 15, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing as part of its Electric Service Tariff, Volume No. 6, revised tariff sheets. PG&E states that the revisions to the sheets removes an incorrect reference to a superseded version of the California ISO's Grid Management Charge and is submitted to comply with the Commission's July 1, 1999 Order, in the above-referenced docket. PG&E requests an effective date of July 1, 1999.

PG&E states that this filing has been served on the California Public Utilities Commission, San Francisco Bay Area Rapid Transit District and all parties listed on the official service list in the above-referenced docket.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Carolina Power & Light Company

[Docket No. ER99–3570–000]

Take notice that on July 14, 1999, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Tractebel Energy Marketing, Inc. under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: August 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. The Legacy Energy Group, LLC

[Docket Nos. ER99–3571–000]

Take notice that on July 14, 1999, The Legacy Energy Group, Inc. (Legacy), submitted a Notice of Succession pursuant to Section 35.16 of the Commission's Regulations, 18 CFR 35.16. As a result of a name change, Legacy is succeeding to the Rate Schedule FERC No. 1 of The Legacy Group, Inc., effective June 11, 1999.

Comment date: August 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Alliant Energy Corporate Services Inc.

[Docket No. ER99–3572–000]

Take notice that on July 14, 1999, Alliant Energy Corporate Services Inc. (ALTM), tendered for filing a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and Commonwealth Edison Company (CE).

ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of July 13, 1999.

Comment date: August 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Indiana Gas & Electric

[Docket No. ER99–3573–000]

Take notice that on July 15, 1999, Southern Indiana Gas & Electric Company (SIGECO), tendered for filing two (2) Service Agreements for market based rate power sales under its Market Based Rate Tariff with DTE Energy Trading, Inc., and East Kentucky Power Cooperative, Inc.

Copies of the filing were served upon each of the parties to the Service Agreements.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. PP&L, Inc.

[Docket No. ER99–3574–000]

Take notice that on July 15, 1999, PP&L, Inc. (PP&L), tendered for filing a partially executed Service Agreement dated July 13, 1999, with Edison Mission Marketing & Trading, Inc. (EMMT) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds EMMT as an eligible customer under the Tariff.

PP&L requests an effective date of July 15, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to EMMT and to the Pennsylvania Public Utility Commission.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Tampa Electric Company

[Docket No. ER99–3575–000]

Take notice that on July 15, 1999, Tampa Electric Company (Tampa Electric), tendered for filing a service agreement with the Reedy Creek Improvement District (RCID) under Tampa Electric's Market-Based Sales Tariff.

Tampa Electric proposes that the service agreement be made effective on July 1, 1999.

Copies of the filing have been served on RCID and the Florida Public Service Commission.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Company

[Docket No. ER99–3576–000]

Take notice that on July 15, 1999, Northern States Power Company (Minnesota) (NSP), tendered for filing the Connection Agreement No. 57 for the Grove City Point of Connection, and Connection Agreement No. 58 for the Airtech Point of Connection (Agreements), between NSP and Cooperative Power Association (CPA). These Agreements recognize two new points of delivery between NSP and CPA.

NSP requests that the Commission accept the Agreements effective July 14, 1999, and requests waiver of the Commission's notice requirements in order for the revisions to be accepted for filing on the date requested.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Carolina Power & Light Company

[Docket No. ER99–3577–000]

Take notice that on July 15, 1999, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Reliant Energy Services, Inc. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of July 6, 1999 for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Carolina Power & Light Company

[Docket No. ER99–3578–000]

Take notice that on July 15, 1999, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Short-Term Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service with TXU Energy Trading Company. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of July 7, 1999 for each Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Fitchburg Gas and Electric Light Company

[Docket No. ER99–3579–000]

Take notice that on July 15, 1999, Fitchburg Gas and Electric Light Company (Fitchburg), tendered for filing under Part 35 of the Commission's Regulations, 18 CFR Part 35, the Entitlement Sale and Administrative Services Agreement between Fitchburg Gas and Electric Light Company and Select Energy, Inc., dated May 17, 1999 (the Agreement).

Fitchburg requests that the Agreement be permitted to become effective August 30, 1999.

Copies of the filing were served upon the Massachusetts Department of Telecommunications and Energy.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3581–000]

Take notice that on July 15, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy), tendered for filing Amendment Nos. 1 and 2 to Supplement No. 3 to the Market Rate Tariff and Amendment Nos. 1 and 2 to Supplement No. 6 to the Standard Generation Service Tariff to incorporate Netting Agreements with Rainbow Energy Marketing Corp. into the tariff provisions.

Allegheny Power and Allegheny Energy request a waiver of notice requirements to make the Amendments effective as of the effective dates therein, June 16, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3582–000]

Take notice that on July 15, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (d/b/a Allegheny Energy) tendered for filing Amendment Nos. 1 and 2 to Supplement No. 10 to the Market Rate Tariff and Amendment Nos. 1 and 2 to Supplement No. 8 to the Standard Generation Service Tariff to incorporate Netting Agreements with CNG Power Services into the tariff provisions.

Allegheny Power and Allegheny Energy request a waiver of notice

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requirements to make the Amendments effective as of the effective dates therein, June 21, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Pacific Gas and Electric Company

[Docket No. ER99–3603–000]

Take notice that on July 16, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing a proposed unexecuted Must-Run Service Agreement (Agreement) for the 35 MVar/45MW synchronous condenser/emergency gas turbine located at the FMC Substation in San jose, California. Under the Agreement PG&E proposes to provide reliability must-run services to the California Independent System Operator Corporation.

Copies of this filing have been served upon the California Public Utilities Commission and the California Independent System Operator Corporation.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19486 Filed 7–29–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–93–000, et al.]

Niagara Mohawk Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 21, 1999.

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corporation, Rochester Gas and Electric Corporation, N.G. Energy, Inc.; and Oswego Harbor Power LC.

[Docket No. EC99–93–000]

Take notice that on July 16, 1999 Niagara Mohawk Power Corporation, Rochester Gas and Electric Corporation, N.G. Energy, Inc. and Oswego Harbor Power LC, tendered for filing an application pursuant to Section 203 of the Federal Power Act seeking authorization for the sale of facilities under Section 203 of the Federal Power Act.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. California Independent System Operator and Corporation

[Docket Nos. EC96–19–047 and ER96–1663–049]

Take notice that on July 8, 1999, the California Independent System Operator Corporation (IS) tendered for filing a supplemental compliance filing in the above-identified dockets. The filing consists of an amendment to the IS's Bylaws that would extend the initial term of the IS's Board of Governors to March 31, 2000.

The IS states that this filing has been served upon all persons on the official service list in the above-identified dockets.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Glen Park Associates Limited Partnership, Niagara Mohawk Power Corporation, Northbrook New York, L.L.C.

[Docket Nos. EC99–94–000 and ER99–3623–000]

Take notice that on July 16, 1999, Glen Park Associates Limited Partnership (Glen Park), Niagara Mohawk Power Corporation (NMPC), and Northbrook New York, L.L.C. (Northbrook) (collectively Applicants) submitted for filing an application seeking an order pursuant to Section 203 of the Federal Power Act (FPA) authorizing Glen Park and NMPC to transfer to Northbrook interests in certain transmission facilities at the 32.65 MW Glen Park Hydroelectric Project on the Black River in Jefferson County, NY, in association with Northbrook's acquisition of the project. Also submitted by the Applicants pursuant to Section 205 of the FPA was an application requesting acceptance and approval of three agreements pertaining to the sale of power from the project. Approval of those filings will enable Northbrook to acquire the project and sell project output to NMPC. Applicants have also filed in a separate docket an application seeking a transfer of the license for the project pursuant to Section 8 of the FPA.

Copies of these filings have been served on the New York Public Service Commission.

Comment date: August 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Guadalupe Power Partners, LP

[Docket No. EG99–196–000]

Take notice that on July 16, 1999, Guadalupe Power Partners, LP (Guadalupe Power), with its principal offices at 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, filed with the Federal Energy Regulatory Commission an application for redetermination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Guadalupe Power is a Delaware limited partnership which will construct, own and operate a 1000 MW natural gas-fired generating facility within the region governed by the Electric Reliability Council of Texas (ERCOT) and sell electricity at wholesale.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Lakewood Cogeneration Limited Partnership

[Docket No. EG99–197–000]

Take notice that on July 15, 1999, Lakewood Cogeneration Limited Partnership, 123 Energy Way, Lakewood, New Jersey 08701, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Lakewood Cogeneration Limited Partnership owns a facility with a maximum capacity of approximately 238 MW located in Lakewood Township, New Jersey and is a Delaware limited partnership and consists of HCE Lakewood, Inc. as a 2 percent general partner, HYDRA–CO Enterprises, Inc. as a 78 percent limited partner, and TPC Lakewood, Inc. as a 20 percent limited partner. HCE Lakewood, Inc. is owned 100% by HYDRA–CO Enterprises, Inc., a New York corporation ("HYDRA–CO"). HYDRA–CO is a direct subsidiary of CMS Generation Co., a Michigan corporation, which is a wholly-owned indirect subsidiary of CMS Energy Corporation, also a Michigan corporation.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Torco Energy Marketing, Inc., Alliance Power Marketing, Inc., Central Hudson Enterprises Corporation, North American Energy, Inc., TransCurrent, LC, Energy Unlimited, Inc., Phibro Inc., and Rainbow Energy Marketing Corporation

[Docket No. ER92–429–019, ER96–1818–014, ER97–2869–008, ER98–242–007, ER98–1297–003, ER98–1622–005, ER95–430–020, ER94–1061–021]

Take notice that on July 15, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

7. Russell Energy Services Company Docket No.

[ER96–2882–011]

Take notice that on July 13, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

8. Wolverine Power Supply Cooperative, Inc., Northeast Empire Limited Partnership #1, Northeast Empire Limited Partnership #2, TransCanada Power, and Fina Energy Services Company

[Docket Nos. ER98–411–009, ER98–4183–001, ER98–1125–004, ER95–692–017, and ER97–2413–009]

Take notice that on July 16, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

9. Grayling Generating Station L.P. and Central Hudson Gas & Electric Corporation

[Docket Nos. ER99–791–000 and ER97–2872–000]

Take notice that on July 8, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending June 30, 1999.

10. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3583–000]

Take notice that on July 15, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (d/b/a Allegheny Power), tendered for filing Amendment Nos. 1 and 2 to Supplement No. 7 to the Market Rate Tariff and Amendment Nos. 1 and 2 to Supplement No. 34 to the Standard Generation Service Tariff to incorporate Netting Agreements with Delmarva Power and Light Co., into the tariff provisions.

Allegheny Power and Allegheny Energy request a waiver of notice requirements to make the Amendments effective as of the effective dates therein, June 23, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3584–000]

Take notice that on July 15, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (d/b/a Allegheny Power), tendered for filing Amendment Nos. 1 and 2 to Supplement No. 6 to the Market Rate Tariff and Amendment Nos. 1 and 2 to Supplement No. 19 to the Standard Generation Service Tariff to incorporate Netting Agreements with Baltimore Gas and Electric Company into the tariff provisions.

Allegheny Power and Allegheny Energy request a waiver of notice requirements to make the Amendments effective as of the effective dates therein, June 16, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER99–3585–000]

Take notice that on July 15, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Firm Point-to-Point Transportation Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Ameren Services Company.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Minnesota Power, Inc.

[Docket No. ER99–3586–000]

Take notice that on July 15, 1999, Minnesota Power, Inc. (Minnesota Power), tendered for filing an updated market power analysis in compliance with the Commission's order issued in Docket No. ER96–1823 on July 15, 1996.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Central Power and Light Company

[Docket No. ER99–3587–000]

Take notice that on July 15, 1999, Central Power and Light Company (CPL), tendered for filing an executed interconnection agreements between CPL and the City of Brownsville, Texas, operating by and through the Public Utilities Board of Brownsville (Brownsville).

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CPL requests an effective date of December 3, 1998, for each of the interconnection agreements and therefore requests waiver of the Commission's notice requirement.

CPL states that it has served a copy of the filing on the Public Utility Commission of Texas, Brownsville and the Public Utility Commission of Texas.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Puget Sound Energy, Inc.

[Docket No. ER99–3588–000]

Take notice that on July 15, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing an unexecuted Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with El Paso Electric (El Paso).

PSE respectfully requests the Commission waive its prior notice of filing requirements and permit this filing to become effective as of July 16, 1999.

A copy of the filing was served upon El Paso.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Puget Sound Energy, Inc.

[Docket No. ER99–3589–000]

Take notice that on July 15, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing an unexecuted Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Destec Power Services, Inc., (Destec).

A copy of the filing was served upon Destec.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Energy, Inc.

[Docket No. ER99–3590–000]

Take notice that on July 15, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with City of Santa Clara Electric Department (Santa Clara).

A copy of the filing was served upon Santa Clara.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Puget Sound Energy, Inc.

[Docket No. ER99–3591–000]

Take notice that on July 15, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with City Utilities of Springfield (Springfield).

A copy of the filing was served upon Springfield.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Electric Power Company

[Docket No. ER99–3592–000]

Take notice that on July 15, 1999 the above-mentioned public utility filed its quarterly report for the quarter ending June 30, 1999.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Puget Sound Energy, Inc.

[Docket No. ER99–3593–000]

Take notice that on July 15, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with ConAgra Energy Services, Inc. (ConAgra).

A copy of the filing was served upon ConAgra.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Puget Sound Energy, Inc.

[Docket No. ER99–3594–000]

Take notice that on July 15, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with El Paso Energy Marketing Company (El Paso Energy).

A copy of the filing was served upon El Paso Energy.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Central Power and Light Company

[Docket No. ER99–3595–000]

Take notice that on July 15, 1999, Central Power and Light Company (CPL), tendered for filing an Interconnection Agreement between CPL and Ingleside Cogeneration Limited Partnership (Ingleside).

CPL requests an effective date for the Interconnection Agreement of June 25, 1999.

Accordingly, CPL requests waiver of the Commission's notice requirements.

CPL states that a copy of the filing was served on Ingleside and the Public Utility Commission of Texas.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Arizona Public Service Company

[Docket No. ER99–3596–000]

That notice that on July 15, 1999, Arizona Public Service Company (APS), tendered for filing a revised Contract Demand Exhibit I to APS-FERC Rate Schedule No. 192 between APS and the City of Williams (Williams) for the Operating Year 1999. Current rate levels are unaffected, and revenue levels will decrease from those currently being assessed, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

Copies of this filing have been served on the City of Williams and the Arizona Corporation Commission.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. WICOR Energy Services, Inc.

[Docket No. ER99–3597–000]

Take notice that on July 15, 1999, WICOR Energy Services, Inc. (WESI), requested the Commission to terminate its Electric Rate Schedule No. 1.

WESI states that it has made no sales pursuant to Rate Schedule No. 1 and therefore requests that the Commission waive the sixty-day prior notice requirement in Section 35.15(a) of the Commission's Regulations.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Duke Power (a Division of Duke Energy Corporation)

[Docket No. ER99–3598–000]

Take notice that on July 15, 1999, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement with Ameren Energy Service Company (Ameren) for power sales at market-based rates.

Duke requests that the proposed Service Agreement be permitted to become effective on June 18, 1999.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Puget Sound Energy, Inc.

[Docket No. ER99–3599–000]

Take notice that on July 15, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Coral Power, L.L.C. (Coral Power).

A copy of the filing was served upon Coral Power.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Puget Sound Energy, Inc.

[Docket No. ER99–3600–000]

Take notice that on July 15, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with City of Riverside, California (Riverside).

A copy of the filing was served upon Riverside.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Puget Sound Energy, Inc.

[Docket No. ER99–3601–000]

Take notice that on July 15, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Cook Inlet Energy Supply (CIES).

A copy of the filing was served upon CIES.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. FirstEnergy System

[Docket No. ER99–3602–000]

Take notice that on July 15, 1999, FirstEnergy System tendered for filing a Service Agreement to provide Firm Point-to-Point Transmission Service for Louisville Gas & Electric Company, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is July 6, 1999, for the above mentioned Service Agreement in this filing.

Comment date: August 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–19528 Filed 7–29–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 26, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11775–000.

c. *Date filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Warrior Lake Dam Hydroelectric Project.

f. *Location:* On Black Warrior River, Hale County, Alabama. The project would utilize the U.S. Army Corps of Engineer's Warrior Lake Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Hèctor M. Pèrez, hector.perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for filing motions to intervene, protest and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource energy, they must also serve a copy of the document on that resource agency.

k. The project would use the U.S. Army Corps of Engineer's Warrior Lake Dam and would consist of the following facilities: (1) Two new 180-foot-long, 96-inch-diameter penstocks at the outlet works; (2) a new powerhouse containing two generating units having a total installed capacity of 3 MW; (3) a new tailrace; (4) a new 1100-foot-long, 14.7=KV transmission line; and (5) other appurtenances.

The project would have an annual generation of 18,000 Mwh and project power would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

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Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTESTS", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-named mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–19523 Filed 7–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 26, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11774–000.

c. *Date Filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Bartlett Dam Hydroelectric Project.

f. *Location:* On Verde River in Maricopa County, Arizona. The project would utilize the Bureau of Reclamation's Bartlett Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or Robert Bell, robert.bell@ferc.fed.us, (202) 210–2806.

j. *Deadline for filing motions to intervene, protest and comments: 60 days from the issuance date of this notice.*

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *The project would consist of the following facilities:* (1) Four 200-foot-long and 96-inch-diameter steel penstocks at the outlet works; (2) a powerhouse with four turbine generator units with a total installed capacity of 9.7 megawatts; (3) a tailrace consisting of an exhaust apron; (4) 14.7–kV, 20-mile-long transmission lines; and (5) other appurtenances.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring a file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—a notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–19525 Filed 7–29–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6410–6]

Agency Information Collection Activities; Design for the Environment Reporting; Submission of ICR No. 1768.02 to OMB; Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: "DfE Collection of Impact Data on Technical Information," [EPA ICR No. 1768.02; OMB Control No. 2070–0152] has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on October 31, 1999. A **Federal Register** notice announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on March 12, 1999 (64 FR 12314). EPA did not receive any comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: "farmer.sandy@epamail.epa.gov," or download a copy of the ICR off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1768.02.

ADDRESSES: Send comments, referencing EPA ICR No. 1768.02 and OMB Control No. 2070–0152, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mail Code: 2137), 401 M Street, SW, Washington, DC 20460;

and to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 1768.02; OMB Control No. 2070–0152.

Current Expiration Date: Current OMB approval expires on October 31, 1999.

Title. DfE Collection of Impact Data on Technical Information.

Abstract: EPA's Design for the Environment (DfE) program is a voluntary, non-regulatory approach to encourage industry to adopt technologies and use materials that result in lower levels of pollution, lessened reliance on toxic materials, higher energy efficiency and lower environmental health risks. Through DfE, EPA creates partnerships with industry, professional organizations, state and local governments, other federal agencies and the public to develop and disseminate technical information.

This information collection is a generic ICR for a series of surveys, referred to as DfE Technical Information Impact Studies, to undertake data collection in support of EPA's DfE program. The studies will focus on various industrial sectors such as printing, printed wiring board circuitry and dry cleaning. The purpose of all DfE Technical Information Impact Studies is to evaluate the impact of DfE technical information on industry practices, use of materials and waste generation. In each case, EPA, often in collaboration with industry associations and universities, will have developed technical information for industry on the use of product reclamation processes and other workplace practices that may lower health risks to workers and prevent pollution. The proposed studies will each involve two separate surveys of owners or operators of target industry establishments. The initial survey will establish a baseline representing pre-technical information receipt. A follow-up survey will be administered approximately two years later to establish longer-term impacts of the technical materials. The overall goal of this before-and-after design is to understand the impacts of DfE technical information on workplace practices and

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technologies that generate or prevent pollution. This generic ICR will allow EPA to conduct a series of small, conceptually interrelated surveys. It will permit the DfE program the ability to collect information in a timely manner and to evaluate the effectiveness of the technical materials EPA provides to industry. EPA will be the principal user of information developed from the survey findings, but EPA expects that tens of thousands of small businesses in a variety of industry sectors will benefit from the results of the studies.

Responses to the collection of information are voluntary. Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to be 2 hours per response for an estimated 7,500 respondents making one or more submissions of information annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR Part 9.

Respondents/Affected Entities: Entities potentially affected by this action are companies or industries that are part of industry sectors that may interact with EPA in the Agency's DfE program.

Estimated No. of Respondents: 7,500.

Estimated Total Annual Burden on Respondents: 15,000 hours.

Frequency of Collection: On occasion.

Changes in Burden Estimates

There is an increase (from 1,000 hours to 15,000 hours) in the total estimated respondent burden as compared with that identified in the information collection request most recently approved by OMB. This increase reflects the expectation that greater numbers of respondents in more industry sectors will participate in surveys, as EPA's DfE program becomes better known and more popular and increases its scope. The earlier ICR anticipated 800 annual respondents to surveys, whereas the current request projects 7,500 respondents annually.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: July 26, 1999.

Stephen T. Vineski,

Acting Director, Regulatory Information Division.

[FR Doc. 99–19589 Filed 7–29–99; 8:45 am]

BILLING CODE 5560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6410–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Notice of Intent for Storm Water Discharges Associated With Construction Activity Under a NPDES General Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Notice of Intent for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit, OMB Control No. 2040–0188, EPA ICR No. 1842.02, which expires on September 30, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1842.02.

SUPPLEMENTARY INFORMATION:

Title: Notice of Intent for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit (OMB Control No. 2040–0188; EPA ICR No. 1842.02, expires on 9/30/99). This is a request for extension of a currently approved collection.

Abstract: This ICR calculates the burden and costs associated with the preparation of the Notice of Intent (NOI) for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit, and the Storm Water Pollution Prevention Plan (SWPPP). EPA uses the data contained in the NOIs to track facilities covered by the storm water general permit and assess permit compliance. EPA has developed a format for construction NOIs. The standardized one-page form is called: Notice of Intent (NOI) for Storm Water Discharges Associated with Construction Activity Under a NPDES General Permit. This form is a revision of an existing form entitled, "NOI for Storm Water Discharges Associated with Industrial Activity Under a NPDES General Permit." The new construction NOI only requires the respondent to note whether or not a SWPPP has been prepared. The following information is requested (the questions that are on the new NOI which are not on the existing NOI are indicated by asterisks at the end of the item):

- Name, address, phone number of the facility.
- Status of the owner/operator (whether federal, state, public, or private).
- Name and location of the project (City, State, ZIP, Latitude, Longitude, County)*.
- Whether the facility is located on Indian Country Lands.
- Whether a Storm Water Pollution Prevention Plan (SWPPP) has been prepared.*
- Optional: location for viewing SWPPP and telephone number for scheduling viewing times: Address, City, State, ZIP.*
- The name of the receiving water.
- Estimated construction start date and completion date.
- The estimated area to be disturbed (to nearest acre).
- An estimate of the likelihood of a discharge.*
- Whether any protected species or critical habitat in the project area.
- Which section of Part I.B.3.e.(2) of the permit through which permit eligibility with regard to protection of endangered species is satisfied.

Responses are required to obtain coverage under the NPDES General Permit for storm water discharges associated with construction activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 06/02/97 (62 FR 29826); two comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 40.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of construction activities.

Estimated Number of Respondents: 186,121.

Frequency of Response: Varies.

Estimated Total Annual Hour Burden: 7,697,707 hours.

Estimated Total Annualized Cost Burden (non-labor costs): $2,045,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1842.02 and OMB Control No. 2040–0188 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 26, 1999.

Stephen T. Vineski,

Acting Director, Regulatory Information Division.

[FR Doc. 99–19590 Filed 7–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6410–4]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent To Certify Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of agency receipt of a notification of intent to certify equipment and initiation of 45 day public review and comment period.

SUMMARY: The Agency has received a request to amend a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR part 85, subpart O from the Engelhard Corporation (Engelhard) to include life cycle costs. On March 20, 1998 (63 FR 13660) EPA certified a Engelhard retrofit catalytic muffler which demonstrated a 25% reduction in particulate matter (PM) for 1992–1993 Cummins L–10 electronically-controlled (EC) petroleum-fueled diesel engines (that are not originally equipped with aftertreatment devices). In the original notification dated October 18, 1996, Engelhard provided life cycle cost information applicable only to the L-10 EC engines.

In a letter dated April 20, 1998, Engelhard requested that the March 20, 1998 certification be amended to include all pre-1994 Cummins L–10 engines and "all other 4-stroke urban bus engines". Based on this request, EPA published a notice in the **Federal Register** on November 30, 1998 (63 FR 65780) for public review and comment. In the November 30 notice, EPA provided a summary of the notification amendment request and identified the engines that are being considered for inclusion in the, "all other 4-stroke urban bus engine" classification under the urban bus retrofit/rebuild program for which the catalytic muffler would be applicable. EPA has received comments on the November document and they are currently being reviewed.

Today's document is in response to a letter dated December 4, 1998 from Engelhard requesting that a second amendment be made to the October 18, 1996 notification of intent to certify. Engelhard is specifically requesting that the life cycle costs apply for the equipment and all engine models referenced in the November 30, 1998 **Federal Register** notice. Engelhard has submitted pricing information along with the guarantee that the equipment would be offered to all affected operators for less than the incremental life cycle cost ceiling of $2000 (in 1992 dollars). EPA notes that, if certified to comply with life cycle cost requirements of the urban bus retrofit program, this equipment would trigger program requirements for the 25% reduction standard for specific engines. If certified as a trigger of this standard, then urban bus operators using compliance option 1 will be required to use this retrofit/rebuild equipment or other equipment certified to provide a 25% or greater reduction PM at the time of engine rebuild or replacement for specified engine models.

Pursuant to section 85.1407(a)(7), today's **Federal Register** document summarizes the notification below, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review the additional information submitted relative to the notification of intent to certify, as well as comments received, to determine whether this equipment may be certified to comply with the life cycle requirements of the program.

The Engelhard letters dated April 20, 1998 and December 4, 1998, and the original notification of intent to certify, as well as other materials specifically relevant to it, are contained in category XVII–A of Public Docket A–93–42, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment." This docket is at the address below.

Today's notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment as described herein should be certified for life-cycle costs for the applicable engines. Comments should be provided in writing to Public Docket A–93–42, Category XVII–A, at the address below. An identical copy should be submitted to Anthony Erb, also at the address below.

DATES: Comments must be submitted on or before September 13. 1999.

ADDRESSES: Submit separate copies of comments to the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category XVII-A), Room M–1500, 401 M Street S.W., Washington, D.C. 20460.

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2. Anthony Erb, Engine Compliance and Programs Group, Engine Programs & Compliance Division (6403J), 401 "M" Street S.W., Washington, D.C. 20460.

Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Engine Programs & Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Telephone: (202) 564–9259.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance programs: Program 1 sets particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Program 2 is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet.

Certification of retrofit/rebuild equipment is a key element of the retrofit/rebuild. To show compliance under either of the compliance programs, operators of the affected buses must use equipment that has been certified by the Agency. Emissions requirements under either of the two compliance programs depend on the availability of certified retrofit/rebuild equipment for each engine model. To be used for Program 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Program 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For Program 1, information on life cycle costs must be submitted in the notification of intent to certify in order for certification of the equipment to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of $7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of $2,000 or less for the 25 percent or greater reduction in PM. Both of these values are based on 1992 dollars.

II. Notification of Intent to Certify

By a notification of intent to certify signed November 18, 1996, Engelhard applied for certification of equipment applicable to all Cummins L–10 engines that were originally manufactured prior to and including 1993. The notification of intent to certify stated that the candidate equipment would reduce PM emissions 25 percent or more on petroleum-fueled diesel engines that are rebuilt to Cummins specifications.

The candidate equipment consists of a "catalytic converter muffler" or CMX™, that is a muffler containing an oxidation catalyst. The CMX is intended to replace the standard muffler previously installed in the engine exhaust system. The CMX is intended to be maintenance free, requiring no service for the full in-use compliance period. The engine fuel to be used with this equipment is standard diesel fuel with a maximum sulfur content of 0.05 weight % sulfur.

Life cycle cost information was submitted with the original notification, along with a guarantee that the equipment would be offered to all affected operators for less than the incremental life cycle cost ceiling. EPA's certification of this equipment on March 20, 1998 triggered the requirements for operators using compliance option 1, to reduce PM by 25% when rebuilding or replacing 1992–1993 Cummins L–10 EC models. As a trigger of this standard, urban bus operators were required to use this retrofit/rebuild equipment, or other equipment certified to provide a PM reduction on any applicable engine rebuilt on or after September 21, 1998.

In a letter to EPA dated April 20, 1998, Engelhard requested that the March 20, 1998 certification be amended to include all pre-1994 Cummins L–10 models and all other 4-stroke urban bus engines. Table A of this document provides a listing of the additional 4-stroke urban bus engines to which the candidate equipment is believed to be applicable. EPA requested comment on the appropriateness of the engines currently listed in Table A and information on any additional engines for which this certification may be applicable in the **Federal Register** document that was published on November 30, 1998.

Identification of the engines in this classification was deemed to be necessary based on a letter from Engelhard dated March 16, 1998 which states that the inclusion of "all other 4-stroke engines" in the Engine Control Systems certification dated January 29, 1998 (63 FR 4445) was causing confusion in the marketplace because it was not clear which engines were included in the "all other 4-stroke engine" classification. Accordingly, this notice sought to clarify this matter by identifying the applicable engines. EPA requested additional information on the appropriateness of the engines identified in Table A of this document for this classification. As stated in the notice, it is EPA's intent that the list of engines will apply to the candidate Engelhard certification discussed herein, the Engine Control Systems certification referenced above and to future notifications of intent to certify equipment under the urban bus retrofit regulations that include engines in the "all other 4-stroke" classification. Comments have been received and are currently being reviewed relative to the April 20, 1998 amendment request.

The equipment to be applied to the engines is a "Catalytic Converter Muffler" or CMX™, that is a muffler containing an oxidation catalyst. The CMX is intended to replace the standard muffler previously installed in the engine exhaust system. The CMX is intended to be maintenance free, requiring no service for the full in-use compliance period. The engine fuel to be used with this equipment is standard diesel fuel with a maximum sulfur content of 0.05 wt.% sulfur.

Engelhard has requested approval for all Cummins L–10 engines and all other urban bus 4-stroke engines manufactured prior to and including 1993. As a basis for this certification, Engelhard presented exhaust emission data from testing a 1987 240hp Cummins L–10 engine, control parts list number 0777 (CPL# 0777) along with test data to support this certification. Detailed information on the emission test data presented can be found in the November 30, 1998, **Federal Register** document (63 FR 65780).

In the amendment request of December 4, 1998, Engelhard has provided life cycle cost data relative to the engines that are listed in the April 20, 1998 amendment request. This amendment request to include the life cycle costs, if approved for certification, will trigger new rebuild requirements for specified models listed in Table A.

If the Agency certifies the candidate Engelhard equipment within the applicable life cycle cost, operators will be affected as follows. Under Program 1, this equipment would be available for all rebuilds of applicable Cummins L–10 urban bus engines and other 4-stroke urban bus engines listed in Table A following the effective date of certification. For the following 4-stroke urban bus engines as listed in footnote 3, certification within life cycle cost limits, would trigger the requirement to use this or other equipment certified to produce a 25% reduction of: Caterpillar 8 cylinder engines, General Motors 6 cylinder and 8 cylinder engines, International Harvester/Navistar 8 cylinder engines, MAN 6 and 8 cylinder engines, Saab-Scania 6 cylinder engines, and Volvo 6 cylinder engines installed in applicable urban buses. With regard to the Cummins L–10 models included in Table A, triggering equipment was certified by EPA on December 13, 1995 (60 FR 64046).

The requirement to use certified equipment demonstrating at least a 25% reduction in PM will continue until such time as equipment is certified that triggers the 0.10 g/bhp-hr emission standard for less than a life cycle cost of $7,940 (in 1992 dollars). If the Agency certifies the candidate Engelhard equipment, then operators who choose to comply with Program 2 and install this equipment may use the PM emission level(s) established during the certification review process in their calculations for fleet level as specified in the program regulations. Emission levels proposed by Engelhard are provided in Table A as well.

TABLE A.—ENGELHARD RETROFIT/REBUILD CERTIFICATION LEVELS FOR 4-STROKE ENGINES[1]

Cummins/other engine family	Control parts list (CPL)	Manufacture dates	New engine PM level	Retrofit PM level with CMX	Retrofit PM level with CMX and Cummins Kit
343B	780	11/20/85 to 12/31/87	0.58	0.44	0.26
343B	0781	11/20/85 to 12/31/87	0.59	0.44	0.26
343C	0774	11/20/85 to 12/31/89	0.46	0.34	0.26
343C	0777	11/20/85 to 12/31/89	0.61	0.46	0.26
343C	0996	12/04/87 to 08/19/88	0.61	0.46	0.26
343C	1226	07/26/88 to 12/31/90	0.50	0.38	0.26
343F	1226	07/12/90 to 08/26/92	0.45	0.34	0.26
343F	1441	12/18/90 to 12/31/92	0.46	0.34	0.26
343F	1622	04/24/92 to 12/31/92	0.46	0.34	0.26
343F	1624	04/24/92 to 12/31/92	0.45	0.34	0.26
Other[2] 4-stroke engines, Caterpillar, GM, INT. HARV., Navistar, MAN, Saab-Scania, Volvo.	(4)	Pre-1988	0.50	0.38	N/A
Other[2] 4-stroke engines, Caterpillar, GM, INT. HARV., Navistar, MAN, Saab-Scania, Volvo.		1988 to 1993	(3)	25% reduction from certfication PM levels.	(4)

[1] The New Engine PM certification levels for Cummins engines are based on the certification level or the average test audit result for each engine family. It is noted that for engine famly 343F, although the PM standard for 1991 and 1992 was 0.25 g/bhp-hr and the NOx standard was 5.0 g/bhp-hr, Cummins certified the 1226, 1441, 1622, and 1624 CPLs to a Federal Emission Limit (FEL) of 0.49 g/bhp-hr PM and 5.6 g/bhp-hr NOx under the averaging, banking and trading program.

[2] Applicable to the following 4-stroke engines: Caterpillar 8 cylinder engines, General Motors 6 cylinder and 8 cylinder engines, International Harvester/Navistar 8 cylinder engines, MAN 6 and 8 cylinder engines, Saab-Scania 6 cylinder engines, and Volvo 6 cylinder engines installed in applicable urban buses.

[3] Certification level.

[4] Not applicable

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) the certification requirements of section 85.1406, including whether the testing accurately proves the claimed emission reduction or emission levels; and, (2) the requirements of section 85.1407 for a notification of intent to certify.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) Problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment described in the Engelhard notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review the notification of intent to certify and provide comment during the 45-day period. Please send separate copies of your comments to each of the above two addresses.

The Agency will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45-day period.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–19588 Filed 7–29–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6410–9]

Environmental Laboratory Advisory Board; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Charter for the Environmental Protection Agency's (EPA) Environmental Laboratory Advisory Board (ELAB) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 section 9(c). The purpose of ELAB is to provide advice and recommendations to the Administrator of EPA on issues associated with the systems and standards of accreditation for environmental laboratories.

It is determined that ELAB is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Elizabeth Dutrow, Designated Federal Officer, ELAB, U.S. EPA, 401 M Street, SW., (8724R), Washington, DC 20460.

Dated: July 13, 1999.

Henry L. Longest II,

Acting Assistant Administrator, Office of Research and Development.

[FR Doc. 99–19586 Filed 7–29–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6244–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements, Filed July 19, 1999 Through July 23, 1999, Pursuant to 40 CFR 1506.9.

EIS No. 990253, FINAL EIS, FHW, MN, MN–TH–14 Corridor Reconstruction, MN–TH–60 to I–35, Funding and COE Section 404 Permit Issuance, Blue Earth, Waseca and Steele Counties, MN, Due: August 30, 1999, Contact: Cheryl Martin (651) 291–6120.

EIS No. 990254, DRAFT EIS, FHW, VA, ADOPTION—Grundy Flood Damage Reduction/Highway Upgrade Project, Implementation, Town of Grundy, Buchanan County, CA, Due: August 30, 1999, Contact: Doris Bush (540) 645–1667.

U.S. Department of Transportation's, Federal Highway Administration (FHW) has adopted the Corps of Engineer's, Air National Guard FEIS #950407 filed 8–30–95. FHW was not a Cooperating Agency for the above final EIS. Recirculation of the document is necessary under Section 1506.3(b) of the Council on Environmental Quality Regulations.

EIS No. 990255, DRAFT EIS, FHW, WV, US–35, Funding and COE Section 404 Permit, Mason and Putnam Counties, WV, Due: September 23, 1999, Contact: David E. Bender (304) 347–5928.

EIS No. 990256, FINAL EIS, UMC, AZ, Yuma Marine Corps Air Station (MCAS), To Improve Ordnance Handling and Storage, Construct a new Combat Aircraft Loading Area (CALA); New Station Ordnance Area and Relocation of MCAS Yuma, AZ, Due: August 30, 1999, Contact: Richard Samrah (520) 341–3163.

EIS No. 990257, DRAFT EIS, AFS, MT, Good Creek Resource Management Project, Implementation, Vegetation Treatments and Other Activities to Restore Watershed, Flathead National Forest, Tally Lake Ranger District, Flathead County, MT, Due: September 13, 1999, Contact: Bryan Donner (406) 863–5408.

EIS No. 990258, FINAL EIS, FHW, PA, Central Bradford County Traffic Improvement Project, Construction US 6 Highway through Towanda Borough and North Towanda Township to US 220, Bradford County, PA, Due: August 30, 1999, Contact: Ronald W. Carmichael, PE (717) 221–3461.

EIS No. 990259, FINAL EIS, DOC, PR, VI, Corals and Reef Associated Plants and Invertebrates, Fishery Management Plan, Amendment I Marine Conservation District (MCD), Exclusive Economic Zone (EEZ), Puerto Islands and U.S. Virgin Islands, PR and VI, Due: August 30, 1999, Contact: William Hogarth (727) 570–5305.

EIS No. 990260, DRAFT EIS, FHW, NY, Albany Shaker Road and Watervliet Shakey Road Improvement Project, Construction and Reconstruction, Funding and COE Section 404 Permit, Town of Colonie, Albany County, NY, Due: September 15, 1999, Contact: Harold J. Brown (518) 431–4137.

EIS No. 990261, DRAFT EIS, USN, Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA), To Improved Capability to Detect Quieter and Harder-to-Find Foreign Submarines, Implementation, Due: October 28, 1999, Contact: Kim DaPaul (703) 604–1233.

EIS No. 990262, DRAFT EIS, DOE, Sodium-Bonded Spent Nuclear Fuel for the Treatment and Management, Candidate Sites are Argonne National Laboratory-West (ANL–W) Located within the boundaries of the Idaho National Laboratory I and the Savannah River Sites (SRS) F-Area and L Area, SC, Due: September 13, 1999, Contact: Susan M. Lesica (301) 903–8755.

EIS No. 990263, FINAL EIS, FRC, MA, Holyoke Hydroelectric Relicensing Project. ((FERC) Nos. 2004–073 and 11607–000), Construction, Operation and Maintenance, Located on the Connecticut River, Hampshire, Hampden and Franklin Counties, MA, Due: August 30, 1999, Contact: Allan E. Creamer (202) 219–0365.

EIS No. 990264, FINAL EIS, BLM, UT, Grand Staircase-Escalante National Monument Management Plan, Implementation, Cedar City, UT, Due: August 30, 1999, Contact: Jerry Meredith (435) 865–5100.

EIS No. 990265, DRAFT EIS, APH, Fruit Fly Cooperative Control Program, Eradication Program, Implementation, Due: October 12, 1999, Contact: Harold T. Smith (310) 734–8565.

Amended Notices

EIS No. 990162, DRAFT EIS, USN, GU, Surplus Navy Property Identified in the Guam Land Use Plan (GLUP '94) for Disposal and Reuse, Implementation, GU, Due: September 15, 1999, Contact: Gerald Gibbons (808) 471–9338. Published FR 05–21–99—Review Period extended from 7–6–99 to 9–15–99.

Dated: July 27, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–19625 Filed 7–29–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6244–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 06, 1999 Through July 09, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of that National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) published in FR dated April 09, 1999 (64 FR 17362).

Draft EISs

ERP No. D–AFS–J65300–MT Rating EC2, Tobacco Root Vegetation Management Plan, Restore and Maintain a Mix Vegetation, Beaverhead-Deer Lodge National Forest, Madison Ranger District, Madison County, MT.

Summary: EPA expressed environmental concerns with potential adverse impacts to wetlands and requests disclosure of management practices in the final EIS.

ERP No. D–AFS–J65305–UT Rating EC2, Pretty Tree Bench Vegetation Project, Implementation, Dixie National Forest, Escalante Ranger District, Garfield County, UT

Summary: EPA expressed environmental concerns regarding wetlands, sediment impacts and trends in visibility improvement impairment in potentially impacted National Parks. EPA requested additional information on these issues.

ERP No. D–FHW–B40086–CT Rating EO2, CT 82/85/11 Corridor Transportation Improvements, Funding and COE Section 404 Permit, in the Towns of Salem, Montville, East Lyme and Waterford, CT.

Summary: EPA has objection to the proposed action since it is likely that any of the expressway alternatives described in the EIS would cause or contribute to significant degradation of the aquatic ecosystem. EPA supports further consideration of a community sensitive upgrade and further exploration of a parkway concept.

ERP No. DS–FAA–F51040–IN Rating EC2, Indianapolis International Airport Master Plan Development, Updated/New Information, Establishing New Air Traffic Procedures to Restore, Construct and Operate, Runway 5L/23R Parallel to existing Runway 14/32 and connecting to Runways 5R/23L and 5L/23R, Airport Layout Plan Approval, Funding and US COE Section 404 Permit, Marion County, IN.

Summary: EPA expressed environmental concerns related to the potential adverse impacts on wetlands and bat habitat.

Final EISs

ERP No. F–AFS–J65256–CO, Lakewood Raw Water Pipeline for Continued Operation, Maintenance, Reconstruction and/or Replacement, Application for Easement, Roosevelt National Forest, Boulder Ranger District, in the City of Boulder, CO.

Summary: Review of the Final Supplemental EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–K65184–CA, Rock Creek Recreational Trails Management Plan, Implementation, Eldorado National Forest, Georgetown Ranger District, Eldorado County, CA.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. F–DOE–K08021–CA, Sutter Power Plant Project, Operation and Maintenance of a High-Voltage Electric Transmission, 500 megawatt (MW) Gas Fueled, Sutter County, CA.

Summary: EPA continues to express concerns about the adverse impact to wetlands.

ERP No. F–FHW–F40369–WI, US 141 Highway Transportation Project, Improvement between WI–22 and WI–64 (LeMere Road-6th Road), Funding and COE Section 4 Permit, Marinette and Oconto Counties, WI.

Summary: EPA expressed environmental objections on the basis of the projected secondary impacts to the Baraboo Range National Natural Landmark (BRNNL) area. The secondary impacts (due to the increased potential for development) to the BRNNL from ■ bridge build alternative or a Year-Round ferry alternative are significant, therefore EPA recommends selection of the NO Build alternative (FI) or Seasonal 24-Vehicle ferry alternative (F2).

ERP No. F–NAS–K59011–CA, Programmatic EIS—NASA Ames Aerodynamic Testing Program, Implementation, Analyzation of the Noise Envelope of Future Wind Tunnel Testing at the National Full-Scale Aerodynamic Complex (NFAC), NASA Ames Research Center, Moffet Field, Santa Clara County, CA.

ERP No. F–NAS–K59011–CA, Programmatic EIS—NASA Ames Aerodynamic Testing Program, Implementation, Analyzation of the Noise Envelope of Future Wind Tunnel Testing at the National Full-Scale Aerodynamic Complex (NFAC), NASA Ames Research Center, Moffet Field, Santa Clara County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: July 27, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–19626 Filed 7–29–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–NH/RI; FRL–6091–3]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; States of Rhode Island and New Hampshire Authorization Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On April 30, 1999, Rhode Island and on June 30, 1999, New Hampshire submitted applications for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of the applications from Rhode Island and New Hampshire and the opening of a public comment period that will last for 45 days. Rhode Island and New Hampshire have provided individual State self-certifications of lead programs meeting the requirements for approval under section 404 of TSCA. Therefore, pursuant to section 404, each of these State programs is deemed authorized as of the date of submission. If EPA subsequently finds that a program does not meet all the requirements for approval of a State program, EPA will work with the State to correct any deficiencies in order to approve the program. If the deficiencies are not corrected, a notice of disapproval will be issued in the **Federal Register** and a Federal program will be implemented in the State whose program has been disapproved.

DATES: Individuals should submit comments on the authorization applications on or before September 13, 1999. In addition, a public hearing request may be submitted by September 13, 1999. If a public hearing is requested and granted, the hearing date and time will be announced in the **Federal Register**.

ADDRESSES: Submit in duplicate all written comments and/or requests for a public hearing, identified by docket

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control number "PB–402404–NH/RI" to: Environmental Protection Agency, Region I, (CPT), Suite 1100, One Congress Street, Boston, MA 02114–2023. Comments and a request for a public hearing may be submitted electronically to BRYSON.JAMESM@epamail.epa.gov. Please follow the instructions in Unit IV. of this document. No confidential business information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: James M. Bryson, Regional Abatement Coordinator, Environmental Protection Agency, Region I, (CPT), Suite 1100, One Congress Street, Boston, MA 02214–2023. Telephone: 617–918–1524, e-mail: BRYSON.JAMESM@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102-550, became law. Title X of that statute is the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended the Toxic Substances Control Act ("TSCA") (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–92) which is entitled "Lead Exposure Reduction."

Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in those activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. On August 31, 1998, EPA was required to institute the Federal program in States or Indian Country not having an authorized program, as provided by section 404(h) of TSCA. States and Indian Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA office for review. EPA is required to review those applications within 180 days of receipt of the complete application. To receive EPA approval, a State or Indian Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and that its program provides adequate enforcement. EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA and concluding, based on the required program analysis, that the State program is at least as protective as the Federal program and that the State program provides adequate enforcement.

Upon submission of such certification letter, along with a complete program application, the program is deemed authorized. This authorization is retracted, however, if upon review, EPA subsequently determines that the program is not at least as protective of human health and the environment as the Federal program, and/or does not provide for adequate enforcement, and the State does not correct the deficiencies necessary to make it so. Section 404(b) of TSCA provides that before authorizing a State program, EPA must provide notice and an opportunity for a public hearing on the application. Therefore, by this notice EPA is soliciting public comment on whether the applications submitted by the States of Rhode Island and New Hampshire meet the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the applications. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. If EPA's final decision on the application is a disapproval, this will be discussed in another **Federal Register** Notice.

II. State Program Description Summary

The Rhode Island and New Hampshire programs: (1) Require abatement permits prior to the commencement of abatement activity; (2) investigate tips and complaints, and enforce certification, accreditation, and permitting requirements for all disciplines and for all abatement-related activities, including training; and (3) provide for the suspension and/or revocation of the accreditation of training providers, as well as of the certifications of individuals and firms engaged in lead abatement practices.

The following are summaries of the programs proposed by Rhode Island and New Hampshire.

Rhode Island

The State of Rhode Island and Providence Plantations submitted a Lead Poisoning Prevention Program established by Title 23, Chapter 24.6 of the Rhode Island General Laws (RIGL), the Rhode Island Department of Health Rules and Regulations for Lead Poisoning Prevention (R23-24.6-PB), enacted February 1992 and last amended October 1997, and Rhode Island Department of Environmental Management Air Pollution Control Regulation No 24--Removal of Lead Based Paint from Exterior Surfaces, enacted April 1993.

This program includes: (1) Statewide standards for lead-based paint, dust, soil, and water hazard identification and remediation; (2) approval and monitoring of training programs for lead hazard reduction and environmental lead inspection personnel; (3) licensure of lead hazard reduction contractors, supervisors and workers; (4) certification of environmental lead inspectors and inspector technicians; (5) oversight of lead poisoning cases and evaluation of trends in blood lead levels utilizing the Department of Health Lead Surveillance System and the Department of Health Adult Blood Lead Registry; (6) a full range of clinical and environmental lead-related testing services provided by the RI Department of Health- Division of Laboratories; and (7) health education and community outreach activities to promote lead safe behavior and conditions.

This overall program has been implemented by the RI Department of Health Office of Occupational & Radiological Health and Office of Environmental Health Risk Assessment, the RI Department of Environmental Management Office of Compliance and Inspections, and the RI Department of the Attorney General.

New Hampshire

The State of New Hampshire has submitted a Lead Poisoning Prevention Program established by the New Hampshire Revised Statutes Annotated Chapter 130-A, and New Hampshire Chapter He-P 1600, the Lead Poisoning Prevention and Control Rules. This program includes: (1) Licensure and certification requirements for those professionals who carry out lead abatement and inspection activities; (2) procedures and requirements for the accreditation and reaccreditation of training providers; (3) work practice standards for conducting lead-based paint activities; (4) certification requirements for laboratories performing tests to detect or measure lead in human body fluids and tissues; (5) reporting requirements for laboratories who conduct blood lead analysis on adults or children residing in New Hampshire; and (6) procedures and requirements for enforcement of the rules within the state. The program has been implemented by the Department of Health & Human Services, Office of Community and Public Health.

III. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number "PB–402404–NH/RI." Copies of this notice, and all comments received on the applications are available for inspection in the EPA Region I Office from 7:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA Region I Library, Suite 1100, One Congress Street, Boston, MA 02114-2023. Commenters are encouraged not to include CBI in their comments. However, any information submitted and claimed as CBI must be clearly identified as such and marked "confidential," "CBI," or with some other appropriate designation. In addition, a commenter submitting such information must prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at:

BRYSON.JAMESM@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "PB–402404–NH/RI." Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

IV. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 ("Regulatory Planning and Review," 58 FR 51735, October 4, 1993), and Executive Order 13045 ("Protection of Children from Environmental Health Risks and Safety Risks," 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled "Enhancing Intergovernmental Partnerships" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: July 19, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–19592 Filed 7–29–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34161C; FRL–6097–2]

Methyl Parathion; Notice of Time Change for Public Meeting on Revised Organophosphate Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a public meeting to present the revised risk assessments for one organophosphate pesticide, methyl parathion, to interested stakeholders. This public meeting, called a "Technical Briefing," will provide an opportunity for stakeholders to learn about the data, information, and methodologies that the Agency used in revising its risk assessments for methyl parathion. In addition, representatives of the U.S.

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Department of Agriculture (USDA) will provide ideas on possible risk management for methyl parathion.

DATES: The technical briefing will be held on Monday, August 2, 1999, from 3 p.m. to 6 p.m.

ADDRESSES: The technical briefing will be held at the Holiday Inn-Old Town, 625 First St., Alexandria, VA, (703) 548–6300.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. The Agency believes that a wide range of stakeholders will be interested in technical briefings on organophosphates, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the use of pesticides on food. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

A brief summary of the methyl parathion revised risk assessments is now available at: http://www.epa.gov/pesticides/op/status.htm/, as well as in paper as part of the public version of the official record as described in Unit I.B.2. of this document. To access information about the revised risk assessments, which are scheduled for release on the day of the technical briefing, for the organophosphate pesticide methyl parathion, go directly to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/op/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34161C. The official record consists of the documents specifically referenced in this action, any public comments received during the applicable comment period, and other information related to this action, including information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during the applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

II. What Action has EPA Taken?

This document announces the Agency's intention to hold a technical briefing for the organophosphate pesticide, methyl parathion. The Agency is presenting the revised risk assessments for methyl parathion to interested stakeholders. Technical briefings are designed to provide stakeholders with an opportunity to become even more informed about an organophosphate's risk assessment. EPA will describe in detail the revised risk assessments, including: The major points (e.g., contributors to risk estimates); how public comment on the preliminary risk assessments affected the revised risk assessments; and the pesticide use information/data that was used in developing the revised risk assessments. Stakeholders will have an opportunity to ask clarifying questions. In addition, representatives of the USDA will provide ideas on possible risk management for methyl parathion.

Technical briefings are part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998 as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessment and risk management decisions. EPA and USDA began implementing this pilot process in August 1998 in response to Vice President Gore's directive to increase transparency and opportunities for stakeholder consultation.

On the day of the technical briefing, in addition to making copies available at the meeting site, the Agency will also release for public viewing the methyl parathion revised risk assessments and related documents to the Public Information and Records Integrity Branch and the OPP Internet web site that are described in Unit I.B.1. of this document. In the near future, the Agency will issue a **Federal Register** notice to provide an opportunity for a 60-day public participation period during which the public may submit recommendations and proposals for transition.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 27, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–19725 Filed 7–28–99; 2:49 pm]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 26, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 28, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0564.

Title: Section 76.924 Allocation to service cost categories.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 50.

Estimated Time Per Response: 40 hours.

Frequency of Response: Once.

Total Annual Burden: 2,000 hours.

Total Annual Costs: $0.

Needs and Uses: Section 76.924 of the Commission's rules specifies cost accounting and cost allocation requirements for regulated cable operators. Section 76.924 was established as part of the cable rate regulation requirements set forth in the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). This collection (3060–0564) accounts for the burden imposed on cable operators to rearrange their accounting records to be in compliance with the requirements set forth in Section 76.924. At this time, that burden should be considered a one-time only recordkeeping requirement for new cable operators. The original requirements set forth in Section 76.924 became effective July 21, 1993. Existing operators are therefore assumed to have already rearranged their accounting records and are in compliance with this recordkeeping requirement.

Information derived from accounting records that are arranged in compliance with Section 76.924 is used by the cable operators themselves when completing rate filings and by local franchising authorities when reviewing rate filings.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–19475 Filed 7–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

July 22, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a)

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whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 30, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0139.

Title: Application for Antenna Structure Registration and Antenna Structure.

Form Numbers: FCC 854, FCC 854 R, and FCC 854 ULS.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; Individuals or households; and State, Local, or Tribal Government.

Number of Respondents: 4,500.

Estimated Time Per Response: 5 mins. (50 responses/yr.).

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 6,750 hours.

Total Annual Cost: $181,800.

Needs and Uses: FCC Forms 854/854 R are to register structures used for wire or radio communication services within the United States, or to make changes to an existing registered structure, or to notify the Commission of the dismantlement of a structure. This revision seeks approval to combine FCC FCC Forms 854 ULS and 854 O, due to the costs involved in programming separate forms for electronic filing. FCC 854 ULS will collect Taxpayer Information Number (TIN) of the antenna structure owner. Additionally, the form collects a Sub-Group Identification Number (SGIN) in cases where an entity such as a governmental entity or academic institution is divided into separate groups where each is responsible for its own registration. Antenna structure owners will be required to file either the current form or the new form, depending upon the timeframe in which the Antenna Structure Registration database is converted to ULS. Owners will be required to file the current form 854 until such time as a public notice is issued announcing conversion to ULS and requirements to begin using the Form 854 ULS, then Form 854 process will no longer be available.

OMB Control Number: 3060–0801.

Title: Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications (PCS) Licenses, FCC 98–176, WT Docket No. 97–82, Fourth Report and Order, 13 FCC Rcd 15,743 (1988), 63 FR 50,791 (September 23, 1998).

Form Numbers: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; Individuals or households; and State, Local, or Tribal Government.

Number of Respondents: 750.

Estimated Time Per Response: 15 mins. (0.25 hrs.).

Frequency of Response: One time reporting requirement.

Total Annual Burden: 188 hours.

Total Annual Cost: None.

Needs and Uses: The Fourth Report and Order, in WT Docket No. 97–82, 47 CFR 1.2105 (a)(2)(xi), 24.709 (a)(5), requires each applicant for C Block Broadband PCS Spectrum to attach to its short-form application a statement indicating (under penalty of perjury) whether or not the applicant has ever been in default on any FCC licensees or has ever been delinquent on any non-tax debt owed to any Federal agency. This information allows the FCC to determine the amount of the upfront payment to be paid by each applicant and will help to ensure that C Block Auctions are conducted fairly and efficiently, thereby speeding the flow of payments to the U.S. Treasury and accelerating the provisions of PCS Spectrum to the public.

Federal Communications Commission.

William F. Caton,

Assistant Secretary.

[FR Doc. 99–19471 Filed 7–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval.

July 23, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 30, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0329.

Title: Equipment Authorization—Verification, 47 CFR 2.955.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5,655.

Estimate Time Per Response: 18 hours (avg.).

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 101,790 hours.

Total Annual Costs: $1,131,000.

Needs and Uses: The FCC's Rules require verification of compliance to establish technical standards for certain Part 15 and Part 18 devices. Technical data are gathered and retained by the equipment manufacturers in order to verify compliance with these regulations. The information may be used to determine that the equipment marketed complies with the applicable Commission rules and that the operation of the equipment is consistent with the initially documented test results. The information is essential to controlling potential interference to radio communications.

OMB Control Number: 3060–0704.

Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96–61.

Form Number: None .

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 519.

Estimate Time Per Response: 0.5 to 20.0 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 158,935 hours.

Total Annual Costs: $435,000.

Needs and Uses: In CC Docket No. 96–61, the FCC reinstates the public disclosure requirement and also requires that nondominant interexchange carriers that have Internet websites past this information on-line in a timely and easily accessible manner. The information collection requirements must be disclosed to the public to ensure that consumers have access to the information they need to select a telecommunications carrier and to bring to the Commission's attention, possible violations of the Communications Act without a specific public disclosure requirement.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–19472 Filed 7–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

July 21, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 30, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0003.

Title: Application Form 610 for Amateur Operator/Primary Station License.

Form Number: FCC 610.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents: 79,000.

Estimate Time Per Response: 20 mins. (0.33 hrs.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 26,070 hours.

Total Annual Costs: $208,000.

Needs and Uses: FCC's Rules, 47 CFR 97.17, 97.19, and 97.519; the Communications Act of 1934, as amended; and International Treaties require that applicants file the FCC Form 610 to apply for a new or modified Amateur Operator/Primary Station License. Form 610 may also be used to renew an Amateur Operator/Primary Station License. Commission staff use the data to determine eligibility for radio station authorization and to issue radio station/operator licenses. Data are also used by Compliance and Information Bureau personnel in conjunction with Field Engineers for enforcement and interference resolution purposes. The Commission implemented a program change in which it has eliminated mailing of FCC Form 610 R, and applicants may choose to file for renewal electronically via the VEC program or file FCC Form 610 manually.

OMB Control Number: 3060–0069.

Title: Application for Commercial Radio Operator License.

Form Number: FCC 756.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents: 13,250.

Estimate Time Per Response: 20 mins. (0.33 hrs.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 4,373 hours.

Total Annual Costs: $211,749.

Needs and Uses: Form 756 is used by the FCC, as authorized under Section 303 (1) (1) of the Communications Act of 1934, as amended, to issue radio operator licenses to those persons found to be qualified. To properly identify oneself for an operator's license, applicants must provide their full name, date of birth, and a recent photograph. (A photograph is required of applicants for radiotelegraph licenses in accordance with Paragraph 3870 of Article 55 of the International Radio Regulations.) This form is being revised to delete the payment information, since this information is already being collected when an applicant files FCC Form 159 (Fee Remittance Advice) to make a payment to the FCC.

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Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 99–19473 Filed 7–29–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

July 23, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 30, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0854.

Title: Truth-in-Billing Format—CC Docket No. 98–170.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 3,099.

Estimated Time Per Response: 1 to 80 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 194,388 hours.

Total Annual Cost: $1,800,000–$9,000,000.

Needs and Uses: This is a resubmission of the information collection requirements contained in CC Docket 98–170, Truth-in-Billing and Billing Format Order. On July 2, 1999, the Office of Management and Budget (OMB) disapproved both the collection itself and the Commission's request for emergency approval. The Commission has addressed the concerns expressed by OMB in a separate cover letter accompanying the request for OMB approval.

Increasingly, consumers are concerned about telephone bills that do not provide sufficient information in a user-friendly format to enable them to understand the services being provided and the charges assessed, and to identify the entities providing those services. Lack of clarity in telephone bills has been a significant contributing factor in the growth of telecommunications-related fraud such as slamming (unauthorized changes in a consumer's telecommunications carrier) and cramming (unauthorized charges appearing on a consumer's telephone bill).

In the attached First Report and Order (Order), the Commission is effecting the following collections of information to ensure that telephone bills contain the information necessary for consumers to determine the validity of charges assessed on the bills and to combat telecommunications fraud. They are as follows: (a) Clear identification of service providers; (b) separation of charges by service provider and highlighting new service provider information; (c) full and non-misleading billed charges; and (d) clear and conspicuous disclosure of inquiry contacts.

The information will be used by consumers to help them understand their telephone bills.

Consumers need this information to protect themselves against fraud and to resolve billing disputes on their own.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 99–19474 Filed 7–29–99; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF ENERGY

Federal Deposit Insurance Corporation

Sunshine Act of Meeting; Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:40 a.m. on Tuesday, July 27, 1999, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Ms. Julie L. Williams, acting in the place and stead of Director John D. Hawke, Jr. (Comptroller of the Currency), concurred in by Director Ellen S. Seidman (Director, Office of Thrift Supervision), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: July 27, 1999.
Federal Deposit Insurance Corporation.
James D. LaPierre,
Deputy Executive Secretary.
[FR Doc. 99–19702 Filed 7–28–99; 12:16 pm]
BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 13, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Ben Harry Morgan and Tina Marie Morgan, Marshfield, Missouri; to retain voting shares of Southern Missouri Bancshares, Inc., Marshfield, Missouri, and thereby indirectly retain voting shares of Southern Missouri Bank of Marshfield, Marshfield, Missouri.

Board of Governors of the Federal Reserve System, July 26, 1999.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 99–19493 Filed 7–29–99; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 23, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Illini Corporation, Springfield, Illinois; to acquire 100 percent of the voting shares of Farmers State Bank of Camp Point, Camp Point, Illinois.

Board of Governors of the Federal Reserve System, July 26, 1999.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 99–19492 Filed 7–29–99; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EDT) August 9, 1999.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the July 12, 1999, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of investment policy.
4. Review of Arthur Andersen semiannual financial review.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Elizabeth S. Woodruff,
Secretary to the Board of Federal Retirement Thrift Investment Board.
[FR Doc. 99–19674 Filed 7–27–99; 5:12 pm]
BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

[File No. 9323074]

Fleet Finance Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent order—that would settle these allegations.

DATES: Comments must be received on or before September 28, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Carole L. Reynolds or Thomas E. Kane, FTC/S–4429, 601 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–3230 or (202) 326–2304.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 26, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final

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approval, to a proposed consent order from Fleet Finance, Inc., Home Equity U.S.A, Inc. (Rhode Island), and Home Equity U.S.A., Inc. (Delaware) (collectively referred to as "respondents").

The proposed order would settle charges that Fleet Finance, Inc., incorporated in Delaware ("Fleet Finance"), and a related, now-defunct corporation, Fleet Finance, Inc., which was incorporated in Rhode Island, violated the Truth in Lending Act ("TILA"), and its implementing Regulation Z, and the Federal Trade Commission Act ("FTC Act"). The TILA and Regulation Z require creditors to provide consumers with written disclosures of the costs and terms of consumer credit transactions and also establish various substantive protections for consumers, including the right of recission in certain mortgage transactions. Section 5 of the FTC Act prohibits, *inter alia*, deceptive acts or practices in or affecting commerce.

The proposed order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that Fleet Finance [1] has extended consumer credit transactions in which Fleet Finance acquired or retained a security interest in the consumers' principal dwellings and failed to provide the consumers with the right to rescind the credit transactions by: (a) Failing to provide consumers with notices of the right to rescind; (b) waiving consumers' right to rescind, and disbursing funds, pursuant to rescission waivers that were insufficient; and (c) failing to take actions terminating the security interest and returning any money and property given by the consumers when consumers exercise their right to rescind. According to the complaint, these practices violate Sections 125(a), (b) and (d) of the TILA, 15 U.S.C. 1635(a), (b), and (d); and Sections 226.23(a), (b), (c), (d) and (e) of Regulation Z, 12 CFR 226.23(a), (b), (c), (d) and (e); and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a). The complaint also alleges that Fleet Finance purchased consumer loan transactions through assignments in which Fleet Finance acquired or retained security interests in the consumers' principal dwellings that failed in these same ways to provide the consumers with the right to rescind the credit transactions. The complaint alleges that, based on Fleet Finance's assignee liability in Section 131 of the TILA, 15 U.S.C. 1641, such purchases violate these same sections of the TILA and Regulation Z; and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

The complaint alleges that, in extending consumer credit transactions, Fleet Finance also has failed to provide consumers with all TILA disclosures of the costs and terms of credit and/or to provide all TILA disclosures prior to consummation of credit transactions. According to the complaint, these failures violate Sections 121 and 128 of the TILA, 15 U.S.C. 1631 and 1638; and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18; and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a). The complaint also alleges that Fleet Finance has purchased consumer credit transactions through assignments that failed to provide all the TILA disclosures of the costs and terms of credit and/or failed to provide all the disclosures prior to consummation of credit transactions. According to the complaint, based on Fleet Finance's assignee liability in Section 131 of the TILA, 15 U.S.C. 1641, such purchases violate Sections 121 and 128 of the TILA, 15 U.S.C. 1631 and 1638, and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18; and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

The complaint further alleges that Fleet Finance, in consumer credit transactions that it extended, has failed to provide or failed to provide accurately certain TILA disclosures, including but not limited to the annual percentage rate; the number, amount, and timing of payments scheduled to repay the obligation; and the total of payments. These failures allegedly violate Sections 107 and 128 of the TILA, 15 U.S.C. 1606 and 1638; and Sections 226.18(e), (g) and (h) and 2226.22 of Regulation Z, 12 CFR 226.18(e), (g) and (h) and 226.22; and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a). The complaint also alleges that Fleet Finance purchased consumer credit transactions through assignments that failed to provide or failed to provide accurately the TILA disclosures listed above in this paragraph. The complaint alleges that, based on Fleet Finance's assignee liability in Section 131 of the TILA, 15 U.S.C. 1641, such purchases violate Section 128 of the TILA, 15 U.S.C. 1638, and Sections 226.18(a), (g) and (h) of Regulation Z, 12 CFR 226.18(a), (g), and (h); and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. 45(a).

The complaint also alleges that, in consumer credit transactions it extended, Fleet Finance has failed to retain TILA disclosures, TILA notices of the right to rescind, promissory notes and/or other evidence of the terms and conditions of consumer credit transactions for two years after the date disclosures are required to be made or action is required to be taken concerning the transaction. The compliant alleges that these acts and practices violate Section 226.25(a) of Regulation Z, 12 CFR 226.25(a). The complaint further alleges that Fleet Finance has purchased consumer credit transactions through assignments that failed to retain the documents and other evidence described above in this paragraph. According to the complaint, based on Fleet Finance's assignee liability in Section 131 of the TILA, 15 U.S.C. 1641, such purchases violate Section 226.25(a) of Regulation Z, 12 CFR 226.25(a).

To remedy the violations charged and to prevent respondents from engaging in similar acts and practices in the future, the proposed order contains a consumer redress program and injunctive provisions. The order requires respondents to pay $1.3 million for the redress program and administrative costs. Specific aspects of the redress program are contained in Appendix A to the proposed order. The program applies to certain consumers whose mortgage loans were originated or purchased by Fleet Finance, or Fleet Finance incorporated in Rhode Island ("Fleet Finance (RI)"), during January 1, 1990–December 31, 1993. It covers certain consumers whose mortgage loans, *inter alia*, were either paid off to or written off by Fleet Finance, Fleet Finance (RI), or Fleet Financial Group, Inc. ("FFG"), a parent corporation, except by foreclosure ("eligible consumers" or "ECs"), or were paid off by foreclosure by Fleet Finance, Fleet Finance (RI), or FFG ("eligible foreclosed consumers" or "EFCs"), or who contact an 800-number set up under the proposed order and who provide information showing they are, in essence, ECs or EFCs ("qualified consumers" or "QCs").[2]

With ten business days after service of the order, respondents will deliver to the independent agent that will conduct the redress program two lists of the ECs and EFCs in their records.[3] The independent agent will then add those consumers, who are not on such lists, that the Division of Enforcement of the Commission's Bureau of Consumer Protection ("DOE") specifies are ECs or EFCs and provides to the independent agent (*i.e.*, consumers who have contacted Commission staff in the past several years regarding such loans). The independent agent will mail to all consumers on the two enhanced lists a letter substantially identical to the letter attached as Appendix B to the order ("Appendix B letter") and a claim form substantially identical to the form attached as Appendix C to the order ("Claim Form"). Consumers receiving the Appendix B letter and the Claim Form will have sixty days from the date of their Appendix B letter to return their Claim Form to the independent agent.

As noted above, the order also permits consumers who learn about this settlement and think they might fall within the definitions of either an "eligible consumer" or an "eligible foreclosed consumer" (even though they are not on the two enhanced lists) to call an 800-number staffed by the independent agent within sixty days after the date of the order.[4] The independent agent will inform the consumers that they must submit to the independent agent, within ninety days after the date of the order, documents showing that they meet the definition of an EC or an EFC (even though they are not on the two enhanced lists). Within 120 days after the date of the order, the independent agent will review any documents submitted, decide which consumers, if any, qualify for a redress payment, and submit to DOE a list of those consumers for that Division's approval. If the independent agent is unable to decide whether a particular consumer qualifies, the independent agent will forward the consumer's documents to DOE, who will make the determination.

After receiving the list of consumers whom DOE has deemed "qualified consumers," the independent agent will calculate, and submit to DOE for approval, the amount of redress that, according to the independent agent, should go to each consumer ("proposed amount"). This proposed amount will be the same for each consumer who receives a redress payment. The independent agent will calculate the proposed amount by dividing the "total available redress" by the number of consumers permitted to receive a redress payment. The "total available for redress" will be the $1.3 million paid by respondents, minus: the amount of the independent agent's estimated fees; $10,000 to be reserved for contingencies; and an additional amount, if the independent agent deems it appropriate, to be reserved to pay the redress fund's tax liabilities.[5] The number of consumers permitted to receive a redress payment will be the total of (1) those consumers who were sent an Appendix B letter and submitted a Claim Form, and (2) those consumers who were deemed qualified consumers under Paragraph VIII of Appendix A. The amount of the redress payment to each consumer will not exceed $1000. In addition, no consumer will receive more than one payment, regardless of the number of transactions he or she may have had that were either extended or purchased by Fleet Finance or Fleet Finance (RI).[6]

After DOE reviews the proposed amount, makes any necessary corrections, and informs the independent agent of the approved amount, the independent agent will mail checks in the approved amount to all consumers permitted to receive a redress payment. Along with each check, the independent agent will mail a letter substantially identical to the letter attached to the order as Appendix D and the Commission's consumer education pamphlet pertaining to home equity loans. Consumers will have ninety days after their checks are mailed to cash them.[7]

Those consumers who are not deemed "qualified consumers" by DOE will receive a letter substantially identical to the letter attached to the order as Appendix E. The independent agent will maintain a toll-free number for consumers covered by the order that will be included on all appendix B, D, and E letters.

The order prohibits respondents from communicating with ECs or EFCs concerning the redress program, except for refer consumers to the 800-number provided by the independent agent, until the Commission staff has notified respondents that the redress program has been completed.

The proposed order prohibits respondents from misrepresenting the following in connection with any extension of consumer credit or advertisement to promote any extension of credit: the annual percentage rate; the number, amount, and timing of payments scheduled to repay the obligation and the total of payments; the right to rescind the credit transaction; or any term or condition of financing for any consumer credit transaction. The injunctive provisions also require respondents to make all the disclosures required by the provisions of the TILA, as amended, and Regulation Z and the Regulation Z Commentary, as amended, that govern transaction, such as the annual percentage rate, the total of payments, and the number, amount, and timing of scheduled payments.

In connection with rescindable credit transactions under Regulation Z, as amended, the proposed order prohibits respondents from: (1) Failing to deliver to consumers two copies of a proper Notice of Right to Rescind, as required by Regulation Z, as amended; (2) modifying or waiving a consumer's right to rescind the transaction unless the consumer gives the applicable respondent a dated written statement that describes a bona fide personal financial emergency, specifically modifies or waives the right to rescind the credit transaction, and bears the signature of all consumers entitled to rescind the credit transactions, as required by Regulation Z, as amended; (3) disbursing any money (other than to escrow), performing any service, or delivering any material unless and until (a) time has expired for receipt of the rescission notice and the applicable respondent has not received notice of the rescission from the consumer, (b) consumers entitled to waive their right to rescind do so during the three-day

[1] Fleet Finance is the entity charged in the complain as engaging in specified violations of the TILA, Regulation Z and the FTC Act. Fleet Finance, as well as successor corporations, Home Equity U.S.A., Inc. (Rhode Island) and Home Equity U.S.A., Inc. (Delaware), are respondents in the Agreement Containing Consent Order.

[2] *See* proposed order, definition nos. 10–11. Such consumers must meet definition nos. 9(a) and 9(c), or definition nos. 10(a) and 10(c). Such consumers need not meet definition nos. 9(b) or 10(b), which require consumers' names to be reflected in certain records.

[3] If, before the date of service of the order, respondents have provided final copies of such lists, they will submit a sworn statement to that effect and need not provide additional lists after the order is served.

[4] The "date of the order" refers to the date when the order is served on respondents, which will not occur until after the end of the sixty-day comment that begins today.

[5] *See* Appendix A, Par. IX.

[6] If all consumers permitted to receive a redress payment have received the $1000 maximum and funds remain after payment of administrative costs, the remaining funds will be paid to the United States Treasury.

[7] The independent agent will redeposit the funds from any undeposited checks into the redress fund. If DOE determines that the redress fund has enough money to merit a second-round distribution to consumers, DOE will instruct the independent agent to conduct such a distribution. If a second-round distribution is not feasible, the independent agent will pay the funds from the undeposited checks to the Treasury instead.

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rescission period, or (c) after midnight of the third business day following the later of consummation of the credit transaction, delivery of the rescission notice, or delivery of all material disclosures required by the TILA and Regulation Z, as amended, the applicable respondent obtains a signed written statement from all consumers entitled to rescind the credit transaction stating that three business days have passed since the later of consummation of the credit transaction, delivery of the rescission notice of delivery of all material disclosures, and no consumer has rescinded the credit transaction; and (4) failing to take all actions necessary to terminate the security interest created under the consumer's credit transaction and return any money that the consumer has given in connection with the credit transaction when the consumer exercises his or right to rescind, as required by Regulation Z, as amended.

The proposed order also prohibits respondents from failing to make all disclosures, and in the manner, required by the TILA and Regulation Z, as amended, and from failing in any other manner to meet the requirements of the TILA and Regulation Z, as amended, including but not limited to 15 U.S.C. 1615, as amended.

The proposed order also prohibits respondents from purchasing any consumer credit transaction in which the disclosures required by Sections 121, 122, 125, and 128 of the TILA, 15 U.S.C. 1631, 1632, 1635, and 1638, as amended, violate, on their face, any provisions of the TILA, Regulation Z and the Commentary, as amended, by, for example, inaccuracies or incompleteness or absence of disclosures required by the TILA, Regulation Z, and the Regulation Z Commentary.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–19519 Filed 7–29–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Government-Owned Inventions; Availability for Licensing

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice.

The inventions named in this notice are owned by agencies of the United States Government and are available for licensing in the United States (U.S.) in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to Thomas E. O'Toole, M.P.H., Deputy Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Mailstop E–67, 1600 Clifton Rd., Atlanta, GA 30333, telephone (404) 639–6266. Please note that a signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

PCR and Serological Diagnosis Using the ARP Gene and Its Protein

Methods for specific and highly sensitive detection of Treponema pallidum infection compromising the use of specific antigenic proteins and peptides unique to Treponema pallidum are provided. These methods are directed to the differential detection of specific Treponema infections enabling the identification of causative agents for specific Treponema disease states. Methods are particularly useful for detection of primary syphilis at early stages of infection.

Inventors: Hsi Liu *et al.*
U.S. Patent Application SN: not yet assigned.
(CDC Ref. #: I–040–98/0)

Method and Apparatus for Cough Sound Analysis

This invention is a fast, simple, and reliable method and apparatus for recording cough sounds for diagnosing pulmonary disorders and diseases. Generated data can be used to diagnose pulmonary disorders and diseases as well as track the effectiveness of treatment regimens over time. The simple, noninvasive method allows screening of at-risk individuals and early detection of pulmonary disorders and diseases which may allow earlier treatment or environmental modification, reducing the risk of irreversible injury to pulmonary function.

Inventors: William Goldsmith *et al.*
U.S. Patent Application SN: not yet assigned.
(CDC Ref. #: I–020–99/0)

Method and Apparatus for Safety Testing Optical Systems for Hazardous Locations

Method of determining the ignition characteristics of an optical source emitting optical power into a hazardous environment. The invention will allow testing laboratories to efficiently and accurately vary the irradiance of optical sources for certifying the safety of optical systems in hazardous locations. This new method will improve the accuracy of tests, simplifies test setup, reduces setup time, and reduces component inventory. The use of fiber tapers, rather than external components, reduces the risk of human exposure to potentially dangerous optical beams.

Inventors: Thomas Dubaniewicz *et al.*
U.S. Patent Application SN: not yet received.
(CDC Ref. #: I–015–97/0)

Methods and Compositions for Opsonophagocytic Assays

This invention describes the use of immunoassays for the detection of functional antibodies and the analysis of vaccine efficacy, particularly relating to Streptococcus pneumoniae. This method of pneumococcal vaccine measurement using "functional" opsonophagocytic assays is compliant with the new FDA requirements and is a significant improvement over existing assays. The invention measures vaccine efficacy and allows simultaneous detection of functional antibodies generated by multiple serotypes of a pathogen. Antibody response is easier and faster to measure and output is significantly increased.

Inventors: Joseph E. Martinez *t al.*
U.S. Patent Application SN: not yet received.
(CDC Ref. #: I–006–99/0)

Dated: July 26, 1999.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–19499 Filed 7–29–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Translation Advisory Committee for Diabetes Prevention and Control Programs: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Translation Advisory Committee for Diabetes Prevention and Control Programs.

Times and Dates: 9 a.m.–6 p.m., September 15, 1999; 9 a.m.–1 p.m., September 16, 1999.

Place: Holiday Inn Select, 130 Clairemont Avenue, Decatur, Georgia 30030, telephone 404/371–0204.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with advising the Director, CDC, regarding policy issues and broad strategies for diabetes translation activities and control programs designed to reduce risk factors, health services utilization, costs, morbidity, and mortality associated with diabetes and its complications. The Committee identifies research advances and technologies ready for translation into widespread community practice; recommends broad public health strategies to be implemented through public health interventions; identifies opportunities for surveillance and epidemiologic assessment of diabetes and related complications; and for the purpose of assuring the most effective use and organization of resources, maintains liaison and coordination of programs within the Federal, voluntary, and private sectors involved in the provision of services to people with diabetes.

Matters to be Discussed: The Guide to Community Preventive Services, under the auspices of the U.S. Public Health Service, ■ Task Force on Community Preventive Services is developing a Guide to Community Preventive Services. The Guide will summarize what is known about the effectiveness of population-based interventions for prevention and control. Where data exist, the Guide will also summarize information on the cost-effectiveness of these interventions. Based on available evidence, the Guide will provide recommendations on these population-based interventions and methods for their delivery.

Agenda items are subject to change as priorities dictate.

Contact person for more information: Norma Loner, Committee Management Specialist, Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE, M/S K–10, Atlanta, Georgia 30341–3717, telephone 770/488–5376.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 26, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–19497 Filed 7–29–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Fees for Sanitation Inspections of Cruise Ships

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces fees for vessel sanitation inspections for fiscal year 2000, October 1, 1999, through September 30, 2000.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: David L. Forney, Chief, Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop F–16, Atlanta, Georgia 30341–3724, telephone (770) 488–7333, E-mail: dlf1@cdc.gov.

SUPPLEMENTARY INFORMATION:

Purpose and Background

The fee schedule for sanitation inspections of passenger cruise ships currently inspected under the Vessel Sanitation Program (VSP) was first published in the **Federal Register** on November 24, 1987 (52 FR 45019), and CDC began collecting fees on March 1, 1988. Since then, CDC has published the fee schedule annually. This notice announces fees effective October 1, 1999.

The formula used to determine the fees is as follows:

$$\text{Average cost per inspection} = \frac{\text{Total Cost of VSP}}{\text{Weighted No. of Annual Inspections}}$$

The average cost per inspection is multiplied by a size/cost factor to determine the fee for vessels in each size category. The size/cost factor was established in the proposed fee schedule published in the **Federal Register** on July 17, 1987 (52 FR 27060) and revised in a schedule published in the **Federal Register** on November 28, 1989 (54 FR 48942). The revised size/cost factor is presented in Appendix A.

Fee

The fee schedule is presented in Appendix A and will be effective October 1, 1999, through September 30, 2000; however, should a substantial increase occur in the cost of air transportation, it may be necessary to readjust the fees before September 30, 2000, since travel constitutes a sizable portion of the program's costs. If such a readjustment in the fee schedule is necessary, a notice will be published in the **Federal Register** 30 days before the effective date.

Applicability

The fees will be applicable to all passenger cruise vessels for which inspections are conducted as part of CDC's VSP.

Dated: July 26, 1999.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

Appendix A

SIZE/COST FACTOR

Vessel size	GRT [1]	Average cost X
Extra Small	<3,001	0.25
Small	3,001–15,000 ...	0.50
Medium	15,001–30,000	1.00
Large	30,001–60,000	1.50
Extra Large	>60,000	2.00

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FEE SCHEDULE OCTOBER 1, 1999–SEPTEMBER 30, 2000

Vessel size	GRT [1]	Fee ($)
Extra Small	<3,001	1,075
Small	3,001–15,000 ...	2,150
Medium	15,001–30,000	4,300
Large	30,001–60,000	6,450
Extra Large	>60,000	8,600

[1] GRT—Gross Register Tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

Inspections and reinspections involve the same procedure, require the same amount of time, and are, therefore, charged at the same rate.

[FR Doc. 99–19498 Filed 7–29–99; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Medical Child Support Working Group

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is given of the fourth meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998. The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments.

DATES: The meeting of the MCSWG will be held on Thursday, August 12, 1999, from approximately noon to approximately 6:30 p.m., and on Friday, August 13, 1999, from 8:30 a.m. to approximately 4 p.m.

ADDRESSES: The meeting will be held in Parlor H, on the sixth floor of the Palmer House Hilton and Towers, 17 East Monroe Street, Chicago, IL, 60603. All interested parties are invited to attend this public meeting. Seating may be limited and will be available on a first-come, first-served basis. Persons needing special assistance, such as sign language interpretation or other special accommodation, should contact the Executive Director of the Medical Child Support Working Group, Office of Child Support Enforcement at the address listed below.

FOR FURTHER INFORMATION CONTACT: Ms. Samara Weinstein, Executive Director Child Support Working Group, Office of Child Support Enforcement, Fourth Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447 (telephone (202) 401–6953; fax (202) 401–5559; e-mail: sweinstein@acf.dhhs.gov). These are not toll-free numbers. The date, location and time for subsequent MCSWG meetings will be announced in advance in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) (FACA) notice is given of a meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998 (Pub. L. 105–200).

The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments. This report will include: (1) Recommendations based on assessments of the form and content of the National Medical Support Notice, as issued under interim regulations; (2) appropriate measures that establish the priority of withholding of child support obligations, medical support obligations arrearages in such obligations, and in the case of a medical support obligation, the employee's portion of any health care coverage premium, by such State agencies in light of the restrictions on garnishment provided under title III of the Consumer Credit Protection Act (15 U.S.C. 1671–1677); (3) appropriate procedures for coordinating the provision, enforcement, and transition of health care coverage under the State programs for child support, Medicaid and the Child Health Insurance Program; (4) appropriate measures to improve the availability of alternate types of medical support that are aside from health care coverage offered through the noncustodial parent's health plan, and unrelated to the noncustodial parent's employer, including measures that establish a noncustodial parent's responsibility to share the cost of premiums, co-payments, deductibles, or payments for services not covered under a child's existing health coverage; (5) recommendations on whether reasonable cost should remain a consideration under section 452(f) of the Social Security Act; and (6) appropriate measures for eliminating any other impediments to the effective enforcement of medical support orders that the MCSWG deems necessary.

The membership of the MCSWG was jointly appointed by the Secretaries of DOL and DHHS, and includes representatives of: (1) DOL; (2) DHHS; (3) State Child Support Enforcement Directors; (4) State Medicaid Directors; (5) employers, including owners of small businesses and their trade and industry representatives and certified human resource and payroll professionals; (6) plan administrators and plan sponsors of group health plans (as defined in section 607(1)) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1)); (7) children potentially eligible for medical support, such as child advocacy organizations; (8) State medical child support organizations; and (9) organizations representing State child support programs.

AGENDA: The agenda for this meeting includes a discussion of the issues to be contained in the MCSWG's report to the Secretaries containing recommendations for appropriate measures to address the impediments to the effective enforcement of medical child support as listed above. At the May, 1999, meeting, the MCSWG formed four (4) sub-committees to discuss barriers, issues, options, and recommendations in the interim between full MCSWG meetings. At this August, 1999, meeting, the four sub-committees will present their initial issues and recommendations to the full MCSWG for further discussion and consideration.

PUBLIC PARTICIPATION: Members of the public wishing to present oral statements to the MCSWG should forward their requests to Samara Weinstein, MCSWG Executive Director, as soon as possible and at least four days before the meeting. Such requests should be made by telephone, fax machine, or mail, as shown above. Time permitting, the Chairs of the MCSWG will attempt to accommodate all such requests by reserving time for presentations. The order of persons making such presentations will be assigned in the order in which the requests are received. Members of the public are encouraged to limit oral statements to five minutes, but extended written statements may be submitted for the record. Members of the public also may submit written statements for distribution to the MCSWG membership and inclusion in the public record without presenting oral statements. Such written statements should be sent to the MCSWG Executive Director, as shown above, by mail or fax at least five business days before the meeting.

Minutes of all public meetings and other documents made available to the MCSWG will be available for public inspection and copying at both the DOL and DHHS. At DHHS, these documents will be available at the MCSWG Executive Director's Office, Office of Child Support Enforcement (OCSE), Administration for Children and Families, U.S. Department of Health and Human Services, Aerospace Building, Fourth Floor—East, 370 L'Enfant Promenade, SW, Washington, DC from 8:30 a.m. to 5:30 p.m. Questions regarding the availability of documents from DHHS should be directed to Andrew J. Hagan, OCSE (telephone (202) 401–5375). This is not a toll-free number. Any written comments on the minutes should be directed to Ms. Samara Weinstein, Executive Director of the Working Groups, as shown above.

Dated: July 26, 1999.

David Gray Ross,

Commissioner, Office of Child Support Enforcement.

[FR Doc. 99–19602 Filed 7–29–99; 8:45 am]
BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Reallotment of Funds for FY 1998 Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of determination concerning funds available for reallotment.

SUMMARY: In accordance with section 2607(b)(1) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621 *et seq.*), as amended, a notice was published in the **Federal Register** on June 8, 1999 announcing the Secretary's preliminary determination that $2,381,450.52 in FY 1998 Low Income Home Energy Assistance Program (LIHEAP) funds may be available for reallotment to other LIHEAP grantees. We received a comment from one of the grantees with excess carryover funds indicating that a further review of records revealed that the amount of funds available for reallotment is reduced by $172,597. No additional comments were received. Therefore, the amount of funds available for reallotment is $2,208,853.52.

It has now been determined that the funds will be realloted to all LIHEAP grantees based on the normal allocation formula. No subgrantees or other entities may apply for these funds.

FOR FURTHER INFORMATION CONTACT: Janet Fox, Director, Division of Energy Assistance, Office of Community Services, 370 L'Enfant Promenade, SW, Washington, DC 20447; telephone number (202) 401–9351.

Dated: July 27, 1999.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 99–19601 Filed 7–29–99; 8:45 am]
BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97P–0350]

Obstetrics and Gynecology Devices; Reclassification of Home Uterine Activity Monitor

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of panel recommendation.

SUMMARY: The Food and Drug Administration (FDA) is announcing for public comment the recommendation of the Obstetrics and Gynecology Devices Panel (the Panel) to reclassify the home uterine activity monitor (HUAM) from class III to class II. The Panel made this recommendation after reviewing the reclassification petition submitted by Corometrics Medical Systems, Inc., and other publicly available information. FDA also is announcing for public comment its tentative findings on the Panel's recommendation. After considering any public comments on the Panel's recommendation and FDA's tentative findings, FDA will approve or deny the reclassification petition by order in the form of a letter to the petitioner. FDA's decision on the reclassification petition will be announced in the **Federal Register**. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a guidance document that provides 510(k) applicants with specific directions regarding data and information that should be submitted to FDA in 510(k) submissions for HUAM's.

DATES: Written comments by October 28, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et. seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines

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whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of classified postamendments devices is governed by section 513(f)(2) of the act. This section provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition the Secretary of Health and Human Services (the Secretary) for the issuance of an order classifying the device in class I or class II. FDA's regulations in § 860.134 (21 CFR 860.134) set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Under section 513(f)(2)(B)(i) of the act, the Secretary may, for good cause shown, refer a petition to a device classification panel. The Panel shall make a recommendation to the Secretary respecting approval or denial of the petition. Any such recommendation shall contain: (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the petition was filed.

II. Regulatory History of the Device

A. Preamendments Devices

Before enactment of the 1976 amendments, tokodynamometers, integrated into electronic perinatal monitoring systems, were in commercial distribution. A tokodynamometer is a transducer and monitoring system used to make continuous external (abdominal) measurements of intrauterine pressure and provide strip chart tracings of the uterine contractions of a pregnant woman during labor. Preamendments perinatal monitors were marketed as systems for use in clinical settings, with different models for the office or hospital, and intended for clinical evaluation of the fetus and mother. In 1980, FDA classified these preamendments monitors (external uterine contraction monitor (21 CFR 884.2720) and perinatal monitoring system (21 CFR 884.2740) into class II.

B. Premarket Notifications

Between 1984 and 1987, FDA reviewed 510(k)'s for several HUAM's and found these HUAM's to be substantially equivalent to tokodynamometers used in clinical settings. HUAM manufacturers were permitted to market these devices for use in "low risk at-term" pregnancies. However, FDA determined that use of the HUAM for "the early detection of preterm labor (PTL) in high risk patients" constituted a new intended use. For this new use, FDA determined that the HUAM was not substantially equivalent to any preamendments class I, class II, or class III device not subject to an approved PMA, or to any postamendments device that had been classified into class I or class II for the early detection of PTL. Accordingly, FDA advised HUAM manufacturers that the device was classified into class III under section 513(f)(1) of the act, and that it could not be placed in commercial distribution for early detection of PTL in high risk patients unless it was reclassified under section 513(f)(2), or subject to an approved PMA under section 515 of the act.

C. PMA Reviews and Related Issues

Subsequent to 1987, several PMA's for HUAM's were submitted to FDA and referred to the Panel for its recommendations.

On May 26, 1988, the first PMA the Panel considered was the Tokos' Term Guard™ device. The Panel recommended that this PMA not be approved because the supporting data did not show the individual contribution the monitor made to the early detection of PTL, over and above that attributable to the regimen of daily patient contact (Ref. 1).

On March 6, 1989, the Panel reviewed a PMA submitted by Healthdyne, Inc., for its System 37™ HUAM and recommended that the PMA be found not approvable because the primary study endpoint (physician intervention) was considered too subjective and the study lacked a control group (Ref. 2).

On January 18 and April 4, 1990, the Panel reviewed a PMA submitted by Physiological Diagnostic Systems, Inc., for its Genesis™ HUAM. This PMA was supported by a randomized controlled clinical study that demonstrated the individual contribution of the monitor to the early detection of PTL, as evidenced by cervical dilation at the time of PTL diagnosis. These data, within the study, were compared with the standard care for high risk patients without monitoring. On the basis of this data, the Panel recommended approval of the Genesis™ HUAM for the early detection of PTL in only one high risk patient group (Refs. 3 and 4). Subsequently, on September 12, 1990, FDA approved a PMA for the Genesis™ HUAM. This HUAM is indicated for use, in conjunction with standard high risk care, for the daily at-home measurement of uterine activity in pregnancies ≥24 weeks gestation for women with a history of previous preterm birth. With the Genesis™ system, uterine activity is displayed at a remote location to aid in the early detection of PTL, as evidenced by cervical dilation at the time of PTL diagnosis (Ref. 5).

On June 11, 1990, the Panel reviewed a new PMA from Healthdyne for its System 37™ HUAM. Healthdyne submitted new data and claimed that the System 37™ would identify women, already known to be a high risk for PTL, who were at an even higher risk of preterm birth. The Panel recommended that this PMA not be approved because of inherent study design flaws. In particular, the outcome variable (incidence of preterm birth) had significant intra and interobserver variation, and the study entry criteria were biased (Ref. 6).

On April 29 and 30, 1993, the Panel reviewed a PMA for the DT 100–P HUAM manufactured by Advanced Medical Systems. This HUAM system was indicated for the early detection of PTL in women with twin gestations. The Panel reviewed the PMA and recommended that the PMA be found not approvable because all the key clinical data came from only one site and because significant engineering questions regarding the monitoring system were unanswered.

The Panel also considered several FDA prepared questions on the interpretation of clinical study findings supporting other PMA's under review. In addition, the Panel addressed certain issues relative to the existing draft guidance document entitled "Premarket Testing Guidelines for Home Uterine Activity Monitors" (March 31, 1993). Issues discussed included: (1) The use of a random sample of examiners to address intra and interobserver variance; (2) the use of a standard definition for the terms "preterm labor" and "standard of care for high risk patients"; (3) limiting study inclusions

to a minimum gestational age of 20 weeks; and (4) allowing the use of subgroup analysis, except for the purpose of making promotional claims. The Panel also noted the importance of blinding procedures for patients and investigators, but did not go so far as to identify it as a requirement.

During the April 1993 meeting, the Panel stressed that FDA should look at how the HUAM device is promoted and how often it is used for indications for which it is not approved in the context of postapproval studies or annual reporting (Ref. 7). Also, during this meeting, FDA informed the industry that in light of the many published studies on HUAM's, the devices were a good candidate for reclassification and invited them to petition FDA for a change in classification of the devices.

During the Panel meeting of September 2, 1994, FDA sought additional guidance regarding clinical review issues on HUAM PMA's. The Panel reconsidered whether cervical dilation at the time of PTL diagnosis should remain the primary clinical endpoint. Alternative endpoints were discussed and despite the difficulties and imperfections of using cervical dilation, the Panel concluded that this endpoint should remain an acceptable alternative for HUAM efficacy studies (Ref. 8).

During the Panel meeting of April 24, 1995 (Ref. 9), Caremark, Inc., presented the clinical efficacy study results for its First Activity® HUAM. The study included design elements specifically recommended and preferred by the Panel, including a sham control. When compared to standard clinical care for high risk patients, the study showed no added benefit when using an HUAM for either early PTL detection or reduced preterm births. These findings did not persuade the Panel to change its earlier recommendations regarding acceptable elements of study designs.

On September 29, 1995, FDA approved PMA's for Healthdyne's System 37™ and CareLink Corp.'s CareFone™ HUAM's, for the same indication as the Genesis™ HUAM; i.e., in conjunction with standard high risk care, the HUAM was approved for the daily at-home measurement of uterine activity in pregnancies, ≥24 weeks gestation, for women with a history of previous preterm birth. The uterine activity of these devices is also displayed at a remote location to aid in the early detection of PTL.

D. Reclassification Petition

On August 15, 1997, FDA received a petition from Corometrics Medical Systems, Inc., for its Model 770 BMS HUAM system requesting FDA to reclassify the HUAM system from class III to class II under section 513(f)(2) of the act and § 860.134, based on information submitted in the petition (Ref. 10).

Consistent with the act and the regulation, FDA referred the petition to the Panel for its recommendation on the requested change in classification.

III. Device Description

A home uterine activity monitor is an at-home monitoring system that consists of a tocotransducer and abdominal belt, an at-home recorder/memory system, a telephone data transmitter (at-home modem), and a separate data receiving, storage, and display system that is located, remote from the home, in a clinical setting (data receiving center). The device is intended to be used on women with a previous preterm delivery to aid in the detection of PTL.

At home, per instructions by the obstetrician, a pregnant woman secures the tocotransducer around her abdomen for a specified duration and frequency. Uterine muscular distention (tone) changes, indirectly detected by the tocotransducer, are recorded and stored in the recorder/memory. Either immediately after recording or at a later time, the uterine activity data is transmitted via the modem to the data receiving center for clinical evaluation.

The receiving center has a computerized system with specialized software to receive, store, and display the uterine activity data for clinical evaluation at the remote clinical site. Based on the evaluation of the uterine activity tracing, the patient is referred to her obstetrician for further followup to determine whether she has started PTL.

IV. Recommendations of the Panel

In a public meeting on October 7, 1997, the Panel unanimously recommended that the HUAM be reclassified from class III to class II for use in early detection of PTL, as evidenced by cervical dilation at PTL diagnosis, for women with a previous history of preterm birth (Refs. 11 and 12). The Panel believed that class II with special controls of patient registries, bench testing, consensus standards, and clinical validation studies would provide reasonable assurance of the safety and effectiveness the device.

V. Risks to Health

During its review and discussion of the proposed reclassification of the HUAM, the Panel identified certain risks to health they believed were associated with use of the HUAM. The risks were identified as : (1) Off-label use; (2) initiation of a cascade of interventions including bed rest, hospitalization, and medications; and (3) disabilities and psychological concerns, such as quality of life issues. The Panel had other concerns they believed were hazards to health. They identified the specific hazards as needless exposure to tocolytics and steroids resulting from detection of clinically meaningless contractions, alterations in quality of life from false positives, and inability to identify contractions because of a failure of the transducer to be sensitive and specific.

After considering the discussion by the Panel during the reclassification proceedings, reviewing the reclassification petition, medical device reports, and published literature, FDA identified the following risks it believed are associated with use of the HUAM when used in early detection of PTL, as evidenced by cervical dilation at PTL diagnosis, for women with a history of previous preterm birth:

A. Electric Shock and/or Injury

HUAM's are electrically powered devices which can cause electrical shock to the patient or clinician, leading to injury or death. This potential risk is well understood, and it can be mitigated by appropriate system design such as sufficient electrical isolation and other safety measures in accordance with applicable consensus standards.

B. Skin Irritation and Sensitization

HUAM's have accessories that make contact with the skin, namely, the tocotransducer and abdominal belt. Any material that comes in contact with the skin has the potential for causing skin irritation and sensitization. This risk can be lessened, if it occurs, by a consensus standard for material safety.

C. Unnecessary Evaluation and Treatment

Unnecessary evaluation and treatment may result from an imprecise definition of PTL or failure of an HUAM to accurately depict uterine activity. Diagnosis of PTL is often difficult, and many times can only be confirmed retrospectively by the preterm delivery. Nonetheless, the consequences of preterm delivery can be devastating in terms of neonatal morbidity and mortality. There is a concern that the use of an HUAM system can cause unnecessary visits to the clinic which could, in turn, lead to over-diagnosis of PTL and unnecessary treatment with tocolytics for women who have increased uterine activity but are not destined for preterm delivery. Improper device design or a malfunctioning

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device can also result in an apparent increase in uterine activity and unnecessary clinical visits, thereby leading to unnecessary treatment with tocolytic agents intended to stop or slow labor.

D. Disabilities and Psychological Issues

Physical disabilities and psychological burdens may result from the clinical management of women diagnosed with PTL. For example, the use of some tocolytic agents sometimes causes temporary or permanent injury to the mother. Moreover, the HUAM regimen coupled with a tocolysis regimen can significantly disrupt a woman's pregnancy and her quality of life. Nonetheless, it is noted that a high risk pregnancy is often psychologically debilitating to the patient, and tocolytics may be prescribed for unmonitored women as well.

E. Other Risks From Use in Unproven Patient Populations

HUAM's have only been approved for use on women who have had a previous preterm delivery. The overuse of HUAM's for other indications, i.e., PTL in the current pregnancy, multiple gestations, etc., were expressed concerns of the Panel. The clinical utility for these other indications has not been proven.

VI. Benefits

HUAM's provide a benefit to high risk patients by helping to detect PTL at an early stage, as evidenced by cervical dilation, thereby allowing for early management of PTL. Early detection of PTL increases the likelihood of successful tocolysis, leading hopefully to the ultimate benefit of fewer preterm births and lower infant mortality and premature births. However, because this is only a monitoring device, FDA has required HUAM manufacturers to show that the devices provide contraction information that contributes to the diagnosis of PTL. Manufacturers are not required to show a reduction in the outcome measures because they are a result of successful intervention after diagnosis.

HUAM technology is well-established with a long history of safe use at home and in the clinical setting. HUAM device design does not vary substantially from manufacturer to manufacturer in terms of underlying technology and clinical performance. Specific design choices are not expected to affect the risk to the patient. Therefore, FDA believes that randomized controlled clinical studies intended to show early PTL detection are no longer necessary and that the special controls described in section IX of this document would provide reasonable assurance of the safety and effectiveness of the device.

VII. Summary of Reasons for Recommendation

After reviewing the data and information contained in the petition and provided by FDA, and after consideration of the open discussions during the Panel meetings and the Panel members' personal knowledge of and clinical experience with the device, the Panel gave the following reasons in support of its recommendation to reclassify the generic type HUAM for use, in conjunction with standard high risk care, in the daily at-home measurement of uterine activity in pregnancies ≥24 weeks gestation for women with a history of previous preterm birth from class III into class II:

1. The Panel believes that general controls by themselves are not sufficient to provide reasonable assurance of safety and effectiveness.

2. The Panel believes that the HUAM should be reclassified into class II because special controls, in addition to general controls, provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

VIII. Summary of Data Upon Which the Panel Recommendation is Based

The Panel considered a large number of published clinical studies ranging in size, control, study population, and outcome measures (Ref. 10). Statistical analyses of various studies were also considered. The Panel believed that these studies, as an aggregate, established the effectiveness of HUAM's, and qualified their effectiveness as an adjunctive tool for monitoring high risk pregnancies. At least one study showed that when HUAM's are used in combination with daily nursing care, PTL can be detected earlier than it is detected by the standard clinical management of patients at high risk for PTL (Ref. 12). Other studies showed that when used without daily nursing contact, HUAM's detected PTL earlier (as evidenced by cervical dilation at the time of PTL diagnosis) than standard clinical care of a select patient populations (Refs. 5 and 14). On the other hand, some controlled studies showed that, for high risk populations, HUAM's do not contribute to PTL detection rate or a reduction in preterm deliveries when used with daily nursing contact (Refs. 15 and 16). Some studies evaluated HUAM's for managing pregnant women who were at risk for preterm birth for other reasons, e.g., multiple gestation and PTL in the current pregnancy (Refs. 5, 12, 13, 14, 15, and 16). The Panel did not evaluate the evidence for these indications.

Most of the risks associated with HUAM's identified by the Panel were indirect effects attributable to incorrect monitoring information or misinterpretation of monitoring information leading to misdiagnosis. The concern that the use of the device would result in an increase in the number of hospital visits and use of tocolytics was not borne out in the published literature. The potential risk of misdiagnosis is one that is generally mitigated by proper training, adequate labeling, and limited use of the device by the clinician.

Based on the available information, FDA believes that the special controls discussed in section IX of this document are capable of providing reasonable assurance of the safety and effectiveness of the HUAM with regard to the identified risks to health of this device.

IX. Special Controls

In addition to general controls, FDA believes that the special controls (patient registries and guidance document) discussed in this section are adequate to control the risks to health described for this device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a guidance document entitled "Home Uterine Activity Monitors: Guidance for the Submission of 510k Premarket Notifications" that provides 510(k) applicants with specific directions regarding data and information that should be submitted to FDA in 510(k) submissions for HUAM's.

A. Patient Registries

The rationale for using patient registries is that it provides a means for characterizing the nature of the patient population for which the device is actually used and to track information about the labor and delivery of women for whom the device was prescribed. FDA believes that using patient registries, in a structured sampling format, will provide outcome data that will contribute to appropriate use of the device.

B. Guidance Document (Home Uterine Activity Monitors: Guidance for the Submission of Premarket Notifications)

This document incorporates: (1) The consensus standards from professional organizations to provide uniformity, (2) bench testing and validation study information to validate the effectiveness and performance of the device, and (3)

labeling to describe the device's capabilities and discourage off-label use.

1. Bench Testing

Bench testing can validate the ability of the HUAM to operate (independently or in combination with clinical validation studies) as intended, i.e., to collect, store, and transmit data. Bench testing can also address the risk of false positives and the resulting inappropriate management of the patient. Appropriately designed bench testing will ensure that uterine activity, and contractions in particular, are accurately measured and displayed by the device, thereby minimizing false positives associated with the device.

2. Consensus Standards

The International Electrotechnical Commission (IEC) standards 601–1 for medical electrical equipment and 601–1–2 for general safety identify the electrical safety and electromagnetic compatibility aspects for any type electrical device. Adherence to these standards can control the risks of electrical shock and/or injury to the patient and clinician. Copies of these standards may be obtained from IEC, AT3, Rue de Varembe, P.O. Box 131, Geneva, Switzerland, CH–1211. IEC also maintains a site on the world wide web at "http://www.iec.ch". Testing in accordance with any of a variety of material safety consensus standards, such as ISO–10993, Biological Evaluation of Medical Devices, Part 1: Evaluation and Testing, can minimize the risks of skin irritation and sensitization caused by the tocotransducer and abdominal belt. Copies of this and other material safety standards may be obtained from International Organization for Standardization, Case Postal, Geneva, Switzerland, CH–1121. ISO also maintains a site on the World Wide Web at "http://www.iso.org".

3. Clinical Validation Study

The rationale for using a clinical validation study is to address the risk of false positives and the resulting inappropriate management of the patient. The objective of this limited clinical validation study is to address the remaining performance issues of the device, namely, the recording and data transmission functions that cannot be addressed via bench testing. The system should be tested in a small clinical study, in its intended setting with actual subjects. The study endpoints should address the readability of the received tracings, i.e., are the contractions correctly perceived by the clinician. The outcome of a limited clinical validation study would address and possibly mitigate the risk of unnecessary evaluation and treatment of the patient.

4. Labeling Requirements

Labeling addresses the risk of use of the device in unproved patient populations. Diagnosis of PTL is often difficult, and many times can only be confirmed retrospectively by the actual preterm delivery. Yet, the consequences of preterm delivery can be devastating in terms of neonatal morbidity and mortality. An HUAM system that causes additional visits to a clinic could lead to over-diagnosis of PTL and unnecessary treatment with tocolytics for women who have increased uterine activity but are not destined for preterm delivery. Labeling should provide an accurate description of the device's capabilities and discourage the off-label use of the device and limit the perpetuation of false claims of the device's capabilities.

FDA believes labeling which describes the capabilities and limitations of the HUAM system device can lead to a more informed use of this technology by the clinician, thereby mitigating the risks of unnecessary evaluations and treatments, disabilities, and psychological issues.

X. FDA's Tentative Findings

The Panel and FDA believe that the HUAM should be classified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to established special controls to provide such assurance.

XI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday:

1. Obstetrics and Gynecology Devices Panel Meeting, Summary Minutes, May 26, 1988.

2. Obstetrics and Gynecology Devices Panel Meeting, Summary Minutes, March 6, 1989.

3. Obstetrics and Gynecology Devices Panel Meeting, Summary Minutes, January 18, 1990.

4. Obstetrics and Gynecology Devices Panel Meeting, Summary Minutes, April 4, 1990.

5. Mou, S. M. et al., "Multicenter Randomized Clinical Trial of Home Uterine Activity Monitoring for Detection of Preterm Labor," *American Journal of Obstetrics and Gynecology*, 165(4)1:858–866, 1991.

6. Obstetrics and Gynecology Devices Panel Meeting, Summary Minutes, June 11, 1990.

7. Obstetrics and Gynecology Devices Panel Meeting, Summary Minutes, April 29 and 30, 1993.

8. Obstetrics and Gynecology Devices Panel Meeting, Summary Minutes, September 2, 1994.

9. Obstetrics and Gynecology Devices Panel Meeting, Summary Minutes, April 24, 1995.

10. Reclassification Petition Submitted by Corometrics Medical Systems, Inc., June 5, 1997.

11. Obstetrics and Gynecology Devices Panel Meeting, Transcript, October 7, 1997.

12. Hill, W. C. et al., "Home Uterine Activity Monitoring is Associated With a Reduction in Preterm Birth," *Obstetrics and Gynecology*, 76 (1 Supplement):13s–18s, 1990.

13. Dyson, D. C. et al., "Prevention of Preterm Birth in High Risk Patients: The Role of Education and Provider Contact versus Home Monitoring," *American Journal of Obstetrics and Gynecology*, 164(3):756–762, 1991.

14. Wapner, R. J. et al., "A Randomized Multicenter Trial Assessing a Home Uterine Activity Monitoring Device Used in the Absence of Daily Nursing Contact," *American Journal of Obstetrics and Gynecology*, 172(3):1026–1034, 1995.

15. Blondel, B. et al., "Home Uterine Activity Monitoring in France: A Randomized, Controlled Trial," *American Journal of Obstetrics and Gynecology*, 167(2):424–429, 1992.

16. Iams, J. D., F. F. Johnson, and R. W. O-Shaughnessy, "A Prospective Random Trial of Home Uterine Activity Monitoring in Pregnancies at Increased Risk of Preterm Labor, Part II," *American Journal of Obstetrics and Gynecology*, 150(3):595–603, 1988.

XII. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this reclassification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XIII. Analysis of Impacts

FDA has examined the impacts of the notice under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential

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economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this reclassification action is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the reclassification action is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of the device from class III to class II will relieve manufacturers of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this reclassification action, if finalized, will not have a significant economic impact on a substantial number of small entities. In addition, this reclassification action will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

XIV. Request for Comments

Interested persons may, on or before October 28, 1999, submit to the Dockets Management Branch (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

Dated: June 30, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–19530 Filed 7–29–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2098]

Computer-Controlled Potentially High Risk Medical Devices—List of Device Types

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Computer-Controlled Potentially High Risk Medical Devices—List of Device Types." FDA has developed a list of types of computer-controlled, potentially high-risk medical devices that have the potential for the most serious consequences for the patient should they fail because of date-related problems. This list will be useful to FDA, manufacturers, and health care facilities as they prioritize and assess their efforts to prevent potential Year 2000 (Y2K) problems with medical devices. This list has previously been made available on FDA's web site.

FOR FURTHER INFORMATION CONTACT: Thomas B. Shope, Center for Devices and Radiological Health (HFZ–140), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–3314, ext. 32.

SUPPLEMENTARY INFORMATION:

I. Background

In order to more sharply focus agency efforts related to the possible impact of the Y2K date problem on medical devices, FDA has developed a list of types of computer-controlled, potentially high-risk medical devices that have the potential for the most serious consequences for the patient should they fail. Inclusion of a type of device on this list does not mean that all devices of this type have a date-related problem (are Y2K noncompliant) or, if they are Y2K noncompliant, that they necessarily pose a significant risk to patients. Rather, this list includes those types of devices that could pose a risk to patients if the date-related failure affects the function or operation of the device. FDA will use this list to identify those devices (and manufacturers) that would present the most serious risks to patients if they experienced a Y2K related failure. This will help the agency to focus attention on the devices that could present the highest levels of risk.

The list includes the types of computer-controlled devices whose failure to function as designed or expected could result in immediate and serious adverse health consequences. These potentially high-risk devices are those that are:

1. Used in the direct treatment of a patient where device failure could compromise the treatment or could injure the patient, or
2. Used in the monitoring of vital patient parameters and whose data are immediately necessary for effective treatment, or
3. Necessary to support or sustain life during treatment or patient care.

The list does not include diagnostic devices whose failure would not result in immediate harm to the patient, even though the diagnostic information they provide might be unavailable or incorrect. However, a few diagnostic devices have been included, if the results of calculations or other information processing by the device would not be readily apparent to the user, and a Y2K failure of the device could reasonably lead to serious adverse health consequences before being detected by the user.

This list of computer-controlled potentially high-risk devices will be used by FDA for several purposes and can also provide a guide to health care facilities regarding the types of devices that should receive priority in their assessment and remediation of medical devices.

FDA will identify all manufacturers of these types of devices. These manufacturers will be candidates for further oversight to provide increased assurance that product Y2K status has been carefully assessed and that any Y2K-related upgrade has been developed and tested in accordance with the quality system regulations. That oversight may include facility inspection or audit. FDA will also ascertain whether these manufacturers have made Y2K status information available to users, and that, where appropriate, users have received notification regarding any remedial action that may be necessary.

This list should not be considered a definitive list of all high-risk devices. It was developed by FDA staff based on their assessment of the types of devices that have the greatest potential for direct patient risk should they fail to correctly process date-related information. FDA will update the list, if necessary.

II. Electronic Access

In order to receive a copy of "Computer-Controlled Potentially High Risk Medical Devices—List of Device Types" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1142) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the list may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes "Computer-Controlled Potentially High Risk Medical Devices—List of Device Types," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh". "Computer-Controlled Potentially High Risk Medical Devices—List of Device Types" will also be available at "http://www.fda.gov/cdrh/yr2000/cdrh/phrds/phrds.html".

III. List of Potentially High Risk Devices

The following list contains the potentially high-risk device types. Where the generic device type has been classified by FDA, the list includes the section number in Title 21 of the Code of Federal Regulations where the device type is described. For those devices cleared for market through the premarket approval application process or which have not yet been classified, no classification regulation number is given.

A. Classified Devices

(Classification regulation number followed by classification name)
862.1345 Glucose Test System
862.2140 Centrifugal Chemistry Analyzer for Clinical Use
862.2150 Continuous Flow Sequential Multiple Chemistry Analyzer for Clinical Use
862.2160 Discrete Photometric Chemistry Analyzer for Clinical Use
862.2170 Micro Chemistry Analyzer for Clinical Use
868.1150 Indwelling Blood Carbon Dioxide Partial Pressure (P_{CO2}) Analyzer
868.1200 Indwelling Blood Oxygen Partial Pressure (P_{O2}) Analyzer
868.1730 Oxygen Uptake Computer
868.2375 Breathing Frequency Monitor
868.2450 Lung Water Monitor
868.5160 Gas Machine for Anesthesia or Analgesia
868.5330 Breathing Gas Mixer
868.5400 Electroanesthesia Apparatus
868.5440 Portable Oxygen Generator
868.5470 Hyperbaric Chamber
868.5610 Membrane Lung (for Long-Term Pulmonary Support)
868.5830 Autotransfusion Apparatus
868.5880 Anesthetic Vaporizer
868.5895 Continuous Ventilator
868.5925 Powered Emergency Ventilator
868.5935 External Negative Pressure Ventilator
868.5955 Intermittent Mandatory Ventilation Attachment
870.1025 Arrhythmia Detector and Alarm
870.1750 External Programmable Pacemaker Pulse Generator
870.3535 Intra-aortic Balloon and Control System
870.3545 Ventricular Bypass (Assist) Device
870.3600 External Pacemaker Pulse Generator
870.3610 Implantable Pacemaker Pulse-Generator
870.3700 Pacemaker Programmers
870.4220 Cardiopulmonary Bypass Heart-Lung Machine Console
870.4320 Cardiopulmonary Bypass Pulsatile Flow Generator
870.4330 Cardiopulmonary Bypass On-Line Blood Gas Monitor
870.4360 Nonroller-Type Cardiopulmonary Bypass Blood Pump
870.4370 Roller-Type Cardiopulmonary Bypass Blood Pump
870.4380 Cardiopulmonary Bypass Pump Speed Control
870.5225 External Counter-Pulsating Device
870.5300 DC-Defibrillator Low Energy (Including Paddles)
876.5270 Implanted Electrical Urinary Continence Device
876.5630 Peritoneal Dialysis System and Accessories
876.5820 Hemodialysis System and Accessories
876.5860 High Permeability Hemodialysis System
876.5870 Sorbent Hemoperfusion System
876.5880 Isolated Kidney Perfusion and Transport System and Accessories
880.5130 Infant Radiant Warmer
880.5400 Neonatal Incubator
880.5410 Neonatal Transport Incubator
880.5725 Infusion Pump
882.5820 Implanted Cerebellar Stimulator
882.5830 Implanted Diaphragmatic/Phrenic Nerve Stimulator
882.5840 Implanted Intracerebral/Subcortical Stimulator For Pain Relief
882.5850 Implanted Spinal Cord Stimulator for Bladder Evacuation
882.5860 Implanted Neuromuscular Stimulator
882.5870 Implanted Peripheral Nerve Stimulator for Pain Relief
882.5880 Implanted Spinal Cord Stimulator for Pain Relief
884.1700 Hysteroscopic Insufflator
884.1730 Laparoscopic Insufflator
884.2660 Fetal Ultrasonic Monitor and Accessories
892.5050* Medical Charged-Particle Radiation Therapy System
892.5300* Medical Neutron Radiation Therapy System
892.5700* Remote Controlled Radionuclide Applicator System
892.5750* Radionuclide Radiation Therapy System
892.5900* X-ray Radiation Therapy System

* The device classifications specified previously with an asterisk include radiation treatment planning systems that are accessories to these device types.

B. Post Medical Device Amendments Class III Devices and Devices not yet Classified

Automated Blood Cell and Plasma Separator for Therapeutic Purposes
Cardioconverter, Implantable Defibrillator, Automatic Implantable Cardioverter
Defibrillator, Implantable, Dual-Chamber
Device, Thermal Ablation, Endometrial
Kit, Test, Alpha-Fetoprotein for Neural Tube Defects
Lipoprotein, Low Density, Removal Pulse-Generator, Dual Chamber, Implantable
Pulse-Generator, Program Module
Pulse-Generator, Single Chamber
Pulse-Generator, Single Chamber, Sensor Driven, Implantable
Pump, Drug Administration, Closed Loop
Pump, Infusion, Implanted, Programmable
Separator for Therapeutic Purposes, Membrane Automated Blood Cell/Plasma
Stimulator, Cortical, Implanted (for Pain)
Stimulator, Electrical, Implanted, for Parkinsonian Tremor
Stimulator, Sacral Nerve, Implanted
Stimulator, Spinal-Cord, Totally Implanted for Pain Relief
Stimulator, Subcortical, Implanted for Epilepsy
System, Pacing, Temporary, Acute, Internal Atrial Defibrillation
Ventilator, High Frequency

Dated: July 19, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1458]

Enforcement Policy: Electronic Records; Electronic Signatures—Compliance Policy Guide; Guidance for FDA Personnel

Note: On July 21, 1999 (64 FR 39146), this document was published with some inadvertent errors. For the convenience of the reader, the document is being republished in its entirety.

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a new Compliance Policy Guide (CPG) section 160.850 entitled "Enforcement Policy: 21 CFR Part 11; Electronic Records; Electronic Signatures." This CPG is intended to represent the agency's current thinking on how to comply with the regulations for electronic records and electronic signatures. It also provides that agency decisions on whether or not to pursue regulatory actions will be based on a case-by-case evaluation. The text of the CPG is included in this document.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of CPG section 160.850 entitled "Enforcement Policy: 21 CFR Part 11; Electronic Records; Electronic Signatures" to the Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852. Send two self-addressed adhesive labels to assist that office in processing your requests. Written comments should be identified with the docket number found in brackets in the heading of this document and should be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A copy of the CPG is available on FDA's website at "http://www.fda.gov/ora/compliance_ref/cpg/cpggenl/default.htm". Scroll down the CPG page to locate section 160.850.

FOR FURTHER INFORMATION CONTACT: James F. McCormack, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852, 301–827–0425.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a new CPG section 160.850 entitled "Enforcement Policy: 21 CFR Part 11; Electronic Records; Electronic Signatures." The CPG is an update to the Compliance Policy Guides Manual (August 1996 ed.). It is a new CPG and will be included in the next printing of the Compliance Policy Guides Manual. The CPG is intended for FDA personnel and is available electronically to the public. See the **ADDRESSES** section for electronic access to the CPG. The CPG is a level 2 guidance which is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulation, or both.

The text of the CPG follows:

Section 160.850

Title: Enforcement Policy: 21 CFR Part 11; Electronic Records; Electronic Signatures (CPG 7153.17)

Background:

This compliance guidance document is an update to the Compliance Policy Guides Manual (August 1996 edition). This is a new Compliance Policy Guide (CPG) and will be included in the next printing of the Compliance Policy Guides Manual. The CPG is intended for Food and Drug Administration (FDA) personnel and is available electronically to the public. This guidance document represents the agency's current thinking on what is required to be fully compliant with 21 CFR Part 11, "Electronic Records; Electronic Signatures" and provides that agency decisions on whether or not to pursue regulatory actions will be based on a case by case evaluation. The CPG does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulation, or both.

In the **Federal Register** of March 20, 1997 at 62 FR 13429, FDA issued a notice of final rulemaking for 21 CFR, Part 11, Electronic Records; Electronic Signatures. The rule went into effect on August 20, 1997. Part 11 is intended to create criteria for electronic recordkeeping technologies while preserving the agency's ability to protect and promote the public health (e.g., by facilitating timely review and approval of safe and effective new medical products, conducting efficient audits of required records, and when necessary pursuing regulatory actions). Part 11 applies to all FDA program areas, but does not mandate electronic recordkeeping. Part 11 describes the technical and procedural requirements that must be met if a person chooses to maintain records electronically and use electronic signatures. Part 11 applies to those records required by an FDA predicate rule and to signatures required by an FDA predicate rule, as well as signatures that are not required, but appear in required records.

Part 11 was developed in concert with industry over a period of six years. Virtually all of the rule's requirements had been suggested by industry comments to a July 21, 1992 Advance Notice of Proposed Rulemaking (at 57 FR 32185). In response to comments to an August 31, 1994 Proposed Rule (at 59 FR 45160), the agency refined and reduced many of the proposed requirements in order to minimize the burden of compliance. The final rule's provisions are consistent with an emerging body of federal and state law as well as commercial standards and practices.

Certain older electronic systems may not have been in full compliance with Part 11 by August 20, 1997, and modification to these so called "legacy systems" may take more time. As explained in the preamble to the final rule, Part 11 does not grandfather legacy systems and FDA expects that firms using legacy systems will begin taking steps to achieve full compliance.

Policy:

When persons are not fully compliant with Part 11, decisions on whether or not to pursue regulatory actions will be based on a case by case evaluation, which may include the following:

Nature and extent of Part 11 deviation(s). FDA will consider Part 11 deviations to be more significant if those deviations are numerous, if the deviations make it difficult for the agency to audit or interpret data, or if the deviations undermine the integrity of the data or the electronic system. For example, FDA expects that firms will use file formats that permit the agency to make accurate and complete copies in both human readable and electronic form of audited electronic records. Similarly, FDA would have little confidence in data from firms that do not hold their employees accountable and responsible for actions taken under their electronic signatures.

Effect on product quality and data integrity. For example, FDA would consider the absence of an audit trail to be highly significant when there are data discrepancies and when individuals deny responsibility for record entries. Similarly, lack of operational system checks to enforce event sequencing would be significant if an operator's ability to deviate from the prescribed order of manufacturing steps results in an adulterated or misbranded product.

Adequacy and timeliness of planned corrective measures. Firms should have a reasonable timetable for promptly modifying any systems not in compliance (including legacy systems) to make them Part 11 compliant, and should be able to demonstrate progress in implementing their timetable. FDA expects that Part 11 requirements for procedural controls will already be in place. FDA recognizes that technology based controls may take longer to install in older systems.

Compliance history of the establishment, especially with respect to data integrity. FDA will consider Part 11 deviations to be more significant if a firm has a history of Part 11 violations or of inadequate or unreliable recordkeeping. Until firms attain full compliance with Part 11, FDA investigators will exercise greater vigilance to detect inconsistencies, unauthorized modifications, poor attributability, and any other problems associated with failure to comply with Part 11.

Regulatory Action Guidance:

Program monitors and center compliance offices should be consulted prior to recommending regulatory action. FDA will consider regulatory action with respect to Part 11 when the electronic records or electronic signatures are unacceptable substitutes for paper records or handwritten signatures, and that therefore, requirements of the applicable regulations (e.g., CGMP and GLP regulations) are not met. Regulatory citations should reference such predicate regulations in addition to Part 11. The following is an example of a regulatory citation for a violation of the device quality system regulations.

Failure to establish and maintain procedures to control all documents that are required by 21 CFR 820.40, and failure to use authority checks to ensure that only authorized individuals can use the system and alter records, as required by 21 CFR 11.10(g). For example, engineering drawings for manufacturing equipment and devices are stored in AutoCAD form on a desktop computer. The storage device was not protected from unauthorized access and modification of the drawings.

Dated: July 23,1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Coordination

[FR Doc. 99–19477 Filed 7–29–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–1817]

Home Uterine Activity Monitors Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Home Uterine Activity Monitors; Guidance for the Submission of 510(k) Premarket Notifications." Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of the panel recommendation to reclassify home uterine activity monitors (HUAM's) into class II (special controls) and FDA's tentative findings. FDA agrees that these monitors should be reclassified in class II, and the guidance that is the subject of this notice of availability is one of the special controls that FDA believes will provide reasonable assurance of the safety and effectiveness of these devices.

DATES: Submit written comments by October 28, 1999.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance entitled "Home Uterine Activity Monitors; Guidance for the Submission of 510(k) Premarket Notifications" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments on the "Home Uterine Activity Monitors; Guidance for the Submission of 510(k) Premarket Notifications" to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kathy Daws-Kopp, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, ext. 132.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance document describes a means by which HUAM's may comply with the requirement of special controls for class II devices. Designation of this guidance document as a special control means that manufacturers attempting to establish that their device is substantially equivalent to a predicate HUAM should demonstrate that the proposed device complies with either the specific recommendations of this guidance or some alternate control that provides equivalent assurances of safety and effectiveness.

The guidance document addresses such areas as: Intended use and indications for use; preclinical data including electrical safety testing, electromagnetic compatibility, software, material safety, and bench validation testing; clinical data; cleaning and disinfection; and labeling.

In addition to this guidance document, FDA is also proposing that patient registries be a special control for HUAM's.

II. Significance of Guidance

This guidance represents the agency's current thinking on premarket notifications for HUAM's. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive "Home Uterine Activity Monitors; Guidance for the Submission of 510(k) Premarket Notifications" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (820) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes "Home Uterine Activity Monitors; Guidance for the Submission of 510(k) Premarket Notifications," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh".

IV. Comments

Interested persons may, on or before October 28, 1999, submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance

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document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 30, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–19531 Filed 7–29–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–0377/0378/R–0054]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Request for Certification, HCFA–377 and the Ambulatory Surgical Center Survey Report Form, HCFA–378 and HCFA-R–0054 Supporting Regulations Contained in 42 CFR 416.1 thru 416.49; *Form No.:* HCFA–0377/0378/R–0054 (OMB# 0938–0200); *Use:* The ASC request for certification form is utilized as an application for facilities wishing to participate in the Medicare program as an ASC. This form initiates the process of obtaining a decision as to whether the conditions of coverage are met. It also promotes data retrieval from the Online Data Input Edit (ODIE system, a subsystem of the Online Survey Certification and Report (OSCAR) system by the Health Care Financing Administration's (HCFA) Regional Offices (RO)). The ASC report form is an instrument used by the State survey agency to record data collection in order to determine supplier compliance with individual conditions of coverage and to report it to the Federal government. The form is primarily a coding worksheet designed to facilitate data reduction and retrieval into the ODIE/OSCAR system at the HCFA ROs. This form includes basic information on compliance (i.e., met, not met and explanatory statements) and does not require any descriptive information regarding the survey activity itself.; *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 2,798; *Total Annual Responses:* 2,798; *Total Annual Hours:* 2,100.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 22, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–19482 Filed 7–29–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0106 and HCFA–R–0284]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Criteria for Medicare Coverage of Heart Transplants; *Form No.:* HCFA–R–106 (OMB No 0938–0490); *Use:* Medicare participating hospitals must file an application to be approved for coverage and payment of heart transplants performed on Medicare beneficiaries. The application must include the following data: patient selection, patient management, commitment, facility plans, experience and survival rates, maintenance of data, organ procurement, laboratory procedures, and billing. *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 5; *Total Annual Responses:* 5; *Total Annual Hours Requested:* 500.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicaid Statistical Information System (MSIS); *Form No.:* HCFA–R–0284 (OMB# 0938–0345); *Use:* State data are reported by a Federally mandated process known as MSIS. These data are the basis for: Medicaid actuarial forecasts for service utilization and costs; Medicaid legislative analysis and cost savings estimates; and responding to requests for information from HCFA components, the Department, Congress, and other customers. The national MSIS database will contain details that will allow constructive or predictive analysis of today's Medicaid issues (e.g., pregnant women, and infants).; *Frequency:* Quarterly and Annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 53; *Total Annual Responses:* 212; *Total Annual Hours:* 2,120.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 22, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–19481 Filed 7–29–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0282]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. This is necessary to ensure compliance with § 1852(c) of the Social Security Act and §§ 422.64, 422.111 and 422.560—422.622 of the CFR. We cannot reasonably comply with the normal clearance procedures because all beneficiaries who are eligible to elect M+C plans have had a legal right to receive appeals and grievance information from M+C organizations as of 1/1/99. If the agency does not provide formal guidance to M+C organizations, then it will be difficult for M+C organizations to operationalize the statutory and regulatory requirements. Furthermore, beneficiaries may be harmed by receiving inconsistent information across M+C organizations.

HCFA is requesting OMB review and approval of this collection by August 10, 1999, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by August 9, 1999. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection.

Title of Information Collection: Medicare + Choice (M+C) Organization Appeals and Grievance Data Collection and Reporting Requirements and Supporting Regulations in 42 CFR 422.64, 422.111, and 422.560–422.622.

HCFA Form Number: HCFA–R–0282 (OMB approval #: 0938–NEW).

Use: These information collection pertains to the aggregate number and disposition of grievances and appeals by M+C organizations. Both the Balanced Budget Act (BBA) of 1997 and the Government Performance and Results Act (GPRA) of 1993 establish a need for HCFA to set and monitor performance standards in the area of appeals. The purpose is to hold M+C organizations accountable to regulators and consumers, as well as promote informed choice.

Frequency: Semi-annually.

Affected Public: Business or other for-profit and Individuals or Households.

Number of Respondents: 331.

Total Annual Responses: 662.

Total Annual Burden Hours: 662.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by August 9, 1999:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262 Attn: Louis Blank HCFA–R–0282

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167. Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: July 22, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–19483 Filed 7–29–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection: Comment Request; Contraception and Infertility Research Loan Repayment Program

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of

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the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: Title: Contraception and Infertility Research Loan Repayment Program. Type of Request: Revision (OMB No. 0925–0440, Exp. 12/31/99). Form Number: NIH 2756–1, NIH 2756–2. Need and Use of Information Collection: The NICHD Contraception and Infertility Research Loan Repayment Program (CIR–LRP) intends to provide for the repayment of educational loan debt of health professionals (including graduate students) who agree to commit to a period of obligated service of not less than two years conducting research with respect to contraception and/or infertility. The CIR–LRP is designed to provide an incentive for health professionals to work in areas of reproductive research directly related to contraceptive development and/or infertility diagnosis and treatment by providing assistance in repaying educational loans for such individuals. The long-range objective of the CIR–LRP is to stimulate the commitment of researchers to sustaining a career focus on contraception and/or infertility research. The information proposed for collection will be used by the NICHD to determine an applicant's eligibility for participation in the CIR–LRP. It will enable the NICHD to select qualified individuals for participation in the program, and to deliver eligible benefits. The CIR–LRP application consists of two parts: Part I (Information About the Applicant) is completed by the applicant; Section A of Part II (Loan Information and Permission for Disclosure) is also completed by the applicant; and Section B, Part II (Lender's Verification) is completed by the Lending Institution. It may also be necessary for a State or other entity to verify an outstanding service obligation. In these instances, written verification of the service obligation will be requested from the State or other entity. Frequency of Response: On occasion. Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions. Type of Respondents: Health professionals or those training in the health professions; Lenders. The annual reporting burden is as follows:

	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Applicant	40	6	1.306	313.60
Lender	160	1	0.334	53.440
State/Other Entity	8	1	0.334	2.672
Total				369.712

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility: (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information collected; (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Louis DePaolo, Director, NICHD Contraception and Infertility Research Loan Repayment Program, CPR, NICHD, NIH, 6100 Executive Boulevard, Room 8B01, Bethesda, MD 20892, or call (301) 435–6970 or Email your request, including your address to: ld38p@nih.gov. Information can also be obtained via the World Wide Web at http://www.nih.gov/nichd/docs/research.html.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their effect if received within 60-days of the date of publication.

Dated: July 22, 1999.

Michael Rosenthal,

Acting Executive Officer, NICHD.

[FR Doc. 99–19502 Filed 7–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personnel privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Director's Challenge—Molecular Classification of Tumors.

Date: August 16–18, 1999.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ray Bramhall, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Blvd, Rockville, MD 20892, (301) 496–3428.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 21, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–19503 Filed 7–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee D—Clinical Studies.

Date: August 2–3, 1999.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Martin H. Goldrosen, MS, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Room 635C, Rockville, MD 20852–7408, (301) 496–7930.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 26, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–19506 Filed 7–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 30, 1999.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lawrence E. Chaitkin, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: August 12, 1999.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jack D. Maser, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 26, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–19504 Filed 7–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel National Drug Abuse Treatment Clinical Trials Network.

Date: August 4, 1999.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Susan L. Coyle, Phd, Chief, Clinical, Epidemiological and Applied Sciences Review Branch, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National

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Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: July 26, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–19505 Filed 7–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National institute of Allergy and infectious Diseases Special Emphasis Panel Review of Horga K08 Application.

Date: August 2, 1999.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant appications.

Place: NIAID, NIH, (Room 2148), 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610 (Telephone Conference Call).

Contact Person: Dianne E. Tingley, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 23, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–19509 Filed 7–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Clinical Trials Operations".

Date: July 29, 1999.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Production, Analysis, and Distribution of Cannabis and Marijuana Cigarettes".

Date: August 12, 1999.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: July 23, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–19510 Filed 7–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: August 9, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, Washington, DC 20037.

Contact Person: Russell E. Martenson, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Awards for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 23, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–19511 Filed 7–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: August 4, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd. Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–469–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: August 9, 1999.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Madison Hotel, Fifteenth & M Streets NW, Washington, DC 20005.

Contact Person: Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd. Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–469–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 22, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–19512 Filed 7–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Trauma and Burn.

Date: August 7, 1999.

Time: 8:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Miyako Hotel, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Bruce K. Wetzel, PhD, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–19, Bethesda, MD 20892, (301) 594–3907.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 22, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–19513 Filed 7–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. the grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Trauma and Burn.

Date: August 4, 1999.

Time: 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Harbor House, No. 28 at Pier 21, Galveston, TX 77550.

Contact Person: Bruce K. Wetzel, PhD, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–19, Bethesda, MD 20892, (301) 594–3907.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 22, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–19514 Filed 7–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

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amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 26, 1999.
Time: 2:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 30, 1999.
Time: 1:00 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: William C. Branche, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 30, 1999.
Time: 1:00 p.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jean Hickman, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: July 30, 1999.
Time: 3:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Nancy Shinowara, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1173, shinowan@drg.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 2, 1999.
Time: 10:00 a.m. to 11:00 a.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Edmund Copeland, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, (301) 435–1715.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 5–6, 1999.
Time: 8 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 5, 1999.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel r24s.
Date: August 5–6, 1999.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Inn, 1310 Wisconsin Ave., NW., Washington, DC 20007.
Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 5, 1999.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: The Admiral Fell Inn. 888 South Broadway, Historic Fell's Point, Baltimore, MD 21231.
Contact Person: David L. Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435–1278.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 5–6, 1999.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Ave., NW., Washington, DC 20007.
Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 5, 1999.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Inn, 1310 Wisconsin Ave., NW., Washington, DC 20007.
Contact Person: Carole L. Jelsema, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1249, jelsemac@drg.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–1FCN8–03.
Date: August 5, 1999.
Time: 10:00 a.m. to 11:00 a.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Samuel Rawlings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 5, 1999.
Time: 10:00 a.m. to 3:30 p.m.
Agenda: to review and evaluate grant applications.
Place: The River Inn, 924 25th Street, Washington, DC 20037.
Contact Person: J. Terrell Hoffeld, DDS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 5, 1999.
Time: 1:15 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Robert Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 5, 1999.
Time: 2:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Sami A. Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 5, 1999.
Time: 2:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@csr.nih.gov
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–IFCN8–02.
Date: August 5, 1999.
Time: 2:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Samuel Rawlings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 5, 1999.
Time: 4:00 p.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Timothy J. Henry, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review an funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 5, 1999.
Time: 12:00 p.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Edmund Copeland, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, (301) 435–1715.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review an funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 6, 1999.
Time: 2:00 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: John L. Bowers, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review an funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel zrg1-ifcn5–08.
Date: August 6, 1999.
Time: 10:00 a.m. to 11:30 a.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: John Bishop, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review an funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 6, 1999
Time: 11:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sami A. Mayyasi, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review an funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 23, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–19508 Filed 7–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Amended Notice of Meeting

Notice is hereby given of changes in the meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center, Executive Committee, July 30, 1999, 9:00 a.m. to 10:00 a.m., which was published in the **Federal Register** on July 19, 1999, 64 FR 38685.

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The meeting, which was advertized as closed, will be completely open to the public. The Board will approve the budget and discuss the Board oversight of clinical quality and expectations of Board members for the future.

The time of the meeting is changed to 10:30 a.m. to 11:45 a.m. As previously announced, the meeting will be held at the National Institutes of Health, Clinical Center Medical Board, Room 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Dated: July 23, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–19507 Filed 7–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Conjugate Vaccines to Prevent Disease Caused by Nontypeable Haemophilus influenzae and Moraxella catarrahalis, Particularly Otitis Media

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: US Patent Application Serial Number 08/842,409, entitled "Conjugate Vaccine for Nontypeable *H. influenzae*", filed April 23, 1997 and US Provisional Patent Application Serial Number 60/071,483 (now PCT/US99/00590), entitled "Lipooligosaccharide-Based Vaccine for Prevention of *Moraxella (Branhamella) catarrhalis* Infections in Humans", filed January 13, 1998, to Immune Complex Corporation, having a place of business in San Diego, CA. The patent rights in these inventions have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before September 28, 1999 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Robert Benson, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 267; Facsimile: (301) 402–0220; e-mail: rb20m@nih.gov.

SUPPLEMENTARY INFORMATION: The two patent applications describe conjugates of detoxified lipooligosaccharide (dLOS), isolated from the cellular membrane of either nontypeable *H. influenzae* or *M. catarrhalis*, and a carrier. These conjugates have been shown to raise bactericidal antibodies against the bacterial strain from which the dLOS was isolated and are also cross-reactive with different strains.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to the development of conjugate vaccines for the prevention or treatment of diseases in humans caused by infection with nontypeable *H. influenzae* and *M. catarrhalis*, wherein the carrier is composed of Hepatitis B Virus core protein-based particles. Publication of this notice should be considered a modification of an earlier notice on this subject published in Vol. 64, No. 43, page 10671, on March 5, 1999.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 22, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 99–19501 Filed 7–29–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–41]

Submission for OMB Review: Performance Funding System, Determination of Operating Subsidy for Vacancies

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: Housing Agencies (HAs) report the information to HUD on the Form HUD–52728 in their operating subsidy submissions. The submissions are reviewed and approved by HUD Field Offices and serve as the basis for obligating operating subsidies.

DATES: *Comments Due Date:* August 30, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0066) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposal use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 23, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Performance Funding System, Determination of Operating Subsidy for Vacancies.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0066.

Description of the Need for the Information and its Proposed Use: Housing Agencies (HAs) report the information to HUD on the Form HUD–52728 in their operating subsidy submissions. The submissions are reviewed and approved by HUD Field Offices and serve as the basis for obligating operating subsidies.

Form Number: HUD–52728.

Respondents: State, Local or Tribal Government.

Frequency of Submission: Recordkeeping Report Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–52728	3,100		1		2		6,200

Total Estimated Burden Hours: 6,200.

Status: Reinstatement, without change.

Contact: Joan DeWitt, HUD, (202) 708–1872 ext. 4035, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–19575 Filed 7–29–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–42]

Submission for OMB Review: Interim Assessment of the HOPE VI Program: Survey Development, Data Collection, and Case Studies

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: This study will continue the long-term assessment of the HOPE VI program and its effect on residents, neighborhoods,and cities. The study is looking at HOPE VI sites that have been re-occupied.

DATES: *Comments Due Date:* August 30, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB proposal number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the Office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 26, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Interim Assessment of the HOPE VI Program: Survey Development, Data Collection, and Case Studies.

Office: Policy Development and Research.

OMB Approval Number: 2528–XXXX.

Description of the Need for the Information and Its Proposed Use: This study will continue the long-term assessment of the HOPE VI program and its effects on residents, neighborhoods, and cities. The study is looking at HOPE VI sites that have been re-occupied.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours of response	=	Burden hours
Information Collection	1,500		1		0.25		375

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Total Estimated Burden Hours: 375.
Status: New.
Contract: Robert Leonard, HUD, (202) 708–3700 ext. 4027, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–19576 Filed 7–29–99; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N43]

Submission for OMB Review: Case Study Section 8 Rental Voucher and Rental Voucher and Rental Certificate Programs in Alameda County, CA

AGENCY: Office of the Assistant Secretary for Administration, HUD.
ACTION: Notice.

SUMMARY: The purpose of the study is to trace the movement patterns of Section 8 families in the Oakland-Alameda County, California region and to determine the reasons for moving using the portability feature of the Section 8 programs.

DATES: *Comments Due Date:* August 30, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 26, 1999.

David S. Cristy,
Director, Investment Strategies, Policy, and Management.

Title of Proposal: Case Study of Section 8 Rental Voucher and Rental Certificate Programs in Alameda, California.
Office: Policy Development and Research.
OMB Approval Number: 2528–XXXX.
Description of the Need for the Information and its Proposed Use: The purpose of the study is to trace the movement patterns of Section 8 families in the Oakland-Alameda County, California region and to determine the reasons for moving using the portability feature of the Section 8 programs.
Form Number: None.
Respondents: Individual or Households.
Frequency of Submission: On Time.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	300		0		0.5		150

Total Estimated Burden Hours: 150.
Status: New.
Contact: Garland E. Allen, HUD, (202) 708–3700 ext. 57104027, Joseph F. Lackey, Jr., OMB, (202) 397–7316.

[FR Doc. 99–19577 Filed 7–29–99; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR4485–N–02]

Submission for OMB Review: Public Housing Reform—Change in Admission and Occupancy Requirements

AGENCY: Office of the Assistant Secretary for Administration, HUD.
ACTION: Notice.

SUMMARY: PHAs will provide information required by statute on residency preferences, establishing individual savings accounts for residents, Community Services and Economic Self-Sufficiency Program, FSS Action Plan, over-income small PHAs as part of the admission and occupancy requirements for implementation of the Quality Housing and Work Responsibility Act of 1998.

DATES: *Comments Due Date:* August 30, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 23, 1999.

David S. Cristy,
Director, IRM Policy and Management Division.

Title of Proposal: Public Housing Reform—Change in Admission and Occupancy Requirements.
Office: Public and Indian Housing.
OMB Approval Number: 2577–XXXX.
Description of the Need for the Information and its Proposed Use: PHAs will provide information required by statute on residency preferences, establishing individual savings accounts for residents, Community Services and Economic Self-Sufficiency Program, FSS Action Plan, over-income small PHAs as part of the admission and occupancy requirements for implementation of the Quality Housing and Work Responsibility Act of 1998.
Form Number: None.
Respondents: Individuals or Household, State, Local or Tribal Government.
Frequency of Submission: Report Annually.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	3,400		1		50		169,300

Total Estimated Burden Hours: 169,300.
Status: New.
Contact: Patricia Arnaudo, HUD, (202) 708–10744 ext. 4250, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–19578 Filed 7–29–99; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4476–N–02]

Submission for OMB Review: Voluntary Conversion of Developments From Public Housing Stock: Assessments; Conversion Plan

AGENCY: Office of the Assistant Secretary for Administration, HUD.
ACTION: Notice.

SUMMARY: Public Housing Agencies can convert a development to tenant-based assistance voluntarily by removing the development or a portion of a development from its public housing inventory. PHAs will perform a conversion assessment first to support converting the units. Then, PHAs must develop and submit a conversion plan to HUD for approval.

DATES: *Comments Due Date:* August 29, 1999.

ADDRESSES: Interesed persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the Office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 23, 1999.

David S. Cristy,
Director, IRM Policy and Management Division.

Title of Proposal: Voluntary Conversion of Developments From Public Housing Stock: Assessment; Conversion Plan.
Office: Public and Indian Housing.
OMB Approval Number: 2577–XXXX.
Description of the Need for the Information and its Proposed Use: Public Housing Agencies can convert a development to tenant-based assistance voluntarily by removing the development or a portion of a development from its public housing inventory. PHAs will perform a conversion assessment first to support converting the units. Then, PHAs must develop and submit a conversion plan to HUD for approval.
Form Number: None.
Respondents: State, Local or Tribal Government.
Frequency of Submission: Report.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per Response	=	Burden hours
Information Collection	680		1		30		20,400

Total Estimated Burden Hours: 20,400.
Status: New.
Contact: Jennifer Fogel, HUD, (202) 708–0713 ext. 4113

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Joseph F. Lackey, Jr., OMB, (202) 395–7316

[FR Doc. 99–19579 Filed 7–29–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–30]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* versus *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 23, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–19346 Filed 7–29–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Allocation of Water Supply and Expected Long-Term Contract Execution, Central Arizona Project, Arizona

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior, Bureau of Reclamation (Reclamation), announces its intention to prepare environmental documents under section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, to assist in developing proposed modifications to previous Central Arizona Project (CAP) water allocations.

We anticipate that we will reallocate and offer contracts with certain quantities of CAP water in connection with (1) settlement discussions arising out of operation of the CAP; (2) settlement discussions arising out of legal claims involving the Gila River Indian Community and the San Carlos Indian Community, and (3) negotiations regarding implementation of the 1982 Southern Arizona Water Rights Settlement Act.

At present it is not clear whether the scope of the action and anticipated project impacts will require preparation of an environmental impact statement (EIS) or an environmental assessment (EA). However, to ensure a timely and appropriate level of NEPA compliance and to limit potential future delays to the proposed reallocation and contract actions, Reclamation is proceeding, at this time, as if the project impacts would require preparation of an EIS. Reclamation will reevaluate the need for an EIS after obtaining comments on the proposed action and analysis of alternatives and impacts during the NEPA process. Reclamation will publish a notice of cancellation if, as a result of additional information or analysis, a decision is made to prepare an EA rather than an EIS.

DATES: Comments must be received August 30, 1999.

ADDRESSES: Send written comments concerning the proposal to Mr. Bruce Ellis, Environmental Program Manager, Bureau of Reclamation, PO Box 81169, Phoenix, Arizona, 85069–1169. Written comments received by the Bureau of Reclamation become part of the public record associated with this action. Accordingly, such comments will be available to requestors of information associated with this Notice pursuant to the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Ellis, at (602) 216–3854.

SUPPLEMENTARY INFORMATION:

Background

We have been engaged in active negotiations with a variety of parties in Arizona that have an interest in the CAP, including the operator of the CAP (the Central Arizona Water Conservation District), the Arizona Department of Water Resources, Indian Tribes, and other water users. The current negotiations contemplate that the Secretary will undertake a reallocation of CAP water to assist in the resolution of outstanding Indian water rights claims, and to provide greater certainty to all users of CAP water. If the settlement goes forward, we anticipate that the proposed reallocation of CAP water would constitute a final allocation of water for the CAP system.

Purpose and Need for Action

The purpose and need of the proposed federal action is to implement settlement of ongoing litigation over the operation of the CAP, the status of CAP project water, and to assist in the resolution of outstanding Indian water rights claims. The United States intends that the final allocation of CAP water under the terms of the settlement will facilitate use of CAP water in satisfaction of the goals and purposes of the CAP authorizing legislation (*i.e.* the Colorado River Basin Project Act of 1968).

The Proposed Federal Action

Through the efforts of all parties to these negotiations, significant progress has been made on many matters involving operation and administration of the CAP and a general agreement on the details of the likely scenario regarding the reallocation of CAP water has emerged. Reclamation intends to undertake the environmental review that needs to be completed in order to facilitate the timely implementation of reallocations that are contemplated by the proposed settlement. Because of the lead time needed to complete the environmental review prior to reallocating, Reclamation is initiating the review at this time. In connection with the environmental analysis, Reclamation will analyze the proposed reallocation of CAP water that has been the subject of extensive discussion among the parties as the proposed federal action. This analysis does not preclude, of course, additional adjustments to the final reallocations depending upon the course of negotiations. Accordingly, pursuant to this notice, Reclamation is announcing its intention to undertake an environmental review of allocating and offering contracts for additional CAP water as follows:

1. Reallocation of an additional 200,000 acre feet of CAP water for Indian Water Rights Settlement Purposes. This water would retain its former priority status as "Non-Indian Agricultural" priority water. Of this amount, 102,000 acre feet of CAP water would be allocated and contracted to the Gila River Indian Community; 28,200 acre feet of CAP water would be allocated and contracted to the Tohono O'odham Nation; and a residual amount of 69,800 would be available for allocation and contracting by the Secretary for use in facilitating additional, future Indian Water Rights Settlements.

2. 17,800 acre feet of the CAP water permanently relinquished by the Harquahala Valley Irrigation District (HVID) would be allocated and contracted to the Gila River Indian Community. This water has the priority of "Indian" priority CAP water.

3. All remaining, (approximately 18,600 acre feet) CAP water permanently relinquished by the Roosevelt Water Conservation District, would be allocated and contracted by the Gila River Indian Community. This water would retain its "Non-Indian Agricultural" CAP priority.

4. 17,000 AF of CAP water expected to be permanently relinquished by ASARCO Incorporated, would be allocated and contracted by the Gila River Indian Community. This water would retain its "M&I" CAP priority.

5. 65,647 acre feet of M&I priority water would be allocated and contracted to various municipalities and other entities within the CAP service area. This water would retain its "M&I" CAP priority. Identification of entities, and associated specific quantities for this water would be made after consultation between the Secretary and the State of Arizona (Arizona). It is anticipated that further, specific, NEPA compliance would be undertaken after Arizona has identified the entities it proposes should received allocations of this "M&I" priority CAP water, and completion of the consultation between the Secretary and Arizona on this matter.

As part of the proposed action Reclamation will consider all provisions of the settlements currently under negotiation, including provisions under consideration in the potential settlement of the *Central Arizona Water Conservation District* v. *United States* litigation, in which, as noted above, settlement discussions are currently in progress.

Range of Alternatives

In addition to the above-described proposed action (*i.e.* the settlement approach), Reclamation will implement NEPA requirements by identifying, reviewing and evaluating additional alternatives as part of its NEPA analysis. These alternative analyses will include alternatives that would address alternative allocation and contracting scenarios that could involve Non-Indian Agricultural priority water, Indian priority water, and M&I priority water. Reclamation will also include alternative allocation and contracting scenarios that could be undertaken in the absence of a settlement as part of its NEPA analysis.

Authority

The Secretary has the authority to contract for supplies of Central Arizona Project water under the Act of June 17, 1902, 32 Stat. 388, as amended and/or supplemented, including specifically the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501 *et seq.*).

Prior Efforts

Allocation of CAP project water has been the subject of previous notices published in the **Federal Register** (See, *e.g.*, 37 FR 28082, December 20, 1972; 40 FR 17297, April 18, 1975; 41 FR 45883, October 18, 1976; 45 FR 52938, August 8, 1980; 45 FR 81265, December 10, 1980; 48 FR 12446, March 24, 1983; 56 FR 29704, June 28, 1991; 57 FR 4470, February 5, 1992; and 57 FR 483884, October 23, 1992).

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 99–19558 Filed 7–29–99; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–2822–00–D680]

Closure and Restriction Orders

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Temporary closure of certain public lands within Trinity County, California.

SUMMARY: The BLM is restricting camping and day uses on certain public lands located near the Trinity River at Bucktail Hole in Trinity County California. All public land within the NE¼ of Section 23 and the NW¼ of Section 24, Township 33 North, Range 8 West on the south side (left bank facing downstream) of the Trinity River is closed to camping and day uses, except those specifically authorized by BLM, until September 1, 1999.

The closure is meant to protect the public from activities within the Bucktail Hole area related to emergency rehabilitation of the Lowden wildfire area and the community of Lewiston, Trinity County, California. BLM contractors will be operating heavy equipment and camping within the Bucktail Hole area as part of the rehabilitation effort. Their activities could pose a threat to the safety of the public.

Background

The Lowden wildfire began on July 2, 1999 and resulted in the destruction of 23 homes and numerous outbuildings on private lands. The wildfire was due to the inadvertent escape of a BLM prescribed burn. Therefore, BLM is providing a contractor(s) to assist in the removal of debris from the private lands. Concrete and other masonry retrieved from ruins will be stored at an abandoned rock quarry on public land at Bucktail Hole. Water will also be drawn from the Trinity River within the Bucktail Hole area for use in abating fugitive dust on dirt or gravel access roads within the wildfire area during the implementation of the debris removal contract(s). Lastly, BLM is providing camping areas for contractors within the Bucktail Hole area due to the remote location of the project area and as a means to provide better security for contractor's equipment.

The authority for these closures and rule makings is 43 CFR 8364.1. Any person who fails to comply with a closure order or rule making is subject to arrest and fines of up to $100,000 and/or imprisonment not to exceed 12 months.

DATES: These restrictions take effect July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Charles M. Schultz, Field Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, CA 96002.

Francis Berg,

Acting Redding Field Manager.

[FR Doc. 99–19500 Filed 7–29–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500 1990–00]

Front Range Resource Advisory Council (Colorado) Open Houses and Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of open houses and public comment period.

SUMMARY: Notice is hereby given that the Front Range Resource Advisory Council (Front Range RAC) will hold open houses for the purpose of gathering public comments and input

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on Outdoor Recreation Management Guidelines. These will be recommended to the Bureau of Land Management in Colorado for consideration and use in day-to-day management of public lands in Colorado within the Front Range Center. The RAC will also accept written comments on the Outdoor Recreation Management Guidelines.

DATES: The open houses are scheduled for the following dates and times. Any changes to the time, date and/or location of the Open Houses will be publicized in the local media.

The open houses will be held at the Beidleman Environmental Center, 740 W. Caramillo Street, Colorado Springs, Colorado; at the Chaffee County Fairgrounds, 10165 County Road 120, Salida, Colorado. Unless otherwise indicated, all open houses will begin at 7 p.m. and end at approximately 9 p.m.

August 17, 1999 at the Beidleman Environmental Center.

August 31, 1999 at the Chaffee County Fairgrounds.

The written public comment period will begin with the publication of this notice and end September 15, 1999. Comments should be sent to Bureau of Land Management, Front Range Center, Attn: RAC, 3170 East Main Street, Canon City, Colorado 81212. Written comments and those given at the Open Houses will be equally considered. A copy of the Draft Outdoor Recreation Management Guidelines can be requested.

ADDRESSES: Bureau of Land Management (BLM), Front Range Center, 3170 East Main Street, Canon City Colorado 81212; Telephone (719) 269–8500.

FOR FURTHER INFORMATION CONTACT: Ken Smith at 719–269–8553.

SUPPLEMENTARY INFORMATION: The Front Range RAC, along with the other RACs in Colorado, intend to develop a joint set of outdoor recreation management guidelines to recommend to the BLM in Colorado for adoption and use in everyday management of the lands the agency administers. The open houses are intended as a means for the RACs to gather informal input and ideas on the proposed set of guidelines that all the RACs in Colorado have agreed with so far. After September 15, 1999, representatives from all RACs will jointly develop a set of final recommended guidelines to submit to the BLM for consideration. The guidelines will include recommendations dealing with the management of off-highway vehicle use.

Donnie R. Sparks,

Front Range Center Manager.

[FR Doc. 99–19484 Filed 7–29–99; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–129 (Review)]

Polychloroprene Rubber From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping finding on melamine from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted this review on August 3, 1998 (63 FR 41282) and determined on November 5, 1998 that it would conduct a full review (63 FR 63748, November 16, 1998). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 16, 1998 (63 FR 69306). The hearing was held in Washington, DC, on June 3, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 26, 1999. The views of the Commission are contained in USITC Publication 3212 (July 1999), entitled *Polychloroprene Rubber from Japan (Inv. No. AA1921–129 (Review)*.

Issued: July 27, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19582 Filed 7–29–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Commissioners Crawford and Askey dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–393–396 (Preliminary) and Investigations Nos. 731–TA–829–840 (Preliminary)]

Certain Cold-Rolled Steel Products From Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of certain cold-rolled steel products, provided for in headings 7209, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Brazil. The Commission further determines, pursuant to 19 U.S.C. 1677(24)(A), that the subject imports from Indonesia, Thailand,[2] and Venezuela that are alleged to be subsidized are negligible and its investigations are thereby terminated pursuant to 19 U.S.C. 1671b(a)(1).[3] The Commission also determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of such imports from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela that are alleged to be sold in the United States at less than fair value.

Commencement of Final Phase Investigations

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in these investigations under section 703(b) and section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 705(a) and section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Commissioner Koplan dissenting with respect to allegedly subsidized imports from Thailand.

[3] Chairman Bragg, however, further finds that imports from Indonesia, Thailand, and Venezuela will imminently exceed the statutory negligibility threshold, and makes an affirmative threat determination with regard to such imports.

Background

On June 2, 1999, a petition was filed with the Commission and the Department of Commerce by Bethlehem Steel Corp., Bethlehem, PA; Gulf States Steel, Inc., Gadsden, AL; Ispat Inland, Inc., East Chicago, IN; LTV Steel Co., Inc., Cleveland, OH; National Steel Corp., Mishawaka, IN; Steel Dynamics, Inc., Fort Wayne, IN; U.S. Steel Corp.; a unit of USX Corp., Pittsburgh, PA; Weirton Steel Corp., Weirton, WV; the Independent Steelworkers Union; and United Steel Workers of America, Pittsburgh, PA, alleging that an industry in the United States is materially injured by reason of subsidized or LTFV imports of certain cold-rolled steel products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela. Accordingly, effective June 2, 1999, the Commission instituted antidumping investigations Nos. 701–TA–393–396 (Preliminary) and investigations Nos. 731–TA–829–840 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 9, 1999 (64 FR 31018). The conference was held in Washington, DC, on June 23, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 19, 1999. The views of the Commission are contained in USITC Publication 3214 (July 1999), entitled *Certain Cold-Rolled Steel Products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela: Investigations Nos. 701–TA–393–396 and 731–TA–829–840 (Preliminary).*

By order of the Commission.

Issued: July 23, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19583 Filed 7–29–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

School-Based Partnership Grant Assessment Solicitation

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Office of Community Oriented Policing Services (COPS) is seeking proposals to conduct an assessment of the School-Based Partnership (SBP) grant program. This notice provides background on the SBP program, outlines the purpose and needs sought from the assessment, and identifies questions to be addressed by applicants seeking to provide services under this cooperative agreement. The assessment is being announced as an open competition and requires a three-week turnaround. The selected awardee will be expected to begin work immediately upon selection.

DATES: Applications for the School-Based Partnerships Assessment Cooperative Agreement are due on August 17, 1999, by 5:00 p.m. EST. Please fax a short letter notifying the COPS Office of your intent to apply for the School-Based Partnerships Assessment Cooperative Agreement and identify the contact person, phone number, address, and fax number for receipt of SBP Background Materials. The letter should be faxed to the attention of COPS/PPSE c/o Stacy Curtis at (202) 633–1386 no later than August 3, 1999. The selected awardee will be notified by phone and fax and should plan to begin meeting with the COPS Office in September to begin planning the project.

REQUIREMENTS/LIMITATIONS: Package should include the original application and three copies. Applications should not exceed 15 double-spaced, 12-point typed pages. Budget materials, letters of support/cooperation, and time lines are considered acceptable appendices.

ADDRESSES: Please send application package to: Office of Community Oriented Policing Services Program/ Policy Support and Evaluation Division 1100 Vermont Ave. NW, Washington, DC 20530 (20005 for express services) Attn: Stacy Curtis.

FOR FURTHER INFORMATION CONTACT: Stacy Curtis at (202) 633–1297 or Karin Schmerler at (202) 633–1321 to obtain additional information about this solicitation. Additional information can also be obtained through the COPS Office Internet web site at *www.usdoj.gov/cops* or by calling the Department of Justice Response Center at 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Background

In 1998, the COPS Office announced the first round of School-Based Partnerships grantees to 155 law enforcement agencies. The COPS Office issued a second grant solicitation in early 1999, to fund additional policing agencies and their partners. Funding decisions for SBP '99 are forthcoming. Various components of this assessment will include grantees funded in 1998 while other tasks will focus on grantees funded in 1999. It is possible that some SBP grantees will receive grants in both 1998 and 1999 to problem solve on different crime and disorder problems. Applicants for the assessment should consider ways to best incorporate information from all grantees from the two years of funding and should not be limited in their proposals to the ideas and tasks included in this solicitation.

The SBP grant program is part of the COPS Office's commitment to advancing community policing through collaborative problem solving. The initiative seeks to facilitate a shift from traditional incident-driven policing to proactive problem-oriented policing that encourages community participation to keep children safe by reducing school-related violence, crime, and disorder. Rather than repeatedly responding to the same types of crimes after they have occurred, policing agencies that practice community policing and problem solving work with community members to identify persistent problems, learn more about why these problems occur, and address the underlying conditions that precipitate their occurrence.

The SBP program provides policing agencies with a unique opportunity to work with schools and community-based organizations to address persistent school-related crime problems. Grantees were required to

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focus on one primary school-related crime or disorder problem occurring in or around an elementary or secondary school. Target problems include: drug dealing or use on school grounds, problems experienced by students on the way to and from school, assault/sexual assault, alcohol use or alcohol-related problems/DWI, bullying/threat/intimidation, vandalism/graffiti, loitering and disorderly conduct directly related to crime or student safety, disputes that pose a threat to student safety, or larceny. Successful applicants provided evidence of partnerships with schools or community-based agencies and with students to work cooperatively to analyze the targeted crime or public safety issue.

The School-Based Partnerships program emphasizes problem analysis, a key component of problem solving, to help develop effective responses, many of which include prevention and intervention efforts. Grantees use problem-solving methods to understand the causes of the problem, develop specific, tailor-made responses to that problem and assess the impact of those responses. In order to help communities use creative problem solving to address school-related problems, the program funded resources for purchasing computer technology, hiring crime analysis personnel, conducting student surveys and victim/offender interviews, utilizing community organizers, school personnel and/or students to analyze or coordinate the project, and procuring training and technical assistance in collaborative problem solving.

As part of a successful application, SBP grantees were required to allocate at least 5% of the total project cost to found a local-level evaluation. The COPS Office included this requirement to assure that the impacts of the SBP projects are well documented and to promote local-level practitioner-researcher partnerships. Policing agencies typically have partnered with universities or colleges, research agencies, or have accessed internal resources to conduct the evaluation. At a minimum, the local-level evaluations must include data on outcome measures to evaluate the project's impact on the target crime or disorder problem. Ideally, local level evaluators will also assess the implementation of the problem-solving process. The combination of process and outcome evaluations will provide the most thorough assessment of the SBP grant program. Grantees will be required to submit a final report detailing the implementation of the project, including hurdles and particular successes with the problem-solving model, as well as indicators of the impact of the problem-solving process on the targeted problem.

Information Assistance Needs

In recent years the number of departments across the country implementing problem-solving approaches has increased dramatically. In 1997, the COPS Office first facilitated collaborative problem-solving initiatives through the Problem-Solving Partnerships grant, which focuses on crime and disorder problems in communities across the country. The School-Based Partnerships program applies the same problem-solving model to crime and disorder experienced in and around schools. Anecdotal accounts of problem solving indicate that collaborative efforts to analyze crime and disorder problems prior to implementing a standard response have been very effective at enhancing quality of life and deceasing the targeted crime and disorder problems.

However, the field of policing continues to lack well-documented research on the use of problem-solving approaches to reducing crime and disorder.

The local-level evaluation of the SBP grant program provides the COPS Office an opportunity to understand the processes and outcomes associated with collaborative problem-solving involving police officers, schools, and community members. It will also allow the COPS Office to examine the factors that facilitate as well as impede the implementation of problem-solving approaches. Because the scope and intensity of local-level evaluations will vary across agencies, a national assessment of the SBP program will help provide a more comprehensive look at the COPS grant program's impact by documenting and assessing two rounds of grant funding.

The COPS Office is seeking to work with a provider to collect and analyze several project reports from all SBP '98 grantees. These reports will allow for systematic data collection from all grantees and will yield information on how departments operationalized the problem-solving model in the field. These reports will also provide in-depth information on lessons learned and the subsequent impact of problem solving in the targeted problems. Additionally, the COPS Office is interested in funding in-depth case studies of a subset of grantees awarded in fiscal year 1999. These case studies would use a quasi-experimental design to study the impact of problem solving in target schools compared to similar schools not participating in this school-based project but located in the same or similar jurisdiction as the policing agency and school participating in the SBP project. One of the primary goals of this solicitation is to provide information to law enforcement and educational agencies to stimulate the promotion of problem solving as a way to address crime and disorder problems in and around schools. In summary, the successful applicant will: (1) Develop (based on a previously used questionnaire), distribute, and synthesize findings from a progress report questionnaire on analysis activities undertaken by SBP '98 grantees; (2) review evaluation strategies provided by local-level evaluators and provide technical assistance when needed; (3) develop, distribute, and synthesize findings from a progress report questionnaire on the response activities of SBP '98 grantees; (4) develop, distribute, and synthesize findings from a survey of all SBP '98 grantees on their experiences implementing problem solving; (5) conduct case studies with a subset of SBP '99 grantees; and (6) prepare a final report of findings from SBP '98 and '99 grantees. Applicants should not be limited to these tasks as outlined below. Although the following deliverables are required, we are also seeking creative ideas on other problem-solving products relating to schools that would benefit the policing and education communities.

Scope of Work

For a period hereinafter set forth, the COPs Office and the Awardee will cooperatively furnish the necessary personnel, travel, supplies, and otherwise perform all things necessary for, or incident to, the performance of work (the accomplishment of functional objectives) as set forth below:

Specific Requirements

At a minimum, the following specific tasks are required.

Task 1

During the first quarter, the awardee will work collaboratively with the COPS Office to revise a progress report questionnaire developed previously to gather information on the analysis activities of grantees conducting projects under the Problem Solving partnerships grant (the questionnaire will be made available to the chosen provider). The awardee will distribute the progress report questionnaire to SBP '98 grantees and will collect and synthesize the data, culminating in the development of written reports on the major problem types. The awardee will then distribute these reports to SBP '98 and '99 grantees. The purpose of this task is to provide all SBP grantees with important information regarding analysis findings and the ways their fellow grantees have addressed challenges in the analysis phase that may assist them in implementing their own grants. This tasks will also help the COPS Office anticipate challenges that may be faced by SBP '99 grantees, and help inform any future program design that may be necessary.

Throughout the course of this cooperative agreement, the awardee will provide information on the status of the project. A schedule for reporting will be established between the awardee and the COPS office.

Deliverables for Task 1

(1) The awardee will help the COPS Office refine the existing analysis phase progress report questionnaire, send it to the 155 SBP '98 grantees, collect responses, and synthesize data into at least four separate analysis reports covering the major problem types.

(2) The awardee will disseminate the reports to all SBP '98 and '99 grantees according to their focus problem.

(3) Throughout the course of the project, the awardee will submit progress reports on project activities according to an established schedule.

Task 2

During the first and second quarters of the cooperative agreement the awardee will review proposed local-level evaluation strategies submitted to COPS by SBP '98 grantees. Throughout the project, the awardee will assist local-level evaluators in refining these strategies when technical assistance appears to be required. It is estimated that providing technical assistance to local-level evaluators will make up approximately 10% of staff time on this project.

Deliverables for Task 2

(1) As necessary, the awardee will provide technical assistance to local level evaluators of SBP '98 grants.

(2) The awardee will develop a final report on the evaluation assistance provided to local level evaluators during the course of the cooperative agreement.

Task 3

During the second quarter, the awardee will work collaboratively with the COPS Office to revise a progress report questionnaire used previously to gather information on the responses utilized by Problem Solving Partnerships grantees to tackle the crime and disorder problems being addressed through the problem-solving model (the report will be made available to the awarded provider). The awardee will distribute the progress report questionnaire to SBP '98 grantees and will collect and synthesize the data, culminating in the development of written reports on the major problem types. The awardee will then distribute these reports to SBP '98 and '99 grantees. The purpose of this task is to provide SBP '98 and '99 grantees with important information regarding issues their fellow grantees have faced with respect to generating, selecting and implementing effective responses. This information may prove to be vital as SBP '99 grantees implement their own grant projects. This task will also help the COPS Office anticipate challenges that may be faced by SBP '99 grantees and will help inform future COPS program design.

Deliverables for Task 3

(1) The provider will help the COPS Office refine the existing response phase progress report questionnaire, send it to the 155 SBP '98 grantees, collect responses, and synthesize data into at least four separate reports covering the major problem types.

(2) The provider will disseminate the reports to all SBP '98 and '99 grantees according to their focus problem.

Task 4

During the third quarter, the awardee will develop a tool to collect project information that spans the life of the grant project from all SBP '98 grantees on their experiences implementing collaborative problem solving focused on problems in and around schools. The tool should include both process and outcome indicators and narrative descriptions provided by grantees outlining and processes and impacts of the grant projects. The awardee will work collaboratively with the COPS Office to assure that the instrument adequately addresses the goals of the SBP grant program. If necessary, in accordance with the Paperwork Reduction Act, the awardee will submit the instrument to the COPS Office to be cleared by the Office of Management and Budget (OMB). The awardee will be available to assist local level evaluators in completing this report. In addition, the awardee will identify a subset of grantees that implemented successful projects and will develop 10 short (3 to 5 page) case studies on these projects (an example, "What Works: Promising Practices from the Field," will be provided to potential applicants pending submission of Notice of Intent to Apply, See SBP Background Materials). These case studies will include information generated by the information collection tools described previously and phone and other correspondence between the awardee and SBP '98 grantees. Given conditions at the local level and beyond the control of the COPS Office, this cooperative agreement may include a no-cost extension to incorporate additional time for the awardee to conduct case studies.

Deliverables for Task 4

(1) The awardee will develop an information collection instrument to collect final project information from all SBP '98 grantees on their experiences implementing collaborative problem solving focused on problems in and around schools. Prior to its administration, the awardee will submit the instrument to the COPS Office for review and approval.

(2) The awardee will produce a report to document survey findings.

(3) The awardee will produce 10 short case studies from the SBP '98 program.

Task 5

During the second and third quarters of the grant period, the awardee will select a subset of five SBP '99 grantees with which to conduct an in-depth case study of the processes and outcomes of their SBP grant projects. The awardee will identify promising projects through SBP '99 applications and follow-up contact with the grantees. Selected grantees should be able to implement a quasi-experimental design to compare a series of measures collected at the target schools and similar schools not participating in the School-Based Partnerships grant project. Technical assistance from the awardee is anticipated. Control schools should be located in the same or similar jurisdiction as the policing agency and school participating in the SBP grant project. Through subcontracts, the selected locales will be eligible for additional funding of up to $5,000 to collect information from control schools. Many control schools will already collect data on suspensions, attendance, calls for service, etc., and additional funding will allow grantees to conduct student/faculty surveys, environment surveys, etc., as deemed appropriate by the awardee in conjunction with the local level evaluator. The awardee will develop site selection criteria for review by the COPS Office and will submit a list of potential case study sites for final review and selection in collaboration with representatives of the COPS Office. It is anticipated that the awardee will travel to selected sites during the course of

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these studies. The awardee will develop data collection instruments for use during site visits and will submit these to the COPS Office for review. The awardee will continue to be available to assist local-level evaluators. Given conditions at the local level and beyond the control of the COPS Office, this cooperative agreement may include a no-cost extension to incorporate additional time for the awardee to conduct all aspects of this cooperative agreement.

Deliverables for Task 5

(1) The awardee will develop a short proposal identifying potential case study sites selected from the pool of SBP '99 grantees. This proposal will include site selection criteria and justifications for including these grantees as potential case study candidates. Ultimately, five candidates will be selected in collaboration with the COPS Office to be included as case studies. Case studies will include the processes and outcomes of implementing collaborative problem solving, including a focus on the obstacles encountered and benefits of engaging in problem-solving partnerships with schools, community-based agencies (where applicable), and students. The awardee will provide oversight to ensure the integrity of the data and assessment process.

(2) The awardee will develop data collection instruments to document the experiences and outcomes of sites implementing the SBP grant program. The awardee will submit these for review by the COPS Office.

(3) The awardee will develop short reports (10 pages or fewer) that document the research methods and findings from each case study. These reports shall include a summary section and a description of each individual case study.

(4) The awardee will disseminate these case studies to all SBP '98 and '99 grantees and to other audiences as identified by the COPS Office and/or the provider.

Task 6

During the fourth quarter of the grant period, the awardee will write a report on the SBP grant program. The report will include an analysis of information collected from all SBP '98 grantees and in-depth information from the case study sites of SBP' 99 sites. This report should include an examination of the processes undertaken by SBP grantees, lessons learned, and recommendations to policing agencies and schools seeking to implement similar problem-solving partnerships. In addition, this report should include information on the impact of the projects and the methods and measures local-level evaluators used to assess the projects' impact. Given conditions at the local level and beyond the control of the COPS Office, this cooperative agreement may include a no-cost extension to incorporate additional time for the awardee to conduct all aspects of this cooperative agreement.

Deliverable for Task 6

(1) The awardee will develop a final report based on findings from an outcome evaluation of the SBP grant program.

(2) The awardee will disseminate widely copies of the report to SBP grantees and other policing agencies. The report must receive written approval from the COPS Office prior to dissemination.

Task 7 (Optional)

Applicants may propose additional problem-solving products that would make significant contributions to school safety.

1Applicant Criteria

Applicants should meet the following criteria:

1. Prossess expertise in the areas of community policing, collaborative problem-solving, and schools (or evidence of a partnership with a school organization/consultants with significant experience with school safety issues). Significant experience in the areas of community policing and general problem solving will be essential. In addition, prior experience working with schools or youth crime prevention issues is essential.

2. Posses significant experience coordinating assessments of efforts between policing agencies and other government agencies and/or community-based entities.

3. Possess significant experience providing technical assistance on evaluation to third-party evaluators, overseeing projects involving quasi-experimental designs, and conducting on-site interviews.

4. Possess experience administering federal grants or cooperative agreements of more than $300,000.

5. Have a person record of working collaboratively on projects with other organizations.

6. Possess experience working with local policing agencies in rural, suburban, and urban communities in jurisdictions ranging from 15,000 to over 1,000,000 persons.

Proposal Questions

Applicants competing for this cooperative agreement must submit a Notice of Intent to Apply (see **DATES** section). The COPS Office will provide potential applicants with required forms including, a background information form and budget worksheets (a full lists of forms is included in SBP Background materials). Applicants must complete these forms and provide a double-spaced narrative proposal to apply. The narrative should not exceed 15-pages; the required forms and budget do not count toward the page length. The proposal should address all of the following questions:

Capabilities

1. Describe your organization's previous experience working on assessments of community policing and collaborative problem-solving efforts. Describe your agency's background working with schools of youth crime prevention initiative. Please also describe your organization's experience providing technical assistance to third-party evaluators.

2. Discuss how you work on this project will enhance your organization's ability to be a long-term contributor to the assessment of innovative collaborative problem-solving strategies and community policing efforts. Please outline how your organization would build upon the efforts and infrasturture developed under this project to impact policing departments and communities over the next five years.

3. Discuss your management plan for implementing this project with respect to internal and external management of personnel and resources. Also address how you would facilitate and manage the operations of this project beyond the life of the Cooperative Agreement.

4. Describe a potential management plan for conducting the collection of information to best inform grantees of lessons learned? Provide research questions and topic areas for analysis.

Plan for Case Studies

5. Describe a potential management plan for conducting the five quasi-experimental case studies of SBP '99 grantees. Provide your plan for identifying potential sites, research questions and topic areas for analysis.

Plan for Final Report/Other Problem-Solving Products

6. Discuss how data collected from SBP '98 grantees and sites participating in the case studies could be analyzed, documented, reviewed, and disseminated to promote the ideal implementation of problem-solving approaches in the future. Provide a description of any additional data collection efforts or other activities you would like to undertake and the deliverables that would result. Discuss how policing agencies and researchers could access the products developed out of this project.

Timeline

7. Provide a detailed timeline of the assessment activities described above. Although funds will be awarded for one calendar year, applicants may submit a timeline that exceeds 12 months in anticipation of a no-cost extension to allow for circumstances at the local level and beyond the control of the COPS Office or the awardee of this cooperative agreement.

Budget

Prepare a detailed budget for a one-year agreement. Applicants may apply for up to $350,000. The budget may include travel and per diem costs related to the case studies, mailing or telephone costs for data collection instruments, and production and dissemination costs of all deliverables.

SBP Background Materials

The following materials will be provided to potential applicants following their submission of a Notice of Intent to Apply (See DATES). Materials are also available from the COPS Office internet web site at *www.usdoj.gov/cops.*

—SF 424, Application for Federal Assistance
—Budget Detail Worksheet
—Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements; Coordination with Affected Agencies; Non-Supplanting; and Retention (one form)
—Assurances
—Disclosure of Lobbying Activities
—School-Based Partnerships Application Kit and Fact Sheet
—Problem-Solving Tips
—List of SBP grantees and problem types awarded in 1998; grantees awarded in 1999 will be available following the announcement of funding decisions (likely September 1999)
—Anticipated time line for SBP '98 and SBP '99 projects
—What Works: Promising Practices from the Field

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: July 9, 1999.

Mary Lou Leary,

Interim Director.

[FR Doc. 99–18814 Filed 7–29–99; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1953–99; AG Order No. 2236–99]

Termination of Designation of Liberia Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Attorney General's most recent designation of Liberia under the Temporary Protected Status program (TPS) expires on September 28, 1999. After reviewing country conditions and consulting with the appropriate Government agencies, the Attorney General has determined that conditions in Liberia no longer support a TPS designation. Accordingly, the designation of Liberia for TPS is terminated effective September 28, 1999. After that date, aliens who are nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) who have had TPS under the Liberia program will no longer have such status. This notice contains information regarding the termination of the TPS designation for Liberia.

DATES: The termination of the TPS designation for Liberia is effective September 28, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Office of Adjudications, Residence and Status Branch, Immigration and Naturalization Service, Room 3040, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority for the Designation and Termination of a TPS?

Under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, the Attorney General is authorized to designate a foreign state (or part of a state) for TPS. The Attorney General must then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). Section 244(b)(3)(A) of the Act requires the Attorney General to review, at least 60 days before the end of the TPS designation, the conditions in a foreign state designated under section 244(b)(1) of the Act. 8 U.S.C. 1254a(b)(3)(A).

Section 244(b)(3) further requires the Attorney General to determine whether the conditions for such a designation continue to be met, and to terminate the state's designation when the Attorney General determines conditions are no longer met. 8 U.S.C. 1254a(b)(3)(B). The Attorney General must then publish a notice of termination in the **Federal Register**.

Why Did the Attorney General Decide To Terminate TPS for Liberia?

On September 29, 1998, the Attorney General published a notice re-designating Liberia for TPS for a period of one year, based upon conditions in Liberia at that time. 63 FR 51958 (Sept. 29, 1998). That TPS designation is scheduled to expire on September 28, 1999.

Based upon a more recent review of conditions within Liberia by the Departments of Justice and State, the Attorney General finds that conditions no longer support a TPS designation. A Department of State memorandum concerning Liberia states that "[t]he divisive civil war in Liberia which began in 1990 ended with the Abuja Peace Accords in 1996. Since 1997, the country in general has not experienced ongoing armed conflict. In September 1998, violence erupted suddenly in Monrovia.* * * Since then, however, no further general conflict has occurred." The memorandum also states that "Although conditions in Liberia remain difficult, the overall situation is not sufficiently adverse to prevent most Liberian nationals in the U.S. from returning to Liberia in safety." It concludes, "The Department of State finds that sufficient grounds to recommend a further extension of TPS for Liberia do not exist. We therefore recommend that TPS for Liberia be terminated on its current expiration date of September 28, 1999."

Based on these findings, the Attorney General has decided to terminate the designation of Liberia for TPS.

What Can I Do If I Feel That My Return To Liberia Is Unsafe?

This notice terminates the designation of Liberia under the TPS program. There may be avenues of immigration relief available to aliens who are nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) in the United States who believe that their particular circumstances make return to Liberia unsafe. Such avenues may include, but are not limited to, asylum or withholding of removal.

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How Does The Termination of TPS Effect Former TPS Beneficiaries?

After the designation of Liberia for TPS is terminated on September 28, 1999, those aliens who are nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) will revert back to the immigration status they had prior to TPS, unless they have been granted another immigration status. They stay of removal and eligibility for employment authorization due to the designation of Liberia under the TPS program will no longer be avaiable. However, the termination of the TPS designation for Liberia will not affect any pending applications for other forms of immigration relief.

Those persons who received TPS under the Liberian designation may begin accruing unlawful presence as of September 29, 1999, if they have not been granted any other immigration benefit or have no application for such a benefit pending. Aliens who accrue certain periods of unlawful presence in the United States may be barred from admission to the United States under section 212(a)(9)(B)(i) of the Act. See 8 U.S.C. 1182(a)(9)(B)(i).

Notice of Termination of Designation of Liberia Under the TPS Program

By the authority vested in me as Attorney General under section 244(b)(3) of the Act, I have consulted with the appropriate agencies of Government concerning conflict and security conditions in Liberia. 8 U.S.C. 1254a(b)(3). Based on these consultations, I have determined that Liberia no longer meets the conditions for designation of TPS under section 244(b)(1) of the Act. See 8 U.S.C. 1254a(b)(1).

The civil war in Liberia ended in 1996, with the exception of some armed violence in September 1998. This eruption of violence resulted in the Department of State's September 1998 recommendation to extent TPS for an additional year. Since that time, however, no further general conflict has occurred. I also understand, that, even though the country has made little progress in recovering from the war, the return of persons to Liberia would not result in a danger to their personal safety. In view of the recommendations of the Departments of Justice and State for termination, I terminate the designation of Liberia under the TPS program.

Accordingly, I order as follows:

(1) The designation of Liberia for TPS under section 244(b) of the Act is terminated effective September 28, 1999.

(2) I estimate that there are no more than 10,000 nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) who have been previously granted TPS.

(3) Information concerning the termination of the TPS program for nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) will be available at local Service offices upon publication of this notice.

Dated: July 28, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–19700 Filed 7–28–99; 12:46 pm]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Development of Either a High Security or Medium Security Federal Correctional Facility(ies) in South Carolina

AGENCY: U. S. Department of Justice Federal Bureau of Prisons.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

The United States Department of Justice, Federal Bureau of Prisons has determined that high-security and medium-security federal correctional facilities are needed in its system.

The Federal Bureau of Prisons has preliminarily evaluated several sites in three counties in South Carolina and determined that the DEIS will focus upon sites in the following areas:

Georgetown County 1 tract—1275 acres (apprx.) in Andrews
Marlboro County 1 tract—500 acres (apprx.) in Bennettsville
Williamsburg County 2 tracts—600 acres (apprx.) in Salters and 475 acres (apprx.) near Greeleyville

The Bureau of Prisons proposes to build and operate either a high-security or medium-security federal correctional facility, with an adjacent minimum-security satellite camp, in South Carolina. The main facility would provide habitation for approximately 1000–1200 inmates, and up to 300 inmates at the minimum-security camp. The Bureau of Prisons proposes to build the facility(ies) on portions of tracts near either:

Georgetown County in Andrews, South Carolina
Marlboro County in Bennettsville, South Carolina
Williamsburg County in Greeleyville, South Carolina
Williamsburg County in Salters, South Carolina

The sites appear to be of sufficient size to provide space for housing, programs, administrative services and other support areas such as staff training.

The Process

In the process of evaluating the sites, several aspects will receive detailed examination including: utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources and socio-economic impacts.

Alternatives

In developing the DEIS, the options of "no action" and "alternative sites" for the proposed facility(ies) will be fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be opportunities for public involvement in order to determine the issues to be examined. Scoping Meetings will be held at 7:00 p.m. on the following dates and places:

August 23—Andrews, South Carolina (Georgetown County)—Andrews Elementary School, 13072 County Line Road
August 24—Greeleyville, South Carolina—(Williamsburg County)—C.E. Murray High School, State Highway 521
August 26—Bennettsville, South Carolina (Marlboro County)—Marlboro Civic Center, 106 Clyde Street

The meetings will be well publicized and will be held at times which will make it possible for the public and interested agencies or organizations to attend. In addition, numerous public information meetings have been held by representatives of the Bureau of Prisons with interested citizens, officials and community leaders.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment.

Address

Questions concerning the proposed action and the DEIS may be directed to: David J. Dorworth, Chief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, D.C. 20534. Telephone (202) 514–6470, Facsimile (202) 616–6024, e-mail *siteselection@bop.gov*.

Dated: July 22, 1999.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 99–19196 Filed 7–29–99; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Nominations for Vacancies

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire on November 14, 1999. The groups or fields they represented are as follows: employee organizations, corporate trust, investment management, employers and the general public.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or field specified in the preceding paragraph, may submit recommendations to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW, Suite N–5677, Washington, DC 20210.

Recommendations must be delivered or mailed on or before October 1, 1999. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation should contain a detailed statement of the nominee's background.

Signed at Washington, DC, this 26th day of July, 1999.

Richard McGahey,

Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

[FR Doc. 99–19535 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03179]

Bend Wood Products, Incorporated, Bend, Oregon; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on May 14, 1999 in response to a petition filed on behalf of workers at Bend Wood products, Incorporated, Bend, Oregon.

The worker group is currently covered by an existing determination (NAFTA–02841). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC. this 16th day of July 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–19549 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02476]

Johnson & Johnson Medical, Inc. Including Leased Workers of Kelly Services, Incorporated Menlo Park, California; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), subchapter D, chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on August 31, 1998, applicable to all workers of Johnson & Johnson Medical, Inc., located in Menlo Park, California. The notice was published in the **Federal Register** on September 28, 1998 (63 FR 51605).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce intravenous specialty catheters. New information provided by the State shows that some workers of Johnson & Johnson Medical, Inc. were leased from Kelly Services, Inc. to produce intravenous specialty catheters at the Menlo Park, California plant. Based on these findings, the Department is amending the certification to include leased workers from Kelly Services, Inc., Menlo Park, California.

Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Johnson & Johnson Medical, Inc. adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–02476 is hereby issued as follows:

All workers of Johnson & Johnson Medical, Inc., Menlo Park, California engaged in the production of intravenous specialty catheters and leased workers of Kelly Services, Inc., Menlo Park, California engaged in employment related to the production of intravenous specialty catheters for Johnson & Johnson Medical, Inc., Menlo Park, California who became totally or partially separated

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from employment on or after July 3, 1997 through August 31, 2000 are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, D.C., this 19th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc 99–19541 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03111]

Seagull Energy Corporation, Corporate Office Houston , TX; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on April 14, 1999 in response to a petition filed on behalf of workers at Seagull Energy Corporation, Houston, Texas.

The petitioner was requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 20th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–19547 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02538 and NAFTA–02538A]

Whisper Knits, Inc./Jahmpasa USA, Inc., NC, Clinton, Vass, NC; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on September 15, 1998, applicable to workers of Whisper Knits, Inc., Clinton and Vass, North Carolina. The Notice was published in the **Federal Register** on September 28, 1998 (63 FR 51606).

At the request of the company, the Department reviewed the negative determination for workers of the subject firm. New findings show that the Department inadvertently failed to identify the subject firm title name in its entirety. The Department is amending the certification determination to correctly identify the subject firm title name to read "Whisper Knits, Inc./ Jahmpasa USA, Inc.".

The amended notice applicable to NAFTA–02538 and NAFTA–2538A is hereby issued as follows:

"All workers of Whisper Knits, Inc./ Jahmpasa USA, Inc., Clinton, North Carolina (NAFTA–02538) and Vass, North Carolina (NAFTA–02538A) who become totally or partially separated from employment on of after July 27 1997 through September 15, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, DC this 23th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–19551 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,978

Acordis Cellulosic Fibers, Incorporated, Tencel Facility, Axis, Alabama; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 5, 1999 in response to a worker petition which was filed on behalf of all workers at the Tencel Facility of Acordis Cellulosic Fibers, Incorporated, located in Axis, Alabama (TA–W–35,978).

The petitioner has requested that the petition be withdrawn.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 14th day of July 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–19557 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,090]

Cliff's Drilling, Houston, Texas; Notice of Revised Determination on Reopening

In response to a letter of May 24, 1999, from a petitioner requesting administrative reconsideration of the Department's denial of TAA for workers of the subject firm, the Department reopened its investigation for the former workers of Cliff's Drilling, Houston, Texas.

The initial investigation resulted in a negative determination issued on April 28, 1999, because the workers were believed to be employed in oil exploration overseas. The denial notice was published in the **Federal Register** on May 21, 1999 (64 FR 27810).

By letter of May 24, 1999, a petitioner provided additional information to demonstrate that the workers were engaged in employment related to oil field drilling services and that revenues and employment declined at the subject firm during the relevant time period. Aggregate U.S. imports of crude oil and natural gas increased in the period March through February, 1998—1999, compared to the same time period one year earlier. The declines in revenues and employment resulted from a decreased demand for exploration and drilling activities from oil industry clients due to the increase in U.S. oil and gas imports.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with crude oil produced by the subject firm contributed importantly to the decline in revenues and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Cliff's Drilling, Houston, Texas who became totally or partially separated from employment on or after March 22, 1998, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C., this 6th day of July, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–19546 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,063]

Cobre Mining Company; Hanover, NM; Notice of Revised Determination on Reconsideration

On July 7, 1999, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration regarding the petition for workers of the subject firm.

The initial investigation resulted in a negative determination issued on June 11, 1999, based on the finding that an unforeseen environmental mishap which rendered the continued mining and concentrating of copper impractical and unprofitable. Also, a survey conducted by the Department, revealed that major customers of the subject firm have not increased their purchases of imported copper concentrate, while reducing purchases from the subject firm. The denial notice was published in the **Federal Register** on June 30, 1999 (64 FR 35183).

On reconsideration, further information provided by the company revealed that the environmental mishap during March 1999, although a contributing factor, was not the only factor contributing to layoffs at the subject facility. The company during October 1998 revealed their intentions to close the Cobre mine by mid 1999. The investigation further revealed that the parent company increased their imports of copper concentrate during the relevant period. A group of workers at an affiliated mine of Phelps Dodge Corporation, located at Chino Mine, Santa Rita, New Mexico were certified on May 11, 1999 for Trade Adjustment Assistance under TA–W–35,806, based on increasing corporate imports of copper concentrate.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with copper concentrate contributed importantly to the declines in sales or production and to the total or partial separation of workers of Cobre Mining Company, Hanover, New Mexico. In accordance with the provisions of the Act, I make the following certification:

All workers of Cobre Mining Company, Hanover, New Mexico who became totally or partially separated from employment on or after April 1, 1998 through two years from the date of this certification are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, D.C., this 20th day of July 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–19545 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,494]

F.W.A.–J.S.M. Drilling Company, Midland, Texas; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 28, 1999 in response to a worker petition which was filed on behalf of workers at F.W.A.–J.S.M. Drilling Company, Midland, Texas.

The investigation revealed that an active certification covering the petitioning group of workers remains in effect (TA–W–34,550). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 8th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 19555 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,222]

Fairfield Industries Incorporated, Sugar Land, Texas; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 10, 1999 in response to a petition filed on April 27, 1999 on behalf of workers at Fairfield Industries Incorporated, Sugar Land, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 15th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–19543 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,431]

Fort James Corporation, Business Packaging Division, Portland, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 21, 1999, in response to a worker petition which was filed on behalf of workers at Fort James Corporation, Portland, Oregon.

The petitioning group of workers are subject to an ongoing investigation for which determinations have not yet been issued: Fort James Corporation, Portland, Oregon (TA–W–36,471). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, DC, this 9th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–19548 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or

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threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 9, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 9, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 6th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

Appendix—Petitions Instituted on 07/06/1999

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,500	Inspector's Corp—(TIC) (Wkrs)	Williston, ND	06/14/1999	Oilfield Inspection.
36,501	Becton Dickinson (Co.)	Hancock, NY	06/21/1999	Arterial Blood Gas Syringes.
36,502	Stuart Entertainment (Co.)	McAllen, TX	06/18/1999	Bingo Cards and Ink Dabbers.
36,503	Petron Industries, Inc. (Wkrs)	Houston, TX	06/18/1999	Computerized Drilling Instrumentation.
36,504	Galax Apparel Corp. (Co.)	Galax, VA	06/23/1999	Knit Shirts and Woven Bottoms.
36,505	American Industrial (Co.)	Breckenridge, TX	06/16/1999	Repair Engines & Compressors.
36,506	Fellowes Manufacturing (Wkrs)	Boone, NC	06/21/1999	Wood Racks for Cassette, Videos.
36,507	Alcatel Data Networks (Wkrs)	Mt. Laurel, NJ	06/21/1999	High Speed Switch for Telecommunications.
36,508	Trico International (Wkrs)	San Marcos, TX	06/22/1999	Oilfield Service Equipment.
36,509	Fabric Resources Int'l (Co.)	Mullins, SC	06/15/1999	Finished Fabrics and Ribbons.
36,510	Fairfield Apparel Corp. (Co.)	Fairfield, VA	06/14/1999	Medical Uniforms.
36,511	Willow Creek Apparel (Wkrs)	Jonesville, NC	06/28/1999	Ladies' Sleepwear.
36,512	L.W. Packard and Company (Wkrs)	Ashland, NH	06/26/1999	Woolen Fabric.
36,513	London International (Co.)	Dothan, AL	06/18/1999	Latex Gloves.
36,514	Sensus Tech (USWA)	Uniontown, PA	06/14/1999	Water Meters.
36,515	Strasburg Manufacturing (Wkrs)	Strasburg, VA	06/15/1999	Children's Sportswear & Dresses.
36,516	Jockey International (Wkrs)	Carlisle, KY	06/26/1999	Underwear.
36,517	Bandera Pipeline Service (Wkrs)	Houston, TX	06/23/1999	Repair Pipelines.
36,518	Turner and Seymour (UAW)	Torrington, CT	06/24/1999	Gray Iron Castings.
36,519	Kramer Steel, Inc (Co.)	Farmington Hill, MI	06/05/1999	Warehouses & Distributes Steel.
36,520	Carrier Corp. (SMWIA)	Syracuse, NY	06/25/1999	Industrial Air Conditioning Systems.
36,521	Permac, Inc (Wkrs)	Bluefield, VA	06/21/1999	Metallurgical Coal.
36,522	Inter-National Childrens (Co.)	Birmingham, AL	06/09/1999	Children's Apparel.
36,523	Bosch Automotive (UAW)	Hendersonville, TN	06/24/1999	Automotive Motors.
36,524	Dynamic Drilling Fluids (Co.)	Denver, CO	06/03/1999	Oil Drilling Chemicals.
36,525	Ponder Fishing Tools (Wkrs)	Healdton, OK	06/25/1999	Oilfield Services.
36,526	Pennzoil Energy Explor. (Wkrs)	Houston, TX	06/22/1999	Crude Oil, Natural Gas & Condensate.

[FR Doc. 99–19550 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,449]

International Mill Service, Beaumont, Texas; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 21, 1999 in response to a worker petition which was filed on June 21, 1999 on behalf of workers at International Mill Service, located in Beaumont, Texas.

An active certification covering the petitioning group of workers remains in effect (TA–W–35,086). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 25th day of June, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–19542 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,749]

Johnson & Johnson Medical, Inc., Including Leased Workers of Kelly Services, Inc., Menlo Park, California; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 31, 1998, applicable to all workers of Johnson & Johnson Medical, Inc., located in Menlo Park, California. The notice was published in the **Federal Register** on September 28, 1998 (63 FR 51605).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some workers of Johnson & Johnson Medical, Inc. were leased from Kelly Services, Inc. to produce intravenous specialty catheters at the Menlo Park, California plant. Based on these findings, the Department is amending the certification to include leased workers from Kelly Services, Inc., Menlo Park, California.

The intent of the Department's certification is to include all workers of Johnson & Johnson Medical, Inc. adversely affected by imports.

The amended notice applicable to TA–W–34,749 is hereby issued as follows:

All workers of Johnson & Johnson Medical, Inc., Menlo Park, California engaged in the production of intravenous specialty catheters and leased workers of Kelly Services, Inc., Menlo Park, California engaged in employment related to the production of intravenous specialty catheters for Johnson & Johnson Medical, Inc., Menlo Park, California who became totally or partially separated from employment on or after June 24, 1997 through August 31, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Dated: July 22, 1999.

Signed at Washington, DC, this 19th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–19538 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,727]

Martin Marietta Magnesia specialties Inc. Manistee, MI; Revised Determination on Reopening

By letter of June 18 the company official presented evidence not previously considered in the Department's determination. Accordingly, the Department reopened the petition investigation applicable to workers of the subject firm.

The initial investigation resulted in a negative determination issued on April 20, 1999, based on the finding that during the time period relevant to the petition investigation, customers of Martin Marietta Magnesia Specialities, Inc. did not increase reliance on imports of articles like or directly competitive with refractory products produced at the Manistee, Michigan plant. Layoffs were attributable to the decline in demand for refractory products from the steel industry. The denial notice was published in the **Federal Register** on May 11, 1999 (64 FR 25371).

On reopening, further analysis was conducted regarding purchases of refractory products by the subject firm's major declining customers. New findings show that from 1997 to 1998 a major declining customer increased import purchases of refractory products while decreasing purchases from the Manistee, Michigan plant.

Sales, production and employment declined during the relevant period.

Conclusion

After careful review of the additional facts obtained on reopening, I conclude that increased imports of articles like or directly competitive with refractory products contributed importantly to the declines in sales or production and to the total or partial separation of workers of Martin Marietta Magnesia Specialties Inc., Michigan. In accordance with the provisions of the Act, I make the following certification:

All workers of Martin Marietta Magnesia Specialties Inc., Manistee, Michigan, who became totally or partially separated from employment on or after February 9, 1998, through two years from the date of this certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Dated: July 22, 1999.

Signed in Washington, D.C., this 20th day of July 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–19544 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

[TA–W–35,980]

Morris Button Company, New York, New York; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Morris Button Company, New York, New York. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,890; Morris Button Company, New York, New York (July 20, 1999)

Signed at Washington, D.C., this 20th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–19540 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35, 909 and TA–W–35, 909A]

The O.S. Kelly Company; Springfield, Ohio and Jonesboro, Arkansas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 25, 1999, applicable to workers of the O.S. Kelly Company, Springfield, Ohio. The notice was published in the **Federal Register** on June 30, 1999 (64 FR 35184).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separation occurred at the subject firm's Jonesboro, Arkansas facility when it closed in June, 1999. The workers were engaged in employment related to the production of piano plates. Accordingly, the Department is amending the certification to cover workers of The O.S. Kelly Company, Jonesboro, Arkansas.

The intent of the Department's certification is to include all workers of The O.S. Kelly Company adversely affected by increased imports.

The amended notice applicable to TA–W–35,909 is hereby issued as follows:

All workers of The O.S. Kelly Company, Springfield, Ohio (TA–W–35,909) and Jonesboro, Arkansas (TA–W–35,909A) who became totally or partially separated from employment on or after February 26, 1998 through March 25, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–19537 Filed 7–29–99; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,599 and TA–W–35,599A]

Perfection Pad Co. Inc. A/K/A Consolidated Contractors A/K/A New York Pad Co. Buffalo, NY, Bronx, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Labor Department issued a Notice of Revised Determination on Reopening on June 3, 1999, applicable to all workers of Perfection Pad Co., Inc., a/k/a Consolidated Contractors, a/k/a New York Pad Co. located in Buffalo, New York. The notice was published in the **Federal Register** on June 18, 1999 (64 FR 32895).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received from the company shows that worker separations occurred at the Bronx, New York facility of Perfection Pad Co., Inc. when it closed in December, 1998. The workers were engaged in the production of shoulder pads and sleeveheads used by clothing manufacturers.

The intent of the Department's certification is to include all workers of Perfection Pad Co., Inc. who were adversely affected by increased imports of shoulder pads and sleeveheads.

Accordingly, the Department is amending the certification to cover the workers of Perfection Pad Co., Inc., also known as Consolidated Contractors, also known as New York Pad Co., Bronx, New York.

The amended notice applicable to TA–W–35,599 is hereby issued as follows:

All workers of Perfection Pad Co., Inc., also known as Consolidated Contractors, also known as New York Pad Co., Buffalo, New York (TA–W–35,999) and Bronx, New York (TA–W–35,999A) who became totally or partially separated from employment on or after January 7, 1998 through June 3, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C., this 14th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–19553 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,490]

Trans Texas Corporation, Laredo, Texas; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 28, 1999 in response to a worker petition which was dated June 14, 1999, and filed on behalf of workers at Trans Texas Corporation; Laredo, Texas.

A negative determination applicable to the petitioning group of workers was issued on June 21, 1999 (TA–W–36,218). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 29th day of June, 1999.

Linda G. Poole,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–19556 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,313]

Watlow Controls, Watlow System Integrators, Decorah, Iowa; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 1, 1999, in response to a worker petition which was filed by the company on behalf of its workers at Watlow Controls, Watlow System Integrators, Decorah, Iowa.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 13th day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–19554 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,840 and TA–W–34,840A]

Whisper Knits, Inc./Jahmpasa USA, Inc., Clinton, NC; Vass, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligiblity to Apply for Worker Adjustment Assistance on September 15, 1998, applicable to workers of Whisper Knits, Inc., Clinton and Vass, North Carolina. The notice was published in the **Federal Register** on September 28, 1998 (63 FR 51605).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that the Department inadvertently failed to identify the subject firm title name in its entirety. The Department is amending the certification determination to correctly identify the subject firm title name to read "Whisper Knits, Inc./Jahmpasa USA, Inc.".

The amended notice applicable to TA–W–34,840 and TA–W–34,840A is hereby issued as follows:

All workers of Whisper Knits, Inc./ Jahmpasa USA, Inc., Clinton, North Carolina (TA–W–34,840) and Vass, North Carolina (TA–W–34,480A) who became totally or partially separated from employment on or after July 27, 1997 through September 27, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–19552 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the employment and Training Administration is soliciting comments concerning the proposed extension of the collection of Employment Rates for the Youth Opportunity Area Demonstration. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before September 28, 1999.

ADDRESSES: Greg Knorr, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, room N–5637, Washington, DC 20210; 202–219–5782 ext. 120 (this is not a toll-free number); gknorr@doleta.gov; Fax: 202–219–5455 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Youth Opportunity Area Demonstration is an initiative designed to improve the labor market prospects of out-of-school youth in a small number of high poverty areas. Under this demonstration eleven Opportunity Areas have been created to expand employment, education, and training opportunities for out-of-school youth ages 16–24, with priority given to high school dropouts. Each Opportunity Area consists of an identified target area within a designated empowerment zone or enterprise community with a population of between 10,000 and 20,000 persons and a poverty rate among the highest in the community. The Opportunity Areas are in the cities of Chicago, Los Angeles, Houston, New York, Boston, Detroit, Denver, Baltimore, Oakland, San Diego, and in Kentucky's Lake County Area Development District.

An important part of determining whether these demonstrations are successful is to measure the youth employment rate in the subject areas before the program begins in each area and again after three years of operation. The extension of this collection will allow for the completion of these before and after comparisons. The OMB approved survey that is currently being used is strongly based on the Current Population Survey.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Continuing to collect the before and after youth employment rate measures will allow for an evaluation of the effectiveness of the demonstration's approach. Policy-makers in and out of government will be able to use results from this study to better understand what sorts of program initiatives are effective in increasing youth employment in poverty areas.

Type of Review: Extension.
Agency: Employment and Training Administration.
Title: Employment Rates for the Youth Opportunity Area Demonstrations.
OMB Number: 1205–0373.
Affected Public: Individuals or households.
Cite/Reference/Form/etc: Youth Employment Survey.
Total Respondents: 9,600.
Frequency: One-time.
Total Responses: 9,600.
Average Time per Response: 0.25 hours.
Estimated Total Burden Hours: 2,400.
Total Burden Cost (capital/startup): $0, extension of an ongoing project.
Total Burden Cost (operating/maintaining): $3,600,000 contractor support over three and one-half years

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 26, 1999.

Gerard F. Fiala,

Administrator, Office of Policy and Research.

[FR Doc. 99–19536 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03140]

Jahmpasa USA, Incorporated, Vass, North Carolina; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as ameded (19 U.S.C. 2273), an investigation was initiated on April 28, 1999 in response to a petition filed on behalf of workers at Jahmpasa USA, Incorporated, located in Vass, North Carolina (NAFTA–03158).

The Department of Labor has determined that the petitioning group of workers are covered by an existing certification, as amended (NAFTA–02538A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 23d day of July, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–19539 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General Wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They

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specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of labor Federal status referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and States:

Volume IV

Michigan
MI990085 (Jul. 30, 1999)
MI990086 (Jul. 30, 1999)
MI990087 (Jul. 30, 1999)
MI990088 (Jul. 30, 1999)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT990001 (Mar. 12, 1999)
CT990002 (Mar. 12, 1999)
CT990003 (Mar. 12, 1999)
CT990004 (Mar. 12, 1999)
CT990005 (Mar. 12, 1999)
Massachusetts
MA990018 (Mar. 12, 1999)
MA990019 (Mar. 12, 1999)
NY990006 (Mar. 12, 1999)
New York
NY990002 (Mar. 12, 1999)
NY990003 (Mar. 12, 1999)
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NY990045 (Mar. 12, 1999)
NY990046 (Mar. 12, 1999)
NY990049 (Mar. 12, 1999)
NY990050 (Mar. 12, 1999)
NY990060 (Mar. 12, 1999)
NY990074 (Mar. 12, 1999)
NY990076 (Mar. 12, 1999)

Volume II

Pennsylvania
PA990007 (Mar. 12, 1999)
PA990009 (Mar. 12, 1999)
PA990010 (Mar. 12, 1999)
PA990014 (Mar. 12, 1999)
PA990019 (Mar. 12, 1999)
PA990029 (Mar. 12, 1999)
PA990060 (Mar. 12, 1999)
PA990063 (Mar. 12, 1999)

Volume III

Kentucky
KY990025 (Mar. 12, 1999)
KY990027 (Mar. 12, 1999)
KY990028 (Mar. 12, 1999)

Volume IV

Michigan
MI990003 (Mar. 12, 1999)
MI990012 (Mar. 12, 1999)
Minnesota
MN990003 (Mar. 12, 1999)
MN990005 (Mar. 12, 1999)
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MN990058 (Mar. 12, 1999)
MN990059 (Mar. 12, 1999)
MN990061 (Mar. 12, 1999)
MN990064 (Mar. 12, 1999)
MN990068 (Mar. 12, 1999)
MN990073 (Mar. 12, 1999)

Volume V

Iowa
IA990001 (Mar. 12, 1999)
IA990005 (Mar. 12, 1999)

Volume VI

Alaska
AK990001 (Mar. 12, 1999)
AK990006 (Mar. 12, 1999)
Oregon
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Washington
WA990001 (Mar. 12, 1999)
WA990002 (Mar. 12, 1999)
WA990005 (Mar. 12, 1999)
WA990006 (Mar. 12, 1999)
WA990008 (Mar. 12, 1999)
WA990010 (Mar. 12, 1999)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 22nd day of July 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–19243 Filed 7–29–99; 8:45 am]

BILLING CODE 4510–27–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 99–5 CARP CD 97]

Ascertainment of Controversy for 1997 Cable Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with request for comments.

SUMMARY: The Copyright Office of the Library of Congress directs all claimants to royalty fees collected for secondary transmission by cable systems in 1997 to submit comments as to whether a Phase I or a Phase II controversy exists as to the distribution of these funds.

DATES: Comments are due September 28, 1999.

ADDRESSES: If sent by mail, an original and five copies of written comments and a Notice of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024. If hand-delivered, an original and five copies of written comments and a Notice of Intent to Participate should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, LM–403, First and Independence Avenue, SE, Washington, D.C. 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panels, PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Each year, cable systems submit royalties to the U.S. Copyright Office under a statutory license which allows cable systems to retransmit broadcast signals to their subscribers. 17 U.S.C. 111. These royalties are distributed, in turn, in one of two ways to copyright owners whose works were included in a cable system's secondary transmission and who timely filed a claim with the Copyright Office.

These copyright owners may either negotiate a settlement agreement among themselves as to the distribution of the royalty fees, or the Librarian of Congress may convene an ad hoc Copyright Arbitration Royalty Panel (CARP) to determine the final distribution of the royalty fees which remain in controversy. *See* 17 U.S.C. chapter 8. The Copyright Act also allows the copyright owners to receive a partial distribution of the royalty fees prior to the final determination so long as sufficient funds are withheld from distribution "to satisfy all claims with respect to which a controversy exists." 17 U.S.C. 111(d)(4)(C).

Each year since 1996, representatives of the Phase I claimant categories to which royalties have been allocated in prior distribution proceedings have filed with the Copyright Office a motion for partial distribution of the cable royalties collected two years prior to the requested distribution. However, before beginning a distribution proceeding or making a partial distribution, the Librarian of Congress must first ascertain whether a controversy exists as to the distribution of the funds. 17 U.S.C. 803(d).

In anticipation of a similar filing in 1999, the Office is requesting comment on the existence of any controversies as to the distribution of the 1997 cable royalties. The Office also requests that those claimants intending to participate in the 1997 distribution proceeding file a Notice of Intent to Participate, noting whether they anticipate participating in a Phase I proceeding, a Phase II proceeding, or both.

In a Phase I proceeding, the arbitrators ascertain the distribution of royalties among the categories of broadcast programming represented in the proceeding, and in a Phase II proceeding, the arbitrators settle disputes between claimants within a particular category concerning the distribution of royalty fees within the group. If a claimant anticipates a Phase II controversy, the claimant must state each program category in which he or she has an interest which by the end of the comment period has not yet been satisfied by private agreement.

Participants must advise the Office of the existence of all controversies, Phase I or Phase II, by the end of the comment period. The Office will not consider controversies which come to its attention after the close of the comment period. Failure to file a timely Notice of Intent to Participate shall also preclude a party from participating in this proceeding.

Dated: July 26, 1999.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 99–19585 Filed 7–29–99; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting

TYPE: Quarterly meeting.

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 552b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

QUARTERLY MEETING DATES: September 23–24, 1999, 8:30 a.m. to 5:00 p.m.

LOCATION: Old Town Holiday Inn, 480 King Street, Old Town Alexandria, Virginia; 703–549–6080.

FOR INFORMATION, CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F

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Street NW, Suite 1050, Washington, DC 20004–1107; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax).

AGENCY MISSION: The National council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability prior to this meeting.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of the National Council on Disability will be open to the public.

AGENDA: The proposed agenda includes.

Reports from the Chairperson and the Executive Director

Committee Meetings and Committee Reports

Executive Session (closed)

Unfinished Business

New Business

Announcements

Adjournment

Records will be kept of all National Council on Disability proceedings and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on July 27, 1999.

Ethel D. Briggs,

Executive Director.

[FR Doc. 99–19629 Filed 7–27–99; 4:02 pm]

BILLING CODE 6820–MA–M

NUCLEAR REGULATORY COMMISSION

[NUREG–1600, Revision 1]

Policy and Procedure for NRC Enforcement Actions; Interim Enforcement Policy Regarding Enforcement Discretion for Nuclear Power Plants During the Year 2000 Transition

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement; amendment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its "General Statement of Policy and Procedure for NRC Enforcement Actions." NUREG–1600, Revision 1 (Enforcement Policy), by adding Appendix E. This amendment adds an interim enforcement policy that the NRC will follow to exercise enforcement discretion for noncompliance with license conditions, including technical specifications (TSs), because of year 2000 (Y2K) related situations.

DATES: This action is effective August 30, 1999. Comments on this revision should be submitted within 30 days of publication in the **Federal Register** and will be considered by the NRC prior to the next Enforcement Policy revision.

ADDRESSES: Submit written comments to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Wessman, Deputy Director, Division of Engineering, 301–415–3298, or Allen Hansen, Lead Project Manager, Division of Licensing, Project Management, 301–415–1390, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Y2K-related events arise from a date-related problem that is experienced by a software system, a software application, or a digital device at a key rollover date when the system, application, or device does not perform its intended function. The key rollover dates are January 1, 2000; February 29, 2000 (an uncommon leap day); and December 31, 2000 (the 366th day of an uncommon leap year). The nuclear utility industry is engaged in Y2K readiness programs at all nuclear power plant facilities to seek out and correct Y2K-related problems that have any potential to adversely affect facility operations.

Y2K concerns result from licensees' reliance upon:

(1) Software to schedule maintenance and technical specification surveillances;

(2) Programmable logic controllers and other commercial off-the-shelf software and hardware;

(3) Digital process control systems;

(4) Software to support facility operation;

(5) Digital systems for collection of operating data; and

(6) Digital systems to monitor post-accident plant conditions.

It is recognized that in spite of every reasonable effort by licensees to identify and correct Y2K computer system problems at their facilities, some software, applications, equipment, and systems may remain susceptible to the problem. Additionally, software, data, and systems external to the facility could adversely affect the facility (for example, interruption of communications or partial loss of offsite power).

The electricity production and delivery systems, as two of the more important elements of the North American economic and social infrastructure, must remain dependable during Y2K transition or rollover periods. Most other critical elements of the infrastructure depend on the availability of an interconnected, stable, and reliable supply of electrical power. There is no doubt that cascading or even localized outages of generators and transmission facilities could have serious short-term and long-term consequences.

Continued safe operation of nuclear power plants during Y2K transition or rollover periods will play a major role in maintaining stable and reliable electrical power supply systems, providing necessary reserve power if there are major losses at other generating facilities. The NRC staff is issuing interim guidance on the process for the NRC to exercise enforcement discretion in certain situations where power reactor licensees encounter Y2K-associated compliance problems in the Y2K transition period (December 31, 1999, through the first few days of 2000) or in other key rollover periods. The exercise of enforcement discretion may support a licensee decision to keep the plant in operation, if the licensee has determined that safety will not be unacceptably affected, in order to help maintain electrical grid stability and reliability. The NRC Headquarters Operations Center and the NRC Region IV Incident Response Center will have staff augmented during the key transition from December 31, 1999, to January 1, 2000, to ensure that appropriate actions can be taken for any regulatory issues that arise.

Scope

This interim enforcement policy provides for the exercise of enforcement discretion to address noncompliance with license conditions, including TSs, because of Y2K transition or rollover issues. The interim enforcement policy applies to situations in which plant operation is needed to help maintain the stability and reliability of the electrical power supply system, even when license conditions, including TSs, would require a plant shutdown. If such situations occur, licensees are expected to follow the existing guidance in NRC Inspection Manual Part 9900 for Notices of Enforcement Discretion <http://www.nrc.gov/NRC/IM/noed.html> to the maximum extent practicable, particularly regarding a safety determination and notification of NRC. Licensees may decide to continue operations upon making a determination that it is safe and prudent to do so to help maintain electrical grid stability and reliability, and when certain criteria are met. This enforcement discretion does not extend to situations in which the licensee may be unable to communicate with the NRC. (The staff assessment of telecommunications capability indicates that a loss of all telecommunications between NRC and licensees is highly unlikely.)

To the extent noncompliance was involved, the NRC staff will normally take enforcement action for the root causes that led to the noncompliance for which enforcement discretion was used. Enforcement action will also be considered in those cases in which incorrect or incomplete information was provided to the NRC staff by a licensee in its justification. The NRC recognizes that a licensee will need to exercise judgement in making a determination under this discretion provision. Consistent with the NRC's position involving 10 CFR 50.54(x), enforcement action for a violation of a license condition, including a TS, will not be taken unless a licensee's action was clearly unreasonable considering all the relevant circumstances. Enforcement action could include the assessment of civil penalties and the issuance of orders.

Paperwork Reduction Act Statement

This interim policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0136.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

The NRC is revising the NRC Enforcement Policy by adding Appendix E to read as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

Appendix E: Interim Enforcement Policy Regarding Enforcement Discretion for Nuclear Power Plants During the Year 2000 Transition

This appendix sets forth the interim enforcement policy that will govern the exercise of enforcement discretion by the NRC staff when licensees of operating nuclear power plants find it necessary to deviate from license conditions, including technical specifications (TSs), in those cases in which year 2000 (Y2K) related complications would otherwise require a plant shutdown that could adversely affect the stability and reliability of the electrical power grid. This policy does not extend to situations in which a licensee may be unable to communicate with the NRC.

The policy is effective August 30, 1999 and will remain in effect through January 1, 2001. This policy only applies during Y2K transition or rollover periods (December 31, 1999, through January 3, 2000; February 28, 2000, through March 1, 2000; and December 30, 2000, through January 1, 2001). During these periods, a licensee may contact the NRC Headquarters Operations Center and seek NRC enforcement discretion with regard to the potential noncompliance with license conditions, including TSs, if the licensee has determined that:

(a) Complying with license conditions, including TSs, in a Y2K-related situation would require a plant shutdown;

(b) Continued plant operation is needed to help maintain a reliable and stable grid; and

(c) Any decrease in safety as a result of continued plant operation is small – (considering both risk and deterministic aspects), and reasonable assurance of public health and safety, the environment, and security is maintained with the enforcement discretion.

Licensees are expected to follow the existing guidance as stated in NRC Inspection Manual Part 9900 for Notices of Enforcement Discretion to the maximum extent practicable, particularly regarding a safety determination and notification of NRC. A licensee seeking NRC enforcement discretion must provide a written justification, or in circumstances in which good cause is shown, an oral justification followed as soon as possible by written justification. The justification must document the need and safety basis for the request and provide whatever other information the NRC staff needs to make a decision regarding whether the exercise of discretion is appropriate. The NRC staff may grant enforcement discretion on the basis of balancing the public health and safety or common defense and security of not operating against potential radiological or other hazards associated with continued operation, and a determination that safety will not be unacceptably affected by exercising the discretion. The Director of the Office of Nuclear Reactor Regulation, or designee, will advise the licensee whether the NRC has approved the licensee's request and, if so, will subsequently confirm the exercise of discretion in writing. Enforcement discretion will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting public health and safety and is warranted in the circumstances presented by the licensee.

If the volume of requests to the NRC Headquarters Operations Center is such that the NRC staff cannot review and approve all licensee requests in a timely fashion, the NRC staff will obtain the safety-significant information from the licensee to enable the NRC staff to make a prompt initial assessment. Unless the assessment is unfavorable, the licensee would be permitted to proceed with its planned course of action. The NRC staff will complete these assessments as time permits and the licensee will be advised of the results orally, if possible, and then in writing. If the NRC staff's prompt initial assessment or subsequent assessment determines that a licensee's actions raise safety concerns, the licensee would be so informed. The licensee would then be required to follow its license conditions, including TSs.

If there are communications difficulties between the licensee and the NRC, the licensee is encouraged to interact with the NRC inspector onsite who will have a dedicated satellite telephone. The inspector should be able to facilitate communication with the NRC Headquarters Operations Center and/or the NRC Regional Incident Response Centers (IRCs). If communication with the NRC Headquarters Operations Center is not possible, then the licensee should contact the IRC in NRC Region IV to discuss enforcement discretion. Similarly, if the Region IV IRC cannot be reached, then the licensee should attempt to contact the Region I, II and III IRCs. Although it is considered highly unlikely, if communication with NRC is not possible, the licensee should follow the plant license conditions, including technical specifications.

In conducting its assessments, the licensee should follow, to the extent practicable, the guidance in NRC Inspection Manual Part 9900 for Notices of Enforcement Discretion.

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Contrary to Part 9900 Section B.3 guidance, it is not necessary for an emergency to be declared by a government entity. Licensees are encouraged to contact NRC early in their evaluation process, particularly if time is of the essence, even though complete information as specified in Part 9900 may not be available.

The decision to exercise enforcement discretion does not change the fact that the licensee will be in noncompliance nor does it imply that enforcement discretion is being exercised for any noncompliance that may have led to the noncompliance at issue. To the extent noncompliance was involved, the NRC staff will normally take enforcement action for the root causes that led to the noncompliance for which enforcement discretion was granted. Enforcement action will also be considered in those cases in which incorrect or incomplete information was provided to the NRC staff by a licensee in its justification. The NRC recognizes that a licensee will need to exercise judgement in making a determination under this discretion provision. Consistent with the NRC's position involving 10 CFR 50.54(x), enforcement action for a violation of a license condition, including a TS, will not be taken unless a licensee's action was clearly unreasonable considering all the relevant circumstances. Enforcement action could include assessment of civil penalties and the issuance of orders.

Dated at Rockville, Maryland, this 26th day of July, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–19574 Filed 7–29–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records.

SUMMARY: This document publishes notice of a new Privacy Act system of records, USPS 050.070, Finance Records-Funds Transaction/Transfer Reports. The new system contains personal information about the purchaser and/or recipient of money orders, wire transfer, and/or stored value cards purchased in any combination totaling $3,000 or more during the same visit or multiple visits in 1 business day to the post office.

DATES: Any interested party may submit written comments on the proposed new system of records. This proposal will become effective without further notice on September 8, 1999, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to Administration and FOIA, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–5202. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rubenia Carter (202) 268–4872.

SUPPLEMENTARY INFORMATION: The Postal Service will collect and maintain information about some of its customers to meet one of the requirements of the Bank Secrecy Act. That law is designed to detect and deter money laundering. The intent of the law is to require banks and money services businesses to obtain, maintain, and/or report to the Department of Treasury certain identifying information about individuals who purchase financial instruments at a certain dollar threshold. The Postal Service is named as an entity that must comply with that law (31 U.S.C. 5325 and 5330). The Postal Service will maintain information collected from the purchaser when the dollar amount of cash purchases totals $3,000 or more for money orders, wire transfers, and/or stored value cards. Multiple purchases during 1 business day totaling $3,000 or more must be treated as one purchase, and information about the purchaser must be obtained if a Postal Service employee knows or has reason to believe that multiple purchases are being made. The Postal Service is establishing this grouping of records as a system of records subject to the Privacy Act.

Maintenance of these records is not expected to have a significant impact on individual privacy rights. Information will be kept in a secured environment, with automated data processing physical and administrative security and technical software applied to information on computer media. Computer and hard copy records are maintained in a secured computer complex, with physical, administrative, and software controls. Access to areas within the complex where these records are maintained is restricted with card keys. Access within the area is further restricted to authorized personnel with an official need.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the following proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

USPS 050.070

SYSTEM NAME:

Finance Records-Funds Transaction/ Transfer Reports.

SYSTEM LOCATION:

Finance, Headquarters and St. Louis Accounting Service Center, St. Louis, Missouri.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Postal Service customers who purchase money orders, wire transfers, and/or stored value cards purchased in any combination totaling $3,000 or more during the same visit or multiple visits in 1 business day to the post office. Recipients of wire transfers and the beneficiary of funds from money orders totaling $10,000 or more during the same visit or multiple visits in 1 business day to the post office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, social security number, date of birth, photo ID, type and amount of transactions, driver's license number (or other type of ID if driver's license is not available, such as Alien Registration Number, Passport Number, Military ID, Tax Identification Number), country code, date of issue, transaction number, place of issue, beginning and ending money order serial numbers, and wire transfer number or other transaction number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 5325 and 5330.

PURPOSE(S):

The information will be used to obtain and maintain identifying information on Postal Service customers who purchase money orders, wire transfers, and/or stored value cards totaling $3,000 or more.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

General routine use statements a, b, c, d, e, f, g, h, and j listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses follow:

1. Information may be disclosed to the U.S. Department of Treasury, the U.S. Justice Department, and federal law enforcement agencies pursuant to the provisions of the Federal Bank Secrecy Act, as codified in section 5313 of Title 31 of the U.S. Code.

2. Information from this system may be disclosed to a foreign entity under agreement with the Postal Service to distribute money orders and transfer funds.

3. Information from this system may be disclosed to the purchaser or payee of a money order or money transfer in order to respond to an inquiry concerning the transaction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computer storage media.

RETRIEVABILITY:

By name and other unique identifier.

SAFEGUARDS:

Hard copy records and computers containing information within this system of records are maintained in a building with controlled access. To gain access to the building and access to controlled areas within the building, individuals must have authorized badges and/or card keys. Computer systems are protected within an installed security software package, the use of computer LOG-ON IDs, and operating system controls.

RETENTION AND DISPOSAL:

PS Form 8105–A will be destroyed either by shredding, burning, or other acceptable method of destruction 5 years from the end of accounting period in which they were created. Related automated information will be retained for the same period and purged from the system quarterly after the date of creation.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Financial Officer, Finance, United States Postal Service, 475 L'Enfant Plaza SW, Washington DC 20260–5000.

NOTIFICATION PROCEDURE:

Individuals wanting to know whether information about them is maintained in this system of records must address inquiries in writing to the system manager. Inquiries must contain the name, address, and social security number or other identifying number (driver's license, Alien Registration Number, Passport Number, etc.) of purchaser; and the recipient's name and address of wire transfer transaction.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and the Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information is obtained from purchaser and, for wire transfer transaction information, is obtained from purchaser and recipient.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–19466 Filed 7–29–99; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41641; File No. SR–CBOE–99–31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Administration of DBOE Rule 8.95(f)

July 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 1999, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change. The Exchange submitted Amendment No. 1 to its proposed rule change on July 1, 1999.[3] The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt an Interpretation and Policy pertaining to the administration of DBOE Rule 8.95(f). The text of the proposed rule change is as follows. New text is italicized.

Allocation of Securities and Location of Trading Crowds and DPMs

Rule 8.95 No Change.

* * * *Interpretations and Policies:*

.01–.02 No change.

.03 trading crowd may indicate that it no longer wishes to trade an option class opened for trading prior to May 1, 1987, for purposes of paragraph (f) of Rule 8.95 by means of a voting procedure as described in this Interpretation and Policy. Members of a trading crowd eligible to participate in the vote shall include those market-makers and floor brokers who have transacted at least 80% of their market-maker contracts (in the case of market-makers) or orders (in the case of floor brokers) in each of the three immediately preceding calendar months in option classes traded in the trading crowd, and who continue to be present in the trading crowd in the capacity of a market maker or floor broker at the time of the vote. Eligible market-makers and floor brokers shall each have one vote, and shall vote together as a single class. A trading crowd shall be deemed to have indicated that it no longer wishes to trade a designated option class if a majority of the trading crowd participates in the vote and if a majority of the total votes cast are in favor of the proposition. Any member of a trading crowd eligible to vote on whether the crowd wishes to trade an option class may request that such a vote be held by submitting a written request to that effect to the Secretary of the Exchange. The Exchange shall post a notice at the trading station of the time and date of any vote to be taken for purposes of Rule 8.95(f) at least 24 hours prior to the time of the vote. The Allocation Committee or Special Product Assignment Committee, as applicable shall determine all other administrative procedures pertaining to the vote.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purposes of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made two technical corrections to its proposed rule language to conform the text of the rule language to its current rule and clarified that the Allocation Committee or Special Product Assignment Committee, as applicable, administers CBOE Rule 8.95(f). *See* Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Terri Evans, Attorney, Division of Market Regulation, Commission, dated June 30, 1999 ("Amendment No. 1").

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A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 8.95(f) permits a trading crowd to indicate that it no longer wishes to trade an option class opened for trading prior to May 1, 1987, in which event the Exchange's Allocation Committee or Special Product Assignment Committee, as applicable,[4] may reallocate the class to another trading crowd or to a Designated Primary Market-Marker. The purpose of proposed Interpretation and Policy 8.95.03 is to adopt procedures for the administration of CBOE Rule 8.95(f) that specify how a trading crowd may manifest an indication that it no longer wishes to trade a class of options for purposes of that rule.

Two procedural aspects of the administration of CBOE Rule 8.95(f) are embodied in proposed Interpretation and Policy 8.95.03. The first is to define who constitutes a trading crowd for purposes of the rule, and the second is to adopt voting procedures to be used for purposes of determinations made under the rule. Proposed Interpretation and Policy 8.95.03 provides that members of a trading crowd for purposes of CBOE Rule 8.95(f) are those market-makers and floor brokers who have transacted at least 80% of their market-maker contracts (in the case of market-makers) or orders (in the case of floor brokers) in each of the three immediately preceding calendar months in option classes traded at that trading crowd's station, and who continue to be present in the trading crowd in the capacity of a market maker or floor broker at the time of the vote. These provisions are intended to ensure that determinations made under CBOE Rule 8.95(f) will be made by those members who are currently engaged as market-makers or floor brokers in the trading crowd, and who have concentrated their activity in the trading crowd over the last three months.

The proposed Interpretation and Policy also provides that a crowd will be deemed to have indicated that it no longer wishes to trade an option class only if (i) the question is put to a vote of the members of the trading crowd, (ii) a majority of the members of the trading crowd participate in the vote, and (iii) a majority of the votes cast are in favor of not wanting to continue to trade the class. At least 24 hours posted notice to the trading crowd of the time and date of the vote is required before a vote may take place. These voting procedures are substantially the same as those set forth in CBOE Rule 2.40(d) concerning recommendations of a market-maker surcharge under that rule, except that a specified quorum requirement and a longer (90-day) eligibility period for participation in the vote are provided under Interpretation and Policy 8.95.03 in light of the greater significance to a trading crowd of a determination not to continue to trade a class of options. In other respects, the Allocation Committee or Special Product Assignment Committee, as applicable, shall determine administrative procedures for conducting the vote.[5]

2. Statutory Basis

Proposed Interpretation and Policy 8.95.03 is consistent with and in furtherance of the objectives of Section 6(b)(5) of the Act[6] in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market, because it will provide fair and orderly procedures for the administration of CBOE Rule 8.95(f).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, and therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[7] and paragraph (f)(1) of Rule 19b–4.[8] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–99–31 and should be submitted by August 20, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19490 Filed 7–29–99; 8:45 am]

BILLING CODE 8010–01–M

[4] *Id.*

[5] *See* Amendment No. 1, *supra* note 3.

[6] 15 U.S.C. 78f(b(5).

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

[9] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41647; File No. SR–NASD–98–61]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to Reporting Transactions in Exchange-Listed Securities

July 23, 1999.

I. Introduction

On August 12, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to eliminate an unnecessary provision of an NASD rule relating to the reporting of transactions in exchange-listed securities traded in the third market.

The proposed rule change was published for comment in Exchange Act Release No. 40360 (August 25, 1998), 63 FR 46267 (August 31, 1998). No comments were received on the proposal.[3] This order approves the proposed rule change.

II. Description

The NASD proposes to eliminate an unnecessary provision of its rules applicable to the reporting of transactions in exchange-listed securities. Specifically, NASD Rule 6420(d)(3)(A), which is the general rule requiring NASD members to report all principal transactions in exchange-listed securities in the third market, currently contains language requiring members to report transactions in a manner "reasonably related to the prevailing market taking into considerations all relevant circumstances * * *." Although this provision accompanied a change to the trade reporting rules approved in 1980 (which was intended to make comparable the reporting of third market trades with exchange transactions), Nasdaq believes that this particular language is superfluous in the context of exchange-listed securities and does not serve any meaningful purpose with respect to the trade reporting of these securities.

Nasdaq believes that the language has served only to promote the misperception that the rule provides flexibility in the manner in which NASD members may report third market transactions. The rule was intended to require third market trades to be reported on a "gross" basis, exclusive of any mark-up or mark-down charged to the customer.[4] Nasdaq believes that this has led to inaccurate trade reporting, and has been used by ITS Participants[5] as a reason for not extending the NASD's Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") link to all exchange-listed securities. Accordingly, Nasdaq believes that the best practice would be to remove the unclear language from the rule.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Association and, in particular, with the requirements of Section 15A(b)(6).[6] Section 15A(b) requires that the rules of the association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.[7]

The Commission also finds that the proposed rule change is consistent with Section 11A of the Act.[8] Specifically, the Commission finds that the proposed rule change should facilitate the further development of the National Market System by eliminating any confusion regarding the trade reporting responsibilities of third market makers.

Prior to July 1980, the NASD required that third market makers report transactions to the tape at the "net" price to the customer—that is, inclusive of mark-ups, mark-downs, commission equilavents, or service charges (collectively, "charges"). In contrast, exchange rules have always required a trade to be reported to the tape at the "gross" transaction price—that is, exclusive of charges. In July 1980, the Commission approved an NASD rule change providing that members would be required to report transactions to the tape exclusive of charges. The NASD's rule also allowed members to report prices "reasonably related to the market, taking into consideration all relevant circumstances. * * *"

The NASD's proposed rule change deletes the "reasonably related to the market" language. The Commission believes that the proposed rule change clarifies that third market makers will no longer have the perceived latitude to determine the price at which exchange-listed securities transactions are reported. The proposed rule change further promotes the comparability of transaction prices reported in the consolidated system and improves the manner in which transaction prices are disclosed to public investors.

The Commission notes that the ITS Participants have expressed concern that the perceived lack of comparability between the trade reporting requirements in the third market and those in the exchange markets results in disparate prices and obligations regarding the protection of quotations under the ITS Trade-Through Rule and Block Policy.[9] The Participants note that the

[1] 15 U.S.C. 78s (b)(1).

[2] 17 CFR 240.19b–4.

[3] Although the Commission did not receive any comments on this specific proposed rule change, the Chicago Stock Exchange ("CHX") submitted a comment letter on the Commission's proposal to expand the Intermarket Trading System linkage to all listed securities. The CHX's letter questioned the practical effect of the NASD's proposed rule change. Specifically, CHX questioned whether the NASD's proposed rule change truly eliminated the discretionary nature of the current rule. *See* Letter to Jonathan G. Katz, Secretary, Commission, from Robert H. Forney, President and Chief Executive Officer, CHX, dated August 28, 1998. The NASD responded in December 1998. *See* Letter to Jonathan G. Katz, Secretary, Commission, from Richard G. Ketchum, President and Chief Operating Officer, NASD, dated December 17, 1998.

[4] *See* Exchange Act Release No. 16960 (July 7, 1980), 45 FR 47291 (July 14, 1980) (approving SR–NASD–80–03).

[5] ITS is a communications and order routing network linking eight national securities exchanges and the electronic over-the-counter market operated by the NASD. ITS was designated to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. The NASD's computer assisted execution system ("CAES") enables participating firms to route their orders for listed securities through ITS to obtain executions against quotations of third market makers participating in Nasdaq. The ITS/CAES interface allows participant exchanges and Nasdaq market makers to route commitments to other participant exchange markets for execution.

Participants to the ITS Plan include the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the CHX, the Cincinnati Stock Exchange, Inc., the NASD, the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. (collectively, "Participants").

[6] 15 U.S.C. 78o–3(b)(6).

[7] *See* 15 U.S.C. 78o–3. In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[8] 15 U.S.C. 78k–1.

[9] *See, e.g.*, CHX letter; Letter to Jonathan G. Katz, Secretary Commission, from James E. Buck, Senior Vice President and Secretary, NYSE, dated August 31, 1998 (comment letter to File No. 4–208, Exchange Act Release No. 40260 (July 24, 1998), 63 FR 40748 (July 30, 1998) nn.63, 67) ("NYSE letter").

A "trade-through" occurs when a transaction is effected at a price below the best bid, or above the best prevailing offer. The ITS Trade-Through Rule requires that members of ITS Participant markets avoid initiating a trade-through when purchasing or selling, either as principal or agent, any ITS security on the Participant market or when sending a commitment to trade through ITS. The ITS Block Trade Policy provides that the member who represents a block-size order(s) shall, at the time of execution of the block trade, send, or cause to be sent, through ITS to each participating ITS market center displaying a bid (or offer) superior to the execution price, a commitment to trade at the execution price and for the number of shares displayed with that market center's better-priced bid (or offer). This policy is intended to enable

Continued

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price at which a transaction is reported to the Consolidated Tape System determines whether or not a member in one Participant market who has displayed a better bid or offer within the linked ITS market is entitled to satisfaction as a consequence of an inferior priced transaction reported to the tape in another market. The ITS Participants believe that the current NASD trade reporting rule, containing the "reasonably related to the market" provision, provides latitude to NASD members to report a price to the tape different from the execution price confirmed to customers, thereby creating the potential to avoid the Trade-Through Rule.

In its letter to the Commission, CHX asserts that the NASD's proposed rule change does not address the discretionary nature of the NASD's current trade reporting rule because it "would merely eliminate the standard articulating how to calculate the markup or markdown." The NASD responds that it "fails to see the relevance of the argument that a third market maker could avoid a trade-through by reporting a price within the national best bid and offer while providing a different price to its customer, when that difference must be disclosed to the customer and assessed as a cost of trading on the same basis as any other charge or commission." [10] The NASD further disagrees with the CHX's assertion that the NASD's proposed rule change limits the value of a trade-through rule. CHX argues that a market maker's discretion to report a trade at a prevailing market price at the time of the trade, as long as the customer is made aware of the difference between the reported price and the net price (the markup), enables a market maker to avoid a trade-through. In response, the NASD states that its trade reporting rule emphasizes the value of a trade-through rule by encouraging market participants to provide an execution at a better price than the national best bid or offer. The NASD further believes that such an execution would be "exactly comparable with orders executed on an exchange where the reported price does not include the broker's commission." [11]

The Commission finds that eliminating the "reasonably related to the market" language helps to clarify the NASD's trade reporting rule. As the NYSE stated, removal of the "reasonably related to the prevailing market" language would resolve its long-standing concern [12] with the trade reporting issue.[13] Furthermore, effective surveillance and confirmation disclosure of the charges to the customer should help to enforce these trade reporting obligations.[14] Specifically, in the event a broker-dealer is acting as principal in a transaction in a reporting security, the confirmation disclosure rule, Exchange Act Rule 10b–10, requires a broker-dealer to disclose to a customer the trade price reported to the Consolidated Tape, the net price to the customer in the transaction, and the difference, if any, between the reported price and the price to the customer. If a broker-dealer is acting as agent for a customer, the member must confirm to the customer the gross trade price (which is the price reported to the Consolidated Tape), and the commission equivalent as well as the net price to the customer.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NASD–98–61) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19488 Filed 7–29–99; 8:45 am]

BILLING CODE 8010–01–M

other markets to derive the benefit of the block without breaking it up.

[10] *See* NASD letter.

[11] *See* NASD letter.

[12] *See, e.g.,* Letter to Jonathan G. Katz, Secretary, Commission, from James E. Buck, Senior Vice President and Secretary, NYSE, dated June 25, 1997.

[13] *See* NYSE letter.

[14] *See* Exchange Act Release No. 18713 (May 6, 1982), 47 FR 20413, 20415 n.13 (May 12, 1982).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41546; File No. SR–Phlx–99–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Establish Fees for Transactions Executed Through the Volume Weighted Average Price ("VWAP") Trading System ("VTS")

July 23, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 1999, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change form interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Commission recently approved the Exchange's proposal to operate the Volume Weighted Average Price ("VWAP"®) Trading System ("VTS"™) [3] as a facility of the Exchange.[4] The VTS will provide a daily pre-opening order matching session for the execution of large stock orders at the VWAP. The Exchange now proposes to establish a fee schedule for trades executed through the VTS.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 24, 1999, the Exchange received Commission approval to operate the VTS as a facility of the Exchange. The VTS will provide a daily pre-opening order matching session for the execution of large stock orders at the VWAP. Approximately 300 of the most highly capitalized and highly liquid equity securities that are listed on the New York Stock Exchange will be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] VWAP is a registered trademark of the Universal Trading Technologies Corporation ("UTTC"). The VTS™ is the property of UTTC.

[4] *See* Securities Exchange Act Release No. 41210 (Mar. 24, 1999), 64 FR 15857 (Apr. 1, 1999) ("VTS Approval Order"). The approval is effective for a 1 year pilot period.

eligible for matching during the pre-opening session. During the pre-opening session, the VTS will electronically match orders for execution at the VWAP according to the algorithm developed by the Universal Trading Technologies Corporation. The matched and executed orders will be assigned a final VWAP after the close of regular trading.

As a facility of the Exchange, the VTS will operate using Exchange equipment and personnel, allow Exchange floor traders to participate, and rely upon the Stock Clearing Corporation of Philadelphia ("SCCP") to process VTS trades.[5] Matches performed during the pre-opening session will be regulated and reported as Exchange trades. Further details regarding the operation of the VTS appear in the VTS Approval Order and Exchange Rule 237, "The Universal Trading System Morning Session," which governs the operation of VTS.

The Exchange now proposes to adopt fees for trades executed through the VTS. Although trades executed on behalf of VTS users will result in transaction fees, it is only Exchange member firms and clearing firms that will be billed and held responsible for paying the fees. Thus, the transaction fees resulting from a VTS user's trading activity will be billed to the Exchange member or clearing firm through which the VTS orders were routed. Although the transaction fees vary primarily according to the ultimate user that receives trade execution through the VTS (*e.g,* retail customer, specialist, Exchange member), they also depend on the type of trade (*e.g.*, cross versus non-cross), and the annual volume of VTS trading activity. The proposed fee schedule is as follows:

- Institutional user and retail customer user (non-cross trades):

1 share to 10 million shares per year: $0.02 per share
>10 million to 20 million shares per year: $0.015 per share
>20 million shares per year: $0.01 per share

- Institutional user and retail customer user (cross trades):

Intra-firm: $0.005 per share [6]
Inter-firm: $0.01 per share

- Non-member/non-institutional user: $0.015 per share.
- Specialist or alternate specialist Committer: No charge.
- Member off-floor liquidity provider: $0.01 per share.
- Member user (not enrolled as Committer): $0.01 per share.

Under the proposal, the fees for non-cross trades executed on behalf of a institutional user [7] or retail customer user [8] will be predicated upon the aggregate number of shares that such institutional user or retail customer user trades annually through VTS. In calculating the number of shares that each user trades through the VTS, the Exchange shall always treat January 1 as the start of the year. For the first 10 million shares traded per year, the fee will be $.02 per share. For more than 10 million shares up to 20 million shares per year, the fee will be $.015 per share. For greater than 20 million shares per year, the fee be $.01 per share.[9] These volume discount thresholds will be prorated based upon a user's enrollment date.[10] The Exchange believes that reducing fees for increased trading volume should help attract order flow to the VTS.

With respect to cross orders [11] for institutional users and retail customer users, the Exchange proposes to charge $.005 per side, per share, for intra-firm crosses and $.01 per share for inter-firm crosses.[12] The trade volume of users' cross orders (inter-firm and intra-firm cross orders) will not be counted toward the volume aggregations applicable to non-cross orders.

Trades for non-member/non-institutional users [13] will be assessed fees of $.015 per share. Trades for specialist and alternate specialist Committers [14] will not be charged transaction fees for VTS trades. Trades for the other type of Committer—Exchange members who serve as off-floor liquidity providers—will be charged $.01 per share. Lastly, trades for member users who are not enrolled as Committers will be assessed fees of $.01 per share.

Although Exchange members will be billed for the VTS trades of their customer users, no other separate fee shall apply to members acting as brokers. This practice is similar to other fee arrangements currently employed by the Exchange, including the assessment of fees for equity option transactions.[15]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act [16] in that it provides for the equitable allocation of reasonable fees and other charges among members using VTS. The Exchange further believes that the proposed fee schedule is reasonable and will help attract order flow to VTS.

B. Self-Regulatory Organization's Statement on Burden in Competition

The Exchange believes that the proposed rule change will not impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

[5] The SCCP has filed a separate proposal with the Commission to establish fees for the trade recording and confirmation services that SCCP will provide for VTS trades. *See* File No. SR–SCCP–99–02.

[6] Intra-firm cross trades refer to cross trades where the identified contra-sides are from the same firm. Because the same firm is on both sides of an intra-firm cross trade, the $.005 per share fee applies to each side, thus totaling $.01 per share.

[7] An institutional user is an entity not registered as a broker-dealer or doing business as a hedge fund (*i.e.*, private investment pool), but one that serves in a fiduciary capacity. Such entities include, but are not limited to: qualified pension plans, investment companies registered under the Investment company Act of 1940, bank trust departments, corporations that purchase securities for corporate purposes, and insurance companies. *See* Exchange Rule 237(c)(v).

[8] The level of fees will not affect the manner in which orders are matched pursuant to the UTTC matching algorithm. *See* Exchange Rule 237(e).

[9] The Exchange's billing system monitors users' VTS transaction volume on an aggregate and ongoing basis. Therefore, discounts are immediately applied toward any VTS transaction volume that exceeds the discount thresholds. Telephone conversation between Michael L. Loftus, Attorney, Division of Market Regulation, Commission, and Nandita Yagnik, Counsel, Exchange, on July 8, 1999.

[10] For example, if a new user enrolled on July 1, the volume discount thresholds would be reduced by 50% because 50% of the year would have expired. Thus, the user's trades would generate transaction fees of $.02 for the first five million shares matched, $.015 for matches greater than 5 million shares up to 10 million shares, and $.01 for matches over 10 million shares.

[11] A cross order is a two-sided order with both sides comprised of non-member interest, with instructions to match the identified buy-side with the identified sell-side. The two sides making up the cross can be entered separately, with the contra-side identified. *See* Exchange Rule 237(d)(i)(C).

[12] Inter-firm cross orders refer to cross orders where the identified contra-sides are from different firms.

[13] The non-member/non-institutional user category includes non-member broker-dealers.

[14] "Committers" are Exchange members who agree to provide contra-side liquidity on a proprietary basis. Committers are required to provide a minimum volume guarantee of 2,500 shares for each side of the market. Committer status is restricted to Exchange members that are: (i) Phlx floor traders, Phlx specialists, or Phlx alternate specialists; or (ii) off-floor liquidity providers. Specialists and alternate specialists may act as Committers only in their specialty issues. *See* Exchange Rule 237(c)(i). A more thorough description and discussion of order types, classes of users, and conditions to access appear in Exchange Rule 237 and the VTS Approval Order.

[15] *See* Securities Exchange Act Release No. 41317 (Apr. 21, 1999), 64 FR 23144 (Apr. 29, 1999).

[16] 15 U.S.C. 78f(b)(4).

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III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes a due, fee, or charge imposed by the Exchange, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(2) thereunder.[18] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[19]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–99–21 and should be submitted by August 20, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19489 Filed 7–29–99; 8:45 am]

BILLING CODE 8010–01–M

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] In reviewing this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f)

[20] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before August 30, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: U.S. Small Business Administration's Application Survey.

Form No.: 1843.

Frequency: On Occasion.

Description of Respondents: Person's seeking employment with SBA.

Annual Responses: 75.

Annual Burden: 13.

Dated: July 22, 1999.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–19480 Filed 7–29–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Delegation of Authority No. 145–16]

Redelegation of Responsibilities and Functions of the U.S. Arms Control and Disarmament Agency to the Department of State

By virtue of the authority vested in me as Secretary of State, including section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651), and the Chemical Weapons Convention Implementation Act of 1998 and the Foreign Affairs Reform and Restructuring Act of 1998 (as contained in Pub. L. 105–277), section 1(a) of State Department Delegation of Authority No. 145 of February 4, 1980 (45 FR 11655), as amended, is hereby further amended:

(1) By inserting at the end thereof the following new subsections:

"(13) The functions conferred on the Secretary by the Chemical Weapons Convention Implementation Act of 1998 (as contained in Pub. L. 105–277).

"(14) The functions that, before the effective date described in section 1201 of the Foreign Affairs Reform and Restructuring Act of 1998 (as contained in Pub. L. 105–277) were vested in the United States Arms Control and Disarmament Agency, including any functions conferred on the Director or any officer or employee of that agency, and that, pursuant to the provisions of the Act (including amendments made by that Act), are now conferred on the Secretary."; and

(2) By striking the word "Affairs" following the phrase "Under Secretary for Arms Control and International Security".

This delegation shall be published in the **Federal Register.**

Dated: July 21, 1999.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 99–19612 Filed 7–29–99; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of a Current Public Collection of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on a currently approved public information collection which will be submitted to OMB for renewal.

DATES: Comments must be received on or before September 28, 1999.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judith Street, Room 612, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on the following current collection of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection. Following is a short synopsis of the currently approved public information collection activity, which will be submitted to OMB for review and renewal: 2120–0007, Flight Engineers and Flight Navigators. This information collection is necessary to determine applicant eligibility for flight engineer or flight navigator certificates. The information is also to determine training course acceptability for those schools training flight engineers or navigators. The respondents are an approximate 2700 people applying for flight engineer or flight navigator certificates, and approximately 25 flight engineer schools.

Issued in Washington, DC, on July 23, 1999.

Patricia W. Carter,

Acting Manager, Standards and Information Division, APF–100.

[FR Doc. 99–19623 Filed 7–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lawrence County, Ohio and Greenup County, Kentucky

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for transportation improvements proposed in Lawrence County, Ohio and Greenup County, Kentucky.

FOR FURTHER INFORMATION CONTACT: Scott McGuire, Field Operations Engineer, Federal Highway Administration, 200 North High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6852.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to replace the Ironton-Russell Bridge (93C) across the Ohio River and connecting the two communities of Ironton, Ohio and Russell, Kentucky.

The purpose of the transportation improvement is to replace the structurally deficient and functionally obsolete bridge with a facility that meets current design standards while providing safe and efficient travel opportunity. Actions under consideration include (1) replacement of the existing facility on the existing alignment, (2) replacement on an adjacent location and (3) taking no action.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in the project area. On August 19, 1999 the preliminary corridors under consideration will be presented to the public and, in the year 2000, a public meeting will be held to obtain input on a preferred alignment. A Public Hearing will be held and may also take place in the year 2000. Public notice will be given of the exact time and place of the meetings and the hearing to be held for the project. The Draft EIS will be available for public and agency review and comment prior to the Public Hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action or the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 26, 1999.

Scott A. McGuire,

Field Operations Engineer, Federal Highway Administration, Columbus, Ohio.

[FR Doc. 99–19581 Filed 7–29–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–99–5880]

Hours of Service of Drivers; Exemption Application From Hulcher Services, Inc.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of application for exemption and intent to deny exemption; request for comments.

SUMMARY: The FHWA is announcing its preliminary determination to deny the application of Hulcher Services, Inc. (Hulcher) for an exemption from the maximum driving time limitations in the Federal Motor Carrier Safety Regulations (FMCSRs). Hulcher requested an exemption because it believes the current requirements interfere with the efficiency and effectiveness of the company's core business, emergency and disaster response to railroad accidents. The FHWA intends to deny the exemption because Hulcher did not explain how it would ensure that it could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the hours-of-service regulations. Also, Hulcher did not describe the impacts (e.g., inability to test innovative safety management control systems, etc.) it could experience if the exemption is not granted by the FHWA. The exemption, if granted, would preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: Comments must be received on or before August 30, 1999.

ADDRESSES: Submit written, signed comments to FHWA Docket No. FHWA–99–5880, the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HMCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

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SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments that were submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, in response to previous rulemaking notices concerning the docket referenced at the beginning of this notice by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107). Section 4007 of TEA–21 amended 49 U.S.C. 31315 and 31136(e) concerning the Secretary of Transportation's (the Secretary's) authority to grant exemptions from the FMCSRs for a person(s) seeking regulatory relief from those requirements. An exemption may be granted for no longer than two years from its approval date, and may be renewed upon application to the Secretary. The Secretary must provide the public with an opportunity to comment on each exemption request prior to granting or denying the exemption.

The TEA–21 requires the FHWA to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public with an opportunity to inspect the safety analysis and any other relevant information known to the agency, and to comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the FHWA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, the FHWA published an interim final rule implementing section 4007 of TEA–21 (63 FR 67600). The regulations at 49 CFR part 381 establish the procedures persons must follow to request waivers and to apply for exemptions from the FMCSRs, and the procedures the FHWA will use to process the requests for waivers and applications for exemptions.

Hulcher's Application for an Exemption

Hulcher applied for an exemption from 49 CFR 395.3, which provides requirements concerning the maximum driving time for drivers of commercial motor vehicles (CMVs). A copy of the application is in the docket identified at the beginning of this notice. Generally, under the current regulations drivers may not drive more than 10 hours following eight consecutive hours off duty, or for any period after being on duty (this includes all driving time, and all time spent working, but not driving) for 15 hours following eight consecutive hours off duty. In addition, drivers may not drive after being on duty 60 hours in any seven consecutive days if the employing motor carrier does not operate CMVs every day of the week (60-hour rule), or after being on duty 70 hours in any eight consecutive days if the employing motor carrier operates CMVs every day of the week (70-hour rule). Hulcher requested an exemption to all these requirements. If such an exemption is not possible, the company asked that the FHWA consider allowing its drivers a 24-hour restart for the 70-hour rule—after 24 consecutive hours off-duty, the driver would be allowed to drive a CMV irrespective of the number of days used to accumulate the previous 70-hours on-duty.

Hulcher is a business that provides assistance in restoring rail service after train accidents, including hazardous materials incidents. The company responds to emergencies, makes necessary repairs to tracks and switches, and lifts locomotives and rail cars back onto the tracks. Its equipment is maintained and staged strategically throughout the United States in order to respond quickly and efficiently to railroad emergencies. The company claims that its average movement of equipment and personnel is less than 200 miles. Hulcher states:

> The company's dilemma concerns, the interpretation by the company, of the requirement of [49 CFR 395.3]. The company's heavy equipment operators, and laborers, who are CDL qualified, and who would occasionally operate a CMV, maintain a daily record of duty status. These personnel are performing daily activities other than operating a CMV, and not necessarily associated with a CMV. The company's practice has been to record hours worked daily as, on duty not driving, in a driver's daily log. The duties being performed are no different from the duties of a heavy equipment mechanic. A mechanic whose daily job function, and classification, is to maintain the equipment at a company owned location and, on occasion, if CDL qualified, may be needed to operate a CMV. The mechanic would not be required to maintain a drivers daily log record, but would be accountable for seven days prior plus the day he would be operating a CMV. Because of this company's current practice to record ■ duty status of all hours of every day, available hours of service have been significantly reduced, when needed to respond to an emergency. These personnel may go for days or weeks, without operating a CMV, but may report daily to a company owned facility. These personnel are relieved from duty daily for at least fifteen hours while at these locations. In the event, our operators and laborers have been operating heavy equipment at an emergency scene, they are still showing a daily record of duty status as "on duty not driving." Once the job is finished, and prior to transporting the equipment back to it's staged location, all heavy equipment operators, and laborers, who will be operating a CMV, for the return trip, will be housed at a motel or other accommodations in order that they be rested before operating the CMV. Several of these personnel may have exhausted all available hours of service during this job. In order to comply with the requirements of [49 CFR 395.3], they will need to stay off duty up to an additional two days before regaining available hours. These operators and laborers can not possibly be more rested after forty-eight or more hours off duty, and away from home, than after having been off duty for at least twenty-four hours and returning home, and being placed off duty. The company, and its Managers, will not allow a fatigued individual to operate any company owned vehicle, and or equipment.
>
> Hulcher submitted information on its "Safety Recognition Program" which is intended to reward employees who have been successful in preventing both accidents and injuries. One point (each point has a cash value) is earned for each month that an employee works without having a "chargeable" accident or injury. If the employee has a chargeable accident or injury he or she loses points (two points per accident or injury). Bonus points may be earned based on the number of consecutive months or years the employee works without an incident, and based on the performance of the employee's division. The information provided does not show any discernible linkage between the recognition program and compliance with safety regulations or company guidelines.

Basis for Preliminary Determination to Deny the Exemption

The FHWA has carefully reviewed Hulcher's application for an exemption to the maximum driving time regulation and its alternate request for the use of a 24-hour restart to the 70-hour rule, and does not believe there is scientific or safety-performance data to support granting either request. Hulcher has failed to explain how it would ensure that it could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the hours-of-service regulations. Also, Hulcher did not describe the impacts (e.g., inability to test innovative safety management control systems, etc.) it could experience if the exemption is not granted by the FHWA. Although Hulcher argues that regulatory relief is necessary to respond to disasters and emergencies, there is no discussion of specific disasters or emergencies the company has been unable to respond to because of compliance with the hours-of-service regulations. The FHWA does not believe that an exemption granted under the authority of section 4007 of the TEA–21 is necessary for motor carriers to obtain regulatory relief to respond to legitimate emergencies.

The FMCSRs include an emergency relief exemption (49 CFR 390.23) from almost all of the FMCSRs, including the hours-of-service requirements, for any motor carrier or driver operating a CMV to provide relief during an emergency (as defined [1] in 49 CFR 390.5) subject to certain limitations. For regional emergencies, the emergency relief exemption is effective when an emergency has been declared by the President, the governor of a State, or their authorized representatives having authority to declare emergencies; or certain officials in one of the FHWA's Resource Centers have declared that a regional emergency exists which justifies an exemption from parts 390 through 399. In the case of local emergencies, the exemption is effective when an emergency has been declared by a Federal, State or local government official having authority to declare an emergency; or certain officials in one of the FHWA's Resource Centers have declared that a local emergency exists which justifies an exemption from parts 390 through 399 of the FMCSRs.

The motor carrier or driver is subject to the requirements of parts 390 through 399 upon termination of direct assistance to the regional or local emergency relief effort. Direct assistance ends when a driver or CMV is used in interstate commerce to transport cargo not destined for the emergency relief effort, or when the motor carrier dispatches the driver or CMV to another location to begin operations in commerce. When the driver has been relieved of all duty and responsibilities after providing direct assistance to a regional or local emergency relief effort, the driver may not operate a CMV in commerce until all the requirements of § 395.3 are met and, the driver has had at least 24 consecutive hours off-duty when the driver has operated in excess of the 60-or 70-hour rules.

Hulcher has not explained why the current emergency relief exemption is not sufficient for the incidents to which they typically respond. Also, Hulcher has not provided an explanation of what it considers an emergency or disaster. The FHWA does not believe that the mere fact that a train accident occurs automatically constitutes an emergency necessitating regulatory relief from the hours-of-service rules. The exemption from all of the hours-of-service limits, as requested by Hulcher, provides no specific terms or conditions that could be evaluated by the agency beforehand to ensure that an acceptable level of safety would likely be achieved, nor does it offer a means to monitor the safety performance of Hulcher's drivers. Under these circumstances, it would be inappropriate to consider granting the request.

With regard to Hulcher's alternate request to use a 24-hour restart to the 70-hour rule, the FHWA is not aware of any research that would support such an exemption. The agency proposed allowing a 24-hour restart for all motor carriers in 1992 (57 FR 37504; August 19, 1992). Nearly 68,000 comments were received in response to the 1992 notice of proposed rulemaking. Virtually no substantive information was presented in these comments to support a change in the regulations. Except in very general terms, the FHWA received little discussion of potential impacts on highway safety that could result from increasing the available on-duty hours. The FHWA, therefore, declined to make the proposed changes to the rule and, on February 3, 1993 (58 FR 6937), withdrew the proposal and closed the docket.

On November 5, 1996 (61 FR 57252), the FHWA published an advance notice of proposed rulemaking (ANPRM) on all aspects of the hours-of-service regulations. The agency indicated that it was nearing the completion of several research projects and was seeking the results of other relevant research to consider in revising the hours-of-service regulations. To assist the FHWA in gathering all pertinent data to make informed decisions based upon scientific evidence, the FHWA requested assistance in locating any other relevant information, including research, operational tests, or pilot regulatory programs conducted anywhere in the world, that may be used by the agency in developing a revised regulatory scheme for CMV drivers' hours of service. The agency has reviewed all the research reports submitted by commenters to the rulemaking docket, and scientific information obtained through other sources, and is not aware of any data that would support granting an exemption to use a 24-hour restart. Copies of all known research reports, as well as all comments submitted in response to the ANRPM, are available in FHWA Docket No. FHWA–97–2350.

The FHWA recognizes that Hulcher provides an important service needed to restore rail service after an accident or incident, but does not believe it is necessary to grant either a blanket exemption to the hours-of-service regulations or allow a 24-hour restart to the 70-hour rule. There are no reported instances of the hours-of-service regulations preventing Hulcher from responding to a legitimate emergency or a disaster.

Moreover, the FHWA has considered Hulcher's safety recognition program and does not believe it is relevant to the application. Based on the information submitted by Hulcher, drivers are rewarded for not having "chargeable" accidents or injuries or penalized for having such occurrences. The FHWA does not consider this to be an acceptable alternative to complying with well-defined, enforceable terms and conditions that the agency could attempt to evaluate during the period of the exemption.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FHWA is requesting public comment from all interested persons on the exemption application

[1] Emergency means any hurricane, tornado, storm (e.g., thunderstorm, snowstorm, icestorm, blizzard, sandstorm, etc.), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout or other occurrence, natural or man-made, which interrupts the delivery of essential services (such as, electricity, medical care, sewer, water, telecommunication transmissions) or essential supplies (such as, food and fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in: a declaration of an emergency by the President, the governor of a State, or their authorized representatives; or by certain officials in one of the FHWA's resource centers near the location in which the emergency occurs; or by other Federal, State, or local government officials having authority to declare emergencies.

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from Hulcher. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but the FHWA may deny the exemption at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.48.

Issued on: July 22, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–19463 Filed 7–29–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33784]

Penn Virginia Corporation—Continuance in Control Exemption—Kanawha Rail Corp.

Penn Virginia Corporation (Penn Virginia) has filed a notice of exemption to continue in control of the Kanawha Rail Corp. (Kanawha),[1] upon Kanawha's becoming a Class III railroad.

The transaction is scheduled to be consummated on July 29, 1999, the effective date of the exemption (7 days after the notice of exemption was filed).

This transaction is related to STB Finance Docket No. 33783, *Kanawha Rail Corp.—Acquisition and Operation Exemption—Winifrede Railroad Company*, wherein Kanawha seeks to acquire and operate approximately 6.47 miles of rail line together with associated rail properties from the Winifrede Railroad Company.

Penn Virginia indirectly exercises control over the Powell River Railroad Company (PRR). PRR is wholly owned by the Powell River Railroad Corporation (PRCC). PRCC, in turn, is wholly owned by Penn Virginia.

Penn Virginia states that: (i) the rail line to be operated by Kanawha does not connect with the PRR (the only other railroad controlled by Penn Virginia); (ii) the transaction is not part of a series of anticipated transactions that would connect Kanawha with the PRR; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33784, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 23, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–19560 Filed 7–29–99; 8:45 am]

BILLING CODE 4915–00–P

[1] Kanawha was formerly known as Penn Virginia Resources Marketing Corporation.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33783]

Kanawha Rail Corp.—Acquisition and Operation Exemption—Winifrede Railroad Company

Kanawha Rail Corp. (Kanawha),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Winifrede Railroad Company and operate approximately 6.47 miles of rail trackage in Kanawha County, WV (subject line), together with associated rail properties. The subject line extends from its northern terminus at an interchange with CSX Transportation, Inc., at CSX Station 670+30, south along Fields Creek, in Cabin Creek District, to its southern terminus.

Kanawha reports that it intends to consummate the transaction upon the effective date of the exemption. The earliest the transaction can be consummated is July 29, 1999 (7 days after the exemption was filed).

This transaction is related to STB Finance Docket No. 33784, *Penn Virginia Corporation—Continuance in Control Exemption—Kanawha Rail Corp.*, wherein Penn Virginia Corporation has concurrently filed a verified notice to continue in control of Kanawha upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33783, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: July 23, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–19559 Filed 7–29–99; 8:45 am]

BILLING CODE 4915–00–P

[1] Kanawha was formerly known as Penn Virginia Resources Marketing Corporation.

DEPARTMENT OF THE TREASURY

General Counsel Designation No. 241; Appointment of Members to the Legal Division Performance Review Board

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26 U.S.C. 7801, Treasury Department Order No. 101–5 (Revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following individuals to the Legal Division Performance Review Board:

(1) For the General Counsel Panel—

Kenneth R. Schmalzbach, Acting Deputy General Counsel, who shall serve as Chairperson
Roberta K. McInerney, Assistant General Counsel (Banking & Finance);
Stephen J. McHale, Assistant General Counsel (Enforcement);
Russell L. Munk, Assistant General Counsel (International Affairs);
Rochelle F. Granat, Acting Assistant General Counsel (General Law & Ethics);
Francine J. Kerner, Deputy Assistant General Counsel (Enforcement);
Marilyn L. Muench, Deputy Assistant General Counsel (International Affairs);
Eleni Constantine, Deputy Assistant General Counsel (Banking & Finance);
John J. Manfreda, Chief Counsel, Bureau of Alcohol, Tobacco & Firearms;
Elizabeth B. Anderson, Chief Counsel, United States Customs Service; and
Walter Eccard, Chief Counsel, Bureau of Public Debt.

(2) For the Internal Revenue Service Panel—

Chairperson, Deputy Chief Counsel, IRS;
Deputy General Counsel;
Two Associate Chief Counsel, IRS; and
Two Regional Counsel, IRS.

I hereby delegate to the Chief Counsel of the Internal Revenue Service the authority to make the appointments to the IRS Panel specified in this Designation and to make the publication of the IRS Panel as required by 5 U.S.C. 4314(c)(4).

Neal S. Wolin,

Acting General Counsel.

[FR Doc. 99–19485 Filed 7–29–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 878]

The Department of the Treasury's Odor Recognition Proficiency Standard for Explosives Detection Canines (99R–235P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of availability.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is announcing the availability of the Department of the Treasury's Odor Recognition Proficiency Standard for Explosives Detection Canines. The standard has been revised using solicited input and recommendations from other Federal law enforcement agencies that use explosives detection canines. A copy of the standard is available to all interested persons.

ADDRESSES: To receive a copy of the Department of the Treasury's Odor Recognition Proficiency Standard, send a written request, on official law enforcement or government letterhead, to: Chief, Canine Operations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Room 5100, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Rhonda Bokorney, Chief, Canine Operations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8680).

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1996, the Omnibus Consolidated Appropriations Act of 1997, Public Law 104–208, authorized the Secretary of the Treasury to establish a standard for explosives detection canines. Section 653(a) of the Act provides the following:

> Authoritzation.—The Secretary of the Treasury is authorized to establish scientific certification standards for explosives detection canines, and shall provide, on a reimbursable basis, for the certification of explosives detection canines employed by Federal agencies, or other agencies providing explosives detection services at airports in the United States.

The Secretary of the Treasury requested the Bureau of Alcohol, Tobacco and Firearms (ATF) to develop the standard. On September 29, 1997, we published in the **Federal Register** a notice announcing the establishment of an odor recognition proficiency standard for explosives detection canines (Notice No. 97–101; 62 FR 50982). The standard included a minimum odor recognition proficiency test which could be used by agencies that use detection canines. Copies of the odor recognition proficiency standard were available to all interested persons.

In Notice No. 97–101, we also stated that the established odor recognition proficiency standard would be further tested and validated. Prior to its being scientifically validated, the standard was revised using solicited input and recommendations from other Federal law enforcement agencies that use explosives detection canines.

From May 28, 1998, through February 1999, the Oak Ridge National Laboratory, managed by Lockheed Martin Energy Research Corporation for the U.S. Department of Energy, conducted an independent assessment of the validity of the odor recognition proficiency standard. On march 10, 1999, the Laboratory issued a final report that concluded the standard and test are valid for the measure of the proficiency for detecting explosives odors at the recognition and alerting phase of training.

A copy of the revised Department of the Treasury's Odor Recognition Proficiency Standard is available to law enforcement and government agencies.

Authority and Issuance: This notice is issued under the authority in Sec. 653, Pub. L. 104–208, 110 Stat. 3009.

Signed: July 23, 1999.

John W. Magaw,

Director.

[FR Doc. 99–19520 Filed 7–29–99; 8:45 am]

BILLING CODE 4810–31–M

UNITED STATES INFORMATION AGENCY

Notice: Culturally Significant Objects Imported for Exhibition Determinations

AGENCY: United States Information Agency.

SUBJECT: Culturally significant objects imported for exhibition determinations.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit "The Golden Age of Chinese Archaeology Celebrated Discoveries from the People's Republic of China" imported from abroad for temporary exhibition without profit within the United States, is of cultural significance. These objects are imported from abroad for temporary exhibition without profit within the United States, is of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC from on or about September 19, 1999, to on or about January 2, 2000; at the Museum of Fine Arts, Houston TX, from on or about February 13, 2000 to May 7, 2000; and at the Asian Art Museum of San Francisco, San Francisco, CA, from on or about June 17, 2000, to on or about September 11, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

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FOR FURTHER INFORMATION CONTACT: Paul W. Manning, Assistant General Counsel, 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: July 27, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–19603 Filed 7–29–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination: "Unseen Treasures: Imperial Russia and the New World"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Unseen Treasures: Imperial Russia and the New World," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed objects at the New Jersey State Museum, Trenton, NJ, from on or about September 25, 1999, to on or about January 16, 2000, and the Missouri Historical Society, saint Louis, MO, from on or about May 15, 2000, to on or about August 15, 2000, and the Mint Museum of Art, Charlotte, NC, from on or about September 1, 2000, to on or about December 31, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects and for further information, contact Ms. Neila Sheahan, Assistant General Counsel, Office of the General Counsel, 202/619–5030. The address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: July 26, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–19604 Filed 7–29–99; 8:45 am]

BILLING CODE 8230–01–M

federal register

Friday
July 30, 1999

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 412, 413, 483, and 485
Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2000 Rates; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412, 413, 483, and 485

[HCFA–1053–F]

RIN 0938–AJ50

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2000 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are revising the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement changes arising from our continuing experience with the systems. In addition, in the addendum to this final rule, we describe changes in the amounts and factors necessary to determine rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes are applicable to discharges occurring on or after October 1, 1999. We also set forth rate-of-increase limits as well as policy changes for hospitals and hospital units excluded from the prospective payment systems. Finally, we are revising certain policies governing payment to hospitals for the direct costs of graduate medical education.

DATES: The provisions of this final rule are effective October 1, 1999. This rule is a major rule as defined in Title 5, United States Code, section 804(2). Pursuant to 5 U.S.C. section 801(a)(1)(A), we are submitting a report to Congress on this rule on July 30, 1999.

FOR FURTHER INFORMATION CONTACT:
Steve Phillips, (410) 786–4531, Operating Prospective Payment, Diagnosis-Related Group (DRG), and Wage Index Issues.
Tzvi Hefter, (410) 786–4487, Capital Prospective Payment, Excluded Hospitals, and Graduate Medical Education Issues.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/nara__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

I. Background

A. Summary

Section 1886(d) of the Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of hospital inpatient stays under a prospective payment system. Under these prospective payment systems, Medicare payment for hospital inpatient operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. Discharges are classified according to a list of diagnosis-related groups (DRGs).

Certain specialty hospitals are excluded from the prospective payment systems. Under section 1886(d)(1)(B) of the Act, the following hospitals and hospital units are excluded from the prospective payment systems: psychiatric hospitals or units, rehabilitation hospitals or units, children's hospitals, long-term care hospitals, and cancer hospitals. For these hospitals and units, Medicare payment for operating costs is based on reasonable costs subject to a hospital-specific annual limit.

Under section 1886(a)(4) of the Act, costs incurred directly by a hospital in connection with approved graduate medical education (GME) programs are excluded from the operating costs of inpatient hospital services. Hospitals with approved GME programs are paid for the direct costs of GME in accordance with section 1886(h) of the Act; the amount of payment for direct GME costs for a cost reporting period is based on the hospital's number of residents in that period and the hospital's costs per resident in a base year.

The regulations governing the hospital inpatient prospective payment systems are located in 42 CFR part 412. The regulations governing excluded hospitals and hospital units are located in parts 412 and 413, and the GME regulations are located in part 413.

B. Summary of the Provisions of the May 7, 1999 Proposed Rule

On May 7, 1999, we published a proposed rule in the **Federal Register** (64 FR 24716) that set forth proposed changes to the Medicare hospital inpatient prospective payment systems for both operating costs and capital-related costs that would be effective for discharges occurring on or after October 1, 1999. We also proposed changes concerning GME costs and excluded hospitals and units, as well as critical access hospitals (CAHs). On June 15, 1999, we issued a correction notice (64 FR 31995) for the May 7, 1999 proposed rule. That notice corrected Table 3C of the Addendum (which lists each hospital's case-mix index and adjusted average hourly wage based on data on file at HCFA as of February 22, 1999) and made several other technical corrections.

In the proposed rule, we noted that the efforts that we were undertaking to make the Medicare computer systems compliant on January 1, 2000, would not delay our ability to make timely and updated payments to hospitals under the FY 2000 prospective payment systems final rule. This statement still applies and the changes and updated rates set forth in this final rule will be implemented on October 1, 1999.

The following is a summary of the contents of the proposed rule:

- In order to avoid compromising our ability to process and pay hospital claims during the period leading up to and immediately following January 1, 2000, we did not propose to implement any revisions to the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) coding system. We did propose to make some limited changes to certain DRG classifications for FY 2000 and described other proposed decisions concerning DRGs. We also recalibrated the DRG relative weights based on the proposed DRG changes and updated Medicare claims data.
- We proposed an FY 2000 hospital wage index update, using FY 1996 wage data, and revisions to the wage index based on hospital redesignations. In addition, we proposed to begin excluding from the wage index Part A physician wage costs that are teaching-related, as well as resident and Part A certified registered nurse anesthetist (CRNA) costs.
- We proposed several policy changes in the regulations in 42 CFR parts 412 and 413 and proposed to continue existing policy concerning classifications of sole community hospitals; the indirect medical education adjustment; and Medicare Geographic Classification Review Board (MGCRB) decisions. In addition, we updated the qualifying criteria for rural referral centers and proposed several changes to the regulations governing payments for the direct costs of GME programs.
- We discussed the special exceptions process for certain eligible hospitals to receive additional payments for major construction or renovation projects that began soon after the start of the capital prospective payment system and proposals that we had received to change the eligibility criteria for these payments.
- We discussed a number of proposals concerning Medicare payments to excluded hospitals and hospital units and CAHs. These proposed changes related to limits on and adjustments to the proposed target amounts for FY 2000; changes in bed size or status of excluded hospitals or hospital units; payment for Medicare services furnished at satellite hospital locations; responsibility for care of patients in hospitals-within-hospitals; the allowable emergency response time for CAHs located in frontier or other specifically defined remote areas; and compliance with minimum data set requirements by CAHs with swing bed approval.
- In the addendum to the proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 2000 prospective payment rates for operating costs and capital-related costs. We also addressed update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 2000 for hospitals and hospital units excluded from the prospective payment system.
- In Appendix A of the proposed rule, we set forth an analysis of the impact that the proposed changes would have on affected entities.
- In Appendix B of the proposed rule, we set forth the technical appendix on the proposed FY 2000 capital cost model.
- In Appendix C of the proposed rule, as required by section 1886(e)(3)(B) of the Act, we set forth our report to Congress on our initial estimate of a recommended update factor for FY 2000 for both hospitals included in and hospitals excluded from the prospective payment systems.
- In Appendix D of the proposed rule, as required by sections 1886(e)(4) and (e)(5) of the Act, we included our recommendation of the appropriate percentage change for FY 2000 for—
  - —Large urban area and other area average standardized amounts (and hospital-specific rates applicable to sole community hospitals and Medicare-dependent, small rural hospitals) for hospital inpatient services paid for under the prospective payment system for operating costs; and
  - —Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the prospective payment system.
- In the proposed rule, we discussed the recommendations concerning hospital inpatient payment policies made by the Medicare Payment Advisory Commission (MedPAC) and presented our responses to those recommendations. Under section 1805(b) of the Act, MedPAC is required to submit a report to Congress, not later than March 1 of each year, that reviews and makes recommendations on Medicare payment policies.

C. Public Comments Received in Response to the Proposed Rule

We received a total of 82 timely items of correspondence containing multiple comments on the proposed rule. The main areas of concern addressed by the commenters were removal of teaching-related and CRNA costs from the wage index, payments for services furnished at satellite hospital locations, and limits on the transfer of patients in hospitals-within-hospitals. We also received a number of comments relating to the eligibility criteria for hospitals to qualify for capital exceptions payments.

Summaries of the public comments received and our responses to those comments are set forth below under the appropriate section.

II. Changes to DRG Reclassifications and Recalibrations of Relative Weights

A. Background

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in all DRGs.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights at least annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

As discussed in more detail in section II.B.8 of this preamble, we are not implementing any revisions to the ICD–9–CM codes. We have undertaken, and continue to undertake, major efforts to ensure that all of the Medicare computer systems are ready to function on January 1, 2000. If we were to implement changes to the ICD–9–CM codes on October 1, 1999, we would endanger the functioning of the Medicare computer systems, and, specifically, we might compromise our ability to process hospital bills. We can, however, reclassify existing codes into different DRGs, if appropriate.

The changes to the DRG classification system, and the recalibration of the DRG weights for discharges occurring on or after October 1, 1999, are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using ICD–9–CM codes. The Medicare fiscal intermediary enters the information into its claims processing system and subjects it to a series of automated screens called the

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Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the Medicare Provider Analysis and Review (MedPAR) file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights.

Currently, cases are assigned to one of 499 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6, Diseases and Disorders of the Digestive System); however, some MDCs are not constructed on this basis since they involve multiple organ systems (for example, MDC 22, Burns).

In general, cases are assigned to an MDC based on the principal diagnosis before assignment to a DRG. However, there are five DRGs to which cases are directly assigned on the basis of procedure codes. These are the DRGs for liver, bone marrow, and lung transplants (DRGs 480, 481, and 495, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (CC).

Generally, GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not performed in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

We proposed several changes to the DRG classification system for FY 2000 and other decisions concerning DRGs. The proposed changes, the comments we received concerning them, and the final DRG changes are set forth below. Unless otherwise noted, our DRG analysis is based on the full (100 percent) FY 1998 MedPAR file, which contains data from bills received through March 31, 1999.

2. MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period)

In the May 7, 1999 proposed rule, we noted that the following codes in the newborn observation series are included in the allowable secondary diagnoses under DRG 391 (Normal Newborn):

V29.0, Observation for suspected infectious disease
V29.1, Observation for suspected neurological condition
V29.8, Observation for other specified suspected condition
V29.9, Observation for unspecified suspected condition

There are two related codes, however, that currently are not included as allowable secondary diagnoses under DRG 391: V29.2 (Observation for suspected respiratory condition) and V29.3 (Observation for suspected genetic or metabolic condition). (In the proposed rule, we incorrectly stated that V29.3 was titled "Observation for other genetic problem.") Diagnosis codes V29.2 and V29.3 (as well as the other V29.x codes noted above) are used to indicate that the newborn was suspected of having an abnormal condition resulting from exposure from the mother or the birth process, but is without signs or symptoms and, after examination and observation, no abnormal condition is found to exist. Currently, when either V29.2 or V29.3 is the only secondary diagnosis for an otherwise healthy newborn, the case is assigned to DRG 390 (Neonate with Other Significant Problems). Based on a belief that the presence of diagnosis code V29.2 or V29.3 should not exclude a newborn from being classified as normal, we proposed to include diagnosis codes V29.2 and V29.3 in the list of allowable secondary diagnoses under DRG 391 (Normal Newborn).

We received one comment on this proposal.

Comment: The commenter questioned whether any of the codes in the V29 series should be assigned to DRG 391. The commenter believes that the infants assigned to diagnosis code in the V29 series do not belong in the same clinical group as "normal newborn." The commenter recommended that, before moving codes V29.2 and V29.3 to DRG 391, we should examine data such as the average length of stay for DRGs 390 and 391 and those cases coded with V29.x. Citing one hospital's experience, the commenter noted that 2.7 percent of the cases in DRG 391 were assigned a secondary diagnosis of V29.0 (Observation for suspected infectious disease). In addition, cases with secondary diagnosis codes V29.1, V29.8, and V29.9 represented less than 1 percent each of all cases in DRG 391. The commenter also reported that, for DRG 390, less than 1 percent of cases were assigned a secondary diagnosis code of V29.2 or V29.3. The commenter believes that the length of stay and resource consumption for these cases should be compared to other cases assigned to DRG 390 and DRG 391 to determine whether a separate DRG should be created to adequately categorize these infants.

Response: The experience of the hospital reported by the commenter indicates that newborn cases with a secondary diagnosis of V29.2 or V29.3 represent a small percentage of newborn cases. Medicare data do not contain enough data on newborns to verify this.

In the FY 1998 MedPAR file, there are only nine cases assigned to DRG 390 and none to DRG 391. In fact, in FY 1998, there were only 18 cases assigned to all of MDC 15. Because of the lack of data on newborns in the Medicare claims file, the relative weights and lengths of stay for the DRGs in MDC 15 are based on non-Medicare data collected from 19 States. (See the September 1, 1995 final rule (60 FR 45781) for a detailed discussion of this policy.) Therefore, we rely closely on experts outside of HCFA when we make any changes in MDC 15. We had received information before publication of the proposed rule suggesting that V29.2 and V29.3 should be included with the other V29.x codes in DRG 391. After verifying with our medical consultants that this information was clinically accurate, we proposed to make this DRG classification change. We do note that the average lengths of stay for DRG 390 and 391 do not differ dramatically (3.4 and 3.1 days, respectively). However, the relative weight for DRG 390 is significantly higher than that for DRG 391 (1.5908 and 0.1516, respectively). Thus, we believe the amount of resource use devoted to newborns in DRG 390 is not connected to the amount of time spent in the hospital.

The commenter did not provide any length of stay or resource use data nor did the commenter provide any reason that codes V29.2 or V29.3 should be treated differently than the other codes in category V29.x. We believe that DRG 390, as its title indicates, should be used to classify newborns with significant problems. Newborns who exhibit no signs or symptoms and are merely evaluated or observed for a suspected condition that is ruled out should not be classified with newborns who have significant problems that require treatment.

We note that DRG 391 includes newborns who have minor problems or conditions that require treatment. For example, some newborns with jaundice, newborns with scalp injuries or mild birth asphyxia, and newborns with minor skin infections are all classified to DRG 391. Thus, that DRG does contain newborn cases for which some medical treatment must be provided. We believe that including newborns observed for suspected respiratory, genetic, or metabolic conditions in DRG 391 is clinically appropriate. Therefore, as proposed, we will include V29.2 and V29.3 as allowable secondary diagnoses under DRG 391, as are the rest of the codes in that category.

3. MDC 19 (Mental Diseases and Disorders)

We proposed to revise the title of DRG 425, "Acute Adjustment Reaction and Disturbances of Psychosocial Dysfunction" under MDC 19 to read "Acute Adjustment Reaction and Psychosocial Dysfunction." Correspondents had stated that the terms "disturbances" and "dysfunction" were redundant since the terms have similar meanings.

We received one comment in support of this revision. Therefore, we are adopting this proposed revision as final.

4. MDC 22 (Burns)

In the July 31, 1998 final rule (63 FR 40957), we implemented an extensive redesign of the DRGs for burns to more appropriately capture the variation in resource use associated with different classes of burn patients. After these DRGs went into effect on October 1, 1998, we were contacted by several hospitals about our inclusion of the fifth digit "0" on codes 948.10 through 948.90 to capture cases of full-thickness burns. These hospitals stated that codes in category 948 with a fifth digit of "0" should not be assigned to DRGs 506 through 509 as full-thickness burns since not all of these cases will have a full-thickness (third degree) burn. The fifth digit "0" can capture cases in which there actually is no third degree burn. The hospitals requested that we consider removing from the full-thickness burn DRGs 506 through 509 all codes in the 948 category with a fifth digit of "0" as follows:

948.00 Body burn involving less than 10 percent of body surface, third degree less than 10 percent or unspecified
948.10 Body burn involving 10 to 19 percent of body surface, third degree less than 10 percent or unspecified
948.20 Body burn involving 20 to 29 percent of body surface, third degree less than 10 percent or unspecified
948.30 Body burn involving 30 to 39 percent of body surface, third degree less than 10 percent or unspecified
948.40 Body burn involving 40 to 49 percent of body surface, third degree less than 10 percent or unspecified
948.50 Body burn involving 50 to 59 percent of body surface, third degree less than 10 percent or unspecified
948.60 Body burn involving 60 to 69 percent of body surface, third degree less than 10 percent or unspecified
948.70 Body burn involving 70 to 79 percent of body surface, third degree less than 10 percent or unspecified
948.80 Body burn involving 80 to 89 percent of body surface, third degree less than 10 percent or unspecified
948.90 Body burn involving 90 percent or more of body surface, third degree less than 10 percent or unspecified.

We agreed with the hospitals and proposed that the codes listed above be removed from DRGs 506 through 509 and added to DRG 510 (Nonextensive Burns with CC or Significant Trauma) and DRG 511 (Nonextensive Burns without CC or Significant Trauma). Hospitals have been instructed in *Coding Clinic for ICD–9–CM*, Fourth Quarter, 1994 (pages 22 through 28) to code the site of the burn first (codes 940 through 947), when known. Codes from category 948 may be used as a principal diagnosis only when the site of the burn is not specified. Category 948 is used as an additional code to provide information on the percentage of total body that is burned or to show the percentage of burn that was third degree. When hospitals report codes properly, full-thickness burns would be assigned to a code for burn of the specific site (940 through 947). This site code also shows the degree of the burn. Furthermore, for those rare cases in which the site is not provided, but it is known that 10 percent or more of the body has a third degree burn, hospitals may report this information through the use of category 948 with a fifth digit of "1" through "9." All of these cases would continue to be classified as full-thickness burns in DRGs 506 through 509. Therefore, the proposed removal of codes 948.1 through 948.9 with a fifth digit of "0" would not prevent cases from being assigned to one of the full-thickness DRGs when there is a third degree burn and the case is correctly coded.

Comment: One commenter stated that while it is true that codes in category 948 with a fifth digit of "0" may be assigned when there is no third degree burn, fifth digit "0" is also used to report cases that have a body surface of 1 to 9 percent involved in third degree burns. The commenter suggested that consideration be given to these cases as the presence of a third degree burn represents additional risk to the patient.

Response: We agree with the commenter that the presence of third degree burns represents additional risk to the patient and may result in a higher resource use. More accurately capturing this fact was one of the primary purposes in revising the burn DRGs in FY 1999. However, as the commenter noted, in category 948, the fifth digit of "0" includes cases with no third degree burns as well as third degree burns involving 1 to 9 percent of the body surface. It is precisely because many of the cases coded in 948 with a "0" fifth digit have no third degree burns that we believe it is not appropriate to include these codes in DRGs 506 through 509. As stated above, hospitals have been instructed to code the site of the burn first (codes 940 through 947), when known. These codes capture information on the site of the burn as well as whether the burn is a third degree burn. Therefore, by using the more precise codes in the 940 through 947 series, hospitals will be appropriately assigning cases with minor third degree burns to DRGs 506 through 509.

We are adopting as final our proposal to remove codes in the 948 category with a fifth digit of "0" from the list of full-thickness burns.

5. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in

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assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. It is, therefore, necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most to least resource intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of classes coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

A surgical class can be composed of one or more DRGs. For example, in MDC 5, the surgical class "heart transplant" consists of a single DRG (DRG 103), and the class "major cardiovascular procedures" consists of two DRGs (DRGs 110 and 111). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class involves weighting each DRG for frequency to determine the average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5. Assume also that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other OR procedures" as discussed below.

This methodology may occasionally result in a case involving multiple procedures being assigned to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for the procedure in the most resource-intensive surgical class, this result is unavoidable.

We note that, notwithstanding the foregoing discussion, there are a few instances when a surgical class with a lower average relative weight is ordered above a surgical class with a higher average relative weight. For example, the "other OR procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the relative weight for the DRG or DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other OR procedures" class is a group of procedures that are least likely to be related to the diagnoses in the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should be considered only if no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average weights for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, by virtue of the hierarchy change, the relative weights are likely to shift such that the higher-ordered surgical class has a lower average weight than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we proposed to modify the surgical hierarchy as set forth below. However, in developing the proposed rule, we were unable to test the effects of proposed revisions to the surgical hierarchy and to reflect these changes in the proposed relative weights due to the unavailability of revised GROUPER software at the time the proposed rule was prepared. Rather, we simulated most major classification changes to approximate the placement of cases under the proposed reclassification and then determined the average charge for each DRG. These average charges then serve as our best estimate of relative resource use for each surgical class. We tested the proposed surgical hierarchy changes after the revised GROUPER was received. The final changes in the DRG relative weights are reflected in this final rule.

We proposed to revise the surgical hierarchy for the Pre-MDC DRGs and MDC 3 (Diseases and Disorders of the Ear, Nose, Mouth and Throat) as follows:

- In the Pre-MDC DRGs, we proposed to reorder Lung Transplant (DRG 495) above Bone Marrow Transplant (DRG 481).
- In MDC 3, we proposed to reorder Tonsil and Adenoid Procedure Except Tonsillectomy and/or Adenoidectomy Only (DRGs 57 and 58) above Cleft Lip and Palate Repair (DRG 52).

We received two comments in support of the two surgical hierarchy proposals. In addition, based on a test of the proposed revisions using the most recent MedPAR file and the revised GROUPER software, we have found that the revisions are still supported by the data and no additional changes are indicated. Therefore, we are incorporating the proposed revisions and reorders in this final rule.

6. Refinement of Complications and Comorbidities (CC) List

There is a standard list of diagnoses that are considered CCs. We developed this list using physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In previous years, we have made changes to the standard list of CCs, either by adding new CCs or by deleting CCs already on the list. In the May 7, 1999 proposed rule, we did not propose to delete any of the diagnosis codes on the CC list.

In the September 1, 1987 final notice concerning changes to the DRG classification system (52 FR 33143), we modified the GROUPER logic so that certain diagnoses included on the standard list of CCs would not be considered a valid CC in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes to preclude coding of CCs for closely related conditions, to preclude duplicative coding or inconsistent coding from being treated as CCs, and to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair.

In the May 19, 1987 proposed notice concerning changes to the DRG classification system (52 FR 18877), we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for a condition should not be considered CCs for one another.
- Conditions that may not co-exist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.

- The same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended to be only a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCs were intended to identify only the most obvious diagnoses that should not be considered complications or comorbidities of another diagnosis. For that reason, and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC. (See the September 30, 1988 final rule for the revision made for the discharges occurring in FY 1989 (53 FR 38485); the September 1, 1989 final rule for the FY 1990 revision (54 FR 36552); the September 4, 1990 final rule for the FY 1991 revision (55 FR 36126); the August 30, 1991 final rule for the FY 1992 revision (56 FR 43209); the September 1, 1992 final rule for the FY 1993 revision (57 FR 39753); the September 1, 1993 final rule for the FY 1994 revisions (58 FR 46278); the September 1, 1994 final rule for the FY 1995 revisions (59 FR 45334); the September 1, 1995 final rule for the FY 1996 revisions (60 FR 45782); the August 30, 1996 final rule for the FY 1997 revisions (61 FR 46171); the August 29, 1997 final rule for the FY 1998 revisions (62 FR 45966); and the July 31, 1998 final rule for the FY 1999 revisions (63 FR 40954).) In the May 7, 1999 proposed rule, we did not propose to add or delete any codes from the CC list.

In addition, because we are not making changes to the ICD–9–CM codes for FY 2000, we are not modifying the current list for new or deleted codes. Therefore, there are no revisions to the CC Exclusions List for FY 2000.

7. Review of Procedure Codes in DRGs 468, 476, and 477

Each year, we review cases assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis), and DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis) in order to determine whether it would be appropriate to change the procedures assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the OR procedures performed is related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases that do not occur with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

60.0 Incision of prostate
60.12 Open biopsy of prostate
60.15 Biopsy of periprostatic tissue
60.18 Other diagnostic procedures on prostate and periprostatic tissue
60.21 Transurethral prostatectomy
60.29 Other transurethral prostatectomy
60.61 Local excision of lesion of prostate
60.69 Prostatectomy NEC
60.81 Incision of periprostatic tissue
60.82 Excision of periprostatic tissue
60.93 Repair of prostate
60.94 Control of (postoperative) hemorrhage of prostate
60.95 Transurethral balloon dilation of the prostatic urethra
60.99 Other operations on prostate

All remaining OR procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures, if performed with an unrelated principal diagnosis, was published in Table 6C in section IV of the Addendum to the September 30, 1988 final rule (53 FR 38591). As part of the final rules published on September 4, 1990, August 30, 1991, September 1, 1992, September 1, 1993, September 1, 1994, September 1, 1995, August 30, 1996, and August 29, 1997, we moved several other procedures from DRG 468 to 477, and some procedures from DRG 477 to 468. (See 55 FR 36135, 56 FR 43212, 57 FR 23625, 58 FR 46279, 59 FR 45336, 60 FR 45783, 61 FR 46173, and 62 FR 45981, respectively.) No procedures were moved in FY 1999, as noted in the July 31, 1998 final rule (63 FR 40962).

a. Adding Procedure Codes to MDCs

We annually conduct a review of procedures producing DRG 468 or 477 assignments on the basis of volume of cases in these DRGs with each procedure. Our medical consultants then identify those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. Based on this year's review, we identified several procedures that we proposed to move to surgical DRGs for additional MDCs so that they are not assigned to DRG 468. We did not identify any necessary changes in procedures under DRG 477 and, therefore, did not propose to move any procedures from DRG 477 to one of the surgical DRGs.

First, we proposed to move three codes from DRG 468 to MDC 1 (Diseases and Disorders of the Nervous System), all of which would be assigned to DRGs 7 and 8 (Peripheral and Cranial Nerve and Other Nervous System Procedure).[1] Procedure code 38.7 (Interruption of the vena cava) is sometimes performed in conjunction with treatment for the principal diagnosis 434.11 (Cerebral embolism with infarction), which is assigned to MDC 1. Our medical advisors believe that procedure code 38.7 is appropriately performed for some neurological conditions such as a cerebral embolism with infarction. Because the current DRG configuration does not allow this assignment, we proposed to add procedure code 38.7 to DRGs 7 and 8.

Second, we proposed that procedure codes 83.92 (Insertion or replacement of skeletal muscle stimulator) and 83.93 (Removal of skeletal muscle stimulator) both be categorized with other procedures on the nervous system. These procedures can be performed on patients with a principal diagnosis in MDC 1, such as 344.00 (Quadriplegia unspecified) or 344.31 (Monoplegia of lower limb, affecting dominant side). Therefore, these two codes would also be assigned to DRGs 7 and 8.

Third, procedure code 39.50 (Angioplasty or atherectomy of noncoronary vessel) is not currently assigned to MDC 4 (Diseases and Disorders of the Respiratory System). This procedure is performed for patients who develop pulmonary embolism. The principal diagnosis for pulmonary embolism is in MDC 4, and, to increase clinical coherence, we proposed to add procedure code 39.50 to that MDC in DRGs 76 and 77 (Other Respiratory System OR Procedures).

Fourth, insertion of totally implantable infusion pump (procedure code 86.06) is not assigned to MDC 5 (Diseases and Disorders of the Circulatory System) in the current DRG configuration. Infusion pumps should

[1] A single title combined with two DRG numbers is used to signify pairs. Generally, the first DRG is for cases with CC and the second DRG is for cases without CC. If a third number is included, it represents cases with patients who are age 0–17. Occasionally, a pair of DRGs is split between age >17 and age 0–17.

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be assigned to all MDCs in which subcutaneous insertion of the pump is appropriate. Procedure code 86.06 may be performed on patients with a principal diagnosis in MDC 5 such as 451.83 (Phlebitis and thrombophlebitis of the deep veins of other extremities). Therefore, we proposed to add procedure code 86.06 to DRG 120 (Other Circulatory System OR Procedures) in MDC 5.

We received two comments on these MDC and DRG assignments, both of which concurred with our proposed changes. Therefore, we are adopting them as final.

b. Reassignment of Procedures Among DRGs 468, 476, and 477

We also reviewed the list of procedures that produce assignments to DRGs 468, 476, and 477 to ascertain if any of those procedures should be moved from one of these DRGs to another based on average charges and length of stay. Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on our review this year, we did not propose to move any procedures from DRG 468 to DRGs 476 or 477, from DRG 476 to DRGs 468 or 477, or from DRG 477 to DRGS 468 or 476.

8. Changes to the ICD–9–CM Coding System

As described in section II.B.1 of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and HCFA, that is charged with the mission of maintaining and updating the ICD–9–CM system. That mission includes approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the *Tabular List* and *Alphabetic Index for Diseases*, while HCFA has lead responsibility for the ICD–9–CM procedure codes included in the *Tabular List* and *Alphabetic Index for Procedures*.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding field, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups as well as physicians, medical record administrators, health information management professionals, and other members of the public, to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes for FY 2000 at public meetings held on June 4 and November 2, 1998. Even though the Committee conducted public meetings and considered approval of coding changes for FY 2000 implementation, we are not implementing any changes to ICD–9–CM codes for FE 2000. We have undertaken, and continue to undertake, major efforts to ensure that all of the Medicare computer systems are ready to function on January 1, 2000. If we were to make system changes to capture additions, deletions, and modifications to ICD–9–CM codes for FY 2000, we would endanger the functioning of the Medicare computer systems, and, specifically, we might compromise our ability to process hospital bills. Therefore, the code proposals presented at the public meetings held on June 4 and November 2, 1998, that (if approved) ordinarily would have been included as new codes for October 1, 1999, are not included in this final rule. These code changes to ICD–9–CM will be considered for inclusion in the annual update for FY 2001. The initial meeting for consideration of coding changes for implementation in FY 2001 was held on May 13, 1999.

Copies of the minutes of the 1998 meetings and the May 13, 1999 meeting can be obtained from the HCFA Home Page at http://www.hcfa.gov/medicare/icd9cm.htm or from http://www.hcfa.gov/events, click on "meetings and workshops" link, and then click on "reports of the ICD–9–CM coordination and maintenance committee" link. Paper copies of these minutes are no longer available and the mailing list has been discontinued. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Donna Pickett, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; NCHS; Room 1100; 6525 Belcrest Road; Hyattsville, Maryland 20782. Comments may be sent by E-mail to dfp4@cdc.gov.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; HCFA, Center for Health Plans and Providers, Plan and Provider Purchasing Policy Group, Division of Acute Care; C4–07–07; 7500 Security Boulevard; Baltimore, Maryland 21244–1850. Comments may be sent by E-mail to pbrooks@hcfa.gov.

We received one comment in support of our decision not to update ICD–9–CM codes given the magnitude of system changes needed during the period leading up to the year 2000.

9. Other Issues

a. Implantation of Muscle Stimulator

In the July 31, 1998 final rule, we responded to a comment on the DRG assignment for implantation of a muscle stimulator (63 FR 40964). In that document, we stated that we would readdress this issue after reviewing the FY 1998 MedPAR file.

There is concern in the manufacturing industry that the current DRG assignment for the implantation of a muscle stimulator and the associated tendon transfer for quadriplegics is inappropriate. When the procedures are performed during two separate admissions, the tendon transfer (procedure code 82.56 (Other hand tendon transfer or transplantation)) is assigned to DRGs 7 and 8, and the insertion of the muscle stimulator (procedure code 83.92 (Insertion or replacement of skeletal muscle stimulator)) is assigned to DRG 468. However, when both procedures are performed in the same admission, the case is assigned to DRGs 7 and 8.

As discussed in section II.B.7.a of this preamble, in the May 7, 1999 proposed rule, we proposed to assign code 83.92 to DRGs 7 and 8 in MDC 1. Therefore, if a case involves either procedure code 82.56 or 83.92, or both procedure codes, the case would be assigned to DRGs 7 and 8.

A presentation on one type of muscle stimulator was made by a device manufacturer before the ICD–9–CM Coordination and Maintenance Committee on November 2, 1998. The manufacturer strongly suggested that a new code assignment be made for the procedure for insertion of this stimulator and that it be placed in category 04.9 (Other operations on cranial and peripheral nerves). However, based on comments received by the Committee, there was an overwhelming response from the coding community that a new code should not be created. The commenters believe that these codes (82.56 and 83.92) adequately described the procedures since the patient receives a tendon transfer in addition to the skeletal muscle stimulator insertion. This is done so that the quadriplegic patient can achieve some hand grasping ability where there was none before. Some quadriplegic patients receive the tendon transfer on one admission and the stimulator insertion on a subsequent admission. Others have both procedures performed on the same admission. Since the tendon transfer and stimulator insertion are being performed on quadriplegic patients, a condition found in MDC 1, we proposed to add procedure codes 82.56 and 83.92 to DRGs 7 and 8. We did not receive any comments on this proposal. Therefore, we are adopting it as final.

b. Pancreas Transplant

Through a Medicare Coverage Issues Manual revision (Transmittal No. 115, April 1999), HCFA announced that, effective July 1, 1999, Medicare covers whole organ pancreas transplantation (procedure codes 52.80 or 52.83) if it is performed simultaneous with or after a kidney transplant.

Pancreas transplantation is generally limited to those patients with severe secondary complications of diabetes, including kidney failure. However, pancreas transplantation is sometimes performed on patients with labile diabetes and hypoglycemic unawareness.

Pancreas transplantation for diabetic patients who have not experienced end-stage renal failure secondary to diabetes continue to be excluded from coverage. Medicare also excludes coverage of transplantation of partial pancreatic tissue or islet cells. Claims processing instructions to intermediaries were contained in Program Memorandum Transmittal No. A–99–16 (April 1999).

We received one comment regarding the coverage and claims processing instructions for pancreas transplants.

Comment: The commenter requested clarification on the date of coverage for services related to pancreas transplantation services furnished on or after July 1, 1999. Specifically, the commenter asked whether coverage is effective for admissions, discharges, or actual transplant surgery on or after that date. In addition, the commenter believes that if the resource use for a pancreas-kidney transplant is significantly greater than for a kidney transplant alone, then a new DRG should be created for the dual transplant. Finally, the commenter was unsure how hospitals should report the organ acquisition costs attributable to pancreas. Specifically, the commenter wanted to know if the costs should be included, on the hospital cost report with the kidney costs or whether a separate organ acquisition cost center will be established for pancreas acquisition costs.

Response: As stated in Transmittal No. 115, coverage is effective for dates of service on or after July 1, 1999. Therefore, any pancreas transplant performed on or after July 1, 1999 is covered by Medicare if all other qualifying criteria are met.

Under the current DRG classification, if a kidney transplant and a pancreas transplant are performed simultaneously on a patient with chronic renal failure secondary to diabetes with renal manifestations (diagnosis codes 250.40 through 250.43), the case is assigned to DRG 302 (Kidney Transplant) in MDC 11 (Disease and Disorders of the Kidney and Urinary Tract. If a pancreas transplant is performed following a kidney transplant (that is, in a different hospital admission) on a patient with chronic renal failure secondary to diabetes with renal manifestations, the case is assigned to DRG 468 (Major OR Procedure Unrelated to Principal Diagnosis) because pancreas transplant is not assigned to MDC 11, the MDC to which a principal diagnosis of chronic renal failure secondary to diabetes is assigned.

If a kidney and pancreas transplant are performed simultaneously or if a pancreas transplant is performed following a kidney transplant, on a patient with chronic renal failure secondary to diabetes with ketoacidosis (diagnosis codes 250.10 through 250.13), diabetes with hyperosmolarity (diagnosis codes 250.20 through 250.23), diabetes with other coma (diagnosis codes 250.30 through 250.33), diabetes with other specified manifestations (diagnosis codes 250.80 through 250.83), or diabetes with unspecified complication (diagnosis codes 250.90 through 250.93), the case would be assigned to DRG 292 or 293 (Other Endocrine, Nutritional and Metabolic OR Procedures) in MDC 10 (Endocrine, Nutritional, and Metabolic Diseases and Disorders). As the commenter notes, it is possible that the resource use for a pancreas-kidney transplant or a pancreas-only transplant might be significantly different from a kidney-only transplant. We intend to review the Medicare data in our FY 1999 MedPAR file in order to analyze whether we should either reassign these transplants to a different DRG or create a new DRG. We will announce any proposals on that issue in the FY 2001 proposed rule, which will be published in the Spring of 2000.

A separate organ acquisition cost center has been established for pancreas transplantation. The Medicare cost report will include a separate line to account for pancreas transplantation costs. In addition, in this final rule, we are making a conforming change to 412.2(e)(4) to include pancreas in the list of organ acquisition costs that are paid on a reasonable cost basis.

c. Immunotherapy

Effective October 1, 1994, procedure code 99.28 (Injection or infusion of biological response modifier [BRM] as an antineoplastic agent) was created. This procedure is also known as BRM therapy or immunotherapy. At that time, we designated the code as a Anon-OR@ code that does not affect DRG assignment.

Comment: One commenter, a manufacturer of a biologic response modifier, requested that we create a new DRG for BRM therapy or assign cases in which BRM therapy is performed to an existing DRG with a high relative weight. The commenter suggested that DRG 403 (Lymphoma and Non-Acute Leukemia with CC) would be an appropriate DRG. The manufacturer=s particular drug is used in the treatment of metastatic renal cell carcinoma and metastatic melanoma.

Response: Using the 100 percent FY 1998 MedPAR file that contains bills through December 31, 1998, we performed an analysis of the cases for which procedure code 99.28 was reported. Based on the commenter's request, for purposes of this analysis we examined cases only for hospitals that use the particular drug manufactured by the commenter. We identified 121 cases in 19 DRGs in 9 MDCs. No more than 31 cases were assigned to any one particular DRG. Of the 121 cases identified, 31 cases were assigned to DRG 318 (Kidney and Urinary Tract Neoplasms with CC) and 30 of the cases were assigned to DRG 82 (Respiratory Neoplasms). There was a wide range of charges (between approximately $1,300 and $125,000 per case) associated with this therapy. The average length of stay was approximately 5 days. Due to the limited number of cases that were

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distributed throughout 19 DRGs and the variation of charges, we concluded that it would be inappropriate to classify these cases into a single DRG. Because of the numerous principal diagnoses reported with BRM therapy, a single DRG for procedure code 99.28 would need to be placed in the pre-MDC DRG category. Similarly, it would be impossible to classify these cases into DRG 403 because only a few cases were coded with a principal diagnosis assigned to MDC 17 (Myeloproliferative Diseases and Disorders, and Poorly Differentiated Neoplasms), the MDC that includes DRG 403. Finally, the variation in charges reflected in the 121 cases do not persuade us that there is an analytic basis for combining these cases into one DRG. Using the FY 1999 MedPAR, we intend to do a full analysis of these cases, which we will discuss in the FY 2001 proposed rule.

As a final note, any DRG classification change for procedure code 99.28 must be appropriate for all cases that receive BRM therapy, not just those that use the commenter's drug. Even if we might consider such an assignment appropriate, we have no way to distinguish between different drug therapies assigned to the same procedure code. The FY 1998 MedPAR file we analyzed contained 930 cases with procedure code 99.28. These 930 cases were assigned to 18 MDCs.

d. Heart Assist Devices

Effective May 5, 1997, we revised Medicare coverage of heart assist devices to allow coverage of a ventricular assist device used for support of blood circulation postcardiotomy if certain conditions were met. In the August 29, 1997 final rule (62 FR 45973), we moved procedure code 37.66 (Implant of an implantable pulsatile heart assist device) from DRGs 110 and 111 (Major Cardiovascular Procedures) to DRG 108 (Other Cardiothoracic Procedures) to improve payment for these procedures. In the July 31, 1998 final rule (63 FR 40956), in a further effort to improve payment for these cases, we moved procedure code 37.66 to DRGs 104 and 105 (Cardiac Valve and Other Major Cardiothoracic Procedures).

We received one comment regarding the DRG classification of procedure code 37.66.

Comment: The commenter recommended that we either reclassify heart assist device cases to DRG 103 (Heart Transplant) or create a new DRG specifically for this device and technology. The commenter cited a discrepancy between the cost of the device implantation and payment for DRGs 104 and 105 as the basis for these recommendations.

Response: We refer the reader to our response to a similar comment in the August 29, 1997 final rule (62 FR 45967). We note that the FY 1998 MedPAR file has 22 cases coded with procedure code 37.66. Of these 22 cases, 8 cases were assigned to DRG 103 (Heart Transplant) and 4 cases to DRG 483 (Tracheostomy Except for Face, Mouth, and Neck Diagnoses). The remaining 10 cases would have been assigned to DRGs 104 and 105 under the current classification.

C. Recalibration of DRG Weights

We proposed to use the same basic methodology for the FY 2000 recalibration as we did for FY 1999. (See the July 31, 1998 final rule (63 FR 40965).) That is, we recalibrated the weights based on charge data for Medicare discharges. However, we used the most current charge information available, the FY 1998 MedPAR file. (For the FY 1999 recalibration, we used the FY 1997 MedPAR file.) The MedPAR file is based on fully coded diagnostic and surgical procedure data for all Medicare inpatient hospital bills.

The final recalibrated DRG relative weights are constructed from FY 1998 MedPAR data, based on bills received by HCFA through March 1999, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 1998 MedPAR file includes data for approximately 11.3 million Medicare discharges.

The methodology used to calculate the DRG relative weights from the FY 1998 MedPAR file is as follows:

- All the claims were regrouped using the DRG classification revisions discussed above in section II.B of this preamble.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education (IME) and disproportionate share hospital (DSH) payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers, using the same criteria as were used in computing the current weights—that is, all cases that are outside of 3.0 standard deviations from the mean of the log distribution of both the charges per case and the charges per day for each DRG.
- The average charge for each DRG was then recomputed (excluding the statistical outliers) and divided by the national average standardized charge per case to determine the relative weight. A transfer case is counted as a fraction of a case based on the ratio of its length of stay to the geometric mean length of stay of the cases assigned to the DRG. That is, a 5-day length of stay transfer case assigned to a DRG with a geometric mean length of stay of 10 days is counted as 0.5 of a total case.
- We established the relative weight for heart and heart-lung, liver, and lung transplants (DRGs 103, 480, and 495) in a manner consistent with the methodology for all other DRGs except that the transplant cases that were used to establish the weights were limited to those Medicare-approved heart, heart-lung, liver, and lung transplant centers that have cases in the FY 1998 MedPAR file. (Medicare coverage for heart, heart-lung, liver, and lung transplants is limited to those facilities that have received approval from HCFA as transplant centers.)
- Acquisition costs for kidney, heart, heart-lung, liver, and lung transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs (DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant for Heart and Heart-Lung Transplants); DRG 480 (Liver Transplant); and DRG 495 (Lung Transplant)). Because these costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to prevent the relative weights for these DRGs from including the effect of the acquisition costs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges before computing the average charge for the DRG and before eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. We used that same case threshold in recalibrating the DRG weights for FY 2000. Using the FY 1998 MedPAR data set, there are 40 DRGs that contain fewer than 10 cases. We computed the weights for the 40 low-volume DRGs by adjusting the FY 1999 weights of these DRGs by the percentage change in the average weight of the cases in the other DRGs.

The weights developed according to the methodology described above, using the final DRG classification changes, result in an average case weight that is different from the average case weight before recalibration. Therefore, the new weights are normalized by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight before recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

Section 1886(d)(4)(C)(iii) of the Act requires that, beginning with FY 1991, reclassification and recalibration changes be made in a manner that ensures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payment to hospitals is affected by factors other than average case weight. Therefore, as we have done in past years and as discussed in section II.A.4.b of the Addendum to this final rule, we make a budget neutrality adjustment to ensure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

D. Use of Non-MedPAR Data for Reclassification and Recalibration of the DRGs

1. Introduction

As in past years, in the DRG reclassification and recalibration process for the FY 2000 final rule, we used the MedPAR file, which consists of data for approximately 11.3 million Medicare discharges. In the FY 1999 final rulemaking process, we used the FY 1997 MedPAR file to recalibrate DRGs and evaluate possible changes to DRG classifications; for this FY 2000 final rule, we used the FY 1998 MedPAR file. The Conference Report that accompanied the Balanced Budget Act of 1997 stated that "in order to ensure that Medicare beneficiaries have access to innovative new drug therapies, the conferees believe that HCFA should consider, to the extent feasible, reliable, validated data other than Medicare Provider Analysis and Review (MedPAR) data in annually recalibrating and reclassifying the DRGs" (H.R. Conf. Rep. No. 105–217 at 734 (1997)).

Consistent with that language, we considered non-MedPAR data in the rulemaking process for FY 1999 and in developing the May 7, 1999 proposed rule for FY 2000. We received non-MedPAR data from entities on behalf of the manufacturer of a specific drug, platelet inhibitors. The manufacturer was seeking to obtain a new DRG assignment for cases involving platelet inhibitors. The non-MedPAR data purported to show cases involving platelet inhibitors. As discussed in the proposed rule, we concluded it was not feasible to use the non-MedPAR data submitted to us because, among other things, we did not have information to verify that the cases actually involved the drug, nor did we have information to verify that the cases reflected a representative sample (and did not simply reflect high cost cases).

Effective October 1, 1998, we implemented a code for platelet inhibitors, but until we receive bills for Medicare discharges occurring during FY 1999, the MedPAR data do not enable us to distinguish between cases with platelet inhibitors and cases without platelet inhibitors (63 FR 40963). Representatives of the pharmaceutical company first presented us with non-MedPAR data during the rulemaking process for FY 1999. The data were compiled by a health information company, and purported to show, for cases from a sample of hospitals, the average standardized charges (as calculated by the health information company) for different classes of patients.

In the FY 1999 final rule, we stated a number of reasons for rejecting the non-MedPAR data we had received. Basically, the data were unreliable and the data's use was not feasible—the data could not be validated or verified.

After publication of the July 31, 1998 final rule, we met and corresponded on several occasions with the manufacturers, vendors, and legal representatives of the pharmaceutical company in an effort to resolve data issues. We reiterated that, among other things, we needed to know for each case the hospital that furnished the services. Before the publication of the proposed rule, we had not received information necessary to validate the data or the data's representativeness.

We remain open to considering non-MedPAR data in the DRG reclassification and recalibration process, but, consistent with the Conference Report, as well as our longstanding policies, the data must be "reliable" and "validated." The July 31, 1998 final rule reflected the major factors that we consider in evaluating whether data are feasible, reliable, and validated; however, because we believed it might be useful, we discussed these issues in much greater detail in the May 7, 1999 proposed rule.

2. The DRG Reclassification and Recalibration Process

In order to understand whether it is feasible to use non-MedPAR data, and whether the data are reliable and validated, it is critical to understand the DRG recalibration and reclassification process. As described earlier, one of the first steps in the annual DRG recalibration is that the Medicare hospital inpatient claims (in the MedPAR file) from the preceding Federal fiscal year are classified using the DRG classification system (proposed or final) for the upcoming year. Cases are classified into DRGs based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. Each case is classified into one and only one DRG.

As the term suggests, the relative weight for each DRG reflects *relative* resource use. The recalibration process requires data that enable us to compare resource use across DRGs. As explained earlier, as part of the recalibration process, we standardize the charges reflected on each Medicare claim to remove the effects of area wage differences, the IME adjustment, and the DSH adjustment; in order to standardize charges, we need to know which hospital furnished the service. For each DRG, we calculate the average of the standardized charges for the cases classified to the DRG. To calculate DRG relative weights, we compare average standardized charges across DRGs.

In evaluating whether it is appropriate to reclassify cases from one DRG to another, we examine the average standardized charges for those cases. The recalibration process and the reclassification process are integrally related; to evaluate whether cases involving a certain procedure should be reclassified, we need to have information that (1) enables us to identify cases that involve the procedure and cases that do not involve the procedure, and (2) enables us to determine appropriate DRG relative weights if certain cases are reclassified.

3. Feasible, Reliable, Validated Data

As indicated above, the Conference Report reflected the conferees' belief that, "to the extent feasible," HCFA should consider "reliable, validated data" in recalibrating and reclassifying DRGs. The concepts of reliability and validation are closely related. In order for us to use non-MedPAR data, the non-MedPAR data must be independently validated. When an entity submits non-MedPAR data, we

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must be able to independently review the medical records and verify that a particular procedure was performed for each of the cases that purportedly involved the procedure. This verification requires the identification of a particular Medicare beneficiary and the hospital where the beneficiary was treated, as well as the dates involved. Although it is unlikely that we would review 100 percent of thousands of cases submitted for review, at a minimum, we must be able to validate data through a random sampling methodology. We must also be able to verify the charges that are reflected in the data.

Independent validation is particularly critical in part because the non-MedPAR data might be submitted by (or on behalf of) entities that have a financial interest in obtaining a new DRG assignment and in obtaining the highest possible DRG relative weight. If we receive non-MedPAR data that purport to reflect cases involving a certain procedure and a certain level of charges, we must have some way to verify the data.

Even if non-MedPAR data are reliable and verifiable, that does not mean it is necessarily "feasible" to use the data for purposes of recalibration and reclassification. In order to be feasible for these purposes, the non-MedPAR data must enable us to appropriately measure relative resource use across DRGs. It is critical that cases are classified into one *and only one* DRG in the recalibration process, and that we have information that enables us to standardize charges for each case and determine appropriate DRG relative weights. Moreover, the data must reflect a complete set of cases or, at a minimum, a representative sample of hospitals and claims.

If cases are classified into more than one DRG (or into the incorrect DRG) in the recalibration process, or if the non-MedPAR data reflect an unrepresentative sample of cases, the measure of relative resources would be distorted. For example, cases of percutaneous transluminal coronary angioplasty (PTCA) treated with GPIIb/IIIa platelet inhibitors (procedure code 99.20) are currently classified to DRG 112. Prior to the publication of the proposed rule, the same drug manufacturer discussed above provided us with information on the average charges for a sample of cases that purportedly involve PTCA, for the purpose of evaluating whether these cases should be moved to the higher-weighted DRG 116. However, without adequate identification of the cases to allow us to specifically identify all of the cases treated with platelet inhibitors, the relative weight for DRG 112 would reflect the costs of platelet inhibitor cases. This distortion would result in excessive payments under DRG 112, and thus undermine the integrity of the recalibration process.

Therefore, in order for the use of non-MedPAR data to be feasible, generally we must be able to accurately and completely identify all of the cases to be reclassified from one DRG to another. At a minimum, we must have some mechanism for ensuring that DRG weights are not inappropriately inflated (or deflated) to the extent that a DRG weight reflects cases that would be reclassified to a different DRG.

In short, then, for use of non-MedPAR data to be feasible for purposes of DRG recalibration and reclassification, the data must, among other things (1) be independently verifiable, (2) reflect a complete set of cases (or a representative sample of cases), and (3) enable us to calculate appropriate DRG relative weights and ensure that cases are classified to the "correct" DRG, and to one DRG only, in the recalibration process.

4. Submission of Data

Finally, in order for use of non-MEDPAR data to be feasible, we must have sufficient time to evaluate and test the data. The time necessary to do so depends upon the nature and quality of the data submitted. Generally, however, a significant sample of the data should be submitted by August 1, approximately 8 months prior to the publication of the proposed rule, so that we can test the data and make a preliminary assessment as to the feasibility of the data's use. Subsequently, a complete database should be submitted no later than December 1 for consideration in conjunction with the next year's proposed rule.

5. How the Prospective Payment System Ensures Access to New Technologies

As noted at the outset of this discussion, the Conference Report that accompanied the BBA indicated that we should consider non-MEDPAR data, to the extent feasible, "in order to ensure that Medicare beneficiaries have access to innovative new drug therapies" (H.R. Conf. Rep. No. 105–217 at 734 (1997)). There seems to be a concern that, if a new technology is introduced, and if the new technology is costly, then Medicare would not make adequate payment if the new technology is not immediately placed in a new DRG. This concern is unfounded. As explained below, the Medicare hospital inpatient prospective payment does ensure access to new drug therapies, and to new technologies in general.

First, to the extent a case involving a new technology is extremely costly relative to the cases reflected in the DRG relative weight, the hospital might qualify for outlier payments, that is, additional payments over and above the standard prospective payment rate.

Second, Medicare promotes access to new technologies by making payments under the prospective payment system that are designed to ensure that Medicare payments for a hospital's cases *as a whole* are adequate. We establish DRGs based on factors such as clinical coherence and resource utilization. Each diagnosis-related group encompasses a variety of cases, reflecting a range of services and a range of resources. Generally, then, each DRG reflects some higher cost cases and some lower cost cases.

For some cases, the hospital's costs might be higher than the payment under the prospective payment system; this does not mean that the DRG classifications are "inappropriate." For other cases, the hospital's costs will be lower than the payment under the prospective payment system. We believe that Medicare makes appropriate payments for a hospital's cases as a whole.

Each year we examine the best data available to assess whether DRG changes are appropriate and to recalibrate DRG relative weights. As we have indicated on numerous occasions, it usually takes 2 years from the time a procedure is assigned a code to collect the appropriate MedPAR data and then make an assessment as to whether a DRG change is appropriate. This timetable applies to reclassifications that would lead to decreased payment as well as those that would increase payment. In fact, the introduction of new technologies itself might lead to either higher than average costs or *lower* costs.

Our ability to evaluate and implement potential DRG changes depends on the availability of validated, representative data. We believe that our policies ensure access to new technologies and are critical to the integrity of the recalibration process. We still remain open to using non-MedPAR data if the data are reliable and validated and enable us to appropriately measure relative resource use.

We received a number of comments regarding this issue, including comments from MedPAC, pharmaceutical manufacturers (including two manufacturers of platelet inhibitor drugs), an industry manufacturers' association, and several

cardiologists. We received only one comment from a State hospital association; otherwise, hospital associations were silent on this issue.

Comment: MedPAC stated that HCFA's general criteria provide a valid basis for assessing the feasibility and appropriateness of using outside data to establish DRG assignments and relative weights for specific technologies. MedPAC believes that it would be helpful to entities that desire to submit useful data if HCFA would establish and publish explicit data standards to guide their efforts. MedPAC suggested the criteria might include the format and content of the patient care records; the minimum sample size; required documentation of sampling procedures; acceptable methods for ensuring that the sampled providers were representative of the relevant provider universe; and any other information that HCFA considered essential to establish the validity and reliability of the submitted data. MedPAC believes that the criteria would help to prevent misunderstandings and ensure HCFA's ability to assess whether the submitted data were adequate to serve as a basis for DRG assignment before actual MedPAR claims become available.

Response: We appreciate the Commission's support of our general criteria. We would prefer to gain further experience working with non-MedPAR data before we develop any specific criteria regarding sample sizes or methodologies. This will enable us to establish criteria that realistically reflect the availability of such data and the general suitability of the data for use in the DRG reclassification and recalibration process. Our intent at this time is to address some fundamental criteria that must be taken into consideration by outside parties interested in submitting non-MedPAR data.

We note that the timetable we set forth in the proposed rule is intended to provide adequate opportunity to permit outside parties to conform their data to our needs through testing and resubmission. This is the primary reason we believe it is generally necessary to have a sample of the data 8 months prior to the publication of the proposed rule. We are willing to meet with outside parties interested in submitting non-MedPAR data for consideration, and would suggest that those interested in submitting such data in the future should contact us to discuss the specific data they wish to submit and whether the data may be adequate.

Comment: One commenter, while supporting the idea that the data must be reliable and verifiable, indicated that HCFA should consider other means by which to accomplish this purpose. The commenter stated that many of the sources for data are restricted from releasing identifying elements of the data they collect. The commenter claimed, for example, that they could validate the method by which the data were assembled, thereby alleviating our concern that the cases may not represent Medicare beneficiaries or that the reported charges are inaccurate.

Response: We are open to considering any feasible method for validating non-MedPAR data, and that is why at this time we are not specifying explicit criteria for the types of data we will or will not consider. Instead, we have outlined general guidelines and fundamental objectives that must be met. One of those fundamental objectives is that we must be able to validate the data and to accurately identify cases to be reclassified during DRG recalibration.

In order to preserve the integrity of the DRG reclassification and recalibration process, we generally believe it is imperative that we are able to independently validate the data submitted. As noted previously, if we receive non-MedPAR data that purport to reflect cases involving a certain procedure and a certain level of charges, we must have some way to verify that data. In addition, it is not enough to simply decide that a particular diagnosis or procedure code should now be classified to a higher-weighted DRG. Cases in the MedPAR data used for recalibration with that diagnosis or procedure code should be reclassified accordingly. Otherwise, these cases will affect the calculation of the relative weights of other DRGs. Therefore, in order to allow us to ensure the accuracy of DRG recalibration, we must have some mechanism for ensuring that DRG weights are not inappropriately inflated.

Comment: Some commenters stated that the criteria regarding the feasibility of using the data are inconsistent with the intent of the Conference Report language. The commenters contend that there is no need to identify each case involving a new technology. Rather, the agency can extrapolate the findings from a representative sample of cases and estimate which cases must be moved from one DRG to another. Two of the commenters stated that this approach was used in reclassifying lithotripsy to an appropriate DRG, and that extrapolation is used to some degree in setting the physician fee schedule and was used in the proposed outpatient prospective payment system. One commenter wanted us to clarify that we would accept a representative, statistically valid sample of both non-HCFA and HCFA data that reflect cases for a period of less than a full year, as well as requesting that we specify the sources (for example, private payers, manufacturers of medical technologies, or suppliers) from which we are willing to accept such data.

Response: We did not rule out the use of extrapolation based on non-MedPAR data in the proposed rule. In fact, we stated that the data must reflect either a complete set of cases, or, at a minimum, a representative sample of hospitals and claims. However, as stated previously, the process of recalibrating the DRG weights requires that cases be moved consistent with the reclassification of diagnosis or procedure codes from one DRG to another. Failure to do so could lead to inflated or deflated relative weights, which, in turn, result in over or underpayments for cases in the affected DRGs.

We are attempting to accommodate the realities faced by outside parties as they attempt to collect and present non-MedPAR data for consideration. In addition, we will continue to explore our processes for ways to incorporate such data while preserving the empirical and clinical integrity of the recalibration process.

As noted by two commenters, in the September 3, 1986 final rule (51 FR 31486), we did, based on analysis by the Prospective Payment Assessment Commission (ProPAC), assign all cases involving a principal diagnosis of urinary stones treated by extracorporeal shock wave lithotripsy (ESWL) to DRG 323 (Urinary stones, age >69 and/or CC). Prior to this DRG change, ESWL cases were assigned to either DRG 323 or DRG 324, depending on the presence of a CC or based on the patients age (over 69). The Commission, an independent advisory body established by Congress (and MedPAC's predecessor organization), obtained information on ESWL procedure costs and other routine and ancillary hospital service charges from the American Heart Association (AHA), the American Urological Association, and seven hospitals that furnished ESWL. In addition, ProPAC obtained a preliminary summary of a study conducted by the Institute for Health Policy Analysis at Georgetown University Medical Center. This study included cost data from 16 hospitals that furnished lithotripsy. At the time of these studies, approximately 50 hospitals were furnishing ESWL. Because the ProPAC data were obtained directly from hospitals and were verified by the Commission at the

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hospital level, we believed the data were reliable and used the data as a basis for reassigning ESWL cases to DRG 343 only. A full explanation of the study and ProPAC's analysis and recommendations can be found in the Technical Appendixes that accompanied ProPAC's April 1, 1986 Report to Congress.

We have not precluded using either external or internal data that represent less than a full year's worth of cases. For example, we could examine a partial year's worth of cases from the current Federal fiscal year rather than the preceding year's complete MedPAR. Once again, however, a feasible approach must be developed to enable the appropriate classification and recalibration of the DRG weights.

Finally, we do not believe it is necessary, or appropriate, to identify in advance the sources from which we are willing to accept data. At this time, we remain open to considering any data source that is reliable, verifiable, and feasible. We would note, however, that involving hospitals in any data collection would probably aid HCFA in any validation effort. Generally, if we receive non-MedPAR data, we will be contacting the hospitals that furnished the sources to verify some or all of the data.

Comment: Two commenters stated the timeframe for submission of the non-MedPAR data is unreasonable. They suggested that the submission of data 7 months before the updated DRGs take effect (March 1) in the case of internal HCFA data, and 8 months (February 1) in the case of external data, would more appropriately ensure beneficiary access.

Response: The length of time necessary to validate non-MedPAR data depends on the nature and quality of the data. In the proposed rule, we stated that a significant sample of the data should be submitted by August 1, approximately 8 months prior to the publication of the proposed rule, so that we can verify and test the data and make a preliminary assessment as to the feasibility of the data's use. Subsequently, a complete database should be submitted no later than December 1, approximately 4 months prior to the publication of the proposed rule.

We do not believe that this timeframe is unreasonable. If we were to adopt the commenter's suggestion, we would receive non-MedPAR data only 2 months before the proposed rule is scheduled to be published (April 1). This might not allow us sufficient time to ensure that the data are reliable or valid prior to their use in preparing the proposed rule.

We believe the timeframe we set forth is necessary to enable us to independently validate any non-MedPAR data submitted. In order to verify the data's reliability and validity, we believe we need to review a sufficient number of the medical records associated with the data. Expecting us to be able to accomplish this in a matter of weeks after receiving the data (which is all the time that would be available for data received in February due to the requirement to begin the process of reclassifying and recalibrating the proposed DRGs by the end of February in order for the proposed rule to be published by April 1) is unrealistic.

Comment: Many of the commenters, including the manufacturer of the platelet inhibitor drug, national associations representing device and drug manufacturers, and individual cardiologists, argued that our current process has inhibited the development of new medical technologies, and that the criteria for the use of non-MedPAR data are unworkable and would further slow the development of new technologies. Several commenters asserted that certain new technologies (including platelet inhibitors) are denied to Medicare beneficiaries due to insufficient payment.

Response: After 15 years of administering the prospective payment system, we do not have any independent evidence that Medicare beneficiaries are being denied access to new technologies by hospitals or physicians. Although we have always acknowledged that there is a time-lag between the time new technologies are introduced and the point at which we can begin to accurately identify their associated costs, we believe this has not hampered Medicare beneficiaries' access to these new technologies. The fact that under the prospective payment system a hospital might lose money on some cases but will gain money on other cases is well understood by hospitals. We received no comments from hospitals or beneficiary advocates complaining about access to new technologies in general or drug therapies in particular, and only a brief comment from a State hospital association that indicated that the use of non-MedPAR data should extend beyond drug therapies. Furthermore, as provided in § 489.53(a)(2), HCFA may terminate its participation agreement with any hospital if HCFA finds that the hospital places restrictions on the persons it will accept for treatment and it fails either to exempt Medicare beneficiaries from those restrictions or to apply them to Medicare beneficiaries the same as to all people seeking care.

Comment: Several commenters, including the manufacturer of a platelet inhibitor drug and individual cardiologists, specifically commented on our discussion in the proposed rule of the attempts by the manufacturer of the drug to introduce its data into the process, with the objective that cases in which platelet inhibitor therapy is administered should be reclassified from DRG 112 (Permanent Cardiovascular Procedures) to DRG 116 (Other Permanent Cardiac Pacemaker Implant or PTCA with Coronary Artery Stent Implant) for FY 2000. The commenters stated that HCFA has been unwilling to consider the data. One commenter stated that HCFA refused to accept these data when they were offered in December 1998.

Response: As discussed in great detail above, and also in the FY 1999 final rule, our review of the previous data submitted by the drug manufacturer found the data to be insufficient. Despite our consultation with the manufacturer's representatives in advance of their submission of data during the rulemaking process for FY 1999 (that is during the first half of calendar year 1998), in which we advised them that we must be able to identify individual hospitals and patients in order to utilize the data, this information was not included on over 90 percent of the cases submitted in May 1998. As noted in the May 7, 1999 proposed rule, we continued to meet and correspond with the manufacturers, contractors, and legal representatives of the pharmaceutical company in an effort to resolve data issues. At no time have we refused to consider any data offered by the company or its agents.

However, our discussions with these parties led us to the conclusion that it might be helpful to identify general criteria for submission of non-MedPAR data in the proposed rule. In particular, we were concerned that outside parties wishing to submit non-MedPAR data were unfamiliar with our current process and the importance of accurately reclassifying and recalibrating the DRGs. The DRG relative weights are the principle factor in adjusting the prospective payments for each of approximately 11 million Medicare discharges each year. In addition to the potential financial implications to the Medicare Trust Fund and to hospitals themselves if these weights are inaccurate, inappropriately assigning cases to higher-weighted DRGs may create incentives that are not in the best interest of Medicare beneficiaries.

We are hopeful that, by explaining the general criteria for submitting non-MedPAR data and receiving public comments on those criteria, we can help to ensure that in the future those interested in submitting non-MedPAR data will be better informed regarding how the process can work. In particular, we believe the timeframe we set will enable us to work effectively with those interested in submitting non-MedPAR data to help them provide data that can be used.

Comment: A manufacturer of a platelet inhibitor drug expressed concern that HCFA may assign a special DRG classification for patients who receive coronary intervention with an angioplasty and treatment with platelet inhibitor therapy, but not for acute coronary syndrome patients who receive the same drugs without coronary intervention. These latter cases are assigned to DRG 124 (Circulatory Disorders Except Acute Myocardial Infarction, with Cardiac Catheterization and Complex Diagnoses) or DRG 140 (Angina Pectoris). The commenter stated that if we were to modify payment for one use and not the other, it would potentially create a financial incentive for expensive, risky, and invasive treatment. Making payment provisions for both indications at the same time, on the other hand, will give neither use an advantage over the other. We were asked by the commenter to evaluate platelet inhibitor therapy cases assigned to DRG 124 or DRG 140.

Response: Because this is the first comment we have received regarding the noncoronary intervention use of the therapy, an extensive study of DRGs 124 and 140 before publication of this final rule was not feasible. We will evaluate this issue as part of our annual update for FY 2001, when we will have MedPAR data capturing injection or infusion of platelet inhibitor (ICD–9–CM procedure code 99.20). This commenter's concern that increasing payment for one application of platelet inhibitors but not for others could actually create an inappropriate incentive in favor of a more invasive treatment, illustrates the importance of proceeding cautiously in the process of DRG reclassification and recalibration. We have a responsibility not to inadvertently create financial incentives that adversely affect clinical decisionmaking.

Comment: During the comment period, we received a revised set of data from the manufacturer seeking to have platelet inhibitor therapy cases receiving angioplasty reclassified from DRG 112 to DRG 116. The data contain 27,673 cases from 164 hospitals in which Medicare patients underwent an angioplasty. The commenter describes the data as Athe public MedPAR file with an additional field that identifies the MedPAR case as involving an angioplasty with or without platelet inhibitor therapy. Thus, HCFA can identify the patient and the hospital from these data such that they are reliable and verifiable. It also is ■ representative sample of claims and, therefore, it is feasible for the agency (HCFA) to use the data set. In light of the significant number of angioplasty cases contained in the data, HCFA should be able to utilize accepted statistical methods to extrapolate the results of these data and recalibrate the DRG weights.@ The manufacturer indicated that HCFA should reclassify angioplasty cases with platelet inhibitor therapy on the basis of these data.

Included with the comment are tables summarizing the results of the commenter's analysis of the data, showing that angioplasty cases receiving platelet inhibitor therapy are more expensive than those not receiving platelet inhibitors. According to the commenter, the approximate average standardized charges for the different classes of patients are as follows:

- No drug, no stent: $19,877.
- No drug, with stent: $22,968.
- Drug, no stent: $26,389.
- Drug, stent: $30,139.

Response: The submission of these data illustrates the problems of attempting to ensure that non-MedPAR data are reliable, validated, and feasible to use. Our greatest concern with respect to the data submitted by the commenter is that we must validate the data to assess whether they are reliable, and (as explained further below) this validation process would take significant time and resources because the data are not readily verifiable.

The data file submitted by the commenter is a MedPAR file with an additional field. The commenter has "marked" certain cases in the MedPAR file. The file contains variables named REO–FLAG and STENT–FLAG, which purportedly indicate the case received the platelet inhibitor or a coronary stent, respectively. However, the variables were placed in the file by the commenter, based on information that was not made available to HCFA; we did not receive any information to verify that the cases flagged by the commenter involved platelet inhibitors. Although we can use the FY 1998 MedPAR data to validate whether a case received a coronary stent (because the FY 1998 MedPAR data include the corresponding procedure code (36.06)), we cannot use the FY 1998 MedPAR file by itself to validate whether a case involved platelet inhibitors because the procedure code for the use of platelet inhibitors (procedure code 99.20) was not effective until October 1, 1998. Therefore, we cannot validate the data submitted to us without further investigation.

In order to do so, we believe it is necessary to review the medical records associated with the cases. Unless the entity submitting the non-MedPAR data includes medical records (or other information that would enable us to validate the data), the only method HCFA has to review medical records is through Peer Review Organization (PRO) review. Thus, we would need to request assistance in the PRO in each of the States represented in the submitted data. The PROs would then contact the hospitals involved to request copies of the medical records. Finally, based on reviewing those records, the PROs would notify HCFA whether the data can be validated.

Conducting a PRO independent validation would require a minimum of 2 to 3 months, and possibly much longer. Thus, there is not sufficient time available to conduct a review of the data submitted by the drug manufacturer. Since we cannot validate the data, it would compromise the integrity of the DRG recalibration process to use these data in the DRG reclassification and recalibration for FY 2000.

We note that the process used by the manufacturer to collect these data is not specified. Based upon our prior discussions with the manufacturer and its contractor that prepared the data, we believe the 164 hospitals represented in the sample have a contract for data analysis and review with the consultant. Although we would not rule out the possibility that this sample is statistically sufficient, we note that in general, random sampling is necessary for generalization beyond the sample itself.

The analysis submitted by the commenter is similar to that presented in last year's final rule. As we indicated at that time, our general process of waiting until we have identifiable MedPAR data applies to changes that would enhance payment as well as those that would decrease payment. Absent alternative data meeting the criteria otherwise described in the proposed rule and in this final rule, we cannot reclassify the administration of platelet inhibitors with angioplasty (procedure code 99.20) from DRG 112 to DRG 116.

Comment: Some commenters believed that the proposed weights for DRGs 112 and 116 are dramatically lower than they should be and the result will be a disincentive to use these technologies.

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Another commenter stated that by not reclassifying cases receiving platelet inhibitors with angioplasty to DRG 116, we actually promote the inaccuracy of the DRG weights, by grouping these higher-cost cases with other lower-cost cases in DRG 112.

Response: With regard to the comment concerning the weights of DRGs 112 and 116, we refer the commenters to the discussion above in section II.C of this preamble concerning the steps we take in recalibrating the weights. Every year when the relative weights are recalibrated, we use charge information from the most recent Medicare data available. That is, we use the charges reported by hospitals for the cases under each DRG to establish the relative weights. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in all DRGs. We have not identified any problems or anomalies related to the cases in DRGs 112 and 116 and are confident that the relative weights are accurate.

With respect to the comment about our promoting the inaccuracy of the DRG weights by failing to reclassify platelet inhibitor cases, the commenter does not appear to understand the difference between reclassification and recalibration. That is, the commenter argues that the DRG relative weights are inaccurate because high-cost cases are not reclassified to a higher-weighted DRG. However, our point regarding the accuracy of the relative weights pertains to the necessity that, in the process of recalibration, cases are grouped in the DRG to be used for payment for similar cases during the upcoming year. Thus, the relative weights are accurate in the sense that they are calculated by grouping cases according to the DRG under which they would be paid.

Comment: One of the manufacturers of platelet inhibitor therapy disagreed with our statement in the proposed rule that the prospective payment system outlier policy would address the rationing of new technology to Medicare beneficiaries. The commenter argues that cases of platelet inhibitor therapy would not receive outlier payments because the cost of the drug, while it is several thousand dollars over the DRG payment, is not in excess of the fixed loss threshold ($14,575 over the DRG payment in the proposed rule for FY 2000).

Response: Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments for outlier cases, cases involving extraordinarily high costs. Our statement in the proposed rule was meant to apply to all new technologies, and not specifically to platelet inhibitor therapy. As stated previously, the prospective payment system reflects "averaging principles," which means, among other things, that a hospital might lose money on some cases but will gain money on other cases; sometimes new technologies lead to lower costs and we might Aoverpay@ hospitals for those cases. If a case does not qualify for an outlier payment, then presumably the case falls within the "typical" range of costs for cases in the DRG. We believe that, as a whole, the prospective payment system does ensure access to new technologies, including platelet inhibitor therapy.

III. Changes to the Hospital Wage Index

A. Background

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts "for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In accordance with the broad discretion conferred under the Act, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs), Primary MSAs (PMSAs), and New England County Metropolitan Areas (NECMAs) issued by the Office of Management and Budget (OMB). OMB also designates Consolidated MSAs (CMSAs). A CMSA is a metropolitan area with a population of one million or more, comprised of two or more PMSAs (identified by their separate economic and social character). For purposes of the hospital wage index, we use the PMSAs rather than CMSAs since they allow a more precise breakdown of labor costs. If a metropolitan area is not designated as part of a PMSA, we use the applicable MSA. Rural areas are areas outside a designated MSA, PMSA, or NECMA.

We note that effective April 1, 1990, the term Metropolitan Area (MA) replaced the term Metropolitan Statistical Area (MSA) (which had been used since June 30, 1983) to describe the set of metropolitan areas comprised of MSAs, PMSAs, and CMSAs. The terminology was changed by OMB in the March 30, 1990 **Federal Register** to distinguish between the individual metropolitan areas known as MSAs and the set of all metropolitan areas (MSAs, PMSAs, and CMSAs) (55 FR 12154). For purposes of the prospective payment system, we will continue to refer to these areas as MSAs.

Beginning October 1, 1993, section 1886(d)(3)(E) of the Act requires that we update the wage index annually. Furthermore, this section provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure, to the extent feasible, the earnings and paid hours of employment by occupational category, and must exclude the wages and wage-related costs incurred in furnishing skilled nursing services. As discussed below in section III.F of this preamble, we also take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act when calculating the wage index.

B. FY 2000 Wage Index Update

The final FY 2000 wage index values in section VI of the Addendum to this rule (effective for hospital discharges occurring on or after October 1, 1999 and before October 1, 2000) are based on the data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in FY 1996 (the FY 1999 wage index was based on FY 1995 wage data).

The final FY 2000 wage index includes the following categories of data associated with costs paid under the hospital inpatient prospective payment system (as well as outpatient costs), which were also included in the FY 1999 wage index:

- Salaries and hours from short-term, acute care hospitals.
- Home office costs and hours.
- Certain contract labor costs and hours.
- Wage-related costs.

Consistent with the wage index methodology for FY 1999, the final wage index for FY 2000 also continues to exclude the direct and overhead salaries and hours for services not paid through the inpatient prospective payment system, such as skilled nursing facility services, home health services, or other subprovider components that are not subject to the prospective payment system. (As discussed in section III.C of this preamble, we are refining the methodology for calculating the wage index for FY 2000.)

We calculate a separate Puerto Rico-specific wage index and apply it to the Puerto Rico standardized amount. (See 62 FR 45984 and 46041.) This wage index is based solely on Puerto Rico's data. Finally, section 4410 of the BBA provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State.

Comment: In a general comment on the wage index, MedPac noted that new measures are needed to implement each new prospective payment system as well as for Medicare+Choice plans and suggested that we explore alternative strategies for obtaining labor prices that could be applied to each type of provider affected. MedPAC offers to assist us in examining this issue.

Response: We agree with MedPAC that this is an area warranting further attention to determine whether it is appropriate to continue to adjust payments for these other provider types based on the relative average hourly wages of hospital employees, and whether the collection of wage data for every type of Medicare provider is feasible or necessary. Currently, the data used to calculate the hospital wage index is used broadly in payment systems for other types of Medicare providers. New prospective systems for skilled nursing facilities, hospital outpatient services, and home health agencies will continue to use the hospital wage index data for the foreseeable future. We have collected data separately for skilled nursing facilities, but, pending further development and auditing of these data, we continue to use the hospital wage data (before reclassifications by the Medicare Geographic Classification Review Board) for adjusting skilled nursing facility payments at this time.

C. FY 2000 Wage Index Methodology Changes

In the July 31, 1998 final rule, we reiterated our position that, to the greatest degree possible, the hospital wage index should reflect the wage costs associated with the areas of the hospital included under the hospital inpatient prospective payment system (63 FR 40970). That final rule contained a detailed discussion concerning the costs related to teaching physicians, residents, and CRNAs, all of which are paid by Medicare separately from the prospective payment system. For reasons outlined in detail in that final rule, we decided not to remove those costs from the calculation of the FY 1999 wage index, but to review updated data and consider removing them in developing the FY 2000 wage index.

In response to concerns within the hospital industry related to the removal of these costs from the wage index calculation, the American Hospital Association (AHA) convened a workgroup to develop a consensus recommendation. The workgroup, which consisted of representatives from national and State hospital associations, recommended that costs related to teaching physicians, residents, and CRNAs should be phased-out of the wage index calculation over a 5-year period. Based upon our analysis of hospitals' FY 1996 wage data, and consistent with the AHA workgroup's recommendation, we proposed to phase-out these costs from the calculation of the wage index over a 5-year period. The proposed FY 2000 wage index was based on a blend of 80 percent of an average hourly wage including these costs, and 20 percent of an average hourly wage excluding these costs.

Comment: Commenters unanimously supported our proposal to remove teaching-related and CRNA costs from the wage index. Further, two commenters recommended that we emphasize that Medicare pays its share of teaching-related wage costs through direct graduate medical education (GME) payments and that these costs are being removed from the wage index only insofar as Medicare continues to pay the costs outside of the hospital prospective payment system. Additionally, commenters favored the proposed 5-year phase-out of these costs to reduce significant redistributive impacts.

MedPAC, however, recommended that, rather than reducing the weights for the old calculation and increasing the weights for the new calculation by the proposed 20 percent each year, we should apply smaller weights to the new wage index calculation for the first 2 years. Its rationale for this is its concern that inaccurate reporting of teaching physician data, and our methodology for removing costs for hospitals that fail to report these data, may inappropriately lower the wage index values for nonteaching hospitals in the same labor market areas.

Response: We are pleased to receive strong support for our efforts to remove from the hospital wage index, wage costs that are associated with areas of the hospital not included under the hospital prospective payment system. Therefore, beginning with the FY 2000 wage index, and over a 5-year period, we are phasing-out costs related to teaching physicians, residents, and CRNAs. As recommended, we emphasize that our rationale for removing these costs from the wage index calculation is that Medicare pays for these costs separately, and these costs will be excluded from the wage index as long as they are paid separately from the hospital prospective payment system.

With respect to MedPAC's recommendation that the weight given to the average hourly wage calculated after removing CRNAs, teaching physicians, and residents, should be less than 20 percent for FY 2000, we disagree. If we applied a percentage less than 20 percent for FY 2000 (and FY 2001), we then would have to apply a higher percentage phase-out in a later fiscal year (or years) and thus increase the redistributive impact for that year. We believe that applying 20 percent increments each year promotes the smoothest transition to total exclusion of the costs.

1. Teaching Physician Costs

As discussed in the FY 1999 final rule and the FY 2000 proposed rule, before FY 1999, we included direct physician Part A costs and excluded contract physician Part A costs from the wage index calculation. Since some States prohibit hospitals from directly employing physicians, hospitals in these States were unable to include physician Part A costs because they were incurred under contract rather than directly. Therefore, for cost reporting periods beginning in 1995, we began separately collecting physician Part A costs (both direct and contract) so we could evaluate how to best handle these costs in the wage index calculation. Based on our analysis of the 1995 wage data, we decided to include the contract physician salaries in the wage index beginning with FY 1999.

In the July 31, 1998 final rule, in response to comments regarding the inclusion in physician Part A costs of teaching physician costs for which teaching hospitals are already compensated through the Medicare GME payment, we stated that we would collect teaching physician data "as expeditiously as possible in order to analyze whether it is feasible to separate teaching physician costs from other physician Part A costs" (63 FR 40968). Excluding teaching physician costs from the wage index calculation is consistent with our general policy to exclude from that calculation those costs that are paid separately from the prospective payment system.

Because the FY 1996 cost reports did not identify teaching physician salaries and hours separately from physician Part A costs, we instructed our fiscal intermediaries to collect, through a survey, teaching physician costs and hours from the teaching hospitals they service. Specifically, we requested collection of data on the costs and hours related to teaching physicians that were

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included in Line 4 (salaried), Line 10 (contracted), Line 12 (home office and related organizations), and Line 18 (wage-related costs) of the Worksheet S–3, Part II. In our instructions accompanying the survey, we indicated that these teaching-related costs are those payable under the per resident amounts (§ 413.86) and reported on Worksheet A, Line 23 of the hospital's cost report.

Survey data were received from approximately 59 percent of teaching hospitals reporting physician Part A costs on their Worksheet S–3, Part II (500 out of 845). Our fiscal intermediaries reviewed the survey data for consistency with the Supplemental Worksheet A–8–2 of the hospitals' cost reports. Supplemental Worksheet A–8–2 is used to apply the reasonable compensation equivalency limits to the costs of provider-based physicians, itemizing these costs by the corresponding line number on Worksheet A.

Hospitals were given until March 5, 1999 to request changes to the initial survey data. Fiscal intermediaries had until April 5, 1999 to submit the revised data to the Health Care Provider Cost Report Information system (HCRIS) for inclusion in the May 1999 final wage data file. Due to the extraordinary effort needed to collect these data and the importance of accurately removing teaching physician costs, we allowed hospitals to request revisions to their teaching survey data up until June 5, 1999.

The hospital industry workgroup also recommended that if the teaching data collected by the intermediaries are not accurate or reliable, HCFA should include only 20 percent of reported physician Part A costs in the calculation, based on the assumption that 80 percent of total physician Part A costs are related to teaching physicians. In developing the final FY 2000 wage index (as in the proposed), if we had complete survey data for a hospital, that amount was subtracted from the amount reported on the Worksheet S–3 for physician Part A costs. These data had been verified by the fiscal intermediary before submission to us. If we did not have survey data for a teaching hospital as of June 5, 1999, we removed 80 percent of the hospital's reported total physician Part A costs and hours for the wage index.

Although removing 80 percent from the amount reported on the Worksheet S–3 for physician Part A costs allows an estimate of teaching physician costs to be removed in the majority of cases in which survey data are not available, there are instances in which a teaching hospital did not report either survey data or any physician Part A costs on its Worksheet S–3. We identified 19 of these teaching hospitals in our final database (there were 72 of these hospitals identified in the proposed rule). For purposes of calculating the FY 2000 wage index for these 19 hospitals, we subtracted the costs reported on Line 23 of the Worksheet A, Column 1 (Resident and Other Program Costs) from Line 1 of the Worksheet S–3. These costs (from Line 23, Column 1 of Worksheet A) are included in Line 1 of the Worksheet S–3, which is the sum of Column 1, Worksheet A. They also represent costs for which the hospital is paid through the per resident amount under the direct GME payment.

We believe this approach is appropriate in situations in which hospitals have failed to otherwise identify their teaching physician costs. To determine the hours to be removed, we divided the costs reported on Line 23 of Worksheet A, Column 1 by the national average hourly wage for physician Part A costs based upon Line 4 of Worksheet S–3 (the national average hourly wage is $54.48). We indicate these 19 hospitals by an asterisk in Table 3C of this final rule.

In the proposed rule, we invited comments as to whether the proposed method to remove teaching-related costs based on the amount included in Line 23, Column 1 of Worksheet A would be an appropriate method for removing GME costs in the future (and perhaps other excluded area costs as well). We were especially concerned that the earliest cost report on which we would be able to make the necessary changes to capture the separate reporting of teaching physician Part A costs would be those submitted for cost reporting periods beginning during FY 1998. Therefore, we were considering subtracting the costs in Lines 20, 22, and 23 of Worksheet A from Line 1 of Worksheet S–3, Part II, in calculating the FY 2001 wage index. The current Worksheet S–3 is not designed to net out of Line 1 costs that are otherwise included in Column 1 of Worksheet A, but it would be possible to use data from the Worksheet A in a manner similar to that described above.

Comment: Two commenters disagreed with our decision to allow changes to the teaching survey data but not to corresponding lines on Worksheet S–3 during the final wage data correction period (June 5 deadline). They believed we should be willing to accept conforming wage data corrections, even during the final correction period, to achieve the goal of using the most accurate data available.

Response: If hospitals had miscategorized their teaching physician costs on their cost report in such a way that accurately completing the teaching survey would result in their teaching physician survey costs being removed twice, we did authorize corresponding revisions to Worksheet S–3. For example, some hospitals included teaching physician costs in Line 6 of their Worksheet S–3 (which is intended for reporting interns and residents' costs). Therefore, reporting these costs on their teaching physician survey, which would be subtracted from Line 4 for the salaries of teaching physicians directly employed by the hospital, would result in them being removed twice, once when the teaching physician data are subtracted from Line 1 of Worksheet S–3, and again when Line 6 of Worksheet S–3 is subtracted from Line 1.

Comment: We received several comments regarding our proposal to use the teaching survey data for teaching hospitals that submitted surveys but to remove 80 percent of the total physician Part A costs and hours for nonresponsive teaching hospitals. Most commenters supported our reliance on the teaching survey data for the FY 2000 wage index. One commenter added that we should be assertive in insisting that teaching survey data be reported accurately by hospitals and verified by fiscal intermediaries, holding hospitals to a level of accountability that is similar to the certification of a cost report at filing. Another commenter urged us to incorporate the separate collection of teaching physician Part A data into the cost report as soon as possible to ensure that the data submitted by hospitals is consistent.

Although most commenters agreed that we should reduce reported total physician Part A costs by 80 percent for teaching hospitals that do not submit the teaching survey, some took issue with this approach. One national and one State hospital association recommended we remove 100 percent of reported total physician Part A costs from nonresponsive teaching hospitals' total costs as a penalty for not reporting their data. The commenters believe that, for hospitals whose proportion of teaching physician Part A costs relative to total physician Part A costs is greater than 80 percent, there is no incentive to complete the teaching survey. On the other hand, MedPAC recommended that, since HCFA's preliminary teaching survey data indicate that teaching physician Part A costs are 68 percent of total physician Part A costs, we should have adjusted the hospital's data by that amount rather than the higher 80 percent figure. MedPAC comments that, although using the 80 percent figure may give hospitals the incentive to submit the requested survey data if their ratio of teaching physician Part A costs to total physician Part A costs is less than 80 percent, that amount could inappropriately lower the wage index values for other hospitals located in the same MSA as the nonresponsive teaching hospital. The comments do acknowledge, however, the policy dilemma in terms of the incentives not to report that may arise by setting the percentage too low.

Response: We appreciate the commenters' general support of using the survey data, as well as the efforts of hospitals and the fiscal intermediaries in this special data collection effort. We believe that, although the response rate is less than we would have preferred, the end result is a more accurate FY 2000 wage index.

Although Worksheet S–3 is being revised to provide for the separate reporting of teaching physician Part A costs, this change will not be incorporated until cost reporting periods beginning during FY 1998. Therefore, we will have to conduct another teaching physician cost survey corresponding with the FY 1997 wage data. We agree with the commenter's suggestion that the accuracy and completeness of the survey data should be certified by the hospital in the same manner as the accuracy and completeness of the cost report data must be certified.

In our calculation of the FY 2000 wage index, we removed 80 percent of physician Part A costs and hours for teaching hospitals that failed to report their teaching physician costs. We will consider the comment to remove 100 percent of these costs for nonresponsive hospitals in the future, however. Although the 80 percent figure was taken from the industry workgroup's recommendation, we believe it may be appropriate to consider raising this percentage to address the problem of hospitals failing to comply with Medicare instructions.

We appreciate MedPAC's concern that the estimation of teaching physician costs for hospitals that did not report should not disproportionately harm other hospitals in the same labor market area. Similarly, however, these hospitals should not benefit from noncompliance. Also, as noted previously, because the teaching physician costs are being removed gradually, with 80 percent of the FY 2000 wage index based on an average hourly wage that includes all of these costs, we do not believe it is necessary to reduce the 80 percent estimate to an amount based on the percentage of teaching physician Part A costs to all physician Part A costs for hospitals completing the survey to protect other hospitals in the labor market area. Any impact should be relatively minor for this first year.

Comment: Two commenters believed that hospitals that contract with physicians for Part A services are disadvantaged because the cost report and teaching survey instructions seem to be designed only for hospitals that employ physicians.

Response: The cost report and teaching survey do account for the costs of contract physicians. The first year contract physician Part A costs were included in the wage index was FY 1999. Beginning with the FY 1995 cost report, we revised Worksheet S–3 to allow a separate line item for reporting these costs. To improve the reporting for all physician-related wage costs, we made additional changes to the FY 1996 cost report. The teaching survey was patterned after the FY 1996 Worksheet S–3.

The salaries on the Worksheet S–3 for employed physicians derive from column 1 of Worksheet A. Hospitals should report the labor costs associated with contract physicians in column 2 of that same worksheet. If hospitals report their costs properly according to the cost report instructions, hospitals using contract physicians will not be disadvantaged by the way the costs are reported. We encourage hospitals to be diligent in working with their intermediaries if they have questions about reporting costs on the cost report.

Comment: We received four comments regarding the use of Worksheet A, Line 23, Column 1 as a proxy for teaching-related wage costs when a teaching hospital did not report either survey data or any physician Part A costs. One was favorable without qualifications. One commenter recommended that, beginning with the FY 2001 wage index, we should instruct hospitals to report on Worksheet S–3 the wage costs associated with teaching physicians directly from Worksheet A, Line 23 and the corresponding hours directly from hospitals' records. A national hospital association recommended that if we use Worksheet A, Line 23 for teaching salaries and a national average hourly wage for physicians to estimate the associated hours to be removed for nonreporting hospitals, then we should apply this approach to all hospitals. If we apply this method only to hospitals that do not respond to the teaching survey, the commenter believed that we should penalize nonresponsive hospitals by increasing the hourly rate by 25 percent to ensure they are not advantaged by not reporting their costs.

Several hospitals contacted us to report that, although they were listed as one of the 72 hospitals for whom we used Line 23 of Worksheet A to remove teaching physician costs, these costs were actually included in other lines of Worksheet S–3, such as Line 5, Physician Part B services, or Line 6, Interns and Residents. Therefore, since both of these lines are subtracted from Line 1 in our calculation, subtracting Line 23 from Worksheet A would remove these costs twice.

In opposing the use of Line 23 as a proxy for teaching-related costs, one commenter cautioned that, particularly for hospitals in States that are prohibited from employing physicians, Line 23, Column 1 may not include any teaching physician costs. MedPAC also stated concern with this approach, but did not cite any specific problems associated with it.

Response: For FY 2000, we are removing the amount reported on Worksheet A, Line 23, Column 1, only in the absence of teaching survey or Worksheet S–3 data for a hospital but we will continue to explore using this approach rather than the survey for identifying GME and CRNA costs to be removed in the FY 2001 wage index. The approach we adopted has the advantage of being straightforward and easy to apply. Line 1, Column 1 of Worksheet S–3 is equal to Line 101 of Column 1 of the Worksheet A. Line 23 of Column 1, which is for the reporting of nonresidents' costs related to GME that are paid separately from the prospective payment system, is included in Line 101. Therefore, one could argue that the simplest way to remove GME costs from the wage index calculation would be to subtract the costs from Line 1 of Worksheet S–3 that are attributable to the GME cost centers on Worksheet A (Lines 22 and 23).

In carving out an estimate of hours for the final 19 hospitals for which we subtracted Line 23 of Worksheet A from total salaries on Worksheet S–3, we removed an estimated amount of associated hours based on the average hourly wage of all physician Part A salaries. We did not increase this average hourly wage by 25 percent as a penalty for hospitals that did not otherwise report teaching physician costs. We do reserve the right to remove some or all of a hospital's wage data that cannot be appropriately supported by the hospital's records. We also reserve the right to pursue further action in the case of hospitals that intentionally withhold, conceal, or otherwise attempt

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to circumvent the cost reporting requirements of their participation agreements.

If we were contacted timely by a hospital that reported its costs from Line 23 of Worksheet A somewhere other than Line 4 of the Worksheet S–3, we did accommodate the hospital's request to avoid removing the teaching physician Part A costs twice. We note that the majority of these situations involved hospitals that did not follow the cost reporting instructions for these costs. Despite MedPAC's general concerns about this approach to removing costs, we did not receive any comments that would cause us to rule out this seemingly straightforward approach for removing GME and CRNA costs from the FY 2001 wage index for all teaching hospitals. The biggest difficulty seems to be related to ensuring that the cost reporting instructions are uniformly followed.

Comment: Two commenters suggested using Worksheet A–8–2 of the cost report, "Provider-Based Physicians Adjustments," to determine physician Part A costs, particularly for costs associated with teaching and contract physicians. The commenters reasoned that, because Worksheet A–8–2 is used to determine allowable cost and hours to be included in the Medicare cost report, HCFA should use Worksheet A–8–2 to determine physician Part A labor costs for wage index purposes. Use of the Worksheet A–8–2 would also ensure the wage index includes only those physician costs paid under Part A. One of the commenters commended us for requesting intermediaries to compare the teaching survey and Worksheet A–8–2 data, but suggested that we should also require intermediaries to use Worksheet A–8–2 data for determining teaching physician wage costs when the survey data are unacceptable.

Response: We agree that, if properly completed, Worksheet A–8–2 should be an acceptable source for teaching physician Part A data. In February, we instructed intermediaries to review hospitals' teaching survey data for consistency with Worksheet A–8–2, and when necessary, revise the data accordingly. One minor problem with relying solely on Worksheet A–8–2 is that it may include some wage-related costs that are excluded from the wage index calculation; however, these should be insignificant. We believe that Worksheet A–8–2 is an appropriate source for physician Part A costs. However, we need to examine Worksheet A–8–2 more closely before requiring that it be used to determine physician part A costs for future wage indexes.

Comment: We received two comments recommending that we remove overhead costs associated with the teaching physician, resident, and CRNA direct costs that are excluded from the wage index. The commenter compared this action to our current policy in which we remove the overhead costs associated with excluded providers such as skilled nursing facilities or rehabilitation units from the wage data. One commenter offered technical assistance to HCFA in this effort.

Response: We agree, in principle, that overhead costs associated with teaching-related and CRNA labor costs should be removed from the wage index calculation in the same way that we remove overhead costs associated with excluded areas of the hospital. However, we believe that the methodology we apply for specific patient care cost centers excluded from the wage data may not be appropriate for removing overhead related to CRNA and GME costs. Therefore, we are grateful for the commenter's offer of technical assistance to develop an appropriate methodology for allocating overhead costs related to CRNAs and GME. We anticipate that this issue will be discussed by HCFA's wage index workgroup later this year, and in next year's proposed rule for FY 2001.

2. Resident and CRNA Part A Costs

The wage index presently includes salaries and wage-related costs for residents in approved medical education programs and for CRNAs employed by hospitals under the rural pass-through provision (§ 412.113(c)). Because Medicare pays for these costs outside the prospective payment system, removing these costs from the wage index calculation would be consistent with our general policy to exclude costs that are not paid through the prospective payment system. However, because these costs were not separately identifiable on Worksheet S–3 before the FY 1995 wage data, we could not remove them.

We began collecting the resident and CRNA wage data separately on the FY 1995 cost report. However, there were data reporting problems associated with these costs. For example, the original FY 1995 cost report instructions for reporting resident costs on Line 6 of Worksheet S–3, Part III, erroneously included teaching physician salaries and other teaching program costs. Also, the FY 1995 Worksheet S–3 did not provide for separate reporting of CRNA wage-related costs. These problems were corrected in the reporting instructions for the FY 1996 cost report, and, therefore, we proposed and are now implementing the removal of CRNA and resident costs over a 5-year period, beginning with the FY 2000 wage index.

We received no comments related to this change.

3. Transition Period

The FY 2000 wage index is based on a blend of 80 percent of hospitals' average hourly wages without removing the costs and hours associated with teaching physician Part A, residents, and CRNAs, and 20 percent of the average hourly wage after removing these costs and hours from the wage index calculation. This methodology is consistent with the recommendation of the industry workgroup for a 5-year phase-out of these costs. The transition methodology is discussed in detail in section III.E of this preamble.

Comment: One hospital believed that it has been disadvantaged by HCFA's allowance of contract teaching physician Part A costs in the FY 1999 wage index, and that HCFA should disallow teaching physician costs entirely, beginning with FY 2000. The hospital stated that it is experiencing difficulty meeting the criteria for geographic reclassification for purposes of the wage index to another MSA that includes a teaching hospital that reports a large amount of contract teaching physician Part A costs.

Response: Our reasons for including contract physician Part A costs are discussed in detail in the July 31, 1998 **Federal Register** (63 FR 40967). In general, it was our belief that if contract physician Part A costs were reliably reported by hospitals, they should be included in the wage data along with the Part A costs of directly employed physicians. In that final rule, we also discussed our position that, to the greatest degree possible, the hospital wage index should reflect the wage costs associated with the areas of the hospital included under the hospital inpatient prospective payment system. Therefore, based on data we have collected since that final rule was published, and as discussed above, we are removing teaching physician costs (as well as CRNA and resident costs) for the wage data, over a 5-year period.

As is generally true with changes in the wage index, hospitals that may have once been eligible to reclassify to another MSA for purposes of the wage index may find that they no longer qualify after changes have been implemented. However, we believe that all our changes to the wage index are designed to more accurately reflect the wage costs incurred by hospitals. In the case of the teaching physician costs, we believe that a 5-year phase out is appropriate to reduce significant redistribution impacts. With regard to the accuracy of the teaching hospital data, the intermediary verified the data and determined it is consistent with audit findings.

D. Verification of Wage Data from Medicare Cost Reports

The data for the FY 2000 wage index were obtained from Worksheet S–3, Parts II and III of the FY 1996 Medicare cost reports. The data file used to construct the final wage index includes FY 1996 data submitted to HCRIS as of early February 1999. As in past years, we performed an intensive review of the wage data, mostly through the use of edits designed to identify aberrant data. In the proposed rule, we discussed our review and methodology for resolving questionable elements in the hospital data (64 FR 24728). The revised data are reflected in this final rule. Since the proposed rule, we deleted data for four hospitals that reported aberrant and unverifiable wage data that would have significantly distorted the wage index values, and added data for seven hospitals that were not included in the proposed wage index but rather whose data have now been corrected and verified. The final FY 2000 wage index is calculated based on FY 1996 data for 5,038 hospitals.

Comment: One hospital association expressed concern that a number of hospitals might have failed to comply with the new cost reporting instructions for wage-related costs, causing an overreporting of these costs in the FY 2000 wage index. Prior to the FY 1996 cost report, the lines on Worksheet S–3 for core and other wage-related costs reflected a hospital's total costs for those categories. However, beginning with the FY 1996 cost report, core and other wage-related costs must be reported net of costs associated with excluded areas. The commenter stated that wage-related costs for a significant number of hospitals increased at least 10 percent this year and it believed that the increase is due to hospitals incorrectly reporting excluded area wage-related costs on Line 13. The commenter recommended that we develop a method to determine if a hospital misreports its wage-related costs, and that we should require correction of the data.

Response: We believe the new cost reporting instructions for wage-related costs, Lines 13 and 14 of Worksheet S–3, Part II, are clear regarding the exclusion of costs associated with excluded areas. Intermediaries were aware of the new cost reporting instructions and instructed their auditors to closely examine the costs reported in Lines 13 and 14 of Worksheet S–3, Part II for compliance. In addition, the intermediaries' FY 1996 wage data review program included an edit for hospitals having wage-related costs that increased 10 percent or more between FY 1995 and FY 1996. Furthermore, we contacted representatives of national hospital associations who agreed to alert their members of the reporting change. We are aware of numerous instances where intermediaries adjusted hospitals' wage-related costs after review. As part of the FY 1997 wage data desk review program (for the FY 2001 wage index), we will provide more specific instructions to the intermediaries to review the data reported for core and other wage-related costs to ensure no costs associated with excluded areas are included.

Comment: One commenter disagreed with the approach we used in the proposed rule to identify teaching hospitals to ensure that all of these hospitals had reported teaching physician survey data. We based our decision to remove either 80 percent of physician Part A costs and hours or the amount on Line 23, Column 1 of Worksheet A, based on whether the hospital had a resident-to-bed ratio greater than zero on the latest Provider-Specific File. The commenter suggested it would be more appropriate to base the identification of teaching hospitals on whether the hospital reported residents on its cost report for the period corresponding with the wage data.

Response: We agree with this comment. It is more appropriate to base the identification of teaching hospitals on data from the same year as the wage data we use. Therefore, we revised our method to identify teaching hospitals based on whether they reported residents during their cost reporting period beginning during FY 1996.

Comment: One State hospital association commented that the underrepresentation of physician Part A costs for hospitals in its State is due to the intermediary's exclusion of a majority of the costs reported by hospitals. The commenter believes there are inconsistencies between the two intermediaries that service hospitals in the State in their treatment of contract physician Part A costs. The commenter recommended that HCFA monitor intermediaries and enforce uniform application of Medicare principles and standards, particularly with regard to the determination of allowable physician costs on Worksheet A–8–2.

Response: For wage index purposes, contract physician costs are to be reported according to the instructions for Worksheet S–3 Part II, Line 10. The physician Part A costs reported on Worksheet S–3 may differ slightly from those reported on worksheet A–8–2 because there are minor differences in the types of wage-related costs that are allowed for each of the worksheets. The two forms serve different purposes. The wage index worksheet (S–3) may include, to a reasonable extent, the actual costs a hospital incurs. However, Worksheet A–8–2 is used to determine allowable costs for Medicare cost report purposes and includes cost limits. The commenter did not indicate exactly what inconsistencies it had found. If there are inconsistencies, we would like to address them as soon as possible for the FY 2001 wage index.

We note that, intermediaries have informed us that hours associated with contract physicians are often difficult to verify because hospitals have not developed reporting systems that accurately account for contract physician hours. Consistent with Medicare policy, intermediaries must exclude costs and other data that are insufficiently supported by a hospital's documentation.

Comment: One commenter noted several errors in the proposed rule and final wage data public use file. The commenter stated that Table 3C of the proposed rule included some hospitals with extremely low average hourly wages, and that the average hourly wages reported for some hospitals marked with an asterisk do not seem to incorporate the Worksheet A, Line 23 data as described in the footnote. Additionally, the commenter stated that the final wage data on the Internet includes two different date formats for fiscal year begin and end dates, an eight digit format and a seven digit format. The commenter asked that HCFA make the appropriate corrections in the final wage index calculation.

Response: We were informed shortly after publication of the proposed rule that there were several errors in Table 3C, including those noted by the commenter. As a result, we issued a revised Table 3C in a correction notice published in the **Federal Register** on June 15, 1999 (64 FR 31995). Although the extremely low average hourly wages still appear in Table 3C of the correction notice just as they were reported by the hospitals, the aberrant data were either corrected or deleted in the final wage index calculation. All other errors identified in Table 3C were corrected through the June 15 notice. Also, fiscal year beginning and ending dates that appear in a 7-digit date format in the final wage data public use file were

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corrected to an 8-digit date format in the final calculation.

E. Computation of the Wage Index

The method used to compute the FY 2000 wage index is as follows:

Step 1—As noted above, we based the FY 2000 wage index on wage data reported on the FY 1996 Medicare cost reports. We gathered data from each of the non-Federal, short-term, acute care hospitals for which data were reported on the Worksheet S–3, Parts II and III of the Medicare cost report for the hospital's cost reporting period beginning on or after October 1, 1995 and before October 1, 1996. In addition, we included data from a few hospitals that had cost reporting periods beginning in September 1995 and reported a cost reporting period exceeding 52 weeks. These data were included because no other data from these hospitals would be available for the cost reporting period described above, and because particular labor market areas might be affected due to the omission of these hospitals. However, we generally describe these wage data as FY 1996 data.

Step 2—Salaries—The method used to compute a hospital's average hourly wage is a blend of 80 percent of the hospital's average hourly wage including all teaching physician Part A, resident, and CRNA costs, and 20 percent of the hospital's average hourly wage after eliminating all teaching physician, resident, and CRNA costs.

In calculating a hospital's average salaries plus wage-related costs, including all teaching physician Part A, resident, and CRNA costs, we subtracted from Line 1 (total salaries) the Part B salaries reported on Lines 3 and 5, home office salaries reported on Line 7, and excluded salaries reported on Lines 8 and 8.01 (that is, direct salaries attributable to skilled nursing facility services, home health services, and other subprovider components not subject to the prospective payment system). We also subtracted from Line 1 the salaries for which no hours were reported on Lines 2, 4, and 6. To determine total salaries plus wage-related costs, we added to the net hospital salaries the costs of contract labor for direct patient care, certain top management, and physician Part A services (Lines 9 and 10), home office salaries and wage-related costs reported by the hospital on Lines 11 and 12, and nonexcluded area wage-related costs (Lines 13, 14, 16, 18, and 20). We note that contract labor and home office salaries for which no corresponding hours are reported were not included.

We then calculated a hospital's salaries plus wage-related costs by subtracting from total salaries the salaries plus wage-related costs for teaching physicians (see section III.C.1 of this preamble for a detailed discussion of this policy), Part A CRNAs (Lines 2 and 16), and residents (Lines 6 and 20).

Step 3—Hours—With the exception of wage-related costs, for which there are no associated hours, we computed total hours using the same methods as described for salaries in Step 2.

Step 4—For each hospital reporting both total overhead salaries and total overhead hours greater than zero, we then allocated overhead costs. First, we determined the ratio of excluded area hours (sum of Lines 8 and 8.01 of Worksheet S–3, Part II) to revised total hours (Line 1 minus Lines 3, 5, and 7 of Worksheet S–3, Part II). We then computed the amounts of overhead salaries and hours to be allocated to excluded areas by multiplying the above ratio by the total overhead salaries and hours reported on Line 13 of Worksheet S–3, Part III. Finally, we subtracted the computed overhead salaries and hours associated with excluded areas from the total salaries and hours derived in Steps 2 and 3.

Step 5—For each hospital, we adjusted the total salaries plus wage-related costs to a common period to determine total adjusted salaries plus wage-related costs. To make the wage adjustment, we estimated the percentage change in the employment cost index (ECI) for compensation for each 30-day increment from October 14, 1995 through April 15, 1997 for private industry hospital workers from the Bureau of Labor Statistics' *Compensation and Working Conditions*. We use the ECI because it reflects the price increase associated with total compensation (salaries plus fringes) rather than just the increase in salaries. In addition, the ECI includes managers as well as other hospital workers. This methodology to compute the monthly update factors uses actual quarterly ECI data and ensures that the update factors match the actual quarterly and annual percent changes. The factors used to adjust the hospital's data were based on the midpoint of the cost reporting period, as indicated below.

MIDPOINT OF COST REPORTING PERIOD

After	Before	Adjustment factor
10/14/95	11/15/95	1.023163
11/14/95	12/15/95	1.021153

MIDPOINT OF COST REPORTING PERIOD—Continued

After	Before	Adjustment factor
12/14/95	01/15/96	1.019151
01/14/96	02/15/96	1.017157
02/14/96	03/15/96	1.015246
03/14/96	04/15/96	1.013489
04/14/96	05/15/96	1.011888
05/14/96	06/15/96	1.010428
06/14/96	07/15/96	1.009099
07/14/96	08/15/96	1.007900
08/14/96	09/15/96	1.006788
09/14/96	10/15/96	1.005719
10/14/96	11/15/96	1.004695
11/14/96	12/15/96	1.003653
12/14/96	01/15/97	1.002529
01/14/97	02/15/97	1.001325
02/14/97	03/15/97	1.000000
03/14/97	04/15/97	0.998514

For example, the midpoint of a cost reporting period beginning January 1, 1996 and ending December 31, 1996 is June 30, 1996. An adjustment factor of 1.009099 would be applied to the wages of a hospital with such a cost reporting period. In addition, for the data for any cost reporting period that began in FY 1996 and covers a period of less than 360 days or more than 370 days, we annualized the data to reflect a 1-year cost report. Annualization is accomplished by dividing the costs and hours by the number of days in the cost report and then multiplying the results by 365.

Step 6—Each hospital was assigned to its appropriate urban or rural labor market area before any reclassifications under sections 1886(d)(8)(B) or 1886(d)(10) of the Act. Within each urban or rural labor market area, we added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in that area to determine the total adjusted salaries plus wage-related costs for the labor market area.

Step 7—We divided the total adjusted salaries plus wage-related costs obtained under both methods in Step 6 by the sum of the corresponding total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Because the FY 2000 wage index is based on a blend of average hourly wages, we then added 80 percent of the average hourly wage calculated without removing teaching physician Part A, residents, and CRNA costs, and 20 percent of the average hourly wage calculated with these costs removed.

Step 8—We added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in the nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage (using the same blending methodology described in Step 7). Using the data as described above, the national average hourly wage is $21.1800.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8. We note that on July 6, 1999, OMB announced the designations of two new MSAs: Auburn-Opelika, Alabama, comprising Lee County, and Corvallis, Oregon comprising Benton County.

Step 10—Following the process set forth above, we developed a separate Puerto Rico-specific wage index for purposes of adjusting the Puerto Rico standardized amounts. (The national Puerto Rico standardized amount is adjusted by a wage index calculated for all Puerto Rico labor market areas based on the national average hourly wage as described above.) We added the total adjusted salaries plus wage-related costs (as calculated in Step 5) for all hospitals in Puerto Rico and divided the sum by the total hours for Puerto Rico (as calculated in Step 4) to arrive at an overall average hourly wage of $9.86756 for Puerto Rico. For each labor market area in Puerto Rico, we calculated the hospital wage index value by dividing the area average hourly wage (as calculated in Step 7) by the overall Puerto Rico average hourly wage.

Step 11—Section 4410 of the BBA provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State. Furthermore, this wage index floor is to be implemented in such a manner as to ensure that aggregate prospective payment system payments are not greater or less than those that would have been made in the year if this section did not apply. For FY 2000, this change affects 226 hospitals in 36 MSAs. The MSAs affected by this provision are identified in Table 4A by a footnote.

Comment: Two commenters suggested that, given the complexity of the FY 2000 wage index calculation, we should make our detailed calculation procedures and edits publicly available. This would enable hospitals and researchers to more easily replicate the wage index values. One of the commenters recommended that the detailed calculations and methods should be included in future proposed and final rules. In addition, they requested that we release the actual computer program used to calculate the wage index.

Response: We have fully explained the steps we take to calculate each hospital's average hourly wage and the wage index. In addition, we have worked with hospitals that contacted us after attempting to replicate our calculations, by reviewing their results and identifying discrepancies. In doing so, we have been able to identify certain anomalies in some of the proposed wage index values, which have been corrected in the final wage index. Therefore, we agree that it might be useful to provide more information to make it easier for the public to replicate our calculations, and we are exploring our options. However, we do not generally provide our computer programs that are used to perform the wage index calculations, or for that matter, the programs we use for all other calculations we perform.

Comment: One commenter recommended that, for leap years HCFA should use 366 days, rather than 365 days, when annualizing cost report data (see step 5 of the wage index calculation).

Response: We agree that the commenter's recommended method of annualization, which recognizes an additional day for leap years, is theoretically more accurate than our simple, across-the-board approach. However, due to the intense effort required to incorporate all of the wage data changes processed in conjunction with hospitals' final opportunity to request revisions, we were unable to evaluate and incorporate this change into our computer program in time to be reflected in the final FY 2000 wage index. Therefore, we are not adopting this recommendation for the FY 2000 wage index calculation. We would note that, as described in step 5 above, we annualize any cost reporting period that covers a period of fewer than 360 days or more than 370 days. The majority of cost reporting periods are not annualized. In those instances where annualization is done, we would further point out that it does not affect the hospital's average hourly wage calculation, since both the costs and hours are annualized by 365. The impact, therefore, of this commenter's suggestion is limited to the calculation of the labor market area average hourly wage. Furthermore, if we were to account for the additional day of a leap year in our annualization, the impact on any particular area's average hourly wage could be either positive or negative.

F. Revisions to the Wage Index Based on Hospital Redesignation

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system.

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the area to which they have been redesignated. Therefore, as provided in section 1886(d)(8)(C) of the Act, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals would reduce the wage index value for the area to which the hospitals are redesignated by 1 percentage point or less, the area wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the hospitals that are redesignated are subject to that combined wage index value.
- If including the wage data for the redesignated hospitals increases the wage index value for the area to which the hospitals are redesignated, both the area and the redesignated hospitals receive the combined wage index value.
- The wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located.
- Rural areas whose wage index values would be reduced by excluding the wage data for hospitals that have been redesignated to another area continue to have their wage index values calculated as if no redesignation had occurred.
- Rural areas whose wage index values increase as a result of excluding

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the wage data for the hospitals that have been redesignated to another area have their wage index values calculated exclusive of the wage data of the redesignated hospitals.

• The wage index value for an urban area is calculated exclusive of the wage data for hospitals that have been reclassified to another area. However, geographic reclassification may not reduce the wage index value for an urban area below the statewide rural wage index value.

We note that, except for those rural areas in which redesignation would reduce the rural wage index value, the wage index value for each area is computed exclusive of the wage data for hospitals that have been redesignated from the area for purposes of their wage index. As a result, several urban areas listed in Table 4A have no hospitals remaining in the area. This is because all the hospitals originally in these urban areas have been reclassified to another area by the MGCRB. These areas with no remaining hospitals receive the prereclassified wage index value. The prereclassified wage index value will apply as long as the area remains empty.

The final revised wage index values for FY 2000 are shown in Tables 4A, 4B, 4C, and 4F in the Addendum to this final rule. Hospitals that are redesignated should use the wage index values shown in Table 4C. Areas in Table 4C may have more than one wage index value because the wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located. When the wage index value of the area to which a hospital is redesignated is lower than the wage index value for the rural areas of the State in which the hospital is located, the redesignated hospital receives the higher wage index value, that is, the wage index value for the rural areas of the State in which it is located, rather than the wage index value otherwise applicable to the redesignated hospitals.

Tables 4D and 4E list the average hourly wage for each labor market area, before the redesignation of hospitals, based on the FY 1996 wage data. In addition, Table 3C in the Addendum to this final rule includes the adjusted average hourly wage for each hospital based on the FY 1996 data (as calculated under Steps 4 and 5 above). The MGCRB will use the average hourly wage published in the final rule to evaluate a hospital's application for reclassification for FY 2001, unless that average hourly wage is later revised in accordance with the wage data correction policy described in § 412.63(w)(2). In these cases, the MGCRB will use the most recent revised data used for purposes of the hospital wage index. We note that, in adjudicating these wage index reclassification requests during FY 2000, the MGCRB will use the average hourly wages for each hospital and labor market area that are reflected in the final FY 2000 wage index.

At the time the proposed wage index was constructed, the MGCRB had completed its review of FY 2000 reclassification requests. Therefore, the proposed FY 2000 wage index values incorporated all 441 hospitals redesignated for purposes of the wage index (hospitals redesignated under section 1886(d)(8)(B) or 1886(d)(10) of the Act) for FY 2000. In this final rule, we have incorporated changes to the wage index that occurred after the proposed wage index was calculated and that resulted from withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process. The changes may affect not only the wage index value for specific geographic areas, but also the wage index value redesignated hospitals receive, that is, whether they receive the wage index value for the area to which they are redesignated, or a wage index value that includes the data for both the hospitals already in the area and the redesignated hospitals. Further, the wage index value for the area from which the hospitals are redesignated may be affected.

Under § 412.273, hospitals that have been reclassified by the MGCRB are permitted to withdraw their applications within 45 days of the publication of the proposed rule. To be effective in FY 2000, the request for withdrawal of an application for reclassification had to be received by the MGCRB by June 21. A hospital that requests to withdraw its application may not later request that the MGCRB decision be reinstated.

G. Wage Data Corrections

In the proposed rule, we stated that, to allow hospitals time to evaluate the wage data used to construct the proposed FY 2000 hospital wage index, we would make available in May 1999 a final public data file containing the FY 1996 hospital wage data.

The final wage data file was released on May 7, 1999 (amended on May 14). As noted above in section III.C of this preamble, this file included hospitals' teaching survey data as well as cost report data. As with the file made available in February 1999, we made the final wage data file released in May 1999 available to hospital associations and the public (on the Internet). However, with the exception of the teaching survey data, this file was made available only for the limited purpose of identifying any potential errors made by HCFA or the intermediary in the entry of the final wage data that the hospital could not have known about before the release of the final wage data public use file, not for the initiation of new wage data correction requests.

If, after reviewing the May 1999 final data file, a hospital believed that its wage data were incorrect due to a fiscal intermediary or HCFA error in the entry or tabulation of the final wage data, it was provided an opportunity to send a letter to both its fiscal intermediary and HCFA, outlining why the hospital believed an error exists and provide all supporting information, including dates. These requests had to be *received* by us and the intermediaries no later than June 7, 1999.

Changes to the hospital wage data were made only in those very limited situations involving an error by the intermediary or HCFA that the hospital could not have known about before its review of the final wage data file. (As noted above, however, we also allowed hospitals to request changes to their teaching survey data. These requests had to comply with all of the documentation and deadline requirements specified in the May 7, 1999 proposed rule.) Specifically, neither the intermediary nor HCFA accepted the following types of requests at this stage of the process:

• Requests for wage data corrections that were submitted too late to be included in the data transmitted to HCRIS on or before April 5, 1999.

• Requests for correction of errors that were not, but could have been, identified during the hospital's review of the February 1999 wage data file.

• Requests to revisit factual determinations or policy interpretations made by the intermediary or HCFA during the wage data correction process.

Verified corrections to the wage index received timely (that is, by June 7, 1999) are incorporated into the final wage index in this final rule, to be effective October 1, 1999.

We believe the wage data correction process provides hospitals with sufficient opportunity to bring errors in their wage data to the intermediary's attention. Moreover, because hospitals had access to the final wage data by early May 1999, they had the opportunity to detect any data entry or tabulation errors made by the intermediary or HCFA before the development and publication of the FY 2000 wage index and its implementation on October 1, 1999. If hospitals avail themselves of this opportunity, the FY 2000 wage index implemented on October 1 should be free of these errors. Nevertheless, in the unlikely event that errors should occur after that date, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(w)(2), we may make midyear corrections to the wage index only in those limited circumstances in which a hospital can show (1) that the intermediary or HCFA made an error in tabulating its data; and (2) that the hospital could not have known about the error, or did not have an opportunity to correct the error, before the beginning of FY 2000 (that is, by the June 7, 1999 deadline). As indicated earlier, since a hospital had the opportunity to verify its data, and the intermediary notified the hospital of any changes, we do not foresee any specific circumstances under which midyear corrections would be made. However, should a midyear correction be necessary, the wage index change for the affected area will be effective prospectively from the date the correction is made.

In the September 1, 1994 **Federal Register**, we stated that we did not believe that a "formal appeals process" regarding intermediary decisions denying hospital requests for wage data revisions was necessary, given the numerous opportunities provided to hospitals to verify and revise their data (59 FR 45351). We continue to believe that the process described above provides hospitals more than adequate opportunity to ensure that their data are correct. Nevertheless, we wish to clarify that, while there is no formal appeals process that culminates before the publication of the final rule and that is described above, hospitals may later seek formal review of denials of requests for wage data revisions made as a result of that process.

Once the final wage index values are calculated and published in the **Federal Register**, the last opportunity for a hospital to seek to have its wage data revised is under the limited circumstances described in § 412.63(w)(2). As we noted in the September 1, 1995 **Federal Register**, however, hospitals are entitled to appeal any denial of a request for a wage data revision made as a result of HCFA's wage data correction process to the Provider Reimbursement Review Board (PRRB), consistent with the rules for PRRB appeals found at 42 CFR Part 405, Subpart R (60 FR 45795). As we also stated in the September 1, 1995 **Federal Register**, and as the regulation at § 412.63(w)(5) provides, any subsequent reversal of a denial of a wage revision request that results from a hospital's appeal to the PRRB or beyond will be given effect by paying the hospital under a revised wage index that reflects the revised wage data at issue. The revised wage data will not, however, be used for purposes of revisiting past adjudications of requests for geographic reclassification.

Comment: One commenter suggested that our notices of the wage index review process should be more explicit regarding dates, titles, and addresses, and should be presented in a format similar to the request for hearing language contained in most Notices of Program Reimbursements. The commenter believes this would avoid confusion and misunderstandings throughout the process.

Response: Although we believe that our notices of wage index file availability are already quite detailed, we agree they might be improved to minimize misunderstandings. For example, we intend to continue to work with our intermediaries to ensure that, in their correspondence with hospitals regarding the resolution of revision requests submitted by the hospitals, the intermediaries state more explicitly the criteria, procedures, and deadlines for requesting our intervention when a hospital disagrees with an intermediary's policy determination. We welcome any other specific recommendations.

Comment: One commenter requested that we consider providing a mid-year correction, as in the FY 1999 wage index, for those areas that are affected by a major change in the FY 2000 wage index. The commenter stated that further opportunity to review and adjust its wage data would provide a more meaningful wage index.

Response: As we stated in the February 25, 1999 final rule implementing changes resulting from the limited window of opportunity for hospitals to request revisions to their FY 1995 data used to calculate the FY 1999 wage index, we believe our usual procedures provide ample opportunity for diligent hospitals to ensure the accuracy of their wage data (64 FR 93781). The limited opportunity to request revisions to the data used to calculate the FY 1999 wage index was based on a combination of circumstances unique to that year, and hospitals should assume in the future that all requests to change their wage data must conform to the well-established guidelines discussed above. Therefore, we do not intend to again provide such a special opportunity for further revision requests.

IV. Other Decisions and Changes to the Prospective Payment System for Inpatient Operating Costs and Graduate Medical Education Costs

A. Sole Community Hospitals (SCHs) (§ 412.92)

If a hospital is classified as an SCH because, by reason of certain factors, it is the sole source of inpatient hospital services reasonably available to Medicare beneficiaries in a geographic area, the hospital is paid based on the highest of the following: the applicable adjusted Federal rate; the updated hospital-specific rate based on a 1982 base period; or the updated hospital-specific rate based on a 1987 base period. Under our existing rules, urban hospitals within 35 miles of another hospital cannot qualify as SCHs. Since 1983, we have consistently defined an "urban" area for purposes of determining if a hospital qualifies for SCH status as an MSA or NECMA as defined by OMB.

In the past, we have considered and rejected two alternatives to the MSA definitions of an urban area for SCH purposes. These alternatives were the urbanized areas as defined by the Census Bureau and the health facility planning areas (HFPAs) as used by the Health Resource Services Administration. We have concluded that the MSA definition continues to be the most appropriate geographic delimiter available at this time. Therefore, in the May 7, 1999 proposed rule, we proposed to continue to apply the MSA definition of an urban area for SCH status purposes.

We proposed to continue our current policy for several reasons. First, as we have previously noted, since OMB considers local commuting patterns in establishing urban definitions, we believe that residents in urban areas have access to hospital services either by living in close proximity to a hospital or by establishing a heavy commuting pattern to an area in which a hospital is located (48 FR 39780, September 1, 1983). We do not believe that either Census Bureau urbanized areas or HFPAs take commuting patterns into account in the way that OMB's MSAs do. We believe commuting patterns serve as an important indicator of whether a hospital is the sole hospital reasonably accessible by Medicare beneficiaries in an area.

In addition, we note that our use of MSAs to define urban areas for SCH status purposes has direct statutory support. Section 1886(d)(2)(D) of the

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Act specifically authorizes us to use OMB's MSA definition of urban areas for purposes of calculating the prospective payment system standardized amounts. SCH status represents an adjustment to the usual prospective payment that a hospital would receive, and since that prospective payment is based on the standardized amount, among other factors, we believe it would be anomalous to employ one definition of urban area for purposes of calculating the standardized amount and another for purposes of determining if the hospital qualified as an SCH. To do so would be to use one set of geographic delimiters in applying the general rule (payment under the prospective payment system based on the standardized amount) but a different set in determining exceptions to the rule (payment under the prospective payment system adjusted to take into account SCH status). We do not think this would be appropriate. For this reason, also, we propose to continue to define "urban" for SCH purposes as meaning MSAs as defined by OMB, not as meaning either Census Bureau urbanized areas or HFPAs.

We received one comment on our proposed retention of this definition.

Comment: One commenter, which had been communicating with us before the issuance of the proposed rule, continued to express concern about our policy of defining urban areas for SCH purposes based on MSAs. The commenter raised several points. First, the commenter stated that our discussion in the proposed rule is "misleading" because it did not mention recent litigation on this issue. Second, the commenter argued that our proposal is flawed because it results in inequitable treatment of hospitals; that is, it renders a hospital's ability to qualify as an SCH dependent on OMB's reconfiguration of MSA boundaries, and patients' ability to access inpatient hospital services is not affected by those boundaries. Third, the commenter questioned two aspects of our rationale for retaining an MSA-based definition of the urban areas in the SCH context—that OMB considers commuting patterns when defining MSAs and that use of MSAs is consistent with the methodology we use for computing the standardized amounts. Finally, the commenter suggested that, if we decided to adopt our proposal to base the definition of urban areas for SCH purposes on MSAs, we should at least adopt an exception to that rule under which a hospital that is the only hospital in an MSA could still qualify as an SCH.

Response: We do not agree with the commenter that we should either abandon our longstanding policy of defining urban areas for SCH purposes based on MSAs or adopt the exception to that policy that the commenter suggests. Although the commenter is correct in pointing out that there has been recent litigation involving our definition of "urban area" for SCH purposes, we do not believe that our proposal was in any way misleading. Partly as a result of the litigation, we decided to reiterate and clarify our policy. Thus, we clearly stated in the proposed rule that we proposed to retain our longstanding definition in favor of other definitions based on the Census Bureau's urbanized areas or on HFPAs and explained the reasons for our proposal. We believe the proposed rule, therefore, gave interested parties more than adequate notice of the issue and afforded them the opportunity to comment.

We continue to believe that it is appropriate to adopt an MSA-based definition of urban areas for SCH purposes for the reasons stated in the proposed rule and in our earlier discussions of the MSA-based definition. The commenter gave an example of a situation in which an urban hospital is the nearest like hospital to a rural hospital, and the rural hospital is likewise the nearest hospital to the urban hospital. The commenter stated that the rural hospital could obtain SCH status, but the urban hospital could not, which, the commenter concluded, results in inequitable treatment of similarly situated hospitals.

We do not agree with this conclusion for several reasons. First, if the urban hospital was located more than 35 miles from the rural hospital, it could in fact qualify for SCH status under our rules. Moreover, the hospitals in this example are not similarly situated; one is urban and one is rural. As we have stated previously, urban areas generally have better roads, faster snow clearing, and more available hospitals, factors that affect access to inpatient hospital services. (See 56 FR 25483 (June 4, 1991).) Thus, even if the rural hospital in the commenter's example qualified as an SCH and the urban hospital did not, the difference in result is justified by the hospitals' different geographic circumstances.

The commenter's example does nothing to demonstrate that any other definition of an urban area for SCH purposes is preferable to an MSA-based definition. The somewhat unique situation the commenter described—an urban hospital that is closest to a rural hospital and vice versa—could arise no matter what definition of urban area we adopt.

Similarly, while the commenter objected to hospitals' ability to qualify for SCH status depending on possible shifting OMB definitions of MSAs, the same objection could be made of any definition of urban area that adopts geographic delimiters promulgated by another entity—including Census Bureau urbanized areas or HFPAs. In addition, we consider the fact that OMB occasionally revises the MSA boundaries to be a strength of that scheme. We think it is appropriate that any definition of urban areas for SCH purposes be reviewed periodically to take into account changes that have occurred in various areas' characteristics. Urban and rural areas do not remain static forever. Shifts in population and other changes can transform previously rural areas into urban ones, and vice versa. Because we believe the nature of an area as urban or rural is an important part of determining whether a hospital should qualify as an SCH, the mechanism for making those determinations should be able to account for changes in that nature.

As noted above and in our previous discussions of this issue, we believe that several factors make urban hospitals more accessible to patients than rural ones. Contrary to the commenter's statement that access is not affected by MSA boundaries, we proposed to adopt MSAs as the definition of urban areas for SCH purposes precisely because MSAs provided a good gauge of the presence of factors affecting access. The commenter's contentions fail to convince us that we should not adopt this proposal.

The commenter also argued that we have not properly considered reasonable alternatives to our proposed MSA-based definition of urban areas for SCH purposes. To the contrary, we specifically considered and proposed to reject two alternative definitions based on urbanized areas and HFPAs. The commenter offered no additional alternatives. Rather, the commenter questioned our reliance on OMB's use of commuting patterns in establishing MSAs, and stated that both urbanized areas and HFPAs also consider commuting patterns in the form of such factors as availability of roads and travel time and distance. Even if true, however, that means only that all three potential definitions consider commuting patterns in some form, and thus does not provide a basis for preferring a definition of urban areas other than one based on MSAs. The commenter pointed out that the commuting patterns OMB analyzes pertain to commutes to workplaces, which, the commenter claimed, do not relate to access to hospital services. However, we have indicated that we deem commuting patterns important because they indicate access to areas in which hospitals are located. (See 48 FR 39780 (Sept. 1, 1983).) As such, they are a good indicator of access to hospital services.

The commenter questioned our reliance on the fact that MSAs are used as the basis for determining the standardized amounts that form the basis of prospective payment system payments. The MSAs also supply the definition of urban areas used for virtually every other purpose under the hospital inpatient prospective payment system, including other special status determinations, geographic reclassification, and calculation of the wage index. We continue to believe that it is appropriate to use a definition of urban areas for SCH purposes that is consistent with the definition used for almost all other components of the prospective payment rates.

In regard to the commenter's suggestion that, if we retain the MSA-based definition of urban areas for SCH purposes, we adopt an exception to that definition under which an urban hospital that is the only hospital in its MSA would qualify as an SCH if it would otherwise qualify absent its urban location. We note that, to a large extent, we already apply this rule. As noted above, an urban hospital that is more than 35 miles from the nearest like hospital may qualify as an SCH notwithstanding its urban location. Thus, urban hospitals, including those in a sole-hospital MSA, can in fact qualify as SCHs, provided they are not in close proximity to another like hospital.

We acknowledge that a small number of MSAs may contain only one hospital; however, we have stated that urban areas *generally* have more available hospitals (56 FR 25483 (June 4, 1991)). Again, urbanized areas, HFPAs, or an urban area defined under any other methodology might also contain only one hospital. As a result, there is nothing inherent in our adoption of an MSA-based definition that compels adoption of the exception the commenter has proposed. It continues to be our judgment that an urban hospital within 35 miles of another like hospital is not the "sole" source of inpatient hospital services in its community, given the close proximity of the other hospital and the other factors affecting increased access to inpatient hospital services that location in an urban area denotes. Thus, we have not adopted the commenter's proposed exception to the rule defining urban areas based on MSAs for SCH purposes.

B. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, § 412.96 sets forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a rural referral center. For discharges occurring before October 1, 1994, rural referral centers received the benefit of payment based on the other urban rather than the rural standardized amount. As of that date, the other urban and rural standardized amounts were the same. However, rural referral centers continue to receive special treatment under both the disproportionate share hospital (DSH) payment adjustment and the criteria for geographic reclassification.

One of the criteria under which a rural hospital may qualify as a rural referral center is to have 275 or more beds available for use. A rural hospital that does not meet the bed size criterion can qualify as a rural referral center if the hospital meets two mandatory criteria (specifying a minimum case-mix index and a minimum number of discharges) and at least one of the three optional criteria (relating to specialty composition of medical staff, source of inpatients, or volume of referrals). With respect to the two mandatory criteria, a hospital may be classified as a rural referral center if its—

- Case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 discharges per year or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (The number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. The methodology we use to determine the national and regional case-mix index values is set forth in regulations at § 412.96(c)(1)(ii). The proposed national case-mix index value in the May 7, 1999 proposed rule included all urban hospitals nationwide, and the proposed regional values were the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105).

These values were based on discharges occurring during FY 1998 (October 1, 1997 through September 30, 1998) and include bills posted to HCFA's records through December 1998. Therefore, we proposed that, in addition to meeting other criteria, hospitals with fewer than 275 beds, if they are to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 1999, must have a case-mix index value for FY 1998 that is at least—

- 1.3438; or
- The median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by HCFA for the census region in which the hospital is located. (See the table set forth in the May 7, 1999 proposed rule at 64 FR 24732–24733.)

Based on the updated FY 1998 MedPAR file, which contains data from additional bills received through March 31, 1999, the final national case-mix value is 1.3438 and the median case-mix values by region are set forth in the following table:

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.2498
2. Middle Atlantic (PA, NJ, NY)	1.2499
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.3306
4. East North Central (IL, IN, MI, OH, WI)	1.2577
5. East South Central (AL, KY, MS, TN)	1.2795
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.1877
7. West South Central (AR, LA, OK, TX)	1.2994
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3438
9. Pacific (AK, CA, HI, OR, WA)	1.3231

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing each hospital's FY 1998 case-mix index value in Table 3C in section VI of the Addendum to this final rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

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2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining referral center status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. In the May 7, 1999 proposed rule, we proposed to update the regional standards. The proposed regional standards were based on discharges for urban hospitals' cost reporting periods that began during FY 1997 (that is, October 1, 1996 through September 30, 1997). That is the latest year for which we have complete discharge data available.

Therefore, we proposed that, in addition to meeting other criteria, a hospital, if it is to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 1999, must have as the number of discharges for its cost reporting period that began during FY 1998 a figure that is at least—

- 5,000; or
- The median number of discharges for urban hospitals in the census region in which the hospital is located, as indicated in the following table. (See the table set forth in the May 7, 1999 proposed rule at 64 FR 24733.)

Based on the latest discharge data available for FY 1997, the final median number of discharges for urban hospitals by census region areas is as follows:

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	6733
2. Middle Atlantic (PA, NJ, NY)	8655
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	7845
4. East North Central (IL, IN, MI, OH, WI)	7499
5. East South Central (AL, KY, MS, TN)	6832
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	5346
7. West South Central (AR, LA, OK, TX)	5380
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	8026
9. Pacific (AK, CA, HI, OR, WA)	6151

We note that the number of discharges for hospitals in each census region is greater than the national standard of 5,000 discharges. Therefore, 5,000 discharges is the minimum criterion for all hospitals.

We reiterate that an osteopathic hospital, if it is to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 1999, must have at least 3,000 discharges for its cost reporting period that began during FY 1997.

Comment: One commenter urged HCFA to reconsider its decision not to restore RRC status to those hospitals located in areas that have been redesignated as urban by the OMB. The commenter argued that the statute established only one qualification for having a hospital's RRC status restored; that is, a hospital must have been designated as an RRC in FY 1991. According to the commenter, the statute provides no other conditions, nor does it provide HCFA with the discretion to create other conditions. The commenter believes that our decision not to restore the RRC status of hospitals located in areas redesignated as urban by OMB effectively requires affected hospitals to satisfy an additional condition that they be located in a rural area.

Response: We responded to a comment raising the same issue in the May 12, 1998 final rule (63 FR 26326). We addressed our interpretation of section 4202(b)(1) of the BBA in the August 29, 1997 final rule with comment period (62 FR 45999 and 46000) as well as the May 12, 1998 final rule, and we refer the reader to those documents.

C. Changes to the Indirect Medical Education Adjustment (§ 412.105)

Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals that have residents in an approved graduate medical education (GME) program receive an additional payment to reflect the higher indirect operating costs associated with GME. The regulations regarding the calculation of this additional payment, known as the indirect medical education (IME) adjustment, are located at § 412.105.

In the August 29, 1997 final rule (62 FR 46029), we redesignated the previous § 412.105(g) as § 412.105(f), and added a new paragraph (g) to implement section 1886(d)(5)(B) of the Act as revised by section 4621 of the BBA of 1997. However, when we redesignated paragraph (g) as paragraph (f), we inadvertently did not revise all of the relevant cross-references to reflect this redesignation. Specifically, at § 412.105(f)(1)(iii), there are three cross-references to paragraph (g)(1)(ii). These cross-references are incorrect in light of the redesignation of previous paragraph (g) as paragraph (f). We proposed to revise § 412.105(f)(1)(iii) to correct these cross-references.

We did not receive any comments on this proposal and are adopting it as final.

D. Medicare Geographic Classification Review Board: Conforming Changes §§ 412.256 and 412.276

In the May 12, 1998 final rule (63 FR 26321), we revised the regulations governing the timeframes for submittal of applications by hospitals to the MGCRB for geographic reclassifications and for MGCRB decisions to take into consideration the revised statutory publication schedule for the annual prospective payment policies and rates (that is, August 1 instead of September 1) implemented by the BBA. In making those changes, we inadvertently omitted conforming changes to two other sections of the regulations that also specify timeframes that are affected by the change to an August 1 publication date—§§ 412.256 and 412.276. We proposed to revise § 412.256(c)(2) to specify that at the request of the hospital, the MGCRB may, for good cause, grant a hospital that has submitted an application by September 1 (instead of October 1) an extension beyond September 1 (instead of October 1) to complete its application. In addition, we proposed to revise § 412.276(a) to specify that the MGCRB notifies the parties in writing, with a copy to HCFA, and issues a decision within 180 days after the "first day of the 13-month period preceding the Federal fiscal year for which the hospital had filed a completed application" for reclassification, to make the language consistent with the statute and the May 1998 changes made to the application deadline in § 412.256(a)(2).

We did not receive any comments on this proposal and are adopting it as final.

We note that the instructions for preparing applications for FY 2001 individual and group reclassifications, which are due to the MGCRB by September 1, 1999, are now available for downloading from the Internet at www.hcfa.gov/regs/appeals.

Comment: One commenter requested clarification about submitting an application for reclassification for the standardized amount when the payment rates had changed during the year for which the applicable cost report would be used. Specifically, the commenter was concerned that the revised average hourly wage data, wage index, and standardized amounts applicable for FY 1999 beginning on or after March 1, 1999 (see the final rule published on February 25, 1999 (64 FR 9378)) will require the MGCRB to determine which wage index and standardized amount value to use when evaluating applications seeking standardized amount geographic reclassification. The commenter asserted that because the MGCRB must use historical national adjusted operating standardized amounts and wage indices, a problem potentially arises when HCFA calculates more than one standardized amount and wage index for an area in a year, as it did in FY 1999. The commenter suggested the MGCRB use prorated standardized amount and wage index values in evaluating applications.

Response: When the MGCRB evaluates an application for reclassification for the standardized amounts, it uses actual payment rates for actual periods. Therefore, if the payment rate changed during the year that applies to a hospital's application, those figures are incorporated into the calculation for the months during which they applied. The same policy holds true for wage data.

E. Payment for Direct Costs of Graduate Medical Education (§ 413.86)

Under section 1886(h) of the Act, Medicare pays hospitals for the direct costs of graduate medical education (GME). The payments are based on the number of residents trained by the hospital. The BBA revised section 1886(h) of the Act to cap the number of residents that hospitals may count for direct GME. We have issued rules to implement the caps for GME (62 FR 46002, August 29, 1997; 63 FR 26327, May 12, 1998; and 63 FR 40986, July 31, 1998). Since the publication of these rules we have received a number of questions relating to GME. In addition, we have received information related to other aspects of our GME policies. In response to these questions and information, in the proposed rule, we proposed to clarify certain GME policies and also make some technical changes to the regulations text. In addition, we proposed certain changes in GME policy.

1. Approved Geriatric Programs

Under sections 1886(h)(5)(F) and (G) of the Act and § 413.86(g), Medicare counts each resident within an initial residency period as a 1.0 full-time equivalent (FTE) for purposes of determining GME payments. Each resident beyond the initial residency period is counted as 0.5 full-time equivalent. Section 1886(h)(5)(F) of the Act extends the initial residency period by up to 2 years if an individual is in a geriatric or preventive medicine residency or fellowship. At § 413.86(b), we specify that an "approved geriatric program" is "a fellowship program of one or more years in length that is approved by the Accreditation Council for Graduate Medical Education (ACGME) under the ACGME's criteria for geriatric fellowship programs." In recent years, geriatric programs have been approved by other national organizations. Consistent with the statute, we proposed to clarify the definition of approved geriatric programs at § 413.86(b) to include fellowship programs approved by the American Osteopathic Association, the Commission on Dental Accreditation, and the Council on Podiatric Medical Education. These organizations, in addition to ACGME, are recognized by HCFA as the accrediting bodies for determining approved educational activities. We also proposed to make a conforming change to § 413.86(g)(1)(iii) to recognize approved geriatric programs accredited by all national approving organizations.

We received one comment in support of our proposed revision to § 413.86(b). We are adopting the revision as final.

2. Hospital Payment For Resident Training in Nonhospital Settings

Under sections 1886(d)(5)(B)(iv) and 1886(h)(4)(E) of the Act, hospitals may count residents working in nonhospital sites for indirect and direct medical education respectively if the hospital incurs "all or substantially all" of these education costs. The requirements for counting the time residents spend training in nonhospital settings are addressed at § 413.86(f)(4). Currently, the requirements for hospital payment under this provision are that the resident spend his or her time in patient care activities and that a written agreement exist between the hospital and the nonhospital site. This written agreement must indicate that the hospital will incur the cost of the residents' salaries and fringe benefits while the residents are training in the nonhospital site and that the hospital is providing reasonable compensation to the nonhospital site for supervisory teaching activities. In addition, the written agreement must indicate the compensation the hospital is providing to the nonhospital site for supervisory teaching activities.

Under the statute, the time residents spend at nonhospital sites may be counted "if the hospital incurs all, or substantially all, of the costs of the training program in that setting." The existing regulations text, however, is framed in terms of the hospital having an agreement that it "will incur" the costs in the nonhospital setting. We proposed to make a technical change to the regulations text by adding a new § 413.86(f)(4)(iii), to clarify that in order to count residents at a nonhospital site, the hospital must actually incur all or substantially all of the costs for the training program, as defined in § 413.86(b), in the nonhospital site. This definition of all or substantially all requires the hospital to incur the expenses of the residents' salaries and fringe benefits (including travel and lodging where applicable) and the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct GME.

Comment: Many commenters supported our technical change under the proposed § 413.86(f)(4)(iii), which provides that, in order to count residents training at a nonhospital site for purposes of direct and indirect GME payment, the hospital must actually incur all or substantially all of the costs for the training programs. However, we believe several commenters misunderstood our technical change. The commenters believed that the change was unnecessary because the existing regulations, which were issued in the July 31, 1998 final rule, provide adequate guidance for purposes of the hospital claiming direct and indirect GME for resident training in the nonhospital site.

Response: We proposed to make the technical change in § 413.86(f)(4)(iii) for two reasons. First, we stated in the preamble to the July 31, 1998 final rule that we are requiring the hospital to actually incur all or substantially all of the cost, but the regulation text only indicated that the hospital must have an agreement to incur the cost; that is, the regulation text did not include specific language requiring that the hospital actually incur the cost. Second, we defined the phrase "all or substantially all" in § 413.86(b) but inadvertently omitted using the phrase in the policy specified in § 413.86(f)(4).

Comment: In regard to our proposed technical change to the nonhospital payment policy as specified in § 413.86(f)(4)(iii), one commenter asked us to define the difference, if any, in our use of "nonprovider" entity and "nonhospital" entity. In addition, the commenter asked whether a skilled nursing facility or a unit excluded from the prospective payment system is considered to be a nonhospital setting.

Also, similar to the public comments addressed in the in July 31, 1998 final rule, several commenters asked us to clarify whether hospitals would still be eligible to receive payments in situations where the teaching faculty volunteers their services and neither the hospital nor the nonhospital entity

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incurs costs for supervisory teaching physicians. The commenters asked us to continue to support the following statement that we included in the July 31, 1998 final rule (63 FR 40996) allowing hospitals to remain eligible for payment in such situations where supervisory physicians in the nonhospital site are volunteering their time: "for the purposes of satisfying the requirement of a written agreement, the written agreement between a hospital and a nonhospital site may specify that there is no payment to the clinic for supervisory activities because the clinic does not have these costs."

Response: For purposes of our nonhospital payment policy for GME in § 413.86(f)(4), we use the terms "nonhospital" and "nonprovider" interchangeably. A free-standing SNF (that is, a SNF that is not part of a hospital) is a nonhospital site. An excluded unit of a hospital is not a nonhospital site because an excluded unit is still part of a hospital.

We will continue a volunteer supervisory physician policy consistent with the policy stated in the July 31, 1998 final rule, as requested by the commenter. Hospitals may receive payment for the costs of training residents in the nonhospital site even though the hospital might not be incurring any costs for supervisory physician activities.

3. New Residency Programs

In the regulations we published on August 29, 1997 and May 12, 1998, we established special rules for adjusting the full-time equivalent (FTE) resident caps for indirect and direct GME for new medical residency programs. In general, the special rules allow for adjustments to the caps based on the number of residents participating in the program in its third year of existence. In §§ 413.86(g)(6)(i) and 413.86(g)(6)(ii), we set forth a methodology for adjusting hospital FTE caps for new medical residency training programs established on or after January 1, 1995. In the May 7, 1999 proposed rule, we proposed the following clarifications, technical changes, and policy changes:

a. In § 413.86(g)(6)(i), we specify that, if a hospital had no residents before January 1, 1995, the adjustments for new programs are based on the highest number of residents in any program year during the third year of the newly established program. However, § 413.86(g)(6)(ii) does not explicitly state the methodology for adjusting caps for hospitals that did have residents in the most recent cost reporting period ending before January 1, 1995. The adjustments of the caps for programs established on or after January 1, 1995 and on or before August 5, 1997, also are made based on the number of residents in the third year of the new program. We proposed to revise § 413.86(g)(6)(ii) to clarify that, for a hospital that did have residents in the most recent cost reporting period ending on or before December 31, 1996, the adjustment is based on the highest number of residents in any program year in the third year of the new program.

b. Sections 413.86(g)(6)(i) and 413.86(g)(6)(ii) specify that the adjustment to the cap is also based on the number of years in which residents are expected to complete each program based on the minimum accredited length for the type of program. We proposed to add language to clarify how to account for situations in which the residents spend an entire program year (or years) at one hospital and the remaining year (or years) of the program at another hospital. In this situation, the adjustment to the FTE cap is based on the number of years the residents are training at each hospital, not the minimum accredited length for the type of program. If we were to use the minimum accredited length for the program in this case, the total adjustment to the cap for both hospitals might exceed the total accredited slots available to the hospitals participating in the program. In the May 12, 1998 final rule (63 FR 26334), we specified that the adjustment to the FTE cap may not exceed the number of accredited resident slots available.

c. It was brought to our attention that the regulations do not explicitly address how to apply the cap during the first 3 years of a new program before the adjustments to the cap are established. In the May 7, 1999 proposed rule, we proposed to clarify our policy on new residency programs by adding language in §§ 413.86(g)(6)(i) and 413.86(g)(6)(ii) to specify how to determine the hospital's cap in the first 3 years of a new residency program, before the implementation of the hospital's permanent adjustment to its FTE cap effective beginning with the fourth year of the program. We proposed to specify that the cap may be adjusted during each year of the first 3 years of the hospital's new residency program, using the actual number of residents participating in the new program. The adjustment may not exceed the number of accredited slots available to the hospital for each program year.

d. As discussed above, on August 29, 1997, we implemented the hospital-specific caps on the number of residents that a hospital can count for purposes of GME payments in a final rule with comment period (62 FR 46002). In both the May 12, 1998 and July 31, 1998 final rules (63 FR 26327 and 63 FR 40954), we responded to comments we received on this provision. We did not receive any comments about hospitals that participated in residency training in the past, had terminated their participation before the hospitals' cost reporting period ending in calendar year 1996, and have now again begun a new residency program. After publication of the July 31, 1998 final rule, we were contacted by representatives of some hospitals that had a resident cap of zero because they had temporarily terminated their GME programs in the past and had no residents training during the cost reporting period ending in 1996. Based on the existing regulations, these hospitals have FTE caps of zero. There is no provision in the existing regulations for making adjustments to the cap to allow these hospitals to receive payment for indirect and direct GME for allopathic and osteopathic residents.

To address this issue, we proposed to revise § 413.86(g)(6)(i) to allow for an adjustment to a hospital's FTE cap if the hospital had no allopathic and osteopathic residents in its cost reporting period ending during calendar year 1996. This change would allow all hospitals that did not participate in allopathic and osteopathic resident training in the cost reporting period ending in calendar year 1996 to receive adjustments to the indirect and direct GME FTE caps for new residency programs. We believe it is appropriate to revise the regulations to allow for payment during the first 3 years of the new program and for an adjustment to the FTE cap 3 years after these hospitals restart participation in residency training, similar to the existing adjustment for hospitals that never participated in residency training. We proposed to revise § 413.86(g)(6)(i) to allow a hospital that has zero residents for the cost reporting period ending during the calendar year 1996 to receive an adjustment. This change would be effective for discharges occurring on or after October 1, 1999, for purposes of the IME adjustment and for cost reporting periods beginning on or after October 1, 1999, for purposes of direct GME.

In addition, we proposed to make a change in § 413.86(g)(6)(ii) to make the language similar to that in § 413.86(g)(6)(i) to specify that hospitals that did have residents in the cost reporting period ending on or before December 31, 1996, are allowed adjustments to the cap for new programs begun on or after January 1, 1995, and on or before August 5, 1997. Existing § 413.86(g)(6)(ii) refers to a hospital that did have residents in its most recent cost reporting period ending on or before January 1, 1995. The regulation states that these hospitals also may qualify for an adjustment to the caps, but only for medical residency programs created on or after January 1, 1995, and on or before August 5, 1997. Since we proposed to revise § 413.86(g)(6)(i) to indicate that a hospital may qualify for an adjustment to the cap under that paragraph if it did not have residents in the cost reporting period ending during calendar year 1996, we proposed to make a similar change in § 413.86(g)(6)(ii) to indicate that this paragraph provides for an adjustment to the cap for hospitals that did have residents in its most recent reporting period ending on or before December 31, 1996. We proposed this revision to make the language of these two paragraphs consistent. Hospitals may qualify either under § 413.86(g)(6)(i) or § 413.86(g)(6)(ii). For hospitals that qualify under § 413.86(g)(6)(i), the FTE caps are established 3 years after the hospital either begins or restarts participation in residency training for programs that began on or after January 1, 1995. However, for hospitals that qualify under § 413.86(g)(6)(ii), adjustments to the cap are limited to those programs that began on or after January 1, 1995 and on or before August 5, 1997.

e. We proposed to make technical changes to §§ 413.86(g)(6)(i) and 413.86(g)(6)(ii), which refer to whether a hospital had residents in its most recent cost reporting period on or before December 31, 1996. Instead of simply specifying "residents," we proposed to reference "allopathic and osteopathic residents," because the FTE cap applies only to allopathic and osteopathy residents. There is no FTE cap on the number of podiatry and dentistry residents. Therefore, we proposed to add the words "allopathic and osteopathic" in §§ 413.86(g)(6)(i) and 413.86(g)(6)(ii) before the word "resident."

We received a number of comments on our proposals.

Comment: One commenter supported our technical changes to the new residency program adjustments under proposed §§ 413.86(g)(6)(i) and 413.86(g)(6)(ii). The commenter agreed with our technical change of referencing "allopathic and osteopathic residents" instead of simply "residents."

The proposed rule specified that the method for calculating the adjustment to the cap is based on the product of the highest number of residents in any program year during the third year of the newly established program and the number of years in which residents are expected to complete each year program based on the minimum accredited length for the type of program. One commenter requested an example of a calculation of this adjustment.

Response: In response to the commenter's request, we are providing the following example of how to calculate the new residency program adjustment under § 413.86(g)(6)(ii). This example was included in a Program Memorandum (Transmittal No. A–97–13 (p. 16), September 1997) that transmitted billing instructions to our fiscal intermediaries.

Example: Assume a hospital had an unweighted direct GME count of 100 FTE residents for its cost reporting period ending June 30, 1996 and the hospital, although it had 6 first year slots, began an internal medicine program on July 1, 1995 with 4 first year residents (who were included as part of the 100 FTE cap). On July 1, 1996, the program expands to 10 residents (6 first year and 4 second year residents.) On July 1, 1997, the program has 16 residents (6 first year residents, 6 second year residents, and 4 third year residents). Since the minimum accredited length for internal medicine program listed is 3 years, the hospital's unweighted FTE cap can be adjusted based on 18 residents in the internal medicine program (6 first year residents * 3 years). In the hospital's cost reporting period ending June 30, 1996, the hospital had a total of 100 FTE residents including 4 in internal medicine. The hospital's cap can be adjusted up to 14 residents (18 internal medicine residents less 4 already included in the fiscal year ending June 30, 1996 FTE count).

Comment: Several commenters expressed concern about our definition of "new medical residency training program" for purposes of determining the FTE cap adjustment under § 413.86(g). One commenter raised questions regarding the situation where the original sponsor of a residency program has been notified that it has lost its accreditation and a new sponsor assumes the training of all or most of the residents of an existing program. The commenter believed that the program under the new sponsor should be treated as "new" as well. Another commenter suggested we have interpreted "new residency program" to be simply a new site for a residency program that may have been in existence at other clinical sites in the past.

Response: Under the existing § 413.86(g)(7) (proposed to be redesignated as § 413.86(g)(9)), we define "new medical residency training program" to be a program "that receives initial accreditation by the appropriate accrediting body or begins training residents on or after January 1, 1995." The language "begins training residents on or after January 1, 1995" means that the program may have been accredited by the appropriate accrediting body prior to January 1, 1995, but did not begin training in the program until on or after January 1, 1995. The language does not mean that it is the first time a particular hospital began training residents in a program on or after January 1, 1995, but the program was in existence at another hospital prior to January 1, 1995, as the commenter suggests.

We believe there may be some confusion on the part of the commenters as to how to determine when a hospital may receive an adjustment to its FTE cap for a new residency program. The definition can be more easily understood if we explain the application in two steps. First, determine if the hospital's residency program qualifies to be "new" under § 413.86(g)(9). Second, once the residency program is determined to meet the definition of "new," apply the criteria under §§ 413.86(g)(6)(i) and 413.86(g)(6)(ii) to determine whether a hospital's new program qualifies for an adjustment to its FTE cap. A hospital's sponsorship of the program plays no role in determining whether a hospital qualifies to receive an adjustment under either § 413.86(g)(6)(i) or § 413.86(g)(6)(ii).

If two hospitals "merge" separate residency programs, the single residency program resulting from the merger would not be considered "new" for purposes of either hospital receiving an adjustment to its FTE cap. The programs have already been in existence and, presumably, the hospitals have been able to count the residents training in each individual program as part of the hospitals' respective FTE caps. If the hospital that is training the residents in the merged program would like to receive an adjustment to its FTE cap for the added residents it presumably now trains, that hospital may wish to affiliate for purposes of establishing an aggregate FTE cap.

Comment: We received several comments on our clarification on how to account for situations when residents spend an entire program year (or years) at one hospital and the remaining year (or years) of the program at another hospital (or hospitals) during the first 3

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years of the new residency program. We stated that, in this situation, the adjustment to the FTE cap is based on the number of years the residents are training at each hospital, not the minimum accredited length of the program. One commenter asked us to clarify the adjustment to the cap in situations where the residents rotate to multiple sites in a single program year during the first 3 years of a new residency program—that is, the residents rotate to other hospitals for partial years. Another commenter requested that we give examples of how to calculate the FTE cap adjustment in these situations.

Response: In situations where residents spend an entire program year (or years) at one hospital and the remaining year (or years) of the program at another hospital during the first 3 years of the new residency program, each hospital that trains the residents receives an adjustment to its cap based on the product of the highest number of residents in any program years during the third year of the first program's existence and the number of years that the residents are training at each respective hospital. In situations where the residents spend partial years at different hospitals during the first 3 years of the new residency program, each hospital that trains the residents receives an adjustment to its cap based on product of the highest number of residents in any program year during the third year of the first program's existence and the minimum accredited length of the program.

In response to the second commenter's request, the following are some examples as to how to calculate the adjustment to the FTE cap for a new residency program in situations where residents spend an entire program year (or years) at one hospital and the remaining year (or years) at another hospital during the first 3 years of the program. In addition, we are including an example where residents spend partial years at different hospitals during the first 3 years of the new residency program:

Example 1

Assume Hospital A has 10 residents in a new internal medicine residency program. These 10 residents are trained at Hospital A for 2 years of the program. In the third year of the program, 5 of the 10 residents are rotated to Hospital B for training.

Hospital A would receive an adjustment to its cap of 10 FTE (5 residents * 2 years).

Hospital B would receive an adjustment to its cap of 5 FTE (5 residents * 1 year).

Example 2

Assume Hospital A has the following residents training in its new internal medicine residency program:

Year 1–10 new program year (PGY [1] 1) residents

Year 2—Hospital A rotates the 10 (now PGY 2) residents from Year 1 to Hospital B for training for 1 year and Hospital A also accepts 8 (PGY 1) new residents.

Year 3—The 10 (now PGY 3) residents who rotated to Hospital B in Year 2 return to Hospital A. Hospital A accepts 9 new (PGY 2) residents and also rotates the 8 (PGY 2) residents from Year 2 to Hospital B for training for 1 year. Thus, in the third year of the program, Hospital A has 10 (PGY 3) residents and 9 (PGY 1) residents and Hospital B has 8 (PGY 2) residents.

Hospital A would receive an FTE cap adjustment of 20 FTE (10 residents * 2 years).

Hospital B would receive an FTE cap adjustment of 8 FTE (8 residents * 1 year).

[1] PGY = Program Year

Example 3

Assume Hospital A has 10 residents in a new internal medicine program for one half of each of the three residency program years. Hospital B trains the 10 residents for the other half of each of the three residency years.

Hospital A would receive an FTE cap adjustment of 15 FTEs (10 residents * .5 FTE * 3 years).

Hospital B would receive an FTE cap adjustment of 15 FTEs (10 residents * .5 FTE * 3 years).

Both Hospital A and Hospital B train a total of 5 FTE residents each residency program year (.5 of 10 residents each year) and this number is multiplied by the minimum accredited length of the residency program (3 years for internal medicine).

Comment: One commenter suggested that only the hospital or hospitals that have received the accreditation for the new residency program should receive the adjustment to the FTE cap or caps.

Response: While Medicare will provide GME payment to a hospital for training a resident only if that resident is participating in an accredited program, it is irrelevant whether the accreditation for the program belongs to the hospital currently training the residents or some other entity. Thus, we disagree with the commenter's suggestion to allow only hospitals that received the new residency program accreditation to receive a new residency program adjustment.

Comment: Several commenters were concerned about our provision on the adjustment to the FTE cap during the first 3 years of a new residency program, as specified in proposed § 413.86(g)(6)(i)(B). One commenter stated that it seemed inconsistent to refer to "adjusting the cap" during these years when the cap is not actually adjusted until the third year. Another commenter suggested that, when looking at the number of residents training at the hospital during the first 3 years for purposes of deciding the cap adjustment in those 3 years, the FTE count for cost reporting purposes should be based on the number of residents for which the hospital has oversight and the time worked in locations within or outside the hospital complex to which they rotate.

Response: Section 413.86(g)(6)(i)(B) contains the provision that explains how a hospital is to adjust its FTE cap during the first 3 years of establishing a new residency program—the hospital's cap may be adjusted during each of the first 3 years using the actual number of residents participating in the new program. The "number of residents participating in the new program" means the number of residents actually training at that hospital. It does not mean the number of residents within the "oversight" of the hospital, which could include the time residents spend at other types of facilities during their training; it only includes the time the residents spend training at the actual hospital site.

When a hospital establishes a new residency program, the hospital's 1996 FTE cap for the first 3 years is adjusted. Thus, the 1996 FTE cap is also receiving an adjustment during those 3 years.

Comment: One commenter noted that while we made clarifications in our new residency program adjustment policy under §§ 413.86(g)(6)(i) and 413.86(g)(6)(ii), we failed to make consistent changes to § 413.86(g)(6)(iii).

Response: We agree that we inadvertently omitted the third change. We are revising § 413.86(g)(6)(iii) in this final rule.

Comment: One commenter suggested that our meaning is unclear concerning our provision in proposed redesignated § 413.86(g)(6)(i)(D) that allows a rural hospital that receives an adjustment to its FTE cap for establishing new residency programs to affiliate with other hospitals for the purpose of establishing an aggregate cap.

Response: We are revising the language in this section to state more clearly that, in the case of hospitals in urban areas, we limit the use of affiliations to provide for aggregate caps only to urban hospitals that did not receive a new residency program adjustment for a program begun on or after August 6, 1997 (the date after enactment of the BBA). Urban hospitals that had no program or programs reported for their most recent cost reporting period ending on or before December 31, 1996 and have received an FTE cap adjustment for a new program may not affiliate with other hospitals for purposes of establishing an aggregate FTE cap. However, rural hospitals that had no program or programs reported for the most recent cost reporting period ending on or before December 31, 1996 and have received an FTE cap adjustment for establishing a new program may affiliate with other hospitals for purposes of establishing an aggregate FTE cap.

4. Adjustment to GME Caps for Certain Hospitals to Account for Residents in New Medical Residency Training Programs

Section 4623 of the BBA amended section 1886(h) of the Act to provide for "special rules" in applying FTE caps for medical residency training programs established on or after January 1, 1995. In the August 29, 1997 and May 12, 1998 final rules (62 FR 46002 and 63 FR 26327), we implemented special rules to account for residents in new medical residency training programs. We proposed to implement another special rule to permit an adjustment to the FTE cap for a hospital if the entire facility was under construction prior to August 5, 1997 (the date of enactment of the BBA) and if the hospital sponsored a new medical residency training program but the residents were temporarily trained at another hospital.

Under current policies, if a new medical residency training program was established on or after January 1, 1995, a hospital may receive an adjustment to its FTE cap to account for residents in the new program. If the residents in the new program begin training in one hospital and are subsequently "transferred" to another hospital, the second hospital would *not* receive an adjustment to its FTE cap; if we made an adjustment for the second hospital, then two hospitals would receive an adjustment for the same resident.

We believe, however, that an adjustment for the second hospital might be appropriate in certain limited circumstances. If the second hospital sponsored a new medical residency training program but the residents in the new program temporarily trained at the first hospital because the second hospital was still being built, then we believe it would be appropriate to permit an adjustment for the second hospital. Otherwise, the second hospital's FTE cap would be zero, and the hospital would not receive any GME or IME payments.

We proposed to permit an adjustment under this policy only if the second hospital (the sponsor of the new program) began construction of its entire facility prior to the date of enactment of the BBA. Prior to August 5, 1997, a hospital would not have had knowledge of the provisions of the BBA and thus would not have known that a decision to temporarily train residents at another hospital might have resulted in the hospital being unable to receive GME and IME payments in the future. In contrast, a hospital that began construction of an entirely new facility after August 5, 1997, would have had notice of changes in the law prior to making a decision to temporarily train residents at another hospital.

Thus, we proposed to add a new § 413.86(g)(7) (existing § 413.86(g)(7) would be redesignated as § 413.86(g)(9)) to address application of the FTE caps with regard to a hospital that began construction of an entire facility prior to August 5, 1997, sponsored medical residency training programs, and temporarily trained those residents at another hospital(s) until the new facility was completed. For hospitals that meet these criteria, we proposed that the FTE caps will be determined in a manner similar to those hospitals that qualify for an adjustment to the FTE cap under § 413.86(g)(6)(i). That is, the hospital's cap would equal the lesser of (a) the product of the highest number of residents in any program year during the third year of the first program's existence for all new residency training programs at either the newly constructed facility or the temporary training site but sponsored by the newly constructed hospital and the number of years in which residents are expected to complete the programs based on the minimum accredited length for each type of program; or (b) the number of accredited slots available for each year of the program. If the medical residency training programs sponsored by the newly constructed hospital have been in existence for 3 years or more by the time the residents begin training at the newly constructed hospital, the newly constructed hospital's cap would be based on the number of residents training in the third year of the first of those programs begun at the temporary training site. If the medical residency training programs sponsored by the newly constructed hospital have been in existence for less than 3 years when the residents begin training at the newly constructed hospital, the hospital's cap would be based on the number of residents training at the newly constructed hospital in the third year of the first of those programs (including the years at the temporary training site). This provision would be effective for portions of cost reporting periods occurring on or after October 1, 1999.

Comment: With regard to our proposed change concerning our adjustment to the GME caps for newly constructed hospitals, one commenter suggested that while §§ 413.86(g)(7)(i)(A) and (B) appear to be clear and straightforward, §§ 413.86(g)(7)(ii) and (iii) are unclear and add confusion to the calculation of the newly constructed hospital's FTE cap. The commenter suggested that §§ 413.86(g)(7)(ii) and (iii) be removed.

Another commenter suggested that a newly constructed hospital under § 413.86(g)(7) should be able to affiliate with other hospitals for purposes of establishing an aggregate FTE cap.

Response: The purpose of both §§ 413.86(g)(7)(i)(B) and 413.86(g)(7)(ii)(B) is to clarify how to establish the newly constructed hospital's FTE cap in all possible situations. The regulation at 413.86(g)(7)(i)(B) addresses the calculation of the newly constructed hospital's FTE cap if the new program has been in existence for 3 or more years at the temporary training site by the time the residents begin training at the newly constructed hospital. The regulation at § 413.86(g)(7)(ii)(B) addresses the calculation of the cap if the new program has been in existence for 3 or fewer years at the temporary training site by the time the residents begin training at the newly constructed hospital.

We agree with the commenter's suggestion to allow a newly constructed hospital under § 413.86(g)(7) to affiliate for purposes of establishing an aggregate FTE cap. We currently allow teaching hospitals that receive a new residency program adjustment under § 413.86(g)(6)(ii) to affiliate with other hospitals if the teaching hospitals had established new programs prior to the enactment of the BBA. Teaching hospitals could not have known what policies would be enacted in the BBA. Therefore, they would not have had the opportunity to establish programs for purposes of affiliation in order to circumvent the FTE cap established by the BBA. The commenter notes that we used the same rationale when espousing

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the policy on newly constructed hospitals in the proposed rule—we are allowing hospitals that began construction prior to August 5, 1997 to establish an FTE cap because the hospitals would not have had knowledge of the provisions of the BBA. For the same reason, we agree that the newly constructed hospital should be able to affiliate for purposes of establishing an aggregate cap because the hospital under construction would not have known the BBA restrictions. Therefore, we are revising the text of § 413.86(g)(7) to include this new policy.

In addition, consistent with this reasoning, we are allowing newly constructed hospitals under § 413.86(g)(7) to calculate their FTE cap using the same methodology as articulated in § 413.86(g)(6)(ii), the provision for teaching hospitals that establish new residency programs on or after January 1, 1995 and on or before August 5, 1997. We allow those teaching hospitals to receive a new residency program adjustment during that "window" because these hospitals could not have known what requirements would be enacted in the BBA if the teaching hospitals established new programs during that time. As stated above, we used the same rationale for allowing newly constructed hospitals to establish a cap—these hospitals could not have known about the BBA when the hospitals established residency programs. Therefore, we are adding language to § 413.86(g)(7) as follows: " * * * a hospital that began construction of its facility on or before August 5, 1997, sponsored new medical residency training programs that were established on or after January 1, 1995 and on or before August 5, 1997, and either received initial accreditation by the appropriate accrediting body or temporarily trained those residents at another hospital(s) until the facility was completed, may receive an adjustment to its FTE cap." We note that we are clarifying the phrase "prior to August 5, 1997" to mean "on or before August 5, 1997" to make it consistent with this policy. We also are making conforming changes to §§ 413.86(g)(7)(i)(A) and (B) and 413.86(g)(7)(ii)(B) to allow the cap to be adjusted for each new program established within the "window." Under the previous language, the adjustment was tied to the third year of the first new program. Under the new language, the adjustment is tied to each new program's establishment during the "window." Therefore, for example, in a situation where a newly constructed hospital establishes a new residency program and the first new program began on July 1, 1995, and a second program began on July 1, 1997, the adjustment for the second program under the previous language would have been tied to the third year of the first new program (1997). However, under the new language, the adjustment for the second program is not established until the third year (1999) of the second program's existence.

Comment: Another commenter suggested that we include the word "new" when referring to medical residency training programs in § 413.86(g)(7)(ii) and (iii).

Response: We are making the revision as the commenter suggests. This revision will clarify that the provisions allowing an adjustment to the FTE cap for a facility constructed on or before August 5, 1997 applies to new residency programs.

5. Temporary Adjustments to FTE Cap to Reflect Residents Affected by Hospital Closure

In the May 12, 1998 prospective payment system final rule (63 FR 26330), we indicated that we would allow a temporary adjustment to a hospital's resident cap under limited circumstances and if certain criteria are met when a hospital assumes the training of additional residents because of another hospital's closure. The temporary adjustment to the FTE cap is available to the hospital only for the period of time necessary to train those displaced residents. Once the residents leave the hospital or complete their programs, the hospital cap would be based solely on the statutory base year (with any applicable adjustments for new medical residency training programs or affiliated group arrangements).

Under current policies, we permit a temporary adjustment to the FTE cap for a hospital only if it assumed additional medical residents from a hospital that closed in the July 1996–June 1997 residency training year. In the May 7, 1999 proposed rule, we proposed to allow adjustments to address hospital closures after this period. Thus, we would allow an adjustment for a hospital if it trains additional residents from a hospital that closes at any time, on or after July 1, 1996. This adjustment is intended to account for residents who may have partially completed a medical residency training program and would be unable to complete their training without a residency position at another hospital.

We proposed this change because hospitals have indicated a reluctance to accept additional residents from a closed hospital without a temporary adjustment to their caps. We proposed to add a new § 413.86(g)(8) to allow a temporary adjustment to a hospital's FTE cap to reflect residents added because of a hospital's closure at any time on or after July 1, 1996. We would allow an adjustment to a hospital's FTE cap if the hospital meets the following criteria: (a) the hospital is training additional residents from a hospital that closed on or after July 1, 1996; and (b) the hospital that is training the additional residents from the closed hospital submits a request to its fiscal intermediary at least 60 days before the beginning of training of the residents for a temporary adjustment to its FTE cap. The hospital must also document that it is eligible for this temporary adjustment to its FTE cap by identifying the residents who have come from the closed hospital and have caused the hospital to exceed its cap, and specify the length of time that the adjustment is needed. After the displaced residents leave the hospital's training program or complete their residency program, the hospital's cap would be based solely on the statutory base year (with any applicable adjustments for new medical residency training programs or affiliated group arrangements).

Comment: Many commenters were generally pleased with our proposed policy concerning the temporary adjustment to FTE caps to reflect residents affected by hospital closures specified under proposed § 413.86(g)(8). However, various commenters asked us to define what we meant by a "closed" hospital.

Response: Section 413.86(g)(8) provides that a hospital may receive a temporary adjustment to its FTE cap to reflect residents added because of another hospital's closure which occurs on or after July 1, 1996. By hospital "closure," we mean the hospital terminates its Medicare participation agreement with HCFA under the provisions specified in § 489.52. To "close," a hospital would have to comply with the requirements as specified in this section to terminate its agreement. We are making conforming changes in § 413.86(g)(8) on the temporary adjustment to reference § 489.52.

Comment: Many of the commenters suggested that we include bankruptcy of a hospital and lost accreditation of a program, both acts that displace residents, as applicable to the temporary adjustment policy.

Response: We do not agree with the commenters. We do not believe it is appropriate to expand our policy to cover any acts other than hospital closure because, unless the hospital actually terminates its Medicare agreement, it will retain its statutory FTE cap. For example, in the case where a hospital files for bankruptcy, it continues to retain its FTE cap. While the bankruptcy action may displace the hospital's residents, the hospital continues to be subject to the statutorily mandated cap on FTEs. Therefore, it can still decide to train residents at the hospital or affiliate with other hospitals for purposes of establishing an aggregate cap. The hospital may, in fact, use its ability to affiliate in order to place its residents at a new hospital.

Comment: One commenter explained that there were hospitals that had plans to close their doors earlier this year and deliberately remained open for various reasons until the start of the July 1, 1999 residency year. This commenter suggested that because hospitals are training these displaced residents beginning on July 1, 1999, we should change the effective date of the temporary adjustment provision to coincide with the July 1, 1999 date. Similarly, another commenter was concerned about affiliated groups, suggesting that because final regulations on affiliated groups were not published until May 12, 1998, some hospitals that would have liked to have participated in affiliations prior to the FY 1998 were not able to because there were no implementing regulations before the May 12, 1998 date.

Response: The effective date of the temporary adjustment policy, like the effective date for all changes in this final rule, is October 1, 1999.

Similarly, hospitals that choose to affiliate cannot do so before the effective date of the May 12, 1998 regulation.

Comment: Under the temporary adjustment provision, § 413.86(g)(8)(ii) requires a hospital to submit a request for the temporary adjustment to its fiscal intermediary at least 60 days before the hospital begins to train the residents. One commenter suggested that it was not appropriate for the fiscal intermediary to be in the position of granting requests for adjustments. In addition, several commenters suggested that submitting a request at least 60 days before the hospital begins to train the residents is "problematic," since it is not always easy to estimate exactly when a hospital will close and other hospitals can then continue training the residents.

Response: The fiscal intermediaries have been delegated the authority to calculate Medicare program payments for hospitals, including GME payments. HCFA is not in a position to be able to respond to every request for a temporary FTE cap adjustment. As long as hospitals that request the adjustments meet each condition in our regulations, the hospitals will receive the adjustments.

We agree with the commenters who suggested that requiring a hospital to submit a request for a temporary adjustment to an intermediary at least 60 days before the hospital begins to train the residents might be problematic for hospitals. Therefore, we are revising our regulations to require a hospital to submit a request for a temporary adjustment to an intermediary no later than 60 days after the hospital first begins training the displaced residents.

Comment: One commenter requested that we clarify the provision at § 413.86(g)(8)(ii) that hospitals must identify residents that come from closed programs in order to receive a temporary adjustment to their FTE caps.

Response: In order to receive a temporary adjustment to their FTE caps, hospitals must provide the social security numbers of the residents coming from the closed hospital and documentation that proves that the residents were training at the hospital that closed.

6. Determining the Weighted Number of FTE Residents

Section 413.86(g)(1)(ii) states that for residency programs in osteopathy, dentistry, and podiatry, the minimum requirement for certification in a specialty or subspecialty is the minimum number of years of formal training necessary to satisfy the requirements of the appropriate approving body listed in § 415.200(a). This reference is incorrect. The correct section in which approving bodies for residency programs are listed is § 415.152. We proposed to make this correction.

Section 413.86(g)(1)(i) specifies that the initial residency period is the minimum number of years of formal training necessary to satisfy board eligibility in the particular specialty for which the resident is training, as specified in the 1985–1986 Directory of Residency Training Programs. Section 1886(h)(5)(G)(iii) of the Act allows the Secretary to increase or decrease the initial residency period if the minimum number of years of formal training specified in a later edition of the directory is different from the period specified in the 1985–1986 Directory of Residency Training Programs. We proposed to revise the regulations text to state that the initial residency period is determined using the most recently published edition of the Graduate Medical Education Directory, not the 1985–1986 Directory.

Comment: At § 413.86(g)(1), we proposed to update the provisions concerning what source to use when calculating the initial residency period for residencies. One commenter stated that one of the provisions that we updated, changing "1985–1986 Directory of Residency Training" to "the most recently published edition of the Graduate Medical Education Directory," applies only when calculating the initial residency periods for allopathic residencies. The commenter suggests that initial residency periods for all residencies be published in the **Federal Register**. The commenter further suggested that, for determining the updates of initial residency periods for dental residencies, the most recent accreditation standards of the Commission on Dental Accreditation for advanced dental programs be used. Another commenter asked whether the most recently published edition of the Graduate Medical Education Directory or the initial residency periods is published in the **Federal Register** should be the guiding source when calculating the initial residency periods for residencies in the case where there is a discrepancy between the two.

Response: Generally, proposed redesignated § 413.86(g)(1)(i) defines the initial residency period as "the minimum number of years of formal training necessary to satisfy the requirements for initial board eligibility in the particular specialty for which the resident is training, as specified in the most recently published edition of the Graduate Medical Education Directory." Proposed § 413.86(g)(1)(ii) provided that for residency programs in osteopathy, dentistry, and podiatry, "the minimum number of years of formal training necessary to satisfy the requirements of the appropriate approving body listed in § 412.152 of this chapter." Section 412.152 lists all of the accreditation organizations for allopathy, osteopathy, podiatry, and dentistry, including the Commission on Dental Accreditation of the American Dental Association. In other words, while the Graduate Medical Education Directory only applies to allopathic residencies, as the first commenter suggests, the organization that the commenter encourages us to use as the accrediting organization for purposes of determining the initial residency period for dental residencies—the Commission on Dental Accreditation of the American Dental Association—is already used to determine the initial residency periods for dental residencies.

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The first commenter also suggests that we publish the initial residency periods in the **Federal Register**. While we have already done so in the August 30, 1996 **Federal Register** (61 FR 46208), we plan to update the list of initial residency periods in upcoming regulations. The second commenter asked for guidance in the case where the initial residency periods listed in the August 30, 1996 (and in future regulations) differ from the information listed in the most recent edition of the Graduate Medical Directory. The information that we used to publish the initial residency periods in the August 30, 1996 **Federal Register** is based on the most recent edition of the Graduate Medical Directory. The Graduate Medical Directory is the most current and updated source of information on allopathic residencies. We agree that in some cases our latest listing in the **Federal Register** may not reflect the most recent update of the applicable directory. Thus, in the case where there is a discrepancy in the length of an initial residency period listed in what we publish in the **Federal Register** and what is published in the most recent edition of the Graduate Medical Education Directory (or other applicable publications for the other specialty areas), the Directory should be the guiding source.

7. Clarification of a Statement in the Preamble of the May 12, 1998 Final Rule Relating to Affiliated Groups

In the May 12, 1998 final rule (63 FR 26341), in the third column of page 26341, in the sentence prior to section "O. Payment to Managed Care Plans for Graduate Medical Education," we stated, "If the combined FTE counts for the individual hospitals that are members of the same affiliated group do not exceed the aggregate cap, we will pay each hospital based on its FTE cap as adjusted per agreements." The phrase "do not exceed" should have read "exceed." Thus, the sentence should have read, "If the combined FTE counts for individual hospitals that are members of the same affiliated group exceed the aggregate cap, we will pay each hospital based on its FTE cap as adjusted per agreements." We regret any confusion that resulted from this misstatement.

Comment: Several commenters requested that we clarify that a nonteaching hospital that participates in an affiliated group agreement as specified under § 413.86(g)(4) is not precluded from later seeking an adjustment to its FTE cap for establishing a new residency program.

Response: We agree with the commenters' request. Consistent with our regulations at § 413.86(g)(6)(i), a nonteaching hospital that participated (or participates) in an affiliated group for purposes of establishing an aggregate FTE cap does not forego its opportunities to later establish new residency programs and accordingly receive an adjustment to its individual FTE cap. The requirements under § 413.86(g)(6)(i) specify that a hospital may receive an adjustment to its FTE cap for establishing a new residency program if the hospital had no allopathic or osteopathic residents in its most recent cost reporting period ending on or before December 31, 1996. In other words, the hospital must have a zero FTE cap based on its number of residents in its most recent cost reporting period ending on or before December 31, 1996 in order to qualify to receive an adjustment under this provision. The fact that a nonteaching hospital has affiliated with other hospitals does not change the fact that in determining the aggregate cap for the affiliated group the nonteaching hospital still has an FTE cap of zero. Accordingly, consistent with our regulations, a nonteaching hospital that affiliates is not precluded from later seeking a new residency program adjustment.

Comment: The BBA specifically required the Secretary to give special consideration to facilities that meet the needs of underserved rural areas. With this mandate in mind, several commenters requested that we consider recognizing new family practice programs that are classified as rural by the Residency Review Committee for the purpose of establishing a cap and receiving GME payment under Medicare.

Response: We will consider the suggestion to apply our rules for rural hospitals to all hospitals with the new family practice programs for purposes of GME in developing future regulations.

Comment: We received several other comments suggesting GME policy changes concerning rural hospitals. One commenter suggested that we allow rural hospitals that received a new residency program adjustment under § 413.86(g)(6)(ii) to affiliate with other hospitals for purposes of establishing an aggregate FTE cap. Another commenter suggested that we allow rural hospitals a new residency program adjustment for expansions of already established residency programs at the rural hospitals.

Response: Any hospital, rural or urban, that receives a new residency program adjustment under § 413.86(g)(6)(ii) is permitted to affiliate for purposes of establishing an aggregate cap. As for allowing an FTE cap adjustment for expansions of already established residency programs at rural hospitals, we will take this policy suggestion into consideration in future regulations.

Comment: We received many comments on various other GME issues. One commenter asked what level of documentation is needed to demonstrate for purposes of our nonhospital payment policy that a particular hospital and nonhospital site are a single legal entity. Another commenter asked for a cost report change to account for situations when a hospital could have one FTE cap for one-half of the year and a different cap for the second half of the year. One commenter suggested that, in a situation when two hospitals affiliate for purposes of establishing an aggregate cap, the hospital that is the sponsor of the residency program should be given the ability to better control the limited number of training slots as established under the aggregate cap. Another commenter suggested that we consider allowing a new residency program adjustment for family practice programs beginning on or after July 1, 1994. Finally, one commenter made two suggestions: (1) that we increase a particular hospital's FTE count because when the cap was set, some of the hospital's residents were rotated out to other hospitals to meet a Residency Review Committee (RRC) program requirement, and are now brought back into the hospital after the BBA because the hospital can now meet the RRC requirement, and (2) that we allow payment to a hospital that had established an ambulatory care rotation prior to the BBA.

Response: We will consider all of these suggestions made by the commenters in future regulations.

Comment: One commenter suggested that we discuss what happens to hospitals' FTE caps in situations where there is a merger of two or more hospitals.

Response: We discussed the merger of hospitals and FTE caps in the May 12, 1998 **Federal Register** (63 FR 26329). Where two or more hospitals merge after each hospital's cost reporting period ending during FY 1996, the merged hospital's FTE cap will be an aggregation of the FTE cap for each hospital participating in the merger.

V. Changes to the Prospective Payment System for Capital-Related Costs: Special Exceptions Process

Section 1886(g) of the Act requires the Secretary to pay for hospital capital-related costs "in accordance with a prospective payment system established by the Secretary." Under the statute, the Secretary has broad authority in establishing and implementing the capital prospective payment system. We initially implemented the capital prospective payment system in the August 30, 1991 final rule (56 FR 43409), in which we established a 10-year transition period to change the payment methodology for Medicare inpatient capital-related costs from a reasonable cost-based methodology to a prospective methodology (based fully on the Federal rate).

Generally, during the transition period, inpatient capital-related costs are paid on a per discharge basis, and the amount of payment depends on the relationship between the hospital-specific rate and the Federal rate during the hospital's base year. A hospital with a base year hospital-specific rate lower than the Federal rate is paid under the fully prospective payment methodology during the transition period. This method is based on a dynamic blend percentage of the hospital's hospital-specific rate and the applicable Federal rate for each year during the transition period. A hospital with a base period hospital-specific rate greater than the Federal rate is paid under the hold harmless payment methodology during the transition period. A hospital paid under the hold harmless payment methodology receives the higher of (1) a blended payment of 85 percent of reasonable cost for old capital plus an amount for new capital based on a portion of the Federal rate or (2) a payment based on 100 percent of the adjusted Federal rate. The amount recognized as old capital is generally limited to the allowable Medicare capital-related costs that were in use for patient care as of December 31, 1990. Under limited circumstances, capital-related costs for assets obligated as of December 31, 1990, but put in use for patient care after December 31, 1990, also may be recognized as old capital if certain conditions are met. These costs are known as obligated capital costs. New capital costs are generally defined as allowable Medicare capital-related costs for assets put in use for patient care after December 31, 1990. Beginning in FY 2001, at the conclusion of the transition period for the capital prospective payment system, capital payments will be based solely on the Federal rate for the vast majority of hospitals.

In the August 30, 1991 final rule, we also established a capital exceptions policy, which provides for exceptions payments during the transition period (' 412.348). Section 412.348 provides that, during the transition period, a hospital may receive additional payment under an exceptions process when its regular payments are less than a minimum percentage, established by class of hospital, of the hospital's reasonable capital-related costs. The amount of the exceptions payment is the difference between the hospital's minimum payment level and the payments the hospital would receive under the capital prospective payment system in the absence of an exceptions payment. The comparison is made on a cumulative basis for all cost reporting periods during which the hospital is subject to the capital prospective payment transition rules. The minimum payment percentages for regular capital exceptions payments by class of hospitals for FY 2000 are:

- For sole community hospitals, 90 percent;
- For urban hospitals with at least 100 beds that have a disproportionate share patient percentage of at least 20.2 percent or that received more than 30 percent of their net inpatient care revenues from State or local governments for indigent care, 80 percent;
- For all other hospitals, 70 percent of the hospital's reasonable inpatient capital-related costs.

We indicated that we would carefully monitor the impact of the capital prospective payment system in order to determine whether some type of permanent exceptions process was necessary and the circumstances under which additional payments would be made.

Under the special exceptions provision at § 412.348(g), an additional payment may be made for up to 10 years beyond the end of the capital prospective payment system transition period for eligible hospitals that meet (1) a project need requirement as described at § 412.348(g)(2), which, in the case of certain urban hospitals, includes an excess capacity test; and (2) a project size requirement as described at § 412.348(g)(5). Eligible hospitals include sole community hospitals, urban hospitals with at least 100 beds that have a disproportionate share percentage of at least 20.2 percent, and hospitals with a combined Medicare and Medicaid inpatient utilization of at least 70 percent. In the September 1, 1994 final rule, we described the special exceptions process as "* * * narrowly defined, focusing on a small group of hospitals who found themselves in a disadvantaged position. The target hospitals were those who had an immediate and imperative need to begin major renovations or replacements just after the beginning of the capital prospective payment system. These hospitals would not be eligible for protection under the old capital and obligated capital provisions, and would not have been allowed any time to accrue excess capital prospective payments to fund these projects" (59 FR 45385).

For hospitals in States with certificate of need (CON) requirements, the project need requirement is satisfied by obtaining a CON approval. For other hospitals, the project need requirement is satisfied by meeting an age of assets test. The project size requirement is satisfied if the hospital completes the qualifying project between the period beginning on or after its first cost reporting period beginning on or after October 1, 1991, and the end of its last cost reporting period beginning before October 1, 2001, and the project costs are (1) at least $200 million or (2) at least 100 percent of the hospital's operating cost during the first 12-month cost reporting period beginning on or after October 1, 1991. The minimum payment level under special exceptions for all qualifying hospitals is 70 percent of allowable capital-related costs. Special exception payments are offset against positive Medicare capital and operating margins.

When we established the special exceptions process, we selected the hospital's cost reporting period beginning before October 1, 2001 as the project completion date in order to limit cost-based exceptions payments to a period of not more than 10 years beyond the end of the transition to the fully Federal capital prospective payment system. Because hospitals are eligible to receive special exceptions payments for up to 10 years from the year in which they complete their project (but for not more than 10 years after September 30, 2001, the end of the capital prospective payment transition), generally, if a project is completed by September 30, 2001, exceptions payments could continue up to September 30, 2011. In addition, we believe that for projects completed after the September 30, 2001 deadline, hospitals would have had the opportunity to reserve their prior years' capital prospective payment system payments for financing projects.

In the July 31, 1998 final rule (63 FR 40999), we stated that a few hospitals had expressed concern with the required completion date of October 1, 2001, and other qualifying criteria for the special exceptions payment. Therefore, we solicited certain information from hospitals on major capital construction projects that might qualify for the capital special exceptions

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payments so we could determine if any changes in the special exceptions criteria or process were necessary.

In the May 7, 1999 proposed rule (64 FR 24736), we reported that four hospitals had responded timely to our solicitation with information on their major capital construction projects. The hospitals submitted information about their location, the cost of the project, the date that the CON approval was received, the start date of the project, and the anticipated completion date.

The hospitals suggested changing a number of the requirements of the special exception provision, including (1) changing the project completion date requirement; (2) revising the project size requirement; (3) lowering the DSH qualifying percentage from 20.2 percent to 15 percent; (4) changing the minimum payment level from 70 percent to 85 percent; and (5) revising the qualifying criteria so that only capital payment margins are considered instead of both capital payment margins and operating margins (as is now the case). In addition, hospitals suggested capping special exceptions payments that result from changes to the special exceptions process at $40 million annually.

When we issued the May 7, 1999 proposed rule, we had no specific proposal to revise the special exceptions process. However, we invited comments from hospitals and other interested parties on the suggestions and recommendations discussed above. We noted that, since the capital special exceptions process is budget neutral, any liberalization of the policy would require a commensurate reduction in the capital rate paid to all hospitals. That is, even after the end of the capital prospective payment system transition, we will continue to make an adjustment to the capital Federal rate in a budget neutral manner to pay for exceptions, as long as an exceptions policy is in force. Currently, the limited special exceptions policy will allow for exceptions payments through September 30, 2011. We also noted that, based on the comments we received, we may make changes to the special exceptions criteria in the final regulation or propose changes in the FY 2001 proposed rule.

In the May 7, 1999 proposed rule, we indicated that we had little information about the impact of any of the suggested changes discussed in the proposed rule, since no hospitals are currently being paid under the special exceptions process. Until FY 2001, the special exceptions provision currently pays either the same as the regular exceptions process or less for high DSH and sole community hospitals. We indicated that we would attempt to obtain information on projects that might qualify for special exceptions payments through our fiscal intermediaries during the comment period. However, we noted that we were reluctant to impose a burden on the fiscal intermediaries at this time, since it could interfere with our major efforts to make the Medicare computer systems Y2K compliant prior to January 1, 2000.

We received six comments on potential changes to the special exceptions process. Three were in favor of changing the process in various ways, and two were opposed to making any changes. In addition, MedPAC opposed expanding the process until we have a better estimate of the impact of any expansion.

Comments: Three commenters that supported changing the special exception process made various suggestions as to what those changes should be.

Two of the commenters believe that the way HCFA formulated the special exceptions process is inconsistent with Congressional intent because the Conference Report that accompanied the Omnibus Budget Reconciliation Act (OBRA) of 1993 (Public Law 103–66) indicated the conferees' expectation that HCFA would assess information and make appropriate changes to ". . . address the problems of hospitals subject to lengthy CON review processes or subject to other circumstances which are not fully addressed in the current rules" (H.R. Rep. No. 103–213, at 744 (1993)). The commenters noted that Congress used a separate sentence to state a belief that the Secretary should ". . . evaluate whether current policies provide adequate protection to sole community hospitals and hospitals that serve a disproportionate share of low income patients." Thus, the commenters believe that Congress did not intend to limit the special exceptions process to any particular type of hospital and that Congress intended HCFA to deal separately with the problems of high DSH hospitals and to make the special exceptions process available to all hospitals.

One commenter stated that eligibility for special exceptions payments should be based solely on when a hospital had to begin a capital project and the size of the project, rather than "noncapital-related" tests such as the operating offset and the DSH requirement. The commenter argued that, if the purpose of the special exceptions process was to help hospitals that could not benefit from old and obligated capital provisions, then HCFA did not act consistently with that premise when it adopted criteria that limited qualifying hospitals. The commenter believes that HCFA may have adopted some criteria, such as the requirement that urban hospitals must have a DSH percentage of at least 20.2 and the offset of positive operating margins, to limit the cost of the special exceptions program. If that is the case, then the commenter suggested that a cap on total payments made under the special exceptions authority would accomplish the same result more fairly.

One commenter requested that the DSH percentage requirement for urban hospitals (20.2 percent) be lowered. The commenter believes that the current requirement is not a natural result of the rationale we used for limiting the special exceptions process, and that, if a hospital builds a project during the transition, it is disadvantaged relative to other hospitals regardless of its DSH percentage. This commenter suggested that, if we do decide to retain the DSH requirement, the requirement be lowered to 15 percent, and that we adopt a sliding scale payment floor of between 15 and 20.2 DSH percentages in which the minimum payment level at the 15 DSH percentage would be 70 percent and the maximum payment level at 20.2 DSH percentage would be 85 percent.

One commenter supported lowering the project size requirement from 100 percent of the hospital's FY 1992 operating costs to 45 percent of those costs.

All three commenters who advocated changes to the special exceptions process supported changing the offset provision so that eligibility for special exceptions does not take into account positive operating margins. They argued that the operating and capital payment methodologies were separately developed and that payments are separately calculated. If the offset against operating payments is not eliminated, they believe it should be modified to include outpatient margins as well. One of these commenters noted that a similar offset was not required for "old capital."

Two of the commenters recommended that, if a hospital had received CON approval by September 1, 1995 and expended $750,000 or 10 percent of total project cost, then the project completion date should be extended to December 31, 2003. They believe that a hospital could have started planning a major capital project early in the transition, but, because of events beyond the hospital's control, the completion date might extend beyond the end of the transition.

Two commenters suggested that we should establish a cap on special exceptions payments, and indicated that HCFA has the authority to set and implement such a cap because of the authority given the Secretary under section 1886(g) of the Act to implement the capital prospective payment system. The legislation provided for an exceptions process, as the Secretary determined to be appropriate. The commenter asserted that the "regular" capital exceptions process already includes a "cap" of 10 percent. The commenters recommended a cap of 1 percent of total capital prospective payments in a given fiscal year, and that, if aggregate eligibility for payments exceeds the cap, the payments would be reduced on a pro rata basis.

The commenters also recommended that any exception payments a hospital qualifies for but does not receive because of the cap should be rolled over into future years so that those payments could be made in later years. Without a rollover provision, the commenters advocate setting the cap at 1.5 percent. They believe that with the expiration of hold harmless provisions and the exceptions floors in FY 2001, the suggested cap would result in lower budget neutrality adjustments than is currently the case.

Using 1992 through 1996 cost report data, one of the commenters prepared an estimate of the number of hospitals it believes will be eligible for special exception payments if the criteria were changed as suggested by the commenter. Based on the commenter's estimate, aggregate eligibility for special exceptions payments would exceed the recommended 1 percent cap for approximately 5 years (FY 2002 through FY 2006). The commenter also suggested that hospitals that believe they are eligible for special exceptions be required to submit an application to their fiscal intermediary in January of each year, and to update their application by June of each year, so that an estimate could be prepared of the number of hospitals that will qualify for special exceptions. The data could also be used to estimate the amount of reductions that will be required to stay within the cap. The commenter suggests that hospitals that did not submit the information could be precluded from receiving special exceptions payments in the following fiscal year.

All three commenters who advocated changes to the special exceptions process supported raising the 70 percent minimum payment level to 85 percent. One commenter objected to the 70 percent minimum payment level, arguing that it offers little improvement over the Federal rate and guarantees that hospitals will take a 30-percent loss on their actual capital costs for each Medicare discharge. This commenter believes that special exceptions should be paid at the rate of 85 percent, which is what hospitals eligible for old capital hold harmless payment received.

In addition, two of the commenters supported finalizing changes to the special exceptions process in the FY 2000 final rule so that affected hospitals can plan more effectively.

Two national hospital associations were opposed to changing the special exceptions policy. They believe that the special exceptions process was intended to be limited in scope, and although some hospitals may be disadvantaged by some aspects of the fully Federal capital prospective payment system, they have had a number of years to plan for it. All other hospitals will be receiving payments based on the Federal rate beginning in FY 2002 and the commenters do not believe that the majority of hospitals should have their payments further reduced to expand the special exceptions process to a few hospitals. One of the commenters noted that Congress considered a similar proposal to expand the special exceptions process as part of the BBA deliberations and, ultimately, did not include the proposal. The commenter believes this failure to act was an indication of Congressional intent, and that HCFA has no authority to disregard it and adopt these changes by regulation. The other commenter stated that since HCFA has no reliable estimate of the number of hospitals that would be affected by changes to the special exceptions process, it would be capricious to make a change absent an impact analysis.

Response: When we proposed the special exceptions process in 1994 (May 27, 1994, **Federal Register** (59 FR 27746)), we stated "* * * we are therefore proposing at § 412.348 to provide special protection for some hospitals that are undertaking major projects to renovate or replace aging plant during the transition period. This special protection, which will provide a 70 percent minimum payment level for up to 10 years beyond the transition period, will be available only to * * * [s]ole community hospitals * * *; [u]rban hospitals with at least 100 beds that either have a DSH percentage of 20.2 percent or receive at least 30 percent of their revenue from State or local funds for indigent care * * *; [h]ospitals with a combined inpatient Medicare and Medicaid utilization of at least 70 percent. * * *" We believe this strict set of qualifying criteria makes it clear that we intended to make the special exception process limited in scope.

Since publication of the proposed rule, we have attempted to obtain information on hospital projects that might qualify for special exceptions payments in order to assess the impact of the recommended changes to the existing policy. Because of the impracticality of obtaining data timely from every State in the country, we focused our efforts on certain States. Using information obtained from the Department of Housing and Urban Development (HUD) and the Health Resources and Services Administration (HRSA), we developed a list of States in which a large concentration of hospital construction occurred during the capital transition period. For several States, we contacted the State Department of Health's Facility and Planning Staff, who provided us with information on the hospital construction projects in their State, including the name and location of the hospital, the cost of the construction project, the date of CON approval (if required), the start date of the project, and the completion or anticipated completion date of the project. In conjunction with the most recent cost report data readily available (FY 1996), we attempted to estimate which of the hospital construction projects might qualify for special exception payments under the existing policy and how that universe of hospitals might change as a result of the recommended revisions to the special exceptions criteria.

Because exception payments to a hospital for a given cost reporting period are based on a percentage of the hospital's capital costs incurred during the cost reporting period, we were unable to determine a precise estimate of the amount of payments to hospitals that might be eligible for special exceptions. In addition, hospitals are not eligible for special exception payments until the assets are put into use for patient care. Once eligibility for special exceptions payment has been demonstrated, it is some time before completed and settled cost reports are available to determine these payments. It is also difficult to predict whether particular hospitals will be able to meet all of the special exceptions eligibility criteria (DSH percentage, inpatient margins, completion date, project size, and project need requirements) in future years based on the earlier cost report data.

Based on our research, we were able to identify a universe of 266 possible hospital construction projects from two States (New York and Illinois) that

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might possibly qualify for special exception payments. Our data largely understate the total number of eligible projects that may qualify for special exception payments nationally since our estimate is based on data from only 2 of the 50 States in the country. Our estimate includes all inpatient hospital construction projects in those two States, of which only a subset of projects will qualify for special exception payments. Extrapolating our estimate to the large numbers of hospital construction projects nationally, we believe that any changes to the special exceptions policy may affect a significant number of hospitals.

Based on our belief that these changes may have an impact on a significant number of hospitals and our evaluation of the comments and after careful consideration of all the issues, we have concluded, as suggested by one commenter, that the more appropriate forum for addressing the capital special exception is the legislative process in Congress rather than the regulation process.

Based on this conclusion, we are generally not addressing the specific changes recommended for the special exceptions process or eligibility criteria. However, there are some comments on the general policies of the special exception process that we would like to address individually. These include our efforts to address the OBRA 1993 Conference Report language concerning the obligated capital provisions of the capital prospective payment system, the rationale for the 70 percent minimum payment level for the special exceptions process, and the administrative feasibility of capping special exception payments and rolling over unfunded special exceptions to future years.

First, in the Conference Report that accompanied OBRA 1993, Congress addressed obligated capital criteria for hospitals in States with a lengthy CON process. The language states, "The conferees note that in the proposed rule for fiscal year 1994, changes to the hospital inpatient prospective payment system, that was published in the **Federal Register** on May 26, 1993, the Secretary indicated that insufficient information was available to complete a systematic evaluation of the obligated capital criteria for hospitals in states with a lengthy Certificate-of-Need process in time to consider appropriate changes during the fiscal year 1994 rulemaking process. The conferees expect the Secretary to complete the assessment in time for consideration in the fiscal year 1995 rulemaking process and that appropriate changes in payment policy will be made to address the problems of hospitals subject to a lengthy Certificate-of-Need review process or subject to other circumstances which are not fully addressed in the current rules. In addition, the conferees believe the Secretary should evaluate whether current policies provide adequate protection to sole community hospitals and hospitals that serve a disproportionate share of low income patients" (H.R. Conf. Rep. No. 103–66, at 744 (1993)).

In the May 27, 1994 proposed rule (59 FR 27744), we described our analysis of provisions related to obligated capital for hospitals subject to lengthy CON processes. We also proposed a change to the deadline for putting an asset into use for patient care (§ 412.302(c)(2)(i)(D)) and addressed recommendations that we had received from hospitals to change the capital exceptions policy, which would provide exceptions payments after the conclusion of the capital prospective payment transition period. These hospitals had asked that the minimum payment level for urban hospitals with at least 100 beds and a DSH percentage of at least 20.2 percent be guaranteed through the rest of the transition and extended for at least 10 years after the transition.

In the September 1, 1994 final rule (59 FR 45376), we adopted the proposed change to the deadline for putting an asset into use in the obligated capital regulations (§ 412.348) from "the earlier of" September 30, 1996, or 4 years from the date of CON approval to "the later of" September 30, 1996, or 4 years from the date of CON approval. We also implemented the capital special exceptions process and expanded the qualifying criteria for the classes of eligible hospitals to include sole community hospitals; urban hospitals with at least 100 beds that have a DSH percentage of at least 20.2 percent or that receive at least 30 percent of their revenue from State or local funds for indigent care; and hospitals with a combined inpatient Medicare and Medicaid utilization of at least 70 percent.

Because we adopted changes to both the obligated capital criteria and finalized the special exceptions process, we believe that we have appropriately addressed the issues raised in the Conference Report language concerning hospitals in States with a lengthy CON process as well as SCHs and hospitals that serve a disproportionate share of low-income patients.

Second, in response to the commenters' suggestion that the 70 percent minimum payment level for special exceptions be raised to 85 percent, we believe that this change would expand the special exceptions process beyond its original narrow focus. The commenters' comparison of the special exceptions process to hold harmless payments for old capital is not appropriate. Paying hospitals for 85 percent of the cost of old capital was reasonable to account for the change from a cost-based system to a prospective payment system for capital. Since hospitals had committed to these costs years prior to the implementation of the capital prospective payment system, it was reasonable to allow relief to hospitals for these costs. In addition, during the prospective payment system transition, all hospitals, based on their costs, were eligible for exception payments to account for high costs that exceed the prospective payment rate. Except for sole community hospitals and hospitals with a DSH percentage of at least 20.2, hospitals received exceptions payments at the 70-percent minimum payment level. A 70-percent minimum payment level for special exceptions continues exceptions payments for qualifying hospitals with high costs after the transition at the same level most hospitals received under the regular exceptions process during the transition.

Third, it would be extremely difficult administratively to implement a cap and roll-over provision such as the one advocated by the commenters. Hospitals are not eligible for special exception payments until assets are put into use for patient care. A lag time exists before completed and settled cost reports are available to determine special exception payments once eligibility has been demonstrated. Information taken from cost reports cannot be used to accurately determine whether a hospital meets all of the special exceptions eligibility criteria. Specifically, date of CON approval (if applicable) and DSH percent are not determined based on cost report information. Other criteria, such as project size and age of asset (if applicable) requirements, and their accuracy will need to be reported by the hospital and verified by the fiscal intermediaries.

Even when we have a more accurate assessment of qualifying special exception projects, we do not believe a cap and roll-over process such as the commenter suggests would be administratively feasible. We intend to administer the existing special exception process in the post-transition period in a manner similar to the regular exception process. Based on data received, we will make an estimate of special exception payments in the coming year. If our model shows that special exception payments are projected to be more than 10 percent of total capital payments under the existing 70 percent payment level, we would reduce the minimum payment level to ensure that projected payments do not exceed the 10 percent threshold. If, however, when cost reports were settled for that fiscal year, payments for eligible projects were determined to be more or less than the amount estimated, they would still be eligible for special exception payments, even if actual payments exceeded the amount we initially estimated. Each year's exception payments are determined separately. It would be extremely difficult to maintain an estimate of actual qualifying projects, given varied dates on which hospitals' fiscal years end, and increase or decrease the exception payment amount each hospital was eligible to receive. We would not know whether the amount budgeted for a project was more or less than the amount the project actually qualified for until the cost report was settled. Since hospitals have different cost report ending dates, it would be some time before all the cost reports for a given fiscal year would be finalized. At that time, it would be necessary for each fiscal intermediary to determine how much was actually paid for special exception, and any carryover amount for each project to a future fiscal year. We believe that this process would be very cumbersome, if not impossible, to administer.

It is our intention in the FY 2001 proposed and final rules to discuss a data collection effort to assist us in modeling special exception payments for the FY 2002 proposed rule.

Comment: MedPAC commented that they share HCFA's desire to keep special exceptions narrowly targeted. The Commission stated that many of the suggestions for changing the special exception process and criteria would unnecessarily expand payments beyond clearly disadvantaged hospitals whose financial health is important to maintaining access to care for Medicare beneficiaries. MedPAC recommends that, since so few hospitals responded to our request for information on potentially qualifying projects, we should not change the current special exceptions policy until we receive more information about the extent of financial problems hospitals are having. However, MedPAC does believe that we should consider increasing the special exceptions payment for SCHs and urban hospitals with a DSH percentage of at least 20.2 percent to equal the amount they receive under the regular exceptions policy (that is, 90 and 80 percent, respectively). MedPAC suggests that these increases are necessary to continue to provide financial protection to institutions that safeguard access to care for Medicare beneficiaries.

MedPAC supports offsetting special exceptions payments against both capital and operating margins, because it is consistent with their belief that at the end of the transition the two payment systems should be combined.

Response: We agree with MedPAC that, in determining eligibility for special exception payments, it is appropriate to examine a hospital's operating margins as well as its capital margins. We believe it is reasonable to provide an additional limit on exceptions payments for the period 10 to 20 years after the beginning of capital prospective payments. In addition, we agree that since inpatient operating and capital costs are so inherently intertwined in providing inpatient care, it is appropriate to have an operating payment offset for the capital special exception. It is not appropriate to consider any outpatient services when determining eligibility for the inpatient special exception payment. Any outpatient capital-related costs are paid to hospitals under Medicare Part B.

VI. Changes for Hospitals and Hospital Units Excluded from the Prospective Payment System

A. Limits on and Adjustments to the Target Amounts for Excluded Hospitals and Units (§§ 413.40(b)(4), (c), (f), and (g))

1. Updated Caps

Section 1886(b)(3) of the Act (as amended by section 4414 of the BBA) establishes caps on the target amounts for certain excluded hospitals and units for cost reporting periods beginning on or after October 1, 1997 through September 30, 2002. The caps on the target amounts apply to the following three categories of excluded hospitals: psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals.

A discussion of how the caps on the target amounts were calculated can be found in the August 29, 1997 final rule with comment period (62 FR 46018); the May 12, 1998 final rule (63 FR 26344); and the July 31, 1998 final rule (64 FR 41000). For purposes of calculating the caps on existing facilities, the statute requires us to calculate the 75th percentile of the target amounts for each class of hospital (psychiatric, rehabilitation, or long-term care) for cost reporting periods ending during FY 1996. Under section 1886(b)(3)(H)(iii) of the Act, the resulting amounts are updated by the market basket percentage increase applicable to the fiscal year.

In the May 7, 1999 proposed rule, we proposed the following caps on target amounts for cost reporting periods beginning in FY 2000:

- Psychiatric hospitals and units: $11,067
- Rehabilitation hospitals and units: $20,071
- Long-term care hospitals: $39,596

These proposed caps reflected an update of 2.6 percent, the projected market basket increase for excluded hospitals and units.

The final projection of the market basket percentage increase for excluded hospitals and units for FY 2000, based on the most recent data available, is 2.9 percent. Accordingly, the final caps on the target amounts for existing hospitals and units for cost reporting periods beginning during FY 2000 are as follows:

- Psychiatric hospitals and units: $11,100
- Rehabilitation hospitals and units: $20,129
- Long-term care hospitals: $39,712

2. New Excluded Hospitals and Units (§ 413.40(f))

a. Updated Caps for New Hospitals and Units

Section 1886(b)(7) of the Act establishes a payment methodology for new psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals. Under the statutory methodology, for a hospital that is within a class of hospitals specified in the statute and that first receives payments as a hospital or unit excluded from the prospective payment system on or after October 1, 1997, the amount of payment will be determined as follows: for the first two 12-month cost reporting periods, the amount of payment is the lesser of (1) the operating costs per case, or (2) 110 percent of the national median of target amounts for the same class of hospitals for cost reporting periods ending during FY 1996, updated to the first cost reporting period in which the hospital receives payments and adjusted for differences in area wage levels.

The amounts included in the following table reflect the updated 110 percent of the wage neutral national median target amounts for each class of excluded hospitals and units for cost reporting periods beginning during FY 2000. These figures are based on the final FY 1999 figures updated by the projected market basket increase of 2.9

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percent. (The proposed amounts were based on an estimated market basket increase of 2.6 percent.) For a new provider, the labor-related share of the target amount is multiplied by the appropriate geographic area wage index and added to the nonlabor-related share in order to determine the per case limit on payment under the statutory payment methodology for new providers.

Class of excluded hospital or unit	Labor-related share	Nonlabor-related share
Psychiatric	$ 6,394	$ 2,544
Rehabilitation	12,574	4,999
Long-term Care	16,206	6,443

As specified at § 413.40(c)(4), for purposes of determining the hospital's target amount for the hospital's third 12-month cost reporting period, the target amount for the preceding cost reporting period is equal to the payment amount in the second 12-month cost reporting period as determined in accordance with § 413.40(f)(2)(ii)(A). The payment amount is the lesser of (1) the operating costs per case, or (2) 110 percent of the national median of target amounts for the same class of hospitals for cost reporting periods ending during FY 1996, updated to the first cost reporting period in which the hospital receives payments and adjusted for differences in area wage levels. It has come to our attention that § 413.40(c)(4)(v) does not specify how to apply the update factors to the amount of payment for the second 12-month cost reporting period in order to calculate the target amount in subsequent cost reporting periods. Therefore, we are revising §§ 413.40(c)(4)(v) and 413.40(f)(2)(ii)(A) to clarify the application of the update factors and the base period for new psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals.

b. Multicampus Excluded Hospitals

Section 1886(b) of the Act, as amended by the BBA, provides for caps on target amounts for certain classes of excluded hospitals, and also provides a statutory payment methodology for new excluded hospitals. A question has arisen regarding the appropriate target amount to be used for an excluded hospital or unit that was part of a multicampus hospital but alters its organizational structure so that it is no longer part of that multicampus hospital. The question was raised by long-term care hospitals that are seeking alternate structures due to the application of the cap on hospital-specific target amounts specified in § 413.40(c)(4)(iii).

In these cases, to determine the appropriate target amount, we must determine whether the excluded hospital or unit established under the organizational restructure is a new provider. Under § 413.40(f)(1), a new excluded hospital or unit is a provider of hospital inpatient services that (1) has operated as the type of hospital or unit for which HCFA granted it approval to participate in the Medicare program, under present or previous ownership (or both), for less than 1 full year; and (2) has provided the type of hospital inpatient services for which HCFA granted it approval to participate for less than 2 full years. If the new hospital is a children's hospital, a 2-year exemption from the application of the target amount is permitted (§ 413.40(f)(2)(i)). A new psychiatric or rehabilitation hospital or unit or a long-term care hospital receives, for the first two 12-month cost reporting periods, the lower of its new inpatient operating cost per case or 110 percent of a national median of target amounts for the class of hospital, updated and adjusted for area wages (§ 413.40(f)(2)(ii)).

If the entity that separated itself from the multicampus hospital provides inpatient services of a different type than it had when it was part of the multicampus hospital so that it qualifies as a different class of excluded hospital or unit (for example, from long-term care to rehabilitation), we would calculate a new target amount per discharge for the newly created hospital or unit. However, if the entity does not operate as a different class of hospital or unit, it does not meet the criteria at § 413.40(f)(1) to qualify as a new provider. Instead, if the entity replaces a hospital or unit that had been excluded from the prospective payment system (for example, the entity had previously been a long-term care hospital before becoming part of the multicampus hospital), the previously established hospital-specific target amount for the hospital, prior to its becoming part of the multicampus hospital, would again be applicable. This is consistent with our current policy for a hospital or unit that is excluded from the prospective payment system and that has periods in which the hospital or unit is not subject to the target amount, as specified at § 413.40(b)(1)(i). The target amount established earlier for the hospital or unit is again applicable despite intervening cost reporting periods during which the hospital or unit was not subject to that target amount due to other provisions of the law or regulations that applied while it was part of the multicampus hospital. We proposed to revise § 413.40(b)(1)(iii) to specify that if the entity continues to operate as the same class of hospital that is excluded from the prospective payment system, but does not replace a hospital or unit that existed prior to being part of a multicampus hospital (for example, a newly created long-term care hospital became part of a multicampus hospital and subsequently separates from the multicampus hospital to operate separately), the base period for calculating a hospital-specific target amount for the newly separated hospital is the first cost reporting period of at least 12 months effective with the revised Medicare certification.

We did not receive any comments on this proposed revision. Therefore, we are adopting the proposed change to § 413.40(b)(1)(iii) as final.

3. Exceptions

The August 29, 1997 final rule with comment period (62 FR 46018) specified that a hospital that has a hospital-specific target amount that is capped at the 75th percentile of target amounts for hospitals in the same class (psychiatric, rehabilitation, or long-term care) would not be granted an adjustment payment (also referred to as an exception payment) based solely on a comparison of its costs or patient mix in its base year to its costs or patient mix in the payment year. Since the hospital's target amount would not be determined based on its own experience in a base year, any comparison of costs or patient mix in its base year to costs or patient mix in the payment year would be irrelevant.

In addition, the July 31, 1998 final rule (63 FR 41001) revised § 413.40(g)(1) to specify, under paragraph (g)(1)(iv), that in the case of a psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospital, the amount of the adjustment payment may not exceed the applicable limit amounts for hospitals of the same class.

Similarly, for hospitals and units with a FY 1998 hospital-specific revised target amount established under the rebasing provision at § 413.40(b)(1)(iv), in determining whether the hospital qualifies for an adjustment and the amount of the adjustment, we compare the hospital's operating costs to the average costs and statistics for the cost reporting periods used to determine the FY 1998 revised target amount. Since the rebased FY 1998 target amount is an average of three cost reporting periods, as described in § 413.40(b)(1)(iv), comparisons of costs from the cost year to the FY 1998 cost period would be inaccurate. Therefore, as specified in the August 29, 1997 final rule with comment period (62 FR 46018), a determination of whether the hospital qualifies for an adjustment, and the amount of an adjustment, are based on a comparison of the hospital's operating costs and its costs used to calculate the FY 1998 rebased target amount. For hospitals that have been rebased under the provisions of § 413.40(b)(1)(iv) and qualify for an adjustment under the provisions of § 413.40(g), the base year figures used for such items as costs, utilization, and length-of-stay should be determined based on the average of the costs and utilization statistics from the same 3 cost reporting years used in calculating the FY 1998 rebased target amount.

In the proposed rule, we proposed to revise § 413.40(g)(1) to clarify these limitations on the adjustment payments.

We received no comments on this clarification and, therefore, are adopting it in this final rule.

4. Report on Adjustment Payments to the Ceiling (§ 413.40(g))

Changes in the types of patients served or inpatient care services that distort the comparability of a cost reporting period to the base year are grounds for requesting an adjustment payment in accordance with section 1886(b)(4) of the Act. Section 4419(b) of the BBA of 1997 requires the Secretary to publish annually in the **Federal Register** a report describing the total amount of adjustment (exception) payments made to excluded hospitals and units, by reason of section 1886(b)(4) of the Act, during the previous fiscal year. However, the data on adjustment payments made during the previous fiscal year are not available in time to publish a report describing the total amount of adjustment payments made to all excluded hospitals and units in the subsequent year's final rule published in the **Federal Register**.

The process of requesting, adjudicating, and awarding an adjustment payment for a given cost reporting period occurs over a 2-year period or longer. An excluded hospital or unit must first file its cost report for the previous fiscal year with its intermediary within 5 months after the close of the previous fiscal year. The fiscal intermediary then reviews the cost report and issues a Notice of Program Reimbursement (NPR) in approximately 2 months. If the hospital's operating costs are in excess of the ceiling, the hospital may file a request for an adjustment payment within 6 months from the date of the NPR. The intermediary, or HCFA, depending on the type of adjustment requested, then reviews the request and determines if an adjustment payment is warranted. Therefore, it is not possible to provide data in a final rule on adjustments granted for cost reports ending in the previous Federal fiscal year, since those adjustments have not even been requested by that time. However, in an attempt to provide interested parties at least some relevant data on adjustments, we are publishing data on requests for adjustments that were processed by the fiscal intermediaries or HCFA during the previous Federal fiscal year.

The table below includes the most recent data available from the fiscal intermediaries and HCFA on adjustment payments that were adjudicated during FY 1998. By definition these were for cost reporting periods ending in years prior to FY 1998. The total adjustment payments awarded to excluded hospitals and units during FY 1998 are $95,676,720. The table depicts for each class of hospital, in aggregate, the number of adjustment requests adjudicated, the excess operating cost over the ceiling, and the amount of the adjustment payment.

Class of hospital	Number	Excess cost over ceiling	Adjustment Payment
Psychiatric	235	$112,437,640	$55,784,497
Rehabilitation	93	67,353,452	26,487,095
Long-term care	7	10,326,069	6,085,941
Children's	7	6,893,393	2,898,679
Cancer	3	10,463,245	4,420,508

5. Development of Case-Mix Adjusted Prospective Payment System for Rehabilitation Hospitals and Units

Section 4421 of the BBA added a new section 1886(j) to the Act that mandates the phase-in of a case-mix adjusted prospective payment system for inpatient rehabilitation services (freestanding hospitals and units) for cost reporting periods beginning on or after October 1, 2000 and before October 1, 2002. The prospective payment system will be fully implemented for cost reporting periods beginning on or after October 1, 2002.

As provided in section 1886(j)(3)(A) of the Act, the prospective payment rates will be based on the inpatient operating and capital costs of rehabilitation facilities. Payments will be adjusted for case-mix using patient classification groups, area wages, inflation, and outlier and any other factors the Secretary determines necessary. We will set prospective payment amounts so that total payments under the system during FY 2001 and FY 2002 are projected to equal 98 percent of the amount of payments that would have been made under the current payment system. Outlier payments in a fiscal year may not be projected or estimated to exceed 5 percent of the total payments based on the rates for that fiscal year.

B. Changes in Bed Size or Status of Hospital Units Excluded under the Prospective Payment System

Existing regulations (§ 412.25(b) and (c)) specify that, for purposes of payment to a psychiatric or rehabilitation unit that is excluded from the prospective payment system, changes in the bed size or the status of excluded hospital units will be recognized only at the beginning of a cost reporting period. These regulations have been in effect since the inception of the hospital inpatient prospective payment system and were intended to simplify administration of the exclusion provisions of the prospective payment system by establishing clear rules for the timing of changes in these excluded units. The statutory basis and rationale for these rules are explained more fully in the preamble to the proposed rule (64 FR 24740).

To provide more flexibility to hospitals while not recognizing changes that undermine statutory requirements and principles, we proposed to revise § 412.25(b) and (c) to provide that, for purposes of exclusion from the prospective payment system, the number of beds and square footage of an excluded unit may be decreased, or an excluded unit may be closed in its entirety, at any time during a cost reporting period under certain conditions. The hospital would be

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required to give the fiscal intermediary and the HCFA Regional Office a 30-day advance written notice of the intended change and to maintain all information needed to accurately determine costs attributable to the excluded unit and proper payments. However, any unit that is closed during a cost reporting period could not be paid again as a unit excluded from the prospective payment system until the start of the next cost reporting period. If the number of beds or square footage of a unit excluded from the prospective payment system is decreased during a cost reporting period, that decrease would remain in effect for the remainder of that period.

We noted that the number of beds and square footage of the part of the hospital paid under the prospective payment system may also be affected by a change in the size or status of a unit that is excluded from the prospective payment system. If the bed capacity and square footage were previously part of the excluded unit and are then included in the part of the hospital paid under the prospective payment system and are used to treat acute patients rather than excluded unit patients, the additional bed capacity and square footage would, starting with the effective date of the change, be counted as part of the hospital paid under the prospective payment system. We would count the bed capacity and square footage for purposes of calculating available bed days and the number of beds under §§ 412.105 and 412.106, relating to payments for the indirect costs of medical education and hospitals that serve a disproportionate share of low-income patients. On the other hand, if the bed capacity and square footage are taken out of service or added to another hospital-based provider, such as a distinct-part skilled nursing facility, they would not be counted as part of the hospital paid under the prospective payment system.

We received six comments on our proposal.

Comment: Several commenters expressed support for the proposed change and indicated that it would increase hospital flexibility. No commenters opposed the change. However, one commenter noted that some California hospitals may need to temporarily vacate certain facilities to allow renovation and construction necessary to comply with new State seismic code requirements, and stated that such a relocation of a facility may necessitate a change in its number of beds or square footage. The commenter recommended that our regulations be revised to account for this possibility or for relocations that are necessary due to catastrophic occurrences such as earthquakes, floods, tornadoes, or other natural disasters.

Response: We appreciate the commenters' support of our proposal and are adopting it as final with one change. To address the types of compliance or catastrophic situations described by one of the commenters, we are revising § 412.25(b) to allow reductions in the number of beds in an excluded unit, or increases or decreases in the square footage of the excluded unit, if these changes result from relocation of the unit made necessary because of construction or renovation needed to bring a facility into compliance with changes in Federal, State, or local law affecting the physical facility, or because of catastrophic events such as fires, floods, earthquakes, or tornadoes. We understand that these relocations may necessitate a change in the square footage of a unit, although it is not clear that any increase in bed size would be required. We also are allowing corresponding exceptions to the requirements that a grandfathered satellite facility be operated under the same terms and conditions in effect on September 30, 1999 under §§ 412.23(h)(3) and 412.25(e)(3)).

C. Payment for Services Furnished at Satellite Hospital Locations

Under Medicare, each hospital is treated, for purposes of certification, coverage, and payment, as a single institution. That is, each entity that is approved to participate in Medicare as a "hospital" must separately comply with applicable health and safety requirements as a condition of participation under regulations at part 482, with provider agreement requirements specified in regulations at part 489, and with requirements relating to the scope of benefits under Medicare Parts A and B specified in parts 409 and 410. Our policies that involve the movement of patients from one hospital to another, or from outpatient to inpatient status at the same hospital, are premised on the assumption that each hospital is organized and operated as a separate institution.

Section 412.22(e) of the regulations permits an entity that is located in the same building or in separate buildings on the same campus as another hospital to be treated, for purposes of exclusion under the prospective payment systems, as a "hospital." This status is available, however, only when the entity meets specific, stringent criteria designed to ensure that the hospital-within-a-hospital is organized as a separate entity and operates as a separate entity.

We have received several requests for approval of "satellite" arrangements, under which an existing hospital that is excluded under the prospective payment system, and that is either a freestanding hospital or a hospital-within-a-hospital under § 412.22(e), wishes to lease space in a building or on a campus occupied by another hospital, and, in some cases, to have most or all services to patients furnished by the other hospital under contractual agreements, including arrangements permitted under section 1861(w)(1) of the Act. In most cases, a hospital intends to have several of these satellite locations so that the hospital would not exist at any single location, but only as an aggregation of beds located at several sites. Generally, the excluded hospital seeks to have the satellite facility treated as if the satellite facility were "part of" the excluded hospital.

In the preamble to the proposed rule, we explained in detail our reason for concern that satellite arrangements could lead to circumvention of several Medicare payment provisions. To prevent inappropriate Medicare payment for services furnished in satellite facilities, we proposed to revise §§ 412.22 and 412.25 to provide for payment to satellite facilities of hospitals and units that are excluded from the prospective payment system under specific rules. With respect to both hospitals and units, we proposed to define a "satellite facility" as a part of a hospital that provides inpatient services in a building also used by another hospital, or in one or more buildings on the same campus as buildings also used by another hospital but is not a "hospital-within-a-hospital," since it is also part of another hospital. We proposed that, if the satellite facility is located in a hospital that is paid under the prospective payment system, Medicare would pay for services furnished at the satellite facility by using the same rates that apply to the prospective payment hospital within which the satellite is located. As explained in the proposed rule, we reasoned that, if the satellite facility is effectively "part of" the prospective payment system hospital, then it should be paid under the prospective payment system.

We proposed that if the satellite facility is located in a hospital excluded from the prospective payment system, then Medicare would pay for the services furnished in the satellite facility as follows: we proposed to examine the discharges of the satellite facility and to apply the target amount for the excluded hospital *in which the hospital is located,* subject to the applicable cap for the hospital *of which the satellite is a part.* Also, when the satellite facility is established, we proposed to treat it as a new hospital for payment purposes. That is, for the satellite's first two 12-month cost reporting periods, the satellite would be subject to the cap that applies to new hospitals of the same class as the hospital of which the satellite is a part. We believed that the proposed application of the cap for new hospitals was appropriate because we believe that a number of hospitals are attempting to avoid the hospital caps by characterizing entities as satellites rather than new hospitals.

Under the proposed rule, satellite facilities excluded from the prospective payment system prior to the effective date of the revised regulations (October 1, 1999) would not be subject to those new regulations as long as they operate under the same terms and conditions in effect on September 30, 1999. We proposed to make this exception available only to those facilities that could document to the HCFA regional offices that they are operating as satellite facilities excluded from the prospective payment system as of that date. The exception would not be available to hospitals that might be excluded from the prospective payment system as of that date and at some later time enter into satellite arrangements. In addition, we proposed not to apply the rules for payments to satellite facilities to multicampus arrangements, that is, those in which a hospital has a facility at two or more locations but does not share a building or a campus with any other hospital at those locations.

We also solicited comments on a possible further exception. In section 4417 of the BBA, Congress extended the long-term care hospital exclusion to a hospital "that first received payment under this subsection [subsection 1886(d)(1)(B)(iv) of the Act] in 1986 which has an average inpatient length of stay (as determined by the Secretary) of greater than 20 days and that has 80 percent or more of its annual Medicare inpatient discharges with a principal diagnosis of neoplastic disease in the 12-month cost reporting period ending in fiscal year 1997." In view of the specific provision made for a hospital meeting these requirements, we indicated that we were considering whether a satellite facility opened by such a hospital should be exempt from the proposed rules on satellites. We requested comment on this issue and on whether this exclusion could be implemented without compromising the effectiveness of the proposed changes.

We noted that there may be some operational difficulties differentiating services, costs, and discharges of the satellite facilities from those of the existing hospital that is excluded from the prospective payment system. We indicated that, if these operational problems cannot be overcome, we would consider revising the regulations to prohibit exclusion of any hospital or hospital unit from the prospective payment system that is structured, entirely or in part, as a satellite facility in a hospital paid under the prospective payment system.

We received 18 comments on this proposal.

Comment: Several commenters objected to the proposal to pay satellite facilities of excluded hospitals or units under a different methodology than that used for the excluded hospital or unit itself. These commenters argued that the potential abuses described in the preamble to the proposed rule are likely to occur rarely, if at all, and that differential payment for satellite facilities would interfere with hospitals' flexibility to use their facilities efficiently and to take advantage of economies of scale. Other commenters suggested that the proposal, if adopted, could lead to a shortage of crucial rehabilitation or long-term hospital services.

Most of the commenters suggested that the proposed changes be withdrawn and that no limitations be placed on the ability of excluded hospitals or units to establish satellite facilities and claim payment for their services on the same basis as services in the rest of the excluded hospital or unit. Other commenters suggested that we permit services in satellite facilities to be paid on the same basis as services in the remainder of the excluded hospital or unit only if satellite facilities were created and operated under certain rules. Some commenters, including a national health care association, suggested that our concerns could be addressed if we limit the number of satellite beds that an excluded hospital or unit could establish or require that the satellite independently meet exclusion criteria.

Response: We have reviewed these comments and concluded that we can address the concerns raised in the proposed rule, especially our concerns with the application of the appropriate BBA cap on the hospital target amount, without resorting to making payments for the services provided in the satellite under a different methodology than used for the original hospital or unit.

We have decided that, for purposes of payment, the satellite facility of an excluded hospital or unit may be treated as a part of the excluded hospital or unit and may receive payment on the same basis as the excluded hospital or unit, but only if the following specific criteria are met:

- In the case of a hospital (other than a children's hospital) or unit that was excluded from the prospective payment system before the effective date of section 4414 of the BBA (cost reporting periods beginning on or after October 1, 1997), the number of beds in the hospital or unit (including both the base hospital or unit and the satellite location) does not exceed the number of State-licensed and Medicare-certified beds in the hospital or unit on the last day of the hospital's or unit's last cost reporting period beginning before October 1, 1997. Thus, while an excluded hospital or unit can "transfer" bed capacity from a base facility to a satellite, it cannot, through the establishment of a satellite, increase total bed capacity beyond the level it had in the most recent cost reporting period prior to the effective date of section 4414.
- The satellite facility independently complies with selected prospective payment system exclusion requirements applicable to the type of hospital unit. Specifically, a satellite of a children's hospital must meet the requirement with respect to treatment of inpatients who are predominantly individuals under age 18, as stated in § 412.23(d)(2); a satellite of a long-term care hospital must meet the average length of stay requirement of § 412.23(e)(1) through (3)(i); a satellite of a rehabilitation hospital or unit must treat an inpatient population meeting the requirement in § 412.23(b)(2); and a satellite of a psychiatric unit must meet the requirement regarding admission of only psychiatric patients in § 412.27(a).
- The satellite facility complies with certain requirements designed to ensure that costs are reported accurately for both the hospital in which the satellite is located and the hospital of which the satellite is a part. Specifically, a satellite of an excluded hospital or unit must (1) have admission and discharge records that are separately identified from those of the hospital in which it is located and are readily available; (2) have beds that are physically separate from (that is, not commingled with) the beds of the hospital in which it is located; (3) be serviced by the same fiscal intermediary as the hospital of which it is a part; (4) be treated as a separate cost center of the hospital of which it is a part, for cost reporting and apportionment purposes; (5) use an accounting system that properly allocates costs; (6) maintain

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adequate statistical data to support the basis of allocation; and (7) report its costs in the cost report of the hospital of which it is a part, covering the same fiscal period and using the same method of apportionment as the hospital of which it is a part.

If an excluded hospital or unit has a satellite location and fails to meet these requirements, the entire hospital or unit would lose its exclusion from the prospective payment system. Under §§ 412.22(d) and 412.25(c), the change in status from excluded to included in the prospective payment system would be effective at the start of the first cost reporting period after the cost reporting period in which the hospital or unit failed to meet the requirements. Loss of exclusion status means that payment to the entire hospital or unit would then be made under the prospective payment system.

Thus, under our policy, we permit a satellite facility to be excluded (and treated as part of an excluded hospital) if certain criteria are met, but deny excluded status to the entire hospital if the criteria are not met. We are adopting this policy primarily because of concerns about preventing inappropriate Medicare payments. As explained above and in the proposed rule, we believe that hospitals might be seeking satellite arrangements so that the services furnished in the satellite facility are paid on an excluded basis when they should be paid on a prospective payment basis. We also believe that hospitals are seeking satellite arrangements in order to avoid the effects of the payment caps that apply to new excluded hospitals under the BBA. Therefore, we believe it is necessary and appropriate to establish criteria for determining when a satellite facility may be treated as part of the excluded hospital and paid on an excluded basis, and to deny exclusion to the satellite facility if the satellite fails to meet those criteria.

Another significant concern underlying our policy is administratively feasibility. We believe it would be administrative cumbersome, if not infeasible, to pay a satellite facility on a different basis than the rest of the excluded hospital or unit. Therefore, we believe that, if the satellite does not qualify for exclusion, then it is necessary and appropriate to deny exclusion to the entire hospital. If a hospital is considering whether to establish a satellite facility, it should keep these payment rules in mind.

We note that these exclusion criteria would be administered in the same manner as the general rules for excluded hospitals and hospital units at § 412.22 and the common requirements for excluded hospital units at § 412.25. Specifically, the HCFA Regional Office will assess a hospital's or unit's compliance with the requirements before the start of a cost reporting period and will implement the decision at the start of the cost reporting period, effective for all of that period.

One of the major concerns we had with payments for services at satellites was the ability of a hospital to circumvent the intent of the BBA by applying the higher cap for existing hospitals and units to the beds in the new satellite. By requiring that the number of beds in the expanded hospital or unit (including both the base hospital or unit and the satellite location) cannot exceed the number of State-licensed and Medicare-certified beds in the excluded hospital or unit at the time the BBA was enacted, we ensure that the excluded hospital or unit does not inappropriately circumvent the payment caps for new hospitals enacted by the BBA. For hospitals and units first excluded from the prospective payment system after the enactment date of the BBA, we would not limit the number of beds in the hospital or unit, including all satellites, since all beds in the hospital or unit necessarily will be subject to the lower cap for new excluded hospitals and units. We are not applying this requirement to children's hospitals since those hospitals are not subject to caps established by the BBA.

Furthermore, by requiring that the satellite meet the prospective payment system exclusion requirements applicable to the type of hospital or unit, we are applying a policy to satellites that is similar to that currently applicable to a hospital-within-a-hospital. This policy, which is consistent with the suggestion of a national health care association, will ensure that the satellite retains the identity of the type of excluded hospital of which it is a part. For example, if we allowed the 25-day length of stay for long-term care hospital designation to be determined based on an examination of the base long-term care hospital including the satellite, the satellite could be excluded from the prospective payment system even if its patients all had short lengths of stay. By calculating the length of stay for patients exclusively at the satellite, we are ensuring that it is, in fact, a long-term care facility that warrants being excluded from the prospective payment system and receiving payment on a reasonable cost basis. Under this approach, if the satellite facility and the rest of the hospital or unit independently meet the applicable exclusion criteria, then the entire entity will be treated as one facility in making payments.

We also believe it is essential to be able to identify the costs of satellite facilities separately from the costs of the host hospitals in which they are located, so that services in both facilities are paid for accurately and Medicare does not pay two facilities for the same costs. To accomplish this, we will require the satellite to meet a number of requirements relating to separate identification of the beds, patients, and costs of the satellite. We note that these requirements closely parallel similar requirements applicable to all excluded units under § 412.25(a)(3) and (a)(7) through (12).

We are revising §§ 412.22(h) and 412.25(e) to implement this policy.

Comment: Some commenters argued that paying satellite facilities of excluded hospitals or units under a different methodology than that used for the excluded hospital or unit itself would be inconsistent with the Medicare law, in particular, sections 1886(b)(1) and (d)(1)(A) and (D) of the Act.

Response: We believe that our policies are consistent with the statutory scheme and the considerations underlying exclusions under the prospective payment system, as well as our rulemaking authority under section 1871 of the Act. Our policies addressing payments to satellite facilities are designed to prevent inappropriate payments to hospitals and to address potential fraud and abuse, and, at the same time, to permit exclusion from the prospective payment system when the circumstances warrant exclusion. As we discussed in the proposed rule, we believe that a number of excluded hospitals are seeking satellite arrangements so that the services furnished in the satellite facility are inappropriately paid on an excluded basis when they should be paid on a prospective payment basis; we also believe that a number of excluded hospitals are seeking satellite arrangements in order to avoid the effect of the payment caps that apply to new excluded hospitals. Even if hospitals are not *intentionally* trying to "game" the system, treating a satellite facility as "part of" the excluded hospital for payment purposes might lead to inappropriate payments in a number of ways.

We believe that Congress did not contemplate satellite arrangements when it enacted section 1886(d) of the Act. Section 1886(d) does not specifically address satellite

arrangements; also, section 1886(d) does not mandate that certification status equate to payment status. The statute does, however, establish a scheme under which entities may be excluded from the prospective payment system. The purpose of exclusions is to recognize situations in which the principles of the prospective payment system do not apply. As we explained in the proposed rule, the considerations underlying exclusions from the prospective payment system might not apply to satellite facilities, which might be "part of" excluded hospitals only "on paper." Thus, we believe it is necessary and appropriate to address Medicare payment for services furnished in satellite facilities.

Comment: Several commenters approved of our proposal to grandfather excluded hospitals or units structured as satellite facilities on September 30, 1999, to the extent that they operate under the same terms and conditions in effect on that date.

Response: We agree that grandfathering these facilities is appropriate and are adopting this part of the proposed rule without change. However, we wish to emphasize that this policy does not extend to satellites established after September 30, 1999, even if they are established by an excluded hospital or unit that has another satellite that was grandfathered.

Comment: Two commenters expressed support for our proposal to not apply the new satellite rules to any hospital excluded from the prospective payment system by section 4417 of the BBA, as implemented under § 412.23(e)(2) (that is, a hospital that was first excluded in 1986, that had an average inpatient length of stay of greater than 20 days, and that demonstrated that at least 80 percent of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in FY 1997 had a principal diagnosis that reflected a finding of neoplastic disease).

Response: We agree with the commenters that this is appropriate and are revising § 412.22(h)(3) to reflect this policy.

In addition, as discussed earlier under section VI.B of this preamble, we are including in §§ 412.22(h)(4) and 412.25(e) a corresponding exception to the requirement that a grandfathered satellite facility be operated under the terms and conditions in effect on September 30, 1999. The corresponding change would allow for increases or decreases in square footage, or decreases in the number of beds, of the satellite facility necessitated by changes for compliance with Federal, State, and local law affecting the physical facility or because of catastrophic events such as fires, floods, earthquakes, or tornadoes.

D. Responsibility for Care of Patients in Hospitals-within-Hospitals

Generally, hospitals that admit patients, including hospitals subject to the prospective payment system and "hospitals-within-hospitals" that are excluded from the prospective payment system, accept overall responsibility for the patients' care and furnish all services they require. In accordance with section 1886(d)(5)(I) of the Act and implementing regulations at § 412.4, for payment purposes, the prospective payment system distinguishes between "discharges" (situations in which a patient leaves an acute care hospital paid under the prospective payment system after receiving complete acute care treatment) and "transfers" (situations in which acute care treatment is not completed at the first hospital and the patient is transferred to another acute care hospital for continued, related care). The payment rules at § 413.30, which apply to hospitals excluded from the prospective payment system, also are premised on the assumption that discharges occur only when the excluded hospital's care of the patient is complete.

It has come to our attention that, given the co-location of prospective payment system facilities and facilities excluded from the prospective payment system in a hospital-within-a-hospital, and the absence of clinical constraints on the movement of patients, there may be situations in which, in these settings, patients appear to have been moved from one facility to another for financial rather than clinical reasons. The excluded hospital-within-a-hospital might have incentives to inappropriately discharge patients early (to the prospective payment system hospital within which it is located) in order to minimize its overall costs and, in turn, to minimize its cost per discharge. If the excluded hospital-within-a-hospital inappropriately discharges patients to the prospective payment system hospital without providing a complete episode of the type of care furnished by the excluded hospital, then Medicare would make inappropriate payments to the hospital-within-a-hospital. This is the case because payments made to an excluded hospital are made on a per-stay basis, up to the hospital's per discharge target amount, and any artificial decrease in the hospital's cost per stay could lead to the hospital inappropriately circumventing, through decreased length of stay, its target amount cap and receiving inappropriate bonus and relief payments under section 4415 of the BBA.

We believe it is important to address possible financial incentives for inappropriate early discharges from excluded hospitals-within-hospitals to prospective payment system hospitals. Therefore, in the proposed rule, we discussed several approaches for preventing inappropriate Medicare payments to an excluded hospital-within-a-hospital for inappropriate discharges to the prospective payment system hospital in which it is located. One approach was to provide that, if an excluded hospital-within-a-hospital transfers patients from its beds to beds of the prospective payment system hospital in which it is located, the hospital-within-a-hospital would not qualify for exclusion in the next cost reporting period. A second possible approach was to provide that the hospital-within-a-hospital would qualify for exclusion if it transfers patients to the prospective payment system hospital only when the services the patients require cannot be furnished by the hospital-within-a-hospital.

After considering these options, we decided to propose a third approach. We proposed to deny exclusion to a hospital-within-a-hospital for a cost reporting period if, during the most recent cost reporting period for which information is available, the excluded hospital-within-a-hospital transferred more than 5 percent of its inpatients to the prospective payment system hospital in which it is located. We stated that we believe that a 5-percent allowance of transfers under this approach would (1) avoid the need for administratively burdensome case review, (2) provide adequate flexibility for transfers in those cases in which the hospital-within-a-hospital is not equipped or staffed to provide the services required by the patient, and (3) limit the extent to which patients may be transferred inappropriately.

We solicited comments on our proposed approach as well as suggestions on other ways to address the possible incentives for inappropriate transfers in a manner that is administratively feasible.

We received 30 comments in response to our proposal and solicitation.

Comment: Several commenters argued that the choice of a 5-percent limit on discharges to the host prospective payment system hospital was arbitrary, and that we did not cite any study or other empirical evidence in support of it. Other commenters stated that the proposal could discourage excluded

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hospitals-within-hospitals from admitting medically complex cases, thus contributing to a shortage of certain types of care. Other commenters, including a number of physicians, respiratory therapists, and other clinical personnel, expressed concern that the proposed rule could discourage medically appropriate transfers and thus limit patients' ability to receive needed care. One commenter indicated that the proposed rule was stated only in terms of transfers from the excluded hospital-within-a-hospital to the host prospective payment system hospital, while the problems described in the preamble involve transfers of patients from the excluded hospital-within-a-hospital to the host prospective payment system hospital, followed by readmission of the patient to the excluded hospital-within-a-hospital. Other commenters suggested that while these transfers might be abusive, the sanction identified in the proposed rule—loss of the exclusion from the prospective payment system of the hospital-within-a-hospital—is disproportionate to the problem.

Response: After review of all comments on this issue, we have decided to modify our approach. First, we agree with those commenters who stated that the primary focus of concern should not be discharges from the excluded hospital-within-a-hospital to the host prospective payment system hospital, but rather should include situations in which the discharges are then followed by readmissions to the excluded hospital-within-a-hospital, without any intervening movement of the patient from the host hospital to a skilled nursing facility, his or her home, or another hospital. Thus, we are revising the regulations to address only the latter situations.

We also agree that there is a better way to address inappropriate transfers and readmissions. When the level of inappropriate transfers exceeds the threshold level described below, we will, instead of terminating a hospital's exclusion, simply not consider the earlier discharge in these cases to have occurred, for purposes of calculating the payment to the hospital or unit. That is, if a patient is discharged from an excluded hospital-within-a-hospital to the host prospective payment system hospital and is then readmitted to the excluded hospital-within-a-hospital directly from the host hospital, the readmission would mean that the earlier discharge(s) from the excluded hospital will not be taken into account in calculating payments to the hospital-within-a-hospital under the excluded hospital payment provisions and their implementing regulations in § 413.40.

We also considered whether this policy should be applied in all cases or only if a specific threshold is exceeded. We continue to believe that the types of cases described (discharge of the patient to the host prospective payment system hospital, followed by readmission directly to the excluded hospital-within-a-hospital) are potentially vulnerable to abuse and that, in principle, we should adopt a policy of "zero tolerance" for these cases. At the same time, we are aware that this stringent approach might be difficult and controversial to implement and could have the unintended effect of discouraging some medically necessary or appropriate discharges to the host hospital. Therefore, we will allow a 5-percent margin to hospitals for these cases, in that we would not count the first discharge for purposes of payment as an excluded hospital only when the excluded hospital's number of these cases in a particular cost reporting year exceeded 5 percent of the total number of its discharges. If a hospital exceeds this 5-percent threshold, we would, with respect to these cases, not include any previous discharges to the host prospective payment system hospital in calculating the excluded hospital's cost per discharge. That is, the entire stay would be considered one "discharge" for purposes of payments to the hospital.

For example, assume that a patient was discharged from the excluded hospital-within-a-hospital to the prospective payment system hospital in which it is located and then was readmitted to the excluded hospital-within-a-hospital from the prospective payment system hospital (the "host"). If the total number of discharges (to all locations) of the hospital-within-a-hospital in the cost reporting period is 100 and the number readmitted from the host after having been previously discharged to it is 3, the percentage would be 3 percent (3 divided by 100), and all of the discharges, including the previous discharge to the host, would be taken into account. However, if the total number of discharges had been only 50, and of those, 3 patients had been readmitted from the host after a previous discharge to it, the percentage would be 6 percent (3 divided by 50) and the first discharge of the patients readmitted to the host would not be counted. Therefore, payment would be based on 47 discharges. In determining whether a patient had previously been discharged and then readmitted, we would consider all prior discharges, even if the discharge occurred late in one cost reporting period and the readmission occurred in the next cost reporting period.

Thus, in the May 7, 1999 proposed rule, we proposed to deny exclusion to a hospital-within-a-hospital if, during the most recent cost reporting period for which information is available, the excluded hospital-within-a-hospital transferred more than 5 percent of its inpatients to the prospective payment system hospital in which it is located. After considering the public comments, in this final rule we are implementing a policy that differs from the proposed policy in two significant ways. First, rather than focusing solely on discharges to the host hospital, we are examining situations involving a discharge to the host hospital followed by a readmission to the excluded hospital. Second, if the 5-percent threshold is triggered, we would not deny exclusion to the hospital-within-a-hospital; instead, the hospital-within-a-hospital could continue to receive payment as an excluded hospital-within-a-hospital, but, for purposes of determining the amount of payment, we would not count the first discharge for those cases involving a discharge followed by readmission. (If the 5-percent threshold is not triggered, then all discharges would be counted.)

We continue to believe that the 5-percent threshold is appropriate to trigger special payment rules. We are trying to prevent inappropriate payments to hospitals for inappropriate transfers, and a 5-percent threshold reflects a balance of a number of considerations. As indicated in the proposed rule, a 5-percent threshold would (1) avoid the need for administratively burdensome case review (to determine whether discharges or readmissions were inappropriate), (2) provide adequate flexibility for transfers in those cases in which the hospital-within-a-hospital is not equipped or staffed to provide the services required by the patient, and (3) address possible incentives for hospitals to transfer patients inappropriately.

The rationale for this policy is largely conceptual in nature, and the 5-percent threshold is not based solely on any one source of statistics or data available to us. If we tried to set a threshold based solely on such statistics, it might be extremely difficult and time-consuming to distinguish between appropriate transfers and inappropriate transfers. Given the importance of preventing inappropriate payments, we believe it would not be prudent to delay implementing this policy. At this time, we believe that a 5-percent "allowance" reflects an appropriate balance of the considerations discussed above and is consistent with information available to us. However, we will continue to monitor this issue and review data, and we might revise the threshold in a future rulemaking if information indicates that a revision is appropriate.

We are revising the definition of "ceiling" in § 413.40(a)(3) to implement our revised policy.

Comment: Some commenters asked whether the intent of the proposed rule was to exclude hospitals-within-hospitals described under § 412.22(f) from the provision on responsibility for care of patients, since the proposed rule would have added a new paragraph (e)(6), and existing § 412.22(f) states that the rules in paragraph (e) do not apply to hospitals described in paragraph (f).

Response: As discussed above, we are not proceeding with the proposed changes at § 412.22(e)(6) and are instead implementing our revised policy by amending the definition of "ceiling" in § 413.40(a)(3). The hospitals described in § 412.22(f) will be subject to the new policy on the same basis as other hospitals-within-hospitals.

E. Critical Access Hospitals (CAHs)

1. Emergency Response Time Requirements for CAHs in Frontier and Remote Areas

Because of the high cost of staffing rural hospital emergency rooms and the low volume of services in those facilities, we do not require CAHs to have emergency personnel on site at all times. Thus, for CAHs, the regulations at § 485.618(d) require a doctor of medicine or a doctor of osteopathy, a physician assistant, or a nurse practitioner with training and experience in emergency care to be on call and immediately available by telephone or radio contact, and available on site within 30 minutes, on a 24–hour basis. We included this requirement because we recognize the need of rural residents to have reasonable access to emergency care in their local communities.

Section 1820(h) of the Act, as added by section 4201 of the BBA, states that any medical assistance facility (MAF) in Montana shall be deemed to have been certified by the Secretary as a CAH if that facility is otherwise eligible to be designated by the State as a CAH. However, under the current requirements, following the initial transition of a MAF to CAH status, the former MAF would be subject to the CAH requirements during any subsequent review, one of which is the 30-minute emergency response time for emergency services currently required under § 485.518(d).

Some facilities have suggested that in many "frontier" areas (that is, those having fewer than six residents per square mile), the requirement of a 30-minute response might be too restrictive for CAHs, especially those MAFs transitioning to CAH status.

In order to recognize the special needs of sparsely populated rural areas in meeting beneficiaries' health needs, and at the same time to protect patients' health and safety, in the May 7, 1999 proposed rule, we proposed to revise § 485.618(d) to allow a response time of up to 60 minutes for a CAH if (1) it is located in an area of the State that is defined as a frontier area (that is, having fewer than six residents per square mile based on the latest population data published by the Bureau of the Census) or meets other criteria for a remote location adopted by the State and approved by HCFA under criteria specified in its rural health care plan under section 1820(b) of the Act; (2) the State determines that, under its rural health care plan, allowing the longer emergency response time is the only feasible method of providing emergency care to residents of the area; and (3) the State maintains documentation showing that a response time of up to 60 minutes at a particular CAH it designates is justified because other available alternatives would increase the time required to stabilize the patient in an emergency. The criteria for remote location would, like other parts of the rural health care plan, be subject to review and approval by the HCFA Regional Office, as would the State's documentation regarding the emergency response time.

We noted that, under the terms of the Montana State Code applicable to MAFs, at times when no emergency response person is available to come to the facility, a MAF's director of nursing is permitted to come to the facility and authorize the transfer of a patient seeking emergency services to another facility. Under one possible reading of the State requirement, this activity could be seen as an alternative way of complying with the emergency services requirement and the MAF's (and CAH's) responsibilities under section 1867 of the Act (the Emergency Medical Treatment and Active Labor Amendments Provision) to provide emergency medical screening and stabilization services to patients who come to the hospital seeking emergency treatment. We requested comments on whether the Medicare regulations in §§ 485.618(d) and 489.24 should be further revised to explicitly permit this practice to continue following the transition of a MAF to CAH status. We were particularly interested in obtaining comments from practitioners on the risks and benefits involved in adoption of this practice.

We received three comments on our proposal.

Comment: Two commenters supported our proposal to allow a 60-minute emergency response time for frontier areas.

Response: We appreciate the commenters' support and are adopting this proposal as final without change.

Comment: One commenter believed that the 60-minute response timeframe in the proposed rule is too long considering the importance of timely provision of emergency care even in remote areas. The commenter believes that if a facility wants to function as a CAH, it should have appropriate personnel onsite within 30 minutes to provide care.

Response: As we have indicated above, we believe that we must recognize the special needs of sparsely populated rural areas in meeting beneficiaries' health needs and at the same time protect patients' health and safety. We believe our proposed change accomplishes this goal.

2. Compliance with Minimum Data Set (MDS) Requirements by CAHs with Swing-Bed Approval

Existing regulations allow CAHs to obtain approval from HCFA to use their inpatient beds to provide posthospital SNF care (§ 485.645). To obtain this approval, however, the CAH must agree to meet specific requirements that also apply to SNFs, including the comprehensive assessment requirements at § 483.20(b) of the SNF conditions of participation.

Section 483.20(b)(1) specifies that a SNF must make a comprehensive assessment of a resident's needs, using the resident assessment instrument specified by the State. Section 483.20(b)(2) further specifies that, subject to the timeframes in § 413.343(b), the assessments must be conducted within 14 calendar days after the patient is admitted; within 14 days after the facility determines, or should have determined, that there is a significant change in the patient's physical or mental condition; and at least once every 12 months. Section 413.343(b) specifies that in accordance with the methodology in § 413.337(c) related to the adjustment of the Federal rates for case-mix (the SNF prospective payment system), patient assessments must be performed on the 5th, 14th, 30th, 60th, and 90th days following admission.

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It is clear that the timeframes for patient assessments required under § 413.343(b) are linked to the prospective payment system for SNFs. The methodology specifically referenced in § 413.337(c) refers to the SNF prospective payment system. Therefore, it is apparent that the patient assessments and concomitant timeframes for performing such assessments are inextricably intertwined with the case-mix adjustment under the SNF prospective payment system. CAHs with swing-bed approval are not paid for their services to SNF-level patients under that SNF prospective payment system but are paid under the payment method described in § 413.114, which does not include a case-mix adjustment. Therefore, the timeframes for patient assessments as dictated by § 413.343(b) are not applicable to CAHs and are not required to be met by CAHs. Nevertheless, to make it explicit that the patient assessment timeframes required under § 413.343(b) do not apply, we proposed to revise § 485.645 to state that the requirements in § 413.343(b), and the timeframes specified in § 483.20, do not apply to CAHs.

Comments: We received three comments on this proposal. One commenter supported our proposal and stated that the clarification would help eliminate the confusion that has existed in the industry. Another commenter noted that we do not have a comparable requirement for screening patients in swing beds located in all other rural hospitals and therefore believes it is inappropriate to implement a standard for CAHs that exceed normal practice. Another commenter objected to the proposed clarification as inflexible and biased and urged us to defer implementing the screening policy for swing beds for CAHs until we have established overall policy for swing beds.

Response: We believe that the changes we have proposed have revised the rules to allow for flexibility for CAHs. As stated above, CAHs with swing-bed approval are not paid for their services to SNF-level patients under the SNF prospective payment system but are paid under the payment method described in § 413.114, which does not include a case-mix adjustment. However, swing beds in rural hospitals are paid under the SNF prospective payment system. As explained above, the changes proposed to the reporting requirements for CAHs are intended to allow the policy to be consistent with the payment policy for swing beds in CAHs. With the change, we are making it explicit that the patient assessment timeframes required under §§ 413.343(b) and 483.20 do not apply to CAHs.

3. Additional Comments Received on CAH Issues

We received comments on two separate issues regarding CAHs on which we did not propose policy changes.

Comment: One commenter believes that the definition of CAH is prohibitive in one State and recommended that we change the criteria for CAHs to allow a hospital that meets all the criteria except for being located in an urban (versus a rural) area to be considered a CAH.

Response: We would need a change in the statute to authorize a change in the requirements for CAH designation, as the commenter recommended. Section 1820(c)(2)(B)(i) of the Act provides that a State may designate a facility as a CAH only if the hospital is located in a rural area as defined in section 1886(d)(2)(D) of the Act. Thus, we did not revise our regulations to address this comment.

Comment: One commenter suggested that the reasonable cost payment methodology for CAHs should extend to ambulance services and requested that HCFA address this in the final rule.

Response: The provision of law governing payment for outpatient CAH services, section 1834(g) of the Act, states that reasonable cost payment is to be made for outpatient CAH services. These services are defined, at section 1861(mm)(3) of the Act, as medical and other health services furnished by a CAH on an outpatient basis. Consistent with our policy on ambulance services, these services are treated under a separate benefit and are covered and paid for under separate statutory authority and a separate payment method. Therefore, we have no basis on which to authorize reasonable cost payment for ambulance services .

VII. MedPAC Recommendations

As required by law, we reviewed the March 1, 1999 report submitted by MedPAC to the Congress and gave its recommendations careful consideration in conjunction with the proposals set forth in the May 7, 1999 proposed rule. We also responded to the individual recommendations in the proposed rule. The comments we received on the treatment of the MedPAC recommendations are set forth below, along with our responses to those comments. However, if we received no comments from the public concerning a MedPAC recommendation or our response to that recommendation, we have not repeated the recommendation. Recommendations concerning the update factors for inpatient operating cost and for hospitals and hospital distinct part units excluded from the prospective payment system are discussed in Appendix C of this final rule.

A. Excluded Hospitals and Hospital Units (Recommendations 4B and 4C)

Recommendation: The Congress should adjust the wage-related portion of the excluded hospital target amount caps (the 75th percentile of target amounts for hospitals in the same class (psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospitals)) to account for geographic differences in labor costs. The Commission presumes legislation would be necessary to adjust the caps for wages.

Response in the Proposed Rule: We previously addressed this issue in the May 12, 1998 final rule (63 FR 26345). In that discussion, we explain why we believe the statutory language, the statutory scheme, and the legislative history, viewed together, strongly argue against making a wage adjustment in applying the target amount caps under the current statute.

Comment: We received two comments on our response to the MedPAC recommendation regarding the wage related portion of the excluded hospital target amount cap. Specifically, MedPAC commented that it would encourage HCFA to seek legislative authority to adjust the target amount caps for area wages. The other commenter asserted that such adjustments should be made since they are used for new facilities and because the exclusion of an adjustment is unfair to regions with higher labor costs.

Response: In the May 12, 1998 final rule, we explained our decision not to wage adjust the caps on the target amounts. The decision was based on our analysis of the statutory language, the statutory scheme, the legislative history, and policy considerations. First, we noted that section 4414 of the BBA, which provides that "* * * in the case of a hospital or unit that is within a class of hospital described in clause (iv), the Secretary shall estimate the 75th percentile of the target amounts for such hospitals within such class for cost reporting periods ending during fiscal year 1996," directs the Secretary to examine target amounts and calculate a single number for each of three classes of hospitals. In addition, we stated that while the statutory language directs the Secretary to calculate the 75th percentile of target amounts, it does not explicitly direct or even authorize the Secretary to make adjustments to that number after it is calculated. We agree that the absence of an explicit instruction, in and of itself, does not necessarily mean that the Secretary cannot implement a wage adjustment. However, Congressional "silence" on this issue must be construed in light of the statutory scheme and the legislative history, as well as policy considerations.

With regard to the statutory scheme, we stated that in requiring that we calculate a separate number for each class of hospitals, the Congress established a scheme that directs us to recognize differences across types of hospitals, but does not direct us to recognize differences in wages. In addition to the scheme of section 4414 itself, we considered this section in light of other statutory provisions. We concluded that, because the Congress explicitly requires wage adjustments in some contexts, failure to require a wage adjustment in this context reflects a judgement by the Congress that we should not make one under section 4414. In terms of the legislative history, we noted that there is no reference in the Conference Report to a wage adjustment to the TEFRA caps.

Finally, we asserted that while from a broad policy perspective a wage adjustment might be appropriate, policy considerations do not dictate a wage adjustment. A payment cap is different from a payment rate in that a cap only affects hospitals that are above the cap, while a payment rate affects all hospitals. Thus, we believe that while a wage adjustment might be preferable policy, the lack of a wage adjustment is not unreasonable. We stated that we would support a hospital-sponsored legislative change to permit wage adjustments and we will continue to do so; however, our decision, as expressed in the May 12, 1998 final rule, remains unchanged.

B. Disproportionate Share Hospitals (DSH) (Recommendations 3C, 3D, and 3E)

Recommendations: The Congress should require that disproportionate share payments be distributed according to each hospital's share of low-income patient costs, defined broadly to include all care to the poor. The measure of low-income costs should reflect: (1) Medicare patients eligible for Supplemental Security Income, Medicaid patients, patients sponsored by other indigent care programs, and uninsured and underinsured patients as represented by uncompensated care (both charity and bad debts); and (2) services provided in both inpatient and outpatient settings.

As under current policy, disproportionate share payment should be made in the form of an adjustment to the per-case payment rate. In this way, the total payment each hospital receives will reflect its volume of Medicare patients.

Through a minimum threshold for low-income share, the formula for distributing disproportionate share payments should concentrate payments among hospitals with the highest shares of poor patients. A reasonable range for this threshold would be levels that make between 50 percent and 60 percent of hospitals eligible for a payment. However, the size of the payment adjustment should increase gradually from zero at the threshold. The same distribution formula should apply to all hospitals covered by prospective payment.

The Secretary should collect the data necessary to revise the disproportionate share payment system from all hospitals paid under the prospective payment system.

Response in the Proposed Rule: We continue to give careful consideration to MedPAC's recommendations concerning the DSH adjustment made to operating payments under the prospective payment system.

We are in the process of preparing a report to the Congress on the Medicare DSH adjustment that includes several options for amending the statutory disproportionate share adjustment formula. We believe that any adjustment to the DSH formula or data sources should be directed and supported by the Congress.

The MedPAC option involves collecting data on uncompensated care, that is, charity and bad debts. Ideally, this would be a direct measure of a hospital's indigent care burden. However, there are problems associated with verification of such data and consistency of reporting nationally. We appreciate the Commission's recommendations about and assistance with the Medicare DSH adjustment as we formulate our legislative proposal and await Congressional action.

Comment: MedPAC commented that it does not believe that the verification process for uncompensated care (charity and bad debt) data needs to be burdensome. It recommends that HCFA keep reporting requirements to a minimum to limit data collection problems. Specifically, MedPAC recommends that HCFA collect only total uncompensated care data rather than separate data on the two components of uncompensated care—bad debts and charity care. HCFA should publish guidelines specifying the types of unpaid charges that can be included so that reporting problems are minimal.

Response: As we noted in our response to this recommendation in the proposed rule, we are preparing a Report to Congress on the revision of the DSH adjustment formula and have taken into consideration the inclusion of a recommendation to collect uncompensated care charge data by payer category (inpatient and outpatient) for our analysis. We believe it is important to promote the consistent reporting of data to the extent possible. We plan to minimize reporting problems by collecting only total uncompensated care data, thereby avoiding the problem of different definitions of bad debts, indigent care, and uncompensated care among States. However, we continue to anticipate other reporting problems such as hospital recordkeeping of these data.

VIII. Other Required Information

Requests for Data from the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have set up a process under which commenters can gain access to the raw data on an expedited basis. Generally, the data are available in computer tape or cartridge format; however, some files are available on diskette as well as on the Internet at HTTP://WWW.HCFA.GOV/STATS/PUBFILES.HTML. In our May 7, 1999 proposed rule, we published a list of data files that are available for purchase (64 FR 24746 and 24747).

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

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42 CFR Chapter IV is amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

A. Part 412 is amended as follows:

1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 412.2, the introductory text of paragraph (e) is republished and paragraph (e)(4) is revised to read as follows:

§ 412.2 Basis of payment.

* * * * *

(e) *Excluded costs.* The following inpatient hospital costs are excluded from the prospective payment amounts and are paid on a reasonable cost basis:

* * * * *

(4) Heart, kidney, liver, lung, and pancreas acquisition costs incurred by approved transplantation centers.

* * * * *

3. Section 412.22 is amended by adding a new paragraph (h) to read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(h) *Satellite facilities.* (1) For purposes of paragraphs (h)(2) through (h)(4) of this section, a satellite facility is a part of a hospital that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital.

(2) Except as provided in paragraph (h)(3) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital that has a satellite facility must meet the following criteria in order to be excluded from the prospective payment systems for any period:

(i) In the case of a hospital (other than a children's hospital) that was excluded from the prospective payment systems for the most recent cost reporting period beginning before October 1, 1997, the hospital's number of State-licensed and Medicare-certified beds, including those at the satellite facilities, does not exceed the hospital's number of State-licensed and Medicare-certified beds on the last day of the hospital's last cost reporting period beginning before October 1, 1997.

(ii) The satellite facility independently complies with—

(A) For psychiatric hospitals, the requirements under § 412.23(a);

(B) For rehabilitation hospitals, the requirements under § 412.23(b)(2);

(C) For children's hospitals, the requirements under § 412.23(d)(2); or

(D) For long-term care hospitals, the requirements under §§ 412.23(e)(1) through (e)(3)(i).

(iii) The satellite facility meets all of the following requirements:

(A) It maintains admission and discharge records that are separately identified from those of the hospital in which it is located and are readily available.

(B) It has beds that are physically separate from (that is, not commingled with) the beds of the hospital in which it is located.

(C) It is serviced by the same fiscal intermediary as the hospital of which it is a part.

(D) It is treated as a separate cost center of the hospital of which it is a part.

(E) For cost reporting and apportionment purposes, it uses an accounting system that properly allocates costs and maintains adequate statistical data to support the basis of allocation.

(F) It reports its costs on the cost report of the hospital of which it is a part, covering the same fiscal period and using the same method of apportionment as the hospital of which it is a part.

(3) Except as provided in paragraph (h)(4) of this section, the provisions of paragraph (h)(2) of this section do not apply to—

(i) Any hospital structured as a satellite facility on September 30, 1999, and excluded from the prospective payment systems on that date, to the extent the hospital continues operating under the same terms and conditions, including the number of beds and square footage considered, for purposes of Medicare participation and payment, to be part of the hospital, in effect on September 30, 1999; or

(ii) Any hospital excluded from the prospective payment systems under § 412.23(e)(2).

(4) In applying the provisions of paragraph (h)(3) of this section, any hospital structured as a satellite facility on September 30, 1999, may increase or decrease the square footage of the satellite facility or may decrease the number of beds in the satellite facility if these changes are made necessary by relocation of a facility—

(i) To permit construction or renovation necessary for compliance with changes in Federal, State, or local law; or

(ii) Because of catastrophic events such as fires, floods, earthquakes, or tornadoes.

4. Section 412.25 is amended by revising paragraphs (b) and (c) and adding a new paragraph (e) to read as follows:

§ 412.25 Excluded hospital units: Common requirements.

* * * * *

(b) *Changes in the size of excluded units.* For purposes of exclusions from the prospective payment systems under this section, changes in the number of beds and square footage considered to be part of each excluded unit are allowed as specified in paragraphs (b)(1) through (b)(3) of this section.

(1) *Increase in size.* Except as described in paragraph (b)(3) of this section, the number of beds and square footage of an excluded unit may be increased only at the start of a cost reporting period.

(2) *Decrease in size.* Except as described in paragraph (b)(3) of this section, the number of beds and square footage of an excluded unit may be decreased at any time during a cost reporting period if the hospital notifies its fiscal intermediary and the HCFA Regional Office in writing of the planned decrease at least 30 days before the date of the decrease, and maintains the information needed to accurately determine costs that are attributable to the excluded unit. Any decrease in the number of beds or square footage considered to be part of an excluded unit made during a cost reporting period must remain in effect for the rest of that cost reporting period.

(3) *Exception to changes in square footage and bed size.* The number of beds in an excluded unit may be decreased, and the square footage considered to be part of the unit may be either increased or decreased, at any time, if these changes are made necessary by relocation of a unit—

(i) To permit construction or renovation necessary for compliance with changes in Federal, State, or local law affecting the physical facility; or

(ii) Because of catastrophic events such as fires, floods, earthquakes, or tornadoes.

(c) *Changes in the status of hospital units.* For purposes of exclusions from the prospective payment systems under this section, the status of each hospital unit (excluded or not excluded) is determined as specified in paragraphs (c)(1) and (c)(2) of this section.

(1) The status of a hospital unit may be changed from not excluded to excluded only at the start of the cost reporting period. If a unit is added to a hospital after the start of a cost reporting period, it cannot be excluded from the prospective payment systems before the start of a hospital's next cost reporting period.

(2) The status of a hospital unit may be changed from excluded to not excluded at any time during a cost reporting period, but only if the hospital notifies the fiscal intermediary and the HCFA Regional Office in writing of the change at least 30 days before the date of the change, and maintains the information needed to accurately determine costs that are or are not attributable to the excluded unit. A change in the status of a unit from excluded to not excluded that is made during a cost reporting period must remain in effect for the rest of that cost reporting period.

* * * * *

(e) *Satellite facilities.* (1) For purposes of paragraphs (e)(2) through (e)(4) of this section, a satellite facility is a part of a hospital unit that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital.

(2) Except as provided in paragraph (e)(3) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital unit that establishes a satellite facility must meet the following requirements in order to be excluded from the prospective payment systems for any period:

(i) In the case of a unit excluded from the prospective payment systems for the most recent cost reporting period beginning before October 1, 1997, the unit's number of State-licensed and Medicare-certified beds, including those at the satellite facility, does not exceed the unit's number of State-licensed and Medicare-certified beds on the last day of the unit's last cost reporting period beginning before October 1, 1997.

(ii) The satellite facility independently complies with—

(A) For a rehabilitation unit, the requirements under § 412.23(b)(2); or

(B) For a psychiatric unit, the requirements under § 412.27(a).

(iii) The satellite facility meets all of the following requirements:

(A) It maintains admission and discharge records that are separately identified from those of the hospital in which it is located and are readily available.

(B) It has beds that are physically separate from (that is, not commingled with) the beds of the hospital in which it is located.

(C) It is serviced by the same fiscal intermediary as the hospital unit of which it is a part.

(D) It is treated as a separate cost center of the hospital unit of which it is a part.

(E) For cost reporting and apportionment purposes, it uses an accounting system that properly allocates costs and maintains adequate statistical data to support the basis of allocation.

(F) It reports its costs on the cost report of the hospital of which it is a part, covering the same fiscal period and using the same method of apportionment as the hospital of which it is a part.

(3) Except as specified in paragraph (e)(4) of this section, the provisions of paragraph (e)(2) of this section do not apply to any unit structured as a satellite facility on September 30, 1999, and excluded from the prospective payment systems on that date, to the extent the unit continues operating under the same terms and conditions, including the number of beds and square footage considered to be part of the unit, in effect on September 30, 1999.

(4) In applying the provisions of paragraph (h)(3) of this section, any unit structured as a satellite facility as of September 30, 1999, may increase or decrease the square footage of the satellite facility or may decrease the number of beds in the satellite facility at any time, if these changes are made necessary by relocation of the facility—

(i) To permit construction or renovation necessary for compliance with changes in Federal, State, or local law affecting the physical facility; or

(ii) Because of catastrophic events such as fires, floods, earthquakes, or tornadoes.

§ 412.105 [Amended]

5. Section 412.105 is amended by revising the cross reference "paragraph (g)(1)(ii) of this section" in paragraphs (f)(1)(iii) (three times) and (f)(2)(v) to read "paragraph (f)(1)(ii) of this section".

§ 412.256 [Amended]

6. In § 412.256, paragraph (c)(2), the date "October 1", appearing in two places, is revised to read "September 1".

7. Section 412.276 is amended by revising paragraph (a) to read as follows:

§ 412.276 Timing of MGCRB decision and its appeal.

(a) *Timing.* The MGCRB notifies the parties in writing, with a copy to HCFA, and issues a decision within 180 days after the first day of the 13-month period preceding the Federal fiscal year for which a hospital has filed a complete application. The hospital has 15 days from the date of the decision to request Administrator review.

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

B. Part 413 is amended as follows:

1. The authority citation for Part 413 is revised to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

2. Section 413.40 is amended by adding a sentence containing paragraphs (A) and (B) at the end of the definition of "ceiling" in paragraph (a)(3) and revising paragraphs (b)(1)(iii), (c)(4)(v), (f)(2)(ii)(A), and (g)(1) to read as follows:

§ 413.40 Ceiling on the rate-of-increase in hospital inpatient costs.

(a) *Introduction.* * * *

(3) *Definitions.* * * *

Ceiling * * * For a hospital-within-a-hospital, as described in § 412.22(e) of this chapter, the number of Medicare discharges in a cost reporting period does not include discharges of a patient to another hospital in the same building on or on the same campus, if—

(A) The patient is subsequently readmitted to the hospital-within-a-hospital directly from the other hospital; and

(B) The hospital-within-a-hospital has discharged to the other hospital and subsequently readmitted more than 5 percent (that is, in excess of 5.0 percent) of the total number of inpatients discharged from the hospital-within-a-hospital in that cost reporting period.

* * * * *

(b) *Cost reporting periods subject to the rate-of-increase ceiling.* (1) *Base period.* * * *

(iii) When the operational structure of a hospital or unit changes (that is, a freestanding hospital becomes an excluded unit or an excluded unit becomes a freestanding hospital, or an entity of a multicampus hospital becomes a newly created hospital or unit or a hospital or unit becomes a part of a multicampus hospital), the base period for the hospital or unit that

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changed its operational structure is the first cost reporting period of at least 12 months effective with the revised Medicare certification classification.

* * * * *

(c) *Cost subject to the ceiling.* * * *

(4) *Target amounts.* * * *

(v) In the case of a hospital that received payments under paragraph (f)(2)(ii) of this section as a newly created hospital or unit, to determine the hospital's target amount for the hospital's third 12-month cost reporting period, the payment amount determined under paragraph (f)(2)(ii) of this section for the preceding cost report period is updated to the third cost reporting period.

* * * * *

(f) *Comparison to the target amount for new hospitals and units.* * * *

(2) *Comparison.* * * *

(ii) *Median target amount.* (A) For cost reporting periods beginning on or after October 1, 1997, the amount of payment for a new psychiatric hospital or unit, a new rehabilitation hospital or unit, or a new long-term care hospital that was not paid as an excluded hospital prior to October 1, 1997, is the lower of the hospital's net inpatient operating cost per case or 110 percent of the national median of the target amounts for the class of excluded hospitals and units (psychiatric, rehabilitation, long-term care) as adjusted for differences in wage levels and updated to the first cost reporting period in which the hospital receives payment. The second cost reporting period is subject to the same target amount as the first cost reporting period.

* * * * *

(g) *Adjustment.* (1) *General rules.* (i) HCFA adjusts the amount of the operating costs considered in establishing the rate-of-increase ceiling for one or more cost reporting periods, including both periods subject to the ceiling and the hospital's base period, under the circumstances specified in paragraphs (g)(2), (g)(3), and (g)(4) of this section.

(ii) When the hospital requests an adjustment, HCFA makes an adjustment only to the extent that the hospital's operating costs are reasonable, attributable to the circumstances specified separately, identified by the hospital, and verified by the intermediary.

(iii) When the hospital requests an adjustment, HCFA makes an adjustment only if the hospital's operating costs exceed the rate-of-increase ceiling imposed under this section.

(iv) In the case of a psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospital, the amount of payment under paragraph (g)(3) of this section may not exceed the payment amount based on the target amount determined under paragraph (c)(4)(iii) of this section.

(v) In the case of a hospital or unit that received a revised FY 1998 target amount under the rebasing provisions of paragraph (b)(1)(iv) of this section, the amount of an adjustment payment for a cost reporting period is based on a comparison of the hospital's operating costs for the cost reporting period to the average costs and statistics for the cost reporting periods used to determine the FY 1998 rebased target amount.

* * * * *

§ 413.86 [Amended]

3. Section 413.86 is amended as follows:

a. In paragraph (b), the definition of "approved geriatric program" is revised to read as set forth below.

b. In paragraph (b), under paragraph (1) of the definition of "approved medical residency program", the reference "§ 415.200(a) of this chapter" is revised to read "§ 415.152 of this chapter".

c. In paragraph (e)(1)(ii)(C), the reference "paragraph (j)(2) of this section" is revised to read "paragraph (k)(1) of this section".

d. In paragraph (e)(1)(iv), the reference, "paragraph (j)(1) of this section", is revised to read "paragraph (k)(1) of this section".

e. A new paragraph (f)(4)(iii) is added, paragraphs (g)(1)(i), (ii), and (iii), (g)(6) introductory text, (g)(6)(i) and (ii), and the first sentence of paragraph (g)(6)(iii) are revised, paragraph (g)(7) is redesignated as paragraph (g)(9), and new paragraphs (g)(7) and (g)(8) are added to read as follows:

§ 413.86 Direct graduate medical education payments.

* * * * *

(b) * * *

Approved geriatric program means a fellowship program of one or more years in length that is approved by one of the national organizations listed in § 415.152 of this chapter under that respective organization's criteria for geriatric fellowship programs.

* * * * *

(f) *Determining the total number of FTE residents.* * * *

(4) * * *

(iii) The hospital must incur all or substantially all of the costs for the training program in the nonhospital setting in accordance with the definition in paragraph (b) of this section.

(g) *Determining the weighted number of FTE residents.* * * *

(1) * * *

(i) For residency programs other than those specified in paragraphs (g)(1)(ii) and (g)(1)(iii) of this section, the initial residency period is the minimum number of years of formal training necessary to satisfy the requirements for initial board eligibility in the particular specialty for which the resident is training, as specified in the most recently published edition of the Graduate Medical Education Directory.

(ii) For residency programs in osteopathy, dentistry, and podiatry, the minimum requirement for certification in a specialty or subspecialty is the minimum number of years of formal training necessary to satisfy the requirements of the appropriate approving body listed in § 415.152 of this chapter.

(iii) For residency programs in geriatric medicine, accredited by the appropriate approving body listed in 415.152 of this chapter, these programs are considered approved programs on the later of—

(A) The starting date of the program within a hospital; or

(B) The hospital's cost reporting periods beginning on or after July 1, 1985.

* * * * *

(6) If a hospital establishes a new medical residency training program as defined in paragraph (g)(9) of this section on or after January 1, 1995, the hospital's FTE cap described under paragraph (g)(4) of this section may be adjusted as follows:

(i) If a hospital had no allopathic or osteopathic residents in its most recent cost reporting period ending on or before December 31, 1996, and it establishes a new medical residency training program on or after January 1, 1995, the hospital's unweighted FTE resident cap under paragraph (g)(4) of this section may be adjusted based on the product of the highest number of residents in any program year during the third year of the first program's existence for all new residency training programs and the number of years in which residents are expected to complete the program based on the minimum accredited length for the type of program. The adjustment to the cap may not exceed the number of accredited slots available to the hospital for the new program.

(A) If the residents are spending an entire program year (or years) at one hospital and the remainder of the program at another hospital, the adjustment to each respective hospital's cap is equal to the product of the highest number of residents in any program year during the third year of the first program's existence and the number of years the residents are training at each respective hospital.

(B) Prior to the implementation of the hospital's adjustment to its FTE cap beginning with the fourth year of the hospital's residency program, the hospital's cap may be adjusted during each of the first 3 years of the hospital's new residency program using the actual number of residents participating in the new program. The adjustment may not exceed the number of accredited slots available to the hospital for each program year.

(C) Except for rural hospitals, the cap will not be adjusted for new programs established more than 3 years after the first program begins training residents.

(D) An urban hospital that qualifies for an adjustment to its FTE cap under paragraph (g)(6)(i) of this section is not permitted to be part of an affiliated group for purposes of establishing an aggregate FTE cap.

(E) A rural hospital that qualifies for an adjustment to its FTE cap under paragraph (g)(6)(i) of this section is permitted to be part of an affiliated group for purposes of establishing an aggregate FTE cap.

(ii) If a hospital had allopathic or osteopathic residents in its most recent cost reporting period ending on or before December 31, 1996, the hospital's unweighted FTE cap may be adjusted for new medical residency training programs established on or after January 1, 1995 and on or before August 5, 1997. The adjustment to the hospital's FTE resident limit for the new program is based on the product of the highest number of residents in any program year during the third year of the newly established program and the number of years in which residents are expected to complete each program based on the minimum accredited length for the type of program.

(A) If the residents are spending an entire program year (or years) at one hospital and the remainder of the program at another hospital, the adjustment to each respective hospital's cap is equal to the product of the highest number of residents in any program year during the third year of the first program's existence and the number of years the residents are training at each respective hospital.

(B) Prior to the implementation of the hospital's adjustment to its FTE cap beginning with the fourth year of the hospital's residency program, the hospital's cap may be adjusted during each of the first 3 years of the hospital's new residency program, using the actual number of residents in the new programs. The adjustment may not exceed the number of accredited slots available to the hospital for each program year.

(iii) If a hospital with allopathic or osteopathic residents in its most recent cost reporting period ending on or before December 31, 1996, is located in a rural area (or other hospitals located in rural areas that added residents under paragraph (g)(6)(i) of this section), the hospital's unweighted FTE limit may be adjusted in the same manner described in paragraph (g)(6)(ii) of this section to reflect the increase for residents in the new medical residency training programs established after August 5, 1997. * * *

(7) A hospital that began construction of its facility prior to August 5, 1997, and sponsored new medical residency training programs on or after January 1, 1995 and on or before August 5, 1997, that either received initial accreditation by the appropriate accrediting body or temporarily trained residents at another hospital(s) until the facility was completed, may receive an adjustment to its FTE cap.

(i) The newly constructed hospital's FTE cap is equal to the lesser of:

(A) The product of the highest number of residents in any program year during the third year of the newly established program and the number of years in which residents are expected to complete the programs based on the minimum accredited length for each type of program; or

(B) The number of accredited slots available to the hospital for each year of the programs.

(ii) If the new medical residency training programs sponsored by the newly constructed hospital have been in existence for 3 years or more by the time the residents begin training at the newly constructed hospital, the newly constructed hospital's cap will be based on the number of residents training in the third year of the programs begun at the temporary training site.

(iii) If the new medical residency training programs sponsored by the newly constructed hospital have been in existence for less than 3 years by the time the residents begin training at the newly constructed hospital, the newly constructed hospital's cap will be based on the number of residents training at the newly constructed hospital in the third year of the programs (including the years at the temporary training site).

(iv) A hospital that qualifies for an adjustment to its FTE cap under paragraph (g)(7) of this section may be part of an affiliated group for purposes of establishing an aggregate FTE cap.

(v) The provisions of this paragraph (g)(7) are applicable during portions of cost reporting periods occurring on or after October 1, 1999.

(8) A hospital may receive a temporary adjustment to its FTE cap to reflect residents added because of another hospital's closure if the hospital meets the following criteria:

(i) The hospital is training additional residents from a hospital that closed on or after July 1, 1996.

(ii) No later than 60 days after the hospital begins to train the residents, the hospital submits a request to its fiscal intermediary for a temporary adjustment to its FTE cap, documents that the hospital is eligible for this temporary adjustment by identifying the residents who have come from the closed hospital and have caused the hospital to exceed its cap, and specifies the length of time the adjustment is needed.

(iii) For purposes of paragraph (g)(8) of this section, "closure" means the hospital terminates its Medicare agreement under the provisions of § 489.52 of this chapter.

* * * * *

PART 483—REQUIREMENTS FOR STATES AND LONG-TERM CARE FACILITIES

C. Part 483 is amended as set forth below:

1. The authority citation for Part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 483.20, the introductory text of paragraph (b)(2) is revised to read as follows:

§ 483.20 Resident assessment.

* * * * *

(b) *Comprehensive assessments.*

* * *

(2) *When required.* Subject to the timeframes prescribed in § 413.343(b) of this chapter, a facility must conduct a comprehensive assessment of a resident in accordance with the timeframes specified in paragraphs (b)(2) (i) through (iii) of this section. The timeframes prescribed in § 413.343(b) of this chapter do not apply to CAHs.

* * * * *

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

D. Part 485 is amended as follows:

1. The authority citation for Part 485 continues to read as follows:

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Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 485.618 is amended by revising paragraph (d) to read as follows:

§ 485.618 Conditions of participation: Emergency services.

* * * * *

(d) *Standard: Personnel.* There must be a doctor of medicine or osteopathy, a physician assistant, or a nurse practitioner with training or experience in emergency care on call and immediately available by telephone or radio contact, and available on site within the following timeframes:

(1) Within 30 minutes, on a 24-hour a day basis, if the CAH is located in an area other than an area described in paragraph (d)(2) of this section; or

(2) Within 60 minutes, on a 24-hour a day basis, if all of the following requirements are met:

(i) The CAH is located in an area designated as a frontier area (that is, an area with fewer than six residents per square mile based on the latest population data published by the Bureau of the Census) or in an area that meets criteria for a remote location adopted by the State in its rural health care plan, and approved by HCFA, under section 1820(b) of the Act.

(ii) The State has determined under criteria in its rural health care plan that allowing an emergency response time longer than 30 minutes is the only feasible method of providing emergency care to residents of the area served by the CAH.

(iii) The State maintains documentation showing that the response time of up to 60 minutes at a particular CAH it designates is justified because other available alternatives would increase the time needed to stabilize a patient in an emergency.

* * * * *

3. In § 485.645, the introductory text of paragraph (d) is republished and paragraph (d)(6) is revised to read as follows:

§ 485.645 Special requirements for CAH providers of long-term care services ("swing beds").

* * * * *

(d) *SNF services.* The CAH is substantially in compliance with the following SNF requirements contained in subpart B of part 483 of this chapter:

* * * * *

(6) Comprehensive assessment, comprehensive care plan, and discharge planning (§ 483.20 (b), (d), and (e) of this chapter, except that the CAH is not required to comply with the requirements for frequency, scope and number of assessments prescribed in § 413.343(b)).

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: July 21, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

Dated: July 22, 1999.

Donna E. Shalala,

Secretary.

Editorial Note: The following addendum and appendixes will not appear in the Code of Federal Regulations.

Addendum—Schedule of Standardized Amounts Effective with Discharges Occurring On or After October 1, 1999; Payment Amounts for Blood Clotting Factor Effective for Discharges Occurring On or After October 1, 1999; and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 1999

I. Summary and Background

In this addendum, we are setting forth the amounts and factors for determining prospective payment rates for Medicare inpatient operating costs and Medicare inpatient capital-related costs. We are also setting forth rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the prospective payment system.

For discharges occurring on or after October 1, 1999, except for sole community hospitals, Medicare-dependent, small rural hospitals, and hospitals located in Puerto Rico, each hospital's payment per discharge under the prospective payment system will be based on 100 percent of the Federal national rate.

Sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge. Medicare-dependent, small rural hospitals are paid based on the Federal national rate or, if higher, the Federal national rate plus 50 percent of the difference between the Federal national rate and the updated hospital-specific rate based on FY 1982 or FY 1987 cost per discharge, whichever is higher. For hospitals in Puerto Rico, the payment per discharge is based on the sum of 50 percent of a Puerto Rico rate and 50 percent of a national rate.

As discussed below in section II, we are making changes in the determination of the prospective payment rates for Medicare inpatient operating costs for FY 2000. The changes, to be applied prospectively, affect the calculation of the Federal rates. In section III of this addendum, we are updating the payments per unit for blood clotting factor provided to hospital inpatients who have hemophilia. We are also adding another product (clotting factor, porcine (HCPCS code J7191)) to the list of clotting factors that are paid under this benefit.

In section IV of this addendum, we discuss our changes for determining the prospective payment rates for Medicare inpatient capital-related costs for FY 2000. Section V of this addendum sets forth our changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system for FY 2000. The tables to which we refer in the preamble to this final rule are presented at the end of this addendum in section VI.

II. Changes to Prospective Payment Rates For Inpatient Operating Costs for FY 2000

The basic methodology for determining prospective payment rates for inpatient operating costs is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for inpatient operating costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the factors used for determining the prospective payment rates. The Federal and Puerto Rico rate changes, once issued as final, will be effective with discharges occurring on or after October 1, 1999. As required by section 1886(d)(4)(C) of the Act, we must also adjust the DRG classifications and weighting factors for discharges in FY 2000.

In summary, the standardized amounts set forth in Tables 1A and 1C of section VI of this addendum reflect—

- Updates of 1.1 percent for all areas (that is, the market basket percentage increase of 2.9 percent minus 1.8 percentage points);
- An adjustment to ensure budget neutrality as provided for in sections 1886 (d)(4)(C)(iii) and (d)(3)(E) of the Act by applying new budget neutrality adjustment factors to the large urban and other standardized amounts;
- An adjustment to ensure budget neutrality as provided for in section 1886(d)(8)(D) of the Act by removing the FY 1999 budget neutrality factor and applying a revised factor;

- An adjustment to apply the revised outlier offset by removing the FY 1999 outlier offsets and applying a new offset; and
- An adjustment in the Puerto Rico standardized amounts to reflect the application of a Puerto Rico-specific wage index.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contains a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required us to determine the Medicare target amounts for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates (52 FR 33043, 33066).

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886(d)(2) (B) and (C) of the Act required us to update base-year per discharge costs for FY 1984 and then standardize the cost data in order to remove the effects of certain sources of variation in cost among hospitals. These effects include case mix, differences in area wage levels, cost-of-living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

Under sections 1886 (d)(2)(H) and (d)(3)(E) of the Act, in making payments under the prospective payment system, the Secretary estimates from time to time the proportion of costs that are wages and wage-related costs. Since October 1, 1997, when the market basket was last revised, we have considered 71.1 percent of costs to be labor-related for purposes of the prospective payment system. The average labor share in Puerto Rico is 71.3 percent. We are revising the discharge-weighted national standardized amount for Puerto Rico to reflect the proportion of discharges in large urban and other areas from the FY 1998 MedPAR file.

2. Computing Large Urban and Other Area Averages

Sections 1886(d) (2)(D) and (3) of the Act require the Secretary to compute two average standardized amounts for discharges occurring in a fiscal year: one for hospitals located in large urban areas and one for hospitals located in other areas. In addition, under sections 1886(d)(9) (B)(iii) and (C)(i) of the Act, the average standardized amount per discharge must be determined for hospitals located in urban and other areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 50 percent of the applicable Puerto Rico standardized amount and 50 percent of a national standardized payment amount.

Section 1886(d)(2)(D) of the Act defines "urban area" as those areas within a Metropolitan Statistical Area (MSA). A "large urban area" is defined as an urban area with a population of more than 1,000,000. In addition, section 4009(i) of Public Law 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas." Areas that are not included in MSAs are considered "rural areas" under section 1886(d)(2)(D) of the Act. Payment for discharges from hospitals located in large urban areas will be based on the large urban standardized amount. Payment for discharges from hospitals located in other urban and rural areas will be based on the other standardized amount.

Based on 1997 population estimates published by the Bureau of the Census, 61 areas meet the criteria to be defined as large urban areas for FY 2000. These areas are identified by a footnote in Table 4A. We note that on July 6, 1999, the Office of Management and Budget announced the designation of the Corvallis, Oregon and the Auburn-Opelika, Alabama MSAs. We have incorporated these changes in this final rule.

3. Updating the Average Standardized Amounts

Under section 1886(d)(3)(A) of the Act, we update the area average standardized amounts each year. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are updating the large urban areas' and the other areas' average standardized amounts for FY 2000 using the applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act. Section 1886(b)(3)(B)(i)(XV) of the Act specifies that, for hospitals in all areas, the update factor for the standardized amounts for FY 2000 is equal to the market basket percentage increase minus 1.8 percentage points.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecast of the hospital market basket increase for FY 2000 is 2.9 percent. Thus, for FY 2000, the update to the average standardized amounts equals 1.1 percent.

As in the past, we are adjusting the FY 1999 standardized amounts to remove the effects of the FY 1999 geographic reclassifications and outlier payments before applying the FY 2000 updates. That is, we are increasing the standardized amounts to restore the reductions that were made for the effects of geographic reclassification and outliers. We then apply the new offsets to the standardized amounts for outliers and geographic reclassifications for FY 2000.

Although the update factor for FY 2000 is set by law, we are required by section 1886(e)(3) of the Act to report to the Congress on our final recommendation of update factors for FY 2000 for both prospective payment hospitals and hospitals excluded from the prospective payment system. We have included our final recommendations in Appendix C to this final rule.

4. Other Adjustments to the Average Standardized Amounts

a. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment.

Section 1886(d)(4)(C)(iii) of the Act specifies that beginning in FY 1991, the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal

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to the average case weight prior to recalibration.

Section 1886(d)(3)(E) of the Act requires us to update the hospital wage index on an annual basis beginning October 1, 1993. This provision also requires us to make any updates or adjustments to the wage index in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that DRG reclassification and recalibration of the relative weights be budget neutral, and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be budget neutral, we used historical discharge data to simulate payments and compared aggregate payments using the FY 1999 relative weights and wage index to aggregate payments using the FY 2000 relative weights and wage index. The same methodology was used for the FY 1999 budget neutrality adjustment. (See the discussion in the September 1, 1992 final rule (57 FR 39832).) Based on this comparison, we computed a budget neutrality adjustment factor equal to 0.997808. We also adjust the Puerto Rico-specific standardized amounts for the effect of DRG reclassification and recalibration. We computed a budget neutrality adjustment factor for Puerto Rico-specific standardized amounts equal to 0.999745. These budget neutrality adjustment factors are applied to the standardized amounts without removing the effects of the FY 1999 budget neutrality adjustments. We do not remove the prior budget neutrality adjustment because estimated aggregate payments after the changes in the DRG relative weights and wage index should equal estimated aggregate payments prior to the changes. If we removed the prior year adjustment, we would not satisfy this condition.

In addition, we will continue to apply these same adjustment factors to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 1999. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

b. Reclassified Hospitals—Budget Neutrality Adjustment.

Section 1886(d)(8)(B) of the Act provides that certain rural hospitals are deemed urban effective with discharges occurring on or after October 1, 1988. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the Medicare Geographic Classification Review Board (MGCRB). Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that total aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8)(B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. To calculate this budget neutrality factor, we used historical discharge data to simulate payments, and compared total prospective payments (including IME and DSH payments) prior to any reclassifications to total prospective payments after reclassifications. In the May 7, 1999 proposed rule, we applied an adjustment factor of 0.994453 to ensure that the effects of reclassification are budget neutral. The final budget neutrality adjustment factor is 0.993799.

The adjustment factor is applied to the standardized amounts after removing the effects of the FY 1999 budget neutrality adjustment factor. We note that the proposed FY 2000 adjustment reflects wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of February 26, 1999. The effects of any additional reclassification changes resulting from appeals and reviews of the MGCRB decisions for FY 2000 or from a hospital's request for the withdrawal of a reclassification request are reflected in the final budget neutrality adjustment required under section 1886(d)(8)(D) of the Act and published in this final rule.

c. Outliers.

Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments for "outlier" cases, cases involving extraordinarily high costs (cost outliers). Section 1886(d)(3)(B) of the Act requires the Secretary to adjust both the large urban and other area national standardized amounts by the same factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section 1886(d)(9)(B)(iv) of the Act requires the Secretary to adjust the large urban and other standardized amounts applicable to hospitals in Puerto Rico to account for the estimated proportion of total DRG payments made to outlier cases. Furthermore, under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total payments based on DRG prospective payment rates.

i. FY 2000 outlier thresholds. For FY 1999, the fixed loss cost outlier threshold is equal to the prospective payment for the DRG plus $21,100 ($10,129 for hospitals that have not yet entered the prospective payment system for capital-related costs). The marginal cost factor for cost outliers (the percent of costs paid after costs for the case exceed the threshold) is 80 percent. We applied an outlier adjustment to the FY 1999 standardized amounts of 0.948740 for the large urban and other areas rates and 0.9392 for the capital Federal rate.

For FY 2000, we proposed to establish a fixed loss cost outlier threshold equal to the prospective payment rate for the DRG plus the IME and DSH payments plus $14,575 ($13,309 for hospitals that have not yet entered the prospective payment system for capital related costs). In addition, we proposed to maintain the marginal cost factor for cost outliers at 80 percent. In setting the final FY 2000 outlier thresholds, we used updated data. In this final rule, we are establishing a fixed loss cost outlier threshold for FY 2000 equal to the prospective payment rate for the DRG plus the IME and DSH payments plus $14,050 ($12,827 for hospitals that have not yet entered the prospective payment system for capital related costs). In addition, we are maintaining the marginal cost factor for cost outliers at 80 percent. As we have explained in the past, to calculate outlier thresholds we apply a cost inflation factor to update costs for the cases used to simulate payments. For FY 1998, we used a cost inflation factor of minus 2.005 percent (a cost per case decrease of 2.005 percent). For FY 1999, we used a cost inflation factor of minus 1.724 percent. To set the proposed FY 2000 outlier thresholds, we used a cost inflation factor (or cost adjustment factor) of zero percent. We are using a cost inflation factor of zero percent to set the final FY 2000 outlier thresholds. This factor reflects our analysis of the best available cost report data as well as calculations (using the best available data) indicating that the percentage of actual outlier payments for FY 1998 is higher than we projected before the beginning of FY 1999, and that the percentage of actual outlier payments for FY 1999 will likely be higher than we projected before the beginning of FY 1999. The calculations of "actual" outlier payments are discussed further below.

ii. Other changes concerning outliers. In accordance with section 1886(d)(5)(A)(iv) of the Act, we calculated outlier thresholds so that outlier payments are projected to equal 5.1 percent of total payments based on DRG prospective payment rates. In accordance with section 1886(d)(3(E), we reduced the FY 2000 standardized amounts by the same percentage to account for the projected proportion of payments paid to outliers.

As stated in the September 1, 1993 final rule (58 FR 46348), we establish outlier thresholds that are applicable to both inpatient operating costs and inpatient capital-related costs. When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a higher percentage of outlier payments for capital-related costs than for operating costs. We project that the thresholds for FY 2000 will result in outlier payments equal to 5.1 percent of operating DRG payments and 6.0 percent of capital payments based on the Federal rate.

The proposed outlier adjustment factors applied to the standardized amounts for FY 2000 were as follows:

	Operating standardized amounts	Capital federal rate
National	0.948934	0.9397
Puerto Rico	0.969184	0.9334

The final outlier adjustment factors applied to the standardized amounts for FY 2000 are as follows:

	Operating standardized amounts	Capital federal rate
National	0.948859	0.9402
Puerto Rico	0.968581	0.9331

As in the proposed rule, we apply the outlier adjustment factors after removing the effects of the FY 1999 outlier adjustment factors on the standardized amounts.

Table 8A in section VI of this addendum contains the updated Statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the fiscal intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. Effective October 1, 1999, these Statewide average ratios replace the ratios published in the July 31, 1998 final rule (63 FR 41099). Table 8B contains comparable Statewide average capital cost-to-charge ratios. These average ratios would be used to calculate cost outlier payments for those hospitals for which the fiscal intermediary computes operating cost-to-charge ratios lower than 0.209551 OR greater than 1.284349 and capital cost-to-charge ratios lower than 0.01290 or greater than 0.17205. This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. We note that the cost-to-charge ratios in Tables 8A and 8B will be used during FY 2000 when hospital-specific cost-to-charge ratios based on the latest settled cost report are either not available or outside the three standard deviations range.

iii. FY 1998 and FY 1999 outlier payments. In the July 31, 1998 final rule (63 FR 41009), we stated that, based on available data, we estimated that actual FY 1998 outlier payments would be approximately 5.4 percent of actual total DRG payments. This was computed by simulating payments using actual FY 1997 bill data available at the time. That is, the estimate of actual outlier payments did not reflect FY 1998 bills but instead reflected the application of FY 1998 rates and policies to available FY 1997 bills. Our current estimate, using available FY 1998 bills, is that actual outlier payments for FY 1998 were approximately 6.5 percent of actual total DRG payments. We note that the MedPAR file for FY 1998 discharges continues to be updated. Thus, the data indicate that, for FY 1998, the percentage of actual outlier payments relative to actual total payments is higher than we projected before FY 1998 (and thus exceeds the percentage by which we reduced the standardized amounts for FY 1998). In fact, the data indicate that the proportion of actual outlier payments for FY 1998 exceeds 6 percent. Nevertheless, consistent with the policy and statutory interpretation we have maintained since the inception of the prospective payment system, we do not plan to recoup money and make retroactive adjustments to outlier payments for FY 1998.

We currently estimate that actual outlier payments for FY 1999 will be approximately 6.3 percent of actual total DRG payments, higher than the 5.1 percent we projected in setting outlier policies for FY 1999. This estimate is based on simulations using the March 1999 update of the provider-specific file and the March 1999 update of the FY 1998 MedPAR file (discharge data for FY 1998 bills). We used these data to calculate an estimate of the actual outlier percentage for FY 1999 by applying FY 1999 rates and policies to available FY 1998 bills.

Comment: Several commenters indicated that the proposed 30-percent increase in the cost outlier threshold is too great and implementing that threshold will cause significant revenue losses for hospitals with large numbers of high-cost cases. They observed that the proposed increase in the fixed loss threshold may be reasonable to reach the 5.1 percent level of outlier payments, but suggested an increase in funding for outlier cases from the current level of 5.1 percent to 5.5 percent, or even 6.0 percent, with a corresponding reduction in the fixed loss threshold.

Response: Outlier payments are meant to protect hospitals against the financial effects of treating extraordinarily high-cost cases. Increasing the level of outlier payments to 5.5 percent would result in a corresponding offset to the standardized amounts, proportionally reducing payments for typical cases. We believe that it is in the best interest of hospitals and the program to maintain the level of outliers at 5.1 percent, thereby providing all hospitals with somewhat larger rates for typical cases.

We also note that we estimate that actual outlier payments for FY 1998 were equal to 6.5 percent of actual total DRG payments, and 6.3 percent for FY 1999. We believe that outlier payments are greater than expected for these years in part because actual hospital costs may be higher than reflected in the methodology used to set outlier thresholds for those years. While we are attempting to improve our estimate of payments for FY 2000 by using a cost inflation factor of zero percent rather than a negative inflation factor, we believe it would be imprudent to raise the estimated level of outlier payments at a time when actual outlier payments have exceeded our estimates by more than one percentage point for the past 2 years.

Comment: One commenter expressed concern that, in the proposed rule, we referenced our longstanding policy regarding overpayments and underpayments and retroactive adjustments to outlier payments. The commenter stated that this reference appears to be necessitated by a large number of hospital appeals and questioned whether we intend to provide a clarification instead of what appears to be a new interpretation.

Response: As we stated in the proposed rule, our statement that "we do not plan to recoup money and make retroactive adjustments to outlier payments for FY 1998," because the actual outlier payments exceed 6 percent of total payments, is consistent with the policy and statutory interpretation we have maintained since the inception of the prospective payment system. We have publicly stated our policy on several occasions. For example, in the January 3, 1984 final rule (49 FR 234, 265), we stated:

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"Using data we had available, we set the outlier criteria so that an estimated 6 percent of total payments would be made for outliers. Nevertheless, there is no necessary connection between the amount of estimated outlier payments and the actual payments made to hospitals for cases that actually meet the outlier criteria. While we expect that under these criteria, outlier payments will approximate 6 percent of total payments, we will pay for any outlier that meets the criteria, even if aggregate outlier payments result in more than 6 percent of total payments." Also, in the September 1, 1992 final rule (57 FR 39784), we stated that "* * * in light of the nature of the prospective payment system, and our attempts to estimate outlier payments as accurately as possible, we believe that we have satisfied the statute and that no retroactive adjustment is warranted." In the same rule, we also stated that "* * * retroactive adjustment of system wide elements would be contrary to the nature of the prospective payment system." Therefore, our comment in the proposed rule concerning the overpayment or underpayment of outliers was a restatement of our longstanding policy.

5. FY 2000 Standardized Amounts

The adjusted standardized amounts are divided into labor and nonlabor portions. Table 1A contains the two national standardized amounts that are applicable to all hospitals, except for hospitals in Puerto Rico. Under section 1886(d)(9)(A)(ii) of the Act, the Federal portion of the Puerto Rico payment rate is based on the discharge-weighted average of the national large urban standardized amount and the national other standardized amount (as set forth in Table 1A). The labor and nonlabor portions of the national average standardized amounts for Puerto Rico hospitals are set forth in Table 1C. This table also includes the Puerto Rico standardized amounts.

B. Adjustments for Area Wage Levels and Cost of Living

Tables 1A and 1C, as set forth in this addendum, contain the labor-related and nonlabor-related shares used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico. This section addresses two types of adjustments to the standardized amounts that are made in determining the prospective payment rates as described in this addendum.

1. Adjustment for Area Wage Levels

Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act requires that we make an adjustment to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of this preamble, we discuss the data and methodology for the FY 2000 wage index. The wage index is set forth in Tables 4A through 4F of this addendum.

2. Adjustment for Cost of Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 2000, we are adjusting the payments for hospitals in Alaska and Hawaii by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
County of Honolulu	1.25
County of Hawaii	1.15
County of Kauai	1.225
County of Maui	1.225
County of Kalawao	1.225

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Relative Weights

As discussed in section II of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed relative weights for each DRG that reflect the resource utilization of cases in each DRG relative to Medicare cases in other DRGs. Table 5 of section VI of this addendum contains the relative weights that we will use for discharges occurring in FY 2000. These factors have been recalibrated as explained in section II of the preamble.

D. Calculation of Prospective Payment Rates for FY 2000

General Formula for Calculation of Prospective Payment Rates for FY 2000

Prospective payment rate for all hospitals located outside of Puerto Rico except sole community hospitals and Medicare-dependent, small rural hospitals = Federal rate.

Prospective payment rate for sole community hospitals = Whichever of the following rates yields the greatest aggregate payment: 100 percent of the Federal rate, 100 percent of the updated FY 1982 hospital-specific rate, or 100 percent of the updated FY 1987 hospital-specific rate.

Prospective payment rate for Medicare-dependent, small rural hospitals = 100 percent of the Federal rate, or, if the greater of the updated FY 1982 hospital-specific rate or the updated FY 1987 hospital-specific rate is higher than the Federal rate, 100 percent of the Federal rate plus 50 percent of the difference between the applicable hospital-specific rate and the Federal rate.

Prospective payment rate for Puerto Rico = 50 percent of the Puerto Rico rate + 50 percent of a discharge-weighted average of the national large urban standardized amount and the national other standardized amount.

1. Federal Rate

For discharges occurring on or after October 1, 1999 and before October 1, 2000, except for sole community hospitals, Medicare-dependent, small rural hospitals, and hospitals in Puerto Rico, the hospital's payment is based exclusively on the Federal national rate.

The payment amount is determined as follows:

Step 1—Select the appropriate national standardized amount considering the type of hospital and designation of the hospital as large urban or other (see Table 1A in section VI of this addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4A, 4B, and 4C of section VI of this addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted, if appropriate, under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5 of section VI of this addendum).

2. Hospital-Specific Rate (Applicable Only to Sole Community Hospitals and Medicare-Dependent, Small Rural Hospitals)

Sections 1886(d)(5)(D)(i) and (b)(3)(C) of the Act provide that sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge.

Sections 1886(d)(5)(G) and (b)(3)(D) of the Act provide that Medicare-dependent, small rural hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate or the Federal rate plus 50 percent of the difference between the Federal rate and the greater of the updated hospital-specific rate based on FY 1982 and FY 1987 cost per discharge.

Hospital-specific rates have been determined for each of these hospitals based on both the FY 1982 cost per discharge and the FY 1987 cost per discharge. For a more detailed discussion of the calculation of the FY 1982 hospital-specific rate and the FY 1987 hospital-specific rate, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); and the September 4, 1990 final rule (55 FR 35994).

a. Updating the FY 1982 and FY 1987 Hospital-Specific Rates for FY 2000.

We are increasing the hospital-specific rates by 1.1 percent (the hospital market basket percentage increase of 2.9 percent minus 1.8 percentage points) for sole community hospitals and Medicare-dependent, small rural hospitals located in all areas for FY 2000. Section 1886(b)(3)(C)(iv) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals equals the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for FY 2000, is the market basket rate of increase minus 1.8 percentage points. Section 1886(b)(3)(D) of the Act provides that the update factor applicable to the hospital-specific rates for Medicare-dependent, small rural hospitals equals the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for FY 2000, is the market basket rate of increase minus 1.8 percentage points.

b. Calculation of Hospital-Specific Rate.

For sole community hospitals and Medicare-dependent, small rural hospitals, the applicable FY 2000 hospital-specific rate is calculated by increasing the hospital's hospital-specific rate for the preceding fiscal year by the applicable update factor (1.1 percent), which is the same as the update for all prospective payment hospitals. In addition, the hospital-specific rate is adjusted by the budget neutrality adjustment factor (that is, 0.997808) as discussed in section II.A.4.a of this Addendum. The resulting rate is used in determining under which rate a sole community hospital or Medicare-dependent, small rural hospital is paid for its discharges beginning on or after October 1, 1999, based on the formula set forth above.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 1999 and Before October 1, 2000

a. Puerto Rico Rate. The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban or other designation of the hospital (see Table 1C of section VI of the addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate Puerto Rico-specific wage index (see Table 4F of section VI of the addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 50 percent.

Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5 of section VI of the addendum).

b. National Rate. The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1C of section VI of the addendum) by the appropriate national wage index (see Tables 4A and 4B of section VI of the addendum).

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 50 percent.

Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5 of section VI of the addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

Comment: One commenter asked if the temporary relief payment provision of the Balanced Budget Act of 1997 (BBA) would continue into FY 2000. The commenter suggested that, in light of reports that implementation of the hospital-related provisions of the BBA provided larger than expected savings, we consider extending the provision into next year and increasing the amount of relief.

Response: Under section 4401(b) of the BBA, the temporary special payment for certain hospitals that did not receive IME or DSH payments and that did not qualify as Medicare-dependent, small rural hospitals is limited to FY 1998 and FY 1999. The statute does not provide for the special payment in later fiscal years. We believe that the temporary special payment provided under section 4401(b) of the BBA was meant to partially protect qualifying hospitals from the initial effects of the reduced updates to hospital payment rates enacted by the BBA. We believe that two years of relief payments is adequate to allow hospitals to adjust to the reduced payment updates under the BBA.

III. Changes to the Payment Rates for Blood Clotting Factor for Hemophilia Inpatients

As discussed in our May 7, 1999 proposed rule (64 FR 24756), section 4452 of the BBA amended section 6011(d) of Public Law 101–239 to reinstate the add-on payment for the costs of administering blood clotting factor to Medicare beneficiaries who have hemophilia and who are hospital inpatients for discharges occurring on or after October 1, 1997. The add-on payment amount for each clotting factor, as described in HCFA's Common Procedure Coding System (HCPCS), is based on the median average wholesale price (AWP) of the several products available in that category of factor, discounted by 15 percent.

Also, we are adding HCPCS code J7191 (clotting factor, porcine) to the list of clotting factors that will be paid under this benefit. This code was recently reestablished in the HCPCS coding system because it represents a unique product that is different from the other clotting factors listed.

Based on the methodology described above, the prices per unit of factor for FY 2000 are as follows:

J7190 Factor VIII (antihemophilic factor, human)	0.79

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J7191 Factor VIII (antihemophilic factor, porcine)	1.87
J7192 Factor VIII (antihemophilic factor, recombinant)	1.03
J7194 Factor IX (complex)	0.45
J7196 Other hemophilia clotting factors (for example, anti-inhibitors)	1.43
Q0160 Factor IX (antihemophilic factor, purified, nonrecombinant)	0.97
Q0161 Factor IX (antihemophilic factor, recombinant)	1.00

These prices for blood clotting factor administered to inpatients who have hemophilia will be effective for discharges beginning on or after October 1, 1999 through September 30, 2000. Payment will be made for the blood clotting factor only if there is an ICD–9–CM diagnosis code for hemophilia included on the bill.

We received one comment on this proposed provision.

Comment: One commenter indicated that there is a new clotting factor product, recombinant coagulation Factor VIIa, that is covered by this benefit, but was not mentioned in the proposed rule. Because this product is unique and packaged and dosed per microgram, and not per IU as the other clotting factor products listed in the HCPCS, the commenter requested a separate temporary code and price to be added to the final rule.

Response: We agree that recombinant coagulation Factor VIIa is covered by this benefit. We also agree that no appropriate HCPCS code exists for this product. Because of constraints on Year 2000 computer systems changes, we are not able to establish a new HCPCS code or a claims process to pay for this product at this time. Therefore, any providers furnishing recombinant coagulation Factor VIIa to hospital inpatients who have hemophilia should hold their billings for Factor VIIa until we announce by instructions to our fiscal intermediaries that a new code and claims process have been established. These hospitals should continue to submit claims for all other covered items and services furnished to these Medicare beneficiaries in accordance with established program procedures. The price for recombinant coagulation Factor VIIa for FY 2000 will be $1.19 per microgram.

IV. Changes to Payment Rates for Inpatient Capital-Related Costs for FY 2000

The prospective payment system for hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period and during a 10-year transition period extending through FY 2001, hospital inpatient capital-related costs are paid on the basis of an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of a hospital's historical costs for capital.

The basic methodology for determining Federal capital prospective rates is set forth at §§ 412.308 through 412.352. Below we discuss the factors that we used to determine the Federal rate and the hospital-specific rates for FY 2000. The rates would be effective for discharges occurring on or after October 1, 1999.

For FY 1992, we computed the standard Federal payment rate for capital-related costs under the prospective payment system by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992, we update the standard Federal rate, as provided in § 412.308(c)(1), to account for capital input price increases and other factors. Also, § 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated proportion of outlier payments under the Federal rate to total capital payments under the Federal rate. In addition, § 412.308(c)(3) requires that the Federal rate be reduced by an adjustment factor equal to the estimated proportion of payments for exceptions under § 412.348. Furthermore, § 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral. For FYs 1992 through 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that aggregate payments for inpatient hospital capital costs were projected to equal 90 percent of the payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. That provision expired in FY 1996. Section 412.308(b)(2) describes the 7.4 percent reduction to the rate that was made in FY 1994, and § 412.308(b)(3) describes the 0.28 percent reduction to the rate made in FY 1996 as a result of the revised policy of paying for transfers. In the FY 1998 final rule with comment period (62 FR 45966), we implemented section 4402 of the BBA, which requires that for discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted standard Federal rate is reduced by 17.78 percent. A small part of that reduction will be restored effective October 1, 2002. As a result of the February 25, 1999 final rule (64 FR 9378), the Federal rate changed effective March 1, 1999, because of revisions to the GAF.

For each hospital, the hospital-specific rate was calculated by dividing the hospital's Medicare inpatient capital-related costs for a specified base year by its Medicare discharges (adjusted for transfers), and dividing the result by the hospital's case-mix index (also adjusted for transfers). The resulting case-mix adjusted average cost per discharge was then updated to FY 1992 based on the national average increase in Medicare's inpatient capital cost per discharge and adjusted by the exceptions payment adjustment factor and the budget neutrality adjustment factor to yield the FY 1992 hospital-specific rate. Since FY 1992, the hospital-specific rate has been updated annually for inflation and for changes in the exceptions payment adjustment factor. For FYs 1992 through 1995, the hospital-specific rate was also adjusted by a budget neutrality adjustment factor. For discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted hospital-specific rate is reduced by 17.78 percent. A small part of this reduction will be restored effective October 1, 2002.

To determine the appropriate budget neutrality adjustment factor and the exceptions payment adjustment factor, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projects changes in Medicare inpatient capital-related costs over time. With the expiration of the budget neutrality provision, the model is still used to estimate the exceptions payment adjustment and other factors. The model and its application are described in greater detail in Appendix B of this final rule.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment formula. Prior to FY 1998, hospitals in Puerto Rico were paid a blended rate that consisted of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. However, effective October 1, 1998, as a result of enactment of section 4406 of the BBA, operating payments to hospitals in Puerto Rico are based on a blend of 50 percent of the applicable standardized amount specific to Puerto Rico hospitals and 50 percent of the applicable national average standardized amount. In conjunction with this change to the operating blend percentage, effective with discharges on or after October 1, 1997, we compute capital payments to hospitals in Puerto Rico based on a blend of 50 percent of the Puerto Rico rate and 50 percent of the Federal rate. Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for inpatient capital-related costs. Accordingly, for capital-related costs we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital.

A. Determination of Federal Inpatient Capital-Related Prospective Payment Rate Update

In the July 31, 1998 final rule (63 FR 41011), we established a capital Federal rate of $378.05 for FY 1999. As of the March 1, 1999 revision, the Federal rate for FY 1999 is $378.10. In the proposed rule, we stated that the proposed FY 2000 Federal rate was $374.31. In this final rule, we are establishing a FY 2000 Federal rate of $377.03.

In the discussion that follows, we explain the factors that were used to determine the FY 2000 capital Federal rate. In particular, we explain why the FY 2000 Federal rate has decreased 0.28 percent compared to the FY 1999 Federal rate. Even though the FY 2000 Federal capital rate is less than the FY 1999 Federal rate, we estimate aggregate capital payments will increase by 3.64 percent during this same period. This increase is primarily due to the increase in the Federal blend percentage from 80 to 90 percent for fully prospective payment hospitals.

Total payments to hospitals under the prospective payment system are relatively unaffected by changes in the capital prospective payments. Since capital payments constitute about 10 percent of hospital payments, a 1 percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Aggregate payments under the capital prospective payment transition system are estimated to increase in FY 2000 compared to FY 1999.

1. Standard Federal Rate Update

a. Description of the Update Framework.

Under section 412.308(c)(1), the standard Federal rate is updated on the basis of an analytical framework that takes into account changes in a capital input price index and other factors. The update framework consists of a capital input price index (CIPI) and several policy adjustment factors. Specifically, we have adjusted the projected CIPI rate of increase as appropriate each year for case-mix index related changes, for intensity, and for errors in previous CIPI forecasts. The proposed rule reflected an update factor of −0.6 percent, based on the data available at that time. Under the update framework, the final update factor for FY 2000 is 0.3 percent. This update factor is based on a projected 0.6 percent increase in the CIPI, a 0.1 percent adjustment for the FY 1998 DRG reclassification and recalibration, and a forecast error correction of −0.4 percent. We explain the basis for the FY 2000 CIPI projection in section II.D of this addendum.

Below we describe the policy adjustments that have been applied to the FY 2000 capital payment rates update.

The case-mix index is the measure of the average DRG weight for cases paid under the prospective payment system. Because the DRG weight determines the prospective payment for each case, any percentage increase in the case-mix index corresponds to an equal percentage increase in hospital payments.

The case-mix index can change for any of several reasons:

- The average resource use of Medicare patients changes ("real" case-mix change).
- Changes in hospital coding of patient records result in higher weight DRG assignments ("coding effects").
- The annual DRG reclassification and recalibration changes may not be budget neutral ("reclassification effect").

We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs but do not reflect higher resource requirements. In the update framework for the prospective payment system for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the case-mix index. We also remove the effect on total payments of prior changes to the DRG classifications and relative weights, in order to retain budget neutrality for all case-mix index-related changes other than patient severity. (For example, we adjusted for the effects of the FY 1998 DRG reclassification and recalibration as part of our FY 2000 update recommendation.) We have adopted this case-mix index adjustment in the capital update framework as well.

For FY 2000, we are projecting a 0.5 percent increase in the case-mix index. We estimate that real case-mix increase will equal 0.5 percent in FY 2000. Therefore, the net adjustment for case-mix change in FY 2000 is 0.0 percentage points.

We estimate that FY 1998 DRG reclassification and recalibration resulted in a −0.1 percent change in the case mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs. In the framework, we make an adjustment for DRG reclassification and recalibration to account for the 2-year lag on the available data used to estimate the effect of DRG changes. A DRG reclassification and recalibration adjustment of 0.1 percentage points was calculated for the FY 2000 update as the percent change in the case mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs based on FY 1998 data. That is, in determining the effect of DRG reclassification and recalibration using FY 1998 data, the actual effect of DRG reclassification and recalibration was understated by −0.1 percent. Therefore, we are making a 0.1 percent adjustment for DRG reclassification and recalibration in the update for FY 2000.

Comment: One commenter noted that the magnitude of the −0.7 adjustment for FY 1998 Reclassification and Recalibration (GROUPER Effect) in the proposed capital (and operating) update framework appears to be inconsistent with past numbers published by HCFA. Accordingly, the commenter requested that HCFA review the data and computation of that adjustment in the capital update framework.

Response: In the May 7, 1999 proposed rule (64 FR 24578), we estimated that FY 1998 DRG reclassification and recalibration resulted in a 0.7 percent change in the case-mix index when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs. Therefore, we proposed making a −0.7 percent adjustment for DRG reclassification and recalibration in the proposed capital update recommendation for FY 2000.

Upon review, we have discovered that incorrect data were used in estimating the proposed −0.7 adjustment for the effect of FY 1998 reclassification and recalibration. We have recalculated the adjustment based on correct and updated data and the revised adjustment for the effect of FY 1998 reclassification and recalibration for the FY 2000 capital update is +0.1.

The capital update framework contains an adjustment for forecast

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error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the upcoming year. In any given year, there may be unanticipated price fluctuations that may result in differences between the actual increase in prices and the forecast used in calculating the update factors. In setting a prospective payment rate under the framework, we make an adjustment for forecast error only if our estimate of the change in the capital input price index for any year is incorrect by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of the forecast error. A forecast error of −0.4 percentage points was calculated for the FY 1998 update. That is, current historical data indicate that the FY 1998 CIPI used in calculating the forecasted FY 1998 update factor overstated realized price increases by 0.4 percent. Therefore, we are making a −0.4 percent adjustment for forecast error in the update for FY 2000.

Under the capital prospective payment system update framework, we also make an adjustment for changes in intensity. We calculate this adjustment using the same methodology and data as in the framework for the operating prospective payment system. The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove cost-ineffective services.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI hospital component), and changes in real case mix. The use of total charges in the calculation of the intensity factor makes it a total intensity factor; that is, charges for capital services are already built into the calculation of the factor. Therefore, we have incorporated the intensity adjustment from the operating update framework into the capital update framework. Without reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume, as in the revised operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework thus provides an add-on to the input price index rate of increase of one-half of the estimated annual increase in intensity to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

For FY 2000, we have developed a Medicare-specific intensity measure based on a 5-year average using FY 1994 through FY 1998 data. In determining case-mix constant intensity, we found that observed case-mix increase was 0.8 percent in FY 1994, 1.7 percent in FY 1995, 1.6 percent in FY 1996, 0.3 percent in FY 1997, and −0.4 percent in FY 1998. For FY 1995 and FY 1996, we estimate that real case-mix increase was 1.0 to 1.4 percent each year. The estimate for those years is supported by past studies of case-mix change by the RAND Corporation. The most recent study was "Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988" by G.M. Carter, J.P. Newhouse, and D.A. Relles, R–4098–HCFA/ProPAC (1991). The study suggested that real case-mix change was not dependent on total change, but was usually a fairly steady 1.0 to 1.5 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment. Following that study, we consider up to 1.4 percent of observed case-mix change as real for FY 1994 through FY 1998. Based on this analysis, we believe that all of the observed case-mix increase for FY 1994, FY 1997, and FY 1998 is real. The increases for FY 1995 and FY 1996 were in excess of our estimate of real case-mix increase.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI hospital component), and changes in real case-mix. Given estimates of real case mix of 0.8 percent for FY 1994, 1.0 percent for FY 1995, 1.0 percent for FY 1996, 0.3 percent for FY 1997, and −0.4 for FY 1998, we estimate that case-mix constant intensity declined by an average 1.3 percent during FYs 1994 through 1998, for a cumulative decrease of 6.3 percent. If we assume that real case-mix increase was 0.8 percent for FY 1994, 1.4 percent for FY 1995, 1.4 percent for FY 1996, 0.3 percent for FY 1997, and −0.4 for FY 1998, we estimate that case-mix constant intensity declined by an average 1.5 percent during FYs 1994 through 1998, for a cumulative decrease of 7.1 percent. Since we estimate that intensity has declined during that period, we are making a 0.0 percent intensity adjustment for FY 2000.

In summary, the FY 2000 final capital update under our framework is 0.3 percent. This update is based on a projected 0.6 increase in the CIPI, policy adjustment factors of 0.0, a 0.1 adjustment for the effect of FY 1998 reclassification and recalibration, and a forecast error correction of −0.4.

b. Comparison of HCFA and MedPAC Update Recommendations.

As discussed in the proposed rule, MedPAC recommended a −1.1 to 1.8 percent update to the standard capital Federal rate and we recommended a −0.6 percent update. (See the May 7, 1999 proposed rule for the differences between the MedPAC and HCFA update frameworks (64 FR 24758)). In this final rule, as discussed in the previous section, we are implementing a 0.3 percent update to the capital Federal rate.

Comment: MedPAC noted that our update recommendation of −0.6 percent was within the range of the −1.1 to 1.8 percent that they recommended. They also asserted that the distinction between inpatient operating and capital payment rates is arbitrary and does not foster efficient overall decision making about the allocation of resources. Accordingly, MedPAC recommended that once the transition to fully prospective capital payment is completed, a single prospective payment rate should be developed for hospital inpatient services to Medicare beneficiaries. MedPAC indicated that a single prospective payment rate for both operating and capital costs would be consistent with the way that hospitals purchase a majority of goods and services. MedPAC plans to investigate options for coordinating the capital and operating updates and would be pleased to work with HCFA on this effort.

Response: We responded to a similar comment in the May 7, 1999 proposed rule (64 FR 24759), the July 31, 1998 final rule (63 FR 41013), and in the September 1, 1995 final rule (60 FR 45816). In those rules, we stated that our long-term goal was to develop a single update framework for operating and capital prospective payments and that we would begin development of a unified framework. We indicated that, in the meantime, we would maintain as much consistency as possible between the current operating and capital frameworks in order to facilitate the eventual development of a unified framework. In addition, we stated that because of the similarity of the update frameworks, the update frameworks could be combined without too much difficulty. We maintain our goal of combining the update frameworks and may examine combining the payment systems after the conclusion of the capital prospective payment transition period. While we welcome MedPAC's assistance in the eventual development of a unified operating and capital update framework, we believe that developing a unified operating and capital update framework would become a higher priority if the actual operating update was no longer determined by Congress through the statute and the unified update would be appropriately applied directly to a combined payment rate for operating and capital costs.

2. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on the portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments (for example, 90 percent for cost reporting periods beginning in FY 2000 for hospitals paid under the fully prospective payment methodology). Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of outlier payments under the Federal rate to total inpatient capital-related payments under the Federal rate. The outlier thresholds are set so that operating outlier payments are projected to be 5.1 percent of total operating DRG payments. The inpatient capital-related outlier reduction factor reflects the inpatient capital-related outlier payments that would be made if all hospitals were paid 100 percent of the Federal rate. For purposes of calculating the outlier thresholds and the outlier reduction factor, we model payments as if all hospitals were paid 100 percent of the Federal rate because, as explained above, outlier payments are made only on the portion of the Federal rate that is included in the hospital's inpatient capital-related payments.

In the July 31, 1998 final rule, we estimated that outlier payments for capital in FY 1999 would equal 6.08 percent of inpatient capital-related payments based on the Federal rate (63 FR 41013). Accordingly, we applied an outlier adjustment factor of 0.9392 to the Federal rate. For FY 2000, we estimate that outlier payments for capital will equal 5.98 percent of inpatient capital-related payments based on the Federal rate. Therefore, we are establishing an outlier adjustment factor of 0.9402 to the Federal rate. Thus, estimated capital outlier payments for FY 2000 represent a lower percentage of total capital standard payments than in FY 1999.

The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. Therefore, the net change in the outlier adjustment to the Federal rate for FY 2000 is 1.0011 (0.9402/0.9392). The outlier adjustment increases the FY 2000 Federal rate by 0.11 percent compared with the FY 1999 outlier adjustment.

3. Budget Neutrality Adjustment Factor for Changes in DRG Classifications and Weights and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that aggregate payments for the fiscal year based on the Federal rate after any changes resulting from the annual DRG reclassification and recalibration and changes in the GAF are projected to equal aggregate payments that would have been made on the basis of the Federal rate without such changes. We use the actuarial model, described in Appendix B, to estimate the aggregate payments that would have been made on the basis of the Federal rate without changes in the DRG classifications and weights and in the GAF. We also use the model to estimate aggregate payments that would be made on the basis of the Federal rate as a result of those changes. We then use these figures to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the GAF.

For FY 1999, we calculated a GAF/DRG budget neutrality factor of 1.0027. In the February 25, 1999 final rule (64 FR 9381), we adopted an incremental GAF/DRG budget neutrality factor of 1.0028 for discharges on or after March 1, 1999. In the proposed rule for FY 2000, we proposed a GAF/DRG budget neutrality factor of 0.9986. In this final rule, based on calculations using updated data, we are applying a factor of 0.9985. The GAF/DRG budget neutrality factors are built permanently into the rates; that is, they are applied cumulatively in determining the Federal rate. This follows from the requirement that estimated aggregate payments each year be no more than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the GAF. The incremental change in the adjustment from FY 1999 to FY 2000 is 0.9985. The cumulative change in the rate due to this adjustment is 1.0014 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, FY 1996, FY 1997, FY 1998, FY 1999, and FY 2000: 0.9980 × 1.0053 × 0.9998 × 0.9994 × 0.9987 × 0.9989 × 1.0028 × 0.9985 = 1.0014).

This factor accounts for DRG reclassifications and recalibration and for changes in the GAF. It also incorporates the effects on the GAF of FY 2000 geographic reclassification decisions made by the MGCRB compared to FY 1999 decisions. However, it does not account for changes in payments due to changes in the DSH and IME adjustment factors or in the large urban add-on.

4. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of additional payments for exceptions under § 412.348 relative to total payments under the hospital-specific rate and Federal rate. We use an actuarial model described in Appendix B to determine the exceptions payment adjustment factor.

For FY 1999, we estimated that exceptions payments would equal 2.17 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we applied an exceptions reduction factor of 0.9783 (1—0.0217) in determining the Federal rate. In the May 7, 1999 proposed rule, we estimated that exceptions payments for FY 2000 would equal 2.48 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we proposed an exceptions payment reduction factor of 0.9752 to the Federal rate for FY 2000. For this final rule, based on updated data, we estimate that exceptions payments for FY 2000 will equal 2.70 percent of aggregate payments based on the Federal rate and hospital-specific rate. We are, therefore, applying an exceptions payment reduction factor of 0.9730 (1—0.0270) to the Federal rate for FY 2000. The final exceptions reduction factor for FY 2000 is 0.54 percent lower than the factor for FY 1999 and 0.23 percent lower than the factor in the FY 2000 proposed rule.

The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. Therefore, the net adjustment to the FY 2000 Federal rate is 0.9730/0.9783, or 0.9946.

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5. Standard Capital Federal Rate for FY 2000

For FY 1999 (effective March 1, 1999), the capital Federal rate was $378.10. As a result of changes we proposed to the factors used to establish the Federal rate, we proposed that the FY 2000 Federal rate would be $374.31. In this final rule, we are establishing a FY 2000 Federal rate of $377.03. The Federal rate for FY 2000 was calculated as follows:

- The FY 2000 update factor is 1.0030: that is, the update is 0.30 percent.
- The FY 2000 budget neutrality adjustment factor that is applied to the standard Federal payment rate for changes in the DRG relative weights and in the GAF is 0.9985.
- The FY 2000 outlier adjustment factor is 0.9402.
- The FY 2000 exceptions payments adjustment factor is 0.9730.

Since the Federal rate has already been adjusted for differences in case mix, wages, cost of living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we have made no additional adjustments in the standard Federal rate for these factors other than the budget neutrality factor for changes in the DRG relative weights and the GAF.

We are providing a chart that shows how each of the factors and adjustments for FY 2000 affected the computation of the FY 2000 Federal rate in comparison to the FY 1999 Federal rate. The FY 2000 update factor has the effect of increasing the Federal rate by 0.30 percent compared to the rate in FY 1999, while the final geographic and DRG budget neutrality factor has the effect of decreasing the Federal rate by 0.15 percent. The FY 2000 outlier adjustment factor has the effect of increasing the Federal rate by 0.11 percent compared to FY 1999. The FY 2000 exceptions reduction factor has the effect of decreasing the Federal rate by 0.54 percent compared to the exceptions reduction for FY 1999. The combined effect of all the changes is to decrease the Federal rate by 0.28 percent compared to the Federal rate for FY 1999.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 1999 FEDERAL RATE AND FY 2000 FEDERAL RATE

	FY 1999	FY 2000	Change	Percent change
Update Factor [1]	1.0010	1.0030	1.0030	0.30
GAF/DRG Adjustment Factor [1]	1.0028	0.9985	0.9985	−0.15
Outlier Adjustment Factor [2]	0.9392	0.9402	1.0011	0.11
Exceptions Adjustment Factor [2]	0.9783	0.9730	0.9946	−0.54
Federal Rate	$378.10	$377.03	0.9972	−0.28

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 1999 to FY 2000 resulting from the application of the 0.9985 GAF/DRG budget neutrality factor for FY 2000 is 0.9985.

[2] The outlier reduction factor and the exceptions reduction factor are not built permanently into the rates; that is, these factors are not applied cumulatively in determining the rates. Thus, for example, the net change resulting from the application of the FY 2000 outlier reduction factor is 0.9402/0.9392, or 1.0011.

As stated previously in this section, the FY 2000 Federal rate has decreased 0.28 percent compared to the FY 1999 Federal rate, even though the capital rate update factor has increased from 0.1 percent in FY 1999 to 0.3 percent in FY 2000. The 0.28 percent decrease in the Federal capital rate is a result of the combination of the FY 2000 factors and adjustments applied to the Federal rate. Specifically, the exceptions reduction factor decreased 0.54 percent from 0.9783 for FY 1999 to 0.9730 for FY 2000, which results in a larger reduction to the Federal capital rate for FY 2000 compared to FY 1999. Also, the GAF/DRG adjustment factor decreased 0.42 percent from 1.0027 for FY 1999 to 0.9985 for FY 2000, which results in a decrease the Federal capital rate for FY 2000 compared to FY 1999. The outlier adjustment factor increased 0.11 percent from 0.9392 for FY 1999 to 0.9402 for FY 2000, which results in an increase to the Federal capital rate for FY 2000 compared to FY 1999. The effect of all of these changes is a −0.28 percent decrease in the FY 2000 Federal rate compared to FY 1999.

Even though the FY 2000 Federal capital rate is less than the FY 1999 Federal rate, we estimate that aggregate capital payments will increase 3.64 percent during this same period, primarily due to the increase in the Federal blend percentage (from 80 to 90 percent) for fully prospective payment hospitals.

We are also providing a chart that shows how the final FY 2000 Federal rate differs from the proposed FY 2000 Federal rate.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 2000 PROPOSED FEDERAL RATE AND FY 2000 FINAL FEDERAL RATE

	Proposed FY 2000	Final FY 2000	Change	Percent change
Update Factor [1]	0.9940	1.0030	1.0091	0.91
GAF/DRG Adjustment Factor	0.9986	0.9985	0.9999	−0.01
Outlier Adjustment Factor	0.9397	0.9402	1.0005	0.05
Exceptions Adjustment Factor	0.9752	0.9730	0.9977	−0.23
Federal Rate	$374.31	$377.03	1.0073	0.73

[1] As noted previously in section IV.A.1.a of this addendum, upon review we discovered that incorrect data were used in estimating the proposed adjustment for the effect of FY 1998 reclassification and recalibration in the proposed rule. As a result, the revised adjustment for the effect of FY 1998 reclassification and recalibration for the capital update for FY 2000 is +0.1 (compared to the proposed −0.7). Accordingly, the FY 2000 final update is 0.30 (compared to the proposed −0.06), which accounts for the 0.73 increase in the Federal rate from the FY 2000 proposed to FY 2000 final rule.

6. Special Rate for Puerto Rico Hospitals

As explained above, hospitals in Puerto Rico are paid based on 50 percent of the Puerto Rico rate and 50 percent of the Federal rate. The Puerto Rico rate is derived from the costs of Puerto Rico hospitals only, while the Federal rate is derived from the costs of all acute care hospitals participating in the prospective payment system (including Puerto Rico). To adjust hospitals' capital payments for geographic variations in capital costs, we apply a geographic adjustment factor (GAF) to both portions of the blended rate. The GAF is calculated using the operating prospective payment system wage index and varies depending on the MSA or rural area in which the hospital is located. We use the Puerto Rico wage index to determine the GAF for the Puerto Rico part of the capital blended rate and the national wage index to determine the GAF for the national part of the blended rate. Since we implemented a separate GAF for Puerto Rico in 1998, we also applied separate budget neutrality adjustments for the national GAF and for the Puerto Rico GAF. We applied the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. The Puerto Rico GAF budget neutrality factor is 0.9991, while the DRG adjustment is 0.9999, for a combined cumulative adjustment of 0.9990.

In computing the payment for a particular Puerto Rico hospital, the Puerto Rico portion of the rate (50 percent) is multiplied by the Puerto Rico-specific GAF for the MSA in which the hospital is located, and the national portion of the rate (50 percent) is multiplied by the national GAF for the MSA in which the hospital is located (which is computed from national data for all hospitals in the United States and Puerto Rico). In FY 1998, we implemented a 17.78 percent reduction to the Puerto Rico rate as required by the BBA. For FY 1999, before application of the GAF, the special rate for Puerto Rico hospitals was $181.10. With the changes we proposed to the factors used to determine the rate, the proposed FY 2000 special rate for Puerto Rico was $174.15. In this final rule, the FY 2000 capital rate for Puerto Rico is $174.81.

B. Determination of Hospital-Specific Rate Update

Section 412.328(e) of the regulations provides that the hospital-specific rate for FY 2000 be determined by adjusting the FY 1999 hospital-specific rate by the following factors:

1. Hospital-Specific Rate Update Factor

The hospital-specific rate is updated in accordance with the update factor for the standard Federal rate determined under § 412.308(c)(1). For FY 2000, we are updating the hospital-specific rate by a factor of 1.0030.

2. Exceptions Payment Adjustment Factor

For FYs 1992 through FY 2001, the updated hospital-specific rate is multiplied by an adjustment factor to account for estimated exceptions payments for capital-related costs under § 412.348, determined as a proportion of the total amount of payments under the hospital-specific rate and the Federal rate. For FY 2000, we estimated in the proposed rule that exceptions payments would be 2.48 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we proposed that the updated hospital-specific rate be reduced by a factor of 0.9752. In this final rule, we estimate that exceptions payments will be 2.70 percent of aggregate payments based on the Federal rate and hospital-specific rate. Accordingly, for FY 2000, we are applying an exceptions reduction factor of 0.9730 to the hospital-specific rate. The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the hospital-specific rate. The net adjustment to the FY 2000 hospital-specific rate is 0.9730/0.9783, or 0.9946.

3. Net Change to Hospital-Specific Rate

We are providing a chart to show the net change to the hospital-specific rate. The chart shows the factors for FY 1999 and FY 2000 and the net adjustment for each factor. It also shows that the cumulative net adjustment from FY 1999 to FY 2000 is 0.9976, which represents a decrease of 0.24 percent to the hospital-specific rate. For each hospital, the FY 2000 hospital-specific rate is determined by multiplying the FY 1999 hospital-specific rate by the cumulative net adjustment of 0.9976.

FY 2000 UPDATE AND ADJUSTMENTS TO HOSPITAL-SPECIFIC RATES

	FY 1999	Final FY 2000	Net adjustment	Percent change
Update Factor	1.0010	1.0030	1.0030	0.30
Exceptions Payment Adjustment Factor	0.9783	0.9730	0.9946	−0.54
Cumulative Adjustments	0.9793	0.9769	0.9976	−0.24

Note: The update factor for the hospital-specific rate is applied cumulatively in determining the rates. Thus, the incremental increase in the update factor from FY 1999 to FY 2000 is 1.0030. In contrast, the exceptions payment adjustment factor is not applied cumulatively. Thus, for example, the incremental increase in the exceptions reduction factor from FY 1999 to FY 2000 is 0.9730/0.9783, or 0.9946.

C. Calculation of Inpatient Capital-Related Prospective Payments for FY 2000

During the capital prospective payment system transition period, a hospital is paid for the inpatient capital-related costs under one of two payment methodologies—the fully prospective payment methodology or the hold-harmless methodology. The payment methodology applicable to a particular hospital is determined when a hospital comes under the prospective payment system for capital-related costs by comparing its hospital-specific rate to the Federal rate applicable to the hospital's first cost reporting period under the prospective payment system. The applicable Federal rate was determined by making adjustments as follows:

- For outliers by dividing the standard Federal rate by the outlier reduction factor for that fiscal year; and,
- For the payment adjustment factors applicable to the hospital (that is, the hospital's GAF, the disproportionate share hospital (DSH) adjustment factor, and the indirect medical education (IME) adjustment factor, when appropriate).

If the hospital-specific rate is higher than the applicable Federal rate, the hospital is paid under the hold-harmless methodology. If the hospital-specific rate is lower than the applicable Federal rate, the hospital is paid under the fully prospective methodology.

For purposes of calculating payments for each discharge under both the hold-harmless payment methodology and the fully prospective payment methodology,

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the standard Federal rate is adjusted as follows: (Standard Federal Rate) × (DRG weight) × (GAF) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + DSH Adjustment Factor + IME Adjustment Factor). The result is the adjusted Federal rate.

Payments under the hold-harmless methodology are determined under one of two formulas. A hold-harmless hospital is paid the higher of the following:

- 100 percent of the adjusted Federal rate for each discharge; or
- An old capital payment equal to 85 percent (100 percent for sole community hospitals) of the hospital's allowable Medicare inpatient old capital costs per discharge for the cost reporting period plus a new capital payment based on a percentage of the adjusted Federal rate for each discharge. The percentage of the adjusted Federal rate equals the ratio of the hospital's allowable Medicare new capital costs to its total Medicare inpatient capital-related costs in the cost reporting period.

Once a hospital receives payment based on 100 percent of the adjusted Federal rate in a cost reporting period beginning on or after October 1, 1994 (or the first cost reporting period after obligated capital that is recognized as old capital under § 412.302(c) is put in use for patient care, if later), the hospital continues to receive capital prospective payment system payments on that basis for the remainder of the transition period.

Payment for each discharge under the fully prospective methodology is the sum of the following:

- The hospital-specific rate multiplied by the DRG relative weight for the discharge and by the applicable hospital-specific transition blend percentage for the cost reporting period; and
- The adjusted Federal rate multiplied by the Federal transition blend percentage.

The blend percentages for cost reporting periods beginning in FY 2000 are 90 percent of the adjusted Federal rate and 10 percent of the hospital-specific rate.

Hospitals may also receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on that portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments. For fully prospective hospitals, that portion is 90 percent of the Federal rate for discharges occurring in cost reporting periods beginning during FY 2000. Thus, a fully prospective hospital will receive 90 percent of the capital-related outlier payment calculated for the case for discharges occurring in cost reporting periods beginning in FY 2000. For hold-harmless hospitals paid 85 percent of their reasonable costs for old inpatient capital, the portion of the Federal rate that is included in the hospital's outlier payments is based on the hospital's ratio of Medicare inpatient costs for new capital to total Medicare inpatient capital costs. For hold-harmless hospitals that are paid 100 percent of the Federal rate, 100 percent of the Federal rate is included in the hospital's outlier payments.

The outlier thresholds for FY 2000 are in section II.A.4.c of this Addendum. For FY 2000, a case qualifies as a cost outlier if the cost for the case is greater than the prospective payment rate for the DRG (and any IME and DSH payments) plus $14,050.

During the capital prospective payment system transition period, a hospital may also receive an additional payment under an exceptions process if its total inpatient capital-related payments are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment level is established by class of hospital under § 412.348. The minimum payment levels for portions of cost reporting periods occurring in FY 2000 are as follows:

- Sole community hospitals (located in either an urban or rural area), 90 percent.
- Urban hospitals with at least 100 beds and a disproportionate share patient percentage of at least 20.2 percent and urban hospitals with at least 100 beds that qualify for disproportionate share payments under § 412.106(c)(2), 80 percent.
- All other hospitals, 70 percent.

Under § 412.348(d), the amount of the exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period.

New hospitals are exempted from the capital prospective payment system for their first 2 years of operation and are paid 85 percent of their reasonable costs during that period. A new hospital's old capital costs are its allowable costs for capital assets that were put in use for patient care on or before the later of December 31, 1990 or the last day of the hospital's base year cost reporting period, and are subject to the rules pertaining to old capital and obligated capital as of the applicable date. Effective with the third year of operation, we will pay the hospital under either the fully prospective methodology, using the appropriate transition blend in that Federal fiscal year, or the hold-harmless methodology. If the hold-harmless methodology is applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period.

D. Capital Input Price Index

1. Background

Like the operating input price index, the Capital Input Price Index (CIPI) is a fixed-weight price index that measures the price changes associated with costs during a given year. The CIPI differs from the operating input price index in one important aspect—the CIPI reflects the vintage nature of capital, which is the acquisition and use of capital over time. Capital expenses in any given year are determined by the stock of capital in that year (that is, capital that remains on hand from all current and prior capital acquisitions). An index measuring capital price changes needs to reflect this vintage nature of capital. Therefore, the CIPI was developed to capture the vintage nature of capital by using a weighted-average of past capital purchase prices up to and including the current year.

Using Medicare cost reports, American Hospital Association (AHA) data, and Securities Data Corporation data, a vintage-weighted price index was developed to measure price increases associated with capital expenses. We periodically update the base year for the operating and capital input prices to reflect the changing composition of inputs for operating and capital expenses. Currently, the CIPI is based to FY 1992 and was last rebased in 1997. The most recent explanation of the CIPI was discussed in the final rule with comment period for FY 1998 published on August 29, 1997 (62 FR 46050). The following **Federal Register** documents also describe development and revisions of the methodology involved with the construction of the CIPI: September 1, 1992 (57 FR 40016), May 26, 1993 (58 FR 30448), September 1, 1993 (58 FR 46490), May 27, 1994 (59 FR 27876), September 1, 1994 (59 FR 45517), June 2, 1995 (60 FR 29229), and September 1, 1995 (60 FR 45815), May 31, 1996 (61 FR 27466), August 30, 1996 (61 FR 46196), June 2, 1997 (62 FR 29953), August 29, 1997 (62 FR 46050), May 8, 1998 (63 FR 25619), July 31, 1998 (63 FR 41017), and May 7, 1999 (64 FR 24763).

2. Forecast of the CIPI for Federal Fiscal Year 2000

We are forecasting the CIPI to increase 0.6 percent for FY 2000. This reflects a projected 1.6 percent increase in vintage-weighted depreciation prices (building and fixed equipment, and movable equipment) and a 3.5 percent increase in other capital expense prices in FY 2000, partially offset by a 2.9 percent decline in vintage-weighted interest rates in FY 2000. The weighted average of these three factors produces the 0.6 percent increase for the CIPI as a whole.

V. Changes to Payment Rates for Excluded Hospitals and Hospital Units: Rate-of-Increase Percentages

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in regulations at § 413.40. Under these limits, a hospital-specific target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors). In the case of a psychiatric hospital or hospital unit, rehabilitation hospital or hospital unit, or long-term care hospital, the target amount may not exceed the updated figure for the 75th percentile of target amounts for hospitals and units in the same class (psychiatric, rehabilitation, and long-term care) for cost reporting periods ending during FY 1996. The target amount is multiplied by the number of Medicare discharges in a hospital's cost reporting period, yielding the ceiling on aggregate Medicare inpatient operating costs for the cost reporting period.

Each hospital-specific target amount is adjusted annually, at the beginning of each hospital's cost reporting period, by an applicable update factor.

Section 1886(b)(3)(B) of the Act, which is implemented in regulations at § 413.40(c)(3)(vii), provides that for cost reporting periods beginning on or after October 1, 1999 and before October 1, 2000, the update factor depends on the hospital's or hospital unit's costs in relation to the ceiling. For hospitals with costs exceeding the ceiling by 10 percent or more, the update factor is the market basket increase. For hospitals with costs exceeding the ceiling by less than 10 percent, the update factor is the market basket minus .25 percent for each percentage point by which costs are less than 10 percent over the ceiling. For hospitals with costs equal to or less than the ceiling but greater than 66.7 percent of the ceiling, the update factor is the greater of 0 percent or the market basket minus 2.5 percent. For hospitals with costs that do not exceed 66.7 percent of the ceiling, the update factor is 0.

The most recent forecast of the market basket increase for FY 2000 for hospitals and hospital units excluded from the prospective payment system is 2.9 percent. Therefore, the update to a hospital's target amount for its cost reporting period beginning in FY 2000 would be between 0.4 and 2.9 percent, or 0 percent.

In addition, § 413.40(c)(4)(iii) requires that for cost reporting periods beginning on or after October 1, 1999 and before October 1, 2000, the target amount for each psychiatric hospital or hospital unit, rehabilitation hospital or hospital unit, and long-term care hospital cannot exceed a cap on the target amounts for hospitals in the same class. In the May 7, 1999 proposed rule, based on available data, we estimated that, for cost reporting periods beginning in FY 2000, the caps on target amounts would be $11,067 for psychiatric hospitals and hospital units, $20,071 for rehabilitation hospitals and hospital units, and $39,596 for long-term care hospitals. In this final rule, based on updated data, we are establishing the caps as follows: $11,100 for psychiatric hospitals and hospital units, $20,129 for rehabilitation hospitals and hospital units, and $36,712 for long-term care hospitals. Regulations at § 413.40(d) specify the formulas for determining bonus and relief payments for excluded hospitals and specify established criteria for an additional bonus payment for continuous improvement. Regulations at § 413.40(f)(2)(ii) specify the payment methodology for new hospitals and hospital units (psychiatric, rehabilitation, and long-term care) effective October 1, 1997.

VI. Tables

This section contains the tables referred to throughout the preamble to this final rule and in this Addendum. For purposes of this final rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1A, 1C, 1D, 3C, 4A, 4B, 4C, 4D, 4E, 4F, 5, 7A, 7B, 8A, 8B, and 10 are presented below. The tables presented below are as follows:

Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor

Table 1C—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor

Table 1D—Capital Standard Federal Payment Rate

Table 3C—Hospital Case-Mix Indexes for Discharges Occurring in Federal Fiscal Year 1998 and Hospital Average Hourly Wage for Federal Fiscal Year 2000 Wage Index

Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas

Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas

Table 4C—Wage Index and Capital Geographic Adjustment

Table 4D—Average Hourly Wage for Urban Areas

Table 4E—Average Hourly Wage for Rural Areas

Table 4F—Puerto Rico Wage Index and Capital Geographic Adjustment Factor (GAF)

Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric Mean Length of Stay, and Arithmetic Mean Length of Stay Points Used in the Prospective Payment System

Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 98 MEDPAR Update 3/99 GROUPER V16.0

Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 98 MEDPAR Update 3/99 GROUPER V17.0

Table 8A—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) July 1999

Table 8B—Statewide Average Capital Cost-to-Charge Ratios (Case Weighted) July 1999

Table 10—Percentage Difference in Wage Indexes for Areas That Qualify for a Wage Index Exception for Excluded Hospitals and Units

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TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
$2,809.18	$1,141.85	$2,764.70	$1,123.76

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor	Nonlabor	Labor	Nonlabor
National	$2,785.40	$1,132.18	$2,785.40	$1,132.18
Puerto Rico	1,336.54	538.00	1,315.38	529.48

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	$377.03
Puerto Rico	174.81

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX

Prov.	Case mix index	Avg. hour wage
010001	1.4595	15.85
010004	0.9933	15.02
010005	1.1767	16.26
010006	1.4579	17.31
010007	1.1421	14.80
010008	1.1818	17.65
010009	1.0941	17.53
010010	1.0799	15.91
010011	1.5835	20.63
010012	1.2614	19.30
010015	1.0478	18.35
010016	1.2492	16.13
010018	0.9696	18.96
010019	1.2766	15.49
010021	1.2490	14.63
010022	0.9597	20.51
010023	1.6881	16.26
010024	1.4243	16.03
010025	1.3513	14.53
010027	0.8132	14.93
010029	1.6000	16.41
010031	1.4175	18.02
010032	0.8803	12.65
010033	1.9945	19.68
010034	1.0473	14.73
010035	1.2411	17.48
010036	1.0916	17.29
010038	1.2337	18.33
010039	1.6337	18.81
010040	1.4963	19.10
010043	1.0500	16.20
010044	1.0246	17.02
010045	1.1799	15.01
010046	1.4713	17.18
010047	0.9285	16.38
010049	1.1887	14.48
010050	1.0755	15.42
010051	0.8965	9.94

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
010052	1.0154	13.86
010053	1.0508	13.18
010054	1.1318	17.12
010055	1.4221	18.19
010056	1.3283	19.08
010058	1.0358	12.78
010059	1.0567	18.19
010061	1.1098	15.92
010062	1.0102	13.57
010064	1.7584	20.90
010065	1.3234	15.64
010066	0.9014	12.07
010068	1.3052	18.74
010069	1.1329	13.57
010072	1.0785	14.35
010073	0.8800	12.83
010078	1.2901	17.71
010079	1.1867	16.87
010080	.....	13.85
010081	1.6351	16.98
010083	1.0586	16.21
010084	1.5089	18.78
010085	1.3152	18.87
010086	1.0122	14.93
010087	1.7288	18.39
010089	1.1989	16.61
010090	1.6540	18.11
010091	0.9933	16.36
010092	1.4279	16.50
010094	1.1544	18.56
010095	1.0456	11.90
010097	0.8654	12.90
010098	0.9896	14.28
010099	1.1725	15.93
010100	1.2912	15.48
010101	1.0199	15.42
010102	0.9314	12.73
010103	1.8375	19.31

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
010104	1.6950	18.10
010108	1.1528	20.79
010109	1.0504	14.09
010110	0.9691	15.91
010112	1.1495	15.11
010113	1.6159	17.24
010114	1.2530	17.26
010115	0.8495	13.75
010118	1.2464	16.69
010119	0.8457	18.17
010120	0.9886	17.03
010121	1.2822	15.18
010123	1.1647	18.16
010124	1.2264	16.27
010125	1.0590	14.42
010126	1.1224	17.64
010127	1.3140	19.61
010128	0.9265	12.57
010129	1.0647	14.43
010130	1.0418	16.35
010131	1.3325	17.91
010134	0.8150	10.78
010137	1.3106	15.93
010138	0.9196	12.13
010139	1.6338	19.95
010143	1.2282	15.71
010144	1.4120	17.12
010145	1.3336	20.75
010146	1.1894	18.86
010148	0.9791	14.64
010149	1.2567	17.08
010150	1.0438	16.97
010152	1.2508	17.38
010155	1.0794	16.70
020001	1.5235	27.97
020002	1.0556	26.91
020004	1.1841	26.40
020005	0.8955	29.01

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
020006	1.1238	26.77
020007	0.8205	24.96
020008	1.0781	30.47
020009	0.8199	23.18
020010	0.9473	18.64
020011	0.9160	29.47
020012	1.2763	23.92
020013	0.9595	26.82
020014	1.1151	24.09
020017	1.4946	24.97
020018	0.8973	.....
020019	0.7991	.....
020021	0.8011	.....
020024	1.1106	22.73
020025	0.9156	27.15
020026	1.2660	.....
020027	0.9434	.....
030001	1.2614	19.87
030002	1.8069	21.63
030003	2.2742	23.67
030004	1.0231	17.73
030006	1.5269	17.64
030007	1.2538	18.56
030008	2.1843	.....
030009	1.2486	17.93
030010	1.3867	18.80
030011	1.4361	20.08
030012	1.2389	19.42
030013	1.2741	21.02
030014	1.5098	19.47
030016	1.2340	20.56
030017	1.4178	20.42
030018	1.8584	18.91
030019	1.2403	19.92
030022	1.4895	15.79
030023	1.4965	22.44
030024*	1.7469	21.67
030025	0.9555	17.67
030027	0.9624	17.58
030030	1.6450	21.62
030033	1.2353	16.84
030034	0.9867	19.09
030035	1.1548	19.72
030036	1.2810	18.94
030037	2.0844	21.44
030038	1.6163	22.08
030040	1.0766	17.97
030041	0.8880	17.44
030043	1.2200	20.77
030044	0.8787	16.47
030047	0.8899	19.69
030049	0.8711	19.09
030054	0.8646	14.49
030055	1.2312	18.28
030059	1.2853	21.71
030060	1.1435	16.77
030061	1.6875	17.35
030062	1.1800	17.48
030064	1.7662	18.54
030065	1.8097	19.93
030067	1.0273	15.62
030068	1.0246	17.35
030069	1.3639	19.00
030071	0.9602	.....

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
030072	0.8682	.....
030073	1.0290	.....
030074	0.8858	.....
030075	0.7952	.....
030076	0.8826	.....
030077	0.8563	.....
030078	1.1470	.....
030079	0.9065	.....
030080	1.3762	19.99
030083	1.2775	23.64
030084	1.1378	.....
030085	1.4648	17.84
030086	1.4452	18.50
030087	1.6802	20.05
030088	1.3656	19.58
030089	1.6781	19.90
030092	1.5831	21.56
030093	1.4204	19.47
030094	1.2697	19.48
030095	1.1371	14.25
030099	0.9411	18.07
030100	2.0364	.....
030101	1.4114	.....
030102	2.5824	.....
040001	1.0888	15.57
040002	1.1552	14.09
040003	1.1003	14.00
040004	1.6291	17.29
040005	1.0368	12.88
040007	1.6975	19.53
040008	1.0417	12.70
040010	1.3432	17.62
040011	0.9412	12.27
040014	1.3255	15.39
040015	1.2147	14.60
040016	1.6858	17.54
040017	1.1675	14.95
040018	1.2212	17.56
040019	1.0337	25.71
040020	1.6146	14.81
040021	1.1844	16.46
040022	1.4741	16.00
040024	0.9980	15.73
040025	0.9100	10.95
040026	1.5789	18.24
040027	1.2523	14.54
040028	1.0074	12.84
040029	1.2995	17.78
040030	0.8754	14.15
040032	0.9633	13.33
040035	0.9500	11.21
040036	1.4559	17.91
040037	1.0687	13.48
040039	1.2281	13.84
040040	0.9162	17.43
040041	1.2619	13.36
040042	1.2038	14.66
040044	1.0386	11.44
040045	1.0121	18.77
040047	1.0270	16.39
040048	.....	15.82
040050	1.1544	11.79
040051	1.0845	16.28
040053	1.0708	15.82

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
040054	0.9798	15.04
040055	1.4290	16.10
040058	1.0566	15.67
040060	0.9763	11.47
040062	1.6600	17.28
040064	1.0495	12.40
040066	1.0504	17.64
040067	1.0989	13.49
040069	1.0278	16.11
040070	0.9313	15.48
040071	1.6676	16.30
040072	1.0377	15.84
040074	1.2314	17.38
040075	1.0145	12.75
040076	1.0802	18.55
040077	1.0508	12.46
040078	1.5191	17.86
040080	1.0065	15.74
040081	0.8669	10.68
040082	1.0972	16.51
040084	1.1085	17.25
040085	1.1526	15.78
040088	1.3887	15.67
040090	0.8950	17.55
040091	1.1702	17.04
040093	0.9194	12.90
040100	1.1477	14.97
040105	0.9904	14.24
040106	0.9680	15.40
040107	1.0685	19.62
040109	1.1497	13.98
040114	1.8340	18.31
040116	1.1343	19.57
040118	1.4205	17.43
040119	1.1612	15.38
040124	1.0612	17.25
040126	0.9478	11.68
040132	.....	13.18
040134	2.7047	.....
040135	2.3711	.....
050002	1.4963	27.60
050006	1.4139	19.53
050007	1.4840	29.54
050008	1.4234	25.86
050009	1.6827	26.25
050013	1.9903	24.85
050014	1.2091	24.53
050015	1.4488	25.38
050016	1.1522	20.15
050017	2.0965	23.66
050018	1.3646	14.66
050021	.....	28.50
050022	1.6612	22.96
050024	1.3214	20.34
050025*	1.7668	22.00
050026	1.5146	28.69
050028	1.3702	16.45
050029	1.4013	23.29
050030	1.3135	21.01
050032	1.3391	22.59
050033	1.4640	24.56
050036	1.7264	20.47
050038	1.3454	27.83
050039	1.6288	22.25

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TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
050040	1.1955	30.67
050042	1.2702	22.23
050043	1.4927	33.23
050045	1.2716	20.73
050046	1.1729	31.38
050047	1.5619	29.44
050051	1.1199	17.84
050054	1.1899	19.37
050055	1.2399	29.09
050056	1.3404	23.85
050057	1.5981	21.76
050058	1.4969	25.73
050060	1.5506	20.92
050061	1.4125	23.74
050063	1.3477	23.07
050065	1.6835	21.18
050066	1.3006	21.42
050067	1.2503	21.30
050068	1.1029	28.48
050069	1.6082	29.30
050070	1.2340	32.60
050071	1.3229	33.14
050072	1.3883	32.97
050073	1.2621	34.61
050074	0.8073	.....
050075	1.3460	33.52
050076	2.0321	33.88
050077	1.5585	23.30
050078	1.2960	22.80
050079	1.4849	34.43
050082	1.6734	21.70
050084	1.6102	23.10
050088	0.9681	24.06
050089	1.3381	20.02
050090	1.2652	23.90
050091	1.0925	22.22
050092	0.8481	15.38
050093	1.5646	24.08
050095	.....	33.38
050096	1.1459	21.67
050097	1.5292	22.61
050099	1.4630	24.29
050100	1.6425	30.06
050101	1.3595	30.01
050102	1.3792	21.29
050103 *	1.5724	25.34
050104	1.4491	25.44
050107	1.4640	21.76
050108	1.8389	25.21
050109	.....	26.48
050110	1.2148	20.18
050111	1.2943	21.74
050112	1.3851	26.29
050113	1.3172	27.78
050114	1.3842	25.91
050115	1.4915	21.05
050116	1.5226	25.59
050117	1.3979	20.44
050118	1.1870	24.00
050121	1.2882	18.88
050122	1.5694	.....
050124	1.2826	23.02
050125	1.3726	24.04
050126	1.4571	23.84
050127	1.2537	19.76
050128	1.6061	24.18
050129	1.7541	27.16
050131	1.2640	29.06
050132	1.3641	22.91
050133	1.2717	24.40
050135	1.4811	27.03
050136	1.3553	24.43
050137	1.3023	30.07
050138	2.0450	37.41
050139	1.2542	31.38
050140	1.3201	33.66
050144	1.4211	25.75
050145	1.3762	33.06
050146	1.5826	.....
050148	1.1126	21.06
050149	1.4979	23.38
050150	1.2673	23.48
050152	1.3291	27.75
050153	1.6393	29.59
050155	1.0972	22.94
050158	1.3019	27.98
050159	1.3226	25.21
050167	1.3813	21.68
050168	1.5382	25.25
050169	1.4765	24.64
050170	1.4490	22.20
050172	1.2543	17.70
050173	1.3755	23.33
050174	1.7008	31.21
050175	1.2707	27.79
050177	1.1869	20.25
050179	1.2337	19.29
050180	1.5831	32.19
050183	1.2743	19.98
050186	1.3443	21.91
050188	1.4374	27.44
050189	0.9674	23.24
050191	1.4686	26.73
050192	1.1474	17.81
050193	1.1575	23.73
050194	1.2304	28.27
050195	1.5638	34.78
050196	1.2799	16.69
050197	1.9550	31.45
050204	1.5274	24.39
050205	1.2839	21.15
050207	1.2607	20.86
050211	1.3187	31.22
050213	1.5919	20.73
050214	1.5454	20.87
050215	1.5686	28.41
050217	1.2859	19.89
050219	1.1417	25.47
050222	1.5169	27.07
050224	1.5831	23.79
050225	1.5688	20.80
050226	1.3277	26.93
050228	1.3226	30.38
050230	1.4125	25.36
050231	1.6438	25.58
050232	1.5691	23.38
050233	.....	31.40
050234	1.1501	28.52
050235	1.5560	25.86
050236	1.5100	26.27
050238	1.5300	24.00
050239	1.5979	20.41
050240	1.5284	25.25
050241	1.1379	27.22
050242	1.4436	30.14
050243	1.5323	22.91
050245	1.5075	24.40
050248	1.2025	27.42
050251	1.1079	18.50
050253	1.4192	20.07
050254	1.2000	19.69
050256	1.7675	23.53
050257	0.9509	19.59
050260	0.9690	23.52
050261	1.2104	20.45
050262	1.8179	29.01
050264	1.3472	29.45
050267	1.6945	24.75
050270	1.3631	23.73
050272	1.3984	21.44
050274	0.9467	21.19
050276	1.1734	28.51
050277	1.4821	22.31
050278	1.5187	23.84
050279	1.2881	21.06
050280	1.6532	24.43
050281	1.3916	18.59
050282	1.3212	24.46
050283	1.5054	27.88
050286	0.9172	17.80
050289	1.7326	26.72
050290	1.6720	26.37
050291	1.1953	26.49
050292	1.1088	22.49
050293	1.0656	19.18
050295	1.4570	20.74
050296	1.2166	25.32
050298	1.3348	20.52
050299	1.3248	25.77
050300	1.4160	22.74
050301	1.2329	26.03
050302	.....	29.20
050305	1.5886	32.71
050307	1.2758	27.98
050308	1.5082	28.40
050309	1.2826	24.40
050310	.....	20.62
050312	1.9732	23.79
050313	1.1561	23.10
050315	1.3435	21.92
050317	.....	19.45
050320	1.2358	30.60
050324	2.0041	26.27
050325	1.2290	23.24
050327	1.6638	22.85
050328	.....	23.19
050329	1.2988	21.41
050331	1.3506	25.53
050333	1.0612	20.15
050334	1.7488	32.02
050335	1.4579	20.20
050336	1.3568	20.10

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
050342	1.2515	19.35
050343	0.9701	17.34
050348	1.8021	20.75
050349	0.8875	15.05
050350	1.4042	25.07
050351	1.4941	24.69
050352	1.3148	23.59
050353	1.6191	23.25
050355	0.8391	17.16
050357	1.3422	23.64
050359	1.2474	20.40
050360	1.4310	31.76
050366	1.3326	21.34
050367	1.2594	29.48
050369	1.3034	24.26
050373	1.3971	26.65
050376	1.4232	25.30
050377	1.0200	25.64
050378	1.0934	22.24
050379	1.0197	15.50
050380	1.6047	30.58
050382	1.3597	26.15
050385	1.3419	25.92
050388	0.8725	13.79
050390	1.1965	22.57
050391	1.3438	22.49
050392	0.9370	21.93
050393	1.4352	23.14
050394	1.5741	22.24
050396	1.6444	23.63
050397	0.9367	20.77
050401	1.1055	17.78
050404	1.0664	19.28
050406	1.0245	16.89
050407	1.2842	30.12
050410	1.0668	16.47
050411	1.3582	32.24
050414	1.2992	24.42
050417	1.3197	21.89
050419	1.3788	23.12
050420	1.3062	22.68
050421	1.2343	.....
050423	1.0112	23.33
050424	1.8400	23.78
050425	1.2315	33.69
050426	1.3898	23.71
050427	0.9468	20.07
050430	1.0003	21.34
050432	1.5198	21.50
050433	0.9711	16.80
050434	1.0631	15.63
050435	1.1647	32.99
050436	1.0075	16.36
050438	1.7349	24.08
050440	1.2722	21.11
050441	1.9397	28.71
050443	0.8705	16.43
050444	1.3224	24.67
050446	0.8088	20.54
050447	1.0850	18.42
050448	1.1055	20.08
050449	1.2871	22.18
050454 *	1.7729	28.69
050455	1.7949	19.92
050456	1.2213	17.62
050457	1.9129	31.25
050459	1.5220	37.09
050464	1.7089	22.31
050468	1.5589	23.17
050469	1.1499	23.44
050470	1.1391	17.03
050471	1.8969	24.29
050476	1.3686	23.14
050477	1.4367	27.78
050478	0.9911	23.05
050481	1.3949	26.83
050482	1.0569	16.93
050483	2.2575	21.60
050485	1.6066	23.19
050486	.....	24.50
050488	1.3257	32.86
050491	1.2006	25.10
050492	1.4183	21.42
050494	1.2386	25.41
050496	1.7595	33.02
050497	0.8258	.....
050498	1.2296	24.84
050502	1.7271	22.63
050503	1.3477	23.59
050506	1.3621	21.22
050510	1.2784	33.46
050512	1.4429	34.31
050515	1.3439	35.04
050516	1.5017	25.19
050517	1.2038	20.37
050522	1.1593	31.73
050523	1.2442	28.42
050526	1.2943	26.92
050528	1.1883	18.69
050531	1.1101	20.73
050534	1.2834	23.30
050535	1.5140	24.23
050537	1.3698	22.21
050539	1.3269	23.25
050541	1.5646	34.62
050542	0.9786	17.85
050543	0.8445	23.04
050545	0.7658	27.57
050546	0.6961	27.76
050547	0.9008	27.08
050548	.....	26.59
050549	1.6034	27.91
050550	1.3697	25.75
050551	1.3532	24.05
050552	1.2766	22.87
050557	1.5203	22.14
050559	1.2865	24.67
050561	1.2133	33.93
050564	1.3237	24.51
050565	1.3123	22.88
050566	0.9219	18.33
050567	1.5570	24.23
050568	1.3420	20.52
050569	1.2025	24.94
050570	1.6497	24.50
050571	1.3946	24.37
050573	1.5647	25.14
050575	1.1467	.....
050577	1.3600	20.52
050578	1.2666	28.91
050579	1.4322	30.07
050580	1.2849	23.92
050581	1.4507	23.57
050583	1.6163	23.36
050584	1.2401	23.16
050585	1.2561	26.50
050586	1.3532	23.84
050588	1.2801	30.39
050589	1.2395	24.35
050590	1.3227	.....
050591	1.3156	22.32
050592	1.2663	26.05
050594	1.6277	22.78
050597	1.2260	23.18
050598	1.3410	28.11
050599	1.5942	26.32
050601	1.6465	32.87
050603	1.4208	22.75
050604	1.4564	33.32
050607	.....	24.10
050608	1.2793	16.15
050609	1.4917	31.93
050613	1.1189	23.48
050615	1.5453	23.70
050616	1.3449	22.80
050618	1.0867	21.70
050623	1.5638	30.32
050624	1.3297	22.34
050625	1.6305	24.35
050630	1.2762	24.10
050633	1.2825	21.98
050635	.....	37.85
050636	1.4239	20.83
050638	1.1491	23.63
050641	1.2971	21.36
050643	0.9604	.....
050644	1.0737	23.12
050660	1.4966	.....
050661	.....	20.48
050662	0.8151	28.29
050663	1.1758	23.71
050667	1.0967	24.11
050668	1.0944	39.90
050670	0.7555	21.88
050674	1.2425	36.24
050675	2.2195	15.84
050676	1.0018	17.53
050677	1.3679	33.71
050678	1.2889	22.66
050680	1.1178	27.32
050682	0.9234	17.97
050684	1.2409	21.81
050685	1.1904	32.13
050686	1.2866	33.25
050688	1.1936	30.00
050689	1.4920	34.19
050690	1.4168	33.83
050693	1.3155	33.30
050694	1.3866	22.57
050695	1.0607	23.52
050696	2.1060	26.41
050697	1.3204	21.47

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TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
050699	0.5913	28.48
050700	.....	28.45
050701	1.3166	27.62
050702	.....	12.25
050704	1.0855	20.76
050707	0.9714	27.51
050708	1.4500	21.91
050709	1.2519	19.42
050710	1.3390	26.81
050713	0.7909	15.30
050714	1.3510	.....
050715	.....	19.12
050717	1.2647	.....
050718	0.7579	.....
050719	3.1984	.....
050720	0.9044	.....
060001	1.6835	20.59
060003	1.2708	19.32
060004	1.1987	21.79
060006	1.2571	17.86
060007	1.1650	16.38
060008	1.0843	17.09
060009	1.4985	21.18
060010	1.6874	22.72
060011	1.3925	21.97
060012	1.3814	19.77
060013	1.3217	19.14
060014	1.8153	20.53
060015	1.6320	23.57
060016	1.1638	15.96
060018	1.2867	21.86
060020	1.6130	17.73
060022	1.5677	19.65
060023	1.6323	19.65
060024	1.7015	22.83
060027	1.6925	21.67
060028	1.5331	22.25
060029	0.8925	21.41
060030	1.3542	20.03
060031	1.5383	19.40
060032	1.4782	22.37
060033	1.1398	13.82
060034	1.5846	21.41
060036	1.1376	19.24
060037	1.0079	14.05
060038	0.9440	14.31
060041	0.9246	14.83
060042	1.0356	20.08
060043	0.8801	13.05
060044	1.1681	22.53
060046	1.0302	20.44
060047	0.9655	15.12
060049	1.3171	20.64
060050	1.2512	16.80
060052	1.0404	12.55
060053	1.0148	14.94
060054	1.4104	19.39
060056	0.9051	17.05
060057	1.0273	23.38
060058	0.9425	16.91
060060	0.9200	14.89
060062	0.8628	14.94
060063	.....	15.09
060064	1.4833	20.93
060065	1.2913	24.30
060066	0.9930	14.07
060068	.....	19.64
060070	1.1250	16.58
060071	1.2078	16.95
060073	0.9583	15.84
060075	1.2425	22.85
060076	1.4325	19.29
060085	0.8869	13.48
060087	.....	21.03
060088	0.9983	16.67
060090	0.8997	14.51
060096	1.1067	23.12
060100	1.5321	22.00
060103	1.3211	22.34
060104	1.2351	22.30
060107	1.1955	13.64
060108	0.4789	.....
060109	1.1185	.....
070001	1.7614	26.51
070002	1.8336	25.46
070003	1.1215	26.09
070004	1.2043	23.27
070005	1.4436	25.57
070006	1.3881	28.71
070007	1.3524	27.19
070008	1.2506	26.03
070009	1.2685	23.47
070010	1.6992	25.94
070011	1.3820	23.96
070012	1.1724	25.10
070015	1.3890	25.33
070016	1.4259	26.30
070017	1.3718	24.80
070018	1.3684	28.88
070019	1.1838	24.70
070020	1.3222	23.72
070021	1.2362	26.52
070022	1.8643	25.08
070024	1.3255	25.15
070025	1.8686	25.41
070026	.....	18.79
070027	1.3113	23.64
070028	1.5522	24.69
070029	1.3352	22.75
070030	1.2883	24.97
070031	1.2420	21.66
070033	1.4115	28.81
070034	1.3893	29.12
070035	1.4205	23.06
070036	1.7251	28.95
070038	0.7729	.....
070039	0.9555	21.78
080001	1.7133	25.28
080002	.....	15.60
080003	1.3835	22.40
080004	1.2651	19.77
080005	.....	14.43
080006	1.3003	22.26
080007	1.4176	20.38
090001	1.6034	25.89
090002	1.3475	19.70
090003	1.3718	28.61
090004	1.7978	24.43
090005	1.3706	24.88
090006	1.3152	20.08
090007	1.3040	21.66
090008	1.5064	21.60
090010	1.0721	15.87
090011	2.1194	27.37
100001	1.5307	17.69
100002	1.4390	21.32
100004	1.0119	15.25
100006	1.6160	20.63
100007	1.8871	21.72
100008	1.5830	20.72
100009	1.4671	24.29
100010	1.4977	21.91
100012	1.6382	18.52
100014	1.4823	19.83
100015	1.4805	18.24
100017	1.5923	17.77
100018	1.5493	20.84
100019	1.5572	19.81
100020	1.3926	26.18
100022	1.7978	25.89
100023	1.3578	21.11
100024	1.3497	20.78
100025	1.7580	19.12
100026	1.5873	20.76
100027	1.0231	12.94
100028	1.2105	19.75
100029	1.3375	19.18
100030	1.2542	18.82
100032	1.8533	19.32
100034	1.7580	18.23
100035	1.5894	19.58
100038	1.6636	24.78
100039	1.5287	20.25
100040	1.7501	18.64
100043	1.3307	17.52
100044	1.3922	21.14
100045	1.3923	20.77
100046	1.4279	21.21
100047	1.8496	18.87
100048	0.9391	13.50
100049	1.2653	18.56
100050	1.1494	16.60
100051	1.2391	18.84
100052	1.3875	16.19
100053	1.2128	18.71
100054	1.2776	18.19
100055	1.3755	17.62
100056	1.4973	23.65
100057	1.3595	18.75
100060	1.8341	22.39
100061	1.4541	21.79
100062	1.7297	17.96
100063	1.1596	16.23
100067	1.3589	17.40
100068	1.3600	18.65
100069	1.2996	16.14
100070	1.4348	20.33
100071	1.2324	16.48
100072	1.2519	19.22
100073	1.7170	18.16
100075	1.5967	18.05
100076	1.2999	16.25

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
100077	1.3907	19.62
100078	1.0296	18.28
100079	1.3325	.....
100080	1.6004	21.16
100081	1.1059	13.96
100082	1.4981	19.80
100084	1.3484	20.40
100085	1.4397	21.08
100086	1.2337	21.16
100087	1.8332	23.12
100088	1.6560	20.06
100090	1.3796	17.88
100092	1.5762	18.19
100093	1.5951	16.63
100098	1.0984	19.03
100099	1.2207	15.30
100102	1.0153	19.33
100103	0.9374	18.10
100105	1.4538	21.50
100106	1.0262	19.31
100107	1.3128	18.01
100108	0.9979	11.47
100109	1.3846	22.17
100110	1.3687	19.64
100112	0.9703	9.77
100113	1.9526	22.26
100114	1.3378	23.45
100117	1.1904	18.86
100118	1.2978	19.76
100121	1.1778	19.34
100122	1.2065	18.06
100124	1.2961	19.05
100125	1.2709	17.33
100126	1.4682	18.09
100127	1.6587	19.87
100128	2.2076	21.37
100129	1.3074	18.57
100130	1.1759	19.10
100131	1.3440	22.17
100132	1.2920	16.90
100134	0.9738	13.47
100135	1.5672	17.48
100137	1.2758	19.05
100138	1.0055	11.01
100139	1.0894	15.64
100140	1.2173	17.35
100142	1.2261	18.68
100144	1.1622	15.02
100145	.....	19.11
100146	0.9697	17.87
100147	1.0080	14.68
100150	1.3244	21.02
100151	1.7687	19.40
100154	1.5832	19.85
100156	1.1101	17.13
100157	1.5609	21.03
100159	0.9570	16.38
100160	1.2026	21.63
100161	1.6995	21.50
100162	1.3955	19.87
100165	1.1535	18.57
100166	1.4349	20.42
100167	1.3548	21.81
100168	1.3372	20.13
100169	1.7623	20.78
100170	1.4159	15.12
100172	1.4335	15.18
100173	1.6528	17.34
100174	1.3768	20.51
100175	1.1543	17.82
100176	2.0764	24.70
100177	1.2977	22.00
100179	1.7103	20.91
100180	1.4415	18.48
100181	1.1065	24.57
100183	1.1888	20.86
100187	1.4299	20.69
100189	1.3286	21.01
100191	1.3182	18.47
100199	1.3519	23.37
100200	1.2409	22.26
100203	.....	18.86
100204	1.6272	20.20
100206	1.3739	20.35
100207	.....	15.92
100208	1.3673	20.83
100209	1.4791	19.73
100210	1.5718	19.18
100211	1.3991	25.53
100212	1.6224	25.34
100213	1.5100	19.12
100217	1.2751	19.87
100220	1.6355	19.91
100221	1.8110	22.25
100222	0.9440	22.19
100223	1.4651	18.76
100224	1.3349	24.70
100225	1.3371	20.64
100226	1.3508	24.86
100228	1.2825	23.70
100229	1.3326	18.21
100230	1.3523	20.60
100231	1.6815	17.40
100232	1.2511	17.32
100234	1.2587	21.58
100235	.....	17.66
100236	1.3925	21.81
100237	2.1893	22.93
100238	1.5454	17.63
100239	1.4287	19.76
100240	1.0888	17.93
100241	0.8994	13.83
100242	1.4298	17.12
100243	1.4071	20.38
100244	1.3741	17.41
100246	1.3686	21.22
100248	1.5873	21.54
100249	1.3084	19.02
100252	1.2005	17.87
100253	1.4323	20.60
100254	1.5401	20.91
100255	1.2559	21.02
100256	2.0104	23.56
100258	1.6901	21.88
100259	1.3409	19.86
100260	1.4570	21.22
100262	1.3448	19.59
100263	.....	16.90
100264	1.3620	17.61
100265	1.2932	19.86
100266	1.3567	17.73
100267	1.3056	17.10
100268	1.1952	23.59
100269	1.4345	21.20
100270	1.0181	19.86
100271	1.7715	19.92
100275	1.3944	21.33
100276	1.2371	21.98
100277	1.0333	16.14
100279	1.2721	23.02
100280	1.2951	16.58
100281	1.2795	22.02
100282	1.0837	19.77
100284	1.0855	.....
110001	1.2552	18.06
110002	1.2532	17.37
110003	1.3637	16.91
110004	1.3569	18.95
110005	1.1963	19.26
110006	1.4201	20.13
110007	1.6114	23.50
110008	1.2419	18.26
110009	1.1355	14.82
110010	2.1768	24.55
110011	1.1631	18.28
110013	1.0596	16.03
110014	0.9442	16.12
110015	1.1403	19.48
110016	1.2284	15.30
110017	0.9311	10.54
110018	1.1969	21.04
110020	1.1913	18.53
110023	1.3377	18.65
110024	1.3651	19.79
110025	1.3872	18.65
110026	1.1354	16.14
110027	1.1200	14.68
110028	1.7799	19.89
110029	1.3551	20.05
110030	1.2989	17.68
110031	1.2252	21.58
110032	1.2518	16.19
110033	1.4207	21.41
110034	1.5887	18.19
110035	1.3910	21.17
110036	1.8557	24.42
110038	1.4440	16.38
110039	1.4173	20.77
110040	1.0663	16.40
110041	1.1827	16.69
110042	1.1533	20.65
110043	1.8094	17.22
110044	1.1898	19.60
110045	1.1386	19.94
110046	1.2456	19.23
110048	1.2372	15.65
110049	1.0992	14.21
110050	1.1823	18.75
110051	1.0253	15.75
110052	.....	15.06
110054	1.3647	19.27
110056	1.0854	16.50

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
110059	1.2176	17.70
110061	1.0960	13.72
110062	0.9082	12.21
110063	1.0542	17.97
110064	1.4891	18.34
110065	1.0304	13.32
110066	1.4455	20.65
110069	1.2576	18.35
110070	1.1398	18.23
110071	1.0981	14.89
110072	0.9710	12.43
110073	1.1423	15.14
110074	1.5078	20.76
110075	1.3221	17.01
110076	1.4652	20.44
110078	1.7591	24.71
110079	1.4560	20.14
110080	1.3568	23.43
110082	2.0994	22.01
110083	1.7625	21.36
110086	1.2841	14.98
110087	1.3556	20.54
110089	1.2027	18.58
110091	1.2778	21.38
110092	1.0882	15.09
110093	0.9940	14.80
110094	0.9912	13.87
110095	1.3528	15.95
110096	1.0800	16.32
110097	1.0625	15.62
110098	0.9868	14.01
110100	1.0558	20.38
110101	1.1014	11.73
110103	0.9292	11.94
110104	1.0957	15.32
110105	1.3084	16.52
110107	1.8959	17.39
110108	0.9495	15.14
110109	1.1092	16.37
110111	1.2038	17.32
110112	0.9910	19.13
110113	1.0478	15.19
110114	1.0443	15.13
110115	1.7515	24.83
110118	1.1342	15.40
110120	1.0378	15.19
110121	1.2814	15.58
110122	1.3852	18.85
110124	1.2083	17.13
110125	1.2563	17.33
110127	0.8834	13.76
110128	1.1927	18.97
110129	1.6606	18.12
110130	1.0077	13.08
110132	1.1467	15.02
110134	0.9641	11.56
110135	1.3364	17.08
110136	1.1043	16.17
110140	1.0432	17.88
110141	0.9978	12.51
110142	0.9537	12.30
110143	1.4324	21.69
110144	1.0701	17.98
110146	1.0869	17.61
110149	1.1792	22.23
110150	1.4100	18.77
110152	1.0430	14.77
110153	1.0935	18.69
110154	0.9773	14.81
110155	1.1373	17.14
110156	1.0500	15.34
110161	1.3183	20.87
110162	0.7522	.....
110163	1.4626	18.20
110164	1.4197	19.49
110165	1.4296	19.00
110166	1.4485	19.85
110168	1.6662	19.82
110169	1.2028	18.72
110171	1.6129	20.09
110172	1.3551	25.44
110174	0.9161	14.30
110176	3.7291	22.40
110177	1.5099	19.59
110178	.....	16.85
110179	1.1506	20.52
110181	0.9051	13.72
110183	1.3138	21.18
110184	1.2424	20.95
110185	1.1859	16.25
110186	1.2579	17.34
110187	1.2755	21.45
110188	1.3546	20.05
110189	1.1719	18.86
110190	1.0646	19.43
110191	1.3087	19.11
110192	1.4455	20.77
110193	1.2441	18.78
110194	0.8928	15.09
110195	1.0992	10.52
110198	1.2874	26.19
110200	1.8858	17.21
110201	1.5098	19.24
110203	0.9319	20.30
110204	0.8239	20.57
110205	1.0578	26.12
110207	1.0141	12.87
110208	0.9593	14.89
110209	0.7100	20.46
110211	0.9611	21.82
110212	1.0031	12.66
110213	.....	13.20
110215	1.0915	.....
110216	2.1653	.....
110217	2.8336	.....
120001	1.8210	26.71
120002	1.2129	24.38
120003	1.1495	23.85
120004	1.2588	24.05
120005	1.2449	20.54
120006	1.2730	23.72
120007	1.7318	23.27
120009	0.9876	19.02
120010	1.8326	25.40
120011	1.3630	33.55
120012	0.8391	22.52
120014	1.2760	24.05
120015	1.0355	29.07
120016	1.0574	29.41
120018	1.2117	25.61
120019	1.3192	21.92
120021	0.8937	19.42
120022	1.6843	17.93
120024	1.0727	22.28
120025	.....	19.02
120026	1.2648	23.22
120027	1.4048	24.55
120028	1.2481	23.49
130001	0.9681	24.95
130002	1.3266	16.19
130003	1.3394	19.95
130005	1.4416	20.17
130006	1.8354	18.87
130007	1.6730	19.84
130008	0.9590	12.92
130009	0.9302	18.30
130010	0.8926	21.43
130011	1.2859	19.08
130012	0.9911	22.62
130013	1.3306	19.22
130014	1.3247	17.98
130015	0.8768	15.27
130016	1.0211	17.00
130017	1.1066	16.88
130018	1.6255	17.97
130019	1.1213	17.23
130021	0.9692	12.26
130022	1.2150	19.50
130024	1.1595	18.38
130025	1.0955	15.27
130026	1.1725	20.55
130027	0.9334	20.70
130028	1.2849	18.21
130029	1.0697	20.32
130030	0.8448	18.40
130031	1.0229	17.65
130034	1.0325	18.82
130035	1.1048	20.47
130036	1.3938	13.79
130037	1.3059	17.74
130043	0.9589	16.07
130044	0.9748	13.18
130045	0.9802	16.47
130048	0.9813	15.09
130049	1.2324	20.39
130054	0.9573	17.78
130056	0.8508	15.66
130058	.....	17.75
130060	1.2887	20.85
130061	1.2950	16.78
130062	0.7200	15.11
130063	1.4979	.....
140001	1.2255	15.44
140002	1.2571	19.26
140003	1.0026	18.00
140004	1.1707	17.52
140005	0.9673	10.87
140007	1.4692	22.40
140008	1.4670	21.28
140010	1.3723	25.22
140011	1.2034	17.28
140012	1.2770	19.44

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
140013	1.5752	17.35
140014	1.1751	20.76
140015	1.2854	15.02
140016	1.0294	12.54
140018	1.2556	21.41
140019	1.1123	15.34
140024	0.9557	14.67
140025	1.0826	16.95
140026	1.2234	15.96
140027	1.2694	17.50
140029	1.3385	21.03
140030	1.8214	22.44
140031	1.2008	15.94
140032	1.3345	17.34
140033	1.2874	22.56
140034	1.1851	19.15
140035	1.0002	13.00
140036	1.2407	17.04
140037	1.0383	12.50
140038	1.1029	17.61
140040	1.2581	16.25
140041	1.1609	17.28
140042	1.0170	15.61
140043	1.1892	18.95
140045	1.0315	20.65
140046	1.3045	16.46
140047	1.0950	16.33
140048	1.3056	20.58
140049	1.6537	21.59
140051	1.5128	20.85
140052	1.3027	19.60
140053	2.0158	17.82
140054	1.3339	26.15
140055	1.0225	14.80
140058	1.2340	17.27
140059	1.1394	15.39
140061	1.0953	15.96
140062	1.2457	27.09
140063	1.4375	22.39
140064	1.3249	19.25
140065	1.4610	23.16
140066	1.1773	16.17
140067	1.8177	18.40
140068	1.2883	18.87
140069	1.0457	16.15
140070	1.2636	19.30
140074	1.0760	19.01
140075	1.3671	22.51
140077	1.2557	16.64
140079	1.2639	21.92
140080	1.5815	21.00
140081	1.0826	15.51
140082	1.3675	22.62
140083	1.2487	18.13
140084	1.2529	20.01
140086	1.1147	17.37
140087	1.3481	18.36
140088	1.7136	24.26
140089	1.2745	17.21
140090	1.5324	23.59
140091	1.9057	20.70
140093	1.1687	19.15
140094	1.3422	20.61
140095	1.4016	21.54
140097	0.9525	16.90
140100	1.3286	19.06
140101	1.2240	26.09
140102	1.0445	15.08
140103	1.4231	17.86
140105	1.2926	20.91
140107	1.0113	12.76
140108	1.3335	28.60
140109	1.1446	15.47
140110	1.2400	18.81
140112	1.1563	16.24
140113	1.5588	17.92
140114	1.3342	20.48
140115	1.3041	20.09
140116	1.2341	21.83
140117	1.5614	19.64
140118	1.7249	23.08
140119	1.7816	26.50
140120	1.3740	14.84
140121	1.3607	9.53
140122	1.5542	23.75
140124	1.1024	26.97
140125	1.3478	17.10
140127	1.4164	19.42
140128	1.0296	17.67
140129	1.1659	15.25
140130	1.2488	23.77
140132	1.4905	23.04
140133	1.4025	19.91
140135	1.2759	17.69
140137	1.0383	16.51
140138	1.0650	14.59
140139	1.1039	16.58
140140	1.1395	15.30
140141	1.2644	15.18
140143	1.0957	18.76
140144	0.9933	19.79
140145	1.1514	16.61
140146	1.0740	23.74
140147	1.2519	24.82
140148	1.8274	19.50
140150	1.6434	27.85
140151	1.0618	19.30
140152	1.1951	22.43
140155	1.3310	17.31
140158	1.3594	22.27
140160	1.1737	17.88
140161	1.2224	19.04
140162	1.6988	18.42
140164	1.4390	18.61
140165	1.0866	15.42
140166	1.1670	17.54
140167	1.0995	16.57
140168	1.1303	16.46
140170	1.1327	14.14
140171	0.9915	14.73
140172	1.5915	20.80
140173	0.8685	18.48
140174	1.6130	19.92
140176	1.2480	21.41
140177	1.2010	18.17
140179	1.3630	22.70
140180	1.4469	23.25
140181	1.4232	20.55
140182	1.3607	20.70
140184	1.2116	14.98
140185	1.4938	17.36
140186	1.3429	18.99
140187	1.5865	17.69
140188	0.9985	14.84
140189	1.2534	19.08
140190	1.0757	15.88
140191	1.4399	24.74
140193	1.0289	15.52
140197	1.2537	17.98
140199	1.0816	18.83
140200	1.4773	21.65
140202	1.3290	22.18
140203	1.1563	20.78
140205	0.9296	17.24
140206	1.2023	20.51
140207	1.2939	20.20
140208	1.7156	23.94
140209	1.6271	17.79
140210	1.1138	12.66
140211	1.2095	20.96
140213	1.2790	26.20
140215	0.9874	14.45
140217	1.3233	23.32
140218	0.9871	15.08
140220	1.1223	16.73
140223	1.5508	21.47
140224	1.4309	22.99
140228	1.6773	18.67
140230	0.9381	16.60
140231	1.5608	21.61
140233	1.7813	18.37
140234	1.2225	18.72
140236	1.0843	13.13
140239	1.7318	18.88
140240	1.3948	24.21
140242	1.6371	22.67
140245	1.2029	15.56
140246	1.0621	12.82
140250	1.3281	23.41
140251	1.3069	20.58
140252	1.4989	24.49
140253	1.1634	16.74
140258	1.5765	21.13
140271	0.9795	15.36
140275	1.2739	17.96
140276	2.0654	23.72
140280	1.3786	18.84
140281	1.6496	23.34
140285	1.2739	14.71
140286	1.1863	19.95
140288	1.6193	21.82
140289	1.3459	16.45
140290	1.3383	21.24
140291	1.3339	22.44
140292	1.2911	22.71
140294	1.1347	17.52
140297	.....	21.47
140300	1.4559	23.26
150001	1.1041	21.70
150002	1.4489	18.76
150003	1.8053	19.31
150004	1.5183	19.70

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TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
150005	1.1499	19.00
150006	1.2599	20.04
150007	1.2063	19.53
150008	1.4364	20.97
150009	1.3649	18.22
150010	1.3600	18.48
150011	1.2166	19.19
150012	1.6210	20.52
150013	1.1027	16.00
150014	1.6030	21.28
150015	1.2975	22.05
150017	1.9021	18.89
150018	1.4575	19.56
150019	1.0931	15.29
150020	1.1536	14.46
150021	1.6905	19.02
150022	1.0882	17.92
150023	1.5779	18.66
150024	1.3427	17.83
150025	1.4440	18.15
150026	1.2077	20.51
150027	1.0057	16.48
150029	1.3399	21.74
150030	1.2418	17.33
150031	1.0791	18.01
150032	.....	20.64
150033	1.5759	21.69
150034	1.4830	21.29
150035	1.4915	19.82
150036	1.0011	20.38
150037	1.2875	17.79
150038	1.2923	20.25
150039	1.0012	17.49
150042	1.2828	17.12
150043	1.1061	17.98
150044	1.2617	17.64
150045	1.0943	17.04
150046	1.3952	17.32
150047	1.5995	24.88
150048	1.1920	16.96
150049	1.2163	16.85
150050	1.1659	17.14
150051	1.5091	18.20
150052	1.0896	15.36
150053	0.9867	18.75
150054	1.1338	17.33
150056	1.8954	23.30
150057	2.2387	16.86
150058	1.7048	20.95
150059	1.3598	20.80
150060	1.1844	16.01
150061	1.2118	17.21
150062	1.1077	18.41
150063	1.0850	21.09
150064	1.1848	17.03
150065	1.1695	19.01
150066	1.0217	14.60
150067	1.1259	17.08
150069	1.2229	17.39
150070	0.9568	17.20
150071	1.0951	14.73
150072	1.1985	16.11
150073	1.0647	19.03
150074	1.6339	18.86
150075	1.1208	14.98
150076	1.1839	22.34
150077	0.8124	17.58
150078	1.0539	19.01
150079	1.1723	15.45
150082	1.5245	17.88
150084	1.9902	22.92
150086	1.2532	17.34
150088	1.3451	19.45
150089	1.4582	22.94
150090	1.3308	19.06
150091	1.0358	19.89
150092	1.0090	15.92
150094	0.9814	18.34
150095	1.0848	17.12
150096	1.0067	20.03
150097	1.0940	18.31
150098	1.1571	14.30
150099	.....	18.97
150100	1.6554	17.48
150101	1.0910	17.56
150102	1.0778	11.50
150103	0.9707	17.31
150104	1.1260	17.26
150105	1.3381	19.17
150106	1.0525	18.91
150109	1.3958	18.23
150110	0.9834	18.58
150111	1.1588	16.17
150112	1.2455	19.82
150113	1.2372	19.20
150114	0.9743	16.96
150115	1.3404	17.06
150122	1.1625	19.35
150123	1.1180	15.16
150124	1.0843	15.07
150125	1.4619	20.32
150126	1.4866	20.30
150127	1.0396	22.81
150128	1.2478	19.92
150129	1.1853	23.47
150130	1.3391	16.41
150132	1.4200	19.48
150133	1.1910	16.49
150134	1.1949	17.06
150136	0.9556	19.28
160001	1.2585	19.03
160002	1.0936	15.37
160003	0.9994	15.77
160005	1.0825	15.23
160007	1.0218	15.66
160008	1.1402	14.97
160009	1.2212	16.09
160012	1.0500	16.54
160013	1.1368	17.06
160014	1.0250	15.09
160016	1.1678	18.37
160018	0.9630	14.16
160020	1.0690	14.41
160021	1.1123	15.49
160023	1.0852	14.20
160024	1.6086	18.95
160026	1.0312	18.66
160027	1.0851	15.74
160028	1.2328	20.54
160029	1.5330	20.40
160030	1.3897	17.99
160031	1.1173	15.28
160032	1.1540	16.18
160033	1.9249	18.37
160034	1.1538	14.51
160035	0.8486	15.92
160036	1.0544	19.20
160037	1.0575	18.40
160039	1.0380	17.63
160040	1.2725	16.83
160041	1.0640	15.47
160043	0.9958	15.63
160044	1.2165	16.04
160045	1.8190	20.12
160046	1.0270	14.77
160047	1.3715	16.69
160048	1.2473	13.14
160049	0.9271	13.36
160050	1.0702	16.42
160051	0.8978	14.27
160052	0.9917	17.55
160054	1.0301	15.71
160055	0.9883	14.06
160056	1.0674	15.38
160057	1.2430	17.41
160058	1.8366	20.34
160060	1.0432	15.95
160061	1.0830	17.57
160062	0.9941	14.44
160063	1.1620	16.30
160064	1.5338	19.91
160065	1.0522	16.51
160066	1.1019	16.26
160067	1.4239	17.85
160068	1.0224	15.85
160069	1.5367	18.49
160070	0.9958	15.66
160072	1.0345	14.19
160073	0.9972	15.05
160074	1.0388	16.48
160075	1.0778	17.89
160076	1.0989	17.31
160077	1.1087	11.40
160079	1.4119	17.71
160080	1.2114	17.81
160081	1.1520	16.51
160082	1.9236	18.76
160083	1.6706	18.41
160085	0.9972	18.55
160086	0.9601	16.46
160088	1.1561	17.53
160089	1.1911	16.74
160090	1.0139	16.60
160091	1.0383	12.19
160092	1.0120	15.80
160093	1.0155	15.95
160094	1.1043	16.56
160095	1.0299	14.26
160097	1.0774	15.21
160098	0.9466	15.54
160099	0.9654	13.79
160101	1.0851	17.87
160102	1.3432	18.36
160103	0.9416	17.15
160104	1.2969	19.74
160106	1.1113	16.66
160107	1.1505	16.56
160108	1.0215	15.42
160109	1.0167	16.49
160110	1.5105	18.81
160111	0.9969	13.17
160112	1.3695	16.28
160113	1.0947	14.58
160114	0.9776	15.58
160115	0.9770	15.76
160116	1.1196	16.69
160117	1.4111	17.29
160118	0.9954	15.84
160120	0.9721	12.56
160122	1.1137	18.52
160124	1.2998	17.16
160126	0.9700	17.74
160129	0.9742	15.89
160130	1.1286	15.45
160131	1.0437	14.69
160134	0.9459	13.32
160135	1.0163	16.33
160138	1.0146	15.71
160140	1.1321	18.80
160142	1.0188	16.14
160143	1.1242	15.92
160145	1.0697	15.17
160146	1.4411	16.35
160147	1.2764	18.39
160151	1.0545	15.74
160152	0.9425	15.22
160153	1.7595	19.69
170001	1.2073	17.44
170004	1.0739	13.06
170006	1.1966	19.31
170008	1.0034	13.90
170009	1.1479	19.59
170010	1.3585	17.90
170012	1.4135	16.79
170013	1.2818	17.89
170014	1.0342	17.34
170015	0.9809	15.89
170016	1.7098	19.64
170017	1.1985	17.87
170018	1.1014	14.28
170019	1.2400	16.66
170020	1.4076	16.15
170022	1.0506	17.94
170023	1.4694	19.36
170024	1.0663	13.06
170025	1.1917	16.37
170026	1.0821	13.31
170027	1.3182	16.39
170030	1.0600	15.24
170031	0.8926	13.47
170032	1.0154	14.48
170033	1.4154	16.05
170034	1.0335	14.63
170035	0.8974	15.62
170036	.....	14.17
170038	0.9007	14.21
170039	1.0924	14.30
170040	1.5839	20.14
170041	1.0515	11.47
170044	0.9951	14.78
170045	1.0889	12.11
170049	1.3513	18.58
170051	0.9883	14.16
170052	1.0435	14.62
170053	0.9379	9.04
170054	1.0385	12.77
170055	0.9812	14.99
170056	0.8854	14.87
170057	.....	15.09
170058	1.1560	18.34
170060	1.0207	17.23
170061	1.1617	14.14
170063	0.8974	11.33
170064	.....	12.42
170066	0.9451	14.48
170067	0.9987	12.78
170068	1.2647	15.82
170070	1.0611	12.82
170072	0.9119	13.34
170073	1.0417	16.47
170074	1.2029	14.40
170075	0.9266	11.26
170076	1.0180	13.58
170077	0.9138	12.72
170079	1.0029	14.29
170080	0.9644	12.20
170081	0.9118	12.51
170082	0.9387	12.39
170084	0.8978	12.16
170085	0.8894	14.51
170086	1.6767	19.85
170088	0.9319	11.75
170089	0.9744	18.08
170090	0.9652	11.27
170092	.....	12.85
170093	0.8902	12.78
170094	0.9571	17.71
170095	1.0123	15.75
170097	0.9087	15.85
170098	1.1360	14.10
170099	1.1529	13.55
170100	.....	14.47
170101	0.9694	12.88
170102	0.9678	13.24
170103	1.3272	16.66
170104	1.4805	19.76
170105	1.0590	15.93
170106	0.9336	14.68
170109	0.9346	16.94
170110	0.9857	15.55
170112	1.1452	13.39
170113	1.0746	13.39
170114	0.9511	14.51
170115	0.9977	12.68
170116	1.0599	15.76
170117	0.9782	15.28
170119	0.9657	13.97
170120	1.2725	16.21
170122	1.7569	20.13
170123	1.7222	21.42
170124	0.9948	16.21
170126	0.9316	12.13
170128	0.9613	14.99
170131	.....	13.10
170133	1.1278	17.11
170134	0.8746	14.23
170137	1.1825	17.42
170139	1.0034	13.39
170142	1.3143	17.32
170143	1.1142	15.88
170144	1.5081	16.09
170145	1.1137	16.75
170146	1.4464	19.97
170147	1.1950	16.28
170148	1.3683	17.25
170150	1.1491	15.43
170151	0.9386	13.37
170152	1.0039	13.68
170160	0.9948	13.31
170164	0.9849	15.56
170166	1.1213	17.57
170171	1.0545	13.81
170175	1.3044	17.88
170176	1.6757	20.32
170182	1.4288	14.20
170183	1.9802	19.09
170184	.....	27.01
180001	1.3845	19.52
180002	1.0807	18.13
180004	1.1145	15.99
180005	1.1967	20.63
180006	0.9088	11.23
180007	1.4605	17.20
180009	1.3630	20.81
180010	1.9352	17.55
180011	1.3149	16.93
180012	1.4399	18.74
180013	1.4516	17.45
180014	1.6962	20.80
180016	1.3326	18.84
180017	1.3055	15.17
180018	1.2972	18.90
180019	1.1916	16.76
180020	1.1096	17.78
180021	1.0498	15.16
180023	0.9502	15.22
180024	1.4071	15.33
180025	1.2007	17.17
180026	1.2061	14.16
180027	1.2508	14.89
180028	1.0896	19.35
180029	1.2291	18.02
180030	1.1690	17.02
180031	1.1171	13.79
180032	1.0592	16.09
180033	1.0969	13.77
180034	1.0876	17.32
180035	1.6449	19.45
180036	1.1569	19.19
180037	1.3120	18.81
180038	1.4617	17.16
180040	1.9294	19.44
180041	1.1888	15.17
180042	1.1678	16.29

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
180043	1.1248	16.61
180044	1.1967	17.82
180045	1.3993	17.73
180046	1.0431	17.91
180047	1.0016	15.04
180048	1.2482	19.57
180049	1.3489	16.08
180050	1.2187	18.48
180051	1.3876	15.68
180053	1.0545	14.63
180054	1.0894	16.39
180055	1.2204	14.64
180056	1.1028	16.62
180058	1.0446	14.36
180059	0.8725	14.26
180060	.....	7.21
180063	1.0690	11.91
180064	1.1791	14.49
180065	1.0777	20.03
180066	1.0801	18.56
180067	1.8973	18.53
180069	1.1243	17.30
180070	1.1056	13.84
180072	1.1200	17.85
180075	.....	15.07
180078	1.0782	19.16
180079	1.1816	13.41
180080	1.0820	15.83
180087	1.2278	14.97
180088	1.6070	22.53
180092	1.2232	16.31
180093	1.4180	16.83
180094	1.0265	12.51
180095	1.1312	13.40
180099	1.0423	13.70
180101	1.1766	19.56
180102	1.4368	17.88
180103	2.3182	19.22
180104	1.5485	18.87
180105	0.8828	14.08
180106	0.8754	13.61
180108	0.8268	14.62
180115	0.9601	17.11
180116	1.2335	16.94
180117	1.1154	18.38
180118	0.9648	12.15
180120	1.0190	17.81
180121	1.1698	14.51
180122	1.0646	16.97
180123	1.3537	19.00
180124	1.3291	18.41
180125	1.1248	19.73
180126	1.1140	12.40
180127	1.2901	17.35
180128	1.0665	17.05
180129	0.9823	17.86
180130	1.4358	19.01
180132	1.2696	17.26
180133	1.3414	22.23
180134	1.0880	13.63
180136	1.8166	17.71
180138	1.2012	18.61
180139	1.0562	18.77
180140	0.9802	20.40
180141	1.8686	20.01
180142	1.7788	.....
190001	0.8863	17.01
190002	1.6872	18.84
190003	1.3293	22.15
190004	1.4227	17.54
190005	1.5108	16.71
190006	1.4657	17.73
190007	1.0554	13.60
190008	1.6184	16.89
190009	1.2835	14.21
190010	1.2068	17.02
190011	1.1462	15.17
190013	1.3006	16.57
190014	1.1871	17.02
190015	1.2674	18.19
190017	1.3423	15.79
190018	1.1075	16.98
190019	1.7884	17.40
190020	1.1993	17.31
190025	1.3078	16.07
190026	1.5549	17.22
190027	1.5154	16.19
190029	1.1492	17.11
190033	0.9722	10.74
190034	1.1721	16.51
190036	1.6846	19.94
190037	0.9642	12.02
190039	1.4096	17.17
190040	1.3336	20.32
190041	1.6062	17.90
190043	1.0448	12.57
190044	1.1671	17.20
190045	1.4154	21.69
190046	1.4275	19.35
190048	1.2068	16.34
190049	0.9395	16.42
190050	1.0788	15.38
190053	1.1493	12.50
190054	1.2992	16.47
190059	0.8878	15.84
190060	1.3886	18.37
190064	1.5235	19.90
190065	1.4997	19.39
190071	0.8370	13.59
190077	0.8845	12.83
190078	1.1084	13.50
190079	1.3543	17.29
190081	0.8862	12.02
190083	1.0663	16.14
190086	1.3280	14.93
190088	1.2140	19.63
190089	1.1095	12.79
190090	1.0412	16.56
190092	.....	18.07
190095	0.9939	15.73
190098	1.5467	19.22
190099	1.1795	18.92
190102	1.6260	19.05
190103	0.9068	15.57
190106	1.1248	17.75
190109	1.2488	14.53
190110	0.9773	12.99
190111	1.5936	20.04
190112	1.6944	19.21
190113	1.3926	18.99
190114	1.0180	12.91
190115	1.2776	20.49
190116	1.1970	12.59
190118	0.9984	12.95
190120	0.9918	13.69
190122	1.2902	14.83
190124	1.6262	22.38
190125	1.4998	18.63
190128	1.1960	19.71
190130	1.0021	12.43
190131	1.2634	19.60
190133	1.0829	13.48
190134	1.0010	12.68
190135	1.4336	21.35
190136	0.9974	11.33
190138	.....	22.71
190140	0.9506	12.03
190142	0.9173	14.98
190144	1.1852	16.84
190145	0.9756	13.99
190146	1.5254	20.09
190147	0.9772	14.32
190148	0.9409	14.02
190149	0.9956	15.19
190151	1.0763	11.92
190152	1.5099	20.40
190155	.....	11.08
190156	0.9523	12.48
190158	1.2658	19.62
190160	1.2656	18.47
190161	1.0796	14.63
190162	1.2953	19.50
190164	1.1850	16.33
190167	1.1283	16.29
190170	0.9051	13.58
190173	1.3386	19.64
190175	1.4211	20.69
190176	1.6017	18.82
190177	1.7127	20.32
190178	0.9284	10.49
190182	1.3004	20.03
190183	1.1900	16.11
190184	0.9948	14.86
190185	1.3089	19.37
190186	0.9392	16.36
190189	.....	26.54
190190	0.9164	18.67
190191	1.1467	18.14
190196	0.9433	14.87
190197	1.1821	17.92
190199	1.1077	13.42
190200	1.4896	19.41
190201	1.0997	19.14
190202	1.1257	17.90
190203	1.4077	21.31
190204	1.4949	21.21
190205	1.9200	18.10
190206	1.6311	20.06
190207	1.2616	17.67
190208	0.8087	14.61
190218	1.0606	18.16
190223	.....	19.26

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
190227	1.0049	12.11
190231	1.5630	16.89
190235	.....	18.27
190236	1.4200	22.18
190237	2.6647	.....
190238	1.6631	.....
190239	1.1565	.....
190240	0.9574	.....
200001	1.3477	17.19
200002	1.1150	18.77
200003	1.0964	16.74
200006	1.0846	19.80
200007	1.0259	17.89
200008	1.2221	20.50
200009	1.8810	20.64
200012	1.1802	17.01
200013	1.1132	16.49
200015	.....	20.11
200016	1.0407	17.66
200017	.....	19.65
200018	1.2100	17.24
200019	1.2510	18.64
200020	1.1517	20.60
200021	1.1958	19.41
200023	0.8393	14.92
200024	1.4795	18.65
200025	1.2498	19.07
200026	0.9907	17.28
200027	1.2361	18.28
200028	0.9208	16.93
200031	1.2276	15.90
200032	1.3282	17.92
200033	1.7827	21.40
200034	1.2767	19.24
200037	1.2288	18.24
200038	1.1403	19.21
200039	1.2567	20.29
200040	1.1161	19.30
200041	1.1251	17.66
200043	0.8011	16.54
200050	1.2048	18.08
200051	0.9887	19.59
200052	0.9951	15.12
200055	1.0880	17.17
200062	0.9532	16.51
200063	1.2440	19.67
200066	1.1429	16.34
210001	1.4433	18.73
210002	2.0494	22.84
210003	1.6842	25.37
210004	1.3603	23.59
210005	1.2944	19.62
210006	1.1143	17.77
210007	1.8010	21.54
210008	1.3067	19.50
210009	1.8608	21.81
210010	1.1389	14.38
210011	1.3616	21.24
210012	1.6214	23.43
210013	1.3595	18.85
210015	1.3058	16.69
210016	1.8547	22.15
210017	1.2502	17.17
210018	1.2626	21.41
210019	1.6155	19.09
210022	1.4895	21.82
210023	1.4521	21.80
210024	1.6929	19.56
210025	1.3269	19.57
210026	1.3215	11.64
210027	1.2849	18.49
210028	1.1685	18.86
210029	1.2770	22.39
210030	1.2555	21.02
210031	1.3110	15.59
210032	1.1818	18.50
210033	1.2403	19.91
210034	1.3179	16.12
210035	1.3496	20.61
210037	1.2643	18.74
210038	1.4168	23.26
210039	1.1908	20.73
210040	1.3185	25.08
210043	1.2817	18.59
210044	1.3636	22.24
210045	1.0866	9.69
210048	1.2884	22.39
210049	1.1698	17.67
210051	1.4028	20.76
210054	1.3672	23.51
210055	1.3640	20.10
210056	1.3926	20.94
210057	1.3578	22.57
210058	1.5015	21.50
210059	1.1916	23.13
210060	1.2744	.....
210061	1.1312	20.02
220001	1.2885	26.32
220002	1.4675	22.58
220003	1.1126	19.14
220004	.....	20.01
220006	1.3858	22.12
220008	1.2978	21.89
220010	1.3476	21.92
220011	1.0966	28.57
220012	1.3138	29.51
220015	1.1694	21.78
220016	1.3440	23.14
220017	1.3512	25.26
220019	1.1553	19.13
220020	1.2443	19.99
220021	.....	23.63
220023	0.6351	18.76
220024	1.2152	21.59
220025	1.1428	19.94
220028	1.4561	22.07
220029	1.1597	21.87
220030	1.1060	14.54
220031	1.9047	28.16
220033	1.2607	20.41
220035	1.3065	22.00
220036	1.6250	24.16
220038	1.3105	22.35
220041	1.1892	23.15
220042	1.2714	25.28
220046	1.3199	22.47
220049	1.2818	23.03
220050	1.1650	20.83
220051	1.1795	20.48
220052	1.2991	23.14
220053	1.1633	21.27
220055	1.2850	21.57
220057	1.3594	23.00
220058	1.1555	20.19
220060	1.2301	26.17
220062	0.5637	20.06
220063	1.2667	20.95
220064	1.2836	22.18
220065	1.3716	20.20
220066	1.3505	20.46
220067	1.2871	25.74
220068	.....	6.45
220070	1.2178	19.77
220071	1.9238	24.65
220073	1.3020	25.87
220074	1.3357	24.05
220075	1.7963	21.54
220076	1.2498	24.78
220077	1.8273	24.80
220079	1.1002	21.01
220080	1.3051	20.50
220081	0.9211	25.34
220082	1.2653	20.02
220083	1.1883	23.08
220084	1.2499	24.66
220086	1.7929	30.46
220088	1.6454	23.38
220089	1.2586	21.79
220090	1.2248	21.64
220092	1.1846	17.04
220094	.....	21.99
220095	1.1895	21.45
220098	1.3182	20.86
220100	1.3672	25.35
220101	1.4445	24.33
220104	1.4751	27.53
220105	1.2705	21.69
220106	1.2167	24.55
220107	.....	20.27
220108	1.1918	22.64
220110	2.1062	29.19
220111	1.2452	23.05
220116	1.9074	24.97
220118	.....	30.52
220119	1.2606	22.86
220123	1.0333	27.31
220126	1.2501	20.96
220128	.....	20.56
220133	0.6976	35.27
220135	1.2820	25.08
220153	1.0071	23.90
220154	0.9026	22.13
220162	1.5209	.....
220163	2.0316	27.35
220171	1.6823	23.43
230001	1.1547	19.20
230002	1.2729	21.91
230003	1.1440	19.61
230004	1.6897	22.03
230005	1.2524	19.40
230006	1.0497	18.47
230007	.....	19.43

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TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
230012	0.9628	18.67
230013	1.3746	20.63
230015	1.1422	20.43
230017	1.6115	20.40
230019	1.5321	21.32
230020	1.7453	21.32
230021	1.5006	18.57
230022	1.2699	19.76
230024	1.4264	27.96
230027	1.0344	18.03
230029	1.5752	21.06
230030	1.3412	17.70
230031	1.4268	17.53
230032	1.7439	20.68
230034	1.2703	17.23
230035	1.0782	17.56
230036	1.2543	21.76
230037	1.1759	19.07
230038	1.7538	23.39
230040	1.1335	20.39
230041	1.2547	19.03
230042	1.2347	19.49
230046	1.9274	25.95
230047	1.3582	20.64
230053	1.5879	22.18
230054	1.8393	19.54
230055	1.1717	19.84
230056	0.9022	16.41
230058	1.1008	18.23
230059	1.4590	19.51
230060	1.3289	17.87
230062	0.9642	16.30
230063	1.2580	20.22
230065	1.3189	21.15
230066	1.3680	21.51
230069	1.1982	21.79
230070	1.6482	20.06
230071	1.1143	22.16
230072	1.2345	20.43
230075	1.5088	19.43
230076	1.4056	23.82
230077	2.0633	20.39
230078	1.1156	16.25
230080	1.2475	18.91
230081	1.2085	17.95
230082	1.1156	17.74
230085	1.2336	17.54
230086	0.9507	16.98
230087	1.0836	15.77
230089	1.2845	21.39
230092	1.3584	18.96
230093	1.2332	20.19
230095	1.1754	16.78
230096	1.1056	22.56
230097	1.6198	20.10
230099	1.1227	20.25
230100	1.1434	13.11
230101	1.0673	18.61
230103	1.0518	19.60
230104	1.5580	23.47
230105	1.8005	20.88
230106	1.1850	18.35
230107	0.9423	14.67
230108	1.2110	17.42
230110	1.3149	17.80
230113	0.8490	11.17
230115	1.0569	16.47
230116	0.8683	16.36
230117	1.9017	23.94
230118	1.1392	21.71
230119	1.3553	23.96
230120	1.1300	19.64
230121	1.2281	20.08
230122	1.3510	18.09
230124	1.1665	18.89
230125	.....	15.35
230128	1.4062	23.58
230130	1.6919	22.52
230132	1.3454	26.17
230133	1.2277	17.57
230134	.....	15.32
230135	1.2335	22.74
230137	.....	18.34
230141	1.6286	23.05
230142	1.2833	20.12
230143	1.2819	16.45
230144	1.1235	20.99
230145	1.1243	16.60
230146	1.2623	18.63
230147	1.4122	20.51
230149	1.1319	14.17
230151	1.4152	20.89
230153	1.0656	17.33
230154	0.8898	14.58
230155	1.0291	16.99
230156	1.7492	23.61
230157	1.1708	19.72
230159	1.0227	18.84
230162	0.9486	17.77
230165	1.9365	23.31
230167	1.7523	20.32
230169	1.3609	22.86
230171	1.0638	14.96
230172	1.1814	20.22
230174	1.3724	20.85
230175	2.3801	21.81
230176	1.2161	21.86
230178	0.9470	16.08
230180	1.1228	15.48
230184	1.2506	17.29
230186	1.1355	.....
230188	1.1192	15.56
230189	0.9459	15.91
230190	0.8855	23.71
230191	0.9307	17.12
230193	1.3034	20.18
230195	1.3593	22.37
230197	1.4069	21.62
230199	1.1010	18.40
230201	1.2559	15.32
230204	1.3711	22.95
230205	0.9890	13.89
230207	1.2528	20.35
230208	1.2993	17.15
230211	0.9109	17.51
230212	1.0548	22.14
230213	0.9300	15.32
230216	1.5720	19.59
230217	1.2676	20.95
230219	0.8629	20.70
230221*	.....	21.50
230222	1.3905	20.84
230223	1.2683	21.50
230227	1.4220	21.38
230230	1.5842	22.53
230232	.....	12.64
230235	1.0983	15.95
230236	1.3279	23.22
230239	1.1721	19.23
230241	1.1923	18.85
230244	1.4096	21.08
230253	0.9601	21.95
230254	1.2941	21.28
230257	0.9124	20.47
230259	1.1378	21.15
230264	1.6854	15.18
230269	1.3102	22.81
230270	1.2083	20.08
230273	1.5194	23.40
230275	0.5244	17.60
230276	0.5657	18.58
230277	1.2485	22.50
230278	.....	16.66
230279	0.6550	16.04
230280	1.0995	14.22
230283	2.2592	.....
240001	1.5332	22.85
240002	1.7586	23.02
240004	1.5987	23.92
240005	0.8865	16.98
240006	1.1679	27.11
240007	1.0673	16.98
240008	1.1473	21.81
240009	0.9476	16.69
240010	1.9899	23.63
240011	1.1456	18.96
240013	1.2868	18.97
240014	1.0965	21.86
240016	1.3894	19.86
240017	1.1545	17.23
240018	1.2702	19.07
240019	1.1855	20.99
240020	1.1176	19.57
240021	0.9884	17.40
240022	1.1043	19.16
240023	0.9797	20.39
240025	1.0961	17.25
240027	1.0734	16.25
240028	1.1427	19.38
240029	1.1507	17.99
240030	1.2812	18.44
240031	0.9279	18.07
240036	1.5882	20.33
240037	1.0148	18.46
240038	1.5017	26.35
240040	1.2710	19.90
240041	1.1727	19.21
240043	1.2209	17.31
240044	1.1345	18.92
240045	1.1610	20.99
240047*	1.5761	21.86
240048	.....	23.31

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
240049	.....	22.13
240050	1.2090	24.50
240051	0.9678	18.23
240052	1.3021	19.22
240053	1.4864	21.20
240056	1.2521	22.29
240057	1.8388	23.24
240058	0.9316	14.91
240059	1.0446	21.96
240061	1.7835	25.56
240063	1.4484	23.54
240064	1.3231	20.76
240065	1.1449	12.55
240066	1.3065	22.05
240069	1.1937	19.18
240071	1.1063	19.19
240072	1.0228	18.00
240073	0.8981	15.63
240075	1.2006	21.19
240076	1.0723	21.07
240077	0.8989	14.95
240078	1.5437	22.71
240079	0.9531	17.82
240080*	1.6136	23.73
240082	1.1218	18.03
240083	1.2912	19.29
240084	1.3307	19.61
240085	1.0393	18.02
240086	1.0475	15.33
240087	1.1670	17.06
240088	1.4004	21.02
240089	0.9225	18.42
240090	1.1253	18.05
240093	1.2993	18.68
240094	0.9638	20.57
240096	0.9927	18.34
240097	1.1145	23.62
240098	0.9306	20.60
240099	1.0713	14.38
240100	1.2877	19.19
240101	1.2098	17.75
240102	0.9288	15.56
240103	1.2084	16.88
240104	1.1678	24.02
240105	.....	14.79
240106	1.3974	23.78
240107	0.9782	19.03
240108	0.9821	16.46
240109	0.9815	13.15
240110	0.9379	17.28
240111	0.9930	17.04
240112	0.9784	15.32
240114	0.9362	15.49
240115	1.6103	22.16
240116	0.9259	15.18
240117	1.1442	17.57
240119	0.8629	22.50
240121	0.9090	21.37
240122	1.0827	18.04
240123	1.0155	15.60
240124	0.9602	19.05
240125	0.9736	13.15
240127	1.0148	14.77
240128	1.1120	16.08
240129	0.9953	15.42
240130	0.9313	15.65
240132	1.2720	24.50
240133	1.2168	18.52
240135	0.9183	13.60
240137	1.1747	19.18
240138	0.9423	13.74
240139	0.9616	17.02
240141	1.1570	21.99
240142	1.0110	20.61
240143	0.9629	14.28
240144	1.0633	15.87
240145	0.9100	15.00
240146*	0.9093	16.75
240148	1.0294	11.34
240150	0.8795	12.83
240152	1.0247	20.20
240153	1.0013	15.61
240154	1.0226	17.06
240155	0.9164	20.42
240157	1.0213	14.69
240160	1.0612	16.60
240161	1.0365	15.42
240162	1.0748	19.04
240163	0.9730	17.87
240166	1.1543	16.39
240169	0.9599	18.62
240170	1.1064	17.65
240171	1.0064	16.72
240172	0.9741	16.07
240173	0.9970	16.74
240179	1.0360	16.65
240184	0.9619	14.40
240187	1.2498	17.51
240193	1.0038	16.30
240196	0.6772	23.27
240200	0.9005	14.73
240205	0.9227	.....
240206	0.8330	.....
240207	1.2623	23.33
240210	1.2530	23.84
240211	0.9634	20.55
250001	1.6314	18.14
250002	0.8836	15.60
250003	0.9911	15.66
250004	1.5373	17.12
250005	0.9463	12.00
250006	0.9631	15.70
250007	1.2281	19.16
250008	1.0321	13.32
250009	1.2665	16.18
250010	1.0095	13.34
250012	0.9332	18.48
250015	1.0380	11.07
250017	1.0279	17.30
250019	1.4828	17.15
250020	0.9516	14.06
250021	0.8435	9.08
250023	0.8955	13.54
250024	0.8985	11.59
250025	1.1484	17.89
250027	0.9764	12.42
250029	0.8697	14.85
250030	0.9198	13.63
250031	1.2472	18.77
250032	1.2183	17.30
250033	1.0130	15.76
250034	1.5442	18.13
250035	0.8342	17.41
250036	0.9965	13.79
250037	0.8826	10.32
250038	0.9386	13.62
250039	0.9969	16.51
250040	1.3140	15.64
250042	1.2627	16.47
250043	0.9006	13.65
250044	0.9882	16.75
250045	1.2709	19.48
250047	0.9058	12.10
250048	1.5287	15.71
250049	0.8842	10.76
250050	1.2687	13.92
250051	0.9276	9.60
250057	1.1769	14.29
250058	1.1854	15.42
250059	1.0826	14.30
250060	0.7514	7.99
250061	0.8571	13.97
250063	0.8309	14.97
250065	0.8940	12.68
250066	0.9147	14.33
250067	1.1605	15.29
250068	0.8225	11.43
250069	1.2675	15.77
250071	0.9001	11.21
250072	1.4320	16.93
250077	0.9344	11.41
250078	1.5476	15.46
250079	0.8556	19.06
250081	1.2710	16.14
250082	1.4184	14.02
250083	0.9424	9.20
250084	1.0972	19.74
250085	0.9906	13.85
250088	0.9812	16.75
250089	1.0895	13.05
250093	1.1743	15.09
250094	1.3417	17.85
250095	0.9930	16.36
250096	1.2105	17.07
250097	1.2839	18.41
250098	0.9397	14.30
250099	1.2925	14.41
250100	1.2679	16.60
250101	0.8835	16.31
250102	1.5198	20.02
250104	1.4479	17.54
250105	0.9368	14.60
250107	0.8802	13.63
250109	0.8898	14.55
250112	0.9928	14.20
250117	1.0623	14.52
250119	1.0646	12.74
250120	1.0648	14.41
250122	1.1767	17.71
250123	1.2182	17.41
250124	0.9343	12.67

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TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
250125	1.2795	14.49
250126	0.9354	14.71
250127	0.9230	.....
250128	1.0364	13.00
250131	1.0826	10.28
250134	0.9628	17.98
250136	0.9183	18.05
250138	1.2050	17.60
250141	1.2056	17.12
250145	0.8696	11.40
250146	0.9386	13.28
250148	1.2354	14.82
250149	0.9692	12.98
250150	1.2560	.....
260001	1.6540	17.55
260002	1.4391	20.59
260003	1.1323	14.35
260004	0.9723	13.75
260005	1.6472	19.71
260006	1.5189	18.94
260008	1.0522	16.25
260009	1.2922	17.94
260011	1.5359	18.34
260012	1.0022	14.46
260013	1.1867	15.54
260015	1.1785	21.33
260017	1.1731	15.80
260018	0.8870	12.23
260019	1.1516	23.67
260020	1.8132	21.86
260021	1.4382	17.57
260022	1.2554	19.35
260023	1.4184	15.82
260024	0.9715	13.47
260025	1.3027	14.94
260027	1.6141	21.01
260029	1.1888	17.47
260030	1.1362	11.24
260031	1.5369	18.30
260032	1.7266	20.81
260034	1.0233	17.90
260035	1.0041	12.59
260036	1.0016	18.31
260039	1.0672	14.20
260040	1.6822	15.39
260042	1.2519	17.44
260044	1.0069	17.12
260047	1.6386	17.28
260048	1.2523	21.43
260050	1.0553	18.74
260052	1.3718	17.75
260053	1.1217	12.01
260054	1.3547	17.37
260055	0.9682	13.80
260057	1.0095	15.33
260059	1.2434	15.79
260061	1.1184	15.01
260062	1.1843	20.26
260063	1.0723	16.85
260064	1.3324	16.50
260065	1.7738	18.47
260066	1.0120	14.42
260067	0.8925	12.16
260068	1.6794	19.83
260070	1.0404	21.69
260073	1.0809	13.01
260074	1.2969	15.45
260077	1.7295	18.26
260078	1.1807	15.48
260079	1.0611	14.83
260080	0.9884	12.56
260081	1.6614	18.96
260082	1.1528	15.79
260085	1.5832	19.51
260086	0.9274	14.87
260091	1.6930	19.61
260094	1.1892	15.87
260095	1.3659	19.77
260096	1.5590	21.72
260097	1.1452	15.79
260100	1.0130	15.73
260102	1.0038	16.37
260103	1.3185	17.35
260104	1.7110	19.12
260105	1.8654	20.80
260107	1.4527	18.46
260108	1.8537	19.24
260109	0.9906	13.44
260110	1.6721	17.00
260113	1.2263	14.90
260115	1.2279	17.90
260116	1.1041	14.57
260119	1.2152	16.20
260120	1.1948	17.13
260122	1.0917	14.54
260123	1.0487	14.00
260127	1.0634	15.95
260128	1.0338	11.27
260129	.....	14.64
260131	1.2601	19.75
260134	1.1698	16.58
260137	1.7102	15.22
260138	1.9094	21.39
260141	2.0004	17.96
260142	1.1233	16.03
260143	1.0016	11.94
260147	0.9530	13.66
260148	0.9021	10.34
260158	1.0574	12.40
260159	1.0116	18.22
260160	1.1472	16.19
260162	1.5667	20.71
260163	1.2567	14.81
260164	0.9190	14.31
260166	1.2194	19.53
260172	0.9615	12.49
260173	1.0048	11.98
260175	1.1265	16.29
260176	1.7233	19.54
260177	1.3369	20.75
260178	1.4649	21.41
260179	1.6106	20.74
260180	1.6586	18.54
260183	1.6585	20.19
260186	1.5839	18.06
260188	1.2743	18.58
260189	0.9387	10.75
260190	1.1980	18.16
260191	1.2861	19.34
260193	1.2221	20.51
260195	1.2459	15.95
260197	1.0938	16.46
260198	1.2956	17.64
260200	1.2113	18.88
260205	1.1124	.....
260206	2.6705	.....
270002	1.2833	17.19
270003	1.2141	22.13
270004	1.6968	21.34
270006	0.8808	16.19
270007	1.0011	13.17
270009	1.0256	17.70
270011	1.0498	19.82
270012	1.6001	22.88
270013	.....	20.40
270014	1.8500	18.56
270016	0.9247	19.77
270017	1.2639	19.58
270019	1.0268	12.78
270021	1.1669	16.65
270023	1.2640	20.36
270026	0.9053	15.64
270027	1.0596	9.78
270028	1.1731	17.21
270029	0.9212	17.89
270032	1.1264	17.03
270033	0.8642	16.46
270035	1.0021	17.65
270036	0.9187	14.08
270039	1.0483	15.35
270040	1.1242	19.19
270041	1.0440	16.78
270044	1.1390	13.46
270046	.....	17.10
270048	1.0158	15.84
270049	1.7683	21.17
270050	0.9929	18.04
270051	1.3159	18.95
270052	1.0056	14.80
270057	1.3060	20.01
270058	0.9229	14.07
270059	0.7506	15.60
270060	0.9519	14.02
270063	0.9338	14.23
270073	1.0809	15.53
270074	0.8781	.....
270075	0.8274	.....
270079	0.9373	15.03
270080	1.1414	14.04
270081	0.9580	15.52
270082	1.1019	16.13
270083	1.0075	20.82
270084	0.9157	16.21
280001	1.0653	17.89
280003	2.1221	22.00
280005	1.3612	18.75
280009	1.7670	18.75
280010	0.8073	16.54
280011	0.8552	13.96
280012	.....	16.41
280013	1.7273	22.18
280014	0.9006	15.24

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
280015	1.0732	14.64
280017	1.0728	14.19
280018	1.0539	14.85
280020	1.8150	19.40
280021	1.1771	16.69
280022	0.9681	15.71
280023	1.3944	21.24
280024	0.9612	13.91
280025	0.9712	14.27
280026	1.0404	16.06
280028	1.0763	15.89
280029	1.2096	19.05
280030	1.7625	28.71
280031	0.9956	13.22
280032	1.3462	19.39
280033	1.0807	14.93
280034	.....	15.28
280035	0.9131	15.33
280037	1.0308	16.17
280038	1.0606	16.47
280039	1.0660	15.19
280040	1.7369	18.97
280041	0.9646	13.39
280042	1.0402	15.30
280043	0.9786	15.79
280045	1.0415	14.27
280046	1.0475	13.72
280047	1.1206	18.37
280048	1.1174	14.07
280049	1.0856	15.63
280050	0.8884	15.34
280051	1.1386	15.85
280052	1.0615	13.65
280054	1.2474	17.58
280055	0.9142	12.99
280056	0.9322	14.02
280057	0.9649	15.76
280058	1.2501	17.88
280060	1.6246	28.60
280061	1.4157	17.95
280062	1.1769	13.67
280064	1.0166	15.51
280065	1.2679	18.53
280066	1.0165	11.64
280068	0.9402	10.13
280070	0.9894	13.74
280073	0.9850	17.06
280074	0.9716	15.22
280075	1.1012	13.79
280076	1.0276	13.92
280077	1.2963	19.01
280079	1.0819	9.91
280080	1.0562	14.35
280081	1.7212	20.92
280082	1.0739	13.13
280083	1.0628	17.55
280084	0.9626	11.69
280085	0.8210	21.58
280088	1.2613	22.11
280089	0.8817	17.47
280090	0.8499	14.72
280091	1.0928	15.22
280092	0.9078	14.20
280094	0.9941	15.88
280097	1.0876	14.30
280098	0.8785	10.17
280101	1.0046	17.42
280102	.....	12.94
280104	0.9207	13.38
280105	1.2342	18.78
280106	1.0160	15.54
280107	1.1351	13.46
280108	1.0616	17.22
280109	0.9496	11.06
280110	0.9845	12.30
280111	1.2649	23.08
280114	0.9211	13.56
280115	0.9774	16.43
280117	1.0941	16.82
280118	0.9071	16.92
280119	0.9530	.....
280123	.....	20.77
280125	1.2264	.....
290001	1.6989	22.42
290002	0.9461	20.94
290003	1.6712	25.01
290005	1.3324	17.86
290006	1.2261	19.88
290007	1.6901	29.69
290008	1.2555	20.25
290009	1.6203	22.74
290010	1.1253	14.48
290011	1.0959	16.44
290012	1.3503	21.51
290013	0.9996	17.09
290014	1.0332	18.38
290015	0.9724	17.83
290016	1.1412	12.79
290019	1.3301	20.93
290020	0.9828	26.15
290021	1.6748	21.13
290022	1.5940	24.08
290027	0.8902	16.43
290029	0.9227	.....
290032	1.4060	22.79
290036	0.5760	18.61
290038	0.9361	23.14
290039	1.3330	25.80
290041	1.2649	.....
290043	1.5247	.....
300001	1.4811	21.42
300003	1.9992	23.38
300005	1.3421	19.99
300006	1.1762	18.93
300007	1.0898	19.34
300008	1.2459	16.46
300009	1.0636	20.01
300010	1.2614	19.38
300011	1.3223	21.24
300012	1.3247	23.89
300013	1.1162	18.97
300014	1.2417	19.80
300015	1.1328	19.93
300016	1.2146	18.50
300017	1.3266	22.34
300018	1.3652	20.89
300019	1.2381	20.61
300020	1.3828	21.97
300021	1.0721	17.35
300022	1.1269	17.19
300023	1.3992	20.39
300024	1.2667	17.95
300028	1.2841	18.05
300029	1.3193	20.90
300033	1.0937	19.85
300034	2.1599	23.52
310001	1.7867	27.60
310002	1.8508	27.87
310003	1.2979	27.42
310005	1.2978	23.05
310006	1.2138	21.56
310008	1.3295	24.95
310009	1.3238	23.19
310010	1.2493	21.11
310011	1.2567	23.40
310012	1.6481	26.32
310013	1.3716	22.11
310014	1.6717	28.70
310015	2.0397	26.76
310016	1.2889	26.05
310017	1.3516	26.07
310018	1.0776	24.53
310019	1.6759	23.09
310020	1.3978	19.27
310021	1.5405	22.65
310022	1.3233	20.73
310024	1.3299	22.78
310025	1.1918	22.81
310026	1.2343	23.87
310027	1.3202	21.77
310028	1.2507	23.52
310029	1.9457	23.38
310031	2.7809	25.18
310032	1.3227	23.30
310034	1.2856	21.69
310036	1.1393	19.82
310037	1.4029	27.44
310038	2.0126	25.38
310039	1.2557	22.03
310040	1.2028	23.99
310041	1.3458	23.78
310042	1.2925	24.33
310043	1.1863	22.09
310044	1.3355	20.43
310045	1.4863	28.16
310047	1.3368	24.52
310048	1.2892	23.33
310049	1.2327	24.76
310050	1.2135	22.59
310051	1.3946	25.28
310052	1.3043	22.58
310054	1.3470	24.74
310057	1.3024	20.45
310058	1.1475	26.22
310060	1.1966	19.11
310061	1.2040	20.80
310062	.....	19.27
310063*	1.3463	21.85
310064	1.3574	24.21
310067	1.3006	22.27
310069	1.2634	24.17
310070	1.4210	25.04

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TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
310072	1.3713	22.22
310073	1.6775	25.63
310074	1.3809	24.46
310075	1.4097	26.46
310076	1.4991	28.90
310077	1.6678	25.06
310078	1.4298	23.48
310081	1.3501	23.89
310083	1.2768	23.68
310084	1.3292	24.09
310086	1.2175	21.44
310087	1.3344	20.89
310088	1.2069	22.34
310090	1.3904	24.24
310091	1.2672	22.01
310092	1.3248	22.34
310093	1.2003	21.23
310096	1.9959	26.30
310105	1.2465	24.49
310108	1.4314	22.88
310110	1.2678	20.14
310111	1.2705	21.72
310112	1.3062	22.52
310113	1.2906	22.95
310115	1.3002	20.07
310116	1.2884	25.24
310118	1.2517	24.54
310119	1.7352	29.48
310120	1.2046	21.69
310121	.....	18.74
320001	1.5262	17.85
320002	1.3456	22.46
320003	1.0767	15.35
320004	1.2930	17.24
320005	1.3126	19.87
320006	1.3526	18.65
320009	1.5990	17.64
320011	1.1443	16.55
320012	1.0529	16.00
320013	1.1406	23.84
320014	1.0812	15.97
320016	1.1821	18.93
320017	1.1290	18.15
320018	1.5139	18.19
320019	1.5059	19.26
320021	1.8101	17.16
320022	1.2310	15.84
320023	1.0211	16.42
320030	1.1556	16.53
320031	0.9386	13.99
320032	0.8993	18.75
320033	1.1749	20.31
320035	1.0245	25.74
320037	1.1621	17.08
320038	1.2322	16.29
320046	1.4424	19.00
320048	1.4140	19.17
320056	1.1122	.....
320057	0.9720	.....
320058	0.8862	.....
320059	1.0597	.....
320060	0.9253	.....
320061	1.1311	.....
320062	0.8525	.....
320063	1.2513	19.83
320065	1.2154	16.10
320067	0.8614	57.48
320068	0.8969	18.18
320069	0.9807	11.31
320070	0.9556	.....
320074	1.0870	18.65
320079	1.2126	17.07
330001	1.1862	25.21
330002	1.4469	26.39
330003	1.3432	18.05
330004	1.3046	19.96
330005	1.6831	24.28
330006	1.3374	25.92
330007	1.3674	18.80
330008	1.1788	18.07
330009	1.3298	30.42
330010	1.2856	14.74
330011	1.3008	18.04
330012	1.7199	31.51
330013	2.0374	19.99
330014	1.3839	27.57
330016	0.9911	17.41
330019	1.3601	32.45
330020	1.0286	14.55
330023	1.3009	24.27
330024	1.8309	33.62
330025	1.1220	16.03
330027	1.4693	32.50
330028	1.4098	27.08
330029	1.1581	16.56
330030	1.4112	15.06
330033	1.3199	16.75
330034	0.5292	30.78
330036	1.2759	24.32
330037	1.2233	16.00
330038	1.1832	16.01
330039	.....	12.47
330041	1.2880	30.42
330043	1.3066	27.63
330044	1.2646	18.70
330045	1.3781	27.17
330046	1.4593	31.98
330047	1.1968	17.69
330048	1.2630	17.62
330049	1.2706	19.31
330053	1.2225	15.67
330055	1.5732	30.73
330056	1.4694	30.22
330057	1.6858	18.69
330058	1.3130	16.98
330059	1.6062	32.23
330061	1.2760	25.07
330062	1.0970	15.28
330064	1.4280	32.87
330065	1.2350	18.37
330066	1.2659	19.94
330067	1.3299	21.29
330072	1.4098	29.31
330073	1.1707	15.88
330074	1.2820	18.16
330075	1.0916	17.43
330078	1.4535	17.49
330079	1.2806	16.76
330080	1.2173	26.88
330084	1.0649	23.03
330085	1.2898	18.78
330086	1.2276	30.69
330088	1.0486	25.62
330090	1.5583	18.68
330091	1.3777	18.53
330092	1.0002	12.65
330094	1.2368	17.72
330095	1.3283	18.55
330096	1.1192	16.60
330097	1.2475	16.96
330100	0.9953	28.11
330101	1.7932	31.31
330102	1.3020	17.52
330103	1.2013	16.52
330104	1.4136	28.77
330106	1.7013	35.87
330107	1.2670	28.08
330108	1.2378	17.08
330111	1.0739	15.20
330114	0.9034	18.24
330115	1.1307	16.56
330116	0.8479	24.23
330118	1.6335	20.76
330119	1.7050	34.75
330121	1.0145	15.85
330122	1.0108	21.20
330125	1.8904	19.75
330126	1.1356	22.70
330127	1.3751	29.33
330128	1.3130	27.87
330132	1.2002	14.70
330133	1.3616	32.38
330135	1.1987	18.33
330136	1.3304	17.60
330140	1.8211	19.50
330141	1.3368	25.14
330144	0.9874	15.51
330148	1.0682	15.04
330151	1.0931	13.97
330152	1.4635	29.48
330153	1.7143	17.50
330154	1.7631	.....
330157	1.3782	20.82
330158	1.4535	26.05
330159	1.2598	18.02
330160	1.4258	30.57
330162	1.2112	27.72
330163	1.2668	20.46
330164	1.3673	19.48
330166	1.0666	14.18
330167	1.7231	31.18
330169	1.4422	33.45
330171	1.3081	25.43
330175	1.1866	16.69
330177	0.9536	14.54
330179	0.8480	12.69
330180	1.2149	15.53
330181	1.3246	32.47
330182	2.5278	30.93
330183	1.4710	20.00
330184	1.3687	27.49
330185	1.2683	26.95

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
330188	1.2749	18.72
330189	1.1706	17.66
330191	1.3142	18.86
330193	1.3094	29.80
330194	1.8144	35.57
330195	1.6168	31.39
330196	1.2584	28.45
330197	1.1217	17.00
330198	1.3910	23.81
330199	1.3867	27.66
330201	1.6595	30.33
330202	1.3321	30.79
330203	1.3921	19.24
330204	1.3626	29.37
330205	1.2157	19.46
330208	1.2524	25.82
330209	1.2116	24.88
330211	1.1008	19.10
330212	1.1242	21.18
330213	1.1317	18.51
330214	1.8270	32.20
330215	1.2136	17.58
330218	1.0783	21.71
330219	1.6448	22.15
330221	1.2958	32.21
330222	1.2727	17.81
330223	1.0436	17.28
330224	1.2609	21.97
330225	1.1997	25.80
330226	1.2800	17.67
330229	1.3032	16.25
330230	1.3323	28.86
330231	1.0181	29.09
330232	1.2621	19.50
330233	1.4710	33.30
330234	2.3453	33.33
330235	1.1654	19.45
330236	1.3908	30.70
330238	1.2201	14.80
330239	1.2099	17.28
330240	1.3684	30.48
330241	2.0212	22.60
330242	1.2840	24.74
330245	1.4695	17.28
330246	1.3231	26.66
330247	0.8484	27.62
330249	1.1958	16.48
330250	1.2389	19.56
330252	.....	17.04
330254	1.1711	16.73
330258	1.2652	30.47
330259	1.4799	25.25
330261	1.3017	26.17
330263	1.0017	19.64
330264	1.1961	23.14
330265	1.3299	15.62
330267	1.3394	23.56
330268	0.9564	14.62
330270	2.0232	28.24
330273	1.2930	25.89
330275	1.3094	17.42
330276	1.1580	17.75
330277	1.1064	17.16
330279	1.2946	19.91
330285	1.8724	22.47
330286	1.3300	25.09
330290	1.7078	32.58
330293	1.1263	15.38
330304	1.2300	29.37
330306	1.3461	27.62
330307	1.3055	20.74
330308	.....	36.84
330314	1.3296	24.74
330316	1.2613	28.79
330327	0.8785	16.97
330331	1.3605	31.04
330332	1.2161	27.16
330333	1.2122	.....
330336	1.3033	30.17
330338	1.2486	23.01
330339	0.9024	19.67
330340	1.1804	26.92
330350	1.7352	30.38
330353	1.2745	33.55
330354	1.5861	.....
330357	1.3424	34.75
330359	.....	29.29
330372	1.2139	22.50
330381	1.2974	29.24
330385	1.1317	28.84
330386	1.1738	24.67
330387	0.7617	.....
330389	1.7654	32.42
330390	1.3622	29.79
330393	1.7228	27.99
330394	1.5602	18.77
330395	1.3551	37.68
330396	1.1225	30.72
330397	1.3731	31.00
330398	1.3883	30.32
330399	1.2650	35.52
330400	0.8755	.....
340001	1.4550	19.01
340002	1.8335	18.78
340003	1.1380	21.97
340004	1.5053	17.89
340005	1.1327	14.09
340006	1.0448	17.81
340007	1.1625	17.17
340008	1.1063	18.38
340009	.....	20.50
340010	1.3066	17.65
340011	1.1010	14.92
340012	1.1766	16.66
340013	1.2440	17.43
340014	1.5360	19.92
340015	1.2395	19.01
340016	1.1721	16.40
340017	1.2566	19.22
340018	1.1435	15.16
340019	0.9975	13.59
340020	1.2389	16.75
340021	1.2577	19.67
340022	1.1225	16.72
340023	1.3395	17.21
340024	1.1417	16.64
340025	1.2484	16.82
340027	1.2085	17.30
340028	1.5314	17.72
340030	2.0552	20.05
340031	0.9565	12.39
340032	1.3524	20.47
340035	1.0956	18.10
340036	1.1292	16.97
340037	1.0029	15.53
340038	1.1014	17.01
340039	1.2603	20.15
340040	1.7863	20.12
340041	1.2563	17.76
340042	1.1906	16.63
340044	1.1019	16.37
340045	1.0204	12.42
340047	1.8911	19.60
340048	0.6134	.....
340049	0.7590	16.50
340050	1.1658	18.56
340051	1.2890	18.60
340052	0.9879	21.37
340053	1.6306	19.49
340054	1.1743	14.47
340055	1.2601	18.18
340060	1.0858	17.92
340061	1.7102	20.85
340063	1.0122	16.92
340064	1.1554	17.26
340065	1.3341	18.32
340067	1.0091	18.61
340068	1.2353	16.70
340069	1.8140	19.99
340070	1.2558	18.63
340071	1.1412	16.37
340072	1.1342	15.60
340073	1.3877	20.69
340075	1.2374	18.21
340080	0.9827	16.85
340084	1.1260	21.78
340085	1.1684	16.24
340087	1.1121	16.70
340088	1.2483	19.83
340089	0.9798	13.86
340090	1.1715	17.85
340091	1.6767	19.40
340093	1.0384	15.16
340094	1.3871	15.96
340096	1.1735	17.98
340097	1.1300	21.37
340098	1.5807	20.17
340099	1.1289	15.09
340101	1.0689	15.36
340104	0.8681	15.87
340105	1.3487	18.90
340106	1.1391	18.08
340107	1.2312	16.95
340109	1.3520	17.96
340111	1.1185	14.92
340112	0.9997	14.60
340113	1.8588	20.88
340114	1.6123	20.82
340115	1.5468	18.67
340116	1.8562	19.48
340119	1.2136	16.85
340120	1.1373	14.38

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TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
340121	1.0483	15.97
340123	1.1257	16.22
340124	1.1103	14.05
340125	1.4571	19.63
340126	1.3214	17.72
340127	1.3040	17.38
340129	1.2333	19.73
340130	1.3605	19.44
340131	1.5410	18.94
340132	1.2906	16.94
340133	1.0718	14.35
340137	1.2697	.....
340138	1.0653	19.28
340141	1.7096	22.22
340142	1.1906	16.09
340143	1.4510	20.95
340144	1.2510	19.19
340145	1.3190	19.20
340146	1.0415	13.01
340147	1.2389	19.11
340148	1.3628	18.42
340151	1.2111	16.57
340153	1.8460	20.66
340155	1.3964	20.42
340156	0.7271	.....
340158	1.0716	17.26
340159	1.1780	16.80
340160	1.1654	15.53
340162	.....	16.64
340164	1.3637	19.68
340166	1.3042	19.17
340168	0.4833	14.75
340171	1.1348	20.05
340173	1.2020	20.21
350001	0.9646	11.73
350002	1.8448	17.28
350003	1.2042	17.43
350004	1.9290	17.90
350005	1.0889	16.03
350006	1.3866	16.62
350007	0.9036	13.28
350008	0.9709	21.70
350009	1.1851	18.28
350010	1.1308	15.28
350011	1.9286	18.49
350012	1.0793	12.73
350013	1.0590	16.68
350014	1.0326	15.79
350015	1.7240	15.87
350016	.....	11.63
350017	1.3378	17.78
350018	1.0325	13.64
350019	1.7209	19.40
350021	0.9859	12.69
350023	0.9505	12.80
350024	1.0053	14.37
350025	0.9820	16.24
350027	1.0099	17.12
350029	0.8409	12.80
350030	1.0653	17.35
350033	0.9296	14.90
350034	0.9296	18.32
350035	0.8734	10.16
350038	1.0783	18.74
350039	1.0442	17.31
350041	0.9447	14.68
350042	1.0586	16.75
350043	1.6076	17.16
350044	0.9014	10.53
350047	1.1414	17.93
350049	1.2037	14.53
350050	0.9242	10.57
350051	0.9872	17.53
350053	1.0048	13.94
350055	0.9884	12.37
350056	0.9227	14.74
350058	0.9550	14.35
350060	0.8626	9.60
350061	1.0451	14.59
350063	0.8913	.....
350064	0.8650	.....
350068	2.4777	.....
350069	1.2467	.....
360001	1.3010	17.39
360002	1.1805	17.40
360003	1.7521	22.03
360006	1.9102	22.09
360007	1.0878	17.10
360008	1.2553	17.82
360009	1.5416	17.53
360010	1.2807	18.09
360011	1.2954	18.95
360012	1.2982	19.22
360013	1.1484	20.81
360014	1.1318	19.88
360016	1.6655	18.77
360017	1.9312	22.50
360018	1.6955	21.34
360019	1.2255	20.17
360020	1.4599	22.95
360024	1.3135	18.54
360025	1.3536	19.29
360026	1.3128	17.04
360027	1.4745	20.36
360028	1.4934	17.27
360029	1.1928	18.22
360030	1.3464	15.35
360031	1.1973	19.90
360032	1.1566	17.93
360034	1.3261	15.56
360035	1.6492	20.33
360036	1.3101	19.18
360037	2.1402	22.52
360038	1.6231	19.89
360039	1.2936	17.40
360040	1.2903	18.12
360041	1.2883	18.42
360042	1.1662	16.12
360044	1.1577	16.79
360045	1.4251	21.18
360046	1.1457	19.32
360047	1.1301	15.34
360048	1.8831	21.17
360049	1.2259	18.81
360050	1.2304	12.89
360051	1.6202	20.95
360052	1.6991	20.02
360054	1.2488	16.19
360055	1.3169	23.27
360056	1.3944	18.76
360057	1.0590	13.81
360058	1.1920	17.92
360059	1.6176	21.97
360062	1.4095	20.31
360063	1.1426	22.79
360064	1.6125	20.64
360065	1.2530	19.45
360066	1.6379	20.03
360067	1.1487	14.57
360068	1.7961	21.22
360069	1.1401	17.83
360070	1.7813	17.53
360071	1.4168	23.30
360072	1.2698	17.97
360074	1.2995	18.26
360075	1.3458	18.47
360076	1.3578	19.59
360077	1.6203	20.82
360078	1.2481	20.79
360079	1.8424	22.00
360080	1.1428	16.64
360081	1.3443	19.64
360082	1.2775	22.86
360083	.....	18.46
360084	1.6064	20.09
360085	1.8845	21.67
360086	1.4307	17.04
360087	1.4307	20.04
360088	1.3186	22.31
360089	1.1340	20.56
360090	1.2673	20.40
360091	1.3221	21.03
360092	1.1368	15.91
360093	1.1664	18.57
360094	1.3406	18.31
360095	1.2602	18.71
360096	1.0740	17.16
360098	1.4616	18.34
360099	1.0145	18.55
360100	1.2435	17.66
360101	1.3302	22.31
360102	1.2047	19.77
360103	.....	22.62
360104	1.1889	.....
360106	1.2012	16.18
360107	1.2436	18.62
360108	1.0496	16.51
360109	1.0898	19.52
360112	1.9109	22.57
360113	1.3312	22.46
360114	1.0862	16.33
360115	1.3561	18.19
360116	1.1098	18.08
360118	1.3482	18.61
360121	1.2089	21.10
360123	1.2389	19.13
360125	1.1466	18.17
360126	1.2114	20.46
360127	1.1478	16.92
360128	1.1562	15.58
360129	0.9412	15.52
360130	1.0130	15.34

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
360131	1.3306	18.29
360132	1.4151	18.27
360133	1.6452	19.03
360134	1.7555	20.24
360136	1.0165	17.85
360137	1.7409	20.26
360140	0.9460	19.13
360141	1.6436	22.85
360142	1.0518	17.32
360143	1.3319	20.44
360144	1.2938	21.92
360145	1.6950	19.39
360147	1.2418	16.59
360148	1.1492	18.89
360149	1.2611	18.79
360150	1.3013	20.63
360151	1.3912	17.49
360152	1.5355	22.00
360153	1.1316	14.89
360154	1.0439	13.78
360155	1.3700	20.90
360156	1.2856	17.92
360159	1.1775	20.71
360161	1.3543	19.41
360162	1.0718	18.61
360163	1.8529	20.38
360164	.....	16.16
360165	1.1711	19.48
360166	.....	16.98
360170	1.4463	17.18
360172	1.3447	18.47
360174	1.2444	19.09
360175	1.1884	20.41
360176	1.1409	15.47
360177	1.3262	19.41
360178	1.3137	17.40
360179	1.4139	19.14
360180	2.1661	22.09
360184	0.5560	19.35
360185	1.2339	18.67
360186	1.0606	20.86
360187	1.4030	18.02
360188	0.9307	17.53
360189	1.1003	17.37
360192	1.3355	21.00
360193	.....	17.69
360194	1.1609	17.69
360195	1.1446	19.02
360197	1.1573	19.42
360200	0.9129	17.76
360203	1.1658	15.62
360204	1.2012	19.35
360210	1.1911	20.28
360211	1.2583	19.58
360212	1.3505	20.23
360213	1.2574	18.33
360218	1.3249	18.41
360230	1.5283	21.44
360231	1.1689	13.56
360234	1.3667	22.43
360236	1.2668	19.49
360239	1.2640	19.86
360241	0.4070	22.08
360242	1.8361	.....
360243	0.6859	13.58
360244	.....	10.55
360245	0.7433	15.06
360247	0.4015	18.11
360248	.....	21.65
370001	1.7346	21.27
370002	1.2288	14.08
370004	1.1872	16.77
370005	0.9385	17.38
370006	1.1884	12.95
370007	1.1457	17.15
370008	1.3742	17.30
370011	1.0371	14.64
370012	0.8381	10.80
370013	1.8493	18.04
370014	1.1887	19.65
370015	1.1904	17.82
370016	1.3340	16.64
370017	1.1216	12.98
370018	1.3475	14.24
370019	1.3147	16.88
370020	1.2736	13.48
370021	0.8600	11.26
370022	1.3152	17.90
370023	1.2592	16.82
370025	1.3103	16.40
370026	1.4917	16.90
370028	1.8963	19.71
370029	1.1600	13.89
370030	1.1994	15.47
370032	1.6025	16.64
370033	1.0433	12.39
370034	1.2299	14.51
370035	1.7120	18.96
370036	1.0585	11.46
370037	1.7309	17.75
370038	0.9615	12.81
370039	1.1544	16.27
370040	1.0110	14.26
370041	0.9415	17.41
370042	0.8612	14.61
370043	0.9299	16.08
370045	1.0224	12.44
370046	0.9794	18.15
370047	1.4234	15.67
370048	1.2065	17.44
370049	1.3139	19.84
370051	0.9449	12.18
370054	1.3637	16.56
370056	1.5690	18.88
370057	1.0262	14.66
370059	1.1239	16.46
370060	1.0608	15.12
370063	1.1026	17.06
370064	0.9372	8.75
370065	0.9995	16.56
370071	1.0270	14.95
370072	0.8663	14.65
370076	1.2551	12.86
370077	.....	17.62
370078	1.6865	17.24
370079	0.9319	13.60
370080	0.9519	14.34
370082	0.8529	13.54
370083	0.9651	11.49
370084	1.0188	21.75
370085	0.8885	11.88
370086	1.1192	13.56
370089	1.2148	14.50
370091	1.6636	17.58
370092	0.9955	14.68
370093	1.7971	18.57
370094	1.4454	18.38
370095	0.9872	14.13
370097	1.3459	23.31
370099	1.1217	16.26
370100	0.9773	17.10
370103	0.9111	15.90
370105	1.9566	17.68
370106	1.5308	18.62
370108	0.9670	12.24
370112	1.0270	15.25
370113	1.2331	16.20
370114	1.6454	15.98
370121	1.0409	19.55
370122	1.0456	12.15
370123	1.4493	16.36
370125	0.8954	13.55
370126	0.9646	18.24
370131	0.9766	16.24
370133	1.0621	10.02
370138	1.0502	15.94
370139	1.0969	13.30
370140	1.0458	15.23
370141	1.3710	12.14
370146	1.0935	12.56
370148	1.4517	16.41
370149	1.3477	16.72
370153	1.1156	15.32
370154	1.0477	15.91
370156	1.1036	13.64
370158	1.0207	15.09
370159	1.2557	17.83
370163	0.9854	14.56
370165	1.2557	13.22
370166	1.0448	17.82
370169	1.0466	9.48
370170	1.0201	.....
370171	1.0333	.....
370172	0.8953	.....
370173	1.0677	.....
370174	0.7213	.....
370176	1.2191	16.03
370177	0.9826	11.88
370178	0.9826	11.64
370179	0.9491	19.27
370180	0.9918	.....
370183	1.0386	7.62
370186	0.9783	13.35
370190	1.4695	13.70
370192	1.4803	16.74
370196	0.8822	.....
370197	.....	21.57
370198	1.4366	.....
370199	1.0710	.....
370200	1.1757	.....
380001	1.3054	22.03
380002	1.2171	19.48

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
380003	1.1769	24.74
380004	1.7367	23.14
380005	1.1722	23.24
380006	1.2239	20.54
380007	1.6506	24.29
380008	1.0693	21.19
380009	1.7994	25.17
380010	1.0403	19.75
380011	1.1050	21.14
380013	1.1851	20.10
380014	1.6519	23.48
380017	1.9289	23.82
380018	1.8307	22.08
380019	1.2451	20.77
380020	1.4521	21.35
380021	1.2078	20.64
380022	1.1103	21.61
380023	1.1371	19.24
380025	1.2975	24.67
380026	1.1401	19.27
380027	1.2810	20.16
380029	1.1435	18.57
380031	0.9408	22.83
380033	1.7943	23.29
380035	1.3526	21.65
380036	1.0855	19.33
380037	1.2290	21.23
380038	1.2487	25.58
380039	1.2583	22.12
380040	1.2936	21.64
380042	1.0177	19.81
380047	1.6722	21.95
380048	1.0388	18.38
380050	1.4293	18.25
380051	1.6373	21.24
380052	1.2518	17.87
380055	.....	21.25
380056	1.1058	17.16
380060	1.4643	23.29
380061	1.5204	22.60
380062	1.2219	18.52
380063	.....	19.36
380064	1.3264	19.87
380065	1.3064	22.17
380066	1.3262	20.42
380068	.....	22.76
380069	1.0690	19.58
380070	1.3461	24.71
380071	1.2354	20.47
380072	0.9961	16.32
380075	1.4230	22.17
380078	1.1344	19.10
380081	1.0229	20.59
380082	1.2605	22.58
380083	1.1703	21.81
380084	1.2427	23.64
380087	1.2284	14.10
380088	1.0722	19.52
380089	1.2782	23.74
380090	1.2985	27.09
380091	1.2615	22.83
390001	1.5197	18.64
390002	1.3161	18.08
390003	1.2413	17.24
390004	1.3985	18.89
390005	1.0952	16.44
390006	1.8485	19.60
390007	1.2517	21.41
390008	1.1995	16.74
390009	1.7387	20.12
390010	1.2493	17.23
390011	1.2786	18.07
390012	1.2224	20.02
390013	1.2401	19.33
390015	1.1327	12.94
390016	1.2481	17.07
390017	1.1841	16.22
390018	1.2421	19.12
390019	1.0759	16.40
390022	1.3526	22.90
390023	1.2272	19.56
390024	1.1811	25.03
390025	0.4279	15.71
390026	1.2761	22.76
390027	1.8053	27.69
390028	1.8916	20.11
390029	2.0498	19.69
390030	1.2190	18.40
390031	1.2148	19.52
390032	1.2612	18.15
390035	1.2648	18.51
390036	1.5398	18.87
390037	1.3709	22.24
390039	1.1436	16.54
390040	0.9484	15.12
390041	1.2688	19.58
390042	1.5854	21.13
390043	1.1832	16.36
390044	1.6421	19.54
390045	1.7159	18.46
390046	1.6104	20.46
390047 *	1.7392	24.58
390048	1.1549	18.38
390049	1.6110	21.13
390050	2.1144	20.92
390051	2.1338	26.05
390052	1.1515	17.10
390054	1.2341	17.44
390055	1.8882	25.90
390056	1.1205	17.17
390057	1.3152	19.75
390058	1.2858	19.25
390060	1.2088	13.63
390061	1.4942	20.48
390062	1.2444	16.45
390063	1.8378	19.64
390065	1.2322	20.00
390066	1.2608	18.71
390067	1.8018	20.65
390068	1.3033	17.55
390069	1.2663	19.28
390070	1.4159	20.19
390071	1.1073	16.23
390072	1.0501	15.56
390073	1.6671	20.69
390074	1.2469	16.60
390075	1.3924	17.27
390076	1.2799	21.43
390078	1.1498	18.23
390079	1.7562	18.20
390080	1.2916	19.52
390081	1.2972	23.99
390083	1.2031	20.59
390084	1.2677	16.35
390086	1.1360	17.25
390088	1.3689	23.49
390090	1.8001	20.65
390091	1.1280	18.37
390093	1.1551	16.63
390095	1.2033	13.05
390096	1.4914	19.31
390097	1.2750	21.41
390100	1.6552	20.30
390101	1.2029	17.05
390102	1.3959	19.49
390103	1.0911	17.71
390104	1.0664	15.96
390106	1.1156	16.28
390107	1.3308	19.18
390108	1.4026	21.29
390109	1.2009	14.66
390110	1.5954	21.32
390111	1.9491	28.79
390112	1.2904	14.04
390113	1.2508	17.94
390114	1.2348	22.97
390115	1.3965	24.72
390116	1.3025	20.60
390117	1.1716	16.90
390118	1.2155	16.90
390119 *	1.3896	18.59
390121	1.3960	18.64
390122	1.0609	17.46
390123	1.2758	20.84
390125	1.2088	15.94
390126	1.2888	20.94
390127	1.2287	21.88
390128	1.2209	19.41
390130	1.1335	17.33
390131	1.3299	16.83
390132	1.2842	20.55
390133	1.7977	24.61
390135	1.2393	21.25
390136	1.1430	17.61
390137	1.5156	16.56
390138	1.3213	18.86
390139	1.5077	22.94
390142	1.6076	26.80
390145	1.3889	20.34
390146	1.2155	17.70
390147	1.2656	21.11
390150	1.1805	19.66
390151	1.2299	20.51
390152	1.1121	19.15
390153	1.2219	23.12
390154	1.2679	15.85
390156	1.4108	21.16
390157	1.3940	19.83
390158	.....	21.60
390160	1.2390	20.77
390161	1.1929	12.37
390162	1.5211	21.02

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
390163	1.2276	15.62
390164	2.1736	21.59
390166	1.1138	19.96
390167	.....	22.91
390168	1.2592	18.99
390169	1.3390	18.99
390170	1.8476	22.99
390173	1.2211	17.86
390174	1.6855	25.24
390176	1.1814	17.36
390178	1.3114	17.70
390179	1.3111	21.41
390180	1.4575	25.12
390181	1.0728	17.09
390183	1.1617	19.08
390184	1.1308	20.75
390185	1.2169	17.65
390189	1.1404	18.67
390191	1.1721	16.20
390192	1.1726	16.37
390193	1.1915	16.47
390194	1.1396	20.15
390195	1.8300	23.69
390196	1.5787	.....
390197	1.2829	18.99
390198	1.2778	15.45
390199	1.2683	16.66
390200	0.9687	13.59
390201	1.2641	20.50
390203	1.3610	21.19
390204	1.2735	20.85
390206	1.3965	18.57
390209	1.0811	16.96
390211	1.2188	17.91
390213	1.1371	17.44
390215	1.2554	21.43
390217	1.2220	19.29
390219	1.3081	21.63
390220	1.1645	18.52
390222	1.3169	20.91
390223	1.7259	22.65
390224	0.8838	15.91
390225	1.1965	18.17
390226	1.6019	23.16
390228	1.2988	19.81
390231	1.5687	24.49
390233	1.3518	18.77
390235	1.4228	24.60
390236	1.2240	17.03
390237	1.5705	21.75
390238	1.2725	.....
390242	.....	18.09
390244	0.9246	14.41
390245	1.3207	20.15
390246	1.1923	17.92
390247	1.0508	20.67
390249	0.9293	10.73
390256	1.8873	23.78
390258	1.4564	21.36
390260	1.0990	21.19
390262	1.9277	18.67
390263	1.4217	20.09
390265	1.2937	19.51
390266	1.2120	16.24
390267	1.2587	20.51
390268	1.3361	21.02
390270	1.3866	17.83
390272	0.4775	.....
390277	0.4015	27.10
390278	0.6656	19.20
390279	1.0539	13.70
390283	1.2887	.....
390284	1.2825	.....
400001	1.2244	9.86
400002	1.6964	9.31
400003	1.3598	9.99
400004	1.1415	8.48
400005	1.1222	7.85
400006	1.1587	10.53
400007	1.1989	7.86
400009	1.0514	8.37
400010	0.8930	11.66
400011	1.0733	5.68
400012	1.3553	7.81
400013	1.2614	8.21
400014	1.3933	9.54
400015	1.3572	10.33
400016	1.3661	12.07
400017	1.1566	8.57
400018	1.2826	9.45
400019	1.6564	10.15
400021	1.4420	9.91
400022	1.3356	11.12
400024	0.9529	7.56
400026	0.9627	7.12
400027	1.1026	8.49
400028	1.2378	8.40
400031	1.2515	9.78
400032	1.2192	9.73
400044	1.2602	11.75
400048	1.0437	8.92
400061	1.7071	12.28
400079	1.2218	7.08
400087	1.4146	10.40
400094	0.9953	7.82
400098	1.3997	7.21
400102	1.1587	7.73
400103	1.3967	10.73
400104	1.2587	9.94
400105	1.2156	10.17
400106	1.2572	8.51
400109	1.4778	10.18
400110	1.1266	10.53
400111	1.1973	9.56
400112	1.0576	12.85
400113	1.1558	9.48
400114	1.0813	6.41
400115	1.0388	9.13
400117	1.1552	10.04
400118	1.2390	8.70
400120	1.2553	9.74
400121	0.9964	7.11
400122	1.0235	8.48
400123	1.2032	9.02
400124	2.8388	11.48
400125	1.0258	.....
410001	1.3403	22.53
410004	1.2575	22.32
410005	1.3736	21.24
410006	1.3072	21.98
410007	1.6369	20.95
410008	1.2134	22.61
410009	1.2947	24.08
410010	1.1607	27.14
410011	1.2718	24.37
410012	1.9093	21.33
410013	1.2981	25.01
420002	1.5001	20.20
420004	1.8174	19.41
420005	1.1360	15.99
420006	1.2057	18.24
420007	1.5723	17.58
420009	1.1691	17.25
420010	1.1771	17.91
420011	1.2447	14.99
420014	1.0205	16.72
420015	1.3354	17.18
420016	0.9537	18.15
420018	1.8084	19.73
420019	1.2188	15.55
420020	1.1847	17.90
420023	1.4285	20.97
420026	1.8906	21.90
420027	1.3311	18.08
420029	.....	18.35
420030	1.2089	17.82
420031	0.8604	13.07
420033	1.1644	21.09
420036	1.2900	19.74
420037	1.1933	21.96
420038	1.3150	16.15
420039	1.0732	16.96
420042	.....	14.66
420043	1.1871	18.36
420048	1.2367	18.03
420049	1.1990	19.23
420051	1.6460	18.25
420053	1.1431	16.55
420054	1.2387	16.55
420055	1.0582	16.18
420056	1.1140	15.60
420057	1.1152	14.50
420059	0.9721	19.13
420061	1.1775	16.13
420062	1.1898	18.95
420064	1.1047	15.45
420065	1.3888	19.06
420066	0.9829	15.50
420067	1.2167	18.31
420068	1.3841	17.21
420069	1.0603	16.32
420070	1.2337	17.45
420071	1.3506	18.29
420072	0.9129	12.60
420073	1.2811	19.20
420074	1.0309	13.80
420075	0.9395	16.29
420078	1.8574	20.68
420079	1.5169	18.77
420080	1.3719	24.83
420081	.....	20.42
420082	1.5862	18.88

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TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
420083	1.3552	23.34
420085	1.4126	18.55
420086	1.4345	19.31
420087	1.5936	18.40
420088	1.0874	17.91
420089	1.2957	21.66
420091	1.2752	18.57
420093	1.0331	16.77
420094	.....	32.68
430004	0.9951	17.84
430005	1.3596	15.84
430007	1.0895	14.06
430008	1.0961	16.76
430010	1.1568	16.11
430011	1.2924	16.42
430012	1.3190	17.78
430013	1.2075	17.24
430014	1.3645	18.44
430015	1.2102	16.41
430016	1.8688	18.97
430018	0.8830	14.91
430022	0.8600	12.95
430023	0.8726	11.64
430024	0.9383	13.99
430026	.....	10.85
430027	1.7702	18.64
430028	1.0723	16.72
430029	0.9695	15.10
430031	0.9138	12.46
430033	0.9911	14.64
430034	0.9542	12.85
430036	0.9551	13.78
430037	0.9633	15.95
430038	1.0095	11.94
430040	1.0562	13.37
430041	0.9146	12.62
430043	1.1343	13.43
430044	0.9084	16.45
430047	1.0290	15.62
430048	1.2374	17.26
430049	0.8800	14.44
430051	0.9313	17.21
430054	0.9661	13.50
430056	0.8354	11.41
430057	0.8972	15.15
430060	1.0902	8.64
430062	.....	10.89
430064	1.0315	12.74
430065	.....	12.77
430066	0.9635	13.44
430073	1.0645	14.98
430076	0.9498	12.25
430077	1.6674	17.71
430079	0.9893	12.98
430081	0.8927	.....
430082	0.8557	.....
430083	0.9273	.....
430084	0.8292	.....
430085	0.7951	.....
430087	.....	10.45
430089	0.8333	17.01
430090	1.3132	.....
430091	1.4508	.....
430092	2.2027	.....

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
430093	0.9944	.....
440001	1.1723	15.31
440002	1.6655	18.54
440003	1.2107	17.47
440006	1.4049	20.66
440007	1.0023	7.76
440008	0.9789	15.47
440009	1.1546	15.46
440010	0.9316	13.51
440011	1.3825	17.16
440012	1.7212	19.06
440014	1.0054	14.61
440015	1.8026	21.09
440016	1.0329	14.94
440017	1.7407	21.13
440018	1.2959	18.21
440019	1.7380	28.22
440020	1.1314	15.59
440022	.....	19.02
440023	1.1026	14.14
440024	1.2941	18.10
440025	1.1546	15.28
440026	0.8073	22.92
440029	1.2571	18.52
440030	1.2081	15.57
440031	1.0313	14.30
440032	1.0042	13.60
440033	1.1597	14.04
440034	1.5624	17.93
440035	1.2300	18.16
440039	1.8880	19.37
440040	0.9695	17.50
440041	1.0284	13.63
440046	1.2340	16.88
440047	0.9232	17.00
440048	1.8759	18.14
440049	1.6647	16.71
440050	1.3886	16.76
440051	0.9140	14.91
440052	1.0635	16.27
440053	1.3256	17.69
440054	1.1374	12.31
440056	1.1442	14.25
440057	1.0332	12.72
440058	1.2111	18.74
440059	1.4218	17.53
440060	1.1643	15.86
440061	1.1488	16.84
440063	1.6723	18.29
440064	1.0849	17.62
440065	1.2815	18.69
440067	1.2417	22.07
440068	1.2254	17.45
440070	1.0048	15.04
440071	1.3484	16.27
440072	1.3554	16.77
440073	1.2784	18.56
440078	1.0266	13.09
440081	1.0930	17.97
440082	2.0510	23.08
440083	0.9673	35.10
440084	1.2069	13.37
440091	1.6378	19.73
440100	1.0065	13.95

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
440102	1.1291	13.96
440103	1.1144	19.21
440104	1.7467	22.39
440105	1.7762	16.03
440109	1.0850	14.25
440110	1.1007	15.92
440111	1.4511	21.07
440114	1.0554	13.61
440115	1.0675	12.97
440120	1.6383	18.30
440125	1.5580	16.11
440130	1.1358	16.67
440131	1.1191	14.68
440132	1.1320	15.91
440133	1.5497	21.51
440135	1.2187	20.90
440137	1.0853	14.70
440141	0.9707	12.48
440142	1.0003	13.01
440143	1.0458	17.84
440144	1.2153	16.67
440145	0.9558	13.66
440147	1.7028	22.01
440148	1.1231	17.64
440149	1.0963	17.15
440150	1.3332	13.08
440151	1.1150	15.43
440152	2.0217	17.84
440153	1.1545	16.10
440156	1.5019	19.61
440157	1.0816	11.40
440159	1.1206	17.62
440161	1.8695	20.76
440162	.....	14.41
440166	1.6850	18.14
440168	1.0595	15.95
440173	1.6016	18.47
440174	1.0343	17.01
440175	1.0711	17.61
440176	1.3789	18.75
440180	1.2237	17.34
440181	0.9669	11.85
440182	0.9559	20.32
440183	1.5916	19.44
440184	1.2535	18.06
440185	1.1857	18.73
440186	1.0484	18.53
440187	1.1034	16.25
440189	1.4919	16.19
440192	1.0808	19.97
440193	1.2258	18.40
440194	1.2517	20.33
440197	1.3608	23.11
440200	1.0409	16.06
440203	0.9731	16.61
440206	0.9468	15.55
440209	.....	14.75
440210	0.8584	12.33
440211	0.7028	.....
440212	1.3679	.....
440213	2.6309	.....
440214	1.3295	.....
440215	3.2594	.....
450002*	1.5331	19.92

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
450004	1.1460	15.28
450005	1.1874	15.59
450007	1.2676	15.75
450008	1.2574	15.75
450010	1.4353	16.08
450011	1.5196	18.01
450014	1.1164	18.22
450015	1.6333	18.44
450016	1.6642	17.31
450018	1.4440	20.41
450020	0.9574	16.97
450021	1.8603	22.69
450023	1.4538	16.64
450024	1.4522	16.56
450025	1.7316	16.44
450028	1.4999	18.43
450029	1.6790	17.69
450031	1.4813	20.90
450032	1.3572	15.24
450033	1.7147	20.86
450034	1.5646	18.91
450035	1.4767	16.81
450037	1.5593	18.65
450039	1.4220	22.08
450040	1.5467	17.52
450042	1.7755	17.59
450044	1.6190	21.04
450046	1.3229	17.09
450047	1.1484	13.90
450050	0.9409	13.00
450051	1.5732	20.08
450052	1.0005	13.53
450053	1.1017	17.31
450054	1.6336	21.98
450055	1.1134	14.81
450056	1.6266	20.00
450058	1.6320	16.98
450059	1.3025	14.21
450063	0.9080	13.81
450064	1.4194	16.42
450065	1.0265	19.61
450068	1.9340	22.69
450072	1.1756	17.38
450073	1.1201	16.62
450076	1.7324	.....
450078	0.8770	13.49
450079	1.5304	19.49
450080	1.1737	16.31
450081	1.0574	*16.17
450082	0.9662	13.30
450083	1.8059	20.18
450085	1.0594	14.22
450087	1.4462	21.48
450090	1.1225	13.91
450092	1.2258	15.73
450094	1.3312	19.42
450096	1.4157	16.63
450097	1.3386	18.27
450098	1.0981	15.48
450099	1.1520	22.88
450101	1.4857	16.96
450102	1.7293	18.85
450104	1.1823	15.98
450107	1.5327	20.74

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
450108	1.0390	16.15
450109	0.9217	12.77
450110	.....	21.44
450111	1.2307	19.27
450112	1.2575	14.76
450113	1.3243	18.53
450118	1.6605	15.83
450119	1.4078	18.32
450121	1.5371	18.23
450123	1.1890	19.19
450124	1.6617	21.09
450126	1.3281	17.45
450128	1.1958	15.89
450130	1.5002	17.87
450131	1.2654	17.62
450132	1.6202	18.07
450133	1.6004	19.92
450135	1.6151	20.81
450137	1.5720	23.96
450140	0.9268	18.07
450143	1.0303	14.46
450144	1.1036	16.30
450145	0.8681	14.84
450146	0.9514	14.20
450147	1.3107	18.07
450148	1.2211	22.03
450149	1.4919	24.00
450150	0.9050	15.21
450151	1.1068	14.84
450152	1.2314	17.38
450153	1.5422	19.94
450154	1.1797	13.18
450155	1.0303	23.77
450157	1.0679	14.66
450160	0.9603	8.75
450162	1.2180	22.20
450163	1.0045	16.98
450164	1.1806	20.04
450165	1.0378	15.16
450166	0.9271	10.28
450169	.....	15.88
450170	0.9642	14.81
450176	1.2922	16.30
450177	1.2048	14.73
450178	1.0236	16.76
450181	1.0155	14.02
450184	1.4598	19.97
450185	1.0280	13.06
450187	1.1970	17.57
450188	0.9951	13.78
450191	1.0175	18.80
450192	1.1761	19.33
450193	2.0418	22.73
450194	1.3020	19.15
450196	1.4363	16.49
450200	1.4435	17.38
450201	1.0156	17.05
450203	1.1610	18.66
450209	1.5661	18.66
450210	1.0520	14.23
450211	1.3657	17.14
450213	1.7239	18.45
450214	1.3278	17.25
450217	0.9404	11.69

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
450219	1.0827	15.42
450221	1.1951	16.99
450222	1.4958	18.45
450224	1.3659	22.83
450229	1.5753	16.41
450231	1.6275	17.70
450234	1.0446	13.30
450235	1.0697	13.42
450236	1.1450	15.68
450237	1.5270	17.40
450239	1.0085	13.64
450241	0.9610	14.87
450243	0.9422	12.36
450246	1.0263	17.97
450249	1.0666	11.63
450250	0.9906	14.91
450253	1.1245	15.35
450258	1.0358	13.23
450259	.....	17.85
450264	0.8807	13.89
450269	0.9970	14.93
450270	1.0799	12.70
450271	1.2418	15.50
450272	1.2621	17.95
450276	1.0970	12.71
450278	0.8254	13.79
450280	1.5817	19.49
450283	1.0456	13.89
450286	.....	12.12
450288	4.1566	15.99
450289	1.4628	18.35
450292	1.1880	19.51
450293	0.9416	14.43
450296	1.3456	20.66
450299	1.5391	17.97
450303	0.9610	12.67
450306	1.0915	13.32
450307	0.8064	16.68
450309	1.0981	16.21
450315	0.9782	20.80
450320	1.2433	19.63
450321	0.9220	13.39
450322	0.5973	12.46
450324	1.5321	17.87
450327	0.9680	16.09
450330	1.1273	18.42
450334	0.9752	12.27
450337	0.9914	17.42
450340	1.4515	15.85
450341	1.0145	19.18
450346	1.4978	17.10
450347	1.2191	17.69
450348	1.1295	12.94
450351	1.2160	15.98
450352	1.1896	17.85
450353	1.1368	15.00
450355	1.0439	14.32
450358	2.0749	21.28
450362	1.0930	15.35
450369	1.0526	15.19
450370	1.2091	15.44
450371	1.2416	11.90
450372	1.2361	19.86
450373	1.1050	17.60

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TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
450374	0.8698	12.83
450378	1.2110	23.16
450379	1.5565	20.28
450381	0.9516	15.62
450388	1.7788	17.56
450389	1.2896	18.15
450393	1.2509	18.74
450395	1.0405	16.67
450399	0.9427	16.31
450400	1.3730	14.08
450403	1.2446	21.37
450411	0.9314	14.05
450417	1.0243	13.85
450418	1.3882	20.58
450419	1.2157	21.82
450422	1.0412	24.53
450423	1.5370	19.44
450424	1.2472	17.57
450429	1.1166	11.38
450431	1.5621	16.27
450438	1.1335	16.55
450446	0.7614	21.97
450447	1.3915	16.61
450451	1.1857	19.64
450457	1.8458	19.77
450460	1.0022	14.22
450462	1.7379	20.13
450464	0.9349	13.47
450465	1.3025	15.22
450467	1.0721	15.60
450469	1.3893	22.10
450473	1.0194	14.19
450475	1.0898	16.25
450484	1.4878	19.59
450488	1.3277	18.68
450489	0.9699	14.57
450497	1.1185	11.92
450498	0.9726	12.02
450508	1.3869	19.87
450514	1.0763	22.28
450517	0.9630	12.87
450518	1.5221	19.01
450523	1.4824	20.26
450530	1.1935	22.91
450534	0.9667	24.08
450535	1.2294	21.26
450537	1.3395	21.74
450538	.....	19.69
450539	1.2636	14.25
450544	1.1451	19.38
450545	1.3921	16.97
450547	1.0630	13.81
450551	1.1015	13.91
450558	1.7932	20.02
450559	.....	13.46
450561	.....	16.82
450563	1.2612	30.37
450565	1.2556	16.45
450570	1.1337	17.71
450571	1.4934	16.97
450573	0.9884	15.67
450574	0.9302	14.24
450575	1.1417	19.06
450578	0.9369	16.87
450580	1.1529	15.36
450583	1.0313	15.50
450584	1.1775	13.37
450586	1.0568	12.84
450587	1.1748	17.11
450591	1.1439	17.92
450596	1.2187	14.82
450597	0.9686	16.18
450603	0.7880	12.77
450604	1.3018	15.48
450605	1.1881	20.15
450609	0.8938	10.73
450610	1.4658	16.75
450614	0.9889	13.83
450615	1.0752	14.75
450617	1.3304	19.54
450620	1.1230	13.71
450623	1.1370	21.83
450626	1.0095	19.79
450628	1.0152	16.83
450630	1.5196	19.19
450631	1.6627	17.56
450632	0.9391	12.73
450633	1.5491	20.72
450634	1.6032	20.29
450638	1.5279	19.70
450639	1.4801	20.31
450641	1.0503	13.50
450643	1.2187	17.43
450644	1.4341	20.79
450646	1.4580	19.99
450647	1.8895	22.42
450648	1.0047	14.75
450649	1.0310	15.82
450651	1.6794	20.73
450652	0.9055	16.65
450653	1.0887	19.28
450654	0.9509	13.88
450656	1.3892	18.73
450658	0.9617	15.15
450659	1.4870	20.56
450661	1.1054	20.22
450662	1.4695	18.68
450665	0.8670	15.44
450666	1.3171	19.35
450668	1.6278	18.72
450669	1.3458	22.28
450670	1.3452	18.20
450672	1.5856	21.21
450673	1.0157	13.84
450674	1.1487	20.62
450675	1.3667	23.26
450677	1.3315	18.79
450678	1.4770	20.75
450681	1.3177	.....
450683	1.2748	21.17
450684	1.2383	22.85
450686	1.5942	15.01
450688	1.3164	20.90
450690	1.3880	22.41
450694	1.1399	18.49
450696	1.3358	17.57
450697	1.3675	15.93
450698	0.9133	14.40
450700	0.9460	15.12
450702	1.5056	21.01
450703	1.1321	18.80
450704	1.2429	21.62
450705	0.8800	22.32
450706	1.1954	21.38
450709	1.1866	19.77
450711	1.6330	18.24
450712	0.5453	16.89
450713	1.4856	23.60
450715	1.4308	19.77
450716	1.2691	19.99
450717	1.2889	19.45
450718	1.2002	19.07
450723	1.4188	19.70
450724	1.2574	20.07
450725	.....	19.56
450727	1.0500	17.75
450728	0.8255	12.93
450730	1.3987	20.91
450733	1.4696	20.37
450735	0.8297	8.00
450742	1.2714	20.78
450743	1.4590	15.95
450746	0.9207	20.75
450747	1.3342	17.38
450749	1.0361	12.95
450750	1.0162	14.72
450751	1.2134	22.25
450754	0.9408	14.89
450755	1.1073	14.71
450757	0.8766	13.96
450758	1.9447	18.65
450760	1.2078	18.07
450761	0.9462	11.14
450763	1.0029	17.56
450766	2.0818	21.81
450769	0.8516	13.62
450770	0.9940	16.83
450771	1.9082	21.58
450774	1.6697	16.52
450775	1.3660	19.97
450776	1.0045	10.20
450777	0.9770	19.59
450779	1.2931	22.97
450780	1.7380	15.28
450785	0.9897	18.55
450788	1.5021	20.98
450794	.....	18.40
450795	0.9879	14.17
450796	3.3883	17.45
450797	0.7701	18.59
450798	0.7662	9.22
450801	1.4581	16.61
450802	1.4444	18.90
450803	1.0992	16.20
450804	1.7531	20.22
450807	0.8919	13.23
450808	1.9250	45.47
450809	1.5460	19.03
450810	0.9739	.....
450811	2.3971	18.38
450812	.....	20.74
450813	0.9718	.....

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
450815	2.5623	.....
450817	0.6826	.....
450818	1.2025	.....
450819	1.5000	.....
450820	1.0411	.....
450822	1.2110	.....
460001	1.7793	20.63
460003	1.6046	20.60
460004	1.7755	20.82
460005	1.6581	17.58
460006	1.3373	19.65
460007	1.3076	20.57
460008	1.3677	21.03
460009	1.8478	21.11
460010	2.0972	21.25
460011	1.3205	16.71
460013	1.4303	20.33
460014	1.2254	19.55
460015	1.2396	20.10
460016	0.9953	18.08
460017	1.3888	26.03
460018	0.9230	16.86
460019	1.0510	17.37
460020	0.9556	17.03
460021	1.3848	20.26
460022	0.9569	18.21
460023	1.1785	21.33
460024	.....	13.03
460025	0.8243	12.51
460026	1.0605	17.34
460027	0.9545	20.83
460029	1.0958	17.25
460030	1.1918	17.22
460032	0.9792	19.55
460033	0.9753	15.72
460035	0.9477	14.28
460036	1.0005	22.38
460037	0.9080	18.77
460039	1.0603	24.48
460041	1.3072	21.69
460042	1.3714	17.85
460043	0.9896	23.90
460044	1.1363	20.69
460046	.....	17.11
460047	1.6723	21.38
460049	1.9825	18.82
460050	.....	26.25
460051	1.1552	20.98
460052	1.4619	.....
470001	1.3011	19.61
470003	1.8338	22.59
470004	1.0674	18.10
470005	1.2285	21.51
470006	1.2408	18.39
470008	1.2590	19.41
470010	1.0678	19.47
470011	1.1504	21.20
470012	1.2780	18.52
470015	1.1985	19.26
470018	1.2252	20.42
470020	0.9900	18.99
470023	1.3197	20.64
470024	1.1528	20.41
490001	1.1931	24.76
490002	1.0751	12.99
490003	0.6419	18.00
490004	1.2740	18.77
490005	1.5963	16.91
490006	1.2147	15.23
490007	2.0919	18.43
490009	1.9489	22.95
490010	1.0335	18.58
490011	1.4655	18.75
490012	1.1933	13.78
490013	1.2476	16.93
490014	1.5333	24.56
490015	1.5161	19.36
490017	1.3895	17.32
490018	1.3002	17.94
490019	1.1951	17.53
490020	1.2248	17.67
490021	1.3810	19.45
490022	1.5532	20.72
490023	1.2186	18.96
490024	1.6762	16.89
490027	1.1131	14.42
490030	1.1907	10.50
490031	1.0734	15.82
490032	1.7204	21.56
490033	1.1999	18.33
490037	1.1999	15.97
490038	1.2143	15.71
490040	1.4733	22.52
490041	1.2747	16.55
490042	1.2324	15.27
490043	1.3532	20.68
490044	1.3213	17.63
490045	1.2161	19.63
490046	1.5370	18.61
490047	1.1078	17.16
490048	1.5688	17.89
490050	1.4272	22.71
490052	1.6372	16.94
490053	1.3233	15.69
490054	1.0319	15.55
490057	1.5739	19.07
490059	1.5941	20.37
490060	1.0645	19.20
490063	1.7721	28.25
490066	1.3274	16.50
490067	1.2535	17.19
490069	1.4182	15.70
490071	1.4083	19.47
490073	1.5076	26.14
490074	.....	19.34
490075	1.3785	19.19
490077	1.2263	19.79
490079	1.3128	16.44
490083	.....	16.64
490084	1.1308	16.38
490085	1.1582	16.40
490088	1.1286	15.60
490089	1.0694	15.86
490090	1.1220	16.28
490091	1.2330	19.99
490092	1.2219	15.69
490093	1.4339	16.48
490094	1.0922	16.79
490095	.....	18.25
490097	1.2096	15.86
490098	1.2068	14.70
490099	0.9555	16.87
490100	.....	17.22
490101	1.2286	25.09
490104	0.7018	28.49
490105	0.5822	18.25
490106	0.8713	16.91
490107	1.3326	22.41
490108	0.8935	19.75
490109	0.8779	21.16
490110	1.2994	15.84
490111	1.2000	17.35
490112	1.6550	20.52
490113	1.3249	23.08
490114	1.1582	16.91
490115	1.1600	17.10
490116	1.1704	16.44
490117	1.1543	13.84
490118	1.7091	20.87
490119	1.3367	17.87
490120	1.3095	19.98
490122	1.3605	23.97
490123	1.1355	16.85
490124	1.0893	19.36
490126	1.3233	18.23
490127	1.0410	14.48
490129	1.0746	27.47
490130	1.3119	16.28
490132	1.0183	17.02
500001	1.4869	21.35
500002	1.4055	21.04
500003	1.4016	24.31
500005	1.7533	23.48
500007	1.3352	22.43
500008	1.9490	24.19
500011	1.3373	25.18
500012	1.5530	22.28
500014	1.5641	23.93
500015	1.3293	23.24
500016	1.4955	23.90
500019	1.3833	22.37
500021	1.4802	24.46
500023	1.2073	27.19
500024	1.6886	24.05
500025	1.9090	23.96
500026	1.4529	23.35
500027	1.6832	25.05
500028	1.0717	18.86
500029	0.9086	16.81
500030	1.4513	24.13
500031	1.2483	23.37
500033	1.3309	21.39
500036	1.3911	21.90
500037	1.1389	19.68
500039	1.3828	23.32
500041	1.3244	24.85
500042	1.4121	22.13
500043	1.0107	20.25
500044	1.9371	23.11
500045	1.0116	22.10
500048	0.9601	19.30
500049	1.4695	22.95

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TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
500050	1.3489	20.94
500051	1.6736	24.48
500052	1.1621	.....
500053	1.3284	22.05
500054	1.8781	22.90
500055	1.1284	22.88
500057	1.3026	18.04
500058	1.4834	23.40
500059	1.0767	22.54
500060	1.3712	23.54
500061	1.0000	20.40
500062	1.0655	19.46
500064	1.6382	24.53
500065	1.2532	21.42
500068	1.0543	18.70
500069	1.1155	20.63
500071	1.2837	19.38
500072	1.2021	24.46
500073	0.9531	21.43
500074	1.1055	18.65
500077	1.3298	23.21
500079	1.3220	22.98
500080	0.8180	13.80
500084	1.2784	22.22
500085	0.9302	28.61
500086	1.2601	22.31
500088	1.2967	23.70
500089	1.0515	17.94
500090	0.8380	16.33
500092	1.0165	17.29
500094	0.8803	18.11
500096	0.9394	20.96
500097	1.0798	20.80
500098	1.0464	12.99
500101	1.0108	19.45
500102	0.9022	20.33
500104	1.2616	22.58
500106	0.9351	18.71
500107	1.2053	17.30
500108	1.7383	27.21
500110	1.2107	21.41
500118	1.1490	22.92
500119	1.3555	21.57
500122	1.2755	21.91
500123	0.9495	19.58
500124	1.3681	24.15
500125	1.0521	16.63
500129	1.6409	23.60
500132	0.9686	19.36
500134	0.6491	20.96
500138	3.6799	.....
500139	1.4682	20.88
500141	1.3726	22.94
500143	0.5954	17.60
500146	.....	17.85
510001	1.9499	17.83
510002	1.2866	17.34
510005	1.0198	14.43
510006	1.2719	17.88
510007	1.5729	20.25
510008	1.2172	17.37
510012	1.0087	16.50
510013	1.1012	16.62
510015	0.9677	14.79
510016	.....	12.03
510018	1.0741	16.48
510020	1.0848	12.65
510022	1.8970	19.84
510023	1.2380	15.94
510024	1.5836	18.80
510026	1.0574	13.46
510027	0.9600	17.58
510028	1.0520	20.73
510029	1.2855	17.05
510030	1.0520	18.31
510031	1.4131	18.49
510033	1.2904	18.81
510035	1.2311	18.65
510036	0.9839	13.20
510038	1.0640	14.34
510039	1.3990	16.06
510043	0.9349	14.29
510046	1.2735	17.73
510047	1.2611	19.12
510048	1.1332	20.37
510050	1.7457	16.57
510053	1.0811	15.59
510055	1.2306	22.84
510058	1.2795	17.98
510059	2.0210	16.77
510060	1.0503	15.66
510061	1.0243	14.22
510062	1.2784	17.63
510065	.....	14.59
510066	.....	12.72
510067	1.2058	18.11
510068	1.2058	16.29
510070	1.2966	16.36
510071	1.3297	16.24
510072	1.0573	17.66
510077	1.1370	16.41
510080	1.1479	14.80
510081	1.0787	13.00
510082	1.1597	13.69
510084	1.0361	12.48
510085	1.2771	18.64
510086	1.1035	13.79
510088	1.0389	.....
520002	1.2721	18.35
520003	1.0869	16.43
520004	1.1778	18.17
520006	1.0164	20.44
520007	1.0508	13.11
520008	1.6392	22.80
520009	1.6949	18.51
520010	1.1559	20.34
520011	1.1930	20.38
520013	1.3680	21.63
520014	1.1066	16.40
520015	1.1978	18.32
520016	0.9703	13.29
520017	1.1930	19.32
520018	1.1211	18.64
520019	1.3095	18.31
520021	1.4596	20.03
520024	1.0420	14.61
520025	1.0654	18.11
520026	1.0296	19.81
520027	1.2626	18.91
520028	1.3294	19.14
520029	0.8917	16.75
520030	1.7395	20.00
520031	1.0756	18.71
520032	1.2622	17.90
520033	1.2388	18.89
520034	1.1058	16.69
520035	1.3246	17.10
520037	1.7026	20.05
520038	1.3352	17.71
520039	0.9990	19.60
520040	1.5261	20.74
520041	1.1567	15.37
520042	1.1256	17.66
520044	1.4143	17.79
520045	1.6556	19.67
520047	0.9397	17.87
520048	1.4958	19.17
520049	2.0506	19.57
520051	1.8466	19.74
520053	1.1884	16.49
520054	1.0542	15.99
520057	1.1944	18.32
520058	1.1077	18.13
520059	1.4368	19.85
520060	1.4770	17.17
520062	1.2487	17.80
520063	1.1864	20.77
520064	1.5707	21.46
520066	1.4671	22.44
520068	0.9618	18.08
520069	1.2293	17.91
520070	1.5249	17.82
520071	1.2525	18.79
520074	1.0559	18.69
520075	1.4866	19.09
520076	1.1796	16.51
520077	0.9312	15.54
520078	1.6373	20.56
520082	1.1943	16.74
520083	1.7219	22.57
520084	1.0804	18.95
520087	1.6992	19.39
520088	1.2752	20.15
520089	1.4733	20.61
520090	1.2604	18.00
520091	1.2778	20.07
520092	1.0845	17.56
520094	0.7818	19.78
520095	1.2908	18.51
520096	1.3848	19.30
520097	1.3197	19.65
520098	1.7723	20.03
520100	1.2561	18.38
520101	1.0650	17.85
520102	1.1753	19.83
520103	1.3285	21.23
520107	1.2649	20.54
520109	1.0080	18.63
520110	1.2429	20.03
520111	1.0771	17.24
520112	1.1382	18.18
520113	1.2755	20.59

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998, HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hour wage
520114	1.0706	17.38
520115	1.2453	17.38
520116	1.2751	18.57
520117	1.0083	17.42
520118	0.9267	12.44
520120	0.9639	15.62
520121	0.9801	17.58
520122	0.9988	16.76
520123	0.9687	17.41
520124	1.0567	16.39
520130	1.0645	15.16
520131	1.0215	18.80
520132	1.2140	17.28
520134	1.1056	17.61
520135	0.9686	14.47
520136*	1.5183	19.99
520138	1.8827	20.89
520139	1.2600	21.28
520140	1.6650	21.42
520141	.....	16.95
520142	0.8577	17.70
520144	1.0177	16.62
520145	0.9103	17.24
520146	1.0606	15.73
520148	1.1737	16.93
520149	0.8651	13.30
520151	1.0561	18.08
520152	1.1273	21.33
520153	0.9014	15.45
520154	1.1283	17.92
520156	1.1278	19.84
520157	1.1408	17.28
520159	0.9357	18.74
520160	1.7939	18.84
520161	0.9978	18.57
520170	1.1960	22.50
520171	0.9558	15.73
520173	1.1310	20.14
520177	1.7178	21.76
520178	1.0401	17.04
520187	0.6853	.....
520188	1.9479	.....
530002	1.1799	17.59
530003	0.8696	15.78
530004	0.9388	16.19
530005	1.1268	15.15
530006	1.1073	19.34
530007	1.0673	18.06
530008	1.2158	22.96
530009	0.9826	19.45
530010	1.2456	18.93
530011	1.1585	17.44
530012	1.6198	19.48
530014	1.4187	17.32
530015	1.2855	22.65
530016	1.2279	17.71
530017	0.9404	13.71
530018	0.9876	17.87
530019	0.9171	16.76
530022	1.1504	17.88
530023	0.8235	20.75
530025	1.3737	20.32
530026	1.1260	18.92
530027	0.8284	29.77
530029	0.9986	17.80
530031	0.8242	13.38
530032	1.1799	20.21

*Asterisk denotes teaching physician costs removed based on costs reported on Worksheet A, Col. 1, Line 23 of FY 1996 cost report.

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (constituent counties)	Wage index	GAF
0040 Abilene, TX	0.8179	0.8714
Taylor, TX		
0060 Aguadilla, PR[2]	0.4249	0.5565
Aguada, PR		
Aguadilla, PR		
Moca, PR		
0080 Akron, OH	1.0163	1.0111
Portage, OH		
Summit, OH		
0120 Albany, GA	1.0372	1.0253
Dougherty, GA		
Lee, GA		
0160 Albany-Schenectady-Troy, NY	0.8754	0.9129
Albany, NY		
Montgomery, NY		
Rensselaer, NY		
Saratoga, NY		
Schenectady, NY		
Schoharie, NY		
0200 Albuquerque, NM	0.8499	0.8946
Bernalillo, NM		
Sandoval, NM		
Valencia, NM		
0220 Alexandria, LA	0.7910	0.8517
Rapides, LA		
0240 Allentown-Bethlehem-Easton, PA	0.9550	0.9690
Carbon, PA		
LeHigh, PA		
Northampton, PA		
0280 Altoona, PA	0.9342	0.9545
Blair, PA		
0320 Amarillo, TX	0.8435	0.8900
Potter, TX		
Randall, TX		
0380 Anchorage, AK	1.3009	1.1974
Anchorage, AK		
0440 Ann Arbor, MI	1.1483	1.0993
Lenawee, MI		
Livingston, MI		
Washtenaw, MI		
0450 Anniston, AL	0.8462	0.8919
Calhoun, AL		
0460 Appleton-Oshkosh-Neenah, WI	0.8913	0.9242
Calumet, WI		
Outagamie, WI		
Winnebago, WI		
0470 Arecibo, PR	0.4815	0.6062
Arecibo, PR		
Camuy, PR		
Hatillo, PR		
0480 Asheville, NC	0.8884	0.9222
Buncombe, NC		
Madison, NC		
0500 Athens, GA	0.9800	0.9863
Clarke, GA		
Madison, GA		
Oconee, GA		
0520 Atlanta, GA	1.0050	1.0034
Barrow, GA		
Bartow, GA		
Carroll, GA		
Cherokee, GA		
Clayton, GA		
Cobb, GA		
Coweta, GA		
DeKalb, GA		
Douglas, GA		
Fayette, GA		
Forsyth, GA		
Fulton, GA		
Gwinnett, GA		
Henry, GA		
Newton, GA		
Paulding, GA		
Pickens, GA		
Rockdale, GA		
Spalding, GA		
Walton GA		
0560 Atlantic-Cape May, NJ	1.1050	1.0708
Atlantic, NJ		
Cape May, NJ		
0580 Auburn-Opelika, AL	0.7748	0.8397
Lee, AL		
0600 Augusta-Aiken, GA–SC	0.9013	0.9313
Columbia, GA		
McDuffie, GA		
Richmond, GA		
Aiken, SC		
Edgefield, SC		
0640 Austin-San Marcos, TX[1]	0.9081	0.9361
Bastrop, TX		
Caldwell, TX		
Hays, TX		
Travis, TX		
Williamson, TX		
0680 Bakersfield, CA[2]	0.9951	0.9966
Kern, CA		
0720 Baltimore, MD[1]	0.9891	0.9925
Anne Arundel, MD		
Baltimore, MD		
Baltimore, City, MD		
Carroll, MD		
Harford, MD		
Howard, MD		
Queen Anne's, MD		
0733 Bangor, ME	0.9609	0.9731

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TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Penobscot, ME		
0743 Barnstable-Yarmouth, MA	1.3302	1.2158
Barnstable, MA		
0760 Baton Rouge, LA	0.8707	0.9095
Ascension, LA		
East Baton Rouge, LA		
Livingston, LA		
West Baton Rouge, LA		
0840 Beaumont-Port Arthur, TX	0.8624	0.9036
Hardin, TX		
Jefferson, TX		
Orange, TX		
0860 Bellingham, WA	1.1394	1.0935
Whatcom, WA		
0870 Benton Harbor, MI [2]	0.8831	0.9184
Berrien, MI		
0875 Bergen-Passaic, NJ [1]	1.1833	1.1222
Bergen, NJ		
Passaic, NJ		
0880 Billings, MT	1.0038	1.0026
Yellowstone, MT		
0920 Biloxi-Gulfport-Pascagoula, MS	0.7949	0.8545
Hancock, MS		
Harrison, MS		
Jackson, MS		
0960 Binghamton, NY	0.8750	0.9126
Broome, NY		
Tioga, NY		
1000 Birmingham, AL	0.8994	0.9300
Blount, AL		
Jefferson, AL		
St. Clair, AL		
Shelby, AL		
1010 Bismarck, ND	0.7893	0.8504
Burleigh, ND		
Morton, ND		
1020 Bloomington, IN	0.8593	0.9014
Monroe, IN		
1040 Bloomington-Normal, IL	0.8993	0.9299
McLean, IL		
1080 Boise City, ID	0.9086	0.9365
Ada, ID		
Canyon, ID		
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (MA Hospitals) [1 2]	1.1369	1.0918
Bristol, MA		
Essex, MA		
Middlesex, MA		
Norfolk, MA		
Plymouth, MA		
Suffolk, MA		
Worcester, MA		
Hillsborough, NH		
Merrimack, NH		
Rockingham, NH		
Strafford, NH		
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (NH Hospitals) [1]	1.1358	1.0911
Bristol, MA		
Essex, MA		
Middlesex, MA		
Norfolk, MA		
Plymouth, MA		
Suffolk, MA		
Worcester, MA		
Hillsborough, NH		
Merrimack, NH		
Rockingham, NH		
Strafford, NH		
1125 Boulder-Longmont, CO	0.9944	0.9962
Boulder, CO		
1145 Brazoria, TX	0.8516	0.8958
Brazoria, TX		
1150 Bremerton, WA	1.1011	1.0682
Kitsap, WA		
1240 Brownsville-Harlingen-San Benito, TX	0.9212	0.9453
Cameron, TX		
1260 Bryan-College Station, TX	0.8501	0.8947
Brazos, TX		
1280 [1] Buffalo-Niagara Falls, NY	0.9604	0.9727
Erie, NY		
Niagara, NY		
1303 Burlington, VT	1.0558	1.0379
Chittenden, VT		
Franklin, VT		
Grand Isle, VT		
1310 Caguas, PR	0.4561	0.5842
Caguas, PR		
Cayey, PR		
Cidra, PR		
Gurabo, PR		
San Lorenzo, PR		
1320 Canton-Massillon, OH [2]	0.8649	0.9054
Carrll, OH		
Stark, OH		
1350 Casper, WY	0.9199	0.9444
Natrona, WY		
1360 Cedar Rapids, IA	0.9018	0.9317
Linn, IA		
1400 Champaign-Urbana, IL	0.9163	0.9419
Champaign, IL		
1440 Charleston-North Charleston, SC	0.8988	0.9295
Berkeley, SC		
Charleston, SC		
Dorchester, SC		
1480 Charleston, WV	0.9095	0.9371
Kanawha, WV		
Putnam, WV		
1520 Charlotte-Gastonia-Rock Hill, NC–SC [1]	0.9433	0.9608
Cabarrus, NC		
Gaston, NC		
Lincoln, NC		
Mecklenburg, NC		
Rowan, NC		
Stanly, NC		
Union, NC		
York, SC		
1540 Charlottesville, VA	1.0573	1.0389
Albermarle, VA		
Charlottesville City, VA		
Fluvanna, VA		
Greene, VA		
1560 Chattanooga, TN–GA	0.9731	0.9815
Catoosa, GA		
Dade, GA		
Walker, GA		
Hamilton, TN		
Marion, TN		
1580 Cheyenne, WY [2]	0.8859	0.9204
Laramie, WY		
1600 Chicago, IL [1]	1.0872	1.0589
Cook, IL		
DeKalb, IL		
DuPage, IL		
Grundy, IL		
Kane, IL		
Kendall, IL		
Lake, IL		
McHenry, IL		
Will, IL		
1620 Chico-Paradise, CA	1.0390	1.0265
Butte, CA		
1640 Cincinnati, OH–KY–IN [1]	0.9434	0.9609
Dearborn, IN		
Ohio, IN		
Boone, KY		
Campbell, KY		
Gallatin, KY		
Grant, KY		
Kenton, KY		
Pendleton, KY		
Brown, OH		
Clermont, OH		
Hamilton, OH		
Warren, OH		
1660 Clarksville-Hopkinsville, TN–KY	0.8283	0.8790
Christian, KY		
Montgomery, TN		
1680 Cleveland-Lorain-Elyria, OH [1]	0.9688	0.9785

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Ashtabula, OH		
Cuyahoga, OH		
Geauga, OH		
Lake, OH		
Lorain, OH		
Medina, OH		
1720 Colorado Springs, CO	0.9218	0.9458
El Paso, CO		
1740 Columbia, MO	0.8904	0.9236
Boone, MO		
1760 Columbia, SC	0.9357	0.9555
Lexington, SC		
Richland, SC		
1800 Columbus, GA–AL	0.8510	0.8954
Russell, AL		
Chattahoochee, GA		
Harris, GA		
Muscogee, GA		
1840 Columbus, OH	0.9907	0.9936
Delaware, OH		
Fairfield, OH		
Franklin, OH		
Licking, OH		
Madison, OH		
Pickaway, OH		
1880 Corpus Christi, TX	0.8702	0.9092
Nueces, TX		
San Patricio, TX		
1890 Crovallis, OR	1.1087	1.0732
Benton, OR		
1900 Cumberland, MD–WV (Maryland Hospitals)	0.8801	0.9163
Allegany, MD		
Mineral, WV		
1920 Dallas, TX [1]	0.9589	0.9717
Collin, TX		
Dallas, TX		
Denton, TX		
Ellis, TX		
Henderson, TX		
Hunt, TX		
Kaufman, TX		
Rockwall, TX		
1950 Danville, VA	0.9061	0.9347
Danville City, VA		
Pittsylvania, VA		
1960 Davenport-Moline-Rock Island, IA–IL	0.8706	0.9095
Scott, IA		
Henry, IL		
Rock Island, IL		
2000 Dayton-Springfield, OH	0.9336	0.9540
Clark, OH		
Greene, OH		
Miami, OH		
Montgomery, OH		
2020 Daytona Beach, FL [2]	0.8986	0.9294
Flagler, FL		
Volusia, FL		
2030 Decatur, AL	0.8679	0.9075
Lawrence, AL		
Morgan, AL		
2040 Decatur, IL	0.8321	0.8817
Macon, IL		
2080 Danver, CO [1]	1.0197	1.0134
Adams, CO		
Arapahoe, CO		
Denver, CO		
Douglas, CO		
Jefferson, CO		
2120 Des Moines, IA	0.8754	0.9129
Dallas, IA		
Polk, IA		
Warren, IA		
2160 Detroit, MI [1]	1.0421	1.0286
Lapeer, MI		
Macomb, MI		
Monroe, MI		
Oakland, MI		
St. Clair, MI		
Wayne, MI		
2180 Dothan, AL	0.7836	0.8462
Dale, AL		
Houston, AL		
2190 Dover, DE	0.9335	0.9540
Kent, DE		
2200 Dubuque, IA	0.8520	0.8961
Dubuque, IA		
2240 Duluth-Superior, MN–WI	1.0165	1.0113
St. Louis, MN		
Douglas, WI		
2281 Dutchess County, NY	0.9872	0.9912
Dutchess, NY		
2290 Eau Claire, WI	0.8957	0.9273
Chippewa, WI		
Eau Claire, WI		
2320 El Paso, TX	0.8947	0.9266
El Paso, TX		
2330 Elkhart-Goshen, IN	0.9379	0.9570
Elkhart, IN		
2335 Elmira, NY [2]	0.8636	0.9045
Chemung, NY		
2340 Enid, OK	0.7953	0.8548
Garfield, OK		
2360 Erie, PA	0.9023	0.9320
Erie, PA		
2400 Eugene-Springfield, OR	1.0765	1.0518
Lane, OR		
2440 Evansville-Henderson, IN–KY (IN Hospitals) [2]	0.8396	0.8872
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
2440 Evansville-Henderson, IN–KY (KY Hospitals)	0.8303	0.8804
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
2520 Fargo-Moorhead, ND–MN	0.8620	0.9033
Clay, MN		
Cass, ND		
2560 Fayetteville, NC	0.8494	0.8942
Cumberland, NC		
2580 Fayetteville-Springdale-Rogers, AR	0.7773	0.8415
Benton, AR		
Washington, AR		
2620 Flagstaff, AZ–UT	1.0348	1.0237
Coconino, AZ		
Kane, UT		
2640 Flint, MI	1.1020	1.0688
Genesee, MI		
2650 Florence, AL	0.7927	0.8529
Colbert, AL		
Lauderdale, AL		
2655 Florence, SC	0.8618	0.9032
Florence, SC		
2670 Fort Collins-Loveland, CO	1.0302	1.0206
Larimer, CO		
2680 Ft. Lauderdale, FL [1]	1.0172	1.0117
Broward, FL		
2700 Fort Myers-Cape Coral, FL [2]	0.8986	0.9294
Lee, FL		
2710 Fort Pierce-Port St. Lucie, FL	1.0109	1.0075
Martin, FL		
St. Lucie, FL		
2720 Fort Smith, AR–OK	0.7844	0.8468
Crawford, AR		
Sebastian, AR		
Sequoyah, OK		
2750 Fort Walton Beach, FL [2]	0.8986	0.9294
Okaloosa, FL		
2760 Fort Wayne, IN	0.9096	0.9372
Adams, IN		
Allen, IN		
De Kalb, IN		
Huntington, IN		
Wells, IN		
Whitley, IN		
2800 Forth Worth-Arlington, TX [1]	0.9835	0.9887
Hood, TX		
Johnson, TX		
Parker, TX		
Tarrant, TX		
2840 Fresno, CA	1.0262	1.0179
Fresno, CA		
Madera, CA		
2880 Gadsden, AL	0.8754	0.9129
Etowah, AL		
2900 Gainesville, FL	1.0102	1.0070
Alachua, FL		
2920 Galveston-Texas City, TX	0.9732	0.9816
Galveston, TX		
2960 Gary, IN	0.9369	0.9563
Lake, IN		
Porter, IN		
2975 Glens Falls, NY [2]	0.8636	0.9045

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Warren, NY Washington, NY		
2980 Goldsboro, NC Wayne, NC	0.8333	0.8826
2985 Grand Forks, ND–MN Polk, MN Grand Forks, ND	0.9097	0.9372
2995 Grand Junction, CO Mesa, CO	0.9188	0.9437
3000 Grand Rapids-Muskegon-Holland, MI[1] Allegan, MI Kent, MI Muskegon, MI Ottawa, MI	1.0135	1.0092
3040 Great Falls, MT Cascade, MT	1.0459	1.0312
3060 Greeley, CO Weld, CO	0.9722	0.9809
3080 Green Bay, WI Brown, WI	0.9215	0.9456
3120 Greensboro-Winston-Salem-High Point, NC[1] Alamance, NC Davidson, NC Davie, NC Forsyth, NC Guilford, NC Randolph, NC Stokes, NC Yadkin, NC	0.9037	0.9330
3150 Greenville, NC Pitt, NC	0.9500	0.9655
3160 Greenville-Spartanburg-Anderson, SC Anderson, SC Cherokee, SC Greenville, SC Pickens, SC Spartanburg, SC	0.9188	0.9437
3180 Hagerstown, MD Washington, MD	0.8853	0.9200
3200 Hamilton-Middletown, OH Butler, OH	0.8989	0.9296
3240 Harrisburg-Lebanon-Carlisle, PA Cumberland, PA Dauphin, PA Lebanon, PA Perry, PA	0.9917	0.9943
3283 Hartford, CT[1 2] Hartford, CT Litchfield, CT Middlesex, CT Tolland, CT	1.2413	1.1595
3285 Hattiesburg, MS[2] Forrest, MS Lamar, MS	0.7306	0.806
3290 Hickory-Morganton-Lenoir, NC Alexander, NC Burke, NC Caldwell, NC Catawba, NC	0.9148	0.940
3320 Honolulu, HI Honolulu, HI	1.1479	1.099
3350 Houma, LA Lafourche, LA Terrebonne, LA	0.7837	0.8463
3360 Houston, TX[1] Chambers, TX Fort Bend, TX Harris, TX Liberty, TX Montgomery, TX Waller, TX	0.9387	0.9576
3400 Huntington-Ashland, WV–KY–OH Boyd, KY Carter, KY Greenup, KY Lawrence, OH Cabell, WV Wayne, WV	0.9757	0.9833
3440 Huntsville, AL Limestone, AL Madison, AL	0.8822	0.9178
3480 Indianapolis, IN[1] Boone, IN Hamilton, IN Hancock, IN Hendricks, IN Johnson, IN Madison, IN Marion, IN Morgan, IN Shelby, IN	0.9792	0.9857
3500 Iowa City, IA Johnson, IA	0.9607	0.9729
3520 Jackson, MI Jackson, MI	0.8840	0.9190
3560 Jackson, MS Hinds, MS Madison, MS Rankin, MS	0.8387	0.8865
3580 Jackson, TN Madison, TN Chester, TN	0.8600	0.9019
3600 Jacksonville, FL[1 2] Clay, FL Duval, FL Nassau, FL St. Johns, FL	0.8986	0.9294
3605 Jacksonville, NC[2] Onslow, NC	0.8290	0.8795
3610 Jamestown, NY[2] Chautauqua, NY	0.8636	0.9045
3620 Janesville-Beloit, WI Rock, WI	0.9656	0.9763
3640 Jersey City, NJ Hudson, NJ	1.1674	1.1118
3660 Johson City-Kingsport-Bristol, TN–VA Carter, TN Hawkins, TN Sullivan, TN Unicoi, TN Washington, TN Bristol City, VA Scott, VA Washington, VA	0.8894	0.9229
3680 Johnstown, PA[2] Cambria, PA Somerset, PA	0.8524	0.8964
3700 Jonesboro, AR Craighead, AR	0.7251	0.8024
3710 Joplin, MO[2] Jasper, MO Newton, MO	0.7723	0.8378
3720 Kalamazoo-Battlecreek, MI Calhoun, MI Kalamazoo, MI Van Buren, MI	0.9981	0.9987
3740 Kankakee, IL Kankakee, IL	0.8598	0.9017
3760 Kansas City, KS–MO[1] Johnson, KS Leavenworth, KS Miami, KS Wyandotte, KS Cass, MO Clay, MO Clinton, MO Jackson, MO Lafayette, MO Platte, MO Ray, MO	0.9322	0.9531
3800 Kenosha, WI Kenosha, WI	0.9033	0.9327
3810 Killeen-Temple, TX Bell, TX Coryell, TX	0.9932	0.9953
3840 Knoxville, TN Anderson, TN Blount, TN Knox, TN Loudon, TN Sevier, TN Union, TN	0.9199	0.9444
3850 Kokomo, IN Howard, IN Tipton, IN	0.8984	0.9293
3870 LaCrosse, WI–MN Houston, MN La Crosse, WI	0.8933	0.9256
3880 Lafayette, LA Acadia, LA Lafayette, LA St. Landry, LA St. Martin, LA	0.8397	0.8872
3920 Lafayette, IN Clinton, IN Tippecanoa, IN	0.8809	0.9168
3960 Lake Charles, LA Calcasieu, LA	0.7966	0.8558
3980 Lakeland-Winter Haven, FL[2] Polk, FL	0.8986	0.9294
4000 Lancaster, PA Lancaster, PA	0.9255	0.9484
4040 Lansing-East Lansing, MI Clinton, MI Eaton, MI Ingham, MI	0.9977	0.9984
4080 Laredo, TX Webb, TX	0.8323	0.8819
4100 Las Cruces, NM Dona Anam, NM	0.8590	0.9012
4120 Las Vegas, NV–AZ[1] Mohave, AZ Clark, NV Nye, NV	1.1258	1.0845
4150 Lawrence, KS Douglas, KS	0.8222	0.8745
4200 Lawton, OK Comanche, OK	0.9532	0.9677
4243 Lewiston-Auburn, ME Androscoggin, ME	0.8899	0.9232
4280 Lexington, KY Bourbon, KY Clark, KY Fayette, KY Jessamine, KY Madison, KY Scott, KY Woodford, KY	0.8552	0.8984
4320 Lima, OH Allen, OH Auglaize, OH	0.9108	0.938
4360 Lincoln, NE Lancaster, NE	0.9670	0.977
4400 Little Rock-North Little Rock, AR Faulkner, AR Lonoke, AR Pulaski, AR Saline, AR	0.8614	0.9029
4420 Longview, Marshall, TX Gregg, TX Harrison, TX Upshur, TX	0.8738	0.9118
4480 Los Angeles-Long Beach, CA[1] Los Angeles, CA	1.2085	1.1385
4520 Louisville, KY–IN Clark, IN Floyd, IN Harrison, IN Scott, IN Bullitt, KY Jefferson, KY Oldham, KY	0.9381	0.9572
4600 Lubbock, TX Lubbock, TX	0.8411	0.8883
4640 Lynchburg, VA Amherst, VA Bedford, VA Bedford City, VA Campbell, VA Lynchburg City, VA	0.8814	0.9172
4680 Macon, GA Bibb, GA Houston, GA Jones, GA Peach, GA Twiggs, GA	0.8530	0.8968
4720 Madison, WI Dane, WI	0.9729	0.981
4800 Mansfield, OH[2] Crawford, OH Richland, OH	0.8649	0.905
4840 Mayaguez, PR Anasco, PR Cabo Rojo, PR Hormigueros, PR Mayaguez, PR Sabana Grande, PR San German, PR	0.4674	0.5940
4880 McAllen-Edinburg-Mission, TX Hidalgo, TX	0.8120	0.8671
4890 Medford-Ashland, OR Jackson, OR	1.0492	1.0334
4900 Melbourne-Titusville-Palm Bay, FL Brevard, FL	0.9296	0.9512
4920 Memphis, TN–AR–MS[1] Crittenden, AR DeSoto, MS Fayette, TN Shelby, TN Tipton, TN	0.8244	0.8761
4940 Merced, CA Merced, CA	1.0509	1.0346
5000 Miami, FL[1] Dade, FL	1.0233	1.0159
5015 Middlesex-Somerset-Hunterdon, NJ[1] Hunterdon, NJ Middlesex, NJ Somerset, NJ	1.0876	1.0592
5080 Milwaukee-Waukesha, WI[1] Milwaukee, WI Ozaukee, WI Washington, WI Waukesha, WI	0.9845	0.9894
5120 Minneapolis-St. Paul, MN–WI[1] Anoka, MN Carver, MN Chisago, MN Dakota, MN Hennepin, MN Isanti, MN Ramsey, MN Scott, MN Sherburne, MN Washington, MN Wright, MN Pierce, WI St. Croix, WI	1.0929	1.0627
5140 Missoula, MT Missoula, MT	0.9085	0.9364
5160 Mobile, AL Baldwin, AL Mobile, AL	0.8267	0.8778
5170 Modesto, CA Stanislaus, CA	1.0111	1.0076
5190 Monmouth-Ocean, NJ[1] Monmouth, NJ Ocean, NJ	1.1258	1.0845
5200 Monroe, LA Quachita, LA	0.8221	0.8745
5240 Montgomery, AL Autauga, AL Elmore, AL Mongomery, AL	0.7724	0.8379
5280 Muncie, IN Delaware, IN	1.0834	1.0564
5330 Myrtle Beach, SC Horry, SC	0.8529	0.8968
5345 Naples, FL Collier, FL	0.9839	0.9889
5360 Nashville, TN[1] Cheatham, TN Davidson, TN Dickson, TN Robertson, TN Rutherford TN Sumner, TN Williamson, TN Wilson, TN	0.9449	0.9619
5380 Nassau-Suffolk, NY[1] Nassau, NY Suffolk, NY	1.4074	1.2637
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT[1] Fairfield, CT New Haven, CT	1.2417	1.1598
5523 New London-Norwich, CT New London, CT	1.2428	1.1605
5560 New Orleans, LA[1]	0.9089	0.9367

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TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Jefferson, LA		
Orleans, LA		
Plaquemines, LA		
St. Bernard, LA		
St. Charles, LA		
St. James, LA		
St. John The Baptist, LA		
St. Tammany, LA		
5600 New York, NY [1]	1.4517	1.2908
Bronx, NY		
Kings, NY		
New York, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		
5640 Newark, NY [1]	1.0772	1.0522
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Warren, NJ		
5660 Newburgh, NY–PA	1.0908	1.0613
Orange, NY		
Pike, PA		
5720 Norfolk-Virginia Beach-Newport News, VA–NC [1]	0.8442	0.8905
Currituck, NC		
Chesapeake City, VA		
Gloucester, VA		
Hampton City, VA		
Isle of Wight, VA		
James City, VA		
Mathews, VA		
Newport News City, VA		
Norfolk City, VA		
Poquoson City, VA		
Portsmouth City, VA		
Suffolk City, VA		
Virginia Beach City VA		
Williamsburg City, VA		
York, VA		
5775 Oakland, CA	1.5095	1.3258
Alameda, CA		
Contra Costa, CA		
5790 Ocala, FL	0.9615	0.9735
Marion, FL		
5800 Odessa-Midland, TX	0.8873	0.9214
Ector, TX		
Midland, TX		
5880 Oklahoma City, OK [1]	0.8589	0.9011
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		
Pottawatomie, OK		
5910 Olympia, WA	1.0932	1.0629
Thurston, WA		
5920 Omaha, NE–IA	1.0455	1.0309
Pottawattamie, IA		
Cass, NE		
Douglas, NE		
Sarpy, NE		
Washington, NE		
5945 Orange County, CA [1]	1.1592	1.1065
Orange, CA		
5660 Orlando, FL	0.9806	0.9867
Lake, FL		
Orange, FL		
Osceola, FL		
Seminole, FL		
5990 Owensboro, KY	0.8104	0.8659
Daviess, KY		
6015 Panama City, FL	0.9169	0.9423
6020 Parkersburg-Marietta, WV–OH (WV Hospitals)	0.8414	0.8885
Washington, OH		
Wood, WV		
6020 Parkersburg-Marietta, WV–OH (OH Hospitals) [2]	0.8649	0.9054
Washington, OH		
Wood, WV		
6080 Pensacola, FL [2]	0.8986	0.9294
Escambia, FL		
Santa Rosa, FL		
6120 Peoria-Perkin, IL	0.8399	0.8874
Peoria, IL		
Tazewell, IL		
Woodford, IL		
6160 Philadelphia, PA–NJ	1.1186	1.0798
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		
Salem, NJ		
Bucks, PA		
Chester, PA		
Delaware, PA		
Montgomery, PA		
Philadelphia, PA		
6200 Phoenix-Messa, AZ [1]	0.9464	0.9630
Maricopa, AZ		
Pinal, AZ		
6240 Pine Bluff, AR	0.7697	0.8359
Jefferson, AR		
6280 Pittsburgh, PA [1]	0.9634	0.9748
Allegheny, PA		
Beaver, PA		
Butler, PA		
Fayette, PA		
Washington, PA		
Westmoreland, PA		
6323 Pittsfield, MA [2]	1.1369	1.0918
Berkshire, MA		
6340 Pocatello, ID	0.8973	0.9285
Bannock, ID		
6360 Ponce, PR	0.4971	0.6196
Guayanilla, PR		
Juana Diaz, PR		
Penuelas, PR		
Ponce, PR		
Villalba, PR		
Yauco, PR		
6403 Portland, ME	0.9487	0.9646
Cumberland, ME		
Sagadahoc, ME		
York, ME		
6440 Portland-Vancouver, OR–WA [1]	1.0996	1.0672
Clackamas, OR		
Columbia, OR		
Multnomah, OR		
Washington, OR		
Yamhill, OR		
Clark, WA		
6483 Providence-Warwick-Pawtucket, RI [1]	1.0690	1.0468
Bristol, RI		
Kent, RI		
Newport, RI		
Providence, RI		
Washington, RI		
6520 Provo-Orem, UT	0.9818	0.9875
Utah, UT		
6560 Pueblo, CO	0.8853	0.9200
Pueblo, CO		
6580 Punta Gorda, FL	0.9508	0.9660
Charalotte, FL		
6600 Racine, WI	0.9216	0.9456
Racine, WI		
6640 Raleigh-Durham-Chapel Hill, NC [1]	0.9544	0.9685
Chatham, NC		
Durham, NC		
Franklin, NC		
Johnston, NC		
Orange, NC		
Wake, NC		
6660 Rapid City, SD	0.8363	0.8848
Pennington, SD		
6680 Reading, PA	0.9436	0.9610
Berks, PA		
6690 Redding, CA	1.1263	1.0849
Shasta, CA		
6720 Reno, NV	1.0655	1.0444
Washoe, NV		
6740 Richland-Kennewick-Pasco, WA	1.1224	1.0823
Benton, WA		
Franklin, WA		
6760 Richmond-Petersburg, VA	0.9545	0.9686

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Charles City County, VA		
Chesterfield, VA		
Colonial Heights City, VA		
Dinwiddie, VA		
Goochland, VA		
Hanover, VA		
Henrico, VA		
Hopewell City, VA		
New Kent, VA		
Petersburg City, VA		
Powhatan, VA		
Prince George, VA		
Richmond City, VA		
6780 Riverside-San Bernardino, CA [1]	1.1061	1.0715
Riverside, CA		
San Bernardino, CA		
6800 Roanoke, VA	0.8142	0.8687
Botetourt, VA		
Roanoke, VA		
Roanoke City, VA		
Salem City, VA		
6820 Rochester, MN	1.1429	1.0958
Olmsted, MN		
6840 Rochester, NY [1]	0.9184	0.9434
Genesee, NY		
Livingston, NY		
Monroe, NY		
Ontario, NY		
Orleans, NY		
Wayne, NY		
6880 Rockford, IL	0.8783	0.9150
Boone, IL		
Ogle, IL		
Winnebago, IL		
6895 Rocky Mount, NC	0.8735	0.9115
Edgecombe, NC		
Nash, NC		
6920 Sacramento, CA [1]	1.2284	1.1513
El Dorado, CA		
Placer, CA		
Sacramento, CA		
6960 Saginaw-Bay City-Midland, MI	0.9294	0.9511
Bay, MI		
Midland, MI		
Saginaw, MI		
6980 St. Cloud, MN	0.9608	0.9730
Benton, MN		
Stearns, MN		
7000 St. Joseph, MO	0.8943	0.9264
Andrew, MO		
Buchanan, MO		
7040 St. Louis, MO–IL [1]	0.9052	0.9341
Clinton, IL		
Jersey, IL		
Madison, IL		
Monroe, IL		
St. Clair, IL		
Franklin, MO		
Jefferson, MO		
Lincoln, MO		
St. Charles, MO		
St. Louis, MO		
St. Louis City, MO		
Warren, MO		
7080 Salem, OR	0.9949	0.9965
Marion, OR		
Polk, OR		
7120 Salinas, CA	1.4710	1.3025
Monterey, CA		
7160 Salt Lake City-Ogden, UT [1]	0.9854	0.9900
Davis, UT		
Salt Lake, UT		
Weber, UT		
7200 San Angelo, TX	0.7845	0.8469
Tom Green, TX		
7240 San Antonio, TX [1]	0.8318	0.8815
Bexar, TX		
Comal, TX		
Guadalupe, TX		
Wilson, TX		
7320 San Diego, CA [1]	1.1955	1.1301
San Diego, CA		
7360 San Francisco, CA [1]	1.3784	1.2458
Marin, CA		
San Francisco, CA		
San Mateo, CA		
7400 San Jose, CA [1]	1.3492	1.2277
Santa Clara, CA		
7440 San Juan-Bayamon, PR [1]	0.4657	0.5925
Aguas Buenas, PR		
Barceloneta, PR		
Bayamon, PR		
Canovanas, PR		
Carolina, PR		
Catano, PR		
Ceiba, PR		
Comerio, PR		
Corozal, PR		
Dorado, PR		
Fajardo, PR		
Florida, PR		
Guaynabo, PR		
Humacao, PR		
Juncos, PR		
Los Piedras, PR		
Loiza, PR		
Luguillo, PR		
Manati, PR		
Morovis, PR		
Naguabo, PR		
Naranjito, PR		
Rio Grande, PR		
San Juan, PR		
Toa Alta, PR		
Toa Baja, PR		
Trujillo Alto, PR		
Vega Alta, PR		
Vega Baja, PR		
Yabucoa, PR		
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.0470	1.0320
San Luis Obispo, CA		
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0819	1.0554
Santa Barbara, CA		
7485 Santa Cruz-Watsonville, CA	1.3927	1.2546
Santa Cruz, CA		
7490 Santa Fe, NM	1.0437	1.0297
Los Alamos, NM		
Santa Fe, NM		
7500 Santa Rosa, CA	1.3000	1.1968
Sonoma, CA		
7510 Sarasota-Bradenton, FL	0.9905	0.9935
Manatee, FL		
Sarasota, FL		
7520 Savannah, GA	0.9953	0.9968
Bryan, GA		
Chatham, GA		
Effington, GA		
7560 Scranton—Wilkes-Barre—Hazleton, PA [2]	0.8524	0.8964
Columbia, PA		
Lackawanna, PA		
Luzerne, PA		
Wyoming, PA		
7600 Seattle-Bellevue-Everett, WA [1]	1.1289	1.0866
Island, WA		
King, WA		
Snohomish, WA		
7610 Sharon, PA [2]	0.8524	0.8964

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TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Mercer, PA		
7620 Sheboygan, WI[2]	0.8759	0.9133
Sheboygan, WI		
7640 Sherman-Denison, TX	0.9329	0.9535
Grayson, TX		
7680 Shreveport-Bossier City, LA	0.9049	0.9339
Bossier, LA		
Caddo, LA		
Webster, LA		
7720 Sioux City, IA–NE	0.8549	0.8982
Woodbury, IA		
Dakota, NE		
7760 Sioux Falls, SD	0.8776	0.9145
Lincoln, SD		
Minnehaha, SD		
7800 South Bend, IN	0.9793	0.9858
St. Joseph, IN		
7840 Spokane, WA	1.0799	1.0541
Spokane, WA		
7880 Springfield, IL	0.8684	0.9079
Menard, IL		
Sangamon, IL		
7920 Springfield, MO	0.7991	0.8576
Christian, MO		
Greene, MO		
Webster, MO		
8003 Springfield, MA[3]	1.1369	1.0918
Hampden, MA		
Hampshire, MA		
8050 State College, PA	0.9138	0.9401
Centre, PA		
8080 Steubenville-Weirton, OH–WV (OH Hospitals)[2]	0.8649	0.9054
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8080 Steubenville-Weirton, OH–WV (OH Hospitals)[2]	0.8614	0.9029
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8120 Stockton-Lodi, CA	1.0518	1.0352
San Joaquin, CA		
8140 Sumter, SC[2]	0.8264	0.8776
Sumter, SC		
8160 Syracuse, NY	0.9441	0.9614
Cayuga, NY		
Madison, NY		
Onondaga, NY		
Oswego, NY		
8200 Tacoma, WA	1.1631	1.1090
Pierce, WA		
8240 Tallahassee, FL[2]	0.8986	0.9294
Gadsden, FL		
Leon, FL		
8280 Tampa-St. Petersburg-Clearwater, FL[1]	0.9119	0.9388
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
8320 Terre Haute, IN	0.8570	0.8997
Clay, IN		
Vermillion, IN		
Vigo, IN		
8360 Texarkana, AR-Texarkana, TX	0.8174	0.8710
Miller, AR		
Bowie, TX		
8400 Toledo, OH	0.9593	0.9719
Fulton, OH		
Lucas, OH		
Wood, OH		
8440 Topeka, KS	0.9326	0.9533
Shawnee, KS		
8480 Trenton, NJ	0.9955	0.9969
Mercer, NJ		
8520 Tucson, AZ	0.8742	0.9120
Pima, AZ		
8560 Tulsa, OK	0.8086	0.8646
Creek, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		
8600 Tuscaloosa, AL	0.8064	0.8630
Tuscaloosa, AL		
8640 Tyler, TX	0.9369	0.9563
Smith, TX		
8680 Utica-Rome, NY[2]	0.8636	0.9045
Herkimer, NY		
Oneida, NY		
8720 Vallejo-Fairfield-Napa, CA	1.2655	1.1750
Napa, CA		
Solano, CA		
8735 Ventura, CA	1.0952	1.0643
Ventura, CA		
8750 Victoria, TX	0.8378	0.8859
Victoria, TX		
8760 Vineland-Millville-Bridgeton, NJ	1.0517	1.0351
Cumberland, NJ		
8780 Visalia-Tulare-Porterville, CA	1.0411	1.0280
Tulare, CA		
8800 Waco, TX	0.8075	0.8638
McLennan, TX		
8840 Washington, DC–MD–VA–WV[1]	1.1053	1.0710
District of Columbia, DC		
Calvert, MD		
Charles, MD		
Frederick, MD		
Montgomery, MD		
Prince Georges, MD		
Alexandria City, VA		
Arlington, VA		
Clarke, VA		
Culpeper, VA		
Fairfax, VA		
Fairfax City, VA		
Falls Church City, VA		
Fauquier, VA		
Fredericksburg City, VA		
King George, VA		
Loudoun, VA		
Manassas City, VA		
Manassas Park City, VA		
Prince William, VA		
Spotsylvania, VA		
Stafford, VA		
Warren, VA		
Berkeley, WV		
Jefferson, WV		
8920 Waterloo-Cedar Falls, IA	0.8841	0.9191
Black Hawk, IA		
8940 Wausau, WI	0.9445	0.9617
Marathon, WI		
8960 West Palm Beach-Boca Raton, FL[1,2]	0.9951	0.9966
Palm Beach, FL		
9000 Wheeling, WV–OH (WV Hospitals)[2]	0.8068	0.8633
Belmont, OH		
Marshall, WV		
Ohio, WV		
9000 Wheeling, WV–OH (OH Hospitals)[2]	0.8649	0.9054
Belmont, OH		
Marshall, WV		
Ohio, WV		
9040 Wichita, KS	0.9421	0.09600
Butler, KS		
Harvey, KS		
Sedgwick, KS		
9080 Wichita Falls, TX	0.7652	0.8325
Archer, TX		
Wichita, TX		
9140 Williamsport, PA[2]	0.8524	0.8964
Lycoming, PA		
9160 Wilmington-Newark, DE–MD	1.1274	1.0856
New Castle, DE		
Cecil, MD		
9200 Wilmington, NC	0.9707	0.9798
New Hanover, NC		
Brunswick, NC		
9260 [2]Yakima, WA	1.0446	1.0303
Yakima, WA		
9270 Yolo, CA	1.0485	1.0330
Yolo, CA		
9280 York, PA	0.9309	0.9521
York, PA		
9320 Youngstown-Warren, OH	0.9996	0.9997
Columbiana, OH		
Mahoning, OH		
Trumbull, OH		
9340 Yuba City, CA	1.0662	1.0449
Sutter, CA		
Yuba, CA		
9360 Yuma, AZ	0.9924	0.9948
Yuma, AZ		

[1] Large Urban Area.
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2000.

TABLE 4B.—WAGE INDEX AND CAPITLA GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7390	0.8129
Alaska	1.2057	1.1367
Arizona	0.8544	0.8978
Arkansas	0.7236	0.8013
California	0.9951	0.9966
Colorado	0.8813	0.9171
Connecticut	1.2413	1.1595
Delaware	0.9166	0.9421
Florida	0.8986	0.9294
Georgia	0.8094	0.8652
Hawaii	1.0726	1.0492
Idaho	0.8651	0.9055
Illinois	0.8047	0.8617
Indiana	0.8396	0.8872
Iowa	0.7926	0.8528
Kansas	0.7460	0.8182
Kentucky	0.8043	0.8615
Louisiana	0.7486	0.8201
Maine	0.8639	0.9047
Maryland	0.8631	0.9041
Massachusetts	1.1369	1.0918
Michigan	0.8831	0.9184
Minnesota	0.8669	0.9068
Mississippi	0.7306	0.8066
Missouri	0.7723	0.8378
Montana	0.8398	0.8873
Nebraska	0.8007	0.8588
Nevada	0.9097	0.9372
New Hampshire	0.9905	0.9935
New Jersey[1]		
New Mexico	0.8378	0.8859
New York	0.8636	0.9045
North Carolina	0.8290	0.8795
North Dakota	0.7647	0.8322
Ohio	0.8649	0.9054
Oklahoma	0.7255	0.8027
Oregon	0.9873	0.9913
Pennsylvania	0.8524	0.8964
Puerto Rico	0.4249	0.5565

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Yakima, WA		
9270 Yolo, CA	1.0485	1.0330
Yolo, CA		
9280 York, PA	0.9309	0.9521
York, PA		
9320 Youngstown-Warren, OH	0.9996	0.9997
Columbiana, OH		
Mahoning, OH		
Trumbull, OH		
9340 Yuba City, CA	1.0662	1.0449
Sutter, CA		
Yuba, CA		
9360 Yuma, AZ	0.9924	0.9948
Yuma, AZ		

[1] All counties within the State are classified as urban.

TABLE 4B.—WAGE INDEX AND CAPITLA GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS—Continued

Nonurban area	Wage index	GAF
Rhode Island[1]		
South Carolina	0.8264	0.8776
South Dakota	0.7576	0.8269
Tennessee	0.7650	0.8324
Texas	0.7471	0.8190
Utah	0.8906	0.9237
Vermont	0.9427	0.9604
Virginia	0.7916	0.8521
Washington	1.0446	1.0303
West Virginia	0.8068	0.8633
Wisconsin	0.8759	0.9133
Wyoming	0.8859	0.9204

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area	Wage index	GAF
Abilene, TX	0.8179	0.8714
Akron, OH	0.9981	0.9987
Albany, GA	0.9544	0.9685
Alexandria, LA	0.7910	0.8517
Amarillo, TX	0.8435	0.8900
Anchorage, AK	1.3009	1.1974
Ann Arbor, MI	1.1343	1.0901
Atlanta, GA	1.0050	1.0034
Austin-San Marcos, TX	0.9081	0.9361
Baltimore, MD	0.9891	0.9925
Baton Rouge, LA	0.8707	0.9095
Beaumont-Port Arthur, TX	0.8624	0.9036
Benton Harbor, MI	0.8831	0.9184
Bergen-Passaic, NJ	1.1833	1.1222
Billings, MT	1.0038	1.0026
Biloxi-Gulfport-Pascagoula, MS	0.7949	0.8545
Binghamton, NY	0.8750	0.9126
Birmingham, AL	0.8994	0.9300
Bismarck, ND	0.7893	0.8504
Boise City, ID	0.9086	0.9365
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1358	1.0911
Burlington, VT	1.0122	1.0083
Caguas, PR	0.4561	0.5842
Champaign-Urbana, IL	0.9163	0.9419
Charleston-North Charleston, SC	0.8988	0.9295
Charleston, WV	0.8861	0.9205
Charlotte-Gastonia-Rock Hill, NC–SC	0.9433	0.9608
Chattanooga, TN–GA	0.9453	0.9622
Chicago, IL	1.0872	1.0589
Cincinnati, OH–KY–IN	0.9434	0.9609
Clarksville-Hopkinsville, TN–KY	0.8283	0.8790
Cleveland-Lorain-Elyria, OH	0.9688	0.9785
Columbia, MO	0.8736	0.9116
Columbia, SC	0.9215	0.9456
Columbus, GA–AL	0.8318	0.8815
Columbus, OH	0.9728	0.9813
Corpus Christi, TX	0.8599	0.9018
Dallas, TX	0.9589	0.9717
Danville, VA	0.8706	0.9095
Davenport-Moline-Rock Island, IA–IL	0.8606	0.9023
Dayton-Springfield, OH	0.9231	0.9467
Denver, CO	1.0197	1.0134
Des Moines, IA	0.8754	0.9129
Dothan, AL	0.7836	0.8462
Dover, DE	1.0511	1.0347
Duluth-Superior, MN–WI	1.0165	1.0113
Elkhart-Goshen, IN	0.9379	0.9570
Eugene-Springfield, OR	1.0765	1.0518
Evansville-Henderson, IN–KY	0.8396	0.8872
Fargo-Moorhead, ND–MN (ND and SD Hospitals)	0.8620	0.9033
Fargo-Moorhead, ND–MN (MN Hospital)	0.8669	0.9068
Fayetteville, NC	0.8494	0.8942
Flagstaff, AZ–UT	0.9860	0.9904
Flint, MI	1.0918	1.0620
Fort Collins-Loveland, CO	1.0197	1.0134
Fort Pierce-Port St. Lucie, FL	1.0109	1.0075
Fort Smith, AR–OK	0.7696	0.8358
Fort Walton Beach, FL	0.8713	0.9100
Forth Worth-Arlington, TX	0.9835	0.9887
Fresno, CA	1.0262	1.0179
Gadsden, AL	0.8754	0.9129
Gainesville, FL	0.9963	0.9975
Goldsboro, NC	0.8333	0.8826
Grand Forks, ND–MN	0.9097	0.9372
Grand Rapids-Muskegon-Holland, MI	1.0017	1.0012
Great Falls, MT	1.0459	1.0312
Greeley, CO	0.9449	0.9619
Green Bay, WI	0.9215	0.9456
Greensboro-Winston-Salem-High Point, NC	0.9037	0.9330
Greenville, NC	0.9237	0.9471
Greenville-Spartanburg-Anderson, SC	0.9188	0.9437
Hagerstown, MD	0.8853	0.9200
Harrisburg-Lebanon-Carlisle, PA	0.9793	0.9858
Hartford, CT	1.1715	1.1145
Hickory-Morganton-Lenoir, NC	0.9148	0.9408
Honolulu, HI	1.1479	1.0991
Houston, TX	0.9387	0.9576
Huntington-Ashland, WV–KY–OH	0.9436	0.9610
Huntsville, AL	0.8608	0.9024
Indianapolis, IN	0.9792	0.9857
Iowa City, IA	0.9460	0.9627
Jackson, MS	0.8268	0.8779
Jackson, TN	0.8447	0.8909
Jacksonville, FL	0.8957	0.9273
Johnson City-Kingsport-Bristol, TN–VA	0.8894	0.9229
Jonesboro, AR	0.7251	0.8024
Joplin, MO	0.7678	0.8345

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TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Kalamazoo-Battlecreek, MI	0.9981	0.9987
Kansas City, KS–MO	0.9322	0.9531
Knoxville, TN	0.9199	0.9444
Kokomo, IN	0.8984	0.9293
Lafayette, LA	0.8397	0.8872
Lansing-East Lansing, MI	0.9834	0.9886
Las Vegas, NV–AZ	1.1258	1.0845
Lexington, KY	0.8552	0.8984
Lima, OH	0.9108	0.9380
Lincoln, NE	0.9451	0.9621
Little Rock-North Little Rock, AR	0.8432	0.8898
Longview-Marshall, TX	0.8541	0.8976
Los Angeles-Long Beach, CA	1.2085	1.1385
Louisville, KY–IN	0.9381	0.9572
Macon, GA	0.8530	0.8968
Madison, WI	0.9729	0.9814
Mansfield, OH	0.8649	0.9054
Memphis, TN–AR–MS	0.8244	0.8761
Merced, CA	1.0509	1.0346
Milwaukee-Waukesha, WI	0.9845	0.9894
Minneapolis-St. Paul, MN–WI	1.0929	1.0627
Missoula, MT	0.9085	0.9364
Monmouth-Ocean, NJ	1.1258	1.0845
Monroe, LA	0.8062	0.8628
Montgomery, AL	0.7724	0.8379
Myrtle Beach, SC	0.8357	0.8843
Nashville, TN	0.9254	0.9483
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2417	1.1598
New London-Norwich, CT	1.2328	1.1541
New Orleans, LA	0.9089	0.9367
New York, NY	1.4399	1.2836
Newark, NJ	1.0772	1.0522
Newburgh, NY–PA	1.0837	1.0566
Norfolk-Virginia Beach-Newport News, VA–NC	0.8442	0.8905
Oakland, CA	1.5095	1.3253
Oklahoma City, OK	0.8589	0.9011
Omaha, NE–IA	1.0455	1.0309
Orange County, CA	1.1592	1.1065
Orlando, FL	0.9806	0.9867
Peoria-Pekin, IL	0.8399	0.8874
Philadelphia, PA–NJ	1.1186	1.0798
Phoenix-Mesa, AZ	0.9464	0.9630
Pittsburgh, PA	0.9496	0.9652
Pocatello, ID	0.8651	0.9055
Portland, ME	0.9487	0.9646
Portland-Vancouver, OR–WA	1.0996	1.0672
Provo-Orem, UT	0.9818	0.9875
Raleigh-Durham-Chapel Hill, NC	0.9544	0.9685
Roanoke, VA	0.8142	0.8687
Rockford, IL	0.8783	0.9150
Sacramento, CA	1.2284	1.1513
Saginaw-Bay City-Midland, MI	0.9294	0.9511
St. Cloud, MN	0.9608	0.9730
St. Louis, MO–IL	0.9052	0.9341
Salt Lake City-Ogden, UT	0.9854	0.9900
San Diego, CA	1.1955	1.1301
Santa Fe, NM	0.9911	0.9939
Santa Rosa, CA	1.3000	1.1968
Seattle-Bellevue-Everett, WA	1.1289	1.0866
Sharon, PA	0.8524	0.8964
Sherman-Denison, TX	0.8833	0.9185
Sioux City, IA–NE	0.8549	0.8982
South Bend, IN	0.9692	0.9788
Springfield, IL	0.8684	0.9079
Springfield, MO	0.7991	0.8576
Syracuse, NY	0.9441	0.9614
Tallahassee, FL	0.8274	0.8783
Tampa-St. Petersburg-Clearwater, FL	0.9119	0.9388
Texarkana, AR-Texarkana, TX	0.8174	0.8710
Toledo, OH	0.9593	0.9719
Topeka, KS	0.9326	0.9533
Tulsa, OK	0.7931	0.8532
Tuscaloosa, AL	0.8064	0.8630
Tyler, TX	0.9199	0.9444
Vallejo-Fairfield-Napa, CA	1.2167	1.1438
Victoria, TX	0.8378	0.8859
Waco, TX	0.8075	0.8638
Washington, DC–MD–VA–WV	1.1053	1.0710
Waterloo-Cedar Falls, IA	0.8841	0.9191
Wausau, WI	0.9445	0.9617
Wichita, KS	0.9082	0.9362
Rural Colorado	0.8813	0.9171
Rural Florida	0.8986	0.9294
Rural Illinois	0.8047	0.8617
Rural Louisiana	0.7486	0.8201
Rural Michigan	0.8831	0.9184
Rural Minnesota	0.8669	0.9068
Rural Missouri	0.7723	0.8378
Rural Montana	0.8398	0.8873
Rural Oregon	0.9873	0.9913
Rural Tennessee	0.7650	0.8324
Rural Texas	0.7471	0.8190
Rural Virginia (KY Hospital)	0.8043	0.8615
Rural Washington	1.0333	1.0227
Rural Wyoming	0.8859	0.9204

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS

Urban area	Average hourly wage
Abilene, TX	17.3227
Aguadilla, PR	8.0776
Akron, OH	21.5248
Albany, GA	21.9678
Albany-Schenectady-Troy, NY	18.5415
Albuquerque, NM	18.0017
Alexandria, LA	16.6660
Allentown-Bethlehem-Easton, PA	21.6602
Altoona, PA	19.7859
Amarillo, TX	17.7501
Anchorage, AK	27.2347
Ann Arbor, MI	24.3199
Anniston, AL	17.9235
Appleton-Oshkosh-Neenah, WI	18.8767
Arecibo, PR	10.1973
Asheville, NC	18.8155
Athens, GA	20.5536
Atlanta, GA	21.2868
Atlantic-Cape May, NJ	23.9544
Auburn-Opelika, AL	16.4103
Augusta-Aiken, GA–SC	19.0900
Austin-San Marcos, TX	19.2341
Bakersfield, CA	20.3699
Baltimore, MD	20.9485
Bangor, ME	20.3521
Barnstable-Yarmouth, MA	28.1731
Baton Rouge, LA	18.4424
Beaumont-Port Arthur, TX	18.2648
Bellingham, WA	24.1321
Benton Harbor, MI	17.9119
Bergen-Passaic, NJ	25.4749
Billings, MT	21.2596
Biloxi-Gulfport-Pascagoula, MS	16.6634
Binghamton, NY	18.5327
Birmingham, AL	19.0492
Bismarck, ND	16.4329
Bloomington,IN	18.1990
Bloomington-Normal, IL	19.0474
Boise City, ID	19.1895
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	24.0562
Boulder-Longmont, CO	21.0610
Brazoria, TX	18.0362
Bremerton, WA	23.3211
Brownsville-Harlingen-San Benito, TX	19.5103
Bryan-College Station, TX	18.0042
Buffalo-Niagara Falls, NY	20.3404
Burlington, VT	22.3616
Caguas, PR	9.6595
Canton-Massillon, OH	18.5769
Casper, WY	19.4829
Cedar Rapids, IA	19.1010
Champaign-Urbana, IL	19.4065
Charleston-North Charleston, SC	19.0373
Charleston, WV	19.2624
Charlotte-Gastonia-Rock Hill, NC–SC	19.9800
Charlottesville, VA	22.3946
Chattanooga, TN–GA	20.6102
Cheyenne, WY	17.3158
Chicago, IL	23.0278
Chico-Paradise, CA	22.0066
Cincinnati, OH–KY–IN	19.9480
Clarksville-Hopkinsville, TN–KY	17.1337
Cleveland-Lorain-Elyria, OH	20.5190
Colorado Springs, CO	19.5228
Columbia, MO	18.8596
Columbia, SC	19.8182
Columbus, GA–AL	18.0250
Columbus, OH	20.9839
Corpus Christi, TX	18.4298
Corvallis, OR	23.4819
Cumberland, MD–WV	18.6405
Dallas, TX	20.3455
Danville, VA	19.1906
Davenport-Moline-Rock Island, IA–IL	18.4403

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Dayton-Springfield, OH	20.0366
Daytona Beach, FL	19.0345
Decatur, AL	18.3823
Decatur, IL	17.6232
Denver, CO	21.5811
Des Moines, IA	18.5408
Detroit, MI	22.0711
Dothan, AL	16.5159
Dover, DE	19.7725
Dubuque, IA	18.0451
Duluth-Superior, MN–WI	21.5294
Dutchess County, NY	22.3487
Eau Claire, WI	18.9711
El Paso, TX	18.9500
Elkhart-Goshen, IN	19.8656
Elmira, NY	18.0730
Enid, OK	16.8452
Erie, PA	19.1114
Eugene-Springfield, OR	22.4571
Evansville, Henderson, IN–KY	17.5854
Fargo-Moorhead, ND–MN	18.2572
Fayetteville, NC	17.9896
Fayetteville-Springdale-Rogers, AR	16.4641
Flagstaff, AZ–UT	21.9164
Flint, MI	23.3401
Florence, AL	16.7894
Florence, SC	18.2536
Fort Collins-Loveland, CO	21.8189
Fort Lauderdale, FL	21.5452
Fort Myers-Cape Coral, FL	18.9574
Fort Pierce-Port St. Lucie, FL	21.1766
Fort Smith, AR–OK	16.6129
Fort Walton Beach, FL	18.4550
Fort Wayne, IN	19.2662
Fort Worth-Arlington, TX	20.8308
Fresno, CA	21.7350
Gadsden, AL	18.4020
Gainesville, FL	21.3966
Galveston-Texas City, TX	20.6131
Gary, IN	19.8884
Glens Falls, NY	18.2277
Goldsboro, NC	17.6500
Grand Forks, ND–MN	19.2683
Grand Junction, CO	19.4593
Grand Rapids-Muskegon-Holland, MI	21.4652
Great Falls, MT	22.1512
Greeley, CO	20.5908
Green Bay, WI	19.3420
Greensboro-Winston-Salem-High Point, NC	19.1402
Greenville, NC	20.1214
Greenville-Spartanburg-Anderson, SC	19.4594
Hagerstown, MD	18.7266
Hamilton-Middletown, OH	18.9474
Harrisburg-Lebanon-Carlisle, PA	21.0037
Hartford, CT	24.8124
Hattiesburg, MS	16.1679
Hickory-Morganton-Lenoir, NC	19.2995
Honolulu, HI	24.3050
Houma, LA	16.5978
Houston, TX	19.8810
Huntington-Ashland, WV–KY–OH	20.6646
Huntsville, AL	18.6860
Indianapolis, IN	20.7402
Iowa City, IA	20.3481
Jackson, MI	18.7230
Jackson, MS	17.7627
Jackson, TN	18.2151
Jacksonville, FL	18.9712
Jacksonville, NC	16.6300
Jamestown, NY	16.6418
Janesville-Beloit, WI	20.4504
Jersey City, NJ	24.7265
Johnson City-Kingsport-Bristol, TN–VA	18.7506
Johnstown, PA	18.2989
Jonesboro, AR	15.3149
Joplin, MO	16.2618
Kalamazoo-Battlecreek, MI	21.1395
Kankakee, IL	18.2109
Kansas City, KS–MO	19.7430
Kenosha, WI	19.1315
Killeen-Temple, TX	21.0356
Knoxville, TN	19.4838
Kokomo, IN	18.8885
La Crosse, WI–MN	18.9205
Lafayette, LA	17.6615
Lafayette, IN	18.6572
Lake Charles, LA	16.8715
Lakeland-Winter Haven, FL	18.6713
Lancaster, PA	19.6017
Lansing-East Lansing, MI	21.1315
Laredo, TX	17.6272
Las Cruces, NM	18.1944
Las Vegas, NV–AZ	23.8445
Lawrence, KS	17.4151
Lawton, OK	20.1897
Lewiston-Auburn, ME	18.8489
Lexington, KY	18.0690
Lima, OH	18.8613
Lincoln, NE	20.4820
Little Rock-North Little Rock, AR	18.2444
Longview-Marshall, TX	18.5072
Los Angeles-Long Beach, CA	25.5235
Louisville, KY–IN	19.8685
Lubbock, TX	17.8142
Lynchburg, VA	18.6683
Macon, GA	18.0675
Madison, WI	20.6054
Mansfield, OH	17.9510
Mayaguez, PR	9.9005
McAllen-Edinburg-Mission, TX	17.1975
Medford-Ashland, OR	22.2214
Melbourne-Titusville-Palm Bay, FL	19.6889
Memphis, TN–AR–MS	17.4610
Merced, CA	21.7673
Miami, FL	21.6737
Middlesex-Somerset-Hunterdon, NJ	23.5556
Milwaukee-Waukesha, WI	20.8513
Minneapolis-St. Paul, MN–WI	23.1482
Missoula, MT	19.2420
Mobile, AL	17.5090
Modesto, CA	21.4157
Monmouth-Ocean, NJ	23.8439
Monroe, LA	17.4115
Montgomery, AL	16.3157
Muncie, IN	22.9458
Myrtle Beach, SC	18.0643
Naples, FL	20.8392
Nashville, TN	20.0138
Nassau-Suffolk, NY	29.8096
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	26.1700
New London-Norwich, CT	26.3222
New Orleans, LA	19.2503
New York, NY	30.7475
Newark, NJ	24.6654
Newburgh, NY–PA	23.1041
Norfolk-Virginia Beach-Newport News, VA–NC	17.8754
Oakland, CA	31.8928
Ocala, FL	20.3639
Odessa-Midland, TX	18.7922
Oklahoma City, OK	18.1873
Olympia, WA	23.1536
Omaha, NE–IA	22.1432
Orange County, CA	24.5477
Orlando, FL	20.7465
Owensboro, KY	17.1643
Panama City, FL	19.4197
Parkersburg-Marietta, WV–OH	17.8217
Pensacola, FL	17.8801
Peoria-Pekin, IL	17.6840
Philadelphia, PA–NJ	23.6372
Phoenix-Mesa, AZ	20.0450
Pine Bluff, AR	16.3022
Pittsburgh, PA	20.4057
Pittsfield, MA	21.7194
Pocatello, ID	19.0047
Ponce, PR	10.5280
Portland, ME	20.0674
Portland-Vancouver, OR–WA	23.2438
Providence-Warwick, RI	22.6420
Provo-Orem, UT	20.7946
Pueblo, CO	18.7505
Punta Gorda, FL	20.1370
Racine, WI	19.5201
Raleigh-Durham-Chapel Hill, NC	20.2151
Rapid City, SD	17.7126
Reading, PA	19.9855
Redding, CA	23.8559
Reno, NV	22.5678
Richland-Kennewick-Pasco, WA	23.7721
Richmond-Petersburg, VA	20.2158
Riverside-San Bernardino, CA	23.7428
Roanoke, VA	17.2365
Rochester, MN	24.2072
Rochester, NY	19.4510
Rockford, IL	18.6017
Rocky Mount, NC	18.4997
Sacramento, CA	26.0168
Saginaw-Bay City-Midland, MI	19.6689
St. Cloud, MN	19.9529
St. Joseph, MO	18.9408
St. Louis, MO–IL	19.1725
Salem, OR	21.0721
Salinas, CA	31.1554
Salt Lake City-Ogden, UT	20.8711
San Angelo, TX	16.6166
San Antonio, TX	17.6168
San Diego, CA	25.2676
San Francisco, CA	29.6537
San Jose, CA	28.8225
San Juan-Bayamon, PR	9.8640
San Luis Obispo-Atascadero-Paso Robles, CA	22.1746
Santa Barbara-Santa Maria-Lompoc, CA	22.9137
Santa Cruz-Watsonville, CA	29.4979
Santa Fe, NM	22.1051
Santa Rosa, CA	27.5337
Sarasota-Bradenton, FL	20.9796
Savannah, GA	21.0803

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TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Scranton-Wilkes Barre-Hazleton, PA	17.7324
Seattle-Bellevue-Everett, WA	23.9115
Sharon, PA	17.5441
Sheboygan, WI	17.3719
Sherman-Denison, TX	19.7582
Shreveport-Bossier City, LA	19.1657
Sioux City, IA–NE	18.1059
Sioux Falls, SD	18.5874
South Bend, IN	20.7421
Spokane, WA	22.8719
Springfield, IL	18.3917
Springfield, MO	16.9245
Springfield, MA	22.6142
State College, PA	19.3540
Steubenville-Weirton, OH–WV	18.2449
Stockton-Lodi, CA	22.2772
Sumter, SC	17.4486
Syracuse, NY	19.9343
Tacoma, WA	24.3099
Tallahassee, FL	17.9690
Tampa-St. Petersburg-Clearwater, FL	19.1546
Terre Haute, IN	18.1515
Texarkana, AR-Texarkana, TX	17.2300
Toledo, OH	20.7884
Topeka, KS	19.7520
Trenton, NJ	21.3959
Tucson, AZ	18.5157
Tulsa, OK	17.1256
Tuscaloosa, AL	17.0793
Tyler, TX	19.8429
Utica-Rome, NY	17.5752
Vallejo-Fairfield-Napa, CA	28.2652
Ventura, CA	24.2606
Victoria, TX	17.7441
Vineland-Millville-Bridgeton, NJ	22.2740
Visalia-Tulare-Porterville, CA	22.0500
Waco, TX	17.1037
Washington, DC–MD–VA–WV	23.4111
Waterloo-Cedar Falls, IA	18.0392
Wausau, WI	20.0043
West Palm Beach-Boca Raton, FL	21.2055
Wheeling, OH–WV	16.1892
Wichita, KS	19.9536
Wichita Falls, TX	16.2079
Williamsport, PA	17.8945
Wilmington-Newark, DE–MD	23.8786
Wilmington, NC	20.5594
Yakima, WA	21.8833
Yolo, CA	20.5840
York, PA	19.7168
Youngstown-Warren, OH	21.1707
Yuba City, CA	22.5816
Yuma, AZ	21.0182

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS

Nonurban area	Average hourly wage
Alabama	15.6529
Alaska	25.5370
Arizona	18.0961
Arkansas	15.3250
California	21.0766
Colorado	18.6657
Connecticut	26.2903
Delaware	19.4135
Florida	19.0317
Georgia	17.1426
Hawaii	22.7187
Idaho	18.3238
Illinois	17.0445
Indiana	17.7834
Iowa	16.7882
Kansas	15.8000
Kentucky	17.0342
Louisiana	15.6336
Maine	18.2971
Maryland	18.2815
Massachusetts	24.0785
Michigan	18.6693
Minnesota	18.3602
Mississippi	15.4749
Missouri	16.3576
Montana	17.7804
Nebraska	16.9591
Nevada	19.2681
New Hampshire	20.9790
New Jersey [1]	
New Mexico	17.7448
New York	18.2911
North Carolina	17.5573
North Dakota	16.1967
Ohio	18.3192
Oklahoma	15.3668
Oregon	20.8991
Pennsylvania	18.0541
Puerto Rico	8.9988
Rhode Island [1]	
South Carolina	17.5024
South Dakota	16.0465
Tennessee	16.2034
Texas	15.8229
Utah	18.8636
Vermont	19.9246
Virginia	16.7397
Washington	22.1244
West Virginia	17.0883
Wisconsin	18.5514
Wyoming	18.7641

[1] All counties within the State are classified as urban.

TABLE 4F.—PUERTO RICO WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF)

Area	Wage index	GAF	Wage index reclass. hospitals	GAF reclass. hospitals
Aguadilla, PR	0.9120	0.9389		
Arecibo, PR	1.0334	1.0228		
Caguas, PR	0.9789	0.9855	0.9789	0.9855
Mayaguez, PR	1.0033	1.0023		
Ponce, PR	1.0669	1.0453		
San Juan-Bayamon, PR	0.9996	0.9997		
Rural Puerto Rico	0.9120	0.9389		

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
1	01	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.0957	6.5	9.3
2	01	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.1047	7.4	9.9
3	01	SURG	*CRANIOTOMY AGE 0–17	1.9619	12.7	12.7
4	01	SURG	SPINAL PROCEDURES	2.3205	4.9	7.5
5	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.4466	2.5	3.4
6	01	SURG	CARPAL TUNNEL RELEASE	.8119	2.2	3.1
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.4986	6.9	10.4

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC.	1.3426	2.2	3.1
9	01	MED	SPINAL DISORDERS & INJURIES	1.1917	4.6	6.3
10	01	MED	NERVOUS SYSTEM NEOPLASMS W CC	1.2036	4.9	6.6
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	.8283	3.0	4.1
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	.8904	4.6	6.3
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.7599	4.2	5.2
14	01	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.1914	4.7	6.1
15	01	MED	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	.7397	3.0	3.7
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.0985	4.6	5.9
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6399	2.6	3.4
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	.9353	4.2	5.5
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.6503	3.0	3.8
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2.6125	7.7	10.2
21	01	MED	VIRAL MENINGITIS	1.5032	5.0	6.8
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	.9621	3.8	4.9
23	01	MED	NONTRAUMATIC STUPOR & COMA	.7746	3.1	4.2
24	01	MED	SEIZURE & HEADACHE AGE >17 W CC	.9770	3.7	5.0
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	.5911	2.6	3.4
26	01	MED	SEIZURE & HEADACHE AGE 0–17	.6337	2.8	3.6
27	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3581	3.3	5.3
28	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.2690	4.5	6.2
29	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR AGE <17 W/O CC	.6859	2.8	3.6
30	01	MED	*TRAUMATIC STUPOR & COMA, COMA >1 HR AGE 0–17	.3318	2.0	2.0
31	01	MED	CONCUSSION AGE >17 W CC	.8497	3.2	4.3
32	01	MED	CONCUSSION AGE >17 W/O CC	.5295	2.1	2.7
33	01	MED	*CONCUSSION AGE 0–17	.2085	1.6	1.6
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.0275	3.9	5.3
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.5937	2.7	3.5
36	02	SURG	RETINAL PROCEDURES	.6834	1.2	1.4
37	02	SURG	ORBITAL PROCEDURES	1.0318	2.6	3.8
38	02	SURG	PRIMARY IRIS PROCEDURES	.4875	1.9	2.6
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5704	1.4	1.9
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.8170	2.2	3.3
41	02	SURG	*EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17	.3378	1.6	1.6
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.6236	1.6	2.1
43	02	MED	HYPHEMA	.4515	2.6	4.1
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6496	4.1	5.0
45	02	MED	NEUROLOGICAL EYE DISORDERS	.6941	2.7	3.4
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.7525	3.5	4.6
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.4784	2.5	3.2
48	02	MED	*OTHER DISORDERS OF THE EYE AGE 0–17	.2975	2.9	2.9
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	1.8557	3.7	5.0
50	03	SURG	SIALOADENECTOMY	.8401	1.6	2.0
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.8504	1.9	2.9
52	03	SURG	CLEFT LIP & PALATE REPAIR	.7696	1.5	1.9
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	1.1784	2.3	3.6
54	03	SURG	*SINUS & MASTOID PROCEDURES AGE 0–17	.4823	3.2	3.2
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES.	.8686	1.9	2.9
56	03	SURG	RHINOPLASTY	.8893	2.1	2.8
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	1.1589	2.8	4.5
58	03	SURG	*T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17.	.2739	1.5	1.5
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.6720	1.9	2.5
60	03	SURG	*TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17	.2086	1.5	1.5
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.2597	2.9	4.8
62	03	SURG	*MYRINGOTOMY W TUBE INSERTION AGE 0–17	.2953	1.3	1.3
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.3136	3.0	4.5
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.2464	4.3	6.6
65	03	MED	DYSEQUILIBRIUM	.5261	2.3	2.9
66	03	MED	EPISTAXIS	.5548	2.6	3.2
67	03	MED	EPIGLOTTITIS	.8031	2.9	3.7
68	03	MED	OTITIS MEDIA & URI AGE >17 W CC	.6758	3.4	4.2
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5191	2.7	3.3
70	03	MED	OTITIS MEDIA & URI AGE 0–17	.3985	2.3	2.7
71	03	MED	LARYNGOTRACHEITIS	.6136	2.7	3.4
72	03	MED	NASAL TRAUMA & DEFORMITY	.6462	2.6	3.4
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	.7667	3.3	4.3

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
74	03	MED	*OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17.	.3356	2.1	2.1
75	04	SURG	MAJOR CHEST PROCEDURES	3.1107	7.8	9.9
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.7208	8.3	11.1
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.2113	3.6	5.0
78	04	MED	PULMONARY EMBOLISM	1.3861	6.1	7.1
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	1.6439	6.6	8.4
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC.	.8980	4.5	5.6
81	04	MED	*RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17	1.5196	6.1	6.1
82	04	MED	RESPIRATORY NEOPLASMS	1.3656	5.2	7.0
83	04	MED	MAJOR CHEST TRAUMA W CC	.9796	4.3	5.5
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.5278	2.6	3.2
85	04	MED	PLEURAL EFFUSION W CC	1.2421	5.0	6.5
86	04	MED	PLEURAL EFFUSION W/O CC	.6724	2.9	3.8
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3694	4.8	6.3
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	.9406	4.3	5.3
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.0855	5.1	6.1
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.6734	3.7	4.3
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0–17	.6334	3.3	4.0
92	04	MED	INTERSTITIAL LUNG DISEASE W CC	1.1786	5.0	6.3
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.7644	3.5	4.3
94	04	MED	PNEUMOTHORAX W CC	1.1910	4.8	6.4
95	04	MED	PNEUMOTHORAX W/O CC	.5944	2.9	3.6
96	04	MED	BRONCHITIS & ASTHMA AGE >17 W CC	.7943	3.9	4.8
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.5954	3.1	3.7
98	04	MED	BRONCHITIS & ASTHMA AGE 0–17	.6859	3.3	4.5
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS W CC	.6817	2.4	3.1
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5268	1.8	2.2
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	.8490	3.3	4.4
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5349	2.1	2.7
103	05	SURG	HEART TRANSPLANT	19.5100	35.7	56.5
104	05	SURG	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH.	7.2361	9.3	11.9
105	05	SURG	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH.	5.6607	7.6	9.4
106	05	SURG	CORONARY BYPASS W PTCA	7.3334	9.1	10.9
107	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.4639	9.3	10.5
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.7715	8.3	11.0
109	05	SURG	CORONARY BYPASS W/O PTCA OR CARDIAC CATH	4.0403	6.9	7.8
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.1600	7.2	9.6
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.2267	4.9	5.7
112	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	1.9222	2.7	3.8
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	2.7283	9.5	12.6
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS.	1.5555	6.0	8.2
115	05	SURG	PRM CARD PACEM IMPL W AMI, HRT FAIL OR SHK, OR AICD LEAD OR GNRTR PR.	3.4727	6.2	8.4
116	05	SURG	OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT.	2.4651	2.8	3.9
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT.	1.2931	2.7	4.1
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.5480	2.0	2.9
119	05	SURG	VEIN LIGATION & STRIPPING	1.2297	3.0	4.9
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.0136	5.0	8.2
121	05	MED	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE.	1.6295	5.6	6.8
122	05	MED	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE.	1.1063	3.4	4.2
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.5108	2.7	4.4
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	1.4020	3.4	4.5
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	1.0436	2.2	2.8
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.5170	9.3	12.1
127	05	MED	HEART FAILURE & SHOCK	1.0144	4.2	5.4
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7645	5.1	5.9
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.0770	1.8	2.8
130	05	MED	PERIPHERAL VASCULAR DISORDERS W CC	.9469	4.7	5.9

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.6050	3.7	4.5
132	05	MED	ATHEROSCLEROSIS W CC	.6713	2.5	3.1
133	05	MED	ATHEROSCLEROSIS W/O CC	.5675	1.9	2.4
134	05	MED	HYPERTENSION	.5846	2.6	3.3
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE ≤17 W CC.	.8704	3.3	4.4
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE ≤17 W/O CC.	.6004	2.3	2.9
137	05	MED	*CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17	.8188	3.3	3.3
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	.8154	3.1	4.0
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.5079	2.1	2.5
140	05	MED	ANGINA PECTORIS	.5829	2.3	2.8
141	05	MED	SYNCOPE & COLLAPSE W CC	.7091	2.9	3.7
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5419	2.2	2.7
143	05	MED	CHEST PAIN	.5342	1.8	2.2
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.1526	3.8	5.4
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.6497	2.2	2.8
146	06	SURG	RECTAL RESECTION W CC	2.7862	9.1	10.3
147	06	SURG	RECTAL RESECTION W/O CC	1.6382	6.1	6.7
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.4289	10.1	12.1
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.5723	6.2	6.7
150	06	SURG	PERITONEAL ADHESIOLYSIS W CC	2.8098	9.0	11.0
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.3437	4.9	6.0
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.9606	6.9	8.3
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.2170	5.0	5.6
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC.	4.1335	10.1	13.2
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC.	1.3781	3.5	4.5
156	06	SURG	*STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17.	.8432	6.0	6.0
157	06	SURG	ANAL & STOMAL PROCEDURES W CC	1.2392	4.0	5.6
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.6561	2.1	2.6
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC.	1.3097	3.7	5.0
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC.	.7801	2.2	2.7
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	1.0976	2.9	4.2
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	.6283	1.6	2.0
163	06	SURG	*HERNIA PROCEDURES AGE 0–17	.8720	2.1	2.1
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.3463	7.3	8.5
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.2655	4.4	4.9
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.4788	4.1	5.1
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	.8995	2.4	2.8
168	03	SURG	MOUTH PROCEDURES W CC	1.2039	3.3	4.6
169	03	SURG	MOUTH PROCEDURES W/O CC	.7492	1.9	2.5
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.8435	7.8	11.3
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.2556	3.6	4.8
172	06	MED	DIGESTIVE MALIGNANCY W CC	1.3144	5.1	6.9
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.7123	2.7	3.8
174	06	MED	G.I. HEMORRHAGE W CC	.9981	3.9	4.9
175	06	MED	G.I. HEMORRHAGE W/O CC	.5456	2.5	2.9
176	06	MED	COMPLICATED PEPTIC ULCER	1.0968	4.1	5.3
177	06	MED	UNCOMPLICATED PEPTIC ULCER W CC	.8802	3.7	4.5
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.6502	2.6	3.2
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.0869	4.8	6.2
180	06	MED	G.I. OBSTRUCTION W CC	.9206	4.2	5.4
181	06	MED	G.I. OBSTRUCTION W/O CC	.5277	2.8	3.4
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST. DISORDERS AGE >17 W CC.	.7821	3.4	4.3
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST. DISORDERS AGE >17 W/O CC.	.5710	2.4	3.0
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST. DISORDERS AGE 0–17.	.5286	2.3	3.0
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.	.8593	3.3	4.5
186	03	MED	*DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17.	.3214	2.9	2.9
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.7790	2.9	3.9
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0942	4.1	5.6

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TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
189 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	.5831	2.4	3.2
190 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	1.0011	3.9	5.6
191 ...	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.3837	10.6	14.2
192 ...	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.8454	5.7	7.0
193 ...	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC.	3.4161	10.3	12.6
194 ...	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.	1.6401	5.4	6.6
195 ...	07	SURG	CHOLECYSTECTOMY W C.D.E. W CC	2.9359	8.4	10.0
196 ...	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.6554	4.9	5.7
197 ...	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC.	2.4183	7.1	8.6
198 ...	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC.	1.2324	3.9	4.5
199 ...	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3317	7.1	9.6
200 ...	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON–MALIGNANCY.	3.0708	7.2	11.1
201 ...	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	3.5838	10.3	14.1
202 ...	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.3188	5.0	6.6
203 ...	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.3046	5.0	6.7
204 ...	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.2161	4.6	6.0
205 ...	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W CC	1.1816	4.7	6.4
206 ...	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W/O CC.	.7163	3.1	4.1
207 ...	07	MED	DISORDERS OF THE BILIARY TRACT W CC	1.1013	4.0	5.2
208 ...	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.6455	2.3	2.9
209 ...	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY.	2.1175	4.6	5.2
210 ...	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC.	1.8028	5.9	6.8
211 ...	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.	1.2609	4.5	4.9
212 ...	08	SURG	*HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17	.8468	11.1	11.1
213 ...	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.7130	6.1	8.3
214 ...	08	SURG	NO LONGER VALID	.0000	.0	.0
215 ...	08	SURG	NO LONGER VALID	.0000	.0	.0
216 ...	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	2.1400	6.9	9.6
217 ...	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCSKELET & CONN TISS DIS.	2.8006	8.6	12.6
218 ...	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC.	1.4900	4.2	5.3
219 ...	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC.	1.0117	2.7	3.2
220 ...	08	SURG	*LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17.	.5841	5.3	5.3
221 ...	08	SURG	NO LONGER VALID	.0000	.0	.0
222 ...	08	SURG	NO LONGER VALID	.0000	.0	.0
223 ...	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	.9378	2.0	2.6
224 ...	08	SURG	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC.	.8042	1.7	2.0
225 ...	08	SURG	FOOT PROCEDURES	1.0518	3.2	4.5
226 ...	08	SURG	SOFT TISSUE PROCEDURES W CC	1.4383	4.1	6.0
227 ...	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.8181	2.1	2.8
228 ...	08	SURG	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC.	1.0516	2.4	3.6
229 ...	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	.7348	1.9	2.4
230 ...	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.	1.1722	3.2	4.8
231 ...	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR.	1.3623	3.1	4.6
232 ...	08	SURG	ARTHROSCOPY	1.1567	2.4	4.1
233 ...	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.0424	5.3	7.5
234 ...	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC.	1.2450	2.7	3.5
235 ...	08	MED	FRACTURES OF FEMUR	.7479	3.8	5.1
236 ...	08	MED	FRACTURES OF HIP & PELVIS	.7157	3.9	5.0
237 ...	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.5451	2.9	3.6

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
238 ...	08	MED	OSTEOMYELITIS	1.2831	6.4	8.4
239 ...	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	.9660	4.9	6.3
240 ...	08	MED	CONNECTIVE TISSUE DISORDERS W CC	1.2328	5.0	6.7
241 ...	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.6089	3.2	4.0
242 ...	08	MED	SEPTIC ARTHRITIS	1.0168	5.1	6.7
243 ...	08	MED	MEDICAL BACK PROBLEMS	.7164	3.7	4.7
244 ...	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	.7024	3.8	4.8
245 ...	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	.4801	2.8	3.6
246 ...	08	MED	NON-SPECIFIC ARTHROPATHIES	.5545	3.0	3.7
247 ...	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE.	.5563	2.6	3.4
248 ...	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.7554	3.6	4.6
249 ...	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	.6504	2.5	3.5
250 ...	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC.	.6700	3.2	4.1
251 ...	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC.	.4608	2.3	2.9
252 ...	08	MED	*FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17	.2537	1.8	1.8
253 ...	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W CC.	.7261	3.7	4.8
254 ...	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC.	.4339	2.6	3.2
255 ...	08	MED	*FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17.	.2954	2.9	2.9
256 ...	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	.7687	3.8	5.1
257 ...	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W CC	.9134	2.3	2.9
258 ...	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.7227	1.8	2.1
259 ...	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	.8673	1.9	2.8
260 ...	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.6444	1.3	1.5
261 ...	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	.9188	1.7	2.2
262 ...	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.8392	2.7	3.9
263 ...	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC.	2.0609	8.7	11.8
264 ...	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC.	1.1216	5.3	7.1
265 ...	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.5650	4.4	7.0
266 ...	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.	.8495	2.4	3.3
267 ...	09	SURG	PERIANAL & PILONIDAL PROCEDURES	.9815	2.9	4.1
268 ...	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES.	1.1979	2.4	3.8
269 ...	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.6147	5.6	7.9
270 ...	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	.7447	2.2	3.1
271 ...	09	MED	SKIN ULCERS	.9905	5.6	7.1
272 ...	09	MED	MAJOR SKIN DISORDERS W CC	1.0003	4.8	6.3
273 ...	09	MED	MAJOR SKIN DISORDERS W/O CC	.6275	3.3	4.4
274 ...	09	MED	MALIGNANT BREAST DISORDERS W CC	1.1335	4.7	6.6
275 ...	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.6322	2.6	3.9
276 ...	09	MED	NON-MALIGANT BREAST DISORDERS	.6529	3.5	4.4
277 ...	09	MED	CELLULITIS AGE >17 W CC	.8312	4.7	5.8
278 ...	09	MED	CELLULITIS AGE >17 W/O CC	.5621	3.7	4.4
279 ...	09	MED	CELLULITIS AGE 0–17	.6641	4.1	5.1
280 ...	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	.6736	3.3	4.2
281 ...	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC.	.4596	2.4	3.1
282 ...	09	MED	*TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17	.2569	2.2	2.2
283 ...	09	MED	MINOR SKIN DISORDERS W CC	.7129	3.6	4.7
284 ...	09	MED	MINOR SKIN DISORDERS W/O CC	.4373	2.5	3.2
285 ...	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS.	2.0217	7.7	10.6
286 ...	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.2287	5.2	6.6
287 ...	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	1.8045	7.4	10.4
288 ...	10	SURG	O.R. PROCEDURES FOR OBESITY	2.0665	4.6	5.7
289 ...	10	SURG	PARATHYROID PROCEDURES	.9756	2.1	3.0

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				Relative weights	Geometric mean LOS	Arithmetic mean LOS
290 ...	10	SURG	THYROID PROCEDURES	.9174	1.9	2.4
291 ...	10	SURG	THYROGLOSSAL PROCEDURES	.6732	1.6	2.0
292 ...	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	2.4719	7.1	10.4
293 ...	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.1942	3.5	5.0
294 ...	10	MED	DIABETES AGE >35	.7518	3.7	4.7
295 ...	10	MED	DIABETES AGE 0–35	.7464	3.0	3.9
296 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	.8556	4.0	5.3
297 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC.	.5204	2.8	3.5
298 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17	.4954	2.4	3.5
299 ...	10	MED	INBORN ERRORS OF METABOLISM	.9475	3.8	5.4
300 ...	10	MED	ENDOCRINE DISORDERS W CC	1.0779	4.8	6.2
301 ...	10	MED	ENDOCRINE DISORDERS W/O CC	.5889	2.8	3.6
302 ...	11	SURG	KIDNEY TRANSPLANT	3.5669	8.2	9.7
303 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM.	2.5401	7.2	8.8
304 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC.	2.3458	6.5	8.9
305 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC.	1.1857	3.2	3.9
306 ...	11	SURG	PROSTATECTOMY W CC	1.2448	3.7	5.4
307 ...	11	SURG	PROSTATECTOMY W/O CC	.6588	2.0	2.4
308 ...	11	SURG	MINOR BLADDER PROCEDURES W CC	1.5907	4.1	6.1
309 ...	11	SURG	MINOR BLADDER PROCEDURES W/O CC	.9442	2.0	2.5
310 ...	11	SURG	TRANSURETHRAL PROCEDURES W CC	1.0869	3.0	4.3
311 ...	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	.6126	1.6	1.9
312 ...	11	SURG	URETHRAL PROCEDURES, AGE >17 W CC	1.0270	3.1	4.6
313 ...	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	.6640	1.8	2.4
314 ...	11	SURG	*URETHRAL PROCEDURES, AGE 0–17	.4950	2.3	2.3
315 ...	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0660	4.5	7.8
316 ...	11	MED	RENAL FAILURE	1.3380	4.9	6.7
317 ...	11	MED	ADMIT FOR RENAL DIALYSIS	.6965	2.1	3.2
318 ...	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1413	4.4	6.0
319 ...	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.6187	2.1	2.9
320 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	.8647	4.4	5.4
321 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	.5785	3.3	3.9
322 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17	.5606	3.0	3.7
323 ...	11	MED	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	.7816	2.4	3.2
324 ...	11	MED	URINARY STONES W/O CC	.4475	1.6	1.9
325 ...	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC.	.6287	3.0	3.9
326 ...	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC.	.4203	2.2	2.7
327 ...	11	MED	*KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17	.3541	3.1	3.1
328 ...	11	MED	URETHRAL STRICTURE AGE >17 W CC	.7024	2.7	3.7
329 ...	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	.5172	1.7	2.4
330 ...	11	MED	*URETHRAL STRICTURE AGE 0–17	.3189	1.6	1.6
331 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	1.0157	4.1	5.5
332 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC.	.6104	2.6	3.4
333 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17	.7642	3.3	4.4
334 ...	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.5864	4.3	5.0
335 ...	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.1911	3.3	3.5
336 ...	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC	.8965	2.8	3.6
337 ...	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	.6229	2.0	2.2
338 ...	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	1.1552	3.3	5.1
339 ...	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1.0600	2.9	4.5
340 ...	12	SURG	*TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17	.2834	2.4	2.4
341 ...	12	SURG	PENIS PROCEDURES	1.1141	2.1	3.2
342 ...	12	SURG	CIRCUMCISION AGE >17	.8601	2.6	3.5
343 ...	12	SURG	*CIRCUMCISION AGE 0–17	.1540	1.7	1.7
344 ...	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	1.1025	1.6	2.4
345 ...	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	.8816	2.5	3.7
346 ...	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	.9645	4.2	5.7
347 ...	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	.5828	2.3	3.1
348 ...	12	MED	BENIGN PROSTATIC HYPERTROPHY W CC	.6983	3.2	4.2
349 ...	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	.4345	2.0	2.5
350 ...	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6957	3.6	4.4

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
351 ...	12	MED	*STERILIZATION, MALE	.2363	1.3	1.3
352 ...	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.6769	2.7	3.9
353 ...	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	1.9721	5.4	7.1
354 ...	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC.	1.5134	4.8	5.8
355 ...	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC.	.9477	3.2	3.4
356 ...	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES.	.7916	2.2	2.6
357 ...	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY.	2.3699	7.0	8.7
358 ...	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.2357	3.7	4.4
359 ...	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	.8699	2.7	2.9
360 ...	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	.8823	2.5	3.0
361 ...	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1.1894	2.4	3.4
362 ...	13	SURG	*ENDOSCOPIC TUBAL INTERRUPTION	.3020	1.4	1.4
363 ...	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.7807	2.5	3.3
364 ...	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	.7601	2.6	3.5
365 ...	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.8299	4.9	7.1
366 ...	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.2474	4.7	6.8
367 ...	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.5509	2.2	3.0
368 ...	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	1.0499	4.8	6.2
369 ...	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.	.5526	2.4	3.2
370 ...	14	SURG	CESAREAN SECTION W CC	1.0974	4.4	5.9
371 ...	14	SURG	CESAREAN SECTION W/O CC	.7212	3.3	3.6
372 ...	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.5920	2.6	3.5
373 ...	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.4020	1.9	2.1
374 ...	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	.7081	2.5	3.2
375 ...	14	SURG	*VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	.6856	4.4	4.4
376 ...	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.	.5342	2.4	3.4
377 ...	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE.	1.3506	3.1	5.4
378 ...	14	MED	ECTOPIC PREGNANCY	.9394	2.2	2.8
379 ...	14	MED	THREATENED ABORTION	.4424	2.1	3.1
380 ...	14	MED	ABORTION W/O D&C	.3404	1.6	1.9
381 ...	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY.	.6002	1.7	2.3
382 ...	14	MED	FALSE LABOR	.2045	1.2	1.3
383 ...	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS.	.5334	2.8	4.0
384 ...	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS.	.3437	1.8	2.4
385 ...	15		*NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.3760	1.8	1.8
386 ...	15		*EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE.	4.5376	17.9	17.9
387 ...	15		*PREMATURITY W MAJOR PROBLEMS	3.0991	13.3	13.3
388 ...	15		*PREMATURITY W/O MAJOR PROBLEMS	1.8699	8.6	8.6
389 ...	15		*FULL TERM NEONATE W MAJOR PROBLEMS	1.8398	4.7	4.7
390 ...	15		*NEONATE W OTHER SIGNIFICANT PROBLEMS	1.6011	3.4	3.4
391 ...	15		*NORMAL NEWBORN	.1526	3.1	3.1
392 ...	16	SURG	SPLENECTOMY AGE >17	3.1411	7.2	9.7
393 ...	16	SURG	*SPLENECTOMY AGE 0–17	1.3479	9.1	9.1
394 ...	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	1.6806	4.1	6.8
395 ...	16	MED	RED BLOOD CELL DISORDERS AGE >17	.8168	3.3	4.6
396 ...	16	MED	RED BLOOD CELL DISORDERS AGE 0–17	1.0917	2.1	3.2
397 ...	16	MED	COAGULATION DISORDERS	1.2154	3.9	5.4
398 ...	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.2507	4.7	6.0
399 ...	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	.7085	3.0	3.7
400 ...	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.6610	5.9	9.1
401 ...	17	SURG	LYMPHOMA & NON–ACUTE LEUKEMIA W OTHER O.R. PROC W CC.	2.6191	7.8	11.1
402 ...	17	SURG	LYMPHOMA & NON–ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.	1.0641	2.8	4.2
403 ...	17	MED	LYMPHOMA & NON–ACUTE LEUKEMIA W CC	1.7181	5.7	8.1
404 ...	17	MED	LYMPHOMA & NON–ACUTE LEUKEMIA W/O CC	.8549	3.2	4.3

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TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
405 ...	17		*ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17 ...	1.9110	4.9	4.9
406 ...	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC.	2.7833	7.5	10.1
407 ...	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC.	1.2463	3.4	4.2
408 ...	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC.	1.9990	4.7	7.7
409 ...	17	MED	RADIOTHERAPY	1.0631	4.5	6.1
410 ...	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	.9015	2.8	3.6
411 ...	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.4335	1.9	2.4
412 ...	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.4070	1.5	2.0
413 ...	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC.	1.3925	5.5	7.5
414 ...	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC.	.7824	3.1	4.2
415 ...	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.5541	10.3	14.1
416 ...	18	MED	SEPTICEMIA AGE >17	1.4988	5.6	7.3
417 ...	18	MED	SEPTICEMIA AGE 0–17	.8695	3.5	4.8
418 ...	18	MED	POSTOPERATIVE & POST–TRAUMATIC INFECTIONS	.9931	4.8	6.1
419 ...	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	.8885	3.9	4.9
420 ...	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6136	3.0	3.7
421 ...	18	MED	VIRAL ILLNESS AGE >17	.6663	3.1	3.9
422 ...	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17	.4792	2.4	3.0
423 ...	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.6019	5.7	7.7
424 ...	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS.	2.3706	8.7	14.1
425 ...	19	MED	ACUTE ADJUSTMENT REACTION & PSYCHOLOGICAL DYSFUNCTION.	.6805	3.0	4.1
426 ...	19	MED	DEPRESSIVE NEUROSES	.5363	3.4	4.7
427 ...	19	MED	NEUROSES EXCEPT DEPRESSIVE	.5714	3.4	4.9
428 ...	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.6982	4.4	6.9
429 ...	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.8448	4.9	6.7
430 ...	19	MED	PSYCHOSES	.7881	6.0	8.4
431 ...	19	MED	CHILDHOOD MENTAL DISORDERS	.7532	4.7	7.1
432 ...	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.7083	3.3	5.2
433 ...	20		ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.2961	2.3	3.1
434 ...	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC.	.7296	3.9	5.2
435 ...	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC.	.4275	3.4	4.4
436 ...	20		ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	.7850	10.7	13.6
437 ...	20		ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY.	.6864	7.5	9.0
438 ...			NO LONGER VALID	.0000	.0	.0
439 ...	21	SURG	SKIN GRAFTS FOR INJURIES	1.6571	5.0	7.5
440 ...	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.9354	5.7	9.0
441 ...	21	SURG	HAND PROCEDURES FOR INJURIES	.9179	2.2	3.1
442 ...	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.2454	5.2	7.9
443 ...	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	.9614	2.5	3.3
444 ...	21	MED	TRAUMATIC INJURY AGE >17 W CC	.7087	3.3	4.3
445 ...	21	MED	TRAUMATIC INJURY AGE >17 W/O CC	.4800	2.4	3.0
446 ...	21	MED	*TRAUMATIC INJURY AGE 0–17	.2962	2.4	2.4

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
447 ...	21	MED	ALLERGIC REACTIONS AGE >17	.5220	1.9	2.5
448 ...	21	MED	*ALLERGIC REACTIONS AGE 0–17	.0974	2.9	2.9
449 ...	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	.8149	2.6	3.7
450 ...	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	.4352	1.6	2.0
451 ...	21	MED	*POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17	.2631	2.1	2.1
452 ...	21	MED	COMPLICATIONS OF TREATMENT W CC	.9920	3.5	4.9
453 ...	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.5060	2.2	2.9
454 ...	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	.8152	3.2	4.5
455 ...	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	.4663	1.9	2.6
456 ...			NO LONGER VALID	.0000	.0	.0
457 ...			NO LONGER VALID	.0000	.0	.0
458 ...			NO LONGER VALID	.0000	.0	.0
459 ...			NO LONGER VALID	.0000	.0	.0
460 ...			NO LONGER VALID	.0000	.0	.0
461 ...	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES.	1.1309	2.4	4.5
462 ...	23	MED	REHABILITATION	1.3599	9.9	12.4
463 ...	23	MED	SIGNS & SYMPTOMS W CC	.6811	3.3	4.3
464 ...	23	MED	SIGNS & SYMPTOMS W/O CC	.4942	2.5	3.2
465 ...	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.6720	2.0	3.6
466 ...	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.7129	2.3	4.0
467 ...	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.4986	2.1	3.3
468 ...			EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	3.6400	9.3	13.2
469 ...			**PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	.0
470 ...			**UNGROUPABLE	.0000	.0	.0
471 ...	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY.	3.2205	4.9	5.6
472 ...			NO LONGER VALID	.0000	.0	.0
473 ...	17		ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.7200	7.8	13.4
474 ...			NO LONGER VALID	.0000	.0	.0
475 ...	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT.	3.7065	8.0	11.2
476 ...		SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	2.2633	8.6	11.7
477 ...		SURG	NON–EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.7696	5.3	8.1
478 ...	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.3515	5.0	7.3
479 ...	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.4618	2.9	3.8
480 ...		SURG LIVER TRANS PLANT	10.7834	17.5	23.1	
481 ...		SURG	BONE MARROW TRANSPLANT	8.7285	21.9	24.9
482 ...		SURG	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES	3.6454	9.9	12.9
483 ...		SURG	TRACHEOSTOMY EXCEPT FOR FACE, MOUTH & NECK DIAGNOSES.	16.1211	33.0	40.9
484 ...	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.5421	8.9	13.3
485 ...	24	SURG	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TRA.	3.0757	7.4	9.2

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TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS
486 ...	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA.	4.8962	8.4	12.3
487 ...	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.9536	5.3	7.4
488 ...	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.7891	12.0	18.1
489 ...	25	MED	HIV W MAJOR RELATED CONDITION	1.7913	6.1	8.8
490 ...	25	MED	HIV W OR W/O OTHER RELATED CONDITION	.9651	3.8	5.3
491 ...	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY.	1.6673	3.0	3.5
492 ...	17	MED	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	4.4470	11.4	16.8
493 ...	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.8290	4.3	5.7
494 ...	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.0246	2.0	2.5
495 ...		SURG	LUNG TRANSPLANT	8.8332	12.9	15.6
496 ...	08	SURG	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	5.6871	8.4	10.8
497 ...	08	SURG	SPINAL FUSION W CC	2.8441	4.9	6.3
498 ...	08	SURG	SPINAL FUSION W/O CC	1.7952	2.8	3.4
499 ...	08	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC	1.4487	3.6	4.8
500 ...	08	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC	.9836	2.3	2.8
501 ...	08	SURG	KNEE PROCEDURES W PDX OF INFECTION W CC	2.5305	8.0	10.0
502 ...	08	SURG	KNEE PROCEDURES W PDX OF INFECTION W/O CC	1.5559	5.2	6.3
503 ...	08	SURG	KNEE PROCEDURES W/O PDX OF INFECTION	1.2029	3.1	4.0
504 ...	22	SURG	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT	13.2930	24.0	31.6
505 ...	22		EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT	2.2593	2.6	5.2
506 ...	22		FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA.	4.2007	12.5	16.8
507 ...	22		FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA.	1.8942	6.8	9.5
508 ...	22		FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA.	1.5971	5.8	8.6
509 ...	22		FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA.	.8554	3.9	5.4
510 ...	22		NON–EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	1.3335	5.1	7.3
511 ...	22		NON–EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA	.8312	3.6	5.2

*MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
*DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
***NOTE:** GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES
***NOTE:** ARITHMETIC MEAN IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY

[FY98 MEDPAR Update 03/99 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	36836	9.2593	2	4	7	12	19
2	7214	9.8343	3	5	7	12	19
3	7	10.5714	1	4	12	12	14
4	6080	7.4523	1	3	5	9	16
5	99334	3.4177	1	1	2	4	7
6	378	3.1138	1	1	2	4	7
7	11825	9.7856	2	4	7	12	19
8	3419	3.1120	1	1	2	4	7
9	1714	6.1190	1	3	5	8	12
10	19310	6.5665	2	3	5	8	13
11	3187	4.0446	1	2	3	5	8
12	44543	6.2764	2	3	4	7	12
13	6583	5.1621	2	3	4	6	9
14	356495	6.0058	2	3	5	7	11
15	144927	3.7348	1	2	3	5	7
16	12107	5.9202	2	3	5	7	11
17	3316	3.3685	1	2	3	4	6
18	27243	5.4721	2	3	4	7	10
19	7972	3.7881	1	2	3	5	7
20	6169	9.9651	2	5	8	13	19
21	1426	6.8079	2	3	5	9	13
22	2583	4.9001	2	2	4	6	9
23	7700	4.1762	1	2	3	5	8
24	54812	5.0310	1	2	4	6	10

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY98 MEDPAR Update 03/99 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
25	24401	3.3481	1	2	3	4	6
26	29	3.5862	1	1	3	4	6
27	3652	5.2916	1	1	3	7	12
28	11240	6.0932	1	3	5	8	12
29	3756	3.6140	1	2	3	5	7
30	1	13.0000	13	13	13	13	13
31	3208	4.3332	1	2	3	5	8
32	1420	2.6901	1	1	2	3	5
34	20085	5.3312	1	2	4	6	10
35	4903	3.4852	1	2	3	4	7
36	4666	1.4256	1	1	1	1	2
37	1560	3.8372	1	1	3	4	8
38	107	2.6355	1	1	2	3	5
39	1469	1.8693	1	1	1	2	4
40	1988	3.3441	1	1	2	4	7
42	3314	2.1177	1	1	1	2	4
43	85	4.0471	1	2	2	4	7
44	1360	4.9669	2	3	4	6	9
45	2503	3.4259	1	2	3	4	6
46	3061	4.5541	1	2	3	6	9
47	1208	3.1283	1	1	2	4	6
48	1	6.0000	6	6	6	6	6
49	2282	5.0206	1	2	4	6	10
50	2831	1.9947	1	1	1	2	3
51	278	2.8921	1	1	1	3	7
52	243	1.9506	1	1	1	2	3
53	2719	3.6348	1	1	2	4	8
54	1	1.0000	1	1	1	1	1
55	1561	2.8482	1	1	2	3	6
56	587	2.8399	1	1	2	3	6
57	501	4.7665	1	1	3	5	12
59	79	2.5316	1	1	2	3	6
60	4	1.2500	1	1	1	1	2
61	239	4.8075	1	1	3	6	10
62	2	2.5000	2	2	3	3	3
63	3306	4.4574	1	2	3	5	9
64	3302	6.6087	1	2	4	8	14
65	31897	2.9095	1	1	2	4	5
66	7003	3.2128	1	2	3	4	6
67	512	3.7051	1	2	3	4	7
68	13164	4.1907	2	2	3	5	7
69	4092	3.3140	1	2	3	4	6
70	38	2.7368	1	2	2	3	5
71	109	3.4037	1	2	3	4	6
72	804	3.5162	1	2	3	4	7
73	6475	4.3396	1	2	3	5	8
74	1	2.0000	2	2	2	2	2
75	40541	9.9139	3	5	7	12	19
76	40510	11.0970	3	5	9	14	21
77	2204	5.1134	1	2	4	7	10
78	30089	7.0769	3	5	6	9	12
79	204223	8.4303	3	4	7	10	16
80	8430	5.5426	2	3	5	7	10
81	9	6.1111	1	4	6	7	9
82	67992	6.9678	2	3	5	9	14
83	6986	5.4814	2	3	4	7	10
84	1530	3.2170	1	2	3	4	6
85	21593	6.5211	2	3	5	8	13
86	1741	3.7731	1	2	3	5	7
87	67713	6.2694	1	3	5	8	12
88	398220	5.2575	2	3	4	7	9
89	510879	6.1132	2	3	5	8	11
90	46381	4.3406	2	3	4	5	7
91	64	3.9531	1	2	3	5	7
92	14187	6.2415	2	3	5	8	12
93	1438	4.2976	1	2	4	6	8
94	13076	6.3852	2	3	5	8	12
95	1514	3.6242	1	2	3	4	7
96	63671	4.7632	2	3	4	6	8
97	28420	3.7362	1	2	3	5	7

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TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY98 MEDPAR Update 03/99 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
98	18	4.5000	2	2	3	4	5
99	19449	3.1467	1	1	2	4	6
100	7748	2.1705	1	1	2	3	4
101	20140	4.4049	1	2	3	6	[illegible]
102	4778	2.6877	1	1	2	3	5
103	547	56.5466	9	15	39	81	126
104	32842	11.8946	3	6	10	15	22
105	28697	9.4228	4	5	7	11	17
106	3906	10.9158	5	7	9	13	18
107	97459	10.4755	5	7	9	12	17
108	5282	10.9737	3	6	9	14	21
109	66660	7.8095	4	5	7	9	13
110	59376	9.5303	2	5	8	11	18
111	6606	5.6197	2	4	6	7	[illegible]
112	80818	3.8201	1	1	3	5	8
113	46280	11.9185	3	5	9	15	23
114	8726	8.1877	2	4	7	10	16
115	14436	8.4070	2	4	7	11	16
116	272446	3.9260	1	1	3	5	[illegible]
117	3511	4.1398	1	1	3	5	9
118	6439	2.8987	1	1	2	4	6
119	1554	4.8932	1	1	3	6	11
120	36832	8.2211	1	2	5	11	18
121	169544	6.5073	2	4	5	8	12
122	83742	3.9783	1	2	4	5	7
123	42140	4.4070	1	1	2	6	10
124	145335	4.4326	1	2	3	6	8
125	69830	2.8428	1	1	2	4	6
126	5297	11.8577	3	6	9	15	23
127	725354	5.3846	2	3	4	7	10
128	13964	5.8876	3	4	5	7	9
129	4522	2.8074	1	1	1	3	7
130	93798	5.8395	2	3	5	7	10
131	26368	4.4800	1	3	4	6	7
132	167891	3.0914	1	2	2	4	6
133	7132	2.3751	1	1	2	3	4
134	32871	3.3420	1	2	3	4	6
135	7556	4.3634	1	2	3	5	8
136	1151	2.9427	1	1	2	4	6
138	204380	3.9935	1	2	3	5	8
139	74952	2.5369	1	1	2	3	5
140	90171	2.8048	1	1	2	3	5
141	85551	3.7306	1	2	3	5	7
142	40836	2.7078	1	1	2	3	5
143	174426	2.1903	1	1	2	3	4
144	77995	5.3213	1	2	4	7	11
145	6796	2.8261	1	1	2	4	5
146	12246	10.3034	5	7	9	12	17
147	2305	6.7080	3	5	7	8	10
148	143500	12.1060	5	7	10	14	21
149	16362	6.7222	4	5	6	8	10
150	22214	11.0307	4	6	9	14	19
151	4386	5.9758	2	3	6	8	11
152	4778	8.3024	3	5	7	10	14
153	1793	5.6168	3	4	5	7	8
154	32409	13.1933	4	7	10	16	25
155	5603	4.5138	1	2	4	6	8
156	5	10.6000	2	2	11	13	22
157	8595	5.5779	1	2	4	7	11
158	4411	2.6384	1	1	2	3	5
159	17429	4.9651	1	2	4	6	10
160	10531	2.7382	1	1	2	4	5
161	12611	4.1561	1	2	3	5	9
162	6778	2.0031	1	1	1	2	4
163	6	3.3333	1	3	3	5	5
164	5103	8.5348	4	5	7	10	14
165	1821	4.9368	2	3	5	6	8
166	3423	5.1440	2	3	4	6	10
167	2688	2.7742	1	2	2	3	5
168	1682	4.6843	1	2	3	6	10

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY98 MEDPAR Update 03/99 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
169	866	2.5208	1	1	2	3	5
170	12216	11.2317	2	5	8	14	22
171	1060	4.7679	1	2	4	6	9
172	32209	6.9183	2	3	5	9	14
173	2318	3.8007	1	1	3	5	[illegible]
174	250706	4.8426	2	3	4	6	9
175	25360	2.9403	1	2	3	4	5
176	17698	5.2788	2	3	4	6	10
177	10596	4.4886	2	2	4	6	8
178	3611	3.1742	1	2	3	4	6
179	12438	6.1530	2	3	5	8	12
180	90784	5.3432	2	3	4	7	10
181	24531	3.4095	1	2	3	4	6
182	236683	4.3360	1	2	3	5	8
183	77376	2.9902	1	1	2	4	6
184	89	3.0225	1	1	2	3	7
185	4281	4.5359	1	2	3	6	9
186	7	3.2857	1	2	3	4	4
187	865	3.9052	1	2	3	5	8
188	76094	5.5497	1	2	4	7	11
189	9709	3.2163	1	1	2	4	6
190	69	5.6087	1	2	4	7	9
191	9760	14.1831	4	7	10	17	28
192	838	7.0251	2	4	6	9	11
193	6564	12.6140	5	7	10	15	23
194	743	6.5639	2	4	6	8	11
195	5935	9.9928	4	6	8	12	17
196	1267	5.6780	2	4	5	7	9
197	23028	8.6261	3	5	7	10	15
198	6393	4.5098	2	3	4	6	8
199	1894	9.6172	2	4	7	13	19
200	1196	10.9983	2	4	8	14	22
201	1515	14.0614	4	6	11	18	28
202	27560	6.5773	2	3	5	8	13
203	30112	6.7066	2	3	5	9	13
204	55486	5.9715	2	3	5	7	11
205	23295	6.3206	2	3	5	8	12
206	1730	4.0694	1	2	3	5	8
207	32811	5.1164	1	2	4	6	10
208	9895	2.9051	1	1	2	4	6
209	355057	5.1351	3	3	4	6	8
210	134595	6.7578	3	4	6	8	11
211	29234	4.9046	3	3	4	6	7
212	8	3.6250	1	2	4	5	5
213	7936	8.3266	2	4	[illegible]	10	17
216	6080	9.5355	2	4	7	12	19
217	19791	12.6226	3	5	9	15	27
218	22787	5.2827	2	3	4	6	10
219	19533	3.1973	1	2	3	4	5
220	4	9.2500	1	1	6	12	18
223	17962	2.5659	1	1	2	3	5
224	8009	2.0411	1	1	2	3	4
225	5837	4.4655	1	2	3	6	9
226	5298	5.9932	1	2	4	8	12
227	4340	2.7548	1	1	2	3	5
228	2585	3.5791	1	1	2	4	8
229	1157	2.4408	1	1	2	3	4
230	2300	4.7948	1	2	3	6	10
231	11018	4.6331	1	2	3	6	10
232	535	4.0748	1	1	2	5	9
233	4876	7.5070	2	3	5	9	16
234	2587	3.4519	1	2	3	4	7
235	5406	5.0218	1	2	4	6	9
236	39509	4.9105	1	3	4	6	9
237	1711	3.5634	1	2	3	4	6
238	7793	8.3853	3	4	6	10	16
239	55949	6.2607	2	3	5	8	12
240	12987	6.6413	2	3	5	8	13
241	3039	4.0234	1	2	3	5	7
242	2683	6.6347	2	3	5	8	13

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TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY98 MEDPAR Update 03/99 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
243	84670	4.7255	1	3	4	5	9
244	12703	4.8316	1	3	4	6	9
245	4970	3.5777	1	2	3	4	7
246	1351	3.7187	1	2	3	5	7
247	14132	3.4177	1	2	3	4	7
248	9001	4.6185	1	2	4	6	9
249	10992	3.5375	1	1	2	4	7
250	3653	4.1237	1	2	3	5	8
251	2300	2.8961	1	1	2	4	5
253	19185	4.7469	1	3	4	6	9
254	10028	3.2017	1	2	3	4	6
256	5967	5.1324	1	2	4	6	10
257	19522	2.9195	1	2	2	3	5
258	16906	2.0608	1	1	2	2	3
259	3748	2.7620	1	1	2	3	6
260	4729	1.4743	1	1	1	2	2
261	1803	2.1780	1	1	1	3	4
262	653	3.9326	1	1	3	5	8
263	26034	11.3386	3	5	8	14	22
264	3840	6.9898	2	3	5	8	13
265	4133	6.9557	1	2	4	8	14
266	2546	3.3496	1	1	2	4	7
267	241	4.0788	1	1	3	5	9
268	897	3.8060	1	1	2	4	8
269	8851	7.8528	2	3	6	10	16
270	2749	3.1364	1	1	2	4	7
271	22655	7.0989	3	4	6	8	13
272	5664	6.2920	2	3	5	7	12
273	1357	4.3839	1	2	3	5	8
274	2464	6.5345	1	3	5	8	13
275	208	3.8894	1	1	2	5	8
276	1001	4.3906	1	2	4	5	8
277	84629	5.7563	2	3	5	7	10
278	27776	4.4282	2	3	4	5	8
279	11	5.0909	1	3	4	5	8
280	15056	4.2132	1	2	3	5	8
281	6510	3.0602	1	1	3	4	6
282	1	3.0000	3	3	3	3	3
283	5366	4.7128	1	2	4	6	9
284	1799	3.1957	1	1	3	4	6
285	6035	10.5781	3	5	8	13	21
286	2166	6.6307	2	3	5	8	13
287	6069	10.3935	3	5	7	12	20
288	2020	5.7025	3	3	4	6	9
289	4812	3.0247	1	1	2	3	6
290	8605	2.4284	1	1	2	3	4
291	76	2.0132	1	1	1	2	3
292	4847	10.4246	2	4	8	13	21
293	323	4.9567	1	2	4	6	11
294	84534	4.7447	1	2	4	6	9
295	3469	3.8665	1	2	3	5	7
296	234511	5.2830	2	3	4	6	10
297	36737	3.5367	1	2	3	4	6
298	90	3.4889	1	1	2	4	7
299	1124	5.3932	1	2	4	7	11
300	16177	6.2295	2	3	5	8	12
301	2822	3.5666	1	2	3	4	7
302	8038	9.6920	5	6	7	11	17
303	20077	8.7449	4	5	7	10	15
304	12388	8.8926	2	4	7	11	18
305	2795	3.9030	1	2	3	5	7
306	9132	5.4262	1	2	3	7	12
307	2186	2.3605	1	1	2	3	4
308	8285	6.1389	1	2	4	8	13
309	4064	2.5226	1	1	2	3	5
310	25390	4.3348	1	2	3	5	9
311	7973	1.9387	1	1	1	2	4
312	1665	4.5808	1	1	3	6	10
313	643	2.3919	1	1	2	3	5
314	1	2.0000	2	2	2	2	2

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY98 MEDPAR Update 03/99 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
315	28422	7.8309	1	2	5	10	17
316	94820	6.6602	2	3	5	8	13
317	801	3.1898	1	1	2	3	6
318	6098	5.9802	1	3	4	8	12
319	457	2.8665	1	1	2	4	6
320	183745	5.4047	2	3	4	7	10
321	26994	3.8755	2	2	3	5	7
322	68	3.6618	1	2	3	4	6
323	16793	3.2042	1	1	2	4	6
324	7668	1.9287	1	1	1	2	4
325	7806	3.8663	1	2	3	5	7
326	2390	2.7046	1	1	2	3	5
327	9	3.4444	1	2	3	6	6
328	691	3.7019	1	2	3	5	7
329	108	2.4259	1	1	1	3	5
331	45316	5.5090	1	3	4	7	11
332	4707	3.4391	1	1	3	4	7
333	267	4.4082	1	2	3	5	10
334	14231	4.9975	3	3	4	6	8
335	10417	3.5491	2	3	3	4	5
336	46652	3.6099	1	2	3	4	7
337	31028	2.2136	1	1	2	3	3
338	2147	5.1202	1	2	3	7	12
339	1813	4.4865	1	1	3	6	10
340	2	1.0000	1	1	1	1	1
341	4093	3.2057	1	1	2	3	6
342	880	3.4966	1	2	2	4	7
344	4123	2.3546	1	1	1	2	5
345	1236	3.7055	1	1	2	4	8
346	4984	5.7153	1	3	4	7	11
347	376	3.1303	1	1	2	4	7
348	3100	4.1839	1	2	3	5	8
349	600	2.5250	1	1	2	3	6
350	6572	4.3821	2	2	4	5	8
352	698	3.9169	1	1	3	5	7
353	2712	7.0749	3	4	5	8	13
354	9042	5.7710	3	3	4	6	10
355	5962	3.4074	2	3	3	4	5
356	28380	2.5532	1	2	2	3	4
357	6098	8.6471	3	5	7	10	16
358	25005	4.4148	2	3	3	5	7
359	29669	2.8899	2	2	3	3	4
360	17416	3.0307	1	2	3	3	6
361	478	3.3703	1	1	2	4	7
362	1	1.0000	1	1	1	1	1
363	3606	3.2887	1	2	2	3	7
364	1831	3.5281	1	1	2	4	7
365	2018	7.0927	2	3	5	9	15
366	4378	6.7106	1	3	5	8	14
367	476	2.9853	1	1	2	3	6
368	2781	6.2312	2	3	5	8	12
369	2776	3.2248	1	1	2	4	6
370	1166	5.9185	3	3	4	5	9
371	1248	3.6330	2	3	3	4	5
372	888	3.4651	1	2	2	3	5
373	3969	2.1464	1	2	2	2	3
374	140	3.1714	1	2	2	3	4
375	6	3.8333	1	1	2	5	5
376	205	3.4439	1	1	2	3	7
377	35	5.4000	1	1	3	5	13
378	177	2.7514	1	2	2	3	4
379	359	3.0836	1	1	2	3	6
380	91	1.8571	1	1	1	2	3
381	185	2.3297	1	1	1	3	5
382	56	1.2857	1	1	1	1	2
383	1526	4.0216	1	2	3	5	8
384	123	2.4065	1	1	2	2	5
385	1	2.0000	2	2	2	2	2
389	8	6.7500	1	5	5	7	12
390	9	3.3333	1	1	4	4	5

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TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY98 MEDPAR Update 03/99 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
392	2665	9.6432	3	4	7	12	20
394	1796	6.8135	1	2	4	8	15
395	77862	4.5487	1	2	3	6	9
396	17	3.1765	1	1	2	4	6
397	19299	5.3534	1	2	4	7	11
398	18648	5.9575	2	3	5	7	11
399	1513	3.7198	1	2	3	5	7
400	7367	9.1258	2	3	6	11	20
401	6271	11.0518	2	5	[illegible]	14	22
402	1464	4.1735	1	1	3	5	9
403	36559	8.0187	2	3	6	10	16
404	4130	4.3341	1	2	3	6	9
406	2851	10.1371	3	5	8	13	21
407	677	4.1773	1	2	3	5	7
408	2412	7.7363	1	2	5	10	18
409	3775	6.1094	2	3	4	6	12
410	50278	3.5715	1	2	3	4	6
411	20	2.3500	1	1	2	3	4
412	28	2.0000	1	1	1	2	4
413	7463	7.4528	2	3	6	10	15
414	693	4.1616	1	2	3	5	[illegible]
415	42974	14.0677	4	6	11	17	28
416	215135	7.3072	2	4	6	9	14
417	42	4.6905	1	2	3	6	10
418	22536	6.0572	2	3	5	7	11
419	15983	4.9037	2	2	4	6	9
420	3053	3.6495	1	2	3	5	7
421	13182	3.9219	1	2	3	5	7
422	93	2.9785	1	1	2	4	6
423	9177	7.6953	2	3	6	9	16
424	1398	14.0250	2	5	10	17	27
425	15652	4.0606	1	2	3	5	8
426	4620	4.6361	1	2	3	6	9
427	1678	4.9362	1	2	3	6	11
428	871	6.8726	1	2	4	8	15
429	29605	6.5253	2	3	5	8	13
430	59517	8.3640	2	3	6	11	17
431	313	7.1374	1	3	5	8	13
432	442	5.1833	1	2	3	5	10
433	6368	3.0974	1	1	2	4	6
434	21885	5.1509	1	2	4	6	10
435	14675	4.3381	1	2	4	5	8
436	3324	13.5096	4	7	12	21	27
437	11674	8.9895	3	5	8	11	15
439	1202	7.5166	1	3	5	9	15
440	5340	8.9891	2	3	6	11	19
441	571	3.0490	1	1	2	4	7
442	15865	7.8969	1	3	6	10	16
443	3389	3.2762	1	1	2	4	7
444	5071	4.2901	1	2	3	5	8
445	2242	2.9942	1	1	2	4	6
447	4724	2.5356	1	1	2	3	5
448	2	1.5000	1	1	2	2	2
449	26249	3.7076	1	1	3	4	7
450	6361	2.0483	1	1	1	2	4
451	4	3.7500	1	1	2	4	8
452	22505	4.9207	1	2	3	6	10
453	4265	2.8802	1	1	2	4	5
454	6007	4.4748	1	2	3	5	9
455	994	2.5905	1	1	2	3	5
461	3500	4.5026	1	1	2	5	11
462	11041	12.2571	4	6	10	16	23
463	16720	4.2907	1	2	3	5	8
464	4504	3.1854	1	2	3	4	6
465	204	3.6029	1	1	1	4	7
466	1771	4.0011	1	1	2	4	8
467	1238	3.2504	1	1	2	4	6
468	60480	13.2738	3	6	10	17	26
471	11960	5.6279	3	3	5	6	9
473	8085	13.1116	2	3	7	19	33

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY98 MEDPAR Update 03/99 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
475	110336	11.1055	2	5	9	15	22
476	5200	11.6544	2	6	10	15	21
477	27191	8.0489	1	3	6	10	17
478	119489	7.2839	1	3	5	9	15
479	21407	3.7730	1	2	3	5	7
480	459	23.1046	7	11	16	28	48
481	274	24.8759	10	19	23	30	40
482	6476	12.8700	4	7	10	15	23
483	43362	38.9597	14	21	32	48	71
484	416	13.1466	1	5	10	18	27
485	3232	9.1894	4	5	7	11	17
486	2171	12.1935	1	5	10	16	24
487	3766	7.3221	1	3	6	9	15
488	794	18.0416	3	7	13	23	37
489	14199	8.7326	2	3	6	11	18
490	4835	5.2709	1	2	4	7	10
491	11661	3.5467	2	2	3	4	6
492	2597	16.8063	4	5	11	27	35
493	55406	5.7168	1	3	5	7	11
494	26219	2.5095	1	1	2	3	5
495	143	15.6434	6	8	12	22	29
496	1111	10.7885	4	5	8	13	21
497	23280	6.2649	2	3	5	7	11
498	16782	3.4122	1	2	3	4	[illegible]
499	33561	4.8046	1	2	4	[illegible]	9
500	40918	2.7633	1	1	2	3	5
501	1994	10.0035	4	5	8	12	19
502	554	6.2708	3	4	5	7	11
503	5907	3.9661	1	2	3	5	7
504	123	31.6260	9	15	26	40	63
505	158	5.2405	1	1	2	6	13
506	1117	16.4270	4	7	13	22	33
507	415	9.5133	2	4	8	13	20
508	1111	7.3987	2	3	5	9	14
509	504	4.9187	1	2	3	6	11
510	1026	6.9688	2	3	5	8	15
511	307	4.8143	1	2	3	6	9
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TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY
[FY98 MEDPAR Update 03/99 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	36836	9.2593	2	4	7	12	19
2	7214	9.8343	3	5	7	12	19
3	7	10.5714	1	4	12	12	14
4	6080	7.4523	1	3	5	9	16
5	99334	3.4177	1	1	2	4	7
6	378	3.1138	1	1	2	4	7
7	12698	10.3438	2	4	7	13	21
8	3450	3.1467	1	1	2	4	7
9	1714	6.1190	1	3	5	8	12
10	19309	6.5667	2	3	5	8	13
11	3187	4.0446	1	2	3	5	8
12	44543	6.2764	2	3	4	7	12
13	6583	5.1621	2	3	4	6	9
14	356487	6.0057	2	3	5	7	11
15	144920	3.7348	1	2	3	5	7
16	12105	5.9197	2	3	5	7	11
17	3316	3.3685	1	2	3	4	6
18	27243	5.4721	2	3	4	7	10
19	7971	3.7885	1	2	3	5	7
20	6169	9.9651	2	5	8	13	19
21	1426	6.8079	2	3	5	9	13
22	2583	4.9001	2	2	4	6	9
23	7698	4.1758	1	2	3	5	8

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TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY98 MEDPAR Update 03/99 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
24	54812	5.0310	1	2	4	6	10
25	24400	3.3482	1	2	3	4	6
26	29	3.5862	1	1	3	4	6
27	3652	5.2916	1	1	3	7	12
28	11239	6.0937	1	3	5	8	12
29	3756	3.6140	1	2	3	5	7
30	1	13.0000	13	13	13	13	13
31	3208	4.3332	1	2	3	5	8
32	1420	2.6901	1	1	2	3	5
34	20085	5.3312	1	2	4	6	10
35	4903	3.4852	1	2	3	4	7
36	4666	1.4256	1	1	1	1	2
37	1560	3.8372	1	1	3	4	8
38	107	2.6355	1	1	2	3	5
39	1469	1.8693	1	1	1	2	4
40	1988	3.3441	1	1	2	4	7
42	3314	2.1177	1	1	1	2	4
43	85	4.0471	1	2	2	4	7
44	1360	4.9669	2	3	4	6	9
45	2503	3.4259	1	2	3	4	6
46	3061	4.5541	1	2	3	6	9
47	1208	3.1283	1	1	2	4	6
48	1	6.0000	6	6	6	6	6
49	2282	5.0206	1	2	4	6	10
50	2831	1.9947	1	1	1	2	3
51	278	2.8921	1	1	1	3	7
52	159	1.8868	1	1	1	2	3
53	2719	3.6348	1	1	2	4	8
54	1	1.0000	1	1	1	1	1
55	1561	2.8482	1	1	2	3	6
56	587	2.8399	1	1	2	3	6
57	680	4.4588	1	1	2	5	11
59	79	2.5316	1	1	2	3	6
60	4	1.2500	1	1	1	1	2
61	239	4.8075	1	1	3	6	10
62	2	2.5000	2	2	3	3	3
63	3306	4.4574	1	2	3	5	9
64	3302	6.6087	1	2	4	8	14
65	31895	2.9094	1	1	2	4	5
66	7002	3.2129	1	2	3	4	6
67	512	3.7051	1	2	3	4	7
68	13163	4.1908	2	2	3	5	7
69	4092	3.3140	1	2	3	4	6
70	38	2.7368	1	2	2	3	5
71	109	3.4037	1	2	3	4	6
72	804	3.5162	1	2	3	4	7
73	6475	4.3396	1	2	3	5	8
74	1	2.0000	2	2	2	2	2
75	40541	9.9139	3	5	7	12	19
76	41055	11.1287	3	5	9	14	21
77	2213	5.1148	1	2	4	7	10
78	30088	7.0769	3	5	6	9	12
79	204216	8.4304	3	4	7	10	16
80	8429	5.5429	2	3	5	7	10
81	9	6.1111	1	4	6	7	9
82	67991	6.9678	2	3	5	9	14
83	6985	5.4805	2	3	4	7	10
84	1530	3.2170	1	2	3	4	6
85	21592	6.5212	2	3	5	8	13
86	1741	3.7731	1	2	3	5	7
87	67711	6.2696	1	3	5	8	12
88	398204	5.2576	2	3	4	7	9
89	510853	6.1132	2	3	5	8	11
90	46380	4.3406	2	3	4	5	7
91	64	3.9531	1	2	3	5	7
92	14187	6.2415	2	3	5	8	12
93	1438	4.2976	1	2	4	6	8
94	13076	6.3852	2	3	5	8	12
95	1514	3.6242	1	2	3	4	7
96	63669	4.7632	2	3	4	6	8

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY98 MEDPAR Update 03/99 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
97	28418	3.7363	1	2	3	5	7
98	18	4.5000	2	2	3	4	5
99	19447	3.1469	1	1	2	4	6
100	7748	2.1705	1	1	2	3	4
101	20139	4.4047	1	2	3	6	8
102	4778	2.6877	1	1	2	3	5
103	547	56.5466	9	15	39	81	126
104	32842	11.8946	3	6	10	15	22
105	28697	9.4228	4	5	7	11	17
106	3906	10.9158	5	7	9	13	18
107	97459	10.4755	5	7	9	12	17
108	5282	10.9737	3	6	9	14	21
109	66660	7.8095	4	5	7	9	13
110	59376	9.5303	2	5	8	11	18
111	6606	5.6197	2	4	6	7	8
112	80818	3.8201	1	1	3	5	8
113	46280	11.9185	3	5	9	15	23
114	8726	8.1877	2	4	7	10	16
115	14436	8.4070	2	4	7	11	16
116	272446	3.9260	1	1	3	5	8
117	3511	4.1398	1	1	3	5	9
118	6439	2.8987	1	1	2	4	6
119	1554	4.8932	1	1	3	6	11
120	36921	8.2184	1	2	5	11	18
121	169542	6.5073	2	4	5	8	12
122	83737	3.9785	1	2	4	5	7
123	42138	4.4072	1	1	2	6	10
124	145335	4.4326	1	2	3	6	8
125	69830	2.8428	1	1	2	4	6
126	5297	11.8577	3	6	9	15	23
127	725343	5.3846	2	3	4	7	10
128	13957	5.8882	3	4	5	7	9
129	4522	2.8074	1	1	1	3	7
130	93795	5.8394	2	3	5	7	10
131	26365	4.4803	1	3	4	6	7
132	167887	3.0915	1	2	2	4	6
133	7131	2.3751	1	1	2	3	4
134	32871	3.3420	1	2	3	4	6
135	7556	4.3634	1	2	3	5	8
136	1151	2.9427	1	1	2	4	6
138	204377	3.9935	1	2	3	5	8
139	74949	2.5370	1	1	2	3	5
140	90166	2.8049	1	1	2	3	5
141	85549	3.7307	1	2	3	5	7
142	40835	2.7078	1	1	2	3	5
143	174420	2.1903	1	1	2	3	4
144	77994	5.3212	1	2	4	7	11
145	6796	2.8261	1	1	2	4	5
146	12246	10.3034	5	7	9	12	17
147	2305	6.7080	3	5	7	8	10
148	143500	12.1060	5	7	10	14	21
149	16362	6.7222	4	5	6	8	10
150	22213	11.0306	4	6	9	14	19
151	4386	5.9758	2	3	6	8	11
152	4778	8.3024	3	5	7	10	14
153	1793	5.6168	3	4	5	7	8
154	32408	13.1935	4	7	10	16	25
155	5602	4.5059	1	2	4	6	8
156	5	10.6000	2	2	11	13	22
157	8593	5.5783	1	2	4	7	11
158	4411	2.6384	1	1	2	3	5
159	17429	4.9651	1	2	4	6	10
160	10531	2.7382	1	1	2	4	5
161	12610	4.1558	1	2	3	5	9
162	6778	2.0031	1	1	1	2	4
163	6	3.3333	1	3	3	5	5
164	5103	8.5348	4	5	7	10	14
165	1821	4.9368	2	3	5	6	8
166	3422	5.1441	2	3	4	6	10
167	2688	2.7742	1	2	2	3	5

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TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY98 MEDPAR Update 03/99 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
168	1624	4.6188	1	2	3	6	9
169	829	2.5223	1	1	2	3	5
170	12216	11.2317	2	5	8	14	22
171	1060	4.7679	1	2	4	6	9
172	32207	6.9186	2	3	5	9	14
173	2318	3.8007	1	1	3	5	8
174	250699	4.8426	2	3	4	6	9
175	25358	2.9404	1	2	3	4	5
176	17698	5.2788	2	3	4	6	10
177	10595	4.4886	2	2	4	6	8
178	3611	3.1742	1	2	3	4	6
179	12437	6.1533	2	3	5	8	12
180	90780	5.3431	2	3	4	7	10
181	24531	3.4095	1	2	3	4	6
182	236680	4.3360	1	2	3	5	8
183	77375	2.9902	1	1	2	4	6
184	89	3.0225	1	1	2	3	7
185	4281	4.5359	1	2	3	6	9
186	7	3.2857	1	2	3	4	4
187	865	3.9052	1	2	3	5	8
188	76090	5.5497	1	2	4	7	11
189	9709	3.2163	1	1	2	4	6
190	69	5.6087	1	2	4	7	9
191	9760	14.1831	4	7	10	17	28
192	838	7.0251	2	4	6	9	11
193	6564	12.6140	5	7	10	15	23
194	743	6.5639	2	4	6	8	11
195	5935	9.9928	4	6	8	12	17
196	1267	5.6780	2	4	5	7	9
197	23028	8.6261	3	5	7	10	15
198	6393	4.5098	2	3	4	6	8
199	1894	9.6172	2	4	7	13	19
200	1196	10.9983	2	4	8	14	22
201	1515	14.0614	4	6	11	18	28
202	27560	6.5773	2	3	5	8	13
203	30111	6.7062	2	3	5	9	13
204	55485	5.9715	2	3	5	7	11
205	23295	6.3206	2	3	5	8	12
206	1730	4.0694	1	2	3	5	8
207	32809	5.1165	1	2	4	6	10
208	9894	2.9049	1	1	2	4	6
209	355054	5.1351	3	3	4	6	8
210	134594	6.7578	3	4	6	8	11
211	29233	4.9046	3	3	4	6	7
212	5	3.6250	1	2	4	5	5
213	7936	8.3266	2	4	6	10	17
216	6080	9.5355	2	4	7	12	19
217	19791	12.6226	3	5	9	15	27
218	22787	5.2827	2	3	4	6	10
219	19533	3.1973	1	2	3	4	5
220	4	9.2500	1	1	6	12	18
223	17960	2.5661	1	1	2	3	5
224	8009	2.0411	1	1	2	3	4
225	5837	4.4655	1	2	3	6	9
226	5297	5.9941	1	2	4	8	12
227	4340	2.7548	1	1	2	3	5
228	2585	3.5791	1	1	2	4	8
229	1157	2.4408	1	1	2	3	4
230	2300	4.7948	1	2	3	6	10
231	11018	4.6331	1	2	3	6	10
232	535	4.0748	1	1	2	5	9
233	4876	7.5070	2	3	5	9	16
234	2587	3.4519	1	2	3	4	7
235	5406	5.0218	1	2	4	6	9
236	39504	4.9102	1	3	4	6	9
237	1711	3.5634	1	2	3	4	6
238	7793	8.3853	3	4	6	10	16
239	55949	6.2607	2	3	5	8	12
240	12987	6.6413	2	3	5	8	13
241	3039	4.0234	1	2	3	5	7

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY98 MEDPAR Update 03/99 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
242	2683	6.6347	2	3	5	8	13
243	84667	4.7255	1	3	4	6	9
244	12703	4.8316	1	3	4	6	9
245	4969	3.5768	1	2	3	4	7
246	1351	3.7187	1	2	3	5	7
247	14131	3.4179	1	2	3	4	7
248	9001	4.6185	1	2	4	6	9
249	10990	3.5379	1	1	2	4	7
250	3653	4.1237	1	2	3	5	8
251	2300	2.8961	1	1	2	4	5
253	19183	4.7470	1	3	4	6	9
254	10028	3.2017	1	2	3	4	6
256	5967	5.1324	1	2	4	6	10
257	19521	2.9195	1	2	2	3	5
258	16906	2.0608	1	1	2	2	3
259	3748	2.7620	1	1	2	3	6
260	4729	1.4743	1	1	1	2	2
261	1803	2.1780	1	1	1	3	4
262	653	3.9326	1	1	3	5	8
263	26033	11.3385	3	5	8	14	22
264	3840	6.9898	2	3	5	8	13
265	4133	6.9557	1	2	4	8	14
266	2546	3.3496	1	1	2	4	7
267	241	4.0788	1	1	3	5	9
268	897	3.8060	1	1	2	4	8
269	8851	7.8528	2	3	6	10	16
270	2749	3.1364	1	1	2	4	7
271	22654	7.0990	3	4	6	8	13
272	5663	6.2930	2	3	5	7	12
273	1357	4.3839	1	2	3	5	8
274	2464	6.5345	1	3	5	8	13
275	208	3.8894	1	1	2	5	8
276	1001	4.3906	1	2	4	5	8
277	84624	5.7564	2	3	5	7	10
278	27774	4.4283	2	3	4	5	8
279	11	5.0909	1	3	4	5	8
280	15054	4.2136	1	2	3	5	8
281	6510	3.0602	1	1	3	4	6
282	1	3.0000	3	3	3	3	3
283	5366	4.7128	1	2	4	6	9
284	1799	3.1957	1	1	3	4	6
285	6035	10.5781	3	5	8	13	21
286	2166	6.6307	2	3	5	8	13
287	6069	10.3935	3	5	7	12	20
288	2020	5.7025	3	3	4	6	9
289	4812	3.0247	1	1	2	3	6
290	8605	2.4284	1	1	2	3	4
291	76	2.0132	1	1	1	2	3
292	4847	10.4246	2	4	8	13	21
293	323	4.9567	1	2	4	6	11
294	84531	4.7447	1	2	4	6	9
295	3469	3.8665	1	2	3	5	7
296	234504	5.2830	2	3	4	6	10
297	36736	3.5367	1	2	3	4	6
298	90	3.4889	1	1	2	4	7
299	1124	5.3932	1	2	4	7	11
300	16177	6.2295	2	3	5	8	12
301	2822	3.5666	1	2	3	4	7
302	8038	9.6920	5	6	7	11	17
303	20077	8.7449	4	5	7	10	15
304	12388	8.8926	2	4	7	11	18
305	2795	3.9030	1	2	3	5	7
306	9132	5.4262	1	2	3	7	12
307	2186	2.3605	1	1	2	3	4
308	8285	6.1389	1	2	4	8	13
309	4064	2.5226	1	1	2	3	5
310	25390	4.3348	1	2	3	5	9
311	7973	1.9387	1	1	1	2	4
312	1665	4.5808	1	1	3	6	10
313	643	2.3919	1	1	2	3	5

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY98 MEDPAR Update 03/99 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
314	1	2.0000	2	2	2	2	2
315	28422	7.8309	1	2	5	10	17
316	94819	6.6602	2	3	5	8	13
317	801	3.1898	1	1	2	3	6
318	6096	5.9810	1	3	4	8	12
319	457	2.8665	1	1	2	4	6
320	183743	5.4047	2	3	4	7	10
321	26994	3.8755	2	2	3	5	7
322	68	3.6618	1	2	3	4	6
323	16792	3.2039	1	1	2	4	6
324	7668	1.9287	1	1	1	2	4
325	7806	3.8663	1	2	3	5	7
326	2390	2.7046	1	1	2	3	5
327	9	3.4444	1	2	3	6	6
328	691	3.7019	1	2	3	5	7
329	108	2.4259	1	1	1	3	5
331	45315	5.5089	1	3	4	7	11
332	4707	3.4391	1	1	3	4	7
333	267	4.4082	1	2	3	5	10
334	14231	4.9975	3	3	4	6	8
335	10417	3.5491	2	3	3	4	5
336	46652	3.6099	1	2	3	4	7
337	31028	2.2136	1	1	2	3	3
338	2147	5.1202	1	2	3	7	12
339	1813	4.4865	1	1	3	6	10
340	2	1.0000	1	1	1	1	1
341	4093	3.2057	1	1	2	3	6
342	880	3.4966	1	2	2	4	7
344	4123	2.3546	1	1	1	2	5
345	1236	3.7055	1	1	2	4	8
346	4983	5.7154	1	3	4	7	11
347	376	3.1303	1	1	2	4	7
348	3100	4.1839	1	2	3	5	8
349	600	2.5250	1	1	2	3	5
350	6571	4.3821	2	2	4	5	8
352	698	3.9169	1	1	3	5	7
353	2712	7.0749	3	4	5	8	13
354	9042	5.7710	3	3	4	6	10
355	5962	3.4074	2	3	3	4	5
356	28378	2.5532	1	2	2	3	4
357	6098	8.6471	3	5	7	10	16
358	25005	4.4148	2	3	3	5	7
359	29668	2.8899	2	2	3	3	4
360	17416	3.0307	1	2	3	3	5
361	478	3.3703	1	1	2	4	7
362	1	1.0000	1	1	1	1	1
363	3606	3.2887	1	2	2	3	7
364	1831	3.5281	1	1	2	4	7
365	2018	7.0927	2	3	5	9	15
366	4378	6.7106	1	3	5	8	14
367	476	2.9853	1	1	2	3	6
368	2781	6.2312	2	3	5	8	12
369	2776	3.2248	1	1	2	4	6
370	1166	5.9185	3	3	4	5	9
371	1248	3.6330	2	3	3	4	5
372	888	3.4651	1	2	2	3	5
373	3968	2.1467	1	2	2	2	3
374	140	3.1714	1	2	2	3	4
375	6	3.8333	1	1	2	5	5
376	205	3.4439	1	1	2	3	7
377	35	5.4000	1	1	3	5	13
378	177	2.7514	1	2	2	3	4
379	359	3.0836	1	1	2	3	6
380	91	1.8571	1	1	1	2	3
381	185	2.3297	1	1	1	3	5
382	56	1.2857	1	1	1	1	2
383	1526	4.0216	1	2	3	5	8
384	123	2.4065	1	1	2	2	5
385	1	2.0000	2	2	2	2	2
389	8	6.7500	1	5	5	7	12

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY98 MEDPAR Update 03/99 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
390	9	3.3333	1	1	4	4	5
392	2665	9.6432	3	4	7	12	20
394	1796	6.8135	1	2	4	8	15
395	77861	4.5487	1	2	3	6	9
396	17	3.1765	1	1	2	4	6
397	19299	5.3534	1	2	4	7	11
398	18648	5.9575	2	3	5	7	11
399	1513	3.7198	1	2	3	5	7
400	7367	9.1258	2	3	6	11	20
401	6271	11.0518	2	5	8	14	22
402	1464	4.1735	1	1	3	5	9
403	36557	8.0188	2	3	6	10	16
404	4130	4.3341	1	2	3	6	9
406	2851	10.1371	3	5	8	13	21
407	677	4.1773	1	2	3	5	7
408	2412	7.7363	1	2	5	10	18
409	3775	6.1094	2	3	4	6	12
410	50278	3.5715	1	2	3	4	6
411	20	2.3500	1	1	2	3	4
412	28	2.0000	1	1	1	2	4
413	7463	7.4528	2	3	6	10	15
414	693	4.1616	1	2	3	5	9
415	42974	14.0677	4	6	11	17	28
416	215132	7.3072	2	4	6	9	14
417	42	4.6905	1	2	3	6	10
418	22536	6.0572	2	3	5	7	11
419	15983	4.9037	2	2	4	6	9
420	3053	3.6495	1	2	3	5	7
421	13182	3.9219	1	2	3	5	7
422	93	2.9785	1	1	2	4	6
423	9177	7.6953	2	3	6	9	16
424	1398	14.0250	2	5	10	17	27
425	15651	4.0608	1	2	3	5	8
426	4620	4.6361	1	2	3	6	9
427	1678	4.9362	1	2	3	6	11
428	871	6.8726	1	2	4	8	15
429	29599	6.5256	2	3	5	8	13
430	59517	8.3640	2	3	6	11	17
431	313	7.1374	1	3	5	8	13
432	442	5.1833	1	2	3	5	10
433	6368	3.0974	1	1	2	4	6
434	21885	5.1509	1	2	4	6	10
435	14675	4.3381	1	2	4	5	8
436	3324	13.5096	4	7	12	21	27
437	11674	8.9895	3	5	8	11	15
439	1202	7.5166	1	3	5	9	15
440	5340	8.9891	2	3	6	11	19
441	571	3.0490	1	1	2	4	7
442	15864	7.8964	1	3	6	10	16
443	3388	3.2760	1	1	2	4	7
444	5071	4.2901	1	2	3	5	8
445	2242	2.9942	1	1	2	4	6
447	4724	2.5356	1	1	2	3	5
448	2	1.5000	1	1	2	2	2
449	26247	3.7078	1	1	3	4	7
450	6361	2.0483	1	1	1	2	4
451	4	3.7500	1	1	2	4	8
452	22505	4.9207	1	2	3	6	10
453	4265	2.8802	1	1	2	4	5
454	6006	4.4745	1	2	3	5	9
455	994	2.5905	1	1	2	3	5
461	3500	4.5026	1	1	2	5	11
462	11041	12.2571	4	6	10	16	23
463	16720	4.2907	1	2	3	5	8
464	4503	3.1857	1	2	3	4	6
465	204	3.6029	1	1	1	4	7
466	1771	4.0011	1	1	2	4	8
467	1238	3.2504	1	1	2	4	6
468	58933	13.2171	3	6	10	17	26
471	11960	5.6279	3	3	5	6	9

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TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY98 MEDPAR Update 03/99 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
473	8085	13.1116	2	3	7	19	33
475	110336	11.1055	2	5	9	15	22
476	5200	11.6544	2	6	10	15	21
477	27190	8.0489	1	3	6	10	17
478	119489	7.2839	1	3	5	9	15
479	21407	3.7730	1	2	3	5	7
480	459	23.1046	7	11	16	28	48
481	274	24.8759	10	19	23	30	40
482	6476	12.8700	4	7	10	15	23
483	43362	38.9597	14	21	32	48	71
484	416	13.1466	1	5	10	18	27
485	3232	9.1894	4	5	7	11	17
486	2171	12.1935	1	5	10	16	24
487	3766	7.3221	1	3	6	9	15
488	794	18.0416	3	7	13	23	37
489	14199	8.7326	2	3	6	11	18
490	4835	5.2709	1	2	4	7	10
491	11661	3.5467	2	2	3	4	6
492	2597	16.8063	4	5	11	27	35
493	55404	5.7170	1	3	5	7	11
494	26218	2.5095	1	1	2	3	5
495	143	15.6434	6	8	12	22	29
496	1111	10.7885	4	5	8	13	21
497	23280	6.2649	2	3	5	7	11
498	16782	3.4122	1	2	3	4	6
499	33561	4.8046	1	2	4	6	9
500	40918	2.7633	1	1	2	3	5
501	1994	10.0035	4	5	8	12	19
502	554	6.2708	3	4	5	7	11
503	5907	3.9661	1	2	3	5	7
504	123	31.6260	9	15	26	40	63
505	158	5.2405	1	1	2	6	13
506	974	16.7454	4	8	13	22	33
507	354	9.4831	2	4	8	13	19
508	602	8.5166	2	3	6	10	17
509	214	5.2991	1	2	4	7	10
510	1678	7.3194	2	3	5	9	16
511	658	5.1884	1	2	3	6	11
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TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) JULY 1999

State	Urban	Rural
ALABAMA	0.379	0.377
ALASKA	0.507	0.732
ARIZONA	0.368	0.532
ARKANSAS	0.478	0.454
CALIFORNIA	0.361	0.457
COLORADO	0.440	0.571
CONNECTICUT	0.500	0.506
DELAWARE	0.495	0.453
DISTRICT OF COLUMBIA	0.519	
FLORIDA	0.372	0.386
GEORGIA	0.486	0.487
HAWAII	0.492	0.556
IDAHO	0.549	0.576
ILLINOIS	0.441	0.531
INDIANA	0.559	0.596
IOWA	0.498	0.626
KANSAS	0.425	0.631
KENTUCKY	0.483	0.513
LOUISIANA	0.417	0.489

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) JULY 1999—Continued

State	Urban	Rural
MAINE	0.615	0.566
MARYLAND	0.764	0.821
MASSACHUSETTS	0.528	0.559
MICHIGAN	0.474	0.580
MINNESOTA	0.524	0.594
MISSISSIPPI	0.469	0.471
MISSOURI	0.423	0.512
MONTANA	0.501	0.568
NEBRASKA	0.488	0.625
NEVADA	0.288	0.492
NEW HAMPSHIRE	0.569	0.592
NEW JERSEY	0.412	
NEW MEXICO	0.476	0.511
NEW YORK	0.542	0.620
NORTH CAROLINA	0.537	0.506
NORTH DAKOTA	0.616	0.662
OHIO	0.520	0.564
OKLAHOMA	0.436	0.539
OREGON	0.547	0.594

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) JULY 1999—Continued

State	Urban	Rural
PENNSYLVANIA	0.403	0.531
PUERTO RICO	0.488	0.591
RHODE ISLAND	0.590	
SOUTH CAROLINA	0.453	0.455
SOUTH DAKOTA	0.522	0.617
TENNESSEE	0.465	0.490
TEXAS	0.416	0.519
UTAH	0.514	0.663
VERMONT	0.645	0.608
VIRGINIA	0.472	0.494
WASHINGTON	0.590	0.661
WEST VIRGINIA	0.592	0.571
WISCONSIN	0.562	0.634
WYOMING	0.475	0.681

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) JULY 1999

State	Ratio
ALABAMA	0.047
ALASKA	0.066
ARIZONA	0.042
ARKANSAS	0.050
CALIFORNIA	0.039
COLORADO	0.049
CONNECTICUT	0.037
DELAWARE	0.055
DISTRICT OF COLUMBIA	0.039
FLORIDA	0.046
GEORGIA	0.056
HAWAII	0.046
IDAHO	0.060
ILLINOIS	0.042
INDIANA	0.059
IOWA	0.054
KANSAS	0.049
KENTUCKY	0.050
LOUISIANA	0.050

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) JULY 1999—Continued

State	Ratio
MAINE	0.040
MARYLAND	0.013
MASSACHUSETTS	0.056
MICHIGAN	0.045
MINNESOTA	0.050
MISSISSIPPI	0.047
MISSOURI	0.049
MONTANA	0.051
NEBRASKA	0.057
NEVADA	0.029
NEW HAMPSHIRE	0.067
NEW JERSEY	0.037
NEW MEXICO	0.044
NEW YORK	0.052
NORTH CAROLINA	0.050
NORTH DAKOTA	0.075
OHIO	0.052

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) JULY 1999—Continued

State	Ratio
OKLAHOMA	0.051
OREGON	0.049
PENNSYLVANIA	0.042
PUERTO RICO	0.049
RHODE ISLAND	0.035
SOUTH CAROLINA	0.047
SOUTH DAKOTA	0.069
TENNESSEE	0.055
TEXAS	0.051
UTAH	0.050
VERMONT	0.051
VIRGINIA	0.060
WASHINGTON	0.066
WEST VIRGINIA	0.056
WISCONSIN	0.056
WYOMING	0.053

TABLE 10.—PERCENTAGE DIFFERENCE IN WAGE INDEXES FOR AREAS THAT QUALIFY FOR A WAGE INDEX EXCEPTION FOR EXCLUDED HOSPITALS AND UNITS

Area	1982–1996 difference	1984–1996 difference	1988–1996 difference	1990–1996 difference	1991–1996 difference	1992–1996 difference	1993–1996 difference	1994–1996 difference
Colorado					10.4524		8.1881	
Connecticut	19.6203	21.9951						
Delaware		10.0096						
Florida		10.2983						
Georgia		8.7027						
Hawaii		21.3348	11.4158		12.6562	8.9266		
Illinois				9.5874	8.7873			
Indiana				9.2802				
Iowa				8.2639	9.0834			
Maryland		8.3480						
Massachusetts	8.6383	12.1756						
Mississippi				9.6174	9.9473	8.1089		
Nebraska			14.3694	11.6425	9.9561	10.9156	10.9771	
New Hampshire		11.6434						
New Mexico				11.9006				
North Carolina		8.5221						
South Carolina		14.2383						
South Dakota				8.9288	9.0543	8.3679		
Tennessee		8.6185						
Vermont		11.9881						
Washington			8.3161	12.0455	8.3048			
Wyoming				12.9830	11.6587	10.5578	8.3272	
Akron, OH				9.7516				
Albany, GA	27.7655	33.1280	28.7328	21.9948	17.5830	20.4926	20.6327	
Anniston, Al		10.2828						
Arecibo, PR		10.1831	21.6831	29.8544	26.7773		9.4816	
Athens, GA	19.5810	25.7158	18.1110	18.0248	9.5754			
Atlanta, GA		8.1459		6.4055				
Atlantic-Cape May, NJ		14.8340						
Bellingham, WA			8.4523					
Bergen-Passaic, NJ	12.8013	14.7272	16.7200					
Billings, MT	16.1065	19.1965	26.2081	30.8632	35.1113	35.3130	29.6247	
Bremerton, WA	13.0957	15.0214	15.3709	15.4435	13.8559			
Brownsville-Harlingen-San Benito, TX				8.5425	12.0954			
Bryan-College, Station, TX								
Burlington, VT		12.4268	12.7269	10.3355		13.9804		
Caquas, PR		14.7999						
Casper, WY				9.2907	9.6686	9.1351		
Cedar Rapids, IA				10.3119				
Charlotte-Gastonia-Rock Hill, NC–SC		12.6597						
Charlottesville, VA	14.0438	19.5365	9.8608	11.4472	12.9594	15.1868	15.4762	
Chattanooga, TN–GA		13.4017			8.8235		9.9797	
Cheyenne, WY						8.3488	9.3340	
Clarksville-Hopkinsville, TN–KY		11.2945	10.4286	18.4133				
Columbia, SC		10.8124						
Columbus, GA–AL	8.1734	15.8296	13.6333	12.7302	9.6367	9.7215	9.3830	
Cumberland, MD–MVA				8.5070	9.0177			
Danville, VA	12.9378	18.7705	20.6043	14.8561	11.9610			
Decatur, AL			17.3472	15.8281	8.4468			
Dubuque, IA					9.1888			

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TABLE 10.—PERCENTAGE DIFFERENCE IN WAGE INDEXES FOR AREAS THAT QUALIFY FOR A WAGE INDEX EXCEPTION FOR EXCLUDED HOSPITALS AND UNITS—Continued

Area	1982–1996 difference	1984–1996 difference	1988–1996 difference	1990–1996 difference	1991–1996 difference	1992–1996 difference	1993–1996 difference	1994–1996 difference
Duluth-Superior, MN–WI				10.7902	10.0227			
Dutchess County, NY		8.4704						
Elkhart-Goshen, IN				9.4527				
Eugene-Springfield, OR				11.7281				
Flagstaff, AZ–UT								
Florence, AL		11.8054						
Florence, SC	13.0320	11.8640						
Gadsen, AL				12.1611				
Gainsville, FL		15.7424	14.7172	13.7100	14.4832	12.2944		
Grand Junction, CO								
Great Falls, MT				18.0341	21.0392	17.3455	20.4676	
Greeley, CO				11.4525				
Hickory-Morganton-Lenoir, NC		10.9461						
Houma, LA			9.0896					
Huntington-Ashland, WV–KY–OH				8.6526	8.6163	8.4473		
Jackson, MS			8.3592	12.0957	12.2607	11.1892		
Jackson, TN	9.5132	13.7566	8.6270					
Jacksonville, NC		8.7685	8.6495	8.9799	9.1010	13.3699	11.2812	
Janesville-Beliot, WI			13.9620	14.6249	13.0547	9.9021	11.6946	
Jersey City, NJ		8.7268	10.8011					
Killeen-Temple, TX	13.1336							
Knoxville, TN		12.1556				8.5300	8.5044	
Laredo, TX		13.0842	14.2641	26.7784	19.4632	23.3037	17.6562	
Las Cruse, NM			8.5144					
Lawton, OK		11.8386	13.5303	12.6581	12.2204	10.9146	13.9374	
Lima, OH			10.3470					
Lynchburg, VA							8.5602	
Macon, GA			9.3169					
Mayaguez, PR							10.8634	
Medford-Ashland, OR		8.6916		12.5510	8.3660			
Middlesex-Somerset-Hunterdon, NJ	8.3277	12.0153						
Monmouth-Ocean, NJ	14.3408	19.9318	13.6139	9.5243				
Muncie, IN	8.4919	12.2462	34.1672	26.6394	14.0301	18.7288	11.5183	
Nassau-Suffolk, NY		16.2468	8.6879					
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	10.4496	14.7474						
New London-Norwich, CT	12.8280	16.4870						
New York, NY		10.1191						
Newburgh, NY–PA	18.2439	22.5618	12.9076					
Ocala, FL	10.9508	18.0769	11.5170	13.1443	9.4978			
Omaha, NEIA			16.2054				10.2732	
Owensboro, KY						8.0822		
Panama City, FL	10.6298	16.0633		9.5853	21.6370	12.0631	13.7311	
Parkersburg-Marietta, WV–OH				8.4838		8.5537		
Ponce, PR					9.0132			
Providence-Warwick-Pawtucket, RI		9.8100						
Pueblo, CO					10.4692			
Redding, CA		13.7562						
Richland-Kennewick-Pasco, WA	10.3096	15.4733	19.2774	21.6958	16.3350	12.1167	12.5664	
Richmond-Petersburg, VA				8.3428				
Riverside-San Bernardino, CA								
Rochester, MN	12.0161			13.2930	8.6820		9.5886	
Salinas, CA	17.9442	16.9131	12.7030	11.4394		*		
San Angelo, TX					9.9972			
Santa Cruz-Watsonville, CA	12.9155	12.9980	8.8387	9.1800				
Santa Fe, NM		10.0021	14.1030					
Savannah, GA	12.5014	18.2769	19.4121	14.6131		10.9835		
Sherman-Denison, TX							8.3004	
Tacoma, WA		12.0133	11.1455	12.9502	10.2700			
Vallejo-Fairfield-Napa, CA		8.7346						
Wilmington-Newark, DE–MD		9.6799						
Wilmington, NC		18.6820	11.3188					
Yakima, WA				9.5536	8.2905			
Yuma, AZ			11.5934		14.3977			

Appendix A : Regulatory Impact Analysis

I. Introduction

Section 804(2) of title 5, United States Code (as added by section 251 of Public Law 104–121), specifies that a "major rule" is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic and export markets.

We estimate that the impact of this final rule will be to reduce payments to hospitals by approximately $125 million in FY 2000. Therefore, this rule is a major rule as defined in Title 5, United States Code, section 804(2).

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless we certify that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the hospital inpatient prospective payment system, we classify these hospitals as urban hospitals.

It is clear that the changes being made in this document would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this final rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

II. Changes in the Final Rule

Since we published the proposed rule, the market basket estimates for hospitals subject to the prospective payment system and hospitals and units excluded from the system have risen by 0.2 and 0.3 percentage points, respectively. As a result, the updates are 0.2 percent higher than the updates reflected in the impact analysis for the proposed rule.

Since the May 7, 1999 proposed rule, we have discovered that incorrect data were used in the capital (and operating) update framework in estimating the proposed adjustment for the effect of FY 1998 Reclassification and Recalibration. The revised adjustment resulted in a 0.91 percent increase in the capital rate update factor in this final rule.

With the exception of these changes, we are generally implementing the policy and statutory provisions discussed in the proposed rule.

III. Limitations of Our Analysis

As has been the case in our previously published regulatory impact analyses, the following quantitative analysis presents the projected effects of our policy changes, as well as statutory changes effective for FY 2000, on various hospital groups. We estimate the effects of individual policy changes by estimating payments per case while holding all other payment policies constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as admissions, lengths of stay, or case mix.

We received no comments on the methodology used for the impact analysis in the proposed rule.

IV. Hospitals Included in and Excluded From the Prospective Payment System

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general, short-term, acute care hospitals that participate in the Medicare program. There were 44 Indian Health Service hospitals in our database, which we excluded from the analysis due to the special characteristics of the prospective payment method for these hospitals. Among other short-term, acute care hospitals, only the 50 such hospitals in Maryland remain excluded from the prospective payment system under the waiver at section 1814(b)(3) of the Act. Thus, as of July 1999, we have included 4,922 hospitals in our analysis. This represents about 82 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

The remaining 18 percent are specialty hospitals that are excluded from the prospective payment system and continue to be paid on the basis of their reasonable costs (subject to a rate-of-increase ceiling on their inpatient operating costs per discharge). These hospitals include psychiatric, rehabilitation, long-term care, children's, and cancer hospitals. The impacts of our final policy changes on these hospitals are discussed below.

V. Impact on Excluded Hospitals and Units

As of July 1999, there were 1,112 specialty hospitals excluded from the prospective payment system and instead paid on a reasonable cost basis subject to the rate-of-increase ceiling under § 413.40. Broken down by specialty, there were 586 psychiatric, 200 rehabilitation, 225 long-term care, 71 children's, 20 Christian Science Sanatoria, and 10 cancer hospitals. In addition, there were 1,497 psychiatric and 942 rehabilitation units in hospitals otherwise subject to the prospective payment system. These excluded units are also paid in accordance with § 413.40. Under § 413.40(a)(2)(i)(A), the target rate-of-increase ceiling is not applicable to the 20 specialty hospitals and units in Maryland that are paid in accordance with the waiver at section 1814(b)(3) of the Act.

As required by section 1886(b)(3)(B) of the Act, the update factor applicable to the rate-of-increase limit for excluded hospitals and units for FY 2000 will be between 0 and 2.9 percent, depending on the hospital's or unit's costs in relation to its limit for the most recent cost reporting period for which information is available.

The impact on excluded hospitals and units of the update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital or unit since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the percentage increases in the rate-of-increase limits since their base period, the major effect will be on the level of incentive payments these hospitals and units receive. Conversely, for excluded hospitals and units with per case cost increases above the cumulative update in their rate-of-increase limits, the major effect will be the amount of excess costs that would not be reimbursed.

We note that, under § 413.40(d)(3), an excluded hospital or unit whose costs exceed 110 percent of its rate-of-increase limit receives its rate-of-increase limit *plus* the lesser of 50 percent of the difference between its reasonable costs and 110 percent of the limit, or 10 percent of the limit. In no case would the payment exceed 110 percent of the limit. In addition, under the various provisions set forth in § 413.40, certain excluded hospitals and units can obtain payment adjustments for justifiable increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases, we continue to provide an incentive for excluded hospitals and units to restrain the growth in their spending for patient services.

VI. Quantitative Impact Analysis of the Policy Changes Under the Prospective Payment System for Operating Costs

A. Basis and Methodology of Estimates

In this final rule, we are announcing policy changes and payment rate updates for the prospective payment systems for operating and capital-related costs. We have prepared separate impact analyses of the changes to each system. This section deals with changes to the operating prospective payment system.

The data used in developing the quantitative analyses presented below are taken from the FY 1998 MedPAR file and the most current Provider-Specific File that is used for payment purposes. Although the analyses of the changes to the operating prospective payment system do not incorporate cost data, the most recently available hospital cost report data were used to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to these policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely quantify the impact associated with each change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, particularly the number of beds, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. For individual hospitals, however, some miscategorizations are possible.

Using cases in the FY 1998 MedPAR file, we simulated payments under the operating prospective payment system given various combinations of payment parameters. Any short-term, acute care hospitals not paid under the general prospective payment systems (Indian Health Service hospitals and hospitals in Maryland) are excluded from the simulations. Payments under the capital prospective payment system, or payments for costs other than inpatient operating costs, are

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not analyzed here. Estimated payment impacts of final FY 2000 changes to the capital prospective payment system are discussed below in section VII of this Appendix.

The final changes discussed separately below are the following:

- The effects of the annual reclassification of diagnoses and procedures and the recalibration of the DRG relative weights required by section 1886(d)(4)(C) of the Act.
- The effects of the floor on the wage index established by section 4410(a) of the BBA of 1997, which provided that the wage index for urban hospitals may not be less than the area wage index applicable to hospitals in rural areas of the State in which the hospital is located.
- The effects of changes in hospitals' wage index values reflecting the wage index update (FY 1996 data).
- The effects of fully removing from the wage index the costs and hours associated with teaching physicians Part A, residents, and CRNAs; and the effects of our policy to implement the first year of a 5-year phase-out of these costs, by calculating a wage index based on 20 percent of hospitals' average hourly wages after removing the costs and hours associated with teaching physicians, residents, and CRNAs, and 80 percent of hospitals' average hourly wages with these costs included.
- The effects of geographic reclassifications by the MGCRB that will be effective in FY 2000.
- The total change in payments based on FY 2000 policies relative to payments based on FY 1999 policies.

To illustrate the impacts of the FY 2000 final changes, our analysis begins with a FY 2000 baseline simulation model using: the FY 1999 GROUPER (version 16.0); the FY 1999 wage index without applying the rural floor; and no MGCRB reclassifications. Outlier payments are set at 5.1 percent of total DRG plus outlier payments.

Each final and statutory policy change is then added incrementally to this baseline model, finally arriving at an FY 2000 model incorporating all of the changes. This allows us to isolate the effects of each change.

Our final comparison illustrates the percent change in payments per case from FY 1999 to FY 2000. Four factors have significant impacts here. The first is the update to the standardized amounts. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are updating the large urban and the other areas' average standardized amounts for FY 2000 using the most recently forecasted hospital market basket increase for FY 2000 of 2.9 percent minus 1.8 percentage points. Similarly, section 1886(b)(3)(C)(ii) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals (SCHs), essential access community hospitals (EACHs) (which are treated as SCHs for payment purposes), and Medicare-dependent, small rural hospitals (MDHs) is equal to the market basket increase of 2.9 percent minus 1.8 percentage points (for an update of 1.1 percent).

A second significant factor that impacts changes in hospitals' payments per case from FY 1999 to FY 2000 is a change in MGCRB reclassification status from one year to the next. That is, hospitals reclassified in FY 1999 that are no longer reclassified in FY 2000 may have a negative payment impact going from FY 1999 to FY 2000; conversely, hospitals not reclassified in FY 1999 that are reclassified in FY 2000 may have a positive impact. In some cases, these impacts can be quite substantial, so if a relatively small number of hospitals in a particular category lose their reclassification status, the percentage increase in payments for the category may be below the national mean.

A third significant factor is that we currently estimate that actual outlier payments during FY 1999 will be 6.3 percent of actual total DRG payments. When the FY 1999 final rule was published, we projected FY 1999 outlier payments would be 5.1 percent of total DRG plus outlier payments, and the standardized amounts were reduced correspondingly. The effects of the higher than expected outlier payments during FY 1999 (as discussed in the Addendum to this final rule) are reflected in the analyses below comparing our current estimates of FY 1999 payments per case to estimated FY 2000 payments per case.

Fourth, payment adjustments for indirect medical education (IME) and disproportionate share (DSH) are lower in FY 2000 relative to FY 1999. Section 1886(d)(5)(B)(ii) of the Act provides that the IME adjustment is reduced from approximately a 6.5 percent increase for every 10 percent increase in a hospital's resident-to-bed ratio in FY 1999, to a 6.0 percent increase in FY 2000. Similarly, in accordance with section 1886(d)(5)(F)(ix) of the Act, the DSH adjustment for FY 2000 is reduced by 3 percent from what would otherwise have been paid, compared to a 2 percent reduction for FY 1999.

Table I demonstrates the results of our analysis. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 4,922 hospitals included in the analysis. This figure represents 53 fewer hospitals than were included in the impact analysis in the FY 1999 final rule (63 FR 41106).

The next four rows of Table I contain hospitals categorized according to their geographic location (all urban, which is further divided into large urban and other urban, or rural). There are 2,782 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,584 hospitals located in large urban areas (populations over 1 million), and 1,198 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 2,140 hospitals in rural areas. The next two groupings are by bed-size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows hospital groups based on hospitals' FY 2000 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural show that the number of hospitals paid based on these categorizations (after consideration of geographic reclassifications) are 2,858, 1,662, 1,197, and 2,064, respectively.

The next three groupings examine the impacts of the final changes on hospitals grouped by whether or not they have residency programs (teaching hospitals that receive an IME adjustment) or receive DSH payments, or some combination of these two adjustments. There are 3,809 nonteaching hospitals in our analysis, 871 teaching hospitals with fewer than 100 residents, and 242 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status, and whether they are considered urban or rural after MGCRB reclassifications. Hospitals in the rural DSH categories, therefore, represent hospitals that were not reclassified for purposes of the standardized amount or for purposes of the DSH adjustment. (They may, however, have been reclassified for purposes of the wage index.) The next category groups hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next five rows examine the impacts of the final changes on rural hospitals by special payment groups (SCHs, rural referral centers (RRCs), and MDHs), as well as rural hospitals not receiving a special payment designation. The RRCs (154), SCHs (647), MDHs (355), and SCH and RRCs (57) shown here were not reclassified for purposes of the standardized amount. There are 15 RRCs, 3 SCHs, and 2 SCH and RRCs that will be reclassified for the standardized amount in FY 2000 that, therefore, are not included in these rows.

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data are taken primarily from the FY 1997 Medicare cost report files, if available (otherwise FY 1996 data are used). Data needed to determine ownership status or Medicare utilization percentages were unavailable for some hospitals (80 and 82, respectively). For the most part, these are new hospitals.

The next series of groupings concern the geographic reclassification status of hospitals. The first three groupings display hospitals that were reclassified by the MGCRB for both FY 1999 and FY 2000, or for either of those 2 years, by urban and rural status. The next rows illustrate the overall number of FY 2000 reclassifications, as well as the numbers of reclassified hospitals grouped by urban and rural location. The final row in Table I contains hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act.

Table I—Impact Analysis of Changes For FY 2000 Operating Prospective Payment System
[PERCENT CHANGES IN PAYMENTS PER CASE]

	Number of hospitals[1]	DRG recalib.[2]	Wage index floor[3]	New wage data[4]	Remove GME and CRNA costs[5]	Blended wage index costs[6]	DRG & WI changes[7]	MGCRB reclassification[8]	All FY 2000 changes[9]
	(0)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
(BY GEOGRAPHIC LOCATION)									
ALL HOSPITALS	4,922	0.0	0.1	0.1	0.4	0.1	0.0	0.0	−0.5
URBAN HOSPITALS	2,782	0.0	0.1	0.0	0.3	0.1	−0.1	−0.4	−0.7
LARGE URBAN	1,584	0.0	0.0	0.0	0.1	0.0	−0.1	−0.4	−0.8
OTHER URBAN	1,198	0.0	0.2	0.0	0.6	0.1	0.1	−0.4	−0.5
RURAL HOSPITALS	2,140	0.2	0.0	0.4	0.6	0.5	0.5	2.6	1.0
BED SIZE (URBAN):									
0–99 BEDS	727	0.1	0.3	−0.2	0.4	−0.2	0.1	−0.5	−0.2
100–199 BEDS	938	0.1	0.2	0.1	0.4	0.1	0.2	−0.5	−0.1
200–299 BEDS	553	0.0	0.1	0.1	0.4	0.1	0.0	−0.4	−0.5
300–499 BEDS	422	0.0	0.1	0.0	0.4	0.1	−0.1	−0.3	−0.7
500 OR MORE BEDS	142	−0.1	0.0	0.0	0.0	0.0	−0.2	−0.4	−1.6
BED SIZE (RURAL):									
0–49 BEDS	1,194	0.3	0.0	0.4	0.5	0.5	0.6	0.2	1.4
50–99 BEDS	571	0.2	0.0	0.4	0.5	0.5	0.5	1.0	1.2
100–149 BEDS	223	0.2	0.0	0.4	0.7	0.5	0.5	3.8	1.2
150–199 BEDS	87	0.1	0.0	0.5	0.6	0.6	0.5	4.5	1.2
200 OR MORE BEDS	65	0.1	0.0	0.4	0.5	0.5	0.4	4.8	0.3
URBAN BY CENSUS DIVISION:									
NEW ENGLAND	149	0.0	0.2	0.6	0.8	0.7	0.6	−0.2	−0.2
MIDDLE ATLANTIC	421	0.0	0.1	−0.2	−0.5	−0.2	−0.3	−0.3	−1.4
SOUTH ATLANTIC	407	0.0	0.2	0.1	0.9	0.3	0.2	−0.4	−0.2
EAST NORTH CENTRAL	467	0.0	0.1	0.4	0.0	0.4	0.3	−0.4	−0.4
EAST SOUTH CENTRAL	165	0.0	0.1	0.5	0.3	0.6	0.4	−0.4	0.0
WEST NORTH CENTRAL	190	−0.1	0.0	−0.1	0.1	0.0	−0.3	−0.5	−0.8
WEST SOUTH CENTRAL	353	0.0	0.0	−0.6	0.4	−0.5	−0.7	−0.5	−1.1
MOUNTAIN	134	−0.1	0.0	−0.1	0.2	0.0	−0.3	−0.5	−0.5
PACIFIC	449	0.0	0.1	−0.3	0.9	−0.2	−0.3	−0.4	−0.8
PUERTO RICO	47	0.1	0.0	0.4	0.3	0.4	0.4	−0.5	0.2
RURAL BY CENSUS DIVISION:									
NEW ENGLAND	52	0.1	0.0	−0.2	0.1	−0.1	−0.3	2.5	0.5
MIDDLE ATLANTIC	79	0.1	0.0	−0.4	0.0	−0.4	−0.4	2.2	0.7
SOUTH ATLANTIC	280	0.2	0.0	1.0	0.7	1.1	1.1	3.0	0.9
EAST NORTH CENTRAL	283	0.1	0.0	0.3	0.6	0.4	0.3	2.3	1.0
EAST SOUTH CENTRAL	267	0.3	0.0	0.7	0.8	0.8	0.9	2.7	1.6
WEST NORTH CENTRAL	492	0.1	0.0	0.8	0.4	0.9	0.8	2.3	1.5
WEST SOUTH CENTRAL	341	0.3	0.0	−0.3	0.7	−0.2	−0.1	3.5	0.9
MOUNTAIN	201	0.2	0.0	0.5	0.4	0.5	0.5	1.8	1.3
PACIFIC	140	0.1	0.0	−0.4	0.7	−0.2	−0.3	1.9	0.0
PUERTO RICO	5	0.1	0.0	1.8	0.6	1.9	1.9	1.6	2.4
(BY PAYMENT CATEGORIES)									
URBAN HOSPITALS	2,858	0.0	0.1	0.0	0.3	0.1	0.0	−0.3	−0.7
LARGE URBAN	1,662	0.0	0.0	0.0	0.1	0.0	−0.1	−0.3	−0.9
OTHER URBAN	1,197	0.0	0.2	0.1	0.6	0.2	0.1	−0.3	−0.4
RURAL HOSPITALS	2,064	0.2	0.0	0.4	0.6	0.5	0.5	2.3	1.1
TEACHING STATUS:									
NON-TEACHING	3,809	0.1	0.1	0.1	0.5	0.2	0.2	0.3	0.2
LESS THAN 100 RESIDENTS	871	0.0	0.1	0.0	0.4	0.1	−0.1	−0.3	−0.6
100+ RESIDENTS	242	0.0	0.0	0.1	−0.1	0.1	−0.1	−0.2	−1.5
DISPROPORTIONATE SHARE HOSPITALS (DSH):									
NON-DSH	3,069	0.0	0.1	0.1	0.4	0.1	0.0	0.3	−0.2
URBAN DSH 100 BEDS OR MORE	1,387	0.0	0.1	0.0	0.3	0.1	0.0	−0.4	−0.8
FEWER THAN 100 BEDS	89	0.2	0.1	−0.2	0.6	0.0	0.1	−0.5	0.1
RURAL DSH SOLE COMMUNITY (SCH)	158	0.3	0.0	0.4	0.6	0.6	0.6	0.3	2.1
REFERRAL CENTERS (RRC)	60	0.2	0.0	0.7	0.7	0.8	0.8	5.0	1.2
OTHER RURAL DSH HOSPITALS 100 BEDS OR MORE	49	0.2	0.0	0.7	0.8	0.8	0.9	1.0	1.1
FEWER THAN 100 BEDS	110	0.4	0.0	0.7	0.8	0.9	1.0	0.2	2.0
URBAN TEACHING AND DSH:									
BOTH TEACHING AND DSH	716	0.0	0.0	0.0	0.2	0.1	−0.1	−0.4	−1.1
TEACHING AND NO DSH	331	−0.1	0.1	0.0	0.2	0.1	−0.2	−0.1	−0.8
NO TEACHING AND DSH	760	0.1	0.2	0.0	0.6	0.1	0.1	−0.2	0.0
NO TEACHING AND NO DSH	1,052	0.0	0.2	0.0	0.4	0.1	0.1	−0.4	−0.3
RURAL HOSPITAL TYPES:									
NONSPECIAL STATUS HOSPITALS	851	0.3	0.0	0.5	0.7	0.7	0.7	1.1	1.2
RRC	154	0.1	0.0	0.4	0.7	0.6	0.4	5.7	0.6
SCH	647	0.2	0.0	0.2	0.3	0.3	0.3	0.3	1.4
MDH	355	0.3	0.0	0.4	0.5	0.5	0.6	0.3	1.2
SCH AND RRC	57	0.1	0.0	0.2	0.3	0.2	0.1	2.2	1.4
TYPE OF OWNERSHIP:									
VOLUNTARY	2,831	0.0	0.1	0.1	0.3	0.1	0.0	−0.1	−0.5
PROPRIETARY	752	0.1	0.1	0.0	0.6	0.1	0.0	0.0	−0.2
GOVERNMENT	1,259	0.1	0.1	0.2	0.6	0.3	0.2	0.3	−0.3
UNKNOWN	80	0.0	0.0	0.3	−0.8	0.1	0.0	−0.5	−1.4

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Table I—Impact Analysis of Changes For FY 2000 Operating Prospective Payment System—Continued
[PERCENT CHANGES IN PAYMENTS PER CASE]

	Number of hospitals[1]	DRG recalib.[2]	Wage index floor[3]	New wage data[4]	Remove GME and CRNA costs[5]	Blended wage index costs[6]	DRG & WI changes[7]	MGCRB reclassification[8]	All FY 2000 changes[9]
	(0)	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
MEDICARE UTILIZATION AS A PERCENT OF INPATIENT DAYS:									
0–25	386	0.1	0.0	−0.3	0.6	−0.1	−0.3	−0.1	−1.3
25–50	1,775	0.0	0.0	0.0	0.3	0.1	−0.1	−0.3	−0.8
50–65	1,893	0.0	0.1	0.1	0.4	0.2	0.1	0.2	−0.1
OVER 65	786	0.1	0.2	0.3	0.4	0.3	0.4	0.3	0.1
UNKNOWN	82	0.0	0.0	0.3	−0.8	0.1	0.0	−0.5	−1.4
HOSPITALS RECLASSIFIED BY THE MEDICARE GEOGRAPHIC REVIEW BOARD									
RECLASSIFICATION STATUS DURING FY 1999 AND FY 2000:									
RECLASSIFIED DURING BOTH FY 1999 AND FY 2000	370	0.1	0.0	0.3	0.7	0.4	0.3	5.9	0.0
URBAN	57	0.0	0.0	0.0	0.9	0.1	0.0	4.4	−1.4
RURAL	313	0.1	0.0	0.4	0.6	0.5	0.4	6.6	0.7
RECLASSIFIED DURING FY 2000 ONLY	127	0.1	0.0	0.2	0.5	0.3	0.2	4.4	4.7
URBAN	26	0.0	0.1	−0.1	0.4	0.0	−0.2	3.3	2.7
RURAL	101	0.2	0.0	0.6	0.6	0.7	0.7	5.7	7.0
RECLASSIFIED DURING FY 1999 ONLY	188	0.1	1.1	−0.2	0.6	−0.1	0.8	−0.5	−3.9
URBAN	100	0.0	1.7	−0.6	0.6	−0.4	1.0	−0.5	−3.7
RURAL	88	0.2	0.0	0.4	0.6	0.5	0.5	−0.5	−4.2
FY 2000 RECLASSIFICATIONS:									
ALL RECLASSIFIED HOSPITALS	498	0.1	0.0	0.3	0.6	0.4	0.3	5.6	0.9
STANDARDIZED AMOUNT ONLY	66	0.2	0.0	0.3	0.8	0.4	0.4	2.6	−1.4
WAGE INDEX ONLY	386	0.1	0.0	0.3	0.6	0.4	0.3	6.0	1.3
BOTH	46	0.1	0.0	−0.1	0.7	0.0	−0.1	4.8	−0.5
NONRECLASSIFIED	4,398	0.0	0.1	0.1	0.3	0.1	0.0	−0.6	−0.6
ALL URBAN RECLASSIFIED	83	0.0	0.0	−0.1	0.7	0.1	−0.1	4.1	−0.2
STANDARDIZED AMOUNT ONLY	13	0.1	0.1	−0.4	0.9	−0.2	−0.2	0.8	−4.4
WAGE INDEX ONLY	47	0.0	0.1	0.2	0.7	0.3	0.1	5.4	0.6
BOTH	23	0.2	0.0	−0.8	0.7	−0.6	−0.7	0.7	−1.1
NONRECLASSIFIED	2,673	0.0	0.1	0.0	0.3	0.1	−0.1	−0.6	−0.7
ALL RURAL RECLASSIFIED	416	0.1	0.0	0.5	0.6	0.6	0.5	6.5	1.5
STANDARDIZED AMOUNT ONLY	53	0.2	0.0	0.7	0.8	0.9	0.9	3.9	0.6
WAGE INDEX ONLY	339	0.1	0.0	0.4	0.6	0.5	0.4	6.3	1.7
BOTH	23	0.1	0.0	1.0	0.6	1.1	1.0	11.6	0.5
NONRECLASSIFIED	1,725	0.2	0.0	0.4	0.5	0.5	0.5	−0.4	0.6
OTHER RECLASSIFIED HOSPITALS (SECTION 1886(d)(8)(B))	26	0.1	8.7	−0.4	0.3	−0.3	8.3	1.5	3.2

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 1998, and hospital cost report data are from reporting periods beginning in FY 1996 and FY 1997.
[2] This column displays the payment impact of the recalibration of the DRG weights based on FY 1998 MedPAR data and the DRG reclassification changes, in accordance with section 1886(d)(4)(C) of the Act.
[3] This column shows the impacts of implementing the rural wage index floor for urban hospitals in an area that otherwise would have a wage index below the Statewide rural wage index. This was established by section 4410(a) of the BBA of 1997.
[4] This column shows the payment effects of updating the data used to calculate the wage index with data from the FY 1996 cost reports.
[5] This column displays the impact of completely removing the costs and hours associated with teaching physicians Part A, residents, and CRNAs from the wage index calculation.
[6] This column illustrates the payment impact of phasing out the costs and hours associated with teaching physicians Part A, residents, and CRNAs, by calculating the wage index based on a blend of 20 percent of an average hourly wage after removing these costs and 80 percent of an average hourly wage without removing these costs.
[7] This column displays the combined impact of the reclassification and recalibration of the DRGs, the updated and revised wage data used to calculate the wage index, and the budget neutrality adjustment factor for these two changes, in accordance with sections 1886(d)(4)(C)(iii) and 1886(d)(3)(E) of the Act. Thus, it represents the combined impacts shown in columns 1, 2, 3, 4, and 5, and the FY 2000 budget neutrality factor of 0.997808.
[8] Shown here are the effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB). The effects demonstrate the FY 2000 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 2000. Reclassification for prior years has no bearing on the payment impacts shown here.
[9] This column shows changes in payments from FY 1999 to FY 2000. It incorporates all of the changes displayed in columns 6 and 7 (the changes displayed in columns 1, 2 and 5 are included in column 6). It also displays the impact of the FY 2000 update, changes in hospitals' reclassification status in FY 2000 compared to FY 1999, the difference in outlier payments from FY 1999 to FY 2000, and the reductions to payments through the IME and DSH adjustments taking effect during FY 2000. The sum of these columns may be different from the percentage changes shown here due to rounding and interactive effects.

B. Impact of the Changes to the DRG Reclassifications and Recalibration of Relative Weights (Column 1)

In column 1 of Table I, we present the combined effects of the DRG reclassifications and recalibration, as discussed in section II of the preamble to this final rule. Section 1886(d)(4)(C)(i) of the Act requires us to annually make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

We compared aggregate payments using the FY 1999 DRG relative weights (GROUPER version 16) to aggregate payments using the FY 2000 DRG relative weights (GROUPER version 17). Overall payments per case are unchanged due to the DRG reclassifications and recalibration. Consistent with the minor changes we made in the FY 2000 GROUPER, the redistributional impacts of DRG reclassifications and recalibration across hospital groups are very small (no change for large and other urban hospitals; a 0.2 percent increase for rural hospitals). Within hospital categories, the net effects for urban hospitals are small positive changes for small hospitals (a 0.1 percent increase for hospitals with fewer than 200 beds), and small decreases for larger hospitals (a 0.1 percent decrease for hospitals with more than 500 beds). Among rural hospitals, small hospital categories experience the largest increases, a 0.3 percent increase for hospitals with fewer than 50 beds.

The breakdown by urban census division shows either no impact or a small decrease (0.1 percent), except that payments to urban hospitals in Puerto Rico increase by 0.1 percent. All rural hospital census divisions experience payment increases, which range from 0.1 percent to 0.3 percent for hospitals in the East South Central and West South Central census divisions.

This pattern of payment increases for small hospitals and decreases for larger hospitals persists among other categories. Declines in the relative weights of several specific DRGs likely contribute to this trend. Among these DRGs, the relative weight for DRG 108 (Other Cardiothoracic Procedures), declined from 5.9764 in FY 1999 to 5.7715 in this final rule for FY 2000. Also, the relative weight for DRG 112 (Percutaneous Cardiovascular Procedures) declined from 1.9893 in FY 1999 to 1.9217 in this final rule for FY 2000. Although these cardiovascular procedures are not necessarily limited to very large hospitals, we would expect they are more likely to occur in larger hospitals. As the relative weights of DRGs predominantly occurring in large hospitals decline, the relative weights of other DRGs rise, leading to the small payment increases in hospitals less likely to be affected by the declines in the DRGs noted above.

C. Impact of the Wage Index Floor for Urban Areas (Column 2)

Section 4410(a) of the BBA of 1997 required that the wage indexes for urban hospitals may not be below the Statewide rural wage index for the State in which the urban hospitals are located. The section went on to state that this floor must be implemented in a budget neutral manner, so that total payments after establishing the floor are equal to what they were prior to establishing the floor. We include this impact when we calculate the wage and recalibration budget neutrality factor, as noted in the Addendum to this final rule.

There are 36 MSAs (and 226 hospitals) affected by this provision for FY 2000. The MSAs affected are identified in Table 4A, as indicated in the footnote. The largest impacts among census divisions are increases of 0.2 percent for urban hospitals in New England and the South Atlantic. In New England, several Massachusetts MSAs (including the 63 hospitals in the Boston MSA) receive the rural Massachusetts wage index. Similarly, in the South Atlantic, seven Florida MSAs receive the rural Florida wage index.

D. Impact of Updating the Wage Data (Column 3)

Section 1886(d)(3)(E) of the Act requires that, beginning October 1, 1993, we annually update the wage data used to calculate the wage index. In accordance with this requirement, the wage index for FY 2000 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1995 and before October 1, 1996. As with the previous column, the impact of the new data on hospital payments is isolated by holding the other payment parameters constant in the two simulations. That is, column 3 shows the percentage changes in payments when going from a model using the FY 1999 wage index (effective for discharges on or after March 1, 1999 (64 FR 9378)) based on FY 1995 wage data before geographic reclassifications including the application of the rural floor to a model using the FY 2000 prereclassification wage index based on FY 1996 wage data.

The wage data collected on the FY 1996 cost reports are similar to the data used in the calculation of the FY 1999 wage index. For example, the wage index values used here include all physician Part A costs (direct and contracted), resident costs, and CRNA costs. Also, as in the calculation for the FY 1999 wage index, contract labor costs and hours for top management positions are included, and the overhead costs allocated to patient care areas excluded from the calculation of the wage index are excluded as well.

The results indicate that the new wage data have an overall impact of a 0.1 percent increase in hospital payments (prior to applying the budget neutrality factor, see column 6). Rural hospitals especially appear to benefit from the update. Their payments increase by 0.4 percent. Rural Arizona experiences an increase of nearly 7 percent in the prereclassification wage index values due to new data.

Urban hospitals as a group are not significantly affected by the updated wage data. Urban West South Central hospitals experience a 0.6 percent decrease. Meanwhile, the urban New England census division experiences a 0.6 percent increase, and urban East South Central payments per case increase 0.5 percent due to the update to the wage data.

The largest increases are seen in the rural census divisions. Rural Puerto Rico experiences the greatest positive impact, 1.8 percent. Hospitals in three other rural census divisions receive relatively large positive impacts: South Atlantic at 1.0 percent, East South Central at 0.7 percent, and West North Central at 0.8 percent.

E. Impact of Removing Teaching Physicians' Part A, Residents', and CRNAs' Costs (Column 4)

As discussed in section III.C of the preamble, we are revising the calculation of the wage index by phasing out the costs and hours associated with teaching physicians Part A, residents, and CRNAs. Although the FY 2000 wage index is based upon a blend of 20 percent of hospitals' average hourly wages after removing these costs and 80 percent of average hourly wages calculated without removing these costs, this column displays the impacts on payments per case of completely removing these costs from the wage index calculation.

As described above in section III.C.1 of the preamble, we determined teaching physician costs by first subtracting the costs and hours attributable to teaching physicians based upon the special survey data we collected for this purpose. If these data were not available from the survey for a particular teaching hospital, 80 percent of the total physician Part A costs and hours for that hospital were removed, consistent with the recommendation of the hospital industry (see discussion in section III.C.1 of the preamble). If a teaching hospital did not separately report its physician Part A costs on the cost report, the amount reported on Line 23, Column 1, of the Worksheet A was removed from the total wage data (as was an associated amount for hours). Resident and CRNA costs and hours were removed in their entirety, based upon the data separately attributed to these employees on the Worksheet S–3.

Column 4 shows the payment impacts of completely removing these costs, relative to wage index values calculated based on the FY 1996 wage data without removing these costs. The overall payment impact of completely removing these costs and hours from the wage index calculation would be a 0.4 percent increase in total payments (prior to applying budget neutrality). The FY 2000 wage index is, however, based on a blended average hourly wage. The impacts of this blended approach are shown in column 5.

The impacts of removing these costs from the wage index calculation are generally positive across the majority of hospital categories, with negative impacts concentrated in particular groups. Examining the impacts across urban and rural census divisions indicate that urban Middle Atlantic hospitals experience a 0.5 percent decrease. This effect is attributable to the concentration of teaching hospitals in this census division. The largest positive impacts occur in the urban South Atlantic and the Pacific census divisions, with 0.9 percent payment increases.

F. Impact of 5-Year Phase-Out of Teaching Physicians', Residents', and CRNAs' Costs (Column 5)

As described above in section III.E of this final rule, the FY 2000 wage index is calculated by blending 80 percent of hospitals' average hourly wages calculated without removing teaching physician Part A, residents, or CRNA costs (and hours), and 20 percent of average hourly wages calculated after removing these costs (and hours). This constitutes the first year of a 5-year phase-out of these costs, where the proportion of the calculation based upon average hourly wages after removing these costs increases by 20 percentage points per year.

This column shows the impact of the blended wage index relative to a wage index using FY 1996 wage data without removing costs or hours of Part A teaching physicians, residents, or CRNAs. As expected, the hospital categories experiencing significant payment impacts in column 4 are mitigated

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considerably by the blend. The impact is 0.1 percent for all hospitals and for urban hospitals as a category, while for rural hospitals it is 0.5 percent.

The impacts in this column illustrate that, for the FY 2000 wage index, replacing hospitals' FY 1995 wage data with FY 1996 wage data has a much greater impact on the final wage indexes than the removal of GME and CRNA costs. The urban West South Central census division loses 0.6 percent from the new wage data, and gains 0.4 percent from the removal of GME and CRNA costs, but the impact of the blended wage index is a 0.5 decrease relative to last year's wage index.

The following chart compares the shifts in wage index values for labor market areas for FY 2000 relative to FY 1999. This chart demonstrates the impact of the changes for the FY 2000 wage index relative to the FY 1999 wage index. The majority of labor market areas (318) experience less than a 5-percent change. A total of 30 labor market areas experience an increase of more than 5 percent, with 8 having an increase greater than 10 percent. A total of 22 areas experience decreases of more than 5 percent. Of those, 5 decline by 10 percent or more.

Percentage change in area wage index values	Number of labor market areas	
	FY 1999	FY 2000
Increase more than 10 percent	9	8
Increase more than 5 percent and less than 10 percent	29	22
Increase or decrease less than 5 percent	305	318
Decrease more than 5 percent and less than 10 percent	28	17
Decrease more than 10 percent	0	5

Among urban hospitals, 112 would experience an increase of between 5 and 10 percent and 21 more than 10 percent. A total of 13 rural hospitals have increases greater than 5 percent, but none greater than 10 percent. On the negative side, 121 urban hospitals but no rural hospitals have decreases in their wage index values of at least 5 percent but less than 10 percent. There also are no rural hospitals with decreases greater than 10 percent. However, there are 18 urban hospitals in this category. The following chart shows the projected impact for urban and rural hospitals.

Percentage change in area wage index values	Number of hospitals	
	Urban	Rural
Increase more than 10 percent	21	0
Increase more than 5 percent and less than 10 percent	112	13
Increase or decrease less than 5 percent	2587	2051
Decrease more than 5 percent and less than 10 percent	121	0
Decrease more than 10 percent	18	0

G. Combined Impact of DRG and Wage Index Changes—Including Budget Neutrality Adjustment (Column 6)

The impact of DRG reclassifications and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral. In addition, section 1886(d)(3)(E) of the Act specifies that any updates or adjustments to the wage index are to be budget neutral. As noted in the Addendum to this final rule, we compared simulated aggregate payments using the FY 1999 DRG relative weights and wage index (prior to application of the rural floor) to simulated aggregate payments using the FY 2000 DRG relative weights and blended wage index, after applying the rural floor. Based on this comparison, we computed a wage and recalibration budget neutrality factor of 0.997808. In Table I, the combined overall impacts of the effects of both the DRG reclassifications and recalibration and the updated wage index are shown in column 6. The 0.0 percent impact for All Hospitals demonstrates that these changes, in combination with the budget neutrality factor, are budget neutral.

For the most part, the changes in this column are the sum of the changes in columns 1, 2, and 5, minus approximately 0.2 percent attributable to the budget neutrality factor. There may be some variation of plus or minus 0.1 percent due to rounding.

H. Impact of MGCRB Reclassifications (Column 7)

Our impact analysis to this point has assumed hospitals are paid on the basis of their actual geographic location (with the exception of ongoing policies that provide that certain hospitals receive payments on bases other than where they are geographically located, such as hospitals in rural counties that are deemed urban under section 1886(d)(8)(B) of the Act). The changes in column 7 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 2000. As noted below, these decisions affect hospitals' standardized amount and wage index area assignments. In addition, rural hospitals reclassified for purposes of the standardized amount qualify to be treated as urban for purposes of the DSH adjustment.

Beginning in 1998, by February 28 of each year, the MGCRB makes reclassification determinations that will be effective for the next fiscal year, which begins on October 1. (In previous years, these determinations were made by March 30.) The MGCRB may approve a hospital's reclassification request for the purpose of using the other area's standardized amount, wage index value, or both, or for FYs 1999 through 2001, for purposes of qualifying for a DSH adjustment or to receive a higher DSH payment.

The FY 2000 wage index values incorporate all of the MGCRB's reclassification decisions for FY 2000. The wage index values also reflect any decisions made by the HCFA Administrator through the appeals and review process. Additional changes that resulted from the Administrator's review of MGCRB decisions or a request by a hospital to withdraw its application are reflected in this final rule.

The overall effect of geographic reclassification is required by section 1886(d)(8)(D) of the Act to be budget neutral. Therefore, we applied an adjustment of 0.993799 to ensure that the effects of reclassification are budget neutral. (See section II.A.4.b. of the Addendum to this final rule.)

As a group, rural hospitals benefit from geographic reclassification. Their payments rise 2.6 percent, while payments to urban hospitals decline 0.4 percent. Among urban hospital groups (that is, bed size, census division, and special payment status), payments generally decline.

A positive impact is evident among all rural hospital groups. The smallest increases among the rural census divisions is 1.6 percent for Puerto Rico and 1.8 percent for Mountain. The largest increase is in rural West South Central, with an increase of 3.5 percent.

Among rural hospitals designated as RRCs, 128 hospitals are reclassified for purposes of the wage index only, leading to the 5.7 percent increase in payments among RRCs overall. This positive impact on RRCs is also reflected in the category of rural hospitals with 200 or more beds, which has a 4.8 percent increase in payments.

Rural hospitals reclassified for FY 1999 and FY 2000 experience a 6.6 percent increase in payments. This may be due to the fact that these hospitals have the most to gain from reclassification and have been reclassified for a period of years. Rural hospitals reclassified for FY 2000 but not FY 1999 experience a 5.7 percent increase in payments, while rural hospitals reclassified for FY 1999 but not FY 2000 experience a 0.5 percent decrease in payments. Urban hospitals reclassified for FY 1999 but not FY 2000 experience a 0.5 percent decline in payments overall. Urban hospitals reclassified for FY 2000 but not for FY 1999 experience a 3.3 percent increase in payments.

The FY 2000 Reclassification rows of Table I show the changes in payments per case for all FY 2000 reclassified and nonreclassified hospitals in urban and rural locations for each of the three reclassification categories (standardized amount only, wage index only, or both). The table illustrates that the largest impact for reclassified rural hospitals is for those hospitals reclassified for both the standardized amount and the wage index. These hospitals receive an 11.6 percent increase in payments. In addition, rural hospitals reclassified just for the wage index receive a 6.3 percent payment increase. The overall impact on reclassified hospitals is to increase their payments per case by an average of 5.6 percent for FY 2000.

The reclassification of hospitals primarily affects payment to nonreclassified hospitals through changes in the wage index and the geographic reclassification budget neutrality adjustment required by section 1886(d)(8)(D) of the Act. Among hospitals that are not reclassified, the overall impact of hospital reclassifications is an average decrease in payments per case of about 0.6 percent. Rural nonreclassified hospitals decrease by 0.4 percent, and urban nonreclassified hospitals lose 0.6 percent (the amount of the budget neutrality offset).

I. All Changes (Column 8)

Column 8 compares our estimate of payments per case, incorporating all changes reflected in this final rule for FY 2000 (including statutory changes), to our estimate of payments per case in FY 1999. It includes the effects of the 1.1 percent update to the standardized amounts and the hospital-specific rates for SCHs and MDHs. It also reflects the 1.2 percentage point difference between the projected outlier payments in FY 2000 (5.1 percent of total DRG payments) and the current estimate of the percentage of actual outlier payments in FY 1999 (6.3 percent), as described in the introduction to this Appendix and the Addendum to this final rule.

Additional changes affecting the difference between FY 1999 and FY 2000 payments are the reductions to the IME and DSH adjustments enacted by the BBA of 1997. These changes initially went into effect during FY 1998 and include additional decreases in payment for each of several succeeding years. As noted in the introduction to this impact analysis, for FY 2000, IME is reduced to approximately a 6.0 percent rate of increase, and DSH is reduced by 3 percent from what hospitals otherwise would have received. We estimate the overall effect of these statutory changes to be a 0.5 percent reduction in FY 2000 payments. For hospitals receiving both IME and DSH, the impact is estimated to be a 0.8 percent reduction in payments per case.

We also note that column 8 includes the impacts of FY 2000 MGCRB reclassifications compared to the payment impacts of FY 1999 reclassifications. Therefore, when comparing FY 2000 payments to FY 1999, the percent changes due to FY 2000 reclassifications shown in column 7 need to be offset by the effects of reclassification on hospitals' FY 1999 payments (column 7 of Table 1, July 31, 1998 final rule (63 FR 41106)). For example, the impact of MGCRB reclassifications on rural hospitals' FY 1999 payments was approximately a 2.7 percent increase, more than offsetting the 2.6 percent increase in column 7 for FY 2000. Therefore, the net change in FY 2000 payments due to reclassification for rural hospitals is actually a decrease of 0.1 percent relative to FY 1999. However, last year's analysis contained a somewhat different set of hospitals, so this might affect the numbers slightly.

There might also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 8 may not equal the sum of the changes in columns 6 and 7, plus the other impacts that we are able to identify.

The overall payment change from FY 1999 to FY 2000 for all hospitals is a 0.5 percent decrease. This reflects the 1.1 percent update for FY 2000, the 1.2 percent lower outlier payments in FY 2000 compared to FY 1999 (5.1 percent compared to 6.3 percent); and the 0.5 percent reduction due to lower IME and DSH payments.

Hospitals in urban areas experience a 0.7 percent drop in payments per case compared to FY 1999. The 0.4 percent negative impact due to reclassification is offset by an identical negative impact for FY 1999. The impact of reducing IME and DSH is a 0.6 percent reduction in FY 2000 payments per case. Payment to hospitals in large urban areas are expected to fall 0.8 percent per case compared to 0.5 percent per case for hospitals in other urban areas.

Hospitals in rural areas, meanwhile, experience a 1.0 percent payment increase. As discussed above, this is primarily due to the positive effect of the wage index and DRG changes (0.5 percent increase).

Among census divisions, urban Middle Atlantic displays the largest negative impact (−1.4 percent), followed by the West South Central (−1.1 percent decrease in payments). In the case of hospitals in the urban Middle Atlantic census division, these decreases are related to changes to the wage index, plus a greater impact of the IME and DSH payment reductions and the decline in estimated outlier payments. In the case of the urban West South Central census division, the decline is largely related to changes in the wage index. East South Central and Puerto Rico are the only urban categories grouped by census division not exhibiting decreases in payments per case for FY 2000.

No rural census division experiences a negative payment impact, although payments to rural hospitals in the Pacific census division are unchanged from FY 1999. The largest increases by rural hospitals are in Puerto Rico at 2.4 percent. Among rural census divisions, the largest increases are in the East South Central and West North Central, with 1.6 percent and 1.5 percent increases in their FY 2000 payments per case, respectively. As with the other impacts discussed above, this is generally due to updating the wage data. One rural census division that did not experience an increase in payments as large as suggested by the positive impact of updating the wage data was the South Atlantic. This census division experienced a 3.8 percent payment increase due to geographic reclassification in FY 1999, but the effect of geographic reclassification in FY 2000 was only 3.0 percent.

Among special categories of rural hospitals, those hospitals receiving payment under the hospital-specific methodology (SCHs, MDHs, and SCH/RRCs) experience payment increases of 1.4 percent, 1.2 percent, and 1.4 percent, respectively. This outcome is primarily related to the fact that, for hospitals receiving payments under the hospital-specific methodology, there are no outlier payments. Therefore, these hospitals do not experience negative payment impacts from the decline in outlier payments from FY 1999 to FY 2000 (from 6.3 of total DRG plus outlier payments to the projected 5.1 percent) as do hospitals paid based on the national standardized amounts.

The largest negative payment impacts from FY 1999 to FY 2000 are among hospitals that were reclassified for FY 1999 and are not reclassified for FY 2000. Overall, these hospitals lose 3.9 percent. The urban hospitals in this category lose 3.7 percent, while the rural hospitals lose 4.2 percent. On the other hand, hospitals reclassified for FY 2000 that were not reclassified for FY 1999 would experience the greatest payment increases: 4.7 percent overall; 7.0 percent for 101 rural hospitals in this category and 2.7 percent for 26 urban hospitals.

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TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2000 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Payments per case]

	Number of hospitals (1)	Average FY 1999 payment per case (2)[1]	Average FY 2000 payment per case (3)[1]	All changes (4)
(BY GEOGRAPHIC LOCATION)				
ALL HOSPITALS	4,922	6,779	6,747	−0.5
URBAN HOSPITALS	2,782	7,344	7,293	−0.7
LARGE URBAN AREAS	1,584	7,881	7,815	−0.8
OTHER URBAN AREAS	1,198	6,620	6,590	−0.5
RURAL HOSPITALS	2,140	4,493	4,540	1.0
BED SIZE (URBAN):				
0–99 BEDS	727	4,969	4,958	−0.2
100–199 BEDS	938	6,150	6,141	−0.1
200–299 BEDS	553	7,012	6,977	−0.5
300–499 BEDS	422	7,819	7,764	−0.7
500 OR MORE BEDS	142	9,882	9,726	−1.6
BED SIZE (RURAL):				
0–49 BEDS	1,194	3,720	3,771	1.4
50–99 BEDS	570	4,225	4,274	1.2
100–149 BEDS	223	4,584	4,638	1.2
150–199 BEDS	87	4,962	5,019	1.2
200 OR MORE BEDS	65	5,734	5,749	0.3
URBAN BY CENSUS DIVISION:				
NEW ENGLAND	149	7,757	7,739	−0.2
MIDDLE ATLANTIC	421	8,278	8,162	−1.4
SOUTH ATLANTIC	407	6,970	6,954	−0.2
EAST NORTH CENTRAL	467	6,991	6,960	−0.4
EAST SOUTH CENTRAL	165	6,574	6,572	0.0
WEST NORTH CENTRAL	190	7,099	7,043	−0.8
WEST SOUTH CENTRAL	353	6,785	6,709	−1.1
MOUNTAIN	134	7,014	6,983	−0.5
PACIFIC	449	8,451	8,382	−0.8
PUERTO RICO	47	3,115	3,120	0.2
RURAL BY CENSUS DIVISION:				
NEW ENGLAND	52	5,354	5,383	0.5
MIDDLE ATLANTIC	79	4,858	4,892	0.7
SOUTH ATLANTIC	280	4,660	4,702	0.9
EAST NORTH CENTRAL	283	4,562	4,608	1.0
EAST SOUTH CENTRAL	267	4,138	4,203	1.6
WEST NORTH CENTRAL	492	4,282	4,348	1.5
WEST SOUTH CENTRAL	341	3,997	4,031	0.9
MOUNTAIN	201	4,763	4,825	1.3
PACIFIC	140	5,566	5,567	0.0
PUERTO RICO	5	2,327	2,383	2.4
(BY PAYMENT CATEGORIES)				
URBAN HOSPITALS	2,858	7,309	7,259	−0.7
LARGE URBAN	1,662	7,807	7,740	−0.9
OTHER URBAN	1,197	6,609	6,582	−0.4
RURAL HOSPITALS	2,064	4,468	4,516	1.1
TEACHING STATUS:				
NON-TEACHING	3,809	5,462	5,471	0.2
FEWER THAN 100 RESIDENTS	871	7,173	7,130	−0.6
100 OR MORE RESIDENTS	242	10,898	10,737	−1.5
DISPROPORTIONATE SHARE HOSPITALS (DSH):				
NON-DSH	3,069	5,800	5,787	−0.2
URBAN DSH:				
100 BEDS OR MORE	1,387	7,959	7,899	−0.8
FEWER THAN 100 BEDS	89	5,099	5,105	0.1
RURAL DSH:				
SOLE COMMUNITY (SCH)	158	4,190	4,277	2.1
REFERRAL CENTERS (RRC)	60	5,310	5,371	1.2
OTHER RURAL DSH HOSPITALS:				
100 BEDS OR MORE	49	4,051	4,094	1.1
FEWER THAN 100 BEDS	110	3,589	3,660	2.0
URBAN TEACHING AND DSH:				
BOTH TEACHING AND DSH	716	8,922	8,827	−1.1
TEACHING AND NO DSH	331	7,318	7,256	−0.8
NO TEACHING AND DSH	760	6,331	6,329	0.0
NO TEACHING AND NO DSH	1,052	5,641	5,624	−0.3

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2000 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per case]

	Number of hospitals (1)	Average FY 1999 payment per case (2)[1]	Average FY 2000 payment per case (3)[1]	All changes (4)
RURAL HOSPITAL TYPES:				
NONSPECIAL STATUS HOSPITALS	851	3,911	3,956	1.2
RRC	154	5,198	5,230	0.6
SCH	647	4,462	4,523	1.4
MDH	355	3,758	3,803	1.2
SCH AND RRC	57	5,374	5,446	1.4
TYPE OF OWNERSHIP:				
VOLUNTARY	2,831	6,957	6,920	−0.5
PROPRIETARY	752	6,187	6,171	−0.2
GOVERNMENT	1,259	6,295	6,279	−0.3
UNKNOWN	80	9,713	9,575	−1.4
MEDICARE UTILIZATION AS A PERCENT OF INPATIENT DAYS:				
0–25	386	8,790	8,678	−1.3
25–50	1,775	7,908	7,845	−0.8
50–65	1,893	5,998	5,992	−0.1
OVER 65	786	5,273	5,276	0.1
UNKNOWN	82	9,711	9,573	−1.4
HOSPITALS RECLASSIFIED BY THE MEDICARE GEOGRAPHIC REVIEW BOARD				
RECLASSIFICATION STATUS DURING FY 1999 AND FY 2000:				
RECLASSIFIED DURING BOTH FY 1999 AND FY 2000	370	5,823	5,826	0.0
URBAN	57	7,961	7,853	−1.4
RURAL	313	5,185	5,220	0.7
RECLASSIFIED DURING FY 2000 ONLY	127	5,580	5,840	4.7
URBAN	26	7,182	7,377	2.7
RURAL	101	4,385	4,693	7.0
RECLASSIFIED DURING FY 1999 ONLY	188	5,597	5,378	3.9
URBAN	100	6,389	6,151	−3.7
RURAL	88	4,574	4,382	−4.2
FY 2000 RECLASSIFICATIONS:				
ALL RECLASSIFIED HOSPITALS	498	5,776	5,828	0.9
STANDARDIZED AMOUNT ONLY	66	4,768	4,701	−1.4
WAGE INDEX ONLY	386	5,822	5,900	1.3
BOTH	46	6,255	6,223	−0.5
NONRECLASSIFIED	4,398	6,910	6,867	−0.6
ALL URBAN RECLASSIFIED	83	7,717	7,704	−0.2
STANDARDIZED AMOUNT ONLY	13	5,279	5,047	4.4
WAGE INDEX ONLY	47	8,415	8,464	0.6
BOTH	23	6,992	6,912	−1.1
NONRECLASSIFIED	2,673	7,342	7,289	−0.7
ALL RURAL RECLASSIFIED	416	5,062	5,139	1.5
STANDARDIZED AMOUNT ONLY	53	4,473	4,501	0.6
WAGE INDEX ONLY	339	5,089	5,175	1.7
BOTH	23	5,384	5,409	0.5
NONRECLASSIFIED	1,725	4,113	4,140	0.6
OTHER RECLASSIFIED HOSPITALS (SECTION 1886(d)(8)(B))	26	4,663	4,813	3.2

[1] These payment amounts per case do not reflect any estimates of annual case-mix increase.

Table II presents the projected impact of the changes for FY 2000 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the projected payments per case for FY 2000 with the average estimated per case payments for FY 1999, as calculated under our models. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table II equal the percentage changes in average payments from column 8 of Table I.

VII. Impact of Changes in the Capital Prospective Payment System

A. General Considerations

We now have cost report data for the 6th year of the capital prospective payment system (cost reports beginning in FY 1997) available through the March 1999 update of the Health Care Provider Cost Report Information System (HCRIS). We also have updated information on the projected aggregate amount of obligated capital approved by the fiscal intermediaries. However, our impact analysis of payment changes for capital-related costs is still limited by the lack of hospital-specific data on several items: the hospital's projected new capital costs for each year, its projected old capital costs for each year, and the actual amounts of obligated capital that will be put in use for patient care and recognized as Medicare old capital costs in each year. The lack of this information affects our impact analysis in the following ways:

• Major investment in hospital capital assets (for example, in building and major fixed equipment) occurs at irregular intervals. As a result, there can be significant variation in the growth rates of Medicare capital-related costs per case among hospitals. We do not have the necessary hospital-specific budget data to project the

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hospital capital growth rate for individual hospitals.

• Our policy of recognizing certain obligated capital as old capital makes it difficult to project future capital-related costs for individual hospitals. Under § 412.302(c), a hospital is required to notify its fiscal intermediary that it has obligated capital by the later of October 1, 1992, or 90 days after the beginning of the hospital's first cost reporting period under the capital prospective payment system. The fiscal intermediary must then notify the hospital of its determination whether the criteria for recognition of obligated capital have been met by the later of the end of the hospital's first cost reporting period subject to the capital prospective payment system or 9 months after the receipt of the hospital's notification. The amount that is recognized as old capital is limited to the lesser of the actual allowable costs when the asset is put in use for patient care or the estimated costs of the capital expenditure at the time it was obligated. We have substantial information regarding fiscal intermediary determinations of projected aggregate obligated capital amounts. We still do not know, however, when these projects will actually be put into use for patient care, the actual amount that will be recognized as obligated capital when the project is put into use, or the Medicare share of the recognized costs. Therefore, we do not know actual obligated capital commitments for purposes of the FY 2000 capital cost projections. In Appendix B of this final rule, we discuss the assumptions and computations that we employ to generate the amount of obligated capital commitments for use in the FY 2000 capital cost projections.

In Table III of this section, we present the redistributive effects that are expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals in FY 2000. In addition, we have integrated sufficient hospital-specific information into our actuarial model to project the impact of the FY 2000 capital payment policies by the standard prospective payment system hospital groupings. While we now have actual information on the effects of the transition payment methodology and interim payments under the capital prospective payment system and cost report data for most hospitals, we still need to randomly generate numbers for the change in old capital costs, new capital costs for each year, and obligated amounts that will be put in use for patient care services and recognized as old capital each year. We are unable to predict accurately FY 2000 capital costs for individual hospitals but, with the most recent data hospitals' experience under the capital prospective payment system, there is adequate information to estimate the aggregate impact on most hospital groupings.

B. Projected Impact Based on the FY 2000 Actuarial Model

1. Assumptions

In this impact analysis, we model dynamically the impact of the capital prospective payment system from FY 1999 to FY 2000 using a capital cost model. The FY 2000 model, as described in Appendix B of this final rule, integrates actual data from individual hospitals with randomly generated capital cost amounts. We have capital cost data from cost reports beginning in FY 1989 through FY 1997 as reported on the March 1999 update of HCRIS, interim payment data for hospitals already receiving capital prospective payments through PRICER, and data reported by the intermediaries that include the hospital-specific rate determinations that have been made through April 1, 1999 in the provider-specific file. We used these data to determine the FY 2000 capital rates. However, we do not have individual hospital data on old capital changes, new capital formation, and actual obligated capital costs. We have data on costs for capital in use in FY 1997, and we age that capital by a formula described in Appendix B. Therefore, we need to randomly generate only new capital acquisitions for any year after FY 1997. All Federal rate payment parameters are assigned to the applicable hospital.

For purposes of this impact analysis, the FY 2000 actuarial model includes the following assumptions:

• Medicare inpatient capital costs per discharge will change at the following rates during these periods:

AVERAGE PERCENTAGE CHANGE IN CAPITAL COSTS PER DISCHARGE

Fiscal year	Percentage change
1998	0.37
1999	1.00
2000	1.00

• The Medicare case-mix index will decrease by 0.5 percent in FY 1999 and increase by 0.5 percent in FY 2000.

• The Federal capital rate and hospital-specific rate were updated in FY 1996 by an analytical framework that considers changes in the prices associated with capital-related costs, and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The FY 2000 update is 0.3 percent (see section IV of the Addendum to this final rule).

2. Results

We have used the actuarial model to estimate the change in payment for capital-related costs from FY 1999 to FY 2000. Table III shows the effect of the capital prospective payment system on low capital cost hospitals and high capital cost hospitals. We consider a hospital to be a low capital cost hospital if, based on a comparison of its initial hospital-specific rate and the applicable Federal rate, it will be paid under the fully prospective payment methodology. A high capital cost hospital is a hospital that, based on its initial hospital-specific rate and the applicable Federal rate, will be paid under the hold-harmless payment methodology. Based on our actuarial model, the breakdown of hospitals is as follows:

CAPITAL TRANSITION PAYMENT METHODOLOGY FOR FY 2000

Type of hospital	Percent of hospitals	Percent of discharges	Percent of capital costs	Percent of capital payments
Low Cost Hospital	66	61	53	59
High Cost Hospital	34	39	47	41

A low capital cost hospital may request to have its hospital-specific rate redetermined based on old capital costs in the current year, through the later of the hospital's cost reporting period beginning in FY 1994 or the first cost reporting period beginning after obligated capital comes into use (within the limits established in § 412.302(e) for putting obligated capital into use for patient care). If the redetermined hospital-specific rate is greater than the adjusted Federal rate, these hospitals will be paid under the hold-harmless payment methodology. Regardless of whether the hospital became a hold-harmless payment hospital as a result of a redetermination, we continue to show these hospitals as low capital cost hospitals in Table III.

Assuming no behavioral changes in capital expenditures, Table III displays the percentage change in payments from FY 1999 to FY 2000 using the above described actuarial model. With the Federal rate, we estimate aggregate Medicare capital payments will increase by 3.64 percent in FY 2000.

TABLE III.—IMPACT OF FINAL CHANGES FOR FY 2000 ON PAYMENTS PER DISCHARGE

	Number of hospitals	Discharges	Adjusted federal payment	Average federal percent	Hospital specific payment	Hold harmless payment	Exceptions payment	Total payment	Percent change over FY 1999
FY 1999 Payments per Discharge:									
Low Cost Hospitals	3,203	6,746,008	$518.19	81.46	$59.00	$3.39	$8.65	$589.23	
Fully Prospective	2,983	16,158,921	507.63	80.00	64.62		7.26	579.51	
100% Federal Rate	185	517,623	652.10	100.00			5.01	657.11	
Hold Harmless	35	69,464	456.70	69.51		329.49	158.88	945.07	
High Cost Hospitals	1,640	4,259,861	649.03	97.08		27.20	15.52	691.75	
100% Federal Rate	1,425	3,846,137	664.09	100.00			9.25	673.35	
Hold Harmless	215	413,723	508.96	71.69		280.11	73.75	862.82	
Total Hospitals	4,843	11,005,868	568.83	87.69	36.16	12.61	11.31	628.91	
FY 2000 Payments per Discharge:									
Low Cost Hospitals	3,203	6,814,738	$573.54	90.68	$29.43	$2.32	$11.72	$617.01	4.71
Fully Prospective	2,983	6,221,683	568.06	90.00	32.23		8.39	608.68	5.03
100% Federal Rate	190	542,491	643.37	100.00			17.97	661.34	0.64
Hold Harmless	30	50,564	499.44	74.17		312.08	354.68	1,166.20	23.40
High Cost Hospitals	1,640	4,303,107	641.55	97.57		22.65	25.76	689.96	−0.26
100% Federal Rate	1,432	3,901,155	653.77	100.00			15.41	669.18	−0.62
Hold Harmless	208	401,953	522.90	75.31		242.47	126.27	891.65	3.34
Total Hospitals	4,843	11,117,846	599.86	93.41	18.04	10.19	17.16	645.25	2.60

We project that low capital cost hospitals paid under the fully prospective payment methodology will experience an average increase in payments per case of 5.03 percent, and high capital cost hospitals will experience an average decrease of 0.26 percent. These results are due to the change in the blended percentages to the payment system to 90 percent adjusted Federal rate and 10 percent hospital-specific rate.

We project that low capital cost hospitals paid under the hold-harmless payment methodology will experience an average increase in payments per case of 23.40 percent over FY 1999. Because this group of hospitals consists of such a small number of hospitals, when determining the percentage change over FY 2000, a slight change in the number of hospitals in that group (35 hospitals in FY 1999 compared to 30 hospitals in FY 2000) results in a large percentage change. That is, the five hospitals that left this group from FY 1999 to FY 2000 were lower cost hospitals, so that there are fewer hospitals in this group over which to distribute their total capital payments. As a result, the remaining hospitals in this group are projected to receive a larger increase in payments over FY 1999.

For hospitals paid under the fully prospective payment methodology, the Federal rate payment percentage will increase from 80 percent to 90 percent and the hospital-specific rate payment percentage will decrease from 20 to 10 percent in FY 2000. The Federal rate payment percentage for hospitals paid under the hold-harmless payment methodology is based on the hospital's ratio of new capital costs to total capital costs. The average Federal rate payment percentage for high cost hospitals receiving a hold-harmless payment for old capital will increase from 71.69 percent to 75.31 percent. We estimate the percentage of hold-harmless hospitals paid based on 100 percent of the Federal rate will increase from 86.9 percent to 87.3 percent. We estimate that the few remaining high cost hold-harmless hospitals (208) will experience an increase in payments of 3.34 percent from FY 1999 to FY 2000. This estimate differs from our projection (8.38 percent) in the proposed rule; in the proposed rule, we estimated a larger increase in exception payments for these hospitals between FY 1999 and FY 2000 than we are now projecting in this final rule.

We expect that the average hospital-specific rate payment per discharge will decrease from $64.62 in FY 1999 to $32.23 in FY 2000. This is mostly due to the decrease in the hospital-specific rate payment percentage from 20 percent in FY 1999 to 10 percent in FY 2000.

We have made no changes in our exceptions policies for FY 2000. As a result, the minimum payment levels are—

• 90 percent for sole community hospitals;

• 80 percent for urban hospitals with 100 or more beds and a disproportionate share patient percentage of 20.2 percent or more; or

• 70 percent for all other hospitals.

We estimate that exceptions payments will increase from 1.80 percent of total capital payments in FY 1999 to 2.66 percent of payments in FY 2000. The projected distribution of the exception payments is shown in the chart below:

Estimated FY 2000 Exceptions Payments

Type of hospital	Number of hospitals	Percent of exceptions payments
Low Capital Cost	171	42
High Capital Cost	216	58
Total	387	100

C. Cross-Sectional Comparison of Capital Prospective Payment Methodologies.

Table IV presents a cross-sectional summary of hospital groupings by capital prospective payment methodology. This distribution is generated by our actuarial model.

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS (ESTIMATED FOR FY 2000)

	(1) Total No. of hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
By Geographic Location:				
All hospitals	4,843	4.9	33.5	61.6
Large urban areas (populations over 1 million)	1,546	5.2	41.1	53.6
Other urban areas (populations of 1 million or fewer)	1,167	6.5	41.0	52.4
Rural areas	2,130	3.8	23.8	72.4
Urban hospitals	2,713	5.8	41.1	53.1

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TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS (ESTIMATED FOR FY 2000)—Continued

	(1) Total No. of hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
0–99 beds	670	7.2	33.3	59.6
100–199 beds	927	7.9	47.6	44.6
200–299 beds	552	4.7	41.8	53.4
300–499 beds	422	1.2	39.3	59.5
500 or more beds	142	3.5	38.0	58.5
Rural hospitals	2,130	3.8	23.8	72.4
0–49 beds	1,187	3.1	17.2	79.7
50–99 beds	568	5.1	28.7	66.2
100–149 beds	223	6.3	36.3	57.4
150–199 beds	87	0.0	32.2	67.8
200 or more beds	65	1.5	47.7	50.8
By Region:				
Urban by Region	2,713	5.8	41.1	53.1
New England	148	1.4	27.7	70.9
Middle Atlantic	415	4.1	34.9	61.0
South Atlantic	402	5.7	52.5	41.8
East North Central	463	5.4	31.5	63.1
East South Central	158	9.5	48.1	42.4
West North Central	181	4.4	39.2	56.4
West South Central	332	11.7	58.1	30.1
Mountain	124	2.4	53.2	44.4
Pacific	443	5.2	34.8	60.0
Puerto Rico	47	4.3	25.5	70.2
Rural by Region	2,130	3.8	23.8	72.4
New England	52	1.9	23.1	75.0
Middle Atlantic	77	6.5	19.5	74.0
South Atlantic	279	1.4	34.4	64.2
East North Central	282	2.1	20.2	77.7
East South Central	267	3.0	32.6	64.4
West North Central	491	3.3	16.3	80.4
West South Central	338	5.0	26.6	68.3
Mountain	200	8.0	17.5	74.5
Pacific	139	5.8	24.5	69.8
Large urban areas (populations over 1 million)	1,624	5.0	41.1	53.8
Other urban areas (populations of 1 million or fewer)	1,165	6.5	40.6	52.9
Rural areas	2,054	3.9	23.4	72.7
Teaching Status:				
Non-teaching	3,731	5.1	32.9	61.9
Fewer than 100 Residents	870	4.7	36.2	59.1
100 or more Residents	242	2.5	32.2	65.3
Disproportionate share hospitals (DSH):				
Non-DSH	2,997	4.9	29.3	65.8
Urban DSH:				
100 or more beds	1,383	5.0	44.1	50.9
Less than 100 beds	87	8.0	23.0	69.0
Rural DSH:				
Sole Community (SCH/EACH)	158	5.1	22.8	72.2
Referral Center (RRC/EACH)	60	3.3	48.3	48.3
Other Rural:				
100 or more beds	49	4.1	40.8	55.1
Less than 100 beds	109	2.8	25.7	71.6
Urban teaching and DSH:				
Both teaching and DSH	715	3.8	36.9	59.3
Teaching and no DSH	331	5.7	32.3	61.9
No teaching and DSH	755	6.5	48.5	45.0
No teaching and no DSH	988	6.4	40.9	52.7
Rural Hospital Types:				
Non special status hospitals	842	1.9	24.3	73.8
RRC/EACH	154	1.9	42.2	55.8
SCH/EACH	647	7.6	21.0	71.4
Medicare-dependent hospitals (MDH)	354	1.7	16.9	81.4
SCH, RRC and EACH	57	10.5	26.3	63.2
Type of Ownership:				
Voluntary	2,821	4.5	32.9	62.6
Proprietary	732	8.5	57.8	33.7
Government	1,257	3.7	21.0	75.3
Medicare Utilization as a Percent of Inpatient Days:				
0–25	375	5.3	28.5	66.1
25–50	1,770	5.2	35.9	58.9
50–65	1,885	4.8	32.6	62.6
Over 65	779	4.4	33.0	62.6

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS (ESTIMATED FOR FY 2000)—Continued

As we explain in Appendix B of this final rule, we were not able to determine a hospital-specific rate for 79 of the 4,922 hospitals in our database. Consequently, the payment methodology distribution is based on 4,843 hospitals. These data should be fully representative of the payment methodologies that will be applicable to hospitals.

The cross-sectional distribution of hospital by payment methodology is presented by: (1) geographic location; (2) region; and (3) payment classification. This provides an indication of the percentage of hospitals within a particular hospital grouping that will be paid under the fully prospective payment methodology and the hold-harmless payment methodology.

The percentage of hospitals paid fully Federal (100 percent of the Federal rate) as hold-harmless hospitals is expected to increase to 33.5 percent in FY 2000.

Table IV indicates that 61.6 percent of hospitals will be paid under the fully prospective payment methodology. (This figure, unlike the figure of 66 percent for low cost capital hospitals in the chart "Capital Transition Payment Methodology for FY 2000," shown previously in section VII.B.2 of this impact analysis, takes into account the effects of redeterminations. In other words, this figure does not include low cost hospitals that, following a hospital-specific rate redetermination, are now paid under the hold-harmless methodology.) As expected, ■ relatively higher percentage of rural and governmental hospitals (72.4 percent and 75.3 percent, respectively by payment classification) are being paid under the fully prospective payment methodology. This is a reflection of their lower than average capital costs per case. In contrast, only 33.7 percent of proprietary hospitals are being paid under the fully prospective methodology. This is ■ reflection of their higher than average capital costs per case. (We found, at the time of the August 30, 1991 final rule (56 FR 43430), that 62.7 percent of proprietary hospitals had a capital cost per case above the national average cost per case.)

D. Cross-Sectional Analysis of Changes in Aggregate Payments

We used our FY 2000 actuarial model to estimate the potential impact of our changes for FY 2000 on total capital payments per case, using a universe of 4,843 hospitals. The individual hospital payment parameters are taken from the best available data, including: the April 1, 1999 update to the provider-specific file, cost report data, and audit information supplied by intermediaries. In Table V we present the results of the cross-sectional analysis using the results of our actuarial model and the aggregate impact of the FY 2000 payment policies. Columns 3 and 4 show estimates of payments per case under our model for FY 1999 and FY 2000. Column 5 shows the total percentage change in payments from FY 1999 to FY 2000. Column 6 presents the percentage change in payments that can be attributed to Federal rate changes alone.

Federal rate changes represented in Column 6 include the 0.28 percent decrease in the Federal rate, a 0.5 percent increase in case mix, changes in the adjustments to the Federal rate (for example, the effect of the new hospital wage index on the geographic adjustment factor), and reclassifications by the MGCRB. Column 5 includes the effects of the Federal rate changes represented in Column 6. Column 5 also reflects the effects of all other changes, including the change from 80 percent to 90 percent in the portion of the Federal rate for fully prospective hospitals, the hospital-specific rate update, changes in the proportion of new to total capital for hold-harmless hospitals, changes in old capital (for example, obligated capital put in use), hospital-specific rate redeterminations, and exceptions. The comparisons are provided by: (1) geographic location, (2) region, and (3) payment classification.

The simulation results show that, on average, capital payments per case can be expected to increase 2.6 percent in FY 2000, despite the effect of the 0.9 percent decrease attributable to the reduction in the Federal rate and other factors (which include changes in the adjustment to the Federal rate, the increase in case mix, and the other components of column 6 of table V).

Our comparison by geographic location shows that urban and rural hospitals will experience slightly different rates of increase in capital payments per case (2.5 percent and 3.2 percent, respectively). This is due to the differing impact on urban hospitals relative to rural hospitals (-1.1 percent and 0.2 percent, respectively) from Federal rate changes alone. Urban hospitals will gain approximately the same as rural hospitals (3.6 percent and 3.0 percent, respectively) from the effects of all other changes.

Most regions are estimated to receive increases in total capital payments per case, partly due to the increased share of payments that are based on the Federal rate (from 80 to 90 percent). Changes by region vary from a low of 0.4 percent decrease (West South Central urban region) to a high of 5.2 percent increase (West North Central rural region).

By type of ownership, government hospitals are projected to have the largest rate of increase of total payment changes (3.7 percent, a 4.2 percent increase from the effects of all other changes and a 0.5 percent decrease due to Federal rate changes). Payments to voluntary hospitals will increase 2.7 percent (a 3.6 percent increase from the effects of all other changes and a 0.9 percent decrease due to Federal rate changes), and payments to proprietary hospitals will increase 0.7 percent (a 2.2 percent increase from the effects of all other changes and a 1.5 percent decrease due to Federal rate changes).

Section 1886(d)(10) of the Act established the MGCRB. Hospitals may apply for reclassification for purposes of the standardized amount, wage index, or both, and for purposes of DSH for FYs 1999 through 2001. Although the Federal capital rate is not affected, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes affects the geographic adjustment factor, since that factor is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 2000 compared to the effects of reclassification for FY 1999, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. For FY 2000 reclassifications, we indicate those hospitals reclassified for standardized amount purposes only, for wage index purposes only, and for both purposes. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

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Hospitals reclassified for FY 2000 as a whole are projected to experience a 3.7 percent increase in payments (a 3.5 percent increase attributable to the effects of all other changes and a 0.2 percent increase attributable to Federal rate changes). Payments to nonreclassified hospitals will increase less (2.5 percent) than reclassified hospitals (3.7 percent) overall. While payments to reclassified hospitals will increase (0.2 percent) from the Federal rate changes, payments to nonreclassified hospitals will decrease by 1.1 percent from the Federal rate changes. However, they will both gain about the same from the effects of all other changes (3.5 percent compared to 3.6 percent).

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE

[FY 1999 Payments Compared to FY 2000 Payments]

	Number of hospitals	Average FY 1999 Payments/case	Average FY 2000 Payments/case	All changes	Portion attributable to federal rate change
By Geographic Location:					
All hospitals	4,843	629	645	2.6	−0.9
Large urban areas (populations over 1 million)	1,546	729	745	2.2	−1.1
Other urban areas (populations of 1 million or fewer)	1,167	616	634	3.0	−1.0
Rural areas	2,130	418	432	3.2	0.2
Urban hospitals	2,713	681	698	2.5	−1.1
0–99 beds	670	499	506	1.4	−1.0
100–199 beds	927	597	613	2.8	−1.0
200–299 beds	552	649	663	2.2	−1.0
300–499 beds	422	701	723	3.1	−1.0
500 or more beds	142	899	917	2.0	−1.4
Rural hospitals	2,130	418	432	3.2	0.2
0–49 beds	1,187	343	358	4.6	0.6
50–99 beds	568	391	409	4.5	0.3
100–149 beds	223	436	448	2.8	0.3
150–199 beds	87	451	464	2.9	0.0
200 or more beds	65	535	539	0.8	−0.4
By Region:					
Urban by Region	2,713	681	698	2.5	−1.1
New England	148	691	721	4.3	−0.2
Middle Atlantic	415	752	766	1.8	−1.3
South Atlantic	402	665	690	3.8	−0.9
East North Central	463	638	659	3.3	−0.5
East South Central	158	629	643	2.2	−1.1
West North Central	181	669	691	3.4	−1.2
West South Central	332	669	672	0.4	−2.0
Mountain	124	648	660	1.8	−0.8
Pacific	443	755	768	1.7	−1.4
Puerto Rico	47	293	296	1.0	−1.6
Rural by Region	2,130	418	432	3.2	0.2
New England	52	499	516	3.5	0.0
Middle Atlantic	77	441	455	3.1	−0.2
South Atlantic	279	435	445	2.5	−0.1
East North Central	282	427	438	2.6	0.2
East South Central	267	385	398	3.5	0.6
West North Central	491	405	427	5.2	0.8
West South Central	338	375	385	2.5	−0.1
Mountain	200	439	454	3.4	0.4
Pacific	139	495	513	3.6	−0.8
By Payment Classification:					
All hospitals	4,843	629	645	2.6	−0.9
Large urban areas (populations over 1 million)	1,624	722	738	2.2	−1.1
Other urban areas (populations of 1 million or fewer)	1,165	614	633	3.0	−1.0
Rural areas	2,054	415	429	3.3	0.2
Teaching Status:.					
Non-teaching	3,731	524	538	2.7	−0.7
Fewer than 100 Residents	870	661	676	2.3	−1.1
100 or more Residents	242	951	978	2.8	−1.1
Urban DSH:					
100 or more beds	1,383	721	739	2.5	−1.1
Less than 100 beds	87	503	503	0.1	−0.4
Rural DSH:					
Sole Community (SCH/EACH)	158	371	385	3.7	0.8
Referral Center (RRC/EACH)	60	474	484	2.1	0.0
Other Rural:					
100 or more beds	49	378	386	2.1	0.2
Less than 100 beds	109	327	342	4.8	1.2
Urban teaching and DSH:					
Both teaching and DSH	715	794	813	2.4	−1.2
Teaching and no DSH	331	680	699	2.8	−1.1
No teaching and DSH	755	596	613	2.8	−1.0

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[FY 1999 Payments Compared to FY 2000 Payments]

	Number of hospitals	Average FY 1999 Payments/case	Average FY 2000 Payments/case	All changes	Portion attributable to federal rate change
No teaching and no DSH	988	564	577	2.2	−1.0
Rural Hospital Types:					
Non special status hospitals	842	369	382	3.5	0.4
RRC/EACH	154	484	496	2.5	−0.3
SCH/EACH	647	410	427	4.0	0.3
Medicare-dependent hospitals (MDH)	354	344	360	4.6	0.4
SCH, RRC and EACH	57	489	502	2.6	0.5
Hospitals Reclassified by the Medicare Geographic Classification Review Board:					
Reclassification Status During FY99 and FY00:					
Reclassified During Both FY99 and FY00	370	546	563	3.0	−0.7
Reclassified During FY00 Only	127	528	563	6.7	3.6
Reclassified During FY99 Only	146	518	508	−2.0	−4.3
FY00 Reclassifications:					
All Reclassified Hospitals	498	543	563	3.7	0.2
All Nonreclassified Hospitals	4,319	640	656	2.5	−1.1
All Urban Reclassified Hospitals	83	715	745	4.1	−0.7
Urban Nonreclassified Hospitals	2,604	680	697	2.4	−1.1
All Reclassified Rural Hospitals	415	479	496	3.5	0.6
Rural Nonreclassified Hospitals	1,715	377	388	3.0	−0.3
Other Reclassified Hospitals (Section 1886(D)(8)(B))	26	456	470	3.0	1.8
Type of Ownership:					
Voluntary	2,821	643	661	2.7	−0.9
Proprietary	732	625	630	0.7	−1.5
Government	1,257	552	572	3.7	−0.5
Medicare Utilization as a Percent of Inpatient Days:					
0–25	375	762	781	2.4	−1.5
25–50	1,770	724	740	2.2	−1.1
50–65	1,885	567	585	3.1	−0.8

Appendix B: Technical Appendix on the Capital Cost Model and Required Adjustments

Under section 1886(g)(1)(A) of the Act, we set capital prospective payment rates for FY 1992 through FY 1995 so that aggregate prospective payments for capital costs were projected to be 10 percent lower than the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. To implement this requirement, we developed the capital acquisition model to determine the budget neutrality adjustment factor. Even though the budget neutrality requirement expired effective with FY 1996, we must continue to determine the recalibration and geographic reclassification budget neutrality adjustment factor and the reduction in the Federal and hospital-specific rates for exceptions payments. To determine these factors, we must continue to project capital costs and payments.

We used the capital acquisition model from the start of prospective payments for capital costs through FY 1997. We now have 6 years of cost reports under the capital prospective payment system. For FY 1998, we developed a new capital cost model to replace the capital acquisition model. This revised model makes use of the data from these cost reports.

The following cost reports are used in the capital cost model for this final rule: the March 31, 1999 update of the cost reports for PPS–IX (cost reporting periods beginning in FY 1992), PPS–X (cost reporting periods beginning in FY 1993), PPS–XI (cost reporting periods beginning in FY 1994), PPS–XII (cost reporting periods beginning in FY 1995), PPS–XIII (cost reporting periods beginning in FY 1996), and PPS–XIV (cost reporting periods beginning in FY 1997). In addition to model payments, we use the April 1, 1999 update of the provider-specific file and the March 1994 update of the intermediary audit file.

Since hospitals under alternative payment system waivers (that is, hospitals in Maryland) are currently excluded from the capital prospective payment system, we excluded these hospitals from our model.

We developed FY 1992 through FY 1999 hospital-specific rates using the provider-specific file and the intermediary audit file. (We used the cumulative provider-specific file, which includes all updates to each hospital's records, and chose the latest record for each fiscal year.) We checked the consistency between the provider-specific file and the intermediary audit file. We ensured that increases in the hospital-specific rates were at least as large as the published updates (increases) for the hospital-specific rates each year. We were able to match hospitals to the files as shown in the following table:

Source	Number of hospitals
Provider-Specific File Only	145
Provider-Specific and Audit File	4,777
Total	4,922

Of the 4,922 hospitals, 105 had unusable or missing data or had no cost reports available. For 23 of the 105 hospitals, we were unable to determine a hospital-specific rate from the available cost reports. However, there was adequate cost information to determine that these hospitals were paid under the hold-harmless methodology. Since the hospital-specific rate is not used to determine payments for hospitals paid under the hold-harmless methodology, there was sufficient cost report information available to include these 21 hospitals in the analysis. We were able to estimate hospital specific amounts from the PPS–IX cost report data for an additional two hospitals and from the PPS–X cost report data for one more hospital. Hence, we were able to use 26 of the 105 hospitals. We used 4,843 hospitals for the analysis. Seventy-nine hospitals could not be used in the analysis because of insufficient information. These hospitals account for less than 0.3 percent of admissions. Therefore, any effects from the elimination of their cost report data should be minimal.

We analyzed changes in capital-related costs (depreciation, interest, rent, leases, insurance, and taxes) reported in the cost reports. We found a wide variance among

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hospitals in the growth of these costs. For hospitals with more than 100 beds, the distribution and mean of these cost increases were different for large changes in bed-size (greater than ±20 percent). We also analyzed changes in the growth in old capital and new capital for cost reports that provided this information. For old capital, we limited the analysis to decreases in old capital. We did this since the opportunity for most hospitals to treat "obligated" capital put into service as old capital has expired. Old capital costs should decrease as assets become fully depreciated and as interest costs decrease as the loan is amortized.

The new capital cost model separates the hospitals into three mutually exclusive groups. Hold-harmless hospitals with data on old capital were placed in the first group. Of the remaining hospitals, those hospitals with fewer than 100 beds comprise the second group. The third group consists of all hospitals that did not fit into either of the first two groups. Each of these groups displayed unique patterns of growth in capital costs. We found that the gamma distribution is useful in explaining and describing the patterns of increase in capital costs. A gamma distribution is a statistical distribution that can be used to describe patterns of growth rates, with the greatest proportion of rates being at the low end. We use the gamma distribution to estimate individual hospital rates of increase as follows:

(1) For hold-harmless hospitals, old capital cost changes were fitted to a truncated gamma distribution, that is, a gamma distribution covering only the distribution of cost decreases. New capital cost changes were fitted to the entire gamma distribution, allowing for both decreases and increases.

(2) For hospitals with fewer than 100 beds (small), total capital cost changes were fitted to the gamma distribution, allowing for both decreases and increases.

(3) Other (large) hospitals were further separated into three groups:

- Bed-size decreases over 20 percent (decrease).
- Bed-size increases over 20 percent (increase).
- Other (no change).

Capital cost changes for large hospitals were fitted to gamma distributions for each bed-size change group, allowing for both decreases and increases in capital costs. We analyzed the probability distribution of increases and decreases in bed size for large hospitals. We found the probability somewhat dependent on the prior year change in bed size and factored this dependence into the analysis. Probabilities of bed-size change were determined. Separate sets of probability factors were calculated to reflect the dependence on prior year change in bed size (increase, decrease, and no change).

The gamma distributions were fitted to changes in aggregate capital costs for the entire hospital. We checked the relationship between aggregate costs and Medicare per discharge costs. For large hospitals, there was a small variance, but the variance was larger for small hospitals. Since costs are used only for the hold-harmless methodology and to determine exceptions, we decided to use the gamma distributions fitted to aggregate cost increases for estimating distributions of cost per discharge increases.

Capital costs per discharge calculated from the cost reports were increased by random numbers drawn from the gamma distribution to project costs in future years. Old and new capital were projected separately for hold-harmless hospitals. Aggregate capital per discharge costs were projected for all other hospitals. Because the distribution of increases in capital costs varies with changes in bed size for large hospitals, we first projected changes in bed size for large hospitals before drawing random numbers from the gamma distribution. Bed-size changes were drawn from the uniform distribution with the probabilities dependent on the previous year bed-size change. The gamma distribution has a shape parameter and a scaling parameter. (We used different parameters for each hospital group and for old and new capital.)

We used discharge counts from the cost reports to calculate capital cost per discharge. To estimate total capital costs for FY 1998 (the MedPAR data year) and later, we use the number of discharges from the MEDPAR data. Some hospitals had considerably more discharges in FY 1998 than in the years for which we calculated cost per discharge from the cost report data. Consequently, a hospital with few cost report discharges would have a high capital cost per discharge, since fixed costs would be allocated over only a few discharges. If discharges increase substantially, the cost per discharge would decrease because fixed costs would be allocated over more discharges. If the projection of capital cost per discharge is not adjusted for increases in discharges, the projection of exceptions would be overstated. We address this situation by recalculating the cost per discharge with the MedPAR discharges if the MedPAR discharges exceed the cost report discharges by more than 20 percent. We do not adjust for increases of less than 20 percent because we have not received all of the FY 1998 discharges, and we have removed some discharges from the analysis because they are statistical outliers. This adjustment reduces our estimate of exceptions payments, and consequently, the reduction to the Federal rate for exceptions is smaller. We will continue to monitor our modeling of exceptions payments and make adjustments as needed.

The average national capital cost per discharge generated by this model is the combined average of many randomly generated increases. This average must equal the projected average national capital cost per discharge, which we projected separately (outside this model). We adjusted the shape parameter of the gamma distributions so that the modeled average capital cost per discharge matches our projected capital cost per discharge. The shape parameter for old capital was not adjusted since we are modeling the aging of "existing" assets. This model provides a distribution of capital costs among hospitals that is consistent with our aggregate capital projections.

Once each hospital's capital-related costs are generated, the model projects capital payments. We use the actual payment parameters (for example, the case-mix index and the geographic adjustment factor) that are applicable to the specific hospital.

To project capital payments, the model first assigns the applicable payment methodology (fully prospective or hold-harmless) to the hospital as determined from the provider-specific file and the cost reports. The model simulates Federal rate payments using the assigned payment parameters and hospital-specific estimated outlier payments. The case-mix index for a hospital is derived from the FY 1998 MedPAR file using the FY 2000 DRG relative weights included in section VI. of the Addendum to this final rule. The case-mix index is increased each year after FY 1998 based on analysis of past experiences in case-mix increases. Based on analysis of recent case-mix increases, we estimate that case-mix will decrease 0.5 percent in FY 1999. We project that case-mix will increase 0.5 percent in FY 2000. (Since we are using FY 1998 cases for our analysis, the FY 1998 increase in case mix has no effect on projected capital payments.)

Changes in geographic classification and revisions to the hospital wage data used to establish the hospital wage index affect the geographic adjustment factor. Changes in the DRG classification system and the relative weights affect the case-mix index.

Section 412.308(c)(4)(ii) requires that the estimated aggregate payments for the fiscal year, based on the Federal rate after any changes resulting from DRG reclassifications and recalibration and the geographic adjustment factor, equal the estimated aggregate payments based on the Federal rate that would have been made without such changes. For FY 1999, the budget neutrality adjustment factors were 1.00294 for the national rate and 1.00233 for the Puerto Rico rate.

Since we implemented a separate geographic adjustment factor for Puerto Rico, we applied separate budget neutrality adjustments for the national geographic adjustment factor and the Puerto Rico geographic adjustment factor. We applied the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. Separate adjustments were unnecessary for FY 1998 and earlier since the geographic adjustment factor for Puerto Rico was implemented in 1998.

To determine the factors for FY 2000, we first determined the portions of the Federal national and Puerto Rico rates that would be paid for each hospital in FY 2000 based on its applicable payment methodology. Using our model, we then compared, separately for the national rate and the Puerto Rico rate, estimated aggregate Federal rate payments based on the FY 1999 DRG relative weights and the FY 1999 geographic adjustment factor to estimated aggregate Federal rate payments based on the FY 1999 relative weights and the FY 2000 geographic adjustment factor. In making the comparison, we held the FY 2000 Federal rate portion constant and set the other budget neutrality adjustment factor and the exceptions reduction factor to 1.00. We determined that, to achieve budget neutrality for the changes in the national geographic adjustment factor, an incremental budget neutrality adjustment of 0.99857 for FY 2000 should be applied to the previous cumulative FY 1999 adjustment of 1.00294, yielding a cumulative adjustment of 1.00151 through FY 2000. For the Puerto Rico geographic adjustment factor, an incremental budget neutrality adjustment of 0.99910 for FY 2000 should be applied to the previous cumulative FY 1999 adjustment of 1.00233, yielding a cumulative adjustment of 1.00143 through FY 2000. We apply these new adjustments, then compare estimated aggregate Federal rate payments based on the FY 1999 DRG relative weights and the FY 2000 geographic adjustment factors to estimated aggregate Federal rate payments based on the FY 2000 DRG relative weights and the FY 2000 geographic adjustment factors. The incremental adjustment for DRG classifications and changes in relative weights would be 0.99991 nationally and for Puerto Rico. The cumulative adjustments for DRG classifications and changes in relative weights and for changes in the geographic adjustment factors through FY 2000 would be 1.00142 nationally, and 1.00134 for Puerto Rico. The following table summarizes the adjustment factors for each fiscal year:

BUDGET NEUTRALITY ADJUSTMENT FOR DRG RECLASSIFICATIONS AND RECALIBRATION AND THE GEOGRAPHIC ADJUSTMENT FACTORS

Fiscal year	National				Puerto Rico			
	Incremental adjustment			Cumulative	Incremental adjustment			Cumulative
	Geographic adjustment factor	DRG reclassifications and recalibration	Combined		Geographic adjustment factor	DRG reclassifications and recalibration	Combined	
1992				1.00000				
1993			0.99800	0.99800				
1994			1.00531	1.00330				
1995			0.99980	1.00310				
1996			0.99940	1.00250				
1997			0.99873	1.00123				
1998			0.99892	1.00015				1.00000
1999	0.99944	1.00335	1.00279	1.00294	0.99898	1.00335	1.00233	1.00233
2000	0.99857	0.99991	0.99848	1.00142	0.99910	0.99991	0.99901	1.00134

The methodology used to determine the recalibration and geographic (DRG/GAF) budget neutrality adjustment factor is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating costs. One difference is that, under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG relative weights. Under the capital prospective payment system, there is a single DRG/GAF budget neutrality adjustment factor (the national rate and the Puerto Rico rate are determined separately) for changes in the geographic adjustment factor (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low-income patients or the large urban addon payments.

In addition to computing the DRG/GAF budget neutrality adjustment factor, we used the model to simulate total payments under the prospective payment system.

Additional payments under the exceptions process are accounted for through a reduction in the Federal and hospital-specific rates. Therefore, we used the model to calculate the exceptions reduction factor. This exceptions reduction factor ensures that aggregate payments under the capital prospective payment system, including exceptions payments, are projected to equal the aggregate payments that would have been made under the capital prospective payment system without an exceptions process. Since changes in the level of the payment rates change the level of payments under the exceptions process, the exceptions reduction factor must be determined through iteration.

In the August 30, 1991 final rule (56 FR 43517), we indicated that we would publish each year the estimated payment factors generated by the model to determine payments for the next 5 years. The table below provides the actual factors for FYs 1992 through 1999, the final factors for FY 2000, and the estimated factors that would be applicable through FY 2004. We caution that these are estimates for FYs 2001 and later, and are subject to revisions resulting from continued methodological refinements, receipt of additional data, and changes in payment policy. We note that in making these projections, we have assumed that the cumulative national DRG/GAF budget neutrality adjustment factor will remain at 1.00142 (1.00134 for Puerto Rico) for FY 2000 and later because we do not have sufficient information to estimate the change that will occur in the factor for years after FY 2000.

The projections are as follows:

Fiscal year	Update factor	Exceptions reduction factor	Budget neutrality factor	DRG/GAF adjustment factor [1]	Outlier adjustment factor	Federal rate adjustment	Federal rate (after outlier) reduction)
1992	N/A	0.9813	0.9602		.9497		415.59
1993	6.07	.9756	.9162	.9980	.9496		417.29
1994	3.04	.9485	.8947	1.0053	.9454	[2] .9260	378.34
1995	3.44	.9734	.8432	.9998	.9414		376.83
1996	1.20	.9849	N/A	.9994	.9536	[3] .9972	461.96
1997	0.70	.9358	N/A	.9987	.9481		438.92
1998	0.90	.9659	N/A	.9989	.9382	[4] .8222	371.51
1999	0.10	.9783	N/A	1.0028	.9392		378.10
2000	0.30	.9730	N/A	.9985	.9402		377.03
2001	0.50	.9636	N/A	[5] 1.0000	[5] .9402		375.26
2002	0.50	[6] 1.0000	N/A	1.0000	.9402		391.38
2003	0.50	[6] 1.0000	N/A	1.0000	.9402	[4] 1.0255	403.38

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Fiscal year	Update factor	Exceptions reduction factor	Budget neutrality factor	DRG/GAF adjustment factor [1]	Outlier adjustment factor	Federal rate adjustment [5]	Federal rate (after outlier) reduction)
2004	0.50	[6]1.0000	N/A	1.0000	.9402	.....	405.40

[1] Note: The incremental change over the previous year.
[2] Note: OBRA 1993 adjustment.
[3] Note: Adjustment for change in the transfer policy.
[4] Note: Balanced Budget Act of 1997 adjustment.
[5] Note: Future adjustments are, for purposes of this projection, assumed to remain at the same level.
[6] Note: We are unable to estimate exceptions payments for the year under the special exceptions provision (§ 412.348(g) of the regulations) because the regular exceptions provision (§ 412.348(e)) expires.

Appendix C: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Several provisions of the Act address the setting of update factors for inpatient services furnished in FY 2000 by hospitals subject to the prospective payment system and those excluded from the prospective payment system. Section 1886(b)(3)(B)(i)(XV) of the Act sets the FY 2000 percentage increase in the operating cost standardized amounts equal to the rate of increase in the hospital market basket minus 1.8 percent for prospective payment hospitals in all areas. Section 1886(b)(3)(B)(iv) of the Act sets the FY 2000 percentage increase in the hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals equal to the rate set forth in section 1886(b)(3)(B)(i) of the Act, that is, the same update factor as all other hospitals subject to the prospective payment system, or the rate of increase in the market basket minus 1.8 percentage points. Under section 1886(b)(3)(B)(ii) of the Act, the FY 2000 percentage increase in the rate of increase limits for hospitals excluded from the prospective payment system ranges from the percentage increase in the excluded hospital market basket to 0 percent, depending on the hospital's costs in relation to its limit for the most recent cost reporting period for which information is available.

In accordance with section 1886(d)(3)(A) of the Act, we are updating the standardized amounts, the hospital-specific rates, and the rate-of-increase limits for hospitals excluded from the prospective payment system as provided in section 1886(b)(3)(B) of the Act. Based on the second quarter 1999 forecast of the FY 2000 market basket increase of 2.9 percent for hospitals subject to the prospective payment system, the updates in the standardized amounts are 1.1 percent for hospitals in both large urban and other areas. The update in the hospital-specific rate applicable to sole community and Medicare-dependent, small rural hospitals is also 1.1 percent. The update for hospitals excluded from the prospective payment system can be as high as the percentage increase in the excluded hospital market basket (currently estimated at 2.9 percent) or as low as zero, depending on the hospital's costs in relation to its rate-of-increase limit. (See Section V of the Addendum to this final rule.)

Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of the Medicare Payment Advisory Commission (MedPAC), recommend update factors for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. In its March 1, 1999 report, MedPAC stated that the legislated update of market basket increase minus 1.8 percentage points would provide a reasonable level of payment to hospitals. Although MedPAC suggests that a somewhat lower update could be justified in light of changes in the utilization and provision of hospital inpatient care, the Commission does not believe it is necessary to recommend a lower update for FY 2000. MedPAC did not make a separate recommendation for the hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals.

Under section 1886(e)(5) of the Act, we are required to publish the update factors recommended under section 1886(e)(4) of the Act. Accordingly, we published the FY 2000 update factors recommended by the Secretary as Appendix D of the May 7, 1999 proposed rule (64 FR 24852).

Under section 1886(e)(4) of the Act, we recommended that an appropriate update factor for the standardized amounts was 0.0 percentage points for hospitals located in large urban and other areas. We also recommended an update of 0.0 percentage points to the hospital-specific rate for sole community hospitals and Medicare-dependent, small rural hospitals. These figures are consistent with the President's FY 2000 budget recommendations. We stated that we believe our recommended update factors would ensure that Medicare acts as a prudent purchaser and provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund.

In the proposed rule, we recommended that hospitals excluded from the prospective payment system receive an update of between 0 and 2.6 percentage points. The recommended update for excluded hospitals and units was equal to the increase in the excluded hospital operating market basket less a percentage between 0 and 2.5 percentage points, or 0 percentage points, depending on the hospital's or unit's costs in relation to its rate-of-increase limit. For the proposed rule, the market basket rate of increase was forecast at 2.6 percent. This recommendation was consistent with the President's FY 2000 budget, although we noted that the market basket rate of increase was forecast at 2.7 percent when the budget was submitted.

II. Secretary's Final Recommendations for Updating the Prospective Payment System Standardized Amounts

We received seven comments concerning our proposed recommendations, two of which commented directly on the update recommendation. Our final recommendations for the operating update for both prospective and excluded hospitals do not differ from the proposed. However, the second quarter forecast of the market basket percentage increase is 2.9 for prospective payment hospitals (up from 2.7 estimated in the proposed rule) and 2.9 for excluded hospitals and units (up from 2.6 estimated in the proposed rule).

Comment: Several commenters expressed support for our proposal to update hospital payment rates on October 1, 1999, rather than delaying the update because of concerns about "Year 2000" (Y2K) systems issues. One commenter, while acknowledging that we are required to use the factors set in current law to update payment rates, expressed concern that an update to the rates less than the full market basket rate of increase is inadequate, forcing hospitals to forego technological advances that may improve quality and patient outcomes. Another commenter believes that the proposed updates would place more financial hardship on hospitals, in particular teaching hospitals, by freezing or reducing payment rates.

Response: We appreciate the support from commenters. As the one commenter noted, we are required by section 1886(b)(3) of the Act, as amended by the Balanced Budget Act of 1997 (BBA), to update rates for FY 2000 by the estimated increase in the hospital market basket minus 1.8 percentage points. Our latest available data show that hospital costs per case are continuing to decline while payments per case are increasing, resulting in high average Medicare profit margins across all hospitals. Therefore, we believe that the update to payment rates specified by law for FY 2000 is sufficient to allow hospitals to continue providing Medicare beneficiaries with efficient care of high quality. We will continue to monitor the financial performance of hospitals as newer data become available and will adjust our future update recommendations to Congress as appropriate.

Comment: MedPAC stated that while HCFA's proposed update recommendation of zero percentage points is within the range that MedPAC adopted in its own recommendation, the Commission believes that the update specified in law is appropriate because the effects of the BBA are not yet fully evident. Reducing payments below the level prescribed by law would not be prudent, at least for FY 2000. MedPAC further stated that it will monitor the financial performance of hospitals under BBA during the coming year.

Response: As we stated in the proposed rule, we believe that our recommendation (an update of zero percentage points) is an appropriate response to current trends in health care delivery, including the recent decreases in the use of hospital inpatient services and the corresponding increase in the use of hospital outpatient and postacute care services. Furthermore, as a prudent purchaser of health care for Medicare beneficiaries, we believe it is important that we maintain incentives to hospitals to provide high quality care efficiently. Like MedPAC, we, too, will continue to monitor the financial performance of hospitals and adjust future update recommendations as appropriate.

III. Secretary's Final Recommendation for Updating the Rate-of-Increase Limits for Excluded Hospitals

We received one comment concerning our proposed recommendation for updating the rate-of-increase limits for excluded hospitals.

Comment: MedPAC recommended adding 0.4 percentage points to the market basket forecast before applying the update formula to account for technical improvements that hospitals must make related to Y2K-related computer problems. MedPAC believes Y2K-related computer malfunctions could potentially compromise patient care by interrupting service continuity, thereby creating substantial liability exposure for hospitals. Therefore, HCFA should increase the market basket forecast to account for the additional costs hospitals will incur in making computer system improvements to avoid Y2K problems.

Response: Our final recommendation is that hospitals and hospital units excluded from the prospective payment system receive an update using a market basket increase estimate of 2.9 percentage points. This update is consistent with the updates provided to the prospective payment hospitals. We note that under our update framework for excluded hospitals and units, the analysis indicates identical findings to those for prospective payment system hospitals regarding changes in productivity, scientific and technological advances, practice patterns, and case-mix for FY 2000. We believe these updates will ensure that Medicare acts as a prudent purchaser and will provide incentives to hospitals for increased efficiency. Thus, using the statutory target amount update formula, the update factor for an excluded hospital or unit will be between 0.4 percent and 2.9 percent, or 0.

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Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 409, 411, 413, and 489
Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Final Rule and Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 411, 413, and 489

[HCFA–1913–F]

RIN 0938–AI47

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to comments submitted by the public on our May 12, 1998 interim final rule, that implemented provisions in section 4432 of the Balanced Budget Act of 1997 regarding Medicare payment for skilled nursing facility services. This legislation established a prospective payment system, a consolidated billing provision, and a number of related changes.

EFFECTIVE DATE: These regulations are effective on September 28, 1999.

FOR FURTHER INFORMATION CONTACT:

Dana Burley, (410) 786–4547 (for information related to the case-mix classification methodology).

John Davis, (410) 786–0008 (for information related to the Federal rates).

Jackie Gordon, (410) 786–4517 (for information related to consolidated billing).

Steve Raitzyk, (410) 786–4599 (for information related to the facility-specific transition payment rates).

Bill Ullman, (410) 786–5667 (for information related to coverage and level of care determinations).

Laurence Wilson, (410) 786–4603 (for general information).

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this preamble, we are providing the following table of contents.

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In addition, because of the many terms to which we refer by acronym in this rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

ADLs Activities of daily living
ASC Ambulatory Surgical Center
BBA Balanced Budget Act of 1997
CAH Critical access hospital
CBO Congressional Budget Office
CFR Code of Federal Regulations
CORF Comprehensive Outpatient Rehabilitation Facility
CPI Consumer Price Index
CPI–U Consumer Price Index for All Urban Consumers
CPT [Physicians'] Current Procedural Terminology
DME Durable medical equipment
ESRD End stage renal disease
FI Fiscal intermediary
GAO General Accounting Office
HCFA Health Care Financing Administration
HCPCS HCFA Common Procedure Coding System
HIPPS Health Insurance Prospective Payment System
ICD–9–CM International Classification of Diseases, Ninth Edition, Clinical Modification
MDS Minimum Data Set
MEDPAR Medicare Provider Analysis and Review File
MGCRB Medicare Geographic Classification Review Board
MIM–3 Medicare Intermediary Manual, Part 3
MRI Magnetic Resonance Imaging
MSA Metropolitan Statistical Area
NHCMQD [Multistate] Nursing Home Case-mix and Quality Demonstration
OBRA 87 Omnibus Budget Reconciliation Act of 1987
OIG Office of the Inspector General
OMRA Other Medicare Required Assessment
PM Program Memorandum
PPS Prospective payment system
PRM Provider Reimbursement Manual
PRO Peer Review Organization
RAI Resident Assessment Instrument
RAPs Resident Assessment Protocols
RUG–III Resource Utilization Groups, version III
SNF Skilled nursing facility
SOM State Operations Manual
STM Staff time measure

I. Background

Section 4432 of the Balanced Budget Act of 1997 (BBA) (Public Law 105–33) mandated the implementation of a per diem prospective payment system (PPS) for skilled nursing facilities (SNFs), covering all costs (routine, ancillary, and capital) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. Major elements of the system include:

• *Rates:* Per diem Federal rates are established for urban and rural areas using allowable costs from fiscal year (FY) 1995 cost reports. These rates also include an estimate of the cost of services that, before July 1, 1998, had been paid under Part B but furnished to SNF residents during a Part A covered stay. Rates are case-mix adjusted using a resident classification system (Resource Utilization Groups, version III (RUG–III)) based on resident assessments (using the Minimum Data Set (MDS) 2.0). In addition, the Federal rates are adjusted by a wage index to account for geographic variation in wages. Finally, the rates will be adjusted annually using an SNF market basket index.

• *Transition:* The SNF PPS includes a 3-year transition that blends a facility-specific payment rate with the Federal case-mix adjusted rate. The blend that is used changes each cost reporting period after a facility migrates to the new system. For most facilities, the facility-specific rate is based on allowable costs from FY 1995.

• *Coverage:* The PPS legislation did not change Medicare's fundamental statutory requirements for SNF coverage. However, because RUG–III classification is based, in part, on the resident's need for skilled nursing care and therapy, we have attempted where possible to adapt the existing claims review procedures to coordinate them with the outputs of resident assessment and RUG–III classifying activities, as discussed later in this preamble.

• *Consolidated Billing:* The statute includes a billing provision that requires an SNF to submit consolidated Medicare bills for its residents for virtually all services that are covered under either Part A or Part B. The statute excludes a small list of services (primarily those of physicians and certain other types of practitioners). A related statutory provision requires SNFs to use HCFA Common Procedure Coding System (HCPCS) coding on all Part B bills, and specifies that they are to be paid an amount determined in accordance with the otherwise applicable Part B fee schedule for the particular item or service.

• *Effective Date:* The SNF PPS is effective for cost reporting periods beginning on or after July 1, 1998. The law provides that the consolidated billing and coding requirements are effective for services and items furnished on or after July 1, 1998.

An interim final rule implementing the SNF PPS was published in the **Federal Register** on May 12, 1998 (63 FR 26252), and the comment period was initially scheduled to close on July 13, 1998. A follow-up notice (63 FR 37498, July 13, 1998) extended the public comment period for an additional 60 days, and a second notice (63 FR 65561, November 27, 1998) reopened the comment period for another 30 days. In addition, a correction notice (63 FR 53301, October 5, 1998) made a number of minor technical and editorial corrections to the interim final rule. We have also issued several Program Memorandums (PMs) on claims processing and billing under the SNF PPS that are available on the SNF PPS home page at the HCFA website on the Internet, at the following location: <www.hcfa.gov/medicare/snfpps.htm>.

As described in the interim final rule, the BBA requires implementation of a Medicare SNF PPS for cost reporting periods beginning on or after July 1, 1998. Under the PPS, SNFs are no longer paid under the previous, reasonable cost-based system, but rather through per diem prospective case-mix adjusted payment rates applicable to all covered SNF services. These payment rates cover all the costs of furnishing covered skilled nursing services (that is, routine, ancillary, and capital-related costs) other than costs associated with approved educational activities. Covered SNF services include posthospital SNF services for which benefits are provided under Part A and all items and services that, prior to July 1, 1998, had been paid under Part B (other than physician and certain other services specifically excluded under the BBA), but furnished to SNF residents during a Part A covered stay.

A. Payment Provisions—Federal Rate

The statute sets forth a fairly prescriptive methodology for calculating the amount of payments under the SNF PPS. The PPS uses per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the system. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports during the base year (that is, for reporting periods that began in FY 1995). The data used in developing the Federal rates also incorporate an estimate of the amounts that were paid separately under Part B for covered SNF services furnished during the base year to individuals who were residents of a facility and receiving Part A covered services.

In developing the rates, we update costs to the first effective year of the PPS (15-month period beginning July 1, 1998) using an SNF market basket index, and standardize for facility differences in case-mix and for geographic variations in wages. Providers that received "new provider" exemptions from the routine cost limits are excluded from the data base used to compute the Federal payment rates. In addition, costs related to payments for exceptions to the routine cost limits are excluded from the data base used to compute the Federal payment rates. In accordance with the formula prescribed in the BBA, we set the Federal rates at a level equal to a weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and a weighted mean of all SNF costs (hospital-based and freestanding) combined. We compute and apply separately payment rates for facilities located in urban and rural areas.

The Federal rate also incorporates adjustments to account for facility case-mix using a resident classification system that accounts for the relative resource utilization of different patient types. This classification system, RUG–III, uses resident assessment data (from the MDS) completed by SNFs to assign residents into one of 44 groups. SNFs complete these assessments according to an assessment schedule specifically designed for Medicare payment (that is, on the 5th, 14th, 30th, 60th, and 90th days after admission to the SNF).

For Medicare billing purposes, there are specific codes associated with each of the 44 RUG–III groups, and each assessment applies to specific days within a resident's SNF stay. SNFs that fail to perform assessments timely are paid a default payment for the days of a patient's care for which they are not in compliance with this schedule. In addition, we adjust the portion of the Federal rate attributable to wage-related costs by a wage index.

For the initial period of the PPS, beginning on July 1, 1998, and ending on September 30, 1999, the payment rates were contained in the interim final rule. For each succeeding fiscal year, we will publish the rates in the **Federal Register** before August 1 of the year preceding the affected Federal fiscal year. Pursuant to section 1888(e)(4)(E)(ii) of the Social Security Act (the Act), for FY 2000 through 2002, we will increase the rates each year by a factor equal to the SNF market basket change minus one percentage point. For subsequent fiscal years, we will increase the rates by the applicable SNF market basket change.

B. Payment Provisions—Transition Period

Beginning with a provider's first cost reporting period beginning on or after July 1, 1998, there is a transition period covering three cost reporting periods. During this transition phase, SNFs receive a payment rate comprising a blend between the Federal rate and a facility-specific rate based on each facility's FY 1995 cost report. Under section 1888(e)(2)(E)(ii) of the Act, SNFs that received their first payment from Medicare on or after October 1, 1995, receive payment according to the Federal rates only.

For SNFs subject to the transition, the composition of the blended rate varies depending on the year of the transition. For the first cost reporting period beginning on or after July 1, 1998, we make payment based on 75 percent of the facility-specific rate and 25 percent of the Federal rate. In the next cost reporting period, the rate consists of 50 percent of the facility-specific rate and 50 percent of the Federal rate. In the following cost reporting period, the rate consists of 25 percent of the facility-specific rate and 75 percent of the Federal rate. For all subsequent cost reporting periods, we base payment entirely on the Federal rate.

C. Payment Provisions—Facility-Specific Rate

For most facilities, we compute the facility-specific payment rate used for the transition using the allowable costs of SNF services for cost reporting periods that began in FY 1995 (cost reporting periods beginning on or after October 1, 1994, and before October 1, 1995). Included in the facility-specific per diem rate for most facilities is an

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estimate of the amount that was paid separately under Part B for covered SNF services furnished during the base year to individuals who were residents of the facility and receiving Part A covered services. Under section 1888(e)(3)(A) of the Act, the facility-specific rate (in contrast to the Federal rates) includes amounts paid to SNFs for exceptions to the routine cost limits. In addition, we also take into account "new provider" exemptions from the routine cost limits, but only to the extent that routine costs do not exceed 150 percent of the routine cost limit.

We update the facility-specific rate for each cost reporting period after FY 1995 to the first cost reporting period beginning on or after July 1, 1998 (the initial period of the PPS) by a factor equal to the SNF market basket percentage increase minus 1 percentage point. For the FYs 1998 and 1999, we update this rate by a factor equal to the SNF market basket increase minus 1 percentage point, and, for each subsequent year, we update it by the applicable SNF market basket increase.

D. Consolidated Billing for Skilled Nursing Facilities

Section 4432(b) of the BBA sets forth a consolidated billing requirement applicable to all SNFs providing Medicare services. SNF consolidated billing is a comprehensive billing requirement (similar to the one that has been in effect for inpatient hospital services for well over a decade), under which the SNF itself is responsible for billing Medicare for virtually all of the services that its residents receive. As with hospital bundling, the SNF consolidated billing requirement does not apply to the services of physicians and certain other types of medical practitioners. In a related provision, section 4432(b)(3) of the BBA requires the use of fee schedules and uniform coding specified by the Secretary of Health and Human Services (the Secretary) for SNF Part B bills. The law provides that these requirements are effective for services furnished on or after July 1, 1998.

II. Provisions of the Interim Final Rule

In the interim final rule that was published on May 12, 1998, we made a number of revisions in the regulations in order to implement both the PPS and the SNF consolidated billing provision and its conforming statutory changes:

- With regard to payment, we revised the regulations in 42 CFR part 413, subpart A (that deal with Medicare payment to providers of services) to reflect the replacement of the existing reasonable cost reimbursement methodology for SNFs by the new SNF PPS.
- We revised the regulations to provide that for SNF residents who are in a covered Part A stay, Medicare makes payment under the PPS described in new subpart J of part 413, effective with cost reporting periods beginning on or after July 1, 1998.
- For SNF residents who are not in a covered Part A stay, we revised the regulations to provide that Medicare makes payment on the basis of the otherwise applicable Part B fee schedule amounts, effective for services furnished on or after July 1, 1998.
- We made a conforming change in subpart B of part 483 (requirements for long term care facilities) to indicate that the frequency of resident assessments is subject to the timeframes prescribed under the SNF PPS in the new subpart J of part 413.
- We made a number of revisions to implement the consolidated billing provision, under which the SNF itself has the Medicare billing responsibility for virtually all of the services that its residents receive.
- We revised the regulations in part 410 (payment of benefits under Part B) to provide that Part B makes payment for these services to the SNF rather than to the beneficiary. We also made conforming changes with regard to Part B coverage of certain individual medical and other health services.
- We revised part 411 (exclusions from coverage) to exclude from coverage any service furnished to an SNF resident (other than certain specified service categories) when billed to Medicare by an entity other than the SNF itself, and we added a definition of an SNF "resident" for purposes of this provision.
- We revised the regulations in subpart B of part 489 (Medicare provider agreements) to add compliance with the consolidated billing provision to the specific terms of an SNF's provider agreement.
- We revised subpart C of part 424 (claims for payment) to require the inclusion of an SNF's Medicare provider number on claims for physician services furnished to an SNF resident, and the inclusion of HCPCS coding on an SNF's Part B claims.
- We made a number of conforming changes in subparts C, D, and F of part 409 of the regulations which describe, respectively, the scope of covered SNF benefits under Part A, the criteria for determining a covered SNF level of care, and benefit period determinations.

As noted previously, the PPS legislation did not change the basic statutory definition of an SNF level of care. However, because RUG–III classification is based, in part, on the resident's need for skilled nursing care and therapy, our revisions in the level of care criteria reflected an attempt where possible to coordinate claims review procedures with the outputs of resident assessment and RUG–III classifying activities. For example, we believe that an initial 5-day assessment, properly completed, that places the resident in one of the upper 26 RUG–III classifications provides the basis for us to assume that the resident needed a covered level of SNF care upon admission and at least up until the assessment reference date of the initial Medicare-required 5-day assessment. We will, however, continue to make individual review determinations for claims of individuals who classify in the lower 18 RUG–III categories.

III. Analysis of and Responses to Public Comments

We received almost 500 comments on the SNF PPS interim final rule published on May 12, 1998 (63 FR 26302). Comments were submitted by nursing homes and other providers, suppliers and practitioners (both individually, and through their respective trade associations), State agencies, nursing home resident advocacy groups, elected officials, health care consulting firms, and private citizens.

The comments basically fell into three broad areas. The first involved the payment rates, including treatment of "outlier" situations and non-therapy ancillaries, calculation of the Federal rates themselves and of the Part B add-on, and the transition from facility-specific rates to the Federal rates. The second area concerned the clinical aspects of the SNF PPS, including MDS assessment and scheduling requirements, certification and recertification procedures, medical review criteria, treatment of rehabilitation therapy under the RUG–III classification system, nurse staffing and staff time measurement studies, and coverage and level of care determinations. The third broad area involved the consolidated billing requirement and the scope of the extended care benefit.

As noted in the interim final rule, because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are unable to acknowledge or respond to them individually. In particular, a number of commenters on the interim final rule raised extremely technical and detailed questions regarding the MDS and the

billing process. These questions are of a nature that would more appropriately be addressed through manual instructions and other issuances than in these regulations. In this final rule, we are addressing the general concerns raised by the commenters. A summary of the major issues and our responses follows:

A. Federal Rates—Outliers/Non-therapy Ancillaries (NTAs)

Comment: We received a number of comments expressing concern over the ability of the PPS to provide adequate payment for certain outlier or extraordinary cases. Several of the comments noted specific examples of these cases, such as HIV-infected patients with significant drug therapy needs, patients receiving intravenous (IV) drug therapy for antibiotic-resistant infections, ventilator-dependent patients, or simply patients with generally high costs. A number of commenters recommended the adoption of an outlier payment process or exceptions process to provide higher payments for these cases.

Other comments suggested use of a later base year (for example, FY 1997) or add-on to the rates in order to recognize changes made by facilities after 1995, the year on which the rates are based. These commenters argued that many facilities increased the scope of services provided to beneficiaries and served a higher acuity resident population after 1995 and, therefore, the costs associated with providing this higher level of care were not reflected in the calculation of the Federal rate.

Response: Section 1888(e)(4) of the Act provides specific requirements related to the formula and cost data to be used in computing the Federal rates. The statute provides that "the amount of the payment for all costs * * * of covered skilled nursing facility services" during the transition period is "equal to" a prescribed blended payment, and after the transition period is "equal to" the applicable adjusted Federal per diem rate. The statute does not provide for additional payments over and above these prescribed amounts. While the Act includes specific statutory authority for the application of outlier policies in relation to the acute care hospital PPS (section 1886(d) through (f) of the Act), home health PPS (section 1895 of the Act), and inpatient rehabilitation PPS (section 1886(j) of the Act), it does not provide such explicit authority with regard to the SNF PPS. However, we are concerned about this matter and are pursuing the basic issue of the accuracy of payments through an examination of the case-mix classification system.

In addition, the statute mandates use of the FY 1995 cost data in the development of the payment rates. It should be noted that when the rates were computed, the FY 1995 data were the latest available to compute the rates. We believe the Congress took this into consideration when developing the statutory language related to the computation of the Federal rates as well as the specific impact of using the 1995 data on the accumulation of Medicare savings, a key goal of the BBA.

We also note that while the Congress provided for Medicare budgetary savings through the SNF PPS (which had an obvious downward effect on the rates), there are numerous reports by the U.S. General Accounting Office (GAO) and Office of the Inspector General (OIG) suggesting Medicare payment for SNF ancillary services under cost reimbursement was inappropriately inflated in the past. If correct, this would mitigate the impact of the budgetary savings. The OIG includes an expanded discussion of this concept in a 1998 report on the SNF PPS titled "Review of the Health Care Financing Administration's Development of a Prospective Payment System for Skilled Nursing Facilities" (Number A–14–98–00350).

We understand the concerns expressed in the comments related to this issue. As discussed in the impact analysis accompanying the interim final rule, the SNF PPS will have a varying impact on providers. Because "prices" are based on averages, SNFs should expect that certain patients cost more than payments and others less. The extent to which certain facilities can provide quality care, while incorporating efficiencies in their purchasing of services and operations, will affect how well they manage under this payment system, which uses mean-based prices rather than reasonable costs. Financial performance should, therefore, be determined by looking across each facility's Medicare population, not on a patient specific comparison of costs and the payment rate under which the rate would become essentially a limit.

We will focus our efforts on ensuring that these prices are as accurate as possible with respect to the resources used by Medicare beneficiaries. The SNF PPS, through case-mix classification and adjustment, currently reflects a full range of SNF patient types with varying characteristics and degrees of resource intensity. Through research and refinements to the PPS, we will try to ensure that the PPS not only continues to account for a high level of resource intensity, but improves in terms of its sensitivity to less common conditions or patient types. This aspect of our plan is discussed later in the context of the comments on payment for certain ancillary services.

Comment: There were a number of comments expressing concern with the adequacy of the PPS rates to cover the costs of ancillary services other than occupational, physical, and speech therapy (non-therapy ancillaries), including such things as drugs, laboratory services, respiratory therapy, and medical supplies. Prescription drugs or medication therapy were frequently noted areas of concern due to their potentially high cost for particular residents. Some commenters suggested that the RUG–III case-mix classification methodology does not adequately provide for payments that account for the variation in, or the real costs of, these services provided to their residents. A number of commenters stated their belief that the payment rates do not generally reflect the costs of certain of these services (for example, drugs or respiratory therapy).

Recommendations from commenters included removing all or some of these services from the PPS rates and continuing to pay for them on a cost basis, and making changes to the case-mix system and indices to account for these services more accurately.

Response: We are aware of the challenges certain providers have faced as they transition from a payment system based on reasonable costs to one that uses mean-based prices such as the SNF PPS. In fact, many of the same concerns raised in the comments to the interim final rule were voiced by hospitals when we implemented the hospital PPS system in the early 1980s. However, we believe this is an important issue that calls for a broader discussion of the PPS itself, and requires the clarification of certain technical issues related to the PPS and to the statute.

Section 1888(e)(1) of the Act requires that the PPS provide payment for "all costs" (including routine, ancillary, and capital related costs) of covered SNF services. Consistent with the statute, the PPS rates are based on 1995 allowable costs calculated from Medicare Part A cost report data and applicable Part B allowable charges. Thus, a facility's historical costs (from FY 1995) of drugs, laboratory services, respiratory therapy, and other non-therapy ancillary services were captured in these cost reports and reflected in both the Federal and facility-specific transition rates.

In addition, many of these non-therapy ancillary services (for example, respiratory therapy, IV medications, and

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IV feedings) are captured both directly and indirectly in the case-mix methodology and result in higher payments for SNFs. The issue of whether the nursing case-mix index adequately reflects the relative costs of non-therapy ancillary services was one that was studied in the development of the interim final rule and the associated payment rates.

As indicated in the preamble of that rule, using MDS assessments to classify patients into RUG–III groups, we compared the relative charges for non-therapy ancillaries to the nursing case-mix indices for each RUG–III group. We found that the pattern of the two relative amounts was similar across the RUG–III groups. That is, RUG–III groups with high nursing weights also tended to have relatively high charges per stay for non-therapy ancillaries.

Based on this comparison, we concluded that it was reasonable to include non-therapy ancillary costs in the nursing component of the rate. Accordingly, the idea that the PPS rates do not reflect the cost of respiratory therapy, drugs, and other non-therapy ancillaries is simply not accurate. Whether the accuracy of the rates can be enhanced in this regard is a subject for research and development that we discuss below.

The recommendation to remove or "carve out" these services as a class from the PPS rates and continue to pay for them on a cost basis raises some fundamental concerns related to both the statutory and conceptual framework of the PPS. As discussed above, section 1888(e)(A)(1) of the Act requires that the PPS provide payment for "all costs" (including routine, ancillary, and capital related costs) of covered SNF services. The conference report associated with section 4432 of the BBA explicitly states that under the SNF PPS, "services and supplies provided to residents will be included in pre-determined per diem payment rates."

Beyond the threshold issue of statutory language, the issue of whether specific services should be identified and paid separately appears to conflict with certain fundamental concepts embodied in a PPS. Carried to its logical conclusion, this approach is antithetical to the very concept of the SNF PPS itself, which is based on bundling services for similar patients and paying an average, prospectively determined amount for all services included in the bundle. The PPS rate already recognizes differences between nursing, rehabilitation therapy, and ancillary services, as well as non-case-mix components.

It is important to consider the budgetary impact of the commenters' proposal to remove certain services from the PPS rates and to continue paying for them on a cost basis. The budgetary impact would be significant and would reduce the savings to Medicare associated with the SNF PPS provisions of the BBA. Implementing the provision in a way that would have a budget neutral impact on savings (for example, a downward adjustment to the Federal rates) would penalize providers that have made changes to their operations in order to provide services more efficiently, and would benefit those that have not. Therefore, we believe that further disaggregation of the payment rate would not be consistent with the objectives of prospective payment from a conceptual, statutory, or budgetary perspective.

Finally, we agree with the commenters' recommendation that we explore the potential for refinements to the PPS and, more specifically, the case-mix classification system (RUG–III) to ensure that it continues to account more accurately for the services provided to SNF residents. We consider the continuing adequacy of the PPS rates, and the case-mix methodology in particular, to be a high priority. We believe very strongly that the case-mix methodology should be periodically evaluated to determine the appropriateness of the RUG–III groups in relation to changes in patient care practices and the Medicare population.

In addition, the conference report language associated with section 4432 of the BBA specifically recommended examining payment for medication therapy in the context of the SNF PPS. Accordingly, we are funding substantial research to examine the potential for refinements to the case-mix methodology, including an examination of medication therapy, medically complex patients, and other non-therapy ancillary services.

We are currently funding two research contracts to determine the potential for refinements to the RUG–III model. The first contract was awarded in FY 1997 and provides preliminary analysis and alternatives for refinements using a limited database. The next phase of the research focuses on fully developing these options using more extensive data. Completion of the research is targeted for January 1, 2000. Potential refinements to the case-mix model may include the division of the current 44 groups or the addition of new ones based on items currently on the MDS 2.0 (for example, new extensive care groups combining both medical ancillaries and rehabilitation).

In addition, a new payment index (or set of relative weights) based on ancillary charges, rather than the current staff-time based indices, is being explored for the non-therapy ancillary component of the PPS rates. Any refinements to the RUG–III model and case-mix indices that result from this research would have a distributional effect on payments resulting in a new set of payment weights across the various groups. If the research supports refinements, we anticipate their implementation in conjunction with the October 1, 2000, update to the PPS rates. This time line is dictated by the complexity of the research and by operational and regulatory requirements, including publication of a proposed rule.

It should be noted that the BBA provisions establishing the SNF PPS provided for over $9 billion in savings to Medicare (in fee for service) as a result of the statutory formula used for developing the rates. Accordingly, an SNF's current costs may well exceed the PPS rates if the SNF does not revise the historical purchasing and charging practices that it followed under the preexisting cost-based payment system.

B. Federal Rate Calculation

Section 4432(a) of the BBA amended section 1888 of the Act by adding a new paragraph (e) that provides for the establishment of per diem Federal payment rates under the SNF PPS. These rates encompass all costs of furnishing covered skilled nursing services (that is, routine, ancillary, and capital-related costs), other than costs associated with approved educational activities. In the interim final rule, we established a new subpart J in the regulations at 42 CFR part 413, that describes this new payment methodology. In this section of the preamble, we are providing responses to comments on a number of important issues related to the Federal rates. These include payment for non-rehabilitation ancillary services, outlier cases, and a variety of issues related to the data and design of the Federal payment rates. In addition, we are providing for a minor increase in the unadjusted rates effective October 1, 1999, based on the recommendation of one commenter.

Comment: We received a number of comments recommending that we periodically recompute the PPS rates using the most recent data. Reasons commonly mentioned include that rebasing would allow the PPS to recognize changes over time in the intensity and scope of services provided in SNFs, and that it would provide an opportunity for re-standardization of the payment rates using actual resident assessment (MDS) data.

Conversely, we received comments that recommended against rebasing payment rates periodically. These commenters were concerned that because the PPS provides incentives for SNFs to provide services more efficiently and eliminate distinct parts (that would tend to lower average SNF costs, as determined from Medicare cost reports), the impact of rebasing the rates would be unfair, since it would tend to penalize providers for being efficient.

Response: While we are not able to predict the absolute impact on SNF costs of the incentive for SNFs to provide services more efficiently or their continued desire to maintain distinct parts under PPS, we have no doubt that the PPS will result in some downward pressure on costs. Anecdotal evidence up to this point certainly supports this conclusion.

Section 1888(e)(4)(A) of the Act requires a 1995 base year. Section 1888(e)(5)(A) of the Act specifically provides for the establishment of an SNF market basket index, while section 1888(e)(4)(E) of the Act requires that the SNF PPS rates be updated annually using that index.

As discussed in response to earlier comments, we believe that it is appropriate to recognize changes over time in the Medicare population or care delivery practices in SNFs in the context of case-mix adjustments. Our periodic evaluation of the case-mix classification and indices will provide an opportunity for making refinements to the PPS that recognize changes in the intensity and scope of services provided in SNFs.

Comment: We received several comments regarding certain costs that were not included in the computation of the Federal rate. Specifically, the commenters expressed concern that all SNFs receiving "new" provider exemptions from the routine cost limits and all allowable costs associated with atypical services exceptions to the cost limits have not been included in the data used for computation of the Federal rates.

The commenters suggested that it is unfair to exclude the cost associated with those providers that are providing atypical levels of care. Further, they noted that these are the same providers that would have a high case-mix in the new payment rates and, therefore, should be included. Virtually all of these commenters suggested that the rates are distorted due to the exclusion of many providers and costs of furnishing atypical services.

Response: The statute is very specific regarding the exclusion of providers that have received "new" provider exemptions from the calculation of the Federal rates. Section 1888(e)(4)(A) of the Act requires that cost data from SNFs "that were subject to (and not exempted from) the per diem limits" be used in computing the payment rates. Similarly, the statute specifically requires the exclusion of allowable costs associated with exceptions granted in the FY 1995 base year. Section 1888(e)(4)(A)(i) requires the use of the allowable costs of SNF services "excluding exceptions payments" in calculating the payment rates.

Comment: Several commenters were concerned that we eliminated certain cost reports from the calculation of the Federal rates on the basis of their duration. Cost reports in excess of 13 months or less than 10 months in duration were eliminated from the rate computations. In addition, concerns were expressed over the use of a geometric outlier elimination process to remove SNF costs from the data.

Response: As we indicated in the interim final rule, we used only those cost reports for periods of at least 10 months but not more than 13 months. We excluded those periods that fell outside these parameters on the basis that those cost reports may not be reflective of a normal cost reporting period and, therefore, may tend to distort the rate computation. For example, providers entering or exiting the Medicare program could have abnormally high or low costs due to fluctuations in occupancy. This approach does not affect a large number of cost reports and is consistent with our rate setting methodology in other areas of Medicare.

Similarly, we believe the application of a geometric outlier elimination process for the SNF costs used to calculate the payment rates is an appropriate analytical approach consistent with rate setting for payment systems in other areas of Medicare. We believe that three standard deviations from the geometric mean of the log value for each cost component is a fair level of tolerance that focuses on the truly aberrant cost values. In addition, this process involved the removal of both high cost and low cost aberrant values, resulting in a more equitable and more meaningful computation of the rate components.

We would also add that we used all FY 1995 cost reports that were available at the time of the development of the interim final rule and associated payment rates. While some cost reports may not have been available at that time, we constructed the rates based upon the best available data and are confident it was more than adequate for construction of the rates. Finally, a small number of cost reports were eliminated from the computation of the rates due to faulty or missing data on critical items.

Comment: Several commenters expressed concern with our methodology related to the use of a MEDPAR analog in the standardization of the Federal payment rates. They questioned whether the MEDPAR data were sufficiently accurate for the purpose of developing payment rates and referred to the 28 percent difference, reported in the interim final rule (63 FR 26260), between the therapy index calculated from actual MDS assessments and the MEDPAR analog-generated index. They noted additional limitations of the analog, such as the lack of functional status information and recommended that we use actual MDS data, when available, to re-standardize the payment rates, possibly in conjunction with a rebasing of the cost data.

Response: As noted in the interim final rule, an adequate national sample of MDS data for use in standardizing the Federal payment rates does not yet exist. In the absence of these data, we believe the MEDPAR analog, adjusted by the case-mix adjustment factor, provides an appropriate estimate of case-mix for the purpose of rate standardization. Based on our comparison of actual MDS and MEDPAR data, we concluded that limitations of the MEDPAR case-mix analog had no effect on the nursing component of the rate. Whatever inaccuracy existed in the MEDPAR analog data, the effect was limited to the therapy component and tended to increase, not decrease, the payment rate. The fact that the available MDS data yielded a therapy index value 29 percent higher than the MEDPAR analog data for the same cases demonstrates that use of the MEDPAR data alone would have made the therapy component inappropriately high. That is the reason that the correction factor was applied to the therapy component.

Comment: A few commenters expressed concern about the adjustment we made to the cost report data in developing the Federal rates, to account for providers with cost reports that were not settled. One commenter indicated that all SNFs should not be penalized by this adjustment. It was also suggested that the rates be redone in the future to account for the actual change between the as-submitted cost reports and the settled ones. In addition, one comment

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addressed the methodological application of the adjustment in the computation of the rates, suggesting an alternative where the adjustment is applied to total Medicare routine costs as opposed to only costs subject to the routine limit.

Response: As we indicated in the interim final rule, the adjustment made pursuant to section 1888(e)(4)(A)(i) of the Act was applied to unsettled cost reports and was based on the average ratio for all providers in 1995, between their as-submitted and settled cost report. This adjustment is only applied to the cost report data of providers whose cost report was not settled as of the time we computed the rates. It is an actuarial adjustment required under the law that affects how the average SNF costs are determined and does not penalize other providers with settled reports.

As we indicated in the interim final rule, these adjustment factors were validated using data from three previous years, that showed this ratio remains fairly constant. To update and change the rates in the future based on revised cost reports is impractical. Revisions are constantly being made to cost reports (for many years) and our validation exercise indicates the ratios are accurate.

Finally, we have decided to incorporate the methodological alternative described above and will adjust the unadjusted nursing case-mix component of the urban and rural Federal rates by +$.32 and +$.24, respectively. In addition, we will adjust the unadjusted non-case-mix component of the urban and rural Federal rate by +$.25 and +$.21, respectively. We believe this refinement in the application of the adjustment factor may result in a more accurate estimate of the routine costs of SNFs. This adjustment will be prospective and will be effective at the next scheduled update of the SNF PPS rates on October 1, 1999. That is the earliest point at which we can implement changes to the standard claims processing systems.

Comment: We received one comment asking why the issue of payments for low-volume SNFs was not addressed in the interim final rule.

Response: The new Part A PPS established in section 1888(e) of the Act applies to all SNFs, and does not include any special treatment for low-volume SNFs. Section 1888(d) of the Act provided for a separate, optional payment system for SNFs with less than 1500 days (that is, low-volume SNFs) in their preceding cost reporting period. However, according to current law, this special payment system for low-volume SNFs is only in effect for cost reporting periods beginning before July 1, 1998.

Comment: Numerous comments were received from hospital-based facilities and their representatives indicating that the rates are too low and do not recognize the additional overhead incurred in a hospital-based facility. The commenters pointed out that the Federal rate uses a mean of the average for all freestanding providers and the average for all freestanding and hospital-based providers. This computation double counts freestanding providers, thus lowering the rates. Some commenters suggested the rates should be redone, or an add-on or separate rate for freestanding versus hospital-based providers be established, similar to what was done for routine cost limits.

Response: As many of the commenters have already recognized, the computation as described above is clearly mandated in the formula set out in section 1888(e)(4) of the Act.

Comment: We received several comments regarding the wage index that is used to standardize and adjust the rates. The commenters suggested that the hospital wage index might not adequately represent wages paid in SNFs. Many of the commenters pointed out that SNF wages and hours are excluded from the hospital wage index computation, yet we are applying it to SNF payments. Most commenters want the wage index updated periodically and often to reflect the most recent changes in wages. One commenter suggested that we make other changes to the method for how the wage index is calculated by including costs that are now excluded, such as physician salaries, and excluding items like interns' and residents' salaries. There were also a few commenters who suggested that any move to a wage index based on SNF wage data be done slowly to ensure it is done accurately. Most commenters hope to see a wage index based on SNF data soon. In addition, many commenters want us to use a later wage index to reflect the recent mandated changes in the minimum wages rates paid to some employees.

Response: As we indicated in the interim final rule, we are using the hospital wage data since the SNF wage data have not been completed. We used the latest completed hospital wage index that was available at the time of publication. It is our intent to use the latest wage index data that are complete and available when we publish rates or updates to the rates in the future.

We have been unable to evaluate a wage index based on SNF wage data, as not all SNF providers reported data via the worksheet S–3. Now that we have a full year of wage data for both freestanding and hospital-based facilities, we will begin to evaluate and analyze the wage and hourly data from the SNF and hospital-based SNF cost reports. We will analyze and develop these data to evaluate their accuracy and validity. It is our intent, if the data are accurate, eventually to use and publish a wage index based on SNF wage data. However, it has been our experience in the past that when new wage data are used, they can result in enormous and erratic shifts in the wage indexes; many providers could be adversely affected while others experience a windfall. Therefore, before we use any SNF wage data, we will perform numerous edits to ensure quality. In addition, we will ask for public comments once the wage index data are available. Since we have not yet developed a wage index based on SNF wage data, we do not know the impact of excluding or including any particular cost centers.

As discussed above and in the interim final rule, until an appropriate wage index based on SNF data is available, we will use the latest available hospital wage index data in making annual updates to the payment rates. We believe that SNFs and hospitals compete in the same labor market areas and, therefore, absent specific SNF wage data, we continue to believe that the hospital wage data accurately reflect the relative wage costs between labor areas. In making these annual updates, section 1888(e)(4)(G)(ii) of the Act requires that the application of this wage index be made in a manner that does not result in aggregate payments which are greater or less than would otherwise be made in the absence of the wage adjustment. For the initial period of the SNF PPS, the adjustment required by this section was accounted for through the standardization of the cost data that formed the basis for the per diem rate components. By means of standardization, each rate component was adjusted for wage index and case-mix differences so that aggregate payments were unaffected by the presence of these payment adjustors.

Since, for the second PPS year (Federal rates effective October 1, 1999), we plan to update the wage index applicable to SNF payments using the most recent hospital wage data, it is necessary to ensure that the aggregate payments in the second year are neither greater nor less than they would be if we continued to use the wage index from the initial year. This requirement, established pursuant to section 1888(e)(4)(F)(ii) of the Act, will be met by multiplying each of the per diem rate components by the ratio of the volume weighted mean wage adjustment factor (using the wage index from the initial year) to the volume weighted mean wage adjustment factor, using the wage index for the fiscal year beginning October 1, 1999. The same volume weights are used in both the numerator and denominator and will be derived from 1997 MedPAR data. The wage adjustment factor used in this calculation is defined as the labor share of the rate component multiplied by the wage index plus the non-labor share.

Comment: We received two comments suggesting that the rates should have an add-on to account for the additional cost of completing resident assessments and the administrative costs associated with implementing this new payment system and other unfunded mandates.

Response: We recognize that the increased frequency of assessment may result in additional costs for SNFs. However, as we indicated in response to an earlier comment, the Congress mandated both the basic formula and the fiscal year cost data that we are to use in developing the rates. To the extent that any of these assessment costs are included in the base year data, they are reflected in the rates. We would note that, as we indicated in the interim final rules discussion of the Paperwork Reduction Act, it was determined that the increased assessments required and the time to transmit them has a minimal impact on each individual facility. We recognize that providers will incur additional costs associated with more frequent assessments but we believe our current rate scheme is consistent with the law.

Comment: Several commenters suggested that capital should not be part of the rate, suggesting that it be an add-on or pass-through to recognize those facilities that were committed to large capital expenditures incurred after 1995.

Response: In accordance with section 1888(e)(2)(B) of the Act, the calculation of the Federal rates included the capital costs. We realize that committed capital expenditures after 1995 may create some hardship on some providers. However, we believe that the present rate scheme, which includes capital, is consistent with the language and intent of the statute. Further, we believe that the capital costs included in the rates are adequate to cover capital costs that would be incurred for providers over time.

Comment: We received numerous requests, particularly from rural hospital-based facilities, suggesting that we allow providers to reclassify to a nearby adjacent urban area to receive the urban wage index or the rates applicable to the adjoining urban area, especially in circumstances where the hospital has been reclassified because it is in a county that was defined as urban under section 1886(d)(8)(B) of the Act (sometimes referred to as a "Lugar" county) or as a result of geographic reclassifications based on decisions of the Medicare Geographical Classification Review Board (MGCRB) or the Secretary under section 1886(d)(10) of the Act for purposes of the hospital PPS. These commenters suggested that the SNFs are competing in the same market as hospitals. One commenter suggested that a board similar to the MGCRB be established to consider an SNF's request to be reclassified.

Response: While we have broad authority to develop an SNF wage index, we continue to believe that the reclassifications permitted for hospitals under sections 1886(d)(8)(B) and 1886(d)(10) of the Act are specific to hospitals. The Congress could have chosen to extend this provision to SNFs under section 1888(e) of the Act, but it did not. In addition, it has been our longstanding policy not to allow or recognize reclassification for SNFs for payment under the routine cost limits. Since we hope eventually to develop a wage index specific to SNFs, the possible effect of reclassification on the wage index is unclear and might have unintended consequences.

Comment: Two comments were received asking that we consider an adjustment for the non-labor portion for Alaska and Hawaii providers, similar to what is done for routine cost limits for SNFs. These commenters suggested that these areas experience a much higher cost than those providers in the continental United States and, therefore, are entitled to this adjustment.

Response: The hospital inpatient PPS does have an adjustment similar to that requested by these commenters; however, it was mandated by the statute governing the hospital PPS. By contrast, the Congress did not provide for such an adjustment in the legislation for the SNF PPS. Costs incurred by Alaska and Hawaii providers are, of course, included in the base year computation.

Comment: One comment we received suggested that SNFs that were subject to the low-volume rates should have been eliminated from the calculation of the Federal rates. Furthermore, the commenter added that these providers should be exempt from PPS and continue to be paid under the low-volume rates.

Response: Section 1888(e)(4)(A) of the Act specifically included low-volume facilities in the SNF PPS rate calculation.

C. Federal Rates—Part B Add-on

In describing the data to be used in developing the Federal rates, section 1888(e)(4)(A)(ii) of the Act provides for including an estimate of the amounts payable under Part B for covered SNF services furnished during FY 1995 to individuals who were residents of a facility and receiving Part A covered services. This estimate is also known as the "Part B add-on." In this section of the preamble we are providing an expanded discussion of the development of the add-on for Part B services which is included in the Federal rates.

Comment: We received a number of comments questioning the accuracy of our estimate of Medicare Part B allowable charges associated with patients in Medicare Part A stays during the FY 1995 base year used for determining both the Federal and facility-specific payment rates. Certain commenters cited evidence of missing bills and charges associated with individual providers for particular types of services (for example, laboratory services or rehabilitation therapy). In addition, several commenters suggested that we allow for an appeals process related to the Part B estimate associated with facility-specific rates.

Response: We took great care in both the methodological design and construction of the data sources necessary for the development of this estimate. We are aware of several independent industry efforts to review this methodology which found no defects in the design. In this final rule, we are providing the following, more detailed discussion of the methodology used for the development of the Part B estimate with the hope that doing so will clarify our process of determining this estimate and respond to questions and concerns.

The facility-specific payment rate used for the transition is computed using the allowable costs of SNF services for cost reporting periods beginning in FY 1995 (cost reporting periods beginning on or after October 1, 1994, and before October 1, 1995). Included in the facility-specific per diem rate is an estimate of the amount payable under Part B for covered SNF services furnished during cost reporting periods beginning in FY 1995 to individuals who were residents of the facility and receiving Part A covered services.

These estimates were developed using allowed charges (including coinsurance and deductibles) from all Medicare Part

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B claims actually submitted (other than those specifically excluded from the consolidated billing requirements, such as physician services) associated with SNF residents in a Part A stay during cost reporting periods that began in FY 1995. Applying the methodology described below, we provided the fiscal intermediaries (FIs) in May of 1998 with the total aggregate amount payable under Part B. In addition, at the request of the nursing home industry, we included a detailing of certain components of that amount for informational purposes.

At that time, we instructed the FIs that only the item listed as "Total Part B Add-on Amount" should be incorporated in the calculation of the facility-specific rates. We noted that, while the total Part B amount was an accurate estimate based on the universe of Part B claims, the assignment of allowed charges into the different service components was only an approximation due to the level of specificity of the codes and the variation in supplier billing and coding practices. The following description details the methodology used to determine the Part B add-on amounts:

1. Identify Cost Report Period

For each SNF, determined appropriate FY 1995 cost report period. Used all FY 1995 cost reports on file as of January 30, 1998. If no FY 1995 cost report was available, estimated a FY 1995 period from the latest cost report available.

2. Create List of Dates for SNF Stays for Each Beneficiary

For each SNF, identified all Part A SNF claims with the discharge date on the claim falling within the cost report period. For each beneficiary, identified the dates of each stay during the cost report period.

3. Identify All Non-Physician Part B Claims

Obtained all Part B physician, supplier, DME claims for 1994, 1995, and 1996. Omitted all professional services, defined as any service associated with a physician specialty code. Obtained all Part B outpatient department facility claims for 1994, 1995, and 1996.

4. Match List of Part A SNF Stays to Part B Claims

By beneficiary, matched list of Part A SNF stays to Part B claims. Kept all non-physician services or facility claims falling on or between dates of admit and discharge for each SNF stay.

5. Drop Claims for DME

For non-physician Part B claims, that is, not facility claims, reviewed all alphanumeric HCPCS and identified and dropped obvious DME codes, for example, wheelchairs, canes, transcutaneous electrical nerve stimulation (TENS), glucose monitors, commodes, walkers, bath and toilet aids, lifts, and oxygen equipment. Because coverage under the Part B DME benefit is not allowed for beneficiaries in an SNF stay, we believe that these codes probably occurred on either the day of admission or the day of discharge or were associated with erroneous payments.

6. Adjust Outpatient Claims to Reflect Costs

Adjusted total charges on Part B outpatient facility bills to reflect total Medicare payments using a payment to charge ratio calculated from FY 95 outpatient cost reports. If no FY 95 cost report was available, used ratio from FY 94 or, if necessary, FY 93 cost report. If a FY 93 cost report was not available, used the payment amount associated with the claim.

7. Drop Outpatient Bills

Removed claims with home health and dialysis provider numbers. Dropped Part B outpatient facility claims where the SNF provider number matched the hospital outpatient provider number. Dropped bills with at least one of the following revenue centers: surgery, emergency room (ER), ambulatory surgical center (ASC), cardiac catheterization, computerized axial tomography (CT) scan, and magnetic resonance imaging (MRI). These outpatient hospital services are excluded from the consolidated billing requirements.

8. Calculate Totals

Calculated total allowed charges for all non-physician Part B claims. Calculated total payments for Part B outpatient facility claims.

9. Create Descriptive Categories Within Totals

At request of certain members of the industry, created general categories to describe the distribution of dollars among types of services. Categories are not exact due to the lack of precision in categories for HCPCS ranges, local codes, and the structure of facility claims. For example, dollars for laboratory services could appear in (a) the "laboratory" category for non-physician Part B, (b) the "other" category for non-physician Part B if the code was local, or (c) the outpatient department's (OPD) "other" category for laboratory tests conducted by an outpatient facility.

Created categories for non-physician Part B claims using HCPCS and CPT ranges. Often, broad HCPCS categories capture some unrelated codes. In addition, temporary local codes had to be placed into the "other" category.

The structure of the outpatient facility claims prevents associating a code with a specific dollar amount. Created outpatient therapy category by combining all claims from CORF hospitals and any claim with only one physical therapy (PT), occupational therapy (OT), or speech-language pathology (SLP) code. Left all remaining bills in OPD category.

As discussed in the above description of our methodology, a number of factors prevented us from disaggregating the total Part B allowable charges precisely into distinct high level categories (for example, laboratory services). However, we decided to attempt to provide an approximate breakout by category to provide SNFs some notion of what their Part B service mix may have looked like in the FY 1995 base year.

While we did note in the listing of Part B add-ons provided to FIs that the categorization of charges was only an approximation, this qualification may not have always been understood by providers. We regret any confusion caused by this breakout. We would note that our purpose in developing the total estimate of Part B allowable charges did not go beyond providing an accurate account of the total allowed charges to be included in the PPS rates, and we believe our estimate accomplished this. However, even if our purpose had been to map every charge and HCPCS code precisely to some broad category, once again, the data and structure of Medicare's billing system would not have permitted it.

Beyond issues related to the categorization of Part B charges, we received no comments that contained substantiated evidence of systematic defects in the methodology or data. We would note that section 1888(e)(8)(B) of the Act limits administrative review of this estimate.

Comment: We received numerous comments indicating that we should publish, or otherwise make available to the public and the industry, the complete and itemized data that were included in the computation of the rates. Of particular concern was the percentage of the nursing case-mix component of the rate that is attributable to nursing services and non-therapy ancillary costs. Some commenters suggested that they were unable to replicate the rates we published with the data currently available.

Response: Much of the data necessary to compute the rates have been available for some time, including the 1995 SNF cost reports and the MEDPAR files. We have also put data and information related to the computation of the case-mix indices on our SNF PPS website, at: <www.hcfa.gov/medicare/snfpps.htm>. A public use file containing the most significant data items relating to the calculation of the unadjusted Federal rates can also be found on the website. The standardization and case-mix correction factors are included with the public use data.

It is our understanding from conversations with a number of users of the data that the public use file, along with the data that were already available, has been quite helpful in understanding the calculation of the rates. In addition, we have honored several requests under the Freedom of Information Act for data associated with the rate calculations, and have provided further information through data release agreements.

Regarding the percentage of the nursing case-mix component of the rate that is attributable to nursing services and social services and non-therapy ancillary costs, we agreed with earlier comments to the interim final rule that the public would benefit by knowing the percentages for nursing and social services and non-therapy ancillary services included in the rate. Accordingly, on November 27, 1998, we published a notice in the **Federal Register** (63 FR 65561) to reopen comments to the interim final rule. We also provided the public with a percentage breakdown of the nursing case-mix component of the rates to the extent feasible.

Comment: We received a number of comments concerning our discussion in the interim final rule related to OIG's proposal to adjust the Federal rates to account for costs in the 1995 base year cost data that result from medically unnecessary services or improper payments. These comments strongly recommended that we not proceed with such an adjustment, citing the already significant downward impact on the Federal rates of the BBA budgetary savings, the inadequate statistical basis for pursuing such an adjustment, and insufficient statutory authority for proceeding with an actuarial adjustment of this type to the rates.

Response: We are concerned about the application of an adjustment that would have a downward impact on the Federal rates in light of the substantial reduction already incorporated into the calculation under the BBA requirements. According to the impact analysis contained in the interim final rule, this reduction is 17 percent on average. However, there is a substantial body of evidence, in the form of OIG and GAO studies, that at least suggests there were inappropriate services or improper payments associated with SNF services during the 1995 base year. Consequently, it could reasonably be argued that exclusion of the costs of these services from the cost base used to compute the Federal payment rates is appropriate.

However, we believe that in considering the level of budgetary savings to incorporate into the statutory formula for establishing the Federal rates, the Congress took into account the existing cost base and aggregate SNF payment levels to determine an appropriate level of budgetary savings. Our policy with regard to this issue will be not to proceed with such an adjustment in the absence of specific statutory direction from the Congress.

D. Facility-specific Rates-Transition

Section 1888(e)(2) of the Act provides, for most facilities, a phased transition from facility-specific payment rates (which reflect the individual facility's historical cost experience) to the Federal rates. During such a facility's first three cost reporting periods under the SNF PPS, it receives a blended payment rate, in which the Federal portion initially represents 25 percent of the facility's total payment rate, and then increases by 25 percent increments in each succeeding period until the facility is paid at the full Federal rate.

In this section of the preamble, we are providing responses to comments on a number of issues related to the PPS transition period and the calculation of the facility-specific rates. These include issues related to the eligibility of certain SNFs for the transition. In addition, this section includes policy changes related to the calculation of the Federal rates for certain SNFs with short cost reporting periods and the eligibility for the transition of SNFs with cost reporting periods beginning in FY 1994 but including the entire FY 1995 period.

Comment: We received several comments suggesting that we should define a new SNF as one that first furnished patient care on or after October 1, 1995, rather than one that first received payment on or after October 1, 1995, as our present policy dictates.

Response: We understand that there are many concerns regarding the issue of eligibility for the PPS transition. However, we believe current policy is consistent with the statute. Section 1888(e)(2)(E) of the Act specifically refers to the date an SNF first received payment from Medicare on or after October 1, 1995, as the threshold date. However, it is important to understand that the threshold for determining eligibility for the transition period affects providers in different ways, creating both winners and losers. Thus, while many providers may want to receive PPS transition payments, many other providers would rather be paid on the basis of the full Federal rate. We do not see the benefit of a policy change that creates losers under the system from winners and vice versa.

Comment: We received a number of comments recommending that we modify our policy with regard to the PPS transition, to allow existing SNFs to elect to bypass the transition and be paid 100 percent of the Federal rate if they had experienced significant shifts in case-mix or significant capital expenditures after the 1995 base year used for determining the facility-specific rate. One commenter included a detailed assessment of this proposed policy, including an estimate of the aggregate costs to the Medicare program of its adoption.

Response: We understand the concern of SNFs that have operated under the Medicare program since 1995 or earlier and yet find themselves disadvantaged by the PPS transition due to changes in their care delivery model or significant capital expenditures that occurred after the 1995 base year used for computing the facility-specific rate. However, we believe our present policy to be reasonable and consistent with the plain language of the statute. Section 1888(e)(2)(E)(ii) of the Act sets forth the requirements concerning whether a facility receives payment under the PPS transition or solely according to the Federal rates. This section provides that for SNFs that "first received Medicare payment for services under this title on or after October 1, 1995, payment for such services shall be made under this subsection as if all services were furnished after the transition period." In our view, this language establishes clear criteria related to provider eligibility for the transition and the appropriate basis for Medicare payment. Accordingly, we have established a policy which relies on the date an SNF first received payment (interim or otherwise) from Medicare to determine the basis of their payment.

Comment: We received one comment asking us to reconsider our policy regarding eligibility for the transition for providers that do not have a cost

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reporting period beginning in FY 1995, but whose period contains the entire 1995 FY. Examples of these cost reporting periods include a 13-month cost reporting period beginning September 1, 1994, and ending on September 30, 1995 or reporting periods with a floating beginning date (that is, tied to a specific day of the week) of September 27, 1994.

Response: In Transmittal 405 of the Provider Reimbursement Manual (PRM, HCFA Pub. 15–1), we had initially required these providers to be paid at the Federal rate without a transition period, since these providers did not have a cost reporting period beginning in FY 1995 (the statutory basis for computing the facility-specific transition rate). However, we have reconsidered our policy, because these providers did receive their first payment from Medicare before October 1, 1995. These providers will now be eligible for the transition period.

In addition, any provider that has been paid the full Federal rate based on our original policy contained in Transmittal 405 of the Provider Reimbursement Manual will be held harmless, since they have already transitioned to the PPS. In short, this means that providers with a cost reporting period beginning date in 1994 and whose period contains the full 1995 fiscal year (that is, the 12 months beginning October 1, 1994, through September 30, 1995), will be able to elect either a PPS transition based payment or the full Federal rate. Whichever rate the provider chooses must be used for all the years of the transition period.

Comment: We received a number of comments regarding our policy on changes of ownership and mergers as they relate to a provider's eligibility for the PPS transition.

Response: As discussed earlier in this section, SNFs that first received payment from Medicare on or after October 1, 1995 receive payment based on the Federal rate only while SNFs that first received payment from Medicare prior to October 1, 1995 are paid according to the transition rate and are precluded from receiving payment solely based on the Federal rate. In addition, our policy, as stated broadly in transmittal 405 of the Provider Reimbursement Manual, requires that, for purposes of determining a provider's eligibility for the transition, Medicare makes its determination based on the date of first Medicare payment (interim or otherwise) under the present provider number.

For example, when an SNF undergoes a change in ownership, such as a merger or a consolidation, the payment is determined by the payment history of the surviving entity as indicated by the surviving SNF's provider number. This conforms with longstanding reimbursement policy and payment principles as applied under the former reasonable cost payment system and provides administrative simplicity in addressing complex transactions among SNFs, hospitals, and other entities.

Comment: We received several comments recommending that we adopt a policy where SNFs would be allowed to elect to bypass the transition period and receive payment based on the full Federal rate.

Response: Similar to our response to an earlier comment, we understand how the transition payment methodology may disadvantage certain providers. However, section 1888(e)(1) and (2)(E) of the Act specifically addresses the issue of which providers are paid the full Federal rate and which ones must receive transition payments. As we discussed, the statute requires that SNFs that received their first payment under Medicare before October 1, 1995, are to be paid based on the transition payment methodology described in the interim final rule.

Comment: We received a number of comments related to the Part B add-on and the methodology for computing facility-specific rates for SNFs that participated in the Multistate Nursing Home Case-Mix and Quality Demonstration (NHCMQD) in 1997. Under the interim final rule, these facilities did not receive a Part B add-on as part of their facility-specific rate. The commenters argued that a Part B add-on is appropriate for these SNFs. Several commenters provided detailed arguments asserting that a Part B add-on for these providers is legally supportable under the statute.

Response: It appears to us that a Part B add-on to the facility-specific rate for providers participating in the NHCMQD in 1997 could well be an appropriate payment policy in light of the historical circumstances.

During the NHCMQD, many Medicare Part A patients in these SNFs received certain ancillary items or services provided by suppliers who then billed Medicare directly under Part B. However, we find that the statutory language at section 1888(e)(3)(B) of the Act, that provides the formula for computing facility-specific rates for NHCMQD providers, does not support this policy outcome.

Accordingly, we are maintaining the policy, set forth in the interim final rule, of not including a Part B add-on in the calculation of facility-specific rates for SNFs participating in the NHCMQD in 1997. We believe this policy is consistent with the statute. The statute treats NHCMQD providers differently from other facilities. For most facilities, the statute directs the Secretary to use a 1995 base year and provides for a Part B "add-on"; for NHCMQD facilities, the statute directs the Secretary to use a later base year (1997) and does not provide for a Part B "add-on." Although a Part B add-on for NHCMQD facilities might be appropriate as a conceptual matter, the statute does not provide for a Part B add-on and we do not believe the lack of a Part B add-on leads to an absurd result.

In our effort to ensure the appropriateness of the payment methodology set forth in the interim final rule, we have decided to make a modification to one aspect of the calculation of the facility specific rates. This change only affects the methodology for determining the inflation factor applied in the calculation of the facility specific rates for certain providers with short cost reporting periods (that is, less than 12 months).

There were three different types of short periods discussed in the interim final rule:

a. A short period in the base year,

b. A short period in the initial period, and

c. A short period between the base year and the initial period.

The interim final rule included separate instructions on how to determine which factor to use for an SNF having a short period. There was, however, no discussion of how to determine which factor to use if a SNF had more than one short period. For example, an SNF could have a short period in the base year and a short period between the base year and the initial period of the PPS.

We now believe that the instructions for item c should not be applied to SNFs which have both a short period in the base year and a short period between the base year and the initial period. If an SNF has a short period in the base year and a short period between the base year and the initial period, the instructions in section (a) should be applied using the short period in the base year.

E. MDS Assessments

Under the SNF PPS, the Federal rate incorporates adjustments to account for case-mix, using a resident classification system that accounts for the relative resource utilization of different patient types. This classification system, RUG–III, assigns beneficiaries into one of 44

groups, using assessment data from the MDS that the SNF completes according to an assessment schedule specifically designed for Medicare payment.

In the interim final rule, we discussed issues relating to the use of the RUG–III classification system under the SNF PPS, including scheduling and other requirements pertaining to the MDS, use of the RUG–III "grouper" software, and the use of an Other Medicare Required Assessment (OMRA) in certain situations following the discontinuation of rehabilitation therapy services.

In this section of the preamble, we are providing responses to comments on a number of issues related to the use of the OMRA, grace days, and the Health Insurance Prospective Payment System (HIPPS) codes used to bill Medicare Part A covered SNF stays. We also address comments and questions about the midnight rule and its effect on the MDS schedule, and provide clarification regarding counting therapy minutes on the MDS, as well as the requirements for the therapy plan of treatment. In addition, we are responding to comments concerning recognition of respiratory therapy and recreational therapy in the payment rates and on the MDS.

Comment: We received numerous suggestions of ways to improve the MDS instrument, the assessment schedule, and the classification system. These comments included suggestions both to increase and decrease the frequency of required MDS assessments, to improve the MDS staging of pressure ulcers, ideas for modifications to individual RUG–III groups, and commenters' requests that we be more directive in our rules about how facilities are to spend the payments they receive from Medicare.

Response: We appreciate all of the suggestions and will consider them in our future work in these areas. The comments were very specific and too numerous to address in this context. Rather, the subject matter and degree of specificity of some of these suggested changes would be more appropriately addressed through manual issuances.

It is also worth noting that at this time, the SNF PPS has been in effect in most facilities for less than 12 months. In the future, when providers have achieved greater stability and familiarity with the system, and we have additional data to guide our decisions, we can consider making additional refinements such as those suggested by the commenters.

1. Billing Issues

Comment: There were several questions submitted with the comments regarding the HIPPS codes used for billing SNF PPS claims. The questions focused on how to use these codes for billing as distinguished from MDS coding instructions.

Response: Although these codes were not mentioned in the interim final rule, we believe that it would be helpful and appropriate to explain here what the HIPPS codes are as distinct from the MDS information. The HIPPS codes are 5-character codes used solely for billing the Medicare FI for the Part A SNF stay. The codes reflect the RUG–III group into which the beneficiary classified and the reason for the assessment used for determining the classification. The HIPPS code does not appear anywhere on the MDS. The reason for assessment reflected in the HIPPS code is based on information coded in items A8a and A8b of the MDS, but is not a duplication of the data reported on the MDS. Rather, a conversion must be made from the information on the MDS to the reason for assessment identifier that comprises the last two digits of the HIPPS code.

For instructions for billing on the Unified Billing Form 92 (UB–92), see Transmittal 405 of the Provider Reimbursement Manual (PRM, HCFA Pub. 15–1, 7/98) published on our website. These instructions are sent to our FIs and are also available through them.

Further, in the context of billing procedures, we would also like to use this opportunity to clarify our policy on Periodic Interim Payments (PIP). Since the inception of the Medicare program, SNFs reimbursed on the basis of reasonable costs received interim payments during their cost reporting year for the cost of Part A services provided to Medicare beneficiaries. For many years, SNFs have also been permitted to receive PIP—interim payments paid in equal biweekly amounts—for these services if they met the requirements in § 413.64(h) and received intermediary approval. Since July 1987, the statutory authority for PIP for qualifying SNFs has been in section 1815(e)(2) of the Act. Section 1815(e)(1) of the Act was added to include certain requirements, in addition to the requirements in § 413.64(h), specifically applicable to hospitals receiving prospective payments under section 1886(d) of the Act in order for the hospitals to receive PIP. Section 1815(e)(2) of the Act clarified that the additional requirements applicable to those hospitals were not applicable to other types of providers, including SNFs, entitled to PIP. Accordingly, the regulations at § 413.64(h) were revised to provide for the continuing availability of PIP after July 1987 for these other types of providers, including for Part A services provided by SNFs.

Interim payments, including PIP, provide cost reimbursed providers with estimated payments during the cost reporting year pending submittal and subsequent settlement of a Medicare cost report. A provider can submit its cost report to the intermediary as late as the last day of the fifth month after the end of the cost reporting period. Following submittal, the intermediary's determination of Medicare cost reimbursement to the provider for services provided to beneficiaries during the year cannot be made until the cost report is reviewed, sometimes including audit of the provider's records. Because determination of Medicare reimbursement takes place after the end of the cost reporting year, interim payments are needed during the year until this final payment can be determined.

Because a cost report is not required to calculate prospective payments, interim payments are not necessary to a provider for services paid on the basis of prospective payments. Nevertheless, with the exception of special requirements for hospitals receiving prospective payments under section 1886(d) of the Act, section 1815(e) currently provides for the availability of PIP for certain services, including Part A services provided by SNFs, if the requirements in § 413.64(h) are met. It does not prohibit PIP for SNFs receiving prospective payments.

While the BBA eliminated PIP under the provisions mandating a PPS for home health agencies (HHAs), the Congress made no such requirement under the statutory provisions related to SNF PPS. This may be because, like the preceding SNF payment system, the SNF PPS continues to rely on a daily payment amount, while for the HHA PPS, changes in the unit of payment were contemplated. However, at this time, we see no reason to discontinue administratively our existing policy of allowing PIP for qualified SNFs, though we may choose to evaluate its continuing need in the future.

Therefore, we are permitting the continued availability of PIP for services of SNFs paid under the PPS. For those services, PIP is based on estimated prospective payments for the year rather than on estimated cost reimbursement. An SNF receiving prospective payments, whether or not it received PIP prior to receiving prospective payments, may receive PIP if it meets the requirements in § 413.64(h) and receives approval by its intermediary. Likewise, if an intermediary determines that an SNF which received PIP prior to

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receiving prospective payments is no longer entitled to receive PIP, it will remove the SNF from PIP. As provided in § 413.64(h)(5), intermediary approval of PIP is conditioned upon the intermediary's best judgment as to whether payment can be made under the PIP method without undue risk of its resulting in an overpayment to the provider.

An SNF can receive Medicare payment for the bad debts of Medicare beneficiaries if it meets the requirements at § 413.80 and implementing instructions. Payment for these bad debts are not included in the prospective payments but rather are claimed on the Medicare cost report. Also, some SNFs may incur costs for an approved medical education program or may incur other costs that are not included in the prospective payment. Payment for these costs are determined based on the completion of a Medicare cost report. Because final payment for Medicare bad debts and for costs paid outside the prospective payment system is not determined until the cost report is settled, it is appropriate that SNFs which receive prospective payments should receive estimated interim payments during the year for bad debts and for costs paid outside the prospective payment system. Payments for these costs are made in equal biweekly payments in the same manner as PIP. There is no requirement for an SNF to meet in order to receive biweekly payments for these costs because it is the only type of interim payment made for them.

The new regulations providing for PIP for SNFs receiving prospective payments and for biweekly interim payments for costs outside the prospective payment system closely follow the regulations at § 412.116 which provide for PIP for hospitals receiving prospective payments under section 1886(d) of the Act, as adjusted to remove provisions specifically applicable to those hospitals. As with § 412.116 for hospitals and § 413.64 for SNFs under the previous cost-based system, these regulations for SNFs also provide for accelerated payments in certain situations.

2. Corrections

Comment: We received several comments with questions and suggestions regarding the policies governing the correction of MDS errors and billing errors.

Response: The MDS corrections policy is set forth in the State Operations Manual (SOM, HCFA Pub. 7) by HCFA's Center for Medicaid and State Operations. The corrections policy applies to all users of the MDS and, thus, is beyond the scope of this regulation. We address issues and provide clarification of Medicare policy regarding how to correct or adjust SNF Part A bills to the Medicare program in the Provider Reimbursement Manual.

3. Other Medicare Required Assessment (OMRA)

Comment: There were a number of questions about the OMRA. These included questions about when the OMRA is to be performed and whether it is a full or comprehensive assessment.

Response: An OMRA is required 8 to 10 days after rehabilitation therapy is discontinued for Medicare beneficiaries who have been receiving rehabilitation therapy in the SNF. Specifically, there is confusion regarding whether or not this assessment type is required in certain circumstances. For example, when the beneficiary has no further need for skilled care and has been moved out of the Medicare-certified portion of the institution before the eighth day following the cessation of rehabilitation services or when one or two of three therapy services are discontinued. As stated in our corrections notice to the interim final rule, published in the **Federal Register** on October 5, 1998 (63 FR 53301), the OMRA is not required to be a comprehensive assessment. There are no PPS requirements for comprehensive assessments (that is, those including Resident Assessment Protocols (RAPs)). Comprehensive assessments are only required for clinical reasons, as they have been since implementation of the nursing home reform requirements enacted in the Omnibus Budget Reconciliation Act of 1987 (OBRA 87, Public Law 100–203).

An SNF must perform an OMRA only for those beneficiaries who continue to have skilled care requirements after their rehabilitation therapy services have been discontinued. For those beneficiaries who are not ready for discharge from the facility, and who continue to require a Medicare covered skilled level of care, an OMRA must be performed in order to obtain an accurate classification into one of the non-therapy RUG–III groups.

The assessment reference date of the OMRA must be set on day 8, 9, or 10 after the last day any rehabilitation therapy services were provided. This timing ensures that no therapy minutes will be captured on the OMRA and that the beneficiary's new classification will be into one of the non-therapy RUG–III groups. An OMRA will always result in classification into a non-therapy RUG–III group. For the days between the cessation of rehabilitation therapy and the assessment reference date of the OMRA, the beneficiary continues to be covered at the therapy RUG–III group level to which he or she was classified before cessation.

We expect that there will be many cases in which the beneficiary will be discharged from the facility shortly after rehabilitation therapy services end. Before PPS, beneficiaries were often discharged from the SNF immediately upon the discontinuation of rehabilitation therapies. Likewise, many SNF residents who received rehabilitation therapy services under Medicare Part A were moved to a non-Medicare level of care following the cessation of therapy services. These same patterns are expected to continue under the PPS.

In circumstances in which the beneficiary is discharged from the facility (or from the Medicare-certified portion of a larger, noncertified institution) before the eighth day following the end of all rehabilitation therapy, there is no expectation by Medicare that an OMRA will be performed. If the beneficiary remains in the Medicare-certified facility through the eighth day following rehabilitation therapy discontinuation, there must be some clinical reason for his or her continuing skilled stay that is supported by documentation in the medical record. We realize that there will be cases in which the beneficiary stays in the SNF for a number of days after rehabilitation therapy ends, in order for the facility staff to verify that his or her status is stable and to assure that the plans for his or her next destination are appropriate and in the best interests of the beneficiary.

By contrast, always waiting to perform the OMRA to verify that the beneficiary is stable and no longer in need of skilled nursing or therapy services is not appropriate. A pattern of OMRA assessments immediately preceding discharge from the facility, or from the Medicare level of care within the facility, would indicate that perhaps the facility is at times using those 8 to 10 days inappropriately. We believe it is unfair to the beneficiary to use any of the 100 Medicare SNF benefit days available in a benefit period unless he or she is actually in need of skilled services. Likewise, it is an inappropriate use of Medicare trust fund dollars for Medicare to pay for SNF days that are not needed by the beneficiary.

The beneficiary should not be kept in a Medicare Part A stay if skilled services are neither needed, nor being provided. We believe that nursing homes' clinical staff should know when there are no

skilled services being provided to a beneficiary. Our guidelines provided in the PRM (Transmittal 405) reinforce the expectation that facilities may, and in fact are expected to, act in the best interest of the beneficiary with regard to use of the beneficiary's limited SNF benefit days, by ending Medicare Part A coverage appropriately. (See also the discussion below regarding circumstances that serve to discontinue a presumption that the SNF level of care requirement is met by a beneficiary who has classified into one of the upper 26 RUG–III groups.)

F. Certification and Recertification

Comment: We received a few comments regarding the statutory requirement for initial certification and periodic recertification as to level of care, as required under section 1814(a)(2) of the Act.

Response: The comments regarding this particular provision are addressed later, in the discussion on coverage and level of care determinations under the SNF PPS. However, we would like to take this opportunity to clarify that the required certification and recertification statements are not the same as any requirements specifically related to the plan of treatment for therapy that is required for purposes of coverage, or to the overall requirement for the multidisciplinary plan of care required by the long-term care facility requirements for participation at section 1819(b)(2) of the Act.

G. MDS Scheduling Requirements

1. Grace Days

Comment: We received several comments asking about the appropriate use of the 3-day grace period provided for the Medicare 5-day assessment. There is some confusion about when use of the grace days could result in the facility being at a high risk for an audit.

Response: Days six, seven, and eight, of the Medicare covered stay, were provided as grace days for setting the assessment reference date for the Medicare 5-day assessment. This assessment is to have an assessment reference date (MDS 2.0 Item A3a) of any day one through eight of the Medicare Part A stay. Days one through five are optimal but days six through eight are also acceptable, and for some residents may actually be more appropriate; for example, to allow maximum flexibility for nurses to determine when to set the assessment reference date for the beneficiary's MDS, and thereby lessen the burden of the increased frequency of assessments that accompanied the PPS. Thus, the resident can be assessed using any one of these first eight days as the assessment reference date for the Medicare-required 5-day assessment.

However, we discourage the routine use of grace days for assessing every Medicare admission. We plan to identify patterns of inappropriate use as we gain a better understanding of what facilities' practice patterns are. When a facility routinely uses a grace day as the assessment reference date for the 5-day assessment, it loses the cushion that these days provide against performing the MDS later than day eight and, thus, risks being faced with payment at the default rate.

At this time our main interest is to encourage facilities to perform assessments timely and to recognize the grace days as a cushion and to use them as such, rather than as deadlines for setting each beneficiary's assessment reference date. The grace days are also provided to offset any incentive that facilities may have to initiate therapy services before the beneficiary is able to tolerate that level of activity.

Our discussion in the interim final rule about the possibility of audits was intended to address the possible practice of routinely using grace days for Medicare assessments. We were cognizant that the routine use of a grace day for the 5-day assessment would pose a temptation to back-date the assessment fraudulently when day eight was missed. We believed that any facility that routinely used grace days for the required assessments was liable to have assessments billed at the default rate; and that the absence of default rate billings in the facility's claims might indicate that some misrepresentation of the assessment reference dates had occurred.

Unlike the routine use of grace days described above, we do expect that many beneficiaries who classify into the rehabilitation category will have 5-day assessment reference dates that fall on grace days. There are many cases in which the beneficiary is not physically able to begin therapy services until he or she has been in the facility for a few days. Thus, for a beneficiary who does not begin receiving rehabilitation therapy until the fifth, sixth, or seventh day of his or her SNF stay, the assessment reference date may be set for one of the grace days in order to capture an adequate number of days and minutes in section P of the current version of the MDS to qualify the resident for classification into one of the rehabilitation therapy RUG–III groups.

Another reason for the provision of three grace days for the 5-day assessment was to make it possible for beneficiaries to classify into the two highest RUG–III rehabilitation sub-categories. Classification into the Ultra High and Very High Rehabilitation sub-categories is not possible unless the beneficiary receives the sub-category's minimum level of services during the first seven days of the stay.

We also intended to minimize the incentive to facilities to provide too high a level of rehabilitation therapy to newly admitted beneficiaries. Having these extra few days allows time for those beneficiaries who need it, to stabilize from the acute care setting and be prepared for the beginning of rehabilitation in the SNF. We expect facilities will not compromise any beneficiary's health by beginning rehabilitation therapy prematurely or at a level that is too rigorous for the individual's status. In summary, use of grace days is acceptable and permitted for patients with any condition. However, a facility that uses grace days routinely may be subject to audit to determine that assessment reference dates are accurately reflected.

Comment: One commenter requested that we modify the statement at section II.B.7 of the interim final rule that states SNFs "must submit the Resident Assessment Protocols (RAPs) with either the 5-day or the 14-day assessment" to indicate that the SNFs must submit the completed RAP Summary Form, section V of the MDS with either the 5-day or 14-day assessment.

Response: This may be a helpful clarification for providers; however, we want to be certain that providers fully understand this requirement. We will take this opportunity to make clear that the RAPs are not a PPS requirement. The requirements for completion of section V and the care planning responsibilities of facility clinical staff are unchanged by the PPS. We included the clinical requirement for RAPs in the interim final rule in an effort to help providers to understand how the Medicare required SNF PPS assessments coordinate with the required clinical assessments.

The requirement for RAPs is entirely outside of the SNF PPS. In fact, if the clinical initial admission assessment (item AA8a of the MDS 2.0 = "01") was performed before the beneficiary started his Medicare covered SNF stay, neither the Medicare required 5-day, nor the Medicare 14-day assessment is required to have a completed section V. There are no care planning requirements associated with any full MDS assessment performed solely for the purpose of complying with the Medicare assessment schedule for a Part

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A Medicare beneficiary's SNF stay. The Medicare PPS requirements are separate from the clinical requirements. However, we have designed the Medicare requirements so that an SNF can coordinate the scheduling of assessments to avoid duplication of effort.

2. Completion and Locking

For Medicare payment, we are requiring that any assessment, including the 5-day, must be "completed" (that is, signed by all members of the care team) within 14 days of the assessment reference date (MDS item A3a). That is, the completion date at MDS item R2b, must be a date that is within 14 days of the date at A3a. Then the assessment must be "locked" within seven days of the date at R2b, and transmitted to the State in which the SNF operates within 31 days of the final lock date (State Operations Manual, HCFA Pub. 7).

However, there are other considerations to keep in mind. There is still the clinical requirement that an Initial Admission Assessment must be "completed" by the 14th day of the nursing home stay. This means that for a Medicare beneficiary who is newly admitted to the SNF for a covered Part A stay, the SNF must complete a comprehensive MDS by day 14, regardless of the assessment reference dates on the Medicare-required 5 day and 14 day assessments.

As has been the case since the OBRA 1987 requirements were implemented, a comprehensive assessment (Initial Admission Assessment) is due to be completed by the 14th day of the SNF stay. In addition, for Medicare beneficiaries in the SNF for a covered Part A stay, a 5-day assessment must be performed, with an assessment reference date on any day one through eight of the Medicare Part A covered stay, and must be completed within 14 days of the assessment reference date. Also, by the end of the second week in the Medicare Part A covered stay, the Medicare 14-day assessment must be performed. This assessment must have an assessment reference date of any day 11 through 19 (including the 5-day grace period provided for this assessment).

Given these requirements during the first weeks of the SNF stay, and considering that Medicare Part A coverage often begins on the day of admission, we believe that in many cases nursing homes will opt to complete a single assessment to satisfy the requirements for both the 5-day (or 14-day) assessment and the Initial Admission Assessment. In this example, the Medicare 5-day assessment, with an assessment reference date of any day, one through eight of the stay, will be a comprehensive assessment and will have to be completed within 14 days of the start of the SNF stay. The day of admission is counted as day one. The assessment must comply with the requirements for the Initial Admission Assessment. That is, it must be a comprehensive assessment, including the RAPs.

When the Medicare 5-day assessment is also used to fulfill the requirement for the Initial Admission Assessment, the Medicare 14-day assessment may be performed using any day 11 through 14 of the stay as the assessment reference date (MDS item A3a) and, in addition, the SNF may use the five available grace days (through day 19), if necessary. The Medicare 14-day assessment must then be completed (dated at item R2b) 14 days after the assessment reference date, locked in seven days, and so forth. Keep in mind that there are no grace days for completion of the Initial Admission Assessment. As always, the Initial Admission Assessment must be completed by day 14. Another factor to consider in timing completion and locking of assessments is that bills may only be sent for assessments that have been locked.

3. Discharge and Leave of Absence

Comment: One commenter asked for a definition of "leave of absence" as distinguished from a "discharge."

Response: Although this is not a distinction that is specific to the PPS, we would like to define these terms in the context of clarifying another somewhat misunderstood aspect of Medicare coverage, the so-called "midnight rule" and the clinical requirements for Discharge forms and Re-Entry Tracking forms. We received questions from other commenters on how to handle cases in which the beneficiary is out of the facility at the time of census-taking, midnight. These activities are all interrelated and have generated many questions during the initial phase of PPS implementation. There are a number of reasons why a beneficiary may leave the SNF for a "leave of absence." These include a temporary home visit, a temporary therapeutic leave, or a hospital observational stay of less than 24 hours in which the beneficiary is not formally admitted to the hospital and is not discharged from the SNF. In each of these situations, there is no requirement for the SNF to complete a Discharge or a Re-Entry Tracking form.

When a beneficiary goes to an acute care hospital emergency room (ER) during his or her SNF stay and is in the ER at midnight, there is an additional aspect with regard to Medicare payment. According to Medicare rules, the day preceding the midnight on which the beneficiary was absent from the facility becomes a day for which the SNF may not bill Part A of Medicare. This is known as the "midnight rule." However, for clinical purposes, as long as the beneficiary returns to the facility in less than 24 hours, was not admitted to the hospital, and was not discharged from the SNF, this time in the ER is considered a "leave of absence" and requires no discharge form.

Likewise, from the perspective of Medicare payment under PPS, there is no requirement for any additional assessment. The day preceding the midnight is not a covered Part A day and, therefore, the Medicare assessment "clock" is altered by skipping that day in calculating when the next Medicare assessment is due. From a clinical standpoint, the leave of absence does not affect the "clock" for the clinical assessments.

For example, if the beneficiary is due for his 30-day assessment on March 30 (day 30 of his Medicare covered stay), but he spends midnight of March 27 in the ER, day 30 of his Medicare Part A covered stay now falls on March 31, as March 27 does not count as one of the beneficiary's 100 days of Medicare SNF care. In other words, the count of days in the Medicare covered stay changes when there is a noncovered day because the facility cannot count that day as one of the beneficiary's benefit days. Given the flexibility of the assessment windows for the Medicare assessments, altering the count of days as described here should have no more than a negligible effect on assessment scheduling for facilities.

Of course, a beneficiary who is required to be in the ER at midnight may well have experienced a significant change in clinical status. In that case, the facility must comply with the clinical requirement to complete a Significant Change in Status Assessment when the beneficiary returns to the SNF. The Medicare payment requirements and the midnight rule have no bearing on this requirement for completion of a Significant Change in Status Assessment.

Alternatively, if the beneficiary is in the ER for more than 24 hours, or is actually admitted to the hospital or discharged from the SNF, a Discharge Tracking form is required. In addition, when the beneficiary returns to the SNF, a Re-Entry Tracking form is required, and a Return/Readmission Assessment (MDS 2.0 item A8b=5) must be performed to restart the Medicare assessment schedule. The Return/Readmission Assessment fulfills the requirement for a Medicare 5-day assessment in this situation, and the next required assessment would be the Medicare 14-day assessment.

Finally, with regard to MDS scheduling requirements, we are taking this opportunity to clarify the regulations text at § 413.343(b), which specifies the assessment schedule required under the SNF PPS. The current language requires the performance of such assessments on the 5th, 14th, 30th, 60th, and 90th days "following admission." However, as indicated in the preceding discussion, it is not the admission date per se that determines the start of the Medicare assessment schedule, but rather, the commencement of Medicare-covered care in the SNF. Although Medicare-covered posthospital SNF care often does begin immediately upon a beneficiary's admission to the SNF, the existing language fails to address those situations in which such care does not commence until sometime after the day of admission. The Medicare required assessment schedule is based only on those days in the Medicare Part A covered stay and, thus, cannot be scheduled based on the day of admission per se. Therefore, we are revising the language in the regulations text to take into account the possibility that a beneficiary's "posthospital SNF care" (that is, SNF care that is covered under Medicare Part A) may begin subsequent to the day of his or her actual admission to the facility. The Medicare required assessments are to be performed so that, using the first day of posthospital SNF care as day 1, there is a full MDS assessment on the 5th day, the 14th day, the 30th day, the 60th day and the 90th day of the SNF stay.

H. Other Medicare MDS Requirements

In the interim final rule, we stated that collection of medication information using a revised version of section U of the MDS would be required under PPS, beginning October 1, 1999. The criteria we established for this process anticipated that a refined section U would be developed to facilitate streamlined data collection, maximize data accuracy, and minimize burden to facilities. We have, to date, made considerable progress in our work on the section U refinements. However, due to systems constraints resulting from the need to achieve Year 2000 (Y2K) compliance (see the further discussion of the Y2K issue below in the context of the partial delay in SNF consolidated billing implementation), we will not be able to implement the refined version of section U until after the first months of the year 2000 have passed. Therefore, we have determined that the most straightforward and least burdensome approach is to defer section U implementation until October 1, 2000.

I. Medical Review

Comment: We received several comments requesting that we publish the medical review criteria to be used now that PPS is in place. Also, there were requests that we institute consistent medical review policies across FIs.

Response: We are currently formalizing the medical review criteria that will be used in the review of SNF PPS bills. Certainly, one of the primary goals of the new policy is to provide reviewers with guidelines that will facilitate consistent national medical review policy, one of the initial goals of implementing the PPS. We recently published a PM (PM transmittal No. A–99–20, May 1999) to instruct medical reviewers in the new process. One aspect of the reviews of SNF PPS bills to be performed by the FIs focuses on the MDS information and its consistency with the documentation in the rest of the medical record. In addition, the review process focuses on identification of instances in which inappropriate services were provided or in which the beneficiary did not meet the requirements for Medicare Part A coverage in an SNF.

Comment: There were questions about how the MDS information might be matched to claims data to facilitate monitoring or auditing of SNF reporting practices.

Response: The process for matching the bill to the MDS takes place at HCFA. We use the bill data forwarded to us by the FIs to match to the appropriate MDS from the HCFA MDS Repository. From these matched or unmatched files, we generate various reports for use by HCFA and the FIs in their audit functions.

Comment: We received a comment requesting that we instruct FIs to give demand bills a high priority within the review process and to process these submissions no later than 30 days from the date of the request.

Response: The policy governing how demand bills will be processed under the SNF PPS will be determined by considering the FIs' overall workloads, of which the SNF PPS represents only a small portion.

Comment: A commenter requested that we generate and disseminate to the nursing home industry and to the payers, the full process of transmission of clinical Medicare Part A information and claims submission requirements, including documentation requirements needed by the fiscal intermediary for late assessment reference dates.

Response: The requirements for the transmission of all MDS assessments can be found in the **Federal Register** published on December 23, 1997 (62 FR 67174). There are no separate requirements for Medicare Part A information. The facility must submit the MDS to the State in which it operates and the State transmits it to us. In contrast, the SNF submits claims to the FI, as they did before PPS. Each claim is transmitted to us by the FI after it has been paid, and we match the claim to the appropriate MDS. The FI may request any information it deems to be necessary to verify the level of services billed by the facility.

Comment: We received one comment suggesting that we should exempt from post-payment review or on-site audit, any 5-day assessment with an assessment reference date on one of the grace days that results in the beneficiary's classification into a Low Rehabilitation group.

Response: This comment reflects a misunderstanding of our policy regarding grace days. As explained above in this final rule, the grace days are available for use, without penalty. The reference to audits in the interim final rule was not intended to preclude any appropriate use of the grace days. Therefore, although the comment indicates that beneficiaries who classify into one of the low rehabilitation groups should be exempt from review (presumably because of the requirement for six days of nursing rehabilitation services in order to qualify for this RUG–III group), there is no reason for us to consider excluding any type of Medicare SNF claims from post-payment review.

Comment: Several commenters cited the BBA mandate that we must implement a quality monitoring system. Section 4432(c) of the BBA requires the Secretary to establish a medical review process to examine the effects of the SNF and PPS related provisions on the quality of SNF services furnished to Medicare beneficiaries, with particular emphasis on the quality of non-routine covered services and Medicare-covered physician services.

Response: The quality of care provided to beneficiaries is paramount in our view. We will use our existing survey and enforcement activities (along with the new techniques and data that are now becoming available with the advent of prospective payment) to ensure the quality of SNF services provided to Medicare beneficiaries.

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In addition to the more traditional medical review process we are establishing, as described above, we have also begun work toward the establishment of a quality medical review process that is specifically designed to fulfill the BBA mandate. We have developed an SNF PPS Quality Medical Review Pilot project that uses MDS and other data to monitor and target quality and program integrity problems. This monitoring will be accomplished by testing a more integrated and cooperative approach to medical review of SNF services using several pilot states to partner Peer Review Organizations (PROs), FIs, State Survey Agencies, and Medicaid agencies to assess, monitor, and improve the quality of Medicare SNF services under the PPS.

We are implementing a two-tier strategy using the PRO Special Project process. This strategy is expected to strengthen program integrity and quality review in SNFs, promote SNF quality improvement, deter fraud and abuse, and enhance beneficiary protection. The first tier is a statistical analysis PRO (StatPRO), that is testing a data driven approach which analyzes MDS data to flag potential quality of care and program integrity problems. The MDS data set will be linked with other HCFA data sets (such as, Medicare Part A and B claims, OSCAR-Online Survey Certification and Reporting System, HCIS–HCFA Customer Information System, FI payment, and program integrity data) to identify patterns and trends in care. The second tier of the project pilot tests a data based approach using StatPRO and other data to examine State trends and variations in SNF data and patient care through the collaboration of quality medical review (QMR) teams composed of the PRO, FI, and State survey agency in two States (NC and CO) and in three States (AZ, MA, and MD) the Medicaid Agency is added. The QMR pilots will field test an integrated model where they will work together to better understand each other's program integrity and quality review roles, develop collaborative approaches within their regulatory authority, test a targeted clinical data driven intervention strategy, target beneficiary protection, and deterrence of fraud and abuse. Finally, we will use the vast data resources available from the national MDS data repository to support our quality initiatives.

J. Rehabilitation Therapy Services and PPS

Comment: Many commenters questioned when rehabilitation therapy may begin in the SNF stay.

Response: Although rehabilitation therapy may begin as early as day one of the Medicare Part A SNF stay, we note that all of the rehabilitation therapy services (PT, OT, and SLP) must meet each of the following criteria in order to be coded in the MDS as minutes of rehabilitation therapy:

- The service must be ordered by a physician.
- The therapy intervention must relate directly and specifically to an active written treatment regimen established by the physician after any needed consultation with the qualified rehabilitation therapy professional and must be reasonable and necessary to the treatment of the beneficiary's illness or injury (section 230 of the Medicare Skilled Nursing Facility Manual, HCFA Pub. 12).
- An appropriately licensed or certified individual must provide or directly supervise the therapeutic service and coordinate the intervention with nursing services.

Even though these three criteria are not new with PPS, the establishment of a new payment system has heightened interest in understanding and satisfying these standards. For instance, in addition to the commenters' question about when rehabilitation therapy services can begin, we have received many questions during the first year of PPS implementation regarding standards for supervision of rehabilitation therapy assistants and aides, and many questions regarding the physician signature requirements for the rehabilitation therapy plan of treatment. Accordingly, we will take this opportunity to provide further clarification of those issues. The rehabilitation therapy service must be ordered by a physician. The Medicare policy regarding the requirement for the physician signature on the therapy plan of treatment has not changed. As is stated in the SNF Manual, rehabilitation therapy services provided to a beneficiary in a SNF must be directly and specifically related to an active written treatment plan established by the physician after any needed consultation with a qualified therapist. Implementation of the PPS did nothing to alter this guideline. We will, however, take this opportunity to clarify what is required for coverage of rehabilitation therapy.

As stated in the language in the SNF Manual cited in the preceding paragraph, Medicare requires the physician to make decisions regarding the amount and intensity of rehabilitation therapy services provided to Medicare beneficiaries in SNFs after consulting with the professional therapist. This requirement is based on our commitment to ensuring quality care for Medicare beneficiaries, and also reflects the requirements for participation (at section 1819(b)(6)(A) of the Act), which specify that the medical care of every SNF resident must be provided under the supervision of a physician. Our policy has not changed, and we are taking this opportunity to clarify that policy. The physician's responsibility in the development of a rehabilitation therapy plan of treatment ensures that the services to be provided will not exceed the beneficiary's abilities as constrained by his clinical status. In addition, we believe that the physician's clinical judgement is an important aspect in preventing injuries that can result from the provision of inappropriate rehabilitation therapy. For example, the rehabilitation plan of treatment for a beneficiary with a hip fracture should be developed with an awareness of his or her limitations due to severe osteoporosis and emphysema. Unless the beneficiary's entire clinical condition is taken into account, there is a significant risk of injury and of a compromised medical status.

We expect that the same care will be taken by the physician and SNF staff to document physician responsibility for developing the therapy plan of treatment, including precautions, that is reasonably expected to be taken for any other element of the medical record. We realize, however, that in the SNF setting there may not be a physician on the premises every day. Therefore, Medicare allows the professional therapist to develop a suggested plan of treatment and to begin providing services based on that plan prior to obtaining the physician's signature on the plan. We continue to require that the plan of treatment must be a physician's responsibility after any needed consultation with a qualified therapist, and that the requirement for physician verification of the suggested plan of treatment will be obtained within a reasonable amount of time. However, a physician signature must be obtained before the facility bills Medicare for payment for the rehabilitation therapy services provided to the beneficiary based on the plan of treatment he or she has approved. In this way, the facility can be sure that the level of therapy for which it bills Medicare is the level the physician deems to be medically necessary. We expect that the type and intensity of therapy billed will always match the type and intensity of therapy on the signed therapy plan of treatment.

We understand that many physicians use the fax to participate actively in the review of written plans of care and so believe that it is appropriate to accept physicians' faxed signatures for the plan of treatment. As always, whenever the plan of treatment is altered in any way, the modification must be made in writing. If the physician is not the person making the modification, the therapist who is making the change must notify the physician timely, and the physician must sign the change within a reasonable amount of time.

In addition to the issues discussed above, we would like to clarify the requirements for the rehabilitation therapist's initial evaluation of a Medicare beneficiary in a SNF stay and the requirements for licensed therapist supervision of therapy assistants and therapy aides when they provide therapy services to Medicare beneficiaries. The initial evaluation, performed by the licensed therapist and necessary for the development of the plan of treatment, must be performed during the beneficiary's SNF stay. It is not acceptable to use an evaluation that was performed for instance, in the acute care hospital or the rehabilitation hospital setting as the evaluation of the beneficiary in the SNF, because the beneficiary's status must be evaluated as he or she presents in the SNF setting. The evaluation, and the resultant plan of treatment, developed in the acute care hospital or rehabilitation hospital is relevant to the specific type of setting and is not interchangeable with an evaluation and plan of treatment developed for the beneficiary in the SNF setting. The time that it takes for the therapist to perform this evaluation may not be recorded as minutes of therapy received by the beneficiary.

An appropriately licensed or certified individual must provide or supervise the therapeutic service and coordinate the intervention with nursing services. As stated above, Medicare expects that services will be provided by, or supervised by, appropriately licensed or certified professionals.

Physical and occupational therapy assistants may provide rehabilitation therapy services under the supervision of the professional therapist. A rehabilitation therapy assistant must be under the general supervision of a professional therapist who is accessible while the assistant is providing services to the beneficiary. The therapy assistant cannot supervise a therapy aide. It is up to the professional therapist to ensure that the assistant is capable of performing therapy services without the more stringent "line-of-sight" level of supervision required by therapy aides.

A therapy aide must be supervised personally by the professional therapist in such a way that the therapist has visual contact with the aide at all times. Therapy aides are not to perform any services without "line-of-sight" supervision. Similarly, a therapy aide must never be responsible for provision of group therapy services, as this is well beyond the scope of services that they are qualified to provide.

A therapy student who is participating in field experience must also be under the "line-of-sight" level of supervision of the professional therapist. Even though these students may become licensed therapists within months of the field training portion of their school program, they are not licensed or certified for practice in an unsupervised status. Further, none of the minutes of therapy services provided by the students may be recorded on the MDS as minutes of therapy received by the beneficiary. Medicare recognizes the costs associated with approved educational activities as a pass-through (see § 413.85).

Comment: Many commenters had questions about the correct counting and recording in the MDS of minutes of rehabilitation therapy.

Response: Section P of the current version of the MDS contains the items that capture the amount of time each nursing home resident spends receiving rehabilitation therapy. Thus, it is in section P that the clinician records the number of days and minutes of rehabilitation therapy (PT, OT, ST) received by the individual beneficiary during the past seven days, or since admission to the SNF, whichever is shorter.

The directions for completion of section P instruct the assessor to look back over the "last 7 calendar days," counting only post admission days and minutes of therapy, when counting the days and minutes of rehabilitation therapy received by the beneficiary. The number of minutes recorded here must be the actual number received by the beneficiary. Seven calendar days are, by definition, consecutive days.

In the case of a Medicare 5-day assessment, however, the nurse assessor will choose as the assessment reference date (MDS item A3a), any day one through eight of the covered stay, and will look back over the prior seven calendar days (or over the days since admission if there are fewer than seven days since admission) to count the number of days upon which more than 15 minutes of therapy were received and the number of minutes that were received by the beneficiary during those days. It is irrelevant if there is a break in therapy (for example, for a weekend or holiday) during that time. For example, if day five of the stay is chosen as the assessment reference date, the assessor would look back to admission to count the patient's PT, OT, and ST time. If the beneficiary received PT for 50 minutes on both the second and fifth days of the Part A covered stay, that would be recorded as two days of PT and 100 total minutes of PT. The actual number (not rounded) of minutes must be recorded on the MDS. Minutes cannot be rounded to multiples of 10 or 15.

The rehabilitation therapy time reported on the MDS is a record of the time the beneficiary spent receiving therapy services, not a record of the therapist's time. As stated in the August 1996 publication, Long Term Care Resident Assessment *Instrument Questions and Answers, Version 2.0*, the beneficiary's "therapy time starts when he begins the first treatment activity or task and ends when he finishes with the last apparatus and the treatment is ended."

Set-up time is included, as is time under the therapist's or therapy assistant's direct supervision. PT, OT, and ST provided outside the building may be counted and recorded on the MDS, as long as the staff who provide therapy are qualified to provide the service. In the State Operations Manual (SOM, HCFA Pub. 7) Transmittal #272, pp. R64, "The therapy treatment may occur inside or outside the facility." This includes the time it takes for the therapist to take the beneficiary to his or her home for a home visit before discharge as long as the therapist uses the time in the car to teach or discuss the beneficiary's treatment or treatment goals, and for family conferences when the beneficiary is also present.

Whether the time spent evaluating the beneficiary is counted depends on whether it is the formal initial evaluation or an evaluation performed after the course of therapy has begun. The time it takes to perform the formal initial evaluation and develop the treatment goals and the plan of treatment may not be counted as minutes of therapy received by the beneficiary. However, a reevaluation—that is, a hands-on examination of the beneficiary and not simply an update to the documentation and revision of the care plan—that is performed once a therapy regimen is underway (for example, evaluating goal achievement as part of the therapy session) may be counted as minutes of therapy received.

This policy was established because we do not wish to provide an incentive for facilities to perform initial evaluations for therapy services for patients who have no need of those specialized services. However, we

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believe that the initial evaluation is an appropriate cost of doing business. Therefore, the cost of the initial assessment is included in the payment rates for all Medicare beneficiaries in covered Part A SNF stays.

For beneficiaries who do not classify into one of the Rehabilitation RUG–III groups, the therapy non-case-mix component is part of the daily rate. The amount, $0.91, is reflected in the rate for all of the non-therapy RUG–III groups.

The Long Term Care Resident Assessment Instrument Questions *and Answers Version 2.0*, clarifies how to account for therapy provided to an individual within a group setting. It states that if the group has four or fewer participants per supervising therapist (or therapy assistant under general supervision by the therapist) then it is appropriate to report the full time as therapy for each patient. The example used is that of a therapist working with three patients for 45 minutes on training to return to the community. Each patient's MDS would reflect receipt of 45 minutes of therapy for this session.

Although we recognize that receiving PT, OT, or ST as part of a group has clinical merit in select situations, we do not believe that services received within a group setting should account for more than 25 percent of the Medicare resident's therapy regimen during the SNF stay. For this reason, no more than 25 percent of the minutes reported in the MDS may be provided within a group setting. This limit is to be applied for each therapy discipline; that is, only 25 percent of the PT minutes reported in the MDS may be minutes received in a group setting and, similarly, only 25 percent of the OT, or the ST minutes reported may be minutes received in a group setting.

To summarize, the minutes of therapy provided by at least one supervising therapist (or therapy assistant under general supervision by the therapist) within a group of four or fewer participants, may be fully counted, provided that those minutes account for no more than 25 percent of the resident's weekly therapy in that discipline, as reported in the MDS. The supervising therapist may not be supervising any individuals other than the four or fewer individuals who are in the group at the time of the therapy session. Naturally, provision of group therapy time in excess of the 25 percent threshold is allowable, but those minutes may not be counted in section P of the MDS for purposes of RUG–III classification for Medicare Part A beneficiaries.

Under section 1814(a)(2)(B) of the Act, a covered SNF level of care is defined in terms of those services that necessitate the involvement of skilled personnel, are needed and received on a daily basis and, as a practical matter, can be provided only in an SNF on an inpatient basis. Additionally, the requirements for participation at section 1819(b)(4)(A) of the Act require an SNF to furnish the full range of nursing and specialized rehabilitative services needed to attain or maintain each resident's highest practicable state of well-being, in accordance with the comprehensive plan of care. This means that there are to be no limits placed on the services to be provided to the beneficiary due to the facilities interpretations of how many minutes are "allowed" by the given RUG–III group.

The RUG–III classification system uses minimum levels of minutes per week as qualifiers for classification into the rehabilitation therapy groups. These minutes are minimums and are not to be used as upper limits for service provision. Similarly, there are instances in which beneficiaries in the so-called "clinical categories," Extensive Services, Special Care and Clinically Complex, will need some limited amounts of rehabilitation therapy services, which they should receive, even though they may not require a level that would qualify them for one of the rehabilitation groups. The SNF PPS is based on averages, and a facility that continues to provide services as they are needed by its beneficiaries should receive payments that, in the aggregate, are adequate to pay for those services. Any policy of holding therapy to the bare minimum, regardless of beneficiary need, is inconsistent with the statutory requirements discussed above, and will result in poor outcomes, longer lengths of stay, and a degradation in the facility's quality of care.

Section T of the current version of the MDS must be included with each Medicare PPS assessment, but in the case of a Medicare five day assessment, the clinician captures minutes of therapy that are anticipated for the beneficiary during the first two weeks of the nursing home stay. This makes it possible for the beneficiary to classify into the appropriate RUG–III rehabilitation group based on the anticipated receipt of rehabilitation therapy, even though the assessment is done during the first few days of the SNF stay.

Section T of the current version of the MDS contains three items, T1b, T1c and T1d, in which the assessor is to record "ordered therapies." The T1b item asks, "Has physician ordered any of the following therapies to begin in FIRST 14 days of stay—PT, OT, or speech pathology service?" If the answer to this question is yes, then the number of expected minutes and days is completed in items T1c and T1d of the current version of the MDS. If the answer is no, then there is nothing to report in T1c or T1d.

If the physician orders therapy for 10 days, the projected number of days in section T will be 10 rather than 14; likewise, if the physician does not order a limited number of days, the projection will be based on the entire two weeks, assuming the beneficiary's continued stay and receipt of services.

The RUG–III grouper takes into consideration both the days and minutes already received by the beneficiary, as reported in section P of the current version of the MDS, and the days and minutes expected to be received in the first two weeks of the stay. The number of days and minutes expected, as reported in section T, should include those already received.

For example, the beneficiary received an hour of OT on both the fourth and fifth days (a Monday and Tuesday) of the SNF stay. The prescribed regimen calls for the beneficiary to receive an hour of OT daily, Monday through Friday, during the first two weeks in the SNF. The assessment reference date was set for the fifth day of the stay; two days and 120 minutes were reported as having been received in section P of the MDS, and 10 days and 600 minutes were reported as anticipated in section T. The 10 days and 600 minutes recorded in section T include the 2 days and 120 minutes already received, in addition to the upcoming three days and 180 minutes expected to be received in the first week, and the five days and 300 minutes of therapy in the second week.

We realize that reporting therapy time that has not yet been provided is a significant change for providers, but it is in compliance with the grouper logic and allows the facility to provide the most accurate representation of the services to be provided to the beneficiary during the first assessment period.

K. RUG–III Groups

Comment: We received a few comments stating that the "limits" on therapy minutes imposed by the RUG–III groups were too low, and that more than 720 minutes should be allowed for beneficiaries in the highest RUG–III groups.

Response: The RUG–III system does not impose limits on the services a resident may receive; rather, it is used to determine how much Medicare pays for the services that the resident

receives. The minutes used to classify beneficiaries into RUG–III groups are in no way to be taken as upper limits. The 720-minute threshold for the Ultra High sub-category is a minimum for purposes of classifying residents. In fact, during the demonstration, there were beneficiaries who were receiving more that 1,000 minutes per week, and we expect that there will be similar instances during the national implementation. All of the groups were created based on a continuum of minutes being provided, including Ultra High. Just as we expect to see beneficiaries in the High Rehabilitation sub-category receiving 450 minutes per week, we expect that as many minutes as are needed will be provided to beneficiaries in the Ultra High groups.

Comment: We received a comment requesting that we explain how the RUG–III grouper works. The commenter believed that we failed to explain fully in the interim final rule the grouping logic that restricts classification into the Rehabilitation Ultra High and Very High sub-categories to beneficiaries who have a full week of therapy recorded in section P of the MDS.

Response: The grouper software uses the minutes and days recorded in sections P and T together to classify beneficiaries into the RUG–III rehabilitation groups. However, in order for a beneficiary to classify into the upper two sub-categories, Ultra High and Very High, he or she must have received at least one full week (five days) of therapy at the level that would qualify for these groups.

For example, suppose a beneficiary is admitted on Monday, May 1 and begins PT and OT on May 4. The beneficiary receives 90 minutes of PT and 60 minutes of OT on the 4th, 5th, 6th, 7th, and 8th of May. The assessment reference date for the Medicare 5-day assessment is Monday, May 8. The beneficiary will classify into the Ultra High sub-category based on having received more than 720 minutes of therapy across at least two disciplines during the past seven days, as recorded in section P of the MDS. If, on the other hand, the beneficiary received this level of therapy on only four of the first seven days in the SNF, he or she would classify into the High Rehabilitation sub-category since this is the highest level of classification that is possible when a minimum of 500 minutes and five days of therapy have not been provided.

We have posted a tool on our web site that allows the user to follow the grouper logic manually. It walks through each step of the grouping logic and we believe it is a useful learning tool. The website address is: <www.hcfa.gov/medicare/hsqb/mds20/>.

Comment: There were a few comments regarding the use of the combination of physician visits and order changes to qualify beneficiaries for the Clinically Complex RUG–III category. One of the commenters argued that these criteria are unacceptable because an SNF represents not a medical model but rather a nursing model; as such, the physician's involvement and participation may be limited, or may result from consultation sought by the facility's nursing staff due to changes in a resident's condition or the need for specific services. Another commenter inquired about the specific definition being used to define a "physician order change."

Response: These comments are representative of concerns that have been expressed during the initial implementation of the SNF PPS. While we are aware that many facilities operate using a nursing model as opposed to a medical model of care delivery, the commenter's further observation on why the nursing staff would consult with the physician provides the explanation for why physician order changes and visits are qualifiers for the RUG–III groups.

The RUG–III system uses clinical events, conditions, and services as indicators of severity. The results of the research that is the basis of the RUG–III system showed that an increased frequency of physician visits and order changes are indicators of a beneficiary's clinical instability. As in the commenter's example, the nursing staff may consult with the physician due to changes in the beneficiary's condition that require medical intervention or the need for specific services that require a physician order.

We would also like to make clear what constitutes an order change. The specific issues that have been raised include whether an order to continue a specified treatment is a new order and, therefore, counts as an order change; whether a sliding scale medication order counts as a new order every time the clinician administers one of the different dosages specified in the scale; whether orders written to clarify a previous order count; and, whether all doctor's visits count in the number of physician visits item.

A physician's order to continue or renew some specified treatment or regimen would not be considered to be an order change, nor would an order written solely to clarify an earlier order. As stated in the Long Term Care RAI User's Manual, the definition of an order change does not include admission orders, return admission orders, or renewal orders without changes. Similarly, a sliding scale dosage schedule that is written to cover different dosages depending on lab values, does not count as an order change simply because a different dose is administered based on the sliding scale guidelines. "Physician visits" are also defined in the *Long Term Care RAI User's Manual*. The physician is defined to include an "MD, osteopath, podiatrist, or dentist who is either the primary physician or consultant. Also include an authorized physician assistant or nurse practitioner working in collaboration with the physician." The visit is defined as a partial or full exam at the facility or in the physician's office.

L. Nurse Staffing and the Staff Time Measurement Studies

Comment: We received a variety of questions related to the staff time measurement (STM) studies performed in 1995 and 1997 that were used to set the case-mix indices. These included questions about what portion of the nurses' time was accounted for in the study, whether all nursing minutes (resident specific and non-specific) were used, whether medication aide time was counted, and what nurse staffing mix was used. Also, the suggestion was made that we should conduct another STM study after the PPS has been in place for a year.

Response: Before addressing the specific comments, we are taking this opportunity to provide a brief background explanation of the STM studies. As stated in the interim final rule, we conducted the STM studies in 12 States across 154 SNFs and 3,900 residents. The 1997 STM was performed to supplement the 1995 study to secure additional STM data from SNFs identified as providing both high quality care and more than an average level of rehabilitation therapy to patients on their Medicare-certified nursing units, and to include a broad geographic distribution of providers.

The STM data collection accounted for all nursing staff time during the 48-hour collection period. This time included that of the registered nurses (RNs), licensed practical nurses (LPNs), aides (certified nursing assistants (CNAs)), and medication aides. The resident-specific component counted all nursing time of 30 seconds or more spent in an activity directly attributable to a specific resident. The non-resident specific component included all time

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not directly related to a specific resident, such as meetings, nursing unit administration, and staff meal times. Also, if the nursing staff member worked past the end of the shift, that time was counted as well.

The therapy staff time was collected over a 7-day period. All time that the therapist, therapy assistant, and therapy aides spent working in the certified nursing unit was accounted for and was apportioned between resident specific and non-resident specific, following the same methodology as was used in the nursing time allocation. All of these collected time data were used in the development of the indices.

The staffing levels and the nurse staffing mix on the units selected for the study met the OBRA 87 staffing requirements and provided more than 110 minutes of daily resident specific nurse staff time. Both freestanding and hospital-based facilities were used in the study. Salaries were adjusted based on the American Health Care Association's 1995 study of national nursing home salaries.

The nurse staffing mix found on the certified nursing units in the study were determined per unit, based on the mix of residents on the nursing unit at the time of the data collection. Based on a case-mix of 0.92, the average time across the two staff time studies was: 1.2 hours per resident, per day of RN time; 0.7 hours per resident, per day of LPN time; 2.6 hours per resident, per day of CNA time (including medication aides). This adds up to 4.6 hours per resident, per day of nursing time.

An important point to understand about the nursing time is how it affects the rates. The nursing time associated with any one group in the RUG–III hierarchy does not represent the nursing minutes that must be provided (and that will be paid for by Medicare) to each of those beneficiaries. Rather, the minutes are a distributional value—an average for the RUG–III group—and were an important factor in the development of the case-mix indices. The weight for each of the 44 RUG–III groups represents the average resources (including, of course, nursing) required to care for beneficiaries who classify to that group relative to the average resources required to care for beneficiaries in all of the other RUG–III groups. The RUG–III group with a value of 1.0 is identified and the weights for the other groups are calculated once that has been done. The value of 1.0 indicates that the average resources required to care for beneficiaries in that group are the average compared to all of the other groups. Accordingly, the resource requirements to care for beneficiaries in the other 43 RUG–III groups are either higher or lower than for the group with the weight of 1.0. Depending on the distribution of beneficiaries across the RUG–III groups, the group with the relative value of 1.0 will vary. It is important to bear this concept in mind, in order to avoid the misconception that a RUG–III group with a relative weight that changes from one year to the next has staffing requirements that have changed from the original staff time measurement study. The RUG–III system does not impose any new staffing requirements. The data are available from the HCFA PPS website address: <www.hcfa.gov/medicare/snfpps.htm.>

Comment: One commenter requested that we explain why the Behavior Category is so low in the RUG–III hierarchy, even though beneficiaries who classify into that group require intensive amounts of staffing resources.

Response: The reason for this is that the RUG–III hierarchy is in large part based on minutes of licensed nursing time and on the clinical conditions that require the attention of licensed staff. This is a result of early research findings that indicated that beneficiaries who have the clinical characteristics that would classify them into the medically complex categories, like Extensive Care, generally require much more RN and LPN time than do beneficiaries who classify into the groups in the lower end of the clinical scale. Similarly, beneficiaries who classify into groups lower in the hierarchy generally require less licensed nurse time but, as stated by the commenter, may require intensive amounts of staffing resources.

Beneficiaries in the Behavior Category may not need much licensed nurse time, but instead may require a large amount of certified nurse assistant (CNA) time. Much of the care required in these lower-end RUG–III groups is of the type provided by CNAs, such as assistance with activities of daily living (ADLs) and other types of maintenance care. In general, the need for CNA time is reflected in the beneficiaries' ADL sum scores, whereas the need for licensed nurse time is predicted by clinical complexity as reflected by the level in the hierarchy. Thus, beneficiaries who classify into the Extensive Services category where the ADL sum score is at least 7, have highly complex clinical needs and require high levels of both licensed nurse (RN/LPN) and CNA time. Beneficiaries in the lower-weighted RUG–III groups may also require skilled nursing care, but generally not as much as required in the higher groups.

Comment: Several commenters had concerns that the STM was collected over too short a period, that too few facilities were used and that not enough of them were hospital-based facilities, and that too few of the facilities used were located in metropolitan statistical areas (MSAs) with populations in excess of 500,000 people.

Response: We are confident that the methodology used for the STM studies was valid and appropriate for the task. Three STM studies were conducted. The first was in 1990, followed by another in 1995, and the last in 1997. The staff time studies were conducted in 13 States, in units of more than 300 nursing homes, representing care provided to about 12,000 residents. The States included were California, Colorado, Florida, Kansas, Maine, Maryland, Mississippi, Nebraska, New York, Ohio, South Dakota, Texas, and Washington. These States are geographically representative and include rural areas, as well as MSAs with populations in excess of 500,000.

Within each of these States, the selection of SNFs was guided by the research design that called for a sample that would adequately represent units that provide high quality, high-acuity care. The facilities in the combined 1995 and 1997 study sample were 55 percent for-profit facilities, 45 percent non-profit, 22 percent hospital-based facilities; 36 percent of the facilities had a head trauma unit, a ventilator unit, a special rehabilitation therapy unit, or a dialysis unit, or had been recommended as a high intensity unit by the Technical Expert Panel. Although the amount of time spent collecting data on any particular unit was short, the studies were conducted during different years and each year's study was performed over a period of months. In this way, the study was reflective of practice in the facilities in the aggregate, if not precisely representative of any particular facility over time.

Comment: One commenter argued that the staffing patterns (using 1995 as the base year) used in developing the rate structure lock SNFs into historic staffing patterns. Another commenter asserted that since there is no language in the regulation requiring SNFs to use a certain proportion of the rate on direct care services, they will not do so, and suggested that we adopt the staffing recommendations of the Institute for Geriatric Nursing of the John A. Hartford Foundation.

Response: As indicated earlier, the RUG–III system does not impose staffing requirements. We do not believe that our use of the 1995 base year locks facilities into any particular level of nurse staffing, either directly or indirectly. As stated above, the staffing levels in the staff time studies were based on the unit's case-mix at the time. The study used units that had a mix of payor types. Nationally, of the 14,000 Medicare certified facilities, fewer than 4,000 have an average daily census of more than 10 Medicare beneficiaries. We do not believe that it is appropriate to require staffing standards based on the needs of such a small portion of the facility's population, but this is an issue that is outside of this regulation's scope. We will carefully review and consider the findings of the National Academy of Sciences report (the report cited by the commenter is part of this larger effort) when it becomes available.

Comment: One commenter suggested that we include speech language pathology assistant times when we perform our next staff time measurement study. The commenter recommended that we include the times for these care providers in our update of the RUG–III case-mix indices.

Response: While we are not prepared to address the issue of when to conduct another staff time measurement study within the context of this final rule, we would note that services of speech language pathology assistants are not recognized for separate coverage under Medicare. In order for this class of providers to be eligible for Medicare payment, they must first achieve licensure or some other standard credential recognized at the national level. To date, these assistants have not obtained this standing.

Comment: We received a number of comments regarding the treatment of respiratory therapy services under the RUG–III. Several commenters expressed concern that facilities would be using inappropriately trained nurses rather than appropriately trained personnel to provide respiratory therapy services.

Response: We share the commenters' concern with regard to the quality of care. As stated in the SNF Manual at section 230.10.B.1, Medicare requires that respiratory services must be provided by respiratory therapists or technicians, physical therapists, nurses, or other qualified personnel. We currently have no evidence that unqualified personnel are administering respiratory treatments, but note that the State surveyors monitor long-term care facilities for such lapses in quality. The rules governing the provision of respiratory treatment were not altered by the implementation of PPS but certainly, in light of the PPS and its associated incentives, we are determined to monitor closely the provision of SNF care, including respiratory treatments. A key provision in implementing the new payment system is to safeguard quality of care for nursing home residents, and this issue warrants particular attention from our quality and enforcement initiative.

Comment: Several commenters raised concerns with the manner in which respiratory therapy is recognized in the SNF PPS.

Response: As discussed earlier in this preamble in the context of the Federal PPS rates, the treatment of respiratory therapy services in the SNF PPS was the result of careful consideration and extensive analysis. The RUG–III case-mix classification system, which forms the basis for the payment rates, does not include respiratory therapy in the same category as the rehabilitation therapies (occupational, speech, and physical therapy).

The primary reason for this was the difference in treatment patterns between respiratory therapy and the rehabilitation therapies. A secondary reason is that the costs of respiratory therapy services are not always separately identifiable on SNF cost reports, since trained nurses are qualified to provide these services, and often do so. However, we note that all costs from the base year data associated with respiratory therapy were captured in the computation of the payment rates, and the provision of respiratory therapy, as indicated on the resident assessment, can result in a higher payment in the non-rehabilitation RUG–III groups.

We believe that the SNF PPS accounts for respiratory therapy appropriately, and we do not believe that the RUG–III classification system will discourage the provision of needed respiratory rehabilitation. However, as discussed earlier, we are engaged in research to determine the potential for making refinements to the current case-mix model to improve accuracy of the payments. Ancillary services, such as pharmacy and respiratory therapy, will be one focus of the research.

Comment: One commenter noted that Medicare beneficiaries with more than $1,000 in paid respiratory therapy claims account for only 18 percent of all Medicare beneficiaries who received respiratory therapy services in 1996, and that the top four diagnoses (excluding a generic category of "other diseases of the lung")—chronic bronchitis, chronic airway obstruction, pneumonia due to solids or liquids, and pneumonia—average between $75 and $100 per day in respiratory services. The commenter added that this amount far exceeds the payment amounts associated with the 42 RUG–III categories that do not have respiratory adjustments, and that this warrants the development of an outlier policy to insure adequate care for these beneficiaries.

Response: Please refer to the preamble discussion on the Federal rates, in which we discuss "outlier" situations.

Comment: One commenter suggested that any future revisions to the MDS 2.0 should include an expansion of data collection fields to capture critical respiratory therapy diagnoses and medication requirements, and that certain data items in the current MDS related to respiratory care should be considered in revising the RUG–III classifications, so that patient acuity and payment will be appropriately recognized.

Response: These are important issues to consider as we revise the MDS and implement new versions in the future; however, we will not be making any changes to the MDS in this final rule.

Comment: Several commenters raised issues in connection with recreational therapy. Some indicated that the definitions and language within section T should accurately reflect and comply with the recreational therapy profession's standards and practices. To provide an accurate picture of the resident's rehabilitation needs, sections T1c and T1d should include recreational therapy within the mix of comprehensive rehabilitation services.

Response: Recreational therapy has long been among the services that Medicare has recognized as related to patient care in SNFs; however, it is not a therapy specifically identified for coverage in the statute. For this reason, recreational therapy services are not included in the RUG–III system in the same way as the rehabilitation therapies.

Comment: One commenter expressed a belief that the RUG–III system fails to reflect the importance of interdisciplinary comprehensive rehabilitation services. The commenter argued that recreational therapy is identified as a viable and recognized treatment option within all rehabilitation treatment settings, and noted that within the present RUG–III version, Recreation Therapy treatment minutes are not used in identifying the RUG–III rehabilitation classification.

Response: To the extent recreational therapy services were furnished in the SNF PPS base year, they are reflected in the SNF PPS payments. Thus, the SNF PPS reflects the provision of recreational therapy services to Medicare beneficiaries. Accordingly, we find no evidence to support the notion that the RUG–III classification system in any way prevents Medicare beneficiaries from receiving recreational therapy services.

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M. SNF Coverage and Level of Care Determinations

One of the prerequisites for coverage under the "extended care" (that is, Part A SNF) benefit is the beneficiary's need for and receipt of an SNF level of care. In the preamble to the interim final rule (63 FR 26283–85), we designated the upper 26 of the 44 RUG–III groups as representing an SNF level of care. We specified that a beneficiary's assignment to one of the upper 26 RUG–III groups as the result of a resident assessment would automatically classify the beneficiary as meeting the SNF level of care definition. Beneficiaries assigned to one of the lower 18 RUG–III groups would not automatically classify as either meeting or not meeting the level of care definition, but would instead receive an individual determination under the longstanding level of care criteria in regulations at Part 409, subpart D.

As discussed below, in this final rule we are clarifying the role played by a beneficiary's RUG–III assignment in the process of making SNF level of care determinations, and we are also restoring portions of the regulations text that appeared previously in § 409.33(a) on management and evaluation, observation and assessment, and patient education, which were deleted by the interim final rule.

Comment: We received numerous comments regarding the procedures for making SNF level of care determinations under the SNF PPS. Several commenters were under the impression that, in view of the prospective nature of the SNF PPS, and the interim final rule's designation of the upper 26 RUG–III groups as representing an SNF level of care, a resident assessment that triggers assignment to one of the upper 26 groups would result in automatic coverage that continues for the entire duration of the period to which that assessment applies, regardless of any changes in condition or services provided that might occur subsequent to the completion of the assessment itself. This impression was reinforced, in their view, by a table (Table 2.D) on the Medicare Assessment Schedule, which appeared in the preamble of the interim final rule (63 FR 26267), and which included a column entitled "Number of Days Authorized for Coverage and Payment." These commenters also asserted that making coverage determinations for a predetermined block of time was the approach that had been adopted under the NHCMQD, which served as the forerunner of the SNF PPS.

Response: In order to understand the actual effect of an assignment to one of the upper 26 RUG–III groups in making level of care determinations under the SNF PPS, it is also necessary to consider how SNF coverage determinations were made before the inception of the PPS. Before the SNF PPS, when a beneficiary met the "posthospital" requirements for SNF coverage (that is, the timely initiation of SNF care following the beneficiary's discharge from a qualifying hospital stay), an individual level of care determination was made, using the longstanding criteria that appear in regulations at §§ 409.31 through 409.35, and manual instructions in the Medicare Intermediary Manual, Part 3 (MIM–3, HCFA Pub. 13–3), sections 3132ff and the Skilled Nursing Facility Manual, sections 214ff.

As discussed in the interim final rule, this determination entailed a retrospective review by the Medicare FI, which focused primarily on a beneficiary's need for and receipt of specific, individual skilled services. Along with the posthospital and level of care requirements, the SNF services also had to meet additional requirements that apply to Medicare coverage generally; for example, the overall requirement that a service must be reasonable and necessary to diagnose or treat the beneficiary's condition (section 1862(a)(1) of the Act). Under this system of retrospective review, it was possible for an FI to issue a denial of coverage that was retroactive all the way back to—and even including—the day of SNF admission itself. As noted in the interim final rule, this situation made it extremely difficult for an SNF to predict with any degree of certainty that a particular admission ultimately would, in fact, be covered.

In the interim final rule, we designated a beneficiary's correct assignment to one of the upper 26 RUG–III groups as representing an SNF level of care in an effort to bring more predictability and certainty to the process of making coverage determinations. However, this designation was made specifically with respect to the SNF level of care requirement itself, and was never intended to supersede any of the other existing criteria for coverage under the SNF benefit, such as the posthospital requirements, or the overall requirement for services to be reasonable and necessary to diagnose or treat the beneficiary's condition. Thus, under this approach, when the initial Medicare (that is, 5-day) required assessment results in a beneficiary being correctly assigned to one of the upper 26 RUG–III groups, this effectively creates a presumption of coverage for the period from admission up to, and including, the assessment reference date for that assessment, and the coverage that arises from this presumption remains in effect for as long thereafter as it continues to be supported by the actual facts of the beneficiary's condition and care needs. Relative to the situation that existed before the SNF PPS, we believe that this approach provides the SNF with far greater confidence in coverage at the outset of a resident's stay, and enables the SNF, once coverage is established, to continue to bill for the resident's care for as long as the resident's actual care needs continue to support coverage.

The use of this presumption at the outset of a resident's SNF stay is supported by the SNF benefit's basic nature as a posthospital benefit, which is a major factor in determining the typical course of an SNF stay. In its July 1998 testimony before the House Ways and Means Committee (GAO/T–HEHS–98–214), the GAO noted that SNF residents tend to be relatively unstable and require fairly intensive skilled care during the period immediately following admission from the prior hospitalization, but that this tendency typically diminishes as they get further on in the SNF stay. The GAO indicated that a policy which continues to "deem" coverage for these individuals after they have clearly reached the point where they no longer need a skilled level of care would represent an unwarranted expansion in the SNF benefit.

We concur with the GAO's conclusion and, in view of the misunderstanding expressed by commenters on this point, we believe it is appropriate to clarify in this final rule that the initial presumption of coverage that arises from a beneficiary's Medicare-required 5-day assessment and his or her resulting RUG–III assignment encompasses the period from admission through the assessment reference date for the initial 5-day assessment, and is not intended to create an opportunity for continued payment beyond the point where SNF care is no longer reasonable and necessary; accordingly, the continuation of coverage, once established by the RUG–III presumption, would depend upon the subsequent course of the resident's actual condition and care needs.

We also wish to clarify that this presumption does not arise in connection with any of the subsequent assessments, but applies specifically to the period ending with the assessment reference date for the initial Medicare-required 5-day assessment that occurs shortly after the beneficiary's admission from the prior hospital stay. Accordingly, we are amending the regulations text at § 409.30 to clarify that this presumption is valid up to and including the assessment reference date (that is, the last day of the observation period, which must occur no later than the eighth day of posthospital SNF care) for the initial Medicare-required 5-day assessment.

As the preceding discussion indicates, the course that SNF stays characteristically take over time means, in effect, that the basis for making any type of presumption with regard to coverage would tend to become progressively less conclusive as a resident moves farther into the SNF stay, and would be at its most conclusive at the very outset of the stay, during the period immediately following the resident's admission from the prior hospitalization. Accordingly, in situations in which a resident's condition upon admission is such as to warrant assignment to one of the upper 26 RUG–III groups, we regard this very tendency of SNF stays to be at their most intensive and unstable immediately following admission as justifying a presumption of coverage at the very outset of the SNF stay, during the period leading up to the assessment reference date for the initial Medicare-required 5-day assessment. This initial portion of the SNF stay provides the opportunity for the facility to initiate skilled nursing and rehabilitation services, and to begin its complete assessment of the beneficiary's clinical characteristics and care needs.

In addition, we believe that the use of the coverage presumption during these first few days of a resident's stay may provide the additional benefit of enabling medical review resources to be deployed for maximum effectiveness: by combining the clinical criteria that are captured in the upper 26 RUG–III groups with the tendency (as discussed above) for the initial portion of an SNF stay to be the most intensive and unstable, the presumption should provide a more reliable way of identifying at the outset those residents who do, in fact, require a covered SNF level of care. This, in turn, will enable medical reviewers to focus their resources elsewhere, on other residents or other portions of the SNF stay that are far more likely to involve the provision of noncovered care.

The underlying principle at work in the use of this administrative presumption at the outset of a covered stay is the fact that the RUG–III groups themselves are expressions of a certain level of services—skilled nursing care and skilled rehabilitation services, the need for which represents the SNF level of care described in the statute at section 1814(a)(2)(B) of the Act. We, therefore, believe that in situations in which a beneficiary's initial, Medicare-required 5-day assessment results in an accurate assignment to one of the highest 26 of the 44 RUG–III groups, this assignment (in combination with the proximity to the prior qualifying hospital stay) makes it appropriate to presume that the beneficiary meets the SNF level of care definition at the outset of the stay. However, as is the case with all such administrative presumptions, this presumption is itself rebuttable in those individual cases in which the services actually received by the resident do not meet the basic statutory criterion of being reasonable and necessary to diagnose or treat a beneficiary's condition (according to section 1862(a)(1) of the Act). Accordingly, the presumption would not apply, for example, in those situations in which a resident's assignment to one of the upper 26 RUG–III groups is itself based on the receipt of services that are subsequently determined to be not reasonable and necessary.

The role of this presumption in determining coverage is, in some ways, similar to that performed by a physician who correctly certifies that a beneficiary requires a covered level of care, in that both activities serve to identify a beneficiary's initial need for covered care. In this context, it is worth noting that the interim final rule amended the physician certification regulations to reflect the use of the RUG–III system specifically with regard to the initial certification (§ 424.20(a)(1)(ii)), but not the subsequent recertifications (§ 424.20(c)).

Further, we note that the process of providing appropriate resident care in SNFs (which consists of a continuous loop of resident assessment, care planning, implementing specific interventions, and assessing the resident's response to and continued need for the interventions) serves to keep the SNF apprised, on an ongoing basis, of any changes in the resident's care needs. Thus, once the SNF determines that skilled care is no longer required, it must acknowledge this change in condition at that point and issue the appropriate written notice of noncoverage to the beneficiary.

Under existing program policy, in situations involving a provider that has acted in good faith but has nonetheless had a claim for Medicare coverage denied, a separate statutory provision on limitation of liability at section 1879 of the Act might permit payment to be made on an exception basis. This provision specifically refers to denials based on the general exclusion from coverage for care that is not reasonable and necessary (section 1862(a)(1) of the Act), as well as the exclusion for custodial care (section 1862(a)(9) of the Act). Taken together, these provisions indicate that any presumption about the need for covered care at the outset of the SNF stay is rebuttable by one of these general coverage exclusions—and might be remediable by the limitation of liability provision.

We do not agree with the commenters who argued that the prospective nature of the SNF PPS should result in coverage being granted prospectively for a predetermined block of time (that is, for the entire duration of the assessment period). Rather, the SNF PPS is prospective in the sense of paying a predetermined rate that represents—in the aggregate—the cost of SNF care that would typically be associated with a beneficiary who classifies to a particular RUG–III group. However, we note that a basic feature of the SNF PPS (and one that fundamentally distinguishes it from, for example, its inpatient hospital counterpart) is that it makes payment on a per day rather than a per episode basis. This means that while there may, in practice, be some variation in resource intensity from one resident to another within a particular RUG–III group (and even from one day to another within a particular resident's stay), the SNF PPS per diem payments, when taken in the aggregate, appropriately reflect the overall intensity of resources associated with that particular RUG–III group. Further, the per diem basis for payment recognizes that in practice, the levels and types of services required and the duration of the actual need for a covered SNF level of care may vary somewhat from one resident to another.

The preamble discussion of the case-mix system in the interim final rule (63 FR) 26261) notes that in the nursing home setting, "* * * no adequate models have been found for using length of stay or episode cost to explain resource use. Thus, the RUG–III nursing home case-mix system explains patient resource use on a daily basis." Accordingly, the framework set forth in the interim final rule supports the concept that the continuation of SNF coverage (once it has been initiated by the RUG–III presumption) must be supported by the resident's actual condition and care needs, and is not guaranteed for some predetermined block of time. To determine otherwise would effectively create a perverse incentive for SNFs to extend the length

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of Medicare stays beyond the point where the provision of skilled care ceases to be reasonable and necessary. Additionally, with regard to dually-entitled residents, an SNF might have an additional incentive to prolong the period during which it receives Medicare per diem payments, in order to delay the change to a Medicaid payment that, in some States, is lower.

Further, with regard to the comments on the NHCMQD, we note that in contrast to the SNF PPS itself, we intentionally refrained from conducting medical review under the demonstration, in order to observe facility practices and care patterns in its absence. The resulting facility activity under the demonstration did not appear to diverge significantly from prior experience. With regard to duration of coverage, it would appear that the primary factor in determining the cessation of coverage under the demonstration was not the resident assessment cycle but, rather, the interest of beneficiaries and their families in keeping the length of SNF stays as short as possible—in order to avoid or minimize their financial liability for the daily SNF coinsurance that begins on the 21st day of Part A coverage, and to have the beneficiary return home at the earliest possible moment (under the demonstration, patients were only in the SNF long enough to have an average of 2.5 Medicare-required assessments). Based on the demonstration experience, as well as the nature of the coverage presumption itself (that is, its validity up to the assessment reference date for the initial Medicare-required 5-day assessment), this presumption clearly is not designed to guarantee payment for the entire duration of the assessment period.

Nevertheless, consistent with the averaging function of the PPS, the payment rate, once established, is guaranteed for as long as the beneficiary's care needs continue to fall within the range of covered care, even if the specific acuity of the beneficiary's care needs within this range decreases; thus, the SNF can continue to receive the higher payment rate for such a beneficiary's covered care up to the next assessment. Conversely, it is possible that a resident's acuity may decrease to the point where it actually falls below a covered level of care, even though it has not changed sufficiently to trigger a Significant Change in Status Assessment. At that point, the ongoing coverage is ended by Medicare's statutory coverage exclusion of custodial care at section 1862(a)(9) of the Act, which provides that "[* * * [n]otwithstanding any other provision of this title, no payment may be made for any expenses incurred for items or services * * * where such expenses are for custodial care" (emphasis added), and the SNF would be required to issue a notice of noncoverage. Under the implementing regulations at 42 CFR 411.15(g), this exclusion is invoked whenever a beneficiary receives care that does not meet the requirements for coverage as SNF care as set forth in §§ 409.31 through 409.35. The qualifying language in the statute means that the custodial care exclusion from coverage takes precedence over other provisions of the program—including any presumptions made with regard to coverage. Thus, under the SNF PPS, the introduction of the coverage presumption based on a beneficiary's RUG–III group assignment was intended to streamline and simplify the initial level of care determination (which, along with the posthospital requirements, governs access to coverage under the extended care benefit). However, once this presumption has served to establish a beneficiary's initial access to coverage under the extended care benefit, it does not in any way supplant or invalidate the remainder of the basic and longstanding process for determining the duration of that coverage. While we believe that the use of this coverage presumption at the outset of the SNF stay represents a significant advancement toward achieving greater simplicity, predictability, and consistency in the coverage process, we will continue to monitor coverage determinations under the SNF PPS with a view toward the possibility of making further refinements and improvements in the future.

Finally, with regard to Table 2.D (Medicare Assessment Schedule), which appeared in the preamble to the interim final rule (63 FR 26267), we note that the heading to column four, Number of Days Authorized for Coverage and Payment, refers to the *maximum* period of coverage between assessments, but was not intended to prescribe coverage of a predetermined block of time consisting of a minimum number of days. In order to resolve any confusion that publication of this table may inadvertently have caused, we are now republishing the table below, with that particular column omitted.

TABLE 2.D.—MEDICARE ASSESSMENT SCHEDULE

Medicare MDS assessment type	Reason for assessment (AA8b code)	Assessment reference date	Applicable medicare payment days
5 day	1	Days 1—8*	1 through 14.
14 day	7	Days 11—14**	15 through 30.
30 day	2	Days 21—29	31 through 60.
60 day	3	Days 50—59	61 through 90.
90 day	4	Days 80—89	91 through 100.

* If a patient expires or transfers to another facility before day 8, the facility will still need to prepare an MDS as completely as possible for the RUG–III classification and Medicare payment purposes. Otherwise the days will be paid at the default rate.
** RAPs follow Federal rules.

Comment: One commenter questioned the appropriateness of using a resident's assignment to one of the upper 26 RUG–III groups as a determinant of a skilled level of care in situations in which the RUG–III assignment is based solely on events that occurred during the "look-back" period (for example, IV medications within the past 14 days). The commenter noted that this could result in a resident being covered even though the qualifying skilled services that triggered the RUG–III assignment have themselves been discontinued before admission to the SNF, and the resident is no longer actually receiving any skilled care whatsoever by the time of the assessment itself.

Response: We note that the use of the "look-back" period in making RUG–III assignments is essentially a clinical proxy that is designed to serve as an indicator of situations that involve a high probability of the need for skilled care. Thus, our expectation is that the occurrence of one of the specified events during the "look-back" period, when taken in combination with the characteristic tendency (as discussed above) for an SNF resident's condition to be at its most unstable and intensive state at the outset of the SNF stay, should make this a reliable indicator of the need for skilled care upon SNF admission in virtually all instances. In particular, residents in such situations may need the types of services formerly listed in § 409.33(a) of the regulations, that are discussed more fully below. If it should become evident in actual practice that this is not the case, it may become appropriate at that point to reassess the validity of the RUG–III system's use of the "look back" period in making assignments.

Comment: In the interim final rule, we invited comments on the feasibility of dispensing with the level of care criteria in existing regulations, in favor of utilizing the RUG–III framework as the exclusive means for making level of care determinations. One commenter expressed support for this approach; however, many others supported the continuation of individual level of care determinations under the existing criteria for beneficiaries assigned to one of the lower 18 RUG–III groups. A few of these commenters suggested that we might reassess this approach after the PPS has been in operation for a few years; at that point, they suggested, it might be possible to identify specific clusters of services within the lower 18 RUG–III groups that could serve as reliable indicators of skilled care, and to incorporate those indicators into the upper 26 RUG–III groups.

Response: As requested by most of the commenters, we are retaining in the regulations the existing criteria with certain modifications, as discussed elsewhere in this preamble. To the extent that our continuing experience in implementing the SNF PPS may indicate at some future point that further revisions in these criteria are warranted, we will consider making appropriate refinements to them at that time.

Comment: We received a number of comments concerning certain incremental adjustments that we made to the existing level of care criteria in the interim final rule. We made these revisions in order to achieve greater consistency with the general approach adopted under the SNF PPS with the use of the RUG–III groups, and also to reflect the significant advances in the state of long-term care practices that have occurred during the quarter century since the current SNF level of care regulations were first promulgated. Specifically, in view of changes in medical practice over time, we deleted the previous references to hypodermoclysis and subcutaneous injections as examples of skilled nursing services. We retained enteral feeding as an example of a skilled nursing service, but adopted specific qualifying criteria from the RUG–III framework (that is, that the enteral feeding must comprise at least 26 percent of daily calorie requirements and at least 501 milliliters of fluid per day). Further, we deleted the categories previously listed in § 409.33(a) of "management and evaluation of a care plan," "observation and assessment", and "patient education" as examples of skilled services, in the belief that these categories were already effectively captured by the clinical proxies that have been incorporated into the upper 26 RUG–III groups.

Additionally, in the preamble to the interim final rule (63 FR 26284), we indicated that it might well be desirable to delete the insertion, irrigation, and replacement of urinary catheters as an example of a skilled service, in order to avoid providing a perverse incentive for their inappropriate use. However, we also invited comments on the desirability of retaining this example specifically with regard to suprapubic catheters.

Of the comments we received on these changes, the largest number supported retaining suprapubic catheters as an example of a skilled nursing service, noting that this procedure is a major vector for infection that can be fatal if improperly performed, and that requires a greater amount of skilled care than foley catheters. One commenter favored deleting even suprapubic catheters from the examples of skilled nursing services, while another favored retaining all types of catheters in the examples. Several commenters advocated reinstating observation and assessment, management and evaluation, and patient education as explicit examples of skilled services in the SNF level of care regulations (or, alternatively, amending the regulations governing the home health benefit at § 409.42(c)(1), which currently cross-refer to the SNF regulations, to include them). A few commenters suggested retaining subcutaneous injections as an example of a skilled nursing service specifically with regard to those residents who, due to cognitive impairments such as those associated with dementia, are unable to self-administer the injections, and another favored retaining hypodermoclysis.

Response: As noted above, our reason for deleting the explicit references in the regulations to management and evaluation, observation and assessment, and patient education was not that they no longer represented appropriate examples of skilled care, but rather, because we believed that these separate references were no longer necessary in view of the clinical indicators that have been incorporated into the upper 26 RUG–III groups. However, in order to avoid possible confusion on this point, we are accepting the commenters' suggestion to reinstate these categories as specific examples in the SNF level of care regulations.

Further, while we continue to believe that it is inappropriate to cite the use of a urinary catheter as an example of a skilled service in most instances, we agree with the reasons advanced by the commenters who favored specifically retaining suprapubic catheters in the list of examples of skilled nursing services; accordingly, we are modifying the example regarding catheters to refer exclusively to this particular type of catheter. However, for the reasons discussed previously in the preamble to the interim final rule, we are not reinstating hypodermoclysis or subcutaneous injections as examples of skilled nursing services. Regarding the latter, we do not believe that the presence of a cognitive impairment in the person who receives the injection would significantly affect the skills required on the part of another person who actually administers it.

Finally, we are taking this opportunity to correct a technical inaccuracy that appears in the regulations at § 411.15(g), defining the term "custodial care," as well as in the introductory material for § 409.30. An earlier version of the custodial care definition (which appeared at § 405.310(g)) correctly described this term in the SNF context as any care that does not meet the SNF level of care criteria, which at that time appeared in § 405.126 through § 405.128. When the SNF level of care criteria were redesignated as § 409.31 through § 409.35 (48 FR 12534, March 25, 1983), a conforming change was subsequently made to the cross-reference in the custodial care regulations (50 FR 33031, August 16, 1985).

However, in addition to the level of care regulations at redesignated § 409.31 through § 409.35, this conforming change inadvertently revised the cross-reference erroneously to include the SNF benefit's posthospital requirements at redesignated § 409.30. Since the posthospital requirements are not an element of the custodial care definition, we are deleting that portion of the citation from the cross-reference, which is revised to refer correctly to the SNF

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level of care criteria at § 409.31 through § 409.35. Similarly, we are revising the cross-reference in the second sentence of the introductory material in § 409.30 (regarding the use of the RUG–III groups in making level of care determinations) to refer solely to the level of care requirements in § 409.31, and not to the posthospital requirements set forth in the remainder of § 409.30 itself.

Comment: Some comments reflected certain longstanding misconceptions regarding the SNF level of care definition, in terms of a beneficiary's need for and receipt of skilled services on a daily basis which, as a practical matter, can be furnished only in an SNF on an inpatient basis. One recurring misconception with regard to the "daily basis" requirement (which some of the commenters expressed as well) is that Medicare coverage guidelines provide for specific breaks in skilled therapy services for the observance of a prescribed list of national holidays. Another longstanding misconception shared by some commenters is that the cessation of therapy for so much as a single day due, for example, to the beneficiary's temporary illness or fatigue, would mandate an automatic discontinuance of coverage. The recurring misconception with regard to the "practical matter" requirement is that a beneficiary's ability to have even an occasional, brief absence from the SNF in order to attend, for example, a holiday meal with family or friends, would result in the loss of Medicare coverage. As explained below, these interpretations of Medicare SNF coverage requirements are incorrect.

Response: We note that the commenters' misunderstandings reflect certain recurring misconceptions about the SNF level of care criteria that long predate the SNF PPS. With regard to the "practical matter" requirement, it is true that a beneficiary's ability to have frequent or prolonged absences from the facility may raise a question as to whether the beneficiary, as a practical matter, can only receive the care that he or she needs on an inpatient basis in the SNF. However, this is not the case when a beneficiary is capable of having only occasional, brief absences from the facility. As section 214.6.C. of the Medicare SNF Manual indicates:

> An SNF should * * * not interpret the "practical matter" criterion so strictly that it results in the automatic denial of coverage for patients who have been meeting all of the SNF level of care requirements but who have occasion to be away from the SNF for a brief period of time. While most beneficiaries requiring an SNF level of care find that they are unable to leave the facility for even the briefest of time, the fact that a patient is granted an outside pass, or short leave of absence, for the purpose of attending a special religious service, holiday meal or family occasion, for going on a ride or for a trial visit home, is not by itself evidence that the individual no longer needs to be in an SNF to receive required skilled care. Very often special arrangements, not feasible on a daily basis, have had to be made to allow for absence from the facility.

Thus, the requirement for daily skilled services should not be applied so strictly that it would not be met merely because there is a brief, isolated absence from the facility in a situation where discharge from the facility would not be practical. It is also worth noting that, in addition to the coverage guidelines discussed above, the Medicare certification requirements for SNFs, at § 483.15(d), provide that each resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility. Similarly, with regard to the "daily basis" requirement, the Medicare program does not specify in regulations or guidelines an official list of holidays or other specific occasions that a facility may observe as breaks in rehabilitation services, but recognizes that the resident's own condition dictates the amount of service that is appropriate. Accordingly, the facility itself must judge whether a brief, temporary pause in the delivery of therapy services would adversely affect the resident's condition.

Comment: A commenter asked whether the certification and recertification statements for posthospital skilled nursing facility services required under section 1814(a)(2) of the Act must be performed only by a physician, or can be performed by an authorized facility staff member. Another requested that we authorize a physician assistant to perform certification and recertification statements (as nurse practitioners and clinical nurse specialists already are under current law). One commenter noted that the SNF benefit's requirement for a physician to certify (and periodically recertify) that a beneficiary needs an SNF level of care was waived under the NHCMQD, and argued that this requirement is a needless burden that should be permanently eliminated.

Response: Section 1814(a)(2) of the Act requires that a physician (or a nurse practitioner or clinical nurse specialist who does not have a direct or indirect employment relationship with the facility, but who is working in collaboration with a physician) initially certifies, and periodically recertifies, the need for a skilled level of care. However, this provision does not currently authorize facility staff members or physician assistants to perform this function. Section 424.20 sets forth the timing of the required certifications as follows: the initial certification must occur at the time of admission or as soon thereafter as is reasonable and practicable; the first recertification is required no later than the 14th day of posthospital SNF care; and, subsequent recertifications are required at least every 30 days after the first recertification.

Comment: One commenter noted that the upper 26 groups of RUG–III are designated as representing a covered SNF level of care only in the preamble to the interim final rule, and suggested that this designation should also be made explicit in the regulations text itself.

Response: The reason that we declined to specify particular RUG–III groups in the regulations text itself was not to expand or contract coverage relative to the types of conditions that the upper 26 RUG–III groups currently identify, but rather, to allow for the possibility that the RUG–III groups themselves might be reconfigured in the future. This gives us the necessary flexibility to designate (in the routine annual update of Federal prospective rates described in regulations at § 413.345) those reconfigured RUG–III groups that would correspond to the upper 26 groups under the current RUG–III configuration, without having to go through the full rulemaking process in order to make specific revisions in the regulations text itself. (Of course, any such reconfiguration in the RUG–III groups would itself be effected through rulemaking.)

N. SNF Consolidated Billing

The consolidated billing requirement (established by section 4432(b) of the BBA) places with the SNF itself the Medicare billing responsibility for virtually the entire package of services furnished to a resident of an SNF. In the interim final rule, we addressed both the scope of services and the definition of an SNF "resident" that apply for purposes of this provision. As discussed below, this final rule provides additional clarification on implementation timeframes for this provision and on the scope of services to which this provision applies, including the role played by the SNF care planning process.

Comment: We received many comments regarding timeframes for implementation of the SNF consolidated billing provision, particularly with respect to those SNF residents who are not in a covered Part A stay. Many expressed support for a delay in the implementation of this aspect of the provision, and requested that advance notification be given before implementing it.

Response: Section 4432(d) of the BBA provides that, unlike the effective date for the PPS itself (which is tied to the start of the individual SNF's first cost reporting period that begins on or after July 1, 1998), the consolidated billing provision applies to items and services furnished on or after July 1, 1998. In April 1998, we published PM transmittal number AB–98–18, which contained operational instructions for Medicare contractors on consolidated billing implementation.

As noted in the preamble to the interim final rule, in order to accommodate individual SNFs that lacked the capability to perform consolidated billing as of the July 1, 1998, effective date, the PM provided for a "transition period," under which such a facility would be required to begin consolidating its bills for items and services furnished on or after the earlier of either (1) January 1, 1999 or, (2) the facility's PPS start date.

However, this instruction was subsequently superseded by PM transmittal number AB–98–35 (July 1998), which eliminated the transition period described in PM transmittal number AB–98–18, and provided instead that an SNF must consolidate its bills as of its PPS start date, for those of its residents who are in a covered Part A stay. For those SNF residents who are not in a covered Part A stay (for example, who have exhausted their available days of coverage under the Part A SNF benefit, or who do not meet that benefit's posthospital or level of care requirements), the PM postponed implementation of consolidated billing indefinitely. This was necessitated by systems modification delays in connection with achieving Y2K compliance.

The Y2K problem arose because computer programming, which has commonly employed only two digits to record the year in the date for transactions and other entries, will not be able to distinguish the year 2000 from the year 1900 without reprogramming. This problem must be corrected on a timely basis in order to avoid the potential for significant disruption of the automated systems that are essential to administering the entire Medicare program. (For a more detailed discussion of Medicare and the Y2K problem, please refer to the preamble for the proposed rule on the outpatient hospital PPS, 63 FR 47605, September 8, 1998.) Making the necessary systems renovations to correct this problem is an extensive and complex process that must be given priority over other systems modifications.

Accordingly, consolidated billing implementation with regard to those SNF residents who are in noncovered stays is being postponed at present, because it will require systems modifications that are far more extensive than those needed for the SNF PPS under Part A—modifications of a magnitude that simply cannot be accomplished until the current actions to achieve Y2K compliance have been completed. We plan to publish a notice of the anticipated implementation date for this aspect of consolidated billing in the **Federal Register** at least 90 days in advance.

Comment: Numerous commenters recommended a wide variety of items and services that they believe should be categorically excluded from the SNF consolidated billing requirement and paid separately from the PPS. Some examples included: laboratory services, intravenous medications, medications for patients with acquired immune deficiency syndrome (AIDS), and various types of practitioner services. Some of these commenters noted our discussion in the preamble to the interim final rule regarding a technical amendment to section 1833(h)(5)(A) of the Act (which would specifically authorize SNFs to receive Part B payment for laboratory tests that they do not themselves either perform or supervise), and advocated deferring the application of consolidated billing to those services until after the actual enactment of this legislation. Other commenters argued that since the consolidated billing legislation specifically excludes several types of practitioner services, the services of certain additional types of practitioners, such as clinical social workers and audiologists, should similarly be excluded. One commenter mistakenly understood the exclusion of "physician services" from consolidated billing to be the result of an administrative decision by us, and expressed support for this decision; another argued that the statute's categorical exclusion of "physician services" from this provision mandates the exclusion not only of a diagnostic test's professional component (representing the physician's interpretation of the diagnostic test), but also of the technical component (representing the test itself).

Response: The only types of services furnished to SNF residents that are categorically excluded from the PPS and consolidated billing provisions are the ones specified in a short list of statutory exclusions at section 1888(e)(2)(A)(ii) of the Act, for which an outside supplier can still bill Medicare directly and receive a separate payment under Part B. All other services are subject to consolidated billing when furnished to an SNF resident, and are included in the PPS payment that Medicare makes to the SNF for a covered Part A stay. In addition, we note that the issue of an SNF receiving Part B payment for laboratory services under consolidated billing does not arise at present since, as discussed previously, the implementation of SNF consolidated billing is currently on hold for those residents who are not in a covered Part A stay.

Further, we note that although the consolidated billing legislation does exclude the services of psychiatrists and clinical psychologists, it does not exclude the services of clinical social workers. (In this context, it is worth noting that the SNF consolidated billing requirement was modeled on the corresponding Medicare comprehensive billing or "bundling" requirement for inpatient hospital services (section 1862(a)(14) of the Act), which has been in effect for well over a decade and similarly includes clinical social worker services, while excluding the services of certain other types of mental health professionals.) Similarly, section 1888(e)(2)(A)(ii) of the Act does not exclude audiologists; in fact, it is quite explicit in specifying that "speech language therapy" services are always subject to consolidated billing, even when performed by a type of practitioner (such as a physician) whose services would otherwise be categorically excluded from this provision.

We note that the exclusion of physician services themselves from consolidated billing is statutory rather than the result of an administrative decision; further, the implementing regulations at § 411.15(p)(2)(i) define the excluded "physician's services" as those meeting the criteria of § 415.102(a), and the latter provision specifies, in part, that this definition encompasses only those services that are furnished personally by the physician. Thus, under consolidated billing, only the professional component of a diagnostic test (representing the interpretation that the physician performs personally) is billed separately as a physician service, while the technical component represents the diagnostic test itself, which must be billed by the SNF.

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Finally, in connection with further defining the bundle of services subject to consolidated billing when furnished to an SNF resident, we are taking this opportunity to make a conforming change in the regulations governing Medicare provider agreements in subpart B of Part 489. The interim final rule amended this subpart by adding a new paragraph (s) to § 489.20 to implement section 1866(a)(1)(H)(ii) of the Act, which makes compliance with the consolidated billing provision a specific requirement under the terms of an SNF's Medicare provider agreement. We are now adding a new paragraph (h) to § 489.21, which explicitly precludes an SNF from charging a resident for any items or services that are subject to the Medicare consolidated billing requirement. (We note that this new provision parallels the longstanding provision in paragraph (f) of § 489.21, which similarly prohibits a hospital from charging its inpatient for any items or services that are subject to the Medicare hospital bundling provision.)

Comment: Several commenters wrote regarding the provision in section 4541 of the BBA, which imposes a $1500 annual per beneficiary limit on Part B payments for outpatient PT services (including speech-language therapy services) and a similar limit for outpatient OT services, but specifically excepts services furnished by a hospital's outpatient department from each of these annual limits. (This $1500 Part B payment limit does not affect SNF residents who are in a covered Part A SNF stay, since the therapy services that they receive are bundled to the SNF and included in the PPS payment made under Part A, rather than being billed separately to Part B.)

The commenters objected to the interim final rule's exclusion of beneficiaries who are considered SNF "residents" for consolidated billing purposes from the outpatient hospital exception to the Part B therapy payment limit (63 FR 26299). The commenters argued that this decision results in a reduction of an SNF resident's available Part B therapy benefits in relation to residents of a totally noncertified nursing home (who would, by comparison, get a richer benefit package), thus effectively depriving SNF residents of the "escape hatch" that would otherwise be afforded by the exception of services furnished in the outpatient hospital setting from the $1500 therapy payment limit.

Another commenter cited the discussion in Program Memorandum transmittal number AB–98–63 (October 1998) of the $1500 limit on Part B therapy payment, and asked whether the SNF billing and tracking requirements for Part B therapy services described in the PM indicate that the decision to postpone consolidated billing implementation for residents in noncovered SNF stays has been reversed specifically with regard to therapy services.

Response: As discussed in the preamble to the SNF PPS interim final rule, we decided not to except services furnished to SNF residents in the outpatient hospital setting from the Part B $1500 therapy payment limit, specifically in order to avoid creating a perverse incentive to have the hospital outpatient department furnish therapy services that the resident could appropriately receive from the SNF itself. We note that section 1819(a)(1) of the Act defines an SNF, in part, as an institution that is primarily engaged in furnishing skilled rehabilitation services to its residents. This means that the provision of therapy services to its residents is an inherent and essential function of this type of facility.

Moreover, the long-term care facility requirements for participation (at section 1819(b)(4)(a)(i) of the Act) specifically require an SNF to provide ". . . specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident . . ." Thus, an SNF that fails to provide medically necessary therapy services simply because a resident had reached the $1500 annual Part B payment limit for these services would be in violation of this requirement, and would be subject to appropriate enforcement remedies.

In addition, we wish to clarify that the SNF billing and tracking responsibilities described in PM AB–98–63 arise solely in the context of implementing the $1500 Part B therapy payment limit, which represents an entirely separate BBA provision (and statutory authority) from SNF consolidated billing; as specified in PM AB–98–35 (July 1998), the consolidated billing provision itself currently remains on hold for all services furnished to SNF residents in noncovered stays.

Finally, in addition to the comments on the $1500 therapy cap provision specifically as it affects SNF residents, several commenters included more general observations about the nature of the provision itself. However, these concerns are beyond the scope of this regulation, and were addressed instead in the June 5, 1998, proposed rule on Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 1999 (63 FR 30818), and in the final rule published on November 2, 1998 (63 FR 58814).

Comment: One commenter noted that the regulation at § 413.335(b) concerning prospective payment for SNFs indicates that the PPS payment represents payment in full for the costs associated with furnishing inpatient SNF services to Medicare beneficiaries, but does not contain language that specifically excepts those types of services (such as physician services) that are categorically excluded by law.

Response: The qualifying language that the commenter requested is, in fact, already contained in the regulations at § 413.1(g)(2), which specify that, for an SNF resident in a covered Part A stay, the PPS determines the amounts paid for services furnished, "other than those described in § 411.15(p)(2) of this chapter." The latter provision lists the services that are categorically excluded from the PPS bundle.

Comment: We received a large number of comments about the treatment of ambulance services under the consolidated billing provision. Some advocated exclusion of all ambulance services from the consolidated billing provision. Others expressed concern that confusion over the circumstances in which these services are subject to consolidated billing could result in payment delays. Several commenters specifically requested clarification on whether emergency and other outpatient trips to a hospital via ambulance are subject to consolidated billing. Others argued that the inclusion of ambulance services under consolidated billing is inconsistent with the negotiated fee schedule provisions for ambulance services in the BBA.

Response: As discussed previously, the only types of services furnished to SNF residents that are categorically excluded from the PPS and consolidated billing provisions are the ones specified in a short list of statutory exclusions at section 1888(e)(2)(A)(ii) of the Act. Since ambulance services do not appear on this statutory excluded list, they are subject to consolidated billing when furnished to an SNF resident and are included in the PPS payment that Medicare makes to the SNF for a covered Part A stay.

The statute specifies that the consolidated billing provision applies only to those services that are furnished to an SNF "resident." Thus, as explained in the preamble to the interim final rule, an ambulance trip is considered to be furnished to an SNF resident (and, thus, subject to consolidated billing) if it occurs during the course of an SNF stay, but not if it occurs at either the very beginning or

end of the stay. (This policy is comparable to the one governing ambulance services furnished in the inpatient hospital setting, which has been subject to a similar comprehensive Medicare billing or "bundling" requirement for well over a decade.) Accordingly, the initial ambulance trip that first brings a beneficiary to an SNF is not subject to consolidated billing because the beneficiary has not yet been admitted to the SNF as a resident at that point. Similarly, the regulations at § 411.15(p)(2)(x) provide that an ambulance trip that conveys a beneficiary from the SNF is not subject to consolidated billing when it occurs in connection with one of the events specified in §§ 411.15(p)(3) (i) through (iv) as ending the beneficiary's SNF "resident" status. The events are—

- A trip for an inpatient admission to a Medicare-participating hospital or critical access hospital (CAH), or to another SNF.
- A trip to the beneficiary's home to receive services from a Medicare-participating home health agency under a plan of care.
- A trip to a Medicare-participating hospital or CAH for the specific purpose of receiving emergency services or certain other intensive outpatient services that are not included in the SNF's comprehensive care plan.
- A formal discharge (or other departure) from the SNF that is not followed within 24 hours by readmission to that or another SNF.

With regard to the third bullet above, § 411.15(p)(3)(iii) of the regulations excludes from consolidated billing those types of outpatient hospital services ". . . that are not furnished pursuant to the [SNF's] comprehensive care plan." This outpatient hospital exclusion (as discussed in greater detail below, in the context of the SNF comprehensive plan of care) applies to a small number of exceptionally intensive services that lie well beyond the scope of care that SNFs would ordinarily furnish (and, thus, beyond the ordinary scope of SNF care plans), as well as emergency services (which, by their nature, cannot be anticipated and planned for in advance). This means that when an outpatient visit to a hospital occurs for the purpose of receiving one of these excluded types of services, the individual receiving the services ceases to be a "resident" of the SNF for consolidated billing purposes and, thus, the associated ambulance transportation to the hospital is also excluded from consolidated billing. We note that this exclusion applies to the return trip from the hospital to the SNF as well, since the beneficiary's status as an SNF "resident" for consolidated billing purposes (once ended by the receipt of an excluded outpatient hospital service) does not resume until he or she returns to the SNF.

With regard to the concerns about the negotiated fee schedule provisions for ambulance services, section 4531 of the BBA—the same provision that mandates the development of an ambulance fee schedule through a negotiated rulemaking process—also prescribes an interim payment methodology to be used until the ambulance fee schedule takes effect. Under the interim payment methodology, Part B will continue to pay for ambulance services that an SNF furnishes (either directly with its own resources, or under arrangements made with an outside supplier) on a reasonable cost basis, in which the cost per trip is limited to the prior year's reasonable cost per trip, updated by an inflation factor (that is, the consumer price index for all urban consumers (CPI–U) minus one percentage point). We note that the Medicare contractors have already received instructions (PM Number A–97–15 (November 1997) and PM Number A–98–2 (February 1998)) that describe this payment methodology in detail.

Comment: One commenter noted that the regulations at § 410.40(b)(4) require ambulance services furnished to an SNF resident to be furnished by, or under arrangements made by, the SNF itself. The commenter questioned whether this requirement is consistent with our policy of allowing certain ambulance services (such as those furnished in connection with the receipt of excluded outpatient hospital services) to be excluded from consolidated billing.

Response: In discussing services furnished to an SNF resident, § 410.40(b)(4) includes a specific cross-reference to the SNF "resident" definition at § 411.15(p)(3) which, in turn, specifies certain circumstances (such as the receipt of excluded outpatient hospital services) as ending a beneficiary's status as a "resident" of the SNF for consolidated billing purposes.

Comment: One commenter noted that our designation of certain categories of outpatient hospital services as ending (for consolidated billing purposes) a beneficiary's status as an SNF "resident" also has the effect of unbundling ambulance transportation that is associated with the beneficiary's receipt of those services. The commenter then suggested that we should similarly designate a beneficiary's receipt of excluded dialysis services at an offsite location as ending his or her SNF resident status in order to permit the associated ambulance transportation to be unbundled as well.

Response: We believe that this comment reflects a misunderstanding of the underlying purpose of the outpatient hospital exclusion. This exclusion from consolidated billing does not serve as a mechanism for unbundling ambulance services per se. Rather, as discussed above, this exclusion is intended to encompass those services—specific to the outpatient hospital setting—that are so exceptionally intensive, costly, or emergent as to lie well beyond the ordinary scope of SNF care. The resulting unbundling of ambulance services associated with these excluded outpatient hospital services occurs simply because the bundling of ambulance services is itself tied to a beneficiary's status as an SNF "resident" for consolidated billing purposes, which is suspended by the beneficiary's receipt of these excluded types of outpatient hospital services.

By contrast, the performance of dialysis—even if it occurs offsite in the outpatient hospital setting—is a type of activity that clearly falls well within the normal scope of SNF care. (As discussed below, the effect of the exclusion of dialysis services from the SNF consolidated billing provision is that an SNF is not itself required to furnish—either directly or under arrangements—dialysis services to its residents; however, if an SNF nonetheless elects to furnish these services, they are included within the scope of the Part A extended care benefit, as well as in the PPS per diem payment that Part A makes to the SNF.) Accordingly, while the statute categorically excludes dialysis services themselves from the requirement for SNF consolidated billing, their receipt offsite does not have the effect of ending a beneficiary's status as an SNF resident for purposes of this requirement and, consequently, does not result in unbundling the associated ambulance transportation.

We note, in addition, that the policy regarding ambulance services in the SNF setting is also affected by a final rule on ambulance services coverage that was published in the **Federal Register** on January 25, 1999 (64 FR 3637). Although this rule was published well after the SNF PPS interim final rule, it has raised certain questions and concerns about ambulance trips (and transportation generally) in the SNF context.

In addition to the specific service categories listed in sections 1861(h)(1) through (6) of the Act, the extended care benefit includes coverage of ". . . such other services necessary to the health of the patients as are generally provided

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by, or under arrangements made by, skilled nursing facilities" (section 1861(h)(7) of the Act). As explained in the interim final rule on the SNF PPS (63 FR 26302), the medical and other health services specified in section 1861(s) of the Act (which include ambulance services) are considered to be "generally furnished" by SNFs and, therefore, coverable under the Part A extended care benefit (see regulations at § 409.27(a)).

As discussed previously, under the SNF consolidated billing provision, the SNF itself is responsible for billing Medicare for virtually all of the services that a resident receives, except for a short list of excluded service categories specified in the statute at section 1888(e)(2)(A)(ii) of the Act. Since the Congress did not specify ambulance services as one of the excluded categories, such services must be billed to Medicare by the SNF when furnished to an SNF resident. As explained above and in the interim final rule (63 FR 26298), the consolidated billing provision does not apply to an ambulance trip that conveys a beneficiary to the SNF for the initial admission, or from the SNF following a final discharge, but only to ambulance transportation that is furnished during the period that the beneficiary is actually an SNF resident.

Nevertheless, as noted in the interim final rule (63 FR 26296), it is possible for particular service categories (such as preventive or screening services) to be subject to the SNF consolidated billing provision, and yet not be included within the scope of coverage under the Part A SNF benefit. It has been suggested that this is also the case with ambulance services, in view of instructions in the SNF Manual at sections 260.2 and 262 that indicate ambulance services are covered only under Part B. However, we note that these sections appear in a portion of the instructions that deal exclusively with situations involving SNF services covered under Part B when no payment under the Part A SNF benefit is possible (Part A benefits exhausted, no prior qualifying hospital stay, etc.); thus, the reference to "ambulance services" in this context applies specifically to the Part B benefit described in section 1861(s)(7) of the Act.

By contrast, for situations that do involve payment under the Part A SNF benefit, the applicable SNF Manual instructions in this regard appear at section 230.10.A. These instructions correspond to section 1861(h)(7) of the Act, which includes within the scope of the extended care benefit those services—not otherwise specified in section 1861(h)—that are generally furnished by (or under arrangements made by) SNFs. As explained in the preamble to the interim final rule (63 FR 26302), this provision is considered to include the full range of medical and other health services described in section 1861(s) of the Act, other than those particular service categories (such as preventive and screening services) that, under the statute, lie specifically beyond the scope of the extended care benefit. The remainder of the medical and other health services described in section 1861(s) of the Act are considered to be "generally furnished" by SNFs and, therefore, within the scope of the extended care benefit when furnished to a resident in a covered Part A stay.

Thus, when an SNF provides or makes arrangements for a resident's transportation by ambulance during the course of a covered Part A stay, such services are not considered Part B ambulance services under the separate Part B benefit at section 1861(s)(7) of the Act, but Part A extended care services that SNFs generally furnish under section 1861(h)(7) of the Act. This is essentially similar to the use of the term "durable medical equipment" (DME), which refers exclusively to the Part B benefit described in section 1861(s)(6) of the Act; however, when an SNF furnishes the same types of items to a resident during the course of a covered Part A stay, they are not covered as DME under the separate Part B benefit, but rather, "as supplies, appliances and equipment" under the Part A extended care benefit at section 1861(h)(5) of the Act. Further, section 1833(d) of the Act prohibits Part B payment for any service that is payable under Part A.

In order to clarify that the Part A SNF benefit covers ambulance transportation under the authority of section 1861(h)(7) of the Act, we are relocating the ambulance provision from § 409.20(a)(8) to a new subparagraph of § 409.27, the section of the regulations that implements this particular portion of the statute. We are also clarifying that the SNF benefit's coverage of ambulance transportation is limited to those circumstances meeting the general medical necessity requirements that would apply to Part B coverage under the separate ambulance services benefit (as set forth in § 410.40(d)(1)) if the services were not covered under Part A—that is, those situations in which a beneficiary's medical condition is such that other means of transportation would be contraindicated.

We note that the ambulance rule's primary objective in revising the extended care benefit regulations was to clarify that the scope of this benefit specifically includes coverage of transportation via ambulance. In the SNF PPS context, this effectively results in bundling the cost of all ambulance trips made in connection with an individual who has the status of an SNF resident, regardless of whether, prior to the PPS, the SNF undertook to furnish these services itself as "patient transportation" under Part A or, alternatively, allowed an outside supplier to furnish them as "ambulance services" under Part B.

However, the ambulance rule's revision was made in a manner that also raises the issue of coverage of transportation generally, by modes other than ambulance. In the institutional context, the issue of non-ambulance transportation arises mainly in the SNF setting, since this particular institutional setting is one in which a facility may routinely utilize offsite sources of services for its resident during the course of his or her stay, under circumstances that do not necessarily require the use of an ambulance.

Further, we note that unlike transportation via ambulance (which involves a service that is precisely delineated in terms of vehicle type, appropriate destinations, etc., and is recognized as a specific benefit category), the concept of non-ambulance transportation is a more generalized one that denotes the basic function of conveying an individual from one place to another, rather than a particular benefit or mode of conveyance. Under the long-term care facility requirements for participation at § 483.25, an SNF's essential obligation is to provide each resident with those services that are necessary "* * * to attain or maintain the [resident's] highest practicable physical, mental, and psychosocial well-being. * * *" The SNF can meet this obligation either by providing the needed services onsite at the SNF, or by securing them at an offsite location. SNFs that pursue the latter course have historically used a wide variety of means for conveying a resident to receive offsite services. Some of these (like community wheelchair transportation) were available at no cost and others generally involved various non-Medicare funding sources (such as Medicaid, or the resident's own family).

We note that, unlike transportation via ambulance, no separate benefit category has ever existed under Part B of Medicare for coverage of non-ambulance modes of transportation. Thus, prior to the inception of the SNF PPS, non-ambulance transportation for SNF residents occurred in a wide variety of ways that did not generally involve any Medicare payment under either Part A or Part B. In making the ambulance final rule's revision to the extended care benefit regulations, it was not our intent to create an SNF benefit expansion by establishing a new entitlement under the Medicare program that did not heretofore exist in this setting; nor is it our intent to define as part of the SNF PPS bundle any services for which the Medicare program did not previously assume financial responsibility under either Part A or Part B. Therefore, we are revising § 409.27, as discussed above, to refer specifically to ambulance transportation rather than to transportation generally.

Comment: Several commenters requested clarification regarding the status of dialysis services under consolidated billing. One commenter suggested that Part B should pay for dialysis performed at the hospital outpatient department or, alternatively, when furnished by a freestanding dialysis center on the SNF's premises.

Response: Dialysis is one of the service categories that the BBA specifically excludes from the SNF consolidated billing provision. Most of the other excluded service categories are, by definition, outside the scope of the Part A extended care benefit. For example, an SNF cannot bill Part A for physician services, since section 1861(b)(4) of the Act defines these services as being outside the scope of the inpatient hospital benefit which, in turn, has the effect of excluding them as well from the extended care benefit under section 1861(h) of the Act (see the undesignated clause following section 1861(h)(7) of the Act).

By contrast, dialysis services have always been included within the scope of the Part A extended care benefit under section 1861(h)(7) of the Act that provides for coverage of those services (not specified elsewhere in section 1861(h)) that are generally furnished by, or under arrangements made by, SNFs. Thus, the exclusion of dialysis from the consolidated billing provision means that an SNF is not itself required to furnish or make arrangements for this service. However, even though the SNF is not required to furnish or make arrangements for dialysis during the course of a covered Part A stay, if it nonetheless elects to do so, the dialysis is included within the scope of the Part A extended care benefit, as well as in the PPS per diem payment. Alternatively, since the exclusion of dialysis services from the consolidated billing provision allows the SNF the option of declining to furnish or make arrangements for dialysis services, those services that meet the following coverage requirements for the Part B dialysis benefit could be furnished and billed to Medicare directly by an outside dialysis supplier.

There are two situations under which dialysis services would be considered a Part B service and billable by an end stage renal disease (ESRD) facility or supplier when provided to an SNF resident. The first is for institutional dialysis services received at a Medicare certified ESRD facility. Institutional dialysis services must be provided by entities that meet the ESRD conditions of coverage that are specified in regulations at part 405, subpart U. These regulations limit outpatient maintenance dialysis services to those services provided "on the premises" of the facility. Thus, it is not possible for Part B institutional dialysis services to be provided at the site of a nursing facility or SNF that does not itself meet the ESRD conditions of coverage. The second situation involves Part B coverage of home dialysis services for residents of nursing facilities or SNFs, as these facilities may qualify as the residents' home for purposes of this benefit.

In order for Medicare payment of home dialysis to be made, the resident must elect to become a home dialysis patient and have completed a training program provided by an approved ESRD facility. Once a patient has completed the training, he or she must elect either Method I, where an ESRD approved facility furnishes the dialysis equipment and supplies, or Method II, where the patient elects a single supplier other than the ESRD facility to furnish all of the dialysis equipment and supplies, other than laboratory services and support services which are provided by a certified ESRD facility. Each home patient must have his or her own supplies and equipment. These cannot be shared with other SNF residents. Also, home dialysis is intended to be self-dialysis performed by the patient or the patient's family. Therefore, Medicare does not cover the services of staff to assist with the home dialysis services.

Comment: Many commenters requested clarification of the relationship between the SNF comprehensive care plan and a beneficiary's status as a "resident" of the SNF for consolidated billing purposes. Section 1862(a)(18) of the Act defines the applicability of the consolidated billing requirement in terms of services that are furnished to an individual who is a "resident" of an SNF. The implementing regulations at § 411.15(p)(3) specify several circumstances that have the effect of ending a beneficiary's status as an SNF "resident" for consolidated billing purposes.

Section 411.15(p)(3)(iii) specifies as one such circumstance the receipt of those types of outpatient hospital services "... that are not furnished pursuant to the [SNF's] comprehensive care plan." Many commenters expressed confusion about the appropriate interpretation of this provision, along with the erroneous belief that a given outpatient hospital service is subject to the SNF consolidated billing provision only if it is actually specified in the individual care plan of the particular beneficiary to whom the service is furnished. Other commenters suggested additional types of outpatient hospital services for exclusion beyond the specific categories already identified in the preamble to the interim final rule. Still others advocated extending the exclusion to apply to services furnished in nonhospital settings as well (for example, MRIs performed at freestanding imaging centers).

Response: The purpose of citing the SNF's comprehensive care plan in the context of an outpatient hospital visit is to clarify that the SNF retains the overall billing responsibility for essentially the entire package of care furnished during the outpatient visit, other than certain specifically excluded services. As explained in the interim final rule (63 FR 26298), in the outpatient hospital context, this exclusion applies to the small number of exceptionally intensive services that lie well beyond the scope of care that SNFs would ordinarily furnish (and, thus, beyond the ordinary scope of SNF care plans), as well as emergency services (which, by their nature, cannot be anticipated and planned for in advance).

In November 1998, we issued PM transmittal number A–98–37, which provided additional clarification on the outpatient hospital exclusion, as well as a list of the specific HCPCS codes that identify the excluded services. The PM explains that this exclusion is not invoked merely because a particular outpatient hospital service does not appear in the individual SNF care plan of the person receiving the service; rather, the exclusion applies only to those specified categories of services that, by definition, lie well beyond the scope of SNF care plans generally. Currently, only those services that are specifically cited in the PM itself are excluded from consolidated billing on this basis: cardiac catheterization; computerized axial tomography (CT) scans; MRIs, ambulatory surgery involving the use of an operating room;

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emergency room services; radiation therapy; angiography; and, lymphatic and venous procedures. However, as indicated in the interim final rule, we continue to consider further refinements in this policy as the new PPS for outpatient hospital services is being developed, and any further refinements would be made through future rulemaking.

In this context, we note that a key concern underlying the development of the consolidated billing exclusion of certain outpatient hospital services specifically involves the need to distinguish those services that comprise the SNF bundle from those that will become part of the outpatient hospital bundle that is currently being developed in connection with the outpatient hospital PPS. Accordingly, we are not extending the outpatient hospital exclusion from consolidated billing to encompass any other, freestanding settings.

Finally, in order to resolve the confusion that commenters expressed regarding the role of the comprehensive care plan, we are revising the parenthetical in § 411.15(p)(3)(iii) to read as follows: ". . .(but only with respect to those services that are beyond the general scope of SNF comprehensive care plans, as required under § 483.20)." This is to clarify that an outpatient hospital service is not excluded from consolidated billing merely because it does not appear in the particular care plan of the individual beneficiary receiving the service; rather, consolidated billing excludes only those types of outpatient hospital services that we specifically identify as being beyond the scope of SNF care plans generally. As indicated above, this exclusion currently encompasses only those particular service categories that we have specifically identified in PM A–98–37; however, as we continue to examine this issue, we may make further modifications in future instructions.

Comment: Many commenters requested further clarification regarding the definition of "emergency" outpatient hospital services in terms of their exclusion from SNF consolidated billing. One commenter argued that it is unreasonable to define an emergency as including only "life or death" situations. Another commenter noted the interim final rule's description of emergency outpatient hospital services as being beyond the general scope of SNF care plans (since, by their nature, they cannot be anticipated and planned for in advance), and questioned whether this characterization would be appropriate in those instances where "emergency" situations actually are addressed in a resident's plan of care (for example, contingency plans that are based on risk factors identified in the resident assessment). Another inquired as to whether the exclusion of emergency services extends to other services that are clearly unrelated to the emergency itself, but that happen to be performed during the individual's visit to the emergency room.

Response: As noted in the preceding discussion of the relationship between the outpatient hospital exclusion and the comprehensive care plan, PM transmittal number A–98–37 (November 1998) provided additional clarification on the exclusion of certain outpatient hospital services from SNF consolidated billing. As the PM indicates, we are not establishing a special definition of "emergency" services unique to consolidated billing, but instead are incorporating the longstanding definition contained in regulations at § 424.101, "services that are necessary to prevent death or serious impairment of health and, because of the danger to life or health, require use of the most accessible hospital available and equipped to furnish those services." This definition is not limited to "life or death" situations, since it specifically includes those that present a risk of "serious impairment of health" as well. The PM also explains that emergency services are excluded from consolidated billing by virtue of their designation as being beyond the scope of SNF care plans generally, which would be true regardless of whether the individual care plan of a particular resident may occasionally address contingency plans in the event of a medical emergency. The PM also clarifies that the exclusion from consolidated billing is limited to, "Those services and supplies that are directly related and required to complete the procedure or treat the emergency condition for which the beneficiary came to the hospital, for example, anesthesia when used during ambulatory surgery involving the use of an operating room." All other services and supplies must be bundled back to the SNF and the hospital must look to the SNF for payment.

Thus, for example, a laboratory test that is required to diagnose the condition that occasioned the emergency visit would be excluded from consolidated billing, and can be billed to Part B by the hospital. By contrast, a routine diagnostic test that is unrelated to the emergency condition itself would not be excluded from consolidated billing merely because it happens to be performed during the beneficiary's visit to the emergency room.

Comment: Two commenters noted that the outpatient hospital exclusion of ambulatory surgery from SNF consolidated billing applies specifically to those procedures that involve the use of an operating room, and they requested clarification on whether this exclusion would encompass the insertion and replacement of a percutaneous esophageal gastrostomy (PEG) tube when performed in a hospital's gastrointestinal (GI) suite or endoscopy suite rather than in an operating room.

Response: The procedure codes that specifically pertain to PEG tubes are 43750 (percutaneous placement of gastrostomy tube) and 43760 (change of gastrostomy tube), both of which come under the general exclusion from SNF consolidated billing for ambulatory surgery involving the use of an operating room. The reason that the instructions in PM A–98–37 restrict the outpatient hospital exclusion for ambulatory surgery to those procedures that involve the use of an operating room is to avoid encompassing procedures that are simple enough to be performed at bedside in the SNF itself. Accordingly, with respect to PEG tube procedures, we regard the use of a GI suite or an endoscopy suite as equivalent to the use of an operating room for purposes of this exclusion.

Comment: We received many comments on various aspects of an SNF's relationship with its suppliers. In the interim final rule (63 FR 26300), we noted that section 1888(e)(9) of the Act provides that the amount of Part B payment to an SNF shall be determined in accordance with the applicable fee schedule for the particular service. We also noted the concern that if an SNF were to arrange with an outside supplier for the provision of a particular service for less than the applicable fee schedule amount, allowing the SNF to retain the difference could create a perverse incentive for the SNF to provide unnecessary services.

We invited comments on possible ways to address this concern, including pursuing legislation (to limit the SNF's Part B payment to the lower of the applicable fee schedule amount or the amount that the supplier actually charges the SNF) or, alternatively, to require the SNF to pay its supplier the full fee schedule amount. A few commenters expressed support for limiting the SNF's Part B payment to the lower of the applicable fee schedule amount or the amount of the supplier's actual charge to the SNF, but only if the SNF is required to pass this entire amount (as so limited) on to the supplier. A greater number supported requiring the SNF to pass the full fee schedule amount on to the supplier, regardless of the supplier's actual charge (some of these commenters advocated permitting the SNF to retain a "reasonable" administrative charge).

By far the largest group of commenters, however, argued against imposing any restrictions in this area, noting that transactions between the SNF and its suppliers are a private contractual matter in which we should not intervene. They maintained that the appropriate way to address any abusive practices would be through more vigorous enforcement of existing statutes and regulations (such as medical review procedures), rather than to prescribe the specific terms of payment between the SNF and its suppliers. Other commenters expressed concerns about possible violations of the anti-kickback provisions at section 1128B(b) of the Act, as well as more general concerns about the timeliness and adequacy of the SNF's payment to its suppliers.

Response: We agree that, under current law, an SNF's relationship with its supplier is essentially a private contractual matter, and the terms of the supplier's payment by the SNF must be arrived at through direct negotiations between the two parties themselves. Accordingly, we believe that the most effective way for a supplier to address any concerns that it may have about the adequacy or timeliness of the SNF's payment would be for the supplier to ensure that any terms to which it agrees in such negotiations satisfactorily address those concerns.

We remain concerned, however, over the potential for the provision of unnecessary services, and will continue to evaluate possible legislative and other approaches to addressing this concern. In addition, we note that our discussion of the relationship between an SNF and its suppliers should not be construed as addressing in any manner the potential applicability of the statutory anti-kickback provisions, since matters relating specifically to the enforcement of these provisions lie exclusively within the purview of the Office of the Inspector General.

O. Scope of Extended Care Benefits

Along with the promulgation of regulations specifically describing the SNF PPS itself, the interim final rule also included a number of conforming revisions in other portions of the regulations. One such revision was a reorganization of subpart C of part 409 (describing the scope of covered services under the Part A SNF benefit), which now tracks more accurately the corresponding portion of the Medicare statute at section 1861(h) of the Act.

Comment: One commenter requested us to clarify that the regulations at § 409.26(a) (coverage of transfer agreement hospital services) provide for separate Part B payment for the medical services of an intern or resident of the SNF's transfer agreement hospital.

Response: The commenter's understanding of the purpose of this provision is incorrect. This section of the regulations implements section 1861(h)(6)(A) of the Act, which describes the scope of services included in the Part A extended care benefit. Accordingly, the medical services of interns and residents described in § 409.26(a) are covered as SNF services under Part A, rather than being covered separately as practitioner services under Part B.

P. Impact Analysis

As required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995, and the Regulatory Flexibility Act (RFA) (Public Law 96–354), the interim final rule included a Regulatory Impact Statement, on which we received numerous comments.

Comment: Many commenters were concerned about the budgetary savings from the SNF PPS as indicated in the interim final rule, as compared with CBO's estimate at the time of the BBA. Many of these commenters felt that this "extra" money should be given back to the SNFs through the calculation of the rates to be used in the PPS.

Response: CBO's estimate of savings of $9.2 billion over five years only shows the effect on SNFs under Medicare fee for service and does not include the indirect savings due to reduced managed care payments, which are based on average fee for service payments by county. The estimate of 5-year savings shown in the interim final rule (63 FR 26304) of $12.87 billion includes both the fee-for-service effect and the managed care effect (which, as stated in the interim final rule, is about 25 percent of the total). If savings attributable to managed care are taken out, the result is very close to the $9.5 billion in savings which CBO had estimated.

Comment: Many commenters were concerned about the behavioral offset which was assumed in the savings estimate. Some argued that there should have been no offset assumed whatsoever, and all believed that the offset that actually was assumed was much too large. In addition, many commenters expressed concern about the potential for nursing home closures and diminished beneficiary access to needed care.

Response: The "behavioral" offset assumed for the impact analysis is only used as a device to assess impact. It is not used to adjust the payment rates. Along with the possible sources of this offset listed in the interim final rule, there are probably many additional factors which would also have the effect of offsetting the savings from this provision.

We are aware and concerned about the statements being reported about potential closures of nursing homes and the delay in patient discharges from hospitals that are being attributed to the change in payments resulting from implementation of the PPS for SNFs. At this time, however, we do not have sufficient claims or MDS data either to confirm or refute these statements. It will be several months before we can establish a baseline and begin to assess the impact on access and quality. As we accumulate data and learn more about the effects of the new payment system, we will report the results.

Regarding the issue of beneficiary access to care, we note that in terms of the impact analysis itself, if these beneficiaries had to remain in higher cost care as opposed to moving to SNFs, this could affect the budgetary savings to Medicare and, therefore, would be part of this offset factor. The final result is that this behavioral offset factor is only used to determine the total budget effect of a provision. It is not meant to indicate abusive behavior by the providers. The 45 percent factor that was used in our impact analysis is in the typical range for offset factors related to a significant payment system change like the SNF PPS. While little empirical data is currently available to estimate the overall impact of the PPS and consolidated billing on access to care in SNFs, this is an important issue in the context of the payment system, certification requirements and quality monitoring activities.

However, from a broader policy perspective, this issue involves not only the payment characteristics of the PPS itself, but also a number of related requirements regarding provider participation in the Medicare program. Some commenters expressed concern that the payment rates under the SNF PPS may be inadequate and could result in SNFs withholding needed care and services from Medicare beneficiaries, or even denying admission to them. We note that in order to be certified for participation in the Medicare program as an SNF, a nursing home must first meet a set of requirements for

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participation designed to protect and promote resident health and safety. These certification standards include the requirement to "* * * provide services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident * * *" (section 1819(b)(2) of the Act). Thus, an SNF that fails to provide or make the necessary arrangements for the care and services that a resident requires would jeopardize its program certification.

Further, the statutory provision regarding Medicare provider agreements (section 1866(a)(1) of the Act) requires an SNF to accept the Medicare payment for covered SNF services as payment in full. The corresponding regulations at § 489.53(a)(2) specify that one of the grounds for terminating a provider agreement is when the provider "* * * places restrictions on the persons it will accept for treatment and it fails either to exempt Medicare beneficiaries from those restrictions or to apply them to Medicare beneficiaries the same as to all other persons seeking care." In addition, longstanding program guidelines in section 134 of the Medicare SNF Manual (HCFA Pub. 12) indicate that, while a provider may restrict the types of health conditions it accepts or may establish other criteria relating to the admission of patients, if those restrictions apply to Medicare beneficiaries, they must apply in the same manner to all other persons seeking care and treatment by the provider.

Comment: One commenter felt that a 17 percent level of budgetary savings cited in the interim final rule was significant for providers of care.

Response: The 17 percent savings factor is an average based on the Medicare business of a provider. When this factor is converted to a total facility basis, it is estimated to be a 1.7 percent savings on average. This does not meet the threshold of three percent which we have used in the past to determine that an anticipated impact is significant. We do realize that using average values does not totally reflect each individual SNF's effect, which was acknowledged in the impact analysis of the interim final rule. However, for many of the factors included in the calculation, only averages existed. Specific data were not available for each individual facility.

Comment: One commenter stated that the 17 percent savings would be higher once the PPS was fully implemented. This factor only was for the first year of implementation, when most facilities would be paid based on 75 percent of their facility-specific rate and 25 percent of the Federal rate.

Response: We agree with this comment that the estimated savings will be greater in future years. The effect of a system that paid all facilities entirely at the Federal rate as of the first year, instead of having the transition, would be that it would save 21 percent on average instead of 17 percent (see table IX.2). This effect would be felt much more heavily by hospital-based facilities (33 percent savings) as opposed to freestanding facilities (18 percent). This result was not included in the original interim final rule because that rule only deals with setting rates for the first year and not with what will happen when it is fully implemented. The results listed here have the same caveats as those done in the original impact analysis; primarily, that averages have been used and the effects on individual providers may differ. Future impacts will be shown as the rates are developed and published in the future.

Comment: Several commenters stated that the 17 percent reduction may be true on average but specific providers may have much larger reductions (based on geographical characteristics).

Response: As was stated in the interim final rule, we do not know the effect on individual providers. Some providers will have a greater than 17 percent reduction in payments while others will have less than that or even an increase. As more data becomes available through the implementation of this system, we will be able to complete a much more thorough analysis of the effects of this system on many of these smaller groups of characteristics.

Comment: Several commenters asserted that the savings were understated because they did not take into account the added costs of implementing PPS for the facilities.

Response: It is true that the savings estimate shown in the interim final rule in table IX.1 (63 FR 26304) does not include any additional costs due to implementing PPS. This is because these savings are the difference in payments to facilities under the PPS compared to the previous payment system (either based on reasonable cost or the optional low-volume PPS). In developing the impact analysis, the previous system payments would not include the costs of implementing PPS. Likewise, the estimates of the new PPS costs do not include the implementation costs. Therefore, the differences between these costs or the savings do not include any effect of this additional cost. On the other hand, the savings estimates do not reflect the lower costs which result from providing services more efficiently, which is a natural outcome of implementing a PPS.

Comment: One commenter stated that the Congress had only intended to reduce the rate of growth in SNF payments and not actually reduce the level of payments.

Response: The statute prescribes the methodology for calculating the payment rate. The statute specifies the base year and specifies the updates to the base year costs. The legislation which implemented this system called for only allowing a market basket minus 1 percentage point increase going back to 1995. This amounted to a total of about seven percent over the three years. In the meantime, costs on a per diem basis had been increasing at a total of about 40 percent during that same period. Some of that increase is due to an increase in case-mix during that period, but as can easily be seen from these numbers, a very stringent limit had been placed on facilities' rate of growth for the last three years. Payments under this system are higher, on average, when compared to 1995 payments, but when compared to 1996 and 1997 payments, could very well be lower.

In addition, due to the formula expressed in the statute, many hospital-based facilities may face a reduction even in comparison to 1995 payments, because the formula for calculating the Federal rate is more weighted to the freestanding average. Thus, because of the statutory formula, most facilities may see a drop in payments in their first year of PPS as opposed to their last year under the previous payment system.

Comment: One commenter wished to know if we considered the probability of units closing or decertifying because of reimbursement levels. They wanted an estimate of the potential closings of small rural facilities since they are usually the only such units in these communities.

Response: We did consider the chance of some facilities closing due to the implementation of PPS. As stated in the interim final rule, the effect on individual SNFs will depend on their ability to adapt to the incentives resulting from the new system. If a provider decides that it cannot (or will not) adapt to the PPS, then that provider may decide to drop out of the Medicare program. This certainly may be a consequence of this provision but, as shown in the impact analysis of the interim final rule, the effect of these provisions are fairly equitable across urban and rural and hospital-based and freestanding ranges. Of course, individual SNFs may be affected in very different ways and this may prompt a variety of responses, including an election to drop out of the program. There is no way to estimate the number of facilities that will make the election to leave the Medicare program. However, as part of the offset factor development, this possibility was considered and, therefore, some of that offset is due to the possibility that beneficiaries may be required to stay in more expensive care settings in the absence of SNF care being available. This was one of the reasons reflected in the impact analysis to the interim final rule that budgetary savings from this provision would be diminished.

Comment: Several commenters expressed concern that suppliers would be significantly affected by the changes made in this system.

Response: The way suppliers do business will to some extent be affected by these provisions. Since the suppliers will now have to negotiate with facilities in order to receive payment for their services, this will be different from the current process for suppliers in situations involving an SNF that had not previously elected to do the Medicare billing for its residents' supplies. However, we do not anticipate that this change will be uniformly significant, even among this subset of suppliers, since its effect will be limited primarily to those particular areas that have an abundance of suppliers competing for the business of a relatively small number of SNFs. By contrast, we believe that in most situations suppliers should be able to negotiate a fair amount of payment from the facilities and, thus, will not be significantly affected economically by these provisions, as discussed further in section VI below.

Comment: One commenter argued that since the interim final rule is a major rule (savings over $100 million), it appears inconsistent to state that an assessment of costs and benefits pursuant to the Unfunded Mandates Reform Act was not needed since local governments and the private sector would not be incurring costs of over $100 million. This commenter felt that there would be cost shifting and these entities would be picking up the amount of savings the Federal government was realizing.

Response: The interim final rule implemented major changes in how SNFs will be paid by Medicare. Other payers, being prudent purchasers of health care services, will still be able to negotiate with the providers to reach a fair and equitable payment for services rendered to patients they cover. Because other payers are able to negotiate we believe that if providers attempt to shift costs due to SNF PPS other payers will quickly negotiate what they will pay to avoid being unduly burdened with additional costs. Therefore, there is a great amount of uncertainty regarding the amounts, if any, that other payers may have to bear due to the payment changes as a result of SNF PPS. In previous cases, what has occurred is that other payers have adjusted their policies after we changed our payment policy.

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may mandate an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more. We believe that this final rule will not mandate expenditures in that amount. We do realize that using average values does not totally reflect each individual SNF's effect, which was acknowledged in the Impact section of the interim final rule, or the segmented aggregate effect on State, local, or tribal governments, and the private sector. However, for many of the factors in the calculation only averages existed, and facility-specific data were not available for each individual facility, not making such segmentation possible.

IV. Provisions of the Final Regulations

This final rule incorporates the provisions of the interim final rule with the following revisions, as discussed previously in this preamble:

- We are amending the regulations text at §§ 409.20 and 409.27 to clarify that transportation by ambulance that meets the general medical necessity requirements set forth in § 410.40(d)(1) is covered under the Part A SNF benefit as services that are generally furnished by (or under arrangements made by) SNFs.
- We are amending the regulations text at § 409.30 (Basic requirements) to clarify that the initial presumption of coverage that arises from a beneficiary's first Medicare assessment and his or her resulting RUG–III assignment is valid as of the assessment reference date (that is, the last day of the observation period) for the initial 5-day assessment. We are also correcting an erroneous cross-reference that appears in the introductory material for § 409.30, as well as in the definition of custodial care at § 411.15(g).
- In § 409.33 (Examples of skilled nursing and rehabilitation services), we are restoring certain portions of the regulations text that the interim final rule deleted, with regard to the overall management and evaluation of the care plan; observation and assessment of the patient's changing condition; and, patient education. We are also clarifying that the use of insertion, sterile irrigation, and replacement of catheters as an example of a skilled nursing service applies solely with regard to suprapubic catheters.
- In § 411.15(p)(3)(iii) we are revising the parenthetical phrase to clarify that our basis for determining that a particular type of outpatient hospital service is subject to the SNF consolidated billing provision is its inclusion within the customary scope of SNF care plans generally, without regard to whether it appears in the individual care plan of a particular beneficiary.
- We are adding a new § 413.350 that provides for making periodic interim payments under the SNF PPS, and we are making a conforming revision in § 413.64(h)(2)(iii). We are also revising the regulations text at § 413.343(b), in order to clarify the language that describes the required Medicare assessment schedule.
- We are amending § 489.21 by adding a new paragraph (h), which specifically precludes charging an SNF resident for an item or service that is subject to the consolidated billing requirement.

V. Collection of Information Requirements

The information collection requirements associated or referenced in this rule, which are subject to the Paperwork Reduction Act, have been approved by the Office of Management and Budget. The titles, approval numbers and current expiration dates of the collection requirements are as follows: "Medicare Common Claim Form," 0938–0008, 08/31/99; "SNF Resident Assessment MDS Data," 0938–0739, 04/30/99.

VI. Impact Analysis

A. Background

Summary of the Interim Final Rule Regulatory Impact Statement

Section 1888(e) of the Act specifies that the base year for computing the RUG payment rates is FY 1995 (that is, October 1, 1994, through September 30, 1995.) Pursuant to the statute, we incorporated several elements into the SNF PPS such as case-mix methodology, the MDS assessment schedule, a market basket index, a wage index, the urban and rural distinction used in the development or adjustment of the Federal rates, and coverage requirements.

In the interim final rule, we stated that SNF PPS will result in estimated annual savings over five years ranging from $30 million in the first year to

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$4.28 billion in the fifth year. Savings included both the savings from Medicare fee-for-service and managed care payments. It was projected that 8958 SNFs would experience a decrease in Medicare payments as a result of the SNF PPS. The percentage reduction in payments was estimated to be 17 percent.

However, because Medicare SNF payments account for only approximately 10 percent on average of a SNF's total revenue the revenue reduction of a SNF as a result of the interim final rule was approximately 1.7 percent. These were average figures and we did not (and do not) have data that would allow us to determine if a substantial number of SNFs will experience revenue decreases greater than the estimated average.

As stated in the interim final rule, we did not expect suppliers of services to SNFs to be significantly affected by the consolidated billing provisions. Total Medicare reimbursement to suppliers was estimated in the interim final rule to be about $4 billion each year. The reimbursement to suppliers for SNF services was estimated to be about $60 million each year. Therefore, we believed that the consolidated billing provisions related to the services provided to patients in Part A SNF stays would generally have a minimal impact on suppliers.

As stated in the interim final rule the majority of ancillary services are provided directly by SNFs or under arrangements with suppliers and are, therefore, already billed to Medicare by the SNFs. While there was a possibility that, for those services being consolidated as a result of the statute and the interim final rule, a sizeable number of these suppliers might be reimbursed by SNFs at rates lower than the rates at which they were reimbursed by Medicare under the previous system, we believed that this was highly dependent on the reaction each individual supplier had to the new payment system.

In addition, with regard to consolidated billing related to services provided to SNF patients who are not in a Part A stay, to the extent that these services have been necessary in the past, they will still be required and provided to these patients by suppliers. Accordingly, it was anticipated that the total impact on suppliers would be minimal. However, determining the effect on individual suppliers was not possible due to a lack of data. Therefore we were not able to determine if the new SNF per diem rates would result in a substantial number of suppliers experiencing significant decreases in their total revenues.

B. Impact of This Final Rule

We have examined the impacts of this final rule as required by Executive Order 12866, section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995, and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

The purpose of this final rule is not to initiate significant policy changes with regard to the SNF PPS but, rather, to clarify and make minor modifications in the policies that were established in the SNF PPS interim final rule published on May 12, 1998 (63 FR 26251). Accordingly, we believe that the revisions and clarifications mentioned elsewhere in the preamble (for example, the adjustment to the nursing case-mix component of the urban and Federal rates) will have, at most, only a negligible overall effect upon the regulatory impact estimate specified in the interim final rule. As such, these revisions will not represent an additional burden to the industry.

Columns A–C of Table IX.2 below, published in the interim final rule (63 FR 26304) depicted the number of facilities that were projected to experience a decrease in Medicare SNF payments under the new SNF PPS rates and the percentage change for the type of facility.

TABLE IX.2.—IMPACT ON SNFS BY TYPE

Type of SNF	Total number of SNFs (A)	Number of SNFs with lower payment (B)	Estimated average percentage reduction in payments for first year transition (C)	Estimated average percentage reduction in payments for fully implemented PPS (D)
MSA Freestanding	5617	5585	17	18
MSA Hospital Based	683	679	19	34
Non-MSA Freestanding	2204	2189	17	18
Non-MSA Hospital Based	533	531	18	30
Total	9037	8984	17	21

Specifically, column (A) of the table depicted the total number of SNFs in the data base for FY 1995 cost reporting periods. Column (B) depicted the number of SNFs whose payment rate for cost reporting periods beginning July 1, 1998 would be lower than the payment they would have received under the former cost-based methodology for cost reporting periods beginning July 1, 1998.

As described in the interim final rule, the payments received under SNF PPS would initially be based on a facility level case-mix score developed using the case-mix indices and the MEDPAR analog. The payments that would have been received under the former (pre-SNF PPS) system were estimated by using the same average inflation factor from the 1995 data for each facility. Column (C) depicts the estimated reduction in payments on a percentage basis between the two payment methodologies for the first year of transition. New column (D) depicts the estimated reduction in payments on a percentage basis between the two payment methodologies for the fully implemented SNF PPS.

The estimated effect of the fully implemented SNF PPS (if, instead of having the transition, it paid all facilities entirely at the Federal rate as of the first year) is that it would save 21 percent on average instead of 17 percent. This effect is felt much more heavily by hospital-based facilities (34 percent savings) as opposed to freestanding facilities (18 percent).

As was stated in the interim final rule, the results listed in Table IX.2 should be viewed with caution and as illustrative of broad groupings of SNFs. Averages have been used and the effects on individual SNFs may differ. Future impacts will be shown as the rates are developed and published in the future.

As stated in the interim final rule, in developing the estimate, we assumed each facility would increase costs at the national average rate. This national average increase includes the higher costs of new facilities entering the program. Therefore, this increase might be slightly higher than the true amount for existing facilities. We do, however, expect total payments to SNFs to decrease compared to payments that would have occurred under the former cost-based methodology. The effects of this decrease in payments to any individual SNF will depend on that SNF's ability to operate under the new payment methodology and on the proportion of its revenues that come from the Medicare program.

The RFA requires agencies to analyze options for regulatory relief of small entities. The BBA mandates implementation of SNF PPS. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most SNFs and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. States and tribal governments are not considered to be small entities, nor are intermediaries or carriers.

Under the RFA, an economic impact is significant if the annual total costs or revenues of a substantial number of entities will be increased or decreased by at least 3 percent. Medicare payments generally do not account for a high proportion of SNF revenue (about 10 percent on average) and the estimated average percentage reduction in payments for the fully implemented SNF PPS reduces those payments by approximately 21 percent on average. Therefore, total revenues for SNFs will be reduced by about 2.1 percent. As stated above, we are unable to determine the effects on individual SNFs and therefore are unable to determine if the new SNF per diem rates will result in a substantial number of SNFs experiencing significant decreases in their total revenues.

C. Rural Hospital Impact Statement

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

D. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may mandate an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more. We believe that this final rule will not mandate expenditures in that amount.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as follows:

PART 409—HOSPITAL INSURANCE BENEFITS

A. Part 409 is amended as set forth below:

1. The authority citation for part 409 is revised to read as follows:

Authority: Sections 1102 and 1871 of the Social Security Act (U.S.C. 1302 and 1395hh).

Subpart C—Posthospital SNF Care

2. In § 409.20, remove paragraph (a)(8).

3. In § 409.27, the word "and" is removed from the end of paragraph (a), the period at the end of paragraph (b) is removed and a semicolon followed by the word "and" is added in its place, and a new paragraph (c) is added, to read as follows:

§ 409.27 Other services generally provided by (or under arrangements made by) SNFs.

* * * * *

(c) Transportation by ambulance that meets the general medical necessity requirements set forth in § 410.40(d)(1) of this chapter.

Subpart D—Requirements for Coverage of Posthospital SNF Care

4. In § 409.30, the second sentence in the introductory text is removed and two sentences are added in its place to read as follows:

§ 409.30 Basic requirements.

* * * A beneficiary in an SNF is also considered to meet the level of care requirements of § 409.31 up to and including the assessment reference date for the 5-day assessment prescribed in § 413.343(b) of this chapter, when assigned to one of the Resource Utilization Groups that is designated (in the annual publication of Federal prospective payment rates described in § 413.345 of this chapter) as representing the required level of care. For the purposes of this section, the assessment reference date is defined in accordance with § 483.315(d) of this chapter, and must occur no later than the eighth day of posthospital SNF care.

* * * * *

5. In § 409.33, paragraphs (a), (b), and (c) are redesignated as paragraphs (b), (c), and (d), respectively; a new paragraph (a) is added; and newly designated paragraph (b)(4) is revised to read as follows:

§ 409.33 Examples of skilled nursing and rehabilitation services.

(a) *Services that could qualify as either skilled nursing or skilled rehabilitation services.* (1) *Overall management and evaluation of care plan.* (i) When overall management and evaluation of care plan *constitute skilled services.* The development, management, and evaluation of a patient care plan based on the physician's orders constitute skilled services when, because of the patient's physical or mental condition, those activities require the involvement of technical or professional personnel in order to meet the patient's needs, promote recovery, and ensure medical safety. Those activities include the management of a plan involving a variety of personal care services only when, in light of the patient's condition, the aggregate of

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those services requires the involvement of technical or professional personnel.

(ii) *Example.* An aged patient with a history of diabetes mellitus and angina pectoris who is recovering from an open reduction of a fracture of the neck of the femur requires, among other services, careful skin care, appropriate oral medications, a diabetic diet, an exercise program to preserve muscle tone and body condition, and observation to detect signs of deterioration in his or her condition or complications resulting from restricted, but increasing, mobility. Although any of the required services could be performed by a properly instructed person, such a person would not have the ability to understand the relationship between the services and evaluate the ultimate effect of one service on the other. Since the nature of the patient's condition, age, and immobility create a high potential for serious complications, such an understanding is essential to ensure the patient's recovery and safety. Under these circumstances, the management of the plan of care would require the skills of a nurse even though the individual services are not skilled. Skilled planning and management activities are not always specifically identified in the patient's clinical record. Therefore, if the patient's overall condition supports a finding that recovery and safety can be ensured only if the total care is planned, managed, and evaluated by technical or professional personnel, it is appropriate to infer that skilled services are being provided.

(2) Observation and assessment of the patient's changing *condition.* (i) When observation and assessment constitute skilled *services.* Observation and assessment constitute skilled services when the skills of a technical or professional person are required to identify and evaluate the patient's need for modification of treatment or for additional medical procedures until his or her condition is stabilized.

(ii) *Examples.* A patient with congestive heart failure may require continuous close observation to detect signs of decompensation, abnormal fluid balance, or adverse effects resulting from prescribed medication(s) that serve as indicators for adjusting therapeutic measures. Similarly, surgical patients transferred from a hospital to an SNF while in the complicated, unstabilized postoperative period, for example, after hip prosthesis or cataract surgery, may need continued close skilled monitoring for postoperative complications and adverse reaction. Patients who, in addition to their physical problems, exhibit acute psychological symptoms such as depression, anxiety, or agitation, may also require skilled observation and assessment by technical or professional personnel to ensure their safety or the safety of others, that is, to observe for indications of suicidal or hostile behavior. The need for services of this type must be documented by physicians' orders or nursing or therapy notes.

(3) *Patient education services.* (i) *When patient education services constitute skilled services.* Patient education services are skilled services if the use of technical or professional personnel is necessary to teach a patient self-maintenance.

(ii) *Examples.* A patient who has had a recent leg amputation needs skilled rehabilitation services provided by technical or professional personnel to provide gait training and to teach prosthesis care. Similarly, a patient newly diagnosed with diabetes requires instruction from technical or professional personnel to learn the self-administration of insulin or foot-care precautions.

(b) * * *

(4) Insertion and sterile irrigation and replacement of suprapubic catheters;

* * * * *

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

B. Part 411 is amended as set forth below:

1. The authority citation for part 411 continues to read as follows:

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Exclusions and Exclusion of Particular Services

§ 411.15 [Amended]

2. In § 411.15:

a. In paragraph (g), remove the citation "§§ 409.30" and add, in its place "§§ 409.31".

b. Paragraph (p)(3)(iii) is revised to read as follows:

§ 411.15 Particular services excluded from coverage.

* * * * *

(p) * * *

(3) * * *

(iii) The beneficiary receives outpatient services from a Medicare-participating hospital or CAH (but only with respect to those services that are beyond the general scope of SNF comprehensive care plans, as required under § 483.20 of this chapter); or

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

C. Part 413 is amended as set forth below:

1. The heading for part 413 is revised as set forth above.

2. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

3. In § 413.64, paragraph (h)(2)(iii) is revised to read as follows:

§ 413.64 Payments to providers: Specific rules.

* * * * *

(h) * * *

(2) * * *

(iii) Part A SNF services furnished in cost reporting periods beginning before July 1, 1998. (For services furnished in subsequent cost reporting periods, see § 413.350 regarding periodic interim payments for skilled nursing facilities).

* * * * *

§ 413.343 [Amended]

4. In § 413.343(b), remove the words "following admission" and add, in their place, the words "of posthospital SNF care".

5. Add § 413.350 to subpart J to read as follows:

§ 413.350 Periodic interim payments for skilled nursing facilities receiving payment under the skilled nursing facility prospective payment system for Part A services.

(a) *General rule.* Subject to the exceptions in paragraphs (b) and (c) of this section, SNFs receiving payment under the PPS for Part A services do not receive interim payments during the cost reporting year, and receive payment only following submission of a bill. Paragraph (d) of this section provides for accelerated payments in certain circumstances.

(b) Periodic interim payments. (1) An SNF receiving payment under the prospective payment system may receive periodic interim payments (PIP) for Part A SNF services under the PIP method subject to the provisions of § 413.64(h). To be approved for PIP, the SNF must meet the qualifying requirements in § 413.64(h)(3). Moreover, as provided in § 413.64(h)(5), intermediary approval is conditioned upon the intermediary's best judgment as to whether payment can be made under the PIP method without undue risk of its resulting in an overpayment to the provider.

(2) *Frequency of payment.* The intermediary estimates an SNF's prospective payments net of estimated beneficiary coinsurance and makes biweekly payments equal to 1/26 of the total estimated amount of payment for the year. If an SNF has payment experience under the prospective payment system, the intermediary estimates PIP based on that payment experience, adjusted for projected changes supported by substantiated information for the current year. Each payment is made 2 weeks after the end of a biweekly period of service as described in § 413.64(h)(6). The interim payments are reviewed at least twice during the reporting period and adjusted if necessary. Fewer reviews may be necessary if an SNF receives interim payments for less than a full reporting period. These payments are subject to final settlement.

(3) Termination of PIP. (i) Request by the SNF. An SNF receiving PIP may convert to receiving prospective payments on a non-PIP basis at any time.

(ii) Removal by the intermediary. An intermediary terminates PIP if the SNF no longer meets the requirements of § 413.64(h).

(c) Interim payments for Medicare bad debts and for Part A costs not paid under the prospective payment system. For Medicare bad debts and for costs of an approved education program and other costs paid outside the prospective payment system, the intermediary determines the interim payments by estimating the reimbursable amount for the year based on the previous year's experience, adjusted for projected changes supported by substantiated information for the current year, and makes biweekly payments equal to 1/26 of the total estimated amount. Each payment is made 2 weeks after the end of a biweekly period of service as described in § 413.64(h)(6). The interim payments are reviewed at least twice during the reporting period and adjusted if necessary. Fewer reviews may be necessary if an SNF receives interim payments for less than a full reporting period. These payments are subject to final cost settlement.

(d) *Accelerated payments.* (1) *General rule.* Upon request, an accelerated payment may be made to an SNF that is receiving payment under the prospective payment system and is not receiving PIP under paragraph (b) of this section if the SNF is experiencing financial difficulties because of the following:

(i) There is a delay by the intermediary in making payment to the SNF.

(ii) Due to an exceptional situation, there is a temporary delay in the SNF's preparation and submittal of bills to the intermediary beyond its normal billing cycle.

(2) Approval of payment. An SNF's request for an accelerated payment must be approved by the intermediary and HCFA.

(3) Amount of payment. The amount of the accelerated payment is computed as a percentage of the net payment for unbilled or unpaid covered services.

(4) *Recovery of payment.* Recovery of the accelerated payment is made by recoupment as SNF bills are processed or by direct payment by the SNF.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

D. Part 489 is amended as set forth below: -

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, 1819, 1861, 1864(m), 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395i-3, 1395x, 1395aa(m), 1395cc, and 1395hh).

2. In § 489.21, a new paragraph (h) is added to read as follows:

§ 489.21 Specific limitations on charges.

* * * * *

(h) Items and services (other than those described in § 489.20(s)(1) through (11)) furnished to a resident (as defined in § 411.15(p)(3) of this chapter) of an SNF for which Medicare payment would be made if furnished by the SNF or by other providers or suppliers under arrangements made with them by the SNF. For this purpose, a charge by another provider or supplier for such an item or service is treated as a charge by the SNF for the item or service, and is also prohibited.

(Catalog of Federal Domestic Assistance Program Number 93.773, Medicare—Hospital Insurance; and Program Number 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 14, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: July 22, 1999.

Donna Shalala,

Secretary.

[FR Doc. 99–19478 Filed 7–29–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1056–N]

RIN 0938–AJ65

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the updates required in section 1888(e) of the Social Security Act (the Act), as added by section 4432 of the Balanced Budget Act of 1997, related to Medicare payments and consolidated billing for skilled nursing facilities.

EFFECTIVE DATE: This notice is effective October 1, 1999. This notice is a major rule as defined in Title 5, United States Code, section 804(2). Pursuant to 5 U.S.C. section 801(a)(1)(A), we are submitting a report to the Congress on this notice on July 30, 1999.

FOR FURTHER INFORMATION CONTACT:
Dana Burley, (410) 786–4547 (for information related to the case-mix classification methodology).
John Davis, (410) 786–0008 (for information related to the Federal Rates).
Jackie Gordon, (410) 786–4517 (for information related to consolidated billing).
Steve Raitzyk, (410) 786–4599 (for information related to the facility-specific transition rates).
Bill Ullman, (410) 786–5667 (for information related to coverage and level-of-care determinations).
Laurence Wilson, (410) 786–4603 (for general information).

SUPPLEMENTARY INFORMATION:

I. Background

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 4432 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) mandated the implementation of a per diem prospective payment system (PPS) for skilled nursing facilities (SNFs), covering all costs (routine, ancillary, and capital) of covered SNF services furnished to beneficiaries under Part A of the Medicare program effective for cost reporting periods beginning on or after July 1, 1998. Major elements of the system include:

Rates: Per diem Federal rates were established for urban and rural areas using allowable costs from FY 1995 cost reports. These rates also included an estimate of the cost of services that before July 1, 1998, had been paid under Part B, but furnished to SNF residents during a Part A covered stay. Rates are case-mix adjusted using a resident classification system (Resource Utilization Groups, version III (RUG–III)) based on resident assessments (using the Minimum Data Set (MDS) 2.0). In addition, the Federal rates are adjusted by the hospital wage index to account for geographic variation in wages. Finally, the rates will be adjusted annually using an SNF market basket index.

- Transition: The SNF PPS includes a 3-year transition that blends a facility-specific payment rate with the Federal case-mix adjusted rate. The blend that is used changes each cost reporting period after a facility migrates to the new system. For most facilities, the facility-specific rate is based on allowable costs from FY 1995.
- Coverage: The PPS statute did not change Medicare's fundamental requirements for SNF coverage. However, because RUG–III classification is based, in part, on the resident's need for skilled nursing care and therapy, we have attempted where possible to coordinate claims review procedures with the outputs of resident assessment and RUG–III classifying activities. For example, we believe that an initial Medicare-required (5-day) assessment, properly completed, that places the resident in one of the upper 26 RUG–III classifications provides the basis for us to assume that the resident needed a covered level of SNF care upon admission and at least up until the assessment reference date for the initial Medicare-required assessment. We will, however, continue to make individual review determinations for claims of individuals who classify in the lower 18 RUG–III categories.
- Consolidated Billing: The statute includes a billing provision that requires an SNF to submit consolidated Medicare bills for its residents for virtually all services that are covered under either Part A or Part B. The statute excludes a small list of services (primarily those of physicians and certain other types of practitioners). A related statutory provision requires SNFs to use HCFA Common Procedure Coding System (HCPCS) coding on all Part B bills, and specifies that they are to be paid an amount determined in accordance with the otherwise applicable Part B fee schedule for the particular item or service.
- Effective Date: The PPS is effective for cost reporting periods beginning on or after July 1, 1998. The law provides that the consolidated billing and coding requirements are effective for services and items furnished on or after July 1, 1998.

An interim final rule implementing the SNF PPS was published in the **Federal Register** on May 12, 1998 (63 FR 26252) and the comment period was initially scheduled to close on July 13, 1998. A follow-up notice (63 FR 37498, July 13, 1998) extended the public comment period for an additional 60 days, and a second notice (63 FR 65561, November 27, 1998) reopened the comment period for another 30 days. In addition, a correction notice was published (63 FR 53301, October 5, 1998) that made a number of minor technical and editorial corrections to the interim final rule. We also published a final rule found elsewhere in this **Federal Register** document that addressed comments on the May 12, 1998 interim final rule. We have also issued several Program Memorandums on claims processing and billing under the SNF PPS that are available on the SNF PPS home page at the HCFA website on the Internet, at the following location: <www.hcfa.gov/medicare/snfpps.htm>

B. Requirements of the Balanced Budget Act of 1997 for Updating the Prospective Payment System for Skilled Nursing Facilities

As described above, section 1888(e)(4)(H) of the Act requires that we publish in the **Federal Register**:

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the fiscal year.
2. The case-mix classification system to be applied with respect to these services during the fiscal year.
3. The factors to be applied in making the area wage adjustment with respect to these services. In addition, in the interim final rule (May 12, 1998, 63 FR 26252), we indicated that we would announce any changes to the Medicare coverage guidelines or the RUG–III classifications.

This notice updates the rates as mandated by the Social Security Act (the Act).

C. Skilled Nursing Facility Prospective Payment—General Overview

As described above, the Medicare SNF PPS was implemented for cost reporting periods beginning on or after July 1, 1998. Under the PPS, SNFs are paid through per diem prospective case-mix adjusted payment rates applicable to all covered SNF services. These payment rates cover all the costs of furnishing covered skilled nursing services (that is, routine, ancillary, and capital-related costs) other than costs associated with approved educational activities. Covered SNF services include posthospital SNF services for which benefits are provided under Part A and all items and services that, before July 1, 1998, had been paid under Part B (other than physician and certain other services specifically excluded under the BBA) but furnished to SNF residents during a Part A covered stay. (For a complete discussion of these provisions see the May 12, 1998 interim final rule (63 FR 26252).)

1. Payment Provisions—Federal Rate

The statute sets forth a fairly prescriptive methodology for calculating the amount of payment under SNF PPS. The PPS utilizes per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the PPS. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in fiscal year 1995. The data used in developing the Federal rates also incorporate an estimate of the amounts that would be payable under Part B for covered SNF services to individuals who were residents of a facility and receiving Part A covered services. In developing the rates for the initial period, we updated costs to the first effective year of PPS (15-month period beginning July 1, 1998) using a SNF market basket index, and standardized for facility differences in case-mix and for geographic variations in wages. Providers that received "new provider" exemptions from the routine cost limits were excluded from the database used to compute the Federal payment rates. In addition, costs related to payments for exceptions to the routine cost limits were excluded from the database used to compute the Federal rates. In accordance with the formula prescribed in the BBA, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We compute and apply separately payment rates for facilities located in urban and rural areas.

The Federal rate also incorporates adjustments to account for facility case-mix using a resident classification system that accounts for the relative resource utilization of different patient types. This classification system, RUG–III, utilizes resident assessment data (from the Minimum Data Set or MDS) completed by SNFs to assign residents into one of 44 groups. The May 12, 1998 interim final rule (63 FR 26252) has a complete and detailed description of the RUG–III classification system.

In addition, we adjust the portion of the Federal rate attributable to wage related costs by a wage index.

For the initial period of PPS, the rates were published in the May 12, 1998 interim final rule (63 FR 26252). The Federal rates reflected in this notice updates those rates by a factor equal to the SNF market basket index amounts minus 1 percentage point. Pursuant to section 1888(e)(4)(E)(ii) of the Act, for fiscal years 2001 and 2002, we will inflate the rates each year in the same way, by increasing the current rates by the SNF market basket change minus 1 percentage point. For subsequent fiscal years, we will increase the rates by the applicable SNF market basket change.

2. Payment Provisions—Transition Period

Beginning with a provider's first cost reporting period beginning on or after July 1, 1998, there is a transition period covering three cost reporting periods. During the transition phase, SNFs receive a payment rate comprising a blend between the Federal rate and a facility-specific rate based on each facility's fiscal year 1995 cost report. Under section 1888(e)(2)(E)(ii) of the Act, SNFs that received their first payment from Medicare on or after October 1, 1995 receive payment according to the Federal rates only.

For SNFs subject to transition, the composition of the blended rate varies depending on the year of transition. For the first cost reporting period beginning on or after July 1, 1998, we make payment based on 75 percent of the facility-specific rate and 25 percent of the Federal rate. In the next cost reporting period, the rate consists of 50 percent of the facility-specific rate and 50 percent of the Federal rate. In the following cost reporting period, the rate consists of 25 percent of the facility-specific rate and 75 percent of the Federal rate. For all subsequent cost reporting periods, we base payments entirely on the Federal rates.

3. Payment Provisions—Facility-Specific Rate

For most facilities, we compute the facility-specific payment rate utilized for the transition using the allowable costs of SNF services for cost reporting periods beginning in fiscal year 1995 (cost reporting periods beginning on or after October 1, 1994 and before October 1, 1995). Included in the facility-specific per diem rate for most facilities is an estimate of the amount that would be payable under Part B for covered SNF services furnished during fiscal year 1995 to individuals who were residents of the facility and receiving Part A covered services under section 1888(e)(3)(A). The facility-specific rate, in contrast to the Federal rates, includes amounts paid to SNFs for exceptions to the routine cost limits. In addition, we also take into account "new provider" exemptions from the routine cost limits but only to the extent that routine costs do not exceed 150 percent of the routine cost limit.

We update the facility-specific rate for each cost reporting after fiscal year 1995 to the first cost reporting period beginning on or after July 1, 1998 (the initial period of the PPS) by a factor equal to the SNF market basket percentage increase minus 1 percentage point. For fiscal years 1998 and 1999, we updated this rate by a factor equal to the SNF market basket increase minus 1 percentage point, and each subsequent year, we update it by the applicable SNF market basket increase.

II. Prospective Payment System for Skilled Nursing Facilities

A. This notice sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 1999. This schedule incorporates per diem Federal rates designed to provide payment for all costs of services furnished to a Medicare resident of an SNF.

1. Cost and Services Covered by the Federal Rates

The Federal rates apply to all costs (that is, routine, ancillary, and capital related costs) of covered skilled nursing services other than costs associated with operating approved educational activities as defined in 42 CFR 413.85. Under section 1888(e)(2) of the Act, covered SNF services include posthospital SNF services for which benefits are provided under Part A (the hospital insurance program) and all items and services (other than services excluded by statute) for which, before July 1, 1998, payment may be made under Part B (the supplementary medical insurance program) and that are furnished to SNF residents during a Part A covered stay. (These excluded service categories are discussed in greater detail in Section V.B.2 of the May 12, 1998 interim final rule (63 FR 26252).)

2. Methodology Used for the Calculation of the Federal Rates

The methodology to compute the Federal rates has not changed, except as we published in the final rule found

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elsewhere is this **Federal Register** document, we have adjusted the unadjusted nursing case-mix component of the urban and rural Federal rates by +$0.32 and +$0.24, respectively. In addition, we adjusted the unadjusted non-case-mix by $0.25 for urban and $0.21 for rural. Additionally, as required by the Act, the data are updated using the latest market basket percentage minus 1 percentage point. For a complete listing of the multistep process, see the May 12, 1998 interim final rule (63 FR 26252).

The SNF market basket is used to adjust each per diem amount forward to reflect cost increases occurring between the midpoint of the cost reporting period represented in the data and the midpoint of the period beginning October 1, 1999 and ending September 30, 2000 to which the payment rates apply. In accordance with section 1888(e)(4)(B) of the Act, the cost data are updated between the cost reporting period and the current period by a factor equivalent to the annual market basket index percentage minus 1 percentage point.

TABLE 1.—UNADJUSTED FEDERAL RATE PER DIEM URBAN

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case mix	Non-case-mix
Per Diem Amount	$111.89	$84.25	$11.12	$57.20

TABLE 2.—UNADJUSTED FEDERAL RATE PER DIEM RURAL

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy-non-case-mix	Non-case-mix
Per Diem Amount	$107.12	$97.33	$11.88	$58.25

B. Case-Mix Adjustment

As required by the Act, any changes to the case-mix classification system to be applied with respect to services furnished for SNF Medicare SNF PPS residents must be published each August for the succeeding year. At this time, we are not making any changes or refinements to the case-mix or RUG–III classification system. The RUG–III classification system is discussed in the May 12, 1998 interim final rule (63 FR 26252) and describes in detail the design and implementation of the case-mix and RUG–III classification system and assessment schedule for SNFs to submit MDSs.

Application of the case-mix indices as described in the May 12, 1998 interim final rule (63 FR 26252) to the updated per diem Federal rates presented in Tables 1 and 2 above, results in 44 separate RUG–III classification groups. The case-mix adjusted payment rates are listed separately for urban and rural SNFs (44 each) in Tables 3 and 4 below with the corresponding case-mix index values. The rates are listed in total and by component. The application of the wage index, described later in this section, is the final adjustment applied to the Federal rates.]

TABLE 3.—CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES URBAN

RUG III category	Nursing index	Therapy index	Nursing component	Therapy component	Therapy non-case-mix component	Non-case-mix component	Total rate
RUC	1.30	2.25	$145.46	$189.56		57.20	392.22
RUB	0.95	2.25	106.30	189.56		57.20	353.06
RUA	0.78	2.25	87.27	189.56		57.20	334.03
RVC	1.13	1.41	126.44	118.79		57.20	302.43
RVB	1.04	1.41	116.37	118.79		57.20	292.36
RVA	0.81	1.41	90.63	118.79		57.20	266.62
RHC	1.26	0.94	140.98	79.20		57.20	277.38
RHB	1.06	0.94	118.60	79.20		57.20	255.00
RHA	0.87	0.94	97.34	79.20		57.20	233.74
RMC	1.35	0.77	151.05	64.87		57.20	273.12
RMB	1.09	0.77	121.96	64.87		57.20	244.03
RMA	0.96	0.77	107.41	64.87		57.20	229.48
RLB	1.11	0.43	124.20	36.23		57.20	217.63
RLA	0.80	0.43	89.51	36.23		57.20	182.94
SE3	1.70		190.21		11.12	57.20	258.53
SE2	1.39		155.53		11.12	57.20	223.85
SE1	1.17		130.91		11.12	57.20	199.23
SSC	1.13		126.44		11.12	57.20	194.76
SSB	1.05		117.48		11.12	57.20	185.80
SSA	1.01		113.01		11.12	57.20	181.33
CC2	1.12		125.32		11.12	57.20	193.64
CC1	0.99		110.77		11.12	57.20	179.09
CB2	0.91		101.82		11.12	57.20	170.14
CB1	0.84		93.99		11.12	57.20	162.31
CA2	0.83		92.87		11.12	57.20	161.19
CA1	0.75		83.92		11.12	57.20	152.24
IB2	0.69		77.20		11.12	57.20	145.52
IB1	0.67		74.97		11.12	57.20	143.29

TABLE 3.—CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES URBAN—Continued

RUG III category	Nursing index	Therapy index	Nursing component	Therapy component	Therapy non-case-mix component	Non-case-mix component	Total rate
IA2	0.57		63.78		11.12	57.20	132.10
IA1	0.53		59.30		11.12	57.20	127.62
BB2	0.68		76.09		11.12	57.20	144.41
BB1	0.65		72.73		11.12	57.20	141.05
BA2	0.56		62.66		11.12	57.20	130.98
BA1	0.48		53.71		11.12	57.20	122.03
PE2	0.79		88.39		11.12	57.20	156.71
PE1	0.77		86.16		11.12	57.20	154.48
PD2	0.72		80.56		11.12	57.20	148.88
PD1	0.70		78.32		11.12	57.20	146.64
PC2	0.65		72.73		11.12	57.20	141.05
PC1	0.64		71.61		11.12	57.20	139.93
PB2	0.51		57.06		11.12	57.20	125.38
PB1	0.50		55.95		11.12	57.20	124.27
PA2	0.49		54.83		11.12	57.20	123.15
PA1	0.46		51.47		11.12	57.20	119.79

TABLE 4.—CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES RURAL

RUG III category	Nursing index	Therapy index	Nursing component	Therapy component	Therapy non-case-mix component	Non-case-mix component	Total rate
RUC	1.30	2.25	$139.26	$218.99		$58.25	$416.50
RUB	0.95	2.25	101.76	218.99		58.25	379.00
RUA	0.78	2.25	83.55	218.99		58.25	360.79
RVC	1.13	1.41	121.05	137.24		58.25	316.54
RVB	1.04	1.41	111.40	137.24		58.25	306.89
RVA	0.81	1.41	86.77	137.24		58.25	282.26
RHC	1.26	0.94	134.97	91.49		58.25	284.71
RHB	1.06	0.94	113.55	91.49		58.25	263.29
RHA	0.87	0.94	93.19	91.49		58.25	243.93
RMC	1.35	0.77	144.61	74.94		58.25	277.80
RMB	1.09	0.77	116.76	74.94		58.25	249.95
RMA	0.96	0.77	102.84	74.94		58.25	236.03
RLB	1.11	0.43	118.90	41.85		58.25	219.00
RLA	0.80	0.43	85.70	41.85		58.25	185.80
SE3	1.70		182.10		11.88	58.25	252.23
SE2	1.39		148.90		11.88	58.25	219.03
SE1	1.17		125.33		11.88	58.25	195.46
SSC	1.13		121.05		11.88	58.25	191.18
SSB	1.05		112.48		11.88	58.25	182.61
SSA	1.01		108.19		11.88	58.25	178.32
CC2	1.12		119.97		11.88	58.25	190.10
CC1	0.99		106.05		11.88	58.25	176.18
CB2	0.91		97.48		11.88	58.25	167.61
CB1	0.84		89.98		11.88	58.25	160.11
CA2	0.83		88.91		11.88	58.25	159.04
CA1	0.75		80.34		11.88	58.25	150.47
IB2	0.69		73.91		11.88	58.25	144.04
IB1	0.67		71.77		11.88	58.25	141.90
IA2	0.57		61.06		11.88	58.25	131.19
IA1	0.53		56.77		11.88	58.25	126.90
BB2	0.68		72.84		11.88	58.25	142.97
BB1	0.65		69.63		11.88	58.25	139.76
BA2	0.56		59.99		11.88	58.25	130.12
BA1	0.48		51.42		11.88	58.25	121.55
PE2	0.79		84.62		11.88	58.25	154.75
PE1	0.77		82.48		11.88	58.25	152.61
PD2	0.72		77.13		11.88	58.25	147.26
PD1	0.70		74.98		11.88	58.25	145.11
PC2	0.65		69.63		11.88	58.25	139.76
PC1	0.64		68.56		11.88	58.25	138.69
PB2	0.51		54.63		11.88	58.25	124.76
PB1	0.50		53.56		11.88	58.25	123.69
PA2	0.49		52.49		11.88	58.25	122.62
PA1	0.46		49.48		11.88	58.25	119.41

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C. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we provide for adjustments to the Federal rates to account for differences in area wage levels using "an appropriate" wage index as determined by the Secretary. In addition, as discussed in the final rule found elsewhere is this **Fedreal Register** document, it is our intent to evaluate a wage index based on SNF data once it becomes available. The SNF wage data are currently being collected and evaluated to determine if we can utilize them in the future. Once a wage index based on SNF data is developed, we will publish it for comment. However, in the interim, the BBA as well as many commenters urged us to incorporate the latest wage data available. We continue to believe that until a wage index based on SNF wage data is collected and analyzed, the hospital wage index wage data provide the best available measure of comparable wages that should be paid by SNFs. We believe, since hospitals and SNFs compete in the same labor market area, that the use of the hospital wage data results in an appropriate adjustment to the labor portion of the costs based on an appropriate wage index as required under section 1888(e) of the Act.

For rates effective with this rule, we are using wage index values that are based on hospital wage data from cost reporting periods beginning in fiscal year 1996—the most recent hospital wage data available. Accordingly, the wage index values used in this rule are based on the same wage data as used to compute the FY 2000 wage index values for the hospital inpatient PPS.

The computation of the wage index is identical to past years, and a detailed discussion can be found in the **Federal Register** published on May 12, 1998 (63 FR 26252).

The SNF wage index values are based on the Metropolitan Statistical Area (MSA) designations in effect as of June 30, 1999. For purposes of computing SNF wage index values, we are not taking into account changes in geographic reclassifications for certain rural hospitals required under section 1886(d)(8)(B) of the Act or geographic reclassifications based on decisions of the Medicare Geographic Classification Review Board or the Secretary under section 1886(d)(8)–(10) of the Act. Accordingly, we continue to believe that the MSA (or non-MSA) designation provides the best method for determining the wage index values used for SNF payments, and physical location of hospitals is an appropriate basis upon which to construct the wage index.

Table 5 at the end of this section presents the wage indices applicable to urban and rural areas for use in making geographic adjustments to the Federal rates. The wage index adjustment is applied to the labor-related portion of the Federal rate, which is 77.545 percent of the total rate. The schedule of Federal rates below shows the Federal rates by labor-related and non-labor-related components. Instructions and an example related to the application of the wage index to the case-mix adjusted rates are provided following the table.

As discussed above and in the interim final rule, until appropriate wage index based on SNF data is available, HCFA will use the latest available hospital wage index data in making annual updates to the payment rates. In making these annual updates, section 1888(e)(4)(G)(ii) of the Act requires that the application of this wage index be made in a manner that does not result in aggregate payments that are greater or less than would otherwise be made in the absence of the wage adjustment. For the initial period of the SNF PPS, the adjustment required by this section was accounted for through the standardization of the per diem Federal rate components. By means of standardization, each rate component was adjusted for wage index and case-mix differences so that aggregate payments were unaffected by the presence of these payment adjustors. In this second PPS year (Federal rates effective October 1, 1999), we are updating the wage index applicable to SNF payments using the most recent hospital wage data and applying an adjustment to fulfill the budget neutrality requirement. This requirement will be met by multiplying each of the per diem rate components by the ratio of the volume weighted mean wage adjustment factor (using the wage index from the initial year) to the volume weighted mean wage adjustment factor, using the wage index for the fiscal year beginning October 1, 1999. The same volume weights are used in both the numerator and denominator and will be derived from 1997 Medicare Provider Analysis and Review File (MedPAR) data. The wage adjustment factor used in this calculation is defined as the labor share of the rate component multiplied by the wage index plus the non-labor share. The budget neutrality factor for FY 2000 is 0.9981 which is multiplied by each of the Federal rate components.

TABLE 5.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT

RUGs III category	Labor-related	Non-labor-related	Total federal rate
RUC	$304.15	$ 88.07	$392.22
RUB	273.78	79.28	353.06
RUA	259.02	75.01	334.03
RVC	234.52	67.91	302.43
RVB	226.71	65.65	292.36
RVA	206.75	59.87	266.62
RHC	215.09	62.29	277.38
RHB	197.74	57.26	255.00
RHA	181.25	52.49	233.74
RMC	211.79	61.33	273.12
RMB	189.23	54.80	244.03
RMA	177.95	51.53	229.48
RLB	168.76	48.87	217.63
RLA	141.86	41.08	182.94
SE3	200.48	58.05	258.53
SE2	173.58	50.27	223.85
SE1	154.49	44.74	199.23
SSC	151.03	43.73	194.76
SSB	144.08	41.72	185.80

TABLE 5.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUGs III category	Labor-related	Non-labor-related	Total federal rate
SSA	140.61	40.72	181.33
CC2	150.16	43.48	193.64
CC1	138.88	40.21	179.09
CB2	131.94	38.20	170.14
CB1	125.86	36.45	162.31
CA2	124.99	36.20	161.19
CA1	118.05	34.19	152.24
IB2	112.84	32.68	145.52
IB1	111.11	32.18	143.29
IA2	102.44	29.66	132.10
IA1	98.96	28.66	127.62
BB2	111.98	32.43	144.41
BB1	109.38	31.67	141.05
BA2	101.57	29.41	130.98
BA1	94.63	27.40	122.03
PE2	121.52	35.19	156.71
PE1	119.79	34.69	154.48
PD2	115.45	33.43	148.88
PD1	113.71	32.93	146.64
PC2	109.38	31.67	141.05
PC1	108.51	31.42	139.93
PB2	97.23	28.15	125.38
PB1	96.37	27.90	124.27
PA2	95.50	27.65	123.15
PA1	92.89	26.90	119.79

TABLE 6.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT

RUGs III category	Labor-related	Non-Labor related	Total federal rate
RUC	$322.97	$93.53	$416.50
RUB	293.90	85.10	379.00
RUA	279.77	81.02	360.79
RVC	245.46	71.08	316.54
RVB	237.98	68.91	306.89
RVA	218.88	63.38	282.26
RHC	220.78	63.93	284.71
RHB	204.17	59.12	263.29
RHA	188.38	54.55	242.93
RMC	215.42	62.38	277.80
RMB	193.82	56.13	249.95
RMA	183.03	53.00	236.03
RLB	169.82	49.18	219.00
RLA	144.08	41.72	185.80
SE3	195.59	56.64	252.23
SE2	169.85	49.18	219.03
SE1	151.57	43.89	195.46
SSC	148.25	42.93	191.18
SSB	141.60	41.01	182.61
SSA	138.28	40.04	178.32
CC2	147.41	42.69	190.10
CC1	136.62	39.56	176.18
CB2	129.97	37.64	167.61
CB1	124.16	35.95	160.11
CA2	123.33	35.71	159.04
CA1	116.68	33.79	150.47
IB2	111.70	32.34	144.04
IB1	110.04	31.86	141.90
IA2	101.73	29.46	131.19
IA1	98.40	28.50	126.90
BB2	110.87	32.10	142.97
BB1	108.38	31.38	139.76
BA2	100.90	29.22	130.12
BA1	94.26	27.29	121.55
PE2	120.00	34.75	154.75
PE1	118.34	34.27	152.61
PD2	114.19	33.07	147.26
PD1	112.53	32.58	145.11

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TABLE 6.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUGs III category	Labor-related	Non-Labor related	Total federal rate
PC2	108.38	31.38	139.76
PC1	107.55	31.14	138.69
PB2	96.75	28.01	124.76
PB1	95.92	27.77	123.69
PA2	95.09	27.53	122.62
PA1	92.60	26.81	119.41

For any RUG–III group, to compute a wage-adjusted Federal payment rate, the labor-related portion of the payment rate is multiplied by the SNF's appropriate wage index factor listed in Table 7. The product of that calculation is added to the corresponding non-labor-related component. The resulting amount is the Federal rate applicable to a patient in that RUG–III group for that SNF. See the example below.

XYZ SNF is located in State College, Pennsylvania. The per diem Federal rate applicable to an Ultra High Rehabilitation 'A' patient (RUA) is calculated using the rates listed in Table 5 and the wage index factor found in Table 7. Accordingly, the computation of the adjusted per diem rate is made as follows:

(259.02 × 0.9138) + 75.01 = $311.70 per diem

This Federal rate will be applicable to all patients in the RUA category for the XYZ SNF (effective October 1, 1999 through September 30, 2000).

D. Updates to the Federal Rates

In accordance with section 1888(e)(4)(H) of the Act, the payment rates here have been updated by the SNF market basket minus 1 percentage point, which equals 2.1 percent. For each succeeding fiscal year, we will publish the rates in the **Federal Register** before August 1 of the year preceding the affected Federal fiscal year.

For the current fiscal year (FY 2000) through 2002, section 1888(e)(4)(ii) of the Act requires the rates to be increased by a factor equal to the SNF market index change minus 1 percentage point. In addition, for subsequent fiscal years this section requires the rates to be increased by the applicable SNF market basket index increase.

TABLE 7.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
0040 Abilene, TX	0.8179
Taylor, TX	
0060 Aguadilla, PR	0.3814
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	1.0163
Portage, OH	
Summit, OH	
0120 Albany, GA	1.0372
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8754
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.8499
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.7869
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	1.0227
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9342
Blair, PA	
0320 Amarillo, TX	0.8381
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2859
Anchorage, AK	
0440 Ann Arbor, MI	1.1483
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8462
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.8913
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4815
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.8884
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9704
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	1.0050
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City-Cape May, NJ	1.1310
Atlantic City, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.7748
Lee, AL	
0600 Augusta-Aiken, GA–SC	0.9013
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9081
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	0.9618
Kern, CA	
0720 Baltimore, MD	0.9891
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9609
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3302
Barnstable, MA	
0760 Baton Rouge, LA	0.8707
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
084 Beaumont-Port Arthur, TX	0.8624
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1394
Whatcom, WA	
0870 Benton Harbor, MI	0.8457
Berrien, MI	
0875 Bergen-Passaic, NJ	1.2028
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	1.0038
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.7868
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8750
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.8994
Blount, AL	
Jefferson, AL	
St Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7759
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8593
Monroe, IN	
1040 Bloomington-Normal, IL	0.8993
McLean, IL	
1080 Boise City, ID	0.9060
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1358
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9944
Boulder, CO	
1145 Brazoria, TX	0.8516
Brazoria, TX	
1150 Bremerton, WA	1.1011
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.9212
Cameron, TX	
1260 Bryan-College Station, TX	0.8501
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9604
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0558
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4561
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8771
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9199
Natrona, WY	
1360 Cedar Rapids, IA	0.9018
Linn, IA	
1400 Champaign-Urbana, IL	0.9163
Champaign, IL	
1440 Charleston-North Charleston, SC	0.8988
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.9095
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC–SC	0.9433
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0573
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN–GA	0.9731
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.8176
Laramie, WY	
1600 Chicago, IL	1.0872
Cook, IL	
De Kalb, IL	
Du Page, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	1.0390
Butte, CA	
1640 Cincinnati, OH–KY–IN	0.9418
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN–KY	0.8090
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9688
Ashtabula, OH	
Geauga, OH	
Cuyahoga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9218
El Paso, CO	
1740 Columbia, MO	0.8904
Boone, MO	
1760 Columbia, SC	0.9357
Lexington, SC	
Richland, SC	
1800 Columbus, GA–AL	0.8510
Russell, AL	
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9907
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8702
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1087
Benton, OR	
1900 Cumberland, MD–WV	0.8801
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9606
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.9061
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA–IL	0.8706
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9460
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.8987
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8679
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8321
Macon, IL	

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TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
2080 Denver, CO	1.0189
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8754
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0421
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7798
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9335
Kent, DE	
2200 Dubuque, IA	0.8520
Dubuque, IA	
2240 Duluth-Superior, MN–WI	1.0165
St Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0552
Dutchess, NY	
2290 Eau Claire, WI	0.8957
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.8947
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9379
Elkhart, IN	
2335 Elmira, NY	0.8533
Chemung, NY	
2340 Enid, OK	0.7953
Garfield, OK	
2360 Erie, PA	0.9023
Erie, PA	
2400 Eugene-Springfield, OR	1.0603
Lane, OR	
2440 Evansville-Henderson, IN–KY	0.8303
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND–MN	0.8620
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8494
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.7773
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ–UT	1.0348
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1020
Genesee, MI	
2650 Florence, AL	0.7927
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8618
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0302
Larimer, CO	
2680 Ft Lauderdale, FL	1.0172
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.8951
Lee, FL	
2710 Fort Pierce-Port St Lucie, FL	0.9998
Martin, FL	
St Lucie, FL	
2720 Fort Smith, AR–OK	0.7844
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.8713
Okaloosa, FL	
2760 Fort Wayne, IN	0.9096
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX	0.9835
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0262
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8688
Etowah, AL	
2900 Gainesville, FL	1.0102
Alachua, FL	
2920 Galveston-Texas City, TX	0.9732
Galveston, TX	
2960 Gary, IN	0.9390
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8606
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8333
Wayne, NC	
2985 Grand Forks, ND–MN	0.9097
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9188
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	1.0135
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	1.0459
Cascade, MT	
3060 Greeley, CO	0.9722
Weld, CO	
3080 Green Bay, WI	0.9132
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9037
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9500
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9188
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.8842
Washington, MD	
3200 Hamilton-Middletown, OH	0.8946
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9917
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.1715
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7634
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.9112
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1475
Honolulu, HI	
3350 Houma, LA	0.7837
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9387
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV–KY–OH	0.9757
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8822
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9792
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9607
Johnson, IA	
3520 Jackson, MI	0.8840

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Jackson, MI	
3560 Jackson, MS	0.8387
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8600
Chester, TN	
Madison, TN	
3600 Jacksonville, FL	0.8957
Clay, FL	
Duval, FL	
Nassau, FL	
St Johns, FL	
3605 Jacksonville, NC	0.7852
Onslow, NC	
3610 Jamestown, NY	0.7857
Chautaqua, NY	
3620 Janesville-Beloit, WI	0.9656
Rock, WI	
3640 Jersey City, NJ	1.1674
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8853
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8640
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7231
Craighead, AR	
3710 Joplin, MO	0.7678
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	0.9981
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.8598
Kankakee, IL	
3760 Kansas City, KS–MO	0.9322
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9033
Kenosha, WI	
3810 Killeen-Temple, TX	0.9932
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.9199
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.8918
Howard, IN	
Tipton, IN	
3870 La Crosse, WI–MN	0.8933
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8339
Acadia, LA	
Lafayette, LA	
St Landry, LA	
St Martin, LA	
3920 Lafayette, IN	0.8809
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7966
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.8816
Polk, FL	
4000 Lancaster, PA	0.9255
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9977
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8323
Webb, TX	
4100 Las Cruces, NM	0.8590
Dona Ana, NM	
4120 Las Vegas, NV–AZ	1.1258
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8222
Douglas, KS	
4200 Lawton, OK	0.9532
Comanche, OK	
4243 Lewiston-Auburn, ME	0.8899
Androscoggin, ME	
4280 Lexington, KY	0.8531
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.8905
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9670
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8614
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8738
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.2051
Los Angeles, CA	
4520 Louisville, KY–IN	0.9381
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8411
Lubbock, TX	
4640 Lynchburg, VA	0.8814
Amherst, VA	
Bedford City, VA	
Bedford, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.8530
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	0.9729
Dane, WI	
4800 Mansfield, OH	0.8475
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4674
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8120
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0492
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9296
Brevard, FI	
4920 Memphis, TN–AR–MS	0.8244
Crittenden, AR	
De Soto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	1.0277
Merced, CA	
5000 Miami, FL	1.0233
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1122
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9845
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St Paul, MN–WI	1.0929
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St Croix, WI	

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TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
5140 Missoula, MT	0.9085
Missoula, MT	
5160 Mobile, AL	0.8267
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0111
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.1258
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8221
Ouachita, LA	
5240 Montgomery, AL	0.7703
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	1.0834
Delaware, IN	
5330 Myrtle Beach, SC	0.8529
Horry, SC	
5345 Naples, FL	0.9839
Collier, FL	
5360 Nashville, TN	0.9449
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.4074
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2356
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.2428
New London, CT	
5560 New Orleans, LA	0.9089
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.4517
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1646
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY–PA	1.0908
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA–NC	0.8440
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.5058
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9615
Marion, FL	
5800 Odessa-Midland, TX	0.8873
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8587
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0932
Thurston, WA	
5920 Omaha, NE–IA	1.0455
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1590
Orange, CA	
5960 Orlando, FL	0.9795
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8104
Daviess, KY	
6015 Panama City, FL	0.9169
Bay, FL	
6020 Parkersburg-Marietta, WV–OH	0.8414
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8442
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8349
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA–NJ	1.1160
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9464
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7697
Jefferson, AR	
6280 Pittsburgh, PA	0.9634
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0255
Berkshire, MA	
6340 Pocatello, ID	0.8973
Bannock, ID	
6360 Ponce, PR	0.4971
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9475
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR–WA	1.0974
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0690
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	0.9818
Utah, UT	
6560 Pueblo, CO	0.8853
Pueblo, CO	
6580 Punta Gorda, FL	0.9508
Charlotte, FL	
6600 Racine, WI	0.9216
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9544
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8363
Pennington, SD	
6680 Reading, PA	0.9436
Berks, PA	
6690 Redding, CA	1.1263
Shasta, CA	
6720 Reno, NV	1.0655
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.1224
Benton, WA	
Franklin, WA	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
6760 Richmond-Petersburg, VA	0.9545
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1210
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8138
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.1429
Olmsted, MN	
6840 Rochester, NY	0.9184
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.8783
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.8735
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.2284
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9287
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St Cloud, MN	0.9421
Benton, MN	
Stearns, MN	
7000 St Joseph, MO	0.8943
Andrews, MO	
Buchanan, MO	
7040 St Louis, MO–IL	0.9052
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St Charles, MO	
St Louis, MO	
St Louis City, MO	
Warren, MO	
Sullivan City, MO	
7080 Salem, OR	0.9949
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4710
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9854
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.7845
Tom Green, TX	
7240 San Antonio, TX	0.8318
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1930
San Diego, CA	
7360 San Francisco, CA	1.4001
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.3608
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4657
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.0470
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0819
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.3927
Santa Cruz, CA	
7490 Santa Fe, NM	1.0437
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.3000
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9905
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9953
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton-Wilkes-Barre-Hazleton, PA	0.8372
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1290
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.8283
Mercer, PA	
7620 Sheboygan, WI	0.8202
Sheboygan, WI	
7640 Sherman-Denison, TX	0.9329
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.9049
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA–NE	0.8549
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.8776
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9793
St Joseph, IN	
7840 Spokane, WA	1.0799
Spokane, WA	
7880 Springfield, IL	0.8684
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.7991
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0677
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.9138
Centre, PA	
8080 Steubenville-Weirton, OH–WV	0.8614
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0518
San Joaquin, CA	
8140 Sumter, SC	0.8238
Sumter, SC	
8160 Syracuse, NY	0.9412
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1478
Pierce, WA	
8240 Tallahassee, FL	0.8484
Gadsden, FL	
Leon, FL	
8280 Tampa-St Petersburg-Clearwater, FL	0.9044
Hernando, FL	
Hillsborough, FL	
Pasco, FL	

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TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Pinellas, FL	
8320 Terre Haute, IN	0.8570
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8135
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9815
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9326
Shawnee, KS	
8480 Trenton, NJ	1.0102
Mercer, NJ	
8520 Tucson, AZ	0.8742
Pima, AZ	
8560 Tulsa, OK	0.8086
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8064
Tuscaloosa, AL	
8640 Tyler, TX	0.9369
Smith, TX	
8680 Utica-Rome, NY	0.8298
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3345
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1454
Ventura, CA	
8750 Victoria, TX	0.8378
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0517
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	1.0411
Tulare, CA	
8800 Waco, TX	0.8075
McLennan, TX	
8840 Washington, DC–MD–VA–WV	1.1053
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8517
Black Hawk, IA	
8940 Wausau, WI	0.9445
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	1.0012
Palm Beach, FL	
9000 Wheeling, OH–WV	0.7644
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9421
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.7652
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8449
Lycoming, PA	
9160 Wilmington-Newark, DE–MD	1.1274
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9707
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0332
Yakima, WA	
9270 Yolo, CA	0.9719
Yolo, CA	
9280 York, PA	0.9309
York, PA	
9320 Youngstown-Warren, OH	0.9996
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0662
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.9924
Yuma, AZ	

TABLE 7.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7390
Alaska	1.2057
Arizona	0.8544
Arkansas	0.7236
California	0.9951
Colorado	0.8813
Connecticut	1.2413
Delaware	0.9166
Florida	0.8986
Georgia	0.8094
Guam	0.7268
Hawaii	1.0726
Idaho	0.8651
Illinois	0.8047
Indiana	0.8396
Iowa	0.7926
Kansas	0.7460
Kentucky	0.8043
Louisiana	0.7381
Maine	0.8639
Maryland	0.8631
Massachusetts	1.1369
Michigan	0.8815
Minnesota	0.8669
Mississippi	0.7306
Missouri	0.7723
Montana	0.8395
Nebraska	0.8007
Nevada	0.9097
New Hampshire	0.9905
New Jersey[1]	
New Mexico	0.8378
New York	0.8636
North Carolina	0.8290
North Dakota	0.7647
Ohio	0.8649
Oklahoma	0.7255
Oregon	0.9867
Pennsylvania	0.8524
Puerto Rico	0.4249
Rhode Island[1]	
South Carolina	0.8264
South Dakota	0.7576
Tennessee	0.7650
Texas	0.7471
Utah	0.8906
Vermont	0.9407
Virginia	0.7904
Virgin Islands	0.6389
Washington	1.0446
West Virginia	0.8068
Wisconsin	0.8759
Wyoming	0.8859

[1] All counties within the State are classified urban.

E. Relationship of RUG–III Classification System to Existing Skilled Nursing Facility

Level-of-Care Criteria

In the May 12, 1998 interim final rule (63 FR 26252), we described how the RUG–III classification system will make coverage determinations easier and more consistent. In the final rule as published elsewhere in this **Federal Register** document, we clarified how residents are classified and the determinations of coverage. A complete discussion of coverage and classification of patients is discussed in the final rule. We are not making any changes to the classifications or coverage in this notice.

However, regulations at 42 CFR 413.345 provide that the information included in each update of the Federal payment rates in the **Federal Register** shall include the designation of those specific RUGs under the resident classification system that represent the required SNF level of care, as provided in § 409.30. Accordingly, we hereby designate the upper 26 RUG–III groups for this purpose.

III. Three-Year Transition Period

Under sections 1888(e)(1) and (2) of the Act, during a facility's first three cost reporting periods that begin on or after July 1, 1998 (transition period), the facility's PPS rate will be equal to the sum of a percentage of an adjusted facility-specific per diem rate and a percentage of the adjusted Federal per diem rate. After the transition period, the PPS rate will equal the adjusted Federal per diem rate. The transition period payment method will not apply to SNFs that first received Medicare payments (interim or otherwise) on or after October 1, 1995 under present or previous ownership; these facilities will be paid based on 100 percent of the Federal rate.

The facility-specific per diem rate is the sum of the facility's total allowable Part A Medicare costs and an estimate of the amounts that would be payable under Part B for covered SNF services for cost reporting periods beginning in fiscal year 1995 (base year). The base year cost report used to compute the facility-specific per diem rate in the transition period may be settled (either tentative or final) or as submitted for Medicare payment purposes. Under section 1888(e)(3) of the Act, any adjustments to the base year cost report made as a result of settlement or other action by the fiscal intermediary, including cost limit exceptions and exemptions, or results of an appeal will result in a revision to the facility-specific per diem rate. The instructions for calculating the facility-specific per diem rate are described in detail in the May 12, 1998 interim final rule (63 FR 26252). For providers that received payment under the RUG–III demonstration during a cost reporting period that began in calendar year 1997, we will determine their facility-specific per diem rate using the methodology described below. It is possible that some providers participated in the demonstration but did not have a cost reporting period that began in calendar year 1997. For those providers, we will determine their facility-specific per diem rate by using the calculations outlined in the May 12, 1998 **Federal Register** interim final rule (63 FR 26252, Section III, (A)1.(a), (b), or (c). As with the facility-specific per diem applicable to other providers, the allowable costs will be subject to change based on the settlement of the cost report used to determine the total payment under the demonstration. In addition, we derive a special market basket inflation factor to adjust the 1997 costs to the midpoint of the rate setting period (July 1, 1998 to September 30, 1999).

Step 1. Determine the aggregate payment during the cost reporting period that began in calendar year 1997—RUG–III payment plus routine capital costs plus ancillary costs (other than occupational therapy, physical therapy, and speech pathology).

Step 2. Divide the amount in Step 1. by the applicable total inpatient days for the cost reporting period.

Step 3. Adjust the amount in Step 2. by 1.031532 (inflation factor)—Do not use 8.C. The amount in Step 3. is the facility-specific rate that is applicable for the facility's first cost reporting period beginning after July 1, 1998. A separate calculation for Part B services is not required.

Computation of the Skilled Nursing Facility Prospective Payment System Rate During the Transition

For the first three cost reporting periods beginning on or after July 1, 1998 (transition period), an SNF's payment under the PPS is the sum of a percentage of the facility-specific per diem rate and a percentage of the Federal per diem rate. Under section 1888(e)(2)(C) of the Act, for the first cost reporting period in the transition period, the SNF payment will be the sum of 75 percent of the facility-specific per diem rate and 25 percent of the Federal per diem rate. For the second cost reporting period, the SNF payment will be the sum of 50 percent of the facility-specific per diem rate and 50 percent of the Federal per diem rate. For the third cost reporting period, the SNF payment will be the sum of 25 percent of the facility-specific per diem rate and 75 percent of the Federal per diem rate. For all subsequent cost reporting periods beginning after the transition period, the SNF payment will be equal to 100 percent of the Federal per diem rate. See the example below.

Example of Computation of Adjusted PPS Rates and SNF Payment

Using the XYZ SNF described in this section, the following shows the adjustments made to the facility-specific per diem rate and the Federal per diem rate to compute the provider's actual per diem PPS payment in the transition period. XYZ's 12-month cost reporting period begins October 1, 1999. (This is the provider's second cost reporting period under the transition).

Step 1

Compute:

Facility-specific per diem rate—$570.00
Market Basket Adjustment (Table 8.C) × 1.09929
Adjusted facility-specific rate—$626.60

Step 2

Compute Federal per diem rate:

SNF XYZ from above is located in State College, PA with a wage index of 0.9138.

RUG group	Labor portion*	Wage index	Adjusted labor	Nonlabor portion*	Adjusted rate	Medicare days	Payment
RVC	$234.52	0.9138	$214.30	$67.41	$282.21	50	$14,111
RHC	215.09	0.9138	196.55	62.29	258.84	100	25,884
Total						150	39,995

*From Table 5.

Step 3

Apply transition period percentages:

Facility-specific per diem rate $626.60 × 150 days = $93,990
Times transition percentage (50 percent)—.50
Actual facility-specific PPS payment—$46,995
Federal PPS payment—$39,995
Times transition percentage (50 percent)—.50
Actual Federal PPS payment—$19,998

Step 4

Compute total PPS payment:

XYZ's total PPS payment ($46,995 + $19,998) $66,993

IV. The Skilled Nursing Facility Market Basket Index

Section 1888(e)(5)(A) of the Act requires the Secretary to establish an SNF market basket index (input price index) that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. Accordingly, as described below, we have developed a SNF market basket

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index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. In the May 12, 1998 **Federal Register** (63 FR 26252), we indicated that we were rebasing the SNF market basket based on fiscal year 1992. A complete discussion on the rebasing can be found in the May 12, 1998 **Federal Register** (63 FR 26252).

Each year we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the input price index. There are 21 separate cost categories and respective price proxies. These cost categories were illustrated in Table 4.A, 4.B, and the appendix found in the May 12, 1998 **Federal Register** (63 FR 26252). Table 8.A below summarizes the updated 1992-based labor-related share.

TABLE 8.—A REVISED 1992-BASED LABOR-RELATED SHARE

Cost category	1992-Based market basket weight
Wages and Salaries	56.647
Employee Benefits	12.321
Nonmedical Professional Fees	1.959
Labor-intensive Services	3.738
Capital-related	2.880
Total	77.545

The forecasted rates of growth used to compute the projected SNF market basket percentages, described in the next section, are shown below in Table 8.B.

TABLE 8.B.—SKILLED NURSING FACILITY TOTAL COST MARKET BASKET, FORECASTED CHANGE, 1997—2001

Fiscal years beginning October 1	Skilled nursing facility total cost market basket
October 1996, FY 1997	2.4
October 1997, FY 1998	2.8
October 1998, FY 1999	2.8
October 1999, FY 2000	2.9
October 2000, FY 2001	2.7
Forecasted Average: 1997–2001	2.7

Source: Standard & Poor's DRI HCC, 1st QTR, 1999;@USSIM/TREND25YR0299 @CISSIM/CONTROL991.
Released by HCFA, OACT, National Health Statistics Group.

Use of the Skilled Nursing Facility Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index, described in the previous section, from the midpoint of the prior fiscal year (or period) to the midpoint of the fiscal year (or other period) involved. The facility-specific portion and Federal portion of the SNF PPS rates effective with this rule are based on cost reporting periods beginning in Federal fiscal year 1995 (base year). The percentage increases in the SNF market basket index will be used to compute the update factors to reflect cost increases occurring between the cost reporting periods represented in the base year and the midpoint of the fiscal year (or other period). We used the Standard & Poor's DRI CC, 1st quarter 1999 historical and forecasted percentage increases of the revised and rebased SNF market basket index for routine, ancillary, and capital-related expenses, described in the previous section, to compute the update factors. The update factors, as described below, will be used to adjust the base year costs for computing the facility-specific portion and Federal portion of the SNF PPS rates.

A. Facility-Specific Rate Update Factor

Under section 1888(e)(3)(D)(i) of the Act, for the facility-specific portion of the SNF PPS rate, we will update a facility's base year costs up to the period beginning October 1, 1999 and ending September 30, 2000 by the SNF market basket percentage, minus 1 percentage point. We took the following steps to develop the 12-month cost reporting period facility-specific rate update factors shown in Table 8.C.

For the facility rate, we developed factors to inflate data from cost reporting periods beginning October 1, 1994 through September 30, 1995 to the period of October 1, 1999 through September 30, 2000. The years through FY 1999 were inflated at a rate of market basket minus 1 percentage point, while FY 2000 was inflated at the full market basket rate of increase.

1. We first determined the total growth from the midpoint of each 12-month cost reporting period that began during the period from October 1, 1994 through September 30, 1995 to the midpoint of FY 2000.

2. From this total growth we determined the average annual growth rate for each time span.

3. We subtracted 1 percentage point from each average annual growth rate.

4. These reduced average annual growth rates were converted to cumulative growth rates, using each original time span less 1 year at the reduced growth rate and with full market basket for the final year. (For example, if the time span were for 9 years, we would inflate at the market basket minus 1 percentage point annual rate for 8 years and at annual market basket rate for 1 additional year).

TABLE 8.C.—UPDATE FACTORS[1] FOR FACILITY-SPECIFIC PORTION OF THE SNF PPS RATES—ADJUST TO 12-MONTH COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 1999 AND BEFORE OCTOBER 1, 2000 FROM COST REPORTING PERIODS BEGINNING IN FY 1995 (BASE YEAR)

If 12-month cost reporting period in initial period begins	Adjust from 12-month cost reporting period in base year that begins	Using update factor of
October 1, 1999	October 1, 1994	1.09929
November 1, 1999	November 1, 1994	1.09745
December 1, 1999	December 1, 1994	1.09553
January 1, 2000	January 1, 1995	1.09378
February 1, 2000	February 1, 1995	1.09221
March 1, 2000	March 1, 1995	1.09082
April 1, 2000	April 1, 1995	1.08937
May 1, 2000	May 1, 1995	1.08788
June 1, 2000	June 1, 1995	1.08634
July 1, 2000	July 1,1995	1.08486
August 1, 2000	August 1, 1995	1.08344

TABLE 8.C.—UPDATE FACTORS[1] FOR FACILITY-SPECIFIC PORTION OF THE SNF PPS RATES—ADJUST TO 12-MONTH COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 1999 AND BEFORE OCTOBER 1, 2000 FROM COST REPORTING PERIODS BEGINNING IN FY 1995 (BASE YEAR)—Continued

If 12-month cost reporting period in initial period begins	Adjust from 12-month cost reporting period in base year that begins	Using update factor of
September 1, 2000	September 1, 1995	1.08209

[1] Source: Standard & Poor's DRI, 1st Qtr 1999; @USSIM/TREND25YR0299@CISSIM/CONTROL991.

SNFs may have cost reporting periods that are fewer than 12 months in duration (short period). This may occur, for example, when a provider enters the Medicare program after its selected fiscal year has already begun or when a provider experiences a change of ownership before the end of the cost reporting period. Since short periods affect a small number of providers, relative to the total number of SNFs, and the facility-specific portion of the SNF PPS rate is subject to a transition period, we do not believe consideration of computing a "short period specific" update factor is warranted. Accordingly, we will apply the following rules to short periods.

1. Short Period in Base Year

First, select the later short period in the base year for the affected provider. Second, if necessary, adjust the beginning or end of the short period as follows. Short periods may not necessarily begin on the first of the month or end on the last day of the month. In order to simplify the process of determining the short period update factor, if the short period begins before the 16th of the month, it will be adjusted to a beginning date of the 1st of that month. If the short period begins on or after the 16th of the month, it will be adjusted to the beginning of the next month. Also, if the short period ends before the 16th of the month, it will be adjusted to the end of the preceding month, or, if the short period ends on or after the 16th of the month, it will be adjusted to the end of that month. Third, determine the midpoint of the short period. Fourth, use the following midpoint guidelines to determine which 12-month update factor to use from Table 8.C.

If the midpoint of short period falls between	Use factor for this 12-month period
March 16, 1995–April 15, 1995	October 1994–September 1995.
April 16, 1995–May 15, 1995	November 1994–October 1995.
May 16, 1995–June 15, 1995	December 1994–November 1995.
June 16, 1995–July 15, 1995	January 1995–December 1995.
July 16, 1995–August 15, 1995	February 1995–January 1996.
August 16, 1995–September 15, 1995	March 1995–February 1996.
September 16, 1995–October 15, 1995	April 1995–March 1996.
October 16, 1995–November 15, 1995	May 1995–April 1996.
November 16, 1995–December 15, 1995	June 1995–May 1996.
December 16, 1995–January 15, 1996	July 1995–June 1996.
January 16, 1996–February 15, 1996	August 1995–July 1996.
February 16, 1996–March 15, 1996	September 1995–August 1996.

2. Short Period Between Base Year and Initial Period

A provider may experience a change of ownership or may receive proper approval to change its cost reporting period between the base year cost reporting period and the initial period. If this occurs, the base year cost reporting period may begin on a date that is different from that of the initial period. In these instances, use the beginning date of the initial period to determine the 12-month factor that corresponds to the beginning date of the "adjusted to period" in Table 8.C.

B. Federal Rate Update Factor

To update each facility's costs up to the common period, we—

1. Determined the total growth from the average market basket level for the period of July 1, 1998 through September 30, 1999 to the average market basket level for the period of October 1, 1999 through September 30, 2000.

2. Calculated the rate of growth between the midpoints of the two periods.

3. Calculated the annual average rate of growth for #2.

4. Subtracted 1 percentage point from this annual average rate of growth.

5. Using the annual average minus 1 percentage point rate of growth, determined the cumulative growth between the midpoints of the two periods specified above.

This revised update factor was used to compute the Federal portion of the SNF PPS rate shown in Tables 1 and 2.

V. Regulatory Impact Analysis

We have examined the impacts of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This notice is a major rule as defined in Title 5, United States Code, section 804(2) because we estimate its impact will be to increase the payments to SNFs by approximately $120 million in FY 2000. The update set forth in this notice applies to payments in FY 2000. Accordingly, the analysis that follows describes the impact of this 1 year only. In accordance with the requirements of Social Security Act, we will publish a notice for each subsequent fiscal year that will provide for an update to the

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payment rates and include an associated impact analysis.

The RFA requires agencies to analyze options for regulatory relief of small entities. The BBA did not allow options to implementing a SNF PPS. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most SNFs and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, all States and tribal governments are not considered to be small entities, nor are intermediaries or carriers. Individuals and States are not included in the definition of small entity. The policies contained in this notice update the SNF PPS rates by increasing the payment rates published in the May 12, 1998 interim final rule, but will not have a significant effect upon small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. We believe that this notice will not mandate expenditures in that amount.

This notice updates the SNF PPS rates contained in the interim final rule, titled "Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities," published on May 12, 1998 (63 FR 26251). The following table presents the projected effects of the policy changes in the SNF PPS interim final rule, as well as statutory changes effective for FY 2000, on various skilled nursing facility categories. We estimate the effects of each policy change by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as days or case mix.

The data used for this analysis are the same data used to create the FY 1999 rates that were stipulated in our interim final rule published on May 12, 1998 (63 FR 26251). The final data set used in developing those rates was used here to estimate the effects of changing only one payment variable at a time. We would prefer to use more recent data in calculating the FY 2000 impact. However, it should be recalled that SNF PPS was phased-in instead of being implemented simultaneously in all SNFs nationwide. Consequently, we only have a partial database of SNF PPS claims and other data at the present time. Due to the phased-in manner in which SNFs came into the PPS, we believe that extrapolation of the current partial database of SNF PPS claims and other data as the basis of the methodology to calculate the FY 2000 impact would produce less accurate results than the method we are using.

Next year we anticipate having a full year of SNF PPS claims and other data and, under ordinary circumstances, we would be able to show the impact of the annual update for SNFs across the various RUG–III case-mix groups and associated payments. However, we also anticipate that certain events may combine that may limit the scope or accuracy of our impact analysis, because such an analysis is future oriented and, thus, very susceptible to forecasting errors due to other changes in the forecasted impact time period. Examples of such events may be newly legislated general Medicare program funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program will continue to be made as a result of the Balanced Budget Act of 1997. Although these changes may not be specific to SNF PPS, due to the nature of the Medicare program the changes may interact, and the complexity of the interaction of these changes could make it very difficult to accurately predict the full scope of the impact upon SNFs.

While the discussion above acknowledges the difficulties we anticipate encountering, we also want to state that our first and foremost concern has always been and will continue to be the effect of policy changes on beneficiaries' access to affordable quality health care. For example, if research indicates that refinements are necessary to the case mix classification system and the PPS rates, we will make the changes that ensure that the rates properly account for the intensity of resources involved in furnishing quality patient care. As discussed earlier, we are funding substantial research to examine the potential for refinements to the case mix methodology, including an examination of medication therapy, medically complex patients, and other non-therapy ancillary services.

In addition to the above research efforts, we are proactively monitoring the impact of the Balanced Budget Act of 1997 to ensure that beneficiary access to quality SNF services is not compromised. That monitoring includes the gathering of extensive objective information using various sources from across the nation to help us determine how access to care and quality of care may be impacted by the rates, and what specific corrective actions may be necessary. As we accumulate data and learn more about the effects of the new payment system, we will report the results.

As stated previously in this preamble, the aggregate increase in payments associated with this update is estimated to be $120 million. There are four areas of change that produce this increase for facilities.

- The effect of the Federal transition, which results in most facilities being paid at 50 percent the Federal rate and 50 percent the facility-specific rate instead of the current 25 percent Federal rate and 75 percent facility-specific rate.
- The effect of the methodological change to the Federal rates described in the final rule to be published elsewhere in this **Federal Register** document. This resulted in increases of $.32 and $.24 to the unadjusted urban and rural case-mix component of the Federal rates, respectively, and a $.25 and $.21 to the unadjusted urban and rural non-case-mix component of the Federal rates, respectively.
- The effect of changes to the wage index used in this year's rates as compared to last year's rates. This is budget neutral in total but may affect individual facilities in either direction.
- The total change in payments from FY 1999 levels to FY 2000 levels. This includes all the previous changes in addition to the effect of the update to the rates.

As can be seen from the table below, some of these areas result in increased aggregate payments and others tend to lower them. The four areas of change are as follows:

The first row of the table includes the effects on all facilities. The next six rows show the effects on facilities split by hospital-based or freestanding and urban or rural. The rest of the table shows the effects on urban or rural status by census region.

The first column in the table shows the number of facilities in the database. The second column shows the effect of the transition to the Federal rates. This change has an overall effect of lowering payments by 1.4 percent with most of the lowering coming from hospital-based facilities. There are a few regions that have increased payments due to this provision but most have lower payments with the largest effect being in the West South Central region for both urban and rural facilities.

The next column shows the effect of the rate increase associated with the methodological change to the Federal rates referred to above. As seen in the table, the add-on increases payments by 0.2 percent on average and is fairly constant for all types of facilities and their location. This consistency should be expected since the add-on is a constant amount for each provider.

The next column shows the effect of the changes in the wage index in this year's rates. Since these changes were made budget-neutral, the total effect is no change. However, there is variation based on type of facility and location. Urban facilities have their payments reduced, although some regions do show slight increases. However, rural facilities have their payments increased with the largest effect in the West North Central region.

The final column of the table shows the effect of all the changes on the FY 2000 payments. This includes all the previous changes and the update to this year's rates of market basket minus 1 percentage point as required by law. Therefore, it is assumed that payments will increase by 0.9 percent in total if there are no behavioral changes by the facilities. As can be seen from this table, the effects on specific types of providers and by location differ by much larger amounts.

	Number of facilities	Transition to federal rates (percent)	Add-on to federal rates (percent)	Change in wage index (percent)	Total FY 2000 change** (percent)
Total	9037	−1.4	0.2	0.0	0.9
Total urban	6300	−1.4	0.2	−0.3	0.6
Total rural	2737	−1.1	0.1	1.3	2.4
Hospital-based urban	683	−6.1	0.1	−0.2	−4.2
Freestanding urban	5617	−0.5	0.2	−0.3	1.5
Hospital-based rural	533	−4.6	0.1	0.9	−1.6
Freestanding rural	2204	−0.3	0.1	1.4	3.3
Urban by region:					
New England	630	3.3	0.2	−1.2	4.4
Middle Atlantic	877	1.9	0.2	0.1	4.4
South Atlantic	959	−3.0	0.1	0.4	−0.5
East North Central	1232	−0.2	0.2	−0.2	1.9
East South Central	212	−2.4	0.2	0.5	0.3
West North Central	469	−1.6	0.2	0.4	1.1
West South Central	519	−6.3	0.1	−0.5	−4.7
Mountain	303	−4.6	0.1	0.2	−2.3
Pacific	1070	−2.9	0.1	−0.3	−1.1
Rural by region:					
New England	88	2.2	0.1	1.1	5.6
Middle Atlantic	144	1.2	0.1	0.9	4.4
South Atlantic	373	−1.5	0.1	1.4	2.1
East North Central	561	−0.0	0.1	1.3	3.5
East South Central	255	−2.3	0.1	1.6	1.4
West North Central	581	−0.4	0.1	2.8	4.6
West South Central	354	−4.4	0.1	1.0	−1.3
Mountain	204	−1.9	0.1	2.1	2.4
Pacific	151	−0.2	0.1	0.6	2.6

** The effects of the various changes are not additive.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Section 1888(e) of the Social Security Act (42 U.S.C. 1395yy (e)).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 17, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: July 19, 1999.

Donna E. Shalala,

Secretary.

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Part IV

Department of Education

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DEPARTMENT OF EDUCATION

Office of Postsecondary Education

[CFDA No.: 84.063]

Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Notice; deadline and submission dates for receipt of applications, reports, and other documents for the 1999–2000 award year.

SUMMARY: The Secretary announces the deadline dates for receiving documents from persons applying for grants under the Federal Pell Grant Program in the 1999–2000 award year, and the earliest submission and deadline dates for receiving documents from institutions participating in that program in that year.

SUPPLEMENTARY INFORMATION: The Federal Pell Grant Program, administered by the U.S. Department of Education (Department), provides grants to students attending eligible institutions of higher education to help them pay for their educational costs. The program supports Goals 2000, the President's strategy for moving the Nation toward the National Education Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning. Authority for the Federal Pell Grant Program is contained in section 401 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070a.

Deadline and Submission Dates

The following table provides deadline dates for application processing and receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs) for the Federal Pell Grant Program.

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A. Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs)

Who Submits?	What is Submitted?	Where is it Submitted?	What is the Deadline Date for Receipt?
Student	Free Application for Federal Student Aid (FAFSA) on the Web, Renewal FAFSA on the Web, or FAFSA Express electronic application	Electronically to the Central Processing System	June 30, 2000*
	Signature Page (if required)	The address printed on the signature page	August 16, 2000
Student through an institution	An electronic original or renewal application	Electronically to the Central Processing System	June 30, 2000*
Student	A paper original Free Application for Federal Student Aid (FAFSA) or paper Renewal FAFSA	The address indicated on the FAFSA, Renewal FAFSA, or envelope provided with the form	June 30, 2000
Student	Free Application for Federal Student Aid (FAFSA) from .pdf file obtained from http://www.fafsa.ed.gov	The address indicated on the FAFSA.pdf file	June 30, 2000
Student through an Institution	Electronic corrections and duplicate requests	Electronically to the Central Processing System	August 25, 2000*
Student	SAR corrections	The address indicated on the SAR	August 16, 2000
Student	Change of address, change of institutions, and duplicate requests	The address indicated on the SAR	August 16, 2000
		The Federal Student Aid Information Center by calling 1-800-433-3243	August 25, 2000
Student	Valid SAR	Institution	The earlier of: - the student's last date of enrollment; or - August 31, 2000
Student Through the Central Processing System	Valid ISIR****	Institution receives ISIR from Central Processing System	

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A. Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs)			
Student	Verification documents	Institution	The earlier of:** - 90 days after the student's last date of enrollment; or - August 31, 2000
Student	Verified SAR	Institution	The earlier of:*** - 90 days after the student's last date of enrollment; or - August 31, 2000
Student Through the Central Processing System	Verified ISIR****	Institution receives ISIR from Central Processing System	

* The deadline for electronic transactions is 7:00 PM (Central Time) on the deadline date. Transmissions must be completed and accepted by 7:00 PM to meet the deadline. If transmissions are started before 7:00 PM but are not completed until after 7:00 PM, those transmissions will not meet the deadline. In addition, any transmission picked up on the deadline date that gets rejected may not be able to be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the reject.

** Although the Department has set this deadline date for the submission of verification documents, if corrections to the SAR or ISIR are required, the above deadline dates for submission of paper or electronic corrections must still be met.

*** The institution must have already received a SAR or ISIR with an eligible EFC while the student was enrolled and eligible for payment for those students completing verification while no longer enrolled. These students will be paid based on the higher of the two EFCs.

****For this purpose, the date the ISIR transaction was processed by the Central Processing System is considered to be the date the institution received the ISIR.

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The following table provides the earliest submission and deadline dates for submitting Federal Pell Grant Disbursement Records. The origination record and the disbursement record have replaced the Payment Data record referred to in previous Federal Pell Grant notices. Except for the amount of specific disbursements, the origination record contains basically the same information as the previously used payment data record. This information is used by the Department's Recipient Financial Management System (RFMS) to edit the accuracy of a student's annual award amount and includes information such as the student's annual award amount calculated by the institution, expected family contribution, and cost of attendance. An institution uses the disbursement record: (1) to report a disbursement or expected disbursement for each student, and (2) for those institutions that participate in the Just-in-time payment method pilot, to request funds. The "regular" disbursement record basically includes an origination record unique identifier and the amount and date of the disbursement. RFMS uses totals of the accepted disbursement record data in the funding process as either the basis for adjusting an institution's authorization level or as a request for funds. Starting in the 1999–2000 award year, an institution may submit a disbursement record earlier than the reported disbursement date in the record. The Department considers a disbursement of Federal Pell Grant funds to have occurred on the earlier of the date that the institution: (a) Credits a student's account at the institution's general ledger or any subledger of the general ledger; or (b) pays a student directly with funds received from the Department. The Department considers a disbursement to have occurred even if institutional funds are used in advance of receiving the program funds from the Department (34 CFR part 668.164(a)). Table B provides the earliest date an institution can submit a disbursement record to the Department. Any disbursement record received prior to the earliest submission date is rejected. Table B also includes the latest date an institution may submit a disbursement record. The Department may impose an adverse action such as a fine or other penalty for an institution's failure to submit a Federal Pell Grant disbursement record within the required 30-day timeframe. Also, failing to submit a disbursement record within the required 30-day timeframe may result in an audit or program review finding for an institution.

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B. Earliest Submission and Deadline Dates for Submitting Federal Pell Grant Disbursement Records			
Who Submits?	What is Submitted?	Where is it Submitted?	What is the Earliest Submission and Deadline Date for Receipt?
Institution	At least one acceptable disbursement record must be submitted for each Federal Pell Grant recipient at the institution by: Recipient Data Exchange (RDE)*; or Electronic Data Exchange (EDE)**	1. Through the Recipient Financial Management System (RFMS) using Recipient Data Exchange: Regular Mail: U.S. Department of Education Student Aid Origination Team, PSS P.O. Box 6565 Rockville, Maryland 20850-6565 Or Commercial Couriers/Hand Deliveries: U.S. Department of Education Student Aid Origination Team, PSS c/o Affiliated Computer Services, RFMS, Federal Pell Grant Program Mail Stop 3200, One Curie Court Rockville, Maryland 20850-4389 2. Through RFMS using EDE or custom software: Title IV Wide Area Network	An institution may submit disbursement records as early as June 25, 1999, but can not submit a disbursement record any earlier than: (a) 30 calendar days prior to the disbursement date under the Advance payment method; (b) 5 calendar days prior to the disbursement date under the Just-in-time payment method; or (c) the date of disbursement under the Reimbursement or Cash Monitoring payment methods. An institution is required to submit a disbursement record not later than the earlier of: (a) 30 calendar days after the institution - makes a payment; or - becomes aware of the need to make an adjustment to previously reported disbursement data; or (b) October 2, 2000. After October 2, 2000, an institution may submit a disbursement record only if: (a) downward adjustment of previously reported award; or (b) program review or initial audit finding per 34 CFR 690.83.
	Requests for Year-To-Date Records	1. Pell Grant User Support Hotline: 1-800-474-7268 2. http://www.pellgrantsonline.ed.gov 3. Using the information provided in items #1 (RDE) and #2 (EDE) for submitting a disbursement record	August 16, 2000***

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B. Earliest Submission and Deadline Dates for Submitting Federal Pell Grant Disbursement Records			
Who Submits?	What is Submitted?	Where is it Submitted?	What is the Earliest Submission and Deadline Date for Receipt?
Institution	Request for administrative relief based on an administrative error by the Department or Departmental contractors	U.S. Department of Education Institutional Financial Management Division, AFMS P.O. Box 23791 Washington, D.C. 20026-0791	January 31, 2001

*The 1999-2000 award year is the last year the Department accepts RDE tape submissions.
**An institution must ensure that its transmission of disbursement records is completed before midnight (local time at the institution's EDE destination point) on October 2, 2000.
***Year-To-Date records may be requested after this date, however, there may not be sufficient time for institutions to receive the file, create a disbursement record batch and submit to the Department by the October 2, 2000 deadline date for receipt of all 1999-2000 requests for payment.

NOTE: RFMS must accept a student origination record for a student from an institution before it accepts a disbursement record from the institution for that student. An institution may submit an origination and a disbursement record for a student in the same transmission.

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Proof of Delivery for Federal Pell Grant Payment Documents

The Department accepts as proof of delivery, if the documents were submitted by mail or by non-U.S. Postal Service courier, one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly-dated U.S. Postal Service postmark.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method of proof of mailing, an institution should check with the post office at which it mails its submission. An institution is strongly encouraged to use First Class Mail.

(3) A dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

The Department accepts commercial couriers or hand deliveries between 8 a.m. and 4:30 p.m. Eastern Time, Monday through Friday except Federal holidays.

Other Sources for Detailed Information on the Application and Automated Processes

A more detailed discussion of the student application process for the Federal Pell Grant Program is contained in the *1999–2000 Student Guide, Funding Your Education, the 1999–2000 High School Counselor's Handbook, A Guide to 1999–2000 SARs and ISIRs,* and the *1999–2000 Federal Student Financial Aid Handbook*. A more detailed discussion of the institutional reporting requirements for the Federal Pell Grant Program is contained in the *Federal Student Financial Aid Handbook* and the Information for Financial Aid Professionals web site at http://www.ifap.ed.gov.

Applicable Regulations

The following regulations apply: (1) Federal Pell Grant Program, 34 CFR part 690, (2) Student Assistance General Provisions, 34 CFR part 668, and (3) Institutional Eligibility, 34 CFR part 600.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Butler, Program Specialist, U.S. Department of Education, Office of Student Financial Assistance Programs, 400 Maryland Avenue, S.W. (ROB–3, Room 3045), Washington, DC 20202–5447. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of Alternate Format Center, U.S. Department of Education, 400 Maryland Avenue, S.W. (Switzer Bldg., Room 1000), Washington, D.C. 20202–4560. Telephone: (202) 260–9895.

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Program Authority: Authority: 20 U.S.C. 1070a.

Dated: July 26, 1999.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 99–19442 Filed 7–29–99; 8:45 am]

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federal register

Friday
July 30, 1999

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 801, 878, and 880
Surgeon's and Patient Examination Gloves; Reclassification and Medical Glove Guidance Manual Availability; Proposed Rule and Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 801, 878, and 880

[Docket No. 98N–0313]

RIN 0910–AB74

Surgeon's and Patient Examination Gloves; Reclassification

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing regulations to reclassify all surgeon's and patient examination gloves as class II medical devices because it believes that general controls are insufficient to provide a reasonable assurance of safety and effectiveness. The reclassified gloves, including those made of natural rubber latex (NRL) or synthetic material, will be regulated in four categories: Powdered surgeon's gloves, powder-free surgeon's gloves, powdered patient examination gloves, and powder-free patient examination gloves. The proposed special controls are in the form of a proposed guidance document entitled "Medical Glove Guidance Manual," which includes recommended protein and glove powder limits, and new label caution statements including protein and powder labeling requirements. FDA is also proposing to require expiration dating. This proposed rule is intended to reduce the adverse health effects from allergic and foreign body reactions caused by the natural latex (NL) protein allergens and glove powder found on surgeon's and patient examination gloves and to reduce the adverse health effects from defects in the barrier integrity and quality of surgeon's and patient examination gloves.

DATES: Written comments by October 28, 1999. Written comments on the information collection requirements should be submitted by August 30, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn.: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Donald E. Marlowe, Center for Devices and Radiological Health (HFZ–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4777.

SUPPLEMENTARY INFORMATION:

I. Background

Surgeon's and patient examination gloves are intended to provide an effective barrier against potentially infectious materials and other contaminants. However, the use of surgeon's and patient examination gloves has been associated with a number of adverse health effects in patients and users, including allergic reactions, foreign body reactions, and irritation.

NL is a milky fluid that consists of extremely small particles of rubber obtained from plants, principally from the *Heavea brasiliensis* (rubber) tree, dispersed in an aqueous medium. NL contains a variety of naturally occurring substances, including plant proteins, which are believed to be the primary allergens associated with NL allergy. NL is employed in the natural rubber latex manufacturing process. Products made by the natural rubber latex manufacturing process, such as medical gloves, are referred to as containing or made of NRL. For a more complete description of the NRL manufacturing process and further definition of related terms, see the final rule entitled "Natural Rubber-Containing Medical Devices; User Labeling," published on September 30, 1997 (62 FR 51021), and codified in part 801 (21 CFR part 801) at § 801.437.

Glove powder is defined as the total particulate matter on a finished glove, including donning and dusting powder, as well as former-release (or mold-release) compounds and manufacturing debris. The main component of donning and dusting powder is most commonly cornstarch.

Health care workers, comprised of physicians, dentists, pharmacists, nurses, technologists, technicians, and phlebotomists, use millions of NRL gloves during procedures involving millions of patients; this makes NRL gloves a significant source of exposure to NL allergens (Ref. 1).

Studies of health care workers, blood donors, and ambulatory surgical patients have demonstrated an appreciable prevalence of NL sensitivity (Refs. 2 to 8). FDA has received 330 reports of adverse events attributed to NL allergy occurring in patients and health care workers, which suggests that allergic reaction to NRL products in health care settings manifests itself in a variety of symptoms ranging from dermatitis to anaphylaxis (Ref. 9). The general population is directly exposed to NRL from a variety of sources, including consumer products such as industrial gloves and NRL balloons, as well as medical devices such as barrier contraceptives and NRL gloves.

FDA has significant concerns about the role of glove powder as a carrier of airborne allergens, because NL allergens have been shown to bind to cornstarch. A number of published clinical and experimental studies support this conclusion (Refs. 10 to 14). In addition to the role of glove powder as a carrier of airborne allergens, FDA is also aware that glove powder contributes to a number of other adverse health effects. As particulate matter, it can cause foreign body reactions, resulting in inflammation, granulomas and adhesions of peritoneal tissues after surgery (Refs. 15 to 19). Glove powder may serve as an absorbent or adsorbent for unbound chemicals that may be irritants or chemical contact sensitizers. In addition, glove powder from nonsterile patient examination gloves may also support microbial growth and act as a carrier for endotoxins (Ref. 20). These multiple concerns of adverse health effects associated with particulate matter from the surface of medical gloves constitute compelling reasons for FDA to reduce the amount of powder on all gloves, as well as to ensure that both powdered gloves and powder-free alternatives are clearly labeled so users and consumers may make informed choices. Although data is not currently available to quantify a maximum allowable level of glove powder, decreased exposure to glove powder will decrease the prevalence of adverse health effects. Therefore, FDA is recommending a powder level it believes is achievable by industry.

In June 1997, the National Institute of Occupational Safety and Health (NIOSH) issued a safety alert recommending the use of powder-free, reduced protein content NRL or synthetic gloves as a means to reduce exposure to NL allergens, specifically via the airborne route of exposure (Ref. 21). While FDA agrees with the goal of reducing exposure to airborne allergens, FDA is concerned that efforts to produce powder-free gloves with satisfactory donning properties may require additional manufacturing processes that, if not appropriately controlled, have deleterious effects on physical properties, performance, and shelf-life of the gloves (Refs. 22 and 23).

II. Statutory Authority

The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide a reasonable assurance of their safety and effectiveness.

The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval). The effect of classifying a device into class I is to require that the device meet only the general controls that are applicable to all devices. The effect of classifying a device into class II is to require the device to meet special controls as well as general controls, which together provide reasonable assurance of the safety and effectiveness of the device. Class II devices are devices which cannot be classified in class I because general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness and for which there is sufficient information to establish special controls to provide such assurance, including the issuance of performance standards, postmarket surveillance, patient registries, and guidelines (see section 513(a)(1)(B) of the act). The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application (PMA) that includes information concerning safety and effectiveness of the device.

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

A device that is first offered in commercial distribution after May 28, 1976, generally referred to as a postamendments device, and which FDA determines to be substantially equivalent to a device classified under this scheme, is classified into the same class as the device to which it is substantially equivalent. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807). A device that was not in commercial distribution prior to May 28, 1976, and that has not been found by FDA to be substantially equivalent to a legally marketed device, is classified automatically by statute (section 513(f) of the act) into class III, without any FDA rulemaking proceeding.

Reclassification of classified preamendments devices is governed by section 513(e) of the act (21 U.S.C. 360c(e)). This section provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based upon "new information." The reclassification can be initiated by FDA or by the petition of an interested person. The term "new information," as used in section 513(e) of the act, includes information developed as a result of the reevaluation of the data before the agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of changes in "medical science." (See *Upjohn* v. *Finch*, supra, 422 F.2d at 951.) However, regardless of whether data before the agency are past or new data, the "new information" on which any reclassification is based is required to consist of "valid scientific evidence," as defined in section 513(a)(3) of the act (21 U.S.C. 360c(a)(3)) and 21 CFR 860.7(c)(2). FDA relies upon "valid scientific evidence" in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information.

On November 21, 1997, the President signed into law FDAMA. Section 206 of FDAMA added a new section 510(m) (21 U.S.C. 360(m)) to the act. Section 510(m)(2) of the act provides that FDA may, on its own initiative or upon petition of an interested person, exempt a class II device from the requirement of premarket notification in section 510(k) of the act, if FDA determines that a 510(k) submission is not necessary to provide reasonable assurance of the safety and effectiveness of the device. Such an exemption would permit manufacturers to introduce the generic type of device into commercial distribution without first submitting a premarket notification to FDA.

Section 701(a) of the act (21 U.S.C. 371(a)) authorizes FDA to issue substantive binding regulations for the efficient enforcement of the act. (*Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973); see also *Weinberger* v. *Bentex Pharmaceuticals*, Inc., 412 U.S. 645, 653 (1973); *National Ass'n of Pharmaceutical Manufacturers* v. *FDA*, 637 F.2d 877 (2d Cir. 1981); *National Confectioners Ass'n* v. *Califano*, 569 F.2d 690 (D.C. Cir. 1978); *National Nutritional Foods Ass'n* v. *Weinberger*, 512 F.2d 688 (2d Cir.), cert. denied, 423 U.S. 825 (1975).)

Section 502(a) of the act (21 U.S.C. 352(a)) provides that a device is misbranded "[I]f its labeling is false or misleading in any particular." Section 201(n) of the act (21 U.S.C. 321 (n)) provides that, in determining whether labeling of a regulated article (such as a device) is misleading

> * * * there shall be taken into account * * * not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling * * * fails to reveal facts material in light of such representations * * * with respect to consequences which may result from the use of the article to which the labeling * * * relates under the conditions of use prescribed in the labeling or advertising thereof or under such conditions of use as are customary or usual.

The courts have upheld FDA's authority to prevent false or misleading labeling by issuing regulations requiring label warnings and other affirmative disclosures (See, e.g., *Cosmetic, Toiletry, and Fragrance Association* v. *Schmidt*, 409 F. Supp. 57 (D.D.C. 1976), aff'd without opinion, Civil No. 75–1715 (D.C. Cir. August 19, 1977), even in the absence of a proven cause-and-effect relationship between product usage and harm (*Council for Responsible Nutrition* v. *Goyan*, Civil No. 80–1124 (D. D. C. August 1, 1980)).

FDA may impose testing requirements in a labeling regulation issued under its general rulemaking authority. (See, e.g.,

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American Frozen Food Inst. v. *Mathews*, 413 F. Supp. 548 (D.D.C. 1976), aff'd per curiam sub nom. *American Frozen Food Inst.* v. *Califano*, 555 F.2d 1059 (D.C. Cir. 1977); see also *National Nutritional Foods Ass'n* v. *Weinberger*, supra.) Thus, FDA may require that all manufacturers use the same conditions to test aging to ensure that the expiration date reflects the period of time a product can be used safely. Similar requirements are imposed in § 801.430(f) for absorbency testing for menstrual tampons, and in § 801.420(c)(4) on hearing aid manufacturers and distributors who must determine and state technical data values for hearing aid labeling in accordance with specified test procedures. The hearing aid regulation has been upheld. (*American Speech and Hearing Ass'n* v. *Califano*, Medical Devices Report (CCH) No. 77–1327 §§ 15004, 15007 (D.D.C. August 23, 1977) aff'd No. 77–1327 (D.C. Cir. Dec. 19, 1977).) Food regulations issued under section 701(a) of the act also impose many such specific testing requirements (see e.g., 21 CFR 113.40 (tests for low-acid canned foods); 21 CFR 155.190(b)(2)(i) (test for determining drained weight of canned tomatos); 21 CFR 161.190 (method for determining color designation of tuna).

III. Powder and Protein Concerns

Although FDA has been concerned about airborne NL allergens associated with the use of powdered medical gloves and has undertaken continued efforts to address these concerns, recent heightened awareness within the health care community and State and Federal Government agencies of adverse health effects has prompted this proposed action.

Over the past 3 years, FDA has received requests to ban the use of all glove powders. These requests have been based on a number of clinical and experimental studies reporting that cornstarch on surgical gloves can reduce tissue resistance to infection, enhance the development of infection, cause formation of granulomas and adhesions, act as a carrier of NL protein from NRL products, and serve as a potential source of occupational asthma. Although a ban of all powdered medical gloves has been requested by petitioners and would reduce the problem of airborne powder, it would not completely address the problem of NL allergy and would potentially leave a significant and important need for high quality barrier products unmet.

One of the concerns regarding glove powder, in general, is its capability, as particulate material, to cause foreign body reaction, resulting in inflammation, granulomas and adhesions of peritoneal tissues after surgery (Refs. 15 to 19). Although cornstarch was considered to be absorbable by United States Pharmacopeia (USP), changes in the sterilization processes have reduced absorbability significantly (Ref. 15). Cornstarch represents a growth source for bacteria, and it is also a carrier of endotoxin, which can play a role in enhancing both delayed and immediate hypersensitivity (Ref. 20). Clinical experience suggests that powder on NRL gloves, in addition to its role in Type I allergy, may also be a contributing factor in the development of irritant dermatitis and Type IV allergy. Irritant skin reactions have been observed in association with frequent exposure to glove powder. Compromised skin barrier properties resulting from such reactions may permit penetration of allergens and other substances into the skin, thereby increasing chances for the development of both Type I and Type IV allergy (Ref. 24).

In addition, a significant concern, specific to NL gloves, exists regarding the role of glove powder as a carrier of airborne NL allergens. A number of respiratory problems and episodes of bronchial spasms in hospital employees and patients, reported since the mid 1980's, were ascribed to inhalation of airborne NL allergens in settings with heavy use of powdered gloves (Refs. 25 to 30). The implication of glove powder in the previous clinical reports was based on medical histories of individuals presenting with symptoms, on positive skin tests, positive tests for the presence of antibodies to NL allergens in blood and, in some cases, on positive inhalation challenge tests. A number of published clinical and experimental studies support this conclusion.

Binding of NL proteins to cornstarch was demonstrated in recent laboratory studies, which support a causal relationship between asthmatic reactions in individuals with NL allergy and the exposure to airborne particles from NL products (Refs. 10 and 11). The level of exposure and the severity of the reactions depend on both the amount of powder and the amount of NL protein allergens on the finished products. Measurements of airborne particle levels in environments where NL gloves were used frequently demonstrated that the level of airborne allergen is directly related to the frequency of powdered NL glove usage in particular areas and to the level of allergen and/or powder on the gloves used (Refs. 12 and 14).

Direct evidence that NL protein allergens, bound to the glove powder particles, provoke respiratory allergic reactions and asthma-like attacks has been documented by the bronchial provocation tests with powders on NL gloves. The bronchial provocation tests were performed by having allergic individuals inhale the extracts from powder-free surgeon's gloves, from powdered surgeon's gloves, and from cornstarch powder not exposed to NL. The studies indicated that cornstarch powder not exposed to NL did not cause any reaction in sensitized subjects, while nebulized powdered NL surgeon's glove extract, and to some extent, nebulized powder-free glove extract induced bronchoconstriction in tested subjects (Ref. 31).

However, the scientific data to define the quantitative relationship between respiratory allergic reactions and powder level on NL gloves are not available at this time. Such data and the specific dose-response relationship would be difficult to establish, because allergenicity of the airborne glove powder depends on the amount of powder and also on the amount of powder-bound allergenic proteins. Standardized methods for measuring the amount of powder-bound proteins or allergens and the amount of inhaled powder are not available.

NL protein has been widely reported as a cause of Type I sensitivity in individuals who have been exposed to NL devices (Refs. 2 to 8). Repeated exposure to NL protein is considered to increase the probability that an individual will become sensitized. Total water-extractable protein on the finished NL product is considered an indirect measure of the potential allergenicity. Because several NL proteins have already been identified as allergenic and others may be identified in the future, exclusion of any proteins from the evaluation may result in an inaccurate determination of potential allergenicity. The total water-extractable protein level measured using the standard American Society for Testing and Materials (ASTM) D 5712 method was found to correlate well with currently used allergen measurement methods. Most importantly, a total water-extractable protein level correlates also with the skin prick test, which is a direct measure of allergic response in sensitized individuals (Ref. 32). Since May 1991, FDA has advised manufacturers of NL devices to reduce the water-extractable protein on their NL devices. This reduction is now addressed in the Quality System (QS) Regulation at 21 CFR 820.3(p) and 820.70(h).

Initially, a labeling claim for a protein level was not accepted in a 510(k) submission because a standard test method for measuring water-extractable protein in NL did not exist. In 1995, with the help of industry and FDA, ASTM published the "ASTM Standard Test Method for Analysis of Protein in Natural Rubber and its Products, D 5712–95." FDA subsequently issued a document entitled "Interim Guidance On Protein Content Labeling Claim For Latex Medical Gloves," which is based on this test method. Manufacturers were allowed to use this guidance to submit a 510(k) submission for NL gloves identifying the level of water-extractable protein for the device. FDA is now proposing that a recommended limit on water-extractable protein per glove and the actual protein level appear on the label.

The amount of powder required for satisfactory donning of gloves has not been quantified, and the level of glove powder used varies greatly. Limited laboratory data from measurements of a number of surgeon's and patient examination gloves demonstrated that powder levels ranged from 70 to 375 milligrams (mg) per glove for surgeon's gloves and from 50 to 426 mg per glove for patient examination gloves (Ref. 31). Because of the multiple concerns regarding adverse health effects associated with particulate matter from the surface of surgeon's and patient examination gloves, FDA is now proposing that a recommended limit on glove powder and the actual level of glove powder appear on the label. FDA recognizes there is a correlation between powder level and ease of glove donning and that powder level is correlated with adverse health effects. For this reason, FDA is encouraging industry to find the balance between donning requirements and reducing the risks of adverse health effects.

Lowering the powder level and the amount of protein on surgeon's and patient examination gloves will reduce exposure to NL allergens and benefit both allergic individuals and those at risk to develop allergy. In addition, the reduction of glove powder levels will help reduce exposure to particulate materials responsible for foreign body reactions. However, the reduction of powder and protein levels must be accomplished by methods that do not compromise the availability of or barrier properties of surgeon's and patient examination gloves.

IV. Barrier and Other Quality Issues

In the **Federal Register** of October 21, 1980 (45 FR 69723), FDA issued a final rule classifying the patient examination glove into class I and exempting manufacturers of the device from compliance with premarket notification procedures under section 510(k) of the act and certain requirements of the current good manufacturing practice (CGMP) regulation. FDA granted the exemptions in the 1980 regulation because, at that time, no adverse experiences had been related to patient examination gloves. Furthermore, the role of the gloves as a protective barrier against human immunodeficiency virus (HIV) transmission was not recognized and the concomitant risks associated with glove failure were not well understood.

In the **Federal Register** of January 19, 1982 (47 FR 2810 at 2852), FDA proposed that the surgeon's glove be classified into class II because of concerns about tissue compatibility and the risk of infection if the devices were not properly sterilized. Comments offered in response to the proposed classification stated that those problems could be addressed through general controls, including labeling and CGMP adherence, and recommended that the device be classified into class I because of the history of its safe and effective use. In the **Federal Register** of June 24, 1988 (53 FR 23856), FDA issued a final rule classifying the surgeon's glove into class I without exemptions. Manufacturers and importers of surgeon's gloves have been required to comply with the premarket notification and CGMP regulations since the initial classification of the device.

Over the years, many issues regarding surgeon's and patient examination gloves have been brought to the attention of FDA. The acquired immune deficiency syndrome (AIDS) epidemic resulted in an elevated reliance on medical gloves as a barrier against blood-borne viral transmission. The increased demand for gloves soon outstripped the domestic supply. Foreign glove manufacturers began to meet the demand for additional gloves. Many manufacturers with little or no medical glove manufacturing experience began operations, resulting in large quantities of gloves of uncertain quality entering the U.S. market.

Following the advent of AIDS as a major public health concern and recommendations from the Centers for Disease Control and Prevention (CDC) that health care workers use appropriate barrier precautions to prevent exposure to the HIV virus, FDA recognized the need for greater assurance that cross-contamination between patients and health care workers be prevented. Accordingly, in the **Federal Register** of January 13, 1989 (54 FR 1602), FDA revoked the exemption for patient examination gloves from certain CGMP requirements in order to assure that manufacturers provide an acceptable manufacturing quality level. FDA similarly revoked the exemption from premarket notification requirements for patient examination gloves. On December 12, 1990 (55 FR 51254), FDA published regulations describing certain circumstances under which surgeon's and patient examination gloves would be considered adulterated, and establishing the sampling plans and test methods the agency would use to determine whether gloves were adulterated (§ 800.20 (21 CFR 800.20)). Subsequently, FDA initiated inspections of glove manufacturers to assure conformance with the acceptable quality levels (AQL) identified in that regulation.

FDA has sought to address many concerns regarding the quality and barrier integrity of medical gloves. Certain processes or conditions can often contribute to degradation of the barrier. NL degrades if it is not correctly formulated and processed. Proper formulation includes the use of stabilizers, antiozonants, and antioxidants to reduce degradation. Improper curing can also cause thin spots on the glove surface, which may lead to early barrier failure.

Gloves composed of synthetic polymer, such as nitrile, are produced by essentially the same processes as NL. The same accelerators, antioxidants, and stabilizers are used to reduce degradation. Thus, improper formulation and processing may also lead to rapid degradation of synthetic gloves.

Storage conditions can also cause degradation of the polymers, whether natural or synthetic. These storage conditions include the temperature at which the material is held, the humidity of their environment, and any radiation (for example, sunlight or fluorescent lights) to which the material may be exposed.

Additionally, chlorination is widely used to reduce the tackiness of NL gloves and thus eliminate the need for donning powder. Chlorination works by degrading the surface of the gloves. Therefore, chlorination must be carefully controlled in order to prevent destruction of the glove barrier. Improperly chlorinated gloves rapidly degrade, and breaks in the latex film may occur in a matter of months.

Another concern has been the presence of minute defects known as pinholes, which directly affect the barrier integrity of the gloves. FDA studies of micro-photographs of

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defective NL devices have shown that dust, dirt, rust, paint chips, charred starch, insect parts, and other debris may cause pinholes. Therefore, appropriate environmental and processing controls, as required by the QS regulation, are needed. Manufacturers also need to control other causes of pinholes such as former vibration, air bubbles in the dipping tanks, dirty formers, incorrect formulation, and excessive curing temperatures.

If gloves have pinholes, breaks or tears, viruses can potentially penetrate the glove wall, eliminating or reducing the gloves' effectiveness as a barrier. On April 6 and 7, 1989, the University of Maryland, in conjunction with FDA, held a conference entitled "Latex as a Barrier Material," which reiterated the value of NL as a barrier film and generated continued support towards more research in this area by industry and FDA.

Although manufacturers have data to show that their gloves meet their company AQL for defects when the gloves are shipped, for some manufacturers, the same gloves which passed the manufacturer's tests are sometimes rejected at the port of entry in the United States because the gloves fail the FDA water leak test at that point. This test result disparity, whether due to degradation or for other reasons, is a primary reason why, upon importation, the gloves of some manufacturers have been detained without physical examination. Manufacturers should assure, by means of stability testing, that their surgeon's and patient examination gloves will continue to meet the manufacturers' specifications over the expected life of the gloves.

FDA is aware that microbial growth on gloves also can be a problem. The QS regulation requires manufacturers to control processing, shipping and storage environment, and contamination when these can adversely affect the product. Therefore, processing controls should include: Using only cornstarch with an acceptable bioburden, properly storing the cornstarch until it is used, applying cornstarch by established procedures, cooling the cornstarch slurry and/or using an antimicrobial in the cornstarch slurry tanks, checking finished gloves on a sampling basis to assure that excessive cornstarch is not applied, keeping the finished gloves clean, establishing and meeting a dryness specification for finished gloves, and protecting finished gloves from adverse environmental conditions.

Although synthetic materials have improved in recent years, NL gloves may be superior to some synthetic gloves in regard to barrier properties (Ref. 34). Both NL and synthetic surgeon's and patient examination gloves provide protection against microorganisms; however, it has been demonstrated that compared to vinyl, NL has more effective and durable barrier qualities (Refs. 35 and 36).

There are other safety and performance issues related to gloves and other barrier devices that are currently being considered by industry and FDA. These issues include puncture resistance, tear resistance, reliability, and biocidal claims.

V. The Proposed Rule

Based upon new information that was not presented, not available, or not developed when FDA originally classified surgeon's and patient examination gloves, FDA has reevaluated its classification in light of changes in the medical science discussed in sections III and IV of this document. The new, publicly available, valid scientific evidence demonstrates that these gloves should not remain as class I devices because of: (1) Barrier integrity concerns; (2) degradation of quality during storage; (3) contamination concerns; and (4) concerns about exposure to NL allergens and the role of glove powder as a carrier of airborne NL allergens, and the inability of general controls to address these concerns. The agency believes that general controls are no longer sufficient to provide reasonable assurance of the gloves' safety and effectiveness and, therefore, FDA is proposing that these gloves be reclassified into class II.

Surgeon's and patient examination gloves are intended for use as an effective barrier against potentially infectious materials and other contaminants. Risk to the user or patient may result from lack of barrier integrity from degradation, pinholes, breaks, tears, or loss of quality during storage, potentially causing penetration of the glove wall by viruses or other infectious materials. When glove powder comes into contact with compromised human tissue, risk to the user or patient may result from foreign body reactions caused by NL allergens bound to the glove powder. Allergic reactions may also be caused by inhalation of NL allergens bound to the glove powder. Reducing the degree of risk to acceptable levels depends on effective maintenance of the barrier properties of the gloves and on reducing exposure to NL allergens, particularly exposure to airborne NL allergens. The highest risk products are those with large amounts of glove powder and NL protein and those products with poor barrier properties.

In order to enable users to distinguish between powdered and powder-free gloves and to choose the glove type appropriate for their needs, FDA proposes to reclassify surgeon's gloves into two separate classifications, based on powder level: Powdered surgeon's gloves, and powder-free surgeon's gloves. FDA similarly proposes to reclassify patient examination gloves into two categories: Powdered patient examination gloves, and powder-free patient examination gloves.

FDA is proposing that these gloves be subject to two special controls: A guidance document entitled, "Medical Glove Guidance Manual," and new user labeling requirements. FDA believes that the proposed guidance document and user labeling requirements are necessary to provide reasonable assurance of the safe and effective use of the devices. The guidance is currently being issued in draft as a Level 1 guidance consistent with the good guidance practices (GGP's) FDA adopted for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance in draft form, to provide an opportunity for comment.

The proposed guidance document recommends that manufacturers of powdered surgeon's and patient examination gloves limit the amount of powder to no more than 120 mg of powder per glove, regardless of glove size. In order to limit total exposure to the user, a "per glove" measurement (mg per glove) is used instead of the "per unit" dose (mg per gram (g) of glove material). Under the proposed labeling requirements, manufacturers of all powdered gloves would be required to include the actual level of glove powder on the label. FDA believes that the recommended limit should be sufficient for proper donning of gloves, but would reduce exposure to airborne glove powder particles. In addition to the role of glove powder as a carrier of airborne allergens, FDA is also aware that glove powder contributes to a number of other adverse health effects. As particulate matter, it can cause foreign body reactions, resulting in inflammation, granulomas and adhesions of peritoneal tissues after surgery (Refs. 15 to 19). Glove powder may serve as an absorbent or adsorbent for unbound chemicals that may be irritants or chemical contact sensitizers.

The proposed guidance document further recommends that manufacturers of powder-free surgeon's and patient examination gloves limit the amount of total trace (residual) powder to no more than 2-mg particulate weight (based on the ASTM test standard D 6124–97) per glove, regardless of glove size. Previously, this limit was recommended to manufacturers who wanted to market gloves with a powder-free labeling claim. A number of premarket notification submissions based on this claim already have been cleared for market.

The proposed guidance document also recommends that manufacturers of NL surgeon's and patient examination gloves limit the amount of water-extractable protein on the gloves to no more than 1,200 micrograms (μg) of protein per glove, regardless of glove size. In order to limit total exposure to the user, a "per glove measurement" (mg per glove) is used instead of a "per unit" dose (mg per g of glove material). Under the proposed labeling requirements, labeling on all NL gloves would be required to include the level of water-extractable protein measured, as recommended in the guidance, by the currently recognized ASTM D 5712 modified Lowry method. The lowest acceptable amount of water-extractable protein that may be stated in the labeling will be limited by the sensitivity of the current ASTM D 5712 test method to 50 μg of protein per g of natural rubber product (which translates to 300 μg per glove for a 6 g glove, i.e., 6 x 50 = 300). FDA believes that without a more sensitive standard method, lower claims would be misleading.

The proposed labeling requirements are a special control intended to provide guidance to users of surgeon's and patient examination gloves. They would require manufacturers to provide new caution statements, which would include both the FDA recommended limit for glove powder and protein levels, as well as the actual glove powder and protein levels present in the manufacturer's gloves. The labeling special control provides essential decisionmaking information for health professionals, patients, and lay users. The information required under the proposed regulations would assist health care professionals, patients and lay users to select a lower risk device by providing information about protein and glove powder levels.

The proposed caution statements would be required to appear on all device labels and other labeling, including the principal display panel of the device packaging, the outside package, container or wrapper, and the immediate device package, container or wrapper. The proposed caution statements for powdered and powder-free NL gloves (surgeon's and patient examination) would supersede the caution statements in § 801.437(d) for devices containing NRL currently required in the regulation published in the **Federal Register** of September 30, 1997 (effective September 30, 1998).

Labeling for powdered surgeon's and patient examination gloves containing NL that contacts humans would be required to bear the following statement:

"Caution: This product contains natural rubber latex which may cause allergic reactions. FDA recommends that this product contain no more than 120 mg powder and 1,200 μg extractable protein per glove. This product contains no more than [insert level] mg powder and no more than [insert level] μg extractable protein per glove."

Labeling for powder-free surgeon's and patient examination gloves containing NL that contacts humans would be required to bear the following statement:

"Caution: This product contains natural rubber latex which may cause allergic reactions. FDA recommends that this product contain no more than 1,200 μg extractable protein per glove. This product contains no more than [insert level] μg extractable protein per glove."

FDA is also proposing new labeling requirements for powdered gloves made of synthetic material. FDA proposes that labeling for those gloves bear the following statement:

"Caution: Glove powder is associated with adverse reactions. FDA recommends that this product contain no more than 120 mg powder per glove. This product contains no more than [insert level] mg powder per glove."

FDA is proposing no new labeling for powder-free surgeon's gloves and patient examination gloves made of synthetic materials.

FDA is also proposing to require expiration dating on the labeling of all powdered surgeon's and patient examination gloves and powder-free surgeon's and patient examination gloves. Previously, expiration dating has not been required for surgeon's or patient examination gloves, although it is customary for surgeon's gloves to bear an expiration date for sterility. A few glove manufacturers have voluntarily used expiration dates based on real-time data to support the integrity of the gloves throughout the shelf-life period.

In view of the quality concerns discussed in section IV of this document, especially those relating to degradation of barrier integrity over time, FDA believes that expiration dating is necessary to allow users to correctly store and use stock of gloves, and to allow users to avoid gloves that may have degraded. Users must be aware of the potential for degradation of gloves in order to safely use such products to provide a barrier from infectious agents. Accordingly, FDA believes that shelf life is a fact material to the consequences of use of surgeon's and patient examination gloves. Therefore, FDA is now proposing that all surgeon's and patient examination gloves be required to bear an expiration date on their primary and retail packaging and shipping carton. The expiration date should consist of the month and year for which data exists to support the shelf-life of the gloves. The time period upon which the expiration date is based starts with the date of manufacture.

This expiration date must be based on testing conducted according to a validated stability study protocol to determine the shelf-life of the gloves. The stability study protocol should employ tests commonly used by industry to demonstrate the physical and mechanical integrity of the gloves over their claimed shelf-life.

Manufacturers will not be required to provide new section 510(k) of the act submissions to demonstrate the shelf-life of gloves. However, for each distinct glove design, the records of study protocols and test data must be retained for a period equivalent to the design and expected life of the gloves, and must be made available for inspection by FDA personnel.

Expiration dates for sterile surgeon's or patient examination gloves should either be based on the shelf-life determined by stability studies as outlined in the proposed rule, or on the sterility shelf-life, whichever is shorter. Only one expiration date should appear on each product.

FDA does not intend to require a new submission under section 510(k) of the act based upon labeling changes or reductions in glove powder or NL protein made to comply with any final regulation based upon this proposed regulation, provided that no other changes requiring a new 510(k) submission under § 807.81 are made to the device.

Section 510(m) of the act allows FDA to exempt a class II device from the requirement of premarket notification in section 510(k) of the act. FDA does not intend to exempt powdered or powder-free surgeon's or patient examination gloves from premarket notification because of FDA's concerns regarding the effective maintenance of barrier properties and adverse health effects associated with NL allergens, glove powder and residual chemical sensitizers and irritants.

This proposed rule would not impose requirements on glove users or user facilities. Therefore, it would not affect

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the authority of the Secretary of Labor, under the Occupational Safety and Health Act (OSH act), to enforce regulations, standards, or other directives issued under the OSH act.

VI. Specific Request for Comments

FDA recognizes that this regulation affects surgeon's and patient examination gloves in different ways, depending on glove powder level. FDA also recognizes that manufacturing processes for powdered and powder-free gloves vary. FDA welcomes comments on all aspects of the proposed regulation, but particularly invites comments on the following issues:

1. FDA requests comments on the timeframe for implementation of the proposed rule considering the need for changes in production, technology, and labeling, as well as the immediate need to address adverse health concerns associated with medical gloves. Although FDA prefers a 1-year effective date, FDA is proposing a 2-year effective date based on indications from industry that the necessary changes could not be made in 1 year and that a shortage of medical gloves could result.

2. In the proposed guidance document, FDA recommends a limit of no more than 120 mg powder per powdered glove, regardless of size, as the maximum level in order to reduce exposure to particulates and airborne allergens. FDA requests comments on the recommended limit with regard to the minimum level of powder needed for adequate donning of gloves.

3. FDA requests comments on the feasibility and desirability of additional labeling requiring manufacturers to state the primary ingredients in glove powder in the product labeling.

4. In the proposed guidance document, FDA is recommending no more than 2 mg powder per glove, regardless of size, as the recommended powder level for those surgeon's and patient examination gloves labeled "powder-free." FDA requests comments on the proposed limit. FDA is also seeking comments on the possible impact of this powder limit on barrier properties and shelf-life of NL gloves.

5. FDA is also considering a future requirement that all surgeon's and patient examination gloves marketed in the United States be powder-free. FDA requests comments as to whether a continued need for powdered gloves exists, and, if so, the reason for this need.

6. FDA considered restrictions on the sale (advertising), distribution, and use of powdered surgeon's and patient examination gloves. FDA is seeking comments on the feasibility of such restrictions.

7. In the proposed guidance document, FDA is recommending an upper limit of no more than 1,200 µg protein per NL glove, regardless of size, as the maximum level for NL surgeon's and patient examination gloves. FDA is seeking comments on the proposed recommended limit.

8. FDA's objectives in this proposed rulemaking are to reduce adverse health effects from allergic reactions and foreign body reactions by controlling the levels of water-extractable protein and glove powder on NL gloves. FDA requests comments as to whether there are feasible alternative approaches to achieve these objectives. If other alternatives or data submitted present feasible methods to protect the public health or suggest that different powder or protein levels are adequate to protect the public health, FDA may incorporate such data or approaches in a final rule.

9. FDA also invites comments on the issue of whether the recommended limits on powder and protein proposed in this rule should be recommended limits or required limits.

10. FDA considered allowing manufacturers to establish an initial tentative shelf-life up to a certain duration based on accelerated aging data, provided that manufacturers initiate concurrent real-time shelf-life studies to confirm and extend the tentative shelf-life. FDA has been unable, however, to determine whether any validated stability study protocols exist employing accelerated aging methodologies. The agency invites comments or information on the availability of accelerated aging stability study protocols which are predictive of glove shelf-life. If convincing information concerning such protocols is available, FDA may incorporate such an approach in a final rule.

11. FDA considered requiring the use of a special air handling system at the point of use for those facilities using powdered surgeon's and patient examination gloves with powder levels over 120 mg per glove, regardless of glove size. FDA is seeking comments on the appropriateness of this restriction.

12. FDA seeks comments as to whether a provision permitting affected persons to request exemptions or variances from the labeling requirements or restrictions on distribution and use proposed in this rule should be added.

VII. General Request for Comments

Interested persons may submit written comments regarding this proposed rule by October 28, 1999, to the Dockets Management Branch (address above). Comments regarding the information collection provisions should be submitted by August 30, 1999, to the Office of Information and Regulatory Affairs, Office of Management and Budget (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Access to Special Control

The availability of the special control entitled "Medical Glove Guidance Manual" is being announced elsewhere in this issue of the **Federal Register**. A copy of the "Medical Glove Guidance Manual" may be seen by interested persons in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). FDA's Center for Devices and Radiological Health (CDRH), maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a PC with access to the Web. The CDRH home page is updated on a regular basis and includes the draft "Medical Glove Guidance Manual;" device safety alerts; **Federal Register** reprints; information on premarket submissions (including lists of approved applications and manufacturers' addresses); small manufacturers' assistance; and information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh".

Submit written requests for single copies of the draft guidance to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

To receive the directions via fax machine on receiving the proposed guidance document, call CDRH Facts-on-Demand system at 800–399–0381, or 301–827–0111 from a touch-tone telephone. At the first voice prompt, press 1 to access the Division of Small Manufacturers Assistance (DSMA) Fax, at the second voice prompt, press 2, and then enter the document number 852 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

IX. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Unless the agency certifies that the rule is not expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. Section 202 of the Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in the Executive Order and in these two statutes. The rule is an economically significant regulatory action as defined by the Executive Order. With respect to the Regulatory Flexibility Act, FDA does not believe that this proposal will have a significant effect on a substantial number of small entities, but recognizes the uncertainty of its estimates. Therefore, the agency has prepared an IRFA. FDA is not required to conduct a cost-benefit analysis according to the Unfunded Mandates Reform Act, because the rule will not impose any mandates on State, local, or tribal governments, or the private sector, that will result in an annual expenditure of $100 million or more.

Furthermore, in accordance with the Small Business Regulatory Enforcement Fairness Act of 1995 (Public Law 104–121), it has been determined that this proposed rule would be a major rule for the purpose of congressional review.

A. Objectives of the Proposed Regulations

The objectives of this proposed regulation are to reduce the adverse health effects from allergic and foreign body reactions caused by the NL protein allergens and glove powder found on surgeon's and patient examination gloves, and from defects in the barrier integrity and quality of surgeon's and patient examination gloves. The rule will accomplish these objectives by encouraging manufacturers to limit both the level of water-extractable protein allowed on gloves and the level of powder packaged with the gloves, and by requiring the inclusion of caution statements and the actual level of protein and powder in the labeling of the gloves. In addition, labeling will include expiration dates to ensure that the gloves provide adequate barrier protection and that all medical gloves meet quality standards specified in the special control guidance referenced elsewhere in this preamble. FDA believes that by reducing the amount of powder dispersed, these special controls will reduce the incidence and severity of the allergic reactions caused by NL proteins without compromising the barrier performance of these products.

B. Risks of NL Protein Allergic Reactions

FDA recognizes that no systemic epidemiological data exist to identify the risk of airborne NL protein allergens. However, several sources indicate that a proportion of the U.S. population have developed NL sensitivity (Refs. 1 to 8) due to increased exposure to NL proteins. The increased use of NL gloves with unlimited powder and protein levels in recent years is believed to contribute to these adverse events.

FDA's Adverse Experience Reporting System received a total of 330 NL allergy Medical Device Reports (MDR's) associated with medical gloves for the 12-month period of August 15, 1996, through August 15, 1997 (Ref. 9). These reports included reactions of 435 affected persons. Despite the lack of representative sampling and the unconfirmed nature of these reports, FDA believes these data may provide a reasonable measure of the magnitude of existing risk. Table 1 classifies these reports by type and severity of reaction and shows the results by number of affected patients.

TABLE 1.—NUMBER OF PATIENTS REPORTING TO FDA NATURAL RUBBER LATEX ALLERGIES REACTIONS ASSOCIATED WITH MEDICAL GLOVES BETWEEN AUGUST 15, 1996, AND AUGUST 15, 1997

	Type of Allergic Reaction[1]			
	Local Topical	Systemic Topical (i.e., rash not in area with direct contact)	Systemic Respiratory (e.g., wheezing, shortness of breath)	Respiratory Requiring Aggressive Treatment (e.g., anaphylaxis, hospitalization)
Number of Patients Reporting Reaction	20	21	294	100

[1]Includes 40 patients with unclassified reactions that were distributed by proportion of reported reactions.

FDA has long been aware that MDR's received by the agency may account for as little as one percent of the actual events (Ref. 37). If true, the reports received for allergic reactions associated with medical gloves could represent as many as 43,500 allergic incidents during the 12-month period. Because patients may often fail to connect an allergic incident to use of gloves, FDA believes that this estimate better reflects the true number of incidents associated with medical gloves. Given that approximately 22.0 billion gloves (Ref. 38) were used and 2.16 billion patient visits occurred during that period (Ref. 39), the projected baseline rate of annual allergic reaction incidents to the total population (0.0001626) at current protein/powder levels does not seem unreasonable.

Despite the widespread under-reporting cited in the General Accounting Office (GAO) report, FDA believes that those allergic reactions that require the most aggressive treatment would be subject to less under-reporting. For this analysis, FDA has assumed that MDR's for patients with severe allergic reactions are under-reported by 33 percent, and the other three categories are proportionally

increased to account for the total under-reporting (Table 2). Specifically, FDA believes that the 100 reported incidents of respiratory allergic reactions requiring aggressive treatment (from Table 1) represent only 150 actual such incidents; not 1,000 as would be indicated by MDR underreporting. The difference of 850 expected incidents were distributed to the remaining three categories to result in 43,500 total incidents. Table 2 also shows the proportion of each category of reactions reporting long-term and short-term effects, based on reported lost work-time due to recovery. As expected, only fi percent of all topical local reactions were considered long-term, while almost half of the serious systemic reports were long-term. As discussed in the benefits section (section IX.F of this document), FDA has assumed, based on discussions with clinicians, that short-term impacts have a duration of 1 day and long-term impacts a duration of 2 months.

Table 2 also presents FDA's estimated annual number of each type of allergic reaction. Although no mortalities were reported in the MDR's for this period, anaphylaxis carries a risk of mortality that FDA statisticians place at up to 2 percent, even in health care settings. Because not all reported serious systemic respiratory reactions were anaphylaxis, FDA assigned a probability of 0.002 to the adjusted reports to account for potential fatalities due to anaphylactic shock caused by NL allergens. (This assumes that only 10 percent of all respiratory reactions that require aggressive treatment were due to anaphylaxis.) Given the estimated under-reporting rate, this implies an annual risk of 0.3 mortalities. FDA expects that by encouraging lower protein and powder levels for medical gloves, the proportion of allergic reactions to NL protein allergens will be reduced.

TABLE 2.—ESTIMATED NUMBER OF PATIENTS EXPERIENCING NATURAL RUBBER LATEX ALLERGIC REACTION ASSOCIATED WITH MEDICAL GLOVES FROM AUGUST 15, 1996, TO AUGUST 15, 1997, AND PROPORTION EXPERIENCING SHORT- AND LONG-TERM EFFECTS

	Type of Allergic Reaction				
	Local Topical	Systemic Topical	Systemic Respiratory	Respiratory Requiring Aggressive Treatment	
				Other Reactions	Mortality
Estimated Number of Patients Experiencing Reaction	2,588	2,717	38,045	149.7	0.3
Proportion Exhibiting Short-Term Effects (duration of 1 day)	94%	74%	73%	51%	NA
Proportion Exhibiting Long-Term Effects (duration of 2 months)	6%	26%	27%	49%	NA

C. Costs of the Proposed Regulation

This section develops estimates of the costs of compliance with the proposed rule by comparing the expected costs of using surgeon's and patient examination gloves after the rule is in effect to the costs that would have been incurred in the absence of the rule. Regulatory costs occur in four categories. First, the proposed regulation is expected to accelerate the trend of the glove market towards more costly, powder-free products. Second, higher average glove purchase prices will result from the increased cost of gloves with recommended levels of powder and NL proteins compared to the cost of gloves with unregulated levels of powder and NL proteins. Third manufacturers will be required to conduct shelf-life testing on gloves in order to support expiration dates. Fourth, increased labeling costs will result from the addition of protein and powder levels and/or expiration dating to each package of surgeon's and patient examination gloves. Because many of the estimates are derived from uncertain projections based on limited data, sensitivity analyses are presented for the most critical variables and assumptions.

D. Baseline Conditions

1. Annual Number of Gloves

To measure the incremental costs of the regulation against a baseline of nonregulation, FDA first projected future glove sales. An estimated 22.0 billion surgeon's and patient examination gloves were used in the United States in 1997, more than an 11-fold increase from the approximately 2.0 billion gloves used in 1987 (Ref. 38). The major contributors to this growth were the recognition of the potential risk from AIDS infection and the publication of Occupational Safety and Health Administration (OSHA) regulations requiring barrier protection for patients and employees exposed to blood borne pathogens (Ref. 40).

FDA assumed that the demand for surgeon's and patient examination gloves will continue to grow as a result of expected increases in employment within the health services industry (Standard Industrial Classification (SIC) 80). The Bureau of Labor Statistics has suggested that employment within this industry may continue to grow at an annual rate of 3.9 percent (Ref. 41). Assuming that annual glove use per employee remains at current levels of approximately 10 pairs per day, the agency projected that the annual demand for gloves will increase over the next 10 years at an approximate rate of 3.9 percent per year (see Table 3). As expected growth in employment or patient health service visits may also predict future glove use. FDA tested this assumption by forecasting alternative rates of growth in the sensitivity analyses presented in section IX.G of this document.

About 65 percent of the current glove market consists of powdered gloves (Ref. 38), but both health service facilities and glove manufacturers agree that the market share of powdered gloves is decreasing rapidly as facilities gain awareness of the potential adverse health effects associated with NL protein allergens. Manufacturers, however, explain that powdered gloves will not soon disappear, because new chlorinators and production lines associated with powder-free glove production take at least 18 months to install and because powdered gloves are still desired by a proportion of customers. However, manufacturers have estimated that even in the absence of this regulation, the market share of powder-free gloves could reach as high as 60 percent within 18 months (Ref. 38). For this analysis, FDA assumed that, even in the absence of regulation, the market share for powdered gloves would decrease from the current 65 percent down to 20 percent within 4 years. Concurrently, the market share for powder-free gloves would increase from 35 percent up to 80 percent over the same period (see Table 3).

Next, FDA estimated that gloves manufactured with synthetic materials (referred to as synthetic gloves), which are available in both powdered and powder-free varieties, account for approximately 10 percent of the current market. Most synthetic gloves are manufactured of vinyl, but other polymers are also used. Synthetic gloves are generally believed to provide less acceptable barrier protection after extended use and reduced tactile sensitivity compared to NL. FDA assumed that, in the absence of regulation, this market share would increase slightly each year, accounting for 20 percent of the market within 5 years. Table 3 includes the projected market shares for each glove type.

Because these projections contain considerable uncertainty, FDA analyzed several alternative assumptions in the sensitivity analysis section presented in section IX.G of this document. These scenarios assume that, in the absence of this rule, the anticipated baseline market adjustments would take either 10 years, or would not occur at all.

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TABLE 3.—SURGEON'S AND PATIENT EXAMINATION GLOVE MARKET SHARES—BASELINE ESTIMATE

Year	All Surgeon's and Patient Examination Gloves	Synthetic Gloves		Natural Rubber Latex Gloves		
	Number of Gloves (billion)	Number for Powder-Free (billion)	Number of Powdered (billion)	Number of Powder-Free (billion)	Number of Powdered (billion)	Total (billion)
Current	22.00	0.77	1.43	6.93	12.87	19.80
1	22.86	1.37	1.37	10.06	10.06	20.12
2	23.75	1.99	1.33	12.25	8.17	20.42
3	24.68	2.76	1.18	14.51	6.22	20.73
4	25.64	3.69	0.92	16.82	4.20	21.02
5	26.64	4.26	1.07	17.05	4.26	21.31
6	27.68	4.43	1.11	17.71	4.43	22.14
7	28.76	4.60	1.15	18.40	4.60	23.00
8	29.88	4.78	1.20	19.12	4.78	23.90
9	31.04	4.97	1.24	19.87	4.97	24.83
10	32.25	5.16	1.29	20.64	5.16	25.80

2. Baseline Glove Cost

There are an estimated 198 current marketers of surgeon's and patient examination gloves in the United States, 10 of which are domestic manufacturers. Approximately 95 percent of all gloves purchased in the United States are imported. Although individual marketers of surgeon's and patient examination gloves operate in a highly competitive industry and face highly elastic demand curves, the aggregate market demand for the gloves is assumed to be price inelastic, because of workplace regulations that require gloves as barrier protection (Ref. 42). Demand is inelastic if the percentage increase in price exceeds the percentage decrease in quantity sold. Consequently, most glove manufacturing cost increases would be passed on to health care facilities in the form of industry wide price increases. Although over 95 percent of the manufacturing facilities are located overseas and the world wide demand for gloves is high, the United States market dominates global sales. According to Malaysian manufacturers (Ref. 38), about 80 percent of their gloves are for U.S. customers.

Current prices of powdered NL gloves average $3.90 per 100, while powder-free NL gloves average $5.80 per 100 (Ref. 38). Prices were reported as averages of both surgeon's and patient examination gloves. The price difference of $1.90 per 100, or almost $.02 per pair, is attributable to a number of factors, but the predominant reason is the increased cost of removing former-release powder and/or applying other lubricants to produce powder-free gloves. The estimated cost for synthetic gloves is $4.15 per 100 for powdered and $5.03 per 100 for powder-free. Vinyl gloves account for 90 percent of the synthetic glove market, with the remaining gloves manufactured from polymers and other materials.

The nation's annual expenditures for surgeon's and patient examination gloves are currently estimated at over $1.0 billion. Even in the absence of regulation, FDA expects that these outlays would increase to $1.1 billion within 1 year and $1.7 billion within 10 years.

E. Estimation of Compliance Costs

The net costs of compliance with the proposed regulation is the difference between glove-related costs with and without the regulation. As noted earlier, industry comments suggest that even in the absence of this regulation, the market share of powder-free gloves is expected to increase from 35 percent to about 80 percent over a 4-year period. With regulation, this trend will be accelerated. Although the market effects of the rule cannot be known with certainty, FDA estimates that powder-free gloves will achieve the 80 percent market share 2 years earlier, or within 2 years of the rule's implementation. In addition, manufacturers would experience increased costs due to the recommendation to limit the level of protein to 1,200 g per glove and the level of powder on NL and synthetic powdered gloves to 120 mg per glove. These costs would be passed through to health care facilities in the form of higher prices. Finally, each package of NL gloves must include labeling that includes protein and powder levels and expiration dating, and shelf-life testing must support this labeling.

1. Accelerated Market Share for Powder-Free and Synthetic Gloves

Figure 1 illustrates FDA's forecast that powder-free gloves would gain 80 percent of the surgeon's and patient examination glove market share within 4 years without regulation and within 2 years with regulation. Manufacturers have indicated (Ref. 38) that if U.S. facilities are willing to bear the market price for powder-free gloves, the powder-free supply to other parts of the world could be shifted to meet U.S. demand and powder-free market shares could reach as high as 60 percent within 18 months. FDA forecasts that the proposed regulations will accelerate this trend by reinforcing incentives for facilities to use powder-free gloves. The shaded area of the chart measures the expected substitution of powder-free for powdered gloves caused by facilities choosing to increase use of powder-free gloves in response to regulatory controls. In addition, FDA projects that the synthetic market share will rise from 10 to 20 percent within 5 years without regulation, but within 2 years with regulation. The expected market shares with the proposed regulation in place are shown in Table 4.

FDA also examined the potential of this regulation to result in domestic shortages of latex gloves and concluded that there would be minimal disruption to the U.S. market, as it constitutes such a major proportion of global sales (up to 80 percent (Ref. 38)). If other countries do not restrict glove powder, it is possible that the number of powder-free gloves sold in those markets would fall in the short-term, while producers adjusted to the demand shift. FDA solicits public comment on how manufacturers would respond to these altered market forces.

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TABLE 4.—SURGEON'S AND PATIENT EXAMINATION GLOVE MARKET SHARES WITH REGULATION

Year	Surgeon's and Patient Examination Gloves	Synthetic Gloves		Natural Rubber Latex Gloves		
	Total Number (billion)	Number of Powder-Free (billion)	Number of Powdered (billion)	Number of Powder-Free (billion)	Total (billion)	Total (billion)
Current	22.00	0.77	1.43	6.93	2.20	19.80
1	22.86	1.37	1.37	10.06	2.74	20.12
2	23.75	2.47	1.33	12.97	3.80	19.95
3	24.68	3.95	0.99	15.79	4.94	19.74
4	25.64	4.10	1.03	16.41	5.13	20.51
5	26.64	4.26	1.07	17.05	5.33	21.31
6	27.68	4.43	1.11	17.71	5.54	22.14
7	28.76	4.60	1.15	18.40	5.75	23.00
8	29.88	4.78	1.20	19.12	5.98	23.90
9	31.04	4.97	1.24	19.87	6.21	24.83
10	32.25	5.16	1.29	20.64	6.45	25.80

Because the regulation would not be implemented until 2 years after publication of the final rule (as shown in Figure 1), no costs would be incurred in the first year. Moreover, there would be no market share-associated costs expected after the fourth year, because, by that time, there would be no difference in the respective market shares of powdered and powder-free gloves. Based on these assumptions, the accelerated increase in the powder-free market share results in increased regulatory costs of $18.9 million in the second year and $37.3 million in the third year. In the fourth year following implementation of the rule, costs would fall by $2.9 million due to the increased use of lower cost synthetic gloves. As shown in Table 5, the average annualized costs (at a 7 percent discount rate over a 10-year period) attributable to the accelerated market share for powder-free gloves are calculated at $6.4 million.

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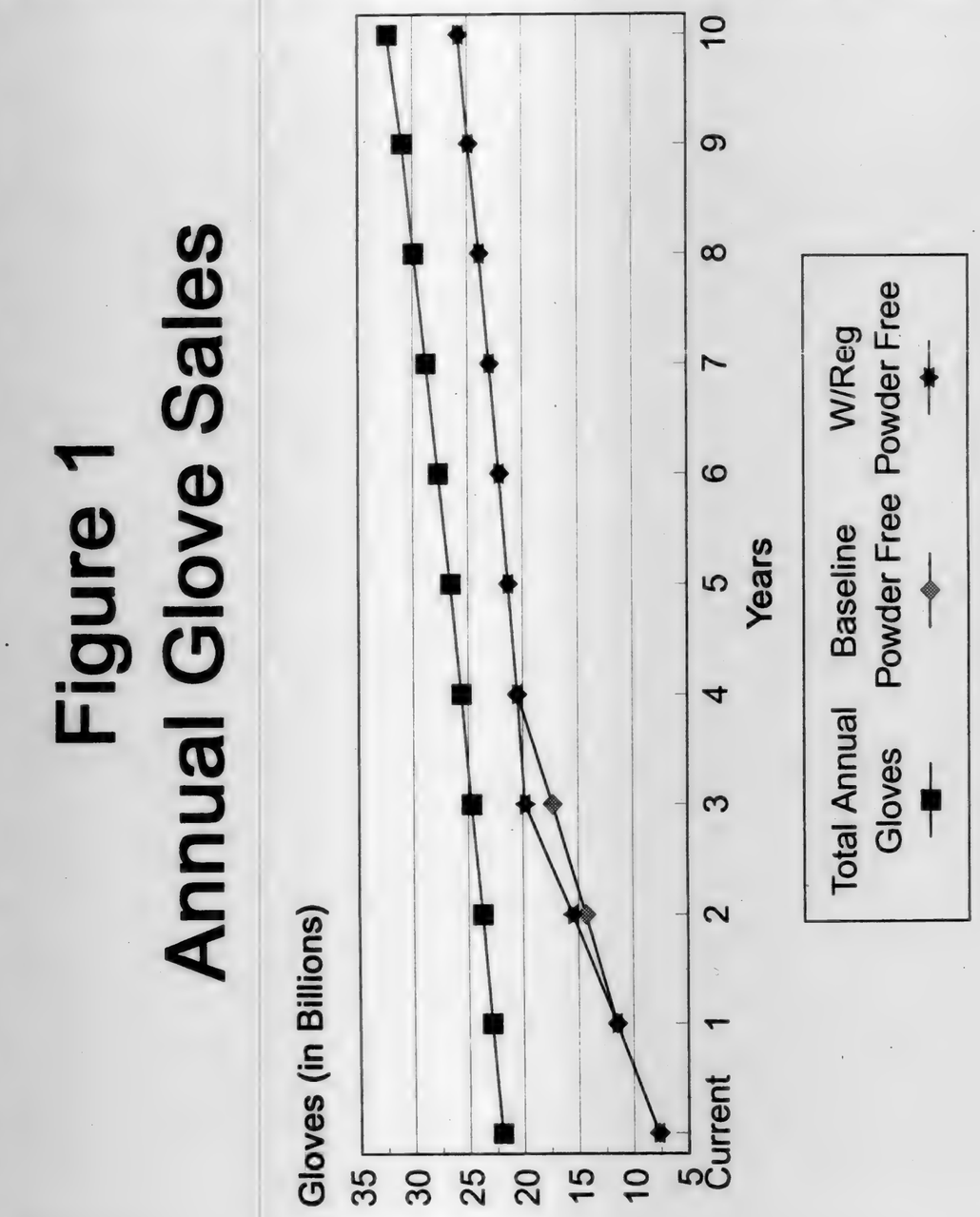

Figure 1
Annual Glove Sales

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2. Increased Costs for Powdered Gloves

Limiting the amount of protein and powder permitted on gloves would increase the production cost and therefore raise the purchase price of gloves to health care facilities. Although the limits are only recommended, both the actual and recommended levels of protein and powder must be included on the product label. Thus, FDA believes it likely that most glove manufacturers will meet the recommended levels. According to tests conducted by FDA, current powder levels on powdered gloves vary between 50 mg and 426 mg per glove. For this analysis, FDA assumed that a typical powdered NL or synthetic glove contains 260 mg of powder (based on the observed distribution). Current glove protein levels vary widely.

Several manufacturers indicated that even minimal recommendations on powder and protein would result in cost increases of as much as five percent. These increases would be due to the increased testing and validation required to ensure that gloves did not exceed limits, the slower production times resulting from more controlled processes, the increased inventory damage when stripping gloves from molds, the increased controls for slurry mixtures, the increased time spent cleaning or replacing filters and other equipment, and the other costs associated with more careful controls for the entire manufacturing process. Manufacturers stated that limiting powder is more a question of adding controls in the production process than adding new production lines or facilities. Equipment such as slurries and tumblers are currently in place, and controls are likely to consist of simply weighing finished gloves or weighing the slurry filters. However, these costs are expected to result in increased contract prices for U.S. health facilities, because there are no substitute products for medical gloves.

To calculate the costs of alternative permissible powder limits, FDA estimated an average cost function where the cost of reducing each mg of powder increases as the proportion of powder remaining on the manufactured glove decreases. Because current powdered NL gloves cost $3.90 per 100 and powder-free gloves cost $5.80 per 100, FDA calculated that the $1.90 cost of removing the average 260 mg of powder per 100 gloves is about $0.0073 per mg ($1.90/260 mg). If the cost function were linear, the incremental cost of reducing powder levels by 140 mg (i.e., from the current average 260 mg of powder to the recommended level of 120 mg) would be calculated as $0.0073 times 140, or $1.022 per 100 gloves. However, FDA believes that the relationship is unlikely to be linear as several manufacturers indicated that significant control costs would be needed to achieve even modest reductions in powder levels, after which average costs would rise slowly and then more steeply as powder concentrations approach zero. Such a functional form is typical of many manufacturing processes and illustrated by the solid sigmoid curve shown in Figure 2 (Refs. 44 and 45). A cost equation fitting this illustrated functional form is:

$$Y = 0.00365 + 0.0292(X - 0.5)^3$$

Where:

Y equals the cost per mg removed per 100 gloves, and

X equals the proportion of powder removed.

Figure 2 includes the estimated cost function for removing powder from synthetic gloves as the hashed line. The expected costs per mg removed are less than for NL gloves because the current price difference between powder-free and powdered synthetic gloves ($0.88 per 100) is less than the difference for NL gloves ($1.90 per 100).

On the assumption that these equations approximate the actual relationships, FDA estimates that the cost of limiting powder to 120 mg per 100 NL gloves is about $0.003652 per mg removed, or about $0.511 per 100 NL gloves. For synthetic gloves, the estimated costs are $0.001693 per mg removed, or about $0.237 per 100 synthetic gloves. As shown in Figure 3, the control costs rise sharply for limits below 120 mg. For example, a proposed powder limit of 100 mg per NL and synthetic glove would result in costs over 15 percent greater than the proposed 120 mg limit. Because of the control processes required, FDA assumes that the previous estimates would also account for the cost of limiting protein levels for NL gloves.

Table 5 shows these estimated costs over a 10-year period. Because the regulation is expected to be implemented 2 years after publication of the final rule, no increased powdered glove costs are incurred in the first year. In year 2, the higher prices for powdered NL gloves result in increased costs of $35.7 million. In year 3, these costs fall to $20.2 million. Thereafter, the yearly incremental compliance costs associated with NL glove powder and protein limits vary between $21.0 and $26.4 million. The average annualized contribution of this cost category (at a 7 percent discount rate over 10 years) equals $21.4 million.

Within 2 years, higher costs for powdered synthetic gloves will equal $3.1 million. The yearly incremental compliance cost for powdered synthetic gloves is expected to decrease to $2.3 million in year 3, and then increase slightly each year throughout the evaluation period. The average annualized contribution of this cost category (at a 7 percent discount rate over 10 years) equals $2.4 million.

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Figure 2. Cost per mg of Powder Removed from 100 Gloves by Proportion of Powder Removed

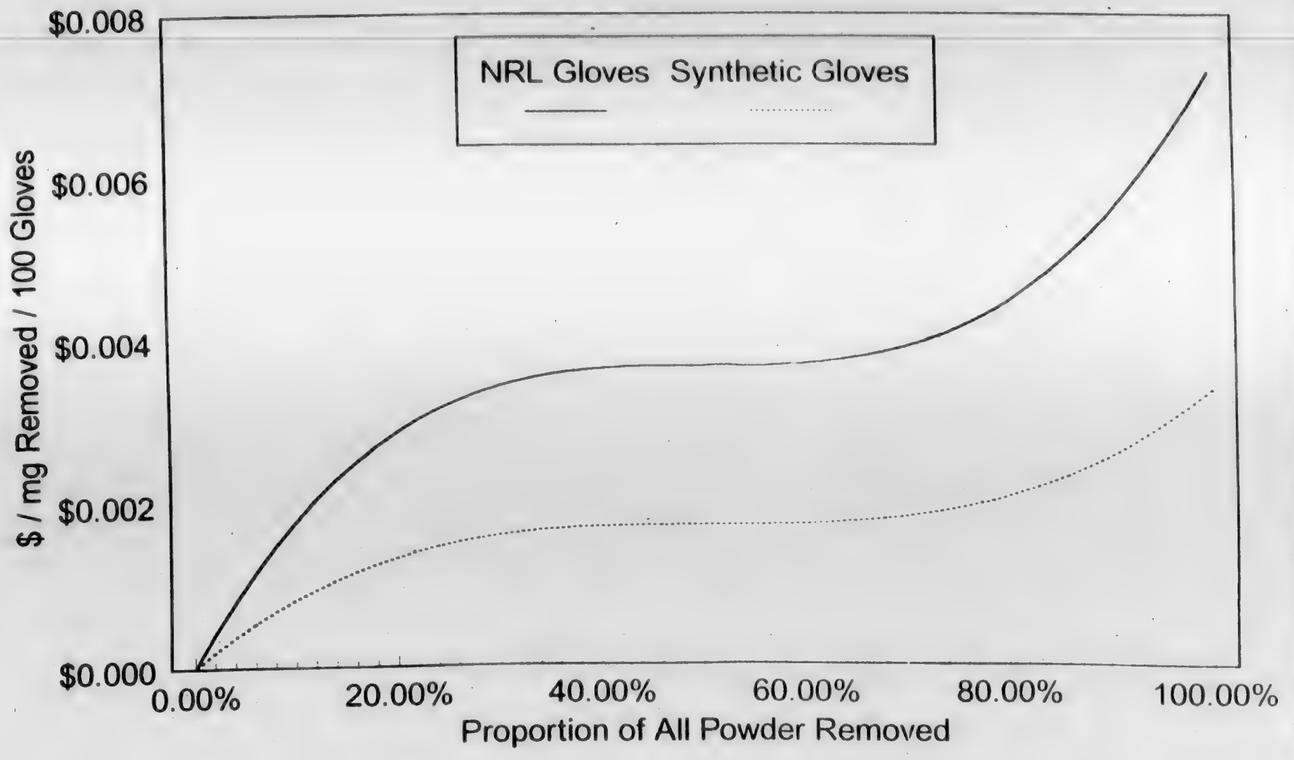

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Figure 3. Increased Cost per 100 Gloves by Powder Level

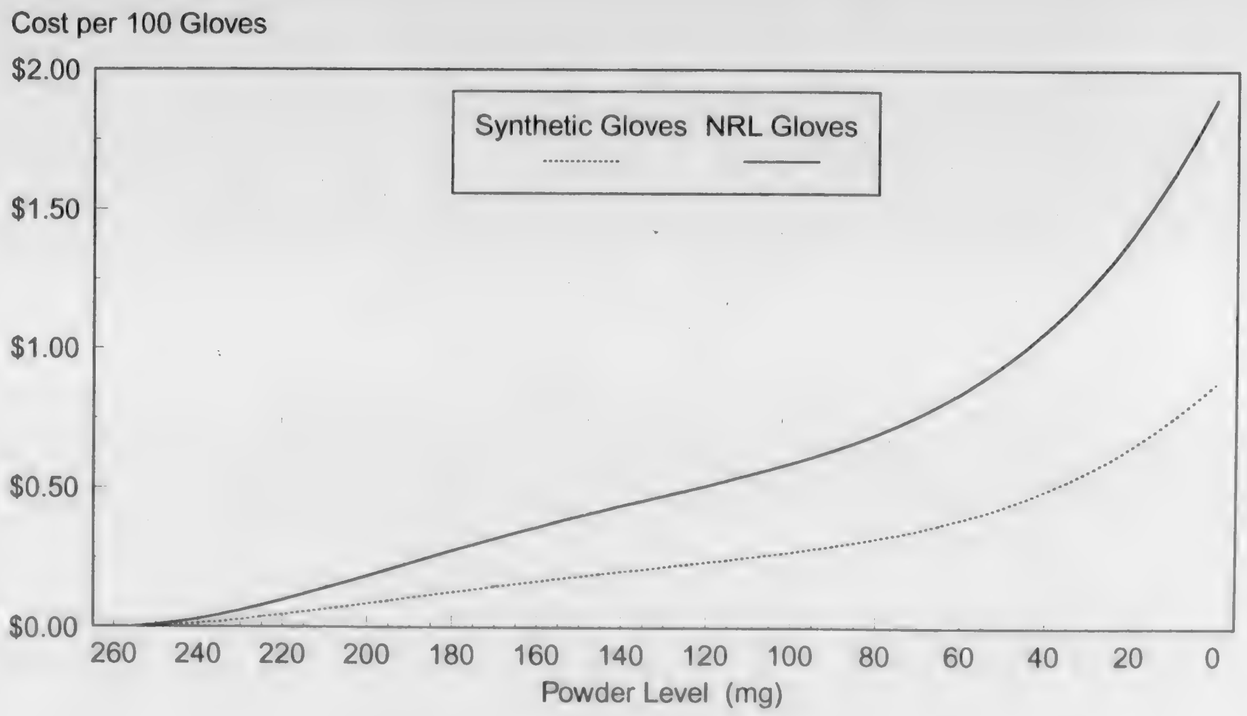

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TABLE 5.—COMPLIANCE COSTS OVER 10–YEAR PERIOD

Year	Cost of Accelerated Market Share ($ million)	Increased Powdered NRL Gloves ($ million)	Cost of Synthetic Gloves ($ million)	Cost of Shelf-Life Testing		Labeling Cost ($ million)	Total Cost ($ million)
				Test Cost ($ million)	Lost Inventory ($ million)		
1	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2	18.9	35.7	3.1	1.6	3.0	1.6	63.9
3	37.3	20.2	2.3	1.2	1.3	0.6	62.9
4	2.9	21.0	2.4	1.2	1.1	0.5	23.3
5	0.0	21.8	2.5	1.3	1.4	0.7	27.7
6	0.0	22.6	2.6	1.3	1.2	0.5	28.2
7	0.0	23.5	2.7	1.5	1.1	0.6	29.4
8	0.0	24.4	2.8	1.5	1.6	0.8	31.1
9	0.0	25.5	2.9	1.4	1.3	0.6	31.7
10	0.0	26.4	43.1	1.5	1.3	0.6	32.9
Total	53.3	221.0	24.6	12.5	13.3	6.5	331.2
Average Annualized (7 percent discount rate)	6.4	21.4	2.4	1.2	1.3	0.7	33.4

3. Costs of Shelf-life Testing and Inventory Loss

The proposed regulation will require manufacturers of patient examination and surgical gloves to develop and affix labeling to their products that will include expiration dating. To ensure that medical gloves will maintain adequate barrier protection for the entire stated period, manufacturers will likely conduct real-time shelf-life testing of gloves. The compliance costs of this testing includes both the actual cost of conducting laboratory tests, and the lost revenues of inventory lost due to sampling.

a. *Shelf-life testing.* FDA contracted with the Eastern Research Group (ERG), an economic consulting firm, to contact domestic and foreign glove manufacturers and research laboratories to determine the expected unit costs of shelf-life testing, and to determine current levels of industry compliance. ERG developed a cost model that estimated compliance costs according to the size of the manufacturer (Ref. 45a).

ERG estimated that the expected marketing life for each glove model is approximately 3 years. During this period, stability testing is likely to occur at 6-month, 1-year, 2-year, and 3-year intervals. The actual tests were assumed to consist of a combination of real-time and accelerated tests. Overall, the estimated costs of a shelf-life test was found to approximate $265 for foreign tests and $865 for domestic tests. (The difference in testing costs are attributable to the lower purchasing power parity per capita in foreign countries that produce medical gloves.)

As explained in Ref. 45a, almost 3,000 separate glove models are currently produced by 198 separate manufacturers. Only 160 models are marketed by the 10 domestic manufacturers. Given the expected growth in the demand for gloves, and the shift to powder-free and synthetic glove models, the estimated costs of shelf-life testing varies with FDA's projected number of future glove models. It was assumed that new models would have two shelf-life tests during the year of introduction while models already marketed would have one annual shelf-life test. Finally, ERG and industry sources estimated the current level of shelf-life testing based on both domestic/foreign and size characteristics.

Based on these assumptions, the greatest increase in shelf-life testing is expected during year 2, with over 6,000 additional tests due to this proposed regulation. The total cost of conducting these tests equals $1.6 million, of which $0.1 million is incurred by domestic glove manufacturers. Amortizing the annual testing costs by 7 percent over 10 years, the average annualized costs of conducting the required shelf-life tests equals $1.2 million.

b. *Inventory losses.* As part of these tests, manufacturers will be required to set inventory aside from which test samples will be selected. ERG, with discussions with laboratories and manufacturers, has determined that small glove manufacturers would be likely to set 10,000 gloves per model aside for shelf-life testing while large manufacturers would set 30,000 gloves per model. Given the industry characteristics as discussed in Ref. 45a, this implies that over 115 million gloves would be set aside in year 2. In addition, the relative market shares of synthetic, NL, powdered and powder-free gloves is expected to change over time which will affect the average lost revenue per sample. FDA analyzed the impact of this future inventory loss and found that during year 2 of the evaluation period, the value of lost inventory for testing is expected to equal over $3.0 million for the entire industry. The average annualized cost of this lost inventory (as shown in Table 5) at 7 percent over 10 years equals $1.3 million.

4. *Costs of Labeling.* ERG also developed estimates of the costs of developing the proposed enhanced labeling for gloves. These estimates included the costs of artwork, design, regulatory review, production and application, as shown in Ref. 45a. Overall, the average cost of developing a label for a foreign medical glove model was estimated to equal $411, while a domestic model would cost $1,444. The number of domestic and foreign glove models expected to be introduced throughout the 10-year evaluation period and the market characteristics as discussed in Ref. 45a, indicate that the costs of labeling will equal $1.4 million in year 2. These yearly costs will then decrease to as low as $0.3 million by the 10th year. The average annualized cost of developing and producing labeling for medical gloves attributable to this proposed regulation is estimated to equal $0.7 million, as shown in Table 5.

5. Total Incremental Costs

Figure 4 presents the estimated annual expenditures imposed by the proposed rule. Overall, costs of $63.9 million are expected in year 2. These costs decreased to $62.9 million in year 3, and then decrease to $23.3 million in the third year. Costs are expected to

increase slightly for each subsequent year. Most of the incremental costs, as shown in Table 5, are due to increases in glove costs (powdered NL and synthetic gloves with limited powder levels). The estimated average annualized cost over a 10-year period (at a 7 percent discount rate) is $33.4 million.

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Figure 4. Total Annual Compliance Costs

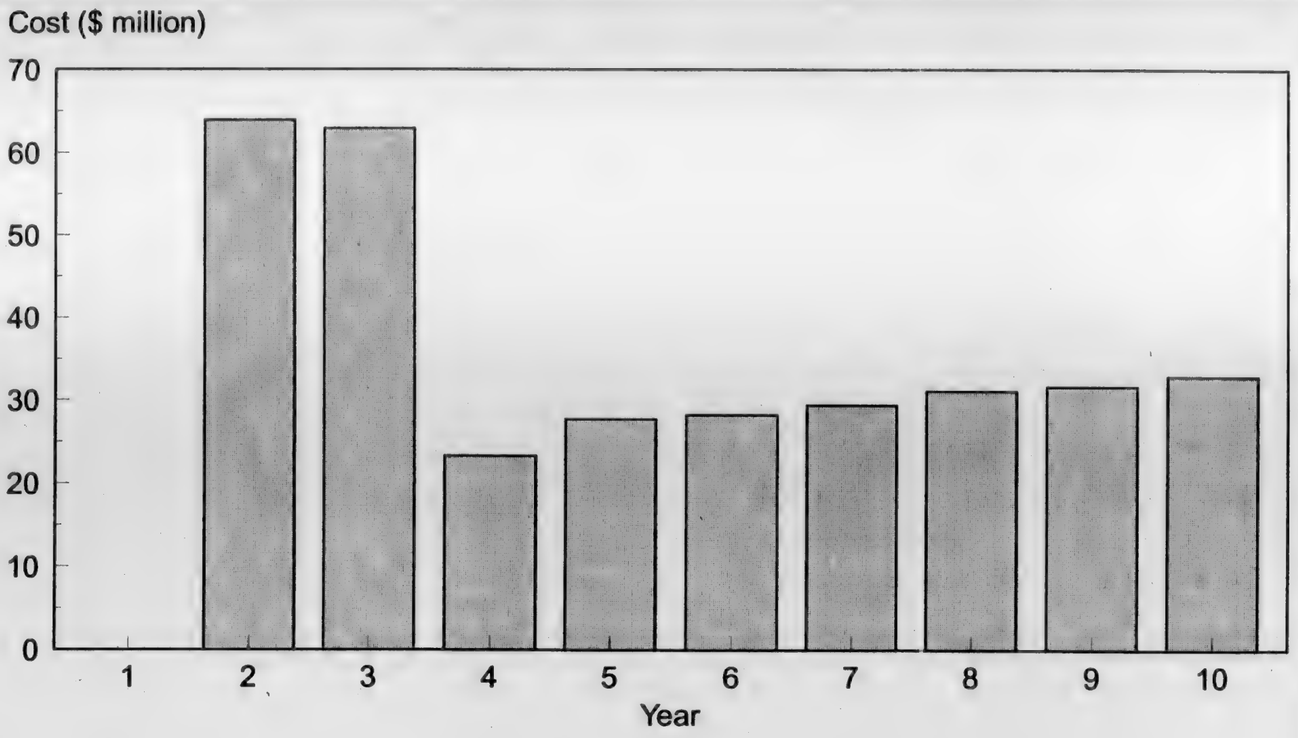

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Figure 5
Percent of the Population Experiencing Allergic Reaction to Natural Latex Proteins in Relation to the Level of Powder

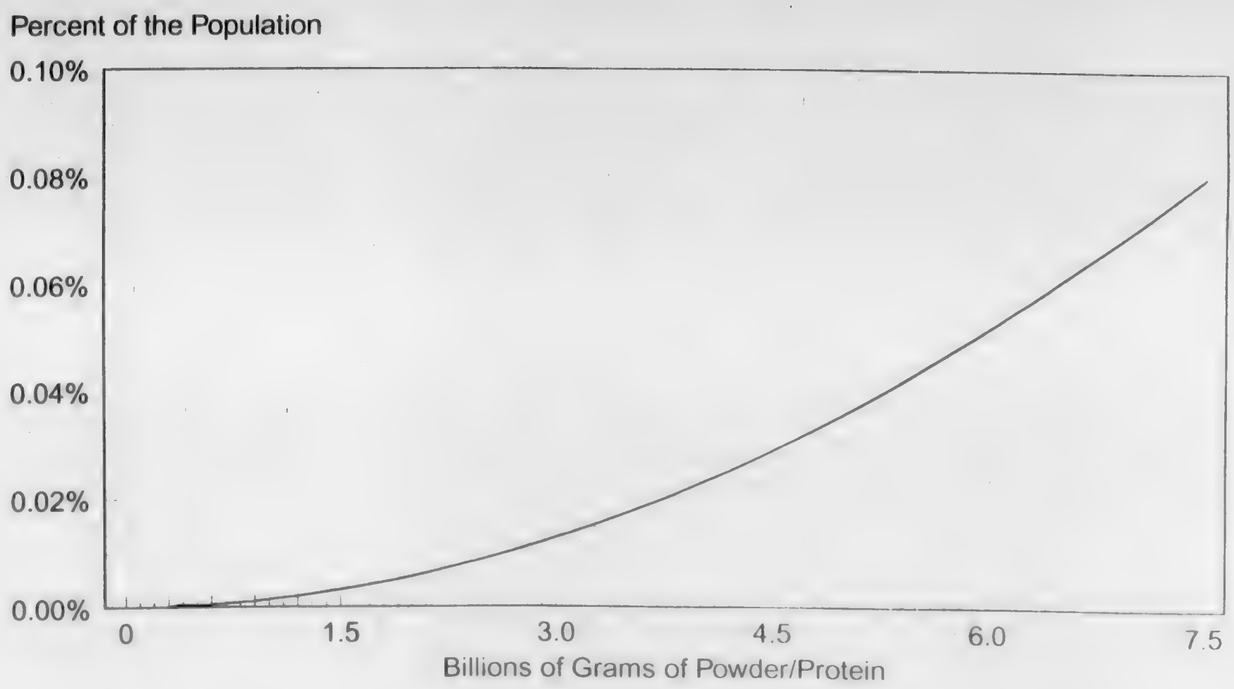

F. Benefits of the Proposed Regulations

1. Expected Risk Reduction

As discussed previously, the estimated annual proportion of the population (0.0001626) that experiences allergic reactions associated with medical gloves is assumed to be related to the prevalence of environmental protein and powder. Consequently, reducing protein and powder levels would reduce the proportion of the population expected to experience an allergic reaction. Decreases would be expected in NL sensitization as well as allergic reactions.

To estimate this relationship, FDA assumed that the proportion of the population affected would vary directly with the total quantity of environmental protein/powder. The annual level of environmental protein/powder was calculated from the expected annual number of powdered NL gloves multiplied by the average level of powder per glove. The current market share of powdered NL gloves (Table 3) and the current average level of glove powder (260 mg) yield an aggregate estimate of 3.346 billion g of protein/powder. This quantity of protein/powder is associated with allergic reactions in 0.0001626 of the population, or 0.000049 reactions per billion g. If the relationship between the number of reactions and the quantity of protein/powder were linear, the model implies a 30 percent reduction in allergic prevalence for each billion g of powder reduction. Alternatively, the function relationship may take other forms, and FDA suspects that the increasing number of reports of allergic reactions to NL in recent years likely indicates a nonlinear relationship. Figure 5 presents a polynomial projection that FDA tentatively adopts as a plausible estimate for this analysis. The equation of the function illustrated in Figure 5 is:

$Y = (0.0000143)X^2$

Where:

Y equals the proportion of the population with NL allergic reactions, and

X equals the level of environmental protein/powder (in billions of g).

Although the exact relationship is speculative, FDA believes that an exponential relationship as shown in Figure 5 is most likely. As shown in section IX.G of this document, the agency's sensitivity analysis indicates that due to the rising baseline projection, this polynomial projection yields smaller benefits than a linear model.

Table 6 shows the expected number of allergic reactions associated with protein/powder levels with and without the proposed regulation. The protein/powder amounts are derived from the expected numbers of powdered NL gloves shown in Tables 3 and 4, the current average glove powder level (260 mg per glove), and the new recommended glove powder level (120 mg per glove). Powdered synthetic gloves do not affect this relationship because no NL proteins are associated with those products. Table 6 shows that in the absence of the proposed regulation, the expected increased market share of powder-free gloves would reduce the number of annual allergic reactions attributable to medical gloves from 43,500 to only 4,800 within 4 years. With the proposed regulation in place, the expected number of allergic reactions would decrease to only 900 within 3 years, and consistently remain several thousand fewer than those expected without regulations.

2. Benefits

To estimate the potential benefits of the proposed rule, the number of reduced expected allergic reactions shown in Table 6 were distributed in proportion to the categories shown in Table 2. Assuming that the decreased number of reactions would not modify the severity distribution as reported in the MDR's (as adjusted to account for under-reporting), the proposed regulation would reduce annual allergic reactions by 15,100 within 2 years. The characteristics of these second year avoided reactions are shown in the first four columns of Table 7.

TABLE 6.—EXPECTED NUMBER OF ALLERGIC REACTIONS

Year	In the Absence of Regulation[1]			With Regulation[2]			Difference in Allergic Reactions with Regulation (000)
	Number of Powdered Natural Rubber Latex Gloves (billion)	Level of Powder (billion g)	Estimated Number of Allergic Reactions (000)	Number of Powdered Natural Rubber Latex Gloves (billion)	Level of Powder (billion g)	Estimated Number of Allergic Reactions (000)	
Current	12.87	3.35	43.5	- NA -	- NA -	- NA -	- NA -
1	10.06	2.62	26.9	10.06	2.62	26.9	0.0
2	8.17	2.13	17.9	6.98	0.84	2.8	(15.1)
3	6.22	1.62	10.4	3.95	0.47	0.9	(9.5)
4	4.20	1.09	4.8	4.10	0.49	1.0	(3.8)
5	4.26	1.11	5.0	4.26	0.51	1.1	(3.9)
6	4.43	1.15	5.4	4.43	0.53	1.2	(4.3)
7	4.60	1.20	5.9	4.60	0.55	1.3	(4.7)
8	4.78	1.24	6.4	4.78	0.57	1.4	(5.1)
9	4.97	1.29	7.0	4.97	0.60	1.5	(5.5)
10	5.16	1.34	7.6	5.16	0.62	1.6	(6.0)

[1] Powder level of 0.260 g per glove
[2] Powder level of 0.120 g per glove

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There is no methodology that permits a precise assignment of monetary values to regulatory health benefits. However, one approach recently described in the health economics literature (Refs. 47 and 48) combines relative states of well-being with observed willingness to pay for risk avoidance. FDA adopted this methodology and used the Kaplan-Bush Indices of Well-Being (Refs. 49 and 50) to estimate the value of reducing the number of allergic reactions.

The first step was to assign to each category of reaction a functional index based on mobility/physical/sociability scales. The index of relative well-being (as described in Refs. 49 and 50) utilize functionality levels as a basis for estimating well-being. The functionality scales are described in Table 8. Baseline levels of well-being were defined for 43 distinct combinations of mobility, physical activity, and sociability. For example, if a hypothetical patient could drive a car and use transportation without help (mobility equals 5), could walk without a physical problem (physical activity equals 4), and had no morbidity symptoms or problem, then this patient would have an assigned well-being of 1.0000. However, if this hypothetical patient could perform all of these activities, but suffered from any morbidity (including requiring eyeglasses), the assigned baseline level of well-being was found to equal 0.7433. The baseline levels of well-being are then adjusted, either up or down, based on the predominant symptom or problem that is on-going. This methodology is described in detail in Refs. 49 and 50. For example, a local topical reaction is unlikely to interfere with normal activities, such as driving a car or performing housework. A patient suffering from a local topical reaction is expected to continue to be able to interact with others in a normal manner. This functional state is assigned a relative well-being rate of 0.7433, or roughly 74 percent of optimum well-being. This baseline functional index is based on the prevailing medical problem. In this case, the problem/symptom is identified as "burning and/or itching of skin" and the 0.0171 value for this problem/symptom (from Refs. 49 and 50) is added to the basic functional state. Thus, by combining these indices, a person suffering a local, topical allergic reaction is expected to have a relative well-being of 0.7604. Each of the categories of reactions have been assigned values, as included in Table 7. Mortalities are valued as 0.0000.

Next, optimum values of well-being were derived for both short-term durations (1 day) and long-term durations (2 months). The economic literature includes many attempts to quantify society's willingness-to-pay (WTP) to avoid risks. Various methodologies have resulted in an average value of approximately $5.0 million as a measure of the WTP to avoid a statistical death (Refs. 51, 52, and 53). By amortizing this value to account for life expectancy and expected disability-days (Refs. 54 and 55), FDA estimates that a quality-adjusted life-year (QALY) has an approximate value of $373,000. Using this estimate, the expected value of a quality-adjusted life-day is approximately $1,022 and the expected value of two quality-adjusted life-months is $62,166.

The relative wellness values for each category shown in Table 7 represent the proportion of wellness relative to an optimum level. The willingness of society to pay for avoiding each incident were reflected as the difference between the wellness state and an optimum level multiplied by the duration of the event. For example, a local topical allergic reaction has an expected wellness value of 0.7604, or 0.2396 below optimum. This difference is used to calculate the amount that society is willing to pay to avoid a reaction of this type.

TABLE 7.—CHARACTERISTICS OF REDUCTIONS IN SECOND YEAR ALLERGIC REACTIONS

Category of Reaction	Number of Avoided Reactions (000)	Number of Avoided Short-Term Reactions (000)	Number of Avoided Long-Term Reactions (000)	Functional State[1]	Problem/ Symptom Weight[2]	Relative Wellness	Value per Short-Term Reaction	Value per Long-Term Reaction ($ 000)	Value per Short-Term Reaction Avoided ($ 000)	Value per Long-Term Reaction Avoided ($ 000)	Total Value ($ 000)
Local Topical	0.89	0.84	0.05	0.7433	0.0171	0.7604	245	14,900	205	794	999
Systemic Topical	0.94	0.69	0.24	0.6065	0.0171	0.6236	385	23,400	267	5,709	5,976
Systemic Respiratory	13.24	9.66	3.57	0.525	-0.0075	0.5175	493	30,000	4,764	107,194	111,958
Respiratory Requiring Aggressive Treatment	0.05	0.03	0.03	0.5284	-0.1507	0.3777	636	38,700	17	972	980
Mortality	0.00	NA	NA	0	0	0	NA	NA	NA	NA	5143
Totals	15.11	11.22	3.90								120,436

[1] Functional states: Mobility - 5; Physical activity - 4; Social - 5 = 0.7433
Mobility - 4; Physical activity - 4; Social - .4 = 0.6065
Mobility - 4; Physical activity - 3; Social - 3 = 0.525
Mobility - 4; Physical activity - 1; Social - 2 = 0.5284
Mortality = 0.0000

[2] Problem/Symptom Adjustments:
Burning or itching rash on body = +0.0171
Wheezing or shortness of breath = -0.0075
Loss of consciousness, fainting = -0.1507

[3] Value per mortality is $5 million. May not add due to rounding.

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For 1 day, this value is $245 ($1,022 x .2396) and for 2 months, the estimated value per reaction is $14,895. The derived values for each of the reaction categories and terms are shown in Table 7.

The values for each category, when multiplied by the number of decreased reactions expected due to this regulation, result in the expected annual benefit. Table 7 includes this estimate for only the second evaluation year. It indicates that society would be willing to pay a value of approximately $120.4 million to avoid 15,100 allergic reactions to NL protein.

Taking these steps for each year in the evaluation period yields estimates of the willingness to pay to avoid these reactions as shown in Table 9. The undiscounted benefits equal $120.4 million in year 2, then decrease to $30.4 million in year 4. Between years 4 and 10, the estimated annual benefit increases to a value of $47.5 million. The estimated annualized benefit of avoiding these reactions is $46.9 million.

FDA notes that other potential benefits, such as the avoidance of third-party payments as a result of treating fewer allergic reactions, the value of reduced anxiety due to lowering NL sensitization, the reduction in defects in glove barrier integrity, and the reduction in other foreign body reactions caused by glove powder have not been quantified at this time. FDA recognizes the considerable uncertainty of all of these estimates, however, and requests comment on all of the data and assumptions.

TABLE 8.—DESCRIPTION OF INPUTS TO FUNCTIONALITY LEVELS

Mobility	Physical Activity	Social Activity
5-Drove car and used transportation without help		5-Did work, school, or housework and other activities
4-Did not drive, needed help with transportation	4-Walked without physical problem	4-Did work, school, or housework, but other activities limited
3-In house	3-Walked with physical problem	3-Limited in work, school or housework
2-In hospital	2-Moved own wheelchair without help	2-Performed self-care
1-In special unit	1-In bed or chair	1-Had help in self-care

Source: Kaplan, Bush, et. al. (Refs. 49 and 50)

TABLE 9.—Expected Benefit of Decreased NRL Allergic Reactions Due to Regulation

Year	Decreased Reactions (000)	Value of Decreased Reactions ($ million)	Net Present Value of Decreased Reactions ($ millions)
Current	NA	NA	NA
1	0.0	NA	NA
2	(15.1)	120.4	105.2
3	(9.5)	76.0	62.0
4	(3.8)	30.4	23.2
5	(3.9)	31.1	22.2
6	(4.3)	34.0	22.7
7	(4.7)	37.1	23.1
8	(5.1)	40.3	23.4
9	(5.5)	43.7	23.8
10	(6.0)	47.5	24.2
Average Annual Benefit ($ million)			46.9

G. Sensitivity Analyses

FDA examined the impact of various assumptions that affect future conditions. These analyses are as follows:

1. Growth Rate of the Demand for Surgical and Patient Examination Gloves

FDA used 1992 to 1994 rates of employment growth within the health services industry (SIC 80) to project a 3.9 percent annual growth in the future demand for surgical gloves (Ref. 41). However, more recent data obtained for the period up to 1998 suggest the more modest growth rate of 2.7 percent for this industry (Ref. 55a). Examining the expected costs and benefits after lowering the expected growth for surgical and patient examination gloves to 2.7 percent indicates that average annual costs decrease from $33.4 to $31.5 million and average annual benefits decrease from $46.9 to $42.1 million. If the forecast relied instead on the growth of total employment hours in the health service industry (Ref. 55b), the rate in recent years has been approximately 2.0 percent. Using this rate as the expected growth rate for surgical and patient examination gloves results in average annual costs of $30.4 million and average annual benefits of $39.6 million.

FDA notes that under the alternative assumptions, both costs and benefits are lower than under the scenario presented earlier, but the regulation would still be justified.

2. Market Shares of Powder-Free and Synthetic Gloves

FDA has estimated that in the absence of regulation, within 4 years, 80 percent of the glove market would consist of powder-free gloves; and within 5 years, 20 percent of all gloves would be manufactured of synthetic material. The proposed regulation is expected to accelerate these trends to within 2 years of implementation.

To examine the sensitivity of these assumptions, FDA calculated the costs and benefits of the rule assuming that, in the absence of regulation, it would take 10 years rather than 4 years for powder-free gloves to account for 80 percent of the market and 10 years rather than 5 years for synthetic gloves to account for 20 percent of the market. The expected average annual costs in this scenario equal $72.7 million, and the average annual benefits equal $112.1 million. FDA also examined the impact of assuming no expected change in baseline market share from the first implementation year, in the absence of regulation. In this case, the average annual costs equal $135.7 million, and the average annual benefits equal $283.2 million.

3. Linear Relationship between Environmental Protein/Powder and Allergic Reactions

FDA expects that an exponential relationship exists between protein/powder levels and allergic reactions, but the agency also examined the effect of a linear relationship. The linear model increased the expected average annual benefit of reducing exposure from $46.9 million to $75.7 million, by increasing the number of avoided incidents as protein/powder levels were decreased. Table 9 indicates the magnitude of the expected decrease in NL reactions using the expected exponential relationship. A total of 57,900 avoided reactions were forecast. If the actual relationship were linear, the rule would be expected to result in the avoidance of 88,100 incidents over the same period.

4. Conclusion

FDA has tested several key assumptions used in the analysis of impacts. Each simulation resulted in estimated benefits exceeding costs. Nonetheless, FDA recognizes the significant uncertainty in this analysis and requests any additional information that would improve the projections.

H. Small Business Impact

1. Initial Regulatory Flexibility Analysis

FDA believes that the proposed regulation will not have a significant impact on a substantial number of small entities, but conducted an initial regulatory flexibility analysis (IRFA) to ensure that impacts on small entities were assessed and to alert any potentially impacted entities to the opportunity to submit comments to the agency.

2. Description of Impact

The objectives of the proposed regulation are to reduce the adverse health effects attributable to allergic and foreign body reactions from NL allergens and glove powder and to defects in barrier protection and quality of surgeon's and patient examination gloves. The proposed regulation will accomplish these objectives by reclassifying surgeon's and patient examination gloves into class II products, and requiring product labeling. In addition, the proposed regulation recommends protein and powder levels for surgeon's and patient examination gloves. FDA's statutory authority for the proposed rulemaking under the act is discussed in section II of this document.

Two separate industries will be affected by the proposed regulation: Manufacturers of surgeon's and patient examination gloves (found in Standard Industrial Classification 3842, Medical Equipment and Supplies) and Health Facilities (found in SIC 80).

TABLE 10.—NON-HEALTH CARE INDUSTRIES THAT USE GLOVES AS PROTECTION

Industry Sector	SIC Code	Number of Establishments	Number of Employees
Government	9,461	10,893	56,345
Residential Care	836	2,423	NA
Personal Services	7,362	1,348	163,477
Funeral Services	726	19,890	57,013
Health Units in Industry	NA	202,540	178,732
Non-Health Research Laboratories	8,221	1,453	89,159
Linen Services	7,218	1,250	50,000
Medical Equipment Repair	384	1,076	6,185
Law Enforcement	9,221	4,946	341,546
Fire and Rescue	9,224	3,174	252,048
Lifesaving	9,229	100	5,000
Schools	9,411	6,321	4,132
Waste Removal	4,953	940	13,300

Source: OSHA (Ref. 40)

FDA considered the potential impact of the proposed regulation on a number of nonhealth industries, but found that any impact would be insignificant. When OSHA issued its final regulations on blood-borne pathogens (Ref. 40), it considered a wide-range of establishments including: Law enforcement agencies, schools, linen services, and funeral parlors (see Table 10). While a substantial number of these establishments are small under the Small Business Administration definition, this proposed regulation does not require the use of FDA-regulated medical gloves at these sites. OSHA assumed that many of these industries would use utility gloves or consumer-grade gloves to provide barrier protection. For example, janitorial services and waste removal establishments were assumed to use utility work gloves, while law enforcement agencies were expected to use consumer-grade vinyl gloves. Few industries or establishments were expected to use FDA-regulated medical gloves in nonmedical settings. However, even in settings where medical gloves may be used, the frequency of glove usage was much less in these sectors. OSHA estimated that an average school would use approximately eight pairs of gloves per day. In contrast, a small physician/dental office would be expected to use 30 pairs of gloves per day. Both the relative frequency of glove use and the concentration of FDA-regulated medical gloves convinced FDA to focus on the Health Services Industry (Table 11) as the area of largest potential impact.

TABLE 11.—ESTABLISHMENT AND EMPLOYMENT IN THE HEALTH SERVICES[1]

Establishments and (Standard Industrial Classification Codes)	Number of Establishments (thousand)	Number of Employees (thousand)	Average Number of Employees per Establishment
Total Health Services (80)	1,030.0	11,000.0	10.7

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TABLE 11.—ESTABLISHMENT AND EMPLOYMENT IN THE HEALTH SERVICES[1]—Continued

Establishments and (Standard Industrial Classification Codes)	Number of Establishments (thousand)	Number of Employees (thousand)	Average Number of Employees per Establishment
Clinics and Offices of MD's (801)	328.9	1,908.4	5.8
Clinics and Offices of Dentists (802)	138.5	709.4	5.1
Clinics and Offices of Osteopathy (803)	18.4	60.6	3.3
Other Health Practitioners (804)	243.0	483.6	2.0
Nursing Facilities (805)	57.7	2,011.8	34.9
Hospitals (806)	7.1	4,496.5	633.3
Medical/Dental Laboratories (807)	29.4	229.3	7.8
Home Health Services (808)	99.9	743.9	7.4
Other Allied Services (809)	107.7	356.5	3.3

[1] 1992 Census of Service Industries and Bureau of Labor Statistics projections of employment trends in the health services industries.

Glove manufacturers will be affected by labeling that requires additional warnings and statements concerning recommended protein and powder limits, testing and validation measures that are necessary to ensure the accuracy of this information, and limitations on the use of powder for mold release. Health facilities will face increased expenditures for surgeon's and patient examination gloves by either shifting from powdered gloves to more expensive powder-free products or continuing to use powdered gloves that cost more due to production cost increases.

Manufacturers classified within the four-digit SIC code 3842 are typically small. Only 38 percent of all establishments had 20 or more employees in 1992 (Ref. 56), and companies had an average of 1.12 separate establishments. The manufacturers are highly specialized, with over 92 percent of their products considered within the medical equipment and supplies industry, and 94 percent of all medical equipment and supplies manufactured by these firms. The Small Business Administration classifies as small any entity within this industry with 500 or fewer employees (Ref. 57), capturing the majority of establishments. However, the affected manufacturers of surgeon's and patient examination gloves have some product-specific characteristics that distinguish them from the average establishment in this industry.

FDA's registration system for medical devices shows 198 manufacturers of surgeon's and patient examination gloves, the vast majority of which are located outside the United States and operate in a world-wide market, although the U.S. constitutes the most significant regional market. FDA examined the records of current manufacturers and identified 10 domestic manufacturers of surgeon's and patient examination gloves out of the total 198 marketers. Only 1 of these 10 domestic manufacturers reported employment of fewer than 1,200 employees. However, FDA acknowledges that additional small domestic manufacturers could enter the market in the future.

The main impacts of the proposed regulations on small manufacturers would occur if the manufacturer had to conduct additional validation tests to ensure the accuracy of protein and powder levels displayed on the product labeling and if increased inventory loss or slower production times occurred due to limited uses of powder as a mold release. Although FDA does not stipulate the acceptable validation test method in the regulation, and is soliciting comments on this issue in order to minimize its impact, it is possible that a chemist would be required on a contract basis to ensure that the actual levels of protein and powder matched the levels on the label. FDA is working with industry groups to ensure that an acceptable and reliable test method is chosen. Despite this outreach, the selected test method could impose additional and disparate costs to a small manufacturer. Similarly, increased inventory loss because of tearing in the production process due to limited powder would affect small production runs to a greater degree than large production runs. Discussions with manufacturers have indicated that any additional validation testing or negative impacts on production capability could increase the production costs of medical gloves by 5 percent or more.

As discussed earlier in the analysis of impacts section (section IX.D of this document), the demand for medical gloves is highly price inelastic due to the regulatory requirement for health facilities (SIC 80) to provide barrier protection (Ref. 40) and the lack of substitute products (Ref. 42). The characteristics of the medical glove market therefore indicate that production cost increases resulting from the proposed rule are likely to be passed through in the form of higher contract prices. In addition, many facilities are currently accepting increased glove prices by establishing powder-free environments in the absence of any rule-making. Thus, production cost increases by glove manufacturers are likely to be offset by revenue gains for these same manufacturers, with the result of shifting the cost impact to the health facilities.

Small health facilities therefore will also bear some regulatory impact. The Small Business Administration has defined as small any "for-profit" health facility with annual revenues of $5 million or less (Ref. 57). Most hospitals and nursing facilities would be considered large under this definition. However, nonprofit facilities not dominant in their field are also considered small entities. Industry characteristics of the health facility industry are shown in Table 11. Approximately 95 percent of the hospitals and nursing facilities are considered as small entities (6,700 hospitals and 54,800 nursing facilities).

FDA examined the potential impact of the proposed regulations on two types of health care user facilities: Small physician/dental facilities and small hospitals. A small physician or dental facility may use as many as 25,000 (based on 120 patient visits per week) gloves each year. If the facility substitutes powder-free for powdered gloves as a result of this regulation, costs would increase by $475 per year ((25,000/100) x $1.90).

Similarly, a small hospital is also likely to experience increased annual costs of acquiring gloves. An extremely small hospital with only 6 beds and a staff of 11 might use about 22,000 gloves annually. If the facility faced increased glove costs, the total increase in costs could amount to about $950.

FDA wishes to collect additional information on the nature of the impacts on small entities in order to ensure that all such impacts are noted. In addition,

other public facilities such as prisons, and police or fire departments may face higher glove prices due to this regulation. FDA does not expect these costs to be significant, but solicits comments on this potential burden.

3. Analysis of Alternatives

FDA has examined and rejected the following alternatives to the proposed rule:(1) Banning powdered gloves; (2) mandating protein and powder levels on medical gloves; (3) requiring all users of powdered gloves to comply with restrictions on distribution and use; (4) retaining the class I classification for all (or some) of the medical gloves; and (5) excluding powdered synthetic gloves from this rulemaking; and (6) providing for a shorter or longer compliance period. FDA has rejected the alternatives at this time for the following reasons:

Alternative 1: A ban of all powdered medical gloves has been requested in a citizen petition submitted to FDA. FDA considered banning powdered gloves because that action would meet the stated objective of eliminating airborne powder and greatly reducing exposure to airborne allergens associated with the use of medical gloves. However, FDA did not select this alternative because a ban would not address exposure to NL allergens from medical gloves with high levels of NL proteins. Moreover, such a ban of powdered gloves might compromise the availability of high quality medical gloves and greatly increase the annual costs by almost as much as $64 million over the selected alternative.

Alternative 2: FDA also considered mandating powder and protein levels for medical gloves because this alternative would accomplish the stated objectives more completely than banning. FDA rejected mandating powder and protein levels for medical gloves because the agency believes that the increased regulatory flexibility of the proposed rule may reduce the costs of compliance by allowing for more efficient methods of reaching the goal. Inventories could be lowered and industry capacity could be assured. Mandating specific protein and powder levels, as well as the acceptable test method, may preclude all parties from developing a more efficient system. In addition, FDA inspectional and compliance costs are minimized by relying on recommended levels of powder and protein. By ensuring user access to relevant information, the agency believes that users will move the market to a more efficient level.

Alternative 3: FDA considered restricting the distribution and use of powdered NRL or synthetic material medical gloves by requiring that establishments using powdered gloves establish and maintain written procedures for selecting, purchasing and distributing gloves. FDA further considered restricting the distribution and use of powdered NRL or synthetic material medical gloves by requiring establishments using powdered gloves with more than the recommended powder levels to establish and maintain written procedures to evaluate, monitor and control airborne particulate matter at the point of use, through the use of an externally exhausted air handling system, HEPA filtration, or other system. FDA believes that these restrictions would reduce the risk of adverse foreign body and allergic reactions associated with powdered glove use. However, the extent of the expected reduction is uncertain. The expected costs of complying with these restrictions was estimated to be over $21 million. Furthermore, any such workplace restrictions may impede or preempt the authority of OSHA to regulate gloves and glove powder in the workplace.

Before rejecting this alternative, the agency had examined the feasibility of exempting small facilities from the requirements of developing written procedures and air quality measures. Based on the expectation that small establishments with 10 or fewer employees would be able to communicate and control risks associated with powdered medical easier than larger institutions. Exempting small medical facilities from these controls lowers the added costs to $6.6 million. However, FDA rejected this alternative because the expected benefits of restricting glove use remained uncertain, and the potential overlap of authority with OSHA would still exist.

Alternative 4: FDA considered retaining the class I classification for all or some of the medical gloves. This alternative was rejected because it did not meet the stated objectives. In light of new information concerning barrier integrity, degradation of quality during storage, contamination concerns and concerns about exposure to foreign bodies and allergens, FDA found that general controls are no longer sufficient to provide reasonable assurances of the safety and effectiveness of medical gloves. Moreover, such concerns were not limited to only powdered gloves. To require a device to meet special controls as well as general controls, a device must be classified (or reclassified) into class II. Consequently, although compliance costs would have been reduced by this alternative, retaining some or all gloves as class I devices was rejected.

Alternative 5: Alternative 5 (excluding powdered synthetic gloves for this rulemaking) was considered in order to reduce cost by as much as $2.4 million per year. FDA rejected this alternative because it would not meet the stated objective of the applicable statutes. While synthetic gloves do not contain NL proteins, FDA is concerned about foreign body reactions caused by glove powder. These reactions occur whether the powder is present on a NRL or synthetic glove. Consequently, FDA is rejecting exempting powdered synthetic gloves from this regulation.

Alternative 6: FDA considered providing a shorter compliance period for implementation of the regulation. A compliance period of 90 days or 1 year would significantly increase the expected benefits of the rule by decreasing the number of annual allergic reactions. FDA estimates that a 90-day or 1-year implementation period would result in between 3,300 and 3,600 fewer annual allergic reactions to NL proteins than the number expected with the selected 2-year compliance period. However, FDA is concerned that the lead times necessary to manufacture limited powder gloves would make compliance difficult. As stated earlier, manufacturing equipment used to control glove powder levels is currently backordered as much as 18 months, and short compliance periods may result in inadequate supplies of medical gloves. Not including the potential of shortages, FDA has estimated that average annualized costs of shorter compliance periods could equal $10 million to $16 million more than the selected alternative. The 2-year compliance period allows firms to combine recommended changes with any other market driven changes, and will allow firms to deplete their supply of existing labels. As set forth above, however, FDA is soliciting comment on the timeframe for implementation to determine whether a 2–year compliance period is really needed. FDA also rejected providing a longer compliance period. FDA has tentatively determined that the decrease in costs is outweighed by the decrease in benefits if the compliance period is lengthened to as many as 3 years. While annual costs would decrease by almost $9 million, allowing such a long compliance period would result in about 1,800 additional average annual allergic reactions as compared to the selected alternative and benefits would be reduced to $32.0 million. Since glove manufacturers would have ample opportunity to comply within the

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selected 2-year period, FDA does not believe that additional time is justified.

FDA solicits comments on other alternatives that meet the stated objectives.

4. Assuring Small Entity Participation in Rulemaking

At this time, FDA does not believe that the proposed regulation will have a significant economic impact on a substantial number of small entities. However, the agency recognizes that many facilities will be affected. The impact may range from increased glove manufacturing costs due to validation testing and control of mold powder to increased contract prices of powdered gloves used by health facilities. FDA solicits comments from affected entities to ensure that this impact is analyzed.

FDA plans to provide for access to the **Federal Register** analysis through FDA's website on the Internet. Notice of the availability of this proposed rule and request for comment will be communicated to all glove-related associations and include a request for comments.

FDA is currently preparing an article for publication in latex-related trade publications that will highlight the proposed requirements. In addition, notice of the proposed rulemaking and request for comments will be available in health-related publications and sent to trade organizations. FDA actively seeks input into this proposal and requests comments on all aspects of the analysis of impacts and the regulatory flexibility analysis.

X. Conclusion

FDA has examined the impacts of the proposed regulation of protein and powder levels of NL gloves. Based on these estimates, the average annual quantifiable benefits ($46.9 million) exceed the average annual quantifiable costs ($32.5 million). Given the high level of uncertainty and the existence of unquantified benefits, FDA solicits comment on this analysis and all of its assumptions and projections.

XI. Environmental Impact

FDA has determined under 21 CFR 25.30(k) and 25.34(b) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XII. Paperwork Reduction Act of 1995

This proposed rule contains information collections provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Labeling and Written Procedures Requirements for Powdered and Powder-Free Patient Examination Gloves, and Powdered and Powder-Free Surgeon's Gloves.

Description: The proposed rule intends to provide users with material information to safely use patient examination and surgeon's gloves. The proposed rule expands the labeling for medical gloves to include: (1) Caution statements including the actual levels of protein and powder on the gloves, and (2) expiration dating.

The proposed labeling requirements would require manufacturers to conduct tests to support the protein and glove powder levels and expiration date. The proposed special control, a guidance document entitled "Medical Glove Guidance Manual," recommends that protein levels be measured by the ASTM D 5712 modified Lorry method and that glove powder levels be measured by the ASTM D6124–97 method. The labeling requirements also require stability testing to support the expiration date. The special control recommends that stability testing include tensile strength, elongation and water leak tests.

The labeling is intended to communicate useful information to users about FDA's guidance recommending the use of gloves with no more than 1,200 µg of protein and 120 mg of glove powder (or 2 mg of powder, for powder-free gloves) and to ensure that the labeling contains adequate directions for use. The labeling would require manufacturers to indicate the actual levels of protein and powder on the gloves so that the user can ascertain if the gloves meet the recommended limits on protein and powder, which are intended to reduce exposure to particulates and airborne allergens. The expiration date labeling is intended to ensure that medical glove users have appropriate information regarding shelf life to enable them to use medical gloves safely by avoiding products that may have degraded.

Description of Respondents: Businesses or other for profit organizations.

TABLE 12.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital Costs
801.440(a)	180	1	180	22	3,960	$985,248
801.440(b)	18	1	18	14	252	
801.440(c)	178	1	178	16	2,848	
801.440(d)	376	4[2]	1,504	72	108,288	
Total					115,348	$985,248

[1] There are no operating and maintenance costs associated with this collection of information.

[2] The annual burden reported here represents the first year in which a manufacturer would have conducted testing at 0 days, 3 months, 6 months, and 1 year. FDA expects in any succeeding years, testing would only be done at 6-month intervals.

For the proposed labeling requirements, the hours per response included the hours estimated, based upon communications with industry, to run the tests to support the powder and protein levels and the expiration date, as well as the hours estimated to change the respondent's labeling. The total capital costs were derived from multiplying the total annual responses for protein testing and multiplying it by the estimated costs of buying a spectrometer and a plate reader, instruments that are necessary to conduct the protein testing. That cost was then annualized over a 5-year period.

Based on communication with industry, FDA estimates that a respondent would take approximately 8 hours to run the protein tests necessary to obtain a protein level to add to the labeling. FDA bases its estimate on the ASTM D 6124–97 protein test.

Based on communication with industry, FDA estimates that a respondent would take approximately 6 hours to run the powder tests necessary to obtain a powder level to add to the labeling. FDA bases its estimate on the ASTM D 5712 modified Lowry method powder test.

Based on communication with industry, FDA estimates that a respondent would take approximately 16 hours to run the elongation, tensile strength, and waterleak tests recommended to support the expiration date. In the first year, FDA estimates that the tests would be run 4 times, at 0 days, 3 months, 6 months, and 1 year (16 X 4 = 64). In the second, or succeeding years, FDA expects the tests to be run twice a year.

FDA estimates that a respondent would take approximately 8 hours to change the labeling and approximately 8 hours to change the promotional materials to include the appropriate caution statement and the expiration date. This 16 hours is divided between the labeling changes proposed in § 801.440(a) and (d) resulting in 8 hours being assessed for the caution statement and 8 hours being assessed for the expiration date.

FDA estimates the number of burden hours per response for § 801.440(a) is 22. That burden comes from the sum of the hours for running the powder and protein tests (8 hours plus 6 hours) and the hours for changing the labeling (8 hours).

FDA estimates the number of burden hours per response for § 801.440(b) is 14. That burden comes from the sum of the hours for running the powder tests (6 hours) and the hours for changing the labeling (8 hours).

FDA estimates the number of burden hours per response for § 801.440(c) is 16. That burden comes from the sum of the hours for running the protein tests (8 hours) and the hours for changing the labeling (8 hours).

FDA estimates the number of burden hours per response for § 801.440(d) is 72. That burden comes from the sum of the hours for running the elongation, tensile strength, and waterleak tests four times in the first year (64 hours) and the hours for changing the labeling (8 hours).

FDA believes that manufacturers already have the equipment necessary to do the tests to support the powder levels and expiration dating because such equipment is currently being used to test the gloves. In order to do the protein tests recommended by FDA, FDA believes a manufacturer would need to obtain a spectrometer and a plate reader. FDA estimates that buying this equipment would cost approximately $22,000 (approximately $10,000 for the spectrometer and $12,000 for the plate reader). In addition, FDA assumed a 7 percent discount on the price of the equipment and that the equipment would be annualized over a 5-year period. In order to obtain a per annualized year estimate, FDA multiplied the cost by the discount ($22,000 x .244). FDA added the discounted amount ($5,368) to the cost of the equipment ($22,000) for a total equipment cost of $27,368. That cost annualized over a 5-year period is $5,473.60. FDA multiplied that cost by the number of respondents testing for protein levels (180) for a total capital cost of $985,248.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), FDA has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection by August 30, 1999, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn.: Wendy Taylor, Desk Officer for FDA.

XIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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List of Subjects

21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Parts 878 and 880

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 801, 878, and 880 be amended as follows:

PART 801—LABELING

1. The authority citation for 21 CFR part 801 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360c, 360i, 360j, 371, 374.

2. Section 801.437 is amended by revising paragraph (d) to read as follows:

§ 801.437 User labeling for devices that contain natural rubber.

* * * * *

(d)(1) As described in paragraph (b) of this section, devices containing natural rubber latex that contacts humans, except natural rubber latex surgeon's and patient examination gloves shall bear the following statement in bold print on the device labeling:

"Caution: This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions."

This statement shall appear on all device labels, and other labeling, and shall appear on the principal display panel of the device packaging, the outside package, container, or wrapper, and the immediate device package, container, or wrapper.

(2) Natural rubber latex surgeon's and patient examination gloves shall bear the appropriate caution statement delineated in § 801.440(a) or (c). This statement shall appear on all device labels, and other labeling, and shall appear on the principal display panel of the device packaging, the outside package, container, or wrapper, and the immediate device package, container, or wrapper.

* * * * *

3. Section 801.440 is added to subpart H to read as follows:

§ 801.440 User labeling for powdered and powder-free surgeon's and patient examination gloves.

The caution statements required in this section shall appear on all device labels, and other labeling, and shall appear on the principal display panel of the device packaging, the outside package, container, or wrapper, and the immediate device package, container, or wrapper.

(a) Natural rubber latex powdered surgeon's gloves and powdered patient examination gloves shall bear the following statement: "Caution: This product contains natural rubber latex which may cause allergic reactions. FDA recommends that this product contain no more than 120 mg powder and 1,200 µg extractable protein per glove. This product contains no more than [insert level] mg powder and no more than [insert level] µg extractable protein per glove."

(b) Synthetic material powdered surgeon's or powdered patient examination gloves shall bear the following statement: "Caution: Glove powder is associated with adverse reactions. FDA recommends that this product contain no more than 120 milligrams powder per glove. This product contains no more than [insert level] mg powder per glove."

(c) Natural rubber latex powder-free surgeon's gloves and powder-free patient examination gloves shall bear the following statement: "Caution: This product contains natural rubber latex which may cause allergic reactions. FDA recommends that this product contain no more than 1,200 µg extractable protein per glove. This product contains no more than [insert level] µg extractable protein per glove."

(d) All surgeon's and patient examination gloves shall bear an expiration date as follows:

(1) The expiration date shall state the month and year of the shelf-life as supported by data from the studies described in paragraph (d)(3) of this section;

(2) The expiration date must be prominently displayed on the exterior of the primary and retail package, and on the shipping carton;

(3) The expiration date must be supported by stability studies demonstrating acceptable physical and mechanical integrity of the product over the shelf-life of the product from its date of manufacture;

(4) For each glove design, the testing data and stability study protocol supporting an expiration date must be maintained by the manufacturer for a period equivalent to the design and expected life of that glove type, and shall be made available for inspection and copying by FDA; and

(5) Sterile surgeon's and patient examination gloves that have a date of expiration based on sterility that is different from the expiration date based upon physical and mechanical integrity testing shall bear only the earlier expiration date.

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

4. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

5. Section 878.4460 is revised to read as follows:

§ 878.4460 Surgeon's gloves, powdered.

(a) *Identification.* A powdered surgeon's glove is a disposable device made of natural rubber latex or synthetic material that bears powder to facilitate donning, and it is intended to be worn on the hands, usually in surgical settings, to provide a barrier against potentially infectious materials and other contaminants. The lubricating or dusting powder used on these gloves is classified separately in § 878.4480.

(b) *Classification.* Class II special controls are as follows:

(1) *Guidance document.* The Center for Devices and Radiological Health, FDA, "Medical Glove Guidance Manual," as revised. The guidance document is available from the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850.

(2) *Labeling.* User labeling requirements in § 801.440 of this chapter.

6. Section 878.4461 is added to subpart E to read as follows:

§ 878.4461 Surgeon's gloves, powder-free.

(a) *Identification.* A powder-free surgeon's glove is a disposable device made of natural rubber latex or synthetic material that may bear a trace amount of glove powder and is intended to be worn on the hands, usually in surgical settings, to provide a barrier against potentially infectious materials and other contaminants.

(b) *Classification.* Class II special controls are as follows:

(1) *Guidance document.* The Center for Devices and Radiological Health, FDA, "Medical Glove Guidance Manual," as revised (See § 878.4460(b)(1)).

(2) *Labeling.* User labeling requirements in § 801.440 of this chapter.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

7. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

8. Section 880.6250 is revised to read as follows:

§ 880.6250 Patient examination gloves, powdered.

(a) *Identification.* A powdered patient examination glove is a disposable device made of natural rubber latex or synthetic material that bears powder to facilitate donning and is intended to be worn on the hand or finger(s) for medical purposes to provide a barrier against potentially infectious materials and other contaminants.

(b) *Classification.* Class II special controls are as follows:

(1) *Guidance document.* The Center for Devices and Radiological Health, FDA, "Medical Glove Guidance Manual," as revised. The guidance document is available from the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850.

(2) *Labeling.* User labeling requirements in § 801.440 of this chapter.

9. Section 880.6251 is added to subpart G to read as follows:

§ 880.6251 Patient examination gloves, powder-free.

(a) *Identification.* A powder-free patient examination glove is a disposable device made of natural rubber latex or synthetic material that may bear a trace amount of glove powder and is intended to be worn on the hand or finger(s) for medical purposes to provide a barrier against potentially infectious materials and other contaminants.

(b) *Classification.* Class II special controls are as follows:

(1) *Guidance document.* The Center for Devices and Radiological Health, FDA, "Medical Glove Guidance Manual," as revised (See § 880.6250(b)(1)).

(2) *Labeling.* User labeling requirements in § 801.440 of this chapter.

Dated: March 2, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 99–19191 Filed 7–29–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2335]

Medical Gloves; Draft Guidance Manual; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Medical Glove Guidance Manual." The draft guidance represents a major revision of this guidance document, which was initially issued in 1993 under the title "Guidance for Medical Gloves: A Workshop Manual." This draft guidance is intended to provide current information to assist manufacturers and others in obtaining marketing clearance, applying manufacturing and design controls, and properly labeling medical gloves. This draft guidance also includes recommendations for limits on the amounts of glove powder and natural latex protein present on surgeon's and patient examination gloves. Elsewhere in this issue of the **Federal Register**, the FDA is proposing reclassification of surgeon's gloves and patient examination gloves into class II (special controls) because the agency believes that special controls are necessary to provide reasonable assurance of the safety and effectiveness of the gloves. The agency is proposing that the draft guidance "Medical Glove Guidance Manual" be one of the special controls, and the agency is requesting comment on the content of the manual at this time.

DATES: Submit written comments concerning this draft guidance by October 28, 1999 for consideration prior to implementation of the guidance as a special control.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance. Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Medical Glove Guidance Manual" to the Division of Small Manufacturers Assistance" (HFZ–220), Center for Devices and Radiological, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Arthur K. Yellin, Center for Devices and Radiological Health (HFZ–200), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 800–638–2041, ext. 146, 301–443–6597, ext. 146.

SUPPLEMENTARY INFORMATION:

I. Background

Medical gloves are a significant factor in the protection of both patients and health care personnel in the United States. Because of the increased reliance on medical gloves as a barrier against transmission of infectious diseases and contaminants, it is imperative that they be manufactured and labeled in accordance with FDA laws and regulations.

Originally entitled "Guidance for Medical Gloves: A Workshop Manual," this document was first published in May 1993 to assist manufacturers in preparing premarket notification (510(k)) submissions for medical gloves and applying quality systems requirements (formerly known as good manufacturing practices, or GMP) to the production of medical gloves. It has been used extensively as a text in training workshops provided by the FDA to the regulated industry. It is heavily relied upon and widely recognized as a valuable resource to those currently in, or seeking to enter, the United States medical glove market.

The draft guidance has been revised to address and emphasize the agency's growing concerns about the role of glove powder as a cause of foreign body reactions and as a carrier of airborne natural latex allergens. The draft guidance recommends that manufacturers of powdered surgeon's and patient examination gloves limit the amount of powder to no more than 120 milligrams (mg) of powder per glove, regardless of glove size. It further recommends that manufacturers of powder-free surgeon's and patient examination gloves limit the amount of total trace (residual) powder on gloves to no more than 2 mg particulate weight (based on the American Society for Testing Materials Standard Test Method for Residual Powder on Medical Gloves (D 6124-97)) per glove, regardless of glove size.

The draft guidance also includes a recommendation that manufacturers of natural rubber latex surgeon's and patient examination gloves limit the amount of water-extractable protein on the gloves to no more than 1200 micrograms of protein per glove, regardless of glove size.

II. Significance of Guidance

This draft guidance represents the agency's current thinking on medical gloves. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

Persons interested in obtaining a copy of the medical glove guidance manual may do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes the medical glove guidance manual, device safety alerts, access to **Federal Register** reprints, information on premarket submissions including lists of approved applications and manufacturers' addresses, small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh". The medical glove guidance manual is available at"http://www.fda.gov/cdrh/manual/glovmanl.pdf".

You may also receive instructions about obtaining the medical glove guidance manual via your fax machine. To do so call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt, press 1 to access DSMA Facts, at the second voice prompt, press 2, and then enter the document number (852) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

IV. Comments

Interested persons may, on or before October 28, 1999 submit to Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 15, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–19192 Filed 7–29–99; 8:45 am]

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Part VI

Department of the Treasury

Fiscal Service

31 CFR Part 203
Payment of Federal Taxes and the Treasury Tax and Loan Program; Proposed Rule

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 203

RIN 1510–AA79

Payment of Federal Taxes and the Treasury Tax and Loan Program

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury (Treasury), Financial Management Service (FMS), is proposing a revision of its regulations governing the Treasury Tax and Loan (TT&L) program and specifically a change to the interest rate Treasury charges on TT&L note balances, including funds loaned through the direct investment and special direct investment programs. Under the current rule, the TT&L rate of interest is the Federal funds rate published weekly by the Board of Governors of the Federal Reserve System less 25 basis points. Treasury is proposing to change the basis for computing the TT&L rate of interest to an overnight repurchase agreement rate in order to better approximate the market interest rate for collateralized lending.

Comments are specifically requested on whether the rule is well organized and states its requirement clearly. Also, we welcome suggestions on how to make the rule easier to understand.

Treasury invites comments on all aspects of the proposed change in the regulation.

DATES: Written comments must be received on or before September 28, 1999.

ADDRESSES: Comments or inquiries may be mailed to Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, Room 420, 401 14th Street, SW, Washington, DC 20227. Comments also may be submitted electronically via e-mail to 203.comments@fms.sprint.com or by filling out the comment form available on the EFT website at http://www.fms.treas.gov/eftps. A copy of this notice is being made available for downloading from the Financial Management Service web site at the following address: http://www.fms.treas.gov/regs.html.

Comments on the proposed rule will be available for public inspection at the Department of the Treasury Library, Room 5030, 1500 Pennsylvania Avenue, NW, Washington, DC. Please call (202) 622–0990 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Mary Bailey, Financial Program Specialist, at (202) 874–6749; Walt Henderson, Senior Financial Program Specialist, at (202) 874–6705; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590; or Ellen Neubaurer, Senior Attorney, at (202) 874–6680.

SUPPLEMENTARY INFORMATION:

Background on the Treasury Tax and Loan Program

The Treasury Tax and Loan (TT&L) program encompasses two separate components—a depositary component through which the Treasury collects Federal tax deposits and payments from business taxpayers for employee withholding and other types of taxes, and an investment component through which the Treasury invests short-term operating balances not needed for immediate cash outlays.

Through the TT&L depositary component, which comprises nearly 10,500 commercial financial institutions and Federal Reserve Banks (FRBs), the Treasury collected almost $1.4 trillion in Fiscal Year 1998, representing approximately 80 percent of the total Federal annual receipts, from approximately 5 million business taxpayers.

More than 1,500 of the TT&L depositaries borrow excess short-term Treasury operating funds by participating in the investment component of the TT&L program. Through agreements executed under this Part, participating depositaries borrow Treasury funds in the form of a note secured with collateral pledged to Treasury and pay interest to the Treasury on these balances. In Fiscal Year 1998, the Treasury earned $1.2 billion in interest income through the TT&L investment component.

Treasury Tax and Loan Rate of Interest

The interest rate that the Treasury charges on a TT&L depositary's note balance is the Federal funds rate [computed on a weighted average effective basis by the Federal Reserve Bank of New York (FRBNY)] less 25 basis points (25 hundredths of one percentage point). The Federal funds rate is the interest rate at which financial institutions exchange balances in their accounts at the Federal Reserve with each other on an overnight, unsecured basis.

The current formula was put into place in 1978. At that time, the overnight repurchase agreement market was not mature and a published rate was not available. Thus, the TT&L rate of interest was set as an approximation of an overnight repurchase agreement rate. When the current formula was put into place in 1978, it was generally believed that the Federal funds rate averaged 25 basis points above the volume-weighted average interest rate from overnight repurchase agreements secured by Treasury securities and select Agency securities executed by the FRBNY for its monetary operations. An overnight repurchase agreement is the economic equivalent of an overnight loan collateralized by securities.

Treasury is proposing to change the TT&L rate of interest to an explicit overnight repurchase agreement rate. This change will allow Treasury to receive the actual interest rate, rather than a proxy rate, on an economically similar transaction.

Specifically, Treasury is proposing that FRBNY, as fiscal agent for the U.S. Treasury, compile and publish a volume-weighted average overnight repurchase agreement rate. We propose that the FRBNY compile this rate from data it would obtain from its domestic open market counter parties ("the primary dealers") regarding the volume-weighted average overnight rate the primary dealers paid to finance general collateral securities. The Treasury requests comments on this proposed methodology.

Replacing the formula or proxy rate with an explicit overnight repurchase agreement rate will provide depositaries with an easily understandable rate which will be publicly available. Historically, these two rates generally have moved broadly in tandem. From the inception of the investment program in 1978 through May 1999 the Federal funds rate averaged approximately 29 basis points (29 hundredths of one percentage point) over the overnight repurchase agreement rate. Since 1990, however, the average difference between the two rates has been only approximately 2 basis points (2 hundredths of one percentage point).

Availability of the Overnight Repurchase Agreement Rate

It is important that the TT&L rate of interest be readily available to the public. The Treasury proposes to request that the Federal Reserve publish an overnight repurchase agreement rate on a basis similar to that used to publish the Federal funds rate. Thus, financial institutions that elect to maintain a TT&L note balance will have a readily accessible indicator on which to estimate the cost of funds.

Section by Section Analysis

Section 203.2—Definitions

Treasury proposes to change the definition of the "Treasury Tax and Loan (TT&L) rate of interest" from the Federal funds rate less 25 basis points to a volume-weighted average overnight repurchase agreement rate. Treasury also proposes to add a definition of "Overnight Repurchase Agreement Rate". This new term is used in the redefined "Treasury Tax and Loan (TT&L) rate of interest". As a result of this new definition, this section will be renumbered.

Rulemaking Analysis

Treasury has determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small business entities. The proposed rule does not require any actions on the part of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

Request for Comment

The Treasury invites comments on all aspects of the proposed change in the Treasury Tax and Loan rate of interest for calculating interest due to the Treasury on TT&L note balances. In particular, the Treasury invites comments on the potential impact to the investment component of the TT&L program—specifically, whether depositaries are likely to alter their participation in the program and, if so, by how much—and on the proposed methodology for determining the overnight repurchase agreement rate. Treasury is also interested in comments regarding the extent to which TT&L participants would be interested in obtaining TT&L note balances for a guaranteed term.

List of Subjects in 31 CFR Part 203

Banks, Banking, Electronic funds transfers, Taxes.

Accordingly, it is proposed to amend 31 CFR part 203 as follows:

PART 203—PAYMENT OF FEDERAL TAXES AND THE TREASURY TAX AND LOAN PROGRAM

Subpart A—General Information

1. The authority citation for Part 203 continues to read as follows:

Authority: 26 U.S.C. 6302; 31 U.S.C. 321; 31 U.S.C. 323; 31 U.S.C. 3301–3304; 12 U.S.C. 90; 12 U.S.C. 265–266; 12 U.S.C. 332; 12 U.S.C. 391; 12 U.S.C. 1452(d); 12 U.S.C. 1464(k); 12 U.S.C. 1767; 12 U.S.C. 1789a; 12 U.S.C. 2013; 12 U.S.C. 2122; and 12 U.S.C. 3102.

2. Section 203.2 is amended by deleting paragraph (j), redesignating paragraphs (k) through (w) as paragraphs (j) through (v), adding a new paragraph (w) and revising paragraph (kk) to read as follows:

Subpart A—General Information.

§ 203.2 Definitions.

* * * * *

(w) *Overnight repurchase agreement rate* means the interest rate calculated by the Federal Reserve Bank of New York from the volume-weighted average overnight rate paid to finance general collateral securities compiled by the Federal Reserve Bank of New York and published weekly by the Board of Governors of the Federal Reserve System.

* * * * *

(kk) *Treasury tax and loan (TT&L) rate of interest* means the overnight repurchase agreement rate.

Dated: July 26, 1999.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 99–19564 Filed 7–29–99; 8:45 am]

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Part VII

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1845–AA04

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the loan default reduction and prevention measures in the Student Assistance General Provisions regulations in 34 CFR part 668. This notice of proposed rulemaking (NPRM) reflects changes made by the Higher Education Amendments of 1998 to the Higher Education Act of 1965, as amended (HEA).

DATES: We must receive your comments on or before September 15, 1999.

ADDRESSES: Address all comments about these proposed regulations to Kenneth Smith, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: CDRNPRM@ed.gov

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Kenneth Smith. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3045, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Background

The Higher Education Amendments of 1998 (Pub. L. 105–244, enacted October 7, 1998, and referred to in this NPRM as the "1998 Amendments") changed some requirements relating to the calculation of a school's Federal Family Education Loan (FFEL) Program cohort default rate, William D. Ford Federal Direct Loan (Direct Loan) Program cohort rate, or weighted average cohort rate. The Secretary is proposing to revise 34 CFR 668.17 of the Student Assistance General Provisions regulations to reflect these changes.

Negotiated Rulemaking Process

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, DC, Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals' website (http://ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, they met to develop proposed regulations over the course of several months, beginning in January.

The proposed regulations contained in this NPRM reflect the final consensus of the negotiating committee, which was made up of the following members:

American Association of Community Colleges
American Association of Cosmetology Schools
American Association of State Colleges and Universities

American Council on Education
Career College Association
Coalition of Associations of Schools of the Health Professions
Coalition of Higher Education Assistance Organizations
Consumer Bankers Association
Education Financial Council
Education Loan Management Resources
Legal Services Counsel (a coalition)
National Association of College and University Business Officers
National Association for Equal Opportunity in Higher Education
National Association of Graduate/Professional Students
National Association of Independent Colleges and Universities
National Association of State Student Grant and Aid Programs
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Association of Student Loan Administrators
National Council of Higher Education Loan Programs
National Direct Student Loan Coalition
Sallie Mae, Inc
Student Loan Servicing Alliance
The College Board
The College Fund/United Negro College Fund
United States Department of Education
United States Student Association
US Public Interest Research Group

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document

Proposed Regulatory Changes

To help readers understand the proposed regulatory changes, we believe it is appropriate to provide a brief description of the processes available for schools to challenge or appeal their FFEL Program cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates. To avoid confusion in this NPRM, we use the word "rate" by itself to refer to FFEL Program cohort default rates, Direct Loan Program cohort rates, and weighted average cohort rates. We use the complete term if we are referring to another type of "rate": an "economically disadvantaged rate," a "completion rate," a "placement rate," or a "participation rate."

Each school receives only one of the three types of rates each year: an FFEL Program cohort default rate, a Direct Loan Program cohort rate, or a weighted average cohort rate. However, unless specifically stated in the regulations, the rules and processes for submitting appeals and making challenges apply regardless of which rate a school receives. For example, under the proposed regulations, a school must notify us within 30 calendar days of its intent to appeal a rate on the grounds of exceptional mitigating circumstances, regardless of whether the school's rate is an FFEL Program cohort default rate, a Direct Loan Program cohort rate, or a weighted average cohort rate.

The rate process begins when we send draft rates to schools participating in the FFEL or Direct Loan Program. The rates are accompanied by supporting data, giving detailed information on the loans included in the calculation of the rate. A school may challenge the calculation of a draft rate by following the process outlined in the regulations. In this NPRM we refer to this process as the "challenge" process.

After the completion of the draft rate challenge process, we notify each school of its official rate and publish a listing of all the rates. This NPRM refers to these rates as "published rates." A school may file an appeal of any sanctions resulting from published rates by following the procedures outlined in the regulations. We refer to the process for contesting published rates as an "appeal."

A discussion of each substantive proposed change follows.

1. Challenges and Adjustments to Inaccurate Data Used to Calculate FFEL Cohort Default Rates, Direct Loan Program Cohort Rates, or Weighted Average Cohort Rates (§§ 668.17(a)(1) and 668.17(j))

Why are changes proposed?

Amendments to section 428G of the HEA provide reduced administrative requirements for schools with FFEL Program cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates that are less than 5 or 10 percent. To help implement these new provisions, we are proposing to change the process that schools use to identify and challenge incorrect data.

Before describing the proposed changes, we will describe the current process used to identify and challenge incorrect data.

If a school is not subject to loss of participation, how does it currently correct data used to calculate its rate?

The current process for correcting data has two steps:

• *Challenging draft data.* Any school may challenge the accuracy of any data used to calculate its draft rate. We send supporting data to schools with draft rates of 20 percent or more, and any school that does not receive supporting data may request it. The supporting data reflect the basis for the calculation of a school's rate. A school compares the information in the supporting data with its own records and with information obtained from outside sources to identify possible inaccuracies. A school must challenge any inaccurate draft data within 30 calendar days of receiving the supporting data.

• *Adjustments to published rates.* We send supporting data to schools with published rates of 20 percent or more. Any school that does not receive supporting data may request it. If corrections identified during the draft challenge process are not reflected in a school's published rate, the school may request that its rate be adjusted to reflect those corrections. Adjustment requests must be made within 10 working days of receiving the supporting data. A school may not request an adjustment that is based on data that were changed or added after the draft rate was calculated. Between the calculation of the draft and official rates, data may be corrected, changed, or added by a guaranty agency (for FFEL loans) or the Direct Loan Servicing Center (for Direct Loans).

How would this process be changed under these proposed regulations?

The proposed regulations would retain the two current steps, with the following improvements:

• *Challenging draft data.* We would provide supporting data to all schools when we notify the schools of their draft rates, and we would lengthen the period during which a school may challenge the accuracy of its draft rate from 30 to 45 calendar days.

• *Adjustments to published rates.* We would provide supporting data with the notification of published rates sent to all schools having rates of 10 percent or more. Schools with rates lower than 10 percent would be able to request supporting data separately.

Will there be other changes to this process?

Yes, we will also make some administrative changes to the process for reviewing and challenging rates. Since these are administrative changes, they are not included in these proposed regulations.

The most significant administrative changes will be to the process for requesting adjustments to a published rate. The period during which a school may request an adjustment to its published rate will be extended from 10 working days to 30 calendar days. Also, upon receiving its published rate, a school will be able to request an adjustment to any incorrect new data

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that were included after the draft rate was calculated. This "new data adjustment" will be available to schools beginning with receipt of FY 1998 rates, which will be released before September 30, 2000. This new administrative process will be explained more fully in the FY 1998 Official Cohort Default Rate Guide, which will be sent to a school with the notification of its published rate for FY 1998.

We will also make the following additional administrative improvements to this process:

• *Electronic supporting data.* We will make supporting data available to schools upon request in an electronic format. This will help schools prepare their challenges and appeals more quickly and with less work. We plan to begin this service with the publication of rates for FY 1998. Initially, it is unlikely that we will be able to send electronic data with the notifications of the rates themselves. Instead, we plan to make electronic data available to requesting schools after the notifications are issued, and for subsequent draft and published rates.

• *Real-time data.* Schools will be able to view, year-round, the loan repayment and default data that will be used to calculate their rates. By having access to this "real-time" data, schools will be able to identify errors and to correct them, by working with the data's provider, on a schedule that is compatible with the schools' ongoing workload. We plan to begin this service by the end of 1999.

2. Deadline for Publishing Rates (§ 668.17(b)(3))

What happens if the deadline is missed?

The 1998 Amendments adds a new section 435(m)(4)(D) to the HEA, which directs the Secretary to issue cohort default rates by September 30 each year. During the negotiated rulemaking process, some negotiators expressed a concern about the possible consequences for schools if we issued rates after that date. Under section 435(a)(2) of the HEA, a school's loss of participation in the loan programs based on excessive rates continues for the fiscal year (FY) for which the determination of the loss is made and for the 2 succeeding fiscal years. Some negotiators were concerned that schools might be subject to an additional year of ineligibility if we issued rates after September 30.

The committee discussed an example in which a determination issued before this year's deadline of September 30, 1999, would subject a school to loss of participation for the remainder of this fiscal year (FY 1999) and for the 2 following fiscal years (FY 2000 and FY 2001). By contrast, if the determination was issued after September 30, 1999, the committee asked whether the school would be subject to loss of participation for the remainder of that fiscal year (FY 2000) and for the 2 following fiscal years (FY 2001 and FY 2002).

The Department expects to meet the goal of issuing rates by September 30 each year. If, however, rates are not issued until after that date, a school's loss of eligibility in that case would continue only for the remainder of the fiscal year in which the rates are issued and for the following fiscal year. As this procedure would be administrative, it is not reflected in these proposed regulations.

3. Loss of Pell Eligibility (§ 668.17(b)(4))

How does a school's rate affect its eligibility to participate in the Pell program?

These provisions reflect amendments to section 401(j) of the HEA. Under the amendments, a school becomes ineligible to participate in the Federal Pell Grant Program when it becomes ineligible to participate in the FFEL or Direct Loan Program due to excessive rates. A school that was not participating in the FFEL or Direct Loan Program on October 7, 1998 (the date on which the 1998 Amendments was enacted), is not subject to this provision unless it subsequently participates in either of those programs.

What criteria would be used to determine that a school was not participating in the FFEL or Direct Loan Program on or after October 7, 1998?

Under the proposed regulations, a school would not be considered to have been participating in the FFEL or Direct Loan Program on or after October 7, 1998, if the school—

• Was ineligible to participate in those programs before October 7, 1998, and the school did not regain eligibility;

• Requested in writing, before October 7, 1998, to withdraw its participation in those programs and did not subsequently re-apply to participate; or

• Has not certified an FFEL loan or originated a Direct Loan on or after July 7, 1998.

The deadline date of July 7, 1998, was selected as a compromise and agreed to by the committee. The Department believes this date is appropriate because it provides some protection for a school that had stopped certifying or originating loans, intending to end its participation in these loan programs, but had not sent a written request to withdraw its participation. At the same time, we also believe that this date is appropriate because it provides a sufficient period of time before the date of enactment to verify the school's intent not to participate.

4. Liability for Unsuccessful Appeals (§§ 668.17(b)(5)(ii) and 668.17(b)(6))

What liability would a school assume for loans made while appealing a loss of participation?

These provisions reflect amendments to section 435(a)(2)(A) of the HEA that are intended to reduce the likelihood of frivolous appeals by schools that are subject to loss of eligibility due to excessive rates. A school that certifies and delivers FFEL Program loans or originates and disburses Direct Loan Program loans during its appeal would be required to reimburse the Secretary for an amount equal to the amount of interest, special allowance, reinsurance, and any related or similar payments the Secretary makes, or will be obligated to make, on those loans.

How will the Department determine a school's liability for loans made during an unsuccessful appeal?

We intend to determine a school's liability using the Department's "Estimated Loss Formula." We currently use this formula to calculate schools' liabilities in other circumstances related to the loan programs. In this instance, the formula would use the school's most recent published rate to estimate the principal amount of the loans that would be expected to default. In addition, the formula would be used to estimate costs to the Secretary for interest, special allowance, and other losses on these loans, using timeframes appropriate for the type of school.

For example, an estimate of a 2-year public school's liability would be based on average timeframes for 2-year public schools. To calculate an estimate of the—

• *Interest subsidy,* the Department would project the interest that would accrue on the total principal amount of the subsidized student loans, during the average number of days, for a 2-year public school, between the date the loans were disbursed and the date they entered repayment.

• *Special allowance,* the Department would project the special allowance that would accrue on the total principal amount of the subsidized and unsubsidized student loans and PLUS loans, during the average number of days, for a 2-year public school, between the date the loans enter repayment and either the date they default or the date on which they are paid in full.

How could a school appeal its loss of participation without incurring a liability?

Any school may stop certifying and delivering FFEL Program loans or originating and disbursing Direct Loan Program loans by ending its participation in the program. Also, under the proposed regulations, a school could prevent the possibility of incurring a liability during an appeal by temporarily not certifying and delivering FFEL Program loans and originating and disbursing Direct Loan Program loans during the appeal. This suspension would be at the discretion of the school, and the school would not be required to notify or seek the approval of the Secretary.

5. Participation Rate Index (§§ 668.17(c)(1)(ii)(A) and 668.17(j)(4))

What changes would be made to a school's ability to appeal on the basis of its participation rate index (PRI)?

The proposed regulations reflect the provisions of section 435(a)(6) of the HEA. These provisions are similar in many respects to the Department's regulatory requirements for an appeal on the basis of a school's PRI under 34 CFR 668.17(c)(1)(ii)(A). However, unlike those regulatory requirements, under which a school files a PRI appeal after it receives its published rate, the 1998 Amendments provides for a PRI challenge that is made after a school receives its draft rate. Also, the provisions of the 1998 Amendments allow a school to base its PRI calculation on the fiscal year of the school's draft rate or either of its two most recent published rates, rather than the school's most recent published rate only.

What if a school's published rate isn't the same as its draft rate, and the newly published rate would make its PRI lower than 0.0375?

The proposed regulations retain the opportunity for a school to appeal its published rate on the basis of a PRI lower than 0.0375. (The process that occurs after the draft rate is a "challenge," but the process that occurs after the published rate is an "appeal.") Because a school's draft rate is not always the same as its published rate, there may be cases in which a school's challenge based on its draft rate would be denied, but an appeal based on the school's published rate would be accepted.

For example, a school with a draft rate of 38 percent and with 10 percent of its students receiving loans would have a PRI of .0380 (0.38 multiplied by 0.10 is .0380). Since the school's PRI would be greater than .0375, its challenge would be denied. However, if the school's published rate were calculated 1 percent lower, as 37 percent, the same school would then have a PRI of .0370 (0.37 multiplied by 0.10 is .0370). Since this PRI meets the criterion, the school's appeal would be accepted.

Once a school's PRI challenge or appeal is accepted, would the school need to challenge or appeal again the following year?

A school's successful PRI challenge to the draft rate or appeal of the published rate would not apply to a future loss of participation unless the rate upon which the challenge or appeal was originally based was a rate that could also be used as a basis for the subsequent challenge or appeal. For example, a school that is subject to a loss of participation based on its rates for FY 1999, FY 1998, and FY 1997 may challenge or appeal the loss using a PRI based on any of the following rates:

Upon receipt of...	PRI based on rate for...		
	FY 1999	FY 1998	FY 1997
Draft rate	Draft	Published	Published
Published rate	Published	Published	Published

The school files a successful challenge or appeal but is again subject to loss of participation the following year, based on its rates for FY 2000, FY 1999, and FY 1998. At that time, the school may challenge or appeal using a PRI based on any of the following rates:

Upon receipt of...	PRI based on rate for...		
	FY 2000	FY 1999	FY 1998
Draft rate	Draft	Published	Published
Published rate	Published	Published	Published

The only rates that appear in both tables are the school's published rates for FY 1999 and FY 1998. If the school's successful original challenge or appeal was based on the—

• Published rate for FY 1999 or FY 1998, then the school *would not* need to file another challenge or appeal in order to continue participating.

• Draft rate for FY 1999 or the published rate for FY 1997, then the school *would* need to file another successful PRI, or other type of appeal, in order to continue participating.

6. Mitigating Circumstances Appeals (§§ 668.17(c)(1)(ii)(B) and 668.17(c)(7))

What changes would there be to appeals made on the basis of mitigating circumstances?

These provisions reflect the amendments to section 435(a)(2)(A)(ii) of the HEA and add the provisions of new section 435(a)(4) of the HEA. The amended and new provisions are similar to the current regulatory requirements for an appeal due to mitigating circumstances (see 34 CFR 668.17(c)(1)(ii)(B)). However, the 1998 Amendments makes several substantive modifications to the regulatory requirements:

• The criterion based on a school's economically disadvantaged rate is reduced from a minimum of 70 percent to a minimum of two-thirds.

• The criterion based on a school's placement rate is reduced from a minimum of 50 percent to a minimum of 44 percent.

• The groups of students used in the calculations that determine the school's appeal are re-defined.

• An independent auditor must agree, in a written opinion included with the appeal, that the school meets the appeal's criteria.

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How would the modified requirement for an independent auditor's opinion be implemented under the proposed regulations?

The following process is proposed to incorporate the modified requirement for an auditor's opinion:

- Within 30 days of being notified that its participation will end due to excessive FFEL Program cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates, or that a prior loss of participation will be extended, the school must notify us that it is appealing under these provisions.
- Within 60 days of being notified that its participation will end due to excessive rates, or that a prior loss of participation will be extended, the school must send us the independent auditor's report. The report must include the school's written assertions and be in a format prescribed by us.
- We consider the auditor's report and compare the assertions in the report with the information we maintain.
- If the independent auditor's opinion supports the school's position, and the report's documentation or our data do not contradict the opinion, then the appeal is approved.
- If the independent auditor's opinion does not support the school's assertion, or if the report's documentation or our data contradict the opinion, the appeal is denied.

We rely upon the opinion of the independent auditor in determining whether a school meets the mitigating circumstance criteria. However, it would not be appropriate for us to decide that a school meets the criteria if an auditor's opinion is contradicted by data in the report itself or by data that we maintain.

As agreed during negotiated rulemaking, the data that we would use to evaluate a report's acceptability would be limited to data that the school has supplied to us for other reasons or data that is otherwise available to the school. For example, when making a determination, we may compare data in the report to the data maintained in the Federal Pell Grant Program payment systems, the National Student Loan Data System (NSLDS), the Integrated Postsecondary Education Data System (IPEDS), or other data sources.

We would not typically investigate a school's assertions in making our determination. For example, we would not routinely contact the employers of the school's former students to gather additional information to use in evaluating their placement rate assertions. If improprieties are suspected in a school's appeal, an investigation would be pursued under other legal authority.

How would the groups of students used to calculate economically disadvantaged, completion, and placement rates be re-defined?

The 1998 Amendments changes the definitions of the groups of students used to calculate economically disadvantaged rates, completion rates, and placement rates:

- A student is considered economically disadvantaged if the student is eligible to receive a Federal Pell Grant award that is at least equal to one-half the maximum Federal Pell Grant award for which the student would be eligible based on the student's enrollment status. The previous regulatory criterion considered a student with an expected family contribution (EFC) of zero to be economically disadvantaged.
- A student is considered to have completed a program or to have been placed if the student enters active duty in the Armed Forces of the United States.

Additional changes are included in these proposed regulations. Currently, the economically disadvantaged rates, completion rates, and placement rates used to determine a school's eligibility for this type of appeal are calculated as percentages of all of the school's regular students. The proposed regulations limit the groups of students for whom the percentages are calculated to include only students who are enrolled in programs eligible for Title IV aid.

This change is proposed at the request of some of the non-Federal negotiators, in consideration of the types of student records needed by a school to calculate its eligibility for this appeal and of the likelihood that these records may not be maintained by schools for students who were not enrolled in Title IV eligible programs. We especially request comments on the benefit or harm that this proposed change might cause schools.

7. Other Mitigating Circumstances Appeals (§§ 668.17(c)(1)(ii)(A), (C), and (D))

Why are additional mitigating circumstances proposed?

These provisions are based on the authority given to the Secretary under new section 435(a)(2)(iii) of the HEA. Under this section, the Secretary may identify mitigating circumstances, in addition to those identified in the HEA, that make the consequences of FFEL Program cohort default rates, Direct Loan Program cohort rates, or weighted average cohort rates inequitable. Schools meeting the criteria for these additional mitigating circumstances may be allowed to continue participating in the FFEL and Direct Loan programs.

What additional mitigating circumstances are proposed?

The proposed regulations include the following additional mitigating circumstances for a school to use in appealing a loss of participation based on three consecutive rates of 25 percent or greater:

- A successful appeal, based on a school's participation rate index, that is made upon receipt of the school's published rate rather than its draft rate. The proposed regulations retain and modify previous regulatory requirements. (See the previous discussion of "Participation Rate Index.")
- The total number of a school's borrowers entering repayment in the 3 most recent fiscal years for which data are available is 30 or fewer. For example, if the number of a school's borrowers entering repayment in FY 1996 was 6, in FY 1997 was 10, and in FY 1998 was 8, then the total number of a school's borrowers entering repayment during those 3 fiscal years is 24 (6+10+8=24). The school in the example would be eligible for an appeal of a loss of participation based on the rates for those 3 fiscal years, because the total number of its borrowers entering repayment (24) is 30 or fewer.

This additional mitigating circumstance was developed by the committee and based on the reasoning that schools that make very few loans only pose a minimal financial risk to the taxpayers. The aggregate amount of the funds used to make these few loans is small. The committee was of the view that it was inequitable to subject these schools to loss of participation in the FFEL and Direct Loan programs, and especially to loss of participation in the Federal Pell Grant Program.

- At least two of the three rates upon which a school's loss of participation is based are calculated as "average" rates ("average" rates are calculated for schools with fewer than 30 borrowers in a fiscal year, on the basis of combined data for 3 fiscal years) and would be less than 25 percent if calculated using data specific to each fiscal year.

As an example of this appeal, data for a sample school are provided below:

FY	Students	Default	Rate based on . . .	
			3 years of data (percent)	1 year of data (percent)
FY 1994	25	7	.....	28.0
FY 1995	25	6	.....	24.0
FY 1996	25	10	30.7	40.0
FY 1997	25	4	26.7	16.0
FY 1998	25	5	25.3	20.0

In the example, a school's rates for FY 1996, FY 1997, and FY 1998, as calculated under 34 CFR 668.17(d)(1)(i)(B) (in the "3 Years of Data" column), are 30.7 percent, 26.7 percent, and 25.3 percent. Since calculations for FY 1997 and FY 1998, using data unique to each of those fiscal years (in the "1 Year of Data" column), are both less than 25 percent, the school in the example would meet the criteria for this mitigating circumstance.

The proposed regulations include this mitigating circumstance because we believe such an approach is consistent with the legislative intent of section 435(m)(1)(C) of the HEA, which provides for the calculation of "average" rates, the rates that are applicable to schools with fewer than 30 borrowers entering repayment during a fiscal year. In providing for a calculation based on an "average" rate, we believe that the legislative intent of the HEA is to reduce the effects of volatile rates on schools with fewer than 30 borrowers entering repayment in a fiscal year. However, as shown in the preceding example, using an "average" rate may have the opposite effect in some cases: data for a single fiscal year (in the example, FY 1996) may raise a school's subsequent rates and, absent this proposed mitigating circumstance, could cause the school to lose its eligibility to participate.

8. Definition of "Default" (§§ 668.17(e), 668.17(f), and 668.17(h)(2)(iii))

Why are changes to the definition of "default" included in these proposed regulations?

These provisions would conform 34 CFR 668.17 to an amendment to section 435(l) of the HEA, which changes the definition of "default" from 180 days to 270 days for borrowers who first became delinquent on or after October 7, 1998.

How would the change in the definition of "default" affect a school's rate?

For purposes of calculating a school's rate, an FFEL Program borrower is generally considered to be in default if a claim for insurance is paid on the borrower's loan before the end of the fiscal year that immediately follows the fiscal year in which the loan entered repayment. For Direct Loan Program loans, specific timeframes are included in regulations to determine whether a Direct Loan is considered to be in default for purposes of the Direct Loan Program cohort rate or weighted average cohort rate.

Since there is generally a 90-day delay between the date that an FFEL Program loan defaults and the date that an insurance claim is paid, a corresponding 90-day period is provided in the timeframe used for Direct Loans. Thus, since the timeframe for considering a borrower in default on an FFEL Program loan is changing from 270 days to 360 days, the proposed regulations would change, from 270 days to 360 days—

- The number of days of delinquency after which a borrower would be considered in default on a Direct Loan, if the borrower's delinquency began on or after October 7, 1998; and
- The number of days of repayment on a Direct Loan, under the income-contingent repayment plan, after which a borrower would be included in a school's rate under § 668.17 (e) or (f).

9. Loan Servicing Calculation (§ 668.17(h)(2)(ii))

What changes would there be to the calculation of a school's rate after a loan servicing appeal?

These provisions reflect amendments to section 435(m)(1)(B) of the HEA. The section specifies that a loan is removed from both the numerator and denominator of a rate's calculation if the loan is determined to have been improperly serviced or collected. This is not a change from the current method used to calculate a school's rate for this purpose. The new language in the proposed regulations is included only to reflect the changes to the statute.

10. Definition of "Loan Servicing Records" (§§ 668.17(h)(3)(ii)(B) and 668.17(h)(3)(iii)(B))

Why is the definition of "loan servicing records" changing?

These provisions reflect amendments to section 435(a)(3) of the HEA. The section clarifies the definition of the loan servicing records that guaranty agencies and the Direct Loan Servicer provide to schools during appeals on the basis of improper loan servicing or collection.

How would the definition of "loan servicing records" change?

The definition of "loan servicing records" would remain essentially the same for both the FFEL and Direct Loan programs:

- *FFEL Program* loan servicing records are the collection and payment history records used by a guaranty agency to determine whether to pay a claim on a defaulted loan.
- *Direct Loan Program* loan servicing records are the collection and payment history records that we use to determine a school's Direct Loan Program cohort rate or weighted average cohort rate.

These revisions do not reflect a change in our current procedures. The proposed regulations provide clarification to reflect more closely the language in the 1998 Amendments.

11. Special Institutions (§ 668.17(k) and Appendix H)

How would a special institution's eligibility to participate be affected by the proposed regulations?

These provisions reflect amendments to section 435(a)(2)(C) of the HEA and add the provisions of the new section 435(a)(5) of the HEA. The 1998 Amendments extends, from July 1, 1998, to July 1, 1999, the date on which the consequences of excessive rates are applicable to historically black colleges or universities, tribally controlled community colleges, and Navajo community colleges. In certain cases, the Secretary may treat one of these special institutions that is subject to loss of participation due to excessive rates as an eligible institution during the 1-year periods beginning on July 1, 1999, 2000, and 2001. The proposed regulations include the requirements under which these schools may maintain eligibility during the 1-year periods.

During negotiations, the committee had extensive discussions about the amount of procedural detail needed in these regulations for special institutions. The Department's initial position was that these regulations should provide only the most general requirements, so

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that the process would be flexible enough to account for changes in circumstances and for experiences gained in administering the requirements. Negotiators for special institutions were of the view that it was more important to emphasize the consequences of the requirements and to ensure stricter, more consistent requirements throughout the process, so that schools could devote appropriate resources to the task of reducing rates and would not be subject to changing requirements. The committee came to consensus on this proposed draft.

We note that proposed § 668.17(k)(2)(iii) and the introduction to proposed Appendix H use the word "should" rather than the word "must," which is used throughout the rest of this NPRM. The word "should" was included by agreement during the negotiated rulemaking process, and we chose not to change it at this stage of the process. Although the meaning of this word may differ in different circumstances, we want to emphasize that the term "should" in this particular case is intended to mean "must," and commenters should use this interpretation in developing their comments. We intend to change this section in the final regulations to use the word "must," instead of "should," unless commenters indicate a substantial reason to keep the word "should."

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined to be necessary for the effective and efficient administration of the Title IV programs.

In assessing the potential costs and benefits of this regulatory action—both quantitative and qualitative—we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by negotiators. The resultant consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or to increase any potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the title IV, HEA programs.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 668.17 *Default reduction and prevention measures.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESS** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Entities affected by these regulations are institutions of higher education that participate in the title IV, HEA programs and individual recipients of title IV, HEA program funds. Institutions are defined as small entities, according to the U.S. Small Business Administration, if they are for-profit or nonprofit entities with total revenue of $5,000,000 or less, or entities controlled by governmental entities with populations of 50,000 or less. Individuals are not considered small entities for this purpose. These proposed regulations, which generally reduce operational burden and offer institutions additional ways to maintain their eligibility to participate in the Title IV aid programs, would not have a significant economic impact on small institutions.

The Secretary invites comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

Section 668.17 contains an information collection requirement. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Student Assistance General Provisions—668.17—Default reduction and prevention measures.

Under the proposed regulations, a historically black college or university, tribally controlled community college, or Navajo community college may continue to participate in the FFEL or Direct Loan Program even though it is subject to loss of participation due to excessive rates. This continued participation may only occur during the 1-year periods beginning on July 1, 1999, 2000, and 2001, and depends upon the Secretary's determination of the school's compliance with the proposed regulations.

To make this determination, we need to collect information from schools. Each school is required to submit a default management plan on or before July 1, 1999. On or before July 1, 2000 and 2001, each school is required to submit evidence of the implementation of its plan and of improvement in the preceding 1-year period. Some schools may be required to submit revised default management plans.

Fourteen schools submitted this collection in 1999. We estimate that 8 schools will submit this collection in 2000 and 4 schools will submit this collection in 2001. We estimate a burden of 200 hours per school to create/revise a default management plan, and an additional burden of 200 hours per school to submit evidence of their plan's implementation and of improvement in the preceding 1-year period.

As calculated in the table below, the annual burden is estimated to be 2534 hours:

Year	Number of schools	Default plan hours (Schools × 200 hrs)	Evidence hours (Schools × 200 hrs)	Total hours (Default plan + evidence)
1999	14	2800	N/A	2800
2000	8	1600	1600	3200
2001	4	800	800	1600
Total (2800+3200+1600) =				7600
Average (Total/3) =				2534

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

The Federal Supplemental Educational Opportunity Grant Program and the State Student Incentive Grant Program are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

The Federal Family Education Loan, Federal Supplemental Loans for Students, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Income Contingent Loan, and William D. Ford Federal Direct Loan programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ifap.ed.gov/csb_html/fedlreg.htm
http://www.ed.gov/legislation/HEA/rulemaking/

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 State Student Incentive Grant Program; 84.226 Income Contingent Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: July 27, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.17 is amended to read as follows by—

A. Revising paragraph (a)(1).

B. In the introductory language for paragraph (b)(3), removing the word "institution's" and adding, in its place, "institution whose"; removing the word "respectively"; and removing the words "section and continuing" and adding, in their place, "section. The loss of participation continues".

C. Revising paragraphs (b)(4) through (b)(6).

D. In the introductory text for paragraph (c)(1), after "except that an institution may submit an appeal under", removing the word "section" and adding, in its place, "paragraph"; removing the words "the information required by paragraph (c)(7) may be submitted in accordance with that paragraph" and adding, in their place, "an institution submits an appeal under paragraph (c)(1)(ii)(B) of this section in accordance with paragraph (c)(7) of this section"; and removing the sentence, "The additional 30-day period specified

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in paragraph (c)(7) of this section is an extension for the submission of the auditor's statement only and does not affect the date by which the appeal data must be submitted."

E. Revising paragraphs (c)(1)(ii), (c)(2), and (c)(7).

F. In paragraphs (e)(1)(ii)(A), (e)(1)(ii)(B), (f)(1)(ii)(A), and (f)(1)(ii)(B), removing the number "270" and adding, in its place, "360".

G. In paragraphs (e)(3) and (f)(3), removing "270 days" and adding, in its place, "360 days (or for 270 days, if the borrower's delinquency began before October 7, 1998)".

H. In paragraph (h)(2)(ii), adding, at the end of the paragraph, "In excluding loans from the calculations of these rates, the Secretary removes them from both the number of students who entered repayment and the number of students who defaulted."

I. In paragraph (h)(2)(iii), removing the number "270" and adding, in its place, "360".

J. In the introductory language for paragraph (h)(3)(ii)(B), removing the words "with a representative sample" and adding, in their place, "with access, for a reasonable period of time not to exceed 30 days, to a representative sample"; and removing the words "records submitted by the lender to the guaranty agency to support the lender's submission of a default claim and included in the claim file" and adding, in their place, "collection and payment history records provided to the guaranty agency by the lender and used by the guaranty agency in determining whether to pay a claim on a defaulted loan".

K. In the introductory language for paragraph (h)(3)(iii)(B), removing the words "with a representative sample" and adding, in their place, "with access, for a reasonable period of time not to exceed 30 days, to a representative sample"; and removing the words "records maintained by the Department's Direct Loan Servicer with respect to the servicing and collecting of delinquent loans prior to the default" and adding, in their place, "collection and payment history records maintained by the Department's Direct Loan Servicer that are used in determining an institution's Direct Loan Program cohort rate or weighted average cohort rate".

L. Revising paragraph (j)(1)(ii).

M. Removing paragraph (j)(1)(iii).

N. Redesignating paragraphs (j)(2), (j)(3), (j)(4), (j)(5), and (j)(7) as paragraphs (j)(3)(i), (j)(3)(ii), (j)(3)(iii), (j)(3)(iv), and (j)(3)(v), respectively.

O. Redesignating paragraph (j)(6) as (j)(2).

P. In the redesignated paragraph (j)(2), removing the cross-reference "(h)(1)" and adding, in its place, "(j)(1)".

Q. In the redesignated paragraph (j)(3)(i), removing the number "30" and adding, in its place, "45".

R. In the redesignated paragraph (j)(3)(ii), removing the citation "(h)(2)" and adding, in its place, "(j)(3)(i)".

S. In the redesignated paragraph (j)(3)(v), removing the citation "(d)(1)" and adding, in its place, "(c)(1)(i)"; removing the word "preliminary" and adding, in its place, "draft"; and removing the citation "(h)" and adding, in its place, "(j)(3)".

T. Adding a new paragraph (j)(4).

U. Adding a new paragraph (k).

§ 668.17 Default reduction and prevention measures.

(a) * * *

(1)(i) If the Secretary calculates an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate for an institution, the Secretary notifies the institution of that rate.

(ii) If an institution has an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of 10 percent or more, the Secretary includes a copy of the supporting data used in the calculation of the rate with the notice of the rate.

(iii) An institution with an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate of less than 10 percent may request a copy of the supporting data used in the calculation of the rate. The institution's request must be sent to the Secretary within 10 working days of receiving the Secretary's notice. Upon receiving the institution's request, the Secretary sends a copy of the data to the institution.

* * * * *

(b) * * *

(4) If an institution loses eligibility to participate in the FFEL or Direct Loan Program under this section, it also loses eligibility to participate in the Federal Pell Grant Program for the same period of time, except that the institution may continue to participate in the Federal Pell Grant Program if the Secretary determines that the institution—

(i) Was ineligible to participate in the FFEL and Direct Loan programs before October 7, 1998, and the institution's eligibility was not reinstated;

(ii) Requested in writing, before October 7, 1998, to withdraw its participation in the FFEL and Direct Loan programs, and the institution did not subsequently re-apply to participate; or

(iii) Has not certified an FFEL loan or originated a Direct Loan on or after July 7, 1998.

(5) An institution whose participation in the FFEL, Direct Loan, or Federal Pell Grant Program ends under paragraph (a)(3), (b)(1), (b)(2), or (b)(4) of this section may not participate in that program until the institution—

(i) Demonstrates to the Secretary that it meets all requirements for participation in the FFEL, Direct Loan, or Federal Pell Grant Program;

(ii) Has paid any amount owed to the Secretary under paragraph (b)(6)(ii)(B) of this section or is meeting that obligation under an agreement satisfactory to the Secretary; and

(iii) Executes a new agreement with the Secretary for participation in that program following the period described in paragraph (b)(3) of this section.

(6)(i) An institution may, notwithstanding 34 CFR 668.26, continue to participate in the FFEL, Direct Loan, and Federal Pell Grant programs until the Secretary issues a decision on the institution's appeal if the Secretary receives an appeal that is complete, accurate, and timely in accordance with paragraph (c) of this section; or it may suspend its participation during the appeal.

(ii) If an institution continues to participate in the FFEL or Direct Loan Program under paragraph (b)(6)(i) of this section, and the institution's appeal of its loss of participation is unsuccessful—

(A) The Secretary estimates the amount of interest, special allowance, reinsurance, and any related or similar payments made by the Secretary (or which the Secretary is obligated to make) on any FFEL or Direct Loan Program loan for which the institution certified and delivered or originated and disbursed funds during the period in which the institution would have been otherwise ineligible to certify and deliver or originate and disburse those funds, if it had not appealed;

(B) The Secretary excludes from the estimate calculated under paragraph (b)(6)(ii)(A) of this section any amount that is attributable to funds delivered or disbursed by the institution more than 45 calendar days after the date on which the institution submitted its completed appeal to the Secretary; and

(C) The institution must pay the Secretary the amount estimated under paragraph (b)(6)(ii) of this section within 45 days of the date of the Secretary's notification, unless—

(*1*) The institution files an appeal under the procedures established in subpart H of this part; or

(*2*) The Secretary permits a longer repayment period.

(iii) An institution may also continue to participate in the FFEL Program or Direct Loan Program if it is in compliance with paragraph (k) of this section.

(c) * * *

(1) * * *

(ii) The institution meets one of the following exceptional mitigating circumstances:

(A)(*1*) The institution's participation rate index, as determined under paragraph (c)(1)(ii)(A)(*2*) of this section, is equal to or less than 0.0375 for any of the 3 most recent fiscal years for which data are available.

(*2*) For the purpose of (c)(1)(ii)(A)(*1*) of this section, an institution's participation rate index for a fiscal year is determined by multiplying its FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate for that fiscal year by the percentage of its regular students, as defined in 34 CFR 600.2, who—

(*i*) Were enrolled on at least a half-time basis during any part of a 12-month period ending during the 6 months immediately preceding the fiscal year for which the cohort of borrowers (used to calculate the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate) is determined; and

(*ii*) Received an FFEL or Direct Loan for attendance at the institution for a loan period that coincides with any part of the same 12-month period.

(B)(*1*) If in the opinion of an independent auditor, as submitted under paragraph (c)(7) of this section, the institution's economically disadvantaged rate is two-thirds or more, as determined under paragraph (c)(1)(ii)(B)(2) of this section; and

(*i*) If it offers an associate, baccalaureate, graduate or professional degree, the institution's completion rate is 70 percent or more, as determined under paragraph (c)(1)(ii)(B)(*3*) of this section; or

(*ii*) If it does not offer an associate, baccalaureate, graduate or professional degree, the institution's placement rate is 44 percent or more, as determined under paragraph (c)(1)(ii)(B)(*4*) of this section.

(*2*) For the purpose of (c)(1)(ii)(B)(*1*) of this section, an institution's economically disadvantaged rate is the percentage of its students, enrolled on at least a half-time basis in an eligible program at the institution during any part of a 12-month period that ended during the 6 months immediately preceding the fiscal year for which the cohort of borrowers (used to calculate the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate) is determined, who—

(*i*) Are eligible to receive a Federal Pell Grant award of at least one-half the maximum Federal Pell Grant award for which the student would be eligible based on the student's enrollment status; or

(*ii*) Have an adjusted gross income that, if added to the adjusted gross income of the student's parents (unless the student is an independent student), is less than the poverty level as determined by the Department of Health and Human Services.

(*3*) For the purpose of (c)(1)(ii)(B)(*1*) of this section, an institution's completion rate is the percentage of its regular students, initially enrolled on a full-time basis in an eligible program and scheduled to complete their programs, as described in paragraph (c)(2) of this section, during the same 12-month period used to determine its economically disadvantaged rate under paragraph (c)(1)(ii)(B)(*2*) of this section, who—

(*i*) Completed the educational programs in which they were enrolled;

(*ii*) Transferred from the institution to a higher level educational program;

(*iii*) Remained enrolled and making satisfactory progress toward completion of the student's educational programs at the end of the 12-month period; or

(*iv*) Entered active duty in the Armed Forces of the United States within 1 year after their last day of attendance at the institution.

(*4*)(*i*) Except as provided in paragraph (c)(1)(ii)(B)(*4*)(*ii*) of this section, for the purpose of (c)(1)(ii)(B)(*1*) of this section, an institution's placement rate is the percentage of its former students, as described in paragraph (c)(1)(ii)(B)(*4*)(*iii*) of this section, who are employed, in an occupation for which the institution provided training, on the date following 1 year after their last date of attendance at the institution; were employed, in an occupation for which the institution provided training, for at least 13 weeks before the date following 1 year after their last date of attendance at the institution; or entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at the institution.

(*ii*) If a former student's employer is the institution, the student is not considered employed for the purposes of paragraph (c)(1)(ii)(B) of this section.

(*iii*) The former students who are used to determine an institution's placement rate under paragraph (c)(1)(ii)(B)(*4*) of this section include only students who were initially enrolled in eligible programs on at least a half-time basis; were originally scheduled, at the time of enrollment, to complete their educational programs during the same 12-month period used to determine the institution's economically disadvantaged rate under paragraph (c)(1)(ii)(B)(*2*) of this section; and remained in the program beyond the point at which a student would have received a 100 percent tuition refund from the institution. A student is not included in the calculation of the placement rate if that student, on the date that is 1 year after the student's scheduled completion date, remains enrolled in the same program at the institution and is making satisfactory progress.

(C) At least two of the rates that result in a loss of eligibility under paragraph (a)(3), (b)(1), or (b)(2) of this section—

(*1*) Are calculated using data for the 3 most recent fiscal years, pursuant to paragraph (d)(1)(i)(B), (e)(1)(i)(B), (e)(1)(ii)(B), (f)(1)(i)(B), or (f)(1)(ii)(B) of this section; and

(*2*) Would be less than 25 percent if calculated using data for only the fiscal year for which the institution received its rate, pursuant to paragraph (d)(1)(i)(A), (e)(1)(i)(A), (e)(1)(ii)(A), (f)(1)(i)(A), or (f)(1)(ii)(A) of this section, respectively.

(D) During the 3 most recent fiscal years for which the Secretary has determined the institution's rate, a total of thirty or fewer borrowers entered repayment on a loan or loans included in a calculation of the institution's rate.

(2) For the purposes of the completion rate and placement rate described in paragraphs (c)(1)(ii)(B)(*3*) and (*4*) of this section, a student is scheduled to complete an educational program on the date on which—

(i) If the student is initially enrolled full-time, the student will have been enrolled in the program for the amount of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student; or

(*ii*) If the student is initially enrolled less than full-time, the student will have been enrolled in the program for the amount of time that it would take the student to complete the program if the student remained enrolled at that level of enrollment throughout the program.

* * * * *

(7)(i) An institution that appeals on the grounds that it meets the exceptional mitigating circumstances criteria in paragraph (c)(1)(ii)(B) of this section must submit to the Secretary—

(A) Within 30 calendar days of the date that it was notified of its loss of

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participation, notice of its intent to appeal under that paragraph, in a format prescribed by the Secretary; and

(B) Within 60 calendar days of the date that it was notified of its loss of participation, the independent auditor's compliance attestation report, as described in paragraph (c)(7)(ii) of this section, including the specific institution's management's written assertions for which the independent auditor opines, all in a format prescribed by the Secretary.

(ii)(A) The report of the independent auditor, required for an institution's appeal under paragraph (c)(1)(ii)(B) of this section, must state whether, in the auditor's opinion, the institution's management's assertion met the exceptional mitigating circumstances criteria specified in paragraph (c)(1)(ii)(B) of this section, as provided to the auditor to examine, and is fairly stated in all material respects.

(B) The engagement that forms the basis of the independent auditor's opinion must be an examination-level compliance attestation engagement performed in accordance with the American Institute of Certified Public Accountant's (AICPA) Statement on Standards for Attestation Engagements, Compliance Attestation (AICPA, Professional Standards, vol. 1, AT sec. 500), as amended, and Government Auditing Standards issued by the Comptroller General of the United States.

(iii) The Secretary denies an institution's appeal under paragraph (c)(1)(ii)(B) of this section if—

(A) The independent auditor does not opine that the institution meets the criteria for the appeal; or

(B) The Secretary determines that the independent auditor's report or institution's management's assertion described in paragraph (c)(7)(i) of this section—

(*1*) Demonstrates that the independent auditor's report or examination does not meet the requirements of this section; or

(*2*) Is contradicted or otherwise refuted, to an extent that would render the auditor's report unacceptable, by information maintained by the Secretary.

* * * * *

(j) * * *

(1) * * *

(ii) The Secretary's notice to an institution of its draft cohort default rate includes a copy of the supporting data used in the calculation of that draft rate.

* * * * *

(4)(i) Within 30 calendar days of receiving the draft default rate information from the Secretary, an institution may challenge an anticipated loss of participation under (a)(3), (b)(1), or (b)(2) of this section using the criteria in § 668.17(c)(1)(ii)(A).

(ii) In meeting the requirements of § 668.17(c)(1)(ii)(A) during a challenge under this paragraph, the institution's draft rate is considered to be its most recent rate.

(iii) The Secretary notifies an institution of the determination on its challenge before the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate is published.

(k) *Special institutions.* (1) *Applicability of requirements.* For each 1-year period beginning on July 1 of 1999, 2000, or 2001, the Secretary may determine that the provisions of paragraph (a)(3), (b)(1), or (b)(2) of this section and the provisions of 34 CFR 668.16(m) do not apply to a historically black college or university within the meaning of section 322(2) of the HEA, a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978, or a Navajo community college under the Navajo Community College Act if the institution submits to the Secretary—

(i) By July 1, 1999—

(A) A default management plan; and

(B) A certification that the institution has engaged an independent third party, as described in paragraph (k)(3) of this section; and

(ii) By July 1, 2000 and 2001—

(A) Evidence that it has implemented its default management plan during the preceding 1-year period;

(B) Evidence that it has made substantial improvement in the preceding 1-year period in the institution's FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate; and

(C) A certification that it continues to engage an independent third party, as described in paragraph (k)(3) of this section.

(2) *Default management plan.* (i) An institution's default management plan must provide reasonable assurance that it will, no later than July 1, 2002, have an FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate that is less than 25 percent. Measures that an institution must take to provide this assurance include but are not limited to—

(A) Establishing a default management team by engaging the chief executive officer and relevant senior executive officials of the institution and enlisting the support of representatives from offices other than the financial aid office;

(B) Identifying and allocating the personnel, administrative, and financial resources appropriate to implement the default management plan;

(C) Defining the roles and responsibilities of the independent third party;

(D) Defining evaluation methods and establishing a data collection system for measuring and verifying relevant default management statistics, including a statistical analysis of the borrowers who default on their loans;

(E) Establishing annual targets for reductions in the institution's rate; and

(F) Establishing a process to ensure the accuracy of the institution's rate.

(ii) An institution's default management plan must be acceptable to the Secretary, after consideration of that institution's history, resources, dollars in default, and targets for default reduction.

(iii) If the Secretary determines that an institution's proposed default management plan is unacceptable, the institution should consult with the Secretary to develop a revised plan, and the institution must submit the revised plan to the Secretary within 30 calendar days of notice from the Secretary that the plan is unacceptable.

(iv) If the Secretary determines, based on evidence submitted under paragraph (k)(1)(ii) of this section, that an institution's default management plan is no longer acceptable, the institution must develop a revised plan in consultation with the Secretary, and it must submit the revised plan to the Secretary within 60 calendar days of notice from the Secretary.

(v) A sample default management plan is provided in appendix H to this part. The sample is included to illustrate additional components of an acceptable default management plan. Because institutions' family income profiles, student borrowing patterns, histories, resources, dollars in default, and targets for default reduction are different, an institution must consider its own, individual circumstances in developing and submitting its plan.

(3) *Independent third party.* (i) An independent third party may be any individual or entity that—

(A) Provides technical assistance in developing and implementing the institution's default management plan; and

(B) Is not substantially controlled by a person who also exercises substantial control over the institution.

(ii) An independent third party need not be paid by the institution for its services.

(iii) The services of a lender, guaranty agency, or secondary market as an independent third party under paragraph (k) of this section are not considered to be inducements under § 682.200 or § 682.401(e).

(4) *Substantial improvement.*

(i) For purposes of this section, an institution's substantial improvement is determined based upon—

(A) A reduction in the institution's most recent draft or published FFEL Program cohort default rate, Direct Loan Program cohort rate, or weighted average cohort rate;

(B) An increase in the percentage of delinquent borrowers who avoid default by using deferments, forbearances, and job placement assistance;

(C) An increase in the academic persistence of student borrowers;

(D) An increase in the percentage of students pursuing graduate or professional study;

(E) An increase in the percentage of borrowers for whom a current address is known;

(F) An increase in the percentage of delinquent borrowers contacted by the institution;

(G) The implementation of alternative financial aid award policies and development of financial resources that reduce the need for student borrowing; or

(H) An increase in the percentage of accurate and timely enrollment status changes submitted by the institution to the National Student Loan Data System (NSLDS) on the Student Status Confirmation Report (SSCR).

(ii) When making a determination of an institution's substantial improvement, the Secretary considers the institution's performance in light of—

(A) Its history, resources, dollars in default, targets for default reduction;

(B) Its level of effort in meeting the terms of its approved default management plan during the previous 1-year period; and

(C) Any other mitigating circumstance at the institution during the 1-year period.

(5) *Secretary's determination.* (i) If the Secretary determines that an institution is in compliance with paragraph (k) of this section, then the provisions of paragraph (a)(3), (b)(1), or (b)(2) of this section and the provisions of 34 CFR 668.16(m) do not apply to the institution for that 1-year period, beginning on July 1 of 1999, 2000, or 2001.

(ii) If the Secretary determines that an institution is not in compliance with paragraph (k) of this section, the institution is subject to the provisions of paragraph (a)(3), (b)(1), or (b)(2) of this section and the provisions of 34 CFR 668.16(m). The institution's participation in the FFEL and Direct Loan programs ends on the date that the institution receives notice of the Secretary's determination.

3. A new appendix H is added to part 668 to read as follows:

Appendix H to Part 668—Default Management Plans for Special Institutions

This appendix is provided as a sample plan for those schools developing a default management plan in accordance with 34 CFR 668.17(k). It describes some measures schools may find helpful in reducing the number of students that default on federally funded loans. These are not the only measures a school could implement when developing a default management plan. In developing a default management plan, each school should consider its own history, resources, dollars in default, and targets for default reduction to determine which activities will result in the most benefit to the students and the school.

Core Default Reduction Strategies (from § 668.17(k)(2)(i))

(1) Establish a default management team by engaging the chief executive officer and relevant senior executive officials of the school and enlisting the support of representatives from offices other than the financial aid office.

(2) Identify and allocate the personnel, administrative, and financial resources appropriate to implement the default management plan.

(3) Define the roles and responsibilities of the independent third party.

(4) Define evaluation methods and establish a data collection system for measuring and verifying relevant default management statistics, including a statistical analysis of the borrowers who default on their loans.

(5) Establish annual targets for reductions in the school's rate.

(6) Establish a process to ensure the accuracy of the school's rate.

Additional Default Reduction Strategies

(1) Enhance the borrower's understanding of his or her loan repayment responsibilities through counseling and debt management activities.

(2) Enhance the enrollment retention and academic persistence of borrowers through counseling and academic assistance.

(3) Maintain contact with the borrower after he or she leaves the school by using activities such as skip-tracing to locate the borrower.

(4) Track the borrower's delinquency status by obtaining reports from lenders and guaranty agencies for FFEL Program loans and from the Secretary for Direct Loan Program loans.

(5) Enhance student loan repayments through counseling the borrower on loan repayment options and facilitating contact between the borrower and lender for FFEL Program loans and the borrower and the Secretary for Direct Loan Program loans.

(6) Assist a borrower who is experiencing difficulty in finding employment through career counseling, job placement assistance, and facilitating unemployment deferments.

(7) Identify and implement alternative financial aid award policies and develop alternative financial resources that will reduce the need for student borrowing in the first 2 years of academic study.

(8) Familiarize the parent, or other adult relative or guardian, with the student's debt profile, repayment obligations, and loan status by increasing, whenever possible, the communication and contact with the parent or adult relative or guardian.

Defining the Roles and Responsibilities of Independent Third Party

(1) Specifically define the role of the independent third party.

(2) Specify the scope of work to be performed by the independent third party.

(3) Tie the receipt of payments, if required, to the performance of specific tasks.

(4) Assure that all the required work is satisfactorily completed.

Statistics for Measuring Progress

(1) The number of students enrolled at the school during each fiscal year.

(2) The average amount borrowed by a student each fiscal year.

(3) The number of borrowers scheduled to enter repayment each fiscal year.

(4) The number of enrolled borrowers that received default prevention counseling services each fiscal year.

(5) The average number of contacts the school or its agent had with a borrower who was in deferment/forbearance or repayment status during each fiscal year.

(6) The number of borrowers at least 60 days delinquent each fiscal year.

(7) The number of borrowers who defaulted in each fiscal year.

(8) The type, frequency, and results of activities performed in accordance with the default management plan.

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To correct errors in the authorizations of certain programs administered by the National Highway Traffic Safety Administration. (July 28, 1999; 113 Stat. 206)

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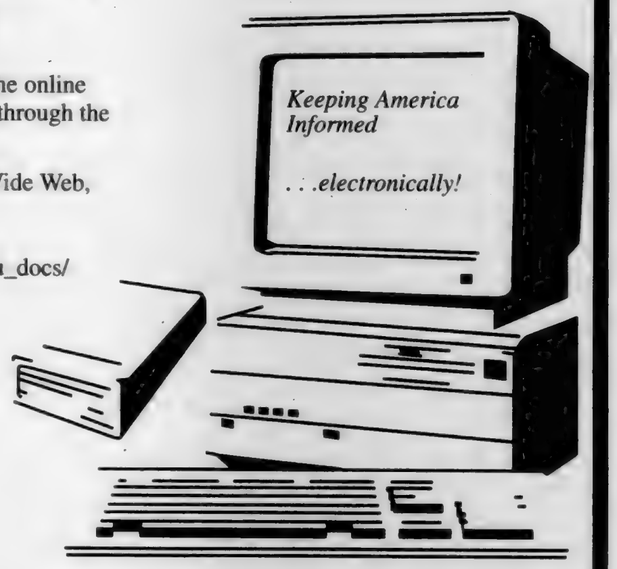

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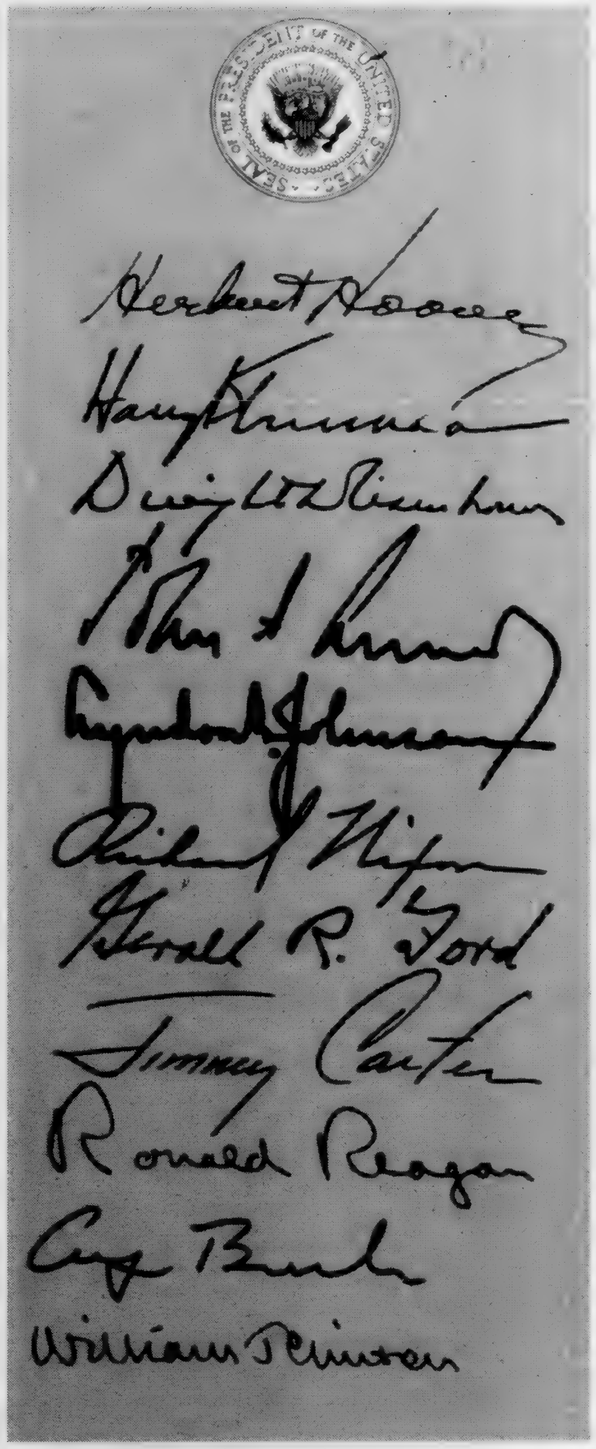

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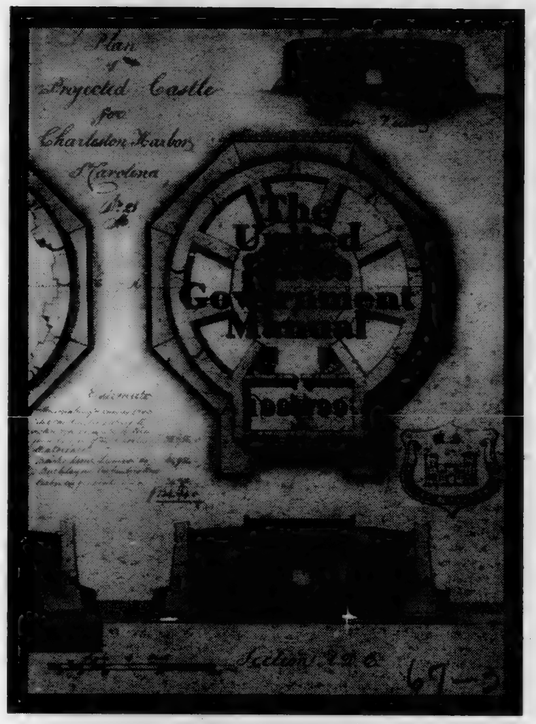

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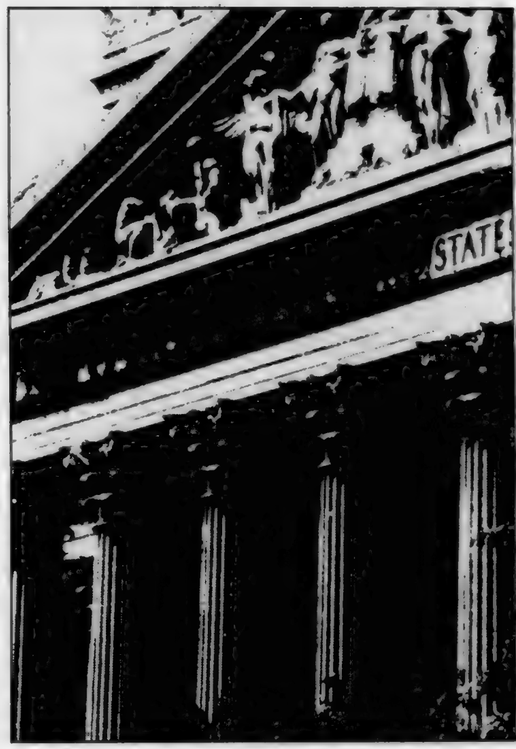

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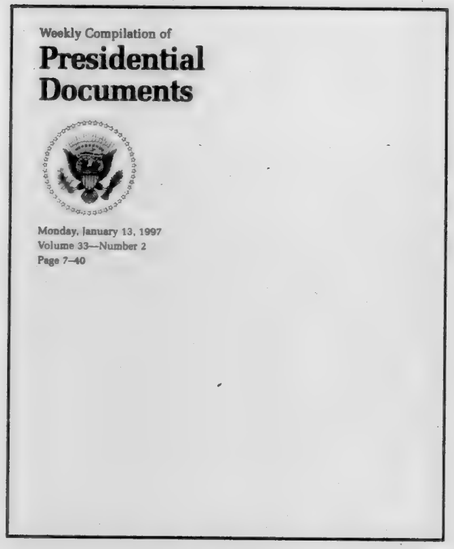

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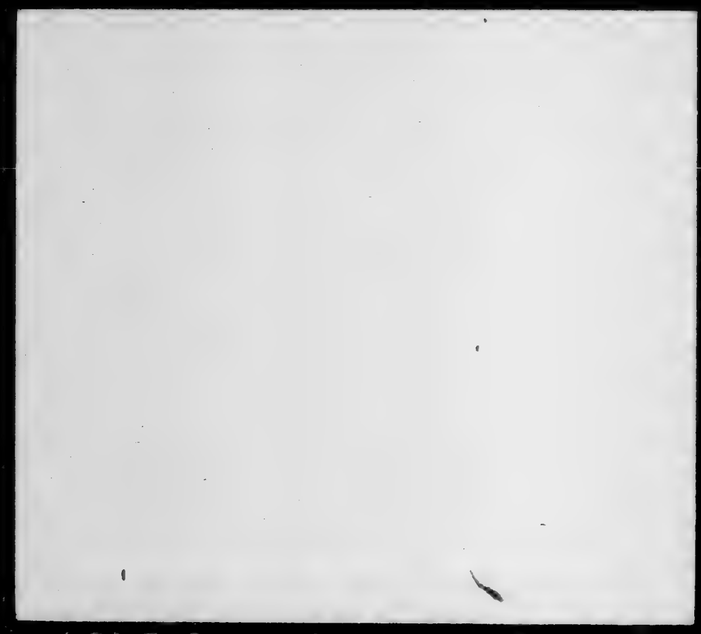

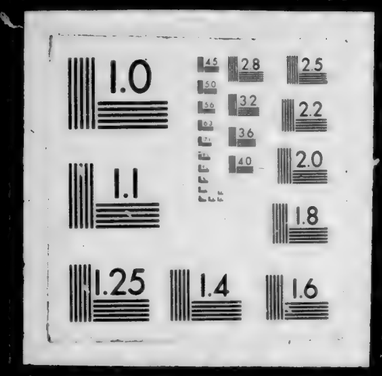

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Rules and Regulations

Federal Register
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Monday, August 2, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A; Docket R–1038]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Regulation A to establish a special lending program under which Federal Reserve Banks will extend credit at a rate 150 basis points above the Federal Open Market Committee's targeted federal funds rate to eligible institutions to accommodate liquidity needs during the century date change period. Unlike adjustment credit, borrowers will not be required to seek credit elsewhere first, uses of funds will not be limited, and the loans may be outstanding for any period while the facility is open.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: James A. Clouse, Chief, Monetary and Financial Market Analysis Section (202) 452–3922, or William R. Nelson, Economist (202) 452–3579, Division of Monetary Affairs; Oliver I. Ireland, Associate General Counsel (202) 452–3625, or Stephanie Martin, Managing Senior Counsel (202) 452–3198, Legal Division. For users of the Telecommunications Device for the Deaf (TDD), contact Diane Jenkins (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Board is amending its Regulation A (12 CFR part 201), Extensions of Credit by Federal Reserve Banks, to provide an additional mechanism under which Federal Reserve Banks will make discount window credit available to depository institutions in the months surrounding the century date change. The Board expects that, with advance planning, depository institutions will be able to meet their liquidity needs during the century date change period relying on their usual sources of funds, including adjustment credit at the discount window. The Board recognizes, however, that uncertainty surrounds potential developments over the period. The Special Liquidity Facility is intended to ensure that a source of funds is available to relieve unusual liquidity pressures that depository institutions may experience.

Background

Depository institutions and their customers are now making plans to meet possible credit needs in the period around the century date change. Their planning is complicated by uncertainty about the cost and availability of funds to individual depository institutions in the period surrounding the rollover. Unusual liquidity strains might arise from the conversion of deposits to currency, heightened credit demands, greater lender and depositor caution, and potential market disruptions. While some banks may experience a surge in deposits as investors pull back from institutions and markets perceived as more vulnerable, the degree and incidence of shifts in liquidity demands and supplies are extremely difficult to predict. They could well involve pressures on small and medium-sized depository institutions that customarily are suppliers of funds to larger institutions and markets. These smaller institutions might have difficulty obtaining relatively large volumes of funds because they typically do not have access to national funding markets and have limited borrowing relationships with other banks.

To a considerable extent, greater aggregate liquidity needs in reserve markets can be met using open market operations, as they are, for example, in November and December of each year when there is a large seasonal increase in demand for currency. Forecasts of reserve market pressures, however, will be subject to considerable uncertainty, and the normal distribution of reserves and liquidity through markets may be disrupted by the unusual funding situations of institutions and uncertainty about the status of potential borrowers. Volatility in the demand for reserves is likely to be compounded by a decline in required reserves as customers replace transaction accounts with currency and by a drop in required reserve balances at the Federal Reserve as banks augment their holdings of vault cash to meet potential customer demands. Consequently, undesirable tightness and distortions in short-term funding markets would be a possibility if reliance were to be placed almost entirely on open market operations to meet liquidity needs.

Supervisors have urged depository institutions to make firm contingency plans for meeting unexpected liquidity demands and have encouraged them to make the Federal Reserve's discount window part of those plans. Although borrowing by depository institutions through the usual adjustment credit facility of the discount window should be adequate to meet most unusual needs and relieve possible pressures on credit markets, in practice depository institutions have been somewhat reluctant in the past to use such credit. Moreover, the adjustment credit program requires borrowers to seek funds elsewhere first, constrains the uses of the funds, and is normally very limited in duration.

Special Liquidity Facility

In May 1999, the Board requested comment on amendments to its Regulation A (12 CFR part 201) to implement a Special Liquidity Facility that would make collateralized Federal Reserve Bank credit more freely available, albeit at an interest rate somewhat above depository institutions' normal cost of funds (64 FR 28768, May 27, 1999). By assuring the availability of Reserve Bank credit, the facility should enable depository institutions and their customers to commit to meeting possible credit needs with greater confidence. The facility should also help to damp any tendency for money markets to tighten owing to transitory imbalances in the supply and demand of reserves.

The Board received 93 comments on its proposal, distributed as follows:

Type of institution	Number
Commercial Bank	63
Trade Association	9
Savings Bank	7
Credit Union	5

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Type of institution	Number
Federal Reserve Bank	2
Investment Bank	2
Government Agency	2
Government Sponsored Agency	1
Clearing House	1
Consultant	1
Total	93

Virtually all of the commenters supported the creation of the Special Liquidity Facility. The commenters frequently noted that even though the financial services industry was well prepared for Year 2000, the facility would provide a desirable degree of certainty that funds would be available to meet liquidity demands around year-end. Only three commenters opposed the facility, all of them stating that existing discount lending programs would be sufficient to meet year-end funding contingencies.

After considering the comments, which are discussed in detail below, the Board has adopted the proposed amendments to Regulation A implementing the Special Liquidity Facility with revisions. The Board has adopted the proposed rate for the facility of 150 basis points over the Federal Open Market Committee's targeted federal funds rate. The Board also moved up the opening date for the facility to October 1, 1999, from the proposed opening date of November 1, 1999. The closing date will be April 7, 2000, or such later date as determined by the Board. Finally, the Board has revised the definition of "eligible institution" to mean an institution that is in sound financial condition in the judgment of the lending Reserve Bank. Such a judgment may be based on more than simply whether a borrower meets certain capital standards on a particular date.

Rate

The Board proposed that credit under the Special Liquidity Facility be available at a spread over the Federal Open Market Committee's target federal funds rate. The Board tentatively proposed that the spread be set at 150 basis points, but specifically requested comment on whether the size of the proposed spread was appropriate.

Nearly 20 percent of the commenters endorsed the facility without commenting on the proposed lending rate, and another 10 percent specifically stated that a 150 basis point spread was appropriate. About 70 percent, however, suggested that the lending rate be set at a lower spread. Of these, nearly 20 percent stated they preferred a spread of 50 basis points, while the remainder were divided about evenly between those requesting less than 50 basis points, 75 basis points, 100 basis points, or simply stating the spread should be below 150 basis points. The commenters offered a variety of reasons why a lower spread would be desirable. Several stated that a rate of 150 basis points over the target federal funds rate is so far above their typical cost of funds that use of the facility would seriously reduce their profits, placing an undue burden on their institutions. Others stated that the proposed spread would discourage use of the facility until liquidity problems had become acute, noting that a lower spread would be sufficient to promote private-sector arrangements. Many institutions expressed concern that the proposed spread would become the standard for the pricing of year-end lines of credit. A few banks observed that institutions would not borrow at the proposed spread for fear that it would be taken as a sign of distress.

The lending rate should be high enough to encourage institutions to continue to make private-sector arrangements to meet potential funding needs, but low enough to provide a reasonable backstop should, contrary to the Board's expectations, concerns about the century date change, or the change itself, begin to put strains on funding and credit markets. It is difficult to determine precisely what spread fits these criteria in part because loans under the facility could be used for a variety of purposes and may be extended to a disparate set of depository institutions. A relatively narrow spread still may be high enough to offer incentives to large financial institutions of unquestioned credit quality with access to money and capital markets to seek private-sector alternatives to the facility, but a wider spread may be required for other institutions that are smaller or for whom markets perceive a significant credit risk.

A related difficulty in selecting a spread is that there are no close analogues to the facility against which to compare the pricing. Unlike most private or government agency alternatives, the Special Liquidity Facility requires no fee to establish and may be drawn on and repaid at any time over the life of the facility without penalty. The Federal Home Loan Banks (FHLBs) have been offering their members Year-2000 funding alternatives, but these typically involve restrictions, fees, or other costs not present in the Special Liquidity Facility. The implicit prices of FHLB alternatives range from above that proposed for the facility to somewhat below, depending on the length of time over which the fees are prorated. Informal discussions with commercial banks suggest secured lines of credit to high-quality, large banks would be priced at only a few basis points over LIBOR,[1] but the spread on a similar line to small banks would be over 100 basis points (LIBOR is now about 25 basis points above the federal funds rate). Other central banks have arrangements through which they lend reserves overnight at a penalty rate. The spreads on these facilities range from 25 basis points in Canada to 200 basis points in Switzerland; several central banks, including the European Central Bank, charge 100 basis points.

On balance, the Board believes that a spread of less than 150 basis points might not be sufficient to assure that many depository institutions still would have incentives to make private-sector arrangements to meet potential shifts in the supplies of, and demands for, liquidity. Furthermore, a spread of 150 basis points probably is low enough to provide a reasonable backstop if concerns about the century date change or disruptions associated with the change itself begin to put strains on funding and credit markets, especially if these strains are short-lived. The federal funds rate has reached highs in excess of 150 basis points above the target rate on more than one-third of the final days of reserve maintenance periods since the beginning of 1994. A spread of 150 basis points is also well within the range of year-end premiums observed in the commercial paper market in past years.

Period of Operation

The Board proposed that credit under the Special Liquidity Facility be available from November 1, 1999, to April 7, 2000. The Board requested comment on how long the facility should be open, in particular whether it should begin earlier.

A majority of commenters either expressed general approval of the facility as described or specifically endorsed the start and stop dates. However, a significant minority (25 percent) suggested an earlier start date, and a few commenters suggested either a later ending date or more flexibility on the stop date depending on circumstances. Among those suggesting an earlier start date, most proposed the beginning of October, although a few requested September, August, or as soon as possible. A majority of those advising an earlier opening cited plans to build up

[1] The London Interbank Offered Rate (LIBOR) is a standard rate of interest used in international transactions.

vault cash earlier in the fall. More broadly, other commenters stated that an earlier start date would be a prudent response to the great uncertainty about demands for liquidity in the fourth quarter, including the potential for cash withdrawals.

In light of these comments, the Board has determined to make the facility available beginning October 1, 1999. The facility is meant to provide assurance to financial institutions that funds will be available if unforeseen difficulties arise. Given the expressed view that such assurance would be desirable earlier than proposed, there appears to be little reason not to open the facility sooner. The Board has retained the closing date of April 7, 2000, but has specified in the regulation that at a later time it could move back the closing date if conditions warrant.

Eligible Borrowers

The Board proposed that credit under the Special Liquidity Facility would remain discretionary, even though many normal discount window conditions would not apply. The Board proposed that the Special Liquidity Facility would be available only to depository institutions in sound financial condition. For example, under the proposal, it would not have been available to depository institutions that are undercapitalized or critically undercapitalized under the standards set forth in the prompt corrective action provisions of the Federal Deposit Insurance Act [2] and implementing regulations. Reserve Bank discounts for and advances to such institutions are limited by § 201.4 of Regulation A. That section implements amendments to section 10B of the Federal Reserve Act [3] that discourage the Reserve Banks from making relatively long-term loans to inadequately capitalized institutions. Similarly, in the case of credit unions, the Board proposed that credit under the Special Liquidity Facility would be available only to institutions with a net worth ratio (as defined in section 216 of the Federal Credit Union Act [4]) of at least six percent, which qualifies a credit union as adequately capitalized under that Act.[5] With respect to branches and agencies of foreign banks, the Board proposed that credit under the Special Liquidity Facility would be available only to a branch or agency where the borrowing bank meets the equivalent of the Basle Capital Accord's minimum standards for capital and is otherwise considered to be in sound financial condition.

Several commenters stated that there may be situations where it would be appropriate to provide access to the Special Liquidity Facility for undercapitalized institutions. Four commenters stated that the Board should permit institutions some liquidity and capital ratio flexibility during the century date change period, particularly in light of the possibility that market behavior during the conversion, such as a "flight to quality" inflow of bank deposits or the drawing down of lines of credit, could create temporary balance sheet distortions. One commenter stated that denying access to these institutions could cause a public reaction that would increase the institution's vulnerability and precipitate customer withdrawals. Another commenter suggested that, rather than prohibit undercapitalized institutions from using the facility, the Board could place more limited controls on undercapitalized institutions that balance the need to provide emergency funding with measures to prevent the inappropriate use of those funds, such as restrictions on the purpose and duration of borrowing and enhanced supervision. Finally, one commenter stated that the eligibility of U.S. branches and agencies of foreign banks for the Special Liquidity Facility should be determined by a combination of supervisory ratings and investment information such as independent agency ratings.

The credit union industry raised specific concerns. Two commenters stated that the proposed 6 percent net worth ratio that must be met by eligible credit unions is unworkable for corporate credit unions, which are not subject to statutory net worth requirements. One commenter suggested that the Board leave the determination as to the eligibility of corporate credit unions to the Reserve Bank or, alternatively, deem a corporate credit union to be eligible if it meets an appropriate capital ratio as determined by its primary regulator.[6] The other commenter suggested that the Board simply deem corporate credit unions to be eligible borrowers. One commenter requested that the Board lower the net worth requirement for eligible credit unions to 5.5 percent because of the likelihood that expenses associated with century-date-change preparations may require some credit unions to reduce their capital. Another commenter suggested that an alternative to lowering the net worth percentage would be to average the credit union's capitalization over several reporting periods to determine eligibility. Another commenter objected to the Board using a statutory net worth requirement for credit unions that has not yet taken effect and suggested that the Board establish a definition of "sound financial institution" that would be flexible and take into account a variety of factors other than capital, such as risk and collateral. Another commenter suggested that any credit union with reasonable net worth and adequate collateral should be eligible.

An important purpose of the Special Liquidity Facility is to encourage depository institutions to extend lines of credit over year-end. The Board has determined, therefore, that its proposed definition of "eligible institution," which tied eligibility to capital standards established under the prompt corrective action regimes for depository institutions, could be unduly constraining. Potentially, depository institutions that do not meet the minimum requirements to be adequately capitalized before or due to their borrowing from the Special Liquidity Facility may still be deemed in sound financial condition by the lending Reserve Bank. In addition, the proposed capital standards may not be applicable to certain institutions, such as corporate credit unions. To provide flexibility to the Reserve Banks in administering the Special Liquidity Facility, in the final rule the Board has deleted the proposed capital standards from the definition of "eligible institution." The Special Liquidity Facility will be available to depository institutions, including credit unions, that the lending Reserve Bank deems to be in sound financial condition. The borrowing limitations in § 201.4(a) for institutions that are less than adequately capitalized will continue to apply.

The Board has made a corresponding change in § 201.7, which applies the Regulation A lending provisions to branches and agencies of foreign banks. As in the case of domestic banks, the minimum capital levels that would be required for branches and agencies of foreign banks under the Basle Capital Accord, while useful guides, may be unduly constraining. There may be cases when an institution is in sound financial condition even though it does not meet these minimum guidelines.

[2] 12 U.S.C. 1831o(b)(1)(E).

[3] 12 U.S.C. 347b(b).

[4] 12 U.S.C. 1790d(o)(3).

[5] Section 216 of the Federal Credit Union Act will take effect on August 7, 2000, except for special provisions regarding risk-based net worth requirements, which take effect on January 1, 2001. The National Credit Union Administration has initiated rule-making procedures to adopt rules to implement the Act, but no final rules are yet in place. *See* 64 FR 27090, May 18, 1999.

[6] Generally, corporate credit unions are not eligible to borrow from the discount window unless they hold reserves.

Conversely, for both domestic and foreign institutions, even where the institution meets minimum capital requirements, the lending Reserve Bank may determine that the institution is not in sound financial condition and therefore is ineligible to borrow under the Special Liquidity Facility.

When determining whether an institution is in sound financial condition, the Board or Reserve Bank may discuss the institution's financial condition or other matters related to the loan with its U.S. supervisor or, in the case of a foreign bank, its home country supervisor or central bank. Institutions that had been adequately capitalized and in sound financial condition but whose capital ratios fell below minimum regulatory standards would be expected to consult with their lending Reserve Bank. In judging whether such a borrower remained in sound financial condition and should continue to have access to the facility, the Reserve Bank would take into account whether the decline owed to temporary balance sheet distortions associated with the century date change, as well as the financial condition of the institution before those distortions occurred.

Collateral.

The Board proposed that the collateral requirements for Special Liquidity Facility credit would be identical to those for other discount window loans, all of which must be fully collateralized to the satisfaction of the Reserve Bank. Several commenters stated that the Board should expand the types of collateral that are eligible to be pledged for a loan under the facility. Commenters stated that they would like to pledge collateral held at the pledgor bank, eligible securities maintained at Euroclear, bank debentures and certificates of deposit (with a generic hair-cut of 15 percent), GNMA and municipal securities, corporate securities, and shares of mutual funds that invest in allowable fixed-income securities (which are commonly held by credit unions). One international bank commenter requested that it be able to use collateral it maintains in the United Kingdom, possibly by pledging it through the Bank of England, which would hold it on account for the Reserve Bank. Two commenters suggested that the Board informally encourage Reserve Banks to be flexible, expeditious, and practical in their consideration of additional asset classes, hair-cuts applied in the valuation of collateral, and methods of perfection. One commenter stated that the collateral procedural requirements should not be as cumbersome as those for other discount window credit. Another commenter asked for clarification as to whether collateral will be fungible for purposes of borrowing under existing discount window arrangements and the Special Liquidity Facility.

The collateral requirements for Special Liquidity Facility credit will be identical to those for other discount window loans. Reserve Banks accept a wide range of loans and securities as collateral, but unless the collateral is traded in active markets, such as a Treasury or Agency security, Reserve Banks must have time to determine the lendable value. Borrowing institutions must have pre-positioned collateral (as well as have the necessary authorizations signed) to have access to credit the day it is requested. If many institutions that have not made collateral arrangements ahead of time request credit simultaneously, the resulting congestion could prevent institutions from obtaining credit on the day they request it. Federal Reserve staff strive to accommodate the needs of depository institutions seeking access to discount window credit. Staff will work aggressively to expand the range of acceptable collateral and to make collateral procedures more expeditious and flexible. In addition, as there will be no separate borrowing agreements, those institutions that arrange, or have already arranged, access to adjustment credit will have access to Special Liquidity Facility credit, provided they are eligible institutions. Similarly, pre-positioned collateral will be available to secure either type of credit.

One commenter asked for clarification on additional operational issues regarding collateral, such as what the minimum notification period would be for using the facility on a collateral-by-collateral-type basis, whether borrowers will be able to substitute collateral, and what the acceptable delivery mechanism would be (delivery-versus-payment, tri-party, or held-in-custody). Another commenter requested that the Reserve Banks and the appropriate FHLBs coordinate on the terms of collateral agreements to enable FHLB members to determine their available collateral in the most efficient manner. Institutions with questions about specific collateral arrangements should contact their local Federal Reserve Bank.

One commenter stated that many banks have already pledged many of their assets to secure public deposits or to the FHLBs, leaving little available to pledge to the Reserve Banks. This commenter suggested that the Reserve Banks could waive collateral requirements for well-capitalized institutions without meaningfully increasing their credit risk. Consistent with the Federal Reserve Act and historical practice, the Reserve Banks will continue to require that all loans be collateralized fully, even though the Board recognizes that some borrowers present less credit risk than others.

Differences from Adjustment Credit.

Special Liquidity Facility credit, as proposed and as adopted, would differ from adjustment credit in several ways meant to provide greater flexibility and increase institutions' willingness to borrow. Borrowers will not be required to exhaust alternative liquidity sources, nor will the use of the funds be limited in the same way as funds from adjustment credit. Furthermore, there will be no requirement that credit be repaid expeditiously; credit can remain outstanding until the program expires. Reserve Banks will not monitor or require additional reports of borrowers under the Special Liquidity Facility. Supervisory authorities may need to assess the condition of the borrowing institution if the use of Special Liquidity Facility credit is accompanied by signs of financial trouble.

One commenter noted that § 201.6(d) of Regulation A prohibits an institution from acting (without permission) as a medium or agent of another institution in receiving Federal Reserve credit. The commenter asked that the Board clarify that § 201.6(d) does not preclude eligibility for a bank that is a net provider of funds to other institutions or needs to use the Special Liquidity Facility because of an unexpected drawdown on a line of credit provided to another institution. As the purpose of the Special Liquidity Facility is to supply additional liquidity to the markets, this restriction on the use of the funds should not apply. The Board has revised § 201.6(d) to clarify that it does not apply to depository institutions that receive credit under the Special Liquidity Facility.

Four commenters requested clarification as to whether an institution may make drawings from the Special Liquidity Facility at any time during the proposed period and whether the term of a borrowing must be stated upon drawing or whether the drawing may be made on an open basis. One of these commenters noted that section 10B of the Federal Reserve Act limits maturities on advances to four months, unless the advances are secured by mortgage loans covering one-to-four family residences. One commenter asked how often the facility could be accessed and whether there were any minimum or maximum borrowing amounts. Another commenter asked the Board to clarify that advances under the facility may be prepaid without penalty.

Borrowers will be able to adjust the amount they borrow as frequently as they desire, although all outstanding credit must be fully collateralized. Loans can be taken down and repaid at the borrowers' discretion at any time while the facility is operating, consequently there can be no penalty for early repayment. Technically, all discount window loans are payable on demand, and accordingly their maturities do not exceed four months.[7]

One commenter stated that the Board should better define the circumstances for determining when an institution may borrow through the Special Liquidity Facility and when it may borrow adjustment credit. A credit union commenter asked for clarification that once the institution's application for discount window access is approved, it may access both adjustment credit and the Special Liquidity Facility. This commenter also requested clarification that a borrower need not consider the Special Liquidity Facility as a funding option that must be exhausted before requesting adjustment credit.

Borrowing under the facility will not be considered a source of funds that would need to be exhausted before obtaining adjustment credit. Furthermore, institutions that experience a very short-term need for Federal Reserve credit (such as meeting reserve requirements on the last day of a maintenance period), including institutions that have loans outstanding under the Special Liquidity Facility, could continue to obtain regular adjustment credit at the basic discount rate.

One commenter stated that the Federal Reserve will need to address a wide range of operational issues before implementing the Special Liquidity Facility, such as the loan request and approval process, reliance on the 21-day period for perfection of instruments under borrower-in-custody arrangements, and modifications to automated systems. As noted above, specific collateral arrangements should be worked out with the local Federal Reserve Bank.

Other Regulatory and Market Concerns.

One commenter stated that the Board should consider temporarily suspending certain provisions of the Federal Reserve Act, such as section 23A, over the century date change period and should expand the types of markets that it uses for open-market purchases to include, for example, asset-backed securities markets. Another commenter stated that the Board should review its payment system risk policy with a view towards increasing the net debit cap for international banks, given the significant changes in the market and in payments system practices since the caps were adopted in 1990. Another commenter stated that the Reserve Banks should pay interest on deposits of at least 100 basis points. One commenter also requested that the Federal Reserve take steps to help banks respond to market fluctuations by adjusting its lending policies and by allowing late reserve adjustments.

The Board is taking and will continue to take actions that it determines are appropriate in order to ensure that the banking system and financial markets continue to operate safely and soundly, with sufficient liquidity, during the century date change period. If problems arise related to certain statutory or regulatory requirements, the Board will consider at that time the appropriate action. Certain actions, such as paying interest on accounts at Reserve Banks, are not authorized by statute.

Finally, one commenter suggested that the Reserve Banks revise Operating Circular 10 (the lending circular) to eliminate the provision that requires a correspondent bank to object to any debit to its account for the amount of a loan repayment due from the borrower to the Reserve Bank within one hour of the time the payment is due or else the payment is irrevocable. The commenter stated that this provision requires the correspondent to become the unintended purchaser of the loan from the Reserve Bank without benefit of the collateral that had secured the loan. The commenter stated that neither the correspondent nor the Reserve Bank would face increased risk if the circular were to eliminate the notion of irrevocability of an unchallenged debit and require the correspondent to transfer the loan repayment amount affirmatively to the Reserve Bank. Arrangements regarding correspondent relationships should be worked out with the local Federal Reserve Bank.

Educational Outreach. One commenter urged the Board to take a leadership role on providing a flexible regulatory response to possible temporary declining capital ratios due to century-date-change activities and to educate rating agencies and the Securities Exchange Commission that such temporary declines near year-end are not necessarily a sign of weakened condition. One commenter urged the Board and other banking agencies to expand Year 2000 outreach efforts to consumers in order to combat emotional overreaction due to unfounded rumors and sensational media stories. Another commenter recommended that the Federal Reserve actively educate depository institutions about the Special Liquidity Facility. The Board has undertaken a number of initiatives to provide information on issues related to the century date change. More information is available on the Board's web site.[8]

[7] *See* the Board's interpretation on eligibility of demand paper for discount and as security for advances by Reserve Banks, 12 CFR 201.107.

[8] *See* <http://www.federalreserve.gov/y2k/>.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the amendments to Regulation A will not have a significant adverse economic impact on a substantial number of small entities. The rule would not impose any additional requirements on entities affected by the regulation but rather would make an additional lending facility available to meet depository institutions' liquidity needs related to the century date change.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 201 is amended as set forth below:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. In § 201.2, new paragraphs (j) and (k) are added to read as follows:

§ 201.2 Definitions.

* * * * *

(j) *Eligible institution* means a depository institution that is in sound financial condition in the judgment of the lending Federal Reserve Bank.

(k) *Targeted federal funds rate* means the federal funds rate targeted by the Federal Open Market Committee.

3. In § 201.3, new paragraph (e) is added to read as follows:

§ 201.3 Availability and terms.

* * * * *

(e) *Special liquidity facility for century date change.* Federal Reserve

Banks may extend credit between and including October 1, 1999, and April 7, 2000, or such later date as determined by the Board, under a special liquidity facility to ease liquidity pressures during the century date change period. This type of credit is available only to eligible institutions. This type of credit is granted at a special rate above the basic discount rate and other market rates for funds, is available for the entire length of the period, and is not subject to the conditions regarding specific use or exhaustion of other liquidity sources as is adjustment credit under paragraph (a) of this section.

4. In § 201.6, paragraph (d) is revised to read as follows:

§ 201.6 General requirements.

* * * * *

(d) *Indirect credit for others.* Except for depository institutions that receive credit under the Special Liquidity Facility described in § 201.3(e), no depository institution shall act as the medium or agent of another depository institution in receiving Federal Reserve credit except with the permission of the Federal Reserve bank extending credit.

5. In § 201.7, the introductory text is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 201.7 Branches and agencies.

* * * * *

(b) This part applies to a United States branch or agency of a foreign bank in the same manner and to the same extent as an eligible institution if the foreign bank is in sound financial condition in the judgment of the lending Federal Reserve Bank.

6. In § 201.52, the heading is revised and a new paragraph (c) is added to read as follows:

§ 201.52 Other credit for depository institutions.

* * * * *

(c) *Special liquidity facility.* The rate for credit extended to eligible institutions under the special liquidity facility provisions in § 201.3(e) is equal to the targeted federal funds rate plus 1.5 percentage points on each day the credit is outstanding.

By order of the Board of Governors of the Federal Reserve System, July 27, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–19632 Filed 7–30–99; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 602

RIN 3052–AB84

Releasing Information

AGENCY: Farm Credit Administration (FCA).

ACTION: Final rule.

SUMMARY: This final rule amends FCA regulations on the release of information under the Freedom of Information Act (FOIA) to:

- Reflect new fees and make it easier for the public to get FCA records;
- Revise the procedures for requests for testimony by FCA employees on official matters and for producing FCA documents in litigation when FCA is not a named party; and
- Add procedures for getting records in public rulemaking files.

We designed this regulation to be concise and easy to understand.

EFFECTIVE DATE: This regulation will become effective 30 days after publication in the **Federal Register** during which either one or both houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

John Hays, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444, or

Jane Virga, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: We received no comments from the public on our proposed rule published March 8, 1999 (64 FR 10954). The revisions to part 602 are now final. We have added two tables to the final regulation to make it easier for readers to view the types and amounts of fees we charge requesters.

List of Subjects in 12 CFR Part 602

Administrative practice and procedure, Courts, Freedom of information, Government employees.

For the reasons stated in the preamble, part 602, of chapter VI, title 12 of the Code of Federal Regulations is revised to read as follows:

PART 602—RELEASING INFORMATION:

Subpart A—Information and Records Generally

Sec.
602.1 Purpose and scope.
602.2 Disclosing reports of examination.

Subpart B—Availability of Records of the Farm Credit Administration 602.3 Definitions.

602.4 How to make a request.
602.5 FCA response to requests for records.
602.6 FOIA exemptions.
602.7 Confidential business information.
602.8 Appeals.
602.9 Current FOIA index.

Subpart C—FOIA Fees 602.10 Definitions.

602.11 Fees by type of requester.
602.12 Fees.
602.13 Fee waiver.
602.14 Advance payments—notice.
602.15 Interest on unpaid fees.
602.16 Combining requests.

Subpart D—Testimony and Production of Documents in Legal Proceedings in Which FCA is Not a Named Party 602.17 Policy.

602.18 Definitions.
602.19 Request for testimony or production of documents.
602.20 Testimony of FCA employees.
602.21 Production of FCA documents.
602.22 Fees.
602.23 Responses to demands served on FCA employees.
602.24 Responses to demands served on non-FCA employees or entities.

Subpart E—Release of Records in Public Rulemaking Files

602.25 General.

Authority: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252; 5 U.S.C. 301, 552; 52 FR 10012; E.O. 12600, 52 FR 23781, 3 CFR 1987, p. 235.

Subpart A—Information and Records Generally

§ 602.1 Purpose and scope.

This part contains FCA's rules for disclosing our records or information; processing requests for records under the Freedom of Information Act (5 U.S.C. 552, as amended)(FOIA); FOIA fees; disclosing otherwise exempt information in litigation when FCA is not a party; and getting documents in public rulemaking files. Part 603 of this chapter tells you how to get records about yourself under the Privacy Act of 1974, 5 U.S.C. 552a.

§ 602.2 Disclosing reports of examination.

(a) *Disclosure by FCA.* Reports of examination are FCA property. We prepare them for our confidential use and the use of the institution examined. We do not give reports of examination to the public. Except as provided in this section, only the Chairman or the Chairman's designee may consent to disclosing reports of examination of Farm Credit System institutions and other institutions subject to our examination. You may send a written request to our General Counsel that explains why we should give permission.

(b) *Disclosure by Farm Credit System institutions.* An institution that we have examined may disclose its report of examination to its officers, directors, and agents, such as its attorney or accountant, if they agree to keep the report confidential. In addition, banks may disclose their reports of examination to their affiliated associations, associations may disclose their reports to their supervisory bank, and service corporations may disclose their reports of examination to the institutions that own them. An institution may not disclose these institutions' reports of examination to any other person without our written permission.

(c) *Disclosure to governmental entities.* Without waiving any privilege, we will disclose reports of examination to other Federal government entities:

(1) In response to a Federal court order;

(2) In response to a request of either House or a Committee or Subcommittee of Congress; or

(3) When requested for confidential use in an official investigation by authorized representatives of other Federal agencies.

Subpart B—Availability of Records of the Farm Credit Administration

§ 602.3 Definitions.

Appeal means a request under the FOIA asking for the reversal of a decision.

Business information means trade secrets or other commercial or financial information that is privileged or confidential.

Business submitter means any person or entity that gives business information to the Government.

FOIA request means a written request for FCA records, made by any person or entity that either directly or indirectly invokes the FOIA or this part.

Record means all documentary materials, such as books, papers, maps, photographs, and machine-readable materials, regardless of physical form or characteristics (for example, electronic format) in our possession and control when we receive your FOIA request.

§ 602.4 How to make a request.

(a) *How to make and address a request.* Your request for records must be in writing and addressed to the FOIA Officer, Farm Credit Administration. You may send it:

(1) By mail to 1501 Farm Credit Drive, McLean, Virginia 22102–5090;

(2) By facsimile to (703) 790–0052; or

(3) By E-mail to "foiaofficer@fca.gov."

(b) *Description of requested records.* You must describe the requested records in enough detail to let us find them with a reasonable effort. If the description is inadequate, we will ask you to provide more information and the 20-day response period under § 602.5(a) will not begin until we receive your reply.

(c) *Faster response.* You may ask for a faster response to your FOIA request by giving us a statement, certified to be true, that you have a "compelling need." The FOIA Officer will tell you within 10 calendar days after receiving the request whether we will respond to it faster. If so, we will respond to your request as soon as we can. A *compelling need* means:

(1) Someone's life or physical safety may be in danger if we do not respond to the request faster; or

(2) You urgently need to tell the public about Federal government activity as a representative of the news media.

(d) *Request for personal information.* If you or your representative requests your personal information, we may require you to give us a notarized request, identify yourself under penalty of perjury, or provide other proof of your identity.

(e) *Fees.* When making a request, you must tell us the most you are willing to pay. Our charges are in the fee tables in §§ 602.11 and 602.12. You may also want to tell us the purpose of your request so we can classify your request for fee purposes.

(f) *Other requests.* To ensure the public has timely information about our activities, the Office of Congressional and Public Affairs will make available copies of public documents, such as the FCA annual report and media advisories.

§ 602.5 FCA response to requests for records.

(a) *Response time.* Within 20 business days of receiving your request, the FOIA Officer will tell you whether we have granted or denied it. If you send your request to the wrong address, the 20-day response time will not begin until the FOIA Officer receives your request.

(b) *Extension of response time.* In "unusual circumstances," the FOIA Officer may extend the 20-day response time for up to 10 more business days by telling you in writing why we need more time and the date we will mail you our response. As used in this subpart, "unusual circumstances" means our need to:

(1) Search for and get the requested records from field offices or other locations;

(2) Search for, get, and review many records identified in a single request;

(3) Consult with another Federal agency having a substantial interest in the request; or

(4) Consult with two or more FCA offices having a substantial interest in the request.

(c) *Referrals.* If you ask for records we have that another Federal agency originated, we will refer the request to the originating agency and tell you about the referral. If you should have sent your request to another Federal agency, we will refer the request to that agency and so advise you.

§ 602.6 FOIA exemptions.

The FOIA allows agencies to withhold documents in certain categories. For instance, we do not have to give you documents that relate to our examination of institutions or that would violate the personal privacy of an individual. If we do not give you a document because the FOIA does not require us to, we will tell you which FOIA exemption applies to our decision.

§ 602.7 Confidential business information.

(a) *FCA disclosure.* FCA may disclose business information from a business submitter only under this section. This section will not apply if:

(1) We decide the business submitter has no valid basis to object to disclosure;

(2) The information has been published lawfully or made available to the public; or

(3) Law (other than the FOIA) requires disclosure of the information.

(b) *Notice by FCA.* When we receive a request for confidential business information, the FOIA Officer will promptly tell the requester and the business submitter in writing that the responsive records may be free from disclosure under the FOIA. We will give the business submitter a reasonable time to object to the proposed disclosure of the responsive records and tell the requester whenever:

(1) The business submitter has in good faith labeled the information a trade secret or commercial or financial information that is privileged or confidential. We will provide such notice for 10 years after receiving the information unless the business submitter justifies the need for a longer period; or

(2) We believe that disclosing the information may result in commercial or financial injury to the business submitter.

(c) *Objection to release.* A business submitter who objects to our releasing the requested information should tell us in writing why the information is a trade secret or commercial or financial information that is privileged or confidential.

(d) *FCA response.* (1) We will consider carefully a business submitter's objections. If we decide to disclose business information over the submitter's objection, the FOIA Officer will explain to the submitter in writing why we disagreed with the submitter's objection and describe the business information to be disclosed.

(2) We will tell the requester and the submitter the proposed disclosure date at the same time.

(3) If a submitter sues to prevent release, we will promptly tell the requester and will not disclose the business information until after the court's decision.

(4) If a requester sues to compel disclosure, we will promptly tell the business submitter.

§ 602.8 Appeals.

(a) *How to appeal.* You may appeal a total or partial denial of your FOIA request within 30 calendar days of the date of the denial letter. Your appeal must be in writing and addressed to the Director, Office of Resources Management (ORM), Farm Credit Administration. You may send it:

(1) By mail to 1501 Farm Credit Drive, McLean, Virginia 22102–5090;

(2) By facsimile to (703) 893–2608; or

(3) By E-mail to foiaappeal@fca.gov.

(b) *FCA action on appeal.* Within 20 business days of receiving your appeal, the ORM Director will tell you, in writing, whether we have granted or denied it. If you send your appeal to the wrong address, the 20-day response time will not begin until the ORM Director receives your appeal.

(c) *Unusual circumstances.* In unusual circumstances, the ORM Director may extend the 20-day response time by telling you in writing why we need more time and the date we will mail you our response. All extensions, including any extension of the response time for the first request, may not total more than 10 business days.

§ 602.9 Current FOIA index.

FCA will make a current index available for public inspection and copying, as required by the FOIA. We will give you an index for the cost of copying it. Because we rarely receive requests for an index, we have not published one in the **Federal Register**.

Subpart C—FOIA Fees

§ 602.10 Definitions.

Commercial use request means an information request by an individual or entity seeking information for a use or purpose that furthers the commercial, trade, or profit interests of that individual or entity.

Direct costs means the costs FCA incurs in searching for and reproducing documents to respond to a FOIA request. For a commercial use request, it also means the costs we incur in reviewing documents to respond to the request. Direct costs include the pro rated cost of the salary of the employee performing the work (based on the basic rate of pay plus 16 percent to cover benefits) and the cost of operating reproduction equipment. They do not include overhead expenses.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education that runs a program of scholarly research.

Noncommercial scientific institution means a nonprofit institution that conducts scientific research that is not intended to promote any particular product or industry.

Pages mean 8–1/2 × 11 inch or 11 × 14 inch paper copies.

Representative of the news media means any person actively gathering news for an entity that publishes or broadcasts news to the public. **NEWS** means information about current events or of current interest to the public.

Reproduce (or reproduction) means copying a record.

Review means looking at documents found in response to a FOIA request to decide whether any portion should be withheld. It does not include the time spent resolving legal or policy issues.

Search means all time spent looking for material responsive to a FOIA request, including page-by-page or line-by-line identification of material within documents.

§ 602.11 Fees by type of requester.

Depending on your identity and the purpose of your request, the FCA may charge you the direct costs of searching for responsive records, reviewing the records, and reproducing them. If necessary, we will seek clarification before classifying the request.

(a) *Educational institutions and noncommercial scientific institutions.* We charge fees for reproduction costs only. The first 100 pages are free. You must show that the request is sanctioned by an educational or noncommercial scientific institution and that you seek the records for scholarly or scientific research, not for a commercial use.

(b) *Representatives of the news media.* We charge fees for reproduction costs only. The first 100 pages are free. You must be a representative of the news media, and the request must not be made for a commercial use. A request for records supporting news distribution is not a request for a commercial use.

(c) *Commercial use.* We charge the direct cost for search, review, and reproduction. Commercial use requesters are not entitled to free search time or free reproduction. We will charge you even if we do not disclose any records.

(d) *All others.* The first 2 hours of search time and the first 100 pages of reproduction are free. After that, we will charge you for search and reproduction costs. We will charge you for a search even if we do not disclose any records.

(e) *Fee table.* The fee information in paragraphs (a) through (d) of this section is presented in the table to this paragraph. You may apply for a waiver if your request is not mostly in your commercial interest and the disclosure is in the public interest. *See* § 602.13.

FEE TABLE

Type of requester	Charges for		Reproduction
	Search time	Review time	
• Educational Noncommercial scientific users News media	No Charge	No charge	First 100 pages free, $ 0.15 a page after that.
Commercial Users [1]	All direct costs	All direct costs	$0.15 a page.

FEE TABLE—Continued

Type of requester	Charges for		Reproduction
	Search time	Review time	
All others*	First 2 hours free, all direct costs after that.	No charge	First 100 pages free, $0.15 a page after that.

* You are responsible for fees even if we do not disclose any records.

§ 602.12 Fees.

(a) FCA may charge:

(1) For manual searches for records and for review, the pro rated cost of the salary of the employee doing the work.

(2) For computer searches for records, the direct costs of computer search time and supply or material costs.

(3) For each page made by photocopy or similar method, fifteen cents a page, and for other forms of copying, the direct costs.

(4) The direct costs of elective services, such as certifying records as true copies or sending records by special methods.

(b) We will not charge fees when total assessed fees are less than $15.00.

(c) You must pay by personal check, bank draft drawn on a United States bank, or postal money order made payable to the Treasury of the United States.

(d) We treat a request about yourself under Privacy Act fee rules.

(e) The information in paragraphs (a) and (b) of this section is presented in the table to this paragraph. Direct costs means the costs FCA incurs in searching for, reviewing, and reproducing documents to respond to a request. Direct costs include pro rated salary and reproduction costs. We will not charge fees when they total less than $ 15.00.

FEE AMOUNTS TABLE

Type of fee	Amount of fee
Manual Search and Review	Pro rated Salary Costs.
Computer Search	Direct Costs.
Photocopy	$0.15 a page.
Other Reproduction Costs	Direct Costs.
Elective Services	Direct Costs.

§ 602.13 Fee waiver.

We may waive or reduce fees if disclosure is not mostly in your commercial interest but, instead, is in the public interest because it will advance public understanding of the Federal government's operations or activities.

§ 602.14 Advance payments—notice.

(a) If fees will be more than $25.00 and you have not told us in advance that you will pay estimated fees, we will tell you the estimated amount and ask that you agree to pay it. Except as noted in this section, we will begin processing the FOIA request when we receive your agreement to pay.

(b) If estimated fees exceed $250.00 and you have a history of promptly paying fees charged for information requests, we may respond to your request based on your agreement to pay.

(c) If estimated fees exceed $250.00 and you have no history of paying fees, we may require you to pay in advance.

(d) If you have previously failed to pay fees for information requests or paid them late, you must pay any fees still owed, plus interest calculated under § 602.15, and the estimated fees before we will respond to a new or a pending request.

(e) If we require advance payment or an advance agreement to pay, we will not consider your request to be received and will not respond to it until you meet the requirement.

§ 602.15 Interest on unpaid fees.

If you fail to pay fees on time, FCA may charge you interest starting on the 31st calendar day following the date we bill you. We will charge you interest at the rate allowed by law (31 U.S.C. 3717) on the billing date.

§ 602.16 Combining requests.

You may not avoid paying fees by filing multiple requests at the same time. When FCA reasonably believes that you, alone or with others, are breaking down a request into a series of requests to avoid fees, we will combine the requests and charge accordingly. We will assume that multiple requests within a 30-day period have been made to avoid fees.

Subpart D—Testimony and Production of Documents in Legal Proceedings in Which FCA is Not a Named Party

§ 602.17 Policy.

(a) The rules in this subpart preserve the confidentiality of FCA's documents and information, conserve employees' time for official duties, uphold fairness in litigation, and help the Chairman decide when to allow testimony and to produce documents. This subpart does not affect access to documents under the FOIA or the Privacy Act. See subpart B of this part and part 603 of this chapter.

(b) Generally, we will not produce documents voluntarily and employees will not appear as witnesses voluntarily in any legal proceeding. However, in limited circumstances, the Chairman may allow the production of documents or testimony when the Chairman decides it would be in the best interest of FCA or the public. All privileged documents produced under this subpart remain our property. Any employee having information or privileged documents may disclose them only as allowed by the Chairman.

§ 602.18 Definitions.

Court means any entity conducting a legal proceeding.

Demand means any order, subpoena, or other legal process for testimony or documents.

Direct costs means FCA's costs to search for, review, and reproduce documents to respond to a request. Direct costs include the pro rated cost of the salary of the employee performing the work (based on the basic rate of pay plus 16 percent to cover benefits) and the cost of operating reproduction equipment.

Document means any record or other documentary materials, such as books,

papers, maps, photographs, and machine-readable materials, regardless of physical form or characteristics (for example, electronic format) in our possession and control when we receive the request.

Employee means any present or former FCA employee, any present or former FCA Board member, any former Federal Farm Credit Board member, any present or former FCA-appointed receiver or conservator, and any present or former agent or contractor.

FCA Counsel means the General Counsel, a Department of Justice attorney, or counsel authorized by FCA to act for the FCA or an employee.

General Counsel means the FCA's General Counsel or designee.

Legal proceeding means any administrative, civil, or criminal proceeding, including a discovery proceeding, before a court when FCA is not a named party and has not instituted the legal proceeding.

§ 602.19 Request for testimony or production of documents.

(a) *How to make and address a request.* Your request for an employee's testimony about official matters or the production of documents must be in writing and addressed to the General Counsel, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

(b) Your request must contain the following:

(1) Title of the case;

(2) Forum;

(3) Your interest in the case;

(4) Summary of the litigation issues;

(5) Reasons for the request;

(6) Why the confidential information is important; and

(7) An explanation of why the testimony or document you want is not reasonably available from another source. If you want testimony, you must also state how you intend to use the testimony, provide a subject matter summary of the requested testimony, and explain why a document could not be used instead.

(c) The General Counsel may ask you to limit your request to make it less burdensome or to give us information to help us decide if providing documents or testimony is in the public interest.

§ 602.20 Testimony of FCA employees.

(a) An employee may testify only as the Chairman approves in writing. Generally, an employee may testify only by deposition or written interrogatory. An employee may give only factual testimony and may not give opinion testimony.

(b) If, in response to your request, the Chairman decides that an employee may testify, you must serve the employee with a subpoena under applicable Federal or State rules of procedure and at the same time send a copy of the subpoena by registered mail to the General Counsel.

(c) Normally, depositions will be taken at the employee's office, at a time convenient to the employee and the FCA. FCA counsel may represent FCA's interests at the deposition.

(d) If you request the deposition, you must give the General Counsel a copy of the deposition transcript at no charge.

§ 602.21 Production of FCA documents.

(a) An FCA employee may produce documents only as the Chairman allows.

(b) Before we will release any documents, the requesting party must get an acceptable protective order from the court before which the action is pending that will preserve the confidentiality of the documents to be released.

(c) On request, we may provide certified or authenticated copies of documents.

§ 602.22 Fees.

(a) For documents released under this subpart, FCA will charge:

(1) The direct costs of searching for responsive records, including the use of a computer, reviewing the records, and reproducing them. We also will charge for the direct costs of any other services and materials that we provide at your request.

(2) Fifteen cents a copy for each page made by photocopy or similar process.

(3) The direct costs for each certification or authentication of documents.

(b) You must pay by personal check, bank draft drawn on a United States bank, or postal money order made payable to FCA. We will waive fees of $15.00 or less. We will send the documents after we receive your payment.

§ 602.23 Responses to demands served on FCA employees.

(a) An employee served with a demand or a subpoena in a legal proceeding must immediately tell the General Counsel of such service, the testimony or documents described in the demand, and all relevant facts.

(b) When the Chairman does not allow testimony or production of documents, FCA Counsel will provide the regulations in this subpart to the party or court issuing the demand and explain that the employee may not testify or produce documents without the Chairman's prior approval.

(c) If the court rules the employee must comply with the demand regardless of the Chairman's instructions not to do so, the employee must respectfully refuse to comply.

(d) FCA's decision under this subpart to comply or not to comply with any demand is not a waiver, an assertion of privilege, or an objection based on relevance, technical deficiency, or any other ground. We may oppose any demand on any legal ground.

§ 602.24 Responses to demands served on non-FCA employees or entities.

If you are not an employee and are served with a demand or a subpoena in a legal proceeding directing you to produce or testify about an FCA report of examination, other document created or adopted by FCA, or any related document, you must object and immediately tell the General Counsel of such service, the testimony or documents described in the demand, and all relevant facts. You also must object to the production of any documents on the basis that they are FCA's property and cannot be released without FCA's consent. You should tell the requester the production of documents or testimony must follow the procedures in this part.

Subpart E—Release of Records in Public Rulemaking Files

§ 602.25 General.

FCA has a public rulemaking file for each regulation. You may get copies of documents in the public rulemaking file by sending a written request to the Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. We will charge fifteen cents a copy for each page. We will waive fees of $15.00 or less.

Dated: July 21, 1999.

Vivian L. Portis,

Secretary,

Farm Credit Administration Board.

[FR Doc. 99–19584 Filed 7–30–99; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–370–AD; Amendment 39–11239; AD 99–16–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–215–1A10 and CL–215–6B11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes, that currently requires repetitive inspections to detect cracking on certain wing to fuselage frame-angles, and repair, if necessary. This amendment would continue to require the same inspections. This amendment is prompted by an adverse comment received in response to the existing amendment. The actions specified by this AD are intended to detect and correct cracking in the wing to fuselage frame-angles, which could result in reduced structural integrity of the airframe.

DATES: Effective September 7, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 7, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding amendment 39–10458 (63 FR 17672, April 10, 1998). [A correction of the direct final rule was published in the **Federal Register** on May 4, 1998 (63 FR 24389)]. That amendment is applicable to certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes, and was published in the **Federal Register** on April 5, 1999.(64 FR 16366). The action proposed to require repetitive inspections to detect cracking on certain wing to fuselage frame-angles, and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10458 (63 FR 34389, May 4, 1998), and by adding a new airworthiness directive (AD), amendment 39–11239, to read as follows:

99–16–04 Bombardier Inc. (Formerly Canadair): Amendment 39–11239. Docket 98–NM–370–AD. Supersedes Amendment 39–10458.

Applicability: Model CL–215–1A10 and CL–215–6B11 series airplanes, serial numbers 1001 through 1125 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the wing to fuselage frame-angles, which could result in reduced structural integrity of the airframe, accomplish the following:

(a) Perform an eddy current inspection to detect cracking of the fuselage frame angles at the wing front and rear spar attachment to the fuselage at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD; in accordance with Bombardier Alert Service Bulletin 215–A476, Revision 3, dated August 21, 1998. Thereafter, repeat the inspection at intervals not to exceed 415 flight hours.

(1) Prior to the accumulation of 2,300 total flight hours.

(2) Within 150 flight hours or 4 months after the effective date of this AD, whichever occurs first.

Note 2: Accomplishment of the eddy current inspections of the lower surfaces of the frame angles conducted in accordance with Bombardier Alert Service Bulletin ASB 215–A476, Revision 1, dated January 14, 1997, or ASB 215–A476, Revision 2, dated June 15, 1998, prior to the effective date of this AD is considered to be acceptable for compliance with the requirements of paragraph (a) of this AD for that area only.

(b) If the results of any inspection required by paragraph (a) of this AD are outside the limits specified in paragraph 2.C.(7) of Bombardier Alert Service Bulletin ASB 215–A476, Revision 3, dated August 21, 1998: Prior to further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The inspections shall be done in accordance with Bombardier Alert Service Bulletin 215–A476, Revision 3, dated August 21, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–97–07R1, dated September 30, 1998.

(f) This amendment becomes effective on September 7, 1999.

Issued in Renton, Washington, on July 23, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–19453 Filed 7–30–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–47–AD; Amendment 39–11237; AD 99–16–02]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain British Aerospace Model BAC 1–11 200 and 400 series airplanes, that currently limits the number of operations at increased cabin pressure differential, and requires repetitive structural inspections for cracking of the fuselage, and repair or replacement of parts, if necessary. This amendment requires additional repetitive inspections for cracking of the fuselage. This amendment is prompted by the determination that airplanes operating at increased cabin pressure differential are more likely to develop fatigue cracking earlier in their service lives than those airplanes operating at normal cabin differential pressures. The actions specified by this AD are intended to detect and correct fatigue cracking of the airplane fuselage, which could result in reduced structural integrity of the airplane.

DATES: Effective September 7, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 7, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW, Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 LindAvenue, SW, Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 89–18–10, amendment 39–6310 (54 FR 34768, August 22, 1989), which is applicable to certain British Aerospace Model BAC 1–11 200 and 400 series airplanes, was published in the Federal Register on January 5, 1999 (64 FR 435). The action proposed to continue to limit the number of operations at increased cabin pressure differential, and to require repetitive structural inspections for cracking of the fuselage, and repair or replacement of parts, if necessary. The action also proposed to require additional repetitive inspections for cracking of the fuselage.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Service Bulletin Reference

One commenter, the manufacturer, states that paragraph (b)(5) of the proposed AD refers to paragraph 2.2.7 of British Aerospace Alert Service Bulletin 53–A–PM5922, but this service bulletin does not contain a paragraph 2.2.7. The commenter suggests that the correct paragraph reference should be to paragraph 2.1.2 of the alert service bulletin. The FAA concurs that Issue 2 of the alert service bulletin, dated April 27, 1995, does not contain a paragraph 2.2.7. However, paragraph (b) of the AD is an existing requirement retained from AD 89–18–10, which requires accomplishment of certain actions in accordance with Issue 1 of the alert service bulletin, dated January 27, 1987. Since Issue 1 of the alert service bulletin contains a paragraph 2.2.7, the reference is correct, and no change is made to the final rule in this regard. However, to allow better identification of the retained and the new requirements of this AD, subject headers have been added to the final rule.

Compliance Time

One commenter notes that it supports the proposed 3-month compliance time for initiation of the additional inspections. The commenter also states that, in light of the urgency of the unsafe condition, it would like the compliance time to be shorter but understands the maintenance, scheduling, and logistics involved with accomplishing the actions specified. The FAA infers that the commenter does not object to the proposed compliance time; no change is made to the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 42 series airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 89–18–10 take approximately 67 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $168,840, or $4,020 per airplane.

The new inspections that are required by this AD will take approximately 29 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $73,080, or $1,740 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6310 (54 FR 34768, August 22, 1989), and by adding a new airworthiness directive (AD), amendment 39–11237, to read as follows:

99–16–02 British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Amendment 39–11237. Docket 98–NM–47–AD. Supersedes AD 89–18–10, Amendment 39–6310.

Applicability: Model BAC 1–11 200 and 400 series airplanes on which British Aerospace Modifications PM2840 and PM3187 have been accomplished; or on which British Aerospace Modification PM4886 has been accomplished; except for airplanes on which British Aerospace Modification PM5282 (cabin freight door) has been accomplished; and certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the airplane fuselage, which could result in reduced structural integrity of the airplane, accomplish the following:

Restatement of Requirements of AD 89–18–10

(a) Except as provided by paragraph (c) of this AD: For airplanes modified for operation to a maximum of 7.75 pounds per square inch (psi) cabin pressure differential, as specified in British Aerospace Alert Service Bulletin 53–A–PM5922, Issue 1, dated January 27, 1987, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) At or prior to the accumulation of 55,000 total landings, or within 15 months after September 28, 1989 (the effective date of AD 89–18–10, amendment 39–6310), whichever occurs later, perform the inspections specified in paragraph 2.1 of the alert service bulletin. Thereafter, repeat the inspections in accordance with paragraph 2.1.1 of the alert service bulletin at intervals shown in Table AA of the alert service bulletin.

(2) At or prior to the accumulation of 60,000 total landings, or within 30 days after September 28, 1989, whichever occurs later, reduce the aircraft maximum cabin pressure differential to 7.5 psi by system modification, in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) Except as provided by paragraph (d) of this AD: For airplanes modified for operation at cabin pressure differentials above 7.75 psi up to a maximum of 8.2 psi, as specified in British Aerospace Alert Service Bulletin 53–A–PM5922, Issue 1, dated January 27, 1987, accomplish the requirements of paragraph (b)(1) or (b)(2) of this AD, as applicable. Subsequently, accomplish the requirements of paragraphs (b)(3) and(b)(4), or paragraphs (b)(5) and (b)(6) of this AD, as applicable.

(1) For airplanes originally manufactured for operation at cabin pressure differentials above 7.75 psi, at or prior to the accumulation of the number of landings shown for initial inspection in the "NE period" column of Table AA in the alert service bulletin, or within 15 months after September 28, 1989, whichever occurs later, perform inspections specified in paragraph 2.2.1 of the alert service bulletin and repeat the inspections as specified in paragraph 2.2.3 of the alert service bulletin at the intervals shown in Table AA of the alert service bulletin.

(2) For airplanes modified for operation at cabin pressure differential above 7.75 psi after the airplane entered service, at or prior to the accumulation of the number of landings shown for initial inspection in the "NE period" column [obtained using the inspection adjustment graph (page 6) of the alert service bulletin], in Table AA of the

alert service bulletin, or within 15 months after September 28, 1989, whichever occurs later, perform initial inspections specified in paragraph 2.2.2 of the alert service bulletin. Thereafter, repeat the inspections as specified in paragraph 2.2.3 of the alert service bulletin, at intervals shown in Table AA of the alert service bulletin.

(3) At or prior to the accumulation of 55,000 total landings, or within 30 days after September 28, 1989, whichever occurs later, reduce the aircraft cabin maximum operating pressure differential to 7.5 or 7.75 psi by modification as specified in paragraph 2.2.4 of the alert service bulletin, in accordance with a method approved by the Manager, International Branch, ANM–116.

(4) For airplanes which have had the cabin pressure differential reduced from 8.2 psi to 7.75 psi as specified in paragraph 2.2.6 of the alert service bulletin, perform repetitive inspections at the intervals specified in the "N.E. period" column in Table AA of the alert service bulletin.

(5) At or prior to the accumulation of 60,000 total landings, or within 30 days after September 28, 1989, whichever occurs later, the airplane cabin maximum operating pressure differential must be reduced to 7.5 psi by modification as specified in paragraph 2.2.7 of the alert service bulletin, in accordance with a method approved by the Manager, International Branch, ANM–116.

(6) For airplanes modified for 8.2 psi maximum cabin operating pressure differential and operated for a period in excess of any Table AA inspection threshold in the alert service bulletin, perform one additional inspection at or prior to the Table AA "N.E. period" column repeat interval after limiting operation to 7.5 psi, as specified in paragraph 2.2.5 of the alert service bulletin.

New Requirements of This AD

New Initial and Repetitive Inspections

(c) For airplanes modified for operation to a maximum of 7.75 pounds per square inch (psi) cabin pressure differential, as specified in British Aerospace Alert Service Bulletin 53–A–PM5922, Issue 2, dated April 27, 1995: Prior to the accumulation of the number of landings specified in Table AA of the alert service bulletin, or within 3 months after the effective date of this AD, whichever occurs later, perform the inspections specified in paragraph 2.1 of the alert service bulletin. Thereafter, repeat the inspections in accordance with paragraph 2.1.1 of the alert service bulletin at the intervals shown in Table AA of the alert service bulletin. Accomplishment of the inspections required by this paragraph terminates the repetitive inspections required by paragraph (a)(1) of this AD.

Note 2: Paragraph (a)(1) of this AD restates the requirement for an initial and repetitive inspections contained in paragraph A.1. of AD 89–18–10. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 89–18–10, paragraph (c) of this AD requires that the next scheduled inspection be performed within the repetitive inspection interval specified in Table AA of Issue 2 of the alert service bulletin, after the last inspection performed in accordance with paragraph A.1. of AD 89–18–10.

(d) For airplanes modified for operation at cabin pressure differentials above 7.75 psi up to a maximum of 8.2 psi, as specified in British Aerospace Alert Service Bulletin 53–A–PM5922, Issue 2, dated April 27, 1995: Prior to the accumulation of the number of landings specified in Table AA of the alert service bulletin, or within 3 months after the effective date of this AD, whichever occurs later, perform the inspections specified in paragraph 2.2.1 of the alert service bulletin. Thereafter, repeat the inspections in accordance with paragraph 2.2.3 of the alert service bulletin at the intervals shown in Table AA of the alert service bulletin. Accomplishment of the inspections required by this paragraph terminates the repetitive inspections required by paragraph (b)(1), (b)(2) or (b)(4) of this AD, as applicable.

Note 3: Paragraph (b)(1) of this AD restates the requirement for an initial and repetitive inspections contained in paragraph B.1. of AD 89–18–10. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 89–18–10, paragraph (d) of this AD requires that the next scheduled inspection be performed within the repetitive inspection interval specified in Table AA of Issue 2 of the alert service bulletin, after the last inspection performed in accordance with paragraph B.1. of AD 89–18–10.

Corrective Actions

(e) If any defect is found during any inspection required by this AD, prior to further flight, accomplish paragraph (e)(1), (e)(2), or (e)(3) of this AD, as applicable.

(1) Replace the defective part with a serviceable part of the same part number in accordance with the Structural Repair Manual; or

(2) For damage within the limits specified in the BAC 1–11 Structural Repair Manual, repair in accordance with the Structural Repair Manual; or

(3) Repair in accordance with a method approved by the Manager, International Branch, ANM–116.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraphs (a)(2), (b)(3), (b)(5), and (e) of this AD, the actions shall be done in accordance with British Aerospace Alert Service Bulletin 53–A–PM5922, Issue 1, dated January 27, 1987, and British Aerospace Alert Service Bulletin 53–A–PM5922, Issue 2, dated April 27, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on September 7, 1999.

Issued in Renton, Washington, on July 22, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–19298 Filed 7–30–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–372–AD; Amendment 39–11238; AD 99–16–03]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 23, 24, 25, 28, 29, 31, 55, and 60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Learjet Model 23, 24, 25, 28, 29, 31, 55, and 60 series airplanes, that requires a one-time detailed visual inspection of the electrical wire leads of the horizontal stabilizer anti-ice system to verify that the numbers on the wire leads correctly correspond to the numbers on the connected airframe wiring; installation of a wire ID strap on the left-and right-hand sides of each terminal block; and installation of a warning placard. This amendment is prompted by a report of severe flight control buffeting of a Learjet Model 55 series airplane due to a malfunction of the horizontal stabilizer anti-ice system. The actions specified by this AD are intended to prevent undetected accretion of ice on the leading edge of the horizontal stabilizer, which could result in the loss of pitch control and consequent reduced controllability of the airplane.

DATES: Effective September 7, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 7, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jose Flores, Senior Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4133; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Learjet Model 23, 24, 25, 28, 29, 31, 55, and 60 series airplanes was published in the **Federal Register** on May 17, 1999 (64 FR 26703). That action proposed to require a one-time detailed visual inspection of the electrical wire leads of the horizontal stabilizer anti-ice system to verify that the numbers on the wire leads correctly correspond to the numbers on the connected airframe wiring; installation of a wire ID strap on the left-and right-hand sides of each terminal block; and installation of a warning placard.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,010 airplanes of the affected design in the worldwide fleet. The FAA estimates that 806 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection and installations, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $48,360, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–16–03 Learjet: Amendment 39–11238. Docket 98–NM–372–AD.

Applicability: Model 23, 24, 25, 28, 29, 31, 55, and 60 series airplanes; as listed in Learjet Service Bulletins SB 23/24/25–30–3, SB 28/29–30–3, SB 31–30–05, SB 55–30–3, and SB 60–30–4, all dated October 27, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected accretion of ice on the leading edge of the horizontal stabilizer, which could result in the loss of pitch control and consequent reduced controllability of the airplane, accomplish the following:

One-Time Inspection

(a) Within 100 flight hours after the effective date of this AD: Perform a one-time detailed visual inspection of the electrical wire leads of the horizontal stabilizer anti-ice system to verify that the numbers on the wire leads correctly correspond to the numbers on the connected airframe wiring, in accordance with Learjet Service Bulletins SB 23/24/25–30–3, (for Model 23, 24, and 25 series airplanes), SB 28/29–30–3 (for Model 28 and 29 series airplanes), SB 31–30–5 (for Model 31 series airplanes), SB 55–30–3 (for Model 55 series airplanes), or SB 60–30–4 (for Model 60 series airplanes); all dated October 27, 1998; as applicable.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation or assembly to detect damage, failure or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Action

(1) If no discrepancy is detected during the inspection required by paragraph (a) of this AD: Concurrent with the inspection, install a wire ID strap on the left-and right-hand sides of each terminal block, and install a warning placard on each terminal block, in accordance with the applicable service bulletin.

(2) If any discrepancy is detected during the inspection required by paragraph (a) of this AD: Prior to further flight, repair the discrepancy in accordance with the procedures specified in Chapter 30 of the Learjet Airplane Wiring Manual. Concurrent with the repair, install a wire ID strap on the left-and right-hand sides of each terminal block, and install a warning placard on each terminal block; in accordance with the applicable service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) Except as provided by paragraph (a)(2) of this AD, the actions shall be done in accordance with Learjet Service Bulletin SB 23/24/25–30–3, dated October 27, 1998; Learjet Service Bulletin SB 28/29–30–3, dated October 27, 1998; Learjet Service Bulletin SB 31–30–5, dated October 27, 1998; Learjet Service Bulletin SB 55–30–3, dated October 27, 1998; or Learjet Service Bulletin SB 60–30–4, dated October 27, 1998, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 7, 1999.

Issued in Renton, Washington, on July 22, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–19297 Filed 7–30–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–9]

Name Change of Guam Island, Agana NAS, GU Class D Airspace Area

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This notice changes the name of the Guam Island, Agana NAS, GU Class D airspace area to Guam International Airport, GU Class D airspace area.

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520.10, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

History

On April 1, 1995, the United States Navy vacated Guam, Agana NAS under the mandates of the Base Realignment and Closure Act. The airport was subsequently renamed Guam International Airport.

Class D airspace is published in Paragraph 5000 FAA Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, through September 15, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in this Order.

The Rule

This amendment to 14 CFR part 71 of the Federal Aviation Regulations renames Class D airspace at Guam Agana NAS, GU to Guam International Airport, GU.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 500 Class D Airspace

* * * * *

AWP GU D Guam International Airport, GU [Amended]

Guam International Airport, GU
(Lat 13°28′54″ N, long. 144°47′36″ E)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.3 mile radius of Guam International Airport.

* * * * *

Issued in Los Angeles, California, on July 27, 1999.

Dawna J. Vicars,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–19692 Filed 7–30–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

14 CFR Parts 254 and 382

[Docket OST–99–5099]

RIN 2105–AC77

Nondiscrimination on the Basis of Disability in Air Travel; Compensation for Damage to Wheelchairs and Other Assistive Devices

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department is amending its rules implementing the Air Carrier Access Act of 1986 (ACAA) to lift an existing cap on the amount of compensation airlines have to pay to passengers for loss or damage of their wheelchairs and other assistive devices. The rule is intended to provide additional relief to passengers who use expensive assistive devices that are lost, destroyed or damaged in the course of airline travel.

EFFECTIVE DATE: This final rule becomes effective on September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC, 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD); 202–366–9313 (fax); bob.ashby@ost.dot.gov (e-mail).

SUPPLEMENTARY INFORMATION: This final rule concerns the issue of compensation for loss of or damage to wheelchairs or other assistive devices. The current regulation provides that:

> With respect to domestic flights, carriers shall not limit liability for loss, damage or delay concerning wheelchairs or other mobility aids to any amount less than twice the liability limits established for passengers' luggage under 14 CFR Part 254. (14 CFR 382.43(b))

This means that carriers are not required to pay compensation exceeding $2500 for loss of or damage to wheelchairs or other assistive devices, given the present $1250 liability limit for luggage that Part 254 permits carriers to impose in domestic transportation. (The Department has recently proposed raising this limit to $2500, which would have the effect, under the present ACAA rule, of raising the liability limit for wheelchairs and other assistive devices to $5000.) People with disabilities have complained that this does not provide adequate compensation for the loss of or serious damage to expensive equipment, such as power wheelchairs that may cost $15,000 or more. Given that a passenger whose wheelchair is lost or seriously damaged will lose his or her mobility at the destination, people with disabilities believe that the Department should require airlines to do more, such as pay full compensation for the loss and make repair or loaner service available.

The Department considered this issue in the original ACAA rulemaking (see 55 FR 8038; March 6, 1990). In response to similar disability group comments at that time, the Department responded that requiring carriers to pay full replacement value did not sufficiently recognize the ability of passengers to purchase insurance for such expensive items. Consequently, the final rule permitted airlines to cap their liability at twice the liability limit for general baggage.

On February 17, 1999, the Department reopened the issue and published a notice of proposed rulemaking (NPRM) in the **Federal Register** (64 FR 7833). Based on anecdotal information, the Department believed that the majority of wheelchairs used in air travel are manual wheelchairs, many of which cost less than $2500. However, the Department further believed that other travelers used power wheelchairs, which typically are stowed as checked baggage and many of which, if lost, damaged, or destroyed, could cost substantially more than $2500 to repair or replace (e.g., over $13,000 in one case brought to our attention). However, we believed that there would be relatively few instances of wheelchair loss or damage that would exceed $2500, limiting the cost exposure to airlines of removing the current cap.

Comments

The Department received thirty-two comments from individuals, associations, and interest groups. These included the Air Transport Association of America (ATA), representing the views of major airlines, and various individuals and groups in the disability community.

Claim Experience

Both the ATA and the disability community agreed that the majority of damage to wheelchairs occurs to manual units, with repair or replacement costs under $2500. The ATA said that ATA member airlines receive less than fifty complaints a year related to wheelchairs and ninety percent of them are for less than $500. The ATA also reported that claims for standard wheelchairs average $450 to $500 per claim and claims for electric wheelchairs average $1500 per claim. ATA mentioned that its members had voluntarily paid a few claims in excess of $20,000. Also, the Eastern Paralyzed Veterans Association (EPVA), which does wheelchair repairs at New York City airports, reported that it repaired 31 wheelchairs in 1998, at an average cost of $467.95 per repair.

Elimination of Liability Limit

A common theme throughout the disability community comments was that wheelchairs and other assistive devices are not ordinary luggage. Disabled people must take their assistive devices because their mobility, independence, and health depend on them. When a disabled person travels with an air carrier, he or she places his or her means of mobility and livelihood into the hands of the airline. According to some of the comments, airline personnel sometimes disregard the instructions given to them by the passenger concerning how to properly handle the assistive device, or may misunderstand the instructions because they are not fluent in English. Furthermore, commenters said that fear of having to make an expensive repair if their device is damaged may deter some people from traveling by air.

Disability community comments also asserted that the amount of damages should be the full replacement or repair cost because depreciation in value is too hard to calculate. They also asked for some sort of system through which the airline would provide a loaner device during the period when the passenger's own device was being repaired. Some comments also addressed the issue of insurance. The comments asserted that coverage for assistive devices is often excluded from homeowner policies. They said it would be unfair to require passengers to purchase extra insurance for something they had no choice but to take with them. Finally, these comments expressed a belief that lifting the liability cap will provide an incentive for airlines to train their employees to comply with ACAA regulations and properly handle assistive devices.

The ATA's comment said that the proposed rule did not address all of the issues associated with wheelchair handling. Instead of a final rule, ATA supported issuing a broader advance notice of proposed rulemaking (ANPRM) on the general issue of wheelchair handling. ATA also suggested that passengers should remain responsible for some part of the risk of transporting expensive equipment, such as through obtaining insurance.

ATA stressed three other points. First, a two-hour advance check in deadline should be required for people wishing to transport an assistive device. This extra time would allow airlines to prepare adequately for carrying of these

devices, while avoiding flight delays. Additional time is particularly important if more than one electric wheelchair is to be transported on the same flight. Second, ATA said that passengers should be required to provide written instructions on how to disassemble batteries and delicate units. Third, ATA questioned the practicality of requiring airlines to maintain an adequate supply of wheelchairs at more than 500 commercial airports in order to provide loaners. ATA pointed out that local supply stores are available if a loaner is needed.

Cost Calculation

In the NPRM, the Department sought comment on whether additional guidance is necessary on how compensation should be calculated (e.g., depreciated vs. replacement cost). Disability community comments said that there is no market for used, customized assistive devices, thus making depreciation in value too hard to calculate. Most of these comments supported requiring airlines to pay the full replacement cost for a destroyed wheelchair (i.e., the cost of a new wheelchair, regardless of the value of the device that had been destroyed). ATA did not comment specifically on this issue, but did express concern about paying for damage that was done before the chair was given to the airline for transport. ATA also expressed concern that lifting the liability cap would allow higher consequential damages to be assessed against carriers in claims resulting from damaged or destroyed wheelchairs.

DOT Response

The Department is persuaded by the comments of the disability community that wheelchairs and other assistive devices should be viewed differently from other baggage. For wheelchair users, their devices are essential, not only to the purpose of a trip, but for all daily activities. The information provided in the comments confirms the Department's impression that there are likely to be relatively few instances where carriers will have to pay large claims, even in the absence of the current regulatory provision allowing carriers to limit their liability. For this reason, the cost exposure to carriers of changing the rule will not be large.

On the other hand, from the perspective of an individual whose expensive electric wheelchair is lost or destroyed, the expense of replacing it can be very difficult to bear. Consequently, we believe that the fairest solution is to remove the current liability cap. The issue is a straightforward one, which commenters discussed thoroughly, and we see no need for an ANPRM as ATA suggested. Wheelchair users may still want to purchase insurance, which may expedite the payment of claims. The ultimate responsibility for damage that occurs while a passenger's device is in the hands of the carrier should rest with the carrier, however.

Under existing DOT baggage rules, carriers are responsible for consequential damages (see 14 CFR part 254). There is no DOT administrative mechanism for awarding these damages; they would be paid through the carriers' claims processes or awarded by the courts. This rule, while removing a regulatory provision allowing carriers to limit their liability for consequential as well as other damages, would not change this basic pattern. It is possible that, as some disability community comments suggested, the possibility of larger consequential damage awards would increase carriers' incentive to ensure that personnel who handle wheelchairs are well trained.

With respect to the way in which costs of settlements are calculated, the Department is persuaded by disability community comments that it is difficult to establish an accurate depreciated value for electric wheelchairs. In the absence of a significant aftermarket for these often individually-tailored devices, there is no parallel to a "blue book" value that can be accurately assigned. On the other hand, it may not be fair to airlines to assess the current replacement cost of a device. For example, a wheelchair that cost $10,000 two years ago may today, because of changes in the equipment or in the market for new wheelchairs, cost $12,000. The $2000 difference in the purchase price of the device cannot be attributed to any action on the airlines' part. For this reason, in the case of a device that is lost or damaged so badly that it must be replaced, the airline would be responsible for the original purchase price ($10,000 in the example above) rather than the total cost of a new device. The statement of this criterion in the rule refers only to the cost of repair or replacement of the device itself; it does not, for example, establish a limit on consequential damages.

The Department believes that requiring the payment of the original purchase price strikes a reasonable balance between the current industry practice of using depreciated value and the proposal, advocated by disability community comments, of requiring carriers to pay the current replacement cost of a wheelchair. In addition, this method should simplify the payment of claims and minimize the number and scope of disputes between passengers and airlines. As is the case today, carriers would remain free to require passengers to document the original purchase price of a lost or damaged assistive device (e.g., purchase receipt, credit card statement, canceled check). In a case where an assistive device is damaged but repairable, the proper measure of compensation is quite clearly the cost of the repair. The Department believes that airlines can avoid the potential problem of being asked to pay for pre-existing damage by inspecting the device and documenting anything that is wrong with it when the passenger checks in, as carriers commonly do with baggage.

The Department's ACAA rule is not intended to require compensation, to any greater extent than courts might award, merely for minor cosmetic damage to wheelchairs or assistive devices. Neither this provision nor —382.43(a), which requires carriers to return wheelchairs and assistive devices to passengers in the condition received by the carrier, would require the carrier, for example, to replace a wheelchair frame that had suffered a small dent or scratch that did not impair the structural soundness or functioning of the device.

In the NPRM, the Department sought comment on whether it is desirable and practical to require that airlines provide a "loaner" device during the period when the damaged device is being repaired or replaced. While a wheelchair is essential equipment, without which the passenger can be stranded, the Department agrees with the ATA that it would be impractical to require each airline to maintain an adequate supply of wheelchairs at more than 500 commercial airports. As pointed out in the comments, many devices are customized to fit an individual's specific needs, and it could be extremely burdensome to require airlines to come up with the same or similar type of wheelchair. Information about where to obtain a "loaner" is available in many locations from the disability community, medical equipment suppliers, or the airlines themselves. We note that the cost of a loaner could constitute consequential damages for which, in some circumstances, a carrier could be liable.

The ATA recommended permitting carriers to require a two-hour advance check-in for passengers wishing to transport electric wheelchairs. The Department does not have, nor did the ATA present, any data to support a contention that a mandatory check-in period of this length would have a significant effect on preventing damage to wheelchairs. On the other hand, carrier personnel are more likely to do a good job of preparing the wheelchair for transportation if they are not trying to do so at the last minute.

The Department's existing ACAA regulation has two provisions that can help carriers avoid "last-minute" problems. First, § 382.41(g)(1) permits carriers to require passengers wanting to transport electric wheelchairs to check in an hour before the scheduled departure time of the flight. This is consistent with the now-pervasive industry recommendation that all passengers arrive an hour before flight time.

As an interpretive matter, we emphasize that the purpose of the one-hour advance check-in deadline is to give carrier personnel enough time to prepare an electric wheelchair for transportation. Therefore, in this context, checking in means not just reporting at the gate or ticket counter but actually turning the wheelchair over to carrier personnel to prepare it for shipment. If a passenger checks in at the gate at 1:00 for a 2:00 flight, but does not surrender the wheelchair to carrier personnel until 1:45, the value of the one-hour advance check-in is diminished. Of course, the airline has the responsibility of providing the passenger, on request, a boarding chair and any necessary assistance in boarding of the aircraft.

Second, § 382.41(g)(2) states that if a passenger's wheelchair battery has been labeled by the manufacturer as non-spillable, or if the wheelchair can be loaded, stored, and secured in an upright position, the carrier shall not require the battery to be removed and separately packaged. In such instances, the airline need not disassemble the chair or separately box the battery, but only disconnect the battery and tape or otherwise insulate the battery terminals to prevent short circuits. By following this rule, carriers would not only reduce the probability of damage to the chair, but also reduce significantly the time it takes to stow the wheelchair and return it to the passenger on arrival.

The ATA felt that passengers should be required to provide written instructions on the assembly and disassembly of batteries and other delicate equipment. The current rule authorizes individuals to provide written instructions concerning the assembly and disassembly of their wheelchairs, and we believe it is a good idea for them—and perhaps for wheelchair manufacturers as well—to do so. However, given that some passengers may not be fluent in English, or that some disabilities may impair an individual's ability to provide such instructions, or that documents can get lost, we do not believe it would be prudent to require passengers to provide written instructions or to allow carriers to require it as a condition for transportation or compensation.

In order to avoid confusion for readers of 14 CFR part 254, the Department's baggage liability regulation, we have added a sentence pointing out that part 254's baggage liability limit does not apply to wheelchairs and other assistive devices used by passengers with disabilities.

Regulatory Analyses and Notices

This final rule is not a significant rule under Executive Order 12866 or a significant rule under the Department's Regulatory Policies and Procedures. Based on the data currently available to the Department and received in the comments, the Department estimates that the costs associated with this rule are not significant. The ATA submitted data indicating that ATA member airlines receive less than fifty complaints a year related to wheelchairs and that ninety percent of these claims are for less than $2500. Furthermore, the ATA asserts that virtually all of its claims are paid in full, even the ones above $2500. Therefore, the incremental costs of this rule are likely to be minimal.

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities. The basis for this statement is the probability that the overall national annual costs would be minimal. Also, the Department does not believe that there would be sufficient Federalism impacts to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 254

Air carriers, Consumer protection, Freight, Reporting and recordkeeping requirements.

14 CFR Part 382

Air carriers, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

Issued This 23rd Day of July 1999, at Washington, DC

Rodney E. Slater,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends 14 CFR parts 254 and 382 as follows:

PART 254—DOMESTIC BAGGAGE LIABILITY

1. The authority citation for 14 CFR part 254 continues to read as follows:

Authority: Secs. 204, 403, 404 and 411, Pub. L. 85–726, as amended, 72 Stat. 743, 758, 760, 769; 49 U.S.C. 1324, 1373, 1374, 1381.

2. Section 254.4 is amended by adding a sentence at the end of the section to read as follows:

§ 254.4 Carrier liability.

* * * Pursuant to 14 CFR 382.43(b), this limit does not apply to wheelchairs or other assistive devices used by passengers with disabilities.

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

3. The authority citation for 14 CFR part 382 continues to read as follows:

Authority: 49 U.S.C. 41702, 41705, and 41712.

4. In § 382.43, paragraph (b) is revised to read as follows:

§ 382.43 Treatment of mobility aids and assistive devices.

* * * * *

(b) With respect to domestic transportation, the baggage liability limits of 14 CFR part 254 do not apply to liability for loss, damage, or delay concerning wheelchairs or other assistive devices. The criterion for calculating the compensation for a lost, damaged, or destroyed wheelchair or other assistive device shall be the original purchase price of the device.

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[FR Doc. 99–19447 Filed 7–30–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 8823]

RIN 1545–AU31

Consolidated Returns, Limitations on the Use of Certain Losses and Deductions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Friday, July 2, 1999, (64 FR 36092), relating to consolidated returns and

limitations on the use of certain losses and deductions.

DATES: This correction is effective July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Vogel or Marie Milnes-Vasquez at (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 8823) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8823), which were the subject of FR Doc. 99–16161, is corrected as follows:

1. On page 36095, column 3, in the preamble under the heading, *Built-in Losses*, line 2 from the bottom of the paragraph, the language "latter or the SRLY event or section 382" is corrected to read "latter of the SRLY event or section 382".

§ 1.1502–15 [Corrected]

2. On page 36103, column 1, § 1.1502–15(d), paragraph (i) of *Example 3.*, line 3, the language "M are each common parents of a" is corrected to read "M are each the common parent of a".

3. On page 36103, column 3, § 1.1502–15(d), paragraph (vii) of *Example 4.*, lines 6 and 7, the language "determining the SRLY limitation for these additional losses in Year 4 (or any" is corrected to read "determining the SRLY limitation for this additional loss in Year 4 (or any".

4 & 5. On page 36104, column 3, § 1.1502–15, paragraphs (g)(4)(i) and (g)(4)(ii) are corrected to read as follows:

§ 1.1502–15 SRLY limitation on built-in losses.

* * * * *

(g) * * *

(4) * * *

(i) All members of the SRLY subgroup with respect to those built-in losses are also included in a loss subgroup (as defined in § 1.1502–91(d)(2)); and

(ii) All members of a loss subgroup (as defined in § 1.1502–91(d)(2)) are also members of a SRLY subgroup with respect to those built-in losses.

* * * * *

6. On page 36105, column 1, § 1.1502–15(g)(6), paragraph (v) of *Example 1.*, the last line in the paragraph, the language "and the application of the section 382." is corrected to read "and the application of section 382.".

7. On page 36105, column 1, § 1.1502–15(g)(6), paragraph (ix) of *Example 1.*, the last line in the paragraph, the language "recognized with the recognition period." is corrected to read "recognized within the recognition period.".

§ 1.1502–21 [Corrected]

8. On page 36109, column 2, § 1.1502–21(c)(2), line 13 from the bottom of the introductory text, the language "(the former group), or for a carryover" is corrected to read "(the former group), whether or not the group is a consolidated group, or for a carryover".

9. On page 36110, column 1, § 1.1502–21(c)(2)(viii), paragraph (i) of *Example 1.*, lines 2 and 3, the language "S, T and M. P and M are each common parents of a consolidated group. During Year" is corrected to read "S, T, and M. P and M are each the common parent of a consolidated group. During Year".

10. On page 36110, column 3, § 1.1502–21(c)(2)(viii), paragraph (i) of *Example 2.*, lines 2 and 3, the language "of the stock of S, T, P and M. P and M are each common parents of a consolidated" is corrected to read "of the stock of S, T, P, and M. P and M are each the common parent of a consolidated".

11. On page 36111, column 1, § 1.1502–21(c)(2)(viii), paragraph (i) of *Example 3.*, lines 2 and 3, the language "the stock of S, T, P and M. S, P and M are each common parents of a consolidated" is corrected to read "the stock of S, T, P, and M. S, P, and M are each the common parent of a consolidated".

12. On page 36112, column 3, § 1.1502–21(g)(5), paragraph (i) of *Example 4.*, line 3, the language "for 6 years. For Year 6, T has an net operating" is corrected to read "for 6 years. For Year 6, T has a net operating".

13. On page 36112, column 3, § 1.1502–21(g)(5), paragraph (i) of *Example 5.*, line 5, the language "unrelated to A, owns all of the stock of P, the" is corrected to read "unrelated to Individual A, owns all of the stock of P, the".

14. On page 36113, column 3, § 1.1502–21(g)(5), paragraph (i) of *Example 9.*, line 11, the language "Individual A. On January 1 of Year 3, M" is corrected to read "Individual A. On December 31 of Year 2, M".

15. On page 36113, column 3, § 1.1502–21(g)(5), paragraph (iii) of *Example 9.*, lines 1 through 3, the language "M's January 1 purchase of 51% of P is a section 382 event because it results in an ownership change of S and T that gives rise" is corrected to read "M's December 31 purchase of 51% of P is a section 382 event because it results in an ownership change of the S loss subgroup that gives rise".

16. On page 36113, column 3, § 1.1502–21(g)(5), paragraph (v) of *Example 9.*, lines 1 through 3, the language "Because the SRLY event and the change date of the section 382 event occur on the same date and the SRLY subgroup and loss" is corrected to read "Because the SRLY event occurred within six months of the change date of the section 382 event and the SRLY subgroup and loss".

§ 1.1502–23 [Corrected]

17. On page 36116, column 1, § 1.1502–23(d)(1), second line from the bottom of the paragraph, the language "consolidated return is taxable years is" is corrected to read "consolidated return is".

Cynthia E. Grigsby, Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–19347 Filed 7–30–99; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 538, 550 and 560

Sudanese Sanctions Regulations; Libyan Sanctions Regulations; Iranian Transactions Regulations: Licensing of Commercial Sales of Agricultural Commodities and Products, Medicine, and Medical Equipment

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Treasury Department is amending the Sudanese Sanctions Regulations, the Libyan Sanctions Regulations, and the Iranian Transactions Regulations to add statements of licensing policy with respect to commercial sales of agricultural commodities and products, medicine, and medical equipment.

EFFECTIVE DATE: JULY 27, 1999.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480) or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, U.S. Treasury Department, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Research Mall" of the FedWorld bulletin board. By modem, dial 703/321–8020, and select self–expanding file "T11FR00.EXE" in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: http://www.treas.gov/ofac, or in fax form through the Office's 24–hour fax–on–demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch–tone telephone.

Background

On April 28, 1999, President Clinton announced that existing unilateral economic sanctions programs would be amended to modify licensing policies to permit case–by–case review of specific proposals for the commercial sale of agricultural commodities and products, as well as medicine and medical equipment, where the United States Government has the discretion to do so. He further announced that the Administration was developing country–specific licensing criteria to guide the case–by–case review process so that governments subject to sanctions do not gain unjustified or unwarranted benefits from such sales. To implement this policy, the Treasury Department's Office of Foreign Assets Control ("OFAC") is amending the Sudanese Sanctions Regulations, 31 CFR part 538 (the "SSR"), the Libyan Sanctions Regulations, 31 CFR part 550 (the "LSR"), and the Iranian Transactions Regulations, 31 CFR part 560 (the "ITR") (collectively, the "Regulations"), to make available both general and specific licenses governing commercial sales of such goods.

This final rule deals with commercial sales to Sudan, Libya and Iran (the "target countries") of agricultural commodities and products intended for ultimate consumption in a target country as food by humans (including live animals, raw, processed and packaged foods) or animals (including animal feeds); as seeds for food crops; or as reproductive materials (such as live animals, fertilized eggs, embryos and semen) for the production of food animals. It also deals with commercial sales of medicines (including those administered by injection) and medical equipment for use in the target countries, if those medicines and medical equipment are not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified EAR 99), as of the date of exportation or reexportation. Regulations, §§ 538.523(a), 550.569(a) and 560.530(a).

Licensing of commercial sales. The amendments authorize two tracks for commercial sales of these goods. First, an OFAC general license permits sellers to negotiate and sign executory contracts for commercial sales and exportation or reexportation of any of these agricultural or medical items to the target countries or their governments. Performance under such executory contracts must made be contingent upon receipt of an OFAC license. After review of an executory contract, OFAC may authorize its performance by specific license where OFAC finds the contract terms consistent with the licensing policy in this final rule. Regulations, §§ 538.523, 550.569 and 560.530. Second, persons wishing to make commercial sales of certain bulk agricultural commodities to the target countries or their governments may apply for specific licenses that permit future entry into and performance of contracts for those commodities. OFAC will issue a specific license for the proposed bulk agricultural commodity sales and exportation and reexportation if it finds the proposal set forth in the application consistent with the licensing policy in this final rule. Regulations, § 538.524 and SSR, appendix A; § 550.570 and LSR, appendix A; § 560.531 and ITR, appendix B. In either case, all sales to the target countries must comply with a series of requirements intended to ensure that such sales do not improperly benefit the target countries' governments.

Required contract terms for executory contracts. In addition to the requirements set forth below in *Required contract terms in general*, executory contracts submitted to OFAC for specific licensing must disclose all parties with an interest in the sales transaction, including identification of a purchasing agent's principals at the wholesale level, if any; set forth all terms of sale (e.g., purchase price, quantity, date of shipment, financing), except that dates for contract performance may be made dependent upon the date OFAC issues a specific license; and ensure that exports and reexports of any goods, technology or services are in compliance with license application requirements of other Federal agencies. Regulations, §§ 538.523(b), 550.569(b) and 560.530(b).

Required contract terms for bulk agricultural commodities contracts. Contracts entered into pursuant to an OFAC specific license for bulk agricultural commodity sales must meet all of the requirements set forth below in *Required contract terms in general*, and may only cover commercial sales of the bulk agricultural commodities listed in the appendices to the Regulations. Regulations, §§ 538.524(b)(1), 550.570(b)(1) and 560.531(b)(1).

Required contract terms in general. Contracts for commercial sales licensed pursuant to this final rule must, in addition to the applicable requirements noted above, comply with the following conditions. The contracts must disclose the purchasers, including (for sales through persons in third countries) those to whom goods are to be resold, which may only be (1) private individuals in the target countries who are acting for their own accounts, (2) nongovernmental entities in the target countries, (3) target–country governmental procurement bodies identified by OFAC as not being affiliated with the coercive organs of the state, or (4) persons in third countries purchasing specifically for resale to any of the foregoing. (A listing of the procurement bodies identified by OFAC as not being affiliated with the coercive organs of the state can be found on OFAC's Web site at http://www.treas.gov/ofac or OFAC's fax–on–demand service at 202/622–0077.) Persons named in OFAC's list of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, and specially designated narcotics traffickers (31 CFR chapter V, appendix A) or of financial institutions owned or controlled by the government of Iran (ITR, appendix A) are not eligible purchasers. All contracts must also provide for sales at prevailing market

prices and with payment terms and financing consistent with the policies set forth below in *Payment and financing terms.* Regulations, §§ 538.523 and 538.524(b); 550.569 and 550.570(b); 560.530 and 560.531(b).

Recordkeeping and reporting requirements. In addition, full records of all transactions pursuant to OFAC licenses must be maintained for a minimum of 5 years after each transaction, and reports relating to the transactions must be provided to OFAC upon demand to ensure compliance with all licensing requirements. Regulations, §§ 538.523(e), 538.524(c); 550.569(e), 550.570(c); 560.530(e), 560.531(c); 501.601 and 501.602.

Payment and financing terms. Certain payment and financing terms for commercial sales of agricultural or medical items to the target countries or their governments are authorized by general license. These include payment of cash in advance, sales on open account (so long as the seller does not discount or otherwise transfer the account receivable created by the sale), and financing by third–country financial institutions (not U.S. persons nor target–country government banks). U.S. financial institutions are authorized by general license to advise or confirm such third–country financial institution financing. Regulations, §§ 538.525(a), 550.571(a) and 560.532(a). In addition, specific licenses may be issued for payment terms and trade financing not permitted by general license. Regulations, §§ 538.525(b), 550.571(b) and 560.532(b). Payments through the U.S. banking system must reference the applicable OFAC license to avoid being stopped or blocked in transit.

Brokering of target country purchases. This final rule permits, by general license, U.S. persons to broker sales of bulk agricultural commodities by U.S. persons destined for the target countries or their governments. For those sales, brokerage is authorized only if the sales meet all applicable requirements of this final rule for bulk agricultural commodity sales. To broker sales of bulk agricultural commodities by non-U.S. persons to the target countries or their governments, the broker must first obtain a specific license from OFAC. Licenses for brokerage are limited to sales of items listed in the bulk agricultural commodities appendices to the Regulations made to target country persons eligible to purchase bulk agricultural commodities from U.S. persons pursuant to paragraphs (b)(2) and (e) of §§ 538.524, 550.570 and 560.531 of the Regulations. Further, if the brokered sales are subject to Federal licensing requirements, the sales must be made contingent upon prior authorization of the relevant Federal agency. Brokerage fees may not be paid from a blocked account of the Government of Sudan or Libya or from an Iranian account as defined in 31 CFR 560.530. Finally, brokers of any sales subject to this final rule must comply with the OFAC recordkeeping and reporting requirements in §§ 501.601 and 501.602 of 31 CFR chapter V. Regulations, §§ 538.526, 550.572 and 560.533.

Incidental transactions. The SSR are interpreted to permit most transactions incidental to licensed transactions. SSR, § 538.405. This final rule amends the LSR and ITR to provide similar interpretations to that of the SSR, and to clarify in all three provisions that OFAC does not interpret the following as permitted incidental transactions: transportation services to or from the target countries except the discharging of licensed or exempt cargo; distribution or leasing of containers in the target countries after performing transportation services; or financing agricultural and medical sales described in this final rule. Regulations, §§ 538.405, 550.405 and 560.405. (General licenses for certain financing terms and statements of licensing policy with respect to alternative terms are noted above.) Travel–related transactions are not restricted in the SSR or ITR. This final rule amends the LSR to authorize travel–related transactions for the negotiation of executory contracts or bulk agricultural commodity contracts. Specific licensing is required for installation and servicing of medical equipment sold to Libya pursuant to executory contracts. LSR, § 550.573.

Paperwork Reduction Act

As authorized in the Administrative Procedure Act (5 U.S.C. 553)(the "APA"), this final rule is amending the Regulations is being issued without prior notice and public comment procedure. The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting and Procedures Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget ("OMB") under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the APA requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

List of Subjects

31 CFR Part 538

Administrative practice and procedure, Agricultural commodities, Banks, banking, Blocking of assets, Drugs, Exports, Foreign trade, Humanitarian aid, Imports, Medical devices, Penalties, Reporting and recordkeeping requirements, Specially designated nationals, Sudan, Terrorism, Transportation.

31 CFR Part 550

Administrative practice and procedure, Agricultural commodities, Banks, banking, Blocking of assets, Drugs, Exports, Foreign investment, Foreign trade, Government of Libya, Imports, Libya, Loans, Medical devices, Penalties, Reporting and recordkeeping requirements, Securities, Services, Specially designated nationals, Terrorism, Travel restrictions.

31 CFR Part 560

Administrative practice and procedure, Agricultural commodities, Banks, banking, Drugs, Exports, Foreign trade, Imports, Information, Investments, Iran, Loans, Medical devices, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Terrorism, Transportation.

For the reasons set forth in the preamble, 31 CFR parts 538, 550 and 560 are amended as set forth below:

PART 538—SUDANESE SANCTIONS REGULATIONS

1. The authority citation for part 538 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230.

Subpart D—Interpretations

2. Section 538.405 is revised to read as follows:

§ 538.405 Transactions incidental to a licensed transaction authorized.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) A transaction by an unlicensed Sudanese governmental entity or involving a debit to a blocked account or a transfer of blocked property not explicitly authorized within the terms of the license;

(b) Provision of any transportation services to or from Sudan not explicitly authorized in or pursuant to this part other than discharging licensed or exempt cargo there;

(c) Distribution or leasing in Sudan of any containers or similar goods owned or controlled by United States persons after the performance of transportation services to Sudan; and

(d) Financing of licensed sales for exportation or reexportation of agricultural commodities or products, medicine, or medical equipment to Sudan or the Government of Sudan. See § 538.525.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

3. Section 538.523 is added to subpart E to read as follows:

§ 538.523 Commercial sales and exportation of agricultural commodities and products, medicine, and medical equipment.

(a) *General license for executory contracts.* Except as provided in paragraph (c) of this section, entry into executory contracts is authorized for the following transactions with individuals in Sudan acting for their own account, nongovernmental entities in Sudan, or procurement bodies of the Government of Sudan identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state, or with persons in third countries purchasing specifically for resale to any of the foregoing, provided that performance of the executory contracts (including any preparatory activities, payments or deposits related to such executory contracts) is contingent upon the prior authorization of the Office of Foreign Assets Control in or pursuant to this part:

(1) The sale of agricultural commodities and products, if those commodities and products are intended for ultimate consumption in Sudan as:

(i) Food by humans (including live animals, raw, processed and packaged foods) or animals (including animal feeds);

(ii) Seeds for food crops; and

(iii) Reproductive materials (such as live animals, fertilized eggs, embryos and semen) for the production of food animals; and

(2) The sale of medicines (including those administered by injection) and medical equipment for use in Sudan, if those medicines and medical equipment are not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified EAR99), as of the date of exportation or reexportation. (EAR99 items may in certain instances require a license from the Department of Commerce, Bureau of Export Administration. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10.)

Note to paragraph (a) of § 538.523. See § 538.524 with respect to the availability of specific licenses for sales of certain bulk agricultural commodities for exportation or reexportation to Sudan or the Government of Sudan.

(b) *Required terms of executory contracts.* The authorization contained in paragraph (a) of this section applies only to executory contracts that:

(1) Disclose all parties with an interest in the sales transaction. If the goods are being sold to a purchasing agent in Sudan, the executory contract must identify the agent's principals at the wholesale level for whom the purchase is being made;

(2) Provide only for sales at prevailing market prices;

(3) Set forth all terms of sale (e.g., purchase price, quantity, date of shipment, financing), except that dates for contract performance may be made dependent upon the date a specific license pursuant to paragraph (d) of this section is obtained from the Office of Foreign Assets Control;

(4) Make any performance involving the exportation or reexportation of any goods, technology (including technical data, software, or other information) or services that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. (For example, EAR99 items may in certain instances require a license from the Department of Commerce, Bureau of Export Administration. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10; see also 22 CFR 123.9); and

(5) Provide for payment terms consistent with the provisions of § 538.525.

(c) *Ineligible purchasers.* Nothing in this section permits entry into or performance of a sales contract with a person specifically named in appendix A to this chapter V or in appendix A to part 560 of this chapter, other than a procurement body of the Government of Sudan identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state.

Note to paragraph (c) of § 538.523. Information on ineligible purchasers and eligible procurement bodies will be published in the **Federal Register** and may be found on the Office of Foreign Assets Control's Internet site: http://www.treas.gov/ofac, or on its fax–on–demand system: 202/622–0077.

(d) *Specific licenses for performance under executory contracts.* Specific licenses may be issued on a case–by–case basis to permit the performance of executory contracts meeting the requirements of paragraphs (a) and (b) of this section. See § 501.801(b) of this chapter with respect to specific licensing procedures.

(e) *Recordkeeping and reporting requirements.* Attention is drawn to the recordkeeping, retention, and reporting requirements of §§ 501.601 and 501.602.

4. Section 538.524 is added to subpart E to read as follows:

§ 538.524 Commercial sales and exportation of certain bulk agricultural commodities.

(a) *Sales of bulk agricultural commodities by licensed sellers.* Specific licenses may be issued on a case–by–case basis to permit the sale and exportation or reexportation to persons in Sudan or the Government of Sudan of bulk agricultural commodities intended for ultimate consumption in Sudan as food by humans or animals (including animal feeds) and seeds for food crops, for sales meeting all requirements of paragraph (b) of this section.

(b) *Required contract terms for commercial sales of bulk agricultural commodities.* Specific licenses issued pursuant to this section will authorize entry into and performance only of contracts that:

(1) Provide for the sale and exportation or reexportation only of bulk agricultural commodities listed in appendix A to this part 538;

(2) Fully identify the purchasers of the bulk agricultural commodities, including (for sales through persons in third countries) those to whom the commodities are to be resold, and do not include as a purchaser any person in Sudan or any person within the definition of the term Government of Sudan other than:

(i) A private individual in Sudan acting for his or her own account;

(ii) A nongovernmental entity in Sudan; or

(iii) A procurement body of the Government of Sudan identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state;

(3) Provide only for sales at prevailing market prices;

(4) Make any performance involving the exportation or reexportation of any goods, technology (including technical data, software, or other information) or services that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. (For example, EAR99 items may in certain instances require a license from the Department of Commerce, Bureau of Export Administration. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10; see also 22 CFR 123.9); and

(5) Provide for payment terms consistent with the provisions of § 538.525.

(c) *Recordkeeping and reporting requirements.* Attention is drawn to the recordkeeping, retention, and reporting requirements of §§ 501.601 and 501.602.

(d) *Other commodities and products.* Requests may be made to the Office of Foreign Assets Control for specific licenses analogous to those available pursuant to paragraph (a) of this section where the applicant demonstrates to the satisfaction of the Office of Foreign Assets Control that, in light of industry practices, sales of the particular agricultural commodity or product, medicine, or medical equipment are impracticable under the executory contract licensing procedures contained in § 538.523.

(e) *Ineligible purchasers.* Nothing in this section permits entry into or performance of a sales contract with a person specifically named in appendix A to this chapter V or in appendix A to part 560 of this chapter, other than a procurement body of the Government of Sudan identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state.

Note to paragraph (e) of § 538.524. Information on ineligible purchasers and eligible procurement bodies will be published in the **Federal Register** and may be found on the Office of Foreign Assets Control's Internet site: http://www.treas.gov/ofac, or on its fax–on–demand system: 202/622–0077.

5. Section 538.525 is added to subpart E to read as follows:

§ 538.525 Payment for and financing of commercial sales of agricultural commodities and products, medicine, and medical equipment.

(a) *General license for payment terms.* The following payment terms for sales of agricultural commodities and products, medicine, and medical equipment pursuant to §§ 538.523 and 538.524 are authorized:

(1) Payment of cash in advance;

(2) Sales on open account, provided that the account receivable may not be transferred by the person extending the credit; or

(3) Financing by third–country financial institutions that are neither United States persons nor Government of Sudan entities. Such financing may be confirmed or advised by U.S. financial institutions.

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case–by–case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to §§ 538.523 and 538.524, except that such financing may not be provided by the Government of Sudan. See § 501.801(b) of this chapter for specific licensing procedures.

(c) *No debits to blocked accounts.* Nothing in this section authorizes payment terms or trade financing involving a debit to an account of the Government of Sudan blocked pursuant to this part.

(d) *Transfers through the U.S. financial system.* Before a United States financial institution initiates a payment on behalf of any customer, or credits a transfer to the account on its books of the ultimate beneficiary, the United States financial institution must determine that the underlying transaction is not prohibited by this part. Any payment relating to a transaction authorized in or pursuant to § 538.523, 538.524, or 538.526 that is routed through the U.S. financial system must reference the relevant Office of Foreign Assets Control license authorizing the payment to avoid the blocking or rejection of the transfer.

6. Section 538.526 is added to subpart E to read as follows:

§ 538.526 Brokering sales of bulk agricultural commodities.

(a) *General license for brokering sales by U.S. persons.* United States persons are authorized to broker the sale and exportation or reexportation by United States persons of the bulk agricultural commodities listed in appendix A to this part 538 to individuals in Sudan acting for their own account, nongovernmental entities in Sudan, procurement bodies of the Government of Sudan identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state, or persons in third countries purchasing specifically for resale to any of the foregoing, provided that the brokered sales meet all conditions of § 538.524.

(b) *Specific licensing for brokering sales by non–U.S. persons.* Specific licenses may be issued on a case–by–case basis to permit United States persons to broker the sale and exportation or reexportation of bulk agricultural commodities by non–United States persons to persons in Sudan or the Government of Sudan. Specific licenses issued pursuant to this section will authorize the brokerage only of sales that:

(1) Are limited to the bulk agricultural commodities listed in appendix A to this part 538;

(2) Are to purchasers permitted pursuant to paragraphs (b)(2) and (e) of § 538.524;

(3) Require that any performance that is subject to license application requirements of another Federal agency be contingent upon the prior authorization of that agency. (For example, items classified EAR99 under the Export Administration Regulations, 15 CFR parts 730 through 774, may in certain instances require a license from the Department of Commerce, Bureau of Export Administration. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10; see also 22 CFR 123.9.)

(c) *No debit to blocked accounts.* Payment for any brokerage fee earned pursuant to this section may not involve a debit to an account blocked pursuant to this part.

(d) *Recordkeeping and reporting requirements.* Attention is drawn to the recordkeeping, retention, and reporting requirements of §§ 501.601 and 501.602.

7. Appendix A to part 538 is added to read as follows:

Appendix A to Part 538—Bulk Agricultural Commodities

Notes:

1. Appendix A sets forth those agricultural commodities eligible for the bulk agricultural commodity sales licensing procedures in § 538.524.

2. Commodities are identified by their classification numbers in the Harmonized Tariff Schedule of the United States (see 19 U.S.C. 1202) ("HTS").

HTS Number	Commodity
1001.10	Durum Wheat
1001.90	Other Wheat and Meslin, including seed, Red Spring Wheat, White Winter Wheat, "Canadian" Western Red Winter Wheat, Soft White Spring Wheat, and Wheat not elsewhere specified
1101.00	Wheat or Meslin Flour
1006.10	Rice in the husk (paddy or rough)
1006.20	Husked (brown) Rice
1006.30	Semi–milled or wholly milled Rice, whether or not polished or glazed
1006.40	Broken Rice
1102.30	Rice Flour
1103.14	Rice Groats, Meal and Pellets
1002.00	Rye
1003.00	Barley
1004.00	Oats
1007.00	Grain Sorghum
1005.00	Corn (Maize)
0713.31	Dried Beans including *Vigna mungo (L.), Hepper,* and *Vigna radiata (L.) Wilczek*
0713.32	Small red (adzuki) beans
0713.33	Kidney beans, including white pea beans
0713.39	Beans, other
0713.50	Broad beans and horse beans
0713.10	Dried Peas (*Pisum sativum*)
0713.20	Chickpeas (garbanzos)
0713.40	Lentils
0713.90	Dried leguminous vegetables, shelled, not elsewhere specified
1201.00	Soybeans, whether or not broken
2304.00	Soybean cake, meal and pellets
1507.10	Soybean oil, crude
1507.90	Soybean oil, other
1514.10	Rapeseed, colza and mustard oil, crude
1514.90	Rapeseed, colza and mustard oil, other
1515.21	Corn (Maize) oil, crude
1515.29	Corn (Maize) oil, other
1512.21	Cottonseed oil, crude
1512.29	Cottonseed oil, other
1517.90	Cottonseed oil, hydrogenated
1508.10	Peanut (ground–nut) oil, crude
1508.90	Peanut (ground–nut) oil, other
1515.50	Sesame oil
1512.11	Sunflower–seed oil, crude
1512.19	Sunflower–seed oil, other
1212.91	Sugar Beets, fresh, chilled, frozen or dried
1212.92	Sugar Cane, fresh, chilled, frozen or dried
1701.11	Cane Sugar, raw, solid form
1701.12	Beet Sugar, raw, solid form
1701.91	Cane or Beet Sugar, solid form, containing added coloring or flavoring
1701.99	Cane or Beet Sugar, other, not elsewhere specified

§ 550.405 Transactions incidental to a licensed transaction authorized.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) A transaction by an unlicensed Libyan governmental entity or involving a debit to a blocked account or a transfer of blocked property not explicitly authorized within the terms of the license;

(b) Provision of any transportation services to or from Libya not explicitly authorized in or pursuant to this part other than discharging licensed or exempt cargo there;

(c) Distribution or leasing in Libya of any containers or similar goods owned or controlled by United States persons after the performance of transportation services to Libya; and

(d) Financing of licensed sales for exportation or reexportation of agricultural commodities or products, medicine or medical equipment to Libya or the Government of Libya. See § 550.571.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

3. Section 550.569 is added to subpart E to read as follows:

§ 550.569 Commercial sales of agricultural commodities and products, medicine, and medical equipment.

(a) *General license for executory contracts.* Entry into executory contracts is authorized for the following transactions with individuals in Libya acting for their own account, nongovernmental entities in Libya or procurement bodies of the Government of Libya identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state, or with persons in third countries purchasing specifically for resale to any of the foregoing, provided that performance of the executory contracts (including any preparatory activities, payments or deposits related to such executory contracts) is contingent upon the prior authorization of the Office of Foreign Assets Control in or pursuant to this part:

(1) The sale of agricultural commodities and products, if those commodities and products are intended for ultimate consumption in Libya as:

(i) Food by humans (including live animals, raw, processed and packaged foods) or animals (including animal feeds);

(ii) Seeds for food crops; and

(iii) Reproductive materials (such as live animals, fertilized eggs, embryos and semen) for the production of food animals; and

(2) The sale of medicines (including those administered by injection) and medical equipment for use in Libya, if those medicines and medical equipment are not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified EAR99), as of the date of exportation or reexportation. (EAR99 items may in certain instances require a license from the Department of Commerce, Bureau of Export Administration. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10.)

Note to paragraph (a) of § 550.569: See § 550.570 with respect to the availability of specific licenses for sales of certain bulk agricultural commodities for exportation or reexportation to Libya or the Government of Libya.

(b) *Required terms of executory contracts.* The authorization contained in paragraph (a) of this section applies only to executory contracts that:

(1) Disclose all parties with an interest in the sales transaction. If the goods are being sold to a purchasing agent in Libya, the executory contract must identify the agent's principals at the wholesale level for whom the purchase is being made;

(2) Provide only for sales at prevailing market prices;

(3) Set forth all terms of sale (e.g., purchase price, quantity, date of shipment, financing), except that dates for contract performance may be made dependent upon the date a specific license pursuant to paragraph (d) of this section is obtained from the Office of Foreign Assets Control;

(4) Make any performance involving the exportation or reexportation of any goods, technology (including technical data, software, or other information) or services that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. (For example, items classified EAR99 under the Export Administration Regulations, 15 CFR parts 730 through 774, may in certain instances require a license from the Department of Commerce, Bureau of Export Administration. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10; see also 22 CFR 123.9); and

(5) Provide for payment terms consistent with the provisions of § 550.571.

(c) *Ineligible purchasers.* Nothing in this section permits entry into or performance of a sales contract with a person specifically named in appendix A to this chapter V or in appendix A to

PART 550—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for part 550 is revised to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 287c, 2349aa–8 and 2349aa–9; 31 U.S.C. 321(b); 49 U.S.C. 40106(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12543, 51 FR 875, 3 CFR, 1986 Comp., p. 181; E.O. 12544, 51 FR 1235, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 57 FR 14319, 3 CFR, 1992 Comp., p. 294.

2. Section 550.405 is revised to read as follows:

part 560 of this chapter, other than a procurement body of the Government of Libya identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state.

Note to paragraph (c) of § 550.569. Information on ineligible purchasers and eligible procurement bodies will be published in the **Federal Register** and may be found on the Office of Foreign Assets Control's Internet site: http://www.treas.gov/ofac, or on its fax–on–demand system: 202/622–0077.

(d) *Specific licenses for performance under executory contracts.* Specific licenses may be issued on a case–by–case basis to permit the performance of executory contracts meeting the requirements of paragraphs (a) and (b) of this section. See § 501.801(b) of this chapter with respect to specific licensing procedures.

(e) *Recordkeeping and reporting requirements.* Attention is drawn to the recordkeeping, retention, and reporting requirements of §§ 501.601 and 501.602.

4. Section 550.570 is added to subpart E to read as follows:

§ 550.570 Commercial sales of certain bulk agricultural commodities.

(a) *Sales of bulk agricultural commodities by licensed sellers.* Specific licenses may be issued on a case–by–case basis to permit the sale and exportation or reexportation to persons in Libya or the Government of Libya of bulk agricultural commodities intended for ultimate consumption in Libya as food by humans or animals (including animal feeds) and seeds for food crops, for sales meeting all requirements of paragraph (b) of this section.

(b) *Required contract terms for commercial sales of bulk agricultural commodities.* Specific licenses issued pursuant to this section will authorize entry into and performance only of contracts that:

(1) Provide for the sale and exportation or reexportation only of bulk agricultural commodities listed in appendix A to this part 550;

(2) Fully identify the purchasers of the bulk agricultural commodities, including (for sales through persons in third countries) those to whom the commodities are to be resold, and do not include as a purchaser any person in Libya or any person within the definition of the term Government of Libya other than:

(i) A private individual in Libya acting for his or her own account;

(ii) A nongovernmental entity in Libya; or

(iii) A procurement body of the Government of Libya identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state;

(3) Provide only for sales at prevailing market prices;

(4) Make any performance involving the exportation or reexportation of any goods, technology (including technical data, software, or other information) or services that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. (For example, EAR99 items may in certain instances require a license from the Department of Commerce, Bureau of Export Administration. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10; see also 22 CFR 123.9); and

(5) Provide for payment terms consistent with the provisions of § 550.571.

(c) *Recordkeeping and reporting requirements.* Attention is drawn to the recordkeeping, retention, and reporting requirements of §§ 501.601 and 501.602.

(d) *Other commodities and products.* Requests may be made to the Office of Foreign Assets Control for specific licenses analogous to those available pursuant to paragraph (a) of this section where the applicant demonstrates to the satisfaction of the Office of Foreign Assets Control that, in light of industry practices, sales of the particular agricultural commodity or product, medicine, or medical equipment are impracticable under the executory contract licensing procedures contained in § 550.569.

(e) *Ineligible purchasers.* Nothing in this section permits entry into or performance of a sales contract with a person specifically named in appendix A to this chapter V or in appendix A to part 560 of this chapter, other than a procurement body of the Government of Libya identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state.

Note to paragraph (e) of § 550.570. Information on ineligible purchasers and eligible procurement bodies will be published in the **Federal Register** and may be found on the Office of Foreign Assets Control's Internet site: http://www.treas.gov/ofac, or on its fax–on–demand system: 202/622–0077.

5. Section 550.571 is added to subpart E to read as follows:

§ 550.571 Payment for and financing of commercial sales of agricultural commodities and products, medicine, and medical equipment.

(a) *General license for payment terms.* The following payment terms for sales of agricultural commodities and products, medicine, and medical equipment pursuant to §§ 550.569 and 550.570 are authorized:

(1) Payment of cash in advance;

(2) Sales on open account, provided that the account receivable may not be transferred by the person extending the credit; or

(3) Financing by third–country financial institutions that are neither United States persons nor Government of Libya entities. Such financing may be confirmed or advised by U.S. financial institutions.

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case–by–case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to §§ 550.569 and 550.570, except that such financing may not be provided by the Government of Libya. See § 501.801(b) of this chapter for specific licensing procedures.

(c) *No debits to blocked accounts.* Nothing in this section authorizes payment terms or trade financing involving a debit to an account of the Government of Libya blocked pursuant to this part.

(d) *Transfers through the U.S. financial system.* Before a United States financial institution initiates a payment on behalf of any customer, or credits a transfer to the account on its books of the ultimate beneficiary, the United States financial institution must determine that the underlying transaction is not prohibited by this part. Any payment relating to a transaction authorized in or pursuant to § 550.569, 550.570, or 550.572 that is routed through the U.S. financial system must reference the relevant Office of Foreign Assets Control license authorizing the payment to avoid the blocking or rejection of the transfer.

6. Section 550.572 is added to subpart E to read as follows:

§ 550.572 Brokering sales of bulk agricultural commodities.

(a) *General license for brokering sales by U.S. persons.* United States persons are authorized to broker the sale and exportation or reexportation by United States persons of the bulk agricultural commodities listed in appendix A to this part 550 to individuals in Libya acting for their own account, nongovernmental entities in Libya, procurement bodies of the Government of Libya identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state, or persons in third countries purchasing specifically for resale to any of the foregoing, provided that the brokered sales meet all conditions of § 550.570.

(b) *Specific licensing for brokering sales by non–U.S. persons.* Specific licenses may be issued on a case–by–case basis to permit United States persons to broker the sale and exportation or reexportation of bulk agricultural commodities by non–United States persons to persons in Libya or the Government of Libya. Specific licenses issued pursuant to this section will authorize the brokerage only of sales that:

(1) Are limited to the bulk agricultural commodities listed in appendix A to this part 550;

(2) Are to purchasers permitted pursuant to paragraphs (b)(2) and (e) of § 550.570;

(3) Require that any performance that is subject to license application requirements of another Federal agency be contingent upon the prior authorization of that agency. (For example, items classified EAR99 under the Export Administration Regulations, 15 CFR parts 730 through 774, may in certain instances require a license from the Department of Commerce, Bureau of Export Administration. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10; see also 22 CFR 123.9.)

(c) *No debit to blocked accounts.* Payment for any brokerage fee earned pursuant to this section may not involve a debit to an account blocked pursuant to this part.

(d) *Recordkeeping and reporting requirements.* Attention is drawn to the recordkeeping, retention, and reporting requirements of §§ 501.601 and 501.602.

7. Section 550.573 is added to subpart E to read as follows:

§ 550.573 Travel transactions in connection with licensed sales of agricultural commodities and products, medicine, and medical products.

Travel transactions to, from, and within Libya for the sole purpose of negotiating contracts authorized by § 550.569 or § 550.570 are authorized. Travel transactions related to installation or servicing of medical equipment sold pursuant to § 550.569 must be authorized by specific license. See § 501.801(b) of this chapter for specific licensing procedures.

Note to § 550.573. U.S. passports must be validated by the U.S. Department of State for travel to Libya.

8. Appendix A to part 550 is added to read as follows:

Appendix A to Part 550—Bulk Agricultural Commodities

Notes:

1. Appendix A sets forth those agricultural commodities eligible for the bulk agricultural commodity sales licensing procedures in § 550.570.

2. Commodities are identified by their classification numbers in the Harmonized Tariff Schedule of the United States (see 19 U.S.C. 1202) ("HTS").

HTS Number	Commodity
1001.10	Durum Wheat
1001.90	Other Wheat and Meslin, including seed, Red Spring Wheat, White Winter Wheat, "Canadian" Western Red Winter Wheat, Soft White Spring Wheat, and Wheat not elsewhere specified
1101.00	Wheat or Meslin Flour
1006.10	Rice in the husk (paddy or rough)
1006.20	Husked (brown) Rice
1006.30	Semi–milled or wholly milled Rice, whether or not polished or glazed
1006.40	Broken Rice
1102.30	Rice Flour
1103.14	Rice Groats, Meal and Pellets
1002.00	Rye
1003.00	Barley
1004.00	Oats
1007.00	Grain Sorghum
1005.00	Corn (Maize)
0713.31	Dried Beans including *Vigna mungo (L.), Hepper,* and *Vigna radiata (L.) Wilczek*
0713.32	Small red (adzuki) beans
0713.33	Kidney beans, including white pea beans
0713.39	Beans, other
0713.50	Broad beans and horse beans
0713.10	Dried Peas (*Pisum sativum*)
0713.20	Chickpeas (garbanzos)
0713.40	Lentils
0713.90	Dried leguminous vegetables, shelled, not elsewhere specified
1201.00	Soybeans, whether or not broken
2304.00	Soybean cake, meal and pellets
1507.10	Soybean oil, crude
1507.90	Soybean oil, other
1514.10	Rapeseed, colza and mustard oil, crude
1514.90	Rapeseed, colza and mustard oil, other
1515.21	Corn (Maize) oil, crude
1515.29	Corn (Maize) oil, other
1512.21	Cottonseed oil, crude
1512.29	Cottonseed oil, other
1517.90	Cottonseed oil, hydrogenated
1508.10	Peanut (ground–nut) oil, crude
1508.90	Peanut (ground–nut) oil, other
1515.50	Sesame oil
1512.11	Sunflower–seed oil, crude
1512.19	Sunflower–seed oil, other
1212.91	Sugar Beets, fresh, chilled, frozen or dried
1212.92	Sugar Cane, fresh, chilled, frozen or dried
1701.11	Cane Sugar, raw, solid form
1701.12	Beet Sugar, raw, solid form
1701.91	Cane or Beet Sugar, solid form, containing added coloring or flavoring
1701.99	Cane or Beet Sugar, other, not elsewhere specified

PART 560—IRANIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 2349aa–9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart D—Interpretations

2. Section 560.405 is added to subpart D to read as follows:

§ 560.405 Transactions incidental to a licensed transaction authorized.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) A transaction by an unlicensed Iranian governmental entity or involving a debit or credit to an Iranian account not explicitly authorized within the terms of the license;

(b) Provision of any transportation services to or from Iran not explicitly authorized in or pursuant to this part other than discharging licensed or exempt cargo there;

(c) Distribution or leasing in Iran of any containers or similar goods owned or controlled by United States persons after the performance of transportation services to Iran; and

(d) Financing of licensed sales for exportation or reexportation of agricultural commodities or products, medicine or medical equipment to Iran or the Government of Iran. See § 560.532.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

3. Section 560.530 is added to subpart E to read as follows:

§ 560.530 Commercial sales of agricultural commodities and products, medicine, and medical equipment.

(a) *General license for executory contracts.* Entry into executory contracts is authorized for the following transactions with nongovernmental

entities in Iran or procurement bodies of the Government of Iran not affiliated with the coercive organs of the state, provided that performance of the executory contracts (including any preparatory activities, payments or deposits related to such executory contracts) is contingent upon the prior authorization of the Office of Foreign Assets Control in or pursuant to this part:

(1) The sale of agricultural commodities and products, if those commodities and products are intended for ultimate consumption in Iran as:

(i) Food by humans (including live animals, raw, processed and packaged foods) or animals (including animal feeds);

(ii) Seeds for food crops; and

(iii) Reproductive materials (such as live animals, fertilized eggs, embryos and semen) for the production of food animals; and

(2) The sale of medicines (including those administered by injection) and medical equipment for use in Iran, if those medicines and medical equipment are not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified EAR99), as of the date of exportation or reexportation. (EAR99 items may in certain instances require a license from the Department of Commerce, Bureau of Export Administration. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10.)

Note to paragraph (a) of § 560.530. See § 560.531 with respect to the availability of specific licenses for entry into and performance of contracts for sales of certain bulk agricultural commodities.

(b) *Required terms of executory contracts.* The authorization contained in paragraph (a) of this section applies only to executory contracts that:

(1) Disclose all parties with an interest in the sales transaction. If the goods are being sold to a purchasing agent in Iran, the executory contract must identify the agent's principals at the wholesale level for whom the purchase is being made;

(2) Provide only for sales at prevailing market prices;

(3) Set forth all terms of sale (e.g., purchase price, quantity, date of shipment, financing), except that dates for contract performance may be made dependent upon the date a specific license pursuant to paragraph (d) of this section is obtained from the Office of Foreign Assets Control;

(4) Make any performance involving the exportation or reexportation of any goods, technology (including technical data, software, or other information) or services that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. (For example, items classified EAR99 under the Export Administration Regulations, 15 CFR parts 730 through 774, may in certain instances require a license from the Department of Commerce, Bureau of Export Administration. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10; see also 22 CFR 123.9); and

(5) Provide for payment terms consistent with the provisions of § 560.532.

(c) *Ineligible purchasers.* Nothing in this section permits entry into or performance of a sales contract with a person specifically named in appendix A to this chapter V or in appendix A to this part 560, other than a procurement body of the Government of Iran identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state.

Note to paragraph (c) of § 560.530. Information on ineligible purchasers and eligible procurement bodies will be published in the **Federal Register** and may be found on the Office of Foreign Assets Control's Internet site: http://www.treas.gov/ofac, or on its fax–on–demand system: 202/622–0077.

(d) *Specific licenses for performance under executory contracts.* Specific licenses may be issued on a case–by–case basis to permit the performance of executory contracts meeting the requirements of paragraphs (a) and (b) of this section. See § 501.801(b) of this chapter with respect to specific licensing procedures.

(e) *Recordkeeping and reporting requirements.* Attention is drawn to the recordkeeping, retention, and reporting requirements of §§ 501.601 and 501.602.

4. Section 560.531 is added to subpart E to read as follows:

§ 560.531 Commercial sales of certain bulk agricultural commodities.

(a) *Sales of bulk agricultural commodities by licensed sellers.* Specific licenses may be issued on a case–by–case basis to permit the sale and exportation or reexportation to persons in Iran or the Government of Iran of bulk agricultural commodities intended for ultimate consumption in Iran as food by humans or animals (including animal feeds) and seeds for food crops, for sales meeting all requirements of paragraph (b) of this section.

(b) *Required contract terms for commercial sales of bulk agricultural commodities.* Specific licenses issued pursuant to this section will authorize entry into and performance only of contracts that:

(1) Provide for the sale and exportation or reexportation only of bulk agricultural commodities listed in appendix B to this part 560;

(2) Fully identify the purchasers of the bulk agricultural commodities, including (for sales through persons in third countries) those to whom the commodities are to be resold, and do not include as a purchaser any person in Iran or any person within the definition of the term Government of Iran other than:

(i) A private individual in Iran acting for his or her own account;

(ii) A nongovernmental entity in Iran; or

(iii) A procurement body of the Government of Iran identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state;

(3) Provide only for sales at prevailing market prices;

(4) Make any performance involving the exportation or reexportation of any goods, technology (including technical data, software, or other information) or services that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. (For example, EAR99 items may in certain instances require a license from the Department of Commerce, Bureau of Export Administration. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10; see also 22 CFR 123.9); and

(5) Provide for payment terms consistent with the provisions of § 560.532.

(c) *Recordkeeping and reporting requirements.* Attention is drawn to the recordkeeping, retention, and reporting requirements of §§ 501.601 and 501.602.

(d) *Other commodities and products.* Requests may be made to the Office of Foreign Assets Control for specific licenses analogous to those available pursuant to paragraph (a) of this section where the applicant demonstrates to the satisfaction of the Office of Foreign Assets Control that, in light of industry practices, sales of the particular agricultural commodity or product, medicine, or medical equipment are impracticable under the executory contract licensing procedures contained in § 560.530.

(e) *Ineligible purchasers.* Nothing in this section permits entry into or performance of a sales contract with a person specifically named in appendix A to this chapter V or in appendix A to this part 560, other than a procurement body of the Government of Iran identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state.

Note to paragraph (e) of § 560.531. Information on ineligible purchasers and eligible procurement bodies will be published in the **Federal Register** and may be found on the Office of Foreign Assets Control's Internet site: http://www.treas.gov/ofac, or on its fax–on–demand system: 202/622–0077.

5. Section 560.532 is added to subpart E to read as follows:

§ 560.532 Payment for and financing of commercial sales of agricultural commodities and products, medicine, and medical equipment.

(a) *General license for payment terms.* The following payment terms for sales of agricultural commodities and products, medicine, and medical equipment pursuant to §§ 560.530 and 560.531 are authorized:

(1) Payment of cash in advance;

(2) Sales on open account, provided that the account receivable may not be transferred by the person extending the credit; or

(3) Financing by third–country financial institutions that are neither United States persons nor Government of Iran entities. Such financing may be confirmed or advised by U.S. financial institutions.

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case–by–case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to §§ 560.530 and 560.531, except that such financing may not be provided by the Government of Iran. See § 501.801(b) of this chapter for specific licensing procedures.

(c) *No use of Iranian accounts.* Nothing in this section authorizes payment terms or trade financing involving a debit or credit to an Iranian account.

(d) *Transfers through the U.S. financial system.* Any payment relating to a transaction authorized in or pursuant to § 560.530, 560.531, or 560.533 that is routed through the U.S. financial system must reference the relevant Office of Foreign Assets Control license authorizing the payment to avoid the rejection of the transfer. See § 560.516(b).

6. Section 560.533 is added to subpart E to read as follows:

§ 560.533 Brokering sales of bulk agricultural commodities.

(a) *General license for brokering sales by U.S. persons.* United States persons are authorized to broker the sale by United States persons of the bulk agricultural commodities listed in appendix B to this part 560 to individuals in Iran acting for their own account, nongovernmental entities in Iran, procurement bodies of the Government of Iran identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state, or persons in third countries purchasing specifically for resale to any of the foregoing, provided that the brokered sales meet all conditions of § 560.531.

(b) *Specific licensing for brokering sales by non–U.S. persons.* Specific licenses may be issued on a case–by–case basis to permit United States persons to broker the sale and exportation or reexportation of bulk agricultural commodities by non–United States persons to persons in Iran or the Government of Iran. Specific licenses issued pursuant to this section will authorize the brokerage only of sales that:

(1) Are limited to the bulk agricultural commodities listed in appendix B to this part 560;

(2) Are to purchasers permitted pursuant to paragraphs (b)(2) and (e) of § 560.531;

(3) Require that any performance that is subject to license application requirements of another Federal agency be contingent upon the prior authorization of that agency. (For example, items classified EAR99 under the Export Administration Regulations, 15 CFR parts 730 through 774, may in certain instances require a license from the Department of Commerce, Bureau of Export Administration. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10; see also 22 CFR 123.9.)

(c) *No debit to an Iranian account.* Payment for any brokerage fee pursuant to this section may not involve a debit or credit to an Iranian account.

(d) *Recordkeeping and reporting requirements.* Attention is drawn to the recordkeeping, retention, and reporting requirements of §§ 501.601 and 501.602.

Appendix A to Part 560 [Redesignated]

7. The appendix to part 560 is redesignated as Appendix A to Part 560.

8. Appendix B to part 560 is added to read as follows:

Appendix B to Part 560—Bulk Agricultural Commodities

Notes:

1. Appendix B sets forth those agricultural commodities eligible for the bulk agricultural commodity sales licensing procedures in § 560.531.

2. Commodities are identified by their classification numbers in the Harmonized Tariff Schedule of the United States (see 19 U.S.C. 1202) ("HTS").

HTS Number	Commodity
1001.10	Durum Wheat
1001.90	Other Wheat and Meslin, including seed, Red Spring Wheat, White Winter Wheat, "Canadian" Western Red Winter Wheat, Soft White Spring Wheat, and Wheat not elsewhere specified
1101.00	Wheat or Meslin Flour
1006.10	Rice in the husk (paddy or rough)
1006.20	Husked (brown) Rice
1006.30	Semi–milled or wholly milled Rice, whether or not polished or glazed
1006.40	Broken Rice
1102.30	Rice Flour
1103.14	Rice Groats, Meal and Pellets
1002.00	Rye
1003.00	Barley
1004.00	Oats
1007.00	Grain Sorghum
1005.00	Corn (Maize)
0713.31	Dried Beans including *Vigna mungo (L.), Hepper,* and *Vigna radiata (L.) Wilczek*
0713.32	Small red (adzuki) beans
0713.33	Kidney beans, including white pea beans
0713.39	Beans, other
0713.50	Broad beans and horse beans
0713.10	Dried Peas (*Pisum sativum*)
0713.20	Chickpeas (garbanzos)
0713.40	Lentils
0713.90	Dried leguminous vegetables, shelled, not elsewhere specified
1201.00	Soybeans, whether or not broken
2304.00	Soybean cake, meal and pellets
1507.10	Soybean oil, crude
1507.90	Soybean oil, other
1514.10	Rapeseed, colza and mustard oil, crude
1514.90	Rapeseed, colza and mustard oil, other
1515.21	Corn (Maize) oil, crude
1515.29	Corn (Maize) oil, other
1512.21	Cottonseed oil, crude
1512.29	Cottonseed oil, other
1517.90	Cottonseed oil, hydrogenated
1508.10	Peanut (ground–nut) oil, crude
1508.90	Peanut (ground–nut) oil, other
1515.50	Sesame oil
1512.11	Sunflower–seed oil, crude
1512.19	Sunflower–seed oil, other
1212.91	Sugar Beets, fresh, chilled, frozen or dried
1212.92	Sugar Cane, fresh, chilled, frozen or dried
1701.11	Cane Sugar, raw, solid form
1701.12	Beet Sugar, raw, solid form
1701.91	Cane or Beet Sugar, solid form, containing added coloring or flavoring
1701.99	Cane or Beet Sugar, other, not elsewhere specified

Dated: July 26, 1999.
R. Richard Newcomb,
Director, Office of Foreign Assets Control.
Approved: July 26, 1999.
Elisabeth A. Bresee,
Assistant Secretary (Enforcement), Department of the Treasury.
[FR Doc. 99–19628 Filed 7–27–99; 4:18 pm]
BILLING CODE 4810–25–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[USCG–1998–4819]

RIN 2115–AF85

Year 2000 (Y2K) Reporting Requirements for Vessels and Marine Facilities; Enforcement Date Change

AGENCY: Coast Guard, DOT.
ACTION: Temporary interim rule.

SUMMARY: The Coast Guard is changing the reporting date for certain vessels and marine facilities to submit their Year 2000 (Y2K) preparedness questionnaires. The current temporary interim rule requires certain vessels and marine facilities to submit Y2K preparedness questionnaires to be received by the Coast Guard no later than August 1, 1999. Due to problems with the software enabling Internet submissions, we are delaying the questionnaire submission date to August 20, 1999. Additionally, we are making some non-substantive, editorial corrections to the interim rule.

EFFECTIVE DATES: This temporary interim rule is effective August 2, 1999 and expires March 31, 2000. All other provisions of the temporary interim rule published on June 23, 1999 at 64 FR 33404–33424 that became effective on June 23, 1999 remain in effect.

FOR FURTHER INFORMATION CONTACT: For questions regarding this change of enforcement date, call Mr. John Hannon, Project Manager, Office of Compliance, telephone 202–267–0492. For questions on viewing, or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Discussion of Regulatory Action

This rule delays the submission requirement for the Y2K questionnaires from August 1, 1999 to August 20, 1999. This delay facilitates the regulated public's ability to use the Internet and other means to submit the required questionnaires. Because this rule relieves the restriction for the August 1, 1999, submission date, until August 20, 1999, under 5 U.S.C. 553 (d)(1), it is effective on its date of publication in the **Federal Register**.

Background

On March 5, 1999, the International Maritime Organization (IMO) issued Circular Letter No. 2121 which established, through unanimous agreement, the Year 2000 Code of Good Practice and Key Elements of Y2K contingency plans for ships, ports, and terminals. After the issuance of Circular No. 2121, the Coast Guard developed a risk assessment matrix, and evaluated the need for information to supplement the questionnaires contained in the Circular. We published a temporary interim rule on June 23, 1999 (64 FR 33404) establishing temporary Y2K preparedness reporting requirements for vessels and marine facilities operating in U.S. waters on any of the following peak risk dates:

- Between midnight (2400 hours local time) September 7, 1999 and midnight (2400 hours local time) September 9, 1999 (48 hours);
- Between midnight (2400 hours local time) December 30, 1999 and midnight (2400 hours local time) January 1, 2000 (48 hours); and
- Between midnight (2400 hours local time) February 27, 2000 and midnight (2400 hours local time) February 29, 2000 (48 hours).

The reporting requirements and copies of the required forms were set out in the temporary interim rule.

Reason for Delay

The temporary interim rule gave the public three options to submit their responses to Y2K questionnaires: by mail, by facsimile (fax), and by submission of data via the Internet. At the time of publication of the Temporary Interim Rule, we reported that we were finalizing our Y2K questionnaire data processing system and indicated we would implement the system by July 1, 1999. At this time, the system is capable of receiving faxed and mailed submissions; however, we are currently experiencing software problems for submitting questionnaires via the Internet. We anticipate that Internet submission capability will not be available until August 1, 1999. If all submissions were made using the Internet, our system may not be able to process all submissions; therefore, we are delaying the date by which we must receive your Y2K preparedness questionnaires until August 20, 1999. We are currently capable of receiving and processing both fax and mail Y2K questionnaire submissions and you are highly encouraged to submit your questionnaires as soon as possible through one of those means.

Additionally, as published, the temporary interim rule contains inaccuracies and editorial errors in need of correction. We are correcting the Navigation and Vessel Inspection Circular (NVIC) 6–99 to read as 7–99. In addition, facilities operating under the authority of the Department of Transportation were omitted from section 160.307 paragraph (g) in error. We are correcting that oversight by adding the Department of Transportation to this section. We are also correcting an editorial error where we mislabeled sub-paragraphs in section 160.317 of the rule by going from (d) to (f), skipping (e). Finally, we are correcting an inaccurate domestic fax number and adding an international fax number for foreign vessels to submit the appropriate Y2K preparedness questionnaire.

List of Subjects in 33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous material transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For reasons set forth in the preamble, the Coast Guard is amending 33 CFR part 160 as follows:

PART 160—PORTS AND WATERWAY SAFETY—GENERAL

1. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 49 CFR 1.46. Subpart D is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

2. Revise paragraph (g) of § 160.307, to read as follows:

§ 160.307 Which vessels and facilities are exempt from this subpart?

* * * * *

(g) Facilities directly operated by the Department of Defense, or under the authority of the Department of the Interior or the Department of Transportation.

3. In § 160.313, revise paragraphs (a)(1), (a)(2), and (b)(2) to read as follows:

§ 160.313 What are the Year 2000 (Y2K) reporting requirements for vessels owned in the United States?

(a) * * *

(1) If your vessel will operate during any of the peak risk periods identified in § 160.311, you must submit a Vessel Questionnaire, as contained in Appendix A to this subpart, so that it is received by the U.S. Coast Guard no later than August 20, 1999.

(2) If your vessel will not operate during any of the peak risk periods identified in § 160.311, but will operate during the period August 1, 1999, through March 21, 2000, you must submit U.S. Supplement 1 (page 3 of the Vessel Questionnaire as contained in Appendix A to this subpart) so that it is received no later than August 20, 1999.

(b) * * *

(2) By fax to: 1–877–825–4357 (for submissions faxed within the United States) or 1–703–522–1839 (for submissions faxed from outside the United States); or

* * * * *

4. Revise paragraph (b)(2) of § 160.315 to read as follows:

§ 160.315 What are the Year 2000 (Y2K) reporting requirements for foreign flag vessels?

* * * * *

(b) * * *

(2) By fax to: 1–877–825–4357 (for submissions faxed within the United States) or 1–703–522–1839 (for submissions faxed from outside the United States); or

* * * * *

5. In § 160.317, revise paragraphs (a)(1), (a)(2), and (b)(2) to read as follows and redesignate paragraphs (f) and (g) as paragraphs (e) and (f):

§ 160.317 What are the Year 2000 (Y2K) reporting requirements for marine facilities?

(a) * * *

(1) If your marine facility will operate during any of the peak risk periods identified in § 160.311, you must submit a Marine Facility Questionnaire, as contained in Appendix B to this subpart, so that it is received by the U.S. Coast Guard no later than August 20, 1999.

(2) If your marine facility will not operate during any of the peak risk periods identified in § 160.311, but will operate during the period August 1, 1999, through March 21, 2000, you must submit U.S. Supplement 2 (page 3 of the Marine Facility Questionnaire as contained in Appendix B to this subpart) so that it is received no later than August 20, 1999.

(b) * * *

(2) By fax to: 1–877–825–4357 (for submissions faxed within the United States) or 1–703–522–1839 (for submissions faxed from outside the United States); or

* * * * *

6. Revise Appendix A to Subpart D of Part 160—United States Coast Guard Vessel Questionnaire to read as follows:

BILLING CODE 4910–15–P

Appendix A to Subpart D of Part 160—United States Coast Guard Vessel Questionnaire

OMB Approval No. 2115-0639

United States Coast Guard Vessel Questionnaire

[IMO Year 2000 Questionnaire 2 and United States Supplement 1]

Instructions

- Please complete this vessel questionnaire as fully as possible and submit to the U.S. Coast Guard via:

Mail: U. S. Coast Guard (G-MOC/Y2K) c/o The Centech Group 2000 N. 14th Street Suite 700 Arlington, VA 22201	OR	**Fax:** 1-877-825-4357 (for U.S. submissions) OR 1-703-522-1839 (for international submissions)	OR	Complete the questionnaire and supplement on the Coast Guard's Internet web site at: http://www.uscg.mil/hq/g-m/y2k.htm

- You must submit this vessel questionnaire such that it is received by:

U.S. Vessels:	Foreign Vessels arriving in U.S. Waters:
August 20, 1999	24 hours prior to 1st arrival after August 1, 1999

- The peak risk periods are: Midnight (2400) Sept 7, 1999, through midnight (2400) Sept 9, 1999, **AND** Midnight Dec 30, 1999, through midnight Jan 1, 2000 **AND** Midnight Feb 27, 2000 through midnight February 29, 2000.
- If your vessel or fleet of vessels **will** be operating in U.S. waters during any of the peak risk periods, you must submit at least one vessel questionnaire. If you operate a fleet of vessels which all have the same Y2K preparedness status, you may submit one IMO Questionnaire 2 for all vessels in that fleet. However, you must complete a U.S. Supplement 1 for each individual vessel in your fleet. The following examples are provided:

  1. Company A has 5 vessels and the same answers to the questions in IMO Questionnaire 2 apply to all 5 vessels. Company A must submit 5 U.S. Supplements (1 for each vessel) but may submit one IMO questionnaire 2 that covers all 5 vessels.

  2. Company B also has 5 vessels; however, each vessel has different answers to the questions in the IMO questionnaire. Company B must submit 5 U.S Supplements (1 for each vessel) and 5 IMO Questionnaire 2s (1 for each vessel).

- If your vessel **will not** be operating in U.S. waters during any of the peak risk periods, but **will** be operating in U.S. waters from August 1, 1999, through March 31, 2000, you need only complete the U.S. Supplement 1 and submit it to the Coast Guard via one of the methods outlined above by the appropriate date. You do not have to complete the IMO Year 2000 Questionnaire 2.
- If a vessel's Y2K preparedness or its operational plans change, please submit an updated questionnaire and supplement via mail/fax or update the information via the Internet. **Any new or updated vessel questionnaires submitted during the peak risk periods must be submitted directly to the Captain of the Port (COTP) in whose zone the vessel is operating instead of the locations specified above.** A list of COTP addresses and fax numbers is on page 4.
- **Data items on the IMO Questionnaire 2 marked with an asterisk (*) do not need to be filled in if the questionnaire is being submitted to the U.S. Coast Guard since the U.S. Supplement addresses similar information.**
- For the purpose of this questionnaire, operating means a vessel is underway, conducting cargo loading/transfer operations, or carrying passengers.
- Please DO NOT SUBSTITUTE Y2K-related contingency plans, brochures, policy statements or similar documents for this questionnaire and supplement. If you have questions about the questionnaire and/or supplement, contact the Coast Guard Office of Compliance at: Commandant (G-MOC), 2100 2nd Street SW, Washington DC 20593-0001; tel: 202-267-2978;.

An agency may not conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection is: 2115-0639.

The Coast Guard estimates it will take averages of 8 minutes to complete and submit Questionnaire 2, and 5 minutes to complete and submit Supplement 1. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Commandant (G-MOC), U.S. Coast Guard, Washington, DC 20593-001.

IMO YEAR 2000 QUESTIONNAIRE 2

From: (Port Authority/Terminal Operator) United States Coast Guard

To: (Name of Ships) _____

Please answer the following as fully as you can. Your response to this questionnaire will assist the Port Authority/Terminal Operator in deciding whether due care has been exercised in avoiding possible equipment failure caused by Year 2000 electronic date recognition problems, and in putting in place contingency plans to cope with unforeseen failures.

Company: _____

Ship's IMO Number *: _____ **Flag *:** _____

Tonnage (gross) *: _____ **Ship Type (e.g. ro-ro, cargo) *:** _____

Date/time of expected arrival/departure *: _____

	Circle as appropriate	
1) Does your company have a documented Year 2000 policy in place?	YES	NO
2) Has an inventory check to identify and categorize potentially non-compliant equipment been carried out?	YES	NO
3) Has equipment critical to the operational safety of the ship(s) been investigated, and have appropriate remedial actions been carried out with regard to:		
- Navigational Systems?	YES	NO
- Propulsion and Power Generation Systems?	YES	NO
- Cargo Handling Equipment?	YES	NO
- Other Safety Equipment?	YES	NO
4) Are records of Year 2000 compliance, and/or the results of equipment tests/investigations documented?	YES	NO
5) Are the above documents available onboard the ships for inspection by the port authority/terminal operator?	YES	NO
6) Do the ships have a documented Year 2000 specific contingency plan, including competent personnel to implement it?	YES	NO
7) Has the ships' Year 2000 contingency plan been tested and reviewed to confirm its effectiveness?	YES	NO
8) Has the ships' equipment not currently in use, but critical to safe operation of the ship, been checked to establish that its functionality has not been affected?	YES	NO
9) Has all necessary information been exchanged and agreed with the above named port/terminal on any additional Year 2000 specific requirements applicable to ship operations in the port?	YES	NO

Name of the Master *: _____

Signature of the Master *: _____

Date: _____

UNITED STATES SUPPLEMENT 1 TO IMO YEAR 2000 QUESTIONNAIRE 2

In addition to the IMO Year 2000 Questionnaire 2, please answer the following as fully as you can for each individual vessel arriving in, operating in, or residing at U.S. ports from August 1, 1999 through March 31, 2000.

Name of the Person Completing Questionnaire: _____

Address: _____

_____

_____

Phone: _____

Fax: _____

Email: _____

Vessel Name: _____

Vessel Type (check one):

___ Oil Tanker (single hull) ___ Oil Tanker (double hull) ___ Ore/Bulk/Oil (OBO) ___ LPG Carrier ___ LNG Carrier ___ Chemical Tanker

___ Bulk Carrier ___ Containership ___ Ro-Ro Cargo ___ General Cargo ___ Passenger ___ Offshore Supply

___ MODU Other: _____

Cargo (check one):

___ Cargo of Particular Hazard (33 CFR 126) ___ Liquefied Hazardous Gas (LHG) ___ Bulk HAZMAT (liquid or solid) ___ Bulk Oil

___ 150 or more passengers ___ 7 to 149 passengers ___ 1 to 6 passengers ___ Other

Gross Tonnage: _____ **Flag:** _____ **IMO or Official Number:** _____

Captain of the Port zone you may be operating in (check "yes" for the dates that the vessel may be in each COTP zone. If needed, attach a separate sheet to list additional COTP zones. Refer to page 4 for a list of COTP zones):

Captain of the Port Zone:	Sept 7, 1999 – Sept 9, 1999	Dec 30, 1999 – Jan 1, 2000	Feb 27, 2000 – Feb 29, 2000	Any other dates Aug 1, 1999 - Mar 31, 2000
	___ Yes	___ Yes	___ Yes	___ Yes
	___ Yes	___ Yes	___ Yes	___ Yes
	___ Yes	___ Yes	___ Yes	___ Yes
	___ Yes	___ Yes	___ Yes	___ Yes
	___ Yes	___ Yes	___ Yes	___ Yes

Please answer the following question	Circle as appropriate
1) If you were required to complete IMO Questionnaire 2 and answered yes to question #6 of that questionnaire, does the contingency plan call for the following when the vessel is underway:	
• Two or more additional trained crew on board during the risk periods?	YES NO
• Anchor detail set and anchor ready for letting go during the risk periods?	YES NO
• Manning the engine room with engine and generator alarm systems in manual override mode during the risk periods?	YES NO
• Setting the steering in manual mode (disengaging automatic pilot) during the risk periods?	YES NO
• Enabling the ship for mechanical steering at rudder post and manning the steering compartment during the risk periods?	YES NO

Marine Safety Offices (MSOs)/Captains of the Port

MSO Portland 103 Commercial Street Portland, ME 04101-4726 PHONE: (207) 780-3681 FAX: (207) 780-3567	MSO Boston 455 Commercial Street Boston, MA 02109-1045 PHONE: (617) 223-3435 FAX: (617) 223-3032	MSO Providence 20 Risho Avenue East Providence, RI 02914-1208 PHONE: (401) 435-2350 FAX: (401) 435-2382	Group/MSO Long Island Sound 120 Woodward Avenue New Haven, CT 06512-3698 PHONE: (203) 468-4401 FAX: (203) 468-4445
USCG Activities New York Prevention/Compliance Division 212 Coast Guard Drive Staten Island, NY 10305 PHONE: (718) 354-4207 FAX: (718) 354-4301	Coast Guard Activities Baltimore 2401 Hawkins Point Road Baltimore, MD 21226-1791 PHONE: (410) 576-2693 FAX: (410) 962-0930	MSO Hampton Roads Norfolk Federal Building, 200 Granby Street Norfolk, VA 23510-1888 PHONE: (757) 441-3300 FAX: (757) 441-3262	MSO Wilmington 272 N. Front Street, Suite 500 Wilmington, NC 28401-3907 PHONE: (910) 815-4895 ext. 107 FAX: (910) 815-4523
MSO/Group Philadelphia 1 Washington Avenue Philadelphia, PA 19147-4395 PHONE: (215) 271-4806 FAX: (215) 271-4833	MSO Miami P.O. Box 01-6940 Miami, FL 33101-6940 PHONE: (305) 535-8705 FAX: (305) 535-8742	MSO Jacksonville 7820 Arlington Expressway, Suite 400 Jacksonville, FL 32211-7445 PHONE: (904) 232-2640 ext. 106 FAX: (904) 232-2664	MSO Tampa 155 Columbia Drive Tampa, FL 33606-3598 PHONE: (813) 228-2189 FAX: (813) 228-2399
MSO Savannah 222 W. Ogelthorpe Avenue, Suite 402 Savannah, GA 31401-3606 PHONE: (912) 652-4353 FAX: (912) 652-4180	MSO Charleston 196 Tradd Street Charleston, SC 29401-1899 PHONE: (843) 724-7684 FAX: (843) 720-7750	MSO San Juan P.O. Box 9023666 San Juan, PR 00902-3666 PHONE: (787) 729-6800 ext.303 FAX: (787) 729-6648	MSO New Orleans 1615 Poydras Street New Orleans, LA 70112-1254 PHONE: (504) 589-4256 FAX: (504) 589-7470
MSO Morgan City 800 David Drive Morgan City, LA 70380-1304 PHONE: (504) 380-5312 FAX: (504) 385-1687	MSO Corpus Christi 400 Mann Street, Suite 210 Corpus Christi, TX 78401-2046 PHONE: (512) 888-3162 FAX: (512) 888-3115	MSO Houston-Galveston P.O. Box 446 Galena Park, TX 77547-0446 PHONE: (713) 671-5100 ext. 0 FAX: (713) 671-5177	MSO Mobile P.O. Box 2924 150 N. Royal Street Mobile, AL 36652-2924 PHONE: (334) 441-5121 FAX: (334) 441-6169
MSO Port Arthur Federal Building 2875 Jimmy Johnson Boulevard Port Arthur , TX 77640-2099 PHONE: (409) 723-6509 ext. 251 FAX: (409) 723-6534	MSO St. Louis 1222 Spruce Street, Suite 8.104E St. Louis, MO 63103-2835 PHONE: (314) 539-3091 ext. 281 FAX: (314) 539-2659	MSO Huntington 1415 6th Avenue Huntington, WV 25701-2420 PHONE: (304) 529-5432 FAX: (304) 529-5051	MSO Louisville 600 Martin Luther King, Jr. Pl., Room 360 Louisville, KY 40202-2230 PHONE: (502) 582-5194 ext. 39 FAX: (502) 582-6825
MSO Memphis 200 Jefferson Avenue, Suite 1301 Memphis, TN 38103-2300 PHONE: (901) 544-3941 ext. 226 FAX: (901) 544-3886	MSO Paducah 225 Tully Street Paducah, KY 42003-1582 PHONE: (502) 442-1621 FAX: (502) 442-1633	MSO Pittsburgh Kossman Building, Suite 1150 100 Forbes Avenue Pittsburgh, PA 15222-1371 PHONE: (412) 644-5808 ext. 115 FAX: (412) 644-3479	MSO Buffalo 1 Fuhrman Boulevard Buffalo, NY 14230 PHONE: (716) 843-9570 FAX: (716) 843-9571
MSO Chicago 215 W. 83rd Street, Suite D Burr Ridge, IL 60521 PHONE: (630) 986-2155 FAX: (630) 986-2120/2174	MSO Cleveland 1055 E. 9th Street Cleveland, OH 44114 PHONE: (216) 522-4405 FAX: (216) 522-3290	MSO Detroit 110 Mt. Elliot Avenue Detroit, MI 48207 PHONE: (313) 568-9580 FAX: (313) 568-9581	MSO Duluth 600 S. Lake Avenue, Canal Park Duluth, MN 55802-2352 PHONE: (218) 720-5286 FAX: (218) 720-5258
MSO Milwaukee 2420 S. Lincoln Memorial Drive Milwaukee, WI 53207-1997 PHONE: (414) 747-7155 FAX: (414) 747-7890	MSO Toledo Federal Building 234 Summit Street, Room 501 Toledo, OH 43604 PHONE: (419) 259-6372 FAX: (419) 259-6374	MSO Sault Ste. Marie 337 Water Street Sault Ste. Maire, MI 49783 PHONE: (906) 635-3223 FAX: (906) 635-3321	MSO Long Beach 165 N. Pico Avenue Long Beach, CA 90802-1096 PHONE: (562) 980-4447 FAX: (562) 980-4413
MSO San Diego 2716 N. Harbor Drive San Diego, CA 92101-1064 PHONE: (619) 683-6477 FAX: (619) 683-6504	MSO San Francisco Building 14, Coast Guard Island Alameda, CA 94501-5100 PHONE: (510) 437-3082 FAX: (510) 437-3072	MSO Puget Sound 1519 Alaskan Way South, Building 1 Seattle, WA 98134-1192 PHONE: (206) 217-6232 FAX: (206) 217-6345	MSO Portland 6767 N. Basin Avenue Portland, OR 97217-3992 PHONE: (503) 240-9301 FAX: (503) 240-9302
MSO Honolulu 433 Ala Moana Boulevard Honolulu, HI 96813-4909 PHONE: (808) 522-8252 FAX: (808) 522-8271	MARSEC/MSO Guam PSC 455, Box 176 FPO AP, 95-6540-1056 PHONE: (671) 339-2001 ext.164 FAX: (671) 339-2005	MSO Juneau 2760 Sherwood Lane, Suite 2A Juneau, AK 99801-8545 PHONE: (907) 463-2464 FAX: (907) 463-2445	MSO Anchorage 510 L Street, Suite 100 Anchorage, AK 99501-1946 PHONE: (907) 271-6724 FAX: (907) 271-6751
MSO Valdez P.O. Box 486 105 South Clifton Valdez, AK 99686-0486 PHONE: (907) 835-7205 FAX: (907) 835-7207			

The geographic boundaries for all Captain of the Port Zones are contained in 33 CFR part 3.

7. Revise Appendix B to Subpart D of Part 160—United States Coast Guard Marine Facility Questionnaire to read as follows:

Appendix B to Subpart D of Part 160—United States Coast Guard Marine Facility Questionnaire

OMB Approval No. 2115-0639

[redacted]

Instructions

- Please complete this marine facility questionnaire as fully as possible and submit to the U.S. Coast Guard via:

Mail: U. S. Coast Guard (G-MOC/Y2K) c/o The Centech Group 2000 N. 14th Street Suite 700 Arlington, VA 22201	**OR**	**Fax:** 1-877-825-4357 (for U.S. submissions) OR 1-703-522-1839 (for international submissions)	**OR**	Complete the questionnaire and supplement on the Coast Guard's Internet web site at: http://www.uscg.mil/hq/g-m/y2k.htm

- You must submit all portions of this questionnaire required for your facility so that they are received by **August 20, 1999**. If your facility **will not** conduct cargo loading/transfer operations on any of the peak risk periods, but will be operating at any time between August 1, 1999, and March 31, 2000, you need only complete the U.S. Supplement 2 and submit it to the Coast Guard via one of the methods outlined above. You **do not** have to complete the IMO Year 2000 Questionnaire 3.
- If your facility will not be operating at any time between August 1, 1999, and March 31, 2000, you need not submit any portion of this questionnaire.
- The peak risk periods are:
  Midnight (2400) September 7, 1999, through midnight (2400) September 9, 1999; and
  Midnight (2400) December 30, 1999, through midnight (2400) January 1, 2000; and
  Midnight (2400) February 27, 2000, through midnight (2400) February 29, 2000.
- If your Y2K preparedness changes or your operational plans change, you must submit an updated questionnaire(s) as soon as possible.
- Any updated or new questionnaires submitted during the peak risk periods must be submitted to the Captain of the Port of the zone in which the facility is operating instead of the locations specified above. A list of Captain of the Port addresses and fax numbers is provided on page 4.
- **Data items on the IMO Questionnaire 3 marked with an asterisk (*) do not need to be filled in if the questionnaire is being submitted to the U.S. Coast Guard since the U.S. Supplement addresses similar information.**
- Please **DO NOT SUBSTITUTE** Y2K-related contingency plans, brochures, policy statements or similar documents for this questionnaire and supplement.
- If you have questions about this questionnaire, contact the Coast Guard Office of Compliance at Commandant (G-MOC), 2100 2nd Street, SW, Washington, D.C. 20593-0001; tel: 202-267-2978;

An agency may not conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this collection is 2115-0639. The Coast Guard estimates it will take, on average, 8 minutes to complete and submit both Questionnaire 3 and Supplement 2. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Commandant (G-MOC), U.S. Coast Guard, Washington, DC 20593-001.

IMO YEAR 2000 QUESTIONNAIRE 3

From: United States Coast Guard

To: (Marine Facility/Terminal Operator) _____

Date/time of expected arrival/departure *: _____

It is anticipated that the above ship will/may require to navigate or handle cargo within your port on or around the above dates. Please complete the following questions concerning the Year 2000 preparations made by the Port Authority/Terminal Operator.

	Circle as appropriate	
1) Does the facility have a documented Year 2000 policy in place?	YES	NO
2) Has an inventory check to identify and categorize non-compliant equipment been carried out?	YES	NO
3) Has all equipment critical to the safety of navigation/cargo handling been assessed for Year 2000 compliance?	YES	NO
4) Has facility personnel investigated potential problems and solutions?	YES	NO
5) Where non-compliant equipment has not been replaced or upgraded, have alternative systems or manual operations been established?	YES	NO
6) Has the facility sought to establish whether its critical suppliers, utilities and external services are Year 2000 compliant?	YES	NO
7) Is there serious doubt as to the availability of any supply, utility or service which is critical to safety?	YES	NO
8) Does the facility have operational contingency plans in place to cope with unforeseen Year 2000 equipment malfunctions?	YES	NO
9) Have these contingency plans been tested and reviewed to confirm their effectiveness?	YES	NO
10) Has all necessary information been exchanged and agreed with ships/shipping company on any additional Year 2000 specific requirements applicable to port/terminal/facility operations?	YES	NO

Name: _____
Position*: _____
Contact Address*: _____
_____

Signature*: _____
Date: _____

UNITED STATES SUPPLEMENT 2 TO IMO YEAR 2000 QUESTIONNAIRE 3

In addition to the IMO Year 2000 Questionnaire3, please answer the following as fully as you can for each Marine Facility operating from August 1, 1999 through March 31, 2000.

Marine Safety Office/Captain of the Port zone located in: _____

Name of Facility: _____

Type(s) of Facility: _____

Name of Company: _____

Name of Person completing questionnaire: _____

Your Title: _____

Address: _____

City: _____ **State:** _____ **Zip:** _____

Phone: _____ **FAX:** _____ **E-mail:** _____

Please indicate (by circling) if this is an: Initial/Original Questionnaire Updated Questionnaire

Please answer the following questions.	**Circle as appropriate**
1) Will the facility conduct cargo loading/transfer operations on the following dates of concern?	
• Midnight September 7 – midnight September 9, 1999	YES MAYBE NO
• Midnight December 30, 1999 – midnight January 1, 2000	YES MAYBE NO
• Midnight February 27 – midnight February 29, 2000	YES MAYBE NO
If you answer "yes" or "maybe" for any date, please complete IMO Year 2000 Questionnaire 3. If you answer "no" for all dates, stop here, you are not required to complete the IMO questionnaire, but you must still submit this supplement to the United States Coast Guard per the instructions on page 1. If, in the future, one of your answers changes from "no" to "yes" or "maybe," submit an updated questionnaire.	
2) Where potential problems and solutions have been identified, has the facility carried out appropriate remedial actions?	YES NO

Marine Safety Offices (MSOs)/Captains of the Port

MSO Portland 103 Commercial Street Portland, ME 04101-4726 PHONE: (207) 780-3681 FAX: (207) 780-3567	MSO Boston 455 Commercial Street Boston, MA 02109-1045 PHONE: (617) 223-3435 FAX: (617) 223-3032	MSO Providence 20 Risho Avenue East Providence, RI 02914-1208 PHONE: (401) 435-2350 FAX: (401) 435-2382	Group/MSO Long Island Sound 120 Woodward Avenue New Haven, CT 06512-3698 PHONE: (203) 468-4401 FAX: (203) 468-4445
USCG Activities New York Prevention/Compliance Division 212 Coast Guard Drive Staten Island, NY 10305 PHONE: (718) 354-4207 FAX: (718) 354-4301	Coast Guard Activities Baltimore 2401 Hawkins Point Road Baltimore, MD 21226-1791 PHONE: (410) 576-2693 FAX: (410) 962-0930	MSO Hampton Roads Norfolk Federal Building, 200 Granby Street Norfolk, VA 23510-1888 PHONE: (757) 441-3300 FAX: (757) 441-3262	MSO Wilmington 272 N. Front Street, Suite 500 Wilmington, NC 28401-3907 PHONE: (910) 815-4895 ext. 107 FAX: (910) 815-4523
MSO/Group Philadelphia 1 Washington Avenue Philadelphia, PA 19147-4395 PHONE: (215) 271-4806 FAX: (215) 271-4833	MSO Miami P.O. Box 01-6940 Miami, FL 33101-6940 PHONE: (305) 535-8705 FAX: (305) 535-8742	MSO Jacksonville 7820 Arlington Expressway, Suite 400 Jacksonville, FL 32211-7445 PHONE: (904) 232-2640 ext. 106 FAX: (904) 232-2664	MSO Tampa 155 Columbia Drive Tampa, FL 33606-3598 PHONE: (813) 228-2189 FAX: (813) 228-2399
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MSO Valdez P.O. Box 486 105 South Clifton Valdez, AK 99686-0486 PHONE: (907) 835-7205 FAX: (907) 835-7207			

The geographic boundaries for all Captain of the Port Zones are contained in 33 CFR part 3.

Dated: July 28, 1999.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–19762 Filed 7–28–99; 4:40 pm]

BILLING CODE 4910–15–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300894; FRL–6090–2]

RIN 2070–AB78

Imidacloprid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety in or on cucurbit vegetables (Crop Group 9) at 0.5 parts per million (ppm), tuberous and corm vegetable subgroup at 0.3 ppm, dasheen leaves at 3.5 ppm, and watercress (upland) at 3.5 ppm. The Interregional Research Project Number 4 (IR-4) New Jersey Agricultural Experiment Station requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective August 2, 1999. Objections and requests for hearings must be received by EPA on or before October 1, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300894], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300894], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300894]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Peg Perreault, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 209, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5417, Perreault.Peg@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 8, 1999 (64 FR 17171) (FRL–6071–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of three pesticide petitions (PP 6E4766, 7E4898, and 7E4899) for tolerances by the Interregional Research Project Number 4 (IR-4) New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903. This notice included a summary of the petitions prepared by IR-4. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.472(a) be amended by establishing tolerances for combined residues of the insecticide imidacloprid (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all expressed as (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, in or on cucurbit vegetables (Crop Group 9) at 0.5 parts per million (ppm), tuberous and corm vegetable subgroup at 0.3 ppm, dasheen leaves at 3.5 ppm, and watercress (upland) at 3.5 ppm.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of imidacloprid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety on cucurbit vegetables (Crop Group 9) at 0.5 ppm, tuberous and corm vegetable subgroup at 0.3 ppm, dasheen leaves at 3.5 ppm, and watercress (upland) at 3.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by imidacloprid are discussed in Unit II.A. of the Final rule on Imidacloprid Pesticide Tolerances published in the **Federal Register** on September 18, 1998 (63 FR 49837) (FRL–6027–1).

B. Toxicological Endpoints

The toxicological endpoints for imidacloprid are discussed in Unit II.B. of the Final rule on Imidacloprid Pesticide Tolerances published in the **Federal Register** on September 18, 1998.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.472) for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, in cr on a variety of raw agricultural commodities and meat at 0.3 ppm, milk at 0.1 ppm, poultry at 0.05 ppm, and eggs at 0.02 ppm. Risk assessments were conducted by EPA to assess dietary exposures from imidacloprid as follows.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of crop treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information to conduct a chronic dietary exposure analysis for imidacloprid as follows: 6% grapefruits, 3% oranges, 13% other citrus, 19% apples, 2% pears, 11% grapes, 30% eggplants/peppers, 32% head lettuce, 21% cole crops, 15% melons, 10% tomatoes, 6% cotton.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which imidacloprid may be applied in a particular area.

i. *Acute exposure and risk.* Acute risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The acute population adjusted dose (aPAD) for imidacloprid is 0.14 mg/kg bwt/day (aPAD = acute RfD/FQPA UF = 0.42 mg/kg bwt/day/3 = 0.14 mg/kg bwt/day). EPA conducted a DEEM (Dietary Exposure Evaluation Model) analysis for acute dietary (food) risk assessment using the Theoretical Maximum Residue Contribution (TMRC), which assumes tolerance level residues and 100% crop-treated (Tier 1). The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of dietary exposure. Resulting exposure values (at the 95th percentile) and percentage of aPAD utilized were below EPA's level of concern for the U.S. population and all subgroups, with the highest exposure in the subgroup children, 1-6 yrs (0.062 mg/kg bwt/day, 44% of the aPAD). The results of this analysis indicate that the acute risk from residues of imidacloprid on food is below EPA's level of concern.

ii. *Chronic exposure and risk.* The chronic population adjusted dose (cPAD) for imidacloprid is 0.019 mg/kg bwt/day (cPAD = chronic RfD/FQPA UF = 0.057 mg/kg bwt/day/3 = 0.019 mg/kg bwt/day). EPA conducted a DEEM analysis for chronic dietary (food only) risk assessment using tolerance level residues for imidacloprid and PCT information for some crops. The resulting of cPAD utilized is below EPA's level of concern for the U.S. population and all subgroups, with the highest exposure in the subgroup children, 1-6 yrs. (0.0092 mg/kg/day, 48% of the cPAD). The results of this analysis indicate that the chronic risk from residues of imidacloprid on food is below EPA's level of concern. The chronic risk assessment should be considered partially refined. Further refinement using anticipated residue values and PCT information would result in a lower estimate of chronic exposure.

2. *From drinking water.* There are no Maximum Contaminant Levels (MCLs) or Health Advisory (HA) levels established for residues of imidacloprid in drinking water.

EPA's Drinking Water Assessment for Imidacloprid indicates that imidacloprid is persistent, water soluble, and fairly mobile. Thus, residues of imidacloprid may be transported to both surface and ground waters. As a condition of registration, EPA has required the submission of the results of two prospective ground water monitoring studies; however, results from these studies are not yet available. Therefore, EPA has calculated estimated concentrations of imidacloprid in surface and ground waters.

i. *Acute exposure and risk.* For acute exposure analysis, the estimated concentrations of imidacloprid in surface and ground water were calculated based on an application rate of 0.5 lbs ai/acre/year. The estimated concentrations in surface and ground water are 4.1 and 1.1 µg/L (ppb), respectively. Estimated acute drinking water levels of comparison (DWLOCs) for imidaloprid range from 780 µg/L for children (1-6 years old) to 3,900 µg/L for the U.S. population (male). The estimated acute concentrations of imidacloprid in surface and ground water are less than the acute DWLOCs for imidacloprid. Therefore, taking into account the currently registered uses and the uses proposed in this action, EPA concludes with reasonable certainty that residues of imidacloprid in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of acute aggregate human health risk at this time.

ii. *Chronic exposure and risk.* For chronic exposure analysis, the estimated concentrations of imidacloprid in surface and ground water were calculated based on an application rate

of 0.5 lbs ai/acre/year. The estimated concentrations in surface and ground water are 0.1 and 1.1 µg/L parts per billion (ppb), respectively. Estimated chronic drinking water levels of comparison (DWLOCs) for imidacloprid range from 98 µg/L for children (1-6 years old) to 490 µg/L for the population subgroup males. The estimated chronic concentrations of imidacloprid in surface and ground water are less than the chronic DWLOCs for imidacloprid. Therefore, taking into account the currently registered uses and the uses proposed in this action, EPA concludes with reasonable certainty that residues of imidacloprid in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of chronic aggregate human health risk at this time.

iii. *Short-term exposure and risk.* For purposes of risk assessment, the estimated maximum chronic exposure of imidacloprid from surface and ground waters (1.1 µg/L), were used for comparison to the DWLOCs for the short-term endpoint.

The DWLOC for short-term exposure to imidacloprid was calculated relative to the aPAD which was utilized for estimating risk for short-term oral exposure to imidacloprid. To calculate the DWLOC for short-term exposure relative to an acute toxicity endpoint, the sum of chronic dietary food exposure and oral exposure to imidacloprid from home garden, turf, and pet uses was subtracted from the aPAD to obtain the acceptable short-term exposure to imidacloprid in drinking water (highest chronic food exposure = 0.0092 mg/kg/day, oral exposure from home garden and turf uses = 0.072 mg/kg bwt/day and, oral exposure from pet uses = 0.058 mg/kg bwt/day). DWLOCs were then calculated using default body weights and drinking water consumption figures. The estimated chronic concentrations of imidacloprid in surface and ground water are less than the short-term DWLOCs for imidacloprid. Therefore, taking into account the currently registered uses and the uses proposed in this action, EPA concludes with reasonable certainty that residues of imidacloprid in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of short-term aggregate human health risk at this time.

3. *From non-dietary exposure.* Imidacloprid is currently registered for use on the following residential non-food sites: ornamentals (e.g., flowering and foliage plants, ground covers, turf, lawns), tobacco, golf courses, walkways, recreational areas, household or domestic dwellings (indoor/outdoor), and pets (cats and dogs). Available data do not demonstrate that imidacloprid has either dermal or inhalation toxicity potential; therefore, non-dietary dermal and inhalation exposure assessments are not required. Since available data show no toxicity from short-term exposure via the dermal or inhalation route, the Agency feels there is no contribution to toxicity from these routes of exposure, and no increase in aggregate risk is anticipated from this exposure. However, there is the potential for residential exposure via incidental non-dietary ingestion from treated lawns and gardens and incidental non-dietary ingestion by toddlers of pesticide residues on pets from hand-to-mouth transfer. Therefore, an increase in short-term aggregate risk is anticipated from residential exposure via incidental non-dietary ingestion and residential exposure.

The product Premise, a termiticide, is also registered for residential use. Premise may be applied only by PCOs and only to inaccessible areas of homes or other buildings; therefore, oral exposure to children is not expected. There is potential for inhalation exposure. However, an inhalation endpoint has not been established, and data from EPA's environmental fate one-liner data base indicates that imidacloprid has a low vapor pressure (6.9×10^{-9} torr). Therefore, inhalation exposure due to residential use is not expected to pose a risk.

Short-term exposure and risk from residential uses of imidacloprid are discussed in detail in Unit II.C.3. of the Final rule on Imidacloprid Pesticide Tolerances published in the **Federal Register** on September 18, 1998. In summary, the residential exposure scenarios examined include the following postapplication short-term oral exposure scenarios for toddlers:

- Incidental non-dietary ingestion of residues on lawns from hand-to-mouth transfer.
- Ingestion of pesticide-treated turfgrass.
- Incidental ingestion of soil from treated gardens.
- Incidental ingestion of pesticide residues on pets from hand-to-mouth transfer.

For children (1 - 6 years), the residential exposure from the home garden and turf uses was estimated to be 0.072 mg/kg bwt/day and the residential exposure from the pet use was estimated to be 0.058 mg/kg bwt/day. It should be noted that these exposures are very conservative estimates since EPA utilized the Draft Standard Operating Procedures for Residential Exposure Assessments (dated December 18, 1997) to estimate these exposures. In the absence of data, it was estimated that 20% of the application rate is retained on pets and that 1% of the available residues are transferred to the skin of individuals who have contact with treated animals. The actual values may be different. A study to quantify dislodgeable residue for toddler's hand from pets treated with these types of products is required. The submission of this study is a condition of the registration of imidacloprid.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether imidacloprid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, imidacloprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that imidacloprid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency looks at include drinking water (whether from ground or surface water), and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor and/or outdoor uses). In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.

1. *Acute risk.* Using the conservative TMRC exposure assumptions and taking into account the completeness and reliability of the toxicity data, EPA has estimated the acute exposure to imidacloprid from food for the most highly exposed population subgroup (children 1 - 6 yrs) will utilize 44% of the aPAD. It was determined that an acceptable acute dietary exposure (food plus water) of 100% or less of the aPAD is needed to protect the safety of all population subgroups.

Despite the potential for exposure to imidacloprid in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD for adults. The maximum estimated concentration of Imidacloprid in surface and ground water for acute exposure is very small compared to the DWLOC. Under current EPA guidelines, non-dietary uses of imidacloprid do not constitute an acute exposure scenario.

2. *Chronic risk.* Using the partially refined exposure assumptions described in this unit and taking into account the completeness and reliability of the toxicity data, EPA has estimated the chronic exposure to imidacloprid from food for the most highly exposed population subgroup (children, 1-6 years old) will utilize 48% of the cPAD. It was determined that an acceptable chronic dietary exposure (food plus water) of 100% or less of the cPAD is needed to protect the safety of all population subgroups.

Despite the potential for exposure to imidacloprid in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD. The maximum estimated concentration of Imidacloprid in surface and ground water for chronic exposure is very small compared to the DWLOC. The registered non-dietary uses of imidacloprid do not constitute a chronic exposure scenario.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Dermal and inhalation short- and intermediate-term risks are not expected for imidacloprid as dermal and inhalation exposure endpoints were not identified due to the demonstrated absence of toxicity. Short- and intermediate-term oral exposures are not expected for adult population subgroups.

Since imidacloprid is registered for use on turf, home gardens and pets, EPA has identified potential short-term oral exposures to children for these uses. A short-term oral endpoint was not identified for imidacloprid. If an oral endpoint is needed for short-term risk assessment (for incorporation of food, water, or oral hand-to-mouth type exposures into an aggregate risk assessment), the acute oral endpoint (LOAEL = 42 mg/kg bwt/day) is used to incorporate the oral component into aggregate risk. The short-term aggregate exposure and risk were calculated (chronic dietary exposure (food only) plus residential exposure (hand-to-mouth from turf, garden, and pet uses) for children age 1-6, resulting in a total MOE of 302 (the acceptable MOE for imidacloprid is 300). Potential short-term exposure from drinking water is at a level below EPA's level of concern. It should also be pointed out that this short-term aggregate risk assessment is a very conservative assessment due to the fact that all exposures are conservative estimates, with the chronic food exposure derived from assuming all residues at the tolerance level and some PCT, and the residential exposures from lawn, garden, and pet uses derived from the Draft Standard Operating Procedures for Residential Exposure Assessment (December 18, 1997) where several conservative assumptions were made including assuming 100% of residue on hands of toddlers is ingested. In addition, the aggregation routes are conservative by assuming children eat treated grass, soil, and have hand-to-mouth transfer from treated pets all on the same day.

4. *Aggregate cancer risk for U.S. population.* Imidacloprid has been classified as a Group E chemical, no evidence of carcinogenicity for humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* The determination of the 3X safety factor to account for the potential for increased sensitivity of infants and children to residues of imidacloprid is discussed in Unit II.E.1.i. of the Final rule on Imidacloprid Pesticide Tolerances published in the **Federal Register** on September 18, 1998.

ii. *Developmental toxicity studies.* Developmental toxicity is discussed in Units II.A.4. and II.E.1. of the **Federal Register** document published on September 18, 1998.

iii. *Reproductive toxicity study.* Reproductive toxicity is discussed in Units II.A.5. and II.E.1. of the **Federal Register** document published on September 18, 1998.

iv. *Prenatal and postnatal sensitivity.* Prenatal and postnatal sensitivity is discussed in Unit II.E.1. of the **Federal Register** document published on September 18, 1998.

v. *Conclusion.* The toxicology data base for imidacloprid is complete with respect to core requirements; however, a developmental neurotoxicity study (Guideline No. 83-6) is required. Exposure data are estimated based on data that reasonably accounts for potential exposures; however, a study to quantify dislodgeable residues on toddler's hands from pets treated with imidacloprid is required.

2. *Acute risk.* Aggregate acute risks for the entire U.S. population and for population subgroups, including infants and children, are discussed in Unit II.D.1. of this preamble.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to imidacloprid from food will utilize 31% of the cPAD for all infants (< 1 year old), 9.2% of the cPAD for nursing infants (<1 year old), 40% of the cPAD for non-nursing infants (<1 year old), 48% of the cPAD for children 1-6 years old, and 10% of the cPAD for children 7-12 years old. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to imidacloprid in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

4. *Short- or intermediate-term risk.* Aggregate short- and intermediate-term risks for the entire U.S. population and for population subgroups, including infants and children are discussed in Unit II.D.3. of this preamble.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to imidacloprid residues.

III. Other Considerations

A. Metabolism in Plants and Animals.

Data concerning the metabolism of imidacloprid in apples, potatoes, tomatoes, eggplant, cottonseed, field corn, ruminants and poultry have previously been submitted. The nature of imidacloprid residues in plants and animals is adequately understood. The residue of concern is imidacloprid and its metabolites containing the 6-

chloropyridinyl moiety, all expressed as parent, as specified in 40 CFR 180.472.

B. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of the regulated imidacloprid residue in plant (Bayer GC/MS Method 00200 and Bayer HPLC-UV Confirmatory Method 00357) and animal (Bayer GC/MS Method 00191) commodities. These methods have successfully completed EPA Tolerance Method Validation, and are awaiting publication in PAM II. In the interim, these methods are available from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703–305–5229).

Bayer Corporation has previously submitted adequate multiresidue method (MRM) recovery data for imidacloprid and its olefin, hydroxy, guanidine, and 6-chloronicotininc acid metabolites through FDA's Protocols A through E. imidacloprid and its metabolites were not recoverable by these methods. These data have been forwarded to FDA and we expect them to be published in the Pesticide Analytical Manual (PAM), Vol I, Appendix I in a future update. Additional MRM recovery data are not required.

C. Magnitude of Residues

The crop field trial data support the proposed tolerances for combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety.

D. International Residue Limits

There are no established CODEX, Canadian or Mexican residue limits for imidacloprid in/on the cucurbit vegetable crop group, tuberous and corm vegetable subgroup, dasheen leaves, and upland watercress. Thus, harmonization of the proposed tolerances with CODEX, Canada and Mexico is not an issue for these petitions.

E. Rotational Crop Restrictions

Data concerning the metabolism of imidacloprid in confined rotational crops was previously submitted. The nature of the residue in rotational crops is adequately understood and is nearly identical to that identified in the primary crops. The residue of concern in rotational crops is imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent. Treated areas may be replanted with any crop specified on an imidacloprid label, or any crop for which a tolerance exists for imidacloprid, as soon as practical following the last application, with the exception of cereals, legumes, and safflower, which have a 30-day plant-back restriction. A 12-month plant-back restriction must be observed for crops not listed on an imidacloprid label and for crops for which no tolerances for imidacloprid have been established.

IV. Conclusion

Therefore, tolerances are established for combined residues of Imidacloprid and its metabolites containing the 6-chloropyridinyl moiety in cucurbit vegetables (Crop Group 9) at 0.5 ppm, tuberous and corm vegetable subgroup at 0.3 ppm, dasheen leaves at 3.5 ppm, and upland watercress at 3.5 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 1, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300894] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes tolerances under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this Final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 19, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. In § 180.472(a), by alphabetically adding the following commodities to the table to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ RevocationDate
• •	•	• •
Dasheen, leaves	3.5	None
• •	•	• •
Vegetable, cucurbit, group	0.5	None
Vegetable, tuberous and corm, subgroup	0.3	None
Watercress, upland	3.5	None
• •	•	• •

* * * * *

[FR Doc. 99–19595 Filed 7–30–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300901; FRL–6092–9]

RIN 2070–AB78

Pyriproxyfen; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for combined residues of the insecticide pyriproxyfen and its metabolites in or on tomatoes at 0.1 part per million (ppm) for an additional 2–year period, This tolerance will expire and is revoked on July 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on tomatoes. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective August 2, 1999. Objections and requests for hearings must be received by EPA, on or before October 1, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300901], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300901], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300901]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location , telephone number, and e-mail address: Rm. 280, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9367; e-mail: ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of May 13, 1998 (62 FR 26466) (FRL–5788–2), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of pyriproxyfen in or on tomatoes at 0.1 ppm, with an expiration date of July 31, 1999. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of pyriproxyfen on tomatoes for this year's growing season due to the continuing emergency situation with whiteflies. A recently introduced strain or species of whitefly has caused extensive damage over the past several years to various vegetable crops in southern areas of the U.S., including tomatoes. This pest has demonstrated resistance to available materials and is expected to cause significant economic losses if not adequately controlled. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of pyriproxyfen on tomatoes for control of whiteflies in tomatoes.

EPA assessed the potential risks presented by residues of pyriproxyfen in or on tomatoes. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of May 13, 1998 (62 FR 26466). Based on those data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on July 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on tomatoes after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 1, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300901] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal

governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 16, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.510 [Amended]

2. In § 180.510, by amending the table in paragraph (b), by revising the expiration/revocation date for Tomatoes from "7/31/99" to read "7/31/01".

[FR Doc. 99–19597 Filed 7–30–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300902; FRL–6094–2]

RIN 2070–AB78

Propiconazole; Re-establishment of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes time-limited tolerances for combined residues of the fungicide propiconazole and its metabolites in or on grain sorghum, grain at 0.2 parts per million (ppm); grain sorghum, stover at 1.5 ppm and sorghum grain aspirated fractions at 20 ppm. These tolerances expired on July 31, 1998. Additionally, this regulation re-establishes time-limited tolerances for combined residues of propiconazole and its metabolites in or on dry beans, dry bean forage, and dry bean hay which expired on December 31, 1998. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on grain sorghum and dry beans. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective August 2, 1999. Objections and requests for hearings must be received by EPA, on or before October 1, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300902], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300902], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300902]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 271, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–9362; e-mail: schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of August 13, 1997 (62 FR 43284) (FRL–5735–2), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for the combined residues of propiconazole and its metabolites in or on grain sorghum, grain at 0.2 ppm; grain sorghum, stover at 1.5 ppm and sorghum aspirated grain fractions at 20 ppm, with an expiration date of July 31, 1998.

EPA also issued a final rule, published in the **Federal Register** of June 13, 1997 (62 FR 32224) (FRL–5718–8), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170) it established time-limited tolerances for the combined residues of propiconazole and its metabolites in or on dry beans at 0.5 ppm; dry bean, forage at 8 ppm; and dry beans, hay at 8 ppm, with an expiration date of December 31, 1998.

EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received requests to extend the use of propiconazole on grain sorghum and dry beans for this year's growing season due to the continued emergency conditions for grain sorghum growers brought on by the spread of sorghum ergot *Claviceps africana* and for bean growers due to the rust. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of propiconazole on grain sorghum for control of sorghum ergot and on dry beans for control of rust.

EPA assessed the potential risks presented by residues of propiconazole in or on grain sorghum and dry beans. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rules of August 13, 1997 (62 FR 43284) and June 13, 1997 (62 FR 32224). Based on that data and information considered, the Agency reaffirms that re-establishment of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are re-established with an expiration date of July 31, 2000, for grain sorghum commodities and December 31, 2000, for dry bean commodities. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although the tolerances on grain sorghum commodities and dry bean commodities will expire and are revoked on July 31, 2000, and December 31, 2000, respectively, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on grain sorghum, grain; grain sorghum, stover and sorghum aspirated grain fractions; dry beans; dry bean, forage and dry bean, hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 1, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for

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inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300902] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch. Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 20, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.434 [Amended]

2. In § 180.434, by amending the table in paragraph (b) by revising the date for "Sorghum, aspirated grain fractions," "Sorghum, grain, grain," and "Sorghum, grain, stover" from "7/31/98" to read "7/31/00" and the date for "Dry bean forage," "Dry bean hay" and "Dry beans" from"12/31/98" to read "12/31/00".

[FR Doc. 99–19598 Filed 7–30–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300868A; FRL–6097–1]

RIN 2070–AB78

Formaldehyde; Revocation of Exemptions from the Requirement of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule announces the revocation of exemptions from the requirement of tolerances for residues found in 40 CFR 180.1032 for formaldehyde or a mixture of methylene bispropionate and oxy(bismethylene) bispropionate in or on the grains of barley, corn, oats, sorghum, and wheat and the forages of alfalfa, Bermuda grass, bluegrass, brome grass, clover, cowpea hay, fescue, lespedeza, lupines, orchard grass, peanut hay, peavine hay, rye grass, soybean hay, sudan grass, timothy, and vetch from postharvest application use as a fungicide to treat animal feeds. This action is being taken because there are no registered uses for formaldehyde on these commodities. The regulatory actions in this notice are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA). By law, EPA is required to reassess 33% of the tolerances and exemptions in existence on August 2, 1996, by August 1999, or about 3,200 tolerances and exemptions. This document revokes 22 exemptions, which will be counted among reassessments made toward the August 1999 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This final rule becomes effective November 1, 1999. Objections and requests for hearings, identified by docket control number [OPP–300868A] must be received by EPA on or before October 1, 1999.

ADDRESSES: Objections and hearing requests can be submitted by mail or in person. Please follow the detailed instructions provided in Unit V of the **SUPPLEMENTARY INFORMATION** section of this document. To ensure proper identification of your objection or hearing request, you must identify the docket control number [OPP–300868A] in the subject line on the first page of your request.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Phil Budig, Special Review Branch, (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Special Review Branch, CM #2, 6th floor, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone: (703) 308–8029; e-mail: budig.phil@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not exhaustive, but is a guide to entities likely to be regulated by this action. The North American Industrial Classification System (NAICS) codes will assist you in determining whether this action applies to you. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of this or other Support Documents?

A. Electronically

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at www.epa.gov. On the Home Page, select "Laws and Regulations," and then look up the entry for this document under "**Federal Register** - Environmental Documents." You can also go directly to the "**Federal Register**" listings at www.epa.gov/fedrgstr.

B. In Person or by Phone

If you have any questions or need additional information about this action, please contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this notice, including the public version, has been established under docket control number [OPP–300868A] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

III. What Action is being Taken?

This final rule revokes FFDCA exemptions from the requirement of tolerances for residues of formaldehyde in or on certain specified commodities. EPA is revoking these exemptions from the requirement of tolerances because they are not necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. This pesticide is no longer used on these commodities within the United States and no person has provided comment identifying a need for EPA to retain the exemptions to cover residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances or exemptions that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active

registrations under FIFRA, unless any person, in comments on the proposal, demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

In the **Federal Register** of May 24, 1999 (64 FR 27943) (FRL–6083–3), EPA issued a proposed rule announcing the proposed revocation of exemptions from the requirement of tolerances, in 40 CFR 180.1032, for residues found for formaldehyde. No comments were received by the Agency in response to the document published in the **Federal Register** of May 24, 1999.

Therefore, EPA is revoking the exemptions from the requirement of tolerances found in 40 CFR 180.1032 for residues of formaldehyde or a mixture of methylene bispropionate and oxy(bismethylene) bispropionate in or on the grains of barley, corn, oats, sorghum, and wheat and the forages of alfalfa, Bermuda grass, bluegrass, brome grass, clover, cowpea hay, fescue, lespedeza, lupines, orchard grass, peanut hay, peavine hay, rye grass, soybean hay, sudan grass, timothy, and vetch from postharvest application use as a fungicide to treat animal feeds.

IV. When Do these Actions Become Effective?

These actions become effective 90 days following publication of this final rule in the **Federal Register**. EPA has delayed the effectiveness of these revocations for 90 days to ensure that all affected parties receive notice of EPA's action. Consequently, the effective date is November 1, 1999. For this particular final rule, the actions will affect uses which have been canceled for more than a year. Therefore, commodities should have cleared the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this notice, and that are in the channels of trade following the revocation of exemptions from the requirement of tolerances, shall be subject to FFDCA section 408(1)(5), as established by the Food Quality Protection Act (FQPA). Under this section, any residue of these pesticides in or on such food shall not render the food adulterated, so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

V. Can I Submit Objections or Hearing Requests?

Yes. Any person can file written objections to any aspect of this regulation and can also request a hearing on those objections. Objections and hearing requests are currently governed by the procedures in 40 CFR part 178, modified as needed to reflect the requirements of FFDCA section 408(g).

A. When and Where to Submit

Objections and hearing requests must be mailed or delivered to the Hearing Clerk no later than October 1, 1999. The address of the Hearing Clerk is: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW, Washington, DC 20460.

B. Fees for Submission

1. Each objection must be accompanied by a fee of $3,275 or a request for waiver of fees. Fees accompanying objections and hearing requests must be labeled "Tolerance Petition Fees" and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

2. EPA may waive any fee when a waiver or refund is equitable and not contrary to the purposes of the Act. A request for a waiver of objection fees should be submitted to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, D.C. 20460. The request for a waiver must be accompanied by a fee of $1,650, unless the objector has no financial interest in the matter. The fee, if required, must be submitted to the address in Unit V.B.1. of this document. For additional information on tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), at the same mailing address, or by phone at (703) 305–5697 or e-mail at tompkins.jim@epa.gov.

C. Information to be Submitted

Objections must specify the provisions of the regulation considered objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector. You may claim information that you submit in response to this document as confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed, except in accordance with procedures set forth in 40 CFR, part 2.

D. Granting a Hearing Request

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following:

1. There is a genuine and substantial issue of fact.

2. There is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary.

3. Resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

VI. How Do the Regulatory Assessment Requirements Apply to this Final Action?

A. Is this a "Significant Regulatory Action"?

No. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this final action is not a "significant regulatory action." The Office of Management and Budget (OMB) has determined that tolerance actions, in general, are not "significant," unless the action involves the revocation of a tolerance that may result in a substantial adverse and material affect on the economy. In addition, this final action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this final action is not an economically significant regulatory action, as defined by Executive Order 12866. Nonetheless, environmental health and safety risks to children are considered by the Agency when determining appropriate tolerances. Under FQPA, EPA is required to apply an additional 10–fold safety factor to risk assessments, in order to ensure the protection of infants and children, unless reliable data supports a different safety factor.

B. Does this Final Action Contain Any Reporting or Recordkeeping Requirements?

No. This final action does not impose any information collection requirements subject to OMB review or approval pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

C. Does this Final Action Involve Any "Unfunded Mandates"?

No. This final action does not impose any enforceable duty, or contain any "unfunded mandates," as described in Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

D. Do Executive Orders 12875 and 13084 Require EPA to Consult with States and Indian Tribal Governments Prior to Taking the Final Action in this Document?

No. Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's final rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. This final action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Does this Final Action Involve Any Environmental Justice Issues?

No. This action does not involve special considerations of environmental-justice related issues pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

F. Does this Final Action Have a Potentially Significant Impact on a Substantial Number of Small Entities?

No. The Agency has certified that tolerance actions, including the tolerance final actions in this document, are not likely to result in a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination, along with its generic certification under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), appears at 63 FR 55565, October 16, 1998 (FRL–6035–7). This generic certification has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

G. Does this Final Action Involve Technical Standards?

No. This tolerance final action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

H. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U S tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA has developed guidance concerning submissions for import tolerance support. This guidance will be made available to interested persons.

I. Is this Final Action Subject to Review under the Congressional Review Act?

Yes. The Congressional Review Act, 5 U.S.C. Sec. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, U.S. House of Representatives, and Comptroller General of the United States, prior to publication of the rule in the **Federal Register**. This action is not a "major rule," as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure,

Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 28, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR, part 180, is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a, and 371.

§ 180.1032 [Removed]

2. By removing § 180.1032.

[FR Doc. 99–19783 Filed 7–30–99; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 186

[OPP–300906; FRL–6096–2]

RIN 2070–AB78

Fenbutatin oxide, Glyphosate, Linuron, and Mevinphos; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revokes specific tolerances for the herbicides glyphosate and linuron, and the insecticides fenbutatin oxide (hexakis (2-methyl-2-phenylpropyl)distannoxane) and mevinphos (methyl 3-[(dimethoxyphosphinyl)oxy]butenoate, alpha and beta isomers). EPA is revoking these tolerances because the Agency has canceled the food uses associated with them. All registrations for mevinphos were canceled in 1994. These revocations were proposed in the **Federal Register**, as given in the regulatory text. The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA). By law, EPA is required to reassess 33% of the tolerances in existence on August 2, 1996, by August 1999, or about 3,200 tolerances. This document revokes 58 tolerances and/or exemptions. Since 3 tolerances were previously reassessed, 55 of the 58 revocations are counted here as reassessments made toward the August, 1999 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This final rule becomes effective November 1, 1999. Objections and requests for hearings, identified by docket control number [OPP–300906], must be received by EPA on or before October 1, 1999.

ADDRESSES: Objections and hearing requests can be submitted by mail or in person. Please follow the detailed instructions provided in Unit V of the "**SUPPLEMENTARY INFORMATION**" section of this document. To ensure proper identification of your objection or hearing request, you must identify the docket control number [OPP–300906] in the subject line on the first page of your request.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Joseph Nevola, Special Review Branch, (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Special Review Branch, CM#2, 6th floor, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone: (703) 308–8037; e-mail: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
.....	112	Animal production
.....	311	Food manufacturing
.....	32532	Pesticide manufacturing

This listing is not exhaustive, but is a guide to entities likely to be regulated by this action. The North American Industrial Classification System (NAICS) codes will assist you in determining whether this action applies to you. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of this or other Support Documents?

A. Electronically

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations", and then look up the entry for this document under "**Federal Register** - Environmental Documents." You can also go directly to the "**Federal Register**"listings at http://www.epa.gov/fedrgstr/.

B. In Person or by Phone

If you have any questions or need additional information about this action, please contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this notice, including the public version, has been established under docket control number [OPP–300906] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

III. What Action is being Taken?

This final rule revokes the FFDCA tolerances for residues of certain specified pesticides in or on certain specified commodities. EPA is revoking these tolerances because they are not necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. These pesticides are no longer used on those specified commodities within the United States and no person has provided comment identifying a need for EPA to retain the tolerances to cover residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person in

comments on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

EPA is not issuing today a final rule to revoke those tolerances for which EPA received comments demonstrating a need for the tolerance to be retained. Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed above only if, (1) prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained, (2) EPA independently verifies that the tolerance is no longer needed, (3) the tolerance is not supported by data, or (4) the tolerance does not meet the requirements under FQPA.

Except for mevinphos, EPA had issued a Registration Eligibility Decision (RED) for the pesticide active ingredients listed in this document before the passage of FQPA. The RED contains the Agency's evaluation of the data base of a chemical, including requirements for additional data on the active ingredients to confirm the potential human health and environmental risk assessments associated with current product uses, and the Agency's decisions and conditions under which these uses and products will be eligible for reregistration. In the **Federal Register**, EPA issued several documents based on those REDs which proposed the establishment, modification, and revocation of specific tolerances and invited public comment for consideration and for support of tolerance retention under FFDCA standards (see below). Actions which were included in the original proposals, such as establishing or modifying tolerances, require assessment under the FQPA standard of "reasonable certainty of no harm", and will be re-proposed after that is completed. However, the tolerance revocations in this document may be taken without such assessment, because the tolerances are no longer necessary.

Hexakis (2-methyl-2 phenylpropyl)distannoxane, also known as fenbutatin oxide, is a miticide/acaricide first registered in 1974. EPA issued a Registration Standard for fenbutatin oxide in 1987 and a RED in November 1994. In the **Federal Register** of March 20, 1996 (61 FR 11359) (FRL–5347–6), EPA proposed to revoke the tolerances for marigolds, fresh in 40 CFR 180.362; and for marigolds (dried and extract) in § 186.3550. Fresh and dried marigolds are not considered to be significant food or feed commodities in Table II, updated in August, 1996 as Table I "Raw Agricultural and Processed Commodities and Feedstuffs Derived from Crops". In addition, the Agency proposed tolerance revocations for dried grape pomace and raisin waste, which were revoked in the **Federal Register** of December 17, 1997 (62 FR 66020) (FRL–5753–1). A comment to the March 20, 1996 document was received.

EPA completed its RED for glyphosate in September 1993. In the **Federal Register** of June 27, 1996 (61 FR 33469) (FRL–5380–9), EPA proposed to revoke the tolerances in 40 CFR 180.364 for cotton, forage and cotton, hay; and for citrus molasses in § 186.3500, which was later transferred to the table in paragraph (a) of § 180.364 (62 FR 17723, April 11, 1997) (FRL–5598–6). Cotton, forage; cotton, hay; and citrus molasses are not considered to be significant food or feed commodities. In addition, the Agency proposed tolerance revocation for peanut, hulls (shells), which was revoked in the **Federal Register** of December 17, 1997 (62 FR 66020) (FRL–5753–1). No significant comments were received concerning glyphosate (61 FR 33469). Therefore, EPA is revoking those three tolerances in 40 CFR 180.364 for glyphosate residues in or on cotton, forage; cotton, hay; and citrus molasses.

The linuron RED was completed in March, 1995. In the **Federal Register** on June 26, 1996 (61 FR 33054) (FRL–5368–7), EPA proposed to revoke the tolerances in 40 CFR 180.184 for barley, grain; barley, hay; barley, straw; corn, pop, fodder; corn, pop, forage; oats, forage; oats, grain; oats, hay; oats, straw; rye, forage; rye, grain; rye, hay; and rye, straw. These uses are no longer registered, and, as discussed above, it is the Agency's policy to revoke tolerances in such cases. The tolerance for parsnips, tops, was also proposed for revocation, since it is not considered to be a significant food or feed commodity. No significant comments were received concerning linuron (61 FR 33054). Therefore, EPA is revoking those 14 tolerances in 40 CFR 180.184.

In the case of mevinphos, on June 30, 1994, Amvac Chemical Corporation submitted a request for voluntary cancellation when EPA was prepared to issue a Notice of Intent to Suspend all mevinphos registrations because of acute poisoning incidents involving agricultural workers. EPA accepted this request. All U.S. registrations for the insecticide mevinphos were canceled on July 1, 1994. The Agency subsequently published a Notice of Receipt of Request for Cancellation, Announcement of Cancellation Order, and FIFRA section 6(g) Notification for Mevinphos in the **Federal Register** on August 1, 1994 (59 FR 38973). The Cancellation Order was subsequently modified on January 13, 1995 to extend the sale and distribution from December 30, 1994 to November 30, 1995, and to extend use from February 28, 1995 to November 30, 1995 (60 FR 17357, April 5, 1995) (FRL–4943–4). EPA proposed to revoke all tolerances for the insecticide mevinphos on August 2, 1995 (60 FR 39302) (FRL–4967–1), proposing the effective date of revocation as May 31, 1996.

The following comments were received by the Agency in response to the documents published in the **Federal Register** of March 20, 1996 (61 FR 11359) for fenbutatin oxide and of August 2, 1995 (60 FR 39302) for mevinphos.

A. Fenbutatin oxide

Comment from DuPont Agricultural Products. A comment was received from DuPont requesting that EPA consider a revision to the hexakis (fenbutatin oxide) tolerance on citrus, dried citrus pulp, and citrus oil. DuPont claimed that new data supports a tolerance of 4 ppm on citrus, 20 ppm on citrus pulp, and 28 ppm on citrus oil.

Agency response. Since an FQPA reassessment will need to be made, the Agency will not revise tolerances for fenbutatin oxide in this document. EPA will address the issue of tolerance revision for citrus, citrus pulp, and citrus oil through the tolerance petition process. The Agency is revoking the tolerances for "marigolds, fresh" in 40 CFR 180.362 and for "marigolds (dried and extract)" in § 186.3550.

B. Mevinphos

1. *Comments from the Farmworker Justice Fund, Inc. and from the United Farmworkers of America.* These groups supported revocation of mevinphos tolerances, and supported an earlier effective date of the tolerance revocations.

2. *Comments from Rogers Foods Chili Products, from Cal-Compack Foods, and from Basic Vegetable Products.* EPA received comments which requested a delay in the revocation of the mevinphos tolerance for dehydrated parsley to May 31, 1997.

3. *Comment from the Association of Fruit and Vegetable Processors and Exporters in General, A.C.* EPA received a request that the tolerances for mevinphos use on broccoli and cauliflower not be revoked.

4. *Comments from Amvac Chemical Corporation.* Comments were received from Weinberg, Bergeson, and Neuman

on behalf of the manufacturer of mevinphos, Amvac Chemical Corporation. Weinberg, Bergeson, and Neuman in comments dated September 28, 1995 and October 16, 1995, outlined issues that concerned Amvac Chemical Corporation regarding the revocation of the mevinphos tolerances. EPA also received several follow-up comments from Amvac Chemical Corporation requesting the retention of certain tolerances to allow importation of mevinphos treated food. In a meeting with EPA on September 26, 1995, and in the letter of September 28, 1995, Amvac Chemical Corporation committed to support tolerances with data for 13 commodities imported into the United States. This was detailed in follow-up letters of October 16, 1995 and March 20, 1996, and revised on June 7, 1996 to include support for an import tolerance concerning cauliflower. In a follow-up communication of July 6, 1999, Amvac Chemical Corporation clarified its position and expressed agreement with EPA that, with the exception of broccoli, cabbage, cauliflower, celery, cucumbers, grapes, lettuce, melons, peppers, peas (succulent), spinach, summer squash, strawberries, tomatoes, and watermelon, the other mevinphos tolerances should be revoked. Amvac suggested that current residue data supports the combination of the two existing watermelon and melons tolerances into a single tolerance for the entire melon group as the raw agricultural commodity of 0.5 ppm.

Agency response. On September 26, 1995, Amvac made a commitment to generate data for 13 tolerances and any additional uses that they intend to support. In fact, Amvac revised its commitment on June 7, 1996, to include cauliflower as an import tolerance. On July 6, 1999, Amvac clarified its position to maintain the watermelon tolerance in combination with melons, but not to maintain the peavines tolerance. Therefore, EPA will not revoke the tolerances in 40 CFR 180.157 for mevinphos use on broccoli; cabbage; cauliflower; celery; cucumbers; grapes; lettuce; melons (incl. cantaloupes, honeydew mellon, and muskmelon, determined on the edible portion with rind removed); peas; peppers; spinach; squash, summer; strawberries; tomatoes, and watermelon at this time. EPA will follow-up to see that data requirements are met. When the submitted data has been reviewed, EPA will re-evaluate these tolerances under FQPA. The suggestion to combine the two watermelon and melons tolerances into a single tolerance will be considered, but not addressed at this time. In general, the Agency's goal is to harmonize U.S. tolerances with Codex Maximum Residue Limits (MRLs) and would consider the data used for establishing MRLs. However, the Agency needs representative data covering all major growing areas that mevinphos treated commodities are likely to be imported from into the United States. EPA has developed guidance on import tolerances that is available to interested persons.

EPA is revoking the tolerances in § 180.157 for alfalfa; apples; artichokes; beans; beets, garden (incl. tops); birdsfoot trefoil, forage; birdsfoot trefoil, hay; Brussel sprouts; carrots; cherries; chicory, red (tops) (also known as radicchio); citrus; clover; collards; corn, field, forage; corn, grain, field; corn, pop, forage; corn, pop, grain; corn, sweet (K+CWHR); corn, sweet, forage; eggplant; kale; mustard greens; okra; onions (green); parsley; peaches; pears; peavines; plums; potatoes; raspberries; sorghum, forage; sorghum, grain; turnips; turnips, tops; walnuts (determined on the nut meats with shell removed); and watercress; and the tolerance in § 180.524 for dehydrated parsley. In the case of dehydrated parsley, 2 years have passed since the requested delay date. Therefore, the requested delay is no longer an issue.

IV. When Do these Actions Become Effective?

These actions become effective 90 days following publication of this final rule in the **Federal Register**. EPA has delayed the effectiveness of these revocations for 90 days to ensure that all affected parties receive notice of EPA's actions. Consequently, the effective date is November 1, 1999. For this particular final rule, the actions will affect uses which have been canceled for more than a year. Therefore, commodities should have cleared the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

V. Can I Submit Objections or Hearing Requests?

Yes. Any person can file written objections to any aspect of this regulation and can also request a hearing on those objections. Objections and hearing requests are currently governed by the procedures in 40 CFR part 178, modified as needed to reflect the requirements of FFDCA section 408(g).

A. When and Where to Submit

Objections and hearing requests must be mailed or delivered to the Hearing Clerk no later than October 1, 1999. The address of the Hearing Clerk is Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St. SW, Washington, DC 20460.

B. Fees for Submission

1. Each objection must be accompanied by a fee of $3,275 or a request for waiver of fees. Fees accompanying objections and hearing requests must be labeled "Tolerance Petition Fees", and forwarded to EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

2. EPA may waive any fee when a waiver or refund is equitable and not contrary to the purposes of the Act. A request for a waiver of objection fees should be submitted to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. The request for a waiver must be accompanied by a fee of $1,650, unless the objector has no financial interest in the matter. The fee, if required, must be submitted to the address in Unit V.B.1. of this document. For additional information on tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), at the same mailing address, or by phone at (703) 305–5697 or e-mail at tompkins.jim@epa.gov.

C. Information to be Submitted

Objections must specify the provisions of the regulation considered objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector. You may claim information that you

submit in response to this document as confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

D. Granting a Hearing Request

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following:

1. There is a genuine and substantial issue of fact.

2. There is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary.

3. Resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

VI. How Do the Regulatory Assessment Requirements Apply to this Final Action?

A. Is this a "Significant Regulatory Action"?

No. Under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action." The Office of Management and Budget (OMB) has determined that tolerance actions, in general, are not "significant" unless the action involves the revocation of a tolerance that may result in a substantial adverse and material affect on the economy. In addition, this action is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because this action is not an economically significant regulatory action as defined by Executive Order 12866. Nonetheless, environmental health and safety risks to children are considered by the Agency when determining appropriate tolerances. Under FQPA, EPA is required to apply an additional 10–fold safety factor to risk assessments, in order to ensure the protection of infants and children, unless reliable data supports a different safety factor.

B. Does this Action Contain Any Reporting or Recordkeeping Requirements?

No. This final action does not impose any information collection requirements subject to OMB review or approval pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

C. Does this Action Involve Any "Unfunded Mandates"?

No. This final action does not impose any enforceable duty, or contain any "unfunded mandates", as described in Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

D. Do Executive Orders 12875 and 13084 Require EPA to Consult with States and Indian Tribal Governments Prior to Taking the Action in this Document?

No. Under Executive Order 12875, entitled "Enhancing the Intergovernmental Partnership" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's final rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Under Executive Order 13084, entitled "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Does this Action Involve Any Environmental Justice Issues?

No. This action does not involve special considerations of environmental-justice related issues pursuant to Executive Order 12898, entitled *"Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations"* (59 FR 7629, February 16, 1994).

F. Does this Action Have a Potentially Significant Impact on a Substantial Number of Small Entities?

No. The Agency has certified that tolerance actions, including the tolerance actions in this document, are not likely to result in a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination, along with its generic certification under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), appears at 63 FR 55565, October 16, 1998 (FRL–6035–7). This generic certification has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

G. Does this Action Involve Technical Standards?

No. This tolerance final action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable

law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

H. Are There Any International Trade Issues Raised by this Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex MRLs in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA has developed guidance concerning submissions for import tolerance support. This guidance will be made available to interested persons.

I. Is this Action Subject to Review under the Congressional Review Act?

Yes. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: July 28, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR parts 180 and 186 are amended as follows:

PART 180—[Amended]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

b. Section 180.157 is revised to read as follows:

§ 180.157 Methyl 3-[(dimethoxyphosphinyl) oxy]butenoate, alpha and beta isomers; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide methyl 3-[(dimethoxyphosphinyl)oxy]butenoate, alpha and beta isomers, in or on the following raw agricultural commodities:

Commodity	Parts per million
Broccoli	1.0
Cabbage	1.0
Cauliflower	1.0
Celery	1.0
Cucumbers	0.2
Grapes	0.5
Lettuce	0.5
Melons (incl. cantaloupes, honeydew melon, and muskmelon, determined on the edible portion with rind removed)	0.5
Peas	0.25
Peppers	0.25
Spinach	1.0
Squash, summer	0.25
Strawberries	1.0
Tomatoes	0.2
Watermelon	0.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.184 [Amended]

c. Section 180.184 is revised to read as follows:

§ 180.184 Linuron; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) in or on the following food commodities:

Commodity	Parts per million
Asparagus	7.0
Carrots	1
Cattle, fat	1
Cattle, mbyp	1
Cattle, meat	1
Celery	0.5
Corn, field, fodder	1
Corn, field, forage	1
Corn, fresh (inc. sweet K+CWHR)	0.25
Corn, grain (inc. pop)	0.25
Corn, sweet, fodder	1
Corn, sweet, forage	1
Cottonseed	0.25
Goats, fat	1
Goats, mbyp	1
Goats, meat	1
Hogs, fat	1
Hogs, mbyp	1
Hogs, meat	1
Horses, fat	1
Horses, mbyp	1
Horses, meat	1
Parsnips (with or without tops)	0.5
Potatoes	1
Sheep, fat	1
Sheep, mbyp	1
Sheep, meat	1
Sorghum, fodder	1
Sorghum, forage	1
Sorghum, grain (milo)	0.25
Soybeans, (dry or succulent)	1
Soybeans, forage	1
Soybeans, hay	1
Wheat, forage	0.5
Wheat, grain	0.25
Wheat, hay	0.5
Wheat, straw	0.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the herbicide linuron 3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea] in or on the following food commodity:

Commodity	Parts per million
Parsley	0.25

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.362 [Amended]

d. By adding a paragraph heading to paragraph (a).

e. By redesignating paragraph (b) as paragraph (c), adding a paragraph heading to newly designated paragraph (c), and by removing from the table in newly designated paragraph (c) the entry for "marigolds, fresh".

f. By adding and reserving with paragraph headings new paragraphs (b) and (d).

The additions to § 180.362 read as follows:

§ 180.362 Hexakis (2-methyl-2-phenylpropyl)distannoxane;tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.364 [Amended]

g. In § 180.364, in the table to paragraph (a)(1) remove the entries for "citrus molasses"; "cotton, forage"; and "cotton, hay".

§ 180.524 [Removed]

h. By removing § 180.524.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 371.

§ 186.3550 [Amended]

b. In § 186.3550, by removing paragraph (b).

[FR Doc. 99–19785 Filed 7–30–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6411–2]

New Jersey: Authorization of State Hazardous Waste Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.* ("RCRA"), and the regulations thereunder, the State of New Jersey (the "State") applied for final authorization of its hazardous waste program adopted in October 1996. On May 11, 1999, the Environmental Protection Agency, Region 2 ("EPA") published a proposed rule (64 FR 25258), proposing to approve and authorize the State's hazardous waste program, subject to public comment. Today's action authorizes the State's hazardous waste program as proposed, since there were no public comments submitted.

EFFECTIVE DATE: This rule is effective August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Elizabeth Butler, Division of Environmental Planning and Protection, USEPA, Region 2, 290 Broadway (22nd Floor) New York, NY 10007-1866; telephone (212) 637-4163; E mail—butler.elizabeth@epamail.epa.gov.

SUPPLEMENTNARY INFORMATION:

I. State Authorization Under RCRA

Pursuant to section 3006 of RCRA, 42 U.S.C. 6926, EPA may, upon application by a state, authorize the applicant state's hazardous waste program to operate in the state in lieu of the federal hazardous waste program. The federal hazardous waste program (the "Federal Program") is comprised of the regulations published in Title 40 of the Code of Federal Regulations under the authority of RCRA. To qualify for final authorization, a state's hazardous waste program must: (1) Be equivalent with the Federal Program; (2) be consistent with the Federal Program; and (3) provide for adequate enforcement. RCRA section 3006(b), 42 U.S.C. 6926(b).

II. Background—History of RCRA Authorization Within the State

In 1985, the State was granted final authorization by EPA for the RCRA base program, effective February 21, 1985 (50 FR 5260, 2/7/85). At that time the base program covered the essential core of the Federal Program as reflected in the initial enactment of RCRA prior to its amendment by the Hazardous and Solid Waste Amendments of 1984. In 1988 and 1993 EPA authorized the State for a small number of additional regulations (53 FR 30054, 8/10/88, and 58 FR 59370, 11/9/93).

On October 21, 1996, the State repealed its then existing hazardous waste program, including the authorized provisions, and adopted a new program (N.J.A.C. 7:26G–1.1 *et seq.*, 28 New Jersey Register 4606, 10/21/96). As part of this October 21, 1996 adoption, the State adopted, with certain exceptions and modifications, 40 CFR parts 124, 260–266, 268 and 270 as set forth in the July 1, 1993 CFR, by incorporation by reference, and designated these provisions N.J.A.C. 7:26G–4 through N.J.A.C. 7:26G–13, inclusive. (28 New Jersey Register 4652–4668, 10/21/96. N.J.A.C. 7:26G–4 through N.J.A.C. 7:26G–13 are referred to below as the "State Program"). Under cover of a letter dated January 13, 1999, the State submitted an application meeting the requirements of 40 CFR part 271, requesting authorization of the State Program.[1]

III. Decision

A. Authorization of the State Program

EPA has reviewed the State's application and has determined that the State Program, with limited exceptions, possesses the requisite equivalence and consistency with the Federal Program. Furthermore, the State's application indicates that the State possesses the necessary enforcement resources and is prepared to utilize those resources to provide adequate enforcement of the State Program. Accordingly, EPA has determined that the State Program qualifies for authorization and hereby approves and authorizes the State Program, with the exceptions noted below.

In several instances the State has not incorporated a federal regulation by reference and has not adopted a substitute regulation. These instances are all clearly indicated in the State's October 21, 1996 adoption. None of these omitted federal regulations, however, are required to be adopted for authorization, for various reasons including, for example, that they are not applicable or delegable to states. Thus, the State's failure to either adopt these particular federal regulations, or to adopt substitute regulations, in no way impairs the equivalence or consistency of the State Program.

EPA notes that its determination to authorize the State Program is based on the information submitted to EPA by the State. If the criteria upon which EPA bases its approval subsequently change for any reason, including without limitation changes in State laws, regulations or administrative procedures which negate the equivalency or consistency of one or more provisions of the State Program, or in any way limit the State's ability to enforce or properly administer the State Program, EPA may revisit its approval. In such event, EPA may exercise its authority, provided in 40 CFR 271.22, to afford the State an opportunity to correct any program deficiencies, or EPA may withdraw authorization of the State Program, in whole or in part. Furthermore,

[1] The State's redesignation of the Parts of the Federal Program adopted by incorporation by reference on October 21, 1996, and comprising the State Program, is as follows: N.J.A.C. 7:26G–4 (40 CFR part 260); N.J.A.C. 7:26G–5 (40 CFR part 261); N.J.A.C. 7:26G–6 (40 CFR part 262); N.J.A.C. 7:26G–7 (40 CFR part 263); N.J.A.C. 7:26G–8 (40 CFR part 264); N.J.A.C. 7:26G–9 (40 CFR part 265); N.J.A.C. 7:26G–10 (40 CFR part 266); N.J.A.C. 7:26G–11 (40 CFR part 268); N.J.A.C. 7:26G–12 (40 CFR part 270); and N.J.A.C. 7:26G–13 (40 CFR part 124).

authorization of the State Program by EPA shall not be deemed in any way as a waiver by EPA of any of its statutory rights under RCRA including but not limited to sections 3004(v), 3005(c)(3), 3007, 3008, 3013, 3020(c) and 7003 (42 U.S.C. 6924(v), 6925(c)(3), 6927, 6928, 6934, 6939b(c) and 6973).

B. Exceptions

In N.J.A.C. 7:26G–8.1(a), the State incorporates by reference 40 CFR part 264, the part of the Federal Program fixing the standards for the owners and operators of hazardous waste treatment, storage and disposal facilities. In the remaining subparagraphs of 7:26G–8.1 ((b) through (h)) the State neither omits 40 CFR 264.101, 264.552 and 264.553, nor adopts these federal regulations with modifications. Thus, the State has adopted 40 CFR 264.101, 264.552 and 264.553 by means of incorporation by reference through 7:26G–8.1(a). The above three sections of the Federal Program are the sections implementing the corrective action provisions of RCRA, which provisions were incorporated into RCRA upon the enactment of the Hazardous and Solid Waste Amendments of 1984. The State, despite its adoption of 40 CFR §§ 264.101, 264.552 and 264.553, informed EPA in its application that it was not applying for authorization for corrective action at this time, and would apply for corrective action authorization under a separate application in the future. Accordingly, while EPA is today authorizing N.J.A.C. 7:26G–8.1(a), EPA is not authorizing the State for corrective action at this time, and 40 CFR 264.101, 264.552 and 264.553 shall remain in full force and effect. Consequently, until the State is authorized for corrective action, EPA shall continue to issue corrective action permits within the State.

In N.J.A.C. 7:26G–12.1(a), the State incorporates by reference 40 CFR 270.73(a) and (b). The State, however, does not incorporate by reference 40 CFR 270.73(c)-(g). Rather, the State replaces these subparagraphs of 40 CFR 270.73 with 7:26G–12.1(c)(16). Title 40 CFR 270.73 is the regulation in the Federal Program governing the loss of interim status (RCRA section 2)(C) and (e)(2)(3), 42 U.S.C. 6925(c)(2)(C) and (e)(2)(3)). N.J.A.C. 7:26G–12.1(c)(16) provides that the State may terminate interim status at its discretion, under a variety of circumstances subject to a hearing, if requested. By contrast, the federal loss of interim status regulations, excluded by the State and replaced by 7:26G–12.1(c)(16), are non-discretionary and operate automatically, without the opportunity for a hearing, if the requirements cited in these federal provisions are not met. Since 7:26G–12.1(c)(16) is discretionary and lacks automatic application, it is not equivalent to 40 CFR 270.73(c)-(g), is less stringent than 40 CFR 270.73(c)-(g), and therefore, cannot be authorized. Consequently, EPA is not authorizing the State for N.J.A.C. 7:26G–12.1(c)(16), and 40 CFR 270.73(c)-(g) shall remain in full force and effect.

IV. Regulatory Requirements

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 104–4, establishes requirements for federal agencies to assess the effects of certain regulatory actions on state, local, and tribal governments, and upon the private sector. Under section 202 of UMRA, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state or local governments in the aggregate, or to the private sector, of $100 million or more. EPA has determined that today's rule does not include a federal mandate that may result in estimated costs of $100 million or more to either state or local governments in the aggregate, or to the private sector. This federal action approves preexisting requirements of State law, and imposes no new requirements. Accordingly, no additional costs to State or local governments, or to the private sector, result from this action.

UMRA, section 203, further provides that before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments it must develop a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of such governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Like section 202, the requirements of section 203 of UMRA do not apply to today's rule, since this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate treatment, storage or disposal facilities, they are already subject to the regulatory requirements under existing State law which are being authorized by EPA, and thus, are not subject to any additional significant or unique requirements by virtue of today's proposed authorization of the State Program.

B. Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA has determined that today's rule will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate treatment, storage or disposal facilities are already subject to the regulatory requirements of existing State law which EPA is authorizing today. EPA's authorization of the State Program therefore, will not add any burdens, since authorization will result only in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Accordingly, pursuant to 5 U.S.C. 605(b), I hereby certify that authorization of the State Program will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule. Authorization of the State Program will not impose any additional information requirements upon the regulated community.

D. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note, *Utilization of Consensus Technical Standards by Federal Agencies*) directs all federal agencies to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs federal agencies to provide Congress, through the Office of Management and Budget, with an explanation in any instance where they decide not to use available and applicable voluntary consensus standards. Authorization of the State Program does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

E. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of E.O. 12866.

F. Compliance With Executive Order 12875

E.O. 12875 is intended to develop an effective process to permit elected officials and other representatives of state or local governments to provide meaningful input in the development of regulatory proposals containing significant unfunded mandates. Since today's rule authorizes preexisting regulatory requirements under State law, no new unfunded mandates result from this action. (See also the discussion under IV. A, above, Unfunded Mandates Reform Act).

G. Compliance With Executive Order 13045

E.O. 13045, *Protection of Children from Environmental Health Risks and Safety Risks*, applies only to federal rules that are "economically significant" as defined under Executive Order 12866 (i.e., a rule "that has an annual effect on the economy of $100 million or more or would adversely affect in a material way the economy, a sector of the economy, productivity, competition , jobs, the environment, public health or safety, or State, local, or tribal governments or communities," E.O. 13045, 62 FR 19885, 4/23/97). EPA has determined that the authorization of the State Program will not have a significant effect on the economy within the meaning of E.O. 12866, since today's rule authorizes preexisting regulatory requirements of State law, and imposes no new requirements. (See also IV. A and F above). Accordingly, E.O. 13045 is inapplicable to today's rule.

H. Submission to Congress and the General Accounting Office Pursuant to the Congressional Review Act

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the United States Environmental Protection Agency submitted a report containing today's rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

AUTHORITY: This document is issued under the authority of sections 2002(a), 3006 and 7004(b) of RCRA, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 6, 1999.

Jeanne M. Fox,

Regional Administrator, Region 2.

[FR Doc. 99–19733 Filed 7–30–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067—AD00

National Flood Insurance Program (NFIP); Insurance Coverage and Rates

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule; request for comments.

SUMMARY: We (the Federal Insurance Administration) are adding an endorsement to the Standard Flood Insurance Policy (SFIP) that will establish a permanent procedure for honoring claims for buildings damaged by continuous lake flooding from closed basin lakes or under imminent threat of flood damage from those closed basin lakes.

DATES: This interim final rule is effective on August 2, 1999. Please submit any comments in writing by October 1, 1999.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) rules@fema.gov.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., room 433, Washington, DC 20472, 202–646–3422, or (email) charles.plaxico@fema.gov.

SUPPLEMENTARY INFORMATION: Residents of the Devils Lake area in northeastern North Dakota face extraordinary flood conditions. During the last three years, the level of the lake has risen twelve feet, negating property owners' short-term flood mitigation efforts, such as temporary dikes, and flooding hundreds of properties and threatening many more.

The conditions at Devils Lake Basin are unique because the lake is part of a "closed basin," that is, although it lies within the Red River-Hudson Bay drainage system, no water has flowed from the Devils Lake Basin in recorded history (since the 1830s). Instead, Devils Lake, together with adjacent Stump Lake, collects the Basin's surface runoff flowing through many small coulees and lakes. (Devils Lake collects about 86% of the runoff; Stump Lake collects the remainder.) The runoff remains in these two lakes until it evaporates or enters the groundwater table.

Since April 1996, as Devils Lake has steadily risen from 1435.2 mean sea level (MSL) to 1447.2 MSL, we have worked with State and local governments as well as Devils Lake property owners insured under the National Flood Insurance Program to provide timely, longer term solutions to this extraordinary problem. Exercising my authority under the Standard Flood Insurance Policy, as Federal Insurance Administrator, I have waived a policy requirement that was not appropriate in light of the unique circumstances at Devils Lake. This decision has permitted property owners along Devils Lake to use claim proceeds to relocate their buildings out of harm's way. (Specifically, I have waived the requirement that a building on Devils Lake be continuously flooded for 90 days before declaring it a total loss, thus honoring a claim that provides funds for the insured to take mitigation action.) This decision has meant a cost savings for the National Flood Insurance Program (NFIP).

We estimate that, by being proactive, rather than waiting for an insured building to be inundated for 90 days by the rising lake levels, we have saved the program on average 25% for each claim in the Devils Lake area. Paying in advance for these inevitable flood losses

so that policyholders can use the claim proceeds to relocate their homes so that we can recover salvage simply makes the best public policy and insurance sense under the circumstances.

Since April 1996, we have communicated this waiver to the Write Your Own companies-the private insurance companies that sell flood insurance policies and adjust claims under the NFIP-through a series of seven separate Policy Issuances to try to keep pace with revised predictions of the crests on Devils Lake. We feel that a piecemeal approach is inadequate and that a better remedy for the dynamic conditions, such as those at Devils Lake, is to offer a permanent solution—one that is comprehensive and uniform for other closed basin lakes. This interim final rule does that.

This interim final rule adds an endorsement to the Standard Flood Insurance Policy that would make buildings damaged by or imminently threatened by continuous flooding from closed basin lakes eligible to be declared a total loss without being continuously flooded for 90 days. It also establishes long-term floodplain management solutions for the imperiled property to eliminate or hold to a minimum the need for future flood insurance claims. For example, this interim final rule requires local governments having jurisdiction over the imperiled property to adopt and enforce permanent mitigation measures. Among these measures are: (1) prohibiting new construction—with limited exceptions—that may be subject to flooding by the rising lake; and (2) restricting for open space—with limited exceptions—any affected property the community may acquire an interest in.

National Environmental Policy Act

This interim final rule qualifies to be categorically excluded according to 44 CFR 10.8 (d) (2) (ii). In addition, no extraordinary circumstances have been found that would override this exclusion; therefore, an environmental assessment is not required.

Executive Order 12866, Regulatory Planning and Review

This interim final rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and has not been reviewed by the Office of Management and Budget. Nevertheless, this rule adheres to the regulatory principles set forth in E.O. 12866.

Pub. L. 104–121, Congressional Review of Agency Rulemaking

This interim final rule is not a "major rule" within the meaning of section 804 of Pub. L. 104–121, Congressional Review of Agency Rulemaking. We have submitted a report to Congress summarizing the scope and effect of the rule, as required by section 801 of Pub. L. 104–121.

Paperwork Reduction Act

This interim final rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This interim final rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This interim final rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 61

Flood Insurance, insurance coverage and rates.

Accordingly, we amend 44 CFR part 61, as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

Appendices A (1), A (2), A (3) [Amended]

2. Amend Part 61 by adding "Endorsement for Closed Basin Lakes" after the last article of each of the following: Appendix A (1), Standard Flood Insurance Policy, Dwelling Form; Appendix A (2), Standard Flood Insurance Policy, General Property Form; and Appendix A (3), Standard Flood Insurance Policy, Residential Condominium Building Association Policy. The added endorsement, which is identical in each appendix, reads as follows:

* * * * *

Endorsement for Closed Basin Lakes

Under 44 CFR 61.13 (d), we are establishing this endorsement for closed basin lakes, which supplements Article 9.T of the Dwelling Policy, Article 8.V of the General Property Policy, and Article 10.V of the Residential Condominium Building Association Policy. (A "closed basin lake" is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) If your insured building is subject to continuous lake flooding from a closed basin lake, we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

1. Lake flood waters must damage or imminently threaten to damage your building.

2. Prior to approval of your claim, you must:

a. Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

b. Grant the conservation easement contained in the Federal Emergency Management Agency's (FEMA) "Policy Guidance for Closed Basin Lakes," to be recorded on the deed of the property. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures it will allow on any portion of the property within the ASC are certain, simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the National Flood Insurance Program (NFIP) and are insured under the NFIP, they will not be eligible for the benefits of this endorsement. If a U.S. Army Corps of Engineers (USACE) certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC.

3. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if there is sufficient reason to extend the time.

4. Prior to the final payment of your claim, you must acquire an elevation certificate and a floodplain management permit from the local floodplain administrator for the new location of your building.

5. Prior to the approval of your claim, the community having jurisdiction over your building must:

a. Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance, that is consistent with the provisions specified in the easement required in 2.b. above.

b. Agree to declare and report any violations of this ordinance to FEMA so that under § 1316 of the National Flood Insurance Act of 1968, as amended, it can deny flood insurance to the building; and

c. Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of 2.b. above except that even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of 2.b. above.

6. Prior to the approval of your claim, the affected State must take all action set forth in FEMA's "Policy Guidance for Closed Basin Lakes."

7. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under this endorsement. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement.

8. This endorsement will be in effect for a community when the FEMA Regional Director for the affected region gives the community, in writing, the following:

a. Confirmation that the community and the State are in compliance with the conditions in numbers 5 and 6 above, and

b. The date by which you must have flood insurance in effect.

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100,"Flood Insurance")

Dated: July 27, 1999.

Jo Ann Howard,

Administrator, Federal Insurance Administration.

[FR Doc. 99–19765 Filed 7–30–99; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC89

Disaster Assistance; Redesign of Public Assistance Project Administration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule; correction.

SUMMARY: On November 20, 1998, FEMA published an interim final rule that redesigned the Public Assistance Disaster Grant Program to provide money to applicants more quickly and to make the application process simpler than before. This document corrects an error in an amendatory instruction.

DATES: This correction is effective November 20, 1998.

FOR FURTHER INFORMATION CONTACT: Melissa M. Howard, Ph.D., (202)646–3053, or (email) melissa.howard@fema.gov.

SUPPLEMENTARY INFORMATION: FEMA published a document in the **Federal Register** of November 20, 1998 (63 FR 64423), which amended FEMA's rules regarding the redesign of the Public Assistance Disaster Grant Program. The document contained an error in amendatory instruction 5 on page 64426 that inadvertently would have removed paragraphs (a)(2)(i)(A) through (D) of § 206.228. This document corrects that error.

In interim final rule, FR Doc. 98–31044, published on November 20, 1998 (63 FR 64423), make the following correction:

PART 206—[Corrected]

§ 206.228 [Corrected]

On page 64426, in the first column, correct amendatory instruction 5 to read as follows:

5. Revise § 206.228(a)(2)(i) introductory test to read as follows:

Dated: July 26, 1999.

Ernest B. Abbott,

General Counsel.

[FR Doc. 99–19763 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1394; MM Docket No. 99–91; RM–9529]

Radio Broadcasting Services; Manson, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain West Broadcasting, allots Channel 259A at Manson, Iowa, as the community's first local aural transmission service. *See* 64 FR 15712, April 1, 1999. Channel 259A can be allotted to Manson in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 259A at Manson are 42–31–48 North Latitude and 94–32–00 West Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 7, 1999. The window period for filing applications for Channel 259A at Manson, Iowa, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–91, adopted July 7, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Manson, Channel 259A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19680 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1394; MM Docket No. 99–92; RM–9530]

Radio Broadcasting Services; Rudd, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain West Broadcasting, allots Channel 268A at Rudd, Iowa, as the community's first local aural transmission service. *See* 64 FR 15712, April 1, 1999. Channel 268A can be allotted to Rudd in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 268A at Rudd are 43–07–34 North Latitude and 92–54–20 West Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 7, 1999. The window period for filing applications for Channel 268A at Rudd, Iowa, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

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List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Rudd, Channel 268A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19681 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1394; MM Docket No. 99–93; RM–9531]

Radio Broadcasting Services; Pleasantville, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain West Broadcasting, allots Channel 242A at Pleasantville, Iowa, as the community's first local aural transmission service. *See* 64 FR 15712, April 1, 1999. Channel 242A can be allotted to Pleasantville in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.9 kilometers (3.0 miles) east to avoid a short-spacing to the licensed site of Station KSOM(FM), Channel 243C1, Audubon, Iowa. The coordinates for Channel 242A at Pleasantville are 41–23–59 North Latitude and 93–14–36 West Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 7, 1999. The window period for filing applications for Channel 242A at Pleasantville, Iowa, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–93, adopted July 7, 1999, and released July 23, 1999.The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Pleasantville, Channel 242A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19682 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1394; MM Docket No. 99–95; RM–9533]

Radio Broadcasting Services; Dunkerton, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain West Broadcasting, allots Channel 280A at Dunkerton, Iowa, as the community's first local aural transmission service. See 64 FR 15712, April 1, 1999. Channel 280A can be allotted to Dunkerton in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.9 kilometers (5.6 miles) north to avoid short-spacings to the licensed sites of Station KLTI–FM, Channel 281C, Ames, Iowa, and Station KDAT(FM), Channel 283C1, Cedar Rapids, Iowa. The coordinates for Channel 280A at Dunkerton are 42–38–59 North Latitude and 92–10–32 West Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 7, 1999. The window period for filing applications for Channel 280A at Dunkerton, Iowa, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–95, adopted July 7, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Dunkerton, Channel 280A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19683 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1394; MM Docket No. 99–97; RM–9535]

Radio Broadcasting Services; Manville, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain West Broadcasting, allots Channel 255C1 at Manville, Wyoming, as the community's first local aural transmission service. *See* 64 FR 15712, April 1, 1999. Channel 225C1 can be allotted to Manville in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 255C1 at Manvill are 42–46–45 North Latitude and 104–37–02 West Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 7, 1999. The window period for filing applications for Channel 255C1 at Manville, Wyoming, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–97, adopted July 7, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Manville, , Channel 255C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19684 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1394; MM Docket No. 98–213; RM–9352]

Radio Broadcasting Services; Clifton, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of STARadio Corporation, allots Channel 297A at Clifton, Illinois, as the community's first local aural transmission service. See 63 FR 38719, December 14, 1998. Channel 297A can be allotted to Clifton in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.1 kilometers (5.0 miles) south to avoid a short-spacing to the licensed site of Station WZVN(FM), Channel 296A, Lowell, Indiana. The coordinates for Channel 297A at Clifton are 40–52–00 North Latitude and 87–58–00 West Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 7, 1999. The window period for filing applications for Channel 297A at Clifton, Illinois, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–213, adopted July 7, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Clifton, Channel 297A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19770 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1394; MM Docket No. 98–215; RM–9370]

Radio Broadcasting Services; Lennox, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ken Mills Agency, allots Channel 256C3 at Lennox, South Dakota, as the community's first local aural transmission service. See 63 FR 38720, December 14, 1998. Channel 256C3 can be allotted to Lennox in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.0 kilometers (0.6 miles) south to avoid a short-spacing to the licensed site of Station KEEZ-FM, Channel 256C1, Mankato, Minnesota. The coordinates for Channel 256C3 at Lennox are 43–21–24 North Latitude and 96–54–05 West Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 7, 1999. The window period for filing applications for Channel 256C3 at Lennox, South Dakota, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–215, adopted July 7, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding Lennox, Channel 256C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19771 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1394; MM Docket No. 98–219; RM–9390]

Radio Broadcasting Services; Sibley, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of 21st Century Radio Ventures, Inc., allots Channel 282A at Sibley, Iowa, as the community's second local FM transmission service. See 63 FR 38719, December 14, 1998. Channel 282A can be allotted to Sibley in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.3 kilometers (0.8 miels) west to avoid a short-spacing to the licensed site of Station KUOO–FM, Channel 280C2, Spirit Lake, Iowa. The coordinates for Channel 282A at Sibley are 43–24–14 North Latitude and 95–45–45 West Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 7, 1999. The window period for filing applications for Channel 282A at Sibley, Iowa, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–219, adopted July 7, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Channel 282A at Sibley.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19772 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1426; MM Docket No. 98–209; RM–9406]

Radio Broadcasting Services; De Ridder, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition for rule making filed on behalf of Willis Broadcasting Corporation, licensee of Station KEAZ(FM), Channel 269A, De Ridder, Louisiana, this document substitutes Channel 250A for Channel 269A at De Ridder and modifies the license for Station KEAZ(FM), as requested. The modification will enable Station KEAZ(FM) to improve its Class A facilities to six kilowatts and expand its coverage area. See 63 FR 67449, December 7, 1998. Coordinates used for Channel 250A at De Ridder, Louisiana, are 30–52–43 NL and 93–17–25 WL. With this action, the proceeding is terminated.

DATES: EFFECTIVE [September 7, 1999].

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–209, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana is amended by removing Channel 269A and adding Channel 250A at De Ridder.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19773 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1425; MM Docket No. 99–43; RM–9468]

Radio Broadcasting Services; Narrowsburg, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Karen L. Johnson, allots Channel 275A to Narrowsburg, NY, as the community's first local aural service. *See* 64 FR 7841, February 17, 1999. Channel 275A can be allotted to Narrowsburg with a site restriction of 5.9 kilometers (3.7 miles) northeast, at coordinates 41–38–00 NL and 74–59–46 WL, to avoid a short-spacing to Station WMGK, Channel 275B, Philadelphia, PA. Canadian concurrence in the allotment has been obtained since Narrowsburg is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective September 7, 1999. A filing window for Channel 275A at Narrowsburg, NY, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–43, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.Q02

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

2. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Narrowsburg, Channel 275A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and rules Division, Mass Media Bureau.

[FR Doc. 99–19774 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1425; MM Docket No. 99–82; RM–9496]

Radio Broadcasting Services; Allen, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain West Broadcasting, allots Channel 265A to Allen, NE, as the community's first local aural service. *See* 64 FR 14422, March 25, 1999. Channel 265A can be allotted to Allen in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.4 kilometers (2.7 miles) north, at coordinates 42–27–14 NL; 96–51–07 WL, to avoid a short-spacing to Station KGBI–FM, Channel 264C, Omaha, NE. With this action, this proceeding is terminated.

DATES: Effective September 7, 1999. A filing window for Channel 265A at Allen, NE, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–82, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Allen, Channel 265A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19775 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1425; MM Docket No. 99–85; RM–9504]

Radio Broadcasting Services; Overton, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain West Broadcasting,

allots Channel 295C1 to Overton, NV, as the community's first local aural service. See 64 FR 14421, March 25, 1999. Channel 295C1 can be allotted to Overton in compliance with the Commission's minimum distance separation requirements with a site restriction of 40 kilometers (24.9 miles) north, at coordinates 36–53–17 NL; 114–34–27 WL, to avoid short-spacings to Stations KSNE-FM, Channel 293C, Las Vegas, NV, KCCA, Channel 296C3, Colorado City, AZ, and to the construction permit of a new station on Channel 296B, Needles, CA. With this action, this proceeding is terminated.

DATES: Effective September 7, 1999. A filing window for Channel 295C1 at Overton, NV, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–85, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Overton, Channel 295C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19776 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1425; MM Docket No. 99–88; RM–9515]

Radio Broadcasting Services; Wells, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain West Broadcasting, allots Channel 280C1 to Wells, NV, as the community's first local aural transmission service. See 64 FR 15713, April 1, 1999. Channel 280C1 can be allotted to Wells in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 41–06–42 NL; 114–57–48 WL. With this action, this proceeding is terminated.

DATES: Effective September 7, 1999. A filing window for Channel 280C1 at Wells, NV, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–88, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Wells, Channel 280C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19777 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1425; MM Docket No. 99–89; RM–9516]

Radio Broadcasting Services; Caliente, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain West Broadcasting, allots Channel 233C1 to Caliente, NV, as the community's first local aural service. See 64 FR 15713, April 1, 1999. Channel 233C1 can be allotted to Caliente in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 37–36–54 NL; 114–30–48 WL. With this action, this proceeding is terminated.

DATES: Effective September 7, 1999. A filing window for Channel 233C1 at Caliente, NV, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–89, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows: Part 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Caliente, Channel 233C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19778 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1424; MM Docket No. 99–51; RM–9454]

Radio Broadcasting Services; Annville, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Vernon R. Baldwin, allots Channel 244A at Annville, Kentucky, as the community's first local aural transmission service. See 64 FR 8786, February 23, 1998. Channel 244A can be allotted to Annville in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.8 kilometers (6.7 miles) southeast to avoid a short-spacing to the licensed site of Station WGKS(FM), Channel 245C2, Paris, Kentucky, and Station WYWY(FM), Channel 241C3, Barbourville, Kentucky. The coordinates for Channel 244A at Annville are 37–14–37 North Latitude and 83–53–35 West Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 7, 1999. The window period for filing applications for Channel 244A at Annville, Kentucky, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–51, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 73 [AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Annville, Channel 244A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19779 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1424; MM Docket No.99–52; RM–9455]

Radio Broadcasting Services; Liberty, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of West Wind Broadcasting, allots Channel 298A at Liberty, Pennsylvania, as the community's first local aural transmission service. See 64 FR 8786, February 23, 1999. Channel 298A can be allotted to Liberty in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (6.9 miles) southwest to avoid a short-spacing to the licensed site of Station WBYN(FM), Channel 298B, Boyertown, Pennsylvania. The coordinates for Channel 298A at Liberty are 41–29–28 North Latitude and 77–12–22 West Longitude. Since Liberty is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 7, 1999. The window period for filing applications for Channel 298A at Liberty, Pennsylvania, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–52, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by adding Liberty, Channel 298A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19780 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No.99–54; RM–9457]

Radio Broadcasting Services; Ridgeley, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of West Wind Broadcasting, allots Channel 263A at Ridgeley, West Virginia, as the community's first local aural transmission service. *See* 64 FR 8786, February 23, 1998. Channel 263A can be allotted to Ridgeley in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.8 kilometers (4.8 miles) northeast to avoid a short-spacing to the licensed and construction permit site of Station WDZN(FM), Channel 261A, Romney, West Virginia, and to the licensed site of Station WOMP–FM, Channel 263B, Bellaire, Ohio. The coordinates for Channel 263A at Ridgeley are 39–42–08 and 78–43–49 West Longitude. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 7, 1999. The window period for filing applications for Channel 263A at Ridgeley, West Virginia, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–54, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Ridgeley, Channel 263A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19781 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1424; MM Docket No.99–53; RM–9456]

Radio Broadcasting Services; Clarendon, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of West Wind Broadcasting, allots Channel 274A at Clarendon, Pennsylvania, as the community's second local FM transmission service. See 64 FR 8786, February 23, 1998. Channel 274A can be allotted to Clarendon in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.1 kilometers (6.3 miles) south to avoid a short-spacing to the licensed site of Station WRLP(FM), Channel 276A, Russell, Pennsylvania. The coordinates for Channel 274A at Clarendon are 41–41–30 North Latitude and 79–03–43 West Longitude. Since Clarendon is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 7, 1999. The window period for filing applications for Channel 274A at Clarendon, Pennsylvania, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–53, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73 [AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by adding Channel 274A at Clarendon.

Federal Communications Commission.

John A. Karousos, Chief,

Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19782 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

48 CFR Part 5416

DLA Acquisition Directive; Types of Contracts

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule.

SUMMARY: This rule adds a new part to the Defense Logistics Acquisition Directive (DLAD) affecting regulations on the use of solicitation provisions and contract clauses for Economic Price Adjustments (EPA). The coverage expands the use of EPA based on market price references. It also expands the use of EPA based on indexes, to encompass indexes for products or services that are identical or similar to the end products to be provided under the contract. It authorizes the development and use, subject to established agency review and approval procedures, of clauses using EPA references as described above. The coverage ensures EPA references that more closely follow market prices, are in conformance with commercial practice, and reduce price risk for both the government and the contractor.

DATES: Effective August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Helen Bailey, Procurement Analyst, Defense Logistics Agency, DLSC–PPP, at (703) 767–1374.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Energy Support Center (DESC), a major contracting activity of DLA, has historically utilized a method of price adjustment in the bulk petroleum area using price indexes for the same or similar end products and using market price assessments for products published in industry trade journals.

None of the three EPA types currently encompassed by the FAR are appropriate for many of the competitive procurements undertaken by DESC and other DLA contracting offices. Currently, FAR 16.203 recognizes EPA references based on established market or catalog prices of the individual contractor only. The new DLAD coverage expands this to include industry-wide and geographically specific market price assessments, and authorizes the development and use of clauses on that basis. FAR 16.203 also recognizes EPA references based only on indexes for labor or material costs or indexes of such costs. The DLAD coverage expands this to include indexes for the same or similar supplies, services, or end items and authorizes the development and uses of clauses on that basis.

The uses of an EPA reference based on an individual contractor's established price or cost of materials is impractical for various competitive procurements. Unique EPA references for each offeror engender relative price variations during the delivery period, making it impossible to determine the most favorable offer at time of award. This creates a significant price risk for the Government in periods where the margins are shrinking and for the contractors in periods where the margins are expanding. such fluctuations can be significant, for example, in petroleum markets. A reference based on the same or similar products as provided under the contract, results in a common EPA reference for competing offerors and minimizes the price risk for both the Government and the contractor.

A proposed rule with request for comments was published in the **Federal Register**.. (60 FR 10826, Feb. 28, 1995.) One respondent submitted comments on the proposed rule. The respondent's comments were considered in the development of the final rule. On October 5, 1995, the Director, Defense Procurement, approved a permanent class deviation for DLA to deviate from the requirements of FAR 16.203–1 and 16.203–4(a) when using fixed price contracts with economic price adjustments. Under this deviation, DLA was authorized to include conforming language in the DLA supplement.

The final rule is the same as the proposed rule with one exception. The second sentence in Subpart 5416.203–4, "Contract clauses' of the proposed rule, which states that "established prices in such clauses need not be verifiable using the criteria in 48 CFR (FAR) 15.804–3" was removed in the final rule. The criteria referred to were deleted from the Truth in Negotiations Act (TINA) (10 U.S.C. 2306a.) when the statute was recently revised. Accordingly, the revised and renumbered FAR Part 15 no longer contains these criteria. Therefore, the language has been removed from the final rule as it is no longer applicable.

Regulatory Flexibility Act

The final rule does not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. An initial regulatory flexibility analysis was not performed. The final rule does not represent a change for small entities doing business with DLA. Comments were requested concerning the effect of the proposed rule on small entities in accordance with section 612 of the Act. No comments were received.

B. Paperwork Reduction Act

This rule does not impose any new reporting or record keeping requirements that require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 5416

Government procurement.

For reasons set forth in the preamble, the Defense Logistics Agency amends 48 CFR Chapter 54, by adding part 5416 to read as follows:

PART 5416—TYPES OF CONTRACTS

Subpart 5416.2—Fixed Price Contracts

5416.203 Fixed-Price Contracts with Economic Price Adjustment
5416.203–1 Description
5416.203–3 Limitations
5416.203–4 Contract Clauses

Authority: Fixed Price Contracts

4516.203 Fixed Price Contracts with Economic Price Adjustment

4516.203–1 Description.

(a)(S–90) Adjustments based on established prices. Established prices may reflect industry-wide and/or geographically based market price fluctuations for commodity groups, specific supplies or services, or contract end items.

(c)(S–90) Adjustments based on cost indexes of labor or materials. These price adjustments may also be based on increases or decreases in indexes for commodity groups, specific supplies or services, or contract end items.

4516.203–3 Limitations.

(S–90) A fixed price contract with economic price adjustment may also be used to provide for price adjustments authorized in this section.

4516.203–4 Contract clauses.

(S–90) When the contracting officer determines that an existing EPA clause is not appropriate, the contracting officer may develop and use another EPA clause in accordance with 5416.203–1 (a)(S–90) or (c)(S–90). Established prices and cost indexes need not reflect changes in the costs or established prices of a specific contractor. The established price or cost index may be derived from sales prices in the marketplace, quotes, or assessments as reported or made available in a consistent manner in a publication, electronic database, or other form, by an independent trade association, Governmental body, or other third party independent of the contractor. More than one established price or cost index may be combined in a formula for economic price adjustment purposes in the absence of an appropriate single price or cost index.

Dated: July 23, 1999.

William J. Kenny,

Executive Director, Procurement Management.

[FR Doc. 99–19630 Filed 7–30–99; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF70

Endangered and Threatened Wildlife and Plants; Listing of Nine Evolutionarily Significant Units of Chinook Salmon, Chum Salmon, Sockeye Salmon, and Steelhead

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is adding several Evolutionarily Significant Units (ESUs) of chinook salmon (*Oncorhynchus tshawytscha*), chum salmon (*Oncorhynchus keta*), sockeye salmon (*Oncorhynchus nerka*), and steelhead

(*Oncorhynchus mykiss*) to the List of Endangered and Threatened Wildlife (List) in accordance with the Endangered Species Act of 1973, as amended (Act). The Puget Sound chinook salmon ESU in Washington, the Lower Columbia River chinook salmon ESU in Washington and Oregon, and the Upper Willamette spring-run chinook salmon ESU in Oregon are added as threatened; the Upper Columbia River spring-run chinook salmon ESU in Washington is added as endangered; the Hood Canal summer-run chum salmon ESU in Washington and the Columbia River chum salmon ESU in Washington and Oregon are added as threatened; the Ozette Lake sockeye salmon ESU in Washington is added as threatened; and the Middle Columbia River steelhead ESU in Washington and Oregon and the Upper Willamette River steelhead ESU in Oregon are added as threatened. This amendment is based on determinations by the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce, which has jurisdiction for these species, published in the **Federal Register** on March 24, 1999 (64 FR 14308), and March 25, 1999 (64 FR 14508, 64 FR 14517, 64 FR 14528).

DATES: The effective date for listing of these ESUs is May 24, 1999. The amendments to the list in 50 CFR 17.11(h) are effective August 2, 1999.

ADDRESSES: Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop 420, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Richard E. Hannan, Acting Chief, Division of Endangered Species, at the above address or telephone 703–358–2171.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Act and Reorganization Plan No. 4 of 1970, NMFS has jurisdiction over west coast steelhead. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The Service is responsible for the actual amendment of the List in 50 CFR 17.11(h).

On March 24, 1999 (64 FR 14308), NMFS published a final rule listing four chinook salmon ESUs as threatened; the Puget Sound chinook salmon ESU in Washington, the Lower Columbia River chinook salmon ESU in Washington and Oregon, and the Upper Willamette spring-run chinook salmon ESU in Oregon; the Upper Columbia River spring-run chinook salmon ESU in Washington was listed as endangered. On March 25, 1999 (64 FR 14508), NMFS published a final rule listing two chum salmon ESUs as threatened; the Hood Canal summer-run chum salmon ESU in Washington and the Columbia River chum salmon ESU in Washington and Oregon. On March 25, 1999 (64 FR 14528), NMFS published a final rule listing one sockeye salmon ESU; the Ozette Lake sockeye salmon ESU in Washington as threatened. On March 25, 1999 (64 FR 14517), NMFS published a final rule listing two steelhead ESUs as threatened; the Middle Columbia River steelhead ESU in Washington and Oregon and the Upper Willamette River steelhead ESU in Oregon. NMFS had previously issued proposed listing rules for the chinook salmon ESUs on March 9, 1998 (63 FR 11482), for the chum salmon ESUs on March 10, 1998 (63 FR 11774), for the sockeye salmon ESU on March 10, 1998 (63 FR 11750), and for the steelhead ESUs on March 10, 1998 (63 FR 11798).

The proposed rules identified above solicited comments from peer reviewers, the public, and all other interested parties. The final rules addressed the comments received in response to the proposed rules. Because NMFS provided public comment periods on the proposed rules, and because this action of the Service to amend the List in accordance with the determinations by NMFS is administrative and nondiscretionary, the Service has omitted the notice and public comment procedures of 5 U.S.C. 553(b) for this action.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. The Service published a notice outlining its reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
Fishes							

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
Salmon, chinook	*Oncorhyncus tshawytscha.*	North America from Ventura R. in California to Point Hope, Alaska and the Mackenzie R. area in Canada, Northeast Asia from Hokkaido, Japan to the Anadyr R., Russia.	U.S.A. (WA) all naturally spawned populations from rivers and streams flowing into Puget Sound, including the Straits of Juan De Fuca from the Elwha R. eastward, and Hood Canal, South Sound, North Sound and the Strait of Georgia.	T	664	NA	NA
Salmon, chinook	*Oncorhyncus tshawytscha.*	North America from Ventura R. in California to Point Hope, Alaska and the Mackenzie R. area in Canada, Northeast Asia from Hokkaido, Japan to the Anadyr R., Russia.	U.S.A. (OR, WA) all naturally spawned populations from the Columbia R. and its tributaries upstream from its mouth to a point east of the Hood R. and White Salmon R., including the Willamette R. to Willamette Falls in Oregon, excluding the spring run in the Clackamas R.	T	664	NA	NA
Salmon, chinook	*Oncorhyncus tshawytscha.*	North America from Ventura R. in California to Point Hope, Alaska and the Mackenzie R. area in Canada, Northeast Asia from Hokkaido, Japan to the Anadyr R., Russia.	U.S.A. (OR) all naturally spawned populations in the Clackamas R. and the Willamette R. and its tributaries above Willamette Falls.	T	664	NA	NA
Salmon, chinook	*Oncorhyncus tshawytscha.*	North America from Ventura R. in California to Point Hope, Alaska and the Mackenzie R. area in Canada, Northeast Asia from Hokkaido, Japan to the Anadyr R., Russia.	U.S.A. (WA) all naturally spawned populations in the Columbia R. tributaries upstream of Rock Island Dam and downstream of Chief Joseph Dam, excluding the Okanogan R., and the Columbia R. from a line between the west end of Clatsop jetty, OR, and the west end of Peacock jetty, WA, upstream to Chief Joseph Dam, including spring-run hatchery stocks (and their progeny) in Chiwawa R., Methow R., Twisp R., Chewuch R., White R., and Nason Creek.	E	664	NA	N

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Salmon, chum	*Oncorhyncus keta* ..	North Pacific Rim from Korea and the Japanese Island of Honshu east to Monterey Bay, California, Arctic Ocean from the Laptev Sea in Russia to Mackenzie R. in Canada.	U.S.A. (WA) all naturally spawned summer-run populations in Hood Canal and its tributaries and Olympic Peninsula rivers between Hood Canal and Dungeness Bay.	T	664	NA	NA
Salmon, chum	*Oncorhyncus keta* ..	North Pacific Rim from Korea and the Japanese Island of Honshu east to Monterey Bay, California; Arctic Ocean from the Laptev Sea in Russia to Mackenzie R. in Canada.	U.S.A. (OR, WA) all naturally spawned populations in the Columbia R. and its tributaries.	T	664	NA	NA
•	•	•	•	•	•	•	
Salmon, sockeye	*Oncorhyncus nerka*	North Pacific Basin from U.S.A. (CA) to Russia.	U.S.A. (WA) all naturally spawned populations in Ozette Lake and its tributary streams.	T	664	NA	NA
•	•	•	•	•	•	•	
Steelhead	*Oncorhyncus mykiss.*	North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula.	U.S.A. (OR) all naturally spawned winter-run populations in the Willamette R. and its tributaries from Willamette Falls to the Calapooia R., inclusive.	T	664	NA	NA
Steelhead	*Oncorhyncus mykiss.*	North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula.	U.S.A. (OR, WA) All naturally spawned populations in streams above and excluding the Wind R. in Washington, and the Hood R. in Oregon, upstream to, and including, the Yakima R. Excluded are steelhead from the Snake R. Basin.	T	664	NA	NA
•	•	•	•	•	•	•	

Dated: July 12, 1999.

Marshall P. Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. 99–19712 Filed 7–30–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 072799D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1999 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 28, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Table 2 of the Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the 1999 Initial TAC of Pacific ocean perch for the Central Aleutian District as 3,561 metric tons (mt). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 TAC for Pacific ocean perch in the Central Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,261 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC of Pacific ocean perch for the Central Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 28, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–19739 Filed 7–28–99; 3:04 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 072799E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1999 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 28, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Table 2 of the Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the 1999 Initial TAC of Pacific ocean perch for the Western Aleutian District as 5,753 metric tons (mt). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 TAC for Pacific ocean perch in the Western Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,453 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC of Pacific ocean perch for the Western Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 28, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–19740 Filed 7–28–99; 3:04 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 147
Monday, August 2, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–07–AD]

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to BHTC Model 407 helicopters. This proposal would require visually inspecting the vertical fin (fin) for reduced skin thickness; repairing or replacing the fin, if necessary; and identifying fins that have been inspected or repaired. This proposal is prompted by a report of an inboard skin damaged during production. The actions specified by the proposed AD are intended to detect fin assemblies with reduced skin thickness which, if not corrected, reduce the strength of the skin, and could lead to failure of the fin and loss of control of the helicopter.

DATES: Comments must be received on or before October 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–07–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mike Kohner, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–07–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–07–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

Transport Canada, which is the airworthiness authority for Canada, has notified the FAA that an unsafe condition may exist on BHTC Model 407 helicopters. Transport Canada advises some fin assemblies may have a reduced skin thickness which decreases the strength of the fin. If not corrected, this situation can lead to cracking of the vertical fin assembly.

BHTC has issued Bell Helicopter Textron Alert Service Bulletin No. 407–98–17, Revision A, dated June 26, 1998, which specifies a visual inspection for certain fin assemblies. It also provides for the repair and fluorescent penetrant inspection of repaired fin assemblies. It further provides for marking the vertical fin to show it is in compliance with the service bulletin. Transport Canada classified this service bulletin as mandatory and issued AD No. CF–98–10R1, dated August 20, 1998, in order to assure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 407 helicopters of the same type design registered in the United States, the proposed AD would require visually inspecting certain serial-numbered fins, part number 206–020–113–223A, –223B, or –223S, for reduced skin thickness; repairing or replacing the vertical fin, if necessary; and marking fins that have been inspected or repaired. This proposal is prompted by a report of an inboard skin damaged during production. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 124 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 3.0 work hours to accomplish the visual

inspection; 4.0 work hours to accomplish the vertical fin replacement, and 0.5 work hour to mark the fin, and that the average labor rate is $60 per work hour. Required parts would cost approximately $18,770. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $19,220 per helicopter, or a total of $2,383,280 for the entire fleet, to accomplish all the actions including replacing the fin.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron Canada: Docket No. 99–SW–07–AD.

Applicability: Model 407 helicopters, with vertical fin (fin) assembly, part number (P/N) 206–020–113–223A, –223B, or –223S, with a serial number with a prefix of "BP", up to and including 2266 (except BP2260, BP2262, and BP2265), installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 100 hours time-in-service, unless accomplished previously.

To detect fin assemblies with reduced skin thickness which, if not corrected, reduce the strength of the skin, and could lead to failure of the vertical fin (fin) and subsequent loss of control of the helicopter, accomplish the following:

(a) Visually inspect the fin assembly for reduced skin thickness, indicated by notches, scratches, or grooves on the skin, in accordance with Part I of the Accomplishment Instructions contained in Bell Helicopter Textron Alert Service Bulletin No. 407–98–17, Revision A, dated June 26, 1998 (ASB). If notches, scratches, or grooves are found, repair or replace the fin assembly in accordance with Part II of the Accomplishment Instructions contained in the ASB .

(b) Identify any fin that has been inspected or repaired in accordance with Part III of the Accomplishment Instructions in the ASB.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–98–10R1, dated August 20, 1998.

Issued in Fort Worth, Texas, on July 26, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–19744 Filed 7–30–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–61–AD; Amendment 39–11061; AD 99–05–13]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech 17, 18, 19, 23, 24, 33, 35, 36/A36, A36TC/B36TC, 45, 50, 55, 56, 58, 58P, 58TC, 60, 65, 70, 76, 77, 80, 88, and 95 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking; withdrawal of final rule.

SUMMARY: This document proposes to withdraw Airworthiness Directive (AD) 99–05–13, which currently applies to Raytheon Aircraft Company (Raytheon) Beech 17, 18, 19, 23, 24, 33, 35, 36/A36, A36TC/B36TC, 45, 50, 55, 56, 58, 58P, 58TC, 60, 65, 70, 76, 77, 80, 88, and 95 series airplanes. AD 99–05–13 requires installing a placard on the fuel tank selector to warn of the no-flow condition that exists between the fuel tank detents. Since the issuance of AD 99–05–13, the Federal Aviation Administration (FAA) has re-evaluated all information related to this subject, and determined that the subject matter in this AD is an operational issue and does not address an unsafe condition. Accordingly, this action proposes to withdraw AD 99–05–13.

DATES: Comments must be received on or before September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Scott West, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4146; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–61–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–61–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 99–05–13, Amendment 39–11061 (64 FR 10560), currently requires installing a placard on the fuel tank selector to warn of the no-flow condition that exists between the fuel tank detents on Raytheon Beech 17, 18, 19, 23, 24, 33, 35, 36/A36, A36TC/B36TC, 45, 50, 55, 56, 58, 58P, 58TC, 60, 65, 70, 76, 77, 80, 88, and 95 series airplanes.

The AD was the result of reports of engine stoppage on the affected airplanes where the cause was considered to be incorrect positioning of the fuel selector. The actions of AD 99–05–13 were intended to prevent a lack of fuel flow to the engine caused by the incorrect positioning of the fuel selector, which could result in loss of engine power.

Events Leading to This Proposed Action

The FAA has since evaluated all information related the subject matter of AD 99–05–13 and has determined that:

—The positioning of the fuel selector is an operational issue and not an unsafe condition under part 39 of the Federal Aviation Regulations (14 CFR part 39) and should be handled by other methods;

—Normal operating and procedural information such as this should be handled through regular revisions to the Airplane Flight Manual (AFM) or Pilot's Operating Handbook (POH); and

—By requiring a placard in an AD to convey normal operating information, the FAA reduces the pilots' sensitivity to true emergency information that should be conveyed by placards.

The FAA's Determination and Provisions of This Proposed Action

Based on the above information, the FAA has determined that there is no need for AD 99–05–13 and that it should be withdrawn.

This proposed action would withdraw AD 99–05–13. Withdrawal of AD 99–05–13 would constitute only such action; and, if followed by a final action, would not preclude the agency from issuing another notice in the future, nor would it commit the agency to any course of action in the future.

Regulatory Impact

Since this proposed action would only withdraw an AD, it is neither a proposed AD nor a final AD and, therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Withdrawal

Accordingly, AD 99–05–13, Amendment 39–11061, published in the **Federal Register** on March 5, 1999 (64 FR 10560), is proposed to be withdrawn.

Issued in Kansas City, Missouri, on July 26, 1999.

Mike Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–19745 Filed 7–30–99; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Performance Data and Disclosure for Commodity Trading Advisors

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: On June 18, 1998, the Commodity Futures Trading Commission ("CFTC" or "Commission") published in the **Federal Register** a "Concept Release" seeking public comment on issues relating to the computation and presentation of rate of return information and other disclosures concerning partially-funded accounts managed by commodity trading advisors ("CTAs"). The Concept Release discussed rules proposed by National Futures Association ("NFA") as well as several other issues related to the presentation of CTA and commodity pool operator disclosure which appeared to warrant further study and analysis. The Concept Release requested public comment on both the NFA proposal and the other issues. Based on its consideration of comments received in response to the Concept Release, the Commission has determined to propose revisions to its rules concerning the documentation, computation, and disclosure of CTA's past performance information. The rules are intended to simplify the recordkeeping and computational requirements for CTAs who accept partially-funded client accounts, while providing for meaningful and focused disclosure to clients regarding the past performance of the CTA, and the risks attendant upon trading on a partially-funded basis.

DATES: Comments must be received by October 1, 1999.

ADDRESSES: Comments on the proposed rules may be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5221, or by electronic mail to secretary@cftc.gov. Reference should be made to "Performance Data and Disclosure for Commodity Trading Advisors."

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Associate Director, (202) 418–5092, electronic mail: "rwasserman@cftc.gov," or Eileen R. Chotiner, Futures Trading Specialist,

(202) 418–5467, electronic mail: "echotiner@cftc.gov," Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. The Concept Release

The Concept Release sought public comment on computational and disclosure matters relating to participation in programs of commodity trading advisors ("CTAs") on a partially-funded basis and raised specific questions regarding a number of issues: (1) Improving risk profile data for clients considering participation in CTA programs on a partially-funded basis; (2) providing CTA client account information to futures commission merchants ("FCMs") to aid the FCM's risk management; (3) improving risk profile data on commodity pools; (4) providing a theoretically sound basis of computation and presentation for rate of return ("ROR") and related risk profile data; (5) improving the presentation of historical performance and risk profile data; and (6) providing periodic statements of program activity and results to CTA clients.

The Commission initially provided a 60-day comment period on the Concept Release, through August 17, 1998. On August 6, 1998, the Commission extended the comment period for 30 days, through September 16, 1998. The Commission received 19 comments on the release: four from firms registered as both CTAs and commodity pool operators ("CPOs"); three from registered CTAs; one from a registered CPO; one from a bar association; one from a futures self-regulatory organization; one from a futures industry trade association; two from academicians; one from an administrative law judge; two from accounting/compliance firms; two from other financial services firms; and one from an individual investor.

The Concept Release addressed in particular rules proposed by the National Futures Association ("NFA").[1] In the rule submissions, NFA proposed that ROR be computed on the basis of the nominal account size, rather than the beginning net asset value ("BNAV") of the account, as currently required by Commission Rule 4.35(a)(6). NFA asserted that the amount of actual funding in a client's account does not control the CTA's trading decisions. In the Concept Release, the Commission raised questions about whether nominal account size is a legitimate basis for the computation of ROR, as well as whether NFA's proposed documentation and disclosure requirements were sufficient to address concerns about the impact of partial funding on a client's account.

In response to the questions raised in the Concept Release, some commenters indicated concern regarding the validity of the nominal account size and the ability of clients to interpret and compare performance data presented on a basis other than the actual funds deposited in a client's account. However, the majority of commenters, including NFA, the Managed Funds Association ("MFA"), and several CPOs and CTAs, expressed support for the use of nominal account size as the basis for computing ROR and presenting the CTA's past performance.

The Concept Release also discussed the current requirements for disclosure of draw-down information pursuant to Rules 4.35(a)(1)(v) and (vi), and asked for comment on the possibility of expanding draw-down disclosure in two areas. First, the Concept Release sought comment on the advisability of requiring draw-down percentage data to be presented at two or three partial-funding levels that are representative of those offered by the CTA, in addition to the fully-funded level. Second, the Concept Release sought comment on the concept of enhancing disclosure of a program's historical volatility, possibly by expanding the time period for historical performance disclosure; reducing the amount of monthly data; and requiring more detailed information concerning the volatility of the CTA's program, either through an expanded number of worst draw-down months, or by requiring presentation of the standard deviation of the monthly returns.

A number of commenters expressed concern that requiring too many items of data would result in less attention being paid to that information. The Commission has been attentive to those concerns. In seeking to highlight the increased leverage—and consequent increased risk—in partially funding accounts, the Commission has proposed a set of disclosures that is significantly limited compared to that discussed in the Concept Release.

A number of other ideas discussed in the Concept Release generated substantial opposition from commenters. These include a requirement that a CTA provide a copy of its agreement with the client to the client's FCM and additional reporting requirements for CTAs. The Commission has determined not to include these in the proposed rules.

II. The Proposed Rules

The Commission has carefully considered the comments received, and has determined to revise its rules to provide a comprehensive framework for addressing certain of the issues raised in the Concept Release. In making the current proposal, which incorporates most of the concepts included in the NFA proposal, the Commission seeks to simplify the recordkeeping and computational requirements for CTAs who accept partially-funded client accounts, while providing for meaningful and focused disclosure to clients regarding the past performance of the CTA, and the risks attendant upon trading on a partially-funded basis.

In particular, the Commission has determined to revise its rules to require that ROR be computed by dividing net performance by the nominal account size. This change is intended to reduce regulatory burdens by relieving CTAs of the responsibility for tying nominal account size to actual funding levels, and to permit a uniform method for CTAs to calculate their RORs, regardless of whether they accept partially-funded client accounts. As discussed below, CTAs who wish to measure performance on an actual funds basis may do so by setting the nominal account size equal to the actual funding level.

The risk disclosure requirements included in the proposed rules are intended to highlight critical information without overloading the client with excessive data. Other changes are proposed primarily to codify certain definitions and other information currently contained in Commission advisories.[2]

A. Documentation of Nominal Account Size

In order to address concerns regarding documentation of the nominal account size and other terms of the CTA's trading for clients' accounts, the Commission is proposing to add new paragraph (c) to Rule 4.33. This provision would require that the CTA execute a written agreement with each client that specifies: The nominal account size; the name or description of the trading program in which the client is participating; the basis for the computation fees; how additions or withdrawals of actual funds, or profits and losses will affect each of (a) the nominal account size and (b) the computation of fees; and whether the client will fully or partially fund the account. The provisions of proposed Rule 4.33(c) are substantially similar to the documentation requirements that were included in NFA's Proposal.

These requirements will apply to all CTAs, regardless of whether they accept partially-funded accounts. A CTA that intends to continue to measure its performance using actual funds may establish a nominal account size which is defined on an actual funds basis. The information specified by Rule 4.33(c) need not be contained in a separate agreement, but may be included as part of any other signed written agreement between the CTA and the client.

B. Changes to Calculations

The Commission is proposing to amend and re-order paragraphs (A)—(F) of Rule 4.35(a)(6)(i) to accommodate the use of nominal account size, rather than net asset value, as the basis for performance computation.[3] Rule 4.10(*l*) would also be amended to define the measurement of a CTA's worst peak-to-valley draw-down by net performance relative to nominal account size, rather than changes in net asset value. Proposed Rules 4.35(a)(6)(i)(D) and (E) address the fact that changes to the nominal account size may result either from changes in actual amounts, such as additions, withdrawals, profits or losses; or from changes to the nominal account size, pursuant to the terms of the CTA's agreement with the client in accordance with proposed Rule 4.33(c)(1). Proposed Rule 4.35(a)(6)(i)(B) defines net performance as the sum of the realized gain or loss on positions closed during the period plus the change during the period in unrealized gain or loss, plus interest on funds deposited with the client's FCM, less fees and expenses. This proposed rule also provides that no interest income may be imputed with respect to nominal account sizes or otherwise computed on a pro-forma basis.

Although proposed rule 4.35(a)(6)(i)(B) would include, as part of net performance, interest on actual funds deposited with the client's FCM, this raises questions regarding whether such interest should be credited as part of the CTA's performance where the interest is earned on investments directed by the FCM (as opposed to the CTA). Reasons supporting the inclusion of the interest include the following: (1) Since trading fees are charged against the CTA's performance, even though the commission rate may be negotiated by the client and the FCM, interest earned at the FCM should be credited to the CTA's performance to maintain parity; and (2) the interest is, in a real sense, part of the return on the funds. Reasons against the inclusion of the interest include the following: (1) Since the objective of performance reporting is to convey the results from the trading which a CTA performed on behalf of a client, it may be misleading to include interest earned on investments managed by the FCM (as opposed to the CTA); and (2) as one commenter explained, "(i)f a CTA agrees with each of several clients to a nominal account size and each account is traded similarly, the performance results of the CTA as they relate to these accounts should be the same." But, if interest on the funds on deposit with the client's FCM is included in the CTA's performance results, then the CTA will have different performance results, depending on each client's arbitrarily selected funding level. The Commission solicits comment on this issue.

C. Disclosure of Actual Funding Levels and Funds Under Management

In accepting the use of nominal account size to compute ROR, the Commission intends to permit CTAs to disclose their trading results as they relate to the account size which governs their trading decisions. However, the Commission believes that disclosure of the amount of client assets managed by the CTA—the funds under management—should continue to reflect the amount of actual funds committed by clients to the CTA's trading program, rather than the aggregate of nominal account sizes. It would be misleading to describe "notional funds,"[4] which the client has chosen not to place in an account over which the CTA has trading authority, as "funds under management." Rule 4.35(a)(1), therefore, would be revised to clarify that the disclosure of funds under management must reflect only the actual funds committed to the CTA's trading program. The term "Actual Funds" is defined in new Rule 4.10(n), which codifies the definitions included in Commission Advisories 87–2 and 93–13.[5] Rule 4.35(a)(1) would permit a CTA that does not posses information about the amount of actual funds a client has deposited to meet this disclosure requirement by simply disclosing that lack of information. New provisions, set forth in Rule 4.35(a)(1)(ix), would require that the performance capsule state the percentage of client accounts in the program that are fully funded and specify that any disclosure of aggregate nominal account sizes must be identified clearly as such and presented adjacent to the actual funds amounts.

D. Disclosure Concerning Draw-Downs

If the client funds the account traded by the CTA at a level less than the nominal account size, then gains or losses will represent a greater percentage of the amount funded. In other words, the leverage will be increased. This increased leverage increased both the likelihood that the client will be faced with a margin call and the size of such a potential margin call. It also increases the risk that the client will lose more than the funds it has advanced. In order to indicate clearly to potential clients the increased leverage—and the consequent increased risk—inherent in partial funding, new Rule 4.35(a)(1)(ix)(A) would require CTAs who accept partially-funded accounts to present draw-down figures computed on the basis of the actual funds committed to the CTA's program by the client with the lowest ratio of actual funds to nominal account size in the trading program.[6] If the CTA does not have sufficient information regarding the funding level of its client accounts, or if the lowest ratio is zero, the draw-down information would be presented at a funding level of 20%. These additional draw-down figures would be presented adjacent to the worst monthly and peak-to-valley draw-

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[1] By letters dated March 15, 1994 and March 15, 1995, NFA submitted to the Commission for its approval, pursuant to Section 17(j) of the Act, NFA Compliance Rule 2–34 and its Interpretive Notice regarding documentation and disclosure for partially-funded accounts. By letter dated February 26, 1998, NFA submitted a revision to NFA Compliance Rule 2–29 regarding the rate of return computation.

[2] CFTC Advisory 87–2 [1986–87 Transfer Binder] Comm. Fut. L. Rep. (CCH) para. 23,624 (June 2, 1987); CFTC Advisory 93–13, 58 FR 8226 (February 12, 1993).

[3] For example: Under the current method of calculation, if a CTA's program has beginning net asset value (BNAV) of 100, ending net asset value (ENAV) of 150, additions (ADDS) of 40 and withdrawals (WDRS) of 0, then net performance (NET–PERF) is 10, and ROR is 10%:

NET–PERF = ENAV − BNAV − ADDS + WDRS
10 = 150 − 100 − 40 + 0
ROR = NET–PERF/BNAV
10% = 10/100

Under the proposal, the CTA is not required to monitor net asset values, and thus net performance must be calculated directly. Under the proposed method of calculation, if the total of the nominal account sizes for the CTA's program (BNOM) is 100 at the beginning of the month, the realized gain on positions closed during the period (RG) is 7, the change in unrealized gains (UN–RG) is 5, and fees and expenses (FEES) are 2, then NET-PERF is still 10, and ROR is still 10%:

NET–PERF = RG + UN–RG − FEES
10 = 7 + 5 − 2
ROR = NET–PERF/BNOM
10% = 10/100

[4] The difference between the nominal account size and the actual funding level frequently been referred to as "notional funds."

[5] *See supra*, note 2.

[6] For example, if the lowest funding level is 25% and the greatest monthly drawdown is 15%, the drawdown shown on the basis of actual funding would be 60% (15%÷25%).

down percentages based on the aggregate nominal account sizes.

The concept release discussed the Commission's concern regarding disclosure of the historical volatility of CTA programs and suggested that, since extreme market events do not always occur within the five-year time-frame specified by the regulations, this time-frame may permit some CTAs to omit their greatest draw-downs from their historical risk profiles. In order to address these concerns, the Commission proposes to revise Rules 4.35(a)(1)(v) and (vi) to require that the worst monthly and peak-to-valley draw-down, which will be based on the composite of accounts, be included in the performance capsule for the most recent five years and, in addition, for the life of the program, if longer than five years. The Commission does not intend that this requirement create a significant additional recordkeeping burden for CTAs, and is proposing a corresponding change to Rule 4.35(a)(6)(ii) to clarify that only the monthly figures derived from the supporting documentation, and not the supporting documentation itself, must be maintained beyond the five-year period specified in Rule 1.31. However, the Commission specifically invites comment regarding the extent to which the additional draw-down disclosure would provide a benefit to clients and details regarding the extent of any additional burden that is anticipated.[7]

E. Disclosure Concerning Range of Rates of Return

The Commission believes that disclosing the range of RORs for closed accounts in the offered program provides an important measure of the returns experienced by clients and will be useful to prospective clients considering participation in the CTA's program. Therefore, the Commission is also proposing to revise Rule 4.35(a)(1)(viii) to require that the performance capsule for the offered program include, in addition to the number of accounts closed with profits and the number closed with losses, the range of rates of return for the accounts closed with net lifetime profits and accounts closed with net lifetime losses, during the five-year period. As previously noted, Rules 4.35(a)(1)(v) and (vi) would be revised to specify that the worst draw-down information be based on the composite of accounts. Thus, the draw-down figures in the CTA's capsule would not reflect the ROR of a client account that performed worse than other accounts in composite.[8] In light of the proposed changes to Rules 4.35(a)(1)(v) and (vi), the Commission believes that presentation of the range of RORs for closed accounts would provide a valuable additional perspective on the results experienced by individual clients. The Commission does not anticipate a significant additional burden as a result of this change due to the existing requirement of Rule 4.35(a)(1)(viii) that CTAs disclose the number of accounts closed with profits and the number of accounts closed with losses.

F. Disclosure of Monthly Performance

The Commission wishes to explore the possibility of requiring that the monthly RORs be presented in a bar graph, in order to provide a more direct visual representation of the variations in RORs from month to month. Currently, Rule 4.35(a)(2)(ii) specifies that monthly RORs for the offered program must be presented either in a numerical table or in bar graph. Proposed revisions to Rule 4.35(a)(2)(ii) would require the bar graph to be disclosed in addition to the tabular presentation of monthly ROR figures. The Commission is requesting comment regarding whether use of a bar graph may communicate the month-to-month changes in customer returns more effectively than a tabular presentation, as well as whether the bar graph should be required in lieu of the tabular presentation of RORs. In addition, the Commission seeks comment regarding the significance of any additional burden that may result from the requirements.

G. Illustrative Performance Capsule

An example of a performance capsule that would meet the disclosure requirements, modified as discussed in §§ II(C–F) above, is attached as Appendix A. This example is not intended to mandate a particular format, but only to serve as an illustration.

H. Changes to Definitions and Disclosure Requirements

Changes are also being proposed to codify definitions and other information currently contained in Commission advisories as well as to clarify existing rules and definitions in the context of the proposed rule revisions. New Rule 4.34(p), in the main, codifies certain of the requirements currently set forth in Commission Advisory 93-13, and also discussed as part of the NFA Proposal, for disclosure to prospective clients of material information concerning the practice of partially funding an account and the factors considered by the CTA in determining the trading level for a given nominal account size. Definitions of "nominal account size," "actual funds" and "partially-funded account" are proposed to be added as Rules 4.10(m), (n) and (o), respectively.

Proposed Rule 4.10(p) contains a definition of "most recent five years" that is intended to simplify the terminology used to designate the five calendar years and year-to-date time period for which performance is required to be disclosed pursuant to Rules 4.25(a)(5) and 4.35(a)(5). This clarification does not affect the existing provisions of Rules 4.25(a)(7) and 4.35(a)(4) that require performance information in a Disclosure Document to be current as of a date not more than three months preceding the date of the Disclosure Document.

I. Commodity Pool Disclosure

The Concept Release included a detailed discussion of disclosure by CPOs. Due to the complexity of pool performance issues, the Commission is, generally, deferring consideration of changes to the requirements for disclosure of past performance by CPOs, other than changes primarily intended to conform the requirements for presentation of CTA past performance in pool disclosure documents with the revisions to Rule 4.35(a)(1) proposed herein. Other issues relating to pools will be considered in the context of the Commission's implementation of recommendations included in the President's Working Group on Financial Markets' April 1999 study, "Hedge Funds, Leverage and the Lessons of Long-Term Capital Management."

In order to highlight a use of leverage by commodity pools, the Commission is proposing one substantive revision to commodity pool disclosure in Rule 4.25(a)(1)(ii)(H). This provision would be applicable only where the CPO allocates, to any of the pool's CTAs, an amount of actual funds which is less than the nominal account size stated in the pool's written agreement with the CTA. In such cases, the CPO would be required to include in the performance capsule for each such CTA, in a column adjacent to the presentation of data based on nominal account size, the draw-down information required by Rule 4.25(a)(1)(ii)(E) and (F), computed on the basis of the ratio of the nominal account size to the pool's actual funds allocated to the CTA's program.

[7] Of course, prior to the effective date of these proposed rule changes, commodity trading advisors would not be obligated to maintain records for this purpose longer than the five years required under Rule 1.31.

[8] However, CTAs would remain subject to the requirement of Rule 4.34(o) to disclose all material information to existing or prospective clients even if such information is not specifically required by these regulations.

III. Transitional Provisions

The Commission proposes to require CTAs and CPOs to comply with the revisions proposed herein, including the requirement to obtain the documentation required by new Rule 4.33(c) for both new and existing clients, by no later than July 1, 2000. The Commission seeks comment on any difficulties anticipated in complying with these proposed requirements by July 1, 2000. CTAs and CPOs would be permitted to adopt these changes immediately upon the effective date of the proposed rules.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), U.S.C. 606–11 (1994), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[9] The Commission previously has determined that registered CPOs are not small entities for the purpose of the RFA.[10] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.[11] In this regard, the Commission notes that the rule revisions being proposed herein create some changes to the content of the documentation and disclosure requirements for CTAs, but are not expected to increase such requirements, and, in fact, are expected ultimately to ease the computational and recordkeeping requirements for CTAs who manage partially-funded client accounts. The Commission has previously determined that the disclosure requirements governing this category of registrant will not have a significant economic impact on a substantial number of small entities.[12] Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13, 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by that Act.

The group of rules contained in all of Part 4, "Commodity Pool Operators and Commodity Trading Advisers," of which Rules 4.10, 4.25, 4.33, 4.34 and 4.35 are a part, was approved on September 4, 1998 and assigned OMB control number 3038–0005. The Commission does not anticipate that the proposed revisions to the rules will affect the total burden of this group of rules. The group of rules contained in OMB control number 3038–0005 has the following burden:

Average burden hours per response: 4.95
Number of respondents: 4,624
Frequency of response: On occasion

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 4

Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors.

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23.

2. Section 4.10 is proposed to be amended by revising paragraph (l) and adding paragraphs (m), (n), (o) and (p) to read as follows:

§ 4.10 Definitions.

* * * * *

(l) *Worst peak-to-valley draw-down* means:

(1) For a commodity pool, the greatest cumulative percentage decline in month-end net asset value due to losses sustained during any period in which the initial month-end net asset value is not equaled or exceeded by a subsequent month-end net asset value. Such decline must be expressed as a percentage of the initial month-end net asset value, together with an indication of the months and year(s) of such decline from the initial month-end net asset value to the lowest month-end asset value of such decline.

(2) For an account directed by a commodity trading advisor or for a commodity trading advisor's trading program, the greatest negative net performance during any period, beginning at the start of one month, and ending at the conclusion of that month or a subsequent month. The worst peak-to-valley draw-down must be expressed as a percentage of the nominal account size at the beginning of the period, together with an indication of the months and year(s) of such draw-down.

(3)(i) For purposes of paragraph (2) of this section, net performance for a period is defined as the total of:

(A) the realized gain or loss on position closed during the period, plus

(B) The change during the period in unrealized gain or loss, plus

(C) Interest accrued on funds deposited in the client's account at a futures commission merchant, plus

(D) Other income accrued on positions held as part of the CTA's program, minus

(E) Fees and expenses.

(ii) No income may be imputed with respect to nominal account sizes or otherwise computed on a pro-forma basis.

(4) For purposes of §§ 4.25 and 4.35, a peak-to-valley draw-down which began prior to the beginning of the most recent five calendar years is deemed to have occurred during such five-calendar-year period.

(m) *Nominal account size* means the account size, designated in the written agreement specified in § 4.33(c), which establish he client's level of trading in a commodity trading advisor's program.

(n) *Actual funds* means the amount of margin-qualifying assets committed to a commodity trading advisor's program, either:

(1) On deposit in an account at a futures commission merchant to margin the client account for which ■ commodity trading advisor has trading authority; or

(2) In another account, so long as the commodity trading advisor has written evidence demonstrating the following:

(i) The client owns the funds and has designated such funds as committed to the commodity trading advisor's trading program;

(ii) The futures commission merchant carrying the client's account for which the commodity trading advisor directs trades has the power to transfer the funds readily from the other account for the purpose of meeting margin requirements in connection with such trades, on a routine operational basis

[9] 47 FR 18618–181621 (April 30, 1982).

[10] 47 FR 18619–18620.

[11] 47 FR 18618–18620.

[12] *See* 60 FR 38146, 38181 (July 25, 1995) and 48 FR 35248 (August 3, 1983).

and without advance notice to the client; and

(iii) The commodity trading advisor has ready access to information concerning the designated balance in the account.

(o) Partially-funded account means a client participation in the program of a commodity trading advisor in which the amount of actual funds committed to the trading program is less than the nominal account size.

(p) For purposes of §§ 4.25 and 4.35, the term *most recent five years* means:

(1) The time period beginning January 1 of the calendar year five years prior to the date of the Disclosure Document and ending as of the date of the Disclosure Document or

(2) The life of the trading program, if less than five years.

3. Section 4.25 is proposed to be amended by revising paragraphs (a)(1)(ii)(D)(*1*) and (*2*) and (E) and (F) and by adding paragraph (a)(l)(i)(H) to read as follows:

§ 4.25 Performance disclosures.

(a) * * *

(1) * * *

(ii) * * *

(D)(*1*) The aggregate of actual funds committed to all of the trading programs of the trading advisor or other person trading the account, as of the date of the Disclosure Document or, if the commodity trading advisor does not have sufficient information regarding the funding of its client's accounts to determine the aggregate of actual funds committed to its programs, a statement of that fact;

(*2*) The aggregate of actual funds committed to the specified trading program of the commodity trading advisor, as of the date of the Disclosure Document or, if the commodity trading advisor does not have sufficient information regarding the funding of its clients' accounts to determine the aggregate of actual funds which are committed to the specified trading program, a statement of that fact.

(E) The greatest monthly draw-down for the trading program specified, expressed as a percentage of aggregate nominal account sizes, and indicating the month and year of the draw-down during the most recent five years.

(F) The greatest peak-to-valley draw-down for the trading program specified, expressed as a percentage of aggregate nominal account sizes, and indicating the month(s) and year(s) of the draw-down during the most recent five years.

* * * * *

(H) In addition to the information specified in § 4.25(a)(1)(ii)(A)–(G), where the CPO allocates, to any of the pool's, CTAs, an amount of funds which is less than the nominal account size states in the written agreement with the CTA, the performance capsule for each such CTA must include, in a column adjacent to the presentation of data based on nominal account size, the draw-down information required by § 4.25(a)(1)(ii)(E) and (F), computed on the basis of the ratio of the nominal account size to the pool's actual funds allocated to the commodity trading advisor's program.

4. Section 4.33 is proposed to be amended by adding paragraph (c) to read as follows:

§ 4.33 Recordkeeping.

* * * * *

(c) A commodity trading advisor must obtain a written agreement signed by each client which, at a minimum, clearly specifies:

(1) The nominal account size;

(2) The name or description of the trading program in which the client is participating;

(3) The basis for the computation of fees;

(4) How each of the following will affect each of the nominal account size and the computation of fees: additions or withdrawals of actual funds or profits or losses; and

(5) Whether the client will deposit, maintain or make accessible to the FCM an amount equal to or less than the nominal account size, i.e., to fully or partially fund the account.

5. Section 4.34 is proposed to be amended by adding paragraph (p) to read as follows:

§ 4.34 General disclosures required.

* * * * *

(p) *Additional Disclosure by Commodity Trading Advisors Accepting Partially-funded Accounts.* A commodity trading advisor that accepts a partially-funded account (as defined in § 4.10(o)) must disclose:

(1) How the management fees will be computed, expressed as a percentage of the nominal accoun: size, and an explanation of the effect of partially funding an account on the management fees as a percentage of actual funds.

(2) An estimated range of the commissions generally charged to an account expressed as a percentage of the nominal account size and an explanation of the effect of partially funding an account on the commissions as a percentage of actual funds;

(3) A statement that partial funding increases leverage, that leverage will magnify both profits and losses, and that the greater the disparity between the nominal account size and the amount deposited, maintained or made accessible to the futures commission merchant, the greater the likelihood and frequency of margin calls, and the greater the size of margin calls as a percentage of the amount of actual funds committed to the commodity trading advisor's program; and

(4) A description of the factors considered by the commodity trading advisor in determining the level of trading for a given nominal account size in the offered trading program and an explanation of how those factors are applied.

6. Section 4.35 is proposed to be amended by revising paragraphs (a)(1)(iv) through (a)(1)(ix), (a)(2), (a)(6)(i) and (a)(6)(ii) to read as follows:

§ 4.35 Performance disclosures.

* * * * *

(a) * * * (1) * * *

(iv)

(A) The aggregate of actual funds committed to all of the trading programs of the trading advisor or other person trading the account, as of the date of the Disclosure Document, of, if the commodity trading advisor does not have sufficient information regarding the funding of its clients' accounts to determine the aggregate of actual funds committed to its programs, a statement of that fact;

(B) The aggregate of actual funds committed to the specified trading program of the commodity trading advisor, as of the date of the Disclosure Document, or, if the commodity trading advisor does not have sufficient information regarding the funding of its client accounts to determine the aggregate of actual funds which are committed to the specified trading program, a statement of that fact.

(v) The greatest monthly draw-down for the trading program specified, expressed as a percentage of aggregate nominal account sizes, and indicating the month and year of the draw-down during each of the following periods:

(A) The most recent five years and

(B) If the commodity trading advisor has traded client accounts pursuant to the trading program for longer than the most recent five years, since the commodity trading advisor began trading the program for client accounts.

(vi) The greatest peak-to-valley draw-down for the trading program specified expressed as a percentage of aggregate nominal account sizes, and indicating the month(s) and year(s) of the draw-down, during each of the following periods:

(A) The most recent five years and

(B) If the commodity trading advisor has traded client accounts pursuant to the trading program for longer than the most recent five years, since the commodity trading advisor began trading the program for client accounts.

(vii) Subject to § 4.35(a)(2) for the offered trading program, the annual and year-to-date rate-of-return for the program for each of the five most recent calendar years and year-to-date, computed on a compounded monthly basis; and

(viii) In the case of the offered trading program:

(A)(*1*) The number of accounts traded pursuant to the offered trading program that were closed during the period specified in § 4.35(a)(5) with positive net lifeline performance (profits) as of the date the account was closed, and

(*2*) The range of rates of return for the accounts closed with net lifetime profits; and

(B)(*1*) The number of accounts traded pursuant to the offered trading program that were closed during the period specified in § 4.35(a)(5) with negative net lifeline performance (losses) as of the date the account was closed, and

(*2*) The range of rates of return for the accounts closed with net lifetime profits; and

(ix) In addition to the information specified in § 4.35(a)(1)(i)–(viii), where the commodity trading advisor accepts partially-funded accounts, the performance capsule must include:

(A) A statement that rates of return are based on nominal account size.

(B) In a column adjacent to the presentation of data based on nominal account size, the draw-down information required by § 4.35(a)(1)(v) and (vi), divided by the percentage of actual funds committed to the commodity trading advisor's program by the client with the lowest ratio of actual funds to nominal account size in the trading program.

(*1*) If the commodity trading advisor does not have sufficient information regarding the funding level of its client accounts to determine the lowest ratio, or if the lowest ratio is zero, present this information at a funding level of 20 percent.

(*2*) The percentage basis of the computation, i.e., the actual funds ratio or the optional 20 percent, must be disclosed in the heading of the column.

(C) A statement of the percentage of client accounts in the program for which the actual funds committed equal the nominal account size. If the commodity trading advisor does not have sufficient information regarding the amount of actual funds committed by its clients to the trading program to determine the percentage of client accounts which have actual funding equal to the nominal account size, the commodity trading advisor must state that fact.

(D) If the commodity trading advisor elects to include the aggregate of the nominal account sizes of the client accounts in the trading program specified, this information must be placed adjacent to the disclosure of actual funds under management by the commodity trading advisor as required by § 4.35(a)(1)(iv).

(2) *Additional requirements with respect to the offered trading program.*

(i) (The performance of the offered trading program must be identified as such and separately presented first;

(ii) The rate of return of the offered trading program must be presented on a monthly basis for the most recent five years, in a numerical table and in bar graph.

(iii) (The bar graph used to present monthly rates of return for the offered trading program:

(A) Must show percentage rate of return on the vertical axis and monthly increments on the horizontal axis; and

(B) Must be scaled in such a way as to clearly show month-to-month differences in rates of return.

(iv) The commodity trading advisory must made available to prospective and existing clients upon request a table showing the information required to be calculated pursuant to § 4.35(a)(6). This table must be updated at least quarterly.

(6) *Calculation of, and recordkeeping concerning, performance information.*

(i) * * *

(A) The nominal account size at the beginning of the period, defined as the previous period's ending nominal account size;

(B)(*1*) The net performance for the period, which is defined as the total of:

(*i*) the realized gain or loss on positions closed during the period plus

(*ii*) the change during the period in unrealized gain or loss, plus

(*iii*) interest accrued on funds deposited in the client's account at a futures commission merchant, plus

(*iv*) other income accrued on positions held as part of the CTA's program, minus

(*v*) fees and expenses.

(*2*) no income may be imputed with respect to nominal account sizes or otherwise computed on a proforma a basis.

(C) The nominal rate of return for the period, which shall be calculated by dividing the net performance by the nominal account size at the beginning of the period.

(D) Changes to the nominal account size during the period, pursuant to the terms of the CTA's agreement with the client in accordance with § 4.33(c)(4). The records should clearly delinate the source of each change (additions or withdrawals of actual funds, profits or losses, or otherwise).

(E) Changes to the nominal account size pursuant to the terms of the CTA's agrement with the client in accordance with § 433(c)(1). The records should clearly delineate the source of each change (the opening or closing of accounts during the period or changes to nominal account size specifically directed by a client in writing.) If a client and the advisor agree that a nominal account size be changed effective at the beginning of a period, the change shall be reflected during the prior period.

(F) The nominal account size at the end of the period, defined the sum of the nominal account size at the beginning of the period (§ 4.35(a)(6)(i)(A)) and the changes specified in this § 4.35(a)(6)(i) (D) and (E).

(ii) All supporting documents necessary to substantiate the computation of such amounts must be maintained in accordance with § 1.31. With respect to the disclosures required by § 4.34(a)(1)(v)(B) and § 4.35(a)(1)(vi)(B), the monthly figures referred to in § 4.35(a)(6)(i)(a–F) must be maintained for five years subsequent to the last date on which disclosure document reflecting the specified trading program is prepared.

Issued in Washington, D.C. on July 26, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

BILLING CODE 6351–01–M

APPENDIX A
ILLUSTRATIVE EXAMPLE OF PERFORMANCE CAPSULE

PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS

Name of CTA:	XYZ Inc.
Name of Trading Program:	Diversified Program
CTA Began Trading Client Accounts:	February 1989
CTA Began Trading Client Accounts in this Program:	March 1992
Current Number of Accounts in Program:	37
Actual Funds Managed by CTA in All Programs:	$12,749,420
Actual Funds Managed by CTA in Diversified Program:	$9,309,600
Aggregate Nominal Account Sizes —	
All Programs	$63,747,100
Diversified Program	$46,548,000

	Nominal Account Size	*20% Actual Funding Level*
Largest Monthly Draw-down — Last Five Years:	Jan 1994: -24%	-120%
Life of Program:	Dec 1992: -30%	-150%
Worst Peak to Valley Draw-down — Last Five Years:	Apr 98-Jun 98: -29%	-145%
Life of Program:	Jun 92-Apr 93: -34%	-170%

Annual Rates of Return:

1999 (YTD)	1998	1997	1996	1995	1994
-7%	10%	62%	63%	149%	-13%

Number of Accounts Closed with Profits:	25
Range of RORs for Accounts Closed with Profits:	35% — 123%
Number of Accounts Closed with Losses:	15
Range of RORs for Accounts Closed with Losses:	-12% — -68%

Rates of Return are Based on Nominal Account Size

As of May 31, 1999, 5% of the accounts in this program have actual funds equal to their nominal account size.

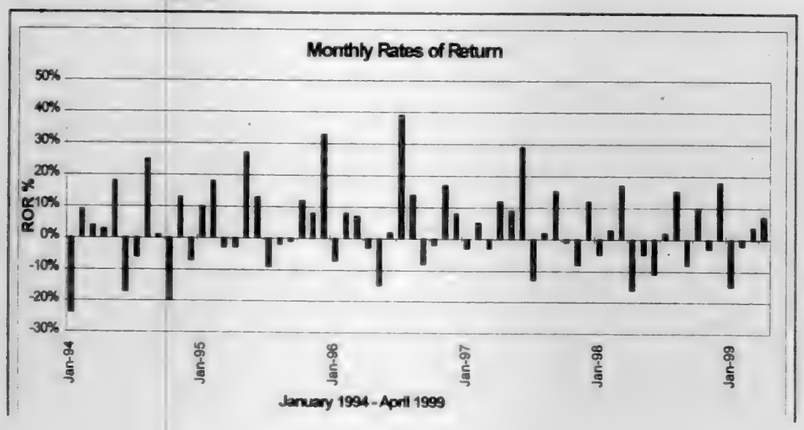

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MONTHLY RATES OF RETURN (JANUARY 1994–APRIL 1999)

[In percent]

	1999	1998	1997	1996	1995	1994
January	-15	-5	-3	-7	10	-24
February	-2	3	5	8	18	9
March	4	17	-3	7	-3	4
April	7	-16	12	-3	-3	3
May		--5	9	-15	27	18
June		-11	29	2	13	-17
July		2	-13	39	-9	-6
August		15	2	14	-2	25
September		-8	15	-8	-1	1
October		10	-1	-2	12	-20
November		-3	-8	17	8	13
December		18	12	8	33	-7
Annual/YTD	-7	10	62	63	149	-13

[FR Doc. 99–19572 Filed 7–30–99; 8:45 am]
BILLING CODE 6351–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12, 113 and 141

RIN 1515–AC45

Assessment of Liquidated Damages Regarding Imported Merchandise That is Not Admissible Under the Food, Drug and Cosmetic Act

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to provide for the assessment of liquidated damages equal to the domestic value of the merchandise in the case of merchandise that is not admissible under the provisions of the Food, Drug and Cosmetic Act and that is not treated or otherwise disposed of in accordance with that Act. The document also proposes to amend various provisions of the Customs Regulations pertaining to customs bonds to provide for liquidated damages of three times the appraised value of the merchandise in the case of merchandise that is restricted or prohibited from entry. Finally, the document sets forth a proposed editorial correction within one of the sections of the Customs Regulations pertaining to Customs bonds. The substantive changes reflected in the proposed amendments are intended to enhance the effectiveness of the affected regulatory provisions by increasing and clarifying the potential liability for the payment of liquidated damages by principals and sureties on customs bonds.

DATES: Comments must be received on or before October 1, 1999.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch (202-927–2344).

SUPPLEMENTARY INFORMATION:

Background

Section 801 of the Food, Drug and Cosmetic Act, as amended (21 U.S.C. 381), and the regulations promulgated thereunder, provide the basic legal framework governing the importation of foodstuffs into the United States. Under 21 U.S.C. 381(a), the Secretary of Health and Human Services is authorized to refuse admission of, among other things, any article that is adulterated, misbranded or has been manufactured, processed or packed under insanitary conditions. The Secretary of the Treasury is required by section 381(a) to cause the destruction of any article refused admission unless the article is exported, under regulations prescribed by the Secretary of the Treasury, within 90 days of the date of notice of the refusal or within such additional time as may be permitted pursuant to those regulations.

Under 21 U.S.C. 381(b), pending decision as to the admission of an article being imported or offered for import, the Secretary of the Treasury may authorize delivery of such article to the owner or consignee upon the execution of a good and sufficient bond providing for the payment of liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of the Treasury. In addition, section 381(b) allows the owner or consignee in certain circumstances to take action to bring an imported article into compliance for admission purposes, under such bonding and other requirements as the Secretary of the Treasury may prescribe by regulation.

Based upon the above statutory authority, imported foodstuffs are conditionally released under bond while determinations as to admissibility are made; *see* § 12.3 of the Customs Regulations (19 CFR 12.3). Under § 141.113(c) of the Customs Regulations (19 CFR 141.113(c)), Customs may demand the return to Customs custody of most types of merchandise that fail to comply with the laws or regulations governing their admission into the United States (also referred to as the redelivery procedure). The condition of the basic importation and entry bond contained in § 113.62(d) of the Customs Regulations (19 CFR 113.62(d)) sets forth the obligation of the importer of record to timely redeliver released merchandise to Customs on demand and provides that a demand for redelivery will be made no later than 30 days after the date of release of the merchandise or 30 days after the end of the conditional release period, whichever is later. Failure to meet the obligation to redeliver contained in § 113.62(d) will create a potential liability for the payment of liquidated damages under the terms of the bond.

Use of the Domestic Value Standard for Liquidated Damages

In an April 1998 report to the Chairman of the Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, on the subject of food

safety, the United States General Accounting Office (GAO) determined that federal efforts to ensure the safety of imported foods were inconsistent and unreliable. Among its specific conclusions, the GAO report indicated that a weakness existed in the Customs bond structure in that liquidated damages arising from breach of obligations to redeliver merchandise for which admission was refused did not represent a deterrent to the importation of unsafe products.

In response to this study, Customs is proposing in this document to amend § 12.3 of the Customs Regulations (19 CFR 12.3) by designating the present text as paragraph (a) and adding a new paragraph (b) that would refer specifically to the assessment of liquidated damages with regard to any food, drug, device or cosmetic that is not redelivered into Customs custody or otherwise treated or disposed of within the time period prescribed by law after such merchandise has been found to be inadmissible pursuant to the provisions of the Food, Drug and Cosmetic Act. The proposed new paragraph (b) specifically provides for the assessment of liquidated damages in an amount equal to the domestic value of the merchandise at the time of entry as if it had not been refused admission or otherwise found to be noncompliant. The meaning of domestic value as set forth in § 162.43(a) of the Customs Regulations (19 CFR 162.43(a)) for purposes of seized merchandise (that is, "the price at which such or similar property is freely offered for sale at the time and place of appraisement, in the same quantity or quantities as seized, and in the ordinary course of trade") would be used as the basis for calculating the liquidated damages.

Use of the "Three Times" Value Standard for Prohibited Merchandise

The conditions of the basic importation and entry bond set forth in § 113.62 of the Customs Regulations (19 CFR 113.62), the conditions of the basic custodial bond set forth in § 113.63 of the Customs Regulations (19 CFR 113.63), the conditions of the international carrier bond set forth in § 113.64 of the Customs Regulations (19 CFR 113.64), the conditions of the commercial gauger and commercial laboratory bond set forth in § 113.67 of the Customs Regulations (19 CFR 113.67), and the conditions of the foreign trade zone operator bond set forth in § 113.73 of the Customs Regulations (19 CFR 113.73) prescribe, as a consequence of default, the assessment of liquidated damages equal to three times the appraised value of the merchandise involved in the default if that merchandise is "restricted merchandise or alcoholic beverages." Similar language is also used in § 141.113(h) of the Customs Regulations (19 CFR 141.113(h)), which recites the liquidated damages that may be assessed for failure to comply with a demand for return of merchandise to Customs custody.

A question has arisen whether the higher "three times" standard for liquidated damages would be appropriate when the merchandise involved is prohibited from entry. While it remains Customs position that the regulatory provisions referred to above permit the assessment of three times the appraised value of the merchandise when the merchandise involved is prohibited, this document proposes to amend those regulatory provisions to explicitly provide for the assessment of three times the appraised value of the merchandise involved when that merchandise is restricted "or prohibited."

Editorial Correction

Finally, this document proposes to make an editorial correction to the first sentence of § 113.62(l)(1) of the Customs Regulations (19 CFR 113.62(l)(1)), which sets forth consequences of default. This sentence refers to "conditions (a), (g), or (i)" as exceptions to the general rules regarding the amount of liquidated damages that may be assessed (that is, the value of, or three times the value of, the merchandise involved in the default). However, the sentence in question also should exclude condition (k) of § 113.62, for which a different level of liquidated damages (that is, $100 per thousand board feet of the imported lumber) is prescribed in paragraph (l)(5) of that section.

Comments

Before adopting these proposed regulatory amendments as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

Regulatory Flexibility Act And Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed regulatory amendments will not require any additional action on the part of the public but rather are intended to facilitate Customs enforcement efforts involving existing import requirements. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Furthermore, this document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

List of Subjects

19 CFR Part 12

Bonds, Customs duties and inspection, Labeling, Marking, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizure and forfeiture, Trade agreements.

19 CFR Part 113

Bonds, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 141

Bonds, Customs duties and inspection, Entry procedures, Imports, Prohibited merchandise, Release of merchandise.

Proposed Amendments to The Regulations

For the reasons stated above, it is proposed to amend parts 12, 113 and 141 of the Customs Regulations (19 CFR parts 12, 113 and 141) as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 continues to read, and the specific authority citation for § 12.3 is revised to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS), 1624.

* * * * *

Section 12.3 also issued under 7 U.S.C. 135b, 21 U.S.C. 381;

* * * * *

2. Section 12.3 is revised to read as follows:

§ 12.3 Release under bond; liquidated damages.

(a) *Release.* No food, drug, device, cosmetic, pesticide, hazardous substance or dangerous caustic or corrosive substance that is the subject of § 12.1 will be released except in accordance with the laws and regulations applicable to the merchandise. Where any merchandise that is the subject of § 12.1 is to be released under bond pursuant to regulations applicable to that merchandise, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, shall be required.

(b) *Liquidated damages.* Whenever liquidated damages arise with regard to any food, drug, device or cosmetic subject to § 12.1(a) for failure to redeliver merchandise into Customs custody or for failure to rectify any non-compliance with the applicable provisions of admission, including the failure to export or destroy the merchandise within the time period prescribed by law after the merchandise has been refused admission pursuant to the provisions of the Food, Drug, and Cosmetic Act, those liquidated damages will be assessed in an amount equal to the domestic value (see § 162.43(a) of this chapter) of the merchandise at the time of entry as if the merchandise were admissible and otherwise in compliance.

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

§ 113.62 [Amended]

2. In § 113.62, paragraph (l)(1) is amended by removing the words "conditions (a), (g), or (i)" and adding, in their place, the words "conditions (a), (g). (i), or (k)" and by adding the words "or prohibited" after the word "restricted".

§ 113.63 [Amended]

3. In § 113.63, paragraph (h)(1) is amended by adding the words "or prohibited" after the word "restricted".

§ 113.64 [Amended]

4. In § 113.64, the second sentence of paragraph (b) is amended by adding the words "or prohibited" after the word "restricted".

§ 113.67 [Amended]

5. In § 113.67, paragraphs (a)(2)(i) and (b)(2)(i) are amended by adding the words "or prohibited" after the word "restricted".

§ 113.73 [Amended]

6. In § 113.73, the second sentence of paragraph (a)(2) is amended by adding the words "or prohibited" after the word "restricted".

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for part 141 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Section 141.113 also issued under 19 U.S.C. 1499, 1623.

§ 141.113 [Amended]

2. In § 141.113, the first sentence of paragraph (h) is amended by adding the words "or prohibited" after the word "restricted".

Raymond W. Kelly,

Commissioner of Customs.

Approved: June 17, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–19636 Filed 7–30–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07 99–056]

RIN 2115–AE46

Special Local Regulations: "Winston Offshore Cup, San Juan, Puerto Rico

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Temporary special local regulations are being proposed for the Winston Offshore Cup, San Juan, Puerto Rico. The event will be held from 1 p.m. to 2:30 p.m. Atlantic Standard Time (AST) on October 10, 1999, in and north of San Juan Harbor, Puerto Rico. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: Comments must be received on or before September 16, 1999.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Greater Antilles Section (aton), P.O. Box S–3666, San Juan, Puerto Rico, 00902, or may be delivered to the Aids to Navigation Office at the Coast Guard Base in Old San Juan between 7:30 a.m. and 3:30 p.m. Monday through Friday, except federal holidays. The telephone number is (787) 729–5381.

FOR FURTHER INFORMATION CONTACT: Mr. John Reyes at (787) 729–5381.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD07–99–056) and the specific section of this proposal to which each comment applies, and give a reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in the view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at the time and place announced by a notice in the **Federal Register**.

Background and Purpose

These proposed regulations would create a regulated area in an north of San Juan Harbor that would prohibit entry to non-participating vessels. The participating race boats will be competing at high speeds with numerous spectator craft in the area, creating an extra or unusual hazard on the navigable waterways. These regulations are required to provide for the safety of life on navigable waters during the Winston Offshore Cup, San Juan, Puerto Rico.

Regulatory Evaluation

This proposed regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(f) of that order. The Office of Management and Budget has excepted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT (44FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulated policies and procedures of DOT is unnecessary. The regulated area will only be in effect for three and one half hours in the vicinity of San Juan Harbor, Puerto Rico.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) the Coast Guard

must consider whether this proposed rulemaking will have a significant economic impact on a substantial number of small entities. Small entities include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant under their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities, as the regulations will only be in effect for approximately three and one half hours on one day in a limited area of San Juan Harbor and its vicinity.

Collection of Information

This proposed rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposed rule consistent with Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, and has determined that this action has been categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add temporary § 100.35T–07–056 to read as follows:

§ 100.35T–07–056 Winston Offshore Cup, San Juan, Puerto Rico.

(a) *Regulated Area:* A regulated area is established for an area starting in San Juan Bay, out the bay entrance around Punta El Morro, then East 2 nautical miles to Penon San Jorge, then back around the bay. The regulated area is established beginning at 18°28′4″N, 066°08′0″W, then North to 18°28′9″N, 066°08′0″W, then East to 18°28′7″N, 066°05′5″W, then South to 18°28′2″N, 066°05′5″W, then directly South to the Shore. This area includes San Juan Bay, except San Antonio Approach Channel, San Antonio channel, Army Terminal Channel, Army Terminal Turning Basin, and Puerto Nuevo Channel, and Graving Dock Channel. All coordinates referenced use Datum: NAD 1983.

(b) *Special Local Regulations:* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. Spectator craft are required to remain in a spectator area to be established by the event sponsor Puerto Rico Offshore Tour, San Juan, Puerto Rico.

(c) *Dates:* This section is effective at 12 p.m. and terminates at 3:30 p.m. AST on October 10, 1999.

Dated: July 22, 1999.

G.W. Sutton,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 99–19690 Filed 7–30–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AB99

Glacier Bay National Park, Alaska; Commercial Fishing Regulations

AGENCY: National Park Service, (NPS), Interior.

ACTION: Re-Proposed rule.

SUMMARY: This re-proposed rule satisfies the requirement in Pub. L. 106–31 for the Secretary of Interior to provide an opportunity for public comment of not less than 45 days. This rule implements section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 ("the Act"), as amended, and establishes special regulations for commercial fisheries within the marine waters of Glacier Bay National Park (NP), Alaska. This rule, in part, amends the general regulatory prohibition on commercial fishing activities in units of the National Park System, and instead, authorizes various existing commercial fisheries to continue in most marine waters of the park subject to a cooperatively developed state/federal fisheries management plan consistent with the requirements of the Act. The rule limits commercial fisheries in Glacier Bay proper to pot and ring net fishing for Tanner crab, longlining for halibut, and trolling for salmon. The rule describes eligibility criteria that allow certain fishermen with a sufficient, reoccurring recent history of participation in Glacier Bay fisheries to continue fishing in Glacier Bay proper for their lifetimes. Moreover, the rule describes application requirements and procedures for those fishermen to follow to obtain a special use permit for lifetime access to a particular Glacier Bay proper fishery. The rule would close certain inlets and areas in the upper reaches of Glacier Bay proper to all commercial fishing by a variety of closure dates set forth in the Act, and would limit certain other areas only to winter season trolling for king salmon by qualifying fishermen. Additionally, the rule would reaffirm closure of all designated wilderness areas in the park to commercial fishing activities.

Nothing in this rule is intended to modify or restrict non-commercial fishing activities otherwise authorized under federal and non-conflicting state fishing regulations, nor to effect legislatively authorized commercial fishing activities within Glacier Bay National Preserve.

In summary, section 123 of the Act laid out four major sets of directives on commercial fishing in Glacier Bay National Park. First, it closed specifically identified areas of non-wilderness waters in Glacier Bay proper and all wilderness waters to all commercial fishing. Second, it established a process for "grandfathering" certain qualifying fisherman who would be allowed to continue fishing in the remaining waters of Glacier Bay proper under lifetime permits. Third, it clarified that the marine waters outside of Glacier Bay proper would remain open to commercial fishing. And fourth, it directed that the commercial fisheries that would be allowed to continue be managed in accordance with a cooperatively developed State/Federal fisheries management plan. This rule addresses the first three of these directives. The cooperative State/Federal fisheries management plan is being developed independent of this rule and will be announced at a later date.

DATES: Written comments will be accepted through September 16, 1999.

ADDRESSES: Comments should be directed to Tomie Lee, Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826.

FOR FURTHER INFORMATION CONTACT: Tomie Lee, Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska, 99827, telephone: (907) 697–2230.

SUPPLEMENTARY INFORMATION:

Background

Establishment of Glacier Bay National Park and Preserve Glacier Bay National Park and Preserve is a 3.3 million acre, glacier-crowned, marine wilderness that stretches northward from Alaska's Inside Passage to the Alsek River, encircling the magnificent, saltwater Glacier Bay. The park derives its name and much of its biological and cultural significance from this great Bay, which harbors spectacular tidewater glaciers and a unique assemblage of marine and terrestrial life.

Glacier Bay National Monument was established by presidential proclamation dated February 26, 1925. 43 Stat. 1988. The monument was established to protect a number of tidewater and other glaciers, and a variety of post glacial forest and other vegetative covering, and also to provide opportunities for scientific study of glacial activity and post glacial biological succession. The early monument included marine waters within Glacier Bay north of a line running approximately from Geikie Inlet on the west side of the bay to the northern extent of the Beardslee Islands on the east side of the bay. The monument was expanded by a second presidential proclamation on April 18, 1939. 53 Stat. 2534. The expanded monument included additional lands and marine waters consisting of all of Glacier Bay proper; portions of Cross Sound, North Inian Pass, North Passage, Icy Passage, and Excursion Inlet; and Pacific coastal waters to a distance of three miles seaward between Cape Spencer to the south and Sea Otter Creek, north of Cape Fairweather.

Glacier Bay National Monument was designated as Glacier Bay National Park and Preserve and enlarged in 1980 by the Alaska National Interest Lands Conservation Act (ANILCA). 16 U.S.C. 410hh–1; see Sen. Rep. No. 413, 96th Cong., 1st Sess. 163 (1979). The legislative history of ANILCA indicates that certain NPS units in Alaska, including Glacier Bay National Park, "* * * are intended to be large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause." Id. at 137; see Cong. Rec. H10532 (1980). Congress described the park as including the adjacent marine waters, and depicted the park accordingly on the official maps.

In addition, ANILCA designated several marine areas within and near Glacier Bay proper as additions to the National Wilderness Preservation System. 16 U.S.C. 1132 note. These areas include upper Dundas Bay, Adams Inlet, the Hugh Miller Inlet complex, Rendu Inlet, and waters in and around the Beardslee Islands.

Within the park's jurisdiction are over 600,000 acres of marine waters, including 53,000 acres of designated wilderness. As a result, Glacier Bay National Park is one of only a handful of conservation areas in the world that includes extensive saltwater habitat. It is also the largest marine area managed by the National Park Service (NPS). As such, it provides valuable opportunities to study and enjoy marine flora and fauna in an unimpaired state, and to educate the public about the biological richness of marine systems and relationship to adjacent glacial and terrestrial systems.

Management of Glacier Bay National Park and Preserve

In addition to the national monument proclamations and relevant ANILCA provisions, the management of Glacier Bay National Park and Preserve has been governed by the NPS Organic Act, 16 U.S.C. Section 1, *et seq.* The NPS Organic Act authorizes the Secretary of the Interior to manage national parks and monuments to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Id. Section 1. This act further directs that "[t]he authorization of activities shall be construed and the protection, management, and administration of [NPS areas] shall be conducted in light of the high public value and integrity of the Nationa' Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress." Id. Section 1a–1. The NPS national general regulations and policies prohibit the commercial extraction of any resources—including fish—for personal profit from areas of the National Park System, absent specific direction to the contrary from Congress. This regulatory prohibition on the commercial extraction of resources from national park areas forms the origins of the longstanding conflict regarding commercial fishing activities in the nonwilderness marine waters of Glacier Bay National Park.

The NPS Organic Act authorizes the Secretary to implement "rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service." Id. Section 3. The Secretary has additional specific authority to "promulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *." Id. Section 1a–2(h).

The designated wilderness areas within Glacier Bay NP, including the marine areas, are additionally governed by the Wilderness Act, Id. section Sec. 1131, *et seq.*, which defines wilderness "as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain." The Wilderness Act requires that wilderness be "administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness." Id. Section 1131(a). Among other things, the Wilderness Act prohibits "commercial enterprise * * * within any wilderness area * * * except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act * * *" Id. Section 1133(c).

In addition, Congress recently passed the Omnibus Consolidated and Emergency Supplemental Act for FY1999 (Pub. L. 105–277), signed into law on October 21, 1998. Section 123 of this Act contained a series of compromises that were designed to provide final resolution of the dispute over the appropriateness of commercial fishing in Glacier Bay. Congress subsequently enacted legislation amending section 123 on May 21, 1999 in order to provide further clarification of commercial fishing phase-out and compensation provisions. This rule is designed to implement the various provisions of section 123 of the Act, as amended by section 501 of the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106–31, 113

Stat. 57). The requirements of the Act, as amended, are more fully described in a following section of this rulemaking.

Commercial Fishing History

The marine waters of Glacier Bay National Park have been fished commercially since prior to the establishment of Glacier Bay National Monument. Commercial fishing continued under federal regulation after the national monument's establishment in 1925 and its subsequent enlargement in 1939.

The Act of June 6, 1924, 43 Stat. 464, authorized the Secretary of Commerce to "set apart and reserve fishing areas in any of the waters of Alaska * * * and within such areas may establish closed seasons during which fishing may be limited or prohibited * * *." The first Alaska Fishery Regulations of the Bureau of Fisheries, promulgated between 1937 and 1939, addressed fisheries in an area designated as the Icy Strait district including Glacier Bay National Monument. See 2 FR 359 (February 12, 1937); 4 FR 927 (February 15, 1939). Those regulations, and regulations promulgated by the U.S. Fish and Wildlife Service (FWS) between 1941 and 1959, set allowances for and restrictions on commercial fisheries in areas within the boundaries of Glacier Bay National Monument. See 6 FR 1252 (March 4, 1941), 50 CFR Part 222; 16 FR 2158 (1951), 50 CFR Part 117; 24 FR 2153 (March 19, 1959), 50 CFR Part 115.

Early NPS fishing regulations prohibited any type of fishing "with nets, seines, traps, or by the use of drugs or explosives, or for merchandise or profit, or in any other way than with hook and line, the rod or line being held in the hand * * *." 6 FR 1627 (March 26, 1941), 36 CFR 2.4. However, in conjunction with the aforementioned FWS regulations, the 1941 NPS regulations also stated that "commercial fishing in the waters of Fort Jefferson and Glacier Bay National Monuments is permitted under special regulations." Id. NPS regulations continued to allow commercial fishing in Glacier Bay National Monument through 1966 in accordance with special regulations approved by the Secretary. See 20 FR 618 (1955), 36 CFR 1.4; 27 FR 6281 (July 3, 1962).

In 1966, NPS revised its fishing regulations so as to prohibit commercial fishing activities in Glacier Bay National Monument. Although the 1966 NPS regulations, unlike previous versions, only prohibited fishing "for merchandise and profit" in park fresh waters, these same regulations generally prohibited unauthorized commercial activities, including commercial fishing, in all NPS areas. See 31 FR 16653, 16661 (December 29, 1966), 36 CFR Secs. 2.13(j)(2), 5.3. In contrast to earlier NPS regulations, the 1966 regulations did not contain specific authorization for commercial fishing in Glacier Bay National Monument.

The 1978 NPS "Management Policies" reiterated that "[c]ommercial fishing is permitted only where authorized by law." Furthermore, in 1978, the Department of the Interior directed FWS to convene an Ad Hoc Fisheries Task Force to review NPS fisheries management. See 45 FR 12304 (February 25, 1980). The task force concluded that the extraction of fish for commercial purposes was a nonconforming use of park resources.

As already noted, in 1980, ANILCA designated Glacier Bay National Monument as Glacier Bay National Park and Preserve, enlarged the area, and designated wilderness that included marine waters within the park. 16 U.S.C. 410hh–1, 1132 note. ANILCA specifically authorized certain park areas where commercial fishing and related activities could continue, including the Dry Bay area of Glacier Bay National Preserve, but not in any area of Glacier Bay National Park. Id. section 410hh–4.

The 1983 revision of the NPS general regulations included the current prohibition on commercial fishing throughout marine and fresh waters within park areas system-wide, unless specifically authorized by law. 48 FR 30252, 30283; 36 CFR 2.3(d)(4). The 1988 version of NPS "Management Policies," still current, reiterates this approach.

However, in the 1980's NPS concluded that some commercial fishing would be tolerated and allowed to continue in Glacier Bay despite National Park Service general policies to the contrary. For example, the 1980, 1983 and 1985 Glacier Bay whale protection regulations implicitly acknowledged commercial fishing operations in Glacier Bay proper. 36 CFR 13.65(b). Also, the park's 1984 General Management Plan stated the following:

> Traditional commercial fishing practices will continue to be allowed throughout most park and preserve waters. However, no new (nontraditional) fishery will be allowed by the National Park Service. Halibut and salmon fishing and crabbing will not be prohibited by the Park Service. Commercial fishing will be prohibited in wilderness waters in accordance with ANILCA and the Wilderness Act.

The General Management Plan defined "traditional commercial fishing practices" to include "trolling, longlining and pot fishing for crab, and seining (Excursion Inlet only) in park waters * * *." General Management Plan at p.51. Finally, the 1988 Final Environmental Impact Statement concerning wilderness recommendations for Glacier Bay National Park referred to the continuation of commercial fishing in nonwilderness park waters.

Events Leading to This Rule

The Wilderness Act has prohibited commercial fishing in the wilderness waters within Glacier Bay NP since 1980. Nevertheless, commercial fishing activities were allowed to continue through a policy of non-enforcement by park management in both wilderness and non-wilderness marine waters of the park. Ultimately recognizing the need to conform Glacier Bay management practices with NPS national policies against commercial fishing in the Park System, there have been several attempts since 1990 to resolve this situation through proposed rulemaking, proposed legislation and negotiation.

In 1990, the Alaska Wildlife Alliance and American Wildlands filed a lawsuit challenging the NPS's failure to bar commercial fishing activities from Glacier Bay NP. Alaska Wildlife Alliance v. Jensen, No. A90–0345–CV (D. AK.). In 1994, the U.S. District Court for Alaska concluded that "there is no statutory ban on commercial fishing in Glacier Bay National Park provided, however, that commercial fishing is prohibited in that portion of Glacier Bay National Park designated as wilderness area." The District Courts' decision was affirmed in March 1997 by the United States Court of Appeals for the Ninth Circuit (Alaska Wildlife Alliance v. Jensen, 108 F.3d 1065 (9th Cir. 1997)). Close to the time that the plaintiffs referenced above initiated the litigation, the State of Alaska's Citizens Advisory Commission on Federal Areas hosted a series of public meetings in local communities to discuss the issues. Following these meetings, NPS decided to draft a regulatory approach to resolving the issues.

NPS published its first proposed rule on August 5, 1991 (56 FR 37262). In essence, the 1991 proposed rule would have: (a) Clarified the statutory prohibition on commercial fishing in designated wilderness waters, and (b) phased out commercial fishing in other park waters over a seven year period. NPS held ten public meetings on the proposed rule, received over 300 comments, and drafted a final rule. At the State's request, however, the Department of the Interior refrained from issuing a final rule in 1993, and instead agreed to discuss with state and Congressional staff the possibility of resolving the issues through a legislative approach.

Between fall 1995 and spring 1996, officials from Glacier Bay National Park and the Alaska Department of Fish and Game (ADFG) co-hosted several meetings in Southeast Alaska involving "stakeholders" interested in trying to resolve the commercial fishing controversy. The stakeholders included representatives of the commercial fishing industry; Native groups; and local, regional and national conservation organizations.

The 1997 Proposed Rule

The National Park Service introduced a new proposed rule for commercial fishing on April 16, 1997 (62 FR 18547). The 1997 proposed rule was intended to provide a further opportunity for public participation and discussion—including ongoing efforts with the State of Alaska—toward a comprehensive resolution of commercial fishing issues in the park. NPS also recognized that new regulations would be necessary to exempt any ongoing commercial fisheries from the general NPS regulatory prohibition found at 36 CFR 2.3(d)(4).

This proposed rule varied significantly from the 1991 NPS proposed rule that would have phased out commercial fishing throughout the park after seven years. In general, the 1997 proposed rule: (a) Prohibited all commercial fishing in Glacier Bay proper but provided certain limited exemptions over a fifteen-year phase-out period for fishermen with a qualifying history of participation in four specified fisheries; (b) closed Glacier Bay proper to commercial fishing during the visitor use season; (c) allowed most commercial fisheries in the park's marine waters outside Glacier Bay proper to continue, subject to reexamination at the end of fifteen years; (d) implemented the statutory prohibition on commercial fishing in designated marine wilderness waters; and, (e) contemplated a management regime for those commercial fisheries allowed to continue that would be based upon a cooperatively developed fisheries management plan developed by NPS and the State, implemented through the Alaska Board of Fisheries, and subject to the Secretary of the Interior's authority to protect park resources and values. Moreover, the preamble of the proposed rule offered for public comment ideas for halibut and Dungeness crab studies, a Hoonah Tlingit cultural fishery, and additional protections for Lituya and Dundas bays. The full text of the 1997 proposed rule should be referred to for a complete description of the proposed actions and additional background information.

NPS described several objectives for resolution of commercial fishing issues in the 1997 proposed rule and an accompanying Environmental Assessment (EA) published in April 1998 and discussed later in more detail in this document. These objectives included: preserving habitats and natural population structure and species distribution; allowing natural succession and evolutionary processes to proceed; maintaining biological and genetic diversity; minimizing visitor and vessel-use conflicts; protecting wilderness values; honoring Native cultural ties, and, expanding existing knowledge and understanding of marine ecosystems. NPS also sought to treat individual commercial fishermen fairly, and to develop an effective partnership with the State that would enhance understanding and conservation of fisheries and marine resources within the park.

In October 1997 (62 FR 54409) NPS extended the public comment deadline from October 15th to June 1, 1998 to provide additional opportunity for comment on the proposed rule and pending EA.

From November 1997 to February 1998 NPS sponsored 3 additional full-day public workshops in Juneau, Alaska to continue discussing the issues associated with the park's commercial fisheries. The first of these public workshops was noticed in the **Federal Register** (62 FR 58932, October 31, 1997), while subsequent workshops were publicized in local media. These workshops contributed to the scoping process for the NPS EA.

Scheduled concurrently with the NPS public workshops, the Alaska Department of Fish and Game sponsored 6 public meetings in Juneau from November 1997 to June 1998. This Glacier Bay Work Group, as it was termed, included several representatives of the commercial fishing industry, Native corporations and governments, and local, regional and national conservation groups. The meetings were open to and attended by various members of the public. NPS and DOI representatives attended all of the meetings. The objective of the work group was to reach an overall consensus agreement regarding commercial fishing activities in the park that could be reflected in either regulation or legislation. Considerable progress was made by the work group, under the State's leadership and in a good faith effort by all involved, to address a number of substantive and difficult issues. The group was unable to achieve a consensus agreement at conclusion of its last meeting in June 1998 and collectively agreed to a final effort toward the goal of consensus in October and November—after the close of the summer fishing season. However, action on the part of Congress—by introducing the issue of commercial fishing into the legislative arena and passing the Act in October—interceded and resolved many issues considered by the work group. Notes from each of the State's work group meetings are included in the administrative record of this rulemaking.

The 1998 Environmental Assessment

In April 1998, NPS released a comprehensive Commercial Fishing Environmental Assessment in support of the 1997 proposed rule for Glacier Bay. The EA described the proposed action (the 1997 proposed rule) and four other alternatives for managing commercial fishing activities in the marine waters of the park. Collectively, the EA's five alternatives described a broad range of potential strategies for managing commercial fishing activities in the nonwilderness marine waters of the park. Alternative One described the 1997 proposed rule. Alternative Two was considered the no action alternative because it would implement existing NPS regulations; this alternative described immediate closure of the park to all commercial fisheries. Alternative Three emphasized use of scientific information to protect resident and sensitive fisheries, while allowing harvest of more transitory species moving in and out of the park. Alternative Four described continuation of commercial fishing throughout the park, consistent with sustainability and habitat protection. Finally, Alternative Five described the 1991 proposed rule's seven-year phase-out of all commercial fisheries. Marine wilderness waters in the park were closed to commercial fishing under each of the alternatives, reflecting the Wilderness Act's prohibition on commercial fishing in wilderness waters, and the federal district and appellate court decisions.

Following publication and distribution of the EA in April 1998, NPS held seven public hearings and seven open houses during May in six Southeast Alaska communities (Elfin Cove, Gustavus, Hoonah, Juneau, Pelican, and Sitka) and in Seattle to solicit comment on the EA and proposed rule. On June 1, 1998, NPS extended the public comment deadline for the EA and proposed rule to

November 15, 1998 (63 FR 30162). NPS held additional informal public meetings in Wrangell and Petersburg during September 1998 following requests from residents of those communities.

The FY1999 Omnibus Supplemental Appropriations Act and Amendment

The Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 (Public Law 105–277, 112 Stat. 2681) ("the Act"), was passed by Congress and signed into law on October 21, 1998. Section 123 of the Act contained a variety of specific statutory requirements for the management or phase out of commercial fishing in the marine waters of Glacier Bay National Park. Section 123 of the Act contained the following provisions:

The Secretary of the Interior was directed to cooperate with the State of Alaska in the development of a management plan for the regulation of commercial fisheries in Glacier Bay National Park pursuant to existing state and federal statutes and any applicable international conservation and management treaties. This management plan is to provide for the continuation of commercial fishing in the marine waters within Glacier Bay National Park outside of Glacier Bay Proper, and in the marine waters within Glacier Bay Proper as specified in paragraphs (a)(2) through (a)(5) of section 123. The management plan is also to provide for the protection of park values and purposes, prohibit any new or expanded fisheries, and provide for the opportunity for the study of marine resources.

Section 123 limits commercial fisheries within Glacier Bay proper to ring or pot fishing for Tanner crab, longlining for halibut and trolling for salmon. That section limits participation in these commercial fisheries to the lifetimes of individual fishermen with a qualifying history, but notes that the qualifying criteria are to be determined by the Secretary of the Interior. Certain inlets or areas of inlets of Glacier Bay proper were closed immediately to all commercial fishing, or were limited to winter season king salmon trolling by qualifying fishermen. Section 123 also restated the statutory prohibition on commercial fishing within the park's designated wilderness areas. Last, Section 123 authorized compensation for qualifying Dungeness crab fishermen who had fished in designated wilderness waters of the Beardslee Islands and Dundas Bay.

The congressional managers of this legislation suggested NPS " extend the public comment period on the pending regulations (62 FR 18547, April 16, 1997) until January 15, 1999, modify the draft regulations to conform to [section 123's] language and publish the changes in the final regulations." See H.R.4328 Conf. Rep. No.105–825, p.1213. Subsequently, the public comment period on the 1997 proposed rule and 1998 EA was reopened and extended until February 1, 1999 (63 FR 68666, December 11, 1998; 64 FR 1573, January 11, 1999). The 1,400 persons who had provided comment by December 1998 were mailed a copy of the **Federal Register** extension and invited to provide additional public comment in light of the new legislation. A second **Federal Register** notice (63 FR 68668, December 11, 1998) describing application procedures for the Dungeness crab commercial fishery compensation program authorized by the Act was published and distributed concurrently with the extension of the public comment deadline.

On May 21, 1999 new legislation passed by Congress amending section 123 of the Act was signed into law. This legislation, section 501 of the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106–31), modified the Dungeness crab fishery compensation program and created a new compensation program for fishermen, processors, crewmembers, communities and others adversely affected by restrictions on commercial fishing activities in the park. Twenty-six million dollars were appropriated for compensation programs under section 501; this is in addition to $5,000,000 in compensation Congress had previously appropriated for qualifying Dungeness crab fishermen under section 123 of the 1998 Act. Section 501 also established delayed implementation dates for the non-wilderness closures in Glacier Bay proper relative to ongoing halibut and salmon commercial fisheries in 1999. Finally, section 501 required the Secretary of the Interior to publish this rule, provide a forty-five day public comment period, and then publish a final rule no later than September 30, 1999. The prohibition on commercial fishing in designated wilderness was not affected by the amendments found in section 501.

This rule implements the requirements of section 123, as amended, and establishes eligibility requirements and application procedures for qualifying fishermen to obtain a special use permit for lifetime access to the three commercial fisheries authorized to continue in Glacier Bay proper. Many ideas described in the 1997 proposed rule and the other four alternatives in the 1998 EA were resolved by the section 123 of the Act. Simultaneously with the publication of this rule, NPS intends to accelerate and expand its collaboration with the State of Alaska to develop a fisheries management plan for the park as contemplated by section 123 of the Act.

Analysis of Public Comments

Comment Period

This rule reflects an extensive and lengthy public involvement process that began with the publication of the 1997 proposed rule on April 16, 1997 and ended with the close of the public comment period on the proposed rule and 1998 EA on February 1, 1999. The comment period for the proposed rule was extended four times and the comment period for the EA was extended three times over the course of twenty-one months to insure adequate opportunities for public involvement.

NPS held seven public hearings during the month of May in the previously noted communities. Each public hearing was preceded by a two-hour open house question and answer period. NPS also established an Internet website that allowed the public to access information regarding the proposed rule and the EA, and provide public comment.

The NPS recorded testimony at public hearings from 66 individuals and received 1,557 written public comments. Written comments included surface mail, faxes and electronic mail. NPS staff read all written public comments, reviewed the transcripts of public hearings, and prepared a summary document of substantive comments.

Overview of Public Comment

The majority (75%) of the 66 individuals testifying at the public hearings (6 hearings were held in Southeast Alaskan communities and 1 in Seattle) supported the continuation of commercial fishing in Glacier Bay National Park. The remaining individuals commenting at public hearings supported some form of commercial fishing phase-out. Slightly more than one-third (570) of the written comments indicated support for the NPS's preferred alternative and/or the proposed regulations. A few (25) commenters simply urged NPS to support a fair process to end commercial fishing. One hundred thirty-four individuals supported the preferred alternative and proposed regulations with a shorter phase-out period and 72 individuals wrote in support of a general, non-specific phase-out of

commercial fishing in park waters. A few individuals (14) supported Alternative Five that reflects the 1991 proposed regulations. Many comments were received (136) supporting Alternative Two that would close all fisheries immediately. Eleven percent (177 individuals) of commenters wrote letters that did not identify support for a particular alternative, but expressed general opposition to commercial fishing. Comments that supported reducing or eliminating commercial fishing in park waters indicated that commercial resource extraction is inappropriate in a National Park and expressed concern about potential impacts to the park's unique marine ecosystem and visitor experiences. Many noted that park waters should be managed for scientific study and public enjoyment.

Ninety-seven individuals signed a petition supporting ongoing commercial fishing in park waters. An additional 432 individuals (28%) signed form letters and 132 commenters wrote general letters of support for ongoing commercial fishing. Commenters supporting ongoing commercial fisheries indicated that the fisheries were currently well managed by the State and were not negatively affecting park resources or visitors. Most commenters supporting commercial fishing stated that fishery closures would severely impact fishermen, their families, and local communities in Southeast Alaska.

NPS Response: Congress passed the Act in October 1998, toward the end of what had already been an extended public involvement and comment period on the 1997 proposed rule and 1998 EA. Congress, in passing the Act, resolved a number of issues that had previously been presented for public comment. The new law contained comprehensive statutory requirements regarding management of commercial fisheries in the marine waters of the park. Congress further expanded and clarified the law in the amendment passed on May 21, 1999. This rule largely implements the requirements of the Act, as amended. All public comments have been analyzed, but many of them have been overridden by the enactment of legislation.

General Comments

Numerous commenters expressed surprise that commercial fishing had been occurring in Glacier Bay National Park; most of these individuals indicated that they believed commercial fishing was inappropriate and/or incompatible with the NPS mission as defined in the Organic Act. Many individuals noted that National Parks were "special places" where activities should be managed differently than elsewhere. Several commenters noted that commercial ventures of any kind are inappropriate in national parks and several mentioned that National Parks and the resources contained therein belong to all Americans and should not be harvested for private profit. Several commenters noted that most Alaskan waters were open to commercial fishing and recommended that Glacier Bay be set aside as one small closed area. Many commenters indicated that NPS should not allow commercial fishing until there was incontrovertible evidence that such activities would not harm park resources.

On the other hand, NPS received many comments noting that commercial fishing had occurred for more than 100 years in park waters with no evidence of resource or visitor impacts. Several individuals noted that commercial fishing is allowed in other National Parks, so it could be allowed in Glacier Bay. Many individuals felt that other activities taking place in Glacier Bay including cruise ship traffic likely resulted in far more impact than commercial fishing.

Jurisdiction

The State, the Alaska Trollers Association (ATA), the Citizens Advisory Commission on Federal Areas (CACFA), Petersburg Vessel Owners Association (PVOA), and others said that the State rather than NPS holds jurisdiction over the marine waters of Glacier Bay. The State offered that the Submerged Lands Act, the Alaska Statehood Act and the Alaska Constitution all indicated that the State "owns and therefore manages all water columns, shorelands, tidelands, and submerged lands, including the resources located within or on such lands and waters." They further noted, however, that "the Act overcomes some of our jurisdictional concern" because it clarifies that NPS may act as provided in the legislation as long as they work directly with the State to address issues.

NPS Response: We acknowledge a legal disagreement with the State of Alaska and others who share the State's view over issues of ownership and jurisdiction with respect to the marine waters of the park. The establishment of Glacier Bay National Monument in 1925, and its 1939 expansion to include the current marine boundaries, predate Alaska statehood by decades. Congress has recognized the park's marine boundaries and waters—and described the Secretary of the Interior's authority and responsibility to manage these marine waters for the purposes of the park—in several federal laws, the most recent example being passage of section 123 of the Act, as amended. Court cases on similar jurisdictional issues in Alaska and elsewhere clearly support the federal view. Importantly, this is the only national park area in Alaska that includes marine waters, and it is the largest marine area included in our National Park System.

We concur with the State of Alaska's conclusion in its comments that the 1998 Act, as amended, should serve to resolve or redress many of the jurisdictional concerns and issues between the federal government and State of Alaska. The Act outlines appropriate roles and authorities for both the federal government and state with respect to management of commercial fisheries in the park. It provides both a requirement and an important opportunity for ongoing cooperation and collaboration between the state and federal government in the implementation of a jointly developed fisheries management plan. We will strive, working together with the State, to provide public opportunity to participate in the development of the fisheries management plan independent of this rulemaking. We believe that the best long-term remedy for jurisdictional issues is an effective state/federal cooperative relationship that outlines and respects individual and collective agency roles and responsibilities, keeps lines of communication open, incorporates opportunities for public involvement in decision making processes, and, ultimately, serves to implement the letter and spirit of the Act, as amended. This is where we intend to devote our energies.

Economic Issues

Many commenters—both those in support of and opposed to ongoing commercial fisheries in Glacier Bay—expressed concern that fishery closures would severely affect numerous individuals and communities. Commenters stated that commercial fishing is the largest employer in Southeast Alaska, that most private sector income in Southeast is derived from the seafood industry, and that the value of fisheries trickles throughout Southeast Alaska and the State. Many commenters mentioned that local fishing villages owe their existence to commercial fishing and depend on raw fish taxes. Commenters opposed to ongoing commercial fishing often cited their concern regarding economic impacts as a reason for recommending a gradual phase-out of commercial fishing. These individuals felt that a

phase-out would allow individuals and communities a transition period, thus reducing economic impacts.

Several commenters said that previous actions or issues were already negatively impacting fishermen's economics (including the IFQ program, low prices for halibut and salmon, state closures of fisheries) and expressed concern that Glacier Bay closures represented an additional economic burden. Many commenters stated that closures would affect not only permit holders but also deckhands, vessel owners, processors and other local business. Several commenters felt that closing Glacier Bay to commercial fishing would devalue fishing permits and IFQ shares.

NPS received numerous comments expressing concern for individual communities and/or businesses or individuals. For example, the cities of Petersburg, Wrangell, Coffman Cove and Pelican wrote comments stating that their communities would be severely impacted by fisheries closures. Individual commenters expressed concern that the community of Pelican could not survive if park waters were closed. One commenter recommended that NPS set up a Glacier Bay Economic Disaster Fund for communities such as Pelican that have a history of raw fish tax revenues from resources harvested in Glacier Bay.

NPS Response: We expect that the Act, as amended, and the "grandfathering" eligibility criteria described in this rule, will significantly reduce economic impacts to fishermen, communities, and others associated with the commercial fishing industry in Glacier Bay. Specifically, the Act authorizes existing commercial fisheries to continue in outer waters where well over 80% of the harvest from park waters occur: we support continuation of these locally important commercial fisheries. Additional harvest will continue in most of Glacier Bay proper during the life tenancy period of qualifying fishermen, supporting fishermen and communities for many years to come. Only about 18% of the park's marine waters (wilderness and non-wilderness) will be immediately closed to commercial fishing pursuant to the closure schedules set forth in the Act, as amended; these closed waters have historically accounted for less than 10% of total commercial harvest in the park. Within Southeast Alaska, Glacier Bay proper has historically accounted for only 2–4% of the commercial halibut harvest; approximately 7–12% of commercial Tanner crab harvest; and an indeterminate, but presumably small percentage of the salmon harvest.

We expect that some portion of the revenue previously harvested in the closed areas of the park will be recovered in Icy Strait and/or other Southeast waters: this is particularly likely in the halibut fishery with its individual quota system and eight month fishing season. Some fishermen not meeting the "grandfather" eligibility criteria for Glacier Bay proper will be displaced. However, these fishermen presumably have not established a regular or sustained dependence on Glacier Bay fisheries and are already fishing and established elsewhere. Moreover, the various compensation packages outlined in the Act, as amended, should alleviate economic impacts to Dungeness crabbers who commercially fished in designated wilderness as well as others directly and substantially dependent upon various fisheries in Glacier Bay proper.

We recognize that wilderness water closures and eventual phase-out of commercial fishing in Glacier Bay proper—as required by Congress—will have an adverse effect on some individuals and communities. However, it is important to note, as several commenters stated, that other external factors including changes in state regulations, establishment of the IFQ system for halibut, and international market forces have also affected fisheries-related incomes in Southeast Alaska. For example, declining fish tax revenues in recent years in small communities such as Hoonah and Pelican have not been the result of any commercial fishing changes within the park. Congress has appropriated a total of $31,000,000 through the 1998 Act and its 1999 amendment to mitigate economic impacts to fishermen, crewmembers, processors, communities and others adversely affected by restrictions on commercial fishing within Glacier Bay.

The State and the ATA were concerned that NPS has not made economic information compiled by an NPS paid contractor available to the public or included it in the 1998 Environmental Assessment analysis.

NPS Response: Data used in the economic analysis presented in the 1998 EA as well as in the Regulatory Flexibility Analysis described below, came from landing information provided by the State of Alaska Commercial Fishery Entry Commission. We therefore believe that the data is readily available to the public at large. Moreover, by publishing this document as a rule with an additional 45-day public comment period, we will be providing the public with and additional opportunity to review and comment on the economic data associated with this rule.

Regulatory Flexibility Act

Many commenters including the Alaska State Legislature, ATA, PVOA, and the State felt that the certification of "no significant economic impact" under the Regulatory Flexibility Act was unfounded, that NPS had inaccurately analyzed the effects of the proposed regulation on small business entities and communities, and that NPS should complete a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act. The State believed that NPS certification of no significant impact was deficient because it did not include an adequate factual basis, did not provide any analysis to support the conclusion, and did not include public input on its assumption and conclusions. The State offered that the findings of this analysis must be made available for public review and comment before proceeding with a final rule.

NPS Response: NPS and the Department of Interior have responded to these comments by completing a Regulatory Flexibility Act analyses of different eligibility criteria under consideration for participation in the three Glacier Bay fisheries authorized by section 123(a)(2) of the Act. Congress, in passing the Act, as amended, resolved various issues about commercial fishing in the park and precluded most decisions by the Secretary of the Interior except the grandfather eligibility criteria. Accordingly, the Regulatory Flexibility Act analysis has focused only on these eligibility criteria. The analysis reviewed the effects of the Department's decision regarding eligibility criteria on the small businesses, organizations and communities in the Glacier Bay area. The analysis is summarized in this preamble.

Grandfather Eligibility Requirements for Continued Fishing in Glacier Bay Proper

NPS received numerous general comments that ongoing fisheries should be limited to those individuals with a "history" of fishing in Glacier Bay or "dependent on" Glacier Bay fisheries. The Wilderness Society and many individuals wrote in support of the proposed 6 of 10-year eligibility requirements and asked NPS not to relax this requirement. The Wilderness Society further stated that NPS bears the burden of proving that criteria selected will not result in resource impacts during the phase-out period. While NPCA did not specify criteria, they offered that "two days or several months of fishing in the Bay over a period of a decade should not be considered adequate for demonstrating historical dependence." A few individuals recommended stringent criteria including: only individuals who fished prior to 1990 should be allowed to continue, only individuals with a familial history of 100+ years of fishing should be allowed to continue, and only individuals older than 50 years should be allowed to continue. One commenter felt that fishing six years was not a serious enough commitment to be entitled to continue fishing.

Conversely, numerous other commenters recommended more liberal eligibility criteria. The State, ATA and numerous individuals supported criteria that would allow any individual holding a Commercial Entry Permit (including T series, B series, S05, S15, and K series permits) with a history of fishing the waters of Glacier Bay to continue. A few individuals supported criteria that would allow any fishermen with a permit for a fishery that occurs in the Bay to fish there. Several individuals suggested that NPS use fishermen's catch history (percentage of landings) from Glacier Bay rather than number of years as a base for eligibility criteria. Several commenters believed that NPS should use different criteria for different fisheries. One commenter recommended that 3 of 5 years be used to determine eligibility for the Tanner crab fishery because this fishery had only recently become commercially valuable. Several individuals commented that their children and grandchildren should be eligible to continue fishing. One commenter recommended that grandfather rights should be 100% transferable with no expiration date, but NPS should be able to buy this right as well as the associated limited entry permit.

Many commenters felt that stringent criteria (including the proposed 6/10 years) would be unfair and difficult to implement. Individuals stated that fishermen typically "lumped" fish landings on a fish ticket, reporting landing locations based on where they caught most fish on a given trip. In these cases, fish tickets would not necessarily reflect fishing effort in Glacier Bay. One commenter indicated that fish ticket information was frequently changed by the processor and was therefore not accurate. Several individuals were concerned that the 6 of 10-year criteria would eliminate many young fishermen who often have very limited experience fishing elsewhere and large investments to support. A few individuals said that some fisheries were closed during the 10-year period being considered, so perhaps no fishermen could qualify for those fisheries. A few individuals felt that strict criteria would displace many fishermen out of Glacier Bay proper, resulting in crowding in Icy Strait which could effect both commercial and recreational catch there. One commenter said that stringent criteria would lower the number of fishermen qualifying resulting in a "bonanza" for remaining fishermen. One commenter stated that the proposed criteria would reward individuals who reported landings for a permit holders on a given boat (typical when a crewmember wishes to qualify for an upcoming limited entry fishery and must report landings to do so).

Commenters indicated that lenient criteria would not increase fishing pressure on Glacier Bay because individual fishermen have typical fishing locations and would be unlikely to shift into the Bay if they had not fished there previously. One commenter felt that the number of permits reporting landings in the park had remained stable in past years and would not be expected to increase in the future.

Many individuals stated that the criteria did not address the needs of crewmembers or individuals that leased vessels to permit holders. A few individuals said that crew (in particular family members) invested considerable time in learning how to fish a particular location assuming they would "inherit" that location in the future. One commenter stated that he often obtained crew jobs because of his knowledge of Glacier Bay and noted that he would not have that opportunity if the fishing fleet were reduced. One commenter stated that he would not meet strict eligibility criteria because he had been leasing a permit. One commenter offered that other limited entry processes have considered the number of years as a crewmember, boat owner or gear owner in determining eligibility for a particular fishery.

A few commenters, including the Petersburg Vessel Owners Association, felt that NPS should determine how many fishermen and/or how much harvest was acceptable and then set criteria for eligibility rather than letting these numbers be a "fallout" from the criteria. One commenter recommended that NPS use "good standing", as a means of determining eligibility by allowing only those individuals whom had never been cited for resource or permit violations. Another commenter recommended that continued eligibility should depend on continued compliance with Glacier Bay and state regulations. The State commented that eligible fishermen should be able to continue using the vessel and crew of the permittee's choice.

NPS Response: Section 123(a)(2) of the Act authorizes the Secretary of the Interior to establish eligibility criteria to determine which fishermen will be issued a non-transferable lifetime access permit to continue to fish in those waters of Glacier Bay proper which were left open for grandfathered commercial fishing under the Act. The Secretary of the Interior has now selected eligibility criteria intended to allow those fishermen with a sufficient reoccurring history of participation in the authorized Glacier Bay fisheries to continue fishing for their lifetimes. The 1997 NPS proposed regulations outlined criteria that would have permitted only those individuals who had fished 6 of the last 10 years in Glacier Bay proper to continue fishing. However, based on public comment and the Regulatory Flexibility Analysis, we believe that the criteria described in the 1997 proposed rule would have adversely affected the economic well being of an unacceptably high number of fishermen as well as local communities.

This rule would allow continued access to Glacier Bay proper to those fishermen who have fished in Glacier Bay proper in one of the three authorized commercial fisheries as follows: For the halibut fishery, 2 years of participation would be required in Glacier Bay proper during the 7-year period, 1992–1998. For the salmon and Tanner crab fisheries, 3 years of participation would be required in Glacier Bay proper during the 10-year period, 1989–1998. The 7-year qualifying period—as further explained below—for halibut is based, in large part, on the establishment of a unique statistical sub-area for Glacier Bay proper in 1992. Use of this qualifying period will assist fishermen in documenting a history of fishing within Glacier Bay proper. A 10-year qualifying period is used for the Tanner crab and salmon fisheries. These longer qualifying periods (of 7 and 10 years, respectively) are intended to provide a better opportunity for fishermen with a variable but reoccurring history of participation in these fisheries in Glacier Bay proper to qualify for the lifetime access permits. Essentially, these criteria require fishermen to have fished in Glacier Bay proper for approximately 30% of the years during the 7 and 10-year base periods to qualify for continued lifetime access to an authorized fishery. We believe that these criteria reflect a reasonable and balanced approach on appropriate eligibility criteria for lifetime access to the authorized Glacier Bay proper commercial fisheries.

A base period of less than 7 to 10-years was considered too short in duration and would not, at least in the case of the Pacific halibut fishery, allow for recent and dynamic changes in the character of the fisheries. We did not consider longer qualifying periods because participation in the three authorized fisheries has only recently stabilized. These fisheries have all become limited entry fisheries in recent times; fewer permit transfers have occurred in recent years. Recent permit holders are most likely to still be fishing and have a current economic reliance on a Glacier Bay proper fishery.

The 2 out of 7-year criteria for the Pacific halibut fishery takes into consideration a recent change in statistical area configuration—the 1992 creation of a separate regulatory sub-area (184) specific to Glacier Bay proper—and allows fishermen to more accurately document their participation in the fishery within Glacier Bay. Before 1992, Glacier Bay was part of regulatory area 182, a larger reporting area combined with Icy Strait. Therefore, it would be difficult for fishermen to document commercial halibut harvest from Glacier Bay proper prior to 1992. This 7-year qualifying period accommodates changes in the commercial halibut fishery since 1995 when it became a limited entry fishery and the entire nature of the fishery changed with prolonged seasons and Individual Fishing Quotas.

The 3 out of 10-year criteria for the Tanner crab fishery accommodates the recent increase in participation in this fishery within Glacier Bay proper from fewer than 10 vessels per year from 1984–1989, to 14–25 vessels per year since 1991. The Tanner crab pot fishery became a limited entry fishery during the latter part of the 1980s.

The troll fishery for salmon in Glacier Bay proper is almost exclusively focused on king salmon during the winter commercial fishing season. Because there is no way to separate out Glacier Bay proper harvest from that occurring elsewhere within District 114, we will consider salmon landing reports from District 114 as indirect evidence of participation in the fishery within Glacier Bay proper, provided it is supported by additional corroborating documentation in making application for a lifetime access to the salmon troll fishery in Glacier Bay proper.

The qualifying periods described in this rule are considerably longer than those typically used by the State of Alaska when establishing a limited entry fishery. For example, the Alaska Commercial Fisheries Entry Commission used preceding 5-year periods in recently establishing limited entry permit fisheries in Southeast Alaska for Dungeness crab and pot fished shrimp. Under Alaska State law, applicants for these limited entry fisheries were ranked and awarded permits according to their participation and economic dependence on the fisheries over the 5-year qualifying period. We decided in favor of longer qualifying periods in interest of minimizing economic impacts to fishermen who have participated in the authorized fisheries in Glacier Bay proper. However, like the State of Alaska, we would require recent and multiple years of participation in a given fishery. We do not believe that a single occurrence of commercial fishing within Glacier Bay proper over the past 7 or 10-years demonstrates a sufficient sustained dependency on those park waters to warrant grandfathering such fishermen in for lifetime permits.

A special use permit will be required to participate in any of the three Glacier Bay fisheries beginning in calendar year 2000. The procedures for applying for and obtaining a special use permit, as well as the eligibility criteria, are described in this rule. Fishermen meeting the eligibility criteria may apply for a special use permit so long as they hold a valid permit for the fishery. The special use permit will be renewed on a 5-year cycle for the life time of each fisherman who continues to hold the necessary license for a Glacier Bay fishery, and is otherwise eligible to participate in the fishery. The special use permits are non-transferable under the Act. However, NPS may consider an emergency transfer of a permit in the event or temporary illness or disability, as otherwise authorized by the Commercial Fisheries Entry Commission. These are hardships of an unexpected and unforeseen nature, and a permit transfer would be limited to 1-year in duration.

The Act is specific to permit holders and does not provide for individuals who own and lease vessels to Glacier Bay fishermen, or for crewmembers. While these individuals do not qualify, under the law, to receive a special use permit to fish in Glacier Bay, nothing in the Act affects the ability of a special use permit holder to continue to lease the vessel or hire the crew of their choice.

Documentation of Eligibility

Many commenters felt that fishermen should supply "evidence" or "definite proof" of fishing history, but only a few commenters addressed specifically what NPS should accept in terms of documentation of fishing history. One commenter indicated that the documentation process discussed in the proposed rule was "too easy." Another commenter indicated that evidence of historic fishing should include official ADFG landing tickets, ATA logbook data, ship's log data and a valid ADFG license. A few commenters, including the State, indicated that an affidavit of catch history should be sufficient. The State also recommended that NPS design a validity review and appeals program consistent with due process. Several individuals were concerned that documenting past fishing effort in Glacier Bay would be quite difficult because ADFG statistical areas do not match park boundaries and because fish tickets reflect only the area where the majority of a landing was harvested. ATA and the State felt that requiring documentation beyond an affidavit would be time consuming and expensive for both agencies and fishermen and would reduce the number of eligible fishermen.

NPS Response: The Act requires individuals to establish their eligibility to participate in one or more of the three authorized Glacier Bay commercial fisheries. This rule would require that an individual hold a valid commercial fishing permit for the fishery in Glacier Bay, provide a sworn and notarized affidavit attesting to their history and participation in the fishery within Glacier Bay proper, and provide other available documentation that would assist in corroborating their participation in the fishery in Glacier Bay during qualifying years. We are requiring applicants to provide two types of corroborating documentation readily available from the State of Alaska: permit histories and landing reports. The permit history documents an individual's years as a permit holder in a fishery, and the landing report documents years and reported harvest locations for fishery landings by an individual. This required corroborating documentation—copy of a valid permit or license, affidavit, permit history, landing report—is less than that typically required by the State of Alaska or National Marine Fisheries Service (halibut) for similar limited entry programs. We encourage any other forms of corroborating documentation—for example, vessel logbook data or affidavits from other fishermen or processors—that can assist in establishing an applicant's history of participation in the fishery.

We recognize the limitations of landing report data based on fish tickets. Although Alaska statute requires accurate reporting of fish harvest information by statistical area, fishermen often lump catches from Glacier Bay and Icy Strait statistical areas, reporting them as Icy Strait landings on fish tickets. Moreover, no statistical reporting area exists specific to Glacier Bay for salmon. Because of this, for the salmon fishery we will consider landing reports from District 114—along with other corroborating documentation (this could be affidavits from crewmembers, other fishermen, processors, log books, etc) provided—as indirect evidence of participation in the fishery in Glacier Bay proper. Because both the halibut fishery (regulatory subarea 184) and the Tanner crab fishery (statistical areas 114–70—114–77) do have reporting areas specific to Glacier Bay, we intend to require some form of additional corroborating documentation beyond the personal affidavit (see suggestions above for the salmon fishery) where landing data for these fisheries are inconclusive. In any event, landing reports must be from the reporting area immediately adjacent to Glacier Bay before they will be considered. In the case of halibut, this is regulatory subarea 182; in the case of Tanner crab, this is statistical area 114–23. These approaches are intended to address concerns regarding the difficulty of attributing harvest to Glacier Bay proper from landing reports, most particularly for the salmon troll fishery.

We intend to work closely with the Alaska Commercial Fisheries Entry Commission, the National Marine Fisheries Service and other knowledgeable sources to notify and identify permit owners who meet the eligibility criteria defined for the Glacier Bay commercial fisheries.

Management Process for Ongoing Fisheries

The State, the CACFA, the Alaska State Chamber of Commerce, the PVOA, the ATA and others requested that NPS clarify particular aspects of the Act. In particular, commenters asked NPS to clarify that ongoing fisheries would be managed by ADFG through the Alaska Board of Fisheries process. They asked for further clarification that NPS's role in joint management would be to contribute expertise in defining and protecting park purposes and values. The State requested that NPS develop specific criteria for the Secretary to use in recommending actions associated with ongoing fisheries. The State also suggested that subsequent rulemaking recognize the authority of the International Halibut Commission, National Marine Fisheries Service, North Pacific Fisheries Management Council, and the Salmon treaty with Canada in managing ongoing fisheries.

The State indicated that an existing Master Memorandum of Understanding between NPS and ADFG commits the NPS "to utilize the State's regulatory process to the maximum extent allowed by federal law in developing new or modifying existing federal regulations or proposing changes in existing state regulations governing or affecting the taking of fish and wildlife on Service lands in Alaska" and requested that NPS reference this MMOU in subsequent rulemaking. They further requested that a written finding be prepared if state regulations appear to conflict with federal law.

NPS Response: The scope and nature of the cooperative fisheries management program for Glacier Bay is beyond the subject matter of this rulemaking. Nevertheless, a few brief comments on the NPS/State cooperatively developed management program are in order. We have already begun collaborative discussions with the State of Alaska regarding the fisheries management program authorized under section 123(a)(1) of the Act. We recognize the fisheries management expertise of the State and the effectiveness of the established regulatory and public involvement process of the Alaska Board of Fisheries. We believe that the spirit and intent of the Act—indeed, its balance—envisions a cooperatively developed fisheries management plan and process that is respectful of and maintains the state and federal governments' traditional management roles. We expect the State to continue its role in the day to day management of the authorized commercial fisheries in the park, and that any changes to state managed fisheries will be implemented through the Alaska Board of Fisheries. We support the State's role and regulatory processes. We view the fisheries management plan as the primary vehicle for interagency and public agreement on fisheries management and research objectives in the park. As the planning and management processes are now envisioned, the State would contribute expertise in management of commercial fisheries and NPS will contribute expertise in park management, purposes and values. State and federal agencies, along with input from interested parties, could jointly develop appropriate marine research and assessment programs to improve understanding and management of park fisheries and the marine environment. Ultimately, the Secretary retains the authority and responsibility to protect park resources and values, especially with regards to new or expanded fisheries. Halibut fisheries in the park are managed by the International Pacific Halibut Commission under international treaty and may require separate cooperative planning and research efforts.

Cooperative Development of Fisheries Management Plan

Many commenters supported the cooperative development of a fisheries management plan. The Wilderness Society requested that NPS prepare an EIS as part of this planning process and ensure that the plan was in compliance with ANILCA and other applicable laws and compatible with park values and purposes. NPCA and numerous other commenters expressed general support for the joint management concept; NPCA recommended that the plan be produced with public involvement and suggested that an advisory committee representing various stakeholders guide the process. The State and others stated that "cooperative development of a management plan" was not synonymous with cooperative management. These commenters reiterated that ongoing fisheries should be managed using the existing state process rather than a cumbersome "dual management" process implied by co-management.

One commenter felt that joint management would be difficult because NPS and ADFG biologists would not have similar escapement goals and might disagree about research needed. One commenter suggested that NPS fund an ADFG position because managing Glacier Bay fisheries would be expensive and it is unfair to use license fees for this management. The State requested that subsequent rulemaking clarify that the Alaska-specific provisions under 36 CFR part 13 and 43 CFR part 36 supercede the closure provisions in 36 CFR part 2.

NPS Response: We will work with the State of Alaska in developing a fisheries management plan for the park. The plan must be consistent with the requirements of the Act and all other applicable federal and state laws. We expect the State and NPS will continue their respective management roles, and do not foresee a duplicative management structure.

Our general goals in the development of the fisheries management plan are to insure that fisheries subject to harvest are prudently managed, and that park areas and fish populations not subject to commercial harvest are protected. We will also work to insure that ongoing fisheries are managed in context with the park's purposes and values. And we will work to optimize opportunities for research and monitoring programs that

can improve understanding, management and conservation of fisheries and the marine system.

We acknowledge the potential merits of creating an advisory committee comprised of a balanced representation of local, state and national interests that could assist in development of a fisheries management plan. The concept of an advisory committee warrants further discussion with the State, but is beyond the scope of this rule.

Additional Closures

Numerous commenters, including the Sierra Club recommended that commercial fishing be phased out of the park's outer fjords including the non-wilderness portion of Dundas Bay and the complex of small fjords from Cape Spencer to Lituya Bay. The State, the CACFA, the Alaska State Chamber of Commerce, the PVOA, and the ATA believe that the Act did not authorize any additional seasonal or area restrictions or closures including the closures of Lituya and Dundas bays or the closure of areas for research projects.

NPS Response: This rule does not implement any additional closures or address restrictions on commercial fisheries beyond those imposed by Congress in passing the Act, as amended. We do not anticipate any additional closures or restrictions specific to commercial fishing in the outer waters of the park (outside Glacier Bay proper) at this point unless those restrictions or closures emerged through the normal course of events in the State's fisheries management administrative process.

15-Year Review for Outer Waters

Several commenters stated that the Act did not allow for a 15-year review of outer water fisheries and requested that this language be omitted from future rulemaking language.

NPS Response: We agree that the Act does not provide for a 15-year review of outer water fisheries. We do expect that ongoing fisheries will be routinely reviewed to determine whether fisheries management objectives are being met. This routine review should serve to resolve any issues or concerns that arise regarding the fisheries. Reference to a 15-year review, therefore, has been deleted from this rule.

New or Expanding Fisheries

A few commenters including the ATA expressed concern about NPS's definition of "new or expanding fisheries." Commenters felt that fisheries that have been closed for conservation reasons should not be considered "expanding fisheries" if they could be sustained in the future. ATA also indicated that this definition must not limit the number of boats or harvest levels permitted in a given area. One commenter offered that this definition must not include increased troll effort as it is unclear what past troll effort has been. The City of Pelican commented that recent changes in the groundfish fishery might result in reallocation or expansion of this fishery in Southeast Alaska and indicated that this quota should be allowed to be harvested. The State recommended that NPS avoid defining key fishery management guidelines in subsequent rulemaking such as the prohibition on "new or expanded fisheries" prior to working with the State. The State and ATA indicated that new and expanded fisheries are already limited under existing mechanisms and that NPS should defer to the Alaska Board of Fisheries "Management Plan for High Impact Expanding Fisheries."

NPS Response: Issues associated with the prohibition in the Act on "any new or expanded fisheries" are largely beyond the scope of this rule and will be addressed in the State/Federal park fisheries management plan to be collaboratively developed with public input.

Commercially Viable Fisheries

ATA and the State objected to NPS's use of the term "commercially viable" for determining which fisheries would continue in park waters and requested that future rulemaking omit reference to continuation of these fisheries. ATA indicated that even small, seemingly unprofitable fisheries might be important to individuals who rely on diversification in several fisheries.

NPS Response: These issues are beyond the scope of this rule and will be addressed in the subsequent State/Federal fisheries management plan for the park.

Permit and/or License Requirements

ATA and the State opposed any permit or license system for ongoing fisheries in outer waters beyond those already implemented by the State, NMFS, or IPHC.

NPS Response: We do not intend to implement a permit requirement for participation in commercial fisheries outside Glacier Bay, nor is one described in this rule. We do recognize a general need to obtain better harvest and effort data for fisheries in the park, but believe that there are other actions that should be fully explored in cooperation with fishermen and the State to obtain this data.

Procedure

Public Hearings

Commenters raised several procedural concerns. Several commenters at public hearings felt that the hearings were not well advertised and that they took place during the commercial fishing season, which limited participation by fishermen. These individuals recommended that NPS hold additional public hearings in the fall. One commenter stated that the release of the EA and the hearing schedule conflicted with fishing season and would reduce the number of fishermen able to attend hearings and/or comment in writing.

Two commenters requested in writing that additional public hearings be held in Port Alexander, Angoon, Petersburg, Wrangell, Craig and Ketchikan. Several individuals phoned in requests for public hearings in Wrangell and Petersburg.

NPS Response: We advertised the local hearings extensively via news releases, public announcements on local radio stations, and flyers posted in local communities. Attendance at the seven hearings and two informal public information meetings was typical of, or greater than, attendance at most NPS hearings. Importantly, because of the many recent public workshops and working group meetings coordinated by the State and NPS, much local attention focused on this issue. We believe that most individuals in Southeast communities were aware that proposed regulations regarding commercial fishing had been published. The public comment period was repeatedly extended over the course of twenty-one months and provided significant opportunities for public input.

We scheduled and held public hearings in 6 Southeast Alaskan communities and Seattle and held informal public information meetings upon request in Petersburg and Wrangell. NPS staff heard testimony at the formal hearings from 66 individuals and heard informal comments from many more individuals during informal open houses in these communities as well as at informal public meetings in Petersburg and Wrangell. NPS also received, and reviewed 1,557 written comments that expressed diverse views regarding the commercial fishing issue. We believe that this extensive public input is representative of the various interests and views regarding the issue of commercial fishing in the park.

Rulemaking and NEPA Process

Many commenters including the State, the Southeast Conference, the State Chamber of Commerce, the Pacific States Marine Fisheries Commission, The CACFA, the State Legislature, Representative Gail Phillips, and the cities of Petersburg and Pelican, requested that NPS terminate the rulemaking effort and reissue a proposed rule that reflected the changes rendered by the Act and clarifies how NPS intends to proceed with implementation of the Act. The CACFA felt that NPS has a responsibility under the Administrative Procedures Act to first publish a proposed regulation and provide the public the opportunity to comment. The CACFA also felt that the 60-day extension period for public comment was ineffective because it took 51 days from the date the Act was signed until NPS issued the notice to reopen the comment period.

NPS Response: Prior to Congress passing the Act in October 1998, the NPS public comment deadline on the EA and proposed rule was scheduled to run until November 15, 1998. Upon passage of the Act, the congressional managers of the legislation directed the NPS to "extend the public comment period on the pending regulations until January 15, 1999, modify the draft regulations to conform to [the Act's] language and publish the changes in the final regulations." Accordingly, we extended the public comment period until February 1 and mailed notice to the 1,400 individuals who had provided comment by December 1998. We responded by letter in December and January to the State of Alaska and the several others who requested a new rulemaking process following passage of the Act. These responses articulated yet other reasons why we were not then pursuing a new proposed rule to implement the Act, including the view that the Act was within the range of actions addressed and analyzed in the EA, and a concern about negating the efforts and ideas of the many individuals who had provided public comment to date.

Notwithstanding the above history, after the close of the public comment period on February 1, 1999, Congress again enacted further directions and clarification language for management of commercial fishing activities within Glacier Bay National Park (section 501 of Pub. L. 106–31, May 21, 1999). Section 501 amended the October 1998 Act and required the Secretary of the Interior to publish an interim final rule without an effective date and a forty-five day public comment period. This rule responds to congressional requirements and the requests from the State of Alaska, fishermen, the Small Business Administration, and others for a new rule describing the Act, as amended. It also provides a Regulatory Flexibility Act analysis of eligibility criteria for the Glacier Bay lifetime access permits. We welcome additional public comments on all aspects of this rule.

These commenters also felt that the EA should be redrafted because it does not reflect the current statutory regime, is based on the previously proposed rule, and does not accurately analyze the environmental and socio-economic effects of the alternatives. One commenter believed that the impacts of the Act were not covered in the EA. Moreover, these commenters suggested that the redrafted document should be prepared as a full Environmental Impact Statement (EIS).

NPS Response: The Council on Environmental Quality regulations, which describe requirements for implementing the National Environmental Policy Act (40 CFR Parts 1500–1508), indicate that a federal agency will determine whether an EIS must initially be prepared based on agency-specific supplemental procedures. NPS staff reviewed agency-specific procedures and determined that an EIS was not initially required, as the effects of the proposed alternatives were not known to result in significant impacts upon the quality of the human environment. As a result, we proceeded with the preparation of an Environmental Assessment (EA). Had the EA analysis determined that the proposed action would result in a significant effect, a full EIS would have been prepared.

Because the published EA included a broad range of alternatives, including an alternative in which all fisheries would continue and an alternative in which no fisheries would continue, the agency has essentially reviewed and displayed the effects of the full range of eligibility criteria. Any decisions regarding eligibility requirements were fully analyzed and are within the scope of the existing Environmental Assessment. We have developed an errata sheet to amend the EA based on past public comment and solicit public comment on the errata sheet as well as on the rule.

Several commenters noted that the proposed rule and the EA falsely outlined the required "No Action" alternative as immediate closure of all fisheries.

NPS Response: We recognize that the designation of the No Action alternative as an alternative that involved immediate closure of all park waters to fishing was confusing to the public because No Action alternatives typically reflect the status quo, which—from a fisherman's viewpoint—would be the continuation of commercial fishing throughout the park's marine waters. However, the No Action alternative—required in all EA or EIS processes—actually requires description and analysis of what would occur under the existing "status quo" of federal laws and regulations. This meant that the "No Action" alternative—given the existing NPS general regulatory prohibition on commercial fishing in the park and the statutory prohibition on commercial fishing in designated wilderness areas—actually described closure of all of the park's marine waters to commercial fishing. In any event, Congress has now twice enacted legislation since the original EA was prepared which further clarified the status of various fisheries in Glacier Bay National Park as a matter of federal statutory law.

Resource Issues

Almost all comments received in support of reducing or eliminating commercial fishing in park waters cited natural resource concerns. Numerous commenters indicated that the NPS is charged with maintaining naturally functioning ecosystems and should not allow commercial fishing because the agency has not proven that such activities do not harm park values. Commenters felt that commercial fishing could result in depletion of fish stocks with concurrent food web effects that might impact other parts of the marine ecosystem. Several individuals commented that commercial fishing activities might alter natural population dynamics even if stocks remained healthy. Numerous individuals cited examples of the effects of overfishing elsewhere in the United States and expressed concern that overharvests could occur in Glacier Bay. A number of commenters indicated that NPS should not allow specific fisheries such as purse seining or scallop dredging. Other resource concerns expressed included potential bycatch effects, water pollution, marine mammal and gear entanglement, vessel-related impacts to the marine system, or impacts to specific species (harbor seals, sea otters, common murre, Kittlitz murrelet, glacier bear, tufted puffin).

On the other hand, almost all comments received from individuals in support of ongoing fisheries indicated that there was no evidence that commercial fisheries resulted in long-term biological harm. These individuals stated that park fisheries have been sustained for over 100 years with no observable biological harm.

NPS Response: We acknowledge the State's expertise and experience in managing fisheries in Southeast Alaska, as well as the strong conservation ethic

of Alaskan fishermen. The State is charged with managing fisheries to maintain sustainable yield. The NPS must manage its lands and waters in a manner that leaves all resources unimpaired. Both of these management approaches are embraced by the Act, as amended, which essentially allows commercial fisheries to continue under the management regime of the State in the outer waters of the park, while establishing a more protective fisheries management regime within Glacier Bay proper.

Many individuals felt that the resource impacts of other commercial ventures (i.e., cruise ships, other tourist operations) in Glacier Bay were likely far greater than commercial fishing impacts. A few individuals believed that logging and mining are precluded from National Parks because they do impact resources while commercial fishing does not.

NPS Response: We analyzed the potential effects of vessel traffic, both commercial and personal, in the 1996 Vessel Management Environmental Assessment and Plan. Based on this assessment, we outlined strict vessel quotas, defined vessel operating conditions, and developed mitigation measures designed to ensure that park resources are not impaired by vessel traffic. Importantly, the NPS has a dual mandate to protect park resources while providing visitors the opportunity to see and learn about parks. Vessel access is the primary means by which the public visits Glacier Bay National Park. In general, commercial ventures associated with providing visitor services—such as cruise ship and tour boat operations and kayak concessions in Glacier Bay—are permitted in national parks, while other commercial ventures—in particular, those that remove resources from park areas for profit—are deemed inappropriate.

Several commenters noted that most of the fish species harvested in Glacier Bay were migratory (salmon, halibut, lingcod) and consequently were not "park resources"; a few commenters indicated that 98% of the salmon caught in Glacier Bay were hatchery raised fish and were not park resources.

NPS Response: Salmon, halibut and lingcod have been documented to range widely and may move in and out of park waters throughout their life span. However, National Parks consider fish and wildlife species to be park resources during their period of residence within park boundaries and manage them as such, regardless of their place of origin or primary area of residency. We do not believe that there are definitive research results available regarding the percentage of hatchery-raised fish using—or caught in—park waters. We have found no data to verify the claim that 98% of salmon caught in Glacier Bay are hatchery-raised; this figure appears to be a misinterpretation of coded wire tag data collected by ADFG. In any event, Congress has resolved the debate over whether salmon should be considered "park resources" by passing the Act, as amended, and assigning the Secretary of the Interior/NPS the responsibility of developing grandfather criteria for lifetime fishing permits in Glacier Bay proper and enforcing a winter king salmon trolling season as well.

Cultural Issues

Many commenters, both Native and non-Native, expressed concern about how the proposed regulations would affect Native fishing activities in park waters. Many commenters, including NPCA supported some form of ongoing Native fisheries including commercial, subsistence, and an undefined "Native fishery." These individuals cited several reasons for supporting ongoing Native fishing including: it is a basic Native right; the Tlingit people have harvested fish with limited impact to the environment; and it is important to preserve cultural traditions, maintain the economic viability of Native villages, and continue Native people's connection to resources.

Several commenters remarked that commercial fishing and subsistence activities were tightly linked for Native peoples. These individuals felt that reducing opportunities for commercial fishing would reduce subsistence products available in Tlingit households. One commenter noted that Tlingit traditional fishing is protected by treaty. One commenter indicated that wilderness water closures eliminated access to waters traditionally used by the Hoonah hand-trolling fleet. A few individuals commented that they did not support ongoing Native fisheries because all people must learn to adapt to change. One commenter thought that fishery closures would protect the Tlingit homeland and therefore protect Native culture.

The State expressed concern that Tlingit historical activities are being ignored and that the residents of other local communities have a cultural and historical dependence upon the Glacier Bay area. They further indicated that NPS's intention with regard to the proposed cultural fishery is unclear.

NPS Response: This issue is generally beyond the scope of this rulemaking which concerns implementation of congressional requirements for commercial fishing activities within the park and the development of appropriate criteria for lifetime nontransferable fishing permits for Glacier Bay proper. That said, we recognize that the Tlingit people have fished the waters of Glacier Bay and Icy Strait for many generations and are intimately connected to both the fish resources and the park itself. Similarly, for over a century, non-Native peoples of Southeast Alaska have come to rely on the waters of the park for sustenance. We recognize that the park represents more than just an economic resource for these groups—it is a place of cultural identity. The Act provisions that authorize lifetime tenancy and continued fishing in outer waters will, to some extent, preserve both Native and non-Native cultural ties to most of Glacier Bay National Park. Moreover, nothing in these regulations or the Act preclude fishermen from participating in other authorized activities including sport or personal use fisheries, or visiting and enjoying the park for other reasons.

We cannot legally provide differential commercial fishing opportunities for Natives and/or local peoples and The Alaska National Interest Lands Conservation Act (ANILCA) does not authorize Title VIII subsistence activities in Glacier Bay National Park.

However, we signed a Memorandum of Understanding with the Hoonah Indian Association (HIA), the federally recognized tribal government, in 1995 which commits NPS and HIA to work together on numerous issues of mutual concern regarding Glacier Bay National Park. We have initiated several ongoing projects and programs designed to maintain and strengthen Tlingit cultural ties to Glacier Bay and to perpetuate important cultural traditions. As part of this effort, we intend to pursue the development of a cultural fishery for the local Tlingit community in cooperation with the HIA and the State. This cultural fishery will allow the Tlingit people to maintain a cultural tradition established by their ancestors that they can pass on to future generations.

Visitor Issues

Many commenters expressed concern that commercial fishing activity, including vessel disturbance and potential ecosystem changes, could affect visitors' experience of Glacier Bay. Many of these individuals felt that commercial fishing vessels destroyed the solitude and serenity of park waters. Several past visitors cited specific instances of having been disturbed by commercial fishing vessels or gear.

On the other hand, many individuals in support of commercial fishing indicated that park visitors enjoyed seeing and learning about commercial fishing. These commenters cited specific examples of passengers on tour boats and cruise ships photographing commercial fishing vessels. Two kayak concessionaires in the park indicated that they had never received complaints from their clients about commercial fishing in park waters. Several commenters explained that many of the fisheries took place during a time period when few visitors were present (i.e., Tanner crab season in February) or in areas where few visitors were present (i.e., the outer coast). Several commenters felt that the presence of commercial fishing vessels enhanced visitor safety for boaters, kayakers, and airplane passengers. One commenter expressed concern that trolling activities were a navigational hazard, particularly in Glacier Bay. One commenter felt that commercial fishing was, in and of itself, a valid way to visit the park. Many commenters described their commercial fishing trips in Glacier Bay as an experience beyond simple economic gain.

NPS Response: We recognize that park visitor opinion on commercial fishing, as with most issues, differs. For some park visitors, seeing and learning about commercial fishing is an important part of their experience in Glacier Bay. Others wish to have park experiences less influenced by human contact. The Act, as amended, attempts to balance this spectrum of visitor interests by authorizing ongoing fisheries in the park's outer waters while designating certain areas—including five wilderness water areas, and in Glacier Bay proper, the upper west arm, the upper east arm, and Geikie Inlet—as closed to commercial fishing. Some of these areas are already closed to motorized traffic under the park's 1996 Vessel Management Plan regulations. Congress also set in motion a process for limiting and phasing out commercial fishing in the rest of Glacier Bay proper through the use of grandfathered nontransferable lifetime permits to qualified fishermen in the three authorized commercial fisheries. We believe that this mixture of closed and open areas will provide diverse visitor experience opportunities; we anticipate few if any new visitor concerns regarding commercial fishing in Glacier Bay under this rule.

Marine Reserve

Numerous individuals supported the concept of providing a marine reserve in Glacier Bay where commercial fishing would be prohibited. Over 200 scientists signed a petition called "Protecting Marine Life in Glacier Bay National Park" which called for the closure of all commercial fishing in Glacier Bay and the establishment of a marine reserve. The Center for Marine Conservation, the Marine Conservation Biology Institute and several individual commenters cited benefits of protected zones including: they may serve as refugia when regional fisheries management fails; they provide a naturally functioning ecosystem for scientific study; they conserve marine species; they enhance non-consumptive uses of the park; and they benefit commercial, recreation, and subsistence fishing outside protected area. One commenter noted that Alaska has 150% more coastline than the rest of the United States, but only one small marine reserve. On the other hand, several commercial fishermen believed that the wilderness area closures would serve as adequate marine reserves. A few commenters indicated that there was little evidence that marine reserves were beneficial. One commenter indicated that outer coast waters were essentially "no-take" areas for much of the year as salmon trolling is limited to one week in July within one mile of shore.

NPS Response: This issue is beyond the scope of this rule which implements congressional requirements for commercial fishing activities in the park and deals with criteria for nontransferable lifetime fishing permits for Glacier Bay proper. Nevertheless, we acknowledge that interest in no-take marine reserves is growing worldwide. Researchers and managers note numerous benefits of areas where limited or no resource extraction takes place including: opportunities for research, preservation of marine species and naturally functioning ecosystems, preservation of biological and genetic diversity, enhanced non-consumptive activities, and potential benefits to fisheries outside the no-take area. The Act, as amended, went far toward establishing no-take marine reserves in Glacier Bay proper by closing several areas to all commercial fishing. Although sport and personal use fisheries continue to be authorized in these areas, very little participation is expected to occur in these areas. The wilderness waters of the Beardslee Islands, Adams Inlet, Hugh Miller Complex, and Rendu Inlet—and portions of Muir Inlet—are closed to motorized traffic during the visitor season and hence receive very little, if any, sport fishing pressure. As a result, the areas closed to commercial fishing by the Act will virtually be no-take areas by default. These areas will allow unparalleled opportunities—previously non-existent in Alaska and rare in northern latitudes worldwide—for researching the effects of marine reserves. The particular elements of a marine reserve research program for Glacier Bay proper will be developed cooperatively with the State of Alaska as required.

Research

Numerous commenters in support of reducing or eliminating commercial fishing in park waters indicated that as a national park, Glacier Bay could serve as an unfished control area, thus providing a unique baseline for future research. Several commenters indicated that one important value of "no-take" marine reserves was the opportunity to compare fished and unfished areas and apply this knowledge to the management of ongoing fisheries. Several commenters felt that NPS should monitor any ongoing fisheries carefully to ensure sustainability and compatibility with park values. A few commenters suggested specific studies including bycatch studies, stream colonization processes, and the effects of fishing on fish, marine mammals, birds, and benthic communities. Several commenters felt that the cooperatively developed fisheries management plan for Glacier Bay should outline cooperative research projects that would be coordinated with existing agencies and agreed to by a joint management board. A few commenters including NPCA recommended that NPS pursue additional funding to support ongoing research needs. The Alaska State Legislature recommended that NPS define what is meant by cooperative research and outline a peer review process and quality standards. The State indicated support for a cooperatively designed research program.

Numerous commercial fishermen indicated that ongoing fisheries would not preclude research and would in fact support research because fishermen could provide valuable information on harvest. Several commenters opposed the Dungeness crab research project proposed in the 1997 draft regulations because it involved private profit from sale of crabs caught; other commenters opposed the halibut study outlined in the preamble of the proposed regulations because it would involve closing a valuable fishing area. ATA commented that they did not support additional closures beyond those described in the Act for research purposes. Several commenters expressed concern about the USGS BRD

crab and halibut studies, indicating that they may not be accurate and unbiased. PVOA believed that research at Glacier Bay would not be applicable to other areas of Southeast because park ecosystems were newly deglaciated and were therefore not representative of other Southeast ecosystems.

NPS Response: We believe that the commercial fishing closures described in the Act, as amended, will provide unique opportunities to compare fished and unfished areas. The specific elements of a research program for Glacier Bay will be cooperatively developed with the State of Alaska as required by section 123(a)(1) of the Act. We look forward to developing a cooperative research program with ADFG and others and envision that, while each agency will likely pursue agency-specific research questions, cooperative studies will be designed to address questions of mutual interest. Development of a cooperative program will also benefit from the input of other stakeholders, in particular, local fishermen who remain fishing in Glacier Bay. We acknowledge that much important information can be gleaned from fishermen's logs as well as from fishermen's traditional knowledge. Importantly, we would like to work with ADFG, IPHC and fishermen to develop better harvest tracking mechanisms for the park.

Phase-Out Period

Most comments received discussed the phase-out of commercial fishing in Glacier Bay proper. Many individuals supported the preferred alternative's phase out period of 15 years. Many commenters supported a shorter phase-out period; recommendations included 7 years (including Sierra Club recommendation), 3–5 years, and 2–4 years. One commenter recommended a 30-year phase-out. Many individuals indicated that commercial fishing should be prohibited immediately in all park waters with no phase-out period. Commenters who supported a phase-out typically indicated that this time period would allow local communities to transition from fishing to a different economy and for fisherman to be retrained for other occupations while ultimately protecting the marine resource. Individuals who recommended a shorter or no phase-out period typically expressed concern that irreversible resource impacts could occur during the phase-out period and/or fishing constituencies would work to overturn decisions regarding fishing closures during that period. The Wilderness Society stated that NPS must show that ongoing fisheries would not compromise resources during the phase-out.

Conversely, many commenters recommended at least lifetime tenancy for fishermen with a history of fishing in Glacier Bay or no phase-out at all. Many of these individuals indicated a phase-out even for the period of their lifetime was unfair because it would preclude fishermen's children and grandchildren from "inheriting" the right to fish in Glacier Bay.

NPS Response: The Act, as amended, grants qualifying fishermen a non-transferable permit for lifetime access to an authorized Glacier Bay proper commercial fishery. Thus, the question of the duration of any phase-out has now been resolved by Congress. We expect that this condition will result in gradual attrition from the commercial fisheries as fishermen retire. At some point in time (likely decades off), all commercial fishing in Glacier Bay proper will cease following the retirement of all fishermen qualified to continue to fish under section 123 of the Act, as amended. Life tenancy will allow individual fishermen with a sufficient history of fishing in Glacier Bay proper to continue harvesting fish and will provide a long time period for communities to make the transition to a different based economy.

Displaced Fishermen

NPS received many comments that expressed concern that fisheries closures would displace fishermen to other areas impacting the displaced fishermen, other fishermen already fishing those areas, and processors. The State disagreed with NPS's assumption as presented in the EA for the halibut and salmon fisheries that displaced fishermen can be redistributed to other areas without significant impact to their economic well being. Commenters indicated that displaced fishermen would potentially have to travel farther from their home port increasing travel costs (fuel, ice, insurance) and would be less productive in fishing new areas they weren't familiar with. Several commenters also indicated that fishermen already in the areas Glacier Bay fishermen were displaced to would be impacted because of increased fishing pressure.

Several individuals indicated that concentrating fishermen could result in resource depletion in those areas and/or state mandated gear or harvest reductions to preclude resource depletion. A few individuals were concerned that increased concentration of fishermen in smaller areas could increase the risk of collision, entanglement, etc. Several commenters indicated that fishery closures in Glacier Bay would force small boats to fish outer waters, which they are not equipped to do. A few commenters felt that closures of outer waters could displace fishermen to the Gulf of Alaska exposing them to more severe weather with limited anchorages. A few commenters indicated that displaced Glacier Bay fishermen could impact subsistence, personal use or recreational fisheries if they were forced to move into areas used for these fisheries.

NPS Response: We expect that few fishermen will be displaced outside of park waters because: (1) The Act, as amended, authorizes ongoing commercial fisheries in outer waters where well over 80% of historic harvest from the park has occurred; (2) the Act requires that any Dungeness crab fishermen compensated retire their limited entry permits (and pots) from the fishery; (3) the Act provides for life tenancy for qualifying fishermen in Glacier Bay; and (4) these regulations outline relatively lenient and inclusive eligibility criteria for the authorized fisheries in Glacier Bay proper.

Compensation

NPS received several general comments indicating that individuals and communities should be compensated for revenue lost due to fisheries closures. Several commenters recommended that all fishermen displaced from wilderness waters be compensated regardless of their fishery. A few individuals stated that deckhands/crewmembers should be compensated; one commenter recommended that crew should be compensated at the standard crew share of 10–12% of the permit holder's settlement. Several commenters indicated that processors should be compensated. The State provided a list of adversely affected entities who should be considered for compensation including commercial fishery entry permit holders, vessel owners, crewmembers, seafood processors, the State, communities and fishermen who have not historically made landings in Glacier Bay but will be impacted by increased competition or loss of opportunities.

A few commenters recommended compensation strategies that included providing business opportunities for displaced fishermen, providing job training or education tuition, and unspecified financial compensation. One commenter felt that NPS should pay displaced fishermen an average of their gross yearly take for life and compensate fishermen's children and grandchildren similarly. The Alaska State Legislature recommended that a bipartisan effort be initiated to seek additional compensation funds for deckhands and communities impacted by fishery closures.

Several commenters indicated that compensation for displaced fishermen was inappropriate. These individuals offered that "nothing is guaranteed for life." Several individuals felt that the government should not financially compensate individuals who had been making a living from a public resource. One commenter indicated that the compensation package for Dungeness crabbers should be cut in half. A few individuals offered that the government should not compensate Dungeness crabbers because sea otters moving into crabbing areas would have eventually reduced crab harvest. Several commenters indicated that fishermen should compensate the American public for past use of public resources.

NPS Response: In May 1999 Congress passed section 501 of the 1999 Emergency Supplemental Appropriations Act that significantly expanded federal compensation available for commercial fishermen, communities and others who are directly affected by fisheries closures within Glacier Bay. We are working closely with the State of Alaska to implement this additional $23 million compensation program as rapidly and as prudently as possible.

The Act passed by Congress in October 1998, as amended, also authorized a compensation program specific to Dungeness crab commercial fishermen who fished in the Beardslee Island or Dundas Bay wilderness waters for at least 6 of 12 years during the period 1987–1998. We are currently administering this compensation program and several fishermen have received compensation.

The State urged NPS to publish a formal rulemaking, which clarifies all aspect of the Dungeness crab buyout program. They further urged that an affidavit be sufficient to establish qualification for the buyout program. The State clarified that the State does not intend to participate actively in the permit relinquishment process whereby Dungeness crabbers would relinquish their Dungeness crab permit. Last, the State indicated that it was not clear how NPS intended to calculate fair market value of vessels and gear and urged NPS to be as lenient as possible. One commenter stated that the application period for Dungeness crab compensation process should be extended because all permit holders were not contacted.

NPS Response: A formal rulemaking process to complete the Dungeness crab compensation program, as described by the Act, as amended, is neither required nor warranted. A new rulemaking on the Dungeness crab fishery would take months to complete and actually serve to delay compensation of qualifying fishermen. Moreover, the Act, as amended, imposes strict timeframes for completion of the compensation program. Fair market values for vessels, gear and permit, where needed, will be carefully determined with assistance of professional appraisers. Following passage of the 1998 Act, notice of the compensation program was provided to all 1,400 individuals who had provided comment or participated in workshops, described in extensive media coverage of the Act, and published in the **Federal Register**. More recently, as part of the May 1999 amendment to the Act, Congress changed the eligibility criteria and extended the application period for the Dungeness crab fishery compensation program. Notice of these changes was published in the **Federal Register** (64 FR 32888, June 18, 1999) and subsequently mailed to every permit holder in the Southeast Alaska Dungeness crab commercial fishery.

Safety

Several commenters expressed concern that smaller boats that typically fished Glacier Bay proper could not safely fish outer waters if they were displaced. A few commenters expressed concern that fishery closures on the outer coast would preclude use of the bays and protected anchorages during inclement weather. The ATA expressed concern that the ability of fishermen to seek safe harborage would be impacted if they had to receive permission from the superintendent for it. The State requested that the language providing for safe harborage in the 1997 rulemaking preamble be included in the body of subsequent rulemaking.

NPS Response: We expect that relatively few fishermen will be displaced and little crowding will occur based on the conditions outlined in the Act (continued fishing in outer waters/life tenancy for qualifying fishermen in Glacier Bay proper) and the relatively lenient and inclusive eligibility criteria described in this rule for the authorized Glacier Bay proper fisheries. Moreover, nothing in this rulemaking, existing park regulations, or the Act would affect the ability of fishermen or other vessel operators to seek safe harbor at any time within the park under hazardous weather or sea conditions, when experiencing mechanical problems, or in other exigent circumstances.

Personal Use, Subsistence and Sport Fishing

One commenter felt that NPS should continue to provide for personal use fisheries. Several commenters indicated that NPS should provide for subsistence fishing. Many commenters indicated that it was unfair to preclude commercial fishing while allowing guided sport fishing to continue. The State offered that NPS rulemaking should not restrict the State's ability to manage personal use fisheries. They further indicated that subsistence and personal use fisheries have occurred within park boundaries for many years and are not limited to residents of particular communities or areas. And they indicated that residents of Hoonah are authorized to participate in these fisheries in Glacier Bay, as are residents of other communities.

NPS Response: Nothing in these regulations on grandfather criteria for lifetime permits for commercial fishing in Glacier Bay proper alters or supercedes existing authorities for personal use or sport fisheries. Existing personal use and sport fishing opportunities will continue consistent with NPS and non-conflicting state regulations. ANILCA specifically authorizes sport fishing in the park; ANILCA does not, however, authorize any Title VIII subsistence activities, including subsistence fishing, in Glacier Bay National Park. We have proposed to the State that all fisheries in Glacier Bay National Park—including authorized commercial, sport and personal use fisheries—be addressed in the cooperatively developed fisheries management plan.

Environmental Assessment

While several commenters noted that portions of the Environmental Assessment were inaccurate, very few comments (with the exception of the State, ATA, PVOA and one individual commenter) provided specific details on which information and/or analysis was incomplete or inaccurate. Several commenters in support of ongoing fisheries felt that, in general, the EA overstated the impacts of commercial fishing on park resources and visitors and understated the effects of closures on fishermen and the local economy.

NPS Response: We acknowledge that commenters provided valuable information with which to improve the analysis presented in the Commercial Fishing Environmental Assessment. Specific comments, particularly regarding economic effects have been incorporated within the context of the Regulatory Flexibility Analysis

presented below. Specific comments associated with biological issues will be addressed in the fisheries management plan. Notwithstanding these specific comments, we believe that the document, with an errata sheet, is balanced and fairly reflects the mix of potential effects associated with continued authorized commercial fishing activities and/or closures.

A few commenters believed that the EA described potential impacts that were unlikely to occur and implied that commercial fishing vessels are the sole or main source of vessel effects on marine and terrestrial systems when in fact they are a minor component of vessel traffic in Glacier Bay. A few commenters offered that preparing separate environmental documents for commercial fishing, sport fishing, vessel management, new park infrastructure, etc. does not allow the public to see the "whole" picture or to understand the cumulative effects of these activities.

NPS Response: One purpose of an Environmental Assessment is to outline all the potential social and biological effects of a proposed federal action. Consequently, the Commercial Fishing Environmental Assessment described the potential effects of commercial fishing on the human and biological environment in and near Glacier Bay National Park. We determined that the commercial fishing issue and associated analysis should be addressed separately from other related issues including vessel management (addressed in the 1996 Vessel Management Plan and Environmental Assessment) and other ongoing fisheries (which will be addressed in the cooperatively developed fisheries management plan). The cumulative impacts section of the Commercial Fishing Environmental Assessment was provided to assist the public in placing this issue within the context of other related park actions and programs. Moreover, many of the original issues addressed in the 1997 proposed rulemaking and its accompanying EA have now been definitively resolved by Congress in the Act, as amended, and are no longer discretionary Federal actions requiring the same scope of NEPA analysis as before.

Section by Section Analysis

The regulations in this section implement the statutory requirements of section 123 of the Omnibus Emergency and Supplemental Appropriations Act for FY 1999 (the "Act") (Pub. L. 105–277), as amended by section 501 of the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106–31). Where possible, the language used in this section of the regulations mirrors the language used in the Act, as amended.

Section 13.65(a)(1) of the regulations provides definitions for the terms "commercial fishing", "Glacier Bay" and "outer waters." The definition for "commercial fishing" is the same as used for the park's vessel regulations in section 13.65(b) of Title 36 of the Code of Federal Regulations. The terms "Glacier Bay" and "outer waters" are used in these regulations to describe marine water areas of the park that are to be regulated differently under requirements of the Act, as amended. The definition for "Glacier Bay" mirrors the definition for "Glacier Bay Proper" that is provided in section 123(c) of the Act. This definition is essentially the same as that provided in the park's vessel management and resource protection regulations found at section 13.65(b)(1) of Title 36 of the Code of Federal Regulations. The term "outer waters" is used to describe all of the marine waters of the park outside of Glacier Bay proper. This includes areas of Icy Straits, Cross Sound, and coastal areas on the Gulf of Alaska running from Cape Spencer to Sea Otter Creek, beyond Cape Fairweather.

Section 13.65(a)(2) of the regulations provides authorization for commercial fishing to continue in some of the non-wilderness marine waters of the park, as specifically provided for by the Act. The Act calls for the State of Alaska and the Secretary of the Interior to cooperatively develop a fisheries management plan for the regulation of commercial fisheries in the park. We anticipate that the fisheries management plan will reflect the requirements of the Act and other applicable federal and state laws, as well as international treaties, and serve to protect park values and purposes, prohibit new or expanded commercial fisheries, and provide opportunity for the study of marine resources. This authorization for commercial fishing supercedes the general regulatory prohibition on commercial fishing in the park found at 2.3(d)(4) of this chapter. The authorization does not, however, exempt commercial fishing activities from other park regulations and programs in place to protect park resources and visitor use opportunities. Commercial fishing activities are to be conducted and managed in concert with park purposes and values.

Section 13.65(a)(3) of the regulation reaffirms the statutory closure of marine wilderness waters as required by the Wilderness Act and restated by section 123(b) of the Act. Two recent federal court decisions have made clear the statutory prohibition on most commercial activities—including commercial fishing—in designated wilderness areas.

Section 13.65(a)(4) of this regulation affirms that, consistent with the requirements of Section 123(a)(1) of the Act, commercial fishing is authorized in the marine outer waters of the park subject to a cooperatively developed State/Federal park fisheries management plan and applicable federal and non-conflicting state laws and regulations.

Section 13.65(a)(5) describes specific requirements and limitations on commercial fisheries in Glacier Bay proper, consistent with the Act, as amended. Section 13.65(a)(5)(i) of the regulation limits Glacier Bay proper commercial fisheries to longlining for halibut, pot or ring net fishing for Tanner crab, and trolling for salmon. These are the only commercial fisheries authorized to continue in Glacier Bay proper. Section 13.65(a)(5)(ii) of the regulations limits participation in the authorized Glacier Bay proper commercial fisheries only to individuals who have a nontransferable lifetime special use permit for access to the fishery issued by the Superintendent. This section clarifies that the requirement for this lifetime special use permit is not currently scheduled to go into effect until January 1, 2000. The delayed implementation date is intended to provide adequate opportunity for the public to comment on this rule, to review those comments and make any adjustments to the rule as may be warranted, and to allow sufficient time for fishermen to apply for and receive the access permits before a permit requirement is put into effect. This section also makes clear that the permits are non-transferable—reflecting the language and requirements of the Act. However, if a temporary emergency transfer of a permit is approved by CFEC due to illness or disability of a temporary, unexpected and unforeseen nature, we will also consider issuing a temporary special use permit transfer for the period (generally, a year or less).

Section 13.65(a)(5)(iii) describes how to apply for a special use permit for access. Subsection (A) restates the Act in requiring an applicant to possess a valid commercial fishing permit for the district or statistical area encompassing Glacier Bay proper. Subsection (B) outlines the specific eligibility requirements that must be met to obtain a special use permit for access to the Glacier Bay fisheries. These eligibility criteria have undergone a Regulatory Flexibility Act analysis, and have been determined to meet the goals of this regulation, while seeking to minimize impacts to commercial fishermen and other affected small businesses to the extent consistent with the Act, as amended. A 12-month application period to obtain a special use permit for access is described; conclusion of the eligibility determinations by October 1, 2000 may be important to completion of the $23,000,000 compensation program authorized by Congress in the 1999 amendment to the Act. This subsection also outlines the specific type of documentation that an applicant must provide to the Superintendent to obtain an access permit. The Act requires fishermen to provide a sworn and notarized affidavit describing their particular history in one or more of the three authorized commercial fisheries. NPS will provide a simple affidavit form to applicants upon request. The Act also requires applicants to provide other available documentation that corroborates their history of participation in the fishery. Licensing and landing histories—two types of readily available corroborating documentation—are required by this regulation. A certified printout of a fisherman's licensing history in a fishery is available at no charge from the CFEC. The licensing history corroborates participation in the fishery during the qualifying years. Landing reports, documenting a fisherman's harvest activities in a specific commercial fishery by year and location, are available at no charge from the ADFG. A form is required from ADFG to obtain this information. We are aware of the limitations of some landing data—there is, for example, no separate statistical reporting unit for Glacier Bay for salmon trolling. Accordingly, we intend to consider salmon landing reports for District 114 as indirect evidence of participation in the Glacier Bay fishery; this indirect evidence must be supported by additional corroborating documentation. For the halibut and Tanner crab fisheries, because specific reporting areas are described for Glacier Bay, additional corroborating documentation will be required where landing data are not conclusive. In any event, landing reports must be for the reporting area immediately adjacent to Glacier Bay to be considered. Finally, subsection (C) describes the delivery address to apply for an access permit, and subsection (D) clarifies that the Superintendent will make a written determination and provide a copy to the applicant. Fishermen will be afforded opportunity to provide additional information, as warranted or needed. We anticipate that it could take 30 days or more to process and respond to an application, depending on the volume and completeness of the applications received. For this reason, fishermen are advised to apply at least 30 days in advance of anticipated fishing activities in Glacier Bay proper that will require a special use permit.

Subsection 13.65(a)(5)(iv) describes special use permit denial and appeal procedures for an applicant. These procedures are similar to those in place for other NPS permit programs in Alaska.

Subsection 13.65(a)(5)(v) makes clear that the special use permits for access to the Glacier Bay proper commercial fisheries are renewable for the lifetime of an access permit holder, provided they continue to hold a valid commercial fishing permit and are otherwise qualified to participate in the fishery. We expect to reissue the special use permits for access on a five-year cycle. This will provide a recurring opportunity to update the list of fishermen authorized to commercial fish in Glacier Bay. NPS will not charge a fee for these special use permits. No special use permits will be required to participate in commercial fisheries otherwise authorized in the marine waters of the park outside Glacier Bay.

Section 13.65(a)(5)(vi) describes non-wilderness areas closed to commercial fishing within Glacier Bay proper, as required by the Act, as amended by section 501 of the 1999 Emergency Supplemental Appropriations Act (May 21, 1999). The 1999 amendment delays implementation of these non-wilderness closures during the 1999 fishing seasons with respect to the commercial halibut and salmon troll fisheries. Wilderness areas remained closed to all commercial fishing under the 1999 amendment, with no delay in implementation; these closures were put into effect by NPS on June 15, 1999. NPS will provide detailed maps and charts depicting these non-wilderness and wilderness closures to every fisherman who receives a special use permit for access to the three authorized Glacier Bay proper commercial fisheries. Subsection (A) describes the general closure of the west arm of Glacier Bay to commercial fishing, with the exception of trolling for king salmon during the State's winter season troll fishery. Subsection (B) implements the closure of Tarr Inlet, Johns Hopkins Inlet, Reid Inlet, and Geike Inlet to all commercial fisheries. These closures include the entirety of each of these inlets, as depicted on the maps and charts available from the Superintendent. Subsection (C) closes the east arm of Glacier Bay north of a line drawn across the mouth of the arm from Point Caroline through the southern point of Garforth Island to the east shore mainland. The Act provides an exception to this prohibition that allows trolling for king salmon during the State's winter troll fishery "south of a line drawn across Muir Inlet at the southernmost point of Adams Inlet." This line is described in this subsection as 58° 50′N latitude, a description more readily understood by commercial fishermen.

Drafting Information

The primary authors of this rule are Randy King, Chief Ranger, Glacier Bay National Park and Preserve; Mary Beth Moss, Chief of Resource Management, Glacier Bay National Park and Preserve; and Donald Barry, Assistant Secretary of the Interior for Fish and Wildlife and Parks. Other key contributors include Molly Ross, Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks; Marvin Jensen and John Hiscock of the National Park Service.

Compliance With Other Laws

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601 *et seq.*, we have prepared an initial regulatory flexibility analysis on the expected impact of this rule on small business entities and have determined that the rule will have a significant economic effect on a substantial number of small entities.

With this rule we are establishing eligibility requirements and application procedures for obtaining a special use permit for lifetime access to the three commercial fisheries authorized in Glacier Bay proper.

At issue is the effect that fishing eligibility restrictions in Park waters would have on numerous individuals and several communities. Commercial fishing is one of the largest employers in Southeast Alaska. The majority of private sector income in the Southeast is derived from the seafood industry, and the economic effect of these fisheries extends throughout Southeast Alaska and the State. Local fishing village governments are supported by commercial fishing, and in some cases depend on raw fish taxes. Restricted eligibility would not only directly affect fishermen unable to meet the participation criteria, but is also likely to affect deckhands, vessel owners, processors, other local business that either directly or indirectly support and are supported by the commercial fishing industry, and village governments.

In designing the eligibility criteria, we attempted to minimize the economic

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impacts to fishermen, communities, and others associated with the commercial fishing industry. The Act authorizes existing commercial fisheries to continue in outer waters where it is estimated that over 80% of the harvest from Park waters occurs. Additional harvest will continue in most of Glacier Bay during the life tenancy period of qualifying fishermen, supporting fishermen and communities over the course of the current generation. About 18% of the Park's marine waters (wilderness and non-wilderness) will be closed immediately to commercial fishing. These closed waters have historically accounted for approximately 10% of total biomass harvested in the Park. Within Southeast Alaska, the Bay has historically accounted for only 2–4% of the commercial halibut harvest; approximately 7–12% of commercial Tanner crab harvest; and an indeterminate, but presumably small percentage of the salmon harvest. 1

We expect that some portion of the revenue previously harvested in the closed areas of the Park will be recovered in Cross Sound and Icy Strait and/or other Southeast waters. This is particularly likely for fishermen pursuing highly migratory species like halibut and salmon. The stocks of these species do not confine themselves to the Bay. They move throughout the local aquatic environment, and fishermen are used to pursuing them more widely. Halibut fishermen operate under an individual quota system and with a fairly lengthy (8-month) fishing season. They should be able to select time and fishing location to achieve their quotas, avoiding the excessive costs and competitive pressures created by derby fishing conditions. Despite the fact that salmon are less broadly distributed in space or in time than halibut, most displaced salmon trollers (power and hand) are likely to be able to recoup the harvest lost from Glacier Bay proper. However, small hand troll operators will probably encounter increased safety risks and other increased costs due to more exposed weather conditions and associated reduced access to migratory king salmon. The governing conditions are less accommodating for Tanner crab fishermen. Tanner crab fishing grounds are fully utilized with few, if any unexploited areas. Displaced Tanner fishermen are unlikely to recover their lost harvest.

In addition, although fishermen who do not meet the eligibility criteria will be displaced or excluded from the Bay, the above statistical data on the distribution of harvests from Park waters suggests that most fishermen who operate in Park waters are not heavily dependent on Glacier Bay proper fisheries. The data indicate that most of these fishermen have been harvesting fish and earning revenues outside the Bay. Moreover, in the Act and amendments thereto, Congress provided for compensation to affected communities and individuals.

Based largely on data collected by the Commercial Fisheries Entry Commission (CFEC) and two studies conducted by Jeff Hartman, Alaska Department of Fish and Game (Hartman 1998 and 1999), we estimate that the economic effects of the eligibility conditions established in the interim rule (direct, indirect, and induced) have a present value of $9.2M (1997$).

- The estimate is inclusive, covering losses of income to fishing permit holders, vessel owners, crew members, seafood processing firms and their employees, local businesses and communities, and the State. The restrictions on fishing may also diminish property values (fishing vessels and gear; real estate and other investment capital), but no estimate was made of these losses.
- The estimate is conservative. With unemployment in the local communities already higher than the State average, employment opportunities are limited. The NPS assumed that for many of the affected individuals the income losses would be perpetual. This and other assumptions explained below lead to an overestimate of the effects of the rule.

The Commercial Fisheries Entry Commission (CFEC) maintains detailed, annual information on permit holders, including size, location, and value of catch (gross earnings). There are two problems with the harvest reporting system which preclude using these data alone to estimate the economic effects of limiting access to the fisheries in the Bay:

- The earnings information is gross, not net.
- The statistical areas for which data are reported frequently do not coincide with Park boundaries, making it difficult to apportion harvest to Park waters.

Fortunately, in 1994, Hartman conducted an in-depth survey of permit holders, vessel owners, crews, and processing firms and their workers, collecting detailed cost information (Hartman 1998). This survey information allows one to estimate net income and profits for the various groups.

In 1999, Hartman utilized the information and results of his 1994 survey in conjunction with decadal (1987–96) CFEC data on harvests size and value, location of catch, and permitee participation by venue to estimate the losses associated with phasing out commercial fishing at Glacier Bay (Hartman 1999). Hartman found that the present value of losses in income to the fishing industry and communities in Southeast Alaska ranged between $16M and $23M (1997$). These estimates do not include diminutions in the value of assets, but they do account for:

- All regional income losses (direct, indirect, and induced), using a multiplier of 1.5. The relatively small multiplier reflects the extent to which the region is dependent upon imports.
- Lost tax revenues to the State. Alaska levies a tax on commercial fishing businesses as well as a corporate income tax. The State shares the fishing tax with local communities based on location of landing.
- Certain transactions cost and administration costs for the compensation program. Hartman estimates the present value of these costs at $4.3M. Over-compensation of firms and individuals ($3.4M) due to the difficulty of precisely identifying affected entities and the magnitude of their losses constitutes the largest component of the transactions costs.

We are puzzled by the inclusion of these transactions and administration costs, especially the transaction costs. They are a transfer payment, not an income loss, and since Congress has funded the compensation program, this $3.4M constitutes an increase in regional income at the expense of taxpayers nationally. In our use of Hartman's analysis, we exclude these expenditures together with $200K for Dungeness crabbers. Losses sustained by Dungeness crabbers are due to the Act, not the promulgation of eligibility conditions for Tanner, halibut, and salmon fishermen. Excluding these costs leaves $670K in administrative expenses. The cost of administering the compensation program is a burden on the State and the NPS, but not a loss to the regional economies. Indeed, depending upon how the monies are disbursed, they may be a gain to the regional economies, especially since these expenses are likely to be covered by taxpayers nationally. Excluding all transactions and administration costs reduces the estimated regional income effects to $12–19M.

We have confidence in Hartman's analysis, both because of the care with which it was designed and executed and because Congress based its $23M appropriation for compensation on this analysis. This latter is a strong endorsement. Hartman's analysis of income losses is more comprehensive than that required of us, however. Hartman wanted to identify all impacts to the region from phasing out commercial fishing in the Bay. We are only responsible for estimating the impacts associated with the promulgation of eligibility conditions for participating in the Tanner, halibut, and salmon troll fisheries. Hartman's upper bound estimate for this subset is $12.1M.

In conducting his analysis, Hartman adopted much more restrictive eligibility criteria than those selected by the Secretary, excluding fishermen with less than 6 years of participation in 10. Scaling back Hartman's results to exclude only those with less than 3 years of participation during the decade reduces the upper bound estimate of the present value of the income effects to $9.2M. At a discount rate of 3% in perpetuity this is an annual impact of $276K. Annualizing over 50 years gives an impact of $358K.

We believe these to be conservative estimates of the economic effect of the eligibility criteria selected by the Secretary on small entities (individuals, firms, communities, and village governments) in Southeast Alaska. First, our estimate is based on Hartman's upper bound, which assumes among other things that most displaced fishermen never work again. Secondly, because CFEC statistical areas do not coincide with Park boundaries, the data overestimate lost harvest and income due to the eligibility criteria. Further, participation data for 1989–1998, the period used by the Secretary in selecting the eligibility criteria, indicate that fewer participants would be excluded from the Bay fisheries than data for the period 1987–1996, the period underlying Hartman's analysis. No effort was made to correct for these influences and refine our estimates further.

We have placed a copy of the regulatory flexibility analysis on file in the Administrative Record at the address specified in the **ADDRESSES** section. Public comment is invited on the regulatory flexibility analysis.

Regulatory Planning and Review

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, the environment, or other units of government. Jobs in local Alaska communities will be lost and a Federally funded compensation programs will mitigate the economic impacts on individuals and the communities. An economic analysis has been completed and is attached (See Regulatory Flexibility Act Section). With this rule we are establishing eligibility requirements and application procedures for obtaining a special use permit for lifetime access to three commercial fisheries authorized in Glacier Bay proper.

b. This rule will not create inconsistencies with other agencies' actions. The Act calls for the Secretary and the State of Alaska (State) to cooperate in the development of a management plan to regulate these ongoing commercial fisheries. Certain inlets or areas of inlets of Glacier Bay proper are either closed to all commercial fishing, or limited to trolling by qualifying fishermen for king salmon during the winter season. The Act confirms the statutory prohibition on commercial fishing within the Park's designated wilderness areas, and authorizes compensation for qualifying Dungeness crab fishermen who had fished in designated wilderness waters of the Beardslee Islands and Dundas Bay.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule implements and establishes eligibility requirements and application procedures for obtaining a special use permit for lifetime access to three commercial fisheries authorized in Glacier Bay proper.

d. This rule will not raise novel legal or policy issues. States and other Federal programs have used similar measures to compensate individuals to accomplish program initiatives.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule:

a. Does not have an effect on the economy of $100 million or more, as demonstrated in the economic analysis (see Regulatory Flexibility Act Section).

b. Will not cause an increase in costs or prices for consumers, individual industries, Federal, State or local governments entities, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises (See Regulatory Flexibility Act Section).

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. This rule does not change the relationship between the NPS and small governments. (See Regulatory Flexibility Act Section).

b. The Department has determined and certifies pursuant the Unfunded Mandates Reform Act, that this rule will not impose a cost of $100 million or more in any given year on local, State or tribal governments or private entities.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. No takings of personal property will occur as a result of this rule. Perceived takings due to job loss will be offset by the compensation program. This rule implements and establishes eligibility requirements and application procedures for obtaining a special use permit for lifetime access to three commercial fisheries authorized in Glacier Bay proper. (See Regulatory Flexibility Act Section).

Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism effects. The primary effect of this rule is to implement eligibility requirements and application procedures for obtaining a special use permit for lifetime access to three commercial fisheries authorized in waters of Glacier Bay National Park.

Civil Justice Reform

The Department has determined that this rule meets the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988. The rule does not unduly burden the judicial system. NPS drafted this rule in "Plain-English" to provide clear standards and to ensure that the rule is easily understood. We consulted with the Department of Interior's Office of the Solicitor during the drafting process.

Paperwork Reduction Act

This rule contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. The collection of information contained in section 13.65 (a)(5)(iii) of this rule is for issuing a special use permit for lifetime access to three authorized commercial fisheries within Glacier Bay proper based upon sufficient historical participation. The

information collected will be used to determine who qualifies for the issuance of a special use permit for lifetime access. It is necessary for someone to apply to obtain a permit.

Specifically, NPS needs the following information from an applicant to issue a special use permit for lifetime access to the salmon troll fishery, Tanner crab pot and ring net fishery, and halibut longline fishery authorized within Glacier Bay proper: (1) Full name, date of birth, mailing address and phone number. (2) A sworn and notarized personal affidavit attesting to the applicant's history of participation as a limited entry permit or license holder in one or more of the three authorized Glacier Bay fisheries during the qualifying years. (3) A copy of a current State or—in the case of halibut—International Pacific Halibut Commission commercial fishing permit card or license that is valid for the area including Glacier Bay proper. (4) Documentation of commercial landings within the statistical units or areas that include Glacier Bay proper during the qualifying period. (5) Any available corroborating information that can assist in a determination of eligibility for the lifetime access permits for the three authorized fisheries within Glacier Bay proper.

NPS has submitted the necessary documentation to the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and received approval for the collection of this information for all areas covered by this rule under permit number 1024–0125. A document will be published in the **Federal Register** establishing an effective date for Sec. 13.65(a)(5)(iii).

The public reporting burden for the collection of this information is estimated to average less than two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden of these information collection requests, to Information Collection Officer, National Park Service, 800 North Capitol Street, Washington, DC 20001; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for Department of the Interior (1024–0125), Washington, D.C. 20503.

National Environmental Policy Act

An Environmental Assessment (EA) that described five alternatives for management of commercial fishing activities within the marine waters of Glacier Bay National Park was distributed for public comment on April 10, 1998. That document described the major issues associated with commercial fishing activities within the park as identified through public meetings, written comments and staff analysis, and examined the social and biological consequences of the five alternatives. The 1997 proposed regulations were described in Alternative 1, and represented the preferred alternative for purposes of the EA. Public comment on the proposed rule and EA were taken at the same time.

Congress, in passing section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999, clarified and limited the Secretary of the Interior's discretionary authority with respect to authorizing commercial fishing in the park. Thus, the Act required the Secretary to describe eligibility criteria for the lifetime access permits for Glacier Bay proper, closed certain named inlets and wilderness waters, and clarified that the outer marine waters of the park should remain open to commercial fishing under a cooperatively developed State/Federal fisheries management plan.

Consistent with the requirements of the Act, as amended, we are providing a 45-day public comment period on this rule. All comments received on this rule will be considered prior to any decision under the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). By requiring completion of the final rule by September 30, 1999, the Act, as amended, does preclude any opportunity to prepare an EIS instead of an EA on this rulemaking. We have placed copies of the 1998 EA on file in the administrative record; copies of the EA may be obtained by contacting the park at the address or phone number listed under **FOR FURTHER INFORMATION CONTACT**.

Clarity of the Rule

Executive Order requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make this rule easier to understand? Please send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: exsec@ios.doi.gov.

Public Comment Solicitation

If you wish to comment you may mail comments to Tomie Lee, Superintendent, Glacier Bay National Park and Preserve, P. O. Box 140, Gustavus, Alaska 99826. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, Reporting and record keeping requirements.

In consideration of the foregoing, NPS proposes to amend 36 CFR part 13 as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for part 13 is amended to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; Sec. 13.65 also issued under 16 U.S.C. 1a–2(h), 20, 1361, 1531, 3197; Pub. L. 105–277, 112 Stat. 2681, October 21, 1998; Pub. L. 106–31, 113 Stat. 57, May 21, 1999.

2. Section 13.65 is amended by adding paragraph (a) and removing and reserving paragraphs (b)(5) and (b)(6) to read as follows:

§ 13.65 Glacier Bay National Park and Preserve.

(a) *Commercial Fishing*—(1) *Definitions.* As used in this section:

Commercial fishing means conducting fishing activities under the appropriate commercial fishing permits and licenses as required and defined by the state of Alaska.

Glacier Bay means all marine waters within Glacier Bay, including coves and inlets, north of an imaginary line drawn from Point Gustavus to Point Carolus.

Outer waters means all of the non-wilderness marine waters of the park located outside of Glacier Bay.

(2) *Authorization.* Commercial fishing is authorized in the non-wilderness marine waters of the park in compliance with paragraph (a) of this section, and applicable federal and non-conflicting state laws and regulations.

(3) *Wilderness.* Commercial fishing and associated buying and processing operations within designated wilderness are prohibited. Maps and charts showing designated wilderness areas are available from the Superintendent.

(4) *Outer waters.* Commercial fishing is authorized within the marine outer waters of the park subject to a cooperatively developed State/Federal park fisheries management plan and applicable federal and non-conflicting state laws and regulations.

(5) *Glacier Bay.* (i) *Authorized fisheries.* Commercial fisheries within Glacier Bay are limited only to longline fishing for halibut, pot or ring net fishing for Tanner crab, and trolling for salmon. All other commercial fisheries are prohibited.

(ii) *Limits on participation.* After January 1, 2000, longlining for halibut, pot or ring net fishing for Tanner crab, or trolling for salmon in Glacier Bay is prohibited without a special use permit for access to the fishery issued by the Superintendent. The special use permit for access is non-transferable.

(iii) *Obtaining a special use permit.* The special use permits for access to the three authorized Glacier Bay commercial fisheries are available to fishermen who-(A) Possess a valid commercial fishing permit for one or more of the three fisheries authorized in Glacier Bay; and,

(B) Provide documentation to the Superintendent prior to October 1, 2000, which demonstrates that the individual participated as a permit holder in the Glacier Bay commercial halibut fishery for at least two years during the period 1992—1998, or, in the case of the Glacier Bay salmon or Tanner crab commercial fisheries, participated as a permit holder for at least three years during the period 1989—1998. The documentation provided must include: full name, date of birth, mailing address and phone number; a sworn and notarized personal affidavit attesting to the applicant's history of participation as a permit holder in one or more of the three authorized fisheries within Glacier Bay during the qualifying period; a copy of a current State of Alaska or, in the case of halibut, International Pacific Halibut Commission commercial fishing permit or license that is valid for the area including Glacier Bay; documentation of licensing history for the fishery during the qualifying period; documentation of commercial landings for the fishery during the qualifying periods and within the statistical unit or area that includes Glacier Bay or Icy Straits. Fishermen are requested to provide any additional corroborating documentation that might be available to assist in a timely determination of eligibility for the special use permits for access.

(C) This information should be delivered to the Superintendent, Attn: Access Permit Program, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826.

(D) The Superintendent will make a written determination of eligibility for the special use permit for access based on information provided by the applicant. A copy of this written determination will be provided to the applicant. If additional information is required to make an eligibility determination, applicants will be notified in writing of that need and be afforded an opportunity to provide it.

(iv) *Special use permit denial and appeal procedures.* If an applicant is determined not eligible for a special use permit for access, the Superintendent will provide the applicant with the reasons for the denial in writing within 15 days of the decision. Any applicant adversely affected by the Superintendent's determination may appeal to the Regional Director, Alaska Region, within 180 days. Applicants must substantiate the basis of their disagreement with the Superintendent's determination. The Regional Director will provide an opportunity for an informal meeting to discuss the appeal within 30 days of receiving the applicant's appeal. Within 15 days of receipt of written materials and informal meeting, if requested, the Regional Director will affirm, reverse, or modify the Superintendent's determination and set forth in writing the basis for the decision. A copy of the decision will be forwarded promptly to the applicant and will constitute final agency action.

(v) *Special use permit renewal.* A special use permit for access to an authorized Glacier Bay fishery will be renewed at 5-year intervals for the lifetime of a fisherman who continues to hold a valid commercial fishing permit or license and is otherwise eligible to participate in the fishery under federal and state law.

(vi) *Areas closed to fishing.* Maps and charts showing marine areas of Glacier Bay closed to commercial fishing are available from the Superintendent.

(A) After December 31, 1999 the west arm of Glacier Bay north of 58°50′N latitude is closed to all commercial fishing, with exception of trolling for king salmon during the period October 1 through April 30, in compliance with state commercial fishing regulations.

(B) After December 31, 1999 Tarr Inlet, Johns Hopkins Inlet, Reid Inlet and Geike Inlet are closed to all commercial fishing.

(C) After December 31, 1999 the east arm of Glacier Bay, north of an imaginary line running from Point Caroline through the southern point of Garforth Island and extending to the east side of Muir Inlet, is closed to commercial fishing, with exception of trolling for king salmon south of 58°50′N latitude during the period October 1 through April 30, in compliance with state commercial fishing regulations.

(b) * * *

(5) [Reserved]

(6) [Reserved]

* * * * *

Dated: July 2, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–19703 Filed 7–30–99; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6410–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Sand Springs Petrochemical Complex site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces its

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intent to delete the Sand Springs Petrochemical Complex Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. The EPA and the State of Oklahoma, acting through the Oklahoma Department of Environmental Quality (ODEQ), have determined that all appropriate response actions under CERCLA have been implemented and that no further cleanup is appropriate. Moreover, EPA and the have determined that response activities conducted at the Site to date have been protective of public health and the environment.

DATES: Written comments concerning this Site must be submitted on or before September 1, 1999.

ADDRESSES: Comments may be mailed to: Ms. Nancy Stonebarger, Community Relations Coordinator, U.S. EPA, Region 6 (6SF–P), 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 665–6619 or 1–800–533–3508.

Comprehensive information on this site is available through the EPA Region 6 Public Docket, located at the EPA Region 6 library. It is available for viewing from 8:00 a.m. to 12:00 p.m., Monday through Friday, excluding holidays. The Sand Springs Petrochemical Complex Site Document Repositories are as follows:

U.S. EPA Region 6 Library (6MD–II), 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6424 or 665–6427.

Page Memorial Library, 6 East Broadway, Sand Springs, Oklahoma 74063.

Oklahoma Department of Environmental Quality, Attn: Mr. Scott A. Thompson, P.O. Box 1677, Oklahoma City, Oklahoma 73101, (405) 702–5156,, Hours of Operation: 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Shawn Ghose, M.S., P.E., Remedial Project Manager, Mail Code (6SF–AP), U.S. Environmental Protection Agency Region 6 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone: (214) 665–6782 or 1–800–533–3508.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II NPL Deletion Criteria
III. Deletion Procedures
IV. History and Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency Region 6 announces its intent to delete the Sand Springs Petrochemical Complex Site (Site), Sand Springs, Oklahoma, from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments concerning this proposal for 30 days after publication of this document in the **Federal Register** and a major local newspaper of general circulation at or near the site (newspaper of record).

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the history of this Site and explains how this Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to § 300.425(e), the EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(a) Section 300.425(e)(1)(i): Responsible parties or other persons have implemented all appropriate response actions required;

(b) Section 300.425(e)(1)(ii): All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(c) Section 300.425(e)(1)(iii): The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

III. Deletion Procedures

Deletion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. The NPL is designed primarily for informational purposes and to assist the EPA management.

Upon determination that at least one of the criteria described in § 300.425(e) of the NCP has been met, EPA may formally begin deletion procedures. The following procedures were used for the intended deletion of the Site from the NPL:

(1) The EPA consulted with the State of Oklahoma on this proposed deletion from the NPL prior to developing this notice of intent for deletion.

(2) The EPA provided the State of Oklahoma at least 30 working days for review of this notice of intent for deletion prior to its publication in the **Federal Register**, and the State of Oklahoma, through the Oklahoma Department of Environmental Quality (ODEQ), concurred with this proposed deletion.

(3) Concurrently with publication of this notice of intent for deletion a notice is being published in a newspaper of record and is being distributed to appropriate Federal, State, and local officials, and other interested parties. Both documents announce a 30-day public comment period concerning this proposed deletion, which commences on the date of publication of this document in the **Federal Register**.

(4) The EPA has placed copies of information supporting the proposed deletion in the information repositories listed above, which information is available for public inspection and copying. The notice in a newspaper of record also announces the availability of this notice of intent for deletion. The public is asked to comment on the EPA's proposal to delete the Site from the NPL. All critical documents needed to evaluate EPA's decision are listed on the Deletion Docket and are available for review and copying at the information repositories.

(5) Upon completion of the 30-day public comment period, the EPA will evaluate the comments and all new data submitted before issuing a final decision on the proposed deletion. The EPA will prepare a responsiveness summary that will address concerns presented by comments and new data and respond to each significant comment and all significant new data submitted during the comment period. Such responsiveness summary will be included in the final deletion package. Members of the public are encouraged to contact the EPA to obtain a copy of the responsiveness summary.

(6) If, after review of all public comments, the EPA determines that the deletion from the NPL is appropriate, the EPA will publish a final notice of deletion in the **Federal Register**. The deletion of the Site does not actually occur until a final notice of deletion is published in the **Federal Register**. The EPA will place the final deletion package in the information repositories listed above once the final notice of deletion has been published in the **Federal Register**.

IV. History and Basis for Intended Site Deletion

The following summary provides the EPA's rationale for deleting the Sand Springs Petrochemical Complex Site from the NPL.

Site History

The Site was formerly operated as a petroleum refinery beginning in the early 1900s. The refinery was acquired by the Sinclair Oil Corporation in the early 1930s and continued to operate until 1948 when most of the refinery operations were shut down. Dismantling of the inactive portions of the refinery commenced shortly thereafter. All remaining refining operations were shut down in 1952. By October 1953, Sinclair had conveyed all but approximately 38 acres of the refinery property to the Sand Springs Home. In 1969, Sinclair merged with the Atlantic Richfield Company (ARCO), and the 38-acre tract of land was absorbed in the merger.

From 1964 through 1983, several solvent and oil recycling facilities operated on a portion of the Site. The area encompassing the recycling operations is now referred to as the "Glen Wynn" portion of the site. The Site (Figure 1) was proposed for inclusion on the Superfund National Priorities List (NPL) in September 1983, and the Site was officially added to the NPL in June 1986.

After the addition to the NPL, the Site was divided into two operable units (OUs): the Source Control OU and the Main Site OU (groundwater and soils).

The remedial investigation/feasibility study (RI/FS) for the Source Control OU was completed in 1987. The Source Control OU consists of eleven areas consisting of surface liquids, sludges, and heavily contaminated soils (Figure 2). The spray ponds were later determined to require no further action.

Records of Decision

Two Records of Decision (ROD) were developed for the Sand Springs Petrochemical Complex. The first was issued on June 28, 1987, for the Main Site OU and the second on September 29, 1987, for the Source Control OU.

The first ROD was issued for the groundwater for the main site, and a no action alternative was selected because the endangerment assessment concluded that, although the groundwater was minimally contaminated, it was not used for drinking water, and samples from the Arkansas River indicated no contamination. This remedy required placement of appropriate warning signs, restriction of access, and sampling and analyses of the groundwater and the Arkansas River for a period of 30 years.

The second ROD was issued to control the sources of contamination at the Site. The original second ROD required on-site incineration. However, the State did not concur with this proposal, and ARCO proposed a privately financed remedy for the Site. The ROD was modified to require that the sludges from the North and South Glen Wynn Lagoons (Figure 2) be excavated and thermally destructed; other sludges from the site be excavated, solidified, and placed in a hazardous waste cell constructed on site and meeting the requirements of Subtitle C of the Solid Waste Disposal Act; and that the Potentially Responsible Parties (PRPs) remain liable for the Site and all associated maintenance and monitoring. Included in this ROD were the development of an acceptable stabilization method, repair or restoration of the cell to prevent migration, and destruction or treatment of the cell's contents if monitoring showed that the solidification remedy had failed.

The EPA determined that these alternatives are protective of human health and the environment, attain Federal and State requirements that are applicable or relevant and appropriate, are cost effective compared to equally environmentally protective alternatives, and utilize permanent solutions and alternative treatment technologies to the maximum extent practicable.

In October 1990 the EPA, ODEQ, and ARCO entered into a consent decree to design and construct the source control remedy. The remedy chosen for the source control required that materials from the two impoundments (North and South Glen Wynn Lagoons) be excavated and sent off-site for incineration.

In 1991 ARCO conducted a chemical stabilization and solidification (CSS) field demonstration to determine the treatment effectiveness of several different CSS technologies. In November 1992, ARCO selected a quicklime-based CSS process to treat Site wastes. The EPA approved the use of the CSS process in February 1993, at which time ARCO commenced remedial design activities.

Remedial action activities began in late 1993 with the start of construction of an on-site Resource Conservation and Recovery Act (RCRA) type landfill. A transportable CSS treatment unit was moved to the Site in the spring of 1994, at which time the excavation, neutralization, and treatment of Site wastes started.

Remediation Activities

ARCO managed all the remediation activities. ARCO contracted with Morrison Knudsen Corporation to perform the design and provide quality assurance during the remedial action. The prime contractor for the remedial action was U.S. Pollution Control, Inc. with Sound/Epic providing the transportable treatment unit. The U.S. Army Corps of Engineers, Tulsa District, provided oversight for the EPA during the remedial investigation, remedial design, and remedial action and will continue to provide oversight during the operation and maintenance phase.

The remediation for the Source Control OU was completed in phases (see Figures 2 and 3).

Tank Bottom Pit

The Tank Bottom Pit (formerly called the Chemlink Waste Pits) remediation started on September 4, 1991. The operations conducted as part of the remediation were setting up the decontamination area, constructing the haul road, excavating the sludge and underlying one foot of material, sampling of remaining material, and backfilling and revegetating the area. Approximately 3,650 cubic yards of material were excavated and placed in the Small Acid Sludge Pit. These materials were later treated with other sludge pits as noted below.

Glen Wynn Area

Remedial activities for the Glen Wynn portion of the Site commenced in August 1992. The remediation included the following 6 subsites: North Lagoon, South Lagoon, Drum Area, T–5 Area, L-Shaped Area, and Pump House.

The Pump House contained barrels of soil and water and plastic bags of personal protective equipment from previous investigations at the Site. Soils in two of the barrels were determined to be Glen Wynn wastes and were incinerated with other Site wastes. All waste materials on the Glen Wynn subsite were tested for chlorine content. Those wastes that exceeded the chlorine

criteria were considered Glen Wynn wastes. All water was treated onsite at the temporary wastewater treatment plant. All plastic bags of personal protective equipment were transported to the Lone Mountain Hazardous Waste facility. The remaining barrels of soil were later deposited at the northeast end of the Large Acid Sludge Pit to be treated with main site wastes in mid-1994. The empty barrels were cleaned, crushed, and transported to an off-site disposal facility.

Remediation of the other subsites consisted of excavating contaminated material and transporting this material to off-site hazardous waste incinerators. After excavated areas tested clean, except for the contaminated lagoon soils at depths greater than indicated by the consent decree workplan, the excavations were backfilled and compacted with either stockpiled soil from the subsites (if cleanup criteria was met) or with clean fill from off-site sources. Contaminated debris, generated during the remediation, were transported to the Lone Mountain Hazardous Waste facility in northwest Oklahoma.

The remaining contaminated lagoon soils are at depths greater than indicated by the consent decree workplan. Borehole samples, down to groundwater level, showed that approximately 700 cubic yards of contaminated soil remained in the South Lagoon and its peripheral area, and 300 cubic yards remained in the North Lagoon. In accordance with the EPA's requirements, the area of the lagoons were regraded to prevent ponding, and groundwater is being monitored.

Final site grading and seeding occurred in December 1992.

Other Sludge Pits

Remedial activities for the other sludge pits were included in the Source Control OU cleanup. These include the wastes in the Large and Small Acid Sludge Pits, the River Acid Sludge Pit (Figure 2), the contaminated soils adjacent to these pits, the Surface Impoundment between the Large and Small Acid Pits, the Round River Pit, the Levee Pit, and the Con-Rad Sludge Area. The last three pits were discovered during the second phase investigation. The Spray Ponds (east and west) were also discovered at this time, but were not included in the consent decree workplan.

The operations conducted as part of the remediation were neutralizing the sludge and underlying one foot of material by mixing the material with a lime slurry, excavating the neutralized material, sampling of remaining material, neutralizing and removing additional material containing greater than 100 ppm benzo(a)pyrene, treating approximately 206,500 cubic yards of stabilized waste in the Thermal Treatment Unit (TTU) to achieve the physical and chemical properties required by the ROD, placing the treated material in the landfill and covering with a RCRA-type cap, and backfilling and revegetating the area (Figure 3).

Main Site OU

Remediation activities for the Main Site OU consisted of the placement of warning signs, access restriction, and placement of seven new monitoring wells. Two of the wells, placed on the dike south of the landfill, were installed prior to construction of the landfill, and the other five were installed after its completion in August 1995 (Figure 3). The wells have been sampled and analyzed for the constituents listed in the consent decree workplan for four quarterly sampling rounds, two semi-annual sampling rounds, and one annual sampling round. These analyses have not shown a degradation of the groundwater which would require a further response action.

A bibliography of reports relevant to the review of this Site is attached (Attachment 1). These documents along with others are available at the information repositories listed above.

The EPA, with the concurrence of the State of Oklahoma, has determined that all appropriate CERCLA response actions for the Site have been completed. Therefore, the EPA makes this proposal to delete the Site from the NPL.

Attachment 1: Sand Springs Petrochemical Complex Site Documents

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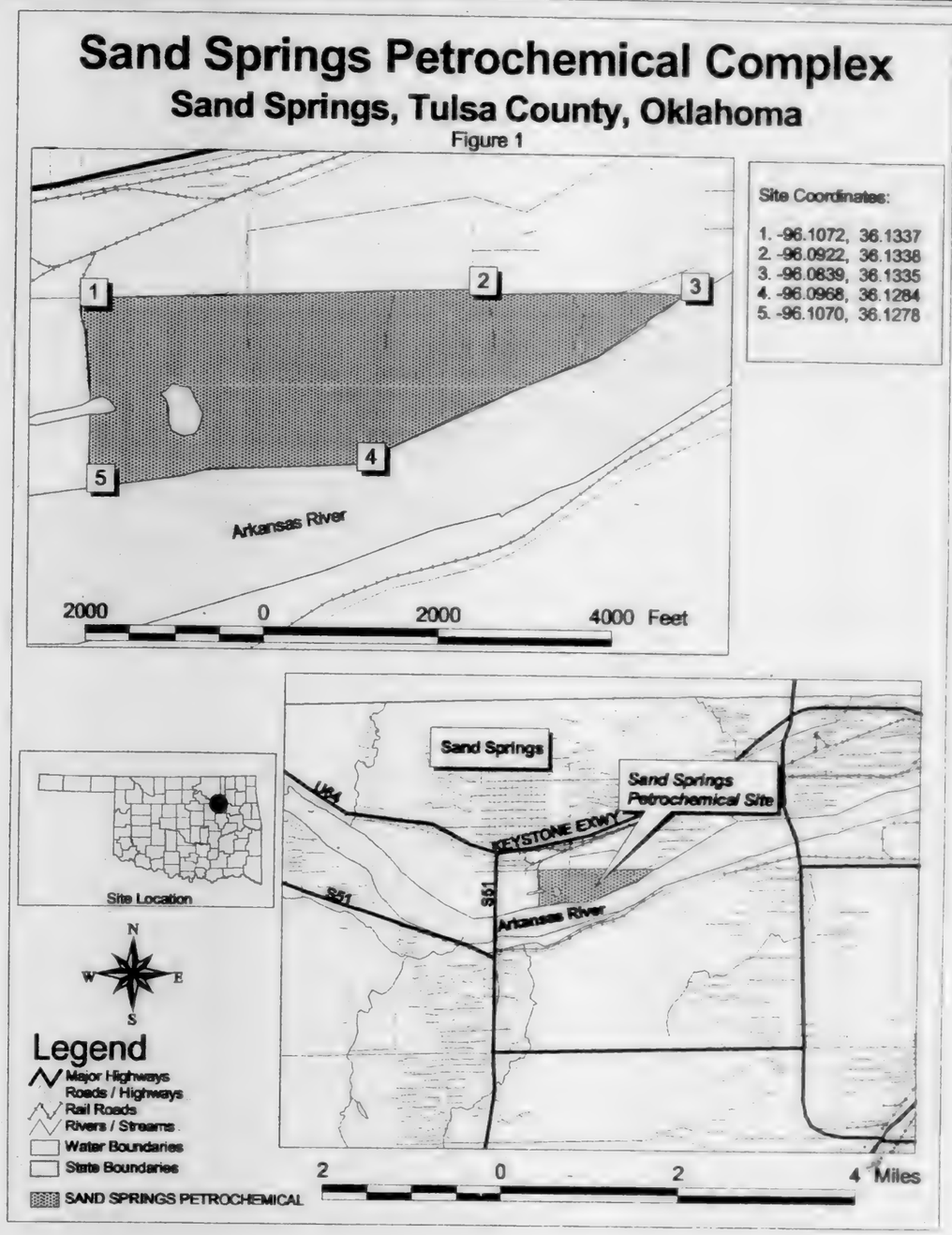

Sand Springs Petrochemical Complex Site

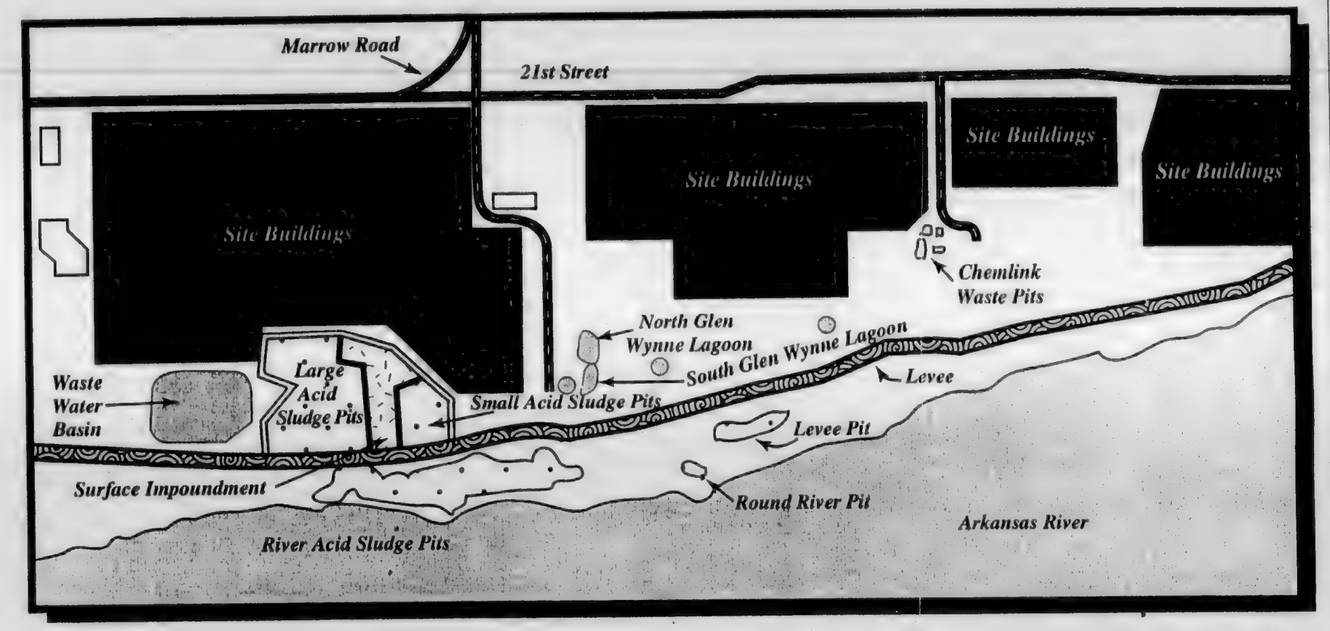

Sand Springs Petrochemical
Before Remediation
Figure 2

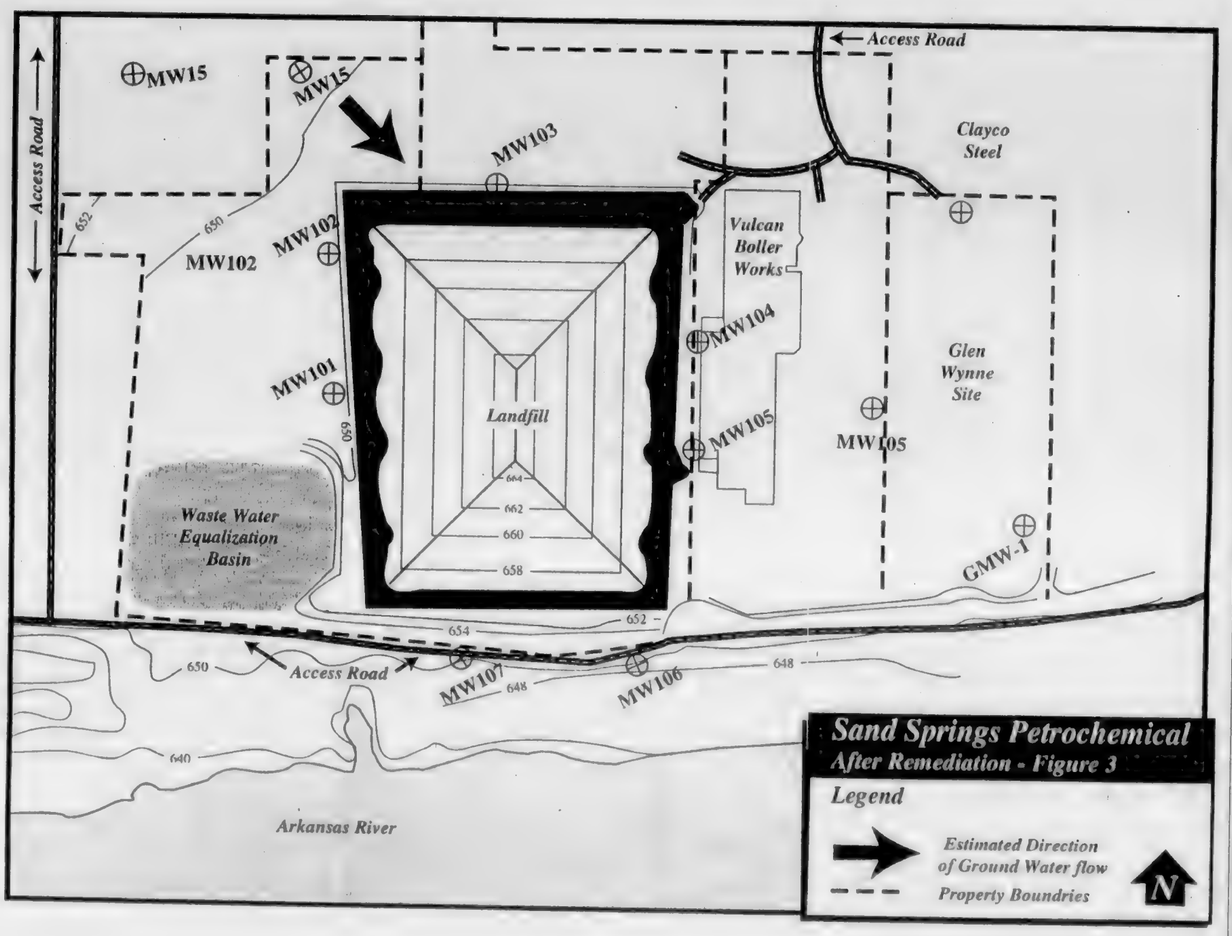

Dated: June 2, 1999.

Myron O. Knudson,

Acting Regional Administrator, Region 6.

[FR Doc. 99–19587 Filed 7–30–99; 8:45 am]

BILLING CODE 6560–60–C

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–2 and 51–5

Miscellaneous Amendments to Committee Regulations

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed rule.

SUMMARY: The Committee is proposing to make changes to its pricing and shipping regulations to make them consistent with new Committee pricing policies reflecting a preference for negotiated rather than formula-based fair market prices.

DATES: Submit comments on or before October 1, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: G. John Heyer (703) 603–0665. Copies of this notice will be made available on request in computer diskette format.

SUPPLEMENTARY INFORMATION: The Committee is proposing to revise 41 CFR 51–2.7, the Committee's general fair market pricing regulation, to reflect the preference for negotiated prices set forth in the Committee's recently-adopted pricing policies and the methods of price-setting established by those policies. Paragraph (a) of 41 CFR 51–5.5 is proposed to be revised to emphasize the statutory nature of the Committee's price-setting authority. This revision is intended to emphasize the exemption of the Committee's prices from a statutory requirement that cost or pricing data be submitted to contracting activities before a price can be negotiated and recommended to the Committee. Paragraph (d)(2) of 41 CFR 51–5.5 is proposed to be revised to change the minimum time for a contracting activity to submit required wage determination paperwork to the appropriate central nonprofit agency from 90 to 60 days before the beginning of a new service period, and to eliminate the requirement for submission of Standard Form 98, which is no longer needed to learn the applicable wage determination rate. Paragraph (e) of 41 CFR 51–5.5 is proposed to be revised to give more flexibility in pricing of special packaging and marking of products and to accommodate current contract documentation.

Prior to a November 16, 1994 change to the Committee's regulations (59 FR 59338), pricing and delivery terms for JWOD commodities, other than military resale commodities, were on an "F.O.B. origin" basis. The 1994 change permitted use of "F.O.B. destination" as an alternative. Since then, the Committee's commodity pricing policies have been revised to designate "F.O.B. destination" as the preferred pricing and delivery basis. "F.O.B. origin" pricing and delivery remain available as an alternative when the nonprofit agency and the Government contracting activity agree to use this basis. The proposed revision of the shipping regulation (41 CFR 51–5.6) reflects the change in Committee pricing policy by identifying "F.O.B. destination" as the preferred pricing and shipping basis for all JWOD commodities, with "F.O.B. origin" as a possible alternative basis.

Regulatory Flexibility Act

I certify that this proposed revision of the Committee regulations will not have a significant economic impact on a substantial number of small entities because the revision clarifies program policies and does not essentially change the impact of the regulations on small entities.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this proposed rule because it contains no new information collection or recordkeeping requirements as defined in that Act and its regulations.

Executive Order No. 12866

The Committee has been exempted from the regulatory review requirements of the Executive Order by the Office of Information and Regulatory Affairs. Additionally, the proposed rule is not a significant regulatory action as defined in the Executive Order.

List of Subjects

41 CFR Part 51–2

Organization and functions (Government agencies).

41 CFR Part 51–5

Government procurement, Handicapped.

For the reasons set out in the preamble, Parts 51–2 and 51–5 of Title 41, Chapter 51 of the Code of Federal Regulations are proposed to be amended as follows:

1. The authority citation for Parts 51–2 and 51–5 continues to read as follows:

Authority: 41 U.S.C. 46–48c.

PART 51–2—COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

2. Section 51–2.7 is revised to read as follows:

§ 51–2.7 Fair market price.

(a) The Committee is responsible for determining fair market prices, and changes thereto, for commodities and services on the Procurement List. The Committee establishes an initial fair market price at the time a commodity or service is added to the Procurement List. This initial price is based on Committee procedures, which permit negotiations between the contracting activity and the nonprofit agency which will produce or provide the commodity or service to the Government, assisted by the appropriate central nonprofit agency. If agreed to by the negotiating parties, the initial price may be developed using other methodologies specified in Committee pricing procedures.

(b) Prices are revised in accordance with changing market conditions under Committee procedures, which include negotiations between contracting activities and producing nonprofit agencies, assisted by central nonprofit agencies, or the use of economic indices, changes in nonprofit agency costs, or other methodologies permitted under these procedures.

(c) Recommendations for initial fair market prices, or changes thereto, shall be submitted jointly by the contracting activities and nonprofit agencies concerned to the appropriate central nonprofit agency. After review and analysis, the central nonprofit agency shall submit the recommended prices and methods by which prices shall be changed to the Committee, along with the information required by Committee pricing procedures to support each recommendation. The Committee will review the recommendations, revise the recommended prices where appropriate, and establish a fair market price, or change thereto, for each commodity or service which is the subject of a recommendation.

PART 51–5—CONTRACTING REQUIREMENTS

3. Section 51–5.5 is amended by revising paragraphs (a), (d)(2), and (e), to read as follows:

§ 51–5.5 Prices.

(a) The prices for items on the Procurement List are fair market prices established by the Committee under authority of the Javits-Wagner-O'Day Act (41 U.S.C. 47(b)).

* * * * *

(d) * * *

(2) Provide a copy of the new wage determination rate or the Department of Labor document stating that the wage determination rate is unchanged to the central nonprofit agency at least 60 days before the beginning of the new service period.

* * * * *

(e) If a contracting activity desires packing, packaging, or marking of products other than the standard pack or as provided in the Procurement List, any difference in cost shall be negotiated with the nonprofit agency.

4. Section 51–5.6 is revised to read as follows:

§ 51–5.6 Shipping.

(a) Except as provided in paragraph (b) of this section, commodities are sold to the Government on an "F.O.B. destination" basis, with delivery being accomplished when the shipment reaches the facility designated by the contracting activity. Time of delivery is when the shipment is released by the carrier and accepted by the contracting activity or its agent. In this delivery method, the nonprofit agency will normally use commercial bills of lading and will be responsible for any loss or damage to the goods occurring before the commodities reach the designated delivery point. The nonprofit agency will prepare and distribute commercial bills of lading, furnish delivery schedules, designate the carriers, and pay all shipping charges to specified delivery points.

(b) The Committee may determine that certain commodities are to be sold to the Government on an "F.O.B. origin" basis, with delivery being accomplished when a shipment is placed aboard the vehicle of the initial carrier. Time of delivery is when the shipment is released to and accepted by the initial carrier. In this delivery method, the nonprofit agency will normally use Government bills of lading, and responsibility for loss or damage to the goods while in transit passes to the Government at the time the initial carrier accepts a shipment. If the contracting activity fails to furnish a Government bill of lading promptly, such failure shall be considered an excusable delay in delivery.

Dated: July 20, 1999.

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–18864 Filed 7–30–99; 8:45 am]

BILLING CODE 6353–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[WT Docket No. 99–217; FCC 99–141]

Promotion of Competitive Networks in Local Telecommunications Markets

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: In this *Notice of Inquiry*, the Commission initiates a proceeding intended to facilitate the development of competitive telecommunications networks that will provide consumers with alternatives to services provided by the incumbent wireline local exchange carriers (LECs). In particular, the Commission seeks comment on the following issues: reasonable and nondiscriminatory access to public rights-of-way and competitively neutral state and local taxation. A companion *Notice of Proposed Rulemaking* and a *Third Further Notice of Proposed Rulemaking* are summarized elsewhere in this issue of the **Federal Register**.

DATES: Comments are due August 13, 1999; Reply comments are due September 3, 1999.

ADDRESSES: Parties who choose to file comments by paper should send comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W.; TW–A325; Washington, D.C. 20554. Comments filed through the Commission's Electronic Comment Filing System (ECFS) can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. See **SUPPLEMENTARY INFORMATION** for additional information about paper and electronic filing.

FOR FURTHER INFORMATION CONTACT: Jeff Steinberg at (202) 418–0896 or Joel Taubenblatt at (202) 418–1513 (Wireless Telecommunications Bureau).

SUPPLEMENTARY INFORMATION: This is a summary of the *Notice of Inquiry in WT Docket No. 99–217* (the "Notice"), FCC 99–141, adopted June 10, 1999 and released July 7, 1999. The complete text of the Notice is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 445 12th Street, S.W., CY–B400, Washington, D.C. 20554. The document is also available via the Internet at <http://www.fcc.gov/Bureaus/Wireless/Orders/1999/index.html>.

Introduction

1. This Notice is part of a larger item that seeks comments and initiates an inquiry in order to further the Commission's ongoing efforts to promote facilities-based competition in the local telephone market. The larger item addresses several issues that are not squarely before the Commission in pending proceedings. In particular, this Notice initiates an inquiry regarding reasonable and nondiscriminatory access to public rights-of-way and competitively neutral State and local taxation.

Background

2. In the Telecommunications Act of 1996, *codified* at 47 U.S.C. 151 *et seq.*, Congress included provisions intended to facilitate competition with the incumbent LECs through three entry strategies: resale of the incumbent LEC's services, leasing of unbundled network elements, and use of a new entrant's own facilities. To date, the Commission's efforts to facilitate local competition pursuant to these provisions of the Act have generally encompassed all three of these means of entry. Carriers who provide service by any of the three means of competitive entry have the potential to bring many of the benefits of competition to local exchange markets, and the Commission recognizes it should continue to facilitate competitive entry by all means. However, in the long term, the most substantial benefits to consumers will be achieved through facilities-based competition. Only facilities-based competitors can break down the incumbent LECs' bottleneck control over local networks and provide services without having to rely on their rivals for critical components of their offerings. Moreover, only facilities-based competition can fully unleash competing providers' abilities and incentives to innovate, both technologically and in service development, packaging, and pricing.

Discussion

3. This Notice initiates an inquiry that will develop a record on the effect of state and local rights-of-way and tax policies on facilities-based competition. The Notice states that the Commission

intends to work with the State and Local Government Advisory Committees and with representatives of the industry to consider these issues.

Filing Procedures

4. Pursuant to 47 CFR 1.415, 1.419, 1.430, interested parties may file comments on or before August 13, 1999, and reply comments on or before September 3, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998).

5. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

6. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW–A325, Washington, D.C. 20554.

7. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 445 12th Street, S.W., CY–B400, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, D.C. 20554.

8. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with 47 CFR 1.49, and all other applicable sections of the Commission's rules. The Commission also directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

Federal Communications Commission.

William F. Caton,

Deputy, Secretary.

[FR Doc. 99–19633 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 96–98; FCC 99–141]

Promotion of Competitive Networks in Local Telecommunications Markets

AGENCY: Federal Communications Commission.

ACTION: Third Further Notice of Proposed Rulemaking.

SUMMARY: In this *Third Further Notice of Proposed Rulemaking*, the Commission seeks comment on a proposed interpretation of Section 224 of the Communications Act in order to facilitate the development of competitive telecommunications networks that will provide consumers with alternatives to services provided by the incumbent wireline local exchange carriers (LECs). In particular, the Commission seeks comment on the provision of reasonable and nondiscriminatory access to rights-of-way and riser conduit on private premises that are under the ownership or control of LECs or other utilities. A companion *Notice of Proposed Rulemaking* and a *Notice of Inquiry* are summarized elsewhere in this issue of the **Federal Register**.

DATES: Comments are due August 13, 1999; Reply comments are due September 3, 1999.

ADDRESSES: Parties who choose to file comments by paper should send comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW.; TW–A325; Washington, DC 20554. Comments filed through the Commission's Electronic Comment Filing System (ECFS) can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. See **SUPPLEMENTARY INFORMATION** for additional information about paper and electronic filing.

FOR FURTHER INFORMATION CONTACT: Jeff Steinberg at (202) 418–0896 or Joel Taubenblatt at (202) 418–1513 (Wireless Telecommunications Bureau).

SUPPLEMENTARY INFORMATION: This is a summary of the *Third Further Notice of Proposed Rulemaking in CC Docket No. 96–98* (the "Notice"), FCC 99–141, adopted June 10, 1999 and released July 7, 1999. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 445 12th Street, SW., CY–B400, Washington, DC 20554. The document is also available via the Internet at <http://www.fcc.gov/Bureaus/Wireless/Orders/1999/index.html>.

Introduction

1. This Notice is part of a larger item that seeks comments and initiates an inquiry in order to further the Commission's ongoing efforts to promote facilities-based competition in the local telephone market. The larger item addresses several issues that are not squarely before the Commission in pending proceedings. In particular, this Notice addresses access by telecommunications and cable service providers to rights-of-way and riser conduit on private premises that are owned or controlled by LECs or other utilities.

Background

2. In the Telecommunications Act of 1996, *codified at* 47 U.S.C. 151 *et seq.*, Congress included provisions intended to facilitate competition with the incumbent LECs through three entry strategies: resale of the incumbent LEC's services, leasing of unbundled network elements, and use of a new entrant's own facilities. To date, the Commission's efforts to facilitate local competition pursuant to these provisions of the Act have generally encompassed all three of these means of entry. Carriers who provide service by any of the three means of competitive entry have the potential to bring many of the benefits of competition to local exchange markets, and the Commission recognizes it should continue to facilitate competitive entry by all means. However, in the long term, the most substantial benefits to consumers will be achieved through facilities-based competition. Only facilities-based competitors can break down the incumbent LECs' bottleneck control over local networks and provide services without having to rely on their rivals for critical components of their offerings. Moreover, only facilities-based competition can fully unleash competing providers' abilities and incentives to innovate, both technologically and in service development, packaging, and pricing.

Discussion

3. In particular, this Notice seeks comment and makes tentative conclusions regarding a Petition for Reconsideration filed by WinStar of the *Local Competition First Report and Order* concerning section 224 of the Communications Act. *See* 61 FR 45476 (August 29, 1996); 11 FCC Rcd 15499; 47 U.S.C. 224. The Notice tentatively concludes that section 224 encompasses access to locations on private property, including end user premises, where a utility has established ownership or control of a right-of-way. The Notice also tentatively concludes that section 224 includes locations on a utility's own property that are used by the utility in the manner of a right-of-way in connection with the utility's distribution network. In addition, the Notice tentatively concludes that a utility must afford access consistent with section 224 to riser conduit that it may own or control. At the same time, the Notice tentatively reaffirms the Commission's prior determination that section 224 does not require a utility to afford access to all of its real property, such as the roof of its corporate office, unless that property constitutes a pole, duct, conduit, or right-of-way. The Notice states the Commission's tentative conclusion that these interpretations of section 224 are consistent with the plain meaning of the statute. The Notice requests comment on these interpretations and on several issues related to the implementation of these interpretations, including what sets of facts would establish utility ownership or control.

Filing Procedures

4. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before August 13, 1999, and reply comments on or before September 3, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998).

5. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

6. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554.

7. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 445 12th Street, SW., CY–B400, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554.

8. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with 47 CFR 1.49, and all other applicable sections of the Commission's rules. The Commission also directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

Initial Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this Third Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of this Third Further Notice of Proposed Rulemaking, as set forth in the Filing Procedures section above, and they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this Third Further Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA.

I. Need for and Objectives of the Proposed Rules

10. We are issuing this Third Further Notice of Proposed Rulemaking to seek comment on proposals to facilitate competition with the incumbent local exchange carriers (LECs) by competitors who use their own end-to-end facilities. Extensive facilities-based competition will provide consumers with a choice of telecommunications providers that will compete to offer traditional, voice-grade telephone service, as well as high-speed data and other advanced services, at reasonable prices and with reasonable terms and conditions—a major goal of the Telecommunications Act of 1996. We particularly expect this proceeding to further the availability of competition to the many consumers and businesses that are located in multiple tenant environments, such as apartment and office buildings.

11. Specifically, this Third Further Notice of Proposed Rulemaking seeks comment on the following issue: the tentative conclusion that, to the extent that LECs or other utilities own or control rooftop and other rights-of-way or riser conduit in multiple tenant environments, 47 U.S.C. 224 requires that they permit competing providers access to such rights-of-way or conduit under just, reasonable and nondiscriminatory rates, terms, and conditions.

II. Legal Basis

12. The potential actions on which comment is sought in this Third Further Notice of Proposed Rulemaking would be authorized under sections 1, 2(a), 4(i), 4(j), 201(b), 224, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 154(j), 201(b), 224, 303(r), and 332, and 47 CFR 1.411 and 1.412.

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

13. The RFA requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). For many of the entities described below, the SBA has defined small business categories through Standard Industrial Classification ("SIC") codes.

14. This Third Further Notice of Proposed Rulemaking could result in rule changes that, if adopted, would impose requirements on local exchange carriers and other utilities. To assist the Commission in analyzing the total number of potentially affected small entities, commenters are requested to provide estimates of the number of small entities that may be affected by any rule changes resulting from this Third Further Notice of Proposed Rulemaking.

a. Local Exchange Carriers

15. The proposal on which comment is sought in this Third Further Notice of Proposed Rulemaking, if adopted, would affect small LECs. Neither the Commission nor the SBA has developed a small business definition specifically for small LECs. The closest applicable definition under the SBA rules is for those telephone communications companies that are not radiotelephone (wireless) companies. The SBA has defined establishments engaged in providing "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees. According to November 1997 Telecommunications Industry Revenue data, 1,371 carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small incumbent LECs that may be affected by the potential actions discussed in this Third Further Notice of Proposed Rulemaking, if adopted.

16. Above, we have included smaller incumbent LECs in our analysis. Although some incumbent LECs may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by the SBA as "small business concerns."

b. Other Utilities

17. The proposal in this Third Further Notice of Proposed Rulemaking with respect to 47 U.S.C. 224, if adopted, would affect utilities other than LECs. Section 224 defines a "utility" as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State." The Commission anticipates that, to the extent its section 224 proposal affects non-LEC utilities, the effect would be concentrated on electric utilities.

(1) Electric Utilities (SIC 4911, 4931 and 4939)

18. Electric Services (SIC 4911). The SBA has developed a definition for small electric utility firms. The Census Bureau reports that a total of 1,379 electric utilities were in operation for at least one year at the end of 1992. According to SBA, a small electric utility is an entity whose gross revenues do not exceed five million dollars. The Census Bureau reports that 447 of the 1,379 firms listed had total revenues below five million dollars in 1992.

19. Electric and Other Services Combined (SIC 4931). The SBA has classified this entity as a utility whose business is less than 95% electric in combination with some other type of service. The Census Bureau reports that a total of 135 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small electric and other services combined utility is a firm whose gross revenues do not exceed five million dollars. The Census Bureau reported that 45 of the 135 firms listed had total revenues below five million dollars in 1992.

20. Combination Utilities, Not Elsewhere Classified (SIC 4939). The SBA defines this type of utility as providing a combination of electric, gas, and other services which are not otherwise classified. The Census Bureau reports that a total of 79 such utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues do not exceed five million dollars. The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars in 1992.

(2) Gas Production and Distribution (SIC 4922, 4923, 4924, 4925 and 4932)

21. Natural Gas Transmission (SIC 4922). The SBA's definition of a natural gas transmitter is an entity that is engaged in the transmission and storage of natural gas. The Census Bureau reports that a total of 144 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small natural gas transmitter is an entity whose gross revenues do not exceed five million dollars. The Census Bureau reported that 70 of the 144 firms listed had total revenues below five million dollars in 1992.

22. Natural Gas Transmission and Distribution (SIC 4923). The SBA has classified this type of entity as a utility that transmits and distributes natural gas for sale. The Census Bureau reports that a total of 126 such entities were in operation for at least one year at the end of 1992. The SBA's definition of a small natural gas transmitter and distributor is a firm whose gross revenues do not exceed five million dollars. The Census Bureau reported that 43 of the 126 firms listed had total revenues below five million dollars in 1992.

23. Natural Gas Distribution (SIC 4924). The SBA defines a natural gas distributor as an entity that distributes natural gas for sale. The Census Bureau reports that a total of 478 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small natural gas distributor is an entity whose gross revenues do not exceed five million dollars. The Census Bureau reported that 267 of the 478 firms listed had total revenues below five million dollars in 1992.

24. Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution (SIC 4925). The SBA has classified this type of entity as a utility that engages in the manufacturing and/or distribution of the sale of gas. These mixtures may include natural gas. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small mixed, manufactured or liquefied petroleum gas producer or distributor is a firm whose gross revenues do not exceed five million dollars. The Census Bureau reported that 31 of the 43 firms listed had total revenues below five million dollars in 1992.

25. Gas and Other Services Combined (SIC 4932). The SBA has classified this entity as a gas company whose business is less than 95% gas, in combination with other services. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small gas and other services combined utility is a firm whose gross revenues do not exceed five million dollars. The Census Bureau reported that 24 of the 43 firms listed had total revenues below five million dollars in 1992.

(3) Water Supply (SIC 4941)

26. The SBA defines a water utility as a firm who distributes and sells water for domestic, commercial and industrial use. The Census Bureau reports that a total of 3,169 water utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small water utility is a firm whose gross revenues do not exceed five million dollars. The Census Bureau reported that 3,065 of the 3,169 firms listed had total revenues below five million dollars in 1992.

(4) Sanitary Systems (SIC 4952, 4953 and 4959)

27. Sewerage Systems (SIC 4952). The SBA defines a sewage firm as a utility whose business is the collection and disposal of waste using sewage systems. The Census Bureau reports that a total of 410 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sewerage system is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 369 of the 410 firms listed had total revenues below five million dollars in 1992.

28. Refuse Systems (SIC 4953). The SBA defines a firm in the business of refuse as an establishment whose business is the collection and disposal of refuse "by processing or destruction or in the operation of incinerators, waste treatment plants, landfills, or other sites for disposal of such materials." The Census Bureau reports that a total of 2,287 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small refuse system is a firm whose gross revenues do not exceed six million dollars. The Census Bureau reported that 1,908 of the 2,287 firms listed had total revenues below six million dollars in 1992.

29. Sanitary Services, Not Elsewhere Classified (SIC 4959). The SBA defines these firms as engaged in sanitary services. The Census Bureau reports that a total of 1,214 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sanitary service firm's gross revenues do not exceed five million dollars. The Census Bureau reported that 1,173 of the 1,214 firms listed had total revenues below five million dollars in 1992.

(5) Steam and Air Conditioning Supply (SIC 4961)

30. The SBA defines a steam and air-conditioning supply utility as a firm who produces and/or sells steam and heated or cooled air. The Census Bureau reports that a total of 55 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a steam and air conditioning supply utility is a firm whose gross revenues do not exceed nine million dollars. The Census Bureau reported that 30 of the 55 firms listed had total revenues below nine million dollars in 1992.

(6) Irrigation Systems (SIC 4971)

31. The SBA defines irrigation systems as firms who operate water supply systems for the purpose of irrigation. The Census Bureau reports that a total of 297 firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small irrigation service is a firm whose gross revenues do not exceed five million dollars. The Census Bureau reported that 286 of the 297 firms listed had total revenues below five million dollars in 1992.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

32. This Third Further Notice of Proposed Rulemaking proposes no additional reporting, recordkeeping or other compliance measures.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

33. This Third Further Notice of Proposed Rulemaking seeks comment on how the proposals set forth could impact regulated entities, including small entities. For example, we seek comment on whether an overly broad construction of utility ownership or control would impose unreasonable burdens on building owners, including small building owners, or compromise their ability to ensure the safe use of rights-of-way or conduit, or engender other practical difficulties. Commenters are invited to address the economic impact of all of our proposals on small entities and offer any alternatives.

VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

34. None.

List of Subjects in 47 CFR Part 1

Communications common carriers, Telecommunications.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–19634 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 51, 68, 76

[WT Docket No. 99–217; FCC 99–141]

Promotion of Competitive Networks in Local Telecommunications Markets

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this *Notice of Proposed Rulemaking*, the Commission initiates a proceeding intended to facilitate the development of competitive telecommunications networks that will provide consumers with alternatives to services provided by the incumbent wireline local exchange carriers (LECs). In particular, the Commission seeks comment on the following issues: the provision of reasonable and nondiscriminatory access to rights-of-

way and riser conduit on private premises that are under the ownership or control of LECs or other utilities and competitively neutral state and local taxation. A companion *Notice of Inquiry* and a *Third Further Notice of Proposed Rulemaking* are summarized elsewhere in this issue of the **Federal Register**.

DATES: Comments are due August 13, 1999; Reply comments are due September 3, 1999.

ADDRESSES: Parties who choose to file comments by paper should send comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW; TW-A325; Washington, D.C. 20554. Comments filed through the Commission's Electronic Comment Filing System (ECFS) can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html≤. See

SUPPLEMENTARY INFORMATION: For additional information about paper and electronic filing.

FOR FURTHER INFORMATION CONTACT: Jeff Steinberg at (202) 418–0896 or Joel Taubenblatt at (202) 418–1513 (Wireless Telecommunications Bureau).

SUPPLEMENTARY INFORMATION: This is a summary of the *Notice of Proposed Rulemaking in WT Docket No. 99–217* (the "Notice"), FCC 99–141, adopted June 10, 1999 and released July 7, 1999. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 445 12th Street, S.W., CY-B400, Washington, D.C. 20554. The document is also available via the Internet at <http://www.fcc.gov/Bureaus/Wireless/Orders/1999/index.html>.

Introduction

1. This Notice is part of a larger item that seeks comment in order to further the Commission's ongoing efforts to promote facilities-based competition in the local telephone market. The larger item addresses issues that are not squarely before the Commission in pending proceedings. In particular, this Notice seeks comment on several potential modifications of the Commission's Rules in order to facilitate competitive providers' access to multiple tenant environments and facilities.

Background

2. In the Telecommunications Act of 1996, *codified at* 47 U.S.C. 151 *et seq.*, Congress included provisions intended to facilitate competition with the incumbent LECs through three entry strategies: resale of the incumbent LEC's services, leasing of unbundled network elements, and use of a new entrant's own facilities. To date, the Commission's efforts to facilitate local competition pursuant to these provisions of the Act have generally encompassed all three of these means of entry. Carriers who provide service by any of the three means of competitive entry have the potential to bring many of the benefits of competition to local exchange markets, and the Commission recognizes it should continue to facilitate competitive entry by all means. However, in the long term, the most substantial benefits to consumers will be achieved through facilities-based competition. Only facilities-based competitors can break down the incumbent LECs' bottleneck control over local networks and provide services without having to rely on their rivals for critical components of their offerings. Moreover, only facilities-based competition can fully unleash competing providers' abilities and incentives to innovate, both technologically and in service development, packaging, and pricing.

Discussion

3. Accordingly, this Notice seeks comment on several potential modifications of the Commission's Rules in order to facilitate access by competing facilities-based providers of telecommunications service to multiple tenant enviornments. Specifically, the Notice also seeks comment, subject to the Commission's future interpretation of the "necessary" and "impair" standards of section 251 of the Communications Act, 47 U.S.C. 251, on whether the Commission should require incumbent LECs to make available to any requesting telecommunications carrier unbundled access to riser cable and wiring that they control within multiple tenant environments.

4. The Notice also seeks comment on whether the Commission should require building owners who allow access to their premises to any telecommunications provider to make comparable access available to all such providers on a nondiscriminatory basis, and on the extent of the Commission's legal authority to adopt such a requirement. The Notice asks questions regarding how any such obligation should be implemented.

5. In addition, the Notice seeks comment on several other proposed Commission actions potentially ensuring that customers located in multiple tenant environments have access to their choice of telecommunications service providers. Specifically, the Notice requests comment on whether the Commission should forbid telecommunications service providers, under some or all circumstances, from entering into exclusive contracts with building owners, and abrogate any existing exclusive contracts between these parties. The Notice also requests comment on whether the Commission should modify its rules governing determination of the demarcation point between facilities controlled by the telephone company and by the landowner on multiple unit premises. In addition, the Notice seeks comment on whether the current rules governing access to cable home wiring for multichannel video programming distributors should be extended to include providers of telecommunications services. Furthermore, the Notice requests comment on whether the Commission should extend rules similar to those adopted under section 207 of the 1996 Act to providers of telecommunications and other fixed wireless services. The Notice recognizes that section 207 by its terms applies only to certain video programming services, but states that the Commission may have authority to adopt similar rules prohibiting restrictions on the placement of antennas used for over-the-air telecommunications and other fixed wireless services pursuant to section 4(i) and other provisions of the Communications Act, including sections 201(b) and 303(r), granting the Commission general authority to effectuate the provisions and purposes of the Communications Act. *See* 47 U.S.C. 4(i), 201(b), and 303(r).

Filing Procedures

6. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before August 13, 1999, and reply comments on or before September 3, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

7. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

8. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW–A325, Washington, D.C. 20554.

9. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 445 12th Street, S.W., CY-B400, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, D.C. 20554.

10. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with 47 CFR 1.49, and all other applicable sections of the Commission's rules. The Commission also directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of this Notice of Proposed Rulemaking, as set forth in the Filing Procedures section above, and they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA.

I. Need for and Objectives of the Proposed Rules

12. We are issuing this Notice of Proposed Rulemaking to seek comment on proposals to facilitate competition with the incumbent local exchange carriers (LECs) by competitors who use their own end-to-end facilities. Extensive facilities-based competition will provide consumers with a choice of telecommunications providers that will compete to offer traditional, voice-grade telephone service, as well as high-speed data and other advanced services, at reasonable prices and with reasonable terms and conditions—a major goal of the Telecommunications Act of 1996. We particularly expect this proceeding to further the availability of competition to the many consumers and businesses that are located in multiple tenant environments, such as apartment and office buildings.

13. Specifically, this Notice of Proposed Rulemaking seeks comment on the following issues: (1) Whether we should require incumbent LECs to make available to any requesting telecommunications carrier unbundled access to riser cable and wiring that they control within multiple tenant environments, subject to the Commission's future interpretation of the "necessary" and "impair" standards of 47 U.S.C. 251; (2) whether we should require building owners who allow access to their premises to any telecommunications provider to make comparable access available to all such providers on a nondiscriminatory basis; (3) whether we should forbid telecommunications service providers, under some or all circumstances, from entering into exclusive contracts with building owners, and abrogate any existing exclusive contracts between these parties; (4) whether we should modify our rules governing determination of the demarcation point between facilities controlled by the telephone company and by the landowner on multiple unit premises; (5) whether the rules governing access to cable home wiring for multichannel video program distribution should be extended to benefit providers of telecommunications services; and (6) whether we should adopt rules similar to those adopted in the video context under section 207 of the 1996 Act protecting the ability to place antennas to transmit and receive telecommunications signals and other signals that are not covered under section 207.

II. Legal Basis

14. The potential actions on which comment is sought in this Notice of Proposed Rulemaking would be authorized under sections 1, 2(a), 4(i), 4(j), 201(b), 251(c)(3), 251(d), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 154(j), 201(b), 251(c)(3), 251(d), 303(r), and 332, and 47 CFR 1.411 and 1.412.

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

15. The RFA requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). For many of the entities described below, the SBA has defined small business categories through Standard Industrial Classification ("SIC") codes.

16. This Notice of Proposed Rulemaking could result in rule changes that, if adopted, would impose requirements on local exchange carriers, building owners and managers, multichannel video program distributors, neighborhood associations, and small governmental jurisdictions. To assist the Commission in analyzing the total number of potentially affected small entities, commenters are requested to provide estimates of the number of small entities that may be affected by any rule changes resulting from this Notice of Proposed Rulemaking.

a. Local Exchange Carriers

17. Many of the potential rules on which comment is sought in this Notice of Proposed Rulemaking, if adopted, would affect small LECs. Neither the Commission nor the SBA has developed a small business definition specifically for small LECs. The closest applicable definition under the SBA rules is for those telephone communications companies that are not radiotelephone (wireless) companies. The SBA has defined establishments engaged in providing "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees. According to November 1997 Telecommunications Industry Revenue data, 1,371 carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small incumbent LECs that may be affected by the potential actions discussed in this Notice of Proposed Rulemaking, if adopted.

18. Above, we have included smaller incumbent LECs in our analysis. Although some incumbent LECs may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by the SBA as "small business concerns."

b. Building Owners and Managers

19. Several of our inquiries in this Notice of Proposed Rulemaking would affect multiple dwelling unit operators and real estate agents and managers, if such inquiries lead to adopted rules. Such inquiries include the following issues: whether we should require building owners who allow access to their premises to any telecommunications provider to make comparable access available to all such providers on a nondiscriminatory basis; whether we should forbid telecommunications service providers, under some or all circumstances, from entering into exclusive contracts with building owners, and abrogate any existing exclusive contracts between these parties; and whether we should adopt rules similar to those adopted in the video context under section 207 of the 1996 Act protecting the ability to place antennas to transmit and receive telecommunications signals and other signals that were not covered under section 207.

(1) Multiple Dwelling Unit Operators (SIC 6512, SIC 6513, SIC 6514)

20. The SBA has developed definitions of small entities for operators of nonresidential buildings, apartment buildings, and dwellings other than apartment buildings, which include all such companies generating $5 million or less in revenue annually. According to the Census Bureau, there were 26,960 operators of nonresidential buildings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992. Also according to the Census Bureau, there were 39,903 operators of apartment dwellings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992. The Census Bureau provides no separate data regarding operators of dwellings other than apartment buildings, and we are unable at this time to estimate the number of such operators that would qualify as small entities.

(2) Real Estate Agents and Managers (SIC 6531)

21. The SBA defines real estate agents and managers as establishments primarily engaged in renting, buying, selling, managing, and appraising real estate for others. According to SBA's definition, a small real estate agent or manager is a firm whose revenues do not exceed 1.5 million dollars.

c. Multichannel Video Program Distributors (SIC 4841)

22. Our inquiry in this Notice of Proposed Rulemaking regarding whether the rules governing access to cable home wiring for multichannel video program distribution should be extended to benefit providers of telecommunications services would affect operators of cable and other pay television services, if such inquiry leads to the adoption of rules. The SBA has developed a definition of a small entity for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Bureau of the Census, there were 1423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.

d. Neighborhood Associations

23. Our inquiry in this Notice of Proposed Rulemaking regarding whether we should adopt rules similar to those adopted in the video context under section 207 of the 1996 Act protecting the ability to place antennas to transmit and receive telecommunications signals and other signals that are not covered under section 207 would affect neighborhood associations, if such inquiry leads to the adoption of rules. Section 601(4) of the Regulatory Flexibility Act, 5 U.S.C. 601(4), defines "small organization" as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." This definition includes homeowner and condominium associations that operate as not-for-profit organizations. The Community Associations Institute estimates that there were 150,000 such associations in 1993.

e. Municipalities

24. Our inquiry in this Notice of Proposed Rulemaking regarding whether we should adopt rules similar to those adopted in the video context under section 207 of the 1996 Act protecting the ability to place antennas to transmit and receive telecommunications signals and other signals that are not covered under section 207 may affect municipalities, if such inquiry leads to the adoption of rules. The term "small governmental jurisdiction" is defined as "governments of * * * districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 governmental entities in the United States. This number includes such entities as states, counties, cities, utility districts and school districts. Of the 85,006 governmental entities, 38,978 are counties, cities and towns. The remainder is composed primarily of

utility districts, school districts, and states. Of the 38,978 counties, cities and towns, 37,566, or 96%, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,606 (96%) are small entities.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

25. This Notice of Proposed Rulemaking proposes no additional reporting, recordkeeping or other compliance measures.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

26. This Notice of Proposed Rulemaking seeks comment on how the inquiries set forth could impact regulated entities, including small entities. For example, with respect to our inquiry into building owner obligations, we seek comment on whether we should limit the scope of any building owner obligation in order to avoid imposing unreasonable regulatory burdens on building owners, and we suggest that a potential rule could exempt buildings that house fewer than a certain number of tenants or are under a certain size. Commenters are invited to address the economic impact of all of our proposals on small entities and offer any alternatives.

VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

27. None.

List of Subjects

47 CFR Parts 1 and 51

Communications common carriers, Telecommunications.

47 CFR Part 68

Communications common carriers, Communications equipment.

47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Deputy, Secretary.

[FR Doc. 99–19635 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 95

[ET Docket 99–255; FCC 99–182]

Wireless Medical Telemetry Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Commission's rules to allocate spectrum and to establish rules for a Wireless Medical Telemetry Service. This action is intended to allow potentially life-critical medical telemetry equipment, which currently operates on a secondary basis, unprotected from interference, to operate on a blanket licensed, interference protected basis. We believe our action will improve the reliability of this critical service.

DATES: Comments must be filed on or before September 16, 1999, and reply comments must be filed on or before October 18, 1999.

ADDRESSES: Address all comments concerning this proposed rule to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, FCC, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hugh L. Van Tuyl, Office of Engineering and Technology, (202) 418–7506, TTY (202) 418–2989, e-mail: hvantuyl@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* ET Docket 99–255, FCC 99–182, adopted July 14, 1999 and released July 16, 1999. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW, Washington, DC, and is available on the FCC's Internet site at http://www.fcc.gov/oet/dockets/et99–255/. The complete text of this document may also be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of Notice of Proposed Rule Making

1. The Commission proposes to amend parts 2 and 95 of the rules to allocate spectrum and to establish service rules for a Wireless Medical Telemetry Service. It proposes to allocate frequencies for medical telemetry equipment to operate on a primary basis. Two possible options for frequencies are proposed; (1) 608–614 MHz, 1395–1400 MHz and 1429–1432 MHz, or (2) 608–614 MHz and 1391–1400 MHz. This action is intended to allow potentially life-critical medical telemetry equipment, which currently operates on a secondary basis, unprotected from interference, to operate on a blanket licensed, interference protected basis. We believe our action will improve the reliability of this critical service.

2. Medical telemetry equipment is used in hospitals and health care facilities to transmit patient measurement data to a nearby receiver, permitting greater patient mobility and increased comfort. Examples of medical telemetry equipment include heart, blood pressure and respiration monitors. The use of these devices allows patients to move around early in their recovery while still being monitored for adverse symptoms. With such devices, one health care worker can monitor several patients remotely, thus decreasing health care costs.

3. Currently, medical telemetry devices are allowed to operate under either part 15 or part 90 of the Commission's rules. Part 15 of the rules permits medical telemetry equipment to operate on an unlicensed basis on TV channels 7–13 and 14–46 (174–216 MHz and 470–668 MHz). Part 90 of the rules permits medical telemetry equipment to operate on a secondary basis to land mobile users in the 450–470 MHz band.

4. There have been recent changes to the Commission's rules that could result in harmful interference to medical telemetry equipment operating under part 15. At the direction of Congress, the Commission has provided for the introduction of digital television (DTV) stations in the TV broadcast bands. In order to accomplish this, the Commission has provided each local TV station with an additional channel that will be used to broadcast DTV during the transition. This means that there will be fewer vacant channels in every market, and that in some areas, channels that were once unused for TV broadcasting may now be used for DTV.

5. To reduce the possibility of DTV causing interference to medical telemetry equipment, the Commission adopted changes to part 15 of the rules in 1997 to increase the number of TV frequencies where medical telemetry devices could operate on an unlicensed basis. These changes allow operation on TV channels 14–46 in addition to channels 7–13, which were the only channels where medical telemetry equipment was previously allowed to operate. The Commission also increased the maximum allowable operating

power for these devices to improve reliability.

6. The transition from analog to digital television is currently under way, with the first stations commencing regular DTV broadcasting in November 1998. The Commission has created over 1600 allotments for DTV stations, a large percentage of which are on TV channels 7–46, which are also used for medical telemetry equipment operating under part 15 of the rules. All television stations are required to commence DTV broadcasting no later than May 1, 2003. As existing stations begin DTV operation on their new channels, some low-power television stations currently operating on or adjacent to those channels may be forced to switch frequency to avoid causing harmful interference to DTV, thereby further crowding the spectrum used by medical telemetry equipment.

7. Concerns about possible interference to medical telemetry equipment by DTV operations were recently heightened. In March 1998, a TV station in Texas began test transmissions on a previously unused channel that had been assigned to it for DTV operation. The transmissions caused severe interference to the operation of medical telemetry equipment at a nearby hospital, rendering the equipment temporarily unusable. The station immediately ceased operation upon learning of the interference, and the medical telemetry equipment was changed to operate on another frequency. The Commission and the Food and Drug Administration have since taken steps to help ensure that hospitals are notified before new DTV stations come on the air to provide them with time to modify any medical telemetry equipment that operates on the same frequency.

8. The American Hospital Association's (AHA) Medical Telemetry Task Force recently submitted recommendations to the Commission for addressing the potential critical safety risks to patients from harmful interference caused to wireless medical telemetry equipment. The task force was established in response to the incidence of interference to medical telemetry equipment from a DTV station. Among the AHA recommendations are that specific frequencies be allocated for a medical telemetry service, and that the service be given primary status on those frequencies.

9. Medical telemetry equipment is increasingly relied upon in hospitals to improve health care and reduce costs. Patients that require the monitoring and treatment capabilities that were formerly available only in intensive care units can be moved to general nursing units. Patient recovery is also improved because the general nursing unit offers a less stressful environment. The number of patients with chronic medical conditions is rising due to the growth in the elderly population. For these reasons, the need for monitoring patients outside of intensive care is rapidly increasing, and this need can be fulfilled with medical telemetry equipment. As we noted, it may be difficult for this equipment to continue to operate in the bands used for DTV and the PLMR services without receiving interference. Given the importance of this equipment, we tentatively conclude that it is necessary to find additional spectrum for medical telemetry equipment. We further tentatively conclude that the spectrum should be allocated on a primary basis to ensure that medical telemetry equipment is able to function without interference from other sources. We seek comment on these tentative conclusions.

10. The AHA performed a survey of 14 hospitals of various sizes in both metropolitan and suburban/rural areas to determine the amount of spectrum needed for medical telemetry equipment. The survey results identify six categories of patient medical parameters that may be measured, and indicate that up to 600 patients may need to be monitored concurrently at a single facility. In order to calculate the required spectrum, AHA assumed the transmitters would operate with a spectral efficiency of 0.8 bits per second per Hertz, which is approximately the same spectral efficiency the Commission requires in part 90 of the rules. AHA then calculated the required spectrum for each of the six categories of parameters and determined that a total of 6.125 MHz is required to meet current patient needs. The AHA survey also indicated that the spectrum requirements for medical telemetry equipment would likely double within ten years. Therefore, AHA believes that in the long term, at least 12 MHz of spectrum is needed for medical telemetry equipment. We invite comment on this analysis, including whether the assumed spectral efficiency is reasonable, and whether more spectrally efficient technologies could be employed to reduce the amount of spectrum required.

11. The AHA performed an analysis of the suitability of various frequency bands, based on such factors as equipment costs, data reliability, amount of spectrum in each band and equipment power consumption. Based on its study, the AHA recommends that the following frequency bands be used for the medical telemetry service: 608–614 MHz, 1385–1390 MHz and 1432–1435 MHz.

12. We note that other parties have expressed an interest in operating in portions of the 1300 MHz and 1400 MHz bands adjacent to the frequencies recommended by AHA. For example the Land Mobile Communications Council (LMCC) has filed a petition for rule making to allocate the 1390–1400 MHz and 1427–1432 MHz bands for private land mobile services under part 90 of the rules. In addition, several licensees of low earth orbit ("Little Leo") satellite systems have been performing studies on the feasibility of operating satellite feeder uplinks in the 1390–1393 MHz band and downlinks in the 1429–1432 MHz band in an effort to obtain an international frequency allocation for this purpose. A discussion of the frequency bands recommended by AHA and the adjacent bands noted above follows. We request comment on the impact that a frequency allocation for medical telemetry would have on other prospective users of these bands.

13. We tentatively conclude that it is necessary to allocate spectrum where medical telemetry equipment can operate on a primary basis. The 608–614 MHz band appears to be suitable, because, other than radio astronomy, it is only used for medical telemetry under part 15 of the rules. Accordingly, we propose to allocate this band to medical telemetry equipment on a co-primary basis with radio astronomy. Under this proposal, operation in this band must not cause interference to radio astronomy operations, and users will be required to coordinate their operation with radio astronomy facilities.

14. While we make no finding regarding NTIA's assertion that the 1385–1390 and 1432–1435 MHz bands must be made available through auction, in order to expedite this proceeding we propose to identify spectrum in the 1390–1400 MHz and 1427–1432 MHz bands for medical telemetry equipment. The medical telemetry allocation would be primary to provide protection from interference, but would be non-exclusive. If an international allocation for Little Leo feeder links were made in the future, we could initiate a proceeding to domestically allocate medical telemetry on a co-primary basis with Little Leo feeder links, although medical telemetry equipment would continue to receive protection from interference. We have devised two possible options for a medical telemetry frequency allocation, which are discussed below. We seek comment on which option is more suitable, or whether any other alternative frequencies would be more suitable.

15 *Option 1: 608–614 MHz/1395–1400 MHz/1429–1432 MHz.* The 1395–1400 MHz band could be allocated for medical telemetry equipment as an alternative to the 1385–1390 band recommended by AHA. Allocating this band would provide the same amount of spectrum AHA requested in the adjacent band, and would increase the frequency separation from government radars operating below 1385 MHz, thereby reducing the risk of interference to medical telemetry equipment. Also, the 1429–1432 MHz band could be allocated as an alternative to the 1432–1435 MHz band recommended by AHA. This would provide the same amount of spectrum as requested by AHA in the adjacent band, and the frequency separation between it and the 1395–1400 MHz band could make them more useful for two-way communications. However, this option would use the 1429–1432 MHz band that the Little Leo satellite operators are investigating for satellite feeder downlinks, as well as parts of the frequency bands requested by LMCC in their petition. Commenters should address the sharing possibilities and criteria for sharing between Little LEOs and medical telemetry under this option.

16. *Option 2: 608–614 MHz/1391–1400 MHz.* A single band at 1391–1400 MHz could be allocated to medical telemetry equipment as an alternative to the upper two bands recommended by AHA. This would provide an additional 1 MHz of spectrum for medical telemetry. The larger contiguous band could provide a greater opportunity for broadband transmissions, although it may be less useful for two-way communications than two separate bands. This option would resolve the potential conflict with satellite downlinks in the 1429–1432 MHz band, but would result in 2 MHz of overlap between the proposed medical telemetry band and a possible 1390–1393 MHz satellite feeder uplink band. This option would also use parts of the frequency bands requested by LMCC in their petition. Commenters should address the sharing possibilities and criteria for sharing between Little LEOs and medical telemetry under this option.

17. We propose service rules for the new Wireless Medical Telemetry Service (WMTS). These proposed service rules only apply to the WMTS and not to the current medical telemetry operations under parts 15 and 90. The proposed rules include licensing requirements and technical standards for the equipment, as well as a frequency coordination procedure. Our proposals are based primarily upon recommendations in the AHA report submitted to the Commission. We request comment on all aspects of these proposed rules.

18. AHA proposes the following definition for medical telemetry: Wireless medical telemetry is defined as the measurement and recording of physiological parameters and other patient-related information via radiated bi-or unidirectional electromagnetic signals.

19. Our intention is to create a Wireless Medical Telemetry Service (WMTS) that will allow medical telemetry equipment to operate in hospitals and medical facilities in much the same manner as the part 15 and part 90 rules allow, but without the potential for interference. Because the definition proposed by AHA appears to encompass our intention in creating this service, we propose it as the definition of the medical telemetry, and request comment.

20. *Licensing.* Medical telemetry equipment operating under part 15 of the rules does not require an individual operator's license. Similarly, medical telemetry equipment operating pursuant to part 90 does not require an individual operator's license. AHA states that, given the number and nature of devices that could be operated in a new medical telemetry service and the number of separate licenses that could co-exist in a given area, there is no basis for the administrative burden of individual licenses. AHA suggests that equipment in the WMTS could be "licensed by rule", such as is done in the Family Radio Service. We tentatively concur in AHA's assessment that there is no need to require individual operators licenses in the new WMTS. Individual licensing is generally designed to give a licensee a protected service area, and thus establishes rights among competing entities in the same service. We do not envision that operators in the WMTS will be in competition with each other as are parties in other radio services. Under our proposal, the WMTS spectrum would be shared, and there would be no mutual exclusivity between users. We therefore propose that the WMTS exist as one of the Citizen's Band services contained in part 95 of the rules. The Commission has authority under Section 307(e) of the Communications Act to license the Citizen's Band services by rule and to define "citizen's band radio service" by rule. We seek comment on our tentative conclusion.

Eligibility. AHA proposes that only authorized health care professionals be eligible to operate transmitters in the WMTS. For the purpose of this service, an "authorized health care professional" would be defined as (1) a physician or other individual authorized under state or federal law to provide health care services; (2) a health care facility operated by or employing individuals authorized under state or federal law to provide health care services; or (3) any trained technician under the supervision and control of an individual or health care facility authorized under state or federal law to provide health care services. AHA suggests that we define a "health care facility" as a hospital or other establishment that offers services, facilities and beds for use beyond 24 hours in rendering medical treatment, and organizations regularly engaged in providing medical services through clinics, public health facilities and similar establishments, including government entities and agencies for their own medical activities. A health care facility would not include an ambulance or other moving vehicle. We propose the eligibility restrictions recommended by AHA to ensure that use of the allocated spectrum is limited to medical telemetry equipment. However, for the sake of clarity, we will change the term "authorized health care professional" to "authorized health care *provider*", and change "beyond 24 hours" to "beyond a 24 hour period". We seek comment on this proposed eligibility requirement, including whether it should be expanded to cover in-home medical uses and how it can be enforced without individual licensing.

22. *Frequency Coordination.* AHA notes that if the WMTS were "licensed-by-rule", there would be no record of which frequencies are used by each facility or device. This could result in interference if multiple parties located close together attempt to use the same frequencies. Accordingly, AHA recommends the appointment of a frequency coordinator, who will maintain a database of all WMTS equipment in operation. The database would be used by eligible users and manufacturers to plan for specific frequency use within a geographic area, especially where numerous WMTS operations may occur. Equipment registered first in a geographic area would be entitled to protection over later-registered equipment. We preliminarily agree that AHA's proposal would assist WMTS users in avoiding interference. Accordingly, we propose that all parties using equipment in the WMTS be required to coordinate their operating frequency and other relevant technical operating parameters with a

coordinator designated by the Commission. We seek comment on this proposal.

23. Specifically, we propose that the designated frequency coordinator would have responsibility to maintain an accurate engineering database of all WMTS transmitters, identified by location, operating frequency, emission type and output power. The frequency coordinator, though, would not be a decision maker as to which frequency should be used. The coordinator would notify users of potential frequency conflicts. We expect that there will be few conflicts between users of WMTS equipment due to its low operating power, and that users will be able to resolve any conflicts among themselves. The Commission would make the final decision, as necessary, in disputes between users. We propose that a single frequency coordinator be designated to handle all requests nationwide. The coordinator must be familiar with the medical telemetry user community, and must make its services available to all parties on a first-come, first-served and non-discriminatory basis. The frequency coordinator must be willing to serve a five year term, which could be renewed by the Commission. In the event that a frequency coordinator did not wish to continue at the end of its term, it would have to transfer its database to another designated entity. The Wireless Telecommunications Bureau would have delegated authority to select the coordinator, and would announce this selection by public notice. We seek comments on this proposal, including: (1) Any other qualifications that a frequency coordinator must have, (2) whether a single entity or multiple entities should be designated as frequency coordinator(s), (3) how the frequency records could be maintained with multiple coordinators, and, (4) whether we should limit the fees the frequency coordinator(s) can charge. We also invite parties interested in becoming a frequency coordinator for the WMTS to file a written statement describing their qualifications.

24. The frequency coordinator would be required to maintain a database of the operating parameters submitted to it by users of the WMTS. We propose to require that the frequency coordinator make the database available to WMTS users, equipment manufacturers and the public. AHA recommends that the information submitted to the coordinator include:

(1) Frequency range(s) used
(2) Modulation scheme used
(3) Effective radiated power
(4) Number of transmitters in use at the health care facility at the time of registration
(5) Legal name of the authorized health care provider
(6) Location of transmitter (coordinates, street address, building)
(7) Point of contact for the authorized health care provider.

We seek comment on these and any other possible information requirements.

25. AHA recommends that equipment registrations be effective for a term of five years, and may be renewed for additional five year terms. Health care providers would have to notify the frequency coordinator when a device is permanently taken out of service, unless it is replaced with one with the same technical characteristics. Health care providers would also be expected to notify the frequency coordinator of any change in location or other operating parameters. We propose to adopt these requirements, except for the more burdensome requirement that equipment registrations be renewed every five years. We seek comment on these proposals, in particular, whether an expiration date for equipment registration is necessary to ensure the database does not become "cluttered" with entries for equipment that is no longer in service if users fail to notify the coordinator of the cessation of operation. We also seek comment on who should have access to the database.

26. *Permissible communications.* AHA recommends that all types of information flows should be permissible in the service, including voice, data, video and telecommand, on both a unidirectional and bidirectional basis. We are concerned, however, about AHA's recommendation to allow voice and video transmissions in the WMTS. Allowing voice transmissions could encourage equipment in this service to be used as a form of wireless intercom, rather than for its intended purpose of transmitting vital patient data. Further, video transmissions could occupy a significant portion of the available spectrum for this service. Accordingly, we propose that the WMTS be used for all types of communication, except voice or video transmissions, on either a uni-or bi-directional basis. We seek comments on these proposals.

27. *Technical Standards.* AHA recommends that the Commission adopt only minimal technical standards for WMTS equipment. AHA states that this flexibility will encourage manufacturers to develop different applications for medical telemetry. AHA does not believe that the lack of standards will lead to inefficient uses of the band. On the contrary, it believes that allowing the industry to move forward without government standards will result in a high degree of innovation. We seek comment on this general approach, and whether the Commission should adopt more specific requirements for certain parameters (e.g.—spectral efficiency.)

28. AHA generally does not recommend a specific channelization scheme for these bands. However, it is concerned that the use of broadband technologies, such as spread spectrum, could allow a single user to monopolize a band, which could inhibit the ability of other health care facilities within an area to utilize narrowband technologies. To facilitate sharing of the spectrum, it recommends that broadband equipment operating in the 608–614 MHz band be capable of operating within one or more channels of 1.5 MHz each, up to a maximum of 6 MHz. Such equipment would operate on the minimum number of channels necessary, and must have the capability of being "throttled back" so it will occupy as little as one 1.5 MHz channel, if necessary, to allow multiple users to share that band. We are proposing these requirements, which we believe will allow the WMTS spectrum to be used efficiently. We seek comment on these proposals.

29. AHA recommends the following field strength limits for WMTS transmitters.

Frequency band	Maximum field strength	Measurement distance	Measurement bandwidth	Detector function
608–614 MHz	370 mV/m	3 meters	120±20 kHz	CISPR QP.
1385–1390 MHz	740 mV/m	3 meters	1 MHz	Average.
1432–1435 MHz	740 mV/m	3 meters	1 MHz	Average.

We note that the proposed limit in the 608–614 MHz band is approximately 5 dB higher than the current part 15 limit for equipment operating in this band. AHA does not provide a justification as to why the limit should be increased, and we are concerned that a higher limit could result in interference to radio astronomy. Accordingly, we propose to maintain the current part 15 limit in the 608–614 MHz band. We propose the higher limits recommended by AHA in the 1395–1400 MHz and 1429–1432 MHz bands (or in the alternatively proposed 1391–1400 MHz band) to offset the increased propagation losses at those frequencies. We request comment on the appropriateness of these proposed limits. Commenters who suggest alternatives to the frequency bands proposed in this Notice should address the issue of appropriate limits in those alternative bands.

30. AHA recommends the following out-of-band emission limits for transmitters in the WMTS.

Frequency band	Maximum field strength	Measurement distance	Measurement bandwidth	Detector function
608–614 MHz	200 μV/m	3 meters	120± 20 kHz	CISPR QP.
1385–1390 MHz	500 μV/m	3 meters	1 MHz	Average.
1432–1435 MHz	500 μV/m	3 meters	1 MHz	Average.

These are the same as the current part 15 limits for out-of-band emissions from most intentional radiators, which we believe to be effective at controlling interference. Accordingly, we are proposing AHA's recommended limits for the 608–614 MHz band, and for the 1395–1400 MHz and 1429–1432 MHz bands (or the alternatively proposed 1391–1400 MHz band). We request comment on the appropriateness of these limits. Commenters who suggest alternatives to the frequency bands proposed in this Notice should address the issue of appropriate limits in those alternative bands.

31. *Protection of other existing services.* The WMTS must not cause interference to radio astronomy operations, and to certain "grandfathered" government operations. We therefore propose rules requiring the coordination of WMTS operations in the 608–614 MHz band with radio astronomy operations, similar to the requirements in part 15. The proposed rules would also require that operation in the 1395–1400 MHz and 1429–1432 MHz bands (or the alternatively proposed 1391–1400 MHz band) must protect certain government operations. Finally, parties using WMTS equipment would need to be aware that the operation of transmitters in close proximity to medical equipment could cause interference to the operation of the medical equipment. The proposed rules would provide a warning to this effect, similar to the warning found in the part 15 rules for medical telemetry equipment. Commenters who suggest alternatives to the frequency bands proposed in this Notice should address the need to protect other existing services.

32. *Equipment authorization requirement.* AHA recommends that WMTS transmitters be authorized through the Declaration of Conformity (DoC) procedure in part 2 of the rules. AHA also recommends that the manufacturer be required to provide certain technical information to the user in addition to the other information required as part of the DoC process. DoC is a manufacturer's self-approval procedure where the equipment is tested to ensure it complies with the Commission's specified technical standards, and may then be marketed without an approval by the Commission. We believe that DoC is an appropriate authorization for WMTS equipment. The equipment is relatively low powered, and will operate in a band reserved exclusively for medical telemetry equipment, with the exception of a limited number of fixed government operations. There is therefore less concern about the equipment causing interference than would be the case if the band were shared with other services. Accordingly, we propose that medical telemetry equipment operating under the new WMTS be authorized through the DoC procedure. We also propose that laboratories accredited to perform DoC testing under part 15 of the rules be permitted to perform DoC testing for equipment in the new WMTS, since the measurement procedures are essentially the same for both types of equipment. However, we would decline to require manufacturers to provide users certain technical information AHA recommends as part of the DoC process. We believe manufacturers would already provide this information as a routine matter, so a requirement on our part is unnecessary. We seek comments on these proposals, and whether certification would be appropriate due to the fact that new types of equipment may be developed for this service.

33. *Transition Provisions.* AHA believes that eventually all medical telemetry equipment should be designed to operate in the new frequency bands. AHA estimates it will take manufacturers approximately three to four years to develop and market devices for these bands. Therefore, they recommend that all equipment approved, beginning four years after adoption of final rules, should be designed to operate in the new frequency bands. AHA further recommends that equipment approved prior to that date can continue to be manufactured, marketed and operated indefinitely so that health care facilities are not forced to replace devices that are still useful.

34. While our primary goal in this proceeding is to protect the operation of medical telemetry equipment from harmful interference, we need to balance that with the goal of allowing DTV and PLMR to grow and develop without unnecessary delays. In that regard, we believe that four years is a longer transition period than necessary for requiring new equipment to operate in the new frequency bands. Equipment operating in the 608–614 MHz band is already available under the provisions of part 15, and AHA has indicated that equipment can be rapidly developed for the other proposed bands. In order to encourage users to migrate out of the DTV and PLMR bands as quickly as possible, we propose that, beginning two years from the effective date of final rules in this proceeding, all medical telemetry equipment authorized must operate in the new frequency bands. Equipment that is already in operation in the DTV and PLMR bands as of that date may continue to be operated, but at the users' own risk. We seek comment on these proposals, including whether we should place a cutoff date on the manufacturing and importation of equipment authorized under parts 15 and 90.

35. AHA also is concerned that the Commission may lift the freeze on high-power operation on the 12.5 kHz offset channels in the 450–470 MHz band. It

states that a five-year transition period starting from the adoption of rules allocating spectrum for medical telemetry equipment is necessary to avoid disastrous consequences to existing users. AHA states that a shorter transition time may be possible in parts of the band, either by relocating existing users or identifying channels which are not used by medical telemetry devices. We seek comment on AHA's 5-year proposal, and on what steps may be taken to allow an earlier lifting of the freeze in the 450–470 MHz band without causing interference to medical telemetry equipment.

Initial Regulatory Flexibility Analysis

36. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making* ("NPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

A. Need for, and Objectives of, the Proposed Rules

37. Medical telemetry equipment currently operates on an unlicensed basis on certain unused TV channels under part 15 of the rules, and on a secondary basis to private land mobile services in the 450–470 MHz band under part 90 of the rules. With the transition to digital TV service, both full-power and low-power TV stations may begin operating on some of the vacant channels used by medical telemetry equipment. In addition, the new channelization scheme being implemented in the 450–470 MHz band will allow high-power operation on the channels currently reserved for low-power use where medical telemetry equipment operates. Both of these changes could result in severe interference with medical telemetry equipment. The proposed rules are intended to allocate new frequency bands where medical telemetry equipment can operate on a primary basis without receiving interference.

B. Legal Basis

38. The proposed action is authorized under Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

39. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). This standard also applies in determining whether an entity is a small business for purposes of the RFA.

40. The Commission has not developed a definition of small entities applicable to RF Equipment Manufacturers. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to manufacturers of "Radio and Television Broadcasting and Communications Equipment." According to the SBA's regulation, an RF manufacturer must have 750 or fewer employees in order to qualify as a small business.[1] Census Bureau data indicates that there are 858 companies in the United States that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.[2] We believe that many of the companies that manufacture RF equipment may qualify as small entities.

41. According to the SBA's regulations, nursing homes and hospitals must have annual gross receipts of $5 million or less in order to qualify as a small business concern. 13 CFR 121.201. There are approximately 11,471 nursing care firms in the nation, of which 7,953 have annual gross receipts of $5 million or less.[3] There are approximately 3,856 hospital firms in the nation, of which 294 have gross receipts of $5 million or less. Thus, the approximate number of small confined setting entities to which the Commission's new rules will apply is 8,247.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

42. We are proposing that equipment operating in the new frequency bands be authorized through the Declaration of Conformity (DoC) procedure. DoC is a manufacturer's self-approval procedure, in which the manufacturer has the equipment tested at an accredited laboratory, and is then permitted to market the equipment without a Commission approval provided the equipment complies with the applicable technical requirements. The DoC procedure requires the manufacturer to supply a compliance statement with each product, and to retain test records.

43. Parties operating the equipment will not be required to obtain an individual operator's license from the Commission, but they will have to register with a frequency coordinator designated by the Commission. The information submitted to the frequency coordinator will be:

(1) Frequency range(s) used;
(2) Modulation scheme used;
(3) Effective radiated power;
(4) Number of transmitters in use at the health care facility as of the date of coordination;
(5) Legal name of the authorized health care provider;
(6) Location of transmitter (coordinates, street address, building);
(7) Point of contact for the authorized health care provider (name, title, office).

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

44. We are proposing to allow equipment in this service to be "licensed by rule". This will eliminate the expense and delays that would result if parties were required to obtain individual operators' licenses. We are also proposing that equipment in this service be authorized through the Declaration of Conformity procedure. This will eliminate the delays in getting equipment to market that would result if manufacturers were required to obtain certification through the Commission or a designated Telecommunication Certification Body.

[1] *See* 13 CFR 121.201, Standard Industrial Classification (SIC) Code 3663.

[2] *See* U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), SIC category 3663.

[3] *See* Small Business Administration Tabulation File, SBA Size Standards Table 2C, January 23, 1996, SBA, Standard Industrial Code (SIC) categories 8050 (Nursing and Personal Care Facilities) and 8060 (Hospitals). (SBA Tabulation File)

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

45. None.

List of Subjects in 47 CFR Parts 2 and 95

Communications equipment.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–19707 Filed 7–30–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket 99–254; FCC 99–180]

Closed Captioning Requirements for Digital Television Receivers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Commission's rules to adopt technical standards for the display of closed captions on digital television (DTV) receivers. The Commission also proposes to require the inclusion of closed captioning decoder circuitry in DTV receivers. The proposals contained herein will help ensure access to digital programming for people with disabilities. This action is taken to fulfill the Commission's obligations contained in the Television Decoder Circuitry Act of 1990.

DATES: Comments must be filed on or before October 18, 1999; and reply comments must be filed on or before November 15, 1999.

ADDRESSES: Address all comments concerning this proposed rule to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Neal McNeil, Office of Engineering and Technology, (202) 418–2408, TTY (202) 418–2989, e-mail: nmcneil@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, ET Docket 99–254, FCC 99–180, adopted July 14, 1999, and released July 15, 1999. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center, (Room TW–A306) 445 12th Street S.W., Washington, DC. The complete text of this document also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Electronic Access and Filing Addresses

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) via the Internet at <http://www.fcc.gov/e-file/ecfs.html>. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Summary of Notice of Proposed Rulemaking

1. Closed captioning is an assistive technology that allows persons with hearing disabilities to enjoy television programming. Through captioning, the audio portion of programming is displayed as text superimposed over the video. Closed captioning information is encoded and transmitted along with the video signal of television broadcasts. The text is not ordinarily visible. In order to display closed captioning, viewers must use either a set-top decoder or a television receiver with integrated decoder circuitry.

2. In 1990, Congress passed the Television Decoder Circuitry Act. The Act was intended to reduce the cost to consumers of receiving closed captioning, to make closed captioning more widely available, and to create market incentives for broadcasters to invest in and provide more captioned programming. The Act requires that television receivers with picture screens 33 cm (13 inches) or larger contain built-in decoder circuitry designed to display closed captioned television transmissions. The Act also requires that the Commission take appropriate action to ensure that closed captioning services continue to be available to consumers as new video technology is developed. The introduction of digital broadcasting now requires the Commission to update its rules to fulfill its continuing obligations under the Act.

3. The Electronics Industries Alliance (EIA) has adopted EIA–708–A, a standard which provides instructions for the encoding, delivery, and display of closed caption information for digital television systems. The standard provides for a larger set of captioning characters than the existing caption standard. It also supports user options which enable caption display to be customized for a particular viewer. For example, closed caption decoders functioning pursuant to EIA–708–A may permit viewers to change various attributes of caption text such as its font, spacing, color, or screen position. This will allow viewers to change the size and appearance of captions to suit their needs. Also, using EIA–708–A, caption providers may distribute the caption text for a particular program at different reading levels. Viewers would then have the option of displaying the standard near-verbatim captions or alternate "easy-reader" captions written for younger viewers or beginner readers. Captions for that same program may also be distributed in alternate languages, simultaneously. We believe that, because of these attributes, EIA–708–A provides substantial benefits for consumers, and substantial improvements over current captioning standards.

4. The Commission proposes to incorporate Section 9 of EIA–708–A into the Commission's rules. That section contains recommendations for the operation of DTV closed captioning decoders. The recommendations are intended to provide minimum performance standards for DTV caption decoders. Because Section 9 supplies manufacturers with a set of common basic functions for DTV caption decoders, we believe that it provides sufficient guidance for the successful implementation of closed caption services with digital television receivers. We propose to transcribe the recommendations contained in Section 9 into requirements that will be contained in part 15 of the Commission's rules. DTV receivers will be required to function pursuant to the recommendations contained therein.

5. During the transition period from analog to digital broadcasting, programming will be transmitted in both analog and digital formats. Accordingly, the first few generations of DTV receivers are expected to be designed to operate in a dual mode. Dual mode receivers will allow consumers to enjoy the enhanced quality of digital broadcast stations while retaining the ability to watch programming on existing analog stations, all with the same receiver. For this type of receiver we believe that it is important to ensure that closed captioning display capability is available in both modes of operation. Accordingly, we propose to require that dual mode receivers operating in the analog mode provide closed captioning functionality pursuant to the Commission's existing rules for analog television receivers. In the digital mode,

such receivers will be required to function in accordance with EIA–708–A.

6. We note that EIA–708–A supports transport of standard analog captioning information. However, we propose to require that the decoder circuitry in digital tuners respond primarily to any digitally formatted caption information. In that way we can ensure that consumers who purchase DTV receivers will be able to take advantage of the new capabilities of captioning in the digital environment. We seek comment on this proposal.

7. We are aware that DTV reception capability will be marketed in a number of ways. During the transition period we expect that many consumers will purchase set-top DTV converter boxes that allow digitally transmitted television signals to be displayed on analog receivers. We also are aware that some manufacturers may choose to sell DTV tuners and display units separately. Consumers will have the option of customizing their DTV system in much the same way that is now done for computer systems. We believe that most set-top converters and all separately sold DTV tuners will be used with picture screens that are 13 inches or larger. Therefore, we propose to require that all such devices be subject to the provisions of the 1990 Act and provide for the display of closed captioning. Specifically, we propose to require that DTV converter boxes used with analog receivers either decode any analog caption information that is transmitted with the DTV signal or pass this information directly to the receiver in a form recognizable by the receiver's built-in caption decoder. Separately sold DTV tuners will be required to have the capability to respond to digitally encoded caption information. Although these converter boxes and tuners may be marketed without display screens, we tentatively conclude that 47 U.S.C. 330(b) provides the Commission with authority to require closed captioning capability in the devices. We seek comment.

Initial Regulatory Flexibility Analysis

8. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making* ("NPRM"). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above. The Commission shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

A. Need for and Objectives of the Proposed Rule

9. In 1990, Congress passed the Television Decoder Circuitry Act ("TDCA"). The TDCA requires that any apparatus designed to receive television broadcast signals, manufactured or imported for use in the United States, must have the capability of displaying closed captioned information if its television screen is 33 centimeters (13 inches) or larger. In 1991, the FCC incorporated the TDCA into its rules by requiring that each broadcast receiver shipped in interstate commerce, manufactured, assembled, or imported after July 1, 1993 be capable of displaying closed captioned information if its television screen is 33 centimeters or larger. *See* 47 CFR 15.119, *Report and Order* in General Docket 91–1, 6 FCC Rcd 2419 (1991), 56 FR 27200, June 13, 1991.

10. The NPRM proposes to amend part 15 of our Rules to require that digital television receivers be capable of displaying closed captioning transmitted with television signals.

B. Legal Basis

11. The proposed action is taken pursuant to Sections 303(u) and 330(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 303(u) and 330(b).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

12. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business" "small organization," and "small governmental jurisdictions." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. *See* 5 U.S.C. 601(3). Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). *See* 15 U.S.C. 632.

13. According to the SBA's regulations, television equipment manufacturers must have 750 or fewer employees in order to qualify as a small business concern. *See* 13 CFR 121.201, (SIC) Code 3663. Census Bureau data indicates that there are 858 U.S. companies that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities. *See* U.S. Department of Commerce, *1992 Census of Transportation, Communications, and Utilities,* SIC Code 3663 (issued May 1995). The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are manufacturers of television equipment. However, we believe that many of the companies that manufacture television equipment may qualify as small entities.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

14. The Commission's rules require television receivers to be verified for compliance with applicable FCC technical requirements. *See* 47 CFR 15.101, 15.117, and 2.951, *et seq.* Documentation concerning the verification must be kept by the manufacturer or importer. The rules adopted in this proceeding require that digital television receivers comply with industry-developed standards for closed captioning display. However, testing regarding closed captioning display is not necessary because compliance with the industry-developed standards, and the associated Commission rules, can be determined easily during the equipment design process. The Commission may, of course, ask manufacturers and importers to document upon occasion how a particular television receiver or computer system complies with the closed captioning display requirements.

E. Significant Alternatives to Proposed Rules Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

15. None.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

16. None.

List of Subjects in 47 CFR Part 15

Communications equipment.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–19708 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1429; MM Docket No. 99–44, RM–9469]

Radio Broadcasting Services; Stanfield, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission dismisses the request of Luella Hoskins seeking the allotment of Channel 241C3 to Stanfield, OR, since neither the petitioner nor any other party expressed an intent to apply for the channel, if allotted. *See* 64 FR 7842, February 17, 1999.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–44, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–19685 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 78

[CS Docket No. 99–250; FCC 99–166]

Eligibility Requirements in Part 78 Regarding 12 GHz Cable Television Relay Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document requests comment on amending the Commission's rules to allow private cable operators ("PCOs") and other multichannel video programming distributors ("MVPDs") to use the frequencies in the 12 GHz band for the delivery of video programming. This document is in response to a petition for rulemaking filed with the Commission by Optel, Inc., a PCO that provides video programming and other services to residential subscribers, requesting eligibility to use the 12 GHz Cable Television Relay Service ("CARS") band for video programming. The Notice invites comments which will help the Commission determine the competitive impact on franchised cable resulting from the proposed expansion of eligibility for CARS licenses to PCOs and other MVPDs. The Notice also invites comments on technical and spectrum management issues relevant to expansion of CARS eligibility.

DATES: Comments are due on or before August 16, 1999 and reply comments are due on or before September 20, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Room TW–A325, Washington, D.C. 20554. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (January 2, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

FOR FURTHER INFORMATION CONTACT: Eloise Gore or Carolyn Fleming at (202) 418–7200 or via internet at egore@fcc.gov or cfleming@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, FCC 99–166, CS Docket No. 99–250, adopted July 9, 1999 and released July 14, 1999 ("Notice"). The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, S.W., Washington, D.C. 20554, or may be purchased from the Commission's copy contractor, International Transcription Service ("ITS"), (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036, or may be reviewed via internet at <http://www.fcc.gov/Bureaus/Cable/News_Releases/1998/nrcb8022.html>. For copies in alternative formats, such as braille, audio cassette or large print, please contact Sheila Ray at ITS.

Ex Parte Rules

This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the rules. (47 CFR 1.1206(b), as revised). Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. (See 47 CFR 1.1206(b)(2), as revised.) Additional rules pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

Synopsis of Notice of Proposed Rulemaking

Introductory Background

1. In this proceeding, we respond to a petition for rulemaking filed by Optel, Inc. ("Optel"), a PCO that provides video and other services to residential users primarily located in multiple dwelling units ("MDUs") on a shared tenant basis. In its petition, Optel proposes to expand eligibility for the 12 GHz CARS band to include PCOs. On its own motion, the Commission seeks comment on expanding eligibility to other MVPDs. The Optel petition was filed on April 1, 1998. The Commission received comments all of which were in support of Optel's petition.

2. For purposes of the Notice, the 12 GHz frequency band is defined as the band segment 12.70—13.20 GHz shared by CARS and other services. Currently, that segment of the 12 GHz bandwidth is used by, among others, CARS licensees which provide point-to-point, *e.g.,* from one side of a river or mountain to the other side of the river or mountain, and point-to-multipoint transmissions, *e.g.,* from one side of a river or mountain to many points, video and related audio signals. Part 78 of the Commission's rules governs the

licensing and operations of fixed or mobile CARS stations; thus, if Optel's petition is granted Sections 78.11 and 78.13 which govern both the eligibility criteria and the permissible services for CARS licensees would need to be amended. Optel has also requested use of the frequency band segment from 13.20 to 13.25 GHz for delivery of video programming. However, that segment is not designated for CARS use but rather for broadcast auxiliary service ("BAS"), including on-site mobile transmissions for electronic newsgathering. The Notice seeks comment on spectrum sharing issues raised by Optel's petition as it relates to incumbent cable operators in the 12 GHz CARS band and to the compatibility between fixed PCOs and mobile BAS in the 13.20 to 13.25 band segment.

3. In its petition, Optel contends that PCOs need access to the 12 GHz CARS band because: (1) Opening the 12 GHz CARS band to PCO licensees would enhance competition with the franchised cable industry; (2) the Commission has established precedent for extending CARS eligibility to other similar users such as multipoint distribution service ("MDS") and multichannel, multipoint distribution service ("MMDS") operators; and (3) the 18 GHz frequency band, because of technical difficulties and recent and pending Commission rulemakings, can no longer support the services provided by the PCO industry. Optel also argues that, in the 12 GHz CARS band, it can provide more channels (up to 82 channels if the CARS band includes 13.20 GHz–13.25 GHz) and, therefore, can be more competitive with franchised cable systems.

4. The Commission's rules define a CARS station as a fixed or mobile station used for the transmission of television and related audio signals, signals of standard and FM broadcast stations, signals of instructional television fixed stations, and cable casting from the point of reception to a terminal point from which the signals are distributed to the public. (47 CFR 78.5(a)). CARS licensees are authorized to use CARS stations to relay signals for and to supply program material to cable television systems and other eligible entities using point-to-point and point-to-multipoint transmissions. (47 CFR 78.11(a), (c), (d)).

5. Optel's petition also requests amendment of Section 101.603(a)(2) to add the 12 GHz band to those frequency bands on which PCO licensees may deliver video programming and Section 101.603(b)(3) to include the 12 GHz band among those frequency bands that may be used to provide the final Radio Frequency ("RF") link in the chain of transmission of program material to cable television systems, MDS, or Master Antenna Television Systems ("MATVs"). Part 101 of the Commission's rules governs the manner in which portions of the radio spectrum may be made available for use by private operational, common carrier, Local Multipoint Distribution Service ("LMDS"), and certain fixed microwave operations. PCOs currently obtain licenses under Part 101 for certain frequencies when their operations use microwave distribution. PCOs are permitted by Part 101 to use the 18 GHz (18.142 GHz–18.580 GHz) and 23 GHz (21.20 GHz–23.60 GHz) frequency bands to distribute video programming. Sections 78.11 and 78.13 govern both the eligibility criteria and the permissible services for CARS licensees. If at the conclusion of this rulemaking the Commission determines to extend the use of the 12 GHz CARS band to PCOs and other MVPDs, procedurally it will be sufficient to amend Section 78.13 of the Commission's rules, which would be consistent with the Commission's previous amendments to Section 78 of its rules to extend CARS eligibility to other service providers and would ensure that all users of this band for video distribution purposes are governed by the same rules and licensing criteria. No amendment to Part 101 is necessary. The Notice states that amending Part 78 to make PCOs and other MVPDs eligible for 12 GHz CARS licenses would also make them eligible for CARS licenses in the 18 GHz band, as are other current CARS licensees.

Competition in the Video Programming Distribution Industry

6. Optel maintains that it competes directly with incumbent franchised cable operators. Commenters agree with Optel's contentions with regard to the alleged competitive benefits of extending CARS eligibility to PCO licensees. RCN Telecom Services, Inc. ("RCN"), an operator of open video systems ("OVS"), argues that extending CARS eligibility to PCO licensees would establish parity between franchised cable operators who use the CARS band to relay programming material and PCO licensees who would use the 12 GHz CARS band for similar purposes. RCN believes that granting Optel's petition would result in increased competition for two reasons. First, RCN states that extending CARS eligibility to PCOs would satisfy the underlying goals of the 1996 Act by removing competitive obstacles and fostering competition. Second, RCN states that Optel correctly compares the status of PCO licensees with that of MDS licensees who were found to be competitors of franchised cable operators and eligible for CARS licenses. The Notice seeks comment on the effect on incumbent CARS licensees of permitting PCO licensees to use the 12 GHz CARS band. The Notice seeks comment as to whether the proposed use of the 12 GHz CARS band by Optel is consistent with the current channelization scheme for 12 GHz CARS licensees. The channelization scheme sets the upper and lower frequency boundaries for each assigned channel used in the CARS band. The Notice further inquires as to whether there are other technical considerations or issues of spectrum congestion or coordination among licensees which should be considered.

7. The Notice notes that PCOs currently are permitted to use 18 GHz and 23 GHz for video, as well as for data and voice. The Notice seeks comment on the costs for PCOs associated with the use of multiple frequency bands that they could use under the existing rules. Specifically, we request a detailed cost analysis and comparison, including equipment costs, comparing use of 18 GHz or 23 GHz versus use of the 12 GHz CARS band.

8. In the Notice, the Commission states its belief that Optel's petition presents an opportunity to consider expanding eligibility for the CARS band to MVPDs other than PCOs. Thus, on the Commission's own motion, the Notice seeks comment on expanding eligibility for the CARS band to entities such as OVS operators and others who provide video programming as their dominant service. An example of an MVPD which provides video programming as its dominant service is an MVPD that offers 60 channels of video programming and 2 channels of ancillary services. The Commission has stated that use of the microwave radio spectrum should be governed by type of use rather than type of licensee is applicable here. *See Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed, Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service*, 5 FCC Rcd 6410, 6423 (1990), 55 FR 46006 (Oct. 31, 1990) ("*CARS Order*"). Based on that principle, the Commission expanded eligibility for the CARS band to MDS licensees and further stated that similarly-situated entities should have parity of access to the spectrum. In the *CARS Order*, the Commission stated that cable and wireless cable, respectively, have similar needs for CARS frequencies and there was no evidence to justify disparate treatment with regard to use of the CARS band.

9. The Commission notes that franchised cable systems that are currently eligible for CARS licenses generally are required to provide service to an entire community. In contrast, PCOs can select those areas and buildings where they wish to provide service and ignore less desirable areas or buildings. The Notice seeks comment on whether PCOs should have the same access to CARS stations without being required to provide the same level of service. In addition, we seek comment on the conflict that could arise where a franchised cable system may be unable to serve a part of a community which it is required to serve because a PCO already has the CARS license for those frequencies. The Notice seeks comment on whether PCOs and other MVPDs would first have to exhaust their spectrum usage in the 18 GHz and 23 GHz frequency bands, as provided by Part 101 of the Commission's rules, before being eligible to use the 12 GHz CARS band. The Notice further seeks comment on whether PCO use of the 12 GHz band for CARS should be limited to secondary use where it will not interfere with cable systems or MMDS licensees that have actual plans to use a CARS station. The Notice inquires further as to whether there are other conditions or restrictions which should be imposed. For example, should the Commission limit CARS eligibility to only those PCOs with a certain minimum number of subscribers?

Technical Limitations in the 18 GHz Band

10. Optel currently uses microwave distribution centers in the 18 GHz frequency band to interconnect private cable systems to a central headend facility. Optel maintains, however, that the 18 GHz band can no longer support the range of services offered by itself and other PCOs because the propagation limitations of the 18 GHz band significantly restrict PCOs' ability to expand due to greater operating costs. Optel maintains that the signal propagation characteristics (*e.g.*, distance over which the signal remains strong) of the 18 GHz band make it unsuitable for widely distributed systems and limits growth within the PCO industry. Optel states that transmissions in the 18 GHz band have an effective range up to 8 miles and that PCOs who wish to provide service outside of the 8 mile area would be forced to build a new headend closer to the outlying systems, add microwave relay stations, or abandon expansion projects altogether. Depending upon path conditions, it has been the Commission's experience that CARS stations in the 12 GHz frequency band using Amplitude Modulated Links (AML) can travel 11–15 miles and, in the 18 GHz frequency band, 8–11 miles. The Notice also refers to section 78.108 of the Commission's rules which requires minimum path lengths of 5 km between the end points of a fixed link using the 12 GHz CARS band. The Notice seeks comment on the estimates of effective range and the assertion that PCOs need additional range and raises related questions such as should PCOs be required to demonstrate that they need to transmit over more than 10 miles before they are eligible for a CARS license? The Notice requests comment on the technical impact on PCOs which continue to operate in the 18 GHz band. The Notice also requests comment on the impact to CARS operations, including franchised cable systems that are currently CARS licensees or may need access to CARS in the future, if PCO entities are allowed access to the 12.75–13.25 GHz band. Will cable systems' transition to fiber optics obviate their need for CARS stations thus lessening any potential negative impact and making more spectrum available to other applicants, such as PCOs and other MVPDs?

Effect on PCOs of Other Ongoing Commission Rulemakings

11. Optel contends that PCOs need access to the 12 GHz CARS frequency band because certain ongoing Commission rulemaking proceedings threaten to limit PCOs' use of the 18 GHz frequency band. Specifically, Optel argues its ability to compete with franchised cable operators in the Denver, CO and the Washington, D.C. markets has been limited by the Commission's decision to relocate Digital Electronic Message Services ("DEMS") in connection with the establishment of "exclusion zones." Optel further argues that its continued existence in the 18 GHz frequency band would be impaired by the grant of blanket licenses to fixed satellite service ("FSS") users in the 18 GHz band as proposed in the *Notice of Proposed Rulemaking, Redesignation of the 17.7–19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7–20.2 GHz and 27.5–30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3–17.8 GHz and 24.75–25.25 GHz Frequency Bands for Broadcast Satellite Service Use*, FCC 98–235, 63 FR 54100 (Oct. 8, 1998) ("*Redesignation NPRM*"). Currently, the 17.70 to 19.70 GHz band is allocated for shared use between satellite services and terrestrial fixed services. If the *Redesignation NPRM* is adopted as proposed, Optel and other terrestrial fixed services would lose their current co-primary status in the 18.30 GHz-18.55 GHz and 18.80 GHz-19.30 GHz bands but gain primary status in the 17.70 Ghz-18.30 Ghz bands. The Commission has determined that fixed services can continue to file for authorization to use these bands, but after the adoption of a Report and Order in *Redesignation NPRM* proceeding, such applications would be accorded secondary status to promote exclusive use of this spectrum by satellite operations. The Commission has explained that a service that is designated as co-primary must share a frequency band with other services designated as co-primary on a co-equal basis and that a service designated as secondary may use a frequency band as long as its operations do not cause interference to any primary designated operations. If interference occurs, the secondary designated service must cease operations. The Notice seeks comment on whether the increasing constraints that will be presented for terrestrial services at 18 GHz warrants making the 12 GHz CARS band available for PCO service, or whether other alternatives, such as 23 GHz, or use of fiber optic cable, can reasonably provide necessary capacity.

12. The Notice also takes note of another ongoing Commission proceeding that raises spectrum sharing issues with regard to the 12 GHz frequency bandwith, *i.e.*, *In the Matter of Amendments of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range and Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates, Notice of Proposed Rulemaking* ("*NGSO 12 GHz NPRM*"), 64 FR 1786 (Jan. 12, 1999). Among other issues, the *NGSO 12 GHz NPRM* responds to a petition filed by SkyBridge LLC requesting that the Commission allow NGSO FSS gateway earth stations earth-to-space links in the CARS frequencies at 12.75 GHz-13.25 GHz on a co-primary basis, subject to appropriate coordination and spectrum sharing requirements. The *NGSO 12 GHz NPRM* takes notice of the Optel petition and requests comments on the

compatibility between new NGSO FSS operations and Optel's proposed use of the 12 GHz frequency band. As noted in the *NGSO 12 GHz NPRM*, 12.75–13.25 GHz is currently subject to heavy usage. Optel's request for use of the 12 GHz CARS band and that of SkyBridge, if granted, could greatly increase the terrestrial use of the 12 GHz band, although Optel's use of the 12 GHz CARS band for point-to-point and point-to-multipoint relay of signals will not differ from the current use of the band by CARS licensees. Spectrum sharing issues with respect to the proposed NGSO FSS operations in the 12.75–13.25 GHz band will be considered in ET Docket No. 98–206. Consideration of these issues need not be repeated in this docket. The Notice invites comment in this proceeding only on any additional issues specifically related to the question of expanding CARS eligibility.

Other Issues

13. The Commission, pursuant to 309(j) of the Telecommunications Act of 1996, is required to implement a system of competitive bidding when mutually exclusive applications are accepted for filing for any initial license or permit involving use of the spectrum. Currently CARS licenses are not auctioned. However, if the Commission determines that opening the CARS band to PCOs and other MVPDs creates mutually exclusive applications, the CARS spectrum would be subject to auction. Alternatively, the Commission could adopt priority of use rules, which would avoid mutual exclusivity and the auctioning of the CARS spectrum. The Notice seeks comment on the effect of auctioning CARS spectrum or adopting priority of use rules. The Notice also seeks comment on the applicability of the Commission's Part 1 auction rules to this service in the event the Commission decides to award CARS licenses through competitive bidding. The Notice also seeks comment on whether the Commission should adopt a minimum subscriber requirement to avoid permitting a PCO with a small number of subscribers to use a CARS station that could have been licensed, instead, to a cable system serving significantly more subscribers. Another option for consideration and comment is granting PCOs and other MVPDs secondary, but not primary, eligibility for using the 12 GHz CARS band.

14. Some PCOs currently use 18 GHz or 23 GHz to bundle data, voice, video and other services in one package for their customers. The 12 GHz CARS band must be used principally for the delivery of video programming. The Notice does not propose to change the principal use of CARS as a tool for relaying video programming between and among the components of a cable or other eligible system. However, we seek comment on whether and to what extent CARS licensees should be permitted to provide voice or data using the 12 GHz CARS band provided the principal use remains the delivery of video programming and subject to existing technical and operating requirements.

15. The Commission, on its own motion, seeks comment on the realignment and the reassignment of the channel frequency assignments set forth in Section 78.18(a) of the Commission's rules to provide for more efficient use of channels by facilitating continuous channel transmissions. Specifically, the Notice seeks comments on: (1) designating the unassigned guard band (12.9465–12.9525 GHz) as channel C43, and the unassigned second guard band (13.0057–13.0125) as channel D43; and (2) allowing CARS operators to slightly shift the frequencies of channels C04–C10, channels D04–D10, channels E04–E10, and channels F04–F10 to produce 6–6 MHz video channels for each channel group (i.e., C group, D group, E group, and F group). Currently, applicants must seek waivers for a change in the frequency assignments pursuant to Section 78.18 of the Commission's rules for such minor frequency shifts and to use the guard band. The Notice also seeks comment on whether other changes in frequency assignments are necessary to provide for more seamless and efficient use of the CARS frequency spectrum.

Paperwork Reduction Act

The requirements proposed in this Notice have been analyzed with respect to the Paperwork Reduction Act of 1995 and do not impose new or modified information collection requirements on the public.

OMB Approval Number: None.

Title: In the Matter of Petition for Rulemaking To Amend Eligibility Requirements in Part 78 Regarding 12 GHz Cable Television Relay Service.

Type of review: None.

Initial Regulatory Flexibility Analysis: As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission is incorporating an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the policies and proposals in this Notice of Proposed Rulemaking. Written public comments concerning the effect of the proposals in the NPRM, including the Initial Regulatory Flexibility Act, on small businesses are requested. Comments must be identified as responses to the IRFA and must be filed by the deadlines for the submission of comments in this proceeding. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

A. Reasons Why Agency Action is Being Considered

This Notice is in response to a petition for rulemaking filed by Optel.

B. Need for Action and Objectives of the Proposed Rule Change

The Commission undertakes this proceeding to address the spectrum sharing and technical issues presented by Optel's petition. Optel's petition, if granted, could increase competition to incumbent, franchised cable operators, particularly with regard to video programming service to multi-dwelling units. While we desire to promote competition and innovation by allowing for new services or additional spectrum use, we also need to consider the competing interests of the incumbent services in the 12 GHz CARS band. The Notice notes the need to consider the impact on PCOs of recent and pending Commission rulemakings involving the 18 GHz band. Thus, the Notice seeks comment on whether the proposed blanket licensing of GSO/FSS operators in the 18 GHz will unduly constrain future growth of incumbent PCO users.

C. Legal Basis

The authority for the action proposed for this rulemaking is contained in Sections 4(i)–(j), 303(c), (f), (g), and (r), and 309(j) of the Communications Act of 1934, as amended.

D. Description and Estimate of the Number of Small Entities Impacted

The IRFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The IRFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.

Private Cable Operators

The proposal to permit PCOs to use the 12 GHz CARS band applies to all private cable system operators. The Commission has developed, with the approval of the Small Business Administration ("SBA"), its own definition of a small cable system operator for rate regulation purposes. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, the Commission estimates that there were 3,400 private cable operators serving multiple dwelling units that qualified as small cable companies. Some of those companies may have grown to serve from 800,000 to 1.5 million subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are fewer than 3,400 small entity cable system operators that may be affected by the decisions and rules the Commission adopts.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The Commission is not proposing to impose additional reporting or recordkeeping requirements.

F. Significant Alternatives Which Minimize the Impact on Small Entities and Are Consistent With Stated Objectives

The NPRM solicits comments on all alternatives to Optel's request which would minimize any adverse impact on small entities.

G. Federal Rules Which Overlap, Duplicate, or Conflict With the Commission's Proposal

None.

H. Report to Congress

The Commission shall send a copy of this IRFA along with this Notice in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. 801(a)(1)(A). A copy of this IRFA will also be published in the **Federal Register**.

Ordering Clauses

It is ordered that, pursuant to Sections 4(i)–(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)–(j), 303(c), (f), and (r), and 309(j), notice is hereby given of the proposed amendments to part 78 of the Commission's rules, in accordance with the proposals, discussions, and statements of issues contained in this Notice of Proposed Rulemaking, and that comment is sought regarding such proposals, discussions, and statements of issues.

It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration, in accordance with paragraph 603(a) of this regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 78

Cable television, Communications equipment.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–19709 Filed 7–30–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on Petition To Delist the Concho Water Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service) announce a 90-day finding for a petition to delist the Concho water snake (*Nerodia paucimaculata*) under the Endangered Species Act of 1973, as amended. We find that the petitioner did not present substantial information indicating that delisting this species may be warranted.

DATES: The finding announced in this document was made on July 13, 1999.

ADDRESSES: Comments, material, information, or questions should be sent to the Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 10711 Burnet Road, Suite 200, Austin, Texas 78758. The petition and supporting data are available for public inspection by appointment during normal business hours at the above address. A copy of the finding announced in this notice may be obtained by writing to the above address.

FOR FURTHER INFORMATION CONTACT: Patrick Connor, Fish & Wildlife Biologist, at the above address (telephone 512–490–0057 ext. 227).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, we must make this finding within 90 days of the date the petition is received, and this finding must be published promptly in the **Federal Register**. If the finding is that the petitioner has presented substantial information we must then promptly commence a status review of the species.

When evaluating whether the substantial information standard is met, we use the definition provided in the implementing regulations at 50 CFR 424.14(b). Substantial information is defined as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted." The factors for listing, delisting or reclassifying species are described in 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be based on one of the following reasons—(1) extinction, (2) recovery, or (3) original data for classification were in error.

On June 29, 1998, we received a petition by John W. Grant on behalf of the Colorado River Municipal Water District (CRMWD) dated June 24, 1998, to delist the Concho water snake (CRMWD 1998). The petition asserts that—(1) the status of the Concho water snake was stable at the time of listing and continues to be stable, (2) all putative threats are insubstantial, and (3) the determination that the Service made to list the snake as threatened was in error. After careful review, we find that the snake should remain classified as threatened under the Act.

The Concho water snake is endemic to the Concho and Colorado rivers in Runnels, Tom Green, Concho, McCulloch, Coleman, Brown, Mills, San Saba, Irion, Lampasas, and Coke counties, Texas. We listed the Concho water snake as threatened on September 3, 1986, due in part, to its limited geographic range, limited population sizes, and loss of important habitats and prey base resulting from water development projects (past, ongoing, and future) (51 FR 31412). We designated critical habitat for the species on June 29, 1989 (54 FR 27377).

Information presented in the petition indicates that, in the 15 areas monitored by CRMWD and in certain reaches of O.H. Ivie Reservoir's shoreline, Concho water snake populations persist. The voluminous data on the snake and its fish preybase submitted by the petitioner provides a detailed picture of snake's status at the CRMWD and Texas A&M University monitoring sites. However, as discussed in the petition, due to limitations in site visits and resultant low number of recaptures, CRMWD biologist were unable to make precise local Concho water snake population size estimates.

The current range of the Concho water snake is similar to when the species was listed 13 years ago. The snake's primary habitat remains riverine (located on or inhabiting the bank of a river). This habitat is threatened by inadequate instream flows to support the fish preybase for the snake. Each of the three major riverine sections (Concho River, Colorado River from Spence Reservoir to O.H. Ivie Reservoir, and Colorado River downstream of O.H. Ivie Reservoir) of the snake's range are downstream of reservoirs. Operations at these reservoirs (O.C. Fisher, Lake Nasworthy, Twin Buttes, E.V. Spence, and O.H. Ivie) can affect instream flows for snakes and their prey for significant periods of time.

In a biological opinion for the U.S. Army Corps of Engineers we identified instream flows (including flushing flows for channel maintenance) below Spence and Ivie reservoirs in our reasonable and prudent alternatives. If we delist the Concho water snake, the requirements of the biological opinion would no longer be in effect.

CRMWD biologists made multiple preybase surveys using seines at the 15 required monitoring sites, as well as other sites. The small fishes in these surveys, upon which snakes are known to feed, are variable in numbers from year to year but generally do not appear to have been a limiting factor for local populations during this period. However, if instream flows are inadequate there will be a decrease in Concho water snake prey.

We do not agree with statements made in the petition that reductions in stream flow are not (and will not be) a problem. Low flow conditions exacerbate any significant pollution problems (i.e. increases in nutrients and/or toxic compounds). If those conditions persist long enough (perhaps for as little as three years), water snakes in those reaches will be at risk of extirpation. The demise of the Concho water snake population below E.V. Spence Reservoir following its construction is likely related to inadequate instream flows (reservoir releases). Scott *et al.* (1989) found certain reaches of the Colorado River "too dry for too long to support water snake populations."

Since the early 1930s, at least five major droughts occurred State-wide in Texas lasting multiple years and disrupting normal use of the State's water resources (U.S. Geological Service 1991). An inadequate instream flow regime remains one of the most serious threats to the snake due to the prevalence of droughts in Texas.

According to information presented in the petition, in the years following the inundation of riverine habitat by O.H. Ivie Reservoir, Concho water snakes survived and reproduced in the reservoir. However, blockage to Concho water snake movement by Freese Dam and the discontinuous nature of some of the reservoir habitat remain as potential barriers to gene flow between populations. In addition, available information does not enable precise estimates on the size or health of the snake population on O.H. Ivie Reservoir. Despite indications that Concho water snakes have been able to survive for a decade, the mid-term and long-term fate of the Concho water snake in O.H. Ivie Reservoir remains uncertain. Examination of the data presented suggests that the abundance of snakes is variable among reservoirs and in general less than the abundance of snakes in suitable riverine habitat. Information presented and available to us indicates that habitat loss from water development and diversion projects remains a threat.

The information presented in the petition indicates that, at least in the early successional stages of O.H. Ivie Reservoir, snakes have been able to survive. However, in the course of the life of reservoirs such as O.H. Ivie, sediment will deposit in the upper reaches of the reservoir. Over time and depending on various conditions in the watershed, upper O.H. Ivie will likely become less suitable snake habitat. Furthermore, changes to the reservoir's fishery due to stockings of game fish and degradation of cover and structure may adversely affect Concho water snake prey availability. While Concho water snakes are somewhat flexible in their response to changes in prey items, an event that would result in the reduction of preferred size food items (e.g, small minnows for juvenile snakes) could affect the species' ability to sustain current population levels. If such an event lasted multiple years, we would expect the snake population to decline. Recruitment would be reduced and populations would decline.

Another factor that threatens the Concho water snake is the fragmentation and isolation of populations resulting from habitat disturbance and from physical barriers such as the Freese Dam. The petition discusses fragmentation citing the Concho water snake genetics study of Sites and Densmore (1991). There is general agreement on several issues—(1) the distribution of the Concho water snake is a linear array of demes (a series of local populations) connected with occasional gene flow and associated with specific habitat features such as riffles (a section of a river characterized by swifter currents, shallow depths and broken water with turbulence or waves at the surface); (2) the Freese Dam poses a barrier to water snake movement both upstream and downstream; (3) mitigation against fragmented habitats and conservation of the Concho water snake require the artificial movement of Concho water snakes between (a) the Colorado River below Freese Dam and the Concho River and (b) the Colorado River below Freese Dam and the Colorado River above Ivie Reservoir; and (4) water snakes (*Nerodia* spp.) in general and Concho water snakes specifically have very low levels of genetic variation.

The petition states that the Ivie Reservoir population effectively connects the Concho and upper Colorado River populations. However, two issues remain that indicate the reservoir itself may be a barrier—(1) the current discontinuity of habitat patches along the reservoir shoreline along with the variability with which Concho water snakes occupy those patches and (2) more importantly, the ultimate fate of (a) the reservoir's physical habitats in the upper reaches and (b) the Concho water snake reservoir populations.

One significant point not addressed by the petition is the wide variability in the health of Concho water snake reservoir populations. Concho water snakes are probably absent from the lakes of the San Angelo area. Available information dating to Martin Whiting's thesis (1993) indicates that the Spence Reservoir population is limited with probably less than 200 individual snakes total (n < 200 total) for his two study sites. Additionally, Whiting found no evidence that the two Spence Concho water snake populations (Pecan Creek and Pump Station populations) exchanged individuals even though they were in the same general area of the reservoir separated by about 2,000 meters (m) or (6,562 feet (ft)).

The likelihood of survival of Concho water snakes in specific reservoirs is likely to be dependent upon a variety of factors such as—(1) reservoir hydrology (inflows to and outflows/diversions from the lake); (2) the time scale chosen (changes to water snake habitats found along the shoreline and the shallow parts of a lake may occur over several decades as opposed to years); limnology (study of freshwater systems such as lakes ponds and rivers and their plant and animal communities as they are affected by their physical, chemical, and biotic environment); and (4) continuity and connectivity with other Concho water snake populations. The persistence of the Concho water snake in Spence Reservoir does not assure us that the snake will persist in Ivie Reservoir. The two reservoirs differ in their hydrology, and we believe more data are needed to understand the fate of the Concho water snake in Ivie Reservoir area.

Finding

In addition to the analysis discussed above, we evaluated the petition in the context of the snake's recovery criteria as set forth in the species' recovery plan (Service 1993). We will consider the Concho water snake for delisting when—(1) Adequate instream flows are assured; (2) viable populations are present in each of the three major reaches * * *; and (3) movement of an adequate number of snakes is assured to counteract the adverse effects of population fragmentation. Importantly, the petition does not address criterion one. In regards to criterion two, while Concho water snake population in each of the three major reaches are stable, there is no reliable data available to indicate that these populations remain viable. Viable populations are self-sustaining and can persist for the long-term (Soulé 1987).

We believe the information provided by the petitioner has added to our knowledge of the distribution and abundance of the Concho water snake. However, the petition lacks adequate information upon which to evaluate the long-term viability of individual populations. Further investigations are needed to understand the various factors important to the snake's long-term viability, including range wide monitoring, and the future distribution of habitat patches, whether occupied and unoccupied, including those at the O.H. Ivie Reservoir.

In summary, the petition fails to provide information indicating that any of the three criteria for delisting (from the recovery plan) are met. Further, the impact of declining instream flows (due to drought and/or water diversions), long term changes to lake habitats, pollution, and other habitat threats on the riffle-dwelling fish in the Concho and Colorado rivers are not addressed in the petition.

References Cited

Colorado River Municipal Water District. 1998. Petition to delist the Concho water snake. Submitted to United States Department of the Interior and Texas Parks and Wildlife Department. pp. 33 + appendices a–c.

Scott, N.J., Jr., T.C. Maxwell, O. W. Thornton, Jr., L.A. Fitzgerald, and J.W. Flury. 1989. Distribution, habitat, and future of Harter's water snake, Nerodia harteri, in Texas. Journal of Herpetology 23(4): 373–389.

Soulé, M.E. 1987. Introduction. In: Viable Populations for Conservation. M.E. Soulé, editor. Cambridge Univ. Press. New York. 189 pp.

U.S. Fish and Wildlife Service. 1993. Concho Water Snake Recovery Plan. Albuquerque, New Mexico vii+66 pp.

Whiting, M.J. 1993. Population ecology of the Concho water snake, Nerodia harteri paucimaculata, in artificial habitats. Unpublished M.S. thesis. Texas A&M University. xvi+137 pp.

Author: The author of this document is Patrick Connor, Austin Ecological Services Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 13, 1999.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 99–19711 Filed 7–30–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 072099F]

Gulf of Mexico Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a series of 10 public workshops on the possible use of marine reserves as a fishery management tool in Federal waters of the Gulf of Mexico.

DATES: Written comments will be accepted until 5 p.m. on September 13, 1999. The public workshops will be held from August 9 through 24, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

ADDRESSES: Written comments should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619. Copies of the scoping documents that will be used at the workshops (Marine Reserves for Fisheries Management: Questions and Answers; and Marine Reserves Technical Document) can be obtained from the Council office at 813-228-2815; web site: http://www.gulfcouncil.org.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; (813) 228–2815; Fax: 813–225–7015.

SUPPLEMENTARY INFORMATION: These workshops are to introduce the concept of marine reserves, i.e., zones of restricted or no fishing, to the public, to solicit public comment on whether they are an appropriate tool to use for fishery management in the Gulf of Mexico, and if so, how they should be used. No specific options to create marine reserves will be presented at these workshops, but the the Council will consider comments provided by the workshop participants in deciding whether and how to proceed with the development of marine reserves. The Council intends to use an outside facilitator to gain the greatest amount of input from participants and avoid any perceptions of bias.

The workshops will be held from 7:00 p.m. to 10:00 p.m. at the following locations:

1. Monday, August 9, 1999—Four Points Sheraton, 3777 North Expressway, Brownsville, TX; telephone: 956–547–1500;

2. Tuesday, August 10, 1999—Ellis Memorial Library, 700 West Avenue A, Port Aransas, TX; telephone: 512–749–4116;

3. Wednesday, August 11, 1999—Texas A&M University Auditorium, 200 Seawolf Parkway, Galveston, TX; telephone:
409–740–4416;

4. Thursday, August 12, 1999—Four Points Sheraton, 333 Poydras Street, New Orleans, LA; telephone: 504–525–9444;

5. Monday, August 16, 1999—J. L. Scott Marine Education Center & Aquarium, 115 East Beach Boulevard, Biloxi, MS; telephone: 228–374–5550;

6. Tuesday, August 17, 1999—Hilton Beachfront Garden Inn, 23092 Perdito

Beach Boulevard, Orange Beach, AL; telephone:
334–974–1600;
7. Wednesday, August 18, 1999—The Boardwalk Beach and Conference Center, 9600 South Thomas Drive, Panama City Beach, FL; telephone: 850–234–3484;
8. Thursday, August 19, 1999—Steinhatchee Elementary School, 1st Avenue South, Steinhatchee, FL; telephone:
352–498–3303;
9. Monday, August 23, 1999—Harvey Government Center, 1200 Truman Avenue, Key West, FL; telephone: 305–292–4431; and
10. Tuesday, August 24, 1999—Radisson Bay Harbor Inn, 7700 Courtney Campbell Causeway, Tampa, FL; telephone: 813–281–8900.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by August 2, 1999.

Dated: July 27, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–19642 Filed 7–30–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 147
Monday, August 2, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations in Chicago, IL at the Wyatt Company on September 27, 1999.

DATES: The meeting will be held on September 27, 1999 from 8:30 AM to 5 PM.

ADDRESSES: The meeting will be held in the Board Room on the twenty-fourth floor of the Wyatt Company, 303 West Madison Street, Chicago, IL.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1805.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Board Room on the twenty-forth floor of the Wyatt Company, 303 West Madison Street, Chicago, IL on Monday, September 27, 1999 from 8:30 AM to 5 PM.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act (Public Law 92–463) that the subject of the meeting falls with the exception to the open meeting requirement set forth in Title 5 U.S.C. 552(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: July 27, 1999.

Patrick W. McDonough,

Advisory Committee Manager Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 99–19768 Filed 7–30–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Solicitation for Membership to the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Solicitation for membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces solicitation for nominations to fill one vacancy as a result of a resignation on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: Deadline for Advisory Board member nominations is August 13, 1999.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 3918 South Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

SUPPLEMENTARY INFORMATION: Section 802 of the Federal Agricultural Improvement and Reform Act of 1996 (The Farm Bill) authorized the creation of the National Agricultural Research, Extension, Education, and Economics Advisory Board. The Board is composed of 30 members, each representing a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed in September 1996 and one-third of the 30 members were appointed for a 1, 2, and 3 year term, respectively.

As a result of a resignation, a vacancy has resulted and will be filled for the remaining 1-year term which will expire September 30, 2000. Nominees will be carefully reviewed for their broad expertise, leadership, and relevancy to a category. The vacancy is for Category:

S. Transportation of Food and Agricultural Products (foreign and domestic) Nominations are being solicited from organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of food and agricultural interests. Please indicate that your nomination is for Category S for each nominee. Each nominee must fill out a form AD–755, "Advisory Committee Membership Background Information" (which can be obtained from the contact person below) and will be vetted before selection. Send nominatee's name, resume, and their completed AD–755 to the Office of the Advisory Board, Research, Education, and Economics, Room 3918 South Building, Department of Agriculture, Washington, DC 20250–2255 no later than August 13, 1999.

Done at Washington, D.C., this 28th day of July 1999.

Eileen Kennedy,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. 99–19750 Filed 7–30–99; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Request for Proposals for Grants for Emergency Assistance to Low Income Migrant and Seasonal Farmworkers

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This Notice requests proposals to assist migrant and seasonal farmworkers under the terms of the Emergency Supplemental Appropriations Act of FY 1999, Public Law 106–31 which made available $20,000,000 for this purpose.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Juan Marinez of the Cooperative State Research, Education, and Extension Service at 202–720–3430.

SUPPLEMENTARY INFORMATION: The Emergency Supplemental Appropriations Act of FY 1999, Pub. L. 106–31, signed into law on May 21, 1999, made available $20,000,000, to assist low income migrant and seasonal farm workers. This Notice requests proposals from public agencies or private organizations with tax exempt status under section 501(c)(3) of title 26 United States Code, that have experience in providing emergency services to low income migrant and seasonal farmworkers where the Secretary determines that a local, State, or national emergency or disaster has caused low income migrant or seasonal farmworkers to lose income, be unable to work, or to stay at home or return home in anticipation of work shortages. The types of service could include assistance in meeting rent or mortgage payments, utility bills, child care, transportation, school supplies, food, repair or rehabilitation of farmworker housing (not restricted to units financed by the Rural Housing Service), facilities related to farmworker housing such as an infirmary for emergency care of a child care facility, and the construction of new farmworker housing units. Prospective applicants should be aware they need to be in compliance with 7 CFR parts 3016 and 3019, which establish the uniform administrative requirements for grants and cooperative agreements to state and local governments and to non-profit organizations, as applicable.

Eligibility to Submit Proposals

Eligibility to submit proposals under this Notice is limited to States and local non-profit community development organizations with experience in delivering direct emergency assistance to farmworkers and their families.

DATES: The deadline for receipt of proposals in response to this Notice is 5:00 p.m. eastern daylight savings time, August 15, 1999. Proposals submitted after this deadline will not be accepted. Applicants intending to mail proposals must provide sufficient time to permit delivery on or before the closing deadline. Proposals will be accepted by Electronic Mail at jmarinez@usda.gov, or by facsimile copy at 202–720–8987. Acceptance by a post office or private mailer does not constitute delivery. Postage due or COD proposals will not be accepted.

ADDRESSES: Proposals must be sent to Juan Marinez, Cooperative State Research, Education, and Extension Service, Room 305A Whitten Bldg., Mail Stop 2201, U.S. Department of Agriculture, 14th Street and Independence Ave., SW, Washington, DC 20250–0320.

Proposal Processing Deadlines

The deadline for the receipt of proposals is 5:00 p.m. eastern daylight savings time, August 15, 1999. Because of the relatively short time frame for processing selected proposals to permit obligation of the funds by September 30, 1999, the following review and processing time frames have been established:

August 15, 1999—Receipt of proposals closes.
August 31, 1999—Proposals reviewed and ranked by National Office staff.
September 30, 1999—Deadline for obligations of funds.

Discussion of Notice

Emergency grants to assist low income migrant and seasonal farmworkers are authorized by section 2281 of the Food, Agriculture, Conservation, and Trade Act of 1990. Grant assistance must be made available in an area experiencing a local emergency or a State or national disaster declaration. Proposals for this grant assistance must contain the nature and the date of the emergency or disaster and specifically identify the experience of the applicant in delivering such assistance to low income migrant or seasonal farmworkers defined as an individual:

(1) Who has, during any consecutive 12 month period within the preceding 24 month period, performed farm work for wages;

(2) Who has received not less than one-half of such individual's total income, or been employed at least one-half of total work time in farm work; and

(3) Whose annual family income within the 12 month period referred to in paragraph (1) does not exceed the higher of the poverty level or 70 percent of the lower living standard income level. The latter was defined in a Department of Labor, **Federal Register** Notice, dated May 6, 1998, Volume 63, No. 87, p. 25086. Copies of that Notice shall be made available on request.

Evaluation of Proposals

Evaluation and Scoring Criteria: Proposals will be evaluated by a team representing the appropriate Mission Areas in USDA. Proposals will be evaluated by the types of assistance to be provided to migrant and seasonal farmworkers. Because the types of assistance may differ depending on the geographic area to be served, and the nature of the disaster or emergency experienced, equal weight will be applied to each form of assistance to be rendered.

Proposals will be scored on the following basis:

- Experience of applicant providing emergency services.
- Number of farmworkers affected by the emergency.
- Number of farmworkers to be assisted by the proposal.
- Economic and social benefits to the farmworkers and their families from the services to be provided.

Dated: July 21, 1999.

Dan Glickman,

Secretary.

[FR Doc. 99–19751 Filed 7–30–99; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Center for Nutrition Policy and Promotion

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Disease Prevention and Health Promotion

Dietary Guidelines Advisory Committee: Meeting Notice

AGENCIES: Department of Agriculture and Department of Health and Human Services.

ACTION: Dietary Guidelines Advisory Committee: Notice of the fourth meeting, and opportunity to provide written comments.

SUMMARY: The Department of Agriculture (USDA) and the Department of Health and Human Services (HHS) (a) provide notice of the fourth meeting of the Committee, and (b) solicit written comments.

DATES: (1) The Committee will meet on September 7–9, 1999, from 8:45 a.m. to 5:30 p.m. on the first day, from 8:45 a.m. to 5:30 p.m. on the second day, and from 8:45 a.m to 5 p.m. on the third day. (2) Written comments on the guidelines may be submitted by 5 p.m. d.s.t. on August 18, 1999, to ensure transmission to the Committee prior to this meeting.

FOR FURTHER INFORMATION CONTACT: Shanthy Bowman, Ph.D., USDA, Agricultural Research Service, Nutrient Data Laboratory, 4700 River Road, Unit 89, Room 6D61, Riverdale, MD 20737, (301) 734–5640; Carole Davis, M.S., R.D., USDA Center for Nutrition Policy and Promotion, 1120 20th St., NW, Suite 200 North Lobby, Washington, DC 20036, (202) 418–2312; or Kathryn McMurry, M.S. or Linda Meyers, Ph.D., HHS, Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738–G, 200 Independence Ave., SW, Washington, DC 20201, (202) 205–4872.

SUPPLEMENTARY INFORMATION:

Dietary Guidelines Advisory Committee

The eleven-member Committee appointed by the Secretaries of the two Departments is chaired by Cutberto Garza, M.D., Ph.D., Cornell University, Ithaca, New York. Other members are Richard J. Deckelbaum, M.D., Columbia University, New York, New York; Johanna T. Dwyer, D.Sc., R.D., Tufts University, Boston, Massachusetts; Scott M. Grundy, M.D., Ph.D., University of Texas, Dallas, Texas; Rachel K. Johnson, Ph.D., R.D., University of Vermont, Burlington, Vermont; Shiriki K. Kumanyika, Ph.D., M.P.H., R.D., University of Pennsylvania School of Medicine, Philadelphia, Pennsylvania; Alice H. Lichtenstein, D.Sc., Tufts University, Boston, Massachusetts; Suzanne P. Murphy, Ph.D., R.D., University of Hawaii, Honolulu, Hawaii; Meir J. Stampfer, M.D., Dr.P.H., Harvard School of Public Health, Boston, Massachusetts; Lesley Fels Tinker, Ph.D., R.D., Fred Hutchinson Cancer Research Center, Seattle, Washington; and Roland L. Weinsier, M.D., Dr.P.H., University of Alabama at Birmingham, Birmingham, Alabama.

Announcement of Meeting

The Committee's fourth meeting will be September 7–9, 1999 from 8:45 a.m. to 5:30 p.m. on the first day, from 8:45 a.m. to 5:30 p.m. on the second day, and from 8:45 a.m to 5 p.m. on the third day. The meeting is open to the public. However, space is limited for all sessions. Please call Shanthy Bowman at (301) 734–5640 by 5 p.m. d.s.t. August 18, 1999, should you require a sign language interpreter.

Location of Meeting

The meeting will be held at the Waugh Auditorium located on the third floor of USDA's Economic Research Service, 1800 M Street NW, Washington DC, one block from Farragut North metro station and three blocks from the Farragut West metro station. Parking is available at local garages. Entry to the building is through the South Lobby Tower. The agenda will include (a) discussion of drafts prepared by members and (b) formulation of plans for future work of the Committee.

Written Comment

By this notice, the Committee is soliciting submission of written comments, views, information and data pertinent to review of the Dietary Guidelines for Americans. Written comments will be accepted throughout the process. To be considered for the fourth meeting, comments should be submitted by 5 p.m. d.s.t. August 18, 1999. Comments should be sent to Shanthy Bowman Ph.D., at Department of Agriculture, Agricultural Research Service, Nutrient Data Laboratory, 4700 River Road, Unit 89, Room 6D61, Riverdale, MD 20737.

Dated: July 27, 1999.

Edward Knipling,

Associate Administrator, Agricultural Research Service, Department of Agriculture.

Rajen Anand,

Executive Director, Center for Nutrition Policy and Promotion, Department of Agriculture.

Linda Meyers,

Acting Director, Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services.

[FR Doc. 99–19749 Filed 7–30–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Special Cotton Import Quota Announcements Numbers 11 Through 20

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: Ten special import quotas for upland cotton equal are established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991, and Presidential Proclamation 6948 of October 29, 1996. The quotas are referenced as the Commodity Credit Corporation Special Cotton Import Quota Announcement Numbers 11 through 20 and are set forth in subheadings 9903.52.11 through 9903.52.20, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: Each of the special quotas is subject to an established date and applies to upland cotton purchased not later than 90 days from the established date and entered into the United States not later than 180 days from the established date. Dates applicable to each individual special import quota are contained in this notice under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Gene S. Rosera, Farm Service Agency, United States Department of Agriculture, STOP 0518, 1400 Independence Avenue, SW, Washington, DC 20013–0518 or call (202) 720–3452.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 3.00 cents per pound. This condition was met for 10 consecutive 10-week periods. Therefore, quotas referenced as Special Cotton Import Quota Announcement Numbers 11 through 20 are established subject to the following dates and quantities.

Secretary of Agriculture's Cotton Import Quota Announcement	HTS subheading	News release date	Quota start date	90-Day purchase date	180-Day import date	Quota amount (kilograms)	3-Month consumption base period
Number 11	9903.52.11	5/06/99	5/13/99	8/10/99	11/08/99	43,005,726	January–March 1999.
Number 12	9903.52.12	5/13/99	5/20/99	8/17/99	11/15/99	43,005,726	January–March 1999.
Number 13	9903.52.13	5/20/99	5/27/99	8/24/99	11/22/99	43,005,726	January–March 1999.
Number 14	9903.52.14	5/27/99	6/03/99	8/31/99	11/29/99	42,690,963	February–April 1999.

Secretary of Agriculture's Cotton Import Quota Announcement	HTS subheading	News release date	Quota start date	90-Day purchase date	180-Day import date	Quota amount (kilograms)	3-Month consumption base period
Number 15	9903.52.15	6/03/99	6/10/99	9/07/99	12/06/99	42,690,963	February–April 1999.
Number 16	9903.52.16	6/10/99	6/17/99	9/14/99	12/13/99	42,690,963	February–April 1999.
Number 17	9903.52.17	6/17/99	6/24/99	9/21/99	12/20/99	42,690,963	February–April 1999.
Number 18	9903.52.18	6/24/99	7/1/99	9/28/99	12/27/99	42,388,357	March–May 1999.
Number 19	9903.52.19	7/1/99	7/8/99	10/5/99	1/3/00	42,388,357	March–May 1999.
Number 20	9903.52.20	7/8/99	7/15/99	10/12/99	1/10/004	42,388,357	March–May 1999.

Each special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to extra long staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on July 26, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–19673 Filed 7–30–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mining Activities on Piru Creek, Los Padres National Forest, Ventura County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service is preparing an environmental impact statement (EIS) for approval of proposed Plans of Operation for mining activities along Piru Creek from Lockwood Flat to Pyramid Lake on the Mount Pinos Ranger District. Management emphases in the Los Padres National Forest Land Resources Management Plan (1988) are to improve water quality, vegetative diversity, and to protect property and cultural resources. Management emphasis for the project area is to manage as a potential Wild and Scenic River candidate.

Potential resource issues which may affect alternative development include the presence of riparian-dependent sensitive amphibians and reptiles; the presence of an amphibian species which is listed as endangered; sensitive heritage resources; water quality; conflicts in recreational uses of Piru Creek; inclusion of Piru Creek into the Wild and Scenic River System; maintaining biodiversity; and protecting the sensitive riparian ecosystem.

The California Department of Fish and Game and the U.S. Fish and Wildlife Service are invited to participate as cooperative agencies to evaluate potential impacts on threatened and endangered species habitat. Representatives from the Army Corps of Engineers and the Regional Water Quality Control Board are invited to participate in resolving issues that deal with water quality. Federal, State, and local agencies, as well as industry; and other individual and organizations who may be interested in or affected by the decision, were invited to participate in the scoping process that was initiated during the fall of 1993 and completed in the spring of 1994. This process included:

1. Identification of potential issues and/or concerns.
2. Identification of issues to be identified in depth.
3. Identification of issues which may be eliminated from further analysis.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review and comment by October of 1999. EPA will publish a notice of availability for the draft EIS in the **Federal Register**. The comment period will be 45 days from the date of the EPA's published notice of availability. All persons interested in the proposed project are urged to participate at that time. Comments on the draft EIS should be as specific as possible and may address the adequacy of the EIS or the merits of the alternatives considered. In addition, Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review so that it is meaningful and alerts an agency to the reviewer's positions and contentions. Environmental objections that could have been raised at the draft EIS review stage may be waived if not raised until after completion of the final EIS. The reason for this is to ensure that substantive comments and objections are made available to the Forest Service in a timely manner so that the agency can respond to them in the final EIS.

The final EIS is scheduled to be completed by April, 2000. In the final EIS, the Forest Service is required to respond to comments received from the public and consulted agencies. The responsible official will consider the comments, responses, laws, regulations and policies in making a decision regarding these project proposals. The responsible official will document the decision and reasons for the decision in the Record of Decision. The decision will be subject to appeal.

Jeanine Derby, Forest Supervisor, Los Padres National Forest, Goleta, CA, is the responsible official. Written comments, questions, and suggestions concerning the analysis should be sent to Mark Bethke, District Ranger, Mount Pinos Ranger District, 34580 Lockwood Valley road, Frazier Park, California 93225, (phone 661–245–3731).

Dated: June 25, 1999.

Jeanine A. Derby,

Forest Supervisor.

[FR Doc. 99–19645 Filed 7–30–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra Nevada Forest Plan Amendment Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of additional public meetings related to the Sierra Nevada Forest Plan Amendment Environmental Impact Statement each month, September through December 1999.

SUMMARY: The Department of Agriculture, Forest Service, Regions 4 and 5 announce additional public meetings at the Sacramento, California office of the Sierra Nevada Framework Project on the first Wednesday of each month, September through December, 1999. Previously scheduled meetings included those held each month from May through July, 1999 and the upcoming meeting scheduled for August 4, 1999, 1:00–3:00 p.m. The Forest Service scheduled these public meetings to inform interested people about its progress in the development of the Sierra Nevada Forest Plan Amendment Environmental Impact Statement and to provide information about other Sierra Nevada Framework activities.

In response to continued public interest in the Sierra Nevada Framework Project activities, additional meetings are scheduled for the first Wednesday of each month, September through December 1999. *Public meetings* will be held at the Sierra Nevada Framework Project Office, *801 I Street, Sacramento, California, 95814, Room 484* as follows:

Wednesday, September 1, 1999, 1:00–4:00 p.m.
Wednesday, October 6, 1999, 1:00–4:00 p.m.
Wednesday, November 3, 1999, 1:00–4:00 p.m.
Wednesday, December 1, 1999, 1:00–4:00 p.m.

In response to public interest, the September public meeting will conclude with a discussion of the modeling design of fire behavior, fuel loading and fire effects.

In addition to the public meetings, the USDA Forest Service Pacific Southwest Region and Research Station are convening "science workshops" in which the public is invited to hear diverse science perspectives on the condition and management of Sierra Nevada ecosystems. Along with hearing from scientists, the public will be provided an opportunity to dialogue with scientists about concerns and possible approaches to management practices in Sierra Nevada ecosystems.

The first science workshop to discuss Sierra Nevada old-forest ecosystems is scheduled for *August 24 and 25, 1999, 8:00 a.m.–5:00 p.m.* each day, in *Freeborn Hall, University of California, Davis.* Additional science workshops are tentatively planned for aquatic, riparian and meadow ecosystems, September, 1999, Fresno, California; and assessment of environmental consequences of proposed management activities, October, 1999, Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Please see the USDA Forest Service Region 5 World Wide Web site www.r5.fs.fed.us or contact USDA Forest Service, Sierra Nevada Framework Project, Room 419, 801 "I" Street, Sacramento, CA 95814; phone number 916–492–7554; TTY via PacBell relay (800) 735–2929.

SUPPLEMENTARY INFORMATION: The USDA Forest Service Pacific Southwest Region and the Pacific Southwest Research Station are integrating new science into management of the national forests of California. The effort is called the Sierra Nevada Framework Project. One objective of the Framework Project is to amend forest plans in conformance with the National Forest Management Act and the National Environmental Policy Act. The Sierra Nevada Forest Plan Amendment Environmental Impact Statement (EIS) will amend national forest plans for the Humboldt-Toiyabe, Modoc, Lassen, Plumas, Tahoe, Eldorado, Stanislaus, Sierra, Sequoia, and Inyo National Forest, and the Lake Tahoe Basin Management Unit. Other activities of the Framework Project involve improving long-term cooperation and coordination among the Forest Service, tribes, local governments, state and federal agencies.

On November 20, 1998, the Region published a Notice of Intent in the **Federal Register** identifying five problem areas to address in an Environmental Impact Statement: old forest ecosystems; aquatic, riparian and meadow ecosystems; fire and fuels management; noxious weeds; and, lower westside hardwood ecosystems. Prior to drafting the Notice of Intent, the Pacific Southwest Region and Pacific Southwest Research Station reviewed recent science and gathered public comment and related information during a series of 37 community workshops throughout the Sierra and other locations in California and Nevada. Publication of the Notice of Intent initiated a 60-day opportunity for public comment, including 27 additional community workshops. To date, the Forest Service has received nearly 3500 comments via letters, postcards, and e-mail. Response to these comments is integrated into the alternatives being developed to address the five problem areas.

In response to the significant public interest in the development of alternatives, the Forest Service is making available summary descriptions of alternatives that may appear in the draft EIS. The Forest Service is not soliciting public comment on these preliminary drafts, but is making them available so people may be better prepared to comment on the draft EIS when it is published.

At present, several alternatives are being developed by the Forest Service. These alternatives reflect extensive public comment and suggestions, as well as recent scientific information. To view summaries of these draft alternatives, please see the USDA Forest Service Region 5 World Wide Web site www.r5.fs.fed.us or contact USDA Forest Service, Sierra Nevada Framework Project, Room 419, Sacramento, CA 95814 to receive a copy by mail.

Dated: July 26, 1999.

Kent P. Connaughton,

Deputy Regional Forester.

[FR Doc. 99–19631 Filed 7–30–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Squirrel Meadows-Grand Targhee Resort Land Exchange Targhee National Forest, Teton County, WY

AGENCY: Forest Service, USDA.

ACTION: Revision of the Notice of Intent to prepare an Environmental Impact Statement for the Squirrel Meadows-Grand Targhee Resort Land Exchange as published in the **Federal Register** page 54039 to 54040 on October 17, 1997 (Vol. 62, No. 200). This revision includes a change of the Responsible Official, acres of land to be exchanged by both parties, and project schedule.

SUMMARY: The USDA, Forest Service is preparing an Environmental Impact Statement to document the analysis and disclose the environmental impacts of a proposed land exchange with Booth Creek, Inc., dba Grant Targhee Resort.

This revised Notice of Intent is to document some minor changes in the process.

- In the original NOI, the tentative date for filing the Draft EIS was May of 1998 and the Final EIS was scheduled for December, 1998. Due to the gathering of additional social and economic information and the creation of additional design concepts, the Draft EIS is not scheduled to be filed in August, 1999, and the final EIS about April of 2000.
- The original Responsible Official was the Regional Forester, Intermountain Region. The Responsible Official now is Jerry B. Reese, Forest Supervisor, Targhee and Caribou National Forests, 420 N. Bridge St, St. Anthony, Idaho 83445.
- The original NOI proposed exchanging up to 265 acres of NFS lands for 330 acres of private ground. The alternatives now is considered in the analysis propose exchanging up to 195 acres of NFS land for approximately 385 acres of private land.

DATES: These changes are minor and no formal comment period will be initiated.

ADDRESSES: Send correspondence to Jack Haddox, Teton Basin Ranger District, PO Box 777, Driggs, Idaho 83422.

FOR FURTHER INFORMATION CONTACT: Questions concerning this revised Notice of Intent the proposed action and the EIS should be directed to Patty Bates, Teton Basin District Ranger, Targhee National Forest, Telephone: (208) 354–2312.

Dated: July 23, 1999.

Jerry B. Reese,

Forest Supervisor, Targhee National Forest, Intermountain Region, USDA Forest Service.

[FR Doc. 99–19647 Filed 7–30–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Pyramid Timber Sales, Willamette National Forest, Linn County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) on a proposal to harvest timber, regenerate harvested lands, construct or reconstruct forest roads, and associated mitigation projects in the South Pyramid subwatershed. The legal description for the planning area is T12S, R5E, sections 19, 28–34. The planning area is approximately 4,637 acres in the Middle Santiam Watershed.

The planning area is primarily designated Matrix-General Forest by the Northwest Forest Plan, with Riparian Reserves, Late Successional Reserve, and Matrix-Special Habitat Areas composing the rest of the landbase. The planning area includes many acres of overstocked 90–150 year forest, where growth rates have slowed. Information and analyses created during the Middle Santiam Watershed Analysis will also be considered when designing this project. This proposal is tentatively scheduled for implementation in fiscal year 2000–2003. The Willamette National Forest invites written comments and suggestions on the scope of this analysis, in addition to those comments received as a result of local public participation activities. The agency will also give notice of the full environmental analysis and decision making process so that interested and affected people are informed as to how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of the analysis should be received in writing by August 16, 1999.

ADDRESSES: Please send written comments and suggestions concerning the South Pyramid Timber Sales to Mike Rassbach, District Ranger, Sweet Home Ranger District, Willamette National Forest, 3225 Hwy 20, Sweet Home, Oregon 97386.

FOR FURTHER INFORMATION CONTACT: Questions about the Proposed Action and scope of analysis should be directed to Brian McGinley, Resource Planner, Sweet Home Ranger District, Willamette National Forest, 3225 Highway 22, Sweet Home, Oregon 97386, phone 541–367–5168.

SUPPLEMENTARY INFORMATION: The Northwest Forest Plan has designed most of the forest's timber production capability to come from Matrix-General Forest lands. The purpose and need for this proposal is to improve tree growth rates and/or quality of overstocked matrix forests, and harvest timber in a landbase that is Matrix Land-General Forest, where timber management is a dominant resource objective. The Forest Service proposal will comply with the 1990 Willamette National Forest Land and Resource Management Plan, as amended by the 1994 Northwest Forest Plan.

This Proposed Action will consider regeneration harvest and/or commercial thinnings to meet project goals, and will compare conventional logging systems with helicopter logging. This project is expected to yield a volume of 4.0 to 4.4 million board feet, part of which will be achieved by thinning at least 40 acres of forest stands to improve growth rates reduced by overstocking. Other activities being considered are likely to involve: reforestation, managed standard improvements, road closures and obliteration, wildlife habitat enhancement, and noxious weed control.

Preliminary resources issues identified that will influence alternatives developed for this project are: old growth habitat retention; maintenance of large, unroaded landscape blocks; economic and biologic effects of logging systems; and northern spotted owl dispersal habitat. Other issues that will be addressed through project design are: edge effects of management on a neighboring Late Successional Reserve, big game habitat conditions, and habitat connectivity with adjacent watersheds.

Alternative have been developed around the Proposed Action addressing the dominant issues and will be compared to the "No Action" Alternative. One action alternative focuses on harvesting the least number of acres and staying out of the unroaded landscape blocks. To achieve project goals, this alternative proposes to regeneration harvest 77 acres (47 acres of which are old growth habitat) and thin 48 acres. Conventional skyline and tractor logging systems will be used. This alternative will require 1.1 miles of new road construction and the obliteration of 0.6 miles of road.

A second action alternative focuses on preserving old growth habitat and avoiding regeneration harvesting or road construction within large unroaded landscape blocks. Because only thinning is proposed, this alternative requires 287 acres (209 acres of which lies within the Pyramids unroaded landscape block) to meet project objectives. Helicopter logging will be used for most units, with only 0.8 miles of new road needed and the obliteration of 0.8 miles of road.

A third action alternative tries to balance the desires of preserving old growth and maintaining large, unroaded landscape blocks by regeneration harvesting 39 acres (23 acres of which is old growth habitat) and thinning 161 acres outside or around the edge of the Pyramids landscape block. This alternative proposes to construct 1.2 miles of new road and the obliteration of 0.6 miles of road.

The decisions to be made from the information and analysis include: number and location of harvest units; silvicultural prescriptions for each harvest unit; logging and transportation systems to access units; priorities of mitigation projects; selection of monitoring needs around this project.

Initial scoping began in November 1997. The forest Service will be seeking additional input and comments from other agencies, organizations and individuals who may be interested or affected by the proposed project. Additional input will be helpful in identifying resource issues not currently identified, and in developing alternatives for a draft EIS.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d) any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The scoping process included; identification of potential issues; identification of key issues to be analyzed in depth; exploration of additional alternatives based on identified issues from the scoping process; and identification of potential environmental effects from analyzed alternatives.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and will be available for public review by September 1999. The comment period for the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, a reviewer of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters in the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The final EIS is scheduled to be completed by January 2000. In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertains to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. The Forest Service is the lead agency for this EIS. The responsible official is Mike Rassbach, District Ranger. As a responsible official, he will document the South Pyramid Timber Sales decision and rationale in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: July 22, 1999.

Mike Rassbach,

Sweet Home District Ranger.

[FR Doc. 99–19676 Filed 7–30–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: The Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for Prepayment and Displacement Prevention of Multiple Family Housing Loans.

DATES: Comments on this notice must be received by October 1, 1999 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese-Foxworth, Senior Loan Officer, Office of Rural Housing Preservation, Multi-Family Housing Portfolio Management Division, Rural Housing Service, U.S. Department of Agriculture, Ag Box 0782, Washington, DC 20250, Telephone (202) 720–1940.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1965–E, "Prepayment and Displacement Prevention of Multiple Family Housing Loans".

OMB Number: 0575–0155.

Expiration Date of Approval: December 31, 1999.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS) is authorized under section 514, 515, 516 and 521 of Title V of the Housing Act of 1949, as amended, to provide loans and grants to eligible recipients for the development of rural rental housing. Such multiple family housing projects are intended to meet the housing needs of persons or families have with low-to moderate-incomes, senior citizens, the handicapped, and domestic farm laborers.

RHS has the responsibility of assuring the public that the housing projects financed are owned and operated as mandated by Congress. RD Instruction 1965–E was issued to insure proper servicing actions are accomplished for projects financed with multiple family housing loan and grant funds. Minimal requirements have been established as deemed necessary to assure that applicable laws and authorities are carried out as intended and to improve the Agency's ability to assure the continued availability of the facilities financed under RHS multiple housing programs to eligible users.

Without the provisions of this regulation, RHS would be unable to provide the necessary guidance to the RHS field staff to assist borrowers in processing servicing actions affecting their projects. RHS also would not be able to quickly respond to servicing requests from borrowers, initiate servicing actions or establish a uniform procedure for processing such requests from borrowers. RHS must be able to assure Congress and the general public that all projects financed with multiple family housing funds will be maintained for the purposes for which they are intended and for the benefit of those they are mandated to serve.

The Housing and Community Development Act of 1987 required that rural rental housing borrowers wishing to prepay their RHS financed loans must be offered a fair incentive to not prepay the loan when RHS makes the decision that the housing continues to be needed to serve low-and moderate-income tenants. If the borrower rejects the incentive, the housing must be offered for sale to a nonprofit organization or public agency. Prepayment can only be accepted if RHS decided there is no need for the housing or if no nonprofit

organization or public agency can be found to purchase the project at fair market value.

The information required is collected on a project-by-project basis and is in accordance with the Housing Act of 1949, as amended, so that RHS can provide guidance and be assured of compliance with the terms and conditions of loan, grant, and/or subsidy agreements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.6 hours per response.

Respondents: Individuals or households, State of local governments, farms, businesses or other for-profits, non-profit institutions, existing borrowers, transferors and/or transferees.

Estimated Number of Respondents: 800.

Estimated Number of Responses per Respondent: 1.15.

Estimated Total Annual Burden on Respondents: 587 hours.

Copies of this information collection can be obtained from Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division, Branch, at (202) 692–0045.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 21, 1999.

Eileen Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–19672 Filed 7–30–99; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 1:00 p.m. on August 20, 1999, at the Vermont State Retirement System, Conference Room 2, 133 State Street, Montpelier, Vermont 05633. The Committee will review its past civil rights monitoring activity, hear from invited guests on the role of private industry in addressing racial harassment in Vermont communities, and plan its next project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Kimberly B. Cheney, 802–229–0334, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 21, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–19649 Filed 7–30–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 5).

Agency: Economic Development Administration (EDA).

Title: Comprehensive Economic Development Strategy Guidelines.

Form Number: Not Applicable.

OMB Approval Number: 0610–0093.

Type of Request: Extension of a currently approved collection.

Burden: 33,150 hours.

Average Hours Per Response: (1) Initial CEDS for Districts and other EDA supported Planning Organizations—240 hours; (2) CEDS Document for non-districts and non-EDA supported organizations—25 hours; (3) Annual CEDS Report—50 hours; and (4) CEDS Update—75 hours.

Number of Respondents: Approximately 640 respondents.

Needs and Uses: The information is needed by EDA to ensure that areas served by an EDA supported planning organization have or are developing a continuous community-based planning process and have thoroughly thought out what type of economic development is needed in the area to alleviate unemployment, underemployment, and/or depressed incomes. This information is required under the Public Works and Economic Development Act of 1965, as amended, including the comprehensive amendments by the Economic Development Administration Reform Act of 1998, Public Law 105–393, (PWEDA). The information is used by EDA to determine: if statutory requirements are met on eligibility for projects for public works and economic adjustment (except for strategy/planning); district designation requirements; and for planning requirements are met. CEDS is the foundation for most of EDA's programs. CEDS is a continuous and broad based and diverse process put in place to describe and to address economic distress through a particular economic development project(s) activity(es).

Affected Public: State, local or Tribal Government and not-for profit organizations.

Frequency: One time for Initial Document, Annual for Report, and Updates are due every 5 years for districts and other EDA-supported Planning Organizations.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DoC Forms Clearance Officer, (202) 482–3272, U.S. Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230. (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–19722 Filed 7–30–99; 8:45am]

BILLING CODE: 3510–34–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Processing Equipment Technical Advisory Committee; Notice of Open Meeting

A meeting of the Materials Processing Equipment Technical Advisory Committee will be held August 19, 1999, 9:00 a.m., in Room 3884 of the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC. The Committee advises the Office of he Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing and related technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Consultation on renewal of Committee charter.
4. Review of reference guide being developed for manufacturing equipment items on the Commerce Control List (CCL).
5. Review of accuracies and related International Standards Organization standards used in the CCL.
6. Discussion of suggested changes to the CCL based on availability and new technology.
7. Other items that may come before the Committee.

The meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OAS/EA MS: 3876, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter at 202–482–2583.

Dated: July 26, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–19766 Filed 7–30–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of five-year ("sunset") reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the antidumping and countervailing duty orders or suspended investigations listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notices of *Institution of Five-Year Reviews* covering these same orders.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Scott E. Smith, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, (202) 482–6397 or (202) 482–3207, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders or suspended investigations:

DOC Case No.	ITC Case No.	Country	Product
A–201–802	A–451	Mexico	Grey Portland Cement and Cement Clinker.
A–588–815	A–461	Japan	Grey Portland Cement and Cement Clinker.
A–307–803	A–519	Venezuela	Grey Portland Cement and Cement Clinker.
C–307–804	C3–21	Venezuela	Grey Portland Cement and Cement Clinker.
A–588–817	A–469	Japan	Flat Panel Displays (Electroluminescent).
A–570–808	A–474	China	Chrome-Plated Lug Nuts.
A–583–810	A–475	Taiwan	Chrome-Plated Lug Nuts.
A–570–811	A–497	China	Tungsten Ore Concentrates.
A–614–801	A–516	New Zealand	Kiwifruit.
C–122–815	C–309	Canada	Pure Magnesium.
C–122–815	C–309	Canada	Alloy Magnesium.
A–122–814	A–528	Canada	Pure Magnesium.
A–557–805	A–527	Malaysia	Extruded Rubber Thread.
A–835–802	A–539	Kyrgyzstan	Uranium.
A–821–802	A–539	Russia	Uranium.
A–844–802	A–539	Uzbekistan	Uranium.
A–823–802	A–539	Ukraine	Uranium.

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Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*e.g.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: "http://www.ita.doc.gov/import_admin/records/sunset/".

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1998). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. We ask that parties notify the Department in writing of any additions or corrections to the list. We also would appreciate written notification if you no longer represent a party on the service list.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 63 FR 24391 (May 4, 1998)).

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (1998)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). We note that the Department considers each of the orders listed above as separate and distinct orders and, therefore, requires order-specific submissions. Because the case number is the same for two countervailing duty orders covering different products from Canada, we request that all submissions clearly identify the order for which the submission is being made by product name as listed above. In accordance with the *Sunset Regulations*, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive a notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews. [1] Please consult the Department's regulations at 19 CFR Part 351 (1998) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: July 23, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19761 Filed 7–30–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (*Sunset Regulations*, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1998), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–815, C–428–817]

Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Intent To Revoke Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty and countervailing duty reviews and intent to revoke orders in part.

EFFECTIVE DATE: August 2, 1999.

SUMMARY: On June 11, 1999, the U.S. Department of Commerce (the Department) received a request on behalf of Bethlehem Steel Corporation, Ispat Inland Steel, LTV Steel Company, Inc., National Steel Corporation, and U.S. Steel Group, a unit of USX Corporation, petitioners in the above mentioned cases, for changed circumstances antidumping (AD) and countervailing duty (CVD) reviews for the purpose of revoking in part the AD and CVD orders with respect to specific corrosion-resistant carbon steel flat products from Germany. Petitioners' letter confirmed a lack of interest in the continuation of the AD and CVD orders with respect to the subject merchandise defined in the Scope of the Review section below.

Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Barbara Chaves (202–482–0414) or Linda Ludwig (202–482–3833), Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (April, 1998).

Background

On August 17, 1993, the Department published the CVD order on certain corrosion-resistant carbon steel flat products from Germany (58 FR 43756). On August 19, 1993, the Department published the AD order on certain corrosion-resistant carbon steel flat products from Germany (58 FR 44170).

On June 11, 1999, petitioners requested partial revocation of the AD and CVD orders pursuant to section 751(b)(1) of the Act and section 351.222(g) of the Department's regulations, with respect to specific corrosion-resistant carbon steel flat products from Germany described below.

Scope of the Review

The corrosion-resistant steel products covered by these AD/CVC orders include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under review is dispositive.

Included in these orders are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from these orders are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, and certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

Merchandise covered by these changed circumstances reviews and partial revocations are shipments of certain corrosion-resistant carbon steel flat products that are deep-drawing carbon steel strip, roll-clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140. The merchandise's chemical composition encompasses a core material of U St 23 (continuous casting) in which carbon is less than 0.08; manganese is less than 0.30; phosphorous is less than 0.20; sulfur is less than 0.015; aluminum is less than 0.01; and the cladding material is a minimum of 99% aluminum with silicon/copper/iron of less than 1%. The products are in strips with thicknesses of 0.07mm to 4.0mm (inclusive) and widths of 5mm to 800mm (inclusive). The thickness ratio of aluminum on either side of steel may range from 3%/94%/3% to 10%/80%/10%.

Initiation and Preliminary Results of Changed Circumstances AD and CVD Reviews and Intent To Revoke Orders in Part

At the request of the petitioners, in accordance with sections 751(d)(1) and 751(b)(1) of the Act and section 351.216 of the Department's regulations, the Department is initiating changed circumstances reviews of certain corrosion-resistant carbon steel flat products from Germany to determine whether partial revocation of the AD and CVD orders is warranted. Section 782(h)(2) of the Act and section 351.222(g)(1)(i) of the Department's regulations provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and preliminary results.

In accordance with section 751(b) of the Act and sections 351.222(g)(l)(i) and 351.221(c)(3) of the Department's regulations, we are initiating these changed circumstances reviews and have determined that expedited action is warranted. Our decision to expedite these reviews stems from the domestic industry's lack of interest in applying the AD and CVD orders to the specific carbon steel plate covered by these requests.

Based on the expression of no interest by petitioners and absent any objection by any other domestic interested parties, we have preliminarily determined that substantially all of the domestic producers of the like product have no interest in continued application of the AD and CVD orders to the corrosion-resistant steel subject to these requests. Therefore, we are notifying the public of our intent to revoke, in part, the AD and CVD orders as they relate to imports of certain corrosion-resistant carbon steel flat products from Germany, as described above.

Public Comment

Interested parties may submit case briefs and/or written comments no later than 14 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 21 days after the date of publication. The Department will issue the final results of these changed

circumstances reviews, which will include the results of its analysis raised in any such written comments, no later than 270 days after the date on which these reviews were initiated, or within 45 days if all parties agree to our preliminary determinations. *See* section 351.216(e) of the Department's regulations.

If final revocation occurs, we will instruct the U.S. Customs Service to end the suspension of liquidation and to refund, with interest, any estimated AD and CVD duties collected for all unliquidated entries of the specific corrosion-resistant carbon steel flat products from Germany covered by these requests that are not subject to final results of an administrative review. The current requirement for a cash deposit of estimated AD and CVD duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of these changed circumstances reviews.

This initiation of review and notice are in accordance with sections 751(b) of the Act (19 U.S.C. 1675(b)), and 19 CFR 351.216, 351.221, and 351.222 of the Department's regulations.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19752 Filed 7–30–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072399A]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Interspecies Committee in August, 1999. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Tuesday, August 24, 1999, at 10 a.m.

ADDRESSES: The meeting will be held at the Sheraton Colonial Hotel, 427 Walnut Street, Lynnfield, MA 01880; telephone: (781) 245–9300.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION: The committee will discuss strawman proposals to manage capacity and latent effort in the multispecies, sea scallop and monkfish fisheries. A discussion of various permitting issues will include allowing the transfer of permits between vessels in limited access fisheries and allowing an increase in the number of combination (scallop and multispecies) permits. There will also be consideration of vessel upgrading issues.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 27, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–19737 Filed 7–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072399B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting via teleconference.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad-Hoc Allocation Committee will confer by telephone.

DATES: The teleconference call will begin Wednesday, August 25, 1999, at 9 a.m. Pacific Daylight Time (PDT).

ADDRESSES: The public may participate in this teleconference (see **SUPPLEMENTARY INFORMATION** for call locations).

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Glock, telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the conference call is to give guidance to the Groundfish Management Team in crafting options and analysis for rebuilding plans for lingcod, bocaccio rockfish, and Pacific ocean perch.

The public may participate in this teleconference meeting at the following locations:

1. Pacific Fishery Management Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR;

2. Pacific States Marine Fisheries Commission, 45 SE 82nd Drive, Suite 100, Gladstone, OR

Contact: Dave Hanson, (503) 650–5400;

3. Washington Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA

Contact: Phil Anderson, (360) 902–2720;

4. Oregon Department of Fish and Wildlife, 2040 SE Marine Science Drive, Newport, OR

Contact: Neal Coenen, (541) 867–4741 extension 226;

5. NMFS Northwest Region, 7600 Sand Point Way NE, Seattle, WA

Contact: Bill Robinson, (206) 526–6142.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 27, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–19738 Filed 7–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062299A]

Marine Mammals; File No. 782–1510

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, Northwest and Alaska Fisheries Science Center, National Marine Fisheries Service, (Principal Investigator: Marilyn Dahlheim), 7600 Sand Point Way, NE. Seattle, Washington 98115, has been issued a permit to take killer whales (*Orcinus orca*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On May 11, 1999, notice was published in the **Federal Register** (64 FR 25294) that a request for a scientific research permit to take killer whales had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Application and documentation are available in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA, 98115–0070 (206/526–6150); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

Dated: July 26, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–19641 Filed 7–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 1, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 27, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services.

Type of Review: New.

Title: Extended Services Study, Supported Employment.

Frequency: Quarterly.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 20

Burden Hours: 158

Abstract: The purpose of this effort is to collect information related to the nature and extent of extended services that are being delivered to a large sample of supported employment consumers. Frequency and intensity of extended services will be related to participants' employment retention and career advancement.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *vivian__reese@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila__carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–19670 Filed 7–30–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 1, 1999.

ADDRESSES: Written comments should be addressed to the Office of

Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 27, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services.

Type of Review: Extension.

Title: Report of Randolph-Sheppard Vending Facility Program.

Frequency: Annually.

Affected Public: Individuals or households; Federal Government; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 51

Burden Hours: 720

Abstract: The information is needed to evaluate the effectiveness of the program and to promote growth. The information is transmitted to State agencies to assist in the conduct and expansion of the program at the State level. Respondents are the designated State vocational rehabilitation agencies.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *vivian_reese@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address *sheila_carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–19671 Filed 7–30–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.033]

Federal Work-Study Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions that participate in the Federal Work-Study (FWS) Program to submit the Campus-Based Reallocation Form (ED Form E40–4P).

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution that participated in the FWS Program for the 1998–1999 award year (July 1, 1998 through June 30, 1999) to request supplemental FWS funds for the 1999–2000 award year (July 1, 1999 through June 30, 2000). The information collected is used to determine whether an institution is eligible to receive supplemental FWS funds for the 1999–2000 award year.

DATES: *Closing Date and Method for Submitting a Campus-Based Reallocation Form.* If you participated in the FWS Program for the 1998–99 award year and want to ensure that you will be considered for supplemental FWS funds for the 1999–2000 award year, you must submit the electronic Campus-Based Reallocation Form by August 27, 1999.

The new Fiscal Operations Report for 1998–1999 and Application to Participate for 2000–2001 (FISAP) software that you will receive in July 1999 also contains the Campus-Based Reallocation Form (E–40–4P). The Campus-Based Reallocation Form electronic data must be transmitted via the Department's Title IV Wide Area Network (Title IV WAN) using EDConnect. Specific information on this electronic transmission is provided in "Dear Colleague" letter CB–99–11 that was issued in July 1999. Transmit the Reallocation Form data to us only if you are releasing campus-based funds or are requesting supplemental 1999–2000 FWS funds.

Although the FISAP is not due until October 1, 1999, you must complete the Campus-Based Reallocation Form electronic data transmission prior to midnight, Eastern time, on August 27, 1999. (For purposes of this notice, this deadline means that an institution has all of August 27, 1999, to transmit electronically.)

SUPPLEMENTARY INFORMATION: The Department will reallocate unexpended FWS Federal funds from the 1998–99 award year as supplemental allocations for the 1999–2000 award year under the FWS Program. Supplemental allocations will be issued this fall in accordance with the reallocation procedures contained in the Higher Education Act of 1965, as amended (HEA). Under section 442(e) of the HEA, unexpended FWS funds returned to the Secretary must be reallocated to eligible institutions that used at least 10 percent of the total FWS Federal funds granted to the institution to compensate students employed in community services. Because reallocated FWS funds will be distributed on the basis of fair share shortfall criteria, you must also have a fair share shortfall to receive these funds. A fair share shortfall means that you have an unmet need for FWS funds as determined by the FWS allocation formula in the HEA that uses data reported on the FISAP. You must use all the reallocated FWS Federal funds to compensate students employed in community services. To ensure consideration for supplemental FWS Federal funds for the 1999–2000 award year, you must submit the Campus-Based Reallocation Form data by August 27, 1999.

Applicable Regulations

The following regulations apply to the Federal Work-Study Program:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Work-Study Programs, 34 CFR part 675.

(4) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(5) New Restrictions on Lobbying, 34 CFR part 82.

(6) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(7) Drug-Free Schools and Campuses, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: For technical assistance concerning the Campus-Based Reallocation Form or other operational procedures of the campus-based programs, contact Mr. Milton Thomas, Jr., Institutional Financial Management Division, U.S. Department of Education, PO Box 23781, Washington, DC 20026–0781. Telephone (202) 708–9756. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text of Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

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Note: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 42 U.S.C. 2752.

Dated: July 27, 1999.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 99–19723 Filed 7–30–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Monticello Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Monticello. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Wednesday, August 18 1999, 7:00 p.m.–9:00 p.m.

ADDRESS: San Juan County Courthouse, 2nd Floor Conference Room, 117 South Main, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO, 81502 (303) 248–7727.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. The Board will receive an update on the repository status.
2. The Board will discuss the Monticello surface and groundwater.
3. The Committee will receive reports from subcommittees on local training and hiring, health and safety, and future land use.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303) 248–7727.

Issued at Washington, DC on July 28, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–19705 Filed 7–30–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, August 19, 1999: 5:30 p.m.–10:00 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

OTHER INFORMATION CONTACT: John D. Sheppard, Site Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Call to order/Discussion
6:00 p.m.—Approve Meeting Minutes
6:05 p.m.—Public Comment/Questions
6:30 p.m.—Presentations
7:15 p.m.—Sub Committee Reports
8:15 p.m.—Administrative Issues
8:30 p.m.—Adjourn

Final copies of the agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior

to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (502) 441–6804.

Issued at Washington, DC, on July 28, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–19706 Filed 7–30–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Nonproliferation and National Security; Nonproliferation and National Security Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of closed meeting.

SUMMARY: This notice announces a meeting of the Nonproliferation and National Security Advisory Committee. The Federal Advisory Committee Act, 5 U.S.C. App. 2 § 10 (a)(2) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, August 17, 1999, 9:00 a.m. to 5:00 p.m.; Wednesday, August 18, 1999, 9:00 a.m. to 5:00 p.m.; and Thursday, August 19, 1999, 9:00 a.m. to 5:00 p.m.

ADDRESSES: Sandia National Laboratories, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Waldron (202–586–2400), Designated Federal Officer, Office of Research and Development (NN–20), Office of Nonproliferation and National Security, 1000 Independence Avenue, SW, Washington, D.C. 20585.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To introduce members of the Committee and to begin discussion of the nonproliferation and national security research and development program.

Tentative Agenda

Tuesday, August 17, 1999

09:00–09:15 NNAC Welcome, Introductions
09:30–10:00 R&D Program Overview
10:00–10:15 NNAC Charge
10:15–12:00 Strategy-to-Task Briefing
12:00–13:00 Working Lunch
13:00–17:00 R&D Program Briefings Sandia National Laboratories (SNL)/ Los Alamos National Laboratory (LANL)

Wednesday, August 18, 1999

09:00–12:00 R&D Program Briefings SNL/LANL
12:00–13:00 Working Lunch
13:00–17:00 R&D Program Briefings SNL/LANL

Thursday, August 19, 1999

09:00–12:00 R&D Program Briefings SNL/LANL
12:00–13:00 Working Lunch
13:00–17:00 NNAC Discussions

Closed Meeting: In the interest of national security, the meeting will be closed to the public pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, § 10 (d), and the Federal Advisory Committee Management regulation, 41 CFR § 101–6.1023, "Procedures for Closing an Advisory Committee Meeting", which incorporate by reference the Government in the Sunshine Act, 5 U.S.C. § 552b, which, at §§ 552b (c)(1) and (c)(3) permits closure of meetings where restricted data or other classified matters are discussed.

Minutes: Minutes of the meeting will be recorded and classified accordingly.

Issued at Washington, D.C. on July 28, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–19704 Filed 7–30–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–398–002]

Caprock Pipeline Co.; Notice of Tariff Filing

July 27, 1999.

Take notice that on July 22, 1999, Caprock Pipeline Co. (CAPROCK) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with an effective date of August 1, 1999:

Substitute Second Revised Sheet No. 6A
Second Substitute Sixth Revised Sheet No. 29A

CAPROCK states that it is submitting this filing to correct the GISG Standard 2.3.9 (Version 1.3) by placing it in the "by reference" tariff sheet.

CAPROCK states that copies of this filing have been served upon all affected firm customers of CAPROCK and applicable state agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19664 Filed 7–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–286–000]

Granite State Gas Transmission, Inc.; Notice of Technical Conference

July 27, 1999.

In the Commission's order issued on May 28, 1999, the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Wednesday, August 4, 1999, at 10:00, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19663 Filed 7–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–46–001]

K N Interstate Gas Transmission Co; Notice of Revised Refund Report Filing

July 27, 1999.

Take notice that on June 29, 1999, K N Interstate Gas Transmission Company (KNI) filed a refund report pursuant to the Commission's February 22, 1995 Order issued in Docket No. RP95–124–000. The refund report shows the refund received by KNI from Gas Research Institute (GRI) overcollections in the amount of $413,712 and the pro rata allocation of that refund amount to KNI's eligible firm customers. KNI is making this filing to correct an inadvertent error contained in its June 24, 1999 GRI refund report.

KNI states that copies of the filing were served upon all affected firm customers of KNI and applicable state agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on August 4, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19656 Filed 7–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–407–002]

KN Wattenberg Transmission LLC; Notice of Tariff Filing

July 27, 1999.

Take notice that on July 22, 1999, KN Wattenberg Transmission LLC (KNW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 1999:

Substitute First Revised Sheet No. 44A
Second Substitute Third Revised Sheet No. 67

KNW states that it is submitting this filing to correct the GISB Standard 2.3.9 (Version 1.3) by placing it in the "by reference" tariff sheet.

KNW states that copies of this filing have been served upon all affected firm customers of KNW and applicable state agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19666 Filed 7–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–445–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

July 27, 1999.

Take notice that on July 21, 1999, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective August 20, 1999:

First Revised Sheet No. 900
Second Revised Sheet No. 901
Third Revised Sheet No. 1000
First Revised Sheet No. 1001
Third Revised Sheet No. 1002
Third Revised Sheet No. 1003
First Revised Sheet No. 1102

Koch Gateway states that the proposed tariff sheets make revisions to the wording of certain gas quality specifications and measurement procedure guidelines located in the General Terms and Conditions section of Koch's tariff.

Koch states that copies of this filing have been served upon Koch's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19668 Filed 7–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–588–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

July 27, 1999.

Take notice that on July 22, 1999, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP99–588–000 a request pursuant to sections 157.205 and 157.214 of the Commission's

Regulations under the Natural Gas Act (18 CFR 157.205, 157.214) for authorization to increase the storage capacity at Henderson Storage Field, located in Venango and Mercer Counties, Pennsylvania, under National Fuel's blanket certificate issued in Docket No. CP83–4–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

National Fuel proposes to increase the maximum storage capacity of Henderson Storage Field from 3,900,000 Mcf to 4,400,000 Mcf, and to increase the maximum storage pressure from 250 psig to 275 psig, located in Venango and Mercer Counties, Pennsylvania.

According to National Fuel, the increase in capacity at Henderson Storage Field will support storage service to be offered to shippers of National Fuel. National Fuel states that the increase in capacity and pressure at Henderson Storage Field will not require additional facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19655 Filed 7–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–416–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

July 27, 1999.

Take notice that on July 21, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

Substitute Fourth Revised Sheet No. 203A
Substitute Second Revised Sheet No. 246A

Natural states that these tariff sheets were filed in compliance with the Commission's Letter Order issued herein on July 15, 1999.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective August 1, 1999.

Natural states that copies of the filing are being mailed to Natural's customers, interested state regulatory agencies and all parties in Docket No. RP99–416.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19667 Filed 7–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–405–002]

TCP Gathering Co.; Notice of Tariff Filing

July 27, 1999.

Take notice that on July 22, 1999, TCP Gathering Co. (TCP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets with an effective date of August 1, 1999:

Substitute First Revised Sheet No. 88D
Second Substitute Fourth Revised Sheet No. 103A

TCP states that it is submitting this filing to correct the GISB Standard 2.3.9 (Version 1.3) by placing it in the "by reference" tariff sheet.

TCP states that copies of this filing have been served upon all affected firm customers of TCP and applicable state agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19665 Filed 7–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3457–000]

Union Electric Company; Notice of Filing

July 27, 1999.

Take notice that on July 14, 1999, Union Electric Company (UE), tendered for filing an executed Amendment to the Wholesale Electric Service Agreement between UE and the City of Owensville, Missouri (Owensville) in order to allow Owensville to participate in a voluntary curtailment program similar to that applicable to its retail service customers in Missouri. UE has requested that the executed amendment be substituted for an unexecuted form of the amendment previously filed on July 1, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 6, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet a hhtp://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19653 Filed 7–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–532–000]

Northern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed 1999 Zone EF Expansion and Request for Comments on Environmental Issues

July 27, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the 1999 Zone EF Expansion involving modification of the Farmington Compressor Station by Northern Natural Gas Company (Northern Natural) in Dakota County, Minnesota.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

Northern Natural proposes to increase its mainline capacity in Zone EF upstream of Farmington, Minnesota by uprating an electric motor driven reciprocating compressor at the Farmington Compressor Station from the current certificated 1,250 rated brake-horsepower (bhp) to 2,250 bhp. The location of the project facilities is shown in appendix 1.[2]

The uprating involves modifying the unit controls of the compressor and would involve no construction or ground disturbance. All activities would be confined within the existing fenced-in station yard.

[1] Northern Natural's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project. We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commenter, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP99–532–000; and
- Mail your comments so that they will be received in Washington, DC on or before August 26, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filing by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the

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CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19654 Filed 7–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

July 27, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 2611–037.

c. *Date Filed:* July 2, 1999.

d. *Applicants:* Kimberly-Clark Tissue Company (Kimberly-Clark), UAH-Hydro Kennebec Limited Partnership (UAH), and Madison Paper Industries (Madison Paper).

e. *Name and Location of Project:* The Hydro-Kennebec Project is on the Kennebec River in Kennebec and Somerset Counties, Maine. The project does not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* For Kimberly-Clark: Ms. Nancy J. Skancke, Grammer Kissel Robbins Skancke & Edwards, 1225 Eye Street, NW, Suite 1225, Washington, DC 20005, (202) 408–5400. For UAH: Mr. Philip K. Dutton, United American Energy Corporation, 50 Tice Boulevard, Woodcliff Lake, New Jersey 07675, (201) 307–1818. For Madison Paper: Mr. Michael J. Kurman, Arent Fox Kintner Plotkin & Kahn, PLLC, 1050 Connecticut Avenue, NW, Washington, DC 20036–5339, (202) 857–6345.

h. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839, or e-mail address: james.hunter@ferc.fed.us.

i. *Deadline for filing comments and or motions:* September 7, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–2611–037) on any comments or motions filed.

j. *Description of Proposal:* Applicants propose a partial transfer of the license for Project No. 2611 from Kimberly-Clark and UAH to UAH and Madison Paper. Substitution of Madison Paper for Kimberly-Clark as co-licensee for this project is being sought in connection with Madison Paper's intended purchase of certain generation resources from Kimberly-Clark.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the descried application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19657 Filed 7–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of transfer of License and Soliciting Comments, Motions To Intervene, and Protests

July 27, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 2615–031.

c. *Date Filed:* July 2, 1999.

d. *Applicants:* Kimberly-Clark Tissue Company (Kimberly-Clark), Madison Paper Industries (Madison Paper), FPL Energy Maine Hydro LLC (FPL), The Merimil Limited Partnership (Merimil), and The Brassua Hydroelectric Limited Partnership (Brassua).

e. *Name and Location of Project:* The Brassua Project is on the Moose River in Somerset County, Maine. The project does not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* For Kimberly-Clark: Ms. Nancy J. Skancke, Grammer Kissel Robbins Skancke & Edwards, 1225 Eye Street, NW, Suite 1225, Washington, DC 20005, (202) 408–5400. For Madison Paper: Mr. Michael J. Kurman, Arent Fox Kintner Plotkin & Kahn, PLLC, 1050 Connecticut Avenue, NW, Washington, DC 20036–5339, (202) 857–6345.

h. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839, or e-mail address: james.hunter@ferc.fed.us.

i. *Deadline for filing comments and or motions:* September 7, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE,Washington, DC 20426.

Please include the project number (P–2615–031) on any comments or motions filed.

j. *Description of Proposal:* Applicants propose a partial transfer of the license for Project No. 2615 from Kimberly-Clark, Madison Paper, FPL, Merimil, and Brassua to Madison Paper, FPL, Merimil and Brassua. Elimination of Kimberly-Clark as co-licensee for this project is being sought in connection with the intended purchase by Madison Paper of certain generation resources from Kimberly-Clark.

One of the current licensees, Scott Paper Company (Scott), no longer exists. Through a corporate merger, transferor Kimberly-Clark is the successor-in-interest to Scott. The applicants request after-the-fact Commission approval of the transfer of the project license from Scott to Kimberly-Clark, as well as the prospective transfer to eliminate Kimberly-Clark as a licensee.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19658 Filed 7–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visits and Soliciting Scoping Comments

July 27, 1999.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Two New Major Licenses and Three Subsequent Licenses.

b. *Project Nos.:* 2897–003, 2931–002, 2932–003, 2941–002, and 2942–005.

c. *Dated filed:* January 22, 1999.

d. *Applicant:* S.D. Warren Company.

e. *Names of Projects:* Saccarappa Project, Gambo Project, Mallison Falls Project, Little Falls Project, and Dundee Project.

f. *Location:* On the Presumpscot River, near the towns of Windham, Gorham, and Westbrook, in Cumberland County, Maine. These projects do not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas Howard, S.D. Warren Company, 89 Cumberland Street, P.O. Box 5000, Westbrook, ME 04098–1597, (207) 856–4286.

i. *FERC Contact:* Bob Easton, robert.easton@ferc.fed.us, (202) 219–2782.

j. *Deadline for filing scoping comments:* September 27, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service lists for the projects. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* These applications are not ready for environmental analysis at this time.

l. *Description of the Projects:*

Saccarappa: The project consists of the following existing facilities: (1) a 322-foot-long diversion dam consisting of two concrete overflow structures separated by an island; (2) two bypassed reaches measuring 475 and 390 feet long; (3) a 380-foot-long and 36-foot wide intake canal; (4) a 49-foot-wide by 71-foot-long masonry powerhouse; (5) three turbine generator units, each with a rated capacity of 450 kilowatts (kW) for a total project installed capacity of 1,350 kW; (6) a 345-foot-long tailrace formed by a 33-foot-high guard wall; (7) a 1-mile-long 2.3 kilovolt (kV) transmission line/generator lead; and (8) other appurtenances.

Gambo: The project consists of the following existing facilities: (1) a 250-foot-long, 24-foot-high concrete overflow section and 50-foot-long intake structure; (2) a 737-foot-long and 15-foot-deep concrete-lined in take canal; (3) a 47-foot-wide by 78-foot-long reinforced concrete and brick powerhouse; (4) two turbine generator units, each with a rated capacity of 950 kW for a total project installed capacity of 1,900 kW; (5) a 300-foot-long bypassed reach; (6) an 8-mile long, 11 kV transmission line; and (7) other appurtenances.

Mallison Falls: The project consists of the following existing facilities: (1) a 358-foot-long and 14-foot-high reinforced concrete, masonry, and cut granite diversion dam; (2) a 70-foot-long headgate structure; (3) a 675-foot-long, 41-foot-wide, and 6-foot-deep bedrock lined intake canal; (4) a 33-foot-wide by 51-foot-long reinforced concrete and masonry powerhouse; (5) two turbine generator units, each with a rated capacity of 400 kW for a total project installed capacity of 800 kW; (6) a 675-foot-long bypassed reach; (7) an 11 kV transmission line tied into the Gambo Project transmission line; and (8) other appurtenances.

Little Falls: The project consists of the following facilities: (1) a 330-foot-long and 14-foot-high reinforced concrete and masonry dam incorporating a 70-foot-long intake structure; (2) a 25-foot-wide by 95-foot-long masonry powerhouse which is integral to the dam; (3) four turbine generator units,

each with a rated capacity of 250 kW for a total project installed capacity of 1,000 kW; (4) a 300-foot-long bypassed reach; (5) an 11 kV transmission line tied into the Gambo Project transmission line; and (6) other appurtenances.

Dundee: The project consists of the following existing facilities: (1) a 1,492-foot-long dam, consisting of a 150-foot-long, 42-foot-high concrete spillway section flanked by two 50-foot-high earthen embankments, a 90-foot-long and 50-foot-high non-overflow section, and a 27-foot-long gate section; (2) a 44-foot-wide by 74-foot-long reinforced concrete powerhouse which is integral to the spillway section of the dam; (3) three turbine generator units, each with a rated capacity of 800 kW for a total project installed capacity of 2,400 kW; (4) a 1,075-foot-long bypassed reach; (5) a 1,075-foot-long, 30-foot-wide, and 11-foot-deep tailrace; (6) two 10-mile-long 11 kV transmission lines; and (7) other appurtenances.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20246, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. *Scoping Process:* The Commission intends to prepare a multiple project Environmental Assessment (EA) for the proposed relicensing of the Saccarappa Project (FERC No. 2897), Gambo Project (FERC No. 2931), Mallison Falls Project (FERC No. 2932), Little Falls Project (FERC No. 2941),and Dundee Project (FERC No. 2942), in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed actions.

Scoping Meetings

The Commission will hold two scoping meetings, one in the morning and one in the evening, to help us identify the scope of issues to be addressed in the EA.

The morning scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Evening Meeting

August 25, 1999, 7:00 p.m., Windham High School, 406 Gray Road, Windham, ME 04061

Morning Meeting

August 26, 1999, 9:00 a.m., Windham High School, 406 Gray Road, Windham, ME 04062

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

Warren and the Commission staff will conduct project site visits on August 25, 1999. We will meet at 9:00 a.m. at parking lot 7 of the Westbrook Mill on Cumberland Street. If you would like to attend, please call Tom Howard, S.D. Warren Company, at (207) 856–4286, no later than August 18, 1999.

Objectives

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resource at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views: (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission's proceedings for these projects.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19659 Filed 7–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License And Soliciting Comments, Motions To Intervene, and Protests

July 27, 1999.

Take notice that the following hydrolectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 4796–029.

c. *Date Filed:* July 6, 1999.

d. *Applicants:* Glen Park Associates Limited Partnership, Niagara Mohawk Power Corporation, and Northbrook New York, L.L.C.

e. *Name of Project:* Glen Park.

f. *Location:* The Glen Park project is located in Jefferson County, New York. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* F. Michael Tucker, Glen Parke Associates Limited Partnership, c/o Mercer Companies, Inc., 330 Broadway, Albany, NY 12207, (518) 434–1311; Michael W. Murphy, Esq., Law Department, A–3, Niagara Mohawk Power Corporation, 300 Erie Boulevard, West Syracuse, NY 13202–4250, (315) 428–6942; (Northbrook New York, L.L.C.) M. Curtis Whittaker, Rath Young and Pignatelli, One Capital Plaza, P.O. Box 1500, Concord, NH 03302, (603) 226–2600.

i. *FERC Contact:* Any questions on this notice should be addressed to Dave Snyder at (202) 219–2385 or by e-mail at david.snyder@ferc.fed.us.

j. *Deadline for filing comments and or motions:* September 9, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the Project Number (4796–029) on any comments or motions filed.

k. *Description of Transfer:* Glen Park Associates Limited Partnership (Glen Park) and Niagara Mohawk Power Corporation (NMPC), the licensees for Project No. 4796, request approval of the transfer of the project license to Northbrook New York, L.L.C. (Northbrook). Transfer approval is sought pursuant to an Asset Purchase, Sale and Termination Agreement dated December 1, 1998 (December 1998 Agreement), in which Glen Park agreed to sell the project to NMPC, and an Asset Purchase Agreement dated June 7, 1999 (1999 APA), in which NMPC agree to sell the project to Northbrook. The applicants intend to close on their sales agreements simultaneously. However, the applicants request that, in the event that the closing of the 1999 APA occurs later, the Commission's approval also applies to separate transfers from NMPC and Glen Park to NMPC and from NMPC to Northbrook.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or, motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS" "PROTEST," OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19660 Filed 7–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 27, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application: Preliminary Permit.*

b. *Project No.:* P–11750–000.

c. *Date filed:* June 11, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Opekiska L&D Hydro Project.

f. *Location:* At the exiting U.S. Army Corps of Engineers' Opekiska Lock and Dam on the Monongahela River, near Morgantown, Monongalia County, West Virginia.

g. *File Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* William Guey-Lee (202) 219–2808 or E-mail address at William.gueylee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Opekiska Lock and Dam, and would consist of the following facilities: (1) five new steel penstocks, each about 50 feet long and 96 inches in diameter; (2) a new powerhouse to be constructed on the downstream side of the dam with 5 generating units and an installed capacity of 6,800 kilowatts; (3) new 500-yard-long, 14.7-kilovolt transmission lines; and (4) appurtenant facilities. The average annual generation is estimated to be 42 gigawatthours. The cost of the studies under the permit will not exceed $1,500,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person

to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, local agencies are invited to file comments on the described application. A copy of any application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19661 Filed 7–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 27, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11751–000.

c. *Date filed:* June 11, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Hildebrand L&D Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Hildebrand Lock and Dam on the Monongahela River, near Morgantown, Monongalia County, West Virginia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* William Guey-Lee (202) 219–2808 or E-mail address at William.gueylee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Hildebrand Lock and Dam, and would consist of the following facilities: (1) five new steel penstocks, each about 50 feet long and 96 inches in diameter; (2) a new powerhouse to be constructed on the downstream side of the dam with 5 generating units and an installed capacity of 6,500 kilowatts; (3) new 400-yard-long, 14.7-kilovolt transmission lines; and (4) appurtenant facilities. The average annual generation is estimated to be 40 gigawatthours. The cost of the studies under the permit will not exceed $1,500,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19662 Filed 7–30–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6411–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Criteria for Classification of Solid Waste Disposal Facilities and Practices (RCRA 257)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval; Criteria for Classification of Solid Waste Disposal Facilities and Practices (RCRA 257), OMB Control Number 2050–0154, expiration date September 30, 1999. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone, (202) 260–2740, by email farmer.sandy@epamail.epa.gov, or down load a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1745.03.

SUPPLEMENTARY INFORMATION:

Title: Criteria for Classification of Solid Waste Disposal Facilities and Practices, (RCRA 257), OMB Control Number 2050–0154; EPA ICR Number 1745.02, expiring on 9/30/99. This is a request for an extension of a currently approved collection.

Abstract: 40 CFR part 257—subpart B, as required under the 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA, established specific Criteria and reporting and recordkeeping provisions for owners and operators of non-municipal non-hazardous waste disposal units that receive CESQG hazardous wastes. The information collected, as a result of this rule, is used by States to regulate and ensure that non-municipal non-hazardous waste disposal units that receive CESQG hazardous wastes are complying with the final revisions contained in this rule. The information needs to be collected to ensure that States effectively implement and enforce this rule on a State level. The information to be collected is mandatory and must be submitted on an occasional basis. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 15, 1999 (64 FR 12803). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 67 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying, information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State, Local, or Tribal Governments, Business.

Estimated Number of Respondents: 164.

Frequency of Response: On Occasion.

Estimated Total Annual Hour Burden: 10,962 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following address.

Please refer to EPA ICR No. 1745.03 and OMB Control No. 2050–0154 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 27, 1999.

Stephen T. Vineski,

Acting Director, Regulatory Information Division.

[FR Doc. 99–19730 Filed 7–30–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6411–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Requirements for Generators, Transporters, and Hazardous Waste Management Facilities Under the RCRA Hazardous Waste Manifest System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Requirements for Generators, Transporters, and Hazardous Waste Management Facilities Under the RCRA Hazardous Waste Manifest System, EPA ICR No. 801.12, OMB Control Number 2050–0039, current expiration date 9/30/99. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 801.12.

SUPPLEMENTARY INFORMATION:

Title: Requirements for Generators, Transporters, and Hazardous Waste Management Facilities Under the RCRA Hazardous Waste Manifest System, OMB Control No. 2050–0039; EPA ICR No. 801.12) expiring 9/30/99. This is an extension of a currently approved collection.

Abstract: The Resource Conservation and Recovery Act (RCRA), as amended, establishes a national program to assure that hazardous waste management practices are conducted in a manner that is protective of human health and the environment. EPA's authority to require compliance with the manifest system stems primarily from RCRA section 3002(a)(5). This section mandates a hazardous waste manifest "system" to assure that all hazardous waste generated is designated for and arrives at the appropriate treatment, storage, disposal facility. An essential part of this manifest system is the Uniform Hazardous Waste Manifest (Form 8700–22A). The manifest is a tracking document that accompanies the waste from its generation site to its final disposition. The manifest lists the wastes that are being shipped and the final destination of the waste. The manifest system is a self-enforcing mechanism that requires generators, transporters, and owner/operators of treatment, storage, and disposal facilities to participate in hazardous waste tracking. In addition the manifest provides information to transporters and waste management facility workers on the hazardous nature of the waste, identifies wastes so that they can be managed appropriately in the event of an accident, spill, or leak, and ensures that shipments of hazardous waste are managed properly and delivered to their designated facilities.

This system does not ordinarily involve intervention on the part of EPA unless hazardous wastes do not reach their point of disposition within a specified time frame. In most cases, RCRA-authorized States operate the manifest system, and requirements may vary among authorized States.

EPA believes manifest requirements and the resulting information collection mitigate potential hazards to human health and the environment by ensuring that hazardous waste is sent to and received by appropriate treatment, storage, and disposal facilities, by initiating appropriate response actions if a shipment does not reach its intended destination, and by providing necessary emergency response information in the event of an accident, spill, or leak during transportation.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 4/5/99 (64 FR 16444); 3 comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.26 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Generators, transporters, and treatment, storage, and disposal facilities (TSDFs).

Estimated Number of Respondents: 105,558.

Frequency of Response: Per shipment of hazardous waste.

Estimated Total Annual Hour Burden: 2,920,383 hours.

Estimated Total Annualized Capital, Operating/Maintenance Cost Burden: $1,871,246.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 801.12 and OMB Control No. 2050–0039 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Stephen T. Vineski,

Acting Director, Regulatory Information Division.

[FR Doc. 99–19731 Filed 7–30–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6411–1]

Underground Injection Control Program Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection Rubicon, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision on no migration petition reissuance:

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Rubicon Inc., (Rubicon) for four Class I injection wells located at Geismar, Louisiana. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by the petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Rubicon, of the specific restricted hazardous wastes identified in the exemption, into four Class I hazardous waste injection well nos. 1, 2, 3, and 4 at the Geismar, Louisiana facility, until December 31, 2025, unless EPA moves to terminate the exemption under provisions of 40 CFR 148.24. As required by 40 CFR 148.22(b) and 124.10, a public notice was issued May 20, 1999. The public comment period closed on July 7, 1999. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of July 26, 1999.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–7165.

Oscar Ramirez, Jr.,

Acting Director, Water Quality Protection Division (6WQ).

[FR Doc. 99–19732 Filed 7–30–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–36194; FRL–6097–3]

Organophosphate Pesticide Tolerances-No Finite Residues Considered to be Reassessed By EPA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA is considering as reassessed 80 meat, milk, poultry, and egg (MMPE) tolerances. These MMPE tolerances are for residues of azinphos-methyl, coumaphos, fenthion, isofenphos, methidathion, naled, phorate, and profenophos. The Agency has evaluated 105 MMPE tolerances listed in the table in this Notice and has concluded that there are no reasonable expectations of finite pesticide residues in or on meat, milk, poultry, or eggs for the listed organophosphate pesticides. Since 25 of these tolerances were previously reassessed by final rule revocation in the **Federal Register**, 80 of the 105 tolerances are counted here as reassessments made toward the August 1999 review deadline of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. EPA will propose a rule to revoke these 80 reassessed MMPE tolerances in a subsequent **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Kimberly Lowe or Daniel Helfgott, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. Telephone: (703) 308-8059 or (703) 308-8054. E-mail:lowe.kimberly@epa.gov or helfgott.dan@epa.gov. Office location: Crystal Mall 2, 6th floor, 1921 Jefferson Davis Hwy., Arlington, VA.

SUPPLEMENTARY INFORMATION:

I. Important Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are interested in the implementation of FQPA, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the "**FOR FURTHER INFORMATION CONTACT**" section.

B. How can I get additional information or copies of support documents?

1. *Electronically.* You may obtain electronic copies of this document from the EPA Home page at the Federal Register - Environmental Documents entry for this document under "Laws and Regulations" http://www.epa.gov/fedrgstr/.

2. *In person.* The official record for this notice, as well as the public version, has been established under docket control number [OPP–36194]. A public version of this record is available for inspection in room 119, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

II. Background

This notice announces to the general public that EPA has determined that 105 tolerances for residues of organophosphate chemicals on meat, milk, poultry, and eggs are unnecessary per 40 CFR 180.6 (see table below). EPA has previously reassessed 25 of these tolerances.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, consideration must be given to the possible residues of those chemicals in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticide residues (40 CFR 180.6). When considering this possibility, EPA can conclude that (1) finite residues will exist in meat, milk, poultry and/or eggs; (2) there is a reasonable expectation that finite residues will exist; or (3) there is a reasonable expectation that finite residues will not exist. If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, tolerances do not need to be established for these commodities [40 CFR 180.6(b) and 40 CFR 180.6(c)].

EPA has evaluated the meat, milk, poultry, and egg tolerances listed in the table in this document and has concluded that there is no reasonable expectation of finite residues of azinphos-methyl, methidathion, naled, phorate, or profenphos in or on those commodities [180.6(a)(3)]. The determination that there is no reasonable expectation of finite residues was made based on feeding studies submitted since the time that the

tolerances were originally established. These feeding studies used exaggerated amounts of the compound (10x the dietary burden) and did not show measurable residues of the pesticides tested. Additionally, EPA has determined that fenthion no longer bears a use that could result in residues in poultry. Because there is no reasonable expectation of finite residues, these 80 tolerances are not required under the FFDCA and can be revoked. The Agency considers these 80 tolerances as reassessed and are counted in this document toward meeting the tolerance reassessment requirements listed in FFDCA section 408(q). EPA will propose a rule to revoke these 80 reassessed MMPE tolerances in a subsequent **Federal Register** notice.

Additionally, because there are no registered uses, EPA has previously revoked 25 of these OP tolerances: 4 coumaphos tolerances (64 FR 39072, July 21, 1999) (FRL–6093–6), 20 isofenphos tolerances and 1 sulprofos tolerance (63 FR 57067, October 26, 1998) (FRL–6035–6). These are also listed on the attached table as having no reasonable expectations of finite residues. These 25 tolerances have already been counted toward tolerance reassessment.

TABLE—ORGANOPHOSPHATE (OP) CHEMICALS WITH MEAT, MILK, POULTRY, AND/OR EGG TOLERANCES, BUT, FOR WHICH THERE IS NO REASONABLE EXPECTATION OF FINITE RESIDUES

OP Name	No of Tolerances	Tolerances Reassessed
Azinphos-methyl	13	cattle, fat; cattle, mbyp; cattle, meat; goats, fat; goats, mbyp; goats, meat; horses, fat; horses, mbyp; horses, meat; sheep, fat; sheep, mbyp; sheep, meat; milk
Coumaphos	4	poultry, fat; poultry, mbyp; poultry, meat; eggs
Fenthion	3	poultry, fat; poultry, mbyp; poultry, meat
Isofenphos	20	cattle, fat; cattle, mbyp; cattle, meat; goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; poultry, fat; poultry, mbyp; poultry, meat; sheep, fat; sheep, mbyp; sheep, meat; milk; eggs
Methidathion	20	cattle, fat; cattle, mbyp; cattle, meat; goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; poultry, fat; poultry, mbyp; poultry, meat; sheep, fat; sheep, mbyp; sheep, meat; milk; eggs
Naled	20	cattle, fat; cattle, mbyp; cattle, meat; goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; poultry, fat; poultry, mbyp; poultry, meat; sheep, fat; sheep, mbyp; sheep, meat; milk; eggs
Phorate	20	cattle, fat; cattle, mbyp; cattle, meat; goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; poultry, fat; poultry, mbyp; poultry, meat; sheep, fat; sheep, mbyp; sheep, meat; milk; eggs
Profenophos	4	poultry, fat; poultry, mbyp; poultry, meat; eggs
Sulprofos	1	eggs

List of Subjects

Environmental protection, pesticides and pests, pesticide tolerance(s), tolerance reassessment, organophosphate(s), chemicals.

Dated: July 28, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–19784 Filed 7–30–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44652; FRL–6094–1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on Phenol (CAS No. 108–95–2) and 1,6-Hexamethylene Diisocyanate (HDI) (CAS No. 822–06–0). These data were submitted pursuant to enforceable testing consent agreements/orders issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Christine Augustyniak, Associate Director, Environmental Assistance Division (7408),Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460,(202) 554–1404, TDD (202) 554–0551, e-mail: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to enforceable consent agreements/orders will be announced to the public in accordance with procedures specified in section 4(d) of TSCA.

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this notice. If you have any questions regarding the applicability of this notice to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How can I get additional information or copies of this document?

1. *Electronically.* You may obtain electronic copies of this document from the EPA Internet Home Page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

2. *In person, by phone, fax, or e-mail.* EPA has established a public record for this TSCA section 4(d) receipt of test data notice (docket number OPPTS–44652). This record includes copies of the studies reported in this notice. The record, excluding Confidential Business Information (CBI), is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC, from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. Requests for documents should be sent in writing to: Environmental Protection Agency, TSCA Nonconfidential Information Center (7405), 401 M St., SW., Washington, DC 20460 or fax: (202) 260–5069 or e-mail: oppt.ncic@epa.gov.

II. What are the details of the test data submissions

Test data for phenol were submitted by the Phenol Regulatory Panel of the Chemical Manufacturers Association (CMA) on behalf of its test sponsor companies: Allied Signal Inc.; Aristech Chemical Corporation; Dakota Gasification Company; Dow Chemical Company; Georgia Gulf Corporation; General Electric Corporation; GIRSA, Inc.; JLM Industries, Inc.; Kalama Chemical, Inc.; Merichem Company; Mitsubishi Company; Mitsui Co. (U.S.A.), Inc.; Shell Chemical Company; and Texaco Refining Marketing. The report was submitted pursuant to a TSCA section 4 enforceable testing consent agreement/order and was received by EPA on June 17, 1999. The submission includes a final report entitled "Two-Generation Oral (Drinking Water) Reproductive Toxicity Study of Phenol in Rats." This chemical is produced in substantial quantities and is used in numerous consumer products.

Test data for HDI were submitted by The Chemical Manufacturers Association (CMA) on behalf of the Hexamethylene Diisocyanate Test Sponsors: Lyondell Chemical Company (formerly ARCO chemical Company), Newtown Square, PA; Bayer Corporation, Pittsburgh, PA: and Rhodia Inc. (formerly Rhone-Poulenc Inc.), Raleigh, NC. The reports were submitted in accordance with a TSCA section 4 enforceable testing consent agreement/order and were received by EPA on June 22, 1999. The submission includes two final reports entitled: (1) "A Developmental Toxicity Study with 1,6-Hexamethylene Diisocyanate (HDI) in the Sprague-Dawley Rat" and (2) "A Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test using 1,6-Hexamethylene Diisocyanate (HDI) in the Sprague-Dawley Rat." This chemical is used in the manufacture of higher molecular weight biuret polyisocyanate resins and trimer polyisocyanate resins. HDI biuret polyisocyanate resins and trimers are mainly used as reactive components of two part polyurethane paint systems for automobile refinishing, industrial maintenance, marine coatings, and other high performance coating systems. For example, the civilian and military aircraft industry uses aliphatic diisocyanate containing paint almost exclusively because of its stability in ultraviolet light. Other consumer uses of HDI are not known at this time.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

List of Subjects

Environmental protection, Test data.

Authority: 15 U.S.C. 2603.

Dated: July 22, 1999.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–19727 Filed 7–30–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–TX–A; FRL–6079–3]

Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Texas's Authorization Application; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** of April 16, 1999 (64 FR 18906) (FRL–6073–6), EPA announced that the State of Texas had submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). The notice also announced a 45–day public comment period and an opportunity to request a public hearing on the application. The document incorrectly listed a certification requirement. This notice corrects that error. In FR Doc. 99–9607, on page 18907, third column, first full paragraph, the second sentence, which reads "The appropriate certification exam must be taken every 3 years for certain disciplines." is hereby removed.

FOR FURTHER INFORMATION CONTACT: Jeffrey Robinson, Regional Lead Coordinator, Environmental Protection Agency, Region VI, 1445 Ross Avenue, Suite 1200, 6PD–T, Dallas, TX 75202–2733. Telephone: 214–665–7577, e-mail address: robinson.jeffrey@epamail.epa.gov.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: May 11, 1999.

Gerald W. Fontenot.

Acting Division Director, Multimedia Planning and Permitting, Region VI.

[FR Doc. 99–19726 Filed 7–30–99; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the Double Tree Hotel, San Diego, California, on August 12, 1999, from 1:00 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Double Tree Hotel, 7450 Hazard Center Drive, San Diego, California 92108.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

July 8, 1999 (Open and Closed)

B. New Business

Regulations

—Transfer of Capital from Banks to Associations [12 CFR Part 615]

Closed Session*

A. Report

—OSMO Report

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: July 28, 1999.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 99–19878 Filed 7–29–99; 1:16 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

Type of Review: Renewal of a currently approved collection.

Title: Certified Statement for Semiannual Deposit Insurance Assessment.

Form Number: 6420/07A.

OMB Number: 3064–0057.

Annual Burden

Estimated annual number of respondents: 21,000.

Estimated time per response: 15 minutes.

Average annual burden hours: 5,250 hours.

Expiration Date of OMB Clearance: August 31, 1999.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before September 1, 1999, to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Certified statements are prepared and submitted semiannually to report and certify deposit liabilities and to compute the assessment payment due for deposit insurance protection.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–19748 Filed 7–30–99; 8:45 am]

BILLING CODE 6714–01–U

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, July 29, 1999, 10:00 a.m., meeting open to the public.

THE FOLLOWING ITEM HAS BEEN WITHDRAWN FROM THE AGENDA: Title 26 Final rules and explanation and justification on documentation required for matching of credit and debit card contributions.

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 99–19843 Filed 7–29–99; 11:37 am]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary.

ACTION: Notice of meeting.

The Advisory Committee on Blood Safety and Availability will meet on August 26, 1999, from 9:00 a.m. to 5:00 p.m. and on August 27, 1999 from 9:00 a.m. to 3:00 p.m. The meeting will take place in the Ticonderoga Room of the Hyatt Regency Hotel on Capitol Hill, 400 New Jersey, NW., Washington, DC 20001. The meeting will be entirely open to the public.

On the morning of August 26, the Committee will consider responses to the deferral of certain former United Kingdom residents from blood donation. That afternoon, the Committee will consider the current availability of blood products, and the current status of the hepatitis C lookback effort. On August 27, the Committee will consider the issue of how federally mandated blood safety initiatives should be financed.

Public comment will be solicited on these topics both days. Public comment will be limited to five minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business August 13, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen D. Nightingdale, M.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Safety, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201. Phone (202) 690–5560 FAX (202) 690–6584 e-mail STEPHENDNIGHTINGALE @osophs.dhhs.gov.

Dated: July 15, 1999.

Stephen D. Nightingale,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 99–19643 Filed 7–30–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–149]

Consultation and Coordination Policy With Indian Tribal Governments

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the final ATSDR policy on conducting consultation and coordination with federally recognized tribal governments. This policy has been finalized after consideration of comments from Agency tribal consultants. The policy is the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Leslie C. Campbell, Acting Tribal Coordinator, Office of Tribal Affairs, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–6337.

SUPPLEMENTARY INFORMATION: The Agency for Toxic Substances and Disease Registry issues the following policy statement:

Consultation and Coordination With Indian Tribal Governments

ATSDR's mission is to prevent exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment.

ATSDR is committed to assisting tribal governments in meeting the environmental health needs of their people. ATSDR continues to work to improve its communication and cooperation with tribes. This new policy is in response to the Presidential Executive Order 13084, Consultation and Coordination With Indian Tribal Governments, May 14, 1998, and affirms the current ATSDR Policy on Government-to-Government Relations with Native American Tribal Governments (61 FR 42255). The policy focuses on environmental health issues related to the release of hazardous substances into the environment.

Consultations between ATSDR and tribal governments will continue to ensure effective collaboration in identifying, addressing, and satisfying the needs of tribal communities affected by hazardous substances. Consultation enables ATSDR staff and tribal members to interactively participate, exchange recommendations, and provide input on environmental health activities.

As defined by ATSDR, the new policy supports: (1) A consultative process with tribal nations and their members to work together to address tribal environmental public health needs; (2) mutual trust, respect, and shared responsibilities between all participating parties; and (3) open communication of information and opinions leading to mutual interaction and understanding.

ATSDR . . .

- Respects and honors the sovereignty of the tribes, the responsibilities and rights to self-governance, and the differences between tribal nations and individuals.
- Consults with tribal governments to ensure community concerns and impacts are carefully considered before the Agency takes action or makes decisions affecting tribal communities.
- Maintains government-to-government relationships with tribal governments.
- Ensures ongoing communication with tribal governments, communities, and individual tribal members to define concerns about possible health impacts from exposure to hazardous substances.

Dated: July 27, 1999.

Donna Garland,

Acting Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 99–19677 Filed 7–30–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00007]

Research on Laboratory Markers of Recent HIV Infection: Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of $500,000 of fiscal year (FY) 2000 funds for a cooperative agreement program for Research on Laboratory Markers for Recent HIV Infection. This program addresses the "Healthy People 2000" priority area of HIV Infection. The purpose of the Program is to support research on laboratory markers that can be used to measure HIV infection incidence from cross-sectional samples and identify recently infected persons.

One example of this approach is provided by a newly described testing algorithm using a modified enzyme immuno assay (EIA) for HIV–1 antibody to identify persons who are in the early period of HIV infection (Janssen et al, JAMA 1998; 280:42–48). Specimens that are positive for HIV antibody by a standard EIA and Western blot are retested with a less sensitive EIA. The method was developed using the Abbott 3A11 EIA as the standard assay and a modified Abbott 3A11 EIA (employing a more dilute specimen and shorter incubation time) as the less sensitive assay. Persons who are HIV-positive on the sensitive assay, but negative on the less sensitive assay, are considered to be recently infected.

The objective is to develop laboratory tests or algorithms for identifying recent HIV infection (e.g., 3–12 months). These might include modifying existing EIAs or developing new serologic assays or testing algorithms. These assays or algorithms should be of sufficient simplicity to permit routine use in public health surveillance and programs.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies: that is, universities, colleges, research institutions, hospitals, other public and private nonprofit, and for-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 specifies that an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 2000 to fund up to two (2) awards. It is expected that the average award will be $250,000. It is also expected that the awards will begin on or about January 2, 2000 and will be made for a 12-month budget period within a project period of up to two (2) years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

Funding will be awarded to applicants proposing different approaches, in order to avoid funding more than one laboratory for the same or very similar research.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for activities under 2. (CDC Activities).

1. Recipient Activities

a. Develop an innovative testing methodology for identifying recent HIV infection, or adapt another commercially available HIV–1 serum EIA to detect early HIV–1 infection in individuals (e.g., 3–12 months), or adapt such methods to other body fluids (oral fluids, urine, etc.), or adapt such methods to rapid HIV testing.

b. Validate methods in appropriate study populations or appropriate panels of specimens using appropriate statistical methods for analysis.

c. Provide results and share data (individual & aggregate) with other collaborators in the field and with CDC.

2. CDC Activities

a. If the research protocol involves human subjects, CDC will assist in the development of a research protocol for

Institutional Review Board (IRB) review by each cooperating institution participating in the research project.

The CDC Institutional Review Board (IRB) will review and approve the protocol initially and on at least an annual basis until the research project is completed.

b. Provide assistance in the design and conduct of the research and statistical analysis.

c. Provide assistance on selected laboratory tests, when requested.

d. Coordinate research activities among diverse sites, when appropriate, as there may be identical samples that require testing by more than one venue.

e. Assist in the analysis of research information and the presentation and publication of research findings.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria Sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than ten (10) double-spaced pages, printed on one side, with one inch margins, and unreduced font.

Budget

1. Submit line-item descriptive justification for personnel, travel, supplies, and other services. Be precise about the purpose of each budget item as it relates to the project.

2. If you request funding for contracts, include the name of the person or firm to receive the contract, the method of selection, the period of performance, the reason for using a contract, and a description of the contracted service requested.

3. Funding levels for year two (2) should be estimated.

Supporting Materials

1. Curriculum vitae and job description of critical staff.

2. Letters of endorsement or collaboration of participating centers, agencies or State or local public health departments.

F. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following internet address: www.CDC.gov...forms or in the application kit. On or before October 4, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" Section of this announcement.

Deadline

Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. The applicant demonstrates the knowledge, ability, and experience necessary to conduct laboratory research on measures of recent HIV infection. (20 points)

2. The applicant demonstrates the ability to obtain and examine appropriate numbers and types of laboratory specimens. (20 points)

3. The applicant presents a sound plan for conducting and evaluating the research, including appropriate statistical analysis. (20 points)

4. The applicant's proposed objectives are measurable, specific, time-phased, and related to required recipient activities and program purpose. (20 points)

5. The applicant demonstrates willingness to cooperate in a study with CDC and other collaborating institutions. (10 points)

6. The size, qualifications, and other time allocation of the proposed staff and the availability of facilities are adequate for the study. (10 points)

7. The budget is reasonable, clearly justified, consistent with the intended use of funds, and allowable. All budget categories should be itemized. (not scored)

8. Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

9. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) The proposed justification when representation is limited or absent; and (c) A statement as to whether the design of the study is adequate to measure differences when warranted. (not scored)

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Progress Reports (semi annual);

2. Financial Status Report (FSR), no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Van Malone, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341.

The following additional requirements are applicable to this program: For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Section 301 of the Public Health Service Act, [42 U.S.C. 241, Section 311, 42 U.S.C. 243], as amended. The Catalog of Federal Domestic Assistance number is 93.943.

J. Where To Obtain Additional Information

Please refer to Program Announcement 00007 when you request information. For a complete program description, information on application procedures, an application package, and business management technical assistance, contact: Van Malone, Grants Management Specialist, Procurement and Grants Office, Announcement 00007, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341, Telephone: (770) 488–2733, Email address: Vxm7@cdc.gov.

For program technical assistance, contact: Donald Ruberti, Senior Public Health Advisor, Prevention Services Research Branch, Division of HIV/AIDS Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mail Stop E46, Atlanta, Georgia 30333, Telephone: (404) 639–2098, Email address: http://www.dor1@cdc.gov. See also the CDC Home Page on the Internet: http://www.cdc.gov

To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

Dated: July 27, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–19675 Filed 7–30–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0926]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Regulations Under the Federal Import Milk Act; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of July 26, 1999 (64 FR 40379). The document announced that a proposed collection of information has been submitted to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1995. The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 99–18927, appearing on page 40379 in the **Federal Register** of Monday, July 26, 1999, the following corrections are made:

1. On page 40379, in the first column, the Docket number is corrected to read "99N–0926"; and in the second column, under the **SUPPLEMENTARY INFORMATION** caption, in the title of the proposed collection of information, the OMB control number "0910–021" is corrected to read "0910–0212".

Dated: July 27, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation

[FR Doc. 99–19688 Filed 7–30–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

International Workshop on the Standardization of Whole Blood Coagulation Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a workshop entitled "International Workshop on the Standardization of Whole Blood Coagulation Devices." The focus of the workshop is to define the issues relating to the calibration of whole blood coagulation assays. Workshop participants will be asked to develop a proposal for standardizing the calibration of these devices. The proposal will be referred to a standards development organization.

DATE: The workshop will be held on August 13, 1999, 1 p.m. to 6 p.m.

ADDRESSES: The workshop will be held at the Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Sheila J. Murdock, Office of Surveillance and Biometrics (HFZ–510), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3060, FAX 301–594–2968, e-mail "coagulation@cdrh.fda.gov".

SUPPLEMENTARY INFORMATION: Whole blood clotting assays are used increasingly in the point of care testing environment. The calibration of these assays against plasma methods is achieved through a variety of approaches. Consequently, the consistency of results between different devices and the traceability of results to plasma methods are variable. Limited correlation between assays can be particularly problematic when monitoring anticoagulant drugs.

The workshop will focus on defining the issues relating to the calibration of whole blood coagulation devices. Workshop participants will collaborate on a proposal for the development of a standardized approach to the calibration of these assays. The proposal will be referred to a standards development organization.

In order to make the best use of limited workshop time, guest speakers will be asked to write a draft standardization proposal prior to the date of the workshop. This document will be posted on the CDRH website after July 15, 1999, at "http://www.fda.gov/cdrh/meetings/coag.html". Members of the public will be encouraged to e-mail comments and recommendations about this document to "coagulation@cdrh.fda.gov". Summaries of all e-mailed comments sent with author's name will be posted to the website in order to provide a forum for ongoing discussion up to the week of the workshop.

Those persons interested in attending the workshop should fax or e-mail their registration including name, title, affiliation (i.e., end-user, government nonregulatory, government regulatory, industry, professional organization, proficiency testing organization, trade press, standards development organization), mailing address, telephone number, fax number, e-mail address, and area of interest. There is no charge to attend the workshop, however, advance registration is requested due to limited seating. If you need special accommodations due to a disability, please contact Shirley L. Meeks at least 7 days in advance of the meeting, at the Office of Systems Management (HFZ–17), Center for Devices and Radiological Health, Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1283, ext. 105, FAX 301–827–2929, e-mail "SLM@CRDH.FDA.GOV".

Registration forms and the preliminary agenda may also be accessed at the CDRH website at "http://www.fda.gov/cdrh/meetings/coag.html". The workshop agenda includes presentations by guest speakers, small breakout group discussions and deliberation and refining of a standardization proposal. The final plenary session will include reports to the assembly from the smaller group discussions. Time will be provided for public comments at the end of this session. The draft standardization proposal will be finalized according to the

recommendations of workshop participants. A summary report of the workshop will be available on CDRH's website approximately 15 working days after the workshop. The CDRH home page may be accessed at "http://www.fda.gov/cdrh".

Dated: July 23, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–19689 Filed 7–30–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Drug Testing Advisory Board; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Drug Testing Advisory Board of the Center for Substance Abuse Prevention in September 1999.

The first day (September 8) of the Drug Testing Advisory Board meeting will be closed from 8 a.m. until 4:30 p.m. and involves the review of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, this portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(2), (4), and (6) and 5 U.S.C. App.2, sec. 10(d).

The second day (September 9) of the Drug Testing Advisory Board meeting will be open from 8 a.m. until 3:30 p.m. The open session will include a roll call, general announcements, and a discussion of the information submitted by industry representatives regarding the use of alternative matrices (hair, sweat, oral fluids) and on-site tests to test for drugs of abuse. A public comment period will be scheduled during the open session. If anyone needs special accommodations for persons with disabilities please notify the Contact listed below.

An agenda for this meeting and a roster of board members may be obtained from: Ms. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20857, Telephone: (301) 443–6014.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Drug Testing Advisory Board.

Meeting Date: September 8–9, 1999.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Closed: September 8, 1999; 8 a.m.–4:30 p.m.

Open: September 9, 1999; 8 a.m. –3:30 p.m.

Contact: Donna M. Bush, Executive Secretary, Telephone: (301) 443–6014 and FAX: (301) 443–3031.

Sandi Stephens,

Committee Management Officer, Substance Abuse and Mental Health, Services Administration.

[FR Doc. 99–19687 Filed 7–30–99; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Coastal Barrier Improvement Act of 1990; Amendments to the Coastal Barrier Resources System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the Fish and Wildlife Service, have changed the boundaries on three maps of the Coastal Barrier Resources System, in Florida and South Carolina, as directed by Congress. In addition, recent legislation reactivates changes to eight maps in Florida that had been invalidated by a court decision on March 8, 1998. These changes are effective without the need to revise maps. We are using this notice to inform the public about the distribution and availability of the revised and reactivated maps.

DATES: The boundary revisions for these units became effective on October 21, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Benjamin N. Tuggle, Department of the Interior, U.S. Fish and Wildlife Service, Division of Habitat Conservation, (703) 358–2161.

SUPPLEMENTARY INFORMATION:

Background

In 1982, Congress passed the Coastal Barrier Resources Act (P.L. 97–348) to restrict Federal spending that could foster development of undeveloped coastal barriers along the Atlantic and Gulf of Mexico coasts. In the Coastal Barrier Improvement Act of 1990 (P.L. 101–591), Congress amended the CBRA to broaden the definition of a coastal barrier, and approved a series of maps entitled "Coastal Barrier Resources System" dated October 24, 1990. These maps identify and depict those coastal barriers located on the coasts of the Atlantic Ocean, Gulf of Mexico, and the Great Lakes, and in Puerto Rico and the Virgin Islands that are subject to the Federal funding limitations outlined in the CBRA.

The CBRA also defines our responsibilities regarding the System maps. We have official custody of these maps, and prepare and distribute copies of the maps. We published a notice of the filing, distribution, and availability of the maps entitled "Coastal Barrier Resources System" dated October 24, 1990, in the **Federal Register** on June 6, 1991, (56 FR 26304–26312). We have announced all subsequent map revisions in the **Federal Register**.

Section 101(e) of Public Law 105–277, enacted on October 21, 1998, requires us to revise the maps of Coastal Barrier Resources System Unit FL–35/FL–35P in Monroe County, Florida, and Unit SC–03 in Georgetown County, South Carolina. Section 134 of Public Law 105–277 requires us to revise the map of Unit M09 in Colleton County, South Carolina. Section 335 of Public Law 105–277 gives "the force and effect of law" to a set of eight maps entitled "Coastal Barrier Resources System", dated October 24, 1990, revised November 12, 1996, that were previously announced in the **Federal Register** on May 28, 1997 (62 FR 28891–28892). These eight maps were invalidated by a court order on March 5, 1998 (*Coastal Alliance* v. *Babbitt*, Civil Action No. 97–1344 (D. D.C.)), but were reinstated as of October 21, 1998, by Section 335 of Public Law 105–277.

Three Revised Maps in Florida and South Carolina

Consistent with Congressional instructions, the following three maps were modified:

North Key Largo Unit FL–35/FL–35P—Congress excluded Pumpkin Key from the System. Congress also removed some developed property of the Ocean Reef community from the System.

Huntington Beach Unit SC–03—Congress changed the western boundary of this unit to remove developed property from the System.

Edisto Island Unit M09—Congress changed the southern and western boundary of this unit back to the boundary it established in 1982.

Eight Reactivated Maps in Florida

We substituted the eight maps dated "October 24, 1990, revised November 12, 1996," for the previous maps for the units. These maps are described in the May 28, 1997, **Federal Register** (62 FR 28891–28892) and pertain to the following units:

Conch Island Unit P05;
Matanzas River Unit P05A;
Vero Beach Unit P10;
Hutchinson Island Unit P11;
Frank B. McGilvrey Unit P11A;
Sanibel Island Unit P18;
Cedar Keys Unit P25; and
Moreno Point Unit P32.

How To Get Copies of the Maps

The Service has given copies of the revised System maps to the House of Representatives Committee on Resources and the Committee on Banking and Financial Services, the Senate Committee on Environment and Public Works, and to each appropriate Federal, State, or local agency having jurisdiction over the areas in which the modified units are located.

You can purchase copies of System maps from the U.S. Geological Survey, Earth Science Information Center, P.O. Box 25286, Denver, Colorado 80225. The cost is $4.00 per map, plus a $3.50 shipping and handling fee for the entire order. Maps can also be viewed at the following Fish and Wildlife Service offices:

Washington Office—All System Maps

U.S. Fish and Wildlife Service, Division of Habitat Conservation, 4401 N. Fairfax Drive Room 400, Arlington, Virginia 22203, (703) 358–2201

Southeast Regional Office—all System Maps for NC, SC, GA, FL, AL, MS and LA

Region 4, U.S. Fish and Wildlife Service, 1875 Century Blvd., Atlanta, Georgia 30345, (404) 679–7125

Field Offices

Field Supervisor, U.S. Fish and Wildlife Service, 6620 S. Point Dr. South, #310, Jacksonville, Florida 32216 (904) 232–2580
Florida: maps for Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Dixie, Levy, Pasco Counties.
Field Supervisor, U.S. Fish and Wildlife Service, 1360 U.S. Highway 1, #5, Vero Beach, FL 32961, (561) 562–3909
Florida: maps for Pinellas, Hillsborough, Manatee, Sarasota, Charlotte, Lee, Collier, Monroe, Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River Counties.
Field Supervisor, U.S. Fish and Wildlife Service, 1612 June Ave., Panama City, FL 32405–3721, (904) 769–0552
Florida: maps for Wakulla, Franklin, Gulf, Bay, Walton, Okaloosa, Santa Rosa, Escambia Counties.
Field Supervisor, U.S. Fish and Wildlife Service, 217 Fort Johnson Road, Charleston, SC 29422–2559, (843) 727–4707
South Carolina: maps for all counties

Dated: July 6, 1999.

Marshall P. Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. 99–19646 Filed 7–30–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–014030

Applicant: Tim H. Pham, Kingstowne, VA

The applicant requests a permit to import six captive-bred Asian bonytongue fish (*Scleropages formosus*) from a CITES-registered breeder, Panda Aquatic, Singapore, for the purpose of enhancement of the species through captive-breeding.

PRT–015107

Applicant: Ralph E. Bolda, Alpena, MI

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–015128

Applicant: Wildlife Conservation Society, Flushing, NY

The applicant requests a permit for interstate commerce of three male and two female captive-bred thick-billed parrots (*Rhynchopsitta p. pachyrhyncha*) from Florida, for the purpose of enhancement of the survival of the species through captive breeding.

PRT–014509

Applicant: Henry Doorly Zoo, Omaha, NE

The applicant requests a permit to import from Thailand and Indonesia biological samples taken from wild and captive-held (wild-born) Javan banteng (*Bos javanicus*) for the purpose of enhancement of the species through scientific research. This notification covers activities conducted by the applicant for a period of five years.

PRT–01437

Applicant: International Center for Gibbon Studies, Santa Clarita, CA

The applicant requests a permit to import one pileated gibbon (*Hylobates pileatus*) from the Twycross Zoo, England, for the purpose of enhancement of the species through propagation and scientific research.

PRT–784934

Applicant: Jeffrey R. Powell, New Haven, CT

The applicant requests renewal of their permit to import from Ecuador blood samples taken from wild Galapagos tortoises (*Geochelone nigra*) for the purposes of enhancement of the species through scientific research. This notification covers activities conducted by the applicant for a period of five years.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 26, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–19713 Filed 7–30–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces the Summer 1999 field trip and meeting of the Aquatic Nuisance Species Task Force. The focus of the field trip and meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The field trip will take place from 12:30 p.m. to 6 p.m., Tuesday, August 17, 1999. The Aquatic Nuisance Species Task Force will meet from 8:30

a.m. to 5 p.m., Wednesday, August 18, 1999, and 8:30 a.m. to 12 p.m., Thursday, August 19, 1999.

ADDRESSES: The field trip will begin at the Ramada Inn Governor House Hotel, 621 S. Capitol Way, Olympia, Washington. The meeting will be held at the John A. Cherberg Building, Washington State Capitol Campus, Senate Hearing Room 4, 14th Avenue and Water Street, Olympia, Washington.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: sharon__gross@fws.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a field trip and meeting of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The field trip will consist of a visit to a local shellfish processing plant with a briefing about the impacts of invasive species and what the industry in general is doing to assist in prevention. The field trip will also include a visit to a docket ship with a presentation on ballast water. Topics to be covered during the meeting Wednesday include briefings about regional nonindigenous species problems and initiatives, presentation to the Task Force of a proposal for mitten crab control and management in California, an update on green crab control activities, a presentation of a Cooperative management and Prevention Program for *Caulerpa taxifolia*, an update on the implementation of the Invasive Species Executive Order and discussion of several other activities. Topics to be covered during the meeting on Thursday include updates from the Task Force's regional panels, a discussion of the Coast Guard's ballast water management program, and upcoming ballast water management workshops.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: July 27, 1999.

Rowan Gould,

Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries.

[FR Doc. 99–19710 Filed 7–30–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–99–1020–00]

Gila Box Riparian National Conservation Area Advisory Committee Meeting

AGENCY: Bureau of Land Management, DOI.

ACTION: Gila Box Riparian National Conservation Area Advisory Committee Meeting.

SUMMARY: The purpose of this notice is to announce the next meeting of the Gila Box Riparian National Conservation Area Advisory Committee Meeting. The purpose of the Advisory Committee is to provide informed advice to the Safford Field Office Manager on management of public lands in the Gila Box Riparian National Conservation Area. The committee meets as needed, generally between two and four times a year.

The meeting will take place at the Bureau of Land Management, Safford Field Office on August 27, 1999, commencing at 1:00 p.m. The topics that will be discussed; include review of the draft implementation plan and schedule, proposed management of new Eagle Creek parcel of land just acquired within the NCA boundary, and status of Safford Land Exchange EIS as it affect the NCA. A public comment period will be provided from 3:30 p.m. to 4:00 p.m.

DATES: Meeting will be held on August 27, 1999 starting at 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jon Collins, Gila Box Project Coordinator, Safford Field Office, 711 14th Ave., Safford AZ 85546, Telephone (520) 348–4400.

Dated: July 22, 1999.

Vernon L. Saline,

Acting Safford Field Manager.

[FR Doc. 99–19650 Filed 7–30–99; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–05; N–63019 and N–63020]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and public purpose lease/conveyance correction.

SUMMARY: On March 18, 1999 a Notice of Realty Action was published in the **Federal Register** on page 13441 for BLM serial numbers N–63021 and N–63022. The serial numbers should have been, N–63019 and N–63020. All of the other information in the NORA was correct.

Dated: July 2, 1999.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 99–19651 Filed 7–30–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's) prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Shell Deepwater Production, Inc.; Equilon Pipeline Company, L.L.C.; and Tejas Offshore Gathering, L.L.C.; Pipeline Activity, SEA Nos. G–15988, G–14711, and G–14283.	West Delta Area, Block 143, Leases, OCS–G 15988, 14711, and 14283, 19 miles offshore, south of Plaquemines Parish, LA.	06/30/99
Dauphin Island Gathering, Partners, Pipeline Activity, SEA No. G–21022.	Viosca Knoll Area, Blocks 823, 779, and 735; Main Pass Area, South and East Addition, Blocks 281, 282 261, 260, 248, and 225; Lease OCS–G 21022, 56 miles offshore Alabama.	05/18/99

Activity/operator	Location	Date
Equilon Pipeline Company, L.L.C., Pipeline Activity, SEA No. G–21047.	Main Pass Area, South and East Addition, Block 283, Lease OCS–G 21047, 41 miles from the nearest coastline.	07/20/99
Mobile Exploration & Producing U.S. Inc., Pipeline Activity, SEA Nos. P–12047, P–12062, and P–12063.	Mobile Area, Blocks 822 to 823, Leases OCS–G 5056 and 5057, 3 to 5 miles south of Dauphine, Island, Mobile County, Alabama.	04/14/99
OEDC Exploration & Production, L.P.'s and Chevron, U.S.A., Development Activity/Pipeline Activity, SEA Nos. S–4906, P–12209, P–12210, P–12111, P–12112, P–12113, P–12163, G–21035, and G–21036.	Destin Dome Area, Blocks 1 and 2, Leases OCS–G 6397 and 6398, 18 miles from the nearest shoreline.	06/25/99
Murphy Exploration & Production Company, Exploration Activity, SEA No. N–6343.	Mobile Area, Blocks 98 and 999, Leases OCS–G 18126 and 19888, 15 miles south of Baldwin County, Alabama.	05/24/99
Shell Deepwater Development Inc., Exploration Activity, SEA No. S–4912.	Alaminos Canyon Area, Block 660, Lease OCS–G 8580, 175 miles south of Galveston County, Texas.	05/21/99
PennzEnergy Exploration, and Production, L.L.C., Development Activity, SEA No. S–4694UA.	High Island Area, Blocks A–351 and A–368, Leases OCS–G 2429 and 2433, 120 miles from the Texas shoreline.	06/07/99
EEX Corporation, Structure Removal Operations, SEA Nos. ES/SR 99–001A, 99–072, and 99–073.	West Cameron Area, Block 406 and Vermilion Area, Blocks 37 and 266; Leases OCS–G 11789, 15162, and 8672; 65 miles south of Cameron Parish, Louisiana.	05/21/99
Murphy Exploration & Production Co. Structure Removal Operations, SEA No. ES/SR 99–004A.	South Pelto Area, Block 20, Lease OCS 0074, 10 miles South of Terrebonne Parish, Louisiana.	06/07/99
Texaco Exploration & Production, Inc., SEA Nos. ES/SR 99–024A and 99–025A.	Eugene Island Area, Blocks 313, Lease OCS–G 2608, 74 miles south of St. Mary Parish, Louisiana.	06/30/99
Forest Oil Corporation, Structure Removal Operations, SEA No. ES/R 99–029.	Eugene Island Area, Block 342, Lease OCS–G 2319, 69 miles south of St. Mary Parish, Louisiana.	05/12/99
Samedan Oil Corporation, Structure Removal Operations, SEA No. ES/SR 99–036.	West Delta Area, Block 18, Lease OCS–G 5669, 12 miles southwest of Plaquemines Parish, Louisiana.	04/16/99
Seneca Resources Corporation, Structure Removal Operations, SEA No. ES/SR 99–037.	West Cameron Area, Block 552, Lease OCS–G 13850, 96 miles south of Cameron Parish, Louisiana.	04/21/99
Seneca Resources Corporations, Structure Removal Operations, SEA Nos. ES/SR 99–037A and 99–075A.	West Cameron Area, Block 552 and Brazos Area, Block 504, Leases OCS–G 13850 and 3469, 29 miles south of Matagorda County, Texas, and 96 miles south of Cameron Parish, Louisiana.	06/18/99
Chevron U.S.A., Structure Removal Operations, SEA No. ES/SR 99–038.	West Delta Area, Block 20, Lease OCS–G 7789, 8 miles south of Plaquemines Parish, Louisiana.	05/03/99
Louisiana Land and Exploration Company, Structure Removal Operations, SEA Nos. ES/SR 99–039, 99–041, and 99–043.	Ship Shoal Area, Block 128; Vermilion Area, Block 120; and Eugene Island Area, Block 110; Leases OCS–G 8707, 13883, and 10722; 27–31 miles offshore the Louisiana coast.	05/04/99
Louisiana Land and Exploration Company, Structure Removal Operations, SEA Nos. 99–040 and 99–042.	Galveston Area, Block 313 and Matagorda Island Area, Block 639, Leases OCS–G 11313 and 4545, 14 to 23 miles offshore the Texas coast.	05/04/99
Burlington Resources Offshore Inc., Structure Removal Operations, SEA Nos. 99–044, through 99–047.	Brazos Area, Blocks 412, 413, and 400; West Cameron Area, Block 54; Leases OCS–G 5003, 9014, 9013, and 14304; 13 miles south of Matagorda, Texas and 9 miles south of Cameron Parish, Louisiana.	04/30/99
Walter Oil and Gas Corporation, Structure Removal Operations, SEA No. ES/SR 99–048.	Vermilion Area, Block 95, Lease OCS–G 5408, 25 miles south of Vermilion Parish, Louisiana.	05/12/99
Murphy Exploration & Production, Structure Removal Operations, SEA Nos. ES/SR 99–049 through 99–058.	Ship Shoal Area, Blocks 90, 93, 113, 114, 118, 119, and 136; South Pelto Area, Blocks 12 and 20; Leases OCS–G 5540 and 3790, OCS 063, 067, 064, 068, 069, 072, and 074; 9 to 19 miles south of Taerrebonne Parish, Louisiana.	05/11/99
Murphy Exploration & Production Company, Structure Removal Operations, SEA Nos. ES/SR 99–059 and 99–060.	Eugene Island Area, Blocks 24 and 26, Leases OCS–G 2893 and 3147, 9 miles south of St. Mary Parish, Louisiana.	05/06/99
Cockrell Oil Corporation, Structure Removal Operations, SEA No. ES/SR 99–061.	East Cameron Area, Block 199, Lease OCS–G 9457, 54 miles south of Cameron Parish, Louisiana.	04/30/99
Chevron U.S.A., Structure Removal Opertions, SEA No. ES/SR 99–062.	South Timbalier Area, Block 35, Lease OCS–G 3336, 9 miles south of Terrebonne Parish, Louisiana.	05/11/99
Walter Oil & Gas Corporation, Structure Removal Operations, SEA No. ES/SR 99–063.	South Marsh Island Area, Block 36 Lease OCS–G 7699, 44 miles southwest of Terrebonne Parish, Louisiana.	05/13/99
Walter Oil & Gas Corporation, Structure Removal Operations, SEA No. ES/SR 99–064.	High Island Area, Block A–22, Lease OCS–G 6180, 36 miles south of Jefferson County, Texas.	05/13/99
CNG Producing Company, Structure Removal Operations, SEA Nos. ES/SR 99–065 through 99–067.	High Island Area, Blocks A–462, A–477, and A–570, Lease OCS–G 3478, 6226, and 2390, 99 miles southeast of Galveston, Texas.	06/01/99
OEDC Exploration & Production, L.P., Structure Removal Operations, SEA No. ES/SR 99–068.	Viosca Knoll Area, Block 117, Lease OCS–G 6872, 24 miles South of Dauphin Island, Alabama.	05/20/99
Texaco Exploration and Production Inc., Structure Removal Operations, SEA No. ES/SR 99–069.	High Island Area, Block 111, Lease OCS–G 2354, 19 miles south of Jefferson County, Texas.	05/19/99
Marathon Oil Company, Structure Removal Operations, SEA No. ES/SR 99–070.	West Cameron Area, Block 80, Lease OCS–G 16113, 11 miles south of Cameron Parish, Louisiana.	05/18/99
CNG Producing Company, Structure Removal Operations, SEA No. ES/SR 99–071.	Vermilion Area, Block 313, Lease OCS–G 1172, 82 miles south of Vermilion Parish, Louisiana.	06/04/99
Snyder Oil Corporation, Structure Removal Operations, SEA No. ES/SR 99–074.	Vermilion Area, Block 282, Lease OCS–G 2084, 80 miles south of Vermilion Parish, Louisiana.	06/04/99

Activity/operator	Location	Date
Seneca Resources Corporation, Structure Removal Operations, SEA No. ES/SR 99–075.	Brazos Area, Block 504, Lease OCS–G 3469, 29 miles southwest of Matagorda, Texas.	06/04/99
Newfield Exploration Company, Structure Removal Operations, SEA No. ES/SR 99–076.	East Cameron Area, Block 89, Lease OCS–G 0935, 22 miles south of Cameron Parish, Louisiana.	06/04/99
EEX Corporation, Structure Removal Operations, SEA No. ES/SR 99–077.	East Cameron Area, Block 234, Lease OCS–G 11841, 80 miles south of Cameron Parish, Louisiana.	06/04/99
Ocean Energy, Inc., Structure Removal Operations, SEA Nos. ES/SR 99–078 and 99–079.	Galveston Area, Blocks 357 and 349, Leases OCS–G 12505 and 7251, 26 miles southeast of Galveston, Texas.	06/07/99
Unocal Corporation, Structure Removal Operations, SEA No. ES/SR 99–080.	Matagorda Island Area, Block 670, Lease OCS–G 6048, 22 miles southeast of Calhoun County, Texas.	06/09/99
Unocal Corporation, Structure Removal Operations, SEA Nos. ES/SR 99–083 through 99–087.	Vermilion Area, Blocks 40 and 42, Leases OCS–G 2869 and 0208, 11 miles south of Vermilion Parish, Louisiana.	07/02/99
Santa Fe Snyder Corporation, Structure Removal Operations, SEA No. ES/SR 99–088.	Main Pass Area, Block 202, Lease OCS–G 5714, 30 miles offshore the Louisiana Coast.	07/02/99
Hall Houston Oil Company, Structure Removal Operations, SEA Nos. ES/SR 99–100 and 99–101.	Eugene Island and Ship Shoal Areas, Blocks 28 and 184 respectively, Leases OCS–G 5479 and 12947 respectively, 11 to 29 miles offshore the Louisiana coast.	07/12/99

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, LA 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis of determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: July 26, 1999.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 99–19746 Filed 7–30–99; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Draft Environmental Impact Statement and Public Hearing; Denali National Park and Preserve, Alaska

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the draft environmental impact statement for access to Spruce Creek; Notice of public hearings for access to inholding, and notice of significant restriction to subsistence use, Denali National Park and Preserve, Alaska.

SUMMARY: The National Park Service (NPS) announces the availability of a draft environmental impact statement (EIS) and subsistence evaluation on a request for access to an inholding, Spruce #4, in the Kantishna Hills of Denali National Park and Preserve. The document describes and analyzes the environmental effects of the applicants' proposed access and three other alternatives for access. The no-action alternative also is evaluated. The subsistence evaluation includes a description and analysis of impacts on subsistence uses and needs. This notice announces the dates and locations of public hearings: (1) to solicit comments on the draft EIS; (2) as required by section 810 of the Alaska National Interest Lands Conservation Act (ANILCA) for an action that may significantly restrict subsistence uses, and; (3) as required by ANILCA Title XI regulations at 43 CFR 36.6 (a) (4) and 36.10 (d).

DATES: Comments on the draft EIS and subsistence evaluation must be received no later than September 30, 1999. Hearing locations, dates, and times are listed under Supplementary Information below.

ADDRESSES: Comments on the draft EIS and subsistence evaluation should be submitted to the Superintendent, Denali National Park and Preserve, Post Office Box 9, Denali Park, Alaska 99755. Comments also can be sent by email to: spruceEIS@nps.gov. Copies of the draft EIS and subsistence evaluation and a 15-page Executive Summary of the draft EIS are available by request from the aforementioned address. The documents also are available on the web at: www.nps.gov/dena/plans/sprucecreek.

FOR FURTHER INFORMATION CONTACT: Bud Rice, EIS Project Leader, National Park Service, Alaska Support Office, Anchorage, Alaska. Telephone: (907) 257–2466.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the Alaska National Interest Lands Conservation Act of 1980 (Pub. L. 96–487, as amended), and 43 CFR 36.6 and 36.10 (d), the National Park Service has prepared a draft EIS and subsistence evaluation for requested access to an inholding, Spruce #4, in Denali National Park and Preserve, Alaska. ANILCA requires the Secretary of Interior shall provide adequate and feasible access for economic and other purposes to inholdings surrounded by conservation system units in Alaska, subject to reasonable regulations. The regulations at 43 CFR part 36, "Access into Conservation System Units in Alaska," specify that the NPS shall permit the right-of-way requested by the applicant unless it finds that the route or method of access would cause significant adverse impacts, jeopardize public health and safety, be inconsistent with the management plans for and purposes of the area, or is unnecessary to accomplish the applicant's land use objective. If the NPS makes one of these findings, then another alternative route or method of access shall be specified that provides adequate and feasible access. The NPS has analyzed alternatives to the proposal and mitigating measures to minimize adverse environmental impacts to the park, but no agency-preferred alternative has been identified in the draft EIS. Section 810 of ANILCA requires an evaluation of "effect of the proposed permit on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or deposition of public lands needed for subsistence purposes." Notice to subsistence committees and regional councils and a hearing are required steps for authorizing a federal land use that would significantly restrict subsistence uses. Two of the draft EIS alternatives would significantly restrict subsistence uses.

Informational meetings and public hearings on the draft EIS and subsistence evaluation are scheduled for the locations, dates, and times indicated below:

Anchorage, AL

August 23, 1999, 7–10 p.m.; University of Alaska—Anchorage, Business Education Building, Room BEB–101.

Fairbanks, AL

August 24, 1999, 7–10 p.m.; Noel Wien Library Auditorium; 1215 Cowles Street.

McKinley Village, AL

August 25, 1999, 7–10 p.m.; Community Center; Mile 230 George Parks Highway.

Kantishna, AL

August 26, 1999, 9–11 p.m.; Kantishna Roadhouse library; Mile 90 Denali Park Road.

Washington, DC

September 14, 1999, 2–4 p.m.; Main Interior Building Auditorium; 1849 C Street NW.

The first hour of each meeting will be an open house format. Representatives of the NPS will be available to provide information about the access request and the draft EIS and to answer questions in an informal setting. Public testimony on the draft EIS and subsistence evaluation will be recorded at the public hearing that will begin at the second hour.

Background

The Draft Environmental Impact Statement for Access to Spruce Creek considers an access proposal and four alternatives to a 20-acre inholding on Spruce Creek in the Kantishna Hills of Denali National Park and Preserve. The inholding lies about 10 miles east of mile 88 of the Denali Park Road. The owners have applied to the NPS for a right-of-way permit to upgrade and maintain a gravel road and airstrip to access, construct, and operate a remote lodge with 30 double-occupancy cabins for overnight visitors. The draft EIS alternatives differ in terms of route, means, or a combination of both, as well as impact on subsistence. The requested access and four alternatives are proximate to but outside of the Denali Wilderness Area.

The proposed Moose Creek Route Alternative (the applicants' proposed action) would be approximately a 10-mile improved road over an existing mining access route, where practical, from the Denali Park Road at mile 88 to the Spruce #4 parcel of land. This alternative includes a spur road to an extension of the Glen Creek landing strip for air access in winter and for optional summer access. This route would cross Moose Creek, Spruce Creek, and other streams a total of 30 times in the form of fords. This alternative would result in a significant restriction of subsistence uses.

Alternatives to the proposed action are:

- North Bench Route Alternative would follow the first three miles of the Moose Creek route. This 9.7-mile route would cross Moose Creek with a new bridge and then traverse benches north of Moose Creek to Spruce #4, crossing Rainy, Dry, and Glen Creeks once each with a reinforced ford. About 5 miles of new road and extension of the Glen Creek landing strip would need to be constructed. This alternative would result in a significant restriction of subsistence uses.
- Skyline Drive Alternative would follow a ridge-top mining access route from mile 91 of the Denali Park Road to Glen Creek and over a bench to Spruce Creek. This 12-mile route would follow 10 miles of existing mining access routes, require 2 miles of new road, and ford Glen Creek 24 times. The existing Kantishna Airstrip would be used as needed for air access. This alternative would not result in a significant restriction of subsistence uses.
- Air-Access-Only Alternative would require a 2,500-foot new airstrip adjacent to the Spruce #4 parcel of land with a short spur road. This alternative would not result in a significant restriction of subsistence uses.
- No-Action Alternative represents no change from the current management direction. This alternative is included for comparative purposes. The affirmative requirements of Title XI of ANILCA and its implementing regulations preclude selection of this alternative absent a change in circumstances. Those circumstances could include acquisition of the property by the NPS or withdrawal of the application. In the meantime, the applicants could apply for access with no road or airstrip improvements. This alternative would not result in a significant restriction of subsistence uses.

Facilities common to each action alternative would include a lodge with 30 cabins and related utility, maintenance, and staff facilities. Guests would be transported to the lodge by the park Visitor Transport System buses to Kantishna and from there by two 15-passenger vans or by single engine aircraft. About 30 guests would be transported in and out of the lodge each day during the summer season, and in the winter season about 10 people would be transported in and out of the lodge once every 3 days. Recreational activities would include hiking, wildlife viewing, gold panning, sport fishing, dog mushing, skiing, and snowshoeing. About 13 people would be employed during the winter season and 17 to 21 people during the summer season.

Paul R. Anderson,

Acting Regional Director, Alaska.

[FR Doc. 99–19786 Filed 7–30–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Denali National Park and Preserve and the Chairperson of the Denali Subsistence Resource Commission announce a forthcoming meeting of the Denali National Park Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order by the Chair.
(2) Roll call and confirmation of quorum.
(3) Superintendent's welcome and introductions.

(4) Approval of minutes of last meeting.
(5) Additions and corrections to the agenda.
(6) Business:
a. Draft Subsistence Management Plan.
(7) Public and other agency comments.
(8) Set time and place of next SRC meeting.
(9) Adjournment.

DATES: The meeting date is: Friday, August 6, 1999, 9 a.m. to 5 p.m.

ADDRESSES: The meeting location is: McKinley Village Community Center, McKinley, AK.

FOR FURTHER INFORMATION CONTACT: Hollis Twitchell, Subsistence Coordinator or Andrea Hansen, Denali National Park, P.O. Box 9, Denali Park, AK 99755. Phone (907) 683–9544.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Acting Regional Director.

[FR Doc. 99–19787 Filed 7–30–99; 8:45 am]

BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for three OSM grant forms—OSM–47 (Budget Information Report), OSM–49 (Budget Information and Financial Reporting) and OSM–51 (Performance and Program narrative).

DATES: Comments on the proposed information collection must be received by October 1, 1999, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implements the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that OSM will Be submitting to OMB for extension or re-approval. This collection is a series of three forms used by State and Tribal regulatory and reclamation authorities to request grant funds and describe program performance.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Budget information, financial reporting, and performance reporting forms.

OMB Control Number: 1029–0059.

Summary: State and Tribal reclamation and regulatory authorities are requested to provide specific budget and program information as part of the grant application and reporting processes authorized by the Surface Mining Control and Reclamation Act.

Bureau Form Numbers: OSM–47, OSM–49, OSM–51.

Frequency of Collection: Semiannually and annually.

Description of Respondents: State and Tribal regulatory and reclamation authorities.

Total Annual Responses: 131.

Total Annual Burden Hours: 655 hours.

Dated: July 28, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–19788 Filed 7–30–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request Office of Management and Budget's (OMB) renewal approval for the collection of information for 30 CFR part 80, Abandoned mine reclamation fund—fee collection and coal production reporting.

DATES: Comments on the proposed information collection must be received by October 1, 1999, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implements the Paperwork Reduction Act of 1995 (Pub. L. 104–13), requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that OSM will be submitting to OMB for extension. This collection was assigned OMB clearance number 1029–0090, and is contained in 30 CFR part 870, Abandoned mine reclamation fund—fee collection and coal production reporting.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR part 870—Abandoned mine reclamation fund—fee collection and coal production reporting.

OMB Control Number: 1029–00090.

Summary: Section 402 of SMCRA requires fees to be paid to the Abandoned Mine Reclamation Fund by coal operators on the basis of coal tonnage produced. This information collection request is needed to support verification of the moisture deduction allowance. The information will be used by OSM during audits to verify that the amount of excess moisture taken by the operator is appropriate.

Frequency of Collection: Quarterly.

Description of Respondents: Coal mine operators.

Total Annual Responses: 1,000.

Total Annual Burden Hours: 750.

Dated: July 28, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–19789 Filed 7–30–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Proposed Agency Information Collection; Comment Request

AGENCY: United States International Trade Commission.

ACTION: Notice of proposed information collection and request for comment.

EFFECTIVE DATE: July 27, 1999.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the U.S. International Trade Commission intends to seek approval from the Office of Management and Budget for extension of a currently approved collection (OMB No.: 3117–0188) for the purpose of obtaining feedback from readers of Commission reports to help meet regular program assessment requirements. Under Public Law 103–62, the Government Performance and Results Act of 1993, the U.S. International Trade Commission is seeking a long-term, continuing means for conducting program evaluations by using the proposed one-page collection, ITC Reader Satisfaction Survey, to help determine the extent to which USITC reports effectively meet the needs of customers. Comments concerning the proposed information collection are requested in accordance with 5 CFR 1320.8(d).

DATES: To be assured of consideration, written comments must be received at the Commission within 60 days of publication of this notice.

ADDRESSES: Signed comments should be submitted to Donna Koehnke, Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: The proposed information collection, for which the Commission intends to request approval from OMB for extension, is published with this notice. Copies of the draft Supporting Statement to be submitted to the Office of Management and Budget will be posted on the Commission's World Wide Web site at http://www.usitc.gov or may be obtained from Larry Brookhart, Office of Industries, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436 (telephone no. 202–205–3418). Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal, (telephone no. 202–205–1810).

SUPPLEMENTARY INFORMATION:

Request for Comments

Comments are solicited as to: (1) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) minimization of the burden of the proposed information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of the Proposed Information Collection

Public Law 103–62, the Government Performance and Results Act of 1993, enacted on August 3, 1993, sets forth objectives for Federal agencies to, among other things, initiate measures to improve information on program performance, and specifically, to focus on evaluating results, quality, and customer satisfaction. The one-page survey asks for voluntary input from respondents by circling responses that indicate an assessment of reader satisfaction regarding the value and quality of Commission reports. The "tear-out" survey is being placed inside the cover of certain reports issued by the Commission (excluding Title VII reports for which a separate survey is being designed), including all public studies requested by the Congress and the United States Trade Representative, or reports conducted by the USITC on its own motion, pursuant to section 332 of the Tariff Act of 1930 (19 U.S.C. 1332(g)), and other public reports that meet agency program requirements for a research program set forth in its Strategic Plan (available on the agency's World Wide Web site at http://www.usitc.gov). Following are highlights of the proposed information collection:

(1) Number of forms to be submitted: One single-page form

(2) Title of form: USITC Reader Satisfaction Survey

(3) Type of request: Proposed extension of a currently approved collection

(4) Frequency of use: Annual or on occasion information gathering

(5) Description of Respondents: Interested parties receiving most all public reports issued by the USITC, with the exception of Title VII reports

(6) Estimated number of respondents: 2,500 annually

(7) Estimated total number of hours to complete the forms: 625 hours annually

(8) Response burden: Less than 15 minutes for each individual respondent

(9) Information requested on a voluntary basis is not proprietary in nature, but rather for program evaluation purposes and is not intended to be published. Commission treatment of questionnaire responses will be followed; responses will be aggregated and will not be presented in a manner that will reveal the individual parties that supplied the information.

Although the survey will be made available on the Commission's web site, responses must be in paper form.

Issued: July 27, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

ITC READER SATISFACTION SURVEY

Title of Report

The U.S. International Trade Commission (ITC) is interested in your voluntary comments (burden <15 minutes) to help us assess the value and quality of our reports, and to assist us in improving future products. Please return survey by fax (202–205–3161) or by mail to the ITC.

Your name and title (please print; *responses below not for attribution*):

_____

Please specify information in this report most useful to you/your organization: _____

Was any information missing that you consider important? Yes (specify below) No

If yes, please identify missing information and why it would be important or helpful to you: _____

Please assess the value of this ITC report (answer below by circling all that apply): SA—Strongly Agree; A—Agree; N—No Opinion/Not Applicable; D—Disagree; SD—Strongly Disagree

Report presents new facts, information, and/or data.	SA	A	N	D	SD
Staff analysis adds value to facts, information, and/or data.	SA	A	N	D	SD
Analysis is unique or ground breaking.	SA	A	N	D	SD
Statistical data are useful to me/my organization.	SA	A	N	D	SD
Subject matter and analysis are timely.	SA	A	N	D	SD
ITC is the only or the preferred source of this information.	SA	A	N	D	SD
If not, please identify from what other source the information is available _____.					

Please evaluate the quality of this report (answer below by circling all that apply): SA—Strongly Agree; A—Agree; N—No Opinion/Not Applicable; D—Disagree; SD—Strongly Disagree

Written in clear and understandable manner.	SA	A	N	D	SD
Report findings or executive summary address key issues.	SA	A	N	D	SD
Figures, charts, graphs are helpful to understanding issue.	SA	A	N	D	SD
Analysis throughout report answers key questions.	SA	A	N	D	SD
Report references variety of primary and secondary sources.	SA	A	N	D	SD
Sources are fully documented in text or footnotes.	SA	A	N	D	SD

Please provide further comment on any of the above performance measures, as appropriate:

Suggestions for improving this report and/or future reports: _____

Other topics/issues of interest or concern: _____

Please provide your Internet address and update your mailing address below, if applicable: _____

OMB No.: 3117–0188

[FR Doc. 99–19742 Filed 7–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–856 (Preliminary)]

Certain Ammonium Nitrate From Russia

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–856 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Russia of certain ammonium nitrate, provided for in subheading 3102.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by September 7, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by September 13, 1999.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 23, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on July 23, 1999, by the Committee for Fair Ammonium Nitrate Trade, ("COFANT"), an ad hoc committee whose members include a number of U.S. producers of the subject product. These U.S. producers are Air Products & Chemicals, Inc., Allentown, PA; Mississippi Chemical Corp., Yazoo City, MS; El Dorado Chemical Co., Oklahoma City, OK; Nitram, Inc., Tampa, FL; La Roche Industries, Inc., Atlanta, GA; and Wilgro Fertilizer, Inc., Celina, TX.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on August 13, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–205–3185) not later than August 11, 1999, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 18, 1999, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

Issued: July 27, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19741 Filed 7–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-474–475 (Review)]

Chrome-Plated Lug Nuts From China and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on chrome-plated lug nuts from China and Taiwan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on chrome-plated lug nuts from China and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is September 21, 1999. Comments on the adequacy of responses may be filed with the Commission by October 15, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Elizabeth Haines (202–205–3200), or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1991, the Department of Commerce issued antidumping duty orders on imports of chrome-plated lug nuts from China and Taiwan (56 F.R. 47736 and 47737). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–028. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as chrome-plated and stainless steel-capped lug nuts. One Commissioner defined the Domestic Like Product differently.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as producers of chrome-plated and stainless steel-capped lug nuts. One Commissioner defined the Domestic Industry differently.

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the Order Date is September 20, 1991.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 21, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is October 15, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1990.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 27, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19754 Filed 7–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–469 (Review)]

Electroluminescent Flat Panel Displays From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on electroluminescent flat panel displays from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on electroluminescent flat panel displays from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is September 21, 1999. Comments on the adequacy of responses may be filed with the Commission by October 15, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–027. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

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five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Elizabeth Haines (202–205–3200), or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1991, the Department of Commerce issued an antidumping duty order on imports of electroluminescent flat panel displays from Japan (56 FR 43741). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as high-information content flat panel displays and display glass therefor. Certain Commissioners defined the Domestic Like Product differently.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of high-information content flat panel displays and display glass therefor. The Commission also found that the Domestic Industry did not include integrators, assemblers, or the company In Focus. Certain Commissioners defined the Domestic Industry differently.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is September 4, 1991.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 21, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is October 15, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1990.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 27, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19755 Filed 7–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–527 (Review)]

Extruded Rubber Thread From Malaysia

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on extruded rubber thread from Malaysia.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on extruded rubber thread from Malaysia would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is September 21, 1999. Comments on the adequacy of responses may be filed with the Commission by October 15, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Elizabeth Haines (202–205–3200), or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1992, the Department of Commerce issued an antidumping duty order on imports of extruded rubber thread from Malaysia (57 FR 46150). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Malaysia.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as extruded rubber thread. Certain Commissioners defined the Domestic Like Product differently.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of extruded rubber thread. Certain Commissioners defined the Domestic Industry differently.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is October 7, 1992.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 21, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is October 15, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1991.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods;

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–032. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 27, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19757 Filed 7–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–516 (Review)]

Fresh Kiwifruit From New Zealand

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on fresh kiwifruit from New Zealand.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on fresh kiwifruit from New Zealand would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is September 21, 1999. Comments on the adequacy of responses may be filed with the Commission by October 15, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Elizabeth Haines (202–205–3200), or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On June 2, 1992, the Department of Commerce issued an antidumping duty order on imports of fresh kiwifruit from New Zealand (57 FR 23203). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is New Zealand.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as fresh Hayward-variety kiwifruit.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as growers of fresh Hayward-variety kiwifruit.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is June 2, 1992.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 21, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is October 15, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

INFORMATION TO BE PROVIDED IN RESPONSE TO THIS NOTICE OF INSTITUTION: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1991.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in tray equivalents and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in tray equivalents and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s'') operations on that product during calendar year 1998 (report quantity data in tray equivalents and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–030. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 27, 1999

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19759 Filed 7–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303–TA–21 (Review) and 731–TA–451, 461, and 519 (Review)]

Gray Portland Cement and Clinker From Japan, Mexico, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders and suspended investigations on gray portland cement & clinker from Japan, Mexico, and Venezuela.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders and termination of the suspended investigations on gray portland cement & clinker from Japan, Mexico, and Venezuela would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is September 21, 1999. Comments on the adequacy of responses may be filed with the Commission by October 15, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Elizabeth Haines (202–205–3200), or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On the dates listed below, the Department of Commerce issued antidumping duty orders on the subject imports:

Order date	Product/country	Inv. No.	F.R. cite
8/30/90	Gray portland cement and clinker/Mexico	731–TA–451	55 F.R. 35443.
5/10/91	Gray portland cement and clinker/Japan	731–TA–461	56 F.R. 21658.

On the dates listed below, the Department of Commerce suspended the following countervailing duty and antidumping duty investigations:

Order date	Product/country	Inv. No.	F.R. cite
2/27/92	Gray portland cement and clinker/Venezuela	731–TA–519	57 F.R. 6706.
3/17/92	Gray portland cement and clinker/Venezuela	303–TA–21	57 F.R. 9242.

The Commission is conducting reviews to determine whether revocation of the orders and termination of the suspended investigations would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–026. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Japan, Mexico, and Venezuela.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as gray portland cement and cement clinker.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as producers of gray portland cement and cement clinker, including "grinding only" operations.

In all cases, the Commission concluded that "appropriate circumstances" existed for a regional analysis of the industry; however, the Commission found different regions to be appropriate based on the facts of each investigation. In its determination concerning Mexico, two Commissioners found that either the southern-tier region (the Gulf States and California) or the alternative southern-tier region (excludes northern California and the inland counties of the Gulf States) was appropriate and that no compelling case was made for one rather than the other. For purposes of the determination, they used the southern-tier region because it was the more difficult region within which to reach an affirmative finding. One Commissioner found that the alternative southern-tier region was appropriate. In its determination concerning Japan, the Commission found the regional industry to consist of producers in southern California; certain Commissioners found the regional industry to consist of producers in the State of California. In its determinations concerning Venezuela, the Commission found the regional industry to consist of producers in Florida. For purposes of this notice, you should report information separately on each of the following Domestic Industries: (1) Producers of gray portland cement and cement clinker, including "grinding only" operations, located in the southern-tier region (the Gulf States and California); (2) producers of gray portland cement and cement clinker, including "grinding only" operations, located in southern California; (3) producers of gray portland cement and cement clinker, including "grinding only" operations, located in Florida; and, producers of gray portland cement and cement clinker, including "grinding only" operations, located in the United States as a whole.

(5) The *Order Dates* are the dates that the antidumping duty orders under review became effective and the investigations were suspended. In these reviews, the Order Dates are as presented in the preceding tabulations.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 21, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is October 15, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall

notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders and termination of the suspended investigations on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since the years the petitions were filed. The Subject Merchandise, the Subject Countries, and the years the petitions were filed are listed below:

Subject merchandise/subject country	Years
Gray portland cement and clinker/Mexico	1989
Gray portland cement and clinker/Japan	1990
Gray portland cement and clinker/Venezuela	1991

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: July 27, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19756 Filed 7–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–309 (Review) and 731–TA–528 (Review)]

Magnesium From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on magnesium from Canada.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on magnesium from Canada would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is September 21, 1999. Comments on the adequacy of responses may be filed with the Commission by October 15, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Elizabeth Haines (202–205–3200), or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1992, the Department of Commerce issued the following orders:

Product/country	Inv. No.	F.R. cite
Pure magnesium/Canada	731–TA–528	57 F.R. 39390.
Alloy magnesium/Canada	701–TA–309	57 F.R. 39392.
Pure magnesium/Canada	701–TA–309	57 F.R. 39392.

The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce. In this case Commerce identified two classes or kinds of subject merchandise: pure magnesium and alloy magnesium.

(2) The *Subject Country* in these reviews is Canada.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined one Domestic Like Product consisting of primary magnesium. Certain Commissioners defined the Domestic Like Product differently. A U.S.-Canada Binational Panel subsequently remanded the case to the Commission, with instructions to conduct a separate injury analysis for the following two industries: (1) Alloy magnesium and (2) pure magnesium. For purposes of this notice, you should report information separately on each of the following two Domestic Like Products: (1) Alloy magnesium and (2) pure magnesium.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–031. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as producers of primary magnesium. Certain Commissioners defined the Domestic Industry differently. A U.S.-Canada Binational Panel subsequently remanded the case to the Commission, with instructions to conduct a separate injury analysis for the following two industries: (1) Alloy magnesium and (2) pure magnesium. For purposes of this notice, you should report information separately on each of the following two Domestic Industries: (1) Alloy magnesium and (2) pure magnesium.

(5) The *Order Date* is the date that the countervailing duty and antidumping duty orders under review became effective. In these reviews, the Order Date is August 31, 1992.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 21, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is October 15, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

Please provide the requested information separately for each Domestic Like Product, as defined above, and for each of the products identified by Commerce as Subject Merchandise. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1991.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in metric tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of each Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of each Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in metric tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in metric tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 27, 1999

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19758 Filed 7–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–497 (Review)]

Tungsten Ore Concentrates from China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on tungsten ore concentrates from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on tungsten ore concentrates from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is September 21, 1999. Comments on the adequacy of responses may be filed with the Commission by October 15, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 2, 1999.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–029. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Elizabeth Haines (202–205–3200), or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On November 21, 1991, the Department of Commerce issued an antidumping duty order on imports of tungsten ore concentrates from China (56 FR 58681). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as all grades of tungsten ore concentrates.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of all grades of tungsten ore concentrates.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is November 21, 1991.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 21, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is October 15, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To be Provided in Response to This Notice of Institution:

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1991.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in metric tons of contained tungsten (MTW) and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in MTW and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in MTW and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 27, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19753 Filed 7–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–539–B, C, E, and F (Review)]

Uranium From Kyrgyzstan, Russia, Ukraine, and Uzbekistan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty order on uranium from Ukraine and suspended antidumping investigations on uranium from Kyrgyzstan, Russia, and Uzbekistan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the

antidumping duty order on uranium from Ukraine and termination of the suspended investigations on uranium from Kyrgyzstan, Russia, and Uzbekistan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is September 21, 1999. Comments on the adequacy of responses may be filed with the Commission by October 15, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Elizabeth Haines (202–205–3200), or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1992, the Department of Commerce suspended antidumping duty investigations on imports of uranium from Kyrgyzstan, Russia, Ukraine, and Uzbekistan (57 FR 49220, Oct. 30, 1992). On August 30, 1993, the Department of Commerce issued an antidumping duty order on imports of uranium from Ukraine (58 FR 45483). The Commission is conducting reviews to determine whether revocation of the order and termination of the suspended investigations would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Kyrgyzstan, Russia, Ukraine, and Uzbekistan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original preliminary determination concerning the U.S.S.R. and in its original final determination concerning Ukraine, the Commission defined the Domestic Like Product as coextensive with the articles under investigation.[2] Certain Commissioners defined the Domestic Like Product differently in the final determination concerning Ukraine.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original preliminary determination concerning the U.S.S.R., the Commission defined the Domestic Industry as producers of the product coextensive with the articles under investigation, including the U.S. Department of Energy's uranium enrichment operations. In its original final determination concerning Ukraine, the Commission defined the Domestic Industry as producers of uranium, including uranium concentrate producers, natural uranium hexafluoride converters, the U.S. Enrichment Corporation, and fuel fabricators. Certain Commissioners defined the Domestic Industry differently.

(5) The *Order Dates* are the dates that the antidumping duty order under review became effective and/or the investigations were suspended. In the reviews concerning the suspended investigations, the Order Date is October 16, 1992. In the review concerning the antidumping duty order, the Order Date is August 30, 1993.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 21, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is October 15, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order and the termination of the suspended investigations on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1991.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–033. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

[2] The articles covered in the preliminary investigation concerning the U.S.S.R. and the final investigation concerning Ukraine included natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U_{235} and its compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing uranium enriched in U_{235} or compounds of uranium enriched U_{235}. The articles covered in the final investigation concerning Ukraine also included low-enriched uranium and highly-enriched uranium.

Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 27, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19760 Filed 7–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–204–2]

Wheat Gluten: Monitoring Developments in the Domestic Industry

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 204(a) of the Trade Act of 1974 (19 U.S.C. 2254(a)) (the Act).

SUMMARY: The Commission instituted the investigation for the purpose of preparing the report to the President and the Congress required by section 204(a)(2) of the Trade Act of 1974 on the results of its monitoring of developments with respect to the domestic wheat gluten industry since the President imposed quantitative limitations on imports of wheat gluten [1] effective June 1, 1998.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and B (19 CFR part 206).

Background

Following receipt of a report from the Commission in March 1998 under section 202 of the Trade Act of 1974 (19 U.S.C. 2252) containing an affirmative determination and remedy recommendation, the President, on May 30, 1998, pursuant to section 203 of the Trade Act of 1974 (19 U.S.C. 2253), issued Proclamation 7103 (as amended by Proclamation 7202 of May 28, 1999), imposing import relief in the form of quantitative limitations on imports of wheat gluten for a period of 3 years and 1 day. Section 204(a)(1) of the Trade Act of 1974 (19 U.S.C. 2254(a)(1)) requires that the Commission, so long as any action under section 203 of the Trade Act remains in effect, monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition. Section 204(a)(2) requires that whenever the initial period of an action under section 203 of the Trade Act exceeds 3 years, the Commission shall submit a report on the results of the monitoring under section 204(a)(1) to the President and the Congress not later than the mid-point of the initial period of the relief, or by December 1, 1999, in this case. Section 204(a)(3) requires that the Commission hold a hearing in the course of preparing each such report.

EFFECTIVE DATE: July 27, 1999.

FOR FURTHER INFORMATION CONTACT: Joanna Bonarriva (202–708–4083), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Participation in the investigation and service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than 14 days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Public hearing.—As required by statute, the Commission has scheduled a hearing in connection with this investigation. The hearing will be held beginning at 9:30 a.m. on October 7, 1999 at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 28, 1999. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 1, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by §§ 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in *camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is October 1, 1999. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is October 15, 1999. In addition, any person who has not entered an appearance as a party to the investigation may submit, on or before October 15, 1999, a written statement concerning the matters to be addressed in the Commission's report to the President. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of § 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with § 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 204(a) of the Trade Act of 1974; this notice is published pursuant to § 206.3 of the Commission's rules.

Issued: July 28, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–19743 Filed 7–30–99; 8:45 am]

BILLING CODE 7020–02–P

[1] Wheat gluten is classified in subheadings 1109.00.10 and 1109.00.90 of the Harmonized Tariff Schedule of the United States.

DEPARTMENT OF JUSTICE

Attorney General

[A.G. Order No. 2237–99]

Certification of the Attorney General; Chickasaw County, Mississippi

In accordance with Section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States in Chickasaw County, Mississippi. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made on August 6, 1965, under Section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on August 7, 1965 (30 FR 9897).

Dated: July 28, 1999.

Janet Reno,

Attorney General of the United States.

[FR Doc. 99–19845 Filed 7–29–99; 12:15 pm]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 27, 1999, Calbiochem-Novabiochem Corporation, 10394 Pacific Center Court, Attn: Receiving Inspector, San Diego, California 92121–4340, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II

The firm plans to import small quantities of the listed controlled substances to make reagents for distribution to the biomedical research community.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 1, 1999.

This procedure is to be conducted simultaneously with and independent of the procedure described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 1, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–19640 Filed 7–30–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 25, 1999, Chiragene, Inc., 7 Powder Horn Drive, Warren, New Jersey 07059, made application by renewal to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501) a

basic class of controlled substance listed Schedule II.

The firm plans to import the phenylacetone to manufacture amphetamine.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted as a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 6, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–19639 Filed 7–30–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Violence Against Women Grants Office; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; STOP Violence Against Women Formula Grants 29 C.F.R. Part 90 Certification.

The Department of Justice, Office of Justice Programs, Office of Violence Against Women G Grants Office has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection list below. This proposed information collection was previously published in the **Federal Register** on December 11, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until September 1, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility:

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Overview of this information:

(1) *Type of information collection:* Reinstatement of collection for which OMB Clearance has expired.

(2) *The title of the form/collection:* Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. Violence Against Women Grants Office, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State Governments. Other: none.

The STOP Violence Against Women Formula Grants were authorized through the Violence Against Women Act, Title IV of the Violent Crime Control and Law Enforcement Act of 1994, to make funds available to States to combat domestic violence, sexual assault, and stalking crimes against women.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The time burden of the 56 respondents to complete the certification form is estimated to be 15 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the certification form is 14 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: July 27, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–19678 Filed 7–30–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Preventon; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; New Collection Drug-Free Communities Support Program Site Visit Protocol.

The Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by August 10, 1999. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–3122, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Kellie Dressler, 202–514–4817, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW, Room 3163, Washington, DC 20531, or should be electronically mailed to the Internet address dresslek@ojp.usdoj.gov, or should be faxed to 202–353–9096.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Drug-Free Communities Support Program Site Visit Protocol.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected pubic who will be asked or required to respond, as well as a brief abstract: Primary: Designated Drug-Free Communities Support Program Coalition representatives, which may include not-for-profit institutions, Local or Tribal government. Other: None. This collection will gather information on promising practices used by diverse community anti-drug coalitions to improve prevention efforts and reduce substance abuse among youth. The site visit protocol will facilitate: (1) provision of technical assistance to grantees; and (2) documentation of coalition and community factors that contribute to various short- and long-term outcomes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are 15 sites and one respondent per site for a total of 15 respondents. It is estimated that the site visit protocol will require an average of 12 hours per site to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the site visit protocol is 210 burden hours. If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: July 23, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–19679 Filed 7–30–99; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–102]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Bios Group LP, of Santa Fe, New Mexico, has applied for an exclusive patent license to practice the invention described and claimed in NASA Case No. ARC–14366, entitled, Masked Proportional Routing, for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objection to the proposed grant of a license should be sent to NASA Ames Research Center.

DATES: Responses to this notice must be received by October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Padilla, Patent Counsel, Ames Research Center, Mail Stop 202A–3, Moffett Field, CA 94035–1000; telephone (650) 604–5104.

Dated: July 22, 1999.

Edward A. Frankle,

General Counsel

[FR Doc. 99–19638 Filed 7–30–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–101]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Preferred Engineering, a subsidiary of Preferred Utilities Manufacturing Corp., has applied for an exclusive license to practice the invention described and claimed in a U.S. Patent No. 5,730,806 entitled "Gas-Liquid Supersonic Cleaning and Cleaning Verification Spray System," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Program Manager, Dual Use and Licensing, John F. Kennedy Space Center.

DATES: Responses to this notice must be received by October 1, 1999.

FOR FURTHER INFORMATON CONTACT: Melanie R. Chan, Program Manager, Dual Use and Licensing, John F. Kennedy Space Center, Mail Code: MM–E, Kennedy Space Center, FL 32899, telephone (407) 867–6367.

Dated: July 23, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–19637 Filed 7–30–99; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR Part 30—Rules of General Applicability to Domestic Licensing of Byproduct Material.

3. The form number if applicable: N/A.

4. How often the collection is required: Required reports are collected and evaluated on a continuing basis as events occur. There is a one-time submittal of information to receive a license. Renewal applications are submitted every 10 years. Information submitted in previous applications may be referenced without being resubmitted. In addition, recordkeeping must be performed on an on-going basis.

5. Who will be required or asked to report: All persons applying for or holding a license to manufacture, produce, transfer, receive, acquire, own, possess, or use radioactive byproduct material.

6. An estimate of the number of responses: There are 6,225 NRC licensee responses and 17,302 Agreement State licensee responses annually for a total of 23,527.

7. The estimated number of annual respondents: The number of annual respondents: 5,529 NRC licensees and 16,000 Agreement State licensees. The total number of respondents is 21,529.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 47,032 hours for the NRC licensees (19,459 reporting + 27,573 recordkeeping) and 111,753 hours for the Agreement State licensees (38,344 reporting + 73,409 recordkeeping). The total burden is 158,785.

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not Applicable

10. Abstract: 10 CFR part 30 establishes requirements that are applicable to all persons in the United States governing domestic licensing of radioactive byproduct material. The application, reporting and recordkeeping requirements are necessary to permit the NRC to make a determination whether the possession, use, and transfer of byproduct material is in conformance with the Commission's regulations for protection of the public health and safety.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 1, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0017), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 22nd day of July 1999.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–19698 Filed 7–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–344]

Pacificorp, Trojan Plant; Notice of Consideration of Approval of Application Regarding Proposed Merger and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating License No. NFP–1 for the Trojan Plant to the extent currently held by Pacificorp, as a co-owner of the Trojan Plant.

According to an application for approval filed by Pacificorp, Pacificorp plans to merge with Scottish Power, NA General Partnership ("ScottishPower") and become an indirect wholly owned subsidiary of ScottishPower, thereby effecting an indirect transfer of Pacificorp's interest in the Trojan license to Scottish Power. No physical changes to the Trojan facility or operational changes are being proposed in the application. No direct transfer of the license would result from the merger.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transfer of control will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By August 23, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Mary A. Murphy, Esq., Leboeuf, Lamb, Greene, and MacRae L.L.P., 1875 Connecticut Avenue, Washington, D.C. 20009–5728; George M. Galloway, Esq., Stoel Rives L.L.P., Standard Insurance Center, 900 SW Fifth Avenue, Suite 2300, Portland, OR 97204–1268; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by September 1, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated May 24, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, Portland, OR 92707.

Dated at Rockville, Maryland this 27th day of July 1999.

For the Nuclear Regulatory Commission.

Michael T. Masnik,

Chief, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–19696 Filed 7–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–77 and DPR–79 issued to the Tennessee Valley Authority (TVA, the licensee) for operation of the Sequoyah Nuclear Plant (SQN), Units 1 and 2, located in Hamilton County, Tennessee.

The proposed amendment would change the SQN Technical Specification (TS) requirements, Sections 3.8.2.1 and 3.8.2.2, by providing an allowance to use a fully qualified and tested spare vital bus electrical inverter in place of any of the eight normal inservice inverters.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated

The proposed changes to the onsite power distribution systems of the SQN TSs will not alter the safety function of the inverters or the 120-V [volt] vital instrument power boards. While additional automatic and manual transfer capabilities have been added, the function of the inverters will remain the same and the availability of a spare inverter will provide improved capability to tolerate inverter failures and support maintenance activities. These improvements will reduce the potential for unit trips and required shutdowns as a result of inverter failures. The new design, along with the operating requirements, have been evaluated and determined to not present the potential to increase the probability of an accident. In addition, the inverters and the associated 120-V vital instrument power boards are utilized to support instrumentation that monitor critical plant parameters to aid in the detection of accidents and to support the mitigation of accidents, but are not considered to be an initiator of a design basis accident. Therefore, the probability of an accident is not increased by the proposed changes to the TSs and the potential for unit shutdowns will be minimized.

The functions of the inverters remain the same based on the proposed change to the TSs. Other design changes, that are independent of the requested change, will improve the ability of the inverters to supply power for the identification and mitigation of accidents. Since the inverter functions and their operation will not be affected by the proposed TS change, the consequences of an accident will not be increased although the consequences should be further minimized as a result of the inverter design changes.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The inverters and the 120-V vital instrument power boards are not considered to be an initiator of a design basis accident. These features provide power to instrumentation that support the identification and mitigation of accidents as well as system control functions during normal plant operations. The functions of the inverters are not altered by the proposed TS change and will not create the possibility of a new or different accident.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The plant setpoints and limits that are utilized to ensure safe operation and detect accident conditions are not impacted by the proposed TS change. The inverters and 120-V vital instrument power boards will continue to provide reliable power to the safety-related instrumentation for the identification and mitigation of accidents and in support of plant operation. The ability to utilize spare inverters that can provide the desired level of redundancy will enhance the safety functions during periods of inverter maintenance or failure that would otherwise have to rely on a single power source without a backup source. Therefore, the margin of safety is not reduced based on the additional capability to utilize a spare inverter that enhances the level of safety without change to plant safety limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed

determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 1, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET10H, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 24, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 26th day of July 1999.

For the Nuclear Regulatory Commission.

Ronald W. Hernan,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–19697 Filed 7–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–123]

University of Missouri, Rolla, Nuclear Research Reactor, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of a license amendment to Facility Operating License No. R–79, issued to University of Missouri, Rolla (the licensee) for operation of the University of Missouri, Rolla Research Reactor (UMRR).

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow extension of the license expiration time from November 20, 1999, to January 14, 2005, for the UMRR as requested by the licensee on May 24, 1999, in accordance with the provisions of 10 CFR 50.90. The licensee submitted an Environmental Report on June 24, 1999.

Need for the Proposed Action

The proposed action is necessary for the continued operation of the UMRR in order to continue instruction, training, and research at the University of Missouri, Rolla.

Environmental Impact of the Proposed Action

The UMRR is located at the University of Missouri, Rolla campus in a metal building on the east side of the campus near 14th Street and Pine Street.

The UMRR is a low power (200 kilowatts), pool-type research reactor (200 kilowatts). The NRC licensed the facility in 1961 at 10 kilowatts and increased maximum authorized power level to 200 kilowatts in 1966. The facility license was renewed in 1985. Since about 1985, the facility has operated about 9 megawatt-hours per year on average. During that time, the gaseous radiological release has been about 100 millicuries/year of Argon-41. Liquid releases have been minimized and radiological liquid releases have been eliminated since about 1994. Solid releases of radioactive material have averaged about 70 microcuries since about 1985. Currently, there are no plans to change any operating characteristics of the reactor during the license extension period.

The Commission concludes that the radiological effects of the continued operation will be minimal based on past radiological releases. The radiological exposures for facility operations have been within regulatory limits. Conditions are not expected to change.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

In addition, the environmental impact associated with operation of research reactors has been generically evaluated by the staff and is discussed in the attached generic evaluation. This evaluation concludes that there will be no significant environmental impact associated with the operation of research reactors licensed to operate at power levels up to and including 2 megawatts thermal and that an Environmental Impact Statement is not required for the issuance of construction permits or operating licenses for such facilities. We have determined that this generic evaluation is applicable to operation of the UMRR and that there are no special or unique features that would preclude reliance on the generic evaluation.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

The alternative to the proposed action for the Research Reactor Facility is to deny the application (i.e., "no action" alternative). If this were the case, the licensee has indicated that they would apply for license renewal and operate under the timely renewal provisions of 10 CFR 2.109 until the Commission renewed or denied the license renewal application. With operation under timely renewal or renewal, the actual conditions of the reactor would not change. If the Commission denied license renewal, UMRR Operations would stop and decommissioning would be required with a likely small impact on the environment.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Environmental Assessment prepared for the renewal of University of Missouri, Rolla's license in January 1985.

Agencies and Persons Contacted

On June 30, 1999, the staff consulted with the Missouri Environmental Public Health Official, Gary McNutt, regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 24, 1999, as supplemented in a letter dated June 24, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 23rd day of July 1999.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Chief, Events Assessment, Generic Communications, and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 99–19695 Filed 7–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

Northeast Nuclear Energy Company, Millstone Nuclear Power Station, Unit 1; Issuance of Final Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director of the Office of Nuclear Reactor Regulation has issued a Final Director's Decision with regard to a Petition dated August 21, 1995, and supplemented on August 28, 1995, submitted by George Galatis and We the People, Inc. (the Petitioners), requesting action under

Title 10 of the Code of Federal Regulations, Section 2.206 (10 CFR 2.206). The Petition pertains to Millstone Nuclear Power Station, Unit 1, operated by Northeast Nuclear Energy Company (licensee).

The Petitioners requested that the NRC (1) suspend the license for the Millstone Unit 1 facility for a period of 60 days after the unit is brought into compliance with the license and the design basis; (2) revoke the operating license until the facility is in full compliance with the terms and conditions of its license; (3) perform a detailed independent analysis of the offsite dose consequences of the total loss of spent fuel pool water; and (4) take enforcement action pursuant to 10 CFR 50.5 and 50.9. As bases for their requests, the Petitioners raised the following three issues: (1) the licensee has knowingly, willingly, and flagrantly operated Millstone Unit 1 in violation of License Amendment Nos. 39 and 40; (2) License Amendment Nos. 39 and 40 for Millstone Unit 1 are based on material false statements made by the licensee in documents submitted to the NRC; and (3) the license amendment proposed in a letter dated July 28, 1995, should be denied and the licensee should be required to operate in full conformance with License Amendment No. 40. By letter dated October 26, 1995, the staff informed the Petitioners that Issue 3 was determined to be a request for a licensing action and therefore, was beyond the scope of 10 CFR 2.206.

In a Partial Director's Decision dated December 26, 1996, the Acting Director of the Office of Nuclear Reactor Regulation partially granted Requests 1, 2, and 3 of the Petition on the basis of the staff's technical review of the core offloading issues presented by the Petitioners. The reasons for that decision were explained in the "Partial Director's Decision Pursuant to10 CFR 2.206" (DD–96–23).

As stated in the Partial Director's Decision, the staff noted that the focus of the Petition was on assertions of wrongdoing on the part of the licensee in certain of its actions and, at the time, that the assertions were still being reviewed by the staff. The staff has completed its review in this area and for the reasons given in the "Final Director's Decision Pursuant 10 CFR 2.206" (DD–99–09), Request 4 of the Petition is partially granted.

Additional information is included in the "Final Director's Decision Pursuant to 10 CFR 2.206" (DD–99–09), the complete text of which follows this notice and which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555–0001, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360 and at the Waterford Library, Attn: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385.

As provided in 10 CFR 2.206(c), a copy of this Final Director's Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 27th day of July 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Final Director's Decision Pursuant to 10 CFR 2.206

I. Introduction

On August 21, 1995, George Galatis and We the People, Inc. (Petitioners), filed a Petition with the Executive Director for Operations of the U.S. Nuclear Regulatory Commission (NRC) pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). A supplement to the Petition was submitted on August 28, 1995. These two submittals will hereinafter be referred to as the "Petition."

The Petition raised three issues regarding the Millstone Nuclear Power Station, Unit 1 (Millstone Unit 1), operated by Northeast Nuclear Energy Company (NNECO or the licensee). First, the Petitioners asserted that the licensee has knowingly, willingly, and flagrantly operated Millstone Unit 1 in violation of License Amendment Nos. 39 and 40. Specifically, Petitioners asserted that NNECO had offloaded more fuel assemblies into the Millstone Unit 1 spent fuel pool (SFP) during refueling outages than permitted under these license amendments. Second, Petitioners asserted that License Amendments Nos. 39 and 40 for Millstone Unit 1 are based on material false statements made by the licensee in documents submitted to the NRC. Third, Petitioners asserted that the license amendment proposed by the licensee under cover of a letter dated July 28, 1995, regarding offloading of the entire core of spent fuel assemblies at Millstone Unit 1, should be denied and the licensee should be required to operate in full conformance with License Amendment No. 40.

On the basis of these assertions, the Petitioners requested that the NRC (1) institute a proceeding under 10 CFR 2.202 to suspend the license for the Millstone Unit 1 facility for a period of 60 days after the unit is brought into compliance with the licensing basis and the design basis, (2) revoke the operating license for the Millstone Unit 1 facility until it is in full compliance with the terms and conditions of its license, (3) perform a detailed independent analysis of the offsite dose consequences of the total loss of SFP water, before reinstatement of the license, and (4) take enforcement action against NNECO pursuant to 10 CFR 50.5 and 50.9. Finally, Petitioners requested that the proposed license amendment sought by NNECO be denied.

In the supplement to the Petition dated August 28, 1995, the Petitioners made additional assertions in support of their first and third issues. Specifically, in support of Issue 1, the Petitioners asserted that the licensees for Millstone Units 2 and 3 and Seabrook Unit 1 also performed full core offloads in violation of their licenses. In support of Issue 3, the Petitioners asserted that there is a material false statement in a submission used to support a previous Millstone Unit 3 license amendment request, and that there is an unanalyzed condition in the Millstone Unit 3 Updated Final Safety Analysis Report in that system piping had not been analyzed for the full core offload normal end-of-cycle event. Also, with regard to Seabrook Station Unit 1, the Petitioners asserted that there are Technical Specification violations related to criticality analysis and gaps in Boraflex material.

By letter dated October 26, 1995, the NRC informed the Petitioners that the Petition had been referred to the Office of Nuclear Reactor Regulation pursuant to 10 CFR 2.206 of the Commission's regulations for preparation of a response. The NRC also informed the Petitioners that the NRC staff would take appropriate action within a reasonable time regarding the specific concerns raised in the Petition. Additionally, the NRC staff informed the Petitioners that their request with regard to issues associated with the requested license amendment (i.e., Petitioners' third issue) was not within the scope of 10 CFR 2.206 and thus was not appropriate for consideration under 10 CFR 2.206.

In a Partial Director's Decision (DD–96–23) dated December 26, 1996, the staff documented its technical review of the full core offload issue at Millstone Units 1, 2, and 3 and Seabrook Unit 1. The staff concluded that Millstone Units 1 and 3 and Seabrook Unit 1 could safely offload full cores. Additionally, the staff found that Millstone Unit 2 was not routinely performing full core offloads as asserted by the Petitioners. However, the staff's followup of SFP issues raised by the Petitioners led, in part, to the identification of a broad spectrum of configuration management concerns that had to be corrected before the Commission allowed restart of any Millstone unit.

On August 14, 1996, the NRC staff issued a Confirmatory Order establishing an Independent Corrective Action Verification Program (ICAVP) for each Millstone unit to ensure that the plant's physical and functional characteristics were in conformance with its licensing and design basis. The ICAVP was performed and completed for Millstone Units 2 and 3 to the satisfaction of the NRC before the Commission allowed the plants to restart.[1] To the extent that Millstone Unit 1 permanently ceased operation, as stated in the Partial Director's Decision, the staff determined that the Petitioners' requests for suspension and revocation of the Millstone Unit 1 operating license was partially granted. The staff further stated that it had evaluated spent fuel accidents beyond the design bases and, to this extent, the Petitioners' request to perform analyses of such accidents was also partially granted.

In the Partial Director's Decision, the staff stated that since the Petitioners' letter of August 28, 1995, contained assertions relating to the third issue (that the license amendment proposed by the licensee under cover of a letter dated July 28, 1995, should be denied) and that the issue was not appropriate for consideration under 10 CFR 2.206, the staff would forward its findings to the Petitioners by separate correspondence. In a letter to the Petitioners dated July 1, 1999, the staff addressed these assertions.

In the Partial Director's Decision, the staff stated that it was still considering the Petitioners' assertions that the licensee knowingly, willingly, and flagrantly operated Millstone Unit 1 in violation of License Amendment Nos. 39 and 40 and submitted material false statements to obtain License Amendment Nos. 39 and 40 (as they support the Petitioners' fourth request). As explained below, the NRC staff has taken actions that, in part, grant the Petitioners' request.

[1] The staff notes that by letter dated July 21, 1998, the licensee informed the NRC of its decision to permanently shut down Millstone Unit 1. Upon the permanent shutdown of Millstone Unit 1, the staff determined that the requirement to perform an ICAVP at Millstone Unit 1 was no longer necessary.

II. Discussion

Request for Enforcement Action Against NNECO Pursuant to 10 CFR 50.5 and 50.9

The Petitioners based their requests on their assertion that the licensee has knowingly, willingly, and flagrantly operated Millstone Unit 1 in violation of License Amendments Nos. 39 and 40 and that License Amendment Nos. 39 and 40 for Millstone Unit 1 are based on material false statements. Specifically, the Petitioners stated that the licensee conducted full core offloads as a routine practice when its licensing basis analyses assumed one-third core offloads as the normal refueling practice. In their supplemental letter of August 28, 1995, the Petitioners asserted that the licensees for Millstone Units 2 and 3 and Seabrook Unit 1 also performed full core offloads in violation of their licenses. The Petitioners further contend that the licensee's actions subjected the public to an unacceptable risk.

As explained in the Partial Director's Decision, the staff concluded that Millstone Units 1 and 3 and Seabrook Unit 1 could safely offload full cores. Additionally, the staff found that Millstone Unit 2 was not routinely performing full core offloads as asserted by the Petitioners.

In a letter to the licensee dated May 25, 1999, regarding a Notice of Violation and Exercise of Enforcement Discretion, the staff stated that it had completed the investigations concerning the performance of fuel offloads at Millstone Unit 1. Regarding the Petitioners' assertion concerning the Millstone Unit 1 full core offload practice, the NRC has drawn a distinction between routinely conducting full core offloads and conducting any offloads before the delay times assumed in the Final Safety Analysis Report (FSAR). The NRC has concluded that enforcement action is not warranted at Millstone Unit 1 and other nuclear facilities for conducting full core offloads on a routine basis. The NRC determined that the use of the terms "abnormal" and "emergency" in describing the full core offload scenario in the FSAR did not appear to be presented by the licensee nor understood by the staff as a commitment to limit the frequency with which full core offloads were conducted at Millstone Unit 1. In this regard, the licensee informed the NRC staff of its practice of offloading the full core at Millstone Unit 1 in a meeting on June 16, 1988, associated with the License Amendment No. 40 request pertaining to SFP reracking. Further, although the analytical constraints and assumptions for the full core offload were generally less restrictive than those for a partial core offload, in licensing actions (typically rerack amendments) for nuclear plants, including Millstone Unit 1, the NRC found the plant design for removing the full core acceptable. Finally, as a way of addressing shutdown risk, the NRC encouraged, and still does, the practice of full core offloads. Thus, consistent with the conclusions drawn for all other plants that routinely performed full core offloads, enforcement is not being proposed for the Millstone Unit 1 full core offloading practices.

The staff's followup of spent fuel pool issues raised by the Petitioners, however, led, in part, to the identification of a broad spectrum of configuration management concerns that had to be corrected before the Commission allowed restart of any Millstone unit. On the basis of information developed during the investigation by the NRC's Office of Investigations, the NRC cited the licensee for four violations of NRC requirements. Specifically, the NRC determined that, in careless disregard of NRC requirements, the licensee (1) performed both partial and full core offloads before the delay times assumed in the FSAR without the appropriate engineering analysis; (2) utilized unapproved and unanalyzed system configurations to augment SFP cooling during refueling outages, without procedures to govern those activities; and (3) in two instances, submitted incomplete and inaccurate information to the NRC (violations of 10 CFR 50.9(a)) related to the performance of fuel offloads that were actually commenced before the delay times assumed in the analysis submitted to the NRC.

In its May 25, 1999, letter transmitting the Notice of Violation, the NRC also stated that these violations, which existed for a long time, appeared to be the result of the deficient safety culture, which contributed to the shutdown of all three Millstone units for an extended period and resulted in a number of other violations for which the NRC issued a $2,100,000 civil penalty to the licensee on December 10, 1997. That penalty was based, in part, on (1) the licensee's failure to ensure that the plant was maintained in the configuration as designed and specified in the licensing basis and (2) the licensee's failure to promptly correct nonconforming conditions. The NRC concluded that the failure of licensee management to

establish standards to ensure that the plant was maintained and operated as designed, and to ensure that nonconforming conditions were promptly identified and corrected, constituted careless disregard of requirements. As such, the violations that resulted from that deficient safety culture, which fostered such disregard, were considered willful in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions NUREG–1600" (Enforcement Policy).

In its May 25, 1999, letter, the NRC further stated that in consideration of (1) the undesirable consequences of performance of unanalyzed core offloads and the licensee's failure to ensure that SFP heat removal was conducted in accordance with approved procedures; (2) the significance of the licensee's providing incomplete and inaccurate information to the NRC; and (3) the significance that the NRC places on careless disregard of its requirements, the four violations had been classified, in the aggregate, as a Severity Level III violation in accordance with the NRC Enforcement Policy. For the reasons outlined in its letter of May 25, 1999, the staff exercised enforcement discretion and did not issue a civil penalty for the violations. In its letter, the NRC staff stated that discretion is appropriate because the licensee already implemented corrective actions to address the underlying performance problems at Millstone and further enforcement action is not necessary to achieve additional remedial actions.

In their Petition, the Petitioners requested that the NRC take enforcement action against the licensee pursuant to 10 CFR 50.5 and 50.9. Although not specifically for the reasons cited by the Petitioners (the Petitioners based their requests on their assertion that the licensee has knowingly, willingly, and flagrantly operated Millstone Unit 1 in violation of License Amendment Nos. 39 and 40 and that License Amendment Nos. 39 and 40 for Millstone Unit 1 are based on material false statements), the NRC did find that in two instances the licensee submitted incomplete and inaccurate information to the NRC related to the performance of fuel offloads that were actually being commenced before the delay times assumed in the analysis submitted to the NRC. Therefore, for the reasons previously given, the NRC's actions constitute a partial granting of the Petitioners' request regarding enforcement action pursuant to 10 CFR 50.5 and 50.9.

III. Conclusion

The staff has completed the investigations concerning the performance of fuel offloads at Millstone and has taken enforcement action as outlined in its letter and Notice of Violation to the licensee dated May 25, 1999. Therefore, to this extent, Petitioners' request for enforcement action against NNECO pursuant to 10 CFR 50.5 and 50.9 is partially granted.

As provided in 10 CFR 2.206(c), a copy of this Final Director's Decision will be filed with the Secretary of the Commission for the Commission's review. This Final Director's Decision will constitute the final action of the Commission (for Petitioners' Request 4) 25 days after its issuance, unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 27th day of July 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–19699 Filed 7–30–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Updated Statistical Definitions of Metropolitan Areas

AGENCY: Executive Office of the President, Office of Management and Budget, Office of Information and Regulatory Affairs.

ACTION: Notice.

SUMMARY: Pursuant to 44 U.S.C. 3504(e)(3) and 31 U.S.C. 1104(d) and Executive Order No. 10253 (June 11, 1951), the Office of Management and Budget (OMB) defines metropolitan areas (MAs) for use in Federal statistical activities in accordance with a set of standards published in the **Federal Register** on March 30, 1990 (55 FR 12154–12160).

On June 30, 1999, OMB updated the MA definitions in OMB Bulletin No. 99–04. Two new Metropolitan Statistical Areas (MSA) were defined based on the standards and the 1998 Bureau of the Census official population estimates:

(1) Auburn-Opelika, Alabama MSA (FIPS Code 0580) was defined effective June 30, 1999. The Auburn-Opelika, Alabama MSA comprises Lee County, Alabama. The MSA's central cities are Auburn, Alabama and Opelika, Alabama.

(2) Corvallis, Oregon MSA (FIPS Code 1890) was defined effective June 30, 1999. The Corvallis, Oregon MSA comprises Benton County, Oregon. The MSA's central city is Corvallis, Oregon.

OMB Bulletin No. 99–04 with the list of all MAs as of June 30, 1999, is available from the National Technical Information Service (NTIS), Document Sales, 5285 Port Royal Road, Springfield, VA 22161, telephone 703–605–6000 or 1–800–553–6847 (Accession Number PB99–132698). This list is also available through NTIS in electronic form (Accession Number PB99–501538). OMB Bulletin No. 99–04 and the current list of MAs are available electronically from the OMB home page at http://www.whitehouse.gov/OMB/bulletins/index.html.

For further information on MA standards and the statistical uses of MA definitions please call Suzann Evinger (202–395–7315). For information concerning the use of MA definitions in a particular Federal agency program, please contact the sponsoring agency directly.

John T. Spotila,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 99–19701 Filed 7–30–99; 7:30 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23920; 812–11696]

Alliance Capital Management, L.P.; Notice of Application

July 27, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 (the "Act") granting relief from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections.

SUMMARY OF APPLICATION: Applicant, alliance Capital Management L.P. ("Alliance Holding"), requests an order under sections 6(c) and 6(e) of the Act exempting it from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections.

FILING DATES: The application was filed on July 20, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 17, 1999, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Applicant, Alliance Capital Management L.P., 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: Susan K. Pascocello, Senior Counsel, at (202) 942–0674, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. Applicant is a limited partnership organized under the laws of Delaware, with its equity interests publicly traded in the form of units ("Units"). Applicant provides diversified investment management services to institutional clients and individual investors. Applicant's sole general partner and holder of a 1% general partnership interest is Alliance Capital Management Corporation ("ACMC"), a wholly owned indirect subsidiary of The Equitable Life Assurance Society of the United States ("Equitable Life"). Equitable Life also owns, directly and indirectly, approximately 57% of the applicant's outstanding Units. Applicant's remaining Units are public held. For tax and business purposes discussed below, applicant proposes to reorganize into a new partnership structure (the "Reorganization").

2. Alliance Capital Management L.P. II ("Alliance Capital") was formed as a Delaware private limited partnership in order to effect the Reorganization. Applicant will transfer its business to Alliance Capital, in exchange for equity interests in Alliance Capital ("Alliance Capital Units"). Immediately following the Reorganization, applicant's business activities will consist of holding Alliance Capital Units and engaging in related activities.[1] Alliance Capital will not be an investment company under section 3(a) of the Act, nor will it rely on an exemption from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act. Alliance Capital Units will not be listed on an exchange and will be subject to significant transfer restrictions.

3. Applicant states that after the Reorganization Alliance Capital will continue the business conducted by applicant prior to the Reorganization. Applicant also states that Equitable Life will have the same degree of control over, and the same ability to manage the business of, Alliance Capital, as it currently has with respect to applicant. Applicant further states that the reorganization will not result in any material change in the rights and benefits of its Unitholders. As a limited partner of Alliance Capital, applicant will be required to allow its Unitholders to vote on certain matters affecting Alliance Capital. Therefore, Unitholders will be allowed to vote with respect to Alliance Capital on those matters on which they currently vote with respect to applicant. As a result, applicant asserts that the Unitholders will be in substantially the same position following the Reorganization as they were prior to it.

4. A majority of applicant's public Unitholders (excluding Equitable Life and its affiliates and applicant's management and employees) must approve the Reorganization. A proxy solicitation will be conducted for that purpose. If the Reorganization is approved, applicant will offer to all its Unitholders, pursuant to an exchange offer, a one-time election to exchange outstanding Units on a one-for-one basis for Alliance Capital Units. Following the exchange offer, Equitable Life and its affiliates, other than applicant, will own approximately 55% of the Alliance Capital Units, and the remainder will be owned by applicant and any public Unitholders who accept the exchange offer. Applicant expects that it will own approximately 45% of Alliance Capital Units.

[1] Such activities will include filing periodic reports with the SEC pursuant to the Securities Exchange Act of 1934, maintaining its New York Stock Exchange listing, holding shareholder meetings, and holding certain assets for which consents for assignment or transfer to Alliance Capital must be obtained. These assets consist of contracts, such as leases and service contracts, licenses, including those obtained from governments and regulatory authorities, and regulatory and other approvals necessary for the conduct of Alliance Capital's business.

5. Applicant states that the purpose of the Reorganization is to offer a choice to Unitholders who are willing to accept the transfer restrictions on the privately placed Alliance Capital Units so that they may receive higher distributions as Alliance Capital is a private partnership and will not be subject to an annual federal tax imposed on the gross business income of publicly traded partnerships. It also will give applicant greater flexibility to acquire businesses and raise capital in the future, since it will be able to offer the selling party or potential investor the choice of whether to receive publicly-traded Units, tax advantaged Alliance Capital Units or a combination of both.

Applicant's Legal Analysis

1. Section 3(a)(1)(C) of the Act defines "investment company" to include any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of that issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Under section 3(a)(2), "investment securities" includes all securities except (i) Government securities and (ii) securities issued by (a) employees' securities companies or (b) certain majority-owned subsidiaries.

2. Applicant states that its primary asset will be Alliance Capital Units. Alliance Capital will not be a majority-owned subsidiary of applicant, and therefore the Alliance Capital Units owned by applicant may be "investment securities" as defined in section 3(a)(2) of the Act. As the Alliance Capital Units will constitute virtually all of the assets of applicant, applicant may be deemed to be an investment company under section 3(a)(1)(C) of the Act.

3. Section 6(c) of the Act provides, in part, that the SEC may exempt any person from any provision of the Act or any rule under the Act if and to the extent the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 6(e) permits the SEC to require companies exempted from the registration requirements of the Act to comply with certain specified provisions of the Act as though the company were a registered investment company. Applicant requests an order under sections 6(c) and 6(e) exempting it from all provisions of the Act, except section 37 through 53 of the Act and the

rules and regulations under those sections.

4. Applicant contends that there are legitimate business reasons for the Reorganization. Applicant also states that, following the Reorganization, applicant will function solely as a holding company for Alliance Capital Units. Alliance Capital Units will be subject to very significant transfer restrictions.[2] Applicant states that its activities will be limited to holding Alliance Capital Units and engaging in activities necessitated by its status as a publicly-held holding company. Accordingly, applicant asserts that its business following the Reorganization will not entail the types of risk to public investors that the Act was designed to mitigate.

Applicant's Conditions

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. Applicant will not hold itself out as being engaged in the business of investing, reinvesting, or trading in securities.

2. Applicant will not require any investment securities, as that term is defined in section 3(a)(2) of the Act, except for: (a) Alliance Capital Units and (b) for cash management purposes, certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof, and shares of money market funds. Applicant will not acquire these short-term securities for speculative purposes but solely to obtain a reasonable return while preserving capital. Applicant may acquire other investment securities provided that (i) the acquisition is in connection with the purchase of any business, assets or property, (ii) applicant simultaneously with the purchase contributes the investment securities to Alliance Capital, (iii) applicant contributes any remaining portion of the purchased business, assets or property to Alliance Capital as soon as practicable, (iv) the value of the consideration received by applicant from Alliance Capital in connection with its contribution to Alliance Capital equals the fair value of the business, assets or property contributed to Alliance Capital and (v) any investment securities received by applicant from Alliance Capital in connection with applicant's contribution to Alliance Capital will be either Alliance Capital Units or investment securities of the type specified in clause (b) of the first sentence of this condition.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19719 Filed 7–30–99; 8:45 am]

BILLING CODE 8010–01–M

[2] In general, the amended partnership agreement of Alliance Capital will permit Alliance Capital Units, including those which will be held by applicant, to be transferred only with the written consent of Equitable Life and ACMC. A business entity, such as applicant, may transfer a block of units representing more than 2% of the outstanding Alliance Capital Units without the consent of ACMC, provided that it has received the written consent of Equitable Life and a written opinion of counsel to the effect that Alliance Capital will not be treated as a publicly-traded partnership for tax purposes as a result of the transfer. Either Equitable Life or ACMC may withhold its consent to transfer in its sole discretion.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23922; International Series Rel. No. 1201; 812–11038]

Caisse des Depots et Consignations; Notice of Application

July 27, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(f) of the Act.

SUMMARY OF APPLICATION: The order would permit any registered investment company other than an investment company registered under section 7(d) of the Act ("U.S. Investment Company"), and its custodians or subcustodians to maintain foreign securities and other assets in France in the custody of applicant Caisse des Depots et Consignations ("CDC"), consistent with the requirements of rule 17f–5 under the Act.

FILING DATES: The application was filed on February 26, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 on August 23, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, c/o Leonard B. Mackey, Jr. Esq., Rogers & Wells LLP, 200 Park Avenue, New York, New York 10166.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, at (202) 942–7120, or Nadya B. Roytblat, Assistant Director at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The Complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. CDC is a quasi-governmental, public-sector financial institution created in 1816 under French law to safeguard deposits requiring a high degree of safety. CDC specifically is not designated as a bank, although CDC is permitted to conduct banking activities. CDC's traditional activities involve safeguarding and managing financial assets, particularly pension plan assets and assets collected by the French savings bank network. In addition, CDC is involved, directly and indirectly, in a broad range of financial activities, including life insurance, local development, banking, capital market activities, and third-party asset management. CDC is the leading securities custodian in France, with assets held in custody at 1998 year-end of approximately US$726.2 billion.

2. CDC's total assets as of December 31, 1998 were approximately US$171 billion, with reserves and retained earnings (the excess of CDC's assets over its liabilities) of approximately US$13 billion. CDC's debt securities are rated AAA by Standard & Poor's Ratings Group and Aaa by Moody's Investors Service, Inc. Although CDC is not subject to any net capital or compulsory reserve regulations, CDC complies on a voluntary basis with the solvency ratio regulations that apply to banks in France. CDC's financial statements are prepared in accordance with the French generally accepted accounting principles applicable to banking and financial institutions and they are audited by two independent accounting firms using the same accounting standards applicable to French banks.

3. Under French law, only specified institutions, including banks and CDC, are permitted to provide custodial services. CDC is subject to the same laws and regulatory authorities governing its custodial activities as govern the custodial activities of banks in France. CDC's custodial services are overseen and inspected by the Financial Market Commission and the Commission des Operations de Bourse, the same agencies that oversee and inspect custodial services provided by French banks.

4. Applicant states that CDC is not immune from suit by its creditors, including customers of CDC's custodial services. While CDC as a public entity under French law is immune from forced execution (or attachment), CDC is not restricted in its ability to pay claims or judgments out of its assets. Applicant states that under French law, CDC must pay a money judgment rendered by any French court of law and, if CDC fails to pay the judgment within four months of being notified of the court decision, CDC must pay a penalty.

5. CDC requests an order to permit any U.S. Investment Company and any custodian or subcustodian for a U.S. Investment Company to maintain assets in the custody of CDC consistent with the requirements of rule 17f–5 under the Act discussed below.

Applicant's Legal Analysis

1. Section 17(f) of the Act requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities, including a bank having at all times aggregate capital, surplus, and undivided profits of at least $500,000. A "bank," as that term is defined in section 2(a)(5) of the Act, includes: (a) a banking institution organized under the laws of the United States; (b) a member bank of the Federal Reserve System; and (c) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks, which is supervised or examined by state or federal authority having supervision over banks, and which is not operated for the purposes of evading the Act.

2. The only entities located outside the United States that section 17(f) authorizes to serve as custodians for U.S. Investment Companies are the overseas branches of qualified U.S. banks. Rule 17f–5 under the Act, however, expands the group of entities that are permitted to serve as foreign custodians. The rule defines the term "Eligible Foreign Custodian" to include, among others, an entity incorporated or organized under the laws of a foreign country that is a banking institution or trust company regulated as such by the foreign country's government or government agency. CDC states that it is not an Eligible Foreign Custodian under rule 17f–5 of the Act because it is a special entity under French law and is not regulated as a banking institution or trust company, nor is it a securities depository or clearing agency under rule 17f–5.

3. Section 6(c) of the Act provides that the SEC may, conditionally or unconditionally, exempt any person or class of persons from any provisions of the Act or from any rule under the Act if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. CDC requests relief from section 17(f) to permit U.S. Investment Companies to treat CDC as an Eligible Foreign Custodian for purposes of rule 17f–5. In selecting CDC as a foreign custodian, a U.S. Investment Company would be required to comply with all of the requirements of rule 17f–5, as now in effect or as it may be amended.[1]

4. CDC states that it is the largest custodian of securities in France. CDC further states that it voluntarily complies with the regulations, such as the solvency ratio regulations, risk control, and accounting rules, that are applicable to French banks. CDC also states that its custodial services are subject to the same regulatory oversight as the custodial services provided by French banks. CDC thus asserts that assets of U.S. Investment Companies in the custody of CDC will have the same or greater protection as in the custody of a French bank. CDC states that it would be consistent with the protection of investors and the policies underlying the Act to treat CDC as a bank for purposes of rule 17f–5.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The foreign custody arrangements that involve CDC will comply with all provisions of rule 17f–5, as now in effect or as it may be amended, except paragraph (a)(1) to the extent CDC does not meet the definition of Eligible Foreign Custodian.

2. CDC will continue to comply voluntarily with French banking regulations concerning risk controls, solvency ratios, and accounting standards.

3. CDC's custodial activities will be subject to regulation by the same agencies that regulate the custodial activities of French banks.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19720 Filed 7–30–99; 8:45 am]

BILLING CODE 8010–01–M

[1] Those requirements include, among others, procedures for selecting, contracting with, and monitoring a foreign custodian.

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (The Quaker Oats Company, Common Stock, $5.00 Par Value, and Attached Preferred Stock Purchase Rights) File No. 1–00012

July 26, 1999.

The Quaker Oats Company ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities are currently listed for trading in the United States on the PCX, the Chicago Stock Exchange ("CHX"), and the New York Stock Exchange ("NYSE"). The Company has considered all the direct and indirect costs arising from maintaining these multiple listings and has determined, in light of the limited volume of trades in its Common Stock on the PCX, to withdrawn the Securities from listings on the PCX, maintaining their listing on the CHX and the NYSE.

The Company has compiled with the rules of the PCX by filing with the Exchange a certified copy of resolutions adopted by the Company's Board of Directors authorizing withdrawal of its Securities from listing on the PCX as well as correspondence setting forth in detail to the Exchange the reasons for such proposed withdrawal, and the facts in support thereof.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Securities from listing on the PCX.

This application relates solely to the withdrawal by the Company of the Securities's listing on the PCX and shall have no effect upon the continued listing of such Securities on the CHX and the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission, the CHX and the NYSE under Section 13 of the Act.

Any interested person may, on or before August 16, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–19669 Filed 7–30–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23921; 812–11596]

Scudder New Europe Fund, Inc.; Notice of Application

July 27, 1999

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Scudder New Europe Fund, Inc. (the "Fund") seeks an order to permit in-kind redemptions of shares by certain affiliated shareholders of the Fund.

FILING DATES: The application was filed on April 29, 1999. Applicant has agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 23, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicant, c/o Yvette M. Garcia, Esq., Willkie Farr & Gallagher, 787 Seventh Avenue, New York 10019–6099.

FOR FURTHER INFORMATION CONTACT: George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. The Fund, a Maryland corporation, is registered under the Act as a closed-end management investment company. On July 20, 1999, shareholders of the Fund approved a proposal to convert the Fund to an open-end management investment company (the "Conversion"). The Conversion is expected to occur on or about September 1, 1999 ("Conversion Date"). Scudder Kemper Investments, Inc. (the "Manager"), an investment adviser registered under the Investment Advisers Act of 1940, is investment adviser to the Fund.

2. In conjunction with the Conversion, the Fund intends to combine with Kemper Europe Fund ("KEF"), a registered open-end management investment company, and change the Fund's name to Scudder Europe Fund, Inc. (the "Reorganization").[1] The Fund's shareholders prior to the Conversion will have their shares redesignated as Class M shares of the Fund after the Conversion.

3. Applicant states that one shareholder currently owns 5% or more of the outstanding shares of the Fund, and is expected to own 5% or more of the Fund following the Conversion and the Reorganization. Applicant requests relief to permit the Fund to satisfy redemption requests made by any shareholder of the Fund who, at the time of such redemption request, is an "affiliated person" of the Fund solely by reason of owning, controlling, or holding with the power to vote, five percent or more of the Fund's shares ("Affiliated Shareholders") by distributing portfolio securities in-kind.[2] The board of directors of the Fund ("Board"), including all of the directors who are not "interested persons" as defined in section 2(a)(19) of the Act ("Disinterested Directors"), has determined that it would be in the best interests of the Fund and its shareholders to pay to an Affiliated Shareholder the redemption price for its shares in-kind.[3]

Applicant's Legal Analysis

1. Section 17(a)(2) of the Act prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from knowingly purchasing any security or other property (except securities of which the seller is the issuer) from the registered investment company. Section 2(a)(3)(A) of the Act defines an "affiliated person" to include any person owning 5% or more of the outstanding voting securities of the other person. Applicant states that to the extent that an in-kind redemption could be deemed to involve the purchase of portfolio securities (of which the Fund is not the issuer) by an Affiliated Shareholder, the proposed redemptions in-kind would be prohibited by section 17(a)(2).

[1] The Reorganization is subject to approval by KEF's shareholders. The Conversion is not contingent on the approval of the Reorganization by KEF's shareholders.

[2] The relief sought would not extend to shareholders who are "affiliated persons" of the Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act (*e.g.* shareholders who are officers, directors or employees of the Fund, or shareholders who have a control relationship with the Fund).

[3] Upon Conversion, the Fund will elect to be governed by the provisions of rule 18f–1 under the Act. Election under rule 18f–1 commits the Fund, during any 90-day period with respect to one shareholder, to redeem its shares in cash up to the lesser of $250,000 or one percent of the Fund's net asset value. Applicant states that with respect to Class M shareholders of the Fund, all redemption requests in excess of $500,000 will be redeemed in-kind during any 90-day period within the one-year period following the Conversion. The Fund will impose a 2% redemption fee on redemptions by Class M shareholders during the one-year period following the Conversion.

2. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicant requests an order under sections 6(c) and 17(b) of the Act to permit Affiliated Shareholders to redeem their shares in-kind. The requested order would not apply to redemptions by shareholders who are affiliated persons of the Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.

5. Applicant submits that the terms of the proposed in-kind redemptions by Affiliated Shareholders meet the standards set forth in sections 6(c) and 17(b) of the Act. Applicant asserts that neither the Manager nor an Affiliated Shareholders will have any choice as to the type of consideration to be received in connection with a redemption request, and neither the Manager nor the Affiliated Shareholder will have any opportunity to select the specific portfolio securities to be distributed. Applicant further states that the portfolio securities to be distributed in the proposed in-kind redemptions will be valued according to an objective, verifiable standard and the in-kind redemptions are consistent with the investment policies of the Fund. Applicant also states that the proposed in-kind redemptions are consistent with the general purposes of the Act because the Affiliated Shareholders would not receive any advantage not available to other redeeming shareholders.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The securities distributed to Affiliated Shareholders and non-Affiliated Shareholders pursuant to a redemption in-kind (the "In-Kind Securities") will be limited to securities that are traded on a public securities market or for which quoted bid and asked prices are available.

2. The In-Kind Securities will be distributed on a *pro rata* basis after excluding: (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933; (b) securities issued by entities in countries which restrict or prohibit the holdings of securities by non-nationals other than through qualified investment vehicles; and (c) certain portfolio assets (such as forward foreign currency exchange contracts, futures and options contracts, and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for that portion of the Fund's assets represented by cash equivalents (such as certificates of deposits, commercial paper and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, cash will be distributed in lieu of portfolio securities not amounting to round lots (e.g., 100 shares) (or which would not amount to round lots if included in the in-kind distribution), or fractional shares and accruals on such securities.

3. The Board, including a majority of the Disinterested Directors, will determine no less frequently than annually: (a) whether the In-Kind Securities, if any, have been distributed in accordance with conditions 1 and 2 above; (b) whether the In-Kind Securities, if any, have been valued in accordance with condition 5 below; and (c) whether the distribution of any In-Kind Securities is consistent with the policies of the Fund as reflected in its prospectus. In addition, the Board shall make and approve such changes as it deems necessary in its procedures for monitoring compliance by the applicant with the terms and conditions of the application.

4. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any redemption in-kind to an Affiliated Shareholder occurred, the first two years in an easily accessible place, a written record of each such redemption setting forth the terms of the distribution and the information or materials upon which the valuation was made.

5. The In-Kind Securities will be valued in the same manner as they would be valued for the purposes of computing the Fund's net asset value per share, which, in the case of securities traded as a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on the national securities market, or, if the securities are not listed on an exchange or the national securities market or if there is no such reported price, the average of the most recent bid and asked price (or, if no such asked price is available, the last quoted bid price).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19721 Filed 7–30–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41651]

Order Cancelling Registration of Certain Transfer Agents

July 26, 1999.

On May 21, 1999, notice was published in the **Federal Register** that the Securities and Exchange Commission ("Commission") intended to issue an order, pursuant to Section 17a(c)(4)(B) of the Securities Exchange Act of 1934 (Exchange Act),[1] cancelling the registrations of the transfer agents whose names appear in the Appendix attached to this Order.[2] For the reasons discussed below, the Commission is cancelling the registration of each of the transfer agents identified in the attached Appendix.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Gregory J. Dumark, Staff Attorney, at 202/942–4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

Background and Discussion

Section 17A(c)(4)(B) of the Exchange Act provides that if the Commission finds that any transfer agent registered with the Commission is no longer in existence or has ceased to do business as a transfer agent, the Commission shall by order cancel that transfer agent's registration. On May 12, 1999, the Commission issued a Notice of

[1] 15 U.S.C. 78q–1(c)(4)(B).

[2] Securities Exchange Act Release No. 34–41391 (May 12, 1999), 64 FR 27840 (May 21, 1999).

Intention to Cancel Registrations of Certain Transfer Agents which identified 14 transfer agents that the Commission believed were no longer in existence or had ceased doing business as transfer agents. The Notice stated that at any time after June 20, 1999, which was 30 days after the Notice was published in the **Federal Register**, the Commission intended to issue an order cancelling the registrations of any or all of the identified transfer agents. None of the 14 identified transfer agents have contacted the Commission to object to the cancellation of its registration.

Accordingly, the Commission is cancelling the registration of each of the identified 14 transfer agents.

Order

On the basis of the foregoing, the Commission finds that each of the transfer agents whose name appears in the attached Appendix either is no longer in existence or has ceased doing business as a transfer agent.

It is therefore ordered, pursuant to section 17A(c)(4)(B) of the Exchange Act, that the registration of each of the transfer agents whose name appears in the attached Appendix be and hereby is canceled.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

APPENDIX

Registration No.	Name
84–1758 ...	Corporate Strategic Services, Inc.

APPENDIX—Continued

Registration No.	Name
84–1997 ...	DC Trading & Development Corp.
84–5406 ...	First Federal Savings Bank Bryan, Texas.
84–1945 ...	Hawthorne Shareholder Services, Inc.
84–5553 ...	The Herman Group, Inc.
84–5522 ...	Keller Financial Services, Inc.
84–1766 ...	Kinlaw Energy Partners Corp.
84–5615 ...	NRG Incorporated.
84–5560 ...	Partnership Services, Inc.
84–0047 ...	Penn Square Management Corporation.
84–5412 ...	Schuster, Jill Lauren.
84–998	Silver Crescent, Inc.
84–5614 ...	Wisconsin Real Estate Investment Trust.
84–1566 ...	Yreka United, Inc.

[FR Doc. 99–19715 Filed 7–30–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41650; File No. SR–CBOE–99–36]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Market-Maker Surcharge Fee Schedule

July 26, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to make changes to its fee schedule pursuant to CBOE Rule 2.40, *Market-Maker Surcharge for Brokerage.*[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined as the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to CBOE Rule 240, the Equity Floor Procedure Committee ("Committee") approved the following fees for the following option classes:

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract)[4]
E*Trade Group (QGR)	$0.20	$0.00
Priceline.com Inc.	0.10	0.00

The fee for Priceline.com will be effective as of July 8, 1999, and the fee for E*Trade Group will be effective on July 1, 1999. All of the fees will remain in effect until such time as the Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4)[5] of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] 17 CFR 200.30–3(a)(22).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 11523 (March 9, 1999) (order approving CBOE Rule 240).

[4] The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate from $0.20 in the relevant option classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

[5] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii)[6] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–36 and should be submitted by August 23, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19717 Filed 7–30–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41649; File No. SR–CBOE–99–33]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Market-Maker Surcharge Fee Schedule

July 26, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to make changes to its fee schedule pursuant to CBOE Rule 2.40, *Market-Maker Surcharge for Brokerage.*[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to CBOE Rule 2.40, the Equity Floor Procedure Committee ("Committee") approved the following fees for the following option classes:

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract)[4]
USWeb Corporation (QWB)	$0.08	$0.00
Concentric Network Corporation (QXF)	0.08	0.00
Xoom.Com, Inc. (XQM)	0.08	0.00
Mindspring Enterprises, Inc. (MQD)	0.06	0.00
Software AG Systems, Inc. (AGS)	0.11	0.00
Casella Waste Systems, Inc. (KWQ)	0.11	0.00
Metacreations Corporation (MQZ)	0.25	0.00
Cadiz Land Company, Inc. (QAZ)	0.04	0.00
Quadramed Corporation (QCD)	0.20	0.00
SFX Entertainment, Inc. (QSX)	0.08	0.00
Qwest Communication, Inc. (QWA)	0.13	0.00
Ryan's Family Steak Houses, Inc. (URA)	0.07	0.00
Invision Technologies, Inc. (VYQ)	0.23	0.00
MTI Technology Corporation (QTX)	0.12	0.00
Barnes and Noble, Inc. (BKS)	0.15	0.00
Friede Goldman International, Inc. (FGI)	0.10	0.00
Northwest Airlines Corporation (NAQ)	0.09	0.00

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 11523 (March 9, 1999)(order approving CBOE Rule 2.40).

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract) [4]
Open Market, Inc. (OQM)	0.12	0.00
Orbital Sciences Corp. (ORB)	0.06	0.00
OnSale, Inc. (QOL)	0.07	0.00
Prime Medical Services, Inc. (QSI)	0.09	0.00
Synovous Financial Corp. (SNV)	0.07	0.00
Wackenhut Corrections Corp. (WHC)	0.08	0.00
Zebra Technologies, Corp. (ZBQ)	0.10	0.00
AboveNet Communications (UBV)	0.15	0.00

[4] The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate from $0.20 in the relevant option classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

These fees will be effective as of July 1, 1999. All of the fees will remain in effect until such time as the Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) [5] of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) [6] of the Act and Subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission all subsequent amendments, all written statements with respect tot he proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–33 and should be submitted by August 23, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19718 Filed 7–30–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C .78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41648; File No. SR–NYSE–99–29]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Instituting a Pilot Program Relating to Continued Listing Standards

July 26, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change has described in Items, I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant partial accelerated approval to the portion of the proposal instituting a pilot program relating to continued listing standards.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 8 of its *Listed Company Manual* ("Manual"), and to make corresponding changes to NYSE Rule 499, regarding its criteria governing the continued listing of securities. The Exchange proposes to implement these changes immediately pursuant to a Pilot program ("Pilot") that would expire on November 1, 1999, or such earlier time as the Commission approves the Exchange's request for permanent approval of the program.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Telephone conversation between N. Amy Bilbija, Counsel, NYSE, and Heather Traeger, Attorney, Division of Market Regulation ("Division"), SEC, on July 9, 1999.

The text of the proposed rule change follows.[4] New text is italicized and deleted text is bracketed.[5]

NYSE Listed Company Mutual

* * * * *

Section 8

Suspension and Delisting

801.00 Policy

* * * * *

802.00 Continued Listing

802.01 Continued Listing Criteria

* * * * *

The Exchange would normally give consideration to delisting a security of *either a domestic or non-U.S. issuer* [a company] when:

802.01A. *Distribution Criteria for* Capital or Common Stock—

* * * * *

[• Aggregate market value of publicly-held shares, (A) subject to adjustment depending on market conditions, as described below (C) is less than—$8,000,000]

[(C) Calculation of Adjustment

On January 15 and July 15 of each year, the NYSE Composite Index at the close of business for that date, or on the next succeeding business day if the Exchange is closed, is divided by the base value of 55.06 (the NYSE Composite Index for July 15, 1971, the date upon which the $5,000,000 standard was adopted). The $5,000,000 standard is multiplied by the adjustment factor as so calculated (after rounding to the nearest thousandth). The resulting product is rounded to the nearest $100,000.

The adjustment is made only when the NYSE Composite Index is lower than that of the base value, and is limited to a maximum reduction of 50% to a $2,500,000 standard which will be in effect for the succeeding six months following the calculation.

Since the NYSE Composite Index has remained above 55.06 in recent years, no adjustment has been necessary and the standard has remained at $5,000,000.]

* * * * *

[4] The Exchange notes that it recently received approval from the Commission to amend many aspects of the NYSE's listing and continued listing programs. The proposed rule language set forth here shows changes against the new text approved by the Commission, but not yet incorporated into the Manual. *See* Securities Exchange Act Release No. 41502 (June 9, 1999), 64 FR 32588 (June 17, 1999) (order approving File No. SR–NYSE–99–13) ("Release No. 41502").

[5] Several minor technical changes were made to the proposed rule text pursuant to a telephone conversation between N. Amy Bilbija, Counsel, NYSE, and Heather Traeger, Attorney, Division, SEC, on July 9, 1999.

[Earnings—

• Aggregate market value of shares outstanding (excluding treasury stock) is less than—$12,000,000 and average net income (D) after taxes for past 3 years is less than—$600,000

• Net tangible assets available to common stock are less than—$12,000,000 and average net income (D) after taxes for past 3 years in less than—$600,000

(D) For a company that included in its original listing application adjustments to historical financial data, during the first three years following the date of its original listing, the Exchange will calculate the company's average net income after taxes for any year considered in assessing its qualification for listing taking into consideration those specific adjustments made to the company's historical financial data for that year in the original listing application.]

* * * * *

[Adjusted Net Income—

• For companies that, on listing, demonstrated earning power by meeting the listing standards requiring minimum levels of adjusted net income, and for companies that are currently valued on a "cash flow" basis, as described in Para. 102.01 of this Listed Company Manual: Aggregate market value of shares outstanding (excluding treasury stock) is less than—$25,000,000 and average adjusted net income for past 3 years is less than—$6,500,000

Bonds—

• The aggregate market value or principal amount of publicly-held bonds is less than—$1,000,000

The issuer is not able to meet its obligations on the listed debt securities.

Preferred Stock, Guaranteed Railroad Stock and Similar Issues

• Aggregate market value of publicly-held shares is less than—$2,000,000

• Publicly-held shares is less than—100,000]

802.01B. Numerical Criteria for Capital or Common Stock—

If a company falls below any of the following criteria, it is subject to the procedures outlined in Paras. 802.02 and 802.03:

• Total global market capitalization is less than $50,000,000 and total stockholders' equity (or net assets for Funds) is less than $50,000,000 (C); or

• Average global market capitalization over a consecutive 30 trading-day period is less than $15,000,000; or

For companies that qualify under the "global market capitalization" standard:

• Total global market capitalization is less than $500,000,000 and total revenues are less than $50,000,000 over the last 12 months (unless the resultant entity qualifies as an original listing under one of the other standards) (C) OR

• Average global market capitalization over a consecutive 30 trading-day period is less than $100,000,000.

Funds—Until a fund has operated for three years, it shall be held to a continued listing standard of $30,000,000 in both total market capitalization and net assets. Regardless of the length of time a fund has been operating at the time of its initial listing, once it has operated for three years, it shall be held to the financial criteria outlined at the beginning of this Para. 802.01B. At all times, all funds must (1) maintain their closed-end status and (2) maintain a minimum market capitalization of $15,000,000.

REITs—Until a REIT has operated for three years, it shall be held to a continued listing standard of $30,000,000 in both total market capitalization and stockholders' equity. Regardless of the length of time a REIT has been operating at the time of its initial listing, once it has operated for three years, it shall be held to the financial criteria outlined at the beginning of this Para. 802.01B. At all times, all REITs must (1) maintain their REIT status (unless the resultant entity qualifies as an original listing as a corporation), and (2) maintain a minimum market capitalization of $15,000,000.

Bonds—

• The aggregate market value or principal amount of publicly-held bonds is less than—$1,000,000

• The issuer is not able to meet its obligations on the listed debt securities.

Preferred Stock, Guaranteed Railroad Stock and Similar Issues—

• Aggregate market value of publicly-held shares is less than—$2,000,000 Publicly-held shares is less than—100,000

(C) A company that is determined to be below this continued listing criteria must re-establish both its market capitalization and its stockholders' equity (or net assets for Funds) or revenues, as applicable, to be considered in conformity with continued listing standards pursuant to Paras. 802.02 and 802.03.

802.01C. Price Criteria

Average closing price of a security is less than $1.00 over a consecutive 30-trading-day period (D).

(D) Once notified, the company must bring its average share price back above $1.00 within the six months following

receipt of the notification. If this is the only criteria that makes the company below the Exchange's continued listing standards, the procedures outlined in Paras. 802.02 and 802.03 do not apply. The company must, however, notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure this deficiency or be subject to suspension and delisting procedures. In the event that at the expiration of the six-month cure period, a $1.00 average share price over the preceding 30 trading days is not attained, the Exchange will commence suspension and delisting procedures.

802.01D. Other Criteria—

If any of the following factors apply to a listed company, the Exchange may in its sole discretion subject the company to the procedures outlined in Paras. 802.02 and 802.03:

* * * * *

Bankruptcy and/or Liquidation—

An intent to file under any of the sections of the bankruptcy law has been announced or a filing has been made or liquidation has been authorized and the company is committed to proceed. *If a company files or announces an intent to file for reorganization relief under the bankruptcy laws (or an equivalent foreign law), the Exchange may exercise its discretion to continue the listing and trading of the securities of the company. However, if a company that is below any continued listing standard enumerated in Para. 802.01B above (which may be determined on the basis of price indications) files or announces an intent to file for relief under any provisions of any bankruptcy laws, it is subject to immediate suspension and delisting. Similarly, if a company that files or announces an intent to file for relief under any provisions of any bankruptcy laws subsequently falls below any continued listing standard enumerated in Para. 802.01B above (which may be determined on the basis of price indications), it is subject to immediate suspension and delisting.*

* * * * *

The Exchange is not limited by the criteria set forth above. Rather, it may make an appraisal of, and determine on an individual basis, the suitability for continued listing of an issue in the light of all pertinent facts whenever it deems such action appropriate, even though a security meets or fails to meet any enumerated criteria. Other factors which may lead to a company's delisting include:

* * * * *

• Unsatisfactory financial conditions and/or operating results.

• Most recent independent public accountant's opinion on the financial statements contains a:

• Qualified opinion;

• Adverse opinion;

• Disclaimer opinion; or

• Unqualified opinion with a "going concern" emphasis.

* * * * *

802.02 Continued Listing Evaluation and Follow-Up Procedures for Domestic Companies

* * * * *

If the Exchange accepts the Plan, the Exchange will review the company on a quarterly basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the quarterly milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time. In any event, if the company does not meet continued listing standards at the end of the 18-month period, the Exchange promptly will initiate suspension and delisting procedures.

If the company did meet continued listing standards at the end of the 18-month Plan period but, within twelve months of the end of the 18-month period, it is again determined to be below continued listing standards, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of financial recovery from the first incident. It will then take appropriate action, which, depending upon the circumstances, may include truncating the procedures described above or immediately initiating suspension and delisting procedures.

* * * * *

802.03 Continued Listing Evaluation and Follow-up Procedures for Non-U.S. Companies

* * * * *

If the Exchange accepts the Plan, the Exchange will review the company on a semi-annual basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the semi-annual milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time. In any event, if the company does not meet continued listing standards at the end of the 18-month period, the Exchange will promptly initiate suspension and delisting procedures.

* * * * *

If the company did meet continued listing standards at the end of the 18-month Plan period but, within twelve months of the end of the 18-month period, it is again determined to be below continued listing standards, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of financial recovery from the first incident. It will then take appropriate action, which, depending upon the circumstances, may include truncating the procedures described above or immediately initiating suspension and delisting procedures.

NYSE Rules

Delisting of Securities, Suspension From Dealings or Removal From List by Action of the Exchange

The aim of the New York Stock Exchange is to provide the foremost auction market for securities of well-established companies in which there is a broad public interest and ownership.

Rule 499.

* * * * *

.10 General.

* * * * *

The Exchange is *not* limited by what is set forth under the heading "Numerical and Other Criteria." Rather, it may make an appraisal of, and determine on an individual basis, the suitability for continued listing of an issue in the light of all pertinent facts whenever it deems such action appropriate, even though a security meets or fails to meet any enumerated criteria. Many factors might be considered in this connection, *e.g.*, the failure of a company to make timely, adequate, and accurate disclosures of information to its shareholders and the investing public or to observe good accounting practices in reporting earnings and financial position; other conduct not in keeping with sound public policy; unsatisfactory financial conditions and/or operating results; *most recent independent accountant's opinion on the financial statements contains a (a) qualified opinion, (b) adverse opinion, (c) disclaimer opinion, or (d) unqualified opinion with a "going concern" emphasis;*

* * * * *

.20 NUMERICAL AND OTHER CRITERIA.—WHEN A COMPANY FALLS BELOW ANY OF THESE CRITERIA, THE EXCHANGE MAY GIVE CONSIDERATION TO ANY DEFINITIVE ACTION THAT A COMPANY WOULD PROPOSE TO TAKE THAT WOULD BRING IT ABOVE CONTINUED LISTING STANDARDS.

[Furthermore, w] Where a listed company which falls below any of these criteria proposes to effect a combination with an unlisted company in a manner in which, in the opinion of the Exchange, would result in the acquisition of the listed company by the unlisted company, regardless of which company is the survivor in the combination, the Exchange will normally not approve the listing of the additional shares arising out of the combination unless the company resulting from the combination meets the original listing standards of the Exchange in all respects.

* * * * *

The Exchange would normally give consideration to suspending or removing from the list a security of a company, *whether it be a domestic or non-U.S. issuer, when:*

* * * * *

[3. Aggregate market value of publicly-held shares, * subject to adjustment ** depending on market conditions, is less than $8,000,000.

* Shares held by officers, directors, or their immediate families and other concentrated holding of 10% or more are excluded in calculating the number of publicly-held shares.

** Value subject to adjustment as described below:

Calculation of Adjustment

On January 15 and July 15 of each year the New York Stock Exchange Composite Index at the close of business for that date, or on the next succeeding business day if the Exchange is closed, would be divided by the base value of 55.06, the NYSE Composite Index for July 15, 1971 and also the date on which the $5,000,000 criterion was adopted, and then multiplied by the $5,000,000 criterion, and then rounded to the nearest $100,000.

Example:

NYSE Composite Index July 15, 1975
51.24

=93.1% × $5,000,000=$4,700,000

NYSE Composite Index Base Year
55.06

The adjustment is made only when the Composite Index is lower than that of the base value, and is limited to a maximum reduction of 50% to a $2,500,000 criterion, and will be in effect for the succeeding six months following the calculation.

4. Aggregate market value of shares outstanding (excluding treasury stock) is less than—$12,000,000 and

Average net income after taxes for past 3 years is less than—$600,000

5. Net tangible assets available to common stock are less than—$12,000,000 and

Average net income after taxes for past 3 years is less than—$600,000]

[6.] *3. Total global market capitalization is less than $50,000,000 and total stockholders' equity (or net assets for Funds) is less than $50,000,000. A company that is determined to be below this continued listing criteria must re-establish both its market capitalization and its stockholders' equity (or net assets for Funds) to be considered in conformity with continued listing standards pursuant to Paras. 802.02 and 802.03.*

5. Average global market capitalization over a consecutive three-month period is less than $15,000,000.

6. For companies that qualify under the "global market capitalization" standard:

• Total global market capitalization is less than $500,000,000 and total revenues are less than $50,000,000 over the past 12 months. A company that is determined to be below this continued listing criteria must re-establish both its market capitalization and its revenues to be considered in conformity with continued listing standards pursuant to Paras. 802.02 and 802.03. OR

• Average global market capitalization over a consecutive 30 trading-day period is less than $100,000,000

7. Funds—Until a fund has operated for three years, it shall be held to a continued listing standard of $30,000,000 in both total market capitalization and net assets. Regardless of the length of time a fund has been operating at the time of its initial listing, once it has operated for three years, it shall be held to the financial criteria outlined in sections 4–6 above. At all times, all funds must (1) maintain their closed-end status, and (2) maintain a minimum market capitalization of $15,000,000.

8. REITs—Until a REIT has operated for three years, it shall be held to a continued listing standard of $30,000,000 in both total market capitalization and stockholders' equity. Regardless of the length of time a REIT has been operating at the time of its initial listing, once it has operated for three years, it shall be held to the financial criteria outlined in sections 4–6 above. At all times, all REITs must (1) maintain their REIT status (unless the resultant entity qualifies as an original listing as a corporation), and (2) maintain a minimum market capitalization of $15,000,000.

9. Average closing price of a security is less than $1.00 over a consecutive 30 trading-day period. Once notified, the company must bring its average share price back above $1.00 within the six months following receipt of the notification. If this is the only criteria that makes the company below the Exchange's continued listing standards, the procedures outlined in Paras. .50 and .60 of this Rule 499 do not apply. The company must, however, notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure this deficiency. In the event that at the expiration of the six-month cure period, a $1.00 average share price over the preceding 30 trading days is not attained, the Exchange will commence suspension and delisting procedures.

* * * * *

[11.]14. Bankruptcy and/or Liquidation.—An intent to file under any of the sections of the bankruptcy law has been announced or a filing has been made of that liquidation has been authorized and the company is committed to proceed. *If a company files or announces an intent to file for reorganization relief under the bankruptcy laws (or an equivalent foreign law), the Exchange may exercise its discretion to continue the listing and trading of the securities of the company. However, if a company that is below any continued listing standard enumerated in sections 4–6 above (which may be determined on the basis of price indications) files or announces an intent to file for relief under any provisions of any bankruptcy laws, it is subject to immediate suspension and delisting. Similarly, if a company that files or announces an intent to file for relief under any provisions of any bankruptcy laws subsequently falls below any continued listing standard enumerated in sections 4–6 above (which may be determined on the basis of price indications), it is subject to immediate suspension and delisting.*

{Renumber current paragraphs 7 through 20 of Rule 499.20 as paragraphs 10 through 23, respectively, of Rule 499.20.}

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for,

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify several of its existing continued listing criteria, to codify certain Exchange policies regarding its continued listing criteria, to replace certain of the current criteria with new continued listing criteria, and to create subsections in the continued listing section.

The Exchange's current numerical continued listing criteria include requirements regarding size, earnings, and share distribution.[6] The Exchange believes that, in contrast to the current standards' focus on earnings and net tangible assets, a company's market capitalization, the breadth of its shareholder base and the size of its stockholders' equity are better gauges for evaluating the continued listing status of a company.

Specifically, the Exchange proposes to replace its current criteria with a financial standard subjecting a company to suspension and delisting if: (i) its global market capitalization and its stockholders' equity (or net assets for closed-end investment companies registered under the Investment Company Act of 1940 ("Funds")) each fall below $50 million, or (ii) its average global market capitalization is below $15 million over 30 consecutive trading days. In the context of delisting, the Exchange believes the more appropriate focus is on the size and the amount of stockholders' equity in a company, rather than on what may be transitory earning trends. These two standards would apply to every company, whether domestic or non-U.S., and whether it listed under the "adjusted earnings" or "cash flow" standard.

The Exchange is also proposing a new continued listing standard for those companies that qualify for initial listing under the "global market capitalization" standard.[7] Such a company would be subject to delisting if: (i) its total global market capitalization is below $500 million and its total revenues are below $50 million over the past 12 months,[8] or (ii) its average global market capitalization is below $100 million over 30 consecutive trading days. In the event that such a company can qualify under one of the other original listing criteria, however, it would not be subject to delisting.

Finally, the Exchange is also proposing to adopt a price criteria applicable to all issuers. Specifically, the Exchange proposes to add a new minimum continued listing standard that would be triggered when a security's average closing price over a 30-trading-day period falls below $1.00. Once this standard is triggered, companies would have six months to cure the deficiency.

With respect to the $50 million market capitalization and $50 million stockholders' equity standard, a company that falls below this continued listing criteria would be permitted 18 months to re-establish both its market capitalization and its stockholders' equity to be considered in conformity with continued listing standards. (*See* Paras. 802.02 and 802.03 of the Manual). With respect to the $15 million minimum for average global market capitalization, upon notification, the company would be required to restore its market capitalization to at least $15 million within 18 months.

With respect to the closing price minimum of $1.00, once notified, a company would have six moths to return its average stock price to above $1.00. As an alert mechanism for issuers, the Exchange intends to notify a company whose average price falls below $5.00 over a 30-trading-day period of the consequences of a further decline in its share price to below $1.00. Each company so identified and notified would then be tracked by the Exchange and its price monitored. If this is the only criteria that causes a company to fall below the Exchange's continued listing standards, the Exchange generally would not commence suspension and delisting procedures for six months. However, the company must notify the Exchange within 10 business days of receipt of its notification of its intent to cure this deficiency or be subject to immediate suspension and delisting. In the event that, at the expiration of the six-month cure period, at $1.00 share price is not attained, the Exchange will commence suspension and delisting procedures.

The Commission recently approved a codification of the Exchange's initial listing standard for Funds with less than three years of operating history.[9] This standard requires a minimum net asset value of $60 million. The Exchange now proposes to codify a specific delisting criteria for these newly-formed Funds of $30 million in both market capitalization and net assets. The Exchange is proposing a lower continued listing standard for newly-formed Funds that recognizes that they qualify originally at a lower amount (50% of the original qualification threshold). In addition, the Exchange proposes to incorporate into the Funds section its general standard of a minimum of $15 million in market capitalization. Finally, the Exchange is proposing to codify its existing policy that Funds are immediately delistable upon conversion to open-ended status. The Exchange notes that, upon attainment of three years of operating history, the Funds would be subject to the numerical criteria generally applicable to capital or common stock proposed above.

The Commission recently approved an original listing standard for REITs with less than three years of operating history.[10] The Exchange now proposes to codify a specific delisting criteria for these newly-formed REITs of $30 million in both market capitalization and stockholders' equity. Similar to Funds, the Exchange is proposing a lower continued listing standard for newly-formed REITs that recognizes that they qualify at a lower amount (50% of the original qualification threshold). In addition, the Exchange proposes to incorporate into the REIT section the minimum standard of $15 million of market capitalization. Finally, the Exchange is proposing a new policy that a REIT is immediately delistable upon the loss of its REIT status if the resultant entity is unable to qualify as an original listing as a corporation (or other operating company) at that time. The Exchange notes that upon attainment of three years of operating history, the REIT would be subject to the numerical criteria generally applicable to capital or common stock proposed above.

The Exchange proposes to clarify and codify its policy whereby a company that files or announces an intent to file for reorganization under the bankruptcy laws is not subject to automatic delisting. In such a situation, the Exchange could exercise discretion to continue the listing and trading of the securities of the company. Once such a company is identified, the Exchange monitors its performance against the remaining continued listing standards, the compliance with which may be determined on the basis of price indications, as opposed to a 30-trading-day average. If a company that is below any continued listing standard enumerated in proposed Para. 802.01B of the Manual ("Numerical Criteria for Capital or Common Stock") files or announces an intent to file for such relief (or if a company having filed for bankruptcy becomes below another continued listing standard), it would be subject to immediate suspension and delisting. Notwithstanding the preceding, the Exchange may at any time exercise its discretion to proceed with suspension and delisting procedures based solely upon a bankruptcy filing.

The Exchange proposes an additional delisting criteria to address non-numerical indications in financial statements of unsatisfactory financial performance. These additional criteria could lead to the delisting of a company that may otherwise continue to meet the specifically-enumerated numerical criteria in Section 802.01 of the Manual. The Exchange views the disclosure contained in the independent accountant's opinion that the company receives on its financial statements as providing one such indication. Independent public accountant's opinions that might indicate unsatisfactory financial performance include: (i) a qualified opinion, (ii) an adverse opinion, (iii) a disclaimer opinion, or (iv) an unqualified opinion with a "going concern" emphasis.

In addition, if a company that emerges from being below continued listing standards again falls below continued listing standards within 12 months, the Exchange will scrutinize the original methods of financial recovery taken by the company. In this regard, the Exchange would also examine the relationship of the two incidents of falling below continued listing standards. Exchange staff would then take the requisite action, which may include truncating the procedures described in Paras. 802.02 and 802.03, or immediately initiating suspension and delisting procedures.

The Exchange proposes to codify and provide more specificity to its current policy of requesting companies that trigger one or more of the factors outlined in "Other Criteria" to comply with the procedures outlined in Paras. 802.02 and 802.03 of the Manual when it determines it is appropriate to do so. For instance, the Exchange has historically requested additional information from companies it has identified as having a significant reduction in operating assets. Such information has often taken the form of a "plan" as defined in Paras. 802.02 and 802.03 of the Manual.

Upon the Commission's approval of this Pilot, all listed companies will immediately become subject to these new continued listing standards, and the 30-day clock for computing the various averages in the proposed standards will begin. The Exchange anticipates that there will be a number of listed companies that are mid-stream through an approved financial plan due to having fallen below the current continued listing standards, which will also be below the new proposed continued listing standards. With regard to these companies, the Exchange notified them of the new standards at the time it filed with the Commission to prepare them for the transition and to give them an opportunity to prepare new plans with new goals. These companies will be notified upon Commission approval and given 45 days from receipt of the notice to submit a plan (unless the current plan is already financially sufficient) to the Exchange delineating how they intend to come into compliance with the new standards within 12 months. However, if the company is solely below the proposed $1.00 threshold, it would only have the six-month period discussed above to cure its deficiency.

The Exchange also notes that there are companies currently identified as below continued listing standards that will not be below continued listing standards under the new proposed standards. While this proposal is pending Commission action, the Exchange intends to stay the plan submission process for these companies. In doing so, the Exchange intends to avoid placing an unfair burden on these issuers by forcing them to expend capital and personnel resources to develop a six-quarter plan, the goals of which will become obsolete in the immediate future. Finally, with regard to all listed companies that are currently in good financial standing, the Exchange intends to afford those companies that are identified as below the new continued criteria at the time of Commission approval 18 months from the effective date of this Pilot to return to good standing pursuant to the procedures detailed in Paras. 802.02 and 802.03 of the Manual.

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[11] that an Exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested that the Commission find good cause, pursuant

[6] Currently, the Exchange's financial criteria subject a company to delisting if it has: an aggregate market value of its policy-held common stock of less than $8 million; or net tangible assets or an aggregate market value of its common stock of less than $12 million *and* average net income of less than $600 thousand for the past three years; *or* for "cash flow companies," an aggregate market value of shares outstanding (excluding treasury stock) of less than $25 million and average "adjusted net income" for the past three years of less than $6.5 million. In addition, there are requirements related to the number of total stockholders and number of publicly held shares.

[7] The standard is currently effective on a three-month pilot period that commenced on May 27, 1999. The Exchange expects to seek permanent approval of this listing standard prior to September 3, 1999, the date the pilot is scheduled to expire. *See* Securities Exchange Act Release No. 41459 (May 27, 1999), 64 FR 30088 (June 4, 1999) (notice and order granting partial accelerated approval to File No. SR–NYSE–99–17).

[8] The review is based on the unaudited Quarterly Reports. Consequently, if a company were to restate its financials, the NYSE would re-evaluate the company's eligibility for continued listing on the Exchange. Telephone conversation between N. Amy Bilbija, Counsel, NYSE, and Deborah Flynn, Special Counsel, Division, SEC, on July 12, 1999.

[9] The Exchange has specifically tailored listing standards for IPOs, Funds and real estate investment trusts ("REITs") that address the nature of these listings and their operations. *See* Securities Exchange Act Release No. 41346 (April 29, 1999), 64 FR 24435 (May 6, 1999).

[10] *See* Release No. 41502.

[11] 15 U.S.C. 78f(b)(5).

to Section 19(b)(2) of the Act,[12] for approving the establishment of the Pilot which would expire on November 1, 1999 (or until such earlier time as the Commission grants the Exchange's request for permanent approval of the program), prior to the thirtieth day after publication in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–29 and should be submitted by August 23, 1999.

V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission finds that the portion of the proposed rule change relating to the establishment of the Pilot is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[14] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public.

The Commission finds that the revisions and codification of the continued listing criteria set forth in the proposed Pilot, which should ensure that companies that final to satisfy the continued listing criteria are identified, reviewed, and then subjected to specified delisting procedures, are consistent with the Act and should enhance investor protection. Moreover, the Pilot should ensure that those companies falling below the NYSE's continued listing criteria are provided with transparent, detailed procedures for addressing their status. The Commission further believes that the proposed Pilot is consistent with the Exchange's obligation to perfect the mechanism of a free and open market by codifying its continued listing criteria, thereby encouraging the NYSE to apply uniformly its criteria in listing and, if necessary, delisting securities on the Exchange. Lastly, the Commission believes that the proposed continued listing criteria, established in the Pilot, should help to ensure the stability of the marketplace, as well as protect investors, by enabling the NYSE to identify listed companies that may not have sufficient trading depth and liquidity to warrant continued listing.

The Commission finds good cause for approving the Pilot prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that accelerated approval of the Pilot will enable the Exchange to minimize the interruption in its continued listing and delisting of these securities and allow for an orderly transition for its issuers, while providing the Commission adequate time to carefully consider the Exchange's proposal seeking permanent approval of the proposed changes to its continued listing criteria.[15]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the Pilot program proposed by the Exchange (File No. SR–NYSE–99–29) is approved until November 1, 1999, or until the Commission approves the proposal permanently.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19716 Filed 7–30–99; 8:45 am]

BILLING CODE 8010–01–M

[12] 15 U.S.C. 78s(b)(2).

[13] In approving this Pilot, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] The Commission's approval of the Pilot should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis.

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3099]

Registration for the Diversity Immigrant (DV–2001) Visa Program

ACTION: Notice of registration for the seventh year of the Diversity Immigrant Visa Program.

This public notice provides information on the procedures for obtaining an opportunity to apply for one of the 55,000 (maximum) immigrant visas to be made available in the Diversity Immigrant Visa (DV) category during Fiscal Year 2001. This notice is issued pursuant to 22 CFR 42.33(b)(2) which implements sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(G) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1151, 1153, and 1154(a)(1)(G)).

Entry Procedures for Immigrant Visas To Be Made Available in the DV Category During Fiscal Year 2001

ENTRIES FOR THE DV–2001 MAIL-IN PERIOD MUST BE *RECEIVED* BETWEEN NOON (EASTERN TIME) ON MONDAY, OCTOBER 4, 1999 AND NOON (EASTERN TIME) ON WEDNESDAY, NOVEMBER 3, 1999. Entries received before or after these dates will be disqualified regardless of when they are postmarked. Entries sent to an incorrect address will also be disqualified.

How Visas Are Apportioned

Visas are apportioned among six geographic regions with a greater number of visas going to regions with lower rates of immigration, and no visas going to countries sending more than 50,000 immigrants to the U.S. in the past five years. No one country can receive more than 7 percent of the diversity visas issued in any one year. For DV–2001, natives of the following are NOT ELIGIBLE to apply:

CANADA
CHINA (mainland and Taiwan, except Hong Kong S.A.R.)
COLOMBIA
DOMINICAN REPUBLIC
EL SALVADOR
HAITI
INDIA
JAMAICA
MEXICO
PHILIPPINES
POLAND
SOUTH KOREA
UNITED KINGDOM (except Northern Ireland) and its dependent territories
VIETNAM

Requirements

To enter, an applicant must be able to claim nativity in an eligible country, AND must meet either the education or training requirement of the DV program. Nativity in most cases is determined by the applicant's place of birth. However, if a person was born in an ineligible country but his/her spouse was born in an eligible country, such person can claim the spouse's country of birth rather than his/her own. Also, if a person was born in an ineligible country, but neither of his/her parents was born there or resided there at the time of the birth, such person may be able to claim nativity in one of the parents' country of birth. Education or Training: To enter, an applicant MUST have EITHER a high school education or its equivalent, defined in the U.S. as successful completion of a 12-year course of elementary and secondary education; OR two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. U.S. Department of Labor definitions will apply. If a person does not meet these requirements, he/she SHOULD NOT submit an entry to the DV program.

Procedures for Submitting an Entry Form

Only ONE entry form may be submitted by or for each applicant during the registration period. Submission of more than one entry will disqualify the person. The applicant must personally sign the entry, preferably in his/her native alphabet. Failure of the applicant to personally sign his/her own entry will result in disqualification.

Completing the Entry Form

There is no specific format for the entry. Simply use a plain sheet of paper and type or clearly print in the English alphabet (preferably in the following order): (Failure to provide ALL of this information will disqualify the applicant.)

1. FULL NAME, with the last (surname/family) name underlined
   EXAMPLES: *Public,* Sara Jane (or) *Lopez,* Juan Antonio
2. DATE AND PLACE OF BIRTH
   Date: Day, Month, Year EXAMPLE: 15 November 1961
   Place: City/Town, District/County/Province, Country EXAMPLE: Munich, Bavaria, Germany
   The name of the country should be that which is currently in use for the place where the applicant was born (Slovenia, rather than Yugoslavia; Kazakstan rather than Soviet Union, for example).
3. THE APPLICANT'S NATIVE COUNTRY IF DIFFERENT FROM COUNTRY OF BIRTH
   If the applicant is claiming nativity in a country other than his/her place of birth, this must be clearly indicated on the entry. This information must match with what is put on the upper left corner of the entry envelope. (See "MAILING THE ENTRY" below.) If an applicant is claiming nativity through spouse or parent, please indicate this on the entry. (See "Requirements" section for more information on this item.
4. NAME, DATE AND PLACE OF BIRTH OF THE APPLICANT'S SPOUSE AND CHILDREN (IF ANY) (Failure to provide all of this information will disqualify the applicant.)
5. FULL MAILING ADDRESS This must be clear and complete, as any communications will be sent there. A telephone number is optional, but useful.
6. PHOTOGRAPH. Attach a recent, preferably less than 6 months old, photograph of the applicant, 1.5 inches (37 mm) square in size, with the applicant's name printed on the back. The photograph (not a photocopy) should be attached to the entry with clear tape—DO NOT use staples or paperclips, which can jam the mail processing equipment.
7. SIGNATURE: Failure to personally sign the entry will disqualify the applicant.

Mailing the Entry

Submit the entry by regular or air mail to the address matching the region of the applicant's country of nativity. Entries sent by express or priority mail, fax, hand, messenger, or any means requiring receipts or special handling will not be processed.

The envelope must between 6 and 10 inches (15 to 25 cm) long and 3½ and 4½ inches (9 to 11 cm) wide. Postcards are NOT acceptable, nor are envelopes inside express or oversized mail packets. In the upper left hand corner of the envelope the applicant must show his/her country of nativity, followed by the applicant's name and full return address. The applicant must provide both the country of nativity and the country of the address, even if both are the same. Failure to provide this information will disqualify the entry. The mailing address for all entries is the same EXCEPT for the ZIP (POSTAL) CODE. The address is: DV–2001 Program, National Visa Center, Portsmouth NH (ZIP CODE as appropriate. See below.), U.S.A.

The Zip Codes are:

ASIA—00210
SOUTH AMERICA/CENTRAL AMERICA/CARIBBEAN—00211
EUROPE—00212
AFRICA—00213
OCEANIA—00214
NORTH AMERICA—00215

For the DV Program, the regions are divided as follows:

(1) ASIA: *ZIP CODE: 00210* (extends from Israel to the northern Pacific islands, and includes Indonesia):

AFGHANISTAN
BAHRAIN
BANGLADESH
BHUTAN
BRUNEI
BURMA
CAMBODIA
HONG KONG S.A.R.
INDONESIA
IRAN
IRAQ
ISRAEL
JAPAN
JORDAN
NORTH KOREA
KUWAIT
LAOS
LEBANON
MALAYSIA
MALDIVES
MONGOLIA
NEPAL
OMAN
PAKISTAN
QATAR
SAUDI ARABIA
SINGAPORE
SRI LANKA
SYRIA
THAILAND
UNITED ARAB EMIRATES
YEMEN

NB: In Asia CHINA—mainland born and Taiwan born, INDIA, PHILIPPINES, SOUTH KOREA, and VIETNAM DO NOT QUALIFY for this year's diversity program. HONG KONG S.A.R. DOES QUALIFY. Applicants born in MACAU MAY APPLY for this year's DV Program, however, they will become ineligible on December 20, 1999 when control of Macau reverts to China, unless legislation is enacted which would allow Macau's continued eligibility for the DV Program.

(2) SOUTH AMERICA/CENTRAL AMERICA/CARIBBEAN: *ZIP CODE: 00211* (extends from Central America (Guatemala) and the Caribbean nations to Chile.)

ANTIGUA & BARBUDA
ARGENTINA
BARBADOS

BELIZE
BOLIVIA
BRAZIL
CHILE
COSTA RICA
CUBA
DOMINICA
ECUADOR
GRENADA
GUATEMALA
GUYANA
HONDURAS
NICARAGUA
PANAMA
PARAGUAY
PERU
ST. KITTS & NEVIS
ST. LUCIA
ST. VINCENT & THE GRENADINES
SURINAME
TRINIDAD & TOBAGO
URUGUAY
VENEZUELA

NB: In South America COLOMBIA, DOMINICAN REPUBLIC, EL SALVADOR, HAITI, JAMAICA, and MEXICO DO NOT QUALIFY for this year's Diversity Program.

(3) EUROPE : ZIP CODE: 00212 (Extends from Greenland to Russia, and includes all countries of the former USSR).

ALBANIA
ANDORRA
ARMENIA
AUSTRIA
AZERBAIJAN
BELARUS
BELGIUM
BOSNIA & HERZEGOVINA
BULGARIA
CROATIA
CYPRUS
CZECH REPUBLIC
DENMARK *
ESTONIA
FINLAND
FRANCE *
GEORGIA
GERMANY
GREECE
HUNGARY
ICELAND
IRELAND
ITALY
KAZAKSTAN
KYRGYZSTAN
LATVIA
LICHTENSTEIN
LITHUANIA
LUXEMBOURG
MACEDONIA, THE FORMER YUGOSLAV REPUBLIC OF
MALTA
MOLDOVA
MONACO
MONTENEGRO
NETHERLANDS *
NORTHERN IRELAND
NORWAY
PORTUGAL *
ROMANIA
RUSSIA
SAN MARINO
SERBIA
SLOVAKIA
SLOVENIA
SPAIN
SWEDEN
SWITZERLAND
TAJIKISTAN
TURKEY
TURKMENISTAN
UKRAINE
UZBEKISTAN
VATICAN CITY

NB: In Europe GREAT BRITAIN and POLAND DO NOT QUALIFY for this year's diversity program. GREAT BRITAIN (UNITED KINGDOM) includes the following dependent areas: ANGUILLA, BERMUDA, BRITISH VIRGIN ISLANDS, CAYMAN ISLANDS, FAULKLAND ISLANDS, GIBRALTAR, MONTSERRAT, PITCAIRN, ST. HELENA, TURKS AND CAICOS ISLANDS. Note that for purposes of the Diversity Program only, Northern Ireland is treated separately; *NORTHERN IRELAND DOES QUALIFY* and is listed among the qualifying areas.

* Includes components and dependent areas overseas.

(4) *AFRICA: ZIP CODE: 00213* (includes all countries on the African continent and adjacent islands):

ALGERIA
ANGOLA
BENIN
BOTSWANA
BURKINA FASO
BURUNDI
CAMEROON
CAPE VERDE
CENTRAL AFRICAN REPUBLIC
CHAD
COMOROS
CONGO
CONGO, DEMOCRATIC REPUBLIC OF THE
COTE D'IVOIRE (IVORY COAST)
DJIBOUTI
EGYPT
EQUATORIAL GUINEA
ERITREA
ETHIOPIA
GABON
GAMBIA, THE
GHANA
GUINEA
GUINEA-BISSAU
KENYA
LESOTHO
LIBERIA
LIBYA
MADAGASCAR
MALAWI
MALI
MAURITANIA
MAURITIUS
MOROCCO
MOZAMBIQUE
NAMIBIA
NIGER
NIGERIA
RWANDA
SAO TOME & PRINCIPE
SENEGAL
SEYCHELLES
SIERRA LEONE
SOMALIA
SOUTH AFRICA
SUDAN
SWAZILAND
TANZANIA
TOGO
TUNISIA
UGANDA
ZAMBIA
ZIMBABWE

(5) OCEANIA: ZIP CODE: 00214 (includes Australia, New Zealand, Papua New Guinea and all countries and islands of the South Pacific):

AUSTRALIA *
FIJI
KIRIBATI
MARSHALL ISLANDS
MICRONESIA, FEDERATED STATES OF
NAURU
NEW ZEALAND *
PALAU
PAPUA NEW GUINEA
SOLOMON ISLANDS
TONGA
TUVALU
VANUATU
WESTERN SAMOA

* Includes components and dependent areas overseas.

(6) NORTH AMERICA: ZIP CODE: 00215 (includes the Bahamas):

BAHAMAS, THE

NB: In North America, CANADA DOES NOT QUALIFY for this year's Diversity Program.

Important Notice: Applicants must meet ALL eligibility requirements under the U.S. law in order to be issued visas. Processing of applications and issuance of diversity visas to successful applicants and their eligible family members MUST occur by September 30, 2001. Family members may not obtain diversity visas to follow to join the applicant in the U.S. after this date. There is NO initial fee, other than postage required to enter the DV–2001 program. The use of an outside intermediary or assistance to prepare a DV–2001 entry is entirely at the applicant's discretion. Qualified entries received directly from applicants or through intermediaries have equal chances of being selected by computer. There is no advantage to mailing early, or mailing from any particular locale. Every application received during the mail-in period will have an equal random chance of being selected within its region. However, more than one application per person will disqualify the person from registration.

Selection of Winners

The selection of winners is made at random and no outside service can legitimately improve an applicant's chances of being chosen or guarantee that an entry will win. Any service that claims it can improve an applicant's odds is promising something it cannot lawfully deliver.

Notifying Winners

Only successful entrants will be notified. They will be notified by mail between April and July of 2000 at the address listed on their entry. Winners will also be sent instructions on how to apply for an immigrant visa, including information on the fee for immigrant visas and a separate visa lottery surcharge. Successful entrants must complete the immigrant visa application process and meet all eligibility requirements under U.S. law to be issued a visa.

Being selected as a winner in the DV Lottery does not automatically guarantee being issued a visa even if the applicant is qualified, because the number of entries selected and registered is greater than the number of immigrant visas available. Those selected will, therefore, need to complete and file their immigrant visa applications quickly. Once all the diversity visas have been issued or on September 30, 2001, whichever is sooner, the DV Program for Fiscal Year 2001 will end.

Obtaining Instructions on Entering the DV Lottery

Interested persons may call (202) 331–7199, which describes the various means to obtain further details on entering the DV–2001 program. Applicants overseas may contact the nearest U.S. embassy or consulate for instructions on the DV lottery. DV information is also available in the Visa Bulletin on the Internet at http://travel.state.gov or via the Consular Affairs automated fax at (202) 647–3000 (code 1103). Calls to the automated fax service must be made from a fax machine using the receiver or voice option of the caller's fax equipment.

Dated: July 27, 1999.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 99–19736 Filed 7–30–99; 8:45 am]

BILLING CODE 4710–06–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending July 23, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6000

Date Filed: July 19, 1999

Parties: Members of the International Air Transport Association

Subject:

PTC23 ME–TC3 0069 dated 20 July 1999

Mail Vote 025—Resolution 010y

TC23/TC123 Middle East-Japan/Korea Special Passenger Amending Resolution from Bahrain, Oman, Qatar, United Arab Emirates to Japan/Korea

Intended effective date: 1 August 1999.

Docket Number: OST–99–6007

Date Filed: July 21, 1999

Parties: Members of the International Air Transport Association

Subject:

CTC COMP 0204 dated 23 July 1999 (adoption including all amendments to resolutions and rate tables)

Mail Vote 017—Resolution 010pp

Special Cargo Amending Resolution—Libya Except to/from USA/US Territories

Intended effective date: 1 October 1999.

Docket Number: OST–99–6020

Date Filed: July 23, 1999

Parties: Members of the International Air Transport Association

Subject:

PTC COMP 0484 dated 27 July 1999 (adoption including all amendments to resolutions and fares tables)

Mail Vote 018—Resolution 010t

Special Passenger Amending Resolution from Libya (Except to USA/US Territories)

Intended effective date: 15 August 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–19694 Filed 7–30–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–23]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 23, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack, (202) 267–7271 or Terry Stubblefield, (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 27, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29499

Petitioner: Alaska's Enchanted Lake Lodge, Inc.

Section of the FAR Affected: 14 CFR 43.3(a) and (g)

Description of Relief Sought: To permit pilots employed by AELL to perform the preventative maintenance functions listed in paragraph (c) of appendix A to part 43 on an aircraft operated under 14 CFR part 135.

Docket No.: 29505

Petitioner: Rough and Ready Guide Services, Inc. dba Nordic Flying Service

Section of the FAR Affected: 14 CFR 43.3(a) and (g)

Description of Relief Sought: To permit pilots employed by NFS to perform the preventative maintenance functions listed in paragraph (c) of appendix A to part 43 on an aircraft operated under 14 CFR part 135.

Docket No.: 29598

Petitioner: The Boeing Company

Section of the FAR Affected: 14 CFR 25.571(b) and 25.671(c)(1)

Description of Relief Sought: To allow the McDonnell Douglas Corporation time to substantiate, including redesign and retrofit, as necessary, that the flap system on the Model 717–200 meets the damage-tolerance and fail-safe criteria of the subject regulations.

Dispositions of Petitions

Docket No.: 29514

Petitioner: Decatur Aero Club

Section of the FAR Affected: 14 CFR 135.251, 135.255, and 135.353

Description of Relief Sought: To permit Decatur Aero Club to conduct sightseeing rides at an airport in the vicinity of Decatur, Illinois for their pancake breakfast on June 13, 1999, for compensation or hire, without complying with the drug and alcohol testing requirements in part 135.

GRANT, 6/11/99, Exemption No. 6899

[FR Doc. 99–19693 Filed 7–30–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 188; Minimum Aviation System Performance Standards for High Frequency Data Link

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 188 meeting to be held August 24–27, 1999, starting at 9:00 a.m. each day. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: August 24–25, (1) Working Group 2, Minimum Operational Performance Standards; May 25–26, (2) WG–1, Minimum Aviation System Performance Standards (starting at 1:00 p.m. on May 25); May 27, Plenary Session: (3) Review summary of Previous Meeting; (4) Review of WG–1 status; (5) Review of WG–2 status; (6) Review activities of other Standards Groups; (7) Open Discussion; (8) Confirm dates for future meetings; (9) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 26, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–19691 Filed 7–30–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 26, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 1, 1999 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0034.
Form Number: ATF F 5000.9.
Type of Review: Extension.
Title: Personnel Questionnaire Alcohol and Tobacco Products.
Description: The information listed on ATF F 5000.9, Personnel Questionnaire, enables ATF to determine whether or not an applicant for an alcohol or tobacco permit meets the minimum qualifications. The form identifies the individual, residence, business background, financial sources for the business and criminal record. If the applicant is found not to be qualified, the permit may be denied.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 10,000 hours.

OMB Number: 1512–0057.
Form Number: ATF F 487–B (5170.7).
Type of Review: Extension.
Title: Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid.
Description: ATF F 487–B is used is to document the shipment of taxpaid Puerto Rican articles into the U.S. The form is verified by Puerto Rican and U.S. Treasury Officials to certify that products are either taxpaid or deferred under appropriate bond. Serves as a method of protection of the revenue.
Respondent: Business or other for-profit.
Estimated Number of Respondents: 20.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 100 hours.

OMB Number: 1512–0171.
Form Number: ATF F 5220.3.
Type of Review: Extension.
Title: Inventory—Export Warehouse Proprietor.
Description: ATF F 5220.3 is used by export warehouse proprietors to record inventories that are required by law and regulations.

Respondent: Business or other for-profit.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 5 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 50 hours.

OMB Number: 1512–0493.
Form Number: ATF F 5300.3.
Type of Review: Extension.
Title: Letterhead Request for Information in Regard to Federal Firearms Dealer's Records (Dealer's Records of Acquisition, Disposition & Supporting Data).
Description: This letter gives the user a simplified format to list the required information ATF needs to perform its functions in regard to the law. The respondent saves time because the questions are simple and a return address is supplied. The form is used to maintain a current status of firearms licensees.
Respondent: Business or other for-profit.
Estimated Number of Respondents: 28,000.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,380 hours.

OMB Number: 1512–0503.
Recordkeeping Requirement ID Number: ATF REC 5120/3.
Type of Review: Extension.
Title: Marks on Wine Containers.
Description: ATF requires that wine on wine premises be identified by statements of information on labels or contained in marks. ATF uses this information to validate the receipts of excise tax revenue by the Federal government. Consumers are provided with adequate identifying information.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 1,560.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 99–19652 Filed 7–30–99; 8:45 am].

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8621

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8621, Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

DATES: Written comments should be received on or before October 1, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
OMB Number: 1545–1002.
Form Number: 8621.
Abstract: Form 8621 is filed by a U.S shareholder who owns stock in a foreign investment company. The form is used to report income, make an election to extend the time for payment of tax, and to pay an additional tax and interest amount. The IRS uses Form 8621 to determine if these shareholders have correctly reported amounts of income, made the election correctly, and have correctly computed the additional tax and interest amount.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 27 hrs., 2 min.

Estimated Total Annual Burden Hours: 54,080.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 22, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–19767 Filed 7–30–99; 8:45 am]

BILLING CODE 4830–01–U

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FEDERAL REGISTER PAGES AND DATES, AUGUST

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 4/P.L. 106–38

National Missile Defense Act of 1999 (July 22, 1999; 113 Stat. 205)

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To correct errors in the authorizations of certain programs administered by the National Highway Traffic Safety Administration. (July 28, 1999; 113 Stat. 206)

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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August 19	September 3	September 20	October 4	October 18	November 17
August 20	September 7	September 20	October 4	October 19	November 18
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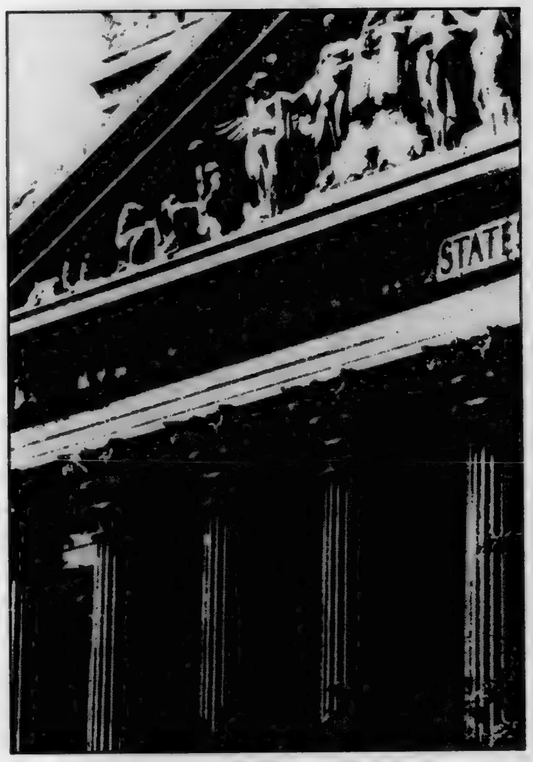

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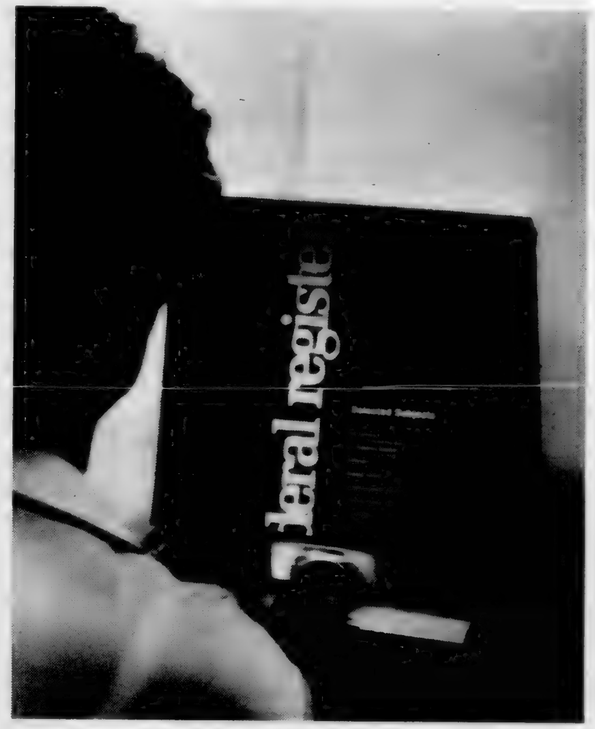

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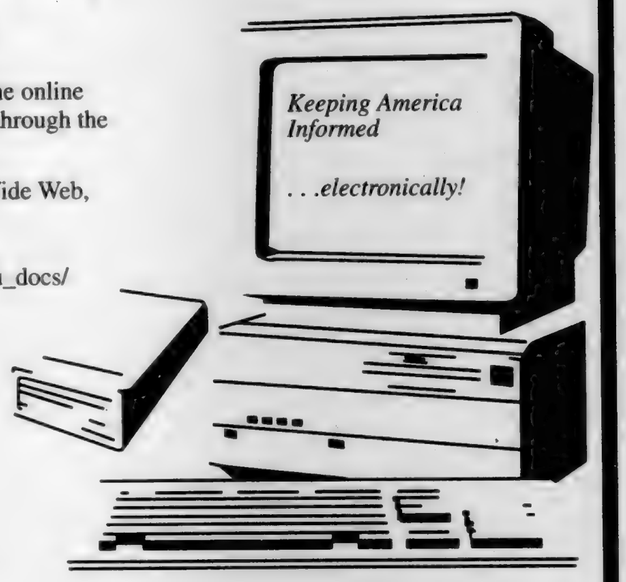

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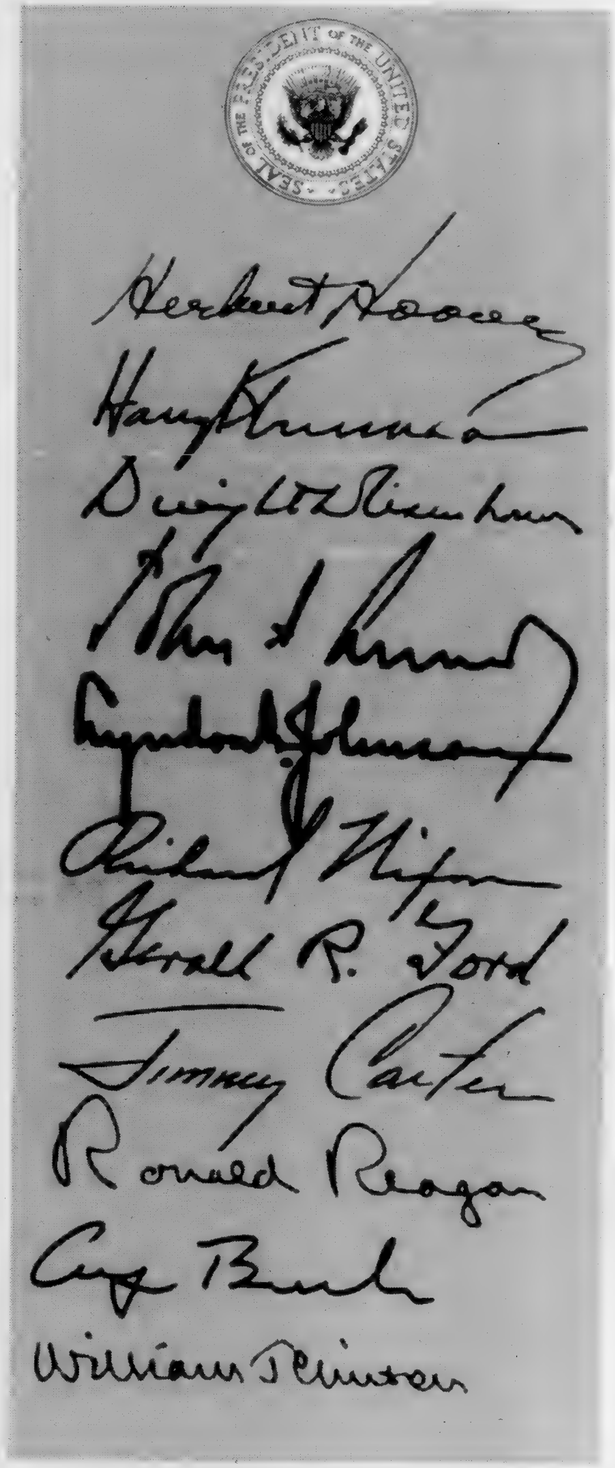

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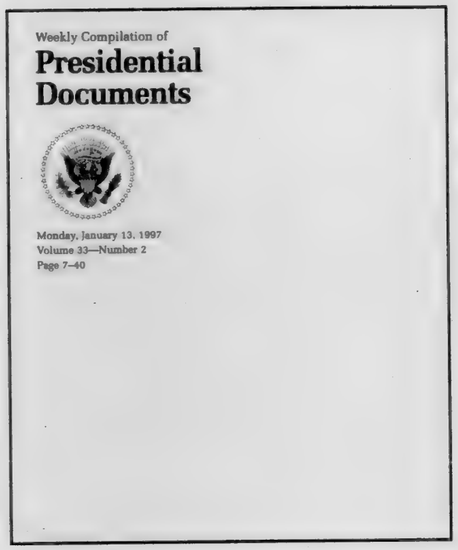

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Rules and Regulations

Federal Register
Vol. 64, No. 148
Tuesday, August 3, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 610

RIN 0578–AA22

Technical Assistance

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: Section 342 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) expands the membership and roles of State Technical Committees established pursuant to Section 1261 of the Food Security Act of 1985, as amended (the 1985 Act). Under Section 1261, the Secretary must establish a technical committee in each State to assist in making technical considerations related to the implementation of the 1985 Act's conservation provisions. Consistent with the 1985 Act, State Technical Committees work closely with the United States Department of Agriculture (USDA) in an advisory capacity.

This rule sets forth the policies and procedures for the use of State Technical Committees by USDA, the membership criteria, and the responsibilities assigned to these committees. It also amends regulations to reflect the responsibilities assigned to the Natural Resources Conservation Service (NRCS) beyond that of soil conservation. This rule amends regulations to acknowledge the NRCS mission to promote the long-term sustainability of all agricultural lands, including cropland, forestland, and grazing lands which include pastureland, rangeland, and grazed forest land. This rule further explains the NRCS mission to include improving water quality, fish and wildlife habitat, wetlands, and unique natural areas.

EFFECTIVE DATE: August 3, 1999.

ADDRESSES: This rule may also be accessed via Internet. Users can access the NRCS **Federal Register** homepage and submit comments at: http://www.nrcs.usda.gov; select 1996 Farm Conservation Programs from the menu.

FOR FURTHER INFORMATION CONTACT: Gary R. Nordstrom, Conservation Operations Division, Natural Resources Conservation Service; telephone: (202) 720–1845; fax: (202) 720–4265; E-mail: gary.nordstrom@usda.gov, Attention: State Technical Committee.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. Pursuant to Sec. 6(a)(3) of Executive Order 12866, the NRCS has conducted an economic analysis of the potential impacts associated with this final rule. Because it is not possible to measure all costs or benefits of the State Technical Committees using strict benefit-cost techniques, a cost-effectiveness analysis was used. This analysis estimates that no material adverse effects on the economy, a sector of the economy, agricultural productivity, competition, jobs, the environment, public safety, or State, local, or tribal governments or communities are expected from implementation of this final rule. Copies of the benefit-cost assessment are available upon request from Mitch Flanagan, Attn: State Tech. Comm., Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this final rule because NRCS is not required by 5 U.S.C. 553, or any other provisions of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

NRCS has determined that this final rule is within the categorical exclusion for advisory and consultative activities under 7 CFR Sec. 1b.3(a)6. Therefore, an environmental assessment was not conducted.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this final rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0578–0027 to the information collection and recordkeeping requirements. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for Agriculture, Washington, DC 20503. Please also send a copy of your comments to Gary R. Nordstrom, PO Box 2890, Washington, DC 20013.

The paperwork associated with the establishment of State Technical Committees will include submission of a request for committee membership consideration including an explanation of the individual's interest and a description of their credentials relevant to becoming a member of the State Technical Committee. We are soliciting comments from the public (as well as from affected agencies) concerning our information collection and recordkeeping requirements. We need this outside input to help us accomplish the following:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological

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collection techniques or other forms of information technology, e.g., permitting electronic submission responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 60 minutes per response.

Estimated number of respondents: 240 (annually).

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 240.

Copies of this information collection can be obtained from: Information Clearance Officer, OCIO, USDA, Room 404–W, 1400 Independence Avenue, Washington, DC 20250.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, the effects of this rulemaking action on State, local, and tribal governments, and the public have been assessed. This action does not compel the expenditure of $100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore, a statement under Section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

USDA classified this final rule as not major; therefore, under Section 304 of the Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354, a risk assessment was not required.

Background and Purpose

Section 1261 of the 1985 Act sets out the membership and roles of the State Technical Committees. Section 1262 (e) exempts State Technical Committees from the provisions of the Federal Advisory Committee Act.

NRCS policy encourages individuals from a variety of natural resource sciences and occupations to participate on the State Technical Committee. NRCS considers the expanded membership of State Technical Committees as a positive step towards gaining local conservation expertise. However, NRCS believes that the ultimate responsibility of the NRCS State Conservationist in a particular State is to ensure that all interests are adequately represented on the committee and that committee recommendations are applied in a streamlined and cost-effective manner.

The 1996 Act (Pub. L. 104–127) expanded eligibility for State Technical Committee membership to include representatives from the private sector. In addition to these members, the State Technical Committee includes additional agencies and groups based on their proven expertise with conservation programs. These member agencies and groups include the following: Environmental Protection Agency, Bureau of Indian Affairs, U.S. Geological Survey, U.S. Army Corps of Engineers, Farm Service Agency State Committee, and Federally-recognized American Indian Tribal Governments and Alaskan Native Corporations encompassing 100,000 acres or more in the State.

The State Technical Committees include one representative from each of the following agencies or groups, unless the agency or group declines membership:

Department of Agriculture

- NRCS (Chairperson);
- Farm Service Agency;
- Farm Service Agency State Committee;
- Forest Service;
- Cooperative State Research, Education, and Extension Service;
- Rural Development;

Department of the Interior

- Fish and Wildlife Service;
- Bureau of Land Management;
- Bureau of Indian Affairs;
- Bureau of Reclamation;
- U.S. Geological Survey;

Department of Defense

- Army Corps of Engineers;
- Each of the Federally recognized American Indian Tribal Governments and Alaskan Native Corporations, encompassing 100,000 acres or more in the State;
- State departments and agencies which the NRCS State Conservationist deems appropriate, for example, a member from each of the following:
- Fish and wildlife agency;
- Forestry agency;
- Water resources agency;
- Department of agriculture;
- Association of soil and water conservation districts;
- Coastal zone management agency;
- Soil and water conservation agency; and
- Other Federal, State, Tribal and local agency representatives with expertise in soil, water, wetlands, plant, and wildlife management, as the NRCS State Conservationist considers appropriate.

In addition to Federal, State, Tribal, and local agency and group membership, the State Technical Committees will include members from the following private interests: [including:]

- Agricultural producers with demonstrable conservation expertise;
- Nonprofit organizations with demonstrable conservation expertise;
- Persons knowledgeable about conservation techniques and programs; and
- Representatives from agribusiness.

To ensure that recommendations of the State Technical Committees take into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability and skills concerning natural resource conservation subjects specific to historically under-served groups and individuals; i.e. minorities, women, persons with disabilities and socially and economically disadvantaged groups.

The NRCS State Conservationist determines the membership on the State Technical Committee. Individuals or groups wanting to participate on a State Technical Committee may submit to the NRCS State Conservationist for that State a request that explains their interest and outlines their credentials, which they believe are relevant to becoming a member of the State Technical Committee. Decisions of the NRCS State Conservationist concerning membership on the committee are final and are not subject to appeal.

State Technical Committee meetings are open to the public. The State Conservationist will provide public notice of meetings that consider issues relating to particular conservation programs. The State Conservationist will publish a meeting notice no later than 14 calendar days prior to the meeting. Notification may exceed this 14-day minimum where State open meeting laws exist and require a longer notification period. An exception to this minimum 14-day notice requirement may occur in the case of an emergency. The State Conservationist will publish this meeting notice in one or more newspaper(s), including recommended Tribal publications, to achieve statewide notification. The State Conservationist will schedule and conduct the meetings, although meetings may be requested by any USDA agency, as needed.

In some situations, specialized subcommittees, made up of State Technical Committee members, may be needed to analyze and refine specific issues. The State Conservationist may assemble certain members to discuss, examine, and focus on a particular technical or programmatic topic. In such situations, where subcommittee meetings occur, the subcommittee may seek public participation. Nevertheless, official recommendations resulting from these subcommittee sessions shall be made only in a general session of the State Technical Committee, where the public is notified and invited to attend.

The State Technical Committees have no implementation or enforcement authority. However, the Committees' advisory capacity extends to many of the USDA conservation programs. As set forth in Section 1262 of the Act (16 U.S.C. 3862(b)(1) and 16 U.S.C. 3862(c)), the responsibilities of the State Technical Committee include recommendations on technical matters such as:

- Guidelines for evaluating petitions by agricultural producers regarding new conservation practices and systems not already described in field office technical guides;
- Aspects of wetland protection, restoration, and mitigation requirements;
- Criteria to be used in evaluating bids for enrollment of environmentally-sensitive lands in the Conservation Reserve Program (16 U.S.C. 3831–3836);
- Guidelines for haying or grazing and the control of weeds to protect nesting wildlife on set-aside acreage;
- Highly erodible land exemptions and the appeals process as they pertain to technical issues and information;
- Wetland and highly erodible land conservation compliance exemptions and the appeals process;
- Methods to address common weed and pest problems and programs to control weeds and pests found on acreage enrolled in the Conservation Reserve Program (16 U.S.C. 3831–3836);
- Guidelines for planting perennial cover for water quality and wildlife habitat improvement on set-aside lands;
- Criteria and priorities for state initiatives under the Environmental Quality Incentives Program (EQIP) (16 U.S.C 3839aa) and 7 CFR 1466, including:
- Criteria to prioritize applications from applicants with significant statewide resource concerns outside a priority area;
- Eligible conservation practices for an EQIP priority area or for significant statewide resource concerns outside a priority area;
- Criteria to be used in defining a large confined livestock operation;
- Suggestions on how often producers' applications are ranked and selected; and
- Determination of cost share and incentive payment limits for participants subject to environmental requirements or with significant statewide resource concerns outside a priority area.

Section 1262 of the Act (16 U.S.C. 3862(c)(9)) also provides that State Technical Committees may offer recommendations on other matters determined appropriate by the NRCS State Conservationist. USDA will seek State Technical Committee recommendations including, but not limited to, the following:

- The implementation of the Wildlife Habitat Incentives Program (WHIP), (16 U.S.C 3836a);
- The development of a statewide Wetlands Reserve Program (WRP) (16 U.S.C. 3837) wetland restoration plan;
- Statewide program guidelines applicable to WRP easement compensation, restoration planning, priority ranking, and related policy matters, 7 CFR part 1467;
- The technical merits of proposals submitted for the Farmland Protection Program;
- Identification of any categories of conversion activities and conditions, which are routinely determined by NRCS to have minimal effect on wetland functions and values as described in 7 CFR part 12;
- Conservation techniques and measures related to achieving environmental justice needs; and
- Types or classes of wetland that are not eligible for mitigation exemption under the Wetland Conservation provisions of 7 CFR part 12.

Technical Assistance

The NRCS delivers the majority of the USDA technical assistance provided to private landowners pursuant to 7 CFR 610.2. Section 610.2 has not yet been revised to provide for the responsibilities assigned to the NRCS beyond that of soil conservation. To reflect the broader mission of NRCS, particularly as it relates to technical assistance provided to private grazing land (16 U.S.C. 2005b) and fish and wildlife habitat areas, NRCS is amending Sec. 610.2. This Section acknowledges that NRCS' mission encompasses promoting the quality of all agricultural lands, including grazing land, pastureland, rangeland, forestland, and cropland, so that the long-term sustainability of the resource base is achieved with special attention to water quality, fish and wildlife habitat, wetlands, and unique natural areas.

Analysis of Public Comments

In general, all 38 respondents expressed appreciation for the opportunity to comment on Part 610. Most of the respondents were pleased with the rule and offered valuable suggestions on how to encourage public participation on State Technical Committees and better explain NRCS' mission, particularly as it relates to providing technical assistance. The majority of the comments were concerned with six major issues in the proposed rule: (1) Explaining the scope of the NRCS mission, as it pertains to technical assistance; (2) notifying the public and State Technical Committee members about meetings and the decisions following these meetings; (3) extending State Technical Committee responsibilities beyond the programs listed in the proposed rule; (4) clarifying the role of the Chairperson; and (5) identifying membership of the State Technical Committee and its specialized subcommittees. Two comments suggested that the title of State Technical Committee be changed to Farm Bill Technical Committee; however, NRCS did not adopt these comments because the State Technical Committees provides advice and recommendations on more than just Farm Bill issues. The following paragraphs summarize the comments received on the proposed rule and NRCS' responses to them.

Preamble Comments by Section

Section 610.2 Scope

Comment: NRCS received ten comments on revising the scope of NRCS technical assistance. None of those who commented opposed the language that was proposed in this section; however, nine of the ten wanted to expand or clarify the scope of NRCS technical assistance. Seven comments expressed an interest in adding fish and wildlife habitat, wetlands, and natural areas to NRCS' mission statement. Several of these comments also supported NRCS expanding its mission to urban areas. One comment indicated that they would like to see its mission statement broadened to include urban erosion and sediment control, water quality, abandoned mine reclamation and rural development, while another comment wanted to expand upon the definition of grazing lands, which would include rangeland, pastureland, grazed forestland, and hayland. Two of the ten comments also supported expanding NRCS' mission to include coastal zone management. One comment indicated satisfaction with the language.

Response: The NRCS appreciates these comments and has clarified the regulations to explain its mission to include improving water quality, fish and wildlife habitat, and wetlands, since many of the authorities under

which NRCS operates include references to fish and wildlife habitat, water quality, and wetlands. NRCS technical assistance does extend to coastal zone management, abandoned mine reclamation and rural development; however, other Federal agencies have a much greater role in these matters.

Subpart C—State Technical Committees

Section 610.21 Purpose and Scope

Comment: All of the comments received by NRCS supported the establishment of State Technical Committees in each State. As of September 30, 1996, all states had established State Technical Committees to assist in making technical recommendations relating to the implementation of USDA conservation provisions. Three comments requested that State Technical Committee recommendations be considered as more than just advice.

Response: The purpose of State Technical Committee, which is stated in the rule, mirrors the statutory purposes. According to Sec. 1262 of the 1985 Act, State Technical Committees are "advisory and shall have no implementation and enforcement authority;" however, the [State Conservationist] shall give strong consideration to the recommendations of such Committees. * * *"

Section 610.22 State Technical Committee Membership

Comment: NRCS received 33 comments on State Technical Committee membership. Four comments supported more local involvement on State Technical Committees, while seven commenters would like to see all agricultural and conservation organizations represented on the committee. One comment asked to see farmers represented on the Committee.

Response: NRCS supports representation from farmers, agricultural and conservation organizations, and other local organizations with conservation technical expertise. The final rule's representation requirements for these organizations and individuals mirrors what is in the statute. This includes representatives from the agricultural community and agribusiness.

Comment: Two comments would like state agency representation to be mandatory rather than "as the State Conservationist deems appropriate."

Response: NRCS has supported and continues to support state agency representation on the State Technical Committee. Historically, NRCS has included members from a variety of state agencies. In fact, in a survey that was conducted in 1996, it was estimated that approximately 49 percent of its members are government employees, over 22 percent being from state agencies. In order to maintain Committee balance among all interests and assure that other interests are fairly represented, NRCS has chosen to retain the statute's language "as deemed appropriate" for State Technical Committee membership and rely on its State Conservationist to determine state agency participation.

Comment: Three comments expressed concerns about the size of State Technical Committees. One comment stated that State Technical Committees will be unwieldy by including all the members that were suggested in the proposed rule. Another comment requested that excessive representation of governmental entities be eliminated. One commented suggested that a procedure be established to expand or reduce the size of the Committee, while four comments indicated that they were satisfied with the proposed State Technical Committee membership.

Response: NRCS shares many of these concerns and has therefore limited membership of governmental agencies to one representative from each of the agencies mentioned in the proposed rule. In order to control the potential unwieldiness that may occur when a large committee meets, NRCS has also established specialized subcommittees, in 7 CFR 610.25, to discuss, analyze, and refine specific issues. NRCS believes that these specialized subcommittees will assist in making these State Technical Committees operate more efficiently and effectively.

Comment: One comment supported allowing the State Conservationist, as Chairperson, to remove an appointed member for lack of participation. Three comments suggested using a fixed-term membership.

Response: NRCS is required by statute to offer membership to several agencies and other categories of participants. To dismiss one member, due to lack of participation, would be contrary to the statutory mandate. However, NRCS also believes that some members may be reluctant to serve due to time, travel, or other constraints and therefore, NRCS has included the phrase, "if willing to serve." Furthermore, NRCS believes that it is up to the agency or organization to select its representative and the term in which they want the representative to serve on the State Technical Committee.

Comment: One comment proposed to include the National Agricultural Statistics Service (NASS) and Environmental Protection Agency (EPA) in State Technical Committee membership.

Response: In the proposed rule, NRCS included EPA in the State Technical Committee membership based on its conservation expertise. In addition to EPA, NRCS has also included, based on their natural resource conservation expertise and past involvement with State Technical Committees, the following agencies and organizations: Bureau of Indian Affairs, U.S. Geological Survey, U.S. Army Corps of Engineers, State Farm Service Agency Committee, and Federally-recognized American Indian Tribal Governments and Alaskan Native Corporations, encompassing 100,000 acres or more in the State. NRCS encourages the State Conservationist to consider and to invite representatives from agencies which may have conservation expertise, such as NASS.

Comment: One comment requested that NRCS make certain that under-served minorities are included as members of the Committee and as participants in the public meeting.

Response: NRCS shares this concern and will increase its outreach to all communities to ensure that representation on the State Technical Committee includes diverse groups. In addition, membership shall include, to the extent practicable, individuals with conservation expertise, which may be particular to historically under-served groups, such as minorities, women, and persons with disabilities.

Comment: Two comments requested that the proposed rule should be amended to have two classes of membership on the State Technical Committee. They suggested that membership on the actual committee should be limited to directors of the individual State or Federal agencies with direct ties to USDA conservation programs. The other committee should consist of department heads or other experts that have expertise in conservation issues but do not have direct authority to implement conservation programs.

Response: NRCS believes that this tiered approach is inconsistent with the law and undermines the broad advice that State Technical Committees are authorized to provide.

Comment: Seven comments requested that NRCS provide a written rationale when organizations and individuals are denied membership. Three of these comments requested appeal rights to the Secretary be granted if membership is denied.

Response: The purpose of the State Technical Committee is to improve the technical quality of USDA decisions on conservation matters. Section 1261 does not create any rights or benefits for any group or individual. Therefore, the State Conservationist's denial of participation does not constitute an adverse decision subject to appeal. In addition, NRCS believes that it is not necessary for a written rationale to be provided when organizations and individuals are denied membership.

Section 610.23 State Technical Committee Meetings

Comment: Six comments requested that NRCS require at least a 14-calendar day notice of all State Technical Committee meetings, rather than the proposed 7-calendar day minimum notice. Four comments suggested that these meetings be held on a quarterly basis, rather than being arranged as appropriate, in order to allow members enough time to arrange their schedule.

Response: NRCS accepted the minimum 14-calendar day notice requirement suggestion, except in cases of emergencies. Notification may exceed this 14-day minimum, where State open meeting laws exist and a longer notification period would be appropriate for participation by State agencies.

Comment: Eleven comments complained that, in the past, many members were not prepared to discuss issues raised at meetings. In addition, they questioned whether their advice was adequately considered by the State Conservationist. As a result, they requested stricter guidelines for State Conservationists, relating to meeting preparations. These included: notifying members of final decisions made; circulating an agenda prior to the meeting; and writing and distributing minutes.

Response: NRCS agrees with the need to prepare members for meetings with upcoming agendas and background information. It also agrees that providing minutes and informing the members of final decisions is extremely important; however, NRCS will outline these detailed requirements in guidance documents to the NRCS State Offices, rather than in the final rule.

Comment: Three comments requested that the State Conservationist notify State Technical Committee members via a mailing list and newspapers.

Response: NRCS concurs with this comment and will outline these requirements in guidance documents to the NRCS State Offices, rather than in the final rule.

Comment: Three comments requested that the role of the State Technical Chairperson be further defined, while another requested that the Chair rotate among members.

Response: NRCS believes that the role of the Chairperson needs to remain flexible; therefore, NRCS is not placing restrictions in the rule. In regards to rotating the Chair among members, NRCS believes that the accountability of the Chairperson for meeting the required duty necessitates that the State Conservationist serve in such capacity.

Section 610.24 Responsibilities of State Technical Committees

Comment: Eight comments requested that the role of the State Technical Committees be extended to advise on issues relating to the Conservation Reserve Program (CRP), while three specifically wanted the State Technical Committee to advise on CRP bid offers, as suggested in Sec. 1262(c) of the Act. Six comments suggested that the State Technical Committee's responsibility for establishing guidelines and criteria for evaluating petitions by agricultural producers for new conservation practices and systems also be included in the final rule. Five other comments suggested that the Committee's responsibility should extend to other programs, such as the Farmland Protection Program and other programs.

Response: NRCS previously set forth the State Technical Committee's responsibilities in the proposed rule and other final rules and public notices pertaining to USDA conservation programs. NRCS believes that these lists and the list that is included in this final rule are adequate in outlining the roles and responsibilities of State Technical Committees.

Section 610.25 Specialized Subcommittees.

Comment: Three comments indicated that they supported the proposed rule's subcommittee language, although two comments suggested that this be included in both the preamble and the regulations published in the final rule.

Response: NRCS agreed with these comments and has inserted the State Technical Committee subcommittee language in both the preamble and the regulations published in this final rule.

Comment: Five comments requested that subcommittees be open to agencies, groups, or persons who are not members of the State Technical Committee.

Response: NRCS believes in allowing as many individuals to participate in the process as possible. However, to have the work of the subcommittee truly focus on the work of the State Technical Committee, subcommittee members need to consist only of members from the State Technical Committee. NRCS welcomes non-members to attend the public meetings and to submit comments as appropriate.

List of Subjects in 7 CFR Part 610

Soil conservation, Technical assistance, Water resources.

Accordingly, part 610 of Title 7 of the Code of Federal Regulations is amended as follows:

PART 610—[AMENDED]

1. The authority for Part 610 is revised to read as follows:

Authority: 16 U.S.C. 590a–f, 590q, 2005b, 3861, 3862.

2. Section 610.2 is revised to read as follows:

§ 610.2 Scope.

(a) Conservation operations, including technical assistance, is the basic soil and water conservation program of NRCS. This program is designed to:

(1) Reduce soil losses from erosion;

(2) Help solve soil, water, and agricultural waste management problems;

(3) Bring about adjustments in land use as needed;

(4) Reduce damage caused by excess water and sedimentation;

(5) Enhance the quality of fish and wildlife habitat; and

(6) Improve all agricultural lands, including cropland, forestland, and grazing lands that include pastureland, rangeland, and grazed forestland so that the long-term sustainability of the resource base is achieved.

(b) The Natural Resources Conservation Service is USDA's technical agency for providing assistance to private landowners, conservation districts, and other organizations in planning and carrying out their conservation activities and programs. NRCS works with individuals, groups, and units of government to help them plan and carry out conservation decisions to meet their objectives.

3. A new Subpart C is added to read as follows:

Subpart C—State Technical Committees

Sec.

610.21 Purpose and scope.

610.22 State Technical Committee membership.

610.23 State Technical Committee meetings.

610.24 Responsibilities of State Technical Committees.

610.25 Specialized Subcommittees.

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§ 610.21 Purpose and scope.

This subpart sets forth the procedures for establishing and using the advice of State Technical Committees. NRCS shall establish in each State a technical committee to assist in making technical recommendations relating to the implementation of natural resource conservation activities and programs. USDA will use State Technical Committees in an advisory capacity in the administration of certain conservation programs and initiatives. These State Technical Committees are exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.2).

§ 610.22 State Technical Committee membership.

(a) State Technical Committees shall include members who represent a variety of natural resource sciences and occupations, including those related to soil, water, wetlands, plants, and wildlife. The State Conservationist in each State will serve as chairperson. In addition, committee membership will include one representative from each of the following agencies or groups, if willing to serve:

(1) NRCS, USDA;

(2) Farm Service Agency, USDA;

(3) State Farm Service Agency Committee, USDA;

(4) Forest Service, USDA;

(5) Cooperative State Research, Education, and Extension Service, USDA;

(6) Rural Development, USDA;

(7) Fish and Wildlife Service, United States Department of Interior;

(8) United States Environmental Protection Agency;

(9) Bureau of Land Management, United States Department of Interior;

(10) Bureau of Indian Affairs, United States Department of Interior;

(11) U.S. Geological Survey, United States Department of Interior;

(12) Bureau of Reclamation, United States Department of Interior;

(13) Corps of Engineers, United States Department of the Army;

(14) Each of the Federally recognized American Indian Tribal Governments and Alaskan Native Corporations encompassing 100,000 acres or more in the State;

(15) State departments and agencies that the NRCS State Conservationist deems appropriate, including a member from each of the following agencies or entities within the State:

(i) Fish and wildlife agency;

(ii) Forestry agency;

(iii) Water resources agency;

(iv) Department of agriculture;

(v) Association of soil and water conservation districts;

(vi) Soil and water conservation agency;

(vii) Coastal zone management agency; and

(16) Other Federal, State, tribal, and local agency personnel with expertise in soil, water, wetlands, plant, and wildlife management, as the NRCS State Conservationist considers appropriate.

(b) In addition to agency and Tribal membership, State Technical Committees shall include members from the following private interests, if willing to serve:

(1) Agricultural producers with demonstrable conservation expertise;

(2) Nonprofit organizations with demonstrable conservation expertise;

(3) Persons knowledgeable about economic and environmental impacts of conservation techniques and programs; and

(4) Representatives from agribusiness.

(c) To ensure that recommendations of the State Technical Committees take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the conservation and related technical concerns of particular historically under-served groups and individuals; i.e., minorities, women, persons with disabilities and socially and economically disadvantaged groups.

(d) In accordance with the guidelines in paragraphs (a), (b), and (c) of this section, the State Conservationist establishes membership on the State Technical Committee. Individuals or groups wanting to participate on a State Technical Committee within a specific State may submit to the State Conservationist of that particular State a request that explains their interest and outlines their credentials which they believe are relevant to becoming a member of the State Technical Committee. Decisions of the State Conservationist concerning membership on the committee are final and not appealable to any other individual or group within USDA.

§ 610.23 State Technical Committee meetings.

(a) The State Conservationist shall provide public notice of State Technical Committee meetings in which issues related to conservation programs will be considered.

(b) The State Conservationist shall publish a meeting notice no later than 14 calendar days prior to the meeting. Notification may exceed this 14-day minimum where State open meeting laws exist and provide for a longer notification period. This minimum 14-day notice requirement may be waived in the case of exceptional conditions. The State Conservationist shall publish this notice in at least one or more newspaper(s), including recommended Tribal publications, to attain statewide circulation. The State Conservationist, as Chairperson, schedules and conducts the meetings, although a meeting may be requested by any USDA agency as needed.

§ 610.24 Responsibilities of State Technical Committees.

(a) Each State Technical Committee established under this subpart shall meet on a regular basis, as determined by the State Conservationist, to provide information, analysis, and recommendations.

(b) The State Technical Committee shall provide, in writing to the implementing USDA program agency, recommendations, data, and technical analyses, which reflect the professional information and judgment of the State Technical Committee. Such information, analyses, and recommendations shall be provided in a manner that will assist in determining matters of fact, technical merit, or scientific question.

(c) The responsibilities of the State Technical Committee include making recommendations with respect to the technical matters such as:

(1) Guidelines for evaluating petitions by agricultural producers regarding new conservation practices and systems not already described in field office technical guides;

(2) Aspects of wetland protection, restoration, and mitigation requirements;

(3) Criteria to be used in evaluating bids for enrollment of environmentally-sensitive lands in the Conservation Reserve Program (16 U.S.C. 3831–3836);

(4) Guidelines for haying or grazing and the control of weeds to protect nesting wildlife on set-aside acreage;

(5) Highly erodible land exemptions and the appeals process as it pertains to technical issues and information;

(6) Wetland and highly erodible land conservation compliance exemptions and the appeals process;

(7) Methods to address common weed and pest problems, and programs to control weeds and pests found on acreage enrolled in the Conservation Reserve Program (16 U.S.C. 3831–3836);

(8) Guidelines for planting perennial cover for water quality and wildlife habitat improvement on set-aside lands;

(9) Criteria and priorities for state initiatives under the Environmental Quality Incentives Program (EQIP) (16 U.S.C. 3839aa), including:

(i) Criteria to prioritize applications from applicants with significant statewide resource concerns outside a priority area;

(ii) Eligible conservation practices for an EQIP priority area or for significant statewide resource concerns outside a priority area;

(iii) Criteria to be used in defining a large confined livestock operation under EQIP;

(iv) Suggestions on how often producers' EQIP applications are ranked and selected;

(v) Criteria to prioritize applications from applicants with significant statewide resource concerns outside a priority area; and

(vi) Determination of cost share and incentive payment limits for participants subject to environmental requirements or with significant statewide resource concerns outside a priority area.

(10) The implementation of the Wildlife Habitat Incentives Program (WHIP) (16 U.S.C 3836a);

(11) The technical merits of proposals submitted for the Farmland Protection Program (16 U.S.C. 3830);

(12) The development of a Wetland Reserve Program (WRP) (16 U.S.C. 3837) wetland restoration plan;

(13) Statewide program guidelines applicable to WRP easement compensation, restoration planning, priority ranking, and related policy matters, 7 CFR part 1467;

(14) Identification of any categories of wetland conversion activities and conditions which are routinely determined by NRCS to have minimal effect on wetland functions and values as described in 7 CFR part 12.

(15) Conservation techniques and measures related to achieving environmental justice needs; and

(16) Types or classes of wetland that are not eligible for mitigation exemption under the Wetland Conservation provisions of 7 CFR part 12.

(d) The implementing agency reserves the authority to accept or reject the Committee's recommendations; however, the implementing USDA agency shall give strong consideration to the Committee's suggestions.

§ 610.25 Specialized subcommittees.

In some situations, specialized subcommittees, made up of State Technical Committee members, may be needed to analyze and refine specific issues. The State Conservationist may assemble certain members to discuss, examine, and focus on a particular technical or programmatic topic. The subcommittee may seek public participation; however, it is not required to do so. Nevertheless, decisions resulting from these subcommittee sessions shall be made only in a general session of the State Technical Committee, where the public is notified and invited to attend.

Signed in Washington, DC on July 28, 1999.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service.

[FR Doc. 99–19899 Filed 8–2–99; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1728

Electric Overhead Distribution Lines; Specifications and Drawings for 24.9/14.4 kV Line Construction

AGENCY: Rural Utilities Service, USDA.

ACTION: Extension of compliance with Bulletin 50–5 or 1728F–803.

SUMMARY: In 1998 the Rural Utilities Service (RUS) updated and revised its bulletin of specifications and drawings for 24.9/14.4kV overhead distribution line construction. The bulletin, formerly named Bulletin 50–6, was renamed "RUS Bulletin 1728F–803; Specifications and Drawings for 24.9/14.4 kV Line Construction." This bulletin is incorporated by reference (IBR) in 7 CFR part 1728. As published in the **Federal Register** on December 31, 1998, at 63 FR 72102, this bulletin was approved for IBR by the Director of the Federal Register and was effective February 1, 1999.

To allow borrowers to conduct an orderly transition from the old Bulletin 50–5 to the new construction assemblies and assembly numbers of the new Bulletin 1728F–803, RUS allowed compliance to either bulletin through December 31, 1999, in a compliance notice published in the **Federal Register** on March 29, 1999, at 64 FR 14813. To prevent additional errors which may result from the year 2000 compliance transitions, RUS has extended the compliance date for borrowers to utilize construction drawings in either Bulletin 50–5 or the new Bulletin 1728F–803 until July 1, 2001. After July 1, 2001, only Bulletin 1728F–803 standard drawings shall be used.

It is anticipated that this action will also allow borrowers sufficient time to make necessary changes in engineering and accounting procedures and associated computer software.

EFFECTIVE DATE: August 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. James L. Bohlk, Electrical Engineer, Distribution Branch, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1569, Washington, DC 20250–1569. telephone: (202) 720–1967. Fax: (202) 720–7491.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*), the Rural Utilities Service (RUS) amended 7 CFR Chapter XVII, Part 1728, Electric Standards and Specification for Materials and Construction, by revising RUS Bulletin 50–5 (D–803), Specification and Drawings for 14.4/24.9 kV Line Construction, and renumbered it as RUS Bulletin 1728F–803. RUS maintains a system of bulletins that contains construction standards and specifications for materials and equipment. These standards and specifications apply to system facilities constructed by RUS electric and telecommunications borrowers in accordance with the RUS loan contract, and contains standard construction units, material, and equipment units commonly used in RUS electric and telecommunication borrowers' systems.

RUS Bulletin 1728F–803 provides dimensioned drawings of standard assembly units and specifications for the construction of 24.9/14.4 kV overhead electric distribution lines. RUS changed the bulletin number from RUS Bulletin 50–5 to RUS Bulletin 1728F–803. The change in the bulletin number and reformatting was necessary to conform to RUS' new publications and directives system. This bulletin is incorporated by reference in § 1728.97. It may be purchased from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7954.

Dated: July 28, 1999.

Blaine D. Stockton, Jr.,

Acting Administrator, Rural Utilities Service.

[FR Doc. 99–19830 Filed 8–2–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 217

[INS No. 2002–99]

RIN 1115–AF99

Adding Portugal, Singapore and Uruguay to the List of Countries Authorized To Participate in the Visa Waiver Pilot Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The Visa Waiver Pilot Program (VWPP) permits nationals from participating countries to apply for admission to the United States for ninety (90) days or less as nonimmigrant visitors for business or pleasure without first obtaining a nonimmigrant visa. This rule amends the Immigration and Naturalization Service (Service) regulations by adding Portugal, Singapore, and Uruguay to the list of countries designated to participate in the VWPP. This action will facilitate travel to the United States and benefit United States businesses.

DATES: *Effective date.* This interim rule is effective August 9, 1999.

Comment date. Written comments must be submitted on or before October 4, 1999.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 2002–99 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW, Room 4064, Washington, DC 20536, Telephone number: (202) 616–7499.

SUPPLEMENTARY INFORMATION:

When Was the VWPP Established?

Public Law 99–603

Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, dated November 6, 1986, added section 217 to the Immigration and Nationality Act (Act), 8 U.S.C. 1187, which established the VWPP. The VWPP waives the nonimmigrant visa requirement for the admission of certain aliens to the United States for a period not to exceed ninety (90) days. That original provision authorized the participation of eight countries in the Pilot Program.

How Has the VWPP Changed Since It Was Established?

Public Law 101–649

Section 201 of the Immigration Act of 1990 (IMMACT 90), Pub. L. 101–649, dated November 29, 1990, amended the VWPP by removing the eight-country cap and extending the provisions to all countries that met the qualifying provisions contained in section 217 of the Act. In addition, section 201 of IMMACT 90 also extended the period for the VWPP until September 30, 1994.

Public Law 103–416

Section 210 of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103–416, dated October 25, 1994, extended the expiration date of the VWPP until September 30, 1996.

Public Law 104–208

Section 635 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104–208, dated September 30, 1996, amended section 217 of the Act by extending the VWPP until September 30, 1997. This law also named the Attorney General as the principal designator of VWPP countries, eliminated probationary VWPP qualification status, and made countries then in such status (Ireland being the only country) permanent participating VWPP countries subject to the same disqualification criteria established for other VWPP countries. Ireland has been added as a VWPP country on a probationary basis on March 28, 1995, upon publication of an interim regulation in the **Federal Register** at 60 FR 15855.

Public Law 105–173

Pub. L. 105–173 extended the VWPP through April 30, 2000. The law also modified the statutory language relating to low visa refusal rates that could extend the VWPP to additional countries previously unable to qualify.

What Are the Requirements for VWPP Participation?

For a country to qualify as a participant in the VWPP, the country must:

- Agree to waive the visa requirement for nationals of the United States entering for business or pleasure for ninety (90) days or less;
- Meet statutorily prescribed limits on visa refusal rates for the prior 2-year period, as well as the prior year;
- Meet statutorily prescribed limits on rates of inadmissibility at Ports-of-Entry and on overstay rates; and,
- Have a machine readable passport program.

What Are the Requirements for VWPP Travelers?

The VWPP traveler must:

- Present a valid passport;
- Seek entry into United States for business or pleasure;
- Seek entry into the United States for 90 days or less (no extensions or changes/adjustments of status are allowed);
- Possess an onward or return ticket if traveling by air or sea;
- Agree to waive any right to appeal a denial of entry; and
- Not be inadmissible under the Immigration and Nationality Act.

What Countries Currently Participate in the VWPP?

The following countries currently participate in the VWPP: Andorra, Argentina, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, San Marino, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man); it does not refer to British overseas citizens, British dependent territories' citizens, or citizens of British Commonwealth countries.

What Does this Rule Do?

The Attorney General, in consultation with the Secretary of State, has determined that Portugal, Singapore, and Uruguay have met the statutory requirements of section 217 of the Act. Accordingly, Portugal, Singapore, and Uruguay, and their citizens are eligible to participate in the VWPP. Effective August 9, 1999, Portugal, Singapore, and Uruguay, are added as participating countries in the VWPP. (See the Department of State rule published elsewhere in this issue of the **Federal Register**.

Good Cause Exception

The Service implementation of this rule as an interim rule, with a 60-day provision for post-promulgation public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553 (b) (B) and (d) (3). The reasons and the necessity for immediate implementation of this interim rule without prior notice and comment are as follows: this interim rule relieves a restriction and will facilitate business and tourist travel to the United States, Portugal, Singapore, and Uruguay.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely removes a restriction for both the traveling public and United States businesses.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 217

Administrative practice and procedures, Aliens, Nonimmigrants, Passports and visas.

Accordingly, part 217 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 217—VISA WAIVER PILOT PROGRAM

1. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

2. In § 217.2 paragraph (a) is amended by revising the definition for "*Designated country*" to read as follows:

§ 217.2 Eligibility.

(a) * * *

Designated country refers to Andorra, Argentina, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, and Uruguay. The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man); it does not refer to British overseas citizens, British dependent territories' citizens, or citizens of British Commonwealth countries.

* * * * *

Dated: July 23, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–19836 Filed 8–2–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–151–AD; Amendment 39–11240; AD 99–16–05]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Saab Model SAAB 2000 series airplanes, that requires repetitive inspections for excessive wear of the aileron control cables, cable guides, and cable pulleys located at the rear wing spars; and corrective actions, if necessary. This amendment also requires repetitive replacement of the control cables and cable guides with new or serviceable components. This amendment also provides for optional terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness. The actions specified by this AD are intended to detect and correct excessive wear on the aileron control cables, cable guides, and cable pulleys located at the rear wing spars, which could result in broken aileron control cables and consequent reduced controllability of the airplane.

DATES: Effective September 7, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 7, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on May 7, 1999 (64 FR 24542). That action proposed to require repetitive inspections for excessive wear of the aileron control cables, cable guides, and cable pulleys located at the rear wing spars; and corrective actions, if necessary. That action also proposed to require repetitive replacement of the control cables and cable guides with new or serviceable components. That action also provides for optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry would be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $180, or $60 per airplane, per inspection cycle.

It will take approximately 8 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $1,440, or $480 per airplane, per replacement cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to perform the optional terminating modification, it would take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the optional terminating modification provided by this AD on U.S. operators is estimated to be $1,440, or $480 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–16–05 SAAB Aircraft AB: Amendment 39–11240. Docket 97–NM–151–AD.

Applicability: Model SAAB 2000 series airplanes, serial numbers 004 through 064 inclusive; except those airplanes on which Saab Aircraft AB Modification 6093 (reference Saab Service Bulletin 2000–27–037, dated March 11, 1998) has been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct excessive wear on the aileron control cables, cable guides, and cable pulleys located at the rear wing spars, which could result in broken aileron control cables and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) Inspect to detect discrepancies of the left-and right-hand aileron control cables, cable guides, and cable pulleys at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Saab Service Bulletin 2000–27–033, dated April 29, 1997, or Revision 01, dated March 27, 1998. Repeat the inspection thereafter at intervals not to exceed 500 flight hours. If any discrepancy is found during any inspection required by this AD, prior to further flight, perform corrective action in accordance with the service bulletin.

(1) For airplanes on which Saab Modification 5784 has been installed: Inspect at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 1,800 total flight hours; or within 1,800 flight hours after accomplishment of the modification or replacement of any control cable; whichever occurs latest. Or

(ii) Within 200 flight hours after the effective date of this AD.

(2) For airplanes on which Saab Modification 5784 has not been installed: Inspect at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to the accumulation of 3,200 total flight hours, or within 3,200 flight hours after replacement of any control cable, whichever occurs later. Or

(ii) Within 200 flight hours after the effective date of this AD.

Note 2: Although the inspection schedules of this AD apply to both left- and right-hand wing cable systems, replacement of the cable, guide, or pulley on one wing only, prior to scheduled replacement, would result in subsequent staggered inspections for the components of the left- and right-hand cable systems.

Repetitive Replacements

(b) Replace the aileron control cables, cable guides, and cable pulleys with new or serviceable parts, as applicable; at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable; in accordance with Saab Service Bulletin 2000–27–033, dated April 29, 1997, or Revision 01, dated March 27, 1998.

(1) For airplanes on which Saab Modification 5784 has been installed: Replace at the later of the times specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this AD. Thereafter, repeat the inspection required by paragraph (a) of this AD at the time specified in paragraph (a)(1); and replace the control cables and cable guides thereafter prior to the accumulation of 3,200 flight hours after replacement of any control cable.

(i) Prior to the accumulation of 3,200 total flight hours; or within 3,200 flight hours after installation of the modification, or after replacement of any control cable; whichever occurs latest. Or

(ii) Within 200 flight hours after the effective date of this AD.

(2) For airplanes on which Modification 5784 has not been installed: Replace at the later of the times specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this AD. Thereafter, repeat the inspections required by paragraph (a) of this AD at the time specified in paragraph (a)(2); and replace the control cables and cable guides thereafter prior to the accumulation of 6,200 flight hours following replacement of any control cable.

(i) Prior to the accumulation of 6,200 total flight hours, or within 6,200 flight hours after replacement of any control cable, whichever occurs later. Or

(ii) Within 200 flight hours after the effective date of this AD.

Optional Terminating Action

(c) Accomplishment of the modification of the aileron control system in accordance with Saab Service Bulletin 2000–27–037, dated March 11, 1998, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Saab Service Bulletin 2000–27–033, dated April 29, 1997; Saab Service Bulletin 2000–27–033, Revision 01, dated March 27, 1998; and Saab Service Bulletin 2000–27–037, dated March 11, 1998, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–111R1, dated March 30, 1998.

(g) This amendment becomes effective on September 7, 1999.

Issued in Renton, Washington, on July 26, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–19580 Filed 8–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 734, 738, 740, and 742

[Docket No. 990709187–9187–01]

RIN 0694–AB96

Revision of High Performance Computer Licensing Policy

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by raising the performance parameters for those computers which can be exported and reexported under License Exception CTP. The upper threshold of the Composite Theoretical Performance (CTP) parameter for Computer Tier 2 countries is raised from 10,000 millions of theoretical operations per second (MTOPS) to 20,000 MTOPS. The upper threshold for Computer Tier 3 countries is raised from 7,000 MTOPS to 12,300 MTOPS for civilian end-users and end-uses. For military end-users and end-uses in Computer Tier 3 destinations the CTP parameter remains at 2,000 MTOPS for the immediate future. The upper parameter for military end-users and end-uses to Computer Tier 3 countries will be raised from 2,000 MTOPS to 6,500 MTOPS on the same date the threshold for advance notification for high performance computers (HPC) exports to Tier 3 countries is raised from 2,000 MTOPS to 6,500 MTOPS. The threshold for advance notification for exports of HPCs to Tier 3 countries is raised to 6,500 MTOPS, effective approximately 180 days following the submission of a statutorily mandated report to Congress. The President sent this report to Congress on July 26, 1999. In addition, the following countries are moved from Computer Tier 2 to Computer Tier 1: Brazil, the Czech Republic, Hungary, and Poland.

DATES: This rule is effective August 3, 1999.

FOR FURTHER INFORMATION CONTACT: James A. Lewis, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–4196.

SUPPLEMENTARY INFORMATION:

Background

On January 25, 1996, the Bureau of Export Administration created License Exception CTP for exports and reexports of HPCs. This policy took into account rapid technical advances in computing power, as well as national security and nonproliferation concerns. License Exception CTP divided the world into tiers based on U.S. national security and foreign policy interests. These tiers represent the level of proliferation and security risk a country poses to the U.S. and, as a result, the technical level of computer exports tier members can receive without applying for an export license. Computer Tier 1 consists of close U.S. allies; Computer Tier 2 includes countries representing minimal security concerns to the U.S; countries representing a potential proliferation or security concern are listed in Computer Tier 3; and Computer Tier 4 consists of terrorist supporting states.

The President has decided to amend these country tiers by transferring Brazil, the Czech Republic, Hungary, and Poland from Tier 2 to Tier 1. The Administration will consider moving additional countries between Computer Tiers in the future.

The rapid evolution of computer technology has also made CTP parameter revisions necessary. This rule changes the upper threshold of the CTP

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parameter for Computer Tier 2 from 10,000 MTOPS to 20,000 MTOPS and the upper threshold of Computer Tier 3 countries from 7,000 MTOPS to 12,300 MTOPS for civilian end-users and end-uses. License Exception CTP will be made available for military end-users and end-uses in Computer Tier 3 in approximately 180 days along with the raising of the advance notification level under the 1998 National Defense Authorization Act (NDAA) from 2,000 MTOPS to 6,500 MTOPS. Revision of the advance notification threshold will be effective 180 days after the submission by the President of a required report notifying the Congress of this change. The President sent this report to Congress on July 26, 1999. Following this 180 day period, the upper parameter will be raised from 2,000 MTOPS to 6,500 MTOPS for military end-users and end-uses in Computer Tier 3. This level reflects the Administration's determination that widespread commercial availability makes computers with a performance of 6,500 MTOPS or less uncontrollable. Note that the advance notification requirements of the 1998 NDAA for exports and reexports of computers with a CTP greater than 2,000 MTOPS to Computer Tier 3 destinations remains in effect until such changes are reviewed by the U.S. Congress.

This rule does not have an immediate impact on post-shipment reporting and record keeping requirements compelled by the 1998 NDAA for HPC exports. All HPC exports with a CTP greater than 2,000 MTOPS to Tier 3 Countries still require post-shipment reporting. However, BXA may, prior to January 23, 2000, publish an additional rule regarding further reporting requirements to meet stipulations under the 1998 NDAA to provide the Congress an annual report on all HPC exports to Computer Tier 3 destinations. This potential rule will most likely require HPC exporters to report the intended end-use of all HPC exports with a CTP greater than 2,000 MTOPS but less than or equal to 6,500 MTOPS to Computer Tier 3 destinations. This information is currently provided by exporters in their advance notification requests for computers with a CTP greater than 2,000 MTOPS to Computer Tier 3 destinations. In light of the rapid technological advancement in HPCs, the United States will routinely review these licensing levels to determine if further adjustments are warranted. In particular, for Tier 2, the United States will review the licensing level in six months with the expectation of raising the level to the 32,000 to 36,000 MTOPS range. Changes to Tier 3 may also be made at that time.

This rule specifically amends the EAR in the following ways:

1. In section 740.7, Brazil, the Czech Republic, Hungary, and Poland are moved from Computer Tier 2 to Computer Tier 1, and the upper threshold of the CTP parameter for Computer Tier 2 is raised from 10,000 MTOPS to 20,000 MTOPS.

2. In section 740.7, the upper threshold of the CTP parameter for Computer Tier 3 is raised from 7,000 MTOPS to 12,300 MTOPS for civilian end-users and end-uses. The upper parameter for military end-users and uses is raised from 2,000 MTOPS to 6,500 MTOPS, effective January 23, 2000.

3. In section 740.7, the CTP level for computers requiring advance notification for export and reexport to Computer Tier 3 destinations is raised from 2,000 MTOPS to 6,500 MTOPS, effective January 23, 2000.

4. In section 740.11 and Supplement No. 1 to section 740.11, the CTP level for computers not eligible for License Exception GOV is raised from 10,000 MTOPS to 20,000 MTOPS.

5. In section 742.12, the upper threshold of the CTP parameter as measured in MTOPS for Computer Tier 2 is raised from 10,000 MTOPS to 20,000 MTOPS.

6. In section 742.12, the upper threshold of the CTP parameter for Computer Tier 3 is raised from 7,000 MTOPS to 12,300 MTOPS for civil end-users and end-uses. Effective January 23, 2000, the upper threshold of the CTP parameter for Computer Tier 3 is raised from 2,000 MTOPS to 6,500 MTOPS for military end-users and end-uses.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527) August 13, 1997 (62 FR 43629) and August 13, 1998 (63 FR 44121).

Rule Making Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This regulation involves collections previously approved by the Office of Management and Budget under control numbers 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes per manual submission and 40 minutes per electronic submission. Miscellaneous and recordkeeping activities account for 12 minutes per submission. In addition, information is also collected under OMB control number 0694–0107, "National Defense Authorization Act," Advance Notifications and Post-Shipment Verification reports.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act requiring notice of proposed rule making, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rule making and an opportunity for public comment be given for this rule. Because a notice of proposed rule making and opportunities for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Frank J. Ruggiero, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 738

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Foreign Trade.

Accordingly, parts 734, 738, 740, and 742 of the Export Administration Regulations (15 CFR Parts 730–774) are amended as follows:

1. The authority citation for 15 CFR part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*, 1701 *et seq.*; E.O. 12924, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 3 CFR, 1996 Comp., p. 228; and Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1998 Comp., p. 294.

2. The authority citation for 15 CFR Part 738 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; and Notice of August 13, 1998, 63 FR 44121, 3 CFR 1998 Comp., p. 294.

3. The authority citation for 15 CFR Part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; and Notice of August 13, 1998, 63 FR 44121, 3 CFR 1998 Comp., p. 294.

4. The authority citation for 15 CFR Part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; and Notice of August 13, 1998, 63 FR 44121, 3 CFR 1998 Comp., p. 294.

PART 734—[AMENDED]

§ 734.4 [Amended]

5. Section 734.4 is amended by revising the phrase "7,000 MTOPS" in paragraph (a) to read "12,300 MTOPS".

PART 738—[AMENDED]

6. Supplement No. 1 to Part 738 is amended by revising the phrase "greater than 10,000 MTOPS" in the second footnote to read "greater than 20,000 MTOPS".

PART 740—[AMENDED]

7. Section 740.7 is amended by:

a. Revising paragraphs (b)(1) and (c);

b. Revising paragraphs (d)(2) and (d)(3); and

c. Revising paragraphs (d)(5)(i) and (d)(5)(v) introductory text to read as follows:

§ 740.7 Computers (CTP).

* * * * *

(b) *Computer Tier 1*—(1) *Eligible countries.* The countries that are eligible to receive exports and reexports under this License Exception are Australia, Austria, Belgium, Brazil, Czech Republic, Denmark, Finland, France, Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Mexico, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.

* * * * *

(c) *Computer Tier 2*—(1) *Eligible countries.* The countries that are eligible to receive exports under this License Exception include Antigua and Barbuda, Argentina, Bahamas, Barbados, Bangladesh, Belize, Benin, Bhutan, Bolivia, Botswana, Brunei, Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central Africa, Chad, Chile, Colombia, Congo, Costa Rica, Cote d'Ivoire, Cyprus, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Gambia (The), Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Indonesia, Jamaica, Kenya, Kiribati, Korea (Republic of), Lesotho, Liberia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Micronesia (Federated States of), Mozambique, Namibia, Nauru, Nepal, Nicaragua, Niger, Nigeria, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and Grenadines, Sao Tome & Principe, Senegal, Seychelles, Sierra Leone, Singapore, Slovak Republic, Slovenia, Solomon Islands, Somalia, South Africa, Sri Lanka, Surinam, Swaziland, Taiwan, Tanzania, Togo, Tonga, Thailand, Trinidad and Tobago, Tuvalu, Uganda, Uruguay, Venezuela, Western Sahara, Western Samoa, Zaire, Zambia, and Zimbabwe.

(2) *Eligible computers.* The computers eligible for License Exception CTP to Tier 2 destinations are those having a CTP greater than 2,000 MTOPS, but less than or equal to 20,000 MTOPS.

(d) * * *

(2) *Eligible computers.* The computers eligible for License Exception CTP to Tier 3 destinations are those having a CTP greater than 2,000 MTOPS, but less than or equal to 12,300 MTOPS for civil end-users and end-uses. Beginning on January 23, 2000, computers having a CTP greater than 2,000 MTOPS but less than or equal to 6,500 MTOPS are eligible for License Exception CTP to military end-users and end-uses subject to the restrictions in paragraph (d)(3) of this section.

(3) *Eligible exports.* Only exports and reexports to permitted end-users and end-uses located in countries in Computer Tier 3. License Exception CTP does not authorize exports and reexports to Computer Tier 3 for nuclear, chemical, biological, or missile end-users and end-uses and military end-users and end-uses subject to license requirements under § 744.2, § 744.3, 0§ 744.4, § 744.5, and § 744.12 of the EAR. Such exports and reexports will continue to require a license and will be considered on a case-by-case basis. Retransfers to defined proliferation end-users and end-uses in eligible countries is strictly prohibited without prior authorization.

(4) * * *

(5) *NDAA notification*—(i) *General requirement.* The National Defense Authorization Act (NDAA) of FY98 enacted on November 18, 1997 requires advance notification of certain exports and reexports of computers to Computer Tier 3 countries. Prior to January 23, 2000, advance notification is required for all exports and reexports of computers with a CTP between 2,000 and 12,300 MTOPS to Computer Tier 3 destinations. Beginning on January 23, 2000, advance notification is required for all exports and reexports of computers with a CTP between 6,500 and 12,300 MTOPS to Computer Tier 3 destinations. For each such transaction destined to Computer Tier 3, prior to using License Exception CTP, you must first notify BXA by submitting a completed Multipurpose Application Form (BXA–748P). The Multipurpose Application Form must be completed including all information required for a license application according to the instructions described in Supplement No. 1 to part 748 of the EAR, with two exceptions. You (the applicant as listed in Block 14) shall in Block 5 (Type of Application) mark the box "Other." This designator will permit BXA to route the NDAA notice into a special processing procedure. (Blocks 6 and 7, regarding support documentation, may be left blank.) You must also provide a notice using this procedure prior to exporting or reexporting items that you know will be used to enhance beyond 2,000 MTOPS the CTP of a previously exported or reexported computer. Beginning on January 23, 2000, you must provide a notice using this

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procedure prior to exporting or reexporting items that you know will be used to enhance beyond 6,500 MTOPS the CTP of a previously exported or reexported computer. BXA will not initiate the registration of an NDAA notice unless all information on the Multipurpose Application form is complete.

* * * * *

(v) *Post-shipment verification.* This section outlines special post-shipment reporting requirements for exporters of computers with a CTP over 2,000 MTOPS to destinations in Computer Tier 3 under the NDAA. These reporting requirements also apply when you know that the items being exported will be used to enhance beyond 2,000 MTOPS the CTP of a previously exported or reexported computer. Such reports must be submitted in accordance with the provisions of this paragraph (d)(5)(v), and records of such exports subject to the post-shipment reporting requirements of this section, must be kept in accordance with part 762 of the EAR.

* * * * *

§ 740.11 [Amended]

8. Section 740.11 is amended by revising the phrase "10,000 MTOPS" in paragraphs (a)(2)(ii) and (iii) and in paragraph (c)(2)(i) to read "20,000 MTOPS".

9. Supplement No. 1 to section 740.11 is amended by revising the phrase "10,000 MTOPS" in paragraphs (a)(1)(ii), (a)(1)(iii), (b)(1)(ii), and (b)(1)(iii) to read "20,000 MTOPS".

PART 742—[AMENDED]

10. Section 742.12 is amended by revising the phrase "greater than 10,000" in paragraph (b)(2)(i) to read "greater than 20,000"; by revising the phrase "to military end-users and end-uses and to nuclear, chemical, biological, or missile end-users and end-uses defined in part 744 of the EAR" in paragraph (b)(3)(i)(A) to read "to nuclear, chemical, biological, or missile end-users and end-uses and military end-users and end-uses subject to license requirements under § 744.2, § 744.3, § 744.4, § 744.5, and § 744.12 of the EAR" by revising the phrase "to military end-users and end-uses and nuclear, chemical, biological, or missile end-users and end-uses defined in part 744 of the EAR" in paragraph (b)(3)(ii) to read "to nuclear, chemical, biological, or missile end-users and end-uses and military end-users and end-uses subject to license requirements under § 744.2, § 744.3, § 744.4, § 744.5, and § 744.12 of the EAR"; and revising paragraphs (b)(3)(i)(B) and (C) to read as follows:

* * * * *

§ 742.12 High performance computers.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(B) A license is required to export or reexport computers with a CTP greater than 12,300 MTOPS for civilian end-users and end-uses in countries in Computer Tier 3. Prior to January 23, 2000, a license is required to export or reexport computers having a CTP greater than 2,000 MTOPS to military end-users and end-uses in Computer Tier 3. Beginning on January 23, 2000, a license is required to export or reexport computers having a CTP greater than 6,500 MTOPS to military end-users and end-uses in Computer Tier 3.

(C) Prior to January 23, 2000, a license may be required to export or reexport computers with a CTP greater than 2,000 MTOPS to countries in Computer Tier 3 pursuant to the NDAA (see § 740.7(d)(5) of the EAR). Beginning on January 23, 2000, a license may be required to export or reexport computers with a CTP greater than 6,500 MTOPS to countries in Computer Tier 3 pursuant to the NDAA (see § 740.7(d)(5) of the EAR).

* * * * *

Dated: July 27, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 99–19644 Filed 8–2–99; 8:45 am]

BILLING CODE 3510–33–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–41661; File No. S7–8–99]

RIN 3235–AH61

Year 2000 Operational Capability Requirements for Registered Broker-Dealers and Transfer Agents

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting temporary Rules 15b7–3T, 17Ad–21T, and 17a–9T under the Securities Exchange Act of 1934 ("Exchange Act"). Rules 15b7–3T and 17Ad–21T require registered broker-dealers and non-bank transfer agents to ensure that their mission-critical computer systems are Year 2000 compliant by August 31, 1999, or to certify that any material Year 2000 problems in mission critical systems will be fixed no later than November 15, 1999. Rule 17a9–T requires certain broker-dealers to make and preserve a separate trade blotter and securities record or ledger as of the close of business of the last three business days of 1999. Rule 17Ad–21T requires non-bank transfer agents to make and preserve a backup copy of all their master securityholder files so that the records can be reconstructed if necessary for a possible transfer to another Year 2000 compliant transfer agent. These rules are intended to reduce the risk to investors and the securities markets posed by broker-dealers and non-bank transfer agents that have not adequately prepared their computer systems for the millennium transition.

EFFECTIVE DATE: August 30, 1999.

FOR FURTHER INFORMATION CONTACT: *Broker-Dealers (Rule 15b7–3T)* Sheila Slevin, Assistant Director, 202–942–0796, Heidi Pilpel, Special Counsel, 202–942–0791, Kevin Ehrlich, Attorney, 202–942–0778, or Robert Long, Attorney, 202–942–0097; *Transfer Agents (Rule 17Ad–21T)* Jerry W. Carpenter, Assistant Director, 202–942–4187, or Lori R. Bucci, Special Counsel, 202–942–4187; *Recordkeeping (Rule 17a–9T)* Tom McGowan, Assistant Director, 202–942–0177, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1002.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Broker-dealers, transfer agents, and other securities market participants will soon face a critical test of their automated systems with the upcoming Year 2000. As the next millennium approaches, unless proper modifications have been made, the program logic in many computer systems will start to produce erroneous results because the systems will incorrectly read dates such as "01/01/00" as being in 1900 or in some other incorrect year.

The Commission views the Year 2000 problem as an extremely serious issue and has taken various steps to address it. For example, we adopted Rules 17a–5(e)(5) and 17Ad–18 under the Exchange Act [1] requiring certain broker-dealers and non-bank transfer agents to file reports with us and their designated examining authority ("DEA") regarding their Year 2000 preparedness.[2] We also provided interpretive guidance for public companies, investment advisers, investment companies, and municipal securities issuers regarding their disclosure obligations.[3] Since 1996, we have monitored the Year 2000 efforts of the exchanges, Nasdaq, and the clearing agencies. In addition, since the third quarter of 1996, we have included a Year 2000 examination module in our examinations of regulated entities.[4] The Commission also worked with the Securities Industry Association as the March and April 1999 industry-wide test for Year 2000 was developed and implemented.[5] Finally, we instituted public administrative and cease-and-desist proceedings against broker-dealers and transfer agents that failed to file all or part of the required Year 2000 forms in a timely manner.[6] Through these efforts, we have made clear that broker-dealers and non-bank transfer agents can not use their failure to address the Year 2000 problem as an excuse for failing to protect investors.

Recently, the Commission's efforts have focused on examinations, requiring broker-dealers and non-bank transfer agents to disclose their Year 2000 readiness, and encouraging point-to-point and industry-wide testing.[7] Based on the experience and information obtained from these efforts, the Commission in March determined to propose additional safeguards to reduce any adverse effects of non-Year 2000 compliant broker-dealers and non-bank transfer agents on investors and the securities markets.

B. Year 2000 Rules

On March 5, 1999, the Commission proposed for comment new Rules 15b7–3T (17 CFR 240.15b7–3T), 17a–9T (17 CFR 240.17a–9T), and 17Ad–21T (17 CFR 240.17Ad–21T) under the Exchange Act,[8] addressing broker-dealer and non-bank transfer agent operational capability in the context of Year 2000.[9] Proposed Rules 15b7–3T and 17Ad–21T required registered broker-dealers and non-bank transfer agents to ensure that their mission-critical systems would be Year 2000 compliant by August 31, 1999, or to certify that any material Year 2000 problems would be fixed by October 15, 1999.[10] Proposed Rule 17a–9T required large broker-dealers to make and preserve additional copies of trade blotters and securities records or ledgers for each of the last two business days of 1999.[11] Proposed Rule 17Ad–21T required every non-bank transfer agent to maintain a segregated copy of its database, file layouts, and all relevant files for a rolling five business day period beginning August 31, 1999, and ending on March 31, 2000.

The Commission received 42 comment letters on the proposed rules, most of which were favorable.[12] As discussed below, the Commission is adopting the proposed rules with several modifications intended to address commenters' concerns. These rules should facilitate the use of a proactive approach in dealing with broker-dealers and non-bank transfer agents that are not ready for Year 2000.

II. Discussion of Year 2000 Rules

A. Rule 15b7–3T

Proposed Rule 15b7–3T prohibited any broker-dealer having a material Year 2000 problem on or after August 31, 1999, from conducting a securities business unless the broker-dealer certified and could demonstrate that it would fix the problem by October 15, 1999.[13] The proposal defined the term "material Year 2000 problem," set forth criteria giving rise to a presumption of a material Year 2000 problem, and required firms having a material Year 2000 problem to notify the Commission and satisfy certain conditions if they wished to continue conducting a securities business.[14]

Most of the comment letters on proposed Rule 15b7–3T were favorable, although two commenters suggested that in lieu of the proposed approach, the Commission should instead permit firms with Year 2000 problems simply to disclose to clients their readiness status and the inherent risks of being non-Year 2000 compliant.[15] As discussed in detail below, the majority of commenters recommended specific modifications to the proposed rule. The Commission has determined to adopt Rule 15b7–3T substantially as proposed, but with certain modifications suggested by the commenters.

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[1] Exchange Act Release No. 40162 (July 2, 1998), 63 FR 37668 (July 13, 1998); Exchange Act Release No. 40163 (July 2, 1998), 63 FR 37688 (July 13, 1998).

[2] In addition, we later amended Rule 17a–5 and Rule 17Ad–18 to require these entities to file a report prepared by an independent public accountant regarding their process for preparing for the Year 2000. Exchange Act Release No. 40608 (Oct. 28, 1998), 63 FR 59208 (Nov. 3, 1998); Exchange Act Release No. 40587 (Oct. 22, 1998), 63 FR 58630 (Nov. 2, 1998).

[3] Exchange Act Release No. 40277 (July 29, 1998), 63 FR 41394 (Aug. 4, 1998). We subsequently published guidance in the form of Frequently Asked Questions to clarify recurring issues regarding Year 2000 disclosure obligations. Exchange Act Release No. 40649 (Nov. 9, 1998), 63 FR 63758 (Nov. 16, 1998).

[4] In addition, in June 1997 and 1998, our staff published reports to Congress on the *Readiness of the United States Securities Industry and Public Companies to Meet the Information Processing Challenges of the Year 2000.* Both of these reports are available at <http://www.sec.gov/news/studies/yr2000.htm> (and yr2000–2.htm). Our staff has submitted a similar report to Congress for 1999.

[5] In addition, we are actively participating in international Year 2000 efforts, including those sponsored by International Organization of Securities Commissions ("IOSCO").

[6] *See, e.g.*, Exchange Act Release No. 40573 [Adm. Proc. File No. 3–9758] (Oct. 20, 1998) (broker-dealers that failed to file Form BD–Y2K); Exchange Act Release No. 40895 [Adm. Proc. No. 3–9801] (Jan. 7, 1999) (transfer agents that failed to file Form TA–Y2K). We also filed 8 actions against investment advisors that failed to file similar Year 2000 reports. *See, e.g.*, Investment Advisors Act Release No. 1800 [Adm. Proc. No. 3–9888] (May 4, 1999).

[7] We also reminded broker-dealers and non-bank transfer agents that failure to adequately prepare for the Year 2000 will not be considered a valid excuse for noncompliance with the requirements of Exchange Act Rules 17a–3, 17Ad–6, and 17Ad–7 to make and keep current books and records. *See generally* Exchange Act Release Nos. 40162 (July 2, 1998), 63 FR 37668 (July 13, 1998); 40163 (July 2, 1998), 63 FR 37688 (July 13, 1998). *See also In re* Lowell H. Listrom, 50 SEC 883, n. 7 (1992) (Commission stating that "if a broker-dealer or its agent develops a computer-communications system to facilitate regulatory compliance, failure of that system does not excuse the broker-dealer from its obligation to comply with each of its regulatory responsibilities.")

[8] 15 U.S.C. 78a *et seq.*

[9] Exchange Act Release No. 41142 (Mar. 5, 1999), 64 FR 12127 (Mar. 11, 1999) ("Proposing Release"). On March 5, 1999, the Commission also proposed Rule 15b7–2 and 17Ad–20 under the Exchange Act. These rules would have codified a statutory requirement that broker-dealers and non-bank transfer agents have sufficient operational capability to conduct a securities business. The Commission is deferring action on the general operational capability rules at this time.

[10] Proposed temporary Rules 15b7–3T and 17Ad–21T.

[11] Proposed temporary Rule 17a–9T.

[12] The comment letters are in Public File S7–8–99, which is available for inspection in the Commission's Public Reference Room. The Commission received comment letters on behalf of the following: American Institute of Certified Public Accountants ("AICPA"); Associated Financial Services, Inc.; The Bond Market Association; Brown & Brown Securities, Inc.; Patrick Calby; Charles Schwab & Co., Inc.; DST Systems, Inc.; Federated Investors, Inc.; Goffstown Financial Investments; Gramercy Securities; Grodsky Associates, Inc.; HBK Finance L.P. and HBK Securities Ltd; H.C. Denison & Co.; H.M. Payson & Co.; Paul Henning; Holly Securities, Inc.; Instinet Corporation; Intellivest Securities, Inc.; Investment Company Institute ("ICI"); Dan Jamieson; L.P.; The Jeffrey Matthews Financial Group, LLC; Lam Securities Investments, Inc.; Littlewood & Associates, Inc.; M. Hadley Securities, Inc.; Dan McEwan; Monroe Securities; Morgan Stanley & Co. Incorporated; National Association of Securities Dealers, Inc. ("NASD"); Network 1 Financial Securities, Inc.; Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation ("Pershing"); Raymond James Financial, Inc.; Registrar and Transfer Company ("RTC"); Howard Spindel; Securities Industry Association ("SIA"); The Securities Transfer Association ("STA"); Sierra Trading Group LLC; Stock USA, Inc.; Treasure Financial Corp.; U.S. Bancorp Piper Jaffray; U.S. Participation, Ltd.; Wall Street Capital Company; Dale W. Way.

[13] *See* generally proposed Rule 15b7–3T.

[14] *See* proposed Rule 15b7–3T(c), (d), and (e).

[15] *See* letters from Intellivest Securities and Monroe Securities.

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1. Scope of the Rule; Definition of Material Year 2000 Problem

As proposed, Rule 15b7–3T applied generally to all broker-dealers, and stated that a broker-dealer has a material Year 2000 problem if: (1) Any of its computer systems incorrectly identifies any date in the Year 1999, the Year 2000, or in any year thereafter; and (2) the error impairs or, if uncorrected, is likely to impair, any of its mission critical computer systems.[16]

Ten commenters suggested narrowing the scope of the proposed rule. For example, several commenters urged the Commission to limit the rule's applicability to clearing firms, firms with a large number of customer accounts, firms that use computers for recordkeeping, order execution or order transmission, or firms with high capital requirements.[17] One commenter recommended that the rule apply only to self-clearing firms, firms that clear for other broker-dealers, and market-makers.[18]

Several commenters suggested narrowing the definition of "material Year 2000 problem." One commenter stated generally that the definition of "material Year 2000 problem" should have more specific criteria.[19] Other commenters stated that the rule should make clear that "a material Year 2000 problem is one in which a 'mission critical' system is experiencing a 'material' problem arising from the misreading of dates." [20] In contrast, one commenter suggested defining the term material Year 2000 problem more broadly than proposed.[21]

In response to commenters' concerns that the scope of the proposed rule is too broad, the Commission has modified the language of paragraph (a) to clarify that the rule applies only to broker-dealers that use computers in the conduct of their business as a broker or dealer. Rule 15b7–3T is intended to focus on those broker-dealers whose computer systems are necessary for processing securities transactions, managing trading accounts, maintaining customer accounts, or delivering funds and securities (*i.e.*, broker-dealers for whom computer systems are "mission critical systems"). The rule is not intended to cover, for example, a broker-dealer whose reliance on automation is limited to the use of off-the-shelf word processing or payroll software. Likewise, many smaller broker-dealers still transmit orders via the telephone. The rule is not intended to cover these broker-dealers unless they use computers in their broker-dealer business functions, the failure of which could pose a risk to investors.

The Commission, however, has decided not to modify the definition of "material Year 2000 problem." Thus, as adopted, the rule states that a broker-dealer has a material Year 2000 problem if, at any time on or after August 31, 1999: (1) Any of its mission critical computer systems incorrectly identifies any date in the Year 1999 or the Year 2000; and (2) the error impairs or, if uncorrected, is likely to impair, any of its mission critical systems.[22] The Commission believes that any impairment of a mission critical system is inherently material. The definition is *not* intended to include a broker-dealer whose systems have minor technical problems regarding the reading of dates if these problems do not adversely affect the broker-dealer's core business.

Moreover, the Commission has decided not to exclude from the rule broker-dealers based on factors such as size or number of accounts. Even small or introducing broker-dealers have the potential to affect other market participants by, for example, introducing inaccurate or corrupted data into other systems. Where appropriate, the Commission believes it should have the ability to act to prevent a patently non-compliant broker-dealer from continuing to do business before the century date change.

2. Presumption of a Material Year 2000 Problem

The Commission proposed that a broker-dealer would be presumed to have a material Year 2000 problem if it: (1) Does not have written procedures designed to identify, assess, and remediate any Year 2000 problems in mission critical systems; (2) has not verified its Year 2000 remediation efforts through reasonable internal testing of mission critical systems; (3) has not verified its Year 2000 remediation efforts by satisfying any applicable Year 2000 testing requirements imposed by a self-regulatory organization; or (4) has not remediated all exceptions contained in any independent public accountant's report prepared on behalf of the broker-dealer pursuant to Exchange Act Rule 17a–(5)(e)(5)(vi).[23]

One commenter stated generally that a materiality standard should be added to the proposed presumptions.[24] A few commenters expressed concern that, under the rule as proposed, a broker-dealer could be presumed to have a material Year 2000 problem if a mission-critical system under the control of its service bureau, clearing broker, or other third party were not Year 2000 compliant.[25] These commenters argued that it would be unfair to hold a broker-dealer responsible for a presumption that it could neither rebut nor cure.

In response to the Commission's request for comment on whether independent third party verification of remediation plans should be required, two commenters said it should not.[26] One commenter expressed concern that there would be a lack of objective standards by which to evaluate Year 2000 remediation plans.[27] In addition, several commenters raised concerns regarding the requirement that *all* exceptions in an independent public accountant's report must be remedied to avoid being presumed to be a Year 2000 problem.[28]

The Commission is adopting the presumption with a few changes. Because a broker-dealer cannot reasonably be expected to certify regarding the Year 2000 status of a mission critical system that it does not control, the Commission has limited the rule so that a broker-dealer will not be presumed to have a material Year 2000 problem if its written procedures or internal testing do not cover mission critical systems under the control of third parties.[29] As adopted, the presumptions of the rule regarding written procedures and internal testing apply only to mission critical systems over which the broker-dealer has some control. For example, a broker-dealer has control over a mission critical system if it operates and maintains the systems.

In the Proposing Release, we stated that arrangements between introducing and clearing brokers do not relieve either broker-dealer of its responsibilities under proposed Rule 15b7–3T. The modification to Rule 15b7–3T is intended to clarify that firms will not be held responsible for failing to certify to the Year 2000 status of mission critical systems controlled by third parties.[30] Introducing broker-dealers, however, will still be expected to diligently inquire into the status of their clearing firm's Year 2000 readiness, and to make arrangements with another clearing firm if they are not satisfied with their clearing firm's progress or response.

The Commission has decided not to expressly narrow the scope of the rule to only "material" exceptions in the independent public accountant's report. These reports generally do not distinguish between material and immaterial exceptions. In fact, it is likely that only material problems will be sufficient to cause an exception in the first instance.[31]

Thus, as adopted, Rule 15b7–3T provides that a broker-dealer will be *presumed* to have a material Year 2000 problem if, at any time on or after August 31, 1999, it:

- Does not have written procedures reasonably designed to identify, assess, and remediate any Year 2000 problems in mission critical systems under its control; [32]
- Has not verified its Year 2000 remediation efforts through reasonable internal testing of mission critical systems under its control; [33]
- Has not verified its Year 2000 remediation efforts by satisfying Year 2000 testing requirements imposed by self-regulatory organizations to which it is subject; [34] or
- Has not remediated all exceptions relating to its mission critical systems contained in any independent public accountant's report prepared on behalf of the broker-dealer pursuant to Exchange Act Rule 17a–(5)(e)(5)(vi).

The failure of a broker-dealer to satisfy any of the four conditions above will require the broker-dealer to provide notice to the Commission. If a broker-dealer that has a material Year 2000 problem or that is presumed to have a material Year 2000 problem wishes to continue operating beyond August 31, 1999, it must submit a certificate to the Commission, as described below.

3. Notification to the Commission and DEA

As proposed, the rule required any broker-dealer that has or is presumed to have a material Year 2000 problem at any time on or after August 31, 1999, to immediately notify the Commission and its DEA of the problem. The Commission received one comment on this provision which supported the notice procedure to the Commission and the DEAs.[35]

The Commission, therefore, is adopting this provision as proposed. Notice to the Commission must be sent by overnight delivery to the Division of Market Regulation, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1002 Attention: Y2K Compliance. Notice also must be provided to the firm's DEA. The notification requirement is intended to alert the Commission and DEA so that we can assess the broker-dealer's condition and decide if its Year 2000 problems threaten customers or the integrity of the markets.[36]

4. Prohibition on Non-Compliant Broker-Dealers and Certification

a. Deadlines

The proposal stated that a broker-dealer that is not operationally capable because it has a material Year 2000 problem would be prohibited, on or after August 31, 1999, from effecting any transaction in, or inducing the purchase or sale of, any security, receiving or holding customer funds or securities, or carrying customer accounts, unless it certifies and can demonstrate that it will fix the problem by October 15, 1999.[37] As proposed, a broker-dealer that is presumed to have a material Year 2000 problem would have the burden to prove that it did not have a material Year 2000 problem, and would be required to come forward before October 15, 1999, with sufficient evidence to rebut the presumption.[38]

The Commission specifically sought comment on whether the proposed August 31, 1999, deadline to notify the Commission of a material Year 2000 problem, and the proposed October 15, 1999, deadline to achieve Year 2000 compliance, were appropriate. Several commenters stated that the proposed dates were too early. One commenter stated that the proposed deadlines should have been announced months or years ago to provide firms adequate notice.[39] In contrast, one commenter stated that the proposed deadlines were too late, given the difficulty associated with transferring accounts.[40]

Several commenters expressed reservations about requiring a firm to cease business if it failed to correct Year 2000 problems by the proposed deadline.[41] Commenters suggested that broker-dealers should be permitted to

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[16] *See* proposed Rule 15b7–3T(b)(1).

[17] *See* letters from Goffstown Financial Investments, Gramercy Securities, Grodsky Associates, Holly Securities, HBK Finance, Intellivest Securities, Dan Jamieson, Monroe Securities, U.S. Participation, and Wall Street Capital Company.

[18] *See* NASD letter.

[19] *See* AICPA letter.

[20] *See* letters from Pershing and SIA.

[21] *See* NASD letter. Specifically, the NASD recommended that the rule should cover other date related processing errors and incorporate references to functionality, data integrity, and performance. The Commission believes that these concepts are already included in the rule's definition of "material Year 2000 problem" and that this degree of specificity might cause confusion.

[22] *See* temporary Rule 15b7–3T(b)(1). The term "mission critical system" is defined as any system that is necessary, depending on the nature of the broker-dealer's business, to assure the prompt and accurate processing of securities transactions, including order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, and the delivery of funds and securities. Temporary Rule 15b7–3T(g)(1). The phrase "depending on the nature of their business" is intended to tailor the definition of a "material Year 2000 problem" to different broker-dealers' businesses and operations. The definition of "mission critical system" is adopted as proposed.

[23] *See* proposed Rule 15b7–3T(b)(2).

[24] *See* SIA letter.

[25] *See* letters from Dan Jamieson, Federated, NASD, and SIA.

[26] *See* letters from Pershing and SIA.

[27] *See* AICPA letter.

[28] *See* letters from Jeffrey Matthew's Financial Group, Pershing, RTC, SIA, and STA.

[29] Broker-dealers will still be expected to diligently inquire into the status of their third parties' Year 2000 readiness, and to make appropriate alternative arrangements if they are not satisfied. Broker-dealers will still be responsible, however, if third party failure causes the firm to be in violation of any provision under federal securities laws other than Rule 15b7–3T. *See supra* note 7.

[30] *See supra* note 7. A broker-dealer will still be responsible if a third party failure causes the broker-dealer to be in violation of any provision under the federal securities laws other than Rule 15b7–3T(b).

[31] The Commission notes that it expects to file actions against firms for violating this rule in federal district court.

[32] The appropriate scope of such procedures would vary depending on the nature of a broker-dealer's business and the size and complexity of its computer systems. To provide flexibility, we are not prescribing specific written procedures. However, broker-dealers should, at a minimum, use industry standards. For example, the NASD has published a High-Level Plan, prepared by the SIA, summarizing the standard components of a sample Year 2000 Project Plan. NASD Year 2000 Member Information (1998).

[33] The General Accounting Office has recommended a set of testing guidelines that we believe is reasonable for broker-dealers to follow. It describes five phases of Year 2000 testing activities, beginning with establishing an organizational testing infrastructure, followed by designing, conducting and reporting on software unit testing, software integration testing, system acceptance testing, and end-to-end testing. GAO Year 2000 Computing Crisis: A Testing Guide (November 1998) ("GAO Guidelines").

[34] We have approved SRO rule changes that permit the SROs to require their members to conduct Year 2000 testing. *See* Exchange Act Release Nos. 40745 (Dec. 3, 1998), 63 FR 68324 (Dec. 10, 1998) (NASD); 40836 (Dec. 28, 1998), 64 FR 1037 (Jan. 7, 1999) (American Stock Exchange); 40837 (Dec. 28, 1998), 64 FR 1055 (Jan. 7, 1999) (NYSE); 40838 (Dec. 28, 1998), 64 FR 1044 (Jan. 7, 1999) (Chicago Board Options Exchange); 40839 (Dec. 28, 1998), 64 FR 1046 (Jan. 7, 1999) (Chicago Stock Exchange); 40870 (Dec. 31, 1998), 64 FR 1263 (Jan. 8, 1999) (Philadelphia Stock Exchange); 40871 (Dec. 31, 1998), 64 FR 1838 (Jan. 12, 1999) (Boston Stock Exchange); 40893 (Jan. 7, 1999) (Pacific Stock Exchange), 64 FR 2932 (Jan. 19, 1999); 40696 (Nov. 20, 1998), 63 FR 65829 (Nov. 30, 1998) (Depository Trust Company); 40889 (Jan. 6, 1999), 64 FR 2691 (Jan. 15, 1999) (MBS Clearing Corporation); and 40946 (Jan. 14, 1999), 64 FR 3328 (Jan. 21, 1999) (National Securities Clearing Corporation).

[35] *See* NASD letter.

[36] The Commission is adopting this requirement as proposed except that notices will be sent to the Division of Market Regulation directly, rather than to the Secretary's Office.

[37] *See* proposed temporary Rule 15b7–3T(d).

[38] *Id.*

[39] *See* H.M. Payson letter.

[40] *See* letters from DST and Schwab.

[41] *See* letters from DST, Grodsky Associates, L.P. Littlewood and Associates, NASD, Pershing, STA, and Stock USA.

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fix problems after the October 15, 1999, deadline without transferring accounts.[42] Another commenter, however, argued that, given the unique nature of the Year 2000 problem, shutting down a firm with a material Year 2000 problem was appropriate.[43]

Upon consideration of commenters' views, the Commission has determined to push back the date to November 15, 1999, by which a broker-dealer must certify that its material Year 2000 problems will be remedied. Any broker-dealer that continues to have a material Year 2000 problem on or after November 15, 1999, will be required to cease operations by December 1, 1999. The Commission expects that the broker-dealer will use the period between November 15, 1999, and December 1, 1999, to unwind its business in an orderly fashion. Moving the deadline to November 15, 1999, will provide broker-dealers with as much time as possible to address Year 2000 problems, while permitting the Commission to take proactive steps in the event a broker-dealer is not Year 2000 compliant by that date.

Several commenters expressed concern that the proposed October 15, 1999, deadline was too late given the difficulties associated with the transfer of accounts. The Commission acknowledges that in the ordinary course of business the transfer of funds and accounts might take several months. However, in light of the Year 2000 problem, accounts may need to be transferred on an expedited basis.[44] The Commission notes that the rule, both as proposed and adopted, permits the Commission or a court of competent jurisdiction to order a broker-dealer to comply with Rule 15b7–3T(d) (*i.e.*, to cease its securities business and transfer accounts) at any time after August 31, 1999, if to do so would be in the public interest or for the protection of investors. We expect to reserve this authority for situations in which it is patently unrealistic that a broker-dealer will be able to conduct sufficient remediation to achieve Year 2000 compliance by November 15, 1999.

b. Certification

Four comment letters addressed the certification requirement. One commenter suggested that firms that file certificates be allowed to operate beyond the October 15, 1999, deadline.[45] Another commenter asserted that requiring the firm's CEO to sign the document is unnecessary. In addition, this commenter expressed concern that CEOs of small firms would be the targets of enforcement actions as a consequence of the rule.[46] Another commenter expressed concern that the certification requirement puts CEOs in the position of either telling the truth and shutting down or lying in order to continue operations.[47] This commenter concluded that some CEOs would inevitably lie, which would only provide false comfort and jeopardize the credibility of the Commission and the securities markets.[48] In addition, this commenter stated that if enough CEOs told the truth, *i.e.*, that their firms had material Year 2000 problems, it would cause panic.[49] On the other hand, one commenter agreed that a firm's CEO is the appropriate party to sign the certification.[50]

As adopted, Rule 15b7–3T provides that a broker-dealer with (or that is presumed to have) a material Year 2000 problem on or after August 31, 1999, will be permitted to continue to operate until December 1, 1999, if, in addition to providing the Commission and its DEA with the notice required by paragraph (c) of the rule, it submits to the Commission and its DEA a certificate signed by its chief executive officer (or an individual with similar authority) stating:

- The broker-dealer is in the process of remediating its material Year 2000 problem;
- The broker-dealer has scheduled testing of its affected mission critical systems to verify that the material Year 2000 problem has been remediated, and specifies the testing dates;
- The date (which cannot be later than November 15, 1999) by which the broker-dealer anticipates completing remediation of the material Year 2000 problem in its mission critical systems, and will therefore be operationally capable; and
- Based on inquiries and to the best of its chief executive officer's knowledge, the broker-dealer does not anticipate that the existence of the material Year 2000 problem in its mission critical systems will impair its ability, depending on the nature of its business, to ensure prompt and accurate processing of securities transactions, including order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, or the delivery of funds and securities; and the broker-dealer anticipates that the enumerated remediation steps will result in remedying the material Year 2000 problem on or before November 15, 1999.

In response to the comments, we made four changes to the certification provision. First, as stated above, the date by which the broker-dealer must expect to have remediated the material Year 2000 problem is now November 15, 1999 (rather than October 15, 1999). Second, the Commission has added language to paragraph (e)(1)(i)(D) to require that the certification include a statement that the chief executive officer believes that the steps referred to in paragraphs (A) through (C) will result in remedying the material Year 2000 problem no later than November 15, 1999. In the rule as proposed, there was no affirmative statement that the chief executive officer believed that the described remediation steps would address the firm's problems before a specified date.

Third, Rule 15b7–3T(d)(2) provides that a broker-dealer that has or is presumed to have a material Year 2000 problem on or after August 31, 1999, will be permitted to operate until November 15, 1999, if it files a certificate signed by its chief executive officer that contains the representations specified in paragraph (e)(1)(i) of the rule. The Commission is also adding paragraph (e)(1)(ii) to permit broker-dealers to include additional information to show that their mission critical systems are free of material Year 2000 problems.

Fourth, the rule as adopted requires broker-dealers that have submitted a certificate pursuant to paragraph (e)(1)(i) to submit a second certificate signed by the chief executive officer (or an individual with similar authority) on or before November 15, 1999, stating that, based on inquiries and to the best of the chief executive's knowledge, the firm has remediated its Year 2000 problem or that it intends to cease operations. The second certification is designed to give firms the opportunity to certify to the Commission, the public, and their customers that they have, in fact, remediated their Year 2000 problem.[51] In addition, the second certification will provide information to the Commission regarding the firms that have fixed their Year 2000 problems and the firms that have not.

The Commission notes that the rule requires a broker-dealer to notify the Commission of material Year 2000 problems it experiences on or after August 31, 1999. Therefore, a broker-dealer filing a certificate on August 31, 1999, must update it if the information contained in the original certificate becomes materially inaccurate in any respect. If a broker-dealer finds a new material Year 2000 problem subsequent to August 31, 1999, it must promptly notify its DEA and the Commission and submit a certificate in accordance with the rule.

5. Confidentiality of Notices and Certifications

In the Proposing Release, we indicated that the August 31, 1999, notices and certifications would be made public so that customers and counterparties of these broker-dealers could assess the potential impact on them and take any appropriate action. One commenter stated that making the notices public could result in a "death sentence" for the affected firms because customers would take their business to compliant firms, *i.e.*, firms that did not file notices.[52] This commenter also believed that making the notices public would discourage firms from reporting their problem[s] for fear of negative press.[53] Another commenter, however, recognized that it is important to give investors and market participants notice of Year 2000 problems.[54] The NASD did not object to making the notices public, but suggested that Rule 15b7–3T permit firms to file a follow-up notice when the firm has remediated its Year 2000 problem.[55]

Consistent with the Commission's previous policy in making Year 2000 disclosures such as the Form BD–Y2K public, the Commission will make the notices and certificates available to the public. The Commission believes that the public and other market participants need this information in order to make alternative arrangements, if appropriate. In response to one commenter's suggestion, the Commission has adopted a second certificate provision which gives firms the opportunity to inform the Commission and the public that they have remediated their Year 2000 problem. After December 1, 1999, the Commission will also make public any actions taken against firms that are not Year 2000 compliant under the rule.

6. Transfer of Accounts

In the event that a broker-dealer has a material Year 2000 problem in a mission critical system that it cannot remediate by November 15, 1999, steps will have to be taken by December 1, 1999, to transfer customer accounts to other broker-dealers that are Year 2000 compliant. The Commission understands that broker-dealers may be reluctant to take over customer accounts from a non-compliant firm. The Commission intends to exercise a great degree of flexibility in accommodating broker-dealers that accept customer accounts before or after December 1, 1999, from impaired firms. By moving the deadline for Year 2000 compliance from October 15, 1999, to November 15, 1999, the Commission anticipates that fewer broker-dealers will be required to transfer accounts due to a material Year 2000 problem.

The Commission has the ability to take action before December 1, 1999, to limit a firm's business in order to protect investors. After August 31, 1999, the Commission will be reviewing notices and certificates, and making follow-up inquiries regarding broker-dealers' Year 2000 readiness. We can take action against a firm at any time after August 31, 1999, regardless of whether a firm has filed a certificate. Although the Commission expects that the vast majority of firms will be ready for Year 2000, Rule 15b7–3T(f) makes clear that the Commission will act proactively to address the isolated firms that will clearly not be ready for the Year 2000.

B. Rule 17Ad–21T

Rule 17Ad–21T, applicable to non-bank transfer agents, is similar to temporary Rule 15b7–3T, applicable to broker-dealers.[56] Specifically, proposed Rule 17Ad–21T prohibited any registered non-bank transfer agent from conducting transfer agent business unless the non-bank transfer agent certified and could demonstrate that it would fix the problem by October 15, 1999.[57] The proposal defined the term "material Year 2000 problem;" set forth criteria giving rise to a presumption of a Year 2000 problem; and required firms having a material Year 2000 problem to notify the Commission and satisfy certain conditions if they wished to continue conducting their transfer agent business. The Commission is adopting temporary Rule 17Ad–21T with several changes to respond to commenters' concerns.

1. Scope of the Rule; Definition of Material Year 2000 Problem

As proposed, Rule 17Ad–21T applied to all non-bank transfer agents, and stated that a non-bank transfer agent has a material Year 2000 problem if: (1) Any of its computer systems incorrectly identifies any date in the Year 1999, the Year 2000, or in any year thereafter; and (2) the error impairs or, if uncorrected, is likely to impair, any of its mission critical computer systems.[58]

Much like the broker-dealer rule, commenters generally requested that the Commission limit the application of Rule 17Ad–21T.[59] For instance, one commenter suggested that the definition of material Year 2000 problem be narrowed to exclude situations that do not result from an error in the transfer agent's system for securityholder recordkeeping and accounting.[60] In addition, this commenter recommended that the definition be further limited to exclude isolated date identification failures.[61] Another commenter, commenting on both the broker-dealer rule and transfer agent rule, stated that the rule should include a more thorough definition with specific criteria.[62]

Responding to comments that the scope of the proposed rule is too broad, temporary Rule 17Ad–21T is being revised to apply only to non-bank transfer agents that use computers in the course of their business as transfer agents. The Commission also recognizes that some non-bank transfer agents that use computers could conduct their business manually without disrupting service. Therefore, the rule is not intended to cover any non-bank transfer agent whose computer system is not a mission critical system. This rule is intended to cover those non-bank transfer agents that rely on computers and that cannot resort to manual processing without causing disruption to service or without posing a risk to their customers.

Similar to Rule 15b7–3T, the Commission has decided not to modify Rule 17Ad–21T's definition of material Year 2000 problem.[63] The Commission

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[42] *See* letters from NASD and Pershing.

[43] *See* Schwab letter.

[44] The Commission appreciates the difficulties associated with an expedited transfer of accounts. *See infra* Section II. B. 5 for a further discussion of this issue.

[45] *See* SIA letter.

[46] *See* Dan Jamieson letter.

[47] *See* Dale W. Way letter.

[48] *Id.*

[49] *Id.*

[50] *See* NASD letter.

[51] The NASD recommended that a firm be permitted to file an additional notice in the event the firm believes that it no longer has a material Year 2000 problem. *See* NASD letter.

[52] *See* Pershing letter.

[53] *Id.*

[54] *See* Schwab letter.

[55] *See* NASD letter.

[56] The term "non-bank transfer agent" means a transfer agent whose appropriate regulatory agency ("ARA") is the Commission and not the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation. The term ARA is defined in Exchange Act Section 3(a)(34), 15 U.S.C. 78c(a)(34).

[57] *See generally* proposed Rule 17Ad–21T.

[58] *See* proposed Rule 17Ad–21T(b)(1).

[59] *See* letters from DST, Federated, RTC, and STA.

[60] *See* DST letter.

[61] *Id.*

[62] *See* AICPA letter.

[63] As adopted, temporary Rule 17Ad–21(b)(1) states that a non-bank transfer agent has a material Year 2000 problem if, at any time on or after August

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believes that any impairment of a mission critical system is inherently material. The definition is not intended to include a non-bank transfer agent whose system has a minor technical problem reading dates if such problem does not adversely affect the transfer agent's core business. The rules therefore do not apply to systems that have no bearing on the core transfer agent functions and are less likely to have a negative impact on the transfer agent's ability to conduct business for its customers.

2. Presumption of a Material Year 2000 Problem

The Commission proposed that a non-bank transfer agent would be presumed to have a material Year 2000 problem if it: (1) Does not have written procedures designed to identify, assess, and remediate any Year 2000 problems in mission critical systems; (2) has not verified its Year 2000 remediation efforts through reasonable internal testing of mission critical systems and reasonable testing of external links; or (3) has not remediated all exceptions contained in any independent public accountant's report prepared on behalf of the non-bank transfer agent pursuant to Exchange Act Rule 17Ad–18(f).[64]

The Commission received one comment on the responsibility of non-bank transfer agents for third-party systems. The commenter stated that the rule should not require a firm to "ensure" that the third-party provider is free from material Year 2000 problems.[65] Rather, the commenter suggested that the firm should be required to take "reasonable steps" to verify that third parties are Year 2000 compliant.[66]

Similar to the broker-dealer rule, the Commission is modifying the presumption language so that a non-bank transfer agent will not be presumed to have a material Year 2000 problem if its written procedures or testing do not cover mission critical systems under the control of third parties.[67] As adopted, the rule is limited in scope to cover only those written procedures and testing of mission critical systems over which the non-bank transfer agent has some element of control.[68] Non-bank transfer agents will still be expected to diligently inquire into the status of their third parties' Year 2000 readiness, and to make appropriate alternative arrangements if they are not satisfied. A non-bank transfer agent will still be responsible, however, if third party failure causes the non-bank transfer agent to be in violation of any provision under federal securities laws other than Rule 17Ad–21T.

The rule as adopted provides that a non-bank transfer agent would be *presumed* to have a material Year 2000 problem if, at any time on or after August 31, 1999, it:

- Does not have written procedures reasonably designed to identify, assess, and remediate any Year 2000 problems in its mission critical systems under its control;[69]
- Has not verified its Year 2000 remediation efforts through reasonable internal testing of its mission critical systems under its control and reasonable testing of external links under its control;[70] or
- Has not remediated all exceptions related to its mission critical systems contained in any independent public accountant's report prepared on behalf of the transfer agent pursuant to Exchange Act Rule 17Ad–18(f).[71]

The failure of a non-bank transfer agent to satisfy any of the three conditions above by August 31, 1999, will require the non-bank transfer agent to provide notice to the Commission.

3. Notification to the Commission and Issuer

As proposed, the rule required any registered non-bank transfer agent that has or is presumed to have a material Year 2000 problem at any time on or after August 31, 1999, to immediately notify the Commission of the problem. In the proposing release the Commission also specifically asked for comment on whether non-compliant transfer agents should notify their "customers," which was defined in the proposed rule to include issuers. The Commission received no comment on this provision.

The Commission is adopting the notice provision as proposed with two changes. First, because it is important for an issuer to know the status of its transfer agent's preparation for Year 2000, any non-bank transfer agent that has or is presumed to have a material Year 2000 problem must notify not only the Commission but also must notify its issuers. Second, notices to the Commission must be sent to the Division of Market Regulation instead of to the Secretary.[72]

4. Prohibition on Non-Compliant Non-bank Transfer Agents and Certification

a. Deadlines

As proposed, a non-bank transfer agent that has or is presumed to have a material Year 2000 problem will not be permitted, on or after August 31, 1999, to engage in any transfer agent function, including: (i) Countersigning securities upon issuance; (ii) monitoring the issuance of securities with a view to preventing unauthorized issuance; (iii) registering the transfer of securities; (iv) exchanging or converting securities; or (v) transferring record ownership of securities by book-keeping entry without physical issuance of securities certificates, unless it certifies and can demonstrate that it will fix the problem by October 15, 1999.[73] As proposed, a non-bank transfer agent that is presumed to have a material Year 2000 problem would have the burden to prove that it did not have a material Year 2000 problem, and would be required to come forward before October 15, 1999, with sufficient evidence to rebut the presumption.[74]

The Commission specifically sought comment on whether the proposed August 31, 1999, deadline to notify the Commission of an existing Year 2000 problem, and the October 15, 1999, deadline to achieve Year 2000 compliance, were appropriate. Two commenters stated that the August 31, 1999, and October 15, 1999, deadlines were too early because they will not allow adequate time for testing with external vendors.[75] One commenter suggested that the August 31, 1999, deadline should be moved to the end of September 1999.[76] In order to facilitate the orderly transfer of customer accounts, another commenter suggested that transfer agents be permitted to temporarily operate beyond the August 31, 1999, cutoff date, during which time customer accounts could be transferred.[77]

Two commenters expressed reservations about forcing a transfer agent to cease operations for not remediating Year 2000 problems.[78] One of these commenters noted that requiring non-bank transfer agents to cease processing, pursuant to Rule 17Ad–21T, would eliminate their ability to use manual procedures while problems are being corrected.[79] The commenter stated that it would be more prudent to prohibit the non-bank transfer agents from taking on new accounts or relationships.[80]

According to one commenter, transferring accounts from non-compliant firms would be difficult.[81] The commenter opined that it would not be able to convert any issuer from any transfer agent experiencing a material Year 2000 problem or a failure of operational capability within the four-month period remaining between September 1, 1999, and December 31, 1999, because there is insufficient time to adequately plan and test the conversion. This commenter went on to suggest that it would be more appropriate and practicable to require firms experiencing a Year 2000 problem to identify themselves, cease accepting new business, accept financial responsibility for losses incurred by their failure to become Year 2000 compliant, and use their best efforts to become compliant or minimize the effects of their non-compliance.

The Commission has determined to push back to November 15, 1999, the date by which a non-bank transfer agent must certify that its material Year 2000 problems will be remedied. Any non-bank transfer agent that has a material Year 2000 problem on or after November 15, 1999, will be required to start winding down its business and cease operations by December 1, 1999. The Commission expects that the non-bank transfer agent will use the period between November 15, 1999, and December 1, 1999, to unwind its business in an orderly fashion. Moving the deadline to November 15, 1999, will provide non-bank transfer agents with as much time as possible to address Year 2000 problems, while permitting the Commission to take proactive steps in the event a non-bank transfer agent is not Year 2000 compliant.

The Commission acknowledges that in the ordinary course of business the transfer of accounts might take several months. However, given the nature of the Year 2000 problem, accounts may need to be transferred on an expedited basis.[82] The Commission notes that the rule, both as proposed and as adopted, permits the Commission or a court of competent jurisdiction to order a non-bank transfer agent to comply with Rule 17Ad–21T(d) (*i.e.*, cease its transfer agent business and transfer accounts) at any time after August 31, 1999, if to do so would be in the public interest or for the protection of investors.[83]

b. Certification

As adopted, Rule 17Ad–21T provides that a non-bank transfer agent with (or presumed to have) a material Year 2000 problem on or after August 31, 1999, will be permitted to continue to operate until December 1, 1999, if in addition to providing the Commission with the notice required by paragraph (c) of the rule, it provides the Commission and its issuers a certificate signed by its chief executive officer (or an individual with similar authority) stating:

- The non-bank transfer agent is in the process of remediating its material Year 2000 problem;
- The non-bank transfer agent has scheduled testing of its affected mission critical systems to verify that the material Year 2000 problem has been remediated, and specifies the testing dates;
- The date (which cannot be later than November 15, 1999) by which the non-bank transfer agent anticipates completing remediation of the material Year 2000 problem in its mission critical systems; and
- Based on inquiries and to the best of its chief executive officer's knowledge, the non-bank transfer agent does not anticipate that the existence of the material Year 2000 problem in its mission critical systems will impair its ability, depending on the nature of its business, to assure the prompt and accurate transfer and processing of securities, the maintenance of master securityholder files, or the production and retention of required records; and the non bank transfer agent anticipates that the enumerated remediation steps will result in remedying the material Year 2000 problem on or before November 15, 1999.

The Commission has made four changes to the certification provision. First, as stated above, the date by which the non-bank transfer agent must expect to have remediated the material Year 2000 problem is now November 15, 1999 (rather than October 15, 1999). Second, the Commission has added language to paragraph (e)(1)(i)(D) to require that the certification include a statement that the chief executive officer believes that the steps referred to in paragraphs (A) through (C) will result in remedying the material Year 2000 problem no later than November 15, 1999. In the rule as proposed, there was no affirmative statement that the chief executive officer believed that the described remediation steps would address the firm's problems before a specified date.

Third, Rule 17Ad–21T(d)(2) provides that a non-bank transfer agent that has or is presumed to have a material Year 2000 problem on or after August 31, 1999, will be permitted to operate until November 15, 1999, if it files a certificate signed by its chief executive officer that contains the representations specified in paragraph (e)(1)(i) of the rule. The Commission is also adding paragraph (e)(1)(ii) to permit non-bank transfer agents to include additional information to show that their mission critical systems are free of material Year 2000 problems.

Fourth, the rule as adopted requires non-bank transfer agents that have submitted a certificate pursuant to paragraph (e)(1)(i) to submit a second certificate signed by the chief executive officer (or an individual with similar authority) on or before November 15,

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31, 1999: (1) Any of its mission critical computer systems incorrectly identifies any date in the Year 1999 or the Year 2000; and (2) the error impairs or, if uncorrected, is likely to impair, any of its mission critical systems. The term "mission critical system" is defined as any system that is necessary, depending on the nature of the transfer agent's business, to assure the prompt and accurate transfer and processing of securities, the maintenance of master securityholder files, and the production and retention of required records as described in paragraph (d) of the rule.

[64] *See* proposed Rule 17Ad–21T(b)(2).

[65] *See* Federated letter.

[66] *Id.*

[67] In the Proposing Release, we stated that arrangements between registered non-bank transfer agent and other registered transfer agents (variously referred to as the recordkeeping transfer agent, co-transfer agent, or service company) do not relieve the registered non-bank transfer agent of its responsibilities under proposed Rule 17Ad-21T. The modification to Rule 17Ad-21T is intended to clarify that firms will not be held responsible for failing to certify to the Year 2000 status of mission critical systems controlled by third parties.

[68] For example, a non-bank transfer agent has control over a mission critical system if it operates and maintains the system.

[69] The appropriate scope of such procedures would vary depending on the nature of a non-bank transfer agent's business and size and complexity of its computer systems.

[70] Unlike broker-dealers, transfer agents do not belong to any SROs, therefore unlike broker-dealers, non-bank transfer agents do not have specific testing mandates. However, this rule contemplates that transfer agents will conduct effective testing of internal mission critical systems and external links under the control of the non-bank transfer agent. We believe that it is reasonable for transfer agents to rely on testing guidelines established by SROs.

[71] Similar to Rule 15b7–3T, the Commission has decided not to expressly narrow the scope of the rule to "material" exceptions in the independent public accountant's report. The Commission notes that it expects to file actions against non-bank transfer agents for violating this rule in a federal district court.

[72] Notice to the Commission must be sent by overnight delivery to the Division of Market Regulation, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1002 Attention: Y2K Compliance. Notice also must be provided to the non-bank transfer agent's issuer.

[73] Proposed Temporary Rule 17Ad–21T.

[74] *Id.*

[75] *See* letters from RTC and STA.

[76] *See* STA letter.

[77] *See* Federated letter.

[78] *See* letters from RTC and STA.

[79] *See* STA letter.

[80] *Id.*

[81] *See* DST letter.

[82] The Commission appreciates the difficulties associated with an expedited transfer of accounts. *See infra* Section II. B. 6 for a further discussion of this issue.

[83] This action would be appropriate where it is patently unrealistic that a non-bank transfer agent will be able to conduct sufficient remediation to achieve Year 2000 compliance by November 15, 1999.

1999, stating that, based on inquiries and to the best of the chief executive's knowledge, the non-bank transfer agent has remediated its Year 2000 problem or that it intends to cease operations. The second certification is designed to give non-bank transfer agents the opportunity to certify to the Commission, the public, and their customers that they have, in fact, remediated their Year 2000 problem. In addition, the second certification will provide information to the Commission regarding the non-bank transfer agents that have fixed their Year 2000 problems and those non-bank transfer agents that have not.

The Commission notes that the rule requires a non-bank transfer agent to notify the Commission of material Year 2000 problems it experiences on or after August 31, 1999. Therefore, a non-bank transfer agent filing a certificate on August 31, 1999, must update it if the information contained in the original certificate becomes materially inaccurate in any respect. If a non-bank transfer agent finds a new material Year 2000 problem subsequent to August 31, 1999, it must promptly notify its issuers and the Commission and submit a certificate in accordance with the rule.

5. Confidentiality of Notices and Certifications

In the Proposing Release, we indicated that the August 31, 1999, notices and certifications would be made public so that customers of these transfer agents could assess the potential impact on them and take any appropriate action. Consistent with the Commission's previous policy in making Year 2000 disclosures public, the Commission will make the notices and certificates available to the public.[84] After December 1, 1999, the Commission will also make public any actions taken against firms that are not Year 2000 compliant under the rule.

6. Transfer of Accounts

In the event that a non-bank transfer agent has a material Year 2000 problem in a mission critical system that it cannot remediate by November 15, 1999, it will have to take steps by December 1, 1999, to transfer customer accounts to other Year 2000 compliant transfer agents. The Commission understands that transfer agents may be reluctant to take over customer accounts from a non-compliant firm. The Commission intends to exercise a great degree of flexibility in accommodating transfer agents that accept accounts before or after December 1, 1999, from impaired transfer agents.[85]

The Commission can take action before December 1, 1999, to protect investors. After August 31, 1999, the Commission will be reviewing notices and certificates, and making follow-up inquiries regarding transfer agents' Year 2000 readiness. Rule 17Ad–21T(f) makes clear that the Commission can take action to protect investors regardless of whether a firm has filed a certificate, to proactively address the few firms that will clearly not be ready for the Year 2000.

In addition, the Commission encourages each firm that files a notice and accompanying certificate by August 31, 1999, to begin negotiations for a standby agreement with another transfer agent that does not have a Year 2000 problem in case it becomes necessary to transfer business. The Commission believes that having a standby agreement to transfer business is prudent in light of the Year 2000 problem and the logistics involved in transferring accounts.[86]

III. Recordkeeping Requirements

A. Transfer Agents

Proposed Rule 17Ad–21T contained a recordkeeping requirement for non-bank transfer agents. As proposed, the rule required that, beginning August 31, 1999, and ending March 31, 2000, every non-bank transfer agent to make a daily backup copy of its database and file layouts.[87] The proposal specified that such backup records were to be made at the end of each business day and preserved for a rolling five business day period in a manner that allowed for the possible transfer and conversion to a successor transfer agent.[88] In the event of a transfer agent failure, it may be impossible to retrieve files unless the transfer agent has previously stored a separate set of backup records. Thus, this requirement was intended to facilitate the transfer to and conversion of records by another registered transfer agent if necessary.

The comments received regarding the recordkeeping requirement were favorable. For example, two commenters opined that maintenance of multiple day backup records is a conservative, inexpensive, and responsible approach designed to enhance recovery capabilities.[89] Three commenters stated that because a backup of daily work is necessary, a recordkeeping requirement set forth in the proposed rule should become a general, not a temporary rule.[90] One commenter suggested a more extensive recordkeeping program with a backup of three generations of files,[91] namely, copying the entire database at the end of the week with a daily backup of changed files and transactions, and storing these records for three weeks.

Another commenter, however, pointed out that while most larger transfer agents already maintain the required records for longer than five days, the proposed format for record retention appeared likely to be onerous.[92] This commenter explained that the proposed rule employed the term "database," and therefore would include significantly more records than those required for a successful conversion. It was suggested that the records required to be backed up should be limited to computerized securityholder records that are necessary for a conversion of the securityholder records to a successor transfer agent.

Responding to the commenters' concerns, we have made several changes. First, the Commission acknowledges that the requirement to backup the entire database and file layouts on a daily basis might be burdensome. Thus, the rule as adopted requires that backup records must be made and preserved for all master securityholder files.[93] As adopted, the rule still requires that backup records be maintained for a rolling five business day period.[94] In case the most recent backup records have been corrupted, this five day preservation requirement gives the transfer agent four more opportunities to obtain uncorrupted backup records from which to reconstruct its critical computer files. In addition, the Commission has also added language which provides for two additional safeguards in case the records need to be reconstructed. First, if a non-bank transfer agent has a material Year 2000 problem, it must preserve for at least one year the five days of backup records immediately preceding the day the problem was discovered. In addition, the non-bank transfer agent must make and preserve for one year backup records for the five business days prior to January 1, 2000.[95]

In summary, Rule 17Ad–21T provides that beginning August 31, 1999, and ending March 31, 2000, a non-bank transfer agent must maintain backup records for all master securityholder files.[96] Such backup records must be made at the close of each business day and must be preserved for a rolling five business day period in a manner that will allow for the transfer and conversion to a successor transfer agent. If a non-bank transfer agent discovers a Year 2000 problem, it must preserve for at least one year the five day backup records immediately preceding the day the problem was discovered. In addition, the non-bank transfer agent must make, at the close of business on December 27 through 31, 1999, a backup copy for all master securityholder files and preserve these records for at least one year. Such backup records must permit the timely restoration of such systems to their condition existing prior to experiencing the material Year 2000 problem. Copies of the backup records must be kept in an easily accessible place but must not be located with or held in the same computer system as the primary records. In addition, they must be able to be immediately produced or reproduced. A non-bank transfer agent must furnish promptly to a representative of the Commission such legible, true, and complete copies of those records, as may be requested.

B. Broker-Dealers

Proposed Rule 17a–9T would have required certain broker-dealers to make a separate copy of their blotters and their securities record or ledger ("securities record") for the last two business days of 1999.[97] Specifically, the proposed rule would have obligated broker-dealers that, as of December 30 and 31, 1999, are required under Rule 15c3–1(a)(2) to maintain minimum net capital of $250,000[98] to make and to preserve a separate copy of their blotters and securities record as of the close of business on December 30 and 31, 1999. Under the proposed rule, broker-dealers could have kept the records on paper or on any micrographic or electronic storage media acceptable under Rule 17a–4(f). Proposed Rule 17a–9T would only have required broker-dealers to make and preserve a separate copy of an existing record and to ensure that the record was created at the close of business on December 30 and December 31, 1999. It would not have required a broker-dealer to create any new record.[99] This rule was intended to assist broker-dealers, the Commission, the DEAs, and the Securities Investor Protection Corporation in identifying all securities positions carried by the broker-dealer and the location of the securities in the event a broker-dealer experiences Year 2000 problems.

Several commenters expressed concerns about the proposed recordkeeping rule. One commenter, for example, argued that the recordkeeping rule should apply only to those broker-dealers that failed to file a Form BD–Y2K, those that have failed industry testing, and those that report Year 2000 problems after August 31, 1999.[100] Another commenter thought that the recordkeeping requirement should apply only to large firms.[101] One commenter opposed the recordkeeping requirement on the grounds that such records would be difficult to make and the additional requirements would be time consuming and expensive.[102] In addition, this commenter argued that the rule as proposed did not allow sufficient flexibility in recordkeeping methods. Specifically, this commenter argued that such records should not be kept on non-rewritable and non-erasable storage media, but rather that broker-dealers be permitted to use temporary storage means.[103]

Other commenters agreed that records should be kept, but had concerns regarding how and when to make and keep those records. In its comment letter, the NASD stated that the proposed recordkeeping requirements should be extended to cover the last three business days of 1999, in order to assist in identifying securities trades that may not have settled as of year end.[104] In addition, the NASD suggested that broker-dealers should maintain month-end records for November 1999.[105]

The Commission believes that the recordkeeping rule provides a safeguard against unforeseen Year 2000 problems. Should a Year 2000 problem disrupt a broker-dealer, its account positions and transactions must be reconstructed. It is therefore crucial to assure that broker-dealers maintain all the necessary records to permit reconstruction.

The Commission is adopting Rule 17a–9T with several changes to respond to commenters' concerns and to clarify the rule language. The Commission agrees with the commenters that broker-dealers should keep records for the length of the three day settlement cycle to assure that sufficient records exist in the event of a problem. Thus, the rule

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[84] By requiring a second certificate, we are giving non-bank transfer agents the opportunity to inform the Commission and the public that they have remediated their Year 2000 problems.

[85] 85 By moving the deadline for Year 2000 compliance from October 15, 1999 to November 15, 1999, the Commission anticipates that fewer transfer agents will be required to transfer accounts due to a material Year 2000 problem.

[86] The Commission is aware that the process of a shareholder record conversion and transfer to another transfer agent can be a time consuming process and requires the issuer to appoint or agree to a successor transfer agent. In addition, over-printing of the transfer agent and registrar signature panel on certificates will be necessary.

[87] File layouts was defined in proposed Rule 17Ad–21T(g)(4) as the description and location of informatioin contained in the database.

[88] We understand that most transfer agents already make and preserve a separate copy of their record as a good business practice.

[89] *See* letters from STA and RTC.

[90] *See* letters from STA, RTC, and DST.

[91] *See* STA letter.

[92] *See* DST letter.

[93] The Commission recently proposed for comment amendments to Rule 17Ad–7 (17 CFR 240.17Ad–7) that would allow registered transfer agents to use electronic storage media for recordkeeping purposes. Should the Commission adopt the proposed amendments, transfer agents would be able to maintain their backup records in any format that is allowed by Rule 17Ad–7, as amended, provided that all the conditions imposed by the rule are met, that would allow for a successful conversion and transfer to a Year 2000 compliant transfer agent. Exchange Act Release No. 41442 (May 25, 1999), 64 FR 29608 (June 2, 1999).

[94] As noted in the STA letter, some transfer agents currently copy their entire database at the end of the business week with daily backup copies of just the changed files and transactions, and store these records for at least two weeks. We would consider this procedure to comply with the backup requirement.

[95] This rule requires that non-bank transfer agents make and preserve a separate copy of an existing record. It does not require non-bank transfer agents to create any new records.

[96] Because transfer agents maintain the only inclusive records of the owners of issuers' outstanding securities and are necessary for the continuous trading and transfer of ownership of those securities, the Commission believes that it is prudent to require transfer agents to begin maintaining backup records at the end of August 1999. Furthermore, because there are potential Year 2000 problems that may arise because 2000 is a leap year, the recordkeeping period will extend through March 31, 2000.

[97] Rule 17a–3(a)(1) requires every broker-dealer to make and keep current a blotter containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. The blotter is required to show the account for which each transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered. 17 CFR 240.17a–3(a)(1). Rule 17a–3(a)(5) requires every broker-dealer to make and keep current a securities record or ledger reflecting separately for each security all long or short positions (including securities in safekeeping and securities that are the subject of repurchase or reverse repurchase agreements) carried by the broker-dealer for its account or for the account of its customers, including the name or designation of the account in which each position is carried. The securities record is also required to show the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date the differences were discovered. 17 CFR 240.17a–3(a)(5).

[98] *See* 17 CFR 240.15c3–1(a)(2).

[99] We understand that most broker-dealers already make and preserve a separate copy of these records as a good business practice. However, because of the time-sensitive nature of the securities markets, this temporary rule requires that broker-dealers keep a copy of these records separate from other records required under Rules 17a–3 and 17a–4.

[100] *See* Pershing letter.

[101] *See* Monroe Securities letter.

[102] *See* Schwab letter.

[103] *Id.*

[104] *See* NASD letter.

[105] *Id.*

as adopted requires broker-dealers to keep records for December 29, December 30, and December 31, 1999. The Commission is also adding language to clarify that such records must be made before January 1, 2000 to assure that separate records are made before the date change and the possibility of data corruption. The rule requires that broker-dealers make separate blotters for each of the final three business days of the year. In addition, the Commission deleted the proposed language that would have allowed a broker-dealer to avoid preserving separate blotters if its securities record reflected both trade date and settlement date positions. The Commission deleted this language because the information contained in blotters, which is different from the information contained in securities records, may be important in reconstructing account positions and transactions.

The Commission is adding paragraph (d) to Rule 17a–9T to clarify that the records may be maintained in any format that is now acceptable under Rules 17a–3 and 17a–4, so long as broker-dealers comply with all the conditions in those rules. In addition, the Commission is clarifying that broker-dealers that retain the records using micrographic or electronic storage media must comply with all the conditions set forth in paragraph (f) of Exchange Act Rule 17a–4.[106]

IV. Conclusion

For the reasons discussed above, the Commission believes that adopting new temporary Rules 15b7–3T, 17Ad–21T, and 17a–9T under the Exchange Act will help the Commission and market participants identify broker-dealers and non-bank transfer agents that will not be ready for Year 2000. The temporary rules provide a schedule for broker-dealers and non-bank transfer agents to remediate Year 2000 problems. The temporary rules balance the need to permit broker-dealers and non-bank transfer agents with sufficient time to address their Year 2000 problems with the need of customers and the financial markets to have time to make alternative arrangements before harm is done. Because of the risks to investors and the financial markets, the temporary rules provide an additional mechanism for regulatory authorities to identify isolated problems and to take action to address those problems before the Year 2000.

V. Costs and Benefits of the Rules

The Commission believes that the benefits of the rules justify the associated costs. To assist the Commission in its evaluation of the costs and benefits and the effect on competition, efficiency and capital formation that may result from the new rules, commenters were requested to provide analysis and data, if possible, relating to costs and benefits associated with the proposal. The Commission received only one comment that that touched on this issue.[107]

The Commission believes that temporary Rules 15b7–3T, 17Ad–21T, and 17a–9T are necessary to protect investors and the integrity of the securities markets during the transition to the Year 2000. The rules are designed to protect investors and the markets from the risks posed by any broker-dealers or non-bank transfer agents who do not succeed in making their mission critical systems Year 2000 compliant by the end of 1999. In addition, the rules provide for the retention of records which will assist broker-dealers, non-bank transfer agents, the Commission, DEAs, and the Securities Investor Protection Corporation in identifying all securities positions and the location of securities in the event that a broker-dealer or non-bank transfer agent experiences a Year 2000 problem.

Since the Proposing Release was issued, the rule language has been changed to incorporate several suggestions provided by commenters. In particular, the Commission clarified that (1) only broker-dealers and non-bank transfer agents that use computers in the course of their business as broker-dealers and non-bank transfer agents are subject to the rules; (2) the rules only cover mission critical systems; and (3) for purposes of these rules, broker-dealers and non-bank transfer agents will not be presumed to have a material Year 2000 problem for failing to have written procedures to address Year 2000 problems in mission critical systems if they are under another entity's control. As a result of the changes, the costs have been reduced because the rule affects fewer broker-dealers and non-bank transfer agents. Nonetheless, we recognize that, as described below, these rules will impose costs on broker-dealers and non-bank transfer agents. We believe, however, that the benefits of this rule justify the costs.

A. Benefits

The Commission believes that the rules will provide the following benefits:

- Broker-dealers and non-bank transfer agents will be required to focus on the serious issue of Year 2000 readiness
- Capital formation will be facilitated by the smooth functioning of the U.S. securities markets during the transition to the Year 2000
- The rules will help ensure that investors are able to promptly access their accounts and execute transactions at the turn of the century
- Investors will be protected in their investment activities by reduced individual firm risk and systemic risk that would result from computer system failures.
- The risks non-Year 2000 compliant broker-dealers and non-bank transfer agents pose to the financial system will be reduced, permitting financial markets to efficiently operate without delays in executions and settlements.
- The temporary recordkeeping requirements will assist the Commission, broker-dealers, DEAs, Securities Investor Protection Corporation, and non-bank transfer agents in reconstructing records that are lost or damaged due to computer problems associated with the Year 2000, if any occur.
- The costs associated with these temporary rules are much lower than the costs that would be incurred if Year 2000 problems were left unchecked.

B. Costs

We recognize that these rules will impose certain costs on broker-dealers and transfer agents. To avoid being presumed to have a material Year 2000 problem, broker-dealers and non-bank transfer agents must, on or after August 31, 1999, have written procedures, have verified their Year 2000 remediation efforts through appropriate testing, and have addressed all exceptions contained in any public independent accountant's report. Although these rules may result in some firms accelerating their remediation programs, these are costs most broker-dealers and non-bank transfer agents already must incur in order to comply with other Commission and/or SRO rules. In addition, virtually all broker-dealers and non-bank transfer agents must already incur these costs in order to take the necessary steps to become Year 2000 compliant and therefore to stay in business post-Year 2000.

[106] 17 CFR 240.17a–4. We note that one of the conditions set forth in paragraph (f) of the rule requires that records be made immediately available.

[107] One commenter stated that the Commission presented an inadequate relationship between the costs to brokerage firms (of being shut down) and the benefits to the investing public. *See* Grodsky Associates letter.

Broker-dealers and transfer agents that have material Year 2000 problems or do not have the operational capability to conduct their respective businesses could bear additional costs, *i.e.*, the costs of not being able to engage in their business. However, the market itself may impose these costs on them once it became clear that they were not ready for the Year 2000 or do not have the required operational capability.

Finally, as described below, these rules will impose additional costs on firms required to file notices and certificates with the Commission. The rules will also impose additional costs on firms subject to the recordkeeping requirements of the rules.

1. Rule 15b7–3T

The Commission staff estimates that approximately 39 brokers-dealers will be affected by the rule.[108] The Commission staff estimates that each respondent will submit one notice. The Commission staff estimates that the aggregate cost burden for 39 broker-dealers to submit notices will be $1,950.[109]

The Commission staff expect that most, if not all, broker-dealers with Year 2000 problems on or after August 31, 1999, will choose to submit an initial certificate in order to continue operations. Broker-dealers that submit an initial certificate must file a second certificate. The Commission staff estimates that the aggregate cost burden for 39 broker-dealers to submit both certificates will be $3,900.[110]

The Commission estimates the aggregate burden on broker-dealers to file one notice and two certificates will be $5,850.

2. Rule 17Ad–21T

The Commission staff estimates that there will be approximately 6 non-bank transfer agents affected by rule.[111] The Commission staff also estimates that each respondent will submit one notice under the rule. The Commission staff estimates that the aggregate cost burden for 6 non-bank transfer agents to submit notices will be $300.[112]

The certificate requirement is optional. The Commission, however, expects most, if not all, non-bank transfer agents with material Year 2000 problems on or after August 31, 1999, to submit the initial certificate in order to continue performing certain functions. Non-bank transfer agents that submit an initial certificate must file a second certificate. The Commission staff estimates that the aggregate cost burden for 6 non-bank transfer agents to submit both certificates will be $600.[113]

The Commission estimates that the aggregate burden on non-bank transfer agents to file one notice and two certificates will be $900.

C. Recordkeeping Requirements

1. Transfer Agents

The Commission staff estimates that there are approximately 600 non-bank transfer agents that will be impacted by Rule 17Ad–21T's recordkeeping requirements. The Commission estimates that the recordkeeping costs to each non-bank transfer agent under the rule will be minimal because the Commission is simply codifying what is already an existing and established business practice.[114] The Commission reached this conclusion after considering that these records will already exist and the rule only requires non-bank transfer agents to make separate copies. The Commission staff estimates the aggregate cost burden of 600 non-bank transfer agents to comply with this recordkeeping requirement to be approximately $4,590,000.[115] The Commission notes that a substantial portion of this cost is already incurred by non-bank transfer agents because they perform this recordkeeping in the course of their business.[116]

The rule also requires non-bank transfer agents that have a material Year 2000 problem to preserve for at least one year backup records for the five days immediately preceding the day the Year 2000 problem was discovered. The Commission staff estimates that the non-bank transfer agents that must comply with this provision will incur an aggregate cost burden of $1,200.[117]

The rule requires that non-bank transfer agents make at the close of business on December 27 through 31, 1999, a backup copy of all master securityholder lists and preserve these records in an easily accessible place for at least one year. The Commission staff estimates the aggregate cost burden to comply with this recordkeeping requirement to be approximately $120,000.[118]

The records required to be made and kept under the rule are records that are currently kept by non-bank transfer

[108] There are approximately 8,300 registered broker-dealers and the Commission staff estimates that approximately 3,900 will have systems that will need to be Year 2000 compliant. The Commission staff estimates that approximately one percent of these broker-dealers might be required to submit notices and may choose to submit certificates under the rule. This estimate is consistent with the estimates provided to the Commission by various SROs. The Commission notes that the estimated number of broker-dealers that will have systems that will need to be Year 2000 compliant has been reduced because adopted Rule 15b7–3T is narrower in scope than the proposed rule. In the Proposing Release, the Commission estimated that the 59 broker-dealers would be affected by the rule.

[109] This amount was calculated by multiplying 39 broker-dealers by $50. The Commission staff estimates that the cost for each respondent submitting a notice will be $50 (0.5 hours at $100 per hour).

[110] This amount was calculated by multiplying 39 broker-dealers by $100. The Commission staff estimates that the cost for each respondent submitting a certificate will be $50 (0.5 hours at $100 per hour). Therefore, filing two certificates will cost a broker-dealer $100.

[111] The Commission staff estimates that there are approximately 600 non-bank transfer agents. The Commission staff estimates that approximately one percent of those non-bank transfer agents might be required to submit notices and may choose to submit certificates under the rule. The Commission emphasizes the serious difficulty in estimating the number of non-bank transfer agents that will have material Year 2000 problems at some point in the future. The Commission expects that most non-bank transfer agents will not have such problems.

[112] This amount was calculated by multiplying 6 non-bank transfer agents by $50. The Commission staff estimates that the cost for each respondent submitting a notice will be $50 (0.5 hours at $100 per hour).

[113] This amount was calculated by multiplying 6 non-bank transfer agents by $100. The Commission staff estimates that the cost for each respondent submitting a certificate will be $50 (0.5 hours at $100 per hour). Therefore, it will cost a non-bank transfer agent $100 to file both certificates.

[114] The RTC estimated that compliance with this recordkeeping requirement, if not already performed would take approximately ½ hour to 4 hours of computer operations each night at a cost of between $50 to $2,000 per night. The cost of preserving the data on disk was estimated by RTC to be a one time cost of between $50 and $200. The RTC also estimated that preparation of the certification would consume 1.5 hours of labor and cost less than $1,000. *See* RTC letter.

[115] This amount was computed by adding $4,530,000 (600 non-bank transfer agents multiplied by 151 days—the period between August 31, 1999, and March 31, 2000—multiplied by $50 for labor) and $60,000 (600 non-bank transfer agents multiplied by $100 for disks). The Commission staff estimates that the total burden for each non-bank transfer agent for the period between August 31, 1999, and March 31, 2000 will be approximately 38 hours (approximately 151 business days at 0.25 hours per business day). With respect to burden hours, the Commission staff estimates that the aggregate burden for all non-bank transfer agents under the rule will be approximately 22,800 hours (600 transfer agents at 38 hours per non-bank transfer agent).

[116] In its comment letter, the STA stated that backing up files is a standard and good practice, which is part of the cost of doing business. *See* STA letter. In addition, the RTC stated in their comment letter that "All responsible information technology professionals already perform daily database and processing system file back-ups" and that "Maintenance of multiple day record back-ups is a conservative, inexpensive and responsible approach designed to enhance recovery capabilities." *See* RTC letter.

[117] This amount was computed by multiplying 6 (the number of non-bank transfer agents the Commission estimates might have a material Year 2000 problem) by $200 (the cost to store five days of all master securityholder files for one year).

[118] This amount was computed by multiplying 600 (the number of non-bank transfer agents) by $200 (the cost to store five days of master securityholder files for one year).

agents. Thus, the Commission is not promulgating rules that require respondents to generate new records. Rather, the rules only require that a back-up copy be made and kept. The rules will aid the Commission, non-bank transfer agents, and the public in the event of operational failures by non-bank transfer agents. The Commission believes that the rules will guard against Year 2000 problems.

2. Broker-Dealers

The Commission staff estimates that approximately 1,100 broker-dealers will be affected by Rule 17a–9T.[119] The Commission staff estimates that the aggregate cost burden for 1,100 broker-dealers to make and preserve the records required by this rule will be approximately $15,000.[120]

The records required to be copied and kept under the rule are records that are currently kept by broker-dealers.[121] Thus, the Commission is not promulgating a rule that requires respondents to generate new records. Rather, the rules only require that back-up copies be made and kept. The records required by this rule will benefit the Commission and the public in the event of operational failures by broker-dealers. The records will assist in the identification of all securities positions carried by the broker-dealer, and the transfer to and conversion of records to another entity.

VI. Effects on Competition, Efficiency and Capital Formation

Section 23(a)(2) of the Exchange Act requires that the Commission, when adopting rules under the Exchange Act, consider the anticompetitive effects of those rules, if any, and balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act.[122] In the Proposing Release, the Commission solicited comment on the effects of the rules on competition, efficiency and capital formation. The Commission received one comment regarding these issues.[123] The commenter stated that the proposals would harm all of these areas.[124] Specifically, the commenter stated that the rules would place smaller firms under unnecessary burdens.[125] The commenter also objected to the filing and recordkeeping requirements as being inefficient.[126]

The Commission has considered Rules 15b7–3T, 17Ad–21T, and 17a–9T in light of the comment received and the standards cited in Section 23(a)(2) of the Exchange Act.[127] The Commission believes that these new rules do not impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. With the Year 2000 quickly approaching, all firms should be preparing for the Year 2000. Testing computer systems and remediating Year 2000 problems is a matter of good business practice that is necessary for the protection of investors and the securities markets. A firm that expends resources preparing for the Year 2000 will no longer be at a competitive disadvantage to another firm that does not expend any resources preparing for the Year 2000.

The Commission believes that the rules are necessary for the U.S. securities markets to operate efficiently at the turn of the century. Without the rules, non-compliant firms that interact with other market participants could have detrimental and potentially widespread consequences on other market participants. The new rules reduce the likelihood of a firm's Year 2000 problem affecting the securities markets to the detriment of investors and the public. By reducing the likelihood of firms experiencing Year 2000 problems (*e.g.*, problems have the potential to delay executions and slow the settlement process), the Commission is promoting efficiency.

The rules will not hinder capital formation. The rules are necessary to ensure that the U.S. securities markets function efficiently in the Year 2000 and, more specifically, that broker-dealers and non-bank transfer agents are able to provide their customers prompt and efficient service.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with Section 4 of the Regulatory Flexibility Act ("RFA").[128] It relates to new temporary Rules 15b7–3T, 17a–9T, and 17Ad–21T under the Exchange Act.

An Initial Regulatory Flexibility Analysis ("IRFA") was prepared in accordance with 5 U.S.C. 603 and was made available to the public.[129]

A. Need for and Objectives of Amendments

Unless proper modifications have been made, many computer systems in the Year 2000 will incorrectly read the date "01/01/00" as being in the year 1900 or another incorrect date. Year 2000 problems could have negative repercussions throughout the financial system because of the extensive interrelationship between broker-dealers, transfer agents, other market participants and markets. The new rules are intended to reduce the chances of harm to investors and the potential systemic risk to the public and the financial markets as a result of operational failures by registered broker-dealers and non-bank transfer agents.

1. Rule 15b7–3T

Temporary Rule 15b7–3T is needed to protect investors and the integrity of the securities markets during the transition to the Year 2000. The objective of the rule is to help ensure that broker-dealers operating at the turn of the century are Year 2000 compliant. To accomplish this objective, Rule 15b7–3T requires broker-dealers that have or are presumed to have a material Year 2000 problem on or after August 31, 1999, to notify the Commission and their DEA. Those broker-dealers that have or are presumed to have a material Year 2000 problem must cease to conduct their securities business.

The rule, however, provides those brokers or dealers that are not Year 2000 compliant on or after August 31, 1999, the opportunity to remediate their Year 2000 problem by submitting a certificate to the Commission. By filing a certificate, firms have until November 15, 1999, to remediate their Year 2000 problems. A broker-dealer that continues to have a material Year 2000 problem on November 15, 1999, has until December 1, 1999, to unwind its business. If a broker-dealer submits a certificate stating that it will remediate its Year 2000 problem by November 15, 1999, that broker-dealer is required to submit a second certificate to the Commission stating that it has remediated its Year 2000 problem or it intends to cease operations.

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[119] Only those broker-dealers that are required to maintain certain net capital pursuant to Rule 15c3–1(a)(2)(i), 17 CFR 240.15c3–1(a)(2)(i), will be required to comply with the rule.

[120] The Commission staff estimates that each such broker-dealer subject to the rule will incur an average burden of approximately 0.75 hours to make and keep the records. The Commission believes that the recordkeeping function may be performed by clerical staff at a rate of $25 per hour. The Commission staff estimates that the total aggregate burden under the rule will be approximately 825 hours (1,100 brokers or dealers at 0.75 hours per broker or dealer).

[121] *See* Rule 17a–3(a)(1), 17 CFR 17a–3(a)(1) and Rule 17a–3(a)(5), 17 CFR 17a–3(a)(5).

[122] 15 U.S.C. 78w(a)(2).

[123] *See* Dan Jamieson letter.

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] *See* 15 U.S.C. 78w(a)(2).

[128] *See* 5 U.S.C. 604.

[129] *See* Proposing Release.

2. Rule 17Ad–21T

Temporary Rule 17Ad–21T is needed to protect investors and the national market system during the transition to the Year 2000. The objective of the rule is to help ensure that that non-bank transfer agents will be capable of performing their functions in the Year 2000. To accomplish this objective, Rule 17Ad–21T requires non-bank transfer agents that have or are presumed to have a material Year 2000 problem on or after August 31, 1999, to notify the Commission. Non-bank transfer agents that have a material Year 2000 problem on or after August 31, 1999, must cease to conduct their transfer agent operations.

The rule, however, permits those non-bank transfer agents that have or are presumed to have a material Year 2000 problem on or after August 31, 1999, the opportunity to submit a certificate stating their Year 2000 status and intent to remediate the problem. By filing a certificate, firms have until November 15, 1999, to remediate their Year 2000 problems. A non-bank transfer agent that continues to have a material Year 2000 problem on November 15, 1999, has until December 1, 1999, to unwind its business. If a non-bank transfer agent submits a certificate stating that it will remediate its Year 2000 problem by November 15, 1999, that non-bank transfer agent is required to submit a second certificate to the Commission stating that it has remediated its Year 2000 problem or it intends to cease operations.

In addition, Rule 17Ad–21T contains a recordkeeping requirement. The objective of the rule's recordkeeping requirement is to help facilitate the transfer to and conversion of records to a Year 2000 compliant transfer agent, if necessary. The rule requires that registered non-bank transfer agents implement daily backup procedures and maintain backup records for all master securityholder files beginning August 31, 1999, and ending March 31, 2000. Records backup must be performed at the close of each business day. The records must be preserved for a five business day period.

If a firm has a material Year 2000 problem, the rule mandates that it must preserve, for at least one year, the backup records for the five days immediately preceding the day the problem was discovered. In addition, firms must make, at the close of business on December 27 through 31, 1999, a backup copy of all master securityholder files and preserve these records in an easily accessible place for at least one year.

3. Rule 17a–9T

Temporary Rule 17a–9T is needed to assist broker-dealers, the Commission, the DEAs, and the Securities Investor Protection Corporation in identifying all securities positions carried by the broker-dealer and the location of the securities in the event that a broker-dealer experiences a Year 2000 problem. The rule requires certain broker-dealers to make before January 1, 2000, separate blotters pursuant to Rule 17a–3(a)(1)[130] and a separate securities record or ledger pursuant to Rule 17a–3(a)(5) for each of the last three business days of 1999. These records must be preserved for a period of not less than one year.

B. Significant Issues Raised by Public Comments

No public comments were received in response to the IRFA and no comments specifically addressed that analysis. Commenters did, however, discuss limiting the scope of the proposed rules to exclude small firms. For example, several commenters urged the Commission to limit the applicability of Rule 15b7–3T to clearing firms, firms with larger numbers of customer accounts, firms that use computers for record keeping, order execution or order transmission, or firms with higher capital requirements.[131]

In response to commenters' concerns that the scope of the proposed Rule 15b7–3T is too broad, the Commission has modified the language of Rule 15b7–3T to clarify that the rule applies only to broker-dealers that use computers in the conduct of their business as a broker or dealer. In order to clarify the rule's scope, the Commission noted in this adopting release that Rule 15b7–3T is not intended to cover a broker-dealer whose reliance on automation is limited to the use of off-the-shelf word processing or accounting software. Moreover, smaller broker-dealers that still transmit orders via the telephone are not intended to be covered; only broker-dealers that use computers to conduct their business as broker-dealers are subject to the rule.

The Commission further clarified in the release and rule that only material problems in mission critical systems trigger the provisions of this rule. In other words, only problems that might pose a risk to investors and markets are covered by this rule.

The Commission has decided not to exclude broker-dealers from the rule based on factors such as size or number of accounts. The Commission believes that even small or introducing broker-dealers have the potential to affect other market participants by, for example, introducing inaccurate or corrupted data into other systems. The Commission believes the more appropriate test for applicability is whether a broker-dealer uses computers in the conduct of its business as a broker-dealer.

Although the Commission did not receive any comments requesting that Rule 17Ad–21T be limited to exclude small non-bank transfer agents, the Commission has determined to limit Rule 17Ad–21T to non-bank transfer agents that use computers in the conduct of their business as a transfer agent.

C. Legal Basis

Proposed Rules 15b7–3T and 17a–9T are being proposed pursuant to Sections 3(b), 15(b) and (c), 17, and 23(a) of the Exchange Act [15 U.S.C. 78c(b), 78o(b) and (c), 78q and 78w(a)]. Proposed Rule 17Ad–21T is being proposed pursuant to Sections 17(a), 17A(d), and 23(a) of the Exchange Act [15 U.S.C. 78q(a), 78q–1(d) and 78w(a)].

D. Small Entities Subject to the Rule

For purposes of Commission rulemaking, paragraph (c) of Rule 0–10 under the Exchange Act[132] defines the term "small business" or "small organization" to include any broker or dealer that: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) Is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section.

For purposes of Commission rulemaking, paragraph (h) of Rule 0–10 under the Exchange Act[133] defines the term "small business" or "small organization" to include any transfer agent that: (1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) Transferred items only of issuers that

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[130] 17 CFR 240.17a–3(a)(1).

[131] *See* letters from US Participation, Goffstown Financial Investments, Holly Securities, HBK Finance, Intellivest Securities, Grodsky Associates, Dan Jamieson, Monroe Securities, Gramercy Securities, and Wall Street Capital Company.

[132] 17 CFR 240.0–10(c).

[133] 17 CFR 240.0–10(h).

would be deemed "small businesses" or "small organizations" as defined in this section; (3) Maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (4) Is not affiliated with any person (other than a natural person) that is not a small business or small organization under this section.

All registered brokers or dealers that use computers in the conduct of their business are subject to the requirements of Rule 15b7–3T. The Commission staff estimates that there are 8,300 registered broker-dealers, of which approximately 5,200 qualify as "small entities" for purposes of the RFA. Not all of the 5,200 broker-dealers that qualify as "small entities" will be subject to the new rule. Specifically, broker-dealers that do not use computers in the conduct of their business will not be subject to the rule.

All registered non-bank transfer agents that use computers in the conduct of their business are subject to Rule 17Ad–21T. The Commission staff estimates that there are approximately 1,120 registered transfer agents. Approximately 600 are non-bank transfer agents. Of these, 430 qualify as "small entities" for purposes of the RFA. Not all of the 430 non-bank transfer agents that qualify as "small entities" will be subject to the new rule, however. Specifically, non-bank transfer agents that do not use computers in the conduct of their business will not be subject to the rule.

Rule 17a–9T applies only to broker-dealers that are required to maintain a minimum net capital of $250,000 pursuant to Rule 15c3–1(a)(2)(i) as of December 29, 30, and 31, 1999. The Commission estimates that of the 8,300 registered broker-dealers, 1,100 are required to maintain a minimum net capital of $250,000. The Commission staff estimates that 15 of these broker-dealers may qualify as "small entities," as defined in the RFA.

E. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission believes that, for business reasons, prudent broker-dealers should already have developed plans to address potential computer problems caused by the Year 2000. Therefore, Rule 15b7–3T is not placing new burdens on broker-dealers to develop plans or address computer problems. The rule does, however, require broker-dealers that are not Year 2000 compliant to (1) notify the Commission and their DEAs of material Year 2000 problems on or after August 31, 1999, (2) submit a certificate to the Commission if they wish to continue operations beyond August 31, 1999, and (3) submit a second certificate to the Commission if they previously filed a certificate and wish to stay in business.

The Commission believes that, for business reasons, prudent non-bank transfer agents should already have developed plans to address potential computer problems caused by the Year 2000. Therefore, Rule 17Ad–21T is not placing new burdens on non-bank transfer agents to develop plans or address computer problems. The rule does, however, require non-bank transfer agents that are not Year 2000 compliant to (1) notify the Commission of material Year 2000 problems on or after August 31, 1999, (2) submit a certificate to the Commission if they wish to continue operations beyond August 31, 1999, and (3) submit a second certificate to the Commission if they previously filed a certificate and wish to stay in business.

In addition, Rule 17Ad–21T contains a recordkeeping requirement. The rule requires that registered non-bank transfer agents implement daily backup procedures and maintain backup records for all master securityholder files beginning August 31, 1999, and ending March 31, 2000. Records backup must be performed at the close of each business day. The records must be preserved for a rolling five business day period. The rule also requires that if a firm has a material Year 2000 problem, it must preserve for at least one year the five day backup records immediately preceding the day the problem was discovered. In addition, firms must make, at the close of business on December 27 through 31, 1999, a backup copy for all master securityholder files and preserve these records in an easily accessible place for at least one year. The recordkeeping requirement does not require non-bank transfer agents to make any new records, but only to preserve a separate copy of an existing record.

Temporary Rule 17a–9T provides that only those broker-dealers required to maintain a minimum net capital of $250,000 are required to make and preserve a separate trade blotter and a separate securities record or ledger as of the close of business of each of the last three business days of 1999. The recordkeeping requirement does not require such broker-dealers to make any new records, but only to preserve a separate copy of an existing record. The records are required to be kept in an easily accessible place for a period of not less than one year. The Commission notes that this is not a continuing obligation, but only applies on December 29, 30, and 31, 1999.

F. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with the adopted rules.

G. Steps to Minimize Impact on Small Entities

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse economic impact on small entities. Pursuant to Section 3(c) of the RFA, the Commission considered the following alternatives:

(a) The establishment of differing compliance or reporting requirements or timetables the take into account the resources available to small entities;

(b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities;

(c) the use of performance rather than design standards; and

(d) an exemption from coverage of the rules, or any part thereof, for such small entities.

Regarding the first alternative, the compliance and reporting requirements contained in 15b7–3T and 17Ad–21T are narrowly tailored to help ensure all firms are Year 2000 compliant and not subjected to unnecessary burdens. In an effort to allow firms with Year 2000 problems the maximum amount of time possible to remedy them, the Commission has extended the deadline one month, from October 15, 1999, to November 15, 1999. Pushing back the deadline provides small entities which may have limited resources extra time to become Year 2000 compliant. Rather than allowing only small entities to take advantage of the extra month, the Commission decided to allow all firms to take advantage of the extension.

Regarding the second alternative, the Commission notification requirements contained in Rules 15b7–3T and 17Ad–21T simply state that notice must be made. The certification provisions were designed to clearly and succinctly set forth the information necessary to be included in the certificate. As for Rule 17a–9T, which contains a minimum net capital requirement of $250,000, the Commission anticipates that very few small entities, if any, will be obligated to comply with the rule.

Regarding the third alternative, Rules 15b7–3T and 17Ad–21T incorporate the use of performance standards because they do not set forth the method for broker-dealers or non-bank transfer agents to become Year 2000 compliant, but only require them to be Year 2000 compliant and able to perform their ordinary business functions for investors. Similarly, the notice requirements do not specify the form the notices must take. Adequate notice must be provided to the Commission for purposes of Rules 15b7–3T and 17Ad–21T, but the Commission is not determining the design or the format of those notices.

Regarding the fourth alternative, Rules 15b7–3T and 17Ad–21T exclude from coverage firms that do not use computers to conduct their business. This exclusion, which was created in response to commenters' concerns, is primarily designed to benefit small firms. In addition, smaller broker-dealers, *i.e.*, firms that are not required to maintain minimum net capital of $250,000, would be exempt from the requirements of Rule 17a–9T. The Commission believes, however, that all registered broker-dealers and transfer agents that do not fit into the exclusions set forth above are important to protecting investors and the national securities market from Year 2000 problems.

Therefore, having considered the foregoing alternatives, the Commission believes the rules include regulatory alternatives that minimize the impact on small entities while achieving the stated objectives.

VIII. Paperwork Reduction Act

As explained in the proposing release, certain provisions of the rules contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*). Accordingly, the Commission submitted the collection of information requirements contained in the rules to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB approved the new collections and assigned the following control numbers: Rule 15b7–3T, OMB No. 3235–0526; Rule 17a–9T, OMB No. 3235–0524; Rule 17Ad–21T(c) and (e), OMB No. 3235–0525; and Rule 17Ad–21T(f), OMB No 3235–0525. The new rules are necessary to protect investors and the financial markets from Year 2000 problems. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

In the Proposing Release, the Commission requested comment on the proposed collections of information. Only one comment was received that specifically addressed the PRA submission.[134] However, other comments touched on PRA related issues. Based on these comments, the Commission has revised the collections of information required under the rules, as discussed below.

A. Rules 15b7–3T and 17Ad–21T(c) and (e)

As more fully described in Section II. A and B above, the Commission has added a second certification requirement to Rules 15b7–3T and 17Ad–21T.[135] The second certification provision is designed to give firms the opportunity to certify to the Commission, the public, and their customers that they have, in fact, remediated their Year 2000 problem. In addition, the second certification notifies the Commission of which firms have fixed their Year 2000 problems and which firms have not.

There are approximately 8,300 registered broker-dealers and 600 registered non-bank transfer agents. The Commission staff estimates that approximately 3,900 broker-dealers and 600 non-bank transfer agents will have systems that will need to be Year 2000 compliant.[136] Based on information provided by the SROs, the Commission staff estimates that approximately one percent of these broker-dealers might be required to submit notices and choose to submit certificates under the rule. Thus, the Commission staff estimates that there will be approximately 39 broker-dealers that will be affected by the rule. Similarly, the Commission staff estimated that one percent of non-bank transfer agents (approximately 6 entities) will be affected by the rule.

In the Proposing Release, the Commission staff estimated that each respondent submitting a notice of a material Year 2000 problem will incur an average burden of 0.5 hours, and that each respondent submitting a certificate will incur an average burden of 0.5 hours. The burden for submitting a second certificate is estimated by the Commission staff to be an additional 0.5 hours. Hence, the Commission estimates that the total burden per broker-dealer and non-bank transfer agent will be 1.5 hours.

The notice requirement of the rule is mandatory for all affected broker-dealers and non-bank transfer agents. The certification process is optional. The Commission, however, expects most broker-dealers and non-bank transfer agents with material Year 2000 problems after August 31, 1999, to submit the initial certificate and the follow-up certificate in order to continue performing certain functions. Thus, the aggregate burden for 39 broker-dealer respondents will be approximately 58.5 hours (39 broker-dealers multiplied by 1.5 hours), and the aggregate burden for 6 non-bank transfer agent respondents will be approximately 9 hours (6 non-bank transfer agents multiplied by 1.5 hours). The Commission notes that its estimate of the paperwork burden for Rules 15b7–3T and 17Ad–21T(c) and (e) has changed slightly from that approved by OMB. Accordingly, the Commission has submitted a PRA Change Worksheet to OMB.

B. Rule 17Ad–21T(g)

In response to the comments received, the Commission made several changes to Rule 17Ad–21T, particularly with regard to the type of records required to be retained. Nevertheless, the Commission estimates that the burden on transfer agents will stay the same. The Commission estimates that the recordkeeping burden to non-bank transfer agents under the rule should be minimal because the records will already exist and the rule only requires non-bank transfer agents to make separate copies. The Commission staff estimates that there are approximately 600 non-bank transfer agents. The Commission staff estimates that non-bank transfer agents will incur a burden of 0.25 hours per business day to comply with the recordkeeping requirement.[137] Thus, the Commission staff estimates that the total burden for each non-bank transfer agent for the period between August 31, 1999, and March 31, 2000, will be approximately 38 hours (approximately 151 business days at 0.25 hours per business day). The Commission staff estimates that the aggregate burden for all non-bank transfer agents under the rule will be approximately 22,800 hours (600

[134] In its comment letter, RTC estimated that the notification and certification requirement of Rule 17Ad–21T would consume 1.5 hours.

[135] The Commission requested comment in the Proposing Release on whether to have more than one certification provision in case a broker-dealer does not complete its remediation efforts by a target date. *See* Proposing Release.

[136] In the Proposing Release, the Commission estimated that 5,900 broker-dealers would have systems that would need to be Year 2000 compliant. This estimate was reduced to 3,900 broker-dealers after the rule was changed to specifically exclude broker-dealers that do not use computers in the conduct of their businesses.

[137] The RTC estimated that compliance with this recordkeeping requirement, if not already performed, as is the case with RTC, would take approximately ½ hour to 4 hours of computer operations each night. *See* RTC letter.

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transfer agents at 38 hours per transfer agent). The Commission notes that a substantial portion of this burden is already assumed by non-bank transfer agents.[138]

C. Rule 17a–9T

As more fully described in Section III. B above, the Commission extended 17a–9T's recordkeeping requirement from the last two business days of 1999 to the last three business days of 1999. The Commission has made no other substantive changes to the rule because the rule does not require broker-dealers to make new records, but only to preserve a copy of existing records.

In the Proposing Release, the Commission estimated that each broker-dealer subject to the rule would incur an average burden of 0.5 hours (0.25 hours per day). Because the Commission has extended the recordkeeping requirement to include December 29, 1999, the Commission staff now estimates that each broker-dealer will incur an average burden of 0.75 hours.

Since the Proposing Release, the Commission has also revised its estimate regarding the number of broker-dealers that will be required to comply with the rule. In the Proposing Release, the Commission estimated that approximately 4,300 broker-dealers would be subject to the rule's requirement. After reviewing current filings with the Commission, we now estimate that approximately 1,100 broker-dealers will meet the net capital requirements necessary to be subject to the rule.[139] The Commission staff estimates that the total aggregate burden under the rule will be approximately 825 hours (1,100 broker-dealers at 0.75 hours per broker-dealer). The Commission staff's estimate of the aggregate paperwork burden to comply with Rule 17a–9T has decreased from 2,150 hours to 825 hours.[140] Accordingly, the Commission has submitted to OMB a revision of the currently approved collection.

IX. Effective Date

The effective date for Rules 15b7–3T, 17Ad–21T and 17a–9T is August 30, 1999. Section 553(d) of the Administrative Procedure Act requires that, unless an exception applies, a substantive rule may not be made effective less than 30 days after notice of the rule has been published in the **Federal Register**.[141] One exception to the 30-day requirement is when an agency finds good cause for a shorter notice period. We find that good cause exists in this situation.

The need to implement the rules less than 30 days after publication arises from the time-sensitive nature of the Year 2000 problem as well as from the specific date components of the rule. Because the date by which Year 2000 problems in mission critical computer systems must be repaired cannot be changed, the effectiveness of these rules cannot be delayed beyond August 30. The rule will permit us to act to reduce the risk to investors and the securities markets posed by broker-dealers and non-bank transfer agents that have not adequately prepared their computer systems for the millennium transition.

We also believe that this early effectiveness will not impose any significant burdens on broker-dealers and transfer agents subject to the rule. First, we are adopting these rules in an open meeting more than 30 days before they become effective. Our formal **Federal Register** notice will provide less than 30 days notice because of the time required to prepare the rule for publication. As a result, many broker-dealers and non-bank transfer agents subject to the rule will, in fact, have more than 30 days notice before the rules become effective. Moreover, these rules will be effective only a few days earlier than they otherwise would have been. This minimizes the burden imposed by early effectiveness.

Second, we believe that the broker-dealers and transfer agents subject to these rules are effectively already in preparation for their effectiveness. In particular, broker-dealers and transfer agents are already aware that we are treating the Year 2000 problem as a serious problem. In addition, because a broker-dealer or transfer agent that does not fix its computer systems by the end of the year will likely not be able to continue in business, virtually all persons directly affected by this rule are already fixing their systems. Indeed, many broker-dealers are already subject to testing requirements imposed by their SROs. We therefore find that good cause exists to make these rules effective less than thirty days after publication in the **Federal Register**.

X. Statutory Basis

Pursuant to the Exchange Act of 1934 and particularly Sections 3(b), 15(b) and (c), 17, and 23(a) thereof [15 U.S.C. 78c(b), 78o(b) and (c), 78q and 78w(a)], the Commission is adopting 240.15b7–3T and 240.17a–9T of Title 17 of the Code of Federal Regulation in the manner set forth below. Pursuant to the Exchange Act of 1934 and particularly Sections 17(a), 17A(d), and 23(a) thereof [15 U.S.C. 78q(a), 78q–1(d) and 78w(a)], the Commission is adopting 240.17Ad–21T of Title 17 of the Code of Federal Regulation in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By adding § 240.15b7–3T to read as follows:

§ 240.15b7–3T Operational capability in a Year 2000 environment.

(a) This section applies to every broker or dealer registered pursuant to Section 15 of the Act, (15 U.S.C. 78o) that uses computers in the conduct of its business as a broker or dealer. If you have a material Year 2000 problem, then you do not have operational capability within the meaning of Section 15(b)(7) of the Act (15 U.S.C. 78o(b)(7)).

(b)(1) You have a material Year 2000 problem under paragraph (a) of this section if, at any time on or after August 31, 1999:

(i) Any of your mission critical computer systems incorrectly identifies any date in the Year 1999 or the Year 2000; and

(ii) The error impairs or, if uncorrected, is likely to impair, any of your mission critical systems.

(2) You will be presumed to have a material Year 2000 problem if, at any time on or after August 31, 1999, you:

(i) Do not have written procedures reasonably designed to identify, assess, and remediate any Year 2000 problems in mission critical systems under your control;

(ii) Have not verified your Year 2000 remediation efforts through reasonable internal testing of mission critical systems under your control;

(iii) Have not verified your Year 2000 remediation efforts by satisfying Year 2000 testing requirements imposed by self-regulatory organizations to which you are subject; or

(iv) Have not remediated all exceptions related to your mission critical systems contained in any independent public accountant's report prepared on your behalf pursuant to § 240.17a–5(e)(5)(vi).

(c) If you have or are presumed to have a material Year 2000 problem, you must immediately notify the Commission and your designated examining authority of the problem. You must send this notice to the Commission by overnight delivery to the Division of Market Regulation, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1002 Attention: Y2K Compliance.

(d)(1) If you are a broker or dealer that is not operationally capable because you have or are presumed to have a material Year 2000 problem, you may not, on or after August 31, 1999:

(i) Effect any transaction in, or induce the purchase or sale of, any security; or

(ii) Receive or hold customer funds or securities, or carry customer accounts.

(2) Notwithstanding paragraph (d)(1) of this section, you may continue to effect transactions in, or induce the purchase or sale of, a security, receive or hold customer funds or securities, or carry customer accounts:

(i) Until December 1, 1999, if you have submitted a certificate to the Commission in compliance with paragraph (e) of this section; or

(ii) Solely to the extent necessary to effect an orderly cessation or transfer of these functions.

(e)(1)(i) If you are a broker or dealer that is not operationally capable because you have or are presumed to have a material Year 2000 problem, you may, in addition to providing the Commission the notice required by paragraph (c) of this section, provide the Commission and your designated examining authority a certificate signed by your chief executive officer (or an individual with similar authority) stating:

(A) You are in the process of remediating your material Year 2000 problem;

(B) You have scheduled testing of your affected mission critical systems to verify that the material Year 2000 problem has been remediated, and specify the testing dates;

(C) The date by which you anticipate completing remediation of the material Year 2000 problem in your mission critical systems, and will therefore be operationally capable; and

(D) Based on inquiries and to the best of the chief executive officer's knowledge, you do not anticipate that the existence of the material Year 2000 problem in your mission critical systems will impair your ability, depending on the nature of your business, to ensure prompt and accurate processing of securities transactions, including order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, or the delivery of funds and securities; and you anticipate that the steps referred to in paragraphs (e)(1)(i)(A) through (C) of this section will result in remedying the material Year 2000 problem on or before November 15, 1999.

(ii) If the information contained in any certificate provided to the Commission pursuant to paragraph (e) of this section is or becomes misleading or inaccurate for any reason, you must promptly file an updated certificate correcting such information. In addition to the information contained in the certificate, you may provide the Commission with any other information necessary to establish that your mission critical systems will not have material Year 2000 problems on or after November 15, 1999.

(2) If you have submitted a certificate pursuant to paragraph (e)(1) of this section, you must submit a certificate to the Commission and your designated examining authority signed by your chief executive officer (or an individual with similar authority) on or before November 15, 1999, stating that, based on inquiries and to the best of the chief executive officer's knowledge, you have remediated your Year 2000 problem or that you will cease operations. This certificate must be sent to the Commission by overnight delivery to the Division of Market Regulation, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1002 Attention: Y2K Compliance.

(f) Notwithstanding paragraph (d)(2) of this section, you must comply with the requirements of paragraph (d)(1) of this section if you have been so ordered by the Commission or by a court.

(g) For the purposes of this section:

(1) The term *mission critical system* means any system that is necessary, depending on the nature of your business, to ensure prompt and accurate processing of securities transactions, including order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, and the delivery of funds and securities; and

(2) The term *customer* includes a broker or dealer.

(h) This temporary section will expire on July 1, 2001.

3. By adding § 240.17a–9T to read as follows:

§ 240.17a–9T Records to be made and retained by certain exchange members, brokers and dealers.

This section applies to every member, broker or dealer registered pursuant to Section 15 of the Act, (15 U.S.C. 78o), that is required to maintain, as of December 29, December 30 and December 31, 1999, minimum net capital of $250,000 pursuant to § 240.15c3–1(a)(2)(i).

(a) You must make before January 1, 2000, for each of December 29, December 30 and December 31, 1999, separate copies of the blotters pursuant to § 240.17a–3(a)(1).

(b) You must make before January 1, 2000, as of the close of business for each of December 29, December 30 and December 31, 1999, a separate copy of the securities record or ledger pursuant to § 240.17a–3(a)(5).

(c) You must preserve these records for a period of not less than one year.

(d) The provisions of § 240.17a–4(i) shall apply as if part of this § 240.17a–9T.

(e) You may preserve these records in any format that is acceptable and in compliance with the conditions described in § 240.17a–4(f).

(f) You must furnish promptly to a representative of the Commission such legible, true and complete copies of those records, as may be requested.

(g) This temporary section will expire on July 1, 2001.

4. By adding § 240.17Ad–21T to read as follows:

§ 240.17Ad–21T Operational capability in a Year 2000 environment.

(a) This section applies to every registered non-bank transfer agent that uses computers in the conduct of its business as a transfer agent.

(b)(1) You have a material Year 2000 problem if, at any time on or after August 31, 1999:

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[138] In the STA comment letter, the STA stated that backing up files is a standard and good practice, which is part of the cost of doing business. *See* STA letter. In addition, the RTC stated in their comment letter that "All responsible information technology professionals already perform daily database and processing system file back-ups" and that "Maintenance of multiple day record back-ups is a conservative, inexpensive and responsible approach designed to enhance recovery capabilities." *See* RTC letter.

[139] Only those broker-dealers that are required to maintain certain net capital pursuant to Rule 15c3–1(a)(2)(i), 17 CFR 240.15c3–1(a)(2)(i), will be required to comply with this rule. As a result of the rule's limited scope, the Commission staff estimates that approximately 1,100 registered broker-dealers will be required to comply with the rule.

[140] *See* Proposing Release.

[141] 5 U.S.C. 553(d)

(i) Any of your mission critical computer systems incorrectly identifies any date in the Year 1999 or the Year 2000, and

(ii) The error impairs or, if uncorrected, is likely to impair, any of your mission critical systems under your control.

(2) You will be presumed to have a material Year 2000 problem if, at any time on or after August 31, 1999, you:

(i) Do not have written procedures reasonably designed to identify, assess, and remediate any material Year 2000 problems in your mission critical systems under your control;

(ii) Have not verified your Year 2000 remediation efforts through reasonable internal testing of your mission critical systems under your control and reasonable testing of your external links under your control; or

(iii) Have not remediated all exceptions related to your mission critical systems contained in any independent public accountant's report prepared on your behalf pursuant to § 240.17Ad–18(f).

(c) If you have or are presumed to have a material Year 2000 problem, you must immediately notify the Commission and your issuers of the problem. You must send this notice to the Commission by overnight delivery to the Division of Market Regulation, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1002 Attention: Y2K Compliance.

(d)(1) If you are a registered non-bank transfer agent that has or is presumed to have a material Year 2000 problem, you may not, on or after August 31, 1999, engage in any transfer agent function, including:

(i) Countersigning such securities upon issuance;

(ii) Monitoring the issuance of such securities with a view to preventing unauthorized issuance;

(iii) Registering the transfer of such securities;

(iv) Exchanging or converting such securities; or

(v) Transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates.

(2) Notwithstanding paragraph (d)(1) of this section, you may continue to engage in transfer agent functions:

(i) Until December 1, 1999, if you have submitted a certificate to the Commission in compliance with paragraph (e) of this section; or

(ii) Solely to the extent necessary to effect an orderly cessation or transfer of these functions.

(e)(1)(i) If you are a registered non-bank transfer agent that has or is presumed to have a material Year 2000 problem, you may, in addition to providing the Commission the notice required by paragraph (c) of this section, provide the Commission and your issuers a certificate signed by your chief executive officer (or an individual with similar authority) stating:

(A) You are in the process of remediating your material Year 2000 problem;

(B) You have scheduled testing of your affected mission critical systems to verify that the material Year 2000 problem has been remediated, and specify the testing dates;

(C) The date by which you anticipate completing remediation of the material Year 2000 problem in your mission critical systems; and

(D) Based on inquiries and to the best of the chief executive officer's knowledge, you do not anticipate that the existence of the material Year 2000 problem in your mission critical systems will impair your ability, depending on the nature of your business, to assure the prompt and accurate transfer and processing of securities, the maintenance of master securityholder files, or the production and retention of required records; and you anticipate that the steps referred to in paragraphs (e)(1)(i)(A) through (C) of this section will result in remedying the material Year 2000 problem on or before November 15, 1999.

(ii) If the information contained in any certificate provided to the Commission pursuant to paragraph (e) of this section is or becomes misleading or inaccurate for any reason, you must promptly file an updated certificate correcting such information. In addition to the information contained in the certificate, you may provide the Commission with any other information necessary to establish that your mission critical systems will not have material Year 2000 problems on or after November 15, 1999.

(2) If you have submitted a certificate pursuant to paragraph (e)(1) of this section, you must submit a certificate to the Commission and your issuers signed by your chief executive officer (or an individual with similar authority) on or before November 15, 1999, stating that, based on inquiries and to the best of the chief executive officer's knowledge, you have remediated your Year 2000 problem or that you will cease operations. This certificate must be sent to the Commission by overnight delivery to the Division of Market Regulation, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1002 Attention: Y2K Compliance.

(f) Notwithstanding paragraph (d)(2) of this section, you must comply with the requirements of paragraph (d)(1) of this section if you have been so ordered by the Commission or by a court.

(g) Beginning August 31, 1999, and ending March 31, 2000, you must make backup records for all master securityholder files at the close of each business day and must preserve these backup records for a rolling five business day period in a manner that will allow for the transfer and conversion of the records to a successor transfer agent. If you have a material Year 2000 problem, you must preserve for at least one year the five day backup records immediately preceding the day the problem was discovered. In addition, you must make at the close of business on December 27 through 31, 1999, a backup copy for all master securityholder files and preserve these records for at least one year. Such backup records must permit the timely restoration of such systems to their condition existing prior to experiencing the material Year 2000 problem. Copies of the backup records must be kept in an easily accessible place but must not be located with or held in the same computer system as the primary records, and you must be able to immediately produce or reproduce them. You must furnish promptly to a representative of the Commission such legible, true, and complete copies of those records, as may be requested.

(h) For the purposes of this section:

(1) The term *mission critical system* means any system that is necessary, depending on the nature of your business, to assure the prompt and accurate transfer and processing of securities, the maintenance of master securityholder files, and the production and retention of required records as described in paragraph (d) of this section;

(2) The term *customer* includes an issuer, transfer agent, or other person for which you provide transfer agent services;

(3) The term *registered non-bank transfer agent* means a transfer agent, whose appropriate regulatory agency is the Commission and not the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation; and

(4) The term *master securityholder file* has the same definition as defined in § 240.17Ad–9(b).

(i) This temporary section will expire on July 1, 2001.

By the Commission.

Dated: July 27, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19824 Filed 8–2–99; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[TD 99–61]

RIN 1515–AC47

Exemption of Originating Mexican Goods From Certain Customs User Fees

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect that goods imported from Mexico that qualify as originating goods under the North American Free Trade Agreement (NAFTA) Implementation Act (the Act) and qualify as goods of Mexico for marking under the NAFTA Marking Rules will no longer be subject to the merchandise processing fees assessed under 19 U.S.C. 58c(a)(9) and (10). This amendment results from a provision of Title II of the Act, which eliminates application of the fees for originating Mexican goods after June 29, 1999.

EFFECTIVE DATE: August 3, 1999.

FOR FURTHER INFORMATION CONTACT: Howard Duchan, Office of Field Operations (202–927–0639).

SUPPLEMENTARY INFORMATION:

Background

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (codified at 19 U.S.C. 58c and referred to in this document as the COBRA provision), provides for the collection of various fees for providing Customs services in connection with the arrival of vessels, vehicles, railroad cars, aircraft, passengers and dutiable mail, in connection with the entry or release of merchandise, and in connection with Customs broker permits. The fees pertaining to the entry or release of merchandise are set forth in subsections (a)(9) and (10) of the COBRA provision (19 U.S.C. 58c(a)(9) and (10)) and include an ad valorem fee for each formal entry or release (subject to specific maximum and minimum limits), a surcharge for each manual entry or release, and specific fees for three types of informal entry or release.

Title II of the North American Free Trade Agreement (NAFTA) Implementation Act (the Act), Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions relating to the administration of certain Customs laws. In section 204 of Title II, paragraph (10) of section 13031(b) of the COBRA (19 U.S.C. 58c(b)(10)) was amended to provide, in pertinent part, that for goods qualifying under the rules of origin set out in section 202 of the Act (19 U.S.C. 3332 and General Note 12, Harmonized Tariff Schedule of the United States (HTSUS) (pertaining to rules of origin)), the fees under subsection (a)(9) or (10) may not be increased after December 31, 1993, and may not be charged after June 29, 1999, with respect to goods that qualify to be marked as goods of Mexico pursuant to Annex 311 of the Act, for such time as Mexico is a NAFTA country (see 19 U.S.C. 58c(b)(10)(B)(ii)).

Regulations implementing the COBRA provision regarding merchandise processing fees are contained in § 24.23 of the Customs Regulations (19 CFR 24.23). Section 24.23(c)(3) pertains to an exemption from the merchandise processing fees (provided for under paragraphs (b)(1) and (b)(2)(i) of § 24.23) for goods originating in Canada within the meaning of either General Note 9 or General Note 12 of the HTSUS, where such goods qualify to be marked as goods of Canada pursuant to Annex 311 of the Act.

Customs, in this document, amends § 24.23(c)(3) to: (1) Add to the merchandise subject to the exemption goods originating in Mexico within the meaning of General Note 12, HTSUS, where such goods qualify to be marked as goods of Mexico pursuant to Annex 311 of the Act; (2) add language specifying that the exemption applies to such Mexican goods entered or released after June 29, 1999; and (3) remove the reference to General Note 9, HTSUS. Regarding the effective date, this exemption will apply to qualifying Mexican goods "entered or released" after June 29, 1999, within the meaning of that term as defined in § 24.23(a)(2) and 19 U.S.C. 58c(b)(8)(E). Regarding removal of the reference to General Note 9, HTSUS, this General Note pertained to the Canadian Free Trade Agreement which is suspended. Consequently, reference to it is no longer relevant for purposes of the section.

Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on this regulation are unnecessary. The regulatory change conforms the Customs Regulations to the terms of a statutory provision that is already in effect. In addition, the regulatory change benefits the public by providing specific information regarding the right to an exemption from the payment of certain import fees. Pursuant to the provisions of 5 U.S.C. 553(a)(1), public notice and comment is also inapplicable to this final regulation because it is within the foreign affairs function of the United States. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Taxes, User fees, Wages.

Amendment to the Regulations

For the reasons stated in the preamble, part 24 of the Customs Regulations (19 CFR Part 24) is amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part, and a new authority citation for § 24.23 is added to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1450, 1624; 31 U.S.C. 9701.

* * * * *

Section 24.23 also issued under 19 U.S.C. 3332;

* * * * *

2. Section 24.23(c)(3) is revised to read as follows:

§ 24.23 Fees for processing merchandise.

* * * * *

(c) *Exemptions and limitations.* * * *

(3) The ad valorem, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2)(i) of this section shall not apply to goods originating in Canada or Mexico within the meaning of General Note 12, HTSUS (see also 19 U.S.C. 3332), where such goods qualify to be marked, respectively, as goods of Canada or Mexico pursuant to Annex 311 of the North American Free Trade Agreement and without regard to whether the goods are marked. For qualifying goods originating in Mexico, the exemption applies to goods entered or released (as defined in this section) after June 29, 1999. Where originating goods as described above are entered or released with other goods that are not originating goods, the ad valorem, surcharge, and specific fees shall apply only to those goods which are not originating goods.

* * * * *

Approved: June 14, 1999.

Raymond W. Kelly,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–19807 Filed 8–2–99; 8:45 am]

BILLING CODE 4820–02–U

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 3077]

RIN 1400–A75

Visas: Passports and Visas Not Required for Certain Nonimmigrants

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Interim rule with request for comments.

SUMMARY: Current law provides for a Visa Waiver Pilot Program (VWPP) for nationals of countries qualifying under the provisions of the Pilot Program and designated by the Attorney General, in consultation with Secretary of State, as countries whose nationals benefit from the waiver of the nonimmigrant B–1/B–2 visa requirement. This interim rule adds Portugal, Singapore and Uruguay as participants in this Program.

DATES: This interim rule is effective August 9, 1999. The Department invites written comments which must be received on or before October 4, 1999.

ADDRESSES: Submit written comments, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Room L–603C, Department of State, Washington, D.C. 20520–0106.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, Washington, D.C. 20522–0113, (202) 663–1204.

SUPPLEMENTARY INFORMATION: This interim rule amends Part 41, Title 22 of the Code of Federal Regulations relating to visa waivers for certain nonimmigrants pursuant to section 217 of the Immigration and Nationality Act (INA).

History of INA 217

Pub. L. 99–603

Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, amended the INA by adding a new section 217. Section 217 provides for a Visa Waiver Pilot Program (VWPP) which waives the nonimmigrant visa requirement for nationals of certain countries having low nonimmigrant visa refusal rates and who are seeking to enter the United States for a period not to exceed ninety days. This original provision authorized the participation of eight countries in the VWPP to be designated by the Secretary of State and the Attorney General, acting jointly, from among countries meeting specific criteria. These original qualifying countries included: France; the Federal Republic of Germany; Italy; Japan, the Netherlands; Sweden; Switzerland; and the United Kingdom. [See **Federal Register** publications 53 FR 24903, June 30, 1988; 53 FR 50161, December 13, 1988; and 54 FR 27120, June 27, 1989.]

Pub. L. 101–649

On November 29, 1990, the President signed the Immigration Act of 1990 (IMMACT 90), Pub. L. 101–649, Section 201 of IMMACT 90 revised the VWPP set forth in section 313 of IRCA. It removed the eight-country cap and extended the provisions of the VWPP to all countries that meet the qualifying criteria of the VWPP and are designated by the Attorney General, acting jointly with the Secretary of State, as Pilot Program countries thereunder.

Effective October 1, 1991, Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain, having met all of the requirements for participants in the nonimmigrant Visa Waiver Pilot Program, were added as participants in the Program. [See 56 FR 46716, September 13, 1991.] Brunei was designated as a participant in the Visa Waiver Pilot Program in an interim rule published at 58 FR 40581, July 26, 1993.

Pub. L. 103–415

Section 1(m) of Pub. L. 103–415 extended the Visa Waiver Pilot Program through September 30, 1995.

Pub. L. 103–416

Section 210 of the Immigration and Nationality Technical Corrections Act of 1994 (INTC), Pub. L. 103–416, amended section 217 of the INA extending the VWPP to September 30, 1996. Section 211 of INTC created and established criteria for a new probationary qualification status for countries which met the criteria for that status under the VWPP and which were designated by the Secretary of State and the Attorney General, acting jointly, as countries whose nationals benefit from the waiver of the nonimmigrant B–1/B–2 visa requirement.

On March 28, 1995, the Department published an interim rule [59 FR 15872] to implement the provisions of sections 210 and 211 of Pub. L. 103–416. Ireland was determined to be the only country that met the criteria set forth for such probationary qualification status. On July 8, 1996 Argentina was added as a non-probationary VWPP country [61 FR 35628] and Australia became a non-probationary participating country on July 29, 1996 [61 FR 39318].

Pub. L. 104–208

On September 30, 1996 the President signed Pub. L. 104–208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, (IIRIRA). Section 635 of this law once again amended INA 217 by extending the Program until September 30, 1997. This law also named the Attorney General (in consultation with the Secretary of State) as the principal designator of VWPP countries, eliminated probationary VWPP qualification status and made countries then in probationary status (Ireland being the only country) permanent participating VWPP countries subject to the same disqualification criteria established for other VWPP countries. On September 30, 1997, the Attorney General added Slovenia as a participating country. [See 62 FR 51030.]

Pub. L. 105–173

Pub. L. 105–173 extended the VWPP through April 30, 2000. This law also modified the statutory language relating to low visa refusal rates that could extend the VWPP to additional countries previously unable to qualify.

Requirements for VWPP Participation

For a country to qualify as a participant in the VWPP, the country:

- Must agree to waive the visa requirement for nationals of the United States entering for business or pleasure for ninety (90) days or less,
- Must meet statutorily prescribed limits on visa refusal rates for the prior two year period, as well as the prior year;
- Must meet statutorily prescribed limits on rates of exclusion at ports of entry and on overstay rates,
- Must have a machine readable passport program. VWPP travelers must meet the following conditions:
- They must present a valid passport;
- They must be seeking entry into the United States for business or pleasure;
- They must be seeking entry into the United States for ninety days or less (no extensions or changes/adjustments of status are allowed);
- They must possess an onward or return ticket if traveling by air or sea;
- They must not be ineligible under the Immigration and Nationality Act;
- They must agree to waive any right to appeal a denial of entry.

Addition of Qualifying Countries

Portugal, Singapore and Uruguay

The Attorney General, in consultation with the Secretary of State, has recently determined that Portugal, Singapore, and Uruguay have met the statutory requirements of INA 217 and, effective August 9, 1999, are eligible to participate in the Visa Waiver Pilot Program.

Interim Rule

The Department is promulgating this regulation in conjunction with the Immigration and Naturalization Service (INS) because section 217 of the INA, requires action by the Attorney General, in consultation with the Secretary of State. [See INS Rule also published in this **Federal Register** issue.]

The Department is implementing this regulation as an interim rule, with a 30-day provision for post-promulgation public comments. Publication as an interim rule is based upon the "good cause" exceptions set forth at 5 U.S.C. 553(b)(B) and 553(d)(3). Because this rule will facilitate tourist and business travel to and from the designated countries, delay for pre-promulgation public comment would be contrary to the public interest.

In accordance with 5 U.S.C. 605(b) [Regulatory Flexibility Act], the Department certifies that this rule does not have a "significant adverse economic impact" on a substantial number of small entities, because it is inapplicable. This rule is exempt from E.O. 12866 [Regulatory Planning and Review] but has been coordinated with the Immigration and Naturalization Service because action by the Attorney General is required under section 217 of the INA, as amended. The rule imposes no reporting or record-keeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act. The Department has reviewed the rule as required by E.O. 12988 [Civil Justice Reform] and certifies it to be in compliance therewith.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports, Temporary visitors, Visas, Waivers.

This interim rule, with request for comments, amends Part 41, Title 22 as follows:

PART 41—[AMENDED]

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104.

§ 41.2 [Amended]

2. Amend paragraph (l)(2) of § 41.2 by removing the period at the end of the paragraph and adding " 'Portugal, Singapore and Uruguay" (effective August 9, 1999)" at the end of the sentence.

Dated: June 25, 1999.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 99–19923 Filed 8–2–99; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD11–99–012]

Drawbridge Operation Regulations; Sacramento River, California Department of Transportation Highway Bridge at Mile 90.1, at Knights Landing, Between Sutter and Yolo Counties, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The U.S. Coast Guard has issued a temporary deviation to regulations governing opening of the California Department of Transportation (Caltrans) Knights Landing bascule bridge over the Sacramento River at Knights Landing, CA. The bridge need open for vessels only on 24 hours advance notice from August 2 through September 14, 1999. Additionally, only the south leaf of the bridge will be in service during this period. The bridge is normally operated on 12 hour advance notice, but Caltrans needs additional notice to facilitate replacement of the submarine power cable.

DATES: Effective period of the deviation is August 2, 1999, through September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Olmes, Bridge Administrator, Eleventh Coast Guard District, Building 50–6, Coast Guard Island, Alameda, CA 94501–5100, telephone (510) 437–3515.

SUPPLEMENTARY INFORMATION: Caltrans notified the Eleventh Coast Guard District of the need for the submarine cable replacement on June 25, 1999. These dates represent the only available work window, due to potential impacts to sensitive species at other times. Although alternate routes past the bridge are not available, there would be little or no impact to vessel traffic since vessels can still transit the bridge with advance notice. The horizontal clearance through the bridge with one leaf operation is 100 feet, which is adequate for all vessels normally using the waterway in the Knights Landing area. The bridge provides 30 feet vertical clearance above Low Water and is opened only a few times each year for large recreational vessels or marine construction or dredging equipment.

This deviation from the normal operating regulations in 33 CFR 117.189(b) is authorized in accordance with the provisions of 33 CFR 117.35.

Dated: July 22, 1999.

T.H. Collins,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 99–19529 Filed 8–2–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6409–3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting a petition submitted by Occidental Chemical Inc. (Occidental) to exclude from hazardous waste control (or delist) a certain solid

waste. This action responds to the petition originally submitted by Occidental Chemical to delist the Rockbox Residue on a "generator specific" basis from the lists of hazardous waste. The EPA received a notice from Oxy Vinyls, LP regarding a change in ownership. Effective May 1, 1999, Oxy Vinyls, LP became the owner of Occidental Chemical Corporation, Houston Chemical Complex, VCM Site. Oxy Vinyls has advised the Agency that it wishes to proceed with the petition for delisting submitted by Occidental Chemical. We have changed the references to Occidental Chemical in the conditions of the delisting to Oxy Vinyls.

After careful analysis, the EPA has concluded that the petitioned waste is not hazardous waste when disposed of in Subtitle D landfills/surface impoundments. This exclusion applies to Rockbox Residue generated at Oxy Vinyl's Deer Park, Texas facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills/surface impoundments but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.

EFFECTIVE DATE: August 3, 1999.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act review room on the 7th floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is "F–97–TXDEL–OCCDEERPK". The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact Bill Gallagher, at (214) 665–6775. For technical information concerning this notice, contact Michelle Peace, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, (214) 665–7430.

SUPPLEMENTARY INFORMATION:

The information in this section is organized as follows:

I. Overview Information
A. What action is EPA finalizing?
B. Why is EPA approving this delisting?
C. What are the limits of this exclusion?
D. How will Oxy Vinyls manage the waste if it is delisted?
E. When is the final delisting exclusion effective?
F. How does this action affect states?
II. Background
A. What is a delisting petition?
B. What regulations allow facilities to delist a waste?
C. What information must the generator supply?
III. EPA's Evaluation of the Waste Data
A. What wastes did Oxy Vinyls petition EPA to delist?
B. How much wastes did Oxy Vinyls propose to delist?
C. How did Oxy Vinyls sample and analyze the waste data in this petition?
IV. Public Comments Received on the Proposed Exclusion
A. Who submitted comments on the proposed rule?
B. Can Oxy Vinyl increase the waste volume?
C. Why wasn't the EPACMTP used?

I. Overview Information

A. What Action Is EPA Finalizing?

The EPA is finalizing:

(1) The decision to grant Oxy Vinyls' petition to have their Rockbox Residue excluded, or delisted, from the definition of a hazardous waste; and

(2) The use of the EPA Composite Model for Landfills as the fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste once it is disposed.

After evaluating the petition, EPA proposed, on February 19, 1999 to exclude the Oxy Vinyls' waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 64 FR 8278).

B. Why Is EPA Approving This Delisting?

Oxy Vinyls petitioned to exclude the Rockbox Residue treatment residues because it does not believe that the petitioned waste meets the criteria for which it was listed.

Oxy Vinyls also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional listing criteria and the additional factors required by the HSWA of 1984. *See,* section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4).

For reasons stated in both the proposal and this document, EPA believes that Oxy Vinyls' Rockbox Residue should be excluded from hazardous waste control. The EPA therefore is granting a final exclusion to Oxy Vinyls, located in Deer Park, Texas for its Rockbox Residue.

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of part 261 and the conditions contained herein are satisfied. The maximum annual volume of the Rockbox Residue is 1,000 cubic yards.

D. How Will Oxy Vinyls Manage the Waste if It Is Delisted?

The Rockbox Residue is currently disposed of in an off-site hazardous waste landfill. When delisted, the waste will be disposed of in an off-site Subtitle D industrial landfill.

E. When Is the Final Delisting Exclusion Effective?

This rule is effective August 3, 1999. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How Does This Action Affect States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received our authorization to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some States (for example, Louisiana, Georgia,

Illinois) to administer a delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If Oxy Vinyls transports the petitioned waste to or manages the waste in any State with delisting authorization, Oxy Vinyls must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude from the list of hazardous wastes, wastes the generator does not consider hazardous under RCRA.

B. What Regulations Allow Facilities To Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information to EPA to allow the EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Data

A. What Waste Did Oxy Vinyls Petition EPA To Delist?

Occidental Chemical-Deer Park, now Oxy Vinyls petitioned the EPA to exclude from hazardous waste control its Rockbox Residue waste generated at the wastewater treatment facility. The Rockbox Residue is listed for 3 EPA Hazardous Waste Numbers due to the "derived-from" and mixture rules. The waste are listed as K019, K020, and K017. The listed constituents of concern for these EPA Hazardous Waste Numbers are shown in Table 1. *See,* part 261, appendix VII.

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTEWATER STREAMS

Waste code	Basis for characteristics/listing
K019/K020	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K017	Epichlorohydrin, chloroethers, trichloropropane, dichloropropanols.

B. How Much Waste Did Oxy Vinyls Propose To Delist?

Specifically, in its petition, Oxy Vinyls requested that EPA grant a standard exclusion for 1,000 cubic yards of Rockbox Residue generated per calender year.

C. How Did Oxy Vinyls Sample and Analyze the Waste Data in This Petition?

In support of its petition, which included the sampling and analysis plan, Oxy Vinyls submitted: (1) Descriptions of its waste water treatment processes and the incineration activities associated with petitioned waste; (2) results of the total constituent list for 40 CFR part 264, appendix IX volatiles, semivolatiles, and metals except for pesticides, herbicides, and PCBs; (3) results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals; (4) results for reactive sulfide; (5) results for reactive cyanide; (6) results for pH; (7) results of ignitability; (8) results of the total basis for dioxin and furan; and (9) results of the dioxin and furan TCLP extract.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

The EPA received public comments on April 5, 1999, proposal from one interested party, the petitioner, Oxy Vinyls.

B. Can Oxy Vinyls Increase the Waste Volume?

The facility would like to increase the waste volume for the Rockbox Residue from 238 cubic yards to 1,000 cubic yards per year. The plant apparently has gathered information that additional waste will be generated and therefore requests that the increased annual volume be allowed.

A change in the volume of Rockbox Residue waste will not change the DAF, therefore the delisting levels will remain the same. The EPA approves the request to increase the volume of Rockbox Residue from 238 cubic yards to 1,000 cubic yards and revising the petition.

C. Why Wasn't the EPACMTP Used?

Oxy Vinyls felt that EPA should use the EPA Composite Model for Leaching Migration with Transformation Products (EPACMTP) to determine if the petitioned waste was a candidate for a delisting petition, in the proposed rule.

The Region used the EPACMTP as a tool to preliminarily determine whether the wastes could meet the criteria for delisting as they pertain to the ground water pathway. We did not propose the Oxy Vinyls delisting decision based on the EPACMTP because the Region has not received internal concurrence or completed the external peer review necessary to propose the model's use in evaluating delisting petitions. When these reviews are complete, the Region will propose a decision based on the evaluation of the EPACMTP and request public comment. Until then, EPA must continue to use the EPACML model.

Regulatory Impact

Under Executive Order (EO) 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The final to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this

facility to manage its waste as nonhazardous. There is no additional impact therefore, due to today's final rule. Therefore, this proposal would not be a significant regulation and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. The EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon State, local, or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by E.O. 12866.

Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments.

Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

National Technology Transfer and Advancement Act

Under section 12(d) if the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: July 14, 1999.

Robert E. Hannesschlager,

Acting Director, Multimedia Planning and Permitting Division, Region 6.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of Appendix IX, Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Oxy Vinyls	Deer Park, Texas	Rockbox Residue, (at a maximum generation of 1,000 cubic yards per calender year) generated by Oxy Vinyls using the wastewater treatment process to treat the Rockbox Residue (EPA Hazardous Waste No. K017, K019, and K020). Oxy Vinyls must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Delisting Levels:* All concentrations for the following constituents must not exceed the following levels (ppm). The Rockbox Residue must be measured in the waste leachate by the method specified in 40 CFR 261.24. (A) Rockbox Residue: (i) Inorganic Constituents: Barium—200; Chromium—5.0; Copper—130; Lead+1.5; Tin—2,100; Vanadium—30; Zinc—1,000 (ii) Organic Constituents: Acetone—400; Dichloromethane—1.0; Dimethylphthalate—4,000; Xylene—10,000; 2,3,7,8-TCDD Equivalent—0.00000006 (2) *Waste Holding and Handling:* Oxy Vinyls must store in accordance with its RCRA permit, or continue to dispose of as hazardous waste all Rockbox Residue generated until the verification testing described in Condition (3)(B), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of the Rockbox Residue do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels set in Condition 1, waste generated during the time period corresponding to this sample must be managed and disposed of in accordance with subtitle C of RCRA. (3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, Oxy Vinyls may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Oxy Vinyls must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). (A) *Initial Verification Testing:* (i) When the Rockbox unit is decommissioned for clean out, after the final exclusion is granted, Oxy Vinyls must collect and analyze composites of the Rockbox Residue. Two composites must be composed of representative grab samples collected from the Rockbox unit. The waste must be analyzed, prior to disposal, for all of the constituents listed in Condition 1. No later than 90 days after the Rockbox unit is decommissioned for clean out the first two times after this exclusion becomes final, Oxy Vinyls must report the operational and analytical test data, including quality control information.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) *Subsequent Verification Testing:* Following written notification by EPA, Oxy Vinyls may substitute the testing conditions in (3)(B) for (3)(A)(i). Oxy Vinyls must continue to monitor operating conditions, analyze samples representative of each cleanout of the Rockbox of operation during the first year of waste generation. (C) *Termination of Organic Testing for the Rockbox Residue:* Oxy Vinyls must continue testing as required under Condition (3)(B) for organic constituents specified under Condition (3)(B) for organic constituents specified in Condition (1)(A)(ii) until the analyses submitted under Condition (3)(B) show a minimum of two consecutive annual samples below the delisting levels in Condition (1)(A)(ii), Oxy Vinyls may then request that annual organic testing be terminated. Following termination of the quarterly testing, Oxy Vinyls must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after exclusion). (4) *Changes in Operating Conditions:* If Oxy Vinyls significantly changes the process which generate(s) the waste(s) and which may or could affect the composition or type waste(s) generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process), Oxy Vinyls must notify the EPA in writing and may no longer handle the wastes generated from the new process or no longer discharges as nonhazardous until the wastes meet the delisting levels set Condition (1) and it has received written approval to do so from EPA. (5) *Data Submittals:* The data obtained through Condition 3 must be submitted to Mr. William Gallagher, Chief, Region 6 Delisting Program, U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD-O) within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) *Reopener Language:* (A) If, anytime after disposal of the delisted waste, Oxy Vinyls possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Director in granting the petition, then the facility must report the data, in writing, to the Director within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, Oxy Vinyls must report the data, in writing, to the Director within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (A) or (B) and any other information received from any source, the Director will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(D) If the Director determines that the reported information does require Agency action, the Director will notify the facility in writing of the actions the Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (D) or (if no information is presented under paragraph (D)) the initial receipt of information described in paragraphs (A) or (B), the Director will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Director's determination shall become effective immediately, unless the Director provides otherwise. (7) *Notification Requirements:* Oxy Vinyls must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

* * * * *

[FR Doc. 99–19439 Filed 8–2–99; 8:45 am]
BILLING CODE 6560–50–P

OFFICE OF PERSONNEL MANAGEMENT

45 CFR PART 801

RIN: 3206–AI77

Voting Rights Program

AGENCY: Office of Personnel Management.

ACTION: Final rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is establishing two new offices for filing applications or complaints under the Voting Rights Act of 1965, as amended. This designation is necessary to enforce the voting guarantees of the Fourteenth and Fifteenth amendments to the Constitution. This amendment establishes Leake County, Mississippi, and Chickasaw County, Mississippi, as new offices for filing applications or complaints.

DATES: This rule is effective August 2, 1999. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before September 2, 1999.

ADDRESSES: Send or deliver comments to James F. Hicks, Assistant General Counsel, Office of Personnel Management, Office of the General Counsel, Room 7536, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: James F. Hicks, (202) 606–1700.

SUPPLEMENTARY INFORMATION: The Attorney General has designated Leake County and Chickasaw County as additional examination points under the provisions of the Voting Rights Act of 1965, as amended. These designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, OPM will appoint Federal Examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Under section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Under section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately in view of the pending election to be held in the subject counties, where Federal observers will observe the election under the authority of the Voting Rights Act of 1965, as amended.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it adds two new locations to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

List of Subjects in 45 CFR Part 801

Administrative practice and procedure, Voting Rights.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 45 CFR part 801 as follows:

PART 801—VOTING RIGHTS PROGRAM

1. The authority citation for part 801 continues to read as follows:

Authority: 5 U.S.C. § 1103; secs. 7, 9, 79 Stat. 440, 411 (42 U.S.C. 1973e, 1973g).

Appendix A to Part 801 [Amended]

2. Appendix A to Part 801 is amended by adding alphabetically Chickasaw County and Leake County of Mississippi to read as follows:

* * * * *

Mississippi

* * * * *

Chickasaw: U.S. Office of Personnel Management, 75 Spring Street SW, Room 905, Atlanta, Georgia, 30303

1 (888) 496–9455: August 3, 1999

* * * * *

Leake: U.S. Office of Personnel Management, 75 Spring Street SW, Room 905, Atlanta, Georgia 30303

1 (888) 496–9455; August 3, 1999
* * * * *
[FR Doc. 99–20103 Filed 7–30–99; 4:50 pm]
BILLING CODE 6325–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 701, 702, 703, 705, 706, 709, 714, 716, 719, 726, 732, 733, 734, 749, 750 and 752

[AIDAR Circular 99–1]

RIN 042–AA42

Realignment of Contracting Responsibilities and Authorities From the Procurement Executive to the Director, Office of Procurement, and Other Miscellaneous Amendments to Acquisition Regulations

AGENCY: U.S. Agency for International Development.

ACTION: Final rule.

SUMMARY: Authorities previously delegated to the Agency Procurement Executive have been redelegated to the Director of the Office of Procurement. Many of these authorities are identified in the USAID Acquisition Regulation (AIDAR), 48 CFR Chapter 7, which consequently must be amended to reflect the redelegation. Other administrative amendments are being made concurrently.

EFFECTIVE DATE: September 2, 1999.

FOR FURTHER INFORMATION CONTACT: M/OP/POL, Ms. Diane M. Howard, Room 7.08–082U, 1300 Pennsylvania Ave., NW., U.S. Agency for International Development, Washington, DC 20523–7801. Telephone (202) 712–0206; internet: dhoward@usaid.gov.

SUPPLEMENTARY INFORMATION: In conjunction with the reassignment of the Agency Procurement Executive and the naming of a new Director of the Office of Procurement ("M/OP Director"), authorities and responsibilities previously delegated to the Procurement Executive have been redelegated to the M/OP Director. Many of these authorities and responsibilities are specified in the USAID Acquisition Regulation (AIDAR), and consequently the AIDAR is being amended to reflect this realignment and to appropriately relocate and more concisely state these authorities and responsibilities in (48 CFR) AIDAR 701. Amendments 2 through 8, 11, 13, 14, 18, 20, and 22 make changes resulting from this redelegation. In addition, amendments 4 and 5 amend the organization of AIDAR administrative policy and contracting authorities in the AIDAR itself to more closely parallel the FAR, including instituting the use of the term "AIDAR Circular" rather than "AIDAR Notice" as the title of the document used to revise the AIDAR.

Administrative matters are effected through Amendments 9, 10, 12, 15, 16, 17, 19, 21, 23, and 24, summarized as follows:

1. Amendment 9 amends section 702.170–17 to update USAID's definition of its Automated Directives System;

2. Amendment 10 removes a redundant section;

3. Amendments 12, 15, and 17 correct references that were overlooked in AIDAR Notice 98–1, which amended the AIDAR to be consistent with the FAR Part 15 Rewrite (FAC 97–2);

4. Amendment 16 amends the heading for Part 719 to be consistent with FAR Part 19;

5. Amendment 19 removes invalid language;

6. Amendment 21 removes the references to the International Development Cooperation Agency in section 750.7101, since this agency was abolished in the Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–277;

7. Amendment 23 updates the name of the referenced office; and

8. Amendment 24 removes the clause in section 752.2026, because replacement regulatory coverage for periodic reporting is being handled separately through the Proposed rule published on November 4, 1998, as AIDAR Notice 98–2 (63 FR 59501), and the continued inclusion of this clause in the AIDAR is confusing.

The changes being made by this Circular are not considered "significant" under FAR 1.301 or FAR 1.501, and public comments have not been solicited. This Circular will not have an impact on a substantial number of small entities nor does it establish a new collection of information as contemplated by the Regulatory Flexibility Act and the Paperwork Reduction Act. Because of the nature and subject matter of this Circular, use of the proposed rule/public comment approach was not considered necessary. We decided to issue as a Final Rule; however, we welcome public comment on the material covered by this Circular or any other part of the AIDAR at any time. Comments or questions may be addressed as specified in the **FOR FURTHER INFORMATION CONTACT** section of the Preamble.

List of Subjects in 48 CFR Parts 701, 702, 703, 705, 706, 709, 714, 716, 719, 726, 732, 733, 734, 749, 750 and 752

Government procurement.

For the reasons set out in the Preamble, 48 CFR Chapter 7 is amended as set forth below.

1. The authority citations in Parts 701, 702, 703, 705, 706, 709, 714, 716, 719, 726, 732, 733, 749, 750 and 752 continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

CHAPTER 7—[AMENDED]

2. Chapter 7 is amended by removing "Procurement Executive" wherever it appears in the following sections and adding "M/OP Director" in its place:

709.403
714.406–3
714.406–4
726.7005
733.103–71
733.103–72
733.103–73
734.002–70
749.111–70
749.111–71
750.7105
750.7110–2
750.7110–3
750.7110–4

Appendix D to Chapter 7, Section 4(e)(3)

3. Chapter 7 is amended by removing "USAID Procurement Executive" wherever it appears in the following sections and adding "M/OP Director" in its place:

701.602–3
706.501

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

4. Subpart 701.3 is revised to read as follows:

Subpart 701.3—U.S. Agency for International Development Acquisition Regulation

701.301 Policy.
701.303 Publication and codification.

701.301 Policy.

(a) *Responsibility.* Subject to the direction of the Administrator, the Director, Office of Procurement ("M/OP Director") is responsible for:

(1) Developing and maintaining necessary uniform procurement policies, procedures, and standards;

(2) Providing assistance to the contracting activities as appropriate;

(3) Keeping the Administrator and Executive Staff fully informed on procurement matters which should be brought to their attention; and

(4) All agency head duties and authorities stated in (48 CFR) FAR subpart 1.3, in accordance with (48 CFR) AIDAR 701.601. These responsibilities include but are not limited to developing, issuing, and maintaining the USAID Acquisition Regulation ("AIDAR", 48 CFR chapter 7), USAID's supplement to the Federal Acquisition Regulation (48 CFR Chapter 1), in coordination with the General counsel and such other offices as may be appropriate.

(b) *Applicability.* (1) Unless a deviation is specifically authorized in accordance with subpart 701.4, or unless otherwise provided, the FAR and AIDAR apply to all contracts (regardless of currency of payment, or whether funds are appropriated or non-appropriated) to which USAID is a direct party.

(2) At Missions where joint administrative services are arranged, procuring offices may apply the Department of State Acquisition Regulation (48 CFR chapter 6) for all administrative and technical support contracts except in defined areas. The Office of Administrative Services will furnish the defined areas and administrative guidelines for procurement to the overseas Missions. Administrative and local support services include the procurement accountability, maintenance and disposal of all office and residential equipment and furnishings, vehicles and expendable supplies purchased with administrative and/or technical support funds, either dollars or local currency.

701.303 Publication and codification.

(a) The AIDAR is USAID's Acquisition Regulation supplementing the FAR (48 CFR chapter 1) and is published as chapter 7 of Title 48, Code of Federal Regulations. AIDAR Circulars shall be used to promulgate changes to the AIDAR and shall be published in compliance with (48 CFR) FAR part 1.

(b) *Appendices.* Significant procurement policies and procedures that do not correspond to or conveniently fit into the FAR system described in FAR 1.1 and 1.303 may be published as Appendices to the AIDAR. Appendices follow the main text of the AIDAR in a section entitled "Appendices to Chapter 7" and contain a table of contents and the individual appendices identified by letter and subject title (*e.g.*, "Appendix D—Direct USAID Contracts with a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad").

(c) Only the M/OP Director has the authority to issue internal agency guidance applicable to all agency contracts. The heads of the various USAID contracting activities (see subparts 701.6 and 702.10) may issue operating instructions and procedures consistent with the FAR, AIDAR, and other Agency regulations, policies, and procedures for application within their organizations. One copy of each such issuance shall be forwarded to the Office of Procurement, Policy Division (M/OP/POL). Insofar as possible, such material will be numerically keyed to the AIDAR.

Subpart 701.6—[Amended]

5. The head for subpart 701.6 is revised and section 701.601 is amended by redesignating paragraphs (a) and (b) as (b) and (c) respectively; by removing newly designated paragraph (c) (1) and redesignating paragraphs (c)(2), (c)(3), and (c)(4) as (c)(1), (c)(2), and (c)(3) respectively; and by adding a new paragraph (a), to read as follows:

Subpart 701.6—Career Development, Contracting Authority, and Responsibilities

701.601 General

(a) (1) Pursuant to the delegations in ADS 103.5.10, the M/OP Director is authorized to act as the Head of the Agency for all purposes described in the Federal Acquisition Regulation (FAR, 48 CFR Chapter 1), except for the authority in (48 CFR) FAR sections 6.302–7(a)(2), 6.302–7(c)(1), 17.602(a), 19.201(c), 27.306(a), 27.306(b), and 30.201–5, or where the "head of the agency" authority is expressly not delegable under the FAR or AIDAR. Further, the M/OP Director is responsible for implementing the procurement related aspects of the Foreign Assistance Act, Executive Order 11223, the Office of Federal Procurement Policy Act, and other statutory and Executive Branch procurement policies and requirements applicable to USAID operations, except for those authorities and responsibilities delegated to the Procurement Executive as specified in ADS 103.5.10f.

(2) The M/OP Director has specified authority to:

(i) Select and appoint contracting officers and terminate their appointments in accordance with section 1.603 of the Federal Acquisition Regulation; and

(ii) Exercise in person or by delegation the authorities stated in subpart 1.4 of the Federal Acquisition Regulation with regard to deviations from that regulation.

* * * * *

PART 702—DEFINITIONS OF WORDS AND TERMS

702.170–9 [Amended]

6. Section 702.170–9 is amended by removing "702.170–13(c)(4), the Agency Procurement Executive" and adding "701.601(a)(1), the M/OP Director" in its place.

7. Section 702.170–13 is revised to read as follows:

702.170–13 Procurement Executive.

"Procurement Executive" is synonymous with "Senior Procurement Executive" as defined in FAR 2.101 and means the USAID official who is responsible for the management direction of USAID's assistance and acquisition ("A&A") system, as so delegated and more fully described in ADS 103.5.10f.

702.170–14 [Removed]

8. Section 702.170–14 is removed and reserved.

9. Section 702.170–17 is revised to read as follows:

702.170–17 Automated Directives System

"Automated Directives System" ("ADS") sets forth the Agency's policies and essential procedures, as well as supplementary informational references. It contains six functional series, interim policy updates, valid USAID handbook chapters, a resource library, and a glossary. References to "ADS" throughout this chapter 7 are references to the Automated Directives System. Procurement-related sections of this system are accessible to the general public at the following internet address: http://www.info.usaid.gov/pubs/ads. The entire ADS is available on the ADS Compact Disk (ADS CD), which may be purchased from the Agency at cost by submitting a completed ADS CD order form. To request a fax copy of the ADS CD order form, send an e-mail with your fax number to ADS@USAID.GOV.

PART 703—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

703.104–11 [Removed]

10. Section 703.104–11 is removed.

PART 705—PUBLICIZING CONTRACT ACTIONS

705.502 [Amended]

11. Section 705.502(a) is amended by removing "Procurement Executive" and "702.170–13(c)(4)" in the first sentence and adding "M/OP Director" and "701.601(a)(1)" in their places respectively.

PART 706—COMPETITION REQUIREMENTS

706.302–70 [Amended]

12. Paragraph (b)(4) of section 706.302–70 is amended by removing "715.613–70" and replacing it with "715.370–1" and by removing "715.613–71" and replacing it with "715.370–2".

PART 709—CONTRACTOR QUALIFICATIONS

13. Section 709.503 is revised to read as follows:

709.503 Waiver.

For purposes of approving waivers or further delegating the authority to approve waivers pursuant to FAR 9.503, the M/OP Director is the Agency head (see AIDAR 701.601(a)(1)). The M/OP Director hereby delegates the authority to approve waivers pursuant to FAR 9.503 to the heads of USAID contracting activities, as defined in AIDAR 702.170–10.

PART 716—TYPES OF CONTRACTS

716.303 [Amended]

14. Section 716.303(c) is amended by removing "USAID Procurement Executive (see 702.170–13)" and replacing it with "M/OP Director (see 701.601(a)(1))".

716.306 [Removed]

15. Section 716.306 is removed and reserved.

16. The heading for Part 19 is revised to read as follows:

PART 719—SMALL BUSINESS PROGRAMS

719.271–6 [Amended]

17. Section 719.271–6 is amended by removing "715.613–71" in paragraph (a)(3) and replacing it with "715.370–2".

PART 732—CONTRACT FINANCING

18. Section 732.402 is amended by revising paragraph (e)(1) to read as follows:

732.402 General.

* * * * *

(e)(1) U.S. Dollar advances to for-profit organizations, including advances for disbursement to grantees, shall be processed and approved in accordance with ADS 583.5.6b.

* * * * *

732.406–72 [Amended]

19. Section 732.406–72 is amended by removing "16 digit" from paragraph (b)(2).

PART 733—PROTESTS, DISPUTES AND APPEALS

733.101 [Amended]

20. Section 733.101 is amended by removing paragraph (a) and by redesignating paragraphs (b) and (c) as (a) and (b), respectively.

PART 750—EXTRAORDINARY CONTRACTUAL ACTIONS

750.7101 [Amended]

21. Section 750.7101 is amended by removing the designation "(a)" in front of the first paragraph and by removing paragraph (b) in its entirety. The first sentence of the remaining text is amended by adding "and" in front of "Executive Order 12163" and by removing "as amended; and International Development Cooperation Agency Delegation of Authority No. 1, dated October 1, 1979 (44 FR 57521)".

22. Section 750.7110–1 is amended by revising the last sentence to read as follows:

750.7110–1 Investigation

* * * The investigation shall establish the facts essential to meet the standards for deciding the particular case and shall address the limitations upon exercise of the authority of the M/OP Director to approve the request.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

752.202–1 Alternate 71 [Amended]

23. The definition of the "Director" in section 752.202–1, Alternative 71, is amended by removing "Office of International Training" and replacing it with "Center for Human Capacity Development (G/HCD)".

752.7026 [Removed]

24. Section 752.7026 is removed and reserved.

Dated: July 8, 1999.

Rodney W. Johnson,

Director, Office of Procurement.

[FR Doc. 99–19648 Filed 8–2–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990727204–9204–01; I.D. 072299A]

RIN 0648–AM87

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Gulf of Maine (GOM) Cod Landing Limit Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: This rule adjusts the GOM cod landing limit by increasing it from 30 lb (13.6 kg) to 100 lb (45.4 kg) per day-at-sea (DAS) with a maximum GOM cod possession limit of 500 lb (226.8 kg) per trip and by revising the "running clock" provision. The intent of this adjustment is to address overfishing of GOM cod by reducing overall fishing mortality and discards that have been reportedly occurring on trips targeting other species managed under the Northeast Multispecies Fishery Management Plan (FMP). The intent is to allow the fishing industry to attain some economic benefit from their GOM cod incidental catch, yet to be sufficiently restrictive to discourage a directed fishery for GOM cod, which remains severely overfished. These interim measures will provide intermediate relief from overfishing due to excessive discards while permanent measures to remedy the problem are developed by the New England Fishery Management Council (Council).

DATES: Effective August 3, 1999 through January 30, 2000; comments must be received on or before September 2, 1999.

ADDRESSES: Copies of the documents supporting this action may be obtained from the Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Comments on the interim final rule may be sent to the Regional Administrator, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope "comments on GOM cod trip limit adjustment."

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, 978–281–9279.

SUPPLEMENTARY INFORMATION:

Background

GOM cod is overfished. The Advisory Report on Stock Status issued pursuant to the 27th Stock Assessment Workshop (SAW) in July 1998 stated that GOM cod biomass has declined to an extremely low level. Recruitment of cod to the fishery in 1996 through 1998 was the lowest ever observed. In addition, survival of pre-recruits has been declining and is at an all-time low. Fishing mortality has also been very high—about 1.5 times greater than the fishing mortality rate threshold of the overfishing definition and approximately twice the maximum fishing mortality rate necessary to rebuild the stock under the rebuilding schedule in the FMP. The low spawning stock biomass, high fishing mortality, record low recruitment, and record low survival of pre-recruit fish indicate that the stock is collapsing. The 27th SAW Advisory Report stated that measures should be implemented to cease all directed fishing on GOM cod and to minimize bycatch of the species. In 1998, the Stock Assessment Review Committee (SARC) recommended an immediate reduction in fishing mortality to near zero.

In response to SAW 27 and to the recommendations of the SARC, the Council, in January 1999, approved Framework Adjustment 27 to the FMP. Framework 27 was necessary to address overfishing of several stocks, in particular GOM cod, and to achieve the rebuilding goals of the FMP for the 1999 multispecies fishing year. Framework 27 utilized a conservative fishing mortality rate (F) reference point, $F_{0.1} = 0.16$, to ensure that the fishing mortality rate objective of Amendment 7 to the FMP ($F_{max} = 0.29$) would not be exceeded.

In developing the measures for Framework 27, the Council attempted to balance the interests of several industry sectors. The measures that the Council approved relied to a significant extent upon the premise stated by the fishing industry that vessel owners could, and would, avoid GOM cod when conducting fisheries for such other species as flounder. Based largely upon this testimony, the Council approved measures in Framework 27 consisting of a GOM cod landing limit of 200 lb (90.7 kg) per DAS and rolling closure areas, in an effort to balance the need to protect GOM cod while still allowing fishing for other species managed under the FMP. To ensure that the target total allowable catch (TAC) level would not be exceeded, the Council also approved a mechanism to reduce the landing limit to between 5 and 100 lb (2.3 and 45.4 kg) per DAS, triggered when 402 metric tons (mt) of GOM cod was projected to be landed. Framework 27 also included several important gear restrictions and other measures.

On May 1, 1999, areas off Massachusetts, including Stellwagen Bank, which had been closed during February, March, and April under Framework Adjustment 26, were reopened. Based upon projected landings data, the trigger of 402 mt of GOM cod was reached on May 28, 1999. Accordingly, the landing limit was reduced to 30 lb (13.6 kg) per DAS to ensure that the TAC associated with $F_{0.1}$ was not exceeded (64 FR 28937, May 28, 1999). Almost immediately, high levels of GOM cod discards were reported by the industry. Two factors apparently contributed to this situation: (1) Despite previous testimony, the industry could not avoid cod while fishing for other species; and (2) concentrations of cod in the reopened closed areas were very large.

These reports of discarding prompted the Council on May 28, 1999, by a 9–8 vote, to request the Secretary of Commerce to take emergency action to increase the GOM cod landing limit up to 700 lb (317.5 kg) per DAS, with the following two additional changes to the regulations:

> [The first change to the rule is that] there would be a limit on the allowance of overages equating to three days' landings. When landing overages, a vessel must remain in port until sufficient time has been deducted from its days-at-sea allocation. Currently, there is no limit on the amount of overage a vessel can land on any trip except for the vessel's total days-at-sea allocation. The second change to the rule is that when a vessel lands an overage, it must remain in port for two additional layover days after calling out of the days-at-sea program. The Council decided to recommend this course of action because it would minimize regulatory discards and, with the mandatory layover requirement and overage limit, would reduce the potential for vessels to direct effort and pulse fish on cod.

However, NMFS determined that the current situation did not meet NMFS' policy guidelines for taking emergency action under sec. 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The policy guidelines (62 FR 44421, August 21, 1997) define an emergency, in part, as a situation that results from recent, unforeseen events or recently discovered circumstances. Although the magnitude of discarding is large, the Council was aware of this possibility during its deliberations for Framework 27 and considered the possible consequences when approving the measures. The Council instead chose to rely upon industry testimony given during the development of Framework 27, which stated that vessels could, and would, avoid cod while targeting other species. Furthermore, a GOM cod landing limit of 700 lb (317.5 kg) per DAS, even in conjunction with the other measures proposed by the Council, would not be sufficient to discourage a directed fishery for GOM cod and, most likely, would result in the target TAC and overall fishing mortality objectives being greatly exceeded, thereby worsening overfishing.

Interim measures are authorized under sec. 305(c) of the Magnuson-Stevens Act when they are needed to reduce overfishing. Measures to reduce high levels of discarding and overall fishing mortality are necessary because, if left uncontrolled, the effectiveness of Framework 27 will be undermined. These measures contribute towards the achievement of the GOM cod fishing mortality target in two ways: (1) Allowing the retention of cod (100 lb (45.4 kg) per DAS) that would otherwise be discarded enhances the profitability per day of a fishing trip, compared to the status quo (30 lb (13.6 kg) per DAS), and therefore, may provide more of an incentive for vessel owners to decrease the length of their trips. A decrease in the length of trips targeting other species will reduce the opportunity to encounter GOM cod, and thereby reduce the overall fishing mortality, as compared to the status quo. (2) Revising the "running clock" so that it may be used for no more than 24 hours may reduce the incentive for industry to target GOM cod, which may result in fewer overall discards and reduced fishing mortality.

These interim measures allow vessels to land 100 lb (45.4 kg) of GOM cod for the first 24–hour period of a trip or portion thereof, after a vessel has called into the DAS program to start a trip on which cod are landed. For example, a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 100 lb (45.4 kg), but the vessel cannot land any more GOM cod on a subsequent trip until at least 6 a.m. on the following day. For trips longer than 24 hours, a vessel may land up to an additional 100 lb (45.4 kg) for each additional 24–hour block of DAS fished, or part of an additional 24–hour block of DAS fished, up to a maximum possession limit of 500 lb (226.8 kg) per trip. For example, a vessel that has been

called into the DAS program for 48 hours or less, but more than 24 hours, may land up to, but no more than, 200 lb (90.7 kg) of GOM cod. However, for trips beyond 24 hours, if a vessel lands GOM cod and has only been called into part of an additional 24–hour block of a DAS (e.g., more than 24 hours but less than 48 hours), the vessel may only land an additional 100 lb (45.4 kg) of cod provided the vessel operator does not call out of the DAS program or depart from port, until the remainder of the additional 24– hour block of the DAS has elapsed. For example, a vessel that has been called into the DAS program for 49 hours, at the time of landing, may land only up to 300 lb (136.08 kg) of cod, provided that the vessel operator does not call out of the DAS program, or leave port, until 72 hours have elapsed from the beginning of the trip. In effect, use of the "running clock" may not exceed 24 hours.

Vessels possessing multispecies permit categories C (small vessel), H (handgear) and J (scallop limited access possession limit) are subject to this same landing limit (100 lb (45.4 kg) per day), but with a maximum possession limit of 300 lb (136.08 kg) of GOM cod per trip.

The adjusted GOM cod landing limit is set to provide a balance that is more reflective of the actual level of cod encountered in directed fishing for other species, yet that discourages directed fishing for GOM cod. These interim measures are within the range of alternatives analyzed for Framework 27, and will provide some relief from overfishing due to excessive discards of GOM cod while other measures are developed by the Council.

Increasing the daily GOM cod landing limit to 100 lb (45.4 kg) per DAS allows vessels to retain cod that otherwise would have been discarded under the current limit of 30 lb (13.6 kg) per DAS of cod. Regulatory discards will be converted to economic benefits for vessels, which could enhance the profitability of time spent fishing, compared to the status quo, and may provide an incentive for vessel operators to reduce the length of their trips. Shorter trips may reduce overall GOM cod fishing mortality because there is less opportunity to encounter cod. Although a higher trip limit may result in higher reported landings of GOM cod than the current trip limit, it is projected that the interim measures will bring the overall GOM cod fishing mortality rate closer to the F_{max} target than is likely to occur under the status quo.

Conservation benefits will also be achieved by limiting the "running clock" to no more than 24 hours, and by instituting a maximum possession limit for GOM cod of 500 lb (226.8 kg) per trip. Under current regulations, there is only an indirect limit on the "running clock," which requires vessels to call out of the DAS program after 14 days. Limiting the "running clock" to no more than 24 hours and implementing a maximum possession limit prevents the possibility that a vessel will target cod, retain several hundred pounds, and then return to shore and let the DAS clock continue to run to equate to the vessel's GOM cod landings. This is possible under current regulations because many vessels do not utilize their entire allocation of DAS and can afford to let the DAS clock run to account for overages. Although the "running clock" was originally implemented for the purpose of reducing regulatory discards, it has unintentionally allowed industry to circumvent the daily GOM cod landing limit and continue a directed fishery for GOM cod. Revising the "running clock" provision will reduce the incentive to target cod, which otherwise would have occurred by increasing the trip limit. With fewer individual vessels targeting cod, overall discards will be minimized.

Several options were considered in the development of these interim measures, including a higher landing limit, additional closed areas in conjunction with a higher limit, and a no-action alternative. A higher landing limit would not be effective in curtailing a directed fishery for GOM cod, as evidenced by the high volume of landings that occurred under a 200 lb (90.7 kg) per DAS landing limit in May 1999 and triggered the reduction of the landing limit to 30 lb (13.6 kg) per DAS on May 28, 1999. Additional closed areas in conjunction with a higher landing limit would have required additional analysis and could not have been implemented in a timely manner. These interim measures, which were analyzed in Framework 27, will help to reduce discards while contributing to the achievement of the fishing mortality target.

The Council has initiated a framework action to modify the GOM cod fishery management program, which would remain in effect through the next fishing year if it is approved and implemented. NMFS will work with the Council and the public, while these interim measures are in place, to develop measures that reduce mortality on GOM cod, without excessive discarding.

These measures will remain in effect for 180 days and may be extended for an additional 180 days, provided the public has had opportunity to comment on the measures. Accordingly, NMFS is seeking public comment on these interim measures.

Classification

The Assistant Administrator for Fisheries (AA) finds that a delay in action to reduce overfishing to provide prior notice and opportunity for public comment would increase the likelihood of exceeding the GOM cod target TAC and would increase the probable need for more severe restrictions in the future. Thus, the AA, pursuant to authority set forth at 5 U.S.C. 553(b)(B), for good cause finds that it would be contrary to the public interest to provide prior notice and opportunity for public comment for this rule. The increase in the GOM cod landing limit relieves a restriction and, thus, under 5 U.S.C. 553(d)(1) is not subject to a 30-day delay in effective date. With respect to the other provisions of the rule, because of the need to implement these measures in a timely manner to address overfishing of GOM cod, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness.

This rule has been determined to be not significant for purposes of E.O. 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and Recordkeeping requirements.

Dated: July 28, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.10, paragraphs (f)(3)(i) and (ii) are suspended and paragraph (f)(3)(iii) is added to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(f) * * *

(3) * * *

(iii) A vessel subject to the cod landing limit restriction, specified in § 648.86(b)(1)(iv), must enter port and call-out of the DAS program no later than 14 DAS after starting a multispecies DAS trip.

3. In § 648.14, paragraphs (c)(23), (c)(24), and (c)(25) are suspended and paragraphs (c)(27), (c)(28), (c)(29), and (c)(30) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(c) * * *

(27) Fail to enter port and call-out of the DAS program no later than 14 DAS after starting (i.e., the time of the issuance of the DAS authorization number) a multispecies DAS trip, as specified in § 648.10(f)(3)(iii), unless otherwise specified in § 648.86(b)(1)(iv), or unless the vessel is fishing under the cod exemption specified in § 648.86(b)(2).

(28) Enter port, while on a multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1)(iv) without reporting the cod hail weight, unless the vessel is fishing under the cod exemption specified in § 648.86(b)(2). Under no circumstances may such a trip exceed 14 days in length.

(29) Fail to remain in port for the appropriate time specified in § 648.86(b)(1)(ii), except for transiting purposes, provided the vessel complies with § 648.86(b)(5).

(30) Land more than the allowable limit of cod specified in § 648.86(b)(1)(iv), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(2).

* * * * *

4. In § 648.82, paragraph (b)(3)(i) is suspended and paragraph (b)(3)(iii) is added to read as follows:

§ 648.82 Effort-control program for limited access vessels.

* * * * *

(b) * * *

(3) * * *

(iii) *DAS allocation.* A vessel qualified and electing to fish under the small vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, per trip without being subject to DAS restrictions, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip. Such a vessel is not subject to a possession limit for other NE multispecies.

* * * * *

5. In § 648.86 paragraphs (b)(1)(i), (b)(1)(ii)(A), and (b)(3) are suspended and paragraphs (b)(1)(iv) and (b)(5) are added to read as follows:

§ 648.86 Possession restrictions.

* * * * *

(b) * * *

(1) * * *

(iv) *Landing limit.* Notwithstanding any other provisions of this part, the following measures shall be in effect from August 3, 1999 until January 30, 2000. Except as provided in paragraph (b)(2) of this section, and subject to the call-in provision specified in § 648.10(f)(3)(iii), a vessel fishing under a NE multispecies DAS may land only up to 100 lb (45.4 kg) of cod during the first 24–hour period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to a 100 lb (45.4 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hours, a vessel may land up to an additional 100 lbs (45.4 kg) for each additional 24–hour block of DAS fished, or part of an additional 24–hour block of DAS fished, up to a maximum of 500 lb (226.8 kg) per trip (e.g., a vessel that has been called into the DAS program for 48 hours or less, but more than 24 hours, may land up to but no more than 200 lb (90.7 kg) of cod). A vessel that has only been called into part of an additional 24–hour block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hours but less than 48 hours) may land up to an additional 100 lb (45.4 kg) of cod for that trip provided that the vessel complies with the following:

(A) The vessel operator does not call-out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(5) of this section, until the rest of the additional 24–hour block of the DAS has elapsed regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hours, at the time of landing, may land only up to 200 lb (90.7 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hours have elapsed from the beginning of the trip).

(B) Comply with paragraph (b)(1)(ii)(B) of this section.

(C) Vessels must have at least one standard tote on board. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

(5) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraph (b)(1) of this section, and is therefore, subject to the requirement to remain in port for the period of time described in paragraph (b)(1)(iv) of this section may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator (see Table 1 to § 600.502 of this chapter) either at the time the vessel reports its hailed weight of cod or at a later time prior to transiting and provides the following information: vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.81(e) and may not have any fish on board the vessel.

* * * * *

6. In § 648.88, paragraph (a)(1) is suspended and paragraph (a)(3) is added to read as follows:

§ 648.88 Open access permit restrictions.

(a) * * *

(3) Notwithstanding any other provisions of this part, the following measures shall be in effect from August 3, 1999 until January 30, 2000. The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, per trip, and unlimited amounts of the other NE multispecies, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(b)(1)(iv), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and that the vessel does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board.

* * * * *

[FR Doc. 99–19851 Filed 7–29–99; 4:00 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990723203–9203–01; I.D. 061599A]

RIN 0648–AM65

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustments 27 and 30 to the Northeast Multispecies Fishery Management Plan (FMP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement some of the measures contained in Framework 30 of the Northeast Multispecies Fishery Management Plan (FMP). This final rule implements a Georges Bank (GB) cod landing limit (daily landing limit) of 2,000 lb (907 kg) per day-at-sea (DAS) starting August 15, 1999, with a maximum possession limit (possession limit) of 20,000 lb (9,072 kg) per trip. This rule also authorizes the Administrator, Northeast Region, NMFS (Regional Administrator), to adjust the daily landing limit and possession limit depending on the risk of exceeding the target total allowable catch (TAC), or not catching 75 percent of the TAC for GB cod. This action is necessary to reduce the GB cod fishing mortality rate (F) to achieve the rebuilding goals of the FMP. This rule also corrects the final rule implementing Framework Adjustment 27 to the FMP, which was published on May 5, 1999, and provides revised definitions for purposes of clarification for pelagic longline gear and pelagic hook and line gear.

DATES: Effective July 29, 1999.

ADDRESSES: Copies of the Framework 30 document, its Regulatory Impact Review, the Environmental Assessment, and other supporting documents are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906-1036.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 978–281–9221.

SUPPLEMENTARY INFORMATION:

Background

Amendment 7, which became effective on July 1, 1996, established a procedure for reviewing annually the FMP and making adjustments to management measures to achieve the rebuilding objectives. The New England Fishery Management Council (Council) conducted a review during December 1998 and January 1999 for the May 1999 fishing year, and submitted proposed measures contained in Framework 27 to address the severely depleted Gulf of Maine (GOM) cod stock. The final rule implementing Framework 27 was published on May 5, 1999 (64 FR 24066). In Framework 27, the Council was unable to complete development of measures to reduce F on GB cod by the necessary 22 percent to achieve the $F_{0.1}$ objective for that stock for the 1999 fishing year, as indicated in the Multispecies Monitoring Committee's annual report. Framework 30, therefore, is a continuation of the annual adjustment for the multispecies fishery for May 1999 through April 2000, initiated with Framework 27.

Approved Measures

This rule establishes a daily landing limit of 2,000 lb (907 kg) per DAS, with a possession limit of 20,000 lb (9,072 kg) per trip, on vessels enrolled in the GOM Cod Trip Limit Exemption Program. NMFS is approving these measures to reduce the GB cod fishing mortality rate (F) and increase the chances of achieving the rebuilding targets of the FMP. This rule also authorizes the Regional Administrator to reduce the allowable cod daily landing limit and possession limit for GB cod, when 75 percent of the target TAC for that stock is projected to be reached. The lower cod daily landing limit and possession limit would be calculated to keep landings below the target TAC. On the other hand, on or after January 1, 2000, the Regional Administrator is authorized to increase the daily landing limit and possession limit, if there is a high probability that GB cod landings for the fishing year are projected to be less than 75 percent of the TAC for that stock. The higher daily landing limit and possession limit would be calculated to a level that would allow landings to reach at least 75 percent of the TAC for GB cod.

This rule also implements a technical change to clarify the Council's intent of Framework 27 by removing language that would require gear stowage for vessels transiting the GOM/GB Inshore Restricted Roller Gear Area with roller gear in excess of 12 inches (30.48 cm) in diameter. The Council voted to recommend this change from the proposed rule for Framework 27 during the Council meeting on April 15, 1999, citing the need to relieve a burdensome restriction that requires all vessels, before transiting the area, to stow gear in which the diameter of any part of the trawl footrope (including discs, rollers, or rockhoppers) exceeds the minimum size authorized in the GOM/GB Inshore Restricted Roller Gear Area. However, since the comment period for Framework 27 closed on April 13, 1999 (64 FR 14846, March 29, 1999), and the Council did not address the matter until after that time, the measure could not be incorporated into the final rule for Framework 27. The final rule for Framework 27 was published on May 5, 1999 (64 FR 24066). This rule deletes the Restricted Area transiting provision in § 648.80(a)(2)(iv) in response to the Council's clarification of its intent in Framework 27.

In addition, "exempted gear," as defined at § 648.2, means gear that is deemed to be not capable of catching Northeast multispecies, and includes: Pelagic hook or longline gear, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, purse seines, shrimp trawls (with a properly configured grate), surf clam and ocean quahog dredges, and midwater trawls. For clarification purposes, this rule replaces the definition of "pelagic hook or longline gear" with two definitions: one for "Pelagic longline gear" and another for "pelagic hook and line gear."

The preamble to the final rule implementing Framework 27 correctly indicated that scallop dredge gear is considered exempted gear in the newly closed areas in Framework 27 when vessels are fishing under a scallop DAS, provided that the vessel does not retain any regulated multispecies during any part of a trip (see 64 FR 24067, May 5, 1999, column 3, under Area Closures and Exemptions). The Council specifically clarified that "newly closed areas" refer only to the Rolling Closure Areas specified in Framework 27, as well as the Cashes Ledge Closure Area. It did not refer to Closed Areas I and II, the Nantucket Lightship Closed Area, or the Western GOM Area Closure. However, the regulatory text for Framework 27 at § 648.81(i)(2) incorrectly indicated that vessels fishing under scallop DAS are exempt from the Western GOM closure. The inadvertent inclusion of scallop dredge gear in the list of exemptions for the Western GOM is being corrected by this action, in accordance with the intent of Framework Adjustment 27. Because scallop dredge gear is not considered exempted gear in the Western GOM Area Closure, it is removed from the list of exemptions at § 648.81(i)(2).

Disapproved Measure

The framework action, as proposed by the Council, included a large 30-day GB closure area off Cape Cod. The Council intended that this closure area would be effective, if possible, in June 1999 but recognized that the measure might be implemented in July 1999. Analysis for both months was included in the documentation for the action and showed that a closure in June 1999 was expected to reduce mortality of GB cod by about 11 percent, and by 8 percent for a July 1999 closure. This option was selected based on an optimistic assumption of no effort displacement occurring as the result of a 30-day closure. An alternative option, which simulated possible displacement, showed a 2.7 percent mortality reduction from a June 1999 closure, and less than 2.7 percent for July 1999.

Because implementation of this action could not occur within the months analyzed in the framework documents, the GB closure provision is disapproved since the conservation basis for the closure diminishes with time as concentrations of cod disperse after the spring spawning period.

The effect of this disapproval is that the 22–percent reduction of F for GB cod will need to be achieved solely by the daily landing limit and possession limit, which may have to be reduced by the RA sooner in the absence of an area closure. However, if displacement would have been extensive during a June or July 1999 closure, then most of the reduction of F would have still been accomplished by the daily landing limit and possession limit. Because larger offshore vessels tend to be affected more by a daily landing limit, and small inshore vessels by inshore area closures, the differential impact on these sectors may be changed, at least slightly.

Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings, at which public comments are accepted. The Council must provide the public with advance notice of both the framework proposals and the associated analyses, and provide an opportunity to comment on them specifically, prior to and at the second Council meeting. Upon review of the analyses and public comments, the Council may recommend to the Regional Administrator that the measures be published as a final rule, or as a proposed rule, if additional public comment is necessary.

The initial and final meetings for Framework 27 were on December 10, 1998, and January 27-28, 1999, respectively. During these meetings the Council focused its efforts on developing measures to reduce fishing effort on GOM cod, which the best scientific information available indicated was collapsing. To avoid any delay in implementing management measures to protect GOM cod, the Council initiated Framework 30 to address GB cod. The initial and final meetings for Framework 30 were February 24-25, 1999, and April 14-15, 1999, respectively. The Council's Groundfish Committee and Industry Advisory Panel also held meetings and took public comment on the proposals on March 22 and 23, 1999, respectively.

At the joint meeting of the committee and advisory panel, which followed the initial framework meeting, the Council received a new proposal for GB cod from a group of fishing industry representatives. Because the industry proposal was in the preliminary stages of development, the Council decided that it could not delay further the implementation of GB cod protection measures and continued development of Framework 30.

Comments and Responses

Documents summarizing the Council's proposed action and the analysis of biological, economic, and social impacts of this and alternative actions were available for public review 1 week prior to the final meeting, as required under the framework adjustment process. Written comments were accepted up to and during that meeting.

Comment 1: Many members of the fishing industry, representing all of the major gear sectors, spoke out against the use of a daily landing limit because it would cause discards, be difficult and costly to enforce, and not necessarily produce the desired result.

Response: The Council considered a wide range of alternatives to achieve the FMP objective of a 22–percent reduction in F. It adopted the GB cod daily landing limit as a contingency measure, which is being implemented under this rule, since the alternative proposal contained in Framework 31 will not be voted on by the Council and submitted to NMFS by August 15, 1999. The Council originally selected August 15, 1999, as the anticipated date for Council approval and NMFS implementation of Framework 31 that would supersede the GB cod daily landing limit. The Council chose this measure because, unlike area closures and DAS reductions, the daily landing limit focuses the needed conservation restrictions on the vessels targeting cod, with minimal impact on vessels targeting other regulated species. The Council did not include a running clock provision, partly because of enforceability concern and the possibility that it would enable vessels to circumvent the conservation benefits of Framework 30. By including both a daily landing limit and a possession limit, the Council reduced the potential for discards, especially when vessels that exceed the daily landing limit can reduce the incidental catch of cod. The Council also provided authority to the Regional Administrator to adjust the daily landing limit and possession limit to reduce the risk of exceeding the target TAC.

Comment 2: Several members of the fishing industry, as well as representatives of an organization claiming at least 500 supporters, asked the Council to seek a closure of the multispecies fishery on GB in May, through emergency action by the Secretary of Commerce. The commenters expressed concern that not implementing such a measure prior to the June-July peak period of cod landings would result in a succession of more severe restrictions in the future to achieve the same reductions in F.

Response: The Council and NMFS determined that the present circumstances did not meet the requirements for an emergency action, and that the Council could not justify circumventing the normal framework process that allows all the affected public to comment on the alternatives and analysis of impacts. However, once it became apparent that the effective date of this action would not occur prior to mid-July, the conservation benefits accrued from the proposed GB closure no longer justified the administrative and industry burden associated with such a closure. Thus, this measure is disapproved. NMFS believes that the daily landing limit and possession limit and the adjustment mechanism implemented under this action will ensure that the 1999 fishing year target TAC is not exceeded.

Comment 3: Members of the affected fishing industry and their representatives urged the Council to consider a plan developed through a number of meetings and an outreach program that included all gear sectors, as well as fish processors and dealers. This plan called for a mandatory 30-day block of time out of the multispecies fishery during each quarter, reductions in the amount or size of gear fished, and an increase in the minimum size of cod.

Response: The Council agreed to consider this proposal and develop it as a separate framework adjustment, Framework 31. If Framework 31 had been adopted and implemented when the Council originally intended, it would have superseded the GB cod limits scheduled to take effect on August 15, 1999, under Framework 30. However, at the final meeting for Framework 31, on May 26–27, 1999, a review of the analysis indicated that the proposal may not achieve the intended goals. Thus, no further action was taken to approve Framework 31.

Comment 4: Several members of the fishing communities on Cape Cod stated that the alternatives under consideration by the Council would impact

disproportionately small, inshore vessels and their homeport communities.

Response: A large GB closure would have had a disproportionate impact on small, inshore vessels that fish out of Cape Cod ports due to the inability of some of these vessels to travel beyond the closure to fish elsewhere during the closure period. As noted above, this portion of the framework has been disapproved.

Classification

In accordance with the framework procedures, the public already received prior notice and an opportunity to comment on the measures in this rule. Comments received from the public are summarized and responded to in the preamble of this rule. Pursuant to 5 U.S.C. 553(b)(B), the AA finds for good cause that providing additional prior notice and opportunity for public comment is impracticable and contrary to the public interest in the conservation and sustainable use of the GB cod resource. Additional prior notice and opportunity for comment would reduce the chances of achieving the 22 percent reduction in F needed to meet rebuilding targets of this overfished stock in a timely manner, to allow for the sustainable use of GB cod.

Pursuant to 5 U.S.C. 553(d)(3), the AA finds good cause to waive the normally required 30-day delay in the effective date. Immediate implementation of this final rule will decrease the need for more severe reductions in F associated with a later effective date and will reduce the risk of exceeding the target TAC. Fishermen will be notified of the new daily landing limit and possession limit via NOAA weather radio, Coast Guard announcements, and letters to permit holders. In addition, industry has planned its GB cod fishing activities on the expectation that the daily landing limit and possession limit will start on August 15, 1999, as proposed by the Council. A later effective date would therefore disrupt the fishery and fishery-dependent communities.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Consequently, no regulatory flexibility analysis has been prepared. Nevertheless, the socioeconomic impacts on affected small entities, as well as alternatives to mitigate such impacts, were considered in the regulatory impact review contained in the supporting analyses for Framework 30.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 27, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, the definition for "Pelagic hook or longline gear" is removed, and the definitions for "Pelagic hook and line gear" and "Pelagic longline gear" are added, in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Pelagic hook and line gear means handline or rod and reel gear that is designed to fish for, or that is being used to fish for, pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time.

Pelagic longline gear means fishing gear that is not fixed, nor designed to be fixed, nor anchored to the bottom and that consists of monofilament main line (as opposed to a cable main line) to which gangions are attached.

* * * * *

3. In § 648.14, paragraphs (c)(19), (c)(23), and (c)(24) are revised, and a new paragraph (c)(26) is added, to read as follows:

§ 648.14 Prohibitions.

(c) * * *

(19) Fail to comply with the exemption specifications as described in § 648.86(b)(4).

* * * * *

(23) Fail to enter port and call-out of the DAS program no later than 14 DAS after starting a multispecies DAS trip (i.e., the time a vessel leaves port or when the vessel received a DAS authorization number, whichever comes first), as specified in § 648.10(f)(3), unless otherwise specified in § 648.86(b)(1)(ii), or unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4).

(24) Enter port, while on a multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1)(i) without reporting the cod hail weight, unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4).

* * * * *

(26) Fish for, land or possess cod in excess of the cod trip landings and/or maximum possession limits specified in or pursuant to § 648.86(b)(2).

* * * * *

4. In § 648.80, paragraph (a)(2)(iv) is revised to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

(a) * * *

(2) * * *

(iv) *Rockhopper and roller gear restrictions.* For all trawl vessels fishing in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers must not exceed 12 inches (30.48 cm). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

* * * * *

5. In § 648.81, paragraphs (a)(2)(ii) and (i)(2) are revised to read as follows:

§ 648.81 Closed areas.

(a) * * *

(2) * * *

(ii) Fishing with or using pelagic longline gear or pelagic hook and line gear or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies; or

* * * * *

(i) *Western GOM Area Closure.* * * *

(2) Paragraph (i)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (g)(2)(ii) or (iii) of this section.

* * * * *

6. In § 648.86, paragraph (b)(1) heading and the first sentence of paragraph (b)(1)(i) are revised, paragraph (b)(2) is redesignated as paragraph (b)(4), and a new paragraph (b)(2) is added to read as follows:

§ 648.86 Landing and possession restrictions.

* * * * *

(b) * * * (1) *Gulf of Maine Cod Landing Limit.* (i) Except as provided in paragraphs (b)(1)(ii) and (b)(4) of this section, and subject to the cod landing limit call-in provision specified at § 648.10(f)(3)(i), a vessel fishing under a NE multispecies DAS may land up to 200 lb (90.7 kg) of cod per DAS, or any part of a DAS, unless otherwise specified in this paragraph. * * *

* * * * *

(2) *Georges Bank Cod Landing and Maximum Possession Limits.* For the 1999 fishing year, beginning August 15, 1999, and,

(i) For each fishing year thereafter, beginning on May 1, a vessel that is exempt from the landing limit described in paragraph (b)(1) of this section fishing under a NE multispecies DAS may land only up to 2,000 lb (907.2 kg) of cod per DAS, or any part of a DAS, up to a maximum possession limit of 20,000 lb (9,071.8 kg) per trip, unless otherwise specified pursuant to paragraph (b)(2)(ii) of this section. The vessel must have a standard tote on board. Cod on board a vessel subject to these landing and maximum possession limits must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) When the Regional Administrator projects that 75 percent of the target TAC will be harvested (8.9 million lb (4,012 mt) for the 1999 fishing year), NMFS may publish a notification in the **Federal Register** that, as of a specific date, the landing and/or maximum possession limits specified in paragraph (b)(2) of this section are reduced to a level calculated to keep landings below the target TAC based on the risk of exceeding the target TAC. Cod on board a vessel subject to these landings and maximum possession limits must be separated from other species of fish and stored so as to be readily available for inspection.

(iii) Paragraph (b)(2)(i) of this section notwithstanding, between January 1, and April 30 of each fishing year, if the Regional Administrator projects that less than 75 percent of the target TAC (8.9 million lb (4,012 mt) for the 1999 fishing year) will be harvested by April 30, of the fishing year, NMFS may publish a notification in the **Federal Register** that, as of a specific date, the landings and/or maximum possession limits are increased to the amount that the Regional Administrator projects will be sufficient to allow harvesting of up to 8.9 million lb (4,012 mt) for the 1999 fishing year by April 30, 2000.

* * * * *

[FR Doc. 99–19850 Filed 7–29–99; 4:00 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 148
Tuesday, August 3, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–271–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped with Rolls Royce Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes. This proposal would require repetitive inspections to detect wire chafing of the left and right engine fuel shutoff valve wire bundles at Power Plant Station 278 on each engine strut, and repair if necessary. This proposal would also require repetitive replacement of three wire support brackets with improved wire support brackets. This proposal is prompted by reports that such wire support brackets failed due to fatigue, which subsequently caused the fuel shutoff valve wire to chafe and to experience a short circuit. The actions specified by the proposed AD are intended to prevent such conditions, which could result in either the possible ignition of fuel vapors in a flammable leakage zone or in the inability to stop the flow of fuel in the event of an engine fire.

DATES: Comments must be received by September 17, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 8–NM–271–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–271–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–271–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that one operator has experienced several incidents of "tripped" circuit breakers. These circuit breakers are part of the electrical circuit that controls the activation of the engine fuel shutoff valves. Later investigation revealed that the brackets that support the engine fuel shutoff valve wire bundle had failed due to fatigue. The bracket failures allowed a fuel shutoff wire bundle to chafe against the hole through which the wire bundle passes. The chafing of the wire bundle eventually resulted in exposure of an electrical conductor. This in turn led to a short circuit, after which the affected engine fuel valve shutoff circuit became disabled. The brackets are located at Power Plant Station 278, which is located in an area of the strut that is considered to be a "flammable leakage zone." This condition, if not corrected, could result in either the possible ignition of fuel vapors in a flammable leakage zone or in the inability to stop the flow of fuel in the event of an engine fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 757–54–0013, Revision 3, dated October 23, 1997, which describes procedures for repetitive inspections of the wire support brackets to detect fatigue cracking, and corrective actions if necessary. The service bulletin also describes procedures for replacing the existing brackets with new, improved brackets. Such replacement would eliminate the need to continue performing the repetitive inspections specified above. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that the service bulletin does not specify compliance times for accomplishing the initial and repeat inspections of the wire support brackets, nor does it specify a compliance time for replacing these brackets. The FAA has determined that a 12-month initial inspection compliance time and a repetitive inspection interval that is not to exceed 12 months would address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification.

In addition, Boeing has failed to establish the expected fatigue life of the new, improved wire support brackets to the FAA's satisfaction. The brackets installed per Revision 3 to the service bulletin are the latest of three designs, each of which was intended to correct the problem of bracket failure. However, both of the two previous bracket designs installed per earlier revisions to the service bulletin also proved to be susceptible to fatigue failure. Thus, because this design feature was historically prone to failure, this proposed AD would require that the wire support brackets installed in accordance with Revision 3 of the service bulletin be replaced at 12-month intervals—i.e., at the same time the wire bundles are inspected. This interval is shorter than the actual life of the previously failed brackets.

Operators also should note that this proposed AD would require operators to replace all three wire support brackets on each strut of all affected airplanes, whereas the service bulletin recommends that operators replace brackets on only certain airplanes. The proposed AD would require more replacements because the expected fatigue life of the bracket is not well established.

Finally, operators should note that, for the reason given above, this proposed AD would require inspections of the wire bundles that pass through the three wire support brackets on each strut to detect wire chafing, whereas the service bulletin recommends inspection only if a wire support bracket is cracked or broken.

Cost Impact

There are approximately 501 airplanes of the affected design in the worldwide fleet. The FAA estimates that 249 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 6 work hours per airplane to accomplish the proposed replacement and approximately 2 work hours to accomplish the proposed inspection. The average labor rate is estimated to be $60 per work hour. Required parts would cost approximately $525 per airplane per replacement cycle. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $250,245, or $1,005 per airplane, per inspection/replacement cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98–NM–271–AD.

Applicability: Model 757 series airplanes equipped with Rolls Royce engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short circuit that could result in either the possible ignition of fuel vapors in a flammable leakage zone or in the inability to stop the flow of fuel in the event of an engine fire, accomplish the following:

Corrective Action

(a) Within 12 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD. Thereafter, repeat paragraphs (a)(1) and (a)(2) at intervals not to exceed 12 months.

(1) Accomplish a detailed visual inspection of the wire bundles that pass through the three wire support brackets located at Power Plant Station (PPS) 278 on each engine strut, to detect wire chafing.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Replace all three existing wire support brackets located at PPS 278 on each engine strut with improved wire support brackets, in accordance with Boeing Service Bulletin 757–54–0013, Revision 3, dated October 23, 1997.

(b) During any inspection performed in accordance with paragraph (a) of this AD, if

any wire bundle is found to be chafed, prior to further flight, repair the wire bundle in accordance with the Boeing Standard Wiring Practices Manual, Document D6–54446, Revision 23, dated August 1998.

Spares Paragraph

(c) As of the effective date of this AD, no person shall install a wire support bracket having P/N 287N1112–8, –9, –20, or –21 on any airplane.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 27, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–19810 Filed 8–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–270–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR42 series airplanes. This proposal would require a revision to the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate inspections to detect fatigue cracking in certain structure, inspection intervals, and life limits for certain items. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to ensure that fatigue cracking of certain structural elements is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

DATES: Comments must be received by September 17, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–270–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–270–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–270–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on Aerospatiale Model ATR42 series airplanes. The DGAC advises that analysis of fatigue test data has revealed that certain inspections must be performed at specific intervals to preclude fatigue cracking in certain areas of the airplane. Additionally, the DGAC advises that certain life limits must be imposed for various components on these airplanes to preclude the onset of fatigue cracking in those components.

Fatigue cracking of certain structural elements, if not detected and corrected in a timely manner, could adversely affect the structural integrity of these airplanes.

Description of Service Information

Aerospatiale has issued ATR42 Maintenance Planning Document (MPD), "Time Limits," Revision 2, dated January 1997, which includes the following:

1. Life limit times for certain structural components or parts of the nose landing gear, the main landing gear, the main landing gear support structure, engine components, and various equipment.
2. Structural inspection times to detect fatigue cracking of certain Structural Significant Items (SSI's).

Performing the specified structural inspections will identify fatigue cracking, and revising the component life limits will preclude the onset of fatigue cracking of certain structural elements of the airplane.

The French DGAC has classified Revision 2 of the Time Limits section of the Aerospatiale Model ATR42 Maintenance Planning Document, dated January 1997, as mandatory, and issued French airworthiness directive 95–104–060 (B), dated May 24, 1995, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the French DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Description of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a revision to the Airworthiness Limitations Section of the Instructions for Continued Airworthiness [Aerospatiale refers to this as the maintenance planning document (MPD)] to incorporate inspections to detect fatigue cracking of certain SSI's and to revise life limits for certain equipment and various components that are specified in the Time Limits section of the ATR42 Airworthiness Limitations of the Maintenance Planning Document, Revision 2, dated January 1997.

Explanation of Action Taken by the FAA

In accordance with airworthiness standards requiring "damage tolerance assessments" [reference current section 1529 of parts 23, 25, 27, and 29 of the Federal Aviation Regulations (FAR); section 4 of parts 33 and 35 of the FAR; section 82 of part 31 of the FAR; and the Appendices referenced in those sections], all products certificated to comply with those sections must have Instructions for Continued Airworthiness (or, for some products, maintenance manuals), that include an Airworthiness Limitations Section. That section must set forth:

- Mandatory replacement times for structural components,
- Structural inspection intervals, and
- Related approved structural inspection procedures necessary to show compliance with the damage-tolerance requirements.

Compliance with the terms specified in the Airworthiness Limitations Sections is required by sections 43.16 (for persons maintaining products) and 91.403 (for operators) of the FAR.

In order to require compliance with these inspection intervals and life limits, the FAA must engage in rulemaking, namely the issuance of an AD. For products certificated to comply with the referenced part 25 requirements, it is within the authority of the FAA issue an AD requiring a revision to the Airworthiness Limitations Section that includes reduced life limits, or new or different structural inspection requirements. These revisions then are mandatory for operators under section 91.403(c) of the FAR, which prohibits operation of an airplane for which Airworthiness Limitations have been issued unless the inspection intervals specified in those limitations have been complied with.

Once that document is revised, as required, and the AD has been fully complied with, the life limit or structural inspection change remains enforceable as a part of the Airworthiness Limitations. (This is analogous to AD's that require changes to the Limitations Section of the Airplane Flight Manual.)

Requiring a revision of the Airworthiness Limitations, rather than requiring individual inspections, is advantageous for operators because it allows them to record AD compliance status only once—at the time they make the revision—rather than after every inspection. It also has the advantage of keeping all Airworthiness Limitations, whether imposed by original certification or by AD, in one place within the operator's maintenance program, thereby reducing the risk of non-compliance because of oversight or confusion.

Cost Impact

There are approximately 291 Aerospatiale Model ATR42 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 106 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,360 or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 97–NM–270–AD.

Applicability: All Model ATR42 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not

been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness in accordance with Section 9, "Time Limits," of the ATR42 Maintenance Planning Document, Revision 2, dated January 1997. This may be accomplished by inserting a copy of Section 9, "Time Limits," of the ATR42 Maintenance Planning Document, Revision 2, dated January 1997, into the Airworthiness Limitations Section of the Instructions for Continued Airworthiness.

(b) Except as provided in paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 95–104–060 (B), dated May 24, 1995.

Issued in Renton, Washington, on July 27, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–19809 Filed 8–2–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–273–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR72 series airplanes. This proposal would require a revision to the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate inspections to detect fatigue cracking in certain structure, inspection intervals, and life limits for certain components. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to ensure that fatigue cracking of certain structural elements are detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

DATES: Comments must be received by September 17, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–273–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–273–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–273–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on Aerospatiale Model ATR72 series airplanes. The DGAC advises that analysis of fatigue test data has revealed that certain inspections must be performed at specific intervals to preclude fatigue cracking in certain areas of the airplane. Additionally, certain life limits must be imposed for various components on these airplanes to preclude the onset of fatigue cracking in those components.

Fatigue cracking of certain structural elements, if not detected and corrected in a timely manner, could adversely affect the structural integrity of these airplanes.

Description of Service Information

Aerospatiale has issued ATR72 Maintenance Planning Document (MPD), "Time Limits," Revision 1, dated February 1996, which includes the following:

1. Life limit times for certain structural components or parts of the nose landing gear, the main landing gear, the main landing gear support structure, engine components, and various equipment. And

2. Structural inspection times to detect fatigue cracking of certain Structural Significant Items (SSI's).

Performing the specified structural inspections will identify fatigue cracking, and revising the component life limits will preclude the onset of fatigue cracking of certain structural elements of the airplane.

The French DGAC has classified Revision 1 of the Time Limits section of the Aerospatiale Model ATR72 Maintenance Planning Document, dated February 1996, as mandatory, and has issued French airworthiness directive 95–105–026(B), dated May 24, 1995, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the French DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Description of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a revision to the Airworthiness Limitations Section of the Instructions for Continued Airworthiness [Aerospatiale refers to this as the maintenance planning document (MPD)] to incorporate inspections to detect fatigue cracking of certain SSI's. The proposed AD also would revise life limits for certain equipment and various components that are specified in the Time Limits section of the ATR72 Airworthiness Limitations of the Maintenance Planning Document, dated February 15, 1996.

Explanation of Action Taken by the FAA

In accordance with airworthiness standards requiring "damage tolerance assessments" [reference current section 1529 of parts 23, 25, 27, and 29 of the Federal Aviation Regulations (FAR); section 4 of parts 33 and 35 of the FAR; section 82 of part 31 of the FAR; and the Appendices referenced in those sections], all products certificated to comply with those sections must have Instructions for Continued Airworthiness (or, for some products, maintenance manuals), that include an Airworthiness Limitations Section. That section must set forth:

- Mandatory replacement times for structural components,
- Structural inspection intervals, and
- Related approved structural inspection procedures necessary to show compliance with the damage-tolerance requirements.

Compliance with the terms specified in the Airworthiness Limitations Sections is required by sections 43.16 (for persons maintaining products) and 91.403 (for operators) of the FAR.

In order to require compliance with these inspection intervals and life limits, the FAA must engage in rulemaking, namely the issuance of an AD. For products certificated to comply with the referenced part 25 requirements, it is within the authority of the FAA to issue an AD requiring a revision to the Airworthiness Limitations Section that includes reduced life limits, or new or different structural inspection requirements. These revisions then are mandatory for operators under section 91.403(c) of the FAR, which prohibits operation of an airplane for which Airworthiness Limitations have been issued unless the inspection intervals specified in those limitations have been complied with.

Once that document is revised, as required, and the AD has been fully complied with, the life limit or structural inspection change remains enforceable as a part of the Airworthiness Limitations. (This is analogous to AD's that require changes to the Limitations Section of the Airplane Flight Manual.)

Requiring a revision of the Airworthiness Limitations, rather than requiring individual inspections, is advantageous for operators because it allows them to record AD compliance status only once—at the time they make the revision—rather than after every inspection. It also has the advantage of keeping all Airworthiness Limitations, whether imposed by original certification or by AD, in one place within the operator's maintenance program, thereby reducing the risk of non-compliance because of oversight or confusion.

Cost Impact

There are approximately 173 Aerospatiale Model ATR72 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,340, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 97–NM–273–AD.

Applicability: All Model ATR72 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness in accordance with Section 9, "Time Limits," of the ATR72 Maintenance Planning Document, Revision 1, dated February 1996. This may be accomplished by inserting a copy of Section 9, "Time Limits," of the ATR72 Maintenance Planning Document, Revision 1, dated February 1996, into the Airworthiness Limitations Section of the Instructions for Continued Airworthiness.

(b) Except as provided in paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 95–105–026 (B), dated May 24, 1995.

Issued in Renton, Washington, on July 27, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–19808 Filed 8–2–99; 8:45 am]

BILLING CODE 4910–13–U

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 98–5]

RIN 3014–AA16

Americans With Disabilities Act Accessibility Guidelines; Recreation Facilities; Extension of Comment Period and Public Hearing

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of proposed rulemaking; extension of comment period and public hearing.

SUMMARY: On July 9, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a Notice of Proposed Rulemaking to amend the Americans with Disabilities Act Accessibility Guidelines by adding provisions for newly constructed and altered recreation facilities that are not adequately addressed by the existing guidelines. The comment period was originally scheduled to close on November 8, 1999 during which time one public hearing was scheduled. The Access Board is extending the comment period an additional 30 days to allow for a second public hearing.

DATES: Comments should be received by December 8, 1999. The Access Board will hold public hearings on the proposed rule on August 26, 1999 from 9:00 a.m. to 3:00 p.m and on November 17, 1999 from 9:30 a.m. to 4:00 p.m.

ADDRESSES: Comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Fax number (202) 272–5447. E-mail comments should be sent to recreate@access-board.gov. Comments sent by e-mail will be considered only if they include the full name and address of the sender in the text. Comments will be available for inspection at the above address from 9:00 a.m. to 5:00 p.m. on regular business days.

The public hearing on August 26, 1999 will be held at the Hyatt Regency, 300 Reunion Boulevard in Dallas, Texas. The public hearing on November 17, 1999 will be held at the World Trade Center, 164 Northern Avenue, Room 306, Boston, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 34 (Voice); (202) 272–5449 (TTY). These are not toll-free numbers. E-mail address: greenwell@access-board.gov.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of the proposed rule may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 1 on the telephone keypad, then 1 again, and requesting publication S–37 (Recreation Facilities Notice of Proposed Rulemaking). Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication S–37. The proposed rule is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or computer disk). The proposed rule is also available on the Access Board's Internet site (http://www.access-board.gov/rules/recnprm.htm).

Extension of Comment Period and Public Hearing

On July 9, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a Notice of Proposed Rulemaking to amend the Americans with Disabilities Act Accessibility Guidelines (ADAAG) by adding a new special application section for newly constructed and altered recreation facilities that are not adequately addressed by the existing guidelines. 64 FR 37326 (July 9, 1999). The new section covers amusement rides, boating facilities, fishing piers and platforms, golf courses, miniature golf, exercise equipment and machines, bowling lanes, shooting ranges, swimming pools, wading pools, and spas. The proposed rule also amends several existing ADAAG provisions to specifically address certain recreation facility features and adds provisions for saunas and steam rooms, and benches.

Finally, the proposed rule adds a provision for boat and ferry docks.

The comment period was originally scheduled to close on November 8, 1999 during which time one public hearing was scheduled. To facilitate substantive public review of the proposed rule, the Access Board is extending the comment period an additional 30 days to allow for a second public hearing.

Interested members of the public may contact the Access Board at (202) 272–5434 extension 18 or (202) 272–5449 (TTY) to preregister to give testimony or may register on the day of the hearings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 99–19798 Filed 8–2–99; 8:45 am]

BILLING CODE 8150–01–P

FEDERAL MARITIME COMMISSION

46 CFR Part 535

[Docket No. 99–13]

The Content of Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Maritime Commission is issuing this Inquiry to solicit comments concerning the appropriate content of agreements filed with the Commission pursuant to the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998. The comments received will assist the Commission in preparing a proposal to update or refine the existing content standards.

DATES: Submit comments on or before October 4, 1999.

ADDRESSES: Address all comments concerning this Inquiry to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol St., N.W., Room 1046, Washington, D.C. 20573–0001.

FOR FURTHER INFORMATION CONTACT:

Florence A. Carr, Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001, (202) 523–5787

Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol St., N.W., Washington, D.C. 20573–0001, (202) 523–5740

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission") is seeking comments from interested parties regarding possible changes to its rules that govern the content of ocean common carrier and marine terminal operator agreements filed with the Commission. This proceeding is being initiated in response to the suggestions of several commenters in a recent rulemaking, Docket No. 98–26, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984*, 64 FR 11236 (March 8, 1999), urging the Commission to address, by rule, the issue of what is required to be included in agreements subject to the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* ("1984 Act"), as amended by the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902 ("OSRA").

Effective May 1, 1999, in Docket No. 98–26, the Commission amended its rules governing agreements among ocean common carriers and marine terminal operators to reflect changes made to the 1984 Act by OSRA. As part of that proceeding, the Commission also eliminated some agreement form and manner requirements that had previously been in effect. The Commission stated, however, that the elimination of the form and manner requirements had no substantive effect on the content requirements for agreements. Rather, the Commission retained the content requirements, which mirror section 5(a) of the 1984 Act, which section was not changed by OSRA. Section 5(a) requires that "a true copy of every agreement entered into with respect to any activity described in section 4 (a) or (b) of this Act shall be filed with the Commission. * * *" 46 U.S.C. app. 1704(a).

Section 4, as amended by OSRA, describes the agreements that are within the scope of the 1984 Act. Section 4(a) applies to agreements by or among ocean common carriers to

(1) discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;

(2) pool or apportion traffic, revenues, earnings, or losses;

(3) allot ports or restrict or otherwise regulate the number and character of sailings between ports;

(4) limit or regulate the volume or character of cargo or passenger traffic to be carried;

(5) engage in exclusive, preferential, or cooperative working arrangements among themselves or with one or more marine terminal operators;

(6) control, regulate, or prevent competition in international ocean transportation; or

(7) discuss and agree on any matter related to service contracts.

46 U.S.C. app. 1703(a).

Section 4(b) applies to agreements among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers to

(1) discuss, fix, or regulate rates or other conditions of service; or

(2) engage in exclusive, preferential, or cooperative working arrangements, to the extent that such agreements involve ocean transportation in the foreign commerce of the United States.

46 U.S.C. app. 1703(b).

The Commission's rules governing agreements echo the requirement in section 5(a) of the 1984 Act that agreements filed with the Commission must be true and complete. 46 CFR 535.103(g) provides:

> An agreement filed under the Act must be clear and definite in its terms, must embody the complete understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their present operations and regulate the relationships among the agreement members.

Similarly, 46 CFR 535.407(a) states:

> Any agreement required to be filed by the Act and this part shall be the complete agreement among the parties and shall specify in detail the substance of the understanding of the parties.

In comments filed in Docket No. 98–26, a number of carrier commenters expressed concerns that elimination of form and manner requirements could create uncertainty as to what substantive content should be included in filed agreements. The Commission rejected these arguments; however, it further determined that it would institute a subsequent rulemaking proceeding on the issue of the content of filed agreements in response to requests from a nearly unanimous carrier community. The carrier commenters sought more specific requirements as to what matters do or do not have to be filed. They also suggested that the Commission's rules should provide protections for confidential business information, provide maximum flexibility for carriers to modify cooperative arrangements without overly burdensome filing requirements or waiting periods, and possibly include guidance tailored for different types of arrangements. 64 FR at 11238–9.

At this juncture, the Commission is undertaking a review of its existing agreement content regulations to determine whether, and in what manner, they should be updated or refined. Comments received in response to this Inquiry will assist the

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Commission in fashioning a notice of proposed rulemaking reflecting the evolving shipping industry and the Commission's statutory mission.

Commenters are free to address any issue relevant to the agreement content rules. In addition, set forth below are questions suggesting particular areas of concern or focus for the Commission:

1. Should the current filing exemption for routine operational or administrative matters be eliminated, retained in its current form, or modified? If so, describe how.

2. If parties were required to file every arrangement or understanding among themselves that came within the scope of section 4 (including all operational or administrative matters), would they be subject to commercial harm or burden? If so, describe in detail (providing copies of and using as many specific examples as possible of) actual arrangements or understandings for which filing would give rise to such burdens or harm; explain (and where possible, quantify) exactly what such burdens would be.

3. Should the Commission adopt different standards for agreement content for different types of agreements, i.e., would it be appropriate to tailor content rules to rate agreements (conferences and rate discussion agreements) vis-a-vis operational agreements (alliances and space/vessel charter arrangements)?

4. Are there types of agreements currently filed with the Commission that would be appropriate for exemption from filing under the standard set forth in section 16 of the Act, i.e., the filing exemption will not result in a substantial reduction in competition or be detrimental to commerce? Exemptions may be either partial (e.g., eliminating waiting periods, or requiring notification in lieu of filing) or complete.

5. Should the rates charged by one carrier to another for use of space and/or vessels be exempt from filing or withheld from public disclosure?

6. Is public disclosure of agreements filed with the FMC useful to shippers, intermediaries, labor, non-party carriers, marine terminal operators, or other interested persons? If so, describe in detail the types of agreements and information used, and why the disclosure of such information is useful.

7. Given the public notice requirement of section 6 of the 1984 Act, can the Commission implement measures to protect commercially sensitive information contained in agreements?

8. How are competing concerns of completeness, burden, and confidentiality resolved in the filing requirements of other regulatory authorities, including antitrust and sector specific agencies?

Now therefore, It is ordered that this Notice of Inquiry be published in the **Federal Register**.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–19847 Filed 8–2–99; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF42

Endangered and Threatened Wildlife and Plants; Proposal To Remove the Aleutian Canada Goose From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (we) proposes to remove the Aleutian Canada goose (*Branta canadensis leucopareia*), currently listed as threatened, from the list of endangered and threatened wildlife. Current data indicate that the population of Aleutian Canada goose in North America has recovered. This recovery has primarily been the result of four activities: the removal of introduced Arctic foxes (*Alopex lagopus*) from some of its nesting islands; the release of captive-reared and wild, translocated family groups of geese to fox-free islands to establish new breeding colonies; protection of the Aleutian Canada goose throughout its range from mortality due to hunting; and protection and management of migration and wintering habitat. Removal from the list of Endangered and Threatened Wildlife would result in elimination of regulatory protection offered by the Endangered Species Act of 1973, as amended (Act) but would not affect protection provided to the subspecies by the Migratory Bird Treaty Act. Section 4(g) of the Act requires us to implement a system in cooperation with the States to monitor a recovered species for at least 5 years following delisting. This proposal includes a draft monitoring plan that may be implemented if the Aleutian Canada goose is delisted as proposed.

DATES: Comments from all interested parties must be received by November 1, 1999. Requests for a public hearing must be received by September 17, 1999.

ADDRESSES: Comments and information concerning this proposal should be sent to Ann Rappoport, U.S. Fish and Wildlife Service, 605 West 4th Avenue, Room G–62, Anchorage, Alaska 99501. Comments and information received will be available for inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ann Rappoport, at the above address (907) 271–2787, or Greg Balogh, U.S. Fish and Wildlife Service, 605 West 4th Avenue, Room G–62, Anchorage, Alaska 99501, (907) 271–2778.

SUPPLEMENTARY INFORMATION:

Background

The Aleutian Canada goose is a small, island-nesting subspecies of Canada goose. Morphologically (in form), it resembles other small Canada goose subspecies, but nearly all Aleutian Canada geese surviving past their first winter have a distinct white neck ring at the base of a black neck. Other distinguishing characteristics include an abrupt forehead, separation of the white cheek patches by black feathering along the throat, and a narrow border of dark feathering at the base of the white neck ring. The Aleutian Canada goose is the only subspecies of Canada goose whose range once included both North America and Asia (Amaral 1985). It formerly nested in the northern Kuril and Commander Islands, in the Aleutian Archipelago and on islands south of the Alaska Peninsula east to near Kodiak Island. The species formerly wintered in Japan, and in the coastal western United States south to Mexico. Delacour (1954) considered coastal British Columbia within the former wintering range of this subspecies; however, there are no bona fide records of Aleutian Canada geese from this area (P. Springer, pers. comm.).

The decline of the Aleutian Canada goose was primarily the result of the introduction of Arctic foxes (*Alopex lagopus*) and, to a lesser extent, red foxes (*Vulpes vulpes*) to its breeding islands for the purpose of developing a fur industry. Between 1750 and 1936, Arctic and red foxes were introduced to more than 190 islands within the breeding range of the Aleutian Canada goose in Alaska (Bailey 1993). Several life cycle stages of the goose, including eggs, goslings and flightless, molting geese are vulnerable to predation by foxes. The decrease of Aleutian Canada geese on Agattu Island between 1906, when they were termed the most abundant bird (Clark 1910), and 1937, when only a few pairs were observed (Murie 1959), attests to the precipitous nature of their decline. At the time of its listing as endangered in 1967, its known breeding range was limited to Buldir Island, a small, isolated island in the western Aleutian Islands. There is a record that Arctic foxes were introduced to Buldir Island in 1924, but this is either incorrect or the introduction failed to establish a population (Bailey 1993).

Hunting throughout its range in the Pacific Flyway, especially on the migration and wintering range in California, and loss and alteration of habitat on its migration and wintering range also contributed to the subspecies' decline. Hunting was likely a limiting factor when populations were low.

In response to reduced population levels, we classified the Aleutian Canada goose as endangered on March 11, 1967 (32 FR 4001). Congress afforded additional protection with passage of the Endangered Species Act of 1973. We approved a recovery plan for the Aleutian Canada goose in 1979 and revised it in 1982 and 1991 (Byrd et al. 1991). We began recovery activities in 1974. Important features of the recovery program in Alaska and the western U.S. included: banding of birds on the breeding grounds to identify important wintering and migration areas; closure of principal wintering and migration areas to hunting of all Canada geese; acquisition, protection and management of important wintering and migration habitat; removal of foxes from potential nesting islands; propagation and release of captive Aleutian Canada geese on fox-free nesting islands in the Aleutians; and translocation of molting family groups of wild geese from Buldir Island to other fox-free islands in the Aleutians.

At the time of its listing, we based population estimates of Aleutian Canada geese on limited data. Boecker (in Kenyon 1963) speculated during a 1963 expedition that only 200–300 birds were on Buldir Island. We believed breeding birds to be confined to that one island, and the migration routes and wintering range were unknown. A spring count at a principal migration stopover near Crescent City, California in 1975 revealed only 790 individuals (Springer et al. 1978).

We subsequently found small breeding groups of Aleutian Canada geese on Kiliktagik Island in the Semidi Islands south of the Alaska Peninsula in 1979 (Hatch and Hatch 1983), and on Chagulak Island in the central Aleutians in 1982 (Bailey and Trapp 1984). Geese from Chagulak Island are morphologically (in form) identical to those from the western Aleutians. Semidi Islands geese are morphologically similar to geese from the Aleutian Islands but tend to have darker breasts, more variable neck rings and a less distinct subtending line below the neck ring (D. Pitkin, Fish and Wildlife Service, pers. comm.). Genetic studies indicate that geese from both Chagulak Island and the Semidi Islands are more closely related to Aleutian Canada geese than other Canada goose subspecies (Shields and Wilson 1987; Pierson et al. 1998). We consider the Chagulak Island and Semidi Islands geese remnant populations of the previously more continuously distributed Aleutian Canada goose.

Marking of Aleutian Canada geese on Buldir Island beginning in 1974. and later on Chagulak Island and Kiliktagik Island, helped reveal their wintering range and migration routes. These marking studies indicate that there are two, relatively discrete breeding segments of Aleutian Canada geese—the Aleutian Islands segment, including birds from Chagulak Island and the western Aleutian Islands, and the Semidi Islands segment. A recent genetic study found that geese from the Semidi Islands are genetically distinct from geese from the Aleutian Islands, indicating limited contemporary gene flow and/or major shifts in gene frequency through genetic drift (the random change in gene frequencies in small populations due to chance) (Pierson et al. 1998).

Most Aleutian Canada geese that nest in the Aleutian Islands winter in California, primarily on agricultural lands where they feed on grass, waste beans, and grain, including corn and sprouting winter wheat (Woolington et al. 1979, Dahl 1995). They arrive on the wintering grounds in mid-October. Some geese stop in the Crescent City area in coastal northwest California, but most continue on to the vicinities of Colusa in the Sacramento Valley and Modesto in the northern San Joaquin Valley. The lands used by Aleutian Canada geese near Colusa, California are primarily privately owned farms and Reclamation District (local government) land. The 733-acre Butte Sink National Wildlife Refuge in the Colusa area is actively managed to attract geese and other waterfowl.

By mid-December nearly all Aleutian Canada geese are near Modesto where they winter primarily on two privately owned ranches and on the adjacent San Joaquin River National Wildlife Refuge. In previous years, a large proportion of geese from the Modesto area would periodically shift southward to the nearby Grassland Ecological Area near Los Banos and Gustine. The lands in the Grassland Ecological Area are owned by the Fish and Wildlife Service, State of California and private duck hunting clubs. Recently, up to several thousand geese have been using night roosts on private duck hunting clubs in this area.

Small numbers of Aleutian Canada geese from the Aleutian Islands stop near El Sobrante on lands owned by a public utility in north San Francisco Bay in late fall and early winter before continuing on to Modesto. The number of birds observed at El Sobrante has steadily declined in recent years from a high of 140 geese in 1985 to a low of 8 birds in 1997. Twenty-one Aleutian Canada geese were observed there in early 1998 (Dunne 1998). Small numbers of wintering Aleutian Canada geese have been occasionally observed in northwestern California near Crescent City, on the Humboldt Bay National Wildlife Refuge, and on the Eel River bottoms (P. Springer, pers. comm.). Six hundred Aleutian Canada geese wintered in the Crescent City area in 1998 (Fisher 1998).

Small numbers of Aleutian Canada geese also occasionally appear in other areas, especially during migration. The most frequent of these areas include Willapa Bay in south coastal Washington, the Willamette Valley in Oregon, and the Sacramento-San Joaquin Delta in San Francisco Bay, California. See Springer and Lowe (1998) for a more thorough discussion of the distribution of Aleutian Canada geese and factors affecting their distribution.

On the northward migration in spring, most Aleutian Canada geese stage near Crescent City, where the birds roost nightly on Castle Rock, an offshore island protected as a national wildlife refuge. Some geese also roost on nearby Prince Island, which is owned by the Tolowa Indians, and on Goat Rock, a unit of the Oregon Islands National Wildlife Refuge, just north of the California/Oregon border. During the day birds graze on privately owned farms in the Smith River bottoms and on lands owned and managed by the State of California. In recent years, Aleutian Canada geese have been departing the Crescent City area increasingly early in spring and spending several weeks feeding in privately owned pastures and in pastures managed by the Bureau of Land Management in the New River area in south coastal Oregon near the town of Langlois. These birds roost at night on offshore islands that are part of the Oregon Islands National Wildlife Refuge. In the spring of 1998, about 10,000 Aleutian Canada geese were

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observed in the Langlois area (Fisher 1998).

The small numbers of geese that breed in the Semidi Islands winter exclusively in coastal Oregon near Pacific City. These birds forage during the day on pastures at two privately owned dairies and roost at night on Haystack Rock in the Oregon Islands National Wildlife Refuge or on the ocean. Since fall, 1996, small numbers of geese that nest in the Aleutian Islands have wintered with the Semidi Islands geese in Oregon. In winter 1997/1998, about 20 geese from the Aleutians wintered with the Semidi Islands geese (D. Pitkin, U.S. Fish and Wildlife Service, pers. comm.).

An important component of the Recovery Plan, establishment of closed areas for hunting Canada geese, has contributed to the recovery of the Aleutian Canada goose. Six closed areas for Aleutian Canada geese currently exist, including: islands in Alaska west of Unimak Island, beginning in 1973; northwestern California, the Modesto area and the Colusa area, beginning in 1975; and the Pacific City area and central and south coastal Oregon beginning in 1982. Occasionally, hunters kill a few Aleutian Canada geese using habitats outside of the closed hunting areas.

Initial population increases of Aleutian Canada geese were likely in response to hunting closures in California and Oregon to protect the geese during migration and during winter. However, a substantial increase in numbers was dependent on re-establishing geese on former nesting islands. Release of captive-reared birds on fox-free islands in the Aleutians was largely unsuccessful due to low survival rates. Once the number of geese on Buldir Island was large enough, we initiated translocation of wild geese from Buldir Island to other fox-free islands. This approach was much more successful and the release of captive-reared birds was phased out.

As new breeding colonies became established in the Aleutian Islands, the number of Aleutian Canada geese increased rapidly. Annual rates of increase between 1975 and 1989 ranged from 6 to 35 percent, and by winter 1989/1990, the peak winter count reached 6,300 geese. We reclassified the Aleutian Canada goose from endangered to threatened in 1990 (55 FR 51106, December 12, 1990).

Summary of Previous Listing Actions

We first designated the Aleutian Canada goose as an endangered species in the United States on March 11, 1967 (32 FR 4001) under the Endangered Species Preservation Act of 1966 (Pub. L. 89–669, 80 Stat. 926). The Endangered Species Conservation Act of 1969 (Pub. L. 91–135, 83 Stat. 275), which replaced the 1967 law, authorized the listing of foreign species; the Aleutian Canada goose was included on the foreign species list (proposed April 14, 1979 (36 FR 6969); final June 2, 1970 (35 FR 8495)). We proposed the reclassification of the species from endangered to threatened status on September 29, 1989 (54 FR 40142) and finalized the reclassification on December 12, 1990 (55 FR 51106). On April 9, 1998 (63 FR 17350), we published a Notice of Status Review on the Aleutian Canada goose and notified the public of our intent to propose the removal of the species from the threatened species list.

Summary of Current Status

Since the subspecies was downlisted to threatened in 1990, the overall population of Aleutian Canada geese has sustained a strong increase in numbers. Table 1 summarizes peak counts and indirect population estimates of Aleutian Canada geese on the wintering grounds since the subspecies was downlisted in 1990. Peak counts are counts of the geese on the wintering grounds near Modesto, California, during early spring as they arrive at and leave their primary roosts at Castle Rock and Prince Island in northwestern California. Indirect counts are based on a ratio of marked to unmarked birds. (See Other Factors in Support of Delisting for a more detailed discussion of survey techniques). The most recent and highest population estimate of Aleutian Canada geese from the Aleutian Islands is of birds from their staging area near Crescent City in spring 1999. This preliminary estimate suggests that the Aleutian Canada goose population is now about 32,000 individuals (Table 1). Since 1990, the annual rate of growth of the population, based on peak counts of birds in California, has averaged about 20 percent. The overall annual growth rate of the population since recovery activities began in the 1970s has been about 14 percent (M. Fisher, U.S. Fish and Wildlife Service, pers. comm.).

TABLE 1.—PEAK COUNT AND INDIRECT ESTIMATES OF ALEUTIAN CANADA GEESE IN CALIFORNIA (ALEUTIAN ISLAND NESTING GEESE) AND NEAR PACIFIC CITY, OREGON (SEMIDI ISLANDS NESTING GEESE).

Year	California		Pacific City, OR
	Peak count	Indirect count	
1989/1990	6,300	.....	115
1990/1991	7,000	.....	128
1991/1992	7,800	.....	126
1992/1993	11,680	.....	132
1993/1994	15,700	.....	122
1994/1995	19,150	21,769	111
1995/1996	21,421	24,643	107
1996/1997	22,815	23,977	114
1997/1998	27,700	28,984	120
1998/1999	32,281	28,628	*120

*Preliminary estimate (D. Pitkin, U.S. Fish and Wildlife Service, pers. comm.).

The peak count of Semidi Island birds on their wintering grounds near Pacific City, Oregon, during both 1998 and 1999 was 115–120 (D. Pitkin, U.S. Fish and Wildlife Service, pers. comm.). Despite protection on both the breeding and wintering grounds, the Semidi Islands geese have sustained no growth since 1993 (Table 1). The reasons for this are not clear although counts from the wintering range in Oregon indicate poor recruitment in recent years.

Predictably, marked increases of geese on the wintering grounds are mirrored by similar increases on most breeding islands, although nesting geese are far more difficult to enumerate than those on wintering and migration habitat. At the time of their listing, we believed Aleutian Canada geese to be nesting only on Buldir Island, but based on later discoveries, they also probably nested on Chagulak Island and in the Semidi Islands. Our earliest estimate of the number of geese on Buldir Island was 200–300 birds in 1963 (see Kenyon 1963). By 1995, the last year we surveyed the breeding islands, we estimated the number of breeding geese on Buldir Island was 7,000. Assuming 40% of the population are breeders (Byrd 1995), then by 1995 the number of birds on Buldir Island was about 17,500. We released geese on Agattu Island periodically from 1974 to 1984 (Byrd et al. 1991). By 1990, 100 birds were nesting there and in 1995, we estimated 700 birds were nesting there (1,750 total geese; Byrd 1995). We found similar increases at Alaid-Nizki. We first released geese on Alaid-Nizki in 1981 and, by 1987, they were nesting there. We estimated the number of breeding geese on Alaid-Nizki in 1995 at 248 (or 620 total geese). Byrd (1995) states that the number of geese breeding at Agattu could approach 2,000 in the future and double at Alaid-Nizki. It is unknown how numerous geese on Buldir Island will become. Elsewhere in the Aleutian Islands, we estimate that about 10 birds nested in the Rat Islands in 1995 and about 40 birds nested at Chagulak Island in 1995 (Byrd 1995).

We have also documented recent breeding of Aleutian Canada geese at Amchitka, Amukta, and Little Kiska islands. Although the current status of Aleutian Canada geese on these islands is unknown, we believe reestablishment of breeding populations via translocations to Amchitka and Little Kiska Islands and natural recolonization of Amukta Island to have a low probability of success. We believe the presence of bald eagles (*Haliaeetus leucocephalus*), a major predator of geese, on islands east of Buldir Island to be a factor that has limited the success of translocations to Amchitka, Little Kiska and Kiska Islands.

We believe the small group of geese nesting on Chagulak Island to be stable in number, but the terrain is steep and nesting habitat is limited. We have removed foxes from most of the islands near Chagulak, and to bolster the population of geese in this portion of the Aleutians, translocated geese from Buldir Island to Yunaska Island in 1994 and 1995. We also translocated geese from Buldir Island to Skagul Island in the Rat Island group in 1994 and 1995. We have not conducted subsequent surveys on these islands to determine if the translocations have resulted in establishment of breeding populations on these islands. However, in winter 1997/1998, we observed 15 marked, female geese translocated to Yunaska Island and 13 marked, female geese translocated to Skagul Island in California. These sightings indicate that there are translocated female geese now of reproductive age that still survive and that potentially may already be breeding on these islands.

In the Semidi Islands, investigators studying Aleutian Canada geese found 14 nests on Kiliktagik Island and 3 nests on Anowik Island in 1995, which is 11 nests (39 percent) fewer than were found on the same islands in 1992 (Beyersdorf and Pfaff 1995). Hatching success and overall nesting success of geese in the Semidi Islands in 1995 were lower than their counterparts in the western Aleutian Islands. In addition, recruitment rates for Semidi Islands geese were low compared with rates we observed among Aleutian Island birds based on censuses of hatching-year birds on the wintering grounds each fall in coastal Oregon (D. Pitkin and R. Lowe, U.S. Fish and Wildlife Service, pers. comm.). The reason for lower productivity of Aleutian Canada geese in the Semidi Islands is unknown.

Review of Aleutian Canada Goose Recovery Plan

In accordance with the Act, we appointed a team of experts to write a plan for recovery of the Aleutian Canada goose. The original recovery plan was approved on August 7, 1979, and later revised on September 8, 1982, and September 30, 1991 (Byrd et al. 1991). The most recent version of the recovery plan was written after the Aleutian Canada goose was downlisted to threatened in 1990, and established objectives for measuring recovery and indicating when delisting was appropriate. Recovery plans and objectives are intended to guide and measure recovery, but are supposed to be flexible enough to adjust to new information.

The Aleutian Canada Goose Recovery Plan (Byrd et al. 1991) identified the following recovery objectives: (1) The overall population of Aleutian Canada geese includes at least 7,500 geese, and the long-term trend appears upwards; (2) at least 50 pairs of geese are nesting in each of three geographic parts of the historic range—western Aleutians (other than Buldir Island), central Aleutians, and Semidi Islands, for three or more consecutive years; and (3) a total of 25,000–35,000 acres (ac) of specific land parcels identified by the recovery team as feeding and roosting habitat needed for migration and wintering are secured and are being managed for Aleutian Canada geese. The recovery plan states that failure to achieve a specific acreage target of migration and wintering habitat would not preclude delisting of the Aleutian Canada goose if otherwise warranted. A discussion of the status of the Aleutian Canada goose relative to the recovery objectives follows.

(1) The most recent estimate of the overall population of Aleutian Canada geese is approximately 32,000 birds, which is over four-fold greater than the population objective for delisting. The population trend of Aleutian Canada geese continues upward, and has averaged about 20 percent annual growth since the subspecies was downlisted in 1990. We believe that the subspecies is no longer threatened or endangered and its population may continue to grow in size in the future.

(2) The objective of 50 or more pairs of Aleutian Canada geese nesting in each of 3 geographic parts of the historic range—western Aleutians (other than Buldir Island), central Aleutians, and Semidi Islands, has not been met. The population of Aleutian Canada geese nesting in the western Aleutians far exceeds the delisting objective, with self-sustaining breeding populations established on three islands—Buldir, Agattu, and Alaid/Nizki. Primarily on the strength of recovery in the western Aleutian Islands, the Recovery Team recommended delisting the subspecies (Byrd 1995).

We have not surveyed geese nesting in the central Aleutians since 1993, but existing data suggest the size of the breeding group at Chagulak Island has been stable at about 20–25 pairs since the time of their discovery in 1982. Chagulak Island is very steep and has limited nesting habitat. A substantial increase in the number of birds in the central Aleutian Islands likely will require colonization of new islands. Although we discovered nesting by Aleutian Canada geese on nearby Amukta Island, we do not know if they are currently nesting there or if breeding occurs on Yunaska Island as a result of the translocation of geese there in 1994 and 1995. We have also removed foxes from several other nearby islands, including Carlisle, Herbert, Kagamil, Uliaga and Seguam, and these islands could be colonized by Aleutian Canada geese in the future. We believe that increasing numbers of Aleutian Canada geese in the central Aleutians is desirable. However, we do not view the lack of evidence that there are at least 50 pairs of geese breeding in the central Aleutians as a barrier to delisting because they appear to be from the same breeding segment as the western

Aleutian geese. We surmise this based on their similar physical characteristics, some preliminary data on mitochondrial DNA (Shields and Wilson 1987), and their use of the same wintering area.

The Semidi Islands breeding segment more than doubled in size following closure of the wintering area to hunting in 1982. Since 1990, it has fluctuated moderately in size on its wintering area, averaging about 120 geese. However, the lack of an increase in these birds since 1993, given protection of the birds on the breeding and wintering grounds, and the availability of unexploited breeding and wintering habitat, cannot be fully explained with existing information. Local farmers in Oregon maintain that these geese have used the same local farms for at least 65 years and have never been numerous (R. Lowe, U.S. Fish and Wildlife Service, pers. comm.). Despite lack of a persistent and positive population response of Semidi Islands geese, we believe this should not be a barrier to delisting the Aleutian Canada goose subspecies because of the health and vigor of the subspecies as a whole. Furthermore, we can continue to protect this breeding segment from various forms of take under provisions of the Migratory Bird Treaty Act (see Summary of Factors Affecting the Species below). We will continue to closely monitor the status of the Semidi Islands breeding segment of Aleutian Canada geese on its wintering grounds.

Although the criteria of 50 or more pairs nesting in each of 3 geographic parts of their historic range has not been fully met, the Recovery Team in 1995 considered the following factors overriding: the population is approximately three times higher (now almost four times higher) than the minimum suggested for delisting; the population is continuing to increase at a high rate; there are now self-sustaining breeding populations in the western Aleutians on Buldir, Agattu, and Alaid/Nizki islands; and we have removed foxes from islands in the central Aleutians and translocations of birds there has bolstered goose numbers.

(3) We have not fully met the recovery objective of conserving and managing 25,000–35,000 ac of migration and wintering habitat; however, the recovery team allowed that not attaining this acreage target would not preclude delisting if this action was otherwise warranted. The original target of greater than 25,000 ac was derived by summing the acreage of most parcels of land that have been used by Aleutian Canada geese on their wintering grounds and on principal migration stopovers outside of Alaska since their recovery began. The acreage target reflects inclusion of parcels that are no longer used by Aleutian Canada geese. We believe that sufficient progress is being made toward this objective to warrant delisting the Aleutian Canada goose. The population has responded very favorably to management actions taken on its behalf by the Service, States, and private landowners in migration and wintering areas. More than 8,000 ac of currently-used winter and migration habitat are secure (Table 2), and we have an active acquisition program for both fee title and perpetual conservation easements in the Sacramento and San Joaquin Valleys. This total secure acreage does not include 33,108 ac of national wildlife refuge land and 67,000 ac of private land protected under perpetual conservation easements within the Grassland Ecological Area located approximately 40 miles south of the main use area for Aleutian Canada geese. We have documented recent use by Aleutian Canada geese in this area. (D. Woolington, U.S. Fish and Wildlife Service, pers. comm.).

TABLE 2.—SECURE LANDS IN MIGRATION OR WINTERING AREAS UNDER FEDERAL, STATE OR PRIVATE OWNERSHIP AND CURRENTLY BEING MANAGED FOR ALEUTIAN CANADA GEESE

Location	Owner/Manager	Acreage	Goose use
CALIFORNIA			
Northwestern CA			
Castle Rock	FWS	13	Roosting.
Prince Island	Tribal	6	Roosting.
Lake Earl Wildlife Area	State of CA	470	Feeding.
Lake Earl Project	State of CA	230	Feeding.
Colusa Area			
833 Reclamation District	Local Gov't.	2,000	Feeding/roosting.
Butte Sink NWR	FWS	733	Feeding/roosting.
El Sobrante Area			
East Bay Municipal Utility District	Local Gov't.		Feeding/roosting.
Modesto Area			
San Joaquin River NWR	FWS	[1] 1,607	Feeding/roosting.
Faith Ranch	Gallo Family	1,964	Feeding/roosting.
OREGON			
Oregon Islands NWR	FWS	45	Roosting.
Nestucca Bay NWR	FWS	120	Feeding.
BLM grazing land	BLM	537	Feeding.
Floras Lake Park	Curry County	300	Roosting.
Total		8,025	

[1] 6,108 acres are currently in the refuge but only 1,607 acres are suitable for Aleutian Canada geese.

As the population of Aleutian Canada geese continues to grow, we plan to secure additional parcels of migration and wintering habitat. Acquisition of additional goose habitat remains a top priority for the San Joaquin River National Wildlife Refuge for geese that nest in the Aleutian Islands, and for the Nestucca Bay National Wildlife Refuge in coastal Oregon for geese that nest in the Semidi Islands.

The concentration of relatively large numbers of Aleutian Canada geese on small areas of wintering and migration habitat, most of which is in private ownership, has created conflicts between landowners and geese. Typically the conflicts occur over sprouting grain or pasture grass that is used by both geese and livestock. Northwestern California, particularly in the Smith River bottoms, remains an increasingly controversial area for Aleutian Canada geese because only about 700 ac of State land are now actively managed as foraging habitat for geese in this area. Many geese forage on intensively managed, privately owned pastures in this area during their brief fall stopover and more extensive spring stopover.

In response to the competition between geese and livestock on private lands, the Service in the Modesto area and the State of California in northwestern California are more actively managing their lands to attract geese away from private parcels. In addition, the Service and State provide technical assistance to willing landowners to help them manage their lands for geese.

We acknowledge the important role that private landowners have played in the recovery of the Aleutian Canada goose. Aleutian Canada geese have used and continue to heavily use private lands for feeding, loafing and roosting. Some landowners actively manage their lands for geese with technical assistance from State and Service wildlife biologists. Other landowners have shown considerable patience as goose numbers have increased and geese have impacted their crops and competed with their livestock for grass. The depredation problem may intensify as Aleutian Canada goose numbers continue to increase.

Other Factors in Support of Delisting

The Aleutian Canada Goose Recovery Team lists three additional factors in support of removing the Aleutian Canada goose from the list of threatened and endangered species (Byrd 1995). First, a program designed to reestablish Aleutian Canada geese in the Asian portion of their range is underway through the cooperation of Japanese and Russian wildlife agencies and the Service. Lee (1998) provides a chronological history of this effort, highlights of which are summarized below.

In 1992, we transported 19 captive Aleutian Canada geese to Petropavlovsk, Kamchatka, Russia to establish a captive population of geese as a nucleus for reintroduction of Aleutian Canada geese in Russia. In 1993, a Japanese/Russian team identified Ekarma Island in the northwest Kuril Islands as a suitable fox-free island for future releases of Aleutian Canada geese. A total of 86 captive-reared geese was released in 1995, 1996 and 1997. In winter 1997/1998, Japanese scientists observed at least 15 Aleutian Canada geese on the wintering grounds in Japan, including 4 marked birds from the 1997 release of 33 geese. Seven of the birds appeared to be a family group, and Gerasimov (1998) speculated that the unmarked Aleutian Canada geese may have been progeny of birds from the earlier releases on Ekarma Island. We are very encouraged by the early successes of the goose restoration efforts in Russia and Japan, and will continue to support and participate in this international phase of the overall restoration program.

Second, the State of California and some cooperating local landowners are implementing a plan to reduce depredations by geese on privately owned pastures in the Smith River bottoms in northwestern California. This plan focuses on providing high quality forage for geese on about 200 ac of managed pastures owned by the State of California and hazing birds off of private pastures. A multi-agency "Lake Earl Working Group" was formed to address the depredation problem in northwestern California, and local farmers are working with the State of California to help manage State lands for geese through fertilization of pastures and grazing by livestock. Results are encouraging thus far. In 1995 almost no use by geese occurred on State lands. The amount of time geese spent on State land increased to 12 percent in 1996, 20 percent in 1997 and 44 percent in 1998. Further increases in the amount of time geese spend on State land on the order of an additional 20 percent are expected (M. Fisher, U.S. Fish and Wildlife Service, pers. comm.).

We do not wish to overstate the success of management of State lands in northwestern California as a mechanism to reduce conflicts between Aleutian Canada geese and private landowners. Intensive management of State lands in northwestern California has been a great success to date; however, there is a finite amount of forage available there and these lands must also be managed for other wildlife species and habitat values. Furthermore, most State lands consist of poor soils which are not as amenable to intensive management for geese as nearby privately owned parcels.

Lastly, we have developed a new procedure to monitor the population of Aleutian Canada geese wintering in California, enabling us to detect and respond to reverses in the growth of the population. We currently use two procedures to measure population size. The first involves coordinated peak counts of Aleutian Canada geese on the wintering grounds near Modesto, and during early spring as they arrive at and leave their primary roosts at Castle Rock and Prince Island in northwestern California. This technique has proved extremely reliable in the past; however, because numbers of Aleutian Canada geese are now large, obtaining complete counts is difficult. In addition, Aleutian Canada geese now often winter in mixed flocks with the similar-looking Cackling Canada goose (*Branta canadensis minima*). As a result, we recently developed an indirect survey technique that is based on a ratio of marked to unmarked birds. Comparisons of surveys using the indirect method with "complete" counts of geese suggest a high degree of concordance between the methods. We anticipate that the indirect count method will become more reliable and widely used if the Aleutian Canada goose population continues to grow.

In summary, the Recovery Plan for the Aleutian Canada goose identified three criteria to use for evaluating when recovery had occurred and when delisting was appropriate. To date, only one recovery objective, attainment of a total population of the subspecies of at least 7,500, has been completely achieved, but we believe that the population is of sufficient size that threats to maintaining recovery have been sufficiently reduced or eliminated to warrant delisting. Contrary to our expectations, the Aleutian Canada geese in the central Aleutians have not recovered despite protection of these birds both on the breeding and wintering grounds. Similarly, the segment of birds breeding in the Semidi Islands has not increased in number although it is not known how large this group of birds was historically. We have not conducted surveys recently in the central Aleutians to determine the current goose population on Chagulak Island and to evaluate the success of recent transplants and determine the number of pioneering birds to fox-free islands in the area. Nevertheless, the explosive growth of the western Aleutian breeding segment assures the future viability of the Aleutian Canada goose subspecies. We remain concerned about the lack of growth of the Semidi Islands breeding segment. However, in recent history this small group of birds has been relatively stable and obvious threats have been removed. We believe

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we can effectively protect this breeding segment from various forms of take under provisions of the Migratory Bird Treaty Act (see Summary of Factors Affecting the Species below). In regard to conservation and management of migration and wintering habitat, we support additional acquisition and management of habitat, both to secure wintering and migration habitat and as a tool to reduce future competition between geese and farmers.

Summary of Comments and Recommendations

On April 9, 1998, we published a Notice of Status Review of the Aleutian Canada goose requesting information and comments on the status of the Aleutian Canada goose and notifying the public of our intent to prepare a proposal to remove the subspecies from the list of threatened and endangered species if appropriate (63 FR 17350, April 9, 1998). We received five comments on the notice, including one from a branch of the U.S. Armed Services, one from a public utility, and three from individuals and organizations. Three of the responses supported delisting the Aleutian Canada goose; none opposed delisting. Only one issue of concern was raised in the comments. This issue and our response is presented below.

Comment: Subpopulations like the Semidi Islands group may need continued protection under the Act.

Our response: We remain concerned about the stable but small number of Semidi Islands geese despite protection of these birds on their winter and summer ranges, and will continue to monitor their status. We believe that protective measures available under the Migratory Bird Treaty Act, i.e., continued hunting closures and regulation of various forms of take, would provide strong protection for Semidi Islands geese. The Service and the Pacific Flyway Council will ensure that Semidi Islands geese are considered during annual regulatory framework changes that govern the sport harvest of waterfowl, and that appropriate hunting closures to protect Semidi Islands geese on the wintering grounds are maintained. These regulatory changes have proven to be very effective in protecting other populations of geese in the Pacific Flyway. Additionally, the Pacific Flyway Technical Committee established an Aleutian Canada Goose subcommittee in 1997 that includes State and Federal agency representatives. This subcommittee has begun drafting a management plan for Aleutian Canada geese to ensure that appropriate management activities are continued following delisting.

Summary of Factors Affecting the Species

In accordance with the Act and implementing regulations at 50 CFR part 424, a species shall be listed if the Secretary of the Interior determines that one or more of five factors listed in section 4(a)(1) of the Act threatens the continued existence of the species. A species may be delisted according to § 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered or threatened for one of the following reasons:

1. Extinction;
2. Recovery; or
3. Original data for classification of the species were in error.

After a thorough review of all available information, we have determined that Aleutian Canada geese are no longer endangered or threatened with extinction. A substantial recovery has taken place since the mid-1970s, and none of the five factors addressed in section 4(a)(1) of the Act currently jeopardizes the continued existence of this subspecies of goose. These factors and their relevance to Aleutian Canada geese are discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Threats to habitat of Aleutian Canada geese still exist, primarily in the form of development and modification of wintering and migration habitat, and the continued presence of foxes on former nesting islands in Alaska. However, both on the breeding and wintering/migration grounds, improvements to habitat have been and continue to be made through predator removal, fee title acquisition and establishment of conservation easements to protect migration and wintering habitat, and management of migration and wintering habitat.

Restoration of habitat on the breeding grounds in the Aleutian Islands and islands south of the Alaska Peninsula continues as the fox removal program proceeds. Since 1949, we have restored 33 islands, totaling more than 596,000 ac, by removing Arctic and red foxes. In 1998, 2 additional islands were cleared of foxes, and 11 islands are scheduled for restoration between 1999 and 2004. We plan to remove foxes from 223,000-ac Attu Island in 1999. Attu Island is close to Agattu Island and to the Alaid-Nizki Island group, all of which have rapidly growing reestablished populations of Aleutian Canada geese, and Attu would provide a substantial amount of nesting habitat if it was colonized. Once cleared of foxes, transplants of family groups of Aleutian Canada geese to Attu Island would be logistically feasible. All of the extant nesting islands of Aleutian Canada geese in Alaska, as well as most of the islands within its historic nesting range, are protected as part of the Alaska Maritime National Wildlife Refuge.

Even if additional fox-free nesting islands are not colonized by Aleutian Canada geese in the foreseeable future, we believe that the availability of nesting habitat in the Aleutian Islands is not likely to limit future population growth or change in a manner that would lead to a decline in goose abundance. We believe there is considerable unoccupied nesting habitat available for geese on existing nesting islands. Despite the availability of nesting habitat, natural expansion to unoccupied islands east of Buldir is not expected to occur rapidly because of the presence of bald eagles, a predator of Aleutian Canada geese, and the strong tendency for Canada geese to return to natal areas to breed.

On the wintering grounds, improvements to habitat are ongoing through fee title acquisition of land, establishment of conservation easements, and management of those lands for feeding, loafing and roosting by Aleutian Canada geese. The intent is to provide attractive, high quality habitat for geese on managed lands to reduce crop depredation on neighboring private farms and ranches. Over 8,000 ac of winter and migration habitat are secure (Table 2) and are being used by Aleutian Canada geese. In addition, 33,108 ac of national wildlife refuge land and 67,000 ac of private land protected under perpetual conservation easements within the Grassland Ecological Area are located approximately 40 miles south of the main use area for Aleutian Canada geese and have recently been used by Aleutian Canada geese.

In addition to migration and wintering habitat already in conservation status, we are working to increase our land holdings of habitat currently used by Aleutian Canada geese in the Modesto, California area. Land acquisition or conservation activities within and near the San Joaquin River National Wildlife Refuge that are underway include:

(1) Acquisition of 3,100 ac south of Highway 132 and along the San Joaquin River, part of which will be suitable winter range for Aleutian Canada geese;

(2) Negotiation of a conservation easement with the owner of a 1,994-ac ranch currently used by Aleutian Canada geese for feeding, loafing and roosting. The landowner is currently working with the Service to manage this land for geese. This ranch is currently included within the authorized boundary of the San Joaquin River National Wildlife Refuge; and

(3) Negotiation for fee title acquisition of 378 acres and a long-term conservation easement on 705 acres on another nearby ranch currently used by Aleutian Canada geese for feeding, loafing and roosting. Agricultural practices used on these parcels favor Aleutian Canada geese although conflicts between the geese and the landowner are intensifying as goose numbers increase. This ranch is also included within the authorized boundary of the San Joaquin River National Wildlife Refuge.

Activities to acquire or conserve other lands within the wintering and migration range of the Aleutian Canada geese include:

(1) Negotiation for purchase of the two dairies on which Aleutian Canada geese from the Semidi Islands winter. These dairies are within the authorized boundary of the Nestucca Bay National Wildlife Refuge. The Service has made offers on both pieces of property, but thus far purchase agreements have not been reached; and

(2) Evaluation by the State of California of acquisition proposals for additions to the Lake Earl Wildlife Area in northwestern California as suitable goose foraging habitat.

We believe that sufficient breeding, migration, and wintering habitat will remain secure over the long-term to allow for the continued viability of this subspecies.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Historically, Aleuts residing in the Aleutian Islands harvested Aleutian Canada geese for food. In addition, market hunters on the wintering grounds, and more recently, sport hunters, harvested Aleutian Canada geese in the Pacific Flyway. After introduced foxes had reduced the breeding range of the Aleutian Canada goose and prior to the identification of the goose's wintering range, sport hunting likely limited population growth. Therefore, establishment of areas closed to hunting was an effective conservation measure and likely was responsible for early increases in goose numbers.

Delisting of the Aleutian Canada goose will not result in overutilization of the subspecies because take will still be governed by the Migratory Bird Treaty Act and corresponding regulations codified in 50 CFR Part 20. After the Aleutian Canada goose is delisted, we must decide if and when they can be taken for recreational hunting and for other purposes. A regulatory framework already exists for managing migratory waterfowl in the United States (U.S. Fish and Wildlife Service 1988). (See discussion of existing regulatory mechanisms under factor D.)

Other than sport hunting, no appreciable demand for Aleutian Canada geese for commercial or recreational purposes is anticipated. There may be a small demand for birds for scientific purposes. As with hunting, we will regulate take through the Migratory Bird Treaty Act.

C. Disease or Predation

Because many waterfowl species in the Pacific Flyway are now highly concentrated on the greatly reduced wetland acres of their wintering grounds, they are vulnerable to disease. Disease and other health factors accounted for 28 percent of the mortality of Aleutian Canada geese on wintering and migration areas between 1975 and 1991 (n = 583 birds; Springer and Lowe 1998). Avian cholera, a highly infectious disease caused by the bacterium *Pasteurella multocida*, has been identified as the cause of mortality of most of the Aleutian Canada geese found dead on the wintering grounds near Modesto. From 1983 to 1998, the number of Aleutian Canada geese that are known to have died annually from avian cholera has ranged from none to 155. However, an exceptional cold period during December 1998 in California set the stage for an extensive and intense avian cholera outbreak during January 1999. Approximately 809 Aleutian Canada geese died of avian cholera during that month. Additional birds probably died that are not included in the mortality count, as coyotes (*Canis latrans*) may have removed some of the carcases. Although this outbreak was the worst known for Aleutian Canada geese, it claimed only about 2.5 percent of the total population. Rapid response to the outbreak and effective management of afflicted wetlands minimized the toll on the subspecies.

Based on these data, we conclude that disease is a chronic, low-level problem on the wintering grounds which may occasionally flare up into a severe outbreak. However, effective land management should prevent future outbreaks from having serious consequences at the population level. The Aleutian Canada Goose Recovery Team has prepared and revised a disease and contamination hazard contingency plan that provides information and direction to reduce the incidence and severity of both disease and contamination hazards (Byrd et al. 1996). We implement this plan through an active program of collecting and disposing of dead and diseased waterfowl to reduce exposure of healthy geese.

Currently, we employ seasonal biologists to monitor Aleutian Canada geese in the Sacramento and San Joaquin Valleys and in the Crescent City area. Much of this effort is focused on the San Joaquin River National Wildlife Refuge and neighboring areas and includes monitoring for disease outbreaks. When a disease outbreak occurs, these employees and other refuge staff begin an intensive effort of carcass retrieval and disposal to break the cycle of cholera infection. Refuge staff also have the ability to manage disease by managing water levels at roost sites and wetland basins to avoid concentrating bacteria in those waters.

Besides disease, other sources of mortality of Aleutian Canada geese include shooting (49 percent), drowning (see below), collisions and predation (12 percent) and trapping accidents (2 percent) (Springer and Lowe 1998). Collectively, they account for only a small amount of annual mortality. Shooting of Aleutian Canada geese occurred prior to establishment of hunting closures, but declined after closures were established. Occasionally, Aleutian Canada geese are shot outside the closed areas (Springer and Lowe 1998).

On the breeding grounds, predators still prevent breeding on many islands. As mentioned above, we continue to implement an aggressive program to eradicate introduced foxes from islands within the Alaska Maritime National Wildlife Refuge. However, on islands east of Buldir, predation by bald eagles, in concert with the high degree of site fidelity exhibited by geese, may limit colonization of new nesting islands. Non-native rats, ground squirrels, and voles have also been introduced on a variety of islands within the nesting range of the Aleutian Canada goose and will be difficult, if not impossible, to eradicate. These species may prey on Aleutian Canada goose eggs, hatchlings or goslings if they have the opportunity, although a study completed in the Semidi Islands suggests that ground squirrels were not a predator of goose eggs (Beyersdorf and Pfaff 1995). Predation of goslings in the Semidi Islands by ground squirrels and

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Glaucous-winged gulls (*Larus glaucescens*) may be a factor limiting production of this breeding segment although it has not been quantified (Beyersdorf and Pfaff 1995).

D. The Inadequacy of Existing Regulatory Mechanisms

If delisted, Aleutian Canada geese will remain protected under the Migratory Bird Treaty Act, which regulates taking of all migratory birds. Once delisted, we will evaluate, with cooperation from the States through the Pacific Flyway Council, and with public comment, whether protections should be relaxed to allow some take through sport hunting and other means, and to manage current and future depredation problems on the wintering grounds and along migration routes. An effective regulatory framework is in place to manage waterfowl (U.S. Fish and Wildlife Service 1988). This annual rulemaking process provides for participation by the States through the Flyway Councils and opportunity for public input. The Pacific Flyway Council, which is composed of wildlife agency directors from each of the western States and Canadian provinces in the Pacific Flyway, including Alaska, will participate in the formulation of any regulations regarding future hunting of Aleutian Canada geese. An Aleutian Canada goose subcommittee of the Pacific Flyway Study Committee (waterfowl experts from the Flyway States) has undertaken the drafting of a management plan for the Aleutian Canada Goose that will ensure that overutilization does not occur (T. Rothe, Alaska Department of Fish and Game, pers. comm.). Continued closure of Canada goose hunting in the wintering area of the Semidi Islands geese will be a part of any regulatory framework that emerges for Aleutian Canada geese.

Two recent case histories provide good examples of the effectiveness of waterfowl management under the provisions of the Migratory Bird Treaty Act. By the mid-1980s, populations of the Cackling Canada goose and Pacific white-fronted goose (*Anser albifrons frontalis*) had plummeted to 24,000 birds and 97,000 birds, respectively. As a result of reductions in sport hunting bag limits, establishment of areas closed to hunting on the wintering grounds, and voluntary reductions in take by Alaska Natives on the breeding grounds, the population of Cackling Canada goose has increased to more than 200,000 birds and the Pacific white-fronted geese to more than 300,000 birds (R. Oates, U.S. Fish and Wildlife Service, pers. comm.). We believe the provisions of the Migratory Bird Treaty Act will allow sufficient protection of the Aleutian Canada goose, including the small group of birds that breeds in the Semidi Islands and winters near Pacific City, Oregon.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Three incidences of drowning of Aleutian Canada geese in ocean surf have occurred in recent years (Springer et al. 1989, Pitkin and Lowe 1994): 43 geese near Crescent City, California in 1984; 23 geese near Pacific City, Oregon in 1987; and 10 geese near Pacific City, Oregon in 1993. All drowning incidents were related to storms. Because the number of birds in the Semidi Islands breeding segment is small, we are concerned about these drowning incidents, but little can be done to prevent their reoccurrence.

At their lowest population level, Aleutian Canada geese may have numbered in the low hundreds (see Kenyon 1963) and were distributed on three widely separated remnant nesting islands. Populations that go through small population bottlenecks may exhibit reduced genetic variability and suffer from inbreeding depression. Such populations may not be able to successfully adapt to changes in the environment or to stochastic (random) events. The lack of growth of the Semidi Islands breeding segment of Aleutian Canada geese despite protection on the breeding and wintering grounds led to speculation that this breeding segment was inbred and lacked genetic variability. A recent genetic study showed several potential indicators of a recent genetic bottleneck, including the fact that the Semidi Islands geese have fewer alleles per loci, as well as a lower haplotype and nucleotide diversity when compared to Buldir Island birds, indicating lower overall genetic diversity. However, statistical tests were inconclusive (Pierson et al. 1998).

In summary, we have carefully reviewed all available scientific and commercial data and conclude the threats that caused the population of Aleutian Canada geese to decline no longer pose a risk to the continued survival of the subspecies. A sustained recovery has occurred during the last three decades as a result of removal of foxes from nesting islands in Alaska, closure of wintering and migration areas to hunting, and conservation and management of wintering and migration areas. This recovery indicates that the subspecies as a whole is no longer endangered or likely to become endangered in the foreseeable future throughout a significant portion of its range. Therefore, the species no longer meets the Act's definitions of endangered or threatened. Under these circumstances, removal from the list of threatened and endangered wildlife is appropriate.

Effects of This Rule

Take, as defined in the Act, of the Aleutian Canada goose is currently prohibited. If this proposal is made final, direct protection by the Act will no longer be provided to the subspecies. In addition, Federal agencies will no longer be required to consult with us to insure that the actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species. However, the Aleutian Canada goose would still be afforded protection under the Migratory Bird Treaty Act. The Migratory Bird Treaty Act regulates the taking of migratory birds for educational, scientific, and recreational purposes. It also states that the Secretary of the Interior is authorized and directed to determine, if, and by what means, the take of migratory birds should be allowed, and to adopt suitable regulations permitting and governing the take. In adopting regulations, the Secretary is to consider such factors as distribution and abundance to ensure that take is compatible with the protection of the species.

Delisting of the Aleutian Canada goose under the Endangered Species Act will not affect ongoing negotiations to secure habitat in the migration and wintering grounds (see discussion under factor A). We will continue to acquire or conserve additional lands for Aleutian Canada geese and other migratory waterfowl through fee title acquisition of land or establishment of conservation easements.

Future Conservation Measures

Section 4(g)(1) of the Act requires that we monitor species for at least 5 years after delisting. If evidence acquired during this monitoring period shows that endangered or threatened status should be reinstated to prevent a significant risk to the subspecies, we may use the emergency listing authority provided by the Act. At the end of the 5-year monitoring period, we will decide if relisting, continued monitoring, or an end to monitoring activities is appropriate. We propose the following plan for monitoring Aleutian Canada geese in the event they are delisted.

Proposed Monitoring Plan

This monitoring plan is designed to detect changes in the status of the Aleutian Canada goose primarily by: (1) Monitoring population size on wintering and migration areas; (2) monitoring productivity of the Semidi Islands population segment on the wintering grounds; and (3) monitoring the status of breeding birds on nesting islands in Alaska.

(1) Monitoring population size on wintering and migration areas: We propose to monitor the population of Aleutian Canada geese by using either or both the indirect population estimation procedure based on a marked to unmarked ratio of birds on their wintering grounds in the Modesto area, or direct counts of geese as they leave their roosts while staging in northwestern California in spring. Aleutian Canada geese nesting in the Semidi Islands will be most effectively monitored by conducting counts of foraging birds on their wintering grounds near Pacific City, Oregon.

(2) Monitoring productivity of the Semidi Islands breeding segment on its wintering range: Lack of productivity on Kiliktagik and Anowik Islands appears to be the principal factor in the lack of growth in the Semidi Islands breeding segment. The reasons for this lack of productivity are not understood. Because it is possible to distinguish hatching year birds from older birds on their winter range, we propose to monitor production of the Semidi Islands geese by making direct counts of birds on their winter range in Oregon.

(3) Monitoring the status of breeding birds on nesting islands in Alaska: The status of Aleutian Canada geese on their nesting islands was last summarized in 1995 (Beyersdorf and Pfaff 1995, Byrd 1995). We propose to determine the status of nesting Aleutian Canada geese on all the known nesting islands (Agattu, Alaid/Nizki, Buldir, Chagulak, Amukta, Kilikitagik, Anowik), and islands on which transplants of geese have occurred but for which the current breeding status is unknown (Little Kiska, Amchitka, Skagul, Yunaska), at least once during the 5-year monitoring period.

We will consider relisting if during, or after, the 5-year monitoring period, it appears that a reversal of the recent recovery has taken place. We have not established any firm thresholds that if reached will trigger relisting, but relisting will be considered if:

(1) The overall population of Aleutian Canada geese declines by 25 percent below the current level, and there is a negative population trend for 2 or more years based on either direct or indirect population estimates of birds in migration and wintering areas; and if

(2) Through disease or other stochastic (random) events, Aleutian Canada geese decline appreciably and may be extirpated from one or more of their principal nesting islands (Agattu, Alaid/Nizki, or Buldir islands).

We may determine that monitoring is no longer warranted if studies indicate that the overall population of Aleutian Canada geese is stable at current levels or increasing and that no known factors threaten the subspecies. If the Service has identified one or more factors that are believed to have the potential to cause a decline, monitoring will be continued beyond the 5-year period. Consistent with all other flyway management plans, a Pacific Flyway management plan for Aleutian Canada geese will include a population objective and monitoring activities to assess the effects of management activities.

We remain committed to monitoring the status of the Semidi Islands geese as long as necessary to ensure the population's health. Consequently, we will continue to monitor this breeding segment beyond the 5-year period on an annual basis on the wintering grounds and occasionally on the breeding grounds.

In addition to monitoring the status of the Aleutian goose in the United States, we also intend to actively support and participate in the ongoing efforts to restore Aleutian Canada geese in Russia and Japan.

Public Comments Requested

We request comments on three aspects of this proposed rulemaking: (1) the proposed removal of the Aleutian Canada goose from the List of Endangered and Threatened Wildlife; (2) the clarity of this proposal, pursuant to Executive Order 12866, which requires agencies to write clear regulations; and (3) the collection of information from the public during the 5-year monitoring period.

Proposed Delisting

We intend that any final action resulting from this proposal be as accurate as possible. Therefore, we request information and comments concerning the status of the Aleutian Canada goose and this proposal. We request information and comments from all affected Federal, State and local government agencies, the scientific community, industry, private interests, and all other interested parties. In particular, comments are sought concerning:

(1) Biological or other relevant data concerning the range, distribution, numbers and threats to Aleutian Canada geese; and

(2) Suggestions on the 5-year monitoring plan outlined above.

In developing the final rule for the Aleutian Canada goose, we will take into consideration any information and comments received. Therefore, the final rule may differ from this proposal.

The Endangered Species Act allows for public hearings on this proposal, if requested. We must receive requests within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing, and should be addressed to Ann Rappoport (see address above).

Executive Order 12866

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following:

(1) Is the discussion in the "Supplementary Information" section of the preamble helpful in understanding the proposal?

(2) Does the proposal contain technical language or jargon that interferes with its clarity?

(3) Does the format of the proposal (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to the office identified in the **ADDRESSES** section at the beginning of this document.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, require that Federal agencies obtain approval from OMB before collecting information from the public. The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, record keeping, or disclosure requirements imposed on ten or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that "ten or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. For purposes of this definition, employees of the Federal government are not included.

This rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act. The information needed to monitor the status of the Aleutian

Canada goose following delisting will be collected primarily by our personnel. We do not anticipate a need to request data or other information from ten or more persons during any 12-month period to satisfy monitoring information needs. If it becomes necessary to collect information from 10 or more non-Federal individuals, groups, or organizations per year, we will first obtain information collection approval from OMB.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Listing Priority Guidance

The processing of this proposed rule conforms with our Listing Priority Guidance for Fiscal Years 1998 and 1999, published on May 8, 1998. This guidance clarifies the order in which we will process rulemakings, giving the highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants; second priority (Tier 2) to processing final determinations on proposals to add species to the lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this delisting proposal is a Tier 2 action.

References Cited

A complete list of all references cited herein is available upon request from Ann Rappoport (see address above).

Author. The primary author of this proposal is Anthony DeGange (see address above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulations Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [AMENDED]

2. Section 17.11(h) is amended by removing the entry for the "Goose, Aleutian Canada, Branta canadensis leucopareia" under "Birds."

Dated: July 8, 1999.

John G. Rogers, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 99–19900 Filed 7–30–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990722200–9200–01; I.D. 060899D]

RIN 0648–AG88

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coral Reef Resources of Puerto Rico and the U.S. Virgin Islands; Amendment 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 1 to the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands (FMP). This rule proposes to establish a marine conservation district (MCD) of approximately 16 square nautical miles (mi2)(41 km2) in the Exclusive Economic Zone (EEZ), southwest of St. Thomas, U.S. Virgin Islands (USVI), in an area known as "Hind Bank." Within the MCD, fishing for any species and anchoring by fishing vessels would be prohibited. The intended effect is to protect important marine resources.

DATES: Written comments must be received on or before September 17, 1999.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 1, which includes a regulatory impact review (RIR), an initial regulatory flexibility analysis (IRFA), and a final supplemental environmental impact statement (FSEIS), should be sent to the Caribbean Fishery Management Council (Council), 268 Munoz Rivera Avenue, Suite 1108, San Juan, PR 00918-2577.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727-570-5305.

SUPPLEMENTARY INFORMATION: The fishery for coral reef resources and related fisheries off Puerto Rico and the U.S. Virgin Islands are managed under the FMP. The FMP was prepared by the Council, and was approved and implemented by NMFS, under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), through final regulations at 50 CFR part 622.

This proposed rule would implement Amendment 1 and establish a MCD of approximately 16 mi2 (41 km2) in the EEZ off the USVI southwest of St. Thomas, in an area known as "Hind Bank." The purpose of the MCD is to protect coral reef resources, reef fish stocks, and their habitats. Fishing and anchoring of fishing vessels would be prohibited within the MCD. The ban on anchoring of fishing vessels would aid in enforcement of the fishing prohibition and protect the reefs from direct physical damage from anchoring.

Caribbean coral reefs are under considerable ecological stress as a result of the effects of coastal development and deforestation (sedimentation, pollution, dredging) and fishing (gear impacts and overfishing effects). The FMP currently prohibits the taking of corals and live rock in the EEZ and limits the type of gear used to collect live reef invertebrates and algae for aquariums.

The FMP was recently amended by a generic essential fish habitat (EFH) amendment (Generic EFH Amendment) that addressed EFH requirements for all the Council's FMPs. The Generic EFH Amendment designated U.S. Caribbean coral and coral reef areas as EFH. NMFS approved these EFH designations under the Generic EFH Amendment for 17 selected species and corals (15 reef fish species, spiny lobster, and queen conch), and published a notice of agency decision in the **Federal Register** (64 FR 14884; March 29, 1999). Amendment 1 is intended to protect coral reef resources and associated species, and EFH within the MCD.

Amendment 1 would specifically address fishing effects on reefs by

establishing a "no take" MCD in a coral reef area known as Hind Bank southwest of St. Thomas, USVI. The dominant coral on Hind Bank is the boulder star coral, *Montastrea annularis*. Observed colonies are roughly 1 m in diameter. Based on recorded growth rates of approximately 0.4–1.2 cm/year, these colonies are at least 100 years old. At about 20 fathoms (36 m), the bottom topography of Hind Bank consists of a series of coral ridges (each approximately 100 m wide) interspersed with sandy depressions.

Fisheries in the U.S. Caribbean are multi-species, multi-gear, and primarily artisanal. Studies show declines in catch rates and relative abundance of groupers, snappers, triggerfish, angelfish, parrotfish, and grunts in USVI trap fisheries. Jewfish (*Epinephelus itajara*), Nassau grouper (*E. striatus*), and queen conch (*Strombus gigas*) have been designated by NMFS as overfished under the provisions of the Magnuson-Stevens Act (NMFS' Report to Congress - Status of Fisheries of the United States, October 1998). Red hind, *Epinephelus guttatus*, the dominant commercial reef fish species in the U.S. Caribbean, is showing signs of a significantly skewed sex ratio, and declines in catch-per-unit-effort and average size.

Since 1991, Hind Bank has been closed to fishing from January through March under the regulations implementing the FMP to protect red hind spawning aggregations. A 1997 scientific research report to the Council indicated that this closure was having a positive effect in terms of increased red hind abundance and size.

In addition to red hind, other species thought to aggregate on Hind Bank for spawning include yellowfin grouper, *Mycteroperca venenosa*; yellowtail snapper, *Ocyurus chrysurus*; stoplight parrotfish, *Sparisoma viride*; creole wrasse, *Clepticus parrae*; and the creole-fish, *Paranthias furcifer*. Hind Bank was once a spawning site for Nassau grouper, but few individuals have been seen in the area in recent years. The MCD is intended to protect these other aggregating species.

Amendment 1 would extend the current seasonal Hind Bank closure year-round. The Council considered the possibility of allowing some fishing within MCDs to accommodate handline fishermen taking snappers, pelagics, and highly migratory species (HMS). However, the Council determined that any fishing activities in the MCD could adversely affect spawning aggregations, degrade the reef ecosystem, and complicate enforcement.

The Council specifically intends that the MCD fishing restrictions apply to all fisheries, including the HMS fisheries, including those fisheries for tunas, billfishes, and sharks. During the public comment periods on Amendment 1 and this proposed rule, NMFS will use its HMS Fax Network to ensure that all affected HMS fishermen are informed of the MCD proposal.

There is considerable literature on the benefits of marine reserves or "no-take" MCDs. They are designed to protect older, larger fish and, thereby, protect critical spawning stock biomass, intra-specific genetic diversity, population age-structure, recruitment supply, and ecosystem balance. Specific expected benefits include (1) establishment of a refuge and replenishment area to ensure continued abundance and diversity of reef resources, (2) protection of critical spawning stock and recruits from overfishing, (3) physical protection of the coral reef structures, and (4) "spillover" effects to surrounding areas. Regarding "spillover" effects, MCDs are expected to be a source of adults and larvae for adjacent areas and may be effective in addressing the problem of recruitment overfishing, especially in sedentary species. MCDs are believed to be important in maintaining the high abundance of many reef fish species worldwide. For example, existing marine reserves in the Netherland Antilles and Barbados show increasing population biomass and size of sampled reef fish.

During 1995–96, 25 commercial fishermen reported landings, primarily from trap fishing for finfish and spiny lobsters, from the general area southwest of St. Thomas (EEZ waters only). This area accounted for 14 percent of the trips and 31 percent of the total commercial catch (about 390,000 lb (176,901 kg)) in the USVI. Handline fishermen in this area accounted for only 4 percent of the trips and 8 percent of the total catch. There are no comparable data for the recreational sector. There are approximately 10 charter fishing operations in the St. Thomas-St. John area; however, these boats reportedly fish the "dropoff" south of St. John, rather than off St. Thomas.

Additional background and rationale for the measures discussed above are contained in Amendment 1, the availability of which was announced in the **Federal Register** on June 21, 1999 (64 FR 33041).

Classification

At this time, NMFS has not determined that the amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendment 1.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an initial regulatory flexibility analysis (IRFA) for Amendment 1 as required by the Regulatory Flexibility Act (RFA). The IRFA describes the economic impacts this proposed rule, if adopted, would have on small entities. A summary of the IRFA follows.

The IRFA concluded that a substantial number of small entities would be affected because 20 to 30 entities would be displaced and another 100 would be indirectly affected by the displaced group. The total would be well over 20 percent of the entities that fish in the general area. The IRFA concluded that there may not be a negative gross revenue impact of more than 5 percent and that there would not be a 5-percent increase in compliance costs. It was also determined that there would be no annual compliance costs and no differential small versus large business impacts and that capital costs would not change significantly. However, it was determined that an unknown number of the 20 to 30 directly displaced small entities may cease operations if the proposed rule is implemented. Additionally, the action is of major public interest, and represents a unique and fundamental change in fishery management approaches used in the Southeast.

The proposed MCD is intended to conserve coral and associated habitats, maintain marine biodiversity, and provide for the conservation and management of economically important species. The Magnuson-Stevens Act provides the legal basis for the rule. The rule would apply to approximately 121 licensed fishermen, most of whom operate small outboard skiffs. These fishermen report average annual ex-vessel revenues of $12,000 and report catches of a wide variety of species associated with coral habitats. These fishermen take roughly 35 to 60 trips annually in the vicinity of the proposed reserve, but a much smaller number of trips wholly within the reserve. The rule contains no new reporting requirements and no duplicative, overlapping, or conflicting Federal rules were identified. The Council considered the status quo alternative, as well as three alternative marine reserves differing in size and location to the marine reserve proposed. Additionally, a range of no-take restrictions were considered for

each reserve. The Council deemed that restrictive no-take regulations were appropriate in all cases. The Council concluded that exceptions would make compliance enforcement more difficult and prevent attainment of the major FMP objective to protect important marine resources. The Council rejected the status quo because of its failure to meet the FMP objective of increasing net national benefits. The Council rejected one of the three alternative marine reserves considered on the basis that insufficient information was available to determine whether the FMP objective could be met. For this rejected alternative, the users would still be negatively impacted in the short-run with no assurance of long-term gains. The Council rejected the other two alternative marine reserves because those alternatives, while providing for a greater level of net economic benefits, had a greater short-term cost to the users. Although both of these reserves were deemed capable of meeting the FMP objective and providing for a long-term increase in net national benefits, the preferred alternative was selected on the basis of having the least amount of short-term negative impact. Copies of the RIR/IRFA are available (see **ADDRESSES**).

The Council prepared a FSEIS for the FMP that was filed with the Environmental Protection Agency for public review and comment. A notice of its availability for public comment for 30 days will be published in the **Federal Register** on July 30, 1999. According to the FSEIS, the elimination of consumptive uses within the MCD will provide a refuge and replenishment area for reef resources and ensure continued abundance and species diversity. The MCD will provide insurance against recruitment failure and simplify enforcement. The general public understands and supports the concept of MCDs. Although commercial and recreational fishers could experience increased costs of further restrictions on their activities within the MCD, they and non-consumptive users will realize long-term benefits resulting from the maintenance of healthy and diverse coral ecosystems.

Changes Proposed by NMFS

NMFS proposes to restructure § 622.33, for the convenience of the reader, to distinguish more clearly between seasonal and year-round closures.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: July 28, 1999

Andrew A. Rosenberg,

Deputy Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 622.33 is revised to read as follows:

§ 622.33 Caribbean EEZ seasonal and/or area closures.

(a) *Seasonal closures*—(1) *Mutton snapper spawning aggregation area.* From March 1 through June 30, each year, fishing is prohibited in that part of the following area that is in the EEZ. The area is bounded by rhumb lines joining the following points in the order listed.

Point	North lat.	West long.
A	17°37.8'	64°53.0'
B	17°39.0'	64°53.0'
C	17°39.0'	64°50.5'
D	17°38.1'	64°50.5'
E	17°37.8'	64°52.5'
A	17°37.8'	64°53.0'

(2) *Red hind spawning aggregation areas.* From December 1 through February 28, each year, fishing is prohibited in those parts of the following areas that are in the EEZ. Each area is bounded by rhumb lines connecting, in order, the points listed.

(i) *East of St. Croix.*

Point	North lat.	West long.
A	17°50.2'	64°27.9'
B	17°50.1'	64°26.1'
C	17°49.2'	64°25.8'
D	17°48.6'	64°25.8'
E	17°48.1'	64°26.1'
F	17°47.5'	64°26.9'
A	17°50.2'	64°27.9'

(ii) *West of Puerto Rico*—(A) *Bajo de Cico.*

Point	North lat.	West long.
A	18°15.7'	67°26.4'
B	18°15.7'	67°23.2'
C	18°12.7'	67°23.4'
D	18°12.7'	67°26.4'
A	18°15.7'	67°26.4'

(B) *Tourmaline Bank.*

Point	North lat.	West long.
A	18°11.2'	67°22.4'
B	18°11.2'	67°19.2'
C	18°08.2'	67°19.2'
D	18°08.2'	67°22.4'
A	18°11.2'	67°22.4'

(C) *Abrir La Sierra Bank.*

Point	North lat.	West long.
A	18°06.5'	67°26.9'
B	18°06.5'	67°23.9'
C	18°03.5'	67°23.9'
D	18°03.5'	67°26.9'
A	18°06.5'	67°26.9'

(3) *Queen conch closure.* From July 1 through September 30, each year, no person may fish for queen conch in the Caribbean EEZ and no person may possess on board a fishing vessel a queen conch in or from the Caribbean EEZ.

(b) *Year-round area closures.* (1) *Hind Bank Marine Conservation District (MCD).* The following activities are prohibited within the Hind Bank MCD: Fishing for any species, except for scientific research activity, exempted fishing, and exempted educational activity as provided in § 600.745 of this chapter; and anchoring by fishing vessels. The Hind Bank MCD is bounded by rhumb lines connecting, in order, the points listed.

Point	North lat.	West long.
A	18°13.2'	65°06.0'
B	18°13.2'	64°59.0'
C	18°11.8'	64°59.0'
D	18°10.7'	65°06.0'
A	18°13.2'	65°06.0'

(2) [Reserved]

[FR Doc. 99–19915 Filed 8–2–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990713189–9189–01; I.D. 060899B]

RIN 0648–AK79

Fisheries of the Northeastern United States; Spiny Dogfish Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the Spiny Dogfish Fishery Management Plan (FMP). This proposed rule would implement the following measures: A commercial quota; seasonal (semi-annual) allocation of the quota; a prohibition on finning; a framework adjustment process; establishment of a Spiny Dogfish Monitoring Committee; annual FMP review; permit and reporting requirements for commercial vessels, operators, and dealers; and other measures.

DATES: Comments on this proposed rule must be received on or before September 17, 1999.

ADDRESSES: Comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on proposed rule for Spiny Dogfish FMP."

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of the FMP, the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) contained within the RIR, the "supplement" dated May 1999, and the Final Environmental Impact Statement (FEIS) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council (MAFMC), Room 2115 Federal Building, 300 South New Street, Dover, DE 19904–6790.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, at 978–281–9279.

SUPPLEMENTARY INFORMATION: The spiny dogfish (*Squalus acanthias*) is a common small shark that inhabits the temperate and sub-Arctic latitudes of the North Atlantic Ocean. In the Northwest Atlantic, spiny dogfish range from Labrador to Florida, but are most abundant from Nova Scotia to Cape Hatteras. They migrate seasonally, moving north in spring and summer, and south in fall and winter. Spiny dogfish are considered a unit stock in the Northwest Atlantic Ocean.

The FMP was developed jointly by the Mid-Atlantic and New England Fishery Management Councils (Councils). The Mid-Atlantic Fishery Management Council (Mid-Atlantic Council) has the administrative lead on the FMP. A Notice of Availability for the FMP was published for public comment at 64 FR 34759, June 29, 1999.

Domestic landings of spiny dogfish on the East Coast have increased rapidly from 9.92 million lb (4,500 metric tons (mt)) in 1989 to 61.72 million lb (28,000 mt) in 1996, and then declined to approximately 41.89 million lb (19,000 mt) in 1997. During this period, the fishing mortality rate (F) rose from below 0.1 during the 1980s to 0.3 in 1997. In addition to the overall increase in landings, the landings have been disproportionately composed of females, because females grow to a larger size than males and are, therefore, preferred for processing. Because of the directed fishing effort on adult female spiny dogfish, the spawning stock biomass (SSB) has severely declined. The 26th Northeast Regional Stock Assessment Workshop (SAW 26), in March 1998, concluded that spiny dogfish are overexploited. SAW 26 reported that minimum biomass estimates of mature females (≥ 80 cm) have declined by over 50 percent since 1989 and that recruitment of juvenile dogfish was the lowest on record in 1997. The combination of increased F, declining biomass of mature females, and low recruitment have contributed to the overfished condition of the stock.

NMFS notified the Councils on April 3, 1998, that spiny dogfish was being added to the list of overfished stocks in the Report on the Status of the Fisheries of the United States, prepared pursuant to section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act requires remedial action for stocks that are designated overfished and requires the Regional Fishery Management Councils to prepare measures within 1 year of notification to end overfishing and to rebuild the overfished stock. The purpose of this action is to propose the implementation of the management measures contained in the FMP.

Proposed Management Measures

This proposed rule would implement the following measures contained in the FMP: (1) A commercial quota; (2) seasonal (semi-annual) allocation of a commercial quota; (3) a prohibition on finning; (4) a framework adjustment process; (5) the establishment of a Spiny Dogfish Monitoring Committee; (6) annual FMP review; (7) permit and reporting requirements for commercial vessels, operators, and dealers; and (8) other measures regarding sea samplers, foreign fishing, and experimental fishing activities.

Commercial Quota

An annual spiny dogfish commercial quota would be allocated to the fishery to control F. The quota would be set at a level to assure that the F specified in the FMP would not be exceeded. The annual commercial quota would be established by the Regional Administrator, Northeast Region, NMFS (Regional Administrator) based upon the recommendations of the Spiny Dogfish Monitoring Committee and the Spiny Dogfish Committee to the Councils. The quota recommendation of the Spiny Dogfish Monitoring Committee would be based upon projected stock size estimates for that year, as derived from the latest stock assessment information, coupled with the target F specified for that year. The quota would be specified for the fishing year, which would be defined as May 1 through April 30, and would be allocated to two semi-annual periods, as described below. The commercial quota could change annually following the Spiny Dogfish Monitoring Committee process set forth below, if appropriate. However, the quota could also be specified for a period of up to 3 years.

The management unit for spiny dogfish extends throughout its range. Therefore, the commercial quota would apply throughout the management unit, in both state and Federal waters. All spiny dogfish landed for sale from Maine through Florida would be applied against the commercial quota, regardless of where the spiny dogfish were harvested. Using data collected through this FMP, NMFS would monitor the fishery to determine when the quota for a semi-annual quota period would be reached. The Regional Administrator, through notification in the **Federal Register**, would prohibit possession of spiny dogfish in the U.S. exclusive economic zone (EEZ) and landings of spiny dogfish by vessels with Federal spiny dogfish permits for the remainder of the period, when the

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semi-annual quota has been determined to be reached.

The rebuilding schedule and corresponding annual quotas, as described in the FMP, were projected assuming an implementation date of May 1, 1999. A 1-year "exit" approach was chosen to minimize the impact of the rebuilding program on both the harvesting and processing sectors of the industry. According to the rebuilding schedule adopted by the Councils for the period May 1, 1999, to April 30, 2000, F would be reduced to 0.2, which would result in a quota of 22,059,228 lb (10,006 mt), for the first year. Landings would be allocated semi-annually for the periods May 1 through October 31 and November 1 through April 30. The May 1 through October 31 period would be allocated 57.9 percent of the annual quota, and the remaining 42.1 percent would be allocated to period November 1 through April 30. Due to unanticipated delays in the development of the FMP, the implementation date of this FMP, if approved, would be approximately November 1, 1999. Therefore, the quota for the second semi-annual period (November 1999 through April 2000) of Year 1 would be implemented at a level of 9,286,935 lb (4212.5 mt), which is equivalent to 42.1 percent of the first year's quota. F would then be reduced to 0.03 for the remaining 4 years of the rebuilding plan (2000 through 2003). This is expected to result in annual quotas ranging from 2,901,254 lb (1,316 mt) to 3,198,875 lb (1,451 mt) during those 4 years.

The quotas in the FMP were developed with the assumption that current levels of discard mortality would continue at the recent average annual rate of 9.8 million lb (4,445 mt) per year.

Seasonal Allocation of Annual Commercial Quota

As described above, the annual commercial quota would be distributed between two periods (May 1 through October 31 and November 1 through April 30) based on the historical percentage of commercial landings for each semi-annual period during the years 1990 through 1997. The period May 1 through October 31 would receive 57.9 percent of the annual allocation, and the period November 1 through April 30 would receive 42.1 percent of the annual allocation. The specification of the seasonal allocation may be revised through the framework adjustment process described below.

Prohibition on Finning

Finning, the act of removing the fins of spiny dogfish and discarding the carcass, would be prohibited. Vessels that land spiny dogfish must land fins in proportion to carcasses, with the weight of fins not to exceed 5 percent of the weight of carcasses. Fins may not be stored on board a vessel after a vessel lands spiny dogfish.

Framework Adjustment Process

The Councils may add or modify management measures through a framework adjustment process. This adjustment procedure allows the Councils to add or to modify management measures through a streamlined public review process. The following management measures could be implemented or adjusted at any time through the framework adjustment process: (1) Minimum fish size; (2) maximum fish size; (3) gear requirements, restrictions, or prohibitions, including, but not limited to, mesh size restrictions and net limits; (4) regional gear restrictions; (5) permitting restrictions and reporting requirements; (6) recreational fishery restrictions, including possession limits, size limits, and season/area restrictions; (7) commercial season and area restrictions; (8) commercial trip or possession limits; (9) fin weight to carcass weight restrictions; (10) onboard observer requirements; (11) commercial quota system, including commercial quota allocation procedure and possible quota set-asides to mitigate bycatch and to conduct scientific research or for other reasons; (12) recreational harvest limit; (13) annual quota specification process; (14) FMP Monitoring Committee composition and process; (15) description and identification of essential fish habitat (EFH); (16) description and identification of habitat areas of particular concern; (17) overfishing definition and related thresholds and targets; (18) regional season restrictions (including the option to split seasons); (19) restrictions on vessel size (length and gross registered tonnage (GRT)) or shaft horsepower;(20) target quotas; (21) provisions to mitigate marine mammal entanglements and interactions; (22) regional management; (23) any management measures currently included in the FMP; and (24) provisions relating to aquaculture projects.

The framework adjustment process would involve the following steps. If the Councils determine that an adjustment to management measures is necessary to meet the goals and objectives of the FMP, they would recommend, develop, and analyze appropriate management actions over the span of at least two Council meetings. The Councils would then provide the public with advance notice of the availability of the recommendation, justification for the measure, and economic and biological analyses. The Councils would afford the public an opportunity to comment on the proposed framework adjustment before and during the second Council meeting. After developing management actions and receiving public comments, the Councils would make a recommendation approved by a majority of each Council's members, present and voting, to the Regional Administrator. Adjustments to the FMP using the framework adjustment process would require the approval of both Councils. The Councils' recommendation to the Regional Administrator must include supporting rationale, an analysis of impacts, and a recommendation to the Regional Administrator on whether to publish the management measures as a final rule.

If the Councils recommend that the framework adjustment management measures should be published as a final rule, they must consider at least the following factors and provide support and analysis for each factor considered: (1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule; (2) whether regulations have to be in place for an entire harvest/fishing season; (3) whether there has been adequate notice and opportunity for participation by the public and affected industry members in the development of the Councils' recommended management measures; (4) whether there is an immediate need to protect the resource; and (5) whether there will be a continuing evaluation of management measures adopted following the Councils' promulgation as a final rule.

If, after reviewing the Councils' recommendation and supporting information, NMFS concurs with the Councils' recommended management measures and determines that the recommended management measures may be published as a final rule, then the action will be published in the **Federal Register** as a final rule.

If NMFS concurs with the Councils' recommendation and determines that the recommended measures should be published first as a proposed rule, then the action will be published first as a proposed rule in the **Federal Register**. After providing an opportunity for additional public comment, if NMFS concurs with the Councils' recommendation, then the action will be published as a final rule in the **Federal Register**.

If NMFS does not concur with the Councils' recommendation, they would be notified, in writing, of the reason for non-concurrence.

Spiny Dogfish Monitoring Committee and Annual FMP Review

The Spiny Dogfish Monitoring Committee would be a joint committee made up of staff representatives of the Mid-Atlantic and New England Councils, the NMFS Northeast Regional Office, the NMFS Northeast Fisheries Science Center, and state representatives. The state representatives would include any individual designated by an interested state from Maine to Florida. In addition, the Monitoring Committee would include two non-voting, ex-officio industry representatives (one each from the Mid-Atlantic and New England Council regions). The Mid-Atlantic Council Executive Director or a designee will chair the Committee.

The Spiny Dogfish Monitoring Committee would annually review the best available data, as specified in 50 CFR 648.230, and recommend to the Joint Spiny Dogfish Committee a commercial quota and, possibly, other measures to assure that the target F specified in the FMP for spiny dogfish is not exceeded. This recommendation would be reviewed, and possibly modified, by the Joint Spiny Dogfish Committee, which would then recommend a quota and, possibly, other measures to the Councils to assure that the F specified in the FMP for the fishing year is not exceeded. The Councils would consider the recommendation of the Joint Spiny Dogfish Committee and then, jointly determine the quota and other measures for the following year to assure that the specified F is not exceeded. The Councils would make their recommendation to the Regional Administrator. The Regional Administrator would review the recommendation and, if necessary, modify it by using any measures that were not rejected by both Councils to assure that the target F is not exceeded. The recommended measures would be published as a proposed rule for public comment, followed by a final rule to implement the quotas and other management measures.

Permits for Commercial Vessels, Operators, and Dealers

Any owner of a vessel fishing for spiny dogfish within the EEZ for sale or transporting or delivering for sale, spiny dogfish taken within the EEZ must have a valid open access Federal commercial vessel permit issued by NMFS for that purpose. Individuals with commercial vessel permits may only sell spiny dogfish, at the point of first sale, to a dealer who has a dealer permit issued pursuant to this FMP.

Any individual who operates a vessel for the purpose of fishing commercially for spiny dogfish (i.e., possesses a valid commercial vessel permit for spiny dogfish) would be required to obtain an operator's permit. Any vessel fishing commercially for spiny dogfish would be required to have at least one operator who holds an operator's permit on board. An operator is defined as the master or other individual on board a vessel who is in charge of that vessel. That operator would be held accountable for violations of the fishing regulations and could be subject to a permit sanction. During the permit sanction period, the individual operator could not work in any capacity aboard a federally permitted fishing vessel.

An operator's permit would be issued for a period of up to 3 years. The permit would not be transferable. Permit holders would be required to carry their operator's permit aboard the fishing vessel during fishing and off-loading operation and must have it available for inspection upon request by an authorized officer.

Any dealer of spiny dogfish would be required to have a permit. A dealer of spiny dogfish would be defined as a person or firm that receives spiny dogfish for a commercial purpose other than transport from a vessel possessing a Federal commercial spiny dogfish permit. Only persons with a Federal dealer permit may buy spiny dogfish from, or landed by, a vessel that has a commercial spiny dogfish permit issued pursuant to this FMP.

Reporting Requirements for Commercial Vessels, Dealers and Processors

To aid in the monitoring of this fishery, this rule would require owners or operators of vessels issued a Federal vessel permit to submit vessel trip reports on a monthly basis. The vessel trip reports would be the same as those required under other Federal FMPs in the Northeast Region.

This rule would require dealers with permits issued pursuant to this FMP to submit weekly reports showing the quantity of all fish purchased and the name and permit number of the vessels from which the fish were purchased. This rule would also require dealers to report purchases of spiny dogfish through the Interactive Voice Response (IVR) system utilized for quota-managed species in the Northeast Region. Dealers would also be required to annually report to NMFS certain employment data.

Other Measures

The Regional Administrator would be authorized to place sea samplers aboard spiny dogfish vessels.

No foreign fishing vessel would be allowed to conduct a fishery for or to retain any spiny dogfish. Foreign nations catching spiny dogfish would be subject to prohibited species regulations at § 600.509.

The Regional Administrator, in consultation with the Executive Directors of the Councils, could exempt any person or vessel from the requirements of the FMP to conduct experimental fishing beneficial to the management of the spiny dogfish resource or fishery.

The Regional Administrator may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law. The exemption may not have a detrimental effect on the spiny dogfish resource and/or fishery, cause any quota to be exceeded, or create significant enforcement problems.

Each vessel participating in an exempted experimental fishing activity would be subject to all provisions of the FMP, except those necessarily relating to the purpose and nature of the exemption. The Regional Administrator would specify the exemption in a letter issued to each vessel participating in the experimental activity. The vessel would be required to carry the letter on board while participating in the exempted experimental fishery. All exempted experimental activities would be required to be consistent with the harvest levels in the FMP.

Classification

At this time, NMFS has not determined that the FMP this rule would implement is consistent with the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Councils prepared a FEIS for this FMP. A notice of availability for the FMP, containing the FEIS, was published at 64 FR 34759, June 29, 1999. The proposed management measures would have long-term positive impacts on affected human environments. A copy of the FEIS may

be obtained from the Councils (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Councils prepared an IRFA as part of the RIR, which describes the impact this proposed rule, if adopted, would have on small entities.

Domestic landings of spiny dogfish increased rapidly from 1989 through 1996, but began a decline in 1997. In 1998 NMFS declared the stock to be overfished. Without any management measures (status quo), landings in 2001 would be expected to decline to 21.3 million lb (9,662 mt), and then continuously decline due to the overfished condition of the stock. Eventually, the spawning stock would diminish, leading to recruitment failure and stock collapse. Due to the slow growth and low fecundity of spiny dogfish, it would take decades to rebuild the stock. The continuation of an unregulated fishery for spiny dogfish is contrary to the requirements of the Magnuson-Stevens Act, which requires remedial action through appropriate management measures for species designated as overfished. This FMP proposes measures for spiny dogfish to prevent overfishing, rebuild the stock, and comply with other provisions of the Magnuson-Stevens Act.

The categories of small entities likely to be affected by this proposed action are commercial vessel owners harvesting spiny dogfish and dogfish processors. The IRFA estimates that this proposed action is expected to affect 595 vessels and 3 processors that meet the criteria for small entities.

Impacts of Permitting and Reporting Requirements

Under all of the alternatives, any vessel fishing commercially for spiny dogfish must have a valid open access Federal vessel spiny dogfish permit issued by NMFS. It is estimated that 87 percent of the 595 commercial vessels landing spiny dogfish in 1997 from Federal waters already possess a NMFS permit for at least one or more fisheries other than spiny dogfish. Therefore, the other 13 percent (approximately 77 vessels) would be required to apply for a Federal spiny dogfish vessel permit using the initial application form. The remainder would use the renewal form and would not likely incur an additional burden. It is estimated that owner/operators of all 77 vessels would apply for a spiny dogfish permit. The burden costs to the public for the permit application consist only of the time required to complete an application (.5 hr), at a hourly rate of $15/hour. The total burden cost to the public would be $578 ($7.50 per vessel X 77 vessels).

The expected burden cost to the public for commercial logbook submissions would be $1,540 ($20 per vessel per year X 77 vessels).

In addition, the operators of these 77 vessels would be required to apply for a Federal spiny dogfish operator permit using the initial application form. The remainder would use the renewal form and would not likely incur an additional burden. The burden costs to the public for the operator permit consist only of the time required to complete an application (1 hr), at a hourly rate of $15/hour. The total burden cost to the public would be $1,155 ($15 per operator X 77 operators).

It is expected that there will be approximately 15 new applicants for dealer permits. The cost to the public for dealer permits would be $18.75 ($1.25 per applicant X 15 applicants). Thereafter, the public annual estimate of submitting weekly reports will be $26 per dealer per year. Thus, total cost for all new dealers (who do not currently have permits) for permitting requirements in the first year is $409 ($1.25 + $26 X 15 dealers).

Non-Preferred Alternative to Permitting and Reporting Requirements

The alternative to the permitting and reporting requirements is the status quo, or no regulation. Without these requirements, a Federal quota system would be unmanageable, as landings information would be poor or unavailable and closures would be unenforceable. Because the status quo option would not meet the requirements of the Magnuson-Stevens Act, this alternative was rejected.

Impacts of Prohibition on Finning

This rule would prohibit the practice of finning spiny dogfish (cutting off and retaining the fins and discarding the carcass). Fishing industry representatives testified that this practice occurs only under extremely limited circumstances in the fishery; therefore, the prohibition would have a negligible effect on the current fishery. The provision is proposed to prevent the practice in a reduced fishery and thereby reduce waste of the spiny dogfish resource.

Non-Preferred Alternative to Prohibition on Finning

The alternative to the prohibition of finning is the status quo, or no regulation. The practice is already banned in other shark fisheries in the management area, therefore, not having a prohibition in this fishery could complicate enforcement by allowing fishermen to claim that fins from other sharks were from dogfish. Due to the strong support for prohibiting finning from all sectors and the insignificant economic effects of the prohibition, the status quo alternative was rejected.

Impacts of the Preferred Spiny Dogfish Rebuilding Schedule

The intent of the Councils is to rebuild the spawning stock biomass of the spiny dogfish stock to levels that will support the fisheries at long-term, sustainable levels. The preferred rebuilding schedule identified in the FMP is expected to eliminate overfishing and rebuild the spiny dogfish stock in the shortest possible time, while still allowing for a 1-year "exit fishery." The 1-year "exit fishery" of 22 million lb (10,006 mt) (9,286,935 lb (4212.5 mt) for the second semi-annual period of year 1) will allow participants to reduce gradually their activity in the directed spiny dogfish fishery. This approach was chosen to reduce the impacts of the rebuilding program on both the harvesting and processing sectors of the industry, during the first 6 months. Beginning May 1, 2000, landings would be reduced to 2.9 million lb (1,316 mt) and then maintained at under 4.4 million lb (2,000 mt) until the target biomass is reached.

Based upon projected status quo landings in relation to proposed total allowable commercial landings or TALs, ex-vessel gross revenue declines would reach a high of $3,383,903 in year two as landings are reduced to 2,901,780 lb (1,316 mt). Pack-out facility gross revenue declines would be the greatest ($902,374) in year two. Gross revenue losses would decline from this point as projected landings increase.

In year one of the preferred rebuilding schedule, there would be a 30–percent reduction in landings compared with the status quo levels. This reduction would cause a decrease in gross revenues of greater than 5 percent for approximately 149 vessels (using 1997 dealer and weighout data) and for 2 processors. In year two, with an 89–percent reduction in landings (relative to the status quo levels), 232 harvesters would have a gross reduction of revenues greater than 5 percent (based on 1997 landings and dealer data). The RIR also concluded that it is possible that the proposed action will result in at least 12 spiny dogfish harvesters ceasing operations.

Processors have indicated that their ability to process spiny dogfish in a cost-effective manner is dependent upon volume. The proposed action, which greatly reduces landings in years two through four, could, therefore, result in the elimination of dogfish processing operations for the remaining 3 dogfish processors and the potential loss of approximately 200 jobs.

An area of uncertainty is the effect of low TALs upon markets. The proposed low TAL may cause processors to cease processing spiny dogfish and cause established U.S.-based markets for this species to collapse. Since most spiny dogfish are currently processed and exported, the implications of the proposed action upon both foreign and domestic markets are hard to predict. The demand for spiny dogfish by foreign markets may decline as dogfish is replaced by a more readily available alternative, or, conversely, reduction of supply in combination with static demand could cause dogfish prices to rise and allow for a limited fishery to exist with landings at low levels. Industry members indicate that demand is likely to decline. The ability of processors and harvesters to re-establish markets, if they ceased operations earlier, is unknown.

If markets for spiny dogfish cease, there would be no processors to whom harvesters could sell their catch. Conversely, if prices rise, harvesters would be able to receive higher ex-vessel prices for spiny dogfish (assuming a market exists). Even if prices increase, due to the extremely low TALs, it would probably not mitigate the economic impacts on the processors and harvesters caused by the preferred alternative. Given low TALs, the harvesting, processing, and support industries are not likely to see cumulative nominal benefits for at least 15 years.

While the short and intermediate effects of the FMP are negative for those involved in the fishery, the long-term effects are likely to be positive. Projections indicate that an unregulated dogfish fishery, left unchecked, would deplete the adult spawning portion of the stock by about 85 percent within 10 years. This would lead to a stock collapse. Yields would be expected to plummet (even at current high levels of F), and a rebuilding program after a stock collapse is projected to take decades, due to the life history of dogfish. The proposed action will rebuild the adult spawning stock biomass in a relatively short period of time and, then, allow for a sustainable fishery in future years.

Impacts of Alternatives to the Preferred Rebuilding Schedule Considered but Rejected

Other alternatives to the preferred rebuilding schedule were considered, but either did not meet the requirements of the Magnuson-Stevens Act, or did not provide long-term economic benefits greater than those of the proposed action.

Non-Preferred Alternative Rebuilding Schedule 1 would reduce landings to a consistent level of approximately 5.5 million lb (2,500 mt) until 2003, when landings are assumed to reach a consistent level of 14 million lb (6,350 mt). Relative to status quo, gross revenue declines would reach a high of $3,067,000 in year two (2000). Cumulative gross revenues would exceed status quo levels in 2015. Similarly, relative to status quo, gross revenue declines for pack-out facilities would reach a high of $817,000 in year two (2000). Impacts would then decline afterwards as projected landings increase. At approximately 5.5 million lb (2,500 mt), a directed fishery for spiny dogfish is unlikely, and the effect that an incidental dogfish fishery would have on markets is not known. This option would not provide for a 1-year "exit" fishery; therefore, it would have imposed greater economic burdens on fishery participants in the short term. In addition, this alternative's long-term economic benefits would not exceed those of the preferred alternative.

Non-Preferred Alternative Rebuilding Schedule 2 would reduce landings to 22.5 million lb (10,206 mt) in year one, to 11.3 million lb (5,125 mt) in year two, and then limit landings to a level that would ensure the rebuilding of the stocks within a 10-year time-frame. Relative to status quo, gross revenue declines would reach a high of $2,778,962 in year three (2001). Cumulative gross revenues would exceed status quo levels in 2020. Similarly (also relative to status quo), gross revenue declines for pack-out facilities would reach a high of $741,056 in year three (2001). Impacts would then decline afterwards as projected landings increase. Unlike the preferred alternative, this alternative does not provide for a rebuilt stock until 2009. Similarly, although the second year of this option provides for a higher TAL than the preferred, the long-term economic outlook for the preferred alternative is superior. Given the higher TAL in year two of this option, there is the possibility that, in the short-term, this option could provide some cost savings. By not forcing harvesters into other fisheries as quickly as the preferred alternative, this option could provide greater cost savings in the first 2 years of implementation of the management measures. However, the cost data needed to clarify this point are currently unavailable. The analysis examined gross revenues, and the long-term benefits of the preferred alternative exceeded this alternative.

Non-Preferred Alternative Rebuilding Schedule 3 would allow for a reduction in dogfish landings to 13.2 million lb (5,988 mt) in 1999 and 8.8 million lb (3,992 mt) in 2000. Landings until 2003 would be reduced to such a level as to allow the stock to be rebuilt in 5 years. Year one gross ex-vessel revenue declines would be $2,631,447 and reach a high of $2,697,000 in year three (2001), compared to the status quo revenue levels. These impacts would decline throughout the time-span of the FMP as projected landings increase. Cumulative gross revenues would exceed status quo levels in 2015. This alternative would not provide for an economically feasible exit fishery compared to the preferred alternative; therefore, it was not favored by members of the fishing industry. In addition, this alternative's long-term economic benefits do not exceed those of the preferred alternative.

Alternatives four, five, and six would reduce F to levels that are necessary to rebuild spiny dogfish stocks within a 15-, 20-, and 30-year time frame, respectively. These options were rejected early in the FMP development process because the Magnuson-Stevens Act specifies that rebuilding, in most cases, may not exceed 10 years. These options would spread economic impacts over a greater time period, but would not meet the requirements of the Magnuson-Stevens Act.

Alternative seven would establish a system of uniform trip limits in conjunction with an annual quota. In the second year of the rebuilding program, the projected trip limits per vessel could potentially be as low as 12 lb (5.4 kg) per trip, assuming a TAL of 2.9 million lb (1,315 mt) and 250,000 trips. Given that the average commercial fishing trip in 1997 landed 3,116 lb (1,413 kg), this low trip limit would preclude a viable directed fishery. There could be fewer participants involved in the commercial spiny dogfish fishery, an occurrence that would allow for larger trip limits. However, a uniform trip limit system would not necessarily ensure an equitable distribution for all geographic areas, gears, and seasons. This management option was rejected, because positive long-term benefits would be limited.

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Alternative eight would establish a minimum size limit for spiny dogfish that corresponds to the length at which 50 percent of female spiny dogfish are sexually mature (32 in (81 cm)). Alternative nine would establish a minimum size limit for spiny dogfish that corresponds to the length at which 100 percent of female spiny dogfish are sexually mature (36 in (91 cm)). These alternatives would have little economic impact on recreational fishing because most recreationally caught spiny dogfish are released after capture. However, there would likely be negative short-term economic impacts on the commercial harvesting sector through reduced landings because very few dogfish harvested by commercial fishermen currently achieve the proposed minimum sizes. These negative economic impacts would likely extend to processors and dealers because of reduced landings of spiny dogfish.

Alternative ten would allow only the harvest of spiny dogfish between 27.5 in (70 cm) to 32 in (81 cm) in length (a "slot size" limit). The results of projected TALs under this scenario indicate that this strategy would result in lower overall yields and not in reducing the rebuilding period. Thus, the potential benefits under this scenario would be less than the preferred alternative for the same time period.

The eleventh and twelfth alternatives would distribute the annual quota on a quarterly or bi-monthly basis. The effects of these alternatives would depend largely upon the distributional system set up by the Councils. An equitable allocation of quotas would help to ensure the maximization of long-term benefits through a rebuilt spiny dogfish fishery. As the industry is presently structured, there are insufficient fish to make processing operations (which depend on volume) economically viable. Additionally, administrative logistics associated with implementing a quarterly or bimonthly quota monitoring system is expected to be formidable. For these reasons, these alternatives were rejected.

NMFS seeks comments regarding the IRFA. A copy of this analysis is available from the Councils (see **ADDRESSES**).

Paperwork Reduction Act (PRA)

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains eight new collection-of-information requirements subject to review and approval by the OMB under PRA. These collection-of-information requirements have been submitted to the OMB for approval. The public reporting burden for these collection-of-information requirements are indicated in the following statements and include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: Whether the proposed collection-of-information requirements are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments regarding any of these burden estimates or any other aspect of the collection-of-information to NMFS and OMB (see **ADDRESSES**).

New Collection-of-Information Requirements

1. Spiny Dogfish Vessel Permits (§ 648.4(a)(11)), (30 minutes/response);
2. Spiny Dogfish Operator Permits (§ 648.5(a)), (60 minutes/response));
3. Spiny Dogfish Dealer/Processor Permits (§ 648.6(a)), (5 minutes/response));
4. Spiny Dogfish Weekly Dealer Purchase Reports (§ 648.7(a)(1)(i)), (2 minutes/response);
5. Spiny Dogfish Weekly IVR System Reports (§ 648.7(a)(2)(i)), (4 minutes/response);
6. Annual Processed Products Report (§ 648.7(a)(3)(i)), (2 minutes/response);
7. Northeast Region Vessel Logbook (§ 648.7(b)(1)(i)), (5 minutes/response);
8. Vessel Identification (§ 648.8), (45 minutes/response).

Endangered Species Act

A formal Endangered Species Act section 7 consultation on the potential impacts of the proposed FMP was initiated May 24, 1999. The consultation will be completed prior to the publication of the final rule.

Marine Mammal Protection Act

Potential adverse impacts to marine mammals resulting from fishing activities conducted under this rule are discussed in the FEIS, which focuses on potential impacts to harbor porpoise, right whales, and humpback whales.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 28, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows.

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

Subpart A—General Provisions

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.1, paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Atlantic Sea Scallop FMP (Scallop FMP)); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies fishery (NE Multispecies FMP); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); and the spiny dogfish fishery (Spiny Dogfish FMP). These FMPs and the regulations in this part govern the conservation and management of the above named fisheries of the Northeastern United States.

* * * * *

3. In § 648.2, the definition for "Council" is revised and the definitions for "Councils" and "Spiny Dogfish Monitoring Committee" are added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Council means the New England Fishery Management Council (NEFMC) for the Atlantic sea scallop and the NE multispecies fisheries, or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; the Atlantic surf clam and ocean quahog; the summer flounder, scup, and black sea bass fisheries; the Atlantic bluefish fishery; and the spiny dogfish fishery.

Councils means the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC) for the spiny dogfish fishery.

* * * * *

Spiny Dogfish Monitoring Committee means a committee made up of staff representatives of the MAFMC, NEFMC, the NMFS Northeast Regional Office, the Northeast Fisheries Science Center, the states and two ex-officio industry members (one from each Council jurisdiction). The MAFMC Executive Director or a designee chairs the committee.

* * * * *

4. In § 648.4, paragraphs (a)(9) and (a)(10) are added and reserved, paragraph (a)(11) is added, and the first 4 sentences of paragraph (b) are revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(9) [*Reserved*].

(10) [*Reserved*].

(11) *Spiny dogfish vessels.* Any vessel of the United States that fishes for, possesses, or lands spiny dogfish in or from the EEZ must have been issued and carry on board a valid commercial spiny dogfish vessel permit.

(b) *Permit conditions.* Any person who applies for a fishing permit under this section must agree as a condition of the permit that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing activity occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, or black sea bass moratorium permit or spiny dogfish permit must also agree not to land summer flounder, scup, black sea bass or spiny dogfish, respectively, in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species.

* * * * *

5. In § 648.5, paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, monkfish, mackerel, squid, butterfish, scup, black sea bass, bluefish, or spiny dogfish harvested in or from the EEZ, or issued a permit for these species under this part, must have been issued under this section and carry on board a valid operator's permit. An operator's permit issued pursuant to part 649 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

* * * * *

6. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, monkfish, sea scallop, summer flounder, surf clam, ocean quahog, mackerel, squid, butterfish, scup, black sea bass, and bluefish dealers and surf clam and ocean quahog processors must have been issued under this section and have in their possession a valid permit for these species. All spiny dogfish dealers must have been issued under this section and have in their possession a valid dealer permit. As of the effective date of the final rule to implement Amendment 12 to the Northeast Multispecies and Monkfish Fishery Management Plan, persons on board vessels receiving small-mesh multispecies at sea for use as bait are not defined as dealers and are not required to possess a valid permit under this section, provided the vessel complies with the provisions specified under § 648.13.

* * * * *

7. In § 648.7, paragraphs (a)(1)(i), (a)(3)(i), and (b)(1)(i) are revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) * * *

(i) All summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, bluefish, or spiny dogfish dealers, must provide: Dealer's name and mailing address; dealer's permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for a trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable), price per pound by species (by market category, if applicable); or total value by species (by market category, if applicable); port landed; and any other information deemed necessary by the Regional Administrator. The dealer or other authorized individual must sign all report forms. If no fish are purchased during a reporting week, no written report is required to be submitted. If no fish are purchased during an entire reporting month, a report so stating on the required form must be submitted.

* * * * *

(3) * * *

(i) Summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, bluefish, and spiny dogfish dealers must complete the "Employment Data" section of the Annual Processed Products Report; completion of the other sections of that form is voluntary. Reports must be submitted to the address supplied by the Regional Administrator.

* * * * *

(b) * * *

(1) * * *

(i) *Owners of vessels issued a summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish Atlantic mackerel, squid, butterfish, bluefish, spiny dogfish permit.* The owner or operator of any vessel issued a permit for the species listed in the preceding sentence must maintain on board the vessel and submit an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other system. At least the following information, and any other information required by the Regional Administrator, must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and

bearings); total hauls per area fished; average tow time duration; pounds by species (or count, if a party or charter vessel) of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

8. In § 648.11, paragraphs (a) and (e) are revised to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

(a) The Regional Administrator may require any vessel holding a permit for Atlantic sea scallops, or NE multispecies, or monkfish, or Atlantic mackerel, squid, butterfish, or scup, or black sea bass, or bluefish, or spiny dogfish, or a moratorium permit for summer flounder, to carry a NMFS-approved sea sampler/observer. If required by the Regional Administrator to carry an observer or sea sampler, a vessel may not engage in any fishing operations in the respective fishery unless an observer or sea sampler is on board, or unless the requirement is waived.

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, or a scup moratorium permit, or a black sea bass moratorium permit, or a bluefish permit, or a spiny dogfish permit, if requested by the sea sampler/observer, also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, or other specimens taken by vessel.

* * * * *

9. In § 648.12, the introductory text is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts B (Atlantic mackerel, squid, and butterfish), D (sea scallop), E (surf clam and ocean quahog), F (NE multispecies), G (summer flounder), H (scup), I (black sea bass), J (bluefish), or L (spiny dogfish) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the Council regarding such exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, bluefish, and spiny dogfish fisheries.

* * * * *

10. In § 648.14, paragraphs (y) and (z) are added and reserved and paragraphs (a)(117), (a)(118), and (aa) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(117) Purchase or otherwise receive, except for transport, spiny dogfish from the owner or operator of a vessel issued a spiny dogfish permit, unless the purchaser/receiver is in possession of a valid spiny dogfish dealer permit.

(118) Purchase or otherwise receive for a commercial purpose spiny dogfish landed for sale by a federally permitted vessel in any state, from Maine to Florida, after the effective date of notification published in the **Federal Register** stating that the semi-annual quota has been harvested and the EEZ is closed to the harvest of spiny dogfish.

* * * * *

(y) [*Reserved*].

(z) [*Reserved*].

(aa) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel issued a valid spiny dogfish permit or issued an operators permit to do any of the following:

(1) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than for transport, spiny dogfish, unless the dealer or transferee has a dealer permit issued under § 648.6(a).

(2) Possess spiny dogfish harvested in or from the EEZ after the effective date of the notification published in the **Federal Register** stating that the semi-annual quota has been harvested and that the EEZ is closed to the harvest of spiny dogfish.

(3) Land spiny dogfish for sale after the effective date of the notification in the **Federal Register** stating that the semi-annual quota has been harvested and that the EEZ is closed to the harvest of spiny dogfish.

(4) Remove the fins of spiny dogfish and discard the carcass.

(5) Land spiny dogfish fins in excess of 5 percent, by weight, of the weight of spiny dogfish carcasses.

(6) Store spiny dogfish fins on board a vessel after the vessel lands spiny dogfish.

11. Subpart K is added and reserved.

Subpart K—[*Reserved*]

12. Subpart L is added to read as follows:

Subpart L—Management Measures for the Spiny Dogfish Fishery

Sec.

648.230 Catch quotas and other restrictions.

648.231 Closures.

648.232 Time Restrictions. [*Reserved*]

648.233 Minimum Fish Sizes. [*Reserved*]

648.234 Gear restrictions. [*Reserved*]

648.235 Possession limit. [*Reserved*]

648.236 Special Management Zones. [*Reserved*]

648.237 Framework specifications.

§ 648.230 Catch quotas and other restrictions.

(a) *Annual review.* The Spiny Dogfish Monitoring Committee will annually review the following data, subject to availability, to determine the total allowable level of landings (TAL) and other restrictions necessary to achieve a target fishing mortality rate (F) of 0.2 in 1999 through 2000, a target F of 0.03 in 2000 through 2003, and a target F of 0.08 thereafter: Commercial and recreational catch data; current estimates of F; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of spiny dogfish; and any other relevant information.

(b) *Recommended measures.* Based on this review, the Spiny Dogfish Monitoring Committee shall recommend to the Joint Spiny Dogfish Committee a commercial quota set, from a range of zero to the maximum allowed, to assure that the F specified in paragraph (a) of this section for the upcoming fishing year (May 1 through April 30) will not be exceeded and that the seasonal allocation of the quota will be distributed into the following two semi-annual periods: May 1 through October 30 and November 1 through April 30. In addition to the commercial quota, the Spiny Dogfish Monitoring Committee may also recommend any of the following measures:

(1) Minimum or maximum fish sizes;

(2) Seasons;

(3) Mesh size restrictions;

(4) Trip limits; or

(5) Other gear restrictions.

(c) *Annual fishing measures.* The Joint Spiny Dogfish Committee shall review the recommendations of the Spiny Dogfish Monitoring Committee. Based on these recommendations and any public comments, the Joint Spiny Dogfish Committee shall recommend to the Councils a commercial quota set, from a range of zero to the maximum allowed, to assure that the F specified in paragraph (a) of this section for the upcoming fishing year (May 1 through April 30) will not be exceeded, and that the seasonal allocation of the quota will be distributed into the following two semi-annual periods: May 1 through October 30 and November 1 through April 30. In addition to the commercial quota, the Joint Spiny Dogfish Committee may also recommend any of the measures specified in paragraph (b) of this section. The Councils shall review these recommendations and, based on the recommendations and any public comments, recommend to the Regional Administrator a commercial quota and other measures specified in paragraph (b) to assure that the F specified in paragraph (a) of this section for the upcoming fishing year will not be exceeded. The Councils' recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations. After such review, the Regional Administrator will publish a proposed rule in the **Federal Register** to assure that the F specified in paragraph (a) of this section will not be exceeded. The Regional Administrator may modify the Councils' recommendation using any of the measures specified in paragraph (b) of this section that were not rejected by both Councils. After considering public comments, the Regional Administrator will publish a final rule in the **Federal Register** to implement a coastwide commercial quota and other measures necessary to assure that the F specified in paragraph (a) of this section will not be exceeded.

(d) *Distribution of annual quota.* (1) The annual quota specified in paragraph (a) of this section shall be allocated between two semi-annual quota periods as follows: May 1 through October 30 (57.9 percent) and November 1 through April 30 (42.1 percent).

(2) All spiny dogfish landed for sale in the states from Maine through Florida shall be applied against the applicable semi-annual commercial quota, regardless of where the spiny dogfish were harvested. The Regional Administrator will determine the date by which the semi-annual quota will be harvested and will close the EEZ to the harvest of spiny dogfish upon that date. The Regional Administrator will publish a notice in the **Federal Register** advising that, upon that date, no vessel may possess spiny dogfish in the EEZ during a closure, nor may vessels issued a spiny dogfish permit under this part land spiny dogfish during the closure.

§ 648.231 Closures.

If the Regional Administrator determines that the specified spiny dogfish quota for a semi-annual quota period, as described in § 648.200(d)(1), will be reached, then he/she shall close the EEZ to fishing for spiny dogfish by federally permitted commercial vessels for the remainder of that semi-annual quota period, by publishing a notification in the **Federal Register**.

§ 648.232 Time Restrictions. [Reserved]

§ 648.233 Minimum Fish Sizes. [Reserved]

§ 648.234 Gear restrictions. [Reserved]

§ 648.235 Possession limit. [Reserved]

§ 648.236 Special Management Zones. [Reserved]

§ 648.237 Framework specifications.

(a) *Within season management action.* The Councils may, at any time, initiate action to add or adjust management measures if they find that action is necessary to meet or be consistent with the goals and objectives of the Spiny Dogfish FMP.

(1) *Adjustment process.* After the Councils initiate a management action, they shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis for comment prior to, and at, the second Council meeting. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size; maximum fish size; gear requirements, restrictions or prohibitions (including, but not limited to, mesh size restrictions and net limits); regional gear restrictions; permitting restrictions and reporting requirements; recreational fishery measures (including possession and size limits and season and area restrictions); commercial season and area restrictions; commercial trip or possession limits; fin weight to spiny dogfish landing weight restrictions; onboard observer requirements; commercial quota system (including commercial quota allocation procedures and possible quota set-asides to mitigate bycatch, conduct scientific research, or for other purposes); recreational harvest limit; annual quota specification process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat; description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional season restrictions (including option to split seasons); restrictions on vessel size (length and GRT) or shaft horsepower; target quotas; measures to mitigate marine mammal entanglements and interactions; regional management; any other management measures currently included in the spiny dogfish FMP; and measures to regulate aquaculture projects.

(2) *Councils' recommendation.* After developing management actions and receiving public testimony, the Councils shall make a recommendation approved by a majority of each Council's members, present and voting, to the Regional Administrator. The Councils' recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, they must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Councils' recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action.* If the Councils' recommendation includes adjustments or additions to management measures and:

(i) If NMFS concurs with the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (b)(2) of this section, then the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures will be published as a

proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures will be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the Councils will be notified in writing of the reasons for the non-concurrence.

(iv) Framework actions can be taken only in the case where both Councils approve the proposed measure.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[FR Doc. 99–19852 Filed 8–2–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 90720198–9198–01; I.D. 070799B]

RIN 0648–AM36

Fisheries of the Exclusive Economic Zone Off Alaska; Maximum Retainable Bycatch Percentages, Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulatory amendment to separate shortraker rockfish and rougheye rockfish (SR/RE) from the aggregated rockfish bycatch species group and reduce maximum retainable bycatch (MRB) percentages for SR/RE in the Eastern Regulatory Area (ERA) of the Gulf of Alaska (GOA) groundfish fisheries. This action is necessary to slow the harvest rate of SR/RE thereby reducing the potential for overfishing. This action is intended to further the objectives of the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP).

DATES: Comments must be received at the following address by September 2, 1999.

ADDRESSES: Comments may be sent to Susan Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for this action may be obtained from the same address or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Shane Capron, 907–586–7228 or shane.capron@noaa.gov.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the GOA is managed by NMFS according to the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 600 and 679.

Regulations at 50 CFR 679.20(e) establish MRB percentages for groundfish species or species groups that are closed to directed fishing. The MRB amount is calculated as a percentage of the species on bycatch status relative to the amount of other species retained on board the vessel that are open for directed fishing. MRB percentages serve as a management tool to slow down the harvest rates of non-target species by limiting the amount that can be retained on board a vessel. By not placing a species on "prohibited" status, thereby prohibiting all retention, MRBs also serve to minimize regulatory discard of non-target species when they are taken incidental to other directed fisheries. MRB percentages reflect a balance between slowing harvest rates and minimizing the potential for undesirable discard. Although directed fishing for a species or species group may be prohibited under 50 CFR 679.20(d)(1)(iii), fishermen can "top off" their retained catch with these species up to the MRB amount by deliberately targeting the bycatch species.

In October 1998, the Council requested NMFS to initiate an analysis for a regulatory amendment to reduce the MRB percentages for SR/RE. Reducing the MRB percentages is needed to slow the harvest rates of SR/RE in the groundfish fisheries, thereby reducing the potential for overfishing and minimizing industry incentives to "top off" retained catch with SR/RE. Based on the analysis presented to the Council at its meeting in April 1999, the Council recommended that SR/RE be separated from the aggregated rockfish bycatch species group in the ERA of the GOA for the deep-water complex only. In addition, the Council recommended that the MRB percentages for SR/RE be reduced to 7 percent relative to deep-water complex species in the ERA (primarily Pacific ocean perch (POP) and sablefish) and remain at 5 percent (in the aggregated rockfish category GOA-wide) relative to shallow-water complex species. The MRB percentage relative to arrowtooth flounder would remain at 0 percent. Further rationale for these MRB adjustments is discussed below.

Separation of SR/RE From Aggregated Rockfish

MRB percentages are established for aggregate rockfish species that are closed to directed fishing. Rockfish species were aggregated because of concerns that separate MRB percentages for each rockfish species category would increase the overall amount of rockfish that could be retained and increase incentives to vessel operators to "top off" their retained catch of target species with rockfish. As part of the aggregate rockfish MRB, the combined amounts of rockfish on bycatch status must not exceed specified percentages of other retained species that are open to directed fishing. These percentages are 15 percent relative to deep-water complex species (other rockfish species, sablefish, Greenland turbot, and flathead sole) and 5 percent relative to shallow-water complex species (Atka mackerel, pollock, Pacific cod, yellowfin sole, rock sole, "other flatfish," squid, and other species).

SR/RE are highly valued, but amounts available to the commercial fisheries are limited by the relatively small amounts of total allowable catch (TAC), all of which are needed to support incidental catch needs in other groundfish fisheries. As a result, the directed fishery for SR/RE typically is closed at the beginning of the fishing year. Incidental catch amounts of SR/RE, however, can exceed the species TAC and approach its overfishing level. In 1998, the SR/RE incidental catch in the ERA trawl and hook-and-line fisheries (181 mt and 554 mt, respectively) exceeded the acceptable biological catch (ABC) and caused overfishing concerns. This resulted in SR/RE being placed on prohibited species status on October 1, 1998. In this case, closure of any fishery, including the individual fishing quota fisheries for sablefish and halibut, that could have incidental catches of SR/RE was a possibility; SR/RE bycatch did not reach the overfishing level and those fisheries remained open.

For these reasons, NMFS proposes to remove SR/RE from the aggregated rockfish bycatch species group and establish a SR/RE bycatch species group for the ERA of the GOA.

Reduction of the SR/RE MRB Percentages

The majority of SR/RE bycatch is taken in the POP and sablefish fisheries. Based on data reported by the fishing industry since 1995, the amount of retained SR/RE bycatch in the rockfish fishery has ranged from 78 to 91 percent. During the same time period, the retained amount of SR/RE in the hook-and-line sablefish fishery relative to other retained catch has ranged from 51 to 69 percent.

Analyses of 1996–1998 observer data in the GOA fisheries indicate that most SR/RE bycatch is taken in the minority of hauls. In the POP fishery, the average bycatch rate for SR/RE from 1996 through 1998 was only 3.3 percent. The average incidental catch rate for the hook-and-line sablefish fishery for the same time period was only 3.1 percent. However, about 50 percent of the SR/RE incidental catch was associated with hauls that had SR/RE as the majority of the catch.

To the extent that these high-bycatch hauls represent "topping off," a reduction in MRB percentages would limit this activity and reduce the risk of approaching the overfishing level for SR/RE stocks. The proposed MRB percentages, however, remain high enough to prevent an increase in regulatory discards.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), determined that this rule is necessary for the conservation and management of the groundfish fisheries of the GOA. The Regional Administrator also determined that this proposed rule is consistent with the Magnuson-Stevens Act and other applicable law.

This action has been determined to be not significant for purposes of E.O. 12866. No new reporting, recordkeeping, or compliance requirements are imposed by this rule.

NMFS has prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Currently, insufficient quantitative economic information exists on the affected fishery to determine the economic significance of this action. In the absence of such quantitative social and economic data, a qualitative IRFA was conducted to comply with the Regulatory Flexibility Act. The following summarizes the extent to which this rule is expected to adversely impact small entities and the alternatives considered.

This proposed action is being considered because harvest of SR/RE has significantly exceeded the TAC in the ERA of the GOA in each of the last 4 years. This action could have direct effects on 138 fishing vessels. In 1998, while participating in the rockfish fisheries, 23 trawl catcher vessels and 17 catcher/processors accounted for 772 mt of SR/RE harvest in the GOA (roughly 45 percent of the total harvest of SR/RE). Also in 1998, 484 hook-and-line catcher vessels harvested 710 mt of SR/RE while participating in the sablefish fishery. Of the total 1,482 mt of SR/RE harvested by these two sectors, only 1,064 mt was actually retained (about 72 percent of the total catch amount). About 50 percent of the SR/RE harvested was in SR/RE directed hauls. These hauls, composed primarily of SR/RE, are likely to be "top off" hauls, some of which would no longer be available to the fishery in the ERA of the GOA given the reduced ability to "top off" at historic levels. Any marginal loss in the short-term due to forgone catch of SR/RE would be offset by the long-term viability of the fishery while harvesting at maximum acceptable biological levels.

The alternative of reducing the MRB for SR/RE in the ERA of the GOA was found to be the least restrictive on small entities while maximizing the harvest of SR/RE within the TAC amount. Under the status quo alternative, fishing mortality of SR/RE would continue at levels above the ABC and would likely cause adverse modification to the fishery resulting in reduced stocks; therefore the alternative was rejected. The alternative of reducing the MRB in all areas of the GOA also was rejected because it was too restrictive on entities fishing in areas that have not exceeded acceptable harvest amounts within the last 3 years.

This proposed rule does not contain reporting, recordkeeping, or compliance requirements and there are no relevant Federal rules which may duplicate, overlap, or conflict with this proposed rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 27, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In part 679, Table 10 to Part 679—Gulf of Alaska Retainable Percentages is revised to read as follows:

TABLE 10 TO PART 679—GULF OF ALASKA RETAINABLE PERCENTAGES

[Incidental Catch Species [1]]

	Pollock	Pacific cod	Deep flatfish	Rex sole	Flathead sole	Shallow flatfish	Arrowtooth	Sablefish	Aggregated rockfish [2]	SR/RE ERA [3]	DSR SEO [4]	Atka mackerel	Aggregated forage fish [5]	Other species
Basis Species: [1]														
Pollock	[6] na	20	20	20	20	20	35	1	5	[6] na	10	20	2	20
Pacific cod	20	[6] na	20	20	20	20	35	1	5	[6] na	10	20	2	20
Deep flatfish	20	20	[6] na	20	20	20	35	7	15	7	1	20	2	20
Rex sole	20	20	20	[6] na	20	20	35	7	15	7	1	20	2	20
Flathead sole	20	20	20	20	[6] na	20	35	7	15	7	1	20	2	20
Shallow flatfish	20	20	20	20	20	[6] na	35	1	5	[6] na	10	20	2	20
Arrowtooth	5	5	0	0	0	0	[6] na	0	0	0	0	0	2	0
Sablefish	20	20	20	20	20	20	35	[6] na	15	7	1	20	2	20
Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Shortraker/rougheye	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Other rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Pelagic rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
DSR-SEEO	20	20	20	20	20	20	35	7	15	7	[6] na	20	2	20
Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Atka mackerel	20	20	20	20	20	20	35	1	5	[6] na	10	[6] na	2	20
Other species	20	20	20	20	20	20	35	1	5	[6] na	10	20	2	[6] na
Aggregated amount of non-groundfish species	20	20	20	20	20	20	35	1	5	[6] na	10	20	2	20

[1] For definition of species, see Table 1 of the GOA groundfish specifications.
[2] Aggregated rockfish means rockfish defined at § 679.2 except in the Southeast Outside District where demersal shelf rockfish (DSR) is a separate category and in the Eastern Regulatory Area where shortraker/rougheye (SR/RE) rockfish is a separate category for the deep water complex only.
[3] SR/RE ERA = shortraker/rougheye rockfish in the Eastern Regulatory Area.
[4] SEO = Southeast Outside District.
[5] Forage fish are defined at § 679.2.
[6] na = not applicable.

[FR Doc. 99–19866 Filed 8–2–99; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 64, No. 148
Tuesday, August 3, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Conehead-Summit Resource Management Project, Mt. Hood National Forest, Clackamas and Wasco Counties, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare and consider an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare and consider an environmental impact (EIS) on a Proposed Action to manage second-growth forest stands by thinning and regeneration harvest. The proposal also calls for the construction and reconstruction of temporary roads as well as thinning in the upland portion of riparian reserves. The projects are within the Stone Creek drainage of the Oak Grove Fork of the Clackamas River watershed, and the Warm Springs watershed. The "Conehead" portion of the planning area is in T. 7 S., and R. 8 & 8½E. Willamette Meridian. It is west of the Warm Springs Indian Reservation near West Pinhead Butte. The "Summit" portion of the planning area is in T. 6 S., and R. 8 E. Willamette Meridian. It is south east of Rock Butte and north east of Peavine Butte. The areas are approximately 60 air miles south east of Portland, Oregon. These proposals are tentatively planned for implementation in fiscal years 2000 and 2001. The Mt. Hood National Forest invites written comments and suggestions on the scope of the analysis in addition to those comments already received as a result of local public participation activities. The agency will also give notice of the full environmental analysis and decision-making process so that interested and affected people are made aware as to how they may participate and contribute to the final decision. Presently, there are no plans for a scoping meeting.

DATES: Comments concerning the scope and implementation of the analysis should be received in writing by August 30, 1999.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Chris Pazzula, Acting District Ranger, Clackamas River Ranger District, Mt. Hood National Forest, 595 NW Industrial Way, Estacada, Oregon 97023. E-mail address: clackriv/r6pnw__mthood@fs.fed.us

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and the scope of analysis to Jim Roden, Clackamas River Ranger District, phone 503–630–8722.

SUPPLEMENTARY INFORMATION: This project will be consistent with the Mt. Hood National Forest Land and Resource Management Plan as amended by the Northwest Forest Plan. The Watershed Analysis for the Oak Grove Fork has been completed and the Watershed Analysis for the Warm Springs River has not yet been completed. The Land Allocations include C1—Timber Emphasis, B3—Roaded Recreation, and Riparian Reserve. The elevation ranges from 4000 to 4400 feet and encompasses second-growth stands which were established after wildfires. The trees are lodgepole pine and mixed conifers 80 to 130 years old.

The project area contains stands with declining health and growth and are experiencing high mortality. Action is needed to move these stands closer to the desired future conditions specified in higher level plans including the Mt. Hood Forest Plan, the Northwest Forest Plan and Watershed Analysis. There is the opportunity to enhance forest health and to provide wood products to meet the social and economic needs described in the Northwest Forest Plan. There is also the opportunity to enhance habitat for Canada lynx, to enhance the productivity of Big Huckeleberry, to enhance riparian conditions, and to meet objectives for recreation.

The proposed action includes approximately 1015 acres of thinning (15 acres of which is in the Riparian Reserve) and approximately 370 acres of regeneration harvesting. Unit shapes, sizes, and post harvest treatments would be designed to take advantage of opportunities available to enhance the resources described in the previous paragraph. The proposed action also calls for the construction of 3.35 miles of temporary roads and the reconstruction of existing roads.

One issue identified is that temporary road construction and harvest could change the areas undeveloped character by further modifying the area so that management activities are more obvious. There have been few roads built in this area in the past because of the fire history of this area and the small size of the trees. Another issue identified concerns the effect of thinning in Riparian Reserves which may pose a short-term risk to water quality and fish habitat, if sediment is delivered to streams. A third issue identified concerns the effect of creating openings to enhance huckleberry and lynx habitats.

The Forest Service will be seeking information, comments and assistance from Federal, State, local agencies, tribes, and other individuals or organizations who may be interested in, or affected by the proposed action. This information will be used to determine the issues significant to the development and analysis of alternatives, to determine the appropriate range of alternative ways of implementing the proposed action, and to guide the analysis of effects.

The scoping process will include the following:

- Identification of potential issues;
- Identification of issues to be analyzed in depth;
- Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis;
- Exploration of alternative ways to implement the proposed actions based on the issues identified during the scoping process; and
- Determination of environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

A range of alternatives will be considered including the No Action alternative. As issues are identified, other potential alternatives will be developed.

Comments received in response to this notice, including names and addresses of those who comment, will

be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October, 1999. The comment period on the draft EIS will be 45 days from the date EPA publishes the notice of availability of the draft EIS in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The final EIS is scheduled to be completed in December, 1999. In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. The responsible official is the Forest Supervisor, Gary L. Larsen. As responsible official, he will document the Conehead-Summit Resource Management Project decision and rationale in a Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: July 26, 1999.

Gary L. Larsen,

Forest Supervisor, Mt. Hood National Forest.

[FR Doc. 99–19844 Filed 8–2–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funding and Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program; Correction

AGENCY: Rural Housing Service, USDA.

ACTION: Correction.

SUMMARY: The Rural Housing Service (RHS) corrects a notice published June 16, 1999 (64 FR 32373). This action is taken to correct the maximum allowable interest rate to be negotiated between the lender and the applicant. Accordingly, the notice published June 16, 1999 (64 FR 32373), is corrected as follows:

On page 32374 in the first column, Item V. A. (4), the introductory text prior to the table should read "Loans with interest rates less than the maximum allowable 250 basis points over the 30 Year Treasury Bond Yield as published in the Wall Street Journal as of the business day previous to the business day the rate was set, will be awarded points as follows:"

On page 32374 in the third column, Item VI. C. "Maximum Interest Rate," the text "30-year Treasury Bond Rate" should read "30-year Treasury Bond Yield."

Dated: July 21, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–19831 Filed 8–2–99; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–826, A–469–809, A–588–852, A–580–841]

Initiation of Antidumping Duty Investigations: Structural Steel Beams From Germany, Japan, South Korea, and Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 3, 1999.

FOR FURTHER INFORMATION CONTACT: Robert James (Germany) at (202) 482–5222; Abdelali Elouaradia (Japan) at (202) 482–2243; Rick Johnson (South Korea) at (202) 482–3818; and Linda Ludwig (Spain), at (202) 482–3833, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1998).

The Petition

On July 7, 1999, the Department of Commerce ("the Department") received petitions filed in proper form by Northwestern Steel and Wire Company, Nucor-Yamato Steel Company, TXI-Chaparral Steel Company, and United Steelworkers of America AFL–CIO (collectively petitioners). The Department received supplemental information to the petitions on July 8, July 21 and July 22, 1999.

In accordance with section 732(b) of the Act, petitioners allege that imports of structural steel beams ("structural beams") from Germany, Japan, South Korea, and Spain are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations they are requesting the Department to initiate (*see Determination of Industry Support for the Petition* below).

Scope of Investigations

For purposes of this investigation, the products covered are doubly-symmetric shapes, whether hot-or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products ("Structural Steel Beams") include, but are not limited to, wide-flange beams ("W" shapes), bearing piles ("HP" shapes), standard beams ("S" or "I" shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this investigation:

- Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

In addition to the above exclusion, petitioners have requested that the Department exclude certain special section I-shapes. *See* Exhibit 5 of the petition, submitted on July 7, 1999, *see also* Attachment A of the July 23, 1999 petition amendment. The Department is currently considering this exclusion request, and attempting to define the request using physical, mechanical, and chemical criteria.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that the scope in the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as we discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by August 16, 1999. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. Any product coverage comment filed must be filed for the record of each structural steel beam investigation (*i.e.*, commentors must file *all* coverage comments on the record of the investigations for structural steel beams from Germany, Japan, South Korea (both antidumping and countervailing duty investigations) *and* Spain). The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law (*see Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16,.1991).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

The domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section, above. The Department has no basis on the record to find the petition's definition of the domestic like product to be inaccurate. The Department has, therefore, adopted the domestic like product definition set forth in the petition.

In this case, the Department has determined that the petition and supplemental information to the petition contain adequate evidence of sufficient industry support (*see Attachment to the Initiation Checklist Re: Industry Support*, July 27, 1999). For all countries, producers and workers supporting the petition represent over 50 percent of total production of the domestic like product.

Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which our decisions to initiate these investigations are based. Should

the need arise to use any of this information in our preliminary or final determinations for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

Germany

Petitioners have identified Salzgitter AG (Salzgitter) and Stahlwerk Thüringen GmbH (Stahlwerk Thüringen) as possible exporters of structural beams from Germany and the primary producers of subject merchandise in Germany. Petitioners based export price ("EP") on two price offerings for structural beams, one by Salzgitter and one by Stahlwerk Thüringen, made in the fourth quarter of 1998 to unaffiliated U.S. purchasers. Petitioners deducted inland freight obtained from a price quote for trucking wide-flange beams from the German mill to the port of exportation. Petitioners then subtracted ocean freight and insurance costs, calculated as the difference of the unit customs value from the unit C.I.F. value of the subject merchandise. In addition, petitioners deducted port fees, which they acquired from an official port schedule for one of the price offerings and documented by affidavit for the other, and U.S. customs duties, which were obtained from the 1999 HTSUS.

In calculating NV, petitioners used two home market price quotes (one from Salzgitter and one from Stahlwerk Thüringen). Petitioners stated that these prices were quoted for wide-flange beams for sale in the first quarter of 1999 and that the grade offered in these quotes is equivalent to the grades in the U.S. offerings used to compute EP. Because the terms of Salzgitter and Stahlwerk Thüringen's sales were on a delivered basis, petitioners subtracted the cost of delivery to customers in Germany from the delivered prices. Petitioners obtained inland freight costs for shipping a truckload of structural beams in Germany from a freight forwarder. To compute normal value petitioners also deducted home market credit expenses, which were calculated using the average days of credit offered on sales of wide-flange beams in Germany, the home market delivered price, and the average German prime rate (from the Bundesbank) for January and February 1999. In addition, petitioners added an amount for imputed U.S. credit expense in accordance with section 773(a)(6)(C) of the Act. Petitioners derived the imputed U.S. credit expense using the standard days of credit offered on sales of German wide-flange beams in the U.S., the U.S. delivered price, and the average U.S. prime lending rate during the period of shipment.

Petitioners provided information demonstrating reasonable grounds to believe or suspect that home market sales of the subject merchandise were made at prices below the cost of production ("COP"), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales below cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing ("COM"), selling, general, and administrative expenses ("SG&A"), and packing costs. To calculate COP, the petitioners based COM on their own production experiences for COM adjusted for known differences between costs incurred to produce structural beams in the United States and Germany. To calculate SG&A petitioners relied on their own experience. Petitioner's relied upon their own experience for SG&A because as documented in the petition, they were unable to obtain an SG&A rate for a German steel producer. In addition, we note that the SG&A rate used appears to be conservative. To calculate financial expenses, petitioners relied upon the 1998 net financial expense from the financial statements of one of the named producers.

Based on our analysis, certain of the home market sales reported in the petition were shown to be made at prices below the COP. For these sales, petitioner based NV on the constructed value ("CV") of the merchandise, pursuant to section 773(a)(4) and 773(e) of the Act. Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A expenses, packing costs and profit of the merchandise. To calculate the COM, SG&A, and packing costs for CV, petitioners followed the same methodology used to determine COP. The petitioners derived profit for CV based on the 1998 financial statements of one of the producers named in the petition. We adjusted petitioners' calculated profit to exclude investment write-offs and equity earnings in affiliated companies.

The estimated dumping margins based on a comparison between Salzgitter and Stahlwerk Thüringen's U.S. prices and CV, as adjusted by the Department, are 67.78 percent and 88.83 percent, respectively. Based on a comparison of EP to home market prices, petitioners' calculated dumping margins range from 45.91 percent to 49.45 percent, respectively.

Japan

The petitioners based EP for both Tokyo Steel and Nippon Steel on three U.S. price offerings for sales of wide flange beams to unaffiliated purchasers during the fourth quarter of 1998 for delivery in either the first or second quarter of 1999. The terms of sale were FOB truck or ex-dock duty paid per hundred weight, which the petitioners multiplied by twenty to calculate a price per short ton. The petitioners stated that they were unable to obtain rates for trucking the subject merchandise from the locations of each Japanese mill to the port of export; therefore, they did not deduct any Japanese trucking and/or port fees from the U.S. price. However, petitioners did subtract ocean freight, port fees (from an industry expert's affidavit and U.S. government statistics, respectively), and U.S. customs duties (from the 1999 HTSUS schedule).

The petitioners based NV on December 1998 quoted transaction prices for wide-flange beams identical or similar to those sold in the United States, produced by Tokyo Steel and Nippon Steel and sold or offered for sale to customers in Japan. The prices used in the calculation of NV were ex-factory prices. Petitioners deducted inland freight (from an industry expert's affidavit) and credit expense from the starting price. Petitioners used a credit period that was based on a quoted transaction price, and used an interest rate from the *International Financial Statistics*. Petitioners did not add back an amount of U.S. credit. Further, petitioners did not make any adjustment for differences in packing.

Petitioners provided information demonstrating reasonable grounds to believe or suspect that home market sales of the subject merchandise were made at prices below the COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales below cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A and packing costs. To calculate COP, the petitioners based COM on the costs of a surrogate producer because this producer has comparable scrap-based, electric arc furnace production facilities. Petitioners stated that the surrogate producer's costs were representative of Tokyo Steel's and Nippon Steel's cost in producing the same product. For Nippon, petitioners increased the surrogates labor cost by five times based on information contained in a newspaper article. For Nippon, to calculate SG&A, and financial expenses, the petitioners relied upon the non-consolidated financial statements of Nippon Steel Corporation for fiscal year 1998. For Tokyo Steel, to calculate depreciation, SG&A, and financial expenses, the petitioners relied upon the financial statements of Tokyo Steel for the fiscal year 1998. We relied on the cost data contained in the petition except in the following instances.

1. We revised Nippon's SG&A rate to include miscellaneous income and expenses, retirement expenses, and past service pension costs. We also revised Tokyo's SG&A rate to include past service pension costs, loss on disposal of fixed assets and plant shutdown costs.
2. We recalculated Nippon's net financial expense rate using Nippon's consolidated financial statements. *See* Japan Attachment 6 to the *Initiation Checklist*. We also reduced Nippon's and Tokyo's financial expense by short-term interest income. We based the short-term interest income offset on the ratio of cash and cash equivalents to total interest bearing assets for both Nippon and Tokyo.
3. We recalculated Tokyo's depreciation expense using the depreciation expense of the same surrogate producer used to compute the other manufacturing costs contained in the petition.
4. We did not rely on petitioners' revised labor cost submitted on July 22, 1999, because the newspaper article which was relied upon contained inconsistencies. Therefore, we relied on the surrogate's labor cost as indicated in the affidavit provided in the petition.

Based upon our analysis of the adjusted petition information, certain of the home market sales reported in the petition were shown to be made at prices below the COP. Thus, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP. Accordingly, we are initiating a country-wide-sales-below-cost investigation.

For below-cost sales, petitioners based NV on the CV of the merchandise, pursuant to sections 773(a)(4) and 773(e) of the Act. Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A, packing costs, and profit of the merchandise. To calculate the COM, SG&A expenses and packing costs for CV, petitioners followed the same methodology used to determine COP. Accordingly, we relied on this methodology after adjusting certain cost elements as noted above. The petitioners derived Nippon's profit for CV based on certain sales of the surrogate producer used to compute COM. The petitioners derived Tokyo's profit from the one sale which passed the cost test. For Nippon, we recalculated profit based on Nippon's 1998 unconsolidated financial statements. Because Tokyo's 1998 financial statements reflected a net loss, we based the profit for Tokyo on the recalculated Nippon profit rate. *See* Japan cost section of *Initiation Checklist*.

The estimated dumping margins, based on a comparison between Nippon and Tokyo Steel's U.S. prices and adjusted CV, range from 1.58 percent to 23.13 percent. Based on a comparison of EP to home market prices, petitioners calculated dumping margins of 22.21 percent.

South Korea

Petitioners identified Inchon Iron & Steel Co. Ltd ("Inchon") and Kangwon Industries Co. Ltd. ("Kangwon") as the primary producers and exporters of subject merchandise from South Korea to the United States in 1998. Petitioners based EP for Inchon on an April 1999 U.S. price offering for a sale to an unaffiliated purchaser. For Kangwon, petitioners based EP on a December 1998 offer for sale to an unaffiliated purchaser. Because the price offers are for products delivered to the United States, petitioners calculated a net U.S. price for each product by subtracting estimated costs for shipment from the factory in South Korea to the port of export and port charges. In addition, petitioners subtracted unloading and wharfage charges, ocean freight and insurance, U.S. inland freight, and U.S. Customs duties.

To calculate NV, petitioners obtained home market prices for Inchon and Kangwon (from foreign market research and an affidavit from a U.S. producer), contemporaneous with the pricing information used as the basis for EP, for products offered for sale to customers in South Korea which are either identical or similar to those sold to the United States. Petitioners adjusted these prices by subtracting foreign movement charges and credit expenses.

Petitioners provided information demonstrating reasonable grounds to believe or suspect that home market sales of the subject merchandise were made at prices below the COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide-sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A, and packing costs. To calculate COP, petitioners based COM on their own experience, adjusted for known differences between costs incurred to produce structural beams in the United States and South Korea. To calculate SG&A and financial expenses, petitioners relied upon the 1997 financial statements for each of the two South Korean producers named in the petition. We relied on the cost data contained in the petition except for the following. We revised the financial expense ratio to include an offset amount for short-term interest income.

Based on our analysis, certain of the home market sales reported in the petition were shown to be made at prices below the COP. For these sales, petitioner based NV on the CV of the merchandise, pursuant to section 773(a)(4) and 773(e) of the Act. Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A, packing costs, and profit of the merchandise. To calculate the COM, SG&A, and packing costs for CV, petitioners followed the same methodology used to determine COP. Accordingly, we relied on this methodology after adjusting certain cost elements as noted above. The petitioners derived profit for CV based on the South Korean producers' 1997 financial statements.

The estimated dumping margins, based on a comparison between Inchon and Kangwon's U.S. prices and CV, as adjusted by the Department, range from 89.67 to 107.07 percent. Based on a comparison of EP to home market prices, as adjusted by the Department, petitioners' calculated dumping margins range from 50.00 to 62.95 percent. A description of the adjustments which the Department made to petitioners' calculations of export price and normal value are contained in the *Initiation Checklist*.

Spain

The petitioners identified Corporación José María Aristrain SA ("Aristrain" (single Spanish entity) or "Arbed" (consolidated group of companies)) as the possible exporter of structural beams from Spain. The petitioners further identified this exporter as the primary producer of subject merchandise in Spain. The petitioners based EP for Aristrain on a U.S. price offering for the first sale to an unaffiliated purchaser during the fourth quarter of 1998. Because the terms of Aristrain's U.S. sale were FOB truck at the U.S. port of entry, the petitioners calculated a net U.S. price by subtracting estimated costs for shipment from the factory in Spain to a port of export (from an industry expert's affidavit regarding the cost of inland freight). In addition, the petitioners subtracted ocean freight and insurance, unloading charges, and wharfage (from official U.S. tariff rates and official U.S.

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import statistics), and estimated costs for U.S. import duties and fees (both from the 1999 HTSUS schedule).

With respect to NV, petitioners obtained a per metric ton price of wide-flange steel beams offered (or sold) by Aristrain sold (or to be sold) in Spain. Petitioners adjusted this price by subtracting credit expenses (from an industry expert's affidavit and official International Monetary Fund statistics).

Petitioners failed to provide information demonstrating reasonable grounds to believe or suspect that home market sales of the subject merchandise were made at prices below the COP, within the meaning of section 773(b) of the Act. Therefore, at this time we are not initiating a sales-below-cost investigation. *See* Spain cost section of *Initiation Checklist*.

The estimated dumping margin in the petition, based on a comparison between Aristrain's U.S. price and NV, is 66.94 percent.

Initiation of Cost Investigations

Pursuant to section 773(b) of the Act, petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home markets of Germany, Japan, and South Korea were made at prices below the fully allocated COP and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with the requested antidumping investigations on Germany, Japan, and South Korea. The Statement of Administrative Action ("SAA"), submitted to the Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 103–316 at 833 (1994). The SAA, at 833, states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation."

Further, the SAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their costs of production, we find the existence of "reasonable grounds to believe or suspect" that sales of the foreign like product in Germany, Japan, and South Korea were made below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigations for Germany, Japan, and South Korea (*see* country-specific sections above and cost attachment to the initiation checklist).

Fair Value Comparisons

Based on the data provided by petitioners, there is reason to believe that imports of structural beams from Germany, Japan, South Korea, and Spain are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. Petitioners explained that the industry's injured condition is evident in the declining trends in output and net operating profits. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Attachments to Initiation Checklist, Re: Material Injury*, July 27, 1999).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on structural beams and petitioners' responses to our supplemental questionnaire clarifying the petitions, as well as our discussion with the authors of the foreign market research reports supporting the petition on South Korea and other measures to confirm the information contained in these reports, we have found that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of structural beams from Germany, Japan, South Korea, and Spain are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of publication of this notice.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of Germany, Japan, South Korea, and Spain. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition (as appropriate).

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine by August 23, 1999, whether there is a reasonable indication that imports of structural beams from Germany, Japan, South Korea, and Spain are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: July 27, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19919 Filed 8–2–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–842]

Notice of Initiation of Countervailing Duty Investigation: Structural Steel Beams From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 3, 1999.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds at (202) 482–6071 or Tipten Troidl at (202) 482–1767, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348).

The Petition

On July 7, 1999, the Department of Commerce (the Department) received petitions filed in proper form on behalf of Northwestern Steel and Wire Co., Nucor-Yamato Steel Co., TXI-Chaparral Steel Co., and the United Steelworkers of America AFL–CIO (the petitioners). Supplements to the petitions were filed on July 22 and 23, 1999.

In accordance with section 702(b)(1) of the Act, petitioners allege that manufacturers, producers, or exporters of structural beams from the Republic of Korea (Korea) received countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined under sections 771(9)(C) and (D) of the Act. The petitioners have demonstrated sufficient industry support with respect to this countervailing duty investigation, which they are requesting the Department to initiate (*see Determination of Industry Support for the Petition* below).

Scope of the Investigation

For purposes of this investigation, the products covered are doubly-symmetric shapes, whether hot-or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products (Structural Steel Beams) include, but are not limited to, wide-flange beams (W shapes), bearing piles (HP shapes), standard beams (S or I shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this investigation:

- Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

In addition to the above exclusion, petitioners have requested that the Department exclude certain special section I-shapes. *See* Exhibit 5 of the petition, submitted on July 7, 1999, *see also* Attachment A of the July 23, 1999 petition amendment. The Department is currently considering this exclusion request, and attempting to define the request using physical, mechanical, and chemical criteria.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that the scope in the petition accurately reflects the product for which the domestic industry is seeking relief. Moreover, as we discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by August 16, 1999. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. Any product coverage comment filed must be filed for the record of each structural steel beam investigation (*i.e.*, commentors must file *all* coverage comments on the record of the investigations for structural steel beams from Germany, Japan, South Korea (both antidumping and countervailing duty investigations) *and* Spain). The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of Korea (GOK) for consultations with respect to the petition filed. The GOK declined to hold consultations with the Department regarding the petition, but on July 20, 1999, submitted a letter to the Department expressing opposition to the petition.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law (*see Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be

the scope as defined in the petition. Moreover, petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

The domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section, above. The Department has no basis on the record to find the petition's definition of the domestic like product to be inaccurate. The Department has, therefore, adopted the domestic like product definition set forth in the petition.

In this case, the Department has determined that the petition and supplemental information to the petition contain adequate evidence of sufficient industry support (*see Attachment to the Initiation Checklist Re: Industry Support*, July 27, 1999). Producers and workers supporting the petition represent over 50 percent of total production of the domestic like product. Therefore, polling was not necessary.

Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Injury Test

Because Korea is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. Petitioners explained that the industry's injured condition is evident in the declining trends in output and net operating profits. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Attachments to Initiation Checklist, Re: Material Injury*, July 27, 1999).

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

Initiation of Countervailing Duty Investigation

The Department has examined the petition on structural steel beams from Korea and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of structural beams from Korea receive subsidies. *See* the July 27, 1999, memorandum to the file regarding the initiation of this investigation (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099).

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Korea:

1. *GOK Directed Credit Programs*
   a. Pre-1992 Directed Credit
   b. Post-1991 Directed Credit
2. *Debt Restructuring for Kangwon Industries*
3. *Private Capital Investment Act (PCIA)*
4. *Tax Programs Under the Tax Reduction and Exemption Control Act (TERCL)*
   a. Technical Development Reserve Funds (Article 8)
   b. Tax Credit for Investment in Equipment to Develop Technology and Manpower/Investment Tax Credit (Article 10)
   c. Reserve for Export Loss (Article 16)
   d. Reserve for Overseas Market Development (Article 17)
   e. Tax Credits for Vocational Training (Article 18)
   f. Exemption of Corporation Tax on Dividend Income from Overseas Resources Development Investment (Article 24)
   g. Tax Credit for Investment in Productivity Improvement Facilities (Article 25)
   h. Tax Credits for Investment in Specific Facilities (Article 26)
   i. Tax Credits for Temporary Investments (Article 27)
   j. Social Indirect Capital Investment Reserve Funds (Article 28)
   k. Energy-Saving Facilities Investment Reserve Funds (Article 29)
   l. Tax Credits for Specific Investments (Article 71)
   m. Mining Investment Reserve Funds (Article 95)
5. *Reserve for Investment*
6. *Asset Revaluation Pursuant to TERCL Article 56(2)*
7. *Special Cases of Tax for Balanced Development among Areas (TERCL Articles 41, 42, 43, 44, and 45)*
8. *Industry Promotion and Research and Development Subsidies*
   a. Promotion Fund for Science and Technology
   b. Highly Advanced National Project Fund
   c. Steel Campaign for the 21st Century
9. *Overseas Resource Development (Loans and Grants) Programs*
10. *Excessive Duty Drawback*
11. *Electricity Discounts*
12. *Scrap Reserve Fund*
13. *Export Insurance Rates By The Korean Export Insurance Corporation*
14. *Short-Term Export Financing*
15. *Korean Export-Import Bank Loans*
16. *Export Industry Facility Loans (EIFL) and Specialty Facility Loans*
17. *Loans from the Energy Savings Fund*
18. *Tax Incentives for Highly Advanced Technology Businesses*
19. *Special Depreciation of Assets Based on Foreign Exchange Earnings*

Petitioners have also alleged that Kangwon was uncreditworthy from 1991 through 1998. Based upon the information provided by petitioners, including financial ratios, we are initiating an investigation of Kangwon's creditworthiness for the years 1991 through 1998.

We are not including in our investigation the following programs alleged to be benefitting producers and exporters of the subject merchandise in Korea:

1. Tax Credit for Technology and Manpower-Development Expenses (Article 9 of TERCL)

Petitioners alleged that producers and exporters of the subject merchandise may be benefitting from this program. However, we have decided not to initiate an investigation of this program. We recently examined this program in the *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 64 FR 30636 (June 8, 1999) (*Sheet and Strip*). In *Sheet and Strip*, we found this program not countervailable. *See Sheet and Strip*, 64 FR at 30645–6. Petitioners have provided no new information or evidence of changed circumstances to warrant a reexamination of this program.

2. Free Trade Zones (FTZs)

In 1997, the GOK announced its intention of establishing FTZs in the ports of Pusan and Kwangyang. Petitioners allege that special concessions, such as various tax and customs incentives, apply only to companies in GOK-designated FTZs thereby bestowing regionally specific subsidies on companies located in these zones. However, petitioners point out, neither Inchon nor Kangwon is located in the ports scheduled to be designated as FTZs by the GOK. Moreover, petitioners do not provide any evidence in support of their contention that the GOK may have expanded the FTZ program to include ports where Inchon and Kangwon have operations. Therefore, we are not initiating an investigation of this program.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public version of the petition have been provided to the representatives of Korea. We will attempt to provide copies of the public version of the petition to all the exporters named in the petition, as provided for under section 351.203(c)(2) of the Department's regulations.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of this initiation.

Preliminary Determination by the ITC

The ITC will determine by August 23, 1999, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of structural steel beams from Korea. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: July 27, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–19920 Filed 8–2–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Arizona Science Center, Notice of Disposition of Application for Duty-Free Entry of Scientific Instrument

We have been advised that the entry covered by Docket Number 96–105 (see notice at 61 FR 55972, October 30, 1996) was liquidated on August 14, 1998. We are treating the docket as a withdrawal pursuant to Sec. 301.5(g) of the regulations and have discontinued processing.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–19917 Filed 8–2–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Application may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 99–019. *Applicant:* National Institutes of Health, National Institute of Allergy & Infectious Diseases, Rocky Mountain Laboratories, 903 South 4th Street, Hamilton, MT 59840. *Instrument:* Electron Microscope, Model H–7500. *Manufacturer:* Nissei Sangyo Ltd., Japan. *Intended Use:* The instrument is intended to be used for studies of infectious agents of humans and animals, and cells and tissues affected by such agents. These studies will be conducted using standardized and customized preparative and microscopic procedures for high magnification and high resolution visual examination of biomedical samples.

Application accepted by Commissioner of Customs: July 15, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–19918 Filed 8–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072799F]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Oversight Committee and Groundfish Advisory Panel.

DATES: The meeting will be held on August 25, 1999, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Colonial, 1 Audobon Road, Wakefield, MA 01960; telephone: (781) 245–9300.

Council address: New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone: (781) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

The committee and panel will finalize alternatives for a framework adjustment to the Northeast Multispecies Fishery Management Plan (FMP) to implement mid-season adjustments to the management program for the Gulf of Maine cod fishery that could also carry forward to the 2000–01 fishing year. The framework action will also modify the Georges Bank cod trip limit adjustment mechanism (pending NMFS approval of Framework 30 to the FMP). The Council will hold the initial meeting for this framework adjustment on August 10–11, 1999, when it will identify alternatives for this action. It will hold the final meeting, to select measures for submission to the Secretary of

Commerce, on September 21 –23, 1999. The committee and panel will also review the timeline for Amendment 13 to the FMP and outline specific management proposals for a stock-rebuilding program, including but not limited to days-at-sea management, gear reductions and area management. The meeting agenda may also include a review of the technical responses to questions raised by the committee at its June 17 meeting about the scientific basis for the current cod stock boundary delimitation.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 28, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–19865 Filed 8–2–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

July 27, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: August 3, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

At the request of the Government of Jamaica, the U.S. Government has agreed to increase the current guaranteed access levels for textile products in Categories 338/339/638/639 and 352/652.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 60305, published on November 9, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 27, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Jamaica and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on August 3, 1999, you are directed to increase the guaranteed access levels for the categories listed below for the period beginning on January 1, 1999 and extending through December 31, 1999.

Category	Guaranteed access level
338/339/638/639	2,500,000 dozen.
352/652	11,500,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–19897 Filed 8–2–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

July 27, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 3, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 60306, published on November 9, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 27, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on August 3, 1999, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339	588,592 dozen.
347/348	1,107,407 dozen.
638/639	492,759 dozen.
647/648/847	603,816 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–19898 Filed 8–2–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission of OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Application and Contract for Establishment of a Junior Reserve Officers' Training Corps Unit; DA Form 3126; OMB Number 0702–0021.

Type of Request: Reinstatement.

Number of Respondents: 70.

Responses per Respondent: 1.

Annual Responses: 70.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 70.

Needs and Uses: Educational institutions desiring to host a Junior ROTC unit may apply by using a DA Form 3126. The form documents the agreement and becomes a contract signed by both the institution and the U.S. Government. The DA Form 3126 provides information on the school's facilities and states specific conditions if a JROTC unit is placed at the institution. The information submitted is used to determine which schools will be selected. The agreement is initiated by the school and countersigned by a representative of the Secretary of the Army.

Affected Public: Not-For-Profit Institutions; State, Local, or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 28, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–19801 Filed 8–2–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–20]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 of July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–20, with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 28, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

20 JUL 1999
In reply refer to:
I-99/07024

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-20, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Australia for defense articles and services estimated to cost $255 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-20

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) Prospective Purchaser: Australia

(ii) Total Estimated Value:

Major Defense Equipment*	$ 203 million
Other	$ 52 million
TOTAL	$ 255 million

(iii) Description of Articles or Services Offered:
Seventy-one AN/APG-73 radar, 71 Interface Blanking Unit, integration, validation/verification kits, spare and repair parts, support equipment, publications, personnel training and training equipment, and other related elements of logistics support.

(iv) Military Department: Navy (LZY)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(vii) Date Report Delivered to Congress: 20 JUL 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia - AN/APG-73 Radar

The Government of Australia has requested a possible sale of 71 AN/APG-73 radar, 71 Interface Blanking Unit, integration, validation/verification kits, spare and repair parts, support equipment, publications, personnel training and training equipment, and other related elements of logistics support. The estimated cost is $255 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Southwestern Pacific.

The proposed sale of the radar will enhance the country's current F/A-18 fleet and will improve air-to-air and air-to-ground capabilities. Australia, which already has advanced aircraft radar in its inventory, will have no difficulty absorbing this radar.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Systems Company, Los Angeles, California. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of two contractor representatives, in-country, during the installation validation and verification for two months. Australia will require five U.S. Government personnel in support of program management review, twice annually and one contractor representative to provide technical assistance for two months. Maintenance training will be provided by one U.S. Government personnel and one contractor representative for 10 days.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-20

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The mission of the AN/APG-73 radar system is to provide both air-to-air combat and air-to-ground attack functions in support of the F/A-18 Aircraft Weapon System. It surveys a volume of air space, or an area of land, or sea surface to determine the presence of other objects and establish the position, motion, and threat potential of these objects. This is conducted in all weather and in clear/clutter and jam free/jamming environments. Provisions for search, detection, acquisition, tracking, target identification, target illumination and missile support for air to air application is included as well as mapping, and tracking against fixed and moving surface targets for attack and low altitude flight.

2. A determination has been made that Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 99–19800 Filed 8–2–99; 8:45 am]
BILLING CODE 5000–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Panel on Military Operations on Vieques

AGENCY: DoD, Special Panel on Military Operations on Vieques.

ACTION: Notice.

SUMMARY: The Panel will conduct two public meetings to receive and discuss information associated with military operations at Vieques, Puerto Rico and in the adjoining ocean range complex. The panel will receive information from the Department of the Navy on environmental and economic issues on July 30 and from the Attorney General of Puerto Rico on August 6. Because of the short timeframe of the panel's review, and the accelerated pace of the meeting schedule, this announcement must be made less than 15 days before the meetings will take place.

DATES: July 30 and August 6, 1999 from 9:00 to 11:30 a.m.

ADDRESSES: 1401 Wilson Boulevard, Room 400, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Dr. Hector O. Nevarez, the Designated Federal Officer, 1401 Wilson Boulevard, Suite 400, Arlington, VA 22209, phone (703) 696–9456, fax (703) 696–9482, or via Email at *Hector.Nevarez@osd.pentagon.mil*. Written comments must be sent to Dr. Nevarez and received no later than Wednesday, July 28, 1999 and Wednesday, August 4, 1999, respectively. Copies of the draft meeting agenda can be obtained by contacting Debra Crnkovic at (703) 695–5493.

SUPPLEMENTARY INFORMATION: Seating in the panel meeting room is limited, and spaces will be reserved only for panel members and invited representatives. The remaining seating is available on a first-come, first-served basis. No teleconference lines will be available. Written comments for the record may be mailed to the Panel and will be distributed to the Panel members after the adjournment of the July 30 and August 9, 1999 meetings.

Dated: July 28, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–19799 Filed 8–2–99; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse Final Environmental Impact Statement for Reese Air Force Base (AFB), Texas (TX)

On July 26, 1999, the Air Force issued a ROD for the disposal of Reese AFB, TX. The decisions included in this ROD have been made in consideration of the Final Programmatic Environmental Impact Statement for the Disposal and Environmental Impact Report for Reuse (FPEIS) of Reese AFB, TX, which was filed with the Environmental Protection Agency on August 8 1997, and other relevant considerations.

Reese AFB closed September 30, 1997, pursuant to the Defense Base Closure and Realignment Act of 1990, (Public Law 101–510) and the

recommendations of the Defense Secretary's Commission on Base Realignment and Closure. This ROD documents the Reese AFB disposal decisions.

The Air Force has decided to dispose of the approximately 2467 acres fee and 516 acres of easements at Reese AFB and the 520 acres fee and 140 acres of easements at the non-contiguous landing field in Terry County in the following manner: Parcel A (approximately 20 acres), and Parcel B (approximately 21 acres) will be assigned to the Department of Education for conveyance to Texas Tech University and South Plains College, respectively. Parcel C (approximately 40 acres) will be assigned to the Department of Interior and will be conveyed for public park or recreation use. Parcel D (approximately 1 acre) will be conveyed to the City of Lubbock for law enforcement purposes. Parcels E and F (approximately 2906 acres fee and approximately 656 acres of easements) will be conveyed to the Lubbock/Reese Redevelopment Authority (LRRA) by an Economic Development Conveyance (EDC). If for any reasons all or portions of Parcels A, B, C, and D are not conveyed for their intended Public Benefit Purposes, they will be added to Parcel E.

The uses proposed for the property by the prospective recipients of the property under the ROD are included in the proposed action in the FPEIS and are consistent with the community's revised redevelopment plan for the base. The LRRA prepared the plan with the assistance of the broader community.

By this decision, the Air Force adopts certain mitigation measures, as described in this ROD, to protect public health and the environment. In response to the existing or forecasted environmental impacts to or in the area of Reese AFB, subsequent property owners should consider implementation of the more specific mitigation measures associated with reuses they may undertake, as set forth in Chapter 4 of the FEIS.

Any questions regarding this matter should be directed to: Mr. Mike Ruzila, Program Manager, Division C, AFBCA/DC, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2809, (703) 696–5260.

Cheryle D. Gumaer,

Air Force Records Officer.

[FR Doc. 99–19886 Filed 8–2–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a record system.

SUMMARY: The Department of the Air Force proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on September 2, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 21, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 28, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F024 AF AMC A

SYSTEM NAME:

Passenger Reservation and Management System *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Global Air Transportation Execution System (GATES)'.

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters, Air Mobility Command, Scott Air Force Base, IL 62225-5302; Aerial Ports of Embarkation and Debarkation; Military Transportation Offices; Air Mobility Support Flights; Passenger Gateways; Navy Operated Air Terminals and Aerial Ports; Military airfields or installations (all services); any activity or agency responsible for initiating or receiving a request for movement of personnel and their baggage, manifesting, tracing, billing actions, or statistical data collection; and deployed fixed and non-fixed airfields throughout the globe. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Any individual (military or civilian) who is a passenger on a military or civilian contracted aircraft.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to entry 'To customs officials for the purpose of notifying foreign countries of personnel and equipment arrivals.'

* * * * *

F024 AF AMC A

SYSTEM NAME:

Global Air Transportation Execution System (GATES).

SYSTEM LOCATION:

Headquarters, Air Mobility Command, Scott Air Force Base, IL 62225-5302; Aerial Ports of Embarkation and Debarkation; Military Transportation Offices; Air Mobility Support Flights; Passenger Gateways; Navy Operated Air Terminals and Aerial Ports; Military airfields or installations (all services); any activity or agency responsible for initiating or receiving a request for movement of personnel and their baggage, manifesting, tracing, billing actions, or statistical data collection; and deployed fixed and non-fixed airfields throughout the globe. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual (military or civilian) who is a passenger on a military or civilian contracted aircraft.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel order, transportation authorizations, and passenger name records. Categories of information in the passenger name record include, but are not limited to: name, grade, seats required; reservation identification code, which is assigned by a requesting activity or individual passengers and is the Social Security Number or pseudo Social Security Number or Passport Number; origin; destination; requested travel dates, routing indicator (identifies the activity/installation requesting the reservation); cancellation and standby codes (identifies the reason the passenger did not depart as scheduled); flight number; departure date and reporting time, and other administrative coding as determined by a Service activity or HQ AMC to facilitate the completion of travel to include baggage tracer and billing actions. The passenger name record is a complete listing of all transportation related administrative actions related to individual passengers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and E.O. 9397 (SSN).

PURPOSE(S):

Passenger name records are used to prepare aircraft manifests for passenger identification processing and movement on military aircraft, commercial contract (charter) aircraft, and on seats reserved (blocked) on regularly scheduled commercial aircraft at military and civilian airports. Records in this system are also used to:

(a) Develop billing data to the user Military Services or other organizations;

(b) Determine passenger movement trends;

(c) Forecast future travel requirements; and

(d) Identify, research, and resolve transportation related problems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To customs officials for the purpose of notifying foreign countries of personnel and equipment arrivals.

Records from the system are routinely disclosed to other Federal agencies and offices providing transportation, and to civilian airlines and airports for transportation services, developing billing data, manifesting passengers, and for forecasting future transportation requirements.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks/binders, card files, computers, computer output products, paper printouts, computer magnetic tapes, disks, microfiche or rolled microfilm.

RETRIEVABILITY:

Records on this system may be retrieved by any of the following means: Name; Reservation Identification Code; Social Security Number; flight number; movement channel; type transaction; type travel; special passenger category; type standby code, or passenger cancellation reason code.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software

RETENTION AND DISPOSAL:

Transportation authorizations and orders are retained in office files for two years after the annual cutoff, then destroyed. Other records in the system are retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. These records are destroyed by one of the following means: tearing into pieces, shredding, pulping, macerating, burning, or degaussing in the case of magnetic computer media.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Aerial Port Operations, Headquarters, Air Mobility Command, 402 Scott Drive, Unit 3A1, Scott Air Force Base, IL 62225-5302.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to or visit the Headquarters, Air Mobility Command/Aerial Port Operation (DON), 402 Scott Drive, Unit 3A1, Scott Air Force Base, IL 62225-5302.

Full name, reservation identification code, and movement channel are required for inquiries.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Headquarters, Air Mobility Command/Aerial Port Operation (DON), 402 Scott Drive, Unit 3A1, Scott Air Force Base, IL 62225-5302.

Full name, reservation identification code, and movement channel are required for inquiries.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from military transportation and personnel activities, individuals requesting air travel or from other agencies designated to arrange air passenger reservations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–19803 Filed 8–2–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete records systems.

SUMMARY: The Department of the Air Force proposes to delete seven systems of records notices from its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on September 2, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed deletions are not within the purview of subsection (r) of the

Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system.

Dated: July 28, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F023 AFMC A

SYSTEM NAME:

Equipment Maintenance Management Program (EMMP) *(June 11, 1997, 62 FR 31793).*

Reason: System of records is no longer being maintained. All records have been destroyed.

F024 USAFE A

SYSTEM NAME:

Customs Control Records *(June 11, 1997, 62 FR 31793).*

Reason: System of records is no longer being maintained. All records have been destroyed.

F031 AFMC B

SYSTEM NAME:

Space Human Assurance and Reliability Program (SHARP) *(June 11, 1997, 62 FR 31793).*

Reason: System of records is no longer being maintained. All records have been destroyed.

F036 AFAA A

SYSTEM NAME:

Merit Promotion File *(June 11, 1997, 62 FR 31793).*

Reason: Records being maintained are covered under the government-wide system of records notice OPM/GOVT-1, General Personnel Records.

F036 AFCA A

SYSTEM NAME:

Officer Quality Force Management Records *(June 11, 1997, 62 FR 31793).*

Reason: System of records is no longer being maintained. All records have been destroyed.

F036 AFMC C

SYSTEM NAME:

Air Force Materiel Command (AFMC) Senior Civilian Information File *(June 11, 1997, 62 FR 31793).*

Reason: System of records is no longer being maintained. All records have been destroyed.

F038 SSG A

SYSTEM NAME:

Center Automated Manpower and Update System (CAMPUS) *(June 11, 1997, 62 FR 31793).*

Reason: System of records is no longer being maintained. All records have been destroyed.

[FR Doc. 99–19806 Filed 8–2–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective on September 2, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: July 28, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S300.10 CAH

SYSTEM NAME:

Voluntary Leave Transfer Program Records *(October 13, 1994, 59 FR 51965).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete first sentence and replace with 'Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6221, and the Human Resources Offices of the Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs).'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete '(Assistant Secretaries of Defense)' and replace with '(Under Secretary of Defense for Personnel and Readiness)'.

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Record subject; personnel and leave records; and medical certification and similar data.'

* * * * *

S300.10 CAH

SYSTEM NAME:

Voluntary Leave Transfer Program Records.

SYSTEM LOCATION:

Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6221, and the Human Resources Offices of the Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have volunteered to participate in the leave transfer program as either a donor or a recipient.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave recipient records contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, pay level, leave balances, number of hours requested, brief description of the medical or personal hardship which qualifies the individual for inclusion in the program, the status of that hardship, and a statement that selected data elements may be used in soliciting donations.

The file may also contain medical or physician certifications and agency approvals or denials.

Donor records include the individual's name, organization, office telephone number, Social Security Number, position title, grade, and pay level, leave balances, number of hours donated and the name of the designated recipient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6331 et seq. (Leave); 10 U.S.C. 136 (Under Secretary of Defense for Personnel and Readiness); E.O. 9397 (SSN); and 5 CFR part 630.

PURPOSE(S):

The file is used in managing the DLA Voluntary Leave Transfer program. The recipient's name, position data, organization, and a brief hardship description are published internally for passive solicitation purposes. The Social Security Number is sought to effectuate the transfer of leave from the donor's account to the recipient's account.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness; where leave donor and leave recipient are employed by different Federal agencies, to the personnel and pay offices of the Federal agency involved to effectuate the leave transfer.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and electronic form.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Records are destroyed one year after the end of the year in which the file is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Human Resources Office, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, and the Human Resources Officers of the DLA PLFAs.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individual should provide full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Record subject; personnel and leave records; and medical certification and similar data.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–19802 Filed 8–2–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to alter systems of records.

SUMMARY: The Defense Logistics Agency proposes to alter three systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on September 2, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on July 21, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 28, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.11 DMDC

SYSTEM NAME:

Federal Creditor Agency Debt Collection Data Base *(June 25, 1996, 61 FR 32779).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Primary location: Naval Postgraduate School Computer Center, Naval

Postgraduate School, Monterey, CA 93943-5000.

Back-up Location: Defense Manpower Data Center, DoD Center, 400 Gigling Road, Seaside, CA 93955-6771.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In the second sentence, after 'and retirees' insert 'and postal workers covered by the civil service retirement system'.

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.'

* * * * *

S322.11 DMDC

SYSTEM NAME:

Federal Creditor Agency Debt Collection Data Base.

SYSTEM LOCATION:

Primary location: Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Backup location: Defense Manpower Data Center, DoD Center, 400 Gigling Road, Seaside, CA 93955-6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense officers and enlisted personnel, members of reserve and guard components, retired military personnel. All Federal-wide civilian employees and retirees and postal workers covered by the civil service retirement system. Individuals identified by Federal creditor agencies as delinquent in repayment of debts owed to the U.S. Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, debt principal amount, interest and penalty amount, if any, debt reason, debt status, demographic information such as grade or rank, sex, date of birth, duty and home address, and various dates identifying the status changes occurring in the debt collection process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Debt Collection Act of 1982 (Pub.L. 97-365), as amended by the Debt Collection Improvement Act of 1996 (Pub.L. 104-134); 5 U.S.C. 5514 'Installment Deduction of Indebtedness'; 31 U.S.C. 3711, 'Collection and Compromise'; 31 U.S.C. 3716, 'Administrative Offset'; 10 U.S.C. 136; 4 CFR 101.1-105.5,'Federal Claims Collection Standards'; 5 CFR 550.1101-1108 'Collection by Offset from Indebted Government Employees'; 'Guidelines on the Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982', March 30, 1983 (48 FR 15556, April, 1983); the Interagency Agreement for Federal Salary Offset Initiative (Office of Management and Budget, Department of the Treasury, Office of Personnel Management and the Department of Defense, April 1987); and Office of Management and Budget Guidelines (54 FR 52818, June 19, 1989) interpreting the provisions of the Privacy Act (5 U.S.C. 552a) pertaining to computer matching.

PURPOSE(S):

The primary purpose for the establishment of this system of records is to maintain a computer data base permitting computer matching in compliance with the Privacy Act of 1974 (5 U.S.C. 552a) as amended, to assist and implement debt collection efforts by Federal creditor agencies under the Debt Collection Act of 1982 to identify and locate individual debtors.

To increase the efficiency of U.S. Government-wide efforts to collect debts owed the U.S. Government.

To provide a centralized Federal data bank for computer matching of Federal employment records with delinquent debt records furnished by Federal creditor agencies under an Interagency agreement sponsored and monitored by the Department of the Treasury and the Office of Management and Budget.

To identify and locate employees or beneficiaries who are receiving Federal salaries or other benefit payments and indebted to the creditor agency in order to recoup the debt either through voluntary repayment or by administrative or salary offset procedures established by law.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Individual's name, Social Security Number, Federal agency or military service, category of employees, Federal salary or benefit payments, record of debts and current work or home address and any other appropriate demographic data to a Federal creditor agency for the purpose of contacting the debtor to obtain voluntary repayment and, if necessary, to initiate any administrative or salary offset measures to recover the debt.

To the Office of Finance of the U.S. House of Representatives and the Disbursing Office of the U.S. Senate, records of individual indebtedness from this system of records consisting of individual name, Social Security Number and amount, to be used to identify House and Senate members and their employees indebted to the Federal government for the purpose of collecting the debts.

The 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices do not apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic computer tape.

RETRIEVABILITY:

Records are retrieved by social security number and name from a computerized index.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Records are erased within six months after each match cycle.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

Written requests for information should contain the full name, social security number, current address and telephone number of the individual requesting information.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Federal creditor agencies, the Office of Personnel Management and DoD personnel and finance centers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S330.50 DLA-KS

SYSTEM NAME:

Official Personnel Files for Non-Appropriated Fund Employees . *(February 22, 1993, 58 FR 10854).*

CHANGES:

SYSTEM IDENTIFIER:

Delete 'DLA-KS' and replace with 'CAH'.

* * * * *

SYSTEM LOCATION:

Delete first paragraph and replace with 'Defense Logistics Agency Human Resources Operations Center, 3990 East Broad Street, Columbus, OH 43213-0919.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to entry 'To Federal, State, or local agencies that verify eligibility for, administer, or adjudicate claims pertaining to retirement, insurance, unemployment, health benefits, occupational injury, and similar entitlement programs.

To public and private organizations for nominating, considering, or selecting employees for awards and honors or to publicize employee recognition programs.

To the Equal Employment Opportunity Commission (EEOC) for investigating alleged or possible discrimination practices or to fulfill other functions vested in the EEOC.

To the Federal Labor Relations Authority (FLRA) for investigating and resolving allegations of unfair labor practices, or to fulfill other functions vested in the FLRA.'

* * * * *

S330.50 CAH

SYSTEM NAME:

Official Personnel Files for Non-Appropriated Fund Employees.

SYSTEM LOCATION:

Defense Logistics Agency Human Resources Operations Center, 3990 East Broad Street, Columbus, OH 43213-0919.

Some of the information contained in this system may be duplicated for maintenance at a location closer to the employee's work site (e.g., in an administrative office or supervisor's work folder) and still be covered by this system notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of non-appropriated fund (NAF) instrumentalities of DLA and former employees of such activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain identifying information such as name, date of birth, home address, social security number, home telephone, work experience, educational level, and specialized training. Files will also contain information pertaining to the selection and appointment of NAF employees, along with separation, classification, training, adverse or disciplinary actions, and similar employment-related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 302 and E.O. 9397 (SSN).

PURPOSE(S):

The files provide the basic source of factual data about a person's NAF employment. The information is collected and maintained to provide personnel services to the employee and to provide personnel and supervisory officials with information on which to base decisions on employee rights, benefits, eligibility and status.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The information may be disclosed to government and private vendor training facilities and educational institutions in support of training requirements; to health and life insurance carriers for enrollment purposes; and to Federal, state, local, and professional licensing boards concerning the issuance, retention, or revocation of licenses or certificates.

To Federal, State, or local agencies that verify eligibility for, administer, or adjudicate claims pertaining to retirement, insurance, unemployment, health benefits, occupational injury, and similar entitlement programs.

To public and private organizations for nominating, considering, or selecting employees for awards and honors or to publicize employee recognition programs.

To the Equal Employment Opportunity Commission (EEOC)for investigating alleged or possible discrimination practices or to fulfill other functions vested in the EEOC.

To the Federal Labor Relations Authority (FLRA) for investigating and resolving allegations of unfair labor practices, or to fulfill other functions vested in the FLRA.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must have access to perform their duties. The computer files are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Folders are maintained for the duration of the employee's employment. They are retired to the National

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Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118, 30 days after separation except that files on off-duty military personnel are destroyed 2 years after termination of employment and files on non-U.S. citizens residing outside of CONUS, Alaska, Hawaii, but working within CONUS, Alaska, and Hawaii are destroyed 3 years after separation.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Human Resources, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address inquiries to the to the Privacy Act Officer, Defense Logistics Agency Human Resources Operations Center, 3990 East Broad Street, Columbus, OH 43213-0919.

Inquiry should contain requester's full name, Social Security Number, and location of organization and physical location where employed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address inquiries to the to the Privacy Act Officer, Defense Logistics Agency Human Resources Operations Center, 3990 East Broad Street, Columbus, OH 43213-0919.

Inquiry should contain requester's full name, Social Security Number, and location of organization and physical location where employed.

For personal visits employee should be able to provide some acceptable identification such as driver's license or employee identification badge.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information contained in the folder is obtained from the record subject, the employee's previous employer, educational institutions, trade associations, references and others who would have knowledge of the employee's skills or employment characteristics and papers originating with the activity during the employee's work history.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S335.01 DLA-KW

SYSTEM NAME:

Training and Employee Development Record System *(February 22, 1993, 58 FR 10854)*.

CHANGES:

SYSTEM IDENTIFIER:

Delete 'DLA-KS' and replace with 'CAH'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Defense Logistics Agency (DLA) employees and individuals receiving training funded or sponsored by DLA. Department of Defense military personnel and non-appropriated fund personnel may be included in the system at some DLA locations.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Name; Social Security Number; date of birth, home address; occupational series, grade, and supervisory status; registration and training data, including application or nomination documents, pre-and post-test results, student progress data, start and completion dates, course descriptions, funding sources and costs, student goals, long- and short-term training needs, and related data. The files may contain employee agreements and details on personnel actions taken with respect to individuals receiving apprentice or on-the-job training. Where training is required for professional licenses, certification, or recertification, the file may include proficiency data in one or more skill areas.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Information is used to manage and administer training and development programs; to screen and select candidates for training; and for reporting and costing purposes.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Replace paragraphs 2 through 9 with 'To the Department of Veterans Affairs for inspecting, surveying, auditing, or evaluating apprentice or on-the-job training programs.

To the Department of Labor for inspecting, surveying, auditing, or evaluating apprentice training programs and other programs under its jurisdiction.

To Federal and state safety and environmental agencies to determine compliance with training certification requirements.

To public and private sector educational, training, and conferencing entities for participant enrollment, tracking, and evaluation purposes.

To Federal agencies for screening and selecting candidates for training or developmental programs sponsored by the agency.

To Federal oversight agencies for investigating, reviewing, resolving, negotiating, settling, or hearing complaints, grievances, or other matters under its cognizance.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Information is obtained from the record subject, current and past supervisors, personnel offices, educational and training facilities, and licensing or certifying entities.'

* * * * *

S335.01 CAH

SYSTEM NAME:

Training and Employee Development Record System.

SYSTEM LOCATION:

Headquarters Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221; Defense Logistics Agency Human Resources Operations Center, 3990 East Broad Street, Columbus, OH 43213-0919; and the Defense Logistics Agency Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) employees and individuals receiving training funded or sponsored by DLA. Department of Defense military personnel and non-appropriated fund personnel may be included in the system at some DLA locations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number; date of birth, home address; occupational series, grade, and supervisory status; registration and training data, including application or nomination documents, pre-and post-test results, student progress data, start and completion dates, course descriptions, funding sources and costs, student goals, long- and short-term training needs, and related data. The files may contain employee agreements and details on personnel actions taken with respect to individuals receiving apprentice or on-the-job training. Where training is required for professional licenses, certification, or recertification, the file may include proficiency data in one or more skill areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4103, Establishment of training programs; 5 U.S.C. 4115, Collection of Training Information; 5 U.S.C. 4118, Regulations; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used to manage and administer training and development programs; to screen and select candidates for training; and for reporting and costing purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veterans Affairs for inspecting, surveying, auditing, or evaluating apprentice or on-the-job training programs.

To the Department of Labor for inspecting, surveying, auditing, or evaluating apprentice training programs and other programs under its jurisdiction.

To Federal and state safety and environmental agencies to determine compliance with training certification requirements.

To public and private sector educational, training, and conferencing entities for participant enrollment, tracking, and evaluation purposes.

To Federal agencies for screening and selecting candidates for training or developmental programs sponsored by the agency.

To Federal oversight agencies for investigating, reviewing, resolving, negotiating, settling, or hearing complaints, grievances, or other matters under its cognizance.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and electronic form.

RETRIEVABILITY:

Automated records are retrieved by Social Security Number and name, or by one, or a combination of data elements contained in the program master files. Manual records are retrieved by employee last name, by course control information, or by training program title.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Training files are destroyed when 5 years old or when superseded, whichever is sooner; development program records are destroyed 1 year after employee has completed the program.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Civilian Personnel, Headquarters Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221; Director, Defense Logistics Agency Human Resources Operations Center, 3990 East Broad Street, Columbus, OH 43213-0919; and the Human Resources Customer Support Units of the Defense Logistics Agency PLFAs. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Headquarters Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221; to the Privacy Act Officer, Defense Logistics Agency Human Resources Operations Center, 3990 East Broad Street, Columbus, OH 43213-0919; or to the Privacy Act Officer of the Defense Logistics Agency PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Headquarters Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221; to the Privacy Act Officer, Defense Logistics Agency Human Resources Operations Center, 3990 East Broad Street, Columbus, OH 43213-0919; or to the Privacy Act Officer of the Defense Logistics Agency PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individuals should provide name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is obtained from the record subject, current and past supervisors, personnel offices, educational and training facilities, and licensing or certifying entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–19804 Filed 8–02–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

Extension of No Action Period for the Final Environmental Impact Statement (FEIS) for Developing Home Port Facilities for Three NIMITZ-Class Aircraft Carriers in Support of the United States Pacific Fleet

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency ■ Final Environmental Impact Statement (FEIS) for Developing Home Port Facilities for Three Nimitz-Class Aircraft Carriers in Support of the United States Pacific Fleet. The FEIS was issued to the public on July 9, 1999, with a 45-day no action period announced. Because of public interest

and complexity of the FEIS, the no action period will be extended an additional 15 days beyond the previous 45-day extension.

DATES: The new date for the extension of the no action period is September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. John Coon, telephone (888) 428–6440.

Dated: July 28, 1999.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–19925 Filed 8–2–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention, "Underwater Spectroscopic Detector," is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Patent Counsel, Space and Naval Warfare Systems Center, Code D0012, 53510 Silvergate Ave., Rm 103, San Diego, CA 92152–5765. Kindly refer to N.C. 78312 when inquiring about this application.

FOR FURTHER INFORMATION CONTACT: Harvey Fendelman, Patent Counsel, Space and Naval Warfare Systems Center, Code D0012, 53510 Silvergate Ave., Rm 103, San Diego, CA 92152–5765, telephone (619) 553–3001.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: July 20, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–19813 Filed 8–2–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Applied Microsystems, Ltd.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of a prospective license to Applied Microsystems, Ltd., to the Government-owned invention described as "UNDERWATER SPECTROSCOPIC DETECTOR."

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than October 4, 1999.

ADDRESSES: Written objections are to be filed with the Office of Patent Counsel, Space and Naval Warfare Systems Center, D0012, 53510 Silvergate Ave., Rm 103, San Diego, CA 92152–5765. Kindly reference N.C. 78312 in all correspondence directed to this matter.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey Fendelman, Patent Counsel, Space and Naval Warfare Systems Center, Code D0012, 53510 Silvergate Ave., Rm 103, San Diego, CA 92152–5765, telephone (619) 553–3001.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: July 20, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–19812 Filed 8–2–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend record system.

SUMMARY: The Department of the Navy proposes to amend three systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on September 2, 1999 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOI Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Regiser** and are available from the address above.

The Department of the Navy proposes to amend three systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the systems of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The record systems being amended are set forth below, as amended, published in their entirety.

Dated: July 28, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05813–3

SYSTEM NAME:

Records of Trial of General Courts-Martial *(February 22, 1993, 58 FR 10777).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington Navy Yard, Washington, DC 20374–5047.'

* * * * *

N05813–3

SYSTEM NAME:

Records of Trial of General Courts-Martial.

SYSTEM LOCATION:

Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Navy and Marine Corps personnel tried by general courts-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

General courts-martial records of trial.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 10 U.S.C. 865.

PURPOSE(S):

To complete appellate review as required under 10 U.S.C. 866, 867, 869 and provide central repository accessible to the public who may request information concerning the appellate review or want copies of individual public records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept by Navy courts-martial number and each case is cross-referenced by an index card which is filed in alphabetical order according to the last name of the individual concerned.

SAFEGUARDS:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office in which the file cabinets are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for three years and then forwarded to the Washington Federal Records Center, 4205 Suitland Road, Suitland, MD 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Suite 1000, Washington Navy Yard, Washington, DC 20374–5047.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Division Director, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Washington, DC 20374–5047.

The request should contain full name and address of the individual concerned and should be signed.

Personal visits may be made to the Administrative Support Division, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Washington, DC 20374–5047. Individuals making such visits should be able to provide acceptable identification, e.g. Armed Forces' identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Division Director, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Washington, DC 20374–5047.

The request should contain full name and address of the individual concerned and should be signed.

Personal visits may be made to the Administrative Support Division, Office of the Judge Advocate General, Department of the Navy, 716 Sicard Street SE, Washington, DC 20374–5047. Individuals making such visits should be able to provide acceptable identification, e.g. Armed Forces' identification card, driver's license, etc.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Proceedings by a general courts-martial.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05817–1

SYSTEM NAME:

Courts-Martial Statistics *(February 22, 1993, 58 FR 10779).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N05814–3'.

SYSTEM NAME:

Delete 'Statistics' and replace with 'Information'.

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Index cards are filed by year appellate review of the case was completed and alphabetically by last name within a given year.'

SAFEGUARDS:

Delete entry and replace with 'Office is located in a secure building which is guarded 24 hours a day. Admission is allowed only to personnel on official business and authorized visitors.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.'

* * * * *

N05814–3

SYSTEM NAME:

Courts-Martial Information.

SYSTEM LOCATION:

Administrative Support Division (Code 40), Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, 716 Sicard Street SE, Suite 1000, Washington Navy Yard, Washington, DC 20374–5047.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel tried by general courts-martial and by special courts-martial when the special courts-martial sentence, as finally approved, includes a punitive discharge.

CATEGORIES OF RECORDS IN THE SYSTEM:

Courts-martial information on special courts-martial if sentence, as finally approved, includes a punitive discharge and all general courts-martial including name, Social Security Number, pleas, convening authority action, supervisory authority action, and Court of Military Review action. Information is available from 1970 through 1986 only.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To collect data on general and bad conduct discharge special courts-martials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To governmental, public and private organizations and individuals, as required.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index card file.

RETRIEVABILITY:

Index cards are filed by year appellate review of the case was completed and alphabetically by last name within a given year.

SAFEGUARDS:

Office is located in a secure building which is guarded 24 hours a day. Admission is allowed only to personnel on official business and authorized visitors.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Division Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, DC 20374–5047. Written requests must be signed by the requesting individual.

Personal visits may be made to the Administrative Support Division, Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, DC 20374–5047. Individuals must be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Division Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, DC 20374–5047. Written requests must be signed by the requesting individual.

Personal visits may be made to the Administrative Support Division, Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, DC 20374–5047. Individuals must be able to provide some acceptable identification, e.g. Armed Forces identification card, driver's license, etc.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Navy Judge Advocate General Form 5813/1.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05814–5

SYSTEM NAME:

Article 73 Petitions for New Trial *(June 8, 1999, 64 FR 30496).*

CHANGES:

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Division Director, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

The request should contain the full name and address.

Personal visits may be made to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047. Individuals must be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license, etc.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to information about themselves contained in this system should address written inquiries to the Division Director, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

The request should contain the full name and address.

Personal visits may be made to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license, etc.'

* * * * *

N05814–5

SYSTEM NAME:

Article 73 Petitions for New Trial.

SYSTEM LOCATION:

Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel who submitted petitions for new trial to the Judge Advocate General within two years after approval of their courts-martial sentence by the convening authority but after their case had been reviewed by the Navy-Marine Corps Court of Criminal Appeals or the Court of Appeals for the Armed Forces, if appropriate.

CATEGORIES OF RECORDS IN THE SYSTEM:

The petition for new trial, the forwarding endorsements if the petition was submitted via the chain of command, and the action of the Judge Advocate General on the petition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Article 73, Uniform Code of Military Justice, (10 U.S.C. 873).

PURPOSE(S):

To provide a record of individual petitions in order to answer inquiries from the individual concerned and to provide additional advice to commands involved when and if such petitions are granted.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept in alphabetical order according to the last name of the individual concerned.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in the office for four years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street, SE, Suite 1000, Washington, DC 20374–5047.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Division Director, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

The request should contain the full name and address.

Personal visits may be made to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Division Director, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047.

The request should contain the full name and address.

Personal visits may be made to the Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374–5047. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license, etc.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The records are comprised of the following source materials: (1) Petitions for new trial; (2) forwarding endorsements thereon by petitioner's commanding officer and convening/supervisory authorities of courts-martial (above information is omitted if petitioner is former service member); and (3) action of the Judge Advocate General on petitions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–19805 Filed 8–2–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 4, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 28, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Title: State- or Court-Ordered Desegregated Local Educational Agencies' (LEAs') Application for Services.

Frequency: One time.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 275

Burden Hours: 1,100

Abstract: LEAs under such desegregation orders may request a waiver in order to provide Title I services to schools where the concentrations of poverty have been altered by the order, as long as at least 25 percent of a school's total enrollment is from low-income families. The Department uses the information to grant waivers under section 1113(a)(7) of Title I, Part A of the Improving America's Schools Act of 1994.

Written comments and requests for copies of this information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Vivian_Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Kathy Axt at 703–426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–19832 Filed 8–2–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 2, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 28, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Extension.

Title: Lender's Participation Questionnaire (LPQ) for New Lenders.

Frequency: Annually.

Affected Public: Business or other for-profit; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 121

Burden Hours: 20

Abstract: The Lender's Participation Questionnaire is submitted by lenders who are eligible for reimbursement of interest and special allowance, as well as Federal Insured Student Loan (FISL) claims payment, under the Federal Family Education Loan Program. The information will be used by ED to update Lender Identification Numbers (LIDS), lender names, addresses with 9 digit zip codes and other pertinent information.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *vivian_reese@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or electronically mail him at internet address joe_schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–19833 Filed 8–2–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Information Collection Request

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of Information Collection Activity.

SUMMARY: This notice announces that the National Assessment Governing Board (NAGB) will submit an Information Collection Request (ICR) to the Office of Management and Budget for approval. The ICR is: An Investigation of Alternative Methods for Scale Anchoring and Item Mapping in the National Assessment of Educational Progress.

DATES: Public comments must be submitted on or before August 29, 1999.

ADDRESSES: Written comments should be submitted by August 29, 1999. Mail to Patricia Hanick, NAEP ALS Project Manager, ACT, Inc., 2255 North Dubuque Road, P.O. Box 168, Iowa City, IA 52243–0168. Copies of the complete ICR and accompanying appendices may be obtained from the NAEP ALS Project Manager at the address above.

Comments may also be submitted electronically by sending electronic mail (e-mail) to *Hanick@ACT.org*. Electronic comments must be identified by the title of the ICR. No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as confidential business information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by NAGB without prior notice.

FOR FURTHER INFORMATION CONTACT: Patricia Hanick, NAEP ALS Project Manager, ACT, Inc., 2255 North Dubuque Road, P.O. Box 168, Iowa City, IA 52243–0168, Telephone: (319) 337–1452 or (800) 525–6930, e-mail: *Hanick@ACT.org*.

SUPPLEMENTARY INFORMATION: Electronic copies of this ICR can be obtained from the contact person listed above.

I. Information Collection Request

NAGB is seeking comments on the following Information Collection Request (ICR).

Title: An Investigation of Alternative Methods for Scale Anchoring and Item Mapping in the National Assessment of Educational Progress.

Affected Entities: Parties affected by this information collection are persons included in a broadly representative sample including persons identified as panelists for field trials, pilot studies, achievement levels-setting (ALS) meetings, and validation research for the 1996 Science NAEP.

Abstract: The purpose of this information collection activity is to gather information for NAGB regarding the selection of exemplar items from the 1996 Science NAEP. Exemplar items are used as one of the primary means of communicating student performance relative to the NAEP achievement levels. The criteria for selecting exemplar items is critical to the "message" portrayed by the items. Congress has deemed that the achievement levels must be shown to be reasonable, valid, and informative to the public.

Part One of the study has been completed and examined the statistical criteria by comparing various scale anchoring and item mapping methodologies. The results of these systematic comparisons will be judged not only statistically, but also according to the degree to which they agree with expert judgments about item difficulty. This mail survey is designed to collect responses from the expert judges. Because these individuals have participated in the process of setting achievement levels from the 1996 Science NAEP, they are likely to be keenly interested in the ALS process.

Each prospective respondent will be sent a copy of the achievement levels descriptions for one of the three grades assessed (4th, 8th or 12th) along with a selection of approximately one-half of the items that have been released for public review for that grade. Items in the released blocks will be divided so that the distribution of items across the ACT NAEP-Like scale is approximately the same. The mailing will include an addressed, postage-paid envelope.

Respondents will be asked to read the achievement levels descriptions carefully. They will be asked to provide their own judgments of the difficulty of the set of released items. Then they will be asked to indicate whether the item would be a good exemplar for Basic, Proficient, or Advanced levels. Finally respondents will be asked for their interpretation of reports of NAEP achievement data.

The respondents' judgmental classifications will be compared to the "empirical" classifications using the various statistical criteria. Respondents will have determined which, if any, achievement descriptions match the items best, with respect to the knowledge and skill required for a correct response. The mapping criterion that matches the content-based classification best would seem to represent the best statistical criterion to use in selecting exemplar items. Thus, the response criterion that categorized items by levels most frequently chosen by respondents will be considered the "best" criterion to use for selecting exemplar items.

No third party notification or public disclosure burden is associated with this collection.

Burden Statement: The estimated total respondent burden is 141 hours, and the average burden per respondent is 1.0 hour. This is a one-time survey.

Neither small business nor other small entities are included in the survey.

II. Request for Comments

NAGB solicits comments to:

(i) Evaluate whether the proposed collection of information is an appropriate method to determine the "message" portrayed by the items regarding the achievement levels to the public.

(ii) Enhance the accuracy, quality, and utility of the information to be collected.

(iii) Evaluate whether the design of this survey maximizes the response rate, i.e. the number of selected persons who will respond, given the desire to have the sample be broadly representative of persons with some interest in the educational progress of K–12 students in the general content of the discipline of science.

Records are kept of all public comments and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C. from 8:30 a.m. to 5:00 p.m.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 99–19916 Filed 8–2–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Committee on Foreign Medical Education and Accreditation: Meeting

AGENCY: National Committee on Foreign Medical Education and Accreditation, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to announce the upcoming meeting of the National Committee on Foreign Medical Education and Accreditation. Parts of this meeting will be open to the public, and the public is invited to attend those portions.

When and Where Will the Meeting Take Place?

We will hold the meeting on September 15, 1999 beginning at 9:00 a.m. at The Latham Hotel, 3000 M Street, N.W., Washington, D.C. 20007. You may call the Hotel on (202) 726–5000 to inquire about room accommodations.

What Access Does the Hotel Provide for Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format) notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

What Are the Functions of the Committee?

The National Committee on Foreign Medical Education and Accreditation was established by the Secretary of Education under section 102 of the Higher Education Act of 1965, as amended by Public Law 105–244. The

Committee's responsibilities are to (1) evaluate the standards of accreditation applied to applicant foreign medical schools; and (2) determine the comparability of those standards to standards for accreditation applied to United States medical schools.

What Are the Issues To Be Considered at This Meeting?

The National Committee on Foreign Medical Education and Accreditation will review the standards of accreditation applied to medical schools by several foreign countries to determine whether those standards are comparable to the standards of accreditation applied to medical schools in the United States. Discussions of the standards of accreditation will be held in sessions open to the public. Discussions that focus on specific determinations of comparability are closed to the public in order that each country may be properly notified of the decision. Beginning August 30, 1999, you may call to obtain the identity of the countries whose standards are to be evaluated during this meeting.

The Committee also will review the guidelines it uses to make comparability determinations and decide what revisions are necessary. This discussion of the guidelines will be open to the public.

Who Is the Contact Person for the Meeting?

Please contact Bonnie LeBold, who is the Executive Director of the National Committee on Foreign Medical Education and Accreditation, if you have questions about the meeting. You may contact her at the U.S. Department of Education, ROB–3, Room 3082, 400 Maryland Avenue, S.W., Washington, D.C. 20202–7563, telephone (202) 260–3636, fax: (202) 260–5049. Individuals who use telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Greg Woods,

Chief Operating Officer, Student Financial Assistance.

[FR Doc. 99–19931 Filed 8–2–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Science

Office of Science Financial Assistance Program Notice 99–22; Experimental Program To Stimulate Competitive Research (EPSCoR); Building EPSCoR-State/National Laboratory Partnerships

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), in keeping with its energy-related mission to assist in strengthening the Nation's scientific research enterprise through the support of science, engineering, and mathematics, announces its interest in receiving grant applications for collaborative partnerships between academic or industrial researchers from states eligible for the DOE/EPSCoR Program and researchers at DOE's National Laboratories, facilities, and centers. The purpose of the DOE/EPSCoR program is to enhance the capability of designated states to conduct nationally-competitive energy-related research and to develop science and engineering manpower in energy-related areas to meet current and future needs. The purpose of this program notice is to initiate and promote partnering and collaborative relationships that build beneficial energy-related research programs.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 99–22, should be received by DOE by 4:30 P.M., E.D.T., October 6, 1999. A response to the preapplications encouraging or discouraging a formal application will be communicated to the applicant within approximately thirty days of receipt. The deadline for receipt of formal applications is 4:30 P.M., E.S.T., January 12, 2000, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2000.

ADDRESSES: All preapplications, referencing Program Notice 99–22, should be sent to Dr. Matesh N. Varma, Division of Materials Sciences, SC–132, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

After receiving notification from DOE encouraging submission of a formal application, applicants may prepare formal applications and send them to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 99–22. This above address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Matesh N. Varma, DOE/EPSCoR Program Manager, Division of Materials Sciences, SC–132, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, Telephone: (301) 903–3209, Facsimile: (301) 903–9513 or Internet E-mail address: matesh.varma@science.doe.gov.

SUPPLEMENTARY INFORMATION: To continue to enhance the competitiveness of states and territories identified for participation in the Experimental Program to Stimulate Competitive Research (EPSCoR), DOE encourages the formation of partnerships between academic and industrial researchers in EPSCoR states and the researchers at DOE's National Laboratories, facilities and centers in scientific areas supported by DOE. These collaborations should address areas of research of current interest to the Department. Undergraduate and graduate students should be active members of the research team, and it is highly desirable that a student spend a summer or academic-year at the National Laboratory, facility or center. Subcontracting arrangements with DOE National Laboratories will not be permitted. DOE continues to restrict EPSCoR eligibility to the following states and territory: Alabama, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, Wyoming, and the Commonwealth of Puerto Rico.

Program Funding

It is anticipated that approximately $750,000 will be available in FY 2000 for research that encourages and facilitates collaborative efforts between researchers from EPSCoR states and researchers at DOE's National Laboratories, facilities, and centers. Multiple-year funding of grant awards is expected subject to satisfactory progress of the research, the availability of funds, and evidence of substantial interactions between the EPSCoR researchers and the National Laboratory partner. Awards are expected to range up to a maximum of $75,000 annually with terms from one to three years. The number of awards and range of funding will depend on the number of applications received and selected for award. Cost sharing is strongly encouraged, but is not required. All DOE/EPSCoR award funds will be provided to the recipient organization within the EPSCoR state for the purpose of supporting activities in the EPSCoR state and may include travel and lodging, faculty or student stipends, materials, services and equipment.

Applications

To minimize undue effort on the part of applicants and reviewers, interested parties are invited and encouraged to submit preapplications. The preapplications will be reviewed relative to the scope and research needs of the Department of Energy. The brief preapplication must consist of (1) one to two pages of narrative describing the research objectives and methods of accomplishment, (2) a letter from the appropriate state EPSCoR coordinator endorsing the preapplication, and (3) a letter of intent from the DOE National Laboratory confirming collaboration on the project. The preapplications will be grouped according to programmatic areas of interest to DOE and will be reviewed by DOE laboratory scientists to determine the priority of the proposed research. Based on this review, DOE/EPSCoR management will recommend formal submission of applications to the Department. Telephone, facsimile numbers, and e-mail address are required parts of the preapplication. Instructions regarding the contents of a preapplication and other preapplication guidelines can be found on the SC Grants and Contracts web site at: http://www.er.doe.gov/production/grants/preapp.html

In addition to the project description all preapplications and formal applications must include the following information:

1. Applications should explain the relevance of the proposed research to the agency's programmatic needs. On the cover page, applicants should specify the relevant DOE technical program office, and if known, the name of the program manager, and telephone number. DOE program descriptions and the contact person information may be accessed via the web at: http://www.doe.gov

2. Applications must demonstrate clear evidence of collaborative intent, including a delineation of each partner's role and contribution to the research effort as well as a "Letter-of-Intent" from the participating DOE National Laboratory, facility, or center.

3. Applications must explain the individual value to both the EPSCoR and the National Laboratory partners. There should be clear objectives, not necessarily the same, for each partner.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria, listed in descending order of importance as codified at 10 CFR Part 605.10(d).

1. Scientific and/or Technical Merit of the Project,

2. Appropriateness of the Proposed Method or Approach,

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Applications received by SC under its current competitive application mechanisms that meet the criteria outlined in this Notice may also be deemed appropriate for consideration under this announcement and may be funded under this program.

General information about the development and submission of preapplications, applications, eligibility, limitations, evaluation, and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR Part 605. Electronic access to the latest version of SC's Financial Assistance Guide is possible via the Internet at the following web site address: http://www.er.doe.gov/production/grants/grants.html

Additional information regarding format, preparation and specific requirements may be found at web site address: http://www.er.doe.gov/production/bes/EPSCoR/appL1.HTM

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on July 26, 1999.

Ralph H. DeLorenzo,

Acting Associate Director of Science for Resource Management.

[FR Doc. 99–19888 Filed 8–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3127–000]

Bishop Power Company, Inc.; Filing

July 28, 1999.

Take notice that on July 16, 1999, Bishop Power Company, Inc., tendered for filing a request to withdraw its Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority and Request for Expedition filed with the Commission on June 2, 1999, in the above referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 6, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–19880 Filed 8–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–63–000]

Columbia Gas Transmission Corporation; Notice of Refund Report

July 28, 1999.

Take notice that on July 23, 1999, Columbia Gas Transmission Corporation (Columbia) tendered for filing a refund report on the refunding to its firm

customers on July 10, 1999, of refunds it received from the Gas Research Institute (GRI) on May 28, 1999.

Columbia states that it made the refunds by crediting its customers' invoices on July 10, 1999.

Columbia states that a copy of this report is being provided to all recipients of a share of the refund and all state commissions whose jurisdiction includes the location of any recipient of a refund.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before August 4, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–19818 Filed 8–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–586–000]

Columbia Gulf Transmission Company; Notice of Application

July 28, 1999.

Take notice that on July 21, 1999, Columbia Gulf Transmission Company (Columbia Gulf) 2603 Augusta, Suite 125, Houston, Texas 77057–5637, filed in Docket No. CP99–586–000, an application pursuant to section 7(c) of the Natural Gas Act, as amended, for authorization to construct and operate a connection of its Line 300 under the Tennessee River in Hardin County, Tennessee, all as more fully set forth in the request on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

Specifically, Columbia Gulf seeks authorization to construct, operate and maintains to install approximately 2,085 feet of new 36-inch diameter pipeline to complete the connection of its Line 300 under the Tennessee River, which will enhance overall system reliability by providing an additional crossing with its Lines 100 and 200. It is stated that Columbia Gulf estimates the cost of construction at $4,000,000.00. Columbia Gulf requests Commission approval of the application by April 1, 2000 so that construction can begin on May 1, 2000.

Any questions regarding the application should be directed to Stephen R. Melton at (713) 267–4745, Lee M. Beckett at (713) 267–4741, James W. Hart, Jr., at (713) 267–4159, Columbia Gulf Transmission Company, 2603 Augusta, Suite 125, Houston, Texas 77057–5637 or Larry L. Willeke at (202) 216–9764, Columbia Gulf Transmission Company, 10 G Street, NE, Suite 580, Washington, DC 20002.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 18, 1999, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gulf to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–19817 Filed 8–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–2402–000 and ER99–2403–000]

Niagara Mohawk Power Corporation; Filing

July 28, 1999.

Take notice that on July 2, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing a request to withdraw its proposed amendments to Rate Schedule Nos. 164 and 165, filed with the Commission on April 6, 1999, in the above-referenced dockets.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 6, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fedus/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–19879 Filed 8–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–18–000]

Northern Illinois Gas Company; Notice of Petition for Rate Approval

July 28, 1999.

Take notice that on July 15, 1999, Northern Illinois Gas Company, as Nicor Gas Company (Nicor) filed a petition for approval of new and revised rates pursuant to section 284.123(b)(2) of the Commission's regulations, and a July 18, 1997, Commission letter order in Docket Nos. PR96–13–000, *et al.* The 1997 letter order approved settlement rates for Nicor's (then Northern Illinois Gas Company, as NI-Gas) firm and interruptible storage services, as well as interruptible transportation service, requiring a filing by July 15, 1999, restate such rates or propose new rates for such services.

Accordingly, Nicor requests that the Commission approve as fair and equitable (a) a maximum rate for interruptible transportation service of $0.0804 per MMBtu, (b) a maximum rate for interruptible storage service of $0.0946 per MMBtu/d, and (c) maximum rates for firm storage service of $1.4393 per MMBtu for the monthly deliverability charge, $0.0262 per MMBtu for the monthly capacity charge, and injection and withdrawal rates designed to recover only fuel costs.

In addition, Nicor proposes (a) a maximum reservation rate for new firm transportation service of $2.4465 per MMBtu, and a maximum commodity rate for such service designed to recover only fuel costs, and (b) a maximum daily rate of $0.1750 for new parking and loaning service. Finally, Nicor requests that it be permitted to implement negotiated rates for its Part 284 services. All rates are requested to be effective July 15, 1999.

Nicor states that it is an intrastate gas distribution public utility subject to the jurisdiction of the Illinois Commerce Commission under the Illinois Public Utilities Act and that it was issued a blanket certificate under section 284.224 in Docket No. CP92–481. Nicor also notes that, simultaneously with its petition for ate approval herein, it is filing in Docket No. CP92–481 a revised Operating Statement adding the terms and conditions of its proposed new firm transportation service, parking and loaning service, and negotiated rates program.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the proposed rates will be deemed fair and equitable. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentations of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before August 10, 1999. The petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–19822 Filed 8–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–424–001]

Texas-Ohio Pipeline, Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 28, 1999.

Take notice that on July 22, 1999, Texas-Ohio Pipeline, Inc., (Texas-Ohio) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, a First Revised Sheet No. 54C, with an effective date of August 1, 1999.

Texas-Ohio states that the purpose of this filing is to correct a pagination error in its filing that was made on July 2, 1999 in Docket No. RP99–424–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–19823 Filed 8–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3163–000 and Docket No. EL99–78–000]

UtiliCorp United, Inc.; Initiation of Proceeding and Refund Effective Date

July 29, 1999.

Take notice that on July 28, 1999, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL99–78–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL99–78–000 will be 60 days after publication of this notice in the **Federal Register.**

David P. Boergers,

Secretary.

[FR Doc. 99–19881 Filed 8–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–198–000, et al.]

Consolidated Edison Energy Massachusetts, et al.; Electric Rate and Corporate Regulation Filings

July 22, 1999.

Take notice that the following filings have been made with the Commission:

1. Consolidated Edison Energy Massachusetts, Inc.

[Docket No. EG99–198–000]

Take notice that on July 19, 1999, Consolidated Edison Energy Massachusetts, Inc. tendered for filing with the Federal Energy Regulatory Commission, an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations.

Comment date: August 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will its consideration of comments to those that concern the adequacy or accuracy of the application.

2. PP&L Montana, LLC

[Docket No. EL99–79–000]

Take notice that on July 19, 1999, PP&L Montana, LLC (Applicant) filed with the Federal Energy Regulatory Commission a petition for declaratory order disclaiming jurisdiction and for an order reconfirming a prior order and request for expedited consideration.

The Applicant intends to acquire certain undivided interests in the Colstrip project, a four unit coal-fired steam electric generating complex located near Colstrip, Rosebud County, Montana. Applicant is seeking a disclaimer of jurisdiction in connection with a sale leaseback financing involving a portion of the Colstrip project.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. United States Steel Group, a unit of USX Corporation and South Works Power Company

[Docket No. EL99–80–000]

Take notice that on July 19, 1999, United States Steel Group, a unit of USX Corporation and South Works Power Company, an Indiana subsidiary of NiSource, Inc., jointly petitioned the Commission, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 for two declaratory orders. The two companies have entered a lease and other agreements under which U.S. Steel will lease to South Works Power a generator and transmission line owned by U.S. Steel. The two companies seek declaratory orders that the transaction will not subject U.S. Steel to regulation under Section 201(e) of the Federal Power Act and that the transaction does not require the Commission's approval under FPA Section 203.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Bollinger Energy Corporation, Power-Link Systems, Ltd., Tosco Power, Inc., Rocky Mountain Natural Gas & Electric L.L.C., Eastern Pacific Energy, Questar Energy Trading Company, Dynegy Power Services, Inc., The Mack Services Group and Cargill-Alliant, LLC

[Docket Nos. ER98–1821–004, ER98–2181–002, ER96–2635–010, ER98–3108–003, ER98–1829–006, ER96–404–015, ER94–1612–022, ER99–1750–002, and ER97–4273–008]

Take notice that on July 19, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. FirstEnergy Operating Companies

[Docket No. ER99–2609–001]

Take notice that on July 16, 1999, the FirstEnergy Operating Companies (FirstEnergy), tendered for filing proposed changes to its Open Access Transmission Tariff, Original Volume No. 1. The proposed changes clarify the priority of customers reserving "Sequential Off-Peak Hourly Service" and are made in compliance with the Commission's July 1, 1999 order.

FirstEnergy has requested an effective date for the rate schedule change of July 10, 1999.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Company

[Docket No. ER99–2665–000]

Take notice that July 16, 1999, Wisconsin Electric Power Company (Wisconsin Electric), on tendered for filing an amended response to the June 3, 1999 deficiency letter in the above captioned docket. The response constitutes an amendment to the filing submitted by Wisconsin Electric on June 25th.

Copies of the filing have been served on customers under the market-based rate tariff, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Rathdrum Power, LLC

[Docket No. ER99–3320–000]

Take notice that on July 16, 1999, Rathdrum Power, LLC, an electric power developer organized under the laws of Delaware, amended its petition for acceptance of its market-based rate schedule, waiver of certain requirements under Subparts B and C of Part 35 of the Commission's Regulations, and preapproval of transactions under Part 34 of the Regulations.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. FirstEnergy System

[Docket No. ER99–3604–000]

Take notice that on July 16, 1999, FirstEnergy System tendered for filing Service Agreements to provide Non-Firm Point-to-Point Transmission Service for Florida Power & Light Company and FPL Energy Power Marketing, Inc., (the Transmission Customers). Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under these Service Agreements is July 15, 1999.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. FirstEnergy System

[Docket No. ER99–3605–000]

Take notice that on July 16, 1999, FirstEnergy System tendered for filing Service Agreements to provide Firm Point-to-Point Transmission Service for Florida Power & Light Company and FPL Energy Power Marketing, Inc., (the Transmission Customers). Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under these Service Agreements is July 15, 1999, for the above mentioned Service Agreements in this filing.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Consumers Energy Company

[Docket No. ER99–3608–000]

Take notice that on July 16, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for wholesale power service with PECO Energy Company pursuant to Consumers' Market Based Power Sales Tariff accepted for filing in Docket No. ER98–4421–000. The filing request has an effective date of June 25, 1999.

Copies of the filing have been served on the Michigan Public Service Commission and PECO Energy Company.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER99–3609–000]

Take notice that on July 16, 1999, Commonwealth Edison Company (ComEd), tendered for filing four Non-Firm Service Agreements establishing DukeSolutions, Inc. (DSI), TXU Energy Trading Company (TXU), New Energy Ventures, Inc. (NEV), and Allegheny Power Service Corporation (APSC), as customers under the terms of ComEd's OATT.

ComEd also submitted for filing a revised Index of Customers reflecting the addition of DSI, TXU, NEV, and APSC, and name change for current customer NP Energy, Inc., renamed Duke Energy Trading and Marketing, L.L.C. (DETM).

ComEd requests an effective date of July 16, 1999, for the service agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on DSI, TXU, NEV, APSC and DETM.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Energy Company

[Docket No. ER99–3610–000]

Take notice that on July 16, 1999, Consumers Energy Company (Consumers) tendered for filing a proposed amendment to the Joint Open Access Transmission Tariff (the Joint Tariff) which would add a new Ancillary Service entitled Delivery Scheduling and Balancing Service applicable solely to transmission transactions involving Consumers' Transmission Service Area. This Ancillary Service would address deviations between deliveries from a generator located in Consumers' Transmission Service Area and the transmission customer's energy schedule which are not classified as Energy Imbalance Service.

Copies of the filing were served upon Joint Tariff transmission customers and the Michigan Public Service Commission.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. PP&L, Inc.

[Docket No. ER99–3611–000]

Take notice that on July 16, 1999, PP&L, Inc. (PP&L), tendered for filing (1) Interconnection Agreement between PP&L and UGI Utilities, Inc. (UGI), dated July 12, 1999; (2) Addendum to the Interconnection Agreement between PP&L and UGI, dated July 12, 1999; (3) Power Sales Agreement between PP&L and UGI, dated July 12, 1999 (collectively, the Agreements); (4) Notice of Cancellation of the Interconnection Agreement between PP&L and UGI, dated August 1, 1935 (PP&L's Rate Schedule FERC No. 46 and UGI's Rate Schedule FERC No. 3); and (5) Notice of Cancellation of the Power Supply Agreement between PP&L and UGI, dated December 1, 1992 (PP&L's Rate Schedule FERC No. 113).

PP&L requests an effective date for the Agreements and the Notices of Cancellation of August 1, 1999, subject to certain conditions set forth in the Agreements.

PP&L states that a copy of the filing was served on UGI and on the Pennsylvania Public Utilities Commission.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–3612–000]

Take notice that on July 16, 1999, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing revised unexecuted network integration transmission service and network operating agreements for Monongahela Power Company's wholesale customers: the City of Philippi, Harrison Rural Electrification Association and the City of New Martinsville. The effective date for each agreement corresponds to the dates authorized by the Commission in Docket No. ER99–1141–000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER99–3615–000]

Take notice that on July 16, 1999, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Western Resources (Western).

Cinergy and Western are requesting an effective date of June 30, 1999.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. California Independent System Operator Corporation

[Docket No. ER99–3616–000]

Take notice that on July 16, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and the City of Pasadena for acceptance by the Commission.

The ISO states that this filing has been served on the City of Pasadena and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of July 8, 1999.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. California Independent System Operator Corporation

[Docket No. ER99–3617–000]

Take notice that on July 16, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between the City of Pasadena (Pasadena) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Pasadena and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective as of July 8, 1999.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. California Independent System Operator Corporation

[Docket No. ER99–3618–000]

Take notice that on July 16, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and the City of Pasadena for acceptance by the Commission.

The ISO states that this filing has been served on the City of Pasadena and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of July 8, 1999.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. California Independent System Operator Corporation

[Docket No. ER99–3619–000]

Take notice that on July 16, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Utility Distribution Company Operating Agreement (UDC Operating Agreement) between the City of Pasadena (Pasadena) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on the City of Pasadena and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the UDC Operating Agreement to be made effective as of the date Pasadena's decertification of its existing Control Area and incorporation into the ISO Control Area is complete.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. ISO New England Inc.

[Docket No. ER99–3621–000]

Take notice that on July 16, 1999, ISO New England Inc. (the ISO), tendered for filing pursuant to Section 205 of the Federal Power Act, additional revisions to Market Rule 6 together with a request that the Commission accept the revisions to Market Rule 6 on an expedited basis.

The ISO and the NEPOOL Executive Committee state that copies of these materials were sent to the Participants in the New England Power Pool, non-Participant transmission customers and to the New England state governors and regulatory commissions.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Minnesota Power, Inc.

[Docket No. ER99–3622–000]

Take notice that on July 16, 1999, Minnesota Power, Inc., tendered for filing a signed Service Agreement with Coral Power, L.L.C.; The Energy Authority, Inc.; Central Illinois Light Company; and Dayton Power and Light Company under its market-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities Company, Entergy Services, Inc., Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Maine Electric Power Company, Central Maine Power Company, Public Service Company of New Mexico, Rochester Gas and Electric Corporation and Sierra Pacific Power Company

[Docket Nos. OA97–287–004, OA97–458–004, OA97–462–005, OA97–422–005, OA97–433–004, OA97–720–004, OA97–452–005 and OA97–464–004]

Take notice that on July 2, 1999, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities Company and Sierra Pacific Power Company each filed revised standards of conduct in response to the Commission's June 2, 1999 Order. 87 FERC ¶ 61,276 (1999). In addition, between July 2–6, 1999, Public Service Company of New Mexico and Rochester Gas and Electric Corporation filed reports of revisions to their respective organizational charts and/or job descriptions posted on OASIS.

The June 2, 1999 Order accepted the standards of conduct submitted by Entergy Services, Inc., Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Maine Electric Power Company and Central Maine Power Company, but required them to revise their organizational charts and job descriptions posted on OASIS within 30 days. These companies did not make any filings with the Commission (nor were they required to). However, by this notice, the public is invited to intervene, protest or comment regarding their revised organizational charts and job descriptions.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–19884 Filed 8–2–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–199–000, et al.]

Duke Energy St. Francis, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

July 23, 1999.

Take notice that the following filings have been made with the Commission:

1. Duke Energy St. Francis, LLC

[Docket No. EG99–199–000]

Take notice that on July 20, 1999, Duke Energy St. Francis, LLC (DESF) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

DESF, a Delaware limited liability company, will operate two gas-fired combined cycle electric generation facilities near Glennonville, Missouri. DESF will sell power exclusively at wholesale. Duke Energy North America LLC ("DENA") is the sole owner of DESF. DENA is a wholly owned subsidiary of Duke Energy Global Asset Development, Inc. and an indirect subsidiary of Duke Energy, an exempt electric utility holding company.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. PP&L Montana, LLC, PP&L Colstrip I, LLC and PP&L Colstrip II, LLC

[Docket No. EC99–95–000]

Take notice that on July 20, 1999, PP&L Montana, LLC, PP&L Colstrip I, LLC, and PP&L Colstrip II, LLC (the Applicants) filed an application pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b, for approval of a proposed sale and leaseback arrangement of certain interests in the Colstrip Generating Station.

The Applicants state that a copy of the application was served on the Montana Public Service Commission.

Comment date: August 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Arizona Public Service Company v. Idaho Power Company

[Docket No. EL99–44–002]

Take notice that on July 19, 1999, Idaho Power Company filed certain compliance filings pursuant to the June 17, 1999 order of the Federal Energy Regulatory Commission in the above-referenced docket.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Tennessee Power Company

[Docket No. EL99–81–000]

Take notice that on July 22, 1999, Tennessee Power Company (TPCO), 4612 Maria Street, Chattanooga, Tennessee 37411–1209, filed with the Federal Energy Regulatory Commission a complaint regarding certain action and inaction by AmerenCIPS in response to TPCO's request that it be permitted to connect 3 megawatts of distributed generation to the system of AmerenCIPS in southern Illinois.

Comment date: August 11, 1999, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before August 11, 1999.

5. TECO EnergySource, Inc., Monterey Consulting Associates, Incorporated, Burlington Resources Trading Inc., Union Electric Development Corporation and Thicksten Grimm Burgum, Incorporated

[Docket Nos. ER96–1563–014, ER96–2143–011, ER96–3112–011, ER97–3663–008 and ER96–2241–012]

Take notice that on July 20, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

6. Conectiv Energy Supply, Inc.

[Docket No. ER98–2045–005]

Take notice that on July 16, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

7. MEG Marketing, LLC

[Docket No. ER98–2284–005]

Take notice that on July 22, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

8. PJM Interconnection, L.L.C.

[Docket No. ER99–2340–002]

Take notice that on July 19, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing its compliance filing in response to the Commission's order in PJM Interconnection, L.L.C., 87 FERC ¶ 61,299 (1999), concerning generation interconnection rules and procedures.

PJM requests an effective date of April 1, 1999, consistent with the effective date set by the Commission in its order.

Copies of this filing were served upon each entity on the official service list compiled by the Secretary in Docket No. ER99–2340–000, all PJM Members and the state electric regulatory commissions in the PJM Control Area.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. NJR Energy Services Company, Wilson Power & Gas Smart, Inc., New Jersey Natural Energy Company and Merchant Energy Group of the Americas, Inc.

[Docket Nos. ER99–2384–001, ER95–751–018, ER96–2627–010, and ER98–1055–007]

Take notice that on July 21, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

10. PP&L EnergyPlus Co., LLC, formerly known as PP&L EnergyPlus Co.

[Docket No. ER99–3606–000]

Take notice that on July 16, 1999, PP&L EnergyPlus Co., LLC (PP&L EnergyPlus) filed a Notice of Change in Name to notify the Federal Energy Regulatory Commission (Commission) that the corporate name of PP&L EnergyPlus Co. has been changed to PP&L EnergyPlus Co., LLC, effective June 30, 1999.

PP&L EnergyPlus stated that it served a copy of the foregoing on the Pennsylvania Public Utility Commission.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Delmarva Power & Light Company Atlantic City Electric Company Minnesota Power, Inc.

[Docket Nos. ER99–3607–000, ER99–3614–000 and ER99–3620–000]

Take notice that on July 16, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending June 30, 1999.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Ohio Power Company

[Docket No. ER99–3626–000]

Take notice that on July 16, 1999, American Electric Power Service Corporation (hereinafter called AEP), on behalf of Ohio Power Company (hereinafter called OPC), tendered for filing with the Commission a Letter Agreement (Agreement) dated June 11, 1999, between OPC and Adams Rural Electric Cooperative, Inc., (hereinafter called AREC) and Buckeye Power, Inc. (hereinafter called Buckeye).

Buckeye has requested OPC provide a delivery point, pursuant to provisions of the Power Delivery Agreement between OPC, Buckeye Power, Inc. (hereinafter called Buckeye), The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Columbus Southern Power Company and Toledo Edison Company, dated January 1, 1968.

OPC requests an effective date of October 1, 1999, for the tendered agreements.

OPC states that copies of its filing were served upon Adams Rural Electric Cooperative, Inc., Buckeye Power, Inc. and the Public Utilities Commission of Ohio.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. American Electric Power Service Corporation

[Docket No. ER99–3627–000]

Take notice that on July 19, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing blanket service agreements by the AEP Companies under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective as specified in the

submittal letter to the Commission with this filing.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of New Mexico

[Docket No. ER99–3628–000]

Take notice that on July 19, 1999, Public Service Company of New Mexico (PNM), tendered for filing an executed Power Sale Agreement (PSA) between PNM and Navopache Electric Cooperative, Inc. (Navopache), under which wholesale electric power service will commence once certain state and federal approvals are received regarding related transactions and agreements. Under the PSA, PNM will provide firm power and firm energy equal to Navopache's load requirements, subject to certain terms, covenants and conditions in the PSA. The term of the PSA is 25 years, with the option for Navopache to terminate service at the end of the initial ten-year period. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of this filing are being provided to Navopache and to the New Mexico Public Regulation Commission.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Potlatch Corporation

[Docket No. ER99–3629–000]

Take notice that on July 19, 1999, Potlatch Corporation tendered for filing its Initial Rate Schedule for its FERC Electric Service Tariff.

Copies of the filing were served upon Minnesota Power, the sole customer of Potlatch Corporation.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Electric Power Company

[Docket No. ER99–3631–000]

Take notice that on July 19, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2).

Wisconsin Electric respectfully requests an effective date July 13, 1999.

Copies of the filing have been served on Alliant Energy Corporate Services, Inc., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Ohio Valley Electric Corporation and Indiana-Kentucky Electric Corporation

[Docket No. ER99–3632–000]

Take notice that on July 19, 1999, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Short-Term Firm Point-To-Point Transmission Service, dated July 12, 1999 (the Service Agreement) between Louisville Gas & Electric Company/ Kentucky Utilities Company (LG&E/KU) and OVEC. In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

OVEC proposes an effective date of July 12, 1999 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for firm transmission service by OVEC to LG&E/KU.

Copies of this filing were served upon LG&E/KU, the Kentucky Public Service Commission, the Tennessee Regulatory Authority and the Virginia State Corporation Commission.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. MidAmerican Energy Company

[Docket No. ER99–3633–000]

Take notice that on July 19, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, 28th Floor, Des Moines, Iowa 50303 tendered for filing two rate schedule changes consisting of the Second Amendment dated June 8, 1999 to the Interconnection Agreement dated October 9, 1998 entered into by MidAmerican and Storm Lake Power Partners I LLC (SLPP), and the Second Amendment dated June 8, 1999 entered into by MidAmerican and SLPP, assignee of Enron Wind Development Corp. (Enron Wind), to the Facilities Agreement dated February 17, 1998 entered into by MidAmerican and Enron Wind.

MidAmerican states that the Second Amendment to the Interconnection Agreement changes the responsibilities of the parties with regard to operating costs for certain facilities and that the Second Amendment to the Facilities Agreement changes the responsibilities of the parties with regard to the ownership and use of certain facilities.

MidAmerican proposes that both amendments become effective on the sixtieth day after the date of filing.

Copies of the filing were served on SLPP, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Avista Corp.

[Docket No. ER99–3634–000]

Take notice that on July 19, 1999, Avista Corp. (AVA), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8, with Duke Energy Trading and Marketing.

AVA requests the Service Agreement be given the respective effective date of May 24, 1999.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Kentucky Utilities Company

[Docket No. ER99–3635–000]

Take notice that on July 19, 1999, Kentucky Utilities Company (KU), tendered for filing Supplement No. 39, to the Interconnection Agreement between KU and Tennessee Valley Authority. This Supplement amends the Interconnection Agreement TV–11505A, FERC Rate Schedule No. 93.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. PJM Interconnection, L.L.C.

[Docket No. ER99–3636–000]

Take notice that on July 19, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing 2 executed umbrella service agreements with UGI Utilities, Inc. for point-to-point transmission service under the PJM Open Access Transmission Tariff.

A copy of this filing was served upon UGI Utilities, Inc.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Oswego Harbor Power LLC

[Docket No. ER99–3637–000]

Take notice that on July 19, 1999, Oswego Harbor Power LLC (Seller), a limited liability company organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) accepting Seller's proposed Rate Schedule FERC No. 1 (Market-Based Rate Schedule); (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the Regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates. Seller is an indirect subsidiary of Northern States Power Company.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Rochester Gas and Electric Corporation

[Docket No. ER99–3638–000]

Take notice that on July 19, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement between RG&E and Monroe County (Transmission Customer) for service under RG&E's open access transmission tariff. Specifically dealing with the "Retail Access Program" under RG&E's open access transmission tariff.

RG&E requests waiver of the Commission's notice requirements for good cause shown and an effective date of July 13, 1999 for the Monroe County Service Agreement.

A copy of this Service Agreement has been served on the Transmission Customer and the New York Public Service Commission.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Baltimore Gas and Electric Company, Ameren Services Company

[Docket No. ER99–3641–000; Docket No. ER99–3659–000]

Take notice that on July 20, 1999, the above-mentioned public utilities and/or affiliated power producers filed their quarterly reports for the quarter ending June 30, 1999.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Golden Spread Electric Cooperative, Inc.

[Docket No. ES99–48–000]

Take notice that on July 20, 1999, Golden Spread Electric Cooperative, Inc. (Golden Spread), tendered for filing an application under Section 204 of the Federal Power Act seeking authorization to issue from time to time up to $80 million of short-term and intermediate-term notes outstanding at any one time, with an effective date of August 27, 1999.

Golden Spread also requested exemption from compliance with the Commission's competitive bidding or negotiated placement requirements at 18 CFR 34.2.

Comment date: August 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–19883 Filed 8–2–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 28, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11748–000.

c. *Date filed:* June 11, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi Lock & Dam No. 11 Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Mississippi Lock Dam No. 11 on the Mississippi River, near Dubuque, in Dubuque County, Iowa, and Grant County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* William Guey-Lee (202) 219–2808 or E-mail address at William.gueylee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Mississippi Lock and Dam No. 11, and would consist of the following facilities: (1) Twelve new steel penstocks, each about 80 feet long and 114 inches in diameter; (2) a new powerhouse to be constructed on the downstream side of the dam with 6 generating units and an installed capacity of 18,400 kilowatts; (3) a new 300-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The average annual generation is estimated to be 113 gigawatthours. The cost of the studies under the permit will not exceed $3,000,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rim.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for

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preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent of file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A Preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Commnents Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene on accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "**COMMENTS**" "**NOTICE OF INTENT TO FILE COMPETING APPLICATION**" "**COMPETING APPLICATION**", "**PROTEST**" "**MOTION TO INTERVENE**", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named document must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mention address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comment on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boerger,

Secretary.

[FR Doc. 99–19819 Filed 8–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 28, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11749–000.

c. *Date filed:* June 11, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi Lock & Dam No. 20 Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Mississippi Lock and Dam No. 20 on the Mississippi River, near Canton, in Lewis County, Missouri, and Adams County, Illinois.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* William Guey-Lee (202) 219–2808 or E-mail address at William.gueylee@FERC.fed.us.

j. Deadline for filing motions to intervene and protest: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Mississippi Lock and Dam No. 20, and would consist of the following facilities: (1) twenty new steel penstocks, each about 80 feet long and 96 inches in diameter; (2) a new powerhouse to be constructed on the downstream side of the dam with 20 generating units and an installed capacity of 30,000 kilowatts; (3) a new 500-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The average annual generation is estimated to be 184 gigawatthours. The cost of the studies under the permit will not exceed $3,000,000.

m. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–19820 Filed 8–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 28, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11752–000.

c. *Date filed:* June 11, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi Lock & Dam No. 15 Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Mississippi Lock and Dam No. 15 on the Mississippi River, near Rock Island, in Rock Island County, Illinois, and Scott County, Iowa.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* William Guey-Lee (202) 219–2808 or E-mail address at William.gueylee@FERC.fed.us.

j. Deadline for filing motions to intervene and protest: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Mississippi Lock and Dam No. 15, and would consist of the following facilities: (1) fourteen new steel penstocks, each about 80-feet-long and 114 inches in diameter; (2) a new powerhouse to be constructed on the downstream side of

the dam with 14 generating units and an installed capacity of 28,000 kilowatts; (3) new 200-foot-long, 14.7-kilovolt transmission lines; and (4) appurtenant facilities. The average annual generation is estimated to be 172 gigawatt hours. The cost of the studies under the permit will not exceed $3,000,000.

m. Available Locations of Application: A copy of the application is available for inspection and reproduction and the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified document date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Dvisiion of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–19821 Filed 8–2–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6412–2]

Acid Rain Program: Draft Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of permit modifications.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment draft Phase I Acid Rain permit modifications that include nitrogen oxides (NO_X) compliance plans in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76). Because the Agency does not anticipate receiving adverse comments, the permit modifications are also being issued as a direct final action in the notice of permit modifications published elsewhere in today's **Federal Register**.

DATES: Comments on the draft permit modifications must be received no later than September 2, 1999.

ADDRESSES: *Administrative Records.* The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at the following location: EPA Region 4, 100 Alabama NW, Atlanta, GA 30303.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions to EPA Region 4, Air, Pesticides and Toxics Management Division, Attn: Jenny Jachim (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting a NO_X compliance plan.

FOR FURTHER INFORMATION CONTACT: Jenny Jachim, EPA Region 4, (404) 562–9126.

SUPPLEMENTARY INFORMATION: If no adverse comments are timely received, no further activity is contemplated in relation to these draft permit modifications and the permit modifications issued as a direct final action in the notice of permit modifications published elsewhere in today's **Federal Register** will automatically become final on the date specified in that notice. If adverse comments are timely received on any permit modification, that permit modification in the notice of permit modifications will be withdrawn and public comment received on that permit modification based on this notice of draft permit modifications will be addressed in a subsequent notice of permit modifications. Because the Agency will not institute a second comment period on this notice of draft permit modifications, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the permit modifications, see the information provided in the notice of permit modifications elsewhere in today's **Federal Register**.

Dated: June 30, 1999.

Larry F. Kertcher,

Acting Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 99–19901 Filed 8–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6412–3]

Acid Rain Program: Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of permit modifications.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing, as a direct final action, Phase I Acid Rain permit modifications that include nitrogen oxides (NO_X) compliance plans in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76). Because the Agency does not anticipate receiving adverse comments, the permit modifications are being issued as a direct final action.

DATES: The permit modifications issued in this direct final action will be final on September 13, 1999 unless adverse comments are received by September 2, 1999. If adverse comments are timely received on any permit modification in this direct final action, that permit modification will be withdrawn through a notice in the **Federal Register**.

ADDRESSES: *Administrative Records.* The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at the following location: EPA Region 4, 61 Forsyth St., SW, Atlanta, GA, 30303.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions to EPA Region 4, Air, Pesticides and Toxics Management Division, Attn: Jenny Jachim (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting a NO_X compliance plan.

FOR FURTHER INFORMATION CONTACT: Jenny Jachim, EPA Region 4, (404) 562–9126.

SUPPLEMENTARY INFORMATION: Title IV of the Clean Air Act directs EPA to establish a program to reduce the adverse effects of acidic deposition by promulgating rules and issuing permits to emission sources subject to the program. In today's action, EPA is issuing permit modifications that include approval of early election plans for NO_X. The units that are included in the early election plans will be required to meet an actual annual average emissions rate for NO_X of either 0.45 lbs/MMBtu for tangentially-fired boilers or 0.50 lbs/mmBtu for dry bottom wall-fired boilers beginning on January 1, 1997 through December 31, 2007, after which they will be required to meet the applicable Phase II Group 1 emissions limitation for NO_X.

The designated representative submitted complete NO_X early election plans under 40 CFR 76.8(c) to EPA prior to January 1, 1997 as required under 40 CFR 76.8(b). However, through an administrative oversight, EPA failed to review the plans and modify the Phase I permits. Since the units covered by the plans have been in compliance with all applicable requirements under 40 CFR 76.8, including compliance with the Phase I Group 1 limits below beginning in 1997, EPA approves the plans with effective dates beginning retroactively on January 1, 1997.

The following is a list of units included in the permit modifications and the limits that they are required to meet:

H.L. Spurlock unit 2 in Kentucky: 0.45 lbs/mmBtu. The designated representative is Robert E. Hughes, Jr.

W.C. Dale units 3 and 4 in Kentucky: 0.50 lbs/mmBtu. The designated representative is Robert E. Hughes, Jr.

Dated: June 30, 1999.

Larry F. Kertcher,

Acting Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 99–19902 Filed 8–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6411–6; Docket No. A–99–24]

Petition To Delist Ethylene Glycol Butyl Ether From the List of Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of a complete petition.

SUMMARY: This document announces the receipt of a complete petition from the Chemical Manufacturers Association's (CMA's) Ethylene Glycol Ethers Panel requesting EPA to remove the chemical ethylene glycol butyl ether (EGBE) (CAS No. 111–76–2) from the list of hazardous air pollutants (HAPs) contained in section 112(b)(1) of the 1990 Clean Air Act (Act). We have determined that the CMA's original petition dated August 29, 1997 and the supplemental materials provided by CMA through December 21, 1998 will support an assessment of the human health impacts associated with people living in the vicinity of facilities emitting EGBE. In addition, the data submitted by CMA will support an assessment of the environmental impacts associated with emissions of EGBE to the ambient air and deposited onto soil or water. Consequently, we have concluded that CMA's petition is complete as of December 21, 1998, the date of the last supplement, and is ready for public comment and the technical review phase of our delisting evaluation process.

This document invites the public to comment on the petition and to provide additional data, beyond that filed in the petition, on sources, emissions, exposure, health effects and environmental impacts associated with EGBE that may be relevant to our technical review.

DATES: Comments and additional data will be accepted if received on or before September 2, 1999.

ADDRESSES: *Documents.* A copy of the complete petition is contained in a docket available at the Air and Radiation Docket and Information Office, 401 M Street SW, Room M–1500 (6102), Waterside Mall, Washington DC 20460. The docket number for this action is A–99–24. The docket is an organized file of all the information received and considered in making the decision on the completeness of CMA's petition. The main purpose of the docket is to allow you to readily identify and locate documents that record the process we followed in making our decision. You may inspect the petition and copy it for offsite review between 8:30 a.m. and 5:30 p.m. EST, Monday through Friday. In addition, CMA will make copies of the petition available upon request. To request a copy from CMA, you may call Dr. Susan A. Lewis at (202) 879–5042 during normal business hours. A reasonable fee may be charged for copying.

Comments and Data Submissions. Comments and additional data should be submitted (in duplicate if possible) to: The Docket Clerk, Air and Radiation Docket and Information Office, 401 M Street SW, Room M–1500 (Mail Code 6102), Waterside Mall, Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Ted Palma, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5470, electronic mail address: palma.ted@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. What Is the List of Hazardous Air Pollutants?

Hazardous air pollutants include a wide variety of organic and inorganic substances released from large and small industrial operations, fossil fuel combustion, gasoline and diesel-powered vehicles, and many other sources. The HAPs have been associated with a wide variety of adverse health effects, including cancer, neurological effects, reproductive effects, and developmental effects. The health effects associated with the various HAPs may differ depending upon the toxicity of the individual HAP and the particular circumstances of exposure, such as the amount of chemical present, the length of time a person is exposed, and the stage in life of the person when the exposure occurs. The list of HAPs, which includes the pollutant category "glycol ethers," of which EGBE is a member of this category, can be found in section 112(b)(1) of the Act. The HAPs list provides the basis for research, regulation, and other related EPA activities under section 112 of the Act.

B. What Is a HAP Delist Petition?

A HAP delist petition is a formal request to the EPA from an individual or group to remove a specific HAP from the HAPs list. The removal of a HAP from the list eliminates it from consideration in EPA's program to promulgate national, technology-based emissions control standards. This technology-based standards program is commonly referred to as the maximum achievable control technology (MACT) program.

Petitions to add or delete chemicals from the HAPs list are allowed under section 112(b)(3)(A) of the Act. The Act specifies that any person may petition the Administrator to modify, by addition or deletion, the list of HAPs, and the EPA Administrator is required to either grant or deny a petition to delist a specific HAP within 18 months of the receipt of a complete petition.

To delete a substance from the HAPs list, section 112(b)(3)(C) requires that the petitioner must provide adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, and bio-accumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to human health or adverse environmental effects.

C. How Does EPA Review a Petition To Delist a HAP?

The petition review process proceeds in two phases: a completeness determination and a technical review. During the completeness determination, we conduct a broad review of the petition to determine whether or not all the necessary subject areas are addressed and whether reasonable information and analyses are presented for each of these subject areas. Once the petition is determined to be complete, we place a notice of receipt of a complete petition in the **Federal Register**. That **Federal Register** notice announces a public comment period on the petition and starts the technical review phase of our decision-making process. The technical review involves a more thorough scientific review of the petition to determine whether the data, analyses, interpretations, and conclusions in the petition are appropriate and technically sound. The technical review will also determine whether or not the petition satisfies the necessary requirements of section 112(b)(3)(C) and adequately supports a decision to delist the HAP. All comments and data submitted during the public comment period are considered during the technical review.

D. How Is the Decision To Delist a HAP Made?

The decision to either grant or deny a petition is made after a comprehensive technical review of both the petition and the information received from the public to determine whether the petition satisfies the requirements of section 112(b)(3)(C) of the Act. If the Administrator decides to grant a petition, a notice of proposed rulemaking is published in the **Federal Register**. That notice proposes a modification of the HAPs list and presents the reasoning for doing so. However, if the Administrator decides to deny a petition, a notice setting forth an explanation of the reasons for denial will be published instead. A notice of denial constitutes final Agency action of nationwide scope and applicability and is subject to judicial review as provided in section 307(b) of the Act.

II. Completeness Determination and Request for Public Comment

On August 29, 1997, we received a petition from the CMA's Ethylene Glycol Ethers Panel to remove EGBE (CAS No. 111–76–2) from the HAPs list. After our initial review of the petition, we determined that additional information was needed to determine ecological risks as well as on the derivation of the safe human exposure level for EGBE. The petitioner submitted several additional documents in September and December of 1998 to address the information gaps. After reviewing all of the supplemental information, we have now determined that the essential subject areas have been addressed and that the petition is complete and ready for technical review. The CMA's last supplement which occurred December 21, 1998 marked the start of the 18-months decision period. Today's document initiates our comprehensive technical review of the petition and invites public comment on the substance of the petition as described above.

III. Description of the Petition

The complete petition provided by CMA contains the following information:

A. Background information on EGBE, including chemical and physical properties data, synonyms, atmospheric residence time, solubility, information on atmospheric transformations as well as production and usage information.

B. A hazard identification and dose-response assessment to determine whether exposure to EGBE is capable of causing adverse health effects in humans. Further, CMA provided supplemental materials addressing the results of the National Toxicology Program mouse and rat cancer bioassays of EGBE.

C. An inventory of the releases of EGBE to the atmosphere. The inventory was developed by examining Federal, State, and local data sources. In addition, the inventory development included direct contact with industrial and trade associations and review of other chemical databases.

D. "Tiered" air dispersion modeling that provides estimates of the ambient concentration of EGBE for comparison with inhalation health criteria. Tiered modeling involves the use of successive modeling techniques to move from conservative "worst case" estimates of the ambient concentrations of a substance emitted from a source toward more "realistic" site-specific estimates of the ambient concentrations.

E. An evaluation of the ambient measured concentrations of EGBE and estimates of typical urban ambient levels.

F. An evaluation of the environmental fate and transport of EGBE to surface waters.

G. A risk characterization study presenting an assessment of potential air inhalation exposures and surface water ingestion exposures to humans. Further, the petition included an assessment of the quality of the study data and uncertainty associated with the analysis.

H. An ecological risk assessment to determine if adverse environmental effects may occur as a result of predicted ambient air quality levels and deposition to soil and water resulting from air releases of EGBE.

The petition describes EGBE as the largest volume glycol ether used in the U.S. It estimates that the 1995 total U.S. consumption of EGBE was between 285 and 310 million pounds. The vast majority of EGBE is produced at five plants located in Michigan, Texas, and Louisiana. Approximately 90 percent of the EGBE consumed in the U.S. was used as a solvent in paints, coatings, industrial and household cleaners, adhesives, and inks. The remaining 10 percent was used as a chemical intermediate. As described in the petition, releases of EGBE to the environment are primarily to the atmosphere.

In support of the delisting effort, the petitioner conducted a comprehensive emission inventory examining potential air emissions sources of EGBE as well as glycol ethers. Evaluating a cross-section of the industry, the petition collected data and conducted its "tiered-type" air quality assessment on over 3,400 facilities with inventoried air emissions of EGBE.

The hazard identification and dose-response assessment in the petition presents a summary of recent health criteria studies performed by a steering group comprised of CMA and EPA scientists. The petition suggests that an inhalation reference concentration and ingestion reference dose ranging from 3 to 73 milligrams per cubic meter and 3 to 23 milligrams per kilogram per day, respectively, are appropriate health criteria for the risk and exposure assessment.

The risk assessment compares model predicted air quality data with proposed health criteria information to conclude that air releases of EGBE are not anticipated to cause adverse effects to human health. An ecological risk assessment, to determine adverse environmental effects to nonhuman receptors, further concludes that air releases of EGBE are not likely to cause nor contribute to adverse environmental effects.

Dated: July 26, 1999.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 99–19905 Filed 8–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6412–1]

Public Water System Supervision Program Revision for the State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Tennessee is revising its approved Public Water System Supervision Program. Tennessee has adopted drinking water regulations requiring consumer confidence reports from all community water systems. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends on approving this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by September 2, 1999 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by September 2, 1999, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on September 2, 1999. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Tennessee Department of Environment and Conservation, Division of Water Supply, 401 Church Street, 6th Floor, L&C Tower, Nashville, Tennessee 37219–5404 or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street Southwest, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Dan O'Lone, EPA Region 4, Drinking Water Section at the Atlanta address given above or at telephone (404) 562–9434.

Authority: (Section 1420 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations).

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–19907 Filed 8–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6411–9]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Boeck Drum Superfund Site, with Mr. Eugene O. Boeck and the United States Air Force.

The settlement requires the settling parties to pay a total of $149,959.56 as payment of past response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to section 107 of CERCLA, 42 U.S.C. 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733.

DATES: Comments must be submitted on or before September 2, 1999.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. A copy of the proposed settlement may be obtained from Carl Bolden, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–6713. Comments should reference the Boeck Drums Superfund Site, Kingsbury, Guadalupe County, Texas, and EPA Docket Number 6–09–99, and should be addressed to Carl Bolden at the address listed above.

FOR FURTHER INFORMATION CONTACT: Keith Smith, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–2157.

Dated: July 22, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–19908 Filed 8–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6411–8]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Luther Smith Superfund Site, with Mr. Sebastian Koch and the United States Air Force.

The settlement requires the settling parties to pay a total of $272,142.89 as payment of past response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to section 107 of CERCLA, 42 U.S.C. 9607.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733.

DATES: Comments must be submitted on or before September 2, 1999.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. A copy of the proposed settlement may be obtained from Carl Bolden, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–6713. Comments should reference the Luther Smith Superfund Site, Guadalupe County, Texas, and EPA Docket Number 6–08–99, and should be addressed to Carl Bolden at the address listed above.

FOR FURTHER INFORMATION CONTACT: Keith Smith, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–2157.

Dated: July 21, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–19909 Filed 8–2–99; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Final Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final notice of submission for OMB review.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the Equal Employment Opportunity Commission (EEOC) hereby gives notice that it has submitted the information collection described below to the Office of Management and Budget (OMB).

DATES: Written comments on this final notice must be submitted on or before September, 2, 1999.

ADDRESSES: Comments on this final notice should be submitted to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer for the U.S. Equal Employment Opportunity Commission, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or electronically mailed to DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection request should be addressed to Mr. Neckere at the address below.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street. NW, Room 9222, Washington, DC 20507, (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION: A notice that EEOC would be submitting this request was published in the **Federal Register** on March 25, 1999, allowing for a 60-day public comment period. Two commenters responded.

The first commentator stated that, although he was not concerned with the Commission's interpretation of the Uniform Guidelines on Employee Selection Procedures (UGESP) recordkeeping requirements, he believed that the Office of Federal Contract Compliance Programs' (OFCCP) interpretation and application of the UGESP recordkeeping provisions placed an undue burden on federal contractors. The commentator asked EEOC to review OFCCP's interpretation. UGESP was jointly issued by the Commission, the predecessor of the U.S. Office of Personnel Management and the Departments of Justice and Labor. Each of those agencies uses the Guidelines in carrying out its own mission. We note that this commentator has submitted a similar observation to OMB in connection with a PRA notice published by OFCCP and that that particular PRA review by OMB has not yet been completed. Although that other matter is still pending, we nevertheless consulted with OFCCP as a result of the comment and are satisfied that OFCCP's interpretation is not inconsistent with the language of the Guidelines.

The second commentator raised the same concern about OFCCP's interpretation of UGESP and also suggested that (1) the EEOC state whether the recordkeeping requirements of UGESP are mandatory and required of all companies obligated to file EEO–1 reports, and (2), if the UGESP recordkeeping requirements are mandatory, the Questions and Answers to the UGESP issued in 1979 (Q's & A's) also be submitted to OMB for approval. UGESP recordkeeping requirements are mandatory. See 29 CFR 1607.4 and 1607.15 and 29 CFR 1607.16S (" The term 'should' as used in these guidelines is intended to connote action that is necessary to achieve compliance * * *"). They apply to all employers subject to Title VII, Executive Order 11246 and other EEO requirements of federal law, not just those employers who file EEO–1 reports. See 29 CFR 1607.2 and 1607.15. The Q's & A's were published in 44 FR 11996 (1979) and 45 FR 29530 (1980). They were issued as supplemental guidance to clarify and provide a common interpretation of the regulations; however, they do not alter the recordkeeping requirements in the regulations, and it would, therefore, not be appropriate to forward the Q's & A's to OMB for review. The Q's &A's are, however, part of the background information that has been submitted to OMB with the request for extension of the recordkeeping requirement in the regulations.

Overview of This Information Collection

Collection Title: Recordkeeping Requirements of UGESP, 29 CFR 1607.4 and .15.

OMB Number: 3046–0017.

Form Number: None.

Frequency of Report: None required.

Type of Respondent: Businesses or other institutions, state or local governments and farms.

North American Industry Classification System (NAICS) Code: Multiple.

Description of Affected Public: Any employer, labor organization, or employment agency covered by the federal equal employment opportunity laws.

Responses: 666,000.

Reporting Hours: 1,450,000.

Number of Forms: None.

Abstract: The records required to be maintained by 29 CFR 1607.4 and 1607.15 are used by respondents to assure that they are complying with Title VII; by the Commission to investigate, conciliate and litigate charges of employment discrimination; and by complainants to establish violations of federal equal employment opportunity laws.

Burden Statement: There are no reporting requirements associated with UGESP. Thus the only paperwork burden derives from the required recordkeeping. There are a total of 666,000 employers who have 15 or more employees and that are, therefore, subject to the recordkeeping requirement. Prior to the imposition of the UGESP recordkeeping requirement, the EEOC proposed to conduct a practical utility survey to obtain estimates of burden hours. The intended survey was not approved by OMB, however, and the Commission relied instead on data obtained from the Business Roundtable study on the Cost of Government Regulation conducted by the Arthur Anderson Company.

In its initial estimate of the recordkeeping burden, the Commission relied on data from the study to derive the estimate of 1.91 million hours. In a subsequent submission for clearance of the UGESP collection, the Commission made an adjustment to reflect the increase in the incidence of computerized recordkeeping that resulted in a reduction of total burden hours of approximately 300,000, and brought the total burden down to 1.6 million hours.

In the calculation of the initial burden of UGESP compliance, the estimated number of employees covered by the guidelines was 71.1 million. Average cost per employee was taken to be $1.79. Since most of this cost, however, was for employers' administrative functions and represented the time spent in reviewing their selection processes for "adverse impact" and in reviewing and validating their testing procedures, the actual recordkeeping function was estimated to be in the range of 10 to 15 percent of the total per-employee cost, or between $.179 and $.2685 per employee.

In the initial estimate, the Commission used the higher end of the range, but subsequently adopted the midpoint of the range, $.22 per employee, as a better estimate. The number of employees also increased by 15 million since the initial estimate, so that there are now 86 million employees subject to UGESP. In addition, from the private employer survey the Commission has been conducting for past 30 years (EEO–1), it is aware that 29.7 percent of the private employers file their employment reports on magnetic tapes, on diskettes, or on computer printouts. Thus, at a minimum, that proportion of employers has computerized recordkeeping. From the same survey the Commission also has learned that when records are computerized, the burden hours for reporting, and thus for recordkeeping are about one-fifth of the burden hours associated with non-computerized records. Therefore, the Commission's current estimate of recordkeeping burden hours is as follows:

Computerized recordkeepers	(.29) × 86mil × ($.044) =	$1,097,360
All other recordkeepers	(.71) × 86mil × ($.22) =	$13,433,200
Total recordkeeping cost		$14,530,560

Total Burden Hours are then computed by dividing the total cost of recordkeeping by $10, the hours rate of staff recordkeepers. The total estimate of burden hours associated with the UGESP recordkeeping then is 1.45 million hours. Assumptions made in deriving the estimate are as follows:

Cost per employee for computerized records is $.044 *

Hourly rate of pay for recordkeeping staff is $10.00 **

* Both of these are derived from a private employer study.

** To the extent that this is an underestimate, the reporting burden is overestimated.

Dated: July 28, 1999.

For the Commission.
Ida L. Castro,
Chairwoman.
[FR Doc. 99–19887 Filed 8–2–99; 8:45 am]
BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval.

July 26, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 2, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0653.

Title: Sections 64.703 (b) and (c), Consumer Information—Posting by Aggregators (Formerly titled: "Section 64.703 (b)—Consumer Information—Posting by Aggregators").

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 56,200.

Estimated Time Per Response: 3.67 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 206,566 hours.

Total Annual Costs: None.

Needs and Uses: Section 226(c)(1)(A) of the Communications Act and Section 64.703(b) of the Commission's rules require that each aggregator post on or near the telephone instrument in plain view of consumers: (1) The name, address, and toll-free telephone number of the provider of operator services; (2) written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain access to the interstate common carrier of their choice and may contact their preferred interstate common carrier for information on assessing that carrier's service using that telephone; and (3) the name and address of the Enforcement Division of the Common Carrier Bureau of the Commission, to which the consumer may direct complaints regarding operator services. This requirement was a response to a widespread failure of aggregators to disclose information necessary for informed consumer choice in the marketplace.

Section 64.703(c) establishes a 30 day outer limit for aggregators to update the posted information. An aggregator may meet the 30 day outer limit rule, where its maintenance technicians would not otherwise visit the particular payphone location within 30 days, by having its coin collection or other agent affix a temporary sticker to the payphone. Such temporary sticker must be replaced with permanent signage during the next regularly scheduled maintenance visit. Section 64.703(c) is intended to provide updated OSP information to consumers and enable consumers to make informed choices when placing operator service calls.

Aggregators will disclose the required information to consumers via printed notice that is posted on or near each of the aggregator's phones. Pursuant to Section 64.703(c), this information must be updated within 30 days in changes of OSPs. Consumers will use this information to determine whether they wish to use the services of the identified OSP.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 99–19848 Filed 8–2–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

July 29, 1999.

FCC To Hold Open Commission Meeting Thursday, August 5, 1999

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, August 5, 1999, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, S.W., Washington, D.C.

Item No.	Bureau	Subject
1	Wireless Telecommunications	Title: Extending Wireless Telecommunications Services to Native American Reservations. Summary: The Commission will consider a Notice of Proposed Rulemaking concerning wireless and satellite initiatives to facilitate telecommunications service on Native American reservations.
2	Common Carrier	Title: Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved, Tribal, and Insular Areas (CC Docket No. 96–45). Summary: The Commission will consider a Further Notice of Proposed Rulemaking concerning the availability of services supported by federal universal service support mechanisms in unserved and underserved areas, including tribal and insular areas.
3	Common Carrier	Title: Access Charge Reform (CC Docket No. 96–262); Price Cap Performance Review for Local Exchange Carriers (CC Docket No. 94–1); and Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers (CCB/CPD File No. 98–63). Summary: The Commission will consider a Fifth Report and Order and Further Notice of Proposed Rulemaking concerning issues relating to interstate access charge reform.
4	Mass Media	Title: Review of the Commission's Regulations Governing Television Broadcasting (MM Docket No. 91–221); and Television Satellite Stations Review of Policy and Rules (MM Docket No. 87–8). Summary: The Commission will consider a Report and Order concerning local ownership of broadcast stations.
5	Mass Media	Title: Broadcast Television National Ownership Rules (MM Docket No. 96–222); Review of the Commission's Regulations Governing Television Broadcasting (MM Docket No. 91–221); and Television Satellite Stations Review of Policy and Rules (MM Docket No. 87–8). Summary: The Commission will consider a Report and Order concerning the method for determining compliance with the national TV ownership rule.
6	Mass Media	Title: Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests (MM Docket No. 94–150); Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry (MM Docket No. 92–51); and Reexamination of the Commission's Cross-Interest Policy (MM Docket No. 87–154). Summary: The Commission will consider a Report and Order concerning the broadcast attribution rules, the cross-interest policy, and the cable-MDS attribution rules.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at http://www.fcc. gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 99–20072 Filed 7–30–99; 3:31 pm]
BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 26, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Buckeye Bancshares, Inc., Lorain, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Buckeye Community Bank, Lorain, Ohio.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Citrus Financial Services, Inc., Vero Beach, Florida; to acquire 100 percent of the voting shares of Commercial Bank of Highlands County, N.A., Sebring, Florida (in organization).

2. Nexity Financial Corporation, Birmingham, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples State Bank, Grant, Alabama.

3. Synovus Financial Corporation, Columbus, Georgia; to merge with Ready Bank of Fort Walton Beach Holding Company, Fort Walton Beach, Florida, and thereby indirectly acquire Ready Bank of West Florida, Fort Walton Beach, Florida.

Board of Governors of the Federal Reserve System, July 28, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–19814 Filed 8–2–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 26, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Central Illinois Bancorp, Inc., Sidney, Illinois; to establish a *de novo* subsidiary, Marine Bank, Omaha, Nebraska (in organization), and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 28, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–19815 Filed 8–2–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, August 9, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20014 Filed 7–30–99; 2:45 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2250]

Agency Information Collection Activities: Proposed Collection; Comment Request; Current Good Manufacturing Practices for Blood and Blood Components; Notification of Consignees Receiving Blood and Blood Components at Increased Risk for Transmitting HIV Infection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed collection extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection provisions relating to the regulation of FDA's current good manufacturing practices for blood and blood components; notification of consignees receiving blood and blood components at increased risk for transmitting human immunodeficiency virus (HIV) infection.

DATES: Submit written comments on the collection of information by October 4, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Current Good Manufacturing Practices for Blood and Blood Components; Notification of Consignees Receiving Blood and Blood Components at Increased Risk for Transmitting HIV Infection—21 CFR 606.100, 606.160, 610.46, and 610.47 (OMB Control Number 0910–0336)—Extension

Under the biologics licensing and quarantine provisions of the Public Health Service Act (42 U.S.C. 262–264) and the general administrative provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351–353, 355–360, and 371–374), FDA has the authority to issue regulations designed to protect the public from unsafe or ineffective biological products and to issue regulations necessary to prevent the introduction, transmission, or spread of communicable diseases.

FDA has implemented an extensive system of donor screening and testing procedures performed by blood establishments before, during, and after donation, to help prevent the transfusion of blood products that are at increased risk for transmitting HIV. HIV is the virus that causes acquired immune deficiency syndrome (AIDS), a communicable disease that can be transmitted through transfusion. Despite the best practices of blood establishments, however, a person may donate blood early in infection, during the period when the antibody to HIV is not detectable by a screening test, but HIV is present in the donor's blood (a so-called "window" period). If the donor attempts to donate blood at a later date, the test for antibody to HIV may, at that time, be repeatedly reactive. Therefore, FDA believes such circumstances require clarification of the donor's status through testing with a more specific antibody test and procedures to "lookback" at prior collections.

FDA issued regulations that require blood establishments to follow written standard operating procedures (SOP's) when the blood establishments have collected Whole Blood, blood components, Source Plasma, and Source Leukocytes later determined to be at increased risk for transmitting HIV. When a donor who previously donated blood is tested on a later donation, and tests repeatedly reactive for antibody to HIV, the regulations require blood establishments to perform more specific testing using a licensed test, and notify consignees who received Whole Blood, blood components, Source Plasma, and Source Leukocytes from prior collections so that appropriate action is taken. Blood establishments and consignees are required to quarantine previously collection Whole Blood, blood components, Source Plasma, and Source Leukocytes from such donors, and if appropriate, notify transfusion recipients. Upon completion of more specific testing, hospital transfusion services that do not participate in Medicare, and are therefore not subject to Health Care Financing Administration's (HCFA's) regulations, are required to take steps to notify transfusion recipients, as appropriate. These regulations are intended to help ensure the continued safety of the blood supply by providing necessary information is provided to users of blood and blood components and appropriate notification of recipients of transfusion at increased risk for transmitting HIV infection.

Section 606.100(b)(19) (21 CFR 606.100(b)(19)) requires written SOP's for the following procedures: (1) Review prior donations of blood and blood products from donors with no previous history of antibody to HIV who subsequently test repeatedly reactive for the antibody to HIV; (2) quarantine in-house blood and blood products; (3) notify consignees regarding the need to quarantine such products; (4) determine the suitability for release of such products from quarantine; (5) notify consignees of such products with antibody testing results from "lookback" donors; and (6) notify attending physicians so that transfusion recipients are informed that they may have received blood and blood components at increased risk for transmitting HIV. Section 606.160(b)(1)(vii) (21 CFR 606.160(b)(1)(vii)) requires records to relate the donor with the unit number of each previous donation from that donor. Section 606.160(b)(1)(viii) requires records of quarantine, notification, testing, and disposition performed under §§ 610.46 and 610.47 (21 CFR 610.46 and 610.47). Section 610.46(a) requires blood establishments to notify consignees, within 72 hours, of repeatedly reactive tests results so that previously collected blood and blood components are appropriately quarantined. Section 610.46(b) requires blood establishments to notify consignees of licensed, more specific test results for HIV within 30 calendar days after the donors's repeatedly reactive test. Section 610.47(b) requires transfusion services not subject to HCFA regulations to notify physicians of prior donation recipients or to notify recipients themselves of the need for HIV testing and counseling.

There are approximately 3,076 registered blood establishments that annually collect an estimated 24,000,000 units of Whole Blood and Source Plasma, and that are required to follow FDA "lookback" procedures. Of these establishments, approximately 180 are registered transfusion services that are not subject to HCFA's "lookback" regulations.

The following reporting and recordkeeping estimates are based on information provided by industry, and FDA experience. In Table 1, it is estimated that an average of 60 repeat donors per establishment will test repeatedly reactive annually. This estimate results in a total number of 184,560 notifications of these test results to consignees by blood establishments for the purpose of quarantine of affected products, and another 184,560 notifications to consignees of subsequent test results. It is estimated that transfusion services not subject to HCFA regulations will need to notify physicians, or in some cases recipients, an average of 16 times per year resulting in a total number of 2,880 notifications. FDA estimates an average of 10 minutes per notification of consignees, physicians, and recipients. The estimate of one-half hour for § 610.47(b) is based on the minimum requirement of three attempts to notify recipients by transfusion services. In Table 2, the estimate of 154 recordkeepers and 160 records is based on the estimate that the requirement is already implemented voluntarily by more than 95 percent of the facilities, which collect 98 percent of the Nation's blood supply. FDA estimates that it takes approximately 5 minutes to document and maintain the records to relate the donor with the unit number of each previous donation. The establishment of SOP's under § 606.100(b)(19) is a one-time burden. The maintenance of the SOP's is considered usual and customary business practice, therefore no burden is calculated for the preparation and updating of the SOP.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
610.46(a)	3,076	60	184,560	0.17	31,375
610.46(b)	3,076	60	184,560	0.17	31,375
610.47(b)	180	16	2,880	0.5	1,440
Total					64,190

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
606.160(b)(1)(vii)	154	160	24,640	12.8	1,971
606.160(b)(1)(viii)	3,076	60	184,560	4.8	14,765
Total					16,736

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 27, 1999

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–19794 Filed 8–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1387]

Agency Information Collection Activities; Announcement of OMB Approval; Survey of Licensed Biologics Manufacturers and Registered Blood Establishments for Year 2000 Compliance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Survey of Licensed Biologics Manufacturers and Registered Blood Establishments for Year 2000 Compliance" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 25, 1999 (64 FR 28203), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0408. The approval expires on November 30, 1999. A copy of the supporting statement for this information collection is available on the Internet at "http://www.fda.gov/ohrms/dockets".

Dated: July 27, 1999

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–19792 Filed 8–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0670]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Labeling Requirements for Color Additives (Other Than Hair Dyes) Petitions; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of July 8, 1999 (64 FR 36885). The document announced that the proposed collection of information had been submitted to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1995. The document published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 99–17242, appearing on page 36885, in the **Federal Register** of Thursday, July 8, 1999, the following correction is made:

In the third column, in the next to the last line of the document "$14,200 (2 x $2,600 + x $3,000 listing fees = $14,200)." is corrected to read "$14,200 (2 x $2,600 + 3 x $3,000 listing fees = $14,200)."

Dated: July 28, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–19793 Filed 8–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0811]

Agency Information Collection Activities; Announcement of OMB Approval; Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 6, 1999 (65 FR 24406), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0389. The approval expires on June 30, 2002. A copy of the supporting statement for this information collection is available on the Internet at "http://www.fda.gov/ohrms/dockets".

Dated: July 27, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–19795 Filed 8–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2406]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Guidance on VICH GL9 Good Clinical Practices; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment of the following draft guidance document entitled: VICH GL9 "Good Clinical Practices." This draft guidance document was developed by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). It is intended to provide a unified standard for designing, conducting, monitoring, recording, and reporting studies used in registration applications for approval of veterinary products submitted to the European Union, Japan, and the United States.

DATES: Submit written comments by September 2, 1999. FDA must receive comment before the deadline in order to ensure their consideration.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm 1061, Rockville, MD 20852. Comments should be identified with the full title of the draft guidance documents and the docket number found in the heading of this document.

Copies of the draft guidance document entitled "Good Clinical Practices" may be obtained on the Internet from the CVM home page at "http://www.fda.gov/cvm/fda/TOCs/guideline.html". Persons without Internet access may submit written requests for single copies of the draft guidances to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT:

Regarding VICH: Sharon R. Thompson (HFV–3), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e-mail: "sthompso@bangate.fda.gov".

Regarding the guidance document: Herman M. Schoenemann (HFV–120), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0220, e-mail: "hschoene@cvm.fda.gov".

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seeking scientifically-based harmonized technical requirements for the development of pharmaceutical products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) for several years to develop harmonized technical requirements for the approval of human pharmaceutical products among the European Union, Japan and the United States. The VICH is a parallel initiative for veterinary products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary products in the European Union, Japan and the United States, and includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Epizooties (OIE). The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from Mercado Comun Sudamericano (MERCOSUR) representing Argentina, Brazil, Uruguay, and Paraguay, and one representative from Federacion Latino–Americana de la Industria para la Salud Animal. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confederation Mondiale de L'Industrie de la Sante Animale (COMISA). A COMISA representative participates in the VICH Steering Committee meetings.

At a meeting held on October 20 through 22, 1998, the VICH Steering Committee agreed that the draft guidance document entitled "Good Clinical Practices" should be made available for public comment.

The draft guidance is intended to be an international ethical and scientific quality standard for designing, conducting, monitoring, recording, auditing, analyzing and reporting clinical studies evaluating veterinary products. Comments about these draft guidance documents will be considered by the FDA and the VICH Good Clinical

Practices Working Group. Ultimately, FDA intends to adopt the VICH Steering Committee's final guidance and publish it as future guidance for sponsors of domestic animal drug approvals or as proposed regulations for future comment and final rulemaking.

This document has been revised to conform to FDA's good guidance practices regulations (62 FR 8961, February 27, 1997). For example, the document has been designated "guidance" rather than "guideline." Since guidance documents are not binding, mandatory words such as "must" in the original VICH document have been substituted with the verb "should." These revisions are identified by placing the original word in brackets followed by the substitute verb.

This draft document represents current FDA thinking on design and conduct of all clinical studies of veterinary products in the target species. The document does not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternate approaches may be used if they satisfy the requirements of applicable statutes, regulations, or both.

II. Comments

Interested persons should submit written comments on or before September 2, 1999 to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 27, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–19871 Filed 8–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food and Drug Administration/Industry Exchange Workshop on Scale-Up and Postapproval Changes, Supplements, and Other Postapproval Changes; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of workshop.

SUMMARY: The Food and Drug Administration (FDA), Office of the Commissioner, Office of Regulatory Affairs, Center for Drug Evaluation and Research, and the Southeast Region Small Business Assistance Office, in cooperation with the North Carolina Regulatory Affairs Forum (NCRAF) is announcing the following workshop: FDA/Industry Exchange Workshop on Scale-Up and Postapproval Changes (SUPAC), Supplements, and Other Postapproval Changes. The workshop is intended to review the scientific, regulatory, and quality basis of SUPAC; discuss current issues; and provide attendees with information on the impact of the SUPAC guidances that have been finalized, as well as future agency efforts in this area.

Date and Time: The workshop will be held on Tuesday, August 17, 1999, from 8 a.m. to 5 p.m. Send information regarding registration by August 10, 1999.

Location: The workshop will be held at the Durham Marriott at the Civic Center, 201 Foster St., Durham, NC 27701, 919–768–6000, FAX 919–768–6037. Persons needing hotel rooms should mention that they are attending the SUPAC workshop. A special rate is available until July 23, 1999.

Contact: Barbara Ward-Groves, Industry and Small Business Representative, Food and Drug Administration, 60 Eighth St. NE., Atlanta, GA 30309, 404–253–2238.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number), along with a $75 check (which will cover refreshments, lunch, and materials) made payable to NCRAF, P.O. Box 13474, Research Triangle Park, NC 27709, c/o Jamie Morgan, 919–845–8055, by August 10, 1999. Space is limited, therefore, interested parties are encouraged to register early. Limited on-site registration may be available. Please arrive early to ensure prompt registration. If you need special accommodations due to a disability, please contact Jamie Morgan at least 7 days in advance.

SUPPLEMENTARY INFORMATION: The workshop meets the requirements set forth in section 406 of the FDA Modernization Act of 1997 (21 U.S.C 393) and discussed in the FDA Plan for Statutory Compliance, which include working more closely with stakeholders; maximizing the availability of, and clarifying information about the process for review and submissions; and ensuring access to needed scientific and technical expertise.

The workshop also complies with the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121) that requires outreach activities by Government agencies directed to small businesses.

The topics to be discussed include the following: (1) The history of SUPAC development; (2) comparison of SUPAC immediate-release solid dosage forms, modified-release oral dosage forms, and semisolid-topical dosage forms; (3) bulk actives postapproval changes; (4) postapproval changes sterile aqueous solutions; (5) FDA field staff's involvement in SUPAC; (6) description and use of the equipment addenda to SUPAC; and (7) facts, figures, and future directions.

Dated: July 27, 1999

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–19791 Filed 8–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D092013]

Draft "Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics"; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics." This draft guidance, once finalized, will supersede the guidance entitled "FDA's Policy Statement Concerning Cooperative Manufacturing Arrangements for Licensed Biologics," previously made available in the **Federal Register**, that describes innovative arrangements among applicants who wish to cooperate in the manufacture of a licensed biological product. This draft guidance is now being revised to reflect recent changes in the biologics regulations and to provide for additional flexibility in cooperative manufacturing arrangements. The draft guidance is intended to assist manufacturers in the development and production of both conventional and biotechnology-derived biological products, and to increase flexibility in the licensing options for biological products without diminishing the protection of public health.

DATES: Written comments may be submitted at any time, however, comments should be submitted by October 4, 1999, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of the draft "Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics" to the Office of Communication, Training, and Manufacturers Assistance (HFM0940), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852091448. Send one self-addressed adhesive label to assist the office in processing your request. The document may also be obtained by mail by calling the CBER Voice Information System at 10980009835094709 or 30109827091800, or by fax by calling the FAX Information System at 10988809CBER09FAX or 30109827093844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

Submit written comments on the document to the Dockets Management Branch (HFA09305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Gloria J. Hicks, Center for Biologics Evaluation and Research (HFM0917), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852091448, 30109827096210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled "Guidance for Industry: Cooperative Manufacturing Arrangements for Licensed Biologics." Once finalized, this document will supersede "FDA's Policy Statement Concerning Cooperative Manufacturing Arrangements for Licensed Biologics," published in the **Federal Register** of November 25, 1992 (57 FR 55544). This revised guidance document is intended to advise current and potential manufacturers of biological and biotechnology products subject to licensure under section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262) of available cooperative manufacturing arrangements. These arrangements include short supply, divided manufacturing, shared manufacturing, and contract manufacturing.

CBER recognizes that because development of important new biological products is both expensive and time consuming, increasing flexibility in manufacturing arrangements is desirable. In the **Federal Register** of May 14, 1996 (61 FR 24227), FDA published a final rule amending the biologics regulations at 21 CFR 601.2 to eliminate the establishment license application requirements for certain biotechnology and synthetic biological products subject to licensing under the PHS Act. This final rule also amended 21 CFR 600.3(t) to redefine the term "manufacturer" as it is used in 21 CFR 600 through 680. The definition was amended to include "any legal person or entity who is an applicant for a license where the applicant assumes responsibility for compliance with the applicable product and establishment standards." This document is intended to provide guidance to those interested in the manufacture of new biological products, to those already engaged in cooperative manufacturing arrangements, and to those considering changing their present manufacturing arrangements. The guidance document may be useful to applicants submitting product, establishment, and biologics license applications and supplements.

This draft guidance represents the agency's current thinking on cooperative manufacturing arrangements for licensed biologics. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

This draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Written comments may be submitted at any time, however, comments should be submitted by October 4, 1999, to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document using the World Wide Web (WWW). For WWW access, connect to CBER at "http://www.fda.gov/cber/guidelines.htm".

Dated: July 27, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–19796 Filed 8–2–99; 8:45 am]

BILLING CODE 4160090109F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2212]

Medical Devices; Draft Guidance on Quality Systems Regulation Information for Various Premarket Submissions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Guidance on Quality System Regulation Information for Various PreMarket Submissions." This draft guidance is intended to assist medical device manufacturers with information they should include in premarket approval applications (PMA) and product development protocols (PDP) to demonstrate that the submissions are in compliance with the revised quality system (QS) regulation. This draft guidance document also describes the information that should be maintained at the manufacturing facility for premarket notifications (510(k)'s). This draft guidance document represents the agency's current thinking on the QS regulation information for various premarket submissions. This guidance is neither final nor is it in effect at this time.

DATES: Written comments concerning this draft guidance must be submitted by November 1, 1999.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5" diskette of the draft guidance document entitled "Draft Guidance on Quality System Regulation Information for Various PreMarket Submissions" to the Division of Small Manufacturers Assistance (HFZ–220),

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Center for Devices and Radiological, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments on the draft guidance to the Dockets Management Branch, (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Collin L. Figueroa, Center for Devices and Radiological Health (HFZ–341), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4654.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled "Draft Guidance on Quality System Regulation Information for Various PreMarket Submissions." This draft guidance document is intended to describe for manufacturers one means of complying with the requirements of the QS regulation in 21 CFR part 820 and the requirement for design controls and manufacturing information in various premarket submissions.

II. Significance of Guidance

When used by the premarket applicant in conjunction with the QS regulation, this draft guidance document illustrates an approach to comply with the content requirements for PMA and PDP submissions in section 515(c) of the Food, Drug, and Cosmetic Act (the act) (21 USC 360e(c)) and 21 CFR part 814. This document also describes the information that should be maintained at the manufacturing facility for premarket notifications submitted under section 510(k) of the act (21 U.S.C. 360(k)). The guidance document entitled "The 510(k) Paradigm: Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications" (63 FR 25865, May 11, 1998) describes the type of design control information to be submitted in special 510(k)'s for device modifications.

This guidance document does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance document is issued as a Level 1 guidance consistent with GGPs.

III. Electronic Access

In order to receive the "Draft Guidance Document on Quality System Regulation Information for Various PreMarket Submissions" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1140) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft document may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes the "Guidance on Quality System Regulation Information for Various PreMarket Submissions," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh".

IV. Comments

Interested persons may, on or before November 1, 1999, submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number foundin brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 20, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–19869 Filed 8–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2152]

Medical Devices; Device Use Safety: Incorporating Human Factors in Risk Management; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Draft Guidance on Device Use Safety: Incorporating Human Factors in Risk Management." This draft guidance is neither final nor is it in effect at this time. This draft guidance describes how to incorporate human factors techniques and theory into risk management during the development of medical devices. The draft guidance is intended to assist both reviewers of premarket device submissions and manufacturers that develop devices. The draft guidance is expected to decrease problems with the use of medical devices that impact safety and effectiveness and help ensure safer and more effective devices.

DATES: Written comments concerning this draft guidance must be submitted by November 1, 1999.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5" diskette of the draft guidance entitled "Draft Guidance on Device Use Safety: Incorporating Human Factors in Risk Management" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments on the draft guidance to the Dockets Management Branch, (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ron D. Kaye, Center for Devices and Radiological Health (HFZ–230), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3265.

SUPPLEMENTARY INFORMATION:

I. Background

The draft guidance provides a suggested approach for integrating human factors within risk management for medical device design and development. It also contains an introduction to both risk management and human factors and a discussion of how they are linked. The focus is on reducing risks related specifically to the use of medical devices. Human factors techniques are discussed in the context of management. The draft guidance also suggests how human factors-risk management efforts should be documented and included in premarket submissions.

This draft guidance document represents the agency's current thinking on applying human factors to new medical device design and development to help ensure that use of a device will be safe and effective. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance document is issued as a Level 1 guidance consistent with GGP's.

II. Electronic Access

In order to receive "Draft Guidance on Device Use Safety: Incorporating Human Factors in Risk Management" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1497) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes the "Draft Guidance on Device Use Safety: Incorporating Human Factors in Risk Management," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh". The "Draft Guidance on Device Use Safety: Incorporating Human Factors in Risk Management" will be available at "http://www.fda.gov/cdrh/HumanFactors.html".

III. Comments

Interested persons may submit written comments regarding this draft guidance. Two copies of any comments are to be submitted to Dockets Management Branch (address above), except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 20, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–19870 Filed 8–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3021–N]

Medicare Program; August 31, 1999 Open Town Hall Meeting To Discuss the End Stage Renal Disease Network Organizations (ESRD Networks) Activities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a Town Hall meeting to provide an opportunity for health care organizations, beneficiary advocates, and other interested parties to offer comments and raise issues regarding the development of the ESRD Networks' contract activities to begin July 1, 2000. We view this new round of contracts as an opportunity to look at the current quality initiatives and how they might continue to improve the quality of care that our beneficiaries receive. The next Statement of Work will include Administration of the ESRD Program, beneficiary assistance (including grievances), quality improvement activities, and the collection of data to better understand and serve the ESRD population.

DATES: The meeting is scheduled for Tuesday, August 31, 1999 from 9 a.m. until 3 p.m., eastern davlight-saving time.

ADDRESSES: The meeting will be held in the Health Care Financing Administration Main Auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

FOR FURTHER INFORMATION CONTACT: Condict Martak, (410) 786–1366. Linda Okimoto, (410) 786–6877.

SUPPLEMENTARY INFORMATION:

Background

We contract with the End Stage Renal Disease Network Organizations (ESRD Networks) to oversee renal dialysis services furnished by dialysis facilities to Medicare beneficiaries. The ESRD Networks are responsible for ensuring beneficiaries receive quality care. Every 3 years we develop a Statement of Work defining the ESRD Networks' contract activities.

We are announcing a Town Hall meeting to provide an opportunity for organizations representing practitioners, providers, health plans, other purchasers, beneficiaries, and other interested parties to offer comments and raise issues regarding the activities that will be conducted by the ESRD Networks in their next contract beginning in July 2000. This Town Hall meeting provides an opportunity for the renal community to provide their comments directly to the HCFA officials responsible for writing and implementing the ESRD Network contracts.

Individuals who wish to make a short statement at the meeting must contact Condict Martak via e-mail at cmartak@hcfa.gov or Linda Okimoto via e-mail at lokimoto@hcfa.gov by close of business August 15, 1999. Also, because of time constraints, only a limited number of parties may be able to make presentations. We will notify participants who have been selected to make a presentation. We will assign presentation times and notify presenters before the meeting on August 31, 1999.

While the meeting is open to the public, attendance is limited to space available. Individuals must register in advance as described below or as described on the HCFA web site: http://www.hcfa.gov/quality/qlty-2.htm.

Registration

The Office of Clinical Standards and Quality will handle registration for the meeting. Registration forms may be obtained at HCFA's web site: http://www.hcfa.gov/quality/qtly-2.htm. Individuals may register by e-mail or by sending a FAX ((410) 786–4005) to the attention of Condict Martak or Linda

Okimoto, at the Office of Clinical Standards and Quality, Quality Improvement Group, Division of Contract Policy and Performance, 7500 Security Boulevard, Baltimore, Maryland 21244–1850 until August 15, 1999. Individuals must provide their name, credentials, title, organization, address, telephone number, FAX number, and e-mail address on their registration form. They should also indicate whether or not they wish to make a short statement and whether they need directions to HCFA.

Individuals will receive an e-mail or FAX confirming their registration. The meeting materials will be provided at the time of the meeting.

If you have questions regarding registration, please contact Condict Martak at cmartak@hcfa.gov or Linda Okimoto at lokimoto@hcfa.gov.

The agency will accept written questions or other statements (not to exceed two (2) single-spaced, typed pages), preferably before the meeting, or up to 14 days after the meeting. Written submissions should be sent to: Health Care Financing Administration, Attn: Steven Jencks, M.D., Director, Quality Improvement Group, Office of Clinical Standards and Quality, S3–01–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Authority: Section 1881 of the Social Security Act (42 U.S.C. 1395rr).

Dated: July 27, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–19933 Filed 8–2–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Partner and Customer Satisfaction Surveys

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for the opportunity for public comment on the proposed data collection projects, the Center for Scientific Review (CSR), National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 27, 1999, page 28827 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of Health may not conduct or sponsor, the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Partner and Customer Satisfaction Surveys. *Type of Collection Request:* New request. *Need and Use of Information Collection:* The information collected in these surveys will be used by the Center for Scientific Review personnel: (1) to assess the quality of operations and processes used by CSR to review grant applications; (2) to assess the quality of service provided to our partners and customers; (3) to assist with the design of modifications of these operations, processes, and services, based on partner and customer input; (4) to develop new modes of operation based on partner and customer need; and (5) to obtain partner and customer feedback about the efficacy of implemented modifications. These surveys will almost certainly lead to quality improvement activities that will enhance and/or streamline CSR's operations. The major mechanism by which CSR will request input is through surveys. The survey for partners is generic and tailored for Scientific Review Group (SGR) past and present members and chairs. The survey for customers, i.e., grant applicants, will have slight variations determined by which category of scientific review group the researcher/investigator's grant application is reviewed. Surveys will be collected as written documents or via Internet. Information gathered from these surveys will be presented to, and used directly by, CSR management to enhance the operations, processes, and services of our organization. *Frequency of Response:* The participants will respond yearly. *Affected public:* Universities, not-for-profit institutions, business or other for-profit, small businesses and organizations, and individuals. *Type of Respondents:* Adult scientific professionals. The annual reporting burden is as follows: It is estimated that the survey form will take 20 minutes to complete. The annual hour burden is, therefore, estimated to be 1,932 hours for 5,855 respondents. Estimated costs to the respondents consists entirely of their time. Costs for time were estimated using a rate of $38.00 per hour for SGR members, SGR chairs, and principal investigators/grant applicants. The estimated annual cost for which the generic clearance is requested is $73,421. No additional costs should be incurred by respondents or recordkeepers. There are no capital, operating, or maintenance costs to report.

Requests for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the CSR, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond while maintaining their anonymity, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans, contact: Elliot Postow, Ph.D., Director, Division of Molecular and Cellular Mechanisms, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4160 MSC 7806, Bethesda, MD 20892–7806, or call non-toll free: 301–435–0911, or e-mail your request or comments, including your address to postowe@drg.nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before September 2, 1999.

Chris Wisdom,

Executive Officer, CSR.

[FR Doc. 99–19889 Filed 8–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; An Evaluation of the National Cancer Institute Science Enrichment Program

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 8, 1998, page 36925 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: An Evaluation of the NCI Science Enrichment Program (SEP). *Type of Information Collection Request:* NEW. *Need and use of Information Collection:* This Evaluation will include a survey of the parents whose children attend the National Cancer Institute (NCI) SEP. The survey is part of an evaluation of the program. The SEP was developed as an intervention program to respond to the problem of under-representation of scientists from minority and under-served populations. The program targets high school students from such populations with the primary goal of encouraging their interest in science, mathematics, or research career. The parent survey will gather parents' perceptions of changes in their children's interest or commitment to science and the benefits of the program to their children. The results of the survey are needed as part of the annual evaluation reports that will assess the extent to which SEP has been implemented as planned and to determine the effectiveness of the program in encouraging students' short- and long-term interest in science, to understand the specific components that promote or limit the effectiveness of the program, to draw conclusions about how SEP can be improved or made more effective, and ultimately to make decisions regarding continuation and expansion of the program. NCI will use this information to make decisions regarding continuation and expansion of the program. *Frequency of Response:* One time. *Affected Public:* Individuals or households. *Type of Respondents:* Parents of High School and College students. The annualized cost to respondents is estimated at $200.00.

The annual reporting burden is as follows:

Type of respondents	Number	Number of responses	Avg. hrs.	Annl. hrs.
Parents	120	1	167	20

There are no Capitol Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms on information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Mr. Frank Jackson, Office of Special Populations Research, National Cancer Institute, National Institutes of Health, Executive Plaza South, Room 320, 6120 Executive Boulevard, Rockville, MD 20852, or call non-toll-free number (301) 496–8589, or E-mail your request, including your address to: fj12i@nih.gov

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before September 2, 1999.

Dated: July 23, 1999.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 99–19890 Filed 8–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 28, 1999.

Time: 1 to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gopal C. Sharma, DVM, PhD, Scientific Review Administrator, Center

for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7816, Bethesda, MD 20892, (301) 435–1783.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 3, 1999.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carole L. Jelsema, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1249, jelsemac@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 27, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–19893 Filed 8–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, MR Guided Therapy.

Date: August 26, 1999.

Time: 2:30 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Michael B. Small, Phd., Scientific Review Administrator, National Cancer Institute, Division of Extramural Activities, 6130 Executive Blvd., Room 643, Bethesda, MD 20892, 301/496–7929.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.936, Cancer Biology Research; 93.937, Cancer Centers Support; 93.938, Canter Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 27, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–19891 Filed 8–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Characterization of the Opossum Melanoma Model.

Date: August 17, 1999.

Time: 1:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: 5130 Executive Blvd., 6th Floor, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Joyce C. Pegues, Phd, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Room 609, Rockville, MD 20852–7408, 301/496–2378.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 27, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–19892 Filed 8–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Unsolicited grant application.

Date: August 24, 1999.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIAID, NIH (Room 1202), 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (Telephone Conference Call).

Contact Person: Madelon C. Halula, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93:856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 27, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–19894 Filed 8–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–7(01).

Date: August 13, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, 301/594–7799.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 27, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Policy.

[FR Doc. 99–19895 Filed 8–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 13, 1999.

Time: 10:00 am to 11:00 am.

Agenda: To review and evaluate grant applications.

Place: Wilco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 27, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–19896 Filed 8–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in August and September 1999.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: August 26, 1999.

Place: Parklawn Building 5600 Fishers Lane, Rockville, MD 20857.

Closed: August 26, 1999, 8:30 a.m.—adjournment.

Panel: Childrens TA Center (Coordinating Center) SM 99–008.

Contact: Peggy Riccio, Room 17–89, Parklawn Building, Telephone: 301–443–9996 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: August 30–31, 1999.

Place: Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Closed: August 30, 1999, 8:30 a.m.–5:00 p.m.; August 31, 1999, 8:30 a.m.—adjournment.

Panel: Homeless families SM 99–011.

Contact: Stan Kusnetz, Room 17–89, Parklawn Building, Telephone: 301–443–3042 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: August 30–31, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: August 30, 1999, 8:30 a.m.–5:00 p.m.; August 31, 1999, 8:30 a.m.—adjournment.

Panel: School Violence (Coordinating Centers) SM 99–013.

Contact: Boris Aponte, Room 17–89, Parklawn Building, Telephone: 301–443–2290 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: August 8–10, 1999.
Place: Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.
Closed: August 8–9, 1999, 8:30 a.m.–5:00 p.m., August 10, 1999, 8:30 a.m.—adjournment.
Panel: Predictor Variable SP 99–005.
Contact: Stan Kusnetz, Room 17–89, Parklawn Building, Telephone: 301–443–3042 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: August 30–31, 1999.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 30, 1999, 8:30 a.m.–5:00 p.m.; August 31, 1999, 8:30 a.m.–adjournment.
Panel: Target Substance Abuse/HIV (Coordinating Centers) SP 99–003.
Contact: Boris Aponte, Room 17–89, Parklawn Building, Telephone: 301–443–2290 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Dates: September 9–10, 1999.
Place: Bethesda Marriott 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: September 9, 1999, 8:30 a.m.–5:00 p.m., September 10, 1999, 8:30 a.m.–adjournment.
Panel: Practice Research Collaboration TI 99–006.
Contact: Diane McMenamin, Room 17–89, Parklawn Building, Telephone: 301–443–8490 and FAX: 301–443–3437.

Dated: July 27, 1999.

Coral Sweeney,

Lead Grants Technical Assistant, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–19867 Filed 8–2–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Establishment of Advisory Committee to the Interagency Task Force To Improve Hydroelectric Licensing Processes

AGENCY: Office of the Secretary, Interior, and Federal Energy Regulatory Commission, DOE.

ACTION: Notice of establishment.

SUMMARY: The Secretary of the Interior and the Chairman of the Federal Energy Regulatory Commission, with the concurrence of members of the Interagency Task Force to Improve Hydroelectric Licensing Processes (Interagency Task Force) and after consultation with the General Services Administration, have established the Advisory Committee to the Interagency Task Force to Improve Hydroelectric Licensing Processes (Committee). Established in January 1998, the Interagency Task Force is addressing practical ways to improve and make more efficient the process for relicensing hydropower projects under the Federal Power Act. The Committee will provide a forum for non-Federal entities to review and provide comments on the deliberations of the Interagency Task Force.

FOR FURTHER INFORMATION CONTACT: Alex Matthiessen, Office of the Deputy Secretary, Department of the Interior, 1849 C Street, NW., Mail Stop 5100, Washington, D.C. 20042. Telephone 202–208–6291. Or, Carol Connors, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Telephone 202–208–0870.

SUPPLEMENTARY INFORMATION: We are publishing this notice in accordance with the requirements of the Federal Advisory Committee Act (5 U.S.C. App.) (FACA). Secretary Babbitt and Chairman Hoecker certify that they have determined that the creation of the Committee is necessary and is in the public interest.

The Committee will conduct its operations in accordance with the provisions of FACA. The Committee will report to the Steering Committee of the Interagency Task Force and will function solely as an advisory body. The Committee's charter provides for the Committee to assist the Interagency Task Force by: (1) Holding public meetings and/or conferences to solicit input on the Interagency Task Force's work products; (2) providing informal input to the Interagency Task Force working groups; and (3) identifying appropriate members of the public with expertise in hydropower licensing to assist the Interagency Task Force's working groups.

To achieve the Committee's goals, members will be appointed who can represent effectively the varied interests affected by the hydropower relicensing process. Members will represent a variety of viewpoints and have varying experience, and the Committee will be fairly balanced in terms of points of view, backgrounds, and tasks. Membership will be composed of representatives of industry; Federal, State, and local governments; non-governmental organizations; and Indian tribes. Each member must be qualified on the basis of experience in or knowledge of the processes involved in hydroelectric licensing. Federal members will represent the Federal Energy Regulatory Commission, the Department of the Interior, the Department of Commerce, the Department of Energy, and the Department of Agriculture. The Federal Energy Regulatory Commission and the Department of the Interior representatives will serve as co-chairs.

The Committee will meet at such intervals as are necessary to carry out its functions. It is expected that meetings of the Committee generally will occur no more frequently than four times per year. The Department of the Interior will provide necessary support services to the Committee.

The Committee will continue for only as long as the Interagency Task Force is operating. In any event, the Committee will terminate at the end of two years from the date of its establishment, unless, prior to such time, its charter is renewed in accordance with FACA or unless the Secretary and the Chairman of the Federal Energy Regulatory Commission, with the concurrence of the members of the Interagency Task Force, determine that continuance of the Committee is no longer in the public interest.

Fifteen days after publication of this notice in the **Federal Register**, a copy of the Committee's charter will be filed with the Committee Management Secretariat, General Services Administration; Committee on Environment and Public Works, United States Senate; Committee on Energy and Natural Resources, United States Senate; Committee on Resources, United States House of Representatives; Committee on Commerce, United States House of Representatives; and the Library of Congress.

The Certification for establishment is published below.

Certification

We hereby certify that the establishment of the Advisory Committee to the Interagency Task Force to Improve Hydroelectric Licensing Processes is necessary and is in the public interest in connection with the performance of duties imposed on participants in the Interagency Task Force by the Federal Power Act and other Federal laws implicated by the hydropower licensing process. The Committee will assist the Department of the Interior, the Federal Energy Regulatory Commission, and other members of the Interagency Task Force, by providing advice on work products and recommendations to improve the hydropower relicensing process.

Dated: July 28, 1999.

James J. Hoecker,

Chairman, Federal Energy Regulatory Commission.

Dated: July 29, 1999.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 99–19926 Filed 8–2–99; 8:45 am]

BILLING CODE 4310–65–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–09–1220–00: GP9–0263]

Notice of Meeting of the Oregon Trail Interpretive Center Advisory Board

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Advisory Board for the National Historic Oregon Trail Interpretive Center will be held on Thursday, August 26, 1999 from 8:00 a.m. to 4:00 p.m. at the Best Western Sunridge Inn, One Sunridge Lane, Baker City, Oregon. At an appropriate time, the Board will recess for approximately one hour for lunch. Public comments will be received from 12:00 p.m. to 12:15 p.m., August 26, 1999. Topics to be discussed are the Marketing Strategy recommendations, a Baker Country Attractions Pass, BLM budget update and reports from Coordinators of Subcommittees.

DATES: The meeting will be from 8:00 a.m. to 4:00 p.m. August 26, 1999.

FOR FURTHER INFORMATION CONTACT: David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail, Interpretive Center, P.O. Box 987, Baker City, OR 97814, (Telephone 541–523–1845).

Richard T. Watts,

Acting District Manager.

[FR Doc. 99–19811 Filed 8–2–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–050–1610–00]

Notice of Intent To Conduct a Planning Review and Request for Public Participation Concerning Management of the Bureau of Land Management (BLM) Administered Public Lands in That Part of the South Pass Area Administered by the BLM Lander Field Office in Fremont County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The BLM invites the public to identify issues and management needs associated with locating and routing rights-of-way for linear facilities such as oil or natural gas pipelines and power transmission lines on BLM administered public lands in the South Pass area in Fremont County, Wyoming.

DATES: Written comments will be received through September 30, 1999. Comments, including names and addresses, will be available for public review at the Lander Field Office, 1335 Main, Lander, Wyoming, during regular business hours (7:45 a.m. to 4:30 p.m.) Monday through Friday, except legal holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

ADDRESSES: Written comments may be submitted to: Bureau of Land Management, Lander Field Office, P.O. Box 589, Lander, Wyoming 82520.

FOR FURTHER INFORMATION CONTACT: Jack Kelly, Lander Field Manager Bureau of Land Management, P.O. Box 589, 1335 Main Street, Lander, Wyoming 82520; telephone (307) 332–8400.

SUPPLEMENTARY INFORMATION: Management of the BLM administered public lands in the South Pass area of Fremont County, Wyoming, is divided between the Lander BLM Field Office on the east and the Rock Springs BLM Field Office on the west. The Lander Resource Management Plan (RMP) was completed on June 9, 1987, and the Green River Resource Management Plan (covering the Rock Springs Office administrative area) was completed on August 8, 1997. Some of the planning and management decisions for the South Pass area are inconsistent between the two RMPs. For example, compared to the Lander RMP decisions for the South Pass area, the more recent Green River RMP (1) Establishes the South Pass Historic Landscape, which encompasses the view shed along the Oregon, Mormon Pioneer, California, and Pony Express National Historic Trails; (2) establishes the South Pass Historic Landscape Area of Critical Environmental Concern (ACEC); and (3) among other management actions, identifies the South Pass Historic Landscape as an exclusion area for rights-of-way, closing this area to rights-of-way that could adversely affect the values of the Historic Landscape.

A review of the Lander RMP planning decisions for the eastern portion of the South Pass area is needed to further evaluate them for consistency with the adjacent Green River RMP decisions and for adequacy of existing management prescriptions for the protection of the visual and historical integrity of the historic trails and surrounding landscape. Any needed changes in existing management or any new management actions to be prescribed for the eastern portion of the area will be identified and, if necessary, the Lander RMP will be amended.

The planning review will include opportunities for public participation. These opportunities will be announced through **Federal Register** notices, media releases, and mailings. The public will be invited to one or more meetings to discuss problems, conflicts, concerns, and management alternatives. The National Environmental Policy Act (NEPA) environmental analysis process will be used for evaluating these alternatives and for identifying any needed changes in the management prescription for the area.

If the planning review results in the need to amend the Lander RMP, other notices, mailings, or media releases will announce a 30-day protest period on the proposed amendment.

Dated: July 28, 1999.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 99–19846 Filed 8–2–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[AG Order No. 2234–99]

RIN 1125–AA23

Motion to Reopen: Suspension of Deportation and Cancellation of Removal; Correction

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Notice; correction.

SUMMARY: This document corrects the notice published in the **Federal Register** on July 26, 1999 relating to certain aliens who filed an abbreviated motion to reopen their cases, on or before September 11, 1998, in order to apply for benefits under section 203(c) of the Nicaraguan Adjustment and Central American Relief Act (NACARA). A deadline to complete the motion to reopen has been set. The 150-day period for the submission of an application of suspension of deportation or cancellation of removal began June 21, 1999, and ends 150 days later, on November 18, 1999.

FOR FURTHER INFORMATION CONTACT: For matters relating to the Executive Office for Immigration Review—Charles Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470. For matters relating to the Immigration and Naturalization Service—Mary Giovagnoli, Associate General Counsel, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION:

Background

The notice of July 26, 1999 (64 FR 40389–40390) applied to those aliens who filed an abbreviated NACARA motion to reopen by September 11, 1998, as provided in 63 FR 31890 (June 11, 1998). The notice was issued to clarify the deadline to submit an application for suspension of deportation or special rule cancellation of removal and supporting documentation to complete a NACARA motion to reopen. Initially, the Department established a February 8, 1999, deadline for eligible aliens to submit the application for suspension of deportation or special rule cancellation of removal and all the accompanying documentation in support of the NACARA motion to reopen. *See* 63 FR 31890, 31895 (June 11, 1998). In the final NACARA motion to reopen rule, the Department extended the deadline to complete a NACARA motion to reopen to 150 days after the rule implementing section 203 of NACARA becomes effective. *See* 64 FR 13663 (March 22, 1999). The rule implementing section 203 of NACARA was published on May 21, 1999, and the effective date was June 21, 1999. The July 26, 1999 notice alerted those eligible aliens that the 150-day period to complete the NACARA motion to reopen had started to run.

Need for Correction

As published in the **Federal Register** on July 26, 1999 (64 FR 40389), the notice concerning submission of certain motions to reopen pertaining to suspension of deportation and cancellation of removal inadvertently did not calculate the actual ending date for submission of those motions.

Correction of Publication

Accordingly, the publication on July 26, 1999 (64 FR 40389) of the notice that was the subject of FR Doc. 99–18930 is corrected as follows:

1. On page 40389, column 3, in the **SUMMARY**, beginning three lines from the bottom, remove the parenthetical phrase and add "November 18, 1999" in its place.

2. On page 40389, column 3, under **FOR FURTHER INFORMATION CONTACT**, five lines from the bottom, correct the spelling of Mary Giovagnoli's name by removing "Giovagnolia" and adding in its place "Giovagnoli".

3. On page 40390, in the first column, under the heading "When Is the Deadline to Complete a NACARA Motion To Reopen", beginning three lines from the bottom, remove the parenthetical phrase and add "November 18, 1999" in its place.

Dated: July 29, 1999.

Rosemary Hart,

Federal Register Liaison Officer.

[FR Doc. 99–19849 Filed 8–02–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities Proposed Collection; Correction

ACTION: Notice of information collection under review; Early Release for Removal of Criminal Aliens in State Custody Convicted of Nonviolent Offenses; correction.

On July 14, 1999, at 64 FR 38018, the Department of Justice, Immigration and Naturalization Service published a notice of information collection entitled "Early Release for Removal of Criminal Aliens in State Custody Convicted of Nonviolent Offenses". In the notice it stated that comments would be accepted "from September 13, 1999"; however, the notice should have stated that comments will be accepted "until September 13, 1999". As previously stated, written comments and suggestions from the public and affected agencies concerning the proposed collection of information should be submitted to Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestion regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center Building, 1001 G Street, NW., Washington, DC 20530.

Dated: July 27, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–19837 Filed 8–2–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders, Solicitation for a Cooperative Agreement

AGENCY: Department of Justice, National Institute of Corrections.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 1999 for a cooperative agreement to fund the Project "Gender-Responsive Strategies: Research, Practice, and Guiding Principles For Women Offenders." NIC will award this two-year cooperative agreement to create a developmental body of work related to gender-relevant responses for managing and intervening successfully with women offenders in adult corrections. Up to $180,000 is available for the two-year project ($80,000 in FY 1999 and $100,000 in FY 2000).

A cooperative agreement is a form of assistance relationship where the National Institute of Corrections is substantially involved during the performance of the award. An award is made to an organization that will, in concert with the Institute, provide a clearer articulation of gender-responsive strategies which are grounded in current theory and research, drawn from different relevant disciplines and agencies, and applied to the realities of correctional practice in prisons, jails, and community corrections. No funds are transferred to state or local governments.

Background

Women offenders and related gender issues are gaining attention in corrections for numerous reasons. During the last decade, the women offender population has nearly tripled in every sector of corrections. Changes in mandatory sentencing for drug offenders on the federal and state levels are resulting in larger numbers of women serving longer periods of time in correctional facilities. A variety of critical issues such as cross-gender supervision, appropriate relationships between staff and offenders, management of population growth, parity in programming, and appropriate interventions are increasing in numbers and visibility within the criminal justice community and with the public, many due to residual court action.

The experience of many practitioners and the evidence from available research suggest that gender responsivity is crucial to the design of criminal justice processes and programs which achieve greater success with women offenders. However, because women offenders represent a small percentage of the total inmate population, and present a lower level of institutional and public risk, many correctional agencies have not yet addressed the gender-responsive concerns related to differences in risk and program needs of women offenders.

The recent uptake in interest in gender-responsive issues in many different disciplines has produced a significant increase in the knowledge base about these issues. The expansion of this developing knowledge base provides a unique opportunity to analyze what is currently known in diverse disciplines with the goal of developing more effective gender-responsive operational and programmatic standards and principles for women offenders. Of interest is insight not only into *what* interventions have potential in that regard but insight into theories explaining *why* these interventions have such potential. The expanding body of knowledge includes that being developed in disciplines such as health, education, psychology, sociology, women's studies, legal studies, and corrections as well as that being developed as a result of work funded by other governmental agencies and foundations.

NIC expects that the project will involve: (1) Researchers able to identify, assess, and synthesize multi-disciplinary theory and research findings concerning gender-responsive promising practices, and (2) practitioners from different correctional settings (including prisons, jails and community corrections) able to guide researchers toward the critical concerns of the field, alert them to promising operational and programmatic practices, and advise them concerning how the findings should be packaged to be most useful to correctional policy makers, managers and practitioners.

The successful applicant for this cooperative agreement must propose a methodology to involve correctional practitioners in a substantial way in all phases of the effort. The partnership between researchers and practitioners will strengthen the project's ability to effectively impact correctional policy and operations.

Purpose

The National Institute of Corrections is seeking applications for a cooperative agreement that has the following purpose: To determine and make available what can be learned from currently available knowledge that will advance the development of gender-responsive operational and programmatic principles for women offenders in adult corrections.

The cooperative agreement has both primary and secondary project outcomes.

The Primary Outcomes include:

1. A multi-disciplinary survey of theory and research findings pertaining to appropriate and effective gender-responsive practices.

2. An analysis of these findings in terms of their of their implications for the development of gender-responsive operational and programmatic principles for women offenders in adult corrections.

3. Preliminary identification of operational and programmatic principles to guide correctional practice.

4. An identification of critical gaps in the knowledge base which, if addressed, would significantly advance the development of the above principles.

The Secondary Outcomes include:

5. A strategy for dissemination of the findings of this study to correctional leaders, practitioners, and policy makers.

6. Collaboration with the NIC Women's Initiative to support efforts to keep cognizant federal agencies informed of project developments as well as being informed about their efforts.

Application Requirements: Applicants must prepare a proposal that describes their plan to provide the project outcomes. The plan must include goals and objectives, methodology, deliverables, management plan, an overall project budget for the full two years, and a budget and budget narrative for the first 10–12 month phase. Applicants must identify their key project staff and the relevant expertise of each, and address the manner in which they would perform all tasks in collaboration with the NIC Women's initiative Staff and the NIC Project Manager. Proposals are limited to twenty-five double-spaced pages in length, not including resumes, other addenda, and SF–424 forms. Please note that the Standard Form 424, Application for Federal Assistance, submitted with the proposal must contain the cover sheet, budget, budget narrative, assurances, and management plan for the FY 1999 funded portion only, for a maximum of $80,000.

Authority: Public Law 93–415.

Funds Available: Project funds are limited to a maximum total of $180,000 for both direct and indirect costs for two years. A grant award of $80,000 will be made in FY 1999, and a supplemental award of $100,000 will be made in FY 2000. NIC is committed to funding the full two year project and project activity must be completed within 24 months of the date of the award. Funds may only be used for activities that are linked to the desired outcomes of the project. This project will be a collaborative venture with the NIC Women's Initiative.

All products from this funding effort will be in public domain and available to interested agencies through the National Institute of Corrections.

Deadline for Receipt of Applications: Applications must be received by 4 p.m. on Friday, August 27, 1999. they should be addressed to: National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. Attention: Administrative Officer. Hand delivered

applications can be brought to 500 First Street, NW, Washington, DC 20534. The Front desk will call Bobbi Tinsley at (202)–3106, extension 0 for pickup.

Addresses and Further Information: Request for the application kit, which consists of a copy of this announcement and copies of the required forms, should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling (800) 995–6423, extension 159 or (202) 307–3106, extension 159. She can also be contacted by E-mail via *jevens@bop.gov*. All technical and/or programmatic questions concerning this announcement should be directed to Sammie Brown at the above address or by calling (800) 995–6423 or (202) 307–3106, extension 126, or by E-mail via *sbrown@bop.gov* (July 30 to August 13); and to Phyllis Modley, extension 133, or by E-mail via *pmodely@bop.gov* (August 16–August 27). Application forms may also be obtained through the NIC website:http://www.nicic.org. (Click on "What's New" and then, "Cooperative Agreements.")

Eligible Applicants: An eligible applicant is any private or non-profit organization, institution, individual, or team.

Review Considerations: Applications received under this announcement will be subjected to an NIC three to five member Peer Review Process.

Number of Awards: One (1).

NIC Application Number: 99D03. This number should appear as a reference line in the cover letter and also in box 11 of Standard Form 424.

The Catalog of Federal Domestic Assistance number is: 16.602.

Morris L. Thigpen,

Director, National Institute of Corrections

[FR Doc. 99–19921 Filed 8–2–99; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1243]

RIN 1121–ZB77

Announcement of the Availability of the National Institute of Justice Solicitation for "Operations and Maintenance of the National Law Enforcement and Corrections Technology Center (NLECTC)—West"

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice Solicitation "Operations and Maintenance of the National Law Enforcement and Corrections Technology Center (NLECTC)—West."

DATES: Proposals must be received by 4:00 p.m. EST, October 15, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority: This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–203, as amended, 42 U.S.C. 3721–23 (1994).

Background

The purpose of this solicitation is to support the continued operation of the NLECTC-West, a program of the NIJ. This center was established to coordinate and support the identification, development, and application of technology and information to meet the needs of law enforcement, corrections, and other criminal justice agencies at the local, State, and Federal levels.

NLECTC-West serves the following States: Arizona, Alaska, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington. The recipient of the award must be located within one of these States. This solicitation is solely for the operation of the NLECTC-West, and does not include the operation of any other NLECTC centers.

Organizations that are funded by NIJ to support other NLECTC activities are not eligible to respond to this solicitation.

Prospective applicants can review additional information about the NLECTC system on the Justice Technology Information Network (JUSTNET) World Wide Web site at http://www.nlectc.org. Applicants can also request a hard copy of the information on the background of the NLECTC system. Please direct requests for information to:

Department of Justice (DOJ) Response Center (800) 421–6770 or (202) 307–1480 in the Washington, D.C., metro area.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Operations and Maintenance of the National Law Enforcement and Corrections Technology Center (NLECTC)—West" (refer to document No. SL000368). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS, Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–19872 Filed 8–2–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Availability of Benefit Accuracy Measurement Program Results

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of the unemployment Insurance Benefit Accuracy Measurement Program data for calendar year (CY) 1998.

SUMMARY: The purpose of this notice is to announce the availability of the Unemployment Insurance (UI) Benefit Accuracy Measurement (BAM) Program data for CY 1998. BAM program data are published as part of a UI PERFORMS report, which also includes data from the Benefit Timeliness and Quality and Tax Performance System programs. UI PERFORMS is the Department's management system for promoting continuous improvement in UI performance.

DATES: The UI PERFORMS Annual Report will be available on August 27, 1999.

ADDRESSES: The CY 1998 UI PERFORMS Annual Report, including State narratives, is posted on the Information Technology Support Center (ITSC) Internet site (www.itsc.state.md.us). Printed versions of the report are available through the National Technical Information Service (NTIS) (Internet: www.ntis.gov). Orders through the NTIS may be placed by telephone (1–800–553–NTIS (6847) or 703–605–6000), fax (703–605–6900), e-mail (orders@ntis.fedworld.gov), or mail (NTIS, 5285 Port Royal Road, Springfield, Virginia 22161). The printed version will not include State narratives. This notice contains a list of names and addresses of persons in each State who will provide additional information and clarifications regarding the individual State reports upon request.

FOR FURTHER INFORMATION CONTACT: Andrew Spisak, Division of Performance Review, Data Analysis and Data Validation Team, 202–219–5223, extension 157. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: BAM program staff in each State's Employment Security Agency investigate weekly random samples of UI benefit payments and record information based on interviews with claimants, employers, and third parties to determine whether State law, policy, and procedure were followed correctly in processing the sampled payment.

The Department of Labor publishes results from the investigations in a digest which includes information on the 52 jurisdictions participating in the UI BAM program. Five items are reported for each State: The amount of UI benefits paid to the population of claimants, the size of the BAM samples, and the percentages of proper payments, overpayments, and underpayments in the population estimated from the BAM investigations. Ninety-five percent confidence intervals are presented for each of the three percentages as measures of the precision of the estimates. States may provide narratives to comment on or to clarify the meaning of the data.

The UI PERFORMS Annual Report also includes background information and data collection methodology for the BAM program, graphs which display the distribution of overpayment rates for all States, national analytical rates defined for several UI program characteristics, and national cause and responsibility data for overpayments and underpayments for the last five years.

Because States' laws, policies, and procedures vary considerably, the data cannot be used to draw comparisons among States.

States are not required to publish their BAM program data; however, persons wanting clarification or additional information concerning a specific State's report are encouraged to contact the individual identified in the following list.

Signed at Washington, D.C., on July 21, 1999.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

Unemployment Insurance Benefit Accuracy Measurement State Contacts

ALABAMA
Debbie C. Richbourg, Quality Assurance Supervisor, Unemployment Compensation, 649 Monroe Street, Room 321, Montgomery, AL 36130, (334) 242–8133

ALASKA
Karen Van Dusseldorp, Q.C. Data Analyst, Alaska Department of Labor, PO Box 21149, Juneau, AK 99802–1149, (907) 465–5946

ARIZONA
Kristin Garrison, BAM Supervisor, Employment Security Administration, PO Box 6666 (SC 701B–5), Phoenix, AZ 85005, (602) 495–9271

ARKANSAS
Fred Trowell, UI Administrator, Arkansas Employment Security Department, PO Box 2981, Little Rock, AR 72203–2981, (501) 682–3200

CALIFORNIA
Suzanne Schroeder, Office of Constituent Affairs, Employment Development Department, PO Box 826880, Sacramento, CA 94280–0001, (916) 654–9029

COLORADO
Kay Gilbert, BAM Supervisor, Colorado Division Employment & Training, UI Division, 1120 Lincoln St., Suite 1490, Denver, CO 80203, (303) 894–2272

CONNECTICUT
Nancy Steffens, Director of Communications, Connecticut Department of Labor, 200 Folly Brook Boulevard, Wethersfield, CT 06109, (860) 566–4375

DELAWARE
W. Thomas MacPherson, Director, Division of Unemployment Insurance, Department of Labor, PO Box 9950, Wilmington, DE 19809, (302) 761–8350

DISTRICT OF COLUMBIA
Roberta Bauer, Associate Director, Office of Compliance and Independent Monitoring, Department of Employment Services, 500 C Street, NW, Room 511, Washington, DC 20001, (202) 724–7492

FLORIDA
Kenneth E. Holmes, UC Director, Division of Unemployment Compensation, Caldwell Building, Room 201, 107 East Madison St., Tallahassee, FL 32399–0209, (850) 921–3889

GEORGIA
Paul Crawford, Chief, Quality Assurance, Georgia Department of Labor, Room 822, 148 International Blvd., N.E., Atlanta, GA 30305–1751, (404) 656–7242

HAWAII
Sharon Yamaoka, BAM Supervisor, Department of Labor and Industrial Relations, 830 Punchbowl Street, Honolulu, HI 96813, (808) 586–8985

IDAHO
Jim Richmond, Benefit Payment Control Chief, Idaho Department of Employment, 317 Main Street, Boise, ID 83735, (208) 334–6305

ILLINOIS
Joe Wojcik, Manager, Quality Assurance and Compliance Review, Illinois Department of Employment Security, 401 South State Street, Chicago, IL 60605, (312) 793–6222

INDIANA
Sandy Jessee, BAM Supervisor, Indiana Department of Workforce Development, 10 North Senate Avenue, Indianapolis, IN 46204, (317) 233–6676

IOWA
LeLoie Dutemple, Supervisor, Iowa Workforce Development, Unemployment Insurance Services Division, 1000 East Grand Avenue, Des Moines, IA 50319–0209, (515) 281–8386

KANSAS
Vikki O. Muse, BAM/BPC Manager, Kansas Division of Employment Security, 401 SW Topeka Blvd., Topeka, KS 66603–3182, (785) 296–2751

KENTUCKY
Ron Holland, UI Director, Division of Unemployment Insurance, 275 East Main Street, Frankfort, KY 40621, (502) 564–2900

LOUISIANA
Marianne Sullivan, Program Compliance Manager, Louisiana Department of Labor, P.O. Box 94094–9094, Baton Rouge, LA 70804, (225) 342–7103

MAINE
Gail Thayer, Director, Bureau of Unemployment Compensation, PO Box 259, Augusta, ME 04332–0259, (207) 287–2316

MARYLAND
Thomas S. Wendel, Executive Director, Office of Unemployment Insurance, Department of Labor, Licensing and Regulation 1100 North Eutaw Street, Baltimore, MD 21201, (410) 767–2464

MASSACHUSETTS
Rena Kottcamp, Manager of Research, Division of Employment and Training, 19 Staniford Street, Boston, MA 02114–2589, (617) 626–6557

MICHIGAN
Gerald Bell, BAM Supervisor, Michigan Unemployment Agency, 7310 Woodward Avenue, Detroit, MI 48202, (313) 876–6915

MINNESOTA
Bob Dockendorf, Quality Control System Administrator, Minnesota Department of Economic Security, 390 North Robert Street, St. Paul, MN 55101, (651) 296–7188

MISSISSIPPI
Gary Harthcock, BAM Supervisor, Quality Control Unit, Mississippi Employment Security Comm., PO Box 23088, Jackson, MS 39225–3088, (601) 961–7709

MISSOURI
Marilyn A. Hutcherson, Assistant Director, UI Operations, Missouri Division of Employment Security, PO Box 59, Jefferson City, MO 65104, (573) 751–3670

MONTANA
Ken Stephens, Department of Labor and Industry, Unemployment Insurance Division, PO Box 1728, Helena, MT 59624, (406) 444–2670

NEBRASKA
Will Sheehan, Administrator, UI Benefits, or
Don Gammill, Administrator, UI Program Evaluation
both at:
PO Box 94600, Lincoln, NE 68509–4600, (402) 471–9000

NEVADA
Karen Rhodes, Public Information Officer, Department of Employment, Training and Rehabilitation, 500 E. Third Street, Carson City, NV 89713, (702) 687–4620

NEW HAMPSHIRE
Carolyn Angle, BAM Supervisor, Department of Employment Security, 32

South Main Street, Concord, NH 03301, (603) 228–4073
NEW JERSEY
Michael P. Malloy, Director, Unemployment Insurance, Employment Security and Job Training, New Jersey Department of Labor, PO Box 058, Trenton, NJ 08625–0058, (609) 292–2460
NEW MEXICO
Betty Campbell, BAM Supervisor, Quality Control Section, New Mexico Department of Labor, 401 Broadway N.E., PO Box 1928, Albuquerque, NM 87103, (505) 841–8434
NEW YORK
Lou Rosa, Assistant Chief of UI Internal Security, New York State Department of Labor, State Campus-Building 12, Albany, NY 12240, (518) 457–3638
NORTH CAROLINA
W. Howard Phillips Jr., Supervisor, UI Systems and Procedures, Employment Security Commission of North Carolina, PO Box 25903, Raleigh, NC 27611, (919) 733–4893
NORTH DAKOTA
Bill Steckler, Job Service North Dakota, PO Box 5507, Bismarck, ND 58506–5507, (701) 328–3355
OHIO
William Anderson, Chief, Benefit Payment Control, Ohio Bureau of Employment Services 145 South Front Street, PO Box 1618, Columbus, OH 43216, (614) 466–2148
OKLAHOMA
Terry W. McHale, BAM Supervisor, OK Employment Security Commission, 715 S. Service Road, Moore, OK 73160, (405) 793–7286
OREGON
James Mosley, Q.C. Supervisor, Oregon Employment Department, 875 Union Street N.E., Salem, OR 97311, (503) 947–1684
PENNSYLVANIA
Pete Cope, Director, Bureau of Unemployment Compensation Benefits and Allowances, Department of Labor and Industry, Labor and Industry Building, Seventh and Forster Streets, Room 615, Harrisburg, PA 17121, (717) 787–3547
PUERTO RICO
Nancy M. Guzmán, UI Director, PR Department of Labor and Human Resources, 505 Muñoz Rivera Avenue, Hato Rey, PR 00918, (787) 754–5254
RHODE ISLAND
Ellen Pickett, BAM Coordinator, Department of Labor and Training, 1330 Main Street, W. Warwick, RI 02983, (401) 828–6605
SOUTH CAROLINA
Leland H. Teal, Director, UI Quality Performance Assurance, P.O. Box 8117, Columbia, SC 29202, (803) 737–3048
SOUTH DAKOTA
Dennis Angerhofer, Unemployment Insurance Division, Department of Labor, P.O. Box 4730, Aberdeen, SD 57402–4730, (605) 626–2005
TENNESSEE
Sarah Ann Ridings, Supervisor, UI Benefit Accuracy Measurement Unit, Tennessee Department of Employment Security, Davy Crockett Tower, 10th Floor, 500 James Robertson Parkway, Nashville, TN 37245–2700, (615) 741–3190
TEXAS
Judy Schellenburg, UI BAM Supervisor, Texas Workforce Commission, 101 East 15th Street, Room 362, Austin, TX 78778–0001, (512) 305–8965
UTAH
Jeff Bardin, Department of Employment Security, P.O. Box 778, Salt Lake City, UT 84110–0778, (801) 526–9537
VERMONT
Robert Herbst, BAM Supervisor, Vermont Department of Employment and Training, 200 Asa Bloomer Building, Rutland, VT 05701, (802) 786–8807
VIRGINIA
F.W. Tucker, IV, Chief of Benefits, Unemployment Insurance Services, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23211, (804) 786–3032
WASHINGTON
Dale Ziegler, Assistant Commissioner for UI, Washington Employment Security Department, P.O. Box 906, Olympia, WA 98507–9046, (360) 902–9303
WEST VIRGINIA
Dennis D. Redden, Bureau of Employment Programs, 112 California Avenue, Charleston, WV 25305, (304) 558–2256
WISCONSIN
John Mand, QC Section Chief, Wisconsin Department of Workforce Development, 6083 North Teutonia Avenue, P.O. Box 09999, Milwaukee, WI 53209, (414) 438–2055
WYOMING
Marian Sisneros, U I Administration, P.O. Box 2760, Casper, WY 82602, (307) 235–3691

[FR Doc. 99–19863 Filed 8–2–99; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–25]

Temporary Labor Camps Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the extension of the information collection requirements contained in the Temporary Labor Camps Standard (29 CFR 1910.142).

REQUEST FOR COMMENT:

The Agency is particularly interested in comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before October 4, 1999.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–99–25, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements in the Temporary Labor Camps Standards is available for inspection and copying in the Docket Office, or mailed on request by telephoning Todd R. Owen or Barbara Bielaski (202) 693–2444. For electronic copies of the ICR on Temporary Labor Camps, contact OSHA on the Internet at http://www.osha-slc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 657) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

II. Proposed Actions

OSHA proposes to extend the Office of Management and Budget (OMB) approval for the collections of information (paperwork) contained in the Temporary Labor Camps Standard (29 CFR 1910.142). The purpose of the Temporary Labor Camp Standard is to eliminate the incidence of communicable disease among Temporary Labor Camp residents. The standard requires camp superintendents to report immediately to the local health officer (1) The name the address of any individual in the camp known to have or suspected of having a communicable disease or suspected food poisoning, or (2) an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Temporary Labor Camps Standard.

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: Temporary Labor Camps.

OMB Number: 1218–0096.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 7,161.

Frequency: On occasion.

Average Time per Response: Five minutes per response.

Estimated Total Burden Hours: 67 hours.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 27th day of July 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–19864 Filed 8–2–99; 8:45 am]
BILLING CODE 4510–26–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Agenda—National Transportation Safety Board

TIME AND DATE: 9:30 a.m., Tuesday, August 10, 1999.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

7184 Railroad Special Investigation Report: Northern Indiana Commuter Transportation District Railroad Safety Assessment.

News Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, August 6, 1999.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: July 30, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–20036 Filed 7–30–99; 2:51 pm]
BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

In the Matter of Commonwealth Edison Company (Quad Cities Nuclear Power Station, Units 1 and 2); Exemption

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. DPR–29 and DPR–30 for Quad Cities Nuclear Power Station, Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

Quad Cities Nuclear Power Station consists of two boiling water reactors located in Rock Island County, Illinois.

II

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.71, "Maintenance of records, making of reports," paragraph (e)(4) states, in part, that "[s]ubsequent revisions [to the Updated Final Safety Analysis Report (UFSAR)] must be filed annually or 6 months after each refueling outage provided the interval between successive updates [to the UFSAR] does not exceed 24 months." Quad Cities Nuclear Power Station, Units 1 and 2, share a common FSAR. Therefore, this rule requires the licensee to update the same document annually or within 6 months after each unit's refueling outage (approximately every 9 months).

III

Section 50.12(a) of 10 CFR, "Specific exemptions," states:

> The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." The licensee has proposed updating the unified Quad Cities UFSAR no later than 24 calendar months from the date of the previous UFSAR revision submittal. The underlying purpose of the rule was to relieve licensees of the burden of filing annual UFSAR revisions while assuring that such revisions are made at least every 24 months. The Commission reduced the burden, in part, by permitting a licensee to submit its UFSAR revisions 6 months after refueling outages for its facility, but did not provide in the rule for multiple unit facilities sharing a common UFSAR. Rather, the Commission stated that "[w]ith respect to * * * multiple facilities sharing a common UFSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis" (57 FR 39355 (1992)).

As noted In the NRC staff's Safety Evaluation, the licensee's proposed schedule for the Quad Cities UFSAR updates will ensure that the UFSAR will be maintained current for both units within 24 months of the last revision. The proposed schedule satisfies the maximum 24-month interval between UFSAR revisions specified by 10 CFR 50.71(e)(4). The requirement to revise the UFSAR annually or within 6 months after refueling outages for each unit, therefore, is not necessary to achieve the underlying purpose of the rule. Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii). The Commission has further determined that, pursuant to 10 CFR 50.12, the exemption is authorized

by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security, and is otherwise in the public interest.

The Commission hereby grants the licensee an exemption from the requirement of 10 CFR 50.71(e)(4) to submit updates to the Quad Cities UFSAR annually or within 6 months of each unit's refueling outage. The licensee will be required to submit updates to the Quad Cities UFSAR within 24 months of the previous UFSAR revision submittal.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (64 FR 39177).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of July, 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–19854 Filed 8–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 and 50–374]

In the Matter of Commonwealth Edison Company (LaSalle County Station, Units 1 and 2); Exemption

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. NPF–11 and NPF–18 for LaSalle County Station, Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

LaSalle County Station consists of two boiling water reactors located in LaSalle County, Illinois.

II

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.71, "Maintenance of records, making of reports," paragraph (e)(4) states, in part, that "[s]ubsequent revisions [to the Updated Final Safety Analysis Report (UFSAR)] must be filed annually or 6 months after each refueling outage provided the interval between successive updates [to the UFSAR] does not exceed 24 months." The LaSalle station, Units 1 and 2, share a common FSAR. Therefore, this rule requires the licensee to update the same document annually or within 6 months after each unit's refueling outage (approximately every 9 months).

III

Section 50.12(a) of 10 CFR, "Specific exemptions," states:

The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." The licensee has proposed updating the unified LaSalle UFSAR within 24 calendar months of the previous UFSAR revision. The underlying purpose of the rule was to relieve licensees of the burden of filing annual UFSAR revisions while assuring that such revisions are made at least every 24 months. The Commission reduced the burden, in part, by permitting a licensee to submit its UFSAR revisions 6 months after refueling outages for its facility, but did not provide in the rule for multiple unit facilities sharing a common UFSAR. Rather, the Commission stated that "[w]ith respect to * * * multiple facilities sharing a common UFSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis" (57 FR 39355 (1992)).

As noted In the NRC staff's Safety Evaluation, the licensee's proposed schedule for the LaSalle UFSAR updates will ensure that the UFSAR will be maintained current for both units within 24 months of the last revision. The proposed schedule satisfies the maximum 24-month interval between UFSAR revisions specified by 10 CFR 50.71(e)(4). The requirement to revise the UFSAR annually or within 6 months after refueling outages for each unit, therefore, is not necessary to achieve the underlying purpose of the rule. Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii). The Commission has further determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security, and is otherwise in the public interest.

The Commission hereby grants the licensee an exemption from the requirement of 10 CFR 50.71(e)(4) to submit updates to the LaSalle UFSAR annually or within 6 months of each unit's refueling outage. The licensee will be required to submit updates to the LaSalle UFSAR within 24 months of the previous UFSAR revision submittal.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (64 FR 39177).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of July, 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–19855 Filed 8–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–456 and STN 50–457]

In the Matter of Commonwealth Edison Company (Braidwood Station, Units 1 and 2); Exemption

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. NPF–72 and NPF–77 for the Braidwood Station, Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

Braidwood Station consists of two pressurized water reactors located in Will County, Illinois.

II

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.71, "Maintenance of records, making of reports," paragraph (e)(4) states, in part, that "Subsequent revisions [to the Updated Final Safety Analysis Report (UFSAR)] must be filed annually or 6 months after each refueling outage provided the interval between successive updates [to the UFSAR] does not exceed 24 months." Byron, Units 1 and 2, and Braidwood, Units 1 and 2, share a common FSAR. Therefore, this rule requires the licensee to update the same document annually or within 6 months after each unit's refueling outage.

III

Section 50.12(a) of 10 CFR, "Specific exemptions," states that:

The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." The licensee has proposed updating the Byron/Braidwood UFSAR no later than 24 months from the date of the previous UFSAR revision submittal. The underlying purpose of the rule was to relieve licensees of the burden of filing annual UFSAR revisions while assuring that such revisions are made at least every 24 months. The Commission reduced the burden, in part, by permitting a licensee to submit its UFSAR revisions 6 months after refueling outages for its facility, but did not provide in the rule for multiple unit facilities sharing a common UFSAR. Rather, the Commission stated that "[w]ith respect to * * * multiple facilities sharing a common UFSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis" (57 FR 39355 (1992)).

As noted In the NRC staff's Safety Evaluation, the licensee's proposed schedule for the Braidwood/Byron UFSAR updates will ensure that the UFSAR will be maintained current for all units within 24 months of the last revision. The proposed schedule satisfies the maximum 24-month interval between UFSAR revisions specified by 10 CFR 50.71(e)(4). The requirement to revise the UFSAR annually or within 6 months after refueling outages for each unit, therefore, is not necessary to achieve the underlying purpose of the rule. Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii). The Commission has further determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security, and is otherwise in the public interest.

The Commission hereby grants the licensee an exemption from the requirement of 10 CFR 50.71(e)(4) to submit updates to the Braidwood/Byron UFSAR annually or within 6 months of each unit's refueling outage. The licensee will be required to submit updates to the Braidwood/Byron UFSAR within 24 months of the previous UFSAR revision submittal.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (64 FR 39177).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of July, 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–19856 Filed 8–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249]

In the Matter of Commonwealth Edison Company; Dresden Nuclear Power Station, Units 2 and 3; Exemption

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. DPR–19 and DPR–25 for the Dresden Nuclear Power Station, Units 2 and 3. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

Dresden Nuclear Power Station consists of two boiling water reactors located in Grundy County, Illinois.

II

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.71, "Maintenance of records, making of reports," paragraph (e)(4) states, in part, that "[s]ubsequent revisions [to the Updated Final Safety Analysis Report (UFSAR)] must be filed annually or 6 months after each refueling outage provided the interval between successive updates [to the UFSAR] does not exceed 24 months." Dresden Nuclear Power Station, Units 2 and 3, share a common FSAR. Therefore, this rule requires the licensee to update the same document annually or within 6 months after each unit's refueling outage (approximately every 9 months).

III

Section 50.12(a) of 10 CFR, "Specific exemptions," states:

The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." The licensee has proposed updating the unified Dresden UFSAR no later than 24 calendar months from the date of the previous UFSAR revision. The underlying purpose of the rule was to relieve licensees of the burden of filing annual UFSAR revisions while assuring that such revisions are made at least every 24 months. The Commission reduced the burden, in part, by permitting a licensee to submit its UFSAR revisions 6 months after refueling outages for its facility, but did not provide in the rule for multiple unit facilities sharing a common UFSAR. Rather, the Commission stated that "[w]ith respect to . . . multiple facilities sharing a common UFSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis' (57 FR 39355 (1992)).

As noted In the NRC staff's Safety Evaluation, the licensee's proposed schedule for the Dresden UFSAR updates will ensure that the UFSAR will be maintained current for both units within 24 months of the last revision. The proposed schedule satisfies the maximum 24-month interval between UFSAR revisions specified by 10 CFR 50.71(e)(4). The requirement to revise the UFSAR annually or within 6 months after refueling outages for each unit, therefore, is not necessary to achieve the underlying purpose of the rule. Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii). The Commission has further determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense

and security, and is otherwise in the public interest.

The Commission hereby grants the licensee an exemption from the requirement of 10 CFR 50.71(e)(4) to submit updates to the Dresden UFSAR annually or within 6 months of each unit's refueling outage. The licensee will be required to submit updates to the Dresden UFSAR within 24 months of the previous UFSAR revision submittal.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (64 FR 39177).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of July 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–19857 Filed 8–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454 and STN 50–455]

In the Matter of Commonwealth Edison Company; Byron Station, Units 1 and 2; Exemption

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. NPF–37 and NPF–66 for the Byron Station, Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

Byron Station consists of two pressurized water reactors located in Ogle County, Illinois.

II

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.71, "Maintenance of records, making of reports," paragraph (e)(4) states, in part, that "[s]ubsequent revisions [to the Updated Final Safety Analysis Report (UFSAR)] must be filed annually or 6 months after each refueling outage provided the interval between successive updates [to the UFSAR] does not exceed 24 months," Byron, Units 1 and 2, and the Braidwood station, Units 1 and 2, share a common FSAR. Therefore, this rule requires the licensee to update the same document annually or within 6 months after each unit's refueling outage.

III

Section 50.12(a) of 10 CFR, "Specific exemptions," states:

> The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." The licensee has proposed updating the Braidwood/Byron UFSAR no later than 24 calendar months from the date of the previous UFSAR revision submittal. The underlying purpose of the rule was to relieve licensees of the burden of filing annual UFSAR revisions while assuring that such revisions are made at least every 24 months. The Commission reduced the burden, in part, by permitting a licensee to submit its UFSAR revisions 6 months after refueling outages for its facility, but did not provide in the rule for multiple unit facilities sharing a common UFSAR. Rather, the Commission stated that "[w]ith respect to . . . multiple facilities sharing a common UFSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis' (57 FR 39355 (1992)).

As noted In the NRC staff's Safety Evaluation, the licensee's proposed schedule for the Braidwood/Byron UFSAR updates will ensure that the UFSAR will be maintained current for both units within 24 months of the last revision. The proposed schedule satisfies the maximum 24-month interval between UFSAR revisions specified by 10 CFR 50.71(e)(4). The requirement to revise the UFSAR annually or within 6 months after refueling outages for each unit, therefore, is not necessary to achieve the underlying purpose of the rule. Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii). The Commission has further determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security, and is otherwise in the public interest.

The Commission hereby grants the licensee an exemption from the requirement of 10 CFR 50.71(e)(4) to submit updates to the Braidwood/Byron UFSAR annually or within 6 months of each unit's refueling outage. The licensee will be required to submit updates to the Braidwood/Byron UFSAR within 24 months of the previous UFSAR revision submittal.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (64 FR 39177).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of July 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–19858 Filed 8–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027–MLA–4; ASLBP No. 99–770–09–MLA]

Sequoyah Fuels Corporation; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.1201 and 2.1207 of Part 2 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

Sequoyah Fuels Corporation (Gore, Oklahoma Site Decommissioning)

The hearing, if granted, will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a request for hearing submitted by the Attorney General of the State of Oklahoma. The request was filed in response to a notice of consideration by the Nuclear Regulatory Commission of a license amendment request of Sequoyah Fuels Corporation for approval of a site decommissioning plan for the storage of

radioactive contaminated materials at an above-grade disposal cell. The notice of the amendment request was published in the **Federal Register** at 64 FR 31023 (June 9, 1999).

The Presiding Officer in this proceeding is Administrative Judge Charles Bechhoefer. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Thomas D. Murphy has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judge Bechhoefer and Judge Murphy in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Charles Bechhoefer, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Administrative Judge Thomas D. Murphy, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Issued at Rockville, Maryland, this 27th day of July, 1999.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 99–19853 Filed 8–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7001 and 70–7002]

Notice of Amendments to Certificate of Compliance GDP–1 and GDP–2 for the U.S. Enrichment Corporation Paducah Gaseous Diffusion Plant, Paducah, Kentucky, and the Portsmouth Gaseous Diffusion Plant, Portsmouth, OH

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment requests are not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plants' safety, safeguards or security programs. The basis for this determination for the amendment requests is shown below.

The NRC staff has reviewed the certificate amendment applications and concluded that they provide reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue amendments to the Certificates of Compliance for the Paducah Gaseous Diffusion Plant and for Portsmouth Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation. The NRC staff has determined that these amendments satisfy the criteria for a categorical exclusion in accordance with 10 CFR 51.22(c)(19). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared for these amendments.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendments to the Certificates of Compliance without further delay. If a petition for review is received, the decision on the amendment applications will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendments and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Rooms.

Date of amendment requests: February 12, 1999.

Brief description of amendments: The amendments propose to revise the Paducah and Portsmouth Quality Assurance Program (QAP) descriptions to include additional ways to approve suppliers for inclusion on the Approved Suppliers List and clarify the audit requirements applied to suppliers conducting work under the USEC QAP.

Basis for finding of no significance:

1. The proposed amendments will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed revisions to the QAP provide for additional ways to approve suppliers for inclusion on the Approved Suppliers List and clarify the audit requirements applied to suppliers conducting work under the USEC QAP. It does not involve any process which would change or increase the amounts of any effluents that may be released offsite. Therefore, the proposed change will not result in an increase in the amounts of effluents that may be released offsite or result in any impact to the environment.

2. The proposed amendments will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed revisions to the QAP provide for additional ways to approve suppliers for inclusion on the Approved Suppliers List and clarify the audit requirements applied to suppliers conducting work under the USEC QAP; they have no affect on occupational radiation exposure. Therefore, the proposed change does not increase individual or cumulative occupational radiation exposure.

3. The proposed amendments will not result in a significant construction impact.

The proposed change is only a change to the QAP and does not involve any construction. Therefore, it does not result in a significant construction impact.

4. The proposed amendments will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed revisions to the QAP provide for additional ways to approve suppliers for inclusion on the Approved Suppliers List and clarify the audit requirements applied to suppliers conducting work under the USEC QAP. It does not change any previously analyzed accidents and does not affect the possibility of occurrence of a criticality accident. Therefore, the proposed change does not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendments will not result in the possibility of a new or different kind of accident.

The proposed revisions to the QAP provide for additional ways to approve suppliers for inclusion on the Approved Suppliers List and clarify the audit requirements applied to suppliers conducting work under the USEC QAP. The proposed change does not introduce any new or different kind of accident. Therefore, this change will not result in the possibility of a new or different kind of accident.

6. The proposed amendments will not result in a significant reduction in any margin of safety.

The proposed revisions to the QAP provide for additional ways to approve suppliers for inclusion on the Approved Suppliers List and clarify the audit requirements applied to suppliers conducting work under the USEC QAP. Margins of safety are not affected by this change. Therefore, the proposed change does not represent a reduction in any margin of safety.

7. The proposed amendments will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

The proposed revisions to the QAP provides for additional ways to approve suppliers for inclusion on the Approved Suppliers List and clarify the audit requirements applied to suppliers conducting work under the USEC QAP. These changes do not decrease the overall effectiveness of the plants' safety, safeguards, and security programs.

Effective date: The amendments to Certificates of Compliance GDP–1 and GDP–2 will become effective no later than 90 days after being signed by the Director, Office of Nuclear Material Safety and Safeguards.

Certificates of Compliance Nos. GDP–1 and GDP–2: These amendments will revise the QAPs to provide for additional ways to approve suppliers for inclusion on the Approved Suppliers List and to clarify the audit requirements applied to suppliers conducting work under the USEC QAP.

Local Public Document Room locations: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003 and Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 26th day of July 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–19859 Filed 8–2–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 11a1–1(T), SEC File No. 270–428, OMB Control No. 3235–0478

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 11a1–1(T)—Transaction Yielding Priority, Parity, and Precedence

On January 27, 1976, the Commission adopted Rule 11a1–1(T) under the Securities Exchange Act of 1934 ("Exchange Act") to exempt transactions of exchange members for their own accounts that would otherwise be prohibited under Section 11(a) of the Exchange Act. The rule provides that a member's proprietary order may be executed on the exchange of which the trader is a member, if, among other things: (1) The member discloses that a bid or offer for its account is for account to any member with whom such bid or offer is placed or to whom it is communicated; (2) any such member through whom that bid or offer is communicated discloses to others participating in effecting the order that it is for the account of a member; and (3) immediately before executing the order, a member (other than a specialist in such security) presenting any order for the account of a member on the exchange clearly announces or otherwise indicates to the specialist and to other members then present that he is presenting an order for the account of a member.

There are approximately 1,000 respondents that require an aggregate total of 333 hours to comply with this rule. Each of these approximately 1,000 respondents makes an estimated 20 annual responses, for an aggregate of 20,000 responses per year. Each response takes approximately 1 minute to complete. Thus, the total compliance burden per year is 333 hours (20,000 minutes/60 minutes per hour = 333 hours). The approximate cost per hour is $100, resulting in a total cost of compliance for the respondents of $33,333 (333 hours @ $100).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549.

Dated: July 27, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19873 Filed 8–2–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 10A–1, SEC File No. 270–425, OMB Control No. 3235–0468

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 10A–1 implements the reporting requirements in Section 10A of the Exchange Act, which was enacted by Congress on December 22, 1995 as part of the Private Securities Litigation Reform Act of 1995, Pub. L. 104–67. Under section 10A and Rule 10A–1 reporting occurs only if a registrant's board of directors receives a report from its auditors that (1) There is an illegal act material to the registrant's financial statements; (2) senior management and the board have not taken timely and appropriate remedial action, and (3) the failure to take such is reasonably expected to warrant the auditor's modification of the audit report or resignation from the audit engagement. The board of directors must notify the Commission within one business day of receiving such a report. If the board fails to provide that notice, then the auditor, within the next business day, must provide the Commission with a copy of the report that it gave to the board.

Likely respondents are those registrants filing audited financial statements under the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

It is expected that satisfaction of these conditions precedent to the reporting requirements are rare and, therefore, it is estimated that Rule 10AS–1 results in an aggregate additional reporting burden of 10 hours per year. The estimated average burden hours are solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules or forms.

There are no recordkeeping retention periods in Rule 10A–1. Because of the one business day reporting periods, recordkeeping retention periods should not be significant.

Filing the notice or report under Rule 10A–1 is mandatory once the conditions noted above have been satisfied. Because these notices and reports discuss potential illegal acts, they are considered to be investigative records and are kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 27, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19874 Filed 8–2–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 2, 1999.

A Closed meeting will be held on Thursday, August 5, 1999 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters will be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions, set forth in 5 U.S.C. 552b(c)(4), (8), (9)(a) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meetings.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, August 5, 1999, at 11:00 a.m., will be:

Institution of injunctive actions.
Institution and settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Institution and settlement of injunctive actions.

Commissioner Carey, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

July 29, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–20011 Filed 7–30–99; 12:31 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41663; File No. SR–DTC–99–11]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to Liability With Respect to Affiliated Entities

July 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] notice is hereby given that on May 12, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, DTC will amend its rules to limit its liability with respect to affiliated entities and to provide for increased participants fund deposits in the event of a wind down of DTC's operations. Specifically, DTC will amend its rules to provide that notwithstanding any affiliation between DTC and any other entity, including any clearing agency, except as otherwise expressly provided by written

[1] 15 U.S.C. 78s(b)(1).

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agreement DTC shall not be liable for any obligations of such other entity, the participants fund or other assets of DTC shall not be available to such other entity, such other entity shall not be liable for any obligations of DTC, and any assets of such other entity shall not be available to DTC. In addition, DTC will amend its rules to provide that it may increase required deposits to its participants fund to cover costs associated with a voluntary liquidation of DTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Boards of Directors of DTC and the National Securities Clearing Corporation ("NSCC") have determined to proceed with a plan for the integration over time of DTC and NSCC. As an initial step in this plan, DTC and NSCC have elected uniform Boards of Directors. The next step proposed in the plan is to establish a holding company with DTC and NSCC as operating subsidiaries.

A prime consideration in the DTC/NSCC integration plan is that DTC and NSCC each will continue to be insulated from the risks and obligations of the other. Under the proposed rule change, DTC will add new Section 7 to its Rule 2 to disclaim liability for any obligations of NSCC and to clarify that NSCC will not be liable for the obligations of DTC. NSCC has proposed similar revisions to its rules.[3]

As a separate matter, DTC's rules currently provide that in the unlikely event DTC were to cease providing some or all of its services, DTC's participants fund would be available to cover any DTC wind down costs not otherwise defrayed by service fees or other available resources. The proposed rule change will amend Section 1 of DTC's Rule 4 to make clear that the required fund deposits of participants would be increased if necessary to cover such costs.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(2) of the Act[4] and the rules and regulations thereunder applicable to DTC. The proposed rule change will not affect the safeguarding of securities and funds in DTC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from DTC participants have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments, concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–99–11 and should be submitted by August 24, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19877 Filed 8–2–99; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] File No. SR–NSCC–99–07.

[4] 15 U.S.C. 78q–1(b)(2).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41666; File No. SR–NASD–99–31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Automated Confirmation and Transaction Service Desk

July 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 15, 1999, the National Association of Securities Dealers, Inc.("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed a proposed rule change with the Securities and Exchange Commission ("SEC or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 to the proposal on June 18, 1999.[3] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 includes Exhibit A, which was missing from NASD's original filing. *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated June 17, 1999.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD rules relating to the Automated Confirmation Transaction Service ("ACT") and the ACT Service Desk. The proposal would permit NASD members who currently use the Nasdaq Workstation I ("NWI") to report trades, to instead use the ACT Service Desk to report trades, provided that the members have reported an average or 20 or fewer trades per day. The text of the proposed rule hang is available at the NASD and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to amend rules governing the use of ACT to permit NASD members who currently use the NWI to report trades, to instead use the Nasdaq ACT Service Desk to report trades to ACT, provided that the members report an average of 20 or fewer trades per day.

ACT is the Nasdaq system used by members to report and compare trades for clearance and settlement. ACT transmits trade reports for regulatory purposes and public dissemination. After members enter trade information into ACT (as required by NASD and trade-reporting rules),[4] the systems sends locked-in trades to clearing. Under current NASD rules, members must report trades to ACT for certain transactions executed in the over-the-counter market, including transactions in Nasdaq National Market securities ("NNM"), Nasdaq SmallCap securities ("SmallCap"), Over-the-Counter Bulletin Board ("OTCBB") securities, Nasdaq convertible debt securities, exchange-listed securities effected in the over-the-counter market, and securities traded exclusively in the over-the-counter market (*e.g.*, Pink Sheet securities).[5]

There generally are three methods to report trades to ACT: (1) By ordering a Nasdaq Workstation II service ("NWII"); (2) by using the Nasdaq ACT Service Desk; or (3) by having another firm that has access to ACT through NWII report the trades (commonly known as a "give-up" relationship). The ACT Service Desk is a phone-based service that allows firms to report trades over the phone to Nasdaq Market Operations staff, who in turn input the trades into the ACT system for dissemination to the tape. The ACT Service Desk is not meant as a replacement to the trade-reporting facility of the NWII. The ACT Service Desk was designed as a cost effective method of trade reporting for firms that effect very few transactions in Nasdaq securities or other securities traded in the over-the-counter market.[6] As such, NASD rules limit participation in the ACT Service Desk to only those members who do not have access to Nasdaq equipment and who have effected an average of five or fewer trades per day during the previous calendar quarter.[7] If a firm has reported more than five trades per day during the previous calendar quarter, the firm must either order an NWII to report trades or enter into a give-up arrangement.

As a last method of trade reporting, currently approximately 62 firms[8] have access to the NWI terminal—the predecessor to the NWII—which serves as an "ACT only" terminal (*i.e.*, the terminal is used only to input ACT trades). The NWI, however, resides on the Nasdaq Special Services Network, which is being eliminated in July 1999 because that network is not Year 2000 compliant. Accordingly, when the Nasdaq Special Services Network is eliminated, approximately 62 firms will lose their current method of trade reporting and will have to either order an NWII or enter into a give-up arrangement. The former option may be undesirable and/or not feasible from a cost perspective,[9] while the later may not be feasible for business reasons.

In an effort to minimize the effects of the elimination of the NWI trade-reporting capability, Nasdaq proposes to expand access to the ACT Service Desk by raising the trade cap or eligibility limit, from 5 trades to 20 trades per day. Specifically, members who currently utilize the NWI would be permitted to use the ACT Service Desk to report trades if the member has reported an average of 20 or fewer trades per day during the previous calendar quarter. The increase in the cap to the 20 trades per day level would be temporary until Nasdaq has developed a replacement for the current NWI trade-reporting facility.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(6)[10] of the Act, which requires, among other things, that the Association's rules must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Nasdaq believes that the proposed rule change is consistent with the purposes of the Act in that it will provide a cost-effective and efficient mechanism to report trades, and therefore facilitates clearance and settlement of transactions in securities. Additionally, the proposed rule change will enhance the process through which members engage in the comparison and clearing of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[4] *See* NASD Rules 4630, 4640, 4650, 6100, 6400, 6600, and 6700.

[5] *Id.*

[6] *See generally*, Securities Exchange Act Release No. 27908 (Apr. 17, 1990), 55 FR 15313 (Apr. 23, 1990) (Approval order for ACT Service Desk).

[7] *See* NASD Rule 7010 (h), note 2.

[8] Of those 62 firms, 24 would be eligible to use the ACT Service Desk. Of the remaining 38 firms, 10 have upgraded to the NWII, 4 have canceled, and 24 have not yet taken action. Telephone conversation between John Malitzis, Assistant General Counsel, Office of General Counsel, Nasdaq, and David Sieradzki, Special Counsel, Division, SEC, on July 20, 1999.

[9] The cost of obtaining NWII service with one presentation device currently is $2,025 per month, while the cost of subscribing to the ACT Service Desk is $57 per month. *See* NASD Rules 7010(g) and (h).

[10] 15 U.S.C. 78o–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective immediately under Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(5) of Rule 19b–4 thereunder,[12] in that it constitutes a change in an existing order-entry or trading system that: does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not have the effect of limiting the access to or availability of the system. Specifically, the proposed rule change expands the universe of members that may quality to use the ACT Service Desk to report trades to NASD. Additionally, the proposal provides a cost-effective mechanism for qualifying firms that use out-dated technology, to report trades to the NASD, until the NASD has created a replacement for the NWI. The proposal will benefit members and will enhance the ability of members to reconcile and report trades efficiently. Thus, Nasdaq believes that these changes are properly characterized as routine modifications warranting prompt implementation, and consistent with the Commission's stated suggestion that self-regulatory organizations could take better advantage of the expedited process available under Section 19(b)(3)(A) of the Act.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–99–31 and should be submitted by August 24, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19876 Filed 8–2–99; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(5).

[13] *See* Exchange Act Release No. 38672 (May 23, 1997), 62 FR 30485 (June 4, 1997) at footnote 200.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41662; File No. SR–NSCC–99–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Liability With Respect to Affiliated Entities

July 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 13, 1999, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, NSCC will amend its rules to limit its liability with respect to affiliated entities. Specifically, NSCC will amend its rules to provide that notwithstanding any affiliation between NSCC and any other entity, including any clearing agency, except as otherwise expressly provided by written agreement NSCC shall not be liable for any obligations of such other entity, the clearing fund or other assets of NSCC shall not be available to such other entity, such other entity shall not be liable for any obligations of NSCC, and any assets of such other entity shall not be available to NSCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Boards of Directors of NSCC and The Depository Trust Company ("DTC") have determined to proceed with a plan for the integration over time of NSCC and DTC. As an initial step in this plan, NSCC and DTC have elected uniform Boards of Directors. The next step proposed in the plan is to establish a holding company with NSCC and DTC as operating subsidiaries.

A prime consideration of the proposed integration plan is to assure that NSCC, its members, and its clearing fund will continue to be insulated from the risks and obligations arising from DTC's activities (including the custody of securities). Similarly, the plan contemplates that DTC will continue to be insulated from the risks of NSCC's business (including the CNS settlement guaranty). Under the proposed rule change, NSCC will adopt Rule 58, limitations on liability, to clarify that it will not be liable for the obligations of any other clearing agency (including DTC) and to disclaim liability for any obligations of any other clearing agency. DTC has proposed similar revisions to its Rules.[3]

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because it promotes the safeguarding of securities and funds in NSCC's custody or control of for which it is responsible.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the test of the summaries prepared by NSCC.

[3] File No. SR–DTC–99–11.

[4] 15 U.S.C. 78q–1.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(A) by order approved such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–99–07 and should be submitted by August 24, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19875 Filed 8–2–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3198]

State of California

Trinity County and the contiguous counties of Humboldt, Mendocino, Shasta, Siskiyou, and Tehama in the State of California constitute a disaster area as a result of damages caused by a wildfire that occurred on July 2, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 23, 1999 and for economic injury until the close of business on April 24, 2000 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 319805 and for economic injury the number is 9D2700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 23, 1999.

Kris Swedin,

Acting Administrator.

[FR Doc. 99–19826 Filed 8–2–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3199]

State of Iowa

As a result of the President's major disaster declaration on July 22, 1999, I find that Black Hawk, Butler, Jones, and Woodbury Counties in the State of Iowa constitute a disaster area due to damages caused by severe storms and flooding beginning on July 2, 1999 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 19, 1999, and for loans for economic injury until the close of business on April 24, 2000 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Benton, Bremer, Buchanan, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clinton, Crawford, Delaware, Dubuque, Fayette, Floyd, Franklin, Grundy, Hardin, Ida, Jackson, Linn, Monona, Plymouth, and Tama Counties in Iowa; Dakota and Thurston Counties in Nebraska; and Union County, South Dakota.

The interest rates are:

	Percent
Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 319906. For economic injury the numbers are 9D2800 for Iowa, 9D2900 for Nebraska, and 9D3000 for South Dakota.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 27, 1999.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 99–19827 Filed 8–02–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3197]

State of Nevada

As a result of the President's major disaster declaration on July 20, 1999, I find that Clark County, Nevada, constitutes a disaster area due to damages caused by severe storms and flash flooding that occurred July 8 through 16, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 17, 1999, and for loans for economic injury until the close of business on April 20, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Lincoln and Nye Counties in Nevada; Mohave County, Arizona; and Inyo and San Bernardino Counties in California.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 319706. For economic injury the numbers are 9D2400 for Nevada, 9D2500 for Arizona, and 9D2600 for California.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 23, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–19828 Filed 8–2–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3189]

State of North Dakota; Amendment #3

In accordance with a notice received from the Federal Emergency Management Agency dated July 19, 1999, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on March 1, 1999 and continuing through July 19, 1999.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 6, 1999, and for economic injury the deadline is March 8, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 23, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–19829 Filed 8–02–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review Under Executive Order 12372

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 35 existing Small Business Development Centers (SBDCs) for refunding on January 1, 2000, subject to the availability of funds. Ten states do not participate in the EO 12372 process, therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 90 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the **ADDRESSES** section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding on or before September 2, 1999.

ADDRESSES:

Addresses of Relevant SBDC State Directors

Mr. Michael York, State Director, Maricopa Community College, 2411 West 14th Street, Tempe, AZ 85281–6941, (602) 731–8202

Ms. Kimberly Neri, State Director, California Trade & Comm. Agency, 801 K Street, Suite 1700, Sacramento, CA 95814, (916) 324–9538

Mr. Michael Finnerty, State Director, Salt Lake Community College, 1623 South State Street, Salt Lake City, UT 84115, (801) 957–3481

Ms. Mary Madison, State Director, Office of Business Development, 1625 Broadway, Suite 1710, Denver, CO 80202, (303) 892–3848

Ms. Vicki Johnson, Executive Director, Howard University, 2600 6th St., N.W., Room 125, Washington, D.C. 20059, (202) 806–1550

Mr. Hank Logan, State Director, University of Georgia, Chicopee Complex, Athens, GA 30602, (706) 542–6762

Mr. Sam Males, State Director, University of Nevada/Reno, College of Business Admin., Room 411, Reno, NV 89557–0100, (702) 784–1717

Ms. Debbie Bishop, State Director, Economic Development Council, One North Capitol, Suite 420, Indianapolis, IN 46204, (317) 264–6871

Mr. Jerry Cartwright, State Director, University of West Florida, 19 West Garden Street, Pensacola, FL 32501, (850) 595–6060

Mr. Darryl Mleynek, State Director, University of Hawaii/Hilo, 200 West Kawili Street, Hilo, HI 96720, (808) 974–7515

Ms. Mary Burkholder, State Director, Department of Commerce and Community Affairs, 620 East Adams Street, Springfield, IL 62701, (217) 524–5856

Ms. Mary Collins, State Director, University of New Hampshire, 108 McConnell Hall, Durham, NH 03824, (603) 862–4879

Mr. Charles Davis, State Director, University of Southern Maine, 96 Falmouth Street, Portland, ME 04103, (207) 780–4420

Mr. Scott Daugherty, State Director, University of North Carolina, 333 Fayetteville Street Mall, Suite 1150, Raleigh, NC 27514, (919) 715–7272

Dr. Grady Pennington, State Director, SE Oklahoma State University, 517 West University, Durant, OK 74701, (580) 924–0277

Mr. Ronald Hall, State Director, Small Business Development Center, 2727 Second Avenue, Detroit, MI 48201, (313) 964–1798

Mr. Wally Kearns, State Director, University of North Dakota, P.O. Box 7308, Grand Forks, ND 58202, (701) 777–3700

Ms. Erica Kauten, State Director, University of Wisconsin, 432 North Lake Street, Room 423, Madison, WI 53706, (608) 262–3878

Mr. Greg Higgins, State Director, University of Pennsylvania, The Wharton School, 444 Vance Hall, Philadelphia, PA 19104, (215) 898–1219

Mr. John Lenti, State Director, University of South Carolina, College of Business Admin., 1710 College Street, Columbia, SC 29208, (803) 777–4907

Dr. Kenneth J. Burns, State Director, University of Memphis, South Campus, Building #1, Memphis, TN 38152, (901) 678–2500

Mr. Richard Brussard, Acting State Director, Bryant College, 1150 Douglas Pike, Smithfield, RI 02917, (401) 232–6111

Mr. Wade Druin, State Director, University of South Dakota, School of Business, 414 East Clark, Vermillion, SD 57069, (605) 677–5287

Ms. Carol Riesenberg, State Director, Washington State University, 501 Johnson Tower, Pullman, WA 99164–4851, (509) 335–1576

Mr. Jack Peters, Executive Director, University of Guam, P.O. Box 5061, UOG Station, Mangilao, GU 96923, (671) 735–2590

FOR FURTHER INFORMATION CONTACT: Johnnie L. Albertson, Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street, SW, Suite 4600, Washington, D.C. 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with SBA, the general management and oversight of SBA, and a state plan initially approved by the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) strengthen the small business community;

(b) increase economic growth;

(c) assist more small businesses; and

(d) broaden the delivery system to more small businesses.

SBDC Program Organization

The lead SBDC operates a statewide or regional network of SBDC subcenters. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

SBDC Program Requirements

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) Locate subcenters so that they are as accessible as possible to small businesses;

(b) Open all subcenters at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) Develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) Maintain lists of private consultants at each subcenter.

Dated: July 28, 1999.

John L. Gilman,

Acting Associate Administrator, Small Business Development Centers.

[FR Doc. 99–19825 Filed 8–2–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3106]

Finding of No Significant Impact: Penn Octane Corporation Pipelines at the Port of Brownsville, TX

AGENCY: Department of State.

ACTION: Notice of a finding of no significant impact with regard to an application to construct, operate and maintain two pipelines to transport crude oil across the U.S.-Mexico border.

SUMMARY: The Department of State has conducted an environmental assessment of the proposed construction by Penn Octane Corporation of two pipelines to transport petroleum products crossing the international boundary near the Port of Brownsville, Texas. The purpose of these pipelines is to improve both the safety and economics of transporting liquid petroleum gas (LPG) and refined product from producers in the U.S. to consumers in Mexico. The pipelines will originate at the Penn Octane terminal located at the Port of Brownsville, Texas. The pipelines will be designed to transport up to 50,000 barrels of LPG and an equivalent amount of gasoline or diesel per day.

Four alternatives to the proposed action were considered, including three alternate pipeline routes, and a "no action" alternative which would result in the continued transport of LPG via tanker truck from Brownsville to Matamoros, Mexico.

The assessment concluded that there are no substantial impacts from the construction and normal operation of these pipelines. The proposed routing avoids populated areas in Cameron County to the maximum extent possible, and also shows no disproportionate impacts to minority or disadvantaged populations.

Environmental impacts of the proposed routing are minimized by the selection of a route which largely uses existing right-of-ways established for railroads, utility lines, drainage ditches, or roads. Disturbances to waterways to be crossed will be minimized by directionally drilling below resacas (oxbow lakes remaining from the Rio Grande delta) and the Rio Grande River. Additional engineering practices, such as coating, cathodic protection, automatic check valves and inventory

control, inspection, and hydrotesting will be incorporated into the project to minimize the risk of accident to the pipeline in the future.

Based on the environmental assessment, the Department of State has concluded that issuance of a Presidential Permit authorizing construction of the pipelines will not have a significant effect on the human environment within the United States. In accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality Regulations, 40 CFR 1501.4 and 1508.13 and Department of State Regulations, 22 CFR 161.8(C), a finding of no significant impact is adopted and an environmental impact statement will not be prepared.

FOR FURTHER INFORMATION ON THE PIPELINE PERMIT APPLICATION, CONTACT: Bill Memler, Office of International Energy Policy, Room 3535, U.S. Department of State, Washington, DC 20520, (202) 647–4557.

SUPPLEMENTARY INFORMATION: Penn Octane Corporation is a corporation formed under the laws of the State of California, with its principal place of business in Redwood, California.

On May 20, 1999, the Department of State published a Notice of Application for a Presidential Permit in the **Federal Register**. No negative public comments were received and concerned agencies expressed no opposition to issuing the permit.

Dated: July 28, 1999.

Peter Bass,

Deputy Assistant Secretary of State for Energy, Sanctions, and Commodities.

[FR Doc. 99–19924 Filed 8–2–99; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Executive Meeting No. 2).

TIME AND DATE: 9 a.m. (EDT), August 4, 1999.

PLACE: TVA Chattanooga Office Complex Auditorium, 1101 Market Street, Chattanooga, Tennessee.

STATUS: Open.

Agenda

New Business

Energy

C1. Contract with Blue Cross Blue Shield of Tennessee for use of the provider network, medical claims administration, medical management, and cost containment services.

C2. Contracts with ABB Combustion Engineering, Inc., Siemens/Westinghouse Power Corporation, Vistas Corporation, and Westinghouse Electric Company, LLC, for outage services and parts at Sequoyah and Watts Bar Nuclear Plants.

C3. Contract with ABB Combustion Engineering Nuclear Power for replacement steam generators, with associated equipment and licensing support, for Sequoyah Nuclear Plant Unit 1.

C4. Award of a cost-reimbursable contract to Parson Energy & Chemicals Group, Inc., to provide architect/engineering services to support TVA's in-house engineering staff.

C5. Award of a fixed-price contract with LaRoche Industries, Inc., to engineer and design an ammonia storage and supply facility and to supply ammonia for the selective catalytic reduction system at the Paradise Fossil Plant Units 1 and 2.

Information Items

1. Charter for the Regional Resource Stewardship Committee and designation of the Chief Operating Officer to complete the chartering process and appoint committee members.

2. Filing a condemnation cases concerning the Pinhook-Smyrna Transmission Line in Rutherford County, Tennessee; Montgomery-Wilson Tap to Coopertown Transmission Line in Robertson County, Tennessee; and Weaver-Young Cane Transmission Line in Union County, Georgia.

3. Filing of condemnation cases concerning Mt. Pleasant-A.E.D.C Tap to Lynchburg Transmission Line in Bedford County, Tennessee.

4. Concurrence by the Chairman with the Chief Administrative Officer's proposal to sell at public auction 1.47 acres of land at the former Bowling Green Power Service Center site in Warren County, Kentucky, Tract No. NM–7818.

5. Concurrence by the Chairman with the Chief Administrative Officer's proposal to modify a deed restriction affecting approximately 0.08 acre of former TVA land on Norris Lake in Campbell County, Tennessee, Tract No. XNR–154.

6. Concurrence by the Chairman with the Chief Administrative Officer's proposal to modify a release and grant of easement affecting approximately 6.13 acres of former TVA land on Norris Lake in Campbell County, Tennessee, a portion of Tract No. XNR–188;S–2.

Implementation of the results of negotiations with the Engineering Association, Inc., over compensation for annual and hourly employees.

8. Delegation of authority to the Executive Vice President, Transmission Power Supply Group, or a designated representative, to negotiate and execute a contract with Tennessee Technological University to implement a TVA Power Engineering Program.

9. Approval of renegotiation of coal supply contract with Pittston Coal Sales Corporation.

10. Delegation of authority to the Vice President, Fuel Supply and Engineering Services, or such officer's designee, to enter into a contract with Power River Coal Company for subbituminous coal for various TVA fossil plants.

11. Approval to award a 1-year contract extension with Ingersoll-Dresser Pump Company (IDP) for IDP pump parts at TVA's fossil plants.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: July 29, 1999.

William L. Osteen,

Associate General Counsel and Assistant Secretary.

[FR Doc. 99–20035 Filed 7–30–99; 2:49 pm]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Announcement of Selected Fiscal Year 1999 Projects for the Job Access and Reverse Commute Competitive Grant Program

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) solicited competitive grants under the Job Access and Reverse Commute grant program, authorized under Section 3037 of the Transportation Equity Act for the 21st Century (TEA–21). The solicitation was announced in the **Federal Register** of Friday, November 6, 1998, Vol. 63, No. 215, pp. 60168–60176. This notice announces the successful applicants for fiscal year (FY) 1999.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate FTA Regional Administrator for application-specific information and issues (Appendix A). For general program information, contact Doug Birnie, Office of Research Management, (202) 366–1666, email *douglas.birnie@fta.dot.gov*, or refer to the Job Access and Reverse Commute Competitive Grants Notice, 63 FR 60168 *et seq.*, Nov. 6, 1998. A TDD is available at 1–800–877–8339 (TDD/FIRS). The notice can also be accessed through FTA's web site, www.fta.dot.gov/wtw.

SUPPLEMENTARY INFORMATION: The Job Access and Reverse Commute grant program is intended to establish a regional approach to job access challenges through the establishment of a Regional Job Access and Reverse Commute Transportation Plan. Projects derived from this plan support the implementation of a variety of transportation services that may be needed to connect welfare recipients to jobs and related employment activities. All projects funded under the Job Access and Reverse Commute grant program must be derived from this regional plan. The Job Access and Reverse Commute Program has two major goals: to provide transportation services in urban, suburban and rural areas to assist welfare recipients and low income individuals in gaining access to employment opportunities; and to increase collaboration among transportation providers, human service agencies, employers, metropolitan planning organizations (MPOs), states, and affected communities and individuals.

The following table lists the successful applicants for Fiscal Year 1999, by state:

FISCAL YEAR 1999 PROJECTS

State and locality	Recipient	Dollar amount
Alabama: Birmingham	Birmingham-Jefferson County TA	$500,000
Arizona:		
Maricopa County	Maricopa County Human Services Department	1,000,00
Coolidge	Pina-Gila Community Child Service	149,452
Arkansas:		
Little Rock	Central Arkansas TA	485,000
Pine Bluff	Pine Bluff TA	23,500
California:		
Bakersfield	Kern RT	239,000
County of Del Norte	Department of Health and Social Services	73,250
Davis	City of Davis	52,148
Los Angeles	Southern California Association of Governments	425,502
Marysville	Yuba-Sutter TA	101,700
Oakland	Contra Costa AC Transit	143,000
Oakland	East Bay Asian Local Development Corporation on Rides	271,111
Orange County	Orange County Transportation Authority and Social Service Agency.	31,250
Sacramento	Sacramento RTD	822,849
San Andreas	Calaveras County COG	184,014
Santa Clara County	Outreach	499,882
San Luis Obispo	San Luis Obispo COG	193,380
Santa Rosa	Santa Rosa Department of Transit and Parking	200,000
Santa Cruz	Human Resources Agency of Santa Cruz	200,000
Thousand Palms	Sunline Transit	70,000
Ukiah	Mendocino TA	150,000
Visalia	County of Tulare Health Services Agency	200,000
Woodland	Yolo County Transportation Commission	139,695
Colorado:		
Fort Collins	City of Fort Collins	184,549
Pueblo	Pueblo County Department of Social Services	62,370
Loveland	City of Loveland	97,355
Frisco	Summit County	150,000
Pagosa Springs	Archuleta County Department of Social Services	35,000
Grand Junction	Mesa County	200,000
Connecticut:		
Statewide: Urban	Connecticut DOT	1,324,000
Statewide: Medium Urban	Connecticut DOT	1,108,100
Statewide: Rural	Connecticut DOT	513,390
Delaware:		
Statewide: Urban	Delaware DOT	250,000
Statewide: Medium Urban	Delaware DOT	117,500
Statewide: Statewide: Rural	Delaware DOT	371,188
District of Columbia: Washington, DC	Washington Metro Area TA	1,000,000
Florida:		
Jacksonville	Jacksonville TA	1,000,000
Ft. Lauderdale	Broward County Division of Mass Transit	1,500,000
Georgia:		
Atlanta	Atlanta Regional Commission	908,182
Statewide: Savannah	Chatham Area TA	250,000
Statewide: Gainsville	Hall Area Transit	150,000
Illinois:		
Chicago	Chicago RTA	152,500
Chicago	Chicago Housing Authority	273,000
Chicago	PACE, METRA, CTA	1,492,000
Chicago	African American Leadership Partnership	150,000
DuPage County	DuPage County Dept of Human Resources	119,000

FISCAL YEAR 1999 PROJECTS—Continued

State and locality	Recipient	Dollar amount
Rosiclare	RIDES Mass Transit	150,000
Indiana:		
Gary	Gary Public Transportation Corporation	500,000
Indianapolis	Indianapolis Public Transit Corporation	500,000
Muncie	Muncie Public Transportation Corporation	141,757
Iowa:		
Des Moines	Des Moines Metro TA	427,325
Waterloo	Metropolitan Transit Authority of Black Hawk County	30,000
Sioux City	Sioux City Transit System	85,000
Cedar Rapids	Five Seasons Transportation	200,000
Statewide: Rural	Iowa Department of Transportation	254,475
Kansas: Wichita	Wichita Metropolitan TA	725,000
Kentucky: Louisville	Transit Authority of River City	1,032,938
Louisana:		
Baton Rouge	Capital Transportation Corporation	500,000
New Orleans	City of New Orleans	87,364
Statewide: Medium Urban	Louisiana DOT	702.778
Statewide: Rural	Louisiana DOT	532,104
Jefferson Parish	Jefferson Parish Government	250,000
Maine:		
Augusta	York County Community Action Corporation	150,000
Portland	Greater Portland COG	117,500
Maryland:		
Annapolis	Maryland MTA	125,000
Baltimore City/County	Maryland MTA	285,000
Historic East Baltimore CAC	Maryland MTA	150,000
Baltimore: Corridor Transportation Corporation	Maryland MTA	45,000
Baltimore: Anne Arundel County	Maryland MTA	150,000
Frederick County	Maryland MTA	33,000
Howard County	Maryland MTA	326,880
Montgomery County	Maryland MTA	25,000
Montgomery County	Maryland MTA	302,000
Prince George's County	Maryland MTA	79,500
Statewide: Rural	Maryland MTA	598,500
Massachusetts:		
Boston	Massachusetts Bay TA	1,067,270
Lawrence/Haverhill	Merrimack Valley Regional TA	490,560
Springfield	Pioneer Valley TA	500,000
Statewide: Small Urban	Executive Office of Transportation & Construction	1,400,853
Worcester	Worcester Regional TA	491,998
Michigan:		
Statewide: Rural	Michigan DOT	851,190
Detroit	SEMCOG	1,382,294
Minnesota:		
Minneapolis/St. Paul	Metropolitan Council	1,436,250
St. Cloud	St. Cloud Metropolitan Transportation Commission	29,500
Mississippi: Clarksdale and Gulfport	Mississippi DOT	273,096
Missouri:		
Kansas City	Mid America Regional Council	956,000
St. Louis	East West Gateway Coordinating Council	563,384
Springfield	City Utilities of Springfield	42,500
Statewide: Rural	Missouri DOT	939,813
Nevada: Statewide: Rural	Nevada DOT	848,000
New Jersey:		
Mercer County	New Jersey Transit	150,000
Essex County	New Jersey Transit	106,000
Burlington County	New Jersey Transit	200,000
Hunterdon County	New Jersey Transit	135,244
Middlesex County	New Jersey Transit	105,800
Essex County/Meadowlands	New Jersey Transit	250,000
Hudson County	New Jersey Transit	200,000
Bergen County	New Jersey Transit	37,500
Ocean County	New Jersey Transit	190,000
Ocean County	New Jersey Transit	20,000
Union County	New Jersey Transit	102,154
Camden County	New Jersey Transit	165,000
New Mexico:		
Santa Fe	New Mexico State Highway and Transportation Department	1,198,000
Las Cruces	City of Las Cruces Transit Department	268,443
Albuquerque	City of Albuquerque	400,000
New York:		

FISCAL YEAR 1999 PROJECTS—Continued

State and locality	Recipient	Dollar amount
Yonkers	Yonkers Industrial Development Agency	80,000
Nassau County	MTA Long Island Bus	500,000
New York City	Project Renewal	398,760
Syracuse	Central New York Regional TA	500,000
Buffalo	Niagara Frontier TA	500,000
Rochester	Rochester-Genessee Regional TA	187,047
Albany	Capital District TA	497,500
Herkimer-Oneida Counties	Oneida County	248,000
Franklin County	Franklin County Department of Social Services	150,000
Hornell	Hornell Area Transit	58,981
Schoharie	Schoharie County, Office for the Aging	138,925
Sullivan County	Sullivan County Division of HHS	185,000
Ulster County	Ulster County Rural Transportation	198,750
North Carolina:		
Charlotte	City of Charlotte	250,000
Statewide: Rural	North Carolina DOT	501,000
Winston-Salem	City of Winston-Salem	146,395
North Dakota:		
Bismarck	City of Bismarck	166,562
Grand Forks	City of Grand Forks	25,000
Fort Totten	Spirit Lake Tribe	122,941
Fort Yates	Standing Rock Sioux Tribe	76,208
Ohio:		
Cleveland	Greater Cleveland RTA	450,550
Cincinnati	Ohio-Kentucky-Indiana Regional COG	784,450
Toledo	Toledo Metropolitan Area COG	528,016
Akron	Metro Regional TA	510,000
Dayton	Miami Valley RTA	477,000
Columbus	Central Ohio TA	684,708
Youngstown	Youngstown Transit	750,000
Newark	Licking Company Transit Board	119,775
Zanesville	Muskingum Transit	69,772
Bucyrus	ODOT Crawford Council on Aging	18,000
Washington County	Community Action Program of Washington and Morgan Counties.	150,000
Oklahoma:		
Oklahoma City	Central Oklahoma Transportation & Parking Authority	216,473
Tulsa	Metropolitan Tulsa TA	556,092
Eastern Oklahoma	KiBois Community Action Foundation, Inc	500,000
Oregon:		
Portland	TRI County MTD	1,000,000
Salem	Oregon Department of Energy	150,000
Pennsylvania:		
Philadelphia	Southeastern Pennsylvania TA	1,323,576
Pittsburgh	Port Authority of Allegheny County	1,000,000
Lancaster	Red Rose TA	100,000
Johnsonburg	Area Transit Authority Of North Central PA	215,800
Rhode Island:		
Statewide: Urban	Rhode Island Public TA	750,00
Statewide: Rural	Rhode Island Public TA	250,000
South Carolina: Statewide Medium Urban and Rural	South Carolina DOT	1,789,794
Tennessee:		
Chattanooga	Chattanooga Area Regional TA	500,000
Knoxville	City of Knoxville	500,000
Statewide: Rural	Tennessee DOT	1,197,950
Statewide: Kingsport, Johnson City, Bristol, Jackson, Clarksville.	Tennessee DOT	1,267,450
Texas:		
Dallas/Ft. Worth	North Central Texas COG	1,175,000
Houston	Houston-Galveston Area Council	282,000
Galveston	Gulf Coast Center Island Transit	400,000
Bryan	Brazos Valley COG	150,000
Abilene	City of Abilene	100,000
Lubbock	City Transit Management Company	230,00
Kileen-Temple	Kileen-Temple Study	139,366
Vermont: Burlington	Vermont Agency of Transportation	1,197,191
Virginia:		
Culpeper	Rappahannock-Rapidan Planning District Commission	134,175
Richmond	Greater Richmond Transit Company	750,000
Farmville	South Central Private Industry Council	150,000
Charlottesville	Jaunt, Inc	351,500

FISCAL YEAR 1999 PROJECTS—Continued

State and locality	Recipient	Dollar amount
Roanoke	Unified Human Services Transportation System	200,000
Urbana	Chesapeake Agency on Aging	185,695
Orange	Town of Orange	56,220
Washington: Seattle	King County Department of Transportation	1,931,500
West Virginia:		
Weirton	Change, Inc	165,736
Wayne County	Community Service Organization	120,000
Doddrige, Marion, Harrison, Taylor, Monongalia and Wetzel Counties.	Monongalia County Urban MTA	198,000
Wisconsin:		
Milwaukee	Milwaukee County Transit System	1,000,000
Appleton	East Central Wisconsin RPC	211,500

Pre-Award Authority

FTA has provided pre-award spending authority for successful applicants which permits successful applicants to incur costs on eligible projects without prejudice to possible Federal participation in the cost of the project or projects. However, prior to exercising pre-award authority, successful applicants must comply with all Federal requirements. Failure to do so will render a project ineligible for FTA financial assistance. Successful applicants are strongly encouraged to consult the appropriate regional office regarding the eligibility of the project for future FTA funds or the applicability of the conditions and Federal requirements.

Certifications and Assurances Requirements

In accordance with 49 U.S.C. 5323(n), certifications and assurances have been compiled for the various FTA programs. Before FTA may award a Federal grant, each successful applicant for Federal assistance awarded by FTA must provide to FTA all certifications and assurances required by Federal laws and regulations applicable to itself and its project. A State providing certifications and assurances on behalf of its prospective subrecipients should obtain sufficient documentation from those subrecipients needed to provide informed certifications and assurances. A successful applicant for funds under the Job Access and Reverse Commute Grant Program will be required to comply with the requirements of the FTA's Annual Certification and Assurances. It is important that each successful applicant be familiar with all certification and assurances as they are a prerequisite for receiving FTA financial assistance. All successful applicants are advised to read the entire text of those Certifications and Assurances to be confident of their responsibilities and commitments.

The Signature Page accompanying the Certifications and Assurances contains the current fiscal year's certifications and, when properly attested to and submitted to FTA, assures FTA that the applicant intends to comply with the requirements for the specific program involved. FTA will not award any Federal assistance until the successful applicant provides assurance of compliance by selecting Category I on the Signature Page and all other categories applicable to itself and its project. FTA's Fiscal Year 1999 Certifications and Assurances have been published in 63 FR 60107 *et seq.*, Nov. 6, 1998. They are also available on the World Wide Web at *http://www.fta.dot.gov/*library/legal/ca.htm. Copies may also be obtained from FTA regional offices. Applicants that need further assistance should contact the appropriate FTA regional office (see Appendix A) for further information.

U.S. Department of Labor Certification

As a release of Federal funds for this program, Federal Transit law requires that applicants must comply with 49 U.S.C. Section 5333(b), administered under the Department of Labor (DOL)'s Mass Transit Employee Protection Program. These employee protections include the preservation of rights, privileges, and benefits under existing collective bargaining agreements, the continuation of collective bargaining rights, the protection of individual employees against a worsening of their positions related to employment, assurances of employment to employees of acquired mass transportation systems, priority of reemployment, and paid training or retraining. Generally, DOL processes the employee protection certification required under Section 5333(b) in accordance with the procedural guidelines published at 29 CFR 215.3. However, for the Job Access and Reverse Commute Program, DOL has proposed to apply appropriate protections without referral for Job Access and Reverse Commute grant applications serving populations under 200,000 and to utilize the guidelines for Job Access and Reverse Commute grant applications serving populations of 200,000 or more. FTA will submit the grant application to DOL for certification.

Grant funds will NOT be released without DOL certification. Where there are questions regarding the DOL certification process and/or information need by DOL to obtain a labor certification, successful applicants must contact the appropriate FTA regional office (See Appendix A).

Completed Application

All successful applicants must now proceed to complete their grant application by fully documenting all the Job Access and Reverse Commute program requirements that were not fully documented when the application was submitted. FTA regional offices will advise applicants by letter of any remaining outstanding items, as well as stipulations specific to the Job Access and Reverse Commute project which needed to be addressed and/or fully documented prior to grant approval. Upon receipt of notification by the regional office, please contact the regional office immediately.

Issued on: July 28, 1999.

Gordon J. Linton,

Administrator.

Appendix A—FTA Regional Offices

Region I
Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and Massachusetts. Richard Doyle, FTA Regional Administrator, Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, (617) 494–2055

Region II
New York, New Jersey, and Virgin Islands. Letitia Thompson, FTA Regional Administrator, One Bowling Green, Room 429, New York, NY 10004–1415, (212) 668–2170

Region III
Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia. Sheldon Kinbar, FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100

Region IV
Kentucky, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Puerto Rico. Susan Schruth, FTA Regional Administrator, 61 Forsyth Street, S.W., Suite 17T50, Atlanta, GA 30303, (404) 562–3500

Region V
Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio. Joel Ettinger, FTA Regional Administrator, 200 West Adams Street, Suite 2410, Chicago, IL 60606–5232, (312) 353–2789

Region VI
Arkansas, Louisiana, Oklahoma, Texas, and New Mexico. Lee Waddleton, FTA Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, (817) 978–0550

Region VII
Missouri, Iowa, Kansas, and Nebraska. Mokhtee Ahmad, FTA Regional Administrator, 6301 Rockhill Road, Suite 303, Kansas City, MO 64131–1117, (816) 523–0204

Region VIII
Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota. Louis Mraz, FTA Regional Administrator, Columbine Place, 216 16th Street, Suite 650, Denver, CO 80202–5120, (303) 844–3242

Region IX
California, Hawaii, Guam, Arizona, Nevada, American Samoa, and the Northern Mariana Islands. Leslie Rogers, FTA Regional Administrator, 201 Mission Street, Suite 2210, San Francisco, CA 94105–1831, (415) 744–3133

Region X
Idaho, Oregon, Washington, and Alaska. Helen Knoll, FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, (206) 220–7954

[FR Doc. 99–19914 Filed 8–2–99; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 22, 1999.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 2, 1999, to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0472.
Form Number: ATF F 5630.5 and ATF F 5630.7.
Type of Review: Extension.
Title: Special Tax Registration and Return Alcohol and Tobacco (5630.5); and Special Tax Registration and Return National Firearms Act (NFA) (5630.7).
Description: Excise taxes, alcohol, tobacco and firearms taxes, 26 U.S.C. Chapters 51, 52, and 53 authorize the collection of an occupational tax from persons engaging in certain alcohol, tobacco or firearms businesses. ATF 5630.5 and/or ATF F 5630.7 is used to both compute and report the tax, and as an application for registry as required by statute. Upon receipt of the tax, a special tax stamp is issued.
Respondents: Business or other for-profit, individuals or households, not-for-profit institutions.
Estimated Number of Respondents: 90,700.
Estimated Burden Hours Per Respondent: 48 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 72,778 hours.
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 99–19834 Filed 8–2–99; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 27, 1999.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 2, 1999, to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0001.
Form Number: ATF F 1370.3 and ATF F 1370.2.
Type of Review: Extension.
Title: Requisition for Forms or Publications (1370.3); and Requisition for Firearms Explosives Forms (1370.2).
Description: Forms are used by the general public to request or order forms or publications from the ATF Distribution Center. These forms notify ATF of the quantity required by the respondent and provide a guide as to annual usage of ATF forms and publications by the general public.
Respondents: Business or other for-profit, individuals or households.
Estimated Number of Respondents: 30,000.
Estimated Burden Hours Per Respondent: 3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,725 hours.
OMB Number: 1512–0117.
Form Number: ATF F 5620.7 (2147).
Type of Review: Extension.
Title: Claim for Drawback of Tax on Cigars, Cigarettes, Cigarette Papers and Cigarette Tubes.
Description: Form 5620.7 documents that taxpaid cigarettes, cigars, cigarette papers and tubes that were exported to a foreign country, Puerto Rico, or Virgin Islands. This form is used by taxpayer to claim drawback for tax paid on exported products.
Respondent: Business or other for-profit.
Estimated Number of Recordkeepers: 288.
Estimated Burden Hours Per Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 144 hours.
OMB Number: 1512–0190.
Form Number: ATF F 5100.11.
Type of Review: Extension.

Title: Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

Description: ATF F 5100.11 is completed by exporters to report the withdrawal of spirits, denatured spirits and wines from internal revenue bonded premises, without payment of tax for direct exportation, transfer to a foreign trade zone, customs manufacturer's bonded warehouse or customs bonded warehouse or for use as supplies on vessels or aircraft.

Respondent: Business or other for-profit.

Estimated Number of Recordkeepers: 300.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 6,000 hours.

OMB Number: 1512–0185.

Form Number: ATF F 5400.5.

Type of Review: Extension.

Title: Report of Theft or Loss of Explosives.

Description: Losses or theft of explosives must, by statute, be reported within 24 hours of the discovery of the loss or theft. This form contains the minimum information necessary for ATF to initiate criminal investigations.

Respondent: Business or other for-profit.

Estimated Number of Respondents: 250.

Estimated Burden Hours Per Respondent: 1 hour, 48 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 450 hours.

OMB Number: 1512–0195.

Form Number: ATF F 5110.25.

Type of Review: Extension.

Title: Application for Operating Permit Under 26 U.S.C. 5171(d).

Description: ATF F 5110.25 is completed by proprietors of distilled spirits plants who engage in certain specified types of activities. ATF district office personnel use the information on the form to identify the applicant, the location of the business and the types of activities to be conducted.

Respondent: Business or other for-profit.

Estimated Number of Respondents: 80.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 20 hours.

OMB Number: 1512–0549.

Form Number: ATF F 6330.1.

Type of Review: Extension.

Title: Application for National Firearm Examiner Academy.

Description: The Office of Training and Professional Development at ATF has developed a new training program for entry level firearm and toolmark examiners. The application form will allow ATF to process eligible candidates.

Respondents: State, Local or Tribal Government, Federal Government.

Estimated Number of Respondents: 75.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 13 hours.

Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 99–19835 Filed 8–2–99; 8:45 am]

BILLING CODE 4810–31–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Spectacular St. Petersburg: 100 Years of Russian Theatre Design"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit "Spectacular St. Petersburg: 100 Years of Russian Theatre Design" imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Columbus Museum of Art, Columbus, OH, from on or about November 19, 1999, to on or about January 30, 2000, and the Marion Koogler McNay Museum of Art, San Antonio, TX, from on or about February 25, 2000 to March 5, 2000 is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or for further information, contact Jacqueline Caldwell, Assistant General Counsel, Office of the General Counsel, United States Information Agency, at 202/619–6982, or USIA, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: July 28, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–19797 Filed 8–2–99; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0031]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to authorize grants for specially adapted housing for disabled veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 4, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0031" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veteran's Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26–4555c.

OMB Control Number: 2900–0031.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by Loan Guaranty personnel in approving the benefits available under 38 U.S.C. 2101(a). The information requested is necessary in order to determine if it is economically feasible for a veteran to reside in specially adapted housing and also to compute the proper grant amount.

Affected Public: Individuals or households.

Estimated Annual Burden: 115 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 460.

Dated: June 24, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–19838 Filed 8–2–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0034]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed by VA case managers from the trainer and the veteran to properly evaluate a request for leave.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 4, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0034" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Trainee Request for Leave—Chapter 31, Title 38, U.S. Code, VA Form 28–1905h.

OMB Control Number: 2900–0034.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The VA case manager needs the information that the trainer and the veteran provide to properly evaluate a request for leave. Substance allowance is paid during approved leave. Information on this form prevents abuse of paid leave.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 30,000.

Dated: June 24, 1999.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–19839 Filed 8–2–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0107]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, with change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information used by VA's Fiduciary Program to verify the existence of savings bonds or other securities listed as assets on accountings required by State and/or Federal law or regulation.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 4, 1999.

ADDRESSES: Submit written comments on the collection of information to

Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0107" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certificate as to Securities, VA Form 21–4709.

OMB Control Number: 2900–0107.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: This notice solicits comments for information used to verify existence of savings bonds or other securities listed as assets on accountings required by State and/or Federal law or regulation.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Annual Burden: 863 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 4316.

Dated: July 12, 1999.

By direction of the Secretary:

Sandra S. McIntyre,

Information Management Service.

[FR Doc. 99–19840 Filed 8–2–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0265]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information that Vocational Rehabilitation and Counseling (VR&C) needs to quickly assess applicant's entitlement to counseling.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 4, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0265" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Counseling, VA Form 28–8832.

OMB Control Number: 2900–0265.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The data collected is used to quickly assess applicant's entitlement to counseling. A veteran or dependent may use this form as a convenience to apply for counseling services.

Affected Public: Individuals or households.

Estimated Annual Burden: 417 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 5,000.

Dated: June 24, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–19841 Filed 8–2–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0319]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to complete the VA Form 21–4703, which becomes a legal contract between VA and a Federal fiduciary.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 4, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0319" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Fiduciary Agreement, VA Form 21–4703.

OMB Control Number: 2900–0319.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The data collected is used as a legal contract between VA and a Federally appointed fiduciary. It outlines the fiduciary's responsibilities with respect to use of funds derived from VA benefits.

Affected Public: Individuals or households, Business or other for-profit, not for profit institutions.

Estimated Annual Burden: 1,390 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 16,676.

Dated: June 24, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–19842 Filed 8–2–99; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 64, No. 148
Tuesday, August 3, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

RIN 0091-AA95

Health Care Programs: Fraud and Abuse; Revised OIG Sanction Authorities Resulting From Public Law 105-33

Correction

In rule document 99–18515 beginning on page 39420, in the issue of Thursday, July 22, 1999, make the following correction:

§ 1001.2 [Corrected]

On page 39426, § 1001.2, in the second column, in paragraph 4., in the fifth line, "(9)" should read "(d)".

[FR Doc. C9–18515 Filed 8–2–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITES AND EXCHANGE COMMISSION

[Release No. 34-41593; File No. SR-AMEX-99-20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Trust Issued Receipts

Correction

In notice document 99–17464, beginning on page 37178, in the issue of July 9, 1999, make the following correction:

On page 37180, in the third column, in the eighth line from the bottom, "July 30, 1999" should read "July 26, 1999".

[FR Doc. C9–17464 Filed 8–2–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41561; File No. SR–OCC–99–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Use of Non-Equity Securities Options for Determining Margin and Clearing Fund Requirements

June 25, 1999.

Correction

In notice document 99–16864 beginning on page 36062, in the issue of Friday, July 2, 1999, the heading is corrected by adding the date "June 25, 1999".

[FR Doc. C9–16864 Filed 8–2–99; 8:45 am].

BILLING CODE 1505–01–D

federal register

Tuesday
August 3, 1999

Part II

Department of Education

34 CFR Part 682
Federal Family Education Loan (FFEL) Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AC78

Federal Family Education Loan (FFEL) Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Family Education Loan (FFEL) Program regulations. These proposed regulations implement changes made to the Higher Education Act of 1965 by the Higher Education Amendments of 1998 (the "1998 Amendments"). The proposed regulations cover a variety of items, including changes to the financial structure of guaranty agencies in the FFEL Program.

DATES: We must receive your comments on or before September 15, 1999.

ADDRESSES: Address all comments about these proposed regulations to Ms. Pamela A. Moran, U.S. Department of Education, P.O. Box 23272, Washington, DC 20202–5449. If you prefer to send your comments through the Internet, use the following address: ffelnprm@ed.gov

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Mr. George Harris, U.S. Department of Education, 400 Maryland Avenue, SW., room 3045, ROB–3, Washington, DC 20202–5449. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, ROB–3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Background

These proposed regulations are needed to implement and reflect changes to the Higher Education Act of 1965 (the HEA) made by the 1998 Amendments, Public Law 105–244, enacted October 7, 1998.

The FFEL Program regulations (34 CFR part 682) govern the Federal Stafford Loan Program (subsidized and unsubsidized), the Federal Supplemental Loans for Students Program (no longer active), the Federal PLUS Program, and the Federal Consolidation Loan Program (formerly collectively known as the Guaranteed Student Loan Programs). A lender that is eligible under the HEA may make guaranteed loans under the FFEL Program. A guaranty agency is a State or private nonprofit entity that has an agreement with the Secretary to perform certain administrative roles in the FFEL Program. Guaranty agencies receive and hold Federal funds to pay certain FFEL Program costs and expenses. They are trustees for the Federal Government and must comply with fiduciary standards.

Negotiated Rulemaking Process

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, the Secretary published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, DC, Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals website (http://www.ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from

nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, they met to develop proposed regulations over the course of several months, beginning in January.

The proposed regulations contained in this notice of proposed rulemaking (NPRM) reflect the final consensus of the negotiating committee, which was made up of the following members:

- American Association of Collegiate Registrars and
- Admissions Officers.
- American Association of State Colleges and Universities.
- American Council on Education.
- Career College Association.
- Consumer Bankers Association.
- Education Finance Council.
- Education Loan Management Resources.
- Guaranty Agency CEO Caucus.
- Legal Services Counsel (a coalition).
- National Association of Independent Colleges and Universities.
- National Association of State Student Grant and Aid Programs.
- National Association of State Universities and Land Grant Colleges.
- National Association of Student Financial Aid Administrators.
- National Association of Student Loan Administrators.
- National Council of Higher Education Loan Programs.
- National Direct Student Loan Coalition.
- Sallie Mae, Inc.
- State Higher Education Executive Officers Association.
- Student Loan Servicing Alliance.
- United States Department of Education.
- United States Student Association.
- US Public Interest Research Group.

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

The committee that developed these proposed regulations focused on issues unique to FFEL Program guaranty agencies and lenders, particularly in the areas where changes were made to the HEA by the 1998 Amendments affecting guaranty agency financial restructuring. Issues that affected Title IV borrowers in general, such as deferments, cancellations, forbearances, loan amounts, interest rates, etc., were addressed by another negotiating committee. However, the committee agreed that if it completed its required work early, the negotiators could propose changes to update or clarify other provisions in the existing FFEL regulations that were not otherwise being modified as a result of the 1998 Amendments. The committee reached consensus on its required work early and, in response to proposals presented by various negotiators, spent most of its last meeting looking at changes to other regulatory provisions. Some of those additional changes were agreed to by the committee and are included in these proposed regulations.

The goal of the negotiations was to develop an NPRM that reflected a final consensus of the negotiating committee. The proposed regulations in this document reflect that consensus. The following discussion includes summaries of some of the points of view expressed by the negotiators as they sought to reach consensus. This information will assist you in understanding the rationale for some of these proposed regulations.

The members of the committee represented lenders, loan servicers, guaranty agencies, schools, students, and other interested parties from various sectors of the FFEL Program and student aid community, as well as the Secretary. We listened to the views and recommendations offered by the other negotiators during the first meeting of the committee on January 19–20, 1999, and prepared draft proposed regulations that were provided to the other negotiators on February 12. The committee discussed these draft regulations at the second meeting on February 16–17. Taking into account the information provided at the February meeting, we revised the draft proposed regulations and provided them to the other negotiators on March 18. The committee discussed the revised draft regulations during the third meeting on March 22–24, and tentative agreement was reached on many issues.

Between the third and fourth meetings, we again revised the draft proposed regulations and provided them to the other negotiators on April 15. The negotiators discussed the revised draft regulations at the fourth meeting, on April 19–20, and tentative agreement was reached on the entire draft regulations, subject to the edits agreed to by the negotiators. Those edits were incorporated into a new draft, which the Department sent to the other negotiators on May 10. The last meeting of the negotiated rulemaking committee was held May 17–18. On May 17, after a few refinements to the draft language, the negotiators agreed to the draft proposed regulations that they had developed without dissent. After reaching consensus on the regulations that were required to be developed as a result of the 1998 Amendments, the negotiators then agreed to examine other existing regulations that some negotiators believed should be modified. The following discussion of the proposed regulations covers both sets of regulations: the regulations required to implement the changes made to the HEA by the 1998 Amendments and other regulations that the negotiators agreed to propose or revise.

Proposed Regulatory Changes

In accordance with the consensus reached in the negotiated rulemaking, the Secretary proposes to amend the following sections of the regulations:

Section 682.205 Disclosure Requirements for Lenders

The proposed regulations would implement the changes made by the 1998 Amendments to section 433 of the HEA. Those changes affect the loan disclosures that a lender is required to provide to a borrower. Specifically, the HEA now requires a lender to use simple and understandable terms in its disclosure statements and to provide a telephone number the borrower can use to obtain additional loan information. The changes to the HEA also permit a lender to provide the disclosure information and the lender's phone number electronically.

The negotiators reached consensus on these proposed regulations and enhanced the telephone number requirement by requiring the lender to provide a toll free number accessible within the United States.

Section 682.207 Due Diligence in Disbursing a Loan

Although the proposed regulations in this section do not implement changes made by the 1998 Amendments, the negotiators agreed to propose them as improvements to the existing FFEL Program regulations.

The negotiators agreed to propose a change to the Secretary's longstanding policy that a lender must cancel all future disbursements on a loan whenever the first disbursement is returned to the lender. Some negotiators argued that this policy encouraged borrowers to accept loan funds they did not need at the beginning of a school year. Under current policy, a borrower who realizes he or she does not need the first disbursement of a loan and returns the unneeded funds to the lender is

required to reapply later in the year to obtain subsequent disbursements that he or she does need. The extra paperwork and loan processing creates an unnecessary burden on the borrower, the school, the lender, and the guaranty agency. The proposed regulations would leave in place the provision that when a disbursement is returned because the student withdrew, the remaining disbursements are cancelled. However, under the proposed regulations, in the absence of information that the student is no longer enrolled, and at the request of the school, a lender may disburse subsequent disbursements after the first disbursement is returned to the lender.

Section 682.208 Due Diligence in Servicing a Loan

The proposed regulations would make changes to reflect the establishment of a Student Loan Ombudsman's office in the Department, as provided by section 141(f) of the 1998 Amendments. The Ombudsman's office would provide informal resolution of complaints received from Title IV loan borrowers.

The negotiators agreed that the FFEL Program regulations should require schools, lenders, and guaranty agencies to inform borrowers of the existence of the Department's Student Loan Ombudsman's office to resolve disputes borrowers have regarding their FFEL Program loans. The negotiators believed that a borrower should first try to resolve any dispute with a lender or loan servicer on the assumption that many of these disputes are simple misunderstandings. However, if the borrower informs the lender or servicer in writing that he or she believes the dispute has not been resolved, the lender or servicer would advise the borrower to request the guaranty agency to settle the dispute. The guaranty agency analyzes the information provided by the borrower and other parties and notifies the borrower of its decision. If the guaranty agency does not resolve the dispute, the agency's response must provide the borrower with information about the Department's Student Loan Ombudsman's office. The negotiators believed this process would resolve the vast majority of disputes.

In addition to inserting this requirement in § 682.208, the negotiators also proposed adding a conforming requirement to § 682.411 so that the lender due diligence regulations would also contain an Ombudsman notification provision. In addition, guaranty agencies would be required to inform defaulted borrowers of the availability of the Department's Student Loan Ombudsman's office. The negotiators believed this notice to a student loan defaulter would be most effective if it was part of the notification already required by § 682.410(b)(5) before a guaranty agency reports the borrower's default to a credit bureau. Finally, although not part of the proposed regulations developed by this negotiating committee, another negotiating committee agreed to propose regulations requiring schools to provide information about the Department's Student Loan Ombudsman's office when providing exit counseling to borrowers.

Section 682.210 Deferment

Although the proposed regulations in this section do not implement changes made by the 1998 Amendments, the negotiators agreed to propose them as improvements to the existing FFEL Program regulations.

These regulations propose to exclude in-school deferments from the general requirement that a deferment may not be granted for a period beginning more than 6 months before the date the lender receives the request and the documentation required for the deferment. The negotiators believed that the process for obtaining documentation to support an in-school deferment is almost always beyond the student's ability to control. Moreover, many students mistakenly assume that the school notifies their lender that they are in-school. Taken together, these factors have resulted in misunderstandings and technical problems that have led to borrowers defaulting while they are enrolled in-school and eligible for an in-school deferment.

Section 682.211 Forbearance

Although the proposed regulations in this section do not implement changes made by the 1998 Amendments, the negotiators agreed to propose them as improvements to the existing FFEL Program regulations.

The proposed regulations would modify and incorporate into the regulations the Secretary's policy of permitting lenders and guaranty agencies to grant administrative forbearances to assist FFEL borrowers who are residents of areas where natural disasters have occurred. Under that policy, the Secretary notifies loan holders whenever the Federal Emergency Management Agency (FEMA) designates an area eligible for Federal assistance under FEMA's Individual Assistance Program. The Secretary strongly recommends that loan holders grant forbearances to borrowers who contact them and indicate that they have been adversely affected by a natural disaster and need temporary relief from their loan obligations. If the holder believes that the borrower has been harmed and needs assistance, the holder may grant a forbearance for up to 3-months based on the borrower's oral or written request for assistance, which must be documented in the holder's files. The holder does not need to obtain supporting documentation or a signed written agreement from the borrower to justify a forbearance for this initial 3-month period. However, a continuation of the forbearance past this 3-month period would require supporting documentation and a written agreement from the borrower.

The proposed regulations would modify that policy by allowing loan holders to determine if a natural disaster had occurred that affected the borrower's ability to make payments on the loan. If the holder made that determination, it could grant an administrative forbearance to the borrower for up to 3 months consistent with the Secretary's previously described policy. The determination of whether a borrower is covered by a natural disaster would be made by the loan holder, with no requirement that the disaster area be covered under FEMA's Individual Assistance Program. Because loan holders would decide whether a borrower is covered by a natural disaster, the Secretary would no longer need to notify loan holders about the numerous disaster areas designated by FEMA each year. In addition, the forbearance would not be limited only to residents of the disaster area, but could include, at the holder's discretion, borrowers who were adversely affected by the disaster even if they lived outside the disaster area. For example, if the county where the borrower resides suffers no actual damage from tornadoes that destroy the borrower's place of employment in an adjoining county, the forbearance would be permitted. Under the proposed regulations, the determination of whether the borrower was affected by a natural disaster would be made by the holder of the loan, and the Secretary would not challenge a holder's reasonable exercise of that judgment.

The proposed regulations would also allow a lender to grant an administrative forbearance to resolve a borrower's delinquency that existed at the beginning of a mandatory administrative forbearance period under § 682.211(j)(2). These forbearances apply whenever the lender is notified by the Secretary that—

- Exceptional circumstances exist, such as a local or national emergency or military mobilization; or

- The geographic area in which the borrower or endorser resides has been designated as a disaster area by the President of the United States or Mexico, the Prime Minister of Canada, or a Governor of a State.

Section 682.215 Federal Stafford Loan Forgiveness Demonstration Program

The Federal Stafford Loan forgiveness demonstration program was established under section 428J of the HEA by the Higher Education Amendments of 1992. The loan forgiveness program was never implemented because funds were never appropriated for the program. With the enactment of the 1998 Amendments, the Federal Stafford Loan forgiveness demonstration program was replaced by a new section 428J titled "Loan forgiveness for teachers." Consequently, the regulations currently in § 682.215 for the Federal Stafford Loan forgiveness demonstration program are no longer needed and would be deleted.

Section 682.302 Payment of Special Allowance on FFEL Loans

The proposed regulations would implement the requirements of section 438(b)(2)(H) of the HEA, which modified the statutory formula for calculating the amount of special allowance payable on an FFEL Program loan. Previously, the general formula subtracted the applicable interest rate on the loan from the average of the 91-day Treasury bills auctioned during a quarter, and a special allowance factor of 3.1 percent was added to the result. That calculation produced an annualized special allowance rate, which was then divided by four to determine the special allowance paid to the lender for that quarter. The changes made by section 438(b)(2)(H) of the HEA reduced the special allowance factor from 3.1 percent to 2.8 percent, with a further reduction to 2.2 percent during the in-school, grace, and deferment periods. For example, under the new formula, if the 91-day Treasury bill average for a quarter was 5.4 percent and the applicable interest rate on a loan was 7.4 percent, the special allowance calculation for a loan in repayment and not in deferment would be:

$(5.4 - 7.4) + 2.8 \div 4 = 0.2$ percent

In addition to reflecting the previously described revisions, these proposed regulations also reflect the changes made to the HEA relating to the special allowance calculation for loans made or purchased with the proceeds of tax-exempt funds. More specifically, these proposed regulations specify which loans qualify for the minimum (or floor) special allowance rate and are subject to the 50 percent limitation on the maximum special allowance rate.

Section 682.305 Procedures for Payment of Interest Benefits and Special Allowance and Collection of Origination and Loan Fees

The proposed regulations would implement sections 438(c), 438(d), and 428(b)(1)(U)(iii)(I) of the HEA, requiring the Secretary to collect origination fees owed by a lender by offsetting the amount of interest and special allowance payments due the lender or by collecting the amount of origination fees directly from the lender.

Under the proposed regulations, if the full amount of origination and loan fees cannot be collected from the originating lender and the loan has been transferred to a subsequent holder, the Secretary may, following written notice, collect the fees from the subsequent holder. To ensure that originating lenders report origination and loan fees due the Secretary, the negotiators proposed that all participating lenders be required to submit a quarterly ED Form 799 (request for interest and special allowance), or comply with whatever successor process to the ED Form 799 may exist in the future. These proposed regulations would require lenders to report quarterly even if the lender is not owed, or does not wish to receive, interest benefits or special allowance payments from the Secretary.

Section 682.400 Agreements Between a Guaranty Agency and the Secretary

The proposed regulations would delete the reference to the payment of administrative cost allowances to guaranty agencies. Those allowances were eliminated by the 1998 Amendments.

Section 682.401 Basic Program Agreement

The proposed regulations would implement changes made by the 1998 Amendments to sections 422(c)(6)(B)(i) and 428(j)(3) of the HEA. The negotiators agreed to propose that guaranty agencies be required to receive and respond to written, electronic, and telephone inquiries.

A guaranty agency must ensure that it or an eligible lender as described in section 435(d)(1)(D) of the HEA serves as a lender-of-last-resort in the State in which the guaranty agency is the designated guaranty agency. The designated guaranty agency is the guaranty agency with which the Secretary has signed a Basic Program Agreement under § 682.401 to serve the State. The guaranty agency or the lender-of-last-resort may arrange lender-of-last-resort loans to be made by another eligible lender. The proposed regulations specify which loans a lender-of-last-resort is required to make in order to satisfy its statutory obligation. In addition, the proposed regulations provide a lender-of-last-resort with authorization to expand its lender-of-last-resort program to borrowers other than those it is required to serve to meet its statutory obligation.

The proposed regulations describe the procedures that would be used by the Secretary to determine which guaranty agencies would receive Federal funds to be used to make lender-of-last-resort loans. A guaranty agency using Federal funds would be required to provide lender-of-last-resort subsidized and unsubsidized Federal Stafford loans and Federal PLUS loans to borrowers who are otherwise unable to obtain loans under the agency's lender-of-last-resort program. The funds would be advanced on terms and conditions agreed to by the Secretary and the agency if the Secretary determines that—

- Eligible borrowers in a State who qualify for subsidized Federal Stafford loans are seeking and are unable to obtain subsidized Federal Stafford loans;
- The guaranty agency designated for that State has the capability to provide lender-of-last-resort loans in a timely manner, either directly or indirectly using a third party, but cannot do so without Federal capital; and
- It would be cost effective to advance Federal funds to the agency.

The Secretary may provide Federal funds to another guaranty agency, other than the designated agency, to serve a State if the Secretary determines that the designated guaranty agency does not have the capability to provide lender-of-last-resort loans in a timely manner or that it would not be cost effective to provide Federal funds to the designated agency.

In the area of prohibited inducements, the proposed regulations prohibit a guaranty agency from mailing or otherwise distributing unsolicited loan applications to students enrolled in a secondary school or a postsecondary institution, or to parents of those students, unless the potential borrower has previously received loans insured by the guaranty agency.

The negotiators extensively discussed the change made to section 428(b)(3) of the HEA. For many years, there has been a regulatory prohibition, based on section 428(b)(3) of the HEA, against a guaranty agency's offering, directly or indirectly, any premium, payment, or other inducement to an employee or

student of a school, or an entity or individual affiliated with a school, to secure applicants for FFEL Program loans. The statutory prohibition was amended by the 1998 Amendments by adding an exception so that it would not be considered a prohibited inducement for a guaranty agency to provide assistance to schools comparable to the kinds of assistance provided by the Secretary. The Department took the view that the intent of the provision is to provide the exception to assistance comparable to the kinds of assistance provided by the Secretary to schools under the Federal Direct Loan Program. Some negotiators argued that the Secretary could provide assistance under one of the many programs administered by the Department that could also benefit Federal Direct Loan schools' administration of the program. After discussion, the negotiators agreed that it would not be a prohibited inducement for a guaranty agency to provide assistance to schools comparable to the kinds of assistance provided by the Secretary to schools under, or in furtherance of, the Federal Direct Loan Program.

Section 682.402 Death, Disability, Closed School, False Certification, and Bankruptcy Payments

Although the proposed regulations in this section do not implement changes made by the 1998 Amendments, the negotiators agreed to propose them as improvements to the existing FFEL Program regulations.

The proposed regulations would make it easier for some borrowers to obtain closed school discharges of their loan obligations. Current regulations require a borrower to file an application if the borrower wants a discharge of his or her loan obligation based on the school closure. Under the proposed regulations, the Secretary or a guaranty agency may discharge a borrower's FFEL Program loan, without an application, if the borrower's loan was made for the same program of study and time period at the same school as a loan for which the borrower has qualified for and received a closed school discharge under the Federal Perkins Loan Program or the Federal Direct Loan Program. In addition, the Secretary, or a guaranty agency with the Secretary's approval, may discharge a borrower's FFEL Program loan, without an application, if the borrower qualifies for a discharge based on information in the Secretary's or guaranty agency's possession that would satisfy the conditions for discharging the borrower's loan obligation.

The proposed regulations also permit a lender to suspend collection efforts against an endorser (or other party that is secondarily liable) on a loan if the borrower files a petition for relief in bankruptcy. Lenders are required by the Bankruptcy Code to immediately suspend any collection efforts outside the bankruptcy proceeding against the individual who has filed. Lenders have been required by the FFEL regulations to continue collection efforts against an endorser who has not filed for bankruptcy. The non-Federal negotiators believed that this situation creates complicated servicing issues for a lender or guaranty agency and creates confusion among participants. The proposed regulations would provide for more consistent treatment of borrowers and endorsers when the borrower files a bankruptcy petition.

Section 682.404 Federal Reinsurance Agreement

The Secretary proposes to modify § 682.404 to reflect sections 422A, 422B, 428(c)(1), 428(c)(6), 428(c)(9)(A), 428(f), 428(l), 438(c)(2)(H)(ii), and 458 of the HEA, as added or modified by the 1998 Amendments.

These proposed regulations reflect the changes made by the 1998 Amendments to the reinsurance rates paid on a defaulted loan for which the first disbursement was made on or after October 1, 1998.

Section 682.404(g) describes the portion of borrower payments on defaulted loans that guaranty agencies are required to return to the Secretary. Specifically, the Secretary is entitled to a share of borrower payments on default claims paid using assets of the Federal Fund. The 1998 Amendments reduced the portion of collections on defaulted loans that a guaranty agency may retain and specified that the guaranty agency share must be deposited into the agency's Operating Fund. Under current regulations, guaranty agencies are authorized to retain a portion of borrower payments received on defaulted loans on which the Secretary has paid a reinsurance claim. Thus, if a borrower payment is received by a guaranty agency after the default claim was paid but before reinsurance is paid, the guaranty agency may not retain any portion of the payment. In addition to reflecting the reduced percentage a guaranty agency is authorized to retain, the Secretary is also proposing to permit guaranty agencies to retain that portion of collections on default claims paid using assets of the Federal Fund instead of default claims on which reinsurance has been paid. The Secretary believes this change would provide guaranty agencies with an incentive to promptly pursue collections on defaulted loans.

Section 682.404(k) of the proposed regulations addresses the default aversion fee. The default aversion fee is part of the new funding model established by the 1998 Amendments for guaranty agencies. The fee is designed to provide an incentive for guaranty agencies to provide effective default aversion efforts and lower default costs.

Section 428(l) of the HEA authorizes the payment of a default aversion fee to a guaranty agency if the agency is instrumental in averting a default by a borrower who becomes 60 days delinquent in repaying a loan. Section 428(l)(2) of the HEA permits a guaranty agency to transfer a default aversion fee from the Federal Fund to the agency's Operating Fund for any loan on which a claim for default has not been paid as a result of the loan being brought into current repayment status by the guaranty agency on or before the 360th day of delinquency. For purposes of a guaranty agency's earning the default aversion fee, section 428(l)(2)(C) of the HEA defines the term "current repayment status" as "* * * the borrower is not delinquent in the repayment of any principal or interest on the loan."

The negotiators agreed that a borrower who pays all past due amounts should be considered in current repayment status, but there was considerable debate concerning other conditions under which the borrower should be considered as in "current repayment status." In particular, the issue of whether a borrower who was granted forbearance by the lender to resolve a delinquency should be considered "current repayment status" for purposes of earning the default aversion fee was extensively discussed. Some negotiators were concerned that if granting forbearance earned the guaranty agency the default aversion fee, without regard to the borrower's later default, guaranty agencies would have an economic incentive to encourage lenders to be less diligent in determining the appropriate use of forbearances. Thus, some negotiators objected that this practice could result in forbearances delaying defaults but not preventing them.

Guaranty agency representatives stated that they would not be motivated by a financial incentive to earn the maximum amount of income from default aversion fees. They maintained that the potential amount they would earn (one percent of the loan balances) would be less than their costs in providing default aversion assistance. A proposal to track loans brought into "current repayment status" through the granting of forbearance, such that the guaranty agency would earn the default aversion fee only on those that remained current for some period of time following the end of the forbearance period, was discussed extensively. Although the guaranty agency representatives were supportive of the concept, they expressed concern about the expense associated with making system modifications necessary to track individual loans.

After considerable discussion on this topic among the negotiators, those negotiators representing guaranty agencies proposed a compromise approach that resulted in a consensus on this issue. Under the proposed regulations, a guaranty agency could transfer its calculated net amount of default aversion fees from its Federal Fund to its Operating Fund in response to lender requests for default aversion assistance on delinquent loans. However, if a loan on which the agency has received the default aversion fee is subsequently paid as a default claim, the agency must rebate funds to the Federal Fund. The fees may be transferred from the Federal Fund to the Operating Fund no more frequently than monthly, may not be paid more than once on any loan, and must be equal to the net amount of—

- One percent of the unpaid principal and accrued interest on loans at the time the request for default aversion assistance is submitted by lenders to the agency during a given time period; minus
- One percent of the unpaid principal and accrued interest owed by borrowers on default claims paid by the agency during the same time period for which the fees are transferred.

Thus, if the guaranty agency is successful in assisting delinquent borrowers to avoid default, the default aversion fees are retained by the agency. However, if a delinquent borrower for whom the agency has received the default aversion fee subsequently defaults, the guaranty agency must return to the Federal Fund 1 percent of the outstanding principal and accrued interest owed by the borrower. Accordingly, if the borrower does not make any intervening payments on the loan, the agency would be required to return an amount to the Federal Fund for that borrower that is greater than the amount originally received from the Federal Fund. The returned amount would be increased by 1 percent of the interest that accrues from the date the lender submitted the default aversion request until the date the agency pays the default claim to the lender. The Secretary believes the return of this increased amount fairly compensates the Federal Fund for the loss of the funds for the time period they were held by the guaranty agency in its Operating Fund. The committee concluded that this gross basis calculation of the default aversion fee payments results in default aversion fee payments equivalent to the amount specified in section 428(l) of the HEA without requiring a loan-by-loan tracking. In addition, the negotiators agreed that this approach is consistent with the intent of the statute and creates positive incentives for guaranty agencies to aggressively pursue default reduction.

The proposed regulations would also permit a lender to submit a request for default aversion assistance during the 60th day through the 120th day of the borrower's delinquency. If a lender submits the request after the 120th day of delinquency, the guaranty agency must provide the default aversion assistance for which it may receive the default aversion fee.

Finally, the proposed regulations include requirements that govern who can be hired to collect loans on which default aversion assistance payments have been made. Other than the guaranty agency, which is statutorily authorized to perform both roles, the same party may not perform default aversion assistance on a loan and collect on that loan during a 3-year period following the date a default claim is paid. Because the compensation for collecting on a defaulted loan is usually much greater than that received for preventing default, this regulatory provision is intended to prevent corruption of the default aversion process.

Section 682.406 Conditions for Claim Payments From the Federal Fund and for Reinsurance Coverage

The proposed regulations reflect the changes made by the 1998 Amendments to section 428(c)(2) of the HEA. The negotiators agreed that a default claim should be paid only if diligent attempts were made by the lender and guaranty agency to locate the borrower through the use of effective commercial skip tracing techniques, including contact with the school the student attended. Further, as a condition for receiving a reinsurance payment, the guaranty agency must certify to the Secretary that those diligent skip-tracing efforts were made.

Section 682.409 Mandatory Assignment by Guaranty Agencies of Defaulted Loans to the Secretary

The proposed regulations reflect the changes made by the 1998 Amendments to section 428(c)(8) of the HEA to the standards for requiring mandatory assignment of defaulted loans by removing the transition to the Federal Direct Loan Program as one of the criteria.

Section 682.410 Fiscal, Administrative, and Enforcement Requirements

The proposed regulations would make a change to § 682.410 to reflect the establishment of a Student Loan Ombudsman's office in the Department. The proposed changes to § 682.410(b)(5) would add a requirement that a guaranty agency must inform the borrower that the Department's Student Loan Ombudsman's office is available as a dispute resolving office before the agency reports the borrower's default to a credit bureau.

Section 682.411 Lender Due Diligence in Collecting Guaranty Agency Loans

The proposed changes to this section would add a provision in § 682.411(b)(3) requiring a lender to inform a delinquent borrower that the Department's Student Loan Ombudsman's office is available as a dispute resolving office. Under the proposed regulations, a lender's failure to inform a borrower about the availability of the Student Loan Ombudsman's office would not be considered a violation of the lender due diligence requirements in § 682.411 that would cause the loan to lose insurance or reinsurance coverage.

The proposed regulations also implement the requirements of sections 428(c)(2) and 435(l) of the HEA, as modified by the 1998 Amendments. Prior to the enactment of the 1998 Amendments, section 435(l) of the HEA defined "default" in the FFEL Program as a delinquency that persisted for 180 days for loans scheduled to be repaid in monthly installments, and 240 days for loans scheduled to be repaid in less frequent installments. This definition was changed by the 1998 Amendments to 270 days and 330 days, respectively, for loans for which the first day of the 270/330-day delinquency period occurs on or after October 7, 1998. These proposed regulations would change the due diligence requirements for lenders to accommodate this new definition of default.

A lender must send a final demand letter to a delinquent borrower at least 31 days before filing a claim with the guaranty agency. When the definition of default was 180/240 days, the final demand letter was sent on or after the 151st/211th day of delinquency. Accordingly, these proposed regulations

move the timing of the final demand letter to have it sent on or after the 241st day of delinquency, or the 301st day if the loan was scheduled to be repaid less frequently than monthly.

The negotiators also discussed the collection activities that should be required during the additional 90 days of delinquency prior to default. The proposed regulations preserve the current regulatory prohibition against any "gap" in collection efforts that exceed 45 days (or 60 days for loans being transferred from one lender or servicer to another). However, other than the timing of the final demand letter, the proposed regulations do not make any additional changes to § 682.411 at this time (other than including notification of the Ombudsman, as discussed earlier).

The proposed regulations require a lender to request default aversion assistance not earlier than the 60th day and no later than the 120th day of delinquency. If a lender fails to request default aversion assistance between the 60th and 120th day of delinquency, and the lender later submits a claim on that loan, the lender would be subject to the interest penalty described in section I.C.3.b. of Appendix D to Part 682. A default aversion assistance request must be made before the 330th day of delinquency. If the lender fails to request default aversion assistance by the 330th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 270 days prior to default.

The current due diligence requirements in § 682.411 provide for a detailed set of requirements pertaining to the collection of delinquent loans by lenders. The Department and the FFEL community are interested in moving toward a performance-based model for due diligence. Thus, the Secretary provides notice that the Department will entertain proposals from FFEL participants to exercise the Secretary's authority to waive potential liabilities in conjunction with approved experiments with performance-based approaches to default prevention. The Secretary will evaluate proposals and may authorize the implementation of one or more experiments to test new performance-based approaches to default prevention. The Secretary encourages FFEL participants to consider proposals that create positive incentives for default prevention and that incorporate collection approaches that have been used successfully in the private sector.

Section 682.412 Consequences of the Failure of a Borrower or Student To Establish Eligibility

The proposed regulations make a conforming change to reflect a revised regulatory citation for the final demand letter required by § 682.411(f).

Section 682.413 Remedial Actions

The proposed regulations would amend this section to reflect changes made to section 428(c)(9)(I) of the HEA by the 1998 Amendments. The HEA provides that the Secretary's decision to terminate a guaranty agency's participation in the FFEL Program after September 24, 1998, based on certain failures specified in the HEA, does not become final until the Secretary provides the agency with an opportunity for a hearing on the record. The HEA requires a hearing on the record only in those cases in which the proposed termination is based on the specific grounds included in section 428(c)(9) of the HEA. The Department's regulations have long identified other grounds on which a guaranty agency's participation could be terminated, and the Department could have applied the new statutory requirement to only the limited number of statutory terminations. The Secretary suggested, however, that the hearing on the record requirement apply to any proposed termination action against a guaranty agency, and the committee agreed to this expansion.

Section 682.414 Records, Reports, and Inspection Requirements for Guaranty Agency Programs

Although the proposed regulations in this section do not implement changes made by the 1998 Amendments, the negotiators agreed to propose them as improvements to the existing FFEL Program regulations.

The Secretary published final regulations in the **Federal Register** (61 FR 60490, November 27, 1996) reducing the 5-year record retention requirement for schools to 3 years as a result of changes made to the General Education Practices Act (GEPA) by the Improving America's Schools Act of 1994 (Pub. L. 103–382). At that time, the Secretary received requests that the 5-year record retention requirement for lenders be similarly reduced. The Secretary declined to do so and noted that the GEPA changes did not apply to lenders in the FFEL Program.

However, the Secretary made a commitment to consider a future reduction in lender record retention requirements in the interest of reducing lender burden. The proposed regulations reduce the length of time a lender must retain required loan records for loans paid in full by the borrower from 5 years to 3 years from the date the loan is repaid in full by the borrower. For all other loans for which the lender receives payment in full from any other source (for example, a claim payment or a consolidation payoff), or for those loans that are not paid in full, the 5-year retention period will continue to be in effect, except that in particular cases, the Secretary or the guaranty agency may require the retention of records beyond the 3-year or 5-year minimum periods. The Secretary notes that a guaranty agency could serve as a lender's agent for the purpose of maintaining the lender's records for the required time periods. The Secretary believes that the limited exception to the 5-year rule included in these proposed regulations would not interfere with appropriate program administration.

Section 682.417 Determination of Federal Fund or Assets To Be Returned

The changes in these proposed regulations are needed to conform this section to the new financial structure for guaranty agencies under section 422A of the HEA, which was added to the HEA by the 1998 Amendments. The Secretary proposes to change all references to "reserve funds" (or "reserve fund") in § 682.417 to "Federal Fund" to reflect the new financing model established by the 1998 Amendments. As this is done, minor grammatical changes will be made to the current regulations to accommodate the switch from the plural form of "reserve funds" to the singular form of "Federal Fund."

Section 682.418 Prohibited Uses of the Assets of the Operating Fund During Periods in Which the Operating Fund Contains Transferred Funds Owed to the Federal Fund

The proposed regulations would implement the requirements of section 422B(e)(3)(B) of the HEA, which authorizes the Secretary to regulate the uses or expenditures of a guaranty agency's Operating Fund during any period in which funds transferred from the Federal Fund are in the Operating Fund. The negotiators agreed that the restrictions governing the use of the reserve fund in § 682.418 would be acceptable restrictions for the use of the Operating Fund during these periods. Changing the references to "reserve fund" in the existing § 682.418 to "Operating Fund" required no new regulations.

Section 682.419 Guaranty Agency Federal Fund

The proposed regulations reflect section 422A of the HEA, as added by the 1998 Amendments, which requires each guaranty agency to establish a Federal Student Loan Reserve Fund (the "Federal Fund") within 60 days of enactment of the 1998 Amendments.

On January 27, 1999, the Secretary issued a "Dear Colleague Letter" (99-G–316) that provided the Secretary's initial guidance to the guaranty agencies concerning the implementation of the new guaranty agency funding model. Specifically, among other issues, the Secretary stated "* * * all of the funds, securities, and other liquid assets in the agency's reserve fund as of September 30, 1998, as described in 34 CFR 682.410(a), must be deposited into the Federal Fund when it is established." The committee agreed that the date to be used for determining the amount of Federal reserve fund assets to be deposited into the newly established Federal Fund should not be included in these proposed regulations since that date was relevant at only one point in time.

In addition to other receipts, as specified in the Department's regulations, the HEA requires a guaranty agency to deposit revenue from the following sources into the Federal Fund:

- Default reinsurance payments received from the Secretary.
- A percentage of collections equal to the complement of the reinsurance percentage paid on a defaulted loan.
- Insurance premiums collected from borrowers pursuant to § 428(b)(1)(H) and § 428H(h) of the HEA.
- All amounts received from the Secretary as payment for supplemental preclaims activity performed on or before September 30, 1998.
- 70 percent of amounts received on or after October 1, 1998, as payment for administrative cost allowances for loans upon which insurance was issued on or before September 30, 1998.

The negotiators also agreed that, in addition to the deposits specifically listed in the HEA, the proposed regulations should also require the following other amounts to be deposited into the Federal Fund:

- Payments made to the agency by the Secretary on death, disability, bankruptcy, and loan cancellation and discharge claims.
- All funds received by the guaranty agency from any source (including collections from defaulted borrowers) on FFEL Program loans on which the Secretary has paid a claim, minus the portion the agency is authorized to deposit in its Operating Fund.
- Investment earnings on the Federal Fund assets.
- Revenue derived from the Federal portion of a nonliquid asset, in accordance with § 682.420.
- Other funds received by the guaranty agency from any source that are specifically designated for deposit in the Federal Fund.

As written, section 422A(d) of the HEA would permit the assets of the Federal Fund to be used only to pay lender claims and to transfer earned default aversion fees to the agency's Operating Fund. However, other provisions of the HEA authorize or require that the Federal Fund be used for other purposes. These proposed regulations recognize that the Federal Fund has to be used for other purposes, including—

- Transferring account maintenance fees to the agency's Operating Fund, if directed by the Secretary;
- Refunding payments made by or on behalf of a borrower on a loan that has been discharged due to death, disability, bankruptcy, closed school, false certification, or unpaid refund, in accordance with § 682.402;
- Paying the Secretary's share of collections on defaulted loans, in accordance with § 682.404(g);
- Transferring funds to the agency's Operating Fund, pursuant to § 682.421;
- Refunding insurance premiums related to loans cancelled or refunded, in whole or in part;
- Returning to the Secretary portions of the Federal Fund required to be returned by law; and
- Any other purpose authorized by the Secretary.

The Federal Fund (and amounts in the Operating Fund that are transferred from the Federal Fund) must be invested in securities issued or guaranteed by the United States or a State or, with the approval of the Secretary, in other similarly low-risk securities selected by the guaranty agency. Guaranty agencies that have invested the Federal reserve funds in "pooled" investments as part of a State investment program may continue using that investment vehicle for the new Federal Fund without requesting specific approval from the Secretary. Earnings on the investment of the Federal Fund are the sole property of the Federal Government.

Guaranty agencies serve as fiduciaries in safeguarding Federal assets and funds entrusted to their care. Thus, guaranty agencies may not use assets of the Federal Fund for any purpose not authorized by the HEA or the Secretary. Consistent with this obligation, the proposed regulations provide that a guaranty agency may not prepay obligations of the Federal Fund unless it demonstrates, to the satisfaction of the Secretary, that the prepayment is in the best interests of the United States.

The HEA requires a guaranty agency to maintain a minimum Federal Fund level equal to at least 0.25 percent. For the purpose of calculating this ratio, these proposed regulations provide that the numerator is the total assets of the Federal Fund including the amount of funds transferred from the Federal Fund that are in the Operating Fund, using an accrual basis of accounting. The denominator in the above ratio is the original principal amount of loans outstanding and guaranteed by the agency.

Section 682.420 Federal Nonliquid Assets

The proposed regulations reflect section 422A of the HEA, as added by the 1998 Amendments, that restates the longstanding principle that the Federal Fund, and nonliquid assets (such as buildings or equipment) developed or purchased by an agency in whole or in part with Federal reserve funds, regardless of who holds or controls the Federal reserve funds or assets, are the property of the United States. Under the 1998 Amendments, the ownership of an asset is prorated based on the percentage of the asset developed or purchased with Federal funds.

Section 422A of the HEA, on its face, appears to limit the use of the Federal portion of nonliquid assets to the payment of claims to lenders and the transfer of default aversion fees to the Operating Fund. Such a literal reading of the statute would prohibit an agency from using the Federal portion of nonliquid assets (such as a computer or building) for any other purpose and would significantly burden the guaranty agency's performance of its responsibilities as a guaranty agency in the FFEL Program. The HEA authorizes the Secretary to restrict or regulate the use of the Federal portion of nonliquid assets to the extent necessary to reasonably protect the Federal share of the value of those assets. The Federal regulations in effect prior to the 1998 Amendments authorized guaranty agencies to use the Federal portion of nonliquid assets for other allowable purposes, and the negotiators, including the Secretary, agreed to propose a continuation of that policy. In addition, the negotiators agreed to propose that, if a guaranty agency uses the Federal portion of a nonliquid asset (other than an intangible or intellectual property asset or a tangible asset of nominal value) in the performance of its guaranty

activities, the agency must promptly deposit into the Federal Fund an amount representing the net fair value of the use of the asset. The net fair value is the amount that would be paid to use a similar non-Federal asset, minus amounts paid by the agency for expenses that normally would be paid by the owner of the asset.

Guaranty agencies must exercise the level of care required of a fiduciary charged with protecting, investing, and administering the property of others in maintaining and using the Federal portion of nonliquid assets under their control. Accordingly, if the guaranty agency converts the Federal portion of a nonliquid asset, in whole or in part, to a use unrelated to its guaranty activities, the agency promptly must deposit into the Federal Fund a fair percentage of the fair market value or, in the case of a temporary conversion, the net fair value of the portion of the asset employed for the unrelated use.

Section 682.421 Funds Transferred From the Federal Fund to the Operating Fund by a Guaranty Agency

The proposed regulations reflect section 422A(f) of the HEA, as added by the 1998 Amendments, permitting a guaranty agency to transfer a limited amount of funds from the Federal Fund for deposit into the agency's Operating Fund. Upon receiving the Secretary's approval, an agency may transfer from the Federal Fund an amount up to the equivalent of 180 days of cash expenses (not including claim payments) for normal operating expenses for deposit into the agency's Operating Fund. The amount transferred and outstanding at any time during the first 3 years after establishing the Operating Fund may not exceed the lesser of 180 days cash expenses (not including claim payments) or 45 percent of the balance in the Federal reserve fund that existed under § 682.410 as of September 30, 1998. During any period that an agency's Operating Fund contains funds transferred from its Federal Fund, the Operating Fund may be used only as permitted by § 682.410(a)(2) and § 682.418.

The negotiators agreed on the application procedures that guaranty agencies are to use in requesting approval to transfer funds from their Federal Funds to their Operating Funds. Specifically, a guaranty agency must provide the Secretary with an application containing the following:

- A request for the transfer that specifies the desired amount, the date the funds will be needed, and the agency's proposed terms of repayment.
- A projected revenue and expense statement, to be updated annually during the repayment period, that demonstrates that the agency will be able to repay the transferred amount within the repayment period requested by the agency.
- A certification by the agency that, during the period the transferred funds are outstanding, sufficient funds will remain in the Federal Fund to pay lender claims.
- A certification by the agency that it will be able to meet the reserve recall requirements of section 422 of the HEA, and the statutory minimum reserve level of 0.25 percent, as mandated by section 428(c)(9) of the HEA.
- A certification by the agency that no legal prohibition exists that would prevent the agency from obtaining or repaying the transferred funds.

Section 422A(f)(2) of the HEA also authorizes the Secretary to permit a limited number of guaranty agencies, in certain limited cases, to transfer an amount greater than 180 days of operating expenses (not including claim payments). The Secretary may authorize an agency to exceed the 180-day limit by the amount of income earned on the investment of the Federal Fund during the 3-year period following October 7, 1998 (the date of enactment of the 1998 Amendments.) During any period that an agency's Operating Fund contains funds transferred from its Federal Fund, the Operating Fund may be used only as permitted by § 682.410(a)(2) and § 682.418.

To obtain approval to transfer the investment income, an agency must have transferred, and have outstanding, the maximum amount it is otherwise eligible to transfer. In addition to the previously listed application items required for transferring principal amounts from the Federal Fund, an agency seeking to transfer investment income must demonstrate to the Secretary that the cash flow in the Operating Fund will be negative without the transfer of the investment earnings of the Federal Fund and that the transfer of those earnings will substantially improve the financial circumstances of the guaranty agency.

If the Secretary has neither approved nor disapproved a guaranty agency's requested transfer of principal or the investment earnings of the Federal Fund within 30 days after receiving the previously described application items, the agency may proceed with the transfer.

The Secretary recognizes that guaranty agencies may have transferred funds from the Federal Fund to the Operating Fund as a working capital reserve before receiving the Department's January 27, 1999 "Dear Colleague Letter" (99–G–316) guidance concerning the implementation of the new guaranty agency funding model. A guaranty agency that transferred funds (that are still outstanding) without obtaining the Secretary's approval prior to receiving the Department's guidance will be held harmless, subject to the agency providing the Secretary with the previously described application material. Agencies that transferred Federal Fund assets into their Operating Funds are requested to provide the required application material within 60 days following publication of these proposed regulations.

Section 682.422 Guaranty Agency Repayment of Funds Transferred From the Federal Fund

The proposed regulations would implement the requirements of section 422A(f) of the HEA, as added by the 1998 Amendments.

Except in regard to the repayment of investment earnings transferred from the Federal Fund to the Operating Fund, the HEA requires an agency to begin repayment of principal transferred from the Federal Fund not later than the start of the fourth year after the establishment of the Operating Fund. All amounts transferred must be repaid in full not later than 5 years after the date the Operating Fund is established.

Generally, a guaranty agency must repay investment earnings transferred under section 422A(f)(2) of the HEA within 2 years. The HEA authorizes the Secretary to extend the period for repayment of investment earnings from 2 years to 5 years if the Secretary determines that the cash flow of the agency's Operating Fund will be negative if the transferred investment earnings were required to be repaid earlier or the repayment of the earnings would substantially diminish the financial circumstances of the agency. To receive an extension, the agency must demonstrate that it will be able to repay all transferred funds by the end of the eighth year following the date of establishment of the Operating Fund and that the agency will be financially sound upon the completion of repayment. Repayment of amounts transferred from the Federal Fund pursuant to section 422A(f)(2) of the HEA that are repaid during the sixth, seventh, and eighth years following the establishment of the Operating Fund must include the amount transferred, plus any income earned after the fifth year from the investment of the transferred amount. In determining the amount of income earned on the transferred amount, the negotiators agreed that the proposed regulations should provide that the Secretary will use the average investment income earned on all the agency's investments, including investments that are not part of the agency's Operating Fund.

In accordance with section 422A(f) of the HEA, if an agency fails to make a scheduled repayment to the Federal Fund, the agency may not receive any other Federal funds until the agency becomes current in making all scheduled payments, unless the Secretary waives this restriction.

Section 682.423 Guaranty Agency Operating Fund

The proposed regulations would implement section 422B of the HEA, as added by the 1998 Amendments, which requires each guaranty agency to establish a fund designated as the "Operating Fund" within 60 days after the enactment of the 1998 Amendments. The Operating Fund must be in an account that is separate from the Federal Fund. The HEA requires an agency to deposit into the Operating Fund:

- Loan processing and issuance fees.
- 30 percent of administrative cost allowances received after October 1, 1998, for loans upon which insurance was issued before October 1, 1998.
- Account maintenance fees.
- Default aversion fees.
- Amounts remaining from collections of defaulted loans after payment of the Secretary's equitable share and depositing the complement of the reinsurance percentage into the Federal Fund.
- Amounts transferred from the Federal Fund.
- Other receipts as specified in the Secretary's regulations.

Except for funds an agency transfers from the Federal Fund under section 422A(f) of the HEA, the Operating Fund is considered the property of the guaranty agency. The HEA authorizes the Secretary to regulate the uses or expenditure of the Operating Fund during any period in which a guaranty agency owes money to the Federal Fund. These proposed regulations would implement these requirements by providing that § 682.410(a)(2) and § 682.418 apply to the use of the Operating Fund during periods in which transfers from the Federal Fund are outstanding.

Section 422B(d)(1) of the HEA specifies that funds in the Operating Fund must be used for certain activities. Those activities are application processing, loan disbursement, enrollment and repayment status management, default aversion, collection activities, school and lender training, financial aid awareness and outreach activities, compliance monitoring, and other student financial aid related activities, as selected by the guaranty agency. In addition to those specified activities, the negotiators agreed that the Operating Fund should also be permitted to be used to pay for other "guaranty agency-related activities." Some of the negotiators, however, expressed concern that "other student aid-related activities, as selected by the guaranty agency" was too ambiguous and proposed that more specificity be included in the proposed regulations to more narrowly focus the use of the funds in the Operating Fund for this purpose. The negotiators ultimately agreed to include a requirement that the financial aid-related activities must be for the benefit of students. The Secretary will gather data concerning the use of funds in agencies' Operating Funds for financial aid-related activities that benefit students and will make the data available to the public.

Section 682.800 Prohibition Against Discrimination as a Condition for Receiving Special Allowance Payments

The 1998 Amendments repealed the requirements of the "Plan for doing business" for authorities using tax-exempt financing, except for the non-discrimination provisions. In addition, the reference to "handicapped status" in the nondiscrimination factors listed in section 438(e) of the HEA was changed to "disability status."

Appendix D—Policy for Waiving the Secretary's Right To Recover or Refuse To Pay Interest Benefits, Special Allowance, and Reinsurance on Stafford, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Bulletin 88–G–138]

The proposed regulations would revise Appendix D to incorporate the new default definition (270 days of delinquency or 330 days for loans paid less frequently than monthly).

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by negotiators. The resultant consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

Summary of Potential Costs and Benefits

The following is an analysis of the costs and benefits of the most significant provisions of the proposed regulations, all of which reflect statutory changes included in the 1998 Amendments. There are additional proposed changes, some of which do not result from the 1998 Amendments, intended to further improve the administration of the FFEL Program, which are discussed elsewhere in this preamble under the heading *Proposed Regulatory Changes*. The Department does not consider there to be significant costs associated with those provisions.

Payment of Special Allowance on FFEL Loans

Section 682.302 incorporates the statutory modification of the formula for calculating the amount of special allowance payable on FFEL Program loans. Loan holders in the FFEL Program may receive an interest subsidy, called special allowance, from the Government to ensure a guaranteed rate of return on their loans.

Prior to the passage of the 1998 Amendments, the special allowance formula for new Federal Stafford loans (subsidized or unsubsidized) was to be based on a security of comparable maturity (the 10–20 year bond interest rate) plus 1 percent. As such, the Government would have paid loan holders a special allowance if the 10–20 year bond interest rate plus 1 percent for in-school, grace, deferment, and repayment periods was higher than the

interest rates charged to borrowers (which are capped at 8.25 percent).

Under the proposed regulations, for new Federal Stafford loans, the Government would pay loan holders a special allowance if the 91-day Treasury-bill (T-bill) interest rate for a given quarter, plus 2.8 percent (or 2.2 percent during in-school, grace, and deferment periods) is higher than the current interest rates charged to borrowers (with borrower interest rates capped at 8.25 percent).

The 1998 Amendments also changed the basis for calculating borrower interest rates on new Federal Stafford loans from a security of comparable maturity plus 1 percent for both in-school and repayment periods to the 91-day T bill interest rate plus 1.7 percent for in-school, grace, and deferment periods, and the 91-day T-bill interest rate plus 2.3 percent for repayment. When the 1998 Amendments was enacted, the 91-day T-bill interest rate plus 2.3 percent was equal to the 10–20 year bond interest rate plus 1 percent. As a result, this change had no financial impact for loans in repayment.

The 1998 Amendments included, in addition to the traditional special allowance payments, a loan-holder special interest subsidy of 0.50 percent above the borrower interest rates at all times. This new subsidy would provide loan holders $183 million for loans during in-school, grace, and deferment status, and $407 million for loans in repayment, for a total benefit to loan holders and a cost to the Federal Government of $590 million for loans originated in FY 2000.

Federal Reinsurance Agreement

Section 682.404 incorporates several changes, discussed in detail elsewhere in this preamble under the heading *Proposed Regulatory Changes*, associated with the restructuring of guaranty agencies under the 1998 Amendments. The statute moves toward a more performance-based system with the establishment of a new funding and operating structure for guaranty agencies.

The changes incorporated in § 682.404 that have costs and benefits for the Federal Government and for guaranty agencies are outlined in the following discussion. For comparison purposes, the amounts shown (except where noted) are for the life of loans originated in FY 2000, as determined by the Credit Reform Act of 1990.

- The default reinsurance payment—the amount guaranty agencies are reimbursed for claim payments to loan holders on defaulted loans made on or after October 1, 1998—was reduced from 98 percent to 95 percent.
- The default collection retention percentage—the percentage guaranty agencies may retain on defaulted loan collections—was reduced from 27 percent to 24 percent, until October 1, 2003 when the rate is further reduced to 23 percent.
- New fees were created that replace the Administrative Cost Allowance. The new loan processing and issuance fee is 0.65 percent of the total principal amount of the loans on which a guaranty agency issued insurance in a given fiscal year. Beginning October 1, 2003 the percentage is reduced to 0.40 percent. The account maintenance fee is 0.12 percent of the original principal amount of outstanding loans. After fiscal year 2000, the fee is 0.10 percent of the original principal amount of outstanding loans.

Reducing guaranty agency default reinsurance and default retention would decrease guaranty agency revenues by $111 million and $68 million, respectively, for loans originated in FY 2000. Guaranty agency revenue for loans originated in FY 2000 would increase by $154 million for the loan processing and issuance fee and $213 million for the account maintenance fee. (The account maintenance fee is paid on all outstanding loans; for FY 2000, guaranty agencies are expected to receive $212 million in cash for this fee.) The net benefit to guaranty agencies, and the net cost to the Federal Government, would be $188 million for loans originated in FY 2000. These revenues and costs are a direct result of changes made to the HEA by the 1998 Amendments, and have been implemented prior to the development of these proposed regulations.

[In millions of dollars]

Provision	Costs to the Government	Costs to guaranty agencies
Reducing guaranty agency default reinsurance	($111)	$111
Reducing guaranty agency default retention	(68)	68
New loan processing and issuance fee	154	(154)
New account maintenance fee	213	(213)
Net Total	188	(188)

The 1998 Amendments also made a number of changes to the qualifications and procedures for certain transfers between the Federal Fund and the Operating Fund, which will not have an effect on the overall assets managed by the guaranty agencies.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations stated clearly?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (groupings and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 682.205 Disclosure requirements for lenders.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Entities affected by these proposed regulations are guaranty agencies and lenders that participate in the Title IV, HEA programs. The 36 guaranty agencies are State and private nonprofit entities that act as agents of the Federal Government and are not considered small entities for this purpose. Nearly all of the roughly 4,800 participating FFEL loan holders would be defined as small entities under U.S. Small Business Administration (SBA) guidelines. (Student loans are originated by lenders and are often sold in packages to larger secondary market participants.) Small lenders originate only 16 percent of new loans. The economic impact for loans originated in FY 2000 would be $30 million or approximately $6,300 per average lender.

The Secretary invites comments on this determination, and welcomes proposals on any significant alternatives that would satisfy the same legal and policy objectives of these proposals while minimizing the economic impact on small entities.

Paperwork Reduction Act of 1995

Sections 682.305, 682.402, 682.404, 682.414, and 682.421 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Federal Family Education Loan Program. Documentation and notification requirements.

Guaranty agencies receive payments from the Secretary and others for exclusive use in the FFEL Program. With respect to a guaranty agency's Federal Fund, the accumulated surplus of those payments over permissible expenditures is Federal property to be returned to the Secretary upon the guaranty agency's termination or under certain other circumstances. The same is true with respect to the guaranty agency's Operating Fund if the Operating Fund contains Federal money. The Secretary needs and uses the information to determine whether the guaranty agencies comply with the requirements for safeguarding this property and the limitations on it.

Collection of Information: Requirement for lenders to submit ED Form 799 (request for interest and special allowance).

These proposed regulations would affect all FFEL lenders who owe origination and loan fees to the Secretary. The 1998 Amendments requires the Secretary to collect origination and loan fees owed by a lender by offsetting the amount of interest and special allowance payments due the lender or by collecting the amount of fees directly from the lender. These proposed regulations would require a lender that owes fees to the Secretary to submit a quarterly ED Form 799 (or comply with whatever successor process to the ED Form 799 may exist in the future) even if the lender is not owed, or does not wish to receive, interest benefits or special allowance payments from the Secretary. The Department already estimates the amount of hours a lender needs each year to prepare and submit ED Form 799s under currently approved OMB inventory control number 1840–0034. Under existing regulations, a lender is required to submit an ED Form 799 only if it wants to receive interest and special allowance payments from the Federal Government. The Secretary will ask OMB to adjust the estimate of reporting hours on OMB inventory control number 1840–0034 to reflect that the proposed regulations would change the lender's option to submit an ED Form 799 to a requirement to submit the form (or comply with whatever successor process to the ED Form 799 may exist in the future).

Collection of Information: Closed school discharge of a borrower's loan obligation without an application form.

These proposed regulations would affect the potential loan discharge for FFEL borrowers who have received a discharge of their Federal Perkins Loan or their Federal Direct Loan, or who the Secretary or the guaranty agency, with the Secretary's permission, determines qualify for a discharge based on information in the Secretary or guaranty agency's possession. These FFEL borrowers would not need to submit a closed school loan discharge application to receive a discharge. The total burden hour reduction (based on approximately 30 minutes per application) is not expected to be substantial because of the small number of borrowers who would fall within these criteria.

Collection of Information: Annual notification to schools by guaranty agencies that schools can request an automatic notification of default aversion assistance requests.

The proposed regulations require a guaranty agency to accept a blanket request from a school to be notified whenever any of the school's current or former students are the subject of a default aversion assistance request. The agency must notify schools annually of the option to make this blanket request. Currently, there are 5,899 schools in the FFEL Program, and many of them participate with more than one guaranty agency. Although the number of schools participating with multiple guaranty agencies is not known, the collective burden for the agencies should be minimal. It probably should not take a guaranty agency more than an average of 6 minutes to notify each school.

Collection of Information: Submissions of default aversion assistance requests by lenders and performance of default aversion assistance activities by guaranty agencies.

Under these proposed regulations, default aversion assistance essentially replaces the former preclaims and supplemental preclaims assistance process. The renaming of this process, whereby a guaranty agency assists the lender in attempting to prevent a default by a borrower who is at least 60 days delinquent, should not result in a change to the current burden hour estimate associated with the former process of requesting and providing such assistance.

Collection of Information: Reduction in the length of time a lender must retain loan records.

These proposed regulations would affect all FFEL lenders by reducing the length of time a lender must retain required loan records for loans paid in full by the borrower from 5 years to 3 years from the date the loan is repaid in full by the borrower. For all other loans for which the lender receives payment in full from any other source (for example, a claim payment or consolidation payoff), or for those loans that are not paid in full, the 5-year retention period will continue to be in effect, except that in particular cases, the Secretary or the guaranty agency may require the retention of records beyond the 3-year or 5-year minimum periods. A guaranty agency could serve as a lender's agent for the purpose of maintaining the lender's records for the required time periods.

The Department already estimates the financial cost and amount of hours a lender needs each year to maintain loan records under currently approved OMB inventory control number 1840–0538. The estimate of lender burden hours required to maintain loan records will not be shown in these proposed regulations because that estimate is not affected by the proposed reduction in the length of the minimum record retention period. The Secretary will ask OMB to adjust the financial cost estimate on OMB inventory control number 1840–0538 to reflect the reduction in the length of the minimum record retention period.

Collection of Information: Guaranty agency option to transfer funds from the Federal Fund into the agency's Operating Fund.

A guaranty agency that wants to transfer money from the Federal Fund to its Operating Fund must provide the Secretary with the information and certifications specified in these proposed regulations. There are 36 guaranty agencies. Some may decline the opportunity to transfer funds, while others may choose to do so more than once. The amount of time required for an agency to assemble its request to the Secretary is not known at this time, but it should not be substantial because the required information and certifications either should already be known by the agency or should be easily collected.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

The FFEL Program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number 84.032 Federal Family Education Loan Program)

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: July 12, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.205 is amended by:

A. Revising paragraphs (a)(1) and (a)(2)(i).

B. Redesignating paragraphs (a)(2)(ii) through (a)(2)(xvii) as paragraphs (a)(2)(v) through (a)(2)(xx), respectively.

C. Adding new paragraphs (a)(2)(ii) through (a)(2)(iv).

D. Adding a new paragraph (a)(3).

E. Revising paragraphs (b), (c)(1), (c)(2)(i), (d), and (e).

F. Adding new paragraphs (f), (g), and (h).

§ 682.205 Disclosure requirements for lenders.

(a) * * *

(1) A lender must disclose the information described in paragraph (a)(2) of this section to a borrower, in simple and understandable terms, before or at the time of the first disbursement on a Federal Stafford or Federal PLUS loan. The information given to the borrower must prominently and clearly display, in bold type, a clear and concise statement that the borrower is receiving a loan that must be repaid.

(2) * * *

(i) The lender's name;

(ii) A toll-free telephone number accessible from within the United States that the borrower can use to obtain additional loan information;

(iii) The address to which correspondence with the lender and payments should be sent;

(iv) Notice that the lender may sell or transfer the loan to another party and, if it does, that the address and identity of the party to which correspondence and payments should be sent may change;

* * * * *

(3) With the exception of paragraphs (a)(2)(i) through (a)(2)(iii), (a)(2)(v) through (a)(2)(vii), and (a)(2)(xx) of this section, the promissory note approved by the Secretary satisfies these disclosure requirements.

(b) *Separate statement of borrower rights and responsibilities.* In addition to the disclosures required by paragraph (a) of this section, the lender must provide the borrower with a separate written statement, using simple and understandable terms, at or prior to the time of the first disbursement, that summarizes the rights and responsibilities of the borrower with respect to the loan. The statement must also warn the borrower about the consequences described in paragraph (a)(2)(xvi) of this section if the borrower defaults on the loan. The Borrower's Rights and Responsibilities statement approved by the Secretary satisfies this requirement.

(c) * * *

(1) The lender must disclose the information described in paragraph (c)(2) of this section, in simple and understandable terms, in a statement provided to the borrower at or prior to the beginning of the repayment period. In the case of a Federal Stafford or Federal SLS loan, the disclosures required by this paragraph must be made not less than 30 days nor more than 240 days before the first payment on the loan is due from the borrower. If the borrower enters the repayment period without the lender's knowledge, the lender must provide the required disclosures to the borrower immediately upon discovering that the borrower has entered the repayment period.

(2) * * *

(i) The lender's name, a toll free telephone number accessible from within the United States that the borrower can use to obtain additional loan information, and the address to which correspondence with the lender and payments should be sent;

* * * * *

(d) *Exception to disclosure requirement.* In the case of a Federal PLUS loan, the lender is not required to provide the information in paragraph (c)(2)(viii) of this section if the lender, in lieu of that disclosure, provides the borrower with sample projections of the monthly repayment amounts assuming different levels of borrowing and interest accruals resulting from capitalization of interest while the student is in school. Sample projections must disclose the cost to the borrower of principal and interest, interest only, and capitalized interest. The lender may rely on the PLUS promissory note and associated materials approved by the Secretary for purposes of complying with this section.

(e) *Borrower may not be charged for disclosures.* The lender must provide the information required by this section at no cost to the borrower.

(f) *Method of disclosure.* Any disclosure of information by a lender under this section may be through written or electronic means.

(g) *Plain language disclosure.* The plain language disclosure text, as approved by the Secretary, must be provided to a borrower in conjunction with subsequent loans taken under a previously signed Master Promissory Note. The requirements of paragraphs (a) and (b) of this section are satisfied for subsequent loans if the borrower is sent the plain language disclosure text and an initial disclosure containing the information required by paragraphs (a)(2)(i) through (iii), (a)(2)(v), (a)(2)(vi), (a)(2)(vii), and (a)(2)(xx) of this section.

(h) *Notice of availability of income-sensitive repayment option.*

(1) At the time of offering a borrower a loan and at the time of offering a borrower repayment options, the lender must provide the borrower with a notice that informs the borrower of the availability of income-sensitive repayment. This information may be provided in a separate notice or as part of the other disclosures required by this section. The notice must inform the borrower—

(i) That the borrower is eligible for income-sensitive repayment, including through loan consolidation;

(ii) Of the procedures by which the borrower can elect income-sensitive repayment; and

(iii) Of where and how the borrower may obtain more information concerning income-sensitive repayment.

(2) The promissory note and associated materials approved by the Secretary satisfy the loan origination notice requirements provided for in paragraph (h)(1) of this section.

3. Section 682.207 is amended by revising paragraph (b)(1)(vi) and adding a new paragraph (b)(1)(vii) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b) * * *

(1) * * *

(vi) Except as provided in paragraph (d)(2) of this section, may not disburse a second or subsequent disbursement of a Federal Stafford loan to a student who has ceased to be enrolled; and

(vii) May disburse a second disbursement of a Federal Stafford loan, at the request of the school, even if the student or the school returned the first disbursement, unless the lender has information that the student is no longer enrolled.

* * * * *

4. Section 682.208 is amended by adding a new paragraph (c)(3) to read as follows:

§ 682.208 Due diligence in servicing a loan.

* * * * *

(c) * * *

(3)(i) If the borrower disputes the terms of the loan in writing and the lender does not resolve the dispute, the lender's response must provide the borrower with an appropriate contact at the guaranty agency for the resolution of the dispute.

(ii) If the guaranty agency does not resolve the dispute, the agency's response must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

* * * * *

5. Section 682.210 is amended by revising paragraph (a)(5) to read as follows:

§ 682.210 Deferment.

(a) * * *

(5) An authorized deferment period begins on the date the condition entitling the borrower to the deferment first exists; however, except for the deferments described in paragraphs (b)(1)(i) and (s)(2) of this section, a deferment cannot begin more than six months before the date the lender receives a request and documentation required for the deferment.

* * * * *

6. Section 682.211 is amended by revising paragraph (f)(2), and adding a new paragraph (f)(10) to read as follows:

§ 682.211 Forbearance.

* * * * *

(f) * * *

(2) Upon the beginning of an authorized deferment period under § 682.210, or a mandatory administrative forbearance period as specified under paragraph (j)(2) of this section;

* * * * *

(10) For a period not to exceed 3 months for a borrower who is affected by a natural disaster.

* * * * *

§ 682.215 [Removed]

7. Section 682.215 is removed.

8. Section 682.302 is amended to read as follows by:

A. Revising paragraph (b)(1) and the introductory text of paragraph (b)(2).

B. In paragraph (b)(2)(ii), removing the word "or" that appears after the semi-colon.

C. In paragraph (b)(2)(iii), removing the period and adding, in its place, "; or".

Adding a new paragraph (b)(2)(iv).

E. Redesignating paragraphs (c)(1)(iii)(A) through (E) as paragraphs (c)(1)(iii)(C) through (G), respectively.

F. Revising redesignated paragraph (c)(1)(iii)(C).

G. Adding new paragraphs (c)(1)(iii)(A) and (B).

H. Revising paragraph (c)(3)(i)(A).

I. Adding a new paragraph (c)(4).

§ 682.302 Payment of special allowance on FFEL loans.

* * * * *

(b) * * *

(1) Except for non-subsidized Federal Stafford loans disbursed on or after October 1, 1981, for periods of enrollment beginning prior to October 1, 1992, or as provided in paragraphs (b)(2) through (b)(4), or (e) of this section, FFEL loans that otherwise meet program requirements are eligible for special allowance payments.

(2) For a loan made under the Federal SLS or Federal PLUS Program on or

after July 1, 1987 and prior to July 1, 1994, and for any Federal PLUS loan made on or after July 1, 1998 or under § 682.209(e) or (f), no special allowance is paid for any period for which the interest rate calculated prior to applying the interest rate maximum for that loan does not exceed—

* * * * *

(iv) 9 percent in the case of a Federal PLUS loan made on or after October 1, 1998.

(c) * * *

(1) * * *

(iii) * * *

(A)(*1*) 2.8 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1998; or

(*2*) 2.2 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1998 during the borrower's in-school, grace, and authorized period of deferment;

(B) 2.5 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1995 for interest that accrues during the borrower's in-school, grace, and authorized period of deferment;

(C) Except as provided in paragraph (c)(1)(iii)(B) of this section, 3.1 percent to the resulting percentage for a Federal Stafford Loan made on or after October 1, 1992 and prior to July 1, 1998, and for any Federal SLS, Federal PLUS, or Federal Consolidation Loan made on or after October 1, 1992;

* * * * *

(3)(i) * * *

(A) The proceeds of tax-exempt obligations originally issued prior to October 1, 1993, the income from which is exempt from taxation under the Internal Revenue Code of 1986;

* * * * *

(4) Loans made or purchased with funds obtained by the holder from the issuance of obligations originally issued on or after October 1, 1993, and loans made with funds derived from default reimbursement collections, interest, or other income related to eligible loans made or purchased with those tax-exempt funds, do not qualify for the minimum special allowance rate specified in paragraph (c)(3)(iii) of this section, and are not subject to the 50 percent limitation on the maximum rate otherwise applicable to loans made with tax-exempt funds.

* * * * *

9. Section 682.305 is amended by:

A. Revising the heading and paragraph (a)(1).

B. Adding new paragraphs (a)(3)(iii) through (v).

C. Revising paragraph (c)(1).

§ 682.305 Procedures for payment of interest benefits and special allowance and collection of origination and loan fees.

(a) * * *

(1) If a lender owes origination fees or loan fees under paragraph (a) of this section, it must submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary, even if the lender is not owed, or does not wish to receive, interest benefits or special allowance from the Secretary.

* * * * *

(3) * * *

(iii) The Secretary collects from an originating lender the amount of origination fees the originating lender was authorized to collect from borrowers during the quarter whether or not the originating lender actually collected those fees. The Secretary also collects the fees the originating lender is required to pay under paragraph (a)(3)(ii) of this section. Generally, the Secretary collects the fees from the originating lender by offsetting the amount of interest benefits and special allowance payable to the originating lender in a quarter, and, if necessary, the amount of interest benefits and special allowance payable in subsequent quarters may be offset until the total amount of fees has been recovered.

(iv) If the full amount of the fees cannot be collected within two quarters by reducing interest and special allowance payable to the originating lender, the Secretary may collect the unpaid amount directly from the originating lender.

(v) If the full amount of the fees cannot be collected within two quarters from the originating lender in accordance with paragraphs (a)(3) (iii) and (iv) of this section and if the originating lender has transferred the loan to a subsequent holder, the Secretary may, following written notice, collect the unpaid amount from the holder by using the same steps described in paragraphs (a)(3) (iii) and (iv) of this section, with the term "holder" substituting for the term "originating lender".

* * * * *

(c) * * *

(1) If a lender originates or holds more than $5 million in FFEL loans during its fiscal year, it must submit an independent annual compliance audit for that year, conducted by a qualified independent organization or person. The Secretary may, following written notice, suspend the payment of interest benefits and special allowance to a lender that does not submit its audit within the time period prescribed in paragraph (c)(2) of this section.

* * * * *

§ 682.400 [Amended]

10. Section 682.400 is amended by:

A. In paragraph (b)(1)(i), adding the word "and" after the semi-colon.

B. In paragraph (b)(1)(ii), removing "; and" and adding, in its place, a period.

C. Removing paragraph (b)(1)(iii).

11. Section 682.401 is amended by:

A. Revising paragraph (b)(11).

B. In the introductory text of paragraph (b)(23)(i), removing the words "as defined in § 682.800(d)".

C. Adding a heading to paragraph (c).

D. Revising paragraphs (c)(1), (c)(2), and (c)(3).

E. Adding a new paragraph (c)(5).

F. Revising paragraphs (e)(1) and (e)(3).

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(11) *Inquiries.* The agency must be able to receive and respond to written, electronic, and telephone inquiries.

* * * * *

(c) *Lender-of-last-resort.* (1) The guaranty agency must ensure that it, or an eligible lender described in section 435(d)(1)(D) of the HEA, serves as a lender-of-last-resort in the State in which the guaranty agency is the designated guaranty agency. The guaranty agency or an eligible lender described in section 435(d)(1)(D) of the HEA may arrange for a loan required to be made under paragraph (c)(2) of this section to be made by another eligible lender. As used in this paragraph, the term "designated guaranty agency" means the guaranty agency in the State for which the Secretary has signed a Basic Program Agreement under § 682.401.

(2) The lender-of-last-resort must make subsidized Federal Stafford loans and unsubsidized Federal Stafford loans to any eligible student who—

(i) Qualifies for interest benefits pursuant to § 682.301;

(ii) Qualifies for a combined loan amount of at least $200; and

(iii) Has been otherwise unable to obtain loans from another eligible lender for the same period of enrollment.

(3) The lender-of-last-resort may make unsubsidized Federal Stafford and Federal PLUS loans to borrowers who have been otherwise unable to obtain those loans from another eligible lender.

* * * * *

(5)(i) Upon request of the guaranty agency, the Secretary may advance Federal funds to the agency, on terms and conditions agreed to by the Secretary and the agency, to ensure the availability of loan capital for subsidized and unsubsidized Federal Stafford and Federal PLUS loans to borrowers who are otherwise unable to obtain those loans if the Secretary determines that—

(A) Eligible borrowers in a State who qualify for subsidized Federal Stafford loans are seeking and are unable to obtain subsidized Federal Stafford loans;

(B) The guaranty agency designated for that State has the capability for providing lender-of-last-resort loans in a timely manner, either directly or indirectly using a third party, in accordance with the guaranty agency's obligations under the HEA, but cannot do so without advances provided by the Secretary; and

(C) It would be cost-effective to advance Federal funds to the agency.

(ii) If the Secretary determines that the designated guaranty agency does not have the capability to provide lender-of-last-resort loans, in accordance with paragraph (c)(5)(i) of this section, the Secretary may provide Federal funds to another guaranty agency, under terms and conditions agreed to by the Secretary and the agency, to make lender-of-last-resort loans in that State.

* * * * *

(e) * * *

(1) Offer directly or indirectly any premium, payment, or other inducement to an employee or student of a school, or an entity or individual affiliated with a school, to secure applicants for FFEL loans, except that a guaranty agency is not prohibited from providing assistance to schools comparable to the kinds of assistance provided by the Secretary to schools under, or in furtherance of, the Federal Direct Loan Program;

* * * * *

(3) Mail or otherwise distribute unsolicited loan applications to students enrolled in a secondary school or a postsecondary institution, or to parents of those students, unless the potential borrower has previously received loans insured by the guaranty agency;

* * * * *

12. Section 682.402 is amended by:

A. Revising the introductory text following the heading of paragraph (d)(3).

B. Adding a new paragraph (d)(8).

C. Revising paragraph (f)(2).

§ 682.402 Death, disability, closed school, false certification, and bankruptcy payments.

* * * * *

(d) * * *

(3) * * * Except as provided in paragraph (d)(7) of this section, in order to qualify for a discharge of a loan under paragraph (d) of this section, a borrower must submit a written request and sworn statement to the holder of the loan. The statement need not be notarized, but must be made by the borrower under the penalty of perjury, and, in the statement, the borrower must state—

* * * * *

(8) *Discharge without an application.* A borrower's obligation to repay an FFEL Program loan may be discharged without an application from the borrower if the—

(i) Borrower received a discharge on a loan pursuant to 34 CFR 674.33(g) under the Federal Perkins Loan Program, or 34 CFR 685.213 under the William D. Ford Federal Direct Loan Program; or

(ii) The Secretary or the guaranty agency, with the Secretary's permission, determines that the borrower qualifies for a discharge based on information in the Secretary or guaranty agency's possession.

* * * * *

(f) * * *

(2) *Suspension of collection activity.* If the lender is notified that a borrower has filed a petition for relief in bankruptcy, the lender must immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower, and may suspend collection efforts against any co-maker or endorser on the loan.

* * * * *

13. Section 682.404 is amended to read as follows by:

A. Revising the introductory text of paragraph (a)(1).

B. Redesignating paragraph (a)(1)(ii) as (a)(1)(iii).

C. Revising paragraph (a)(1)(i), adding a new paragraph (a)(1)(ii), and revising redesignated paragraph (a)(1)(iii) introductory text.

D. Removing paragraphs (a)(2)(iii) and (a)(3), and revising paragraph (a)(2)(ii).

E. Redesignating paragraphs (a)(4) and (a)(5) as paragraphs (a)(3) and (a)(4), respectively.

F. Revising the redesignated paragraph (a)(4).

G. Revising the heading for paragraph (b), and removing the word "or" at the end of paragraph (b)(1)(i).

H. Revising paragraphs (b)(1)(ii) and (b)(2)(ii), and adding a new paragraph (b)(1)(iii).

I. Removing the word "or" after the semi-colon in paragraph (b)(2)(i).

J. Adding a new paragraph (b)(2)(iii).

K. Revising the heading for paragraph (g).

L. Revising paragraphs (g)(1) and (g)(2), and removing paragraph (g)(3).

M. Redesignating paragraph (i) as paragraph (l).

N. Adding new paragraphs (i), (j), and (k).

§ 682.404 Federal reinsurance agreement.

(a) * * *

(1) The Secretary may enter into a reinsurance agreement with a guaranty agency that has a basic program agreement. Except as provided in paragraph (b) of this section, under a reinsurance agreement, the Secretary reimburses the guaranty agency for—

(i) 95 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1998;

(ii) 98 percent of its losses on default claim payments to lenders for loans made on or after October 1, 1993, and before October 1, 1998; or

(iii) 100 percent of its losses on default claim payments to lenders—

* * * * *

(2) * * *

(ii) *Default aversion assistance* means the activities of a guaranty agency that are designed to prevent a default by a borrower who is at least 60 days delinquent and that are directly related to providing collection assistance to the lender.

* * * * *

(4) If a lender has requested default aversion assistance as described in paragraph (a)(2)(ii) of this section, the agency must, upon request of the school at which the borrower received the loan, notify the school of the lender's request. The guaranty agency may not charge the school or the school's agent for providing this notification and must accept a blanket request from the school to be notified whenever any of the school's current or former students are the subject of a default aversion assistance request. The agency must notify schools annually of the option to make this blanket request.

(b) *Reduction in reinsurance rate.*

(1) * * *

(ii) 88 percent of its losses on default claim payments to lenders on loans made on or after October 1, 1993, and before October 1, 1998; or

(iii) 85 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1998.

(2) * * *

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(ii) 78 percent of its losses on default claim payments to lenders on loans made on or after October 1, 1993, and before October 1, 1998; or

(iii) 75 percent of its losses on default claim payments to lenders on loans for which the first disbursement is made on or after October 1, 1998.

* * * * *

(g) *Share of borrower payments returned to the Secretary.*

(1) After an agency pays a default claim to a holder using assets of the Federal Fund, the agency must pay to the Secretary the portion of payments received on those defaulted loans remaining after—

(i) The agency deposits into the Federal Fund the amount of those payments equal to the applicable complement of the reinsurance percentage that was in effect at the time the claim was paid; and

(ii) The agency has deducted an amount equal to—

(A) 30 percent of borrower payments received before October 1, 1993;

(B) 27 percent of borrower payments received on or after October 1, 1993, and before October 1, 1998;

(C) 24 percent of borrower payments received on or after October 1, 1998, and before October 1, 2003; and

(D) 23 percent of borrower payments received on or after October 1, 2003.

(2) Unless the Secretary approves otherwise, the guaranty agency must pay to the Secretary the Secretary's share of borrower payments within 45 days of its receipt of the payments.

* * * * *

(i) *Account maintenance fee.* A guaranty agency is paid an account maintenance fee based on the original principal amount of outstanding FFEL Program loans insured by the agency. For fiscal years 1999 and 2000, the fee is 0.12 percent of the original principal amount of outstanding loans. After fiscal year 2000, the fee is 0.10 percent of the original principal amount of outstanding loans.

(j) *Loan processing and issuance fee.* A guaranty agency is paid a loan processing and issuance fee based on the principal amount of FFEL Program loans originated during a fiscal year that are insured by the agency. The fee is paid quarterly. No payment is made for loans for which the disbursement checks have not been cashed or for which electronic funds transfers have not been completed. For fiscal years 1999 through 2003, the fee is 0.65 percent of the principal amount of loans originated. Beginning October 1, 2003, the fee is 0.40 percent.

(k) *Default aversion fee.*

(1) *General.* If a guaranty agency performs default aversion activities on a delinquent loan in response to a lender's request for default aversion assistance on that loan, the agency receives a default aversion fee. The fee may not be paid more than once on any loan. The lender's request for assistance must be submitted to the guaranty agency no earlier than the 60th day and no later than the 120th day of the borrower's delinquency.

(2) *Amount of fees transferred.* No more frequently than monthly, a guaranty agency may transfer default aversion fees from the Federal Fund to its Operating Fund. The amount of the fees that may be transferred is equal to—

(i) One percent of the unpaid principal and accrued interest owed on loans that were submitted by lenders to the agency for default aversion assistance; minus

(ii) One percent of the unpaid principal and accrued interest owed by borrowers on default claims that—

(A) Were paid by the agency for the same time period for which the agency transferred default aversion fees from its Federal Fund; and

(B) For which default aversion fees have been received by the agency.

(3) *Calculation of fee.*

(i) For purposes of calculating the one percent default aversion fee described in paragraph (k)(2)(i) of this section, the agency must use the total unpaid principal and accrued interest owed by the borrower as of the date the default aversion assistance request is submitted by the lender.

(ii) For purposes of paragraph (k)(2)(ii) of this section, the agency must use the total unpaid principal and accrued interest owed by the borrower as of the date the agency paid the default claim.

(4) *Prohibition against conflicts.* If a guaranty agency contracts with an outside entity to perform any default aversion activities, that outside entity may not—

(i) Hold or service the loan; or

(ii) Perform collection activities on the loan in the event of default within 3 years of the claim payment date.

* * * * *

14. Section 682.406 is amended by revising the heading, the introductory text of paragraph (a), and paragraph (a)(14) to read as follows:

§ 682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.

(a) A guaranty agency may make a claim payment from the Federal Fund and receive a reinsurance payment on a loan only if—

* * * * *

(14) The guaranty agency certifies to the Secretary that diligent attempts have been made by the lender and the guaranty agency under § 682.411(h) to locate the borrower through the use of effective skip tracing techniques, including contact with the school the student attended.

* * * * *

15. Section 682.409 is amended by revising the introductory text of paragraph (a)(1) to read as follows:

§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

(a)(1) If the Secretary determines that action is necessary to protect the Federal fiscal interest, the Secretary directs a guaranty agency to promptly assign to the Secretary any loans held by the agency on which the agency has received payment under §§ 682.402(f), 682.402(k), or 682.404. The collection of unpaid loans owed by Federal employees by Federal salary offset is, among other things, deemed to be in the Federal fiscal interest. Unless the Secretary notifies an agency, in writing, that other loans must be assigned to the Secretary, an agency must assign any loan that meets all of the following criteria as of April 15 of each year:

* * * * *

16. Section 682.410 is amended by adding a new paragraph (b)(5)(vii) to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(5) * * *

(vii) As part of the guaranty agency's response to a borrower who appeals an adverse decision resulting from the agency's administrative review of the loan obligation, the agency must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

* * * * *

17. Section 682.411 is revised to read as follows:

§ 682.411 Lender due diligence in collecting guaranty agency loans.

(a) *General.* In the event of delinquency on an FFEL Program loan, the lender must engage in at least the collection efforts described in paragraphs (d) through (n) of this section, except that in the case of a loan made to a borrower who is incarcerated or to a borrower residing outside a State, Mexico, or Canada, the lender may send a forceful collection letter in lieu of each telephone effort required by this section.

(b) *Delinquency.*

(1) For purposes of this section, delinquency on a loan begins on the first day after the due date of the first missed payment that is not later made. The due date of the first payment is established by the lender but must occur by the deadlines specified in § 682.209(a) or, if the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the day the lender so learns, except as provided in § 682.209(a)(2)(v) and (a)(3)(ii)(E). If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment that is not later made. A payment that is within five dollars of the amount normally required to advance the due date may nevertheless advance the due date if the lender's procedures allow for that advancement.

(2) At no point during the periods specified in paragraphs (d) and (e) of this section may the lender permit the occurrence of a gap in collection activity, as defined in paragraph (j) of this section, of more than 45 days (60 days in the case of a transfer).

(3) As part of one of the collection activities provided for in this section, the lender must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

(c) *1–15 days delinquent.* Except in the case in which a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan, the lender during this period must send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency. The notice or collection letter sent during this period must include, at a minimum, a lender or servicer contact, a telephone number, and a prominent statement informing the borrower that assistance may be available if he or she is experiencing difficulty in making a scheduled repayment.

(d) *16–180 days delinquent (16–240 days delinquent for a loan repayable in installments less frequently than monthly).*

(1) Unless exempted under paragraph (d)(4) of this section, during this period the lender must engage in at least four diligent efforts to contact the borrower by telephone and send at least four collection letters urging the borrower to make the required payments on the loan. At least one of the diligent efforts to contact the borrower by telephone must occur on or before, and another one must occur after, the 90th day of delinquency. Collection letters sent during this period must include, at a minimum, information for the borrower regarding deferment, forbearance, income-sensitive repayment and loan consolidation, and other available options to avoid default.

(2) At least two of the collection letters required under paragraph (d)(1) of this section must warn the borrower that, if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus, and that the agency may institute proceedings to offset the borrower's State and Federal income tax refunds and other payments made by the Federal Government to the borrower or to garnish the borrower's wages, or to assign the loan to the Federal Government for litigation against the borrower.

(3) Following the lender's receipt of a payment on the loan or a correct address for the borrower, the lender's receipt from the drawee of a dishonored check received as a payment on the loan, the lender's receipt of a correct telephone number for the borrower, or the expiration of an authorized deferment or forbearance period, the lender is required to engage in only—

(i) Two diligent efforts to contact the borrower by telephone during this period, if the loan is less than 91 days delinquent (121 days delinquent for a loan repayable in installments less frequently than monthly) upon receipt of the payment, correct address, correct telephone number, or returned check, or expiration of the deferment or forbearance; or

(ii) One diligent effort to contact the borrower by telephone during this period if the loan is 91–120 days delinquent (121–180 days delinquent for a loan repayable in installments less frequently than monthly) upon receipt of the payment, correct address, correct telephone number, or returned check, or expiration of the deferment or forbearance.

(4) A lender need not attempt to contact by telephone any borrower—

(i) Who is incarcerated;

(ii) Who is residing outside of a State, Mexico or Canada;

(iii) Whose telephone number is unknown;

(iv) Who is more than 120 days delinquent (180 days delinquent for a loan repayable in installments less frequent than monthly) following the lender's receipt of—

(A) A payment on the loan;

(B) A correct address or correct telephone number for the borrower;

(C) A dishonored check received from the drawee as a payment on the loan; or

(D) The expiration of an authorized deferment or forbearance.

(e) *181–270 days delinquent (241–330 days delinquent for a loan repayable in installments less frequently than monthly).* During this period the lender must engage in efforts to urge the borrower to make the required payments on the loan. These efforts must, at a minimum, provide information to the borrower regarding options to avoid default and the consequences of defaulting on the loan.

(f) *Final demand.* On or after the 241st day of delinquency, (the 301st day for loans payable in less frequent installments than monthly) the lender must send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. The lender must allow the borrower at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan.

(g) *Collection procedures when borrower's telephone number is not available.* Upon completion of a diligent but unsuccessful effort to ascertain the correct telephone number of a borrower as required by paragraph (m) of this section, the lender is excused from any further efforts to contact the borrower by telephone, unless the borrower's number is obtained before the 211th day of delinquency (the 271st day for loans repayable in installments less frequently than monthly).

(h) *Skip-tracing.*

(1) Unless the letter specified under paragraph (f) of this section has already been sent, within 10 days of its receipt of information indicating that it does not know the borrower's current address, the lender must begin to diligently attempt to locate the borrower through the use of effective commercial skip-tracing techniques. These efforts must include, but are not limited to, sending a letter to or making a diligent effort to contact each endorser, relative, reference, individual, and entity, including the school the student most recently attended, identified in the borrower's loan file. For this purpose, a lender's contact with a school official who might reasonably be expected to know the borrower's address may be with someone other than the financial aid administrator, and may be in writing

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or by phone calls. These efforts must be completed by the date of default with no gap of more than 45 days between attempts to contact those individuals or entities.

(2) Upon receipt of information indicating that it does not know the borrower's current address, the lender must discontinue the collection efforts described in paragraphs (c) through (f) of this section.

(3) If the lender is unable to ascertain the borrower's current address despite its performance of the activities described in paragraph (h)(1) of this section, the lender is excused thereafter from performance of the collection activities described in paragraphs (c) through (f) and (l)(1) through (l)(3) and (l)(5) of this section unless it receives communication indicating the borrower's address before the 241st day of delinquency (the 301st day for loans payable in less frequent installments than monthly).

(4) The activities specified by paragraphs (m)(1)(i) or (ii) of this section (with references to the "borrower" understood to mean endorser, reference, relative, individual, or entity as appropriate) meet the requirement that the lender make a diligent effort to contact each individual identified in the borrower's loan file.

(i) *Default aversion assistance.* Not earlier than the 60th day and no later than the 120th day of delinquency, a lender must request default aversion assistance from the guaranty agency that guarantees the loan.

(j) *Gap in collection activity.* For purposes of this section, the term *gap in collection activity* means, with respect to a loan, any period—

(1) Beginning on the date that is the day after—

(i) The due date of a payment unless the lender does not know the borrower's address on that date;

(ii) The day on which the lender receives a payment on a loan that remains delinquent notwithstanding the payment;

(iii) The day on which the lender receives the correct address for a delinquent borrower;

(iv) The day on which the lender completes a collection activity;

(v) The day on which the lender receives a dishonored check submitted as a payment on the loan;

(vi) The expiration of an authorized deferment or forbearance period on a delinquent loan; or

(vii) The day the lender receives information indicating it does not know the borrower's current address; and

(2) Ending on the date of the earliest of—

(i) The day on which the lender receives the first subsequent payment or completed deferment request or forbearance agreement;

(ii) The day on which the lender begins the first subsequent collection activity;

(iii) The day on which the lender receives written communication from the borrower relating to his or her account; or

(iv) Default.

(k) *Transfer.* For purposes of this section, the term *transfer* with respect to a loan means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

(l) *Collection activity.* For purposes of this section, the term *collection activity* with respect to a loan means—

(1) Mailing or otherwise transmitting to the borrower at an address that the lender reasonably believes to be the borrower's current address a collection letter or final demand letter that satisfies the timing and content requirements of paragraphs (c), (d), (e), or (f) of this section;

(2) Making an attempt to contact the borrower by telephone to urge the borrower to begin or resume repayment;

(3) Conducting skip-tracing efforts, in accordance with paragraphs (h)(1) or (m)(1)(iii) of this section, to locate a borrower whose correct address or telephone number is unknown to the lender;

(4) Mailing or otherwise transmitting to the guaranty agency a request for default aversion assistance available from the agency on the loan at the time the request is transmitted; or

(5) Any telephone discussion or personal contact with the borrower so long as the borrower is apprised of the account's past-due status.

(m) *Diligent effort for telephone contact.*

(1) For purposes of this section, the term *diligent effort* with respect to telephone contact means—

(i) A successful effort to contact the borrower by telephone;

(ii) At least two unsuccessful attempts to contact the borrower by telephone at a number that the lender reasonably believes to be the borrower's correct telephone number; or

(iii) An unsuccessful effort to ascertain the correct telephone number of a borrower, including, but not limited to, a directory assistance inquiry as to the borrower's telephone number, and sending a letter to or making a diligent effort to contact each reference, relative, and individual identified in the most recent loan application or most recent school certification for that borrower held by the lender. The lender may contact a school official other than the financial aid administrator who reasonably may be expected to know the borrower's address or telephone number.

(2) If the lender is unable to ascertain the borrower's correct telephone number despite its performance of the activities described in paragraph (m)(1)(iii) of this section, the lender is excused thereafter from attempting to contact the borrower by telephone unless it receives a communication indicating the borrower's current telephone number before the 211th day of delinquency (the 271st day for loans repayable in installments less frequently than monthly).

(3) The activities specified by paragraph (m)(1)(i) or (ii) of this section (with references to "the borrower" understood to mean endorser, reference, relative, or individual as appropriate), meet the requirement that the lender make a diligent effort to contact each endorser or each reference, relative, or individual identified on the borrower's most recent loan application or most recent school certification.

(n) *Due diligence for endorsers.*

(1) Before filing a default claim on a loan with an endorser, the lender must—

(i) Make a diligent effort to contact the endorser by telephone; and

(ii) Send the endorser on the loan two letters advising the endorser of the delinquent status of the loan and urging the endorser to make the required payments on the loan with at least one letter containing the information described in paragraph (d)(2) of this section (with references to "the borrower" understood to mean the endorser).

(2) On or after the 241st day of delinquency, (the 301st day for loans payable in less frequent installments than monthly) the lender must send a final demand letter to the endorser requiring repayment of the loan in full and notifying the endorser that a default will be reported to a national credit bureau. The lender must allow the endorser at least 30 days after the date the letter is mailed to respond to the final demand letter and to bring the loan out of default before filing a default claim on the loan.

(3) Unless the letter specified under paragraph (n)(2) of this section has already been sent, upon receipt of information indicating that it does not know the endorser's current address or telephone number, the lender must diligently attempt to locate the endorser through the use of effective commercial skip-tracing techniques. This effort must include an inquiry to directory assistance.

(o) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1080a, 1082, 1087)

§ 682.412 [Amended]

18. Section 682.412 is amended by removing "§ 682.411(e)" in paragraph (a) and adding, in its place, "§ 682.411(f)".

19. Section 682.413 is amended by revising paragraph (e)(1) to read as follows:

§ 682.413 Remedial actions.

* * * * *

(e)(1)(i) The Secretary's decision to require repayment of funds, withhold funds, or to limit or suspend a lender, guaranty agency, or third party servicer from participation in the FFEL Program or to terminate a lender or third party from participation in the FFEL Program does not become final until the Secretary provides the lender, agency, or servicer with written notice of the intended action and an opportunity to be heard. The hearing is at a time and in a manner the Secretary determines to be appropriate to the resolution of the issues on which the lender, agency, or servicer requests the hearing.

(ii) The Secretary's decision to terminate a guaranty agency's participation in the FFEL Program after September 24, 1998 does not become final until the Secretary provides the agency with written notice of the intended action and provides an opportunity for a hearing on the record.

* * * * *

20. Section 682.414 is amended by revising paragraph (a)(4)(iii) to read as follows:

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) * * *

(4) * * *

(iii) Except as provided in paragraph (a)(4)(iv) of this section, a lender must retain the records required for each loan for not less than three years following the date the loan is repaid in full by the borrower, or for not less than five years following the date the lender receives payment in full from any other source. However, in particular cases, the Secretary or the guaranty agency may require the retention of records beyond this minimum period.

* * * * *

21. Section 682.417 is amended by revising the heading and paragraphs (a) through (h) by removing the words "reserve fund" and "reserve funds" and adding, in their place, the words "Federal Fund" and "Federal funds", respectively, wherever they appear, and making minor grammatical adjustments wherever needed to accommodate the change from a plural noun ("funds") to a singular noun ("Fund"). As revised, § 682.417 reads as follows:

§ 682.417 Determination of Federal funds or assets to be returned.

(a) *General.* The procedures described in this section apply to a determination by the Secretary that—

(1) A guaranty agency must return to the Secretary a portion of its Federal Fund which the Secretary has determined is unnecessary to pay the program expenses and contingent liabilities of the agency; and

(2) A guaranty agency must require the return to the agency or the Secretary of Federal funds or assets within the meaning of section 422(g)(1) of the HEA held by or under the control of any other entity, which the Secretary determines are necessary to pay the program expenses and contingent liabilities of the agency or which are required for the orderly termination of the guaranty agency's operations and the liquidation of its assets.

(b) *Return of unnecessary Federal funds.*

(1) The Secretary may initiate a process to recover unnecessary Federal funds under paragraph (a)(1) of this section if the Secretary determines that a guaranty agency's Federal Fund ratio under § 682.410(a)(10) for each of the two preceding Federal fiscal years exceeded 2.0 percent.

(2) If the Secretary initiates a process to recover unnecessary Federal funds, the Secretary requires the return of a portion of the Federal funds that the Secretary determines will permit the agency to—

(i) Have a Federal Fund ratio of at least 2.0 percent under § 682.410(a)(10) at the time of the determination; and

(ii) Meet the minimum Federal Fund requirements under § 682.410(a)(10) and retain sufficient additional Federal funds to perform its responsibilities as a guaranty agency during the current Federal fiscal year and the four succeeding Federal fiscal years.

(3)(i) The Secretary makes a determination of the amount of Federal funds needed by the guaranty agency under paragraph (b)(2) of this section on the basis of financial projections for the period described in that paragraph. If the agency provides projections for a period longer than the period referred to in that paragraph, the Secretary may consider those projections.

(ii) The Secretary may require a guaranty agency to provide financial projections in a form and on the basis of assumptions prescribed by the Secretary. If the Secretary requests the agency to provide financial projections, the agency must provide the projections within 60 days of the Secretary's request. If the agency does not provide the projections within the specified time period, the Secretary determines the amount of Federal funds needed by the agency on the basis of other information.

(c) *Notice.*

(1) The Secretary or an authorized Departmental official begins a proceeding to order a guaranty agency to return a portion of its Federal funds, or to direct the return of Federal funds or assets subject to return, by sending the guaranty agency a notice by certified mail, return receipt requested.

(2) The notice—

(i) Informs the guaranty agency of the Secretary's determination that Federal funds or assets must be returned;

(ii) Describes the basis for the Secretary's determination and contains sufficient information to allow the guaranty agency to prepare and present an appeal;

(iii) States the date by which the return of Federal funds or assets must be completed;

(iv) Describes the process for appealing the determination, including the time for filing an appeal and the procedure for doing so; and

(v) Identifies any actions that the guaranty agency must take to ensure that the Federal funds or assets that are the subject of the notice are maintained and protected against use, expenditure, transfer, or other disbursement after the date of the Secretary's determination, and the basis for requiring those actions. The actions may include, but are not limited to, directing the agency to place the Federal funds in an escrow account. If the Secretary has directed the guaranty agency to require the return of Federal funds or assets held by or under the control of another entity, the guaranty agency must ensure that the agency's claims to those funds or assets and the collectability of the agency's claims will not be compromised or jeopardized during an appeal. The guaranty agency must also comply with all other applicable regulations relating to the use of Federal funds and assets.

(d) *Appeal.*

(1) A guaranty agency may appeal the Secretary's determination that Federal funds or assets must be returned by filing a written notice of appeal within 20 days of the date of the guaranty agency's receipt of the notice of the Secretary's determination. If the agency files a notice of appeal, the requirement that the return of Federal funds or assets be completed by a particular date is suspended pending completion of the appeal process. If the agency does not file a notice of appeal within the period specified in this paragraph, the Secretary's determination is final.

(2) A guaranty agency must submit the information described in paragraph (d)(4) of this section within 45 days of the date of the guaranty agency's receipt of the notice of the Secretary's determination unless the Secretary agrees to extend the period at the agency's request. If the agency does not submit that information within the prescribed period, the Secretary's determination is final.

(3) A guaranty agency's appeal of a determination that Federal funds or assets must be returned is considered and decided by a Departmental official other than the official who issued the determination or a subordinate of that official.

(4) In an appeal of the Secretary's determination, the guaranty agency must—

(i) State the reasons the guaranty agency believes the Federal funds or assets need not be returned;

(ii) Identify any evidence on which the guaranty agency bases its position that Federal funds or assets need not be returned;

(iii) Include copies of the documents that contain this evidence;

(iv) Include any arguments that the guaranty agency believes support its position that Federal funds or assets need not be returned; and

(v) Identify the steps taken by the guaranty agency to comply with the requirements referred to in paragraph (c)(2)(v) of this section.

(5)(i) In its appeal, the guaranty agency may request the opportunity to make an oral argument to the deciding official for the purpose of clarifying any issues raised by the appeal. The deciding official provides this opportunity promptly after the expiration of the period referred to in paragraph (d)(2) of this section.

(ii) The agency may not submit new evidence at or after the oral argument unless the deciding official determines otherwise. A transcript of the oral argument is made a part of the record of the appeal and is promptly provided to the agency.

(6) The guaranty agency has the burden of production and the burden of persuading the deciding official that the Secretary's determination should be modified or withdrawn.

(e) *Third-party participation.*

(1) If the Secretary issues a determination under paragraph (a)(1) of this section, the Secretary promptly publishes a notice in the **Federal Register** announcing the portion of the Federal Fund to be returned by the agency and providing interested persons an opportunity to submit written information relating to the determination within 30 days after the date of publication. The Secretary publishes the notice no earlier than five days after the agency receives a copy of the determination.

(2) If the guaranty agency to which the determination relates files a notice of appeal of the determination, the deciding official may consider any information submitted in response to the **Federal Register** notice. All information submitted by a third party is available for inspection and copying at the offices of the Department of Education in Washington, D.C., during normal business hours.

(f) *Adverse information.* If the deciding official considers information in addition to the evidence described in the notice of the Secretary's determination that is adverse to the guaranty agency's position on appeal, the deciding official informs the agency and provides it a reasonable opportunity to respond to the information without regard to the period referred to in paragraph (d)(2) of this section.

(g) *Decision.*

(1) The deciding official issues a written decision on the guaranty agency's appeal within 45 days of the date on which the information described in paragraph (d)(4) and (d)(5)(ii) of this section is received, or the oral argument referred to in paragraph (d)(5) of this section is held, whichever is later. The deciding official mails the decision to the guaranty agency by certified mail, return receipt requested. The decision of the deciding official becomes the final decision of the Secretary 30 days after the deciding official issues it. In the case of a determination that a guaranty agency must return Federal funds, if the deciding official does not issue a decision within the prescribed period, the agency is no longer required to take the actions described in paragraph (c)(2)(v) of this section.

(2) A guaranty agency may not seek judicial review of the Secretary's determination to require the return of Federal funds or assets until the deciding official issues a decision.

(3) The deciding official's written decision includes the basis for the decision. The deciding official bases the decision only on evidence described in the notice of the Secretary's determination and on information properly submitted and considered by the deciding official under this section. The deciding official is bound by all applicable statutes and regulations and may neither waive them nor rule them invalid.

(h) *Collection of Federal funds or assets.*

(1) If the deciding official's final decision requires the guaranty agency to return Federal funds, or requires the guaranty agency to require the return of Federal funds or assets to the agency or to the Secretary, the decision states a new date for compliance with the decision. The new date is no earlier than the date on which the decision becomes the final decision of the Secretary.

(2) If the guaranty agency fails to comply with the decision, the Secretary may recover the Federal funds from any funds due the agency from the Department without any further notice or procedure and may take any other action permitted or authorized by law to compel compliance.

22. Section 682.418 is amended by revising the heading and paragraph (a)(1), and removing the words "reserve fund" and adding, in their place, the words "Operating Fund", respectively, wherever they appear. The revised heading and text follows:

§ 682.418 Prohibited uses of the assets of the Operating Fund during periods in which the Operating Fund contains transferred funds owed to the Federal Fund.

(a) * * *

(1) During periods in which the Operating Fund contains transferred funds owed to the Federal Fund, a guaranty agency may not use the assets of the Operating Fund to pay costs prohibited under paragraph (b) of this section and may not use the assets of the Operating Fund to pay for goods, property, or services provided by an affiliated organization unless the agency applies and demonstrates to the Secretary, and receives the Secretary's approval, that the payment would be in the Federal fiscal interest and would not exceed the affiliated organization's actual and reasonable cost of providing those goods, property, or services.

* * * * *

23. A new § 682.419 is added to subpart D to read as follows:

§ 682.419 Guaranty agency Federal Fund.

(a) *Establishment and control.* A guaranty agency must establish and maintain a Federal Student Loan Reserve Fund (referred to as the "Federal Fund") to be used only as permitted under paragraph (c) of this section. The assets of the Federal Fund and the earnings on those assets are, at all times, the property of the United States. Consequently, the guaranty agency must exercise the level of care required of a fiduciary charged with the duty of protecting, investing, and administering the money of others.

(b) *Deposits.* The agency must deposit into the Federal Fund—

(1) All funds, securities, and other liquid assets of the reserve fund that existed under § 682.410;

(2) The total amount of insurance premiums collected;

(3) Federal payments for default, bankruptcy, death, disability, closed school, false certification, and other claims;

(4) Federal payments for supplemental preclaims assistance activities performed before October 1, 1998;

(5) 70 percent of administrative cost allowances received on or after October 1, 1998 for loans upon which insurance was issued before October 1, 1998;

(6) All funds received by the guaranty agency from any source on FFEL Program loans on which a claim has been paid, minus the portion the agency is authorized to deposit in its Operating Fund;

(7) Investment earnings on the Federal Fund;

(8) Revenue derived from the Federal portion of a nonliquid asset, in accordance with § 682.420; and

(9) Other funds received by the guaranty agency from any source that are specifically designated for deposit in the Federal Fund.

(c) *Uses.* A guaranty agency may use the assets of the Federal Fund only—

(1) To pay insurance claims;

(2) To transfer default aversion fees to the agency's Operating Fund;

(3) To transfer account maintenance fees to the agency's Operating Fund, if directed by the Secretary;

(4) To refund payments made by or on behalf of a borrower on a loan that has been discharged in accordance with § 682.402;

(5) To pay the Secretary's share of borrower payments, in accordance with § 682.404(g);

(6) For transfers to the agency's Operating Fund, pursuant to § 682.421;

(7) To refund insurance premiums related to loans cancelled or refunded, in whole or in part;

(8) To return to the Secretary portions of the Federal Fund required to be returned by the HEA; and

(9) For any other purpose authorized by the Secretary.

(d) *Prohibition against prepayment.* A guaranty agency may not prepay obligations of the Federal Fund unless it demonstrates, to the satisfaction of the Secretary, that the prepayment is in the best interests of the United States.

(e) *Minimum Federal Fund level.* The guaranty agency must maintain a minimum Federal Fund level equal to at least 0.25 percent of its insured original principal amount of loans outstanding.

(f) *Definitions.* For purposes of this section—

(1) *Federal Fund level* means the total of Federal Fund assets identified in paragraph (b) of this section plus the amount of funds transferred from the Federal Fund that are in the Operating Fund, using an accrual basis of accounting.

(2) *Original principal amount of loans outstanding* means—

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another guarantor, excluding loan guarantees transferred to another agency pursuant to a plan of the Secretary in response to the insolvency of the agency;

(ii) Minus the original principal amount of all loans on which—

(A) The loan guarantee was cancelled;

(B) The loan guarantee was transferred to another agency;

(C) Payment in full has been made by the borrower;

(D) Reinsurance coverage has been lost and cannot be regained; and

(E) The agency paid claims.

(Authority: 20 U.S.C. 1072–1)

24. A new § 682.420 is added to subpart D to read as follows:

§ 682.420 Federal nonliquid assets.

(a) *General.* The Federal portion of a nonliquid asset developed or purchased in whole or in part with Federal reserve funds, regardless of who held or controlled the Federal reserve funds or assets, is the property of the United States. The ownership of that asset must be prorated based on the percentage of the asset developed or purchased with Federal reserve funds. In maintaining and using the Federal portion of a nonliquid asset under this section, the guaranty agency must exercise the level of care required of a fiduciary charged with protecting, investing, and administering the property of others.

(b) *Treatment of revenue derived from a nonliquid Federal asset.* If a guaranty agency derives revenue from the Federal portion of a nonliquid asset, including its sale or lease, the agency must promptly deposit the percentage of the net revenue received into the Federal Fund equal to the percentage of the asset owned by the United States.

(c) *Guaranty agency use of the Federal portion of a nonliquid asset.*

(1) If a guaranty agency uses the Federal portion of a nonliquid asset (other than an intangible or intellectual property asset or a tangible asset of nominal value), the agency must promptly deposit into the Federal Fund an amount representing the net fair value of the use of the asset.

(2) Payments to the Federal Fund required by paragraph (c)(1) of this section must be made not less frequently than quarterly.

(Authority: 20 U.S.C. 1072–1)

25. A new § 682.421 is added to subpart D to read as follows:

§ 682.421 Funds Transferred from the Federal Fund to the Operating Fund by a Guaranty Agency

(a) *General.* In accordance with this section, a guaranty agency may request the Secretary's permission to transfer a limited amount of funds from the Federal Fund to the Operating Fund. Upon receiving the Secretary's approval, the agency may transfer the requested funds at any time within 6 months following the date specified by the Secretary. If the Secretary has not approved or disapproved the agency's request within 30 days after receiving it, the agency may transfer the requested funds at any time within the 6 month period beginning on the 31st day after the Secretary received the agency's request. The transferred funds may be used only as permitted by §§ 682.410(a)(2) and 682.418.

(b) *Transferring the principal balance of the Federal Fund.*

(1) *Amount that may be transferred.* Upon receiving the Secretary's approval, an agency may transfer an amount up to the equivalent of 180 days of cash expenses for purposes allowed by §§ 682.410(a)(2) and 682.418 (not including claim payments) for normal operating expenses to be deposited into the agency's Operating Fund. The amount transferred and outstanding at any time during the first 3 years after establishing the Operating Fund may not exceed the lesser of 180 days cash expenses for purposes allowed by §§ 682.410(a)(2) and 682.418 (not including claim payments), or 45 percent of the balance in the Federal

reserve fund that existed under § 682.410 as of September 30, 1998.

(2) *Requirements for requesting a transfer.* A guaranty agency that wishes to transfer principal from the Federal Fund must provide the Secretary with a proposed repayment schedule and evidence that it can repay the transfer according to its proposed schedule. The agency must provide the Secretary with the following—

(i) A request for the transfer that specifies the desired amount, the date the funds will be needed, and the agency's proposed terms of repayment;

(ii) A projected revenue and expense statement, to be updated annually during the repayment period, that demonstrates that the agency will be able to repay the transferred amount within the repayment period requested by the agency; and

(iii) Certifications by the agency that during the period while the transferred funds are outstanding—

(A) Sufficient funds will remain in the Federal Fund to pay lender claims during the period the transferred funds are outstanding;

(B) The agency will be able to meet the reserve recall requirements of section 422 of the HEA;

(C) The agency will be able to meet the statutory minimum reserve level of 0.25 percent, as mandated by section 428(c)(9) of the HEA; and

(D) No legal prohibition exists that would prevent the agency from obtaining or repaying the transferred funds.

(c) *Transferring interest earned on the Federal Fund.*

(1) *Amount that may be transferred.* The Secretary may permit an agency that owes the Federal Fund the maximum amount allowable under paragraph (b) of this section to transfer the interest income earned on the Federal Fund during the three-year period following October 7, 1998. The combined amount of transferred interest and the amount of principal transferred under paragraph (b) of this section may exceed 180 days cash expenses for purposes allowed by §§ 682.410(a)(2) and 682.418 (not including claim payments), but may not exceed 45 percent of the balance in the Federal reserve fund that existed under § 682.410 as of September 30, 1998.

(2) *Requirements for requesting a transfer.* To be allowed to transfer the interest income, in addition to the items in paragraph (b)(2) of this section, the agency must demonstrate to the Secretary that the cash flow in the Operating Fund will be negative if the agency is not authorized to transfer the interest, and by transferring the interest, the agency will substantially improve its financial circumstances.

(Authority: 20 U.S.C. 1072–1)

26. A new § 682.422 is added to subpart D to read as follows:

§ 682.422 Guaranty agency repayment of funds transferred from the Federal Fund.

(a) *General.* A guaranty agency must begin repayment of money transferred from the Federal Fund not later than the start of the 4th year after the agency establishes its Operating Fund. All amounts transferred must be repaid not later than five years after the date the Operating Fund is established.

(b) *Extension for repaying the interest transferred.*

(1) *General.* The Secretary may extend the period for repayment of interest transferred from the Federal Fund from two years to five years if the Secretary determines that the cash flow of the Operating Fund will be negative if the transferred interest had to be repaid earlier or the repayment of the interest would substantially diminish the financial circumstances of the agency.

(2) *Agency eligibility for an extension.* To receive an extension, the agency must demonstrate that it will be able to repay all transferred funds by the end of the 8th year following the date of establishment of the Operating Fund and that the agency will be financially sound upon the completion of repayment.

(3) *Repayment of interest earned on transferred funds.* If the Secretary extends the period for repayment of interest transferred from the Federal Fund for a guaranty agency, the agency must repay the amount of interest during the 6th, 7th, and 8th years following the establishment of the Operating Fund. In addition to repaying the amount of interest, the guaranty agency must also pay to the Secretary any income earned after the 5th year from the investment of the transferred amount. In determining the amount of income earned on the transferred amount, the Secretary will use the average investment income earned on the agency's Operating Fund.

(c) *Consequences if a guaranty agency fails to repay transfers from the Federal Fund.* If a guaranty agency fails to make a scheduled repayment to the Federal Fund, the agency may not receive any other Federal funds until it becomes current in making all scheduled payments, unless the Secretary waives this restriction.

(Authority: 20 U.S.C. 1072–1)

27. A new § 682.423 is added to subpart D to read as follows:

§ 682.423 Guaranty Agency Operating Fund.

(a) *Establishment and control.* A guaranty agency must establish and maintain an Operating Fund in an account separate from the Federal Fund. Except for funds that have been transferred from the Federal Fund, the Operating Fund is considered the property of the guaranty agency. During periods in which the Operating Fund contains funds transferred from the Federal Fund, the Operating Fund may be used only as permitted by §§ 682.410(a)(2) and 682.418.

(b) *Deposits.* The guaranty agency must deposit into the Operating Fund—

(1) Amounts authorized by the Secretary to be transferred from the Federal Fund;

(2) Account maintenance fees;

(3) Loan processing and issuance fees;

(4) Default aversion fees;

(5) 30 percent of administrative cost allowances received on or after October 1, 1998 for loans upon which insurance was issued before October 1, 1998;

(6) The portion of the amounts collected on defaulted loans that remains after the Secretary's share of collections has been paid and the complement of the reinsurance percentage has been deposited into the Federal Fund;

(7) The agency's share of the payoff amounts received from the consolidation or rehabilitation of defaulted loans; and

(8) Other receipts as authorized by the Secretary.

(c) *Uses.* A guaranty agency may use the Operating Fund for—

(1) Guaranty agency related activities, including—

(i) Application processing;

(ii) Loan disbursement;

(iii) Enrollment and repayment status management;

(iv) Default aversion activities;

(v) Default collection activities;

(vi) School and lender training;

(vii) Financial aid awareness and related outreach activities; and

(viii) Compliance monitoring; and

(2) Other student financial aid-related activities for the benefit of students, as selected by the guaranty agency.

(Authority: 20 U.S.C. 1072–2)

Subpart H—[Amended]

28. Subpart H is amended as follows by:

A. Removing §§ 682.800 through 682.839.

B. Redesignating § 682.840 as § 682.800.

C. Removing the term "handicapped status" in the redesignated § 682.800(a) and adding "disability status" in its place.

* * * * *

29. Appendix D to part 682 is revised to read as follows:

Appendix D to Part 682—Policy for Waiving the Secretary's Right to Recover or Refuse to Pay Interest Benefits, Special Allowance, and Reinsurance on Stafford, Plus, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Bulletin 88–G–138].

Note: The following is a reprint of Bulletin 88–G–138, issued on March 11, 1988, with modifications made to reflect changes in the program regulations. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until three years after the default claim filing deadline. For the purpose of determining the three-year deadline, reinsurance is lost on the later of (a) three years from the last date the claim could have been filed for claim payment with the guaranty agency (271st or 331st day of delinquency, as applicable) for a claim that was not filed; or (b) three years from the date the guaranty agency rejected the claim, for a claim that was filed. These deadlines are extended by periods during which the court imposes a stay of collection activities due to the borrower's filing a bankruptcy petition.

Introduction

This letter sets forth the circumstances under which the Secretary, pursuant to sections 432(a)(5) and (6) of the Higher Education Act of 1965 and 34 CFR 682.406(b) and 682.413(f), will waive certain of the Secretary's rights and claims with respect to Stafford Loans, PLUS, Supplemental Loans for Students (SLS), and Consolidation Program loans made under a guaranty agency program that involve violations of Federal regulations pertaining to due diligence in collection or timely filing. (These programs are collectively referred to in this letter as the FFEL Program.) This policy applies to due diligence violations on loans for which the first day of delinquency occurred on or after March 10, 1987 (the effective date of the November 10, 1986 due diligence regulations) and to timely filing violations occurring on or after December 26, 1986, whether or not the affected loans have been submitted as claims to the guaranty agency.

The Secretary has been implementing a variety of regulatory and administrative actions to minimize defaults in the FFEL Program. As a part of this effort, the Secretary published final regulations on November 10, 1986, requiring lenders and guaranty agencies to undertake specific due diligence activities to collect delinquent and defaulted loans, and establishing deadlines for the filing of claims by lenders with guaranty agencies. In recognition of the time required for agencies and lenders to modify their internal procedures, the Secretary delayed for four months the date by which lenders were required to comply with the new due diligence requirements. Thus, § 682.411 of the regulations, which established minimum due diligence procedures that a lender must follow in order for a guaranty agency to receive reinsurance on a loan, became effective for loans for which the first day of delinquency occurred on or after March 10, 1987. The regulations make clear that compliance with these minimum requirements, and with the new timely filing deadlines, is a condition for an agency's receiving or retaining reinsurance payments made by the Secretary on a loan. *See* 34 CFR 682.406(a)(3), (a)(5), (a)(6) and 682.413(b). The regulations also specify that a lender must comply with § 682.411 and with the applicable filing deadline as a condition for its right to receive or retain interest benefits and special allowance on a loan for certain periods. *See* 34 CFR 682.300(b)(2)(vi), 682.300(b)(2)(vii), 682.413(a)(1).

The Department has received inquiries regarding the procedures by which a lender may cure a violation of § 682.411 regarding diligent loan collection, or of the 90-day deadline for the filing of default claims found in § 682.406(a)(3) and (a)(5), in order to reinstate the agency's right to reinsurance and the lender's right to interest benefits and special allowance. Preliminarily, please note that, absent an exercise of the Secretary's waiver authority, a guaranty agency may not receive or retain reinsurance payments on a loan on which the lender has violated the Federal due diligence or timely filing requirements, even if the lender has followed a cure procedure established by the agency. Under §§ 682.406(b) and 682.413(f), the Secretary—not the guaranty agency—decides whether to reinstate reinsurance coverage on a loan involving such a violation or any other violation of Federal regulations. A lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. *See* §§ 682.406(a)(7) and 682.413(b). As §§ 682.406(a)(7) and 682.413(b) make clear, a guaranty agency's cure procedures are relevant to reinsurance coverage only insofar as they allow for cure of violations of requirements established by the agency affecting the loan insurance it provides to lenders. In addition, all those requirements must be submitted to the Secretary for review and approval under 34 CFR 682.401(d).

References throughout this letter to "due diligence and timely filing" rules, requirements, and violations should be understood to mean only the Federal rules cited above, unless the context clearly requires otherwise.

A. Scope

This letter outlines the Secretary's waiver policy regarding certain violations of Federal due diligence or timely filing requirements on a loan insured by a guaranty agency. Unless your agency receives notification to the contrary, or the lender's violation involves fraud or other intentional misconduct, you may treat as reinsured any otherwise reinsured loan involving such a violation that has been cured in accordance with this letter.

B. Duty of a Guaranty Agency to Enforce Its Standards

As noted above, a lender's violation of a guaranty agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. Thus, as a general rule, an agency that fails to enforce such a requirement and pays a default claim involving a violation is not eligible to receive reinsurance on the underlying loan. However, in light of the waiver policy outlined below, which provides more stringent cure procedures for violations occurring on or after May 1, 1988 than for pre-May 1, 1988 violations, some guaranty agencies with more stringent policies than the policy outlined below for the pre-May 1 violations have indicated that they wish to relax their own policies for violations of agency rules during that period. While the Secretary does not encourage any agency to do so, the Secretary will permit an agency to take either of the following approaches to its enforcement of its own due diligence and timely filing rules for violations occurring before May 1, 1988.

(1) The agency may continue to enforce its rules, even if they result in the denial of guarantee coverage by the agency on otherwise reinsurable loans; or

(2) The agency may decline to enforce its rules as to any loan that would be reinsured under the retrospective waiver policy outlined below. In other words, for violations of a guaranty agency's due diligence and timely filing rules occurring before May 1, 1988, a guaranty agency is authorized, but not required, to retroactively revise its own due diligence and timely filing standards to treat as guaranteed any loan amount that is reinsured under the retrospective enforcement policy outlined in section I.C.1. However, for any violation of an agency's due diligence or timely filing rules occurring on or after May 1, 1988, the agency must resume enforcing those rules in accordance with their terms, in order to receive reinsurance payments on the underlying loan. For these post-April 30 violations, and for any other violation of an agency's rule affecting its guarantee coverage, the Secretary will treat as reinsured all loans on which the agency has engaged in, and documented, a case-by-case exercise of reasonable discretion allowing for guarantee coverage to be continued or reinstated notwithstanding the violation. But any agency that otherwise fails, or refuses, to enforce such a rule does so without the benefit of reinsurance coverage on the affected loans, and the lenders continue to be ineligible for interest benefits and special allowance thereon.

C. Due Diligence

Under 34 CFR 682.200, default on a FFEL Program loan occurs when a borrower fails to make a payment when due, provided this failure persists for 270 days for loans payable in monthly installments, or for 330 days for loans payable in less frequent installments. The 270/330-day default period applies regardless of whether payments were missed consecutively or intermittently. For example,

if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months late (June 1st), and makes no further payments, the delinquency period begins on February 2nd, with the first delinquency, and default occurs on December 27th, when the April payment becomes 270 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

Note: Lenders are strongly encouraged to exercise forbearance, prior to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. *See* 34 CFR 682.211. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

D. Timely Filing

The 90-day filing period applicable to FFEL Program default claims is described in 34 CFR 682.406(a)(5). The 90-day filing period begins at the end of the 270/330-day default period. The lender ordinarily must file a default claim on a loan in default by the end of the filing period. However, the lender may, but need not, file a claim on that loan before the 360th day of delinquency (270-day default period plus 90-day filing period) if the borrower brings the account less than 270 days delinquent before the 360th day. Thus, in the above example, if the borrower makes the April 1st payment on December 28th, that payment makes the loan 241 days delinquent, and the lender may, but need not, file a default claim on the loan at that time. If, however, the loan again becomes 270 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 270 days delinquent prior to the end of that 90-day period). In other words, the Secretary will permit a lender to treat payments made during the filing period as curing the default if those payments are sufficient to make the loan less than 270 days delinquent.

Section I of this letter outlines the Secretary's waiver policy for due diligence and timely filing violations. As noted above, to the extent that it results in the imposition of a lesser sanction than that available to the Secretary by statute or regulation, this policy reflects the exercise of the Secretary's authority to waive the Secretary's rights and claims in this area. Section II discusses the issue of the due date of the first payment on a loan and the application of the waiver policy to that issue. Section III provides guidance on several issues related to due diligence and timely filing as to which clarification has been requested by some program participants.

I. Waiver Policy

A. Definitions

The following definitions apply to terms used throughout this letter:

Full payment means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $50 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $25 per month for a specified time, and the borrower defaulted in making the reduced payments, a full payment would be $50, or two $25 payments in accordance with the original repayment schedule or agreement.) In the case of a payment made by cash, money order, or other means that do not identify the payor that is received by a lender after the date of this letter, that payment may constitute a full payment only if a senior officer of the lender or servicing agent certifies that the payment was not made by or on behalf of the lender or servicing agent.

Earliest unexcused violation means:

(a) In cases when reinsurance is lost due to a failure to timely establish a first payment due date, the earliest unexcused violation would be the 46th day after the date the first payment due date should have been established.

(b) In cases when reinsurance is lost due to a gap of 46 days, the earliest unexcused violation date would be the 46th day following the last collection activity.

(c) In cases when reinsurance is lost due to three or more due diligence violations of 6 days or more, the earliest unexcused violation would be the day after the date of default.

(d) In cases when reinsurance is lost due to a timely filing violation, the earliest unexcused violation would be the day after the filing deadline.

Reinstatement with respect to reinsurance coverage means the reinstatement of the guaranty agency's right to receive reinsurance payments on the loan after the date of reinstatement. Upon reinstatement of reinsurance, the borrower regains the right to receive forbearance or deferments, as appropriate. Reinstatement with respect to reinsurance on a loan also includes reinstatement of the lender's right to receive interest and special allowance payments on that loan.

Gap in collection activity on a loan means:

(a) The period between the initial delinquency and the first collection activity;

(b) The period between collection activities (a request for preclaims assistance is considered a collection activity);

(c) The period between the last collection activity and default; or

(d) The period between the date a lender discovers a borrower has "skipped" and the lender's first skip-tracing activity.

Note: The concept of "gap" is used herein simply as one measure of collection activity. This definition applies to loans subject to the FFEL and PLUS programs regulations published on or after November 10, 1986. For those loans, not all gaps are violations of the due diligence rules.

Violation with respect to the due diligence requirements in § 682.411 means the failure to timely complete a required diligent phone contact effort, the failure to timely send a required letter (including a request for preclaims assistance), or the failure to timely engage in a required skip-tracing activity. If during the delinquency period a gap of more than 45 days occurs (more than 60 days for loans with a transfer), the lender must satisfy the requirement outlined in I.D.1. for reinsurance to be reinstated. The day after the 45-day gap (or 60 for loans with a transfer) will be considered the date that the violation occurred.

Transfer means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

B. General

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations

For any loan on which a cure is required under this letter in order for the agency to receive any reinsurance payment, the lender may resume billing for interest and special allowance on the loan only for periods following its completion of the required cure procedure.

2. Reservation of the Secretary's Right to Strict Enforcement

While this letter describes the Secretary's general waiver policy, the Secretary retains the option of refusing to permit or recognize cures, or of insisting on strict enforcement of the remedies established by statute or regulation, in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of due diligence or timely filing rules and in cases where the best interests of the United States otherwise require strict enforcement. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulation.

3. Interest, Special Allowance, and Reinsurance Repayment Required as a Condition for Exercise of the Secretary's Waiver Authority

The Secretary's waiver of the right to recover or refuse to pay reinsurance, interest benefits, or special allowance payments, and recognition of cures for due diligence and timely filing violations, are conditioned on the following:

(1) The guaranty agency and lender must ensure that the lender repays all interest benefits and special allowance received on loans involving violations occurring prior to May 1, 1988, for which the lender is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., or under the waiver policy for timely filing violations described in section I.E.1., by an adjustment to one of the next three quarterly billings for interest benefits and special allowance submitted by the lender in a timely manner after May 1, 1988. The guaranty agency's responsibility in this regard is satisfied by receipt of a certification from the lender that this repayment has been made in full.

(2) The guaranty agency, on or before October 1, 1988, must repay all reinsurance received on loans involving violations occurring prior to May 1, 1988, for which the agency is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., or under the waiver policy for timely filing violations described in section I.E.1. Pending completion of the repayment described above, a lender or guaranty agency may submit billings to the Secretary on loans that are eligible for reinsurance under the waiver policy in this letter until it learns that repayment in full will not be made, or until the deadline for a repayment has passed without it being made, whichever is earlier. Of course, a lender or guaranty agency is prohibited from billing the Secretary for program payments on any loan amount that is not eligible for reinsurance under the waiver policy outlined in this letter. In addition to the repayments required above, any amounts received in the future in violation of this prohibition must immediately be repaid to the Secretary.

4. Applicability of the Waiver Policy to Particular Classes of Loans

The policy outlined in this letter applies only to a loan for which the first day of the 180/240-day or 270/330-day default period (as applicable) that ended with default by the borrower occurred on or after March 10, 1987, or, in the case of a timely filing violation, December 26, 1986, and that involves violations only of the due diligence or timely filing requirements or both. For a loan that has lost reinsurance prior to December 1, 1992, this policy applies only through November 30, 1995. For a loan that loses reinsurance on or after December 1, 1992, this policy applies until three years after the default claim filing deadline.

5. Excuse of Certain Due Diligence Violations

Except as noted in section II, if a loan has due diligence violations but was later cured and brought current, those violations will not be considered in determining whether a loan was serviced in accordance with 34 CFR 682.411. Guarantors must review the due diligence for the 180 or 270-day period prior to the default date ensuring the due date of the first payment not later made is the correct payment due date for the borrower.

6. Excuse of Timely Filing Violations Due to Performance of a Guaranty Agency's Cure Procedures

If, prior to May 1, 1988, and prior to the filing deadline, a lender commenced the performance of collection activities specifically required by the guaranty agency to cure a due diligence violation on a loan, the Secretary will excuse the lender's timely filing violation if the lender completes the additional activities within the time period permitted by the guaranty agency and files a default claim on the loan not more than 45 days after completing the additional activities.

7. Treatment of Accrued Interest on "Cured" Claims

For any loan involving any violation of the due diligence or timely filing rules for which a "cure" is required under section I.C. or I.E., for the agency to receive a reinsurance payment, the Secretary will not reimburse the guaranty agency for any unpaid interest accruing after the date of the earliest unexcused violation occurring after the last payment received before the cure is accomplished, and prior to the date of reinstatement of reinsurance coverage. The lender may capitalize unpaid interest accruing on the loan from the date of the earliest unexcused violation to the date of the reinstatement of reinsurance coverage. However, if the agency later files a claim for reinsurance on that loan, the agency must deduct this capitalized interest from the amount of the claim. Some cures will not reinstate coverage. For treatment of accrued interest in those cases, see section I.E.1.c.

C. Waiver Policy for Violations of the Federal Due Diligence in Collection Requirements (34 CFR 682.411)

A violation of the due diligence in collection rules occurs when a lender fails to meet the requirements found in 34 CFR 682.411. However, if a lender makes all required calls and sends all required letters during any of the delinquency periods described in that section, the lender is considered to be in compliance with that section for that period, even if the letters were sent before the calls were made. The special provisions for transfers apply whenever the violation(s) and, if applicable, the gap, were due to a transfer, as defined in section I.A.

1. Retrospective Period

For one or more due diligence violations occurring during the period March 10, 1987–April 30, 1988—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if no gap of 46 days or more (61 days or more for a transfer) exists.

b. If a gap of 46–60 days (61–75 days for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period are limited to amounts accruing through the date of default.

c. If a gap of 61 days or more (76 days or more for a transfer) exists, the borrower must be located after the gap, either by the agency or the lender, in order for reinsurance on the loan to be reinstated. (*See* section I.E.1.d., for a description of acceptable evidence of location.) In addition, if the loan is held by the lender or after March 15, 1988, the lender must follow the steps described in section I.E.1., or receive a full payment or a new signed repayment agreement, in order for the loan to again be eligible for reinsurance. The lender must repay all interest benefits and special allowance received for the period beginning with its earliest unexcused violation, occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

2. Prospective Period

For due diligence violations occurring on or after May 1, 1988 based on due dates prior to October 6, 1998—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer.)

b. If there exist not more than two violations of 6 days or more each (21 days or more for a transfer), and no gap of 46 days or more (61 days or more for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default.

However, the lender must complete all required activities before the claim filing deadline, except that a preclaims assistance request must be made before the 240th day of delinquency. If the lender fails to make this request by the 240th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 180 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

c. If there exist three violations of 6 days or more each (21 days or more for a transfer) and no gap of 46 days or more (61 days or more for a transfer), the lender must satisfy the requirements outlined in I.E.1., or receive a full payment or a new signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

d. If there exist more than three violations of 6 days or more each (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation, the lender must satisfy the requirement outlined in section I.D.1., for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

3. Post 1998 Amendments

For due diligence violations based on due dates on or after October 6, 1998—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guaranty agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer.)

b. If there exist not more than two violations of 6 days or more each (21 days or more for a transfer), and no gap of 46 days or more (61 days or more for a transfer)

exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default.

However, the lender must complete all required activities before the claim filing deadline, except that a default aversion assistance request must be made before the 330th day of delinquency. If the lender fails to make this request by the 330th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 270 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

c. If there exist three violations of 6 days or more each (21 days or more for a transfer) and no gap of 46 days or more (61 days or more for a transfer), the lender must satisfy the requirements outlined in I.E.1. or receive a full payment or a new signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

d. If there exist more than three violations of 6 days or more each (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation, the lender must satisfy the requirement outlined in section I.D.1. for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

D. Reinstatement of Reinsurance Coverage for Certain Egregious Due Diligence Violations

1. Cures

In the case of a loan involving violations described in section I.C.2.d. or I.C.3.d., the lender may utilize either of the two procedures described in section I.D.1.a. or I.D.1.b. for obtaining reinstatement of reinsurance coverage on the loan.

a. After the violations occur, the lender obtains a new repayment agreement signed by the borrower. The repayment agreement must comply with the ten-year repayment limitations set out in 34 CFR 682.209(a)(7); or

b. After the violations occur, the lender obtains one full payment. If the borrower later defaults, the guaranty agency must obtain evidence of this payment (e.g., a copy of the check) from the lender.

2. Borrower Deemed Current as of Date of Cure

On the date the lender receives a new signed repayment agreement or the curing payment under section I.D.1., reinsurance coverage on the loan is reinstated, and the borrower must be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default. The lender must then follow the collection and timely filing requirements applicable to the loan.

E. Cures for Timely Filing Violations and Certain Due Diligence Violations

1. Default Claims

a. Reinstatement of Insurance Coverage. Except as noted in section I.B.6., in order to obtain reinstatement of reinsurance coverage on a loan in the case of a timely filing violation, a due diligence violation described in section I.C.2.c. or I.C.3.c., or a due diligence violation described in section I.C.1.c. where the lender holds the loan on or after March 15, 1988, the lender must first locate the borrower after the gap, or after the date of the last violation, as applicable. (*See* section I.E.1.d. for description of acceptable evidence of location.) Within 15 days thereafter, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, that complies with the ten-year repayment limitations in 34 CFR 682.209(a)(7), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 15 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender must, within 5 days thereafter, diligently attempt to contact the borrower by telephone. Within 5–10 days after completing these efforts, the lender must again diligently attempt to contact the borrower by telephone. Finally, within 5–10 days after completing these efforts, the lender must send a forceful collection letter indicating that the entire unpaid balance of the loan is due and payable, and that, unless the borrower immediately contacts the lender to arrange repayment, the lender will be filing a default claim with the guaranty agency.

b. Borrower Deemed Current Under Certain Circumstances. If, at any time on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., or the 270th day of delinquency, whichever is later, the lender receives a full payment or a new signed repayment agreement, reinsurance coverage on the loan is reinstated on the date the lender receives the full payment or new agreement. The borrower must be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default. In the case of a timely filing violation on a loan for which the borrower is deemed current under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation to the date of reinstatement of reinsurance coverage on the loan.

c. Borrower Deemed in Default Under Certain Circumstances. If the borrower does not make a full payment, or sign and return the new repayment agreement, on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., or the 270th day of delinquency, whichever is later, the lender must deem the borrower to be in default. The lender must then file a default claim on the loan, accompanied by acceptable evidence of location (*see* section I.E.1.d.), within 30 days after the end of the 30-day period. Reinsurance coverage, and therefore the lender's right to receive interest benefits and special allowance, is not reinstated on a loan involving these circumstances. However, the Secretary will honor reinsurance claims submitted in accordance with this paragraph on the outstanding principal balance of those loans, on unpaid interest as provided in section I.B.7., and for reimbursement of eligible supplemental preclaims assistance costs.

In the case of a timely filing violation on a loan for which the borrower is deemed in default under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation.

d. Acceptable Evidence of Location. Only the following documentation is acceptable as evidence that the lender has located the borrower:

(1) A postal receipt signed by the borrower not more than 15 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; or

(2) Documentation submitted by the lender showing—

(i) The name, identification number, and address of the lender;

(ii) The name and Social Security number of the borrower; and

(iii) A signed certification by an employee or agent of the lender, that—

(A) On a specified date, he or she spoke with or received written communication (attached to the certification) from the borrower on the loan underlying the default claim, or a parent, spouse, sibling, roommate, or neighbor of the borrower;

(B) The address and, if available, telephone number of the borrower were provided to the lender in the telephone or written communication; and

(C) In the case of a borrower whose address or telephone number was provided to the lender by someone other than the borrower, the new repayment agreement and the letter sent by the lender pursuant to section I.E.1.a., had not been returned undelivered as of 20 days after the date those items were sent, for due diligence violations described in section I.C.1.c. where the lender holds the loan on the date of this letter. and as of the date the lender filed a default claim on the cured loan, for all other violations.

2. Death, Disability, and Bankruptcy Claims. The Secretary will honor a death or disability claim on an otherwise eligible loan notwithstanding the lender's failure to meet the 60-day timely filing requirement (*See* 34 CFR 682.402(g)(2)(i)). However, the Secretary will not reimburse the guaranty agency if,

before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the Federal due diligence or timely filing requirements applicable to that loan, except in accordance with the waiver policy described above. Interest that accrued on the loan after the expiration of the 60-day filing period remains ineligible for reimbursement by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to bankruptcy claims (§ 682.402(e)(2)(ii)) causes irreparable harm to the guaranty agency's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to excuse violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy or, if previously discharged, has been the subject of a reversal of the discharge. In that case, the lender must return the borrower to the appropriate status that existed prior to the filing of the bankruptcy claim unless the status has changed due solely to passage of time. In the latter case, the lender must place the borrower in the status that would exist had no bankruptcy claim been filed. If the borrower is delinquent after the loan is determined nondischargeable, the lender should grant administrative forbearance to bring the borrower's account current as provided in 34 CFR 682.211(f)(5). The Secretary will not reimburse the guaranty agency for interest for the period beginning on the filing deadline for the bankruptcy claim and ending when the claim is filed or becomes eligible again for reinsurance.

II. Due Date of First Payment

Section 682.411(b)(1) refers to the "due date of the first missed payment not later made" as one way to determine the first day of delinquency on a loan. Section 682.209(a)(3) states that, generally, the repayment period on an FFEL Program loan begins some number of months after the month in which the borrower ceases at least half-time study. Where the borrower enters the repayment period with the lender's knowledge, the first payment due date may be set by the lender, provided it falls within a reasonable time after the first day of the month in which the repayment period begins. In this situation, the Secretary generally permits a lender to allow the borrower up to 45 days from the first day of repayment to make the first payment (unless the lender establishes the first day of repayment under § 682.209(a)(3)(ii)(E)).

In cases where the lender learns that the borrower has entered the repayment period after the fact, current § 682.411 treats the 30th day after the lender receives this information as the first day of delinquency. In the course of discussion with lenders, the Secretary has learned that many lenders have not been using the 30th day after receipt of notice that the repayment period has begun ("the notice") as the first payment due date. In recognition of this apparently widespread practice, the Secretary has decided that, both retrospectively and prospectively, a lender should be allowed to establish a first payment due date within 60 days after receipt of the notice, to capitalize interest accruing up to the first payment due date, and to exercise forbearance with respect to the period during which the borrower was in the repayment period but made no payment. In effect, this means that, if the lender sends the borrower a coupon book, billing notice, or other correspondence establishing a new first payment due date, on or before the 60th day after receipt of the notice, the lender is deemed to have exercised forbearance up to the new first payment due date. The new first payment due date must fall no later than 75 days after receipt of the notice (unless the lender establishes the first day of repayment under § 682.209(a)(3)(ii)(E)). In keeping with the 5-day tolerance permitted under section I.C.2.a., for the "prospective period," or section I.C.3.a., for the "post 1998 amendment period," a lender that sends the above-described material on or before the 65th day after receipt of the notice will be held harmless. However, a lender that does so on the 66th day will have failed by more than 5 days to send both of the collection letters required by § 682.411(c) to be sent within the first 30 days of delinquency and will thus have committed two violations of more than five days of that rule.

If the lender fails to send the material establishing a new first payment due date on or before the 65th day after receipt of the notice, it may thereafter send material establishing a new first payment due date falling not more than 45 days after the materials are sent and will be deemed to have exercised forbearance up to the new first payment due date. However, all violations and gaps occurring prior to the date on which the material is sent are subject to the waiver policies described in section I for violations falling in either the retrospective or prospective periods. This is an exception to the general policy set forth in section I.B.5., that only violations occurring during the most recent 180 or 270 days (as applicable) of the delinquency period on a loan are relevant to the Secretary's examination of due diligence.

Please Note: References to the "65th day after receipt of the notice" and "66th day" in the preceding paragraphs should be amended to read "95th day" and "96th day" respectively for lenders subject to § 682.209(a)(3)(ii)(E).

III. Questions and Answers

The waiver policy outlined in this letter was developed after extensive discussion and consultation with participating lenders and guaranty agencies. In the course of these discussions, lenders and agencies raised a number of questions regarding the due diligence rules as applied to various circumstances. The Secretary's responses to these questions follow.

Note: The answer to questions 1 and 4 are applicable only to loans subject to § 682.411 of the FFEL and PLUS program regulations published on or after November 10, 1986.

1. Q: Section 682.411 of the program regulations requires the lender to make "diligent efforts to contact the borrower by telephone" during each 30-day period of delinquency beginning after the 30th day of delinquency. What must a lender do to comply with this requirement?

A: Generally speaking, one actual telephone contact with the borrower, or two attempts to make such contact on different days and at different times, will satisfy the "diligent efforts" requirement for any of the 30-day delinquency periods described in the rule. However, the "diligent efforts" requirement is intended to be a flexible one, requiring the lender to act on information it receives in the course of attempting telephone contact regarding the borrower's actual telephone number, the best time to call to reach the borrower, etc. For instance, if the lender is told during its second telephone contact attempt that the borrower can be reached at another number or at a different time of day, the lender must then attempt to reach the borrower by telephone at that number or that time of day.

2. Q: What must a lender do when it receives conflicting information regarding the date a borrower ceased at least half-time study?

A: A lender must promptly attempt to reconcile conflicting information regarding a borrower's in-school status by making inquiries of appropriate parties, including the borrower's school. Pending reconciliation, the lender may rely on the most recent credible information it has.

3. Q: If a loan is transferred from one lender to another, is the transferee held responsible for information regarding the borrower's status that is received by the transferor but is not passed on to the transferee?

A: No. A lender is responsible only for information received by its agents and employees. However, if the transferee has reason to believe that the transferor has received additional information regarding the loan, the transferee must make a reasonable inquiry of the transferor as to the nature and substance of that information.

4. Q: What are a lender's due diligence responsibilities where a check received on a loan is dishonored by the bank on which it was drawn?

A: Upon receiving notice that a check has been dishonored, the lender must treat the payment as having never been made for purposes of determining the number of days that the borrower is delinquent at that time. The lender must then begin (or resume) attempting collection on the loan in accordance with § 682.411, commencing with the first 30-day delinquency period described in § 682.411 that begins after the 30-day delinquency period in which the notice of dishonor is received. The same result occurs when the lender successfully obtains a delinquent borrower's correct address through skip-tracing, or when a delinquent borrower leaves deferment or forbearance status.

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Tuesday
August 3, 1999

Part III

Department of Education

34 CFR Parts 668, 673, 674, 675, 676, and 690

Student Assistance General Provisions; General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, Federal Supplemental Educational Opportunity Grant Program, and Federal Pell Grant Program; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Parts 668, 673, 674, 675, 676, and 690

RIN 1845–AA01

Student Assistance General Provisions; General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program; and Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed regulations would amend the regulations governing the Student Assistance General Provisions, the Campus-Based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs), and the Federal Pell Grant Program. These proposed amendments are a result of recently enacted changes to the Higher Education Act of 1965, as amended (HEA), made by the Higher Education Amendments of 1998 (1998 Amendments).

DATES: We must receive your comments on or before September 15, 1999.

ADDRESSES: Address all comments about these proposed regulations to: Ms. Kathy Gause, U.S. Department of Education, P.O. Box 23272, Washington, D.C. 20026–3272. If you prefer to send your comments through the Internet use the following address: CBPellNPRM@ed.gov

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT:

1. For the Federal Perkins Loan, FWS, and FSEOG programs: Ms. Kathy Gause, U.S. Department of Education, 400 Maryland Avenue, S.W., Regional Office Building 3, Room 3045, Washington, DC 20202–5447. Telephone: (202) 708–8242.

2. For the Student Assistance General Provisions and the Federal Pell Grant Program: Ms. Monica Woods, U.S. Department of Education, 400 Maryland Avenue, S.W., Regional Office Building 3, Room 3045, Washington, DC 20202–5447. Telephone: (202) 708–8242.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraphs.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3053, ROB–3, 7th & D Streets, SW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Negotiated Rulemaking Process

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, DC, Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals' website (http://ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492. Once the four committees were established they met to develop proposed regulations over the course of several months, beginning in January.

The proposed regulations contained in this notice of proposed rulemaking (NPRM) reflect the final consensus of Committee III, which was made up of the following members:

Accrediting Commission of Career Schools and Colleges of Technology
American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of Cosmetology Schools
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Career College Association
Coalition of Higher Education Assistance Organizations
Education Finance Council
Legal Services Counsel (a coalition)
National Association of College and University Business Officers
National Association of Equal Opportunity in Higher Education
National Association of Graduate/Professional Students
National Association of Independent Colleges and Universities
National Association of State Student Grant and Aid Programs/National Council of Higher Education Loan Programs (a coalition)
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Direct Student Loan Coalition
The College Board
The College Fund/United Negro College Fund
United States Department of Education
United States Student Association
US Public Interest Research Group

As stated in the Committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

Affected Programs

The student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended (HEA), affected by these proposed regulations are the Federal Perkins Loan, FWS, FSEOG, and the Federal Pell Grant programs. These proposed regulations also affect the Student Assistance General Provisions regulations.

The term "campus-based programs" refers to the Federal Perkins Loan, FWS, and FSEOG programs. A description of the major proposed changes to these program regulations follows. The proposed changes that pertain to more than one program are described first, followed by descriptions of provisions that pertain to only a specific program. We will begin with a discussion of the proposed changes to the Student Assistance General Provisions regulations followed by the "campus-based programs" discussion, and end with proposed changes to the Federal Pell Grant Program.

Summary of Proposed Regulatory Changes

Student Assistance General Provisions

Section 668.8 Eligible Program and Section 668.32 Student Eligibility—General

Section 401(c) of the HEA was amended by the 1998 Amendments to allow students enrolled in a postbaccalaureate teacher certificate or licensing program to receive a Federal Pell Grant. For purposes of the Federal Pell Grant Program, the current Student Assistance General Provisions regulations require an educational program to be an undergraduate program in order to qualify as an eligible program. The current regulations also require that a student not have a baccalaureate degree or first professional degree in order to receive a Federal Pell Grant. These proposed regulations would amend the eligible program provision in § 668.8 and the student eligibility provision in § 668.32 of the Student Assistance General Provisions to conform with the amended HEA.

Section 668.161 Scope and Purpose.

Amended section 445(c) of the HEA allows an institution, upon the written request of a student, to make payments of FWS funds directly to the student's account at a financial institution or account at the institution for tuition and fees, contracted room and board, and other institutionally provided educational related goods and services. Currently §§ 668.164 and 668.165 of the *Subpart K—Cash Management* regulations establish the rules and procedures under which a participating institution disburses Title IV, HEA program funds. However, Subpart K does not specifically address the crediting of FWS earnings to a student's account at the institution. Section 675.16 of the FWS regulations would be amended to establish the disbursement procedures for paying a student his or her wages. Therefore, these proposed regulations would amend § 668.161 to indicate that an institution must follow § 675.16 for paying a student under the FWS Program instead of §§ 668.164 and 668.165.

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

Section 673.5 Overaward

These proposed regulations would modify the overaward provisions in § 673.5 of the regulations for the campus-based programs. Section 428(a)(2)(C) of the HEA was amended to change the definition of estimated financial assistance to exclude veterans education benefits under Title 38, Chapter 30 (Montgomery GI Bill) and national service education awards or post-service benefits under Title I of the National and Community Service Act of 1990 (AmeriCorps) in determining a student's eligibility for subsidized loans. This applies to a subsidized Federal Stafford Loan (subsidized Stafford Loan) under the Federal Family Education Loan (FFEL) Program and a Federal Direct Stafford/Ford Loan (Direct Subsidized Loan) under the William D. Ford Federal Direct Loan (Direct Loan) Program.

Under current campus-based regulations, if a student has both a subsidized loan and campus-based aid the most stringent requirement regarding resources becomes operative since the student's eligibility for campus-based funds is reduced by the amount of subsidized loans and any Montgomery GI Bill benefits and AmeriCorps funds, or both, paid for the cost of attendance. Thus, students receiving subsidized loans because of the new exclusion of these benefits may have their eligibility for campus-based aid reduced. The Committee concluded that, under the new statute, a student should not lose campus-based eligibility because of the interaction of the various Title IV programs. Therefore, in order to allow students to have the full advantage of this statutory exclusion of benefits without losing campus-based eligibility, these proposed regulations would change the definition of "resources" for the campus-based programs in cases where a student receives both a subsidized loan and Montgomery GI Bill veterans education benefits and/or an AmeriCorps education award. These regulations are proposing that when packaging a student's financial aid under the campus-based programs, an institution may exclude as a resource any portion of a subsidized Stafford Loan or a Direct Subsidized Loan that is equal to or less than the amount of the student's Montgomery GI Bill veterans education benefits and AmeriCorps education awards or post-service benefits paid for the cost of attendance.

Sections 674.10, 675.10, and 676.10 Selection of Students

Current regulations require institutions to offer to less-than-full-time and independent students at least five percent of its FWS allotment, five percent of its FSEOG allotment, or five percent of the dollar amount of the

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loans made under the Federal Perkins Loan Program if the need of all these students exceeds five percent of the total need of all students at an institution. These proposed regulations would amend §§ 674.10, 675.10, and 676.10 in accordance with amended sections 413C(d), 443(b)(3), and 464(b)(2) of the HEA, to provide that if an institution's FWS, FSEOG, or Federal Perkins Loan (respectively) allocation is directly or indirectly based in part on the financial need of less-than-full-time or independent students, then the institution must offer to those students a reasonable portion of the FWS allocation, FSEOG allocation, or dollar amount of Federal Perkins Loans made.

The language in the sections of the HEA referred to above require institutions to "make available" campus-based funds to less-than-full-time and independent students. The Committee realized that in some circumstances it may be difficult for an institution actually to disburse funds to these students because institutions have no control over whether students will accept aid. Therefore, to accommodate these circumstances and prevent a burden on institutions, the Committee agreed that the words "make available" should be interpreted to mean that the institution must "offer" the funds to less-than-full-time and independent students.

These proposed regulations contain no definition of the statutory words "reasonable portion". Institutions are expected to have reasonable packaging policies for awarding campus-based funds. A policy of exclusion for less-than-full-time and independent students would not be acceptable for purposes of this requirement.

Federal Work-Study Programs

Section 675.2 Definitions

In an effort to increase participation of FWS students in community service activities, the definition of "community services," in section 441(c) of the HEA has been amended. The definition of "community services" now includes child care services provided on campus that are "open and accessible to the community" and services to students with disabilities who "are enrolled at the institution." These proposed regulations would amend § 675.2 of the FWS regulations to reflect these statutory changes.

Child care services. The statutory changes do not alter the Secretary's current policy on the inclusion of child care services provided on campus as "community service".

This policy is described in Part 3 of *The 1999–2000 Student Financial Aid Handbook* and in "Dear Colleague" letters CB–94–4, dated March 1994, and CB–97–12, dated July 1997. On-campus jobs can meet the definition of community service jobs if the services provided are open and accessible to the community. A university or college in and of itself is not considered the community for this purpose.

A service (i.e., child care) is considered open to the community if the service is publicized to the community and the general public uses the service. These regulations are not proposing to set a numerical count or percentage requirement for institutions to demonstrate public use of the service. However, if the service is provided only to students, faculty, staff, and their families, an FWS job does not meet the definition of "community service" under the FWS Program.

Services for students with disabilities. The 1998 Amendments also amended the definition of "community services" to include the provision of support services for students with disabilities who are enrolled at the institution. Current regulations provide that on-campus jobs providing support services for students with disabilities could meet the definition of "community services" only if those services were provided to the community as well. Under section 441(c)(3) of the amended HEA, services to students with disabilities are to be considered as community service activities, even if the services are provided exclusively to students with disabilities who are enrolled at the institution. This is the only statutory exception to the requirement that community services must be open and accessible to the community.

Section 675.8 Program Participation Agreement

These proposed regulations would amend the provisions governing the program participation agreement between the Secretary and the institution in § 675.8 in accordance with the statutory change in section 443(b)(6) of the HEA. The statutory change eliminates the requirement that institutions employing FWS students must make "equivalent employment" offered or arranged by the institution reasonably available to all students at the institution who desire to work.

Section 675.16 Payments Directly to the Student's Account

These proposed regulations would amend § 675.16, in accordance with amended section 445(c) of the HEA, to allow an institution, upon the written request of a student, to make payments of FWS funds directly to the student's account at a financial institution or the student's account at the educational institution for tuition and fees, contracted room and board, and other institutionally-provided educationally-related goods and services.

Currently, the FWS regulations prohibit an institution from directly transferring the Federal share of FWS earnings to a student's account at the institution. Since the FWS Program regulations allow for payment to the student by check or similar instrument, the Department in the past eased the administrative burden for institutions by allowing for the electronic transfer of FWS compensation to the student's bank account. This procedure was acceptable if the student signed an authorization for the electronic transfer and the institution maintained that authorization on file. The institution could not require a student to use this method as a condition for receiving FWS funds.

The 1998 Amendments broaden the institution's authority concerning students who want their FWS earnings credited to their accounts at the institution to cover institutional charges. Institutions already had this authority for all other Title IV, HEA program funds under §§ 668.164 and 668.165 of the *Subpart K—Cash Management* regulations.

Under § 668.165 of the current regulations an institution is required to provide specific award information to a student before it starts disbursing Title IV, HEA funds for any award year. However, under the proposed regulations § 668.165 will not apply to the FWS Program. Therefore, to have this requirement continue to apply to the FWS Program, these regulations are proposing that this student notification requirement be added to the FWS regulations in § 675.16. These regulations also propose that an institution, before making an initial disbursement of FWS compensation for an "award period" to a student, must notify the student of the amount of FWS compensation he or she is authorized to earn, and how and when the compensation will be paid.

An "award period" is the period of time covered by the FWS award made to a specific student. For example, if an institution makes an FWS award to a student for only the summer, the "award period" is that period of time. In this example, the period of time crosses over two award years and the portion of compensation earned up to June 30 is reported for one award year and the compensation earned after that

date is reported for the next award year. It is not the intention of the proposed regulations to require that an institution inform the student about the summer award again even though a new award year has started. Because of this factor, the proposed FWS regulations for the student notification refer to an "award period" and not an award year.

FWS Program student rights and responsibilities. The FWS Program's purpose is to provide part-time employment to needy undergraduate and graduate students. The important distinction to be made between FWS Program funds and other Title IV program funds is that under the FWS Program, the students hold jobs and their compensation is earned and governed by the same applicable Federal, State, or local laws as any other type of earnings from employment. These proposed regulations would allow institutions to credit FWS earnings to a student's account at the institution or to initiate an EFT to a bank account designated by the student under the following conditions:

- The institution must obtain a written authorization from the student;
- The authorization to transfer funds to a student's account at the institution must be separate from the authorization to have funds transferred to his or her bank account;
- For purposes of the authorization to transfer FWS funds to a student's bank account, the bank forms required to initiate a direct EFT deposit can be considered the authorization;
- The authorization cannot be included as part of a list or in combination with other types of authorizations signed by the student;
- The student may not be required or coerced to provide the authorization;
- The student must be allowed to cancel or modify the authorization at any time;
- The institution must clearly explain how it will use the authorization; and
- If an institution credits a student's account and the total amount of FWS funds credited exceeds the amount of tuition and fees, contracted room and board, and charges for other institutionally-provided educationally-related goods and services, the student must be paid the balance as soon as possible by the institution. However, a credit balance must be paid no later than 14 days after the balance occurred on the student's account.

Holding excess FWS funds on behalf of students. These proposed regulations would also allow an institution to hold, on behalf of a student, FWS funds that would otherwise be paid directly to the student after a balance occurred on the student's account unless specifically prohibited by the Secretary under the terms of a reimbursement payment method.

To hold FWS funds for a student, an institution must:

- Obtain a written authorization from the student for this specific purpose;
- Identify the amount of FWS funds held in excess for each student in a designated subsidiary ledger account;
- Maintain cash in its bank account that is always at a minimum equal to the FWS funds being held for students; and
- Pay any remaining balance by the end of the institution's final FWS payroll period for an award period.

Section 675.18 Use of Funds

These regulations propose several amendments to § 675.18.

Carry back funds for summer employment. First, to provide consistency with the new authority in the FSEOG Program to carry back FSEOG funds, these regulations are proposing to change the date of May 15 in § 675.18(f) to May 1. Currently, an institution is authorized to make payments of FWS funds from the succeeding award year's allocation to students for services performed on or after May 15 of the previous award year but prior to the beginning of the succeeding award year (that is, for summer employment). The HEA now provides this same additional "carry-back" authority for the FSEOG Program. After discussion of various possible dates, the Committee agreed that May 1 is a more realistic date. This is the only proposed change for the FWS carry-forward/carry-back provision.

Community service percentage requirement: Second, in accordance with amended section 443(b)(2) of the HEA, these regulations are proposing to amend § 675.18(g) to provide that institutions are required to use at least seven percent of the total funds granted to the institution to compensate students employed in community service activities for the 2000–2001 and subsequent award years. Currently, institutions are required to use at least five percent of those funds to compensate those students.

New reading tutoring and family literacy project requirement. Third, in accordance with amended section 443(b)(2) of the HEA, these regulations also propose to amend § 675.18(g) to require that, beginning with the 2000–2001 award year, an institution must ensure that one or more of its FWS students is employed (1) in a reading tutoring project as a reading tutor for children who are preschool age or are in elementary school, or (2) in a family literacy project performing family literacy activities. As discussed in the preceding paragraph, the HEA previously required that an institution use a specified percentage of its annual FWS allocation to employ students in community service jobs. Although the types of community service jobs were not specified, employing students to tutor children in reading or to work in a family literacy program was recommended to institutions because of the national critical needs in these areas. Encouragement is provided to institutions to employ students in these areas in § 675.26 of the FWS regulations through waivers of the FWS institutional-share requirement.

Family literacy projects. As defined in "Dear Colleague" letter CB–98–6, dated May 1998, a family literacy project integrates four components. It provides:

- Literacy or pre-literacy education to children;
- Literacy training for parents or other caregivers of children in the program;
- A means of equipping parents or other caregivers with the skills needed to partner with their children in learning; and
- Literacy activities between parents or other caregivers and their children.

This definition is consistent with the *Even Start* and *Head Start* definitions of family literacy programs. The four parts make up a comprehensive family literacy project. The interaction between parent (or caregiver) and child is very important. The family literacy concept recognizes the family as an institution for education and learning and the role of parents as their children's first teachers. The family literacy concept also is based on the premise that an investment in the education of adults in a family is, simultaneously, an investment in improving the chances for academic success for the children in that family. For more information about family literacy projects, you can review "Dear Colleague" letter CB–98–6 on the Information for Financial Aid Professionals (IFAP) web site at: http://IFAP.ed.gov

Waiver—Employment of students as reading tutors or in a family literacy project: Section 443(b)(2) of the HEA provides for a waiver of the community service requirement if the Secretary determines that enforcing the requirement would cause hardship for students at the institution. Institutions seeking a waiver of the community service requirement are required to follow the Department's procedure. This procedure requires institutions to submit a written waiver request and any supporting information or documents by

a date established by the Secretary and published in the **Federal Register** each year.

The 1998 Amendments revised section 443(b)(2) of the HEA to grant the Secretary the same waiver authority with respect to the new statutory requirement that institutions must ensure that one or more of its FWS students is employed in a reading tutoring project as a reading tutor for children or in a family literacy project performing family literacy activities. Therefore, these proposed regulations would provide for a waiver if the Secretary determines that enforcing this requirement would create a hardship for students at the institution. The Department would use a waiver procedure that requires institutions seeking a waiver of this new requirement to apply for this waiver in the same manner as for the community service requirement waiver. The institution would be required to submit a written waiver request and any supporting information or documents by the date established by the Secretary and published in the **Federal Register** each year.

The Secretary has approved some waivers to institutions of the community service requirement. In the waiver requests that received approval, the institutions stated that their FWS allocation was very small. It was noted that five percent (increase to seven percent beginning with the 2000–2001 award year) of the FWS allocation only provided enough funds for a student to work for a short period; therefore, the schools were unable to find short-term placement for community service. This was considered a hardship to the student. The fact that it may be difficult for the institution to comply with this provision is not in and of itself a basis for granting a waiver.

Reading tutoring requirement—Priority for schools. Fourth, if an institution employs FWS students as reading tutors in elementary schools, section 443(d)(2) of the HEA requires the institution, to the extent practicable, to give priority to employing students in schools that are participating in a reading reform project. The 1998 Amendments require that the reading reform project be one that is designed to train teachers how to teach reading on the basis of scientifically-based research on reading and funded under the Elementary and Secondary Education Act of 1965, as amended (ESEA). Under the new tutoring and literacy activities, the amended HEA also requires that the FWS students tutoring reading in a school participating in a reading reform project described above receive training from the employing school in the instructional practices used by the school. The Secretary recommends that institutions contact their local educational agency to find out if any elementary schools in their area participate in a reading reform project funded under the ESEA.

This new provision supports the President's "America Reads Challenge" which is designed to ensure that all children read independently and well by the end of the third grade, and also targets at-risk children.

Reading reform projects. The Reading Excellence Act amended Title II of the ESEA by adding a component to improve students' reading ability. The Reading Excellence Act recognizes a reading reform project to be a project that supports the improvement of reading instruction. The projects are funded by the Department of Education through competitive grants to State educational agencies. The Secretary believes that most educational policy makers and practitioners have come to agree that school reform can result in increased student achievement only to the extent that the following four principles are implemented: (1) Set high academic standards that all students are expected to achieve; (2) Measure student progress; (3) Ensure that there is a well-qualified teacher in every classroom; and (4) Hold schools accountable for results.

Payment for time spent in training and travel. Fifth, in accordance with amended section 443(b)(2)(A) of the HEA, these proposed regulations would amend § 675.18 to provide that an institution may pay FWS students for a reasonable amount of time spent for training for any FWS employment, and for travel that is directly related to employment in community service activities (including tutoring in reading and family literacy activities).

Since every job consists of some type of training, whether formal or informal, it has been the Department's policy to allow FWS students to be paid wages during a training period conducted for a reasonable length of time. This policy has applied whether the student was employed in community service activities or not. Therefore, this provision of the proposed regulations is not a change to previous Department policy. The Secretary recognizes that jobs such as math or reading tutors may require more training than other FWS positions. A training period of an academic term would not be considered reasonable because the goal of the FWS Program is to optimize the number of hours an FWS student spends working. The Secretary would consider a reasonable training period to be one that occurs before the student begins the duties of tutoring and that does not exceed approximately 20 hours. Students may also be compensated for a reasonable amount of time to perform on-going activities (i.e., preparation and evaluation time) necessary to accomplish their tutoring jobs.

The new provision in section 443(b)(2)(A) for compensating FWS students for time spent traveling to and from their community service job does change current policy. Beginning with the 1999–2000 award year, institutions will be allowed to pay students for a reasonable amount of time spent for travel that is directly related to employment in community service activities. The Department's policy would require that the time spent for travel be reported on the student's FWS time record as the hours worked are currently reported. The Secretary recommends that institutions use a time record that shows a separation for the time spent in travel from hours worked.

Section 675.20 Eligible Employers and General Conditions and Limitation on Employment

In accordance with amended section 443(b)(1) of the HEA, the proposed regulations amend § 675.20 to clarify that FWS employment may include internships, practicums, or assistantships (e.g., research or teaching assistantships). The 1998 Amendments do not alter the Secretary's current policy on an FWS student receiving academic credit from the work performed in an FWS job. This policy as discussed below is described in Part 3 of *The 1999–2000 Student Financial Aid Handbook*.

It has been the Department's longstanding policy that a student could receive academic credit from the work performed under the FWS Program. However, certain restrictions apply to this type of employment. An internship, practicum, or assistantship does not qualify for FWS employment unless the employer would normally pay the student for the same work even if that student were not FWS eligible. If the employer normally pays or has paid such persons, the internship, practicum, or assistantship qualifies as an FWS job. An example of an internship that normally does not qualify as an FWS job is student teaching because student teachers are not usually compensated for that activity. Also, current Department policy is that a student who receives academic credit for an FWS job cannot be paid any less than he or she would be paid if no academic credit were received.

The 1998 Amendments allow a student to earn FWS funds while earning academic credit in the jobs listed in the prior paragraph because these types of jobs are considered to be outside the normal realm of classroom experience. The list of jobs in these proposed regulations is not meant to be exhaustive. However, Department policy does not allow a student to be paid for receiving instruction in a classroom, laboratory, or other academic setting. Institutions must continue to ensure that students are not being paid for attending class.

Department policy allows an FWS student to be assigned to assist an instructor at any private nonprofit or public institution if the student is doing work the institution would normally support under its own employment program. For example, having a student serve as a research assistant to a professor is appropriate, so long as the work is in line with the professor's official duties and is considered work for the institution itself. However, at a proprietary institution a student may not assist an instructor because instructional activities are not considered student services under § 675.2(b) of the current regulations.

Section 675.23 Employment Provided by a Private For-Profit Organization

Current regulations provide that if a student is employed by a private for-profit organization the work that the student performs must be academically relevant to the student's educational program. In accordance with amended section 443(c)(4) of the HEA, these proposed regulations would amend § 675.23(b) to provide that jobs in a private for-profit organization must be academically relevant only to the maximum extent possible. This change would allow some students to pursue other employment opportunities that provide other valuable experiences outside their field of study.

Section 675.26 FWS Federal Share Limitations

Current regulations provide that the Federal share of FWS compensation paid to a student employed other than by a for-profit organization may not exceed 75 percent. In accordance with amended section 443(b)(5) of the HEA, these regulations propose to amend § 675.26 to provide that the Federal share of an FWS student's compensation may exceed 75 percent, but may not exceed 90 percent, if the student is employed at a nonprofit or a public organization that cannot afford to pay the regular non-Federal share. Institutions that choose to use this provision would have to meet several requirements as prescribed in amended section 443(b)(5) of the HEA:

- No placement at the institution itself would be eligible for the 90 percent match, nor at any agency owned, operated or controlled by the institution. It is the Secretary's view and the Committee agreed that a statement in the institution's file, signed by both the organization and the institution, stating that they have no relationship would satisfy this requirement.
- The organization would have to be selected by the institution on an individual case-by-case basis. It is the Secretary's view and the Committee agreed that an institution would satisfy this requirement by selecting the nonprofit or public organization that meets the requirements of this provision through its normal process of selecting potential employers.
- The nonprofit or public organization must be otherwise unable to afford the costs of this employment. In the Secretary's view and the Committee agreed, a signed letter in the institution's file from an official of the organization stating that the organization cannot afford to pay the regular non-Federal share would be sufficient evidence of the organization's inability to pay.
- This 90 percent funding level would be limited to no more than 10 percent of the students paid under the FWS program. For purposes of this calculation, the 1998 Amendments provide that the institution must use the total number of students paid under the FWS Program during the current award year.

It is important to note that this proposed 10 percent limit on the number of students paid at the 90 percent funding level does not include students whose FWS wages have been exempted from the full institutional match due to current regulations in § 675.26(d) that establish waiver criteria. These proposed regulations would continue to authorize a Federal share of 100 percent of the FWS funds awarded to students by an institution for an award year if the following provisions in the current regulations apply:

- The institution requests the increased Federal share on the Fiscal Operations Report and Application to Participate for that year and is designated as an eligible institution under the Strengthening Institutions Program (34 CFR part 607), the Strengthening Historically Black Colleges and Universities Program (34 CFR part 608), or the Strengthening Historically Black Graduate Institutions Program (34 CFR part 609);
- The student is employed as a reading tutor for preschool age children or children who are in elementary school;
- The student is employed in a family literacy program that provides services to families with preschool age children or children who are in elementary school; or
- The student is employed as a mathematics tutor for children who are in elementary school through the ninth grade.

Work-Colleges Program (Subpart C)

Section 675.45 Allowable Costs, Federal, Share, and Institutional Share

The Work-Colleges Program was created by the Higher Education Amendments of 1992 to encourage comprehensive work-learning programs and recognize the special nature of institutions that choose to make work-learning a central part of their educational programs. These proposed regulations would amend § 675.45(a) of the current regulations in accordance with amended section 448 of the HEA to provide Work-Colleges with more flexibility in the use of their funds. These proposed regulations would allow participants in the Work-Colleges Program to coordinate and carry out joint projects and activities to promote work service learning.

These proposed regulations would also allow Work-Colleges to use funds available to them to conduct a comprehensive longitudinal study of academic progress and academic and career outcomes, relative to student self-sufficiency in financing their higher education, repayment of student loans, continued community service, kind and quality of service performed and career choice and community service selected after graduation. The Secretary and the Committee expect that the results of this study will provide valuable information about the work-learning experience.

Federal Supplemental Educational Opportunity Grant Program

Section 676.18 Use of Funds

In accordance with amended section 413E of the HEA, these proposed regulations would amend § 676.18 to add a new authority for an institution to carry up to ten percent of its current award year FSEOG allocation forward to spend in the next award year and to carry back up to ten percent of its current award year allocation to spend in the prior award year. Current regulations provide institutions with this flexibility under the FWS Program, but not under the FSEOG Program.

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In accordance with amended section 413E, the proposed amendments would also permit institutions to carry back any portion of its current award year FSEOG allocation to make awards to students for payment periods that begin on or after May 1 of the prior award year but end prior to the start of the current award year (summer enrollment through June 30). This carry-back authority would be in addition to the authority to carry back ten percent of the succeeding year's allocation for use at any time during the preceding award year.

Authority to Carry Forward and Carry Back FSEOG Funds During the 1998–99 Award Year

Under proposed § 676.18, institutions would be allowed to use the new authority provided by amended section 413E beginning with the 1998–99 award year. The Secretary has decided and the Committee agreed that the new carry-forward/carry-back authority for the FSEOG Program may be implemented using the same general concepts used for the FWS Program. Under the proposed regulations, the official allocation letter for a specific award period would be the institution's authority to exercise this option. Any of the funds carried forward or back must be reported on the institution's Fiscal Operations and Application to Participate (FISAP). For example, if an institution carried forward 10 percent of its 1998–99 FSEOG allocation to spend in award year 1999–2000, the institution would be required to report this amount on the FISAP to be submitted by October 1, 1999. Before an institution may spend its current year's allocation, it must spend any funds carried forward from the previous year.

Note: Due to the timing of the effective date of the law, an institution is not able to carry back 1998–1999 FSEOG funds to spend in the 1997–98 award year or carry forward 1997–1998 FSEOG funds to spend in the 1998–1999 award year.

These proposed changes will give institutions the flexibility to provide additional FSEOG funds to students at a time when traditionally there were no FSEOG funds available, and also help prevent the need for an institution to return unused FSEOG funds for a particular award year.

Federal Pell Grant Program

Section 690.6 Duration of Student Eligibility—Undergraduate Course of Study and Eligible Postbaccalaureate Program

The current regulations restrict Federal Pell Grant eligibility to students who have not earned a baccalaureate degree. The 1998 Amendments revised section 401(c) of the HEA to extend Federal Pell Grant eligibility to students enrolled in a postbaccalaureate teacher certificate or licensing program even if they have earned a bachelor's degree.

In order to teach in most States, students must complete teacher preparation courses. Some institutions incorporate these courses into a baccalaureate program, while others offer these courses upon completion of a baccalaureate program. To complete the teacher preparation courses after earning a baccalaureate degree requires a fifth year of undergraduate study. This fifth year of undergraduate study is comparable to a fourth year of undergraduate study for a baccalaureate program that incorporates teacher preparation. The 1998 Amendments modified the HEA to allow certain students with a baccalaureate degree to receive a Federal Pell Grant while completing a teacher preparation program. As a result of this statutory change, these proposed regulations would amend the duration of the student eligibility provision of the Federal Pell Grant Program regulations. In addition, these proposed regulations would make corresponding changes to the eligible program provision in § 668.8(h) and the student eligibility provision in § 668.32(c) of the Student Assistance General Provisions regulations.

Conditions for Determining Eligibility

The 1998 Amendments provide that on a case-by-case basis, students enrolled in a postbaccalaureate teacher certificate or licensing program may be eligible to receive a Federal Pell Grant. To address this case-by-case determination, the Secretary and the Committee agreed to establish a set of conditions to be applied to each student enrolled in a postbaccalaureate teacher certificate or licensing program. Under the proposed regulations, if a student meets these conditions, and is otherwise eligible, he or she may receive a Federal Pell Grant. These conditions are discussed below and proposed in § 690.6(c).

To be eligible for a Federal Pell Grant, the 1998 Amendments require that an otherwise eligible student must be:

- Enrolled in a postbaccalaureate program that consists of courses required by a State to receive a professional certification or licensing credential necessary for employment as a teacher in an elementary or secondary school in that State;
- Enrolled in a postbaccalaureate program that does not lead to a graduate degree;
- Enrolled at a postsecondary institution that does not offer a baccalaureate degree in education; and
- Enrolled as at least a half-time student.

The 1998 Amendments do not address whether students seeking to renew their current teacher certification or licensure, or obtain a teacher certification or licensure in another subject matter, are eligible to receive a Federal Pell Grant. The Committee reached consensus regarding the scope of eligibility for a Federal Pell Grant under this provision; namely, to provide Federal Pell Grant funds to students seeking to obtain certification or licensure to begin teaching within a State. Thus, the proposed regulations limit Federal Pell Grant eligibility to only those students pursuing an initial teacher certification or licensing credential within a State.

The proposed regulations would also allow students enrolled in a postbaccalaureate teacher certificate or licensing program to be eligible to receive a Federal Pell Grant for the period of time necessary to complete the program.

Treatment of Students Enrolled in the Postbaccalaureate Program as Undergraduate Students Enrolled in an Undergraduate Program.

The 1998 Amendments do not address whether students enrolled in a postbaccalaureate teacher certificate or licensing program are enrolled in an undergraduate or graduate program. Historically, the Federal Pell Grant Program has been preserved as a source of financial assistance for undergraduate students enrolled in an undergraduate program. As previously discussed, the postbaccalaureate teacher certificate or licensing program is comparable to a baccalaureate program that incorporates teacher preparation into the fourth year of undergraduate study. For this reason, the Secretary and the Committee agreed that institutions must treat students who receive a Federal Pell Grant under this provision as undergraduate students enrolled in an undergraduate program.

Under these proposed regulations a student would be treated as an undergraduate student enrolled in an undergraduate program. Therefore, the student is not automatically independent for purposes of calculating the expected family contribution. Whether the student is dependent or independent, the student must maintain the same dependency status for all Title IV, student financial aid programs. Furthermore, the student is only eligible for fifth year undergraduate Perkins, FFEL, and Direct loan amounts.

Requirement to be a Regular Student in Order to Receive a Federal Pell Grant

The 1998 Amendments do not change the requirement that a Federal Pell Grant recipient must be a regular student. A regular student is a person who is enrolled in an eligible program for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by the institution. Therefore, the institution must provide a student enrolled in a postbaccalaureate teacher certificate or licensing program with a certificate or other recognized educational credential. This is true even if the State provides the student with a certificate upon completion of the postbaccalaureate program. For the purpose of this provision only, it is the view of the Secretary and the Committee agreed that an acceptable recognized educational credential may be an official transcript that documents the student's enrollment in or completion of a postbaccalaureate teacher certificate or licensing program.

Simultaneous Enrollment in Both the Postbaccalaureate Teacher Certificate or Licensing Program and a Graduate or Professional Degree Program

Neither the 1998 Amendments nor the proposed regulations in § 690.6 address simultaneous enrollment in both the postbaccalaureate program (as described here) and a graduate or professional degree program.

The Secretary and the Committee agreed to allow Pell Grant eligibility to a student who is enrolled in a postbaccalaureate program and a separate graduate or professional degree program. However, to be consistent with the proposed changes in § 690.6, the proposed regulations would require an institution to consider the following when determining a student's eligibility for a Federal Pell Grant:

- A student who is enrolled in a postbaccalaureate teacher certificate or licensing program and receives a Federal Pell Grant is treated as an undergraduate student enrolled in an undergraduate program. Thus, the student must be treated as an undergraduate student for the other Title IV programs; e.g., a student who receives a Federal Pell Grant is only eligible for fifth year undergraduate loan amounts;
- A student is not eligible for a Federal Pell Grant if he or she is solely enrolled in a graduate or professional degree program, even if the program's courses are the same as those required for the postbaccalaureate teacher certificate or licensing program;
- A student is not eligible for a Federal Pell Grant if his or her enrollment status, based on the hours required for the postbaccalaureate teacher certificate or licensing program, is less than half-time; and
- Only those courses required for the postbaccalaureate teacher certificate or licensing program can be considered when determining the student's enrollment status.

Section 690.7 Institutional Participation

The 1998 Amendments provide that an institution is ineligible to participate in the Federal Pell Grant Program upon losing its eligibility to participate in the FFEL or Direct Loan programs because of its default rate. This provision is effective after the Secretary's final publication of the cohort default rates for fiscal year 1996. (These rates were published on October 26, 1998). This new provision, in section 401(j) of the HEA, applies to institutions participating in the FFEL or Direct Loan program on or after October 7, 1998. As a result of this statutory change, these regulations propose to amend § 690.7 to provide for this loss of eligibility to participate in the Federal Pell Grant Program. Specific information on the loss of eligibility is provided in proposed § 668.17(b)(4) in a recently published NPRM.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed regulations would address the National Education Goals that (1) all children will start school ready to learn and that student achievement will be enhanced; (2) call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning; (3) every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship; and (4) the Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century. The proposed regulations in § 675.18(g) would further the objectives of these Goals by requiring FWS student participation in reading tutoring and in family literacy projects where the family is recognized as an institution for education and learning and the parent is recognized as their children's first teachers. The objectives of the Goals would also be addressed by the proposal to extend eligibility for Federal Pell Grants to those students who are pursuing a teacher certification or licensing credential through a State approved non-degree postbaccalaureate program.

Executive Order 12866:

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits of this regulatory action—both quantitative and qualitative—we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by negotiators. The consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or to increase any potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Title IV, HEA programs.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

We invite comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

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- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 668.8 *Eligible Program.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

We certify that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Entities affected by these regulations are institutions of higher education that participate in the Title IV, HEA programs. The institutions are defined as small entities, according to the U.S. Small Business Administration, if they are: for-profit or nonprofit entities with total revenue of $5,000,000 or less; or entities controlled by governmental entities with populations of 50,000 or less. These proposed regulations would not impose a significant economic impact on a substantial number of small entities. The regulations would benefit both small and large institutions by providing additional flexibility in the administration of the Federal Pell Grant and Campus-Based programs without requiring significant changes to current institutional system operations. These proposed regulations would ease administrative burden and augment student benefits by: expanding Federal Pell Grant eligibility to allow students enrolled in a postbaccalaureate teacher certification or licensing program to receive a Federal Pell Grant; allowing an institution, upon request of a student, to make payments of FWS funds directly to the student's account at the institution; revising the definition of "resources" in the Campus-Based programs to maximize student benefits and augment institutional flexibility in aid packaging; and implementing new carry-forward and carry-back authorities for the FSEOG Program.

We invite comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

Proposed §§ 673.5, 675.10, 675.16, and 675.20 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of information: General Provisions for the Federal Perkins Loan, FWS, and FSEOG Programs—Section 673.5—Overaward—The Department currently has this section approved under OMB control number 1845–0535. We propose to change the definition of the term "resources" for a student who receives campus-based aid, a subsidized Stafford Loan or a Direct Subsidized Loan, and Montgomery GI Bill veterans educational benefits and/or an AmeriCorps education award paid for the cost of attendance. The institution would be able to exclude as a resource any portion of the subsidized loans that is equal to or less that the amount of the veterans education or AmeriCorps benefits received. This provision does not change the information collection contained in this section.

Section 675.10—Selection of students for FWS employment—We propose under § 675.10(c) that if an institution's allocation of FWS funds is based in part on the financial need of students attending the institution as less-than-full-time or independent students, the institution must offer a reasonable portion of the allocation for FWS to those students. The requirement for offering 5 percent of the FWS allocation would be eliminated. This requirement does not change the information collection contained in this section regarding the maintaining of an institution's procedures for selecting students for FWS employment.

Section 675.16—Payments to students—We are proposing under § 675.16(a)(2) that before an institution pays FWS compensation to a student, the institution will be required to send the student a notice informing the student of the amount of funds he or she is eligible to earn, and how and when the FWS funds will be paid. To provide the student with this notice is standard institutional practice. The institutions that participate in the Title IV, HEA programs normally send this notice out to all students that have applied to their school for Title IV, HEA funds. Students generally receive one notice listing all Title IV, HEA program funds they can expect to receive. FWS funds are earned compensation. Therefore, we have concluded that the requirement for the notice should be reiterated in § 675.16. There are 3,282 institutions of higher education currently participating in the FWS Program, with 747,913 total FWS recipients. We understand that the majority of these 747,913 FWS recipients receive some other type of Title IV, HEA program funds and that institutions are already providing FWS students this information along with information on other types of aid the student can expect to receive in one notice.

Subpart K of the Student Assistance General Provisions regulations (34 CFR Part 668) under the OMB control number 1845–0697 governs the cash management regulations as authorized by section 487 of the HEA. Amendments to this section were part of a Division-wide package—Cash Management/Easy Access for Students and Institutions (EASI)—intended to clarify and consolidate current policies and requirements, and make necessary changes in the regulatory framework for us to improve significantly the delivery of Title IV, HEA program funds to students and institutions. Burden hours for § 668.165(a)(1) were calculated and cleared under 1845–0697 to determine the cost to institutions for notifying students once an award year of: the amounts of Title IV, HEA program funds a student can expect to receive; how and when those funds will be paid; and, whether any Title IV, HEA program loans are subsidized or unsubsidized. There are 6,576 institutions sending this notice to 6,223,450 Title IV aid recipients with an average of 946.4 responses per institution. With each institution taking approximately five minutes to retrieve and mail the information the total average hour burden for each institution is calculated as 78.9 hours. Therefore, annual recordkeeping and reporting burden contained in this collection total 518,846.4 (6,576 respondents × 78.9 hours) hours. Any further calculation of burden hours for § 675.16 for providing a student a notice of the amount of FWS program funds he or she can expect to receive would duplicate hours already calculated for this procedure in § 668.165(a)(1) and cleared under OMB 1845–0697.

Section 675.16 also includes a proposal that upon the written request of a student, an institution may make payments of FWS funds directly to the student's account at the institution for tuition and fees, room and board, and other institutional provided goods and services. This practice is prohibited by current regulations, so it is difficult to estimate an accurate number of respondents that would be submitting this request. Some institutions have informed the Department that they will not implement this procedure, but will continue to pay FWS students by check or electronic fund transfer to the student's bank account. Other institutions have expressed to the Department that the use of this procedure will be minimal at their institutions.

There are 3,282 institutions currently participating in the FWS Program. A total of 747,913 students receive FWS funds at these institutions. We estimate that 74,791 (10 percent of) respondents may sign a written request to have their FWS earnings credited to their account at an institution and that request will average 1 minute per response. Total annual burden hours for the respondents are estimated to be 1,247 hours. The annual recordkeeping burden hours for 3,282 institutions to obtain signatures and maintain a record of the request in their recordkeeping system are estimated to be 12,472 hours. Annual recordkeeping and reporting burden contained in this collection of information as proposed in these regulations are estimated to be 13,719 hours. The total annual recordkeeping and reporting burden hours for § 675.16 equals 13,963 hours.

Section 675.20—Eligible employers and general conditions and limitation on employment—We propose under § 675.20(d) to clarify that employment under the FWS Program may include internships, practicums, and research, teaching, or other assistantships as determined by the Secretary. This proposed change does not affect the information collection requirement in this section for a written agreement between the institution and the employer that is initiated as part of an institution's normal business practices.

If you want to comment on the information collection requirements please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

The Federal Supplemental Educational Opportunity Grant program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

The Federal Work-Study and Federal Pell Grant programs are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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Catalog of Federal Domestic Assistance Numbers: 84.033 Federal Work-Study Program; 84.007 Federal Supplemental Educational Opportunity Grant Program; and 84.063 Federal Pell Grant Program)

List of Subjects

34 CFR Parts 668, 673, 674 and 675

Colleges and universities, Employment, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 676

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 690

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: July 27, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons stated in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by amending Parts 668, 673, 674, 675, 676, and 690 as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.8 is amended by revising paragraph (h) to read as follows:

§ 668.8 Eligible program.

* * * * *

(h) *Eligibility for Federal Pell Grant and FSEOG programs.* In addition to satisfying other relevant provisions of this section—

(1) An educational program qualifies as an eligible program for purposes of the Federal Pell Grant Program only if the educational program is an undergraduate program or a postbaccalaureate teacher certificate or licensing program as described in 34 CFR 690.6(c); and

(2) An educational program qualifies as an eligible program for purposes of the FSEOG Program only if the educational program is an undergraduate program.

* * * * *

3. Section 668.32 is amended by revising paragraph (c) to read as follows:

§ 668.32 Student eligibility—general.

* * * * *

(c)(1) For purposes of the FSEOG Program, does not have a baccalaureate or first professional degree;

(2) For purposes of the Federal Pell Grant Program—

(i) Does not have a baccalaureate or first professional degree; or

(ii) Is enrolled in a postbaccalaureate teacher certificate or licensing program as described in 34 CFR 690.6(c); and

(iii) Is not incarcerated in a Federal or State penal institution; and

(3) For purposes of the Federal Perkins Loan, FFEL, and Direct Loan programs, is not incarcerated;

* * * * *

4. Section 668.161 is amended by revising paragraph (a)(4) to read as follows:

§ 668.161 Scope and purpose.

(a) * * *

(4) *FWS Program.* An institution must follow the disbursement procedures in 34 CFR 675.16 for paying a student his or her wages under the FWS Program instead of the disbursement procedures in 34 CFR 668.164 and 668.165.

* * * * *

PART 673—GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

5. The authority citation for part 673 continues to read as follows:

Authority: 20 U.S.C 421–429, 1070b–1070b–3, and 1087aa–1087ii; 42 U.S.C. 2751–2756b, unless otherwise noted.

6. Section 673.5 is amended by revising paragraph (c)(1) introductory text and paragraph (c)(1)(ix); by redesignating paragraphs (c)(1)(x) and (c)(1)(xi) as paragraphs (c)(1)(xi) and (c)(1)(xii), respectively; and by adding new paragraphs (c)(1)(x) and (c)(4) to read as follows:

§ 673.5 Overaward.

* * * * *

(c) *Resources.* (1) Except as provided in paragraphs (c)(2), (c)(3), and (c)(4) of this section, the Secretary considers that "resources" include, but are not limited to, any—

* * * * *

(ix) Veterans educational benefits paid under Chapters 30, 31, 32, and 35 of title 38 of the United States Code;

(x) National service education awards or post-service benefits paid for the cost of attendance under title I of the National and Community Service Act of 1990 (AmeriCorps);

* * * * *

(4) The institution may exclude as a resource any portion of a Federal Direct Stafford/Ford Loan and subsidized Federal Stafford Loan that is equal to or less than the amount of a student's veterans education benefits paid under Chapter 30 of title 38 of the United States Code (Montgomery GI Bill) and national service education awards or post service benefits paid for the cost of attendance under title I of the National and Community Service Act of 1990 (AmeriCorps).

* * * * *

PART 674—FEDERAL PERKINS LOAN PROGRAM

7. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa-1087ii and 20 U.S.C. 421–429, unless otherwise noted.

8. Section 674.10 is amended by revising paragraph (b) to read as follows:

§ 674.10 Selection of students for loans.

* * * * *

(b) If an institution's allocation of Federal Capital Contribution is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the dollar amount of loans made under this part must be offered to those students.

* * * * *

PART 675—FEDERAL WORK-STUDY PROGRAMS

9. The authority citation for part 675 is revised to read as follows:

Authority: 42 U.S.C. 2751–2756b, unless otherwise noted.

10. In § 675.2 paragraph (b) is amended by revising paragraphs (1) and (3) of the definition of "community services" to read as follows:

§ 675.2 Definitions.

* * * * *

(b) * * *

(1) Such fields as health care, child care (including child care services provided on campus that are open and accessible to the community), literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and community improvement;

* * * * *

(3) Support services to students with disabilities, including students with disabilities who are enrolled at the institution; and

* * * * *

§ 675.8 [Amended]

11. Section 675.8 is amended by removing paragraph (d), and redesignating paragraphs (e), (f), and (g) as paragraphs (d), (e), and (f), respectively.

12. Section 675.10 is amended by revising paragraph (c) to read as follows:

§ 675.10 Selection of students for FWS employment.

* * * * *

(c) *Part-time and independent students.* If an institution's allocation of FWS funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the allocation must be offered to those students.

13. Section 675.16 is amended to read as follows by:

A. Redesignating paragraphs (a)(2), (a)(3), and (a)(4), as paragraphs (a)(9), (a)(10), and (a)(11), respectively;

B. Revising paragraph (a)(1) and adding new paragraphs (a)(2) through (a)(8);

C. In newly redesignated paragraph (a)(10) by removing "wages are" and adding, in its place, "compensation is";

D. In newly redesignated paragraph (a)(11) by removing "wages" and adding, in its place, "compensation";

E. Revising paragraph (b)(1); and

F. In paragraphs (b)(2), (b)(3), and (c), removing "shall" and adding, in its place, "must".

§ 675.16 Payments to students.

(a)(1) An institution must pay a student FWS compensation at least once a month.

(2) Before an institution makes an initial disbursement of FWS compensation to a student for an award period, the institution must notify the student of the amount of funds the student is authorized to earn, and how and when the FWS compensation will be paid.

(3) An institution must pay FWS compensation to a student by—

(i) Check or similar instrument that the student can cash on his or her own endorsement;

(ii) Initiating an electronic funds transfer (EFT) to a bank account designated by the student after obtaining the authorization described in paragraph (a)(4)(i) of this section;

(iii) Crediting the student's account at the institution after obtaining the authorization described in paragraph (a)(4)(i) of this section. The institution may only credit the student's account at the institution to satisfy current award year charges for—

(A) Tuition and fees;

(B) Board, if the student contracts with the institution for board;

(C) Room, if the student contracts with the institution for room; and

(D) Other institutionally provided educationally related goods and services; or

(iv) Crediting the student's account at the institution to satisfy minor prior award year authorized charges if these charges are less than $100 or if the payment of these charges does not, and will not, prevent the student from paying his or her current educational costs after obtaining the authorization described in paragraph (a)(4)(i) of this section.

(4)(i) Except for the noncash contributions allowed under paragraphs (b)(2) and (b)(3) of this section, an institution must obtain a separate written authorization from the student if the student is paid FWS compensation by—

(A) Crediting the student's account at the institution; or

(B) Initiating an EFT to a bank account designated by the student.

(ii) If an institution obtains a written authorization from the student, the institution may hold excess FWS funds under paragraph (a)(8) of this section.

(iii) The institution must obtain and use the written authorization in accordance with the requirements of paragraphs (a)(5) and (a)(6) of this section.

(5) In obtaining the student's written authorization described in paragraph (a)(4) of this section, an institution—

(i) May not require or coerce the student to provide that authorization;

(ii) Must allow the student to cancel or modify that authorization at any time; and

(iii) Must clearly explain how it will carry out that activity.

(6)(i) If a student modifies the written authorization described in paragraph (a)(4) of this section, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student cancels the written authorization described in paragraph (a)(4)(i)(A) of this section, the institution may use the FWS compensation to pay only those authorized charges incurred by the student before the institution received the notice.

(7) If an institution pays a student FWS compensation by crediting the student's account, and the result is a credit balance, the institution must pay the credit balance directly to the student as soon as possible but no later than 14 days after the balance occurred on the account.

(8) Except if prohibited by the Secretary under the reimbursement payment method, an institution may hold, on behalf of the student, FWS funds that would otherwise be paid directly to the student under paragraph (a)(7) of this section, if the institution obtains the authorization described in paragraph (a)(4)(ii) of this section. If an institution holds excess FWS funds, the institution must—

(i) Identify the amount of FWS funds the institution holds for each student in a subsidiary ledger account designated for that purpose;

(ii) Maintain, at all times, cash in its bank account in an amount at least equal to the amount of FWS funds the institution holds for the student; and

(iii) Pay any remaining balance by the end of the institution's final FWS payroll period for an award period.

* * * * *

(b)(1) Except for the noncash contributions allowed under paragraphs (b)(2) or (b)(3) of this section, an institution must pay the student its share of his or her FWS compensation at the same time it pays the Federal share.

* * * * *

14. Section 675.18 is amended as follows by:

A. Revising paragraph (a)(2);

B. In paragraph (f), removing, "May 15" and adding, in its place, "May 1";

C. Revising paragraphs (g)(1) and (g)(2); and adding new paragraphs (g)(3) and (h).

§ 675.18 Use of funds.

(a) * * *

(2) Paying administrative expenses as provided for in 34 CFR 673.7;

* * * * *

(g) *Community service.* (1) For the 2000–2001 award year and subsequent award years, an institution must use at least seven percent of the sum of its initial and supplemental FWS allocations for an award year to compensate students employed in community service activities. In meeting this community service requirement, an institution must include at least one—

(i) Reading tutoring project that employs one or more FWS students as reading tutors for children who are preschool age or are in elementary school; or

(ii) Family literacy project that employs one or more FWS students in family literacy activities.

(2) The Secretary may waive the requirements in paragraph (g)(1) of this section if the Secretary determines that an institution has demonstrated that enforcing the requirements in paragraph (g)(1) of this section would cause a hardship for students at the institution.

(3) To the extent practicable, in providing reading tutors for children under paragraph (g)(1)(i), an institution must—

(i) Give priority to the employment of students to tutor in reading in schools that are participating in a reading reform project that—

(A) Is designed to train teachers how to teach reading on the basis of scientifically-based research on reading; and

(B) Is funded under the Elementary and Secondary Education Act of 1965; and

(ii) Ensure that any student who is employed in a school participating in a reading reform project described in paragraph (g)(3)(i) of this section receives training from the employing school in the instructional practices used by the school.

(h)(1) *Payment for time spent in training and travel.* For any award year, an institution may pay students for a reasonable amount of time spent for training that is directly related to FWS employment.

(2) Beginning with the 1999–2000 award year, an institution may pay students for a reasonable amount of time spent for travel that is directly related to employment in community service activities (including tutoring in reading and family literacy activities).

15. Section 675.20 is amended by adding a new paragraph (d) to read as follows:

§ 675.20 Eligible employers and general conditions and limitation on employment.

* * * * *

(d) *Academic credit and work-study.* (1) A student may be employed under the FWS program and also receive academic credit for the work performed. Such jobs include, but are not limited to, work performed when the student is—

(i) Enrolled in an internship;
(ii) Enrolled in a practicum; or
(iii) Employed in a research, teaching, or other assistantship.

(2) A student employed in an FWS job and receiving academic credit for that job may not be—

(i) Paid less than he or she would be if no academic credit were received;
(ii) Paid for receiving instruction in a classroom, laboratory, or other academic setting; and
(iii) Paid unless the employer would normally pay the person for the same position.

16. Section 675.23 is amended by revising paragraph (b)(1) to read as follows:

§ 675.23 Employment provided by a private for-profit organization.

* * * * *

(b) * * *

(1) The work that the student performs must be academically relevant to the student's educational program, to the maximum extent practicable; and

* * * * *

17. Section 675.26 is amended by revising paragraph (a)(1), by redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4), by adding a new paragraph (a)(2), and by revising paragraph (d)(2)(iii) to read as follows:

§ 675.26 FWS Federal share limitations.

(a)(1) The Federal share of FWS compensation paid to a student employed other than by a private for-profit organization, as described in § 675.23, may not exceed 75 percent unless the Secretary approves a higher share under paragraph (a)(2) or (d) of this section.

(2) The Federal share of the compensation paid to a student may exceed 75 percent, but may not exceed 90 percent, if—

(i) The student is employed at a private nonprofit organization or a Federal, State, or local public agency that—

(A) Is not a part of, and is not owned, operated, or controlled by, or under common ownership, operation, or control with, the institution;

(B) Is selected by the institution on an individual case-by-case basis;

(C) Would otherwise be unable to afford the costs of this employment; and

(ii) The number of students compensated under paragraph (a)(2)(i) of this section is not more than 10 percent of the total number of students paid under the FWS Program at the institution.

* * * * *

(d) * * *

(2) * * *

(iii) The student is employed in a family literacy project that provides services to families with preschool age children or children who are in elementary school; or

* * * * *

Subpart C—Work-Colleges Program

18. Section 675.45 is amended by adding new paragraphs (a)(5) and (a)(6) to read as follows:

§ 675.45 Allowable costs, Federal share, and institutional share.

(a) * * *

(5) Coordinate and carry out joint projects and activities to promote work service learning.

(6) Carry out a comprehensive, longitudinal study of student academic progress and academic and career outcomes, relative to student self-sufficiency in financing their higher education, repayment of student loans, continued community service, kind and quality of service performed, and career choice and community service selected after graduation.

* * * * *

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

20. Section 676.10 is amended by revising paragraph (b) to read as follows:

§ 676.10 Selection of students for FSEOG awards.

* * * * *

(b) *Part-time and independent students.* If an institution's allocation of FSEOG funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the allocation must be offered to those students.

21. Section 676.18 is amended by revising paragraph (a)(2), and adding new paragraphs (c), (d), (e) and (f) to read as follows:

§ 676.18 Use of funds.

(a) * * *

(2) Paying administrative expenses as provided for in 34 CFR 673.7.

* * * * *

(c) *Carry forward funds.* (1) An institution may carry forward and expend in the next award year up to 10 percent of the sum of its initial and supplemental FSEOG allocations for the current award year.

(2) Before an institution may spend its current year FSEOG allocation, it must spend any funds carried forward from the previous year.

(d) *Carry back funds.* An institution may carry back and expend in the previous award year up to 10 percent of the sum of its initial and supplemental FSEOG allocations for the current award year. The institution's official allocation letter represents the Secretary's approval to carry back funds.

(e) *Use of funds carried forward and carried back.* An institution may use the funds carried forward or carried back under paragraphs (c) and (d) of this section, respectively, for activities described in paragraph (a) of this section.

(f) *Carry back funds for summer FSEOG awards.* An institution may carry back and expend in the previous award year any portion of its initial and supplemental FSEOG allocations for the current award year to make awards to eligible students for payment periods that begin on or after May 1 of the previous award year but end prior to the beginning of the current award year.

PART 690—FEDERAL PELL GRANT PROGRAM

22. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

23. Section 690.6 is amended by revising the heading and paragraph (a), and adding new paragraphs (c) and (d) to read as follows:

§ 690.6 Duration of student eligibility—undergraduate course of study and eligible postbaccalaureate program.

(a) Except as provided in paragraphs (c) and (d) of this section, a student is eligible to receive a Federal Pell Grant for the period of time required to complete his or her first undergraduate baccalaureate course of study.

* * * * *

(c) An otherwise eligible student who has a baccalaureate degree and is enrolled in a postbaccalaureate program is eligible to receive a Federal Pell Grant for the period of time necessary to complete the program if—

(1) The postbaccalaureate program consists of courses that are required by a State for the student to receive a professional certification or licensing credential that is required for employment as a teacher in an elementary or secondary school in that State;

(2) The postbaccalaureate program does not lead to a graduate degree;

(3) The institution offering the postbaccalaureate program does not also offer a baccalaureate degree in education;

(4) The student is enrolled as at least a half-time student; and

(5) The student is pursuing an initial teacher certification or licensing credential within a State.

(d) An institution must treat a student who receives a Federal Pell Grant under paragraph (c) of this section as an undergraduate student enrolled in an undergraduate program for title IV purposes.

24. In § 690.7 paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 690.7 Institutional participation.

* * * * *

(c)(1) If an institution loses its eligibility to participate in the FFEL or Direct Loan program under the provisions of 34 CFR 668.17, it also loses its eligibility to participate in the Federal Pell Grant Program for the same period of time.

(2) That loss of eligibility must be in accordance with the provisions of 34 CFR 668.17(b).

* * * * *

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Part IV

Environmental Protection Agency

40 CFR Part 372
Lead and Lead Compounds; Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400140; FRL–6081–4]

RIN 2070–AD38

Lead and Lead Compounds; Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to lower the reporting thresholds for lead and lead compounds which are subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). EPA believes that lead and lead compounds are persistent, bioaccumulative toxic (PBT) chemicals that warrant lower reporting thresholds than those currently established under EPCRA section 313. Today's proposed action also includes a limitation on the reporting of lead when contained in certain alloys and proposed modifications to certain reporting exemptions and requirements for lead and lead compounds.

DATES: Written comments, identified by the docket control number OPPTS–400140, must be received by EPA on or before September 17, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Petitions Coordinator, 202–260–3882, e-mail: bushman.daniel@epamail.epa.gov, for specific information on this proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

You may be potentially affected by this notice if you manufacture, process, or otherwise use lead or lead compounds. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Industry	Facilities that: process copper ores, lead and zinc ores; operate pulp mills, petroleum refineries, primary copper smelters, primary and secondary nonferrous metal smelters, gray/ductile iron foundries, steel foundries, blast furnaces, steel mills, petroleum bulk stations and terminals, industrial boilers that burn coal, wood, petroleum products, and electric utilities that combust coal and/or oil for distribution of electricity in commerce; facilities that manufacture, process, or use inorganic pigments, small arms ammunition, asphalt paving mixtures and blocks, storage batteries, motor vehicles and motor vehicle equipment; manufacture electronic components and accessories.
Federal Government	Federal facilities that: manufacture, process, or use lead or lead compounds; burn coal or petroleum products.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information or Copies of this Document or Other Support Documents?

1. *Electronically.* You may obtain electronic copies of this document from the EPA internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/homepage/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–400140. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number (i.e., "OPPTS–400140") in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G-099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is: 202–260–7093.

3. *Electronically.* Submit your comments electronically by E-mail to: "oppt.ncic@epamail.epa.gov." Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–400140. Electronic comments on this proposal may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information that I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

II. What is EPA's Statutory Authority for Taking These Actions?

These actions are proposed under sections 313(f)(2) and 328 of EPCRA, 42 U.S.C. 11023(f)(2) and 11048.

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using a listed toxic chemical in amounts above reporting threshold levels, to report their environmental releases of each chemical annually. These reports must be filed by July 1 of each year for the previous calendar year. Facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of PPA.

A. What is EPA's Statutory Authority to Lower EPCRA Reporting Thresholds?

Section 313 contains default reporting thresholds, which are set forth in section 313(f)(1). Section 313(f)(2), however, provides that EPA "may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1)." The amounts established by EPA may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

This provision provides EPA with broad authority to establish thresholds for particular chemicals, classes of chemicals, or categories of facilities, and commits to EPA's discretion the determination that a different threshold is warranted. Congress has also committed the determination of the levels at which to establish an alternate threshold to EPA's discretion, requiring only that any "revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements" of section 313 (42 U.S.C. 11023(f)(2)). For purposes of determining what constitutes a "substantial majority of total releases," EPA interprets "facilities subject to the requirements" of section 313 as the facilities currently reporting, in part because section 313(b)(1)(A) provides that "the requirements of [section 313] shall apply" to facilities that meet all the reporting criteria and hence are required to file reports. Thus, in revising the reporting thresholds, EPA must ensure that under the new thresholds a substantial majority of releases currently being reported will continue to be reported. No further guidance for exercising this authority appears in the statute.

While the "substantial majority" requirement of section 313(f)(2) applies whether EPA is raising or lowering thresholds, EPA believes that as a practical matter this standard can operate to constrain EPA's action only when the Agency is raising the thresholds and thereby reducing reporting. Under those circumstances, the releases reported under the new threshold would be lower than those being reported under the current threshold, and EPA would be required to determine that the reduction in reporting would not be so great as to fail the "substantial majority" test. When EPA lowers thresholds, however, the substantial majority test is met as a matter of logical necessity, because the lower thresholds are almost always likely to result in increased, rather than decreased, reporting. The required findings therefore can be made without the need for quantitative support. Thus, EPA has found that the revised reporting thresholds contained in today's proposed action meet the "substantial majority" test in section 313(f)(2).

Because Congress provided no prerequisites to the exercise of EPA's authority to lower the thresholds, and little explicit guidance, EPA looked to the purposes of section 313 to help guide the exercise of its discretion. EPCRA section 313(h) indicates that the data collected under EPCRA section 313 are intended:

> . . . to inform persons about the releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines and standards, and for other similar purposes. (42 U.S.C. 11023(h)).

EPA has identified several purposes of the EPCRA section 313 program, as envisioned by Congress, including: (1) Providing a complete profile of toxic chemical releases and other waste management activities; (2) compiling a broad-based national data base for determining the success of environmental regulations; and (3) ensuring that the public has easy access to these data on releases of toxic chemicals to the environment. (See 62 FR 23834, 23836, May 1, 1997). EPA considered these purposes in exercising its discretion to establish lower reporting thresholds under EPCRA section 313 for lead and lead compounds, which the Agency has determined are persistent, bioaccumulative chemicals.

B. What is EPA's Statutory Authority for Making Modifications to Other EPCRA Section 313 Reporting Requirements?

Congress granted EPA extremely broad rulemaking authority to allow the Agency to fully implement the statute. EPCRA section 328 provides that the "Administrator may prescribe such regulations as may be necessary to carry out this chapter" (28 U.S.C. 11048).

III. How Did EPA Develop this Proposal and What is the Scope of the Comments Being Solicited?

A. Why Was Lead Not Addressed in the Recently Proposed PBT Rule?

In EPA's recent proposed rule to lower the EPCRA section 313 reporting thresholds for certain PBT chemicals (64 FR 688, January 5, 1999) (FRL–6032–3), EPA reviewed the bioaccumulation data for two lead compounds: tetraethyl and tetraethyl lead. However, the analysis was limited to the data for the intact compounds and did not address the potential availability of lead from these compounds or other lead compounds or the potential for lead to bioaccumulate. In the January 5, 1999 proposed rule for PBT chemicals, EPA made the following statements about lead and lead compounds:

> EPA is aware of additional available data that may indicate that lead and/or lead compounds meet the bioaccumulation criteria discussed in this proposed rule. EPA intends to review these additional data to determine if lead and/or lead compounds should be considered PBT chemicals and whether it would be appropriate to establish lower reporting thresholds for these chemicals. Any such determination will be made part of an additional rulemaking activity. (See 64 FR 717, column 1).

Since development of the January 5, 1999 proposed rule, EPA has received numerous comments requesting that the Agency include lead and lead compounds as PBT chemicals under EPCRA section 313 and set lower reporting thresholds (see the docket

support for the proposed rule (docket control number OPPTS–400132)). Many of these comments were received well into the comment period on the January 5, 1999 proposed rule. Rather than delay movement on the January 5, 1999 proposed rule until EPA was ready to proceed with lead and lead compounds, the Agency elected to address lower reporting thresholds for lead and lead compounds as a separate proposal. EPA believes that such an approach will allow both the Agency and those commenters especially interested in lead and lead compounds to focus on the issues specifically related to these substances. Accordingly, today's proposed rule is the result of EPA's review of the available information on lead and lead compounds, and is the Agency's response to the requests for lower reporting thresholds for lead and lead compounds based on their persistence and bioaccumulation.

B. What is the Scope of Comments Being Solicited on this Proposed Rule?

EPA recognizes that this proposal for lead and lead compounds may raise similar issues to those raised in the January 5, 1999 proposed rule. For the purposes of this proposal, however, EPA is only soliciting comments on how these proposed actions would affect EPCRA section 313 reporting on lead and lead compounds, the impacts these proposed changes would have on the burden of section 313 reporting for lead and lead compounds, and the benefits such reporting would provide the public. Comments of a more generic nature were solicited in the January 5, 1999 proposed rule, and should have been submitted during the comment period for that proposal, which closed April 7, 1999. EPA will respond to timely comments on these generic issues in the final PBT chemicals rule. The Agency will limit its consideration of and responses to comments submitted in the comment period for this proposal to those that relate to section 313 reporting of lead and lead compounds. To the extent that comments were submitted on the January 5, 1999 proposed rule that a commenter believes are relevant to this proposal, the commenter must resubmit or reference those comments for inclusion in the docket for this proposal, along with an explanation of why the comments are relevant to lead and lead compounds.

C. What are the Issues on Which EPA is Interested in Receiving Comment?

The Agency is particularly interested in receiving comments on the general policy issues, as they apply to lead and lead compounds, that were discussed and raised for comment in Unit IX. of the preamble to the PBT proposed rule (see 64 FR 688, at 717). It is important for EPA to clarify that this proposal does not introduce any new issues beyond those associated with lead and lead compounds (e.g., persistence data for lead, bioaccumulation data for lead, estimated number of reports). The Agency is therefore only seeking comments on the generic issues that relate specifically to the proposal to lower the reporting threshold for lead and lead compounds. The changes that EPA is proposing to make to the reporting requirements for lead and lead compounds are discussed in detail in Unit VI. of this preamble, including the applicability to lead and lead compounds of the general amendments to EPCRA section 313 reporting requirements for PBT chemicals presented in the proposed PBT rule. Accordingly, comments on the following issues, which were previously identified and for which comment was sought in Unit IX. of the preamble to the proposed PBT rule (see 64 FR 688, at 717), are only requested on this proposal insofar as the comments relate particularly to lead and lead compounds: (1) Whether EPA should attempt to estimate the releases that would be reported at an "average" facility at each of the identified options for a lowered threshold, the appropriate methodology for estimating releases from all affected industry sectors, and whether EPA should then use those estimates to select the lowered threshold that would capture some overall percentage of releases, e.g., 75 - 80%; (2) whether EPA should consider lowering the reporting thresholds for lead and lead compounds based on either persistence or bioaccumulation (rather than both); (3) whether EPA should consider other mechanisms for further minimizing the potential impacts associated with lowering the reporting thresholds for lead and lead compounds (i.e., it was suggested that EPA develop a modified Form A with thresholds more appropriate for lead and lead compounds, retain *de minimis* thresholds for lead and lead compounds (perhaps at a lower level), retain whole number reporting, the half-pound rule, and range reporting for lead and lead compounds, establish an activity qualifier restricting the lower reporting threshold to the manufacture of lead and lead compounds, retaining the higher current thresholds with respect to import, process or use activities, and that EPA modulate the frequency of reporting).

D. What Other Comments Should the Public Submit?

EPA believes that the additional information provided by lowering the TRI reporting thresholds for PBT chemicals, including lead and lead compounds, will be valuable to communities and will significantly enhance their knowledge about toxic chemical releases and other waste management activities that may be of concern to them. At the same time, EPA recognizes that today's proposal, along with its earlier proposal to lower reporting thresholds for various other PBT chemicals (64 FR 688), will increase the burden imposed by the TRI program on facilities that must provide information. EPA is mindful of the importance of minimizing reporting burden, while continuing to provide communities with high quality right-to-know information. EPA is genuinely interested in reducing TRI reporting burden, while assuring that the goals and objectives of EPCRA section 313 continue to be met.

EPA has already initiated a number of burden reducing activities in the TRI program. For example, EPA is currently reviewing the original list of EPCRA section 313 chemicals in response to suggestions that EPA evaluate those chemicals against the EPCRA section 313(d) criteria. EPA is also developing reporting guidance, including guidance specifically for small businesses, which will simplify and ease reporting burdens. These efforts include the development of intelligent reporting software with built-in error checking routines and calculation methodologies; the development of a single facility identification program for facilities that report to EPA; and the development of guidance to facilitate more consistent use of chemical nomenclature, reporting units, and time frames across different programs.

As a means of identifying other potential areas for reducing TRI reporting burden, EPA initiated an intensive stakeholder process to comprehensively evaluate current TRI reporting. An important part of this stakeholder process was a review conducted by the Toxics Data Reporting (TDR) Committee of the National Advisory Council on Environmental Policy and Technology (NACEPT). EPA asked the TDR Committee to develop recommendations to improve the right-to-know information available to communities and to help streamline reporting to ease the paperwork burden for facilities affected by the requirements. Specifically, the Committee was asked to examine the format of and nomenclature in the Form R, seek opportunities for burden reduction, and evaluate EPA's presentation of the data in public information documents. The TDR Committee met eight times between September 1997 and October 1998, and issued its final report in May 1999. The TDR Committee report is available on the Internet at www.epa.gov/opptintr/tri, and a copy of the report is also available in the public version of the official record for this proposed rule.

In their final report to the Agency, after noting that the TDR Committee did not reach final consensus on most issues, the TDR Committee presented the various suggestions raised during the discussions as "ideas" without any indication of the level of support for them. These ideas fall under the broad categories of burden reduction, the public data release (PDR), and the Form R. Some of the burden reduction ideas presented by the TDR Committee include the creation of an intelligent software program for reporters, the integration of reporting across programs, the provision of industry specific guidance, the expansion of the EPCRA section 313 exemptions, and options for increasing eligibility for the alternate threshold as certified by Form A. With regard to the Form R, most of the Committee's suggestions involved the addition of data elements intended to further clarify the information currently collected, particularly on the waste management data. The Committee also offered ideas for improving the PDR, including adding information to the PDR that would provide additional context for the TRI data.

The TDR Committee report also mentions a more general approach for burden reduction that involves establishing, either through regulation or guidance, limitations on the level of effort and data accuracy required for TRI reports. For example, this approach might include greater use of default parameters and standardized estimation methods based on best engineering practices, and/or a percentage rule in which a facility would be required to collect information and report only some fixed percentage of releases (e.g., 90%). This latter approach could allow facilities to focus their reporting efforts on larger sources of releases and ignore some smaller sources, as long as they reported at least the specified percentage of total releases. The absolute quantity not reported would vary from toxic chemical to toxic chemical and from facility to facility. EPA requests comments on the substance of this approach, including mechanisms that would allow implementation consistent with EPCRA section 313. In particular, EPA is interested in comments regarding the potential impacts of this approach on the facility reporting burden and on the integrity of the TRI data and community right-to-know.

In addition to the TDR Committee report, EPA has received other suggestions for burden reduction in the TRI program. Although EPA has already requested comment on the suggestion that EPA effectively modify the frequency of reporting for PBT chemicals (see 64 FR 688, at 718), and lead and lead compounds (see Unit III.C. of this preamble), it has been suggested that EPA consider changing the frequency of reporting under EPCRA section 313 in general, i.e., require biennial reporting. EPA is requesting comment on the utility of biennial reporting and whether that approach would provide for significant burden reduction for affected facilities. EPA welcomes comment on the availability of information that would allow the Agency to make the requisite findings under EPCRA section 313(i)(3)(B), especially how consideration of alternate reporting requirements should pertain to the facilities in the recently added industry sectors for which first reports have just recently been received, the lack of readily available information on EPCRA section 313 chemicals from existing sources, and what available information may exist to allow EPA to address the requirements of the law.

EPA places great importance on reducing burden on the public and is currently considering the various suggestions it has received, including the ideas in the TDR Committee report, and others received from industry and other agencies. EPA welcomes additional suggestions, and specifically requests comment on the ideas presented in the TDR Committee report, particularly those that relate to burden reduction.

IV. Explanation for Lowering Reporting Thresholds

A. What is the General Background for this Rulemaking?

In 1986, Congress passed EPCRA. This new law recognized the unique role that communities can play in assuring environmental protection at the local level. Just prior to the passage of EPCRA, fatal chemical releases from a chemical manufacturing facility in Bhopal, India highlighted the need for developing and sharing both emergency planning information and routine release information with the public. The identification of United States facilities, chemicals, and processes identical to the Bhopal situation brought home the potential for similar accidents in the United States as well as a recognition that routine releases of toxic chemicals associated with routine facility processes could pose significant risks to communities. These routine, annual releases, if assessed at all, were known only to the facilities themselves. Communities however, were unaware of the magnitude and potential consequences of such releases.

Section 313 of EPCRA resulted in the creation of the Toxics Release Inventory (TRI). TRI is a publicly available data base that provides quantitative information on toxic chemical releases and other waste management activities. With the collection of this information for the first time in 1987, came the ability for the public, government, and the regulated community to understand the magnitude of chemical emissions in the United States; to compare chemical releases among facilities and transfers of chemical wastes among States, industries, and facilities; and perhaps most importantly, to assess the need to reduce and where possible, eliminate these releases and other waste management activities. TRI enables all parties interested in environmental progress to establish credible baselines, to set realistic goals, and to measure progress over time, in meeting those goals. The TRI system provides a neutral yardstick by which progress can be measured by all interested parties. TRI is an important tool in empowering the Federal government, State governments, industry, environmental groups, and the general public, to fully participate in an informed dialogue about the environmental and human health impacts of toxic chemical releases and other waste management activities.

Prior to EPCRA, the kind of information contained in the TRI generally was nonexistent or unavailable to the Federal government, State governments, emergency preparedness teams or the general public, and often was not disclosed until after major impacts on human health and the environment were evident. This "after the fact" disclosure of information did little to help plan for or prevent such serious health and environmental impacts. While permit data are generally cited as a public source of environmental data, they are often difficult to obtain, are not multi-media, and present only a limited perspective on a facility's overall environmental performance. While other sources of data are sometimes cited as substitutes for TRI data, based on its own research, EPA is unaware of

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any other publicly available, nationwide data base that provides multi-media, facility-specific release and other waste management information to the public in a readily accessible form. With TRI, and the real gains in understanding it has produced, communities now know which industrial facilities in their area release or otherwise manage as waste listed toxic chemicals.

Under EPCRA section 313, Congress set the initial parameters of TRI, but also gave EPA clear authority to modify TRI in various ways, including to change the toxic chemicals subject to reporting, the facilities required to report, and the threshold quantities that trigger reporting. By providing this authority, Congress recognized that the TRI program would need to evolve to meet the needs of a better informed public and to refine existing information. EPA has, therefore, undertaken a number of actions to expand and enhance TRI. These actions include expanding the number of reportable toxic chemicals by adding 286 toxic chemicals and chemical categories to the EPCRA section 313 list in 1994 (59 FR 61432, November 30, 1994) (FRL–4922–2). Further, a new category of facilities was added to EPCRA section 313 on August 3, 1993, through Executive Order 12856 (58 FR 41981, August 6, 1993), which requires Federal facilities meeting threshold requirements to file annual TRI reports. In addition, in 1997 EPA expanded the number of private sector facilities that are required to report under EPCRA section 313 by adding seven new industrial groups to the list of covered facilities (62 FR 23834, May 1, 1997) (FRL–5578–3). At the same time, EPA has sought to reduce the burden of EPCRA section 313 reporting by actions such as delisting chemicals that were determined not to meet the statutory listing criteria and establishing an alternate reporting threshold of 1 million pounds for facilities with 500 pounds or less of production-related releases and other wastes. Facilities meeting the requirements of this alternate threshold may file a certification statement (Form A) instead of reporting on the standard TRI report, the Form R.

In today's action, EPA is proposing enhanced reporting requirements for lead and lead compounds. Lead and lead compounds are toxic chemicals that persist and bioaccumulate in the environment. To date, with the exception of facilities subject to the alternate threshold exemption, EPA has not altered the statutory reporting threshold for all listed chemicals. However, as the TRI program has evolved over time and as communities identify areas of special concern, thresholds and other aspects of the EPCRA section 313 reporting requirements may need to be modified to assure the collection and dissemination of relevant, topical information and data. Towards that end, EPA is proposing to increase the utility of TRI to the public by lowering the reporting thresholds for lead and lead compounds. Lead and lead compounds, being PBT chemicals, are of particular concern because they remain in the environment for significant periods of time and concentrate in the organisms exposed to them. EPA believes it is important that the public understand that these PBT chemicals can have serious human health and environmental effects resulting from low levels of release and exposure. Lowering the reporting thresholds for lead and lead compounds would ensure that the public has important information on the quantities of these PBT chemicals released or otherwise managed as waste, that would not be reported under the current thresholds.

B. Why Should EPCRA Section 313 be Used to Focus on Chemicals that Persist and Bioaccumulate?

As discussed in Unit VI.A. of this preamble, EPA is proposing to lower the EPCRA section 313 reporting thresholds for lead and lead compounds because these substances persist and bioaccumulate in the environment. A chemical's persistence refers to the length of time the chemical can exist in the environment before being destroyed by natural processes. Bioaccumulation is a general term that is used to describe the process by which organisms may accumulate certain chemicals in their bodies. The term refers to both uptake of chemicals from water (bioconcentration) and from ingested food and sediment residues. PBT chemicals, such as lead and lead compounds, are therefore toxic chemicals that partition to water, sediment, or soil and are not removed at rates adequate to prevent their bioaccumulation in aquatic or terrestrial species. Chemicals that persist and bioaccumulate have been found in shellfish, birds, human adipose tissue, and other mammals. See Unit V. of this preamble for a more detailed discussion of and definitions for the terms persistence and bioaccumulation and the data for lead and lead compounds.

Review of existing data leads EPA to believe that, as a general matter, the release to the environment of toxic chemicals that persist and bioaccumulate is of greater concern than the release of toxic chemicals that do not persist or bioaccumulate. Since PBT chemicals can remain in the environment for a significant amount of time and can bioaccumulate in animal tissues, even relatively small releases of such chemicals from individual facilities have the potential to accumulate over time to higher levels and cause significant adverse impacts on human health and the environment. EPA believes that the availability of information on PBT chemicals, and specifically lead and lead compounds, is a critical component of a community's right-to-know. Therefore, it is particularly important to gather and disseminate to the public relevant information on the releases and other waste management activities of PBT chemicals.

Thus, for PBT chemicals, releases and other waste management activities that occur at facilities that manufacture, process, or otherwise use such chemicals even in relatively small amounts are of concern. Under current reporting thresholds, a significant amount of the releases and other waste management activities involving lead and lead compounds are not being captured. The public, therefore, does not have the information needed to determine if lead and lead compounds are present in their communities at levels that may pose a significant risk. By lowering the section 313 reporting thresholds for lead and lead compounds, EPA would be providing communities across the United States with access to data that may help them in making this determination. This information could also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment.

Several EPA offices have ongoing projects and programs that are dealing with issues concerning PBT chemicals, such as lead and lead compounds. EPA has established the PBT planning group which is a coordinating body consisting of representatives from various program offices throughout EPA that are dealing with PBT chemicals. This group has developed a strategy to reduce pollution from PBT chemicals through the application of regulatory and non-regulatory authorities, with a strong emphasis on pollution prevention. Under this initiative, the reporting of PBT chemicals at lower thresholds under EPCRA section 313 would provide data on PBT chemicals to EPA, industry, and the public. The availability of that data can allow all parties to identify and track releases of PBT chemicals and monitor the progress of the programs designed to reduce the amount of PBT chemicals entering the environment. The data would also allow EPA and others to design prevention strategies that are focused and effective.

EPA is also participating in several international efforts to reduce or eliminate pollution from PBT chemicals. These efforts include: the Commission for Environmental Cooperation (CEC) Process for Identifying Candidate Substances for Regional Action Under the Sound Management of Chemicals Initiative, the United Nations Environment Programme Persistent Organic Pollutants (POPs) Negotiations, and the Canada-United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes Basin.

The program between the United States and Canada focuses on pollution of the Great Lakes by PBT chemicals, which has been a matter of great concern for both countries. However, the Canada-United States Strategy for Virtual Elimination of Persistent Toxic Substances in the Great Lakes Basin contains commitments that apply nationwide, including those for alkyl lead. EPA has established the Great Lakes National Program Office (GLNPO) to develop and implement programs to reduce pollution of the Great Lakes. GLNPO works in cooperation with counterpart organizations in Canada, most notably Environment Canada, to carry out its mission. The "Final Water Quality Guidance for the Great Lakes System" (60 FR 15366, March 23, 1995) (FRL–5173–7) identified "Pollutants that are Bioaccumulative Chemicals of Concern (BCCs)" among the "Pollutants of Initial Focus in the Great Lakes Water Quality Initiative." Working with that list, Canada and the United States agreed on an initial list of chemicals identified as "Substances Targeted by the Canada-United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes Basin" (Ref. 1). A subset of the targeted substances is often referred to as the "Binational Level 1 List," and includes chemicals both countries have committed to "virtually eliminate" from the Great Lakes, through meeting a series of interim reduction goals, some of which are national in scope. Virtual elimination is to be attained by programs implemented voluntarily by each country. The Binational Level 1 List includes alkyl lead, and the associated commitment reads: "US Challenge: Confirm by 1998, that there is no longer use of alkyl lead in automotive gasoline. Support and encourage stakeholder efforts to reduce alkyl lead releases from other sources." The information that would be reported under this proposed rule regarding alkyl lead would directly contribute to the Agency's ability to "support and encourage stakeholder efforts to reduce releases" as agreed to in the Binational Strategy.

EPA discussed the issue of reporting on PBT chemicals under section 313 in its January 12, 1994 chemical expansion proposed rule (59 FR 1788) (FRL–4645–6). In the preamble to the proposed rule, EPA specifically requested comment on whether PBT chemicals should be added to the section 313 list. EPA also asked for comments on what modifications to reporting requirements, such as lowering reporting thresholds or modifying the *de minimis* exemption, would need to be made in order to ensure that release and transfer information would be collected for such chemicals. In response to EPA's request for comments on the reporting of PBT chemicals, 39 commenters responded, with 35 of these commenters fully supporting such reporting under section 313. In addition, of the over 620 comments EPA received on its 1997 proposal to add a dioxin and dioxin-like compounds category, over 520 commenters supported lowering the reporting thresholds for the proposed category. Many commenters also suggested that EPA lower the reporting threshold for all toxic chemicals that persist and bioaccumulate. EPA will provide specific responses to these comments as part of any final rule developed to add the dioxin and dioxin-like compounds category to the section 313 list and lower the reporting thresholds. EPA has recently addressed the issue of lower reporting thresholds for certain other PBT chemicals in a proposed rule that was published on January 5, 1999 (64 FR 688) (FRL–6032–3).

V. Review of Persistence, Environmental Fate, and Bioaccumulation Data for Lead and Lead Compounds

A. What are Persistence and Environmental Fate and What Data are Available for Lead and Lead Compounds?

A chemical's persistence refers to the length of time the chemical can exist in the environment before being destroyed (i.e., transformed) by natural processes. The environmental media for which persistence is measured or estimated include air, water, soil, and sediment; however, water is the medium for which persistence values are most frequently available. It is important to distinguish between persistence in a single medium (air, water, soil, or sediment) and overall environmental persistence. Persistence in an individual medium is controlled by transport of the chemical to other media, as well as transformation to other chemical species. Persistence in the environment as a whole is a distinct concept. It is based on the observations that the environment behaves as a set of interconnected media, and that a chemical substance released to the environment will become distributed in these media in accordance with the chemical's intrinsic (physical/chemical) properties and reactivity. For overall persistence, only irreversible transformation contributes to net loss of a chemical substance.

Although metals and metal compounds, including lead and lead compounds, may be converted from the metal to a metal compound or from one metal compound to another in the environment, the metal cannot be destroyed. Thus, metals are obviously persistent in the environment in some form. The form of the metal that exists in the environment depends on its environmental fate. Environmental fate refers to the ultimate result of physical, chemical, and biological processes acting upon a metal or metal compound once released into the environment. The environmental fate determines whether the metal or the metal from a metal compound will be available for exposure to organisms once released into the environment. The environmental fate of a metal or metal compound varies depending on the environmental conditions and the physical/chemical properties of the metal in question.

The information summarized below for the environmental fate of lead in each environmental medium represents the key elements influencing the transport, transformation, and bioavailability of lead in air, soil, water and sediments. Commenters should consult the support documents and review the studies contained and referenced therein for further information. The information summarized below as well as a more extensive review of the existing data on the environmental fate of lead is contained in *The Environmental Fate of Lead and Lead Compounds* (Ref. 2) and in the references contained therein.

Most lead released to air eventually settles back to ground level by dry deposition or washout by rain. Thus, airborne lead is either returned to soil surfaces by deposition or to surface water by deposition or surface runoff. However, while airborne, some lead compounds (e.g., lead halides) can

undergo reactions to produce lead sulfates and carbonates.

After deposition in the soil environment, lead may bind strongly by mechanisms such as the formation of insoluble complexes with organic material, clay minerals, phosphate, and iron-manganese oxides common in many soils. These mechanisms can lower the levels of soluble lead in soils. However, some of the lead in the soil environment (0.2 to 1%) may be water soluble. The extent of sorption appears to increase with increasing pH. Under acidic conditions, levels of lead in soil water can increase significantly. The solubility of lead increases linearly in the pH range of 6 to 3. At a pH of 5 to 9, heavy metals such as lead may bind to the surface of clay minerals. Cation exchange capacity (CEC, related to soil clay content) and pH also influence the capacity of soil to immobilize lead. Generally, as the CEC and pH increase, the capacity of a soil to sorb lead increases. Conversely, soils with lower CEC and pH tend to have a lower capacity to sorb lead. Using organic chelation as a model, the total capacity of soil to immobilize lead can be predicted by the linear relationship developed by Zimdahl and Skogerboe (Ref. 3). Using this equation to predict saturation capacity from CEC and pH, it can be shown that a pH drop from 5.5 to 4.0 would reduce estimated soil absorption capacity 1.5 times, thereby increasing the concentration of available lead in soil water.

A number of field studies demonstrate the effect of environmental conditions on the mobility of lead in soils. In all of these studies, variables including pH, soil organic matter content and the chemical species of lead present, had a significant influence on soil lead mobility. Data indicate that when the pH and soil organic matter content are low and conditions favor the formation of soluble forms of lead, the mobility of lead increases. Therefore, decreasing pH can lead to increasing concentrations of lead in soil water. Other studies demonstrate that when pH and soil organic matter are high, lead mobility in soils is decreased. Limited data indicate that organolead compounds may be converted into water-soluble lead compounds in some soil. Degradation products of tetramethyl and tetraethyl lead, the trialkyl lead oxides, are expected to be significantly more mobile in soils than the parent tetraalkyl lead compounds would be.

The levels of soluble lead in surface waters depend on the pH of the water and the dissolved salt content. Equilibrium calculations show that at a pH greater than 5.4, the total solubility of lead is approximately 30 micrograms per liter (µg/L) in hard water and approximately 500 µg/L in soft water. In soft water, sulfate ions limit the lead concentration in solution through the formation of lead sulfate. The lead carbonates limit lead in solution at a pH greater than 5.4 (Ref. 4). Concentrations as high as 330 µg/L could be stable in water at a pH near 6.5 and an alkalinity of about 25 milligrams (mg) bicarbonate ion per liter. Water having these properties is common, for example, in runoff areas of New York State and New England. In other waters, where alkalinity and pH are higher, the relative concentrations of soluble lead may be lower.

Lead also forms complexes with organic matter in water. The organic matter includes humic and fulvic acids that are the primary complexing agents in soils and widely distributed in surface waters. The presence of fulvic acid in water has been shown to increase the rate of solution of lead sulfide 10 to 60 times (Refs. 5 and 6). At pH levels near neutral (i.e., about 7.0), soluble lead-fulvic acid complexes are present in solution. As pH levels increase, the complexes are partially decomposed, and lead hydroxide and carbonate are precipitated, and may either remain suspended or fall to the sediment. Other studies have shown that humic acid in freshwater and marine sediments, and in the aqueous phases, are capable of complexing various amounts of metals. In some circumstances, this process could potentially reduce the levels of soluble lead present.

At neutral pH, lead generally moves from the dissolved to the particulate form with ultimate deposition in sediments. There is evidence that in anaerobic sediments, lead can undergo biological or chemical methylation. This process could result in the remobilization and reintroduction of transformed lead into the water column where it could be available for uptake by biota, and volatilization to the atmosphere. However, tetramethyl lead may be degraded in aerobic water before reaching the atmosphere.

In conclusion, EPA believes that processes commonly observed in the environment can result in the release of bioavailable (ionic) lead where it can be bioaccumulated by organisms. These processes may occur in soil and aquatic environments with low pH and low levels of clay and organic matter. Under these conditions, the solubility of lead is enhanced and if there are no sorbing surfaces and colloids, lead ion can remain in solution for a sufficient period to be taken up by biota. Lead sorption to soil organic matter has been shown to be pH dependent. Decreasing pH can lead to increasing concentrations of lead in soil water; while increasing pH can lead to decreasing concentrations of lead in soil water.

The Agency's analysis of the environmental fate of lead and lead compounds, therefore, shows that under many environmental conditions lead is available to express its toxicity and to bioaccumulate. The bioavailability of metals such as lead has been raised as an issue at recent public meetings on EPA's January 5, 1999 proposed rule on PBT chemicals (64 FR 688). It has been suggested that metals will not be bioavailable from certain metal compounds that may be released into the environment and that therefore they should not be considered PBT chemicals. The issue of the bioavailability of metals from metal compounds is broader than just its implications for whether a chemical is a PBT. The issue of bioavailability has been addressed for EPCRA section 313 chemical assessments through EPA's policy and guidance concerning petitions to delist individual members of the metal compound categories listed under EPCRA section 313 (May 23, 1991, 56 FR 23703). This policy states that if the metal in a metal compound cannot become available as a result of biotic or abiotic processes then the metal will not be available to express its toxicity. If the intact metal compound is not toxic and the metal is not available from the metal compound then such a chemical is a potential candidate for delisting. EPA developed this petition process specifically to address such circumstances.

EPA requests comment on its discussion of the scientific information concerning the fate, transport, and the availability of lead in the environment, and on how this information should be considered in classifying lead as a PBT chemical.

B. What is Bioaccumulation and What Aquatic Bioaccumulation Data are Available for Lead and Lead Compounds?

Bioaccumulation is a general term that is used to describe the process by which organisms may accumulate chemical substances in their bodies. The discussions and data on bioaccumulation in this unit (i.e., Unit V.B.) deal strictly with aquatic organisms. This is not to imply that bioaccumulation cannot occur in non-aqueous environments and in fact Unit V.C. of this preamble discusses the bioaccumulation of lead in humans,

including bioaccumulation from non-aqueous media. The term bioaccumulation refers to uptake of chemicals by organisms both directly from water and through their diet (Ref. 7). EPA has defined bioaccumulation as the net accumulation of a substance by an organism as a result of uptake from all environmental sources (60 FR 15366). The nondietary accumulation of chemicals in aquatic organisms is referred to as bioconcentration, and may be described as the process through which a chemical is distributed between the organism and environment based on the chemical's properties, environmental conditions, and biological factors such as an organism's ability to metabolize the chemical (Ref. 8). EPA has defined bioconcentration as the net accumulation of a substance by an aquatic organism as a result of uptake directly from the ambient water through gill membranes or other external body surfaces (60 FR 15366). A chemical's potential to bioaccumulate can be quantified by measuring or predicting the chemical's bioaccumulation factor (BAF). EPA has defined the BAF as the ratio of a substance's concentration in tissue of an aquatic organism to its concentration in the ambient water, in situations where both the organism and its food are exposed and the ratio does not change substantially over time (60 FR 15366). A chemical's potential to bioaccumulate can also be quantified by measuring or predicting the chemical's bioconcentration factor (BCF). EPA has defined the BCF as the ratio of a substance's concentration in tissue of an aquatic organism to its concentration in the ambient water, in situations where the organism is exposed through water only and the ratio does not change substantially over time (60 FR 15366).

A review of the ecotoxicological literature indicates that bioconcentration values of lead and lead compounds (lead salts) in aquatic plants and animals are often above a bioconcentration/bioaccumulation factor of 1,000. Lead is bioaccumulated by aquatic organisms such as plants, bacteria, invertebrates, and fish. The principal form that is believed to be accumulated is divalent lead (i.e., lead in its plus 2 oxidation state (Pb^{+2})). It has been shown that fish held in water at a pH of 6.0 accumulate three times as much lead as fish held in water at a pH of 7.5 (Ref. 9), thus as pH decreases the availability of divalent lead increases. Older organisms usually have the highest body burdens, and lead accumulates in bony tissues to the greatest extent.

Table 1 below summarizes some of the data reviewed concerning the extent (magnitude) of lead bioaccumulation found to occur in many aquatic plants and animals and the lead bioconcentration factors (BCF) determined or measured from laboratory studies conducted for certain durations using BCF test methods. Only some of the laboratory calculated values or monitored field values near or above a bioaccumulation factor of 1,000 are included in Table 1; additional data can be found in the bioaccumulation support document (Ref. 10). Concentrations of lead monitored in various organisms listed in Table 1 were determined by comparing concentrations in the environment (water) with concentrations measured in the organisms.

Table 1.—Bioaccumulation/Bioconcentration Data for Lead and Lead Compounds in Aquatic Organisms.

Test Species	Chemical Tested/ Monitored (concentration)	BCF Value[1]	Field Concentration Factor[2]	Reference
Freshwater Species				
Snail (*Lymnaea palustris*)	Lead nitrate (12 µg/L)	1,700; 3,100 (soft tissue); 2,500 (whole animal)	NA	Ref. 11
Phytoplankton, 13 species (*Melosira italica* and *Asterionella formosa* were dominants)	Lead (0.4-2.5 µg/dm^3	NA	10,000x or greater[3]	Ref. 12
Green alga (*Selenastrum capricornutum*)	Lead nitrate (5 µg/L)	10,000[3]	NA	Ref. 13
Green alga (*Selenastrum capricornutum*)	Lead nitrate (50 µg/L)	2,900[3]	NA	Ref. 13
Green alga (*Cladophora sp.*)	Lead	NA	390x[3]; 690x[3]; and 1,695x[3]	Ref. 14
Pondweed (*Pontamogeton sp.*)	Lead	NA	525x[3] and 1,695x[3]	Ref. 15
Rainbow trout (*Salmo gairdneri*)	Lead (3.5 µg/L; 24 µg/L)	726 (whole fish); 12,540 and 17,300 (intestinal lipids)	NA	Ref. 16
Marine Species				
Blue mussel (*Mytius edulis*)	Lead nitrate; Lead (10 µg/L); Lead (500 µg/L)	2,570 and 2,800 (soft parts); 2,427[3] (kidney) and 306[3] (soft parts); 4,985[3] (soft parts)	NA	Refs. 17 and 18
Eastern oyster (*Crassostrea virginica*)	Lead (1, 3.3 µg/L)	1,320[3] and 691[3] (soft parts)	NA	Ref. 19
Brown alga (*Fucus vesiculosus*)	Lead (1-7.5 µg/L)	NA	570x-3,600x[3]	Ref. 20
Algae (*Ulva sp.*)	Lead (1-7.5 µg/L)	NA	1,140x-7,350x[3]	Ref. 20
Algae (*Enteromorpha linza*)	Lead (1-7.5 µg/L)	NA	1,020x-6,750x[3]	Ref. 20
Algae (*Blidingia minima*)	Lead (1-7.5 µg/L)	NA	900x-12,300x[3]	Ref. 20
American Lobster (*Homarus americanus*)	Lead (50 µg/L)	2,760 (antennal gland)	NA	Ref. 21

[1]BCF values are calculated from laboratory studies.
[2]Field concentrations are estimated from water:organism sample comparisons.
[3]Value was converted from a dry weight value to a wet weight value using appropriate conversion factors.

Additional information concerning lead's bioaccumulation potential is summarized in the bioaccumulation support document for this proposed rule (Ref. 10). In general, bioconcentration values for four freshwater invertebrate species ranged from 499 to 1,700 (Ref 22). BCFs for two species of freshwater fish were much lower, 42 and 45. However, certain fish tissues have much higher BCF values, e.g., the BCF value for the intestinal lipids in rainbow trout were as high as 17,300. Freshwater phytoplankton and both marine and freshwater algae accumulate or concentrate lead to very high levels (e.g., greater than 10,000x). BCF values for marine bivalve organisms were as high as 4,985 for blue mussels. Eastern oysters also have BCF values greater than 1,000. These data indicate that many of the BCF values and measured environmental concentration factors for lead are above 1,000 with several species having BCF or observed concentration factors above 5,000. The references cited for blue mussels include a range of values, the upper end of which is very close to 5,000 (i.e., 4,985). There are also a few fish tissues that have BCFs greater than 10,000, though most of the available fish data are below 5,000.

EPA requests comment on its discussion of the scientific information concerning the bioaccumulation of lead in aquatic organisms, and on how this information should be evaluated in assessing the bioaccumulative potential of lead and lead compounds.

C. What Data are Available on the Human Bioaccumulation of Lead and Lead Compounds?

There is a great deal of information available on the bioaccumulation of lead in humans and the effects that such

accumulation can have. Much of this information is summarized and cited in the following documents, *The Agency for Toxic Substances and Disease Registry Toxicological Profile on Lead* (Ref. 23), *EPA's Risk Analysis to Support Standards for Lead in Paint, Dust, and Soil* (Ref. 24), and *EPA's Air Quality Criteria for Lead* (Ref. 25). EPA's Office of International Affairs has also established an Internet site that provides information on lead including lists of various EPA documents on lead that are available as well as links to other EPA programs and agencies that have information on lead and its hazards (Ref. 26). This unit provides a summary of some of the information from these sources that relates to the ability of lead to accumulate in humans.

The bioaccumulation and persistence of lead in humans is well documented. Although lead has no known biological function in humans, it is readily absorbed through the gut and can be absorbed by inhalation and, to some extent by dermal contact. Absorption of lead can occur as a result of exposure to air-borne forms of lead, as well as ingestion or contact with contaminated soil and dust. Children and developing fetuses are known to absorb lead more readily than adults and to excrete it at a lower total rate. These findings are especially significant since young children are most susceptible to the adverse effects associated with lead exposure. Lead absorption varies from very low levels (e.g., 5%) up to essentially 100%. Lead absorption appears to be linked to particle size, the chemical composition, and other factors (Refs. 27 and 28). Long-lasting impacts on intelligence, motor control, hearing, and neurobehavioral development of children have been documented at levels of lead that are not associated with clinical intoxication and were once thought to be safe. An analysis of human blood-lead level data collected from most recent National Health and Nutrition Examination Surveys (see Ref. 24), showed that approximately 4.4% of the nation's children aged 1-5 years have blood-lead concentrations at or above 10 micrograms per deciliter (µg/dL), which is the current action level established by the Centers for Disease Control. While this is a significant improvement over the 88% of children who had blood lead levels above this threshold in 1976, before the phase-out of lead in gasoline, it is still cause for concern because it leaves nearly 900,000 children aged 1-5 with unacceptably high blood-lead levels.

Once lead is absorbed in the body, it is primarily distributed to the blood, soft tissues (kidney, bone marrow, liver, and brain) and to the mineralizing tissue (bones and teeth). In one study it was shown that in adults, following a single dose of lead, one-half of the lead absorbed from the original exposure remained in the blood for approximately 25 days after exposure, in soft tissues for about 40 days, and in bone for more than 25 years (Ref. 29). Once in the bone, lead can re-enter the blood and soft tissues. Under certain circumstances, such as pregnancy and lactation, lead can more readily re-enter blood and soft tissues. Thus, accumulation of lead in bone can serve to maintain elevated blood lead levels years after exposure. The total amount of lead in long-term bone retention can approach 200 mg for adult males 60-70 years old (and even higher with occupational exposure). For adults, up to 94% of the total amount of lead in the body is contained in the bones and teeth but for children only about 73% is stored in their bones. While the increase in bone lead level across childhood is modest, the total accumulation rate is actually 80-fold when the 40-fold increase in skeletal mass that children undergo is taken into account. While lead absorption rates are influenced by several parameters, including route of exposure, chemical speciation, the physical/chemical characteristics of the lead and the exposure medium, as well as the age and physiological states of the exposed individual, there is substantial documentation that a significant amount of lead can be absorbed and accumulated in humans.

EPA requests comments on its discussion of the scientific information concerning the bioaccumulation of lead in humans and on how this information should be considered in classifying lead and lead compounds as "highly bioaccumulative."

D. What are EPA's Conclusions from the Review of the Available Data on Lead and Lead Compounds?

EPA's review of the available information on lead and lead compounds has led EPA to conclude that lead and lead compounds are highly persistent and highly bioaccumulative. The persistence of lead in the environment is not in question since, as a metal, lead cannot be destroyed in the environment. With respect to whether lead or lead compounds released to the environment will result in lead that is bioavailable, the data indicate that under many environmental conditions lead does become available. The conclusion that lead is bioavailable in the environment is confirmed by the data on the bioaccumulation of lead in aquatic organisms and in humans as a result of environmental exposures. As for lead's bioaccumulation potential, lead has been shown to bioaccumulate in laboratory studies and has been found to bioaccumulate in organisms observed in the environment. These data indicate that many of the BCF values and measured environmental concentration factors for lead are above 1,000 with several species having BCF or observed concentration factors above 5,000. The references cited for blue mussels include a range of values, the upper end of which is very close to 5,000 (i.e., 4,985). There are also a few fish tissues that have BCFs greater than 10,000, though most of the available fish data are below 5,000.

A high concern for the bioaccumulation potential for chemicals with BCF values above 1,000 is consistent with the discussion of BCF values in the recent proposed rule on PBT chemicals (January 5, 1999, 64 FR 688). In addition, there is considerable information on the accumulation of lead in humans, including children who are the most susceptible to the toxic effects of lead. The data on lead's persistence and availability in the environment, the observed high bioaccumulation values in aquatic organisms, and lead's ability to accumulate in humans, are the basis for EPA's conclusion that lead and lead compounds are highly persistent and highly bioaccumulative.

E. Are There Particular Issues on Which EPA is Interested in Receiving Comment?

The Agency recognizes that there are several complex technical issues surrounding the availability and bioaccumulation of lead and lead compounds. For example, during the inter-agency review process it was suggested that the bioavailability of lead in the environment could be constrained by many abiotic factors such that lead is not available in certain environments. These abiotic factors include: Soils have a high capacity to immobilize lead and therefore limit its availability; high pH levels may reduce lead bioavailability; organic matter can decrease lead bioavailability; inorganic constituents can reduce lead availability in aqueous environments; and, increasing water hardness can also reduce lead availability. The Agency specifically requests comments on these issues.

VI. What Changes are EPA Proposing to Make to the Reporting Requirements for Lead and Lead Compounds?

A. What Changes are EPA Proposing for the Reporting Thresholds for Lead and Lead Compounds?

EPA is proposing to lower the reporting thresholds for lead and lead compounds.

1. *What was considered in the selection of lower reporting thresholds?* In selecting potential lower reporting thresholds for lead and lead compounds, EPA considered not only their persistence and bioaccumulation but also the potential burden that might be imposed on the regulated community by lower reporting thresholds. Each of these important considerations is discussed below.

a. *How was persistence and bioaccumulation considered in threshold selection?* Because lead and lead compounds persist and bioaccumulate in the environment, they have the potential to pose human health and environmental risks over a longer period of time. Thus, even small amounts that enter the environment can lead to elevated concentrations in the environment and in organisms which can result in adverse effects on human health and the environment. The nature of lead and lead compounds indicates that small quantities of such chemicals are of concern, which provides strong support for setting lower reporting thresholds than the current section 313 thresholds of 25,000 and 10,000 pounds.

For determining how low reporting thresholds should be set for PBT chemicals, including lead and lead compounds, EPA has adopted a two-tiered approach. Under this approach, EPA identifies PBT chemicals that should have a lower reporting threshold as those chemicals with half-lives of at least 2 months and BAF/BCF values of at least 1,000. This approach also recognizes that toxic chemicals that have very high persistence and bioaccumulation potentials (e.g., chemicals with half-lives of 6 months or more and BAF/BCF values of 5,000 or more), like those that have been widely recognized as PBT chemicals, are of greatest concern and should have an even lower reporting threshold. EPA believes that for toxic chemicals that are highly persistent and bioaccumulative, any release of the toxic chemical can result in elevated concentrations in the environment and organisms because of their very high persistence and bioaccumulation potentials. As a result, consideration of persistence and bioaccumulation alone would lead EPA to set a reporting threshold for the subset of highly persistent bioaccumulative chemicals that approaches zero in order to provide the most relevant data to communities. However, EPA believes that it is appropriate to set a low threshold for toxic chemicals that persist and bioaccumulate and to set a lower threshold for toxic chemicals that are highly persistent and bioaccumulative.

Because lead cannot be destroyed in the environment and because lead is available in the environment, EPA believes that lead and lead compounds are highly persistent. The bioaccumulation data for lead and lead compounds includes many BCF or concentration values well above 5,000, and there is additional data that show that lead bioaccumulates in humans. Given this data, EPA considers lead and lead compounds to be highly bioaccumulative. Thus, EPA believes that based solely on the degree of persistence and bioaccumulation, it would be appropriate to set section 313 manufacture, process, and otherwise use thresholds of 1 pound for lead and lead compounds. This approach is consistent with the general approach that EPA has taken for setting reporting thresholds for PBT chemicals that are highly persistent and highly bioaccumulative as discussed in the recent proposed rule on PBT chemicals (64 FR 688).

As EPA stated in the January 5, 1999 proposed rule, EPA believes that communities have a greater right-to-know about chemicals which can reasonably be anticipated to be present in the community at higher levels (64 FR 688). This is particularly the case for lead which, as a metal, cannot be destroyed in the environment. Releases of lead and lead compounds from facilities subject to section 313 reporting requirements, therefore, can increase the potential exposure to lead within communities relative to a chemical that can be destroyed.

The increased exposure potential also applies to chemicals with different BCFs. The identical amount of two different chemicals, chemical A with a BCF of 1,000 to fish and chemical B with a fish BCF of 5,000, will result in different exposures to fish that consume other organisms lower in the food chain that have been exposed to these chemicals. For example, organisms that consume the fish exposed to chemical B will usually be exposed to greater quantities of the chemical than organisms that consume the fish exposed to chemical A, assuming identical feeding rates and other conditions. Due to concerns for its higher accumulation potential, a lower threshold would be set for Chemical B than for Chemical A.

b. *Was burden considered in threshold selection and what is the proposed threshold for lead and lead compounds?* As discussed above, in determining the appropriate reporting thresholds to propose for lead and lead compounds, EPA started with the premise that very low reporting thresholds may be appropriate for lead and lead compounds based solely on their persistence and bioaccumulation potential. EPA then considered the burden that would be imposed by four sets of reporting thresholds. The thresholds considered were: (1) The 1 pound threshold discussed above; (2) 10 pounds; (3) 100 pounds; and (4) 1,000 pounds. For each threshold, EPA estimated the number of additional reports that facilities might be required to file and the costs associated with the filing of those additional reports (see Tables 3 and 4 in Unit VII.E.4. of this preamble). Based on the potential burdens, EPA believes it is appropriate to lower the reporting thresholds to a level that would capture significantly more information about lead and lead compounds than current thresholds but that would not be unduly burdensome on industry. Therefore, EPA is proposing to lower the manufacture, process, and otherwise use thresholds to 10 pounds for lead and lead compounds. This consideration of burden is consistent with the approach EPA used in the January 5, 1999 proposed rule (64 FR 688), in which the preferred thresholds were set an order of magnitude higher than EPA would have proposed based solely on the degree of persistence and bioaccumulation.

EPA requests comment on its consideration of industry burden in establishing lower reporting thresholds for lead and lead compounds, including comments on the extent to which burden should be considered in EPA's decision. EPA requests comment on whether the Agency should lower the reporting threshold to 1 pound for lead and lead compounds rather than the 10 pound reporting threshold proposed in this document. EPA requests comment on whether there are any policy reasons for selecting the 1 pound reporting threshold rather than the 10 pound reporting threshold. Such policy reasons could include the fact that the 10 pound reporting threshold for lead and lead compounds, which are highly persistent and bioaccumulative, may not capture all releases that are of concern to local communities. Alternatively, EPA also seeks comment on reasons for selecting reporting thresholds of 100 pounds and 1,000 pounds.

c. *What is the relationship of the EPCRA section 313 reporting thresholds to other statutory thresholds?* For purposes of establishing EPCRA section 313 reporting thresholds, Congress has expressed a clear intent to obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of the section, and to assure that this information is reported to EPA and the states and provided to the user community. In this action, by proposing to lower the reporting thresholds for lead and lead compounds, EPA is working to assure that communities are provided with data on these toxic chemicals, which are frequently manufactured, processed, or otherwise used in quantities well below the existing reporting thresholds of 25,000 pounds and 10,000 pounds and consequently are not reported to EPA and the states. In choosing the proposed EPCRA section 313 thresholds for lead and lead compounds, EPA took into consideration a number of factors including small business impacts, overall reporting burden, and report generation in addition to utility of the information. It has been EPA's goal, under the EPCRA section 313 program, to maintain a balance between community right-to-know and overall reporting burden for the affected industry.

EPCRA section 313 provides one of several authorities through which EPA collects data. Each of these authorities has different criteria and different purposes. Many are aimed at supporting environmental decisionmaking and standard setting with community involvement in these processes. The thresholds established under EPCRA section 313 are designed to meet the statutory requirements of the Act as well as the overarching goal of informing the public about chemical releases and other waste management practices in their communities. Other EPA statutes such as the Clean Water Act (CWA), the Clean Air Act (CAA), and Resource Conservation and Recovery Act (RCRA) also have information collection provisions, whose criteria, coverage, scope and purpose may be different from that of EPCRA section 313. The thresholds proposed here, for purposes of EPCRA section 313, should not be construed to limit or expand the data collection goals or authorities of other EPA programs.

B. What is the de minimis Exemption and What Changes is EPA Proposing to Make to the Use of the de minimis Exemption for Lead and Lead Compounds?

As part of the final rule implementing the reporting provisions of EPCRA section 313 (53 FR 4500, February 16, 1988), EPA adopted a limited *de minimis* exemption for listed toxic chemicals in mixtures. The *de minimis* exemption allows facilities to disregard certain concentrations of chemicals in mixtures or other trade name products they import, process, or otherwise use in making threshold calculations and release and other waste management determinations for section 313 reporting. This exemption does not apply to the manufacture of a toxic chemical unless the toxic chemical is manufactured as an impurity or is imported.

EPA adopted this exemption in response to comments requesting some type of concentration limitation for listed toxic chemicals in mixtures or other trade name products as a burden reducing measure. Commenters contended that it would be extremely burdensome for suppliers, processors, and other users of mixtures or trade name products to have to account for quantities below a *de minimis* level. Most of these commenters requested that EPA adopt a *de minimis* concentration limitation consistent with the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (HCS) requirement. The HCS provides that a supplier does not have to list a "hazardous chemical" component in a mixture if that chemical comprises less than 1.0% of the mixture or 0.1% where the chemical is a carcinogen as defined in 29 CFR 1910.1200(d)(4). OSHA chose the 1% and 0.1% limits because the agency believed that they generally appeared to be protective of workers and were considered reasonable by a number of commenters (48 FR 53280, November 25, 1983).

EPA adopted the *de minimis* exemption primarily as a means of reducing burden associated with the new (at the time) EPCRA section 313 reporting requirements. The Agency chose the HCS levels because: (1) They were consistent with the existing OSHA requirements for developing Material Safety Data Sheet (MSDS) information and with other requirements under EPCRA sections 311 and 312; (2) suppliers of products were familiar with these levels; (3) for the first 2 years of reporting, users of these mixtures were only likely to be able to rely on the product MSDS for information about the content and percentage composition of covered toxic chemicals in these products; and (4) EPA did not expect that the processing and otherwise use of toxic chemicals at less than the *de minimis* concentration in mixtures would, in most instances, contribute significantly to the threshold determinations or releases of listed toxic chemicals from any given facility.

When determining whether the *de minimis* exemption applies to a listed toxic chemical, the facility must consider only the concentration of the toxic chemical in mixtures and trade name products in process streams in which the toxic chemical is involved in a reportable activity. If the toxic chemical in a process stream is manufactured as an impurity, imported, processed, or otherwise used and is below the appropriate *de minimis* concentration level, then the quantity of the toxic chemical in that process stream does not have to be applied to threshold determinations nor included in release or other waste management determinations. If a toxic chemical in a process stream is below the appropriate *de minimis* level, all releases and other waste management activities associated with the toxic chemical in that stream are exempt from EPCRA section 313 reporting. It is possible to meet an activity (e.g., processing) threshold for a toxic chemical on a facility-wide basis, but not be required to calculate releases or other waste management quantities associated with a particular process because that process involves only mixtures or trade name products containing the toxic chemical below the *de minimis* level.

As stated above, the intent of the *de minimis* exemption was primarily burden reduction. The *de minimis* exemption was not intended to be a general small quantity exemption, but rather an exemption based on the limited information likely to be readily available to facilities newly affected by EPCRA section 313. EPA did not expect in 1988 that "the processing and [otherwise] use of mixtures containing less than the *de minimis* concentration would, in most instances, contribute significantly to the threshold determinations or releases of listed toxic chemicals from any given facility" (53 FR 4509). However, given 10 years of experience with the program, EPA believes that there are many instances where a PBT chemical, including lead or a lead compound, may exist in a mixture at a concentration below the 1% (or 0.1% for OSHA carcinogens) *de minimis* level, but where the manufacture, process, or otherwise use

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of the PBT chemical in that mixture would otherwise contribute significantly to, or exceed, the lower reporting threshold proposed in this document.

For example, a raw material is processed that contains less than the *de minimis* level of lead. The quantity of raw material processed results in significantly more than the threshold quantity of lead being processed. Also, during the processing of lead, its concentration in the process stream remains below the *de minimis* level. However, the concentration of lead in the wastestream that results from that processing activity is above the *de minimis* concentration level for lead and the wastestream containing lead is released to the land. In this example, because the concentration of lead in the process stream is below the *de minimis* concentration, the *de minimis* exemption can be taken. As a result, (1) The quantities processed do not have to be applied to the processing threshold for lead at the facility, and (2) quantities of lead that are released or otherwise managed as waste as a result of this specific processing activity are exempt from release and other waste management determinations. The exemption applies even though lead is concentrated above the *de minimis* level in the wastestream. This information would not be included in that facility's Form R.

In addition, EPA believes that the information available to the typical EPCRA section 313 reporter is generally greater than it was 10 years ago. Since 1987, the Air Pollution Emission Factors (AP-42) guidance document has been repeatedly updated and expanded. For example, several new sections were added in 1996, including a section specific to electroplating. In the early 1990s, the Factor Information Retrieval data base (FIRE) was developed. EPA has developed several additional guidance documents and software programs, including Air CHIEF CD-ROM, to aid facilities in estimating releases. Facilities also have access to guidance from trade associations.

EPA believes that there may be significant releases of lead and lead compounds in mixtures when these chemicals exist below the *de minimis* limit and that even minimal releases of persistent bioaccumulative chemicals may result in elevated concentrations in the environment or in an organism that reasonably can be anticipated to result in significant adverse effects. Therefore, EPA believes that allowing facilities to continue to take the *de minimis* exemption for lead and lead compounds, would deprive communities of important information. While these chemicals may exist in mixtures below the *de minimis* levels they will concentrate in the environment and in organisms. Further, lead and lead compounds have been shown to cause adverse effects at concentrations far less than the *de minimis* levels. For example, EPA has stated that it appears that some of the health effects of lead, particularly changes in the levels of certain blood enzymes and in aspects of children's neurobehavioral development, may occur at blood lead levels so low as to be essentially without a threshold (Ref. 30). Thus, because lead and lead compounds can cause adverse effects at concentrations well below *de minimis* levels, EPA believes that the *de minimis* principle may no longer apply. See *Environmental Defense Fund v. EPA*, 82 F.3d 451, 466 (D.C. Cir. 1996); *Alabama Power Co. v. Costle*, 636 F. 2d 323, 360 (D.C. Cir 1979). In addition, for the reasons articulated above, EPA is concerned about whether other similar regulatory exemptions continue to be supportable for lead and lead compounds. See e.g., 40 CFR 372.38(c).

Further, EPA believes that lowering the reporting thresholds for lead and lead compounds, while leaving the *de minimis* exemption in place may result in very limited reporting and undermine the very purpose of this action. Without a concomitant change in the *de minimis* exemption, lowering the reporting thresholds would not increase reporting for lead and lead compounds from some industry sectors due to the low concentrations in mixtures or other trade name products that are processed or otherwise used. A facility may exceed the reporting threshold based on some processes that involve lead or lead compounds in a mixture where the lead or lead compound is above the *de minimis* level or on activities for which the *de minimis* exemption is not applicable. However, EPA expects there will be significant numbers of activities that occur for which the *de minimis* exemption could otherwise be taken. All releases and other waste management activities associated with these activities would therefore be exempt.

Given that use of the *de minimis* exemption could significantly limit the amount of reporting on lead and lead compounds under the lower reporting threshold being proposed in today's action, EPA is proposing to eliminate the *de minimis* exemption for lead and lead compounds.

Therefore, EPA is proposing to modify 40 CFR 372.38(a) to add the following sentence to the end thereof:

> This exemption does not apply to toxic chemicals listed in § 372.28 (i.e., the chemicals for which thresholds have been lowered), except for purposes of § 372.45(d)(1).

As indicated in the proposed regulatory text, EPA is proposing to list lead and lead compounds in § 372.28.

EPA is not proposing to extend this modification to 40 CFR 372.45(d)(1) because the Agency believes that there is sufficient information available on lead and lead compounds. Requirement of additional information in this case would result in redundancies.

In past expansion actions, EPA has tried to retain burden reducing options wherever feasible. However, as the TRI program evolves to meet emerging community needs, EPA will need to reassess these exemptions and modify them as appropriate. EPA notes that the increase in burden resulting from eliminating the *de minimis* exemption for lead and lead compounds would be limited to facilities that import, process, otherwise use or manufacture as impurities lead and lead compounds. Many facilities may engage in activities that result in the manufacturing of lead and lead compounds as byproducts. In the preamble to the 1988 final rule implementing the reporting provisions of EPCRA section 313 (53 FR 4500), EPA explained, that the "*de minimis* limitation does not apply to the byproducts produced coincidentally as a result of manufacturing, processing, use, waste treatment, or disposal" (see 53 FR 4501, column 1). EPA further explains on page 4504, column 3, its decision about the application of the *de minimis* exemption to impurities and byproducts:

> EPA has distinguished between toxic chemicals which are impurities that remain with another chemical that is processed, distributed, or used, from toxic chemicals that are byproducts either sent to disposal or processed, distributed, or used in their own right. EPA also considers that it would be reasonable to apply a *de minimis* concentration limitation to toxic chemicals that are impurities in another chemical or mixture. . . .Because the covered toxic chemical as an impurity ends up in a product, most producers of the product will frequently know whether the chemical is present in concentrations that exceed the *de minimis* level, and, thus may be listed on the Material Safety Data Sheet (MSDS) for that product under the OSHA HCS.

This final rule does not adopt a *de minimis* concentration limitation in connection with the production of a byproduct. EPA believes that the facility should be able to quantify the annual aggregate pounds of production of a byproduct which is not an impurity because the substance is separated from the production stream and used, sold, or disposed of, unlike an impurity which remains in the product. (53 FR 4500).

Because many facilities may engage in activities that manufacture lead or lead compounds as byproducts and since the *de minimis* exemption does not apply to such activities, eliminating it would have no effect on the reporting of lead and lead compounds from those facilities.

For lead and lead compounds in mixtures that are imported, processed, or otherwise used, the increase in burden resulting from the elimination of the *de minimis* exemption would be limited because EPCRA does not require additional monitoring or sampling in order to comply with the reporting requirements under EPCRA section 313. EPCRA section 313(g)(2) states:

> In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released in the environment beyond the monitoring and measurement required under other provisions of law or regulation.

Information used should be based on production records, monitoring, or analytical data, guidance documents provided by EPA and trade associations, and reasonable judgement on the part of the facility's management. No further monitoring or analysis of production, process, or use is required.

EPA requests comment on its proposed modification of the *de minimis* exemption for lead and lead compounds. EPA also requests comments on whether the Agency should modify the exemptions at 40 CFR 372.38(c) (e.g., the otherwise use exemptions, including the structural component exemption, the routine janitorial or facility grounds maintenance exemption; the personal use exemption, the motor vehicle maintenance exemption, and the intake air and water exemption) such that they will not apply to lead or lead compounds. The legal authority for these exemptions is also the *de minimis* principle, and as noted above, EPA is concerned that this doctrine may not be applicable to PBT chemicals, such as lead and lead compounds.

C. What is the Alternative Threshold and Form A, and is EPA Proposing Any Changes to the Use of the Alternate Threshold and Form A?

On November 30, 1994, EPA published a final rule (59 FR 61488) that provides that facilities that have 500 pounds or less of production-related waste (the sum of sections 8.1 through 8.7 of Form R) may apply an alternate manufacture, process, and otherwise use reporting threshold of 1 million pounds. Facilities that have less than 500 pounds of production-related waste of a listed toxic chemical and that do not manufacture, process, or otherwise use more than 1 million pounds of that listed toxic chemical may file a Form A certification statement certifying that they do not exceed either of these quantities for the toxic chemical. This certification statement includes facility identification information and chemical identification information. EPA adopted the alternate threshold and the Form A as a means of reducing the burden associated with EPCRA section 313.

EPA believes that use of the existing alternate threshold and reportable quantity for Form A would be inconsistent with the intent of expanded reporting for PBT chemicals such as proposed for lead and lead compounds in this proposed rule. While the Form A does provide some general information on the quantities of the chemical that the facility manages as waste, this information is insufficient for conducting analyses on PBT chemicals, such as lead and lead compounds and would be virtually useless for communities interested in assessing risk from releases of lead and lead compounds. First, the threshold category for amounts managed as waste does not include quantities released to the environment as a result of remedial actions or catastrophic events not associated with production processes (section 8.8 of Form R). Thus, the waste threshold category will not include all releases. Given that even small quantities of lead or lead compounds may result in elevated concentrations in the environment or in an organism, that reasonably can be anticipated to result in significant adverse effects, EPA believes it would be inappropriate to allow an option that would exclude information on some releases. Second, the 500 pound waste threshold category could be interpreted by some users, as a worst-case, to mean that greater than 500 pounds of the lead and lead compounds has been released into the environment (i.e., 500 pounds of production-related waste as release and some quantity of catastrophic release). Other users may assume that the facility had no catastrophic releases and all of the lead or lead compounds in waste was managed in a manner other than as release, e.g., the lead and lead compounds in waste were recycled. For those chemicals, such as lead and lead compounds, where any release is a concern, an uncertainty level of 500 pounds will result in data that are virtually unusable. As a result, EPA is proposing to exclude lead and lead compounds from the alternate threshold of 1 million pounds. Therefore, EPA proposes to modify 40 CFR 372.27 to add a new paragraph (e) to read as follows:

> (e) The provisions of this section do not apply to any toxic chemicals listed in § 372.28. As indicated above, EPA is proposing to list lead and lead compounds in § 372.28.

EPA requests comment on this limitation to the use of the Form A certification statement.

D. What is Range Reporting and What Changes is EPA Proposing to Make to the Use of Range Reporting?

For releases and off-site transfers for further waste management of less than 1,000 pounds of the toxic chemical, EPA allows facilities to report the amount either as a whole number or by using range codes. The reporting ranges are: 1-10 pounds; 11-499 pounds; and 500-999 pounds. For larger releases and off-site transfers for further waste management of the toxic chemical, the facility may report only the whole number. While EPA provided range reporting primarily as a burden reducing measure focused on small businesses, the Agency notes a number of drawbacks. Use of ranges could misrepresent data accuracy because the low or the high end range numbers may not really be that close to the estimated value, even taking into account its inherent error (i.e., errors in measurements and developing estimates). The user of the data must make a determination on whether to use the low end of the range, the mid-point, or the upper end. For example, a release of 501 pounds could be misinterpreted as 999 pounds if reported as a range of 500 to 999. This represents a 100% error. This uncertainty severely limits the utility of release information where the majority of a facility's releases are within the amounts eligible for range reporting. Given that the large uncertainty that would be part of these data would severely limit their utility, EPA believes that facilities should report numerical values, not ranges, for lead and lead compounds. EPA, therefore, proposes to modify 40 CFR 372.85(b)(16)(i) to read as follows:

> An estimate of the total releases in pounds per year (releases of toxic chemicals of less than 1,000 pounds per year may be indicated in ranges, except for toxic chemicals set forth in § 372.28) from the facility plus an indication of the basis of estimate:

EPA also proposes to modify 40 CFR 372.85(b)(16)(ii)(B) to read as follows:

An estimate of the amount of the chemical in waste transferred in pounds per year (transfers of toxic chemicals of less than 1,000 pounds per year may be indicated in ranges, except for toxic chemicals set forth in § 372.28) to each off-site location, and an indication of the basis for the estimate and an indication of the type of treatment or disposal used.

EPA requests comment on its proposal to discontinue the use of range reporting in Form Rs for lead and lead compounds.

E. What is the Half-Pound Rule and Whole Numbers and What Change is EPA Proposing to Make to the Use of the Half-Pound Rule and Whole Numbers?

EPA requires that facilities report numerical quantities in sections 5, 6, and 8 of Form R as whole numbers and does not require more than two significant digits (except where the Agency allows range reporting; see Unit VI.D. of this preamble). EPA currently allows facilities to round releases of 0.5 pounds or less to zero (see Toxic Chemical Release Inventory Reporting Forms and Instructions: Revised 1997 Version (EPA 745-K-98-001), p. 27). The combination of requiring the reporting of whole numbers and allowing rounding to zero would result in a significant number of facilities reporting their releases of lead and lead compounds as zero. EPA, therefore, is proposing that all releases or other waste management quantities greater than a tenth of a pound of lead or lead compounds be reported, provided that the appropriate activity threshold has been exceeded. Releases and other waste management activities would continue to be reported to two significant digits. For quantities of 10 pounds or greater, only whole numbers would be required to be reported. For quantities less than 10 pounds, fractional quantities, e.g., 6.2 pounds, rather than whole numbers would be required. Remember, EPCRA only requires reporting to be based on the best readily available information or reasonable estimates.

EPA requests comment on the proposed requirement that all non-zero releases of lead and lead compounds greater than one tenth of a pound be reported. EPA also requests comment on using fractional quantities for reports under 10 pounds.

F. What Limitation is EPA Proposing for the Reporting of Lead in Certain Alloys?

Lead can be found in various types of alloys and is subject to reporting under section 313 when contained in these alloys. In response to several petitions that EPA has received, the Agency has been reviewing the issue of how metals contained in alloys, specifically stainless steel, brass, and bronze alloys, should be reported under section 313. Because this issue is currently being reviewed and no final decisions concerning the reporting of lead or other metals in alloys have been made, EPA does not believe that, at this time, it would be appropriate to increase reporting for those facilities that must submit reports for lead when contained in these alloys. Thus, EPA is not proposing to make any changes, including lowering thresholds, to the current reporting requirements for lead when contained in stainless steel, brass, and bronze alloys. EPA is therefore proposing to exclude lead contained in stainless steel, brass, and bronze alloys from the lower reporting threshold and retain the current reporting thresholds for lead when contained in stainless steel, brass, and bronze alloys. This would result in no changes to the reporting requirements for lead contained in stainless steel, brass, and bronze alloys until EPA makes a final determination on whether there should be any changes to the reporting requirements for lead and other metals contained in stainless steel, brass, and bronze alloys. Lead contained in stainless steel, brass, and bronze alloys would still be reportable, but only under the current reporting thresholds. EPA would make this distinction at 40 CFR 372.28, which is the new section of the CFR that will set forth the lower section 313 reporting threshold being proposed in this action. This section would indicate that only lead not contained in a stainless steel, brass, or bronze alloy would be subject to the lower reporting threshold. EPA would also make this distinction clear in the section 313 Form R and Form A reporting instructions and other documents.

Under this proposed limitation for lead in stainless steel, brass, and bronze alloys, reporting facilities that use lead to make stainless steel, brass, and bronze alloys would report for lead under the lower reporting threshold since lead is being used to manufacture an alloy. However, once incorporated into the stainless steel, brass, and bronze alloy, lead would not be subject to the lower reporting threshold. For purposes of section 313 reporting, EPA considers metal compounds that are used to make alloys to exist as the parent metal in the alloys. Thus, the limitation on stainless steel, brass, and bronze alloy reporting for lead would apply to lead compounds once they are incorporated into an alloy. The cutting, grinding, shaving, etc. of a stainless steel, brass, or bronze alloy does not negate the reporting limitations for stainless steel, brass, and bronze alloys containing lead.

VII. What are the results of EPA's Economic Analysis?

EPA has prepared an economic analysis of the impact of this proposed action, which is contained in a document entitled *Economic Analysis of the Proposed Rule to Modify Reporting of Lead and Lead Compounds under EPCRA Section 313* (Ref. 31). This document is available in the public docket for this rulemaking. The analysis assesses the costs, benefits, and associated impacts of the proposed rule, including potential effects on small entities. The major findings of the analysis are briefly summarized here.

A. What is the Need for the Rule?

This proposed rule is intended to address the market failures arising from private choices about lead and lead compounds that have societal costs, and the market failures created by the limited information available to the public about the release and other waste management activities involving lead and lead compounds. Through the collection and distribution of facility-specific data on toxic chemicals, TRI overcomes firms' lack of incentive to provide certain information, and thereby serves to inform the public of releases and other waste management of lead and lead compounds. This information enables individuals to make choices that enhance their overall well-being. Choices made by a more informed public, including consumers, corporate lenders, and communities, may lead firms to internalize into their business decisions at least some of the costs to society relating to their releases and other waste management activities involving lead and lead compounds. In addition, by helping to identify areas of concern, set priorities and monitor trends, TRI data can also be used to make more informed decisions regarding the design of more efficient regulations and voluntary programs, which also moves society towards an optimal allocation of resources.

Certain facilities currently report TRI data on lead and lead compounds under the existing 10,000 and 25,000 pound reporting thresholds. In 1996, EPA received TRI data on the release and other waste management of over a billion pounds of lead and lead compounds from approximately 1,600 facilities. The industry groups reporting the largest amounts of release or other waste management of lead and lead compounds in 1996 were: Electronic and Other Electrical Equipment and Components (SIC 36); Primary Metal Industries (SIC 33); Rubber and Miscellaneous Plastics Products (SIC 30); Stone, Clay, Glass, and Concrete Products (SIC 32); and Fabricated Metal Products (SIC 34) (Ref. 31). EPA believes that there are additional facilities in these and other industry groups that do not currently report lead and lead compounds to TRI because they do not exceed current reporting thresholds for lead and lead compounds, and/or because the lead-containing materials they handle are currently covered by the *de minimis* exemption. EPA is not able to quantify the total multi-media releases or other waste management from these additional facilities without TRI reporting. Since even small releases of lead and lead compounds are of concern, EPA believes that there is a need for reporting from these additional facilities.

If EPA were not to take this proposed action to lower the reporting thresholds, the market failure (and the associated social costs) resulting from the limited information on the release and disposition of lead and lead compounds would continue. EPA believes that today's action will improve the scope of multi-media data on releases and other waste management of lead and lead compounds. This, in turn, will provide information to the public, empower communities to play a meaningful role in environmental decision-making, and improve the quality of environmental decision-making by government officials. In addition, this action will serve to generate information that reporting facilities themselves may find useful in such areas as highlighting opportunities to reduce chemical use or release and thereby lower costs of production and/or waste management. EPA believes that these are sound rationales for lowering reporting thresholds for lead and lead compounds.

B. What Regulatory Options Were Considered?

EPA evaluated four regulatory options for lower reporting thresholds in the development of this proposed rule. The options were created by varying the reporting thresholds for lead and lead compounds from their current levels of 25,000 pounds for manufacture and processing, and 10,000 pounds for otherwise use of EPCRA section 313 chemicals. The options in Table 2 below summarize the scope of EPA's analysis.

Table 2.—Summary of Options Considered

Regulatory Option	Description of Reporting Threshold for Lead and Lead Compounds
Option 1	1 pound manufactured, processed, or otherwise used
Option 2	10 pounds manufactured, processed, or otherwise used
Option 3	100 pounds manufactured, processed, or otherwise used
Option 4	1,000 pounds manufactured, processed, or otherwise used

Reporting under all four options is affected by other proposed changes in reporting requirements for lead and lead compounds. These proposed changes include the elimination of the *de minimis* exemption for lead and lead compounds, and a requirement for all facilities to report on lead and lead compounds using the Form R. The effect of these other proposed changes on reporting is addressed in the economic analysis of the proposed rule (Ref. 31).

Table 3 following section E.4. of this unit displays, for each option, the estimated number of additional reports for lead and lead compounds expected from various industry groups under EPCRA section 313. This table is not exhaustive. While EPA believes that it has addressed the industry groups most likely to submit additional reports in economic analysis of the proposed rule (Ref. 31), other industry groups may also file additional reports on lead and lead compounds. EPA requests that commenters provide any available information on other categories of facilities that may be affected by this proposal, as well as any data on the number of facilities in the category that would be affected, and the quantity of lead and lead compounds manufactured, processed, or otherwise used by facilities in the category.

In proposing this rule, EPA has sought to balance the public's right to know about toxic chemical releases and other waste management practices in their neighborhoods and the benefits provided by this expanded knowledge with the costs the rule will likely impose on industry, including the impact on small entities.

C. What are the Potential Costs of this Proposal?

The proposed rule would result in the expenditure of resources that, in the absence of the regulation, could be used for other purposes. The cost of the proposed rule is the value of these resources in their best alternative use. Most of the costs of the proposed rule would result from requirements on industry. Table 4 following section E.4. of this unit displays the industry costs for each option based on the estimated number of facilities affected by this proposal. Under the option presented in the regulatory text (Option 2), approximately 15,000 facilities would submit additional Form R reports annually. As shown, aggregate industry costs in the first year for the proposed alternative are estimated to be $116 million; in subsequent years they are estimated to be $60 million per year. Industry costs are lower after the first year because facilities will be familiar with the reporting requirements, and many will be able to update or modify information from the previous year's report.

Some of the facilities potentially affected by this proposed rule may also be affected by the proposed PBT rule (64 FR 688). If these rules are finalized as proposed, certain facilities may file additional reports on lead or lead compounds, as well as on one or more of the PBT chemicals from the earlier proposal. The ultimate outcome of these separate proposals is, however, uncertain at present. Therefore, certain facility-specific reporting costs have been included in the economic analysis for this proposal and in the economic analysis of the PBT proposal even though these costs would be incurred only once per facility. Upon finalization, the aggregate cost of the two proposals may be less than the sum of the industry costs shown in the economic analyses of these proposals due to this potential double-counting of reporting costs. Under the preferred options presented in the regulatory text of this and the previous proposal, the potential double-counting of industry costs amounts to approximately $4 million in the first year of reporting. EPA plans to estimate the cost of the final rules for these proposals using the regulatory framework that exists at the time of finalization as a baseline. Further information on the extent of potential double-counting of costs in the analyses of the two proposals is presented in the economic analysis of this proposal (Ref. 31).

EPA is expected to expend $1.6 million in the first year, and $1.2 million in subsequent years for programmatic, compliance assistance, and enforcement activities as a result of the proposed rule.

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D. What are the Potential Benefits of this Proposal?

In enacting EPCRA and PPA, Congress recognized the significant benefits of providing the public with information on toxic chemical releases and other waste management practices. TRI has empowered the Federal government, State governments, industry, environmental groups and the general public to participate in a fully informed dialogue about the environmental impacts of toxic chemicals in the United States. TRI's publicly available data base provides quantitative information on toxic chemical releases and other waste management practices. Since TRI's inception in 1987, the public, government, and the regulated community have had the ability to understand the magnitude of chemical releases in the United States and to assess the need to reduce the uses and releases of toxic chemicals. TRI enables all interested parties to establish credible baselines, to set realistic goals for environmental progress over time, and to measure progress in meeting these goals over time. The TRI system is a neutral yardstick by which progress can be measured by all stakeholders.

The information reported to TRI increases knowledge of the amount of toxic chemicals released to the environment and the potential pathways of exposure, improving scientific understanding of the health and environmental risks of toxic chemicals; allows the public to make informed decisions on where to work and live; enhances the ability of corporate leaders and purchasers to more accurately gauge a facility's potential environmental liabilities; provides reporting facilities with information that can be used to save money as well as reduce emissions; and assists Federal, State, and local authorities in making better decisions on acceptable levels of toxic chemicals in the environment.

There are two types of benefits associated with TRI reporting: those resulting from the actions required by the rule (such as reporting and recordkeeping), and those derived from follow-on activities that are not required by the rule. Benefits of activities required by the rule include the value of improved knowledge about the release and waste management of toxic chemicals, which leads to improvements in understanding, awareness and decision-making. It is expected that this rulemaking will generate such benefits by providing readily accessible information that otherwise would not be available to the public. The proposed rule will benefit ongoing research efforts to understand the risks posed by lead and lead compounds and to evaluate policy strategies that address the risks.

The second type of benefits derive from changes in behavior that may result from the information reported to EPCRA section 313. These changes in behavior, including reductions in releases of and changes in the waste management practices for toxic chemicals may yield health and environmental benefits. These changes in behavior come at some cost, and the net benefits of the follow-on activities are the difference between the benefits of decreased chemical releases and transfers and the costs of the actions needed to achieve the decreases.

Because the state of knowledge of the economics of information is not highly developed, EPA has not attempted to quantify the benefits of changing reporting thresholds for lead and lead compounds. Furthermore, because of the inherent uncertainty in the subsequent chain of events, EPA has also not attempted to predict the changes in behavior that result from the information, or the resultant net benefits, (i.e., the difference between benefits and costs of follow-on activities). EPA does not believe that there are adequate methodologies to make reasonable monetary estimates of either the benefits of the activities required by the proposed rule, or the follow-on activities. The economic analysis of the proposed rule, however, provides illustrative examples of how the proposed rule will improve the availability of information on the release and other waste management of lead and lead compounds (Ref. 31).

E. What are the Potential Impacts on Small Entities of this Proposal?

In accordance with the Regulatory Flexibility Act (RFA) and the Agency's longstanding policy of always considering whether there may be a potential for adverse impacts on small entities, the Agency has also evaluated the potential impacts of this proposed rule on small entities. The Agency's analysis of potentially adverse economic impacts is included in the economic analysis for this proposed rule (Ref. 31). The following is a brief overview of EPA's findings.

1. *What was the overall methodology for assessing potential small entity impacts?* This proposed rule may affect both small businesses and small governments. For the purpose of its analysis for the proposed rule, EPA defined a small business using the small business size standards established by the Small Business Administration (SBA). For example, the SBA size standard is 500 employees for approximately 75% of the manufacturing industries, and either 750, 1,000 or 1,500 for the remaining manufacturing industries, which would mean that more than 98.5% of all manufacturing firms are classified as small businesses (Ref. 32). EPA defined small governments using the RFA definition of jurisdictions with a population of less than 50,000. No small organizations are expected to be affected by the proposed rule.

Potential small entity impacts were calculated for both the first year of reporting and subsequent years under Option 2 (the option presented in the proposed regulatory text). Only those small entities that are expected to submit at least one report are considered to be "affected" for the purpose of the small entity analysis, although EPA recognizes that other small entities will conduct compliance determinations under lower thresholds. The number of affected entities will be smaller than the number of affected facilities, because many entities operate more than one facility. First year costs are typically higher than continuing costs because firms must familiarize themselves with the requirements. Once firms have become familiar with how the reporting requirements apply to their operations, costs fall. EPA believes that subsequent year impacts are the best measure of the impact on small entities because these continuing costs are more representative of the costs firms face to comply with the proposed rule.

EPA analyzed the potential cost impact of the proposed rule on small businesses and governments for the manufacturing sector and in each of the recently added industry sectors separately in order to obtain the most accurate assessment for each. EPA then aggregated the analyses for the purpose of determining whether it could certify that the proposed rule will not, if promulgated, have a "significant economic impact on a substantial number of small entities." RFA section 605(b) provides an exemption from the requirement to prepare a regulatory flexibility analysis for a rule where an agency makes and supports the certification statement quoted above. EPA believes that the statutory test for certifying a rule and the statutory consequences of not certifying a rule all indicate that certification determinations may be based on an aggregated analysis of the rule's impact on all of the small entities subject to it.

2. *What are the potential impacts on small businesses?* EPA used annual compliance costs as a percentage of annual company sales to assess the potential impacts on small businesses of this proposed rule. EPA believes that this is a good measure of a firm's ability to afford the costs attributable to a regulatory requirement, because comparing compliance costs to revenues provides a reasonable indication of the magnitude of the regulatory burden relative to a commonly available measure of a company's business volume. Where regulatory costs represent a small fraction of a typical firm's revenue (for example, less than 1%, or not greater than 3%), EPA believes that the financial impacts of the regulation may be considered not significant.

Based on its estimates for Option 2 of the proposed rule, the Agency estimates that approximately 8,100 businesses will be affected by the proposed rule, and that approximately 5,600 of these businesses are classified as small based on the applicable SBA size standards. EPA estimates that no small businesses will bear costs greater than 1% of revenues in the first or subsequent reporting years.

3. *What are the potential impacts on small governments?* To assess the potential impacts on small governments, EPA used annual compliance costs as a percentage of annual government revenues to measure potential impacts. Similar to the methodology for small businesses, this measure was used because EPA believes it provides a reasonable indication of the magnitude of the regulatory burden relative to a government's ability to pay for the costs, and is based on readily available data.

EPA estimates that 36 publicly owned electric utility facilities, operated by a total of 34 municipalities, may be affected under Option 2 of the proposed rule. Of these, an estimated 18 are operated by small governments (i.e., those with populations under 50,000). It is estimated that none of these small governments will bear annual costs greater than 1% of annual government revenues in the first or subsequent reporting years.

4. *What are the potential impacts for all small entities?* As discussed above, no small businesses are expected to bear annual costs over 1% of annual revenues. None of the affected small governments are estimated to bear annual costs greater than 1% of annual revenues. No small organizations are expected to be affected by the proposed rule. Thus, the total number of small entities with impacts above 1% of revenues does not change when the results are aggregated for all small entities (i.e., small businesses, small governments, and small organizations).

Table 3.—Summary of Reporting Under Regulatory Options

SIC Code - Industry Group	Estimated Number of Additional Reports (Annual)			
	Option 1	Option 2	Option 3	Option 4
12 - Coal mining	321	321	321	321
29 - Petroleum refining and related industries	1,033	117	91	90
3241 - Cement, hydraulic	123	123	123	123
33 - Primary metal industries	1,130	1,130	1,109	842
367 - Electronic components and accessories	4,033	4,033	3,109	405
371 - Motor vehicles and motor vehicle equipment	2,862	2,862	1,485	201
4911/4931/4939 - Electric services	414	378	319	248
4953 - Refuse systems (RCRA subtitle C only)	80	74	64	36
5171 - Petroleum bulk stations and terminals	2,459	980	621	55
7389 - Solvent recovery services	26	24	22	14
20-39 - Other manufacturing; industrial combustion	10,142	5,001	1,498	570
Total	22,623	15,043	8,762	2,905

Table 4.—Summary of Reporting and Industry Cost of Regulatory Options

Regulatory Options for Lead and Lead Compounds	Annual Number of Reports	Estimated Industry Costs ($ million per year)	
		First Year	Subsequent Years
Opion 1—Reporting threshold of 1 lb	22,623	$174	$91
Option 2—Reporting threshold of 10 lb	15,043	$116	$60
Option 3—Reporting threshold of 100 lb	8,762	$67	$35
Option 4—Reporting threshold of 1,000 lb	2,905	$22	$12

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VIII. What are the References Cited in this Proposed Rule?

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IX. Regulatory Assessment Requirements

A. What is the Determination Under Executive Order 12866?

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this is an economically "significant regulatory action" subject to review by the Office of Management and Budget (OMB) because it is likely to have an annual effect on the economy of $100 million or more. This action was therefore submitted to OMB for review, and any substantive comments or changes made during that review have been documented in the public record.

In addition, EPA has prepared an economic analysis of the impact of this action, which is contained in a document entitled *Economic Analysis of the Proposed Rule to Modify Reporting of Lead and Lead Compounds under EPCRA Section 313* (Ref. 31). This document is available as part of the public record for this action, and is briefly summarized in Unit VII. of this preamble.

B. What is the Determination Under the Regulatory Flexibility Act?

For the reasons explained in Unit VII. of this preamble, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. In brief, the factual basis of this determination is as follows: none of the approximately 5,600 small businesses potentially affected by the proposed rule will experience annual compliance costs above 1% of annual sales. In addition, EPA estimates that there are 18 small governments that may be affected by the proposed rule (i.e., will have to file reports under the proposed rule), none of which will bear annual costs greater than 1% of annual government revenues. Given these relatively small estimated impacts, for purposes of the RFA, EPA believes that the proposed rule will not have a significant economic impact on a substantial number of small entities. EPA's estimates are based on the economic analysis (Ref. 31), and are also discussed in Unit VII. of this preamble. This determination is for the entire population of small entities potentially affected by this proposed rule, since the test for certification is whether the rule as a whole has a significant economic impact on a substantial number of small entities.

Notwithstanding the Agency's certification of this proposed rule under section 605(b) of the RFA, EPA remains committed to minimizing real impacts on small entities where this does not unacceptably compromise the informational benefits of the rule. The Agency is always interested in any comments regarding the economic impacts that this regulatory action would impose on small entities, particularly suggestions for minimizing that impact. Such comments may be submitted to the Agency at any time, to the address listed in Unit I.C. of this preamble. To ensure consideration during the development of the final rule, comments must be received by the date indicated in the "DATES" section.

Information relating to this determination has been provided to the Chief Counsel for Advocacy of the Small Business Administration, and is included in the docket for this rulemaking.

C. What is the Determination Under the Paperwork Reduction Act?

The information collection requirements contained in this proposed rule have been submitted to OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and in accordance with the procedures at 5 CFR 1320.11. An amended Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1363) and a copy may be obtained from Sandy Farmer, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460, by calling (202) 260-2740, or electronically by sending an e-mail message to "farmer.sandy@epa.gov." The information requirements contained in this proposal are not effective until OMB approves them. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial publication in the **Federal Register**, are maintained in a list at 40 CFR part 9.

Provision of this information is mandatory, upon promulgation of a final rule, pursuant to EPCRA section 313 (42 U.S.C. 11023) and PPA section 6607 (42 U.S.C. 13106). EPCRA section 313 requires owners or operators of certain facilities manufacturing, processing, or otherwise using any of over 600 listed toxic chemicals and chemical categories (hereinafter toxic chemicals) in excess of the applicable threshold quantities, and meeting certain requirements (i.e., at least 10 FTEs or the equivalent), to report environmental releases and transfers of and waste management activities for such chemicals annually. Under section 6607 of the PPA, facilities must also provide information on the quantities of the toxic chemicals in waste streams and the efforts made to manage those waste quantities. The regulations codifying the EPCRA section 313 reporting requirements appear at 40 CFR part 372. Respondents may designate the specific chemical identity of a substance as a trade secret, pursuant to EPCRA section 322 (42 U.S.C. 11042). Regulations codifying the trade secret provisions can be found at 40 CFR part 350.

Under the proposed rule, all facilities reporting to TRI on lead and lead compounds would have to use the EPA Toxic Chemical Release Inventory Form R (EPA Form No. 9350-1). OMB has approved the existing reporting and recordkeeping requirements related to Form R, supplier notification, and petitions under OMB Control No. 2070–0093 (EPA ICR No. 1363).

For Form R, EPA estimates the industry reporting burden for collecting this information (including recordkeeping) to average 74 hours per report in the first year, at an estimated cost of $5,079 per Form R. In subsequent years, the burden is estimated to average 52.1 hours per report, at an estimated cost of $3,557 per Form R. These estimates include the time needed to review instructions; search existing data sources; gather and maintain the data needed; complete and review the collection of information; and transmit or otherwise disclose the information. The actual burden on any specific facility may be different from this estimate depending on the complexity of the facility's operations and the profile of the releases at the facility.

This proposed rule is estimated to result in additional reports from approximately 15,000 respondents. Of these, approximately 5,100 facilities are estimated to be reporting to TRI for the first time as a result of the rule, while approximately 9,900 are currently reporting facilities that will be submitting additional reports. These 15,000 facilities will submit an estimated additional 15,000 Form Rs. This proposed rule therefore results in an estimated total burden of 1.7 million hours in the first year, and 0.9 million hours in subsequent years, at a total estimated industry cost of $116 million in the first year and $60 million in subsequent years.

Under PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes, where applicable, the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. EPA's burden estimates for the rule take into account all of the above elements, considering that under section 313, no additional measurement or monitoring may be imposed for purposes of reporting.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to EPA at the address provided above, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Please remember to include the ICR number in any correspondence. The final rule will respond to any comments on the information collection requirements contained in this proposal.

D. What are the Determinations Under the Unfunded Mandates Reform Act and Executive Orders 12875 and 13084?

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), EPA has determined that this action contains a "Federal mandate" that may result in expenditures of $100 million or more for the private sector in any 1 year, but that it will not result in such expenditures for State, local, and tribal governments in the aggregate. Accordingly, EPA has prepared a written statement for this proposed rule as required by section 202 of UMRA, and that statement is available in the public docket for this rulemaking (Ref. 33). The costs associated with this action are estimated in the economic analysis prepared for this proposed rule (Ref. 31), which is included in the public docket and summarized in Unit VII. of this preamble. The following is a brief summary of the UMRA statement for the proposed rule.

This proposed rule is being promulgated pursuant to sections 313(f)(2) of EPCRA, 42 U.S.C. section 11023(f)(2), and section 6607 of the Pollution Prevention Act, 42 U.S.C. section 13106. The economic analysis estimates that the total industry costs of the proposed rule will be $116 million in the first year and $60 million per year thereafter, and concludes that the benefits will be significant but cannot be assigned a dollar value due to the lack of adequate methodologies. This information is also summarized above in Unit VII. of this preamble. EPA believes that the benefits provided by the information to be reported under this proposed rule will outweigh the costs imposed by today's action. The benefits of the information will in turn have positive effects on health, safety, and the natural environment through the behavioral changes that may result from that information.

EPA has not identified any Federal financial resources that are available to cover the costs of this proposed rule. As set forth in the economic analysis, EPA has estimated the future industry compliance costs (after the first year) of this proposed rule to be $60 million annually. Of those entities affected by today's action, EPA has not identified any disproportionate budgetary impact on any particular region, government, or community, or on any segment of the private sector. Based on the economic analysis, EPA has concluded that it is highly unlikely that this proposed rule will have an appreciable effect on the national economy.

EPA has determined that the proposed rule will not significantly or uniquely affect small governments and does not contain a significant Federal intergovernmental mandate, so no action is needed under section 203 or 204 of UMRA.

Finally, EPA believes this proposed rule complies with section 205(a) of UMRA. The objective of this proposed rule is to expand the public benefits of the TRI program by exercising EPA's discretionary authority to add chemicals to the program and to lower reporting thresholds, thereby increasing the amount of information available to the public regarding the use, management, and disposition of listed toxic chemicals. In making additional information available through TRI, the Agency increases the utility of TRI data as an effective tool for empowering local communities, the public sector, industry, other agencies, and State and local governments to better evaluate risks to public health and the environment, particularly at the local level.

As described in Unit VI. of this preamble, EPA considered burden in the threshold selection. The proposed rule also contains reporting requirements that will limit burden (e.g., reporting limitations for lead and lead compounds in certain alloys). In addition, existing burden-reducing measures (e.g., the laboratory exemption, and the otherwise use exemptions, which include the routine janitorial or facility grounds maintenance exemption, motor vehicle maintenance exemption, structural component exemption, intake air and water exemption and the personal use exemption) will apply to the facilities that file new reports as a result of this proposed rule. EPA also will be assisting small entities subject to the proposed rule, by such means as providing meetings, training, and compliance guides in the future, which also will ease the burdens of compliance.

Many steps have been and will be taken to further reduce the burden associated with this proposed rule, and to EPA's knowledge there is no available alternative to the proposed rule that would obtain the equivalent information in a less burdensome manner. For all of these reasons, EPA believes the rule complies with UMRA section 205(a).

In addition, today's rule does not create a mandate on State, local or tribal governments, nor does it significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 1(a) of Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), and section 3(b) of Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), do not apply to this proposed rule.

E. What are the Determinations Under Executive Orders 12898 and 13045

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this action on environmental and health conditions in low-income populations and minority populations. Since this is an economically significant action (i.e., it is expected to have an annual adverse impact of $100 million or more), additional OMB review is required under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). The Agency has, to the extent permitted by law and consistent with the agency's mission, identified and assessed the environmental health risks and safety risks that may disproportionately affect children.

By lowering the section 313 reporting thresholds for lead and lead compounds, EPA is providing communities across the United States (including low-income populations and minority populations) with access to data that may assist them in lowering exposures and consequently reducing chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Therefore, the informational benefits of the proposed rule will have a positive impact on the human health and environmental impacts of minority populations, low-income populations, and children.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund.

Dated: July 23, 1999.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR part 372 be amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.22 [Amended]

2. In § 372.22(c), by removing the phrase "§ 372.25 or § 372.27" and adding in its place "§ 372.25, § 372.27, or § 372.28".

§ 372.25 [Amended]

3. In the introductory text of § 372.25, by removing the first clause "Except as provided in § 372.27," and adding in its place "Except as provided in §§ 372.27 and 372.28,".

4. In § 372.27, by adding a new paragraph (e) to read as follows:

§ 372.27 Alternate threshold and certification.

* * * * *

(e) The provisions of this section do not apply to any chemicals listed in § 372.28.

5. By adding a new § 372.28 to subpart B to read as follows:

§ 372.28 Lower thresholds for chemicals of special concern.

(a) Notwithstanding § 372.25 or § 372.27, for the toxic chemicals set forth in this section, the threshold amounts for manufacturing (including importing), processing, and otherwise using such toxic chemicals are as set forth in this section.

(1) Chemical listing in alphabetic order:

Chemical name	CAS no.	Reporting threshold
Lead (this lower threshold does not apply to lead when contained in a stainless steel, brass or bronze alloy)	7439-92-1	10

(2) Chemical categories in alphabetic order:

Category name	Reporting threshold
Lead Compounds	10

(b) The threshold determination provisions at § 372.25(c) through (h) and the exemptions at § 372.38(b) through (h) are applicable to the toxic chemicals listed in paragraph (a) of this section.

§ 372.30 [Amended]

6. In § 372.30(a), by removing the phrase "in § 372.25 at" and adding in its place "in § 372.25, § 372.27, or § 372.28 at".

7. In § 372.38(a), by adding the following sentence at the end of the paragraph to read as follows:

§ 372.38 Exemptions.

(a) * * * This exemption does not apply to toxic chemicals listed in § 372.28, except for purposes of § 372.45(d)(1).

* * * * *

§ 372.85 [Amended]

8. Amend § 372.85 as follows:

i. By removing in paragraphs (b)(15)(i) introductory text and (b)(16)(ii)(B) the phrase "may be indicated in ranges" and adding in its place "may be indicated in ranges, except for chemicals set forth in § 372.28".

ii. By removing in paragraph (b)(16)(i)(B) the phrase "may be indicated as a range" and adding in its place "may be indicated as a range, except for chemicals set forth in § 372.28".

[FR Doc. 99–19729 Filed 8–2–99; 8:45 am]
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Part V

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Parts 2570 and 2575
Redesignation of Rules Relating to Adjustment of Civil Monetary Penalties; Final Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2570 and 2575

Redesignation of Rules Relating to Adjustment of Civil Monetary Penalties

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule which relocates and redesignates certain regulations relating to adjustment of civil monetary penalties under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). These changes are needed to simplify the organization and numbering of procedural regulations in the Code of Federal Regulations (CFR) relating to civil monetary penalties under Title I of ERISA.

EFFECTIVE DATE: August 3, 1999.

FOR FURTHER INFORMATION CONTACT: Rudy Nuissl, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, DOL (202) 219 7461. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Background

Part 2570 of Chapter XXV of Title 29 of the CFR contains procedural regulations relating to the assessment of civil penalties under Title I of ERISA. On July 29, 1997, the Department of Labor published at 62 FR 40696 a final rule adopting five new sections effecting the adjustment for inflation of the civil monetary penalties under Title I of ERISA, pursuant to the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The July 29, 1997, final rule also amended the CFR by placing the penalty adjustment regulations in a new subpart E of Part 2570.

Discussion of the Final Rule

The final rule contained in this document amends the CFR by transferring all regulations in Subpart E of part 2570 to Subpart A of a new part 2575 of Chapter XXV of title 29 of the CFR and redesignating each of the regulations so transferred accordingly. This transfer will have the effect of simplifying the organization and numbering of procedural regulations in part 2570.

Publication in Final

The Department has determined that this reorganization of regulations need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA, 5 U.S.C. 553), since this rulemaking merely reflects agency organization, procedure and practice. It is thus exempt under section 553(b)(A) of the APA.

Effective Date

This final action will become effective upon publication pursuant to 5 U.S.C. 553(d). The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that the rule is technical and non-substantive, and merely reflects agency organization, practice and procedure.

Executive Order 12866

This rule has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866, Principles of Regulation. The Department has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the APA, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility analysis do not apply to the rule.

Paperwork Reduction Act

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) since it does not contain any new collection of information requirement.

Small Business Regulatory Enforcement Fairness Act

The rule contained in this document is not subject to the provisions of the Small Business Regulatory Enforcement Fairness Act (SBREFA, 5 U.S.C 801 *et seq.*) because it is a rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties, within the meaning of section 804(3)(C) of SBREFA.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, the final rule contained in this document does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, nor does it include mandates which may impose an annual burden of $100 million or more on the private sector.

List of Subjects

29 CFR Part 2570

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Penalties, Claims, Law enforcement, Pension and Welfare Benefits Administration, Reporting and disclosure.

29 CFR Part 2575

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Penalties, Pensions.

Statutory Authority

This final rule is being adopted pursuant to the authority contained in section 505 of ERISA and section 553(b)(A) of the APA.

For the reasons set forth in the preamble, Subchapter G of Chapter XXV of the *Code of Federal Regulations* is amended as follows:

1. A new Part 2575 is added to read as follows:

PART 2575—ADJUSTMENT OF CIVIL PENALTIES UNDER ERISA TITLE I

Authority: 29 U.S.C.1135; Secretary of Labor Order No. 1–87; sec.4, Pub.L. 101–410; 104 Stat.890 (28 U.S.C. 2461 note), as amended by sec.31001(s)(1), Pub.L.104–134,110 Stat.1321–373.

PART 2570—[AMENDED]

2. The authority citation for Part 2570 is revised to read as follows:

Authority: 5 U.S.C. 8477(c)(3); 29 U.S.C. 1108, 1135; Reorganization Plan No. 4 of 1978; Secretary of Labor Order No. 1–87.

Subpart A is also issued under 29 U.S.C. 1132(c)(1).

Subpart E—[Redesignated as Subpart A]

3. Subpart E of Part 2570 is redesignated as Subpart A of Part 2575.

§§ 2570.100—257.502c–3 [Redesignated]

4. Sections 2570.100 through 2570.502c–3 are redesignated as sections 2575.100 through 2575.502c–3.

5. Subparts B through D are added and reserved in the new Part 2575.

Subpart E—[Reserved]

6. Subpart E of Part 2570 is reserved.

Signed at Washington, DC, this 28th day of July 1999,

Richard M. McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–19862 Filed 8–2–99; 8:45 am]

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Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Tidewater Goby; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF73

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Tidewater Goby

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U. S. Fish and Wildlife Service, propose designation of critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the tidewater goby (*Eucyclogobius newberryi*). The species is now classified as endangered throughout its entire range. We recently determined, however, that north of Orange County, California, more populations exist than were known at the time of the listing, that the threats to those populations are less severe than previously believed, and that the tidewater goby has a greater ability than was known in 1994 to recolonize habitats from which it is temporarily absent. Based on this new information, we recently proposed removal of the northern populations of tidewater goby from protection under the Act. We also determined that the Orange and San Diego, California, Counties population of tidewater gobies constitutes a distinct population segment (DPS) that is genetically distinct and that continues to be threatened by habitat loss and degradation, predation by non-native species, and extreme weather and streamflow conditions. Therefore, we proposed that this DPS be retained as an endangered species on the List of Endangered and Threatened Wildlife. This proposed critical habitat designation for the tidewater goby encompasses areas within that proposed DPS. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments from all interested parties until October 4, 1999. Public hearing requests must be received by September 17, 1999.

ADDRESSES: Send written comments and other materials concerning this proposal to Mr. Ken Berg, Field Supervisor, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Glen Knowles at the above address; telephone 760/431–9440, facsimile 760/431–5902.

SUPPLEMENTARY INFORMATION:

Background

The tidewater goby (*Eucyclogobius newberryi*) is a small, elongate, grey-brown fish not exceeding 50 millimeters (mm) (2 inches (in.)) standard length and is characterized by large, dusky pectoral fins and a ventral sucker-like disk formed by the complete fusion of the pelvic fins. The tidewater goby is a short-lived species, apparently having an annual life cycle (Irwin and Soltz 1984, Swift *et al.* 1997). The tidewater goby is the only member of the monotypic genus *Eucyclogobius*, and is in the family Gobiidae. It was first described in 1857 by Girard as *Gobius newberryi*. Based on Girard's specimens, Gill (1862) erected the genus *Eucyclogobius* for this distinctive species. The majority of scientists have accepted this classification (e.g., Bailey *et al.* 1970, Miller and Lea 1972, Hubbs *et al.* 1979, Robins *et al.* 1991, Eschmeyer *et al.* 1983). A few older works including Ginsburg (1945) placed the tidewater goby and the eight related eastern Pacific species into the genus *Lepidogobius*. This classification includes the currently recognized genera *Lepidogobius*, *Clevelandia*, *Ilypnus*, *Quietula*, and *Eucyclogobius*. Birdsong *et al.* (1988) coined the informal *Chasmichthys* species group, recognizing the phyletic relationship of the eastern Pacific group with species in the northwestern Pacific.

Crabtree's (1985) allozyme work on tidewater gobies from 12 localities throughout the range shows fixed allelic differences at the extreme northern (Lake Earl, Humboldt Bay) and southern (Cañada de Agua Caliente, Winchester Canyon, and San Onofre Lagoon) ends of the range. The northern and southern populations are genetically distinct from each other and from the central populations sampled. The more centrally distributed populations are relatively similar to each other (Brush Creek, Estero Americano, Corcoran Lagoon, Arroyo de Corral, Morro Bay, Santa Ynez River, and Jalama Creek). Crabtree's results indicated that there is a low level of gene flow (movement of individuals) among the northern, central, and southern parts of the range. However, Lafferty *et al.* (in prep.) point out that Crabtree's sites were widely distributed geographically, and may not be indicative of gene flow on more local levels. Lafferty's work is discussed in more detail below.

David Jacobs (University of California, Los Angeles, Department of Organismic Biology, Ecology and Evolution, *in litt.*, 1998) recently began an analysis of mitochondrial genetic material from tidewater goby populations ranging from Humboldt to San Diego Counties. Preliminary results indicate that the San Diego gobies have long been separated from other gobies along the coast. These southernmost populations likely began diverging from the remainder of the gobies in excess of 100,000 years ago.

The tidewater goby is endemic to California, and is unique in that it is restricted to coastal brackish water habitats. Historically, the species ranged from Tillas Slough (mouth of the Smith River, Del Norte County) near the Oregon border to Agua Hedionda Lagoon (northern San Diego County). Within the range of the tidewater goby, shallow, brackish water conditions occur in two relatively distinct situations: (1) The upper edge of tidal bays, such as Tomales, Bolinas, and San Francisco Bays near the entrance of freshwater tributaries, and (2) the coastal lagoons formed at the mouths of small to large coastal rivers, streams, or seasonally wet canyons, along most of the length of California. Few well authenticated records of this species are known from marine environments outside of enclosed coastal lagoons and estuaries (Swift *et al.* 1989).

The tidewater goby is often found in waters of relatively low salinities (around 10 parts per thousand (ppt)) in the uppermost brackish zone of larger estuaries and coastal lagoons. The fish can tolerate a wide range of salinities, however, (Swift *et al.* 1989, 1997; Worcester 1992, Worcester and Lea 1996), and is frequently found throughout lagoons. Tidewater gobies regularly range upstream into fresh water, and downstream into water of up to 28 ppt salinity (Worcester 1992, Swenson 1995). Specimens have also been collected at salinities as high as 42 ppt (Swift *et al.* 1989). The species' tolerance of high salinities (up to 60 ppt for varying time periods) likely enables it to withstand exposure to the marine environment, allowing it to colonize or re-establish in lagoons and estuaries following flood events (Swift *et al.* 1989; Worcester and Lea 1996; Lafferty *et al.* in prep.).

Tidewater gobies are usually collected in water less than 1 meter (m) (3 feet (ft)) deep; many localities have no area

deeper than this (Wang 1982, Irvin and Soltz 1984; Swenson 1995). However, it has been found in waters over 1 m in depth (Worcester 1992, Lafferty and Altstatt 1995; Swift *et al.* 1997; Smith 1998). In lagoons and estuaries with deeper water, the failure to collect gobies may be due to the inadequacy of the sampling methods, rather than the lack of gobies (Worcester 1992, Lafferty 1997, Smith 1998).

Tidewater gobies often migrate upstream into tributaries up to 2.0 kilometers (km) (1.2 miles) (mi) from the estuary. However, in San Antonio Creek and the Santa Ynez River in Santa Barbara County, tidewater gobies are often collected 5–8 km (3–5 mi) upstream of the tidal or lagoonal areas, sometimes in beaver-impounded sections of streams (Swift *et al.* 1989). The fish move upstream in summer and fall, as sub-adults and adults. There is little evidence of reproduction in these upper areas (Swift *et al.* 1997).

Populations originally inhabiting tidal areas, such as those found in San Francisco Bay, rarely were studied before they disappeared, and none remain to adequately study the use of truly tidal conditions by this species. Several of the lagoonal habitats have been converted by human activities into tidal harbors and bays, such as Humboldt Bay, Elkhorn Slough, Morro Bay and Santa Margarita River, among others (Swift *et al.* 1989, 1993). Populations recently present in these artificially created tidal situations have disappeared in the last 5 to 10 years. The only tidal system in which tidewater gobies remain is Humboldt Bay (Swift *et al.* 1989).

The life history of tidewater gobies is keyed to the annual cycles of the coastal lagoons and estuaries (Swift *et al.* 1989, 1994; Swenson 1994, 1995). Water in estuaries, lagoons and bays is at its lowest salinity during the winter and spring as a result of precipitation and runoff. During this time, high runoff causes the sandbars at the mouths of the lagoons to breach, allowing mixing of the relatively fresh estuarine and lagoon waters with seawater. This annual building and breaching of the sandbars is part of the normal dynamics of the systems in which the tidewater goby has evolved (Zedler 1982, Lafferty and Alstatt 1995, Heasly *et al.* 1997). The time of sandbar closure varies greatly among systems and years, and typically occurs from spring to late summer. Summer salinity in the lagoon depends upon the amount of freshwater inflow at the time of sandbar formation (Zedler 1982, Heasly *et al.* 1997).

Males begin digging breeding burrows 75 to 100 mm (3–4 in.) deep, usually in relatively unconsolidated, clean, coarse sand averaging 0.5 mm (0.02 in.) in diameter, in April or May (Swift *et al.* 1989; Swenson 1994, 1995). Swenson (1995) demonstrated that tidewater gobies prefer this substrate in the laboratory, but also found tidewater gobies digging breeding burrows in mud in the wild (Swenson 1994). Inter-burrow distances range from about 5 to 275 centimeters (cm) (2 to 110 in) (Swenson 1995). Females lay about 100 to000 eggs per clutch, averaging 400 eggs/clutch, with clutch size depending on the size of both the female and the male. Females can lay more than one clutch of eggs over their lifespan, with captive females spawning 6–12 times (Swenson 1995). Spawning frequency in wild females probably varies due to fluctuations in food supply and other environmental conditions. Male gobies remain in the burrow to guard the eggs that are attached to sand grains in the walls of the burrow. Males also spawn more than once per season (Swenson 1995), and have been observed guarding multiple clutches in the same burrow (Swift *et al.* 1989, Swenson 1995). Males frequently go at least for a few weeks without feeding, and this probably contributes to mid-summer mortality (Swift *et al.* 1989; Swenson 1994, 1995).

Reproduction peaks during spring to mid-summer, late April or May to July, and can continue into November or December depending on the seasonal temperature and rainfall. Reproduction sometimes increases slightly in the fall (Swift *et al.* 1989). Reproduction takes place from 15–20 degrees Celsius (°C) (60–65 degrees Fahrenheit (°F)) and at salinities of 0–25 ppt (Swift *et al.* 1989; Swenson 1994, 1995). Typically, winter rains and cold weather interrupt spawning, but in some warm years reproduction may occur throughout the year (Goldberg 1977, Wang 1984). Goldberg (1977) showed by histological analysis that females have the potential to lay eggs all year in southern California, but this rarely has been documented. Length-frequency data from southern and central California (Swift *et al.* 1989; Swenson 1994, 1995) and age data analysis from otoliths from central California populations (Swift *et al.* 1997) indicate that tidewater gobies are an annual species and typically live one year or less.

Tidewater goby eggs hatch in 7–10 days at temperatures of 15–18 °C (60–65 °F) at lengths of 4–7 mm (0.2 in.). The newly hatched larvae are planktonic (float in water column) for one to a few days and once they reach 8–18 mm (0.3–0.8 in.) in length, become substrate oriented. All larger size classes are substrate oriented and, although little habitat segregation by size has been noted (Swift *et al.* 1989, Swenson 1995), Worcester (1992) did find that larval gobies in Pico Creek Lagoon tended to use the deeper portion of the lagoon. Individuals collected in marshes appear to be larger (43–45 mm (1.7–1.8 in.) standard length) than those collected in open areas of lagoons (32–35 mm (1.3–1.4 in.) standard length) (Swenson 1995).

Studies of the tidewater goby's feeding habits suggest that it is a generalist. At all sizes examined, tidewater gobies feed on small invertebrates, usually mysids, amphipods, ostracods, snails, and aquatic insect larvae, particularly dipterans (Irwin and Soltz 1984; Swift *et al.* 1989; Swenson 1994, 1995). The food items of the smallest tidewater gobies (4–8 mm (0.2–0.3 in.)) have not been examined, but they probably feed on unicellular phytoplankton or zooplankton similar to many other early stage larval fishes (Swenson and McCray 1996).

Tidewater gobies are preyed upon by native species such as prickly sculpin (*Cottus asper*), staghorn sculpin (*Leptocottus armatus*), starry flounder (*Platichthys californicus*) (Swift *et al.* 1997), and possibly steelhead (*Oncorhynchus mykiss*) (Swift *et al.* 1989). However, tidewater gobies were found in stomachs of only 6 percent of nearly 120 of the latter three species examined, and comprised less than 20 percent by volume of the prey. Predation by the native Sacramento perch (*Archoplites interruptus*) and tule perch (*Hysterocarpus traski*) may have prevented tidewater gobies from inhabiting the San Francisco Bay delta (Swift *et al.* 1989), although direct documentation to support this hypothesis is lacking.

Non-native African clawed frogs (*Xenopus laevis*) also prey upon tidewater gobies (Lafferty and Page 1997), although this is probably not a significant source of mortality due to the limited distribution of this species in tidewater goby habitats. The frogs are killed by the higher salinities that occur when the lagoons are breached (Glenn Greenwald, U.S. Fish and Wildlife Service, pers. obs.). Several non-native fish species also prey on tidewater gobies. The shimofuri goby (*Tridentiger bifasciatus*), which has become established in the San Francisco Bay region (Matern and Fleming 1995), may compete with the smaller tidewater goby, based on dietary overlap (Swenson 1995) and foraging and reproductive behavioral alterations in captivity. Shimofuri gobies eat juvenile tidewater gobies in captivity, but

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usually were unable to catch subadult and adult tidewater gobies (Swenson and Matern 1995). Evidence of predation or competition in the wild is lacking (Swenson 1998). Some authors hypothesize that competition occurs between tidewater gobies and yellowfin (*Acanthogobius flavimanus*) and chameleon (*Tridentiger trigonocephalus*) gobies. Although Wang (1984) found that yellowfin gobies do prey on tidewater gobies, no data were presented indicating the extent of such interactions, nor has there been any further documentation of such competitive or predatory interactions with either species. Shapovalov and Taft (1954) documented the non-native striped bass (*Morone saxatilis*) preying on tidewater gobies in Waddell Creek Lagoon, but stated that striped bass were found only infrequently in the areas inhabited by the goby. Sunfishes and black bass (centrarchids) have been introduced in or near coastal lagoons and may prey heavily on tidewater gobies under some conditions. Predation by young-of-the-year largemouth bass (*Micropterus salmoides*) on tidewater gobies was documented in one system (Santa Ynez River), where tidewater gobies accounted for 61 percent of the prey volume of 55 percent (10 of 18) of the juvenile bass sampled (Swift *et al.* 1997). Although tidewater gobies disappeared soon after centrarchids were introduced at several localities, direct evidence that the introductions led to the extirpations is lacking (Swift *et al.* 1989, 1994; Rathbun *et al.* 1991). In at least one location, tidewater gobies have re-established naturally.

Lafferty *et al.* (in prep.) monitored persistence of 17 tidewater goby populations in Santa Barbara and Los Angeles Counties during and after the heavy winter flows of 1995. All 17 populations persisted after the high flows and no significant changes in population sizes were detected. In addition, gobies apparently colonized Cañada Honda, approximately 10 km (6 mi) from the closest known population, during or after the flooding (Swift *et al.* 1997). Lafferty *et al.* (in prep.) proposed that flood events such as those that occurred in 1995 act as mechanisms of dispersal by washing gobies out into the ocean's littoral zone where they are carried by longshore currents to other estuaries down the coast. As Swenson (in prep.) points out, Lafferty's work suggests that populations at the northern ends of population clusters are more likely than southern populations to serve as source populations. Lafferty *et al.* (in prep.) estimated the extirpation and recolonization rates for 37 populations in southern California, based on over 250 presence-absence records, found a high rate of recolonization. The results suggest that there is more gene flow among populations within geographic clusters (e.g., northern California, San Francisco Bay, Santa Cruz, San Luis Obispo and south) than previously believed. They also found a positive association between tidewater goby presence and wet years, suggesting that flooding may contribute to recolonization of sites from which gobies have temporarily disappeared.

Lagoons in which tidewater gobies are found range in size from less than 0.10 hectare (ha) (0.25 acres (ac)) of surface area to about 800 ha (2000 ac). Most lagoons with tidewater goby populations are in the range of 0.5–5.0 ha (1.25–12.5 ac). Surveys of tidewater goby localities and historical records indicate that size, configuration, location, and access by humans are all related to persistence of populations (Swift *et al.* 1989, 1994). Watered surface areas smaller than about 2 ha (5 ac) generally have histories of extinction, extirpation, or population reduction to very low levels, although some as small as 0.35 ha (0.86 ac) have been identified as having permanent tidewater goby populations (Swift *et al.* 1997, Lafferty 1997, Heasly *et al.* 1997). As evidenced by the Cañada Honda colonization (Swift *et al.* 1997), relatively long distances are not obstacles to colonization or re-establishment. Many of the small lagoons with histories of intermittent populations are within 1–2 km (0.6–1.2 mi) of larger lagoons that can act as sources of colonizing gobies.

The largest localities have not proven to be the best for the species, as evidenced by the loss of tidewater gobies from San Francisco and Morro Bays and the Santa Margarita River estuary. Today, the most stable and largest populations are in lagoons and estuaries of intermediate sizes, 2–50 ha (5–125 ac) that have remained relatively unaffected by human activities, although some systems that are heavily affected or altered also have relatively large, stable populations (e.g., Humboldt Bay, Humboldt County, Santa Clara River, Ventura County, Santa Ynez River, Santa Barbara County, Pismo Creek, and San Luis Obispo County). In many cases, these probably have provided the colonists for the smaller ephemeral sites (Swift *et al.*1997; Lafferty *et al.* in prep.).

Previous Federal Action

We first classified the tidewater goby as a Category 2 candidate species in 1982 (47 FR 58454). It was reclassified as a Category 1 candidate in 1991 (56 FR 58804) based on status and threat information in Swift *et al.* (1989). At that time, Category 2 candidates were those taxa for which information in our possession indicated that proposing to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not currently available to support a listing proposal. Category 1 candidate species, now referred to as candidate species, were those taxa for which we had on file, substantial information on biological vulnerability and threats to support a proposal to list as threatened or endangered. On October 24, 1990, we received a petition from Dr. Camm Swift, Associate Curator of Fishes at the Los Angeles Museum of Natural History, to list the tidewater goby as endangered. Our finding that the requested action may be warranted was published on March 22, 1991 (56 FR 12146). A proposal to list the tidewater goby as an endangered species was published on December 11, 1992 (57 FR 58770). On March 7, 1994, the tidewater goby was listed as a federally endangered species (59 FR 5494). At that time, we did not designate critical habitat, explaining that:

> In the case of the tidewater goby, critical habitat is not presently determinable. A final designation of critical habitat requires detailed information on the possible economic effects of such a designation. The Service does not currently have sufficient information needed to perform the economic analysis (59 FR 5495).

On September 18, 1998, the Natural Resources Defense Council, Inc., filed a lawsuit in Federal District Court in California against the United States Department of the Interior *et al.* for failure to designate critical habitat for the tidewater goby. On April 5, 1999, Judge Carlos R. Moreno ordered that the "Service publish a proposed critical habitat designation for the tidewater goby in 120 days" (*Natural Resources Defense Council, Inc.* v. *United States Department of the Interior et al.* CV 98–7596).

The processing of this proposed critical habitat designation does not conform with our current Listing Priority Guidance (LPG) for FY 1998/1999. That guidance gives the highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants; second priority (Tier 2) to processing final determinations on proposals to add species to the lists, processing new listing proposals, processing administrative findings on petitions (to add species to the lists, delist species, or reclassify listed species), and processing a limited number of proposed and final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed and final rules designating critical habitat. Our Pacific Region is currently working on Tier 1 and 2 actions; however, we are undertaking this Tier 3 action in order to comply with the above-mentioned court order.

On June 24, 1999, we proposed, based on our re-evaluation of the species status throughout its range, to delist the northern populations of the tidewater goby, and to retain the tidewater goby populations in Orange and San Diego Counties as endangered (64 FR 33816). We determined that north of Orange County, more populations exist than were known at the time of the listing, that threats to those populations are less severe than previously believed, and that the tidewater goby has a greater ability to recolonize habitats from which it is temporarily absent than was known in 1994. We determined that the Orange and San Diego Counties populations of tidewater gobies are genetically distinct, and represent a DPS. We further determined that this DPS, comprised of gobies from only six localities, continues to be threatened by habitat loss and degradation, predation by nonnative species, and extreme weather and streamflow conditions. Therefore, we proposed that populations north of Orange County be removed from the List of Endangered and Threatened Animals, and that the southern DPS of tidewater gobies be retained as an endangered species on the list.

Other Federal involvement with the tidewater goby following the initial listing has included section 7 consultations, permitting of breaching and other activities in lagoons through the Clean Water Act, section 404 process by the U.S. Army Corps of Engineers (ACOE), and contributed funding to conduct research and surveys. Measures to reduce impacts to tidewater goby habitat and reduce or eliminate the potential for take of individuals have included adjusting the timing of projects to avoid disruption to breeding activities, the use of silt fencing to reduce sediment loads and as barricades around project sites, installing cofferdams above and below project sites, removal and translocation of animals found within the exclosures prior to necessary dewatering of project sites, minimizing project impacted area, and requiring qualified biologists to oversee all activities.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Because the best available information led us to conclude that the northern tidewater goby populations are no longer endangered and were thus proposed for delisting, we also have concluded that the designation of critical habitat for those Northern populations is not appropriate. We then evaluated benefits to the tidewater goby that could result from critical habitat designation in the southern portion of its range, Orange and San Diego Counties. Tidewater gobies and their habitats in Orange and San Diego Counties are described in detail in the March 7, 1994, final rule listing the species as endangered (59 FR 5494). All of the areas currently thought to be inhabited by the southern DPS of the tidewater goby are owned and controlled by the Federal government. The other areas we evaluated for possible designation are either owned and controlled by the Federal government or are non-Federal lands with a Federal nexus (by virtue of regulation under section 404 of the Clean Water Act).

The possible benefits of critical habitat designation include initiating the section 7 consultation requirement in areas currently unoccupied by the goby. Another possible benefit to the tidewater goby stemming from the designation of critical habitat is ensuring that important habitat and habitat features essential to the tidewater goby are identified for the purposes of Federal agency planning and identifying precise areas where section 7 consultation will be required for unoccupied sites.

To our knowledge, the tidewater goby is not currently threatened by take, collection, or intentional acts of vandalism, and we have no evidence that these threats would be precipitated by designating critical habitat. Thus, the apparent benefits to designating critical habitat are not counterbalanced by any risks, and we find that designating critical habitat for the tidewater goby is prudent.

Proposed Designation—Occupied Habitat

In accordance with section 3(5)(A)(i) of the Act, for habitat occupied by the species, critical habitat is defined as specific areas that contain those physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The habitat features (primary constituent elements) that provide for the physiological, behavioral, and ecological requirements essential for the conservation of the species are described at 50 CFR 424.12, and include, but are not limited to, the following:

Space for individual and population growth, and for normal behavior;

Food, water, or other nutritional or physiological requirements;

Cover or shelter;

Sites for breeding, reproduction, or rearing of offspring; and

Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent habitat elements for the tidewater goby were determined from studies on their habitat requirements and population biology (Lafferty *et al.* in prep.; Manion 1993; Swensen 1994, 1995, 1998; Swift 1989) and include habitat components that are essential to the biological needs of foraging, nest construction, spawning, sheltering, and dispersal. The primary constituent elements for the tidewater goby are coastal lagoons and estuary systems supported by a natural hydrological regime and an environment free from exotic predatory fishes. These elements are discussed in detail below.

Coastal lagoons and estuaries with natural hydrology generally provide several specific habitat elements that gobies require. For instance, aquatic systems supported by a natural hydrological regime are often characterized by a combination of slightly different habitat types: freshwater creek, brackish lagoon, and coastal salt marsh. This habitat heterogeneity generally ensures that some streamflow continues and deep pockets of permanent water remain as

refugia during times of drought; provides for a variety of substrate types, of which sand and coarse silt are necessary for construction of burrows; and provides for structural complexity of the stream channel, which supports various types of aquatic and emergent vegetation. This structural complexity and presence of vegetation may ensure that all gobies are not washed out to sea during flood events (Swensen 1995). Lastly, lagoons and estuaries with a natural hydrological regime and corresponding habitat complexity generally provide for the diversity of prey species (e.g., aquatic invertebrates including aquatic insect larvae, ostracods, crustaceans, and snails) that gobies require.

The second constituent element of tidewater goby habitat is a system that is free from exotic species. Exotic fishes can devastate tidewater goby populations through competition and predation. Largemouth bass, black bass, sunfishes, stripped bass, shimofuri gobies, and yellowfin gobies have all been suspected of preying on tidewater gobies. African clawed frogs are another exotic species that have been found to prey on tidewater gobies. Keeping exotic species out of occupied goby habitats, and eliminating them from potential reestablishment sites will be crucial to the conservation of the goby.

The primary constituent elements are found in all of the six areas occupied by the tidewater goby. These areas are San Onofre Creek, Las Flores Creek, Hidden Creek, Aliso Creek, French Creek, and Cockleburr Creek, all of which are on the Marine Corps base, Camp Pendleton. In each of the areas, however, all of these habitat elements are, to varying degrees, degraded or imperiled by a combination of human-caused and natural factors (see analysis in the June 24, 1999 proposed rule to delist the northern population; 64 FR 33816), and therefore require special management considerations or protection. The six areas currently occupied by the proposed southern DPS of the tidewater goby are proposed for designation as critical habitat.

Proposed Designation—Unoccupied Habitat

In accordance with section 3(5)(A)(i) of the Act, areas outside the geographical area occupied by the species may meet the definition of critical habitat upon determination that they are essential for the conservation of the species. We identified the unoccupied lagoons and estuaries where gobies occurred in the past and evaluated those that might be essential to the conservation of the species. The proposed southern DPS of the tidewater goby is in danger of becoming extinct because of habitat conversion over the last few decades (i.e., altered hydrology), which has resulted in habitat loss and local extinctions. The six remaining occupied habitat areas, discussed above, represent a remnant of the former range that once extended from Aliso Creek, Orange County in the north to Agua Hedionda Lagoon, San Diego County in the south. Even the remaining populations are threatened by human-caused habitat alteration, predation by non-native species, and occasional extreme streamflow conditions (see analysis in 64 FR 33816). Because of these threats, the recent proposal to delist the tidewater goby over much of its range retained the endangered status of the southern DPS.

The long-term survival of tidewater gobies in Orange and San Diego Counties depends upon the presence of enough habitat areas to support the natural pattern of local extinctions and recolonizations (Swift 1989, Lafferty *et al.* in prep.) that characterize its population biology. The removal of threats and the colonization of gobies to additional areas that are currently unoccupied will be necessary.

To determine which unoccupied areas are essential and should be designated as critical habitat, we evaluated which unoccupied areas could provide the primary constituent elements and support tidewater gobies in the future, and, by virtue of their geographical distribution, provide for a network of habitat areas supporting gobies and acting as sources of recolonization for other nearby habitat areas. The essential unoccupied areas that are restorable, or contain restorable areas, and are most likely to promote recolonization of adjacent habitat areas, are Aliso Creek, Orange County, and four estuaries in San Diego County: San Mateo Creek, the Santa Margarita River, Buena Vista Lagoon, and Agua Hedionda Lagoon. These areas are proposed as critical habitat for the tidewater goby.

Proposed Critical Habitat Designation

At this time, the proposed critical habitat areas discussed below constitute our best evaluation of areas needed for the conservation of the tidewater goby. We used the best scientific information available, and took into consideration the proposal to delist the northern populations of the species. We emphasized areas that are essential to the conservation of this species because they provide for the demographic interchange necessary to maintain the viability of the southern DPS. Proposed critical habitat may be revised should new information become available prior to the final rule, and existing critical habitat may be revised if new information becomes available after the final rule.

The following general areas are proposed as critical habitat (see legal descriptions for exact habitat boundaries):

1. Aliso Creek (Orange County) and its associated lagoon and marsh from the Pacific Ocean to approximately 1.0 km (0.6 mi) upstream;
2. San Mateo Creek, its associated lagoon and marsh, from the Pacific Ocean to approximately 1.3 km (0.9 mi) upstream;
3. San Onofre Creek, its associated lagoon and marsh, from the Pacific Ocean to approximately 0.6 km (0.4 mi) upstream;
4. approximately 1.0 km (0.6 mi) of Las Flores Creek, and its associated lagoon and marsh, from the Pacific Ocean to Interstate 5;
5. approximately 0.8 km (0.5 mi) of Hidden Creek, and its associated lagoon and marsh, from the Pacific Ocean to Interstate 5;
6. approximately 0.7 km (0.4 mi) of Aliso Creek and its associated lagoon and marsh, from the Pacific Ocean to Interstate 5;
7. approximately 0.7 km (0.4 mi) of French Creek, and its associated lagoon and marsh, from the Pacific Ocean to Interstate 5;
8. approximately 1.0 km (0.6 mi) of Cockleburr Creek and its associated lagoon and marsh, from the Pacific Ocean to Interstate 5;
9. the Santa Margarita River, from the Pacific Ocean to a point approximately 5.0 km (3.1 mi) upstream;
10. Buena Vista Lagoon, its associated marsh and creek, from the Pacific Ocean to a point approximately 3.4 km (2.1 mi) upstream; and
11. Agua Hedionda Lagoon, its associated marsh and creek, from the Pacific Ocean to a point approximately 3.7 km 92.3 mi) upstream.

Each area includes the current 50-year flood plain.

Although the majority of land being proposed for designation is under Federal administration and management, some estuary and riparian systems are on State, county, city, and private lands. The Aliso Creek segment, Orange County, is owned by the County of Orange, the City of South Laguna, and private interests. Buena Vista Lagoon is owned by the California Department of Fish and Game, the City of Carlsbad, and the City of Oceanside. Agua Hedionda Lagoon is owned by the San Diego Gas and Electric Company, which leases to the City of Carlsbad, and

public and private interests. The segments on San Mateo Creek, San Onofre Creek, Las Flores Creek, Hidden Creek, Aliso Creek, French Creek, Cockleburr Creek, and the Santa Margarita River are owned by the Marine Corps base, Camp Pendleton. Many activities carried out on private, Tribal, State, and Federal lands have Federal involvement, and would be subject to section 7. However, on private lands where no Federal involvement exists, a critical habitat designation has no regulatory impact.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to result in destruction or adverse modification of proposed critical habitat. Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated. Consequently, some Federal agencies may request conferencing with us on actions for which formal consultation has been completed. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). We may also prepare a formal conference report to address the effects on proposed critical habitat from issuance of an incidental take permit, under section 10(a)(1)(B) of the Act.

Activities on Federal lands that may affect the tidewater goby or its critical habitat will continue to require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the ACOE under section 404 of the Clean Water Act, will also continue to be subject to the section 7 consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the tidewater goby is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities such as water diversion or impoundment, groundwater pumping, artificial lagoon breaching to protect urban or agricultural areas from inundation, or any other activity that alters water quality or quantity to an extent that water quality becomes unsuitable to support gobies, or any activity that significantly affects the natural hydrologic function of the lagoon system;

(2) Activities such as coastal development, sand and gravel mining, channelization, dredging, impoundment, or construction of flood control structures, that alter watershed characteristics or appreciably alter stream channel and or lagoon morphology; and

(3) Activities which could lead to the introduction of exotic species, especially exotic fishes, into occupied or potential goby habitat.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503–231–2063, facsimile 503–231–6243).

Designation of critical habitat could affect Federal agency activities. Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the ACOE under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Road construction, right of way designation, or regulation of agricultural activities by Federal agencies; and

(4) Some military maneuvers on the Marine Corps base, Camp Pendleton.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed,

we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day comment period at that time.

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of tidewater goby habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and,

(5) Economic and other values associated with designating critical habitat for the tidewater goby, such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs).

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain technical language or jargon that interferes with the clarity? (3) Does the format of the notice (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? What else could we do to make the notice easier to understand?

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this action has been submitted for review by the Office of Management and Budget. A 60-day comment period is opened with the publication of this rule. Following issuance of this proposed rule, we will prepare an economic analysis to determine the economic consequences of designating the proposed areas as critical habitat. If our economic analysis reveals that the economic impacts of designating any area as critical habitat outweigh the benefits of designation, we will exclude those areas from consideration, unless such exclusion will result in the extinction of the species. In the economic analysis, we will address any possible inconsistencies with other agencies' actions and any effects on entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This proposed rule does not raise novel legal or policy issues.

Other Rulemaking Determinations

In the economic analysis, we will determine the economic and other impacts of the proposed critical habitat designation in compliance with:

1. Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)
2. Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))
3. Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)
4. Taking Personal Property Rights (Executive Order 12630)
5. Federalism (Executive Order 12612)

Civil Justice Reform

In accordance with Executive Order 12988, the Service has determined that this proposed rule is consistent with sections 3(a) and 3(b)(2) of the Order. The proposed rule and final rule will be reviewed by the Department of the Interior Solicitor's Office. We will make every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which the Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the ESA. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This rule does not constitute a major federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2: We understand that recognized Federal Tribes must be related to on a Government-to-Government basis. The 1997 Secretarial Order on Native Americans and the Endangered Species Act clearly states that Tribal lands should not be designated unless absolutely necessary for the conservation of the species. According to the Secretarial Order, "Critical habitat shall not be designated in an area that may impact Tribal trust resources unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands." The proposed designation of critical habitat for the tidewater goby does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author. The primary author of this notice is Glen Knowles (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for "goby, tidewater" under "FISHES" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Goby, tidewater	*Eucyclogobius newberryi.*	U.S.A. (CA)	do	E	527	17.95(e)	NA

3. In § 17.95 add critical habitat for the tidewater goby (*Eucyclogobius newberrii*) under paragraph (e) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes.

* * * * *

Tidewater goby (*Eucyclogobius newberrii*)

1. Critical habitat units are depicted for Orange and San Diego Counties, California, on the maps below.

2. Critical habitat includes the sections of streams indicated on the maps below and their 50 year flood plain, including associated lagoons and marsh.

3. Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, and reproduction. These elements include the following: (1) Coastal lagoons and estuary systems supported by a natural hydrological regime, which results in sufficient streamflow, deep pockets of permanent water, sand and coarse silt substrate, a variety of aquatic and emergent vegetation, and a diversity of prey species; and (2) an environment free from exotic fishes.

Map Unit 1: Orange County, California. From USGS 7.5′ quadrangle map Laguna Beach, California, and San Juan Capistrano, California. San Bernardino Principal Meridian, California, T. 7 S., R 8 W., beginning at a point on Aliso Creek in SW sec. 32 and at approximately 33°30′46″ N latitude and 117°44′37″ W longitude and proceeding downstream (westerly) to the Pacific Ocean covering approximately 1.0 km (0.6 mi.), including the stream, its 50 year flood plain, associated lagoons and marsh.

Map Unit 2: San Diego County, California. From USGS 7.5′ quadrangle map San Clemente, California. San Bernardino Principal Meridian, California, T. 9 S., R. 7 W., beginning at a point on San Mateo Creek in NW sec. 14 and at approximately 33°23′46″ N latitude and 117°35′20″ W longitude and proceeding downstream (southerly) to the Pacific Ocean covering approximately 1.3 km (0.9 mi.), including the stream, its 50 year flood plain, and associated lagoons and marsh.

Map Unit 3: San Diego County, California. From USGS 7.5′ quadrangle map San Clemente, California. San Bernardino Principal Meridian, California, T. 9 S., R. 7 W., beginning at a point on San Onofre Creek in SE sec. 14 and at approximately 33°23′05″ N latitude and 117°34′30″ W longitude and proceeding downstream (southwesterly) to the Pacific Ocean covering approximately 0.6 km (0.4 mi.), including the stream, its 50 year flood plain, and associated lagoons and marsh.

Map Unit 4: San Diego County, California. From USGS 7.5′ quadrangle map Las Pulgas Canyon, California. San Bernardino Principal Meridian, California, T. 10 S., R. 6 W., beginning at a point on Las Flores Creek in the middle of sec. 13 and at approximately 33°17′32″ N latitude and 117°27′20″ W longitude and proceeding downstream (westerly) to the Pacific Ocean covering approximately 0.8 km (0.5 mi.), including the stream, its 50 year flood plain, and associated lagoons and marsh.

Map Unit 5: San Diego County, California. From USGS 7.5′ quadrangle map Las Pulgas Canyon, California. San Bernardino Principal Meridian, California, T. 10 S., R. 5 W., beginning at a point on Hidden Creek in W sec. 30 and at approximately 33°16′46″ N latitude and 117°26′48″ W longitude and proceeding downstream (southwesterly) to the Pacific Ocean covering approximately 0.8 km (0.5 mi.), including the stream, its 50 year flood plain, and associated lagoons and marsh.

Map Unit 6: San Diego County, California. From USGS 7.5′ quadrangle map Las Pulgas Canyon, California. San Bernardino Principal Meridian, California, T. 10 S., R. 5 W., beginning at a point on Aliso Creek in NE sec. 31

and at approximately 33°16′13″ N latitude and 117°26′19″ W longitude and proceeding downstream (southwesterly) to the Pacific Ocean covering approximately 0.7 km (0.4 mi.), including the stream, its 50 year flood plain, and associated lagoons and marsh.

Map Unit 7: San Diego County, California. From USGS 7.5′ quadrangle map Las Pulgas Canyon, California. San Bernardino Principal Meridian, California, T. 10 S., R. 5 W., beginning at a point on French Creek in E sec. 31 and at approximately 33°16′01″ N latitude and 117°26′01″ W longitude and proceeding downstream (westerly) to the Pacific Ocean covering approximately 0.7 km (0.4 mi.), including the stream, its 50 year flood plain, and associated lagoons and marsh.

Map Unit 8: San Diego County, California. From USGS 7.5′ quadrangle map Las Pulgas Canyon, California. San Bernardino Principal Meridian, California, T. 11 S., R. 5 W., beginning at a point on Cockleburr Creek in NE sec. 5 and at approximately 33°15′16″ N latitude and 117°25′21″ W longitude and proceeding downstream (westerly) to the Pacific Ocean covering approximately 1.0 km (0.6 mi.), including the stream, its 50 year flood plain, and associated lagoons and marsh.

Map Unit 9: San Diego County, California. From USGS 7.5′ quadrangle map Oceanside, California. San Bernardino Principal Meridian, California, T. 11 S., R. 5 W., beginning at a point on the Santa Margarita River in NW sec. 2 and at approximately 33°15′08″ N latitude and 117°22′38″ W longitude and proceeding downstream (westerly) to the Pacific Ocean covering approximately 5.0 km (3.1 mi.), including the river's 50 year flood plain, associated lagoons and marsh.

Map Unit 10: San Diego County, California. From USGS 7.5′ quadrangle map San Luis Rey, California. San Bernardino Principal Meridian, California, T. 11 S., R. 4 W., beginning at a point on Buena Vista Creek at the border of sec. 31 and 32 and at approximately 33°10′48″ N latitude and 117°19′49″ W longitude and proceeding downstream (southwesterly) to the Pacific Ocean covering approximately 3.4 km (2.1 mi.), including Buena Vista Creek, its 50 year flood plain, Buena Vista Lagoon, and associated marsh.

Map Unit 11: San Diego County, California. From USGS 7.5′ quadrangle map San Luis Rey, California. San Bernardino Principal Meridian, California, T. 12 S., R. 4 W., beginning at a point on Augua Hedionda Creek in the middle of Section 9 and at approximately 33°08′44″ N latitude and 117°18′19″ W longitude and proceeding downstream (southwesterly) to the Pacific Ocean covering approximately 3.7 km (2.3 mi.), including the creek, its 50 year flood plain, Agua Hedionda Lagoon, and associated marsh.

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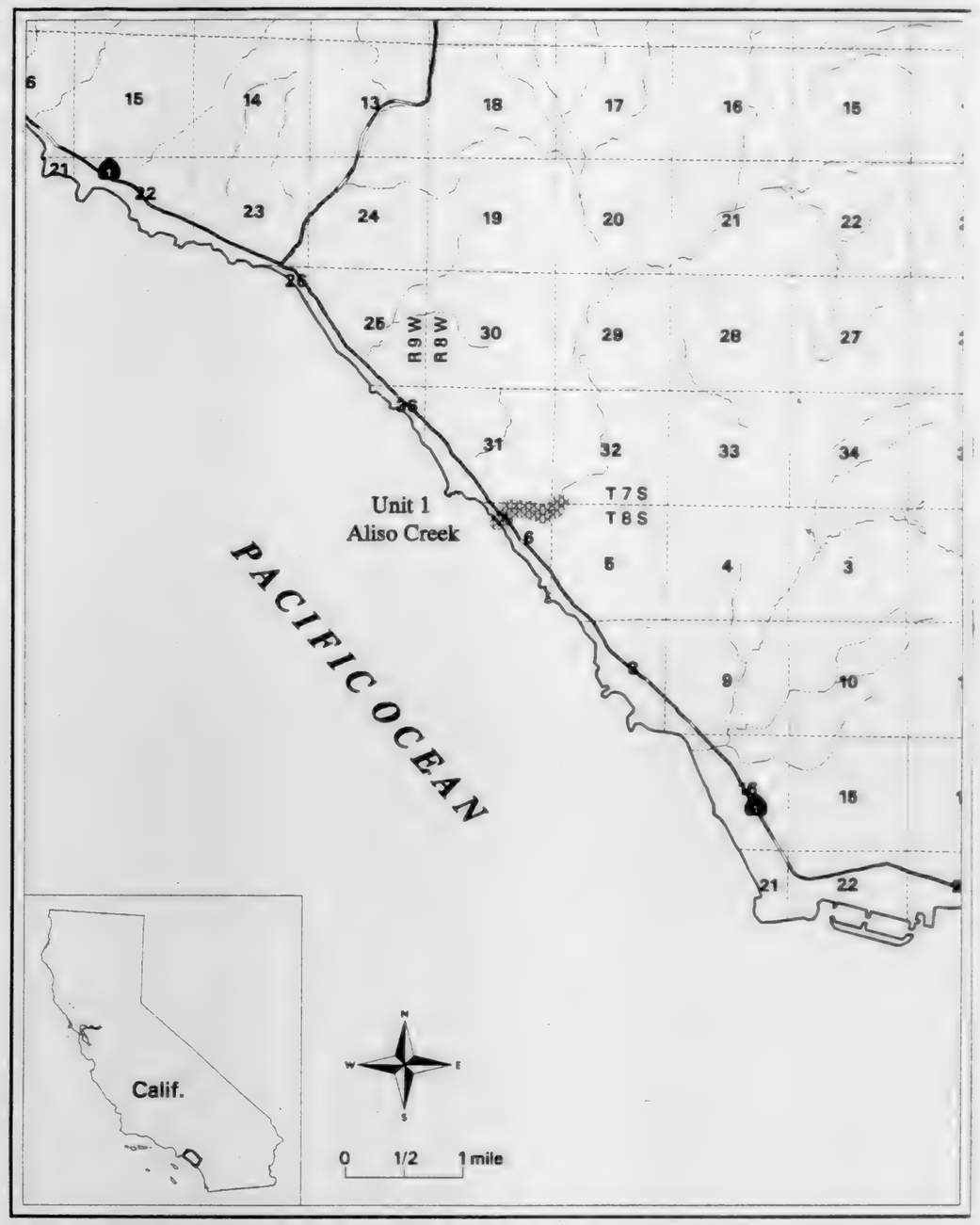

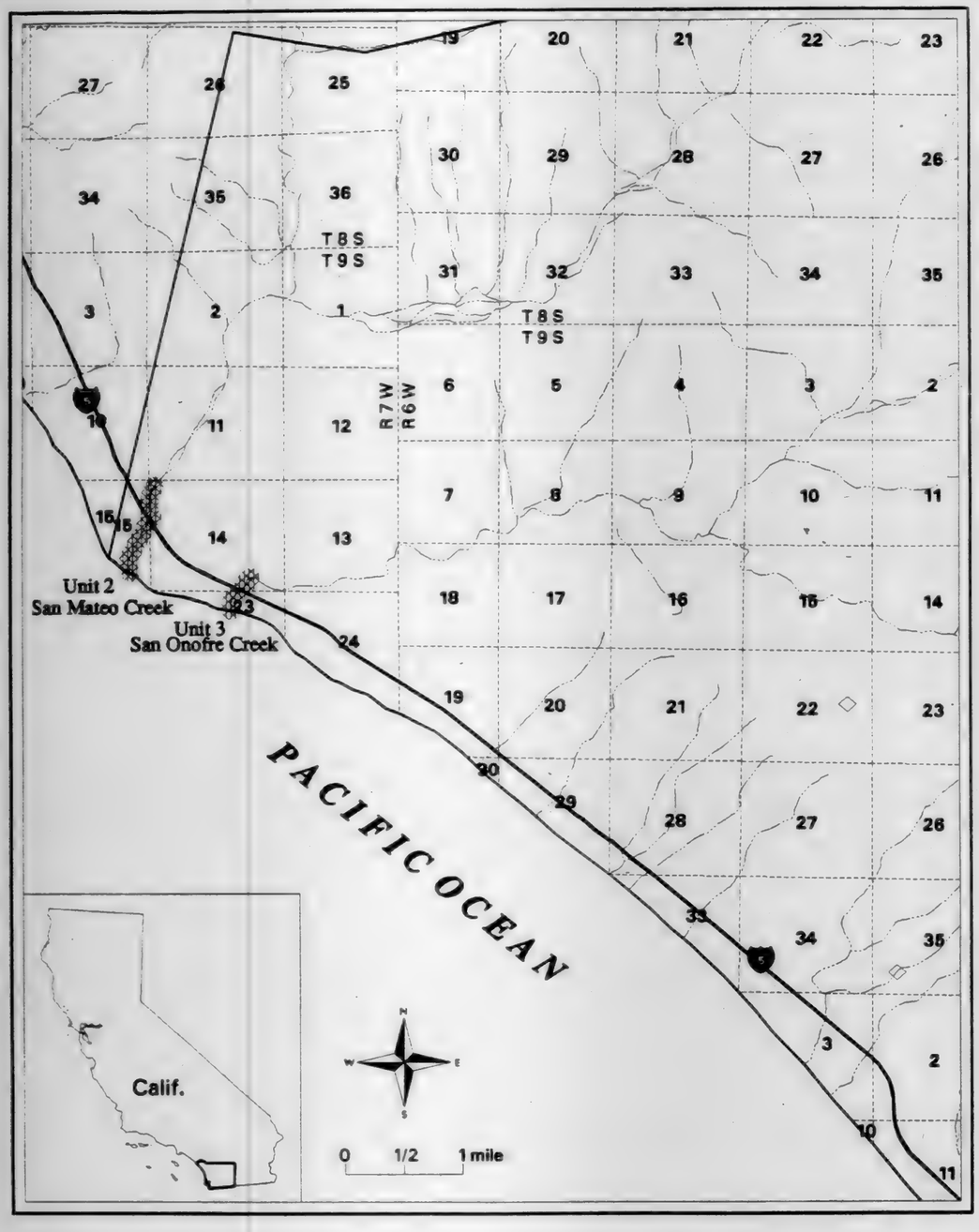
Unit 2
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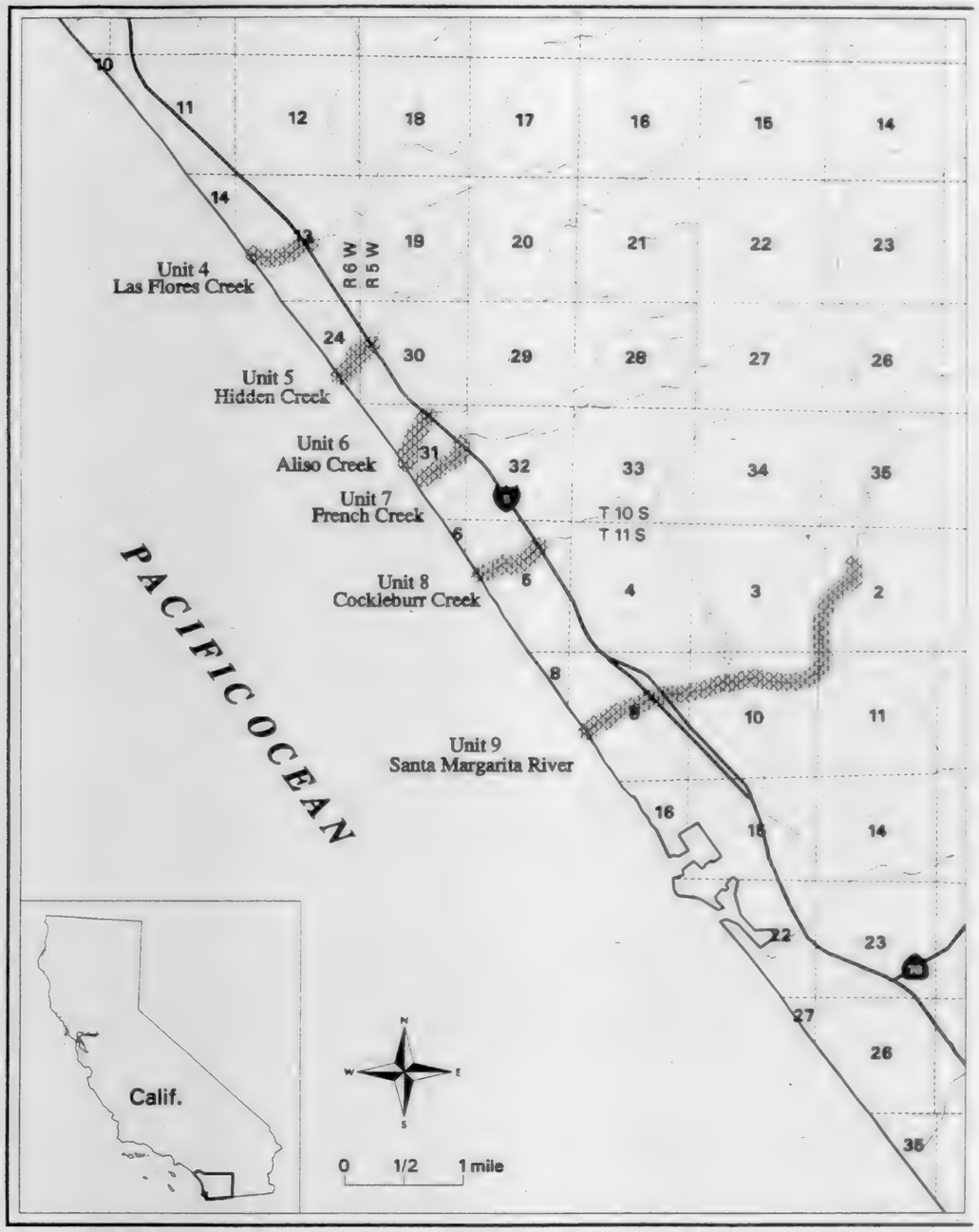
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Hidden Creek
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Aliso Creek
Unit 7
French Creek
Unit 8
Cockleburr Creek
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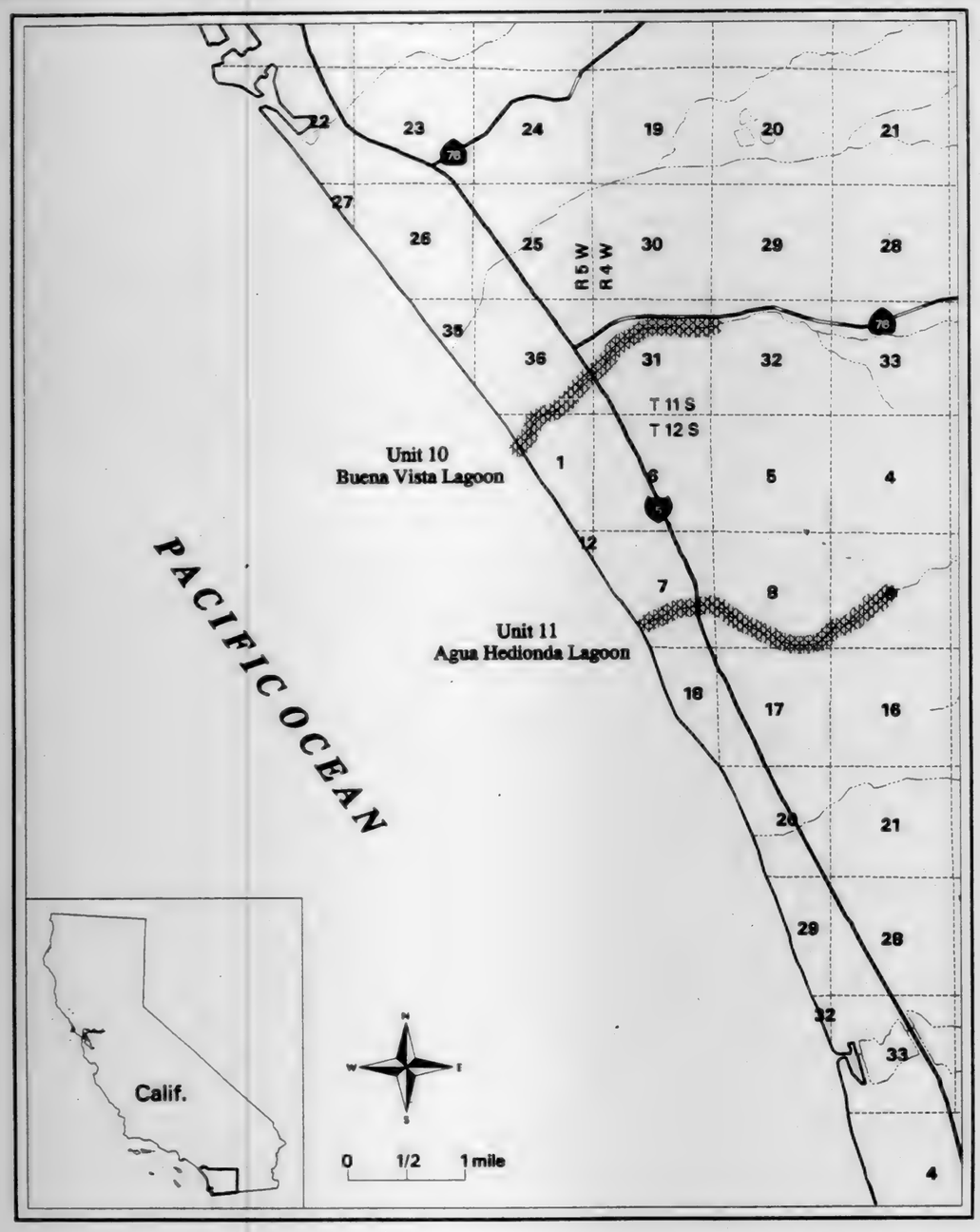

Dated: July 29, 1999.

Stephen C. Saunders,

Acting Assistant Secretary for Fish Wildlife and Parks.

[FR Doc. 99–20034 Filed 7–30–99; 2:55 pm]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 4/P.L. 106–38

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H.R. 2035/P.L. 106–39

To correct errors in the authorizations of certain programs administered by the National Highway Traffic Safety Administration. (July 28, 1999; 113 Stat. 206)

Last List July 22, 1999

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Presidential Documents

Title 3—

The President

Proclamation 7214 of July 30, 1999

To Provide for the Efficient and Fair Administration of Action Taken With Regard to Imports of Lamb Meat and for Other Purposes

By the President of the United States of America

A Proclamation

1. On July 7, 1999, I issued Proclamation 7208, which implemented action of a type described in section 203(a)(3) of the Trade Act of 1974, as amended (19 U.S.C. 2253(a)(3)) (the "Trade Act"), with respect to imports of fresh, chilled, or frozen lamb meat, provided for in subheadings 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, and 0204.43.20 of the Harmonized Tariff Schedule of the United States (HTS). Proclamation 7208 took effect on July 22, 1999.

2. Proclamation 7208 established import relief in the form of tariff-rate quotas (TRQs) and increased duties but did not make specific provision for their administration. I have determined under section 203(g)(1) of the Trade Act (19 U.S.C. 2253(g)(1)) that it is necessary for the efficient and fair administration of the action undertaken in Proclamation 7208 to exempt from the measure goods that were exported prior to July 22, 1999.

3. I have further determined under section 203(g)(1) of the Trade Act that in order to provide for the efficient and fair administration of the TRQs established in Proclamation 7208 it is necessary to delegate my authority to administer the TRQs under that section to the United States Trade Representative.

4. On May 28, 1999, I issued Proclamation 7202, which took certain actions to eliminate circumvention of the quantitative limitations applicable to imports of wheat gluten that were proclaimed in Proclamation 7103. I have determined that a technical correction in the description of an action taken in Proclamation 7202 is appropriate.

5. Section 604 of the Trade Act (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 203 and 604 of the Trade Act, and section 301 of title 3, United States Code, do proclaim that:

(1) In order to provide for the efficient and fair administration of the TRQs on imports of fresh, chilled, or frozen lamb meat classified in HTS subheadings 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, and 0204.43.20, subchapter III of chapter 99 of the HTS is modified as provided for in the Annex to this proclamation.

(2) The United States Trade Representative is authorized to exercise my authority pursuant to section 203(g) of the Trade Act to take all action necessary, including the promulgation of regulations, to administer the TRQs relating to imports of lamb meat provided for in HTS subheadings 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, and 0204.43.20.

(3) The third sentence of initial paragraph 4 of Proclamation 7202 is hereby stricken and the following sentence is inserted in lieu thereof: "Such action shall take the form of a reduction in the European Community's 1999/2000 wheat gluten quota allotment in the amount of 5,402,000 kg., which represents the amount of wheat gluten that entered the United States in excess of the European Community's 1998 quota allocation."

(4) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(5) The actions taken in this proclamation shall be effective on the date of signature of this proclamation and shall continue in effect through the close of the dates on which actions proclaimed in Proclamation 7202 and Proclamation 7208 cease to be effective, unless such actions are earlier expressly modified or terminated.

(6) The modifications to the HTS shall be effective with respect to goods exported on or after July 22, 1999, and shall continue in effect as provided in the Annex to this proclamation, unless such actions are earlier expressly modified or terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of July, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J Clinton

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ANNEX

Modifications to the Harmonized Tariff Schedule of the United States

(a) Effective with respect to goods that are exported on or after July 22, 1999, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified to read as follows:

"8. For purposes of the subheadings enumerated below, the in-quota quantities for fresh, chilled or frozen lamb meat shall be allocated as follows:

Subheadings	Country or Countries	Allocation (kg)
9903.02.01	Australia	17,139,582
	New Zealand	14,481,603
	Other countries	229,966
9903.02.03	Australia	17,600,931
	New Zealand	14,871,407
	Other countries	236,155
9903.02.05	Australia	18,062,279
	New Zealand	15,261,210
	Other countries	242,346

	Carcasses and half-carcasses of lamb (provided for in subheading 0204.10.00 or 0204.30.00), other lamb cuts with bone in (provided for in subheading 0204.22.20 or 0204.42.20), and boneless lamb meat (provided for in subheading 0204.23.20 or 0204.43.20), all the foregoing fresh, chilled or frozen, except products of Canada, of Mexico, of Israel, of developing countries enumerated in general note 4(a) to this schedule, of beneficiary countries under the Caribbean Basin Economic Recovery Act (as enumerated in general note 7(a) to this schedule) or of beneficiary countries under the Andean Trade Preference Act (as enumerated in general note 11(a) to this schedule):		
	If exported on or after July 22, 1999, through July 21, 2000, inclusive:		
9903.02.01	In quantities not in excess of 31,851,151 kg	9%	15.4¢/kg
9903.02.02	Other	40%	15.4¢/kg + 40%
	[Carcasses...:]		
	If exported on or after July 22,2000, through July 21, 2001, inclusive:		
9903.02.03	In quantities not in excess of 32,708,493 kg	6%	15.4¢/kg
9903.02.04	Other	32%	15.4¢/kg + 32%
	If exported on or after July 22, 2001, through July 22, 2002, inclusive:		
9903.02.05	In quantities not in excess of 33,565,835 kg	3%	15.4¢/kg
9903.02.06	Other	24%	15.4¢/kg + 24%"

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 31

RIN 3150—AG06

Requirements for Those Who Possess Certain Industrial Devices Containing Byproduct Material to Provide Requested Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to add an explicit requirement that general licensees, who possess certain measuring, gauging, or controlling devices that contain byproduct material, provide the NRC with information concerning these devices. The NRC intends to use this provision to request information concerning devices that present a comparatively higher risk of exposure to the public or property damage. The final rule is intended to help ensure that devices containing byproduct material are maintained and transferred properly and are not inadvertently discarded.

EFFECTIVE DATE: October 4, 1999.

FOR FURTHER INFORMATION CONTACT: Catherine R. Mattsen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6264, or e-mail at CRM@nrc.gov; or Jayne McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, or e-mail at JMM2@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1959 (24 FR 1089), the Atomic Energy Commission (AEC) amended its regulations to provide a general license for the use of byproduct material contained in certain measuring, gauging, or controlling devices (10 CFR 30.21(c)). Under current regulations in 10 CFR 31.5, certain persons may receive and use a device containing byproduct material under this general license if the device has been manufactured and distributed according to the specifications contained in a specific license issued by the NRC or by an Agreement State. A specific license authorizing distribution of generally licensed devices is issued if a regulatory authority determines that the safety features of the device and the instructions for safe operation of that device are adequate and meet regulatory requirements.

The person or firm who receives such a device is a general licensee. The general licensee is subject to requirements for maintaining labels, following instructions for use, storing or disposing of the device properly, and reporting transfers and failure of or damage to the device. For some devices, the general licensee must also comply with leak testing requirements. The general licensee is also subject to the terms and conditions in 10 CFR 31.2 concerning general license requirements, transfer of byproduct material, reporting and recordkeeping, and inspection. The general licensee must comply with the safety instructions contained in or referenced on the label of the device and must have the testing or servicing of the device performed by an individual who is authorized to manufacture, install, or service these devices.

A generally licensed device usually consists of radioactive material, contained in a sealed source, within a shielded device. The device is designed with inherent radiation safety features so that it can be used by persons with no radiation training or experience. Thus, the general license is meant to simplify the licensing process so that a case-by-case determination of the adequacy of the radiation training or experience of each user is not necessary.

There are about 45,000 general licensees under 10 CFR 31.5. These licensees possess about 600,000 devices that contain byproduct material. The NRC has not contacted general licensees on a regular basis because of the relatively small radiation exposure risk posed by these devices and the very large number of general licensees. However, general licensees are not always aware of applicable regulations and thus are not necessarily complying with all of the applicable requirements. The NRC is particularly concerned about occurrences where generally licensed devices containing radioactive material have not been properly handled or properly disposed of. In some cases, this has resulted in radiation exposure to the public and contamination of property. Although known exposures generally have not exceeded the public dose limit, there is a potential for significant exposures. When a source is accidentally melted in a steel mill, considerable contamination of the mill, the steel product, and the wastes from the process, the slag and the baghouse dust, can result.

The NRC conducted a 3-year sampling (1984 through 1986) of general licensees to assess the effectiveness of the general license program. The sampling revealed several areas of concern regarding the use of generally licensed devices. In particular, the NRC concluded that many general licensees are not aware of the appropriate regulations. Also, approximately 15 percent of all general licensees sampled could not account for all of their generally licensed devices. The NRC concluded that these problems could be remedied by more frequent and timely contact between the general licensee and the NRC.

On December 27, 1991 (56 FR 67011), the NRC published a notice of proposed rulemaking concerning the accountability of generally licensed devices. The proposed rule contained a number of provisions, including a requirement for general licensees under 10 CFR 31.5 to provide information to the NRC upon request, through which a device registry could be developed. The proposed rule also included requirements in 10 CFR 32.51a and 32.52 for the specific licensees who manufacture or initially transfer generally licensed devices. Although the public comments received were reviewed and a final rule developed, a final rule was not issued because the resources needed to implement the proposed rule properly were not available.

The NRC continued to consider the issues related to the loss of control of generally licensed, as well as

specifically licensed, sources of radioactivity. In July 1995, the NRC, with assistance from the Organization of Agreement States, formed a working group to evaluate these issues. A final report was completed in July 1996 and published in October 1996 as NUREG–1551, "Final Report of the NRC-Agreement State Working Group to Evaluate Control and Accountability of Licensed Devices."

In considering the recommendations of the working group, the NRC decided, among other things, to again initiate rulemaking to establish an annual registration program of devices generally licensed under 10 CFR 31.5 that would be similar to the program originally proposed in the December 27, 1991, proposed rule. However, the NRC decided to do so only for those devices that present a higher risk, compared to other generally licensed devices, of potential exposure to the public and property loss if control of the device were lost. The NRC found the working group process valuable in identifying criteria for categorizing devices that are more likely to present a significant risk by exposure of the public or through contamination of property.

On December 2, 1998 (63 FR 66492), the Commission again proposed the addition of an explicit requirement to provide information in response to requests made by the NRC. While the rule applies to all 10 CFR 31.5 general licensees, the NRC plans to contact only those general licensees identified by the working group for the purpose of the registration program. For the most part, general licensees using devices meeting these criteria have a limited number of devices that will require registration.

In that notice (at 63 FR 66493), the NRC also withdrew the December 27, 1991, proposed rule. The NRC has reviewed the other provisions contained in the December 27, 1991, proposed rule and the recommendations of the working group and developed additional requirements in a separate proposed rule published July 26, 1999 (64 FR 40295). The recommendations made in NUREG–1551 were considered in developing the separate, more comprehensive proposed rule issued July 26, 1999. That proposed rule addresses fees for registration, additional reporting, recordkeeping, and labeling requirements for 10 CFR 32.51 licensees, and compatibility of Agreement State regulations in this area.

On March 9, 1999 (64 FR 11508), the Commission established an interim enforcement policy for violations of 10 CFR 31.5 that are discovered and reported by licensees during the initial cycle of the registration program. The initial cycle is considered to be the issuance of one round of registration requests to all affected general licensees. This policy supplements the normal NRC Enforcement Policy in NUREG–1600, Rev. 1. It will remain in effect through one complete cycle of the registration program.

Under this interim enforcement policy, enforcement action normally will not be taken for violations of 10 CFR 31.5 that are identified by the general licensee, and reported to the NRC if reporting is required, provided that the general licensee—

Takes appropriate corrective action to address the specific violations and prevent recurrence of similar problems; and

Has undertaken good faith efforts to respond to NRC notices and provide requested information.

This change from the Commission's normal enforcement policy is intended to remove the potential for the threat of enforcement action to be a disincentive for the licensee to identify deficiencies.

Under the interim enforcement policy, enforcement action, including issuance of civil penalties and Orders, may be taken where there is —

(1) Failure to take appropriate corrective action to prevent recurrence of similar violations;

(2) Failure to respond and provide the information required by regulation;

(3) Willful failure to provide complete and accurate information to the NRC; or

(4) Other willful violations, such as willfully disposing of generally licensed material in an unauthorized manner.

As noted in the December 2, 1998, proposed rule, and discussed further in the separate, more comprehensive proposed rule of July 26, 1999, the Commission also plans to increase the civil penalty amounts specified in its Enforcement Policy in NUREG–1600, Rev. 1, for violations involving lost or improperly disposed of sources or devices. This increase will better relate the civil penalty amount to the costs avoided by the failure to properly dispose of the source or device. Due to the diversity of the types of sources and devices, the Commission is considering the establishment of three levels of base civil penalty for loss or improper disposal. The higher tiers would be for sources that are relatively costly to dispose of.

Discussion

The Atomic Energy Act of 1954 (AEA), as amended, authorizes the NRC to request appropriate information from its licensees concerning licensed activities. However, the Commission had not included such an explicit provision in the regulations governing 10 CFR 31.5 general licensees.

This final rule adds an explicit requirement to 10 CFR 31.5 that requires general licensees who possess certain measuring, gauging, and controlling devices to respond in a timely way to written requests from the NRC for information concerning products that they have received for use under a general license.

The final rule requires a response to requests within 30 days or such other time as specified in the request. For routine requests for information, 30 days should be adequate in most instances, and an extension can be obtained for good cause. If more complicated requests are made or circumstances recognized that may require a longer time, the Commission may provide a longer response time. In the unusual circumstance of a significant safety concern, the Commission could demand information in a shorter time. The NRC will provide a phone number in the request for information in case additional guidance is necessary.

The NRC intends to use this provision primarily to institute an annual registration program for devices using certain quantities of specific radionuclides. The registration program is primarily intended to ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material. The registration process will allow NRC to account for devices that have been distributed for use under the general license. The NRC believes that, if general licensees are aware of their responsibilities, they will comply with the requirements for proper handling and disposal of generally licensed devices. This should help reduce the potential for incidents that could result in unnecessary radiation exposure to the public as well as contamination of property.

The general licensees covered by the registration program will be asked to account for the devices in their possession and to verify, as well as certify, information concerning—

(1) The identification of devices, such as the manufacturer, model, and serial numbers;

(2) The persons knowledgeable of the device and the applicable regulations;

(3) The disposition of the devices; and

(4) The location of the devices.

An organization which uses generally licensed devices at numerous locations is usually considered a separate general licensee at each location (except in the case of different facilities at the same complex or campus). In the case of portable devices that are routinely used at multiple sites, there is one general licensee for each primary place of storage, not for each place of use. Thus, an organization may be required to complete more than one registration, if it possess devices subject to registration at multiple locations.

While the final rule applies to all 10 CFR 31.5 general licensees (about 45,000), the NRC will contact only approximately 5100 general licensees, possessing about 20,000 devices, for registration purposes. This category of general licensees is based on the criteria recommended by the working group for determining which sources should have increased oversight. The proposed rule presented an estimate of 6000 general licensees, based on the estimates made in the working group report. However, this had not accounted for the fact that, in the interim, Massachusetts had become an Agreement State. Using the same criteria, and removing the previously NRC general licensees in Massachusetts, results in an estimate of 5100. Other States are expected to become Agreement States in the near future which will affect the number of general licensees under NRC jurisdiction, but not the overall number nationally. The separate, more comprehensive proposed rule published July 26, 1999, indicated that Agreement States will be required to achieve a compatible level of accountability over generally licensed devices. Thus, following State implementation of compatible programs in conjunction with that rule, further changes in the number of generally licensed devices within NRC jurisdiction should not adversely affect accountability.

Requests for information will be sent to general licensees who are expected, based on current NRC records, to possess devices containing (as indicated on the label) at least—

370 MBq (10 mCi) of cesium-137;
3.7 MBq (0.1 mCi) of strontium-90;
37 MBq (1 mCi) of cobalt-60; or
37 MBq (1 mCi) of any transuranic (at this time, the only generally licensed devices meeting this criterion contain curium-244 and americium-241).

Most of the devices meeting these criteria are used in commercial and industrial applications measuring thickness, density, or chemical composition in petrochemical and steel manufacturing industries. The requests will include the information contained in NRC records concerning the possession of these devices. The licensees will be asked to verify, correct, and add to that information. The NRC records are based on information provided to the NRC by distributors under 10 CFR 32.52(a) and compatible Agreement State regulations and from general licensees as required by 10 CFR 31.5(c) (8) or (9) regarding transfer of generally licensed devices. If a general licensee no longer possesses devices meeting the criteria, it will be expected to provide information about the disposition of the devices previously possessed. Errors in current NRC records concerning these general licensees could be the result of—

(1) Errors made in the quarterly reports of manufacturers or initial distributors;

(2) General licensees not reporting transfers; or

(3) Errors made by NRC or its contractors in recording transfer information.

In addition to the 5100 general licensees identified for registration, the NRC may occasionally request information from other general licensees on a case-by-case basis as necessary or appropriate. For example, this might involve investigating the extent that other users have experienced a problem that has been identified with the design of a particular device model. However, significant modifications to the registration program to include a larger class of licensees would be done through rulemaking.

Although the amendment to the regulations imposes some additional costs on licensees, the NRC has estimated these costs to be minimal. This cost is the estimated administrative cost expended by general licensees to verify the information requested by the NRC regarding licensed devices. The NRC believes that the rule's intended effect of increased compliance by general licensees with regulatory requirements, and resulting NRC and public confidence in the general license program potentially afforded by these new requirements, outweigh this nominal administrative cost.

Public Comments on the Proposed Rule

The NRC reviewed the public comments received on the December 2, 1998, proposed rule. Seven comment letters were received from: the State of Illinois (an Agreement State), National Steel Pellet Company, Steel Manufacturers Association (SMA), the Commonwealth of Massachusetts (an Agreement State), the State of New Jersey (a non-Agreement State), American Iron and Steel Institute (AISI), and one private citizen.

All commenters supported the proposed rule. One commenter agreed with the NRC that the proposed change would increase accountability and control over generally licensed radioactive devices. Another commenter supported the proposed regulation as a step in the right direction, if not completely solving the regulatory problems of the NRC. The steel industry supported the proposed rule as a positive, although small, step toward minimizing the risk associated with improper disposal of spent sources in the scrap supply.

Agreement was expressed by two commenters that the administrative burden on general licensees to provide the minimal information requested by the NRC is reasonable, as is the 30-day period in which general licensees have to respond, with extensions granted for good cause.

Several commenters voiced agreement with the interim enforcement policy. One commenter, the State of New Jersey, believes that it is extremely important to remove any incentive for a general licensee to attempt to discard its source rather than comply with the reporting requirement. The commenter stated that when people get rid of their generally licensed devices in a hurry, the State has to go out and find them in mountains of trash or scrap metal.

Two other commenters, the SMA and AISI, stated that they would support any enforcement program that deters improper disposal of radioactive sources. They also endorse the provision allowing general licensees to report and correct violations without incurring penalties. These commenters believe that this provision would encourage licensees, who are not sure about sources they hold, to remedy the problem rather than improperly dispose of the sources in an attempt to avoid high penalties.

A. Current NRC General Licensing Process and Cost Shift

Comment: In general, the three representatives of the steel industry expressed similar concerns regarding the current NRC general licensing process. One commenter, the SMA, stated that the proposed rule did not address the fact that the current regulatory regime has shifted the costs of lax accountability and control onto steel makers, insurers, and the taxpayers. This commenter stated that general licensees do not pay for their licenses nor provide information directly to NRC about the sources they hold. Instead, the cost has fallen on steel producers to detect the sources, on steel producers and taxpayers to arrange for proper disposal, and on steel producers and their insurers to pay the cost when a source is inadvertently melted. This commenter believed that general

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licensees should be required to shoulder their fair share.

Similarly, the AISI pointed out that current NRC regulations have inadvertently and improperly shifted the costs for accountability and control onto hot metal producers, insurers, and taxpayers and that steel producers are being forced to pay the cost of detecting orphaned sources, to arrange for proper disposal, and to pay for the cleanup when a source is inadvertently melted. This commenter also believed that general licensees should be required to pay their fair share of these costs and stated that improving licensee accountability would also reduce the risk of the illegal release of generally licensed material into the public scrap supply. In addition, the AISI noted that the inadvertent melting of orphaned sources by domestic steel producers has resulted in decontamination, disposal, and lost production costs ranging between $10 million and $24 million at electric furnace mills and that the cost of a similar incident occurring in a major integrated steel mill could easily exceed $100 million.

Response: The Commission recognizes the expense to the steel industry when generally licensed devices containing radioactive material are not properly disposed of or properly handled. The NRC believes that this rulemaking will reduce the probability of lost and improperly disposed of sources, and ultimately the number of incidents of inadvertent meltings. This would reduce the total expense to the steel industry, insurers, and taxpayers resulting from such incidents. A separate, more comprehensive rulemaking on this subject (proposed on July 26, 1999) is expected to further improve accountability for devices and reduce the impact of improperly disposed of sources to the steel industry. In addition, that rule would establish a registration fee to recover the cost of the NRC enhanced oversight program for those general licensees being required to register their devices.

B. Reporting Electronically and Data Verification

Comment: Two commenters recommended that the NRC provide a means for electronically reporting the information requested by the NRC in order to save time, mailing expenses, and paper. They also indicated that the NRC should ensure that its database has an adequate data quality verification system and can easily flag inconsistencies.

One commenter suggested that the electronic filing could be accomplished through a secure page on the NRC Internet Web Site and that the NRC could use the employer's tax identification number and a password to secure the information. This commenter also recommended that the NRC database include a data quality verification system to quickly identify and immediately notify licensees of any reporting inconsistencies and that employers could also be required to annually verify the accuracy of the inventory.

Response: The submission of electronic applications and reports is a generic issue that impacts more than the general license registration program. The NRC has evaluated the issue of permitting licensees to file applications and reports electronically and plans to publish an amendment to the regulations to allow such submissions. The NRC expects to publish the amendment next year. At that time, the NRC will evaluate how this change will impact implementation of the registration program and future enhancements to the design of the automated system. However, the NRC currently expects that the initial registration program would require submission of hard copies of the registration forms.

The NRC is in the process of upgrading its information technology systems to facilitate processing of annual registrations. The upgrades will include adequate data verification for distributor, general licensee, and registration information and will include automated readers for processing the large volume of registration forms. The automated readers will identify changes and inconsistencies with the database, convert changes to electronic form, and incorporate the new data.

C. Control and Accountability

Comment: One commenter believed that a great deal of improvement is needed in the regulations governing licensed radioactive devices concerning their location and whether they are being disposed of properly. This commenter felt that a license should not be given out to persons to own as many devices as they please; instead a license should be given out per device, thereby limiting the number of devices available and making known the number of devices in use. This commenter felt that radioactive material presents an extreme threat to health and safety even if disposed of properly.

Response: The Commission does not believe it is necessary, appropriate, or practical to limit the number of devices going out to general licensees to one per licensee. Tracking the number of devices in use and who has them is achievable without such a restriction. Generally licensed devices are designed to be inherently safe and do not present nearly as great a risk to health and safety as the commenter suggests. Given the nature of the general license, restrictions on numbers of devices that can be possessed would be difficult to enforce and would likely lead to difficulties in getting accurate information on devices possessed.

Comment: Another commenter recommended that the NRC not target businesses with specific licenses, pointing out that they are required to—

(1) Have a Radiation Safety Officer;

(2) Actively perform testing and inspections; and

(3) Maintain written documentation.

Therefore, specific licensees are almost always aware of the byproduct material regulations applicable to byproduct material managed under a general license as well and are more likely to adequately account for and handle devices containing byproduct material in accordance with the regulatory requirements. The commenter recommended that the NRC instead target general licensees that do not currently maintain byproduct material under a specific NRC license because these general licensees are more likely to be unaware of the appropriate regulations and are more likely to inappropriately account for and handle devices containing byproduct material.

Response: Specific licensees who also have generally licensed devices are subject to any regulations applicable to the general license. Therefore, these specific licensees will be subject to registration. Given the approach of this first rule, it would be possible for NRC to simply not make this request for information from those who also hold specific licenses. However, this would require additional effort to cross reference data on specific licensees with that on general licensees. Specific licensees, while generally more aware of applicable regulations, do have problems with incomplete accountability for devices. The potential improvement in accountability should justify the limited administrative effort of providing registration information even in the case of those holding specific licenses.

If the additional rulemaking concerning registration is made final, specific licensees holding generally licensed devices subject to registration may wish to avoid the additional fee. If so, they would have the option of amending their specific license, if necessary, to include the devices, and thereby remove the devices from the general license status. In this case, labels may have to be changed to be consistent with the device's regulatory status.

Comment: The State of Illinois indicated that a group of general licensees in Illinois possesses devices containing curium-244 in quantities that would require registration under the proposed rule. This commenter recommended that the NRC contact licensees possessing not only americium-241 but also curium-244, and noted that the statement in the December 2, 1998, proposed rule (63 FR 66493) that americium-241 is the only transuranic radionuclide found in generally licensed devices in quantities exceeding 37 megabecquerels (1 millicurie), is in error.

Response: The Commission agrees. The omission in that statement, of curium-244 as a transuranic element used in generally licensed devices meeting the criteria for registration, was an oversight. Devices containing curium-244 with quantities meeting the criterion for transuranics will be included in the registration requirement.

Comment: Several commenters stated that the NRC should give serious consideration to the NRC-Agreement State Working Group recommendations as contained in NUREG–1551, "Final Report of the NRC-Agreement State Working Group to Evaluate Control and Accountability of Licensed Devices." Specifically, one commenter stated that there should be a Responsible Individual (RI) and a Backup Responsible Individual (BRI) for each general license. This commenter stated that, unlike a specific license where there are a Radiation Safety Officer and Authorized Users, there may be only one person (RI) who has a real understanding that his or her company possesses a generally licensed device that contains a radioactive source. When that RI dies, retires, resigns, or is laid off, there may be no one at the facility with any understanding or appreciation of the significance of the generally licensed device. The commenter stated that the addition of one extra name and phone number to the records should not be too burdensome on the licensee and may help avoid the burden of responding to a radiation incident involving the device.

Two other commenters recommended that the NRC consider the Working Group's recommended comprehensive measures, including requirements for the NRC to maintain inventory records, to compare and reconcile related discrepancies, and to mandate reporting the bankruptcy of a licensee to the NRC. The commenters also recommended State/NRC site inspections and inventories at regular intervals. These commenters felt that serious consideration should be given to each of these measures in order to prevent the continued loss of licensed sources into the scrap stream.

One of these commenters also urged the NRC to move forward with the planned additional regulations amending or establishing requirements for registration fees, labeling, and compatibility with Agreement State requirements. The commenter stated that the limited registration program would have minimal impact on the radioactive scrap problem if it is the only amendment the NRC proposes.

Response: The more comprehensive measures recommended by the NRC-Agreement State Working Group are being considered in the separate, more comprehensive rule proposed on July 26, 1999. Comments on these issues will be considered as part of that rulemaking process.

D. Registration Program

Comment: One commenter noted that the language of the proposal did not call for a periodic registration program requiring reporting at least annually. Rather, the proposed amendment would merely restate NRC's authority to collect information from licensees. The commenter pointed out that the NRC already has this authority under 42 U.S.G. 2095 and in its own regulations at 10 CFR 30.34. This commenter urged the NRC to explicitly call for a periodic registration program in the amended regulation stating that this would remind general licensees that they have licensed radioactive sources and that there are responsibilities attached to their licenses. It would also indicate that the Government has knowledge of their sources and the authority to enforce prohibitions on improper disposal.

Response: The NRC has proposed explicit provisions for an annual registration requirement in the separate, more comprehensive rule on this subject.

Comment: A commenter suggested that the NRC reconsider one of the provisions in a proposed rule published February 5, 1974 (39 FR 4583), that would have required registration of the generally licensed devices before customers are allowed to receive them. This commenter stated that this would ensure and document that general licensees have received copies of the regulations and that they are aware of their rights and responsibilities.

Response: The Commission does not believe preregistration is necessary to ensure and document that general licensees have received copies of the regulations and that they are aware of their rights and responsibilities. However, the Commission has proposed amendments to address the need for customers to receive additional information prior to purchases of generally licensed devices in the separate, more comprehensive rule.

Comment: Another commenter strongly encouraged the NRC to adopt a mandatory registration program for all sources, not merely those that pose the greatest risk to steel mills.

Response: The Commission has decided to use the criteria developed by the NRC/Agreement State Working Group to determine which sources should be subject to the registration program. These criteria were based on considerations of relative risk and were limited to radionuclides currently in use in devices considered to present a higher risk of potential exposure, as well as potential for contamination of property.

E. Fee-Based System

Comment: One commenter believed that a fee-based system for all general licensees would ensure that the NRC recovers the minimal cost to initiate and maintain the reporting program. The commenter stated that such a registration program would enable the NRC to account for all sources that have been distributed. The commenter further suggested that the program could be designed to allow steel companies and the general public to trace the origins of an improperly disposed of source. This would help steel companies in determining liability for the multimillion-dollar clean-up costs that the steel companies and their insurers incur when sources are inadvertently melted. It would also provide Federal and State nuclear regulators that handle orphan sources a means to obtain reimbursement resulting in an additional deterrent against improper source disposition.

Another commenter was concerned that, even though a fee-based system for all general licensees would permit the NRC to recover the anticipated cost of initiating and maintaining the reporting program, a fee schedule could slow or prevent implementation of the entire proposal. If this is correct, the commenter recommended that the NRC retain the proposal as published.

Response: The Commission is not addressing comments on its proposed fee-based system as part of this rulemaking process. The separate, more

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comprehensive rule addresses fees for registration and the comments will be considered in connection with that rulemaking.

F. Registration Information Available on the Internet

Comment: One commenter was opposed to making the registration information available on the Internet because such posting would unnecessarily cause public concern over the presence and use of low level devices. The commenter believes that this information should be available only through the Freedom of Information Act request process.

Response: Some of the information submitted in distributor quarterly reports and entered into the general license tracking system that is to be used for handling registration information would be considered proprietary. This database will be designed with security features in order to protect proprietary information. It will not be available on the Internet. The NRC would post information on its website concerning lost or unaccounted for devices.

G. Civil Penalty Amounts

Comment: One commenter agreed with the NRC's intent to increase the civil penalty amounts for violations involving lost or improperly disposed of sources or devices. The commenter stated that the penalties must be significantly higher than the costs avoided by the failure to properly dispose of the source or device.

A second commenter supported fining general licensees who violate their general licenses by using a schedule that is proportionate to the damage actually caused by the lost source. The commenter used the example of the cost for cleaning a steel mill contaminated by melting such a source. This commenter believed that because the NRC's proposed penalty is not much higher than the current fine of $2500 per loss that has been assessed to licensees, it would not significantly deter illegal behavior. The commenter believes that increasing the current relatively minimal penalty levels to amounts that reflect the real world damage caused by loss of a licensed source will provide general licensees with a substantive economic incentive to dispose of their sources legally.

Response: As discussed in the July 26, 1999 (64 FR 40295) proposed rule, the Commission is considering raising civil penalties for violations involving lost or improperly disposed of sources or devices and may use a tiered approach with higher than usual civil penalties for sources that are relatively costly to dispose of. This is to ensure that such civil penalties better relate to the costs avoided by the failure to properly dispose of the source or device. The cost of cleaning a contaminated steel mill would not be an appropriate basis for setting fees.

No comments were made concerning the specific wording of the proposed amendment. No change to the rule has been made as a result of these comments.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997 (62 FR 46517), this final rule is classified as Compatibility Category D. Category D means the provisions are not required for purposes of compatibility; however, if adopted by the State, the provisions should not create any conflicts, duplications, or gaps in the regulation of AEA material. Ultimately, an enhanced oversight program is expected to include provisions that will require a higher degree of compatibility. This is being considered in the separate, more comprehensive rulemaking that would add more explicit requirements for the registration program and additional provisions concerning accountability of generally licensed devices.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is amending its regulations to require that those who possess certain industrial devices containing byproduct material provide requested information. The amendments are administrative in nature and require certain types of specific entities to provide information concerning specific devices in their possession. Therefore, this action does not constitute the establishment of a standard that establishes generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in the categorical exclusion in 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The information collection requirements in this rule have been approved by the Office of Management and Budget, approval number 3150–0016.

The public reporting burden for this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of this information collection, including suggestion for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0016), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The NRC has prepared a regulatory analysis for this regulation. The analysis examines the cost and benefits of the alternatives considered by the NRC. The regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained by calling Jayne McCausland, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC, 20555–0001; telephone (301) 415–6219; or e-mail at JMM2@nrc.gov.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities. This rule requires general licensees who have received specific devices to respond to requests for information from NRC. The final rule applies to the approximately 45,000 persons using products under an NRC general license, many of whom may be classified as small entities. However, the NRC intends to request registration information from only approximately 5100 of these general licensees. Registration information to be obtained will include identification of the devices, accountability for the devices, the persons knowledgeable of the device and the applicable regulations, and the disposition of the devices. The NRC believes that the economic impact that any general licensee incurs as a result of supplying this information constitutes a negligible increase in administrative burden. It is estimated that there are approximately 20,000 devices in the possession of the Commission's general licensees which will come under the registration requirement. The average cost to the general licensee per device per year is about $4.00. Therefore, the action will not have a significant economic impact on small entities. The final rule is intended to ensure that general licensees understand and comply with regulatory responsibilities regarding the generally licensed radioactive devices in their possession.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, because these amendments do not involve any provisions that impose backfits as defined in 10 CFR 50.109(a)(1) and, therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 31

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out above and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 31.

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

1. The authority citation for Part 31 continues to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 31.6 also issued under sec. 274, 73 Stat. 688 (42 U.S.C. 2021).

2. Section 31.5 is amended by adding paragraph (c)(11) to read as follows:

§ 31.5 Certain measuring, gauging, or controlling devices.[2]

* * * * *

(c) * * *

(11) Shall respond to written requests from the Nuclear Regulatory Commission to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by submitting a letter to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 and provide written justification as to why it cannot comply.

* * * * *

Dated at Rockville, Maryland, this 1st day of July, 1999.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 99–19984 Filed 8–3–99; 8:45 am]

BILLING CODE 7590–01–P

[2] Persons possessing byproduct material in devices under a general license in 10 CFR 31.5 before January 15, 1975, may continue to possess, use, or transfer that material in accordance with the labeling requirements of 10 CFR 31.5 in effect on January 14, 1975.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–01–AD; Amendment 39–11241; AD 99–16–06]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Model PA–46–350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain The New Piper Aircraft, Inc. (Piper) Model PA–46–350P airplanes. This AD requires installing reinforcement plates to the wing forward and aft attach fittings. This AD is the result of a report that sheet steel material that is below design strength standards may have been utilized on the wing attach fittings on the Model PA–46–350P airplanes manufactured since January 1995. The actions specified by this AD are intended to prevent structural failure of the wing attach fittings caused by the utilization of substandard material, which could result in the wing separating from the airplane with consequent loss of control.

DATES: Effective September 24, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 24, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–01–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William O. Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6084; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper Model PA–46–350P airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 19, 1999 (64 FR 13530). The NPRM proposed to require installing reinforcement plates to the wing forward and aft attach fittings by incorporating the Wing to Fuselage Reinforcement Installation Kit, Piper part number 766–656. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with the instructions to the above-referenced kit, as referenced in Piper Service Bulletin No. 1027, dated November 19, 1998.

The NPRM was the result of a report that sheet steel material that is below design strength standards may have

been utilized on the wing attach fittings on the Model PA–46–350P airplanes manufactured since January 1995.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 185 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 30 workhours per airplane to accomplish the installation, and that the average labor rate is approximately $60 an hour. Piper will give warranty credit for parts on all affected aircraft. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $333,000, or $1,800 per airplane.

Piper has informed the FAA that parts have been distributed to accomplish the installation on 6 of the affected airplanes. Presuming that these parts were incorporated on 6 of the affected airplanes, this will reduce the cost impact of this AD by $10,800 from $333,000 to $322,200.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–16–06 The New Piper Aircraft, Inc.: Amendment 39–11241; Docket No. 99–CE–01–AD.

Applicability: Model PA–46–350P airplanes, serial numbers 4622191 through 4622200 and 4636001 through 4636175, certificated in any category.

Note 1: The affected serial numbers refer to airplanes that have been delivered since January 1995 and could have insufficient strength wing attach fittings installed. Airplanes manufactured after serial number 4636175 have this problem corrected prior to delivery.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent the potential for failure of the wing attach fittings caused by the utilization of substandard material, which could result in the wing separating from the airplane with consequent loss of control of the airplane, accomplish the following:

(a) Install reinforcement plates to the wing forward and aft attach fittings by incorporating the Wing to Fuselage Reinforcement Installation Kit, Piper part number 766–656. Accomplishment of the installation is required in accordance with the instructions to the above-referenced kit, as referenced in Piper Service Bulletin No. 1027, dated November 19, 1998.

(b) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) The installation required by this AD shall be done in accordance with the instructions to the Wing to Fuselage Reinforcement Installation Kit, Piper part number 766–656, dated November 6, 1998, as referenced in Piper Service Bulletin No. 1027, dated November 19, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment becomes effective on September 24, 1999. Issued in Kansas City, Missouri, on July 26, 1999.

Mike Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–19747 Filed 8–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–05]

Amendment to Class E Airspace; Babylon, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Republic Airport, Babylon, NY. The development of new Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) and amendments to the Instrument Landing System (ILS) SIAP and the Non Directional Radio Beacon (NDB) SIAP at Republic Airport have made this proposal necessary. Amendments to the controlled airspace extending upward from 700 feet Above Ground Level (AGL) are needed to accommodate the SIAPs and for Instrument Flight Rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC, August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On March 10, 1999, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by extending the Class E airspace extending upward from 700 feet above the surface at Republic Airport, Babylon NY was published in the **Federal Register** (64 FR 11819).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North America Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

The amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from 700 feet AGL for aircraft executing SIAPs at Republic Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5, Babylon, NY [Revised]

Republic Airport, Farmingdale, NY
(Lat. 40°43'43"N., long. 73°24'48"W.)
Babylon NDB
(Lat. 40°40'21"N., long. 73°23'03"W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Republic Airport and within 3.1 miles each side of a 155° bearing from the Babylon NDB extending from the 8-mile radius to 7 miles southeast of the NDB, excluding that portion that coincides with the Islip, NY, Class E airspace area.

* * * * *

Issued in Jamaica, New York on July 6, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–20020 Filed 8–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0044]

RIN 0910–AA59

Regulations on Statements Made for Dietary Supplements Concerning the Effect of the Product on the Structure or Function of the Body; Public Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; reopening of comment period; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document announcing a public meeting to solicit additional comments on three particularly controversial issues raised by FDA's proposed rule on statements made for dietary supplements concerning the effect of the product on the structure or function of the body ("structure/function claims"). The document, which appeared in the **Federal Register** of Thursday, July 8, 1999 (64 FR 36824), was published with an incorrect starting time for the meeting and the registration time was omitted. This document corrects those errors.

DATES: The meeting will be held on August 4, 1999, from 10 a.m. to 6 p.m. (registration begins at 9 a.m.). Submit written comments on or before August 4, 1999.

ADDRESSES: The meeting will be held at the Jefferson Auditorium, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, or via e-mail to "FDADockets@oc.fda.gov". Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Lisa Barclay, Office of Policy, Planning, and Legislation (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION:

In FR Doc. 99–17424, appearing on page 36824 in the **Federal Register** of Thursday, July 8, 1999, the following corrections are made: On page 36824, in the first column, in the "**DATES**" caption, in the second line, "8 a.m." is

corrected to read "10 a.m.", and by adding the phrase "(registration begins at 9 a.m.)." after "6 p.m.".

Dated: July 28, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–19790 Filed 8–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD08–99–046]

RIN 2115–AE46

Special Local Regulations; National Youth Conference Air Show; Ohio River Mile 602.0–605.0; Louisville, KY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the National Youth Conference Air Show. This event will be held on August 4, 1999, from 1:15 p.m. until 2:15 p.m. in Louisville, Kentucky. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 1:15 p.m. until 2:15 p.m. on August 4, 1999.

ADDRESSES: Unless otherwise indicated, all documents referred to in this regulation are available for review at Marine Safety Office, Louisville, 600 Martin Luther King Jr. Place, Room 360, Louisville, KY 40202–2230.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jeff Johnson, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY. Tel: (502) 582–5194 ext. 39.

SUPPLEMENTARY INFORMATION:

Drafting Information: The drafters of this regulation are Lieutenant Jeff Johnson, Project Officer, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY, and LTJG Michele Woodruff, Project Attorney, Eighth Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rule making for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule making procedures would be impracticable. The details of the event were not finalized with sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is an Air Show. The event is sponsored by the Shawnee Baptist Church Youth Conference. The Air Show will take place over the Ohio River between miles 602.0 to 605.0, mid-channel. Non-participating vessels will be able to transit the area after the river is reopened.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*).

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements.

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. A temporary § 100.35–T08–046 is added to read as follows:

§ 100.35–T08–046 Ohio River at Louisville, Kentucky.

(a) Regulated Area: Ohio River Mile 602.0–605.0.

(b) Special Local Regulation: All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. "Participants" are those persons and/or vessels identified by the sponsor as taking part in the event. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessel assigned to patrol the event. The Coast Guard "Patrol Commander" is a Coast Guard commissioned, warrant, or petty officer who has been designated by Commanding Officer, Coast Guard Marine Safety Office Louisville.

(1) No vessel shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time it is deemed necessary for the protection of life and/or property and can be reached on VHF–FM Channel 16 by using the call sign "PATCOM".

(c) *Effective Date:* These regulations will be effective from 1:15 p.m. to 2:15 p.m. on August 4, 1999.

Dated: July 12, 1999.

Paul J. Pluta,

RADM, USCG Commander, 8th CG District.

[FR Doc. 99–20025 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD07–99–023]

RIN 2115–AA98

Special Anchorage Areas; St. Johns River, Jacksonville, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the Anchorage Regulations for the St. Johns River in Jacksonville, FL. The amendment will improve the safety of vessels anchoring within and transiting these anchorage areas by imposing additional notification, tug employment, and VHF–FM channel monitoring requirements.

DATES: This rule becomes effective September 3, 1999.

FOR FURTHER INFORMATION CONTACT: LT Zachary Pickett, Coast Guard Marine Safety Office Jacksonville, at (904) 232–2640, ext. 128.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 20, 1999, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (64 FR 27487). No comments were received during the comment period.

Background and Purpose

A natural working group established by the Jacksonville Waterways Management Council proposed additional safety requirements for vessels using Anchorage Areas A and B within the St. Johns River. The Captain of the Port agreed with the findings of the Council. The amended regulations require all vessels intending to anchor in the St. Johns anchorage to notify the Captain of the Port, and all anchoring vessels will be required to monitor Channels 13 and 16 VHF–FM at all times. Also, while in the anchorage area, all vessels transferring petroleum products and all vessels over 300 feet in length, will be required to have a pilot or dock master on board and will be required to employ sufficient tugs to ensure safety.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary as these regulations will only economically affect approximately 30 vessels a year.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic effect upon a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities as the tug employment and pilot requirements will only affect approximately 30 vessels each year, and the other changes are only minor in nature.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 34(f) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been completed and is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulation

In consideration of the foregoing, the Coast Guard amends part 110 of title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Revise § 110.183(b) to read as follows:

§ 110.183 St. Johns River, Florida.

* * * * *

(b) * * *

(1) Except in cases of emergency, only vessels meeting the conditions and restrictions of this paragraph will be authorized by the Captain of the Port to anchor in the St. Johns River, as depicted on NOAA chart 11491, between the entrance buoy (STJ) and the Main Street Bridge (in position 30°19′20″N, 81°39′32″W). Vessels unable to meet any of the following conditions and restrictions must obtain specific authorization from the Captain of the Port prior to anchoring in Anchorage A or B.

(2) All vessels intending to enter and anchor in Anchorage A or B shall notify the Captain of the Port prior to entering.

(3) Anchorages A and B are temporary anchorages. Additionally, Anchorage B is used as a turning basin. Vessels may not anchor for more than 24 hours in either anchorage without specific written authorization from the Captain of the Port.

(4) All vessels at anchor must maintain a watch on VHF–FM channels 13 and 16 by a person fluent in English, and shall make a security broadcast on channel 13 upon anchoring and every 4 hours thereafter.

(5) Anchorage A is restricted to vessels less than 250 feet in length.

(6) Anchorage B is restricted to vessels with a draft of 24 feet or less, regardless of length.

(7) Any vessel transferring petroleum products within Anchorage B shall have a pilot or Docking Master aboard, and employ sufficient assist tugs to assure the safety of the vessel at anchor and any vessels transiting the area.

(8) Any vessel over 300 feet in length within Anchorage B shall have a Pilot or Docking Master aboard, and employ sufficient assist tugs to assure the safety of the vessel at anchor and any vessels transiting the area.

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Dated: July 27, 1999.

G.W. Sutton,

Captain U.S. Coast Guard, Commander, Seventh Coast Guard District Acting.

[FR Doc. 99–20024 Filed 8–3–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300880; FRL–6086–9]

RIN 2070–AB78

Azoxystrobin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of azoxystrobin or methyl (*E*)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate) and its *Z* isomer in or on parsley. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on parsley in California. This regulation establishes a maximum permissible level for residues of azoxystrobin in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 30, 2000.

DATES: This regulation is effective August 4, 1999. Objections and requests for hearings must be received by EPA on or before October 4, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300880], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300880], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300880]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jacqueline E. Gwaltney, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 278 Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–6792, gwaltney.jackie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for combined residues or residues of the fungicide azoxystrobin or methyl (*E*)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate) and its *Z* isomer, in or on parsley at 20 parts per million (ppm) for fresh and at 100 ppm for dry. This tolerance will expire and is revoked on December 30, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Azoxystrobin on Parsley and FFDCA Tolerances

The State of California requested an exemption for the use of azoxystrobin (Quadris flowable fungicide) on 3,000 acres of parsley to control Septoria leaf blight disease caused by *Septoria petroselini*. After crop harvest the pathogen does not survive in the fields during the winter months and must therefore be reintroduced into parsley fields each season if disease is to reoccur. This is a seed borne-disease. When contaminated seeds are planted, the pathogen is reintroduced. The reintroduced pathogen spreads in the field through rain splash or sprinkler irrigation. During spring, the parsley growing areas have mild temperatures and high humidity favoring disease development. Disease severity is weather dependent and can vary from season to season. The most logical way of controlling this would be to eradicate this pathogen from the seeds. The spring seasons of 1995 and 1998 were wet and humid favoring disease development. In spite of using registered alternatives (copper fungicides and neem oil), California growers experienced significant losses due to high disease pressure. It is clearly documented that the registered alternatives are not effective in controlling the disease under high disease pressure. During 1999, the spring season was wet and conditions were favorable for the development of disease. It is expected that parsley growers in California will suffer significant losses during the 3rd and 4th parsley cutting without the use of azoxystrobin. EPA has authorized under FIFRA section 18 the use of azoxystrobin on parsley for control of septoria blight/septoria leaf spot in California. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of azoxystrobin in or on parsley. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on parsley after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether azoxystrobin meets EPA's registration requirements for use on parsley or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of azoxystrobin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than California to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for azoxystrobin, contact the Agency's Registration Division at the address provided under the "ADDRESSES" section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of azoxystrobin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of azoxystrobin or methyl (*E*)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate) and its *Z* isomer on parsley at fresh parsley at 20 ppm and dried parsley at 100 ppm ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects and the Agency's selection of toxicological endpoints upon which to assess risk caused by azoxystrobin are discussed below.

1. *Acute toxicity.* The Agency evaluated the existing toxicology data base for azoxystrobin and did not identify an acute dietary endpoint. Therefore, a risk assessment is not required.

2. *Short- and intermediate-term toxicity.* The Agency evaluated the existing toxicology data base for short- and intermediate-term dermal and inhalation exposure and determined that this risk assessment is not required. **Note:** From a 21-day dermal toxicity study the no observed adverse effect level (NOAEL) was 1,000 milligrams/kilograms/day (mg/kg/day) at the highest dose tested (HDT) (Acute inhalation toxicity category III).

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for azoxystrobin at 0.18 mg/kg/day. This RfD is based on on a chronic toxicity study in rats with a NOAEL of 18.2 mg/kg/day. Reduced body weights and bile duct lesions were observed at the lowest effect level (LEL) of 34 mg/kg/day. An Uncertainty Factor (UF) of 100 was used to account for both the interspecies extrapolation and the intraspecies variability.

4. *Carcinogenicity.* The EPA has determined that azoxystrobin should be classified as "Not Likely" to be a human carcinogen according to the proposed revised Cancer Guidelines. This classification is based on the lack of evidence of carcinogenicity in long-term rat and mouse feeding studies.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.507(a)) for the combined residues of azoxystrobin and R230310 in or on a variety of raw agricultural commodities at levels ranging from 0.010 ppm in tree nuts to 20 ppm in rice hulls. Included in these tolerances are numerous ones for animal commodities which were established in conjunction with tolerances for rice and wheat

commodities. Time-limited tolerances range from 0.1 ppm in soybeans to 30 ppm in spinach.

2. *Acute risk.* No toxicological effects which could be attributed to a single dietary exposure were observed, including developmental and neurotoxic effects in the appropriate studies. Therefore, no acute endpoint has been assigned.

3. *Chronic risk.* In conducting this chronic dietary risk assessment, EPA has made very conservative assumptions: 100% of parsley and all other commodities having azoxystrobin tolerances will contain azoxystrobin residues, and those residues will be at the level of the tolerance. Default concentration factors have been removed (i.e., set to 1) for the following commodities: grapes-juice, grapes-raisins, tomatoes-juice, tomatoes-puree, and potatoes-white (dry). Concentration factors were removed because data which were previously submitted show no concentration of residues into raisins, grape juice, tomato juice and puree or potatoes. The default ratio between grape juice and juice concentrate was retained. (Chronic RfD = 0.18 mg/kg/day)

The Novigen DEEM (Dietary Exposure Evaluation Model) system was used for this chronic dietary exposure analysis. The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1991. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of dietary exposure.

The existing azoxystrobin tolerances (published, pending, and including the necessary section 18 tolerances result in a theoretical maximum residue contribution (TMRC) that is equivalent to the following percentages of the Chronic RfD. As the 10x safety factor was removed, the chronic RfD is equal to the PAD (population-adjusted dose). As a result, the exposure given as a percentage of the total allowable exposure is reported as %PAD.

TABLE 1.—SUMMARY: CHRONIC EXPOSURE ANALYSIS BY THE DEEM SYSTEM

Population Subgroup	Exposure (mg/kg/day)	Percent Reference Dose[1] (%Chronic PAD/RfD)
U.S. Population (total)	.012246	6.8%
All Infants (<1 year old)	0.014830	8.2%
Nursing Infants (<1 year old)	0.003917	2.2%
Non-Nursing Infants (<1 year old)	0.019422	10.8%
Children (1-6 years old)	0.022035	12.2%
Children (7-12 years old)	0.012990	7.2%
Non-Hispanic Blacks	0.016444	9.1%
Non-Hispanic/non-white/non-black	0.021015	11.7%
Females 20+ (not pregnant or nursing)	0.012325	6.8%
Females 13+ (nursing)	0.014238	7.9%
Seniors 55+	0.013489	7.5%

[1] Percentage reference dose (% Chronic PAD) = Exposure x 100% (as RfD=PAD in this case) Chronic PAD

The subgroups listed above are: (1) The U.S. Population (total); (2) those for infants and children; and (3) the other subgroups (except regions and seasons) for which the percentage of the chronic PAD occupied is greater than that occupied by the subgroup U.S. Population (total).

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

4. *From drinking water.* Azoxystrobin is persistent and mobile. There is no established Maximum Contaminant Level for residues of azoxystrobin in drinking water. No health advisory levels for azoxystrobin in drinking water have been established. EPA has estimated the concentration of azoxystrobin in surface water based on GENEEC (Generic Estimated Environmental Concentration) modeling and in ground water based on Screening Concentration in Ground Water (SCI-GROW) modeling.

5. *Chronic risk.* Estimated environmental concentrations (EECs) using GENEEC for azoxystrobin on bananas, grapes, peaches, peanuts, pecans, tomatoes, and wheat are listed in the SWAT Team Second Interim Report (June 6, 1997).

The highest EEC for azoxystrobin in surface water (39 µg/L) is from the application of azoxystrobin to grapes. The EEC for ground water is 0.064 µg/L resulting from use on turf. For purposes of risk assessment, the maximum EEC for azoxystrobin in drinking water (39 µg/L) should be used for comparison to the back-calculated human health drinking water levels of comparison (DWLOC) for the chronic (non-cancer) endpoint. These DWLOCs for various population categories are summarized in the following table.

TABLE 2.—DRINKING WATER LEVELS OF COMPARISON FOR CHRONIC EXPOSURE[1]

Population Category[2]	Chronic RfD (mg/kg/day)	Food Exposure (mg/kg/day)	Max. Water Exposure[3] (mg/kg/day)	DWLOC[4,5,6](µg/L)
U.S. Population (total)	0.18	0.012246	0.168	5,900
Females 13+ (nursing)	0.18	0.014238	0.166	5,000

TABLE 2.—DRINKING WATER LEVELS OF COMPARISON FOR CHRONIC EXPOSURE[1]—Continued

Population Category[2]	Chronic RfD (mg/kg/day)	Food Exposure (mg/kg/day)	Max. Water Exposure[3] (mg/kg/day)	DWLOC[4,5,6](µg/L)
Non-nursing Infants	0.18	0.019422	0.161	1,600

[1] Values are expressed to 2 significant figures.
[2] Within each of these categories, the subgroup with the highest food exposure was selected.
[3] Maximum Water Exposure (Chronic) (mg/kg/day) = Chronic RfD (mg/kg/day) - Food Exposure (mg/kg/day).
[4] DWLOC(µg/L) = Max. water exposure (mg/kg/day) x body wt (kg) ÷ [(10^{-3} mg/µg) * water consumed daily (L/day)].
[5] HED Default body weights are: General U.S. Population, 70 kg; Males (13+ years old), 70 kg; Females (13+ years old), 60 kg; Other Adult Populations, 70 kg; and, All Infants/Children, 10 kg.
[6] HED Default daily drinking rates are 2 L/day for adults and 1 L/day for children.

The estimated maximum concentrations of azoxystrobin in surface water and ground water are less than EPA's levels of comparison for azoxystrobin in drinking water as a contribution to chronic aggregate exposure. Therefore, taking into account the present uses and uses proposed in this section 18 and the fact that GENEEC can substantially overestimate (by up to 3X) true pesticide concentrations in drinking water, EPA concludes with reasonable certainty that residues of azoxystrobin in drinking water (when considered along with other sources of chronic exposure for which EPA has reliable data) would not result in an unacceptable estimate of chronic (non-cancer) aggregate human health risk at this time.

EPA bases this determination on ■ comparison of estimated average concentrations of azoxystrobin in surface and ground water to back-calculated DWLOCs for azoxystrobin in drinking water. These levels of comparison in drinking water were determined after EPA considered all other non-occupational human exposures for which it has reliable data, including all current uses, and the use considered in this action. The estimate of azoxystrobin in surface water is derived from a water quality model that uses conservative assumptions (health-protective) regarding the pesticide transport from the point of application to surface and ground water. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of azoxystrobin in drinking water as a part of the chronic (non-cancer) aggregate risk assessment process.

6. *From non-dietary uses.* Azoxystrobin (Heritage formulation) is registered for residential use on ornamental turf. Short-term exposure may occur for residential handlers and for postapplication activities. Because the TES Committee (November 12, 1996) did not select applicable acute dietary or short-term dermal or inhalation endpoints, a short-term risk assessment is not required. No toxicity was observed at the limit dose (1,000 mg/kg body wt/day) in a 21-day dermal study and an acute inhalation study indicated low toxicity. Intermediate-term and chronic exposures are not expected for residential use.

7. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. This risk assessment is not applicable since no indoor and outdoor residential exposure uses are currently registered for azoxystrobin.

C. Aggregate Cancer Risk for U.S. Population

1. *Short- and intermediate-term aggregate risk.* There are no applicable endpoints for short-term exposure (TES Committee, November 12, 1996); therefore, a short-term aggregate risk assessment is not required. Intermediate-term exposure is not expected for registered residential uses; therefore, an intermediate-term risk assessment is not required.

2. *Chronic aggregate risk.* Using the conservative TMRC exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, EPA has estimated the exposure to azoxystrobin from food will utilize 11.7% of the chronic PAD for the most highly exposed adult population subgroup (Non-Hispanic/non-white/non-black). The exposure to azoxystrobin from food for infants and children will utilize from 2.2% to 12.2% of the chronic PAD. EPA generally has no concern for exposures below 100% of the chronic PAD because the chronic PAD represents the level at which daily aggregate oral exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to azoxystrobin in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the chronic PAD. Chronic exposures are not expected for residential uses. EPA concludes that there is a reasonable certainty that no harm will result to adults, infants, or children from chronic aggregate exposure to azoxystrobin residues.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children— i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of azoxystrobin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

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ii. *Developmental toxicity studies*— a. *Rabbit*. In the developmental toxicity study in rabbits, developmental NOEL was 500 mg/kg/day, at the HDT. Because there were no treatment-related effects, the developmental LEL was ≧500 mg/kg/day. The maternal NOEL was 150 mg/kg/day. The maternal LEL of 500 mg/kg/day was based on decreased body weight gain during dosing.

b. *Rat*. In the developmental toxicity study in rats, the maternal (systemic) NOAEL was not established. The maternal LEL of 25 mg/kg/day at the lowest dose tested (LDT) was based on increased salivation. The developmental (fetal) NOAEL was 100 mg/kg/day (HDT).

iii. *Reproductive toxicity study*. In the reproductive toxicity study in rats, the parental (systemic) NOAEL was 32.3 mg/kg/day. The parental LEL of 165.4 mg/kg/day was based on decreased body weights in males and females, decreased food consumption and increased adjusted liver weights in females, and cholangitis. The reproductive NOAEL was 32.3 mg/kg/day. The reproductive LEL of 165.4 mg/kg/day was based on increased weanling liver weights and decreased body weights for pups of both generations.

iv. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicology data base for azoxystrobin is complete with respect to current toxicological data requirements. The results of these studies indicate that infants and children are not more sensitive to exposure, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation reproductive toxicity study in rats. The additional 10X safety factor to account for sensitivity of infants and children was removed by an ad hoc FQPA Safety Factor Committee.

v. *Conclusion*. Therefore, the tolerance is established for combined residues or residues of azoxystrobin or methyl (*E*)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate) and its *Z* isomer in parsley at fresh parsley at 20 ppm and dried parsley at 100 ppm ppm. The results of these studies indicate that infants and children are not more sensitive to exposure, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation reproductive toxicity study in rats. The additional 10X safety factor to account for sensitivity of infants and children was removed by an ad hoc FQPA Safety Factor Committee.

3. *Chronic risk*. Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to azoxystrobin from food will utilize 2 to 5% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to azoxystrobin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to azoxystrobin residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

1. *Plants*. The nature of the residue in plants is adequately understood. The HED Metabolism Assessment Review Committee (MARC) met on November 10, 1998 and determined that the residue of concern in plants is azoxystrobin and its *Z* isomer, R230310. The Committee based this determination on the results of metabolism studies done on grapes, peanuts, and wheat. In all three studies the major residues were azoxystrobin and R230310. EPA will translate these data to parsley for this section 18.

2. *Animals*. As there are no animal feed items associated with this section 18, the nature of the residue in animals is not of concern.

B. Analytical Enforcement Methodology

An adequate analytical method is available for enforcement of the proposed tolerances. Method RAM 243 (GC/NPD) can be used for parsley. The limit of quantitation for spinach was 0.01 ppm. This method has been validated by the Agency's Analytical Chemistry Laboratory and will be submitted to the Food and Drug Administration for inclusion in the Pesticide Analytical Manual II.

C. Magnitude of the Residues

1. *Plants*. IR-4 performed five field trials on spinach. In each trial, six applications were made at an application rate of 0.25 lb ai/A. The PHI was either 6 or 7 days. This use pattern is the same as that proposed for parsley.

2. *Animals*. There are no animal feed items associated with parsley; therefore, the magnitude of the residue in animals is not relevant to this petition.

D. Rotational Crop Restrictions

Rotational crop data were submitted in pesticide petition #6F4762. Based on this information, a 45-day plantback interval is appropriate for all crops other than those with azoxystrobin tolerances.

E. International Residue Limits

There are no CODEX, Canadian, or Mexican Maximum Residue Limits (MRL) for azoxystrobin on parsley. Thus, harmonization is not an issue for this section 18 request.

V. Conclusion

Therefore, the tolerance is established for combined residues or residues of azoxystrobin or methyl (*E*)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate) and its *Z* isomer in fresh parsley at 20 ppm and dried parsley at 100 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by October 4, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300880] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an

effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 22, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a, 321q and 371.

2. In § 180.507 (b), by revising two commodities in the table to read as follows:

§ 180.507 Azoxystrobin; tolerances for residues.

* * * * *

(b)* * *

Commodity	Parts per million	Expiration/ revocation date
Parsley, dried	20.0	12/30/00
Parsley, fresh	100.0	12/30/00

* * * * *

[FR Doc. 99–19910 Filed 8–3–99; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 981231333–8333–01; I.D. 072699C]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces changes to the trip limits in the Pacific Coast groundfish limited entry fisheries for *Sebastes* complex species north of Cape Mendocino, and for yellowtail rockfish and for rockfish other than yellowtail and canary rockfish within the *Sebastes* complex, north of Cape Mendocino. These actions, which are authorized by the Pacific Coast groundfish fishery management plan (FMP), are intended to help the fisheries achieve optimum yields (OYs).

DATES: Effective 0001 hours local time (l.t.) August 1, 1999. For vessels operating in the B platoon, effective 0001 hours l.t. August 16, 1999. These changes remain in effect, unless modified, superseded or rescinded, until the effective date of the 2000 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments on this rule will be accepted through August 19, 1999.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Rodney McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Katherine King or Yvonne deReynier, Northwest Region, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION: The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council), in consultation with the States of Washington, Oregon, and California, at its June 22 through 25, 1999, meeting in Portland, OR. The adjusted trip limits are calculated to provide a year-long fishing opportunity. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments to the cumulative trip limits may be made as necessary.

Currently the limited entry cumulative landings limit for *Sebastes* complex species taken north of Cape Mendocino is 30,000 lb (13,608 kg) per 2-month period. Within that limit and also north of Cape Mendocino, the cumulative landings limit for yellowtail rockfish is 16,000 lb (7,257 kg) per 2-month period.

The best available information at the June Council meeting indicated that 1,107 mt of *Sebastes* complex species had been landed north of Cape Mendocino through May 31, 1999, which is 69 percent of the 1,613 mt expected *Sebastes* complex landings for the January 1 through May 31 period. Within those *Sebastes* complex landings, 630 mt of yellowtail rockfish had been landed north of Cape Mendocino through May 31, 1999, which is 76 percent of the 832 mt expected yellowtail rockfish landings for the January 1 through May 31 period. These relatively low landings rates may be due to several factors, including poor winter weather and unusual La Nina ocean conditions. If the fishery were to continue under current landings limits, the fleet would not harvest its allocations for these species by the end of the year and, therefore the fishery would not achieve OY. For this reason, the Council recommended that the 2-month cumulative trip limit for *Sebastes* complex species taken north of Cape Mendocino be increased to 35,000 lb (15,876 kg) for the period of August 1 through September 30. Within that limit, the Council recommended that the 2-month cumulative trip limit for yellowtail rockfish taken north of Cape Mendocino be increased to 20,000 lb (9,072 kg) for the period of August 1 through September 30. The Council further recommended adding a cumulative trip limit for rockfish, other than yellowtail rockfish and canary rockfish, taken under the *Sebastes* complex landings limit and north of Cape Mendocino. Within the *Sebastes* complex limit, the Council recommended an "other rockfish" 2-month cumulative trip limit of 10,000 lb (4,536 kg) for the period of August 1 through September 30. The purpose of this "other rockfish" limit is to discourage effort shifts to other rockfish species with much smaller harvest guidelines.

Beginning October 1, the 2-month cumulative trip limits for all limited entry landings will convert to 1-month limits, as previously announced in the **Federal Register**, including limits for the *Sebastes* complex, yellowtail rockfish and canary rockfish north of Cape Mendocino. Additionally, the "other rockfish" 2-month cumulative trip limit will convert to a monthly cumulative trip limit of 4,000 lb (1,814 kg) north of Cape Mendocino.

NMFS Action

For the reasons stated previously, NMFS concurs with the Council's recommendations and announces the following changes to the 1999 annual management measures (64 FR 1316, January 8, 1999; 64 FR 16862, April 7, 1999, and 64 FR 24062, May 5, 1999) as amended. The annual management measures are amended as follows:

1. In section IV, under B. *Limited Entry Fishery*, table 3 under paragraph B, (2)(b)(i) is revised to read as follows:

B. Limited Entry Fishery

* * * * *

(2) * * *

(b) * * *

(i) * * *

TABLE 3.—SEBASTES COMPLEX AND ITS COMPONENT SPECIES

Phase	Cumulative trip limit periods	Cumulative trip limits (in pounds)							Length of cumulative trip limit period (months)
		Sebastes complex (north and south of Cape Mendocino)		Yellowtail rockfish [1] (north of Cape Mendocino)	Rockfish other than yellowtail and canary [1] (north of Cape Mendocino)	Canary rockfish [1] (north and south of Cape Mendocino)		Bocaccio [1] (south of Cape Mendocino)	
		North	South			North	South		
I	Jan. 1–Mar. 31	24,000 (10,886 kg)	13,000 (5,897 kg)	15,000 (6,804 kg)		9,000 (4,082 kg)	9,000 (4,082 kg)	750 per month (340 kg)	3
II	Apr. 1–May 31	25,000 (11,340 kg)	6,500 (2,948 kg)	13,000 (5,897 kg)		9,000 (4,082 kg)	6,500 (2,948 kg)	750 per month (340 kg)	2
	June 1–July 31	30,000 (13,608 kg)	3,500 (1,588 kg)	16,000 (7,257 kg)		14,000 (6,350 kg)	3,500 (1,588 kg)	[2] 1,000 (454 kg)	2
	Aug. 1–Sept. 30	35,000 (15,876 kg)	3,500 (1,588 kg)	20,000 (9,072 kg)	10,000 (4,536 kg)	14,000 (6,350 kg)	3,500 (1,588 kg)	[2] 1,000 (454 kg)	2
III	Oct. 1–31	10,000	5,000	5,000	4,000	3,000	3,000	500	1
	Nov. 1–30	10,000	5,000	5,000	4,000	3,000	3,000	500	1
	Dec. 1–31	10,000 (4,536 kg)	5,000 (2,268 kg)	5,000 (2,268 kg)	4,000 (1,814 kg)	3,000 (1,361 kg)	3,000 (1,361 kg)	500 (227 kg)	1

[1] Also counts toward the overall *Sebastes* complex limit.

[2] No more than 500 lb (227 kg) of bocaccio may be landed per trip, which counts towards the cumulative trip limits for bocaccio and the *Sebastes* complex south of Cape Mendocino.

* * * * *

Classification

These actions are authorized by the regulations implementing the FMP, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours.

NMFS finds good cause to waive the requirement to provide prior notice and an opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B) because providing prior notice and opportunity for comment would be impractical. It would be impractical because the cumulative trip limit period begins on August 1, 1999, and affording additional notice and opportunity for public comment would impede the due and timely execution of the agency's function of managing fisheries to achieve OY.

NMFS also finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), because such a delay would be contrary to the public interest. This action should be implemented at the beginning of the cumulative trip limit period to avoid confusion and to maximize the potential that fishers will harvest the allocation. For these reasons, good cause exists to waive the 30-day delay in effectiveness.

These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 29, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–19932 Filed 7–29–99; 4:02 pm]

BILLING CODE 3520–22–P

Proposed Rules

Federal Register
Vol. 64, No. 149
Wednesday, August 4, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Dairy Tariff-Rate Import Quota Licensing

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would make two revisions to Import Regulation 1, Revision 8, which governs the administration of the tariff-rate import quota (TRQ) licensing system for certain dairy products. It would broaden the definition for "Licensing Authority" and provide for the review and correction of errors made by officers or employees of the Federal Government.

DATES: Comments should be received on October 4, 1999 to be assured of consideration.

ADDRESSES: Comments should be sent to Richard Warsack, Dairy Import Quota Manager, Import Policies and Programs Division, 1400 Independence Avenue SW, AG BOX 1021, U.S. Department of Agriculture, Washington, DC 20250–1021 or e-mail at warsack@fas.usda.gov. All comments received will be available for public inspection in room 5541–S at the above address and during normal business hours.

FOR FURTHER INFORMATION CONTACT: Richard Warsack, Import Policies and Programs Division, 1400 Independence Avenue, SW, AG BOX 1021, U.S. Department of Agriculture, Washington, DC 20250–1021, or telephone (202) 720–2916, or e-mail at warsack@fas.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12372

This program is not subject to the provision of Executive Order 12372, which requires intergovernmental consultation with State or local officials. (See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988. The provisions of this proposed rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The proposed rule would not have retroactive effect. The rule does not require that administrative remedies be exhausted before suit may be filed.

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. It has been determined to be not significant for the purpose of E.O. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Office of the Secretary is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act

In accordance with provisions of the Paperwork Reduction Act of 1995, the current information collection is approved by OMB under OMB control number 0551–0001, expiring on October 31, 2000. The proposed rule would not add a paperwork burden on the public.

Background

This proposed rule would make two revisions to Import Regulation 1, Revision 8, that governs the administration of the import licensing system for certain dairy products, which are subject to TRQs provided for in the Harmonized Tariff Schedule of the United States (HTS). Licenses issued annually by the U.S. Department of Agriculture qualify importers to enter specific quantities of certain dairy products under the low-tier tariff rates established in the HTS. In addition, it redesignates § 6.35 as § 6.36; and § 6.36 as § 6.37.

Section 6.21 Definitions

The proposed rule amends section 6.21 to remove the definition of "Licensing Authority" as the "Dairy Import Quota Manager, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture" and inserts in lieu thereof "Any officer or employee of the U.S. Department of Agriculture designated to act in this position by the Director of the Division charged with managing the Dairy Tariff-Rate Import Quota Licensing System, currently the Import Policies and Programs Division of the Foreign Agricultural Service." The proposed amendment would give administrative flexibility to ensure that the functions of the Licensing Authority would not be interrupted during reorganizations or personnel changes.

Section 6.35 Correction of Errors

The proposed rule adds a new section 6.35, Correction of errors. This section provides that if a person demonstrates, to the satisfaction of the Licensing Authority, that errors were made by officers or employees of the United States Government, the Licensing Authority will review and rectify the errors to the extent possible under the regulation. Errors related to activities conducted during each calendar year must be brought to the attention of the Licensing Authority no later than March 15 of the following calendar year. This section also grants the Licensing Authority the authority to transfer the applicable amount of the TRQ from Appendix 2 back to Appendix 1, so the historical license can be issued in the following calendar year. In addition, it provides for the publication of the cumulative changes to the appendixes in the **Federal Register**.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, Reports and recordkeeping requirements.

Proposed Rule

Accordingly, it is proposed to amend 7 CFR part 6 subpart—Tariff-Rate Import Quota Licensing as follows:

Subpart—Tariff-Rate Import Quota Licensing

1. The authority citation for part 6 continues to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 104, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

2. Amend § 6.21 by revising the definition of "Licensing Authority" to read as follows:

§ 6.21 Definitions.

* * * * *

Licensing Authority. Any officer or employee of the U.S. Department of Agriculture designated to act in this position by the Director of the Division charged with managing the Dairy Tariff-Rate Import Quota Licensing System, currently the Import Policies and Programs Division of the Foreign Agricultural Service.

3. Redesignated §§ 6.35 and 6.36 as §§ 6.36 and 6.37, respectively.

4. Add a new § 6.35 to read as follows:

§ 6.35 Correction of errors.

(a) If a person demonstrates, to the satisfaction of the Licensing Authority, that errors were made by officers or employees of the United States Government, the Licensing Authority will review and rectify the errors to the extent permitted under this subpart.

(b) To be considered, a person must provide sufficient documentation regarding the error to the Licensing Authority not later than March 15 of the calendar year following the calendar year in which the error was alleged to have been committed.

(c) If the error resulted in the loss of a historical license by a license holder, the Licensing Authority will transfer the amount of such license from Appendix 2 to Appendix 1 in order to provide for the issuance of such license in the calendar year following the calendar year for which the license was not issued. The cumulative annual transfers to Appendix 1 in accordance with this paragraph will be published in the **Federal Register**.

Signed at Washington, DC on July 26, 1999.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service.

[FR Doc. 99–19561 Filed 8–3–99; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–119–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–301, and Model A340–211, –212, –311, and –312 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330–301, and Model A340–211, –212, –311, and –312 series airplanes. This proposal would require repetitive detailed visual inspections of the fuselage belly fairing support structure to detect cracks; and corrective action, if necessary. This proposal also would provide for an optional terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the fuselage belly fairing support structure, which could result in reduced structural integrity of the fuselage belly fairing support structure.

DATES: Comments must be received by September 3, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–119–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–119–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–119–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330–301, and Model A340–211, –212, –311, and –312 series airplanes. The DGAC advises that, during fatigue tests, cracks were found in the fuselage belly fairing support structure. This condition, if not corrected, could result in reduced structural integrity of the fuselage belly fairing support structure.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A330–53–3029, dated June 26, 1995 (for Model A330 series airplanes), and A340–53–4038, Revision 1, dated February 6, 1996 (for Model A340 series

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airplanes), which describe procedures for performing repetitive detailed visual inspections of particular parts of the fuselage belly fairing support structure for cracks, and repair, if necessary.

Airbus also has issued Service Bulletins A330–53–3012, dated June 26, 1995 (for Model A330 series airplanes), and A340–53–4020, dated June 26, 1996 (for Model A340 series airplanes), which describe procedures for modification of the fuselage belly fairing support structure. The modification involves removing certain parts and replacing the parts with new, improved parts. Accomplishment of this modification would eliminate the need for the repetitive inspections specified in Airbus Service Bulletins A330–53–3029 (for Model A330 series airplanes) and A340–53–4038 (for Model A340 series airplanes).

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified Airbus Service Bulletins A330–53–3029 and A340–53–4038 as mandatory and issued French airworthiness directives 95–256–023(B) R1 and 95–258–037(B) R1, both dated December 17, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Airbus service bulletins described previously, except as discussed below. This proposed AD also would provide for optional terminating action for the repetitive inspections.

Operators should note that, in consonance with the findings of the DGAC, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect cracking before it represents a hazard to the airplanes.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, unlike the inspection procedures described in Airbus Service Bulletins A330–53–3029 (for Model A330 series airplanes) and A340–53–4038 (for Model A340 series airplanes), this proposed AD would not permit further flight if cracking is detected. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any structure that is found to be cracked must be repaired prior to further flight, in accordance with the applicable service bulletins.

Cost Impact

Currently, there are no Airbus Model A330–301 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 5 work hours to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $300 per airplane, per inspection cycle.

Also, there are no Airbus Model A340–211, –212, –311, and –312 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 6 work hours to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $360 per airplane, per inspection cycle.

Should an affected airplane be imported and placed on the U.S. Register and an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take approximately between 10 and 178 hours per airplane (for Model A330 series airplanes), or between 10 and 188 hours per airplane (for Model A340 series airplanes), at an average labor rate of $60 per work hour. Required parts would cost approximately between $1,313 and $13,262 (for Model A330 series airplanes) or between $1,049 and $14,311 (for Model A340 series airplanes), per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be between $1,913 and $23,942 (for Model A330 series airplanes) or between $1,649 and $25,591 (for Model A340 series airplanes), per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 99–NM–119–AD.

Applicability: Model A330–301 series airplanes, except those airplanes on which Airbus Modification 42332 (reference Airbus Service Bulletin A330–53–3012, dated June 26, 1995) has been accomplished; and Model A340–211, –212, –311, and –312 series airplanes, except those airplanes on which Airbus Modification 42331 or 42332 (reference Airbus Service Bulletin A340–53–4020, dated June 26, 1995), has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the fuselage belly fairing support structure, which could result in reduced structural integrity of the fuselage belly fairing support structure, accomplish the following:

Repetitive Inspection

(a) Prior to the accumulation of 4,000 total flight cycles, or within 500 flight hours after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the fuselage belly fairing support structure for cracks, in accordance with Airbus Service Bulletin A330–53–3029, dated June 26, 1995 (for Model A330 series airplanes); or A340–53–4038, Revision 1, dated February 6, 1996 (for Model A340 series airplanes); as applicable. Thereafter, repeat the inspection at intervals not to exceed 2,800 flight cycles.

Repair

(b) If any crack is found during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A330–53–3012, dated June 26, 1995 (for Model A330 series airplanes); or A340–53–4020, dated June 26, 1995 (for Model A340 series airplanes); as applicable. Accomplishment of this action constitutes terminating action for the repetitive inspections required by this AD for only that repaired part.

Optional Terminating Action

(c) Modification of the belly fairing support structure in accordance with Airbus Service Bulletin A330–53–3012, dated June 26, 1995 (for Model A330 series airplanes); or A340–53–4020, dated June 26, 1995 (for Model A340 series airplanes); as applicable; constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 95–256–023(B) R1 and 95–258–037(B) R1, both dated December 17, 1997.

Issued in Renton, Washington, on July 29, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20067 Filed 8–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–52–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 series airplanes. This proposal would require repetitive inspections of the elevator trim control cables for signs of wear damage or broken wires; replacement of damaged or broken cables with certain new cables; and replacement of all 7×7 cables with 7×19 cables. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the elevator trim cable due to fatigue cracking, which if not corrected, could result in reduced controllability of the airplane.

DATES: Comments must be received by September 3, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–52–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–52–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–52–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3–60 series airplanes. The CAA advises that three incidents have occurred in which segments of the elevator trim cabling system have failed. In each case, the cable fractured during flight, and on two of the airplanes, the cable segments that control the nose-up trim failed at identical locations adjacent to pulleys. Metallurgical examinations established that all three separations were the result of fatigue cracking of the individual wire strands in the cable. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Bombardier has issued Shorts Service Bulletin SD360–27–27, Revision 1, dated April 1, 1999, which describes procedures for repetitive inspections of the elevator trim control cables for signs of wear damage or broken wires. The service bulletin also describes procedures for replacement of any cable with worn, broken or frayed wires; and replacement of all 7×7 cables with 7×19 cables. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 016–11–98 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 45 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed cable inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the cable inspection proposed by this AD on U.S. operators is estimated to be $54,000, or $1,200 per airplane, per inspection cycle.

The FAA estimates that it would take approximately 75 work hours per airplane to accomplish the proposed cable replacement, and that the average labor is $60 per work hour. Required parts would cost approximately $4,500 per airplane. Based on these figures, the cost impact of the cable replacement proposed by this AD on U.S. operators is estimated to be $405,000, or $9,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers, PLC: Docket 99–NM–52–AD.

Applicability: All Model SD3–60 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the elevator trim cable due to fatigue, which if not corrected, could result in reduced controllability of the airplane, accomplish the following:

Inspection

(a) Within 12 months after the effective date of this AD, perform a visual inspection to detect wear damage or broken wires of the elevator trim cables, in accordance with Shorts Service Bulletin SD3–60–27–27, Revision 1, dated April 1, 1999.

(1) If no wear damage or broken wire is detected, repeat the inspection specified in paragraph (a) of this AD thereafter at intervals not to exceed 12 months or 2,400 flight hours, whichever occurs first.

(2) If any wear damage or broken wire is detected, prior to further flight, replace the damaged cable with a 7×19 cable in accordance with the service bulletin. Repeat the inspection specified in paragraph (a) of this AD thereafter at intervals not to exceed 12 months or 2,400 flight hours, whichever occurs first.

Replacement and Inspection

(b) Prior to the accumulation of 10,000 total flight hours, or within 12 months after the effective date of this AD, whichever occurs later, replace all 7×7 elevator trim cables with 7×19 cables in accordance with Shorts Service Bulletin SD3–60–27–27, Revision 1, dated April 1, 1999. Repeat the inspection specified in paragraph (a) of this AD thereafter at intervals not to exceed 12 months or 2,400 flight hours, whichever occurs first.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in the British airworthiness directive 016–11–98.

Issued in Renton, Washington, on July 28, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20066 Filed 8–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–96–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319–131, A320–232 and –233, and A321–131 and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319–131, A320–232 and –233, and A321–131 and –231 series airplanes. This proposal would require replacement of all titanium thrust links with steel thrust links. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the titanium thrust links due to the life limit of the thrust links, which in combination with other failures, could result in the separation of an engine from the airplane.

DATES: Comments must be received by September 3, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–96–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–96–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–96–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A319–131, A320–232 and –233, and A321–131 and –231 series airplanes. The DGAC advises that fatigue tests have revealed that the fatigue life limit of the thrust link was not appropriate for the objective life limit of the airplane. Failure of the titanium thrust link in combination with other failures, if not corrected, could result in the separation of an engine from the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–71–1020, dated May 25, 1998, which describes procedures for replacement of all titanium thrust links with steel thrust links. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The Direction Générale de l'Aviation Civile (DGAC) classified this service bulletin as mandatory and issued French airworthiness directive 1999–050–126(B), dated February 10, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to

this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Other Relevant Rulemaking

The FAA has previously issued notice of proposed rulemaking (NPRM), Docket No. 98–NM–284–AD (63 FR 64654, November 23, 1998), that concerns the forward engine mount on certain Airbus Model A319, A320, and A321 series airplanes. The NPRM would require a one-time inspection of the forward engine mount assembly of the left and right engines to verify that the part number on each assembly is correct; re-identification of the forward engine mount assembly; and follow-on actions, if necessary. These actions should be accomplished prior to or concurrently with the actions of this proposed AD. This proposed AD would not affect the proposed requirements of NPRM, Docket No. 98–NM–284–AD.

Cost Impact

The FAA estimates that 65 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would be supplied by the engine manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $11,700, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the RegulatoryFlexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 99–NM–96–AD.

Applicability: Model A319–131, A320–232 and –233, and A321–131 and –231 series airplanes; except those airplanes on which Airbus Modification 26506 (reference Airbus Service Bulletin A320–71–1020, dated May 25, 1998) has been accomplished in production; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the titanium thrust links due to the life limit of the thrust links, which in combination with other failures, could result in the separation of an engine from the airplane, accomplish the following:

(a) Replace all titanium thrust links with steel thrust links in accordance with Airbus Service Bulletin A320–71–1020, dated May 25, 1998; at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of the total flight cycles specified for each particular model in the tables of paragraph B.(5), "Accomplishment Timescale," of the service bulletin.

(2) Within 15 months after the effective date of this AD, or at the next engine removal, whichever occurs first.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–050–126(B), dated February 10, 1999.

Issued in Renton, Washington, on July 28, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20065 Filed 8–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–60–AD]

Airworthiness Directives; Eurocopter France Model SA–365N, SA–365N1, and AS–365N2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) applicable to Eurocopter France Model SA–365N, SA–365N1, and AS–365N2 helicopters. This proposal would require replacing certain defective electrical modules with airworthy electrical modules. This proposal is prompted by the discovery of several defective electrical modules. The actions specified by the proposed AD are intended to prevent loss of electrical continuity, which could cause loss of critical rotorcraft electrical systems and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before October 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–60–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert McCallister, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5121, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–60–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–60–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model SA–365N, SA–365N1, and AS–365N2 helicopters. The DGAC advises of the discovery of malfunctions due to faulty "CONNECTRAL" modules on electrical circuits of a Super Puma AS332 helicopter.

Eurocopter France issued Service Bulletin No. 01.00.47R1, dated December 18, 1998 (S/B), for Model SA–365N, SA–365N1, and AS–365N2 helicopters. The S/B specifies inspecting each "CONNECTRAL" green electrical module manufactured from week 95/16 through week 96/21. The manufacturing code identifies the year and week of module production. The connectral modules manufactured from week 95/16 to week 96/21 and identified by a white spot on the front face are not subject to the requirements of the S/B. The DGAC classified this S/B as mandatory and issued AD No. 1998–253–044(A)R1, dated February 10, 1999, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA–365N, SA–365N1, and AS–365N2 helicopters of the same type design registered in the United States, the proposed AD would require replacing each "CONNECTRAL" green electrical module that does not have a white dot on the face and that has a manufacturing code of 95/16 through 96/21 with an airworthy electrical module. Those manufacturing codes identify modules manufactured between the beginning of the 16th week of 1995 and the end of the 21st week of 1996. Replacing the electrical modules with a white dot on the face is not required because the manufacturer has verified the proper functioning of these units.

The FAA estimates that 41 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 300 work hours to replace all affected modules, and that the average labor rate is $60 per work hour. Required parts would cost approximately $29,520, but the helicopter manufacturer has stated that the parts would be provided at no cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $738,000 to replace all affected modules.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft

regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 98–SW–60–AD.

Applicability: Model SA–365N, SA–365N1, and AS–365N2 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 200 hours time-in-service (TIS) or within the next 3 calendar months, whichever occurs first, unless accomplished previously.

To prevent loss of electrical continuity, which could cause loss of critical rotorcraft electrical systems and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove and replace each "CONNECTRAL" green electrical module that does not have a white dot on the face and that has a manufacturing code of 95/16 through 96/21 with an airworthy electrical module.

Note 2: Eurocopter France Service Bulletin No. 01.00.47R1, dated December 18, 1998, pertains to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No.1998–253–044(A)R1, dated February 10, 1999.

Issued in Fort Worth, Texas, on July 28, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–20064 Filed 8–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–12–AD]

Airworthiness Directives; Robinson Helicopter Company (Robinson) Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Robinson Model R44 helicopters, that currently requires removing and replacing the pilot's cyclic control grip assembly (grip assembly) with an airworthy grip assembly. This action would require the same actions as the current AD but would change a part number referenced in the current AD. This proposal is prompted by the discovery of an error in the part number (P/N) of the current AD. The actions specified by the proposed AD are intended to prevent use of a grip assembly that may crack, resulting in failure of the grip assembly and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before October 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–12–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Fred Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Boulevard, Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–12–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–12–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On October 7, 1998, the FAA issued AD 98–21–36, Amendment 39–10845 (63 FR 55783, October 19, 1998), to require removing and replacing the grip assembly with an airworthy grip assembly. That action was prompted by a report of a crack in the welded corner of a grip assembly. The requirements of that AD are intended to prevent use of a grip assembly that may crack, resulting in failure of the grip assembly and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has discovered that the AD contained an error. The P/N on the replacement grip assembly was incorrectly stated as P/N A756–6, Revision M (or later). It should have stated P/N A756–6, Revision O.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson R44 helicopters of the same type design, the proposed AD would supersede AD 98–21–36 to require removing the grip assembly, P/N A756–6, Revision N or prior revision, and replacing it with an airworthy grip assembly other than P/N A765–6, Revision A through N.

The FAA estimates that 5 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $576 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,080.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10845 (63 FR 55783), Docket No. 97–SW–01–AD, and by adding a new airworthiness directive (AD), to read as follows:

Robinson Helicopter Company: Docket No. 99–SW–12–AD. Supersedes AD 98–21–36, Amendment 39–10845, Docket No. 97–SW–01–AD.

Applicability: Model R44 helicopters, serial numbers (S/N) 0001 through 0159, except S/N's 0143, 0150, and 0156, with pilot's cyclic control grip assembly (grip assembly), part number (P/N) A756–6, Revision N or prior revision, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Within 25 hours time-in-service or 30 calendar days, whichever occurs first, unless accomplished previously.

To prevent use of a grip assembly that may crack, resulting in failure of the grip assembly and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the grip assembly, P/N A756–6 Revision A through N, and replace it with an airworthy grip assembly other than P/N A756–6, Revision A through N.

Note 2: Robinson KI–112 R44 Pilot's Grip Assembly Upgrade Kit instructions, dated December 20, 1996, pertain to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on July 28, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–20063 Filed 8–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–121–AD]

RIN 2120–AA64

Airworthiness Directives; American Champion Aircraft Corporation 7, 8, and 11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document reopens the comment period of an earlier proposed airworthiness directive (AD) that would supersede AD 98–05–04, which currently requires repetitively inspecting the front and rear wood spars for damage, including installing any necessary inspection holes, on certain American Champion Aircraft Corporation (ACAC) Model 8GCBC airplanes; and repairing or replacing any damaged wood spar. Damage is defined as cracks; compression cracks; longitudinal cracks through the bolt holes or nail holes; or loose or missing nails. The proposed AD would retain the actions of AD 98–05–04; would extend these actions to ACAC 7, 8, and 11 series airplanes; and would incorporate alternative methods of accomplishing the actions. Since issuing the NPRM, the Federal Aviation Administration (FAA) received a comment requesting additional time to comment on the proposed AD. The FAA concurs that the comment period for the

proposal should be reopened and the public should have additional time to comment.

DATES: Comments must be received on or before September 10. 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–121–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the American Champion Aircraft Corporation, P.O. Box 37, 32032 Washington Avenue, Highway D, Rochester, Wisconsin 53167; internet address: "www.amerchampionaircraft.com". This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. William Rohder, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7697; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–121–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of the NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–121–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain to certain ACAC 7, 8, and 11 series airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 4, 1999 (64 FR 29972). The NPRM proposed to supersede AD 98–05–04, Amendment 39–10365 (63 FR 10297, March 3, 1998). AD 98–05–04 currently requires repetitively inspecting the front and rear wood spars for damage, including installing any necessary inspection holes; and repairing or replacing any damaged wood spar on certain ACAC Model 8GCBC airplanes. Damage is defined as cracks; compression cracks; longitudinal cracks through the bolt holes or nail holes; or loose or missing nails. The NPRM proposed to retain the actions of AD 98–05–04; proposed to extend these actions to all ACAC 7, 8, and 11 series airplanes; and proposed to incorporate alternative methods of accomplishing the actions. Accomplishment of the proposed inspection as specified in the NPRM would be required in accordance with ACAC Service Letter 406, Revision A, dated May 6, 1998.

The NPRM was the result of a review of the service history of the affected airplanes that incorporate wood wing spars. The review was prompted by in-flight wing structural failures on ACAC Model 8GCBC airplanes, and revealed several incidents where damage was found on the front and rear wood spars on the affected airplanes.

Reason for This Action

The FAA has received a comment requesting additional time to comment on the proposed rule. Since the NPRM comment period has already closed, the FAA is granting this extension by reopening the comment period instead of extending the comment period.

All comments will be addressed in any final or subsequent action taken by the FAA on this subject. The FAA is republishing the actual AD portion of the NPRM, Docket No. 98–CE–121–AD, for the convenience of the owners/operators of the affected airplanes.

Compliance Time of the Proposed AD

The compliance time of the proposed AD is presented in calendar time and hours time-in-service (TIS). Although the unsafe condition specified in the proposed AD is a result of airplane operation, operators of the affected airplanes utilize their airplanes in different ways.

For example, an operator may utilize his/her airplane 50 hours TIS in a year while utilizing the aircraft in no or very little crop dusting operations, banner or glider tow operations, or rough field or float operations. This airplane would obviously have a lower crack propagation rate than an airplane operated 300 hours TIS a year in frequent crop dusting operations, banner or glider tow operations, or rough field or float operations. However, either airplane could have pre-existing and undetected wood spar damage that occurred during previous operations. In this situation, the damage to the wood spar would propagate at a rate that depends on the operational exposure of the airplane and severity of the initial wood spar damage.

The FAA is proposing repetitive inspection compliance times that would coincide with the owner's/operator's annual inspection program. This should have the least impact upon operators because the costs of having the airplane out of service can be absorbed with regularly scheduled down-time.

To assure that compression cracks do not go undetected in the wood spars of the affected airplanes, the FAA has determined that the following compliance times should be used:

1. The proposed initial inspection at the first annual inspection that occurs 30 calendar days or more after the effective date of the AD or within 13 calendar months after the effective date of the AD, whichever occurs first; and

2. The proposed repetitive inspections thereafter at intervals not to exceed 12 calendar months or 500 hours TIS, whichever occurs first.

Cost Impact

Though the proposed AD would not require installing additional inspection holes/covers, the following cost analysis is based on the presumption that 11 additional inspection holes/covers per wing would be required to complete a thorough inspection in accordance with ACAC Service Letter 406, Revision A, dated May 6, 1998. These inspection holes/covers may not be required, which would reduce the proposed cost impact upon U.S. operators of the affected airplanes.

The FAA estimates that 6,701 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours (Installations: 5 workhours; Initial Inspection: 1 workhour) per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $292 per airplane, provided that each airplane would only need 11 additional standard inspection hole covers per wing bottom surface (total of 22 new covers per airplane). If the airplane would require the installation of more inspection covers (i.e., a result of previous non-factory wing recover work), the cost could be slightly higher. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,369,052, or $652 per airplane.

These cost figures are based on the presumption that no affected Model 8GCBC airplane owner/operator has accomplished the installations or the initial inspection as currently required by AD 98–05–04, and do not account for repetitive inspections. The FAA has no way of determining the number of repetitive inspections each owner/operator of the affected airplanes will incur over the life of his/her airplane. However, each proposed repetitive inspection would cost substantially less than the initial inspection because the cost of the initial proposed inspection hole and cover installations would not be repetitive. The inspection covers allow easy access for the inspection of the wood spars, and the proposed compliance time would enable the owners/operators of the affected airplanes to accomplish the repetitive inspections at regularly scheduled annual inspections.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 98–05–04, Amendment 39–10365 (63 FR 10297, March 3, 1998), and by adding a new AD to read as follows:

American Champion Aircraft Company: Docket No. 98–CE–121–AD; Supersedes AD 98–05–04, Amendment 39–10365.

Applicability: The following airplane models, all serial numbers, certificated in any category, that are equipped with wood wing spars:

7AC	7GCB
7ACA	7GCBA
S7AC	7GCBC
7BCM (L–16A)	7HC
7CCM (L–16B)	7JC
S7CCM	7KC
7DC	7KCAB
S7DC	8GCBC
7EC	8KCAB
S7EC	11AC
7ECA	S11AC
7FC	11BC
7GC	S11BC
7GCA	11CC
7GCAA	S11CC

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, repaired, or reconfigured in the area subject to the requirements of this AD. For airplanes that have been modified, altered, repaired, or reconfigured so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent possible compression cracks and other damage in the wood spar wing, which, if not detected and corrected, could eventually result in in-flight structural failure of the wing with consequent loss of the airplane, accomplish the following:

(a) *Initial Inspection With Possible Repair or Replacement:* Inspect and repair or replace the wood wing spars, as follows:

(1) At the first annual inspection that occurs 30 calendar days or more after the effective date of this AD or within the next 13 calendar months after the effective date of this AD, whichever occurs first, inspect (detailed visual) both the front and rear wood wing spars for cracks; compression cracks; longitudinal cracks through the bolt holes or nail holes; and loose or missing rib nails (referred to as damage hereafter). Accomplish these inspections in accordance with American Champion Aircraft Corporation (ACAC), Service Letter 406, Revision A, dated May 6, 1998. This service bulletin specifies using a high intensity flexible light (for example a "Bend-A-Light"). A regular flashlight and mirrors may not be used for this inspection.

(2) If any spar damage is found, prior to further flight, repair or replace the wood wing spar in accordance with Advisory Circular (AC) 43.13–1B, Acceptable Methods, Techniques and Practices; or other data that is approved by the FAA for wing spar repair or replacement.

(b) *Repetitive Inspections:* Accomplish the inspection, repair, replacement, and installation required by paragraphs (a)(1) and (a)(2) of this AD within 12 calendar months or 500 hours TIS (whichever occurs first) after these initial actions, and thereafter at intervals not to exceed 12 calendar months or 500 hours TIS, whichever occurs first.

(c) *Additional Inspection Requirements After Accident/Incident:* If, after the effective date of this AD, any of the affected airplanes are involved in an incident/accident that involves wing damage (e.g., surface deformations such as abrasions, gouges, scratches, or dents, etc.), prior to further flight after that incident/accident, accomplish the inspection and repair or replacement required by paragraphs (a)(1) and (a)(2) of this AD, as applicable.

(d) *Reporting Requirements:* Within 30 days after any wing damage is found per the requirements of this AD, submit a Malfunction or Defect Report (M or D), FAA Form 8010–4, which describes the damage; and send a copy of this report to the Manager, Chicago Aircraft Certification Office (ACO), 2300 E. Devon Avenue, Des Plaines, Illinois 60018; facsimile: (847) 294–7834. Include the airplane model and serial number, the extent of the damage (location and type), and the number of total hours TIS on the damaged wing. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) *Alternatives to the AD:* ACAC Service Letter 406, Revision A, and ACAC Service

Letter 417, Revision C, both dated May 6, 1998, specify additional inspection and installation alternatives over that included in the original issue of these service letters. All inspection and installation alternatives presented in these service letters are acceptable for accomplishing the applicable actions of this AD.

(f) *Special Flight Permits:* Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) *Alternative Methods of Compliance:* An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Chicago ACO, 2300 E. Devon Avenue, Des Plaines, Illinois 60018.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

(2) Alternative methods of compliance approved in accordance with AD 98–05–04 are considered approved for this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago ACO.

(h) *Availability of Service Information:* All persons affected by this directive may obtain copies of the documents referred to herein upon request to the American Champion Aircraft Corporation, P.O. Box 37, 32032 Washington Avenue, Highway D, Rochester, Wisconsin 53167; internet address: "www.amerchampionaircraft.com"; or may examine these documents at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(i) *Other AD's Affected:* This amendment supersedes AD 98–05–04, Amendment 39–10365.

Issued in Kansas City, Missouri, on July 29, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–20062 Filed 8–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–42]

Proposed Modification of Class E Airspace; Marquette, MI; Proposed Revocation of Class E Airspace; Sawyer, MI, and K.I. Sawyer, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Marquette, MI, and revoke the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI. The legal description for the Class E airspace for Sawyer Airport has been changed from Sawyer, MI, to Marquette, MI, and the legal description for Class E airspace for K.I. Sawyer, MI, is no longer valid because K.I. Sawyer Air Force Base (AFB) has been closed and renamed Sawyer International Airport. This action proposes to modify Class E airspace for Marquette, MI, to correctly describe the Class E airspace required for Sawyer International Airport, and to revoke the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI.

DATES: Comments must be received on or before September 20, 1999.

ADDRESSES: Send Comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–42, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air traffic Deivision, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–42." the postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules docket, FAA, Great Lakes Region, Office of the Assistant Chief counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Marquette, MI, and revoke the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI. The legal description for the Sawyer International Airport has changed from Sawyer, MI, to Marquette, MI, and K.I. Sawyer AFB has been closed. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas designated as a surface area for an airport are published in paragraph 6002, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Sawyer, MI [Removed]

* * * * *

AGL MI E2 Marquette, MI [Revised]

Marquette County Airport, MI
(Lat. 46° 32′ 02″N., long. 87° 33′ 42″W.)
Marquette, Sawyer International Airport, MI
(Lat. 46°21′13″N., long. 87°23′45″W.)

Within a 4.4-mile radius of the Marquette County Airport, and within 3.1 miles each side of the 077° bearing from the airport extending from the 4.4-mile radius to 6.1 miles east of the airport and within 3.1 miles each side of the 257° bearing from the airport extending from the 4.4-mile radius to 8.3 miles west of the airport, and within a 4.6-mile radius of Sawyer International Airport.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Sawyer, MI [Removed]

* * * * *

AGL MI E5 K.I. Sawyer, MI [Removed]

* * * * *

AGL MI E5 Marquette, MI [Revised]

Marquette County Airport, MI
(Lat 46°32′02″N., long. 87°33′42″W.)
Marquette, Sawyer International Airport, MI
(Lat 46°21′13″N., long. 87°23′45″W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Marquette County Airport, and within 3.3 miles each side of the 077° bearing from the airport extending from the 6.6-mile radius to 13.1 miles east of the airport and within 3.3 miles each side of the 257° bearing from the airport extending from the 6.6-mile radius to 8.7 miles west of the airport, and that airspace extending upward from 700 feet above the surface within an 7.1-mile radius of the Sawyer International Airport, and that airspace extending upward from 1,200 feet above the surface within a 34.8-mile radius of the Sawyer International Airport.

* * * * *

Issued in Des Plaines, Illinois on July 6, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–20019 Filed 8–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–09]

Proposed Establishment of Class E Airspace; York Airport (THV), York County, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at York Airport, PA. The increased traffic at the York Airport and its capacity to accept flights via a Standard Instrument Approach Procedure (SIAP) makes it desirable to establish Class E airspace designated as a surface area. Additional controlled airspace would enhance the safety of flights operating in the vicinity of the York Airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before September 3, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 99–AEA–09, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, New York 11430. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; Telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AEA–09." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building, #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Logan Airport, PA. Controlled airspace extending upward from the surface is needed to accommodate operations conducted under Instrument Flight Rules. Traffic has also increased for which controlled airspace is desirable to enhance safety. Class E airspace designated as airport surface areas are published in Paragraph 6002 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves and established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entitites under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, is proposed to be amended as follows:

Paragraph 6002 Class E airspace designated as surface area for an airport

* * * * *

AEA PA E2 York County, PA

York Airport (THV), PA
GRP (Lat. 39°55′12″N. x long. 76°52′39″W.)
York NDB
(Lat. 39°55′20″N. x long. 76°52′65″W.)

That airspace extending upward from the surface within a 6.5-mile radius of the York Airport.

* * * * *

Issued in Jamaica, New York, on July 6, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–20021 Filed 8–3–99; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1212

Multi-Purpose Lighters; Request for Additional Comment

AGENCY: Consumer Product Safety Commission.

ACTION: Supplemental Notice of proposed rulemaking.

SUMMARY: The U.S. Consumer Product Safety Commission ("CPSC" or "Commission") previously proposed a rule that would require multi-purpose lighters to resist operation by children under age 5. 63 FR 52397 (September 30, 1998); *see also* 63 FR at 52394; 63 FR 69030 (December 15, 1998). In that proposal, the degree of child resistance is measured by a test with a panel of children to see how many can operate a multi-purpose lighter that has its on/off switch in the off, or locked, position. In this notice, the Commission proposes that the child-panel tests instead be conducted with the on/off switch in the on, or unlocked, position. This will provide additional protection when the users of the lighters do not return the switch to the off position after use. The Commission solicits written and oral comments on this change. Comments must be limited to issues raised by the changed requirement in this document.

DATES: The Commission must receive any written comments in response to this proposal by October 18, 1999. If the Commission receives a request for oral presentation of comments, the presentation will begin at 10 a.m., September 15, 1999, in Room 420 in the Commission's offices at 4330 East-West Highway, Bethesda, MD 20814.

The Commission must receive requests to present oral comments by September 1, 1999. Persons requesting an oral presentation must file a written text of their presentations no later than September 8, 1999.

ADDRESSES: Written comments, and requests to make oral presentations of comments, should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800. Comments also may be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Written comments should be captioned "NPR for Multi-Purpose Lighters." Requests to make oral presentations and texts of presentations should be captioned "Oral Comment; NPR for Multi-Purpose Lighters."

FOR FURTHER INFORMATION CONTACT:

Concerning the substance of the proposed rule: Barbara Jacobson, Project Manager, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207–0001; telephone (301) 504–0477, ext. 1206; email bjacobson@cpsc.gov.

Concerning requests and procedures for oral presentations of comments: Rockelle Hammond, Docket Control and Communications Specialist, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0800 ext. 1232. Information about this rulemaking proceeding may also be found on the Commission's web site: www.cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Discussion

The Commission previously proposed a rule under the Consumer Product Safety Act ("CPSA") that would require multi-purpose lighters to resist operation by children under age 5. 63 FR 52397 (September 30, 1998); see also 63 FR at 52394; 63 FR 69030 (December 15, 1998). As proposed, multi-purpose lighters, which are also known as grill lighters, fireplace lighters, utility lighters, micro-torches, or gas matches, are defined as: hand-held, self-igniting, flame-producing products that operate on fuel and are used by consumers to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, camp fires, camp stoves, lanterns, fuel-fired appliances or devices, or pilot lights, or for uses such as soldering or brazing. See proposed 16 CFR 1212.2(a)(1). The term does not include cigarette lighters (which are subject to the Safety Standard for Cigarette Lighters, 16 CFR 1210.2(c)), devices that contain more than 10 oz. of fuel, and matches. *Id.* The proposal also would require that the child-resistant mechanism automatically return to the child-resistant condition either (1) when or before the user lets go of the lighter or (2), for multi-purpose lighters that remain lit after the users have let go, when or before the user lets go of the lighter after turning off the flame. *Id.* at § 1212.3(b)(3).

In the previous proposal, the degree of child resistance of a multi-purpose lighter is measured by a test with a panel of children to see how many can operate the lighter. That test provides that during testing for child-resistance, multi-purpose lighters with an on/off switch will be tested with the switch in the off, or locked, position. *Id.* at § 1212.4(f)(1).

On/off switches block the operating mechanism of the lighter when in the off, or locked, position. The mechanism is released when the switch is in the on, or unlocked, position. In currently marketed lighters, the switch does not automatically reset to the locked position when the lighter is operated. During testing to determine the baseline child-resistance of currently marketed (non-child-resistant) multi-purpose lighters, the CPSC staff tested four lighters, having on/off switches, with the switch in the locked position. Children who were able to operate the lighters moved the switch to the unlocked position and pulled the trigger. The child-resistance of the lighters so tested ranged from 24 to 41 percent, well below the proposed requirement of 85 percent. The lighter with a child-resistance level of 41 percent was retested with the switch unlocked, and its child-resistance level dropped to 12 percent.

In its December 1998 comments on the proposal, BIC states that many consumers will leave the lighter in the unlocked position. Further, BIC points out that a manufacturer could design a lighter with an on/off switch that is very difficult for a child to unlock, and with a very simple child-resistance mechanism which, in itself, would not meet the 85 percent child-resistance requirement. BIC therefore contends that multi-purpose lighters with on/off switches should be tested with the switch in the unlocked position.

The Commission concurs with BIC's recommended modification to the test protocol. Testing lighters with the switches in the locked position treats the switch as part of the child-resistance mechanism. On/off switches are not adequate to serve this purpose. First, as the Commission's baseline testing demonstrated, most children in the panel age group (42 to 51 months old) can operate the switches, which are similar to those used on many types of toys. Second, when practical, safety devices should function automatically. When in the locked position, the switch may help delay or deter some proportion of children. This protection, however, is not reliable. To provide this protection, intended users must return the switch to the off position every time the lighter is used. For a variety of reasons, even the most careful adults may fail to return the switch to the off position. Thus, as BIC points out, test results for lighters tested with the switch in the locked position may not reflect the true child-resistance of the product as actually used by consumers. Therefore, the Commission now proposes that the test protocol should require that lighters with on/off switches that do not automatically reset to the off position be tested with the switch in the on, or unlocked, position. This change is consistent with the requirement in the original proposal that the child-resistant mechanism automatically reset to its protective condition after the lighter is used.

B. Preliminary Regulatory Analysis

The CPSA requires the Commission to publish a preliminary regulatory analysis of the proposed rule. This includes a discussion of the likely benefits and costs of the proposed rule and its reasonable alternatives. The Commission's preliminary regulatory analysis was published in the September 30, 1998, proposal. The changed requirement proposed in this notice does not significantly affect the results of that analysis. To the extent that lighters accessible to children are stored in the unlocked position, and thereby reduce the lighters' child resistance, there would be an increase in the expected benefits as a result of this change.

The preliminary regulatory analysis was based on the costs of developing cigarette lighters with child-resistant mechanisms. Generally, cigarette lighters do not have on/off switches separate from the child-resistance mechanism (and thus, under the cigarette lighter standard, are required to reset automatically after each actuation of the lighting mechanism). Accordingly, the Commission's cost estimates in the regulatory analysis did not assume that multi-purpose lighters would have on/off switches separate from the resetting child-resistance feature. Therefore, the change proposed in this notice is in line with the cost estimates the staff already has made.

CPSC baseline testing shows that more children are unable to operate a non-child-resistant multi-purpose lighter if the on/off switch is in the off position than if the switch is in the on position. Thus, it is possible that some models of multi-purpose lighters would fail the certification tests unless the tests were conducted with the on/off switch initially in the off position. Changing the protocol may, therefore, adversely impact manufacturers whose initial child-resistant designs were only marginally effective. However, the preliminary regulatory analysis already considered that some manufacturers may need to revise their designs if their initial attempts to certify their multi-purpose lighters fail. Thus, these costs have already been accounted for in the preliminary regulatory analysis.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the Commission to address and give particular attention to the economic effects of the proposed rule on small entities. The original proposal's preliminary regulatory flexibility analysis examined the potential effects of the proposed rule on small entities. As explained above, the change proposed in this notice is likely to have only small changes in the costs and benefits of the final rule. Accordingly, this new requirement does not significantly change the preliminary regulatory flexibility analysis.

D. Preliminary Environmental Assessment

The proposed rule is not expected to have a significant effect on the materials used in the production and packaging of multi-purpose lighters, or in the number of units discarded after the rule becomes effective. Therefore, no significant environmental effects would result from the proposed mandatory rule for multi-purpose lighters.

E. Opportunities for Comment

Written comments limited to the issues raised by the additional

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requirement proposed in this notice may be submitted until October 18, 1999. There also will be an opportunity for interested parties to present oral comments on these issues on September 15, 1999. See the information under the headings **DATES** and **ADDRESSES** at the beginning of this notice. Any oral comments will be part of the rulemaking record.

Persons presenting oral comments should limit their presentations to approximately 10 minutes, exclusive of any periods of questioning by the Commissioners or the CPSC staff. The Commission reserves the right to further limit the time for any presentation and to impose restrictions to avoid excessive duplication of presentations.

F. Extension of Time To Issue Final Rule

Section 9(d)(1) of the CPSA, 15 U.S.C. 2058(d)(1), provides that a final consumer product safety rule must be published within 60 days of publication of the proposed rule unless the Commission extends the 60-day period for good cause and publishes its reasons for the extension in the **Federal Register**. The Commission previously extended the time for issuing a final rule until June 30, 1999. 63 FR 52415.

This reproposal requires another extension of the time to issue a final rule. After the comment period ends on October 18, 1999, the CPSC's staff will need to address the comments and complete a briefing package for the Commission. The Commission is likely to then be briefed, and will later vote on whether to issue a final rule. The Commission expects that this additional work will take about 5 months. Accordingly, the Commission extends the time by which it must either issue a final rule or withdraw the NPR until December 31, 1999. If necessary, this date may be further extended.

Effective date. This reproposal does not require any change in the originally proposed effective date of 1 year after the date a final rule is issued.

List of Subjects in 16 CFR Part 1212

Consumer protection, Fire prevention, Hazardous materials, Infants and children, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

In the **Federal Register** of September 30, 1998 (63 FR 52397) the Commission proposed to amend Title 16, Chapter II, Subchapter B, of the Code of Federal Regulations. For the reasons set out in the preamble, the Commission proposes the following change to that proposal, as set forth below.

PART 1212—SAFETY STANDARD FOR MULTI-PURPOSE LIGHTERS

1. The authority citation for part 1212 continues to read as follows:

Authority: 15 U.S.C. 2056, 2058, 2079(d).

2. The note in § 1212.4(f)(1) is revised to read as follows:

§ 1212.4 Test protocol.

* * * * *

(F) * * *

(1) * * *

Note: For multi-purpose lighters with an "on/off" switch that does not automatically reset to the "off" position in accordance with § 1212.3(b)(3), the surrogate lighter shall be given to the child with the switch in the "on," or unlocked, position.

* * * * *

Dated: July 28, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–19937 Filed 8–3–99; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 101

[Docket No. RM99–7–000]

Depreciation Accounting

July 29, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to set forth uniform standards based on the straight-line method of depreciation and the assets' estimated useful service lives for determining depreciation for accounting purposes.

DATES: Comments on the proposed rulemaking are due on or before October 4, 1999.

ADDRESSES: File comments on the notice of proposed rulemaking with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Comments should reference Docket No. RM99–7–000.

FOR FURTHER INFORMATION CONTACT:

Gregory Berson (Technical Information), Office of Finance, Accounting and Operations, 888 First Street, N.E. Washington, D.C. 20426 (202) 219–2603;

Amy L. Blauman (Legal Information), Office of the General Counsel, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–2143

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1. User assistance is available at 202–208–2474 or by E-mail to cips.master@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend the General Instructions of 18 CFR Part 101 to establish, for those public utilities and licensees that are subject to Part 101, criteria for determining depreciation for accounting purposes.

II. Background

A. Commission Authority

The Commission has authority under section 301 of the Federal Power Act (FPA)[1] over the accounting practices of public utilities and licensees. Pursuant to section 301, the Commission has prescribed a Uniform System of Accounts (USofA)[2] that must be followed by these jurisdictional entities.

[1] 16 U.S.C. 825.

The Commission also has authority under section 302 of the FPA[3] over the depreciation accounting practices of public utilities and licensees. This includes the authority to determine and fix proper and adequate depreciation rates for accounting purposes.

The Commission believes it has a statutory obligation to ensure that proper amounts of depreciation are charged to expense in each financial reporting period. In order to fulfill this statutory obligation, the Commission had required public utilities and licensees to obtain Commission approval prior to changing their depreciation rates for accounting purposes. *See, e.g., MidAmerican Energy Co.*, 79 FERC ¶ 61,169 (1997), *reh'g denied*, 81 ¶ FERC 61,081 (1997). However, a recent decision of the U.S. Court of Appeals for the District of Columbia Circuit, *Alabama Power Company, et al.* v. *FERC*, 160 F.3d 7 (D.C. Cir. 1998) (*Alabama Power*), overturned the Commission's action on procedural grounds.

In light of *Alabama Power*, we decide here to proceed with a rulemaking to establish the principles that public utilities and licensees subject to Part 101 must follow in determining depreciation rates for accounting purposes.[4] We are not proposing to ascertain, determine, and fix individual company depreciation rates as part of this rulemaking. Instead, we provide a regulatory framework for monitoring depreciation accounting practices and for taking action in individual cases if and when the need arises—to ensure that public utilities' and licensees'[5] books reflect proper depreciation amounts.

B. Utility Depreciation Principles

Expenditures for utility plant and other long-lived assets that will be used in the production of utility products and services are typically made in one year but are expected to produce benefits over a number of years. These assets also have finite useful lives, and their value will be substantially diminished at the end of their useful lives.[6] Depreciation represents the cost of using up the assets' service potential during their useful lives.

Depreciation is a process of cost allocation, not of valuation.[7] The primary objective of depreciation accounting is to allocate the cost of utility property to the periods during which the property is used in utility operations, *i.e.*, over the useful service life, in a systematic and rational manner.[8]

Generally, the amount of annual depreciation is determined by multiplying the asset's depreciable base (original cost less estimated salvage value) by a depreciation rate. The depreciation rate is a function of the chosen depreciation method and the asset's useful service life. The depreciation method (*e.g.*, straight line, double-declining balance, sum of the years digits, etc.) determines the timing of the recognition of depreciation expenses. The asset's useful service life, expressed in units of time or production, is based on estimates of the physical, economic or productive life of the asset.

Depreciation accounting is not intended to achieve a desired financial objective, such as an increase or decrease in reported net income or an adjustment in plant costs to perceived market values. Rather, depreciation accounting reflects the decrease in service value, *i.e.*, the using up of the productive capacity of the asset, over its service life. The decrease in service value is estimated using a systematic and rational method to allocate the original cost of assets to the periods over which they are used in utility service—factors that are independent of both an entity's profitability and asset market values.

Recognition of depreciation expenses for accounting purposes is not dependent on the rate recovery of the cost of utility plant. When differences arise between accounting depreciation and rate recovery of the cost of utility plant, the USofA requires utilities with cost-based rates to account for the differences as regulatory assets and liabilities.[9] In this way, utilities can easily keep track of any differences between accounting depreciation and ratemaking recovery of plant costs in their various regulatory jurisdictions.

C. Reasons for This Rule

The Commission believes it must standardize depreciation accounting practices in order to maintain its ability to determine just and reasonable, cost-based utility rates and to ensure the reasonableness and reliability of financial information used by regulators, investors, consumers, and the general public.

Since depreciation is a significant portion of the total cost of providing utility service, the determination of the appropriate amount of depreciation is of concern to this Commission, State commissions, utility management, investors, consumers and others who have an interest in or are affected by the financial performance of these entities. Because the Commission uses depreciation recorded on a utility's books as a starting point for determining cost-based utility rates,[10] to protect consumers and to guard against abuses, the Commission must have assurance that such depreciation expenses are proper.[11] Moreover, standardizing depreciation accounting practices will better ensure that utilities' financial information, reported to regulators, utility investors, utility consumers and the general public, is reasonable and reliable.

Additionally, by establishing generally applicable rules relating to depreciation accounting, this rulemaking is intended to satisfy the procedural prerequisite of FPA section 302 that the Court, in *Alabama Power*, *supra*, found necessary to enable the Commission to set individual utility

[2] *See* 18 CFR Part 101.

[3] 16 U.S.C. 825a.

[4] The proposed rules would not apply to public utilities and licensees that have obtained waivers from our accounting requirements under 18 CFR Part 101.

[5] Henceforth in this narrative preamble, our use of "utilities" is intended to encompass both public utilities and licensees; we will refer to "utilities" for ease of reading. *See* 18 CFR Part 101 Definition No. 39.

[6] In some cases, assets have negative salvage value, *i.e.*, the utility will have to pay additional costs to remove the asset and restore the plant site at the end of the asset's life.

[7] *See FASB Original Pronouncements*, Accounting Research Bulletin No. 43, Chapter 9, Section C, para. 5 (1998).

[8] The Commission's Uniform System of Accounts for electric utilities defines depreciation as follows:

Depreciation, as applied to depreciable electric plant, means the loss in service value not restored by current maintenance, incurred in connection with the consumption or prospective retirement of electric plant in the course of service from causes which are known to be in current operation and against which the utility is not protected by insurance. Among the causes to be given consideration are wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand, and requirements of public authorities.

18 CFR Part 101 Definition No. 12.

[9] *See* 18 CFR Part 101 Definition No. 30, Accounts 182.3 and 254.

[10] The Commission typically permits a utility to recover its investment in utility property over its useful life through inclusion of depreciation expense in the cost of service used to set the utility's cost-based rates. The Commission also typically allows a utility to earn a return on its undepreciated investment in utility property.

[11] For example, a utility could, through inappropriate depreciation practices, over-recover the cost of utility plant, inappropriately attempt to mitigate stranded costs or shift benefits from asset sales to shareholders or particular customer groups. *See, e.g.*, Midwest Power Systems Inc., 67 FERC ¶ 61,076 at 61,208 (1994); South Caroline Electric & Gas Co., 76 FERC ¶ 61,338 at 62,616–19 (1996), *reh'g denied*, 79 FERC ¶ 61,083 (1997); *accord*, Ohio Edison Co., *et al.*, 84 FERC ¶ 61,157 at 61,860–63 (1998).

depreciation rates for accounting purposes.

Therefore, we are proposing here that utilities subject to Part 101 follow uniform standards in determining depreciation rates for accounting purposes. This will ensure that depreciation for accounting purposes is recorded in accordance with sound depreciation principles and thus, in particular, meets this Commission's regulatory needs.[12]

We invite interested parties to present their views on this proposal through the written comment procedures outlined below.

III. Discussion

The current USofA for utilities contains limited guidance on depreciation accounting. The USofA defines depreciation and its related components,[13] and provides various accounts for the recording of depreciation,[14] but does not state how utilities are to determine the rates used to calculate the amount of depreciation to be recorded in the accounts.

In light of the foregoing, the Commission proposes to revise its USofA to require uniform and consistent determinations of depreciation rates for accounting purposes. We also take this opportunity to outline how we intend to oversee utility depreciation practices in the foreseeable future.

A. Regulatory Framework

The Commission proposes to require utilities subject to Part 101 to use depreciation rates for accounting purposes that are based on the straight-line method of depreciation and the assets' estimated useful service lives.[15]

A straight-line method of depreciation is one that allocates the service value[16] of depreciable property to expense in equal monthly charges over the property's useful service life. It is the method typically used by utilities today.[17]

The Commission proposes that the depreciation period for utility property be its estimated useful service life. The current practice of estimating useful service lives of assets based on engineering or other studies of the expected physical, economic, or productive lives over which the assets will provide utility service, would continue.[18]

Where composite depreciation rates are used, they would be based on the weighted average estimated useful service lives of the assets comprising the composite group.

The Commission believes that computing depreciation on a straight-line basis over assets' estimated useful service lives will produce more relevant and reliable financial information for regulatory and financial reporting purposes than other depreciation techniques (*e.g.*, accelerated depreciation, retirement method, sinking fund depreciation, etc.) that do not ratably allocate plant costs to each accounting period. Because of the relatively consistent operation of utility plant over time, the use of the straight-line method and estimated useful service lives appears to provide the most practical way to measure the amount of depreciation consumed each year in producing utility products and services. The straight-line method is also simple in its application in contrast to other depreciation techniques. It is, as well, the standard method for business in general, conforms to generally accepted accounting principles (*i.e.*, systematic and rational) and, as noted, is the method typically used by utilities today.[19]

B. Future Commission Action

We also take this opportunity to explain how the Commission intends to exercise its authority over depreciation accounting in the foreseeable future.

On a case by case basis, *e.g.*, in conjunction with audits, complaints, etc., it may become necessary, as a result of these proceedings, for the Commission from time to time to ascertain and determine, and by order fix, the accounting depreciation rates for individual utilities pursuant to FPA section 302. However, unless otherwise ordered by the Commission, individual utilities will *not* be required to file their accounting depreciation rates with us for our approval. This approach is consistent with our efforts to reduce regulatory burdens to the degree possible and facilitate the transition to competition in the electric utility industry.

IV. Environmental Statement

The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement.[20] The promulgation of a rule that is procedural or that does not substantially change the effect of legislation or regulations being amended raises no environmental considerations.[21] The instant proposed rule amends Part 101 of the Commission's regulations to codify prevalent utility practice and does not substantially change the effect of the underlying legislation or the regulations being revised. Likewise, approval of actions under section 301 of the FPA, relating to accounting orders, also raises no environmental considerations. The instant rule fundamentally involves accounting matters, establishing standardized depreciation accounting practices. Accordingly, no environmental consideration is necessary.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires rulemakings to contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.

[12] Standardizing utilities' depreciation accounting practices will, for example, provide a greater level of assurance that depreciation accounting will not be used to achieve inappropriate ends. *See supra* note 10.

[13] *See, e.g.*, 18 CFR Part 101, Definition Nos. 10, 12, 19, 34–36 (1999).

[14] *See, e.g.*, 18 CFR Part 101, Accounts 108, 110, 119, and 403 (1999).

[15] The USofA defines service life as "the time between the date electric plant is includible in electric plant in service, or electric plant leased to others, and the date of its retirement. If depreciation is accounted for on a production basis rather than on a time basis, then service life should be measured in terms of the appropriate unit of production." 18 CFR Part 101 Definition No. 35.

[16] The USofA defines service value as "the difference between original cost and net salvage value of electric plant." 18 CFR Part 101 Definition No. 36.

[17] *See, e.g.*, J. Suelflow, Public Utility Accounting: Theory and Application 96 (1973) ("Straight line is the predominant method used by utilities and sanctioned by most regulatory bodies."); Deloitte Haskins & Sells, Public Utilities Manual 23 (1980) ("[T]he straight-line concept is applied almost universally for both accounting and rulemaking. * * *"); C. Phillips, The Regulation of Public Utilities: Theory and Practice 272 (3d ed. 1993) (The straight line method * * * is the simplest and most commonly used."); L. Hyman, America's Electric Utilities: Past, Present and Future 292 (5th ed. 1994) ("The book depreciation rate is a straight line rate for most utility companies."); accord Depreciation Subcommittee of the NARUC Committee on Engineering, Depreciation, and Valuation of the National Association of Regulatory Utility Commissioners, Public Utility Depreciation Practices 12 (1968) ("In the two decades, since the Report of the Committee on Depreciation of the NARUC was published in 1943, the use of the straight-line method for accounting and rate-making purposes has became almost universal for public utilities.").

[18] Changes in estimated useful service lives would be based on updated depreciation study results that demonstrated different service lives (shorter or longer) were appropriate.

[19] *See* supra note 17.

[20] 18 CFR 380.4.

[21] 18 CFR 380.4(a)(2)(ii).

In *Mid-Tex Elec. Coop.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985), the court found that Congress, in passing the RFA, intended agencies to limit their consideration "to small entities that would be directly regulated" by proposed rules. *Id.* at 342. The court further concluded that "the relevant 'economic impact' was the impact of compliance with the proposed rule on regulated small entities." *Id.* at 342.

The Commission certifies that, given the entities subject to this proposed rule and their current depreciation accounting practices, this proposed rule will not have a significant economic impact upon a substantial number of small entities.

VI. Public Reporting Burden and Information Collection Statement

The Commission proposes to amend 18 CFR Part 101 by standardizing the method for determining depreciation rates for accounting purposes. Because the proposed rule simply standardizes the method of calculating depreciation rates, without adding or changing any reporting requirements, it does not impose any additional public reporting burden.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Capital Planning and Policy Group, Phone: (202) 208–1415, Fax: (202) 208–2425, E-mail: mike.miller@ferc.fed.us].

To submit comments concerning collections of information and associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, Phone: (202) 395–3087, Fax: (202) 395–7285].

VII. Public Comment Procedures

Prior to taking final action on this proposed rulemaking, we are inviting written comments from interested persons. The Commission also is notifying each State commission having jurisdiction with respect to any public utility involved and is giving reasonable opportunity to each State commission to present its views for our consideration. All comments in response to this notice should be submitted to the Office of Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, and should refer to Docket No. RM99–7–000. An original and fourteen (14) copies of such comments should be filed with the Commission on or before October 4, 1999.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM99–7–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. RM99–7–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comments to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at: 202–501–8145, E-Mail address: brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, comments may be viewed, printed or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS link. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

List of Subjects in 18 CFR Part 101

Electric power, electric utilities, reporting and recordkeeping requirements, Uniform System of Accounts.

By direction of the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 101, Chapter I, Title 18 of the *Code of Federal Regulations*, as set forth below.

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

1. The authority citation for Part 101 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7102–7352, 7651–7651o.

2. In Part 101, General Instructions, paragraph 22 is added to read as follows:

General Instructions

* * * * *

22. *Depreciation Accounting*

A. *Method.* Utilities must use the straight-line method of depreciation. The straight-line method allocates equal amounts of the service value of utility property to expense during each year of the property's useful service life.

B. *Service Lives.* Estimated useful service lives of depreciable property must be supported by engineering or other depreciation studies.

C. *Rate.* Utilities must use percentage rates of depreciation that are based on the straight-line method and the estimated useful service lives of depreciable property. Where composite depreciation rates are used, they should be based on the weighted average estimated useful service lives of the depreciable property comprising the composite group.

[FR Doc. 99–20010 Filed 8–3–99; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM99–9–000]

Designation of Corporate Officials or Other Persons to Receive Service

July 28, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend Rule 2010 of its

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regulations on practice and procedure to require that all entities regulated by the Commission designate a corporate official or other person to receive service of certain types of pleadings where a person to receive service has not otherwise been designated under the Commission's regulations. Each regulated entity would be required to file with the Commission: The name of the corporate official or other person that is to receive service, the title of the corporate official or person, if applicable, the address of the official, including, where applicable, department, room number, or mail routing code, the telephone number of the corporate official or person, the facsimile number of the corporate official or person, if applicable, and the electronic mail address of the corporate official or person, if applicable. Each regulated entity would have a continuing obligation to file updated information with the Commission. The intended effect is to facilitate timely notification to responsible corporate officials.

The Commission also proposes to maintain a list of designated officials in the Office of the Secretary of the Commission and to make the list available to the public in hard copy and through the Commission's web site.

DATES: Comments are due October 4, 1999.

ADDRESSES: Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For further instructions on submittal of comments see section VI. of **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1275.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1. User assistance is available at 202–208–2474 or by E-mail to cips.master@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202-208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Federal Energy Regulatory Commission (Commission) is proposing to revise its regulations to require that all entities regulated by the Commission designate a corporate official or other person to receive service.

I. Background

On March 31, 1999, the Commission issued a final rule (Order No. 602) revising its regulations governing complaints filed with the Commission under the Federal Power Act, the Natural Gas Act, the Natural Gas Policy Act, the Public Utility Regulatory Policies Act of 1978, the Interstate Commerce Act, and the Outer Continental Shelf Lands Act.[1] Order No. 602 was designed to encourage and support consensual resolution of complaints, and to organize the complaint procedures so that all complaints are handled in a timely and fair manner.

A number of requests for rehearing of Order No. 602 were filed. Among the parties filing for rehearing was the Interstate Natural Gas Association of America (INGAA). INGAA sought clarification of the service requirements of the final rule contained in section 385.206(c) of the Commission's regulations.[2] That section currently reads as follows:

> Any person filing a complaint must serve a copy of the complaint on the respondent, affected regulatory agencies, and others the complainant reasonably knows may be expected to be affected by the complaint. Service must be simultaneous with filing at the Commission for respondents and affected entities in the same metropolitan area as the complainant. Simultaneous or overnight service is acceptable for respondents and affected entities outside the complainant's metropolitan area. Simultaneous service can be accomplished through electronic mail, fax, express delivery, or messenger.[3]

On rehearing, INGAA asserted that all Commission regulated entities should be required to appoint an official to receive service of complaints, which official is to be designated on the company's electronic bulletin board (EBB) or web site. INGAA requested that, as part of the service requirement of section 385.206(c), parties must serve the complaint on the corporate official appointed to receive such service by the regulated entity. INGAA contended that, absent such a requirement, a complaint served on a corporation without identifying a specific individual recipient could be misrouted or its significance overlooked. INGAA submitted that by the time the responsible officials become aware that a complaint has been filed, a large portion of time may have been lost, adversely affecting the completeness and timeliness of the answer.

INGAA asserts that a uniform requirement that every regulated entity appoint a corporate official responsible for receiving service of complaints, and a corollary requirement that complainants serve that official directly, will ensure that responses to those complaints are filed expeditiously, thus further the goals of Order No. 602. INGAA states that, regardless of whether service must be issued electronically—an issue that INGAA understands is reserved for determination in Docket No. PL98–1–000[4]—this requirement will ensure expeditious receipt and handling of a complaint by each regulated entity.

II. Discussion

In the Commission's view, INGAA's suggestion has merit and should not be limited to service of complaints. Under § 385.203 of the Commission's existing regulations (Rule 203), the initial pleading or tariff or rate filing of a person must contain, among other things, the name, address and telephone number of at least one person on whom service is to be made.[5] In most cases, a regulated entity initiates a proceeding with a filing such as a rate change filing.

[1] Complaint Procedures, Order No. 602, III FERC Stats. & Regs. ¶31,071 (1999), 64 FR 17087 (April 8, 1999).

[2] 18 CFR 385.206(c).

[3] Certain aspects of the service requirements have been raised on rehearing of Order No. 602 and are being modified in Order No. 602–A, which is being issued contemporaneously with this NOPR.

[4] Public Access to Information and Electronic Filing.

[5] 18 CFR 385.203.

As part of the initial filing, it is required to designate a person to receive service under Rule 203. That person will be placed on the official service list of the proceeding. In addition, when a party makes a filing in a docketed proceeding, it is required to designate a person to receive service. That person's name is also placed on the official service list of the proceeding. The requirements and procedures currently followed under Rule 203 will not be changed.

There are, however, certain situations in which the Commission or another entity initiates a proceeding or some other action and a person to receive service has not otherwise been designated by the regulated entity under the Commission regulations. The filing of a complaint is one such situation. Other examples are petitions for declaratory order, show cause orders, data requests, investigatory letters, or where the Commission *sua sponte* initiates action under section 206 of the Federal Power Act or section 5 of the Natural Gas Act. In these situations, it would be efficient for persons wishing to serve pleadings on regulated entities, as well as the Commission, to be able to serve specific corporate officials. Designating a corporate official to receive service of complaints, declaratory orders, show cause orders, data requests, and investigatory letters would also allow regulated entities to receive pleadings as quickly as possible. This is especially important where the regulated entity has a short time to respond, for example when answering complaints or responding to Commission data requests.

Therefore, the Commission is proposing to add a new paragraph (i) to § 385.2010 (Rule 2010) to require that all entities regulated by the Commission designate at least one, but not more than two, corporate officials or other persons to receive service of certain types of pleadings where a person to receive service has not otherwise been designated under the Commission's regulations. Each regulated entity would be required to file with the Commission (1) the name of the corporate official or other person that is to receive service, (2) the title of the corporate official or person, if applicable, (3) the address of the official, including, where applicable, department, room number, or mail routing code, (4) the telephone number of the corporate official or person, (5) the facsimile number of the corporate official or person, if applicable, and (6) the electronic mail address of the corporate official or person, if applicable. Each regulated entity would have a continuing obligation to file updated information with the Commission.

The Commission also proposes to maintain a list of designated officials in the Office of the Secretary of the Commission and to make the list available to the public in hard copy and through the Commission's web site. For ease of use, the list will be divided by industry. This list will be separate and apart from the official service lists that the Secretary maintains for each proceeding pursuant to § 385.2010(c) of the Commission's regulations (Rule 2010). Thus, in situations where an official service list is maintained for an existing proceeding, a party would be required to serve the person designated by the regulated entity for that proceeding. Where there is no service list because, for example, the proceeding is initiated by the Commission or another entity, a party would be required to serve the person designated pursuant to proposed section 385.2010(i).

In addition, the Commission invites comments on what other ways the names of designated officials could be made available to interested persons. For example, should regulated entities be required to post the names of designated corporate officials on a company's EBB or web site? The Commission recognizes that certain entities regulated by the Commission may not have EBBs, web sites, or other electronic methods to make names of designated officials available to the public. Therefore, the Commission requests comments on what other methods of distribution, if any, are appropriate. For example, should a company be required to periodically mail the names of the designated corporate officials to its customers or other persons otherwise affected by its operations. The Commission realizes that if regulated entities are required to distribute the names of their designated corporate officials, the methods of distribution will likely have to be tailored to the particular industry. The Commission is also interested in receiving comments on what level of burden, if any, will a distribution requirement place on a regulated entity.

As discussed above, in order to implement the new service requirements, the Commission proposes to add a new section (i) to § 385.2010 (Rule 2010).[6] Placement of the requirements in the Rules of Practice and Procedure should provide sufficient notice of the obligations of both regulated entities and parties who desire to serve pleadings on regulated entities for purposes of initiating a proceeding before the Commission. However, the Commission requests comments on whether it is appropriate to place the new requirements in that section of the regulations or whether there may be other places in the regulations which would be more appropriate.

[6] 18 CFR 385.2010.

II. Information Collection Statement

The Commission finds that the information required to be provided by regulated entities is so minimal that it does not impose any measurable additional burden on regulated entities. Therefore, no public reporting burden estimates are being made.

IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[7] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[8] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[9] Therefore, an environmental assessment is unnecessary and has not been prepared in this notice of proposed rulemaking.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[10] The Commission is not required to make such analyses if a proposed rule would not have such an effect.[11]

In the Commission's view, this proposed rule would not have a significant economic impact on small entities. The companies that are regulated by the Commission, who would have to designate a corporate official to receive service, generally do

[7] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[8] 18 CFR 380.4.

[9] See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[10] 5 U.S.C. 601–612 (1994).

[11] 5 U.S.C. 605(b) (1994).

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not meet the RFA's definition of a small entity.[12] Further, it would be easier for any small entity to serve a pleading on a regulated company if that company had a specific official designated to receive service. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss.

The original and 14 copies of such comments must be received by the Commission before 5:00 p.m. October 4, 1999. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426 and should refer to Docket No. RM99–9–000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or below, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM99–9–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. RM99–9–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS links. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By direction of the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 385, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

2. In § 385.2010, new paragraph (i) is added to read as follows:

§ 385.2010 Service (Rule 2010).

* * * * *

(i) *Designation of corporate officials to receive service.* (1) Any entity subject to regulation by the Commission must designate at least one, but not more than two, corporate officials or other persons to receive service of complaints, petitions for declaratory order, show cause orders, data requests, investigatory letters or other documents where a person to receive service has not otherwise been designated under Commission regulations. Each entity must file with the Secretary of the Commission:

(i) The name of the corporate official or person that is to receive service;

(ii) The title of the corporate official or person, if applicable;

(iii) The address of the corporate official or person, including, where applicable, department, room number, or mail routing code;

(iv) The telephone number of the corporate official or person;

(v) The facsimile number of the corporate official or person, if applicable; and

(vi) The electronic mail address of the corporate official or person, if applicable.

(2) Each regulated entity has a continuing obligation to file with the Secretary of the Commission updated information concerning the corporate official or person designated to receive service.

(3) A list of corporate officials and persons designated to receive service pursuant to this paragraph (i) will be maintained by the Secretary of the Commission and will be made available to the public in hard copy upon request and through the Commission's web site at http://www.ferc.fed.us.

(4) Any person who wishes to serve a complaint or petition for declaratory order on any entity regulated by the Commission must serve the corporate official or person designated pursuant to this paragraph (i).

(5) The Commission will serve show cause orders, data requests, investigatory letters or other documents on the corporate official or person designated under this paragraph (i).

[FR Doc. 99–19882 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–P

[12] 5 U.S.C. 601(3)(1994).

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960–AE96

Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Determining Disability and Blindness; Clarification of "Age" as a Vocational Factor

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise the Social Security and Supplemental Security Income (SSI) disability regulations to clarify our consideration of "age" as a vocational factor at the last step of our sequential evaluation process for determining whether an individual is disabled under title II or title XVI of the Social Security Act (the Act). We also propose to amend our rules to better explain how we consider transferability of skills for individuals who are of "advanced age" (age 55 or older) in deciding whether such individuals can make an adjustment to other work.

DATES: To be sure that your comments are considered, we must receive them no later than October 4, 1999.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703; sent by telefax to (410) 966–2830, sent by E-mail to *regulations@ssa.gov*; or delivered to the Office of Process and Innovating Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, Acting Regulations Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, 1–(410) 965–3632 or TTY 1–(800) 988–5906 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION:

Background

The Act provides, in title II, for the payment of disability benefits to persons insured under the Act. Title II also provides for the payment of child's insurance benefits for persons who become disabled before age 22, and for the payment of widow's and widower's insurance benefits for disabled widows, widowers, and surviving divorced spouses of insured persons. In addition, the Act provides, in title XVI, for SSI payments to persons who are aged, blind, or disabled and who have limited income and resources.

For adults (including persons claiming child's insurance benefits based on disability under title II), "disability" is defined in the Act under both title II and title XVI as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." Sections 223(d) and 1614(a) of the Act also state that an individual "shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work."

To implement the process for determining whether an individual is disabled based upon this statutory definition, our regulations at §§ 404.1520 ad 416.920 provide for a five-step sequential evaluation process as follows:

1. Is the individual engaging in substantial gainful activity? If the individual is working and the work is substantial gainful activity, we find that he or she is not disabled. Otherwise, we proceed to step 2 of the sequence.

2. Does the individual have an impairment or combination of impairments that is severe? If the individual does not have an impairment or combination of impairments that is severe, we find that he or she is not disabled. If the individual has an impairment or combination of impairments that is severe, we proceed to step 3 of the sequence.

3. Does the individual's impairment(s) meet or equal the severity of an impairment listed in appendix 1 of subpart P of part 404 of our regulations? If so, and the duration requirement is met, we find that he or she is disabled. If not, we proceed to step 4 of the sequence.

4. Does the individual's impairment(s) prevent him or her from doing his or her past relevant work, considering his or her residual functional capacity? If not, we find that he or she is not disabled. If so, we proceed to step 5 of the sequence.

5. Does the individual's impairment(s) prevent him or her from performing other work that exists in the national economy, considering his or her residual functional capacity together with the "vocational factors" of age, education, and work experience? If so, and if the duration requirement is met, we find that the individual is disabled. If not, we find that he or she is not disabled.

As discussed in §§ 404.1569 and 416.969, at step 5 of the sequential evaluation process we used the medical-vocational rules that are set out in appendix 2 of subpart P of part 404. (By reference, § 416.969 provides that appendix 2 is also applicable to adults claiming SSI payments based on disability.) In general, the rules in appendix 2 take administrative notice of the existence of numerous, unskilled occupations at exertional levels defined in the regulations, such as "sedentary," "light," and "medium." Based upon a consideration of an individual's residual functional capacity, age, education, and work experience, the rules either direct a conclusion as to whether an individual is disabled at step 5 of the sequential evaluation process or provide a framework for making a decision at this step. Some rules in appendix 2 also direct a conclusion when an individual has "skills" acquired from previous skilled or semiskilled work that are "transferable" to other skilled or semiskilled work.

Our rules regarding age and skills are set out in §§ 404.1563, 404.1568, 416.963, and 416.968. The rules and explanatory text of appendix 2 of subpart) of part 404 also provide guidance for considering the vocational factors of age, education, and work experience that supplement the information on consideration of these vocational factors in §§ 404.1560–404.1569a and 416.960–416.969a.

The revisions we are proposing would clarify a number of our rules on the consideration of one of the vocational factors, "age," in §§ 404.1563 and 416.963. They would also clarify in new §§ 404.1568(d)(4) and 416.969(d)(4) how we determine whether individuals who are of "advanced age" (i.e., age 55 or older), including individuals in a subcategory of advanced age called "closely approaching retirement age" (i.e., age 60–64), have skills that are transferable to other work.

Summary of Proposed Changes

Sections 404.1563 and 416.963 Your Age as a Vocational Factor

We propose to revise the first sentence of paragraph (a) of §§ 404.1563 and 416.963, "General," to state more clearly that "age" means chronological age. We propose to do this because there has been some misunderstanding about how we consider the vocational factor of "age" at step 5 of the sequential evaluation process. In current paragraph (a) we state, in part, that *"Age* refers to how old you are (your chronological age) * * *." We use an individual's chronological age when we use the medical-vocational guidelines in appendix 2 to decide whether the individual can do other work. We do this because we built consideration of chronological age and its impact on an individual's ability to make an adjustment to other work into the medical-vocational guidelines in appendix 2, which also consider the person's education and work experience, as well as the person's

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physical and mental functioning (i.e., residual functional capacity).

In addition to defining "age" as how old you are (your chronological age), the first sentence of current paragraph (a) of §§ 404.1563 and 416.963, explains that "age" refers to the extent to which age affects an individual's ability to adapt to a new work situation and "to do work in competition with others." We propose to incorporate the principle intended in this statement into a new third sentence that clarifies our intent, as explained below.

The second sentence of proposed §§ 404.1563(a) and 416.963(a) would combine the second and third sentences of current paragraph (a). It would clarify our intent that, when we decide whether a person is disabled, we will not consider the person's age alone, but will consider his or her residual functional capacity, education, and work experience together with age.

The proposed new third sentence of paragraph (a) of §§ 404.1563 and 416.963 explains that, when we consider the vocational factor of "age" in determining an individual's ability to adjust to other work, we consider advancing age to be an increasingly limiting factor in the ability to make such an adjustment.

The new third sentence we are proposing in paragraph (a) of §§ 404.1563 and 416.963, incorporates the rule we intended in the first sentence of current §§ 404.1563(a) and 416.963(a), indicating that we consider the effects of age on an individual's ability "to do work in competition with others." This current provision, together with a provision regarding skills that are "highly marketable" in current §§ 404.1563(d) and 416.963(d) that we also propose to replace, has been interpreted by some United States Courts of Appeals contrary to our intent, to support holdings that our regulations provide for consideration of an individual's employability. The circuit courts in these cases did not hold that their conclusions were required by the Act, which prohibits consideration of whether an individual would be hired if he or she applied for work. See sections 223(d)(2) and 1614(a)(3)(B) of the Act. Rather, the courts relied on the language in these current provisions of our regulations. These proposed changes in the regulations are, therefore, necessary to clarify our intent in this area.

The fourth and fifth sentences of proposed §§ 404.1563(a) and 416.963(a) are substantially the same as the fourth and fifth sentences of the current rules. In the fourth sentence of the proposed rules, we propose to replace the current rules' reference to the ability to "do a significant number of jobs which exist in the national economy" with a reference to "the ability to do substantial gainful activity" to better reflect the definition of disability in the Act.

We propose to move the last sentence of paragraph (a) of §§ 404.1563 and 416.963 of the current rules to proposed §§ 404.1563(b) and 416.963(b). This sentence explains that we will not apply the age categories mechanically in a borderline situation, and we believe it will fit more logically with the provisions in proposed new paragraph (b), which would explain more fully how we apply the age categories.

We propose to add a new paragraph (b), entitled "How we apply the age categories," to §§ 404.1563 and 416.963. The new paragraph would explain that, if a person's age category changes during the period for which we are adjudicating a disability claim, we will use each of the age categories that is applicable to the person during the period for which we are deciding if the person is disabled. As already noted, we would also explain that in borderline age situations we will not apply the age categories mechanically. We also propose to explain that a "borderline" situation means that the individual is "within a few days to a few months" of reaching a higher age category, consistent with our current policy interpretation in Social Security Ruling 83–10, "Titles II and XVI: Determining Capability To Do Other Work—The Medical-Vocational Rules of Appendix 2," Social Security Rulings (C.E. 1983, p. 174). As we explain in that Social Security Ruling, we are unable to provide "fixed" guidelines since such guidelines themselves would reflect a mechanical approach. (See Social Security Ruling 83–10, ibid., p. 182.)

Because we propose to include a new paragraph (b) in §§ 404.1563 and 416.963, we would redesignate the remaining paragraphs, i.e., current paragraphs (b) through (e), as paragraphs (c) through (f) in the proposed rules.

Proposed paragraph (c) of §§ 404.1563 and 416.963, "Younger person," incorporates the rules for individuals who have not yet attained age 50 that are in current §§ 404.1563(b) and 416.963(b). The reference to "age 45" in the second sentence of current §§ 404.1563(b) and 416.963(b), in which we explain that in some circumstances "we consider age 45 a handicap in adapting to a new work setting," is actually a reference to individuals who are age 45 through 49, because the category "younger person" ends upon attainment of age 50. We propose to state this meaning plainly by changing "age 45" to "age 45–49." We also propose to revise the second sentence to remove the word "handicap," to make the language of paragraphs (c), (d), and (e) of the proposed rules consistent and to clarify our intent; i.e., to discuss the effects of age on the ability to make an adjustment to other work.

Proposed paragraph (d) of §§ 404.1563 and 416.963, "Person closely approaching advanced age," incorporates the rule for individuals age 50 through 54 that is in current §§ 404.1563(c) and 416.963(c). We propose to add the word "closely" to the heading of this paragraph for consistency with the text of the paragraph. We propose to replace the phrase at the end of the sentence in the current rule, "a significant number of jobs in the national economy," with the phrase, "other work," for consistency of language among the provisions of proposed paragraphs (c), (d), and (e) of §§ 404.1563 and 416.963. This is not intended to be a change in the standard, only a change for consistency among the provisions of these sections of the regulations.

Proposed paragraph (e) of §§ 404.1563 and 416.963, "Person of advanced age," incorporates the rules for individuals age 55 or older that are in the first sentence of current §§ 404.1563(d) and 416.963(d). As in the preceding paragraphs, we propose the replace the phrase, "ability to do substantial gainful activity," in the first sentence of the current rules with the phrase "ability to adjust to other work," so that paragraphs (c), (d), and (e) of §§ 404.1563 and 416.963 will contain consistent language.

We propose to revise the provisions that are in the second and third sentences of current §§ 404.1563(d) and 416.963(d) and to move these provisions to proposed new §§ 404.1568(d)(4) and 416.968(d)(4). We explain these proposed changes below, under the explanation of proposed §§ 404.1568(d)(4) and 416.968(d)(4). We propose to include in §§ 404.1563(e) and 416.963(e) an appropriate cross-reference to proposed § 404.1568(d) or § 416.968(d) to make it easier to find the provisions in their new location.

Sections 404.1568 and 416.968 Skill Requirements

We are proposing to add new §§ 404.1568(d)(4) and 416.968(d)(4), "Transferability of skills for individuals of advanced age," to our regulations addressing skills and their transferability. The proposed new paragraph would incorporate and clarify the provisions in the second and third sentences of current §§ 404.1563(d) and 416.963(d). In the current regulations, these sentences provide rules regarding skills and their transferability for individuals of "advanced age" (i.e., age 55 or older) who have the residual functional capacity for no more than "sedentary" work, and for individuals who are "closely approaching retirement age" (i.e., age 60–64) who have the residual functional capacity for no more than "light" work. We believe that they more logically belong in the sections of our regulations that discuss our rules regarding skills and their transferability; i.e., §§ 404.1568 and 416.968. We are also proposing to revise these provisions to clarify our intent, to make their language consistent with current provisions in our regulations, and to be consistent with other provisions in these proposed rules.

The second sentence of current §§ 404.1563(d) and 416.963(d) states that if a person of advanced age has a severe impairment(s) and cannot do medium work (i.e., the person is limited to light or sedentary work), the person "may" not be able to work unless he or she has transferable skills. In fact, under our current rules, we will find that such a person cannot make an adjustment to other work (i.e., is disabled) unless he or she has skills that can be transferred to other jobs the person can do despite his or her impairment(s). We propose to modify the provision to make this clear.

We are proposing to incorporate in proposed new §§ 404.1568(d)(4) and 416.968(d)(4) provisions from §§ 201.00(f) and 202.00(f) of appendix 2 to subpart P of part 404 of our regulations, the Medical-Vocational Guildelines, to clarify our original intent regarding the last sentence of current §§ 404.1563(d) and 416.963(d) and for consistency in our rules. The proposed revisions explain that, for an individual of advanced age (i.e., age 55 or older) whose residual functional capacity permits him or her to do no more than sedentary work, we will find that such individual's skills are transferable to skilled or semiskilled sedentary work only if the sedentary work is so similar to the individual's previous work that the individual would need to make "very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry." In addition, we propose to include in proposed new §§ 404.1568(d)(4) and 416.986(d)(4) a provision to clarify how we consider the transferability of skills for a person who is of advanced age but has not attained age 60 (i.e., a person age 55–59) and who has a severe impairment(s) that limits him or her to no more than light work. We explain that for such a person we will apply the rules in paragraphs (d)(1) through (d)(3) of current §§ 404.1568 and 416.968 to determine if the person has skills that are transferable to skilled or semiskilled light work. The revisions also explain that, for an individual of advanced age who is "closely approaching retirement age" (i.e., age 60–64) and whose residual functional capacity permits him or her to do no more than light work, we will find that such individual's skills are transferable to skilled or semiskilled light work only if the light work is so similar to the individual's previous work that the individual would need to make "very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry."

In making these revisions, we would replace the statement in current §§ 404.1563(d) and 416.963(d), "unless you have skills which are highly marketable," with the foregoing language taken from §§ 201.00(f) and 202.00(f) of appendix 2. This will clarify our original intent that the provisions of current §§ 404.1563(d) and 416.963(d) are consistent with, and must be read in the context of, the provisions of §§ 201.00(f) and 202.00(f) or appendix 2.

There is no reference to "highly marketable" skills in the Act, which prohibits consideration of whether an individual would be hired if he or she applied for work. (See sections 223(d)(2) and 1614(a)(3)(B) of the Act.) The phrase was one of the additions we made to the regulations under the "common sense" redodification in 1980. (See 45 FR 55566, August 20, 1980.) When we issued those regulations, we did not intent to introduce the term as a statement of a new rule or as a change in existing rules. We intended only to contribute to public understanding of the provisions regarding transferability of skills for older workers in the Medical-Vocational Guidelines in appendix 2. (The language in appendix 2 was not changed by the "common sense" redodification in 1980.) However, by using different language in current §§ 404.1563(d) and 416.963(d) from that in appendix 2, we have inadvertently given the mistaken impression that we meant to establish a separate criterion for these individuals beyond what we already provide in appendix 2. That was not our intent. (See, e.g., Social Security Ruling 82–41, "Titles II and XVI: Work Skills and Their Transferability as Intended by the Expanded Vocational Factors Regulations Effective February 26, 1979," Social Security Rulings (C.E. 1982, pp. 196, 202); Final Rules for Adjudicating Disability Claims in Which Vocational Factors Must Be Considered, 43 FR 55349, 55353–55354 (November 28, 1978).)

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Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order (E.O.) 12866. Thus, they were not subject to OMB review. We have also determined that these proposed rules meet the plain language requirement of E.O. 12866 and the President's memorandum of June 1, 1998.

Clarity Of These Proposed Rules

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Woule a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Flexibility Act

We certify that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations impose no additional reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 23, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart P of part 404 and subpart I of part 416 of 20 CFR chapter III as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Section 404.1563 is amended by revising paragraph (a), redesignating paragraphs (b) through (e) as paragraphs (c) through (f), adding a new paragraph (b), and revising redesignated paragraphs (c), (d) and (e) to read as follows:

§ 404.1563 Your age as a vocational factor.

(a) *General.* "Age" means your chronological age. When we decide whether you are disabled under § 404.1520(f)(1), we will consider your chronological age in combination with your residual functional capacity, education, and work experience; we will not consider your ability to adjust to other work on the basis of your age alone. In determining the extent to which age affects a person's ability to adjust to other work, we consider advancing age to be an increasingly limiting factor in the person's ability to make such an adjustment, as we explain in paragraphs (c) through (e) of this section. If you are unemployed because of your age, but you still have the ability to do substantial gainful activity, we will find that you are not disabled. In paragraphs (b) through (e) of this section and in appendix 2, we explain in more detail how we consider your age as a vocational factor.

(b) *How we apply the age categories.* When we make a finding about your ability to do other work under § 404.1520(f)(1), we will use the age categories in paragraphs (c) through (e) of this section. We will use each of the age categories that applies to you during the period for which we must determine if you are disabled. We will not apply the age categories mechanically in a borderline situation. If you are within a few days to a few months of reaching an older age category, and using the older age category could result in a determination or decision that you are disabled, we will consider whether to use the older age category after evaluating the overall impact of all of your vocational factors.

(c) *Younger person.* If you are a younger person (under age 50), we generally do not consider that your age will seriously affect your ability to adjust to other work. However, in some circumstances, we consider that persons age 45–49 are more limited in their ability to adjust to other work than persons who have not attained age 45. See Rule 201.17 in appendix 2.

(d) *Person closely approaching advanced age.* If you are closely approaching advanced age (age 50–54), we will consider that your age along with a severe impairment(s) and limited work experience may seriously affect your ability to adjust to other work.

(e) *Person of advanced age.* We consider that at advanced age (age 55 or older) chronological age significantly affects a person's ability to adjust to other work. We have special rules for persons of advanced age and for persons in this category who are closely approaching retirement age (age 60–64). See § 404.1568(d)(4).

* * * * *

3. Section 404.1568 is amended by adding a new paragraph (d)(4) to read as follows:

§ 404.1568 Skill requirements.

* * * * *

(d) *Skills that can be used in other work (transferability)* * * *.

* * * * *

(4) *Transferability of skills for individuals of advanced age.* If you are of advanced age (age 55 or older), and you have a severe impairment(s) that limits you to sedentary or light work, we will find that you cannot make an adjustment to other work unless you have skills that you can use in (transfer to) other skilled or semiskilled work that you can do despite your impairment(s). We will decide if you have transferable skills as follows. If you are of advanced age and you have a severe impairment(s) that limits you to no more than sedentary work, we will find that you have skills that are transferable to skilled or semiskilled sedentary work only if the sedentary work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. (See § 404.1567(a) and § 201.00(f) of appendix 2.) If you are of advanced age but have not attained age 60, and you have a severe impairment(s) that limits you to no more than light work, we will apply the rules in paragraphs (d)(1) through (d)(3) of this section to decide if you have skills that are transferable to skilled or semiskilled light work (see § 404.1567(b)). If you are closely approaching retirement age (age 60–64) and you have a severe impairment(s) that limits you to no more than light work, we will find that you have skills that are transferable to skilled or semiskilled light work only if the light work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. (See § 404.1567(b) and § 202.00(f)) of appendix 2.)

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

4. The authority citation for subpart I of part 416 continues to read as follows:

AUTHORITY: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

5. Section 416.963 is amended by revising paragraph (a), redesignating paragraphs (b) through (e) as paragraphs (c) through (f), adding a new paragraph (b), and revising redesignated paragraphs (c), (d) and (e) to read as follows:

§ 416.963 Your age as a vocational factor.

(a) *General.* "Age" means your chronological age. When we decide whether you are disabled under § 416.920(f)(1), we will consider your chronological age in combination with your residual functional capacity, education, and work experience; we will not consider your ability to adjust to other work on the basis of your age alone. In determining the extent to which age affects a person's ability to adjust to other work, we consider advancing age to be an increasingly limiting factor in the person's ability to make such an adjustment, as we explain in paragraphs (c) through (e) of this section. If you are unemployed because of your age, but you still have the ability to do substantial gainful activity, we will find that you are not disabled. In paragraphs (b) through (e) of this section and in appendix 2 of subpart P of part 404 of this chapter, we explain in more detail how we consider your age as a vocational factor.

(b) *How we apply the age categories.* When we make a finding about your ability to do other work under § 416.920(f)(1), we ill use the age categories in paragraphs (c) through (e) of this section. We will use each of the age categories that applies to you during the period for which we must determine if you are disabled. We will not apply the age categories mechanically in a borderline situation. If you are within a few days to a few months of reaching an older age category, and using the older age category could result in a determination or decision that you are disabled, we will consider whether to use the older age category after evaluation the overall impact of all of your vocational factors.

(c) *Younger person.* If you are a younger person (under age 50), we generally do not consider that your age will seriously affect your ability to adjust to other work. However, in some circumstances, we consider that persons age 45–49 are more limited in their ability to adjust to other work than persons who have not attained age 45. See Rule 201.17 in appendix 2 of subpart P of part 404 of this chapter.

(d) *Person closely approaching advanced age.* If you are closely approaching advanced age (age 50–54), we will consider that your age along with a severe impairment(s) and limited work experience may seriously affect your ability to adjust to other work.

(e) *Person of advanced age.* We consider that at advanced age (age 55 or older) chronological age significantly affects a person's ability to adjust to other work. We have special rules for persons of advanced age and for persons in this category who are closely approaching retirement age (age 60–64). See § 16.968(d)(4).

* * * * *

6. Section 416.96 is amended by adding a new paragraph (d)(4) to read as follows:

§ 416.968 Skill requirements.

* * * * *

(d) *Skills that can be used in other work (transferability)* * * *.

* * * * *

(4) *Transferability of skills for individuals of advanced age.* If you are of advanced age (age 55 or older), and you have a severe impairment(s) that limits you to sedentary or light work, we will find that you cannot make an adjustment to other work unless you have skills that you can use in (transfer to) other skilled or semiskilled work that you can do despite your impairment(s). We will decide if you have transferable skills as follows. If you are of advanced age and you have a severe impairment(s) that limits you to no more than sedentary work, we will find that you have skills that are transferable to skilled or semiskilled sedentary work only if the sedentary work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. (See § 416.967(a) and § 201.00(f) of appendix 2 of subpart P of part 404 of this chapter.) If you are of advanced age but have not attained age 60, and you have a severe impairment(s) that limits you to not more than *light* work, we will apply the rules in paragraphs (d)(1) through (d)(3) of this section to decide if you have skills that are transferable to skilled or semiskilled light work (see § 416.967(b)). If you are closely approaching retirement age (age 60–64) and you have a severe impairment(s) that limits you to no more than *light* work, we will find that you have skills that are transferable to skilled or semiskilled light work only if the light work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. (See § 416.967(b) and § 202.00(f) of appendix 2 of subpart P of part 404 of this chapter.)

[FR Doc. 99–19989 Filed 8–3–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98P–0683]

Food Labeling: Health Claims; Soy Protein and Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; notice of extension of period for issuance of final rule.

SUMMARY: The Food and Drug Administration (FDA) is extending, for 80 days, the period for issuance of a final rule in response to its proposal of November 10, 1998, entitled "Food Labeling: Health Claims; Soy Protein and Coronary Heart Disease." FDA's regulations require the agency to issue a notice of such extension if it finds, for cause, that it is unable to issue a final rule within 270 days from the November 10, 1998, date of publication of the proposal. Comments to that proposal have persuaded the agency of the need to propose an alternative procedure to assess compliance with qualifying amounts of soy protein in foods that may bear the proposed health claim. FDA will publish a reproposal of the procedure for compliance assessment in the **Federal Register** shortly. The agency then intends to issue one final rule in response to both proposals on or before October 25, 1999.

FOR FURTHER INFORMATION CONTACT: Susan M. Pilch, Center for Food Safety and Applied Nutrition (HFS–465), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4500.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 22, 1997 (62 FR 28229), FDA published a final rule to amend § 101.70 (21 CFR 101.70) of its regulations to provide a timeframe in which it will issue, in rulemakings on health claims, final rules announcing whether it will authorize the use of the claim at issue and to provide for extensions of that timeframe for cause. In that final rule, FDA adopted § 101.70(j)(4)(i), which provides that within 270 days of the date of publication of a proposal to authorize a health claim, the agency will publish a final rule that either authorizes the use of a health claim or explains why the agency has decided not to authorize one. FDA also adopted § 101.70(j)(4)(ii), which provides that, for cause, the agency may extend, no more than twice, the period in which it will publish a final rule and that each such extension

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will be for no more than 90 days. This regulation further requires that FDA publish a notice of any such extension in the **Federal Register**, and that it explain in that notice the basis for the extension, the length of the extension, and the date by which the final rule will be published (§ 101.70(j)(4)(ii)).

In the **Federal Register** of May 14, 1998 (63 FR 26717), FDA published a final rule in part to amend § 101.70 in response to section 302 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) . Section 302 of FDAMA amended section 403(r)(4)(A)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(4)(A)(i)) to provide, in part, that FDA must publish a final rule on a health claim petition within 540 days of receipt of the petition or FDA is required to provide the relevant House and Senate legislative committees with the reason for failing to do so. Accordingly, FDA amended § 101.70(j)(4)(ii) to state that rulemakings on health claim petitions shall be completed within 540 days of receipt of those petitions. FDA noted that, depending upon how much time the agency uses to file a petition and publish a proposed rule in response to it, the agency may be limited to only one extension under § 101.70(j)(4)(ii), and the extension may be limited to fewer than 90 days (63 FR 26717 at 26718).

In the **Federal Register** of November 10, 1998 (63 FR 62977), FDA proposed adding § 101.82 to authorize the use, on food labels and in food labeling, of health claims on the association between soy protein and reduced risk of coronary heart disease (CHD) (the soy protein proposed rule). In the soy protein proposed rule, the agency presented the rationale for a health claim on this food-disease relationship as provided for under the standard in section 403(r)(3)(B)(i) of the act and 21 CFR 101.14(c) of FDA's regulations. The agency tentatively concluded that, based on the totality of publicly available scientific evidence, soy protein included in a diet low in saturated fat and cholesterol may reduce the risk of CHD. The soy protein proposed rule included qualifying criteria for the purpose of identifying soy protein-containing foods eligible to bear the proposed health claim and a proposed analytical method for assessing compliance with the qualifying criteria. Comments received in response to the soy protein proposed rule have persuaded FDA that the proposed method for assessment of compliance is inadequate for many products. Accordingly, FDA intends to publish, in a separate document, a reproposal for an alternative procedure. This procedure would rely on measurement of total protein and require manufacturers, in certain circumstances, to maintain records that document the amount of soy protein in products and to make these records available to appropriate regulatory officials for inspection and copying upon request.

To publish a final rule regarding a health claim for soy protein and CHD within 270 days of the date of publication of the proposed rule, which was November 10, 1998, the agency should publish the final rule on or before August 6, 1999. However, because of the need to provide for public notice and comment on the reproposal, FDA hereby gives notice that there is cause to extend the period for publication of the final rule for a period of 80 days. FDA will, thus, publish a single final rule in response to both proposals on or before October 25, 1999, which is within 540 days of the date of receipt of the petition.

Dated: July 28, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–19979 Filed 8–3–99; 8:45 am]

BILLING CODE 4160–01–F

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 99–5]

Notice and Recordkeeping for Subscription Digital Transmissions

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is proposing to amend the regulation that requires the filing of an initial notice of digital transmissions of sound recordings under statutory license with the Copyright Office to adjust for changes brought about by the passage of the Digital Millennium Copyright Act of 1998.

DATES: Comments are due September 3, 1999.

ADDRESSES: An original and ten copies of the comments shall be delivered to: Office of General Counsel, Copyright Office, LM–403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. 20559–6000, or mailed to: David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1995, Congress enacted the Digital Performance Act in Sound Recordings Act of 1995 ("DPRA"), Public Law 104–39, 109 Stat. 336 (1995). The DPRA gave to sound recording copyright owners an exclusive right to perform their works publicly by means of a digital audio transmission. 17 U.S.C. 106(6). The new right, however, was subject to certain limitations, including exemptions for certain digital transmissions, 17 U.S.C. 114(d)(1), and the creation of a statutory license for nonexempt digital subscription services. 17 U.S.C. 114(d)(2).

The statutory license requires adherence to regulations under which copyright owners may receive reasonable notice of use of their sound recordings under the statutory license, and under which entities performing the sound recordings shall keep and make available records of such use. 17 U.S.C. 114(f)(2). On May 13, 1996, the Copyright Office initiated a rulemaking proceeding to promulgate regulations to govern the notice and recordkeeping requirements. 61 FR 22004 (May 13, 1996). This rulemaking concluded with the issuance of interim rules to govern the filing of an initial notice of digital transmissions of sound recordings under statutory license, 37 CFR 201.35, and the filing of reports of use of sound recordings under statutory license, 37 CFR 201.36. *See* 63 FR 34289 (June 24, 1998).

At the time these regulations were announced, only three noninteractive, nonsubscription, digital transmissions services (DMX, Inc., Digital Cable Radio Associates/Music Choice, and Muzak, Inc.) were in operation and considered eligible for the license. Consequently, the Office prescribed a period for filing initial notices such that all existing services, which were already operating in accordance with the section 114 license, had to submit their notices within 45 days of the effective date of the regulation. Section 201.35(f) reads, in part, as follows: "A Service shall file the Initial Notice with the Licensing Division of the Copyright Office prior to the first transmission of sound recordings under the license, *or within 45 days of the effective date of this regulation.*" (Emphasis added).

Subsequently, the President signed into law the Digital Millennium Copyright Act of 1998 ("DMCA"). Among other things, the DMCA expanded the section 114 compulsory license to allow a nonexempt, eligible nonsubscription transmission service and a pre-existing satellite digital audio radio service to perform publicly a sound recording by means of certain digital audio transmissions, subject to notice and recordkeeping requirements. 17 U.S.C. 114(f).

The notice and recordkeeping requirements found in §§ 201.35 and 201.36 would appear to apply to any service eligible for the section 114 license, including those newly eligible to use the license under the amended provisions of the license. However, these regulations provide no opportunity for a newly eligible nonsubscription transmission service which was in service prior to the passage of the DMCA to make a timely filing of its initial notice of transmission.

Therefore, the Copyright Office is proposing an amendment to § 201.35(f) which would extend the period for filing the initial notice to October 15, 1999, in order to allow the eligible nonsubscription services which were in operation prior to the passage of the DMCA an opportunity to file their initial notice timely. Comments on the extension of the filing period must be filed with the Copyright Office within September 3, 1999.

The Office also recognizes that § 201.36, which prescribes rules detailing how services shall notify copyright owners of the use of their sound recordings, what to include in that notice, and how to maintain and make available such records, does not apply to those services newly eligible for the section 114 license under the DMCA. Currently, § 201.36(c) requires "Reports of Use [to] be served upon Collectives that are identified in the records of the Licensing Division of the Copyright Office as having been designated under the statutory license, either by settlement agreement . . ., or by decision of a Copyright Arbitration Royalty Panel . . ., or by an order of the Librarian . . . ." At this time, no collective has been designated in accordance with any of the methods enumerated in § 201.36(c) for the purpose of collecting royalty fees from the newly eligible services, nor have any rates or terms been set for the use of the license by these services. *See* 63 FR 65555 (November 27, 1998). The newly eligible services and the interested copyright owners, however, continue negotiations to reach industry-wide agreement on rates and terms for the expanded section 114 license. In deference to these negotiations, the Office will refrain from initiating at this time a rulemaking proceeding to consider amendments to the recordkeeping regulations.

Regulatory Flexibility Act

Although the Copyright Office, located in the Library of Congress which is part of the legislative branch, is not an "agency" subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Register of Copyrights has considered the effect of the proposed amendment on small businesses. The Register has determined that the amendment would not have a significant economic impact on a substantial number of small entities that would require provision of special relief for small entities. The proposed amendment is designed to minimize any significant economic impact on small entities.

List of Subjects in 37 CFR Part 201

Copyright.

Proposed Regulations

For the reasons set forth in the preamble, part 201 of title 37 of the Code of Federal Regulations is proposed to be amended as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.35(f) is amended by removing the phrase "or within 45 days of the effective date of this regulation." and adding in its place "or by October 15, 1999."

Dated: July 30, 1999.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 99–19988 Filed 8–3–99; 8:45 am]

BILLING CODE 1410–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6413–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant a petition submitted by BWX Technologies, Inc. (formerly Babcock & Wilcox), to exclude (or "delist") certain solid wastes generated at its Lynchburg, Virginia, facility from the lists of hazardous wastes contained in Subpart D of Title 40 of the Code of Federal Regulations Part 261. This action responds to a "delisting" petition submitted pursuant to 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of 40 CFR Parts 260 through 266, 268, and 273, and pursuant to 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. This proposed decision is based on an evaluation of waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned waste will be excluded from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

DATES: EPA is requesting public comments on this proposed decision. Comments will be accepted until September 20, 1999. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision by filing a request by August 19, 1999. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Two copies of any comments should be sent to David M. Friedman, Technical Support Branch (3WC11), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029.

Requests for a hearing should be addressed to John A. Armstead, Director, Waste and Chemicals Management Division (3WC00), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029.

The RCRA regulatory docket for this proposed rule is located at the offices of U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA, 19103–2029, and is available for viewing from 8:30 a.m. to 5:00 p.m., Monday through Friday, excluding Federal holidays. Call David M. Friedman at (215) 814–3395 for appointments. The public may copy material from the regulatory docket at $0.15 per page. The docket for this proposed rule is also located at the offices of the Campbell County Administrator's Office, P.O. Box 100,

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Main Street—Haberer Building 2nd floor, Rustburg, VA, 24588, and is available for viewing from 8:30 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. Call Kathy Elliot at (804) 332–9619 for appointments.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact David M. Friedman at the address above or at (215) 814–3395.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published at 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of 40 CFR Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have its wastes excluded, a petitioner must show that wastes generated at its facility do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a)(1) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require EPA to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. See 40 CFR 260.22(a)(2). Accordingly, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics defined in Subpart C of 40 CFR Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity), and must present sufficient information for EPA to determine whether the waste contains any other constituents at hazardous levels. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics defined in Subpart C of 40 CFR Part 261.

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived-from" rules and remanded them to EPA on procedural grounds. *Shell Oil Co.* v. *EPA*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the "mixture" and "derived-from" rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). EPA plans to address issues related to waste mixtures and residues in a future rulemaking.

B. Approach Used To Evaluate This Petition

BWX Technologies, Inc.'s (hereinafter, BWX Technologies') petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Based on this review, EPA tentatively agreed with the petitioner, pending public comment, that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.

EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that other factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, and considered the concentration of the constituents in the waste, the toxicity of the constituents, their tendency to migrate and to bioaccumulate, their persistence in the environment if released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. Since BWX Technologies' waste is presently landfilled, EPA determined that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, EPA used a fate and transport model to predict the maximum concentrations of hazardous constituents that may be released from the petitioned waste and to determine the potential impact of BWX Technologies' petitioned waste on human health and the environment. Specifically, EPA used the estimated waste volume and the maximum reported extract concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations were then compared directly to the health-based levels at an assumed excess cancer risk of 10^{-6}, which is the target risk level used in delisting decision-making for the hazardous constituents of concern.

EPA believes that this fate and transport model represents a reasonable worst-case scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C (40 CFR Parts 260 through 266 and 268). The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, should not pose a threat to human health or the environment.

EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, EPA determined that it would be inappropriate to request ground water monitoring data because BWX Technologies currently disposes of the petitioned waste off-site. For petitioners using off-site management, EPA believes that, in most cases, the ground water monitoring data would not be meaningful. Most commercial land disposal facilities accept waste from numerous generators. Any ground water contamination or leachate would be characteristic of the total volume of waste disposed of at the facility. In most cases, EPA believes that it would be impossible to isolate ground water impacts associated with any one waste disposed of in a commercial landfill. Therefore, EPA did not request ground water monitoring data from BWX Technologies.

Based on its evaluation of BWX Technologies' delisting petition, EPA developed a list of constituents for the verification testing program. Proposed maximum allowable leachate concentrations for these constituents were derived by back-calculating from the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. These concentrations (*i.e.*, "delisting levels") are part of the proposed verification testing conditions of the exclusion.

Like other facilities seeking exclusions, BWX Technologies' exclusion (if granted) would be contingent upon the facility conducting analytical testing of representative samples of the petitioned waste at the Lynchburg, VA facility. This testing would be necessary to verify that the treatment system is operating as demonstrated in the petition submitted on September 30, 1994, and in subsequent submissions. Specifically, the verification testing requirements would be implemented to demonstrate that the facility will continue to generate nonhazardous waste (*i.e.*, waste that meets the EPA's verification testing conditions).

EPA's proposed decision to delist waste from BWX Technologies' facility is based on the information submitted in support of today's proposed rule. This information includes descriptions of the waste generation processes and the wastewater treatment system at the Lynchburg, VA facility, and data from the analysis of representative samples of the petitioned waste. HSWA specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

BWX Technologies, Inc., Naval Nuclear Fuel Division, Mount Athos Road, Lynchburg, Virginia 24505–0785.

A. Petition for Exclusion

Babcock & Wilcox acquired the Mt. Athos site and began operations there in 1955. BWX Technologies, Inc. (an affiliate of the Babcock & Wilcox Company) was created as the result of an internal corporate reorganization on July 1, 1997. BWX Technologies, Naval Nuclear Fuel Division, located in Lynchburg, Virginia, is engaged in the production of nuclear fuel assemblies for the United States Department of Energy. They manufacture nuclear fuels and reactor components for commercial and military use. The BWX Technologies facility generates wastewaters which are treated in an on-site wastewater treatment plant that consists of four (4) discrete wastewater treatment systems. These are the pickle acid, low-level radioactive, sanitary, and Lamella systems. Filter cake solids were originally generated from the combined flows of the pickle acid and the Lamella systems. However, these systems were separated with the introduction of a microfiltration system to the pickle acid system in 1992. The metal finishing operations, which consist of cleaning, hydrofluoric and nitric acid pickling, and anodizing, generate wastewaters that are treated in the pickle acid treatment system. The treatment of these wastewaters in the pickle acid treatment system ultimately generates a wastewater treatment sludge in the form of a filter cake which is listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum." The hazardous waste F006 is listed for cadmium, hexavalent chromium, nickel and complexed cyanide (40 CFR Part 261, Appendix VII). The filter cake from the pickle acid system is the only waste stream that is the subject of the BWX Technologies' petition.

Review of this petition included consideration of the original listing criteria, as well as the additional factors required by HSWA. See Section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22.

B. Background

On September 30, 1994, BWX Technologies (then Babcock & Wilcox) petitioned EPA to exclude from the lists of hazardous waste listed at 40 CFR 261.31 both past and currently generated filter cake solids produced by its wastewater treatment facility from the treatment of wastewaters in the pickle acid treatment system because it believed that the petitioned waste did not meet any of the criteria under which the waste was listed and that there were no additional constituents or factors that would cause the waste to be hazardous. Subsequently, BWX Technologies provided additional information to complete its petition. Specifically, in its petition, BWX Technologies requested that EPA grant an exclusion for its past generated filter cake consisting of 551 cubic yards per calendar year (1991 generation rate) and the currently generated filter cake consisting of 247 cubic yards per calendar year (1993 generation rate). BWX Technologies divided its request into these two categories based on the installation of a microfiltration system in 1992 which minimized the volume of filter cake production from the treatment of the pickle acid wastewaters. More recently, BWX Technologies updated the filter cake generation rate. Based on additional information submitted by BWX Technologies on December 17, 1998, the facility is currently generating filter cake solids at a maximum rate of 267 cubic yards per calendar year. By letter dated March 11, 1999, BWX Technologies requested that the delisting be based on a waste volume of 300 cubic yards per calendar year to allow for an increase in the waste generation rate. In support of its petition, BWX Technologies submitted detailed descriptions of its manufacturing and wastewater treatment process, a schematic diagram of the wastewater treatment process, and analytical testing results for representative samples of the petitioned wastes, including: (1) the hazardous characteristics of ignitability and corrosivity; (2) total oil and grease; (3) Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) analysis for volatile and semi-volatile organic compounds and Toxicity Characteristic (TC) metals plus antimony, beryllium, cobalt, copper, nickel, thallium, tin, vanadium and zinc; (4) total constituent analysis for volatile and semi-volatile organic compounds and TC metals plus antimony, beryllium, cobalt, copper, nickel, thallium, tin, vanadium and zinc; (5) total cyanide, total sulfide, total fluoride and total formaldehyde; and (6) TCLP analysis for fluoride. BWX Technologies developed a list of constituents of concern by comparing a list of all raw materials used in the plant that could possibly appear in the petitioned waste with those found in 40 CFR Part 261, Appendix VIII and 40 CFR part 264, Appendix IX. Based on a knowledge of their metal working processes and other processes at the facility and of the treatment operation, BWX Technologies determined that certain classes of chemical constituents would not be anticipated to be present

in the filter cake. These chemicals include semi-volatile organic constituents (except those constituents listed in 40 CFR 261.24), pesticides, herbicides, dioxins and furans.

In June, 1990, the filter cake was found to contain trace levels of special nuclear materials (*i.e.*, uranium at typically less than 30 picocuries per gram). As of October 1991, this special nuclear material contamination was eliminated from the filter cake. Because the past generated filter cake was contaminated with special nuclear materials, it was placed in drums and roll-off boxes and disposed of at a Nuclear Regulatory Commission (NRC) approved hazardous waste landfill after the NRC granted an exemption for filter cake as a low-level radioactive material. Beginning in 1992, a Memtek Advanced Membrane Filtration System has been utilized as part of the BWX Technologies' wastewater treatment process for the pickling acid system. Currently generated filter cake from the Memtek system is not contaminated by special nuclear materials and is being disposed off-site at a RCRA Subtitle C permitted facility.

In BWX Technologies' petition, the past generated filter cake contains a radioactive component; therefore, it is classified as a "mixed waste" under RCRA. A "mixed waste" is defined as a waste that contains both a radioactive component subject to the Atomic Energy Act (AEA), and a hazardous component subject to RCRA. There are two parts of the RCRA program that states implement. These are the RCRA-base program (pre-HSWA) and HSWA. The hazardous components of mixed wastes come under RCRA base program. Under Section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA hazardous waste program within the state. When new, more stringent federal requirements were promulgated or enacted, the state was obligated to enact equivalent authority within specified time frames. New federal requirements did not take effect in authorized states until the state adopted the requirements as state law. Up until 1986, the applicability of RCRA to mixed waste was unclear. To clarify the applicability of RCRA to mixed waste, EPA issued a clarification notice on July 3, 1986 (51 FR 24504). In that notice, EPA announced that the hazardous component of mixed waste is subject to RCRA jurisdiction and that the radioactive portion of the waste (source, special nuclear, and by-product material) is subject to the Atomic Energy Act (AEA). EPA also required states which had obtained RCRA base program authorization prior to the July 3, 1986 notice to revise their programs to clarify the regulatory status of mixed waste (*i.e.*, to include the hazardous component of mixed waste in their program definition of solid waste), and to apply for EPA authorization to their revised program. The Commonwealth of Virginia had been granted authorization to administer the RCRA base program prior to July 3, 1986. However, as of this date, Virginia has not been specifically authorized for mixed waste. In a State which is authorized for the RCRA base program, but not specifically authorized for mixed waste, this waste is not subject to the Federal hazardous waste requirements until the State revises its program and receives authorization specifically for mixed waste. Therefore, EPA cannot consider for exclusion the past generated filter cake solids at BWX Technologies.

BWX Technologies' Naval Nuclear Fuel Division includes several operations which generate wastewaters which are influent to the pickle acid treatment system. A brief description of these operations follows.

(1) Metal Processing—Metal components undergo a metal forming operation and subsequent heat treatment. Solvents, including acetone, xylene, and trichloroethylene (TCE), were used for pre- and post-cleaning to remove various substances. Grit blasting is conducted to remove the oxide film or scale which develops during heat treatment. Prior to 1994, metal components were degreased using ultrasonic detergent cleaning or TCE. In 1994, BWX Technologies eliminated the use of xylene, and the use of acetone and TCE have been strictly limited. None the these solvents (acetone, xylene and TCE) is currently used for pre- or post-cleaning of metal components. Metal components are currently cleaned with aqueous-based cleaning solutions and soaps. Other metal processing operations include corrosion testing, welding, and component inspection.

(2) Metal Pickling—Once cleaned and inspected, metal components are pickled in an aqueous acid solution containing hydrofluoric acid and nitric acid. The metal is then passed through cold and hot water rinse baths.

(3) Metal Anodizing—The final metal components are anodized with a caustic solution followed by water rinses.

(4) Copper Recovery—BWX Technologies conducts a copper dissolution operation using a concentrated nitric acid solution. The process combines the copper-laden spent nitric acid solution with dilute nitric acid rinses. In the past, the resultant solution was treated in an on-site copper recovery process. The copper was removed and sold as a copper oxide product. Non-acidic waste solutions from the copper recovery process were treated in the wastewater treatment plant (WWTP). The copper recovery system ceased operation in 1993. Since December 1993 spent copper nitrate solutions have been collected and shipped off-site as a hazardous waste for recovery.

(5) Hafnium and Inconel Pickling—Hafnium is pickled in the bath used for metal components (after the metal components have been pickled) or in a bath containing fresh nitric and hydrofluoric acid solutions. Inconel (a corrosion-resistant alloy of nickel and chromium) components are cleaned in an aqueous solution of hydrofluoric and nitric acids, and subsequently rinsed in cold and hot water.

(6) Aluminum Pickling and Anodizing—Aluminum components are pickled using a caustic solution, cleaned with an aqueous acid solution consisting of nitric and hydrofluoric acids, and rinsed in cold and hot water. Aluminum is anodized with a caustic solution followed by water rinses.

(7) Other Wastewater Streams Entering the WWTP—Four (4) intermittent wastewater streams have also been treated as part of the pickle acid wastewater system. These included: (a) rinsewater from the aluminum oxide grit blasting operation; (b) backwash of the softener, demineralizer, and sand filter components of the deionized water supply system; (c) effluent from the x-ray photography laboratory silver recovery process; and (d) a low flow sub-surface creek (*i.e.*, ground water seep) intercepted and treated for pH adjustment. Of these four (4) intermittent waste streams, the grit blasting operation is the only one that now discharges to the pickle acid wastewater system. The sub-surface creek, filter plant backwash and silver recovery flows are all treated in the Lamella System. According to BWX Technologies, the three (3) intermittent waste streams that are now treated in the Lamella System did not have an impact on the pickle acid system, and the removal of these streams has had no significant effect on the characteristics of the filter cake.

(8) Acid clean line—This line was added in 1994 as part of a new manufacturing process. It consists of a series of adjacent tanks including hot detergent cleaning, acid cleaning and a variety of rinse tanks. The acid tanks which utilize a mixture of nitric, hydrofluoric, hydrochloric and phosphoric acids, as well as ferric chloride, are used to clean Inconel metal components. The spent acid mixtures are sent off-site for disposal. The detergent and rinse tanks discharge to the pickle acid system.

(9) An industrial water jet cutting operation was added to the manufacturing facility in 1995. The water jet cutter uses a high-pressure jet of water/garnet sand to cut Inconel metal. Wastewater from the cutter flows through a cyclone separator to remove sand and metal fines, and then flows to the pickle acid system.

The current wastewater treatment system is a Memtek Advanced Filtration System which was put into operation in 1992 to minimize the volume of filter cake produced from the neutralization of the pickling wastewaters. Bench-scale and pilot plant testing of the Memtek System indicated that this system reduced the volume of waste generated by 75 percent. The actual reduction attributable to the Memtek System is between 50 and 75 percent.

The pickling wastewaters are first held in a recirculated equalization tank to reduce fluctuations in the fluoride concentration. From the equalization tank, the pickling wastewaters flow to a 2,000-gallon tank where lime is added for initial pH adjustment. The lime causes the fluoride in the wastewater to precipitate. The bulk of the neutralization or final adjustment to obtain a pH of 10.5 is made with sodium hydroxide in a series of two 500-gallon reaction tanks. The sodium hydroxide does not produce any additional neutralization sludge since most sodium salts are soluble. The treated wastewater is transferred to a 650-gallon concentration tank. The wastewater is pumped out of the concentration tank and through a bank of microfilters. Effluent from the filters discharges to a day tank and then to an equalization tank. The equalization tanks are monitored for pH and fluoride prior to reprocessing or discharge to an outfall. Concentrated solids from the filter banks are returned to the concentration tank. The concentration of solids in the concentration tank gradually increases as more solids are added. A timed pump transfers solids from the bottom of the concentration tank to the plate and frame filter press. At the filter press, the slurry is dewatered to produce a 50 to 60 percent solids filter cake.

C. Waste Analysis

BWX Technologies developed a list of analytical constituents based on a review of facility processes, Material Safety Data Sheets for raw materials and chemical additives used in the manufacturing process, and recommendations contained in EPA delisting guidance (Petitions to Delist Hazardous Waste: A Guidance Manual, 2nd Edition, EPA/530–R–93–007, NTIS Publication Number PB 93–169 365, March 1993). For the delisting petition, BWX Technologies collected four (4) weekly composite samples of the filter cake solids. In order to ensure the representativeness of samples collected in 1992 and to detect any variability over time in the concentration of constituents of concern within the filter cake, time-composite sampling was conducted. BWX Technologies provided data which shows that the samples collected take into account all wastes that are discharged to the pickle acid treatment system.

Composite samples were collected beginning September 3, 1992, and continuing through September 29, 1992. Each composite sample consisted of bore hole grab samples taken directly from the filled filter press troughs. The daily grab samples were collected from different filter press troughs each day they were collected so that any variations through the filter press were characterized in the weekly composite sample. At the end of each week, the containers holding the daily grab samples were emptied into a clean stainless steel bucket and mixed thoroughly. Each sample was packed in an appropriately labeled container. Composite samples for most analyses were prepared in the field. However, samples for volatile organic compound (VOC) analysis were sent to the analytical laboratory to be composited under controlled conditions in order to prevent the loss of VOCs.

To supplement the data in its petition, BWX Technologies also collected additional samples as part of an annual sampling program. Composite samples of the filter cake were collected and analyzed for the years 1993, 1994, 1995, 1996, 1997 and 1998.

To quantify the total constituent and leachate concentrations in the four (4) composite samples that were analyzed in 1992, BWX Technologies used SW–846 methods 7040 for antimony, 7061 for arsenic, 6010 for barium, 7091 for beryllium, 7130 for cadmium, 7190 for chromium, 7201 for cobalt, 7210 for copper, 7421 for lead, 7470 and 7471 for mercury, 7520 for nickel, 6010 for selenium, 6010 for silver, 7841 for thallium, 7870 for tin, 7911 for vanadium, 7950 for zinc, 9010 for cyanide, 9030 for sulfide, 8010 for halogenated volatile organics, 8020 for aromatic volatile organics, and 8270 for semivolatile organic compounds. BWX Technologies used EPA method 340.2 to determine fluoride concentrations and NIOSH method 3500 to determine formaldehyde concentrations. Using SW–846 method 9071, BWX Technologies determined that the samples of the petitioned waste had a maximum oil and grease content of less than one (1) percent. (If the total oil and grease concentrations had been greater than or equal to one (1) percent, the Oily Waste Extraction Procedure, Method 1330, would have been required.) BWX Technologies also used these methods on the leachate obtained using the Toxicity Characteristic Leaching Procedure or TCLP (SW–846 method 1311), as described below, to determine leachable levels of metals and selected volatile organic compounds.

Composite samples analyzed during the BWX Technologies' annual sampling program were done using the same analytical methods as the 1992 composites with the following changes: concentrations for all metal analytes were determined using method 6010 with the exception of mercury (which continued to be determined using methods 7470 and 7471), and volatile organic compounds which were determined using method 8260.

EPA has reviewed the sampling procedures used by BWX Technologies and has determined that they satisfy EPA criteria for collecting representative samples.

Table 1 presents the maximum total and leachate concentrations for 17 metals and fluoride, total cyanide and total sulfide. The detection limits presented in Table 1 represent the lowest concentrations quantifiable by BWX Technologies when using appropriate SW–846 methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed.)

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] WWTP FILTER CAKE

Inorganic constituents	Total constituent analyses (mg/kg)	TCLP leachate analyses (mg/l)
Antimony	28.0	*0.7
Arsenic	0.13	0.017
Barium	120.0	0.46
Beryllium	<0.01	0.004
Cadmium	1.14	0.018
Chromium	1100.0	1.8
Cobalt	34.0	2.2
Copper	1850.0	79.3
Lead	12.3	0.22
Mercury	0.5	0.0036
Nickel	260.0	12.5
Selenium	<0.05	<0.016
Silver	419	0.11
Thallium	<0.1	**0.159
Tin	1170	0.107
Vanadium	18.5	<0.004

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] WWTP FILTER CAKE—Continued

Inorganic constituents	Total constituent analyses (mg/kg)	TCLP leachate analyses (mg/nl)
Zinc	130	1.8
Fluoride	11875.0	22.6
Cyanide (total)	<0.02	NA
Sulfide (total)	14.1	NA

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

< Denotes that the constituent was not detected at the detection limit specified in the table.

*Value represents 1 sample analysis out of 4 done in 1992. Since then, process improvements have resulted in all values for antimony being <0.069.

** Maximum TCLP concentration for this constituent occurred in a sample that was not analyzed for total constituent concentration.

BWX Technologies also analyzed samples of the petitioned waste for volatile and semivolatile organic compounds. Table 2 presents the maximum total and leachate concentrations for all detected organic constituents in BWX Technologies' waste samples.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] WWTP FILTER CAKE

Organic constituents	Total constituent analyses (mg/kg)	TCLP leachate analyses (mg/l)
Acetone	0.181	0.062
Benzene	0.007	<0.005
Methyl Ethyl Ketone (2-Butanone)	0.017	<0.05
Methylene Chloride	<0.01	*0.12
Toluene	0.008	<0.005
1,1,1-Trichloroethane	0.004	<0.005

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

< Denotes that the constituent was not detected at the detection limit specified in the table.

* Maximum TCLP concentration for this constituent occurred in a sample that was not analyzed for total constituent concentration.

BWX Technologies submitted a signed Certification of Accuracy and Responsibility statement found at 40 CFR 260.22(i)(12) as required for the information contained in the petition submitted on September 30, 1994, as well as for the information contained in all subsequent submissions.

EPA does not generally verify submitted test data before proposing delisting actions. The sworn affidavit submitted with the petition requires that the petitioner present truthful and accurate results. Failure to do so can subject the petitioner to significant penalties, including the possibility of fine and imprisonment.

D. EPA Evaluation

Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. EPA, therefore, evaluated BWX Technologies' petitioned waste using the modified EPA Composite Model for Landfills (EPACML) which predicts the potential for ground water contamination from wastes that are landfilled. See 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in ground water at a compliance point (*i.e.*, a receptor well serving as a drinking-water supply). Specifically, the model estimated the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground-water recharge for a specific volume of waste. The DAFs generated using the EPACML vary from a maximum of 100 for smaller annual volumes of waste (*i.e.*, less than 1,000 cubic yards per year) to DAFs approaching ten for larger annual volume wastes (*i.e.*, 400,000 cubic yards per year). EPA requests comments on the use of the EPACML as applied to the evaluation of BWX Technologies' waste.

Typically, EPA uses the maximum annual waste volume to derive a petition-specific DAF. The DAFs are currently calculated assuming an ongoing process that generates wastes for 20 years. BWX Technologies' maximum waste volume of 300 cubic yards per year corresponds to a DAF of 100. EPA's evaluation of the BWX Technologies' filter cake using a DAF of 100, a maximum waste volume of 300 cubic yards, and the maximum reported TCLP concentrations (see Tables 1 and 2) yielded the following compliance point concentrations (see Table 3).

TABLE 3.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS WWTP FILTER CAKE

Inorganic and organic constituents	Compliance point concentrations (mg/l) [1]	Levels of concern (mg/l) [2]
Antimony	0.007	0.006
Arsenic	0.00017	0.05
Barium	0.0046	2.0
Beryllium	0.00004	0.004
Cadmium	0.00018	0.005
Chromium	0.018	0.1
Cobalt	0.022	2.1
Copper	0.793	1.3
Lead	0.0022	0.015
Mercury	0.000036	0.002
Nickel	0.125	0.7
Silver	0.0011	0.2
Thallium	0.00159	0.002
Tin	0.00107	21.0
Zinc	0.018	10.0
Fluoride	0.226	4.0
Acetone	0.00062	4.0
Methylene Chloride	0.0012	0.005

[1] Using the maximum TCLP leachate concentration, based on a DAF of 100 for a maximum annual volume of 300 cubic yards.

[2] See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," May 1996 located in the RCRA Public Docket for today's notice.

The compliance point concentrations presented in Table 3 are below the current health-based levels (HBLs) for all inorganic and organic constituents except for the metal antimony. EPA does not consider the maximum reported TCLP concentration of 0.7 mg/l for antimony to be representative of the BWX Technologies' currently generated filter cake. EPA came to this conclusion because the one TCLP result that exceeded the HBL occurred in only one (1) sample (out of four (4)) collected and analyzed by BWX Technologies in 1992. Because antimony was detected in the method blank for this sample, there is not a high degree of confidence in the reported concentration. In addition, since 1992, TCLP concentrations for antimony in the filter cake have been below detection levels in all subsequent analyses for 1993, 1994, 1995, 1996, 1997 and 1998.

BWX Technologies performed total constituent analyses for cyanide (total), but did not submit TCLP results. EPA has determined that TCLP results are not required for this demonstration since cyanide is not used in any of the processes at BWX Technologies, and since total constituent analysis for cyanide (total) concentrations in the filter cake have all been below the reported detection limit of 0.02 mg/kg.

BWX Technologies performed total constituent analyses for fluoride, but did not submit TCLP results until 1998. In evaluating the possibility that fluoride concentrations could be present in sufficient concentrations to be of concern, EPA initially evaluated BWX Technologies' filter cake assuming the extreme worst case situation; that is that all of the fluoride present in the filter cake would leach out of the filter cake during a TCLP test (*i.e.*, the fluoride present in the filter cake was 100 percent leachable). While some of the earlier total constituent analyses results for fluoride could, hypothetically, result in an exceedence of the 4 mg/l HBL concentration for fluoride when evaluating the ground water contamination pathway using the modified EPACML model described earlier, EPA considered this result to be highly unlikely because the fluoride in BWX Technologies' filter cake is present as calcium fluoride (a very insoluble form). Additionally, BWX Technologies has certified that waste minimization efforts at its facility have reduced influent fluoride concentrations to the wastewater treatment facility. Total fluoride concentrations for the filter cake generated in more recent years are more than 50 percent lower that past generation. Total fluoride concentrations in the current filter cake have been less than 5000 mg/kg since 1995. At this level, assuming the extreme worst case situation evaluated above (that the fluoride is 100 percent leachable), and using a DAF of 100 based on a maximum annual waste volume of 300 cubic yards, fluoride levels could not exceed the HBL of 4.0 mg/l. To support this conclusion, BWX Technologies submitted TCLP results for fluoride for the most recent samples collected and analyzed in 1998. The results confirm that leachable fluoride levels are below delisting levels of concern (see the maximum compliance point concentration in Table 3).

For the other inorganic constituents, the maximum reported or calculated leachate concentrations of arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, nickel, silver, thallium, tin and zinc in BWX Technologies' filter cake yielded compliance point concentrations well below the health-based levels used in delisting decision-making. EPA did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, selenium, and vanadium) from BWX Technologies' filter cake because they were not detected in the leachate using the appropriate analytical test methods (see Table 1). EPA believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. If a constituent cannot be detected when using the appropriate analytical method with an adequate detection limit, EPA assumes that the constituent is not present and, therefore, does not present a threat to human health or the environment.

EPA also evaluated the potential hazards of the organic constituents detected in the TCLP leachate of BWX Technologies' filter cake. The maximum reported leachate concentrations of acetone and methylene chloride yielded compliance point concentrations well below the health-based levels used in delisting decision-making.

After reviewing BWX Technologies' process information, EPA concluded that no other hazardous constituents of concern, other than those tested for, are likely to be present in the filter cake, and that any migration of constituents from the waste would result in concentrations below delisting health-based levels of concern. In addition, on the basis of test results and information provided by BWX Technologies pursuant to 40 CFR 260.22, EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, reactivity or toxicity.

During the evaluation of BWX Technologies' petition, EPA also considered the potential impact of the petitioned wastes via non-ground water routes (*i.e.*, air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from BWX Technologies' petitioned waste is unlikely. Therefore, no appreciable air releases are likely from BWX Technologies' waste under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from BWX Technologies' waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from BWX Technologies' filter cake. A description of EPA's assessment of the potential impact of BWX Technologies' waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for today's proposed rule.

EPA also considered the potential impact of the petitioned waste via a surface water route. EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the run-off will tend to be lower than the levels in the TCLP leachate analyses reported in today's notice due to the aggressive acidic medium used for extraction in the TCLP. EPA believes that, in general, leachate derived from the wastes is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, EPA evaluated the potential impacts on surface water if BWX Technologies' waste were released from a municipal solid waste landfill through runoff and erosion. (See "Docket Report on Evaluation of Contaminant Releases to Surface Water from BWX Technologies' Petitioned Waste," April 1999, in the RCRA public docket for today's proposed rule.) The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below EPA Recommended Chronic Water Quality Criteria for aquatic organisms (63 FR 68354 (December 10, 1998)). EPA, therefore, concluded that BWX Technologies' filter cake is not a substantial present or potential hazard to human health and the environment via the surface water exposure pathway.

E. Conclusion

EPA believes that the descriptions of BWX Technologies' hazardous waste process and analytical characterization, in conjunction with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis to grant BWX Technologies' petition for an exclusion of the filter cake. The EPA believes the data submitted in support of the petition show BWX Technologies' process can render the filter cake non-hazardous. EPA has reviewed the sampling procedures used by BWX Technologies and has determined they satisfy EPA

criteria for collecting representative samples for purposes of characterizing the filter cake. The data submitted in support of the petition show that constituents in BWX Technologies' waste are present below health-based levels used in the delisting decision-making. EPA believes that BWX Technologies has successfully demonstrated that the filter cake is non-hazardous.

EPA, therefore, proposes to grant an exclusion to BWX Technologies for the filter cake from its pickle acid treatment system described in its petition as EPA Hazardous Waste No. F006. If made final, the proposed exclusion will apply only to 300 cubic yards of petitioned waste generated annually, on a calendar year basis. The facility must treat waste generated in excess of 300 cubic yards per year as hazardous. If either the manufacturing or treatment processes are altered such that an adverse change in waste composition occurs (*e.g.*, higher levels of hazardous constituents are present in the waste), this exclusion is no longer valid.

Although management of the waste covered by this petition would be removed from Subtitle C jurisdiction upon final promulgation of an exclusion, this exclusion applies only if this waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste, a permitted Subtitle C landfill or a Subtitle C landfill which is operating under interim status.

F. Verification Testing Conditions

(1) Delisting Levels: All leachable concentrations for the following constituents measured using SW–846 method 1311 (the TCLP) must not exceed the following levels (mg/l).

(a) Inorganic constituents—Antimony-0.6; Arsenic-5.0; Barium-100; Beryllium-0.4; Cadmium-0.5; Chromium-5.0; Cobalt-210; Copper-130; Lead-1.5; Mercury-0.2; Nickel-70; Silver-5.0; Thallium-0.2; Tin-2100; Zinc-1000; Fluoride-400.

(b) Organic constituents—Acetone-400; Methylene Chloride-0.5.

BWX Technologies must test its filter cake by determining the levels of constituents in the TCLP leachate. Below these levels (also known as the Maximum Allowable Leachate (MAL) Concentrations), the filter cake would be considered non-hazardous. This exclusion is effective when the final rule is signed by the Regional Administrator. If the annual testing of the filter cake does not meet the delisting levels or MALs described in Paragraph 1 of this Section, the facility must notify the Agency according to the provisions in Paragraph 4 of this Section. In such case, the exclusion will be suspended until a decision is reached by the Agency. The facility shall provide sampling results which support the rationale that the delisting exclusion should not be withdrawn. EPA selected the set of inorganic and organic constituents specified in Paragraph 1 of this Section after reviewing information about the composition of the waste, descriptions of BWX Technologies' treatment process, and previous test data provided for the filter cake. EPA established the proposed delisting levels for this Paragraph by back-calculating MAL concentrations from the health-based levels (HBLs) for the constituents of concern using the EPACML model previously described and a DAF of 100 (see, previous discussions in Section D—Agency Evaluation). These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

(2) Verification testing schedule: BWX Technologies must analyze a representative composite sample of the filter cake from the pickle acid treatment system on an annual, calendar year basis using methods with appropriate detection levels and quality control procedures. If the level of any constituent measured in the sample of filter cake exceeds the levels set forth in Paragraph 1 of this Section, then the waste is hazardous and must be managed in accordance with Subtitle C of RCRA. Data from the annual verification testing must be submitted to EPA within 60 days of the sampling event.

(3) Changes in Operating Conditions: If BWX Technologies significantly changes the manufacturing or treatment process described in the petition, or the chemicals used in the manufacturing or treatment process, BWX Technologies may not manage the filter cake generated from the new process under this exclusion until it has met the following conditions: (a) BWX Technologies must demonstrate that the waste meets the delisting levels set forth in Paragraph 1 of this Section; (b) it must demonstrate that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced into the manufacturing or treatment process; and (c) it must obtain prior written approval from EPA to manage the waste under this exclusion. This condition allows BWX Technologies the flexibility to modify its process (*e.g.*, changes in equipment or operating conditions). However, if any significant change is made which may affect the composition of the waste, BWX Technologies must demonstrate that the waste continues to meet the delisting criteria and must obtain prior written approval from EPA.

(4) Data Submittals: The data obtained under Paragraphs 2 and 3 of this Section must be submitted to The Waste and Chemicals Management Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. Records of operating conditions and analytical data must be compiled, summarized, and maintained on site for a minimum of five years and must be furnished upon request by EPA or the Commonwealth of Virginia, and made available for inspection. Failure to submit the required data within the specified time period or to maintain the required records on site for the specified time period will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent determined necessary by EPA. All data must be accompanied by a signed copy of the certification statement set forth in 40 CFR 260.22(i)(12) to attest to the truth and accuracy of the data submitted. Although management of the wastes covered by this petition would not be subject to Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility or ensure that the waste is delivered to an off-site treatment, storage, or disposal facility. In either case, the facility must be permitted, licensed, or registered by a State to manage municipal or industrial solid waste. The generator may also elect to continue to manage the delisted waste in a facility with a permit or interim status under Subtitle C.

(5) Reopener:

(a) If BWX Technologies discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then BWX Technologies must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate within 10 days of discovering that condition.

(b) Upon receiving information described in paragraph (a) of this Section, regardless of its source, the Regional Administrator or his delegate will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment.

The purpose of Paragraph 5 of this Section is to require BWX Technologies to disclose new or different information related to a condition at the facility or disposal of the waste if it had or has bearing on the delisting. This will allow EPA to reevaluate the exclusion if new or additional information is provided to the Agency by BWX Technologies which indicates that information on which EPA's decision was based was incorrect or circumstances have changed such that the information evaluated for the delisting is no longer correct or would cause EPA to deny the petition if then presented. Further, although this provision expressly requires BWX Technologies to report differing site conditions or assumptions used in the petition within 10 days of discovery, if EPA discovers such information itself or from a third party, EPA will act upon such information as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions located at 40 CFR 268.6. EPA has recognized that current delisting regulations contain no express procedure for reopening a decision if additional information is received and although it believes that it has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978), *et seq.* (APA), to take this action, EPA believes that a clear statement of its authority in the context of delistings is merited in light of Agency experience. Until such time as EPA codifies an express reopener provision in the exclusion regulations, EPA will include language similar to that presented above in delistings. EPA is considering the inclusion of a more specific regulatory process both defining when a delisting should be reopened and the result of reopening a granted exclusion and is soliciting comments on this process. Since each delisting is waste-specific and facility-specific or process-specific, EPA is currently reluctant to adopt a rule which might inadvertently cause an immediate repeal where specific circumstances would not merit so precipitous a result. In the meantime, in the event that an immediate threat to human health or the environment presents itself, EPA will continue to rely on its authority under the APA to make a good cause finding to justify an emergency rulemaking suspending notice and comment. APA Section 553(b).

(6) Notification Requirements: BWX Technologies must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will be deemed to be a violation of this exclusion and may result in a revocation of the decision.

III. Effect on State Authorizations

This proposed exclusion, if promulgated, would be issued under the Federal RCRA delisting program. States, however, may impose more stringent regulatory requirements than EPA, pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (*i.e.*, to make their own delisting decisions). Therefore, this proposed exclusion, if promulgated, may not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, BWX Technologies must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Effective Date

This rule, if made final, will become effective immediately upon such final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for a facility generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedures Act, 5 U.S.C. 553(d).

V. Regulatory Planning and Review (Executive Order 12866)

Under Executive Order 12866, EPA must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the other provisions of the Executive Order. A "significant regulatory action" is one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to Executive Order 12866 it has been determined that this rule is not a "significant regulatory action" and is therefore not subject to OMB review.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act(5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency or delegated representative certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal Agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste rules. Accordingly, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

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VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The proposed delisting decision is deregulatory, and imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA. In addition, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments and, therefore, no small government agency plan is required under Section 203 of the UMRA.

IX. Children's Health Protection

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

X. Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting with these governments, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create a mandate on State, local or tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of Section 1(a) of Executive Order 12875 do not apply.

XI. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this proposed rule.

XII. Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting with these governments, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. There is no impact to tribal governments as the result of today's proposed delisting decision. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this proposed rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 26, 1999.

Stanely Laskowski,

Acting Regional Administrator, Region III.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Table 1 of Appendix IX of Part 261 is amended to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
BWX Technologies	Lynchburg, VA	Wastewater treatment sludge from electroplating operations (EPA Hazardous Waste No. F006) generated at a maximum annual rate of 300 cubic yards per year, after (insert publication date of the final rule), and disposed of in a Subtitle D landfill. BWX Technologies must meet the following conditions for the exclusion to be valid: (1) Delisting Levels: All leachable concentrations for the following constituents measure using the SW–846 method 1311 (the TCLP) must not exceed the following levels (mg/l). (a) Inorganic constituents—Antimony-0.6; Arsenic-5.0; Barium-100; Beryllium-0.4; Cadmium-0.5; Chromium-5.0; Cobalt-210; Copper-130; Lead-1.5; Mercury-0.2; Nickel-70; Silver-5.0; Thallium-0.2; Tin-2100; Zinc-1000; Fluoride-400. (b) Organic constituents—Acetone-400; Methylene Chloride-0.5. (2) Verification testing schedule: BWX Technologies must analyze a representative sample of the filter cake from the pickle acid treatment system on an annual, calendar year basis using methods with appropriate detection levels and quality control procedures. If the level of any constituent measured in the sample of filter cake exceeds the levels set forth in Paragraph 1, then the waste is hazardous and must be managed in accordance with Subtitle C of RCRA. Data from the annual verification testing must be submitted to EPA within 60 days of the sampling event. (3) Changes in Operating Conditions: If BWX Technologies significantly changes the manufacturing or treatment process described in the petition, or the chemicals used in the manufacturing or treatment process, BWX Technologies may not manage the filter cake generated from the new process under this exclusion until it has met the following conditions: (a) BWX Technologies must demonstrate that the waste meets the delisting levels set forth in Paragraph 1; (b) it must demonstrate that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced into the manufacturing or treatment process; and (c) it must obtain prior written approval from EPA to manage the waste under this exclusion. (4) Data Submittals: The data obtained under Paragraphs 2 and 3 must be submitted to The Waste and Chemicals Management Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. Records of operating conditions and analytical data must be compiled, summarized, and maintained on site for a minimum of five years and must be furnished upon request by EPA or the Commonwealth of Virginia, and made available for inspection. Failure to submit the required data within the specified time period or to maintain the required records on site for the specified time period will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent determined necessary by EPA. All data must be accompanied by a signed copy of the certification statement set forth in 40 CFR § 260.22(i)(12) to attest to the truth and accuracy of the data submitted. (5) Reopener: (a) If BWX Technologies discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then BWX Technologies must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate within 10 days of discovering that condition. (b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator or his delegate will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(6) Notification Requirements: BWX Technologies must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will be deemed to be a violation of this exclusion and may result in a revocation of the decision.

[FR Doc. 99–20040 Filed 8–3–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6411–7]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the 62nd Street Superfund site from the National Priorities List: request for comments.

SUMMARY: The United States Environmental Protection Agency (EPA) Region 4 announces its intent to delete the 62nd Street Superfund Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the Florida Department of Environmental Protection (FDEP) have determined that the site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning the proposed deletion of this site from the NPL may be submitted on or before September 3, 1999.

ADDRESSES: Comments may be mailed to: Richard D. Green, Director, Waste Management Division, United States Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303–8909, (404) 562–8651.

Comprehensive information on this site is available through the EPA Region 4 public docket, which is available for viewing at the information repositories at two locations. Locations, contacts, phone numbers and viewing hours are: Record Center, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303–8909, (404) 562–9530, hours: 8 a.m. to 4 p.m., Monday through Friday by appointment only; Tampa/Hillsborough County Public Library/Special Collections, 900 North Ashley, Tampa, Florida 33602, (813) 273–3652, hours: 9 a.m. to 9 p.m. Monday through Thursday, 9 a.m. to 5 p.m., Friday through Saturday.

FOR FURTHER INFORMATION CONTACT: Randa Chichakli, U.S. EPA Region 4, Waste Management Division, 61 Forsyth Street, Atlanta, Georgia 30303–8909, (404) 562–8928.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA Region 4 announces its intent to delete the 62nd Street Superfund Site, Hillsborough County, Tampa, Florida, from the NPL, which constitutes Appendix B of the NCP, 40 CFR part 300, and requests comments on this deletion. The EPA identifies sites on the NPL that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Trust Fund. Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this site from the NPL for thirty calendar days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how this site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites maybe deleted from or re-categorized on the NPL where no further response is appropriate. In making this determination, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

1. Responsible parties or other persons have implemented all appropriate response actions required;
2. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
3. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

If a site is deleted from the NPL where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazardous Ranking System.

III. Deletion Procedures

EPA will accept and evaluate public comments before making a final decision on deletion from the NPL. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Site:

1. EPA has recommended deletion and has prepared the relevant documents;

2. FDEP has concurred with the deletion decision;
3. Concurrently with this Notice of Intent to Delete, notices have been published in local newspapers and have been distributed to appropriate federal, state and local officials and other interested parties announcing a 30-day public comment period on the proposed deletion from the NPL;
4. EPA has made all relevant documents available at the information repositories; and
5. EPA will respond to significant comments, if any, submitted during the public comment period.

Deletion of the site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management. EPA will prepare a Responsiveness Summary, if necessary, which will address the comments received during the public comment period.

A deletion occurs when the Regional Administrator places a Notice of Deletion in the **Federal Register**. Any deletions from the NPL will be reflected in the next NPL update. Public notices and copies of the Responsiveness Summary, if necessary, will be made available to local residents by the Regional office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the intention to delete this Site from the National Priorities List.

The 62nd Street Superfund Site is located in Hillsborough County, north of Columbus Drive and just west of 62nd Street on the east side of the city of Tampa. The five and one-half acre site was formerly used for the disposal of industrial waste and is located in an area with mixed residential and light industrial land use. The site is bounded on the west by a series of what were small, shallow fish breeding ponds. To the east and south of the site are residential areas interspersed with light commercial and industrial operations. To the north of the site is undeveloped land.

In the late 1960's the 62nd Street Site was operated as a borrow pit where sand was removed for use as fill material. When the borrow operations ceased, the owner of the site allowed several companies in the Tampa area to use the excavated pits for disposal of various waste materials, including construction and demolition debris, cement kiln dust, battery wastes, waste materials from an automobile shredder and other wastes. In 1976, the Hillsborough County Environmental Protection Commission (HCEPC) issued a notice to cease all disposal activities at the site due to fish kills which occurred in the fish breeding ponds located west of the 62nd Street Site. However, unauthorized disposal of household garbage and construction debris continued after that date.

Between 1979 and 1980, the site was investigated by many contractors on behalf of Peninsular Fisheries, Inc. These studies concluded that the 62nd Street Site had a hydraulic connection to the fish breeding ponds and was adversely impacting the water quality in these ponds. Environmental sampling was conducted periodically by HCEPC and the Florida Department of Environmental Regulation (FDER) at private wells, fish breeding ponds, a shallow sand point well installed by FDER and various other areas surrounding the site. An analysis of a sample from the shallow sand point well showed levels of chromium which exceeded the FDER groundwater standard. In December 1982, the site was proposed for inclusion on the National Priority List (NPL) which became final in September 1983.

In March 1984, the FDER and EPA entered into a Cooperative Agreement for FDER to conduct a Remedial Investigation/Feasibility Study (RI/FS) at the site. For study purposes, the wastes present at the site were divided into two groups: cement waste and non-cement waste. The waste consisting of cement, cement kiln dust, and cement slag was designated as cement waste and the wastes from the automobile shredder, battery wastes, and other wastes were designated as non-cement wastes.

The RI was conducted between February 1986 and September 1987. The major RI activities at the site consisted of the excavation of 12 test pits and installation of 14 groundwater monitoring wells which were designed to screen within the surficial aquifer and the underlying artesian Floridan aquifer. Chemical analyses were performed on soil, sediment, surface water and groundwater samples recovered from the site as well as from surrounding areas as part of the RI.

The soil and groundwater investigations at the 62nd Street site revealed that the non-cement waste containing antimony, arsenic, cadmium, chromium, copper, lead, nickel and polychlorinated biphenyls (PCBs) could be a potential risk to human health, but the cement waste presented little threat through direct contact or leaching into the groundwater. During the RI/FS, unfiltered groundwater samples from the surficial aquifer at, and downgradient of the site were found to contain cadmium, chromium and lead at levels exceeding the Maximum Concentration Levels (MCLs) of the Safe Drinking Water Act (SDWA). Chromium was the most common contaminant that exceeded the MCLs and the second most common was lead.

On June 27, 1990, consistent with the remedy proposed in the RI/FS, the EPA Region 4 Administrator approved a Record of Decision (ROD). The chosen remedy specified in the ROD called for:

(1) Solidification/stabilization (S/S) of the battery wastes, shredded auto parts, and contaminated soils,

(2) No treatment of the on-site cement wastes, since they presented little threat through either direct contact or leaching to groundwater,

(3) Capping of the entire site with a two-foot vegetative soil cover underlain by an impermeable membrane,

(4) Extraction and treatment of the groundwater from the surficial aquifer both on-site and off-site, and

(5) Institutional controls or other land use restrictions to ensure the integrity of the cap and preclude exposure to the treated soils.

The selected remedy established clean-up levels for contaminants in the groundwater based on the MCLs for cadmium and chromium. The clean-up levels for lead were based on the EPA recommended clean-up level for lead in groundwater. The clean-up criteria for contaminated soils were based on consideration of health effects and leaching to groundwater.

The EPA issued a Unilateral Administrative Order in April 1991 to several Potentially Responsible Parties (PRPs) including David J. Joseph Company and Lafarge Corporation. This order directed the PRPs to develop a Remedial Design for the remedy as described in the ROD and then to implement that remedy by performing a Remedial Action. A Consent Decree for the Remedial Design/Remedial Action was signed by the PRPs in August 1991. The Remedial Design began in November 1991, by the PRPs' contractor Ardaman & Associates, Inc. The Remedial Design considered all design elements required by the directives of the ROD plus a soil-bentonite cut-off wall around the perimeter of the site to facilitate dewatering during remediation and to reduce long term migration of groundwater through the solidified materials beneath the site after remediation.

In September 1991 an Explanation of Significant Difference (ESD) was issued which revised the lead clean-up criteria

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and provided for the disposal of non-contaminated construction-type debris.

On June 29, 1995, the ROD was amended to eliminate the requirement to extract and treat groundwater from the surficial aquifer on-site and off-site, since monitoring of the groundwater in monitor wells located hydraulically downgradient of the site revealed the concentrations of cadmium, chromium, and lead were below the established clean-up levels.

A Pre-Final Inspection was conducted on May 24, 1994, when the S/S activities were near completion. A Final Inspection was conducted at the site on June 13, 1995, upon completion of the top cover. As a result of this Final Inspection, it was determined that all outstanding remedial tasks noted in the Pre-Final Inspection Report had been resolved and all outstanding construction activities had been completed.

As a result of the activities, all objectives of ROD have been met with the exception of the requirement to extract and treat groundwater which was eliminated in a ROD amendment on June 29, 1995.

No specific operational tasks are required for the 62nd Street Site. However, periodic maintenance activities are anticipated to control vegetation and to repair any erosional damage to exposed areas of the top cover and ditches. Routine maintenance of the top cover and drainage ditches will incorporate mowing, weed control and erosion damage repair. Also, once annually during the month of December, groundwater sampling and analysis will be performed to confirm that the cadmium, chromium, and lead concentrations in both filtered and unfiltered groundwater remain below the respective clean-up levels for these parameters.

EPA conducted a five-year review on June 18, 1999 and concluded that the Remedial Action Objectives have been achieved, the remedy is effective and functioning as designed, and continues to remain protective of human health and the environment. EPA has determined that all completion requirements and appropriate actions at the 62nd Street Superfund Site have been completed, and that no further remedial action is necessary. Therefore, EPA is proposing deletion of the site from the NPL.

Dated: July 12, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–19906 Filed 8–3–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 99–6024, Notice 1]

RIN 2127–AH08

Federal Motor Vehicle Safety Standards; Glazing Materials; Low Speed Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to update the Federal motor vehicle safety standard on glazing materials so that it incorporates by reference the 1996 version of the industry standard on motor vehicle glazing. Currently, the Federal standard incorporates the 1977 version. The industry standard was issued by the American National Standards Institute (ANSI). We are taking this action in response to a petition from the American Automobile Manufacturers Association.

In addition, this proposal addresses a few issues not covered by the 1996 ANSI standard. Among these issues are limiting the size of the shade band that glazing manufacturers place at the top of windshields, and we seek comments on how to update the list of code marks or numbers we assign to glazing manufacturers. This action also proposes minor conforming amendments to our standard on low-speed vehicles.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than October 4, 1999. The proposed effective date of the final rule is 45 days after its publication in the **Federal Register**.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C., 20590.

You may call Docket Management at 202–366–9324. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues, you may call John Lee, of the NHTSA Office of Crashworthiness Standards at telephone (202) 366–2264, facsimile (202) 493–2739, electronic mail "jlee@nhtsa.dot.gov".

For legal issues, you may call Steve Wood of the NHTSA Office of Chief Counsel at 202–366–2992, facsimile (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

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I. Background on Standard No. 205 and ANSI Z26.1

Federal Motor Vehicle Safety Standard No. 205, *Glazing materials*, specifies requirements and test procedures for windows in motor vehicles. However, most of the requirements and test procedures for the standard are not within the Code of Federal Regulations. Instead, Standard No. 205 incorporates by reference the requirements and test procedures in the industry standard published by the American National Standards Institute (ANSI). The industry standard is American National Standard, Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways—ANSI Z26.1–1977).

ANSI Z26.1 describes different types of glazing that may be used in motor vehicles. These types, or "items," of glazing are generally defined by their ability to pass a specified set of tests. [1] The set of tests that the glazing must pass varies from item to item, based in part on the type of vehicle, and location within that vehicle, for which the glazing will be used. General descriptions of the material typically used to meet an item's required tests, such as "tempered glass" or "rigid plastics," are sometimes listed in Standard No. 205 and ANSI Z26.1. However, any material that meets the tests for Item "X" glazing can be certified as Item "X" glazing. The tests are listed in a chart in the ANSI standard. The detailed test procedures are also set forth there.

[1] Certain items of glazing are also defined according to their construction characteristics. For example, item 1 glazing may be a multiple glazed unit, which is more than one sheet of glazing in a common mounting. Multiple glazed unit item 1 glazing needs to meet a different set of tests than glazing that is not a multiple glazed unit.

The ANSI standard has been revised periodically by the Society of Automotive Engineers (SAE) Glazing Committee, acting under the sponsorship of ANSI. The Committee is composed of individuals knowledgeable in the field of automotive glazing.

Since the Federal motor vehicle safety standards cannot be changed except through rulemaking, revisions to the ANSI standard do not become part of Standard No. 205 unless we conduct a rulemaking that expressly identifies and incorporates them. The most recent revision we incorporated into Standard No. 205 was ANSI Z26.1a-1980, which supplemented the 1977 version. We incorporated it by a final rule published on February 23, 1984 (49 FR 6732). SAE subsequently petitioned us to upgrade ANSI Z26.1 with 1983 and 1990 revisions. However, we denied those petitions.

In addition to incorporating some of the revisions of the ANSI standard, we have occasionally updated Standard No. 205 directly by adding provisions similar or identical to those in the revisions of the standard.

Consequently, a person wanting an overview of the federal glazing requirements has to read ANSI Z26.1–1977, the 1980 ANSI supplement, and the text of Standard No. 205 in the **Federal Register** together. This rulemaking would simplify the task by shortening the text in Standard No. 205 to a few paragraphs that point the reader to outside publications (the 1996 ANSI Z26.1, and occasionally SAE J100) and define the manufacturer's certification and marking responsiblilities. If this proposal is issued as a final rule, a review of ANSI Z26.1 would provide a single source of Federal glazing requirements for most purposes.

On August 12, 1997, the American Automobile Manufacturers Association (AAMA) petitioned us to amend Standard No. 205 "Glazing Materials" to incorporate the most recent update of the ANSI standard (American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways—ANSI/SAE Z26.1–1996). On January 2, 1998, we granted the AAMA's petition.

II. Benefits of Incorporating the 1996 Version of ANSI Z26.1

AAMA stated in its petition that incorporating ANSI Z26.1–1996 would improve safety, achieve international harmonization, streamline and clarify Standard No. 205, and eliminate wire glass as an approved safety glazing option.

The following is a summary of the reasons why we tentatively conclude that incorporating ANSI Z26.1–1996, instead of ANSI Z26.1–1977 as supplemented by ANSI Z26.1 1980, would be beneficial.

A. Improved Safety

ANSI Z26.1–1977 requires a fracture test (Test No. 7) of a 12 inch square, flat sample of glazing. In contrast, ANSI Z26.1–1996 requires the use of a full-size production piece of vehicle window glass. In addition, 5.7.2 of ANSI Z26.1–1996 states that the specimens of glazing selected for testing ". . . shall be of the most difficult part or pattern designation within the model number." This means the portion of the glazing which we consider most likely to fail the test. AAMA believes that "[t]he new fracture test is both more stringent and more field-relevant when compared to the fracture test currently specified in Standard No. 205."

ANSI Z26.1–1996 also improves safety by eliminating wire glass as an approved glazing material. Wire glass is flat-rolled glass reinforced with wire mesh. It is used mostly for architectural applications (primarily for security and fire doors). The wire mesh is intended to prevent objects from penetrating the glass and to hold pieces of broken glass together. Wire glass has been used in past automotive applications for theft protection, in prison buses, and in the lower windows of emergency doors. In 1990, this practice was discontinued. Today's more modern anti-theft glazing is more appealing and safer than wire glass. Wire glass is known to shatter more readily at lower impact speeds and is more lacerative than laminated glass. Moreover, to our knowledge, no company currently produces wire glass for motor vehicle use.

B. Harmonization With Foreign Glazing Standards

Incorporating ANSI Z26.1–1996 would improve harmonization between U.S., Canadian, and European glazing standards in the following ways:

1. The test fixture for the impact, fracture and penetration resistance tests (Tests 6, 7, 8, 9, 10, 11, 12, 13, 14 and 26) is identical to the support frame required in Economic Commission for Europe (ECE) regulation R43.

2. The equipment used for the abrasion test (Tests 17 and 18) is similar to that used under ECE R43.

3. The Weathering Test (Test 16) is similar to ISO Standard 3917, which requires a xenon light source, rather than the carbon arc light source currently specified in Standard No. 205.

4. The solvents specified in the chemical resistance test (Test 20) have been revised to conform with American Society for Testing and Materials (ASTM) and Occupant Safety and Health Administration (OSHA) requirements. These are the same chemicals specified in ECE R43. This will also result in consistency with the NTTAA (National Technology Transfer Advancement Act), which requires use of voluntary consensus standards unless such use is infeasible or otherwise inconsistent with law.

5. Transport Canada's Canadian Motor Vehicle Safety Standard 205 "Glazing Materials" incorporates ANSI Z26.1–1990, which allows production parts to be used for the fracture test. As explained above, ANSI Z26.1–1977 only calls for the use of surrogate samples. By adopting ANSI Z26.1–1996, we would achieve closer harmonization of Standard No. 205 and Canadian Standard No. 205.

C. Streamlining and Clarification

This proposed incorporation by reference of ANSI Z26.1–1996 would permit the deletion of most of the existing text of Standard No. 205. The amendments of the past 20 years have resulted in a patchwork of requirements that must be read alongside the ANSI Z26.1 in order to gain a comprehensive understanding of the overall requirements of Standard No. 205. Adoption of this proposal would simplify Standard No. 205, consistent with our's regulatory reform efforts.

III. Discussion of the Proposed Changes

A. General Nature of the Textual Changes to ANSI Z26.1

The principal difference between the two versions of the ANSI standard is that the 1996 version contains provisions regarding new types of glazing and other matters not in the 1977 version. In general, the substantive differences between the 1977 and 1996 versions of ANSI Z26.1 are that the newer version includes new types of glazing , e.g., items 4A, 11C, 12, 13, 14, 15A, 15B, 16A, and 16B.

Our substitution of the 1996 version for the 1977 version of the ANSI

standard would not, however, make many substantive changes to our standard since our standard already contains most of those provisions. We directly added them to our standard in various rulemaking proceedings between 1977 and 1996 to supplement the 1977 version of the ANSI standard. Thus, the practical effect of our incorporation by reference of the 1996 ANSI standard is that it would enable us to eliminate the language added by those amendments made to our standard between 1977 and 1996.

Z26.1–1996 also includes numerous editorial and minor substantive changes made to be consistent with Standard No. 205 or to be internally consistent. Although these changes are too numerous and too minor to warrant mention in this NPRM, we have listed them in a table that we have submitted to the docket.

B. Applicability of the Standard to Vehicle Manufacturers

Standard No. 205 is often thought of as strictly an equipment standard because the application section states that the standard applies to glazing materials and not to vehicles. Further, the vehicle manufacturer does not apply the "DOT" mark to certify compliance of the glazing. Paragraph S6 specifies that the prime glazing manufacturer or manufacturers or distributors who cut motor vehicle glazing have the responsibility for certification and marking. We require marking and certification of each piece of glazing because motor vehicle glazing is often sold in the aftermarket, after the vehicle manufacturer no longer controls it.

However, our glazing standard does not operate, and never has operated, strictly as an equipment standard under the statute authorizing its issuance or under other regulations implementing that statute. Vehicle manufacturers are required by 49 USC 30115 and by 49 CFR 567.4 to certify that their vehicles, including the glazing they contain, conform with all applicable Federal motor vehicle safety standards, including Standard No. 205. For example, it would be the vehicle manufacturer's sole responsibility if it installed an otherwise conforming piece of glazing in a location not permitted by Standard No. 205. Pursuant to 49 U.S.C. 30112(b)(2)(B), a vehicle manufacturer may rely on the equipment manufacturer's certification, unless it knows that the certification is false. However, the vehicle manufacturer still retains ultimate responsibility for any recalls that may be required in the event of a noncompliance with the glazing requirements, according to 49 U.S.C. 30102(b)(1)(F) and (G).

For consistency and clarity, we propose to modify the applicability section of Standard No. 205 to explicitly apply it to vehicles. Most of our other standards that apply to separately marked motor vehicle equipment, such as brake hoses and brake fluids, also explicitly apply to vehicles.

C. Meaning of "Most Difficult Part or Pattern" for the Fracture Test

The requirement for specimens to be tested for the fracture test in 5.7.2 of ANSI Z26.1–1996 states, "The number of specimens selected from each model number of glazing shall be six (6) and shall all be of the most difficult part or pattern designation within the model number."

The phrase "the most difficult part or pattern" does not specify the type of difficulty contemplated, nor does it explain how we select the most difficult part or pattern in our compliance testing. Nevertheless, we believe that the phrase "the most difficult part or pattern" was intended to mean the part of the glazing that provides for "worst case" testing. Normally, this would refer to the portion of the glazing that is most curved, but it might mean another part of the glazing that is not tempered properly or that is otherwise more likely to fail.

Although this language might seem subjective, in fact it means that all portions of the glazing surface must be able to pass the test requirements. If the glazing fails a test in a portion we select in our compliance testing, then even if there were another area where compliance would have been more "difficult," by definition the glazing would not pass at that location either. We have made this interpretation explicit in the regulatory text of Standard No. 205.

D. Residual Differences With Foreign Standards

Incorporating ANSI Z26.1–1996 in Standard No. 205 would not eliminate all differences between Standard No. 205, Canadian Motor Vehicle Safety Standard 205, and ECE R43. There would still be differences in the tempered glass fracture test performance requirements, the windshield luminous transmittance test requirement, and the laminated windshield test samples for the optical and impact tests. The differences are summarized in the following table:

Test	Difference
Luminous Transmittance Test 2	ANSI Z26.1 requires 70 percent transmittance. ECE R43 requires 75 percent transmittance.
Fracture Test 7	Standard No. 205 and Z26–1996 require fragments to have a maximum allowable mass of 4.25g. ECE R43 requires a minimum number of particles to be included in a 5 cm × 5 cm square.
Shot Bag Test 8	ECE R43 does not have a shot bag test.
Dart Test 9, 10 & 11	R43 does not have a dart test.
Weathering Test 16	ECE R43 requires a mercury vapor arc lamp. ANSI Z26.1–1996 requires a xenon lamp. Current Standard No. 205 and Canadian Standard No. 205 require a carbon arc lamp.
Wire Glass	Canadian Standard No. 205 allows wire glass to be used, while ANSI Z26.1–1996 does not.

E. Xenon Light Source for Weathering Test

Laboratory-accelerated weathering tests are used to test the durability of glazing materials by simulating the damaging effects of sunlight over an extended period of time. The weathering tests are used to identify materials that are more susceptible to sun damage, such as rigid plastics, flexible plastics and glass-plastics (annealed and tempered).

The weathering test procedures of ANSI Z26.1–1977 simulate sunlight using a carbon arc lamp. Carbon arc technology was developed in 1919 for the textile and printing industries. This is no longer the best light source for simulating sunlight. The spectral power distribution of carbon arc is unlike that of natural sunlight. Narrow spikes of energy in the ultraviolet range of the electromagnetic spectrum (wavelengths of 400 nm and below) can affect how some materials will degrade. We tentatively conclude that a xenon arc light source produces a spectral power distribution closer to that of sunlight, but we request comment on that issue. We note that most of the testing industry is currently using xenon-arc lamp test devices to simulate weathering.

F. Limiting the Width of the Shade Band

ANSI Z26.1 requires most passenger car windows to pass a light transmittance test that assures that they transmit 70 percent of the incident light. However, the standard permits those parts of vehicle glazing that are not needed for driving visibility to be tinted more darkly. The most familiar location for those more darkly tinted areas is the top several inches of the windshield. This area is typically called a "shade band."

Since we need to be able, for the purposes of compliance testing, to differentiate between those areas of a window that are intended to meet the 70 percent transmittance requirement and those areas that are not so intended, the limit of the shade band needs to be marked on the glazing. Section 7 of ANSI Z26.1–1996 requires that if an area of glazing intentionally made with a luminous transmittance less than 70 percent adjoins an area that has 70 percent or more luminous transmittance, the former area must be permanently marked at the edge to show the limits of the area that are supposed to comply with the test. The markings have a line parallel to the edge of the tinted area, and an arrow perpendicular to that line showing the item number of the glazing in the direction of the arrow. For example, with a marking (i.e., glazing that must meet the test), the direction of the arrow indicates the portion of the material that complies with transmittance requirement.

A visibility requirement needs to be set to establish boundaries for shade bands on glazed surfaces. The size of the shade band is not explicitly defined by Standard No. 205. Even the updated ANSI Z26.1–1996 does not set boundaries for the area of glazing that does not have to meet the 70 percent light transmittance. Hypothetically, if the shade band covers 99 percent of the windshield and has the proper markings, it would comply with ANSI Z26.1–1996 even though the windshield needs to be clear for driving visibility.

Fortunately, an industry standard exists, SAE J100 "Class "A" Vehicle Glazing Shade Bands." That standard is based on the eyellipse of a 95th percentile male. The eyellipse is a statistical representation of the 95th percentile male driver's eye positions in a vehicle. That eyellipse is specified because it is the highest eyellipse, and therefore is the eyellipse most likely to be blocked by the shade band. The SAE J100 standard sets limits for the shade band on the windshield, rear window and fixed side windows. Therefore, we have modified Standard No. 205 to incorporate the June 1995 version of SAE J100. We request comment on the appropriateness of SAE J100 and on whether there are other, alternative industry standards we should consider.

G. Conforming Amendment to the Low-speed Vehicle Standard

The standard needs to be updated to account for a new vehicle type. On June 17, 1998, we published (63 FR 33194) a new standard for "low speed vehicles" (49 CFR 571.500). The rule defines low speed vehicles as a separate vehicle type, and S5(b)(8) of the rule specifies the use of either AS–1 or AS–5 glazing for the windshield of these vehicles. The rule also separately incorporates by reference the 1977/1980 version of ANSI Z26.1, rather than cross-referencing Standard No. 205.

Rather than separately proposing to update the incorporation by reference of ANSI Z26.1 in Standard No. 500 and Standard No. 205, we have decided that the specifications should appear only in Standard No. 205. Accordingly, this notice proposes modifying S5(b)(8) of Standard No. 500, to eliminate the incorporation by reference of ANSI Z26.1 and any reference to the permitted types of glazing. Instead, S5(b)(8) would simply state that low speed vehicles must have windshield glazing that meets the specifications of Standard No. 205.

We have revised the applicability paragraph of Standard No. 205 to add low speed vehicles to the list of vehicles to which the standard applies. This will assure that manufacturers of glazing materials in low speed vehicles certify compliance with Standard No. 205. In addition, we propose adding a paragraph to the requirements specifying the use of AS–1 or AS–4 glazing in the windshields of low speed vehicles. This section is necessary because the descriptions of the locations of glazing specified by the ANSI standard would not otherwise allow for AS–5 glazing.

We are also correcting a technical error made when Standard No. 500 was issued. We are replacing AS–5 glazing with AS–4 glazing as a permitted glazing type in low speed vehicles. AS–5 glazing has no light transmittance requirement, because it is specified for locations not requisite for driving visibility. Obviously, windshields are vital for driving visibility, so the equivalent glazing with a light transmittance requirement, or AS–4 glazing, is what we intended to permit.

H. Verification of DOT Numbers

Paragraph S6.2 of Standard No. 205 requires that the prime glazing manufacturer mark the glazing with, among other things, a manufacturer's code mark. The mark is assigned by us upon the written request of the manufacturer. We maintain a list of glazing manufacturers and the marks assigned to them. One use of these code marks (often referred to as a "DOT number") is during an enforcement action to identify the manufacturer that produced a particular piece of glazing.

The SAE Glazing Standards Committee is concerned about the accuracy of our Glazing Manufacturers list. Only 25 percent of the manufacturers listed with DOT numbers are currently active, according to the SAE. SAE further contends that some of the manufacturers have gone out of business without notifying us and that many other manufacturers have moved or merged. Moreover, SAE believes that some of these DOT numbers are being improperly used.

Therefore, we are requesting comments on the need to verify the DOT numbers.

IV. Comments

How do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**. Electronic comment filings need only submit one copy of the document, which must conform to the submission requirements given in the electronic filing instructions at the DOT website (http://dms.dot.gov). Electronically submitted documents may be rejected if they are found to be frivolous, abusive, and/or repetitious filings.

How Can I Be Sure That my Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope

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containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will We Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

A. Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).

B. On that page, click on "search."

C. On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."

D. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

V. Proposed Effective Date

Since the purpose of the amendments is to clarify and consolidate existing requirements and since we believe that the adoption of the amendments would not impose any additional burden on any person, we tentatively find for good cause that an effective date earlier than 180 days after issuance of a final rule would be in the public interest. The proposed amendment would become effective 45 days after publication.

VI. Plain Language

In accordance with the President's June 1, 1998 directive on "Plain Language in government writing," we have rewritten or reorganized portions of the regulatory text for clarity and conformance to Plain Language practices. These include portions of the regulatory text that are not being substantively changed by this rule. For example, we have replaced passive verbs with active verbs, replaced "shall" with "must," and made explicitly clear who has the responsibility for acting.

Rewriting is especially apparent in the certification and marking requirements of section 6. We eliminated the marking requirement of former S6.1 because it is already incorporated in section 7 of ANS Z26. We moved the definition of prime glazing manufacturer in S6.1 into the S4 definitions section. To eliminate redundancy, former S6.2 and S6.3 have been combined in S6.1, and former S6.4 and S6.5 have been combined in S6.3. We do not intend by this proposal to make any substantive changes in S6.

VII. Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12866. The rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The effect of the rulemaking action would be to clarify existing requirements. It would not impose any additional burden upon any person. Impacts of the proposed rule are, therefore, so minimal that preparation of a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

We have considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. Sec. 601 *et seq.*). I certify that this rulemaking action would not have a significant economic impact upon a substantial number of small entities.

The following is our statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The final rule affects manufacturers of motor vehicles and motor vehicle glazing. According to the size standards of the Small Business Association (at 13 CFR Part 121.601), manufacturers of glazing are considered manufacturers of "Motor Vehicle Parts and Accessories" (SIC Code 3714). The size standard for SIC Code 3714 is 750 employees or fewer. The size standard for manufacturers of "Motor Vehicles and Passenger Car Bodies" (SIC Code 3711) is 1,000 employees or fewer. This NPRM would have no significant economic impact of a small business in these industries because, if made final, the rule would make no significant substantive change to requirements currently specified in Standard No. 205. Small organizations and governmental jurisdictions that purchase glazing would not be significantly affected because this rulemaking should not cause price increases. Accordingly, we have not prepared a Regulatory Flexibility Analysis.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on "Federalism." We have determined that the rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule would not have any retroactive effect. According to 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, we propose that 49 CFR Part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.205 would be amended by:

a. Revising paragraph S3,
b. Amending paragraph S4 by adding a new definition in alphabetical order,
c. Revising paragraph S5.1.1,
d. Removing paragraphs S5.1.1.1 through S5.1.1.7,
e. Revising paragraph S5.1.2,
f. Removing paragraphs S5.1.2.1 through S5.1.2.11,
g. Revising paragraph S5.2,
h. Adding paragraph S5.3,
i. Adding paragraph S5.4,
j. Revising paragraphs S6.1 through S6.3,
k. Removing paragraphs S6.4 and S6.5, and
l. Removing Figure 1 at the end of the section.

The additions and revisions read as follows:

§ 571.205 Standard No. 205, Glazing materials.

* * * * *

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, buses, motorcycles, slide-in campers, pickup covers designed to carry persons while in motion, and low speed vehicles and to glazing materials for use in those vehicles.

S4. Definitions. * * *

Prime glazing manufacturer means a manufacturer that fabricates, laminates, or tempers glazing materials.

* * * * *

S5. Requirements.

S5.1 Materials.

S5.1.1 Glazing materials for use in motor vehicles must conform to the October 1996 version of American National Standard Safety Code for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways, Z–26.1 (ANS Z26), unless this standard provides otherwise.

S5.1.2 NHTSA may test any portion of the glazing when doing the fracture test (Test No. 7) described in section 5.7 of ANS Z26.

S5.2 *Edges.* In vehicles except schoolbuses, the prime glazing manufacturer must treat exposed edges of the glazing in accordance with the August 1967 version of SAE Recommended Practice J673a, "Automotive Glazing." In schoolbuses, the vehicle manufacturer must enclose exposed edges of the glazing in a channel.

S5.3 *Shade bands.* The portion of the glazing at the top of the windshield, fixed side windows, and rear windows, as defined in section 4 of the June 1995 version of SAE Recommended Practice J100, is not required for driving visibility.

S5.4 *Low speed vehicles.* Windshields of low speed vehicles must meet the ANS Z26 specifications for either AS–1 or AS–4 glazing.

S6. *Certification and marking.*

S6.1 A prime glazing material manufacturer must certify, in accordance with 49 USC 30115, each piece of glazing material to which this standard applies that is designed—

(a) As a component of any specific motor vehicle or camper; or

(b) To be cut into components for use in motor vehicles or items of motor vehicle equipment.

S6.2 A prime glazing manufacturer certifies its glazing by adding to the marks required by section 7 of ANS Z26, in letters and numerals of the same size, the symbol "DOT" and a manufacturer's code mark that NHTSA assigns to the manufacturer. NHTSA will assign a code mark to a manufacturer after the manufacturer submits a written request to the Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590. The request must include the company name, address, and a statement from the manufacturer certifying its status as a prime glazing manufacturer as defined in S4.

S6.3 A manufacturer or distributor who cuts a section of glazing material to which this standard applies, for use in a motor vehicle or camper, must—

(a) Mark that material in accordance with section 7 of ANS Z26; and

(b) Certify that its product complies with this standard in accordance with 49 USC 30115.

3. Section 571.500 would be amended by revising paragraph (b)(8) of S5, to read as follows:

§ 571.500 Standard No. 500; low speed vehicles.

* * * * *

S5. *Requirements*

* * * * *

(b) * * *

(8) A windshield that conforms with the Federal Motor Vehicle Safety Standard on glazing materials (49 CFR 571.205)

* * * * *

Issued on: July 28, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–19913 Filed 8–3–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 072199C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Regional Administrator, Northeast Region, NMFS (Regional Administrator), is considering approval of EFPs for two vessels to conduct exempted experimental fishing activities otherwise restricted by regulations governing the Fisheries of the Northeastern United States. These EFPs to conduct experimental fishing would involve the possession and retention of Atlantic sea scallops (*Placopecten magellanicus*), including the possible capture and release of regulated multispecies and other bycatch (monkfish, skates, invertebrates, and elasmobranchs), in the Mid-Atlantic Regulated Mesh Area; specifically, within the Hudson Canyon South Sea Scallop Closure Area and the Virginia Beach Sea Scallop Closure Area. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act provisions require publication in the **Federal Register** to provide interested parties the opportunity to comment on the proposed EFPs.

DATES: Comments on this document must be received by August 19, 1999.

ADDRESSES: Comments should be sent to the Regional Administrator, NMFS,

Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Proposed Experimental Fisheries."

Copies of the Environmental Assessment for these activities are available from the Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Bonnie VanPelt, Fishery Management Specialist, 978–281–9244.

SUPPLEMENTARY INFORMATION: The Virginia Institute of Marine Science (VIMS) has submitted a proposal to target and assess Atlantic sea scallop resources (density and length frequency distribution), commercial sea scallop dredge performance, and harvest efficiencies within the Mid-Atlantic Sea Scallop Closure Areas (Hudson Canyon and Virginia Beach). This systematic survey would coordinate closely with NMFS' Northeast Fisheries Science Center's scallop dredge survey to evaluate differences in scallop research dredge performance relative to commercial dredge operation by conducting simultaneous tows and/or same-station comparative tows. The study also proposes to investigate the impacts of scallop dredge activity on bottom habitat and to quantify and compare the bio-fouling of scallops in both closed and open areas. In addition, the habitat assessment portion of the study would look at transitional changes in habitat components from within, on the boundary, and outside the closed areas. In this portion of the study VIMS would closely collaborate with a Rutgers University habitat assessment study being conducted in the Hudson Canyon South Closure Area to avoid station overlap and ensure data integrity.

On a tow-by-tow basis, scientific staff and designated crew members would enumerate bycatch and estimate quantities of non-bycatch debris (mollusk shells), and would report on their general physical condition. The overall objective of the study is to assess the increased availability of commercial sea scallop biomass resulting from the area closures that commenced 16 months ago. A similar study in Georges Bank Closed Area II was not performed until 4 years after the closure. It is thought that more knowledge could be gained from a post-dredge survey conducted closer to the cessation of mobile gear activity.

The survey would be conducted during the period mid-August through September 1999 and would employ the use of two 15–ft (4.6–m) commercial sea scallop dredges at 400 pre-designated stations. Sampling densities of approximately one station per 7.5 nm^2 in the Hudson Canyon South Closure Area and one station of 5.0 nm^2 density in the Virginia Beach Closure Area are proposed. Sampling frequency would be increased to 5.0 nm^2 on or near the edges of closed area boundaries. Set-tow times of 10 minutes at 4.5 knots would calibrate area gear coverage (width of gear x length of dredge path). The dredge gear used would comply with all mesh size and gear configuration provisions of Amendment 4 to the Atlantic Sea Scallop Fishery Management Plan. Therefore, no special twine-top configurations or rock chains would be used.

No other species other than Atlantic sea scallops would be retained or landed, except for unusual specimens of interest to scientists and only at the discretion of the chief scientist in charge of at-sea cruise operations. Participants would be limited to retaining and landing no more than 14,000 lb (6,350 kg) (1,000 lb (454 kg) per day) of Atlantic sea scallops, and would be required to fish under an Atlantic Sea Scallop day-at-sea (DAS) when fishing under the EFP. Based on this landing limit, participants would be required to commit a maximum of 14 sea scallop DAS to the study.

Each vessel's crew would be instructed that low value sea scallops may not be discarded in favor of retaining high value sea scallops (high grading). VIMS' chief scientist would be charged with monitoring all stages of the proposed cruise operations in support of the study objectives and would ensure maximum integrity of data collection and organization of deck operations. EFPs would be issued to participating vessels to exempt them from the Mid-Atlantic Closed Areas.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 29, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20030 Filed 8–3–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 149

Wednesday, August 4, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Farm Service Agency's (FSA) intention to request an extension and revision to a currently approved information collection. The information is used to administer operations of the FSA under the United States Warehouse Act (USWA), and the Commodity Credit Corporation (CCC) Charter Act. The information collection package relates to reporting and recordkeeping requirements for the USWA and the Standards for Approval of Warehouses.

DATES: Comments on this notice must be received on or before October 4, 1999 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Judy Fry, Farm Service Agency, Warehouse and Inventory Division, U.S. Department of Agriculture, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553; telephone 202–720–3822; e-mail comments may be sent: Judy_Fry@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Regulations Under the United States Warehouse Act, Related Reporting and Recordkeeping Requirements, and Standards for Approval of Warehouses Under the CCC Charter Act.

OMB Control Number: 0560–0120.

Expiration Date of Approval: July 31, 1999.

Type of Request: Extension and Revision of Currently Approved Information Collection.

Abstract: The information collected under Office of Management and Budget (OMB) Control Number 0560–0120, as identified above, allows FSA to effectively administer the regulations under the USWA, related reporting and recordkeeping requirements, and Standards for Approval under the CCC Charter Act.

USWA and CCC activities are administered by FSA. The reporting requirements for warehouses covered by USWA and CCC functions, are essentially the same for all types of warehouses. Therefore, the same forms are used for both USWA licensing and for execution of CCC contracts. These forms are furnished to warehouse operators and used by the warehouse examiners employed by FSA to secure and record information about the warehouse operator and the warehouse. The general purpose of the forms is to provide those charged with issuing licenses under the USWA or executing contracts for CCC a basis upon which to determine whether the warehouse and the warehouse operator meet applicable standards to receive a license or contract and to determine compliance once a license is issued or a contract is approved.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 1.84 hours per response.

Respondents: Business or other for profit: Warehouse Operators

Estimated Number of Respondents: 6,283.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 11,549.

Proposed topics for comments include: (a) Whether the continued collection of information is necessary for the proper performance of USWA functions and CCC contracting activities, including whether the information will have practical utility; (b) the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used; (c) enhancing the quality, utility, and clarity of the information to be collected; and (d) minimizing the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Judy Fry, Warehouse and Inventory Division, Farm Service Agency, STOP 0553, 1400 Independence Avenue, SW, Washington, DC 20250–0553; telephone (202) 720–3822 or FAX 202–690–3123.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on July 29, 1999.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 99–20027 Filed 8–3–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Population Survey—October 1999 School Enrollment Supplement.

Form Number(s): None (computer instrument).

Agency Approval Number: 0607–0464.

Type of Request: Revision of a currently approved collection.

Burden: 6,400 hours.

Number of Respondents: 48,000.

Avg Hours Per Response: 8 minutes.

Needs and Uses: The Census Bureau is requesting clearance for the collection of data concerning the School Enrollment Supplement to be conducted in conjunction with the October 1999 Current Population Survey (CPS). The Census Bureau, the Bureau of Labor Statistics, and the National Center for Education Statistics (NCES) sponsor the basic annual school enrollment questions which have been collected annually in the CPS for 40 years. This year's supplement will also contain questions that were last asked in October 1995 concerning language proficiency, disabilities, and grade retention for persons 3–24 years of age.

These additional questions are sponsored by the NCES.

This survey provides information on public/private elementary and secondary school enrollment, and characteristics of private school students and their families, which is used for tracking historical trends and for policy planning and support. This survey is the only source of national data on the age distribution and family characteristics of college students, and the only source of demographic data on preprimary school enrollment. As part of the Federal Government's efforts to collect data and provide timely information to local governments for policymaking decisions, the survey provides national trends in employment and progress in school.

The data are used by Federal agencies; state, county, and city governments; and private organizations responsible for education to formulate and implement education policy. They are also used by employers and analysts to anticipate the composition of the labor force in the future. The NCES will use the data concerning language proficiency, disabilities, and grade retention to study the phenomenon of children being retained in grade.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Linda Hutton, (202) 395–7858.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Linda Hutton, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 28, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–20050 Filed 8–3–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Survey of Income and Program Participation 1996 Panel Wave 12.

Form Number(s): SIPP/CAPI Automated Instrument; SIPP–161205(L) Director's Letter.

Agency Approval Number: 0607–0813.

Type of Request: Revision of a currently approved collection.

Burden: 44,228 hours.

Number of Respondents: 77,700.

Average Hours Per Response: 100,250.

Needs and Uses: The Census Bureau conducts the Survey of Income and Program Participation (SIPP) to collect information from a sample of households concerning the distribution of income received directly as money or indirectly as in-kind benefits. SIPP data are use by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare and transfer payment programs such as the Department of Health and Human Services, the Department of Housing and Urban Development, and the Department of Agriculture.

The SIPP is a longitudinal survey, in that households in the panel are interviewed at 4-month intervals or waves over the life of the panel, making the duration of the panel about 4 years. The next panel of households will be introduced in the year 2000.

The survey is molded around a central core of labor force and income questions, health insurance questions, and questions concerning government program participation that remain fixed throughout the life of the panel. The core questions are asked at Wave 1 and are updated during subsequent interviews. The core is supplemented with additional questions or topical modules designed to answer specific needs.

This request is for clearance of the topical modules to be asked during Wave 12 of the 1996 Panel. The core questions and topical modules for Waves 1–11 have already been cleared. The topical modules for Wave 12 are: Assets, Liabilities, and Eligibility; Children's Well-Being; Medical Expenses/Utilization of Health Care; Work-Related Expenses; and Child Support Paid. Wave 12 interviews will be conducted from December 1999 through March 2000. Additionally, we will conduct a Wave 13 interview with a ¼ portion of the 1996 SIPP panel during April 2000 in order to obtain complete calendar year data for 1999. This interview will collect only core data; no topical module will be administered.

Monetary incentives to encourage non-respondents have been incorporated into the 1996 Panel since Wave 1. The incentives have been approved by OMB for use on a test basis. Wave 12 also includes an incentive plan.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Linda Hutton, (202) 395–7858.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or by the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Linda Hutton, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 29, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–20051 Filed 8–3–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822 and A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits for Preliminary Results of Antidumping Administrative Review.

EFFECTIVE DATE: August 4, 1999.

FOR FURTHER INFORMATION CONTACT: Elfie Blum-Page, Mark Hoadly, or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–0197, (202) 482–0666 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR Part 351 (1999).

Background

On August 19, 1993, the Department published in the **Federal Register** (58 FR 44162) the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. Based on timely requests by petitioners and respondents in both proceedings, the Department published its initiation of these antidumping duty administrative reviews covering the period of August 1, 1997 through July 31, 1998 (63 FR 51893) on September 29, 1998.

Extension of Time Limits for Preliminary Results

Because of the complexities enumerated in the Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limit for the Preliminary Results of Antidumping Administrative Reviews: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada, dated July 30, 1999, it is not practicable to complete these reviews within the time limits mandated by section 751(a)(3)(A) of the Act.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results 7 days to August 6, 1999. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20185 Filed 8–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Coast Zone Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Florida Coastal Zone Management Program and the Elkhorn Slough (CA), Padilla Bay (WA), and Narragansett Bay (RI) National Estuarine Research Reserves.

These evaluations will be conducted pursuant to sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of states with respect to coastal program and research reserve program implementation. Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves require findings concerning the extent to which a state has met the national objectives, adhered to its coastal program document or the Reserve's final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Elkhorn Slough National Estuarine Research Reserve in California site visit will be from September 13–17, 1999. One public meeting will be held during the week. The public meeting will be held on Tuesday, September 14, 1999, at 6:00 P.M., at the Reserve's Visitor Center, 1700 Elkhorn Road, Watsonville, California.

The Padilla Bay National Estuarine Research Reserve in Washington site visit will be from September 20–24, 1999. One public meeting will be held during the week. This public meeting will be held on Tuesday, September 21, 1999, at 7:00 P.M., at the Padilla Bay Reserve Auditorium, 1043 Bayview-Edison road, Mt. Vernon, Washington.

The Narragansett Bay National Estuarine Research Reserve in Rhode Island site visit will be from September 20–24, 1999. One public meeting will be held during the week. This public meeting will be held on Wednesday, September 22, 1999, at 11:00 A.M., at the Narragansett Bay National Estuarine Research Reserve's Field Station, 55 South Reserve Drive, Prudence Island, Rhode Island.

The Florida Coastal Zone Management Program evaluation site visit will be from September 27–October 1, 1999. One public meeting will be held during the week. The public meeting will be held on Tuesday, September 28, 1999, at 7:00 p.m. in Classroom 243 in the Student Union East Building, Gulf Coast Community College, 5230 West Highway 98, Panama City, Florida.

The States will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Margo E. Jackson, Deputy Director, Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3155, ext. 114.

(Federal Domestic Assistance Catalog 11.419. Coastal Zone Management Program Administration)

Dated: July 30, 1999.

John Oliver,

Chief, Office of Management and Budget, National Ocean Service.

[FR Doc. 99–20033 Filed 8–3–99; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072899C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting via teleconference.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad-Hoc Salmon Nonretention Mortality Committee will confer by telephone.

DATES: The teleconference call will begin Friday, August 20, 1999, at 9 a.m. PDT.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for call locations.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: John Coon, Salmon Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The public may participate at the following call locations:

1. Pacific Fishery Management Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR

2. Washington Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA

Contact: Phil Anderson, (360) 902–2720;

3. Oregon Department of Fish and Wildlife, 2040 SE Marine Science Drive, Newport, OR

Contact: Rod Kaiser, (541) 867–4741 extension 240;

4. California Department of Fish and Game, 1416 Ninth Street, Sacramento, CA

Contact: LB Boydstun, (916) 653–6281;

5. National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way NE, Seattle, WA

Contact: Bill Robinson, (206) 526–6142.

The primary purpose of the conference is to review and direct the completion of work assignments in developing updated, scientifically based recommendations for reliable and consistent estimates of nonretention mortality in ocean salmon fisheries under Council management. The Ad-Hoc Committee will report the results of this conference to the Council on September 14, 1999, in Portland, OR.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

The public participation sites are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the conference date.

Dated: July 28, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–20031 Filed 8–3–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 980817219–8219–01. I.D. 073099A]

RIN 0648–AL58

Procedures Implementing the National Environmental Policy Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability; final revised environmental review procedures for NOAA.

SUMMARY: This document announces the availability of final revised environmental review procedures for implementing the National Environmental Policy Act (NEPA) within the National Oceanic and Atmospheric Administration. The revisions update the agency's original procedures published in 1984, based on changing Agency direction, laws, and public concerns. The revisions reflect new initiatives and mandates for NOAA, particularly involving the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Endangered Species Act, and Marine Mammal Protection Act. The revisions provide information on preparing NEPA documents and streamlining of NEPA and other analyses or documents within NOAA.

DATES: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Ramona Schreiber or Steve Kokkinakis, Office of Policy and Strategic Planning, 202–482–5181. A copy of the final revised NOAA Administrative Order (NAO) 216–6 is available from the contacts listed here or via the Internet at: http://www.rdc.noaa.gov/nao/216-6.html.

SUPPLEMENTARY INFORMATION: NOAA's existing environmental review procedures for implementing NEPA appear in NAO 216–6. These procedures are consistent with the Council on Environmental Quality's (CEQ) regulations for implementing NEPA. NOAA's procedures were last revised in 1991. Consistent with CEQ regulation (40 CFR 1507.3(a)), NOAA published a Notice of Availability in the **Federal Register** on October 28, 1998 (FR 57664). That document announced the availability of draft revisions to NAO 216–6. Three sets of public comments were received and considered in the preparation of the final revised NAO 216–6. No modifications to the draft guidelines were necessary as a result of the comments received. NOAA has also consulted with CEQ prior to finalizing the revised NAO 216–6.

Comments and Responses

Comment 1: Two comments recommended that NOAA make its procedures regarding Endangered Species Act (ESA)-related categorical exclusions consistent with those of the U.S. Fish and Wildlife Service (USFWS). Specifically, USFWS authorizes categorical exclusions for conservation agreements that require an incidental take statement; the commenter suggests that NOAA do the same. In addition, one comment suggested that NOAA align its overall ESA-related guidelines to match USFWS guidance.

Response: NOAA recognizes that its guidance regarding conservation agreements differs slightly from that of the USFWS. NOAA's procedures describe cases where an incidental take statement for a conservation agreement may receive a categorical exclusion, when the statement is considered to be a "low-effect". In those cases a categorical exclusion may be appropriate. Requirement of an environmental assessment for those conservation agreements that receive an incidental take statement for a greater effect is consistent with NOAA's ESA implementation guidelines. A modification of NOAA's procedures was not considered appropriate. NOAA coordinates with USFWS on many actions, however each agency has its independent policies. Thus, NOAA and USFWS may provide differing guidance on certain actions in line with each agency's policy position.

Comment 2: A comment recommended that to facilitate public involvement, a mechanism should be provided to extend the 45-day public comment period when appropriate.

Response: NOAA recognizes that in some cases comment periods for review of draft environmental impact statements (EIS) should be extended beyond the minimum required 45-day period. NOAA's procedures recommend that this action be taken when appropriate. A mechanism to extend a comment period exists through notice of extensions via a publication of a notice of availability in the **Federal Register**.

Comment 3: A comment suggested that NOAA's procedures require consideration of impacts on state Coastal Zone Management Plans, species listed under the Endangered Species Act, and essential fish habitat as defined by the Magnuson-Stevens Act be a required part of an EIS.

Response: NOAA agrees that these areas should be considered in the development of an EIS. In fact, NOAA's procedures identify these and other factors as areas that should be considered in scoping. Where scoping identifies these areas as relevant to the specific action, these factors should be addressed within the EIS.

Comment 4: A comment stated that there is not adequate emphasis for the need to produce NEPA documents concurrently with other review documents.

Response: NOAA's procedures provide recommendations to integrate NEPA into NOAA's decisionmaking process. In addition, the procedures recommend measures to cooperate with other federal, state and tribal partners to reduce duplication in document preparation.

Comment 5: A comment suggested that the examples cited for the application of generic NEPA documents are inappropriate.

Response: The examples identified in the procedures are representative of actions by other Federal agencies that have completed generic NEPA documents or of actions that NOAA believes, in certain instances, could be best addressed in a generic EIS. Where a specific action was under review, a generic EIS would not be appropriate and NOAA would complete an EIS specific to that action with adequate review of all potential impacts.

The revisions are administrative and procedural improvements intended to enhance NOAA's ability to comply with a variety of legislative mandates and Executive Orders without unnecessarily delaying and duplicating steps in the decision-making process while ensuring public involvement in decisionmaking. These improvements will result in a better understanding of agency roles and responsibilities relative to NEPA.

Notable changes in this version of NAO–216–6 from the 1991 procedures include: reorganization of the document such that users can review the general requirements for preparing NEPA documents, as well as specific guidance on NEPA requirements for particular programs and activities within NOAA; incorporation of new policies and procedures to streamline and improve NOAA's NEPA compliance; specific guidance for NOAA's NEPA responsibilities under the Magnuson-Stevens Act, Endangered Species Act, Marine Mammal Protection Act, and Oil Pollution Act; and incorporation of NOAA's requirements under E.O. 12898 for Environmental Justice in Minority Populations and Low-Income Populations, E.O. 13112 for Invasive Species, and E.O. 13089 for Coral Reef Protection; and guidance on NOAA facilities and construction projects.

This document is available by request through the contact identified previously as well as via the Internet at: http://www.rdc.noaa.gov/nao/216-6.html.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The Assistant General Counsel for Legislation and Regulation certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule will not have a significant economic impact on a substantial number of small entities because it is a procedural rule, and it will have no economic impact on entities. Therefore, a Regulatory Flexibility Analysis is not required and was not prepared.

Dated: July 27, 1999.

Susan Fruchter,

Director, Office of Policy and Strategic Planning, National Oceanic and Atmospheric Administration.

[FR Doc. 99–20032 Filed 8–3–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

July 29, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing. A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59946, published on November 6, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 29, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on August 5, 1999, you are directed to adjust the limits for the following

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categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
219	6,766,176 square meters.
237	213,827 dozen.
239pt. [2]	678,498 kilograms.
331/631	2,876,284 dozen pairs.
334/634	277,404 dozen.
338	5,622,757 dozen.
339	1,596,443 dozen
340/640	751,448 dozen of which not more than 263,357 dozen shall be in Categories 340–D/640–D [3].
347/348	934,182 dozen.
351/651	375,723 dozen.
352/652	939,308 dozen.
359–C/659–C [4]	974,146 kilograms.
360	6,035,696 numbers.
361	7,018,250 numbers.
363	49,565,423 numbers.
369–F/369–P [5]	2,755,074 kilograms.
369–S [6]	818,012 kilograms.
638/639	521,483 dozen.
647/648	988,711 dozen.
666–P [7]	820,740 kilograms.
666–S [8]	4,525,124 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[5] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[6] Category 369–S: only HTS number 6307.10.2005.

[7] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[8] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–19952 Filed 8–3–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

July 29, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Group II is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67050, published on December 4, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 29, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on August 5, 1999, you are directed to increase the Group II limit, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Group ii 200–227, 300–326, 332, 359–O [2], 360, 362, 363, 369–O [3], 400–414, 434–438, 440, 442, 444, 448, 459pt. [4], 464, 469pt. [5], 600–607, 613–629, 644, 659–O [6], 666, 669–O [7], 670–O [8], 831, 833–838, 840–846, 850–858 and 859pt. [9], as a group.	210,216,637 square meters equivalent.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); and 6406.99.1550 (Category 359pt.).

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[4] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[6] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[7] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[8] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[9] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–19951 Filed 8–3–99; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Collection; Comment Request

AGENCY: Corporation for National and Community Service

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed applications entitled: AmeriCorps Education Awards Program 2000 Application Guidelines. Copies of the information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by October 4, 1999.

ADDRESSES: Send comments to the Corporation for National and Community Service, Nancy Talbot, Director, Planning and Program Development, 1201 New York Avenue, NW, Washington, DC, 20525.

FOR FURTHER INFORMATION CONTACT: Nancy Talbot (202) 606–5000, ext. 470.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Background

AmeriCorps Education Awards Program 2000 Application Guidelines provide the background, requirements and instructions that potential applicants need to complete an application to the Corporation for education awards for community service programs that can support most or all of the AmeriCorps member and program costs from sources other than the Corporation.

Current Action

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application guidelines.

Type of Review: New collection.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Education Awards Program. 2000 Application Guidelines.

OMB Number: None.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 150.

Frequency: Twice per year.

Average Time Per Response: Eight (8) hours.

Estimated Total Burden Hours: 2,400 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 29, 1999.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 99–20016 Filed 8–3–99; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of Currently Approved Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed applications entitled: The 2000 Application Guidelines for Learn and Serve America Higher Education and Learn and Serve America School and Community-Based Programs. Copies of the information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by October 4, 1999.

ADDRESSES: Send comments to the Corporation for National and Community Service, Nancy Talbot, Director, Planning and Program Development, 1201 New York Avenue, NW, Washington, DC, 20525.

FOR FURTHER INFORMATION CONTACT: Nancy Talbot (202) 606–5000, ext. 470.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Part I

Background

The 2000 Application Guidelines for Learn and Serve America Higher Education provide the background, requirements and instructions that potential applicants need to apply to the Corporation for grants to operate Learn and Serve America service-learning programs for college-age youth.

Current Action

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application guidelines. The application forms and instructions are being revised to reflect the evaluation criteria approved by the Corporation board last year. In some instances this means that questions appear under different categories than previously. In an effort to streamline and consolidate this application package, there is one title page and one budget form that all Higher Education applicants can use. Form instructions are clearer and are written in plain language. Questions that need response in the narrative section of the application are streamlined and the same for all Learn and Serve America Programs.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: The 2000 Application Guidelines for Learn and Serve America Higher Education.

OMB Number: 3045–0046.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 400.

Frequency: Once per year.

Average Time Per Response: Six (6) hours.

Estimated Total Burden Hours: 2,400 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Part II

Background

The 2000 Application Guidelines for Learn and Serve America School- and Community-Based Programs provide the background, requirements and instructions that potential applicants need to apply to the Corporation for grants to operate Learn and Serve America service-learning programs for school-age youth.

Current Action

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application guidelines. The application forms and instructions are being revised to reflect the evaluation criteria approved by the Corporation board last year. In some instances this means that questions appear under different categories than previously. In an effort to streamline and consolidate this application package, there is one title page that all Learn and Serve America School and Community-Based Program applicants can use. Forms and form instructions are clearer and are written in plain language. Questions that need response in the narrative section of the application are streamlined and the same for all Learn and Serve America Programs.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: The 2000 Application Guidelines for Learn and Serve America School and Community-Based Programs.

OMB Number: 3045–0045.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 225

Frequency: Once per year.

Average Time Per Response: Ten (10) hours

Estimated Total Burden Hours: 2,250 hrs.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 29, 1999.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 99–20017 Filed 8–3–99; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

DATE OF MEETING: September 15, 1999 from 0830 to 1730 and September 16, 1999 from 0830 to 1620.

PLACE: National Rural Electric Cooperative Association, 4301 Wilson Boulevard Conference Center Room 1, Arlington, VA 22203.

MATTERS TO BE CONSIDERED: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Kelly, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2124.

Dated: July 29 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–19943 Filed 8–3–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 209. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 209 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: August 1, 1999.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 208. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the Federal Register now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: July 29, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA				
ANCHORAGE [INCL NAV RES]				
05/01 - 09/30	161	63	224	03/01/1999
10/01 - 04/30	89	56	145	03/01/1999
BARROW	115	73	188	03/01/1999
BETHEL	105	60	165	03/01/1999
CLEAR AB	80	57	137	03/01/1999
COLD BAY	110	68	178	03/01/1999
CORDOVA	85	62	147	03/01/1998
CRAIG				
05/01 - 08/31	95	66	161	10/01/1998
09/01 - 04/30	79	64	143	10/01/1998
DEADHORSE	80	67	147	03/01/1999
DENALI NATIONAL PARK				
06/01 - 08/31	115	52	167	03/01/1998
09/01 - 05/31	90	50	140	03/01/1998
DILLINGHAM	95	59	154	10/01/1998
DUTCH HARBOR-UNALASKA	110	71	181	03/01/1999
EARECKSON AIR STATION	80	57	137	03/01/1999
EIELSON AFB				
05/15 - 09/15	118	58	176	03/01/1999
09/16 - 05/14	81	54	135	03/01/1999
ELMENDORF AFB				
05/01 - 09/30	161	63	224	03/01/1999
10/01 - 04/30	89	56	145	03/01/1999
FAIRBANKS				
05/15 - 09/15	118	58	176	03/01/1999
09/16 - 05/14	81	54	135	03/01/1999
FT. RICHARDSON				
05/01 - 09/30	161	63	224	03/01/1999
10/01 - 04/30	89	56	145	03/01/1999
FT. WAINWRIGHT				
05/15 - 09/15	118	58	176	03/01/1999
09/16 - 05/14	81	54	135	03/01/1999
GLENNALLEN	90	52	142	10/01/1998
HEALY				
06/01 - 08/31	115	52	167	03/01/1998
09/01 - 05/31	90	50	140	03/01/1998
HOMER				
05/15 - 09/15	115	58	173	03/01/1999
09/16 - 05/14	98	57	155	03/01/1999
JUNEAU	105	68	173	03/01/1999
KAKTOVIK	175	74	249	03/01/1999

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KAVIK CAMP	125	69	194	03/01/1999
KENAI-SOLDOTNA				
05/01 - 09/30	114	63	177	03/01/1999
10/01 - 04/30	76	59	135	03/01/1999
KENNICOTT	149	68	217	10/01/1998
KETCHIKAN				
05/01 - 09/30	110	74	184	03/01/1999
10/01 - 04/30	88	73	161	03/01/1999
KING SALMON	101	70	171	03/01/1999
KLAWOCK				
05/01 - 08/31	95	66	161	10/01/1998
09/01 - 04/30	79	64	143	10/01/1998
KODIAK	99	67	166	03/01/1999
KOTZEBUE				
05/01 - 08/31	137	75	212	03/01/1999
09/01 - 04/30	73	61	134	03/01/1999
KULIS AGS				
05/01 - 09/30	161	63	224	03/01/1999
10/01 - 04/30	89	56	145	03/01/1999
MCCARTHY	149	68	217	10/01/1998
METLAKATLA				
05/30 - 10/01	85	52	137	03/01/1999
10/02 - 05/29	78	51	129	03/01/1999
MURPHY DOME				
05/15 - 09/15	118	58	176	03/01/1999
09/16 - 05/14	81	54	135	03/01/1999
NOME				
03/01 - 03/31	117	58	175	03/01/1999
04/01 - 02/29	92	56	148	03/01/1999
NUIQSUT	120	69	189	03/01/1999
PETERSBURG	87	57	144	03/01/1999
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PRUDHOE BAY	80	67	147	03/01/1999
SEWARD				
05/01 - 09/30	122	65	187	03/01/1999
10/01 - 04/30	86	61	147	03/01/1999
SITKA-MT. EDGECOMBE				
09/05 - 03/31	83	59	142	10/01/1998
04/01 - 09/04	101	60	161	03/01/1998
SKAGWAY				
05/01 - 09/30	110	74	184	03/01/1999
10/01 - 04/30	88	73	161	03/01/1999

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
SPRUCE CAPE	99	67	166	03/01/1999
TANANA				
03/01 - 03/31	117	58	175	03/01/1999
04/01 - 02/29	92	56	148	03/01/1999
UMIAT	107	33	140	03/01/1999
VALDEZ				
05/15 - 10/01	110	63	173	03/01/1999
10/02 - 05/14	84	60	144	03/01/1999
WAINWRIGHT	127	82	209	03/01/1999
WRANGELL				
05/01 - 09/30	110	74	184	03/01/1999
10/01 - 04/30	88	73	161	03/01/1999
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	57	137	03/01/1999
AMERICAN SAMOA				
AMERICAN SAMOA	73	53	126	03/01/1997
GUAM				
GUAM (INCL ALL MIL INSTAL)	150	79	229	10/01/1998
HAWAII				
CAMP H M SMITH	110	61	171	10/01/1998
EASTPAC NAVAL COMP TELE AREA	110	61	171	10/01/1998
FT. DERUSSEY	110	61	171	10/01/1998
FT. SHAFTER	110	61	171	10/01/1998
HICKAM AFB	110	61	171	10/01/1998
HONOLULU NAVAL & MC RES CTR	110	61	171	10/01/1998
ISLE OF HAWAII: HILO	80	52	132	06/01/1998
ISLE OF HAWAII: OTHER	100	54	154	10/01/1998
ISLE OF KAUAI				
12/01 - 04/30	145	64	209	06/01/1999
05/01 - 11/30	115	62	177	06/01/1998
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	112	64	176	10/01/1998
ISLE OF OAHU	110	61	171	10/01/1998
KANEOHE BAY MC BASE	110	61	171	10/01/1998
KEKAHA PACIFIC MISSILE RANGE FAC				
12/01 - 04/30	145	64	209	06/01/1999
05/01 - 11/30	115	62	177	06/01/1998
KILAUEA MILITARY CAMP	80	52	132	06/01/1998
LUALUALEI NAVAL MAGAZINE	110	61	171	10/01/1998
NAS BARBERS POINT	110	61	171	10/01/1998
PEARL HARBOR [INCL ALL MILITARY]	110	61	171	10/01/1998
SCHOFIELD BARRACKS	110	61	171	10/01/1998
WHEELER ARMY AIRFIELD	110	61	171	10/01/1998

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
[OTHER]	79	62	141	06/01/1993
JOHNSTON ATOLL				
JOHNSTON ATOLL	13	9	22	10/01/1998
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	65	41	106	05/01/1999
NORTHERN MARIANA ISLANDS				
ROTA	88	69	157	06/01/1999
SAIPAN	154	88	242	06/01/1999
[OTHER]	61	62	123	06/01/1999
PUERTO RICO				
BAYAMON				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
CAROLINA				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
FAJARDO [INCL CEIBA & LUQUILLO]	82	60	142	03/01/1998
FT. BUCHANAN [INCL GSA SVC CTR,				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
HUMACAO	82	60	142	03/01/1998
LUIS MUNOZ MARIN IAP AGS				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
MAYAGUEZ	94	60	154	06/01/1998
PONCE	101	67	168	09/01/1998
ROOSEVELT RDS & NAV STA	82	60	142	03/01/1998
SABANA SECA [INCL ALL MILITARY]				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
SAN JUAN & NAV RES STA				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
[OTHER]	66	57	123	09/01/1998
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	100	73	173	08/01/1999
12/15 - 04/14	140	77	217	08/01/1999
ST. JOHN				
04/15 - 12/14	236	85	321	08/01/1999
12/15 - 04/14	413	103	516	08/01/1999

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ST. THOMAS						
04/15 - 12/14	176		74		250	08/01/1999
12/15 - 04/14	311		88		399	08/01/1999
WAKE ISLAND						
WAKE ISLAND	60		32		92	09/01/1998

[FR Doc. 99–19944 Filed 8–3–99; 8:45 am]
BILLING CODE 5001–C

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 4, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 29, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Intergovernmental and Interagency Affairs

Type of Review: Extension.
Title: Application for Waiver of the Two-Year Foreign Residence Requirement of the Exchange Visitor Program.
Frequency: On occasion.
Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 25.
Burden Hours: 500.
Abstract: The ED Exchange Visitor Waiver Review Board makes recommendations to the Justice Department through the U.S. Information Agency (USIA) for waiver of the two-year foreign residency requirement for exchange visitors who have been granted J–1 visas. This application will be used by educational or rehabilitative institutions or organizations that apply to the Department of Education to request a recommendation for a waiver on behalf of an exchange visitor. As a result of the regulation reinvention efforts, the Federal Regulations governing this process were eliminated October 1, 1996.

Requests for copies of this information collection should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address Vivian_Reese@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or by e-mail at joe_schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–19960 Filed 8–3–99; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 3, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 29, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: Revision.
Title: Evaluation of the Eisenhower Professional Development Program: State and Local Activities.
Frequency: One time.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 800.
Burden Hours: 800.
Abstract: The Planning and Evaluation Service is conducting a three-year study to evaluate the Eisenhower Professional Development Program and to report on the progress of the program with respect to a set of Performance Indicators established by the Department of Education. The evaluation will provide information on the types of professional development activities supported by the program, the effects of the program participation on classroom teaching, and the quality of program planning and coordination. Clearance is sought for the Longitudinal Study of Teacher Changes, to be conducted in the Spring of the 1998–1999 school year. Respondents will be teachers.

Requests for copies of this information collection should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address Vivian_Reese@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or electronically at his internet address Joe Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–19959 Filed 8–3–99; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–446–000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 29, 1999.

Take notice that on July 26, 1999, CNG Transmission Corporation, (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of August 25, 1999:

Sixth Revised Sheet No. 251
Original Sheet No. 397
Sheet No. 398

CNG states that the purpose of this filing is to modify CNG's FERC Gas Tariff to specify the types of discounts that CNG can offer without having to file individual discounted service agreements. CNG further states that its proposed language is patterned after that which has been approved for many other pipelines in recent months.

CNG states that copies of its filing are being served upon its customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protest must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20005 Filed 8–3–99; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3683–000]

Central Illinois Light Company; Filing

July 29, 1999.

Take notice that on July 22, 1999, Central Illinois Light Company filed its quarterly report for the quarter ending June 30, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211

must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19995 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–447–000]

Crossroads Pipeline Co.; Tariff Filing

July 29, 1999.

Take notice that on July 23, 1999, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with an effective date of August 1, 1999:

Seventh Revised Sheet No. 76

Crossroads states that the purpose of this filing is to comply with Order No. 587–K issued on April 2, 1999. The revised tariff sheet reflects certain Version 1.3 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in the Commission's Regulations.

Crossroads requests waiver of the Commission's regulations to permit the proposed tariff sheet to become effective on August 1, 1999.

Crossroads states that copies of the filing have been mailed to all affected customers and applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commissions Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20002 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–3669–000, ER99–3572–000, ER99–3673–000, ER99–3678–000, and ER99–3682–000]

Little Bay Power Corporation, Lowell Cogneration Company Limited Partnership, Southern Indiana Gas and Electric Company, Alliant Energy Services Company, and PEI Power Corp.; Notice of Filings

July 29, 1999.

Take notice that on July 21, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending June 30, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 10, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20002 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–130–004]

Minnesota Power & Light Company; Filing

July 29, 1999.

Take notice that on July 12, 1999, Minnesota Power & Light Company filed revised standards of conduct in

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–14–003]

Midwestern Gas Transmission Co.; Negotiated Rate Filing

July 29, 1999.

Take notice that on July 26, 1999, Midwestern Gas Transmission Company (Midwestern), tendered for filing a copy of a firm transportation service agreement under Midwestern's Rate Schedule FT–A between Midwestern and Grain Processing Corporation (GPC) (FT–A Service Agreement) and a copy of a Firm Transportation Discount Letter Agreement (Letter Agreement) between Midwestern and GPC. Midwestern states that the FT–A Service Agreement and the Letter Agreement are being filed as a negotiated rate arrangement pursuant to the authority granted Midwestern in Midwestern's Docket No. RP97–14. Midwestern requests that the Commission approve the Negotiated Rate Arrangement effective August 1, 1999.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 5, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–19993 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

response to the Commission's June 18, 1999 Order. 87 FERC ¶ 61,327 (1999).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before August 23, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene in the specific proceeding. Copies of these filings are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20006 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–401–001]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

July 29, 1999.

Take notice that on July 26, 1999, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sub. Fourth Revised Sheet No. 457 and Sub. Second Revised Sheet No. 458, with a proposed effective date of August 1, 1999.

National Fuel states that the purpose of the instant filing is to revise its July 1, 1999, compliance filing submitted in the above-referenced proceeding to reflect the waiver granted to National Fuel by Commission order issued on April 28, 1999, in Docket No. RP99–229–000. The April 28, 1999 Order granted National Fuel a one-year waiver of the following GISB Standards (Version 1.3); Nominations Standards 1.4.1 to 1.4.7, Flowing Gas Standards 2.4.1 to 2.4.6, Invoicing Standards 3.4.1 to 3.4.4, EDM Standards 4.3.1 to 4.3.3, and, to the extent applicable to EDI transactions, 4.3.9 to 4.3.15, and Capacity Release Standards 5.4.1 to 5.4.17.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19994 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–587–000]

National Fuel Gas Supply Corporation; Request Under Blanket Authorization

July 29, 1999.

Take notice that on July 22, 1999, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP99–587–000 a request pursuant to Sections 157.205 and 157.214 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.214) for authorization to increase the storage capacity at its Markle Storage Field, in Jefferson County, Pennsylvania, under authorization issued in Docket No. CP83–4–000 pursuant to Section 7 of the Natural Gas Act, all as fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

In its application, National Fuel requests authorization to increase the maximum storage capacity of Markle Storage Field from 255,000 Mcf to 325,000 Mcf, and to increase the maximum storage pressure from 540 psig to 625 psig. According to National Fuel, the increase in capacity at Markle Storage Field will support storage service to be offered to shippers of National Fuel. National Fuel states that the increase in capacity and pressure at the Markle Storage Field will not require additional facilities.

National Fuel states that it will comply with the reporting requirement pursuant to Section 157.214(c) of the Commission's Regulations, requiring semi-annual reports to coincide with the termination of the injection and withdrawal cycles and will continue to file such reports until the storage volume has reached, or closely approximates, the maximum of 325,000 Mcf, as requested in this prior notice application. It is further stated that National Fuel has received approval from the Pennsylvania Department of Environmental Protection to increase the operating pressure of Markle Storage Field as proposed herein.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19999 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–339–001]

Overthrust Pipeline Company; Tariff Filing

July 28, 1999.

Take notice that on July 23, 1999, Overthrust Pipeline Company tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, to be effective August 1, 1999:

Substitute Fourth Revised Sheet No. 60
Substitute Fifth Revised Sheet No. 78
Substitute Fourth Revised Sheet Nos. 78A, 78B, 78C
Substitute Third Revised Sheet No. 78D
Substitute Original Revised Sheet No. 78E

Overthrust states that the filing is being made in compliance with the Commission's July 15, 1999, letter order in Docket No. RP99–339–000 (the July 15 order).

In the July 15 order, the Commission accepted tariff sheets to be effective, subject to Overthrust revising its tariff sheets within 15 days of the order to reflect corrections discussed in its July 15 order. This tariff filing is tendered as required by the Commission's directives.

Overthrust states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers.

Secretary.

[FR Doc. 99–19953 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3679–000]

PEI Power Corporation; Filing

July 29, 1999.

Take notice that on July 21, 1999, PEI Power Corporation filed a quarterly report for the quarter ending September 30, 1998.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 10, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20003 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3680–000]

PEI Power Corporation; Filing

July 29, 1999.

Take notice that on July 21, 1999, PEI Power Corporation filed a quarterly report for the quarter ending December 31, 1998.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 10, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20004 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 201–000 AK]

Petersburg Municipal Power and Light; Petersburg Municipal Power and Light's Request To Use Alternative Procedures in Filing a License Application

July 29, 1999.

On July 7, 1999, the existing licensee, Petersburg Municipal Power and Light (Petersburg), filed a requests to use alternative procedures in submitting an application for a new license for the existing Blind Slough Hydroelectric Project No. 201. The 2.0-megawatt project is located on Crystal Creek, and Mitkof Island, about 16 miles from the City of Petersburg, Alaska. Petersburg has demonstrated that it has made an effort to contact all resource agencies, Indian tribes, nongovernmental organizations (NGOs), and others affected by the proposal, and that a consensus exists that the use of alternative procedures is appropriate in this case. Petersburg has also submitted a communications protocol that is supported by most interested entities.

The purpose of this notice is to invite comments on Petersburg's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations.[1] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedures being requested here combine the prefiling consultation process with the environmental review process, allowing the applicant to complete and file an Environmental Assessment (EA) in lieu of Exhibit E of the license application. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review process into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

[1] Order No. 596, Regulations for the Licensing of Hydroelectric Projects, 81 FERC ¶ 61,103 (1997).

Applicant Prepared EA Process and Blind Slough Project Schedule

Petersburg has submitted a proposed schedule for the APEA process that leads to the filing of a new license application by August, 2002. Study plans would be developed this summer, with National Environmental Policy Act scoping being conducted in the fall. Field-work would be conducted over two seasons, summer 2000 and 2001 (if needed), with a draft application and draft APEA to be issued for comment in the fall of 2001.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on Petersburg's proposal to use the alternative procedures to file an application for the Blind Slough Hydroelectric Project.

Filing Requirements

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE., Washington, DC 20426.

All comment filings must bear the heading "Comments on the Alternative Procedures," and include the project name and number (Blind Slough Hydroelectric Project No. 201).

For further information on this process, please contact Vince Yearick of the Federal Energy Regulatory Commission at 202–219–2938 or E-mail vince.yearick@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19997 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–592–000]

Southwest Gas Transmission Company, A Limited Partnership; Application

July 29, 1999.

Take notice that on July 22, 1999, Southwest Gas Transmission Company, A Limited Partnership (SGTC), P.O. Box 98510, Las Vegas, Nevada 89193–8510, filed, in Docket No. CP99–592–000, an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment of facilities and services and for a certificate of public convenience and necessity to construct and operate facilities and to transport gas so as to enable SGTC to interconnect with Transwestern Pipeline Company (Transwestern), all as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at *www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

Specifically, SGTC proposes to establish a new upstream pipeline interconnection with Transwestern in order to increase competitive options for upstream gas supplies and transportation in the Southern Nevada market.[1] In order to accomplish this, SGTC seeks to: (1) Construct and operate metering facilities to interconnect SGTC's system and Transwestern's, (2) construct and operate metering facilities at the existing interconnection between SGTC's system and the system of El Paso Natural Gas Company (El Paso), (3) abandon transportation service for El Paso and the existing Fort Mohave Meter Station (located at the downstream terminus of SGTC's system) that was used to measure volumes delivered by El Paso, (4) assign El Paso's transportation service rights on SGTC to Southwest Gas Corporation (Southwest), (5) transport gas Southwest under Section 7(c), and (6) any necessary waivers of the Commission's regulations. In essence, these authorizations would change the shipper on SGTC's system from the upstream supplier (El Paso) to the downstream distributor (Southwest). According to SGTC, the reassignment of capacity rights from El Paso to Southwest would continue to permit transportation on SGTC's system for shippers with transportation rights on the upstream pipelines.

The estimated cost of the proposed facilities is $1,376,000. The cost to abandon the existing meter facility is estimated to be $23,000. SGTC states that it will receive a contribution from Transwestern in aid of construction of the proposed facilities and will finance the remainder of the costs through financing programs and internally generated funds.

Any questions regarding this application should be directed to Edward C. McMurtrie at (702) 876–7109, Southwest Gas Corporation, P.O. Box 98510, Las Vegas, Nevada 89193–8510.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 19, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the

[1] SGTC's entire system is located in Mohave County, Arizona.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–448–000]

Southern Natural Gas Company; Petition for Waiver

July 29, 1999.

Take notice that on July 26, 1999, Southern Natural Gas Company (Southern) tendered for filing a petition for an interim waiver of Section 14.1(c)(1) of the General Terms and Conditions of its Tariff in order to waive cashout premiums incurred during June 1999. Additionally, Southern requests that the Commission permit Southern to continue to waive cashout premiums, to the extent necessary, through the earlier of (1) December 31, 1999 or (2) the last day of the month in which Southern provides notice that the software problems causing the cashout issues are no longer an issue.

Southern states that copies of the filing have been mailed to all of the shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 5, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20007 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intevenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Comments will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for SGTC to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–20000 Filed 8–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3712–000]

Southwestern Electric Power Company; Notice of Filing

July 29, 1999.

Take notice that on July 23, 1999, Southwestern Electric Power Company (SWEPCO), tendered for filing an Interconnection Agreement between SWEPCO and Tenaska Gateway Partners, Ltd. (Tenaska).

SWEPCO requests an effective date for the Interconnection Agreement of July 24, 1999. Accordingly, SWEPCO requests waiver of the Commission's notice requirements. SWEPCO also requests expedited consideration of the filing, including a shortened notice and comment period.

SWEPCO states that a copy of the filing was served on Tenaska and the Public Utilities Commission of Texas.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 6, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20009 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–8–29–000]

Transcontinental Gas Pipe Line Corporation; Proposed Changes in FERC Gas Tariff

July 29, 1999.

Take notice that on July 27, 1999 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Twenty-Second Revised Sheet No. 50, to be effective July 1, 1999.

Transco states that the purpose of the instant filing is to track rate changes attributable to transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. The filing is being made pursuant to tracking provisions under Section 4 of Transco's Rate Schedule FT–NT.

Transco states that included in Appendix B attached to the filing are the explanations of the rate changes and details regarding the computation of the revised Rate Schedule FT–NT rates.

Transco states that copies of the filing are being mailed to each of its FT–NT customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 285.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commissions' Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19998 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–176–000]

Wellhead Generating Company, LLC; Amendment to Application for Commission Determination of Exempt Wholesales Generator Status

July 29, 1999.

Take notice that on July 16, 1999, Wellhead Generating Company LLC, filed with the Federal Energy Regulatory Commission (Commission) a letter amendment to its Application for Determination of Exempt Wholesale Generator Status which was filed with the Commission on June 25, 1999.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before August 10, 1999, and must he served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20001 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. EG99–201–000, et al.]

FSEG North Chennai Ltd., et al.; Electric Rate and Corporate Regulation Filings

July 27, 1999.

Take notice that the following filings have been made with the Commission:

1. PSEG North Chennai Ltd.

[Docket No. EG99–201–000]

Take notice that on July 23, 1999, PSEG North Chennai Ltd. (PSEG North Chennai or Applicant) with its principal office at 608 St. James Court, St. Denis Street, Port Louis, Mauritius filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PSEG North Chennai is a company organized under the laws of Mauritius. PSEG North Chennai will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating a coal-fired electric generating facility consisting of one unit with a nameplate rating of approximately 525 megawatts and incidental facilities located in Ennore, Tamil Nadu, India; selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. LSP Energy Limited Partnership

[Docket No. EG99–202–000]

Take notice that on July 23, 1999, LSP Energy Limited Partnership (Applicant), a Delaware limited partnership with a principal place of business at Two Tower Center, 20th Floor, East Brunswick, NJ 08816, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant was previously issued a Determination of Exempt Wholesale Generator Status by letter of Douglas W. Smith, FERC General Counsel, dated April 28, 1998 in Docket No. EG98–59. Applicant has filed this application to confirm that its exempt wholesale generator status will be maintained if it executes certain contractual arrangements and engages in incidental activities under negotiation with respect to the construction, operation and maintenance of its approximately eight hundred thirty-seven (837) megawatt, natural gas-fired combined cycle electric generation facility under construction in Batesville, Mississippi (the Facility). The Facility is scheduled to commence commercial operation by Summer 2000.

The Applicant is engaged directly, or indirectly through one or more affiliates as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy from the Facility at wholesale.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. PSEG International Ltd.

[Docket No. EG99–203–000]

Take notice that on July 23, 1999, PSEG International Ltd. (PSEG International or Applicant) with its principal office at c/o: Codan Services, Clarendon House, 2 Church Street, Hamilton HMCX, Bermuda filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PSEG International is a company organized under the laws of Bermuda. PSEG International will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating a gas-fired electric generating facility consisting of a 115 megawatt gas turbine and one 250 megawatt steam turbine and auxiliary facilities located in Rades, Tunisia and selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Nevada Power Company

[Docket No. ER99–2338–000]

Take notice that on July 20, 1999, Nevada Power Company (Nevada Power), tendered for filing pursuant to Section 205 of the Federal Power Act, amendments to the Wholesale Generation Tariffs applicable to sales of capacity and energy from the "bundles" of generation that Nevada Power intends to divest. These tariffs permit sales at market-based rates and terms and conditions. The amendments increase the number of bundles located inside the Nevada Power load pocket from three to four, and also make changes to the rate cap provisions applicable to the load pocket bundles.

Nevada Power has requested that the Commission issue an order approving the amended tariffs no later than September 30, 1999, and that the Commission make the tariffs effective as

of the date that ownership of each bundle is transferred to the purchaser.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. UtiliCorp United Inc.

[Docket No. ER99–3297–000]

Take notice that on July 21, 1999, UtiliCorp United Inc., on behalf of its Missouri Public Service operating division, filed a supplement to its June 18, 1999, filing in this docket.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Union Electric Company

[Docket No. ER99–3457–000]

Take notice that on July 1, 1999, Union Electric Company (UE), tendered for filing an Amendment to the Wholesale Electric Service Agreement between UE and the City of Owensville, Missouri (Owensville). UE states that the amendment will allow Owensville to participate in a voluntary curtailment program similar to that applicable to its retail electric service customers in Missouri.

UE has proposed to make the Second Amendment effective on July 2, 1999.

Comment date: August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Okeechobee Generating Company

[Docket No. ER99–3643–000]

Take notice that on July 20, 1999, Okeechobee Generating Company (Okeechobee), tendered for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services, at market-based rates. Okeechobee plans to construct and own a nominally rated 500 MW natural gas-fired, combined cycle power plant located in Okeechobee County, Florida.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas Corporation

[Docket No. ER99–3644–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on July 20, 1999, tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, a service agreement (the Service Agreement) under which NYSEG may provide capacity and/or energy to Consolidated Edison Company of New York, Inc. (ConEd) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 3.

NYSEG has requested waiver of the notice requirements so that the Service Agreement with ConEd becomes effective as of July 21, 1999.

NYSEG has served copies of the filing upon the New York State Public Service Commission and ConEd.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–3645–000]

Take notice that on July 20, 1999, Alliant Energy Corporate Services, Inc (Alliant Energy), tendered for filing an executed Service Agreement for Network Integration Transmission Service and an executed Network Operating Agreement , establishing the Adams-Columbia Electric Cooperative as a Network Customer under the terms of Alliant Energy's transmission tariff.

Alliant Energy requests an effective date of June 21, 1999, for Network Load of this Network Customer. Alliant Energy, accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin, the Iowa Utilities Board, the Illinois Commerce Commission and the Minnesota Public Utilities Commission.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy)

[Docket No. ER99–3646–000]

Take notice that on July 20, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy), tendered for filing Amendment Nos. 1 and 2 to Supplement No. 30, to the Standard Generation Service Tariff to incorporate Netting Agreements with Energy Transfer Group, L.L.C., into the tariff provisions.

Allegheny Power and Allegheny Energy request a waiver of notice requirements to make the Amendments effective as of the effective dates therein, June 21, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–3650–000]

Take notice that on July 20, 1999, Alliant Energy Corporate Services, Inc. (Alliant Energy), tendered for filing an executed Service Agreement for Network Integration Transmission Service and an executed Network Operating Agreement, establishing the Rock County Electric Cooperative as a Network Customer under the terms of Alliant Energy's transmission tariff.

Alliant Energy requests an effective date of June 24, 1999, for Network Load of this Network Customer. Alliant Energy, accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Public Service Commission of Wisconsin, the Iowa Utilities Board, the Illinois Commerce Commission and the Minnesota Public Utilities Commission.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. SCC–L1, L.L.C.

[Docket No. ER99–3651–000]

Take notice that on July 20, 1999, pursuant to Section 205 of the Federal Power Act and Section 35.15(a), 18 CFR 35.15(a) of the Commission's Regulations, SCC–L1, L.L.C. (SCC–L1), tendered for filing with the Federal Energy Regulatory Commission a Notice of Termination of its Long-Term Power Purchase Agreement and Short-Term Power Purchase Agreement by and between SCC–L1 and Enron Power Marketing, Inc. Pursuant to Section 35.15(a) of the Commission's Regulations, SCC–L1 requests an effective date for this termination of September 17, 1999.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. SCC–L2, L.L.C.

[Docket No. ER99–3652–000]

Take notice that on July 20, 1999, SCC–L, L.L.C. (SCC–L2), tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.15(a), 18 CFR 35.15(a) of the Commission's Regulations, with the Federal Energy Regulatory Commission a Notice of Termination of its Long-Term Power Purchase Agreement and Short-Term Power Purchase Agreement by and between SCC–L2 and Enron Power Marketing, Inc.

Pursuant to Section 35.15(a) of the Commission's Regulations, SCC–L2 requests an effective date for this termination 60 days from the date of filing or September 17, 1999.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. SCC–L3, L.L.C.

[Docket No. ER99–3653–000]

Take notice that on July 20, 1999, SCC–L3, L.L.C. (SCC–L3), pursuant to Section 205 of the Federal Power Act and Section 35.15(a), 18 CFR 35.15(a) of the Commission's Regulations, tendered for filing with the Federal Energy Regulatory Commission a Notice of Termination of its Long-Term Power Purchase Agreement and Short-Term Power Purchase Agreement by and between SCC–L3 and Enron Power Marketing, Inc.

Pursuant to Section 35.15(a) of the Commission's Regulations, SCC–L3 requests an effective date for this termination 60 days from the date of filing or September 17, 1999.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. South Eastern Electric Development Corporation

[Docket No. ER99–3654–000]

Take notice that on July 20, 1999, South Eastern Electric Development Corporation tendered for filing a long-term service agreement with Morgan Stanley Capital Group Inc.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Entergy Services, Inc.

[Docket No. ER99–3655–000]

Take notice that on July 20, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Florida Power & Light Company for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Services, Inc.

[Docket No. ER99–3655–000]

Take notice that on July 20, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Florida Power & Light Company for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. New England Power Pool

[Docket No. ER99–3657–000]

Take notice that on July 21, 1999, the New England Power Pool (NEPOOL) Participants Committee submitted revisions to NEPOOL's existing Market Rules and Appendices that have been approved by the NEPOOL Regional Market Operations Committee.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Select Energy, Inc.

[Docket No. ER99–3658–000]

Take notice that on July 21, 1999, Select Energy, Inc. (Select), tendered for filing, under Section 205 of the Federal Power Act, an additional rate schedule providing for the sale of energy, capacity and ancillary services at market-based rates and for the reassignment of transmission rights and an amendment to the existing rate schedule under which Select makes such sales and reassignments.

Select requests an effective date of July 22, 1999.

Copies of the filing were served on purchasers under Select's existing market-based rate schedule and the Connecticut, Massachusetts and New Hampshire Commissions.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Cinergy Services, Inc.

[Docket No. ER99–3660–000]

Take notice that on July 21, 1999, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC), tendered for filing an executed service agreement between COC and LG&E Energy Marketing Inc. (LEM), replacing the unexecuted service agreement filed on November 28, 1997 under Docket No. ER98–847–000] per COC FERC Electric Power Sales Tariff, Original Volume No. 4. which has been replaced by the COC FERC Electric Market-Based Power Sales Tariff, Original Volume No. 7–MB.

Cinergy is requesting an effective date of one day after this filing.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Services, Inc.

[Docket No. ER99–3661–000]

Take notice that on July 21, 1999, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC), tendered for filing an executed service agreement between COC and LG&E Energy Marketing Inc. (LEM), replacing the unexecuted service agreement filed on November 28, 1997 under Docket No. ER98–847–000 per COC FERC Electric Power Sales Tariff, Original Volume No. 4, which has been replaced by the COC FERC Electric Cost-Based Power Sales Tariff, Original Volume No. 6–CB.

Cinergy is requesting an effective date of one day after this filing.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Cinergy Services, Inc.

[Docket No. ER99–3662–000]

Take notice that on July 21, 1999, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC), tendered for filing an executed service agreement between COC and New Energy Ventures, Inc. (NEV), replacing the unexecuted service agreement filed on April 9, 1999 under Docket No. ER99–2440–000 per COC FERC Electric Cost-Based Power Sales Tariff, Original Volume No. 6–CB.

Cinergy is requesting an effective date of May 1, 1999, and the same Rate Designation as per the original filing.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Cinergy Services, Inc.

[Docket No. ER99–3663–000]

Take notice that on July 21, 1999, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The

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Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC), tendered for filing an executed service agreement between COC and New Energy Ventures, Inc. (NEV), replacing the unexecuted service agreement filed on April 16, 1999 under Docket No. ER99–2511–000] per COC FERC Electric Market-Based Power Sales Tariff, Original Volume No. 7–MB.

Cinergy is requesting an effective date of May 1, 1999 and the same Rate Designation as per the original filing.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. California Independent System Operator Corporation

[Docket No. ER99–3664–000]

Take notice that on July 20, 1999, the California Independent System Operator Corporation (ISO), tendered for filing the executed Meter Service Agreement for Scheduling Coordinators (Meter Service Agreement) between the Western Area Power Administration, Sierra Nevada Region and the ISO for acceptance by the Commission. The ISO states that this filing replaces the unexecuted agreement on file with the Commission and incorporates the Amendment No. 1 to the Meter Service Agreement.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–19954 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 29, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Amendment of License.

b. Project No.: 1390–008.

c. Date Filed: July 17, 1999.

d. Applicant: Southern California Edison Co.

e. Name of Project; Lundy Project.

f. Location: The project is located on Mill Creek in Mono County California. The project occupies 119.8 acres of federal lands in the Inyo National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact; Daryl Fryer, Southern California Edison Company, 300 N. Lone Hill Ave., San Dimas, CA 91773, (909) 394–8700.

i. FERC Contact: Any questions on this notice should be addressed to J. W. Flint at (202) 219–2667, or e-mail address Julian.Flint@ferc.fed.us.

j. Deadline for filing comments, motions to intervene, or protests: 45 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Please include the Project Number (1390–008) on any comments, protests, or motions filed.

k. Description of Amendment: The proposed amendment would modify project boundary to add several stream gauge stations that were outside the project boundary and to remove certain facilities no longer considered project works. This amendment will reduce the acreage of federal lands encompassed by the project by 14.2 acres.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC, 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/ online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents.—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments.—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19990 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

July 29, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Transfer of License.

b. Project No: 4349–029.

c. Date Filed: June 3, 1999.

d. Applicants: Moose River Corporation, Dryden Financial II, LLC, and Moose River Acquisition Corporation.

e. Name of Project: Moose River.

f. Location: On the Moose River in the Town of Lyonsdale, Lewis County, New York. The project does not utilize federal or tribal lands.

g. Filed pursuant to: §§ 791(a)–825(r) Federal Power Act, 16 U.S.C.

h. Applicant Contacts (For transferor and transferee): Amy Koch, Cameron McKenna LLP, 1275 K Street, N.W., 5th Floor, Washington, DC 20037, (202) 466–0060, or Frank M. Dickerson, 150 South Wacker Dr., Chicago, IL 60606, (312) 831–3000.

i. FERC Contact: Any questions on this notice should be addressed to Tom Papsidero at (202) 219–2715, or e-mail address: Thomas.Papsidero@ferc.fed.us.

j. Deadline for filing comments and/or motions: September 13, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Please include the project number (4349–029) on any comments or motions filed.

k. Description of Transfer: Applicants propose (for the purpose of facilitating long-term project financing) a partial transfer of the license for Project No. 4349 from Moose River Corporation (Moose River) and Dryden Financial II, LLC (Dryden), to Moose River and Moose River Acquisition Corporation (Acquisition). One of the current licensees, Prudential Interfunding Corporation (Prudential), no longer exists. Through corporate reorganizations, the transferor Dryden (through PruLease, Inc.) is the successor-in-interest to Prudential. The applicants request after-the-fact Commission approval of the transfers of the project license from Prudential to PruLease, Inc. and from PruLease, Inc., to Dryden, as well as the prospective transfer to substitute Acquisition for Dryden as a licensee.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us// online//rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or months to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified the filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–19991 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application for Transfer for License and Soliciting Comments, Motions To Intervene, and Protests

July 29, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 4472–018.

c. *Dated Filed:* June 18, 1999.

d. *Applicants:* Niagara Mohawk Power Corporation (NMPC), Union Falls Hydrpower, L.P. (Union Falls), and Erie Boulevard Hydropower, L.P. (Erie).

e. *Name of Project:* Saranac.

f. *Location:* The project is located in Franklin, Clinton, and Essex Counties, New York. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* M. Margaret Fabic, Esq., Niagara Mohawk Power Corp., 300 Erie Boulevard, West Syracuse, NY 13202; (Union Falls Hydropower, L.P.) Donald H. Clarke, Wilkinson, Barker, Knauer & Quinn, 2300 N Street, NW, Washington, D.C. 20037–1128; and W. Thaddeus Miller, Esq., Erie Boulevard Hydropower, L.P., c/o Orion Power Holdings, Inc., 111 Market Place, Suite 520, Baltimore, MD 21202.

i. *FERC Contact:* Any questions on this notice should be addressed to Dave Snyder at (202) 219–2385 or by e-mail at david.snyder@ferc.fed.us.

j. *Deadline for filing comments and or motions:* September 13, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Please include the Project Number (4472–018) on any comments or motions filed.

k. *Description of Transfer:* NMPC and Union Falls, the co-licensees for Project No. 4472, and Erie request approval of the partial transfer of the license from NMPC to Erie. The transfer is sought pursuant to an Assets Sales Agreement

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dated December 2, 1998, as amended on February 4, 1999, in which NMPC agreed to sell the project's Franklin Falls development and all lands associated with that development to Erie.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENT", "RECOMMENDATIONS FOR THE TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular applicant.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Application's representatives.

Linwood A. Waston, Jr.,

Acting Secretary.

[FR Doc. 99–19992 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

July 29, 1999.

a. Type of filing: Notice of Intent to File Application for a New License.

b. Project No.: 201.

c. Date filed: July 7, 1999.

d. Submitted By: Petersburg Municipal Power and Light.

e. Name of Project: Blind Slough Project.

f. Location: On Crystal Creek, Mitkof Island, near the City of Petersburg, Alaska.

g. Filed Pursuant to: 18 CFR 16.6 of the Commission's regulations.

h. Effective date of current license: June 1, 1980.

i. Expiration date of current license: November 12, 2004.

j. The project consists of: (1) a 32-foot high by 205-foot long rockfill dam; (2) an ungated side-channel spillway; (3) Crystal Lake Reservoir, with approximately 4,450 acre-feet of active storage and a surface area of 233 acres at spillway crest elevation 1,294 feet ms1; (4) a 4,642-foot long, 20-inch diameter steel penstock; (5) two powerhouses containing generating units with rated capacities of 1,600 kW and 400 kW; and (6) other facilities and interests appurtenant to operation of the project.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Dennis Lewis, Superintendent, Petersburg Municipal Power and Light, P.O. Box 329, 11 South Nordic, Petersburg, AK 99833, (907) 772–4203

l. FERC contact: Vince Yearick, 202–219–3073 or vince.yearick@ferc.fed.us

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 12, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–20008 Filed 8–3–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00608; FRL–6088–5]

Data Acquisition for Anticipated Residue and Percent of Crop Treated; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is seeking public comment on the following new Information Collection Request (ICR): "Data Acquistition for Anticipated Residue and Percent of Crop Treated." This ICR proposes a new collection activity that is not currently approved. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number "OPP–00608," must be received on or before October 4, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section of this notice.

FOR FURTHER INFORMATION CONTACT: Cameo Smoot, Office of Pesticide Programs, Mail Code 7506C, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: 703–305–5454, fax: 703–305–5884, e-mail: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

You may be potentially affected by this notice if you are a pesticide registrant with a pesticide registration subject to a tolerance action that is 5 years old that relies on anticipated or actual residues level data. Sections 408(b)(2)(E)(i) and 408(b)(2)(F) of the Federal Food, Drug, and Cosmetic Act (FFDCA) authorizes the EPA to use anticipated or actual residues (ARs) and the percent crop treated (PCT) to establish, modify, maintain, or revoke a tolerance for a pesticide residue. After using ARs or PCT, the Agency must verify that residues in or on food do not unacceptably exceed those relied on for establishing the tolerances. Specifically, section 408(b)(2)(E)(ii) of FFDCA requires data to be called in within 5 years after each tolerance decision that relies on ARs; section 408(b)(2)(F)(iv) of FFDCA requires periodic reevaluation if PCT estimates are used.

Potentially affected categories and entities may include, but are not limited to the following:

Category	NAICS Code	SIC Codes	Examples of Potentially Affected Entities
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Pesticide registrants whose registration relies on a tolerance action which is based on ARs or PCT data

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. You or your business are affected by this action if you have a conditional pesticide registration with the Agency. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. Electronic Availability

Electronic copies of this document and the ICR are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/). You can easily follow the menu to find this **Federal Register** notice using the publication date or the **Federal Register** citation for this notice. Although a copy of the ICR is posted with the **Federal Register** notice, you can also access a copy of the ICR by going directly to http://www.epa.gov/icr/. You can then easily follow the menu to locate this ICR by the title of the ICR.

B. Fax-on-Demand

Using a faxphone call 202–401–0527 and select item 6073 for a copy of the ICR.

C. In Person or By Phone

If you have any questions or need additional information about this notice or the ICR referenced, please contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

In addition, the official record for this notice, including the public version, has been established under docket control number OPP–00608, (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in the Office of Pesticide Programs (OPP) Public Docket, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OPP Public Docket telephone number is 703–305–5805.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number, OPP–00608, in your correspondence.

1. *By mail.* Submit written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. Telephone: 703–305–5805.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00608. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

C. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

We invite you to provide your views on the estimates provided, new approaches we haven't considered, the potential impacts of the various options (including possible unintended

consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the notice.

IV. What Information Collection Activity or ICR Does This Notice Apply to?

EPA is seeking comments on the following ICR:

Title: Data Acquisition for Anticipated Residue and Percent of Crop Treated.

ICR status: This ICR is a new proposed information collection that has not been approved by OMB. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, requires EPA to register pesticides prior to distribution and sale within the United States. FIFRA also requires applicants for pesticide registration to provide EPA with the data needed to assess whether the registration of a pesticide would cause unreasonable adverse effects on human health or the environment, and grants EPA the authority to require registrants to provide additional data to maintain an existing registration.

Sections 408(b)(2)(E)(i) and 408(b)(2)(F) of the FFDCA, as amended by the Food Quality Protection Act of 1996, authorizes the EPA to use ARs data and the PCT data to establish, modify, maintain, or revoke a tolerance for a pesticide residue. However, the new law also requires that tolerance decisions based on ARs or PCT data be verified to ensure that residues in or on food are not above the residue levels relied on for establishing the tolerance. Specifically, section 408(b)(2)(E)(ii) of FFDCA requires data to be called in within 5 years after each tolerance decision that relies on ARs; section 408(b)(2)(F)(iv) of FFDCA requires periodic reevaluation if PCT estimates are used. Section 408(f) of FFDCA lists the methods which EPA may use to obtain the data, which include: Data Call-In notices (DCIs) or **Federal Register** notices to request data.

Under this proposed ICR, EPA will issue a DCI to affected registrants under the authority of FIFRA section 3(c)(2)(B). Currently, there are two main categories of applications for registration: Those requiring submission of a full complement of supporting data (e.g., new chemicals and biorationals), and those requiring submission of little or no data (e.g., "me-too" products) for previously registered chemicals and use patterns. Applicants for a "me-too" product (e.g., a pesticide claimed to be substantially similar in composition and use to a product previously registered by the EPA) may be required only to use EPA Form 8570–34 ("Certification with Respect to Citation of Data") and EPA Form 8570–35 ("Data Matrix") to certify that the applicant intends to rely on data previously submitted to the EPA by another producer, the applicant has contacted the appropriate company (owning the data that the applicant is referencing), and the applicant has offered to pay reasonable compensation for the use of the data.

The kinds of data that may be the subject of a DCI include, but are not limited to the requirments in 40 CFR part 158:

- Monitoring data (Pesticide Data Program (PDP), Food and Drug Administration (FDA), Food Safety Inspection Service (FSIS), States, special monitoring [market basket, single serving, etc.]).
- Field trials.
- Processing studies.
- Reduction in residue data (washing, peeling, cooking, etc.).
- Livestock feeding studies.
- Metabolism studies.
- PCT data.

EPA has published guidelines for studies listed in 40 CFR part 158. Internal guidelines have also been established for monitoring studies which require a registrant to submit and obtain approval of protocol prior to initiating a study and specific requirements when ARs are used. The protocol must describe crops and pesticides to be covered by the study. After approval, the applicant must adhere to the protocol or seek approval for major deviations.

If EPA relies on ARs data when establishing or reassessing a tolerance, it must issue a DCI, and if the EPA used the PCT data estimates for a tolerance action, it may issue a DCI. A DCI is a letter sent to the registrant explaining the data submission requirement, requests specific data, sets out a time frame for a response to EPA, and provides applicable forms and guidelines to assist the registrant with the completion of the DCI request. A registrant must respond within 90 days of receipt of the DCI. The response must describe plans to submit the required data in accordance with the time frame specified, and, if applicable, contain suggested protocols for monitoring studies. Failure to generate the requested data, or respond to the DCI in a timely manner could result in Agency action to modify or revoke the tolerance.

V. What are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for the Data Acquisition for Anticipated Residue and Percent of Crop Treated information collection is estimated to average in a range from 59 hours to 13,636 hours per DCI depending upon the type of response requested. The respondent burden for this collection contains four categories: (1) Anticipated residues requiring a base set of data; (2) anticipated residues requiring minimum data; (3) anticipated residues collected from publically available sources; and (4) PCT using existing information. Burden estimates for each category include: (1) 13,636 hours per DCI for anticipated residues requiring a base set of data; (2) 69 hour per DCI for anticipated residues requiring minimum data; (3) 137 hours per DCI for anticipated residues collected from publically available sources; and (4) 59 hours per DCI for PCT using existing information. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Pesticide registrants whose registration relies on a tolerance action which is based on ARs or PCT data.

Estimated total number of potential respondents: 31.

Frequency of response: Once. Five years after tolerance decision using ARs/PCT data.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 29,807.

Estimated total annual burden costs: $2,773,866.

VI. Are There Changes in the Estimates from the Last Approval?

No. This is a new proposed ICR.

VII. What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

List of Subjects

Environmental protection, Information collection requests.

Dated: July 20, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–19593 Filed 8–3–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00614; FRL–6092–4]

Compliance Requirement for Child-Resistant Packaging Act; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): "Compliance Requirement for Child Resistant Packaging Act (EPA No. 0616.06; OMB 2070–0052)." This ICR is a renewal of a collection activity that is currently approved and due to expire on October 31, 1999. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number "OPP–00614," must be received on or before October 4, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section of this notice.

FOR FURTHER INFORMATION CONTACT: Cameo Smoot, Office of Pesticide Programs, Mail Code 7506C, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: 703–305–5454, fax: 703–305–5884, e-mail: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

You may be potentially affected by this notice if you are a pesticide registrant with a pesticide product that is subject to the Child Resistant Packaging (CRP) requirements in section 25(c)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Section 25 (c)(3) of FIFRA authorizes EPA to establish standards for packaging of pesticide products and pesticidal devises to protect children and adults from serious illness or injury resulting from accidental ingestion or contact. The implementing CRP regulations are in 40 CFR part 157.

Potentially affected categories and entities may include, but are not limited to the following:

Category	NAICS Code	SIC Codes	Examples of Potentially Affected Entities
Pesticide and other agricultural chemical manufacturing	325320	286 Industrial organic chemicals 287Agricultural chemicals	Pesticide registrants with pesticide products subject to child resistant packaging regulations

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. You or your business are affected by this action if you have a conditional pesticide registration with the Agency. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. Electronic Availability

Electronic copies of this document and the ICR are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/). You can easily follow the menu to find this **Federal Register** notice using the publication date or the **Federal Register** citation for this notice. Although a copy of the ICR is posted with the **Federal Register** notice, you can also access a copy of the ICR by going directly to http://www.epa.gov/icr/. You can then easily follow the menu to locate this ICR by the EPA ICR number, the OMB control number, or the title of the ICR.

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B. Fax-on-Demand

Using a faxphone call 202–401–0527 and select item 6074 for a copy of the ICR.

C. In Person or By Phone

If you have any questions or need additional information about this notice or the ICR referenced, please contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

In addition, the official record for this notice, including the public version, has been established under docket control number OPP–00614, (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in the Office of Pesticide Programs (OPP) Public Docket, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OPP Public Docket telephone number is 703–305–5805.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number, OPP–00614, in your correspondence.

1. *By mail.* Submit written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: 703–305–5805.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00614. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

C. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

We invite you to provide your views on the estimates provided, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the notice, along with the EPA and OMB ICR numbers.

IV. What Information Collection Activity or ICR Does This Notice Apply to?

EPA is seeking comments on the following ICR:

Title: Compliance Requirement for Child-Resistant Packaging Act.

ICR numbers: EPA ICR No. 0616.07; OMB No. 2070–0052.

ICR status: This ICR is a renewal of a currently approved information collection that is due to expire on October 31, 1999. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: Section 25 (c)(3) of the FIFRA authorizes EPA to establish standards for packaging of pesticide products and pesticidal devises to protect children and adults from serious illness or injury resulting from accidental ingestion or contact. The law requires that these standards are designed to be consistent with those under the Poison Prevention Packaging Act, administered by the Consumer Product Safety Commission (CPSC). Unless a pesticide product qualifies for an exemption, the product meets certain criteria regarding toxicity and use, it must be sold and distributed in child-resistant packaging. Registrants must certify to the Agency that the packaging or devise meets the standards set forth by the Agency. EPA reviews a registrant's CRP certification to determine if there are human safety/health risk concerns. Exemption requests are reviewed to ascertain if there is a health risk, and if CRP is technically feasible, practicable, and appropriate.

To certify, a registrant must submit the name and EPA registration number of the product to which the certification applies, the certification statement, the registrant's name and address, the date, and the name, title, and signature of the company officer making the certification. The certification statement must contain a statement that the pesticide product complies with 40 CFR 157.32 requirements, including the revised effectiveness standards in 16 CFR 1700.15(b) when tested by the revised protocol testing procedures in 16 CFR 1700.20. A description of the packaging used and the American Society for Testing and Materials (ASTM) Standard D3475–95, "Standard Classification of Child-Resistant Packages," designation is requested (not required). Registrants may also elect to submit data necessary to support a claim that the product is not subject to CRP, or request that the product should be exempt from CRP regulation.

V. What are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for the Compliance Requirement for Child Resistant Packaging Act collection is estimated to average 1.7 hours per respondent. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Pesticide registrants whose pesticide products are subject to Child Resistant Packaging regulations.

Estimated total number of potential respondents: 502.

Frequency of response: Per event.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 853.4.

Estimated total annual burden costs: $55,019.20.

VI. Are There Changes in the Estimates from the Last Approval?

Yes. There is a slight increase in the number of respondents from 449 to 502 from the last ICR approval. However, the total burden hours per respondent to comply with the CRP will remain the same, 1.7 hours at a cost of $109.60 per response. This increase is a result of the change in the percentage of registrants electing to certify to the CRP requirements. More respondents may be opting to certify to CRP due to changes in the cost of packaging, recycling, and safety factors. Or respondents may be electing to certify to CRP because it is less time consuming than electing to submit toxicity data, reformulate to a less toxic product, or request an exemption. Respondent costs are based on technical/managerial and clerical burden hours estimated at $83 and $38 per hour, respectively.

VII. What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

List of Subjects

Environmental protection, Information collection requests.

Dated: July 20, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–19594 Filed 8–3–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. FRL–6413–2]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Call Sandy Farmer at (202) 260–2740, or E-mail at "farmer.sandy@epa.gov", and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1898.01, Public Water System Supervision Program Public Notification Requirements; in 40 CFR parts 141, 142 and 143; was approved 06/30/99; OMB no. 2040–0209; expires 06/30/2002.

EPA ICR No. 1882.01; Unregulated Contaminant Monitoring Regulations, (Proposed Rule); in 40 CFR parts 141 and 142; was approved 06/30/99; OMB no. 2040–0208; expires 06/30/2002.

EPA ICR No. 0982.06; NSPS for Metallic Mineral Processing Plants; in 40 CFR part 60, subpart LL; was approved 07/01/99; OMB No. 2060–0016; expires 07/31/2002.

EPA ICR No. 0988.07; Water Quality Standards Regulations; in 40 CFR part 131; was approved 07/02/99; OMB No. 2040–0049; expires 07/31/2002.

EPA ICR No. 1825.01; Star Track Program; was approved 07/02/99; OMB No. 2000–0526; expires 07/31/2002.

EPA ICR No. 1867.01; Reporting Requirements under EPA's Voluntary Aluminum Industrial Partnership; was approved 07/07/99; OMB No. 2060–0411; expires 07/31/2002.

EPA ICR No. 1851.01; Non-Road Compression-Ignition Engine at or Above 50 Kilowatts and On-Road Heavy-Duty Engine Application for Emission Certification and Participation

in the Averaging, Banking and Trading Program; in 40 CFR 86.091–15, 86.091–7, 86.094–21, 89.209–96, and 89.210–96; was approved 07/07/99; OMB No. 2060–0404; expires 07/31/2002.

EPA ICR No. 1432.17; Recordkeeping an Periodic Reporting of the Production, Import, Export, Recycling, Destruction, Transhipment, and Feedstock use of Ozone-Depleting Substances; in 40 CFR part 82, subpart A; was approved 07/09/99; OMB No. 2060–0170; expires 07/31/2002.

EPA ICR No. 1060.09; NSPS for Steel Plants: Electric Arc Furnaces and Decarburization Vessels; was approved 07/09/99; OMB No. 2060–0038; expires 05/31/2000.

EPA ICR No. 1887.01; Personal Exposure of High-Risk Sub-populations to Particles; was approved 07/12/99; OMB No. 2080–0058; expires 07/31/2002.

EPA ICR No. 0138.06; Modification of Secondary Treatment Requirements for Discharges into Marine Waters; in 40 CFR part 125, subpart G; was approved 07/12/99; OMB No. 2040–0088; expires 07/31/2002.

EPA ICR No. 1643.03; Amended Application Requirements for the Approval and Delegation of Federal Air Toxic Programs to State and Local Agencies; in 40 CFR part 63, subpart E; was approved 07/15/99; OMB No. 2060–0264; expires 09/30/1999.

EPA ICR No. 1426.05; EPA Worker Protection Standards for Hazardous Waste Operations and Emergency Response; in 40 CFR part 311; was approved 07/15/99; OMB No. 2050–0105; expires 07/31/2002.

Extensions of Expiration Dates

EPA ICR No. 1572.04; Hazardous Waste Specific Unit Requirements, and Special Waste Processing and Types; in 40 CFR parts 261, 264, 265 and 266, subpart F; OMB No. 2050–0050; on 06/23/99 OMB extended the expiration date through 06/30/2000.

EPA ICR No. 1069.05; NSPS for Steel Plants: Basic Oxygen Process Furnaces; in 40 CFR part 60, subpart N and Na; OMB No. 2060–0029; on 06/29/99 OMB extended the expiration date through 09/30/99.

EPA ICR No. 0595.06; Notice of Pesticide Registration by States to Meet a Special Local Need (SLN) under FIFRA Section 24(c); in 40 CFR part 162; OMB No. 2070–0055; on 06/30/99 OMB extended the expiration date through 09/30/99.

EPA ICR No. 1504.03; Data Generation for Registration Activities, in 40 CFR parts 158 and 160; OMB No. 2070–0107; on 07/06/99 OMB extended the expiration date through 12/31/99.

EPA ICR No. 1081.05; NESHAP for Inorganic Arsenic Emissions from Glass Manufacturing Plants; in 40 CFR part 61, subpart N; OMB No. 2060–0043; on 07/08/99 OMB extended the expiration date through 09/30/99.

EPA ICR No. 1080.09; NESHAP for Benzene Emissions from Benzene Storage Vessels, and Coke By-Product Recovery Plants; in 40 CFR part 61, subpart L and Y; OMB No. 2060–0185; on 07/08/99 OMB extended the expiration date through 01/31/2000.

EPA ICR No. 1737.01; NESHAP for Recordkeeping and Reporting for the Thermoplastics; in 40 CFR part 63, subpart JJJ; OMB No. 2060–0351; on 07/08/99 OMB extended the expiration date through 01/31/2000.

EPA ICR No. 1768.01; Collection of Impact Data on Technical Information, Request for Generic Clearance, Design for the Environment (DFE); OMB No. 2070–0152; on 07/09/99 OMB extended the expiration date through 10/31/999.

EPA ICR No. 1557.03; NSPS for Municipal Solid Waste Landfills; in 40 CFR part 60, subpart WWW; OMB No. 2060–0220; on 07/14/99 OMB extended the expiration date through 09/30/99.

EPA ICR No. 1739.02; NESHAP for the Printing and Publishing Industry; in 40 CFR part 63, subpart KK; OMB No. 2060–0335; on 07/19/99 OMB extended the expiration date through 01/31/2000.

EPA ICR No. 1765.01; National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings; in 40 CFR part 59, subpart D; OMB No. 2060–0353; on 07/19/99 OMB extended the expiration date through 01/31/2000.

EPA ICR No. 0877.05; Environmental Radiation Ambient Monitoring System (ERAMS); OMB No. 2060–0015; on 07/19/99 OMB extended the expiration date through 01/31/2000.

EPA ICR No. 0282.10; Emission Defect Information and Voluntary Emission Recall Report; in 40 CFR part 85, subpart T and 40 CFR part 91, subpart I; OMB No. 2060–0048; on 07/21/99 OMB extended the expiration date through 11/30/99.

OMB's Comments Filed

EPA ICR No. 1630.05; Proposed Rule to Amend the Facility Response Plan Regulation; OMB filed comments 06/24/99.

EPA ICR No. 1363.07; Toxic Chemical Release Reporting, Recordkeeping, Supplier Notification, and Petitions under Section 313 of the Emergency Planning and Community Right-to-Know Act; OMB filed comments 06/30/99.

EPA ICR No. 0783.39; Motor Vehicle Emission Standards and Emission Credits Provisions under the Tier 2 Rule; OMB filed comments 07/07/99.

EPA ICR No. 1897.01; Information Requirements for Marine Diesel Engine, OMB filed comments on 07/09/99.

EPA ICR No. 1907.01; Recordkeeping and Reporting Requirements Regarding the Sulfur Content of Motor Vehicle Gasoline under Tier 2 (Proposed Rule); OMB filed comments 07/12/99.

Dated: July 30, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–20038 Filed 8–3–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66269; FRL 6092–6]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on January 31, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number, and e-mail address: Rm. 224, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Important Information

A. Does this apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the FOR FURTHER INFORMATION CONTACT SECTION.

B. How can I get additional information or copies of support documents?

1. *Electronically.* You may obtain electronic copies of this document, and various support documents are available from the EPA Home Page at the Federal Register-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

2. *In person.* The official record for this notice, as well as the public version, has been established under docket control number [OPP–66269], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as confidential Business Information (CBI), is available for inspection in Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

II. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

III. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 23 pesticide products registered under section 3 or 24 of FIFRA. These registrations are listed in sequence by registration number (or company number and 24 number) in the following Table 1.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000352 OR–90–0026	Dupont Lexone DF Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
000352 OR–90–0028	Dupont Lexone DF Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
001803–00025	CON-O Chlorine Gas	Chlorine
001812–00349	Cotton Pro 80DF	2,4-Bis(isopropylamino)-6-(methylthio)-s-triazine
002517–00058	Sergeant's Skip-Flea Foam for Dogs	o-Isopropoxyphenyl methylcarbamate
003635–00265	Bacto Loob	2-Benzyl-4-chlorophenol
		o-Phenylphenol
003635–00271	Gax–26	5-Chloro-2-methyl-3(2*H*)-isothiazolone
		2-Methyl-3(2*H*)-isothiazolone
007401–00231	Feri Lome Rose & Ornamental Disease Control	*N*-((Trichloromethyl)thio)phthalimide
007405–00060	Chem-Cap Insect Repellent II	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
007969 WA–98–0024	Clarity Herbicide	2-(2-Aminoethoxy)ethanol 3,6-dichloro-o-anisate
010163 ID–93–0008	Prefar 6–E Herbicide	*S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide
010182 NY–97–0009	Reward Aquatic and Noncrop Herbicide	6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinediium dibromide
011556–00021	Co-Ral (coumaphos) Animal Insecticide 25% Wettable Powd	*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate
028293–00101	Unicorn Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
028293–00113	Unicorn Insect Repellent #2	*N,N*-Diethyl-meta-toluamide and other isomers
028293–00114	Unicorn Insect Repellent #4	*N,N*-Diethyl-meta-toluamide and other isomers
064583–00001	Skedaddle! 4 Hour Insect Protection	*N,N*-Diethyl-meta-toluamide and other isomers
064583–00002	Skedaddle! Insect Protection for Children	*N,N*-Diethyl-meta-toluamide and other isomers
064583–00003	Skedaddle! Spritz	*N,N*-Diethyl-meta-toluamide and other isomers
065564 ID–98–0009	JMS Stylet-Oil	Aliphatic petroleum hydrocarbons
065564 WA–98–0022	JMS Stylet-Oil	Aliphatic petroleum hydrocarbons
066222–00008	Farmrite Folpet 50–W	*N*-((Trichloromethyl)thio)phthalimide
070395–00002	Gone Insect Repelling Table cloth	*N,N*-Diethyl-meta-toluamide and other isomers

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period.

The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1; in sequence by EPA company number.

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TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000352	E.I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
001803	Continental Chemical Co., Inc., 4660 Spring Grove Ave., Cincinnati, OH 45232.
001812	Griffin L.L.C., Box 1847, Valdosta, GA 31603.
002517	Sergeant's Pet Products, Box 18993, Memphis, TN 38181.
003635	Dubois Chemicals, Agent For: Dubois Chemicals, 3630 E. Kemper Rd., Sharonville, OH 45241.
007401	Brazos Associates, Inc., Agent For: Voluntary Purchasing Group Inc., c/o Voluntary Purchasing Groups, Inc., Box 460, Bonham, TX 75418.
007405	Chemical Packaging Corp., 2700 S.W., 14th St., Pompano Beach, FL 33069.
007969	BASF Corp., Agricultural Products, Box 13528, Research Triangle Park, NC 27709.
010163	Gowan Co., Box 5569, Yuma, AZ 85366.
010182	Zeneca Ag., Products, Box 15458, Wilmington, DE 19850.
011556	Bayer Corp., Agriculture Division, Animal Health, Box 390, Shawnee Mission, KS 66201.
028293	Unicorn Laboratories, 12385 Automobile Blvd., Clearwater, FL 33762.
064583	Minnetonka Brands Inc., (Attn: Larry Wilhelm) Agent For: Littlepoint Corp., 7665 Commerce Way, Eden Prairie, MN 55344.
065564	JMS Flower Farms Inc., 1105 25th Ave., Vero Beach, FL 32960.
066222	Makhteshim-Agan of North America Inc., 551 Fifth Ave., Suite 1100, New York, NY 10176.
070395	Solar Glow, 42 Locust Ave., Glen Head, NY 11545.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before January 31, 2000. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received by the Agency. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** June 26, 1991; (56 FR 29362) [FRL 3846–4]. Exception to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: July 21, 1999.

Richard D. Schmitt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 99–19728 Filed 8–3–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30439B; FRL–6091–8]

Certain Companies; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products, containing new active ingredients not included any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), listed in the table below:

Regulatory Action Leader	Office location/telephone number	Address
Judy Loranger	Rm. 910W24, CM #2, 703–308–8056, e-mail: loranger.judy@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA

Regulatory Action Leader	Office location/telephone number	Address
Sheila Moats	Rm. 910W17, CM #2, 703–308–1259, e-mail: moats.sheila@epamail.epa.gov.	Do.
Driss Benmhend	Rm. 910W9, CM #2, 703–308–9525, e-mail: benmhend.driss@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

The following notices of applications that published in **Federal Register** have now been registered by EPA.

1. EPA issued a notice, published in the **Federal Register** of September 10, 1997 (OPP–30439)(62 FR 47663) (FRL–5740–5), which announced that EM Industries Inc./Rona, 7 Skyline Drive, Hawthorne, NY 10532, had submitted an application to register the pesticide product Insect Repellent 3535 (EPA File Symbol 70759–R) containing the active ingredient 3-[*N*-butyl-*N*-acetyl]-aminopropionic acid, ethyl ester at 98%, an active ingredient not included in any previously registered product.

This application was approved on February 10, 1999, as Insect Repellent 3535 for use only in the formulation of insect repellent products (EPA Registration Number 70759–1). (S. Moats)

2. EPA issued a notice, published in the **Federal Register** of June 12, 1998 (OPP–30456)(63 FR 32210) (FRL–5794–4), which announced that 3M Canada Co., P.O. Box 5757 London, Ontario N6A 4TI, had submitted an application to register the pesticide product 3M MEC Eastern Pine Shoot Borer Pheromone Concentrate (EPA File Symbol 10350-UA), containing the active ingredients (*Z*)-9-dodecenyl acetate and (*E*)-9-dodecenyl acetate at 16.0% and 4.0% respectively, active ingredients not included in any previously registered product. The product is a timed release microencapsulated pheromone concentrate used for mating disruption of the Eastern Pine Shoot Borer Moth in forest and woodland applications. This chemical is part of the Pheromone Joint Review Pilot Program currently underway between Canada's Pest Management Regulatory Agency (PMRA) and the United States EPA. The application for registration of the technical grade of the active ingredient is submitted under the same Pheromone Joint Review Pilot Program for the product "Bedoukian 9-Dodecenyl Acetate Technical Pheromone," (EPA File Symbol 52991-RN) by Bedoukian Research Inc., 21 Finance Drive, Danbury, CT 06810.

The applications were approved on May 20, 1999, for manufacturing use of Bedoukian 9-Dodecenyl Acetate Technical Pheromone, (EPA Reg. No. 52991–10) and for the end-use product 3M MEC Eastern Pine Shoot Borer Pheromone Concentrate used for mating disruption of Eastern Pine Shoot Borer Moth in forest and woodland applications (EPA Reg. No. 10350–46). (S. Moats)

3. EPA issued a notice, published in the **Federal Register** of August 12, 1998 (OPP–30457)(63 FR 43177) (FRL–6020–4), which announced that Dominion BioSciences, Inc., Suite 1600, 1872 Pratt Drive, Blackburg, VA 24060, had submitted applications to register the pesticide products Xanthine and Oxypurinol Manufacturing Use Concentrate (EPA File Symbol 71144–E) containing the active ingredients Oxypurinol 50% and Xanthine 50% and Ecologix Cockroach Bait (EPA File Symbol 71144–R) containing the same active ingredients at 1% each, active ingredients not included in any previously registered products.

The applications were approved on May 19, 1999 as follows:

i. Xanthine and Oxypurinol Manufacturing Use Concentrate for manufacture of insecticide baits for commercial and/or domestic indoor use (EPA Reg. No. 71144–2).

ii. Ecologix Cockroach Bait for use in commercial, industrial and residential areas (EPA Reg. No. 71144–1). (J. Loranger)

4. EPA issued a notice, published in the **Federal Register** of March 10, 1999 (OPP–30473)(64 FR 11868) (FRL–6068–9), which announced that Biotechnologies for Horticulture, Inc., 751 Thunderbolt Road, Walterboro, SC 29488, to register the pesticide product EthylBloc (EPA file symbol 71297–R), containing the active ingredient 1-methylcyclopropene at 0.43%, an active ingredient not included in any previously registered product

This application was approved on April 22, 1999, as EthylBloc for use only on ornamental non-food crops (EPA Reg. No. 71297–1). (D. Benmhend)

The Agency has considered all required data on risks associated with the proposed use of these chemicals, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemicals and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of these chemicals when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in the EPA Pesticide Fact Sheets on:

i. (*Z*)-9-dodecenyl acetate and (*E*)-9-dodecenyl acetate.

ii. Oxypurinol and Xanthine.

iii. 1-methylcyclopropene.

iv. 3-[*N*-butyl-*N*-acetyl]-aminopropionic acid, ethyl ester.

A copy of the fact sheets, which provide a summary description of the pesticides, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved labels, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: July 26, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–19911 Filed 8–3–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50859; FRL–6078–8]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUPs) to the following pesticide applicants. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: By mail: Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the designated person at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to Me?

This notice is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the designated contact person listed for the individual EUP.

B. How Can I Get Additional Information or Copies of This Document or Other Documents?

You may obtain electronic copies of this document from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. EUPs

EPA has issued the following EUPs:

275–EUP–82. Amendment/Extension. Abbott Laboratories, 1401 Sheridan Road, North Chicago, IL 60064. This experimental use permit allows the use of 94 pounds of the biochemical plant regulator aminoethoxyvinylglycine on 854 acres of food commodities of the stone fruit crop group to evaluate its potential to improve harvest management. The program is authorized only in the States of Alabama, California, Georgia, Illinois, Maryland, Massachusetts, Michigan, Montana, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Utah, Virginia, and Washington. The experimental use permit is effective from May 13, 1999 to April 1, 2001. A tolerance has been established for residues of the active ingredient in or on food commodities of the stone fruit crop group. (Denise Greenway; Rm. 902W43, Crystal Mall #2; telephone: 703–308–8263; e-mail address: greenway.denise@epa.gov)

67384–EUP–2. Issuance. American Cocoa Research Institute, 7900 Westpark Drive, Suite A–320, McLean, VA 22102. This experimental use permit allows the use of 180 pounds of the insecticide Trilogy 90EC on 6,300 (64 kg) bags of stored cocoa beans to evaluate the control of stored product insect pests. The program is authorized only in the States of Massachusetts and Virigina. The experimental use permit is effective from June 1, 1999 to June 1, 2000. (Alan Reynolds; Rm. 910, Crystal Mall #2; telephone: 703–605–0515; e-mail address: reynolds.alan@epa.gov)

67384–EUP–3. Issuance. American Cocoa Research Institute, 7900 Westpark Drive, Suite A–320, McLean, VA 22102. This experimental use permit allows the use of 103.25 pounds of the insecticide Dipel 2X on 6,300 (64 kg) bags of stored cocoa beans to evaluate the control of warehouse moths. The program is authorized only in the States of Massachusetts and Virginia. The experimental use permit is effective from June 1, 1999 to June 1, 2000. (Alan Reynolds; Rm. 910, Crystal Mall #2; telephone: 703–605–0515; e-mail address: reynolds.alan@epa.gov)

71927–EUP–1. Issuance. Arcadis, Geraghty Miller, 14497 N. Dale Mabry Highway, Suite 240, Tampa, FL 33624. This experimental use permit allows the use of 8 pounds of the fungicide *Verticillium dahliae* isolate WCS 850 on 500 acres of elm trees to evaluate the control of dutch elm disease. The program is authorized only in the States of Colorado, Connecticut, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, North Carolina, Ohio, and Pennsylvania. The experimental use permit is effective from April 15, 1999 to June 1, 2001. (Sharlene R. Matten; Rm. 910W51, Crystal Mall #2; telephone: 703–605–0514; e-mail address: matten.sharlene@epa.gov)

66550–EUP–1. Issuance. Bird Shield Repellent Corporation, P.O. Box 785, Pullman, Washington 99163. This experimental use permit allows the use of 14.31 pounds of the repellent methyl anthranilate on 50 acres of corn grown for seed for planting and sunflower grown for seed for planting to evaluate the control of the compound on blackbirds and to collect residue data to support exemptions from tolerance on these commodities. The program is authorized only in the States of Colorado and North Dakota. The experimental use permit is effective from July 15, 1999 to January 15, 2000. (Judy Loranger; Rm. 910W24, Crystal Mall #2; telephone: 703–308–8056; e-mail address: loranger.judy@epa.gov)

Persons wishing to review these EUPs are referred to the designated contact person. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: July 26, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–19912 Filed 8–3–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00616; FRL–6093–2]

Pesticides; Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: To assure that EPA's policies related to implementing the Food Quality Protection Act are transparent and open to public participation, EPA is soliciting comments on two draft science policy papers entitled "Guidance for the Conduct of Bridging Studies for Use in Acute Dietary Probabilistic Risk Assessments" and "Guidance for the Conduct of Residue Decline Studies for Use in Acute Dietary Probabilistic Risk Assessments." This notice is the eleventh in a series concerning science policy documents related to FQPA and developed through the Tolerance Reassessment Advisory Committee.

DATES: Comments for these draft science policy papers, identified by docket control number OPP–00616, must be received on or before October 4, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00616 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Kathleen Martin, Environmental Protection Agency (7509C), 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–2857; fax: (703) 305–5147; e-mail: martin.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide Producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action affects certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and the two draft science policy papers from the Office of Pesticide Programs Home Page at http://www.epa.gov/pesticides/. On the Office of Pesticide Programs Home Page select "TRAC" and then look up the entry for this document. You can also go directly to the listings at the EPA Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under "**Federal Register** -- Environmental Documents." You can go directly to the **Federal Register** listings http://www.epa.gov/fedrgstr/.

2. *Fax on demand.* You may request to receive a faxed copy of the draft science policy papers, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6040 for the paper entitled "Guidance for the Conduct of Bridging Studies for Use in Acute Dietary Probabilistic Risk Assessments" and select item 6041 for the paper entitled "Guidance for the Conduct of Residue Decline Studies for Use in Acute Dietary Probabilistic Risk Assessments." You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00616. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00616 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. the PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00616. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about

CBI or the procedures for claiming CBI, please consult the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider As I Prepare My Comments for EPA?

EPA invites you to provide your views on the various draft science policy papers, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide solid technical information and/or data to support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate.
5. Indicate what you support, as well as what you disagree with.
6. Provide specific examples to illustrate your concerns.
7. Make sure to submit your comments by the deadline in this notice.
8. At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00616 in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background for the Tolerance Reassessment Advisory Committee (TRAC)

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard ("a reasonable certainty of no harm") for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10-year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs. The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard, but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of many of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC), chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprises more than 50 representatives of affected user, producer, consumer, public health, environmental, states and other interested groups. The TRAC has met six times as a full committee from May 27 through April 29, 1999.

The Agency has been working with the TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC is the development of a framework for addressing key science policy issues. The Agency decided that the FQPA implementation process and related policies would benefit from initiating notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas they believe were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), EPA has been issuing a series of draft documents concerning nine science policy issues identified by the TRAC related to the implementation of FQPA. This notice announces the availability of two draft science policy papers as identified in the "SUMMARY" section.

III. Summary of "Guidance for the Conduct of Bridging Studies for Use in Acute Dietary Probabilistic Risk Assessment Assessments" and "Guidance for the Conduct of Residue Decline Studies for Use in Acute Dietary Probabilistic Risk Assessments"

These documents provide additional guidance to registrants, other test sponsors, interested parties, and data reviewers on the extent and quality of "bridging data" and "residue decline data" needed to support the use of typical application rates in acute dietary probabilistic exposure and risk assessments. Bridging data (generally from side-by-side field trials) are used to establish a relationship among residues from field trials conducted at the maximum application scenario (e.g., maximum application rate, highest application frequency, and shortest pre-harvest interval) and residues which would result from more typical application rates. Residue decline data are used to establish a relationship between pesticide residue levels at the time of application or those following the minimum pre-harvest interval to the pesticide residue levels which follow a range of typical harvest times. This guidance provides information on how risk-mitigation activities (e.g., lowered use rates) can be considered in OPP risk assessments and used to adjust tolerance levels. Additional specific desirable elements in an assessment and details (as well as illustrative examples) are described. By following this guidance, registrants and other sponsors may generate pesticide-specific data that can be used by the Agency to produce highly refined, acute dietary probabilistic exposure and risk assessments. While the data developed in accordance with this guidance are preferred, EPA will also consider other data or information as long as they would provide a scientifically sound basis for estimating residues at typical application rates for risk mitigation purposes.

IV. Questions/Issues for Comment

While comments are invited on any aspect of the draft science policy papers, OPP is particularly interested in comments on the following questions and issues. Due to the similarity in methods and techniques between the companion papers describing bridging studies and residue decline studies, the following questions relate to both papers.

1. Is the guidance provided in these draft documents clear and complete? If not, why not and what additional guidance is needed?
2. Are the residue studies described in these documents adequate for generating refined acute dietary probabilistic exposure and risk assessments? If not, why not and how should they be modified?
3. OPP has proposed that between one and three field trials be conducted, that at least three application rates and/or five pre-harvest intervals (PHI) be tested, and that three composite samples be collected at each application rate or PHI. Do these recommendations appear to be reasonable and sufficient to establish a rate vs. residue or PHI vs. residue relationship? Are data available which indicate that these guidelines are adequate for the purposes intended? Explain.
4. OPP has stated that it believes that the field trials performed for bridging study/residue decline purposes should be conducted (at an exaggerated rate, if necessary) such that all residues are "quantifiable" (i.e., at or greater than the limit of quantitation (LOQ)). We have stated that it would be considered inappropriate to derive a quantitative relationship between application rate and residue level on residues which were below the LOQ as this could introduce substantial uncertainty into the estimated relationship. Please comment on this proposed restriction. Please also comment on the recommendation that studies be conducted at an exaggerated rate, if necessary, to avoid the potential problem associated with non-quantifiable or non-detectable residues.
5. OPP states that extrapolation of data between similar crops may be allowed on a case-by-case basis considering similar cultural practices and application patterns. Should these extrapolations be limited to crops within a crop subgroup/group or should more extensive extrapolations between groups be permitted? If so, on what basis should more extensive extrapolations be permitted?
6. For the relationship produced by bridging or residue decline data to be used in an exposure assessment, it is necessary to have reliable usage data concerning application rates and/or pre-harvest intervals. For example, if residues resulting from the full (maximum) application rate, three-quarters of the maximum application rate, and one-half the maximum application are determined, it is necessary to also have information on the percentage (or fraction) of the time each of these application rates are used. A similar situation exists for pre-harvest intervals. Is this information available from either public or proprietary sources? If so, from which sources can this data be obtained and how readily available is it?
7. The proposed methodology uses what is believed to be the statistically more appropriate "lack of fit" test to determine if the hypothesized model (e.g., linear relationship between application rate and residue level, first order decay in residue concentration with time, etc.) is adequate to describe the data. Please comment on this proposed approach and compare it with the more widely used coefficient of determination (r^2). Under what circumstances might the use of r^2 to judge a fit adequate be preferred to the "lack of fit" test? There may be instances where the lack of fit test reveals that the hypothesized linear association can be rejected, but the coefficient of determination shows that a linear relationship accounts for a significant portion of the variability. Should the two be used in conjunction with one another and if so, how? What statistical tests, if any, should be used to judge whether the r^2 is significant?
8. OPP will require that composite samples be collected as part of reduced-use field trials in order to retain comparability with earlier maximum rate/minimum PHI field trials conducted to support tolerance decisions. Nevertheless, OPP still has concerns about the effect compositing may have on unit-to-unit variation. When residue estimates are generated from maximum application rate and minimum PHI's (worst-case conditions), OPP believes that there is an adequate degree of compensating overestimation such that individual unit variation is not of concern. By incorporating the range of application rates and PHI's in a probabilistic scenario, the conservatism built into our use of field trial data is eroded and may require us to compensate for this with statistically valid data on individual samples and/or unit-to-unit variation. OPP is proposing that chemical-specific considerations be considered to determine whether the use of composite data from reduced-rate field trials is acceptable. Alternatively, a "decomposition" procedure may be judged appropriate. Please comment on whether these concerns are justified and, if so, how they should be addressed by OPP.
9. In performing the regression analysis for bridging studies, OPP has elected not to "force" the regression relationship through zero, despite the fact that an application rate of 0 lbs ai/A would be expected to result in a zero parts per million (ppm) concentration in the plant or plant part. Please comment on this decision and any required changes in interpretation of the statistical parameters which a decision to force the regression through zero would entail.
10. OPP intends to combine the bridging study and residue decline study guidance documents into one document. In doing so, would it be useful to expand the section on multiple regression techniques? How useful would this expansion be and are there any recommendations on how this could best be done?
11. What other data or information similar to that described in this guidance document would provide a sound, empirical basis for determining residues at typical application rates for risk mitigation purposes?

V. Policies Not Rules

The draft policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should be abandoned.

EPA has stated in this notice that it will make available revised guidance after consideration of public comment. Public comment is not being solicited for the purpose of converting any policy document into a binding rule. EPA will not be codifying this policy in the Code of Federal Regulations. EPA is soliciting public comment so that it can make fully informed decisions regarding the content of each guidance document.

The "revised" guidance will not be unalterable. Once a "revised" guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis EPA will decide whether it is appropriate to depart from the guidance

or to modify the overall approach in the guidance. In the course of inviting comment on each guidance document, EPA would welcome comments that specifically address how a guidance document can be structured so that it provides meaningful guidance without imposing binding requirements.

VI. Contents of Docket

Document that are referenced in this notice will be inserted in the docket under docket control number "OPP–00616." In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) have also been inserted in the docket under docket control number OPP–00557.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests.

Dated: July 28, 1999.

Susan H. Wayland,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–20042 Filed 8–3–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00599A; FRL–6096–6]

Pesticides; Draft Guidance on Mandatory/Advisory Labeling Statements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: On June 2, 1999, EPA issued a notice of availability for a draft Pesticide Registration (PR) Notice entitled "Guidance for Mandatory and Advisory Labeling Statements." The comment period would have ended August 2, 1999. In response to a request by the National Pest Control Association, EPA has decided to extend the comment period by 45 days.

DATES: Comments, identified by docket control number OPP–00599A, must be received on or before September 17, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00599A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Jeff Kempter (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5448; fax number: (703) 305–6920; e-mail address: kempter.carlton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this notice if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide Producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. If available, the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this announcement to you, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the " **Federal Register** —Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax on demand.* You may request a faxed copy of the draft Pesticide Registration (PR) Notice entitled "Guidance for Mandatory and Advisory Labeling Statements," by using a faxphone to call (202) 401–0527 and selecting item 6120. You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00%99A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

As described in Unit I.C. of the June 2, 1999, **Federal Register** notice (64 FR 29641) (FRL–6079–4), you may submit comments through the mail, in person, or electronically. Please follow the instructions that are provided in the June 2, 1999, notice. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00599A in the subject line on the first page of your response.

II. What Action is the Agency Taking?

The Agency has issued the draft document listed in the "SUMMARY" and solicited comments on it. The background can be found in the June 2, 1999, **Federal Register** notice (64 FR 29641). A time extension of 45 days is being provided such that the comment period will now end on September 17, 1999.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: July 28, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 99–20043 Filed 8–3–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6412–9]

New Jersey State Prohibition on Marine Discharges of Vessel Sewage; Notice of Final Affirmative Determination

Notice is hereby given that a final determination has been made by the Regional Administrator, Environmental Protection Agency (EPA), pursuant to section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Navesink River, County of Monmouth, State of New Jersey. A Notice of Receipt of Petition and Tentative Determination was published in the **Federal Register** on May 12, 1999 and public comments regarding the tentative determination were accepted through June 12, 1999.

Comments were received from two parties, both objecting to the establishment of the Navesink River No Discharge Area. One individual, who has a boat berthed on the Navesink River, stated that due to his vessel's six-foot draft the available pumpouts are inaccessible to him. He also raised general concerns about maintenance and operability of pumpouts and excessive fees for pumpout use. In response, the application description of depth restrictions to the pumpouts are based on mean low water depth. Two of the available pumpouts have a depth of six-feet at mean low water, so that vessels with a six-foot draft would find pumpouts inaccessible for relatively short periods of time before and after low tide. During high tides, many of the marina operators have indicated that larger vessels will be able to access the pumpouts. Further, the application documents that the fees charged for pumpout on the Navesink River are reasonable. The regulations, 40 CFR 140.4, regarding the prohibition of the discharge from all vessels of any sewage states that the determination will be based on "whether adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels using such waters are reasonably available". Based upon the application submitted by the State of New Jersey, adequate facilities do exist in the no discharge area. Additionally, Monmouth County (in conjunction with the Navesink municipalities) is in the process of purchasing a pumpout boat for use in the Navesink River. The boat should be in operation by May 2000.

Another commenter stated that the calculations and estimates used to determine an adequate number of pumpouts to service the vessel population underestimated the number of pumpouts needed. This commenter indicated that the formula in an EPA guidance document estimates that in New Jersey 6% of the vessels greater than twenty-six feet in length are equipped with holding tanks. However, in the application submitted, the State estimated that 50% of the vessels greater than twenty-six feet were equipped with holding tanks. Based on these numbers and using the calculations as a guideline, four pumpouts available in this area are adequate based on the vessel population. Even if it were assumed that 100% of the vessels greater than twenty-six feet were equipped with holding tanks, the existing number of pumpouts would be sufficient.

Another comment concerned the lack of dump stations for disposal of waste from portable toilets. In response, EPA notes that the pumpouts which received Clean Vessel Act grant monies came equipped with wand systems. The wands permit the portable toilets to be pumped out in a safe and sanitary manner.

An additional comment cited a general provision of the Clean Water Act (CWA) which reads, "* * * it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans." The commenter claims the Agency is going against the intent of the CWA by eliminating a person's ability to use marine sanitation devices. The goal of the CWA which was cited actually envisions that eventually, through research, the discharge of any pollutants to waters of the U.S., in any quantities, would be eliminated. The Agency does not agree that this affirmative decision violates any provisions of nor the intent of the CWA.

This petition was made by the New Jersey Department of Environmental Protection (NJDEP) on April 3, 1998 in cooperation with the Navesink Regional Environmental Council. Members of the Council include the Borough of Fair Haven, the Township of Middletown, the Borough of Red Bank, the Borough of Rumson, the Borough of Tinton Falls, the Township of Holmdel, the Township of Colts Neck, the Township of Freehold and the Township of Marlboro. The Council worked in conjunction with Clean Ocean Action, Marine Development USA, Inc.; Marine Trade Association of New Jersey, Monmouth County Health Department, Monmouth County Planning Board, New Jersey Marine Sciences Consortium, New Jersey Sea Grant Advisory Service, New Jersey State Police Marine Division, U.S. Coast Guard Auxiliary and the U.S. Coast Guard. Upon receipt of an affirmative determination in response to this petition, NJDEP would completely prohibit the discharge of sewage, whether treated or not, from any vessel in Navesink River in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

The Navesink River, located in central New Jersey, is part of the Hudson-Raritan Bay Estuary and drains approximately 95 square miles of urban/suburban residential development and agricultural lands. The Navesink River runs easterly from Red Bank, New Jersey and then joins the Shrewsbury River and empties into Sandy Hook Bay. The tidal waters of the Navesink River extend from the Shrewsbury River, near Sea Bright, upstream to the Swimming River Reservoir dam. The Navesink River has been identified as a waterbody of national significance and is part of the New York-New Jersey Harbor Estuary Program. The No Discharge Area (NDA) will include all tidal waters of the Navesink River which extend from the Shrewsbury River, near Sea Bright, upstream to the Swimming River Reservoir dam. The eastern boundary of the NDA is a line from Lat./Long. 73° 58′ 45″, 40° 22′ 40″ to Lat./Long. 73° 58′ 58″, 40° 23′ 04″. The western boundary of the NDA is at Lat./Long. 74° 06′ 48″, 40° 19′ 12″.

Information submitted by the State of New Jersey and the Navesink Regional Environmental Planning Council states that there are five existing pumpout facilities available to service vessels which use the Navesink River. Sea Land Marina, located at 261 West Front Street, Red Bank, operates a portable pumpout. The pumpout is available from 7 a.m. to 5 p.m. beginning April 15 until October 15 and is operated by the marina staff. A $5.00 fee is charged for the use of the pumpout. Irwin's Boat Works, located at 1 Marine Park, Red Bank, operates a stationary pumpout. The pumpout is available from 8 a.m. to 5 p.m. beginning May until October 31 and is operated by the marina staff. A fee of $5.00 is charged for the use of the

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pumpout. Red Bank Municipal Basin, located at Marine Park, Red Bank, operates a stationery pumpout. The pumpout is available 24 hours a day year round and is self-operated. No fee is charged for use of the pumpout. Fair Haven Yacht Works, located at 75 DeNormandie Avenue, Fair Haven, operates a portable pumpout. The pumpout is available from 8:00 a.m. to 5:00 p.m. and is operated by the marina staff. A $5.00 fee is charged for the use of the pumpout. Molly Pitcher Inn and Marina, located at 88 Riverside Avenue, Red Bank, operates a stationary pumpout. The pumpout is available upon request for customers of the marina. One facility, Sea Land Marina, located in Red Bank has a restriction which would exclude boats greater than 26 feet in length. This restriction impacts approximately 18% of the vessel fleet and there are three facilities available for their needs.

Vessel waste generated from the pumpout facilities within the NDA is discharged into municipal sewer lines and is conveyed to the Northeast Monmouth Regional Sewage Authority (NJPDES Permit No. NJ0024520) at 1 Highland Avenue in Monmouth Beach for treatment.

According to the State's petition, the maximum daily vessel population for the waters of Navesink River is approximately 1122 vessels. This estimate is based on (1) vessels docked at marinas and yacht clubs (866 vessels), (2) vessels docked at non-marina facilities (227 vessels) and (3) transient vessels (29 vessels). The vessel population based on length is 915 vessels less than 26 feet in length, 193 vessels between 26 feet and 40 feet in length and 14 vessels greater than 40 feet in length. Based on number and size of boats, and using various methods to estimate the number of holding tanks, it is estimated that one pumpout is needed for the Navesink River. As previously stated, five pumpout facilities are currently available to service the boating population. Additionally, four marinas have applied for pumpout grants to install a total of five new pumpouts.

The EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Navesink River in the county of Monmouth, New Jersey. For further information contact Jim Olander at (212) 637–3833.

Dated: July 26, 1999.

Jeanne M. Fox,

Regional Administrator, Region II.

[FR Doc. 99–20041 Filed 8–3–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice Concerning Issuance of Powers of Attorney

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Public notice.

SUMMARY: In order to facilitate the discharge of its responsibilities as a conservator and liquidator of insured depository institutions, the Federal Deposit Insurance Corporation (FDIC) publishes the following notice. The publication of this notice is intended to comply with Title 16, section 20 of the Oklahoma Statutes (16 O.S. 20) which, in part, declares Federal agencies that publish notices in the **Federal Register** concerning their promulgation of powers of attorney, to be exempt from the statutory requirement of having to record such powers of attorney in every county in which the agencies wish to effect the conveyance or release of interests in land.

Notice

Pursuant to section 11 of the Federal Deposit Insurance (FDI) Act (12 U.S.C. 1821), as amended by section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the FDIC is empowered to act as conservator or receiver of any state or federally chartered depository institution which it insures. Furthermore, under section 11A of the FDI Act (12 U.S.C. 1821a), as enacted under section 215 of FIRREA, the FDIC is also appointed to manage the FSLIC Resolution Fund.

Upon appointment as a conservator or receiver, the FDIC by operation of law becomes successor in title to the assets of the depository institutions on behalf of which it is appointed. As Manager of the FSLIC Resolution Fund, the FDIC became successor in title to both the corporate assets formerly owned by the now defunct Federal Savings and Loan Insurance Corporation (FSLIC), as well as to the assets of the depository institutions for which the FSLIC was appointed receiver prior to January 1, 1989. In addition, pursuant to section 13(c) of the FDI Act (12 U.S.C. 1823(c)), the FDIC also acquires legal title in its corporate capacity to assets acquired in furtherance of providing monetary assistance to prevent the closing of insured depository institutions or to expedite the acquisition by assuming depository institutions of assets and liabilities from closed depository institutions of which the FDIC is receiver.

In order to facilitate the conservation and liquidation of assets held by the FDIC in its aforementioned capacities, the FDIC has provided powers of attorney to selected employees of its Dallas Field Operations Branch. These employees include: Priscilla Catapat, Charles W. Joyce and Karen Powell.

Each employee to whom a power of attorney has been issued is authorized and empowered to: sign, seal and deliver as the act and deed of the FDIC any instrument in writing, and to do every other thing necessary and proper for the collection and recovery of any and all monies and properties of every kind and nature whatsoever for and on behalf of the FDIC and to give proper receipts and acquittances therefore in the name and on behalf of the FDIC; release, discharge or assign any and all judgments, mortgages on real estate or personal property (including the release and discharge of the same of record in the office of any Prothonotary or Register of Deeds wherever located where payments on account of the same in redemption or otherwise may have been made by the debtor(s)), and to endorse receipt of such payment upon the records in any appropriate public office; receipt, collect and give all proper acquittances for any other sums of money owing to the FDIC for any acquired asset which the attorney-in-fact may sell or dispose of; execute any and all transfers and assignments as may be necessary to assign any securities or other choses in action; sign, seal, acknowledge and deliver any and all agreements as shall be deemed necessary or proper by the attorney-in-fact in the care and management of acquired assets; sign, seal, acknowledge and deliver indemnity agreements and surety bonds in the name of and on behalf of the FDIC; sign receipts for the payment of all rents and profits due or to become due on acquired assets; execute, acknowledge and deliver deeds or real property in the name of the FDIC; extend, postpone, release and satisfy or take such other action regarding any mortgage lien held in the name of the FDIC; execute, acknowledge and deliver in the name of the FDIC a power of attorney wherever necessary or required by law to any attorney employed by the FDIC; foreclose any mortgage or other lien on either real or personal property, wherever located; do and perform every act necessary for the use, liquidation or collection of acquired assets held in the name of the FDIC; and sign, seal, acknowledge and deliver any and all documents as may be necessary to settle any actions(s) or claim(s) asserted against the FDIC, either in its Receivership or Corporate capacity, or as Manager of the FSLIC Resolution Fund.

Dated: July 29, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–20049 Filed 8–3–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011426–027.
Title: West Coast of South America Discussion Agreement.
Parties:
A.P. Moller-Maersk Line
Compania Chilena De Navigacion
Compania Sud Americana De Vapares, S.A.
Crowley American Transport, Inc.
Sea-Land Service, Inc.
APL Co. PTE Ltd.
Seaboard Marine Ltd.
South America Independent Lines Association
Trinity Shipping Line, S.A.
Interocean Lines Inc.
Mediterranean Shipping Company, SA
P&O Nedlloyd B.V.
South Pacific Shipping Company
Transportation Maritima Grancolombiana, S.A.
NYK/NOS Joint Service
Columbus Line
Synopsis: the proposed modification would authorize the parties, or two or more of them, to jointly enter into service contracts and to adopt voluntary guidelines with respect to the terms and conditions of such contracts. The modification also clarifies existing authority; deletes obsolete language; provides for the discussion of further rationalization, the implementation of which will be subject to filing and effectiveness under the Shipping Act of 1984; and restates the agreement.

Agreement No.: 232–011611–001.
Title: MOL/APL Slot Transfer Agreement.
Parties:
American President Lines, Ltd.
APL Co. Pte Ltd
Mitsui O.S.K. Lines, Inc.
Synopsis: The proposed amendment would expand the geographic scope of the Agreement to include ports on the Gulf Coast of the United States and Puerto Rico, and inland points via such ports, and ports on the Gulf of Mexico and Caribbean Sea Coasts of Mexico and Central America and the Caribbean Sea and Atlantic Coasts of South America, and inland points via such ports. It also makes other administrative changes to the Agreement.

Agreement No.: 202–011665.
Title: Specialised Reefer Shipping Association.
Parties:
Cool Carriers AB
Lauritzen Reefers A/S
Nippon Yusen Kaisha
Star Reefers
Seatrade Group NV
Synopsis: The proposed agreement would provide a forum for the parties to discuss and reach agreement on general issues and economic trends affecting the reefer industry worldwide.

By order of the Federal Maritime Commission.

Dated: July 30, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–20054 Filed 8–3–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 27, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Rae Valley Financials, Inc., Petersburg, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Petersburg State Bank, Petersburg, Nebraska.

Board of Governors of the Federal Reserve System, July 29, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–19949 Filed 8–3–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of

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Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 1999.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Eagle Bancshares, Inc., and Fairfield Holdings, Inc., both of Fairfield, Texas; to engage *de novo* through their subsidiary, Texas Bank, S.S.B., Buffalo, Texas (in formation), in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received not later than August 27, 1999.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Umpqua Holdings Corporation, Roseburg, Oregon; to acquire Strand, Atkinson, Williams and York, Inc., Portland, Oregon, and thereby engage, to a limited extent, in underwriting and dealing in commercial paper, municipal revenue bonds, mortgage-related securities, and consumer-receivable related securities, *see Citicorp, 73 Fed. Res. Bull. 473 (1987)*; acting as investment or financial advisor, pursuant to § 225.28(b)(6) of Regulation Y; providing securities brokerage, "riskless principal," private placement, and other agency transactional services, pursuant to § 225.28(b)(7)(i)-(iii), (v); and underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may underwrite and deal in under 12 U.S.C. 24 and 335, pursuant to § 225.28(b)(8)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, July 29, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–19948 Filed 8–3–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Resources' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of the Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 13¼ percent for the quarter ended June 30, 1999. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: July 27, 1999.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 99–19941 Filed 8–3–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Deborah Arenburg, University of Maryland: Based on a report dated December 23, 1998, by the University of Maryland Investigation Committee, Ms. Arenburg's admissions, and information obtained by ORI during its oversight review, ORI finds that Ms. Arenburg, former Research Associate, Maryland Psychiatric Research Center, University of Maryland, engaged in scientific misconduct arising out of certain biomedical research supported by National Institute of Mental Health (NIMH), National Institutes of Health (NIH), grants.

Specifically, Ms. Arenburg was responsible for administering and scoring neuropsychological, neurological, and cognitive tests on patients during the course of two studies. These studies were entitled "Neural Basis of the Deficit Syndrome of Schizophrenia" (Study No. 1) and "Clozapine Treatment of Schizophrenic Outpatients" (Study No. 2) and were supported by the above-referenced grants. ORI finds that Ms. Arenburg failed to conduct the required tests on three patients in Study No. 1 and on ten to twelve patients in Study No. 2. Instead Ms. Arenburg fabricated the experimental records for those tests. Ms. Arenburg admits to fabricating the data.

The fabricated data was included in a publication, "Association Between Eye Tracking Disorder in Schizophrenia and Poor Sensory Integration," *American Journal of Psychiatry* 155(10):1352–1357, 1998. The principal investigator on the grants at issue reanalyzed the research data, eliminating all data produced by Ms. Arenburg, and found no significant difference in the results. A correction, including the reanalyzed data, was published in the *American Journal of Psychiatry* 156(4):603–609, 1999.

Ms. Arenburg has accepted the ORI finding and has entered into a Voluntary Settlement Agreement with ORI in which she has voluntarily agreed, for the three (3) year period beginning July 15, 1999:

(1) To exclude herself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution that submits an application for PHS support for a research project on which her participation is proposed or which uses her in any capacity on PHS supported research, or that submits a report of PHS-funded research in which she is involved, must concurrently submit a plan for supervision of her duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of Ms. Arenburg's research contribution. The institution also must submit a copy of the supervisory plan to ORI.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 99–19975 Filed 8–3–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

[Announcement 99096]

Cooperative Agreements for Human Immunodeficiency Virus Prevention Projects for African American Faith-Based Organizations; Notice of Availability of Funds for Fiscal Year 1999 Amendment

A notice announcing the availability of fiscal year 1999 funds for grants to support Cooperative Agreements for Human Immunodeficiency Virus (HIV) Prevention Projects for African American Faith-Based Organizations was published in the **Federal Register** on June 23, 1999, [Vol. 64 FR No. 120]. The notice is amended as follows:

On page 33733, first column, under "Submission and Deadline—Categories I, II, and III", the first paragraph should read:

On or before August 13, 1999, submit the application to: Julia L. Valentine, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99096, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

All other information and requirements of the notice remain the same.

Dated: July 29, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–19971 Filed 8–3–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00014]

Cooperative Agreement To Support and Evaluate Distance-Based Graduate-Level Degree Programs in Public Health in Developing Countries; Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of funds for fiscal year (FY) 2000 for a cooperative agreement program to support and evaluate distance-based graduate-level degree programs in public health in developing countries (see addendum 2). The purpose of this program is to support and evaluate a program specifically tailored to the needs of the international public health scene. This distance-based program will not require persons enrolled in the program to establish and maintain residence requirements at the university. This program addresses the "Healthy People 2000" priority area of Educational and Community-Based Programs.

B. Eligible Applicants

Applications may be submitted by domestic and foreign public and private nonprofit universities and colleges. The applicant must be an accredited academic institution with university status. Provide this assurance with the application in a separate cover memo.

Note: Public Law 104–65 states that an organization as described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $20,000 is available in FY 2000 to fund one award, pending availability of FY 2000 funds. It is expected that the award will begin on February 1, 2000, and will be made for a 12-month budget period within a project period of 3 years. Funding estimates may change during the period in which the project is conducted.

A continuation award within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Use of Funds

Project funds may be used to support personnel services, supplies, equipment, travel, subcontracts, and other services consistent with the approved scope of work of recipient's activities.

Project funds may not be used to supplant other available applicant or collaborating agency funds, for construction, for purchase of facilities or space, or for patient care.

Project funds may not be used to support student stipends, travel, or tuition and fees for recipient.

Project funds may not be used to support or supplant any basic or applied research.

Foreign institutions will not be reimbursed indirect costs.

E. Program Requirements

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under #1 (Recipient Activities), and CDC will be responsible for the activities listed under #2 (CDC Activities).

1. Recipient Activities

a. Develop graduate-level curriculum programs for distance-based training of public health staff in developing countries throughout the world.

b. Coordinate and distribute training modules and other instructional materials.

c. Evaluate effectiveness of all training programs.

d. Compile and disseminate the results of all aspects of the project.

2. CDC Activities

a. Provide technical assistance and support in the development and promotion of curriculum programs for the training of public health staff throughout the world.

b. Provide technical assistance with the management, administration, and evaluation of the academic program.

F. Application Content

Use the information in the Program Requirements, Other Requirements, Evaluation Criteria, and Errata Sheet to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in the layout of your program plan.

Each application should be submitted as an original and two copies of the PHS 398 (OMB Number 0925–0001). Each application narrative should be limited to 25 pages, excluding attachments (i.e., letters of support, resumes, etc.). All material must be typewritten, single-spaced, with type no smaller than 10 characters per inch, on 8.5" x 11" paper, with at least 1" margins on all four sides, with headings and footers, with page numbers, unbound, and printed on one side only. No materials should be submitted in spiral or other types of bindings.

The first page of the application should contain the response to Applications Requirements as indicated in section B above.

G. Submission and Deadline

Submit the original and five copies of PHS 398 (OMB Number 0925–0001). Adhere to the instructions on the Errata Instruction Sheet for PHS 398. Forms are in the application kit.

On or before October 15, 1999, submit the application to the Grants Management Specialist identified in "Where To Obtain Additional Information" section of this announcement.

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Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

H. Evaluation Criteria

Each application should document the existence of an operational distance-based learning, graduate-level, degree program in the applicant institution. Each qualifying application will be evaluated individually against the following criteria by an independent review panel appointed by CDC.

1. Background, Need, and Capability (30 Percent)

The extent to which the applicant describes current and previous related experience.

a. The extent to which the applicant is currently an internationally recognized, accredited graduate-level program in public health.

b. The extent to which the applicant operates an internationally recognized, accredited graduate-level program in public health.

c. The extent to which the applicant already has existing academic testing centers throughout the world, which are currently maintained, so that a student's academic progress can be objectively monitored at regular intervals without his/her having to go outside his/her country of residence.

2. Goals and Objectives (15 Percent)

The extent to which the goals and objectives are relevant and feasible to be accomplished during the project period, and which address all activities necessary to accomplish the purpose of the proposal.

3. Methods (20 Percent)

The extent to which the applicant provides a detailed description of proposed activities which are likely to achieve each objective and overall program goals and which includes designation of responsibility for each action undertaken. The extent to which the applicant provides a reasonable and complete schedule for implementing all activities. The extent to which concurrence with the applicant's plans by all other involved parties is specific and documented.

4. Evaluation (20 Percent)

The extent to which the proposed evaluation system is detailed and will document program process, effectiveness, impact, and outcome. The extent to which the applicant demonstrates potential data sources for evaluation purposes, and documents staff availability, expertise, and capacity to perform the evaluation. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included.

5. Personnel and Staffing (15 Percent)

The extent to which position descriptions, CVs and lines of command are appropriate to accomplish the program goals and objectives.

6. Budget and Justification (Not Scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Semi-annual reports;

2. Financial status report no more than 90 days after the end of each budget period; and

3. Final financial status and performance reports no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in "Where To Obtain Additional Information" section of this announcement.

The following additional requirements are applicable:

AR–10: Smoke-Free Workplace Requirement

AR–11: Healthy People 2000 Requirement

AR–12: Lobbying Restrictions

J. Authority and Catalog of Federal International Assistance

This program is authorized under the Sections 307 of Public Health Service Act, [42 U.S.C. section 242l], as amended. The Catalog of Federal International Assistance number is 93.283.

K. Where To Obtain Additional Information

To receive additional information, please go to the CDC home page on the Internet: www.cdc.gov and click on the word "funding."

If you do not have Internet access, you can request an application kit by calling 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all documents, business assistance can be obtained from: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00014, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, telephone (770) 488–2717, E-mail address: jcw6@cdc.gov

For program technical assistance, contact Ms. Elliott Churchill, M.S., M.A., Senior Communications Specialist, Division of International Health, Epidemiology Program Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mailstop C–08, Atlanta, GA 30333, telephone: (404) 639–2231, E-mail address: rec1@cdc.gov

Dated: July 29, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–19970 Filed 8–3–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0046]

Update of Guidance Documents at the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing an update of all guidance documents issued and withdrawn since the compilation of the previous quarterly list that published on January 6, 1999, and the annual comprehensive list that published on June 10, 1999. FDA committed to publishing quarterly updates in its February 1997 "Good Guidance Practices" (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents. This list is intended to inform the public of the existence and availability of guidance documents issued for the first part of this year. This list also includes some guidance documents that were inadvertently not included on previously published lists.

DATES: General comments on this list and on agency guidance documents are welcome at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Information on where to obtain single copies of listed guidance documents is provided for each agency center individually in the specific center's list of guidance documents.

FOR FURTHER INFORMATION CONTACT:

For general information regarding GGP's: Lisa M. Helmanis, Regulations Policy and Management Staff (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3480.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 27, 1997 (62 FR 8961), FDA published a notice announcing its GGP's, which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents. The agency adopted the GGP's to ensure public involvement in the development of guidance documents and to enhance public understanding of the availability, nature, and legal effect of such guidance.

As part of FDA's effort to ensure meaningful interaction with the public regarding guidance documents, the agency committed to publish an annual comprehensive list of guidance documents and quarterly **Federal Register** notices that list all guidance documents that were issued and withdrawn during that quarter, including "Level 2" guidance documents. Because the agency has fallen behind in issuing its quarterly updates, this document covers guidance documents issued and withdrawn since the publication of the last quarterly list on January 6, 1999 (64 FR 888), and the annual comprehensive list on June 10, 1999 (64 FR 31228).

On June 1, 1998, the President instructed all Federal agencies to ensure the use of "plain language" in all new documents. As part of this initative, FDA is taking steps to ensure that the principles of "plain language" set forth by the President are being incorporated into its guidance documents. The agency invites public comment on the clarity of its guidances.

The following list of guidance documents represents all guidances issued or withdrawn by FDA since the compilation of the January 6, 1999, quarterly list and the June 10, 1999, annual comprehensive list and any guidance documents inadvertently not included on previously published lists. The guidance documents are organized by the issuing Center or Office within FDA, and are further grouped by the intended users or regulatory activities to which they pertain. Dates provided in the following list refer to the date of issuance or, where applicable, the date of last revision of the document. Document numbers are provided where available.

II. Guidance Documents Issued by the Center for Biologics Evaluation and Research (CBER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Guidance for Industry: FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products	December 1998	FDA—Regulated Industry	Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 1–800–835–4709 or 301–827–1800, FAX Information System: 1–888–CBER–FAX (within the United States) or 301–827–3844 (outside of the United States and local to Rockville, MD). Internet access: http://www.fda.gov/cber
Draft Guidance for Industry: Product Name Placement, Size, and Prominence in Advertising and Promotional Labeling	January 1999	Do	Do
Guidance for Industry: Population Pharmacokinetics	February 1999	Do	Do
Guidance for Industry: Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA) February 1999	Do	Do	Do
Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Plasma-Derived Biological Products, Animal Plasma or Serum-Derived Products	February 1999	Do	Do
Draft Guidance for Industry: Formal Meetings With Sponsors and Applicants for PDUFA Products	February 1999	Do	Do

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Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Draft Guidance for Industry: Formal Dispute Resolution: Appeals Above the Division Level	February 1999	Do	Do
Draft Guidance for Industry: IND's for Phase 2 and 3 Studies of Drugs, Including Specified Therapeutic Biotechnology-Derived Products, Chemistry Manufacturing and Controls Content and Format	February 1999	Do	Do
Draft Guidance for Industry: Accelerated Approval Products—Submission of Promotional Materials	March 1999	Do	Do
Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Biological In Vitro Diagnostic Product	March 1999	Do	Do
Update on Abbokinase (Urokinase)	March 16, 1999	Healthcare Providers	Do
Update on Abbokinase (Urokinase)	March 22, 1999	Do	Do
Guidance for Industry: Public Health Issues Posed by the Use of Nonhuman Primate Xenografts in Humans	April 1999	FDA—Regulated Industry	Do
Guidance for Industry on the Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test	April 1999	Do	Do
Guidance for Industry for the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and for the Completion of the Form FDA 356h "Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use"	May 1999	Do	Do
Guidance for Industry for Platelet Testing and Evaluation of Platelet Substitute Products	May 1999	Do	Do
Guidance for Industry: Efficacy Studies to Support Marketing of Fibrin Sealant Products Manufactured for Commercial Use	May 1999	Do	Do
Dear Colleague Letter—Hypotension and Bedside Leukocyte Reduction Filters	May 5, 1999	Healthcare Providers	Do

III. Guidance Documents Issued by the Center for Devices and Radiological (CDRH)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Industry on Preparing Notices of Availability of Investigational Medical Devices and for Recruiting Study Subjects	March 25, 1999	Office of Compliance (OC)	Division of Small Manufacturers Assistance, 1–800–638–2041 or 301–827–0111 or (FAX) Facts-on-Demand at 1–800–899–0381 or Internet at http://www.fda.gov/cdrh
Document for Special Controls for Erythropoietin Assay Premarket Notifications (510(k))	April 28, 1999	Office of Device Evaluation (ODE)/Division of Clinical Laboratories Devices (DCLD)	Do
In Vitro Diagnostic Fibrin Monomer Paracoagulation Test	April 27, 1999	Do	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Recommended Clinical Study Design for Ventricular Tachycardia Ablation	May 7, 1999	ODE/Division of Cardiovascular, Respiratory, and Neurological Devices (DCRND)	Do
Guidance for the Preparation of a Premarket Notification Application for a Surgical Mesh	March 2, 1999	ODE/Division of General and Restorative Devices (DGRD)	Do
Guidance for the Submission of a Premarket Notification for a Dermabrasion Device	March 2, 1999	Do	Do
Accountability Analysis for Clinical Studies for Ophthalmic Devices	March 15, 1999	ODE/Division of Ophthalmic Device (DOD)	Do
Guidance on 510(k) Submissions for Keratoprostheses	March 31, 1999	Do	Do
The Mammography Quality Standards Act Final Regulations Compliance Guidance—Document 2 (Draft)	March 5, 1999	Office of Health of Industry Program (OHIP)/Division of Mammography Quality and Radiation Programs (DMQRP)	Do
Compliance Guidance: The Mammography Quality Standards Act Final Regulations Motion of Tube-Image Receptor Assembly	March 23, 1999	Do	Do
The Mammography Quality Standards Act Final Regulations Facility Survey and Medical Physicist Qualification Requirements	May 5, 1999	Do	Do
Guidance to Industry on the Testing of Metallic Plasma Sprayed Coatings on Orthopedic Implants to Support Reconsideration of Postmarket Surveillance Requirements (Draft)	February 23, 1999	Office of Surveillance and Biometrics (OSB)/Division of Postmarket Surveillance (DPS)	Do
MDR Reporting Guidance for Date-Related Problems Including Y2K	April 16, 1999	OSB/Division of Surveillance Systems (DSS)	Do
Variance From Manufacturer Report Number Format (Variance No. 5)	August 12, 1996	Do	Do
Immunotoxicity Testing Guidance	May 6, 1999	Office of Science and Technologies (OST)/Division of Life Sciences (DLS)	Do
Replacements			
Guidance for Industry—Abbreviated 510(k) Submissions for In Vitro Diagnostic Calibrators (Replaces: In Vitro Diagnostic Calibrators)	February 22, 1999	ODE/DCLD	Do
Guidance for Spinal System 510(k)'s (Replaces: Draft Guideline for Reviewing Spinal Fixation Device Systems)	May 7, 1999	ODE/DGRD	Do
Electro-Optical Sensors for the In Vivo Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE/PMA (Replaces: In Vivo Devices for the Detection of Cervical Cancer and its Precursors: Submission Guidance for an IDE Draft Document)	May 12, 1999	ODE/Division of Reproductive, Abdominal, Ear, Nose, and Throat Devices Branch (DRAERD)	Do
Home Uterine Activity Monitors: Guidance for the Submission of 510(k) Premarket Notifications (Replaces: Premarket Testing Guidelines for Home Uterine Activity Monitors)	May 12, 1999	Do	Do
Compliance Guidance: The Mammography Quality Standards Act Final Regulation—Document 1 (Replaces: Compliance Guidance: The Mammography Quality Standards Act Final Regulation)	March 4, 1999	OHIP/DMQRP	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Guidance for Request and Issuance of Interim Notice Letters for Mammography Facilities Under the Mammography Quality Standards Act (42 U.S.C. 263(b)) (Replaces: Guidance for Request and Issuance of Interim Notice Letters for Mammography Facilities Under the Mammography Quality Standards Act (42 U.S.C. 263(b))	May 4, 1999	Do	Do
Compliance Guidance: The Mammography Quality Standards Act Final Regulations—Preparing for MQSA Inspections (Replaces: "What a Mammography Facility Should Do to Prepare for an MQSA Inspection" and "Addendum to What a Mammography Facility Should Do To Prepare for an MQSA Inspection"	May 5, 1999	Do	Do
Regulations of Medical Devices Background Information for International Officials (Replaces: Regulations of Medical Devices Background Information for Foreign Officials)	April 14, 1999	OHIP/Division of Small Manufacturers Assistance (DSMA)	Do

IV. Guidance Documents Issued by the Center for Drug Evaluation and Research (CDER)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Accelerated Approval Products—Submission of Promotional Materials	March 26, 1999	Advertising Draft	Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573, or via the Internet at http://www.fda.gov/cder/guidance/index.htm
ANDA's: Impurities in Drug Products	January 5, 1999	Generic Drug Draft	Do
BACPAC 1: Intermediates In Drug Substance Synthesis (Bulk Actives Postapproval Changes: Chemistry, Manufacturing, and Controls Documentation)	November 30, 1998	Chemistry Draft	Do
Bioanalytical Methods Validations for Human Studies	January 5, 1999	Biopharmaceutic Draft	Do
Bioavailability and Bioequivalence Studies for Nasal Aerosols and Nasal Sprays for Local Action	June 1999	Do	Do
Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA)	February 17, 1999	Clinical Medical	Do
Content and Format of Geriatric Labeling	January 21, 1999	Labeling Draft	Do
Enforcement Policy During Implementation of Section 503A of the Federal Food, Drug, and Cosmetic Act	November 23, 1998	Procedural	Do
Establishing Pregnancy Registries	June 4, 1999	Clinical Medical Draft	Do
Evaluation of Human Pregnancy Outcome Data; Draft Guidance for Reviewers	June 4, 1999	Do	Do
Fast Track Drug Development Programs: Designation, Development, and Application Review	November 18, 1998	Procedural	Do
FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products	December 1998	Clinical Medical	Do

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Copy of the Document (Name and Address, Phone, FAX, E-mail, or Internet)
Formal Meetings With Sponsors and Applicants for PDUFA Products	March 19, 1999	Procedural Draft	Do
Formal Dispute Resolution: Appeals Above the Division Level	March 19, 1999	Do	Do
General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products	November 30, 1998	Clinical Pharmacological Draft	Do
In Vivo Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling	November 19, 1998	Do	Do
IND's for Phase 2 and 3 Studies of Drugs, Including Specified Therapeutic Biotechnology-Derived Products; Chemistry, Manufacturing, and Controls Content and Format	April 20, 1999	Chemistry Draft	Do
Metered Dose Inhalers (MDI's) and Dry Powder Inhalers (DPI's) Drug Products; Chemistry, Manufacturing, and Controls Documentation	November 19, 1998	Do	Do
Nasal Spray and Inhalation Solution, Suspension, and Spray Drug Products	May 1999	Do	Do
NDA's: Impurities in Drug Substances	January 21, 1999	Do	Do
Noncontraceptive Estrogen Drug Products—Physician and Patient Labeling	January 8, 1999	Labeling Draft	Do
Organization of an ANDA	March 2, 1999	Generic Drug	Do
Population Pharmacokinetics	February 10, 1999	Clinical Pharmacology	Do
Product Name, Placement, Size, and Prominence in Advertising and Promotional Labeling	March 12, 1999	Advertising Draft	Do
Regulatory Submissions in Electronic Format; General Considerations	January 28, 1999	Electronic Submissions	Do
Regulatory Submissions in Electronic Format; New Drug Applications	January 28, 1999	Do	Do
Skin Irritation and Sensitization Testing of Generic Transdermal Drug Products	February 26, 1999	Generic Drug Draft	Do
SUPAC IR/MR: Immediate-Release and Modified-Release Solid Oral Dosage Forms; Manufacturing Equipment Addendum	February 26, 1999	Chemistry	Do
SUPAC—SS: Nonsterile Semisolid Dosage Forms	January 5, 1999	Chemistry Draft	Do
Therapeutic Equivalence Code Placement on Prescription Drug Labels and Labeling	January 28, 1999	Labeling Draft	Do
Variations in Drug Products that May Be Included in a Single ANDA	January 27, 1999	Generic Drug	Do
Waiver of In Vivo Bioavailability and Bioequivalence Studies for Immediate-Release Solid Oral Dosage Forms Containing Certain Active Moieties/Active Ingredients Based on a Biopharmaceutics Classification System	February 17, 1999	Biopharmaceutic Draft	Do
Withdrawn			
Archiving Submissions in Electronic Format—NDA's	September 23, 1997		
Clinical Evaluation of Drugs to Prevent, Control and/or Treat Periodontal Disease	November 1, 1978		
Content and Format of Investigational New Drug Applications (IND's) for Phases 2 and 3 Studies of Drugs, Including Specific Therapeutic Biotechnology-Derived Products; Preliminary Draft	December 10, 1997		
Providing Regulatory Submissions in Electronic Format—NDA's	April 6, 1998		

V. Guidance Documents Issued by the Center for Food Safety and Applied Nutrition (CFSAN)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, Fax, E-Mail or Internet)
Withdrawn			
Preparing Environmental Assessments: General Suggestions	August 1990		
Step-by-Step Guidance for Preparing Environmental Assessments	March 1987		
Partial List of Enzyme Preparations That are Used in Foods	1998		
Partial List of Microorganisms and Microbial-Derived Ingredients That Are Used in Food	1998		
FDA Nutrition Labeling Guide for Using Data Bases NOTE: ONLY DELETE THE 1993 VERSION	1993		
New Guidances			
Sanitizing Solutions: Chemistry Guidelines for Food Additive Petitions NOTE: RE-ISSUED DUE TO QUALITY FOOD PROTECTION ACT JURISDICTION OVER FOOD CONTACT SUBSTANCES FOR A MORE LIMITED PURPOSE	1993	Petitioners for Food Contact Applications	Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3100, or via the Internet at http://vm.cfsan.fda.gov/~dms/opa-cg3a.html
Statement of Identity Nutrition Labeling and Ingredient Labeling of Dietary Supplements; Small Entity Compliance Guide	January 4, 1999	Dietary Supplement Manufacturers	Industry Activities Staff (HFS–565), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5251
Corrections			
Statement of Policy: Foods Derived From New Plant Varieties: Notice	May 29, 1992	Developers of New Plant Food Varieties	Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW. , Washington, DC 20204, 202–418–3100
Guidance for Submitting Requests under 21 CFR 170.39, Threshold of Regulation for Substances Used in Food Articles	1996	Food Packaging Industry	Do—Internet at http://vm.cfsan.fda.gov/~dms/opa-gg2.html
Guidelines for the Preparation of Petition Submissions	1996	Food Ingredient or Packaging Industry	Do—Internet at http://vm.cfsan.fda.gov/~dms/opa-prep.html
Guidelines for Approval of Color Additives in Contact Lenses Intended as Colors	1996	Color or Contact Lens Industry	Do
FDA Recommendations for Submission of Chemical and Technological Data on Color Additives for Food, Drugs, or Cosmetics Use	February 1993	Color Additives Industry	Do—Internet at http://vm.cfsan.fda.gov/~dms/opa-col1.html
Points to Consider for the Use of Recycled Plastics in Food Packaging: Chemistry Considerations	December 1992	Food Packaging Industry	Do—Internet at http://vm.cfsan.fda.gov/~dms/opa-cg3.html
Recommendations for Submission of Chemical and Technological Data for Direct Food Additive and GRAS Food Ingredient Petitions	May 1993	Do	Do—Internet at http://vm.cfsan.fda.gov/~dms/opa-cg4.html
Recommendations for Chemistry Data for Indirect Food Additive Petitions	June 1995	Do	Do—Internet at http://vm.cfsan.fda.gov/~dms/opa-cg5.html
Enzyme Preparations: Chemistry Recommendations for Food Additive and GRAS Affirmation Petitions	January 1993	Food Enzyme Industry	Do—Internet at http://vm.cfsan.fda.gov/~dms/opa-cg7.html
Estimating Exposure to Direct Food Additive and Chemical Contaminants in the Diet	September 1995	Food and Food Ingredient Industry	Do—Internet at http://vm.cfsan.fda.gov/~dms/opa-cg8.html

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How To Obtain A Hard Copy of The Document (Name and Address, Phone, Fax, E-Mail or Internet)
Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food (also known as Redbook I)	1982	Petitioners for Food or Color Additives	National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, Publication No. PR–83–170696
Environmental Assessment Technical Handbook	March 1987	Do	Do—Publication No. PB87175345–AS, A–01
Environmental Assessment of Food-Packaging Materials With Enhanced Degradation Characteristics	February 1994	Do	Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3100
Color Additive Petitions Information and Guidance	1996	Do	Do
Toxological Testing of Food Additives (Updated 1997)	1983	Do	Do—Internet at http://vm.cfsan.fda.gov/~dms/opa-tg1.html
FDA's Policy for Foods Developed by Biotechnology	1995	Food Industry	Internet at http://vm.cfsan.fda.gov
Food Additive Petition Expedited Review	January 1999	Guidance for Industry and CFSAN	Robert L. Martin, Office of Premarket Approval (HFS–215), 200 C St. SW., Washington, DC 20204, 202–418–3074, or e-mail premarkt@cfsan.fda.gov, or via the Internet at http://vm.cfsan.fda.gov/~dms/opa-expe.html
Use of Antibiotic Resistance Marker Genes in Transgenic Plants	September 1998	Do	Nega Beru, Office of Premarket Approval (HFS–206), 200 C St. SW., Washington, DC 20204, 202–418–3097, or e-mail premarkt@cfsan.fda.gov or via the Internet at http://vm.cfsan.fda.gov/~dms/opa-armg.html

VI. Guidance Documents Issued by the Center for Veterinary Medicine (CVM)

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals	January 1999	Animal Drug Industry	Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1755, FAX 301–594–1831 or via the Internet at http://www.fda.gov/cvm
Guidance for Industry: Submitting a Notice of Claimed Investigational Exemption in Electronic Format to CVM via E-mail	January 1999 (Revised)	Do	Do
Draft Guidance for Industry: Product Name Placement, Size, and Prominence in Advertising and Promotional Labeling	March 1999	Do	Do
Guidance for Industry: FDA Approval of New Animal Drugs for Minor Uses and for Minor Species	April 1999 (Revised)	Do	Do

VII. Guidance Documents Issued by the Office of Regulatory Affairs (ORA)

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Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Compliance Policy Guide, Chapter 1, Sec. 160.850: NEW, Enforcement Policy: 21 CFR Part 11; Electronic Records; Electronic Signatures (CPG 7153.17)	May 13, 1999	FDA Personnel	Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0420 or via the Internet at http://www.fda.gov/ora/compliance_ ref/cpg/cpggenl/cpg160–180.htm
Compliance Policy Guide, Chapter 1, Sec. 160.800, NEW: Year 2000 (Y2K) Computer Compliance	April 26, 1999	Do	Do—Internet at http://www.fda.gov/ ora/compliance_ref/cpg/cpggenl/cpg160–800/html
Compliance Policy Guide, Chapter 5, Sec. 555.425, NEW: Foods—Adulteration Involving Hard or Sharp Foreign Objects	March 23, 1999	Do	Do—Internet at http://www.fda.gov/ ora/compliance_ref/cpg/cpgfod/cpg555–425.htm
Compliance Policy Guide, Chapter 1, Sec.140.100, REVISION/DRAFT: Regulatory Policy on the Disposition of Publications that Constitute Labeling (CPG 7153.13)	April 26, 1999	Do	Do—Internet at http://www.fda.gov/ ora/compliance_ref/cpg/cpgfod/draftrev-cpg715313.htm
Compliance Policy Guide, Chapter 2, Sec. 230.140, NEW, Evaluation and Processing of Post Donation Information Reports	July 9, 1999	Do	Do—Internet at http://www.fda.gov/ora/compliance_ref/default.htm
Computerized Systems Used in Clinical Trials	April 1999	FDA—Regulated Industry	Do—Internet at http://www.fda.gov/ora/compliance_ref/bimo/ffinalcct.htm
Draft Guidance Policy Statement: Draft Civil Money Penalty Reduction Policy for Small Entities	May 18, 1999	FDA Personnel and Regulated Industry	Do—Internet at http://www.fda.gov/ohrms/Dockets/98fr/051899f.txt
Medical Device Warning Letter Pilot	March 8, 1999	Do	Do—Internet at http://www.fda.gov/ohrms/Dockets/98fr/030899e.pdf
Guidelines for Entry Review of Radiation-Emitting Electronic Devices	March 12, 1999	FDA Personnel	Division of Import Operations and Policy (HFC–170), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–1218
Import Alerts	Continuously	Do	Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or via the Internet at http://www.fda.gov/ora/fiars/ora_import—alerts.html
Inspectional Policy Regarding Y2K Issues	February 11, 1999 (Revised March 29, 1999)	Do	Division of Emergency and Investigational Operations (HFC–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5645
Laboratory Procedures Manual, NEW Chapter X, Method Validation Samples	May 1999	Do	Division of Field Science (HFC–140), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7605
Investigations Operations Manual, Chapter 5, Subchapter 520, Section 523.2, REVISION, Photo/Video Identification and Submission	June 1999	Do	Division of Emergency Operations (HFC–130), Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5636 or via the Internet at http://fda.gov/ora/inspect_ref/iom/IOMCoverPg.html
Guide to International Inspections and Travel, REVISION (Formerly: FDA/ORA International Inspection Manual and Travel Guide)	July 1999	Do	Do—Updated version not yet available on Internet
Withdrawn			
Compliance Policy Guide, Chapter 2, Sec. 205.100, Standards and Minimum Requirements for Biologic Products (CPG 7134.03)	December 21, 1998		
Compliance Policy Guide, Chapter 3, Sec. 300.200, Reconditioners/Rebuilders of Medical Devices (CPG 7124.28),	January 4, 1999		

Name of Document	Date of Issuance	Grouped by Intended User or Regulatory Activity	How to Obtain a Hard Copy of the Document (Name and Address, Phone, FAX, E-mail or Internet)
Compliance Policy Guide, Chapter 2, Sec. 210.100, Licensing—Changes To Be Reported to the Office of Biologics (CPG 7134.05)	April 26, 1999		
Compliance Policy Guide, Chapter 4, Sec. 460.200, Manufacture, Distribution, and Promotion of Adulterated, Misbranded, or Unapproved New Drugs for Human Use by State-Licensed Pharmacies (CPG 7132.16)	January 8, 1999		

Dated: July 27, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–19978 Filed 8–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2171]

Medical Devices; Draft Guidance for the Accountability Analysis for Clinical Studies for Ophthalmic Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled, "Accountability Analysis for Clinical Studies for Ophthalmic Devices." This guidance is intended to provide general information about the analysis of accountability of subjects in clinical studies in ophthalmic device investigational device exemption applications and marketing applications and notifications. By providing a reference point for the reporting of accountability information, FDA hopes that terminology and methods of presentation can be standardized so that the agency and sponsors can more effectively analyze these data. This guidance is not final nor is it in effect at this time.

DATES: Written comments concerning this guidance must be submitted by November 2, 1999.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Accountability Analysis for Clinical Studies for Ophthalmic Devices" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist the office in processing your request, or fax your request to 301–443–8818. Submit written comments on the document to the Dockets Management Branch, (HFA–305), Food and Drug Administration, rm 1061, 5630 Fishers Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Donna R. Lochner, Center for Devices and Radiological Health (HFZ–463), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled "Accountability Analysis for Clinical Studies for Ophthalmic Devices." This guidance document provides background information that FDA and the sponsor can use in preparing accountability analyses for subjects enrolled in clinical studies of ophthalmic devices. It provides definitions of common terminology used in describing accountability, considerations for presentation of a "lost to follow-up" analysis, and sample formats for presentation of accountability. FDA has noted that there is often a misunderstanding in the meaning of certain terms used to describe accountability, which can confuse the presentation of the accountability data. Further, sponsors have frequently requested that FDA provide them with sample formats for presentation of accountability data. This guidance document attempts to provide some clarity in these areas.

II. Significance of Guidance

This guidance document represents the agency's current thinking on the accountability analysis for ophthalmic devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive the draft guidance entitled "Accountability Analysis for Clinical Studies for Ophthalmic Devices" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1350) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the World Wide Web for easy access to information including text, graphics, and files that may be downloaded to a PC with access to the Web. Updated on a regular basis, the CDRH home page includes the draft guidance entitled "Accountability Analysis for Clinical Studies for Ophthalmic Devices," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information.

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The CDRH home page may be accessed at "http://www.fda.gov/cdrh".

IV. Comments

Interested persons may, on or before November 2, 1999, submit to Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Comments should be identified with the docket number found in brackets in the heading of this document.

Dated: July 20, 1999

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–19976 Filed 8–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0017]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Guidance on Validation of Analytical Procedures: Methodology; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry entitled "Validation of Analytical Procedures: Methodology." This guidance has been adapted for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH) from an identically titled guidance adopted by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) and published in the **Federal Register**. The guidance provides recommendations on how to consider various validation characteristics for each analytical procedure included as part of registration applications for approval of veterinary medicinal products submitted to the European Union, Japan, and the United States.

DATES: Submit written comments at any time.

ADDRESSES: Copies of the final guidance document entitled "Validation of Analytical Procedures: Methodology" may be obtained on the Internet from the CVM home page at "http://www.fda.gov/cvm/fda/TOCs/guideline.html". Persons without Internet access may submit written requests for single copies of the final guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the final guidance document to the Policy and Regulations Team (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT:

Regarding this guidance: William G. Marnane, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6966, e-mail "wmarnane@cvm.fda.gov".

Regarding VICH: Sharon R. Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e-mail "sthompso@cvm.fda.gov".

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seeking scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies.

FDA has actively participated in the ICH for several years to develop harmonized technical requirements for the approval of human pharmaceutical products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary pharmaceutical products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary pharmaceutical products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Épizooties (OIE). During the initial phase of the VICH, an OIE representative chairs the VICH Steering Committee. The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand, one representative from industry in Australia/New Zealand, one representative from MERCOSUR (Argentina, Brazil, Uruguay, and Paraguay), and one representative from Federacion Latino-Americana de la Industria para la Salud Animal. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

This guidance has been adapted for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH) from an identically titled guidance adopted by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) and published in the **Federal Register** of May 19, 1997 (62 FR 27464).

In the **Federal Register** of January 27, 1998 (63 FR 3907), FDA published this guidance in draft form, giving interested persons until March 30, 1998, to submit comments. After consideration of comments received, a final draft guidance was submitted to the VICH Steering Committee.

At a meeting held on October 20 through 22, 1998, the VICH Steering Committee endorsed the draft guidance for industry entitled "Validation of Analytical Procedures: Methodology." This guidance discusses common analytical procedures and provides guidance and recommendations on how to consider the various validation characteristics for each analytical procedure included as part of a registration application for approval of veterinary medicinal products. It also indicated the various data that should be included in registration applications. This guidance will be implemented in October 1999.

This guidance represents the agency's current thinking on characteristics for consideration during the validation of the analytical procedures included as part of applications. It does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternate approach may be used if it satisfies the requirements of applicable statutes, regulations, or both.

As with all of FDA's guidance, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Dated: July 28, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–19977 Filed 8–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1054–N]

RIN 0938–AJ62

Medicare Program; Hospice Wage Index

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the annual update to the hospice wage index as required by statute. This update is effective October 1, 1999. The wage index is used to reflect local differences in wage levels. The hospice wage index methodology and values are based on recommendations of a negotiated rulemaking advisory committee and were originally published in the **Federal Register** on August 8, 1997. This update is the third year of a 3-year transition period. The third transition year begins October 1, 1999 and ends September 30, 2000.

EFFECTIVE DATE: This notice is effective on October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Carol Blackford, (410) 786–5909

SUPPLEMENTARY INFORMATION:

I. Background

A. Statute and Regulations

Hospice Care is an approach to treatment that recognizes that the impending death of an individual warrants a change in the focus from curative care to palliative care (relief of pain and other uncomfortable symptoms). The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, social, psychological, emotional, and spiritual services through use of a broad spectrum of professional and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Counseling and respite services are available to the family of the hospice patient. Hospice programs consider both the patient and the family as a unit of care.

Section 1861(dd) of the Social Security Act (the Act) provides for coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a participating hospice. The statutory authority for payment to hospices participating in the Medicare program is contained in section 1814(i) of the Act.

Our regulations at 42 CFR part 418 (issued on December 16, 1983, effective for hospice services furnished on or after November 1, 1983) established eligibility requirements and payment standards and procedures, defined covered services, and delineated the conditions a hospice must meet to be approved for participation in the Medicare program. Subpart G of part 418 provides for payment to hospices based on one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of a hospice. The four rate categories are routine home care, continuous home care, inpatient respite care, and general inpatient care. Payment rates are established for each category.

Section 4442 of the Balanced Budget Act of 1997, Public Law 105–C3, amended section 1814 (i)(2) of the Act to require payment for routine and continuous home care to be made based on the geographic location at which the service is furnished. The site of service provision was effective October 1, 1997 and was implemented through a Program Memorandum (transmittal A–97–11) issued in September of 1997.

Section 418.306(c), that requires the rates to be adjusted by a wage index, was revised on August 8, 1997, through publication of a final rule in the **Federal Register** (62 FR 42860). This rule implemented a new methodology for calculating the hospice wage index that was based on the recommendations of a negotiated rulemaking committee. The committee reached consensus on a methodology and the resulting committee statement, describing that consensus, was included as an attachment to the August 8, 1997 hospice wage index final rule. The provisions of the final hospice wage index rule are as follows:

- The revised hospice wage index will be phased in over a 3-year transition period. For the first year of the transition period, a blended index was calculated by adding two-thirds of the 1983 index value for an area to one-third of the revised wage index value for that area. During the second year of the transition period, the calculation was similar, except that the blend was one-third of the 1983 index value and two-thirds of the revised wage index value for that area. During the third transition year, the revised wage index will be fully implemented. The first transition year occurred October 1, 1997 through September 30, 1998. The second transition year occurred October 1, 1998 through September 30, 1999.
- All hospice wage index values of 0.8 or greater are subject to a budget neutrality adjustment to ensure that Medicare does not pay any more in the aggregate than it would have paid with the previous wage index. The budget neutrality adjustment is calculated by multiplying the hospice wage index for a given area by the budget neutrality adjustment factor. The budget neutrality adjustment is to be applied annually, both during and after the transition period.
- All hospice wage index values below 0.8 receive the greater of the following adjustments—the wage index floor, a 15 percent increase, subject to a maximum wage index value of 0.8; or, the budget neutrality adjustment.
- The wage index is to be updated annually, in the **Federal Register**, based on the most current available hospital wage data.

B. Update to the Hospice Wage Index

The third year of the 3-year transition period begins October 1, 1999 and ends September 30, 2000. In accordance with the agreement signed by members of the Hospice Wage Index Negotiated Rulemaking Committee, we are using 1998 hospital area wage index data, including any changes to the definitions of Metropolitan Statistical Areas

(MSAs), that allow us to publish this notice at least 4 months in advance of the October 1, 1999 effective date.

Additionally, the wage index value for hospices in counties that are no longer in the same MSA as they were in 1983 will no longer be blended with the wage index for the original MSA designation. These hospices will receive the full wage index for their current MSA designation. All wage index values are adjusted by a budget neutrality factor of 1.065982 and are subject to the wage index floor adjustment, if applicable. All of the calculations described above have been completed by us and are built into the wage index values reflected in both Tables A and B below. A detailed description of the method used to compute the hospice wage index is contained in both the September 4, 1996 (61 FR 46579) hospice wage index proposed rule and the August 8, 1997 (62 FR 42860) hospice wage index final rule.

Because the hospice wage index is calculated using the pre-reclassified hospital wage index, it is important to note that the method for calculating the Puerto Rico hospital wage index was changed with the publication of the Hospital Inpatient Prospective Payment System (PPS) and Fiscal Year 1998 Rates final rule in August 29, 1997 (62 FR 45984 and 45986). The Puerto Rico hospital wage index is calculated in the same manner as the national wage index, but is based solely on Puerto Rico's wage data. As explained in the PPS final rule, the total adjusted salaries are added to fringe benefits for all hospitals in Puerto Rico and then divided by the sum by the total hours for Puerto Rico to arrive at an overall average hourly wage. For each labor market area in Puerto Rico, the hospital wage index is calculated by dividing the area average hourly wage by the overall Puerto Rico average hourly wage.

C. Tables

TABLE A—HOSPICE WAGE INDEX FOR URBAN AREAS

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
0040 ...	*Abilene, TX*	0.8508
	Taylor, TX	
0060 ...	*Aguadilla, PR*	0.5436
	Aguada, PR	
	Aguadilla, PR	
	Moca, PR	
0080 ...	*Akron, OH*	1.0553
	Portage, OH	
	Summit, OH	
0120 ...	*Albany, GA*	0.8501
	Dougherty, GA	
	Lee, GA	
0160 ...	*Albany-Schenectady-Troy, NY*	0.9178
	Albany, NY	
	Montgomery, NY	
	Rensselaer, NY	
	Saratoga, NY	
	Schenectady, NY	
	Schoharie, NY	
0200 ...	*Albuquerque, NM*	0.9181
	Bernalillo, NM	
	Sandoval, NM	
	Valencia, NM	
0220 ...	*Alexandria, LA*	0.9089
	Rapides, LA	
0240 ...	*Allentown-Bethlehem-Easton, PA*	1.0877
	Carbon, PA	
	Lehigh, PA	
	Northampton, PA	
0280 ...	*Altoona, PA*	0.9951
	Blair, PA	
0320 ...	*Amarillo, TX*	0.9033
	Potter, TX	
	Randall, TX	
0380 ...	*Anchorage, AK*	1.3664
	Anchorage, AK	
0440 ...	*Ann Arbor, MI*	1.1761
	Lenawee, MI	
	Livingston, MI	
	Washtenaw, MI	
0450 ...	*Anniston, AL*	0.9229
	Calhoun, AL	
0460 ...	*Appleton-Oshkosh-Neenah, WI*	0.9407
	Calumet, WI	
	Outagamie, WI	
	Winnebago, WI	
0470 ...	*Arecibo, PR*	0.5597
	Arecibo, PR	
	Camuy, PR	
	Hatillo, PR	
0480 ...	*Asheville, NC*	0.9530
	Buncombe, NC	
	Madison, NC	
0500 ...	*Athens, GA*	0.9245
	Clarke, GA	
	Madison, GA	
	Oconee, GA	
0520	*Atlanta, GA*	1.0569
	Barrow, GA	
	Bartow, GA	
	Carroll, GA	
	Cherokee, GA	
	Clayton, GA	
	Cobb, GA	
	Coweta, GA	
	DeKalb, GA	
	Douglas, GA	
	Fayette, GA	
	Forsyth, GA	
	Fulton, GA	
	Gwinnett, GA	
	Henry, GA	
	Newton, GA	
	Paulding, GA	
	Pickens, GA	
	Rockdale, GA	
	Spalding, GA	
	Walton, GA	
0560 ...	*Atlantic-Cape May, NJ*	1.2297
	Atlantic, NJ	
	Cape May, NJ	
0600 ...	*Augusta-Aiken, GA–SC.*	0.9842
	Columbia, GA	
	McDuffie, GA	
	Richmond, GA	
	Aiken, SC	
	Edgefield, SC	
0640 ...	*Austin-San Marcos, TX*	0.9361
	Bastrop, TX	
	Caldwell, TX	
	Hays, TX	
	Travis, TX	
	Williamson, TX	
0680 ...	*Bakersfield, CA*	1.0160
	Kern, CA	
0720 ...	*Baltimore, MD*	1.0278
	Anne Arundel, MD	
	Baltimore, MD	
	Baltimore City, MD	
	Carroll, MD	
	Harford, MD	
	Howard, MD	
	Queen Anne's, MD	
0733 ...	*Bangor, ME*	1.0099
	Penobscot, ME	
0743 ...	*Barnstable-Yarmouth, MA*	1.6397
	Barnstable, MA	
0760 ...	*Baton Rouge, LA*	0.9457
	Ascension, LA	
	East Baton Rouge, LA	
	Livingston, LA	
	West Baton Rouge, LA	
0840 ...	*Beaumont-Port Arthur, TX*	0.9230
	Hardin, TX	
	Jefferson, TX	
	Orange, TX	
0860 ...	*Bellingham, WA* ...	1.2188
	Whatcom, WA	
0870 ...	*Benton Harbor, MI*	0.9094
	Berrien, MI	
0875 ...	*Bergen-Passaic, NJ.*	1.2990
	Bergen, NJ	
	Passaic, NJ	
0880 ...	*Billings, MT*	0.9746
	Yellowstone, MT	
0920 ...	*Biloxi-Gulfport-Pascagoula, MS*	0.8822
	Hancock, MS	
	Harrison, MS	
	Jackson, MS	
0960 ...	*Binghamton, NY* ...	0.9657
	Broome, NY	
	Tioga, NY	
1000 ...	*Birmingham, AL* ...	0.9672
	Blount, AL	
	Jefferson, AL	
	St. Clair, AL	
	Shelby, AL	
1010 ...	*Bismarck, ND*	0.8555
	Burleigh, ND	
	Morton, ND	
1020 ...	*Bloomington, IN*	0.9557
	Monroe, IN	
1040 ...	*Bloomington-Normal, IL*	0.9435
	McLean, IL	
1080 ...	*Boise City, ID*	0.9764
	Ada, ID	
	Canyon, ID	
1123 ...	*Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH*	1.2013
	Bristol, MA	
	Essex, MA	
	Middlesex, MA	
	Norfolk, MA	
	Plymouth, MA	
	Suffolk, MA	
	Worcester, MA	
	Hillsborough, NH	
	Merrimack, NH	
	Rockingham, NH	
	Strafford, NH	
1125 ...	*Boulder-Longmont, CO*	1.0700
	Boulder, CO	
1145 ...	*Brazoria, TX*	0.9494
	Brazoria, TX	
1150 ...	*Bremerton, WA*	1.1784
	Kitsap, WA	
1240 ...	*Brownsville-Harlingen-San Benito, TX*	0.8780
	Cameron, TX	
1260 ...	*Bryan-College Station, TX*	0.8336
	Brazos, TX	
1280 ...	*Buffalo-Niagara Falls, NY*	1.0220
	Erie, NY	
	Niagara, NY	
1303 ...	*Burlington, VT*	1.0209
	Chittenden, VT	
	Franklin, VT	
	Grand Isle, VT	
1310 ...	*Caguas, PR*	0.5060
	Caguas, PR	
	Cayey, PR	
	Cidra, PR	
	Gurabo, PR	
	San Lorenzo, PR	
1320 ...	*Canton-Massillon, OH*	0.9394
	Carroll, OH	
	Stark, OH	
1350 ...	*Casper, WY*	0.9275
	Natrona, WY	
1360 ...	*Cedar Rapids, IA*	0.9396
	Linn, IA	
1400 ...	*Champaign-Urbana, IL*	0.9299
	Champaign, IL	

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Jefferson, AL	
	St. Clair, AL	
	Shelby, AL	
1010 ...	*Bismarck, ND*	0.8555
	Burleigh, ND	
	Morton, ND	
1020 ...	*Bloomington, IN*	0.9557
	Monroe, IN	
1040 ...	*Bloomington-Normal, IL*	0.9435
	McLean, IL	
1080 ...	*Boise City, ID*	0.9764
	Ada, ID	
	Canyon, ID	
1123 ...	*Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH*	1.2013
	Bristol, MA	
	Essex, MA	
	Middlesex, MA	
	Norfolk, MA	
	Plymouth, MA	
	Suffolk, MA	
	Worcester, MA	
	Hillsborough, NH	
	Merrimack, NH	
	Rockingham, NH	
	Strafford, NH	
1125 ...	*Boulder-Longmont, CO*	1.0700
	Boulder, CO	
1145 ...	*Brazoria, TX*	0.9494
	Brazoria, TX	
1150 ...	*Bremerton, WA*	1.1784
	Kitsap, WA	
1240 ...	*Brownsville-Harlingen-San Benito, TX*	0.8780
	Cameron, TX	
1260 ...	*Bryan-College Station, TX*	0.8336
	Brazos, TX	
1280 ...	*Buffalo-Niagara Falls, NY*	1.0220
	Erie, NY	
	Niagara, NY	
1303 ...	*Burlington, VT*	1.0209
	Chittenden, VT	
	Franklin, VT	
	Grand Isle, VT	
1310 ...	*Caguas, PR*	0.5060
	Caguas, PR	
	Cayey, PR	
	Cidra, PR	
	Gurabo, PR	
	San Lorenzo, PR	
1320 ...	*Canton-Massillon, OH*	0.9394
	Carroll, OH	
	Stark, OH	
1350 ...	*Casper, WY*	0.9275
	Natrona, WY	
1360 ...	*Cedar Rapids, IA*	0.9396
	Linn, IA	
1400 ...	*Champaign-Urbana, IL*	0.9299
	Champaign, IL	
1440 ...	*Charleston-North Charleston, SC*	0.9715
	Berkeley, SC	
	Charleston, SC	
	Dorchester, SC	
1480 ...	*Charleston, WV*	0.9583
	Kanawha, WV	
	Putnam, WV	
1520 ...	*Charlotte-Gastonia-Rock Hill, NC–SC*	1.0325
	Cabarrus, NC	
	Gaston, NC	
	Lincoln, NC	
	Mecklenburg, NC	
	Rowan, NC	
	Stanly, NC	
	Union, NC	
	York, SC	
1540 ...	*Charlottesville, VA*	1.0950
	Albemarle, VA	
	Charlottesville City, VA	
	Fluvanna, VA	
	Greene, VA	
1560 ...	*Chattanooga, TN–GA*	0.9673
	Catoosa, GA	
	Dade, GA	
	Walker, GA	
	Hamilton, TN	
	Marion, TN	
1580 ...	*Cheyenne, WY*	0.8687
	Laramie, WY	
1600 ...	*Chicago, IL*	1.1151
	Cook, IL	
	DeKalb, IL	
	Du Page, IL	
	Grundy, IL	
	Kane, IL	
	Kendall, IL	
	Lake, IL	
	McHenry, IL	
	Will, IL	
1620 ...	*Chico-Paradise, CA*	1.0814
	Butte, CA	
1640 ...	*Cincinnati, OH–KY–IN*	1.0228
	Brown, OH	
	Clermont, OH	
	Hamilton, OH	
	Warren, OH	
	Boone, KY	
	Campbell, KY	
	Gallatin, KY	
	Grant, KY	
	Kenton, KY	
	Pendleton, KY	
	Dearborn, IN	
	Ohio, IN	
1660 ...	*Clarksville-Hopkinsville, TN–KY*	0.8570
	Christian, KY	
	Montgomery, TN	
1680 ...	*Cleveland-Lorain-Elyria, OH*	1.0538
	Ashtabula, OH	
	Cuyahoga, OH	
	Geauga, OH	
	Lake, OH	
	Lorain, OH	
	Medina, OH	
1720 ...	*Colorado Springs, CO*	1.0010
	El Paso, CO	
1740 ...	*Columbia, MO*	0.9532
	Boone, MO	
1760 ...	*Columbia, SC*	0.9903
	Lexington, SC	
	Richland, SC	
1800 ...	*Columbus, GA–AL*	0.9073
	Chattahochee, GA	
	Harris, GA	
	Muscogee, GA	
	Russell, AL	
1840 ...	*Columbus, OH*	1.0426
	Delaware, OH	
	Fairfield, OH	
	Franklin, OH	
	Licking, OH	
	Madison, OH	
	Pickaway, OH	
1880 ...	*Corpus Christi, TX*	0.9075
	Nueces, TX	
	San Patricio, TX	
1900 ...	*Cumberland, MD–WV*	0.8786
	Allegany, MD	
	Mineral, WV	
1920 ...	*Dallas, TX*	0.9987
	Collin, TX	
	Dallas, TX	
	Denton, TX	
	Ellis, TX	
	Henderson, TX	
	Hunt, TX	
	Kaufman, TX	
	Rockwall, TX	
1950 ...	*Danville, VA*	0.9641
	Danville City, VA	
	Pittsylvania, VA	
1960 ...	*Davenport-Moline-Rock Island, IA–IL*	0.8968
	Scott, IA	
	Henry, IL	
	Rock Island, IL	
2000 ...	*Dayton-Springfield, OH*	1.0239
	Clark, OH	
	Greene, OH	
	Miami, OH	
	Montgomery, OH	
2020 ...	*Daytona Beach, FL*	0.9737
	Flagler, FL	
	Volusia, FL	
2030 ...	*Decatur, AL*	0.8776
	Lawrence, AL	
	Morgan, AL	
2040 ...	*Decatur, IL*	0.8565
	Macon, IL	
2080 ...	*Denver, CO*	1.1013
	Adams, CO	
	Arapahoe, CO	

TABLE A—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Denver, CO	
	Douglas, CO	
	Jefferson, CO	
2120 ...	*Des Moines, IA*	0.9005
	Dallas, IA	
	Polk, IA	
	Warren, IA	
2160 ...	*Detroit, MI*	1.1240
	Lapeer, MI	
	Macomb, MI	
	Monroe, MI	
	Oakland, MI	
	St. Clair, MI	
	Wayne, MI	
2180 ...	*Dothan, AL*	0.8413
	Dale, AL	
	Houston, AL	
2190 ...	*Dover, DE*	0.9981
	Kent, DE	
2200 ...	*Dubuque, IA*	0.8765
	Dubuque, IA	
2240 ...	*Duluth-Superior, MN–WI*	1.0619
	St. Louis, MN	
	Douglas, WI	
2281 ...	*Dutchess County, NY*	1.1225
	Dutchess, NY	
2290 ...	*Eau Claire, WI*	0.9139
	Chippewa, WI	
	Eau Claire, WI	
2320 ...	*El Paso, TX*	0.9823
	El Paso, TX	
2330 ...	*Elkhart-Goshen, IN*	0.9919
	Elkhart, IN	
2335 ...	*Elmira, NY*	0.8997
	Chemung, NY	
2340 ...	*Enid, OK*	0.8510
	Garfield, OK	
2360 ...	*Erie, PA*	0.9883
	Erie, PA	
2400 ...	*Eugene-Springfield, OR*	1.1932
	Lane, OR	
2440 ...	*Evansville-Henderson, IN–KY*	0.9091
	Posey, IN	
	Vanderburgh, IN	
	Warrick, IN	
	Henderson, KY	
2520 ...	*Fargo-Moorhead, ND–MN*	1.0148
	Clay, MN	
	Cass, ND	
2560 ...	*Fayetteville, NC*	0.8943
	Cumberland, NC	
2580 ...	*Fayetteville-Springdale-Rogers, AR.*	0.9182
	Benton, AR	
	Washington, AR	
2620 ...	*Flagstaff, AZ–UT*	1.0109
	Coconino, AZ	
	Kane, UT	
2640 ...	*Flint, MI*	1.1759
	Genesee, MI	
2650 ...	*Florence, AL*	0.8182
	Colbert, AL	
	Lauderdale, AL	
2655 ...	*Florence, SC*	0.9062
	Florence, SC	
2670 ...	*Fort Collins-Loveland, CO*	1.1481
	Larimer, CO	
2680 ...	*Ft. Lauderdale, FL*	1.0454
	Broward, FL	
2700 ...	*Fort Myers-Cape Coral, FL*	0.9532
	Lee, FL	
2710 ...	*Fort Pierce-Port St. Lucie, FL*	1.0917
	Martin, FL	
	St. Lucie, FL	
2720 ...	*Fort Smith, AR–OK*	0.8126
	Crawford, AR	
	Sebastian, AR	
	Sequoyah, OK	
2750 ...	*Fort Walton Beach, FL*	0.9183
	Okaloosa, FL	
2760 ...	*Fort Wayne, IN*	0.9644
	Adams, IN	
	Allen, IN	
	De Kalb, IN	
	Huntington, IN	
	Wells, IN	
	Whitley, IN	
2800 ...	*Fort Worth-Arlington, TX*	1.0360
	Hood, TX	
	Johnson, TX	
	Parker, TX	
	Tarrant, TX	
2840 ...	*Fresno, CA*	1.1406
	Fresno, CA	
	Madera, CA	
2880 ...	*Gadsden, AL*	0.9358
	Etowah, AL	
2900 ...	*Gainesville, FL*	1.0077
	Alachua, FL	
2920 ...	*Galveston-Texas City, TX*	1.1613
	Galveston, TX	
2960 ...	*Gary, IN*	1.0058
	Lake, IN	
	Porter, IN	
2975 ...	*Glens Falls, NY*	0.9050
	Warren, NY	
	Washington, NY	
2980 ...	*Goldsboro, NC*	0.9093
	Wayne, NC	
2985 ...	*Grand Forks, ND-MN*	0.9419
	Grand Forks, ND	
	Polk, MN	
2995 ...	*Grand Junction, CO*	0.8825
	Mesa, CO	
3000 ...	*Grand Rapids-Muskegon-Holland, MI*	1.0629
	Allegan, MI	
	Kent, MI	
	Muskegon, MI	
	Ottawa, MI	
3040 ...	*Great Falls, MT*	0.9457
	Cascade, MT	
3060 ...	*Greeley, CO*	1.0081
	Weld, CO	
3080 ...	*Green Bay, WI*	0.9760
	Brown, WI	
3120 ...	*Greensboro-Winston-Salem-High Point, NC*	1.0177
	Alamance, NC	
	Davidson, NC	
	Davie, NC	
	Forsyth, NC	
	Guilford, NC	
	Randolph, NC	
	Stokes, NC	
	Yadkin, NC	
3150 ...	*Greenville, NC*	1.0056
	Pitt, NC	
3160 ...	*Greenville-Spartanburg-Anderson, SC*	0.9830
	Anderson, SC	
	Cherokee, SC	
	Greenville, SC	
	Pickens, SC	
	Spartanburg, SC	
3180 ...	*Hagerstown, MD*	1.0855
	Washington, MD	
3200 ...	*Hamilton-Middletown, OH*	0.9842
	Butler, OH	
3240 ...	*Harrisburg-Lebanon-Carlisle, PA*	1.0724
	Cumberland, PA	
	Dauphin, PA	
	Lebanon, PA	
	Perry, PA	
3283 ...	*Hartford, CT*	1.2612
	Hartford, CT	
	Litchfield, CT	
	Middlesex, CT	
	Tolland, CT	
3285 ...	*Hattiesburg, MS*	0.8000
	Forrest, MS	
	Lamar, MS	
3290 ...	*Hickory-Morganton-Lenoir, NC*	0.9492
	Alexander, NC	
	Burke, NC	
	Caldwell, NC	
	Catawba, NC	
3320 ...	*Honolulu, HI*	1.2269
	Honolulu, HI	
3350 ...	*Houma, LA*	0.8738
	Lafourche, LA	
	Terrebonne, LA	
3360 ...	*Houston, TX*	1.0541
	Chambers, TX	
	Fort Bend, TX	
	Harris, TX	
	Liberty, TX	
	Montgomery, TX	
	Waller, TX	

TABLE A—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
3400 ...	*Huntington-Ashland, WV–KY–OH*	1.0284
	Boyd, KY	
	Carter, KY	
	Greenup, KY	
	Lawrence, OH	
	Cabell, WV	
	Wayne, WV	
3440 ...	*Huntsville, AL*	0.8938
	Limestone, AL	
	Madison, AL	
3480 ...	*Indianapolis, IN*	1.0480
	Boone, IN	
	Hamilton, IN	
	Hancock, IN	
	Hendricks, IN	
	Johnson, IN	
	Madison, IN	
	Marion, IN	
	Morgan, IN	
	Shelby, IN	
3500 ...	*Iowa City, IA*	1.0107
	Johnson, IA	
3520 ...	*Jackson, MI*	0.9833
	Jackson, MI	
3560 ...	*Jackson, MS*	0.8839
	Hinds, MS	
	Madison, MS	
	Rankin, MS	
3580 ...	*Jackson, TN*	0.9125
	Madison, TN	
	Chester, TN	
3600 ...	*Jacksonville, FL*	0.9487
	Clay, FL	
	Duval, FL	
	Nassau, FL	
	St. Johns, FL	
3605 ...	*Jacksonville, NC*	0.8055
	Onslow, NC	
3610 ...	*Jamestown, NY*	0.8165
	Chautauqua, NY	
3620 ...	*Janesville-Beloit, WI*	0.9648
	Rock, WI	
3640 ...	*Jersey City, NJ*	1.2363
	Hudson, NJ	
3660 ...	*Johnson City-Kingsport-Bristol, TN–VA*	0.9352
	Carter, TN	
	Hawkins, TN	
	Sullivan, TN	
	Unicoi, TN	
	Washington, TN	
	Bristol City, VA	
	Scott, VA	
	Washington, VA	
3680 ...	*Johnstown, PA*	0.9188
	Cambria, PA	
	Somerset, PA	
3700 ...	*Jonesboro, AR*	0.8000
	Craighead, AR	
3710 ...	*Joplin, MO*	0.8392
	Jasper, MO	
	Newton, MO	
3720 ...	*Kalamazoo-Battlecreek, MI*	1.2079
	Calhoun, MI	
	Kalamazoo, MI	
	Van Buren, MI	
3740 ...	*Kankakee, IL*	1.0039
	Kankakee, IL	
3760 ...	*Kansas City, KS–MO*	1.0281
	Johnson, KS	
	Leavenworth, KS	
	Miami, KS	
	Wyandotte, KS	
	Cass, MO	
	Clay, MO	
	Clinton, MO	
	Jackson, MO	
	Lafayette, MO	
	Platte, MO	
	Ray, MO	
3800 ...	*Kenosha, WI*	0.9731
	Kenosha, WI	
3810 ...	*Killeen-Temple, TX*	1.0776
	Bell, TX	
	Coryell, TX	
3840 ...	*Knoxville, TN*	0.9506
	Anderson, TN	
	Blount, TN	
	Knox, TN	
	Loudon, TN	
	Sevier, TN	
	Union, TN	
3850 ...	*Kokomo, IN*	0.9887
	Howard, IN	
	Tipton, IN	
3870 ...	*La Crosse, WI–MN*	0.9501
	Houston, MN	
	La Crosse, WI	
3880 ...	*Lafayette, LA*	0.8800
	Acadia, LA	
	Lafayette, LA	
	St. Landry, LA	
	St. Martin, LA	
3920 ...	*Lafayette, IN*	0.9424
	Clinton, IN	
	Tippecanoe, IN	
3960 ...	*Lake Charles, LA*	0.818
	Calcasieu, LA	
3980 ...	*Lakeland-Winter Haven, FL*	0.9529
	Polk, FL	
4000 ...	*Lancaster, PA*	1.0192
	Lancaster, PA	
40	*Lansing-East Lansing, MI*	1.0756
	Clinton, MI	
	Eaton, MI	
	Ingham, MI	
4080 ...	*Laredo, TX*	0.8000
	Webb, TX	
4100 ...	*Las Cruces, NM*	0.9455
	Dona Ana, NM	
4120 ...	*Las Vegas, NV–AZ*	1.2166
	Mohave, AZ	
	Clarke, NV	
	Nye, NV	
4150 ...	*Lawrence, KS*	0.9226
	Douglas, KS	
4200 ...	*Lawton, OK*	0.271
	Comanche, OK	
4243 ...	*Lewiston-Auburn, ME*	0.9753
	Androscoggin, ME	
4280 ...	*Lexington, KY*	0.9067
	Bourbon, KY	
	Clark, KY	
	Fayette, KY	
	Jessamine, KY	
	Madison, KY	
	Scott, KY	
	Woodford, KY	
4320 ...	*Lima, OH*	0.9539
	Allen, OH	
	Auglaize, OH	
4360 ...	*Lincoln, NE*	0.9917
	Lancaster, NE	
4400 ...	*Little Rock-North Little Rock, AR*	0.9064
	Faulkner, AR	
	Lonoke, AR	
	Pulaski, AR	
	Saline, AR	
4420 ...	*Longview-Marshall, TX*	0.9272
	Gregg, TX	
	Harrison, TX	
	Upshur, TX	
4480 ...	*Los Angeles-Long Beach, CA*	1.2882
	Los Angeles, CA	
4520 ...	*Louisville, KY–IN*	0.9693
	Clark, IN	
	Floyd, IN	
	Harrison, IN	
	Scott, IN	
	Bullitt, KY	
	Jefferson, KY	
	Oldham, KY	
4600 ...	*Lubbock, TX*	0.9057
	Lubbock, TX	
4640 ...	*Lynchburg, VA*	0.9487
	Amherst, VA	
	Bedford, VA	
	Bedford City, VA	
	Campbell, VA	
	Lynchburg City, VA	
4680 ...	*Macon, GA*	0.9573
	Bibb, GA	
	Houston, GA	
	Jones, GA	
	Peach, GA	
	Twiggs, GA	
4720 ...	*Madison, WI*	1.0679
	Dane, WI	
4800 ...	*Mansfield, OH*	0.9097
	Crawford, OH	
	Richland, OH	
4840 ...	*Mayaguez, PR*	0.5061
	Anasco, PR	
	Cabo Rojo, PR	

TABLE A—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Hormigueros, PR	
	Mayaguez, PR	
	Sabana Grande, PR	
	San German, PR	
4880 ...	*McAllen-Edinburg-Mission, TX*	0.9480
	Hidalgo, TX	
4890 ...	*Medford-Ashland, OR*	1.0681
	Jackson, OR	
4900 ...	*Melbourne-Titusville-Palm Bay, FL*	0.9824
	Brevard, FL	
4920 ...	*Memphis, TN–AR–MS*	0.8913
	Crittenden, AR	
	DeSoto, MS	
	Fayette, TN	
	Shelby, TN	
	Tipton, TN	
4940 ...	*Merced, CA*	1.0695
	Merced, CA	
5000 ...	*Miami, FL*	1.0678
	Dade, FL	
5015 ...	*Middlesex-Somerset-Hunterdon, NJ*	1.1888
	Hunterdon, NJ	
	Middlesex, NJ	
	Somerset, NJ	
5080 ...	*Milwaukee-Waukesha, WI*	0.9973
	Milwaukee, WI	
	Ozaukee, WI	
	Washington, WI	
	Waukesha, WI	
5120 ...	*Minneapolis-St. Paul, MN–WI*	1.1570
	Anoka, MN	
	Carver, MN	
	Chisago, MN	
	Dakota, MN	
	Hennepin, MN	
	Isanti, MN	
	Ramsey, MN	
	Scott, MN	
	Sherburne, MN	
	Washington, MN	
	Wright, MN	
	Pierce, WI	
	St. Croix, WI	
5140 ...	*Missoula, MT*	0.9795
	Missoula, MT	
5160 ...	*Mobile, AL*	0.8930
	Baldwin, AL	
	Mobile, AL	
5170 ...	*Modesto, CA*	1.1029
	Stanislaus, CA	
5190 ...	*Monmouth-Ocean, NJ*	1.2064
	Monmouth, NJ	
	Ocean, NJ	
5200 ...	*Monroe, LA*	0.8761
	Ouachita, LA	
5240 ...	*Montgomery, AL*	0.8337
	Autauga, AL	

TABLE A—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Elmore, AL	
	Montgomery, AL	
5280 ...	*Muncie, IN*	1.0035
	Delaware, IN	
5330 ...	*Myrtle Beach, SC*	0.8719
	Horry, SC	
5345 ...	*Naples, FL*	1.0848
	Collier, FL	
5360 ...	*Nashville, TN*	1.0106
	Cheatham, TN	
	Davidson, TN	
	Dickson, TN	
	Robertson, TN	
	Rutherford TN	
	Sumner, TN	
	Williamson, TN	
	Wilson, TN	
5380 ...	*Nassau-Suffolk, NY*	1.4490
	Nassau, NY	
	Suffolk, NY	
5483 ...	*New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT*	1.3141
	Fairfield, CT	
	New Haven, CT	
5523 ...	*New London-Norwich, CT*	1.2382
	New London, CT	
5560 ...	*New Orleans, LA*	0.9924
	Jefferson, LA	
	Orleans, LA	
	Plaquemines, LA	
	St. Bernard, LA	
	St. Charles, LA	
	St. James, LA	
	St. John The Baptist, LA	
	St. Tammany, LA	
5600 ...	*New York, NY*	1.5415
	Bronx, NY	
	Kings, NY	
	New York, NY	
	Putnam, NY	
	Queens, NY	
	Richmond, NY	
	Rockland, NY	
	Westchester, NY	
5640 ...	*Newark, NJ*	1.2649
	Essex, NJ	
	Morris, NJ	
	Sussex, NJ	
	Union, NJ	
	Warren, NJ	
5660 ...	*Newburgh, NY–PA*	1.1891
	Orange, NY	
	Pike, PA	
5720 ...	*Norfolk-Virginia Beach-Newport News, VA–NC.*	0.8821
	Currituck, NC	
	Chesapeake City, VA	
	Gloucester, VA	
	Hampton City, VA	
	James City, VA	

TABLE A—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Isle of Wight, VA	
	Mathews, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City VA	
	Williamsburg City, VA	
	York, VA	
5775 ...	*Oakland, CA*	1.5982
	Alameda, CA	
	Contra Costa, CA	
5790 ...	*Ocala, FL*	0.9756
	Marion, FL	
5800 ...	*Odessa-Midland, TX*	0.9227
	Ector, TX	
	Midland, TX	
5880 ...	*Oklahoma City, OK*	0.9283
	Canadian, OK	
	Cleveland, OK	
	Logan, OK	
	McClain, OK	
	Oklahoma, OK	
	Pottawatomie, OK	
5910 ...	*Olympia, WA*	1.2282
	Thurston, WA	
5920 ...	*Omaha, NE–IA*	1.0630
	Pottawattamie, IA	
	Cass, NE	
	Douglas, NE	
	Sarpy, NE	
	Washington, NE	
5945 ...	*Orange County, CA*	1.2282
	Orange, CA	
5960 ...	*Orlando, FL*	1.0460
	Lake, FL	
	Orange, FL	
	Osceola, FL	
	Seminole, FL	
5990 ...	*Owensboro, KY*	0.8284
	Daviess, KY	
6015 ...	*Panama City, FL*	0.9068
	Bay, FL	
6020 ...	*Parkersburg-Marietta, WV–OH.*	0.8545
	Washington, OH	
	Wood, WV	
6080 ...	*Pensacola, FL*	0.8790
	Escambia, FL	
	Santa Rosa, FL	
6120 ...	*Peoria-Pekin, IL*	0.8590
	Peoria, IL	
	Tazewell, IL	
	Woodford, IL	
6160 ...	*Philadelphia, PA–NJ*	1.2120
	Burlington, NJ	
	Camden, NJ	
	Gloucester, NJ	
	Salem, NJ	

TABLE A—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Bucks, PA	
	Chester, PA	
	Delaware, PA	
	Montgomery, PA	
	Philadelphia, PA	
6200 ...	*Phoenix-Mesa, AZ*	1.0224
	Maricopa, AZ	
	Pinal, AZ	
6240 ...	*Pine Bluff, AR*	0.8434
	Jefferson, AR	
6280 ...	*Pittsburgh, PA*	1.0435
	Allegheny, PA	
	Beaver, PA	
	Butler, PA	
	Fayette, PA	
	Washington, PA	
	Westmoreland, PA	
6323 ...	*Pittsfield, MA*	1.1533
	Berkshire, MA	
6340 ...	*Pocatello, ID*	0.9372
	Bannock, ID	
6360 ...	*Ponce, PR*	0.5506
	Guayanilla, PR	
	Juana Diaz, PR	
	Penuelas, PR	
	Ponce, PR	
	Villalba, PR	
	Yauco, PR	
6403 ...	*Portland, ME*	1.0192
	Cumberland, ME	
	Sagadahoc, ME	
	York, ME	
6440 ...	*Portland-Vancouver, OR–WA*	1.1916
	Clackamas, OR	
	Columbia, OR	
	Multnomah, OR	
	Washington, OR	
	Yamhill, OR	
	Clark, WA	
6483 ...	*Providence-Warwick-Pawtucket, RI*	1.1514
	Bristol, RI	
	Kent, RI	
	Newport, RI	
	Providence, RI	
	Washington, RI	
6520 ...	*Provo-Orem, UT*	1.0537
	Utah, UT	
6560 ...	*Pueblo, CO*	0.9287
	Pueblo, CO	
6580 ...	*Punta Gorda, FL*	0.9627
	Charlotte, FL	
6600 ...	*Racine, WI*	0.9732
	Racine, WI	
6640 ...	*Raleigh-Durham-Chapel Hill, NC*	1.0459
	Chatham, NC	
	Durham, NC	
	Franklin, NC	
	Johnston, NC	
	Orange, NC	
	Wake, NC	
6660 ...	*Rapid City, SD*	0.8750
	Pennington, SD	
6680 ...	*Reading, PA*	0.9843
	Berks, PA	

TABLE A—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
6690 ...	*Redding, CA*	1.2640
	Shasta, CA	
6720 ...	*Reno, NV*	1.1827
	Washoe, NV	
6740 ...	*Richland-Kennewick-Pasco, WA*	1.0966
	Benton, WA	
	Franklin, WA	
6760 ...	*Richmond-Petersburg, VA*	0.9819
	Charles City County, VA	
	Chesterfield, VA	
	Colonial Heights City, VA	
	Dinwiddie, VA	
	Goochland, VA	
	Hanover, VA	
	Henrico, VA	
	Hopewell City, VA	
	New Kent, VA	
	Petersburg City, VA	
	Powhatan, VA	
	Prince George, VA	
	Richmond City, VA	
6780 ...	*Rivee-San Bernardino, CA*	1.1467
	San Bernardino, CA	
6800 ...	*Roanoke, VA*	0.9070
	Botetourt, VA	
	Roanoke, VA	
	Roanoke City, VA	
	Salem City, VA	
6820 ...	*Rochester, MN*	1.2470
	Olmsted, MN	
6840 ...	*Rochester, NY*	1.0294
	Genesee, NY	
	Livingston, NY	
	Ontario, NY	
	Orleans, NY	
	Wayne NY	
6880 ...	*Rockford, IL*	0.9183
	Boone, IL	
	Ogle, IL	
	Winnebago, IL	
6895 ...	*Rocky Mount, NC*	0.9607
	Edgecombe, NC	
	Nash, NC	
6920 ...	*Sacramento, CA*	1.2751
	El Dorado, CA	
	Placer, CA	
	Sacramento, CA	
6960 ...	*Saginaw-Bay City-Midland, MI*	1.0113
	Bay, MI	
	Midland, MI	
	Saginaw, MI	
6980 ...	*St. Cloud, MN*	1.0219
	Benton, MN	
	Stearns, MN	
7000 ...	*St. Joseph, MO*	1.0541
	Andrew, MO	
	Buchanan, MO	
7040 ...	*St. Louis, MO–IL*	0.9755
	Franklin, MO	
	Jefferson, MO	
	Lincoln, MO	
	St. Charles, MO	
	St. Louis, MO	
	St. Louis City, MO	
	Warren, MO	
	Clinton, IL	
	Jersey, IL	
	Madison, IL	
	Monore, IL	
	St. Clair, IL	
7080 ...	*Salem, OR*	1.0557
	Marion, OR	
	Polk, OR	
7120 ...	*Salinas, CA*	1.6141
	Monterey, CA	
7160 ...	*Salt Lake City-Ogden, UT*	1.0018
	Davis, UT	
	Salt Lake, UT	
	Weber, UT	
7200 ...	*San Angelo, TX*	0.8150
	Tom Green, TX	
7240 ...	*San Antonio, TX*	0.8634
	Bexar, TX	
	Comal, TX	
	Guadalupe, TX	
	Wilson, TX	
7320 ...	*San Diego, CA*	1.3074
	San Diego, CA	
7360 ...	*San Francisco, CA*	1.4878
	Marin, CA	
	San Francisco, CA	
	San Mateo, CA	
7400 ...	*San Jose, CA*	1.4739
	Santa Clara, CA	
7440 ...	*San Juan-Bayamon, PR*	0.5316
	Aguas Buenas, PR	
	Barceloneta, PR	
	Bayamon, PR	
	Canovanas, PR	
	Carolina, PR	
	Catano, PR	
	Ceiba, PR	
	Comerio, PR	
	Corozal, PR	
	Dorado, PR	
	Fajardo, PR	
	Florida, PR	
	Guaynabo, PR	
	Humacao, PR	
	Juncos, PR	
	Los Piedras, PR	
	Loiza, PR	
	Luguillo, PR	
	Manati, PR	
	Morovis, PR	
	Naguabo, PR	
	Naranjito, PR	
	Rio Grande, PR	
	San Juan, PR	
	Toa Alta, PR	
	Toa Baja, PR	
	Trujillo Alto, PR	
	Vega Alta, PR	
	Vega Baja, PR	

TABLE A—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

MSA code No.	Urban area (constituent counties or county equivalents) [1]	Wage index [2]
	Yabucoa, PR	
7460 ...	*San Luis Obispo-Atascadero-Paso Robles, CA*	1.2007
	San Luis Obispo, CA	
7480 ...	*Santa Barbara-Santa Maria-Lompoc, CA*	1.1933
	Santa Barbara, CA	
7485 ...	*Santa Cruz-Watsonville, CA*	1.4903
	Santa Cruz, CA	
7490 ...	*Santa Fe, NM*	1.0289
	Los Alamos, NM	
	Santa Fe, NM	
7500 ...	*Santa Rosa, CA*	1.4494
	Sonoma, CA	
7510 ...	*Sarasota-Bradenton, FL*	1.0161
	Manatee, FL	
	Sarasota, FL	
7520 ...	*Savannah, GA*	1.0724
	Bryan, GA	
	Chatham, GA	
	Effingham, GA	
7560 ...	*Scranton—Wilkes-Barre—Hazleton, PA*	0.8847
	Columbia, PA	
	Lackawanna, PA	
	Luzerne, PA	
	Wyoming, PA	
7600 ...	*Seattle-Bellevue-Everett, WA*	1.2287
	Island, WA	
	King, WA	
	Snohomish, WA	
7610 ...	*Sharon, PA*	0.9431
	Mercer, PA	
7620 ...	*Sheboygan, WI*	0.8768
	Sheboygan, WI	
7640 ...	*Sherman-Denison, TX*	0.9135
	Grayson, TX	
7680 ...	*Shreveport-Bossier City, LA*	1.0005
	Bossier, LA	
	Caddo, LA	
	Webster, LA	
7720 ...	*Sioux City, IA-NE*	0.9041
	Woodbury, IA	
	Dakota, NE	
7760 ...	*Sioux Falls, SD*	0.9500
	Lincoln, SD	
	Minnehaha, SD	
7800 ...	*South Bend, IN*	1.0510
	St. Joseph, IN	
7840 ...	*Spokane, WA*	1.1649
	Spokane, WA	
7880 ...	*Springfield, IL*	0.9295
	Menard, IL	
	Sangamon, IL	
7920 ...	*Springfield, MO*	0.8604
	Christian, MO	
	Greene, MO	
	Webster, MO	
8003 ...	*Springfield, MA*	1.1715
	Hampden, MA	
	Hampshire, MA	
8050 ...	*State College, PA*	1.0072
	Centre, PA	
8080 ...	*Steubenville-Weirton, OH–WV*	0.8984
	Jefferson, OH	
	Brooke, WV	
	Hancock, WV	
8120 ...	*Stockton-Lodi, CA*	1.1806
	San Joaquin, CA	
8140 ...	*Sumter, SC*	0.8663
	Sumter, SC	
8160 ...	*Syracuse, NY*	1.0020
	Cayuga, NY	
	Madison, NY	
	Onondaga, NY	
	Oswego, NY	
8200 ...	*Tacoma, WA*	1.1065
	Pierce, WA	
8240 ...	*Tallahassee, FL*	0.9006
	Gadsden, FL	
	Leon, FL	
8280 ...	*Tampa-St. Petersburg-Clearwater, FL*	0.9714
	Hernando, FL	
	Hillsborough, FL	
	Pasco, FL	
	Pinellas, FL	
8320 ...	*Terre Haute, IN*	0.9584
	Clay, IN	
	Vermillion, IN	
	Vigo, IN	
8360 ...	*Texarkana, AR-Texarkana, TX*	0.9067
	Miller, AR	
	Bowie, TX	
8400 ...	*Toledo, OH*	1.0650
	Fulton, OH	
	Lucas, OH	
	Wood, OH	
8440 ...	*Topeka, KS*	1.0459
	Shawnee, KS	
8480 ...	*Trenton, NJ*	1.1202
	Mercer, NJ	
8520 ...	*Tucson, AZ*	0.9624
	Pima, AZ	
8560 ...	*Tulsa, OK*	0.9021
	Creek, OK	
	Osage, OK	
	Rogers, OK	
	Tulsa, OK	
	Wagoner, OK	
8600 ...	*Tuscaloosa, AL*	0.8145
	Tuscaloosa, AL	
8640 ...	*Tyler, TX*	0.9400
	Smith, TX	
8680 ...	*Utica-Rome, NY*	0.8973
	Herkimer, NY	
	Oneida, NY	
8720 ...	*Vallejo-Fairfield-Napa, CA*	1.4298
	Napa, CA	
	Solano, CA	
8735 ...	*Ventura, CA*	1.1741
	Ventura, CA	
8750 ...	*Victoria, TX*	0.8934
	Victoria, TX	
8760 ...	*Vineland-Millville-Bridgeton, NJ*	1.1129
	Cumberland, NJ	
8780 ...	*Visalia-Tulare-Porterville, CA*	1.0748
	Tulare, CA	
8800 ...	*Waco, TX*	0.8923
	McLennan, TX	
8840 ...	*Washington, DC–MD–VA–WV*	1.1520
	District of Columbia, DC	
	Calvert, MD	
	Charles, MD	
	Frederick, MD	
	Montgomery, MD	
	Prince Georges, MD	
	Alexandria City, VA	
	Arlington, VA	
	Clarke, VA	
	Culpeper, VA	
	Fairfax, VA	
	Fairfax City, VA	
	Falls Church City, VA	
	Fauquier, VA	
	Fredericksburg City, VA	
	King George, VA	
	Loudoun, VA	
	Manassas City, VA	
	Manassas Park City, VA	
	Prince William, VA	
	Spotsylvania, VA	
	Stafford, VA	
	Warren, VA	
	Berkeley, WV	
	Jefferson, WV	
8920 ...	*Waterloo-Cedar Falls, IA*	0.8483
	Black Hawk, IA	
8940 ...	*Wausau, WI*	1.0375
	Marathon, WI	
8960 ...	*West Palm Beach-Boca Raton, FL*	1.0893
	Palm Beach, FL	
9000 ...	*Wheeling, WV–OH*	0.8130
	Belmont, OH	
	Marshall, WV	
	Ohio, WV	
9040 ...	*Wichita, KS*	0.9485
	Butler, KS	
	Harvey, KS	
	Sedgwick, KS	
9080 ...	*Wichita Falls, TX*	0.8347
	Archer, TX	
	Wichita, TX	
9140 ...	*Williamsport, PA*	0.9121
	Lycoming, PA	
9160 ...	*Wilmington-Newark, DE–MD*	1.2651
	New Castle, DE	
9200 ...	*Wilmington, NC*	0.9959
	Brunswick, NC	
	New Hanover, NC	
9260 ...	*Yakima, WA*	1.0999
	Yakima, WA	
9270 ...	*Yolo, CA*	1.1974
	Yolo, CA	
9280 ...	*York, PA*	1.0031
	York, PA	
9320 ...	*Youngstown-Warren, OH*	1.0463
	Columbiana, OH	
	Mahoning, OH	
	Trumbull, OH	
9340 ...	*Yuba City, CA*	1.1582
	Sutter, CA	
	Yuba, CA	
9360 ...	*Yuma, AZ*	1.0722
	Yuma, AZ	

[1] This column lists each MSA area name (in italics) and each county , or county equivalent, in the MSA area. Counties not listed in this Table are considered to be Rural Areas. Wage Index values for these areas are found in Table B.

[2] Wage index values are based on FY 1998 hospital cost report data prior to reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget neutrality adjustment of 1.065982. Wage index values below 0.8 are adjusted to be the greater of a 15 percent increase, subject to a maximum wage index value of 0.8, or an adjustment by multiplying the hospital wage index value for a given area by the budget neutrality adjustment. All of these adjustments have been completed by HCFA and are built into the wage index values reflected in this table.

TABLE B.—WAGE INDEX FOR RURAL AREAS

MSA code No.	Nonurban area	Wage Index [3]
9901 ...	Alabama	0.8000
9902 ...	Alaska	1.3250
9903 ...	Arizona	0.8516
9904 ...	Arkansas	0.8000
9905 ...	California	1.0637
9906 ...	Colorado	0.8993
9907 ...	Connecticut	1.2871
9908 ...	Delaware	0.9388
9910 ...	Florida	0.9463
9911 ...	Georgia	0.8408
9912 ...	Hawaii	1.1630
9913 ...	Idaho	0.9036
9914 ...	Illinois	0.8438
9915 ...	Indiana	0.8933
9916 ...	Iowa	0.8290
9917 ...	Kansas	0.8000
9918 ...	Kentucky	0.8362
9919 ...	Louisiana	0.8000
9920 ...	Maine	0.9026
9921 ...	Maryland	0.9119
9922 ...	Massachusetts	1.1549
9923 ...	Michigan	0.9461
9924 ...	Minnesota	0.9162
9925 ...	Mississippi	0.8000
9926 ...	Missouri	0.8000
9927 ...	Montana	0.8952
9928 ...	Nebraska	0.8180
9929 ...	Nevada	0.9867
9930 ...	New Hampshire	1.0916
9931 ...	New Jersey [4]	.....
9932 ...	New Mexico	0.8815
9933 ...	New York	0.9155
9934 ...	North Carolina	0.8647
9935 ...	North Dakota	0.8000
9936 ...	Ohio	0.9081
9937 ...	Oklahoma	0.8000
9938 ...	Oregon	1.0564
9939 ...	Pennsylvania	0.9236
9940 ...	Puerto Rico	0.4692
9941 ...	Rhode Island [4]	.....
9942 ...	South Carolina	0.8577
9943 ...	South Dakota	0.8003
9944 ...	Tennessee	0.8000
9945 ...	Texas	0.8064
9946 ...	Utah	0.9444
9947 ...	Vermont	1.0037
9948 ...	Virgin Islands	0.5276
9949 ...	Virginia	0.8375
9950 ...	Washington	1.1181
9951 ...	West Virginia	0.8395
9952 ...	Wisconsin	0.9286
9953 ...	Wyoming	0.9347
9965 ...	Guam	0.9611

[3] Wage index values are based on FY 1998 hospital cost report data prior to reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget neutrality adjustment of 1.065982. Wage index values below 0.8 are adjusted to be the greater of a 15 percent increase, subject to a maximum wage index value of 0.8, or an adjustment by multiplying the hospital wage index value for a given area by the budget neutrality adjustment. All of these adjustments have been completed by HCFA and are built into the wage index values reflected in this table.

[4] All counties within the State are classified as urban.

II. Regulatory Impact Statement

A. Background

We have examined the impacts of this notice as required by Executive Order 12866, the Unfunded Mandate Reform Act, and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). In this notice, we identified an impact on hospices as a result of changes in the way we compute the hospice wage index. The change in the methodology for computing the wage index was determined through a negotiated rulemaking committee and implemented in the August 8, 1997 final rule (62 FR 42860). This notice only describes the effects of those changes in conjunction with the annual update to the hospice wage index. We believe these changes to be insignificant.

1. Executive Order 12866 and RFA

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). We have determined that this notice is not an economically significant rule under this Executive Order. The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities. However, most providers, physicians, and health care suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Approximately 73 percent of Medicare certified hospices are identified as being voluntary, government, or other agency, and therefore are considered small entities. Because the National Hospice Organization estimates that approximately 65 percent of hospice patients are Medicare beneficiaries, we have not considered other sources of revenue in this analysis.

As discussed below, both urban and rural areas in Puerto Rico will experience the most significant decrease, 7.6 and 11.6 percent respectively, in payments under this wage index. Looking at the effects of this rule on Puerto Rico, we see that 21 of the 29 hospices in urban Puerto Rico can be considered small entities that will experience an 7.6 percent decrease in Medicare payments. Therefore, we anticipate this rule will have a significant impact on a substantial number of small entities. However, the methodology for the hospice wage index was previously determined by consensus through a negotiated rulemaking committee that included representatives of national hospice associations; rural, urban, large and small hospices; multi-site hospices; and consumer groups. Based on all of the options considered, the committee determined that the methodology described in the committee statement, and adopted into the August 8, 1997 final rule, was favorable for the hospice community as a whole, as well as for the beneficiaries that they serve. Therefore, we believe that mitigating the effects of small entities has been taken into consideration.

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2. Congressional Review

Section 804(2) of Title 5, United States Code (as added by section 251 of Public Law 104–121 rule of the Public Law), specifies that a "major rule" is any rule that the Office of Management and Budget finds is likely to result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

We estimate that the impact of this notice will not be $100 million or more; therefore, this rule is not a major rule as defined in Title 5, United States Code, section 804(2) and is not being forwarded to Congress for a 60-day review period.

3. Unfunded Mandate

The Unfunded Mandate Reform Act of 1995 also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more. The notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this rule fall below the threshold, as well.

4. Rural Hospital Impact

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

Because this notice has no direct impact on small hospitals, in accordance with 5 U.S.C. 604, the Secretary certifies that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

B. Anticipated Effects

This impact analysis compares hospice payments under the FY 1999 hospice wage index (Column 3 of the table) to the estimated payments using the FY 2000 wage index (Column 4). The wage index blend for the second transition year (FY 1999) was one-third of the 1983 wage index added to two-thirds of the new wage index. The third transition year (FY 2000) fully implements the revised wage index. The data used in developing the quantitative analysis for this notice were obtained from the December 1998 update of the national claims history file of all bills submitted during fiscal year 1998. We deleted bills from hospices that have since closed. In addition to the information contained in Table C below, we have compared estimated payments using the original 1983 hospice wage index to estimated payments using the FY 2000 wage index and determined the new wage index methodology to be budget neutral as required by the negotiated rulemaking committee agreement.

Table C demonstrates the results of our analysis. In Column 2 of the table (below) we indicate the number of routine home care days that were included in our analysis, although the analysis was performed on all types of hospice care. Column 3 of the table indicates payments that were made using the FY 1999 wage index. Column 4 of Table C is based on FY 1998 claims and estimates payments to be made to hospices using the FY 2000 wage index. The final column, which compares Columns 3 and 4, shows the percent change in estimated hospice payments made based on the category of the hospice.

Table C categorizes hospices by various geographic and provider characteristics. The first row displays the results of the impact analysis for all Medicare certified hospices. The second and third rows of the table categorize hospices according to their geographic location (urban and rural). There are 1,375 hospices located in urban areas included in our analysis and 786 hospices located in rural areas. The next two groupings in the table indicate the number of hospices by census region, also broken down by urban and rural hospices. The sixth grouping shows the impact on hospices based on the size of the hospice's program. We determined that the majority of hospice payments are made at the routine home care rate. Therefore, we based the size of each individual hospice's program on the number of routine home care days provided in 1998. The next grouping shows the impact on hospices by type of ownership. The final grouping shows the impact on hospices defined by whether they are provider-based or freestanding.

The results of our analysis show that the greatest increases are for urban and rural hospices in the New England region, 3.0 percent and 2.7 percent respectively, and for rural hospices in the Pacific region, with 2.3 percent. The greatest decreases, besides Puerto Rico, are the urban West South Central and urban East North Central regions with 2.7 percent and 2.0 percent respectively. The most dramatic shift occurs in Puerto Rico, where urban payments decrease by 7.6 percent and rural payments decrease by 11.6 percent.

With the FY 99 wage index, Puerto Rico experienced a 11.6 percent decrease for urban areas and a 12.3 percent decrease for rural areas. The total percentage decrease in payments Puerto Rico will experience with the new hospice wage index is 21 percent for urban areas and 26.3 percent for rural areas, which is consistent with the estimated impact information HCFA provided to the negotiated rulemaking committee during their deliberations. Since the wage index values for the Puerto Rico region are more than 15 percent below the 1983 wage index value of 0.8, this region is most affected by the revision to the wage index floor. However, as mentioned above, Puerto Rico's hospital wage index is calculated in the same manner as the national hospital wage index but is based solely on Puerto Rico's wage data. This has an impact on Puerto Rico's hospice wage index in that the hospice wage index is calculated using the pre-reclassified hospital wage index.

Small hospice programs show small increases while larger programs experience only a negligible decrease. Government-based hospices show slight increases in payment due to the wage index change while proprietary hospices show slight decreases. Finally, freestanding hospices show slight decreases in their wage index values while provider-based hospice programs show small increases.

We have reviewed this notice under the threshold criteria of Executive Order 12612. We have determined that it does not significantly affect the rights, roles, and responsibilities of States.

TABLE C.—IMPACT OF HOSPICE WAGE INDEX CHANGE

	Number of hospices	Number of routine home care days in thousands	Payments using FY 1999 wage index in thousands	Estimated payments using FY 2000 wage index in thousands	Percent change in hospice payments
	(1)	(2)	(3)	(4)	(5)
All	2,161	18,455	2,135,750	2,128,347	−0.3
Urban Hospices	1,375	15,717	1,877,146	1,868,228	−0.5
Rural Hospices	786	2,738	258,604	260,118	0.6
Region (Urban):					
New England	98	607	79,780	82,145	3.0
Middle Atlantic	176	1,970	249,012	252,129	1.3
South Atlantic	188	3,509	433,746	433,786	0.0
East North Central	223	2,546	301,352	295,253	−2.0
East South Central	101	890	92,734	91,468	−1.4
West North Central	98	930	97,912	98,233	0.3
West South Central	185	2,090	224,483	218,502	−2.7
Mountain	90	945	125,720	123,558	−1.7
Pacific	187	2,028	257,817	259,665	0.7
Puerto Rico	29	203	14,592	13,489	−7.6
Region (Rural):					
New England	25	69	7,178	7,372	2.7
Middle Atlantic	36	162	16,287	16,306	0.1
South Atlantic	115	601	55,752	55,890	0.2
East North Central	132	490	46,469	46,864	0.9
East South Central	81	376	34,460	34,534	0.2
West North Central	168	358	33,204	33,579	1.1
West South Central	88	279	24,492	24,408	−0.3
Mountain	84	181	17,817	17,872	0.3
Pacific	54	202	21,593	22,098	2.3
Puerto Rico	3	19	1,352	1,195	−11.6
Size (Routine Home Care Days):					
0–1,754 Days	540	457	46,196	46,452	0.6
1,754–4,373 Days	539	1,603	164,904	164,822	0.0
4,372–9,681 Days	541	3,616	385,755	385,020	−0.2
9,681+Days	541	12,778	1,538,895	1,532,054	−0.4
Type of Ownership:					
Voluntary	1,374	12,342	1,427,656	1,427,863	0.0
Proprietary	574	5,535	648,731	640,829	−1.2
Government	180	494	50,974	51,319	0.7
Other	33	83	8,389	8,335	−0.6
Hospice Base:					
Freestanding	841	10,368	1,211,588	1,202,380	−0.8
Home Health Agency	757	4,852	558,520	559,505	0.3
Hospital	542	3,107	349,520	349,793	0.1
Skilled Nursing Facility	21	127	16,597	16,669	0.4

Authority: Section 1814(I) of the Social Security Act (42 U.S.C. 1395f (I)(1))

(Catalog of Federal Domestic Assistance Program No. 93.743 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 27, 1999.

Nancy-Ann Min DeParle,

Administrator.

Dated: July 2, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–20013 Filed 7–30–99; 1:30 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–0002–N]

Medicare Program; Year 2000 Readiness Letters

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

On May 24, 1999 the Health Care Financing Administration (HCFA) sent the following letters regarding Y2K readiness to physicians, hospitals, managed care organizations and other health care partners that provide services to Medicare beneficiaries. The letters are a follow-up to a January 1999 letter published in the **Federal Register** (64 FR 5667) that had been sent to the over one million providers of Medicare services.

The recent letters include several very important messages regarding Y2K and health care providers. First, HCFA's internal systems and the 75 mission-critical claims processing systems operated by the Medicare carriers and fiscal intermediaries are fully ready to handle all appropriately formatted claims and other data exchanges on January 1, 2000. Second, providers need to be aware that the Y2K computer problem goes beyond the matter of billing and can have a serious impact on the quality of patient care. Finally, the letters provide a list of steps and a number of web site resources that

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providers can use to help them get ready for the Year 2000, including the preparation of contingency plans.

These letters from the Administrator are part of an extensive outreach effort that the agency has undertaken to keep health care providers informed about the status of HCFA's Y2K readiness and to encourage providers to take all steps necessary to become Y2K ready. We have received many questions from concerned providers and others during the last year about the status of agency's Y2K readiness. Our claims processing systems have been fully renovated, implemented and tested and are paying claims today. We will continue to retest systems through the end of the year. However, it should be recognized that HCFA readiness is not enough. In addition, providers must be ready and able to submit claims that can be processed in a Y2K environment. Medicare's fiscal intermediaries and carriers make Y2K compliant billing software available to all providers and claims submitters for free or at a minimal cost.

The best method for providers to be assured that they are Y2K ready and that we are able to process their claims is to test their systems with their Medicare contractor using test claims with future dates. Medicare contractors are prepared to conduct "front end" testing with providers and in some instances "end to end" testing may also be available. We recommend that providers test with as many of their payers as possible.

Many providers that use billing vendors to submit claims to HCFA and other payers appear to be under the incorrect impression that the Y2K transition does not affect them. Providers need to assure that they are able to interface with their bill submitters and that submitters are ready to submit bills and exchange data with Medicare contractors and other payers in a Y2K ready environment. In addition, providers should be aware that any system or equipment with an embedded chip can be affected by Y2K including patient management systems, medical devices, payroll systems, security and fire systems, telephones and other systems that are integral to providing quality patient care and supporting provider business operations.

We have developed very specific contingency plans to assure that we will be able to process claims and make payments to providers in the event of an unforseen failure of Medicare hardware, software or networks due to the Y2K transition. These contingency plans do not include estimated payments to providers who cannot submit a bill that can be processed. Being able to submit a valid bill is the minimal requirement that HCFA believes is necessary to assure that the provider is able to operate in a Year 2000 environment and is actually furnishing covered services. HCFA's accountability to taxpayers requires that payment be made only when a provider can document that a covered service has been delivered through submission of a proper claim. HCFA has always been able to receive paper claims, but this is not a preferred option. Processing paper claims requires additional human resources. Any significant increase in submission of paper claims could slow down the payment process. Payments will be processed more quickly and accurately if claims can be submitted electronically.

Health care providers must have business continuity and contingency plans in place in case of unanticipated problems. Contingency plans help ensure that providers can submit accurate and timely claims to Medicare, and continue to furnish safe and quality care to their patients. HCFA makes a variety of contingency planning resources available to providers, including the HCFA Year 2000 Business Continuity Plan Handbook published on HCFA's web site.

In addition to these letters to providers and the resource information on its web site, www.hcfa.gov, HCFA has established a Y2K Speakers Bureau and is prepared to make speakers available to health care provider meetings and conferences on request. In addition HCFA is holding a series of Y2K provider readiness conferences and public learning sessions in locations across the country. (See web site for locations). Also, a toll-free number is available specifically for providers with questions and concerns about Y2K. That number is 1–800–958–HCFA and is available Monday through Friday, 8:00 a.m. to 8:00 p.m. Eastern time.

FOR FURTHER INFORMATION CONTACT: Joe Broseker 410–786–1950 or Anita Shalit 202–690–7179.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)
(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 28, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

Dear Doctor:

In January, the Health Care Financing Administration (HCFA) wrote to you about the progress it had made in correcting problems in Medicare computer systems caused by the Year 2000 or "Y2K" problem. Many of you responded with letters and further questions. The two most frequently asked questions were: "When will HCFA be fully ready to process our claims?" and "What do we as physicians need to be doing to be ready for the Year 2000?'

We are pleased to tell you that HCFA and its Medicare contractors are fully ready to handle all appropriately formatted claims and other data exchanges on January 1, 2000. All of HCFA's internal systems have been renovated, tested, certified; and necessary changes were implemented by the government-wide Year 2000 deadline of March 31, 1999. Among other things, these internal systems operate HCFA's accounts receivable and payable operations; manage the eligibility, enrollment, and premium status of our 39 million Medicare beneficiaries; and make payments to more than 400 managed care plans on behalf of over 6 million beneficiaries. All 75 mission-critical claims processing systems operated by our Medicare contractors are also certified as compliant, including end-to-end and future-date testing. We continue to test and retest our renovated systems. We want to be sure that you get paid for the valuable work you do.

The Y2K computer problem is far more than a billing problem. We are pleased so many of you are asking the second question about what you need to do. This is a patient care and quality of care issue as well as a technical one. Our expectation is that you will continue to provide the quality of care your patients depend upon. As physicians, you will need to prepare your internal office systems to communicate with HCFA systems and prepare other aspects of your practice to continue to function reliably after January 2000. We urge you to take the following steps toward Y2K readiness: (Please see the enclosed attachments for more details.)

- Understand the issue so that you can assure your patients of continued quality care.
- Access the numerous public and private websites offering Y2K guidance.
- Inventory your practice for other Y2K problems with the attached checklist.
- Contact your Medicare carrier now for testing of your billing submissions.
- Contact your other major third party payers and your State Medicaid Agency.
- Develop business contingency plans in the event something might go wrong.

More detail on each of these steps is attached. This is not an exhaustive list but is meant to guide you in your Y2K readiness efforts. I have also attached a Sample Provider Y2K Readiness Checklist for your information. Many of you have taken steps to prepare for Y2K and have helped us get ready for January 1, 2000, and we thank you. Please continue to let us know, through our Medicare contractors, our toll-free Y2K provider line (1–800–958–HCFA (4232)), and our website (www.hcfa.gov/y2k), what further HCFA activities would help you to get ready.

Sincerely,

Michael M. Hash,

Deputy Administrator.

Robert A. Berenson,

Director, Center for Health Plans and Providers.

Enclosures

Dear Health Care Partner:

I wrote to you in January about the substantial progress that the Health Care Financing Administration ((HCFA) had made in eliminating the Y2K bug from Medicare computer systems and about your part in assuring the continued quality of the health care system. Many of you responded with letters and further questions. The two most frequently asked questions were: "When will HCFA be fully ready to process our claims?" and "What do we as providers need to be doing to be ready for the Year 2000?'

We are pleased to inform you that HCFA and its Medicare contractors are fully ready to handle all appropriately formatted claims and information exchanges on January 1, 2000. All of HCFA's mission critical internal systems were renovated, tested, certified, and implemented by the government-wide Year 2000 deadline of March 31, 1999. Among other things, these internal systems manage the eligibility, enrollment, and premium status of our 39 million Medicare beneficiaries; make payments to more than 400 managed care plans on behalf of over 6 million beneficiaries; and operate HCFA's accounts receivable and payable operations. All 75 mission-critical claims processing systems operated by our Medicare contractors are also certified as compliant, including end-to-end and future-date testing. We continue to test and retest our renovated systems. We want to be sure that you get paid for the valuable work you do.

The available surveys indicate that health care providers, particularly physicians, clinics, and skilled nursing facilities, have not resolved the problems that may occur on January 1, 2000. This so-called "Y2K Bug" is far more than a billing problem. We are pleased so many of you are asking the second question about what you need to do. This is a patient care and quality of care issue as well as a technical one. Our expectation is that you will continue to provide the quality of care your patients depend upon. We urge you to take the following steps toward Y2K readiness:

- Understand the issue so that you can assure your patients of continued quality care.
- Access the numerous public and private websites offering Y2K guidance.
- Inventory your business for other Y2K problems with the attached checklist.
- Contact your Medicare contractor now for testing of your billing submissions.
- Contact your other major third party payers and your State Medicaid Agency.
- Develop business contingency plans in the event something might go wrong.

More detailed information on each of these steps is attached as well as a Sample Provider Y2K Readiness Checklist. This is not an exhaustive list but is meant to guide you in your Y2K readiness efforts. Also, we want to thank the many of you who have already taken steps to prepare for the millennium and have helped us get ready for January 1, 2000. Please continue to let us know, through your Medicare contractors, our toll-free Y2K provider line (1–800–958–HCFA (4232)), and our website (www.hcfa.gov/y2k) what further HCFA activities would help you to get ready.

Sincerely,

Michael M. Hash,

Deputy Administrator.

Enclosures

Attachment A—Suggested Steps Toward Y2K Readiness

Understand the issue so that you can assure your patients of continued quality care.

Become informed about your office's readiness for the Year 2000. If any patients develop concerns in the upcoming months about how Y2K may affect the continuity of their health care, they will be greatly reassured by informed responses from you and your staff.

Access the numerous public and private websites offering Y2K guidance.

- The Food & Drug Administration (FDA) website, www.fda.gov/cdrh/yr2000/year2000.html, offers an extensive listing of the status of medical equipment readiness, by manufacturer.
- The General Services Administration (GSA) website, www.itpolicy.gsa.gov/mks/yr2000/y2khome.htm, offers valuable information to assess your building and infrastructure.
- The Small Business Administration (SBA) website, www.sba.gov/financing/fry2k.html, offers information on how to obtain SBA-guaranteed bank loans that may help small, for profit providers pay for a variety of Y2K-generated needs, including: Y2K adjustments, repair, and acquisition of hardware, software, and consultants.
- Professional organizations such as your state, national and specialty medical societies and associations, and your professional liability carrier offer additional specialized Y2K information.
- Attend programs that will be provided throughout this year from HCFA, continuing medical education providers and professional organizations. HCFA sponsored programs are listed on our website, www.hcfa.gov/y2k.

Inventory your practice for other Y2K problems.

Anything that depends on a microchip or date entry could be affected, whether it belongs to you or to an organization you depend upon. The attached checklist, which can also be found on the HCFA website (www.hcfa.gov/y2k), will help you in this inventory. Don't forget to:

- Identify your mission critical items, that is, those items without which you cannot run your practice, and focus on those first.
- Contact the vendors and service contractors for your computer hardware and software, service companies such as your security company or paging system, and your medical equipment suppliers (EKG machines, for example, may actually give inaccurate diagnostic results) to obtain information regarding the Y2K status or impact on their products.
- Update or replace systems, software programs, and devices that are not Y2K ready and that you decide are critical for your business continuity. There is no time to lose on this activity as the replacement systems you need may be back-ordered.

Keep notes on all your communications and testing information for possible use later and do not assume that a system or a program is Y2K ready just because someone said it is. For critical items, get assurance in writing and/or attempt to have them tested.

- The original manufacturer of a product knows the product best and is in the best position to assess the Y2K status of it and provide advice. Industry experts recommend that you not test biomedical devices until you have checked with the supplier or manufacturer to determine the advisability of such testing. Particular attention should be given to interconnected devices or systems whose components share or communicate data and that are not from a single manufacturer or source.

Contact your Medicare contractor now for testing of your billing submissions.

- Medicare carrier and fiscal intermediary Y2K information numbers can be found on HCFA's website, www.hcfa.gov/y2k, or can be obtained from our toll free provider information line at 1–800–958–HCFA (4232).
- HCFA is now requiring all Medicare contractors to establish a test environment that will allow Medicare claim formats from providers/submitters to be validated. In some instances, you may be able to arrange with your contractor to have "end to end" testing done, whereby your billing submissions are tested into their system and back again to your system. This latter form of test is only available on a limited basis, provided time and resources are available at the contractor.
- HCFA has dedicated software that will give you a way to submit electronic claims in a compliant format in the event your system is not fully compliant. This software is available from your Medicare contractor.

Contact other major third party payers.

- The above considerations are equally applicable for transactions with your other payers. Contact them directly to arrange Y2K testing.

Develop business contingency plans in the event something goes wrong. Focus on the things that would be most problematic for you and your patients.

- While storing claims information on paper may be a part of your contingency, actually submitting them for payment is ill advised, as an enormous increase in paper claims cannot be accommodated by payor systems, and this could significantly delay your payments. We recommend that your billing office work with your carrier to create the appropriate electronic contingency, as noted above.

The Health Care Financing Administration does not assume any responsibility for your Y2K compliance.

Attachment B—Sample Provider Y2K Readiness Checklist

This checklist is intended as a supplemental guide to help you determine your Y2K readiness. Consider using this, along with other diagnostic and reference tools you have obtained for this venture. The purpose of this checklist is to aid you in determining your Y2K readiness. This information is not intended to be all inclusive. The Health Care Financing Administration does not assume any responsibility for your Y2K compliance.

Item	Y2K Ready	Not Y2K Ready
Appointment scheduling system.		
Answering machines.		
Bank debit/credit card expiration dates.		
Banking interface.		
Billing system.		
Building access cards.		
Clocks.		
Computer hardware (list).		
Computer software (list).		
Custom applications (list).		
Diagnostic equipment (list).		
Elevators.		
Fire/smoke alarm.		
Indoor lighting.		
Insurance/pharmacy coverage dates.		
Medical devices (list).		
Membership cards.		
Monitoring equipment (list).		
Office forms (claims, order, referral).		
Outdoor lighting.		
Paging system.		
Payroll system.		
Physician referral forms.		
Security system.		
Telephone system.		
Television/VCR.		
Sprinkler system.		
Treatment equipment (list).		
Safety vaults.		

[FR Doc. 99–19940 Filed 8–3–99; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center; Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Program Support Center (PSC), publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following information collection was recently submitted to OMB:

1. Proposed Project: Application to the Board for Correction of Public Health Service (PHS) Commissioned Corps Records (PSC–54) (Formerly PHS–6190)—OMB 0937–0095—Revision.

An application is submitted by commissioned officers of the PHS Commissioned Corps, former officers, their spouses or heirs who appeal to the Board for Correction to request removal of an alleged error or injustice in an officer's record. The information submitted is used by the Board for Correction to determine if an error or injustice has occurred and to rectify such error or injustice. An appeal cannot be considered without the information furnished on this form. The form has been revised to reflect: (1) Organizational changes which have occurred since its last revision in May 1985; (2) a streamlined form to permit a more logical entry of data; and (3) a need for additional information to process appeals and release records.

Respondents: Individuals or households and Federal employees. *Total Number of Respondents:* ten per calendar year. *Number of Responses per Respondent:* one response per request. *Average Burden per Response:* four hours. *Estimated Annual Burden:* 40 hours.

OMB Desk Officer: Allison Eydt.

The information collection package listed above can be obtained by calling the PSC Reports Clearance Officer on (301) 443–2045. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503.

Comments may also be sent to Norman E. Prince, Jr., Acting PSC Reports Clearance Officer, Room 17A–08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 30 days of this notice.

Dated: July 28, 1999.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 99–19980 Filed 8–3–99; 8:45 am]
BILLING CODE 4168–17–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE 015551

Applicant: Jeffrey A. Laborda, Indiana State University, Terre Haute, Indiana

The applicant requests a permit to take (capture and release) endangered Gray bats (*Myotis grisescens*) and Indiana bats (*Myotis sodalis*) in the State of Indiana. Activities are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); Fax (612/713–5292).

Dated: July 28, 1999.

Charles M. Wooley,

Program Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–20055 Filed 8–3–99; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Statewide Electrified Fence Project in California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The California Department of Corrections has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed permit would authorize incidental take of the federally threatened desert tortoise (*Gopherus agassizii*), Aleutian Canada goose (*Branta canadensis leucopareia*), bald eagle (*Haliaeetus leucocephalus*), western snowy plover (*Charadrius alexandrinum nivosus*), coastal California gnatcatcher (*Polioptila californica californica*), and the federally endangered blunt-nosed leopard lizard (*Gambelia silus*), California brown pelican (*Pelecanus occidentalis californicus*), American peregrine falcon (*Falco peregrinus anatum*), southwestern willow flycatcher (*Empidonax traillii extimus*), Tipton kangaroo rat (Dipodomys nitratoides nitratoides) and San Joaquin kit fox (*Vulpes macrotis mutica*).

The proposed taking of these species would be incidental to the implementation of the Statewide Electrified Fence Project at 25 existing prisons and 4 planned prison sites throughout California. The proposed permit also would authorize future incidental take of 51 currently unlisted species, should any of them become listed under the Act in the future. The permit would be in effect for 50 years. The permit application, available for public review, includes a Habitat Conservation Plan (Plan) which describes the proposed project and mitigation, and the accompanying Implementing Agreement.

The Service also announces the availability of an Environmental Assessment for the incidental take permit application. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

DATES: Written comments should be received on or before September 3, 1999.

ADDRESSES: Comments should be addressed to the Field Supervisor, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340. Written comments may be sent by facsimile to (916) 979–2723.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Rinek, Fish and Wildlife Biologist, at the above address (telephone: 916–979–2129).

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the application, Environmental Assessment, the Plan, and Implementing Agreement for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background Information

Section 9 of the Act and Federal regulation prohibit the "take" of animal species listed as endangered or threatened. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 USC 1538). Under limited circumstances, the Service, however, may issue permits to authorize "incidental take" of listed animal species (defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing permits for threatened species and endangered species, respectively are at 50 CFR 17.32 and 50 CFR 17.22.

Background

The California Department of Corrections seeks a permit for take of the federally listed desert tortoise, Aleutian Canada goose, bald eagle, western snowy plover, coastal California gnatcatcher, blunt-nosed leopard lizard, California brown pelican, American peregrine falcon, southwestern willow flycatcher, Tipton kangaroo rat and the San Joaquin kit fox incidental to the implementation by the Department of lethal electrified fences at 25 existing prisons and 4 planned prison sites throughout California. The proposed permit also would authorize future incidental take of 39 bird, 9 mammal, and 3 reptile species that are currently unlisted, should any of them become listed under the Act in the future. Collectively these listed and unlisted species addressed in the Plan are referred to as the "covered species" for the Statewide Electrified Fence project.

The California Department of Corrections has installed and is operating lethal electrified fences at 25 existing prison sites throughout California, and is considering installation of such fences at 4 future prison sites. The primary reason for implementing the Statewide Electrified Fence Project is to reduce the operational costs of State prisons, while maintaining perimeter security. The project involves the installation and activation of lethal electrified fences within the secured perimeter of the prison facilities. The potential cause of the taking is the direct mortality of animals by accidental electrocution on the lethal electrified wires of the fence. The 29 prison sites are generally located near rural communities or in isolated areas in 16 counties. All of the electrified fence sites are located on State property.

To compensate for project impacts, California Department of Corrections has organized their minimization and mitigation program into three tiers. Tier 1 measures include maintenance and operational-related measures designed to modify or remove habitat or other attractions to wildlife from the secured

perimeter area of each prison, which in turn would reduce wildlife use of the perimeter and thus lower electrocution risks. These measures affect only previously disturbed areas and do not result in the modification or destruction of any listed species habitat. Tier 2 measures involve installation of exclusion and deterrent fence devices which are designed to prevent or deter wildlife from making contact with the electrified fences. The most critical exclusion device that California Department of Corrections has/will install that prevents most birds from contacting the fence is vertical mesh netting that envelops both sides of the electrified fence. Tier 3 measures are designed to offset the residual loss of wildlife resources at the prisons as a result of electrocution risks that remain even after Tier 1 and Tier 2 measures have been implemented. Tier 3 measures include acquisition of lands; habitat enhancement via creation, restoration, or management; and monetary contributions to species recovery efforts.

The Environmental Assessment considers the environmental consequences of five alternatives in addition to the Proposed Action. The Proposed Action consists of the issuance of an incidental take permit to the California Department of Corrections and implementation of the Plan and its Implementing Agreement. Under Alternative 1, the Selective Use of Electrified Fences, California Department of Corrections would reinstate the traditional perimeter security approach of guard tower surveillance at the seven prisons with the highest wildlife mortality or the three prisons with the least labor cost to staff guard positions, thereby reducing the overall risk of incident take of the covered species. Alternative 2 would entail the use of the stun-lethal alternative design for the electrified fences instead of the lethal design. Alternative 3 would involve netting the electrified fence all the way to the top. Alternative 4 would entail installing netting at the five prison sites which have the smallest numbers of bird electrocutions. Under Alternative 5, the No Action Alternative, the Service would not issue an incidental take permit. The electric fences would not be energized, and no incidental take of the listed species would occur.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of law. If the Service determines that the requirements are met, a permit will be issued for the covered species. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: July 22, 1999.

Elizabeth H. Stevens,

Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 99–19972 Filed 8–3–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Tulare Irrigation District Main Intake Canal Lining Project, Tulare County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: The Tulare Irrigation District has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The Service proposes to issue a 5-year permit to the Tulare Irrigation District that would authorize take of the threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) incidental to otherwise lawful activities. Such take would occur during the concrete lining of 9.7 miles of an existing canal in Tulare County, California. Lining of the canal would result in the loss of up to 54 elderberry plants with 227 stems which provide habitat for the valley elderberry longhorn beetle.

We request comments from the public on the permit application, which is available for review. The application includes a Habitat Conservation Plan (Plan). The Plan describes the proposed project and the measures that the Tulare Irrigation District would undertake to minimize and mitigate take of the valley elderberry longhorn beetle.

We also request comments on our preliminary determination that the Plan qualifies as a "low-effect" Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in an Environmental Action Statement, which also is available for public review.

DATES: Written comments should be received on or before September 3, 1999.

ADDRESSES: Send written comments to Mr. Wayne White, Field Supervisor, Fish and Wildlife Service, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340. Comments may be sent by facsimile to 916–979–2744.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Davis, Fish and Wildlife Biologist, at the above address or call (916) 979–2728.

SUPPLEMENTARY INFORMATION:

Document Availability

Please contact the above office if you would like copies of the application, Plan, and Environmental Action Statement. Documents also will be available for review by appointment, during normal business hours at the above address.

Background

Section 9 of the Endangered Species Act and Federal regulation prohibit the "take" of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act to include kill, harm, or harass. The Service may, under limited circumstances, issue permits to authorize incidental take; i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

The Tulare Irrigation District operates the Main Intake Canal (canal) primarily to transport an average of 60,000 acre-feet of water from the St. Johns and Kaweah Rivers to agricultural areas within Tulare Irrigation District boundaries. The canal begins at a turnout on the Friant-Kern Canal, approximately 4 miles east of the community of Ivanhoe in Tulare County, and proceeds in a general southwesterly direction to the Tulare Irrigation District boundary at Road 132, approximately 3 miles west of the community of Farmersville. The existing canal is unlined with a varying capacity up to 900 cubic feet per second. Since 1978, the canal has conveyed water an average of 177 days per year. According to the Tulare Irrigation District, approximately 10 percent of water conveyed through the canal is lost to seepage. Therefore, the Tulare Irrigation District has proposed to line the canal to conserve water, increase water deliveries, and decrease per-unit costs associated with water deliveries.

Although the maintained banks of the canal are generally unvegetated, elderberry bushes and several mature oaks and cottonwoods are present within adjacent Tulare Irrigation District right-of-ways. Land use adjacent to the canal is primarily agricultural (vineyards, orchards, and nurseries) interspersed with stretches of sparse residential and industrial developments. The Tulare Irrigation District comprises approximately 70,000 acres of land that has been entirely developed for agricultural, residential, and/or commercial purposes.

In 1998, biologists surveyed the project area for special-status wildlife and plant species that could be affected by the project. Based upon those surveys, the Service concluded the project may result in take of one federally listed species, the threatened valley elderberry longhorn beetle.

The Tulare Irrigation District has agreed to implement the following measures to minimize and mitigate take of the valley elderberry longhorn beetle: (1) Protect elderberry bushes in place where possible by using protective fencing and conducting educational meetings with contractors to highlight the importance of protecting elderberry bushes; and (2) make a one-time payment into the Valley Elderberry Longhorn Beetle Mitigation Fund that has been established through a joint agreement between the Service and the Center for Natural Lands Management. Payments made to the Mitigation Fund would be dispersed by the Center for Natural Lands Management at the direction of the Service to preserve and manage large tracts of habitat suitable for supporting valley elderberry longhorn beetle.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the Plan to minimize and mitigate impacts of the project on the valley elderberry longhorn beetle. An alternative to the taking of listed species under the Proposed Action is considered in the Plan. Under the No Action Alternative, no permit would be issued. Under this alternative, canal operation would continue to result in the loss of up to 6,000 acre-feet of water per year. The Tulare Irrigation District considered five other alternatives described in the Plan, but did not select them for various reasons, including disagreement among, or opposition from, local landowners.

The Service has made a preliminary determination that the Plan qualifies as a "low-effect" plan as defined by its Habitat Conservation Planning Handbook (November 1996). We made this determination by evaluating the following criteria: (1) Implementation of the Plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the Plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the Plan, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in the Service's Environmental Action Statement, the Tulare Irrigation District Plan likely qualifies as a "low-effect" plan for the following reasons:

1. Approval of the Plan would result in minor or negligible effects on the valley elderberry longhorn beetle and its habitat. The Service does not anticipate significant direct or cumulative effects to the valley elderberry longhorn beetle resulting from lining of the existing canal.
2. Approval of the Plan would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.
3. Approval of the Plan would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.
4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.
5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has preliminarily determined that approval of the Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

The Service provides this notice pursuant to section 10(c) of the Endangered Species Act. We will evaluate the permit application, the Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Endangered Species Act. If the requirements are met, the Service will issue a permit to the Tulare Irrigation District for incidental take of the valley elderberry longhorn beetle during lining of the canal. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: July 24, 1999.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 99–19973 Filed 8–3–99; 8:45 am]

BILLING CODE 4310–55–P

GEOLOGICAL SURVEY

Technology Transfer Act of 1996

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with the Conservation Fund to further develop a new method for treating water degraded by acidic mine drainage or other sources of acid.

INQUIRIES: If any other parties are interested in similar activities with the USGS, please contact Barnaby Watten, USGS–BRD, Leetown Science Center, 1700 Leetown Road, Kearneysville, WV 25430.

BUREAU CLEARANCE OFFICER: John Cordyack, 703–648–7313.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: July 26, 1999.

Byron K. Williams,

Acting Chief Biologist.

[FR Doc. 99–19946 Filed 8–3–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection for Class III Procedures

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of emergency clearance and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) this notice announces that the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs approved an information collection request for emergency clearance under 5 CFR 1320.13. The information

collection, Class III Gaming Procedures, is cleared under OMB Control Number 1076–0149 through October 31, 1999. We are seeking comments from interested parties to renew the clearance.

DATES: Written comments must be submitted on or before October 4, 1999.

ADDRESSES: Comments should be sent to the Bureau of Indian Affairs, Indian Gaming Management Staff, 1849 C Street, NW, Mail Stop 2070–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested person may obtain copies of the information collection requests without charge by contacting Ms. Paula Hart, (202) 219–4066, Facsimile number (202) 273–3153, or E-mail: Paula_Hart@IOS.DOI.GOV.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department has issued regulations prescribing procedures to permit Class III gaming when a State interposes its immunity from suit by an Indian tribe in which the tribe accuses the state of failing to negotiate in good faith. The rule announces the Department's determination that the Secretary may promulgate Class III gaming procedures under certain specified circumstances. It also sets forth the process and standards pursuant to which any procedures would be adopted.

II. Request for Comments

The Department invites comments on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;

(2) The accuracy of the BIA's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility and clarity of the information to be collected; and,

(4) Ways to minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other collection techniques or forms of information technology.

III. Data

(1) *Title of the Information Collection:* Class III Gaming Procedures.

(2) *Summary of Collection of Information:* The collection of information will ensure that the provisions of IGRA, the relevant provisions of State laws, Federal law and the trust obligations of the United States are met.

(3) *Affected Entities:* Federally recognized tribes who submit Class III procedures for review and approval by the Secretary of the Interior.

(4) *Frequency of Response:* Annually.

(5) *Estimated Number of Annual Responses:* 12.

(6) *Estimated Time per Application:* 1,000 hours.

(7) *Estimated Total Annual Burden Hours:* 12,000 hours.

Dated: July 23, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–19958 Filed 8–3–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW72456]

Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW72456 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW72456 effective March 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 99–20029 Filed 8–3–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request; Extension

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of extension of a currently approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), we are notifying you that MMS is planning to submit an information collection request to the Office of Management and Budget (OMB) to request an extension of a currently approved collection. Under the PRA, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to Bids and Financial Statements for Sale of Royalty Oil and Gas (RIK Pilots), (OMB Control Number 1010–0129).

DATES: Submit written comments on the collection of information by October 4, 1999.

ADDRESSES: Submit written comments on the collection of information to the Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS–3021, Denver, Colorado 80225–0165; courier address is Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; e:mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: For questions concerning this collection of information, please contact Anne Ewell, Royalty-in-Kind (RIK) Study Team, telephone (703) 787–1584. You may also obtain copies of this collection of information by contacting MMS's Information Collection Clearance Officer at (202) 208–7744.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. Section 3506(c)(2)(A) of the PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, MMS is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, MMS invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of MMS's functions, including whether the information will have practical utility; (2) the accuracy of MMS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping "cost" burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

Title: Bids and Financial Statements for Sale of Royalty Oil and Gas (RIK Pilot Study)—Extension.

OMB Control Number: 1010–0129.

Abstract: The Secretary of the Interior, under the Mineral Leasing Act (30 U.S.C. 192) and the Outer Continental Shelf Lands Act (43 U.S.C. 1353), is responsible for the management of royalties on minerals produced from leased Federal lands. MMS carries out these responsibilities for the Secretary. Most royalties are now paid in value—when a company or individual enters into a contract to develop, produce, and dispose of minerals from Federal lands, that company or individual agrees to pay the United States a share (royalty) of the full value received for the minerals taken from leased lands. MMS has undertaken several pilot programs to study the feasibility of taking the Government's royalty in the form of production, that is, as RIK. MMS is also evaluating the feasibility and efficiency of providing royalty production to other Federal agencies for consumption.

Submission of bids and financial statements is part of the process MMS has established to comply with statutory requirements that, when RIK is offered for sale to the public, the sale must be competitive. On May 24, 1999, OMB granted emergency approval for MMS to accept financial statements and bids from individuals wishing to purchase Federal RIK production.

The information collected in the bids and financial statements are essential to assure that a fair and competitive return to the Federal Treasury is likely to result from a competitive sale. Further, submission of such bids and financial statements is a routine aspect of doing business in the oil and gas markets, in which privately-owned oil and gas production is often sold competitively and qualifications of the potential purchaser are evaluated, as well as their bid. MMS releases winning bidders' names, but not the amounts or terms of winning bids. Any proprietary information submitted to MMS under this collection will be securely stored and access to them limited as required by applicable regulations of the Department (43 CFR part 2). No items of a sensitive nature are collected. A response is required to obtain a benefit.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Burden Statement: The reporting burden is estimated to average 1 hour per response—(1 hour to prepare, review and submit a bid and 1 hour to prepare update and submit a financial statement). This includes the time for reviewing the instructions and gathering and maintaining supporting data.

In calculating the burden, we assume that respondents perform many of the requirements and maintain records in the normal course of their activities. We consider these usual and customary and take that into account in estimating the burden.

Respondents/Affected Entities: Potential purchasers of RIK production from Federal oil or gas leases participating in RIK pilot programs.

Frequency of Collection: Occasional.

Estimated Number of Respondents: 37 in Year 1; 37 in Year 2; and 37 in Year 3.

Estimated Total Annual Burden on Respondents: 142 hours in Year 1; 532 in Year 2; and 757 in Year 3.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: July 29, 1999.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 99–19956 Filed 8–3–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Mines

Privacy Act of 1974; As Amended; Deletions of Existing Systems of Records

AGENCY: Department of the Interior.

ACTION: Deletions of systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior has deleted from its inventory of Privacy Act systems of records, notices describing records formerly maintained by the Bureau of Mines (USBM).

DATES: These changes will be effective immediately August 4, 1999.

FOR FURTHER INFORMATION CONTACT: Additional information regarding this action may be obtained from the Departmental Privacy Act Officer, Office of the Secretary, 1849 "C" Street, NW., Mail Stop 5312, (OIRM), Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The systems of records notices being abolished are entitled: (1) "Travel Advance File—Interior, WBM–2," previously published in the **Federal Register** on August 28, 1986 (51 FR 30712). Records in this system were disposed of, in accordance with Federal regulations, at the time the USBM was closed; (2) "Travel Voucher and Authorizations—Interior, WBM–3," previously published in the **Federal Register** on August 28, 1986 (51 FR 30713). Records in this system were disposed of, in accordance with Federal regulations, at the time the USBM was closed; (3) "Property Control—Interior, WBM–4," previously published in the **Federal Register** on March 30, 1992 (57 FR 10769). Records in this system were disposed of, in accordance with Federal

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regulations, at the time USBM was closed.

However, some information on employee inventions that was in this system today is maintained under Interior system of records, "Patent Files—Interior/SOL–3;" (4) "Personnel Identification—Interior, WBM–5," published in the **Federal Register** on March 30, 1992 (57 FR 10769). Records in this system were disposed of, in accordance with Federal regulations, at the time USBM was closed; (5) "Safety Management Information System—Interior, WBM–6," published in the **Federal Register** on March 30, 1992 (57 FR 10770). Records in the system were disposed of, in accordance with Federal regulations, at the time USBM was closed. However, some information that was in this system today is maintained under Interior system of records, "Safety Management Information System—Interior/DOI–60; (6) "Personnel Security Files—Interior, WBM–7," published in the **Federal Register** on March 30, 1992 (57 FR 10771). Records in this system were disposed of in accordance with Federal regulations at the time USBM was closed. Therefore, all records were destroyed except for the nondisclosure agreements (General Records Schedule 18, Item 25) which have not reached destruction date (70 years). These records are maintained at the Federal Records Center, Washington, DC and may be requested under Privacy Act system "Security Clearance Files and other Reference Files—Interior/OS–45."

Roy M. Francis,

Departmental Privacy Act Officer.

[FR Doc. 99–19974 Filed 8–3–99; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 24, 1999. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20013–7127. Written comments should be submitted by August 18, 1999.

Patrick Andrus,

Acting Keeper of the National Register.

COLORADO

Fremont County

Canon City State Armory, 110 Main St., Canon City, 99001011

FLORIDA

Marion County

Lake Lillian Neighborhood Historic District, Roughly bounded by Lillian Cir., SE Stetson Rd., SE Mimosa Rd., SE Earp Rd. and CSX RR tracks, Belleview, 99001012

LOUISIANA

Caddo Parish

Antoine, C.C. House, 1941 Perrin St., Shreveport, 99001013

St. John The Baptist Parish

Sorapuru House (Louisiana's French Creole Architecture MPS), 971 LA 18, Edgard vicinity, 99001014

Union Parish

Terrral, Dr., Clinic, 107 N Washington St., Farmerville, 99001015

MARYLAND

Baltimore County

Aigburth Vale, 212 Aigburth Rd., Towson, 99001016

MISSOURI

Montgomery County

Baker, Sylvester Marion and Frances Anne Stephens, House, 60 Boonslick Rd., Montgomery City vicinity, 99001018

Osage County

Bolton, Lewis and Elizabeth, House, 9514 MO W, Jefferson City vicinity, 99001017

St. Louis County

Farmers State Bank of Chesterfiled, 16676–78 Chesterfield Airport Rd., Chesterfield, 99001019

PENNSYLVANIA

Centre County

Bellefonte Forge House, 4098 Axemann Rd., Spring Township, 99001020

PUERTO RICO

Barranquitas Municipality

Palo Hincado Site (Ball Court/Plaza Sites of Puerto Rico and the U.S. Virgin Islands) Address Restricted, Barranquitas vicinity, 99001021

Lares Municipality

Callejones Site (Ball Court/Plaza Sites of Puerto Rico and the U.S. Virgin Islands) Address Restricted, Lares vicinity, 99001022

TEXAS

Smith County

Charnwood Residential Historic District, Roughly bounded by E Houston, RR tracks, E Wells, S Donnybrook, E Dobbs, and S Broadway, Tyler, 99001023

[FR Doc. 99–19942 Filed 8–3–99; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–380; Enforcement Proceeding]

Certain Agricultural Tractors Under 50 Power Take-off Horsepower; Commission Determination Concerning Violation of Cease and Desist Orders and Civil Penalty

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission determined that the respondents in the above-captioned formal enforcement proceeding have violated the Commission cease and desist orders issued to them on February 25, 1997, and determined to impose a civil penalty for the amount of $2,320,000.

FOR FURTHER INFORMATION CONTACT: Shara L. Aranoff, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3090.

SUPPLEMENTARY INFORMATION: The trademark-based section 337 investigation that preceded this enforcement proceeding was instituted on February 14, 1996, based on a complaint filed by Kubota Corporation, Kubota Tractor Corporation, and Kubota Manufacturing of America, Inc. (collectively "Kubota"). On February 25, 1997, at the conclusion of the original investigation, the Commission issued cease and desist orders directed, *inter alia*, to Gamut Trading Co., Inc. ("Gamut Trading") and Gamut Imports. The cease and desist orders provide that Gamut Trading and Gamut Imports, as well as their "principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and/or majority-owned business entities, successors and assigns," shall not "import or sell for importation into the United States" or "sell market, distribute, offer for sale, or otherwise transfer (except for exportation) in the United States" covered product, defined as "agricultural tractors under 50 power take-off horsepower manufactured by Kubota Corporation of Japan that infringe federally-registered U.S. trademark "KUBOTA" (Reg. No. 922,330) and that are not imported by, under license from, or with the permission of the trademark owner." The orders further provide that Gamut Trading and Gamut Imports "shall report to the Commission" on an annual basis "the quantity in units and the value in dollars of foreign-produced covered product" that they have "imported or sold in the United States during the reporting period or that remains in inventory at the end of the period." Finally, the orders provide that they "shall retain any and all records relating to the importation, sale, offer for sale, marketing, distribution, or otherwise transferring in the United States of imported covered product made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of two (2) years from the close of the fiscal year to which they pertain."

On July 16, 1998, Kubota filed a complaint seeking institution of a formal enforcement proceeding against Gamut Trading, Gamut Imports, Ronald A. DePue (Chief Executive Officer and Chairman of the Board of Directors of Gamut Trading), and Darrell J. DuPuy (Chief Financial Officer, President, and member of the Board of Directors of Gamut Trading) (collectively "the Gamut respondents"), alleging that they are violating the cease and desist orders directed to them. Kubota supplemented its complaint on August 26, 1998. On September 28, 1998, the Commission issued an order instituting a formal enforcement proceeding and instructing the Secretary to transmit the enforcement proceeding complaint to the Gamut respondents and their counsel for a response. The following were named as parties to the formal enforcement proceeding: (1) Kubota Corporation, 2–47 Shikitsuhigashi 1-chome, Naniwa-ku, Osaka 556–8601, Japan; Kubota Tractor Corporation, 3401 Del Amo Boulevard, Torrance, California 90503; and Kubota Manufacturing of America Corporation, Industrial Park North, 2715 Ramsey Road, Gainesville, Georgia 30501; (2) Gamut Trading Co., Inc., 13450 Nomwaket Road, Apple Valley, California 92308; (3) Gamut Imports, 14354 Cronese Road, Apple Valley, California, 92037; (4) Ronald A. DePue, Chief Executive Officer and Chairman of the Board of Directors of Gamut Trading Co., Inc.; (5) Darrell J. DuPuy, Chief Financial Officer, President, and member of the Board of Directors of Gamut Trading Co., Inc.; and (6) a Commission investigative attorney to be designated by the Director of the Commission's Office of Unfair Import Investigations. On October 19, 1998, the Gamut respondents filed a joint response to the enforcement complaint denying violation of any of the Commission's remedial orders and infringement of the "KUBOTA" trademark, and asserting that the Commission lacks jurisdiction to address the enforcement complaint.

On October 28, 1998, the Commission issued an order referring the formal enforcement proceeding to an administrative law judge (ALJ) for issuance of an initial determination (ID) regarding whether respondents violated the cease and desist orders and for a recommended determination (RD) regarding what enforcement measures, if any, are appropriate in light of the nature and significance of such violations.

On November 13, 1998, the Gamut respondents filed a motion to dismiss the enforcement complaint contending that the Commission lacked jurisdiction over the subject matter. On November 18, 1998, the Gamut respondents filed a further motion seeking sanctions against complainants under Commission rule 210.4(d)(1) for filing an allegedly frivolous enforcement complaint over which the Commission has no jurisdiction. The ALJ denied both motions by orders dated December 8, 1998 (Orders Nos. 62 and 63). On December 11, 1998, complainants moved for sanctions against the Gamut respondents for filing the two foregoing motions. On January 21, 1999, the ALJ issued Order No. 69, granting complainants' motion for monetary sanctions against the Gamut respondents and their attorney, Lloyd J. Walker, on the grounds that respondents' two motions were "not objectively reasonable under the circumstances when they were filed." Order No. 73, issued March 2, 1999, denied the Gamut respondents' motion for interlocutory appeal of Order No. 69.

Order No. 72, issued March 2, 1999, denied the Gamut respondents' motion to suppress the use of certain information acquired by recording telephone conversations between agents of complainants and certain employees of the Gamut respondents. Order No. 76, issued April 28, 1999, granted in part complainants' motion for adverse inferences based on the Gamut respondents' destruction of certain documents. Specifically, the ALJ found that respondents had destroyed all records showing the profits they made on sales of certain accused tractors and that an adverse inference as to their margin of profit on such sales was therefore warranted.

By agreement of the parties, no evidentiary hearing was held before the ALJ. The parties did submit position statements, proposed findings of fact, documentary exhibits, and certain joint stipulated facts, as well as rebuttal statements, findings of fact, and exhibits. On April 28, 1999, the ALJ issued his 72-page "Final Initial and Recommended Determinations" (ID and RD), finding that the Gamut respondents violated the cease and desist orders directed to them and recommending that the Commission assess a civil penalty against them in the amount of $652,476.

In order to allow the parties to express their views to the Commission prior to final disposition of this enforcement proceeding, the Commission provided the parties with the opportunity to file petitions for review of the ID and/or comments on the appropriate remedy, if any. The Commission also provided an opportunity for public comment on the appropriate remedy. Petitions for review of the ID, comments on remedy, and replies thereto were filed by all parties. The Commission received no public comments.

Having considered the ID and RD, the submissions of the parties, as well as the entire record in this proceeding, the Commission determined that the Gamut respondents had violated the Commission's cease and desist orders by importing and selling infringing tractors on fifty-eight (58) days between February 27, 1997, and October 13, 1998. The Commission adopted the ID with respect to the ALJ's determinations that (1) the Commission has jurisdiction over the subject matter of this enforcement proceeding; (2) respondents violated the cease and desist orders by selling in the United States 172 accused "L" series tractors on 56 days; and (3) respondents violated the reporting and recordkeeping provisions of the cease and desist orders by making false reports to the Commission and destroying certain records. The Commission also determined to adopt ALJ Orders Nos. 62, 63, and 69.

The Commission declined to adopt the ID with respect to the ALJ's determinations that (1) respondents did not violate the cease and desist orders by selling in the United States accused "B" series tractors because those tractors are not "covered product" within the meaning of the orders; and (2) consequently, respondents did not violate the reporting and recordkeeping requirements of the cease and desist orders with respect to accused "B" series tractors. The Commission determined that respondents violated

the cease and desist orders by (1) selling in the United States 16 accused "B" series tractors on seven days, for a combined total of 58 violation days; and (2) failing to comply with the reporting and recordkeeping requirements of the cease and desist orders with respect to such sales. The Commission further determined to impose a civil penalty in the amount of $2,320,000 on the Gamut respondents and determined that respondents should have joint and several liability for the payment of this civil penalty.[1] A Commission opinion concerning the Commission's violation and remedy determinations will be issued shortly.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and § 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

Issued: July 28, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–20044 Filed 8–3–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–364 (Review)]

Aspirin From Turkey

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on aspirin from Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted this review on March 1, 1999 (64 FR 10012) and determined on June 3, 1999, that it would conduct an expedited review (64 FR 31608).

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 29, 1999. The views of the Commission are contained in USITC Publication 3215 (July 1999), entitled Aspirin from Turkey: Investigation No. 731–TA–364 (Review).

Issued: July 30, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–20048 Filed 8–3–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–70]

Circular Welded Carbon Quality Line Pipe

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 202 of the Trade Act of 1974 (19 U.S.C. 2252) (the Act).

SUMMARY: Following receipt of a petition filed on June 30, 1999, as amended on July 2, 1999, on behalf of Geneva Steel, IPSCO Tubulars, Inc., Lone Star Steel Company, Maverick Tube Corporation, Newport Steel, Northwest Pipe Company, Stupp Corporation, and the United Steelworkers of America, AFL–CIO, the Commission instituted investigation No. TA–201–70 under section 202 of the Act to determine whether welded carbon quality [1] line pipe of circular cross section, of a kind used for oil and gas pipelines, whether or not stencilled, is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. Such line pipe is classified in subheadings 7306.10.10 and 7306.10.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and B (19 CFR part 206).

EFFECTIVE DATE: June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Participation in the Investigation and Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Confidential Business Information (CBI) Under an Administrative Protective Order (APO) and CBI Service List

Pursuant to section 206.17 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than 21 days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

Hearings on Injury and Remedy

The Commission has scheduled separate hearings in connection with the injury and remedy phases of this investigation. The hearing on injury will be held beginning at 9:30 a.m. on September 30, 1999, at the U.S. International Trade Commission Building. In the event that the Commission makes an affirmative injury determination or is equally divided on the question of injury in this investigation, a hearing on the question of remedy will be held beginning at 9:30 a.m. on November 10, 1999. Requests to appear at the hearings should be filed in writing with the Secretary to the Commission on or before September 23, 1999, and November 3, 1999, respectively. All persons desiring to appear at the hearings and make oral presentations should attend prehearing conferences to be held at 9:30 a.m. on September 27, 1999 and November 5, 1999, respectively, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by §§ 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs on injury is September 24, 1999; that for filing prehearing briefs on remedy, including any commitments pursuant to 19 U.S.C. 2252(a)(6)(B), is November 3, 1999. Parties may also file posthearing briefs. The deadline for filing posthearing briefs on injury is October 6, 1999; that for filing posthearing briefs on remedy is November 17, 1999. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of injury on or before October 6, 1999, and pertinent to the consideration of remedy on or before November 17, 1999. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain CBI must also conform with the requirements of section 201.6 of the Commission's rules.

In accordance with § 201.16(c) of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or CBI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 202 of the Trade Act of 1974; this notice is published pursuant to § 206.3 of the Commission's rules.

Issued: July 29, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–20045 Filed 8–3–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–768 (Final Remand)]

Fresh Atlantic Salmon From Chile; Scheduling of Remand Proceedings

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its final antidumping investigation No. 731–TA–768 (Final).

EFFECTIVE DATE: July 23, 1999.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake, Office of Investigations, telephone 202–205–3188 or Neal J. Reynolds, Office of General Counsel, telephone 202–205–3093, U.S. International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On July 2, 1999, the Court of International Trade remanded to the Commission its final determination in *Fresh Atlantic Salmon from Chile,* Inv. No. 731–TA–768 (Final), USITC Pub. 3116 (July 1998).[1] In its order, the Court directs the Commission to "reopen the administrative record to verify the accuracy of its foreign production, shipments and capacity data" and to "take any action necessary after reexamining the foreign production, shipments and capacity data." It also directs the Commission to issue a remand determination within ninety days of the date of the order, i.e., by September 30, 1999.

Reopening Record

In order to assist it in making its determination on remand, the Commission is reopening the record on remand in this investigation to verify the accuracy of its foreign production, capacity and shipments data and to permit parties to file comments on whether that data should be revised. If necessary, the Commission will permit the parties to file additional briefs on whether any such revisions should affect the Commission's threat analysis in the investigation.

Participation in the Proceedings

Only those persons who were interested parties to the original administrative proceedings (i.e., persons listed on the Commission Secretary's service list) may participate in these remand proceedings.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigation will be released to parties under the administrative protective order ("APO") in effect in the original investigation. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make business proprietary information gathered in the final investigation and this remand investigation available to additional authorized applicants, that are not covered under the original APO, provided that the application is made not later than seven (7) days after publication of the Commission's notice of reopening the record on remand in the **Federal Register**. Applications must be filed for persons on the Judicial Protective Order in the related CIT case, but not covered under the original APO. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in this remand investigation.

Written Submissions

Each party who is an interested party in this remand proceeding may submit comments to the Commission. These comments must be concise and must be limited specifically to the issue of whether the foreign production, capacity and shipments data of Fiordo Blanco S.A., a Chilean producer of salmon, was double-counted during the

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[1] Commissioner Crawford determined to impose a civil penalty in a different amount.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Carol T. Crawford and Thelma J. Askey dissenting, determining that revocation of the antidumping duty order would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

[1] For purposes of this investigation, carbon quality is defined to mean: products in which (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is 2 percent or less, by weight, and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium

[1] The Commission made an affirmative determination by a 2–1 vote in July 1998. Chairman Bragg determined that the domestic industry was threatened with material injury by reason of the subject imports and Vice Chairman Miller determined that the industry was materially injured by reason of the subject imports. Commissioner Crawford dissented, finding that the industry was neither materially injured nor threatened with material injury by reason of the subject imports.

original investigation, based on data submitted during that investigation and in this remand proceeding. Any material in these comments that does not address this limited issue will be stricken from the record. These comments shall be limited to ten (10) pages, and must be filed no later than the close of business on August 23, 1999.

If the Commission finds that it double counted Fiordo Blanco's data in the original investigation, each party who is an interested party in this remand proceeding will also be permitted to submit a written brief to the Commission. Briefs should be concise and thoroughly referenced to information on the record in the original investigation or information obtained during the remand investigation. Briefs will be strictly limited to the issue of whether any revisions to the original foreign production, capacity, and shipments data that occur as a result of this remand investigation affect the Commission's threat analysis in this proceeding. Any material in the briefs that does not address this limited issue will be stricken from the record. Written briefs shall be limited to fifteen (15) pages, and must be filed no later than the close of business on September 17, 1999. Parties will be informed as to whether these briefs are necessary by September 2, 1999. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of § 201.6, 207.3, and 207.7 of the Commission's rules. In accordance with §§ sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

By order of the Commission.

Issued: July 30, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–20047 Filed 8–3–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–271 and 731–TA–318 (Review)]

Oil Country Tubular Goods From Israel

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in May 1999 to determine whether revocation of the existing countervailing duty and antidumping duty orders would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On July 27, 1999, the Department of Commerce published notice that it was revoking the orders because it determined that no domestic interested party intends to participate in the reviews (64 FR 40548, July 27, 1999). Accordingly, pursuant to § 207.69 of the Commission's rules of practice and procedure (19 CFR 207.69), the subject reviews are terminated.

EFFECTIVE DATE: July 27, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.69 of the Commission's rules (19 CFR 207.69).

Issued: July 30, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–20046 Filed 8–3–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil action No. 53–7989]

U.S. v. The Kansas City Star Co.; Proposed Modification of Final Judgment

Notice is hereby given that defendant Kansas City Star Company (the "Star") has filed with the United States District Court for the Western District of Missouri a motion to modify the Final Judgment in *United States* v. *Kansas City Star Company*, 1957 Trade Cas. (CCH) ¶ 68,857 (W.D. Mo. 1957). The Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to modification of the Final Judgment, but has reserved the right to withdraw its consent based on public comments or for other reasons. The Complaint in this case (filed January 6, 1953) focused on the period 1950–51 and alleged that the Star dominated the sale of news and advertising in Kansas City and engaged in a variety of practices designed to exclude competition, in violation of Section 2 of the Sherman Act, 15 U.S.C. 2.

The Final Judgment (entered on November 15, 1957) ordered the Star to divest its radio and television interests and enjoins the defendants from acquiring "any interest in any commercial radio or television broadcasting station in Metropolitan Kansas City except upon application to this Court." The defendants were further enjoined from acquiring any interest in any newspaper publication with a circulation in Metropolitan Kansas City.

The Final Judgment also enjoins the defendants from price discrimination, certain types of discounts, and tying of advertising in various editions of the newspaper. Some of these provisions are obsolete; others prevent the Star from undertaking certain procompetitive initiatives.

The proposed modification terminates the existing judgment in its entirety and substitutes an Amended Final Judgment that requires that the Star provide the Department with advance notification of Kansas City newspaper acquisitions valued at $5 million or more but not subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a. The Amended Judgment will expire in ten years.

The Department has filed with the Court a memorandum setting forth the reasons why it believes that modification of the Final Judgment would be in the public interest. Copies of the Complaint, the proposed modified Final Judgment, the defendant's motion papers, the Stipulation containing the Government's tentative consent, the Department's memorandum, and all further papers filed with the Court in connection with this motion will be available for inspection at Room 215, Antitrust Division, Department of Justice, 325 Seventh Street, NW., Washington, DC 20530 (Telephone: (202) 514–2481), and at the Office of the Clerk of the United States District Court for the Western District of Missouri, in Kansas City, Missouri. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department regulations.

Interested persons may submit comments to the Department regarding the proposed modification of the Final Judgment. Such comments must be received within the sixty-day period established by court order, and will be filed with the Court by the Department. Comments should be addressed to M.J. Moltenbrey, Chief, Civil Task Force, Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530 (telephone: (202) 616–5935).

Rebecca Dick,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 99–20028 Filed 8–3–99; 8:45 am]

BILLING CODE 4410–11–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

July 30, 1999.

TIME AND DATE: 9:30 a.m., Friday, August 6, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commission that the Commission discuss in closed session the pending application for a prosecutor in Disciplinary Matter, Docket No. D–99–1.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 99–20227 Filed 8–2–99; 3:49 am]

BILLING CODE 6735–01–M

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: 8:30 a.m., August 24, 1999.

PLACE: On board MISSISSIPPI V at City Front, Winona, MN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within St. Paul District; and (3) views and comments on issues affecting programs or projects of the Commission and the Corps.

TIME AND DATE: 9 a.m., August 25, 1999.

PLACE: On board MISSISSIPPI V at Ice Harbor, Dubuque, IA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within Rock Island District; and (3) views and comments on issues affecting programs or projects of the Commission and the Corps.

TIME AND DATE: 1:30 p.m., August 27, 1999.

PLACE: On board MISSISSIPPI V at Melvin Price Locks and Dam, Alton, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within St. Louis District; and (3) Views and comments on issues affecting programs or projects of the Commission and the Corps.

TIME AND DATE: 1:30 p.m., August 30, 1999.

PLACE: On board MISSISSIPPI V at City Front, New Madrid, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within Memphis District; and (3) views and comments on issues affecting programs or projects of the Commission and the Corps.

TIME AND DATE: 8:30 a.m., August 31, 1999.

PLACE: On board MISSISSIPPI V at City Front, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: Summary of national and regional issues affecting Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within Memphis District; and (3) views and comments on issues affecting programs or projects of the Commission and the Corps.

TIME AND DATE: 8:30 a.m., September 1, 1999.

PLACE: On board MISSISSIPPI V at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within Vicksburg District; and (3) views and comments on issues affecting programs or projects of the Commission and the Corps.

TIME AND DATE: 9:30 a.m., September 3, 1999.

PLACE: On board MISSISSIPPI V at Cenac Towing Company Dock, Houma, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary of national and regional issues affecting Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within New Orleans District; and (3) views and comments on issues affecting programs or projects of the Commission and the Corps.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Gwen C. Edris, telephone 601–634–5768.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–20196 Filed 8–2–99; 2:31 pm]

BILLING CODE 3710–PU–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–103]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Solar System Exploration Subcommittee.

DATES: Monday, August 23, 1999, 8:30 a.m. to 5 p.m., and Tuesday, August 24, 1999, 8:30 a.m. to 5 p.m.

ADDRESSES: NASA Headquarters, Conference Room 5H46, 300 E Street, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Carl Pilcher, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The Agenda for the meeting is as follows:

—SScAC meeting summary.
—Office of Space Science Program update.
—Solar System Program update.
—Mission to the Kuiper Belt.
—Building Blocks and our Chemical Origins.
—Evolution of Earth-like Environment.
—Astrophysical Analogues.
—General discussion on mission priorities.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 30, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–20070 Filed 8–3–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Proposed Collection; Comment Request

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) is soliciting public comments on the proposed information collection described below. The proposed information collection will be sent to the Office of Management and Budget (OMB) for review, as required by the provisions of the Paperwork Reduction Act of 1995.

DATES: Comments on this information collection must be submitted on or before October 4, 1999.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW, Room 311, Washington, D.C. 20506, or by email to: sdaisey@neh.gov. Telephone 202–606–8494.

SUPPLEMENTARY INFORMATION: The National Endowment for the Humanities will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This notice is soliciting comments from members of the public and affected agencies. NEH is particularly interested in comments which help the agency to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

This Notice also lists the following information:

Type of Review: Extension of a currently approved collection.
Agency: National Endowment for the Humanities.
Title of Proposal: My History Is America's History Website.
OMB Number: 3136–0136.
Frequency of Collection: Continual.
Affected Public: General Public.
Number of Respondents: Approximately 100,000 per year.
Estimated Time per Respondent: Approximately one hour per response.
Estimated Total Burden Hours: 100,000.

Total Annualized capital/startup costs: 0.
Total Annual costs (operating/maintaining systems or purchasing service): 0.

DESCRIPTION: Comments submitted in response to this notice will be summarized and/or included in the request submitted to the Office of Management and Budget for extended approval of the information collection request; they will also become a matter of public record.

Juan Mestas,

Deputy Chairman.

[FR Doc. 99–19935 Filed 8–3–99; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board, Executive Committee.

DATE AND TIME: August 10, 1999: 2:00 p.m., Closed Session.

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Room 1205, Arlington, VA 22230.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Closed Session (2:00 p.m. to 5:00 p.m.)—FY 2001 Budget.

Marta Cehelsky,

Executive Officer.

[FR Doc. 99–20146 Filed 8–2–99; 1:05 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2, and 3); Exemption

I

The Duke Energy Corporation (Duke/the licensee) is the holder of Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, that authorize operation of the Oconee Nuclear Station, Units 1, 2, and 3 (Oconee), respectively. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the US Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities consist of pressurized water reactors located on Duke's Oconee site in Seneca, Oconee County, South Carolina.

II

Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, Appendix G requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR part 50, Appendix G states that "[t]he appropriate requirements on * * * the pressure-temperature limits and minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Code, section XI, Appendix G limits.

Pressurized water reactor licensees have installed cold overpressure mitigation systems/low temperature overpressure protection (LTOP) systems in order to protect the reactor coolant pressure boundary (RCPB) from being operated outside of the boundaries established by the P–T limit curves and to provide pressure relief of the RCPB during low temperature overpressurization events. The licensee is required by the Oconee Units 1, 2, and 3 Technical Specifications (TS) to update and submit the changes to its LTOP setpoints whenever the licensee is requesting approval for amendments to the P–T limit curves in the Oconee Units 1, 2, and 3 TS.

Therefore, in order to address provisions of amendments to the TS P–T limits and LTOP curves, the licensee requested in its submittal dated May 11, 1999, that the staff exempt Oconee Units 1, 2, and 3 from application of specific requirements of 10 CFR part 50, section 50.60(a) and 10 CFR part 50, Appendix G, and substitute use of three ASME Code Cases as follows:

1. N–514 as an alternate methodology for determining the low temperature overpressure protection system enable temperature,

2. N–588 for determining the reactor vessel P–T limits derived from postulating a circumferentially-oriented reference flaw in a circumferential weld, and

3. N–626 as an alternate reference fracture toughness for reactor vessel materials for use in determining the P–T limits. (As a result of recent ASME code committee action, the designation for Code Case N–626 was changed to N–640. Therefore, Code Case N–640 will be discussed below rather than Code Case N–626, the designation referenced in the submittal.)

The proposed action is in accordance with the licensee's application for exemption contained in a submittal dated May 11, 1999, and is needed to support the TS amendments that are contained in the same submittal and are being processed separately. The proposed amendments will revise the P–T limits of TS 3.4.3 for Oconee Units 1, 2, and 3 related to the heatup, cooldown, and inservice test limitations for the Reactor Coolant System of each unit to a maximum of 33 Effective Full Power Years (EFPY). It will also revise TS 3.4.12, Low Temperature Overpressure Protection System, to reflect the revised P–T limits of the reactor vessels.

Code Case N–514

During staff review of this submittal, the staff determined that granting of an exemption to use Code Case N–514 to redefine the LTOP enable temperature as RT_{NDT} +50 °F was not necessary. Since the prior definition of the enable temperature as RT_{NDT} +90 °F is found only in an NRC Branch Technical Position, an exemption is not required.

Code Case N–588

This requested exemption will allow the use of ASME Code Case N–588 to determine stress intensity factors for postulated defects in circumferential welds. Appendix G of 10 CFR part 50 requires, in part, that Article G–2120 of ASME section XI, Appendix G, be used to determine the maximum postulated defects in reactor pressure vessels (RPV) when determining the P–T limits for the vessel. Article G–2120 specifies that the postulated defect be in the surface of the vessel material and normal (perpendicular in the plane of the material) to the direction of maximum stress. ASME section XI, Appendix G, also provides methodology to determine the stress intensity factors for a maximum postulated defect normal to the maximum stress. The purpose of this article is to prevent non-ductile failure of the RPV by providing procedures to identify the most limiting postulated fractures to be considered in the development of P–T limits.

Per Article G–2120 of ASME section XI, Appendix G, the postulated flaw "normal to the direction of maximum stress" would be an axially-oriented flaw for each reactor vessel beltline material. This postulated reference flaw is intended to be a conservative, bounding defect when compared to those defects that may have gone undetected during the fabrication process.

Engineering experience and non-destructive examinations over the course of the last thirty years have shown this to be a valid assumption and have shown that no service-induced degradation mechanism exists in pressurized water reactors that would cause significant growth of preservice flaws.

However, for a circumferential weld, it is extremely unlikely that axial flaws of appreciable size would be introduced perpendicular to the weld seam during fabrication since the nature of the welding process leads to any extended flaws being introduced parallel to the direction of travel of the welding head. In addition, the size of flaw required to be postulated by the ASME Code, if oriented axially, would extend across the entire nominal width of the circumferential weld and into the base material on either side. Given the strict procedure controls required during the fabrication of ASME Code Class 1 reactor vessels and the extensive amount of preservice and inservice non-destructive examination to which their welded regions have been subjected, it has been confirmed that any remaining defects are small and do not cross transverse to the weld bead orientation. Therefore, the NRC staff finds that the application of this degree of non-physical conservatism is not necessary to achieve the underlying intent of 10 CFR part 50, Appendix G.

In summary, the underlying purpose of 10 CFR part 50, Appendix G and ASME section XI, Appendix G, is to satisfy the requirement that: (1) The reactor coolant pressure boundary be operated in a regime having sufficient margin to ensure that when stressed the vessel boundary behaves in a non-brittle manner and the probability of a rapidly propagating fracture is minimized, and (2) P–T operating and test curves provide margin in consideration of uncertainties in determining the effects of irradiation on material properties.

Application of Code Case N–588 to determine P–T operating and test limit curves per ASME section XI, Appendix G, provides appropriate, conservative procedures to determine limiting maximum postulated defects and to consider those defects in the P–T limits. This application of the code case maintains the margin of safety for circumferential welds equivalent to that originally contemplated for plates/forgings and axial welds.

Therefore, pursuant to 10 CFR 50.12(a)(2)(ii), application of the code case would continue to achieve the underlying purpose of the rule.

Code Case N–640 (Formerly Code Case N–626)

The licensee has proposed an exemption to allow use of ASME Code Case N–626 (which is now Code Case N–640) in conjunction with ASME

section XI, 10 CFR 50.60(a) and 10 CFR part 50, Appendix G, to determine that the P–T limits meet the underlying intent of the NRC regulations.

The proposed amendment to revise the P–T limits for Oconee Units 1, 2, and 3 rely in part on the requested exemption. These revised P–T limits have been developed using the K_{Ic} fracture toughness curve shown on ASME section XI, Appendix A, Figure A–2200–1, in lieu of the K_{Ia} fracture toughness curve of ASME section XI, Appendix G, Figure G–2210–1, as the lower bound for fracture toughness. The other margins involved with the ASME section XI, Appendix G process of determining P–T limit curves remain unchanged.

Use of the K_{Ic} curve in determining the lower bound fracture toughness in the development of P–T operating limits curve is more technically correct than the K_{Ia} curve. The K_{Ic} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heat-up and cooldown process of a reactor vessel. The licensee has determined that the use of the initial conservatism of the K_{Ia} curve when the curve was codified in 1974 was justified. This initial conservatism was necessary due to the limited knowledge of reactor pressure vessel materials. Since 1974, additional knowledge has been gained about reactor pressure vessel materials, which demonstrates that the lower bound on fracture toughness provided by the K_{Ia} curve is well beyond the margin of safety required to protect the public health and safety from potential reactor pressure vessel failure. In addition, P–T curves based on the K_{Ic} curve will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations. The two primary safety benefits in opening the low temperature operating window are a reduction in the challenges to RCS power operated relief valves and elimination of RCP impeller cavitation wear.

Since the RCS P–T operating window is defined by the P–T operating and test limit curves developed in accordance with the ASME section XI, Appendix G procedure, continued operation of Oconee with these P–T curves without the relief provided by ASME Code Case N–640 would unnecessarily restrict the P–T operating window. This restriction requires, under certain low temperature conditions, that only one reactor coolant pump in a reactor coolant loop be operated. The licensee has found from experience that the effect of this restriction is undesirable degradation of reactor coolant pump impellers that results from cavitation sustained when either one pump or one pump in each loop is operating. Implementation of the proposed P–T curves as allowed by ASME Code Case N–640 does not significantly reduce the margin of safety. Thus, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served.

In summary, the ASME section XI, Appendix G procedure was conservatively developed based on the level of knowledge existing in 1974 concerning reactor pressure vessel materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. The NRC staff concurs that this increased knowledge permits relaxation of the ASME section XI, Appendix G requirements by application of ASME Code Case N–640, while maintaining, pursuit to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The staff accepts the licensee's determination that an exemption would be required to approve the use of Code Cases N–588 and N–626 (now Code Case N–640). The staff examined the licensee's rationale to support the exemption request and concurred that the use of the code cases would also meet the underlying intent of these regulations. Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of 10 CFR Part 50, Appendix G; Appendix G of the Code; and RG 1.99, Revision 2, the staff concluded that application of the code cases as described would provide an adequate margin of safety against brittle failure of the RPVs. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. Therefore, the staff concludes that requesting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Cases N–588 and N–626 may be used to revise the LTOP setpoints and P–T limits for the Oconee Units 1, 2, and 3 reactor coolant system.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants Duke an exemption from the requirements of 10 CFR part 50, section 50.60(a) and 10 CFR part 50, Appendix G, for the Oconee Nuclear Station, Units 1, 2, and 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment (64 FR 40901).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of July 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–19986 Filed 8–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of August 2, 9, 16, and 23, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 2

Thursday, August 5

9:55 p.m. Affirmation Session (Public Meeting) (If needed)

10:00 a.m. Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

Week of August 9–Tentative

Thursday, August 12

11:30 a.m. Affirmation Session (Public Meeting) (If needed)

Week of August 16–Tentative

There are no meetings scheduled for the Week of August 16.

Week of August 23–Tentative

Wednesday, August 25

9:55 a.m. Affirmation Session (Public Meeting) (If needed)

10:00 a.m. Briefing on PRA Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5828)

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: July 30, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–20114 Filed 8–2–99; 10:34 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Correction to Biweekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

On July 28, 1999 (64 FR 40903), the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations. On page 40907, under Southern California Edison Company, Docket Nos. 50–361 and 50–362, the date of the amendment request was inadvertently left out. It should read, "Date of amendment requests: December 31, 1998, as supplemented June 14, 1999 (PCN–501)."

Dated at Rockville, Maryland, this 29th day of July 1999.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–19985 Filed 8–3–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23923; 812–11202]

Internet Capital Group, Inc.; Notice of Application

July 28, 1999

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 3(b)(2) of the Investment Company Act of 1940 (the "Act").

SUMMARY: Applicant Internet Capital Group, Inc. ("ICG") seeks an order under section 3(b)(2) of the Act declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. Applicant is an operating company engaged in business-to-business electronic commerce.

Filing Dates: The application was filed on June 26, 1998 and amended on July 26, 1999.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 20, 1999 and should be accompanied by proof of service on the applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicant, 435 Devon Park Drive, Building 800, Wayne, PA 19087.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytblat, Assistant Director, at (202) 942–0693, Division of Investment Management, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. ICG, a Delaware corporation, was formed in 1996.[1] ICG's initial investors were Safeguard Scientifics, Comcast Corporation, and General Electric Corporation. ICG states that its goal from its inception has been to become a premier business-to-business electronic commerce company, primarily engaged in business-to-business electronic commerce through a network of partner companies ("Partner Companies"). ICG represents that it is not in the business of investing, reinvesting or trading in securities.

2. The Partner Companies fall into two categories: (i) Companies that bring buyers and sellers together by creating Internet-based markets for the exchange of goods, services and information, and (ii) companies that sell software and services to businesses engaged in electronic commerce. As of June 15, 1999, ICG owned interests in 35 Partner Companies, 3 of which were majority-owned subsidiaries of ICG and 16 of which were companies in which ICG owned more than 25% of the outstanding voting securities and thus controlled within the meaning of section 2(a)(9) of the Act (majority-owned and controlled subsidiaries of ICG, collectively, "Controlled Companies").[2] ICG states that it also holds small minority interests in four other companies.

3. ICG states that many of the Partner Companies currently are early development stage businesses, in which the entrepreneur seeks to retain a large ownership stake. ICG further states that it invests in the Partner Companies for the long term. As ICG builds its network of companies, ICG expects that it might have a need to sell its interest in certain companies that no longer fit or contribute to the network. ICG does not contemplate selling interests in non-controlled companies in the ordinary course of business. As a general matter, ICG expects that it will seek to increase its ownership interests in Partner Companies it considers strategically important to the network.

4. ICG states that it seeks to acquire and build business-to-business market leaders in electronic commerce and integrate them into the ICG network of companies. ICG states that its infrastructure provides a framework for nurturing emerging companies and

[1] ICG was formed initially as a Delaware limited liability company.

[2] Section 2(a)(9) defines "control" as the power to exercise a controlling influence over the management or policies of a company. That section creates a presumption that an owner of more than 25% of the outstanding voting securities of a company controls the company.

institutionalizing operating practices among the Partner Companies, resulting in efficiencies and economies of scale. ICG also states that the network provides an environment of information exchange and innovation that gives ICG companies a competitive advantage over more isolated Internet firms. ICG states that the network also provides breadth in operations, technology and experience within a narrowly defined but fast growing industrial segment. In addition, ICG states that the network enables information and resources to be rapidly allocated and reallocated among the participating companies with ICG acting as the "parent" or hub or the network.

Applicant's Legal Analysis

1. ICG requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

2. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40% of the value of the issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis. Under section 3(a)(2) of the Act, investment securities include all securities except Government securities, securities issued by employees securities companies, and securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exclusions from the definition of investment company in sections 3(c)(1) or 3(c)(7) of the Act.

3. ICG states that approximately 96% of its assets consists of investment securities as defined in section 3(a)(2). Accordingly, ICG may be deemed an investment company within the meaning of section 3(a)(1)(C) of the Act.[3] ICG asserts that, as of June 15, 1999, 90% of its total assets was comprised of interests in majority-owned subsidiaries and companies primarily controlled by ICG for purposes of rule 3a-1 under the Act. Rule 3a-1 provides an exemption from the definition of investment company if no more than 45% of a company's total assets consist of, and not more than 45% of its net income over the last four quarters is derived from, securities other than Government securities and securities of majority-owned subsidiaries and companies primarily controlled by it. ICG states that it is currently unable to rely on rule 3a-1 because of the net income generated from the sale of two minority interests in 1998.

4. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C), the Commission may issue an order declaring an issuer to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities either directly, through majority-owned subsidiaries, or through controlled companies conducting similar types of businesses. ICG states that it meets the requirements of section 3(b)(2) because it is primarily engaged in business-to-business electronic commerce through its Controlled Companies.

5. In determining whether applicant is "primarily engaged" in a non-investment company business under section 3(b)(2), the Commission considers the following factors: (i) Applicants's historical development, (ii) applicant's public representations of policy, (iii) the activities of applicant's officers and directors, (iv) the nature of applicant's present assets, and (v) the sources of applicant's present income.[4]

a. *Historical Development.* ICG states that since its inception in 1996, it has considered itself to be an operating company engaged in business-to-business electronic commerce. ICG states that its business strategy has not changed since 1996, but has become more refined and focused, and that ICG has taken increasingly larger stakes in Partner Companies that ICG believes to be of strategic importance to its network of business-to-business electronic commerce companies.

b. *Public Representations of Policy.* ICG states that it has consistently held itself out as being engaged in the Internet business and not in the investment company business. ICG states that it describes itself as an operating company that holds interests in a group of Internet-related companies and actively participates in the management of those companies. ICG states that, as part of promoting its business operations in building the network, ICG intends, among other things, to pursue a strategy of "branding" its Partner Companies.

c. *Activities of Officers and Directors.* ICG states that it has three levels of operations: internal operations, Partner Company operations, and acquisitions. ICG states that approximately 27% of the ICG's officers' and employees' time (excluding administrative staff) is currently being allocated to internal operations, 56% to Partner Company operations, and 17% to acquisitions. ICG asserts that its officers have extensive experience in the information technology and internet industries and are active board members for the Partner Companies. Twenty two of ICG's 25 full-time employees devote the majority of their time to issues involving the integration and management of ICG's Network Companies and ICG's operations. ICG has senior management dedicated exclusively to providing operational support and services to the Partner Companies in the areas of human resources, legal, finance, information technology, sales and marketing. ICG also possesses an advisory board composed of leading information technology executives who are actively involved in the affairs of ICG's Partner Companies.

d. *Nature of Assets.* ICG states that, as of June 15, 1999, ICG's three majority-owned subsidiaries represented 4.7%, and the other 16 controlled subsidiaries represented 90%, of ICG's total assets on an unconsolidated basis. ICG states that the rest of its assets was invested in Partner Companies in which ICG had an interest of below 25% and small minority interests in other companies. ICG represents that at least 60% of its total assets on an unconsolidated basis (exclusive of Government securities and cash items) will continue to be invested in Partner Companies that ICG controls within the meaning of the Act.

e. *Sources of Income.* ICG states that its Partner Companies are emerging Internet businesses that typically generate little or no income for ICG in the form of dividends. ICG also states that it may generate net income from time to time as a result of sales or dispositions of assets. ICG asserts that its activities as an operating company therefore are more appropriately analyzed by evaluating ICG's proportionate share of the revenues of its Controlled Companies as well as ICG's total revenues. ICG states that, for the 12 month period ending March 31, 1999, ICG's revenues attributable to its Controlled Companies represented approximately 68% of ICG's total revenues.[5] ICG states that this figure was derived by comparing (i) ICG's consolidated revenues, ICG's proportionate share of the revenues of its Controlled Companies, and ICG's income derived from interests in Controlled Companies to (ii) ICG's total revenues comprised of the items in (i) as well as income derived from sales of interests in non-controlled companies and interest income. ICG represents that it does not intend to derive a significant percentage of its revenues from income derived from sales of interest in non-controlled companies.

6. ICG thus asserts that it satisfies the standards for an order under section 3(b)(2) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–19950 Filed 8–3–99; 8:45 am]

BILLING CODE 8010–01–M

[3] ICG currently is relying on rule 3a-2 under the Act. Rule 3a-2 provides a temporary exemption from the Act for companies with "a bona fide intent to be primarily engaged * * * within a year in a business other than that of investing, reinvesting, owning, holding or trading in securities."

[4] *Tonopah Mining Company of Nevada*, 26 SEC 426, 427 (1947).

[5] ICG states that, for purposes of this analysis, revenues from ICG's majority-owned subsidiaries were consolidated, and revenues of other Controlled Companies were attributed to ICG in proportion to ICG's interests in the Controlled Companies. ICG uses the equity method of accounting for these Controlled Companies, which under Generally Accepted Accounting Principles means that the Companies' income or losses, but not revenues, are attributed to ICG based on its ownership interests in the Companies. ICG notes that ICG's revenues attributable to its Controlled Companies would represent approximately 66% of ICG's total revenues if the revenues of ICG's consolidated majority-owned subsidiaries were attributed to ICG in proportion to ICG's interests in the majority-owned subsidiaries.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23927; 812–11654]

Nations Fund Trust, et al.; Notice of Application

July 30, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain series of Nations Institutional Reserves ("NIR") to acquire all of the assets and liabilities of certain series of Nations Fund Trust ("NFT"), Nations Fund, Inc. ("NFI"), and Nations Fund Portfolios, Inc. ("NFP") (the "Reorganization"). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: NIR, NFT, NFI, NFP, and NationsBanc Advisors, Inc. ("NBAI").

Filing Dates: The application was filed on June 9, 1999. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

Hearing of Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 19, 1999 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, One Bank of America Plaza, 101 South Tryon Street, Charlotte, NC 28255.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, (202) 942–0634, or Michael W. Mundt, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. NFT, a Massachusetts business trust, NFI, a Maryland corporation, and NFP, a Maryland corporation, are open-end management investment companies registered under the Act. NFT currently offers 28 series, 2 of which will participate in the Reorganization. NFI offers 9 series, 2 of which will participate in the Reorganization. NFP currently offers one series, which will participate in the Reorganization. The participating series of NFT, NFI, and NFP are collectively referred to as the "Acquired Funds."

2. NIR, a Massachusetts business trust, is an open-end management investment company registered under the Act. NIR is organizing five new series, (the "Acquiring Funds," and together with the Acquired Funds, the "Funds").[1] Three of the Acquiring Funds are feeder funds ("Feeder Funds") which will invest all of their assets in a corresponding master portfolio of Nations Master Investment Trust ("NMIT"), an open-end management investment company registered under the Act.

3. NBAI is registered under the Investment Advisers Act of 1940 ("Advisers Act") and is the investment adviser for the Funds and NMIT. NBAI is a wholly-owned subsidiary of Bank of America Corporation. Bank of America Corporation, NationsBank, N.A., and/or certain of their affiliates that are under common control with NBAI (the "BankAmerica Group"), hold of record, in their name and in the names of their nominees, more than 5% (and with respect to certain of the Acquired Funds more than 25%) of the outstanding voting securities of each of the Acquired Funds. All of these securities are held for the benefit of others in a trust, agency, custodial, or other fiduciary or representative capacity.

4. On March 31, 1999, and May 26, 1999, respectively, the board of trustees of NIR (the "Acquiring Funds' Board") and the boards of directors or trustees of NFT, NFI and NFP (the "Acquired Funds' Boards," together with the Acquiring Funds' Board, the "Boards") including a majority of the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Disinterested Members"), approved Agreements and Plans of Reorganization (each a "Plan" and collectively, the "Plans") between each of the Acquiring and Acquired Funds. Pursuant to the Plans, each Acquiring Fund will acquire all of the assets and liabilities of the corresponding Acquired Fund in exchange for shares of the Acquiring Fund.[2]

5. Each of the Funds has five classes of shares: Primary A, Primary B, Investor A, Investor B, and Investor C. The number of Acquiring Fund shares to be issued to shareholders of the Acquired Fund will be determined by dividing the aggregate net assets of each Acquired Fund class by the net asset value per share of the corresponding Acquiring Fund class, each computed as of the close of business on the closing date ("Closing Date"). The Plans provide that these Acquiring Fund shares will be distributed pro rata to the

[1] A registration statement for the five shell Acquiring Funds was filed with the SEC on June 4, 1999.

[2] The Acquired Funds and the corresponding Acquiring Funds are: (i) NFT Nations Marsico Focused Equities Fund and NIR Nations Marsico Focused Equities Fund; (ii) NFT Nations Marsico Growth and Income Fund and NIR Nations Marsico Growth and Income Fund (iii) NFI Nations International Equity Fund and NIR Nations International Equity Fund; (iv) NFI Nations International Value Fund and NIR Nations International Value Fund; (v) NFP Nations Emerging Markets Fund and NIR Nations Emerging Markets Fund.

shareholders of record in the applicable Acquired Fund class, determined as of the close of business on the Closing Date, in complete liquidation of each Acquired Fund. Applicants anticipate that the Closing Date will be on or around August 20, 1999.

6. Applicants state that the Acquiring Funds will pursue investment objectives and follow principal investment strategies that are identical to those of the corresponding Acquired Fund. Applicants state that the distribution and shareholder servicing arrangements for the respective classes of the Acquired and Acquiring Funds are also identical. Primary A and Primary B shares of the Funds do not have a sales charge. Investor A shares of the Funds are subject to a maximum front-end sales charge of 5.75%, and certain holders of Investor A shares of the Acquired Funds may be subject to a maximum deferred sales charge of 1% or a redemption fee of 1%. Investor B shares of the Funds are subject to a maximum deferred sales charge of 5%. Investor C shares of the Funds are subject to a maximum deferred sales charge of 1%. No sales charge will be imposed in connection with the Reorganization.

7. The Boards, including a majority of their Disinterested Members, found that participation in the Reorganization is in the best interest of each Fund and that the interests of existing shareholders of the Funds will not be diluted as a result of the Reorganization. In approving the Reorganization, the Boards considered, among other things: (a) the potential effect of the Reorganization; (b) the expense ratios of the Acquiring Funds and the Acquired Funds; (c) the compatibility of the investment objectives and investment strategies of the Acquiring Funds and Acquired Funds; (d) the terms and conditions of the Plans; (e) the tax-free nature of the Reorganization; and (f) the advantages of the master-feeder structure. The Funds will bear the expenses associated with the Reorganization, as determined by the Board of each Fund.

8. The Plans may be terminated by mutual written consent of the Acquiring Fund and the respective Acquired Fund at any time prior to the Closing Date. In addition, either party may terminate a Plan if: (a) the other party materially fails to perform its obligations prior to the Closing Date; (b) the other party materially breaches its representations, warranties, or covenants; or (c) a condition precedent to the party's obligations cannot be met.

9. Definitive proxy solicitation materials have been filed with the SEC and were mailed to the Acquired Fund's shareholders on July 7, 1999. A special meeting of the Acquired Funds' shareholders will be held on or about August 13, 1999.

10. The consummation of the Reorganization is subject to the following conditions: (a) A registration statement under the Securities Act of 1933 for the Acquiring Funds will have become effective; (b) the Acquired Fund shareholders will have approved the Plan; (c) applicants will have received exemptive relief from the SEC with respect to the issues in the application; (d) the Funds will have received an opinion of counsel concerning the tax-free nature of the Reorganization; and (e) each Acquired Fund will have declared a dividend to distribute substantially all of its investment company taxable income and net capital gain, if any, to its shareholders. Applicants agree not to make any material changes to the Plans that affect the application without prior SEC staff approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of that person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that the BankAmerica Group holds of record more than 5% of the outstanding voting securities of each of the Acquired Funds, and more than 25% of certain Acquired Funds. Because of this ownership, applicants state that the funds may be deemed affiliated persons for reasons other than those set forth in rule 17a–8 and therefore unable to rely on the rule. Applicants request an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Reorganization.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants submit that the terms of the Reorganization satisfy the standards set forth in section 17(b). Applicants note that the Boards, including a majority of the Disinterested Members, found that participation in the Reorganization is in the best interests of each Fund and that the interests of the existing shareholders of each Fund will not be diluted as a result of the Reorganization. Applicants also note that the Reorganization will be based on the Funds' relative net asset values.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20071 Filed 8–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41664; File No. SR–BSE–99–10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Minimum Variation for Nasdaq-100 Shares and Disclaimer of Liability With Respect to the Nasdaq-100 Index

July 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 16, 1999, the Boston Stock Exchange, Inc. ("BSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission" or the "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and simultaneously is approving the filing.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Chapter XXIV, Section 5, Interpretations and Policies thereunder, to permit dealings in Nasdaq-100 Shares of the Nasdaq-100 Trust ("Nasdaq-100 Shares") in increments smaller than the minimum variation, and to add proposed Section 7 to Exchange Chapter XXIV relating to disclaimer of liability with respect to the Nasdaq-100 Index.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend an interpretation to the Portfolio Depository Receipt ("PDR") listing rule set forth in Exchange Chapter XXIV, Section 5 to permit dealings in Nasdaq-100 Shares in increments of 1/64 of $1.00. The Nasdaq-100 Trust is a unit investment trust sponsored by Nasdaq-Amex Investment Product Services, Inc. with a portfolio based on the component stocks of the Nasdaq-100 Index. The Exchange intends to trade these securities pursuant to unlisted trading privileges ("UTP"). These securities are currently traded on the American Stock Exchange ("Amex") in increments of 1/64 of $1.00 and, thus, the Exchange believes it is appropriate to trade these securities on the Exchange with the same minimum increment of 1/64 of $1.00 as well.[3]

In connection with the Exchange's license agreement with the Nasdaq Stock Market ("Nasdaq") relating to, among other things, the use of the name "Nasdaq-100 Shares," and the disclaimer of liability relating to the Nasdaq-100 Index, the Exchange is proposing to amend Chapter XXIV to add a new Section 7 to codify a rule governing disclaimers of liability relating to the Nasdaq-100 Index. The proposed rule change is consistent with the disclaimer of liability language adopted by the Amex in its Rule 1006.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5),[5] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–99–10 and should be submitted by August 25, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the BSE's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act [7] because it will facilitate transactions in securities by permitting the BSE: (1) to trade Nasdaq-100 Shares, on a UTP basis, in increments of 1/64th of $1.00, and (2) to adopt a disclaimer of liability rule relating to the Nasdaq-100 Index, consistent with the license agreement between Nasdaq and the Exchange.

The Exchange has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the thirtieth day after the publication of the proposal in the **Federal Register**. The Commission believes that such action is appropriate, in that the proposed rule change establishes the same minimum trading variation as the Amex has adopted for Nasdaq-100 Shares. Further, the proposed rule relating to the disclaimer of liability adopted by the Amex.[8] For the reasons set forth above, the Commission does not believe that this proposal raises any new regulatory issues. Accordingly, the Commission finds that there is good cause for approving the proposed rule change prior to the thirtieth day after the publication of the proposal in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the

[3] *See* Securities Exchange Act Release No. 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999) (SR–Amex–98–34).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] In reviewing the proposed rule change, the Commission considered its potential impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] The Amex disclaimer of liability provision was approved in Securities Exchange Act Release Nos. 41119 (February 26, 1999), and 41562 (June 25, 1999). It was subject to the full notice and comment process in Securities Exchange Act Release No. 41119 and no comments were received with respect to the disclaimer.

[9] 15 U.S.C. 78s(b)(2).

proposed rule change is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20026 Filed 8–3–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lawrence County, Ohio

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplement to a final environmental impact statement will be prepared for a proposed highway project in Lawrence County, Ohio.

FOR FURTHER INFORMATION CONTACT: Scott McGuire, Field Operations Engineer, Federal Highway Administration, 200 North High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6852.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation, will prepare a supplement to the final environmental impact statement (EIS) on a proposal to improve State Route (SR) 7 and SR 607 in Lawrence County, Ohio. The original EIS for the improvements (FHWA–OH–EIS–72–8–F) was approved on January 31, 1974. The supplement is being prepared due to the time elapsed since the original approval in 1974 and to adequately address new legislative and regulatory requirements. In response to the October 28, 1995 Federal planning regulations, a major investment study for the corridor has been completed by KYOVA Interstate Planning Commission.

The existing facility, which travels thru the Villages of Chesapeake and Proctorville (on a two-lane roadway) is prone to heavy traffic numbers exacerbated by turning movements and resulting in a high accident situation. SR 7 in this area is also prone to flooding which results in roadway closure and impairs emergency vehicles. The section of roadway to be relocated is situated in southern Lawrence County across the Ohio River from Huntington, West Virginia, a major metropolitan area. This section of roadway is predominantly used for residences living in Ohio and working in the Huntington area. The project is situated in the Ohio River valley with steep hills to the north. The flatter lands to the south along the river have been developed for residential and commercial buildings. Improvements to the corridor are considered necessary to provide for existing and projected traffic demand.

Alternatives under consideration include (1) taking no action; (2) building a 4-lane limited access facility on new alignment. The alignments under consideration are slightly north of Chesapeake, Proctorville, and Rome.

FHWA, ODOT and other local agencies invite participation in defining the alternatives to be evaluated in the supplemental EIS, and any significant social, economic, or environmental issues related to the alternatives. Information describing the purpose and need of the project, the proposed alternatives, the areas to be evaluated, the citizen involvement program, and the preliminary project schedule may be obtained from the FHWA at the address provided above.

Coordination with concerned federal, state, and local agencies has been ongoing throughout project development. A public meeting was held on June 27, 1996 at a point in time when an EIS was not believed to be necessary. Coordination will be continued throughout the study with federal, state, and local agencies, and with private organizations and citizens who express or are known to have interest in this project. On August 26, 1999, a public meeting will be held to obtain input on a preferred alignment. A Public Hearing will be held and may take place in the year 2000. Public notice will be given of the exact time and place of the meeting and the hearing to be held for the project. The Draft EIS will be available for public and agency review and comment prior to the Public Hearing. No formal scoping meeting will be held.

To ensure that the full range of issues relating to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the supplemental EIS should be sent to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: July 29, 1999.

Scott A. McGuire,

Field Operations Engineer, Federal Highway Administration, Columbus, Ohio.

[FR Doc. 99–20068 Filed 8–3–99; 8:45 am]

BILLING CODE 4910–22–P

[10] 17 CFR 200.30–3(a)912).

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–60]

Customs Accreditation of Coastal Gulf & International Inc. as an Accredited Laboratory

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of accreditation of Coastal Gulf & International, Inc. as a Commercial Accredited Laboratory.

SUMMARY: Coastal Gulf & International, Inc., of Luling, Louisiana has applied to U.S. Customs for accreditation to perform petroleum analysis methods under Part 151.13 of the Customs Regulations (19 CFR 151.13) to their Luling, Louisiana facility. Customs has determined that Coastal Gulf & International, Inc. meets all of the requirements for accreditation as a Commercial Laboratory to perform (1) API Gravity, (2) Distillation, (3)Viscosity, (4) Sediment by Extraction and (5) Percent by Weight of Sulfur. Therefore, in accordance with Part 151.13(f) of the Customs Regulations, Coastal Gulf & International, Inc., is granted accreditation to perform the analysis methods listed above.

LOCATION: Coastal Gulf & International, Inc. accredited site is located at: 13615 River Road, Luling, Louisiana, 70070.

EFFECTIVE DATE: July 27, 1999.

FOR FURTHER INFORMATION CONTACT: Michael J. Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Room 5.5–B, Washington, D.C. 20229 at (202) 927–1060.

Dated: July 27, 1999.

Ira S. Reese,

Acting Director, Laboratories and Scientific Services.

[FR Doc. 99–19945 Filed 8–3–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Claims Against the U.S. for Amounts Due in Case of a Deceased Creditor

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form "Claims Against the U.S. For Amounts Due in Case of a Deceased Creditor."

DATES: Written comments should be received on or before October 4, 1999.

ADDRESSES: Direct all written comments to Financial Management Service, Programs Branch, Room 144, 3700 East-West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Judgment Fund Branch, 3700 East-West Highway, Hyattsville, Maryland 20782, (202) 874–7801.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Claims Against the U.S. for Amounts Due in Case of a Deceased Creditor.

OMB Number: 1510–0042.

Form Number: SF–1055.

Abstract: This form is required to determine who is entitled to the funds of a deceased Postal Savings depositor or deceased award holder. The form, with supporting documentation, enables the government to decide who is legally entitled to payment.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 400.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 400.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: July 29, 1999.

Judith R. Tillman,

Assistant Commissioner.

[FR Doc. 99–19934 Filed 8–3–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0014]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 3, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0014."

SUPPLEMENTARY INFORMATION:

Title: Authorization and Certification of Entrance or Reentrance into Rehabilitation and Certification of Status, VA Form 28–1905.

OMB Control Number: 2900–0014.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The information collected on VA Form 28–1905 ensures that veterans or other eligible persons do not receive benefits for periods when they did not actually begin to participate in any rehabilitation or special restorative or specialized vocational training program. The information is used by VA to establish the correct beginning and ending dates for the education, training, or other rehabilitation services and the correct rates for subsistence allowance payments.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 22, 1999, at pages 20058–20059.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, and State, Local or Tribal Government.

Estimated Annual Burden: 2,917 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 35,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0014" in any correspondence.

Dated: June 24, 1999.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–19961 Filed 8–3–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0068]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 3, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0068."

SUPPLEMENTARY INFORMATION:

Title: Application for Service-Disabled Insurance, VA Form 29–4364.

OMB Control Number: 2900–0068.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used by veterans to apply for Service Disabled Veterans Insurance, to designate a beneficiary and to select an optional settlement. The data collected on the form is used by VA to determine the veteran's eligibility for insurance.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 23, 1999 at page 20059–20060.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,250 hours.

Estimated Average Burden Per Respondent: 40 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 2,833.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0068" in any correspondence.

Dated: June 15, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–19962 Filed 8–3–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0236]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 3, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. "Please refer to "OMB Control No. 2900–0236."

SUPPLEMENTARY INFORMATION:

Title: Application for Education Loan, VA Form 22–8725.

OMB Control Number: 2900–0236.

Type of Review: Revision of a currently approved collection.

Abstract: This form requests information needed to determine eligibility for an education loan. VA uses the information to determine whether an eligible student's education-related expenses will exceed his or her financial resources during a specific enrollment period. The amount of the education may not be more than the difference between an applicant's education-related expenses and his or her available financial resources. Without this information, VA might underpay or overpay the amount of an education loan.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 23, 1999, at pages 20061–20062.

Affected Public: Individuals or households.

Estimated Annual Burden: 20 hours.

Estimated Average Burden Per Respondent: 40 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 30.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0236" in any correspondence.

Dated: June 24, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–19963 Filed 8–3–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0253]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 3, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0253."

SUPPLEMENTARY INFORMATION:

Title: Nonsupervised Lender's Nomination and Recommendation of Credit Underwriter, VA Form 26–8736a.

OMB Control Number: 2900–0253.

Type of Review: Extension of a currently approved collection.

Abstract: The VA Form 26–8736a is used to evaluate loans proposed for guaranteed financing under 38 U.S.C. 3710. Information collected aids determinations and final action on lender's application.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 5, 1999 at page 16524.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 1,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 3,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0253" in any correspondence.

Dated: July 9, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–19964 Filed 8–3–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0320]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 3, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0320."

SUPPLEMENTARY INFORMATION:

Title: Escrow Agreement for Postponed Exterior Onsite Improvements, VA Form 26–1849.

OMB Control Number: 2900–0320.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected is used to allow a veteran to gain occupancy of a property when specified exterior onsite improvements must be postponed because of delays such as bad weather.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 29, 1999 at page 4745–4746.

Affected Public: Individuals or households and business or other for-profit.

Estimated Annual Burden: Because escrow agreements such as VA Form 26–1849 area common practice in the building and lending industry, only 1 hour is being shown in Item 13 of SF 83 for reporting purposes.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 10,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0320" in any correspondence.

Dated: May 28, 1999.

By direction of the Secretary.

Sandra McIntyre,

Management and Program Analyst, Information Management Service

[FR Doc. 99–19965 Filed 8–3–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0355]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 3, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8135 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0355."

SUPPLEMENTARY INFORMATION:

Title: Verification of Pursuit of Course (Leading to a Standard College Degree Under Chapters 32, 34, and 35, Title 38, U.S.C., and Section 903 of Public Law 96–342), VA Form 22–6553.

OMB Control Number: 2900–0355.

Type of Review: Extension of a currently approved collection.

Abstract: The information collection is used to verify the continued enrollment or report change in enrollment status for any student receiving VA educational benefits for the pursuit of a college course. VA uses the information to determine if education benefits are to be continued unchanged, increased, decreased, or terminated. Without the information VA might underpay or overpay benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 1999 at page 13470.

Affected Public: State, Local or Tribal Governments, Not-for-profit Institutions.

Estimated Annual Burden: 24,485 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: The frequency of responses for each educational institution will vary according to the number of students who receive VA education benefits at that school. VA estimates an annual average of 27 responses per educational institution.

Estimated Number of Respondents: The number of respondents is arrived at based on the average number of educational institutions using VA Form 22–6553 which had veterans or eligible persons enrolled during the last 12 months, and a projected number of trainees. VA currently has an average of 5,441 active educational institutions (colleges, universities, or other institutions of higher learning).

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0355" in any correspondence.

Dated: July 12, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–19966 Filed 8–3–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0362]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 3, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0362."

SUPPLEMENTARY INFORMATION:

Titles: Claim under Loan Guaranty, VA Form 26–1874. Claim Form Addendum—Adjustable Rate Mortgages, VA Form 26–1874a.

OMB Control Number: 2900–0362.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: a. VA Form 26–1874 is used by lenders and holder of VA guaranteed home loans as the notification to VA of default on such loans which is required by 38 U.S.C. 3732(a).

b. VA Form 2601874a is used by lenders and holder of VA loans as an attachment to VA 26–1874 when filing a claim under the loan guaranty resulting from the termination of an Adjustable Rate Mortgage loan.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 29, 1999 at page 4746–4747.

Affected Public: Business or other for-profit.

Estimated Annual Burden:

a. VA Form 26–1874—25,806 hours.

b. VA Form 26–1874a—1,000 hours.

Estimated Average Burden Per Respondent:

a. VA Form 26–1874—60 minutes.

b. VA Form 26–1874a—20 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents:

a. VA Form 26–1874—25,806.

b. VA Form 26–1874a—333.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0362" in any correspondence.

Dated: May 28, 1999.

By direction of the Secretary.

Sandra McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–19967 Filed 8–3–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0492]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 3, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0492."

SUPPLEMENTARY INFORMATION:

Title: VAMATIC AUTHORIZATION, VA Form 29–0532–1.

OMB Control Number: 2900–0492.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used by policyholders to authorize deductions from his/her bank account.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 23, 1999 at page 20062.

Affected Public: Individuals or Households.

Estimated Annual Burden: 1500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 3,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0492" in any correspondence.

Dated: June 15, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–19968 Filed 8–3–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0519]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before September 3, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0519."

SUPPLEMENTARY INFORMATION:

Title: Locality Pay System, (DVA Nurse Pay Act of 1990), Health Care Occupation.

Data Collection Form, VA Form 10–0132.

OMB Control Number: 2900–0519.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The information collected is necessary to comply with the provision of Public Law 101–366, Department of Veterans Affairs (VA) Nurse Pay Act of 1990, which specifically provides for a locality pay system for certain health care personnel within VA. The law requires that where available, data from the Bureau of Labor Statistics (BLS) will be used in determining the beginning rates of compensation. At this time, the BLS surveys do not capture beginning rates of compensation nor are the job descriptions used in the survey comparable to VA positions. Until BLS can supply this data, VA medical facility Directors remain responsible for collecting the data to implement and adjust rates for registered nurses, nurse anesthetists, and other health care personnel.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 23, 1998 at page 71191.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Annual Burden: 2,531 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,375.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0519" in any correspondence.

Dated: July 2, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–19969 Filed 8–3–99; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 64, No. 149
Wednesday, August 4, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-440-000]

Black Marlin Pipeline Company; Proposed Changes in FERC Gas Tariff

Correction

In notice document 99–18973 appearing on page 40360 in the issue of Monday, July 26, 1999, the docket number should read as set forth above.

[FR Doc. C9–18973 Filed 8–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-443-000]

Petal Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 99–19219 appearing on page 40861 in the issue of Wednesday, July 28, 1999, make the following correction:

On page 40861, in the second column, in the heading, the docket line is added as set forth above.

[FR Doc. C9–19219 Filed 8–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-579-000, Docket No. CP580-000, Docket No. CP99-581-000, Docket No. CP99-58279-000]

Southern LNG Inc.; Notice of Applications for Section 7 Certificates and A Section 3 Authorization

Correction

In notice document 99–19075 beginning on page 40590 in the issue of Tuesday, July 27, 1999, make the following correction:

On page 40590, in the second column, in the heading, in the sixth line,"Docket No. CP99-58279-000" should read, "Docket No. CP99-582-000".

[FR Doc. C9–19075 Filed 8–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1308 and 1312

[DEA-180F]

Schedules of Controlled Substances: Rescheduling of the Food and Drug Administration Approved Product Containing Synthetic Dronabinol [(-)-Δ^9-(trans)-Tetrahydrocannabinol] in Sesame Oil and Encapsulated in Soft Gelatin Capsules From Schedule II to Schedule III.

Correction

In rule document 99–16833 beginning on page 35928 in the issue of Friday, July 2, 1999, make the following correction:

On page 35929, in the third column, in "3. Labeling and Packaging", in the ninth line, after "packaged before January 3, 2000" insert "that have Schedule II labeling may be distributed until April 3, 2000."

[FR Doc. C9–16833 Filed 8–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Planning Guidance and Instructions for the Submission of the Strategic Five-Year Plan for Title I of the Workforce Investment Act of 1998 (Workforce Investment Systems) and Wagner-Peyser Act Proposed Collection; Comment Request

Correction

In notice document 99–18675, beginning on page 39531, in the issue of Thursday, July 22, 1999, make the following correction(s):

On page 39531, in the first column, in the **DATES:** section, in the fourth line, "August 23, 1999" should read "September 20, 1999".

[FR Doc. C9–18675 Filed 8–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-ACE-36]

Amendment to Class E Airspace; Parsons, KS

Correction

In rule document 99–18576 beginning on page 39007 in the issue of Wednesday, July 21, 1999, make the following correction:

§71.1 [Corrected]

On page 39008, in the second column, eleventh line beneath airspace description "**ACE KS E5 Parsons, KS [Revised]**", "17°" should read,"174°".

[FR Doc. C9–18576 Filed 8–3–99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday
August 4, 1999

Part II

Environmental Protection Agency

40 CFR Parts 9, 122, 123, 124, and 501
National Pollutant Discharge Elimination System Permit Application Requirements for Publicly Owned Treatment Works and Other Treatment Works Treating Domestic Sewage; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123, 124, and 501

[FRL–6401–2]

RIN 2040–AB39

National Pollutant Discharge Elimination System Permit Application Requirements for Publicly Owned Treatment Works and Other Treatment Works Treating Domestic Sewage

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today amends permit application requirements and application forms for publicly owned treatment works (POTWs) and other treatment works treating domestic sewage (TWTDS). TWTDS include facilities that generate sewage sludge, provide commercial treatment of sewage sludge, manufacture a product derived from sewage sludge, or provide disposal of sewage sludge.

Today's rule consolidates POTW application requirements, including information regarding toxics monitoring, whole effluent toxicity (WET) testing, industrial user and hazardous waste contributions, and sewer collection system overflows. The most significant revisions require toxic monitoring by major POTWs (and other pretreatment POTWs) and limited pollutant monitoring by minor POTWs. EPA believes that permitting authorities need this information in order to issue permits that adequately protect the Nation's water resources.

Form 2A replaces existing Standard Form A and Short Form A to account for changes in the National Pollutant Discharge Elimination System (NPDES) program since the forms were issued in 1973.

The regulations also clarify the requirements for TWTDS and allow the permitting authorities to obtain the information needed to issue permits that meet the requirements of the 40 CFR Part 503 sewage sludge use or disposal regulations. Form 2S replaces the existing Interim Sewage Sludge Form. Form 2S is similar to the Interim Sewage Sludge Form but requires less information.

EPA is revising these regulations to ensure that permitting authorities obtain the information necessary to issue permits which protect the environment in the most efficient manner. The forms make it easier for permit applicants to provide the necessary information with their applications and minimize the need for additional follow-up requests from permitting authorities. EPA expects the rule to reduce current annual reporting and record keeping burdens by 21 percent, by standardizing the forms to match information requests with information needs.

This rule also lifts the stay of 40 CFR 501.15(d)(1)(i)(B) in a final rule streamlining state sewage sludge regulations published on August 24, 1998 (63 FR 45113).

DATES: This rule and 40 CFR 501.15(d)(1)(i)(B) expires on December 2, 1999. In accordance with 40 CFR 23.2, this rule shall be considered final for the purposes of judicial review at 1:00 p.m. (Eastern Standard Time) on August 18, 1999.

ADDRESSES: The record for this rulemaking, including all public comments on the proposal, will be available for inspection and copying at the Office of Water Docket. The docket is located at EPA, East Tower Basement, 401 M. St. SW, Washington, D.C. 20460. The docket is open Monday-Friday 9:00 am to 4:00 pm, please contact the docket at (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: For information on Form 2A and municipal wastewater permitting issues in this document, contact Robin Danesi, (202) 260–2991, Permits Division (4203), United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C., 20460.

For information on Form 2S and sewage sludge permitting issues in this document, contact Wendy Bell, (202) 260–9534, Permits Division (4203), United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C., 20460.

Copies of this document with the forms are available from the EPA home page at www.epa.gov under the Laws and Regulations section. Electronic copies of the forms will be available on the Office of Wastewater Management home page at www.epa.gov/owm. EPA plans to provide a word wizard of the form which should be available shortly after the final rule is promulgated.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are governmental entities responsible for implementation of the NPDES and sewage sludge programs and entities that are regulated by these programs. Regulated entities include:

Category	Examples of regulated entities
Local government.	Publicly Owned Treatment Works, owners and operators of treatment works treating domestic sewage.
Private	Privately owned treatment works or other treatment works treating domestic sewage.
State government.	Treatment works owned or operated by States or Tribes.
Federal government.	Federally owned treatment works.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria in Parts 122 and 503 of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Information in the preamble is organized as follows:

I. Background
A. Overview
B. Public Consultation in the Rule Development
II. Description of Today's Final Rule and Response to Comments
A. Scope of Today's Rulemaking
B. Forms 2A & 2S
1. Form 2A
a. Overview
b. Applicability to Privately Owned and Federally Owned Treatment Works
2. Form 2S
a. Overview
b. Clarification of TWTDS
3. Reasons for Separate Forms 2A and 2S
4. Electronic Application Forms
C. Endangered Species and Historic Properties
D. Definitions
E. Requirements Concerning the Use of Forms (§§ 122.21(a),(c),(d), and (f))
F. Application Requirements for POTWs (40 CFR 122.21(j))
1. Permit as a Shield
2. Basic Application Information
3. Additional Application Information for Applicants With Flows Greater Than or Equal to 0.1 mgd.
4. Information on Effluent Discharges
5. Effluent Monitoring for Specific Parameters
a. Pollutant Data Requirements for All POTWs
b. Pollutant Data Requirements for POTWs With Design Flows Greater Than or Equal to 0.1 mgd.
c. Additional Pollutant Data Requirements for Some POTWs
6. Effluent Monitoring for Whole Effluent Toxicity
7. Industrial Discharges
8. Discharges From RCRA/CERCLA Waste Sources
9. Combined Sewer Overflows
10. Contractors
11. Certification
G. Application Requirements for TWTDS (40 CFR 122.21(q))
1. Facility Information
2. Applicant Information
3. Permit Information
4. Indian Country
5. Topographic Map
6. Sewage Sludge Handling
7. Sewage Sludge Quality
8. Requirements for a Person Who Prepares Sewage Sludge
9. Land Application of Bulk Sewage Sludge
10. Surface Disposal
11. Incineration
12. Disposal in a Municipal Solid Waste Landfill
13. Contractors
14. Other Information
15. Signature
H. Permit Conditions for POTWs (40 CFR 122.44(j)
I. State Program Requirements (40 CFR parts 123 & 501)
III. Regulatory Requirements
A. Executive Order 12866
B. Executive Order 12875
C. Unfunded Mandates Reform Act
D. Paperwork Reduction Act
E. Regulatory Flexibility Act
F. National Technology Transfer and Advancement Act
G. Submission to Congress and the General Accounting Office
H. Executive Order 13045
I. Executive Order 13084

I. Background

A. Overview

EPA provided an extensive discussion of the background for today's rule in the proposed rule published on December 6, 1995 (60 FR 62546). For the sake of brevity, EPA refers the reader to that action for information about the background of today's rule.

B. Public Consultation in the Rule Development

EPA made efforts to consult with interested stakeholders during the development of the December 6, 1995, proposed rule. In late 1993 and early 1994, EPA sought feedback on draft forms and other elements of the proposal from States with approved NPDES programs, local governments, the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), the Association of Metropolitan Sewerage Agencies (AMSA), the California Association of Sanitation Agencies (CASA), the Water Environment Federation (WEF), and several environmental groups. In response to this outreach effort, EPA received written comments from a dozen States, several municipalities, and from AMSA. EPA also met with State and municipal representatives and participated in a conference call with representatives from ten POTWs and two States.

EPA received 59 comments during the public comment period on the proposed rule and made numerous changes to the rule and the forms in response to the comments. Specific comments are mentioned throughout today's preamble in the applicable sections.

II. Description of Today's Final Rule and Response to Comments

A. Scope of Today's Rulemaking

Today's document finalizes two sets of application requirements and corresponding permit application forms, and provides instructions for each. Section 122.21(j) contains application requirements pertaining to wastewater treatment and discharge into and from publicly owned treatment works (POTWs). The requirements are incorporated into the new Form 2A which replaces Standard Form A and Short Form A, both of which were developed in 1973. Section 122.21(q) contains application requirements pertaining to generation, treatment, and disposal of sewage sludge at POTWs and other treatment works treating domestic sewage (TWTDS). These requirements are incorporated into the new Form 2S which replaces the Interim Sewage Sludge Permit Application Form.

EPA promulgates these application regulations and publishes the new forms for several reasons. First, this rulemaking addresses changes to the NPDES program since 1973. The NPDES program applicable to POTWs has changed significantly since that time, specifically in the areas of toxics control, water quality-based permitting and pretreatment programs. Second, the rule consolidates application requirements from existing regulations into a "modular" permit application form, thereby streamlining and clarifying the process for permit applicants. Third, these revisions provide permit writers with the information necessary to develop appropriate NPDES permits consistent with requirements of the Clean Water Act and thus, also provide greater certainty for permittees that compliance with their permits constitutes compliance with the CWA. Fourth, the Agency seeks to reduce redundant reporting by allowing NPDES permitting authorities to waive certain information requirements where information is already available to the permitting authority and, finally, to provide a platform for electronic data transmission.

EPA will use the forms in States where the Agency administers the NPDES and/or sewage sludge programs. Authorized States may choose to use these forms because the forms will provide the required application information. Authorized States can also elect to use forms of their own design so long as the information requested includes at least the information required by today's final permit application regulations. EPA and State authorities may request additional information from permit applicants whenever necessary to establish appropriate permit limits and conditions. See CWA sec. 308 and 402(b)(2)(B).

In the December 1995 proposal, EPA asked for comment on whether the forms and instructions should be included with the final rulemaking package. EPA received numerous comments that said that the forms and instructions should be published so they could be available for all to review along with the regulation. EPA has changed the forms significantly in response to comments and in order to facilitate electronic reporting. Therefore, EPA is publishing the forms in the new format with the final rule. The final forms and instructions are included as an appendix to today's notice, but will not be printed in the CFR.

B. Forms 2A and 2S

1. Form 2A

a. Overview. Prior to today's rule, NPDES permitting authorities generally gathered POTW data using Form 1, Standard Form A, and Short Form A. While all these forms are approved Federal forms, the NPDES regulations did not require use of the forms by POTWs when applying for a permit. Standard Form A was intended to be used by all POTWs with a design flow equal to or exceeding one million gallons per day (mgd). It contains questions about the facility and collection system, discharges to and from the facility (including information on some specific pollutant parameters), and planned improvements and implementation schedules. Short Form A was intended for use by all POTWs with a design flow of less than one mgd. It contains only fifteen questions of a summary nature, and asks for virtually no information on specific pollutants. Many States used one or both of the Federal forms, but a number of States

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have developed forms that request information not included on the Federal forms.

The December 1995 proposed application form contained two parts, Basic Application Information and Supplemental Application Information. The basic application section was to be completed by all POTWs and contained facility information and monitoring requirements for 17 pollutants. The supplemental application information was for applicants providing data on toxic pollutants, applicants with significant industrial users, and applicants with CSOs.

During the comment period, EPA collected and scrutinized data on the types and quantities of toxic pollutants discharged by minor POTWs. EPA completed an evaluation of existing data sources and conducted toxic monitoring at selected minor POTWs. The results were published as "Evaluation of the Presence of Priority Pollutants in the Discharges of Minor POTWs" in June 1996. Copies of the report were sent to all State NPDES coordinators and an electronic version is available on the Office of Wastewater Management Home page (www.epa.gov/owm). The Study included a query of the Permit Compliance System (PCS), EPA's nationwide database for storing NPDES permit information. The June 1996 Study compiled the information from a PCS query for minor POTW data from 1990 to the present, an evaluation of minor POTW data provided by State agencies, and on-site monitoring for selected toxics at 86 minor POTWs located throughout the country.

Based on the information from the Minor POTW Study and comments received on the proposal, EPA decided to modify the proposed application requirement to reduce the information required from facilities under 0.1 mgd. The 0.1 mgd cut-off was based on data from the EPA Permit Compliance System (PCS). The data showed that facilities with design flows greater than 1.0 mgd (major facilities) account for 94.6% of the total POTW flow nationwide. Facilities with design flows between 1.0 mgd and 0.1 mgd account for 5% of the total flow. The remaining 0.4% of the nationwide POTW flow is discharged by facilities with design flows less than 0.1 mgd. A facility with a design flow of less than 0.1 mgd typically serves a population of 1,000 people or less. Approximately 40% of all POTWs fall into this less than 0.1 mgd category. Because these POTWs serve very small communities that contribute a small amount of flow (usually without an industrial influent component), EPA determined that requiring less information from these POTWs would reduce the costs associated with analytic monitoring without significantly affecting the information otherwise needed by permit writers.

Today's Form 2A still contains two parts, but the Basic Application Information has been subdivided to reduce the requirements for facilities with a design flow under 0.1 mgd. The "Basic Application Information for All Applicants" part includes information about the collection system and the treatment plant, general information concerning the types of discharges from the treatment plant, identification of outfalls, and effluent monitoring data from the plant for 6 parameters. The requirements are expanded to include effluent monitoring for 14 parameters and several additional questions for POTWs with design flows greater than or equal to 0.1 mgd but less than 1.0 mgd and without pretreatment programs. Larger POTWs and pretreatment POTWs must submit the information requested in the "Supplemental Application Information" part of Form 2A, which requires effluent monitoring data for metals and organic compounds, as well as the parameters required for smaller POTWs. This part also requires results of whole effluent toxicity tests, information on significant industrial users, and information on combined sewer overflows (CSOs) if applicable.

b. Applicability to Privately Owned and Federally Owned Treatment Works.

As in the case of existing Standard Form A and Short Form A, Form 2A and the application requirements at § 122.21(j) are required only for POTWs. EPA believes, however, that NPDES permitting authorities have the discretion to use the form on a case-by-case basis for treatment works that are not owned by a State or municipality. As previously discussed, the NPDES program has evolved considerably since EPA promulgated Standard Form A and Short Form A in 1973. The program can clearly be applied to facilities that are similar to POTWs but which do not meet the regulatory definition of "publicly owned treatment works" (POTWs). Although not owned by States or municipalities, such facilities nevertheless may receive predominantly domestic wastewater, provide physical and/or biological treatment, and discharge effluent to waters of the United States. Such facilities include Federally owned treatment works (FOTWs) and privately owned treatment works that treat primarily domestic wastewater.

EPA received eight comments regarding FOTWs and privately owned treatment works. All but one favored expansion of POTW application requirements to facilities that operate similarly to POTWs but that may be Federally or privately owned. One commenter stated that the current system of different forms for treatment works based on ownership creates an artificial difference between facilities. Other commenters agreed and felt that all facilities that operate similarly should complete the same application form. A commenter representing the Department of Defense provided comments on the similarities between FOTWs and POTWs based on size and scope of activities at military installations and compared the installations to small cities. The commenter argued that statutory differences prevent EPA from requiring the same information from Federal facilities that operate similarly to POTWs.

EPA is aware that Federal and State permitting authorities use a number of mechanisms for obtaining NPDES permit application information from non-POTW treatment works. These mechanisms include Standard Form A, Short Form A, Form 2C ("Existing Manufacturing, Commercial, Mining, and Silvicultural Operations"), and Form 2E ("Facilities Which Do Not Discharge Process Wastewater"). EPA believes that Form 2A is often the most appropriate application form for non-POTW treatment works.

Nevertheless, EPA is not requiring the Form 2A information from non-POTW treatment works. Despite many functional similarities to POTWs, such facilities do not share the same regulatory requirements. Non-POTW treatment works are not required under the CWA, for example, to develop pretreatment programs. The CWA does not require such facilities to meet secondary treatment requirements, though permits for such facilities often apply secondary treatment based limits after a best professional judgement evaluation has been performed by the permit writer. NPDES regulations do not require such facilities to report results of whole effluent toxicity testing with their permit applications. For these facilities, uniformly requiring the same information required in Form 2A might be unnecessary. EPA has added language to the introductory paragraph of § 122.21(j) of today's final rule that allows the Director to require such facilities to comply with the POTW application requirements (e.g. through Form 2A) on a case-by-case basis. This discretion will provide NPDES permit writers with the information necessary to develop permits for facilities that may operate similarly to POTWs but that do not meet the regulatory definition.

2. Form 2S

a. Overview. Today, EPA finalizes a new form, Form 2S, to collect information on sewage sludge from treatment works treating domestic sewage (TWTDS). The term "treatment works treating domestic sewage" is a broad one, intended to reach facilities that generate sewage sludge or effectively change its pollutant characteristics as well as facilities that control its disposal. The term includes all POTWs and other facilities that treat domestic wastewater. It also includes facilities that do not treat domestic wastewater but that treat or dispose of sewage sludge, such as sewage sludge incinerators, composting facilities, commercial sewage sludge handlers that process sludge for distribution, and sites used for sewage sludge disposal. In addition, EPA may designate a facility a TWTDS when the facility's sludge quality or sludge handling, use, or disposal practices have the potential to adversely effect public health and the environment. Individual septic tanks or similar devices are not considered TWTDS.

EPA recognizes that the term "biosolids" is now being used by professional organizations and other stakeholders in place of "sewage sludge" to emphasize that it is a resource that can be recycled beneficially. EPA intends to work with these stakeholders to define the term "biosolids" consistent with the definition of "sewage sludge" in the CWA. Until then, EPA will continue to refer to sewage sludge in its regulations.

Form 2S consists of 2 sections. Part 1 asks for limited background information rather than a complete permit application. Only the information in Part 1 must be submitted by "sludge-only" facilities, i.e. facilities that do not discharge wastewater to surface waters, unless the permit writer determines that the information in Part 2 must also be provided. It is intended to give the permitting authority enough information to decide whether or not to issue a permit to that facility. The information in Part 2 must be submitted by all TWTDS with an NPDES permit and "sludge-only" facilities that have been asked by the permitting authority to submit a complete permit application.

b. Clarification of TWTDS. No change was proposed in the definition of TWTDS or who is required to provide the information in Form 2S, but EPA received several comments with questions or misconceptions on this subject. Since EPA did not propose to change nor solicit comments on the existing definition, EPA considers those comments on the definition to be beyond the scope of the proposal. Nonetheless, EPA provides clarifications of how it interprets the existing definition to assist in compliance with the existing rules. The first point of clarification is how sewage sludge land application sites (i.e., the land) fit into the definition of Treatment Works Treating Domestic Sewage (TWTDS). While the definition does include "land dedicated for the disposal of sewage sludge," i.e., surface disposal sites, the definition does not include land application sites. A "land application site" is the land where sewage sludge is used to condition soil or fertilize crops or vegetation. EPA makes a distinction between *disposal* at a surface disposal site and *use* (also referred to as "beneficial reuse") at a land application site.

Commenters also asked questions about who must apply for a permit. Industrial treatment works that treat domestic sewage along with process wastes are TWTDS unless they generate hazardous sludge. However, EPA determined that it did not have enough information about these facilities to regulate them under Part 503, and it would be difficult to find a technical basis for routine case-by-case permitting. Since there are no Part 503 standards for industrial treatment works, there are no requirements to put in a permit. Therefore, even though these facilities are TWTDS, they are not required to apply for a sewage sludge permit at this time. Today's rule clarifies this issue by stating that "all TWTDS whose sewage sludge use or disposal practice is *regulated by Part 503* must submit a permit application * * *".

If EPA promulgates technical standards for industrial facilities in the future, they would then be required to apply for a permit. The permitting authority can, of course, ask for an application and issue a permit to an industrial facility if a permit is deemed necessary to protect public health and the environment (54 FR 18727, 58 FR 9324 & 9406). In those rare situations where an industrial facility treats domestic sewage and industrial wastewater through totally separate treatment trains, the facility would be required to apply for a permit for its domestic sludge, but not for its industrial sludge.

One commenter raised the situation of TWTDS that use a community septic tank with the effluent routed to a recirculating sand filter. The commenter questioned whether this type of a facility was a TWTDS because septic tanks are excluded from the definition of TWTDS. EPA intended the septic tank exclusion to refer to individual septic tanks because the Agency did not believe it was necessary to ask for information from individual homeowners. EPA believes that community systems that include septic tanks are TWTDS.

Because the type of facility identified by this commenter does not discharge, it probably would not have an NPDES permit. As a "sludge-only" facility, it is required to submit only limited background information (§ 122.21 (c)(2)(iii) (A) through (E)) when a sewage sludge standard applies to the facility's use or disposal practice. The TWTDS is not required to submit any additional application information unless the permitting authority requests a full permit application.

If there is no Part 503 standard for the facility's use or disposal practice, the owner/operator of the facility is not automatically required to submit a permit application. For example, if the sewage sludge from this septic tank is taken to a POTW, the limited background information does not have to be submitted because Part 503 does not apply to this type of disposal method. If the owner/operator of this facility wanted to stop taking its sewage sludge to a POTW and start applying it to the land, it would be required to submit the limited background information to the permitting authority 180 days before changing its use or disposal practice. In addition, because this facility is a TWTDS, the permitting authority can require a permit application at any time if a permit is deemed necessary to protect public health and the environment.

One commenter stated that his State did not make a distinction between NPDES and non-NPDES facilities in setting permitting priorities and would require all TWTDS to submit a full permit application. Another commenter thought that EPA should not make such a distinction in its rules. EPA decided to stagger permit applications and require less information from non-discharging facilities in the February 19, 1993 amendments to Parts 122 and 501 (58 FR 9404). Permitting authorities have the option to require complete permit applications from all TWTDS at any time.

EPA received a comment that asked whether a POTW with a non-discharging lagoon system must apply for a permit. If the lagoon is part of the

waste treatment system and there is no sewage sludge being removed, there is no use or disposal practice to trigger an application requirement. Before sewage sludge is removed from the lagoon and used or disposed in a manner regulated by Part 503, however, the TWTDS must provide limited background information to the permitting authority.

As with any TWTDS, the permitting authority can require a permit application at any time if a permit is deemed necessary to protect public health and the environment. Such circumstances may arise where the permitting authority may ask for an application even after the sewage sludge has been sitting in the lagoon for several years. The permitting authority will decide, for example, whether the sewage sludge lagoon is truly part of the treatment process or a storage lagoon, or whether the lagoon should be regulated as a surface disposal site.

The regulatory situation is similar for a discharging lagoon, where the NPDES permitting authority should already have information about the treatment process. When the sewage sludge permitting authority is also the NPDES permitting authority, EPA expects that they would already know how the TWTDS's sewage sludge should be regulated.

3. Reasons for Separate Form 2A and Form 2S

EPA today publishes two separate forms for municipal wastewater discharges and for sewage sludge for several reasons. First, the requirements represented by the two forms differ in their applicability. The NPDES permit application requirements collected in Form 2A apply only to POTWs; the sewage sludge information requirements collected in Form 2S apply to all TWTDS, not just POTWs. Most facilities that generate, treat, or dispose of sewage sludge are POTWs, and will be required to submit both application forms. Several thousand TWTDS, however, do not discharge to surface waters and therefore are not required to have NPDES permits. Thus, such TWTDS are subject to sewage sludge requirements (Form 2S) but not to NPDES requirements (Form 2A).

Second, separate application forms are also appropriate because wastewater and sewage sludge may be regulated by different permitting authorities. In 43 States and territories, the NPDES program is administered at the State level through an EPA-approved NPDES program. There are currently only 3 States that administer an EPA-approved sewage sludge program. Therefore, until more States are authorized to administer the federal sewage sludge program, POTWs in most NPDES States will obtain NPDES permits from the State permitting authority (by submitting Form 2A or a similar State form to the State) and sewage sludge permits from EPA (by submitting Form 2S to the EPA Regional Office). Separate application forms will facilitate this bifurcated permitting process. In addition, even when a State sludge permitting program is approved, the program will not necessarily be administered by the State's NPDES permitting authority. For example, a POTW in a State with both NPDES and sewage sludge permitting authority could receive its NPDES permit from the water pollution control agency and its sewage sludge permit from a solid waste management agency. Separate Forms 2A and 2S will also acilitate permitting in this situation.

EPA received three comments supporting the use of separate forms. One of these commenters emphasized that applicants should be able to cross reference information submitted on the other form. As discussed in more detail in section II.G of today's preamble, applicants are allowed to photocopy other forms, or reference information that they know was previously submitted to the same permitting authority.

EPA also received several comments that suggested either combining parts of 2A and 2S or further separating them into segments applicable to different types of facilities. EPA considered many different types of form structures before proposing 2A and 2S and reconsidered the forms based on suggestions from commenters. While no form is ideal for all situations, EPA believes that the forms accompanying today's rule represent the best division of information for most applicants. Authorized States are free to create their own State forms as long as the forms request the same minimum information.

4. Electronic Application Forms

Consistent with recent amendments to the Paperwork Reduction Act, the Agency is developing electronic data submission as an alternative format for permit application. The use of electronic media should help to streamline the application process and to reduce the amount of repetition associated with completing application forms that are currently available only in hard copy. As previously noted, the elimination of redundant reporting is one of the goals of today's rulemaking.

EPA's first step in the submission of electronic data is the development of an electronic version of the application form. The Agency has developed such an electronic version, which is available by contacting the persons listed in the **FOR FURTHER INFORMATION** Section of this preamble or on the Internet from the EPA Home Page (www.epa.gov). The application forms will be made available in Word and Windows Wizard formats and include instructions that guide the applicant through the form. Some authorized States are also considering electronic reporting. EPA believes that providing the forms in an easily manipulated software will also assist States that want to use electronic permit applications.

EPA received 21 comments on the issue of electronic reporting. Most of the commenters agreed with the concept of electronic reporting for application forms but were concerned about implementation. A few commenters thought it was not a feasible option for small facilities. The major implementation issues from the comments include: signature; hardware; and software needs. Electronic permit application reporting options range from transmitting data electronically, submitting disk copies, or submitting hard copy permit applications provided to the applicant in an electronic format. The most feasible option currently available involves electronic forms that can be distributed and completed electronically, and subsequently printed, signed, and submitted. EPA continues to explore options for electronic permit application transmission.

C. Endangered Species and Historic Properties

In the December 1995 proposed rule, EPA invited comments related to information about endangered species and historic properties. Specifically, if EPA established permit application questions about endangered and threatened species (listed species) or historic properties, what kind of information could or should the permit applicant provide? Would it be appropriate to request that the permit applicant identify whether there are listed species or historic properties in the area of the POTW discharge or sewage sludge use or disposal site? How could or should EPA provide applicants with flexibility to assist regulatory officials in the consideration of potential impacts of activities on listed species or historic properties?

Most commenters stated that EPA should not require any information in the permit application. The commenters felt strongly that they did not want applicants to determine what listed species or historic properties would be affected by their discharge. The commenters felt this was information that is more easily obtained by the permitting authority.

EPA is not requiring information about listed species or historic properties in today's rule. In many permitting situations, this information may already reside with the permitting authority and therefore EPA believes it would be of little use to require all applicants to submit this information. However, some permit applicants may already have information regarding listed species and historic properties or may be better able than the permitting authority to obtain such information. In such cases, permitting authorities may require such information from applicants on a case-by-case basis.

EPA is also working with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to develop procedures to more closely coordinate efforts to protect water quality and listed species including the use of Endangered Species Act Section 7 consultations for EPA-issued permits and other Federal actions where appropriate.

D. Definitions

In the proposed rule, EPA proposed to revise the definition of the term "POTW," as defined in 40 CFR Part 122 to conform more exactly with the definition of the term at 40 CFR Part 403. The proposed change, however, appeared to create confusion. EPA received 12 comments on this issue. Several commenters agreed that the definitions should be consistent. Most of the commenters raised various issues that they thought might be affected by the changed definition. One commenter thought that the Part 403 definition was too confusing and should not be used. Another thought EPA should consider that other federal regulatory programs, such as hazardous waste management programs, include references to "POTWs" and could be affected by a change in the NPDES definition. After considering the comments, EPA has decided that it is not necessary to change the definition because the existing definitions are not inconsistent (even though the Part 403 definition contains more detail related to Pretreatment Program requirements). Therefore, today's rule does not change the definition of the term "POTW" in Part 122.

E. Requirements Concerning the Use of Forms (§§ 122.21(a), (c), (d) and (f))

EPA today finalizes revisions to the existing general application requirements for all NPDES permittees, which can be satisfied by the use of Forms 2A and 2S by applicants for EPA-issued permits. Today's rule does not require applicants using these forms to use Form 1, because the same information is requested on Forms 2A and 2S. The final rule substantially incorporates the requirements of § 122.21(f) for Form 1 into the requirements of §§ 122.21(j) for Form 2A and 122.21(q) for Form 2S.

On December 11, 1996 (61 FR 65268), EPA proposed a rule to streamline various parts of the NPDES regulations (NPDES streamlining proposal). One of the changes proposed would consolidate the requirements of §§ 122.1(d)(1) and 122.21(d)(3) and move them to a new paragraph, § 122.21(a)(2). Both of these sections dealt with application requirements and were duplicative. EPA believed § 122.21(a) would be a more appropriate location because that subsection pertains to all permit applicants, whereas § 122.21(d) applies to permit reapplications. Section 122.1 is also not a particularly suitable location because it concerns the scope of the NPDES program and not application requirements. EPA proposed to retain the current § 122.21(a) regulation in new § 122.21(a)(1). The Agency proposed to remove § 122.21(d)(3) and reserve the section for future use.

In the proposal for today's rule, EPA proposed changes in the application requirements (paragraph (d)(3)) to reference the new application requirements for POTWs and TWTDS (§§ 122.21(j) and (q)) and Forms 2A and 2S. To avoid confusion and to simplify the changes, EPA decided to make all the changes to §§ 122.21(a) through (d) in today's final rule. Other changes in the NPDES streamlining proposal will be finalized in a later notice. EPA received only favorable comments on these changes in both proposals. Therefore, today's rule deletes § 122.21(d)(3). The requirements in existing § 122.21(a) have been moved to a new § 122.21(a)(1) and modified to clarify that a sludge-only facility must submit a permit for its use or disposal practice only if the practice is regulated by Part 503.

New § 122.21(a)(2) contains the requirements previously included in §§ 122.1(d)(1) and 122.21(d)(3). One commenter on the NPDES streamlining proposal thought that the wording for the storm water-related application forms needed clarification. This language was simply moved from § 122.26(c)(1) and was not changed in the proposal. However, EPA agrees that some of the commenter's suggestions provide clarification and the language of § 122.21(a)(2)(i)(G) has been modified accordingly. This section is finalized as proposed in the NPDES streamlining proposal, with a few minor changes that clarify who is required to submit each form.

As mentioned above in section II.B.4, EPA received numerous comments that support the concept of electronically submitted forms. Section 122.21(a)(2)(ii) explains that electronic forms can be used if approved by EPA or an NPDES authorized State.

Both the municipal/sewage permit applications proposal and the NPDES streamlining proposal contained revisions to § 122.21(c)(2) to reflect the changed location of the application requirements. Section 122.21(c)(2) of today's rule reflects the changes mentioned above to §§ 122.21(a) and (d). EPA is also deleting existing § 122.21(c)(2)(i) and renumbering the remaining paragraphs of § 122.21(c)(2). This provision was intended to allow the permitting authority to obtain applications for sewage sludge incinerators and others who requested site-specific pollutant limits before authorization for other sewage sludge use or disposal practices because these permits would take the most time to issue and EPA believed that incinerators pose the greatest risk to public health. However, there have been few requests for site-specific permits. In addition, changes to Part 503 (60 FR 54771) make the incineration standard totally self-implementing along with the rest of the rule, i.e., the standard must be met whether or not a permit is issued. Therefore, this paragraph is no longer necessary. As described in § 122.21(c)(2)(iii), the Director may require permit applications from any TWTDS at any time if necessary to protect public health and the environment.

EPA received a comment on § 122.21(q)(8) that refers to existing § 122.21(c)(2)(iii)(C), now renumbered as § 122.21(c)(2)(ii)(C). Paragraph (c)(2)(ii) lists the limited background information requested of non-NPDES TWTDS. In § 122.21(q)(8), if sewage sludge meets the "exceptional quality" (EQ) requirements, no additional information is required about land application sites or facilities that further treat the sewage sludge. As pointed out by the commenter, § 122.21(c)(2)(ii)(C) should also be modified to require less information for "EQ" sewage sludge to provide consistency with the full permit application requirements. Therefore, today's rule modifies § 122.21(c)(2)(ii)(C) and does not require the applicant to provide the name and address of facilities where sewage sludge is sent for treatment or disposal

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and the location of land application sites if the sewage sludge meets the "EQ" requirements.

F. Application Requirements for POTWs (40 CFR 122.21(j))

The regulations in § 122.21 (j) provide the application requirements for POTWs. Submittal of a complete Form 2A satisfies the application requirements of this section. POTWs may also satisfy the requirements of this section by completing a State-issued version of the form which has been approved by the State Director.

In the proposal for today's rule, EPA acknowledged concerns relating to redundant reporting raised by State and municipal commenters during consultation. EPA proposed the introductory paragraph of § 122.21(j) to allow the Director to waive any requirement in paragraph (j) if the Director has access to substantially identical information. EPA solicited comment on this approach and other ways to provide the permitting authority with discretion to waive particular information requirements where he or she determines that such information is not necessary for the application.

EPA received numerous responses to the waiver question. Most of the commenters agreed that the Director should be allowed to waive any requirement in paragraph (j) if he or she already has access to the information. Several commenters also stated that applicants should be able to reference previously submitted information that is still accurate rather than resubmit the data. For example, commenters mentioned that much of the information required in the permit application has already been submitted to the same permitting authority in the permittee's reports.

In response, EPA has modified today's final rule to allow applicants to provide information by referencing (in their application) how and when the applicant previously submitted the information. Applicants should be very specific when referencing information so the permitting authority has no difficulty in locating the previous submission. Permitting authorities should recognize the need to keep information available for future action and to ensure the availability of information submitted to various departments. All referenced information should also be incorporated into the administrative record for the permit application.

Many of the commenters also felt that EPA should go further than the proposal and allow a waiver for any requirement that an authorized NPDES State feels is not necessary for the application. EPA has considered this option, and has modified § 122.21(j) of today's rule to provide States with the ability to waive any requirement of § 122.21(j) that the State believes is not of material concern for a specific permit, if approved by the Regional Administrator.

In developing this change from the proposal, EPA attempted to anticipate and avoid confusion in implementation. The primary actors involved in the process for request and approval of waivers are authorized NPDES States and EPA Regions. The permit applicant would be most significantly impacted by this process. EPA intends that, if the authorized NPDES State complies with (and the permit applicant is mindful of) the waiver approval process, then the permit applicant will avoid any adverse legal consequences related to the permit application phase. The two areas of concern are administrative continuation of expired permits (and "completeness" of re-applications), and the scope of the authorization to discharge, also referred to as the "permit shield."

The goal of the application requirements is to provide the permit writer with the information necessary to develop appropriate NPDES permits consistent with requirements of the CWA. The "permit shield" provided by Clean Water Act section 402(k) is predicated on the permit writer's presumed knowledge of the discharge. If a permit application contains information about specific pollutants, waste streams, or processes, then the permit writer is legally presumed to have knowledge about them. The "permit shield" applies whether or not the permit writer imposes regulatory controls in the permit based on that presumed knowledge. The Agency believes that the application information required under today's rule is necessary for the permit writer to consider in developing a permit, so a case-specific waiver may affect the scope of knowledge that EPA presumes of the permit writer. If the waiver approval processes are not followed and the permit applicant does not submit required information, then the scope of the permit shield is questionable. If the waiver approval processes are followed, the scope of the permit shield will not be affected.

When the permitting authority wishes to waive the submission of information, the Director must request approval for the waiver from the Regional Administrator. This request must include documentation that provides justification for the waiver. Section 123.43(b) has been amended to include provisions for this waiver of information. If a waiver is approved by EPA, the justification for the waiver must appear in the permit fact sheet for each facility receiving the waiver. A new paragraph (9) has been added to § 124.8(b) to include this fact sheet requirement.

As with the scope of the permit shield, the waiver opportunity may affect the validity of authorization to discharge under an expired permit. In order to discharge under an expired permit, a permittee must submit a timely and complete application for renewal prior to expiration. The waiver opportunities under today's rule may affect the determination of whether an application is "complete." EPA has added a new paragraph (e)(2) to § 122.21(e) to clarify the completeness requirements. If a State submits its waiver request within 210 days of permit expiration and EPA either approves the waiver or does not act on the waiver within 30 days, the permit application is considered "complete." If EPA disapproves the waiver, the permit application based on the waiver is not "complete."

EPA plans to develop guidance, in consultation with States and other interested stakeholders, to assist the Regions in making determinations for waivers. EPA expects to have this guidance finalized within approximately two years. Until this guidance is completed, EPA and the States must work together to decide on appropriate waivers. The performance partnership agreement process is one forum for determining such appropriateness.

1. Permit-as-a-Shield

Section 402(k) of the CWA, also known as the "permit shield" provision, provides that compliance with an NPDES permit shall be deemed compliance, for purposes of Section 309 and 505 enforcement, with Section 301, 302, 306, 307, and 403 of the CWA (except for any standard imposed under Section 307 for toxic pollutants injurious to human health). In response to questions raised regarding EPA's interpretation of the scope of the "shield" associated with NPDES permits under the CWA, EPA issued a policy statement on July 1, 1994, to describe the Agency's policy on the scope of the authorization by EPA to discharge under an NPDES permit and the "shield" thus associated with permit authorization.

As part of an application for an individual NPDES permit, EPA requires that an applicant provide certain information on its facility. Previous application requirements for municipal

discharges focused primarily on the operation and treatment processes at the municipal treatment works, although some quantitative information is also required.

Historically, EPA has viewed the permit, together with material submitted during the application process and information in the public record accompanying the permit, as important bases for an authorization to discharge under CWA section 402. The availability of the section 402(k) shield is predicated upon the issuance of an NPDES permit and a permittee's full compliance with all applicable application requirements, any additional information requests made by the permit authority and any applicable notification requirements under 40 CFR §§ 122.41(l) and 122.42, as well as any additional requirements specified in the permit.

On April 11, 1995, EPA reissued the memorandum to clarify that a discharger must provide all information in writing for the permit record in order to obtain the authorization to discharge and the "shield" provided by a National Pollutant Discharge Elimination System permit. EPA explained that a permit provides authorization and therefore a shield for the following pollutants resulting from facility processes, waste streams and operations that have been clearly identified in writing in the permit application process when discharged from specified outfalls:

(1) Pollutants specifically limited in the permit or pollutants which the permit, fact sheet, or administrative record explicitly identify as controlled through indicator parameters (of course, authorization is only provided to discharge such pollutants within the limits and subject to the conditions set forth in the permit);

(2) Pollutants for which the permit authority has not established limits or other permit conditions, but which are specifically identified in writing as present in facility discharges during the permit application process and contained in the administrative record which is available to the public; and

(3) Pollutants not identified as present but which are constituents of waste streams, operations or processes that were clearly identified in writing during the permit application process (the permit, of course, may explicitly prohibit or limit the scope of such discharges) and contained in the administrative record which is available to the public.

With respect to subparts 2 and 3 of the permit authorization described above, EPA recognizes that a discharger may make changes to its permitted facility (which contribute pollutants to the effluent at a permitted outfall) during the effective period of the NPDES permit. Pollutants associated with these changes (provided they are within the scope of the operations identified in the permit application) are also authorized provided the discharger has complied in a timely manner with all applicable notification requirements, assuming the permit does not otherwise limit or prohibit such discharges. See 40 CFR 122.41(l) and 122.42(a)&(b). Section 122.42(b) requires that POTWs must provide adequate notice, including information on the quality and quantity of discharges to the POTW and anticipated impacts on the quantity or quality of effluent discharged by the POTW, of new introductions of pollutants by indirect dischargers into the POTW and any substantial change in the volume or character of pollutants being introduced by sources introducing pollutants into the POTW at the time of permit issuance.

Notwithstanding any pollutants that may be authorized pursuant to subparts 1 and 2 above, an NPDES permit does not authorize the discharge of any pollutants associated with waste streams, operations, or processes which existed at the time of the permit application and which were not clearly identified during the application process.

In the policy statement, EPA committed to revise the NPDES permit application regulations for both municipal and industrial discharges, so as to ensure that applicants would have the responsibility to characterize more fully the nature of their effluents and the contributions of their effluents to receiving waters. EPA stated that, in addressing this issue, it would review its position on the scope of the permit shield provided by section 402(k).

Generally, the discharger is in the best position to know the nature of its discharge and potential sources of pollutants. Consequently, requiring as full a disclosure as technically possible in the permit application is one option EPA considered in light of the protection afforded the discharger by the permit shield. In the case of POTWs, however, providing a permit shield only for pollutant discharges fully and completely characterized in the permit application could represent a significant burden on POTWs if they were required to identify every pollutant discharged due to the wide variation in potential pollutant contributions into POTW sewer systems from industrial users and residential dischargers, both in terms of pollutant parameters and volumes. Narrowing the scope of the shield and consequent expansion of potential liability would likely raise the cost associated with the failure to anticipate, detect, and provide information on these discharges.

EPA was concerned that, using the 1973 application form, permitting authorities would not always receive the necessary information about an applicant's discharge to develop adequate permits consistent with the requirements of the CWA. In practice, permitting authorities have been requiring supplemental information in order to write credible permits. Today's rule updates the POTW discharge application requirements and § 122.21(j), to provide necessary information to permit writers and to streamline the permitting process by ensuring that the information needed from most applicants is consolidated onto a single form.

Fourteen commenters responded on the issue of the permit application requirements and the permittee's responsibility to fully characterize its waste stream for permit shield protection under the 1995 policy. All but two of the commenters thought that the requirements did not need to be expanded to include more information than the § 122.21(j) requirements of today's rule. Several commenters thought that permitting authorities already have access to a great deal of discharge data and have the authority to ask for additional data when necessary. In the commenters' view, these information sources, such as pretreatment program POTW annual reports, provide enough information for a permit writer to determine what pollutants can be expected in a POTW's influent from industrial sources, and this information falls within the boundaries of the permit-as-a-shield policy. EPA agrees that some required information that may be found in reports previously submitted to the permitting agency falls within the permit-as-a-shield policy. Today's rule allows reports to be referenced by the permittee in the application form provided they are incorporated into the administrative record for the application.

The proposal for this rule requested comment on whether EPA should ask for information on beach closings, fish kills, or citizens' complaints. Commenters did not believe that asking for any of this information would provide any additional benefit to the permit writer. Two of the commenters thought that a general question such as "Does the permittee have any other information on pollutants not otherwise requested on the forms?" might be

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useful. EPA does not at this time believe additional generic questions are necessary on the permit application because the permitting authority already has access to much of this information.

EPA has concluded that the application requirements in § 122.21(j) of today's rule are sufficient to provide the permitting authority with a reasonable characterization of a permittee's discharge for protection under the permit-as-a-shield policy. Accordingly, the application requirements have not been expanded to include any further questions on beach closings, fish kills, or citizen complaints nor have the requirements been expanded to include a general question on other pollutants.

Since the initial proposal, questions have arisen regarding interpretation of one aspect of the Agency's permit-as-a-shield policy, specifically, applicability of the permit shield to discharges from outfalls identified in the permit application, but not identified or discussed in the permit. Because today's rule requires in the application specific identification of outfalls, including outfalls within the collection system (upstream from the POTW treatment plant), the Agency provides clarification and explicit notice to affected parties of its interpretation of the permit shield, as explained below. This interpretation further clarifies the Agency's April 11, 1995, policy memorandum addressing the shield.

EPA believes that the protection afforded by the permit-as-a-shield provision does not apply to discharges from outfalls or other locations not identified in the permit. EPA believes this interpretation best effectuates the requirements of CWA section 301, which specifies pollutant control standards applicable to discharges. EPA believes that a permit applicant may reasonably expect a permit "shield" when the permitting authority applies its technical expertise to derive permit conditions and effluent limitations based on a permit application that fully discloses the nature of the effluent to be discharged. Permittees cannot, however, reasonably expect a permit "shield" for discharges from outfalls identified in a permit application, but not specifically authorized in a permit. There needs to be some explicit acknowledgment by the permitting authority that discharge from that specific outfall is permissible. Such a discharge would be subject to the technology-based and water quality-based requirements of the CWA. This is distinguished from the Agency's approach for pollutants identified in the application but not limited in the permit because here it is clear that the permitting authority, by choosing at least one pollutant to measure or limit, chose not to establish limits for other pollutants.

This aspect of the Agency's permit-as-a-shield policy is particularly relevant for "emergency" or "accidental" discharges from locations within municipal sewage collection systems not identified in the permit which would not automatically receive the protection of the permit-as-a-shield provision. Rather, the legal status of these discharges is specifically related to the permit language and the circumstances under which the discharge occurs. The Agency notes that NPDES permit regulations do provide limited relief under the bypass and upset provisions of 40 CFR 122.44(m) and (n), respectively, for such discharges. The Agency is currently developing guidance that would clarify the applicability of the bypass and upset provisions to such discharges.

2. Basic Application Information

The December 1995 proposal would have required all POTW applicants to provide the information requested in § 122.21(j)(1) and the 18 questions in the Basic Application Information part of Form 2A. Many commenters suggested that the requirements were not appropriate for smaller facilities and would require these smaller facilities to collect data that might not be utilized in the permitting process. Based on these comments, EPA has restructured the application requirements and Form 2A questions to request less information from smaller facilities. EPA believes the requirements that remain in today's rule will result in the collection of the minimum information a permitting authority needs to issue a permit meeting CWA requirements.

In today's final rule, the basic application requirements in proposed § 122.21(j)(1) have been divided into two sections. Section 122.21(j)(1) contains the requirements for all applicants and requests very limited facility and process information, and 122.21(j)(2) contains additional questions and limited monitoring information. EPA carefully examined the proposed requirements for all facilities and, in conjunction with the comments received, determined the final rule requirements found in § 122.21(j)(1) for very small facilities. Many commenters stated that very small facilities would be able to provide basic information, such as location, discharge methods, and type of treatment. Additional information, such as inflow and infiltration, topographic maps, and process flow diagrams may be more difficult to provide because these facilities lack the resources to provide this information. EPA evaluated each application requirement to determine the impact on the application and permitting process. As discussed earlier in this rulemaking, EPA determined that facilities discharging less than 0.1 mgd account for only 0.4% of the total flow from all POTWs. Additionally, these small facilities are often "package" systems receiving mainly residential sewage discharges. The basic nature of these facilities and their small impact in terms of flow on receiving waters, supported the decision to reduce the application requirements. The information requested in § 122.21(j)(1) is the minimum information a permit writer needs to write a permit that complies with the CWA.

Many paragraphs from proposed § 122.21(j)(1) have been renumbered in today's final rule. The addition of § 122.21(j)(2) to the proposed rule also causes the other paragraphs of § 122.21(j) to be renumbered, e.g., proposed § 122.21(j)(2) is § 122.21(j)(3) in today's final rule.

Section 122.21(j)(1)(i) requests treatment plant identification information. Section 122.21(j)(1)(ii) requests information about the permit applicant which may describe the owner or operator of the facility and not the facility itself. No comments were received on either of these sections, and they are unchanged from the proposed rule.

Section 122.21(j)(1)(iii) asks the applicant to provide permit numbers of any existing environmental permits that have been issued to the facility. One commenter requested clarification of the scope of this requirement because it was unclear in the proposal whether the applicant should provide information on all permits at the facility. The purpose of the requirement is to obtain information on permits related to the treatment plant operation and maintenance. EPA intended to include only environmental permits related to the permittee's treatment plant or collection system operations, e.g., under RCRA, UIC, CAA, etc. EPA does not seek information regarding permits under OSHA, general construction, or other permits that do not implement federal environmental laws. The requirement remains in the final rule.

Section 122.21(j)(1)(iv) requires the applicant to list the municipalities and populations served by the POTW. The POTW may serve several areas in addition to the municipal jurisdiction in which the POTW is located. Systems which discharge into a larger POTW are also known as satellite collection systems. This section asks the POTW to provide information on the satellite collection systems served. If known, the POTW would indicate the type of collection system used by the satellite municipalities and whether the municipality owns or maintains any part of the collection system.

The permit writer needs to know what areas are served and the actual population served in order to calculate the potential domestic sewage loading to the treatment plant. The information on the community served by the NPDES permittee is also useful for providing notice and public comment for permit reissuance and for public education. One commenter requested clarification of the term "population served." By this term, EPA means the number of users of the system. EPA has expanded this requirement from the proposal in order to obtain a more complete picture of the area served by the POTW. The additional information on the satellite systems will be used by the permit writer to identify areas where there is a potential for unpermitted discharges in the collection system prior to the treatment plant. The identified areas may necessitate further investigation.

Section 122.21(j)(1)(v) requires the applicant to report whether the POTW is located in Indian country or discharges to a receiving water that flows through Indian country. This information enables the permit writer to identify the proper permitting authority and applicable requirements, including applicable water quality standards. Today's action also incorporates the definition of "Indian country" found at 18 U.S.C. section 1151. The term "Indian country" encompasses more area than the term "Federal Indian Reservation," which was the term originally proposed. For the purposes of determining the proper permitting authority, the term "Indian country" is more appropriate because, even in States authorized to administer the NPDES program, EPA is generally the proper permitting authority in "Indian country" unless a Tribe is authorized to administer the program.

EPA received one comment on the information requirement regarding location relative to Federal Indian Reservations. The commenter felt that it might be difficult for new permittees to obtain information on discharges that might eventually flow through a Federal Indian Reservation. Readily available maps such as topographic and road maps often identify Federal Indian Reservations and other areas of Indian country, so in many cases a permittee should be able to easily obtain this information. Remaining questions should be directed to EPA Regional offices. The requirement is renumbered from proposed § 122.21(j)(1)(xii) to § 122.21(j)(1)(v).

Section 122.21(j)(1)(vi) requires the applicant to report the facility's design flow rate, annual average daily flow rate, and maximum daily inflow rate for each of the past three years. This information enables the permitting authority to calculate limits appropriate to the POTW, to alert the permitting authority to the need for special permit conditions or facility expansion, and to compare design and actual flows. Two commenters suggested this information is available from the facility's discharge monitoring reports (DMRs). EPA disagrees that this information is universally reported in all POTW DMRs but, as discussed previously, the permitting authority may waive submission of information already available to it or the applicant can reference the DMR if it contains the required information. This requirement remains unchanged from the proposal but it is renumbered from proposed § 122.21(j)(1)(v) to § 122.21(i)(1)(vi).

Section 122.21(j)(1)(vii) requires information on the type of sewer collection system used by the facility. The applicant must identify whether the collection system is a separate sanitary sewer system or a combined sewer system (conveying both storm water and sanitary wastes). The applicant must also estimate the percent of sewer line that each type comprises. Knowledge of the type of collection system enables the permit writer to determine whether the permit should include requirements based on the provisions of the 1994 CSO Control Policy (59 FR 18688). The current application form, Standard Form A, requests that the applicant provide the length of the collection system. Today's rule does not include this requirement because EPA does not believe that such information is useful to the permit writer. As noted previously, however, the application requirements do require identification of known outfalls and information about flow contributions from satellite municipalities. The latter information will be useful to identify areas within the collection system that would be particularly vulnerable to excessive flows. No comments were received on this section, and it is unchanged from the proposal but is renumbered from proposed § 122.21(j)(1)(vi) to § 122.21(j)(1)(vii).

Section 122.21(j)(1)(viii) requires general information regarding the disposition of treated wastes, whether discharged to waters of the United States, as well as to other destinations. This information enables the permit writer to account for all wastewater that enters the POTW plant, regardless of whether or not it is discharged directly to waters of the United States. From a watershed permitting standpoint, permitting authorities may use this information to identify: flows to surface impoundments; land application sites; underground injection; and flows that individually or collectively may have an impact on the watershed, whether or not they are discharged directly into waters of the U.S.

Section 122.21(j)(1)(viii)(A) of today's final rule has been modified slightly to clarify that information must be submitted about all types of outfalls throughout the sewer collection system as well as the POTW plant, including treated effluent, bypasses, CSOs, and constructed "emergency" outfalls within a separate sanitary sewer system.

If any effluent is discharged to a surface impoundment that is designed to avoid discharges to waters of the U.S., the applicant must report the location of each such surface impoundment, the annual average daily volume discharged to such surface impoundment(s), and whether the discharge is continuous or intermittent. If effluent is applied to the land, the applicant must provide the site location, the site size, and the average daily volume of effluent applied. The applicant must also state whether land application is continuous or intermittent. This information alerts the permit writer to the potential for point source discharges to arise from land application sites under exceptional circumstances, such as cold weather or high volume discharges, or from overflowing surface impoundments.

Section 122.21(j)(1)(viii)(D) requires the applicant to report whether wastewater is discharged to another treatment plant, the means by which the wastewater is transported, the average daily flow rate to that other facility, and information identifying the receiving facility. The applicant must also identify the person (owner or operator) transporting the discharge, if other than the applicant. The permit writer needs this information in order to track the wastewater and verify the transfer. One commenter questioned the need for this requirement due to the infrequent transfer of discharges among treatment works. Informal stakeholder comments indicate that this is a common practice at many POTWs, and EPA retains this requirement in today's rule.

Section 122.21(j)(1)(viii) also requires information on other types of disposal, such as underground percolation or injection, in paragraph (E). These types of disposal practices may result in the

transfer of pollutants to waters of the United States through underground flows and thus are of interest both to the permit writer in writing a watershed-based permit and to the permitting authority in designing watershed protection strategies. Section 122.21(j)(1)(viii) remains unchanged from the proposal but is renumbered from proposed § 122.21(j)(1)(xi) to § 122.21(j)(1)(viii).

3. Additional Information for Applicants With a Design Flow Greater Than or Equal to 0.1 mgd

Section 122.21(j)(2) contains additional requirements for applicants with a design flow greater than or equal to 0.1 mgd. EPA believes these requirements are necessary to account for the more complex nature of these more sophisticated facilities.

Section 122.21(j)(2)(i) requires information on estimated amount of inflow and infiltration (I&I) and steps taken and proposed to minimize it. Inflow is water other than sewage water that enters a sewerage system from sources such as roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, surface runoff, street wash waters, or drainage. Infiltration is water other than waste water that enters a sewerage system (including sewer service connections) from the ground through such means as defective pipes, pipe joints, connections, or manholes. These definitions are found at 40 CFR 35.2005.

Sixteen comments were received on this requirement, with most commenters wishing to have the requirement deleted. The commenters felt this information is difficult to quantify and could be overly burdensome for the permittee to obtain. This requirement has been eliminated for facilities under 0.1 mgd. However, for larger facilities EPA disagrees with this position. EPA does not expect facilities to complete extensive studies to provide the amount of I&I but rather to provide a best estimate based on average wet and dry weather flows. This estimate is used by the permit writer to determine if special conditions, such as I&I control programs, are necessary to reduce the unintended flow beyond the design capacity of the collection system or treatment capacity of the POTW plant. The information also helps identify portions of the collection system with potential for overflow or unplanned, untreated discharges. EPA understands that most facilities will have some amount of I&I entering their collection system and thus treatment plants. The Agency does not envision that every POTW will need special permit conditions to control I&I, for example, in cases where I&I is not excessive. The requirement applies only to facilities with a design flow equal to or greater than 0.1 mgd and has been renumbered from § 122.21(j)(1)(vii) to § 122.21(j)(2)(i).

Section 122.21(j)(2)(ii) requires the applicant to provide a topographic map (or other map if topographic map is unavailable) extending at least one mile from the boundaries of the plant, and including information on the layout of the treatment plant and all unit processes; intake and discharge structures; wells, springs, and other surface water bodies in the vicinity; sewage sludge management facilities; and the location(s) at which hazardous waste enters the treatment plant by truck, rail, or dedicated pipe.

Several commenters questioned the elements of the topographic map requirement stating that a topographic map containing this much information may be difficult to read. The contents of the map are necessary for the permit writer to understand the geography of the collection system and treatment facility and the potential for various water quality impacts due to the location of the treatment plant, the outfalls, and other structures and pipes. A topographic map helps the permitting authority identify nearby discharge sources or sensitive areas which may be necessary for a watershed-based approach to permitting. The map must include the major process units and primary structures that carry the wastewater to and from the plant. The permittee may provide another map if the topographic map is unavailable. Permittees may also provide a copy of an original topographic map. The requirement applies only to facilities with a design flow equal to or greater than 0.1 mgd and has been renumbered from § 122.21(j)(1)(viii) to § 122.21(j)(2)(ii).

This requirement is similar to section § 122.21(q)(5) of this rule that requires a topographic map for TWTDS. A facility required to comply with both sets of application requirements can use the same map if the map if the maps cover the same basic area.

Section 122.21(j)(2)(iii) requires the applicant to submit a process flow diagram or schematic, together with a narrative description. The permit writer uses this information to identify bypass and other "emergency" outfall structures and develop applicable permit conditions. Of the commenters on this requirement, half wished to keep it and half wanted it deleted. One commenter who wished to delete the requirement believed a more simplified schematic drawing should suffice. EPA does not intend this requirement to be complex. Instead, this drawing is meant to be a simple drawing of the basic unit processes with intake and discharge points labeled, as well as the design water flow identified for each component process.

This diagram requirement has been slightly modified to ask for information about backup power and identification of redundancy in the applicant's system in order to consolidate information and reduce the number of questions on the application form. Information on backup generators was included in the bypass section of proposed Form 2A but inadvertently left out of the proposed rule language. EPA has added information on backup generators to this part of the final rule because the separate bypass section (from the proposed rule) has been eliminated.

Facilities under 0.1 mgd are not required to submit a process flow diagram. The requirement applies only to facilities with a design flow greater than or equal to 0.1 mgd and has been renumbered from § 122.21(j)(1)(ix) to § 122.21(j)(2)(iii).

Proposed § 122.21(j)(1)(x) would have required information about bypasses, which are intentional diversions of waste streams from any portion of the treatment facility. The proposed rule would have required information about frequency, duration, and volume of bypass incidents. The Agency removed this from the final rule because it is already required by the bypass regulations at § 122.41(m). The bypass regulations set forth clear reporting and notification guidelines for each bypass incident.

Section 122.21(j)(2)(iv) requires the applicant to provide information about scheduled facility improvements. Improvements to the facility may change its flow or removal efficiency, necessitating a permit modification. The permit writer may modify the permit when the improvement is complete, or may include alternate limits in the permit that would take effect upon completion of the improvement. Comments favored keeping the information on facility improvements. One commenter suggested that submitting this type of information would help keep different groups in the same permitting agency informed of anticipated treatment plant upgrades. The requirement applies only to facilities with a design flow equal to or greater than 0.1 mgd and has been renumbered from § 122.21(j)(1)(xii) to § 122.21(j)(2)(iv).

The existing application form, Standard Form A, requested certain information about required improvements including information on dates for completion of the preliminary plan, completion of the final plan, awarding of a contract, and site acquisition. Standard Form A also required the applicant to identify the authority imposing the improvement and the general and specific action codes. The Agency has deleted this requirement because permit writers have indicated that this information is unnecessary for writing the permit. Several commenters specifically endorsed removing this extra information from the final application requirements.

4. Information on Effluent Discharges

Proposed § 122.21(j)(2) has been renumbered in today's rule as § 122.21(j)(3). This section requires all POTWs that discharge effluent to waters of the United States to provide specific information for each outfall through which effluent is discharged to surface waters, excluding CSO outfalls and constructed "emergency" outfalls. This information will be reported in questions 9, 10, and 11 of the Basic Application Information part of Form 2A. The applicant is required to submit specific information for each outfall.

Section 122.21(j)(3)(i) requires general information about each outfall. The applicant must specify the outfall number, location, latitude and longitude, distance from shore and below surface, average daily flow, information about seasonal or periodic discharges, and information about diffusers at the outfall. EPA enters the latitude and longitude points into the water quality data base STORET and into the Permit Compliance System. Maps of the location of water discharges are developed to examine the relationship between NPDES outfalls and other areas of concern, such as drinking water intake points or sensitive ecosystems. This information is also used to establish water quality-based effluent limits appropriate for the particular receiving water. The locational data requested by this question also supports the watershed protection approach because it provides State and Federal environmental managers with information they need to geographically locate discharge points.

Latitude and longitude must be reported to the nearest second. This is consistent with EPA's Locational Data Policy, see "Locational Data Policy Implementation Guidance, Guide to the Policy (March 1992)." In accordance with this Policy, all latitude/longitude measurements in Agency data collection should have accuracies of better than 25 meters (i.e., roughly one second). One commenter disagreed with this requirement, stating that many facilities simply "guess" on this information so it is not accurate. However, EPA believes this information is vital to the permit writer's locating each discharge point. All of § 122.21(j)(3)(i) remains unchanged from the proposal.

Section 122.21(j)(3)(ii) solicits information that describes and identifies the receiving waters into which each outfall discharges. Information about the type of receiving water is useful to the permit writer because mixing zones and wasteload allocations may be calculated differently for different types of receiving waters.

This provision also requests the name of the watershed, the Soil Conservation Service watershed code, the name of the State management basin (if applicable), and the United States Geological Survey hydrologic code. This locational information supports the Watershed Protection Approach by providing Federal and State environmental managers with a means of locating dischargers within the U.S. Soil Conservation Service watershed categorization system, a State's river basin categorization system, and the U.S. Geological Survey cataloging scheme. Some States, as well as EPA Regions, are implementing basin management approaches to watershed protection and will use the information requested by this question to issue permits on a watershed basis.

Several commenters disagreed with this request for information, stating that many facilities will not be able to provide it with their applications. In response, though EPA believes this is important information for State and regional authorities, this information request is no longer mandatory. The permit applicant needs to provide this information only if known.

Section 122.21(j)(3)(iii)(A) requires information on the level of treatment expected for discharges from each outfall. The CWA requires POTWs, with some exceptions, to achieve pollutant reductions to a level based upon secondary treatment prior to discharge. Secondary treatment is defined at 40 CFR 133.102 in terms of five-day biochemical oxygen demand (BOD_5), total suspended solids (TSS), and pH. Part 133 allows adjustments to the secondary treatment requirements for POTWs that meet certain criteria. In addition, some POTWs are subject to requirements for "treatment equivalent to secondary treatment," as described in Section 133.105. Finally, some POTWs may need more advanced levels of treatment to meet water quality-based effluent limits for certain pollutants, such as nitrogen and phosphorous.

This provision requires data on design removal efficiencies for BOD_5 and TSS. Information on these parameters is necessary for the permit writer to set pollutant limits that accurately reflect the pollutant removal that the POTW can achieve. It may also alert the permitting authority to the need for improvements to the treatment facility. The only comment on this section stated that this information may not be appropriate for lagoon systems because design removal efficiencies for BOD_5 and TSS are not readily available or pertinent to these systems. EPA disagrees with this commenter's statement that basic design information is not pertinent to lagoon systems. All POTWs should have a design BOD_5 and TSS removal efficiency. The requirement is not changed from the proposal.

Section 122.21(j)(3)(iii)(B) requires information on disinfection, which commonly occurs through chlorination. Many POTWs also dechlorinate their effluent prior to discharge because excessive free chlorine in a wastewater discharge can cause aquatic toxicity in the receiving water. No comments were received on this section and it remains as proposed.

5. Effluent Monitoring for Specific Parameters

The purpose of § 122.21(j) and Form 2A is to provide the permit writer with the minimum information necessary to issue an NPDES permit that contains effluent limitations and conditions consistent with the requirements of the CWA. EPA recognizes that the quality of a POTW's effluent depends on several factors, such as the number and type of industrial users of the POTW, and that not all POTWs need to report the same information to ensure that NPDES permits satisfy CWA requirements. Hence, EPA proposed a tiered approach to collect needed effluent monitoring information.

In the December 1995 proposal, EPA proposed to require all POTWs to report effluent monitoring information for the 17 parameters listed at proposed 40 CFR Part 122, Appendix J, Table 1 ("Effluent Parameters For All POTWs"). EPA thought these parameters had a high likelihood of occurrence in most POTW effluents. EPA also proposed to require additional reporting of pollutant-specific data for POTWs with design flows greater than or equal to 1.0 mgd.

POTWs that have or are required to have pretreatment programs, and other POTWs required to provide this information to the permitting authority. In general, the pollutants for which additional data was proposed to be required are those for which States have established water quality standards (other than dioxin, asbestos, and "priority pollutant" pesticides). The preamble to the December proposal explained how EPA chose the pollutants to be sampled.

One commenter disagreed with EPA's approach of using data from a survey of six States as a basis for nationwide requirements. The commenter felt EPA should be required to prove the necessity of the rule based on valid scientific research associated with risk assessments that represent the majority of POTWs as opposed to a limited regional survey. EPA examined many pollutant data options through the rule development period. The Agency considered numerous stakeholder comments along with other information and the pollutant scans to determine the requirements in this final rule. EPA determined what pollutant data was necessary in the final rule to maintain a balance between satisfactory environmental protection and burden on applicants. The pollutant requirements in today's rule maintain that balance by setting the minimum data collection requirements necessary to write environmentally valid permits.

Many commenters felt that the requirement for minor POTWs, i.e., facilities with design flows less than 1.0 mgd, to provide the basic application information in proposed Appendix J, Table 1, was overly burdensome. Most of the State commenters felt that it would be more appropriate to request information from minor facilities on a case-by-case basis as determined by the permitting authority. EPA understands the limited resource issue for minor POTWs and in response has reduced the application requirements for facilities with a design flow of less than 0.1 mgd.

Section 122.21(j)(4) requires that data be separately provided for each outfall through which treated sanitary effluent is discharged to waters of the United States. EPA recognizes that a POTW's effluent may have similar qualities at more than one of its outfalls. EPA proposed to allow applicants to provide the effluent data from only one outfall as representative of all such outfalls, where there are two or more outfalls with substantially identical effluents, and with the specific approval of the permitting authority. For outfalls to be considered substantially identical, the outfalls should, at a minimum, be located at the same plant with flows subject to the same level of treatment and having passed through the same types of treatment processes. Six commenters supported allowing information on substantially identical outfalls to be submitted once at the discretion of the Director. One commenter wanted EPA to expand this requirement to allow POTWs to composite samples from outfalls in close proximity that enter the same receiving water but may not be substantially identical. The commenter stated that in such cases it is the combined effect of the various effluents that is important as far as the toxicity of the receiving stream is concerned. The commenter also believes that expanding this requirement in the final rule could substantially reduce the cost of sampling and analysis for the POTW. EPA agrees and § 122.21(j)(4)(i) of today's final rule has been amended to allow POTWs to combine effluent discharges from one or more outfalls that discharge into the same mixing zone of a stream segment, upon approval of the permitting authority.

In the proposal, EPA set forth conditions for data acceptability that all monitoring data submitted to the permitting authority must meet. While commenters agreed with the basis for the conditions, several commenters disagreed with individual requirements. EPA had proposed all data submitted on the application should be from three scans collected within a 3-year period preceding the permit application date. Some commenters felt that the three year constraint on the data would require facilities to collect data specifically for the application by excluding data collected in the first two years of the permit cycle. Several commenters also disagreed with the seasonal constraints placed on the data in the proposed rule. EPA proposed the three samples should span three different calendar seasons. Three commenters felt the seasonal constraints might require a facility to resample because available data was not obtained during the required seasonal variation.

In response to these comments, EPA has modified the proposed sampling requirements to allow applicants to use more of their existing monitoring data. Today's rule extends the window for sampling data to encompass the period from permit issuance to the time of subsequent application submittal in the final rule, which is normally four and one-half years, provided the data represents the current facility operations. In addition, EPA has eliminated the requirement for sample data to be a minimum of 4 months and a maximum of 8 months apart. Instead, EPA is requiring that the samples represent typical daily discharges occurring during the permit term and be representative of seasonal variation in the discharges. These requirements are listed in § 122.21(j)(4)(vi) of today's rule. Because applicants are allowed to submit samples from a four and one-half year period, § 122.21(j)(4)(vii) has also been modified to require summarization of all data from the previous four and one-half years instead of the proposed three years. As in the proposal, when a pollutant is sampled on a monthly or more frequent basis, only the most recent year's worth of data need be summarized for that pollutant.

One commenter felt three data scans may be excessive, especially for smaller facilities. The smallest facilities are only required to monitor for six pollutant parameters which many POTWs sample on a regular basis. Because facilities can use existing data, EPA believes three samples over four and one-half years is easily obtainable for all POTWs.

A few commenters were concerned with the requirements in proposed § 122.21(j)(3)(vii) and the accompanying preamble language that required including all data in the submitted data summaries. They believed that data collected during pilot studies or for system process control should not be required to be included in data summaries. EPA understands that facility operators may wish to collect samples in the influent or throughout the system in order to determine if they are operating properly or returning to proper operations after correcting problems. The introductory language of § 122.21(j)(4)(i) states that the information required is "effluent monitoring information for samples taken from each outfall * * *" Therefore, this does not include information from samples collected in process (prior to discharge). EPA does not intend to require "check samples" or samples collected during pilot studies to be included with other routine samples.

One commenter asked for clarification as to whether applicants were required to submit all sample data or just summaries. The rule language in § 122.21(j)(4)(vii) has been modified to clarify that only the data summaries need be included. NPDES permitting authorities that want to review all the individual data reports are free to request them, either from all applicants or on a case-by-case basis.

Proposed § 122.21(j)(3)(viii) contained sample testing requirements. Commenters stated that time-proportional composite samples should be allowed as an alternative to flow-weighted composite samples because flow proportional samples are not feasible in every situation. They also questioned a preamble statement that suggested that 4 grab samples be summarized for each day of sample collection because they felt 4 samples per day per parameter could be overly burdensome. EPA agrees with these comments and has modified the language of § 122.21(j)(4)(viii) to allow time-proportional sampling. Because the grab sample language is provided as guidance, and not part of the proposed rule, no rule language change was necessary.

One of the requirements of proposed § 122.21(j)(3)(ix) was to report the designated method endpoint for the analytical method used. This section also required applicants to submit pollutant data based upon actual sample values. The proposal explained that even where test values are below the detection or quantification level of the method used, the actual data value should be reported, rather than reporting "non-detect" or zero. EPA would require the endpoint of the method to be reported along with the actual sample results so that the permitting authority could determine if the data is in the "non-detect" range or merely in the "below quantification" range.

Most of the comments received on this issue disagreed with the requirement to submit actual data values when results are below the detection level. These commenters believe that data that is below the sampling method's level of detection is not valid or meaningful data. Two State commenters supported reporting data even if it is below detection level. EPA believes that the maximum measured data value required by § 122.21(j)(4)(ix)(A) should be reported if it is above the method detection limit. Data values that fall below the quantification level of a test method should be reported as the actual sample value. If the maximum value reported for a pollutant is below a detection limit for the sampling method, the permittee should report non-detect. Reporting the method end point will notify the permit writer to look more closely at maximum values that are below the quantification level of the test performed.

EPA agrees with commenters that actual sample values below the method detection level or non-detect values should not necessarily be used in computing the averages required by § 122.21(j)(4)(ix)(B). There are many different ways of averaging numbers that are below detection or quantification limits. In today's final rule, which is about permit application requirements, not permit limit development requirements, EPA does not require a specific averaging method. Applicants can use any statistically credible approach as long as the method is explained with the results and the permitting authority agrees. Permitting authorities may require a specific method to be used.

EPA has provided guidance to the applicant in the Form 2A instructions in order to minimize the conditions that lead to inaccurate sampling data. EPA believes that the permit applicant should: (1) alert its laboratory to the analytical and detection limit requirements and the expectations for documentation; and (2) report the necessary documentation to ensure that the permit writer is fully informed as to the methods used and the results obtained. For more detailed information concerning analytical issues (acceptable methods, effluent-specific detection limits, and documentation of data and analytical problems), applicants should refer to the "Guidance on Evaluation, Resolution, and Documentation of Analytical Problems Associated with Compliance Monitoring", EPA 821–B–93–001, June 1993.

a. Pollutant Data Requirements for All POTWs. As mentioned earlier, EPA has modified the proposed rule to limit the reporting burden for very small (<0.1 mgd) POTWs without significant industrial contributions. These facilities are required to submit effluent monitoring data for only 6 parameters: biochemical oxygen demand (BOD_5 or $CBOD_5$), total suspended solids (TSS), fecal coliform, pH, temperature, and flow. These parameters are listed in Appendix J, Table 1A. EPA selected them based on the secondary treatment regulations at 40 CFR Part 133, which describe the minimum level of effluent quality that POTWs must attain in terms of BOD_5, TSS, and pH. Control of BOD_5 or $CBOD_5$ is necessary to ensure sufficient dissolved oxygen in the receiving water to protect aquatic life. High TSS levels in the effluent block light in the receiving water and inhibit photosynthesis. TSS limits also help prevent solids accumulations that can lead to sediment oxygen demand and other sediment related problems. Permit writers use information on all of the parameters listed above to set appropriate water quality-based limits for permit applicants. When POTWs have been allowed to substitute chemical oxygen demand (COD) or total organic carbon (TOC) for BOD_5, in accordance with 40 CFR 133.104, applicants must report the substituted parameter.

b. Pollutant Data Requirements for POTWs with Design Flows Greater Than or Equal to 0.1 mgd. Facilities that have a design flow greater than or equal to 0.1 mgd are required by § 122.21(j)(4)(iii) to provide additional data on the parameters listed at Appendix J, Table 1. These parameters are oil and grease, total residual chlorine (TRC), Kjeldahl nitrogen (total organic as N), total dissolved solids, total phosphorus, dissolved oxygen, ammonia (as N), and nitrate/nitrite (as N).

EPA originally proposed a pollutant scan list that would have included *E. coli*, enterococci and hardness. Many commenters felt that EPA was premature in proposing requirements for *E. coli* and enterococci to be used as bacterial indicators because EPA had not approved methods to measure for these parameters in POTW effluent. The Agency has, however, developed and recommended water quality criteria for these pollutants. Today's rule does not require analysis for these two pollutants. The Agency notes, however, that pending legislation may direct the Agency to re-evaluate this decision through future rulemaking.

The Beaches Environmental Awareness, Cleanup, and Health Act of 1999, H.R. 999, 106th Cong., 1st Sess. (1999), recently passed in the House of Representatives, is designed to protect coastal recreation waters and beach users from pathogens and beach debris. The legislation would apply to coastal recreational waters, defined as the Great Lakes and marine coastal waters, including estuaries, used by the public for swimming, bathing, surfing, or other similar water contact activities. Section 2 of the legislation would require States to develop revised recommended water quality criteria for *E. coli* and enterococcus for coastal recreation waters. Section 3 would also require EPA to develop new water quality criteria guidance for other pathogen indicators, which States would be required to adopt thereafter. Regardless of whether the legislation is ultimately enacted, EPA intends to propose methods soon to measure for both *E. coli* and enterococci in POTW effluent. Until the Agency approves and promulgates new methods and modifications to the permit application requirements, however, today's permit application rule will continue to use fecal coliform as the pathogen indicator for wastewater.

Three commenters felt that hardness data should be deleted from the general POTW requirements because hardness data are typically used to establish

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metals limitations in the effluent. If the POTW is not required to test for metals, the hardness data is of limited value on the application. Based on these comments, EPA has moved the hardness requirement to § 122.21(j)(4)(iv) which requires reporting of additional pollutants, including metals, by some POTWs.

In the proposal, EPA also solicited comment on the need to require chlorine data from POTWs that do not use chlorination for disinfection and do not otherwise use chlorine in their treatment process. Most commenters felt that chlorine data should not be required from such facilities because facilities would have no reasonable potential to discharge chlorine. EPA agrees with the commenters and has created an exemption from the chlorine testing requirement at § 122.21(j)(4)(iii) for facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent.

EPA received various other comments on all the remaining parameters. Some commenters questioned the testing requirement for oil and grease because facilities employing secondary treatment do not discharge significant quantities of the kinds of materials which would be measured with this parameter. EPA disagrees, and believes that many POTWS have the potential to discharge oil and grease, which may be significant even in very low quantities. Concentrations of oil and grease sufficient to create a sheen on the receiving water not only affect aesthetic qualities of these waters, but may also reduce the re-aeration rate of the receiving waters, potentially contributing to the dissolved oxygen sag problem. Oil and grease may also indicate the presence of other high molecular weight organic pollutants of concern because oil and grease are often discharged with or as a sink for such pollutants. For these reasons EPA is maintaining the oil and grease requirement for facilities with a design flow greater than or equal to 0.1 mgd.

EPA received comments to delete each of the following parameters: ammonia; total nitrate plus nitrite; Kjeldahl nitrogen; and total phosphate. Ammonia, which is common in nearly all sanitary sewage, is highly toxic to aquatic life and studies indicate frequent adverse effects from this compound in receiving waters. The commenter questioning ammonia testing suggested that testing should only be required at facilities which have ammonia limits in their permits. EPA disagrees. Without testing for ammonia in effluents, permit writers may lack the information to determine whether ammonia limits are necessary in the first place. In addition, many State water quality standards regulate ammonia due to its toxicity, thus making testing necessary to assure compliance with such standards.

EPA proposed three additional parameters, nitrate plus nitrite, Kjeldahl nitrogen and phosphorus, because they are prevalent in most POTW effluents and because of their potential for adverse impacts on receiving waters. Nitrogen and phosphorus are often "limiting" nutrients, which cause oxygen depletion in marine and fresh water systems, respectively. Excessive loadings of nitrogen (discharged as ammonia, nitrate, nitrite, and organic nitrogen) and phosphorus (discharged as phosphate) can stimulate algae growth, interfering with shoreline aesthetics and recreational uses. In addition, decaying algae can reduce dissolved oxygen concentrations, thus impairing the aquatic environment. One commenter felt the phosphorus testing should only be required for discharges into impounded lakes or reservoirs where phosphorus build up could result in a serious algal bloom. EPA disagrees with any such limitation because phosphorus is likely to be found in most POTW discharges and causes demonstrated problems in other types of water bodies, including estuaries (e.g. Chesapeake Bay) and in large rivers (e.g. Mississippi River). Therefore, testing for phosphorus and nitrate/nitrite and Kjeldahl nitrogen remain in the final rule.

EPA received no comments on the remaining two parameters, total dissolved solids and dissolved oxygen, and those parameters remain in Appendix J, Table 1 of today's rule.

In the proposal, EPA requested comment on the deletion of six parameters on Standard Form A. Commenters agreed that the six parameters, chemical oxygen demand, fecal streptococci, settleable matter, total coliform bacteria, total organic carbon, and total solids were no longer relevant or useful parameters for evaluation of POTW discharges. These parameters do not appear in the § 122.21(j) requirements.

In addition to the six parameters discussed above, Standard Form A required that POTWs indicate the presence of (but not provide quantitative data for) certain pollutants. These pollutants included metals, as well as other toxics and non-conventional pollutants. As proposed, certain POTWs would need to monitor and indicate the presence of the "priority pollutants" from that list. The requirements for these pollutants are discussed in the following section of this preamble.

Several commenters supported the proposed deletion of the other remaining parameters, which are not included in today's final rule. In the proposal, EPA asked for comment on requiring testing for sulfide, sulfate, aluminum, barium, and fluoride. All of the comments on these parameters supported EPA's proposal to not require testing for these parameters. Therefore, the final rule does not require such testing.

c. Additional Pollutant Data Requirements for Some POTWs. Section 122.21(j)(4)(iv) requires the testing of the additional parameters listed in Appendix J, Table 2, by certain POTWs specified below. EPA believes the specified POTWs are most likely to discharge such pollutants to receiving waters. The Table 2 pollutants are toxic and may interfere with POTW performance or pass through the POTW to receiving waters without treatment, thus causing adverse water quality impacts. As stated earlier, the Agency added hardness to the Table 2 list because permit writers use hardness data in conjunction with metals data to determine the need for and to derive water quality based effluent limits for metals.

Certain POTWs discharge toxic organic and inorganic pollutants primarily as a result of contributions from non-domestic sources. Section 122.21(j)(4)(iv) of today's rule requires the applicant to submit monitoring data for the pollutants listed in Appendix J, Table 2, if the POTW meets any one of the following criteria: (1) the POTW has a design flow rate equal to or greater than 1.0 mgd; (2) the POTW has a pretreatment program or is required to have one under 40 CFR Part 403; or (3) the POTW is otherwise required to submit this data by the permitting authority.

Two commenters felt that the designation of all facilities required to have pretreatment programs is overly burdensome for smaller facilities that are required to have pretreatment programs. The pretreatment regulations at 40 CFR 403.8 set forth the criteria for which POTWs must establish pretreatment programs. EPA believes that all POTWs with pretreatment programs have the potential to discharge Table 2 pollutants, regardless of size.

In addition to POTWs with design flows greater than or equal to 1.0 mgd and POTWs with pretreatment programs, the rule preserves the discretion of the permitting authority to require any other POTW to submit monitoring data for some or all of the pollutants listed in Appendix J, Table 2. EPA recommends that the permitting authority require an applicant to perform a complete or partial pollutant scan if toxicity is known or suspected in a POTW's effluent. In addition, if the POTW's effluent causes adverse water quality impacts or if the POTW discharges to an already impaired receiving water, the permit writer has the discretion to require the applicant to provide analytical results from a complete pollutant scan. The permit writer should also consider whether to require the applicant to test for individual parameters depending on the numbers or kinds of industrial users discharging to the POTW.

Numerous commenters provided input on EPA's decision to require testing of the pollutants listed on the Appendix J, Table 2 list. Many commenters provided individual preferences on which parameters they felt should be required. EPA has reviewed the comments carefully and feels that testing for the complete list is necessary for the development of environmentally protective permits. A few commenters noted cost as a factor for deleting various organic parameters. Upon review, EPA anticipates that most laboratories will run the entire volatile organics scan, acid-extractable scan or base-neutral scan at one price with one sample. Thus, deleting one or two individual parameters will not reduce cost to the permittee. In fact, the Agency developed EPA Methods 624 and 625 (published at 40 CFR 136) so that these two tests would cover most organic priority pollutants.

In the December 1995 preamble, EPA asked for comment on various other approaches to collecting pollutant data. The comments received did not support the use of any of these other approaches.

6. Effluent Monitoring For Whole Effluent Toxicity (WET)

Existing regulations require certain POTWs to provide the results of whole effluent biological toxicity testing as part of their NPDES permit applications. The proposal moved these requirements to proposed § 122.21(j)(4) to require the same POTWs to conduct WET tests and to identify any biological tests the applicant believed to have been conducted within three years of the date of application.

EPA received several comments on the issue of POTWs providing data from the last three years of the permitting cycle. States tended to disagree with the three year limitation because many States require more frequent testing during the first one or two years in the permitting cycle, and a reduced amount for the remaining years. Other commenters disagreed with the three year limitation because they have already undergone several cycles of WET testing and they are now on a routine testing cycle such as annual testing. These permittees do not wish to perform testing for application purposes only. EPA proposed the three year limitation because some of the available WET testing information was not conducted in accordance with the nationally-approved test procedures in 40 CFR Part 136 that became effective on November 15, 1995 (60 FR 53529). EPA agrees that facilities who perform routine WET testing, and have historically shown compliance, should not be required to perform testing for the permit reapplication.

EPA studied several possible scenarios for testing and has determined that it is important for facilities to provide the current WET data available in order for permit writers to set appropriate permit conditions. The most useful data is quarterly data collected within the year prior to the application form. This data provides the most useful and relevant characterization of the applicant's discharge at the time of the application. The Agency does understand that many facilities currently perform WET testing on a routine basis and may have a history of no toxicity. For these facilities, the Agency understands that collecting quarterly data for one year prior to the application may be unnecessary. Today's rule allows facilities who have performed WET analyses at least annually in the five year period prior to the application to submit that data on the application in lieu of collecting new data for the application. EPA presumes the validity of such data provided it shows no appreciable toxicity using a safety factor determined by the permitting authority. The data must also have been conducted in accordance with approved Part 136 methods.

EPA solicited comment on whether the requirement to conduct WET testing should be extended to other POTWs. EPA received several responses all recommending that the requirement should not be expanded. The commenters felt the permitting authority was in the best position to require WET testing from additional facilities on a case-by-case basis. EPA agrees; therefore, today's rule does not expand the WET requirement to other facilities.

Section 122.21(j)(5)(iii) allows the POTW applicant to provide the results of WET testing from only one outfall as representative of all outfalls where the POTW has two or more outfalls with substantially identical effluents discharging to the same receiving stream and where the permitting authority provides specific approval. For outfalls to be considered substantially identical, the outfalls should, at a minimum, be located at the same treatment plant with flows subject to the same level of treatment and having passed through the same types of treatment processes. This section has been modified in the same manner as § 122.21(j)(4)(i) to include a provision to allow an applicant to submit a composite sample in lieu of individual samples for discharges from one or more outfalls that discharge into the same mixing zone if approved by the permitting authority.

Existing WET testing requirements did not specify the number or frequency of tests required, the number of species to be used, or whether to provide the results of acute or chronic toxicity tests. Therefore the December 1995 proposal set minimum reporting requirements of four quarterly tests for a year, required multiple species (no less than two taxonomic groups, e.g., fish, invertebrate, plant), and specified testing for acute or chronic toxicity depending on the range of receiving water dilution.

Many commenters stated that permitting authorities often establish a permit reporting frequency that may change throughout the permit life based on the results. In setting a minimum permit application frequency of quarterly testing for a year, EPA indicated the frequency interval was necessary to adequately assess the effluent variability of toxicity observed over the course of the year. EPA understands that many permitting authorities commonly only require one cycle of quarterly testing at some time during the permit cycle. Most of the commenters agreed that four quarterly samples was an appropriate test size; they disagreed on the three year limitation of the data. One commenter, a permitting authority, stated that EPA should define the minimum data set size and let the NPDES permitting authority define acceptability of data based on when the data was generated. EPA agrees with this recommendation and has expanded the three year requirement for data to the most current permitting cycle in this final rule. EPA did not, however, change the requirement for four quarterly tests.

The existing whole effluent toxicity testing requirements do not specify whether applicants should test for acute or chronic toxicity. An acute toxicity

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test typically measures the lethality of the test sample to test organisms over a period of 96 hours or less. A chronic toxicity test measures effects over longer time periods and measures sublethal effects, such as fertilization, growth, and reproduction, in addition to lethality. See Technical Support Document for Water Quality-Based Toxics Control (1991) (TSD) p. 4.

In the December 1995 proposal, EPA recommended that testing for acute or chronic toxicity be based upon the ratio of receiving water to effluent at the edge of the mixing zone as recommended in the TSD. Many commenters felt this determination should be left to the permitting authority because permit writers are more qualified than permit applicants to assess the discharge and its impacts on the receiving stream. In the final rule, EPA has not specified whether permit applicants must measure for either acute or chronic toxicity based on the ratio of receiving water to effluent though the Agency still maintains that the recommendation is reasonable based on the discussion in the TSD. Permit applicants should consult with the permitting authority to determine applicable testing requirements. Permitting authorities retain discretion to require testing for either acute or chronic toxicity. In jurisdictions where EPA administers the NPDES program, the Agency expects EPA Regions to follow the guidance in the TSD.

Section 122.21(j)(5)(ix) now requires that an applicant provide any information it may have on the cause of any toxicity. Further, applicants must provide written details of any toxicity reduction evaluation conducted. Toxicity reduction evaluations (TREs) are used to investigate the causes and sources of toxicity and identify the effectiveness of corrective actions to reduce it. The permitting authority may require a permittee to conduct a TRE in those cases where the discharger is unable to adequately explain and immediately correct non-compliance with a whole effluent toxicity permit limit or otherwise reduce the toxicity to a level below a "trigger" for the TRE.

7. Industrial Discharges

Today's rule requires certain applicants to provide certain information about industrial users. The proposed rule would have required the applicant to list the total number of categorical industrial users (CIUs) and other significant industrial users (SIUs) discharging to the POTW, to estimate the average daily flow from these users and from all industrial users, and to estimate the percent of total influent contributed by each class of users. Today's rule reduces the scope of required information from the proposal.

A categorical industrial user is any discharger subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N. "Significant industrial user" is defined at 40 CFR 403.3(t) as any categorical industrial user and any other industrial user that: (1) Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, non-contact cooling and boiler blowdown wastewater); (2) contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW; or (3) is designated as such by the Control Authority (40 CFR 403.12(a)) because of a reasonable potential to adversely affect the POTW's operation or violate pretreatment requirements.

Several commenters stated that these requirements would be overly burdensome given the fact the term "industrial user" (IU) includes any non-domestic source regulated under Section 307(b), (c), or (d) of the CWA. The commenters also questioned the usefulness of the requirement to report average daily flow from all IUs and to estimate the percent of total influent contributed by each class.

Section 122.21(j)(6)(i) of the final rule has been modified from the proposal. It does not require reporting of the total SIU, CIU, and IU average daily flow and the estimated percent of total influent because this information can be difficult to obtain and the permit writer may be able to estimate this information from other sources. Today's final rule now only asks the applicant to list the total number of CIUs and other SIUs discharging to the POTW. EPA has not modified the definition of "industrial users" as some commenters suggested. The definition includes commercial sources of non-domestic wastewater because these facilities have the potential to adversely impact the POTW's discharge in the same way as other industrial discharge sources. This comment is beyond the scope of the proposal.

EPA proposed to require POTWs with approved pretreatment programs to describe any substantial modifications to the POTW's pretreatment program that had been submitted, but not yet approved by the approval authority in accordance with 40 CFR 403.18. EPA has determined this requirement is not necessary and the Agency has not included it in the final rule. The permitting authority should already be aware of program modifications submitted but not yet approved by the approval authority so it is not necessary for the applicant to resubmit this information.

EPA proposed to require information on individual SIUs discharging to POTWs. Several commenters suggested various deletions of the information required on SIUs. EPA believes that permit writers need this information to determine if a facility should be required to have a pretreatment program and to evaluate the SIUs and determine if any are more appropriately characterized as CIUs. Therefore, today's rule retains these requirements but renumbers them as § 122.21(j)(6)(ii).

EPA received several comments questioning the difference between the Standard Form A and proposed Form 2A requirements on principal products and raw materials, and the need for such information. Standard Form A required the applicant to identify the quantities of products and raw materials while proposed Form 2A would only have required a narrative description of these products and raw materials. EPA believes that the permit writer only needs this narrative information if the products or raw materials are present in the SIU's discharge. Therefore, today's final rule further modifies this provision to require only information on products or raw materials that may affect or contribute to the SIU's discharge.

Today's rule deletes a requirement on Standard Form A to characterize each SIU's industrial discharge. In many cases, the permit writer is able to determine parameters of concern from the principal products and raw materials for that SIU. If necessary, the permit writer may request this information on a case-by-case basis. Commenters supported this deletion.

In an attempt to reduce duplication of effort, the proposal requested comment on whether a POTW should be allowed to reference substantially similar information about SIUs previously submitted to the permitting authority or to waive SIU information reporting for a POTW who operates an approved pretreatment program and has submitted an annual report containing the required information within the year preceding the application. All of the comments received on this question supported this provision for facilities with approved pretreatment programs who have filed annual reports.

Today's rule contains a new § 122.21(j)(6)(iii) that allows the Director to waive requirements for reporting SIU information for POTWs that submit substantially similar information in an annual report or with a pretreatment

program submittal. All referenced information should also be incorporated into the administrative record for the permit application. This new provision responds to comments that POTWs provide much of this information on previously submitted pretreatment program reports.

8. Discharges From RCRA and CERCLA Waste Sources

EPA proposed to require applicants to provide general information concerning discharges to POTWs of wastes that would be considered "hazardous wastes" under the Resource Conservation and Recovery Act (RCRA) as well as discharges to POTWs from hazardous waste cleanup or remediation sites. This information would alert the permit writer to potential concerns regarding the constituents of such discharges.

Therefore, section 122.21(j)(7)(i) requests information on RCRA hazardous wastes received by truck, rail, or dedicated pipe. Generator information does not have to be reported on RCRA hazardous wastes discharged to a sewer system that mix with domestic sewage before reaching the POTW because the Domestic Sewage Exclusion (under RCRA section 1004(27)) provides that "solid or dissolved material in domestic sewage is not solid waste" and therefore is not a hazardous waste. Such materials, however, remain subject to the prohibited discharge standards of 40 CFR 403.5.

As noted by one commenter, the information requested in this section is already a POTW requirement under RCRA permit-by-rule (40 CFR 270.60(c)). The RCRA rule, however, does not require the POTW to report this information to the NPDES permitting authority. Today's rule ensures that the permitting authority is aware of any hazardous materials that may enter the POTW.

In many cases, POTWs will also already have the information required by § 122.21(j)(7)(ii) because similar information on hazardous constituents is required by the pretreatment requirements at § 403.12(p). This section of today's rule requires the POTW to report information on wastewaters from remedial activities that are accepted at the POTW. Two commenters were concerned that the requirement to identify all hazardous constituents of the wastewater did not have a de minimis exclusion. One of these commenters also questioned the meaning of "hazardous constituent" because it is not defined in the rule. The language has been modified to address these concerns in today's final rule. Section 122.21(j)(7)(ii)(B) clarifies that the hazardous constituents to be identified are those listed in Appendix VIII of 40 CFR part 261. Section 122.21(j)(7)(iii) provides a small quantity exemption for POTWs that receive less than fifteen kilograms of hazardous wastes per month from all discharges into the collection system, unless the wastes are acutely hazardous wastes. This exemption is the same as the exemption for IUs that must report hazardous wastes to POTWs under § 403.12(p) of the pretreatment requirements.

In today's rule language, hazardous constituents in remedial waste need only be reported if known. If a POTW has not required the remedial site to report all the hazardous constituents, the POTW is not required to sample the waste. If the hazardous constituents are not known, the permit writer may require such sampling on a case-by-case basis when he or she believes it is necessary to write a complete permit.

The proposed language requested the same information three separate times, for CERCLA wastes, RCRA corrective action wastes, and other remedial wastes. One commenter suggested that these three questions should be combined. EPA agrees and has done so in today's rule. Commenters also stated that POTWs do not know all the potential sources of hazardous wastes at the time of permit application so they should not be asked about wastes that they expect to receive. One of these commenters was concerned that the proposed language meant that POTWs could not accept remedial waste unless it was identified in the permit application. In response, EPA has changed the language of today's rule to require information on hazardous constituents in wastes that the POTW has received or has agreed or expects to receive. This rule does not preclude POTWs from accepting additional such wastes during the permit, though such wastes do remain subject to the prohibited discharge standards of 40 CFR 403.5.

9. Combined Sewer Overflows (CSOs)

Section 122.21(j)(8)(i) requires information about the combined sewer system (CSS), including a system map and system diagram that describe the relevant features of the system. EPA deleted other information from the proposed rule, such as a system evaluation, because the Agency agrees with commenters that such additional information is unnecessary or is requested elsewhere.

Today's rule at section 122.21(j)(8)(ii) requires that applicants provide information on each CSO outfall specifically covered by the application. This includes locational information similar to the information required for outfalls discharging treated effluent. As discussed previously, this sort of locational data is consistent with Agency policy concerning the reporting of such information and it provides permitting authorities with a means of locating dischargers.

This provision also requires reporting of any parameter monitoring conducted on discharges from CSO outfalls and requests information about any CSO events that occurred in the year previous to the permit application.

Section 122.21(j)(8)(ii)(E) requires the permittee to describe any known water quality impacts, such as beach or shellfish bed closings and fish kills. EPA considers this to be the minimum amount of information needed by the permit writer to specifically authorize discharges at each of the identified CSO outfalls. Originally, EPA proposed to require identification of any significant industrial users that introduce pollutants to the collection system upstream from a CSO outfall. No such requirement exists in the final rule because the information is provided in § 122.21(j)(6)(i) with other information on SIUs.

10. Contractors

Section 122.21(j)(9) requires the applicant to identify all contractors responsible for any operation or maintenance aspects of the POTW and to specify such contractors' responsibilities. This information enables the permit writer to determine who has primary responsibility for the operation and maintenance of the POTW and thus determine whether a contractor should be included on the permit as a co-permittee.

The Agency received conflicting comments on this requirement. One commenter agreed, one disagreed on the basis that POTWs cannot contract out their liability in a permit, and one wanted more clarification. EPA believes that POTWs cannot contract away their liability for compliance with NPDES permit requirements rather, they can contract operational tasks. EPA believes it is important, however, for the permitting authorities to know all parties involved in the operation and maintenance of each POTW in order to determine the appropriate responsible party. This section remains as proposed.

11. Certification

Section 122.21(j)(10) requires the certification and signature of an authorized official in compliance with 40 CFR 122.22. The certification applies to all attachments identified on the application form, as well as any others included by the applicant. No comments were received on this section, and it is unchanged from the proposal.

G. Application Requirements for TWTDS (40 CFR 122.21(q))

Today EPA finalizes regulatory language at § 122.21(q) to update the information that treatment works treating domestic sewage (TWTDS) must submit with their permit applications. EPA also finalizes a new form, Form 2S, for collection of this information. Section (q) requires all TWTDS, except "sludge-only" facilities, to report information regarding sewage sludge generation, treatment, use, and disposal. The permitting authority may also require a "sludge-only" facility to submit a permit application containing this information. Today's requirements are intended to clarify the previous sewage sludge application requirements that are necessary to implement EPA's Part 503 standards for sewage sludge use or disposal. These requirements were originally provided at § 501.15(a)(2) and were moved to § 501.15(a)(4) with the modifications to Parts 123 and 501 published on August 24, 1998 (63 FR 45114). As of today's rule, these requirements are replaced by § 122.21(q). See section II.I of today's preamble for additional discussion.

As with the POTW application requirements, EPA does not wish to require redundant reporting by TWTDS. Thus, the amended regulations authorize EPA to waive submission of certain information required to be reported under § 122.21(q) in circumstances similar to that provided in § 122.21(j). The Director may waive any requirements in paragraph (q) if he or she has access to substantially identical information. EPA received numerous favorable comments on this approach. In addition, an applicant may reference previously submitted information that is still accurate if the applicant is certain that the permitting authority already has all the necessary information.

As with the § 122.21(j) waiver, applicants should be very specific when referencing information so the permitting authority has no difficulty in locating the previous submission. Permitting authorities should recognize the need to keep information available for future action and to ensure the availability of information submitted to various departments. All referenced information should also be incorporated into the administrative record for the permit application.

EPA also solicited comments on ways to allow the permit writer or permitting authority discretion in waiving submission of particular information where the permitting authority determines that such information is not necessary for the application. EPA received several comments that suggested allowing the permitting authority to waive any requirements it deemed unnecessary. In response, EPA has revised § 122.21(q) of today's rule similarly to § 122.21(j) to provide authorized NPDES States with the ability to waive any requirement of § 122.21(q) that the State believes is not of material concern for a specific permit, if approved by the Regional Administrator. See section II.F.for additional waiver discussion.

1. Facility Information

Section 122.21(q)(1) requires summary information on the identity, size, location, and status of the facility as a Federal, State, private, public, or other entity. Proposed paragraph (ii) of this section required that the facility location be described by latitude and longitude to the nearest second. EPA received one comment on this issue. The commenter stated that this requirement is not contained in POTW permit application requirements and should not be in TWTDS application requirements. Section 122.21(j) does require location by latitude and longitude, but only for location of outfalls. For sewage sludge, the location of land application sites is in significance equivalent to outfall locations for POTWs. Therefore, EPA agrees that it does not need the location of a facility described by latitude and longitude. In today's final rule, information on location by latitude and longitude pursuant to EPA's Locational Data Policy is only requested in §§ 122.21(q)(9)–(11) as part of the specific information for land application sites, surface disposal sites, and incinerators.

2. Applicant Information

Section 122.21(q)(2) requires information concerning the identity of the applicant. The only change from the proposal is that proposed § 122.21(q)(2)(iii) is moved to become § 122.21(q)(1)(vi). The proposed question asked whether the applicant was a Federal, private, public, or other entity. This question should be asked about the facility, not the applicant. Therefore, it has been moved from the applicant information section to the facility information section.

3. Permit Information

Section 122.21(q)(3) restates the § 501.15(a)(2)(v) requirement that the applicant list the facility's NPDES permit number and any other permit numbers or construction approvals received or applied for under various authorities. EPA received no comments on this section and it is unchanged from the proposal.

4. Indian Country

Section 122.21(q)(4) asks whether any generation, treatment, storage, land application, or disposal of sewage sludge occurs in Indian country. This section clarifies existing § 501.15(a)(2)(iv), which previously asked only "whether the facility is located on Indian Lands."

Note: Safe Drinking Water Act regulations for the administration of the Underground Injection Control program define "Indian Lands" to mean "Indian country." See 40 CFR 144.3.

For further discussion of the substitution of the term "Indian country," see the discussion earlier in today's preamble. A sewage sludge use or disposal permit, however, may cover activities occurring beyond the boundaries of the "facility."

5. Topographic Map

Proposed § 122.21(q)(5) required the applicant to submit the following information on a topographic map (or maps) depicting the area one mile beyond the property boundaries of the TWTDS: all sewage sludge management facilities, all water bodies, and all wells used for drinking water listed in public records or otherwise known to the applicant within ¼ mile of the property boundaries. This proposed requirement is different from the existing topographic map requirement at § 501.15(a)(2)(vi) in that the proposed requirement asked for information on use and disposal sites rather than just disposal sites.

EPA received 16 comments on this issue of topographic maps. The comments were quite diverse and ranged from support for requiring topographic maps from all use or disposal sites to requiring them only of the facility. EPA has decided that the topographic map requirement for TWTDS should be similar to the requirement for POTWs. Therefore, the final language of § 122.21(q)(5) requires a topographic map that shows on-site treatment, storage, and disposal sites. This does not include land application sites as these are use sites, not disposal sites. This section of the rule also requires the same identification of wells and water bodies as required for POTWs. Section 122.21(j)(1)(viii) requires a topographic map of each POTW that extends one mile beyond the facility. Therefore, all TWTDS that must meet this requirement can use the same topographic map to meet the requirements of § 122.21(q)(5). "Sludge-only" TWTDS are only required to submit limited background information. Therefore, they do not need to prepare a topographic map unless the permitting authority requires a full permit application.

EPA believes that it is important to get information on land application sites but recognizes that many applicants cannot identify all their land application sites at the time of permit application. This is the purpose of the land application plan. EPA believes that topographic maps should be submitted for all sites known to the applicant at the time of permit application unless they receive only exceptional quality (EQ) sewage sludge. EPA is modifying the proposed language in § 122.21(q)(9)(iii) to add a requirement for a topographic map. Several commenters stated that topographic maps should not be required for sites that used only "EQ" sewage sludge. EPA agrees and has placed the map requirement in § 122.21(q)(9)(iii), thereby excluding sites that accept only "EQ" sewage sludge.

The land application plan asks for general information on sites that are not known at the time of permit application. The permitting authority will need to decide exactly what information it needs about these sites as they are put into use.

6. Sewage Sludge Handling

The December 6, 1995, proposal required a flow diagram, and/or a narrative description that identifies all sewage sludge management practices (including on-site storage) to be employed during the life of the permit. EPA believes that this information is necessary because the applicant may employ sewage sludge management practices not covered under the more specific questions proposed in today's rule. Three comments were received on this requirement. One commenter thought that this description would normally not be necessary; the other two thought that it was appropriate.

EPA also requested comments on whether more specific information about on-site and off-site storage of sewage sludge should be required of permit applicants. All five commenters on this issue thought that some information should be obtained about storage, but there were no suggestions of specific questions. Because storage is not regulated by Part 503, EPA believes that asking for information on storage as part of a flow diagram or narrative description is the best way to obtain this information. Therefore, EPA is today promulgating § 122.21(q)(6) as proposed.

7. Sewage Sludge Quality

In the December 6, 1995, notice, EPA proposed a two-tier approach for collection of pollutant specific data based on whether the treatment works had an industrial pretreatment program. As proposed, Class I sludge management facilities would be required to submit the results of at least one toxicity characteristic leaching procedure (TCLP) conducted during the last five years to determine whether the sewage sludge is a hazardous waste. They would also be required to submit sewage sludge data for all the priority pollutants except asbestos, for the Part 503 pollutants, and for total kjeldahl nitrogen (TKN), ammonia, nitrate, and total phosphorus. Other TWTDS would be required to submit data for the pollutants regulated in Part 503 and for TKN, ammonia, nitrate, and total phosphorus.

EPA requested comments on adding several other requirements. These included requiring Class I sludge management facilities to submit data on 20 pollutants from the tentative list for the Part 503 Round Two regulation; requiring all TWTDS that land apply or place sewage sludge in a surface disposal site to submit data on fecal coliform, *Salmonella* sp. bacteria, enteric viruses, and viable helminth ova; and requiring non-Class 1 TWTDS to submit results of a TCLP and data on dioxin/dibenzofurans and co-planar polychlorinated biphenyls (PCBs). EPA also solicited comments on whether an applicant should be required to submit data only for the pollutants regulated for the TWTDS' use or disposal practice.

EPA received numerous comments on all the above issues. The vast majority of the comments questioned the need for data other than the parameters regulated in Part 503. Several commenters mentioned the Part 503 risk assessment and felt that if a pollutant was not regulated in Part 503, there was no need for monitoring or basis for setting a limit.

After considering the comments, EPA has concluded that the permit application should only include monitoring data for pollutants that have Part 503 limits for the applicant's use or disposal method at the time of permit application. At the time of this final rule, for land application these are arsenic, cadmium, copper, lead, mercury, molybdenum, nickel, selenium, and zinc. For surface disposal they are arsenic, chromium, and nickel, and for incineration they are arsenic, cadmium, chromium, lead, and nickel. If an applicant thinks that it may change use or disposal practices during the permit period, it should submit data for all potentially regulated pollutants. Today's notice amends proposed § 122.21(q)(7) to require all applicants to submit data for pollutants for which Part 503 limits have been established for their use or disposal practices.

Two additional issues were raised in the comments received on this section. Three commenters suggested that data from the past three years should be allowed rather than two years for consistency with POTW permit applications. EPA agrees that consistency between the forms makes sense for this issue. The data period for POTW permit application requirements has been extended to four and one-half years in today's final rule. This allows applicants to submit data obtained at any time during the previous permit cycle. For consistency, EPA is making the same change for TWTDS application requirements in § 122.21(q)(7) (and on Form 2S).

The proposed rule asked for the analytical methods used but did not require use of specific methods, to allow for the submittal of existing data. Part 503 requires the use of test methods in SW–846 for monitoring pollutants. Three commenters suggested that SW–846 methods should be used for application data as well. Because all facilities have had to monitor according to Part 503 for several years, there is no longer any reason to accept data that is not analyzed according to SW–846 methods. Therefore, EPA is today modifying § 122.21(q)(7) to require application monitoring data to be analyzed according to methods in SW–846.

8. Requirements for a Person Who Prepares Sewage Sludge

In the December 6, 1995 proposal, § 122.21(q)(8) identified the permit application information that a person who prepares sewage sludge for use or disposal would be required to submit. A "person who prepares," as defined at 40 CFR 503.9(r), is "either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge." This section thus pertains to any POTW

or other treatment works that generates sewage sludge. It also includes facilities (such as composting operations) that receive sewage sludge from another facility and then produce a material derived from that sewage sludge.

Paragraphs (i) and (ii) requested information on the amount of sewage sludge generated (paragraph (i)) plus any other amount that is received from off-site (paragraph (ii)). Paragraph (ii) also solicited information on sewage sludge treatment practices at any off-site facility from which sewage sludge is received. Paragraph (iii) requested information on sewage sludge treatment processes at the applicant's facility, including pathogen or vector attraction reduction processes. Paragraph (iv) asked for the amount of "EQ" sewage sludge that is applied to the land. Paragraph (v) sought information on sewage sludge that is not "EQ," but is nevertheless placed in a bag or other container for sale or give-away for application to the land. Paragraph (vi) sought information about any other "person who prepares" who receives sewage sludge from the applicant's facility.

EPA received eight comments on these proposed information requests. Most of the commenters believed that some or all of the information in § 122.21(q)(8)(vi) was unnecessary and duplicative because it would also be reported on the receiving TWTDS" permit application. One commenter believed that the information in § 122.21(q)(8)(ii) was also unnecessary and duplicative because it would be reported on the sending TWTDS" permit application. EPA anticipated these concerns and requested comments on ways to avoid this duplication, such as allowing the applicant to reference substantially similar information previously submitted to a permitting authority rather than resubmitting the information.

If all permit applications went to the same permitting authority at the same time, information on other TWTDS that handle sewage sludge from the applicant would not be necessary. Due to the tiered permitting scheme (58 FR 9404), however, the limited information requested from non-discharging TWTDS, and the possibility of inter-state transport, this is not always the case.

If the applicant is certain that the permitting authority has received an application from all other TWTDS that handle its sewage sludge, today's final rule allows it to reference the appropriate permit applications or include copies of the relevant sections. In addition, the Director's waiver authority could be used to eliminate duplication. A State that requires all TWTDS to submit full permit applications and believes it has access to all the necessary information could waive submittal of the requested information in §§ 122.21(q)(8)(ii) and (vi) for all its TWTDS once the State sewage sludge management program has been approved by EPA. EPA believes that the information requested in this section should be provided and the rule provides adequate ways of avoiding unnecessary duplication.

The previous requirement at § 501.15(a)(2)(viii) asks for the "name of any distributors when the sludge will be disposed of through distribution and marketing." This requires the names of any facilities that sell or give away EQ sewage sludge. EPA believes that EQ sewage sludge should be treated similarly to other fertilizers. Thus, EPA proposed deleting the names of distributors in the December 1995 proposal. The five comments received on this issue all supported the proposal. For the reasons mentioned above, § 122.21(q)(8), as promulgated, is unchanged from the proposal.

9. Land Application of Bulk Sewage Sludge

Proposed § 122.21(q)(9) requested information on sewage sludge that is land applied in bulk form. This section applies only where the applicant's permit must contain all applicable Part 503 requirements for land application. This section does not apply if the applicant generates EQ sewage sludge subject to § 122.21(q)(8)(iv) or if the applicant places sewage sludge in a bag or other container for sale or give-away for application to the land subject to § 122.21(q)(8)(v). In neither of these cases is it necessary to control the ultimate land application through a permit. Thus the applicant does not need to provide the information requested in § 122.21(q)(9) as part of the application. The section also does not apply if the applicant provides sewage sludge to another "person who prepares" subject to § 122.21(q)(8)(vi). In this case, the ultimate land application would be controlled by the subsequent "person who prepares."

EPA received numerous comments on different aspects of § 122.21(q)(9). Most of the commenters suggested different ways to obtain the information requested in this section. Some commenters believe that this information should not be requested in a permit application but rather during the life of the permit as new sites are added. Other commenters stated that information on land application sites would be available through annual reports. This issue of how to obtain adequate information without duplication or overloading the permitting authority with unnecessary information was addressed during the original development of Part 501 and Part 503.

After reviewing the comments, EPA believes that its current approach is well grounded. If information is known about land application sites at the time of permit application, it should be submitted to the permitting authority. If information is not known, a land application plan must be submitted. Reports are only required from Class I sludge management facilities unless required on a case-by-case basis in a permit. Some States may have more extensive requirements, but this rule only provides the Federal requirements. As mentioned previously, if the required information is already available, the permitting authority may waive the requirement or the permit application may simply reference the information provided elsewhere. Several commenters thought that it would be more appropriate to require information from appliers. However, appliers who do not change the sewage sludge quality are not TWTDS and are therefore not required to apply for a permit. Generators should be aware of where and how their sewage sludge is land applied. EPA believes it is feasible for generators to obtain information from appliers and submit it with their permit application. As mentioned earlier, this section is not applicable if a TWTDS produces all EQ sewage sludge. The land application plan serves as the vehicle to allow TWTDS to add sites during the life of the permit without requiring a major permit modification. The following paragraphs describe the individual requirements in this section. The final rule is the same as the proposal unless otherwise mentioned.

Paragraph (i) of § 122.21(q)(9) clarifies the existing requirement at § 501.15(a)(2)(x) which tells the applicant to report annual sludge production volume. Paragraph (ii) asks how the applicant will satisfy the § 503.12(i) notification requirement for land application sites in a State other than the State where the sewage sludge is prepared.

Paragraphs (A)–(C) of § 122.21(q)(9)(iii) ask the applicant to identify the land application site. These questions request locational information which meets the specifications of EPA's Locational Data Policy and supports the Watershed Protection Approach by providing permit writers and other Federal and State environmental managers with a means of geographically locating land application sites.

Paragraphs (D) and (E) of § 122.21(q)(9)(iii) ask the applicant to identify the land application site owner and applier, if different from the applicant. EPA believes that this information is necessary in order to ensure that the permit is issued to the correct party. These proposed paragraphs clarify and expand on existing requirements at § 501.15(a)(2)(viii).

One of the land application management practices in § 503.14 mandates that bulk sewage sludge shall not be applied to land at greater than the agronomic rate. Therefore, paragraphs (F) and (G) of § 122.21(q)(9)(iii) ask the applicant to identify the type of land application site, the type of vegetation grown on that site, if known at the time of permit application, and the vegetation's nitrogen requirement. This information enables the permit writer to calculate an appropriate permit management practice regarding agronomic rate. EPA recognizes that different crops may be grown on a site during the life of a permit. If the crop for a site is not known or likely to change, the applicant should submit whatever information is available.

Paragraph (H) of § 122.21(q)(9)(iii) requests information on vector attraction reduction measures undertaken at the land application site. Before sewage sludge is applied to the land, it must meet the requirements for vector attraction reduction in § 503.33. These measures may be undertaken either by the "person who prepares" sewage sludge or by the operator of the land application site.

Proposed paragraph (G) of § 122.21(q)(9)(iii) asked the applicant to submit any existing ground-water monitoring data for the land application site. This was intended to give the permitting authorities ground-water monitoring data for land application sites in order to ensure that sewage sludge application rates are appropriately protective of ground water. Five commenters responded to this requirement. Since ground-water monitoring at land application sites is not required by Part 503, some commenters thought that this requirement could cause facilities that voluntarily monitor to discontinue their monitoring program rather than submit all their data to the permitting authority. Another commenter mentioned that many sites have commercial fertilizers applied along with sewage sludge so that it is difficult to relate the results of ground-water testing to sewage sludge. After considering the comments, EPA agrees that available ground-water data should not be required on a permit application, and has not promulgated proposed § 122.21(q)(9)(iii)(G). If States require ground-water monitoring, they may request this information. EPA will only ask for data on ground-water monitoring if it is a specific permit condition.

Section 501.15(a)(2)(ix) asks for information necessary to determine if the site is appropriate for land application and a description of how the site will be managed. This requirement could be interpreted in different ways. Today's rule clearly specifies site management requirements in paragraphs (F)–(H) of § 122.21(q)(9)(iii) by asking for the type of site, the vegetation grown, the nitrogen requirements, and any on-site vector attraction reduction activities.

Permitting authorities need to be assured that sewage sludge is being used in accordance with Part 503. Detailed information on site management is often obtained through operating plans, annual reports, and inspections. In some situations, permitting authorities may choose to get this information before issuing a permit. Paragraph (I) has been added to § 122.21(q)(9)(iii) to emphasize that the permitting authority can request other site management information if it is needed to identify appropriate permit conditions.

Section 122.21(q)(9)(iv) requests information that the permitting authority needs in order to verify whether the § 503.12(e)(2)(i) requirement for appliers of bulk sewage sludge subject to cumulative pollutant loading rates (CPLRs) has been met. A cumulative pollutant loading rate, as defined in § 503.11(f) is "the maximum amount of an inorganic pollutant that can be applied to an area of land." This information enables EPA to ensure that the CPLRs are not exceeded when more than one facility is sending sewage sludge subject to CPLRs to the same site.

Section 122.21(q)(9)(v) restates the requirement in existing § 501.15(a)(2)(ix) for information on land application sites not identified at the time of permit application. EPA received numerous comments on paragraph (E) of this section. Many commenters discussed the difficulties involved in providing notice to "landowners and occupants adjacent to or abutting the proposed land application site." Numerous questions have been raised about exactly what this language means.

EPA agrees that States should provide public notice as required by State and local law, when such laws exist. However, some States and municipalities have no provisions for public notice of land application sites. Section 122.21(q)(9)(v)(E) of today's rule requires that land application plans include provisions for public notice of new land application sites. If State or local law includes public notice provisions, these must be followed. Where State or local law does not require advance public notice, the land application plan must include specific provisions stating how the general public will be apprized of new sites.

10. Surface Disposal

Section 122.21(q)(10) requests information on sewage sludge that is placed on a surface disposal site. By definition, a sewage sludge surface disposal site is a TWTDS. Many surface disposal site owner/operators, however, do not have to complete this section, but instead submit the limited background information required by § 122.21(c)(2)(iii). The applicant is required to provide the information requested by § 122.21(q)(10) only if the surface disposal site is already covered by an NPDES permit; if the owner/operator is requesting site-specific pollutant limits; or if the permitting authority is requiring a full application.

Paragraph (i) of § 122.21(q)(10) clarifies the existing requirement at § 501.15(a)(2)(x) which tells the applicant to report annual sludge production volume. Paragraph (ii) of § 122.21(q)(10) requires that the applicant provide the name or number, address, telephone number, and amount of sewage sludge placed on each surface disposal site that the applicant does not own or operate. This paragraph clarifies and expands on existing requirements at § 501.15(a)(2)(viii). EPA believes that this information is necessary in order to ensure that the permit is issued to the correct party.

Paragraph (iii) of § 122.21(q)(10) requests detailed information on each active sewage sludge unit at each surface disposal site that the applicant owns or operates. A "sewage sludge unit" is defined in § 503.21(n) as "land on which only sewage sludge is placed for final disposal." A "surface disposal site" is "an area of land that contains one or more sewage sludge units." Information on each active sewage sludge unit is necessary because Part 503 provides for different pollutant limits, monitoring requirements, and management practices for each unit. This information enables the permitting authority to establish proper permit conditions.

Paragraphs (A)–(C) of § 122.21(q)(10)(iii) ask the applicant to identify the surface disposal site by submitting the same information requested in § 122.21(q)(9)(iii). This information may have already been provided if the surface disposal site is located at a POTW. The information is requested in this section in order to adequately locate "sludge-only" surface disposal sites that have been asked to submit a full permit application.

Paragraph (K) of § 122.21(q)(10)(iii) requests information on sewage sludge sent to the active sewage sludge unit by any facility other than the applicant's. This information helps the permit writer to determine which requirements apply to the surface disposal site owner/operator and which apply to the facility which sends sewage sludge to the surface disposal site. As previously mentioned, the applicant may reference substantially similar information already submitted to the permitting authority.

Paragraph (L) of § 122.21(q)(10)(iii) requests information on vector attraction reduction measures undertaken at the active sewage sludge unit. Before sewage sludge is placed on an active sewage sludge unit, it must meet the requirements for vector attraction reduction in § 503.33. Since vector attraction reduction measures may be performed either by the facility preparing sewage sludge or by the surface disposal site owner/operator, EPA believes that both should be required to supply information on their practices.

Section 503.24(n)(2) requires surface disposal sites to demonstrate by way of a ground water monitoring program or certification that sludge placed on an active sewage sludge unit does not contaminate the underlying aquifer. In order to ensure that this requirement is implemented, paragraph (M) of § 122.21(q)(10)(iii) requests information on ground water monitoring programs or certifications. Because many communities rely on ground water as a source of drinking water, EPA believes that this information is necessary to protect public health and the environment.

After August 18, 1993, only surface disposal sites showing good cause may apply for site-specific pollutant limits. Paragraph (N) of § 122.21(q)(10)(iii) requests the information necessary for the permit writer to determine whether such site-specific limits are warranted. This information must include a demonstration that the values for site parameters at the applicant's site differ from those used to develop the surface disposal pollutant limits in Part 503.

11. Incineration

Section 122.21(q)(11) requests information on sewage sludge that is fired in a sewage sludge incinerator. According to § 503.41(k), a sewage sludge incinerator is "an enclosed device in which only sewage sludge and auxiliary fuel are fired." A sewage sludge incinerator is a TWTDS and is required to submit a full permit application.

Paragraph (i) of § 122.21(q)(11) clarifies the existing requirement at § 501.15(a)(2)(x) which tells the applicant to report annual sludge production volume. Paragraph (ii) of § 122.21(q)(11) requires that the applicant provide the name or identifying number, address, telephone number, and amount of sewage sludge fired in each sewage sludge incinerator that the applicant does not own or operate. This paragraph clarifies existing requirements at § 501.15(a)(2)(viii). EPA believes that this information is necessary in order to ensure that the permit is issued to the correct party.

Paragraph (iii) of § 122.21(q)(11) requests detailed information on each sewage sludge incinerator that the applicant owns or operates. Paragraph (B) of § 122.21(q)(11)(iii) asks the applicant to identify the sewage sludge incinerator by latitude and longitude. There is no requirement to submit a topographic map because EPA believes all sewage sludge incinerators are located at treatment works that generate sewage sludge. Therefore, they are already required to submit a topographic map under the requirements of § 122.21(q)(5).

Paragraph (C) of paragraph (iii) requests the total amount of sewage sludge fired annually in each incinerator. This information is necessary because the monitoring requirements for sewage sludge incinerators are based on the total amount fired.

Paragraphs (D) and (E) of § 122.21(q)(11)(iii) request information on compliance with the beryllium and mercury National Emissions Standards for Hazardous Air Pollutants (NESHAPs). Section 503.43 paragraphs (a) and (b) require compliance with these standards through a cross-reference to 40 CFR Part 61 subparts C and E. If the incinerator is required to perform stack testing, these paragraphs would require the applicant to submit a report of that testing.

Under § 503.43, the pollutant limits applicable to each sewage sludge incinerator are calculated based on factors unique to each incinerator. Paragraphs (F), (G), and (H) of § 122.21(q)(11)(iii) require each applicant to submit these factors for their incinerator(s). Calculating pollutant limits on an individual basis allows the actual performance of each incinerator and actual site conditions, such as topography, to be taken into account. EPA believes that this is more appropriate than mandating national pollutant limitations for sewage sludge incinerators.

EPA received one comment on this issue. The commenter mistakenly believed that all incinerator applicants would have to resubmit information on their performance tests and air modeling. Incinerator applicants that have already submitted this information to the permitting authority do not have to resubmit. Permit applications have already been completed for most currently operating sewage sludge incinerators. This requirement applies to incinerators for which complete permit applications have not yet been submitted. At the next permit cycle an incinerator permittee can reference the previously submitted data unless the permitting authority requires new testing.

In the development of Part 503, EPA determined that it would be infeasible to establish individual limits for each hydrocarbon in sewage sludge incinerator exit gas. Instead, the Agency adopted a 100 ppm total hydrocarbon (THC) limit and required continuous THC monitoring to show compliance. Part 503 was amended on February 25, 1994 (59 FR 9095) to allow sewage sludge incinerators whose exit gas does not exceed 100 ppm carbon monoxide (CO) to show compliance with the THC operational standard by monitoring CO instead of THC. Paragraphs (H), (I), and (J) of proposed § 122.21(q)(11)(iii) requested information on the incinerator's exit gas concentration of THC or CO, oxygen, and moisture.

One commenter questioned the validity of this requirement. The commenter stated that since THC or CO data must be monitored continuously, a request for one data point on the permit application is meaningless. EPA agrees with this comment and has deleted these questions. In today's rule § 122.21(q)(11)(iii)(I) asks whether the applicant monitors THC or CO.

Many of the incinerator's site-specific factors that are used to calculate pollutant limits and compliance with the operational standard are highly dependent on the temperature at which the incinerator is operated and the rate at which sewage sludge is fed into the incinerator. For most incinerators, these parameters are determined during an initial performance test. EPA asked for the information in paragraphs (K) through (O) of proposed § 122.21(q)(11)(iii) in order to ensure appropriate pollutant limits and that the incinerator would be operated within the parameters of the original performance test.

After reviewing these questions, EPA is making some changes in today's rule. The information in paragraphs (K), (N), and (O) of proposed § 122.21(q)(11)(iii) remain unchanged but the paragraphs are renumbered as (J), (M), and (N). One commenter thought that proposed paragraph (O) is unnecessary and unclear. Part 503 requires that a sewage sludge incinerator's air pollution control devices be operated in a manner that is not significantly different from how they were operated during the performance test. This paragraph requests the performance test operating parameters for the air pollution control devices so compliance with this requirement can be determined. Therefore it is being promulgated as proposed.

The information requested in proposed paragraphs (L) and (M) is from the performance test. Proposed paragraph (L) is finalized as paragraph (K). To be consistent with the amendments to Part 503, the term "combustion temperature" is changed to "maximum performance test combustion temperature", which is the arithmetic mean of the maximum combustion temperature for each of the runs in a performance test. Proposed paragraph (M) is finalized as paragraph (L) and is modified to clarify that the requested sewage sludge feed rate is that used during the performance test.

Proposed paragraphs (P) and (Q) of § 122.21(q)(11)(iii) are promulgated unchanged except for being renumbered as paragraphs (O) and (P). They request information on the monitoring equipment and air pollution control devices installed on the incinerator. Information on this equipment is necessary to ensure that the facility complies with the management practices at § 503.45.

12. Disposal in a Municipal Solid Waste Landfill

Section 122.21(q)(12) requests information on sewage sludge that is sent to a municipal solid waste landfill (MSWLF). Section 503.4 states that sewage sludge sent to a MSWLF that complies with the requirements in 40 CFR Part 258 constitutes compliance with sec. 405(d) of the CWA. The questions in § 122.21(q)(12) are necessary to ensure the availability of accurate information about a MSWLF and the sewage sludge that is sent there.

Paragraphs (i) and (ii) of § 122.21(q)(12) clarify existing requirements at § 501.15(a)(2)(v), (viii), and (x) that request information on other permits, the location of disposal sites, and the annual sludge production volume. Paragraph (iii) requests information on the sewage sludge quality to ensure that it is acceptable for a MSWLF. Paragraph (iv) requests available information on whether the MSWLF is in compliance with Part 258.

EPA received three comments on this section. All three commenters stated that permittees should not be asked about landfill compliance with Part 258 since they believe this is the responsibility of the landfill. EPA disagrees with the commenters and this section remains as proposed. Section 503.4 states that disposal in a MSWLF that complies with the requirements in 40 CFR part 258 constitutes compliance with section 405(d) of the CWA. Sewage sludge that is placed in a MSWLF does not have to meet any of the pollutant limits or pathogen and vector requirements that are contained in Part 503. Protection of public health and the environment is provided by the Part 258 requirements. If sewage sludge is disposed in a landfill that is not in compliance with part 258, there is no way to know if the landfill is designed and operated so as to protect the environment from any potential problems from the sewage sludge. The preamble to Part 503 (58 FR 9248) explains the relationship between Parts 258 and 503.

13. Contractors

Section 122.21(q)(13) requires the applicant to provide contractor information. The applicant is required to identify all contractors responsible for any sewage sludge related operation or maintenance aspects of the TWTDS, and specify their responsibilities. The permitting authority uses this information to determine who has primary responsibility for the operation and maintenance of the TWTDS.

EPA received four comments on this section. One commenter agreed with EPA's proposal to identify all contractors, one disagreed, one wanted information on the proposal but only on appliers, and one wanted more clarification about the scope of the requirement. EPA agrees that TWTDS cannot by contracting out sewage sludge use or disposal avoid their legal obligation to comply with Part 503 and any permit requirements. However, EPA believes it is helpful to the permitting authorities and the general public to know all parties involved in sewage sludge management at a facility. This requirement remains as proposed.

14. Other Information

Section 122.21(q)(14) requires the applicant to report any information necessary to determine the appropriate standards for permitting under 40 CFR Part 503, and any other information the permitting authority may request and reasonably require to assess the sewage sludge use and disposal practices, to determine whether to issue a permit, or to identify appropriate permit requirements. This paragraph restates the existing requirements in § 501.15(a)(2)(xi) and (xii). EPA received one comment on this section. The commenter agreed with the proposal, and it remains as proposed.

15. Signature

Section 122.21(q)(15) requires that an authorized official sign and certify the form in compliance with 40 CFR 122.22. This ensures that the person signing the form has the authority to speak for and legally bind the permittee. No comments were received on this section and it remains as proposed.

H. Permit Conditions for POTWs (40 CFR 122.44(j))

Under existing § 122.21(j)(4), any POTW with an approved pretreatment program must provide a written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1). This provision requires that the local limits evaluation be done prior to permit issuance. States and municipalities have expressed concerns that such evaluation would be more appropriate after permit issuance, so as to avoid the need for a second technical evaluation if the POTW's permit limits are revised in the new permit.

In response to these concerns, the Agency proposed to change this from an application requirement to a POTW pretreatment program requirement at § 403.8(f)(4). EPA did not receive any comments on this change but instead codifies this requirement at § 122.44(j), which lists pretreatment program permit conditions that must be in a POTW's permit. As such the requirement to provide a written evaluation of the need to revise local limits will be included in permits. POTWs must evaluate their local limits during each permit cycle, rather than during the permit application process.

I. State Program Requirements (40 CFR Parts 123 & 501)

EPA intends to maintain consistency between the NPDES permit application

requirements of Part 122 and the State sewage sludge permitting requirements of Parts 123 and 501. This reflects EPA's belief that a TWTDS should submit the same application information regardless of whether the permitting authority regulates sludge management under an approved NPDES or under a non-NPDES program. In fact, EPA published changes to Parts 123 and 501 (63 FR 45114, August 24, 1998) that consolidate all State sewage sludge management requirements under Part 501. As part of this process, the December 6, 1995 proposal of today's rule included revisions to the language of §§ 123.25(a)(4) and 501.15(a)(2) to modify the sewage sludge information requirements. All four comments received by EPA supported having the same minimum requirements for EPA and authorized States.

Today's rule adds paragraph 122.21(q) to the list in § 123.25(a)(4) of provisions that States must implement to be granted NPDES authorization. The specific permit information requirements contained in § 122.21(q) of today's final rule are referenced in § 501.15(d)(1)(i)(B). The August 24, 1998 final rule states that § 501.15(d)(1)(i)(B) is not effective until today's rule becomes effective. This was necessary because § 122.21(q) was not yet final when the Part 501 and 123 revisions were published. Therefore, the August 24, 1998 final rule renumbered § 501.15(a)(2) as § 501.15(a)(4) and retained that section so that there would still be specific sludge permit information requirements in effect. The intent was that this new § 501.15(a)(4) would be deleted upon publication of today's rule. Today's final rule deletes § 501.15(a)(4) and makes § 501.15(d)(1)(i)(B) effective on December 2, 1999.

III. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 **Federal Register** 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and Tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

EPA has concluded that this rule will create a mandate on State, local, and Tribal governments and that the Federal government will not provide the funds necessary to pay the direct costs incurred by the State, local, and/or Tribal governments in complying with the mandate. In developing this rule, EPA consulted with State, local, and Tribal governments to enable them to provide meaningful and timely input in the development of this rule. EPA made efforts to consult with interested stakeholders during the development of the December 6, 1995, proposed rule. In late 1993 and early 1994, EPA sought feedback on draft forms and other elements of the proposal from States with approved NPDES programs, local governments, the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), the Association of Metropolitan Sewerage Agencies (AMSA), the California Association of Sanitation Agencies (CASA), the Water Environment Federation (WEF), and several environmental groups. In response to this outreach effort, EPA received written comments from a dozen States, several municipalities, and from AMSA. EPA also met with State and municipal representatives and participated in a conference call with representatives from ten POTWs and two States.

EPA received 60 comments during the public comment period on the proposed rule and made numerous changes to the rule and the forms in response to the comments. Stakeholders raised a number of issues related to the possible impacts of the municipal application requirements on local governments. The most significant issue concerned the required sampling data. States were particularly concerned about the ability of small municipalities to provide the data. To address this concern, EPA modified the regulation to reduce the information required from small facilities under 0.1 mgd. Many municipalities and States were also concerned about redundant information. EPA resolved this issue by allowing States to waive requirements for information otherwise available to them and by allowing facilities to reference information they have already provided in annual reports, discharge monitoring reports (DMRs), or other reports. The final rule provides flexibility to the States and reduces the reporting burden for regulated facilities while ensuring that EPA and the States will obtain the information necessary to issue permits that protect the environment.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under UMRA section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's rule does not include a Federal mandate that may result in expenditures of $100 million or more to either State, local and tribal governments in the aggregate, or to the private sector in any year. To the extent enforceable duties arise as a result of today's rule on State, local and tribal governments and the private sector, such enforceable duties do not result in a significant regulatory action being imposed upon State, local and tribal governments and the private sector since the estimated aggregate cost of compliance for the regulated entities is not expected to exceed $4.8 million annually. Today's rule streamlines the permit application requirements for municipal and sludge application requirements to provide additional flexibility to the States in complying with current regulatory requirements and reduce the burden on affected governments. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and thus this rule is not subject to the requirements in section 203 of UMRA. The amendments will not significantly affect small governments because as explained above, this rulemaking streamlines current regulatory requirements and provides additional flexibility to meet regulatory requirements. The small governments affected by this rule are tribal and municipal governments and the rule minimizes the impact on these small government entities.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0086. A copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; or by calling (202) 260–2740.

The final rule consolidates application requirements from existing regulations into a "modular" permit application form, thereby streamlining and clarifying the process for permit applicants. EPA has developed forms 2A and 2S and the corresponding reporting requirements at § 122.21(j) and § 122.21(q) in order to consolidate the application requirements for POTWs and TWTDS. EPA has promulgated the Form 2A requirement under the statutory authority of section 402 of the CWA, as amended. Similarly, the Agency has promulgated the Form 2S requirement under section 405 of the CWA, as amended. Both operating statutes allow EPA to consider regulatory options to minimize the forms' economic impacts on small entities.

The annual reporting and recordkeeping costs and burden for this collection of information are described in the following paragraphs.

For Form 2A the total annual costs are $4,100,711. There are 731 major applicants, 1230 minor applicants between 0.1 and 1.0 mgd, and 1230 minor applicants <0.1 mgd. The cost per major (over 1.0 mgd) applicant is $4435, the cost per minor applicant between 0.1 and 1.0 mgd is $477, and the cost per minor applicant <0.1 mgd is $221. The average cost per applicant is $1285. Total annual burden is 30,593 hours. There are 731 major applicants, 1230 minor applicants between 0.1 and 1.0 mgd, and 1230 minor applicants <0.1 mgd. The burden per major applicant is 24 hours, the burden per minor applicant between 0.1 and 1.0 mgd is 6.2 hours, and the burden per minor applicant <0.1 mgd is 4.4 hours. The average burden per applicant is 9.6 hours.

For Form 2S the total annual costs are $714,823. There are 3911 NPDES POTW applicants, 221 NPDES privately owned treatment works applicants, 38 sludge-only POTW applicants, and 2 sludge-only privately owned treatment works applicants. The costs per applicant are: NPDES POTW $183, NPDES privately owned treatment works $551, sludge-only POTW $171, and sludge-only privately owned treatment works $242. The average cost per applicant is $207. Total annual burden is 32,628 hours. There are 3911 NPDES POTW applicants, 221 NPDES privately owned treatment works applicants, 38 sludge-only POTW applicants, and 2 sludge-only privately owned treatment works applicants. The burdens per applicants are: NPDES POTW 9.5 hours, NPDES privately owned treatment works 9.5 hours, sludge-only POTW 3.9 hours, and sludge-only privately owned treatment works 2.5 hours. The average burden per applicant is 9.4 hours.

Overall, for both Form 2A and Form 2S the total annual costs are $4,815,534 and the total annual burden is 63,221 hours. The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR Part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an administrative agency as part of any rulemaking to prepare a regulatory flexibility analysis to describe the impact of rules on small entities. Under 5 U.S.C. 605(b), no regulatory flexibility analysis is required, however, where the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under RFA section 605(b), EPA

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certifies that today's rule will not have a significant economic impact on a substantial number of small entities.

In developing these regulations, EPA considered their effects on small entities. Section 601(6) of the RFA defines small entities as small businesses, small governmental entities, and small, not-for-profit organizations. The small entities affected by this rule include small governmental jurisdictions and small businesses that own or operate wastewater treatment works and sludge facilities or sludge facilities only. About 16,080 small entities are regulated by the rule. Ninety-three percent of the small entities are small governmental jurisdictions, i.e., publicly owned treatment works (POTWs) and six percent are small businesses, i.e., privately owned treatment works. Almost all of the small governmental jurisdictions (99%) will be required to complete both the municipal and sewage sludge application forms; the rest will only have to complete the sewage sludge application form. The small businesses will only have to complete the sewage sludge application form.

Under the RFA, the term "small governmental jurisdiction" means, among other things, governments of cities, counties, towns or special districts with a population of fewer than 50,000. To evaluate the economic impact on small governmental jurisdictions subject to today's rule, EPA looked at the effect on 5 million gallons per day (mgd) or smaller POTWs, that is, those serving 50,000 or less. EPA cannot calculate from available data how many small governmental jurisdictions own and operate POTWs that are subject to the rule. EPA collects data on individual POTW operations and these data are not aggregated by the supplying public entities. EPA has data on POTWs by size, expressed in terms of mgd. With this information, EPA can determine with a fair degree of certainty what size community any given POTW serves. Thus, for example, a 1 mgd POTW will be needed to serve a community of around 10,000. However, EPA cannot determine the number of small governmental jurisdictions operating POTWs by simply totaling the number of POTWs serving populations up to 50,000 (as measured by mgd). This would overstate the number of small governmental jurisdictions owning POTWs. The number of POTWs operated by public entities will obviously vary. A municipality (or sewerage district) may operate one or more POTWs or even none at all, if it chooses to rely on the services of a POTW in a neighboring jurisdiction. Consequently, the number of POTWs serving communities of 50,000 or fewer does not correspond to the number of small governmental jurisdictions with a population of 50,000 or fewer.

While, as explained above, EPA could not determine how many POTWs a public entity owned and operated (and thus could not calculate the number of small governmental jurisdictions affected by the rule), EPA did calculate the economic impact on POTWs serving communities in a number of size ranges in order to evaluate the economic impact on small governmental jurisdictions as defined in the RFA. The result of this analysis showed that in no event would the impact to the community owning the POTW be significant as measured by the POTW's (and consequently, the public entity's) operating revenues. EPA concluded that the economic impact of the rule on small governmental jurisdictions as defined in the RFA would not be substantial in any circumstances.

For purposes of evaluating the economic impact, EPA assumed that water supply revenues of a municipality with a population of 50,000 were equivalent to those of a 5 mgd POTW. Of the data that is available in the 1991–1992 census of governments, the water supply revenue information is most likely to reflect revenues of POTWs, since customer billings generally cover water and sewer charges. To evaluate the economic impact on small businesses, EPA looked at private sewerage systems with annual revenues of 6 million or less, the Small Business Administration's definition of a small business for the sewerage industry.

EPA considered a range of regulatory options for the proposed forms. In today's final rule, EPA adopted the modular permit application approach for both POTWs and privately owned treatment works. In the final rule, EPA imposes fewer, more focused requirements for facilities discharging less than 1.0 mgd, which are less likely to pollute and which have a lower capacity to absorb large monitoring costs. The smallest facilities, less than 0.1 mgd, complete only eight basic questions and provide information on only four pollutants. The more focused requirements result from adjustments that are appropriate to these less "complex" facilities.

For purposes of evaluating the economic impact of this rule on small governmental jurisdictions, EPA compared costs with average annual water supply revenues for small governmental jurisdictions obtained from the 1991–1992 census of governments. Because annual revenues for small privately owned treatment works were not available, in evaluating the economic impact on small businesses, EPA used the average water supply revenue figure for small governmental jurisdictions as a proxy for small privately owned treatment works. For both small POTWs and small privately owned treatment works, EPA used the costs for compliance estimated in the ICR.

EPA's assessment shows that the costs of complying with today's rule are not significant, even for very small POTWs and privately-owned treatment works. The total cost of complying with today's rule for all POTWs and privately-owned treatment works is $4,815,534 and consists entirely of paperwork and testing costs associated with collecting the required information and completing the forms.

The five-year compliance cost estimates for small POTWs that are subject to both sets of application requirements are: $404 for POTWs less than 0.1 mgd; $660 for POTWs between 0.1 and 1.0 mgd; and $4,618 for POTWs between 1.0 and 5.0 mgd. The five-year compliance cost estimate for small POTWs that are subject only to the sludge application requirements are $172. The five-year compliance cost estimate for the vast majority of small privately owned treatment works, that are subject only to the sludge application requirements, is $551. The five-year compliance cost for a few small privately owned treatment works that don't have wastewater discharges is only $242.

The annual cost for a small POTW ranges from 0.02 to 0.09 percent of the average annual water supply revenues of these small governmental jurisdictions, depending on their size and whether or not they have to complete one or both application forms. The annual cost for most small privately owned treatment works will be about 0.08 percent of the average annual water supply revenue of these small businesses. The annual cost for a few small privately owned treatment works without wastewater discharges is even smaller (0.03 percent). Thus, impacts on small treatment facilities will not be significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that today's rule will not have a significant economic impact on a substantial number of small entities.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. section 801 *et.seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on December 2, 1999.

H. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant action as defined by E.O. 12866 and it does not establish an environmental standard intended to mitigate health or safety risks. This rule is a procedural rule that streamlines existing regulations and application forms for municipal dischargers and treatment works who use or dispose of sludge.

I. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments nor does it impose substantial direct compliance costs on them. This rule streamlines current regulatory requirements and provides additional flexibility to meet regulatory requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Environmental protection, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control.

40 CFR Part 123

Confidential business information, Hazardous materials, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control, Penalties.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous waste, Indian lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 504

Confidential business information, Environmental protection, Publicly owned treatment works, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal.

Dated: July 15, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding entries in numerical order under the indicated headings, removing the entry for "122.21(j)(4)", and revising the entry for "123.25" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
. . . . .	
EPA Administered Permit Programs: The National Pollutant Discharge Elimination System	
. . . . .	
122.21(j), (q)	2040–0086

40 CFR citation	OMB control No.
. . . . .	
122.44(j)	2040–0150
. . . . .	
State Permit Requirements	
. . . . .	
123.25	2040–0004 2040–0110 2040–0170 2040–0180 2040–0086
. . . . .	

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

3. The authority citation for Part 122 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

4. Section 122.2 is amended by adding a definition for "Indian country" and "TWTDS" in alphabetical order to read as follows:

§ 122.2 Definitions.

* * * * *

Indian country means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(2) All dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

* * * * *

TWTDS means "treatment works treating domestic sewage."

* * * * *

5. Section 122.21 is amended by revising paragraphs (a), (c)(2), the introductory text of paragraph (f), and paragraph (j); removing and reserving paragraph (d)(3); revising paragraph (e); and by adding paragraph (q) before the notes to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

(a) *Duty to apply.* (1) Any person who discharges or proposes to discharge pollutants or who owns or operates a "sludge-only facility" whose sewage sludge use or disposal practice is regulated by part 503 of this chapter, and who does not have an effective permit, except persons covered by general permits under § 122.28, excluded under § 122.3, or a user of a privately owned treatment works unless the Director requires otherwise under § 122.44(m), must submit a complete application to the Director in accordance with this section and part 124 of this chapter.

(2) *Application Forms:* (i) All applicants for EPA-issued permits must submit applications on EPA permit application forms. More than one application form may be required from a facility depending on the number and types of discharges or outfalls found there. Application forms may be obtained by contacting the EPA water resource center at (202) 260–7786 or Water Resource Center, U.S. EPA, Mail Code 4100, 401 M Street, S.W., Washington, DC 20460 or at the EPA Internet site www.epa.gov/owm/npdes.htm. Applications for EPA-issued permits must be submitted as follows:

(A) All applicants, other than POTWs and TWTDS, must submit Form 1.

(B) Applicants for new and existing POTWs must submit the information contained in paragraph (j) of this section using Form 2A or other form provided by the director.

(C) Applicants for concentrated animal feeding operations or aquatic animal production facilities must submit Form 2B.

(D) Applicants for existing industrial facilities (including manufacturing facilities, commercial facilities, mining activities, and silvicultural activities), must submit Form 2C.

(E) Applicants for new industrial facilities that discharge process wastewater must submit Form 2D.

(F) Applicants for new and existing industrial facilities that discharge only nonprocess wastewater must submit Form 2E.

(G) Applicants for new and existing facilities whose discharge is composed entirely of storm water associated with industrial activity must submit Form 2F, unless exempted by § 122.26(c)(1)(ii). If the discharge is composed of storm water and non-storm water, the applicant must also submit, Forms 2C, 2D, and/or 2E, as appropriate (in addition to Form 2F).

(H) Applicants for new and existing TWTDS, subject to paragraph (c)(2)(i) of this section must submit the application information required by paragraph (q) of this section, using Form 2S or other form provided by the director.

(ii) The application information required by paragraph (a)(2)(i) of this section may be electronically submitted if such method of submittal is approved by EPA or the Director.

(iii) Applicants can obtain copies of these forms by contacting the Water Management Divisions (or equivalent division which contains the NPDES permitting function) of the EPA Regional Offices. The Regional Offices' addresses can be found at § 1.7 of this chapter.

(iv) Applicants for State-issued permits must use State forms which must require at a minimum the information listed in the appropriate paragraphs of this section.

* * * * *

(c) * * *

(2) *Permits under section 405(f) of CWA.* All TWTDS whose sewage sludge use or disposal practices are regulated by part 503 of this chapter must submit permit applications according to the applicable schedule in paragraphs (c)(2)(i) or (ii) of this section.

(i) A TWTDS with a currently effective NPDES permit must submit a permit application at the time of its next NPDES permit renewal application. Such information must be submitted in accordance with paragraph (d) of this section.

(ii) Any other TWTDS not addressed under paragraphs (c)(2)(i) of this section must submit the information listed in paragraphs (c)(2)(ii)(A) through (E) of this section to the Director within 1 year after publication of a standard applicable to its sewage sludge use or disposal practice(s), using Form 2S or another form provided by the Director. The Director will determine when such TWTDS must submit a full permit application.

(A) The TWTDS's name, mailing address, location, and status as federal, State, private, public or other entity;

(B) The applicant's name, address, telephone number, and ownership status;

(C) A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of paragraph (q)(8)(iv) of this section, the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal, and the location of any land application sites;

(D) Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and

(E) The most recent data the TWTDS may have on the quality of the sewage sludge.

(iii) Notwithstanding paragraphs (c)(2)(i) or (ii) of this section, the Director may require permit applications from any TWTDS at any time if the Director determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

(iv) Any TWTDS that commences operations after promulgation of an applicable "standard for sewage sludge use or disposal" must submit an application to the Director at least 180 days prior to the date proposed for commencing operations.

(d) * * *

(3) [Reserved]

(e) *Completeness.* (1) The Director shall not issue a permit before receiving a complete application for a permit except for NPDES general permits. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. For EPA administered NPDES programs, an application which is reviewed under § 124.3 of this chapter is complete when the Director receives either a complete application or the information listed in a notice of deficiency.

(2) A permit application shall not be considered complete if a permitting authority has waived application requirements under paragraphs (j) or (q) of this section and EPA has disapproved the waiver application. If a waiver request has been submitted to EPA more than 210 days prior to permit expiration and EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

(f) *Information requirements.* All applicants for NPDES permits, other than POTWs and other TWTDS, must provide the following information to the Director, using the application form provided by the Director. Additional information required of applicants is set forth in paragraphs (g) through (k) of this section.

* * * * *

(j) *Application requirements for new and existing POTWs.* Unless otherwise indicated, all POTWs and other dischargers designated by the Director must provide, at a minimum, the information in this paragraph to the Director, using Form 2A or another application form provided by the Director. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the Director. The Director may waive any requirement of this paragraph if he or she has access to substantially identical information. The Director may also waive any requirement of this paragraph that is not of material concern for a specific permit, if approved by the Regional Administrator. The waiver request to the Regional Administrator must include the State's justification for the waiver. A Regional Administrator's disapproval of a State's proposed waiver does not constitute final Agency action, but does provide notice to the State and permit applicant(s) that EPA may object to any State-issued permit issued in the absence of the required information.

(1) *Basic application information.* All applicants must provide the following information:

(i) *Facility information.* Name, mailing address, and location of the facility for which the application is submitted;

(ii) *Applicant information.* Name, mailing address, and telephone number of the applicant, and indication as to whether the applicant is the facility's owner, operator, or both;

(iii) *Existing environmental permits.* Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

(A) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;

(B) Underground Injection Control program under the Safe Drinking Water Act (SDWA);

(C) NPDES program under Clean Water Act (CWA);

(D) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(E) Nonattainment program under the Clean Air Act;

(F) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(G) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(H) Dredge or fill permits under section 404 of the CWA; and

(I) Other relevant environmental permits, including State permits;

(iv) *Population.* The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;

(v) *Indian country.* Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

(vi) *Flow rate.* The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous 3 years;

(vii) *Collection system.* Identification of type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and

(viii) *Outfalls and other discharge or disposal methods.* The following information for outfalls to waters of the United States and other discharge or disposal methods:

(A) For effluent discharges to waters of the United States, the total number and types of outfalls (e.g, treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(B) For wastewater discharged to surface impoundments:

(1) The location of each surface impoundment;

(2) The average daily volume discharged to each surface impoundment; and

(3) Whether the discharge is continuous or intermittent;

(C) For wastewater applied to the land:

(1) The location of each land application site;

(2) The size of each land application site, in acres;

(3) The average daily volume applied to each land application site, in gallons per day; and

(4) Whether land application is continuous or intermittent;

(D) For effluent sent to another facility for treatment prior to discharge:

(1) The means by which the effluent is transported;

(2) The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(3) The name, mailing address, contact person, phone number, and NPDES permit number (if any) of the receiving facility; and

(4) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(E) For wastewater disposed of in a manner not included in paragraphs (j)(1)(viii)(A) through (D) of this section (e.g., underground percolation, underground injection):

(1) A description of the disposal method, including the location and size of each disposal site, if applicable;

(2) The annual average daily volume disposed of by this method, in gallons per day; and

(3) Whether disposal through this method is continuous or intermittent;

(2) *Additional Information.* All applicants with a design flow greater than or equal to 0.1 mgd must provide the following information:

(i) *Inflow and infiltration.* The current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;

(ii) *Topographic map.* A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:

(A) Treatment plant area and unit processes;

(B) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;

(C) Each well where fluids from the treatment plant are injected underground;

(D) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within ¼ mile of the treatment works' property boundaries;

(E) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and

(F) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

(iii) *Process flow diagram or schematic.*

(A) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and

(B) A narrative description of the diagram; and

(iv) *Scheduled improvements, schedules of implementation.* The following information regarding scheduled improvements:

(A) The outfall number of each outfall affected;

(B) A narrative description of each required improvement;

(C) Scheduled or actual dates of completion for the following:

(1) Commencement of construction;

(2) Completion of construction;

(3) Commencement of discharge; and

(4) Attainment of operational level;

(D) A description of permits and clearances concerning other Federal and/or State requirements;

(3) *Information on effluent discharges.* Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

(i) *Description of outfall.* The following information about each outfall:

(A) Outfall number;

(B) State, county, and city or town in which outfall is located;

(C) Latitude and longitude, to the nearest second;

(D) Distance from shore and depth below surface;

(E) Average daily flow rate, in million gallons per day;

(F) The following information for each outfall with a seasonal or periodic discharge:

(1) Number of times per year the discharge occurs;

(2) Duration of each discharge;

(3) Flow of each discharge; and

(4) Months in which discharge occurs; and

(G) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used;

(ii) *Description of receiving waters.* The following information (if known) for each outfall through which effluent is discharged to waters of the United States:

(A) Name of receiving water;

(B) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;

(C) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and

(D) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable);

(iii) *Description of treatment.* The following information describing the treatment provided for discharges from each outfall to waters of the United States:

(A) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:

(1) Design biochemical oxygen demand (BOD_5 or $CBOD_5$) removal (percent);

(2) Design suspended solids (SS) removal (percent); and, where applicable,

(3) Design phosphorus (P) removal (percent);

(4) Design nitrogen (N) removal (percent); and

(5) Any other removals that an advanced treatment system is designed to achieve.

(B) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination);

(4) *Effluent monitoring for specific parameters.*

(i) As provided in paragraphs (j)(4)(ii) through (x) of this section, all applicants must submit to the Director effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the United States, except for CSOs. The Director may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The Director may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone;

(ii) All applicants must sample and analyze for the pollutants listed in Appendix J, Table 1A of this part;

(iii) All applicants with a design flow greater than or equal to 0.1 mgd must sample and analyze for the pollutants listed in Appendix J, Table 1 of this part. Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine from Table 1;

(iv) The following applicants must sample and analyze for the pollutants listed in Appendix J, Table 2 of this part, and for any other pollutants for which the State or EPA have established water quality standards applicable to the receiving waters:

(A) All POTWs with a design flow rate equal to or greater than one million gallons per day;

(B) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(C) Other POTWs, as required by the Director;

(v) The Director should require sampling for additional pollutants, as appropriate, on a case-by-case basis;

(vi) Applicants must provide data from a minimum of three samples taken within four and one-half years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The Director should require additional samples, as appropriate, on a case-by-case basis.

(vii) All existing data for pollutants specified in paragraphs (j)(4)(ii) through (v) of this section that is collected within four and one-half years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

(viii) Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR part 136 unless an alternative is specified in the existing NPDES permit. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

(ix) The effluent monitoring data provided must include at least the following information for each parameter:

(A) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;

(B) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;

(C) The analytical method used; and

(D) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

(x) Unless otherwise required by the Director, metals must be reported as total recoverable.

(5) *Effluent monitoring for whole effluent toxicity.*

(i) All applicants must provide an identification of any whole effluent toxicity tests conducted during the four and one-half years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge.

(ii) As provided in paragraphs (j)(5)(iii)–(ix) of this section, the following applicants must submit to the Director the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(A) All POTWs with design flow rates greater than or equal to one million gallons per day;

(B) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(C) Other POTWs, as required by the Director, based on consideration of the following factors:

(1) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(2) The ratio of effluent flow to receiving stream flow;

(3) Existing controls on point or non-point sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(4) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, one of the Great Lakes, or a water designated as an outstanding natural resource water; or

(5) Other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the Director determines could cause or contribute to adverse water quality impacts.

(iii) Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the Director may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The Director may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

(iv) Each applicant required to perform whole effluent toxicity testing pursuant to paragraph (j)(5)(ii) of this section must provide:

(A) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(B) Results from four tests performed at least annually in the four and one half year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the permitting authority.

(v) Applicants must conduct tests with multiple species (no less than two species; e.g., fish, invertebrate, plant), and test for acute or chronic toxicity, depending on the range of receiving water dilution. EPA recommends that applicants conduct acute or chronic testing based on the following dilutions:

(A) Acute toxicity testing if the dilution of the effluent is greater than 1000:1 at the edge of the mixing zone;

(B) Acute or chronic toxicity testing if the dilution of the effluent is between 100:1 and 1000:1 at the edge of the mixing zone. Acute testing may be more appropriate at the higher end of this range (1000:1), and chronic testing may be more appropriate at the lower end of this range (100:1); and

(C) Chronic testing if the dilution of the effluent is less than 100:1 at the edge of the mixing zone.

(vi) Each applicant required to perform whole effluent toxicity testing pursuant to paragraph (j)(5)(ii) of this section must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

(vii) Applicants must provide the results using the form provided by the Director, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to paragraph (j)(5)(ii) of this section for which such information has not been reported previously to the Director.

(viii) Whole effluent toxicity testing conducted pursuant to paragraph (j)(5)(ii) of this section must be conducted using methods approved under 40 CFR part 136. West coast facilities in Washington, Oregon, California, Alaska, Hawaii, and the Pacific Territories are exempted from 40 CFR part 136 chronic methods and must use alternative guidance as directed by the permitting authority.

(ix) For whole effluent toxicity data submitted to the Director within four and one-half years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

(x) Each POTW required to perform whole effluent toxicity testing pursuant to paragraph (j)(5)(ii) of this section must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past four and one-half years revealed toxicity.

(6) *Industrial discharges.* Applicants must submit the following information about industrial discharges to the POTW:

(i) Number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW; and

(ii) POTWs with one or more SIUs shall provide the following information for each SIU, as defined at 40 CFR 403.3(t), that discharges to the POTW:

(A) Name and mailing address;

(B) Description of all industrial processes that affect or contribute to the SIU's discharge;

(C) Principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;

(D) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and non-process flow;

(E) Whether the SIU is subject to local limits;

(F) Whether the SIU is subject to categorical standards, and if so, under which category(ies) and subcategory(ies); and

(G) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past four and one-half years.

(iii) The information required in paragraphs (j)(6)(i) and (ii) of this section may be waived by the Director for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in paragraphs (j)(6)(i) and (ii) of this section.

(A) An annual report submitted within one year of the application; or

(B) A pretreatment program;

(7) *Discharges from hazardous waste generators and from waste cleanup or remediation sites.* POTWs receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

(i) If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR part 261, the applicant must report the following:

(A) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and

(B) The hazardous waste number and amount received annually of each hazardous waste;

(ii) If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and sections 3004(u) or 3008(h) of RCRA, the applicant must report the following:

(A) The identity and description of the site(s) or facility(ies) at which the wastewater originates;

(B) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of part 261 of this chapter; if known; and

(C) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW;

(iii) Applicants are exempt from the requirements of paragraph (j)(7)(ii) of this section if they receive no more than fifteen kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e).

(8) *Combined sewer overflows.* Each applicant with combined sewer systems must provide the following information:

(i) *Combined sewer system information.* The following information regarding the combined sewer system:

(A) *System map.* A map indicating the location of the following:

(1) All CSO discharge points;

(2) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and

(3) Waters supporting threatened and endangered species potentially affected by CSOs; and

(B) *System diagram.* A diagram of the combined sewer collection system that includes the following information:

(1) The location of major sewer trunk lines, both combined and separate sanitary;

(2) The locations of points where separate sanitary sewers feed into the combined sewer system;

(3) In-line and off-line storage structures;

(4) The locations of flow-regulating devices; and

(5) The locations of pump stations;

(ii) *Information on CSO outfalls.* The following information for each CSO discharge point covered by the permit application:

(A) *Description of outfall.* The following information on each outfall:

(1) Outfall number;

(2) State, county, and city or town in which outfall is located;

(3) Latitude and longitude, to the nearest second; and

(4) Distance from shore and depth below surface;

(5) Whether the applicant monitored any of the following in the past year for this CSO:

(i) Rainfall;

(ii) CSO flow volume;

(iii) CSO pollutant concentrations;

(iv) Receiving water quality;

(v) CSO frequency; and

(6) The number of storm events monitored in the past year;

(B) *CSO events.* The following information about CSO overflows from each outfall:

(1) The number of events in the past year;

(2) The average duration per event, if available;

(3) The average volume per CSO event, if available; and

(4) The minimum rainfall that caused a CSO event, if available, in the last year;

(C) *Description of receiving waters.* The following information about receiving waters:

(1) Name of receiving water;

(2) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code (if known); and

(3) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code (if known); and

(D) *CSO operations.* A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable State water quality standard);

(9) Contractors. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility; and

(10) *Signature.* All applications must be signed by a certifying official in compliance with § 122.22.

* * * * *

(q) *Sewage sludge management.* All TWTDS subject to paragraph (c)(2)(i) of this section must provide the information in this paragraph to the Director, using Form 2S or another application form approved by the Director. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the Director. The Director may waive any requirement of this paragraph if he or she has access to substantially identical information. The Director may also waive any requirement of this paragraph that is not of material concern for a specific permit, if approved by the Regional Administrator. The waiver request to the Regional Administrator must include the State's justification for the waiver. A Regional Administrator's disapproval of a State's proposed waiver does not constitute final Agency action, but does provide notice to the State and

permit applicant(s) that EPA may object to any State-issued permit issued in the absence of the required information.

(1) *Facility information.* All applicants must submit the following information:

(i) The name, mailing address, and location of the TWTDS for which the application is submitted;

(ii) Whether the facility is a Class I Sludge Management Facility;

(iii) The design flow rate (in million gallons per day);

(iv) The total population served; and

(v) The TWTDS's status as Federal, State, private, public, or other entity;

(2) *Applicant information.* All applicants must submit the following information:

(i) The name, mailing address, and telephone number of the applicant; and

(ii) Indication whether the applicant is the owner, operator, or both;

(3) *Permit information.* All applicants must submit the facility's NPDES permit number, if applicable, and a listing of all other Federal, State, and local permits or construction approvals received or applied for under any of the following programs:

(i) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);

(ii) UIC program under the Safe Drinking Water Act (SDWA);

(iii) NPDES program under the Clean Water Act (CWA);

(iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(v) Nonattainment program under the Clean Air Act;

(vi) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(vii) Dredge or fill permits under section 404 of CWA;

(viii) Other relevant environmental permits, including State or local permits;

(4) *Indian country.* All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country;

(5) *Topographic map.* All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:

(i) All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and

(ii) Wells, springs, and other surface water bodies that are within ¼ mile of the property boundaries and listed in public records or otherwise known to the applicant;

(6) *Sewage sludge handling.* All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge, the destination(s) of all liquids and solids leaving each such unit, and all processes used for pathogen reduction and vector attraction reduction;

(7) *Sewage sludge quality.* The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in 40 CFR part 503 for the applicant's use or disposal practices on the date of permit application.

(i) The Director may require sampling for additional pollutants, as appropriate, on a case-by-case basis;

(ii) Applicants must provide data from a minimum of three samples taken within four and one-half years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application;

(iii) Applicants must collect and analyze samples in accordance with analytical methods approved under SW–846 unless an alternative has been specified in an existing sewage sludge permit;

(iv) The monitoring data provided must include at least the following information for each parameter:

(A) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;

(B) The analytical method used; and

(C) The method detection level.

(8) *Preparation of sewage sludge.* If the applicant is a "person who prepares" sewage sludge, as defined at 40 CFR 503.9(r), the applicant must provide the following information:

(i) If the applicant's facility generates sewage sludge, the total dry metric tons per 365-day period generated at the facility;

(ii) If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:

(A) The name, mailing address, and location of the other facility;

(B) The total dry metric tons per 365-day period received from the other facility; and

(C) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics;

(iii) If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information:

(A) Whether the Class A pathogen reduction requirements in 40 CFR 503.32(a) or the Class B pathogen reduction requirements in 40 CFR 503.32(b) are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(B) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(1) through (b)(8) are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(C) A description of any other blending, treatment, or other activities that change the quality of sewage sludge;

(iv) If sewage sludge from the applicant's facility meets the ceiling concentrations in 40 CFR 503.13(b)(1), the pollutant concentrations in § 503.13(b)(3), the Class A pathogen requirements in § 503.32(a), and one of the vector attraction reduction requirements in § 503.33(b)(1) through (b)(8), and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this paragraph that is applied to the land;

(v) If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to paragraph (q)(8)(iv) of this section, the applicant must provide the following information:

(A) The total dry metric tons per 365-day period of sewage sludge subject to this paragraph that is sold or given away in a bag or other container for application to the land; and

(B) A copy of all labels or notices that accompany the sewage sludge being sold or given away;

(vi) If sewage sludge from the applicant's facility is provided to another "person who prepares," as defined at 40 CFR 503.9(r), and the sewage sludge is not subject to paragraph (q)(8)(iv) of this section, the applicant must provide the following information for each facility receiving the sewage sludge:

(A) The name and mailing address of the receiving facility;

(B) The total dry metric tons per 365-day period of sewage sludge subject to this paragraph that the applicant provides to the receiving facility;

(C) A description of any treatment processes occurring at the receiving facility, including blending activities

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and treatment to reduce pathogens or vector attraction characteristic;

(D) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 40 CFR 503.12(g); and

(E) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge;

(9) *Land application of bulk sewage sludge.* If sewage sludge from the applicant's facility is applied to the land in bulk form, and is not subject to paragraphs (q)(8)(iv), (v), or (vi) of this section, the applicant must provide the following information:

(i) The total dry metric tons per 365-day period of sewage sludge subject to this paragraph that is applied to the land;

(ii) If any land application sites are located in States other than the State where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the State(s) where the land application sites are located;

(iii) The following information for each land application site that has been identified at the time of permit application:

(A) The name (if any), and location for the land application site;

(B) The site's latitude and longitude to the nearest second, and method of determination;

(C) A topographic map (or other map if a topographic map is unavailable) that shows the site's location;

(D) The name, mailing address, and telephone number of the site owner, if different from the applicant;

(E) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant;

(F) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined under 40 CFR 503.11;

(G) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;

(H) Whether either of the vector attraction reduction options of 40 CFR 503.33(b)(9) or (b)(10) is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and

(I) Other information that describes how the site will be managed, as specified by the permitting authority.

(iv) The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site:

(A) Whether the applicant has contacted the permitting authority in the State where the bulk sewage sludge subject to § 503.13(b)(2) will be applied, to ascertain whether bulk sewage sludge subject to § 503.13(b)(2) has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;

(B) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in § 503.13(b)(2) to the site since July 20, 1993, if, based on the inquiry in paragraph (q)(iv)(A), bulk sewage sludge subject to cumulative pollutant loading rates in § 503.13(b)(2) has been applied to the site since July 20, 1993;

(v) If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

(A) Describes the geographical area covered by the plan;

(B) Identifies the site selection criteria;

(C) Describes how the site(s) will be managed;

(D) Provides for advance notice to the permit authority of specific land application sites and reasonable time for the permit authority to object prior to land application of the sewage sludge; and

(E) Provides for advance public notice of land application sites in the manner prescribed by State and local law. When State or local law does not require advance public notice, it must be provided in a manner reasonably calculated to apprize the general public of the planned land application.

(10) *Surface disposal.* If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

(i) The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period;

(ii) The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does *not* own or operate:

(A) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and

(B) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site;

(iii) The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

(A) The name or number and the location of the active sewage sludge unit;

(B) The unit's latitude and longitude to the nearest second, and method of determination;

(C) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;

(D) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(E) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(F) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec;

(G) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any Federal, State, and local permit number(s) for leachate disposal;

(H) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(I) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(J) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(K) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(1) The name, contact person, and mailing address of the facility; and

(2) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(L) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(9) through (b)(11) is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(M) The following information, as applicable to any ground-water monitoring occurring at the active sewage sludge unit:

(1) A description of any ground-water monitoring occurring at the active sewage sludge unit;

(2) Any available ground-water monitoring data, with a description of the well locations and approximate depth to ground water;

(3) A copy of any ground-water monitoring plan that has been prepared for the active sewage sludge unit;

(4) A copy of any certification that has been obtained from a qualified ground-water scientist that the aquifer has not been contaminated; and

(N) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request;

(11) *Incineration.* If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

(i) The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period;

(ii) The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does *not* own or operate:

(A) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and

(B) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator;

(iii) The following information for each sewage sludge incinerator that the applicant owns or operates:

(A) The name and/or number and the location of the sewage sludge incinerator;

(B) The incinerator's latitude and longitude to the nearest second, and method of determination;

(C) The total dry metric tons per 365-day period fired in the sewage sludge incinerator;

(D) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Beryllium in 40 CFR part 61 will be achieved;

(E) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Mercury in 40 CFR part 61 will be achieved;

(F) The dispersion factor for the sewage sludge incinerator, as well as modeling results and supporting documentation;

(G) The control efficiency for parameters regulated in 40 CFR 503.43, as well as performance test results and supporting documentation;

(H) Information used to calculate the risk specific concentration (RSC) for chromium, including the results of incinerator stack tests for hexavalent and total chromium concentrations, if the applicant is requesting a chromium limit based on a site-specific RSC value;

(I) Whether the applicant monitors total hydrocarbons (THC) or Carbon Monoxide (CO) in the exit gas for the sewage sludge incinerator;

(J) The type of sewage sludge incinerator;

(K) The maximum performance test combustion temperature, as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies;

(L) The following information on the sewage sludge feed rate used during the performance test:

(1) Sewage sludge feed rate in dry metric tons per day;

(2) Identification of whether the feed rate submitted is average use or maximum design; and

(3) A description of how the feed rate was calculated;

(M) The incinerator stack height in meters for each stack, including identification of whether actual or creditable stack height was used;

(N) The operating parameters for the sewage sludge incinerator air pollution control device(s), as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies;

(O) Identification of the monitoring equipment in place, including (but not limited to) equipment to monitor the following:

(1) Total hydrocarbons or Carbon Monoxide;

(2) Percent oxygen;

(3) Percent moisture; and

(4) Combustion temperature; and

(P) A list of all air pollution control equipment used with this sewage sludge incinerator;

(12) *Disposal in a municipal solid waste landfill.* If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

(i) The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;

(ii) The total dry metric tons per 365-day period sent from this facility to the MSWLF;

(iii) A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

(iv) Information, if known, indicating whether the MSWLF complies with criteria set forth in 40 CFR part 258;

(13) *Contractors.* All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal;

(14) *Other information.* At the request of the permitting authority, the applicant must provide any other information necessary to determine the appropriate standards for permitting under 40 CFR part 503, and must provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and

(15) *Signature.* All applications must be signed by a certifying official in compliance with § 122.22.

* * * * *

6. Section 122.44 is amended by revising paragraph (j)(2) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(j) * * *

(2)(i) Submit a local program when required by and in accordance with 40 CFR part 403 to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the permit as described in 40 CFR part 403. The program must require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR part 403.

(ii) Provide a written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1), following permit issuance or reissuance.

* * * * *

7. Part 122 is amended by adding Appendix J to read as follows:

Appendix J to Part 122—NPDES Permit Testing Requirements for Publicly Owned Treatment Works (§ 122.21(j))

Table 1A—Effluent Parameters for All POTWS

Biochemical oxygen demand (BOD–5 or CBOD–5)
Fecal coliform
Design Flow Rate
pH
Temperature
Total suspended solids

Table 1—Effluent Parameters for All POTWS With a Flow Equal to or Greater Than 0.1 MGD

Ammonia (as N)
Chlorine (total residual, TRC)
Dissolved oxygen

Nitrate/Nitrite
Kjeldahl nitrogen
Oil and grease
Phosphorus
Total dissolved solids

Table 2—Effluent Parameters for Selected POTWS

Hardness
Metals (total recoverable), cyanide and total phenols
Antimony
Arsenic
Beryllium
Cadmium
Chromium
Copper
Lead
Mercury
Nickel
Selenium
Silver
Thallium
Zinc
Cyanide
Total phenolic compounds
Volatile organic compounds
Acrolein
Acrylonitrile
Benzene
Bromoform
Carbon tetrachloride
Chlorobenzene
Chlorodibromomethane
Chloroethane
2-chloroethylvinyl ether
Chloroform
Dichlorobromomethane
1,1-dichloroethane
1,2-dichloroethane
Trans-1,2-dichloroethylene
1,1-dichloroethylene
1,2-dichloropropane
1,3-dichloropropylene
Ethylbenzene
Methyl bromide
Methyl chloride
Methylene chloride
1,1,2,2-tetrachloroethane
Tetrachloroethylene
Toluene
1,1,1-trichloroethane
1,1,2-trichloroethane
Trichloroethylene
Vinyl chloride
Acid-extractable compounds
P-chloro-m-creso
2-chlorophenol
2,4-dichlorophenol
2,4-dimethylphenol
4,6-dinitro-o-cresol
2,4-dinitrophenol
2-nitrophenol
4-nitrophenol
Pentachlorophenol
Phenol
2,4,6-trichlorophenol
Base-neutral compounds
Acenaphthene
Acenaphthylene
Anthracene
Benzidine
Benzo(a)anthracene
Benzo(a)pyrene
3,4 benzofluoranthene
Benzo(ghi)perylene
Benzo(k)fluoranthene
Bis (2-chloroethoxy) methane
Bis (2-chloroethyl) ether
Bis (2-chloroisopropyl) ether
Bis (2-ethylhexyl) phthalate
4-bromophenyl phenyl ether
Butyl benzyl phthalate
2-chloronaphthalene
4-chlorophenyl phenyl ether
Chrysene
Di-n-butyl phthalate
Di-n-octyl phthalate
Dibenzo(a,h)anthracene
1,2-dichlorobenzene
1,3-dichlorobenzene
1,4-dichlorobenzene
3,3′-dichlorobenzidine
Diethyl phthalate
Dimethyl phthalate
2,4-dinitrotoluene
2,6-dinitrotoluene
1,2-diphenylhydrazine
Fluoranthene
Fluorene
Hexachlorobenzene
Hexachlorobutadiene
Hexachlorocyclo-pentadiene
Hexachloroethane
Indeno(1,2,3-cd)pyrene
Isophorone
Naphthalene
Nitrobenzene
N-nitrosodi-n-propylamine
N-nitrosodimethylamine
N-nitrosodiphenylamine
Phenanthrene
Pyrene
1,2,4,-trichlorobenzene

PART 123—STATE PROGRAM REQUIREMENTS

8. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

9. Section 123.25 is amended by revising paragraph (a)(4) to read as follows:

§ 123.25 Requirements for Permitting.

(a) * * *

(4) Sections 122.21(a), (b), (c)(2), (e) through (k), and (m) through (p), and (q)—(Application for a permit)

* * * * *

10. Section 123.43 is amended by adding paragraph (b) to read as follows:

§ 123.43 Transmission of information to EPA.

* * * * *

(b) If the State intends to waive any of the permit application requirements of § 122.21(j) or (q) of this chapter for a specific applicant, the Director must submit a written request to the Regional Administrator no less than 210 days prior to permit expiration. This request must include the State's justification for granting the waiver.

* * * * *

PART 124—PROCEDURES FOR DECISIONMAKING

11. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

12. Section 124.8 is amended by adding paragraph (b)(9) as follows:

§ 124.8 Fact sheet.

* * * * *

(b) * * *

(9) Justification for waiver of any application requirements under § 122.21(j) or (q) of this chapter.

PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

13. The authority citation for part 501 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

14. Section 501.15 is amended by removing paragraph (a)(4).

Note: The following forms and instructions will not appear in the Code of Federal Regulations.

BILLING CODE 6560–50–P

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FORM 2A NPDES

NPDES FORM 2A APPLICATION OVERVIEW

APPLICATION OVERVIEW

Form 2A has been developed in a modular format and consists of a "Basic Application Information" packet and a "Supplemental Application Information" packet. The Basic Application Information packet is divided into two parts. All applicants must complete Parts A and C. Applicants with a design flow greater than or equal to 0.1 mgd must also complete Part B. Some applicants must also complete the Supplemental Application Information packet. The following items explain which parts of Form 2A you must complete.

BASIC APPLICATION INFORMATION:

A. **Basic Application Information for all Applicants.** All applicants must complete questions A.1 through A.8. A treatment works that discharges effluent to surface waters of the United States must also answer questions A.9 through A.12.

B. **Additional Application Information for Applicants with a Design Flow ≥ 0.1 mgd.** All treatment works that have design flows greater than or equal to 0.1 million gallons per day must complete questions B.1 through B.6.

C. **Certification.** All applicants must complete Part C (Certification).

SUPPLEMENTAL APPLICATION INFORMATION:

D. **Expanded Effluent Testing Data.** A treatment works that discharges effluent to surface waters of the United States and meets one or more of the following criteria must complete Part D (Expanded Effluent Testing Data):

1. Has a design flow rate greater than or equal to 1 mgd,
2. Is required to have a pretreatment program (or has one in place), or
3. Is otherwise required by the permitting authority to provide the information.

E. **Toxicity Testing Data.** A treatment works that meets one or more of the following criteria must complete Part E (Toxicity Testing Data):

1. Has a design flow rate greater than or equal to 1 mgd,
2. Is required to have a pretreatment program (or has one in place), or
3. Is otherwise required by the permitting authority to submit results of toxicity testing.

F. **Industrial User Discharges and RCRA/CERCLA Wastes.** A treatment works that accepts process wastewater from any significant industrial users (SIUs) or receives RCRA or CERCLA wastes must complete Part F (Industrial User Discharges and RCRA/CERCLA Wastes). SIUs are defined as:

1. All industrial users subject to Categorical Pretreatment Standards under 40 Code of Federal Regulations (CFR) 403.6 and 40 CFR Chapter I, Subchapter N (see instructions); and
2. Any other industrial user that:
   a. Discharges an average of 25,000 gallons per day or more of process wastewater to the treatment works (with certain exclusions); or
   b. Contributes a process wastestream that makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the treatment plant; or
   c. Is designated as an SIU by the control authority.

G. **Combined Sewer Systems.** A treatment works that has a combined sewer system must complete Part G (Combined Sewer Systems).

ALL APPLICANTS MUST COMPLETE PART C (CERTIFICATION)

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BASIC APPLICATION INFORMATION

PART A. BASIC APPLICATION INFORMATION FOR ALL APPLICANTS:

You must provide responses to questions A.1 through A.8 of this Basic Application Information packet.

A.1. Facility Information.

Facility name _____

Mailing Address _____

_____

Contact person _____

Title _____

Telephone number _____

Facility Address _____

(not P.O. Box) _____

A.2. Applicant Information. If the applicant is different from the above, provide the following:

Applicant name _____

Mailing Address _____

_____

Contact person _____

Title _____

Telephone number _____

Is the applicant the owner or operator (or both) of the treatment works?

_____ owner _____ operator

Indicate whether correspondence regarding this permit should be directed to the facility or the applicant.

_____ facility _____ applicant

A.3. Existing Environmental Permits. Provide the permit number of any existing environmental permits that have been issued to the treatment works (include state-issued permits).

NPDES _____ PSD _____

UIC _____ Other _____

RCRA _____ Other _____

A.4. Collection System Information. Provide information on municipalities and areas served by the facility. Provide the name and population of each entity and, if known, provide information on the type of collection system (combined vs. separate) and its ownership (municipal, private, etc.).

Name	Population Served	Type of Collection System	Ownership
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Total population served _____

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A.5. Indian Country.

a. Is the treatment works located in Indian Country?

_____ Yes _____ No

b. Does the treatment works discharge to a receiving water that is either in Indian Country or that is upstream from (and eventually flows through) Indian Country?

_____ Yes _____ No

A.6. Flow. Indicate the design flow rate of the treatment plant (i.e., the wastewater flow rate that the plant was built to handle). Also provide the average daily flow rate and maximum daily flow rate for each of the last three years. Each year's data must be based on a 12-month time period with the 12th month of "this year" occurring no more than three months prior to this application submittal.

a. Design flow rate _____ mgd

	Two Years Ago	Last Year	This Year	
b. Annual average daily flow rate	_____	_____	_____	mgd
c. Maximum daily flow rate	_____	_____	_____	mgd

A.7. Collection System. Indicate the type(s) of collection system(s) used by the treatment plant. Check all that apply. Also estimate the percent contribution (by miles) of each.

_____ Separate sanitary sewer _____ %

_____ Combined storm and sanitary sewer _____ %

A.8. Discharges and Other Disposal Methods.

a. Does the treatment works discharge effluent to waters of the U.S.? _____ Yes _____ No

If yes, list how many of each of the following types of discharge points the treatment works uses:

i. Discharges of treated effluent _____

ii. Discharges of untreated or partially treated effluent _____

iii. Combined sewer overflow points _____

iv. Constructed emergency overflows (prior to the headworks) _____

v. Other _____ _____

b. Does the treatment works discharge effluent to basins, ponds, or other surface impoundments that do not have outlets for discharge to waters of the U.S.? _____ Yes _____ No

If yes, provide the following for each surface impoundment:

Location: _____

Annual average daily volume discharged to surface impoundment(s) _____ mgd

Is discharge _____ continuous or _____ intermittent?

c. Does the treatment works land-apply treated wastewater? _____ Yes _____ No

If yes, provide the following for each land application site:

Location: _____

Number of acres: _____

Annual average daily volume applied to site: _____ Mgd

Is land application _____ continuous or _____ intermittent?

d. Does the treatment works discharge or transport treated or untreated wastewater to another treatment works? _____ Yes _____ No

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If yes, describe the mean(s) by which the wastewater from the treatment works is discharged or transported to the other treatment works (e.g., tank truck, pipe).

_____

If transport is by a party other than the applicant, provide:

Transporter name: _____

Mailing Address: _____

_____

Contact person: _____

Title: _____

Telephone number: _____

For each treatment works that receives this discharge, provide the following:

Name: _____

Mailing Address: _____

_____

Contact person: _____

Title: _____

Telephone number: _____

If known, provide the NPDES permit number of the treatment works that receives this discharge. _____

Provide the average daily flow rate from the treatment works into the receiving facility. _____ mgd

e. Does the treatment works discharge or dispose of its wastewater in a manner not included in A.8.a through A.8.d above (e.g., underground percolation, well injection)? _____ Yes _____ No

If yes, provide the following for each disposal method:

Description of method (including location and size of site(s) if applicable):

_____

Annual daily volume disposed of by this method: _____

Is disposal through this method _____ continuous or _____ intermittent?

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WASTEWATER DISCHARGES:

If you answered "yes" to question A.8.a, complete questions A.9 through A.12 **once for each outfall** (including bypass points) through which effluent is discharged. Do not include information on combined sewer overflows in this section. **If you answered "no" to question A.8.a**, go to Part B, "Additional Application Information for Applicants with a Design Flow Greater than or Equal to 0.1 mgd."

A.9. Description of Outfall.

a. Outfall number _____

b. Location _____
(City or town, if applicable) (Zip Code)

_____
(County) (State)

_____
(Latitude) (Longitude)

c. Distance from shore (if applicable) _____ ft.

d. Depth below surface (if applicable) _____ ft.

e. Average daily flow rate _____ mgd

f. Does this outfall have either an intermittent or a periodic discharge? _____ Yes _____ No (go to A.9.g.)

If yes, provide the following information:

Number of times per year discharge occurs: _____

Average duration of each discharge: _____

Average flow per discharge: _____ mgd

Months in which discharge occurs: _____

g. Is outfall equipped with a diffuser? _____ Yes _____ No

A.10. Description of Receiving Waters.

a. Name of receiving water _____

b. Name of watershed (if known) _____

United States Soil Conservation Service 14-digit watershed code (if known): _____

c. Name of State Management/River Basin (if known): _____

United States Geological Survey 8-digit hydrologic cataloging unit code (if known): _____

d. Critical low flow of receiving stream (if applicable):
acute _____ cfs chronic _____ cfs

e. Total hardness of receiving stream at critical low flow (if applicable): _____ mg/l of $CaCO_3$

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A.11. Description of Treatment.

a. What levels of treatment are provided? Check all that apply.

_____ Primary _____ Secondary

_____ Advanced _____ Other. Describe: _____

b. Indicate the following removal rates (as applicable):

Design BOD_5 removal or Design $CBOD_5$ removal _____ %

Design SS removal _____ %

Design P removal _____ %

Design N removal _____ %

Other _____ _____ %

c. What type of disinfection is used for the effluent from this outfall? If disinfection varies by season, please describe.

_____

If disinfection is by chlorination, is dechlorination used for this outfall? _____ Yes _____ No

d. Does the treatment plant have post aeration? _____ Yes _____ No

A.12. Effluent Testing Information. All Applicants that discharge to waters of the US must provide effluent testing data for the following parameters. Provide the indicated effluent testing required by the permitting authority for each outfall through which effluent is discharged. Do not include information on combined sewer overflows in this section. All information reported must be based on data collected through analysis conducted using 40 CFR Part 136 methods. In addition, this data must comply with QA/QC requirements of 40 CFR Part 136 and other appropriate QA/QC requirements for standard methods for analytes not addressed by 40 CFR Part 136. At a minimum, effluent testing data must be based on at least three samples and must be no more than four and one-half years apart.

Outfall number: _____

PARAMETER	MAXIMUM DAILY VALUE		AVERAGE DAILY VALUE		
	Value	Units	Value	Units	Number of Samples
pH (Minimum)		s.u.			
pH (Maximum)		s.u.			
Flow Rate					
Temperature (Winter)					
Temperature (Summer)					

* For pH please report a minimum and a maximum daily value

POLLUTANT		MAXIMUM DAILY DISCHARGE		AVERAGE DAILY DISCHARGE			ANALYTICAL METHOD	ML / MDL
		Conc.	Units	Conc.	Units	Number of Samples		
CONVENTIONAL AND NONCONVENTIONAL COMPOUNDS.								
BIOCHEMICAL OXYGEN DEMAND (Report one)	BOD-5							
	CBOD-5							
FECAL COLIFORM								
TOTAL SUSPENDED SOLIDS (TSS)								

END OF PART A.
REFER TO THE APPLICATION OVERVIEW TO DETERMINE WHICH OTHER PARTS OF FORM 2A YOU MUST COMPLETE

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BASIC APPLICATION INFORMATION

PART B. ADDITIONAL APPLICATION INFORMATION FOR APPLICANTS WITH A DESIGN FLOW GREATER THAN OR EQUAL TO 0.1 MGD (100,000 gallons per day).

All applicants with a design flow rate ≥ 0.1 mgd must answer questions B.1 through B.6. All others go to Part C (Certification).

B.1. Inflow and Infiltration. Estimate the average number of gallons per day that flow into the treatment works from inflow and/or infiltration.

_____gpd

Briefly explain any steps underway or planned to minimize inflow and infiltration.

_____

_____

B.2. Topographic Map. Attach to this application a topographic map of the area extending at least one mile beyond facility property boundaries. This map must show the outline of the facility and the following information. (You may submit more than one map if one map does not show the entire area.)

a. The area surrounding the treatment plant, including all unit processes.

b. The major pipes or other structures through which wastewater enters the treatment works and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable.

c. Each well where wastewater from the treatment plant is injected underground.

d. Wells, springs, other surface water bodies, and drinking water wells that are: 1) within 1/4 mile of the property boundaries of the treatment works, and 2) listed in public record or otherwise known to the applicant.

e. Any areas where the sewage sludge produced by the treatment works is stored, treated, or disposed.

f. If the treatment works receives waste that is classified as hazardous under the Resource Conservation and Recovery Act (RCRA) by truck, rail, or special pipe, show on the map where that hazardous waste enters the treatment works and where it is treated, stored, and/or disposed.

B.3. Process Flow Diagram or Schematic. Provide a diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. Also provide a water balance showing all treatment units, including disinfection (e.g. chlorination and dechlorination). The water balance must show daily average flow rates at influent and discharge points and approximate daily flow rates between treatment units. Include a brief narrative description of the diagram.

B.4. Operation/Maintenance Performed by Contractor(s).

Are any operational or maintenance aspects (related to wastewater treatment and effluent quality) of the treatment works the responsibility of a contractor? ____Yes ____No

If yes, list the name, address, telephone number, and status of each contractor and describe the contractor's responsibilities (attach additional pages if necessary).

Name: _____

Mailing Address: _____

_____

Telephone Number: _____

Responsibilities of Contractor: _____

B.5. Scheduled Improvements and Schedules of Implementation. Provide information on any uncompleted implementation schedule or uncompleted plans for improvements that will affect the wastewater treatment, effluent quality, or design capacity of the treatment works. If the treatment works has several different implementation schedules or is planning several improvements, submit separate responses to question B.5 for each. (If none, go to question B.6.)

a. List the outfall number (assigned in question A.9) for each outfall that is covered by this implementation schedule.

_____

b. Indicate whether the planned improvements or implementation schedule are required by local, State, or Federal agencies.

____Yes ____No

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c. If the answer to B.5.b is "Yes," briefly describe, including new maximum daily inflow rate (if applicable).

_____

d. Provide dates imposed by any compliance schedule or any actual dates of completion for the implementation steps listed below, as applicable. For improvements planned independently of local, State, or Federal agencies, indicate planned or actual completion dates, as applicable. Indicate dates as accurately as possible.

Implementation Stage	Schedule MM / DD / YYYY	Actual Completion MM / DD / YYYY
– Begin construction	__/__/____	__/__/____
– End construction	__/__/____	__/__/____
– Begin discharge	__/__/____	__/__/____
– Attain operational level	__/__/____	__/__/____

e. Have appropriate permits/clearances concerning other Federal/State requirements been obtained? ___Yes ___No

Describe briefly: _____

_____

B.6. EFFLUENT TESTING DATA (GREATER THAN O.1 MGD ONLY).

Applicants that discharge to waters of the US must provide effluent testing data for the following parameters. Provide the indicated effluent testing required by the permitting authority for each outfall through which effluent is discharged. Do not include information on combined sewer overflows in this section. All information reported must be based on data collected through analysis conducted using 40 CFR Part 136 methods. In addition, this data must comply with QA/QC requirements of 40 CFR Part 136 and other appropriate QA/QC requirements for standard methods for analytes not addressed by 40 CFR Part 136. At a minimum, effluent testing data must be based on at least three pollutant scans and must be no more than four and one-half years old.

Outfall Number:_____

POLLUTANT	MAXIMUM DAILY DISCHARGE		AVERAGE DAILY DISCHARGE			ANALYTICAL METHOD	ML / MDL
	Conc.	Units	Conc.	Units	Number of Samples		
CONVENTIONAL AND NONCONVENTIONAL COMPOUNDS.							
AMMONIA (as N)							
CHLORINE (TOTAL RESIDUAL, TRC)							
DISSOLVED OXYGEN							
TOTAL KJELDAHL NITROGEN (TKN)							
NITRATE PLUS NITRITE NITROGEN							
OIL and GREASE							
PHOSPHORUS (Total)							
TOTAL DISSOLVED SOLIDS (TDS)							
OTHER							

END OF PART B.
REFER TO THE APPLICATION OVERVIEW TO DETERMINE WHICH OTHER PARTS OF FORM 2A YOU MUST COMPLETE

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BASIC APPLICATION INFORMATION

PART C. CERTIFICATION

All applicants must complete the Certification Section. Refer to instructions to determine who is an officer for the purposes of this certification. All applicants must complete all applicable sections of Form 2A, as explained in the Application Overview. Indicate below which parts of Form 2A you have completed and are submitting. By signing this certification statement, applicants confirm that they have reviewed Form 2A and have completed all sections that apply to the facility for which this application is submitted.

Indicate which parts of Form 2A you have completed and are submitting:

_____ Basic Application Information packet

Supplemental Application Information packet:

_____ Part D (Expanded Effluent Testing Data)

_____ Part E (Toxicity Testing: Biomonitoring Data)

_____ Part F (Industrial User Discharges and RCRA/CERCLA Wastes)

_____ Part G (Combined Sewer Systems)

ALL APPLICANTS MUST COMPLETE THE FOLLOWING CERTIFICATION.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Name and official title _____

Signature _____

Telephone number _____

Date signed _____

Upon request of the permitting authority, you must submit any other information necessary to assess wastewater treatment practices at the treatment works or identify appropriate permitting requirements.

SEND COMPLETED FORMS TO:

FACILITY NAME AND PERMIT NUMBER:

Form Approved 1/14/99
OMB Number 2040-0086

SUPPLEMENTAL APPLICATION INFORMATION

PART D. EXPANDED EFFLUENT TESTING DATA

Refer to the directions on the cover page to determine whether this section applies to the treatment works.

Effluent Testing: 1.0 mgd and Pretreatment Treatment Works. If the treatment works has a design flow greater than or equal to 1.0 mgd or it has (or is required to have) a pretreatment program, or is otherwise required by the permitting authority to provide the data, then provide effluent testing data for the following pollutants. Provide the indicated effluent testing information and any other information required by the permitting authority for each outfall through which effluent is discharged. Do not include information on combined sewer overflows in this section. All information reported must be based on data collected through analyses conducted using 40 CFR Part 136 methods. In addition, these data must comply with QA/QC requirements of 40 CFR Part 136 and other appropriate QA/QC requirements for standard methods for analytes not addressed by 40 CFR Part 136. Indicate in the blank rows provided below any data you may have on pollutants not specifically listed in this form. At a minimum, effluent testing data must be based on at least three pollutant scans and must be no more than four and one-half years old.

Outfall number: _____ (Complete once for each outfall discharging effluent to waters of the United States.)

POLLUTANT	MAXIMUM DAILY DISCHARGE				AVERAGE DAILY DISCHARGE					ANALYTICAL METHOD	ML/ MDL
	Conc.	Units	Mass	Units	Conc.	Units	Mass	Units	Number of Samples		
METALS (TOTAL RECOVERABLE), CYANIDE, PHENOLS, AND HARDNESS.											
ANTIMONY											
ARSENIC											
BERYLLIUM											
CADMIUM											
CHROMIUM											
COPPER											
LEAD											
MERCURY											
NICKEL											
SELENIUM											
SILVER											
THALLIUM											
ZINC											
CYANIDE											
TOTAL PHENOLIC COMPOUNDS											
HARDNESS (AS $CaCO_3$)											
Use this space (or a separate sheet) to provide information on other metals requested by the permit writer.											

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Outfall number: _____ (Complete once for each outfall discharging effluent to waters of the United States.)

POLLUTANT	MAXIMUM DAILY DISCHARGE				AVERAGE DAILY DISCHARGE					ANALYTICAL METHOD	ML/ MDL
	Conc.	Units	Mass	Units	Conc.	Units	Mass	Units	Number of Samples		
VOLATILE ORGANIC COMPOUNDS.											
ACROLEIN											
ACRYLONITRILE											
BENZENE											
BROMOFORM											
CARBON TETRACHLORIDE											
CLOROBENZENE											
CHLORODIBROMO-METHANE											
CHLOROETHANE											
2-CHLORO-ETHYLVINYL ETHER											
CHLOROFORM											
DICHLOROBROMO-METHANE											
1,1-DICHLOROETHANE											
1,2-DICHLOROETHANE											
TRANS-1,2-DICHLORO-ETHYLENE											
1,1-DICHLOROETHYLENE											
1,2-DICHLOROPROPANE											
1,3-DICHLORO-PROPYLENE											
ETHYLBENZENE											
METHYL BROMIDE											
METHYL CHLORIDE											
METHYLENE CHLORIDE											
1,1,2,2-TETRACHLORO-ETHANE											
TETRACHLORO-ETHYLENE											
TOLUENE											

FACILITY NAME AND PERMIT NUMBER:

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Outfall number: _____ (Complete once for each outfall discharging effluent to waters of the United States.)

POLLUTANT	MAXIMUM DAILY DISCHARGE				AVERAGE DAILY DISCHARGE					ANALYTICAL METHOD	ML/ MDL
	Conc.	Units	Mass	Units	Conc.	Units	Mass	Units	Number of Samples		
1,1,1-TRICHLOROETHANE											
1,1,2-TRICHLOROETHANE											
TRICHLORETHYLENE											
VINYL CHLORIDE											
Use this space (or a separate sheet) to provide information on other volatile organic compounds requested by the permit writer.											
ACID-EXTRACTABLE COMPOUNDS											
P-CHLORO-M-CRESOL											
2-CHLOROPHENOL											
2,4-DICHLOROPHENOL											
2,4-DIMETHYLPHENOL											
4,6-DINITRO-O-CRESOL											
2,4-DINITROPHENOL											
2-NITROPHENOL											
4-NITROPHENOL											
PENTACHLOROPHENOL											
PHENOL											
2,4,6-TRICHLOROPHENOL											
Use this space (or a separate sheet) to provide information on other acid-extractable compounds requested by the permit writer.											
BASE-NEUTRAL COMPOUNDS.											
ACENAPHTHENE											
ACENAPHTHYLENE											
ANTHRACENE											
BENZIDINE											
BENZO(A)ANTHRACENE											
BENZO(A)PYRENE											

FACILITY NAME AND PERMIT NUMBER:

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Outfall number: _____ (Complete once for each outfall discharging effluent to waters of the United States.)

POLLUTANT	MAXIMUM DAILY DISCHARGE				AVERAGE DAILY DISCHARGE					ANALYTICAL METHOD	ML/ MDL
	Conc.	Units	Mass	Units	Conc.	Units	Mass	Units	Number of Samples		
3,4 BENZO-FLUORANTHENE											
BENZO(GHI)PERYLENE											
BENZO(K)FLUORANTHENE											
BIS (2-CHLOROETHOXY) METHANE											
BIS (2-CHLOROETHYL)-ETHER											
BIS (2-CHLOROISO-PROPYL) ETHER											
BIS (2-ETHYLHEXYL) PHTHALATE											
4-BROMOPHENYL PHENYL ETHER											
BUTYL BENZYL PHTHALATE											
2-CHLORONAPHTHALENE											
4-CHLORPHENYL PHENYL ETHER											
CHRYSENE											
DI-N-BUTYL PHTHALATE											
DI-N-OCTYL PHTHALATE											
DIBENZO(A,H) ANTHRACENE											
1,2-DICHLOROBENZENE											
1,3-DICHLOROBENZENE											
1,4-DICHLOROBENZENE											
3,3-DICHLOROBENZIDINE											
DIETHYL PHTHALATE											
DIMETHYL PHTHALATE											
2,4-DINITROTOLUENE											
2,6-DINITROTOLUENE											
1,2-DIPHENYLHYDRAZINE											

FACILITY NAME AND PERMIT NUMBER:

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Outfall number: _____ (Complete once for each outfall discharging effluent to waters of the United States.)

POLLUTANT	MAXIMUM DAILY DISCHARGE				AVERAGE DAILY DISCHARGE					ANALYTICAL METHOD	ML/ MDL
	Conc.	Units	Mass	Units	Conc.	Units	Mass	Units	Number of Samples		
FLUORANTHENE											
FLUORENE											
HEXACHLOROBENZENE											
HEXACHLOROBUTADIENE											
HEXACHLOROCYCLO-PENTADIENE											
HEXACHLOROETHANE											
INDENO(1,2,3-CD)PYRENE											
ISOPHORONE											
NAPHTHALENE											
NITROBENZENE											
N-NITROSODI-N-PROPYLAMINE											
N-NITROSODI- METHYLAMINE											
N-NITROSODI-PHENYLAMINE											
PHENANTHRENE											
PYRENE											
1,2,4-TRICHLOROBENZENE											
Use this space (or a separate sheet) to provide information on other base-neutral compounds requested by the permit writer.											
Use this space (or a separate sheet) to provide information on other pollutants (e.g., pesticides) requested by the permit writer.											

END OF PART D.
REFER TO THE APPLICATION OVERVIEW TO DETERMINE WHICH OTHER PARTS OF FORM 2A YOU MUST COMPLETE.

FACILITY NAME AND PERMIT NUMBER:

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SUPPLEMENTAL APPLICATION INFORMATION

PART E. TOXICITY TESTING DATA

POTWs meeting one or more of the following criteria must provide the results of whole effluent toxicity tests for acute or chronic toxicity for each of the facility's discharge points: 1) POTWs with a design flow rate greater than or equal to 1.0 mgd; 2) POTWs with a pretreatment program (or those that are required to have one under 40 CFR Part 403); or 3) POTWs required by the permitting authority to submit data for these parameters.

- At a minimum, these results must include quarterly testing for a 12-month period within the past 1 year using multiple species (minimum of two species), or the results from four tests performed at least annually in the four and one-half years prior to the application, provided the results show no appreciable toxicity, and testing for acute and/or chronic toxicity, depending on the range of receiving water dilution. Do not include information on combined sewer overflows in this section. All information reported must be based on data collected through analysis conducted using 40 CFR Part 136 methods. In addition, this data must comply with QA/QC requirements of 40 CFR Part 136 and other appropriate QA/QC requirements for standard methods for analytes not addressed by 40 CFR Part 136.
- In addition, submit the results of any other whole effluent toxicity tests from the past four and one-half years. If a whole effluent toxicity test conducted during the past four and one-half years revealed toxicity, provide any information on the cause of the toxicity or any results of a toxicity reduction evaluation, if one was conducted.
- If you have already submitted any of the information requested in Part E, you need not submit it again. Rather, provide the information requested in question E.4 for previously submitted information. If EPA methods were not used, report the reasons for using alternate methods. If test summaries are available that contain all of the information requested below, they may be submitted in place of Part E.

If no biomonitoring data is required, do not complete Part E. Refer to the Application Overview for directions on which other sections of the form to complete.

E.1. Required Tests.

Indicate the number of whole effluent toxicity tests conducted in the past four and one-half years.

____chronic ____acute

E.2. Individual Test Data. Complete the following chart for each whole effluent toxicity test conducted in the last four and one-half years. Allow one column per test (where each species constitutes a test). Copy this page if more than three tests are being reported.

Test number:_____ Test number:_____ Test number _____

a. Test information.			
Test species & test method number			
Age at initiation of test			
Outfall number			
Dates sample collected			
Date test started			
Duration			
b. Give toxicity test methods followed.			
Manual title			
Edition number and year of publication			
Page number(s)			
c. Give the sample collection method(s) used. For multiple grab samples, indicate the number of grab samples used.			
24-Hour composite			
Grab			
d. Indicate where the sample was taken in relation to disinfection. (Check all that apply for each)			
Before disinfection			
After disinfection			
After dechlorination			

FACILITY NAME AND PERMIT NUMBER:			*Form Approved 1/14/99 OMB Number 2040-0086*
	Test number:_____	Test number:_____	Test number:_____
e. Describe the point in the treatment process at which the sample was collected.			
Sample was collected:			
f. For each test, include whether the test was intended to assess chronic toxicity, acute toxicity, or both.			
Chronic toxicity			
Acute toxicity			
g. Provide the type of test performed.			
Static			
Static-renewal			
Flow-through			
h. Source of dilution water. If laboratory water, specify type; if receiving water, specify source.			
Laboratory water			
Receiving water			
i. Type of dilution water. If salt water, specify "natural" or type of artificial sea salts or brine used.			
Fresh water			
Salt water			
j. Give the percentage effluent used for all concentrations in the test series.			
k. Parameters measured during the test. (State whether parameter meets test method specifications)			
pH			
Salinity			
Temperature			
Ammonia			
Dissolved oxygen			
l. Test Results.			
Acute:			
Percent survival in 100% effluent	%	%	%
LC_{50}			
95% C.I.	%	%	%
Control percent survival	%	%	%
Other (describe)			

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Chronic:			
NOEC	%	%	%
IC_{25}	%	%	%
Control percent survival	%	%	%
Other (describe)			
m. Quality Control/Quality Assurance.			
Is reference toxicant data available?			
Was reference toxicant test within acceptable bounds?			
What date was reference toxicant test run (MM/DD/YYYY)?			
Other (describe)			

E.3. Toxicity Reduction Evaluation. Is the treatment works involved in a Toxicity Reduction Evaluation?

____Yes____No If yes, describe: _____

E.4. Summary of Submitted Biomonitoring Test Information. If you have submitted biomonitoring test information, or information regarding the cause of toxicity, within the past four and one-half years, provide the dates the information was submitted to the permitting authority and a summary of the results.

Date submitted: _____ (MM/DD/YYYY)

Summary of results: (see instructions)

END OF PART E.
REFER TO THE APPLICATION OVERVIEW TO DETERMINE WHICH OTHER PARTS OF FORM 2A YOU MUST COMPLETE.

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SUPPLEMENTAL APPLICATION INFORMATION

PART F - INDUSTRIAL USER DISCHARGES AND RCRA/CERCLA WASTES

All treatment works receiving discharges from significant industrial users or which receive RCRA, CERCLA, or other remedial wastes must complete Part F.

GENERAL INFORMATION:

F.1. Pretreatment Program. Does the treatment works have, or is it subject to, an approved pretreatment program?

___Yes___No

F.2. Number of Significant Industrial Users (SIUs) and Categorical Industrial Users (CIUs). Provide the number of each of the following types of industrial users that discharge to the treatment works.

a. Number of non-categorical SIUs. _____

b. Number of CIUs. _____

SIGNIFICANT INDUSTRIAL USER INFORMATION:

Supply the following information for each SIU. If more than one SIU discharges to the treatment works, copy questions F.3 through F.8 and provide the information requested for each SIU.

F.3. Significant Industrial User Information. Provide the name and address of each SIU discharging to the treatment works. Submit additional pages as necessary.

Name: _____

Mailing Address: _____

_____

F.4. Industrial Processes. Describe all of the industrial processes that affect or contribute to the SIU's discharge.

_____

F.5. Principal Product(s) and Raw Material(s). Describe all of the principal processes and raw materials that affect or contribute to the SIU's discharge.

Principal product(s): _____

Raw material(s): _____

F.6. Flow Rate.

a. Process wastewater flow rate. Indicate the average daily volume of process wastewater discharged into the collection system in gallons per day (gpd) and whether the discharge is continuous or intermittent.

_____ gpd (____continuous or _____intermittent)

b. Non-process wastewater flow rate. Indicate the average daily volume of non-process wastewater flow discharged into the collection system in gallons per day (gpd) and whether the discharge is continuous or intermittent.

_____ gpd (____continuous or _____intermittent)

F.7. Pretreatment Standards. Indicate whether the SIU is subject to the following:

a. Local limits ____Yes ____No

b. Categorical pretreatment standards ____Yes ____No

If subject to categorical pretreatment standards, which category and subcategory?

_____

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F.8. Problems at the Treatment Works Attributed to Waste Discharged by the SIU. Has the SIU caused or contributed to any problems (e.g., upsets, interference) at the treatment works in the past three years?

___Yes___No If yes, describe each episode.

_____

_____

RCRA HAZARDOUS WASTE RECEIVED BY TRUCK, RAIL, OR DEDICATED PIPELINE:

F.9. RCRA Waste. Does the treatment works receive or has it in the past three years received RCRA hazardous waste by truck, rail, or dedicated pipe? ____Yes ___No (go to F.12.)

F.10. Waste Transport. Method by which RCRA waste is received (check all that apply):

_____Truck _____Rail _____Dedicated Pipe

F.11. Waste Description. Give EPA hazardous waste number and amount (volume or mass, specify units).

EPA Hazardous Waste Number	Amount	Units

CERCLA (SUPERFUND) WASTEWATER, RCRA REMEDIATION/CORRECTIVE ACTION WASTEWATER, AND OTHER REMEDIAL ACTIVITY WASTEWATER:

F.12. Remediation Waste. Does the treatment works currently (or has it been notified that it will) receive waste from remedial activities?

____Yes (complete F.13 through F.15.) ____No

Provide a list of sites and the requested information (F.13 - F.15.) for each current and future site.

F.13. Waste Origin. Describe the site and type of facility at which the CERCLA/RCRA/or other remedial waste originates (or is expected to originate in the next five years).

_____

_____

_____

F.14. Pollutants. List the hazardous constituents that are received (or are expected to be received). Include data on volume and concentration, if known. (Attach additional sheets if necessary).

_____

_____

F.15. Waste Treatment.

a. Is this waste treated (or will it be treated) prior to entering the treatment works?

____Yes ____No

If yes, describe the treatment (provide information about the removal efficiency):

_____

_____

b. Is the discharge (or will the discharge be) continuous or intermittent?

____Continuous ____Intermittent If intermittent, describe discharge schedule.

END OF PART F.
REFER TO THE APPLICATION OVERVIEW TO DETERMINE WHICH OTHER PARTS OF FORM 2A YOU MUST COMPLETE

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SUPPLEMENTAL APPLICATION INFORMATION

PART G. COMBINED SEWER SYSTEMS

If the treatment works has a combined sewer system, complete Part G.

G.1. System Map. Provide a map indicating the following: (may be included with Basic Application Information)

a. All CSO discharge points.

b. Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding natural resource waters).

c. Waters that support threatened and endangered species potentially affected by CSOs.

G.2. System Diagram. Provide a diagram, either in the map provided in G.1. or on a separate drawing, of the combined sewer collection system that includes the following information:

a. Locations of major sewer trunk lines, both combined and separate sanitary.

b. Locations of points where separate sanitary sewers feed into the combined sewer system.

c. Locations of in-line and off-line storage structures.

d. Locations of flow-regulating devices.

e. Locations of pump stations.

CSO OUTFALLS:

Complete questions G.3 through G.6 once for each CSO discharge point.

G.3. Description of Outfall.

a. Outfall number _____

b. Location

_____ (City or town, if applicable) (Zip Code)

_____ (County) (State)

_____ (Latitude) (Longitude)

c. Distance from shore (if applicable) _____ ft.

d. Depth below surface (if applicable) _____ ft.

e. Which of the following were monitored during the last year for this CSO?

___Rainfall ___CSO pollutant concentrations ___CSO frequency

___CSO flow volume ___Receiving water quality

f. How many storm events were monitored during the last year? _____

G.4. CSO Events.

a. Give the number of CSO events in the last year.

_____ events (___ actual or ___ approx.)

b. Give the average duration per CSO event.

_____ hours (____ actual or ____ approx.)

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c. Give the average volume per CSO event.

_____ million gallons (_____ actual or _____ approx.)

d. Give the minimum rainfall that caused a CSO event in the last year.

_____ inches of rainfall

G.5. Description of Receiving Waters.

a. Name of receiving water: _____

b. Name of watershed/river/stream system: _____

United States Soil Conservation Service 14-digit watershed code (if known): _____

c. Name of State Management/River Basin: _____

United States Geological Survey 8-digit hydrologic cataloging unit code (if known): _____

G.6. CSO Operations.

Describe any known water quality impacts on the receiving water caused by this CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shell fish bed closings, fish kills, fish advisories, other recreational loss, or violation of any applicable State water quality standard).

_____

_____

END OF PART G.
REFER TO THE APPLICATION OVERVIEW TO DETERMINE WHICH OTHER PARTS OF FORM 2A YOU MUST COMPLETE.

BILLING CODE: 6560-50-C

Instructions for Completing Form 2A—Application for an NPDES Permit

Paperwork Reduction Act Notice: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9.6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments regarding the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., S.W., Washington, DC 20460. Include the OMB control number in any correspondence. Do not send the completed Form 2A to this address.

Background Information

Each wastewater treatment works that discharges treated effluent to waters of the United States must apply for a permit for its discharges. This permitting requirement is part of the National Pollutant Discharge Elimination System (NPDES) program, which is implemented by the U.S. Environmental Protection Agency (EPA). You can obtain a permit for your treatment works by filling out and sending in the appropriate form(s) to your permitting authority. If the State in which your treatment works is located operates its own NPDES program, then the State is your permitting authority and you should ask your State for permit application forms. On the other hand, if EPA operates the NPDES program in your State, then EPA is the permitting authority, and you must fill out and send in Form 2A.

These instructions explain how to fill out each question in Form 2A. However, not every applicant will have to fill out every section of Form 2A. You may determine which parts of Form 2A apply the your treatment works by reading the Application Overview section on page 1 of Form 2A before filling out the form.

Commonly Asked Questions

What If I Need More Space for My Answer?

If you need more room for your answer than is provided on the form, attach a separate sheet called "Additional Information." At the top of the separate sheet, put the name of your plant, your plant's NPDES permit number, and the number of the outfall that you are writing about, if applicable. Also, next to your answer, put the question number (from Form 2A). Provide this information on any drawings or other papers that you attach to your application as well.

Will the Public Be Able To See the Information I Submit?

Any information you submit on Form 2A will be available to the public. If you send in more information than is requested on Form 2A that is considered company-privileged information, you may ask EPA to keep that extra information confidential. Note that you cannot ask EPA to keep effluent data confidential. If you want any of the extra information to be kept confidential, inform EPA of this when you submit your application. Otherwise, EPA may make the information public without letting you know in advance. For more information on claims of confidentiality, see EPA's business confidentiality regulations at Title 40, Part 2 of the Code of Federal Regulations (CFR).

How Do I Complete the Forms?

Answer every question on Form 2A that applies to your treatment works. If your answer to a question requires more room than there is on the form, please attach additional sheets as described above. If a particular question does not apply to your treatment works, write "N/A" (meaning "not applicable") as your answer to that question. If you need additional guidance on filling out these forms, contact your EPA Regional Office or your State office.

Which Parts of the Form Apply?

Form 2A is presented in a modular format, consisting of two packets: the Basic Application Information packet and the Supplemental Application Information packet. The Basic Application Information Packet is divided into three parts. All applicants must complete Part A (Basic Application Information For All Applicants) and Part C (Certification). Applicants with a design flow greater than or equal to 0.1 mgd must also complete Part B (Additional Application Information For Applicants With A Design Flow Greater Than Or Equal To 0.1 MGD). Some applicants must also complete the Supplemental Application Information packet. Refer to the Application Overview on page 1 of Form 2A to determine which parts of the Supplemental Application Information you must complete.

Step-by-Step Instructions

The following section provides clarification and additional information for the questions on Form 2A. Most of the terms used in Form 2A are defined in the NPDES regulations at 40 CFR 122.2.

Basic Application Information

Part A (Basic Application Information for All Applicants)

A.1. Facility Information

Provide your plant's official or legal name. Do not use a nickname or short name. Also provide your plant's mailing address, a contact person at the plant, his/her title, and that person's work telephone number. The contact person should be someone who has a thorough understanding of the operation of the treatment works. The permitting authority may call this person if there are any questions about the application. Also provide the actual facility address (if different than the mailing address). The facility location should be a street address (not a Post Office box number) or other description of the actual location of the facility. Be sure to provide the city or county and state in which the facility is located.

A.2. Applicant Information

If someone other than the facility contact person is actually submitting this application (e.g., a consultant), provide the name and mailing address of that person's organization. Also provide the name of a contact person, his/her title, and his/her work telephone number. The permitting authority may call this person if there are any questions about the application.

A.3. Existing Environmental Permits

Provide the permit number of each currently effective permit issued to the treatment works for NPDES, UIC, RCRA, PSD, and any other environmental programs. If you have previously filed an application but have not yet received a permit, give the number of the application, if any. If you have more than one currently effective permit under a particular permit program, list each such permit number. List any other relevant environmental permits under "Other."

A.4. Collection System Information

Provide the names of all the cities, towns, and unincorporated areas served by your plant and enter the number of people served by your plant at the time you complete this form. Indicate whether each portion of the collection system is separate or combined storm and sanitary, if known, and note the ownership status of each portion of the system (municipal, private, etc.).

A.5. Indian Country

Indian Country means all land within the limits of any Indian reservation under the jurisdiction of the United States Government notwithstanding the issuance of any patent, and including rights-of-way running through the reservation. Indicate whether your plant is located in (i.e., within the limits of) Indian Country and whether the water body into which your plant discharges flows through Indian Country after it receives your plant discharge.

A.6. Flow

a. Provide your plant's current design flow rate. Treatment works with a design flow less than 5 mgd must provide the design influent flow rate to two decimal places. Treatment works that are greater than or equal to 5 mgd must report this to 1 decimal place. This is because fluctuations of 0.01 mgd to 0.09 mgd in smaller treatment works represent a significant percentage of daily flow.

b. Enter the annual average daily flow rate, in million gallons per day, that your plant actually treated this year and each of the past two years for days that your plant actually discharges. Each year's data must be based on a 12-month time period, with the 12th month of "this year" occurring no more than three months prior to this application submittal.

c. Enter the maximum daily flow rate, in million gallons per day (mgd), that your plant received this year and each of the past two years. Each year's data must be based on a 12-month time period, with the 12th month of "this year" occurring no more than three months prior to this application submittal.

A.7. Collection System

Indicate what type of collection system brings wastewater to your plant. If you check both of the collection systems indicated on the form, you must also provide an estimate of what percentage (in terms of miles of pipe) of your entire collection system each type represents. For example, 80 percent separate sanitary sewers would mean that 80 percent of the actual miles of pipes are separate sanitary sewers (and 20 percent are combined sewers).

A.8. Discharges and Other Disposal Methods

a. Note whether the treatment works discharges effluent to waters of the U.S. If yes, note the number of treated effluent discharge points, untreated or partially treated effluent discharge points, combined sewer overflow points, constructed emergency overflows prior to the headworks, and any other discharge points. Dischargers of effluent to waters of the U.S. with flow rates greater than or equal to 0.1 mgd must also complete questions B.1 through B.6 and, in some cases, Part D (Expanded Effluent Testing Data) of Form 2A. See the Application Overview on page 1 of Form 2A for more information.

b. A surface impoundment with no point source discharge (to waters of the U.S.) is a holding pond or basin that is large enough to contain all wastewaters discharged into it. It has no places where water overflows from it. It is used for evaporation of water and very little water seeps into the ground. Your plant must report the location of each surface impoundment, the annual average volume discharged to each impoundment, and the frequency of discharge into the surface impoundment (i.e., is the discharge continuous or intermittent). If your plant discharges to more than one surface impoundment, use an additional sheet (or sheets) to give this information for each impoundment. Attach the additional sheet(s) to the application form. The information on the location of the surface impoundment(s) may be referenced on the topographic map prepared under question B.2, if applicable.

c. Land application is the spraying or spreading of treated wastewater over an area of land. If your plant applies wastewater to land, you must list the site location, the size of the site (in acres), the annual average daily volume applied to the site, and the frequency of application (i.e., is the application continuous or intermittent). If your plant applies wastewater to more than one site, provide the information for each site on a separate sheet (or sheets). Attach the additional sheet(s) to your application form. The information on the location of the land application site may be referenced on the topographic map prepared under question B.2, if applicable.

d. If your plant discharges treated or untreated wastewater to another treatment works (including a municipal waste transport or collection system), provide the information requested in question A.8.d. If your plant sends wastewater to more than one treatment works, provide this information for each treatment works on an additional sheet (or sheets). Attach the additional sheet(s) to your application form. Describe how the wastewater is transported to the other treatment works. Also provide the name and mailing address of the company that transports your plant's wastewater to this treatment works as well as the name, phone number, and title of the contact person at the transportation company. Also provide the name and mailing address of each treatment works that receives wastewater from your plant as well as the name, phone number, and title of the contact person at the treatment works that receives your plant's wastewater and the NPDES permit number for the treatment works, if known. Indicate the average daily flow, in million gallons per day, that is sent from your plant to the other treatment works.

e. If your plant disposes of its wastewater in some way that was not described by A.8.a through A.8.d above, briefly describe how your plant discharges or disposes of its wastewater. Also give the annual daily volumes disposed of this way and indicate whether the discharge is continuous or intermittent. Other ways to discharge or dispose include underground percolation and well injection.

Wastewater Discharges. If this treatment works does not discharge treated wastewater to waters of the United States, do not complete questions A.9 through A.11. Instead, go to Part C (Certification). Note that you may also be required to complete portions of the Supplemental Application Information packet.

Answer questions A.9 through A.12 once for *each* outfall (including bypass points) through which your treatment works discharges effluent to surface waters of the United States. Do not include information about combined sewer overflow discharge points. Surface water means creeks, streams, rivers, lakes, estuaries, and oceans. If your treatment works has more than one

outfall, copy and complete questions A.9 through A.12 once for each outfall.

A.9. Description of Outfall

a–e. Give the outfall number and its location. For location, provide the city or town (if applicable), zip code, county, state, and latitude and longitude to the nearest second. If this outfall is a subsurface discharge (e.g., into an estuary, lake, or ocean), indicate how far the outfall is from shore and how far below the water's surface it is. Give these distances in feet at the lowest point of low tide. Also provide the average daily flow rate in million gallons per day.

f. Mark whether this outfall is a periodic or inter.nittent discharge. A "periodic discharge" is one that happens regularly (for example, monthly or seasonally), but is not continuous all year. An "intermittent discharge" is one that happens sometimes, but not regularly. Discharges from holding ponds, lagoons, etc., may be included as periodic or intermittent. Give the number of times per year a discharge occurs from this outfall. Also tell how long each discharge lasts and how much water is discharged, in million gallons per day. List each month when discharge happens. If you do not have records of exact months in which such discharges occurred, provide an estimate based on the best available information.

g. Indicate whether the outfall is equipped with a diffuser.

A.10. Description of Receiving Waters

a. Give the name of the surface water to which this outfall discharges and the waterbodies to which the discharge will ultimately flow. For example, "Control Ditch A, then into Stream B, then into River C, and finally into River D in River Basin E."

b. If known, provide the name of the watershed in which the receiving water (identified in question A.10.a) is located. If known, also provide the 14-digit watershed code assigned to this watershed by the U.S. Soil Conservation Service.

c. If known, provide the name of the State Management/River Basin into which this outfall discharges. If known, also provide the 8-digit hydrologic cataloging unit code assigned by the U.S. Geological Survey.

d. If known and if the water body is a river or stream, provide the acute and chronic critical low flow in cubic feet per second (cfs). If you are unsure of these numbers, the U.S. Geological Survey may be able to give them to you or you may be able to get these numbers from prior studies.

e. Give the total hardness of the receiving stream at critical low flow, in milligrams per liter of $CaCO_3$, if applicable.

A.11. Description of Treatment

a. Indicate the levels of treatment that your plant provides for the discharge from this outfall.

b. Give the design removal rates, in percent, for biochemical oxygen demand (BOD_5) or carbonaceous biochemical oxygen demand ($CBOD_5$), suspended solids (SS), phosphorus (P), nitrogen (N), and any other parameter requested by the permitting authority.

c. Describe the type of disinfection your plant uses (for example, chlorination, ozonation, ultraviolet, etc.) and any seasonal variation in disinfection technique that may occur. If your plant uses chlorination, indicate whether it also dechlorinates.

d. Note whether the facility has post aeration.

A.12. Effluent Testing Information

All applicants that discharge effluent to waters of the United States must provide effluent testing data for each outfall. Refer to the following table to determine which effluent testing information questions you must complete and to determine the number of pollutant scans on which to base your data. See the Application Overview on page 1 of Form 2A for more information.

Treatment works characteristics	Form 2A requirements	Minimum number of scans (see Appendix A)
Design flow rate less than 1 mgd, *and* Not required to have (or does not have) a pretreatment program	Question A.12	3
Design flow rate greater than or equal to 1 mgd, *or* Required to have a pretreatment program (or has one in place), *or* Otherwise required by the permitting authority to provide the data	Question A.12 *and* Part D of Supplemental Application Information Packet	3

Complete question A.12 *once for each outfall* through which effluent is discharged to waters of the United States. Indicate on each page the outfall number (as assigned in question A.9) for which the data are provided. Do not include information about combined sewer overflow discharge points in question A.12. For specific instructions on completing the pollutant tables in question A.12, refer to Appendix A of these instructions.

Part B (Additional Application Information for Applicants With a Design Flow Greater Than Equal to 0.1 MGD)

All applicants with a design flow rate greater than or equal to 0.1 mgd must answer questions B.1 through B.6.

B.1. Inflow and Infiltration

Estimate the average daily flow rate of inflow and infiltration in gallons per day and steps the facility is taking to minimize inflow and infiltration.

B.2. Topographic Map

Provide a topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes. In addition, the map must show the following:

a. Treatment plant area and unit processes;

b. Major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;

c. Each well where fluids from the treatment plant is injected underground;

d. Wells, springs, and other surface waterbodies listed in public records or otherwise known to the applicant within one-quarter mile of the treatment works' property boundary;

e. Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and

f. Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe.

B.3. Process Flow Diagram or Schematic

Provide a diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. Include a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units. Include a brief narrative description of the diagram.

B.4. Operation/Maintenance Performed by Contractor(s)

If a contractor carries out any operational or maintenance aspects associated with wastewater treatment or effluent quality at this facility, provide the name, mailing address, and telephone number of each such contractor. Also provide a description of the responsibilities of the contractor. Attach additional pages if necessary.

B.5. Scheduled Improvements and Schedules of Implementation

Provide information on any improvements to your treatment works that you are currently planning. Include only those improvements that will affect the wastewater treatment, effluent quality, or design capacity of your treatment works (such improvements may include regionalization of treatment works). Also list the schedule for when these improvements will be started and finished. If your treatment works has more than one improvement planned, use a separate sheet of paper to provide information for each one.

a. List each outfall number that is covered by the implementation schedule. The outfall numbers you use must be the same as the ones provided under question A.9.

b. Indicate whether the planned improvements or implementation schedules are required by local, State, or Federal agencies.

c. Provide a brief description of the improvements to be made for the outfalls listed in question B.5.a, including new maximum daily inflow rate, if applicable.

d. Provide the information requested for each planned improvement. Supply dates for the following stages of any compliance schedule. For improvements that are planned independently of local, State, or Federal agencies, indicate planned or actual completion dates, as applicable. If a step has already been finished, give the date when that step was completed.

- "Begin Construction" means the date you plan to start construction.
- "End Construction" means the date you expect to finish construction.
- "Begin Discharge" means the date that you expect a discharge will start.
- "Attain Operational Level" means the date that you expect the effluent level will meet your plant's implementation schedule conditions.

e. Note whether your treatment works has received appropriate permits or clearances that are required by other Federal or State requirements. If you have received such permits, describe them.

Part C (Certification)

Before completing the Certification statement, review the Application Overview section on the cover page of Form 2A to make sure that you have completed all applicable sections of Form 2A, including any parts of the Supplemental Application Information packet.

All permit applications must be signed and certified. Also indicate in the boxes provided which sections of Form 2A you are submitting with this application.

An application submitted by a *municipality, State, Federal, or other public agency* must be signed by either a principal executive officer or ranking elected official. A principal executive officer of a Federal agency includes: (1) The chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

An application submitted by a *corporation* must be signed by a responsible corporate officer. A responsible corporate officer means: (1) A president, secretary, treasurer, or vice president in charge of a principal business function, or any other person who performs similar policy- or decision-making functions; or (2) the manager of manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

An application submitted by a *partnership or sole proprietorship* must be signed by a general partner or the proprietor, respectively.

Supplemental Application Information Packet

EPA has developed Form 2A in a modular format, consisting of two packets: the Basic Application Information packet and the Supplemental Application Information packet. As directed by the Application Overview section on page 1 of Form 2A, certain applicants will need to complete one or more parts of the Supplemental Application Information packet in addition to some or all of the Basic Application Information packet. Refer to the Application Overview section to determine which part(s) of Form 2A you must complete.

The Supplemental Application Information packet is divided into the following parts:

- Part D Expanded Effluent Testing Data
- Part E Toxicity Testing Data
- Part F Industrial User Discharges and RCRA/CERCLA Wastes
- Part G Combined Sewer Systems

Part D (Expanded Effluent Testing Data)

A treatment works that discharges effluent to surface waters of the United States and meets one or more of the following criteria must complete Part D (Expanded Effluent Testing Data):

- Has a design flow rate greater than or equal to 1 mgd;
- Is required to have a pretreatment program (or has one in place); or
- Is otherwise required by the permitting authority to provide the information

Refer to the following table to determine which effluent testing information questions you must complete and to determine the number of pollutant scans on which to base your data.

Treatment works characteristics	Form 2A requirements	Minimum number of scans (see Appendix A)
Design flow rate less than 1 mgd but greater than 0.1 mgd, *and* Not required to have (or does not have) a pretreatment program	Question B.6	3
Design flow rate greater than or equal to 1 mgd, *or* Required to have a pretreatment program (or has one in place), *or* Otherwise required by the permitting authority to provide the data	Question B.6 *and* Part D of Supplemental Application Information Packet	3

Complete Part D *once for each outfall* through which effluent is discharged to waters of the United States. Indicate on each page the outfall number (as assigned in question A.9 of the Basic Application Information packet) for which the data are provided. Using the blank rows provided on the form, submit any data the facility may have for pollutants not specifically listed in Part D. Note that the permitting authority may require additional testing on a case-by-case basis.

For specific instructions on completing the pollutant tables in Part D, refer to Appendix A of these instructions.

Part E (Toxicity Testing Data)

Treatment works meeting one or more of the following criteria must complete Part E (Toxicity Testing Data):

- Treatment works with a design flow rate greater than or equal to one mgd; *or*
- Treatment works with an approved pretreatment program (as well as those required to have one under 40 CFR Part 403); *or*
- Treatment works otherwise required by the permitting authority to submit the results of whole effluent toxicity testing.

Applicants completing Part E must submit the results from any whole effluent toxicity test conducted during the past four and one-half years that have not been reported or submitted to the permitting authority for each outfall discharging effluent to the waters of the United States. Do not include information on combined sewer overflows in this section. If the applicant conducted a whole effluent toxicity test during the past four and one-half years that revealed toxicity, then provide any information available on the cause of the toxicity or any results of a toxicity reduction evaluation, if one was conducted.

Test results provided in Part E must be based on multiple species being tested quarterly for a minimum of one year. For multiple species, EPA requires a minimum of two species (e.g., vertebrates and invertebrates). The permitting authority may require the applicant to include other species (e.g., plants) as well. Applicants must provide these tests for either acute or chronic toxicity depending on the range of the receiving water dilution. EPA recommends that applicants conduct acute or chronic toxicity testing based on the following dilutions:

- Acute toxicity testing if the dilution of the effluent is greater than 1000:1 at the edge of the mixing zone.
- Acute or chronic toxicity testing if the dilution of the effluent is between 100:1 and 1000:1 at the edge of the mixing zone. Acute testing may be more appropriate at the higher end of this range (1000:1), and chronic testing may be more appropriate at the lower end of this range (100:1).
- Chronic toxicity testing if the dilution of the effluent is less than 100:1 at the edge of the mixing zone.

All data provided in Part E must be based on tests performed within four and one-half years prior to completing this application. The tests must have been conducted since the last NPDES permit issuance or permit modification under 40 CFR 122.62(a). In addition, applicants only need to submit data that have not previously been submitted to the permitting authority. Thus, if test data have already been submitted (within the last four and one-half years) in accordance with an issued NPDES permit, the treatment works may note the dates the tests were submitted and need not fill out the information requested in question E.2 for that test.

Additional copies of Part E may be used in submitting the required information. A permittee having no significant toxicity in the effluent over the past year and who has submitted all toxicity test results through the end of the calendar quarter preceding the time of permit application would need to supply no additional toxicity testing data as part of this application. Instead, the applicant should complete question E.4, which requests a summary of bioassay test information already submitted. (See below for more detailed instructions on completing question E.4)

Where test data are requested to be reported, the treatment works has the option of reporting the requested data on Form 2A or on reports supplied by the laboratories conducting the testing, provided the data requested are complete and presented in a logical fashion. The permitting authority reserves the right to request that the data be reported on Form 2A.

E.1. Required Tests

Provide the total number of chronic and acute whole effluent toxicity tests conducted in the past four and one-half years. A "chronic" toxicity test continues for a relatively long period of time, often one-tenth the life span of the organism or more. An "acute" toxicity test is one in which the effect is observed in 96 hours or less.

E.2. Individual Test Data

Complete E.2 for each test conducted in the last four and one-half years for which data has not been submitted. Use the columns provided on the form for each test and specify the test number at the top of each column. Use additional copies of question E.2 if more than three tests are being reported. The parameters listed on the form are based on EPA-recommended test methods. Permittees may be required by the permitting authority to submit additional test parameter data for the purposes of quality assurance.

If the treatment works is conducting whole effluent toxicity tests and reporting its results in accordance with a NPDES permit requirement, then the treatment works may note the dates the tests were submitted and need not fill out the information requested in question E.2. for those tests (unless otherwise required by the permitting authority).

a. Provide the information requested on the form for each test reported. Under "Test species & test method number," provide the scientific name of the organism used in the test and the test method number. The "Outfall number" reported must correlate to the outfall numbers listed in question A.9 of the Basic Application Information packet.

b. Provide the source of the toxicity test methods followed. In conducting the tests, the treatment works must use methods approved in accordance with 40 CFR Part 136.

Note: Approved methods are currently under development.

c. Indicate whether 24-hour composite or grab samples were used for each test. For multiple grab samples, provide the number of grab samples used. Refer to Appendix A of the instructions for a definition of composite and grab samples.

d. Indicate whether the sample was taken before or after disinfection and/or after dechlorination.

e. Provide a description of the point in the treatment process at which the sample was collected.

f. Indicate whether the test was intended to assess chronic or acute toxicity.

g. Indicate which type of test was performed. A "static" test is a test performed with a single constant volume of water. In a "static-renewal" test, the volume of water is renewed at discrete intervals. In a "flow-through" test, the volume of water is renewed continuously.

h. Indicate whether laboratory water or the receiving water of the tested outfall was used as the source of dilution water. If laboratory water was used, provide the type of water used.

i. Indicate whether fresh or salt water was used as the dilution water. For salt water, specify whether the salt water was natural or artificial (specify the type of artificial water used).

j. For each concentration in the test series, provide the percentage of effluent used.

k. Provide the minimum and maximum parameters measured during the test for pH, salinity, temperature, ammonia, and dissolved oxygen.

l. Provide the results of each test performed. For acute toxicity tests, provide the percent survival of the test species in 100 percent effluent. Also provide the LC_{50} (Lethal Concentration to 50 percent) of the test. "LC_{50}" is the effluent (or toxicant) concentration estimated to be lethal to 50 percent of the test organisms during a specific period. Provide the 95% confidence interval, control percent survival, and any other test results requested by the permitting authority in the space provided. For chronic toxicity tests, provide data at the most sensitive endpoint. While this is generally expressed as a "NOEC" (No Observed Effect Concentration), it may be expressed as an "Inhibition Concentration" (e.g., "IC_{25}"—Inhibition Concentration to 25 percent). The NOEC is the highest measured concentration of an effluent (or a toxicant) at which no significant adverse effects are observed on the test organisms at a specific time of observation. The IC_{25} is the effluent (or toxicant) concentration estimated to cause a 25 percent reduction in reproduction, fecundity, growth, or other non-quantal biological measurements. Provide the control percent survival. Indicate any other test results in the space provided.

m. Note whether reference toxicant data is available and indicate whether the reference toxicant test was within acceptable bounds. Provide the date on which the reference toxicant test was run. Also provide any other quality control/quality assurance information that may be requested by the permitting authority.

E.3. Toxicity Reduction Evaluation

A Toxicity Reduction Evaluation (TRE) is a site-specific study conducted in a stepwise process designed to identify the causative agents of effluent toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in effluent toxicity. If the treatment works is conducting a TRE as part of a NPDES permit requirement or enforcement order, then you only need to provide the date of the last progress report concerning the TRE in the area reserved for details of the TRE.

E.4. Summary of Submitted Biomonitoring Test Information

As stated above, applicants that have already submitted the results of biomonitoring test information over the past four and one-half years do not need to resubmit this data with Form 2A. Instead, indicate in question E.4 the date you submitted each report and provide a summary of the test results for each report. Include in this summary the following information: the outfall number and collection dates of the samples tested, dates of testing, toxicity testing method(s) used, and a summary of the results from the test (e.g, 100% survival in 40% effluent).

Part F (Industrial User Discharges and RCRA/CERCLA Wastes)

All treatment works receiving discharges from significant industrial users (SIUs) or facilities that receive RCRA, CERCLA, or other remedial wastes must complete Part F.

A "categorical industrial user" is an industrial user that is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N, which are technology-based standards developed by EPA setting industry-specific effluent limits. (A list of Industrial Categories subject to Categorical Pretreatment Standards is included in Appendix B.)

A "significant industrial user" is defined in 40 CFR 403.3(t) as an industrial user that:

- Is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; and
- Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the treatment works (excluding sanitary, non-contact cooling and boiler blowdown wastewater); contributes a process wastestream that makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the treatment works; or is designated as such by the Control Authority as defined in 40 CFR 403.12(a) on the basis that the industrial user has a reasonable potential for adversely affecting the treatment works operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

An "industrial user" means any industrial or commercial entity that discharges wastewater that is not domestic wastewater. Domestic wastewater includes wastewater from connections to houses, hotels, non-industrial office buildings, institutions, or sanitary waste from industrial facilities. The number of "industrial users" is the total number of industrial and commercial users that discharge to the treatment works.

For the purposes of completing the application form, please provide information on non-categorical SIUs and categorical industrial users separately.

F.1. Pretreatment Program

Indicate whether the treatment works has an approved pretreatment program. An "approved pretreatment program" is a program administered by a treatment works that meets the criteria established in 40 CFR 403.8 and 403.9 and that has been approved by a Regional Administer or State Director.

Note that if this treatment works has or is required to have a pretreatment program, you must also complete Parts D and E of the Supplemental Application Information packet.

F.2. Number of Significant Industrial Users (SIUs) and Categorical Industrial Users (CIUs)

Provide the number of SIUs and the number of CIUs that discharge to the treatment works.

Significant Industrial User (SIU) Information. All treatment works that receive discharges from SIUs must complete questions F.3 through F.8. If your treatment works receives wastewater from more than one SIU,

complete questions F.3 through F.8 *once for each SIU.*

F.3. Significant Industrial User Information

Provide the name and mailing address of each SIU. Submit additional pages as necessary.

F.4. Industrial Processes

Describe the actual process(es) (rather than simply listing them) at the SIU that affect or contribute to the SIU's discharge. For example, in describing a metal finishing operation, include such information as how the product is cleaned prior to finishing, what type of plating baths are in operation (e.g., nickel, chromium), how paint is applied, and how the product is polished. Attach additional sheets if necessary.

F.5. Principal Product(s) and Raw Material(s)

List principal products that the SIU generates and the raw materials used to manufacture the products.

F.6. Flow Rate

"Process wastewater" means any water that, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. Indicate the average daily volume, in gallons per day, of process wastewater and non-process wastewater that the SIU discharges into the collection system. Specify whether the discharges are continuous or intermittent.

F.7. Pretreatment Standards

Indicate whether the SIU is subject to local limits and categorical pretreatment standards. "Local limits" are enforceable local requirements developed by treatment works to address Federal standards as well as state and local regulations. "Categorical pretreatment standards" are national technology-based standards developed by EPA, setting industry-specific effluent limits. These standards are implemented by 40 CFR 403.6. If the treatment works is subject to categorical pretreatment standards, indicate the category and subcategory.

F.8. Problems at the Treatment Works Attributed to Waste Discharged by the SIU

Provide information concerning any problems the treatment works has experienced that are attributable to discharges from the SIUs. Problems may include upsets or interference at the plant, corrosion in the collection system, or other similar events in the past three years.

RCRA Hazardous Waste Received by Truck, Rail or Dedicated Pipeline. As defined in Section 1004(5) of the Resource Conservation and Recovery Act (RCRA), "Hazardous waste" means "a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may:

- Cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
- Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed."

Those solid wastes that are considered hazardous are listed under 40 CFR Part 261. Treatment works that accept hazardous wastes by truck, rail, or dedicated pipeline (a pipeline that is used to carry hazardous waste directly to a treatment works without prior mixing with domestic sewage) within the property boundary of the treatment works are considered to be hazardous waste treatment, storage, and disposal facilities (TSDFs) and, as such, are subject to regulations under RCRA. Under RCRA, mixtures of domestic sewage and other wastes that commingle in the treatment works collection system prior to reaching the property boundary, including those wastes that otherwise would be considered hazardous, are excluded from regulation under the domestic sewage exclusion. Hazardous wastes that are delivered directly to the treatment works by truck, rail, or dedicated pipeline do not fall within the exclusion. Hazardous wastes received by these routes may only be accepted by treatment works if the treatment works complies with applicable RCRA requirements for TSDFs.

Applicants completing questions F.9 through F.11 should have indicated all points at which RCRA hazardous waste enters the treatment works by truck, rail, or dedicated pipe in the map provided in question B.2 of the Basic Application Information packet, if applicable.

F.9. RCRA Waste

Indicate whether the treatment works currently receives or has received RCRA waste by truck, rail, or dedicated pipe in the past three years.

F.10. Waste Transport

Indicate the method by which RCRA waste is received at the treatment works.

F.11. Waste Description

Provide the EPA hazardous waste numbers, which are located in 40 CFR Part 261, Subparts C & D, and the amount (in volume or mass) received.

CERCLA (Superfund) Wastewater and RCRA Remediation/ Corrective Action Wastewater. Substances that are regulated under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) are described and listed in 40 CFR Part 302. Questions F.12 through F.15 apply to the type, origin, and treatment of CERCLA wastes currently (or expected to be) discharged to the treatment works.

F.12. CERCLA Waste

Indicate whether this treatment works currently receives waste from a CERCLA (Superfund) site or plans to accept waste from a CERCLA site in the next five years. If it does, provide the information requested in F.13 through F.15 *once for each site.*

F.13. Waste Origin

Provide information about the CERCLA site that is discharging waste to the treatment works. Information must include a description of the type of facility and an EPA identification number if one exists.

F.14. Pollutants

Provide a list of the pollutants that are or will be discharged by the CERCLA site and the volume and concentration of such pollutants.

F.15. Waste Treatment

Provide information concerning the treatment used (if any) by the CERCLA site to treat the waste prior to discharging it to the treatment works. The information should include a description of the treatment technology, information on the frequency of the discharge (continuous or intermittent) and any data concerning removal efficiency.

Part G. (Combined Sewer Systems)

A combined sewer system collects a mixture of both sanitary wastewater and storm water runoff.

G.1. System Map

Indicate on a system map all CSO discharge points. For each such point, indicate any sensitive use areas and any waters supporting threatened or endangered species that are potentially affected by CSOs. Sensitive use areas include beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding natural resource waters.

Applicants may provide the information requested in question G.1 on the map submitted in response to question B.2 in the Basic Application Information packet, if applicable.

All maps should be either on paper or other material appropriate for reproduction. If possible, all sheets should be approximately letter size with margins suitable for filing and binding. As few sheets should be used as necessary to show clearly what is involved. All discharge points should be identified by outfall number. Each sheet should be labeled with the applicant's name, NPDES permit number, location (city, county, or town), date of drawing, and designation of the number of sheets of each diagram as "page ____ of ____."

G.2. System Diagram

Diagram the location of combined and separate sanitary major sewer trunk lines and indicate any connections where separate sanitary sewers feed into the combined sewer system. Clearly indicate the location of all in-line and off-line storage structures, flow regulating devices, and pump stations.

The drawing should be either on paper or other material appropriate for reproduction. If possible, all sheets should be approximately letter size with margins suitable for filing and binding. As few sheets should be used as necessary to show clearly what is involved. All discharge points should be identified by outfall number. Each sheet should be labeled with the applicant's name, NPDES permit number, location (city, county, or town), date of drawing, and designation of the number of sheets of each diagram as "page ____ of ____".

CSO Outfalls. Fill out a copy of questions G.3 through G.6 *once for each CSO discharge point.* Attach additional pages as necessary.

G.3. Description of Outfall

a–f. Provide the outfall number and location (including city or town if applicable, state, county, and latitude and longitude to the nearest second). For subsurface discharges (e.g., discharges to lakes, estuaries, and oceans), provide the distance (in feet) of the discharge point from the shore and the depth (in feet) of the discharge point below the surface of the discharge point. Provide these distances at the lowest point of low tide. Indicate whether rainfall, CSO flow volume, CSO pollutant concentrations, receiving water quality, or CSO frequency were monitored during the past 12 months. In addition, provide the number of storm events monitored during the past 12 months.

G.4. CSO Events

a. Provide the number of CSO events that have occurred in the past 12 months. Indicate whether this is an actual or approximate number.

b. Provide the average duration (in hours) per CSO event. Indicate whether this is an actual or approximate value.

c. Provide the average volume (in million gallons) of discharge per CSO incidents over the past 12 months. Indicate whether this is an actual or approximate number.

d. Provide the minimum amount of rainfall that caused a CSO incident in the past 12 months.

G.5. Description of Receiving Waters

a. List the name(s) of immediate receiving waters starting at the CSO discharge point and moving downstream. For example, "Control Ditch A, thence to Stream B, thence to River C, and thence to River D in the River Basin E."

b. Provide the name of the watershed/river/stream system in which the receiving water (identified in question A.10.a) is located. If known, also provide the 14-digit watershed code assigned to this watershed by the U.S. Soil Conservation Service.

c. Provide the name of the State Management/River Basin into which this outfall discharges. If known, also provide the 8-digit hydrologic cataloging unit code assigned by the U.S. Geological Survey.

G.6. CSO Operations

Provide a description of any known water quality impacts on the receiving water caused by CSOs from this discharge point. Water quality impacts include, but are not limited to, permanent or intermittent beach closings, permanent or intermittent shell fish bed closings, fish kills, fish advisories, other recreational loss, or violation of any applicable State water quality standard.

Appendix A—Guidance for Completing the Effluent Testing Information; All Treatment Works

All applicants must provide data for each of the pollutants in question A.12 of the Basic Application Information packet. Some applicants must also provide data for the pollutants in question B.6 of the Basic Application Information packet and Part D of the Supplemental Application Information packet. All applicants submitting effluent testing data must base this data on a minimum of three pollutant scans. All samples analyzed must be representative of the discharge from the sampled outfall.

If you have existing data that fulfills the requirements described below, you may use that data in lieu of conducting additional sampling. If you measure more than the required number of daily values for a pollutant and those values are representative of your wastestream, you must include them in the data you report. In addition, use the blank rows provided on the form to provide any existing sampling data that your facility may have for pollutants not listed in the appropriate sections. All data provided in the application must be based on samples taken within three years prior to the time of this permit application.

Sampling data must be representative of the treatment works' discharge and take into consideration seasonal variations. At least two of the samples used to complete the effluent testing information questions must have been taken no fewer than 4 months and no more than 8 months apart. For example, one sample may be taken in April and another in October to meet this requirement. Applicants unable to meet this time requirement due to periodic, discontinuous, or seasonal discharges can obtain alternative guidance on this requirement from their permitting authority.

The collection of samples for the reported analyses should be supervised by a person experienced in performing wastewater sampling. Specific requirements contained in the applicable analytical methods should be followed for sample containers, sample preservation, holding times, and collection of duplicate samples. Samples should be taken at a time representative of normal operation. To the extent feasible, all processes that contribute to wastewater should be in operation and the treatment system should be operating properly with no system upsets. Samples should be collected from the center of the flow channel (where turbulence is at a maximum), at a location specified in the current NPDES permit, or at any location adequate for the collection of a representative sample.

A minimum of four grab samples must be collected for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, *E. coli*, and enterococci (applicants need only provide data on *either* fecal coliform or *E. coli* and enterococci). For all other pollutants, 24-hour composite samples must be collected. However, a minimum of one grab sample, instead of a 24-hour composite, may be taken for effluent from holding ponds or other impoundments that have a retention period greater than 24 hours.

Grab and composite samples are defined as follows:

- Grab sample: an individual sample of at least 100 milliliters collected randomly for a period not exceeding 15 minutes.
- Composite sample: a sample derived from two or more discrete samples collected at equal time intervals or collected proportional to the flow rate over the compositing period. The composite collection method may vary depending on pollutant characteristics or discharge flow characteristics.

The permitting authority may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which sampling takes place, the duration between

sampling events, and protocols for collecting samples under 40 CFR Part 136. Contact EPA or the State permitting authority for detailed guidance on sampling techniques and for answers to specific questions. The following instructions explain how to complete each of the columns in the pollutant tables in the effluent testing information sections of Form 2A.

Maximum Daily Discharge. For composite samples, the daily discharge is the average pollutant concentration and total mass found in a composite sample taken over a 24-hour period. For grab samples, the daily discharge is the arithmetic or flow-weighted total mass or average pollutant concentration found in a series of at least four grab samples taken during the operating hours of the treatment works during a 24-hour period.

To determine the *maximum* daily discharge values, compare the daily discharge values from each of the sample events. Report the highest total mass and highest concentration level from these samples.

- "Concentration" is the amount of pollutant that is present in a sample with respect to the size of the sample. The daily discharge concentration is the average concentration of the pollutant throughout the 24-hour period.
- "Mass" is calculated as the total mass of the pollutant discharged over the 24-hour period.
- All data must be reported as both concentration and mass (where appropriate). Use the following abbreviations in the columns headed "Units."

ppm—parts per million
gpd—gallons per day
mgd—million gallons per day
su—standard units
mg/l—milligrams per liter
ppb—parts per billion
ug/l—micrograms per liter
lbs—pounds
ton—tons (English tons)
mg—milligrams
g—grams
kg—kilograms
T—tonnes (metric tons)

Average Daily Discharge. The average daily discharge is determined by calculating the arithmetic mean daily pollutant concentration and the arithmetic mean daily total mass of the pollutant from each of the sample events within the three years prior to this permit application. Report the concentration, mass, and units used under the Average Daily Discharge column, along with the number of samples on which the average is based. Use the unit abbreviations shown above in "Maximum Daily Discharge."

If data requested in Form 2A have been reported on the treatment works' Discharge Monitoring Reports (DMRs), you may compile such data and report it under the maximum daily discharge and the average daily discharge columns of the form.

Analytical Method. All information reported must be based on data collected through analyses conducted using 40 CFR Part 136 methods. Applicants should use methods that enable pollutants to be detected at levels adequate to meet water quality-based standards. Where no approved method can detect a pollutant at the water quality-based standards level, the most sensitive approved method should be used. If the applicant believes that an alternative method should be used (e.g., due to matrix interference), the applicant should obtain prior approval from the permitting authority. If an alternative method is specified in the existing permit, the applicant should use that method unless otherwise directed by the permitting authority. Where no approved analytical method exists, an applicant may use a suitable method but must provide a description of the method. For the purposes of the application, "suitable method" means a method that is sufficiently sensitive to measure as close to the water quality-based standard as possible.

Indicate the method used for each pollutant in the "Analytical Method" column of the pollutant tables. If a method has not been approved for a pollutant for which you are providing data, you may use a suitable method to measure the concentration of the pollutant in the discharge, and provide a detailed description of the method used or a reference to the published method. The description must include the sample holding time, preservation techniques, and the quality control measures used. In such cases, indicate the method used and attach to the application a narrative description of the method used.

Reporting Levels. The applicant should provide the method detection limit (MDL), minimum level (ML), or other designated method endpoint reflecting the precision of the analytical method used.

All analytical results must be reported using the actual numeric values determined by the analysis. In other words, even where analytical results are below the detection or quantitation level of the method used, the actual data should be reported, rather than reporting "non-detect" ("ND") or "zero" ("0"). Because the endpoint of the method has also been reported along with the test results, the permitting authority will be able to determine if the data are in the "non-detect" or "below quantitation" range.

For any dilutions made and any problems encountered in the analysis, the applicant should attach an explanation and any supporting documentation with the application. For GC/MS, report all results found to be present by spectral confirmation (i.e., quantitation limits or detection limits should not be used as a reporting threshold for GC/MS).

Total Recoverable Metals. Total recoverable metals are measured from unfiltered samples using EPA methods specified in 40 CFR Part 136.3. A digestion procedure is used to solubilize suspended materials and destroy possible organic metal complexes. The method measures dissolved metals plus those metals recovered from suspended particles by the method digestion.

Appendix B—Industrial Categories Subject to National Categorical Pretreatment Standards

Industrial Categories with Pretreatment Standards in Effect

Aluminum Forming
Asbestos Manufacturing
Battery Manufacturing
Builder's Paper and Board Mills
Carbon Black Manufacturing
Coil Coating
Copper Forming
Electrical and Electronic Components
Electroplating
Feedlots
Ferroalloy Manufacturing
Fertilizer Manufacturing
Glass Manufacturing
Grain Mills Manufacturing
Ink Formulating
Inorganic Chemicals
Iron and Steel Manufacturing
Leather Tanning and Finishing
Metal Finishing
Metal Molding and Casting
Nonferrous Metals Forming and Metal Powders
Nonferrous Metals Manufacturing
Organic Chemicals, Plastics and Synthetic Fibers
Paint Formulating
Paving and Roofing
Pesticide Manufacturing
Petroleum Refining
Pharmaceutical Manufacturing
Porcelain Enameling
Pulp, Paper and Paperboard
Rubber Manufacturing
Soap and Detergents Manufacturing
Steam Electric Power Generating
Sugar Processing
Timber Products Manufacturing

Industrial Categories with Effluent Guidelines Currently Under Development

Pulp, Paper, and Paperboard
Pesticide Formulating, Packaging, and Repackaging
Centralized Waste Treatment
Pharmaceutical Manufacturing
Metal Products and Machinery, Phase I
Industrial Laundries
Transportation Equipment Cleaning
Landfills and Incinerators
Metal Products and Machinery, Phase II

BILLING CODE 6560-50-P

FACILITY NAME AND PERMIT NUMBER:

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OMB Number 2040-0086

FORM 2S NPDES

NPDES FORM 2S APPLICATION OVERVIEW

PRELIMINARY INFORMATION

This page is designed to indicate whether the applicant is to complete Part 1 or Part 2. Review each category, and then complete Part 1 or Part 2, as indicated. For purposes of this form, the term "you" refers to the applicant. "This facility" and "your facility" refer to the facility for which application information is submitted.

FACILITIES INCLUDED IN ANY OF THE FOLLOWING CATEGORIES MUST COMPLETE PART 2 (PERMIT APPLICATION INFORMATION).

1. Facilities with a currently effective NPDES permit.

2. Facilities which have been directed by the permitting authority to submit a full permit application at this time.

ALL OTHER FACILITIES MUST COMPLETE PART 1 (LIMITED BACKGROUND INFORMATION).

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PART I. LIMITED BACKGROUND INFORMATION

This part should be completed only by "sludge-only" facilities - that is, facilities that do not currently have, and are not applying for, an NPDES permit for a direct discharge to a surface body of water.

For purposes of this form, the term "you" refers to the applicant. "This facility" and "your facility" refer to the facility for which application information is submitted.

1. **Facility Information.**

   a. Facility name _____

   b. Mailing Address _____

   _____

   c. Contact person _____

   Title _____

   Telephone number _____

   d. Facility Address (not P.O. B ox) _____

   _____

   e. Indicate the type of facility

   _____ Publicly owned treatment works (POTW) _____ Privately owned treatment works

   _____ Federally owned treatment works _____ Blending or treatment operation

   _____ Surface disposal site _____ Sewage sludge incinerator

   _____ Other (describe) _____

2. **Applicant Information.**

   a. Applicant name _____

   b. Mailing Address _____

   _____

   c. Contact person _____

   Title _____

   Telephone number _____

   d. Is the applicant the owner or operator (or both) of this facility?

   _____ owner _____ operator

   e. Should correspondence regarding this permit be directed to the facility or the applicant?

   _____ facility _____ applicant

FACILITY NAME AND PERMIT NUMBER:

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3. **Sewage Sludge Amount.** Provide the total dry metric tons per latest 365 day period of sewage sludge handled under the following practices:

   a. Amount generated at the facility _____ dry metric tons

   b. Amount received from off site _____ dry metric tons

   c. Amount treated or blended on site _____ dry metric tons

   d. Amount sold or given away in a bag or other container for application to the land _____ dry metric tons

   e. Amount of bulk sewage sludge shipped off site for treatment or blending _____ dry metric tons

   f. Amount applied to the land in bulk form _____ dry metric tons

   g. Amount placed on a surface disposal site _____ dry metric tons

   h. Amount fired in a sewage sludge incinerator _____ dry metric tons

   i. Amount sent to a municipal solid waste landfill _____ dry metric tons

   j. Amount used or disposed by another practice _____ dry metric tons

   Describe _____

4. **Pollutant Concentrations.** Using the table below or a separate attachment, provide existing sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in 40 CFR part 503 for this facility's expected use or disposal practices. If available, base data on three or more samples taken at least one month apart and no more than four and one-half years old.

POLLUTANT	CONCENTRATION (mg/kg dry weight)	ANALYTICAL METHOD	DETECTION LEVEL FOR ANALYSIS
ARSENIC			
CADMIUM			
CHROMIUM			
COPPER			
LEAD			
MERCURY			
MOLYBDENUM			
NICKEL			
SELENIUM			
ZINC			

5. **Treatment Provided At Your Facility.**

   a. Which class of pathogen reduction does the sewage sludge meet at your facility?

   _____ Class A _____ Class B _____ Neither or unknown

   b. Describe, on this form or another sheet of paper, any treatment processes used at your facility to reduce pathogens in sewage sludge:

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c. Which vector attraction reduction option is met for the sewage sludge at your facility?

_____ Option 1 (Minimum 38 percent reduction in volatile solids)
_____ Option 2 (Anaerobic process, with bench-scale demonstration)
_____ Option 3 (Aerobic process, with bench-scale demonstration)
_____ Option 4 (Specific oxygen uptake rate for aerobically digested sludge)
_____ Option 5 (Aerobic processes plus raised temperature)
_____ Option 6 (Raise pH to 12 and retain at 11.5)
_____ Option 7 (75 percent solids with no unstabilized solids)
_____ Option 8 (90 percent solids with unstabilized solids)
_____ Option 9 (Injection below land surface)
_____ Option 10 (Incorporation into soil within 6 hours)
_____ Option 11 (Covering active sewage sludge unit daily)
_____ None or unknown

d. Describe, on this form or another sheet of paper, any treatment processes used at your facility to reduce vector attraction properties of sewage sludge:

_____

_____

6. **Sewage Sludge Sent to Other Facilities.** Does the sewage sludge from your facility meet the Table 1 ceiling concentrations, the Table 3 pollutant concentrations, Class A pathogen requirements, and one of the vector attraction options 1-8?
_____ Yes _____ No

If yes, go to question 8 (Certification).

If no, is sewage sludge from your facility provided to another facility for treatment, distribution, use, or disposal?
_____ Yes _____ No

If no, go to question 7 (Use and Disposal Sites).

If yes, provide the following information for the facility receiving the sewage sludge:

a. Facility name _____

b. Mailing address _____

_____

c. Contact person _____

Title _____

Telephone number _____

d. Which activities does the receiving facility provide? (Check all that apply)

_____ Treatment or blending
_____ Land application
_____ Incineration
_____ Sale or give-away in bag or other container
_____ Surface disposal
_____ Other (describe):

_____

_____

FACILITY NAME AND PERMIT NUMBER:

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7. **Use and Disposal Sites.** Provide the following information for each site on which sewage sludge from this facility is used or disposed:

a. Site name or number _____

b. Contact person _____

Title _____

Telephone _____

c. Site location (Complete 1 or 2)

1. Street or Route # _____

County _____

City or Town _____ State _____ Zip _____

2. Latitude _____ Longitude _____

d. Site type (Check all that apply)

____ Agricultural ____ Lawn or home garden ____ Forest
____ Surface disposal ____ Public Contact ____ Incineration
____ Reclamation ____ Municipal Solid Waste Landfill ____ Other (describe): _____

8. **Certification.** Sign the certification statement below. (Refer to instructions to determine who is an officer for purposes of this certification.)

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with the system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Name and official title _____

Signature _____

Telephone number _____

Date signed _____

SEND COMPLETED FORMS TO:

FACILITY NAME AND PERMIT NUMBER:

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PART 2 PERMIT APPLICATION INFORMATION

Complete this part if you have an effective NPDES permit or have been directed by the permitting authority to submit a full permit application at this time. In other words, complete this part if your facility has, or is applying for, an NPDES permit.

For purposes of this form, the term "you" refers to the applicant. "This facility" and "your facility" refer to the facility for which application information is submitted.

APPLICATION OVERVIEW — SEWAGE SLUDGE USE OR DISPOSAL INFORMATION

Part 2 is divided into five sections (A-E). Section A pertains to all applicants. The applicability of Sections B, C, D, and E depends on your facility's sewage sludge use or disposal practices. The information provided on this page indicates which sections of Part 2 to fill out.

1. **SECTION A: GENERAL INFORMATION.**

   Section A must be completed by all applicants

2. **SECTION B: GENERATION OF SEWAGE SLUDGE OR PREPARATION OF A MATERIAL DERIVED FROM SEWAGE SLUDGE.**

   Section B must be completed by applicants who either:

   1) Generate sewage sludge, or

   2) Derive a material from sewage sludge.

3. **SECTION C: LAND APPLICATION OF BULK SEWAGE SLUDGE.**

   Section C must be completed by applicants who either:

   1) Apply sewage to the land, or

   2) Generate sewage sludge which is applied to the land by others.

   NOTE: Applicants who meet either or both of the two above criteria are exempted from this requirement if <u>all</u> sewage sludge from their facility falls into one of the following three categories:

   1) The sewage sludge from this facility meets the ceiling and pollutant concentrations, Class A pathogen reduction requirements, and one of vector attraction reduction options 1-8, as identified in the instructions, or
   2) The sewage sludge from this facility is placed in a bag or other container for sale or give-away for application to the land, or
   3) The sewage sludge from this facility is sent to another facility for treatment or blending.

4. **SECTION D: SURFACE DISPOSAL**

   Section D must be completed by applicants who own or operate a surface disposal site.

5. **SECTION E: INCINERATION**

   Section E must be completed by applicants who own or operate a sewage sludge incinerator.

FACILITY NAME AND PERMIT NUMBER:

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A. GENERAL INFORMATION

All applicants must complete this section.

A.1. Facility Information.

a. Facility name _____

b. Mailing Address _____

_____

c. Contact person _____

Title _____

Telephone number _____

d. Facility Address (not P.O. Box) _____

_____

e. Is this facility a Class I sludge management facility? _____ Yes _____ No

f. Facility design flow rate: _____ mgd

g. Total population served: _____

h. Indicate the type of facility:

_____ Publicly owned treatment works (POTW)
_____ Federally owned treatment works
_____ Surface disposal site
_____ Other (describe) _____
_____ Privately owned treatment works
_____ Blending or treatment operation
_____ Sewage sludge incinerator

A.2. Applicant Information. If the applicant is different from the above, provide the following:

a. Applicant name _____

b. Mailing Address _____

_____

c. Contact person _____

Title _____

Telephone number _____

d. Is the applicant the owner or operator (or both) of this facility?

_____ owner _____ operator

e. Should correspondence regarding this permit should be directed to the facility or the applicant.

_____ facility _____ applicant

FACILITY NAME AND PERMIT NUMBER:

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A.3. Permit Information.

a. Facility's NPDES permit number (if applicable): _____

b. List, on this form or an attachment, all other Federal, State, and local permits or construction approvals received or applied for that regulate this facility's sewage sludge management practices:

Permit Number	Type of Permit
_____	_____
_____	_____
_____	_____

A.4. Indian Country. Does any generation, treatment, storage, application to land, or disposal of sewage sludge from this facility occur in Indian Country?

_____Yes _____No If yes, describe: _____

_____

A.5. Topographic Map. Provide a topographic map or maps (or other appropriate map(s) if a topographic map is unavailable) that show the following information. Map(s) should include the area one mile beyond all property boundaries of the facility:

a. Location of all sewage sludge management facilities, including locations where sewage sludge is stored, treated, or disposed.

b. Location of all wells, springs, and other surface water bodies, listed in public records or otherwise known to the applicant within 1/4 mile of the facility property boundaries.

A.6. Line Drawing. Provide a line drawing and/or a narrative description that identifies all sewage sludge processes that will be employed during the term of the permit, including all processes used for collecting, dewatering, storing, or treating sewage sludge, the destination(s) of all liquids and solids leaving each unit, and all methods used for pathogen reduction and vector attraction reduction.

A.7. Contractor Information.

Are any operational or maintenance aspects of this facility related to sewage sludge generation, treatment, use or disposal the responsibility of a contractor? _____Yes _____No

If yes, provide the following for each contractor (attach additional pages if necessary):

a. Name _____

b. Mailing Address _____

_____

c. Telephone Number _____

d. Responsibilities of contractor _____

_____

FACILITY NAME AND PERMIT NUMBER:

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A.8. Pollution Concentrations: Using the table below or a separate attachment, provide sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in 40 CFR Part 503 for this facility's expected use or disposal practices. All data must be based on three or more samples taken at least one month apart and must be no more than four and one-half years old.

POLLUTANT	CONCENTRATION (mg/kg dry weight)	ANALYTICAL METHOD	DETECTION LEVEL FOR ANALYSIS
ARSENIC			
CADMIUM			
CHROMIUM			
COPPER			
LEAD			
MERCURY			
MOLYBDENUM			
NICKEL			
SELENIUM			
ZINC			

A.9. Certification. Read and submit the following certification statement with this application. Refer to the instructions to determine who is an officer for purposes of this certification. Indicate which parts of Form 2S you have completed and are submitting:

_____ Part 1 Limited Background Information packet

Part 2 Permit Application Information packet:

_____ Section A (General Information)

_____ Section B (Generation of Sewage Sludge or Preparation of a Material Derived from Sewage Sludge)

_____ Section C (Land Application of Bulk Sewage Sludge)

_____ Section D (Surface Disposal)

_____ Section E (Incineration)

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with the system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Name and official title _____

Signature _____ Date signed _____

Telephone number _____

Upon request of the permitting authority, you must submit any other information necessary to assess sewage sludge use or disposal practices at your facility or identify appropriate permitting requirements.

SEND COMPLETED FORMS TO:

FACILITY NAME AND PERMIT NUMBER:

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B. GENERATION OF SEWAGE SLUDGE OR PREPARATION OF A MATERIAL DERIVED FROM SEWAGE SLUDGE

Complete this section if your facility generates sewage sludge or derives a material from sewage sludge.

B.1. Amount Generated On Site.

Total dry metric tons per 365-day period generated at your facility: _____ dry metric tons

B.2. Amount Received from Off Site. If your facility receives sewage sludge from another facility for treatment, use, or disposal, provide the following information for each facility from which sewage sludge is received. If you receive sewage sludge from more than one facility, attach additional pages as necessary.

a. Facility name _____

b. Mailing Address _____

_____

c. Contact person _____

Title _____

Telephone number _____

d. Facility Address (not P.O. Box) _____

_____

e. Total dry metric tons per 365-day period received from this facility: _____ dry metric tons

f. Describe, on this form or on another sheet of paper, any treatment processes known to occur at the off-site facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics.

_____

_____

B.3. Treatment Provided At Your Facility.

a. Which class of pathogen reduction is achieved for the sewage sludge at your facility?

_____ Class A _____ Class B _____ Neither or unknown

b. Describe, on this form or another sheet of paper, any treatment processes used at your facility to reduce pathogens in sewage sludge:

_____

_____

c. Which vector attraction reduction option is met for the sewage sludge at your facility?

_____ Option 1 (Minimum 38 percent reduction in volatile solids)
_____ Option 2 (Anaerobic process, with bench-scale demonstration)
_____ Option 3 (Aerobic process, with bench-scale demonstration)
_____ Option 4 (Specific oxygen uptake rate for aerobically digested sludge)
_____ Option 5 (Aerobic processes plus raised temperature)
_____ Option 6 (Raise pH to 12 and retain at 11.5)
_____ Option 7 (75 percent solids with no unstabilized solids)
_____ Option 8 (90 percent solids with unstabilized solids)
_____ None or unknown

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B.3. Treatment Provided At Your Facility. (con't)

d. Describe, on this form or another sheet of paper, any treatment processes used at your facility to reduce vector attraction properties of sewage sludge:

_____

_____

e. Describe, on this form or another sheet of paper, any other sewage sludge treatment or blending activities not identified in (a) - (d) above.

_____

_____

Complete Section B.4 if sewage sludge from your facility meets the ceiling concentrations in Table 1 of 40 CFR 503.13, the pollutant concentrations in Table 3 of §503.13, the Class A pathogen reduction requirements in §503.32(a), and one of the vector attraction reduction requirements in § 503.33(b)(1)-(8) and is land applied. Skip this section if sewage sludge from your facility does not meet all of these criteria.

B.4. Preparation of Sewage Sludge Meeting Ceiling and Pollutant Concentrations, Class A Pathogen Requirements, and One of Vector Attraction Reduction Options 1-8.

a. Total dry metric tons per 365-day period of sewage sludge subject to this section that is applied to the land: _____ dry metric tons

b. Is sewage sludge subject to this section placed in bags or other containers for sale or give-away for application to the land?

_____Yes _____No

Complete Section B.5. if you place sewage sludge in a bag or other container for sale or give-away for land application. Skip this section if the sewage sludge is covered in Section B.4.

B.5. Sale or Give-Away in a Bag or Other Container for Application to the Land.

a. Total dry metric tons per 365-day period of sewage sludge placed in a bag or other container at your facility for sale or give-away for application to the land: _____ dry metric tons

b. Attach, with this application, a copy of all labels or notices that accompany the sewage sludge being sold or given away in a bag or other container for application to the land.

Complete Section B.6 if sewage sludge from your facility is provided to another facility that provides treatment or blending. This section does not apply to sewage sludge sent directly to a land application or surface disposal site. Skip this section if the sewage sludge is covered in Sections B.4 or B.5. If you provide sewage sludge to more than one facility, attach additional pages as necessary.

B.6. Shipment Off Site for Treatment or Blending.

a. Receiving facility name _____

b. Mailing address _____

_____

c. Contact person _____

Title _____

Telephone number _____

d. Total dry metric tons per 365-day period of sewage sludge provided to receiving facility: _____

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B.6. Shipment Off Site for Treatment or Blending. (con't)

e. Does the receiving facility provide additional treatment to reduce pathogens in sewage sludge from your facility? ____ Yes ____ No

Which class of pathogen reduction is achieved for the sewage sludge at the receiving facility?

_____ Class A _____ Class B _____ Neither or unknown

Describe, on this form or another sheet of paper, any treatment processes used at the receiving facility to reduce pathogens in sewage sludge:

_____

_____

f. Does the receiving facility provide additional treatment to reduce vector attraction characteristics of the sewage sludge?
_____Yes _____No

Which vector attraction reduction option is met for the sewage sludge at the receiving facility?

_____ Option 1 (Minimum 38 percent reduction in volatile solids)
_____ Option 2 (Anaerobic process, with bench-scale demonstration)
_____ Option 3 (Aerobic process, with bench-scale demonstration)
_____ Option 4 (Specific oxygen uptake rate for aerobically digested sludge)
_____ Option 5 (Aerobic processes plus raised temperature)
_____ Option 6 (Raise pH to 12 and retain at 11.5)
_____ Option 7 (75 percent solids with no unstabilized solids)
_____ Option 8 (90 percent solids with unstabilized solids)
_____ None

Describe, on this form or another sheet of paper, any treatment processes used at the receiving facility to reduce vector attraction properties of sewage sludge.

_____

_____

g. Does the receiving facility provide any additional treatment or blending activities not identified in (c) or (d) above? ____ Yes ____ No

If yes, describe, on this form or another sheet of paper, the treatment or blending activities not identified in (c) or (d) above:

_____

_____

h. If you answered yes to (e), (f), or (g), attach a copy of any information you provide the receiving facility to comply with the "notice and necessary information" requirement of 40 CFR 503.12(g).

i. Does the receiving facility place sewage sludge from your facility in a bag or other container for sale or give-away for application to the land? _____ Yes _____ No

If yes, provide a copy of all labels or notices that accompany the product being sold or given away.

Complete Section B.7 if sewage sludge from your facility is applied to the land, unless the sewage sludge is covered in:
- **Section B.4 (it meets Table 1 ceiling concentrations, Table 3 pollutant concentrations, Class A pathogen requirements, and one of vector attraction reduction options 1-8); or**
- **Section B.5 (you place it in a bag or other container for sale or give-away for application to the land); or**
- **Section B.6 (you send it to another facility for treatment or blending).**

B.7. Land Application of Bulk Sewage Sludge.

a. Total dry metric tons per 365-day period of sewage sludge applied to all land application sites: _____ dry metric tons

FACILITY NAME AND PERMIT NUMBER:

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B.7. Land Application of Bulk Sewage Sludge. (con't)

b. Do you identify all land application sites in Section C of this application? _____ Yes _____ No

If no, submit a copy of the land application plan with application (see instructions).

c. Are any land application sites located in States other than the State where you generate sewage sludge or derive a material from sewage sludge? _____ Yes _____ No

If yes, describe, on this form or another sheet of paper, how you notify the permitting authority for the States where the land application sites are located. Provide a copy of the notification.

_____

_____

Complete Section B.8 if sewage sludge from your facility is placed on a surface disposal site.

B.8. Surface Disposal.

a. Total dry metric tons of sewage sludge from your facility placed on all surface disposal sites per 365-day period: _____ dry metric tons

b. Do you own or operate all surface disposal sites to which you send sewage sludge for disposal?

_____ Yes _____ No

If no, answer B.8.c through B.8.f for each surface disposal site that you do not own or operate. If you send sewage sludge to more than one such surface disposal site, attach additional pages as necessary.

c. Site name or number _____

d. Contact person _____

Title _____

Telephone number _____

Contact is _____Site owner _____Site operator

e. Mailing address _____

_____

f. Total dry metric tons of sewage sludge from your facility placed on this surface disposal site per 365-day period: _____ dry metric tons

Complete Section B.9 if sewage sludge from your facility is fired in a sewage sludge incinerator.

B.9. Incineration.

a. Total dry metric tons of sewage sludge from your facility fired in all sewage sludge incinerators per 365-day period: _____ dry metric tons

b. Do you own or operate all sewage sludge incinerators in which sewage sludge from your facility is fired? _____ Yes _____ No

If no, complete B.9.c through B.9.f for each sewage sludge incinerator that you do not own or operate. If you send sewage sludge to more than one such sewage sludge incinerator, attach additional pages as necessary.

c. Incinerator name or number: _____

d. Contact person: _____

Title: _____

Telephone number: _____

Contact is: _____ Incinerator owner _____ Incinerator operator

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B.9. Incineration. (con't)

e. Mailing address: _____

_____

f. Total dry metric tons of sewage sludge from your facility fired in this sewage sludge incinerator per 365-day period: _____ dry metric tons

Complete Section B.10 if sewage sludge from this facility is placed on a municipal solid waste landfill.

B.10. Disposal in a Municipal Solid Waste Landfill. Provide the following information for each municipal solid waste landfill on which sewage sludge from your facility is placed. If sewage sludge is placed on more than one municipal solid waste landfill, attach additional pages as necessary.

a. Name of landfill _____

b. Contact person _____

Title _____

Telephone number _____

Contact is _____ Landfill owner _____ Landfill operator

c. Mailing address _____

_____

d. Location of municipal solid waste landfill:

Street or Route # _____

County _____

City or Town _____ State _____ Zip _____

e. Total dry metric tons of sewage sludge from your facility placed in this municipal solid waste landfill per 365-day period:

_____ dry metric tons

f. List, on this form or an attachment, the numbers of all other Federal, State, and local permits that regulate the operation of this municipal solid waste landfill.

Permit Number	Type of Permit
_____	_____
_____	_____
_____	_____

g. Submit, with this application, information to determine whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a municipal solid waste landfill (e.g., results of paint filter liquids test and TCLP test)

h. Does the municipal solid waste landfill comply with applicable criteria set forth in 40 CFR Part 258?

_____ Yes _____ No

FACILITY NAME AND PERMIT NUMBER:

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C. LAND APPLICATION OF BULK SEWAGE SLUDGE

Complete Section C for sewage sludge that is applied to the land, unless any of the following conditions apply:

- **The sewage sludge meets the Table 1 ceiling concentrations, the Table 3 pollutant concentrations, Class A pathogen requirements, and one of vector attraction reduction options 1-8 (fill out B.4 instead); or**
- **The sewage sludge is sold or given away in a bag or other container for application to the land (fill out B.5 instead); or**
- **You provide the sewage sludge to another facility for treatment or blending (fill out B.6 instead).**

Complete Section C for every site on which the sewage sludge that you reported in Section B.7 is applied.

C.1. Identification of Land Application Site.

a. Site name or number _____

b. Site location (Complete 1 and 2).

1. Street or Route # _____

County _____

City or Town _____ State _____ Zip _____

2. Latitude _____ Longitude _____

Method of latitude/longitude determination

_____ USGS map _____ Field survey _____ Other

c. Topographic map. Provide a topographic map (or other appropriate map if a topographic map is unavailable) that shows the site location.

C.2. Owner Information.

a. Are you the owner of this land application site? _____ Yes _____ No

b. If no, provide the following information about the owner:

Name _____

Telephone number _____

Mailing Address _____

_____

C.3. Applier Information.

a. Are you the person who applies, or who is responsible for application of, sewage sludge to this land application site?
_____ Yes _____ No

b. If no, provide the following information for the person who applies:

Name _____

Telephone number _____

Mailing Address _____

_____

C.4. Site Type: Identify the type of land application site from among the following.

_____ Agricultural land _____ Forest _____ Public contact site
_____ Reclamation site _____ Other. Describe: _____

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C.5. Crop or Other Vegetation Grown on Site.

a. What type of crop or other vegetation is grown on this site?

_____

b. What is the nitrogen requirement for this crop or vegetation?

_____

C.6. Vector Attraction Reduction.

Are any vector attraction reduction requirements met when sewage sludge is applied to the land application site?
_____ Yes _____ No

If yes, answer C.6.a and C.6.b;

a. Indicate which vector attraction reduction option is met:

_____ Option 9 (Injection below land surface)
_____ Option 10 (Incorporation into soil within 6 hours)

b. Describe, on this form or another sheet of paper, any treatment processes used at the land application site to reduce vector attraction properties of sewage sludge:

_____

_____

Complete Question C.7 only if the sewage sludge applied to this site since July 20, 1993, is subject to the cumulative pollutant loading rates (CPLRs) in 40 CFR 503.13(b)(2).

C.7. Cumulative Loadings and Remaining Allotments.

a. Have you contacted the permitting authority in the State where the bulk sewage sludge subject to CPLRs will be applied, to ascertain whether bulk sewage sludge subject to CPLRs has been applied to this site on or since July 20, 1993? _____ Yes _____ No

If no, sewage sludge subject to CPLRs may not be applied to this site.

If yes, provide the following information:

Permitting authority _____

Contact Person _____

Telephone number _____

b. Based upon this inquiry, has bulk sewage sludge subject to CPLRs been applied to this site since July 20, 1993?
_____ Yes _____ No

If no, skip C.7.c.

FACILITY NAME AND PERMIT NUMBER:

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c. Provide the following information for every facility other than yours that is sending, or has sent, bulk sewage sludge to CPLRs to this site since July 20, 1993. If more than one such facility sends sewage sludge to this site, attach additional pages as necessary.

Facility name _____

Mailing Address _____

_____

Contact person _____

Title _____

Telephone number _____

FACILITY NAME AND PERMIT NUMBER:

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D. SURFACE DISPOSAL

Complete this section if you own or operate a surface disposal site.

Complete Sections D.1 - D.5 for each active sewage sludge unit.

D.1. Information on Active Sewage Sludge Units.

a. Unit name or number: _____

b. Unit location (Complete 1 and 2).

1. Street or Route # _____

County _____

City or Town _____ State _____ Zip _____

2. Latitude_____ Longitude_____

Method of latitude/longitude determination: _____ USGS map _____ Field survey _____ Other

c. Topographic map. Provide a topographic map (or other appropriate map if a topographic map is unavailable) that shows the site location.

d. Total dry metric tons of sewage sludge placed on the active sewage sludge unit per 365-day period: _____ dry metric tons

e. Total dry metric tons of sewage sludge placed on the active sewage sludge unit over the life of the unit: _____ dry metric tons

f. Does the active sewage sludge unit have a liner with a maximum hydraulic conductivity of 1×10^{-7} cm/sec? _____ Yes _____ No

If yes, describe the liner (or attach a description):

_____

_____

g. Does the active sewage sludge unit have a leachate collection system? _____ Yes _____ No

If yes, describe the leachate collection system (or attach a description). Also describe the method used for leachate disposal and provide the numbers of any Federal, State, or local permit(s) for leachate disposal:

_____

_____

h. If you answered no to either D.1.f. or D.1.g., answer the following question:

Is the boundary of the active sewage sludge unit less than 150 meters from the property line of the surface disposal site?
_____ Yes _____ No

If yes, provide the actual distance in meters: _____

Provide the following information:

Remaining capacity of active sewage sludge unit, in dry metric tons: _____ dry metric tons

Anticipated closure date for active sewage sludge unit, if known: _____ (MM/DD/YYYY)

Provide, with this application, a copy of any closure plan that has been developed for this active sewage sludge unit.

FACILITY NAME AND PERMIT NUMBER:

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D.2. Sewage Sludge from Other Facilities. Is sewage sent to this active sewage sludge unit from any facilities other than your facility?
_____ Yes _____ No

If yes, provide the following information for each such facility. If sewage sludge is sent to this active sewage sludge unit from more than one such facility, attach additional pages as necessary.

a. Facility name _____

b. Mailing Address _____

_____

c. Contact person _____

Title _____

Telephone number _____

d. Which class of pathogen reduction is achieved before sewage sludge leaves the other facility?
_____ Class A _____ Class B _____ None or unknown

e. Describe, on this form or another sheet of paper, any treatment processes used at the other facility to reduce pathogens in sewage sludge:

_____

_____

f. Which vector attraction reduction option is met for the sewage sludge at the receiving facility?

_____ Option 1 (Minimum 38 percent reduction in volatile solids)
_____ Option 2 (Anaerobic process, with bench-scale demonstration)
_____ Option 3 (Aerobic process, with bench-scale demonstration)
_____ Option 4 (Specific oxygen uptake rate for aerobically digested sludge)
_____ Option 5 (Aerobic processes plus raised temperature)
_____ Option 6 (Raise pH to 12 and retain at 11.5)
_____ Option 7 (75 percent solids with no unstabilized solids)
_____ Option 8 (90 percent solids with unstabilized solids)
_____ None or unknown

g. Describe, on this form or another sheet of paper, any treatment processes used at the receiving facility to reduce vector attraction properties of sewage sludge

_____

_____

h. Describe, on this form or another sheet of paper, any other sewage sludge treatment activities performed by the other facility that are not identified in (d) - (g) above:

_____

_____

D.3. Vector Attraction Reduction

a. Which vector attraction option, if any, is met when sewage sludge is placed on this active sewage sludge unit?

_____ Option 9 (Injection below and surface)
_____ Option 10 (Incorporation into soil within 6 hours)
_____ Option 11 (Covering active sewage sludge unit daily)

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D.3. Vector Attraction Reduction. (con't)

b. Describe, on this form or another sheet of paper, any treatment processes used at the active sewage sludge unit to reduce vector attraction properties of sewage sludge:

_____

_____

D.4. Ground-Water Monitoring.

a. Is ground-water monitoring currently conducted at this active sewage sludge unit, or are ground-water monitoring data otherwise available for this active sewage sludge unit?
_____ Yes _____ No

If yes, provide a copy of available ground-water monitoring data. Also, provide a written description of the well locations, the approximate depth to ground-water, and the ground-water monitoring procedures used to obtain these data.

_____

_____

b. Has a ground-water monitoring program been prepared for this active sewage sludge unit? _____ Yes _____ No

If yes, submit a copy of the ground-water monitoring program with this permit application.

c. Have you obtained a certification from a qualified ground-water scientist that the aquifer below the active sewage sludge unit has not been contaminated? _____ Yes _____ No

If yes, submit a copy of the certification with this permit application.

D.5. Site-Specific Limits. Are you seeking site-specific pollutant limits for the sewage sludge placed on the active sewage sludge unit?
_____ Yes _____ No

If yes, submit information to support the request for site-specific pollutant limits with this application.

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E. INCINERATION

Complete this section if you fire sewage sludge in a sewage sludge incinerator.

Complete this section once for each incinerator in which you fire sewage sludge. If you fire sewage sludge in more than one sewage sludge incinerator, attach additional copies of this section s necessary.

E.1. Incinerator Information.

a. Incinerator name or number: _____

b. Incinerator location (Complete 1 and 2).

1. Street or Route # _____

County _____

City or Town _____ _____ State _____ Zip _____

2. Latitude_____ Longitude_____

Method of latitude/longitude determination: _____ USGS map _____ Field survey _____ Other

E.2. Amount Fired. Dry metric tons per 365-day period of sewage sludge fired in the sewage sludge incinerator: _____ dry metric tons

E.3. Beryllium NESHAP.

a. Is the sewage sludge fired in this incinerator "beryllium-containing waste," as defined in 40 CFR Part 61.31? _____ Yes _____ No

Submit, with this application, information, test data, and description of measures taken that demonstrate whether the sewage sludge incinerated is beryllium-containing waste, and will continue to remain as such.

b. If the answer to (a) is yes, **submit with this application** a complete report of the latest beryllium emission rate testing and documentation of ongoing incinerator operating parameters indicating that the NESHAP emission rate limit for beryllium has been and will continue to be met.

E.4. Mercury NESHAP.

a. How is compliance with the mercury NESHAP being demonstrated?
_____ Stack testing (if checked, complete E.4.b)
_____ Sewage sludge sampling (if checked, complete E.4.c)

b. If stack testing is conducted, submit the following information with this application:

A complete report of stack testing and documentation of ongoing incinerator operating parameters indicating that the incinerator has met, and will continue to meet, the mercury NESHAP emission rate limit.

Copies of mercury emission rate tests for the two most recent years in which testing was conducted.

c. If sewage sludge sampling is used to demonstrate compliance, submit a complete report of sewage sludge sampling and documentation of ongoing incinerator operating parameters indicating that the incinerator has met, and will continue to meet the mercury NESHAP emission rate limit.

E.5. Dispersion Factor.

a. Dispersion factor, in micrograms/cubic meter per gram/second: _____

b. Name and type of dispersion model: _____

c. Submit a copy of the modeling results and supporting documentation with this application.

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E.6. Control Efficiency.

a. Control efficiency, in hundredths, for the following pollutants:

Arsenic: _____ Chromium: _____ Nickel: _____

Cadmium: _____ Lead: _____

b. Submit a copy of the results or performance testing and supporting documentation (including testing dates) with this application.

E.7. Risk Specific Concentration for Chromium.

a. Risk specific concentration (RSC) used for chromium, in micrograms per cubic meter: _____

b. Which basis was used to determine the RSC?

___Table 2 in 40 CFR 503.43

___Equation 6 in 40 CFR 503,43 (site-specific determination)

c. If Table 2 was used, identify the type of incinerator used as the basis:

___Fluidized bed with wet scrubber

___Fluidized bed with wet scrubber and wet electrostatic precipitator

___Other types with wet scrubber

___Other types with wet scrubber and wet electrostatic precipitator

d. If Equation 6 was used, provide the following:

Decimal fraction of hexavalent chromium concentration to total chromium concentration in stack exit gas: _____

Submit results of incinerator stack tests for hexavalent and total chromium concentrations, including date(s) of test, with this application.

E.8. Incinerator Parameters

a. Do you monitor Total Hydrocarbons (THC) in the sewage sludge incinerator's exit gas? _____ Yes _____ No

Do you monitor Carbon Monoxide (CO) in the sewage sludge incinerator's exit gas? _____ Yes _____ No

b. Incinerator type: _____

c. Incinerator stack height, in meters: _____

Indicate whether value submitted is: _____ Actual stack height _____ Creditable stack height

E.9. Performance Test Operating Parameters

a. Maximum Performance Test Combustion Temperature: _____

b. Performance test sewage sludge feed rate, in dry metric tons/day: _____

indicate whether value submitted is:

_____ Average use _____ Maximum design

Submit, with this application, supporting documents describing how the feed rate was calculated.

c. Submit, with this application, information documenting the performance test operating parameters for the air pollution control device(s) used for this sewage sludge incinerator.

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E.10. Monitoring Equipment. List the equipment in place to monitor the following parameters:

a. Total hydrocarbons or carbon monoxide: _____

b. Percent oxygen: _____

c. Moisture content: _____

d. Combustion temperature: _____

e. Other: _____

E.11. Air Pollution Control Equipment. Submit, with this application, a list of all air pollution control equipment used with this sewage sludge incinerator.

_____

_____

_____

_____

BILLING CODE 6560-50-C

Instructions for Completing Form 2S—Application for a Sewage Sludge Permit

Paperwork Reduction Act Notice: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9.4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Send comments regarding the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St., S.W., Washington, DC 20460. Include the OMB control number in any correspondence. Do not send the completed Form 2S to this address.

Background Information

You can obtain a permit for your facility by filling out and sending in the appropriate form(s) to your permitting authority. If the State in which your facility is located operates its own authorized sewage sludge program, then the State is your permitting authority and you should ask your State for permit application forms. On the other hand, if EPA operates the sewage sludge program in your State, then EPA is the permitting authority, and you must fill out and send in Form 2S.

Be sure to read the Preliminary Information section of Form 2S before you start filling out the form. It will help you determine whether you must fill out Part 1 or Part 2.

Commonly Asked Questions

What If I Need More Space for My Answer?

If you need more room for your answer than is provided on the form, attach a separate sheet called "Additional Information." At the top of the separate sheet, put the name of your treatment works and your facility's NPDES permit number (if you have one). Also, next to your answer, put the question number from Form 2S. Provide this information on any drawings or other papers that you attach to your application as well.

Will the Public Be Able To See the Information I Submit?

Any information you submit on Form 2S will be available to the public. If you send in more information than is requested on Form 2S that is considered company-privileged information, you may ask EPA to keep that extra information confidential. If you want any of the extra information to be kept confidential, tell EPA this when you submit your application. Otherwise, EPA may make the information public without letting you know in advance. For more information on claims of confidentiality, see EPA's business confidentiality regulations at Title 40, Part 2 of the Code of Federal Regulations (CFR).

How Do I Complete the Forms?

Answer every question on Form 2S that applies to your facility. If your answer to a question requires more room than there is on the form, attach additional sheets (see above). If a particular question does not apply, write "N/A" (meaning "not applicable") as your answer to that question. If you need advice on how to fill out these forms, write or contact your EPA Regional Office or your State office.

Who Must Submit Application Information?

This application form collects information from all treatment works treating domestic sewage (TWTDS) whose sewage sludge use or disposal method is regulated by 40 CFR Part 503. This includes the following:

- Any person who generates sewage sludge that is ultimately regulated by Part 503 (i.e., it is applied to the land, placed on a surface disposal site, fired in a sewage sludge incinerator, or placed in a municipal solid waste landfill unit);
- Any person who derives material from, or otherwise changes the quality of, sewage sludge (e.g., an intermediate treatment facility such as a composting facility, or a facility that processes sewage sludge for sale or give away in a bag or other container for application to the land), if that sewage sludge is used or disposed in a manner subject to Part 503;
- Any person who owns or operates a sewage sludge surface disposal site; and
- Any person who fires sewage sludge in a sewage sludge incinerator.

In addition, the permitting authority can require other persons to submit permit application information.

Which Parts of the Form Apply?

Form 2S is presented in a modular format, enabling information collection to be tailored to your facility's sewage sludge generation, treatment, use, or disposal practices. The form tells you which parts must be filled out for each type of applicant.

Part 1 requests a limited amount of information from "sludge-only" facilities (facilities without a currently effective NPDES permit) that are not directed by the permitting authority to submit a full permit application at this time. This limited screening information must be submitted as expeditiously as possible, but no later than 180 days after publication of an applicable use or disposal standard or 180 days before commencing operation for a new "sludge-only facility". It is intended to allow the permitting authority to identify these facilities, track sewage sludge use and disposal, and establish priorities for permitting.

Part 2 of Form 2S is for facilities that are submitting a full permit application at this time. Review items 1–5 of the Part 2 Application Overview on plage 6 of Form 2S to determine which sections of Part 2 cover your facility's sewage sludge use or disposal practices. The table below summarizes which sections cover which activities.

Guidelines for Completing Part 2

Activity(ies) performed	A	B	C	D	E
Generates sewage sludge or derives material from sewage sludge—	✔	✔ (B.1–B.3)			

Guidelines for Completing Part 2—Continued

Activity(ies) performed	A	B	C	D	E
that meets ceiling concentrations in Table 1 of 40 CFR 503.13, pollutant concentrations in Table 3 of § 503.13, Class A pathogen requirements in § 503.32, and one of the eight vector attraction reduction options in § 503.33(b)(1)–(8).	✔	✔ (B.4)			
that is sold or given away in bag or other container for application to the land	✔	✔ (B.5)			
that is shipped off site for treatment or blending	✔	✔ (B.6)			
that is applied to the land in bulk form	✔	✔ (B.7)	✔		
that is placed on a surface disposal site	✔	✔ (B.8)			
that is fired in a sewage sludge incinerator	✔	✔ (B.9)			
that is sent to a municipal solid waste landfill	✔	✔ (B.10)			
Applies bulk sewage sludge to land	✔		✔		
Owns or operates a surface disposal site	✔			✔	
Fires sewage sludge in a sewage sludge incinerator	✔				✔

Additional Information and Instructions

The following section provides clarification and additional information for many of the questions on Form 2S. All applicants must also be in compliance with the Standards for the Use or Disposal of Sewage Sludge, published at 40 CFR Part 503 (58 FR 9248). Most of the terms used in Form 2S are defined in §§ 503.9, 503.11, 503.21, and 503.41. Additional terms are defined in the NPDES regulations at 40 CFR 122.2.

General Information for All Parts of Form 2S

- At the top of each page of Form 2S, put your facilities NPDES permit number (if you have one) in the appropriate space.
- Always report official names rather than colloquial names.
- When a facility address or site location is requested (as opposed to a mailing address) provide the physical location of the facility. If the facility or site lacks a street address or route number, provide the most accurate alternative geographic information (e.g., township and range, section or quarter section number, or nearby highway intersection).
- Options for meeting Class A pathogen reduction are listed at 40 CFR Part 503.32(a). Options for meeting Class B pathogen reduction are listed at § 503.32(b).
- Vector Attraction Reduction Options 1–8 are typically met at the point where sewage sludge is generated or where a material is derived from sewage sludge, and Options 9–11 are typically met at the point of use or disposal.
- If a map is used to obtain latitude and longitude, provide map datum (e.g., NAD 27, NAD 83) and map scale (e.g., 1:24000, 1:100000).
- When asked for population enter the best estimate of the actual population served at the time of application for all areas served by the treatment works (municipalities and unincorporated service areas). If another treatment works discharges into this treatment works, provide on a separate attachment the name of the other treatment works and the actual population it serves (it is not necessary to list the communities served by the other treatment works).
- When asked to submit a topographic map, make sure each map includes the map scale, a meridian arrow showing north, and latitude and longitude at the nearest whole second. Use a 7½-minute series map published by the U.S. Geological Survey (USGS), which may be obtained through the USGS Earth Science Information Center (ESIC) listed below. If a 7½-minute series map has not been published for your facility site, then you may use a 15-minute series map from the U.S. Geological Survey. If neither a 7½-minute nor 15-minute series map has been published for your facility site, use a plat map or other appropriate map, including all the requested information. If you have previously prepared a map that includes the required items, that map may be submitted to fulfill this requirement if it is still accurate.
- Maps may be purchased at local dealers (listed in your local yellow pages) or purchased over the counter at the following USGS Earth Science Information Centers (ESIC):

Anchorage—ESIC, 4230 University Dr., Rm. 101, Anchorage, AK 99508–4664, (907) 786–7011.
Lakewood—ESIC, Box 25046, Bldg. 25, Rm. 1813, Denver Federal Center, MS 504, Denver, CO 80225–0046, (303) 236–5829.
Lakewood Open Files—ESIC, Box 25286, Bldg. 810, Denver Federal Center, Denver, CO.
Menlo Park—ESIC, Bldg. 3, Rm. 3128, MS 532, 345 Middlefield Rd., Menlo Park, CA 94025–3591, (415) 329–4309.
Reston—ESIC, 507 National Center, Reston, VA 22092, (703) 648–6045.
Rolla—ESIC, 1400 Independence Rd., MS 231, Rolla, MO 65401–2602, (314) 341–0851.
Salt Lake City—ESIC, 2222 West 2300 South, Salt Lake City, UT 84119, (801) 975–3742.
Sioux Falls—ESIC, EROS Data Center, Sioux Falls, SD 57198–0001, (605) 594–6151.
Spokane—ESIC, U.S. Post Office Bldg., Rm. 135, 904 W. Riverside Ave., Spokane, WA 99201–1088, (509) 3532524.
Stennis Space Center—ESIC, Bldg. 3101, Stennis Space Center, MS 39529, (601) 688–3541.
Washington, D.C.—ESIC, U.S. Dept. of Interior, 1849 C St., NW, Rm. 2650, Washington, D.C. 20240, (202) 208–4047.

When submitting a map as few sheets as necessary should be used to clearly show what is involved. Each sheet should be labeled with your facility's name, permit number, location (city, county, or town), date of drawing, and designation of the number of sheets of each diagram as "page ____ of ____."

- The certification requirements are as follows:

An application submitted by a *municipality, State, Federal, or other public agency* must be signed by either a principal executive officer or ranking elected official. A principal executive officer of a Federal agency includes: (1) The chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

An application submitted by a *corporation* must be signed by a responsible corporate officer. A responsible corporate officer means: (1) A president, secretary, treasurer, or vice president in charge of a principal business function, or any other person who performs similar policy- or decision-making functions; or (2) the

manager of manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

An application submitted by a *partnership or sole proprietorship* must be signed by a general partner or the proprietor, respectively.

Information on Specific Sections of Form 2S

Section B (Generation of Sewage Sludge or Preparation of a Material Derived From Sewage Sludge)

Complete this section if you are a "person who prepares sewage sludge." This section pertains to any POTW or other TWTDS that generates sewage sludge, as well as to any facility that derives a material from sewage sludge (e.g., it composts sewage sludge or blends sewage sludge with another material). Simply distributing sewage sludge or placing it in a bag or other container for sale or give-away for application to the land is not considered "deriving a material" from sewage sludge (because it does not change sludge quality), and thus a facility that only distributes or bags a sewage sludge is not required to provide the information in this section.

B.4. Preparation of Sewage Sludge Meeting Ceiling and Pollutant Concentrations, Class A Pathogen Requirements, and One of Vector Attraction Options 1–8

Sewage sludge meeting *all* of these criteria is often referred to as "exceptional quality (EQ)". It is exempt from the general requirements of § 503.12 and the management practices of § 503.14, and thus fewer permitting and permit application requirements typically pertain to facilities generating such sludge. For this reason, if you are eligible to complete Section B.4, *you may skip Sections B.5–B.7* unless specifically required to complete any of them by the permitting authority.

B.5. Sale or Give-Away in a Bag or Other Container for Application to the Land

When sewage sludge is placed in a bag or other container for sale or give-away for application to the land, either a label must be affixed to the bag or other container, or an information sheet must be provided to the person receiving the sewage sludge. The information that must be on the label or information sheet is listed at 40 CFR Part 503.14(e).

B.7. Land Application of Bulk Sewage Sludge

If you complete this section (which requests summary information for all bulk sewage sludge that is applied to the land), also complete Section C for each land application site. Current regulations require you to submit a *land application plan* at the time of permit application if you intend to apply sewage sludge that does not meet the EQ requirements to land application sites that have not been identified at the time of permit application. The minimum requirements for this plan are listed in § 122.21(q)(9)(v). The permit writer will work with you to develop additional details of the land application plan on a case-by-case basis. Such details could include site selection criteria (site slope, run-on and run-off control, etc.) and site management guidelines (sludge application rates, access controls, etc.). A land application plan provides for public notice when the land application plan is developed as part of the permit, and it discusses how the public will be notified about new sites. If any land application sites are located in States other than the State where you generate the bulk sewage sludge or derive the material from sewage sludge, the notice to the permitting authority in the States where the land application sites are located must contain the requirements listed at § 503.12(i).

B.8. Surface Disposal

If you own or operate a surface disposal site, also complete Section D.

B.9. Incineration

If you own or operate a sewage sludge incinerator, also complete Section E.

B.10. Disposal on a Municipal Solid Waste Landfill

Sewage sludge placed on a MSWLF must meet requirements in Part 258 concerning the quality of materials placed on a MSWLF unit. Part 258 specifies minimum Federal criteria for MSWLFs, including landfills that accept sewage sludge along with household waste. In contrast to Part 503, Part 258 controls sewage sludge placed on MSWLFs through a facility design and management practice approach. In Part 503, EPA has adopted the Part 258 criteria as the appropriate standard for sewage sludge disposed of with municipal waste. EPA concluded that if sewage sludge is disposed of in a MSWLF complying with Part 258 criteria, public health and the environment are protected. Note that the POTW is legally responsible for knowing whether a MSWLF is in compliance with Part 258 and may be liable if it sends its sludge to an MSWLF that is not in compliance with Part 258.

Section C (Land Application of Bulk Sewage Sludge)

Complete this section if you completed Section B.7 (Land Application of Bulk Sewage Sludge). Unless the permitting authority specifically requires you to complete this section, you may skip this section for sewage sludge that is covered in any of the following sections of this application:

- *Section B.4.* Such sewage sludges are exempt from the general requirements and management practices of Part 503 when they are land applied (unless the permitting authority requires otherwise), and thus the site information in Section C is not required for permitting.
- *Section B.5* Section C does not cover the sale or give-away of sewage sludge in a bag or other container for application to the land because EPA typically will not control the users of such sewage sludge (typically, home gardeners or other small-scale users), or the land on which the sludge is applied, through the generator's permit.
- *Section B.6* Section C does not apply to a generator that sends sewage sludge to another facility for treatment or for blending, because the Part 503 requirements addressed by Section C will largely be the responsibility of the receiving facility.

Provide the information in this section for each land application site that has been identified at the time of permit application. In cases where the sewage sludge is applied to numerous sites with similar characteristics, you may combine the information for several sites under a single response (the name and address of each site must still be provided, however).

C.5. Crop or Other Vegetation Grown on Site

a. If the crop or vegetation to be grown on the site is not yet known, or is likely to change in an unforeseeable manner during the life of the permit, you may so indicate instead of providing the type of crop or other vegetation.

b. Information on the nitrogen content of vegetation grown on the site may be obtained from local agricultural extension services, a local Farm Advisor's Office, or published sources.

C.6. Vector Attraction Reduction

Options 1–8 were covered in Section B.3, which requests information on sewage sludge treatment at the facility generating the sewage sludge. If you met any of options 1–8 (e.g., processes to reduce volatile solids, reduce specific oxygen uptake rate, raise pH, raise percent solids), you should have identified that option in Question B.3.c and described how the option is met in Question B.3.d.

By contrast, vector attraction reduction options 9 and 10 are typically met at the land application site. Options 9 and 10 are not available for sewage sludge applied to a lawn or home garden.

C.7. Cumulative Loadings and Remaining Allotments

Complete Section C.7. *only* for sewage sludge that is applied to the site subject to cumulative pollutant loading rates (CPLRs). Sewage sludge applied to the site on or before July 20, 1993, is not subject to this section. You may *not* apply bulk sewage sludge subject to CPLRs to the site until you have contacted the permitting authority in that State.

Section D (Surface Disposal)

Complete this section if you own or operate a surface disposal site and are required to submit a full permit application (i.e., Part 2 of Form 2S) at this time. A sewage sludge surface disposal site is, by definition, a treatment works treating domestic sewage, and the owner/operator of the site is required to apply for a permit. You are required to submit Part 2 of this form (including Section D) if:

- The surface disposal site is already covered by an NPDES permit (e.g., a POTW's NPDES permit); or
- You have been required by the permitting authority to submit a full permit application at this time.

If none of these criteria apply, you should submit Part 1 instead of Part 2 (and may therefore skip Section D). Part 1 requests a limited amount of information from so-called "sludge-only" facilities (facilities without a currently-effective NPDES permit) that are not requesting site-specific permit limits and are not otherwise required to submit a full permit application at this time. Part 1 is intended to allow the permitting authority to identify these facilities, track sewage sludge use and disposal, and establish priorities for permitting.

D.1. Information on Active Sewage Sludge Units

Most requirements for surface disposal of sewage sludge under Part 503 pertain to individual active sewage sludge units at a surface disposal site. Permit conditions for your facility may be developed on a unit-by-unit basis, or may be developed for the entire surface disposal site if all units are sufficiently similar.

D.4. Ground-Water Monitoring

Placement of sewage sludge on an active sewage sludge unit must not contaminate an aquifer. Compliance must be demonstrated through either: (1) The results of a ground-water monitoring program developed by a qualified ground-water scientist, or (2) certification by a qualified ground-water scientist that contamination has not occurred. This section solicits existing ground-water monitoring data and other documentation to indicate the potential for contamination of an aquifer at the active sewage sludge unit, and the capability of the owner/operator of the surface disposal site to demonstrate that contamination has not occurred.

D.5. Site-Specific Limits

After August 18, 1993, you are allowed to seek site-specific pollutant limits only for good cause, and must do so within 180 days of becoming aware that good cause exists. If you request site-specific pollutant limits with this permit application, you are required to submit information supporting the request, including a demonstration that existing values for site parameters specified by the permitting authority differ from the values for those parameters used to develop the pollutant limits in Table 1 of § 503.23. You must also submit follow-up information at the request of the permitting authority. If the permitting authority determines that site-specific pollutant limits are appropriate, he or she may specify site-specific limits in the permit as long as the existing concentrations of the pollutants in the sewage sludge are not exceeded.

Section E (Incineration)

Complete this section if you own or operate a sewage sludge incinerator. A sewage sludge incinerator is, by definition, a treatment works treating domestic sewage, and the owner/operator of a sewage sludge incinerator is required to submit a full permit application (i.e., Part 2 of Form 2S).

E.3. Beryllium NESHAP

The firing of sewage sludge in a sewage sludge incinerator must not violate the National Emission Standard (NESHAP) for beryllium as established in Subpart C of 40 CFR Part 61. The beryllium NESHAP only applies, however, to sewage sludge incinerators firing "beryllium-containing waste." The beryllium NESHAP is 10 grams of beryllium in the exit gas over a 24-hour period, unless the incinerator owner/operator has been approved to meet a 30-day average ambient concentration limit on beryllium in the vicinity of the sewage sludge incinerator of 0.01 μg/m3. Complete this section to demonstrate compliance with the beryllium NESHAP.

E.4. Mercury NESHAP

The firing of sewage sludge in a sewage sludge incinerator must not violate the NESHAP for mercury as established in Subpart E of 40 CFR Part 61. Complete this section to demonstrate compliance with the mercury NESHAP. Information on stack testing and sewage sludge sampling can be found at 40 CFR Parts 61.53 and 61.54.

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Part III

Environmental Protection Agency

40 CFR Part 58
Air Quality Index Reporting; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[FRL–6409–7]

RIN 2060–AH92

Air Quality Index Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today, EPA adopts revisions to the uniform air quality index used by States for daily air quality reporting to the general public in accordance with section 319 of the Clean Air Act (Act). These changes include the addition of the following elements: a new category described as "unhealthy for sensitive groups;" two new requirements, first, to report a pollutant-specific sensitive group statement when the index is above 100, and second, to use specific colors if the index is reported in a color format; new breakpoints for the ozone (0_3) sub-index in terms of 8-hour average 0_3 concentrations; a new sub-index for fine particulate matter ($PM_{2.5}$); and conforming changes to the sub-indices for coarse particulate matter (PM_{10}), carbon monoxide (CO), and sulfur dioxide (SO_2). In addition, EPA is changing the name of the index from the Pollutant Standards Index (PSI) to the Air Quality Index (AQI). This document discusses the development of related informational materials on pollutant-specific health effects and sensitive groups and on precautionary actions that can be taken by individuals to reduce exposures of concern. This document also discusses the interrelationship between the uniform air quality index and other programs that provide air quality information and related health information to the general public, including State and local real-time air quality data mapping and community action programs.

EFFECTIVE DATE: October 4, 1999.

ADDRESSES: A docket containing information relating to EPA's revisions of the air quality index (Docket No. A–98–20) is available for public inspection in the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, South Conference Center, Room M–1500, 401 M St., SW, Washington, DC 20460, telephone (202) 260–7548. The docket may be inspected between 8 a.m. and 5:30 p.m. on weekdays, and a reasonable fee may be charged for copying. For the availability of related information, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Terence Fitz-Simons, EPA (MD–14), Research Triangle Park, NC 27711, telephone (919) 541–0889, e-mail fitz-simons.terence@epa.gov. For health effects information, contact Susan Lyon Stone, EPA (MD–15), Research Triangle Park, NC 27711, telephone (919) 541–1146, e-mail stone.susan@epa.gov.

SUPPLEMENTARY INFORMATION: In compliance with President Clinton's June 1, 1998 Executive Memorandum on Plain Language in government writing, this package is written using plain language. Thus, the use of "we" or "us" in this package refers to EPA. The use of "you" refers to the reader and may include industry, State and local agencies, environmental groups and other interested individuals.

Availability of Related Information

Certain documents are available from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Available documents include:

(1) The Review of the National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information ("Staff Paper") (EPA–452/R–96–007, June 1996, NTIS #PB–96–203435, $67.00 paper copy and $21.50 microfiche). (Add a $3.00 handling charge per order.)

(2) Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information ("Staff Paper") (EPA–452/R–96–013, July 1996, NTIS #PB–97–115406, $47.00 paper copy and $19.50 microfiche). (Add a $3.00 handling charge per order.)

The guidance documents associated with this rulemaking are available from EPA's Office of Air Quality Planning and Standards in Research Triangle Park, NC. Requests for these publications can be mailed to: Terence Fitz-Simons, EPA (MD–14), Research Triangle Park, NC 27711. Your request may also be phoned in to Terence Fitz-Simons at 919–541–0889, or sent by e-mail to fitz-simons.terence@epa.gov.

(1) Guideline for Public Reporting of Daily Air Quality—Air Quality Index (AQI) (EPA–454/R–99–010).

(2) Guideline for Developing an Ozone Forecasting Program (EPA–454/R–99–009).

The following document is available from EPA's Office of Mobile Sources (OMS) in Ann Arbor, MI. Requests for this publication can be mailed to: Michael Ball, US EPA—National Vehicle and Fuel Emissions Laboratory (NVFEL), 2000 Traverwood Dr., Ann Arbor, MI 48103. Your request may also be phoned in to Michael Ball at 734–214–4897, or sent by e-mail to ball.michael@epa.gov.

(1) Community Action Programs: Blueprint for Program Design (EPA 420–R–98–003).

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I. Background

A. What Are the Legislative Requirements?

Section 319 of the Act governs the establishment of a uniform air quality index for reporting of air quality. This section directs the Administrator to "promulgate regulations establishing an air quality monitoring system throughout the United States which utilizes uniform air quality monitoring criteria and methodology and measures such air quality according to a uniform air quality index" and "provides for daily analysis and reporting of air quality based upon such uniform air quality index * * *".

B. What Is the History of the Air Quality Index?

In 1976, we established a nationally uniform AQI, called the Pollutant Standards Index (PSI), for use by State and local agencies on a voluntary basis (41 FR 37660). This uniform index was established in light of a study conducted by EPA and the President's Council on Environmental Quality (CEQ, 1976). This study found that the 55 urban areas in the U.S. and Canada reporting an index of air quality used 14 different indices, in conjunction with different cautionary messages, such that in essence 55 different indices were being used to report air quality. This diversity of indices sent a confusing message about air quality to the public. Based in part on this study, we developed an index to meet the needs of State and local agencies that has the following advantages: it sends a clear and consistent message to the public by providing nationally uniform information on air quality; it is keyed as appropriate to the national ambient air quality standards (NAAQS) and the significant harm level (SHL) [1] which have a scientific basis relating air quality and public health; it is simple and easily understood by the public; it provides a framework for reflecting changes to the NAAQS; and it can be forecasted to provide advance information on air quality.

The PSI, which is also commonly referred to by some State and local agencies as the AQI, includes sub-indices for O_3, PM, CO, SO_2, and nitrogen oxide (NO_2), which relate ambient pollutant concentrations to index values on a scale from 0 through 500. This represents a very broad range of air quality, from pristine air to air pollution levels that present imminent and substantial endangerment to the public. The index has historically been normalized across pollutants by defining an index value of 100 as the numerical level of the short-term (i.e., averaging time of 24-hours or less) primary NAAQS for each pollutant and an index value of 500 as the SHL.[2] Such index values serve to divide the index into categories, with each category being identified by a simple informative descriptor. The descriptors are intended to convey to the public information about how air quality within each category relates to public health, with increasing public health concerns being conveyed as the categories range to the upper end of the scale. Additional information about the general health effects associated with each category, and precautions that sensitive groups and the general public can take to avoid exposures of concern, has been made available through an informational booklet, updated as appropriate, that also presents and explains the PSI (EPA, 1994).

In 1979, we made changes to the AQI, in part to reflect revisions to the NAAQS for O_3, and to establish requirements for AQI reporting (44 FR 27598). The requirement for State and local agencies to report the AQI appears in 40 CFR part 58.50, and the specific requirements (e.g., what to report, how to report, reporting frequency, calculations) are in appendix G to 40 CFR part 58.

C. What Programs Are Related to the AQI?

Historically, State and local agencies have used primarily the AQI, or other AQIs, to provide general information to the public about air quality and its relationship to public health. In recent years, many States and local agencies, as well as EPA, have been developing new and innovative programs and initiatives to provide more information to the public, in a more timely way. These initiatives, including real-time data reporting through the Ozone Mapping Project and community action programs, can serve to provide useful, up-to-date, and timely information to the public about air pollution and its effects. Such information will help individuals take actions to avoid or reduce exposures of concern and can encourage the public to take actions that will reduce air pollution on days when levels are projected to be in air quality categories of concern to local communities. Thus, these programs are significantly broadening the ways in which State and local agencies can meet the nationally uniform AQI reporting requirements, and are contributing to State and local efforts to provide community health protection and to attain or maintain compliance with the NAAQS. We and State and local agencies recognize that these programs are interrelated with AQI reporting and with the information on the effects of air pollution on public health that is generated through the periodic review, and revision when appropriate, of the NAAQS.

The most recent revisions to the O_3 and PM NAAQS, the Ozone Mapping Project, and community action programs are discussed briefly below. In light of the interrelationships among these programs, we have developed today's revisions to the uniform AQI with the goal of creating a revised AQI that can effectively serve as a nationally uniform link across these programs. In so doing, we intend to support and encourage State and local participation in real-time data reporting initiatives and the development and implementation of community action programs that serve public education and health protection goals.

1. Ozone and Particulate Matter NAAQS Revisions

On July 18, 1997, we revised the primary NAAQS for O_3 and PM based on a thorough review of the scientific evidence linking exposures to ambient concentrations of these pollutants to adverse health effects at levels allowed by the previous NAAQS. In particular, we replaced the 1-hour O_3 NAAQS with an 8-hour O_3 NAAQS and supplemented the PM NAAQS with 24-hour and annual standards for fine particulate matter (measured as $PM_{2.5}$ [3]). These decisions were challenged in the U.S. Court of Appeals for the District of Columbia Circuit, and on May 14, 1999, the Court remanded them to the Agency for further consideration, principally in light of constitutional concerns regarding section 109 of the Act as interpreted by EPA. *American Trucking Associations* v. *EPA*, Nos. 97–1440, 97–1441 (D.C. Cir. May 14, 1999). On June 28, 1999, the U.S. Department of Justice on behalf of EPA filed a petition for rehearing seeking review of the Court's decision by the entire Court of Appeals. The EPA is continuing to assess what further legal or administrative proceedings may be appropriate in response to the Court's decision, as well

[1] Significant harm levels are those ambient concentrations of air pollutants that present an imminent and substantial endangerment to public health or welfare, or to the environment, as established in 40 CFR 51.151.

[2] Intermediate index values of 200, 300, and 400 were defined and are the basis for the Alert, Warning, and Emergency episode levels included in 40 CFR part 51, appendix L, as part of the Prevention of Air Pollution Emergency Episodes program. This program requires specified areas to have contingency plans in place and to implement these plans during episodes when high levels of air pollution, approaching the SHL, are in danger of being reached. Changes to this emergency episode program will be proposed in the near future.

Below an index value of 100, historically an intermediate value of 50 was defined either as the level of the annual standard if an annual standard has been established (for PM_{10} and SO_2), or as a concentration equal to one-half the value of the short-term standard used to define an index value of 100 (for O_3 and CO). Coarse or inhalable particulate matter, PM_{10}, refers to particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

[3] $PM_{2.5}$ refers to particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

as its relevance to other rulemakings such as this one.

With respect to the present rulemaking, we have concluded that it is appropriate to proceed with final action on the proposed AQI revisions. As indicated previously, section 319 of the Act requires the Agency to establish a uniform air quality index, and this requirement is independent of the statutory provisions governing establishment and revision of the NAAQS. Moreover, there is no statutory requirement that the AQI be linked to the NAAQS, although EPA has used NAAQS levels in the past as reference points for the establishment of specific breakpoints within sub-indices. Nothing in the Court's opinion alters the conclusions EPA reached in revising the air quality criteria for PM and O_3 under section 108 of the Act, or in the NAAQS rulemakings, concerning the occurrence of specific health effects at varying concentrations of PM and O_3 in the air. Regardless of the outcome of the remand as to the NAAQS themselves, we believe the scientific record and conclusions underlying them are more than sufficient as a basis for decisions on the levels at which the public should be notified about health risks associated with daily air quality.[4]

We do not regard this notification function as involving the constitutional concerns raised in the Court's opinion. The AQI has no bearing on pollution control requirements for specific sources; nor does it serve to implement the NAAQS involved in the litigation. Rather, it provides information on air quality and health that will help individual citizens take prudent, self-protective actions to avoid or reduce exposures of concern and to avoid contributing to air pollution on days when unhealthy air quality is projected. In this regard, the AQI is essentially a way of conveying scientific/medical advice to the public in an easily understood form.

As indicated below, there was broad support in public comments for modifying and expanding the use of the AQI to take into account the expanded understanding of air quality-health relationships that resulted from EPA's review of the latest scientific information on the effects of PM and O_3. Other proposed revisions were designed to enhance the effectiveness of the AQI generally. The function the AQI serves of conveying to the public information on daily air quality and associated health risks is clearly important, and the season of higher pollution levels is imminent. For all the above reasons, we see no reason to delay final action on the proposed revisions of the AQI. The remainder of this section discusses aspects of the O_3 and PM NAAQS rulemakings as they relate to today's action.

As a result of the reviews of the scientific information upon which the 1997 NAAQS for O_3 and PM are based, an expanded understanding emerged as to the nature of the relationships between exposure to ambient concentrations of these pollutants and the health effects likely to be experienced, especially near the level of the NAAQS. We and the Clean Air Scientific Advisory Committee (CASAC)[5] recognized that for these pollutants there may be no thresholds below which health effects are not likely to occur, but rather a continuum of effects potentially extending down to background levels. As ambient concentrations increase, the proportion of individuals likely to experience effects and the seriousness of the health effects increase. Thus, the 1997 standards were not considered risk free. While the standards were intended to protect public health with an adequate margin of safety, in accordance with section 109(b) of the Act, including the health of sensitive groups, exposures to ambient concentrations just below the numerical level of the standards may result in exposures of concern for the most sensitive individuals. Conversely, exposures to ambient concentrations just above the numerical level of the standards are not likely to result in exposures of concern for most healthy people. This expanded understanding is reflected in the forms of the new standards, which allow for multiple days above the numerical level of the standards.

These understandings were also reflected in CASAC's advice to the Administrator during the O_3 NAAQS review, urging expansion of the public health advisory system (i.e., a uniform AQI) and communication to the public of the apparent nonthreshold nature of the health effects. More specifically, a number of CASAC panel members recommended "that an expanded air pollution warning system be initiated so that sensitive individuals can take appropriate 'exposure avoidance' behavior" (Wolff, 1995). Consistent with this advice, in the preamble to the proposed revisions to the O_3 NAAQS (61 FR 65733–65734), the Administrator requested comment on the usefulness of providing specific health effects information when ambient concentrations are around the numerical level of the standard, the appropriateness of using the AQI to convey such information to the public, the possible addition of two new AQI categories (one just above and one just below the numerical level of the standard) and associated descriptors and levels, as well as related health effects and cautionary statements.

Broad support for modifying the AQI was received in public comments on this aspect of the O_3 NAAQS proposal, as discussed in the final rule establishing revisions to the O_3 NAAQS (62 FR 38873–38874). Commenters overwhelmingly endorsed expanding the use of the AQI for various reasons, although many expressed concern with the possible category descriptors suggested in the proposal (i.e., "moderately good" and "moderately unhealthful"). Many commenters felt that an expanded AQI could help particularly sensitive people take action to minimize their exposures, and that the AQI could be combined with community action programs to reduce ambient concentrations when the numerical level of the standard was forecasted to be exceeded. Some commenters endorsed increasing the specificity of health and cautionary statements related to the AQI categories. Commenters from State and local agencies encouraged us to develop any approaches to revising the AQI in consultation with them, specifically in the areas of sharing real-time monitoring data, risk communication with the public, and coordination of a national program.

2. Real-time Data Reporting Initiative (Ozone Mapping Project)

The Ozone Mapping Project is part of EPA's Environmental Monitoring for Public Access and Community Tracking (EMPACT) initiative—a new approach to providing timely environmental information to communities. It is a cooperative effort of the EPA, State and local air pollution control agencies, and regional organizations including the Mid-Atlantic Regional Air Management Association (MARAMA), the Northeast States for Coordinated Air Use Management (NESCAUM), the northeast Ozone Transport Commission (OTC), the Lake Michigan Air Directors Consortium (LADCO), SouthEast States Air Resource Managers (SESARM), and Central States Air Resource Agencies (CenSARA). During the summer of 1998, EPA's Office of Air Quality Planning and Standards assumed coordination of the project.

The Ozone Map provides simple and timely information about ground-level O_3. During the 1998 O_3 season it was available on EPA's AIRNOW web site (http://www.epa.gov/airnow) and on some local television and news reports. It is an animated contour map that shows concentrations of O_3, in categories ranging from good to moderate to varying degrees of unhealthy, based on AQI values, as they develop across the eastern United States. In 1998, the map was created from real-time, hourly O_3 data provided by a network of more than 400 air monitoring stations from South Carolina to Wisconsin and Maine. When accessed on a computer, cautionary statements for each category could be displayed by running a cursor over the legend. Also available on the AIRNOW web site were still maps of maximum values and forecasted values, and archived animated maps. In 1999, the ozone mapping coverage is being expanded to include 31 States and over 1500 monitors across the eastern and central U.S., and California. In addition, TV weather service providers are planning to carry the Ozone Map and forecasts as part of their traditional weather packages for local TV stations.

Along with the Ozone Map, the AIRNOW web site contains information about O_3 health effects in the "Health Facts" section, and emission reduction activities in the "What You Can Do" section. It also provides links to real-time data, and community action program web sites, that are maintained by State and local agencies around the country. The goals of the web site are to: (1) Provide real-time air pollution data in an understandable, visual format, (2) provide information about the public health and environmental effects of air pollution, and (3) provide the public with information about ways in which they can protect their health and actions they can take to reduce pollution.

3. Community Action Programs

The implementation of community action programs (also referred to as voluntary action programs or episodic emission control programs) is becoming increasingly popular across the country as an innovative approach used to reduce emissions of O_3 precursors, CO, and PM. Motivation for implementation of this type of program often stems from local government and business concerns about the NAAQS attainment status of the area and the restrictions, additional controls, and costs associated with being classified as a nonattainment area. Many areas are also motivated by public health concerns and believe that increasing the amount of air quality information available to sensitive populations raises awareness and results in significant health benefits. Specific goals which are usually associated with community action programs include: (1) Educate the public and enhance protection of public health; (2) attain or maintain NAAQS attainment status and the associated economic benefits; (3) meet specific emission reduction targets; and (4) manage/reduce traffic congestion.

Community action programs are usually voluntary and generally provide multiple steps that the public, business, and industry can take to reduce emissions when higher levels of air pollution are forecast to occur, including in particular transportation-related measures such as trip reduction, postponement of certain activities such as vehicle refueling, and maintenance of cars. The programs emphasize educating the public about the impact of individual activities on local air quality and the basics of air pollution. The educational component of these programs also helps to create a strong link between environmental goals and associated public health benefits.

Most of these programs are based on the categories of the AQI and make use of the AQI descriptors and related health effects and cautionary statements on action days. By linking action days to the AQI, local control programs hope to alter individual behavior to reduce emissions and to reduce exposures to the population. In addition to reduced pollutant exposure of the general population due to improved air quality, there are other health benefits directly associated with community action programs that can be enhanced by linkage to the AQI. Different population groups are more sensitive to the harmful effects of the different air pollutants included in the AQI, and the revisions to the AQI being adopted today, together with related informational materials, will significantly improve the effectiveness of communications with these groups. Public education, or programs directly targeting these groups, may provide the most significant benefits of a community action program. Forecasting days with elevated pollution levels, and then communicating effectively about air quality and associated health effects, may help these groups selectively limit their outdoor activities and, therefore, limit their potential for exposures of concern.

We are committed to providing States and local agencies with support in their efforts to meet air quality standards, to inform the public about air quality, and to educate the public about the impacts of air pollution. The revisions to the AQI being adopted today have as a goal the creation of a revised AQI that can effectively serve as a nationally uniform link across the range of programs (e.g., real-time data reporting initiatives, community action programs) that have these functions.

In support of community action programs, we have developed informational materials related to the AQI, including the health effects and cautionary statements associated with each category and more detailed health effects information (see section II.D.), available on the AIRNOW web site, that State and local agencies may use to enhance their community action programs. Focusing on transportation measures that are often a major component of community action programs, EPA's OMS has developed a report entitled, "Community Action Programs: Blueprint for Program Design." This document describes the major steps needed to put together a successful episodic control program and provides criteria that State and local agencies can use to examine and evaluate their own programs. The report is available from OMS (see Availability of Related Information).

II. Rationale for Final Revisions

In developing the revisions to the AQI that are being adopted today, we sought extensive input from State and local agencies and from the public. We sponsored a workshop with State and local agencies, participated in numerous meetings, prepared and made available a staff draft revision to the AQI sub-index for O_3 for use during the 1998 O_3 season, and conducted several focus groups across the nation to obtain public input on the effectiveness of draft revisions to the AQI and related O_3 maps and informational materials. A

[4] Under section 319, the levels that are appropriate for this purpose do not necessarily depend on the NAAQS levels that may be appropriate under section 109. Depending on how the Agency chose to set an ambient standard, for example, it might conclude that the standard does not need to preclude certain effects falling below the level of public health concern, and at the same time set the AQI in such a way as to assure that sensitive individuals who might experience those effects receive notification and advice on actions they might take to avoid them. Similarly, AQI values might be set that are higher than the standard would permit but that would require more serious health warnings. This is not to say, however, that the levels of the 1997 NAAQS are irrelevant to decisions on the AQI breakpoints. To the contrary, the levels of the 1997 NAAQS are useful surrogates for a series of scientific conclusions reached in the NAAQS rulemakings, based on the revised air quality criteria, regarding the nature, extent, and severity of health effects associated with varying concentrations of PM and O_3 in the air. Accordingly, later sections of this notice make reference as appropriate to relevant levels of the 1997 NAAQS.

[5] CASAC is a scientific advisory committee established under the Act to review the scientific criteria and standards and to advise the Administrator on revision of the NAAQS, as appropriate.

detailed history of the process leading to the proposal and the rationale for the proposed revisions are described more fully in the December 9, 1998 proposal notice (63 FR 67818–67834). The subsections below contain a description of the revisions we proposed, a discussion of the significant comments we received and our responses to them, and a summary of the AQI we are adopting today.

A. What Revisions Did We Propose?

The primary consideration that shaped the proposed revisions was the importance of providing nationally uniform health information associated with daily ambient levels of the air pollutants included in the index, consistent with the requirement of section 319 of the Act for an index to achieve national uniformity in daily air quality reporting. More specifically, the proposed changes to the AQI sub-indices for O_3 and PM reflected the 1997 revisions to the O_3 and PM NAAQS. The proposed general changes to the structure of the AQI were based on the expanded understanding that emerged during the O_3 and PM reviews as to the nature of the relationships between exposure to ambient concentrations of these pollutants and the health effects likely to be experienced, consideration of the implications of changes for the other pollutants, and broad input from State and local agencies and the public. The proposed general changes to the AQI, together with related informational materials, were intended to expand the use of the AQI to provide more pollutant-specific health information, especially when ambient concentrations are close to the level of the primary NAAQS.

1. What Were the Proposed General Changes?

a. Categories and related descriptors, index values and colors. The AQI currently incorporates the pollutants O_3, PM, CO, SO_2, and NO_2. Index values range from 0 to 500[6], and the index is segmented into five categories named by descriptor words that were chosen to characterize the relationship between daily air quality and public health. To reflect better the current understanding of the health effects associated with exposure to these air pollutants, we proposed to revise the AQI categories and descriptors, and to associate specific colors with the categories as shown below in Table 1.

[6] For NO_2, the index ranges from 200 to 500, since there is no short-term NAAQS for this pollutant.

TABLE 1.—PROPOSED CATEGORY INDEX VALUES, DESCRIPTORS, AND COLORS

Index values	Descriptor	Color
0–50	Good	Green
51–100	Moderate	Yellow
101–150	Unhealthy for sensitive groups.	Orange
151–200	Unhealthy	Red
201–300	Very unhealthy	Purple
301–500	Hazardous	Maroon

These proposed changes reflected the addition of a new category above an AQI of 100, created by dividing the current "unhealthful" category into two categories.

When air quality is in the "unhealthy for sensitive groups" range, people that are in the sensitive group, whether the sensitivity is due to medical conditions, exposure conditions, or inherent sensitivity, may experience exposures of concern. However, exposures to ambient concentrations in this range are not likely to result in exposures of concern for most healthy people. The descriptor "unhealthy for sensitive groups" was chosen to convey this message clearly. Participants in focus groups (SAIC 1998) clearly understood that "sensitive groups" does not refer to the general public, indicating that this descriptor effectively communicates the intended health message. This category would include a caution that while perhaps of interest to all citizens, would be of particular interest to individuals and families of individuals who are members of sensitive groups.

As air quality moves into the "unhealthy" range, exposures are associated with an increase in the number of individuals who could potentially experience effects and includes a greater proportion of members of the general public. Based on input received in the development of the proposal, the descriptor "unhealthy" appropriately characterizes air quality in this range.

In addition to an increasing number of exposures of concern, when air quality moves into the "unhealthy" range and above, individuals who were affected at lower levels, typically members of sensitive groups, are likely to experience more serious health effects than members of the general public. To reflect this understanding, it is appropriate to convey two messages in the cautionary statements for both the "unhealthy" and "very unhealthy" categories. One message is directed to members of sensitive groups, and the other is directed to the general public. The use of a distinct cautionary message for members of sensitive groups is entirely consistent with an original goal that the index be based on the relationships between pollutant concentrations and adverse health effects within various groups, e.g., aggravation of disease in people with respiratory disease and incidence of respiratory effects in healthy people. Guidance on pollutant-specific cautionary statements related to the categories of the AQI is discussed below in section II.D.

Consistent with the overarching goal of national uniformity in the reporting of air quality, we proposed that the specific colors listed in Table 1 be associated with each category. While the AQI can be reported without the use of colors (through text and numbers alone), when the index is reported using colors, we proposed to require that only these specified colors be used. Three examples of AQI reports that use color are the color bars that appear in many newspapers, the color scales on State and local agency web sites, and the color contours of the Ozone Map. We participated in many discussions with State and local agencies and associations regarding which specific colors should be associated with the AQI categories, particularly above an index value of 100. These discussions typically were in the context of either the Ozone Mapping Project or community action programs. It was clear that the color associated with a category can be part of the health effects and cautionary message being conveyed. Were various State and local agencies to use different colors to represent the same category, and thus the same level of air quality, it could well send a confusing message about air quality and associated health effects to the public.

As an alternative to requiring the use of specified colors, we solicited comment on the option of recommending, rather than requiring, the use of these colors when reporting agencies choose to report the AQI in color format. In soliciting comment on this alternative, we sought to allow communities maximum flexibility in AQI reporting, while still preserving a nationally uniform AQI. We, therefore, requested that commenters addressing this issue discuss how this more flexible approach would satisfy the statutory language requiring a nationally uniform AQI if different colors may be used across the nation to represent the same range of air quality.

b. Reporting requirements. We proposed to change 40 CFR part 58.50 to require reporting of the AQI in all

Metropolitan Statistical Areas (MSAs)[7] with a population over 350,000, instead of all urbanized areas with a population over 200,000. This change was proposed for consistency with the other monitoring regulations in part 58, which are or will be based on MSAs. This proposed change would not, however, have a significant impact on who is required to report, since virtually the same number of cities would be covered under the proposed reporting requirement as are covered under the existing requirement.

Consistent with early input from State and local agencies, we proposed to change the rounding conventions used to calculate index values corresponding to pollutant concentrations at and above the numerical level of the NAAQS to be consistent with the rounding conventions used in defining the NAAQS for each pollutant. This would avoid situations where a health advisory could be issued that describes the air as unhealthy, when in fact the numerical level of the standard has not been exceeded.

The proposed rule retained the requirements to identify the area for which the AQI is being reported, the time period covered by the report, the "critical" pollutant for which the reported AQI value was derived, the AQI value, and the associated category descriptor. Recognizing that many agencies use a color format to report the AQI, the proposed rule added the requirement to report the associated category color if a color format is used. Because different sensitive groups are at-risk from different pollutants, issuing advisories for all sensitive groups who may be affected at AQI values greater than 100 clearly improves public health protection. Therefore, the proposed rule encouraged, but did not require, that AQI reports include: appropriate health effects and cautionary statements, all AQI values greater than 100, the AQI for sub-divisions of the MSA (if there are important differences in air quality across sub-divisions of the MSA), possible causes for high index values, and the actual pollutant concentrations. These topics were also discussed in our draft "Guideline for Public Reporting of Daily Air Quality—Pollutant Standards Index (PSI)" that was made available on the AIRLINKS web site.

The proposed rule emphasized the importance of forecasting the AQI by specifying that forecasted values should be reported, when possible, but did not require that forecasted values be reported. Given the importance of the O_3 sub-index in a large number of MSAs, and the use of an 8-hour averaging time for calculating the O_3 sub-index value, forecasting the O_3 index value is now more beneficial than before. For a health advisory system to be effective, people need to be notified as early as possible to be able to avoid exposures of concern. Because the O_3 sub-index is based on 8-hour O_3 averages, forecasting O_3 concentrations clearly would have increased value in providing cautionary statements to the public. We recognized that many State and local air agencies are already issuing health advisories based on forecasted O_3 concentrations. Since we have determined that forecasting would add much to the benefits of AQI reporting, we indicated that we would be making available guidance on starting a forecasting program (EPA 1999b) in an area or MSA where forecasting is not presently done. Included in the document is guidance on using hourly O_3 concentrations as predictors for 8-hour averages.

c. Index name. Many State and local agencies encouraged us to change the name of the PSI to the Air Quality Index, or AQI, since many agencies already use the name AQI when reporting the AQI value to the public. Most participants in the focus groups preferred the name AQI, commenting that it more clearly identified the index as relating to the quality of the air rather than to environmental pollution in general. Based on these considerations, we solicited comment on changing the index name from Pollutant Standards Index (PSI) to Air Quality Index (AQI).

2. What Were the Proposed Changes to the Sub-Indices?

To conform to the proposed general changes to the AQI discussed above, and to reflect the recent revisions to the O_3 and PM NAAQS, we proposed changes to the sub-indices for O_3, PM, CO, and SO_2; no conforming changes are necessary for the NO_2 sub-index. The proposed sub-indices are summarized below in Table 2, in terms of pollutant concentrations that correspond to breakpoints in the index, and are discussed in the following sections.

TABLE 2.—PROPOSED BREAKPOINTS FOR O_3, $PM_{2.5}$, PM_{10}, CO, AND SO_2 SUB-INDICES

AQI value	O_3		PM		CO, 8-hr (ppm)	SO_2, 24-hr (ppm)
	8-hr (ppm)	1-hr (ppm)	$PM_{2.5}$, 24-hr ($\mu g/m^3$)	PM_{10}, 24-hr ($\mu g/m^3$)		
50	0.07		15	50	4	0.03
100	0.08	0.12	65	150	9	0.14
150	0.10	0.16	*100	250	12	0.22
200	0.12	0.20	*150	350	15	0.30
300	0.40 (1-hr)	0.40	*250	420	30	0.60
400	0.50 (1-hr)	0.50	*350	500	40	0.80
500	0.60 (1-hr)	0.60	*500	600	50	1.00

*If a different SHL for $PM_{2.5}$ is promulgated, these numbers will be revised accordingly.

a. Proposed ozone sub-index. On July 18, 1997, we revised the O_3 primary NAAQS to replace the 1-hour standard with a new standard with an 8-hour average at a level of 0.08 ppm and a form based on the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentrations measured at each monitor within an area (62 FR 38856–38896). These proposed revisions were based on findings from the most recent review of the NAAQS indicating that the new primary standard will provide increased protection to the public, especially children active outdoors and other sensitive groups, against a wide range of O_3-induced health effects, including decreased lung function; increased respiratory symptoms; hospital admissions and emergency room visits

[7] A complete list of MSAs and their boundaries can be found in the Statistical Abstract of the United States (1998).

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for respiratory causes, among children and adults with pre-existing respiratory disease such as asthma; inflammation of the lung; and possible long-term damage to the lungs. In setting this standard, we recognized that there is no apparent threshold below which health effects do not occur, that the standard is not risk free, and, thus, that exposures of concern are possible below the numerical level of the standard for some extremely sensitive individuals.

We proposed to set an index value of 100 equal to the level of the 8-hour O_3 standard. Recognizing the continuum of health effects, we considered the results of a quantitative risk assessment (Whitfield et al., 1996) in selecting 8-hour O_3 concentrations to correspond to index values of 50, 150 and 200. Since no human health effects information was available for 8-hour average O_3 concentrations at significantly higher levels, we proposed to retain the breakpoints at the upper end of the AQI scale (between the "very unhealthy" and "hazardous" categories and the SHL which corresponds to the top of the PSI scale of 500) in terms of the existing 1-hour average concentrations.

These proposed revisions reflect the new 8-hour O_3 NAAQS and will in almost all areas result in a more precautionary index than the current 1-hour sub-index. However, we recognized that a very small number of areas in the U.S. have atypical air quality patterns, with very high 1-hour daily peak O_3 concentrations relative to the associated 8-hour average concentrations. In such areas, the use of the current 1-hour sub-index may be more precautionary on a given day than the proposed 8-hour sub-index. To allow for the reporting of the more precautionary sub-index value, we proposed to retain the 1-hour sub-index at and above AQI values of 100 and to allow the reporting of the higher of the two O_3 sub-index values. Thus, both the new 8-hour and the current 1-hour sub-indices, as shown in Table 2, were included in the proposed appendix G. Since for the large majority of areas the 8-hour sub-index will be more precautionary, we did not propose to require all areas to calculate both sub-index values. Rather, we proposed to allow areas the flexibility to calculate both sub-index values and, when both sub-index values are calculated, to require that the higher value be reported. We specifically solicited comment on this proposed approach.

b. Proposed PM sub-index. On July 18, 1997, we revised the PM NAAQS by adding a new set of standards for fine particles, or $PM_{2.5}$, set at levels of 15 μg/m³ (annual) and 65 μg/m³ (24-hour average) (62 FR 38652–38760). These revisions were based on findings from the most recent review of the PM NAAQS that recently published studies have indicated that serious health effects were more closely associated with the levels of the smaller particle subset of PM_{10}. These health effects include premature mortality and increased hospital admissions and emergency room visits, primarily in the elderly and individuals with cardiopulmonary disease; increased respiratory symptoms and disease in children and individuals with cardiopulmonary disease; decreased lung function, particularly in children and individuals with asthma; and alterations in respiratory tract defense mechanisms. In addition, PM_{10} standards were retained at the same levels of 50 μg/m³ (annual) and 150 μg/m³ (24-hour average) to continue to provide protection against health effects associated with the coarse particle subset of PM_{10}, including aggravation of asthma and respiratory infections. To reflect these revisions to the PM NAAQS, we proposed to add a new sub-index for $PM_{2.5}$, and to make conforming changes to the sub-index for PM_{10}, consistent with the proposed general changes to the AQI. The proposed sub-indices are summarized in Table 2 and discussed below.

Proposed new $PM_{2.5}$ sub-index. Consistent with the historical method of selecting breakpoints of the AQI, we proposed to set an index value of 100 at the level of the 24-hour $PM_{2.5}$ NAAQS, 65 μg/m³, and an index value of 50 at the level of the annual NAAQS, 15 μg/m³. Also consistent with the basic structure of the AQI, the proposed upper bound index value of 500 corresponds to the SHL, established in section 51.16 of the CFR under the Prevention of Air Pollution Emergency Episodes program. The SHL is set at a level that represents an imminent and substantial endangerment to public health. When we propose revisions to the Prevention of Air Pollution Emergency Episodes program, the proposal will include a SHL for $PM_{2.5}$. In the interim, we proposed to establish a $PM_{2.5}$ concentration of 500 μg/m³ to be associated with a $PM_{2.5}$ index value of 500.

For intermediate breakpoints in the AQI between values of 100 and 500, $PM_{2.5}$ concentrations were proposed that generally reflect a linear relationship between increasing index values and increasing $PM_{2.5}$ values. The available scientific evidence of health effects related to population exposures to $PM_{2.5}$ concentrations between the 24-hour NAAQS level and the proposed $PM_{2.5}$ concentration to be associated with a $PM_{2.5}$ index value of 500 suggest a continuum of effects in this range, with increasing $PM_{2.5}$ concentrations being associated with increasingly larger numbers of people likely experiencing serious health effects (62 FR 38675; Staff Paper, p. VII–27). The proposed generally linear relationship between AQI values and $PM_{2.5}$ concentrations in this range, rounded to increments of 50 μg/m³ to reflect the approximate nature of such a relationship, is consistent with this evidence.

Proposed conforming changes to the PM_{10} sub-index. Consistent with the retention of the levels of the PM_{10} NAAQS, we proposed to retain the PM_{10} sub-index generally and to add a new breakpoint at an index value of 150 to conform to the proposed additional AQI category. We proposed that this breakpoint be set at a PM_{10} 24-hour average concentration of 250 μg/m³, the mid-point between the breakpoints associated with index values of 100 and 200. We believe that the PM_{10} sub-index, with this conforming change, remains appropriate for the public health protection purposes of the AQI.

c. Proposed conforming changes to the CO and SO_2 sub-indices. Since the current AQI sub-indices reflect the current NAAQS for CO and SO_2, the only change we proposed for these sub-indices was to add a breakpoint to each sub-index at an index value of 150 to conform to the proposed additional AQI category. We proposed that these breakpoints be set at concentrations at the mid-points between the breakpoints associated with index values of 100 and 200, consistent with the approach described above for conforming changes to both the 1-hour O_3 sub-index and the PM_{10} sub-index. These proposed breakpoints are summarized in Table 2 and will be reviewed in conjunction with the future reviews of the CO and SO_2 NAAQS.

B. What Were the Significant Comments and Our Responses?

This section describes the significant comments we received on proposed revisions to the index and our general responses to them. More detailed comment summaries and responses are contained in a Response to Comments Document that is available in the docket (see **ADDRESSES**).

1. Comments and Responses on General Changes

a. Categories and related descriptors, index values and colors. With regard to the proposed changes to the general structure of the index, we received comments that focused on two major issues. The first major issue was whether to add a category above or below the standard, or both. In addition, related to that issue were comments about the proposed descriptor for the category we proposed to add above the level of the standard. The second major issue regarded the particular colors, listed in Table 1, we proposed to associate with each category.

With regard to the general structure of the index, most commenters supported our proposal to add a category above the level of the standard. However, commenters from environmental groups and several States suggested adding a category below the level of the standard to provide additional caution for members of sensitive groups, instead of, or in addition to one above. These commenters expressed the view that the proposed sub-indices, that added a category above the standard, did not sufficiently caution members of sensitive groups about health effects occurring below the level of the standard. Specifically, their comments were in reference only to potential health effects occurring below the 8-hour O_3 and 24-hour $PM_{2.5}$ standards. Regarding health effects below the $PM_{2.5}$ standard, one State commenter took exception with the statement in the proposal that an additional category below the standard, while perhaps meaningful for O_3, would not be an appropriate distinction for the other pollutants in the index. This commenter noted that "such a distinction would be more imperative for other pollutants, especially for PM where the level of the 24-hour standard may be less protective of sensitive groups than the ozone standard." (Docket No. A–98–20, IV–D–19). Agreeing with the importance of cautioning sensitive groups below the level of the 24-hour $PM_{2.5}$ standard, another commenter noted "We believe that adding a category below the level of the standard is of particular importance with respect to fine particles." (Docket No. A–98–20, IV–D–11). Regarding the O_3 sub-index, some of the States and the environmental groups that endorsed adding a category below the level of the standard supported that position by noting that we and CASAC stated that extremely sensitive individuals may be affected down to background levels of O_3. One comment from an environmental group noted that:

> The CASAC recognized that for O_3 and fine particle pollution, "there are no discernible thresholds below which health effects are not likely to occur in the most sensitive individuals' as it was advising EPA to set new health standards. We agree with CASAC and support the idea of setting "an expanded air pollution warning system (to) be initiated so that sensitive individuals can take appropriate exposure avoidance behavior," however EPA has misrepresented the health threat with the levels it has proposed. (Docket No. A–98–20, IV–D–17).

A State commenter that supported adding a category below the level of the standard observed that adding such a category would be consistent with EPA's conclusion "that exposures to ambient concentrations just below the numerical level of the standard may result in exposures of concern for the most sensitive individuals." (Docket No. A–98–20, IV–D–19).

We understand and agree with the issues related to communication of risk below the levels of the 24-hour $PM_{2.5}$ and 8-hour O_3 standards. For the $PM_{2.5}$ sub-index, we have addressed concerns about health effects below the level of the 24-hour $PM_{2.5}$ standard by revising the $PM_{2.5}$ sub-index so sensitive groups are cautioned below the 24-hour $PM_{2.5}$ standard. Based on review of the suggested revisions to the $PM_{2.5}$ sub-index that we received in comments, we believe this approach fully addresses their concerns. The revision is discussed in section II.B.2 below.

For better communication of health risk below the 8-hour O_3 standard, we have addressed the issues raised by commenters by revising the O_3 sub-index. We have expanded the "moderate" range of the 8-hour O_3 sub-index to make it more precautionary. When air quality is in the "moderate" range of the 8-hour O_3 sub-index, we have provided health effects and cautionary statements, available in our AQI Reporting Guidance document (EPA, 1999a) (discussed in section II.D), that may be used by State and local agencies to caution unusually sensitive individuals below the level of the 8-hour O_3 standard. This revision is discussed in section II.B.2 below.

We do not believe it is necessary or appropriate to change the general structure of the index by adding a new category below the level of the standard to caution extremely sensitive individuals. Based on the concerns of State and local agencies that the addition of two new categories would unduly complicate the index, we are adding just one new category to maintain the degree of simplicity strongly supported by State and local agencies, none of whom advocated the addition of two new categories. As described in section II.A.1 above, we believe that adding a category above the level of the standard makes a distinction that is useful for members of sensitive groups without alarming the general public. As noted by one State commenter:

> We are satisfied and support the proposed category index values, descriptors and colors. [We] believe that the Air Quality Index * * * has been a very effective communication tool during the ozone season. It has been our experience that a category above the standard provides the proper communication to the affected populations without alarming or desensitizing others. (Docket No. A–98–20, IV–G–04).

Further, given the changes we have made to the $PM_{2.5}$ sub-index, and the expanded "moderate" range and the cautionary statements we have made available in guidance for use below the level of the 8-hour O_3 standard, we do not believe a category below the level of the standard to caution members of sensitive groups would be an appropriate distinction for any of the pollutants included in the index. We believe that the approach we have adopted retains the simplicity of the index while allowing for more detailed cautionary information to be made available to the public when appropriate.

With regard to the descriptor "unhealthy for sensitive groups," some commenters expressed the view that this descriptor is misleading because it encompasses a large segment of the population. In addition, they argued, the public will not know that for certain pollutants healthy people, especially healthy children, are members of sensitive groups. Noting that it is prudent policy to assume that most risk communication regarding air quality impacts will be limited to the general descriptors, some of these commenters requested that if we continue to distinguish sensitive groups from the general population, that the descriptor be changed from "unhealthy for sensitive groups" to "unhealthy for children and other sensitive groups," so that the public would receive a clear message that children are members of a sensitive group that may be at increased risk from exposure to ozone. (Docket No. A–98–20, IV–D–2, IV–D–4 and IV–D–11). We agree with the view of these commenters, based on the responses of participants in the focus groups, that the public will not know that healthy people, including healthy children, may be at risk when air quality is in the "unhealthy for sensitive groups" range. The suggested descriptor, however, is only appropriate for pollutants for which children are a sensitive group. Since the sensitive groups differ from one pollutant to another, and children are only part of the sensitive group for O_3, $PM_{2.5}$ and NO_2, this descriptor is not appropriate for the other pollutants. For

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example, the descriptor "unhealthy for children and other sensitive groups" would not be appropriate for use in the CO sub-index, where people with heart disease are the group most at-risk. Use of this descriptor when CO levels are above an index value of 100 could lead to confusion about the health effects associated with high levels of CO. Therefore, we do not believe it would be useful or prudent to adopt the descriptor "unhealthy for children and other sensitive groups." To increase public awareness that healthy children are members of the sensitive group for O_3, we are adding the requirement that when the AQI value is above 100, reporting agencies include in their published report a statement describing the sensitive group for that particular pollutant. The reporting requirement for pollutant-specific statements describing sensitive groups is discussed below in section II.C.1.b on reporting requirements, and listed in appendix G. We believe that the requirement for agencies to report the pollutant-specific statements identifying the groups at risk, when air quality is above an index value of 100, will more effectively communicate the risk associated with specific air pollutants, and thereby better help members of the public reduce personal exposure. To the extent possible with AQI reporting, this requirement will also ensure that the public is informed that children are part of the sensitive group for O_3. This requirement will not only improve protection for healthy children, but also healthy adults, the elderly, and people with heart and lung disease. We believe that another good way to address this lack of awareness is to educate the public, and the media and health care professionals that inform the public, about the health effects message associated with the category "unhealthy for sensitive groups." To help accomplish the goal of educating the public, we will be expanding the development of education and outreach materials and activities as described in section II.D below.

With regard to the colors listed in Table 1, we received comments concerning both the particular colors associated with the different categories and whether specific colors should be required or recommended. The majority of commenters, including most State and local agencies commenting, supported our proposed color scheme. Many of those (commenters that did support it), had used the same or a similar color scheme associated with either community action programs or ozone maps. Commenters that had used the same or a similar color scheme noted that it effectively and appropriately portrayed the full range of local air quality values. On the other hand, some environmental groups and several States commented that the color red should be used for the category just above standard, instead of the color orange that we proposed. Primarily, these commenters expressed the view that the color orange would not send a sufficiently strong message that the standard has been exceeded. In the proposal we indicated that because the color red sends a strong cautionary message, it is most appropriately used when effects are likely to occur in the general population, and when more serious effects are likely in members of sensitive groups. Many of these commenters noted that since up to 30 percent of the population could be considered to be in the sensitive group for O_3, when the standard is exceeded the general public should be alerted. These commenters expressed the view that it is appropriate to use the color red just above the level of the standard both to alert the public of potential health risks and to encourage emission reduction actions. An environmental group commented:

> While individuals that are sensitive to poor air quality may look at the daily listing in the newspaper or call a message recorded by the state or local air agency, we know from experience that air quality does not receive broad public attention until it is predicted or reaches the level of "code red." At that point, the television and radio media announces that people should restrict outdoor activity and take steps to not add more pollution to the air by carpooling, using less electricity, or using mass transit. (Docket No. A–98–20, IV-D–17).

Another commenter from a State agency noted:

> Considering that the definition of sensitive individuals for ozone includes healthy active children and outdoor workers, a clear unambiguous message needs to be sent to the public so that they can respond accordingly. For parents of active children, a message which states that air quality is unhealthy, and displays it using the color red, sends a clear message—even though it may carry with it the risk that individuals not in the sensitive population might also take exposure avoidance measures. Issuing a message that air quality is unhealthy for sensitive individuals and displays it with a code orange runs the risk of having sensitive individuals, or those guiding sensitive individuals (i.e., doctors and parents) not prescribe any avoidance action because of the ambiguity of the message. (Docket No. A–98–20, IV-G–19).

Additionally, these commenters suggested that the color orange be used for the category they wanted us to add below the level of the standard, as described above.

In considering these comments, we recognize that the NAAQS are set to protect public health with an adequate margin of safety, including the health of sensitive groups. When the standards are met, public health is protected. Exposures to ambient concentrations just above the numerical level of the standards are not likely to result in exposures of concern for most healthy people. This is especially true for the 8-hour O_3 standard, which has a concentration-based form designed to offer more protection from higher concentrations than from multiple smaller exceedances of the standard. The form of the 8-hour O_3 standard allows for multiple days above the level of the standard, provided the 3-year average of the fourth-highest maximum concentrations does not exceed the level of the standard. This means that public health is protected, even when there are multiple days each year when ambient O_3 concentrations are above the level of the standard, as long as the standard is met. Therefore, it is inappropriate on any given day to express a high level of concern when air quality just exceeds the level of the standard. Besides sending an inaccurate health effects message by using the color red with the category "unhealthy for sensitive groups," another concern is the potential loss of credibility that could result from repeatedly sending a signal disproportionate to the expected incidence of noticeable symptoms. If this were to happen, the AQI could lose the power to influence people's behavior to protect their health. One commenter from a State agency expressed this concern:

> One of our key concerns * * * is that the general public will become ambivalent if we forecasted 20, 30, or more Code Red days over the course of an ozone season. Under this scenario, people may not take adequate precautions to protect themselves when an actual unhealthy level is reached. (Docket No. A–98–20, IV–G–05).

A commenter from another State agency expressed a similar view:

> It is important to make sure that this general message is not jeopardized by treating the new 85 ppb, 8-hour standard as the bright line between healthy and unhealthy. The Code Red message will not be considered credible if it is issued between 40 to 60 times a summer in our area. Last year there were 54 days * * * where the 8-hour standard was exceeded. (Docket No. A–98–20, IV–G–13).

From the comments we have received and from our focus group research, we believe that the color red sends too strong a message for use in the "unhealthy for sensitive groups category." Additionally, based on the comments of State and local agencies that have used the same or a similar color scheme, we believe that the color orange sends an appropriate health message and yet a strong message that the standard has been exceeded. One State commenter noted that their environmental agency:

> has been using a green/yellow/orange/red communication system since 1993. The media has used the red, orange *and yellow* air quality codes to convey a "the air is not clean" message. In general, the media has used Code Red to convey a message that air pollution is or will be at a near emergency level. Code Orange has connoted "very dirty." Code Yellow has, in general, been used to characterize air pollution as not too bad—but still not clean. (Docket No. A–98–20, IV–G–13).

Another State commenter noted:

> We disagree, however, with * * * [the] assertion that the "Code Orange" message in the PSI does not adequately protect public health. Our experience * * * has been that the health message can be effectively delivered for Code Orange levels. We have received much feedback from the general public about our ozone action day program, and the resounding message has been: Thank you for this program, I can now plan my day to avoid exposure to high levels of ozone. (Docket No. A–98–20, IV–G–05).

In addition, ozone mapping projects have successfully represented air quality using the full AQI color scheme. In the Ozone Mapping Project, described in section I.C.2, the proposed AQI color scheme was used successfully during the 1998 O_3 season. Participating State and local agencies and regional organizations have selected the same color scheme for use in the 1999 O_3 season. Having used the proposed color scheme in their local O_3 map, one metropolitan air agency noted that "EPA's proposed color scheme communicates clearly in a logical progression which in our experience is already understood by the public and the media." (Docket No. A–98–20, IV–G–11).

Because we believe the proposed color scheme effectively and appropriately communicates the health effects message that was the basis for setting the O_3 and PM standards, we have adopted the color scheme as proposed. However, we strongly agree with the views expressed by commenters that it is important for the health effects message associated with the category "unhealthy for sensitive groups" to be effectively communicated to the public, health care providers and the media. It is very important that members of sensitive groups, which for some pollutants includes healthy children and adults, be alerted to potential health risks and that the general public be motivated to take emissions reductions measures when air quality is above the level of the standard. In response to the concerns expressed by these commenters, we are planning to significantly step up the development of education and outreach materials and increase activities to get this message out, as discussed in section II.D below.

Only two commenters recommended against requiring specific colors. The first commenter did so on the grounds that requiring specific colors would be unenforceable, and may lead to frustration and conflict. While applauding our goal of establishing a consistent message, and agreeing that it is good to have as much national consistency as possible, this commenter noted that efforts to legislate aesthetics are uncomfortable, unwieldy and ultimately unnecessary. (Docket No. A–98–20, IV–D–11). The second commenter noted that some States may elect to use Code Red for ozone action programs at levels other than what is being proposed and the regulation should not preclude them from doing that. (Docket No. A–98–20, IV–D–19). On the other hand, there was very strong support in the comments for us to require that agencies that use color, use specific colors in AQI reporting. All of the other commenters that addressed this issue, including a commenter from an environmental organization, supported requiring specific colors for all State/local agencies using a color format. The commenter from an environmental group noted:

> EPA states that revisions to the PSI have as a goal the creation of a nationally uniform link across a range of programs. We urge that this uniformity be achieved through the use of a national public health warning system that is clear to the public. To this end, we do support the EPA requiring that when colors are used by a state in its PSI, that the same color system incorporated in the PSI, and not variants, be utilized by such state. (Docket No. A–98–20, IV–D–21).

One of the many State commenters agreeing with us that such a requirement was necessary for national uniformity, noted that "Specific colors * * * associated with each category should be required for national uniformity and ease of understanding. Anything less would defeat the purpose of a national index for comparing air quality in different locales." (Docket No. A–98–20, IV–D–07). Another State commenter made the point that "Consistency of message is important, especially if the regional nature of many air pollution problems is to be communicated effectively." (Docket No. A–98–20, IV–D–01).

In response to the first commenter's objections, we do not believe that requiring specific colors presents any particular enforceability problems. This requirement is one of many contained in the 40 CFR part 58 Ambient Air Quality Surveillance requirements and would be enforceable in the same manner and to the same extent as any other requirement of this section. As such, we believe there is no difference in enforceability between this and a requirement for the use of particular descriptors or air quality index values. We expect to work with EPA Regional Offices to ensure that they monitor State implementation of the revised AQI and work with the States to encourage compliance.

With regard to comments that our requirement would preclude States from using other color schemes and action levels in their voluntary programs, it is important to note that the AQI addresses the reporting of measured air quality and does not impose any requirements or limitations on community action programs based on air quality forecasts. We recognize that a nationally uniform color scheme for AQI reporting will, as a practical matter, complicate a State's efforts to use other color schemes in action programs based on predicted air quality, but they remain free to do so under our regulations.

Because it is the fundamental goal of the AQI to provide nationally uniform information about daily air quality and the public health messages that are appropriately associated with various daily air quality levels, in a format that is timely and easily understood, we continue to believe that requiring specified colors when the AQI categories are reported in color format is both necessary and appropriate. Neither of the commenters opposing this requirement addressed how a more flexible approach of recommending specific colors, thereby allowing the use of different colors to represent the same range of air quality, would satisfy the statutory language requiring a nationally uniform air quality index. Therefore, we are adopting the requirement, as specified in appendix G below, that when State and local agencies report the AQI in a color format, that the specific colors listed in Table 1 be associated with each category.

b. Reporting requirements. We received significant comments on several issues related to the reporting requirements, including the population threshold and other aspects of the reporting requirements, the appropriate

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method of monitoring and reporting the PM sub-indices, the effect of AQI changes relative to the SHL program, and the effective date of the final rule. Since we received no significant comments on our proposal to change the rounding conventions for calculating the index to make them consistent with the rounding conventions used in defining the NAAQS, we are adopting that revision as proposed. With regard to the population threshold, one commenter expressed the view that the change from requiring AQI reporting in urbanized areas with a population greater than 200,000, to requiring reporting in MSAs with populations greater than 350,000, would raise the threshold for the requirement and appear to mean that large segments of the U.S. population would not have access to AQI reporting. (Docket No. A–98–20, IV–D–03). We have adopted the requirement for AQI reporting in MSAs with populations greater than 350,000 to be consistent with the State/Local Air Monitoring Stations (SLAMs) monitoring regulations in 40 CFR part 58, since AQI reporting is based on information from SLAMS monitors that are located and reported within the context of MSAs. The use of MSAs also provides for more stable reporting areas since MSAs are usually defined by county boundaries that typically do not change, whereas the boundaries for urbanized areas are very irregular, may include parts of counties, and may change with each census. In selecting the MSA population threshold of 350,000, we tried to make the new reporting requirement equivalent to the old one. Under the new requirement, virtually the same number of cities will be required to report the AQI as were previously. Because urbanized areas and MSAs are not equivalent, we realize that some areas will be required to report the AQI that were not required to do so before this rulemaking, and vice versa. The regulation does not preclude any area from reporting the AQI, and we encourage State and local air agencies to report the AQI whenever possible so that people will be informed about local air quality.

Another commenter noted that some MSAs fall within the boundaries of more than one State, and requested that we identify which of the two or more reporting agencies would be responsible for reporting the AQI for the MSA. (Docket No. A–98–20, IV–G–15). We expect that decisions about AQI reporting in multi-State MSAs will be made by participating agencies in the same manner as decisions about activities to implement the standards through the State Implementation Plans (SIPs). Guidance for air quality planning and implementation in MSAs that fall within the boundaries of more than one State generally calls for the participating State and local agencies to identify, in the SIPs for those States, who will be responsible for the preparation and submission of the required elements, including AQI reports. Where a local or regional planning organization has been designated to carry out such requirements, such an organization is the appropriate one to report the AQI. In any case, we encourage AQI reporting on the sub-MSA level, especially where the AQI differs within the MSA.

Another commenter urged us to expand the requirement for AQI reporting to areas with populations less than 350,000, if these areas are likely not to be in attainment for the 8-hour O_3 standard. To support this position, the commenter noted that O_3 can be transported long distances downwind from where it is generated, resulting in serious air quality problems in downwind rural and smaller urban areas. (Docket No. A–98–20, IV–G–27). We agree with this commenter that downwind areas may be significantly affected by transport of O_3 and precursors. In section 5 of appendix G, we encourage States to evaluate air quality in affected areas downwind of MSAs to identify the potential for significant transport-related air quality impacts and to expand their AQI reporting to address these situations: We have also changed the language in this section such that the affected area need not be contiguous to the reporting MSA.

On a related topic, one commenter noted an example in which a MSA with a population greater than 350,000, has not registered AQI values in excess of 50 (such that AQI reporting would be discretionary), although values above 100 are registered infrequently at a national monument within the larger air basin. (Docket No. A–98–20, IV–G–17). This commenter requested that we revise the reporting requirements to add an air quality consideration to the population threshold as a second component of AQI reporting. To address one part of this comment, we encourage State and local air agencies to report the AQI and issue forecasts for national parks or monuments whenever possible, since these are places people go to for activities that often involve prolonged or vigorous exertion, thereby increasing the risk from air pollution. We have worked with the National Park Service to develop appropriate guidance for visitors and staff to use when index values are expected to be above 100 for O_3. To address the other part of this comment, section 8 of appendix G describes exceptions under which AQI reporting becomes discretionary, either for one pollutant or the entire index, for areas with good air quality. Regarding these exceptions, a State commenter suggested that we require a minimum of 2 years at an AQI value lower than 50 before allowing agencies to "opt out" of reporting the AQI for a particular pollutant, so that for example, one unusually good O_3 season would not make it possible for an agency to avoid reporting high index values in subsequent O_3 seasons. (Docket No. A–98–20, IV–D–06). We believe that requiring 2 years of index values lower than 50 before allowing State and local agencies discretion in reporting, while appropriate in some situations, may be unnecessary in others. We agree with this commenter that it is appropriate to require reporting of higher index values, even if air quality has been good throughout the previous year. Therefore, we have revised section 8 of appendix G, such that when the criteria for an exemption are no longer met, the responsible agency is required to report the AQI. Another commenter expressed the view that we should strengthen the minimum notification requirements, so that when the AQI value exceeds 100, State and local agencies are required to report the index to all three media (print, radio and television) to help ensure that the public is informed that the standard has been exceeded. (A–98–20, IV–E–3) We agree that it is important to inform the public when the AQI is above 100, and therefore have strengthened the reporting provisions in section 6 of appendix G. In particular, when the AQI exceeds 100, reporting agencies should expand reporting to all major news media, and at a minimum, should include notification to the media with the largest market coverages for the area in question.

Looking at these reporting provisions more broadly, we believe that it would be very beneficial for reporting agencies to educate the media about alternative sources for this information, such as web sites and community action programs. Many State and local agencies have web sites that provide quick access to timely and accurate air quality and related information. For State and local agencies participating in the Ozone Mapping Project, the media could be directed to the AIRNOW web site as a source of information about O_3 air quality and associated health effects for yesterday, today and tomorrow. In addition, this web site provides in-depth information about O_3 health effects, sources of emissions and simple measures people can take to improve air quality. Community action programs also provide timely and accurate information, and are often used to inform the public when air quality is predicted to be above an index value of 100. Tools and programs such as these can significantly improve the timeliness of AQI reporting and provide additional useful information. We believe that, in the near future, the AQI will be reported by the regional and national media in ways, such as the Ozone Map, that will not be limited to specific MSAs. This type of approach will help provide AQI reporting for areas that would otherwise not be covered, including, in some cases, rural and small urban areas and national parks.

Regarding reporting the PM sub-indices, one commenter requested that we clarify whether $PM_{2.5}$ and PM_{10} should be treated as one pollutant (e.g., reported simply as PM) or two different pollutants (e.g., reported separately). (Docket No. A–98–20, IV–D–19). We expect State and local air agencies to report $PM_{2.5}$ and PM_{10} separately, since there are two separate sub-indices with different sensitive groups, and different health effects and cautionary statements. In response to this comment, we have added clarifying language to section 9 in appendix G. In addition, many commenters noted that at the present time there is very little monitoring for PM (both $PM_{2.5}$ and PM_{10}) that is suitable for use in daily AQI reports, and requested guidance for the use of non-reference methods for the purpose of AQI reporting. Since PM is often measured at intervals longer than every 24-hours, State and local agencies are encouraged to use monitoring data from continuous PM monitors for use in AQI reporting, whenever possible. As noted by commenters, due to the lack of appropriate monitoring information, at this time it may not be possible to report the AQI for PM in many locations. To assist State and local agencies in the use of non-reference methods, we have added language to section 10 of appendix G stating that non-reference methods may be used for the purpose of AQI reporting if it is possible to demonstrate a simple linear relationship between the non-reference and the reference methods.

Regarding the effect of changes to the AQI on the SHL program, we received two significant comments. One commenter noted that our proposed changes to the categories, to standardize them such that the upper bound falls on an even number, rounded to 50 (e.g., 200), and lower bound falls on an odd number (e.g., 201), resulted in the AQI breakpoint of 200 being the upper bound of the "unhealthy" category, rather than the lower bound of the "very unhealthy" category, as it has been historically. Since the AQI breakpoint of 200 is also commonly used as the "Alert Level," or the first stage of an air pollution emergency episode in example guidance associated with the SHL program, this commenter requested that we leave the AQI value of 200 as the lower breakpoint of the "very unhealthy" category, so that emergency episodes would start when air quality is classified as "very unhealthy" and include appropriate-sounding health effects and cautionary statements. (Docket No. A–98–20, IV–D–22). We are adopting the breakpoints as proposed, because we believe that it is important to be consistent in the treatment of the category boundaries (e.g., 51 to 100, 101 to 150, 151 to 200, etc.). When we propose revisions to the requirements of the SHL program, we plan to change all references to the "Alert Level" so they will refer to air quality that exceeds the "Alert Level," rather than to air quality that reaches the "Alert Level." However, State and local agencies should not change their emergency episode plans at this point simply because we are adopting this consistent approach to setting AQI breakpoints. Eventually, some agencies may have to revise emergency episode plans because we have revised the AQI value of 200 for the 8-hour O_3 sub-index. But we do not expect States to make any revisions to their emergency episode plans until we promulgate the revised requirements. Finally, several commenters noted that in the proposal, we did not specify an effective date for the final revisions. Some of these commenters suggested that we extend the effective date, with suggestions ranging from 60 days to more than a year after publication. We are adopting an effective date of 60 days after publication. We believe that this will allow adequate time for State and local agencies to revise daily AQI reports. We recognize that it may take longer to revise related informational materials, such as printed documents, or related programs that agencies may want to revise. However, since this rulemaking applies only to the requirements for daily reporting of air quality, we believe an effective date of 60 days is adequate.

c. Index name. All commenters that expressed a view on the index name supported changing the name of the index from the Pollutant Standards Index (PSI) to the Air Quality Index (AQI), because this name clearly identifies the index as relating to the quality of the air. Accordingly, we are changing the name of the index to the Air Quality Index, or AQI.

2. Comments and Responses on Changes to the Sub-Indices.

All of the comments we received on proposed changes to the sub-indices focused on the sub-indices that were added for O_3 (8-hour) and $PM_{2.5}$. Since we did not receive specific comments on the conforming changes we proposed to the CO, SO_2 and PM_{10} sub-indices, we are adopting these sub-indices as proposed.

a. Ozone sub-index. We received significant comments on two issues related to the O_3 sub-index. The first group of comments was in response to our request for comment on retaining the 1-hour O_3 sub-index in addition to the 8-hour O_3 sub-index. The second group of comments focused on the appropriateness of providing precautionary language below the level of the 8-hour O_3 standard. Regarding the 1-hour sub-index, almost all of the comments that addressed this issue supported retaining the 1-hour O_3 sub-index. However, one State commenter expressed the view that the proposal was unclear regarding how areas that have not attained the 1-hour O_3 standard are to use the new 8-hour O_3 sub-index. This commenter also noted that it might be confusing to report the AQI based on the 8-hour O_3 sub-index in an area where the 1-hour O_3 standard had not yet been attained. (Docket No. A–98–20. IV–D–07). We are requiring that all State and local agencies that report the AQI for O_3 calculate the 8-hour O_3 sub-index, even if the reporting area has not attained the 1-hour standard. In addition to calculating the 8-hour O_3 sub-index, which is required, the reporting agency may also calculate the 1-hour O_3 sub-index, but this is not required. However, if the reporting agency calculates both O_3 sub-index values, it is required to report the higher index value of the two. The AQI does not relate to attainment status; rather, it is a tool for reporting daily air quality and associated health information. We are retaining the 1-hour O_3 sub-index only because we recognize that there are a very small number of areas in the U.S. that have atypical air quality patterns, with very high 1-hour daily peak O_3 concentrations relative to 8-hour average concentrations. In such areas, an index value greater than 100 might be calculated using the 1-hour sub-index, even when the 8-hour sub-index might be below 100. For these areas, the use of the 1-hour sub-index is clearly more precautionary. Because our major interest is that appropriate precautionary messages be issued, we

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are not retaining a complete 1-hour O_3 sub-index with "good" and "moderate" categories. Likewise, when ambient 8-hour O_3 concentrations are greater than 0.374 ppm, reporting agencies must calculate the index value using the 1-hour O_3 sub-index. This is because no human health effects information is available for higher 8-hour average O_3 concentrations to use as a basis for selecting 8-hour breakpoints and for developing appropriate health effects and cautionary statements. We believe that since State and local agencies are required to report the name of the pollutant responsible for an index value greater than 100, but not the associated averaging period, using the 8-hour O_3 sub-index should not be confusing in areas that have not yet attained the 1-hour O_3 standard.

Regarding the issue of alerting sensitive individuals below the level of the 8-hour O_3 standard, some commenters not only suggested adding a category below the level of the standard, but also suggested reducing the lowar bound of the "moderate" category. (Docket No. A–98–20, IV–D–11, IV–D–17, IV–D–19, IV–G–21). We are not adding a category below the level of the standard as discussed in section II.B.1. above. However, to be somewhat more precautionary, we have expanded the "moderate" range by reducing the lower bound of this category from 0.070 ppm to 0.065 ppm O_3, 8-hour average. We believe that setting the breakpoint between the "good" and "moderate" categories at this lower level, is appropriate, based in part on risk estimates done in conjunction with the review of the O_3 NAAQS which suggested that risk to healthy people likely becomes negligible at this level (Whitfield et al., 1996). This change is also responsive to comments from State agencies that the proposed range of the "moderate" category was so narrow (spanning only 15 ppb O_3, as compared to 20 ppb range used in the Ozone Map in 1998) that it would be more difficult to forecast accurately and also would provide too quick a transition from good to unhealthy. (Docket No. A–98–20, IV–D–10, IV–G–04). Conversely, an industry group and a State commenter took exception to issuing a "limited health notice" for O_3 that we proposed as the purpose of the "moderate" category. (Docket No. A–98–20, IV–D–12, IV–G–14). The State commenter objected to the use of the term "health notice" below the level of the standard because it implies that the standard is not protective of public health. In addition to stating that the "limited health notice" associated with moderate air quality is inconsistent with the 8-hour O_3 standard because the standard is intended to protect public health, even the health of sensitive populations, with an adequate margin of safety, the industry commenter expressed the view that we should omit from our materials the health effects and cautionary statements suggesting that air quality meeting the level of the standard is a threat to health. We agree with the industry and State commenters that since the 8-hour O_3 standard is intended to protect public health, including the health of sensitive groups, with an adequate margin of safety, that the term "limited health notice" may be misleading. However, we continue to believe that it is appropriate to provide guidance with cautionary language for extremely sensitive individuals, not populations or groups, below the level of the standard. This approach is consistent with the advice of CASAC, and the way we discussed expanding the use of the AQI, specifically to caution extremely sensitive individuals below the level of the O_3 standard, in the O_3 proposal and final decision notices.

b. $PM_{2.5}$ sub-index. We received a number of comments regarding the $PM_{2.5}$ sub-index, almost all of them focusing on our proposal to set the index value of 100 at the level of the 24-hour standard (65 $\mu g/m^3$). Some commenters recommended setting an index value of 100, or otherwise providing for cautionary messages, at concentrations lower than 65 $\mu g/m^3$. One commenter, for example, stated that under the proposal "many areas of the country will likely violate the annual standard of 15 $\mu g/m^3$ without ever (or hardly ever) reaching a PSI of 100 or a category indicating some degree of unhealthfulness. This situation will result in an inconsistent and inappropriate message to the public, especially given the severe health effects associated with fine particles." (Docket No. A–98–20, IV–D–11).

In light of these comments, we have reexamined the basis for selecting $PM_{2.5}$ AQI breakpoints and agree that the sub-index as proposed would not adequately caution sensitive groups about potential risks associated with short-term exposures to $PM_{2.5}$. This is essentially because the proposed $PM_{2.5}$ sub-index was developed using the Agency's historical approach to selecting index breakpoints, which on examination does not correspond well with the way the $PM_{2.5}$ standards were intended to function. The historical practice has been simply to set the AQI value of 100 at the level of the short-term standard for a pollutant (in this case, the 24-hour $PM_{2.5}$ standard) and the AQI value of 50 at the level of the annual standard, if there is one, or at one-half the level of the short-term standard.[8] This method of structuring the index is appropriate for a "typical" suite of air-quality standards, which includes a short-term standard designed to protect against the health effects associated with short-term exposures and an annual standard designed to protect against health effects associated with long-term exposures. In such cases, the short-term standard in effect defines the level of health protection provided against short-term risks and thus is a useful benchmark against which to compare daily air-quality concentrations.

In the case of the $PM_{2.5}$ standards, however, EPA took a different approach to protecting against health risks associated with short-term exposures. For reasons discussed in the preamble to the final standards, the annual and 24-hour $PM_{2.5}$ standards were designed to work together for this purpose, and the intended level of protection against short-term risk is not defined by the 24-hour standard but by the combination of the two standards working in concert. Indeed, the annual $PM_{2.5}$ level of 15 $\mu g/m^3$ was intended to serve as the principal vehicle for protection against short-term $PM_{2.5}$ exposures (by reducing the entire distribution of $PM_{2.5}$ concentrations in an area), with the short-term standard serving essentially to provide supplemental protection in special situations.[9] Given the respective roles of the two standards, setting the AQI value of 100 at the level of the 24-hour standard would not reflect the short-term health risks associated with lower concentrations, which the annual standard was designed to address. Accordingly, we agree that it is appropriate to caution members of sensitive groups below the level of the 24-hour standard and believe this should be done in a way that reflects the intended roles of both standards in protecting against short-term risks.

It would also be inappropriate to compare daily air-quality concentrations directly with the level of the annual standard (by setting the AQI value of 100 at that level), because the annual standard represents an average of many daily concentrations rather than daily values per se. In the circumstances, we believe the guiding principle for $PM_{2.5}$ should be to set the AQI value of 100 in a way that, at least conceptually, reflects the general level of health protection against short-term risks

[8] See 63 FR 67819, 67829 (Dec. 9, 1998).
[9] See 62 FR 38669–71, 38676–77 (July 18, 1997).

provided by the annual and 24-hour standards in combination. This approach, although inexact, is consistent with the historical approach, in that the underlying logic of that approach, as applied to a typical suite of standards, is also to set the AQI value of 100 in a way that reflects the level of protection provided against short-term risks—that is, by setting it at the level of the short-term standard that provides the protection. In the case of $PM_{2.5}$, as indicated above, the level of the 24-hour standard (65 $\mu g/m^3$) is too high to reflect the intended level of protection, and the level of the annual standard (15 $\mu g/m^3$) is too low. Between the two values, the available health studies indicate a continuum of risks associated with increasing PM concentrations, although with significant uncertainties as to the extent of the risk associated with single peak exposures.[10] Consistent with EPA's general practice of setting AQI breakpoints in symmetrical fashion where health effects information does not suggest particular levels,[11] we concluded that it is appropriate to set the AQI value of 100 at the mid-point of the range between the annual and the 24-hour $PM_{2.5}$ standards (40 $\mu g/m^3$). Given that decision, we also concluded that it is appropriate to retain the level of the annual standard for an AQI value of 50, as proposed, and to set the AQI level of 150 at the level of the 24-hour standard.

To reiterate, the purpose of setting the AQI value of 100 somewhat below the level of the 24-hour standard was to reflect the dual role of the annual and 24-hour $PM_{2.5}$ standards in protecting against short-term risks, and the aim was to select a breakpoint that would serve as a rough surrogate for the general level of protection provided by the two standards in combination. Given the nature of the standards and the available health information, a more exact approach was not possible. In this regard, setting the breakpoint at the mid-point of the range between the annual and 24-hour standards, as opposed to a level somewhat higher or lower within that range, simply reflected EPA's general practice of setting symmetrical breakpoints as indicated above, and does not imply any sort of health-effects threshold. In particular, it does not reflect a judgment about the extent of the risk associated with single peak concentrations of $PM_{2.5}$, as to which the available health information is inconclusive, or the level at which EPA might set a 24-hour standard if the annual standard did not serve as the primary vehicle for protection against such concentrations. As with other AQI breakpoints, it also has no effect on the degree of control required of specific sources.

In short, EPA's decision to treat the annual standard as the principal vehicle for protecting against short-term $PM_{2.5}$ concentrations, although judged to be the best approach based on the available health information, does present a different situation than that involved in previous AQI rulemakings. As discussed in the preamble to the final standards, the annual standard was intended to reduce all $PM_{2.5}$ concentrations, including short-term peaks, in an area sufficiently to protect public health with an adequate margin of safety, aside from special situations which the 24-hour standard was designed to address. As one commenter suggested, however, it would be possible for an area to violate the annual standard without ever experiencing (or seldom experiencing) daily peaks that exceeded the level of the 24-hour standard. Moreover, it might be difficult, if not impossible, to predict in advance whether the annual standard will be attained in a given area. For these reasons, as well as the uncertainties in the available health information, it is inherently difficult to judge the significance of single peak concentrations when they occur. In view of the various uncertainties involved, particularly sensitive individuals may wish to avoid exposure to such concentrations, especially concentrations that approach the level of the 24-hour standard. To facilitate such choices, consistent with the purposes of the AQI and the advice of CASAC, we believe that cautioning members of sensitive groups in the range of 40 to 65 $\mu g/m^3$ is appropriate.

We did not receive any comments on the proposal to establish a concentration of 500 $\mu g/m^3$ to be associated with a $PM_{2.5}$ index value of 500, or our method of selecting the intermediate breakpoints. Therefore, we are adopting 500 $\mu g/m^3$ as the upper bound of the index.[12] For intermediate breakpoints in the AQI between values of 150 and 500, we have adopted $PM_{2.5}$ concentrations that generally reflect a linear relationship between increasing index values and increasing $PM_{2.5}$ values. As discussed in the proposal, the generally linear relationship between AQI values and $PM_{2.5}$ concentrations in this range, rounded to increments of 50 $\mu g/m^3$ to reflect the approximate nature of such a relationship, is consistent with the health effects evidence that was the basis for the PM standards.

[10] See 62 FR 38670, 38677 (July 18, 1997).
[11] See 63 FR 67824, 67832 (Dec. 9, 1998).
[12] As discussed in the proposal, should the final SHI. for $PM_{2.5}$, when promulgated, be different from this concentration, we will revise this $PM_{2.5}$ sub-index accordingly.

C. What Are the Final Revisions?

The sub-sections below only summarize changes to the regulatory text. They do not describe all aspects of 40 CFR part 58.50 or appendix G.

1. What Are the General Changes?

Based on the proposed structure of the AQI, the comments we received and our responses to them, as discussed above, we are adopting the following changes to the general structure and reporting requirements to the AQI.

a. Categories and related descriptors, index values and colors. We are adopting the index values, descriptors and associated colors listed in Table 1 above.

b. Reporting requirements. We are revising 40 CFR 58.50 to require reporting of the AQI in all MSAs with a population over 350,000. In appendix G, we are adopting rounding conventions to be used to calculate index values that are consistent with the rounding conventions used in defining the NAAQS for each pollutant.

The final rule retains the requirements to identify the area for which the AQI is being reported, the time period covered by the report, the "critical" pollutant for which the reported AQI value was derived, the AQI value, and the associated category descriptor. The final rule adds two requirements: (1) To report the associated category color if a color format is used and, (2) to report the pollutant-specific sensitive group for any reported index value greater than 100. The final rule encourages, but does not require, that AQI reports include: appropriate health effects and cautionary statements, all AQI values greater than 100, the AQI for sub-divisions of the MSA (if there are important differences in air quality across sub-divisions of the MSA), possible causes for high index values, and the actual pollutant concentrations.

In the case of rural or small urban areas that are significantly affected by pollutants transported from a MSA where the AQI is reported, the final rule recommends that the MSA report the AQI for the affected areas as well. In addition, when the AQI is greater than 100, reporting agencies should expand AQI reporting to include all major news media. The final rule continues to allow agencies to discontinue reporting for any pollutant, if index values for that pollutant have been below 5[illegible] for an entire season or a year. However, if in subsequent years pollutant levels rise

such that index values for that pollutant would be above 50, then the final rule requires that AQI reporting for that pollutant resume. The final rule emphasizes the importance of forecasting the AQI by specifying that forecasted values should be reported, when possible, but does not require that forecasted values be reported.

c. Index name. We are adopting the name the Air Quality Index or AQI.

2. What Are the Changes to the Sub-Indices?

Based on the proposed sub-indices, the comments we received and our responses to them, as discussed above, we are adopting new sub-indices corresponding to the 8-hour O_3 standard and the $PM_{2.5}$ standards, as well as conforming changes to the CO, 1-hour O_3, PM_{10}, and SO_2 sub-indices. The adopted breakpoints for the O_3 (8-hour and 1-hour) $PM_{2.5}$, PM_{10}, CO and SO_2 sub-indices are listed in Table 3.

TABLE 3.—BREAKPOINTS FOR O_3, $PM_{2.5}$, PM_{10}, CO, AND SO_2 SUB-INDICES

AQI value	O_3		PM		CO, 8-hr (ppm)	SO_2, 24-hr (ppm)
	8-hr (ppm)	1-hr (ppm)	$PM_{2.5}$, 24-hr ($\mu g/m^3$)	PM_{10}, 24-hr ($\mu g/m^3$)		
50	0.06		15	50	4	0.03
100	0.08	0.12	40	150	9	0.14
150	0.10	0.16	65	250	12	0.22
200	0.12	0.20	*150	350	15	0.30
300	0.40 (1-hr)	0.40	*250	420	30	0.60
400	0.50 (1-hr)	0.50	*350	500	40	0.80
500	0.60 (1-hr)	0.60	*500	600	50	1.00

*If a different SHL for $PM_{2.5}$ is promulgated, these numbers will be revised accordingly.

These sub-indices are presented in more detail in appendix G to reflect the changes to the numerical rounding conventions for calculating index values.

D. What Are the Related Informational Materials?

The primary documents associated with the AQI and this rulemaking, are our guidance on AQI reporting, "Guideline for Public Reporting of Daily Air Quality—Air Quality Index (AQI)" (EPA 1999a), and our guidance on AQI forecasting, "Guideline for Developing an Ozone Forecasting Program" (EPA 1999b). These documents are available on AIRLINKS (http://www.epa.gov/airlinks). The AQI Reporting document contains information regarding the AQI requirements and recommendations, example AQI reports, and a list of MSAs required to report the AQI. It also includes pollutant-specific health effects and cautionary statements for use with the index, for O_3, $PM_{2.5}$, PM_{10}, CO, and SO_2. The AQI Forecasting document explains the steps necessary to start an air pollution forecasting program. Included in the document is guidance on using hourly O_3 concentrations as predictors for 8-hour averages.

Other related informational materials are also available. The brochure "The Pollutant Standards Index" (EPA 1994) contained general information about the health effects and air quality, and general precautions that sensitive groups and the general public can take to avoid exposures of concern. It is being revised to be consistent with the new name (i.e., the Air Quality Index brochure), with final revisions to the AQI, and will identify sensitive groups in the health effects statements for each of the pollutants, and include the pollutant-specific health effects and cautionary statements discussed above. A colorful fact sheet, called the "Air Quality Guide," provides information about the AQI, O_3 health effects and the sources of ground-level O_3 is available on the AIRNOW web site. A revised booklet, "SMOG—Who Does It Hurt?," provides information for the general public about O_3 health effects and is based on scientific information gained in the recent review of the O_3 standard. "SMOG—Who Does It Hurt?" was designed to provide, in simple language, enough detail for individuals to understand who is at most risk from O_3 exposure and why, the nature of O_3 health effects, and a detailed explanation of how individuals can reduce the likelihood of exposure using common everyday activities as examples. We are also developing a shorter, summary pamphlet about O_3 health effects to complement the "SMOG—Who Does It Hurt?" booklet. We expect the AQI brochure, "SMOG—Who Does It Hurt?" and the shorter summary pamphlet about O_3 health effects to be available in paper format and on the AIRNOW web site early in the 1999 ozone season. In addition, we will translate the Air Quality Guide, the AQI brochure, "SMOG—Who Does It Hurt?", and the shorter summary pamphlet into Spanish. These materials will be available on a Spanish page on the AIRNOW web site.

There are other materials available on the AIRNOW web site that provide general information about O_3. Information about ground-level as contrasted to stratospheric O_3 may be found in EPA's publication "Ozone: Good Up High, Bad Nearby." The EPA's video, "Ozone Double Trouble" also provides information about ground-level and stratospheric O_3 and the health effects associated with exposure to ground-level O_3, or smog.

In addition to the products discussed above, to address the concerns of commenters that when air quality is in the "unhealthy for sensitive groups" range the public will not understand that the standard has been exceeded or who is at risk, we are going to significantly increase education and outreach related to the AQI. At this point, we are still in the process of planning specific new products or activities, but have decided what general direction these efforts will take. First, we plan to increase our contacts with the news providers to better inform them about the importance of including accurate, timely and understandable information in their broadcasts and reporting, and to enlist them as full partners in the implementation of the AQI. Second, we plan to form new associations with health care providers to keep them informed about air pollution health effects, since these professionals are the most trusted source of health effects information. Third, we plan to increase direct outreach to the public through a variety of means, including materials tailored to school-age children, the Spanish-speaking community, and others. Finally, we plan to work with public health interest organizations to support their efforts to provide more immediate and interactive education and outreach to all of these groups.

III. Regulatory and Environmental Impact Analyses

A. Executive Order 12866: OMB Review of "Significant Actions"

Under Executive Order 12866, the Agency must determine whether a regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The EPA has determined that the revisions to air quality index reporting in this final rule would not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, and therefore did not prepare a regulatory impact assessment. The OMB has advised us this final decision should be construed as a "significant regulatory action" within the meaning of Executive Order 12866. Accordingly, this action was submitted to the OMB for review. Any changes made in response to OMB suggestions or recommendations will be documented in the public record and made available for public inspection at EPA's Air and Radiation Docket Information Center (Docket No. A–98–20).

B. Regulatory Flexibility Analysis/Small Business Regulatory Enforcement Fairness Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations less than 50,000 people.

Today's final decision to revise the AQI program modifies existing air quality reporting requirements for MSA's with populations over 350,000 people. Today's final decision will not establish any new regulatory requirements affecting small entities. On the basis of the above considerations, EPA certifies that today's final decision will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. Based on the same considerations, EPA also certifies that the new small-entity provisions in section 244 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) do not apply.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. In addition, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's final decision would not include a Federal mandate that may result in estimated costs of $100 million in any 1 year to either State, local, or tribal governments, in the aggregate, or to the private sector. Accordingly, EPA has determined that the provisions of section 202 of the UMRA do not apply to this rulemaking. With regard to section 203 of the UMRA, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule requires reporting of the Air Quality Index only in MSAs with populations greater than 350,000, and therefore does not affect small governments.

D. Paperwork Reduction Act

Today's final decision does not establish any new information collection requirements beyond those which are currently required under the Ambient Air Quality Surveillance Regulations in 40 CFR part 58 (OMB #2060–0084, EPA ICR No. 0940.15). Therefore, the requirements of the Paperwork Reduction Act do not apply to today's action.

E. Executive Order 13045: Children's Health

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), requires Federal agencies to ensure that their policies, programs, activities, and standards identify and assess environmental health and safety risks that may disproportionately affect children. To respond to this order, agencies must explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency. In today's final decision, EPA identified children as one of the sensitive groups which may be at increased risk of experiencing the effects of concern following exposure to O_3, $PM_{2.5}$ and $NO_{2.5}$. The AQI categories, descriptors, and health effects and cautionary statements as proposed, for the first time reflect consideration of the increased health risk to children which may result from such exposures. Promulgation of the proposed AQI is one potentially effective alternative that was considered. However, based on comments that the public may not be aware that healthy, active children are included in the sensitive groups for O_3, $PM_{2.5}$ and NO_2, we have adopted the additional requirement that reporting agencies must include a pollutant-specific statement of the sensitive groups when an index value of 100 is exceeded. For example, when reporting an AQI value of 110 for ozone, the reporting agency must include a statement that children and people with asthma are the groups most at risk. Whenever the AQI value is above 100 for a pollutant, and children are one of the sensitive groups for that pollutant, the AQI report must include a statement

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that children are at risk. Therefore, today's action does comply with the requirements of E.O. 13045.

F. Executive Order 12848: Environmental Justice

Executive Order 12848 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations in the United States.

The nature of today's action is to inform the general public, including minorities and low-income populations, about the nature of the air pollution in the areas in which they live. Today's action establishes a uniform tool for States to use to develop programs which will caution particularly sensitive people to minimize their exposures and educate the public about general health effects associated with exposure to different pollution levels. States may also use information established as part of the AQI to trigger programs designed to reduce emissions to avoid exceedances of the NAAQS. Therefore, today's action will help facilitate public participation, outreach, and communication in areas where environmental justice issues are present.

G. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or we will consult with those governments. If EPA complies by consulting, Executive Order 12875 requires us to provide to OMB a description of the extent of our prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires us to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule implements requirements set forth in section 319 of the Act and thus is required by statute. This rule does not establish a wholly new requirement but rather modifies existing reporting requirements which State and local governments have been implementing for approximately 20 years. While these changes are significant in many ways, they are not expected to result in a significant increase in reporting burdens. Nonetheless, EPA engaged in extensive consultation with State and local governments in the development of the proposed and final rules, and this consultation is discussed and documented elsewhere in today's notice and in the notice of proposed rulemaking.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA will consult with those governments. If EPA complies by consulting, Executive Order 13084 requires us to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule implements requirements specifically set forth by the Congress in section 319 of the Act without the exercise of any discretion by us. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

This rule governs the reporting of air quality by States for MSAs and, in some cases, areas that are significantly affected by transport of pollutants from MSAs. In extensive public and intergovermental coordination efforts during the development of the proposal, EPA received no information which would suggest that the rule will impose new requirements on Indian tribal governments nor will it significantly or uniquely affect communities of Indian tribal governments. To the extent that air pollution from upwind MSAs significantly affects any lands within Indian country, this impact is not a result of, or affected by, today's rule and would be addressed under existing requirements governing the implementation of air quality standards.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

IV. References

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EPA, (1999b) Guideline for Developing an Ozone Forecasting Program, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, 27711, EPA–454/R–99–009.

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Whitfield, R.G.; Biller, W.F.; Jusko, M.J.; Keisler, JM (1996) A probabilistic assessment of health risks associated with short-term exposure to tropospheric ozone. Report prepared for U.S. EPA, OAQPS. Argonne National Laboratory; Argonne, IL.

Wolff, G.T., (1995) Letter from Chairman of the Clean Air Scientific Advisory Committee to the EPA Administrator, dated November 30, 1995. EPA–SAB–CASAC–LTR–96–002.

List of Subjects in 40 CFR Part 58

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 23, 1999.

Carol M. Browner,

Administrator.

Accordingly, 40 CFR part 58 is amended as follows:

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7410, 7601(a), 7613, and 7619.

2. Section 58.50 is revised to read as follows:

§ 58.50 Index reporting.

(a) The State shall report to the general public through prominent notice an air quality index in accordance with the requirements of appendix G to this part.

(b) Reporting is required by all Metropolitan Statistical Areas with a population exceeding 350,000.

(c) The population of a Metropolitan Statistical Area for purposes of index reporting is the most recent decennial U.S. census population.

3. Appendix G to part 58 is revised to read as follows:

Appendix G to Part 58—Uniform Air Quality Index (AQI) and Daily Reporting

General Requirements

1. What is the AQI?
2. Why report the AQI?
3. Must I report the AQI?
4. What goes into my AQI report?
5. Is my AQI report for my MSA only?
6. How do I get my AQI report to the public?
7. How often must I report the AQI?
8. May I make exceptions to these reporting requirements?

Calculation

9. How does the AQI relate to air pollution levels?
10. Where do I get the pollutant concentrations to calculate the AQI?
11. Do I have to forecast the AQI?
12. How do I calculate the AQI?

Background and Reference Materials

13. What additional information should I know?

General Requirements

1. What Is the AQI?

The AQI is a tool that simplifies reporting air quality to the general public. The AQI incorporates into a single index concentrations of 5 criteria pollutants: ozone (O_3), particulate matter (PM), carbon monoxide (CO), sulfur dioxide (SO_2), and nitrogen dioxide (NO_2). The scale of the index is divided into general categories that are associated with health messages.

2. Why Report the AQI?

The AQI offers various advantages:

a. It is simple to create and understand.

b. It conveys the health implications of air quality.

c. It promotes uniform use throughout the country.

3. Must I Report the AQI?

You must report the AQI daily if yours is a metropolitan statistical area (MSA) with a population over 350,000.

4. What Goes Into My AQI Report?

i. Your AQI report must contain the following:

a. The reporting area(s) (the MSA or subdivision of the MSA).

b. The reporting period (the day for which the AQI is reported).

c. The critical pollutant (the pollutant with the highest index value).

d. The AQI (the highest index value).

e. The category descriptor and index value associated with the AQI and, if you choose to report in a color format, the associated color. Use only the following descriptors and colors for the six AQI categories:

TABLE 1.—AQI CATEGORIES

For this AQI	Use this descriptor	And this color [1]
0 to 50	"Good"	Green.
51 to 100	"Moderate"	Yellow.
101 to 150	"Unhealthy for Sensitive Groups".	Orange.
151 to 200	"Unhealthy"	Red.
201 to 300	"Very Unhealthy".	Purple.
301 and above	"Hazardous"	Maroon.[1]

[1] Specific colors can be found in the most recent reporting guidance (Guideline for Public Reporting of Daily Air Quality—Air Quality Index (AQI)).

f. The pollutant specific sensitive groups for any reported index value greater than 100. Use the following sensitive groups for each pollutant:

When this pollutant has an index value above 100 * * *	Report these sensitive groups * * *
Ozone	Children and people with asthma are the groups most at risk.
$PM_{2.5}$	People with respiratory or heart disease, the elderly and children are the groups most at risk.
PM_{10}	People with respiratory disease are the group most at risk.
CO	People with heart disease are the group most at risk.
SO_2	People with asthma are the group most at risk.

When this pollutant has an index value above 100 * * *	Report these sensitive groups * * *
NO_2	Children and people with respiratory disease are the groups most at risk.

ii. When appropriate, your AQI report may also contain the following:

a. Appropriate health and cautionary statements.

b. The name and index value for other pollutants, particularly those with an index value greater than 100.

c. The index values for sub-areas of your MSA.

d. Causes for unusual AQI values.

e. Actual pollutant concentrations.

5. Is My AQI Report for My MSA Only?

Generally, your AQI report applies to your MSA only. However, if a significant air quality problem exists (AQI greater than 100) in areas significantly impacted by your MSA but not in it (for example, O_3 concentrations are often highest downwind and outside an urban area), you should identify these areas and report the AQI for these areas as well.

6. How Do I Get My AQI Report to the Public?

You must furnish the daily report to the appropriate news media (radio, television, and newspapers). You must make the daily report publicly available at one or more places of public access, or by any other means, including a recorded phone message, a public Internet site, or facsimile transmission. When the AQI value is greater than 100, it is particularly critical that the reporting to the various news media be as extensive as possible. At a minimum, it should include notification to the media with the largest market coverages for the area in question.

7. How Often Must I Report the AQI?

You must report the AQI at least 5 days per week. Exceptions to this requirement are in section 8 of this appendix.

8. May I Make Exceptions to These Reporting Requirements?

i. If the index value for a particular pollutant remains below 50 for a season or year, then you may exclude the pollutant from your calculation of the AQI in section 12.

ii. If all index values remain below 50 for a year, then you may report the AQI at your discretion. In subsequent years, if pollutant levels rise to where the AQI would be above 50, then the AQI must be reported as required in sections 3, 4, 6, and 7 of this appendix.

Calculation

9. How Does the AQI Relate to Air Pollution Levels?

For each pollutant, the AQI transforms ambient concentrations to a scale from 0 to 500. The AQI is keyed as appropriate to the national ambient air quality standards (NAAQS) for each pollutant. In most cases, the index value of 100 is associated with the numerical level of the short-term standard (i.e., averaging time of 24-hours or less) for each pollutant. Different approaches are taken for NO_2, for which no short-term standard has been established, and for $PM_{2.5}$, for which the annual standard is the principal vehicle for protecting against short-term concentrations. The index value of 50 is associated with the numerical level of the annual standard for a pollutant, if there is one, at one-half the level of the short-term standard for the pollutant, or at the level at which it is appropriate to begin to provide guidance on cautionary language. Higher categories of the index are based on increasingly serious health effects and increasing proportions of the population that are likely to be affected. The index is related to other air pollution concentrations through linear interpolation based on these levels. The AQI is equal to the highest of the numbers corresponding to each pollutant. For the purposes of reporting the AQI, the sub-indexes for PM_{10} and $PM_{2.5}$ are to be considered separately. The pollutant responsible for the highest index value (the reported AQI) is called the "critical" pollutant.

10. Where Do I Get the Pollutant Concentrations To Calculate the AQI?

You must use concentration data from population-oriented State/Local Air Monitoring Station (SLAMS) or parts of the SLAMS required under 40 CFR 58.20 for each pollutant except PM. For PM, you need only calculate and report the AQI on days for which you have measured air quality data (e.g., particulate monitors often report values only every sixth day). You may use particulate measurements from monitors that are not reference or equivalent methods (for example, continuous PM_{10} or $PM_{2.5}$ monitors) if you can relate these measurements by statistical linear regression to reference or equivalent method measurements.

11. Do I Have to Forecast the AQI?

You should forecast the AQI to provide timely air quality information to the public, but this is not required. If you choose to forecast the AQI, then you may consider both long-term and short-term forecasts. You can forecast the AQI at least 24-hours in advance using the most accurate and reasonable procedures considering meteorology, topography, availability of data, and forecasting expertise. The document "Guideline for Developing an Ozone Forecasting Program" (the Forecasting Guidance) will help you start a forecasting program. You can also issue short-term forecasts by predicting 8-hour ozone values from 1-hour ozone values using methods suggested in the Reporting Guidance, "Guideline for Public Reporting of Daily Air Quality."

12. How Do I Calculate the AQI?

i. The AQI is the highest value calculated for each pollutant as follows:

a. Identify the highest concentration among all of the monitors within each reporting area and truncate the pollutant concentration to one more than the significant digits used to express the level of the NAAQS for that pollutant. This is equivalent to the rounding conventions used in the NAAQS.

b. Using Table 2, find the two breakpoints that contain the concentration.

c. Using Equation 1, calculate the index.

d. Round the index to the nearest integer.

TABLE 2.—BREAKPOINTS FOR THE AQI

These breakpoints						Equal these AQIs * * *		Category
O_3 (ppm) 8-hour	O_3 (ppm) 1-hour [1]	$PM_{2.5}$ (µg/m³)	PM_{10} (µg/m³)	CO (ppm)	SO_2 (ppm)	NO_2 (ppm)	AQI	
0.000–0.064	.....	0.0–15.4	0–54	0.0–4.4	0.000–0.034	([2])	0–50	Good.
0.065–0.084	.....	15.5–40.4	55–154	4.5–9.4	0.035–0.144	([2])	51–100	Moderate.
0.085–0.104	0.125–0.164	40.5–65.4	155–254	9.5–12.4	0.145–0.224	([2])	101–150	Unhealthy for sensitive groups.
0.105–0.124	0.165–0.204	[4]65.5–150.4	255–354	12.5–15.4	0.225–0.304	([2])	151–200	Unhealthy.
0.125–0.374	0.205–0.404	[4]150.5–250.4	355–424	15.5–30.4	0.305–0.604	0.65–1.24	201–300	Very unhealthy.
([3])	0.405–0.504	[4]250.5–350.4	425–504	30.5–40.4	0.605–0.804	1.25–1.64	301–400	
([3])	0.505–0.604	[4]350.5–500.4	505–604	40.5–50.4	0.805–1.004	1.65–2.04	401–500	Hazardous.

[1] Areas are generally required to report the AQI based on 8-hour ozone values. However, there are a small number of areas where an AQI based on 1-hour ozone values would be more precautionary. In these cases, in addition to calculating the 8-hour ozone index value, the 1-hour ozone index value may be calculated, and the maximum of the two values reported.

[2] NO_2 has no short-term NAAQS and can generate an AQI only above an AQI value of 200.

[3] 8-hour O_3 values do not define higher AQI values (≥ 301). AQI values of 301 or higher are calculated with 1-hour O_3 concentrations.

[4] If a different SHL for $PM_{2.5}$ is promulgated, these numbers will change accordingly.

ii. If the concentration is equal to a breakpoint, then the index is equal to the corresponding index value in Table 2. However, Equation 1 can still be used. The results will be equal. If the concentration is between two breakpoints, then calculate the index of that pollutant with Equation 1. You must also note that in some areas, the AQI based on 1-hour O_3 will be more precautionary than using 8-hour values (see footnote 1 to Table 2). In these cases, you may use 1-hour values as well as 8-hour values to calculate index values and then use the maximum index value as the AQI for O_3.

$$I_p = \frac{I_{Hi} - I_{Lo}}{BP_{HI} - BP_{Lo}}\left(C_p - BP_{Lo}\right) + I_{Lo} \qquad \text{(Equation 1)}$$

Where:

I_p = the index value for pollutant$_p$

C_p = the truncated concentration of pollutant$_p$

BP_{Hi} = the breakpoint that is greater than or equal to C_p

BP_{Lo} = the breakpoint that is less than or equal to C_p

I_{Hi} = the AQI value corresponding to BP_{Hi}

I_{lo} = the AQI value corresponding to BP_{Lo}.

iii. If the concentration is larger than the highest breakpoint in Table 2 then you may use the last two breakpoints in Table 2 when you apply Equation 1.

Example

iv. Using Table 2 and Equation 1, calculate the index value for each of the pollutants measured and select the one that produces the highest index value for the AQI. For example, if you observe a PM_{10} value of 210 µg/m³, a 1-hour O_3 value of 0.156 ppm, and an 8-hour O_3 value of 0.130 ppm, then do this:

a. Find the breakpoints for PM_{10} at 210 µg/m³ as 155 µg/m³ and 254 µg/m³, corresponding to index values 101 and 150;

b. Find the breakpoints for 1-hour O_3 at 0.156 ppm as 0.125 ppm and 0.164 ppm, corresponding to index values 101 and 150;

c. Find the breakpoints for 8-hour O_3 at 0.130 ppm as 0.125 ppm and 0.374 ppm, corresponding to index values 201 and 300;

d. Apply Equation 1 for 210 µg/m³, PM_{10}:

$$\frac{150-101}{254-155}(210-155)+101 = 128.$$

e. Apply Equation 1 for 0.156 ppm, 1-hour O_3:

$$\frac{150-101}{0.164-0.125}(0.156-0.125)+101 = 140$$

f. Apply Equation 1 for 0.130 ppm, 8-hour O_3:

$$\frac{300-201}{0.374-0.125}(0.130-0.125)+201 = 203$$

g. Find the maximum, 203. This is the AQI. The minimal AQI report would read:

v. Today, the AQI for my city is 203 which is very unhealthy, due to ozone. Children and people with asthma are the groups most at risk.

Background and Reference Materials

13. What Additional Information Should I Know?

The EPA has developed a computer program to calculate the AQI for you. The program works with Windows 95, it prompts for inputs, and it displays all the pertinent information for the AQI (the index value, color, category, sensitive group, health effects, and cautionary language). The EPA has also prepared a brochure on the AQI that explains the index in detail (The Air Quality Index), Reporting Guidance (Guideline for Public Reporting of Daily Air Quality) that provides associated health effects and cautionary statements, and Forecasting Guidance (Guideline for Developing an Ozone Forecasting Program) that explains the steps necessary to start an air pollution forecasting program. You can download the program and the guidance documents at www.epa.gov/airnow.

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Part IV

Environmental Protection Agency

40 CFR Parts 403 and 503
Standards for the Use or Disposal of Sewage Sludge; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 403 and 503

[FRL–6401–3]

RIN 2040–AC25

Standards for the Use or Disposal of Sewage Sludge

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's action amends the existing regulation regarding the land application, surface disposal, and incineration of sewage sludge. The amendments clarify existing regulatory requirements regarding operational standards for pathogen and vector attraction reduction and provide flexibility to the permitting authority and the regulated community in complying with the minimum frequency of monitoring requirements. The amendments also make the incineration subpart of the regulation totally self-implementing by providing information on air dispersion modelling, incinerator testing methods, and continuous emission monitors to the sewage sludge incinerator owner-operator. It also amends the existing General Pretreatment Regulation for Existing and New Sources of Pollution by adding a concentration for total chromium in land-applied sewage sludge to the list of pollutants that are eligible for a removal credit issued by a wastewater treatment works treating domestic sewage.

EFFECTIVE DATE: The final rule is effective September 3, 1999. For purposes of judicial review, this final rule is promulgated as of 1 pm eastern time on August 18, 1999 as provided in 40 CFR 23.7.

FOR FURTHER INFORMATION CONTACT: Alan B. Rubin, Ph.D., Senior Scientist, Health and Ecological Criteria Division (4304), Office of Science and Technology, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone (202) 260–7589.

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I. Regulated Entities

Entities potentially regulated by today's action are those that prepare sewage sludge and use or dispose of the sewage sludge through application to the land, placement on a surface disposal site, placement in a municipal solid waste landfill unit, or firing in a sewage sludge incinerator. Regulated categories and entities include:

Category	Examples of regulated entities
State/Local/Tribal Gov	Publicly-owned treatment works that treat domestic sewage.
Federal Government	Federally-owned treatment works that treat domestic sewage.
Industry	Privately-owned treatment works that treat domestic sewage, and persons who receive sewage sludge and change the quality of the sewage sludge before it is used or disposed.

The above list of regulated categories and entities is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. The list includes the type of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed above also could be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability section in § 503.1 (Purpose and Applicability) of part 503 of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, contact the individual whose name is in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Authority

The amendments to part 503 are promulgated pursuant to the authority of section 405 of the Clean Water Act (CWA), which requires EPA to establish numerical limits and management practices that protect public health and the environment from the reasonably anticipated adverse effects of toxic pollutants in sewage sludge. Section 405(e) prohibits any person from disposing of sewage sludge from a publicly owned treatment works (POTWs) or any other treatment works treating domestic sewage for any use or disposal for which regulations have been established pursuant to subsection (d) of section 405 except in compliance with such regulations.

The amendment to part 403 is promulgated under the authority of sections 307 and 405 of the CWA. In section 307(b) of the CWA, Congress directed EPA to establish categorical pretreatment standards for industrial dischargers of toxic pollutants to POTWs. Congress authorized POTWs in defined circumstances to provide relief from categorical pretreatment standards in the form of a removal credit to

indirect dischargers. Section 307(b) authorizes a removal credit where, among other things, grant of the removal credit does not prevent the POTW from using or disposing of its sewage sludge in compliance with section 405 of the CWA.

III. Background

A. Part 503 Amendments

On February 19, 1993, EPA promulgated, pursuant to section 405(d) of the CWA, Standards for the Use or Disposal of Sewage Sludge (58 FR 9248). This regulation establishes the requirements that protect public health and the environment when sewage sludge is: (1) Applied to the land to either condition the soil or fertilize crops grown in the soil; (2) placed on a surface disposal site; (3) placed in a municipal solid waste landfill unit; or (4) fired in a sewage sludge incinerator. EPA amended the part 503 sewage sludge regulation on February 25, 1994 (59 FR 9095) and again on October 25, 1995 (60 FR 54764) to address various issues.

On October 25, 1995, EPA published a document in the **Federal Register** proposing several technical changes to part 503 (60 FR 54771). These changes were intended to address a number of issues identified since promulgation of the regulation. The proposed changes clarify certain requirements, provide additional flexibility to the regulated community in complying with the part 503 requirements, and modify the requirements for sewage sludge incinerators to make the requirements self-implementing. Comments on the October 1995 proposal were considered in developing the changes in today's final rule.

B. Part 403 Amendment

Industrial facilities that discharge specific pollutants to POTWs for treatment must pretreat their effluent to meet categorical pretreatment standards promulgated under section 307(b) of the CWA. Section 307(b) also provides that where POTWs provide some or all of the treatment of an industrial user's wastewater required to meet a categorical pretreatment standard, POTWs may grant "a removal credit" to such an indirect discharger. The credit, in the form of a less stringent categorical pretreatment standard, allows an increased concentration of a pollutant in the discharge from the indirect discharger to the POTW.

Section 307(b) of the CWA establishes three criteria that a POTW has to meet to obtain authority to grant a removal credit to a discharger of a toxic pollutant to the POTW: (1) The POTW removes all or any part of the toxic pollutant, (2) the POTW's ultimate discharge does not violate the effluent limitation or standard that would be applicable to the toxic pollutant if it were discharged directly rather than through a POTW, and (3) the discharge to the POTW does not prevent sewage sludge use or disposal by the POTW in accordance with section 405 of the CWA. EPA promulgated removal credit regulations that are codified at 40 CFR 403.7.

On February 19, 1993, EPA amended the part 403 General Pretreatment Regulations to add a new Appendix G that includes two lists of pollutants eligible for a removal credit with respect to the use or disposal of sewage sludge if the other procedural and substantive requirements of 40 CFR 403.7 are met. The first list (Appendix G—Section I) includes, by sewage sludge use or disposal practice, the pollutants regulated in EPA's Standards for the Use or Disposal of Sewage Sludge (40 CFR part 503). The second list (Appendix G—Section II) includes, by sewage sludge use or disposal practice, additional pollutants eligible for a removal credit if the concentration of the pollutant in sewage sludge does not exceed the prescribed concentration. The pollutants in Appendix G—Section II are the pollutants EPA evaluated and decided not to regulate during the development of the part 503 regulation. See 58 FR 9381–9385, February 19, 1993.

The October 1995 proposal addressed the concentration for total chromium for land-applied sewage sludge on the list of pollutants in Appendix G—Section II of the part 403 regulations. EPA concluded after reviewing comments on the proposed concentration to establish the concentration at the value in today's final rule.

IV. Final Amendments to the Part 503 Land Application, Surface Disposal, Pathogen, and Vector Attraction Reduction Requirements

A. Ceiling Concentration Limits—Land Application

In the October 25, 1995, document, EPA proposed to amend the applicability section of the land application requirements to clarify that the ceiling concentration limits (Table 1 of § 503.13) apply to all sewage sludge that is land-applied. Specifically, EPA proposed to amend § 503.10(b)(1), (c)(1), (d), (e), (f), and (g) to expressly provide that the ceiling concentration limits have to be met in all cases. All commenters on this proposed change concurred with the change. Thus, today's action amends § 503.10(b)(1), (c)(1), (d), (e), (f), and (g) to require that the ceiling concentration limits in Table 1 of § 503.13 be met.

B. Frequency of Monitoring

Sections 503.16, 503.26, and 503.46 require periodic monitoring of sewage sludge for pollutants as well as periodic demonstration of compliance with certain pathogen density and vector attraction reduction requirements. The frequency of monitoring varies with the amount of sewage sludge used or disposed. The current regulation allows the permitting authority, after two years of monitoring, to reduce the frequency, but in no case may the permitting authority authorize monitoring less frequently than once a year. EPA proposed to amend the regulation to authorize the permitting authority to reduce the frequency of monitoring for pollutants and certain pathogen density requirements [1] to less than once a year.

Several commenters opposed the proposed change because they believed it would undermine public confidence in the quality of sewage sludge that is used or disposed. They stated that consistent monitoring of sewage sludge is essential to retaining public support for the part 503 regulation.

The Agency does not agree that the proposed change to the frequency of monitoring requirements means that consistent monitoring of sewage sludge will not continue. The reduction in the frequency only applies to pollutant concentrations and certain pathogen density requirements, and only can be made by the permitting authority.

EPA has decided to modify § 503.16, § 503.26, and § 503.46 to delete the requirement to monitor at least once per year. This change provides flexibility to permitting authority to tailor monitoring requirements to specific circumstances without jeopardizing public health and the environment.

Today's change allows, but does not require, the permitting authority to reduce the frequency of monitoring. Moreover, the permitting authority's ability to reduce the monitoring frequency is limited to monitoring for pollutants and the enteric virus and viable helminth ova density requirements in pathogen Class A,

[1] For example, EPA proposed to authorize the permitting authority to reduce the frequency of monitoring for the pathogen densities in § 503.32(a)(5)(ii) and § 503.32(a)(5)(iii). The frequency of monitoring for all other pathogen densities (e.g., the 1000 MPN per gram of total solids fecal coliform requirement for all Class A pathogen alternatives), and for the vector attraction reduction options (e.g., 38 percent volatile solids reduction) cannot be reduced by the permitting authority.

Alternative 3 (see § 503.32(a)(5)(ii) and (5)(iii)). This change does not apply to any other pathogen density requirement or to the vector attraction reduction requirements. Further, this change does not preclude the permitting authority from increasing the frequency of monitoring even if they reduce the frequency after two years of monitoring at the part 503 frequency.

Thus, EPA is today amending § 503.16(a)(2), § 503.26(a)(2), and § 503.46(a)(3) by deleting the phrase "* * * but in no case shall the frequency of monitoring be less than once per year when * * *" Note that the part 503 frequency of monitoring requirements do not apply if sewage sludge is not land-applied, surface-disposed, or fired in a sewage sludge incinerator during the year.

C. Certification Language

Sections 503.17 and 503.27 of the current sewage sludge regulation require sewage sludge preparers and land appliers, and the owner/operator of a surface disposal site, respectively, to keep certain records, and in the case of a Class I sludge management facility, to report this information to the permitting authority. The regulation also requires the recordkeepers to certify to compliance with applicable requirements. Failure to certify may result in significant penalties.

The October 1995 notice proposed to change the certification language in the part 503 recordkeeping sections because the effect of requiring the appropriate person to certify compliance may be to discourage self-reporting of violations. If a requirement is not being met, the applicable person obviously cannot certify to compliance with the requirement without perjury. EPA proposed only to require that the applicable person certify to the accuracy of the information that was collected to show compliance. Compliance with the requirement then would be determined by the permitting authority.

Commenters supported the proposed change. One commenter expressed concern, however, that the language change may be construed to relieve preparers of land-applied sewage sludge from meeting certain requirements. This is not the case. As indicated in § 503.7, the preparer of land-applied sewage sludge is responsible to ensure that the applicable land application requirements are met. The change in the certification language does not relieve a preparer from this duty. Under the regulation, as amended, the appropriate person must certify that information collected to show compliance with a requirement was prepared under his/her direction and supervision in accordance with the system designed to ensure that qualified personnel gather and evaluate information properly.

Another commenter suggested that the certifications in the land application recordkeeping section (§ 503.17) for the preparer be combined into one certification. The commenter also suggested this be done for the certifications for the applier. EPA has decided to retain the current certifications in the land application recordkeeping section without change because they contain the applicable certification for each requirement (i.e., pollutants, pathogens, and vector attraction reduction), and ensure there is no confusion about who is to certify to what.

Today's action amends § 503.17 by revising the certification language as described above in paragraphs (a)(1)(ii), (a)(2)(ii), (a)(3)(i)(B), (a)(3)(ii(A), (a)(4)(i)(B), (a)(4)(ii)(A), (a)(5)(i)(B), (a)(5)(ii)(F), (a)(5)(ii)(H), (a)(5)(ii)(J), (a)(5)(ii)(L), (a)(6)(iii), and (b)(6). EPA is also amending § 503.27 by revising the certification language in paragraphs (a)(1)(ii), (a)(2)(ii), (b)(1)(i), and (b)(2)(i).

D. Time of Application

In the October 25, 1995 Notice, EPA proposed to change certain of the recordkeeping requirements for land-applied sewage sludge and for domestic septage applied to agricultural land, forest, or a reclamation site. EPA proposed to delete the requirement in § 503.17(a)(5)(ii)(C) and § 503.17(b)(3) to record the time of application of bulk sewage sludge and domestic sewage, respectively, to a site. At the same time, EPA proposed to add a new requirement in § 503.17(a)(4)(ii)(E) for Class B sewage sludge. This change would require appliers of Class B sewage sludge to record the date bulk sewage sludge is applied to each site. EPA concluded that, because the regulation restricts the use of sites to which Class B sewage sludge is applied,[2] it is important to record the date Class B sewage sludge is land-applied. For the reasons discussed at proposal, EPA is today adopting these changes.

E. Definition of pH

EPA also proposed a change to the definition of pH to clarify that pH should be measured at 25 degrees Centigrade (C) or be converted to an equivalent value at 25 degrees C. Twenty-five degrees C is the reference temperature for reporting pH values in the scientific literature.

Commenters favored the proposed change, which EPA is today adopting as proposed. Today's notice amends the definition of pH in § 503.31(g) to read as follows: pH means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25° Centigrade or measured at another temperature and then converted to an equivalent value at 25° Centigrade.

The following equation from Smith and Farrell can be used to adjust pH values taken at temperatures other than 25 degrees C to equivalent values at 25 degrees C:

$$\text{pH correction} = [0.03 \text{ pH units}/1.0^\circ \text{ C}] \times [\text{Temp}^\circ \text{ C}_{\text{meas}} - 25^\circ \text{ C}]$$

This equation indicates that for each degree difference between the measured temperature in degrees C and 25 degrees C, there is a change in pH of 0.03 units. Thus, if a pH of 12 is measured at 20 degrees C, the pH at 25 degrees C is 11.85 [12 + (0.03 × −5)]. There is an inverse relationship between temperature and pH.

F. Class B, Alternative 1—at the Time of Use or Disposal

EPA also proposed to amend § 503.32(b)(2) to change the pathogen reduction requirements in pathogen Class B, Alternative 1 to allow those requirements to be met any time before the sewage sludge is used or disposed. Under the current regulation, these requirements must be met "at the time the sewage sludge is used or disposed."

There were two reasons for EPA's decision to propose this change. First, the requirement in § 503.32(b)(2) is inconsistent with the requirements in the two other Class B pathogen alternatives.[3] Part 503 does not require that the requirements in either Class B, Alternative 2 or Class B, Alternative 3 be met at the time the sewage sludge is used or disposed. For example, when the requirements in Class B, Alternative 2 are met, the sewage sludge can be stored and then land-applied. Part 503 does not require additional treatment after the storage period.

Second, EPA concluded that protection of public health and the environment does not require that the Class B pathogen requirements be met at the time sewage sludge is used or disposed. The part 503 rule imposes site restrictions for Class B sewage sludge that is land-applied and management practices for surface-disposed Class B sewage sludge irrespective of which Class B pathogen alternative is selected. The site restrictions and management practices allow time for the environment to further reduce remaining pathogens in the sewage sludge to below detectable levels.

To make the Class B pathogen alternatives consistent, the Agency proposed to delete the requirement that the fecal coliform density in Class B, Alternative 1 be met at the time of use or disposal. This means that the fecal coliform density requirement can be met any time (e.g., before storage) before the sewage sludge is used or disposed. As mentioned above, the site restrictions for land-applied Class B sewage sludge and the surface disposal management practices provide time for the environment to further reduce the remaining pathogens in Class B sewage sludge to below detectable levels.

One commenter opposed the proposed change believing that it would increase the public health risk, particularly when the sewage sludge is stored before it is used or disposed. The Agency disagrees and is adopting the change as proposed.

There is no evidence of increased incidences of disease from exposure to Class B sewage sludge that is either stored, or used or disposed. There is evidence, however, that over time the densities of *Salmonella sp.* bacteria, enteric viruses, and viable helminth ova in sewage sludge are reduced to below detectable levels by environmental conditions. Thus, in EPA's judgement, public health and the environment are protected when the Class B pathogen requirements and the land application site restrictions for a Class B sewage sludge are met. With respect to the concern about stored sewage sludge, the U.S. Department of Agriculture and EPA are preparing guidance on storage of sewage sludge. This guidance will address, among other things, good practices for storing sewage sludge. Today's action amends § 503.32(b)(2)(i) to indicate that seven representative samples of the sewage sludge that is used or disposed shall be collected.

G. Site Restriction for Grazing of Animals

EPA also proposed to change the site restriction in § 503.32(b)(5)(v). The current regulation indicates that animals shall not be allowed to graze for 30 days after land application of a Class II sewage sludge. The language in the proposed change indicates that animals shall not be grazed for 30 days after land application of a Class B sewage sludge. This restriction applies to the intentional, not inadvertent, grazing of animals. Commenters supported this change, and EPA is adopting it today.

H. Vector Attraction Reduction Equivalency

Sewage sludge has a number of qualities that may attract disease-spreading agents—"vectors"—like birds, flies and rats. The part 503 regulation includes requirements for reducing what is called "vector attraction" potential. The regulation allows use of any of 10 vector attraction reduction options when sewage sludge is applied to the land (or 11 options in the case of sewage sludge that is placed on a surface disposal site). See 40 CFR 503.33.

In the October 25, 1995, notice, EPA proposed to allow the use of other vector attraction reduction options for any of the eight treatment options if the permitting authority determined that such an option was "equivalent," (i.e, equally effective in reducing vector attraction). This flexible approach is similar to that provided currently in the part 503 regulation for Class A and Class B pathogen reduction processes. Processes other than those prescribed in the regulation may be used to reduce pathogens if the permitting authority determines they are equivalent.

All of the commenters supported the proposed change. However, none of the commenters provided information necessary to develop appropriate measures that could be used to determine whether an option is equivalent to one of the first eight vector attraction reduction options. Without such measures, equivalency cannot be determined.

Because no measures exist currently that can be used to determine whether a vector attraction reduction option is equivalent to one of the first eight vector attraction reduction options, EPA concluded that the part 503 regulation should not be amended at this time to allow for vector attraction reduction equivalency. For this reason, today's action does not amend § 503.15(c), § 503.25(b), and § 503.33(a).

The Agency encourages anyone with information that can be used to develop appropriate measures for vector attraction reduction equivalency to submit the information to EPA. If measures can be developed, EPA will consider reproposing the changes to § 503.15(c), § 503.25(b), and § 503.33(a) to allow an option that is equivalent to one of the first eight vector attraction reduction options, if the equivalent option is approved by the permitting authority.

I. Vector Attraction Reduction at the Time of Use or Disposal

Another proposed change in the October 25th notice was the time when certain vector attraction reduction options have to be met. Under the current regulation, vector attraction reduction Options 1 through 8 can be met any time before the sewage sludge is used or disposed. In the case of Options 9, 10, and 11, however, they must be met at the time the sewage sludge is used or disposed.

The October 25th notice proposed to change the time when vector attraction reduction Options 6, 7, and 8 have to be met. The proposed change required that those options be met at the time the sewage sludge is used or disposed rather than any time before the sewage sludge is used or disposed.

As explained in the proposal (60 FR 54775, October 25, 1995), vector attraction reduction achieved by pH adjustment (Option 6) may not always be permanent. The target pH conditions in Option 6 allow sewage sludge to be stored for some period before use or disposal without the pH dropping. If the sewage sludge is stored for some longer period of time, however, the pH may drop. At that point, biological activity in the sewage sludge may resume, and the sewage sludge may putrefy and attract vectors.

Similarly, in the case of vector attraction reduction Options 7 and 8, the moisture content of the sewage sludge may increase during storage after the percent solids requirements are met, and biological activity could increase. This also could cause vectors to be attracted to the sewage sludge.

EPA received a significant number of comments opposing the proposed change for Option 6—pH adjustment. Several commenters stated that the proposed change to Option 6 would require them to adjust the pH of the sewage sludge twice—once before storage and then again after storage before use or disposal. This would increase the cost of Option 6.

The commenters assumed incorrectly that part 503 requires the pH of the sewage sludge to be adjusted prior to storage. EPA only proposed to require that the pH be adjusted at the time of use or disposal. Thus, the only cost attributable to part 503 would be the cost of one pH adjustment at the time of use or disposal.

The commenters presented several other reasons for retaining Option 6 in its current form. These include the following. First, nutrient problems could result when high pH sewage sludge is land-applied (micro nutrients

[2] For example, § 503.32(b)(5) prohibits the harvesting of food crops with harvested parts below the land surface up to 38 months after land application of a Class B sewage sludge.

[3] These alternatives are Class B, Alternative 2 (treat sewage sludge in a Process to Significantly Reduce Pathogens (PSRP)) and Class B, Alternative 3 (treat sewage sludge in a process that is equivalent to a PSRP). See § 503.32(b)(3) and § 503.32(b)(4).

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are less available for plant uptake in high pH soils, particularly in coastal plains). Second, the high calcium content of the sewage sludge will lower the agronomic rate for the application site. Third, the effectiveness of herbicides applied to a site will be reduced because herbicides are less available in high pH soils. Finally, sewage sludge with a high pH may induce manganese deficiency because manganese is more water soluble at high pH and, thus, may be removed from a site through leaching to ground water. Some commenters also indicated that if Option 6 is changed, "unstabilized" sewage sludge could be stockpiled or stored and could cause harm to public health. Other commenters indicated there have been no vector attraction problems in cases where the pH of the sewage sludge is adjusted prior to storage, but not at the time of use or disposal.

The only comment on the proposed change to Options 7 and 8 (i.e., percent solids) suggest that these options are often relied on by small POTWs. Thus, the change may have an economic impact on those POTWs.

After further review, EPA concluded that the time when vector attraction reduction Options 6, 7, and 8 have to be met should not be changed. In cases where Option 6 is met prior to storage of the sewage sludge, the pH of the sewage sludge could drop during storage. The Agency agrees, however, that there have been no documented cases of vector attraction problems when this occurs, and that it is desirable to reduce the attractiveness of stored sewage sludge to vectors. In addition, there are measures that can be taken to keep the pH of the sewage sludge from dropping during storage. Thus, the time when Option 6 can be met (i.e., any time before the sewage sludge is used or disposed) remains unchanged.

In the case of Options 7 and 8, the Agency is not aware of any documented cases concerning protection of public health and the environment when those options are met prior to use or disposal. Thus, the time when Options 7 and 8 can be met (i.e., any time before the sewage sludge is used or disposed) also remains unchanged.

J. Time Period for Vector Attraction Reduction Option 10

In the October 25, 1995, notice, EPA proposed to modify the part 503 regulation to allow the permitting authority to change the time period sewage sludge has to be incorporated into the soil in vector attraction reduction Option 10. Vector attraction reduction Option 10 requires incorporation of sewage sludge into the soil within six hours after it is land-applied or surface-disposed. This reduces the attraction of vectors to the sewage sludge by placing a barrier between the sewage sludge and the vectors. EPA proposed this change to allow the permitting authority to consider site-specific conditions (e.g., the remoteness of the land application site) that may affect the time period during which sewage sludge can be incorporated into the soil.

Commenters supported the proposed change. However, one commenter asked EPA to modify the language so as to make it clear that, while the permitting authority may relax the time requirements in Option 10, the permitting authority could not tighten them. EPA is rejecting this suggestion because there may be circumstances in which more rapid soil incorporation is necessary to protect public health and the environment.

The current regulation authorizes the permitting authority to modify the existing part 503 requirements where warranted by circumstances. Section 503.5(a) indicates that a permitting authority may impose additional or more stringent requirements than the requirements in part 503 if necessary to protect public health and the environment. Section 503.5(b) indicates that a State or political subdivision thereof can establish additional or more stringent requirements than those in part 503 for any reason.

EPA is today amending § 503.33(b)(10)(i) to allow the permitting authority to increase the time period during which sewage sludge has to be incorporated into the soil. Only the permitting authority can authorize a time period that is different from the time period in part 503.

K. Technical Corrections

In the October 25, 1995 Notice, EPA proposed several technical corrections to part 503 that were minor in nature and that clarified some of the technical requirements of the part 503 regulation. Commenters supported the clarifications. Today's final amendment makes the following technical corrections to the part 503 regulation with the one exception discussed below.

1. Sections 503.16(a)(1) and 503.26(a)(1)—Frequency of Monitoring

Sections 503.16(a)(1) and 503.26(a)(1) contain the requirements for monitoring for pollutants, pathogen densities, and vector attraction reduction. Those sections indicate there are pathogen density requirements in § 503.32(b)(3) and (b)(4). This is incorrect. Today's final amendment deletes the reference to § 503.32(b)(3) and (b)(4) from § 503.16(a)(1) and § 503.26(a)(1).

Sections 503.16(a)(1) and 503.26(a)(1) also indicate that the frequency of monitoring requirements apply to vector attraction reduction Option 5 in § 503.33(b)(5) and Option 6 in § 503.33(b)(6). This also is incorrect. Today's final amendment deletes the reference to vector attraction reduction Options 5 and 6 from § 503.16(a)(1) and § 503.26(a)(1).

2. Section 503.17(b)(7)—Recordkeeping for Land Application of Domestic Septage

Today's final amendment changes § 503.17(b)(7) by changing an incorrect reference.

3. Section 503.18—Reporting

Today's final amendment corrects the omission of a reporting date in the part 503 regulation by inserting February 19th in § 503.18(a)(2).

4. Section 503.21(c)—Contaminate An Aquifer

Today's final amendment corrects the reference to the maximum contaminant level for nitrate in § 503.21(c). On January 30, 1991, EPA published a regulation (56 FR 3526) that changed the reference for the maximum contaminant level for nitrate from 40 CFR 141.11 to 40 CFR 141.62(b). That change was effective July 30, 1992. For this reason, the reference to the maximum contaminant level for nitrate in the definition of contaminate an aquifer is being changed to 40 CFR 141.62(b) in today's final rule.

5. Section 503.22(b)—General Requirements

Today's final amendment changes § 503.22(b) by correcting the statutory reference and by inserting the appropriate date.

6. Section 503.32(a)(3)—Pathogens

In the October 1995 notice, EPA indicated that pathogen Class A, Alternative 1 only applies to thermal processes such as anaerobic digestion, and does not apply to composting. Upon further review, EPA concluded that the time/temperature conditions in Class A, Alternative 1 can be achieved through composting. If the temperature of every particle of the composted sewage sludge is raised to the appropriate value for the appropriate time period, *Salmonella sp.* bacteria, enteric viruses, and viable helminth ova in the sewage sludge are reduced to below detectable levels. For this reason, the proposed change to § 503.32(a)(3) to exclude composting is not being made.

7. Appendix B to Part 503—Pathogen Treatment Processes

The description of Process to Further Reduce Pathogens (PFRP) No. 6 (Gamma ray irradiation) is corrected to insert the phrase "at dosages of at least 1.0 megarad at room temperature (ca. 20° C)" that was omitted inadvertently.

V. Final Amendments to the Part 503 Incineration Requirements

A. Compliance Period

In the October 25, 1995, proposal, EPA proposed to amend § 503.2 to require compliance with the revised incineration requirements in subpart E of part 503 as expeditiously as practicable, but in no case later than 90 days after publication of the final amendment. If compliance with the revised subpart E requirements required construction of new pollution control facilities compliance had to be achieved as expeditiously as practicable but no later than 12 months after publication of today's final amendment.

Commenters indicated that 90 days are not enough to comply with the revised incineration requirements, particularly the requirement to install continuous emission monitors for total hydrocarbons (THC). EPA agrees, and has increased the time to comply with the revised requirements in subpart E.

Today's final rule amends § 503.2 by adding a new paragraph (d) that, unless otherwise specified in subpart E, requires compliance with the revised subpart E requirements in the final rule as expeditiously as practicable, but in no case later than 12 months after the effective date for the final rule. If new pollution control facilities have to be constructed to comply with the revised requirements, compliance with the revised subpart E requirements shall be achieved as expeditiously as practicable, but no later than 24 months after the effective date for the final rule.

B. Site-Specific Exemption From Frequency of Monitoring, Recordkeeping, and Reporting Requirements

The October 25, 1996, notice proposed to amend the applicability section in § 503.40 to exempt sewage sludge incinerators on a site-specific basis from the frequency of monitoring, recordkeeping, and reporting requirements for a specific pollutant in defined circumstances. Under the proposed approach, if the limit for arsenic, cadmium, chromium, lead or nickel, determined pursuant to § 503.43, is significantly higher than the measured concentration for the pollutant, the permitting authority could exempt the pollutant from the above requirements so long as the incinerator continued to operate within the values for the incinerator operating parameters established during the performance test required by the regulation. The notice requested comments on whether this approach is appropriate, and how to determine whether the calculated limit for a pollutant is significantly higher than the measured concentration of the pollutant in sewage sludge.

All commenters favored allowing such an exemption. With respect to how to determine whether a calculated pollutant limit is significantly higher than the measured concentration, commenters suggested two different approaches. The first limits the availability of the exemption for a pollutant to circumstances in which the monthly average pollutant concentration did not exceed 50 percent of the calculated limit. The second approach varies the frequency of monitoring, based on the percentage the measured concentration bore to the calculated limit. For example, the frequency of monitoring could be reduced to once per year if the measured concentration is 80 percent of the calculated limit. If the measured concentration is 60 percent of the calculated limit or less, there would be no monitoring requirement for that pollutant.

After considering this proposed change further, EPA has decided not to amend the regulation for the following reasons. Although several commenters offered suggestions on how to determine whether a calculated limit is significantly higher than the measured concentration for a pollutant, no commenter provided any test the permit writer could apply for ensuring that, in fact, the actual concentration for the pollutant falls substantially below the calculated limit. Moreover, there are questions about how much data are needed to support an exemption and the period of the exemption (e.g., one year, five years, or forever). In addition, there are many factors that could affect the actual concentration of a pollutant in sewage sludge (e.g., variability of the pollutant in the influent to the treatment works).

Another concern EPA has about the proposed change is the assumption that the incinerator will be operated as it was during the performance test. There are many factors that affect the performance test results (e.g., feed rate and excess oxygen). If these factors change, the calculated limits for a pollutant could change.

Given the concerns about changes in both the calculated limit and the measured concentration of a pollutant in sewage sludge, EPA concluded that the part 503 regulation should not provide for a site-specific exemption from the frequency of monitoring, recordkeeping, and reporting requirements in subpart E. Thus, today's notice does not amend § 503.40 to add a new paragraph (d).

C. Pollutant Limits for Arsenic, Cadmium, Chromium, Lead and Nickel

In the October 25, 1995 notice, EPA proposed several changes to the requirements in § 503.43 for sewage sludge that is incinerated. As explained in greater detail in the preamble to the proposal (60 FR 54777–54779, October 25, 1995), 40 CFR 503.43 establishes limits on the allowable "daily concentration" of arsenic, cadmium, chromium, lead and nickel in sewage sludge. The allowable limits are calculated using equations set forth in the regulation, and are dependent on a number of factors that vary with specific conditions at an incinerator site. To calculate the limit for each of the five pollutants, the regulation requires determination of two factors that are dependent on site-specific conditions. They are: (1) A dispersion factor (DF)—how pollutants are dispersed when they exit the incinerator stack, and (2) the incinerator's control efficiency (CE)—how efficiently the incinerator removes a pollutant in the sewage sludge that is incinerated. The regulation requires use of an air dispersion model to determine the DF and a performance test to establish the CE, both of which must be specified by the permitting authority. In addition, in the case of chromium, the regulation requires the permitting authority to determine whether the risk specific concentration (RSC) for chromium, which is used to establish the allowable chromium sewage sludge pollutant concentration, should be based on default values provided in the regulation (Table 2 of § 503.43) or determined by a site-specific calculation.

The requirement for site-specific action by the permitting authority has significant implications for compliance and enforcement of the regulation. Site-by-site tailoring of a particular incinerator's requirements effectively defers the determination of an individual incinerator's limits until action by the permitting authority. Given the resource-intensive nature of these site-by-site determinations and constraints on available resources, EPA

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proposed to adopt a different approach. The Agency proposed to delete the requirement for the permitting authority to approve the air dispersion modeling and performance tests used to determine DF and CE, respectively, as well as modify the requirement for the permitting authority to determine the appropriate chromium RSC. EPA also proposed to clarify the definition of the allowable concentration of a pollutant in sewage sludge.

1. Average Daily Concentration

EPA proposed to revise 40 CFR 503.43(c)(1) and (d)(1) to clarify that the calculated sewage sludge concentration is an *average* daily concentration based on the number of days in a month that the incinerator operates. This change made the calculated concentration consistent with the risk specific concentration (i.e., the allowable ambient air concentration for a pollutant developed through risk assessment) for a pollutant.

Comments on this proposed changed were generally favorable, but the commenters asked for a clarification with respect to the number of days in the month the incinerator operates. Commenters questioned whether the calculated limit was a monthly average. Upon further review, EPA concluded that it is not appropriate to calculate the allowable concentration of a pollutant in sewage sludge fed to a sewage sludge incinerator using the number of days in the month the incinerator operates. Instead, the average daily concentration should be the arithmetic mean of the concentration of a pollutant in the samples collected and analyzed during a month. Thus, if one sample is collected and analyzed during the month, the average daily concentration is the concentration of a pollutant in that sample. If two samples are collected and analyzed during the month, the average daily concentration is the arithmetic mean of the concentration of a pollutant in those two samples. Likewise, if only one sample is collected and analyzed during the year, the average daily concentration is the concentration for a pollutant in that one sample.

After considering the comments on the proposed change to the allowable concentration of a pollutant in sewage sludge, EPA concluded that the allowable concentration should be an average daily concentration. Thus, today's notice amends § 503.43(c)(1) and (d)(1) by changing the definition of "C" in equations (4) and (5), respectively, to average daily concentration. Today's notice also amends § 503.41—Special Definition—by adding the following definition for average daily concentration: "Average daily concentration is the arithmetic mean of the concentration of a pollutant in milligrams per kilogram of sewage sludge (dry weight basis) in the samples collected and analyzed in a month."

2. Approval of Air Dispersion Model and Performance Test

As noted above, the October 1995 notice proposed to amend the regulation to delete the requirement in § 503.43(c)(2), (c)(3), (d)(4), and (d)(5) for the permitting authority to specify the air dispersion model and performance test used to calculate the sewage sludge pollutant limits. EPA received no comments on these proposed changes. Therefore, today's notice amends § 503.43 (c)(2), (c)(3), (d)(4), and (d)(5) by deleting the requirement for the permitting authority to specify how to meet these requirements.

EPA also proposed amending § 503.43(d)(3) to delete the requirement for the permitting authority to specify one of the two means of calculating the risk specific concentration for chromium. EPA received only one comment, and it favored the proposed change. Thus, today's final rule amends § 503.43(d)(3) by deleting the requirement for the permitting authority to specify how to meet this requirement.

The October 1995 notice also proposed to add a new paragraph (e) to § 503.43. This paragraph contains requirements for air dispersion modeling and performance tests to serve the purpose of the deleted requirements in § 503.43(c)(2), (c)(3), (d)(4), and (d)(5) that the permitting authority specify the air dispersion model and performance test.

The proposed § 503.43(e)(1) required that any air dispersion model and performance test be "consistent with good air pollution control practices for minimizing air pollution." One commenter objected to this provision asserting that such a requirement was inappropriate. In the commenter's view, an air dispersion model and a performance test are used to measure something, not to minimize air emissions. EPA concurs with the comment on § 503.43(e)(1). Thus, today's final amendment only requires that the air dispersion model be appropriate for the geographical, physical, and population characteristics at the incinerator site, and that the performance test be appropriate for the type of sewage sludge incinerator.

Proposed § 503.43(e)(2) required that an air dispersion modeling protocol be submitted to the permitting authority within 30 days of the publication date of this final amendment. The permitting authority would then have 30 days to review the protocol, including the selected air dispersion model, and provide comments on the protocol. If the permitting authority did not object within 30 days, the protocol could be used to determine the dispersion factor for the incinerator site. No comments were received on this proposed requirement.

Upon further review, EPA concluded that the air dispersion model protocol should not be submitted to the permitting authority 30 days from the date of publication of this final amendment because the Agency lacks the resources to review and comment on the protocol within 30 days after it is received. Instead, today's action amends § 503.43(e)(2) to require that results of air dispersion modeling initiated after September 3, 1999, be submitted to the permitting authority no later than 30 days after completion of the modeling. This requirement does not apply to air dispersion modeling completed prior to September 3, 1999.

EPA encourages the person who conducts the air dispersion modeling to coordinate with the permitting authority prior to conducting the modeling. This could prevent future problems if the permitting authority has concerns about the air dispersion modeling.

As indicated in the October 1995 notice, EPA has published several guidance documents that contain recommendations on how to select appropriate air dispersion models. These models consider such site-specific factors as stack height, stack diameter, stack gas temperature, exit velocity and topography of surrounding terrain. See Guidelines on Air Quality Models in Appendix W to 40 CFR part 51 and in the U.S. EPA, "Technical Support Document for Sewage Sludge Incineration" at Section 5.6.1 (EPA 822/R–93–003, November 1992). Information on air quality models also can be obtained from the Support Center for Regulatory Air Models (SCRAM) on the Technology Transfer Network, (http://ttnwww.rtpnc.epa.gov/).

Proposed § 503.43(e)(3) contained the minimum procedures for conducting a performance test. A performance test measures the degree to which a sewage sludge incinerator and associated air pollution control devices remove a pollutant. As previously explained, the pollutant control efficiency from a performance test is used to calculate the allowable concentration of a pollutant in sewage sludge fired in the incinerator.

The procedures in the proposed § 503.43(e)(3) parallel the procedures in 40 CFR 60.8, a regulation that describes the general procedures for conducting performance testing under the Clean Air Act. EPA concluded that it is necessary to specify minimum procedures for conducting performance tests now that the part 503 incineration requirements are self-implementing.

The procedures in proposed § 503.43(e)(3)(i) require that the performance test be conducted under representative incinerator conditions at the highest expected sewage sludge feed rate within design specifications. A commenter suggested that EPA should recognize the variability in the feed rate during the operation of the sewage sludge incinerator.

EPA agrees that the feed rate used in performance tests may well differ from the sewage sludge feed rate during day-to-day operation of the incinerator. Part 503 takes this into account by requiring that the "highest expected" feed rate be used in the performance test. Because the actual feed rate is expected to be equal to or less than the highest expected feed rate, the actual feed rate should not cause the control efficiency for a pollutant to decrease during the day-to-day operation of the incinerator.

The above comment is more applicable to the feed rate used to calculate the limit for a pollutant than to the feed rate during a performance test. As provided in the current rule, the sewage sludge feed rate used in the equations in § 503.43(c)(1) and (d)(1) to calculate the limit for a pollutant takes the feed rate during operation into account. The feed rate used in these equations is either the average daily amount of sewage sludge fired in all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located for the number of days in a 365 day period that each sewage sludge incinerator operates, or the average daily design capacity for all sewage sludge incinerators within the property line of the site where the sewage sludge incinerators are located (see § 503.41(j)). This definition recognizes potential variability in the actual feed rate, and accounts for the variability by providing for averaging over a 365 day period.

The October 25, 1995, proposal required in § 503.43(e)(3)(ii) that the permitting authority be notified at least 30 days prior to a performance test so that the permitting authority may have the opportunity to comment on the test protocol and test methods, and to observe the test. This requirement does not apply in cases where performance tests were conducted prior to September 3, 1999. This change is included in today's final rule as proposed.

EPA has decided not to adopt a provision it proposed as § 503.43(e)(3)(iii) that would have required that performance testing facilities contain safe sampling platforms and safe access to them because that provision is not related directly to the use or disposal of sewage sludge. In addition, for sewage sludge incinerators subject to 40 CFR part 60, subpart O, the proposed provision reflects a similar provision in 40 CFR 60.8 concerning performance tests. There also may be other federal or state safety requirements that govern the way performance tests are conducted. Therefore, the Agency concluded that this provision does not need to be in today's final rule.

Today's final § 503.43(e)(3)(iii), proposed as subparagraph (e)(3)(iv), concerns the number of runs for a performance test. Each performance test shall consist of three runs. The arithmetic mean of the results of the three runs is the control efficiency for a pollutant. All commenters on this proposal agreed with the requirement. Thus, this requirement in today's final rule is the same as it was in the proposal.

Today's action also promulgates § 503.43(e)(4) as proposed on October 25, 1995. This provision requires that the calculated pollutant limits be submitted to the permitting authority within 30 days of completion of air dispersion modeling and performance tests.

As proposed, § 503.43(e)(5) requires new air dispersion modeling and performance testing when there are "significant changes" in specific aspects of the site or in incinerator operating conditions. One commenter asked how high above the feed rate in the performance tests or the feed rate used to calculate pollutant limits can the actual feed rate be before a new performance test or a new limit for a pollutant is required. One possibility is to allow the actual feed rate to increase by a certain percentage (e.g., 10 percent) of the feed rate in the performance test or the feed rate used to calculate a limit before a new performance test has to be conducted or a new limit for a pollutant calculated.

Another possibility is to decide how much the actual feed rate can increase on a case-by-case basis. Under this approach, all the factors that affect the decision on whether to conduct a new performance test or calculate a new limit can be considered. For example, if the measured concentration of a pollutant in sewage sludge is significantly lower than the calculated limit for the pollutant, public health may still be protected if the feed rate increases by more than 10 percent, while in another case, an increase of 10 percent in the feed rate may result in a pollutant limit being exceeded.

Today's final rule does not specify when new performance tests have to be conducted or when new pollutant limits have to be calculated. Section 503.43(e)(5) indicates that significant changes in incinerator operating conditions will require that new performance tests be conducted. The decision on whether a change in operating conditions, including feed rate, is significant will be determined on a case-by-case basis by the permitting authority. Protection of public health should be the major factor in deciding whether to conduct new performance tests or calculate new pollutant limits.

3. Technical Corrections

The October 1995 notice also proposed three technical corrections to § 503.43(d)(1) and (d)(2). Two of the changes corrected typographical errors in the definition of terms in (d)(1) and the other change corrected a reference in (d)(2). These changes are included in today's final rule.

4. Air Emissions Analytical Methods

The preamble in the October 1995 notice requested comments on whether to specify methods to analyze emissions from sewage sludge incinerator stacks in part 503. Commenters on the proposal recommended that EPA not include specific test methods for air emissions in part 503 because EPA approved methods already are required in other regulations. EPA agrees with the commenters.

EPA's Office of Air Quality Planning and Standards has approved Method 29 in 40 CFR part 60, Appendix A as a method for determining compliance with the particulate emissions standards in subpart O of 40 CFR part 60 (Standards of Performance for Sewage Treatment Plants), and the beryllium and mercury emissions standards in subparts C and E, respectively, of 40 CFR part 61 (National Emission Standards for Hazardous Air Pollutants). This method only requires that one sampling train be used. The methods in 40 CFR part 266 (Boilers and Industrial Furnaces), Appendix IX, section 3.1 also can be used to measure emission rates. When those methods are used, more than one sampling train is needed. Because both methods are available, today's final rule does not specify a method to measure emission rates. EPA recommends, however, that Method 29

be used during the performance test required by part 503 because that method only requires one sampling train.

D. Management Practices

Sections 503.45(a)(1) and § 503.45(b)–(d) of the sewage sludge regulation require the installation of instruments that continuously monitor total hydrocarbons (THC) concentration, oxygen concentration, information to determine moisture content in the sewage sludge incinerator stack emissions, and combustion temperature, respectively. These instruments must be installed, calibrated, operated, and maintained "as specified by the permitting authority."

As explained in the October 1995 proposal (60 FR 54779), the part 503 regulation required the permitting authority to specify the manner in which the above instruments are installed calibrated, operated, and maintained because, at the time the regulation was published, there was only limited EPA guidance in this area. Because there is now EPA guidance on how to install, calibrate, operate, and maintain the above instruments, EPA proposed to amend § 503.45(a)(1) and § 503.45(b)–(d) to delete the requirement that the permitting authority specify how the instruments required by those sections are installed, calibrated, operated, and maintained. With one exception, all comments received on the proposed changes concurred with the changes.

EPA received one comment suggesting alternative means of demonstrating compliance with the total hydrocarbons or carbon monoxide operational standards. The commenter suggested that EPA consider providing for the site-specific establishment and continuous monitoring of a minimum incinerator exhaust temperature, in lieu of continuous monitoring of total hydrocarbons or carbon monoxide. The commenter also suggested that the incinerator owner/operator be allowed to demonstrate a site-specific correlation between total hydrocarbons and carbon monoxide emissions as an alternative method of demonstrating compliance with either emissions limit. The Agency did not propose either of these alternatives in the October 25, 1995 proposal. However, in the preamble to the proposal, the Agency stated that it would study monitoring for other parameters, including temperature, to measure compliance with either the total hydrocarbon limit or the carbon monoxide limit and would decide whether further amendments to part 503 were needed as a result of the study. (60 FR 54779). EPA undertook this study and produced a report on the feasibility of alternatives to continuous monitoring of total hydrocarbons or carbon monoxide. A copy of the report, entitled "An Investigation of Alternative Means for Demonstrating Compliance with the part 503 Total Hydrocarbon Operational Standards," EPA 822–R–98–001 is in the rulemaking docket. The study indicated that, while technically feasible on a site-specific basis , either of these options would be extremely resource intensive and would involve the permitting authority in complex procedures to determine and approve site-specific temperature limits or site-specific total hydrocarbons/carbon monoxide correlations. As a result of these findings, the Agency, has decided not to pursue either the option of establishing and continuously monitoring for site-specific temperature limits or the option of establishing site-specific correlations between total hydrocarbons and carbon monoxide emissions in lieu of complying independently with either the 100 ppm total hydrocarbons or carbon monoxide emissions limits. However, the Agency invites the public to comment on whether these options for demonstrating compliance should be pursued further and to provide any additional information to supplement the report that EPA relied on in deciding not to allow for these alternatives at this time. Thus, the above changes are included in today's final rule.

In the October 1995 notice, EPA also proposed to delete the requirements in § 503.45 (e) and (f) for the permitting authority to specify the maximum combustion temperature for a sewage sludge incinerator and the values for the operating parameters for the air pollution control devices, respectively. These proposed changes help make the part 503 incineration requirements self-implementing. Commenters supported the proposed modifications, and they are included in today's final rule.

EPA also proposed to amend § 503.45 (e) to require that the maximum combustion temperature for the incinerator, which is based on information obtained during the performance test, not be exceeded significantly. EPA recognized that the combustion temperature of a sewage sludge incinerator could vary. Consequently, the Agency asked for comment on: (1) What averaging period should be used to determine the maximum allowable combustion temperature (daily average, hourly?) and (2) how much the maximum combustion temperature could vary from the performance test maximum combustion temperature.

Commenters' suggestions ranged from measuring maximum operating combustion temperature as a hourly average to a daily average, with temperature monitored hourly. EPA concluded that the operating combustion temperature for a sewage sludge incinerator should be the arithmetic mean of the hourly average temperature in the hottest zone of the furnace for the hours during the day the incinerator operates, and that the maximum allowable operating combustion temperature be based on the average combustion temperature during the performance test (see discussion below). Any variation in the operating combustion temperature over a day is not expected to significantly impact either the concentration of a pollutant in the emissions from the sewage sludge incinerator or the ambient air concentration for the pollutant and, therefore, is not expected to significantly impact public health. Thus, EPA is amending the part 503 regulation to add a new definition to § 503.41—Special Definitions—for incinerator operating combustion temperature as follows: "Incinerator operating combustion temperature is the arithmetic mean of the temperature readings in the hottest zone of the furnace recorded in a day (24 hours) when the temperature is averaged and recorded at least hourly during the hours the incinerator operates in a day."

As indicated above, EPA proposed that the maximum allowable operating combustion temperature be based on information obtained during the incinerator performance test required by § 503.43 (c)(3) and (d)(5). The proposed regulation required three separate runs for each performance test. Commenters argued that the maximum combustion temperature from each of the runs should be averaged to determine the maximum combustion temperature for the performance test and that temperature should then be increased by a certain percentage (e.g., 20 percent) to determine the maximum operating combustion temperature.

EPA agrees that an average should be used to describe the combustion temperature in a performance test. The Agency does not agree, however, that the maximum temperature from each run should be averaged and that average increased by a certain percentage to obtain the maximum operating combustion temperature. EPA concluded that the performance test combustion temperature should be the arithmetic mean of the average combustion temperature in the hottest zone of the furnace from each of the runs in a performance test. This accounts for variability in the combustion temperature because all of the continuously measured temperature readings are used to calculate the arithmetic mean. Thus, today's final rule amends § 503.41—Special Definitions—by adding the following definition for performance test combustion temperature: "Performance test combustion temperature is the arithmetic mean of the average combustion temperature in the hottest zone of the furnace for each of the runs in a performance test."

EPA also agrees that the performance test combustion temperature should be increased by a certain percentage to determine the maximum operating combustion temperature for an incinerator. After further review, EPA concluded that a 20 percent increase in the performance test combustion temperature is reasonable. The change in control efficiency resulting from a 20 percent increase in performance test combustion temperature is not expected to be significant because that change is not expected to result in a significant change in the concentration of a pollutant in the incinerator stack emissions and is not expected to result in a significant change in the allowable limit for a pollutant (control efficiency is one of the variables used to calculate the limit for a pollutant). Because neither the stack emissions concentration nor the allowable limit for a pollutant are expected to change significantly, public health is not expected to be impacted significantly with a 20 percent increase in performance test combustion temperature on an average daily basis. This is particularly true with respect to the pollutant limits because the limits are designed to protect public health from a lifetime of exposure (i.e., 70 years). In addition, most of the calculated pollutant limits for sewage sludge incinerators are higher (sometimes several orders of magnitude higher) than the measured sewage sludge concentration for a pollutant. Also, as indicated in the report titled "Human Health Risk Assessment for Use & Disposal of Sewage Sludge: Benefits of the Regulation" (EPA 822–R–93–005, November 1992), the estimated aggregate risk (i.e., risk to the entire exposed population) from exposure to emissions from sewage sludge incinerators prior to the establishment of the part 503 incineration requirements (i.e., baseline risk) is low. Because the baseline aggregate risk is low, a 20 percent increase in the performance test combustion temperature on an average daily basis is not expected to impact the risk to the exposed population from incineration of sewage sludge.

A 20 percent increase also provides flexibility needed to operate a sewage sludge incinerator, particularly multiple hearth incinerators. In addition, one of the commenters on the proposal recommended a 20 percent increase even though their recommended increase was in the maximum performance test combustion temperature. As mentioned above, EPA concluded that it is reasonable to apply the increase to the average temperature from the performance test. Thus, § 503.45(e) in today's final rule indicates that the arithmetic mean of the temperature readings in the hottest zone of the furnace recorded in a day when the temperature is average and recorded at least daily (i.e., the operating combustion temperature) shall not exceed the arithmetic mean of the average combustion temperature in the hottest zone of the furnace for each of the runs in the performance test (i.e., the performance test combustion temperature) by more than 20 percent.

Today's final rule amends § 503.45(f) to delete the requirement that the permitting authority specify the air pollution control device operating parameters. Instead, § 503.45(f) requires that the air pollution control device be appropriate for the sewage sludge incinerator and that the operating parameters for the air pollution control device indicate adequate performance of the device. As explained in the preamble to the proposal (60 FR 54780, October 25, 1995), EPA intended that the values for the air pollution control device operating parameters be expressed as a range, and requested comment on what the allowable range of values should be relative to the values determined during the performance test. EPA also requested comments on whether to standardize operating parameters for different air pollution control devices in today's final rule. Operating parameters for different types of air pollution control devices are presented in the "Technical Support Document for Sewage Sludge Incineration" in section 7.5 and Appendix M (EPA 822/R–93–003, November 1992).

All commenters opposed EPA establishing standardized operating parameters in part 503 for the different types of air pollution control devices. The operating parameters and the value for the operating parameter should be established on a case-by-case basis. However, if EPA decides to standardize operating parameters, commenters recommended that EPA establish average daily values, and allow flexibility in selecting the values for the operating parameters (e.g., allow values for the operating parameters that are as low as 70 percent of the average daily value in the performance test).

Because the operating parameters vary depending on the type of air pollution control device used and the values for the operating parameters depend on site-specific conditions, EPA agrees that those parameters and values should be determined on a case-by-case basis. Thus, today's § 503.45(f) does not standardize the operating parameters for the different types of air pollution control devices.

Section 503.45(f) in the proposal indicated that operation of the sewage sludge incinerator shall not cause a significant exceedence of the values for the air pollution control device operating parameters. One commenter requested that EPA define "significant exceedence" as the phrase was used in proposed § 503.45(f). The commenter suggested that EPA employ a concept that uses 20 percent and 40 percent ranges to define "significant exceedence."

Subpart O of 40 CFR part 60 (Standards for Performance for Sewage Sludge Plants) applies to sewage sludge incinerators when the material charged is at least 10 percent sewage sludge or when more than 2205 pounds of sewage sludge are charged per day, and when construction or modification of the incinerator commences after June 11, 1973. That subpart contains the requirements for the operation of the incinerator air pollution control device. For this reason, § 503.45 (f) in today's final rule requires that for sewage sludge incinerators subject to subpart O of 40 CFR part 60, operation of the air pollution control device shall not violate the requirements for the air pollution control device in subpart O.

For all other sewage sludge incinerators, § 503.45 (f) in today's final rule indicates that operation of the sewage sludge incinerator shall not cause a significant exceedence of the average value for the air pollution control device operating parameters from the performance tests required by § 503.43 (c)(3) and (d)(5). EPA decided not to define "significant exceedance" in this case at this time. The Agency is considering whether to request comments on the allowable ranges for the values for the air pollution control device parameters in a subsequent proposal to amend the part 503 regulation.

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EPA also proposed to add a new section § 503.45(h). As proposed, this provision would require that the instruments required in § 503.45(a)–(d) be appropriate for the type of sewage sludge incinerator, and shall be installed, calibrated, operated, and maintained "consistent with good air pollution control practice for minimizing air emissions." EPA received only one comment on this provision. The commenter argued that the phrase "consistent with good air pollution control practice for minimizing air emissions" is not pertinent. EPA agrees that the requirement to install certain instruments for measuring emissions, temperature, etc. is not directly related to emissions capture, and has deleted this phrase from the final rule.

E. Frequency of Monitoring

EPA proposed several changes to the frequency of monitoring requirements in § 503.46 for sewage sludge incinerators. 60 FR 54780–82, October 25, 1995.

1. *Mercury and beryllium.* In the case of mercury and beryllium [4], EPA proposed to delete the requirement that the permitting authority specify the monitoring frequency, and that the frequency be the frequency in the National Emission Standard for Hazardous Air Pollutant (NESHAP) for beryllium in subpart C of 40 CFR part 61 and in the NESHAP for mercury in subpart E of 40 CFR part 61. EPA also requested comment on whether to establish a periodic monitoring frequency for beryllium and mercury for sewage sludge incinerators that is different from the monitoring frequencies in the NESHAP.

The October 1995 notice stated that the Agency was considering three options for the frequency of monitoring for mercury. The options were: (1) Periodic (quarterly or annual) stack or sewage sludge sampling, (2) periodic (monthly, quarterly, or annual) sewage sludge sampling, and (3) sewage sludge sampling based on the amount of sewage sludge fired in a sewage sludge incinerator. For beryllium, EPA indicated that periodic stack sampling only for sewage sludge incinerators that must comply with the beryllium emission standard in 40 CFR 61.32(a) was being considered.

Most of commenters opposed additional beryllium and mercury monitoring beyond that required by the current NESHAP for beryllium and mercury. One commenter recommended a semi-annual frequency for mercury monitoring if mercury in the stack emissions exceeds 1600 grams per day (the NESHAP requires annual monitoring if mercury in the stack emissions exceeds 1600 grams per day). Another commenter recommended sewage sludge sampling for mercury according to the part 503 frequency of monitoring for arsenic, cadmium, chromium, lead, and nickel rather than stack emission sampling. Another commenter recommended no stack sampling and that the monitoring frequency for mercury be based on the amount of sewage sludge fired in a sewage sludge incinerator. [5]

EPA has decided not to establish additional monitoring requirements for beryllium and mercury. The Agency concluded that monitoring frequencies in the beryllium and mercury NESHAPs are reasonable. Thus, today's final regulation amends § 503.46(a)(1) to delete the requirement for the permitting authority to designate the frequency of monitoring for beryllium and mercury in emissions. The regulation, as amended, now provides that the monitoring frequency for beryllium and mercury is the frequency in the beryllium and mercury NESHAP, respectively.

Even though the mercury NESHAP only requires annual monitoring if mercury in the stack emissions exceeds 1600 grams per day, the frequency can be increased on a case-by-case basis by the permitting authority when necessary to protect public health and the environment (see § 503.5). Thus, in areas like the Great Lakes where mercury emissions are a major concern, the monitoring frequency for mercury may be increased by the permitting authority, or the person who fires sewage sludge in a sewage sludge incinerator could elect to increase the mercury monitoring frequency.

2. *Reduction in frequency of sewage sludge monitoring.* The October 1995 notice also proposed to amend § 503.46(a)(3). This section currently allows the permitting authority to reduce the frequency of monitoring for pollutants after the sewage sludge has been monitored for two years at the frequency in Table 1 of § 503.46. In no event, however, may monitoring be less frequent than once per year. EPA proposed to delete the requirement for monitoring at least once per year.

Commenters supported the proposed change. Thus, for the reasons explained above in the previous discussions for the frequency of monitoring for land application and surface disposal, today's final rule amends § 503.46(a)(3) by deleting the at-least-once-per-year monitoring frequency requirement.

3. *Continuous monitoring of THC, oxygen concentration, information to determine moisture content, and combustion temperature.* As previously explained, the current regulation requires continuous monitoring of THC, oxygen concentration, information to determine moisture content, and combustion temperature. EPA proposed in the October 1995 notice to amend this requirement so as to permit monitoring at less frequent intervals. The Agency requested comment on how to determine when less frequent monitoring should be authorized (e.g., should the frequency of monitoring be based on the amount of sewage sludge fired annually or on the number of days in a year an incinerator operates?).

All commenters supported the proposed change to delete the requirement for continuous monitoring for the four parameters. They also offered several recommendations on when to allow less than continuous monitoring of the exit gas. Some commenters recommended exempting fluidized bed incinerators from the continuous monitoring requirement entirely or any incinerator after two years of continuous monitoring if the monitoring results indicate minimal THC concentrations in the emissions. Others recommended exempting an incinerator when the amount of sewage sludge fired is below a specified amount or exempting an incinerator if a demonstration can be made that temperature can be measured continuously in lieu of measuring THC continuously. After reviewing the comments, EPA has decided not to adopt any of the recommendations. EPA concluded that the commenters had failed to provide adequate technical or scientific support for relieving an incinerator from the continuous monitoring requirements. The commenters failed to show how compliance with the applicable requirements could be demonstrated in the absence of continuous monitoring.

4. *Operating parameters for air pollution control devices.* As explained in the preamble to the proposal (60 FR 54779, October 25, 1995), and as discussed above, § 503.45 currently requires the operation of a sewage sludge incinerator's air pollution control device be specified by the permitting authority. Section 503.46(c) requires the permitting authority to specify the frequency of monitoring for the air pollution control device operating parameters. EPA proposed to change § 503.46(c) to delete the requirement for the permitting authority to specify the monitoring frequency for air pollution control device operating parameters and to require that those parameters be monitored at least daily. Commenters supported these proposed changes.

Currently, incinerators that charge more than 10 percent sewage sludge (dry weight) or that charge more than 2205 pounds of sewage sludge per day; that commence construction or modification after June 11, 1973; and that have a wet scrubbing device are required to measure and record the pressure drop of the gas flow through the wet scrubber continuously (see 40 CFR 60.153). Incinerators that meet the first two of the above requirements and that have another type of air pollution control device also may have to monitor air pollution control device operating parameters continuously, if required by the EPA Administrator. The Agency decided not to establish additional frequency of monitoring requirements in today's final rule for sewage sludge incinerators subject to 40 CFR part 60. Thus, the final rule indicates for sewage sludge incinerators subject to part 60, the frequency of monitoring for the air pollution control device operating parameters shall be the frequency of monitoring in subpart O of part 60.

For all other sewage sludge incinerators, the frequency of monitoring for the air pollution control device operating parameters in today's rule is at least daily, as proposed. EPA is considering whether to establish a continuous monitoring requirement for the air pollution control device operating parameters in a subsequent proposal to amend the part 503 regulation. Continuous monitoring is consistent with the monitoring requirements for air pollution control device operating parameters now being considered by other EPA programs. Until a different frequency of monitoring requirement is established, however, the frequency of monitoring for the air pollution control device operating parameters for sewage sludge incinerators not subject to the requirements in subpart O of part 60 is at least daily.

F. Recordkeeping

Today's action amends § 503.47(f) by changing the requirement to record the maximum combustion temperature for the sewage sludge incinerator to a requirement to record the operating combustion temperatures for the sewage sludge incinerator. This change makes § 503.47(f) consistent with the new definition of operating combustion temperature in § 503.41(i).

VI. Final Amendment to Part 403

Part 503, as published on February 19, 1993, restricted the total chromium concentration of land-applied sewage sludge to prevent possible plant injury (i.e., phytotoxicity). On November 15, 1994, the U.S. Court of Appeals for the D.C. Circuit remanded the total chromium land application pollutant limits for modification or additional justification, concluding that EPA lacked an adequate evidentiary basis for the risk-based total chromium limits. *Leather Industries of America* v. *Environmental Protection Agency*, 40 F.3d 392 (DC Cir. 1994). On October 25, 1995, EPA promulgated a final rule that deleted total chromium from the pollutants regulated when sewage sludge is applied to the land (60 FR 54764, October 25, 1995). EPA concluded that there is no current basis for establishing total chromium limits for land-applied sewage sludge.

At the same time EPA deleted the total chromium limits from the part 503 land application requirements, the Agency took two other actions. First, EPA removed total chromium from the list of pollutants in Appendix G—Section I (40 CFR part 403) for which a removal credit is available when sewage sludge is land-applied. EPA removed total chromium because the Appendix G—Section I list is limited to those pollutants specifically regulated in part 503. Second, to ensure the continued eligibility of chromium for a removal credit when sewage sludge is land-applied, EPA added a footnote to the table in Appendix G—Section II. This table lists pollutants not regulated in part 503 that are eligible for a removal credit so long as the concentration of the pollutant in sewage sludge does not exceed the concentration for the pollutant in the table. The footnote stated that determination of a concentration limit for total chromium in sewage sludge that is land-applied would be made on a case-by-case basis. Case-by-case determinations would continue until EPA published a concentration for total chromium in Appendix G—Section II for land-applied sewage sludge.

EPA reviewed the part 503 land application risk assessment for total chromium, and on October 25, 1995, proposed to establish the concentration for total chromium for removal credit purposes in Appendix G—Section II at 12,000 mg/kg (60 FR 54771). This is the value determined to be protective of ground water in the part 503 land application risk assessment. The ground-water pathway was the pathway that resulted in the most stringent limit for total chromium after the phytotoxicity and animal grazing pathways were found to be inappropriate (see EPA's reanalysis of the exposure pathways for total chromium in land-applied sewage sludge in the docket for the October 25, 1995, proposal). Several comments were received on the proposal.

One commenter stated that a numerical value for total chromium in Appendix G—Section II for land-applied sewage sludge is not necessary as a condition for granting a removal credit for total chromium. The commenter believes that the Clean Water Act, as amended, provides EPA the authority to grant a removal credit without having a numerical value for the pollutant in Appendix G—Sections I or II. EPA disagrees with this comment. EPA's position is that a numerical value for the pollutant must be established in Appendix G—Sections I or II for the POTW to be able to grant a removal credit to the indirect discharger for that pollutant. As articulated in the preamble to EPA's recent pretreatment streamlining rule, a POTW or industrial user can currently petition the Agency to establish a Part 503 standard or an amendment to Part 403, Appendix G—Section II for a pollutant along with an analysis of the impact of the pollutant on the use or disposal of its sewage sludge. Upon promulgation of the Part 503 standard or listing of the pollutant in Part 403, Appendix G—Section II, the pollutant would be eligible for inclusion in an application for a removal credit.

With respect to the numerical limit for total chromium, several commenters took issue with some of the assumptions underlying the proposed numeric limit in Appendix G—Section II. Specifically, the commenters indicated that there are problems with the Agency's land application ground-water pathway exposure assessment, which was the basis for the proposed numerical value for total chromium in land-applied sewage sludge in Appendix G—Section II. In the commenters' views, the values for the land application site parameters and the pollutant-specific parameters used in the ground-water pathway analysis are too conservative. Moreover, the commenters believe that EPA's assessment erroneously relied on parameters associated with chromium

[4] The preamble to the proposal explains the current standards and monitoring requirements for incineration of sewage sludge containing mercury and beryllium. 60 FR 54780, October 25, 1995.

[5] One commenter also requested clarification of the applicability of the beryllium NESHAP to sewage sludge incinerators. The beryllium NESHAP applies to incinerators that process beryllium-containing waste, as defined in 40 CFR 61.31(g). Thus, if sewage sludge contains beryllium-containing waste and the sewage sludge is fired in a sewage sludge incinerator, the sewage sludge incinerator is subject to the beryllium NESHAP.

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in its hexavalent form rather than in the trivalent form.

EPA disagrees that the values for the land application site parameters (i.e., soil type, depth to groundwater, and thickness of aquifer) used in the ground-water pathway exposure analysis are too conservative. Because food crops are grown in sandy soils and because sewage sludge is applied to sandy soils, the Agency assumed sand, which has a high pollutant transmission potential, as the soil type when evaluating the ground-water pathway. Likewise, it is not unreasonable to assume that there will be circumstances in which crops will be grown on land that has a depth to groundwater of one meter. Similarly, it is likely that in dryer climates the thickness of the aquifer below the application site could be as small as one meter. Given the potential for land application in such conditions, the values EPA used for the site parameters in the ground-water pathway analysis are reasonable.

EPA agrees, however, that the numerical values for pollutant-specific parameters used in the ground-water pathway analysis are inappropriate for modeling either trivalent chromium or total chromium. This is because the numerical value for the human health endpoint (i.e., maximum contaminant level) used in the ground-water pathway analysis is based on exposure to hexavalent chromium (see 56 FR 3537, January 30, 1991), and because the numerical value for the partition coefficient (KD value) used in the ground-water pathway analysis is what would be expected for hexavalent chromium. EPA concluded, therefore, that the 12,000 mg-chromium/kg-sewage sludge value proposed for total chromium in Appendix G—Section II on October 25, 1995, is for the hexavalent form of chromium in sewage sludge that is land-applied.

Given that the 12,000 mg/kg concentration is for hexavalent chromium only, EPA could either establish the concentration limit in Appendix G—Section II for hexavalent chromium, or determine an appropriate concentration for total chromium. EPA rejected the option of setting a concentration limit for hexavalent chromium only. It is extremely difficult to determine the concentration of hexavalent chromium in sewage sludge for two reasons. First, it is present in sewage sludge at very low levels relative to trivalent chromium levels. Second, hexavalent chromium's high chemical reactivity characteristics make it extremely difficult to quantify in analytical procedures. Therefore, EPA concluded that the chromium limit for land-applied sewage sludge on the list in Appendix G—Section II should be for total chromium.

To determine a limit for total chromium, which represents a mixture of both hexavalent and trivalent chromium, EPA had to determine concentrations for both hexavalent chromium and trivalent chromium that do not cause a reasonably anticipated adverse effect. As noted above, EPA already determined that if the hexavalent chromium concentration does not exceed 12,000 mg/kg, hexavalent chromium in sewage sludge that is land-applied will not have an adverse effect on public health and the environment. For trivalent chromium, formal ground-water modeling has not been performed. Therefore, EPA derived the concentration value for trivalent chromium for the ground-water pathway based on some assumptions.

EPA made two assumptions in using a simple model to determine the trivalent chromium concentration. First, the Agency assumed that all of the values for the land application site parameters in the ground-water model for hexavalent chromium are the same for trivalent chromium. That is, the soil type is sand, the depth to groundwater is one meter, and the thickness of the aquifer is one meter.

Second, EPA assumed that, with the exception of the oral reference dose (RfD), the pollutant-specific parameters for hexavalent chromium are the same for trivalent chromium, including the KD value of 59 l/kg. The RfD for hexavalent chromium used to derive the human health endpoint in the ground-water pathway is $5\times10_{-3}$ mg/kg-day. The RfD for trivalent chromium is 1 mg/kg-day—some 200 times greater. Because the ratio of the numerical values for the RfDs of trivalent to hexavalent chromium is 200, with all other land application site parameters and pollutant-specific parameters being equal for the two chromium valence species, the estimated allowable concentration value for trivalent chromium in sewage sludge is 200 times the allowable concentration for hexavalent chromium or 2,400,000 mg/kg. This is only a theoretical value because the actual concentration can never exceed one million milligrams per kilogram.

The above theoretical concentration for trivalent chromium is an extremely conservative estimate based on many comments that stated that the KD values for trivalent chromium are reported as high as several thousand l/kg. If KD values like these are used in the analysis, the estimated theoretical concentration for trivalent chromium would be higher.

As indicated in the Technical Support Document for Land Application of Sewage Sludge (EPA 822/R–93–001a, November 1992) on page 5–107, sewage sludge contains little, if any, hexavalent chromium because hexavalent chromium is reduced to trivalent chromium during sewage sludge treatment. Thus, EPA believes the concentration of hexavalent chromium in sewage sludge compared to the concentration of trivalent chromium is negligible. At most, hexavalent chromium should not exceed one percent (i.e., 10,000 mg/kg) of the total chromium in sewage sludge.

EPA is today establishing the total chromium concentration in Appendix G—Section II for land-applied sewage sludge at 100,000 mg/kg. The Agency concluded that, although trivalent chromium is the prevalent form of chromium in sewage sludge, it is the hexavalent form of chromium that the total chromium concentration for land-applied sewage sludge must limit. Two commenters recommended a concentration of 100,000 mg/kg as appropriate to protect ground water from total chromium in land-applied sewage sludge. This concentration is consistent with the total chromium concentration limit established for granting a removal credit for sewage sludge placed in a lined active sewage sludge unit. Because the percentage of hexavalent chromium in total chromium is expected to be less than one percent, there is virtually no potential that the hexavalent chromium concentration in land-applied sewage sludge will exceed the allowable concentration for hexavalent chromium (i.e, 12,000 mg/kg) in the 100,000 mg/kg total chromium concentration limit.

A total chromium concentration of 100,000 mg/kg in land-applied total chromium also ensures that the total chromium limit from other pathways in the part 503 land application risk assessment is not exceeded. For example, the total chromium limit for the animal grazing pathway is 190,000 mg/kg, which is almost twice the total chromium concentration in Appendix G—Section II in today's rulemaking.

Finally, it is important to note that the value for total chromium the Agency is adopting today in Appendix G—Section II for land-applied sewage sludge is 1–2 orders of magnitude greater than the highest concentration of total chromium ever measured in sewage sludge based on the results of the 1989 National Sewage Sludge Survey. This too should ensure that the granting of a removal credit for total chromium will not adversely affect public health and environmental when sewage sludge is applied to the land.

VII. Regulatory Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final rule is not a "significant" regulatory action under the terms of Executive Order 12866 and is not subject, therefore, to OMB review. Further, because the effect of today's rule is to modify current requirements and provide additional flexibility to the regulated community in complying with the part 503 requirements, and to allow a removal credit for chromium in land applied sewage sludge under part 403, costs to the regulated community should be reduced or at least remain unchanged.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act, EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This action to amend the part 503 regulation provides added flexibility in complying with the part 503 requirements and technical clarification for some of the requirements. For example, the permitting authority has been given the discretion to reduce the frequency of monitoring for some of the pollutants subject to the rule. Today's action also makes the incineration requirements self-implementing by specifying how an incinerator owner/operator is to determine pollutant limits applicable to sewage sludge to be combusted. The incineration amendments include requirements to provide notice to the permitting authority prior to performance testing and to report information that was previously obtained by the permitting authority during the permitting process. These requirements involve minimal additional cost, because the requirements to develop the information needed to calculate the pollutant limits are not new. Only the need to provide prior notice of testing and to report the results are new, and these requirements involve little expense.

In addition, this action amends the part 403 regulation to establish a total chromium in sewage sludge concentration to allow a wastewater treatment works to issue a removal credit for chromium in land applied sewage sludge. This relieves the wastewater treatment works from having to perform a site-specific evaluation and calculation to establish a total chromium concentration in sewage sludge in order to issue a pre-treatment removal credit for chromium to an industrial discharger. As such, the amendments impose no significant new requirements on the regulated community, including small entities.

Accordingly, I certify that this regulation will not have a significant economic impact on a substantial number of small entities. Therefore, this final regulation does not require a regulatory flexibility analysis.

C. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 30 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. §804(2). This rule will be effective September 3, 1999.

D. Paperwork Reduction Act

The information collection requirements for existing 40 CFR part 503 were approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB approved the information collection requirements for the existing regulation (part 503) and assigned OMB Control Nos. 2040–0004 and 2040–0086. Today's action amending part 503 reduces information collection requirements in part 503 by allowing the permitting authority to reduce the frequency of monitoring for certain part 503 pollutants.

However, today's action also adds a new notice requirement in § 503.43(e). The information collection request for this new provision is currently under development. EPA expects to publish a proposed Information Collection Request (ICR) for these requirements in the **Federal Register** for comment within the next 60 days. The ICR will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* after public comment. The information requirements will be published in the **Federal Register** again for public comment when EPA submits them to OMB for review and approval. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

E. Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before

promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The final amendments either clarify existing regulatory requirements or provide additional flexibility to the regulated community in complying with current part 503 requirements and allow for the issuance of removal credits under part 403.

For example, EPA is making a number of changes to reduce the reporting and recordkeeping burden of the current requirements. These include an amendment to authorize the permitting authority to reduce the frequency of monitoring of sewage sludge for pollutants and certain pathogen density requirements. In addition, the amendments modify the provision to certify that compliance with certain requirements was achieved. Under today's amendment, a person certifies to the accuracy of the submitted information and not, as is the case at present, to compliance with regulatory requirements.

Today's amendments also delete the language from the current regulation that requires the permitting authority to specify certain factors used to calculate site-specific pollutant limits for sewage sludge incinerators and to specify how to install, calibrate, operate, and maintain incinerator continuous emission monitors. Instead, the rule contains the information needed by the incinerator owner/operator to make the site-specific calculations and properly monitor emissions of total hydrocarbons. These self-implementing provisions contain a one-time requirement for the owner/operator to provide notice and report calculations which were previously obtained from the permitting authority. In addition, today's amendments contain technical changes that correct inaccurate cross-references and add omitted reporting dates and inadvertently omitted phrases. Therefore, to the extent that today's final regulation reduces the costs of complying with the current part 503 requirements and allow for the issuance of removal credits under part 403, the final regulation will lessen the regulatory burden on State, local, and tribal governments and the private sector.

As noted above, there are minimal costs or reduced costs associated with the other changes in today's final amendments. Thus, today's amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that today's amendments contain no regulatory requirements that might significantly or uniquely affect small governments. The final amendments do not significantly affect small governments because, as explained above, the amendments provide additional flexibility in complying with existing regulatory requirements, provide for self-implementation, or clarify those requirements. The final amendments also do not uniquely affect small governments because the changes are applicable to facilities operated by small governments to the same extent they are to other sewage sludge preparers and users or disposers. Thus this rule is not subject to the requirements of section 203 of UMRA.

F. Executive Order 12875, Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate on a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

EPA has concluded that this rule will create a mandate on State, local, and tribal governments and that the Federal government will not provide the funds necessary to pay the direct costs incurred by the State, local and/or tribal governments in complying with the mandate. However, the mandate created by these amendments to parts 503 and 403 will have only a minimal impact on these governments as described in sections VII A and E of this preamble.

In developing this rule, EPA consulted with State, local, and tribal governments to enable them to provide meaningful and timely input in the development of this rule. Over the past three years in the development of this rule, EPA on numerous occasions has had communication with State, local, and tribal governments on this rule. EPA has solicited and received suggestions for improving its implementation. This outreach effort culminated in the formation of a National Biosolids (Sewage Sludge) Partnership which serves as an accessible forum for these exchanges to take place. The representatives of these governments have expressed their approval of this communications process.

The concerns of these governments as this rule was developed centered around their need to have greater flexibility in complying with certain provisions of the original part 503 rule. EPA recognized these governments' concerns by providing an option for the permitting authority to allow for a reduction in the frequency of monitoring of certain part 503 pollutants and allowing for increased flexibility in complying with certain pathogen and vector attraction reduction requirements in the part 503 rule. EPA's conclusion is that the incorporation of these provisions of increased flexibility into the part 503 rule still results in adequate protection of public health and the environment from pollutants in land applied sewage sludge.

G. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments and it does not impose substantial direct compliance costs on them. The amendments clarify existing part 503 requirements and provide the regulated community additional flexibility in complying with the regulatory requirements and make other requirements self-implementing. In addition, the amendment to part 403 allows for the issuance of a removal credit for chromium when sewage sludge is land applied, thereby reducing a regulatory burden to the private sector. As explained in sections VII A and E in this preamble, today's changes do not impose substantial direct costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule initiated after April 21, 1997, or proposed after April 21, 1998, that: (1) Is determined to be "economically significant" as defined under EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Because this rule was proposed on October 25, 1995, it is not subject to EO 13045. Also as explained in the section on EO 12866, today's final rule is not an economically significant rule. In addition, EPA does not have reason to believe that today's amendments pose any environmental health or safety risks presenting a disproportionate risk to children. However, EPA reviewed the impact of this rule on children's health in light of the Agency's Policy on Evaluating Health Risks to Children.

Today's amendments to part 503 do not alter any of the existing part 503 pollutant limits, which are based on the results of the risk assessments undertaken for the part 503 rule as published on February 19, 1993 (58 FR 9248). Today's amendment to part 403 establishes a limit for total chromium in land-applied sewage sludge for the purpose of granting a removal credit. That limit is based on the results of the ground-water pathway analysis. A child is protected in this case because the limit based on the ground-water pathway results is more stringent than the limit based on the results of the child ingestion pathway.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act ("NTTAA"), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary concensus standards are not used by EPA, the Act requires the Agency to provide Congress, through OMB, an explanation of the reasons for not using such standards.

Today's final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects

40 CFR Part 403

Environmental protection, Incineration, Land application, Pollutants, Removal credits, Sewage sludge, Surface disposal.

40 CFR Part 503

Environmental protection, Frequency of monitoring, Incineration, Land application, Management practices, Pathogens, Pollutants, Reporting and recordkeeping requirements, Surface disposal, Vector attraction reduction.

Dated: July 15, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as set forth below:

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority citation for part 403 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Appendix G to part 403 is amended by revising section II to read as follows:

Appendix G to Part 403—Pollutants Eligible for a Removal Credit

* * * * *

II. ADDITIONAL POLLUTANTS ELIGIBLE FOR A REMOVAL CREDIT

[Milligrams per kilogram—dry weight basis]

Pollutant	Use or disposal practice			
	LA	Surface disposal		I
		Unlined [1]	Lined [2]	
Arsenic			[3] 100	

II. ADDITIONAL POLLUTANTS ELIGIBLE FOR A REMOVAL CREDIT—Continued

[Milligrams per kilogram—dry weight basis]

Pollutant	Use or disposal practice			
	LA	Surface disposal		I
		Unlined [1]	Lined [2]	
Aldrin/Dieldrin (Total)	2.7	.....	.....	.....
Benzene	[3]16	140	3400	.....
Benzo(a)pyrene	15	[3]100	[3]100	.....
Bis(2-ethylhexyl)phthalate	.....	[3]100	[3]100	.....
Cadmium	.....	[3]100	[3]100	.....
Chlordane	86	[3]100	[3]100	.....
Chromium (total)	[3]100	.....	[3]100	.....
Copper	.....	[3]46	100	1400
DDD, DDE, DDT (Total)	1.2	2000	2000	.....
2,4 Dichlorophenoxy-acetic acid	.....	7	7	.....
Fluoride	730	.....	.....	.....
Heptachlor	7.4	.....	.....	.....
Hexachlorobenzene	29	.....	.....	.....
Hexachlorobutadiene	600	.....	.....	.....
Iron	[3]78	.....	.....	.....
Lead	.....	[3]100	[3]100	.....
Lindane	84	[3]28	[3]28	.....
Malathion	.....	0.63	0.63	.....
Mercury	.....	[3]100	[3]100	.....
Molybdenum	.....	40	40	.....
Nickel	.....	.....	[3]100	.....
N-Nitrosodimethylamine	2.1	0.088	0.088	.....
Pentachlorophenol	30	.....	.....	.....
Phenol	.....	82	82	.....
Polychlorinated biphenyls	4.6	<50	<50	.....
Selenium	.....	4.8	4.8	4.8
Toxaphene	10	[3]26	[3]26	.....
Trichloroethylene	[3]10	9500	[3]10	.....
Zinc	.....	4500	4500	4500

[1] Active sewage sludge unit without a liner and leachate collection system.
[2] Active sewage sludge unit with a liner and leachate collection system.
[3] Value expressed in grams per kilogram—dry weight basis.
Key: LA—land application.
I—incineration.

PART 503—STANDARDS FOR THE USE OR DISPOSAL OF SEWAGE SLUDGE

1. The authority citation for part 503 continues to read as follows:

Authority: Sections 405(d) and (e) of the Clean Water Act, as amended by Pub. L. 95–217, Sec. 54(d), 91 Stat. 1591 (33 U.S.C. 1345 (d) and (e)); and Pub. L. 100–4, Title IV, Sec. 406(a), (b), 101 Stat., 71, 72 (33 U.S.C. 1251 *et seq.*)

2. Section 503.2 is amended by adding a new paragraph (d) to read as follows:

§ 503.2 Compliance period.

* * * * *

(d) Unless otherwise specified in subpart E, compliance with the requirements in §§ 503.41(c) through (r), 503.43(c), (d) and (e), 503.45(a)(1), (b) through (f), 503.46(a)(1), (a)(3), and (c), and 503.47(f) that were revised on September 3, 1999 shall be achieved as expeditiously as practicable, but in no case later than September 5, 2000. When new pollution control facilities must be constructed to comply with the revised requirements in subpart E, compliance with the revised requirements shall be achieved as expeditiously as practicable but no later than September 4, 2001.

3. Section 503.10 is amended by revising paragraphs (b)(1), (c)(1), (d), (e), (f), and (g) to read as follows:

§ 503.10 Applicability.

* * * * *

(b)(1) Bulk sewage sludge. The general requirements in § 503.12 and the management practices in § 503.14 do not apply when bulk sewage sludge is applied to the land if the bulk sewage sludge meets the ceiling concentrations in Table 1 of § 503.13 and the pollutant concentrations in Table 3 of § 503.13; the Class A pathogen requirements in § 503.32(a); and one of the vector attraction reduction requirements in § 503.33(b)(1) through (b)(8).

* * * * *

(c)(1) The general requirements in § 503.12 and the management practices in § 503.14 do not apply when a bulk material derived from sewage sludge is applied to the land if the derived bulk material meets the ceiling concentrations in Table 1 of § 503.13 and the pollutant concentrations in Table 3 of § 503.13; the Class A pathogen requirements in § 503.32(a); and one of the vector attraction reduction requirements in § 503.33(b)(1) through (b)(8).

* * * * *

(d) The requirements in this subpart do not apply when a bulk material derived from sewage sludge is applied to the land if the sewage sludge from which the bulk material is derived meets the ceiling concentrations in Table 1 of § 503.13 and the pollutant concentrations in Table 3 of § 503.13; the Class A pathogen requirements in § 503.32(a); and one of the vector attraction reduction requirements in § 503.33(b)(1) through (b)(8).

(e) Sewage sludge sold or given away in a bag or other container for application to the land. The general requirements in § 503.12 and the management practices in § 503.14 do not apply when sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge sold or given away in a bag or other container for application to the land meets the ceiling concentrations in Table 1 of § 503.13 and the pollutant concentrations in Table 3 of § 503.13; the Class A pathogen requirements in § 503.32(a); and one of the vector attraction reduction requirements in § 503.33(b)(1) through (b)(8).

(f) The general requirements in § 503.12 and the management practices in § 503.14 do not apply when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the derived material meets the ceiling concentrations in Table 1 of § 503.13 and the pollutant concentrations in Table 3 of § 503.13; the Class A pathogen requirements in § 503.32(a); and one of the vector attraction reduction requirements in § 503.33(b)(1) through (b)(8).

(g) The requirements in this subpart do not apply when a material derived from sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge from which the material is derived meets the ceiling concentrations in Table 1 of § 503.13 and the pollutant concentrations in Table 3 of § 503.13; the Class A pathogen requirements in § 503.32(a); and one of the vector attraction reduction requirements in § 503.33 (b)(1) through (b)(8).

4. Section 503.16 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 503.16 Frequency of monitoring.

(a) *Sewage sludge.* (1) The frequency of monitoring for the pollutants listed in Table 1, Table 2, Table 3 and Table 4 of § 503.13; the pathogen density requirements in § 503.32(a) and § 503.32(b)(2); and the vector attraction reduction requirements in § 503.33 (b)(1) through (b)(4) and § 503.33 (b)(7) through (b)(8) shall be the frequency in Table 1 of § 503.16.

TABLE 1 OF § 503.16—FREQUENCY OF MONITORING—LAND APPLICATION

Amount of sewage sludge [1] (metric tons per 365 day period)	Frequency
Greater than zero but less than 290	Once per year.
Equal to or greater than 290 but less than 1,500	Once per quarter (four times per year).
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (six times per year).
Equal to or greater than 15,000	Once per month (12 times per year).

[1] Either the amount of bulk sewage sludge applied to the land or the amount of sewage sludge prepared for sale or give-away in a bag or other container for application to the land (dry weight basis).

(2) After the sewage sludge has been monitored for two years at the frequency in Table 1 of § 503.16, the permitting authority may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in § 503.32(a)(5)(ii) and (a)(5)(iii).

* * * * *

5. Section 503.17 is amended by revising paragraphs (a)(1)(ii), (a)(2)(ii), (a)(3)(i)(B), (a)(3)(ii)(A), (a)(4)(i)(B), (a)(4)(ii)(A), (a)(5)(i)(B), (a)(5)(ii)(C), (a)(5)(ii)(F), (a)(5)(ii)(H), (a)(5)(ii)(J), (a)(5)(ii)(L), (a)(6)(iii), (b)(3), (b)(6), and (b)(7), and by adding a new paragraph (a)(4)(ii)(E) to read as follows:

§ 503.17 Recordkeeping.

(a) *Sewage sludge.* (1) * * *

(ii) The following certification statement:

I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in § 503.32(a) and the vector attraction reduction requirement in [insert one of the vector attraction reduction requirements in § 503.33(b)(1) through § 503.33(b)(8)] was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

* * * * *

(2) * * *

(ii) The following certification statement:

I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in § 503.32(a) and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in § 503.33(b)(1) through (b)(8)) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

* * * * *

(3) * * *

(i) * * *

(B) The following certification statement:

I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in § 503.32(a) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

* * * * *

(ii) * * *

(A) The following certification statement:

I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in § 503.14 and the vector attraction reduction requirement in (insert either § 503.33(b)(9) or (b)(10)) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

* * * * *

(4) * * *

(i) * * *

(B) The following certification statement:

I certify, under penalty of law, that the information that will be used to determine compliance with the Class B pathogen requirements in § 503.32(b) and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in § 503.33(b)(1) through (b)(8)if one of those requirements is met) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

* * * * *

(ii) * * *

(A) The following certification statement:

I certify, under penalty of law, that the information that will be used to determine

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compliance with the management practices in § 503.14, the site restrictions in § 503.32(b)(5), and the vector attraction reduction requirement in (insert either § 503.33(b)(9) or (b)(10) if one of those requirements is met) was prepared for each site on which bulk sewage sludge is applied under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

* * * * *

(E) The date bulk sewage sludge is applied to each site.

(5) * * *

(i) * * *

(B) The following certification statement:

I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in (insert either § 503.32(a) or § 503.32(b)) and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in § 503.33(b)(1) through (b)(8) if one of those requirements is met) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

* * * * *

(ii) * * *

(C) The date bulk sewage sludge is applied to each site.

* * * * *

(F) The following certification statement:

I certify, under penalty of law, that the information that will be used to determine compliance with the requirement to obtain information in § 503.12(e)(2) was prepared for each site on which bulk sewage sludge was applied under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

* * * * *

(H) The following certification statement:

I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in § 503.14 was prepared for each site on which bulk sewage sludge was applied under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

* * * * *

(J) The following certification statement when the bulk sewage sludge meets the Class B pathogen requirements in § 503.32(b):

I certify, under penalty of law, that the information that will be used to determine compliance with the site restrictions in § 503.32(b)(5) for each site on which Class B sewage sludge was applied was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

* * * * *

(L) The following certification statement when the vector attraction reduction requirement in either § 503.33(b)(9) or (b)(10) is met:

I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirement in (insert either § 503.33(b)(9) or § 503.33(b)(10)) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

* * * * *

(6) * * *

(iii) The following certification statement:

I certify, under penalty of law, that the information that will be used to determine compliance with the management practice in § 503.14(e), the Class A pathogen requirement in § 503.32(a), and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in § 503.33(b)(1) through § 503.33(b)(8)) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

* * * * *

(b) * * *

(3) The date domestic septage is applied to each site.

* * * * *

(6) The following certification statement:

I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements (insert either § 503.32(c)(1) or § 503.32(c)(2)) and the vector attraction reduction requirement in [insert § 503.33(b)(9), 503.33(b)(10), or § 503.33(b)(12)] was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

(7) A description of how the pathogen requirements in either § 503.32(c)(1) or (c)(2) are met.

* * * * *

6. Section 503.18 is amended by revising paragraph (a)(2) to read as follows:

§ 503.18 Reporting.

(a) * * *

(2) The information in § 503.17(a)(5)(ii)(A) through (a)(5)(ii)(G) on February 19th of each year when 90 percent or more of any of the cumulative pollutant loading rates in Table 2 of § 503.13 is reached at a land application site.

* * * * *

7. Section 503.21 is amended by revising paragraph (c) to read as follows:

§ 503.21 Special definitions.

* * * * *

(c) *Contaminate an aquifer* means to introduce a substance that causes the maximum contaminant level for nitrate in 40 CFR 141.62(b) to be exceeded in the ground water or that causes the existing concentration of nitrate in ground water to increase when the existing concentration of nitrate in the ground water exceeds the maximum contaminant level for nitrate in 40 CFR 141.62(b).

* * * * *

8. Section 503.22 is amended by revising paragraph (b) to read as follows:

§ 503.22 General requirements.

* * * * *

(b) An active sewage sludge unit located within 60 meters of a fault that has displacement in Holocene time; located in an unstable area; or located in a wetland, except as provided in a permit issued pursuant to either section 402 or 404 of the CWA, shall close by March 22, 1994, unless, in the case of an active sewage sludge unit located within 60 meters of a fault that has displacement in Holocene time, otherwise specified by the permitting authority.

* * * * *

9. Section 503.26 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 503.26 Frequency of monitoring.

(a) *Sewage sludge (other than domestic septage).* (1) The frequency of monitoring for the pollutants in Tables 1 and 2 of § 503.23; the pathogen density requirements in § 503.32(a) and in § 503.32(b)(2); and the vector attraction reduction requirements in § 503.33(b)(1) through (b)(4) and § 503.33(b)(7) through (b)(8) for sewage sludge placed on an active sewage sludge unit shall be the frequency in Table 1 of § 503.26.

TABLE 1 OF § 503.26.—FREQUENCY OF MONITORING—SURFACE DISPOSAL

Amount of sewage sludge [1] (metric tons per 365 day period)	Frequency
Greater than zero but less than 290	Once per year.
Equal to or greater than 290 but less than 1,500	Once per quarter (four times per year).
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (six times per year).
Equal to or greater than 15,000	Once per month (12 times per year).

[1] Amount of sewage sludge placed on an active sewage sludge unit (dry weight basis).

(2) After the sewage sludge has been monitored for two years at the frequency in Table 1 of this section, the permitting authority may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in § 503.32(a)(5)(ii) and (a)(5)(iii).

* * * * *

10. Section 503.27 is amended by revising paragraphs (a)(1)(ii), (a)(2)(ii), (b)(1)(i), and (b)(2)(i) to read as follows:

§ 503.27 Recordkeeping.

(a) * * *

(1) * * *

(ii) The following certification statement:

I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in (insert § 503.32(a), § 503.32(b)(2), § 503.32(b)(3), or § 503.32(b)(4) when one of those requirements is met) and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in § 503.33 (b)(1) through (b)(8) if one of those requirements is met) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

* * * * *

(2) * * *

(ii) The following certification statement:

I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in § 503.14 and the vector attraction reduction requirements in (insert one of the requirements in § 503.33(b)(9) through § 503.33(b)(11) if one of those requirements is met) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

* * * * *

(b) * * *

(1) * * *

(i) The following certification statement:

I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirements in § 503.33(b)(12) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.

* * * * *

(2) * * *

(i) The following certification statement:

I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in § 503.24 and the vector attraction reduction requirements in (insert § 503.33(b)(9) through § 503.33(b)(11) if one of those requirements is met) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine or imprisonment.

* * * * *

11. Section 503.31 is amended by revising paragraph (g) to read as follows:

§ 503.31 Special definitions.

* * * * *

(g) *pH* means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25° Centigrade or measured at another temperature and then converted to an equivalent value at 25° Centigrade.

* * * * *

12. Section 503.32 is amended by revising paragraphs (b)(2)(i) and (b)(5)(v) to read as follows:

§ 503.32 Pathogens.

* * * * *

(b) * * *

(2) * * *

(i) Seven representative samples of the sewage sludge that is used or disposed shall be collected.

* * * * *

(5) * * *

(v) Animals shall not be grazed on the land for 30 days after application of sewage sludge.

* * * * *

13. Section 503.33 is amended by revising paragraph (b)(10)(i) to read as follows:

§ 503.33 Vector attraction reduction.

* * * * *

(b) * * *

(10)(i) Sewage sludge applied to the land surface or placed on an active sewage sludge unit shall be incorporated into the soil within six hours after application to or placement on the land, unless otherwise specified by the permitting authority.

* * * * *

14. Section 503.41 is amended by redesignating paragraphs (c), (d), (e) (f), (g), (h), (i),(j), (k), (l), (m), (n), and (o) as paragraphs (d), (e), (f), (g), (h), (j), (l), (m), (n), (o), (p), (q), and (r), respectively, and by adding new paragraphs (c), (i), and (k) to read as follows:

§ 503.41 Special definitions.

* * * * *

(c) *Average daily concentration* is the arithmetic mean of the concentration of a pollutant in milligrams per kilogram of sewage sludge (dry weight basis) in the samples collected and analyzed in a month.

(i) *Incinerator operating combustion temperature* is the arithmetic mean of the temperature readings in the hottest zone of the furnace recorded in a day (24 hours) when the temperature is averaged and recorded at least hourly during the hours the incinerator operates in a day.

(k) *Performance test combustion temperature* is the arithmetic mean of

the average combustion temperature in the hottest zone of the furnace for each of the runs in a performance test.

15. Section 503.43 is amended by revising paragraphs (c) and (d), and by adding a new paragraph (e) to read as follows:

§ 503.43 Pollutant limits.

* * * * *

(c) *Pollutant limit—lead.* (1) The average daily concentration for lead in sewage sludge fed to a sewage sludge incinerator shall not exceed the concentration calculated using Equation (4).

$$C = \frac{0.1 \times NAAQS \times 86{,}400}{DF \times (1 - CE) \times SF} \qquad \text{Eq. (4)}$$

Where:

C = Average daily concentration of lead in sewage sludge.
NAAQS = National Ambient Air Quality Standard for lead in micrograms per cubic meter.
DF = Dispersion factor in micrograms per cubic meter per gram per second.
CE = Sewage sludge incinerator control efficiency for lead in hundredths.
SF = Sewage sludge feed rate in metric tons per day (dry weight basis).

(2) The dispersion factor (DF) in equation (4) shall be determined from an air dispersion model in accordance with § 503.43(e).

(i) When the sewage sludge stack height is 65 meters or less, the actual sewage sludge incinerator stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (4).

(ii) When the sewage sludge incinerator stack height exceeds 65 meters, the creditable stack height shall be determined in accordance with 40 CFR 51.100(ii) and the creditable stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (4).

(3) The control efficiency (CE) for equation (4) shall be determined from a performance test of the sewage sludge incinerator in accordance with § 503.43(e).

(d) *Pollutant limit—arsenic, cadmium, chromium, and nickel.* (1) The average daily concentration for arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator each shall not exceed the concentration calculated using equation (5).

$$C = \frac{RSC \times 86{,}400}{DF \times (1 - CE) \times SF} \qquad \text{Eq. (5)}$$

Where:

C = Average daily concentration of arsenic, cadmium, chromium, or nickel in sewage sludge.
CE = Sewage sludge incinerator control efficiency for arsenic, cadmium, chromium, or nickel in hundredths.
DF = Dispersion factor in micrograms per cubic meter per gram per second.
RSC = Risk specific concentration for arsenic, cadmium, chromium, or nickel in micrograms per cubic meter.
SF = Sewage sludge feed rate in metric tons per day (dry weight basis).

(2) The risk specific concentrations for arsenic, cadmium, and nickel used in equation (5) shall be obtained from Table 1 of § 503.43.

TABLE 1 OF § 503.43.—RISK SPECIFIC CONCENTRATION FOR ARSENIC, CADMIUM, AND NICKEL

Pollutant	Risk specific concentration (micrograms per cubic meter)
Arsenic	0.023
Cadmium	0.057
Nickel	2.0

(3) The risk specific concentration for chromium used in equation (5) shall be obtained from Table 2 of § 503.43 or shall be calculated using equation (6).

TABLE 2 OF § 503.43.—RISK SPECIFIC CONCENTRATION FOR CHROMIUM

Type of Incinerator	Risk specific concentration (micrograms per cubic meter)
Fluidized bed with wet scrubber	0.65
Fluidized bed with wet scrubber and wet electrostatic precipitator	0.23
Other types with wet scrubber	0.064
Other types with wet scrubber and wet electrostatic precipitator	0.016

$$RSC = \frac{0.0085}{r} \qquad \text{Eq. (6)}$$

Where:

RSC=risk specific concentration for chromium in micrograms per cubic meter used in equation (5).
r=decimal fraction of the hexavalent chromium concentration in the total chromium concentration measured in the exit gas from the sewage sludge incinerator stack in hundredths.

(4) The dispersion factor (DF) in equation (5) shall be determined from an air dispersion model in accordance with § 503.43(e).

(i) When the sewage sludge incinerator stack height is equal to or less than 65 meters, the actual sewage sludge incinerator stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (5).

(ii) When the sewage sludge incinerator stack height is greater than 65 meters, the creditable stack height shall be determined in accordance with 40 CFR 51.100(ii) and the creditable stack height shall be used in the air dispersion model to determine the dispersion factor (DF) for equation (5).

(5) The control efficiency (CE) for equation (5) shall be determined from a performance test of the sewage sludge incinerator in accordance with § 503.43(e).

(e) *Air dispersion modeling and performance testing.* (1) The air dispersion model used to determine the dispersion factor in § 503.43 (c)(2) and (d)(4) shall be appropriate for the geographical, physical, and population characteristics at the sewage sludge incinerator site. The performance test used to determine the control efficiencies in § 503.43 (c)(3) and (d)(5) shall be appropriate for the type of sewage sludge incinerator.

(2) For air dispersion modeling initiated after September 3, 1999, the modeling results shall be submitted to the permitting authority 30 days after completion of the modeling. In addition to the modeling results, the submission shall include a description of the air dispersion model and the values used for the model parameters.

(3) The following procedures, at a minimum, shall apply in conducting performance tests to determine the control efficiencies in § 503.43(c)(3) and (d)(5) after September 3, 1999:

(i) The performance test shall be conducted under representative sewage sludge incinerator conditions at the highest expected sewage sludge feed rate within the design capacity of the sewage sludge incinerator.

(ii) The permitting authority shall be notified at least 30 days prior to any performance test so the permitting authority may have the opportunity to observe the test. The notice shall include a test protocol with incinerator operating conditions and a list of test methods to be used.

(iii) Each performance test shall consist of three separate runs using the applicable test method. The control efficiency for a pollutant shall be the arithmetic mean of the control efficiencies for the pollutant from the three runs.

(4) The pollutant limits in § 503.43 (c) and (d) of this section shall be submitted to the permitting authority no later than 30 days after completion of the air dispersion modeling and performance test.

(5) Significant changes in geographic or physical characteristics at the incinerator site or in incinerator operating conditions require new air dispersion modeling or performance testing to determine a new dispersion factor or a new control efficiency that will be used to calculate revised pollutant limits.

16. Section 503.45 is amended by revising paragraphs (a)(1), (b), (c), (d), (e), and (f), and by adding a new paragraph (h) to read as follows:

§ 503.45 Management practices.

(a)(1) An instrument that continuously measures and records the total hydrocarbons concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

* * * * *

(b) An instrument that continuously measures and records the oxygen concentration in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

(c) An instrument that continuously measures and records information used to determine the moisture content in the sewage sludge incinerator stack exit gas shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

(d) An instrument that continuously measures and records combustion temperatures shall be installed, calibrated, operated, and maintained for a sewage sludge incinerator.

(e) Operation of a sewage sludge incinerator shall not cause the operating combustion temperature for the sewage sludge incinerator to exceed the performance test combustion temperature by more than 20 percent.

(f) An air pollution control device shall be appropriate for the type of sewage sludge incinerator and the operating parameters for the air pollution control device shall be adequate to indicate proper performance of the air pollution control device. For sewage sludge incinerators subject to the requirements in subpart O of 40 CFR part 60, operation of the air pollution control device shall not violate the requirements for the air pollution control device in subpart O of 40 CFR part 60. For all other sewage sludge incinerators, operation of the air pollution control device shall not cause a significant exceedance of the average value for the air pollution control device operating parameters from the performance test required by § 503.43 (c)(3) and (d)(5).

* * * * *

(h) The instruments required in § 503.45(a)–(d) shall be appropriate for the type of sewage sludge incinerator.

17. Section 503.46 is amended by revising paragraphs (a)(1), (a)(3), and (c) to read as follows:

§ 503.46 Frequency of monitoring.

(a) Sewage sludge.

(1) The frequency of monitoring for beryllium shall be as required in subpart C of 40 CFR part 61, and for mercury as required in subpart E of 40 CFR part 61.

* * * * *

(3) After the sewage sludge has been monitored for two years at the frequency in Table 1 of § 503.46, the permitting authority may reduce the frequency of monitoring for arsenic, cadmium, chromium, lead, and nickel.

* * * * *

(c) Air pollution control device operating parameters.

For sewage sludge incinerators subject to the requirements in subpart O of 40 CFR part 60, the frequency of monitoring for the appropriate air pollution control device operating parameters shall be the frequency of monitoring in subpart O of 40 CFR part 60. For all other sewage sludge incinerators, the appropriate air pollution control device operating parameters shall be at least daily.

18. Section 503.47 is amended by revising paragraph (f) to read as follows:

§ 503.47 Recordkeeping.

* * * * *

(f) The operating combustion temperatures for the sewage sludge incinerator.

* * * * *

19. Appendix B to 40 CFR part 503 is amended by revising the description No. 6 under B. Processes to Further Reduce Pathogens (PFRP) to read as follows:

Appendix B to Part 503—Pathogen Treatment Processes

* * * * *

B. * * *

(6) Gamma ray irradiation—Sewage sludge is irradiated with gamma rays from certain isotopes, such as ^{60}Cobalt and ^{137}Cesium, at dosages of at least 1.0 megarad at room temperature (ca. 20° Celsius).

* * * * *

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Part V

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3419

Matching Funds Requirement for Formula Funds for Agricultural Research and Extension Activities at 1890 Land-Grant Institutions, including Tuskegee University, and at the 1862 Land-Grant Institutions in Insular Areas; Proposed Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3419

RIN Number: AA24

Matching Funds Requirement for Formula Funds for Agricultural Research and Extension Activities at 1890 Land-Grant Institutions, Including Tuskegee University, and at the 1862 Land-Grant Institutions in Insular Areas

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) proposes to add a new part 3419 to Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of implementing new statutory matching requirements applicable to Federal agricultural research and extension formula funds for 1890 land-grant institutions, including Tuskegee University, and to the 1862 land-grant institutions in the Commonwealth of Puerto Rico and the insular areas of American Samoa, Guam, Micronesia, Northern Marianas, and the Virgin Islands.

DATES: Written comments are invited from interested individuals and organizations. To be considered in the formulation of the final rule, comments must be received on or before September 3, 1999.

ADDRESSES: Address all comments to CSREES–USDA; Office of Extramural Programs; Policy and Program Liaison Staff; CSREES/USDA; Mail Stop 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299. Comments may be hand-delivered to CSREES–USDA; Office of Extramural Programs; Policy and Program Liaison Staff; Room 302 Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. Comments may be mailed or sent electronically to oep@reeusda.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Edward M. Wilson, Deputy Administrator; Plant and Animal Systems; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Mail Stop 2220; 1400 Independence Avenue, SW; Washington, DC 20250–2220; at 202–401–4329, 202–401–4888 (fax) or via electronic mail at ewilson@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Background and Purpose

This document proposes to add a new part 3419 to Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of implementing the new matching requirements for agricultural research and extension formula funds authorized for the 1890 land-grant institutions and Tuskegee University. Section 226 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), Pub. L. 105–185, amends Subtitle G of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA) by adding a new section 1449. This section requires matching funds from non-Federal sources for formula funds authorized under sections 1444 and 1445 of NARETPA for research and extension activities at the 1890 land-grant institutions and Tuskegee University.

This proposed rule will also implement the new matching requirements for the 1862 land-grant institutions in the Commonwealth of Puerto Rico and the insular areas of American Samoa, Guam, Micronesia, Northern Marianas, and the Virgin Islands. Section 753(d) and (e) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681–33 (1999 Agriculture Appropriations Act), amended section 3(d) of the Hatch Act of 1887 and section 3(e) of the Smith-Lever Act to subject the 1862 land-grant institutions in the Commonwealth of Puerto Rico and the insular areas to the same matching requirements as those applicable to an eligible institution under section 1449 of NARETPA. The amendments made by section 753 apply by operation of law to American Samoa, Micronesia, and Northern Marianas by virtue of section 1361(a) of Pub. L. 96–374, as amended by 9(c) of Pub. L. 99–396, which provides that any provision of law related to land-grant institutions in the Virgin Islands or Guam applies to the land-grant institutions in American Samoa, the Northern Marianas, and the former Trust Territory of the Pacific Islands, the land-grant institution of which is the College of Micronesia.

Section 1449 requires that the State make available matching funds to an 1890 institution out of non-Federal funds. CSREES has determined that this does not necessarily limit the source of matching funds to those directly provided by the State as a part of its direct budget or appropriations process. Accordingly, CSREES has defined "non-Federal sources" to include direct State appropriations and any funds generated by the 1890 institution or by the 1862 institution in the Commonwealth of Puerto Rico or in an insular area and made available to the institution under other authority (other than authority to charge tuition and fees paid by students) provided by the State. This would include, for example, gift acceptance or user fee authority.

Classification

This rule has been reviewed under Executive Order 12866 and has been determined to be nonsignificant as it will not create a serious inconsistency or otherwise interfere with an action planned by another agency; will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; and will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in this executive order. This rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Regulatory Flexibility Act

The Department certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–534 (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required for this proposed rule.

Catalog of Federal Domestic Assistance

The programs affected by this proposed rule are listed in the Catalog of Federal Domestic Assistance under No. 10.205, Payments to 1890 Land-Grant Institutions and Tuskegee University, No. 10.500, Cooperative Extension Service, and No. 10.203, Payments to Agricultural Experiment Stations Under the Hatch Act.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that will be imposed in the implementation of this proposed rule have been submitted to OMB for approval. These requirements would not become effective prior to OMB approval.

Title: Section 1449 Matching Funds Requirement for Research and Extension Activities at Eligible Institutions.

SUMMARY: The purpose of this collection of information is to implement the requirements of section 226 of AREERA, which added section 1449 to NARETPA, and section 753 of the 1999 Agriculture Appropriations Act. These provisions establish new matching requirements for the agricultural research and extension formula funds authorized for the 1890 land-grant institutions, including Tuskegee University, and to the 1862 land-grant institutions in the Commonwealth of Puerto Rico and insular areas.

Need for the Information: This information is needed by CSREES to determine if the matching requirements under section 1449 of NARETPA have been met by the 1890 land-grant institutions, including Tuskegee University, and by the 1862 land-grant institutions in insular areas. CSREES intends to require the eligible institutions to complete Form CSREES–2103, "Section 1449 Matching Funds Requirement for Research and Extension Activities at Eligible Institutions," annually.

Respondents: Respondents will be the 17 1890 land-grant institutions and the six 1862 land-grant institutions in the Commonwealth of Puerto Rico and the insular areas, which will provide information to USDA on the amount and source of non-Federal funds made available by the States, the Commonwealth of Puerto Rico, and the insular governments to the eligible institutions for agricultural research, extension, and qualifying educational activities to meet the matching requirements of section 1449 of NARETPA.

Estimate of Burden: The estimated burden on the respondents for Form CSREES–2103, "Section 1449 Matching Funds Requirement for Research and Extension Activities at Eligible Institutions," is estimated at 3.9 hours per response.

Estimated Number of Respondents: 23.

Estimated Annual Number of Responses: 117.

Estimated Total Annual Burden on Respondents: 456.3 hours.

Frequency of Responses: Annually.

Copies of this information collection can be obtained from Ellen Danus, Policy and Program Liaison Staff, Office of Extramural Programs, CSREES, USDA, (202) 401–4325. Email: oep@reeusda.gov.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: CSREES–USDA; Office of Extramural Programs; Policy and Program Liaison Staff; Mail Stop 2299; 1400 Independence Avenue, SW; Washington, DC 20250–2299 by October 4, 1999 or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20502. Reference should be made to the volume, page, and date of this **Federal Register** publication.

List of Subjects in 7 CFR Part 3419

Agricultural extension, Agricultural research, Colleges and universities.

For reasons set forth in the preamble, it is proposed to amend Title 7, Subtitle B, Chapter XXXIV, of the Code of Federal Regulations by adding part 3419 to read as follows:

PART 3419—MATCHING FUNDS REQUIREMENT FOR AGRICULTURAL RESEARCH AND EXTENSION FORMULA FUNDS AT 1890 LAND-GRANT INSTITUTIONS, INCLUDING TUSKEGEE UNIVERSITY, AND AT 1862 LAND-GRANT INSTITUTIONS IN INSULAR AREAS

Sec.

3419.1 Definitions.
3419.2 Matching funds.
3419.3 Determination of non-Federal sources of funds.
3419.4 Limited waiver authority.
3419.5 Use of Matching Funds.
3419.6 Redistribution of funds.

Authority: 5 U.S.C. 301, 7 U.S.C. 3222d; Sec. 753, Pub. L. 105–277, 112 Stat. 2681–33

§ 3419.1 Definitions.

As used in this part:

Eligible institution means a college or university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 *et seq.*) (commonly known as the Second Morrill Act), including Tuskegee University, or a college or university designated under the Act of July 2, 1862 (7 U.S.C. 301, *et seq.*)(commonly known as the First Morrill Act) and located in the Commonwealth of Puerto Rico and the insular areas of American Samoa, Guam, Micronesia, Northern Marianas, and the Virgin Islands.

Formula funds means agricultural research funds provided to the eligible institutions under section 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended, or under section 3 of the Hatch Act of 1887, 7 U.S.C. 361c, and agricultural extension funds provided to the eligible institutions under section 1444 of NARETPA or under sections 3(b) and (c) of the Smith-Lever Act, 7 U.S.C. 343(b) and (c).

Matching funds means funds from non-Federal sources made available by the State to the eligible institutions:

(1) For programs or activities that fall within the purposes of agricultural research and cooperative extension under sections 1444 and 1445 of NARETPA, the Hatch Act of 1887, and the Smith-Lever Act; or

(2) For qualifying educational activities. Matching funds means cash contributions and excludes in-kind matching contributions.

Non-Federal sources means funds made available by the State to the eligible institution either through direct appropriation or under any authority (other than authority to charge tuition and fees paid by students) provided by a State to an eligible institution to raise revenue, such as gift acceptance authority or user fees.

Qualifying educational activities means programs that address food and agricultural sciences components of an eligible institution.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

State means the government of any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of Northern Marianas, the Virgin Islands of the United States, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

§ 3419.2 Matching funds.

The distribution of formula funds shall be subject to the following matching requirements:

(a) For fiscal year 2000, matching funds shall equal not less than 30

percent of the formula funds to be distributed to the eligible institution;

(b) For fiscal year 2001, matching funds shall equal not less than 45 percent of the formula funds to be distributed to the eligible institution; and

(c) For fiscal year 2002 and each fiscal year thereafter, the matching funds shall equal not less than 50 percent of the formula funds to be distributed to the eligible institution.

§ 3419.3 Determination of non-Federal sources of funds.

(a) Each eligible institution shall submit by September 30, 1999, a report describing for fiscal year 1999:

(1) The sources of non-Federal funds made available to the eligible institutions for agricultural research, extension, and qualified educational activity to meet the matching requirements of section 1449 of NARETPA, as amended; and

(2) The amount of funds generally available from each source.

(b) This report for the fiscal year ending September 30, 1999, may also include a request for a waiver of the matching funds requirement for fiscal year 2000. For fiscal year 2000 and thereafter, this report must be submitted by July 1.

§ 3419.4 Limited waiver authority.

(a) The Secretary may waive the matching funds requirement for fiscal year 2000 for an eligible institution of a State if the Secretary determines that, based on the report received under § 3419.3, the State will be unlikely to satisfy the matching requirement. The criteria to waive the match in fiscal year 2000 may include:

(1) Natural disaster, flood, fire, tornado, hurricane, or drought;

(2) State and/or institution facing a financial crisis; or

(3) Demonstration of a good faith effort to obtain funds.

(b) Approval or disapproval of the request for a waiver will be based on the report submitted under § 3419.3. The Secretary may not waive the matching requirement for any fiscal year other than fiscal year 2000.

§ 3419.5 Use of matching funds.

The required matching funds for the formula programs shall be used by an eligible institution for agricultural research and extension activities that have been approved in the plan of work required under sections 1444(d) and 1445(c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, section 7 of the Hatch Act of 1887, section 4 of the Smith-Lever Act, or for approved qualifying education activities.

§ 3419.6 Redistribution of funds.

All formula funds not matched and reported under § 3419.3 by July 1 of each fiscal year will be reapportioned to the other eligible institutions who have satisfied their current fiscal year requirement for matching funds for the formula funds. Unmatched research and extension funds will be reapportioned in accordance with the research and extension statutory distribution formulas applicable to the 1890 and 1862 land-grant institutions, respectively. Any redistribution of funds shall be subject to the same matching requirement under § 3419.2.

Done at Washington, D.C., this 29th day of July 1999.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

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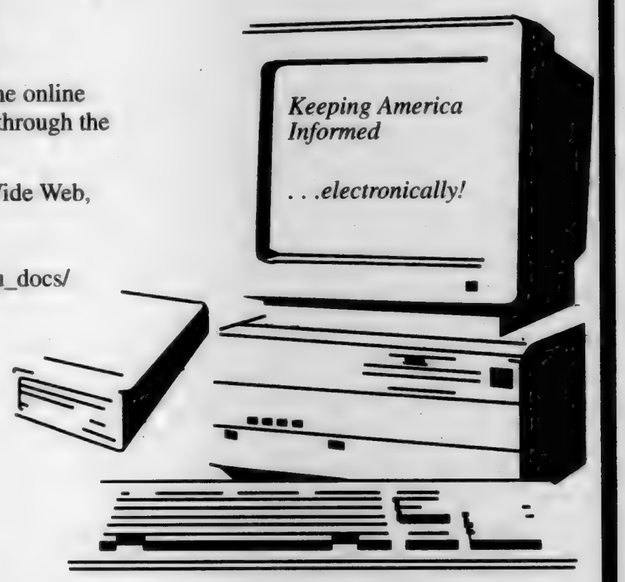

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Federal Register
Vol. 64, No. 150
Thursday, August 5, 1999

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL ELECTION COMMISSION

11 CFR Parts 110, 9004, and 9034

[Notice 1999–13]

Party Committee Coordinated Expenditures; Costs of Media Travel With Publicly Financed Presidential Candidates

AGENCY: Federal Election Commission.

ACTION: Final Rule and Transmittal of Regulations to Congress.

SUMMARY: The Commission is revising two portions of its regulations governing publicly financed Presidential primary and general election candidates. These rules address the costs of transportation and ground services that federally funded Presidential primary and general election campaigns may pass on to the news media covering their campaigns, as well as party committee coordinated expenditures that are made before the date their candidates receive the nomination. Further information is provided in the supplementary information which follows.

DATES: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d) and 26 U.S.C. 9009(c) and 9039(c).

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith , Acting Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations governing certain aspects of the public financing of Presidential campaigns. Specifically, the amended rules at 11 CFR 9004.6 and 9034.6 govern transportation and services provided by federally funded Presidential candidates to the news media covering their campaigns. Also included are amendments to 11 CFR 110.7, regarding coordinated expenditures by political party committees on behalf of their Presidential and Congressional candidates that are made before the date these candidates are nominated by their political parties. These regulations implement section 441a(d) of the Federal election Campaign Act ("FECA"), section 9004 of the Presidential Election Campaign Fund Act ("Fund Act") and section 9034 of the Presidential Primary Matching Payment Account Act ("Matching Payment Act"). *See* 2 U.S.C. 441a(d), and 26 U.S.C. 9004 and 9034. The Fund Act and the Matching Payment Act establish eligibility requirements for Presidential candidates seeking public financing, and indicate how funds received under the public financing system may be spent.

On May 5, 1997, the Commission issued a Notice of Proposed Rulemaking ("1997 NPRM") in which it sought comments on proposed revisions to the coordinated expenditure provisions of 11 CFR 110.7. *See* 62 F.R. 24367 (May 5, 1997). Written comments were received from the Internal Revenue Service (IRS), the Chamber of Commerce, the National Right to Life Committee (NRLC), the Republican National Committee (RNC), the National Republican Senatorial Committee (NRSC), the National Republican Congressional Committee (NRCC), the Democratic National Committee (DNC), a joint comment from the Democratic Senatorial Campaign Committee (DSCC) and the Democratic Congressional Campaign Committee (DCCC), and Common Cause. A public hearing was held on June 18, 1997, at which witnesses testified on behalf of the DNC, the RNC, the NRLC, the NRSC, the DSCC and the DCCC, and Common Cause. The IRS indicated that it found no conflict with the Internal Revenue Code or regulations thereunder. Subsequently, the consideration of final rules was postponed pending the outcome of litigation that could materially affect the policies at issue.

On December 16, 1998, the Commission published a new Notice of Proposed Rulemaking ("1998 NPRM") putting forth proposed amendments to its rules governing publicly financed Presidential primary and general election candidates. *See* 63 F.R. 69524 (Dec. 16, 1998). Issues concerning coordination between party committees and their Presidential candidates, which had been raised in the earlier rulemaking, were also included in the public funding rulemaking. In response to the 1998 NPRM, written comments on coordinated expenditures were received from Perot for President '96; James Madison Center for Free Speech; Common Cause and Democracy 21 (joint comment); Brennan Center for Justice; Lyn Utrecht, Eric Kleinfeld, and Patricia Fiori (joint comment); the DNC; and the RNC. Subsequently, the Commission reopened the comment period and held a public hearing on March 24, 1999, at which the following four witnesses presented testimony on the coordination issues: Lyn Utrecht (Ryan, Phillips, Utrecht & MacKinnon), Joseph E. Sandler (DNC), Thomas J. Josefiak (RNC), and James Bopp, Jr. (James Madison Center for Free Speech).

The 1998 NPRM also sought comments on proposed revisions to the regulations at 11 CFR 9004.6 and 9034.6 regarding media travel. Written comments on the media travel issues were received from Lyn Utrecht, Eric Kleinfeld, and Patricia Fiori (joint comment); the DNC; the RNC; and Carl P. Leubsdorf and twenty eight other executives of news organizations (joint comment). At the public hearing on March 24, 1999, the following witnesses presented testimony on the media travel rules: Kim Hume (Fox News), George Condon (Copley News Service), and Thomas J. Josefiak (RNC). The Internal Revenue Service stated that it has reviewed the NPRM and finds no conflict with the Internal Revenue Code or regulations thereunder. The comments and testimony on both topics are discussed in more detail below.

Please note, the Commission published previously final rules modifying the candidate agreement provisions so that federally-financed Presidential committees must electronically file their reports, as well as final rules governing the matchability of contributions made by credit and debit cards, including those transmitted over the Internet. *See* Explanation and Justification, 63 FR 45679 (August 27, 1998) (electronic filing) and Explanation and Justification, 64 FR 32394 (June 17, 1999) (matchability). The effective

date for the electronic filing regulations is November 13, 1998. *See* Announcement of Effective Date, 63 FR 63388 (November 13, 1998). An effective date for the matching fund rules will be announced once those regulations have been before Congress for thirty legislative days.

Section 438(d) of Title 2 and sections 9009(c) and 9039(c) of Title 26, United States Code, require that any rules or regulations prescribed by the Commission to carry out the provisions of title 2 or 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. The final rules that follow were transmitted to Congress on July 30, 1999.

Explanation and Justification

Section 110.7 Party Committee Coordinated Expenditures and Spending Limits (2 U.S.C. 441a(d))

Section 441a(d) permits national, state, and local committees of political parties to make limited general election campaign expenditures on behalf of their candidates, which are in addition to the amount they may contribute directly to those candidates. 2 U.S.C. 441a(d). These section 441a(d) expenditures are commonly referred to as "coordinated party expenditures" because such expenditures can be made after extensive consultation with the candidates and their campaign staffs.[1] However, party committees have never had to demonstrate actual "coordination" with their candidates to avail themselves of this additional spending limit.

Section 110.7 of the Commission's regulations implements the statutory exception to the contribution limits set forth at 2 U.S.C. 441a. Former paragraph (b)(4) of this section had presumed that party committees were incapable of making independent expenditures. This regulation was implicated by the Supreme Court's plurality opinion in *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission*, 518 U.S. 604 (1996) (*Colorado*). In that decision, the Court concluded that political parties are capable of making independent expenditures on behalf of their candidates for federal office, and that it would violate the First Amendment to subject such independent expenditures to the expenditure limits found in section 441a(d) of the FECA. *Id.* at 613–14.

Following the *Colorado* Supreme Court decision, the Commission promulgated a Final Rule on August 7, 1996 that repealed paragraph (b)(4) of § 110.7 to the extent that this paragraph prohibited national committees of political parties from making independent expenditures for congressional candidates. 61 FR 40961 (Aug. 7, 1996). On the same date, the Commission also published a Notice of Availability seeking comment on other significant issues arising from the *Colorado* decision. 61 FR 41036 (Aug. 7, 1996). These included possible amendments to 11 CFR Part 109 and 11 CFR 110.7 to provide standards for determining when expenditures qualify as "independent" or are considered "coordinated" with Congressional and Presidential candidates. Another issue raised was whether to modify or repeal the rule barring national party committees from making independent expenditures on behalf of Presidential candidates in the general election. *See* 11 CFR 110.7(a)(5). Given that the *Colorado* decision concerned a Senatorial election, the Supreme Court specifically noted in the opinion that it was not addressing issues that might grow out of the public funding of Presidential campaigns. *Colorado*, 518 U.S. at 612.

As explained above, the Commission also issued two Notices of Proposed Rulemaking and held two public hearings on proposed revisions to the coordinated expenditure regulations. *See* 62 F.R. 24367 (May 5, 1997) and 63 F.R. 69524 (Dec. 16, 1998). For example, the 1998 NPRM put forward narrative proposals regarding a content-based standard for coordinated communications made to the general public. It also sought comment on coordination between the national committees of political parties and their Presidential candidates with respect to poll results, media production, consultants, and employees whose services are intended to benefit the parties' eventual Presidential nominees.

At this point, the Commission is continuing to evaluate possible amendments to 11 CFR 110.7 and 109.1 regarding the definitions of "coordinated" and "independent" expenditures, the standards applicable to party committee advertisements directed to the general public, and the possible repeal or modification of 11 CFR 110.7(a)(5), which currently bars national party committees from making independent expenditures in connection with Presidential general election campaigns. Consequently, revised proposals on these topics may be put out for additional public comment in the future.

However, with respect to pre-nomination coordinated expenditures, the Commission is promulgating new paragraph (d) of section 110.7, which is consistent with its previous policy permitting coordinated expenditures to be made before the date of the primary election. *See, e.g.*, Advisory Opinion 1984–15 ("[N]othing in the Act, its legislative history, Commission regulations, or court decisions indicates that coordinated party expenditures must be restricted to the time period between nomination and the general election."); *see also* AO 1985–14. Please note, however, that other aspects of these advisory opinions may be modified or superseded by subsequent Commission decisions regarding the remaining coordination issues.

With regard to prenomination coordinated expenditures, one of the commenters on the 1998 NPRM indicated that the current state of the law is clear, based on AOs 1984–15 and 1985–14, and there is no need to revise the rules. This party committee also noted that its own rules preclude it from supporting a Presidential candidate until that candidate has sufficient delegates to be nominated. In contrast, other commenters urged the Commission to state explicitly in the regulations that political party committees may make 441a(d) expenditures before the general election campaign period. However, one of these commenters opposed a requirement that all pre-nomination expenditures count against the party's 441a(d) limit. The commenter did not think it would be fair to count party expenditures against the coordinated spending limits if they were for positive communications supporting an anticipated nominee who was later forced to withdraw, for example, due to illness.

The Commission has concluded that it is advisable to include language in 11 CFR 110.7 that specifically sets forth the Commission's past policy of permitting pre-nomination coordinated expenditures for the general election. Accordingly, new language at paragraph (d) of section 110.7 covers all Presidential candidates, whether or not they receive federal funding, as well as Congressional candidates. To issue new rules that only apply to Presidential candidates would create the implication that coordinated expenditures for House and Senate candidates are subject to different standards, thereby generating needless confusion. The Commission does not agree with the commenters who opposed counting "positive" pre-nomination expenditures against the 441a(d) limits if another candidate receives the party's nomination. For one thing, this approach would create a distinction between positive ads supporting the party's candidate and negative ads opposing other candidates. There is no apparent basis in the FECA or its legislative history for this type of distinction. In addition, there may be some situations where a party committee ad contains both positive messages about the party and its candidate as well as negative messages about the opposition.

[1] The coordinated spending limits were invalidated on Constitutional grounds by one district court in *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission*, 41 F. Supp.2d 1197 (D. Co.o. 1999) on remand from 518 U.S. 604 (1996). This case is being appealed.

Section 9004.6 Expenditures for Transportation and Services Made Available to Media Personnel; Reimbursements

Section 9004.6 of the Commission's regulations contains provisions governing expenditures by federally financed committees for transportation and other services provided to representatives of the news media covering the Presidential general election campaigns. These rules indicate that expenditures for these purposes will, in most cases, be treated as qualified campaign expenses subject to the overall spending limitations of section 9003.2. Parallel provisions regarding Presidential primary campaigns are located at 11 CFR 9034.6.

However, section 9004.6 also allows committees to accept limited reimbursement for these expenses from the media, and to deduct any reimbursements received from the amount of expenditures subject to the overall expenditure limitation. These rules set limits on the amount of reimbursement that a committee can accept, and require committees to pay a portion of any reimbursement that exceeds those limits to the U.S. Treasury. Section 9004.6(b) limits the reimbursements to 110% of a media representative's *pro rata* share of the actual cost of the transportation and services made available. Please note that the additional 10% generally corresponds to the amount the White House Travel Office bills the press for expenses associated with government employees directly supporting the press. The regulations specify that the *pro rata* share is calculated by dividing the total actual cost of the transportation and services provided by the total number of individuals to whom such transportation and services are made available. Under the revisions to this provision, the total number of individuals has not been changed, and thus continues to include committee staff, media personnel, Secret Service and others.

During the last Presidential election cycle, a number of disputes arose between the media and certain campaigns regarding charges billed to the press. The disputes concerned the types of expenses that relate to media coverage of campaign events as distinguished from the costs of staging those campaign events. Another issue centered on the ability of the campaigns to charge all press representatives for the use of ground facilities, not just those who travel with the candidate. The third issue concerned the perceived lateness and lack of specificity in the bills received for media costs.

1. Types of Costs That May Be Charged to the Media

The 1998 NPRM sought comments on whether the rules should be revised to include lists of allowable and nonallowable expenses that may be charged to the media for ground costs. Disputed items have included security services for the press, sound and lighting equipment, press risers and camera platforms, carpeting, bunting, skirts, railings, flags, and electrical service for the press platforms.

Two witnesses who have represented Presidential campaign committees or a party committee argued that presidential campaigns should be permitted to bill the media for legitimate costs incurred for the benefit of, or at the request of, the media, since these costs would not have been incurred otherwise. These comments stated that all the items listed in the NPRM are reasonable, legitimate costs that should be paid by the media. One of these witnesses specifically opposed an attempt to allocate costs between the press and the campaigns. In contrast, the representatives of 29 major news organizations stated that the informal system they had worked out with presidential campaign committees had broken down in the past two Presidential election campaigns and should be replaced with explicit guidelines. While the news organizations remain willing to pay legitimate travel expenses, they were opposed to being forced to pay what they considered to be the costs the campaign committees incurred in staging campaign events, which includes the sound and lighting systems, bunting and flags. They referred the Commission to the guidelines negotiated by the White House Correspondents' Association and the White House Travel Office for examples of the types of legitimate costs of covering campaign events that the news media believed it could fairly be asked to pay as well as items that should not be billed to the press unless a particular item is ordered by a news organization and that specific organization is billed. They urged the Commission to incorporate into its regulations similar restrictions on reimbursements from the media.

In light of the increasing numbers of disputes in this area, the Commission has concluded that more regulatory guidance is needed. Accordingly, 11 CFR 9004.6 is being amended by adding new paragraph (a)(3) to specify that publicly funded Presidential campaigns may seek reimbursement from the media only for the items listed in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office. The Commission has concluded that these guidelines, which were established by an arms length negotiation process, are suitable for incumbent Presidents seeking re-election, incumbent Vice Presidents running for President, as well as non-incumbent challengers in Presidential primary and general elections. Incorporating the White House Travel Office's guidelines into the regulations will also ensure that any future changes that are negotiated by the White House Correspondents' Association and the White House Travel Office will automatically be reflected in the Commission's rules without the need for additional rulemaking.

The Commission notes that the White House Travel Office guidelines currently include, in addition to a list of billable items, a provision providing for billing for any item specifically requested by a media representative. The Commission assumes that this or a similar provision will be retained in any revisions to the White House guidelines. Therefore, the limitation on press billings to items specified in the White House guidelines would not preclude media personnel from requesting items or services not specifically enumerated in those guidelines, and campaigns could bill the requesting media personnel for the requested items.

2. Ground Services Made Available to Traveling and Non-Traveling Media Representatives

The 1998 NPRM sought input as to whether further clarifications are needed to convey that Presidential campaign committees may only charge a media representative for his or her own *pro rata* share for meals, chairs on the press platform, seats on buses and vans, and telephone lines in filing centers, and that media representatives must not be expected to pay for services

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made available to other members of the press or to campaign staff, volunteers, local elected officials or others. The Notice recognized that at times campaign committees have not sought payment from members of the press who do not travel on the press plane. One witness who has represented federally financed campaigns confirmed that the committees never obtain billing information on many media people. This may be due, sometimes, to the fact that local reporters and other media representatives not traveling with the campaign do not need to provide campaign staff with a credit card number for billing flights. Representatives of the news organizations who filed comments and testified at the hearing suggested that at the time campaigns provide press credentials to media representatives, whether on the plane or on the ground, it would not be a hardship for the campaign staff to obtain billing information. However, these witnesses found it objectionable that the press was sometimes charged for the entire cost of ground services made available to everyone attending the campaign event, or were charged for services that they were not allowed to use.

The current regulations at 11 CFR 9004.6(a)(2) permit, but do not require, campaign committees to obtain reimbursement from media representatives who use ground facilities, such as filing centers, but who do not travel on the press plane. The Commission notes that in practice one straightforward way for campaigns to obtain reimbursement from local media and other members of the press who do not travel with the candidate may be to collect billing information as part of the process of issuing press credentials. However, the Commission has decided that its regulations need not require the collection of billing information because campaign committees may elect to treat media costs as qualified campaign expenses and are not obligated to seek reimbursement.

Under the current regulations at 11 CFR 9004.6(b)(2), campaigns should already be well aware that each-media representative may only be charged his or her own *pro rata* share of costs. These rules explain that everyone, which includes campaign staff and media personnel from other news organizations, must be included in this calculation. Thus, Presidential campaign committees may not force the traveling press to absorb the costs of ground services used or consumed by local media, campaign staff, or others. Consequently no additional changes to the regulations are necessary in this regard.

3. Billing and Payment Guidelines

Representatives of the major news organizations presented evidence in their written comments and testimony to the effect that it sometimes took months or even years after a campaign trip for them to receive bills from Presidential campaign committees for travel costs. They also explained that in some cases, they were presented with a bill for a single lump sum, which made it very difficult, if not impossible, to determine what charges were included and whether these amounts were correct. These commenters and witnesses also urged the Commission to place restrictions on what items could be charged to a media representative's credit card. Specifically, they urged the Commission to limit the use of credit cards to advance charter payments and hotel room reservations.

After evaluating the written comments and oral testimony, the Commission has decided that it is necessary to establish guidelines covering the billing and payment of media travel and ground costs. Consequently, new paragraph (b)(3) of section 9004.6 specifies that Presidential campaign committees have sixty (60) days to provide each media representative traveling or attending a campaign event with an itemized bill for each segment of the trip. The bill should specify the amounts charged for each of the following categories: air transportation, ground transportation, housing, meals, telephone services, and other billable items specified in the White House Travel Office's Travel Policies and Procedures. Sixty days is a reasonable, commercial length of time. The White House Travel Office's Travel Policies and Procedures contemplate billing within twenty (20) business days of the return of a trip. Prompt, detailed billing is needed so that the committees may obtain payment or settle disputes expeditiously. The Commission believes that it is reasonable and consistent with commercial business practices to require media representatives to pay for these costs within sixty (60) days from the date of the bill in the absence of a dispute over the charges. It should be noted that while the individual reporters' credit cards may be billed, their news organizations provide reimbursement. Under the new rules, prompt billing and payment may ensure that these payments are made and these billing disputes are resolved by the parties before the Commission begins to audit the committee.

Section 9034.6 Expenditures for Transportation and Services Made Available to Media Personnel; Reimbursements

The amendments contained in this section follow those made to section 9004.6, as discussed above.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that very few small entities will be affected by these proposed rules, and the cost is not expected to be significant. Further, any small entities affected have voluntarily chosen to receive public funding and to comply with the requirements of the Presidential Election Campaign Fund Act or the Presidential Primary Matching Payment Account Act in these areas.

List of Subjects

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9034

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Subchapters A, E and F of Chapter I of Title 11 of the *Code of Federal Regulations* are amended as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for Part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

2. Section 110.7 is amended by adding paragraph (d) to read as follows:

§ 110.7 Party committee expenditure limitations (2 U.S.C. 441a(d)).

* * * * *

(d) Timing. Party committees may make coordinated expenditures in connection with the general election campaign before their candidates have been nominated. All pre-nomination coordinated expenditures shall be subject to the coordinated expenditure limitations of this section, whether or not the candidate with whom they are coordinated receives the party's nomination.

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

3. The authority citation for Part 9004 continues to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

4. Section 9004.6 is amended by revising paragraphs (a) and (b) to read as follows:

§ 9004.6 Expenditures for transportation and services made available to media personnel; reimbursements.

(a) *General.* (1) Expenditures by an authorized committee for transportation, ground services or facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters, and computers) provided to media personnel, Secret Service personnel or national security staff will be considered qualified campaign expenses, and, except for costs relating to Secret Service personnel or national security staff, will be subject to the overall expenditure limitations of 11 CFR 9003.2(a)(1) and (b)(1).

(2) Subject to the limitations in paragraphs (b) and (c) of this section, committees may seek reimbursement from the media for the expenses described in paragraph (a)(3) of this section, and may deduct reimbursements received from media representatives from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9003.2(a)(1) and (b)(1). Expenses for which the committee receives no reimbursement will be considered qualified campaign expenses, and, with the exception of those expenses relating to Secret Service personnel and national security staff, will be subject to the overall expenditure limitation.

(3) Committees may seek reimbursement from the media only for the billable items specified in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office.

(b) *Reimbursement limits;* billing. (1) The amount of reimbursement sought from a media representative under paragraph (a)(2) of this section shall not exceed 110% of the media representative's pro rata share (or a reasonable estimate of the media representative's pro rata share) of the actual cost of the transportation and services made available. Any reimbursement received in excess of this amount shall be disposed of in accordance with paragraph (d)(1) of this section.

(2) For the purposes of this section, a media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services provided by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available, except that, when seeking reimbursement for transportation costs paid by the committee under 11 CFR 9004.7(b)(5)(i)(C), the total number of individuals shall not include national security staff.

(3) No later than sixty (60) days of the campaign trip or event, the committee shall provide each media representative attending the event with an itemized bill that specifies the amounts charged for air and ground transportation for each segment of the trip, housing, meals, telephone service, and other billable items specified in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office. Payments shall be due sixty (60) days from the date of the bill, unless the media representative disputes the charges.

* * * * *

PART 9034—ENTITLEMENTS

5. The authority citation for Part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

6. Section 9034.6 is amended by revising paragraphs (a) and (b) to read as follows:

§ 9034.6 Expenditures for transportation and services made available to media personnel; reimbursements.

(a) *General.* (1) Expenditures by an authorized committee for transportation, ground services or facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters, and computers) provided to media personnel, Secret Service personnel or national security staff will be considered qualified campaign expenses, and, except for costs relating to Secret Service personnel or national security staff, will be subject to the overall expenditure limitations of 11 CFR 9035.1(a).

(2) Subject to the limitations in paragraphs (b) and (c) of this section, committees may seek reimbursement from the media for the expenses described in paragraph (a)(3) of this section, and may deduct reimbursements received from media representatives from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9035.1(a). Expenses for which the committee receives no reimbursement will be considered qualified campaign expenses, and, with the exception of those expenses relating to Secret Service personnel and national security staff, will be subject to the overall expenditure limitation.

(3) Committees may seek reimbursement from the media only for the billable items specified in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office.

(b) *Reimbursement limits;* billing. (1) The amount of reimbursement sought from a media representative under paragraph (a)(2) of this section shall not exceed 110% of the media representative's pro rata share (or a reasonable estimate of the media representative's pro rata share) of the actual cost of the transportation and services made available. Any reimbursement received in excess of this amount shall be disposed of in accordance with paragraph (d)(1) of this section.

(2) For the purposes of this section, a media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services provided by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available, except that, when seeking reimbursement for transportation costs paid by the committee under 11 CFR 9034.7(b)(5)(i)(C), the total number of individuals shall not include national security staff.

(3) No later than sixty (60) days of the campaign trip or event, the committee shall provide each media representative attending the event with an itemized bill that specifies the amounts charged for air and ground transportation for each segment of the trip, housing, meals, telephone service, and other billable items specified in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office. Payments shall be due sixty (60) days from the date of the bill, unless the media representative disputes the charges.

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Dated: July 30, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–20102 Filed 8–4–99; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 9036

[NOTICE 1999–15]

Matching Credit Card and Debit Card Contributions in Presidential Campaigns

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: On June 10, 1999, the Commission approved new regulations that allow contributions made by credit or debit card, including contributions made over the Internet, to be matched under the Presidential Primary Matching Payment Account Act. "Matchable contributions" are those which, when received by candidates who qualify for payments under the Matching Payment Act, are matched by the Federal Government. The rules published today provide general guidance on the documentation that must be provided before credit and debit card contributions will be matched, and state that more detailed guidance will be found in the Commission's Guideline for Presentation in Good Order.

DATES: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9039(c).

FOR FURTHER INFORMATION CONTACT: Rosemary C. Smith, Acting Assistant General Counsel, or Rita A. Reimer, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530 (toll free).

SUPPLEMENTARY INFORMATION: On June 17, 1999, the Commission published revisions to its regulations at 11 CFR 9034.2 and 9034.3 to permit the matching of credit card and debit card contributions, including contributions received over the Internet, under the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.* ("Matching Payment Act"). 64 FR 32394. In that document the Commission announced that further documentation requirements for these contributions would be addressed in the Commission's upcoming rules concerning the public financing of presidential primary and general election campaigns. *Id.* The Commission is publishing this separate document for this purpose in order to give the regulated community the earliest possible guidance in this area.

Under the Matching Payment Act, if a candidate for the presidential nomination of his or her party agrees to certain conditions and raises in excess of $5,000 in contributions of $250 or less from residents of each of at least 20 States, the first $250 of each eligible contribution is matched by the Federal Government. 26 U.S.C. 9033, 9034. In the past, the Commission declined to match credit card contributions, although it has permitted campaign committees to accept them. The Commission has always held contributions submitted for matching to a higher documentation standard because the matching fund program involves the disbursement of millions of dollars in taxpayer funds. However, the Commission decided earlier this year such contributions should be matched, if appropriate safeguards and procedures were in place to guard against the receipt of excessive and prohibited contributions.

On December 16, 1998, the Commission published a Notice of Proposed Rulemaking ("NPRM") in which it sought comments on a wide range of issues involved in the public financing of presidential primary and general election campaigns. 63 F.R. 69524 (Dec. 16, 1998). Several of those who commented on the NPRM and several witnesses who testified at the Commission's March 24, 1999 public hearing on the NPRM urged the Commission to match qualified contributions made by credit or debit card over the Internet. After considering the comments, testimony and other relevant material, the Commission decided to authorize the matching of such contributions as long as safeguards were present to limit the possibility of fraudulent, illegal or excessive contributions. *See Explanation and Justification to the Federal Election Commission's Rules Addressing Matching Credit Card and Debit Card Contributions in Presidential Campaigns*, 64 F.R. 32394 (June 17, 1999). The new rules are codified at 11 CFR 9034.2(b) and (c), and 11 CFR 9034.3(c). The Commission also approved an Advisory Opinion, AO 1999–9, that authorized the matching of Internet contributions, but made its approval contingent on the expiration of the Congressional review period discussed below.

Section 9039(c) of Title 26, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of the Matching Payment Act be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated.

The regulations at 11 CFR 9034.2 and 9034.3 on matching credit card and debit card contributions were sent to Congress on June 11, 1999. The legislative review period for those rules has not yet expired. However, if those rules are disapproved, then the new rules at 11 CFR 9036.1 and 9036.2 would not take effect, because they are a corollary to the earlier rules. The revisions to 9036.1 and 9036.2 are also subject to their own legislative review period, which began when they were transmitted to Congress on Aug. 2, 1999.

The Commission announced in the June 17, 1999 document that, unless Congress and the President enact legislation disapproving the amendments to 11 CFR 9034.2 and 9034.3, these changes will apply retroactively to contributions made on January 1, 1999 and thereafter. The same is true of these further regulations.

Explanation and Justification

Section 9036.1 Threshold Submission

This section sets forth the requirements a candidate must meet in making the threshold submission to the Commission, that is, the submission in which the candidate demonstrates that the requirements of 26 U.S.C. 9033 and 9034 have been met. The Commission is adding a new paragraph (b)(7) to this section, dealing with credit and debit card contributions, and renumbering paragraphs (b)(7) and (b)(8) as paragraphs (b)(8) and (b)(9), respectively.

The Commission has issued several Advisory Opinions dealing with the Internet, *see, e.g.*, AO's 1995–9, 1995–35, 1997–16, 1999–7, 1998–22, and 1999–9. It has also initiated a project to determine the potential impact of the Internet on various aspects of political committees' operations. It has become clear to the Commission that even cutting-edge advancements in computer technology may quickly become obsolete. Consequently, the Commission has decided to include the technical requirements for making these submissions in its Guideline for Presentation in Good Order, commonly known as "PIGO." Therefore, paragraph (b)(7) states without further elaboration that, in the case of a contribution made by a credit or debit card, including one made over the Internet, the candidate shall provide sufficient documentation to the Commission to insure that each such contribution was made by a lawful contributor who manifested an intention to make the contribution to the campaign committee that submits it for matching fund payments. It further states that additional information on the documentation required to accompany such contributions will be found in PIGO. This approach will enable the Commission to update the technical requirements much more rapidly than would be possible if these requirements were to be included in the text of the rules.

The Commission notes, however, that PIGO has been incorporated by reference into the rules, and therefore is binding on candidates and their campaigns. 11 CFR 9036.1(b)(7), 9036.2(b). A candidate seeking matching funds for his or her presidential campaign must first sign a candidate agreement that provides, *inter alia*, that the candidate and the candidate's authorized committee(s) will prepare matching fund submissions in accordance with PIGO requirements. 11 CFR 9033.1(a)(9). Contributions submitted for matching will therefore not be matched unless these procedures are followed.

Section 9036.2 Additional Submissions for Matching Fund Payments

This section contains information on how subsequent submissions for matching fund payments, i.e., those made after the threshold submission, should be made. For the most part these requirements are identical to those for threshold submissions, except that additional submissions need not break down contributions by State, as is required of threshold submissions.

New paragraph (b)(1)(vii) of this section is identical to new paragraph 11 CFR 9036.1(b)(7), discussed *supra*. The new paragraph reinforces the requirement found in the introductory language of paragraph (b) of this section, which states that all additional submissions for matching fund payments shall be made in accordance with PIGO.

Certification of No Effect Pursuant to 5 U.S.C. § 605(b) (Regulatory Flexibility Act)

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that these regulations do not affect a substantial number of entities, and most of the covered entities are not "small entities" for purposes of the Regulatory Flexibility Act. Therefore the rules would not have a significant economic effect on a substantial number of small entities.

List of Subjects

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Recordkeeping and reporting requirements.

For the reasons set forth in the preamble, Subchapter F, Chapter I of Title 11 of the Code of Federal Regulations is amended to read as follows:

PART 9036—REVIEW OF SUBMISSION AND CERTIFICATION OF PAYMENTS BY COMMISSION

1. The authority citation for Part 9036 continues to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

2. Section 9036.1 is amended by redesignating paragraphs (b)(7) and (b)(8) as paragraphs (b)(8) and (b)(9), respectively, and by adding new paragraph (b)(7) to read as follows:

§ 9036.1 Threshold submission.

* * * * *

(b) * * *

(7) In the case of a contribution made by a credit or debit card, including one made over the Internet, the candidate shall provide sufficient documentation to the Commission to insure that each such contribution was made by a lawful contributor who manifested an intention to make the contribution to the candidate or authorized committee that submits it for matching fund payments. Additional information on the documentation required to accompany such contributions is found in the Commission's Guideline for Presentation in Good Order. *See* 11 CFR 9033.1(b)(9).

* * * * *

3. Section 9036.2 is amended by adding new paragraph (b)(1)(vii), to read as follows:

§ 9036.2 Additional submissions for matching fund payments.

* * * * *

(b) * * *

(1) * * *

(vii) In the case of a contribution made by a credit or debit card, including one made over the Internet, the candidate shall provide sufficient documentation to the Commission to insure that each such contribution was made by a lawful contributor who manifested an intention to make the contribution to the candidate or authorized committee that submits it for matching fund payments. Additional information on the documentation required to accompany such contributions is found in the Commission's Guideline for Presentation in Good Order. *See* 11 CFR 9033.1(b)(9).

* * * * *

Dated: August 2, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–20181 Filed 8–4–99; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWA–4]

RIN 2120–AA66

Modification of the Orlando Class B Airspace Area, Orlando, FL; and Modification of the Orlando Sanford Airport Class D Airspace Area, Sanford, FL

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Orlando Class B airspace area, Orlando, FL; and the Orlando Sanford Airport Class D airspace area, Sanford, FL. Specifically, this action modifies several subareas within the lateral boundaries of the existing Orlando Class B airspace area; and lowers the vertical limits of the Orlando Sanford Airport Class D airspace area. The FAA is taking this action to enhance safety, reduce the potential for midair collision, and improve the management of air traffic operations into, out of, and through the Orlando terminal area while accommodating the concerns of airspace users. Additionally, this action corrects the coordinates for the Orlando Sanford Airport.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

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Availability of Final Rule

An electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661) using a modem and suitable communications software.

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the docket number of this final rule. Persons interested in being placed on a mailing list for future Notices of Proposed Rulemaking or final rules should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published, in the **Federal Register**, the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule (35 FR 7782). This rule provided for the establishment of Terminal Control Airspace (TCA) area (now known as Class B airspace areas).

On June 21, 1988, the FAA published, in the **Federal Register**, the Transponder with Automatic Altitude Reporting Capability Requirement Final Rule (53 FR 23356). This rule, in part, requires all aircraft to have an altitude encoding transponder when operating within 30 nautical miles (NM) of any designated TCA (now known as Class B airspace area) primary airport from the surface up to 10,000 feet mean sea level (MSL). This rule also provides an exclusion for those aircraft not originally certificated with an engine-driven electrical system (or those that have not subsequently been certified with such a system) balloons, or gliders operating outside of the Class B airspace area, but within 30 NM of the primary airport.

On October 14, 1988, the FAA published, in the **Federal Register**, the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule (53 FR 40318). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a TCA (now known as Class B airspace area) to hold at least a private pilot certificate. Excepted from this requirement are student pilots who have received certain documented training.

On December 17, 1991, the FAA published, in the **Federal Register**, the Airspace Reclassification Final Rule (56 FR 65638). This rule, in part, discontinued the use of the term "Terminal Control Area" (TCA) and replaced it with the designation "Class B airspace area." This change in terminology is reflected in the remainder of this final rule.

Background

The Class B airspace area program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic operations by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding these major terminal areas increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating in accordance with visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to manage the increasing number of IFR and VFR operations. The regulatory requirements of Class B airspace areas afford the greatest protection for the greatest number of people, by giving air traffic control the increased capability to provide aircraft separation service.

The standard configuration of a Class B airspace area contains three concentric circles centered on the primary airport extending to 10, 20, and 30 NM, respectively. The standard vertical limit of these airspace areas normally should not exceed 10,000 feet MSL with the floor established at the surface in the inner area and at levels appropriate to the containment of operations in the outer areas. Variations of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

Public Input

On May 17, 1999, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (64 FR 26705) proposing to modify several subareas within the lateral boundaries of the existing Class B airspace area; and modify the vertical limits of the Orlando Sanford Airport Class D airspace area. The comment period for this proposed rulemaking action closed on June 30, 1999.

In response to the proposal, the FAA received four comments. All comments received were considered before making a determination on this final rule. An analysis of the comments and the Agency's response follows.

Discussion of Comments

The FAA received three comments in favor of the planned modifications to the Orlando Class B airspace area and the Orlando Sanford Airport Class D airspace area which are as follows: the Orlando Sanford Airport; the City of Sanford; and the Sanford Airport Authority.

The Air Line Pilots Association also commented in favor of the planned modifications, but expressed concern that Area F to the west and east does not appear to give protection to departures on a standard rate of climb.

The FAA believes that Area F to the west and east is adequately designed to contain departures within the Class B airspace. Traffic normally departs via runway 18L/R on a 200° heading and, based on the aircraft's performance, turned westbound on course. Aircraft departing westbound must be out of 3,000 feet to turn in order to ensure separation from aircraft operating at Kissimmee Airport. Traffic departing eastbound can be transitioned to the north to remain in the Class B airspace area.

The Rule

The FAA amends 14 CFR part 71 by modifying the Orlando Class B airspace area, Orlando, FL, and the Orlando Sanford Airport Class D airspace area, Sanford, FL. Specifically, this action modifies several subareas within the lateral boundaries of the existing Class B airspace area, and modifies the vertical limits of the Orlando Sanford Airport Class D airspace area. The FAA is taking this action to enhance safety, reduce the potential for midair collision, and to improve the management of air traffic operations into, out of, and through the Orlando terminal area. Additionally, this action corrects the coordinates for the Orlando Sanford Airport. Specifically, this action

modifies the Orlando Class B airspace area as follows:

Orlando Class B Airspace Area

Area A. The size of Area A (that area beginning at the surface up to 10,000 feet MSL) is reduced to a 5-mile radius of the primary airport, Orlando International Airport. This airspace modification will contain large turbojet aircraft within the limits of the Class B airspace area while operating to and from the primary airport. In addition, a portion of Area A beyond 5 NM is removed form the surface area and reconfigured as Area B.

Area B. Area B is reconfigured from a section of the surface area, between the 5-mile radius of the primary airport, extending west to the John Young Parkway, north to Lake Underhill Road, east to the Stanton Power Plant, and south to the Orlando VORTAC 14 Distance Measuring Equipment (DME), extending upward from 900 feet MSL. This modification will support approach and departure procedures for aircraft transitioning to and from the Orlando International Airport.

Also, this airspace modification will allow Law Enforcement and Lifeguard helicopter operations below the floor of the Class B airspace area.

Area C. The Floor of Area C will remain at 1,600 feet MSL north of the Orlando Executive Airport; however, the lateral limits of Area C are modified to extend north of Lake Underhill Road, south of S.R. 436, east of S.R. 423 and S.R. 434, and extend 8 miles east of the Orlando Executive Airport. This airspace modification will support approach procedures for aircraft transitioning to the final approach course for the Orlando International Airport.

The floor of Area C is lowered from 3,000 to 1,600 feet MSL, extending 3 miles to the north and south of the Orlando Sanford Airport, east of the Wekiva River, and west of Lake Harney's eastern shore. This airspace modification will support approach procedures for large turbojet aircraft operations transitioning to and from the Orlando Sanford Airport.

In addition, the floor of Area C is raised from 1,500 to 1,600 feet MSL, extending south of the Orlando VORTAC 14 DME arc, north of the Orlando VORTAC 20 DME arc, and between 2 and 13 miles east of the Kissimmee Airport. This airspace modification will support approach procedures for aircraft transitioning to the final approach course for the Orlando International Airport. This modification will also allow nonparticipating aircraft sufficient airspace to conduct VFR operations below the vertical limits of the Class B airspace area while transitioning to/from secondary satellite airports.

Area D. Area D is modified by raising the floor of the area 10 miles north of the Orlando International airport from 1,600 to 2,000 feet MSL, and the area southwest of the Orlando international Airport from 1,500 to 2,000 feet MSL. This area extends between S.R. 423 and Kirkman Road, 6 to 9 miles west of the primary airport, between 2 miles north and 5 miles south of the Kissimmee Airport, and between 7 miles and 11 miles north of the Orlando VORTAC. This airspace modification will provide sufficient airspace modification will provide sufficient airspace for sequencing and vectoring arriving and departing aircraft in close proximity to the primary airport. It will also increase and navigable airspace below the Class B airspace area in the vicinity of Kissimmee Municiport Airport.

Area E. The floor of Area E will remain at 3,000 feet MSL; however, the lateral limits of Area E are expanded to the north and south . Area E is extended 3 miles west of the Wekiva river, and between 3 to 6 miles north of the Orlando Sanford Airport. This airspace modification will provide sufficient airspace for sequencing and vectoring aircraft, and ensure that operations are contained within the Class B airspace area.

Area E is also extended between the 20-mile and 30-mile arcs south of the primary airport, and between 7 miles and 15 miles east of the primary airport. This airspace modification will provide sufficient airspace for sequencing and vectoring aircraft, and will provide a controlled environment for aircraft arriving and departing the Class B airspace area.

Area F. The subareas of the Class B airspace areas are reconfigured as Area F, from 6,000 up to and including 10,000 feet MSL, extending from 8 miles west of the primary airport to Highway 27. This airspace modification will provide sufficient airspace to contain aircraft in a controlled environment when transitioning between the en route and terminal phase of flight.

Area F is also modified from the power line located approximately 15 miles east of the primary airport, eastward, to the power line located approximately 22 miles east of the primary airport. This airspace modification will provide sufficient airspace to contain aircraft in a controlled environment when transitioning between the en route and terminal phase of flight.

Orlando Sanford Airport Class D Airspace Area

The Orlando Sanford Airport Class D airspace area is lowered from 3,000 to 1,600 feet MSL. The Orlando Sanford Airport Class D airspace area will include a radius of 4.4 NM from the Orlando Sanford Airport up to but not including 1,600 feet MDL. This airspace modification coincides with lowering the floor of the Class B airspace area in the vicinity of the Orlando Sanford Airport.

The coordinates for this airspace docket are based on North American Datum 83. Class B and Class D airspace areas are published, respectively, in paragraphs 3000 and 5000 of FAA Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR section 71.1. The Class B and Class D airspace areas listed in this document will be subsequently published in this Order.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act (RFA) requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Will generate benefits that justify its minimal costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities, (4) will not constitute a barrier to international trade and (5) will not contain any federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

The FAA will modify the Orlando Class B and the Orlando Sanford Airport Class D airspace areas. The Orlando Class B airspace area modification will maintain the 10,000 feet MSL airspace ceiling and redefine the lateral limits of several of the existing subareas to

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improve the management of air traffic operations in the Orlando terminal area. The Orlando Sanford Airport Class D airspace area modification will lower the airspace area from 3,000 to 1,600 feet MSL and will include a radius of 4.4 NM from the Orlando Sanford Airport up to but not including 1,600 feet MSL.

The FAA has determined that the modification of the Orlando Class B and the Orlando Sanford Airport Class D airspace areas will improve the operational efficiency while maintaining aviation safety in the terminal areas. Also, clearer boundary definition and changes to lateral and vertical limits of the subareas will leave additional noncontrolled airspace for VFR aircraft transitioning to and from satellite airports. This rule will impose negligible or no additional cost on airspace users and will potentially reduce circumnavigation costs to some operators.

The final rule will result in no additional administrative or operational cost for personnel and equipment to the agency. Printing of aeronautical charts which reflect the changes to the Class B and Class D airspace areas will be accomplished during a scheduled chart printing, and will result in no additional costs for plate modification and updating of charts. Furthermore, no staffing changes will be required to maintain the modified Class B and Class D airspace area. Potential increase in FAA operations workload can be absorbed by current personnel and equipment.

In view of the negligible cost of compliance, enhanced aviation safety, and improved operational efficiency, the FAA has determined that the final rule will be cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that the final rule will have a de minimus impact on small entities. All commercial and general aviation operators who presently use the Orlando International Airport are equipped to operate within the modified Class B airspace area. As for aircraft that regularly fly through the Orlando Sanford Airport Class D airspace area, since the airport is situated within the established Orlando Mode C Veil, all aircraft should already have the necessary equipment to transition the modified Class B airspace area. Therefore, there will be no additional equipment cost to these entities.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The final rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Sector 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This final rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) there are no requirements for information collection associated with this rule.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 3000—Subpart B-Class B Airspace

* * * * *

ASO FL B Orlando, FL [Revised]

Orlando International Airport (Primary Airport)
(lat. 28°25′44″ N., long. 81°18′58″W.)
Orlando VORTAC
(lat. 28°32′34″ N., long. 81°20′06″W.)

Boundaries

Area A—That airspace extending upward from the surface to and including 10,000 feet MSL within a radius of 5 NM from the Orlando International Airport.

Area B—That airspace extending upward from 900 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of Sate Road (S.R.) 423 (John Young Parkway) and Interstate 4, thence northeast along Interstate 4 to the intersection of Interstate 4 and S.R. 441 (Orange Blossom Trail), thence direct to the intersection of Lake Underhill Road and Palmer Street, thence east along Lake Underhill Road to the intersection of Lake Underhill Road and the Central Florida Greenway, thence direct to lat. 28°30′00″ N., long. 81°11′00″ W., (one mile northwest of the Stanton Power Plant), thence south to the intersection of the ORL VORTAC 14-mile radius arc, thence clockwise along the 14-mile radius arc of the ORL VORTAC to the intersection of S.R. 423, thence north along S.R. 423 to the point of beginning.

Area C—That airspace extending upward from 1,600 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of the Wekiva River at 28°44′00″ N., long. 81°25′30″ W., thence north along the Wekiva River to the intersection of lat. 28°50′00″ N. Thence east to lat. 28°50′00″ N., long. 81°02′30″ W., thence south to the intersection of lat. 28°44′00″ N., long. 81°02′30″ W., thence west to the point of beginning.

Also that airspace north of the Orlando Executive Airport extending upward from 1,600 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of Interstate 4 and S.R. 423. Thence north along S.R. 423 to the intersection of S.R. 423 and S.R. 441 (Orange Blossom Trail). Thence direct to the intersection of S.R. 434 (Forest City Road) and S.R. 424 (Edgewater Drive), thence north along S.R. 434 to the intersection of S.R. 436 (Altamonte Drive.), thence east along S.R. 436 to the intersection of Hwy 17–92, thence east along lat. 28°39′20″ N., to long. 81°11′00″ W. Thence south to the intersection of lat. 28°30′00″ N., thence northwest direct to the intersection of Lake Underhill Road and S.R. 417 (Central Florida Greenway), thence west along Lake Underhill Road to the intersection of Palmer Street. Thence southwest direct to the intersection of Interstate 4 and the S.R. 441, thence southwest along Interstate 4 to the point of beginning.

Also that airspace south of the primary airport extending upward from 1,600 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of long. 81°24′06″ W., and the ORL VORTAC 14-mile radius arc, thence counterclockwise along the 14-mile radius arc of the ORL VORTAC to the intersection of long. 81°11′00″ W., thence south to the intersection of the ORL VORTAC 20-mile radius arc, thence clockwise along the ORL VORTAC 20-mile radius arc to long. 81°24′06″ W., thence north to the point of beginning.

Area D—That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of Interstate 4 and long. 81°27′30″ W., thence north to lat. 28°44′00″ N., thence east to long. 81°11′00″ W., thence south to lat. 28°39′20″ N., thence west to the intersection of S.R. 436 and Hwy 17–92, thence west along S.R. 436 to the intersection of S.R. 436 and S.R. 434, thence south along S.R. 434 to the intersection of S.R. 434 and S.R. 424, thence direct to the intersection of S.R. 423 and S.R. 441, thence south along S.R. 423 to the intersection of the ORL VORTAC 14-mile radius arc, thence counterclockwise along the 14-mile radius arc of the ORL VORTAC to long. 81°24′06″ W., thence south to the intersection of the ORL VORTAC 20-mile radius arc, thence clockwise to the intersection of long. 81°27′03″ W., thence north to the point of beginning.

Area E—That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at a point of the intersection of lat. 28°44′00″N., long. 81°27′30″W., thence north to the intersection of lat. 28°53′00″N., thence east to the intersection of the MCO Mode C Veil 30–NM radius arc, thence southeast along this arc to the intersection of the power lines at lat. 28°50′20″N., thence southeast along these power lines to lat.28°44′00″N., thence west to long. 81°02′30″W., thence north to lat. 28°50′00″N., thence west to the intersection of the Wekiva River, thence south along the Wekiva River to lat. 28°44′00″N., thence west to the point of beginning.

Also that airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning south of the primary airport at a point of the intersection of long. 81°27′30″W. and the ORL 20-mile radius arc, thence counterclockwise along the 20-mile radius arc of the ORL VORTAC to the intersection of long. 81°11′00″W., thence north to the intersection of lat. 28°44′00″N., thence east to the intersection of the Florida Power transmission lines at lat. 28°44′00″N., long 81°05′20″W., (one half mile west of Southerland Airport), thence south along this power line to the intersection of Highway 50 at lat. 28°32′10″N., long. 81°03′45″W., thence south to the Bee Line Expressway, at lat. 28°27′05″N., long. 81°03′45″W., thence west along the Bee Line Expressway to the intersection of lat. 28°27′00″N., long. 81°04′40″W., thence south to the intersection of the ORL VORTAC 30-mile radius arc, thence clockwise along the 30-mile radius arc of the ORL VORTAC to long. 81°27′30″W., thence north to the point of beginning.

Area F—That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning south of the primary airport at the intersection of the ORL VORTAC 30-mile radius arc and long. 81°27′30″W., thence clockwise to the intersection of Highway 27, thence north along Highway 27 to the intersection of Highway 27 and long. 81°45′00″W., thence north along long. 81°45′00″W., to the intersection of the ORL VORTAC 24-mile radius arc, thence clockwise along the 24-mile radius arc to the intersection of lat. 28°53′00″N., thence east to lat. 28°53′00″N., long. 81°27′30″W., thence south to the point of beginning.

Also that airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at the Florida Power transmission lines at lat. 28°44′00″N., long. 81°05′20″W., thence east along lat. 28°44′00″N. to the Florida Power transmission lines at lat. 28°44′00″N., long. 80°55′40″W., thence southeast and south along these power lines to the intersection of Highway 50, thence south to the power lines at lat. 28°22′14″N., long. 80°52′30″W., thence southwest along these power lines to the intersection of long. 81°04′40″W., thence north along long. 81°04′40″W., to the intersection of the Bee Line Expressway at lat. 28°27′05″N., long. 81°04′40″W., thence east along the Bee Line Expressway at lat. 28°27′05″N., long. 81°03′45″W., thence north to the intersection of Highway 50 and the Florida Power transmission lines at lat. 28°32′10″N., long. 81°03′45″W., thence north along these power lines to the point of beginning.

* * * * *

Paragraph 5000—Subpart D–Class D Airspace

* * * * *

ASO FL D Sanford, FL

[Revised]

Orlando Sanford Airport, FL [formerly known as the Central Florida Regional Airport
(Lat. 28°46′40″N, long. 81°14′15″W.)

That airspace extending upward from the surface to but not including 1,600 feet MSL within a 4.4-mile radius of the Orlando Sanford Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory/.

* * * * *

Issued in Washington, DC, on July 27, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

BILLING CODE 4910–13–M

ORLANDO
PROPOSED
CLASS B AIRSPACE
NOT TO BE USED FOR NAVIGATION

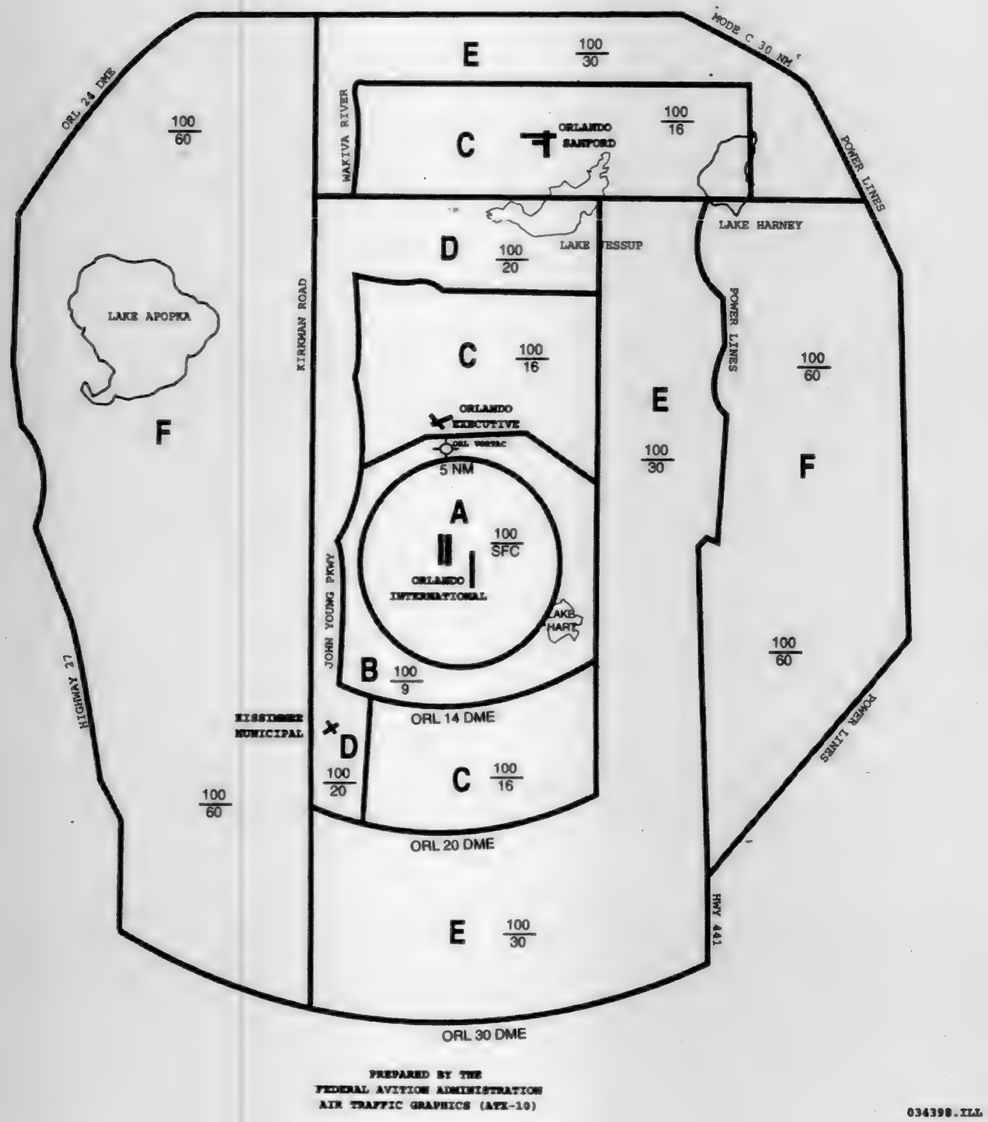

[FR Doc. 99–20022 Filed 8–5–99; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 99–ASW–09]

Revision of Class E Airspace; Galveston, TX.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Galveston, TX.

EFFECTIVE DATE: The direct final rule published at 64 FR 24036 is effective 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5793.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 5, 1999, (64 FR 24036). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 9, 1999. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on July 28, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–20087 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–10]

Revision of Class E Airspace; Shreveport, LA.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Shreveport, LA.

EFFECTIVE DATE: The direct final rule published at 64 FR 24035 is effective 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5793.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 5, 1999, (64 FR 24035). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 9, 1999. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on July 28, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–20086 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–17]

Revision of Class E Airspace; Antlers, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Antlers, OK. The development of a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP), at Antlers Municipal Airport, Antlers, OK, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Antlers Municipal Airport, Antlers, OK.

DATES: Effective 0901 UTC, November 4, 1999. Comments must be received on or before September 20, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–17, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Antlers, OK. The development of a NDB SIAP, at Antlers Municipal Airport, Antlers, OK, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Antlers Municipal Airport, Antlers, OK.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on

the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ASW–17." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an establishment body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adotpion of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW OK Antlers, OK [Revised]

Antlers Municipal Airport, OK
(Lat. 34°11′33″N., long. 95°38′59″W.)
Antlers NDB
(Lat. 34°11′30″N., long. 95°39′7″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Antlers Municipal Airport and within 2.5 miles each side of the 172° bearing from the Antlers NDB extending from the 6.5-mile radius to 7.3 miles south of the airport.

* * * * *

Issued in Fort Worth, TX, on July 12, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–20083 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–16]

Revision of Class E Airspace; Altus, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Altus, OK. The development of a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedures (SIAP), at Frederick Municipal Airport, Frederick, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Frederick Municipal Airport, Frederick, OK.

DATES: Effective 0901 UTC, November 4, 1999. Comments must be received on or before September 20, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–16, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E Airspace at Altus, OK. The development of a NDB SIAP, at Frederick Municipal Airport, Frederick, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Frederick Municipal Airport, Frederick, OK.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ASW–16." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS, ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW OK E5 Altus, OK [Revised]

Altus AFB, OK
(lat. 34°39′30″N., long. 99°16′00″W)
Altus VORTAC
(lat. 34°39′46″N., long. 99°16′16″W)
Altus Municipal Airport, OK
(lat. 34°41′56″N. long 99°20′17″W)
Tipton Municipal Airport, OK
(lat. 34°27′31″N., long. 99°10′17″W)
Frederick Municipal Airport, OK
(lat. 34°21′08″N., long. 98°59′05″W.)
Altus AFB ILS Localizer
(lat. 34°38′32″N., long. 99°16′26″W.)
Frederick NDB
(lat. 34°21′14″N., long. 98°59′11″W.)

That airspace extending upward from 700 feet above the surface within a 9.1-mile radius of Altus AFB and within 1.6 miles each side of the 185° radial of the Altus VORTAC extending from the 9.1-mile radius to 11.9 miles south of the airport and within 3 miles west and 2 miles each of the Altus AFB Localizer north course extending from the 9.1-mile radius to 15 miles north of the airport and within a 6.5-mile radius of altus Municipal Airport and within a 5.4-mile radius of Tipton Municipal Airport and within a 7.2-mile radius of Frederick Municipal Airport and within 2.5 miles each side of the 180° bearing from the Frederick NDB extending from the 7.2-mile radius to 7.7 miles south of the airport.

* * * * *

Issued in Fort Worth, TX, on July 12, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–20082 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 5

Employee Conduct Standards and Financial Conflicts of Interest; Cross-Reference to Executive Branch-wide Regulations

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: In its rule concerning Employee Conduct Standards and Financial Conflicts of Interest, the Commission is amending its cross-reference to the executive branch-wide regulations, to correct a typographical error.

EFFECTIVE DATE: These amendments are effective August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Ira S. Kaye, 202–326–2426, or Shira Pavis Minton, 202–326–2479, Attorneys, Office of the General Counsel, FTC, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Commission is revising Commission Rule 5.1, 16 CFR 5.1, to correct a typographical error.

This rule amendment relates solely to agency practice, and, thus, is not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2), or to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2).

List of Subjects in 16 CFR Part 5, Subpart A

Employee Conduct Standards and Financial Conflict of Interest.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, chapter I, subchapter A, of the Code of Federal Regulations as follows:

PART 5—STANDARDS OF CONDUCT

1. The authority citation for part 5 continues to read as follows:

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 15 U.S.C. 46(g); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1900 Comp., p. 306; 5 CFR part 2635, unless otherwise noted.

2. Section 5.1 is amended by revising the citation "5 CFR 5701.101" to read "5 CFR Part 5701" and by revising the word "supplements" to "supplement".

Donald S. Clark,

Secretary.

[FR Doc. 99–20145 Filed 8–4–99; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 240 and 249

[Release No. 34–41672; File No. S7–16–99]

RIN 3235–AH73

Broker-Dealer Registration and Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is taking several steps as contingency planning in the event that the implementation of Web CRD is postponed and Legacy CRD must be reinstated. These steps include redesignating Form BD currently in effect until July 30, 1999 as Interim Form BD, redesignating Form BDW currently in effect until August 1, 1999 as Interim Form BDW, and extending the effectiveness of these forms indefinitely; amending Rules 15b3–1(c), 15b6–1, 15Ba2–2(e), 15Bc3–1, 15Ca2–1(c), and 15Cc1–1 under the Securities Exchange Act of 1934 to allow the Commission, by order, to conditionally exempt broker-dealers from the filing instructions contained in those rules and Forms BD and BDW, respectively; and amending the Commission's Rules of Practice to delegate the authority to issue orders under all these rules to the Director of the Division of Market Regulation. These actions will permit the Commission to require use of Interim Form BD and Interim Form BDW after July 30, 1999 and August 1, 1999, respectively, in the event the full implementation of Web CRD is delayed and it becomes necessary to return to the Legacy CRD system.

EFFECTIVE DATE: July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, Barbara A. Stettner, Special Counsel, or Brian R. Baysinger, Special Counsel at (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Description of Amendments

On April 30, 1999, the Securities and Exchange Commission ("Commission") adopted amendments to Form BDW ("Revised Form BDW") and Rules 15b3–1, 15b6–1, 15Ba2–2, 15Bc3–1, 15Ca1–1 and 15Cc1–1 under the Securities Exchange Act of 1934 ("Exchange Act").[1] On July 2, 1999, the Commission adopted amendments to Form BD ("Revised Form BD") and Rules 15b3–1, 15Ba2–2, and 15Ca2–1 under the Exchange Act.[2] These amendments were mainly technical and formatting changes needed to accommodate electronic filing in "Web CRD," the new, Internet-based Central Registration Depository ("CRD") system. Revised Form BDW was intended to supercede Form BDW, currently in effect until August 1, 1999, beginning August 1, 1999, and Revised Form BD was intended to supercede Form BD, currently in effect until July 30, 1999,[3] beginning July 30, 1999.

Since the time the Commission adopted these amendments, the National Association of Securities Dealers Inc., which operates the CRD system, has engaged in more extensive testing of Web CRD. While it appears at this time that the implementation of Web CRD will continue to go forward as planned, we believe it is prudent to implement a contingency plan in the event the full implementation of Web CRD is delayed for any reason.

This contingency plan consists of three elements. First, the Commission is redesignating the old Form BD and Form BDW, respectively, as Interim Form BD and Interim Form BDW and extending their effective dates indefinitely. This is intended to preserve the effectiveness of these forms in the event it becomes necessary to return to the Legacy CRD system.[4] However, registrants must continue to file on Revised Forms BD and BDW until notified otherwise by the Commission.

Second, the Commission is amending Rules 15b3–1, 15b6–1, 15Ba2–2, 15Bc3–1, 15Ca2–1, and 15Cc1–1 to provide the Commission with the authority to, by order, conditionally exempt broker-dealers from the filing instructions for Form BD and Form BDW. This authority is needed to provide the Commission with sufficient flexibility to continuously maintain the registration system for broker-dealers in the event the full implementation of Web CRD is delayed.

Third, the Commission is amending Rule 30–3 of its Rules of Practice to add a new paragraph (a)(67). This paragraph will delegate the authority to issue orders under Rules 15b3–1(c)(4), 15b6–1(e), 15Ba2–2(e)(4), 15Bc3–1(e), 15Ca2–1(c)(4), and 15Cc1–1(d) to the Director of the Division of Market Regulation.[5] The Commission believes that this is necessary to effectively respond to any event that may delay the full implementation of Web CRD.

The Commission is adopting these amendments immediately, without notice and comment, which would otherwise be required by the Administrative Procedure Act. The Commission for good cause finds that, based on the reasons cited above, notice and solicitation of comment regarding the Commission's contingency planning for CRD is impracticable, unnecessary, and contrary to the public interest.[6] Furthermore, the Commission for good cause finds that, based on the reasons cited above, the rules and amendments shall be effective July 30, 1999. The Commission believes that the benefits of having a contingency plan to handle any problems with implementing Web CRD justify any minimal cost or inconvenience to broker-dealers. If the Commission does not adopt a contingency plan, and Web CRD fails to timely and adequately replace Legacy CRD, the marketplace could be disrupted: new broker-dealers could be delayed when trying to enter the market and important information about broker-dealers and their employees may be temporarily unavailable or difficult to access. This contingency plan needs to be adopted prior to the expiration of the old Form BD on July 30, 1999.

There will be little or no additional costs if Interim Forms BD and BDW are retained concurrently with new Forms BD and BDW because the forms are virtually identical. Furthermore, the Commission will inform broker-dealers which forms to file and does not intend to discipline firms that inadvertently file on the wrong form.

The Commission would like to stress that we still expect Web CRD to be implemented as planned. However, the Commission believes that, given the size and complexity of the Web CRD system, and the importance of the CRD system in the broker-dealer regulatory scheme, it is prudent to have a contingency plan in place.

II. Cost Benefit Analysis

The Commission believes that the benefits of the rule amendments clearly justify any costs that may be incurred. The amendments will benefit broker-dealers by providing a contingency plan in the event the full implementation of Web CRD is delayed. Also, the Commission would like to stress that there would be little or no additional costs to industry participants if Interim Forms BD and BDW are retained concurrently with Revised Forms BD and BDW.

III. Competitive Effects/NSMIA

Pursuant to Section 23(a) of the Exchange Act, the Commission does not believe the rule amendments will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

IV. Regulatory Flexibility Analysis

Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Chairman has certified that the rule amendments will not have a significant impact on a substantial number of small entities.[7] A copy of the Certification is attached as Exhibit A.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

17 CFR Parts 240 and 249

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Statutory Basis and Text of Final Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by adding paragraph (a)(67) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(67) To issue orders under Rules 15b3–1(c)(4), 15b6–1(e), 15Ba2–2(e)(4), 15Bc3–1(e), 15Ca2–1(c)(4), and 15Cc1–1(d) (17 CFR 240.15b3–1(c)(4), 240.15b6–1(e), 240.15Ba2–2(e)(4), 240.15Bc3–1(e), 240.15Ca2–1(c)(4), and 240.15Cc1–1(d)).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. By amending § 240.15b3–1 by adding paragraph (c)(4) to read as follows:

§ 240.15b3–1 Amendments to application.

* * * * *

(c) *Temporary re-filing instructions.*

* * *

(4) The Commission, by order, may exempt any broker or dealer from the filing requirements provided in Form BD (17 CFR 249.501) and paragraphs (c)(1), (c)(2), and (c)(3) of this section under conditions that differ from the filing instructions contained in Form BD and paragraphs (c)(1), (c)(2), and (c)(3) of this section.

5. By amending § 240.15b6–1 by adding paragraph (e) to read as follows.

§ 240.15b6–1 Withdrawal from registration.

* * * * *

(e) The Commission, by order, may exempt any broker or dealer from the filing requirements provided in Form BDW (17 CFR 249.501a) under conditions that differ from the filing instructions contained in Form BDW.

6. By amending § 240.15Ba2–2 by adding paragraph (e)(4) to read as follows:

§ 240.15Ba2–2 Application for registration of non-bank municipal securities dealers whose business is exclusively intrastate.

* * * * *

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[1] Securities Exchange Act Release No. 41356 (April 30, 1999), 64 FR 25143 (May, 10, 1999) ("BDW Adopting Release").

[2] Securities Exchange Act Release No. 41594 (July 2, 1999); 64 FR 37586 (July 12, 1999) ("BD Adopting Release").

[3] The current Form BD is referred to in the Adopting Release as "Interim Form BD."

[4] The CRD system that is currently in effect is referred to as "Legacy CRD." As explained in the BD Adopting Release and the BDW Adopting Release, the interim forms are compatible with Legacy CRD, not with Web CRD. *See* BD Adopting Release and BDW Adopting Release for details.

[5] 17 CFR 200.30–3

[6] 5 U.S.C. 553(b)(3)(B) (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are "impracticable, unnecessary, or contrary to the public interest."). 5 U.S.C. 553(d) (an agency may dispense with publication of a rule less than thirty days before its effective date only for good cause).

[7] 15 U.S.C. 78w(a).

(e) *Temporary re-filing instructions.*
* * *

(4) The Commission, by order, may exempt any broker or dealer from the filing requirements provided in Form BD (17 CFR 249.501) and paragraphs (e)(1), (e)(2), and (e)(3) of this section under conditions that differ from the filing instructions contained in Form BD and paragraphs (e)(1), (e)(2), and (e)(3) of this section.

7. By amending § 240.15Bc3–1 by adding paragraph (e) to read as follows:

§ 240.15Bc3–1 Withdrawal from registration of municipal securities dealers.

* * * * *

(e) The Commission, by order, may exempt any broker or dealer from the filing requirements provided in Form BDW (17 CFR 249.501a) under conditions that differ from the filing instructions contained in Form BDW.

8. By amending § 240.15Ca2–1 by adding paragraph (c)(4) to read as follows:

§ 240.15Ca2–1 Application for registration as a government securities broker or government securities dealer.

* * * * *

(c) *Temporary re-filing instructions.*
* * *

(4) The Commission, by order, may exempt any broker or dealer from the filing requirements provided in Form BD (17 CFR 249.501) and paragraphs (c)(1), (c)(2), and (c)(3) of this section under conditions that differ from the filing instructions contained in Form BD and paragraphs (c)(1), (c)(2), and (c)(3) of this section.

9. By amending § 240.15Cc1–1 by adding paragraph (d) to read as follows:

§ 240.15Cc1–1 Withdrawal from registration of municipal securities dealers.

* * * * *

(d) The Commission, by order, may exempt any broker or dealer from the filing requirements provided in Form BDW (17 CFR 249.501a) under conditions that differ from the filing instructions contained in Form BDW.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

10. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, et. seq., unless otherwise noted;

* * * * *

11. By amending § 249.501 by designating the current text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 249.501 Form BD, for application for registration as a broker and dealer or to amend or supplement such an application.

(a) * * *

(b) Interim Form BD shall be used for application for registration as broker-dealer under the Securities Exchange Act of 1934, or to amend such application, only by order of the Commission. In the event broker-dealers are required to comply with their filing obligations on Interim Form BD, the form will be made available at the Commission's Publication Office at (202) 942–4040.

12. By amending § 249.501a by designating the current text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 249.501a Form BDW, notice of withdrawal from registration as broker-dealer pursuant to § 240.15b6–1, § 240.15Bc3–1, or § 240.15Cc1–1 of this chapter.

(a) * * *

(b) Interim Form BDW shall be used for application for registration as broker-dealer under the Securities Exchange Act of 1934, or to amend such application, only by order of the Commission. In the event broker-dealers are required to comply with their filing obligations on Interim Form BD, the form will be made available at the Commission's Publication Office at (202) 942–4040.

By the Commission.

Dated: July 30, 1999.

Margaret H. McFarland,

Deputy Secretary.

Note: This Appendix A to the preamble will not appear in the Code of Federal Regulations.

Appendix A to the Preamble—Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Arthur Levitt, Jr., Chairman of the U.S. Securities and Exchange Commission ("Commission"), hereby certify, pursuant to 5 U.S.C. § 605(b), that (1) the redesignation of Form BD and Form BDW, as currently in effect until July 30, 1999 and August 1, 1999, respectively, as Interim Form BD and Interim Form BDW and (2) the amendments to Rules 15b3–1(c), 15b6–1, 15Ba2–2(e), 15Bc3–1, 15Ca2–1(c), and 15Cc1–1("Rules") and 17 CFR § § 249.501 and 501a under the Securities Exchange Act of 1934 ("Exchange Act") would not, if adopted, have a significant economic impact on a substantial number of small entities. The redesignation of Form BD and Form BDW is intended to preserve the effectiveness of these forms in the event it is necessary to return to the legacy CRD system. The rule amendments would allow the Commission, by order, to conditionally exempt broker-dealers from the filing instructions contained in those rules and Forms BD and BDW, respectively. This authority is needed to provide the Commission with sufficient flexibility to continuously maintain the registration system for broker-dealers in the event the full implementation of Web CRD is delayed. The amendments would impose little or no new recordkeeping requirements or compliance burdens on small entities. Accordingly, the amendments would not have a significant economic impact on a substantial number of small entities.

Dated: July 30, 1999.

Arthur Levitt, Jr.,

Chairman.

[FR Doc. 99–20099 Filed 7–30–99; 4:34 pm]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, and 558

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for six new animal drug applications (NADA's) from Roussel-UCLAF SA, Animal Health Division to Hoechst Roussel Vet.

EFFECTIVE DATE: August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Roussel-UCLAF SA, Animal Health Division, 102 Route de Noisy, 93235 Romainville Cedex, France, has informed FDA that it has transferred ownership of, and all rights and interests in, the approved NADA's (130–951, 131–310, 138–612, 140–824, 140–897, and 140–992) to Hoechst Roussel Vet, 30 Independence Blvd., P.O. Box 4915, Warren, NJ 07059.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808. Accordingly, the agency is amending the regulations in 21 CFR parts 510, 520, 522, and 558 to reflect the change of sponsor. The agency is also amending 21 CFR 510.600(c)(1) and (c)(2) to remove the sponsor name for Roussel UCLAF SA because the firm no longer is the holder of any approved NADA's.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520 and 522

Animal drugs.

21 Part 558

Animal Drugs, Animal Feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Roussel-UCLAF SA" and in the table in paragraph (c)(2) by removing the entry for "012579".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.48 [Amended]

4. Section 520.48 *Altrenogest solution* is amended in paragraph (b) by removing "012579" and adding in its place "012799".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

5. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.2476 [Amended]

6. Section 522.2476 *Trenbolone acetate* is amended in paragraph (b) by removing "012579" and adding in its place "012799".

§ 522.2477 [Amended]

7. Section 522.2477 *Trenbolone acetate and estradiol* is amended in paragraph (a) by removing "012579" and adding in its place "012799".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

8. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.265 [Amended]

9. Section 558.265 *Halofuginone hydrobromide* is amended in paragraph (a) by removing "012579" and adding in its place "012799".

Dated: June 29, 1999.

Claire M. Lathers

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–20141 Filed 8–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Pipelines and Pipeline Rights-of-Way; Correction

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Technical amendment.

SUMMARY: This document makes technical amendments to regulations that were published in the **Federal Register** (July 24, 1997, 63 FR 39775; redesignated May 29, 1998, 63 FR 29479, 29486) and were codified in the July 1, 1998, edition of Title 30—Mineral Resources, Parts 200–699, Code of Federal Regulations (CFR). The regulations being corrected relate to the filing fee for applying for a pipeline right-of-way grant in the Outer Continental Shelf. This correction will reduce the filing fees required for converting existing lease term pipelines into right-of-way pipelines.

EFFECTIVE DATE: August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Background

The final rules that we are correcting affect persons submitting applications to MMS for a pipeline right-of-way grant to convert existing lease term pipelines into right-of-way pipelines under 30 CFR 250.1010(a). In September 1997, MMS changed its regulations to raise the filing fee submitted with applications for pipeline right-of-way grants from $1,400 to $2,350. The filing fees MMS charges are based on our administrative costs in processing applications and documents that provide special benefits to non-Federal recipients above those that accrue to the public at large.

Our regulations in § 250.1010(a) state that "* * * MMS periodically will amend the filing fee based on its experience with the costs for administering pipeline right-of-way applications. * * * MMS will amend the application fee * * * without notice and opportunity for comment." Since publishing this final regulation, we have determined that we incur only minimal expenses in administering applications to convert existing lease term pipelines into right-of-way pipelines and issue a pipeline right-of-way grant.

Therefore, we are correcting the regulations at § 250.1010(a) to reduce the pipeline right-of-way grant application filing fee for this type of application to $300, instead of the $2,350 application filing fee required for a pipeline right-of-way grant to install a new pipeline. The reduced amount reflects the average processing costs of these applications.

Need for Correction

As published, the final regulations contain the requirement for an application filing fee for a type of pipeline right-of-way grant that is higher than the administrative processing costs involved and needs to be corrected.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Geological and geophysical data, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Accordingly, 30 CFR part 250 is amended by making the following correcting technical amendment:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

§ 250.1010 [Corrected]

2. In § 250.1010, the first five sentences in paragraph (a) are revised to read as follows:

§ 250.1010 Applications for a pipeline right-of-way grant.

(a) You must submit an original and three copies of an application for a new or modified pipeline right-of-way grant to the Regional Supervisor. The application must address those items required by § 250.1007 (a) or (b) of this subpart, as applicable. It must also state the primary purpose for which you will use the right-of-way grant. If the right-of-way has been used before the application is made, the application must state the date such use began, by whom, and the date the applicant obtained control of the improvement. When you file your application, you must pay the rental required under § 250.1009(c)(2) of this subpart and a non-refundable filing fee of $2,350 for a pipeline right-of-way grant to install a new pipeline or a non-refundable filing fee of $300 for a pipeline right-of-way grant to convert an existing lease term pipeline into a right-of-way pipeline. * * *

* * * * *

Dated: July 9, 1999.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 99–20157 Filed 8–4–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD08–99–048]

RIN 2115–AE46

Special Local Regulations; Aurora APR Powerboat Races Ohio River Miles 496.5–498.5, Aurora, IN

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Aurora APR Powerboat Races taking place on the Ohio River at approximately mile 496.5 to 498.5. This event will be held on August 28–29, 1999 from 9 a.m. until 7 p.m. at Aurora, Indiana. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations are effective from 9 a.m. until 7 p.m. on August 28–29, 1999.

ADDRESSES: Unless otherwise indicated, all documents referred to in this regulation are available for review at Marine Safety Office, Louisville, 600 Martin Luther King Jr. Place, Room 360, Louisville, KY 40202–2230.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jeff Johnson, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY, telephone (502) 582–5194, ext. 39.

SUPPLEMENTARY INFORMATION: *Drafting information.* The drafters of this regulation are Lieutenant Jeff Johnson, Project Officer, Chief, Port Management Department, USCG Marine Safety Office, Louisville, KY, and LTJG Michele Woodruff, Project Attorney, Eighth Coast Guard district Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rule making for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule making procedures would be impracticable. The details of the event were not finalized in sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is a Powerboat Regatta. The event is sponsored by Aurora Riverfront Beautification. The Powerboat Regatta will take place on the Ohio River at approximately mile 496.5 to 498.5. Non-participating vessels will be able to transit the area after the river is reopened.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

This rule contains no information collection requirements under the paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant to preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this rule is excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons set forth in the preamble, the Coast Guard temporarily amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—REGATTAS AND MARINE PARADES

1. The authority citation for Part 100 continues to read:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Effective from 9 a.m. to 7 p.m., August 28–29, 1999, a temporary § 100.35T–08–048 is added to read as follows:

§ 100.35T–08–048 Ohio River at Aurora, Indiana.

(a) *Regulated area.* Ohio River Mile 496.5 to 498.5.

(b) *Special local regulation.* All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. "Participants" are those persons and/or vessels identified by the sponsor as taking part in the event. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessel assigned to patrol the event. The Coast Guard "Patrol Commander" is a Coast Guard commissioned, warrant, or petty officer who has been designated by Commanding Officer, Coast Guard Marine Safety Office Louisville.

(1) No vessel shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander may terminate the event at any time it is deemed necessary for the protection of life and/or property and can be reached on VHF–FM Channel 16 by using the call sign "PATCOM".

(c) *Effective date.* This section is effective from 9 a.m. until 7 p.m., August 28–29, 1999.

Dated: July 26, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 99–20207 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–99–047]

RIN 2115–AE47

Drawbridge Operation Regulation; Tennessee River, TN

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the Chief John Ross Drawbridge, Mile 464.1, Tennessee River. The drawbridge need no open for vessel traffic and may remain in the closed-to-navigation position from July 26, 1999 to October 1, 1999. This temporary rule is issued for bridge repairs and painting necessary to maintain the lift span in safe, working order.

DATES: This temporary rule is effective from 12:01 a.m., July 26, 1999 to noon, October 1, 1999.

ADDRESSES: The public docket and all documents referred to in this rule will be available for inspection and copying at room 2.107f in the Robert A. Young Federal Building at Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St., Louis, Missouri 63103–2832, between 7 a.m and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator; Eighth Coast Guard District, Bridge Branch, telephone 314–539–3900 extension 378.

SUPPLEMENTARY INFORMATION:

Background

On June 29, 1999, the Tennessee Department of Transportation (TNDOT) requested a temporary change to the operation of the Chief John Ross Drawbridge across the Tennessee River, Mile 464.1 at Chattanooga, Tennessee. The TNDOT requested that the drawbridge be permitted to remain closed to navigation beginning in July to the end of September to facilitate necessary repair work and painting required to keep the lift span in safe, working order. Repairs to the deck will require the placement of heavy concrete lane barriers on the lift span which will preclude openings.

This rule is being published as a temporary rule and is being made effective on the date of publication. This rule is being promulgated without a notice of proposed rulemaking and should be made effective in less than 30 days due to the short time frame provided between the submission of the request by the TNDOT and the date of the scheduled start to work. For this reason, the Coast Guard determined good cause exists, according to 5 U.S.C. 553, to eliminate public comment period before the effective date of this rule and to make the rule effective in less than 30 days after publication.

Discussion of Temporary Rule

The Chief John Ross Drawbridge navigation span provides vertical clearance of 58.7 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. Presently, the draw is required to open on signal when the vertical clearance beneath the draw is 50 feet or less. When the vertical clearance is more than 50 feet at least eight hours notice is required. Due to the clearance provided by the bridge in the closed-to-navigation position commercial vessel operators do not usually require the bridge to open for passage of marine traffic. There was only a single reported bridge opening in the past 15 years. This temporary drawbridge operation amendment has been coordinated with the commercial waterway operators. No objections to the temporary rule were raised.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. Since the bridge has not had to open for river traffic in the past several years, it is not expected that navigation will change in the next four months to require openings.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this temporary rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

Because it expects the impact of this action to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this action will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary rule does not provide for a collection-of-information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary rule under the principles and criteria contained in Executive Order 12612, and has determined that this temporary rule does not raise sufficient implications of federalism to warrant the preparation of a Federalism Assessment. The authority to regulate the permits of bridges over the navigable waters of the U.S. belong to the Coast Guard by Federal statutes.

Environmental

The Coast Guard considered the environmental impact of this temporary rule and concluded that under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this temporary rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection

or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard temporarily amends Part 117 of Tile 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Effective from 12:01 a.m., July 26, 1999, to 12 noon, October 1, 1999, § 117.949 is suspended and a new § 117.T950 is added to read as follows:

§ 117.T950 Tennessee River.

(a) *Southern Railway Bridge.* The draw of the Southern Railway Bridge over the Tennessee River, mile 470.7, at Hixon, Tennessee, shall open on signal when the vertical clearance beneath the draw is 50 feet or less. When the vertical clearance beneath the draw is more than 50 feet, at least eight hours notice is required. When the operator of a vessel returning through the draw within four hours informs the drawtender of the probable time to return, the drawtender shall return one half hour before the time specified and promptly open the draw on signal for the vessel without further notice. If the vessel giving notice fails to arrive within one hour after the arrival time specified, whether upbound or downbound, a second eight hours notice is required. Clearance gages of a type acceptable to the Coast Guard shall be installed on both sides of the bridge.

(b) *Chief John Ross Drawbridge.* The drawspan of the Chief John Ross Drawbridge, mile 464.1, at Chattanooga, Tennessee, need not open for vessel traffic and may be maintained in the closed-to-navigation position.

Dated: July 26, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 99–20208 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC25–2018a; FRL–6412–5]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; 15 Percent Plan for the Metropolitan Washington, D.C. Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are converting our conditional approval of the District of Columbia's State Implementation Plan (SIP) revision to achieve a 15 percent reduction in volatile organic compound (VOC) emissions (15% plan) in the Metropolitan Washington, D.C. ozone nonattainment area to a full approval. In a rule published on July 7, 1998, we conditionally approved the District's 15% plan as a revision to the District's SIP. The sole condition we imposed for full approval was that the District begin mandatory testing of motor vehicles under its enhanced inspection and maintenance program (I/M program) on or before April 30, 1999. The District began the required testing on April 26, 1999, and thus fulfilled the condition for full approval. The District's 15% plan SIP revision meets all the requirements of the Clean Air Act relating to the plan to achieve a 15% reduction in VOC emissions.

DATES: This rule is effective on October 4, 1999 without further notice, unless EPA receives adverse written comment by September 7, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, US Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the District of Columbia Department of Public Health, Air Quality Division, 2100 Martin Luther King Avenue, S.E., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, at the EPA Region III address above, or by e-mail at cripps.christopher@epa.gov.

SUPPLEMENTARY INFORMATION: In this action, we are converting our conditional approval of the District's 15% plan as a revision to the District's SIP to a full approval.

In a rule published on July 7, 1998 (63 FR 36578), we granted a conditional approval to the District's 15% plan because the District's enhanced inspection maintenance (I/M) program, which is one of the many control measures adopted by the District to achieve the 15% reduction in VOC emissions, had only been conditionally approved at that time. The sole condition we imposed for full approval of the District's enhanced I/M program and thus the 15% plan was that the District begin mandatory testing of motor vehicles under its enhanced I/M program on or before April 30, 1999. The District began the required testing on April 26, 1999, and thus fulfilled the condition for full approval.

In a rule published June 11, 1999 (64 FR 31498) , we converted our conditional approval of the District's enhanced I/M program as a revision to the District's SIP to a full approval. Therefore, we are now converting our conditional approval of the District's 15% plan as a revision to the District's SIP to full approval.

EPA Action

EPA is converting its conditional approval of the District's 15% plan to a full approval. An extensive discussion of the District's 15% plan and our rationale for our approval action was provided in the previous final rule that conditionally approved the 15% plan (see 63 FR 36578 and 63 FR 36652) and in our Technical Support Document, dated June 22, 1998. This action to convert our conditional approval to a full approval is being published without prior proposal because we view this as a noncontroversial amendment and because we anticipate no adverse comments. In a separate document in the "Proposed Rules" section of this **Federal Register** publication, we are proposing to convert our conditional approval of the District's 15% plan SIP revision to a full approval if adverse comments are filed. This action will be effective without further notice unless we receive relevant adverse comment by September 7, 1999. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. Any parties interested in commenting must do so at this time. If no such comments are received by September 7, 1999, you are advised that this action will be effective on October 4, 1999.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) Is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to convert our conditional approval of the District of Columbia's

15% plan to a full approval must be filed in the United States Court of Appeals for the appropriate circuit by October 4, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: July 23, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart J—District of Columbia

2. Section 52.476 is added to read as follows:

§ 52.476 Control strategy: ozone.

EPA approves as a revision to the District of Columbia State Implementation Plan the 15 Percent Rate of Progress Plan for the District of Columbia's portion of the Metropolitan Washington, D.C. ozone nonattainment area, submitted by the Director of the District of Columbia Department of Health on April 16, 1998.

§ 52.473 [Removed]

3. Section 52.473 is removed and reserved.

[FR Doc. 99–19903 Filed 8–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6410–1]

Wisconsin: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Wisconsin has applied for final authorization of the revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The scope of this revision package includes partial completion of SPA's 8, 9, 13, 14 and 15, with the following clusters: RCRA Cluster I, including HSWA and non-HSWA Rules; RCRA Cluster II, including HSWA and non-HSWA provisions; RCRA Cluster III, including HSWA and non-HSWA provisions; RCRA Cluster IV, including HSWA and non-HSWA provisions; HSWA Cluster I; HSWA Cluster II; non-HSWA Cluster III; non-HSWA Cluster V; and non-HSWA Cluster VI. The major rules in the application include Land Disposal Restrictions, Recycled Used Oil Management, Wood Preserving Listings, and Organic Air Emission Standards for Process Vents and Equipment Leaks. The EPA has reviewed Wisconsin's application and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period, EPA's decision to authorize Wisconsin's hazardous waste program revision will take effect as provided below.

DATES: This rule will become effective on October 4, 1999, without further notice, unless EPA receives relevant adverse comments by September 7, 1999. Should EPA receive such comments EPA will publish a timely document withdrawing this rule.

ADDRESSES: Send written comments referring to Docket Number ARA 6, to Mr. Daniel F. Chachakis, U.S. EPA Region 5, Waste Pesticides and Toxics Division, Program Management Branch (DM–7J), 77 W. Jackson Blvd., Chicago, IL 60604, Phone (312) 886–2022. Copies of the Wisconsin program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 9 a.m. to 4 p.m. at the following addresses: Mr. Tom Eggert, Wisconsin Department of Natural Resources, 101 South Webster Street, Madison, WI 53707–7921 and EPA Region 5, Office of RCRA, 77 West Jackson Blvd., Seventh Floor, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel F. Chachakis, Environmental Protection Specialist, Wisconsin Regulatory Specialist, U.S. EPA Region 5 Waste, Pesticides and Toxics Division, Program Management Branch (DM–7J), 77 West Jackson Blvd., Chicago, IL 60604; (312) 886–2022.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. Wisconsin

Wisconsin initially received Final Authorization on January 30, 1986, effective January 31, 1986 (51 FR 3783) to implement its base hazardous waste management program. Wisconsin received authorization for revisions to its program on May 23, 1989, effective June 6, 1989 (54 FR 22278), on November 22, 1989, effective January 22, 1990 (54 FR 48243), on April 24, 1992 effective April 24, 1992 (57 FR 15029), on June 2, 1993 effective August 2, 1993 (58 FR 31344) and on August 5, 1994, effective October 4, 1994 (59 FR 39971).

The authorized Wisconsin RCRA program was incorporated by reference into the CFR effective April 24, 1989 (54 FR 7422), May 29, 1990 (55 FR 11910), and November 22, 1993 (58 FR 49199).

On May 7, 1999, Wisconsin submitted a final complete program revision application, seeking authorization of its program revision in accordance with 40 CFR 271.21. The EPA reviewed Wisconsin's application, and now makes an immediate final decision, subject to receipt of adverse written comment, that Wisconsin's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Wisconsin Final Authorization for the program modifications contained in the revision.

The public may submit written comments on EPA's immediate final decision until September 7, 1999. Copies of Wisconsin's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

If EPA does not receive adverse written comment pertaining to

Wisconsin's program revision by the end of the comment period, the authorization of Wisconsin's revision will become effective October 4, 1999. If the Agency does receive adverse written comment, it will publish a document withdrawing this immediate final rule before its effective date. EPA will then address the comments in a later final rule based on the companion document appearing in the Proposed Rules section of today's **Federal Register**. EPA may not provide additional opportunity for comment. Any parties interested in commenting should do so at this time.

On October 4, 1999, (unless EPA publishes a prior FR action withdrawing this immediate final rule), Wisconsin will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the following provisions of the Federal program:

Description of Federal requirement [include checklist #, if relevant]	**Federal Register** date and page [and/or RCRA statutory authority]	Analogous State authority [1]
CONSOLIDATED CHECKLIST FOR THE LAND DISPOSAL RESTRICTIONS AS OF JUNE 30, 1994		
Revision Checklist 34	51 *FR* 40572, November 7, 1986 as amended. 52 *FR* 21010, June 4, 1987.	Statute: 227.12(1) Code: 600.01–600.03; 600.06 (1)–(4); 605.02; 605.05(2), (5), (7)(a); 605.04–605.06; 605.08(1)(b); 605.09(1)(c); 610.05(4); 610.07(1), (2); 610.09; 615.06(6); 620.14; 625.04(4); 630.02; 630.12(1); 630.13(1)(f), (h); 630.31(1)(d); 630.31(1)(k)–(o); 675.01–675.02; 675.03(3), (6); 675.04–675.05; 675.06(1); 675.07(1)(a)–(e), (g), (2), (3); 675.11(1), (3); 675.12(1), (2); 675.20(1); 675.21(1), Table CCWE, (2); 675.22(1); 675.22(2)(a); 675.23(1); 675.24(1)(a), (2); 675.30(1)–(5); 675 Appendix I; 680.22(5), (6), (15), (32); 680.42 (intro), (1), (19).
Revision Checklist 39	52 *FR* 25760, July 8, 1987 as amended. 52 *FR* 41259, October 27, 1987.	Code: 600.03(96), (126), (177); 600.10(2); 610.04(2), (3); 615.04(2); 630.13(1)(h)3; 675.03(2), (6) 675.04(1)(b), (2); 675.05(1), (2); 675.06(1); 675.07(1)(a)–(d), (2), (3); 675.13(1)–(5); 675.20(1), (2); 675.22(1)(a), (b), (2)(a); 675.30(1), (6); 675 Appendix II; 680.07(4); 680.22(6); 680.23.
Revision Checklist 50	53 *FR* 31138, August 17, 1988 as amended. 54 *FR* 8264, February 27, 1989.	Code: 600.04(1); 625.05(1); 630.13(1)(h)3; 630.31(1)(k)–(o); 675.04(1)(b); 675.05(1), (2); 675.07(1)(a)–(g), (i), (j), (2), (3); 675.11; 675.12; 675.13(1)(e), (2), (3); 675.14(1), (2), (3), (4)(a)–(c), (5); 675.20(1), (3); 675.21(1), Table CCWE; 675.22(1)(b); 675.23(1), Table CCW, (2); 675.24(1)(a), (c)1, (2); 675.30(4); 680.22(6), (15).
Revision Checklist 62	54 *FR* 18836, May 2, 1989.	Code: 675.23(1) Table CCW.
Revision Checklist 63	54 *FR* 26594, June 23, 1989.	Code: 600.04(1); 675.15; 675.21(1), Table CCWE; 675.22(1)(c); 675.23(1), Table CCW, (2).
Revision Checklist 66	54 *FR* 36967, September 6, 1989 as amended. 55 *FR* 23935, June 13, 1990.	Code: 600.04(1); 625.05(1); 675.05; 675.07(1)(f), (j); 675.14(1), (5); 675.24(1)(a); 675.30(4).
Revision Checklist 78	55 *FR* 22520, June 1, 1990.	Code: 600.04(1), (2); 600.03(2), (100), (126), (177); 605.08(1)(b), (2)(b), (3)(b), (4)(b), (5)(b); 605.09(2)(a), (3)(a)3, 605 Appendix III; 610.05(3); 615.05(4)(a)6; 615.06(3); 625.05(1); 630.02(intro); 655.09; 660.18(3), (9)(c)3, 6; 675.03(intro), (1), (2), (3), (6), (7), (8); 675.06(1), (2); 675.07(1)(d)1b, 2, (e)1b, (f), (j), (k), (L), (2)(d)1b, (e)3, 4, (3); 675.09; 675.16(1)–(4), (5)(a), (6), (7); 675.20(1), (3); 675.21(1), Table CCWE; 675.22(1)(intro), (b), Table 1, Table 2, Table 3, (c), (2)(a), (4), (5), 675.23(1), Table CCW, (3); 675 Appendix III, IV, V, VI, VII; 680.22(5), (25), (32); 680 Appendix I, I.6.
Revision Checklist 83	56 *FR* 3864, January 31, 1991.	Code: 605.04(1)(b)7, Note; 605.08(1)(b); 605.09(2)(a); 610.05(3); 610.08(1)(k)1, (o)9, (q); 615.06(3); 675.03(1), (7), (8)(a), (b); 675.07(1)(b), (c)1b, (d)1b, (e)1b, (g), (h), (i), (k), (L), (2)(d)1d; 675.09(1); 675.14(2); 675.16(1), (3), (4), (5)(a); 675.20(1); 675.21(1), Table CCWE; 675.22(1)(b), Table 1, Table 2, Table 3, (c); 675.23(1), Table CCW, (3); 675 Appendix III, IV, VI, VII; 680 Appendix I, I.6.
Revision Checklist 95	56 *FR* 41164, August 19, 1991.	Code: 605.04(1)(b)6a, b, 8; 675.21(1), Table CCWE, (2); 675.22(1)(b).
Revision Checklist 102 ..	57 *FR* 8086, March 6, 1992.	Code: 630.12(1); 675.06(2); 675.21(1); 675.22(1)(b), Table 2; 680.22(5).
Revision Checklist 103 ..	57 *FR* 20766, May 15, 1992.	Code: 675.16(5)(a).
Revision Checklist 106 ..	57 *FR* 28628, June 26, 1992.	Code: 675.16(3), (8).
Revision Checklist 109 ..	57 *FR* 37194, August 18, 1992.	Code: 600.03(45), (150), (172); 605.04(1)(b)6, 7, (4); 615.05(4); 655.02(intro); 655.05(2); 655.06(1); 655.07(1), (2), (4)(b), (6), (7); 655.11(2)(a), (b); 660.02; 660.16(1); 660.18(11), (28); 675.03(1), (4); 675.05(1); 675.07(1)(c)1c–e, (d), (f), (j), (2)(d)1, (e), (3)(a), (5); 675.09(4), (5); 675.20(2); 675.21(1), Table CCWE, (3); 675.22(1)(b), Table 2, (2)(a), (5); 675.23(1), Table CCW; 675.25; 675.26; 675.30(1); 675 Appendix I; 680.04(1); 680.06(3)(b), (m); 680.07(4); 680.21(1)(a); 680.22(25); 680.23, 680 Appendix I, I.6., M.; 685.02; 685.05(1)(b), (c), (e), (2)(h), (4)(a); 685.06(1)(a)–(c); 685.07(3)(a).
Revision Checklist 118 ..	57 *FR* 47772, October 20, 1992.	Code: 675.16(3), (4), (5).
Revision Checklist 123 ..	58 *FR* 28506, May 14, 1993.	Code: 675.03(1), (5); 675.16(5).

Description of Federal requirement [include checklist #, if relevant]	Federal Register date and page [and/or RCRA statutory authority]	Analogous State authority [1]
BURNING OF WASTE FUEL AND USED OIL FUEL IN BOILERS AND INDUSTRIAL FURNACES		
Revision Checklist 19 (HSWA Cluster I).	50 *FR* 49164–49211, November 29, 1985 as amended. 51 *FR* 41900–41904, November 19, 1986. 52 *FR* 11819–11822 April 13, 1987.	Code: 605.05(1)(q), (t); 610.07(1), (4); 625.07(1), (2)(a), (3)–(7); 655.02.
USED OIL FILTER EXCLUSION		
Revision Checklist 104 (RCRA Cluster II, HSWA Provisions).	57 *FR* 21524–21534, May 20, 1992.	Code: 605.05(1)(v)1–4.
USED OIL FILTER EXCLUSION; TECHNICAL CORRECTIONS		
Revision Checklist 107 (RCRA Cluster III, HSWA Provisions).	57 *FR* 29220, July 1, 1992.	Code: 605.05(1)(v).
CONSOLIDATED CHECKLIST FOR THE RECYCLED USED OIL MANAGEMENT STANDARDS AS OF JUNE 30, 1994		
Revision Checklist 112 ..	57 *FR* 41566, September 10, 1992.	Code: 590.02(1), (4)(a), (b), (5)–(7); 590.03(1), (2), (8), (8) Note, (9), (16), (26), (35), (40), (44), (47), (49), (50), (51), (53)–(55); 590.04(1)(a)–(e), (f), (2); 590.05(1), (2), (4), (7); 590.06(1)(c), (2); 590.07(1)–(4); 590.08; 590.09(1), (2), Table 1; 590.10(1)–(4); 590.11(1)–(5); 590.12(1), (2); 590.13(1), (2), (4), (5); 590.14(1), (2); 590.15; 590.20(1); 590.21(2); 590.30 (intro), (1)–(4); 590.31; 590.32; 590.33; 590.34(1), (2); 590.35(1)–(3); 590.36(1)–(7); 590.37(1)–(4); 590.38; 590.50; 590.51; 590.52(1), (2); 590.53(1), (2), (4)–(8); 590.54; 590.55(1)–(3); 590.56(1), (2); 590.57; 590.58; 590.70; 590.71; 590.72; 590.73; 590.74(1); 590.75(1), (2); 590.76; 590.80; 590.81; 590.82; 590.83; 590.84(1), (2); 590.85(1)–3); 590.86(1), (2); 605.04(1)(b)9; 605.05(1) (q), (t), (x), (2)(a); 610.07(4); 625.12; 708.05.
Revision Checklist 122 ..	58 *FR* 26420, May 3, 1993 as amended. 58 *FR* 33341, June 17, 1993.	Code: 590.02(4)(a), (5); 590.04(1)(b)1, (2)(c)–(e); 590.05(2); 590.07(1)–(3); 590.09(2), Table 1, note; 590.10(1), (3), (5); 590.14(1); 590.33(4); 590.35(2); 590.36(4)(a)1, 2; 590.52(2)(f)10; 590.53, 590.71(1); 590.80; 590.85(1); 605.05(1)(v), (w); 610.07(4); 630.04(6).
Revision Checklist 130 ..	59 *FR* 10550, March 4, 1994.	Code: 590.02(6); 590.03(47); 590.04(1)(c); 590.10(3)(c); 590.11(1); 590.12(2)b; 590.37(1)(d), (2)(e); 590.50(3)(a); 590.53(3).
CONSOLIDATED CHECKLIST FOR THE WOOD PRESERVING LISTINGS AS OF DECEMBER 31, 1992		
Revision Checklist 82	55 *FR* 50450, December 6, 1990.	Code: 605.05(1)(e), (6); 605.09(2)(a), Table II; 605 Appendix II, III, IV; 615.05(4) (a) 4, 5; 645.02(5); 656.02; 656.03(1)–(4); 656.06; 656.07(1)(b), (2)(a)–(d), (3), (4)(a)–(o), (5)(a), (b); 656.08(1)(a)–(c); 680.22(33).
Revision Checklist 91	56 *FR* 27332, June 13, 1991.	Code: 605.09(2)(a), Table II.
Revision Checklist 92	56 *FR* 30192, July 1, 1991.	Code: 605.05(1)(e), (s), (6)(a), (b), (c), (d); 615.05(4)(a); 656.02; 656.06(3); 656.07(1)(b), (2)(a)–(d), (3), (4)(a)–(o), (5)(a), (b); 656.08(1)(a)–(c); 680.22(33).
Revision Checklist 120 ..	57 *FR* 61492, December 24, 1992.	Code: 605.09(2)(a), Table II; 656.02; 656.04(3); 656.07(1)(b), (2)(a), (b), (3), (4)(a), (b), (i); 680.22(33).
CORRECTIVE ACTION MANAGEMENT UNITS AND TEMPORARY UNITS		
Revision Checklist 121 (RCRA Cluster III, HSWA Provisions) (SPA 14).	58 *FR* 8658–8685, February 16, 1993.	Code: 600.03(49), (62), (78), (126), (129), (150); 630.04(8); 635.17(2); 636.40; 636.41; 675.03(6).
STATICAL METHODS FOR EVALUATING GROUND WATER MONITORING DATA FROM HAZARDOUS WASTE FACILITIES		
Revision Checklist 55 (Non-HSWA Cluster V).	53 *FR* 39720–39731, October 11, 1988.	Code: 635.07; 635.12(1)(a), (5), (13), (15)(c), (16); 635.13(3), (7)–(10); 635.14(3)(c), (4), (7)–(10).
AMENDMENTS TO INTERIM STANDARDS FOR DOWN-GRADIENT GROUND-WATER MONITORING WELL LOCATIONS		
Revision Checklist 99 (RCRA Cluster II, Non-HSWA).	56 *FR* 66365–66369, December 23, 1991.	Code: 635.12(1)(c).

Description of Federal requirement [include checklist #, if relevant]	Federal Register date and page [and/or RCRA statutory authority]	Analogous State authority [1]
ORGANIC AIR EMISSION STANDARDS FOR PROCESS VENTS AND EQUIPMENT LEAKS		
Revision Checklist 79 (HSWA Cluster II).	55 *FR* 25454–25519, June 21, 1990.	Code: 600.03(30), (47), (63), (66), (84), (86), (90), (112), (113), (179), (209), (214), (222), (230); 600.10(2)(a)45–51, (b)3; 625.04(4), (7); 630.13(1)(f); 630.15(2)(d); 630.31(1)(d), (h); 630.40(3)(c); 631.02; 631.03; 631.06(1), (2)(a)1, 2, 3, (b)–(L); 631.07; 631.08, (1)–(3)(d)1, 3–9, (e)–(h), (4)–(6); 631.09; 632.02; 632.03; 632.06; 632.07; 632.08; 632.09; 632.10; 632.11(2), (3); 680.06(3)(e), (f)4, 5; 680.22(6), (15), (16), (34), (35).
ORGANIC AIR EMISSION STANDARDS FOR PROCESS VENTS AND EQUIPMENT LEAKS; TECHNICAL AMENDMENT		
Revision Checklist 87 (RCRA Cluster I, HSWA Rule).	56 *FR* 19290, April 26, 1991.	Code: 630.13(1)(f); 630.31(1)(d); 631.02(1), (2); 631.06(2)(f)3; 631.07(3)(a)6; 631.08(2)(d)2, (3)(e); 632.06(1)(b)1, (e)3; 632.09(3); 632.11(2)(d)2, (3)(e)2; 680.22(6), (15), (34), (35).
HSWA CODIFICATION RULE DOUBLE LINERS, CORRECTION		
Revision Checklist 77 (HSWA Cluster II).	55 *FR* 19262–19264, May 9, 1990.	Code: 660.18(11)(b), (d).
LINERS AND LEAK DETECTION SYSTEMS FOR HAZARDOUS WASTE LAND DISPOSAL UNITS		
Revision Checklist 100 (RCRA Cluster II, Both HSWA and Non-HSWA Provisions).	57 *FR* 3462–3497, January 29, 1992.	Statute: Ch 289 (old 144.44); Code: 600.03(192), (220); 630.15(2)(d); 630.31(1)(h); 655.05(2); 655.06(1); 655.07; 655.08(3); 660.13; 660.16; 660.18(11), (12), (16), (18), (28), (30), (31)(b), (c), (38), (39); 660.22(2)(b)–(g), (25); 680.04; 680.06(5)(a); 680.22(25); 680.42(2).
LIQUIDS IN LANDFILLS II		
Revision Checklist 118 (RCRA Cluster III, HSWA Provisions).	57 *FR* 54452–54461, November 18, 1992.	Code: 630.13(1)(g)3; 660.18(8), (9)(b)1, (c)2, 3, (d); 680.22(6), (25).
IDENTIFICATION AND LISTING OF HAZARDOUS WASTE; AND DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION		
Revision Checklist 53 (AMENDED) (Non-HSWA Cluster V).	53 *FR* 35412–35421, September 13, 1988.	Code: 605.05(1)(k); 605.09(2)(b); 605 Appendix III.
IDENTIFICATION AND LISTING OF HAZARDOUS WASTE; REMOVAL OF IRON DEXTRAN FROM THE LIST OF HAZARDOUS WASTES		
Revision Checklist 56 (Non-HSWA Cluster V).	53 *FR* 43878–43881, October 31, 1988.	Code: 605.09 (3)(c); 605 Appendix IV.
IDENTIFICATION AND LISTING OF HAZARDOUS WASTE; REMOVAL OF STRONTIUM SULFIDE FROM THE LIST OF HAZARDOUS WASTES		
Revision Checklist 57 (Non HSWA Cluster V).	53 *FR* 43881–43884, October 31, 1988.	Code: 605.09 (3)(b); 605 Appendix IV.
MINING WASTE EXCLUSION I		
Revision Checklist 65 (Non HSWA Cluster VI).	54 *FR* 36592–36642, September 1, 1989.	Code: 605.04(1)(b)3, 7; 605.05(1)(k).
TESTING AND MONITORING ACTIVITIES		
Revision Checklist 67 (Non-HSWA Cluster VI).	54 *FR* 40260–40269, September 29, 1989.	Code: 600.10(2)(c); 605 Appendix II.
REPORTABLE QUANTITY ADJUSTMENT METHYL BROMIDE PRODUCTION WASTES		
Revision Checklist 68 (HSWA Cluster II).	54 *FR* 41402–41408, October 6, 1989.	Code: 605.09(2)(b); 605 Appendix II, III.

Description of Federal requirement [include checklist #, if relevant]	Federal Register date and page [and/or RCRA statutory authority]	Analogous State authority [1]
REPORTABLE QUANTITY ADJUSTMENT		
Revision Checklist 69 (HSWA Cluster II).	54 *FR* 50968–50979, December 11, 1989.	Code: 605.09(2)(a); 605 Appendix III, IV.
MINING WASTE EXCLUSION II		
Revision Checklist 71 (Non-HSWA Cluster VI).	55 *FR* 2322–2354, January 23, 1990.	Code: 600.03(56); 605.05(1)(k); 610.08(d); 615.08(15).
MODIFICATION OF F019 LISTING		
Revision Checklist 72 (Non-HSWA Cluster VI).	55 *FR* 5340–5342, February 14, 1990.	Code: 605.09(2)(b).
TESTING AND MONITORING ACTIVITIES; TECHNICAL CORRECTIONS		
Revision Checklist 73 (Non-HSWA Cluster VI).	55 *FR* 8948–8950, March 9, 1990.	Code: 600.10(2)(c); 605 Appendix II.
LISTING OF 1,1–DIMETHYLHYDRAZINE PRODUCTION WASTES		
Revision Checklist 75 (HSWA Cluster II).	55 *FR* 18496–18506, May 2, 1990.	Code: 605.09(2)(b); 605 Appendix II, III.
CRITERIA FOR LISTING TOXIC WASTES; TECHNICAL AMENDMENT		
Revision Checklist 76 (Non-HSWA Cluster VI).	55 *FR* 18726, May 4, 1990.	Code: 605.07(2)(a)3.
TOXICITY CHARACTERISTIC; HYDROCARBON RECOVERY OPERATIONS		
Revision Checklist 80 (RCRA Cluster I, HSWA Rule).	55 *FR* 40834–40837, October 5, 1990 as amended. 56 *FR* 3978, February 1, 1991. 56 *FR* 13406–13411, April 2, 1991.	Code: 600.04(1).
PETROLEUM REFINERY PRIMARY AND SECONDARY OIL/WATER/SOLIDS SEPARATION SLUDGE LISTINGS (F037 AND F038)		
Revision Checklist 81 (RCRA Cluster I, HSWA).	55 *FR* 46354–46397, November 2, 1990 as amended. 55 *FR* 51707, December 17, 1990.	Code: 605.09(2)(a); 605.14, 605 Appendix III.
TOXICITY CHARACTERISTIC; CHLOROFLUOROCARBON REFRIGERANTS		
Revision Checklist 84 (RCRA Cluster I, HSWA Rule).	56 *FR* 5910–5915, February 13, 1991.	Code: 605.05(1)(r).
REMOVAL OF STRONTIUM SULFIDE FROM THE LIST OF HAZARDOUS WASTES; TECHNICAL AMENDMENT		
Revision Checklist 86 (RCRA Cluster I, Non-HSWA Rule).	56 *FR* 7567–7568, February 25, 1991.	Code: 605.09(3)(a)1 removed; 605 Appendix IV.
ADMINISTRATIVE STAY FOR K069 LISTING		
Revision Checklist 88 (RCRA Cluster I, Non-HSWA).	56 *FR* 19951, May 1, 1991.	Code: 605.09(2)(b).

Description of Federal requirement [include checklist #, if relevant]	Federal Register date and page [and/or RCRA statutory authority]	Analogous State authority [1]
REVISION TO THE PETROLEUM REFINING PRIMARY AND SECONDARY OIL/WATER/SOLIDS SEPARATION SLUDGE LISTINGS (F037 AND F038)		
Revision Checklist 89 (RCRA Cluster I, HSWA Rule).	56 *FR* 21955–21960, May 13, 1991.	Code: 605.09(2)(a).
MINING WASTE EXCLUSION III		
Revision Checklist 90 (RCRA Cluster I).	56 *FR* 27300–27330, June 13, 1991.	Code: 605.05(1)(k).
RECYCLED COKE BY-PRODUCT EXCLUSION		
Revision Checklist 105 (RCRA Cluster II, HSWA Provisions).	57 *FR* 27880–27888, June 22, 1992.	Code: 605.05(1)(t).
TOXICITY CHARACTERISTICS REVISIONS: TECHNICAL CORRECTIONS		
Revision Checklist 108 (RCRA Cluster III, HSWA Provisions).	57 *FR* 30657–30658, July 10, 1992.	Code: 605.05(1)(e), (i).
COKE BY-PRODUCTS LISTINGS		
Revision Checklist 110 (RCRA Cluster III, HSWA Provisions).	57 *FR* 37284–37306, August 18, 1992.	Code: 605.05(1)(t); 605.09(2)(b); 605 Appendix III.
CHLORINATED TOLUENE PRODUCTION WASTE LISTING		
Revision Checklist 115 (RCRA Cluster III, HSWA Provisions).	57 *FR* 47376–47386, October 15, 1992.	Code: 605.09(2)(b); 605 Appendix III.
TOXICITY CHARACTERISTIC AMENDMENT		
Revision Checklist 117B (RCRA Cluster III, HSWA Provision).	57 *FR* 23062–23063, June 1, 1992.	Code: 605.04(1)(b)3.
TOXICITY CHARACTERISTIC REVISION; TCLP CORRECTION		
Revision Checklist 119 (RCRA Cluster III, HSWA Provision).	57 *FR* 55114–55117, November 24, 1992 as amended. 58 *FR* 6854, February 2, 1993	Code: 605.08(5); 675.07(1)(a); 675.20(1).
TESTING AND MONITORING ACTIVITIES		
Revision Checklist 126 (RCRA Cluster IV, HSWA/Non-HSWA Provisions).	58 *FR* 46040–46051, August 31, 1993 as amended. 59 *FR* 47980–47982, September 19, 1994	Code: 600.10(2)(b)1; 605.08(3)(a)1, 2, (5); 605.10(1)(a), (d); 605 Appendix II; 645.09(1); 660.18(7); 665.06(1)(d)1d, 2, (e)1c, d; 675.07(1)(a), (b), (g); 675.20(1); 675.21(1); 680.18(7); 680.22(22), (25).
STANDARDS FOR GENERATORS OF HAZARDOUS WASTE		
Revision Checklist 58 (Non-HSWA Cluster V).	53 *FR* 45089–45093, November 8, 1988.	Code: 615.08.
LIABILITY COVERAGE—CORPORATE GUARANTEE		
Revision Checklist 27 (Non-HSWA Cluster III).	51 *FR* 25350–25356, July 11, 1986.	Code: 685.08(1).

Description of Federal requirement [include checklist #, if relevant]	**Federal Register** date and page [and/or RCRA statutory authority]	Analogous State authority [1]
CONSOLIDATED LIABILITY REQUIREMENTS		
Revision Checklist 113 (RCRA Cluster III, Non-HSWA Provisions).	53 *FR* 33938–33960, September 1, 1988 as amended. 56 *FR* 30200, July 1, 1991 57 *FR* 42832–42844, September 16, 1992	Statutes: 289.41 (old 144.443); Code: 600.03 (218); 685.07(1), (5)(f), (i); 685.08(1)-(3), (7)–(12).
PERMIT MODIFICATIONS FOR HAZARDOUS WASTE MANAGEMENT FACILITIES		
Revision Checklist 54 (Non-HSWA Cluster V).	53 *FR* 37912–37942, September 28, 1988 as amended. 53 *FR* 41649, October 24, 1988	Statutes: 227.52; 227.53; 289.23 (old 144.44(2)); 289.30 (old 144.44(3)); 291.25(2) (old 144.64(2)(am)1). Code: 600.04(2); 630.22(1)(c)5; 665.07(1)(a), (2)(f); 680.07; 680.40(2); 680.42(5); 680.44; 680 Appendix I; 685.05(3), (4)(a); 685.06(6).
HAZARDOUS WASTE MISCELLANEOUS UNITS; STANDARDS APPLICABLE TO OWNERS AND OPERATORS		
Revision Checklist 59 (Non-HSWA Cluster V).	54 *FR* 615–617, January 9, 1989.	Code: 680.06(3)(e); 680.21(1)(b), (c); 685.05(2); 685.06(5).
AMENDMENT TO REQUIREMENTS FOR HAZARDOUS WASTE INCINERATOR PERMITS		
Revision Checklist 60 (Non-HSWA Cluster V).	54 *FR* 4286–4288, January 30, 1989.	Code: 655.06(4).
CHANGES TO INTERIM STATUS FACILITIES FOR HAZARDOUS WASTE MANAGEMENT PERMITS; PROCEDURES FOR POST–CLOSURE PERMITTING		
Revision Checklist 61 (Non-HSWA Cluster V).	54 *FR* 9596–9609, March 7, 1989.	Statutes: 227.52; 227.53; Ch 289 (old 144.44); 291.23, 291.25, 291.27, 291.29, 291.31 (old 144.64); Code: 665.07; 680.07(4); 680.32; 680.43; 680.44(1); 680 Appendix I.
DELAY OF CLOSURE PERIOD FOR HAZARDOUS WASTE MANAGEMENT FACILITIES		
Revision Checklist 64 (Non-HSWA Cluster VI).	54 FR 33376–33398, August 14, 1989.	Code: 630.12(1), (3)(a); 630.13(1)(a); 680 Appendix I; 685.05(3)(a), (4)(a), (6), (7); 685.07(3)(a)3, 4; 685.22(5), (17), (19).

[1] The Wisconsin provisions are from the Wisconsin Statutes and Annotations 1995–96, and the Wisconsin Administrative Code, Register, May, 1995, No. 473.

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the federal program provisions for which the State is applying for authorization, and which were issued by EPA prior to the effective date of this authorization. EPA has previously suspended issuance of permits for the other provisions on January 31, 1986, June 6, 1986, January 22, 1990, April 24, 1992, August 2, 1993, and October 4, 1994, the effective dates of Wisconsin's final authorization for the RCRA program revisions.

Wisconsin is not authorized to operate the Federal program in Indian country. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Wisconsin's application for program revision authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Wisconsin Final Authorization to operate its hazardous waste program as revised. Wisconsin now has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Wisconsin also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize Wisconsin's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. EPA reserves amendment of 40 CFR part 272, subpart YY until a later date.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for

proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Wisconsin program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) the Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA provides to the Office of Management and Budget a description of the prior consultation and communications the agency has had

with representatives of tribal governments and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. Wisconsin is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This document is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 99–19734 Filed 8–4–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[HCFA–1883–F]

RIN 0938–AI80

Medicare Program; Revision of the Procedures for Requesting Exceptions to Cost Limits for Skilled Nursing Facilities and Elimination of Reclassifications

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises the procedures for granting exceptions to the cost limits for skilled nursing facilities (SNFs) and retains the current procedures for exceptions to the cost limits for home health agencies (HHAs). It also removes the provision allowing reclassification for all providers.

EFFECTIVE DATE: This final rule is effective September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Steve Raitzyk, (410) 786–4599.

SUPPLEMENTARY INFORMATION:

I. Background

Section 223 of the Social Security Amendments of 1972 (Pub. L. 92–603) amended section 1861(v)(1)(A) of the Social Security Act (the Act) to authorize the Secretary to establish "* * * limits on the direct and indirect overall incurred costs or incurred costs of specific items or services or groups of items or services * * *" as a presumptive estimate of reasonable costs. Under section 1861(v)(1)(A), if a provider's cost exceeds its Medicare cost limit, it is deemed to be unreasonable for the efficient delivery of needed health care services. The Congress, however, in the House Committee report "H.R. Rep. No. 92–231, 92nd Congress, 1st Session 5071 (1971)," stated that providers could obtain relief from the effect of the cost limits based on evidence of the need for an exception.

We published a final rule on June 1, 1979 (44 FR 31802) to implement the legislation. The provisions are presently in 42 CFR 413.30 and concern principles of reasonable cost reimbursement.

Section 413.30 describes the general principles and procedures for establishing cost limits and the process by which providers may appeal the applicability of these cost limits. Under § 413.30(c), a provider may seek relief from the effects of applying cost limits, either by requesting an exemption from its limit as a new provider of inpatient services, by requesting a reclassification of its provider status, or by requesting an exception to the cost limit.

On August 11, 1998, we published a proposed rule concerning procedures for requesting exceptions to cost limits in the **Federal Register** (63 FR 42797). We proposed to revise the approval process for granting exceptions to the cost limits for skilled nursing facilities (SNFs) and to remove the provision for obtaining a reclassification for all providers. In that proposed rule, we traced the development of cost limits since 1972.

In the proposed rule, we stated that we may find it inappropriate to apply particular limits to a class of providers because of provider class characteristics, the data on which the limits are based, or the method by which the limits are determined (63 FR 42800). We further stated that we may explain our reasoning for exclusion in a notice setting forth the limits for the appropriate cost reporting periods. We explained that estimates of the costs necessary for efficient delivery of health services may be based on cost reports or other data providing indicators of current costs. Current and past period data would be adjusted to arrive at estimated costs for the prospective periods to which limits are being applied.

We described the process of establishing cost limits and the basis on which they were calculated. We also explained that the servicing intermediary would have to notify each SNF or HHA of its cost limit at least 30 days before the applicable cost reporting period. Each intermediary cost limit notification would have to contain the following:

- The provider's classification and calculation of the applicable limit.
- A statement that, if the provider believes it has been incorrectly classified, it is the provider's responsibility to furnish to the intermediary evidence that demonstrates the classification is incorrect.
- A statement that the provider may be entitled to an exemption from, or an exception to, the cost limits under the provisions of § 413.30.

II. Provisions of the Proposed Rule

A. Provider Reclassification

In the proposed rule, we noted that under current § 413.30(d), a provider may obtain a reclassification of its provider status if it can show that its classification is at variance with the criteria specified in establishing the limits. We noted that when cost limits were first developed, we manually arrayed the data collected from the providers' cost reports and classified them by type (hospital-based or freestanding) and location (metropolitan area or nonmetropolitan area). We stated there were instances when providers were misclassified. Thus, we allowed providers to file reclassification requests if they could show that the data we used for the classification were incorrect.

We noted that HHAs and SNFs now file specific cost reports, and metropolitan and nonmetropolitan area designations have become linked, through automation, to the county and State where each provider is located. As a result, a SNF or HHA cannot be misclassified. Reclassifications for hospitals, now filed with the Medicare Geographic Review Board, are governed under the provisions of subpart L (The Medicare Geographic Classification Review Board) of part 412 (Prospective Payment System for Inpatient Hospital Services). Hospitals no longer apply for reclassifications under § 413.30. Therefore, we proposed to remove § 413.30(d) to discontinue the use of reclassifications.

B. Exceptions to Cost Limits

In the preamble to the June 1979 final rule (44 FR 31806), we clarified the difference between an exemption and an exception. If a provider receives an exemption, it is not affected at all by the cost limits and it is paid under the standard rules for reasonable cost or customary charges. If a provider receives an exception, it is paid on the basis of the cost limit, plus an incremental sum for the reasonable costs warranted by the circumstances that justified the exception.

Our current regulation at § 413.30(f) (§ 413.30(c) in this final rule) allows a provider that is subject to cost limits to request an exception to the cost limits if its costs exceed, or are expected to exceed, the limits as a result of one of the following unusual situations: Atypical services; extraordinary circumstances; providers in areas with fluctuating populations; medical and paramedical education costs; and unusual labor costs. A SNF may request an exception for cost reporting periods occurring before July 1, 1998.

We stated that an adjustment is made only to the extent that the costs are reasonable, attributable to the circumstance specified, separately identified by the provider, and verified by the intermediary. The provider must file a request for an exception to the cost limits no later than 180 days from the date of the intermediary's notice of program pay. The intermediary reviews the request with all supporting documentation. The intermediary also makes and submits to us a recommendation on the provider's request. We make a final determination and respond to the intermediary within 180 days from the date of the intermediary's recommendation. If we do not respond within 180 days, it is considered good cause for the granting of an extension of the time limit to apply for a Provider Reimbursement Review Board review.

In July 1994, we published manual instructions (HCFA Pub. 15–1, Transmittal No. 378) that give SNFs detailed instructions for requesting exceptions to the SNF cost limits. Under this transmittal, in section 2531.1, intermediaries are required to submit their recommendations on a SNF's exception request within 90 days of receipt. We stated that we notify the intermediary of our final determination on the exception within 90 days of the date the request is received. We further stated that our current regulation at § 413.30(c) allows us 180 days to make our final determination.

We explained that after reviewing SNF exception requests submitted by intermediaries under the rules in Transmittal 378, we identified six intermediaries that were proficiently adjudicating SNF exceptions within the required time frame. The resulting increase in administrative efficiency has benefited SNFs, fiscal intermediaries, and the Medicare program.

We proposed in the August 1998 rule to revise § 413.30(c) to give all intermediaries the authority to make final determinations on SNF exception requests. We stated that this would result in an increase in administrative efficiency benefiting all SNFs who file SNF exception requests and fiscal intermediaries that process those exception requests.

We also stated our intent to work with the Blue Cross Association to perform additional training for all fiscal intermediaries and to designate a single contact person to handle all inquiries from fiscal intermediaries regarding exception requests.

Under our proposed § 413.30(c), if the intermediary determines that the SNF did not provide adequate documentation from which a proper determination can be made, the intermediary would notify the SNF that the request is denied. The intermediary would also notify the SNF that it has 45 days from the date on the intermediary's denial letter to submit a new exception request with the complete documentation, that we continue to allow the SNF to request a review by the Provider Reimbursement Review Board (PRRB), and that the time we need to review the request (through the intermediary) is considered good cause for extending the time limit for a PRRB review. Otherwise, the denial is our final determination.

We stated, in accordance with section 4432 of the Balanced Budget Act of 1997 (Pub. L. 105–33), that effective with cost reporting periods beginning on or after July 1, 1998, there will be a 3-year transition period to the prospective payment system. During the transition period, SNFs will be paid a blended payment that is based partially on a facility-specific rate and a prospective payment rate. The base period for the facility-specific rate is cost reporting periods beginning during the period October 1, 1994 through September 30, 1995. Exceptions for SNFs will no longer be available for cost reporting periods beginning on or after July 1, 1998.

The procedures for HHA exception requests would remain unchanged and are set forth in this final rule at § 413.30(c)(1). We note that we will not make exception payments to an HHA that is subject to the per-beneficiary limit described in a final rule with comment period that we published on March 31, 1998 (63 FR 15718).

C. Technical Changes

We proposed to remove paragraph (h) of § 413.30, pertaining to hospital cost report adjustments, because it is obsolete, and we also proposed to make minor editorial changes to other portions of § 413.30.

III. Analysis of and Responses to Comments

We received comments on the proposed rule from an organization representing nursing homes and from a consulting company. The comments and our responses to those comments are as follows:

Comment: The commenter expressed concerns that fiscal intermediaries have a mounting workload due to the implementation of the SNF prospective payment system, and that this

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regulation will create additional workload responsibilities for fiscal intermediaries.

Response: Fiscal intermediaries have been processing SNF exception requests since July 1994, under Transmittal No. 378 of HCFA Pub. 15–1. An intermediary processes an exception within 90 days of receipt from the SNF and sends its recommendation to our staff who also makes a final determination within 90 days. This final regulation will allow an intermediary to implement its recommendation without having to submit it to us for a final determination. Not only is there no additional workload required of an intermediary, this regulation will actually reduce the intermediary's workload by not having to submit the exception to us and wait for our response. We have designated Joseph Menning as the contact person available to assist the intermediaries with any questions or problems and we will monitor the performance of the intermediaries. He may be reached by telephone at (410) 786–4594, or by e-mail at jmenning@hcfa.gov, or by mail at: HCFA, 7500 Security Boulevard, Room C5–06–05, Baltimore, MD 21244.

Comment: One commenter requested that we establish a separate arbitration board to hear SNF claims relating to disagreements about exception decisions made by a fiscal intermediary.

Response: If errors in either computations or the application of exception methodologies are detected by the SNF, the SNF should notify the fiscal intermediary and the intermediary will review the SNF's claim. If there is still a disagreement, the SNF can ask that its intermediary contact the HCFA-designated exceptions contact person in an effort to resolve the disagreement between the SNF and the intermediary. If the SNF still disagrees with the intermediary's determination, it can request a review by the PRRB.

Comment: A commenter claimed that there are inconsistencies in the methodology and calculation of SNF exceptions among intermediaries and that some intermediaries consistently miss responding to a SNF's exception request within the required 90-day timeframe.

Response: We have trained all intermediaries to follow the instructions in Transmittal No. 378 of HCFA Pub. 15–1. We are not aware of any inconsistent applications of exceptions policies among intermediaries. We monitor the performance of intermediaries on various pay issues, including exceptions, under the Contractor Performance Evaluation Program (CPEP). Also, if the intermediary misses the 90-day timeframe to respond to a SNF's exception request, this failure to respond is considered good cause for an extension of the time limit for the SNF to apply for a review by the PRRB.

Comment: One commenter expressed the view that many intermediaries know very little about SNF operations or regulatory compliance issues and this makes it difficult for them to make a proper decision on exceptions issues such as the "low occupancy" adjustment.

Response: All intermediaries employ personnel who deal with operational and regulatory compliance issues. We know of no intermediaries that have had problems in this area. If a fiscal intermediary or SNF encounters a problem concerning any exceptions policy, including operational and regulatory compliance issues, it may contact the HCFA-designated contact person for assistance. Also, a SNF that encounters a problem may contact the HCFA-designated exceptions contact.

Comment: The same commenter indicated that in its estimation, many intermediaries ignore low occupancy arguments and calculations made by SNFs and either make arbitrary partial adjustments or 100 percent low occupancy adjustments.

Response: We have instructed fiscal intermediaries to submit all alternate proposals to the low occupancy adjustment to us for a determination. We have received many alternate proposals to the low occupancy adjustment submitted by fiscal intermediaries on behalf of SNFs and their representatives. We issued program instructions to the fiscal intermediaries based on these proposals.

IV. Provisions of the Final Rule

Based on our review and analysis of comments, we are adopting the proposed rule as final. We are making, however, a technical clarification to the proposed § 413.30(d) to indicate that SNF exemptions apply only to cost reporting periods beginning before July 1, 1998. We are revising the approval process for granting exceptions to the cost limits for SNFs (§ 413.30(c)) and retaining the current procedures for exceptions to the cost limits for HHAs (§ 413.30(c)(1)). We are also removing the current provision allowing reclassification for all providers (§ 413.30(d)).

V. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all SNFs and HHAs are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This rule to eliminate reclassifications for HHAs and SNFs has no effect on them since they currently do not need to be reclassified. Hospitals can obtain any needed reclassifications and exceptions under subpart L of part 412. The change in the method of processing requests for exceptions to cost limits has no economic impact on either the providers or the Medicare program.

For these reasons, we are not preparing an analysis for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 42 CFR, part 413, is amended as follows:

PART 413—[AMENDED]

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 413.30 is revised to read as follows:

§ 413.30 Limitations on payable costs.

(a) *Introduction*—(1) *Scope.* This section implements section 1861(v)(1)(A) of the Act by setting forth the general rules under which HCFA may establish limits on SNF and HHA costs recognized as reasonable in determining Medicare program payments. It also sets forth rules governing exemptions and exceptions to limits established under this section that HCFA may make as appropriate in considering special needs or situations.

(2) *General principle.* Payable SNF and HHA costs may not exceed the costs HCFA estimates to be necessary for the efficient delivery of needed health care services. HCFA may establish estimated cost limits for direct or indirect overall costs or for costs of specific services or groups of services. HCFA imposes these limits prospectively and may calculate them on a per admission, per discharge, per diem, per visit, or other basis.

(b) *Procedure for establishing limits.* (1) In establishing limits under this section, HCFA may classify SNFs and HHAs by factors that HCFA finds appropriate and practical, including the following:

(i) Type of services furnished.

(ii) Geographical area where services are furnished, allowing for grouping of noncontiguous areas having similar demographic and economic characteristics.

(iii) Size of institution.

(iv) Nature and mix of services furnished.

(v) Type and mix of patients treated.

(2) HCFA bases its estimates of the costs necessary for efficient delivery of health services on cost reports or other data providing indicators of current costs. HCFA adjusts current and past period data to arrive at estimated costs for the prospective periods to which limits are applied.

(3) Before the beginning of a cost period to which revised limits will be applied, HCFA publishes a notice in the **Federal Register**, establishing cost limits and explaining the basis on which they are calculated.

(4) In establishing limits under paragraph (b)(1) of this section, HCFA may find it inappropriate to apply particular limits to a class of SNFs or HHAs due to the characteristics of the SNF or HHA class, the data on which HCFA bases those limits, or the method by which HCFA determines the limits. In these cases, HCFA may exclude that class of SNFs or HHAs from the limits, explaining the basis of the exclusion in the notice setting forth the limits for the appropriate cost reporting periods.

(c) *Requests regarding applicability of cost limits.* For cost reporting periods beginning before July 1, 1998, a SNF may request an exception or exemption to the cost limits imposed under this section. An HHA may request only an exception to the cost limits. The SNF or HHA must make its request to its fiscal intermediary within 180 days of the date on the intermediary's notice of program pay.

(1) *Home health agencies.* The intermediary makes a recommendation on the HHA's request to HCFA, which makes the decision. HCFA responds to the request within 180 days from the date HCFA receives the request from the intermediary. The intermediary notifies the HHA of HCFA's decision. The time required by HCFA to review the request is considered good cause for the granting of an extension of the time limit for the HHA to apply for a PRRB review, as specified in § 405.1841 of this chapter. HCFA's decision is subject to review under subpart R of part 405 of this chapter.

(2) *Skilled nursing facilities.* The intermediary makes the final determination on the SNF's request and notifies the SNF of its determination within 90 days from the date that the intermediary receives the request from the SNF. If the intermediary determines that the SNF did not provide adequate documentation from which a proper determination can be made, the intermediary notifies the SNF that the request is denied. The intermediary also notifies the SNF that it has 45 days from the date on the intermediary's denial letter to submit a new exception request with the complete documentation and that otherwise, the denial is the final determination. The time required by the intermediary to review the request is considered good cause for the granting of an extension of the time limit for the SNF to apply for a PRRB review, as specified in § 405.1841 of this chapter. The intermediary's determination is subject to review under subpart R of part 405 of this chapter.

(d) *Exemptions.* Exemptions from the limits imposed under this section may be granted to a new SNF with cost reporting periods beginning before July 1, 1998 as stated in § 413.1(g)(1). A new SNF is a provider of inpatient services that has operated as the type of SNF (or the equivalent) for which it is certified for Medicare, under present and previous ownership, for less than 3 full years. An exemption granted under this paragraph expires at the end of the SNF's first cost reporting period beginning at least 2 years after the provider accepts its first inpatient.

(e) *Exceptions.* Limits established under this section may be adjusted upward for a SNF or HHA under the circumstances specified in paragraphs (e)(1) through (e)(5) of this section. An adjustment is made only to the extent that the costs are reasonable, attributable to the circumstances specified, separately identified by the SNF or HHA, and verified by the intermediary.

(1) *Atypical services.* The SNF or HHA can show that the—

(i) Actual cost of services furnished by a SNF or HHA exceeds the applicable limit because the services are atypical in nature and scope, compared to the services generally furnished by SNFs or HHAs similarly classified; and

(ii) Atypical services are furnished because of the special needs of the patients treated and are necessary in the efficient delivery of needed health care.

(2) *Extraordinary circumstances.* The SNF or HHA can show that it incurred higher costs due to extraordinary circumstances beyond its control. These circumstances include, but are not limited to, strikes, fire, earthquake, flood, or other unusual occurrences with substantial cost effects.

(3) *Areas with fluctuating populations.* The SNF or HHA meets the following conditions:

(i) Is located in an area (for example, a resort area) that has a population that varies significantly during the year.

(ii) Is furnishing services in an area for which the appropriate health planning agency has determined does not have a surplus of beds or services and has certified that the beds or services furnished by the SNF or HHA are necessary.

(iii) Meets occupancy or capacity standards established by the Secretary.

(4) *Medical and paramedical education.* The SNF or HHA can demonstrate that, if compared to other SNFs or HHAs in its group, it incurs increased costs for services covered by limits under this section because of its operation of an approved education program specified in § 413.85.

(5) *Unusual labor costs.* The SNF or HHA has a percentage of labor costs that varies more than 10 percent from that included in the promulgation of the limits.

(f) *Operational review.* Any SNF or HHA that applies for an exception to the limits established under paragraph (e) of this section must agree to an operational review at the discretion of HCFA. The findings from this review may be the basis for recommendations for improvements in the efficiency and economy of the SNF's or the HHA's operations. If recommendations are made, any future exceptions are contingent on the SNF's or HHA's implementation of these recommendations.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 19, 1999.
Nancy-Ann Min DeParle,
Administrator, Health Care Financing Administration.
Dated: April 22, 1999.
Donna E. Shalala,
Secretary.
[FR Doc. 99–20015 Filed 8–4–99; 8:45 am]
BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1441; MM Docket No. 99–124; RM–9519]

Radio Broadcasting Services; Castle Dale, UT

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document allots Channel 237C3 at Castle Dale, Utah, in response to a petition filed by Mountain West Broadcasting. *See* 64 FR 23254, April 30, 1999. The coordinates for Channel 237C3 at Castle Dale are 39–12–48 NL and 111–01–18 WL. With this action, this proceeding is terminated. A filing window for Channel 237C3 at Castle Dale will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective September 7, 1999.
FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.
SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–124, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:
Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Castle Dale, Channel 237C3.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 99–20137 Filed 8–4–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1441; MM Docket No. 99–128; RM–9520]

Radio Broadcasting Services; Mona, UT

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document allots Channel 225A at Mona, Utah, in response to a petition filed by Mountain West Broadcasting. *See* 64 FR 23254, April 30, 1999. The coordinates for Channel 225A at Mona are 39–46–39 NL and 111–51–41 WL. There is a site restriction 4.4 kilometeres (2.7 miles) south of the community. With this action, this proceeding is terminated. A filing window for Channel 225A at Mona will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective September 7, 1999.
FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.
SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–128, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:
Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Mona, Channel 225A.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 99–20136 Filed 8–4–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1441; MM Docket No. 99–126; RM–9518]

Radio Broadcasting Services; Hurricane, UT

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document allots Channel 275C3 at Hurricane, Utah, in response to a petition filed by Mountain West Broadcasting. *See* 64 FR 23253, April 30, 1999. The coordinates for Channel 275C3 at Hurricane are 37–10–30 NL and 113–17–24 WL. With this action, this proceeding is terminated. A filing window for Channel 275C3 at Hurricane will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective September 7, 1999.
FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.
SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–126, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:
Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Hurricane, Channel 275C3.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 99–20135 Filed 8–4–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1441; MM Docket No. 99–125; RM–9542]

Radio Broadcasting Services; Huntington, UT

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document allots Channel 296C2 at Huntington, Utah, in response to a petition filed by Mountain West Broadcasting. *See* FR 64 FR 23252, April 30, 1999. The coordinates for Channel 296C2 at Huntington are 39–19–36 NL and 110–57–50 WL. With this action, this proceeding is terminated. A filing window for Channel 296C2 at Huntington will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective September 7, 1999.
FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.
SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–125, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:
Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Huntington, Channel 296C2.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 99–20134 Filed 8–4–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1441; MM Docket No. 99–132; RM–9525]

Radio Broadcasting Services; Midland, MD

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document allots Channel 258A at Midland, Maryland, in response to a petition filed by West Wind Broadcasting. *See* 64 FR 24567, May 7, 1999. The coordinates for Channel 258A at Midland are 39–40–19 NL and 78–57–25 WL. There is a site restriction 9.1 kilometers (5.7 miles) north of the community. With this action, this proceeding is terminated. A filing window for Channel 258A at Midland will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective September 7, 1999.
FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.
SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–132, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:
Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Maryland, is amended by adding Midland, Channel 258A.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 99–20133 Filed 8–4–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1441; MM Docket No. 99–129; RM–9541]

Radio Broadcasting Services; Monticello, UT

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document allots Channel 291C1 at Monticello, Utah, in response to a petition filed by Mountain West Broadcasting. *See* 64 FR 23255, April 30, 1999. The coordinates for Channel 291C1 at Monticello are 37–52–17 NL and 109–20–32 WL. With this action, this proceeding is terminated. A filing window for Channel 291C1 at Monticello will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–129, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Monticello, Channel 291C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–20132 Filed 8–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1441; MM Docket No. 99–130; RM–9517]

Radio Broadcasting Services; Wellington, UT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 221C3 at Wellington, Utah, in response to a petition filed by Mountain West Broadcasting. *See* 64 FR 23255, April 30, 1999. The coordinates for Channel 221C3 at Wellington are 39–32–33 NL and 110–44–05 WL. With this action, this proceeding is terminated. A filing window for Channel 221C3 at Wellington will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–130, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Wellington, Channel 221C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–20131 Filed 8–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1441; MM Docket No. 99–135; RM–9522]

Radio Broadcasting Services; Groveton, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 251A at Groveton, Texas, in response to a petition filed by Trinity County Radio. *See* 64 FR 24997, May 10, 1999. The coordinates for Channel 251A at Groveton are 31–03–30 NL and 95–07–36 WL. With this action, this proceeding is terminated. A filing window for Channel 251A at Groveton will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–135, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Groveton, Channel 251A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–20130 Filed 8–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1441; MM Docket No. 99–138; RM–9569]

Radio Broadcasting Services; Lovelady, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 282C3 at Lovelady, Texas, in response to a petition filed by Lovelady Broadcasting Company. *See* 64 FR 24998, May 10, 1999. The coordinates for Channel 282C3 at Lovelady are 31–09–51 NL and 95–27–09 WL. There is a site restriction 4.1 kilometers (2.5 miles) north of the community. With this action, this proceeding is terminated. A filing window for Channel 282C3 at Lovelady will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–138, adopted July 14, 1999, and released July 23, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Lovelady, Channel 282C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–20129 Filed 8–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 95–178; FCC 99–116]

Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of June 24, 1999 (64 FR 33788), a report and order and final rule to ease the transition for broadcasters, cable operators, and viewers as the Commission moves from an ADI to a DMA-based market definition. The amended rule did not contain the complete names of two publications containing the DMA designations. This document provides these names for reference by regulated parties and clarifies which sections of the rule are amended.

DATES: Effective on August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Ben Golant, Consumer Protection and Competition Division, Cable Services Bureau, at (202) 418–7111.

SUPPLEMENTARY INFORMATION: The FCC published a report and order and final rule in the **Federal Register** of June 24, 1999 (64 FR 33788). This notice clarifies the sources of the Nielsen data necessary to determine county and station assignments for broadcast signal carriage purposes by revising the amendment to § 76.55(e) to include the complete names of the two Nielsen publications that are necessary to determine the counties comprising a television market and the television stations assigned to each of the 211 markets in the United States. To find out to which market a station is assigned for the 1999 election, the proper publication is *Nielsen's Station Index: 1997–98 Directory*. To find out to which market a county is assigned for the 1999 election, the proper publication is *Nielsen's Station Index: September 1997 U.S. Television Household Estimates*.

In rule FR Doc. 99–15959 published on June 24, 1999, (64 FR 33788) make the following correction. On page 33796 in the first column, in § 76.55, the amendatory instruction number 2., and the amendment to paragraphs (e)(1) through (e)(6) are corrected to read as follows:

* * * * *

2. Section 76.55 is amended by revising paragraph (e) to read as follows:

§ 76.55 Definitions applicable to the must-carry rules.

(e) *Television market.* (1) Until January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to § 76.59, shall be defined as its Area of Dominant Influence (ADI) as determined by Arbitron and published in the Arbitron 1991–1992 Television ADI Market Guide, as noted below, except that for areas outside the contiguous 48 states, the market of a station shall be defined using Nielsen's Designated Market Area (DMA), where applicable, as published in the Nielsen 1991–92 DMA Market and Demographic Rank Report, and that Puerto Rico, the U.S. Virgin Islands, and Guam will each be considered a single market.

(2) Effective January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to § 76.59, shall be defined as its Designated Market Area (DMA) as determined by Nielsen Media Research and published in its Nielsen Station Index Directory and Nielsen Station Index US Television Household Estimates or any successor publications.

(i) For the 1999 election pursuant to § 76.64(f), which becomes effective on January 1, 2000, DMA assignments specified in the 1997–98 Nielsen Station Index Directory and September 1997 Nielsen Station Index US Television Household Estimates, available from Nielsen Media Research, 299 Park Avenue, New York, NY, shall be used.

(ii) The applicable DMA list for the 2002 election pursuant to § 76.64(f) will be the DMA assignments specified in the 2000–2001 list, and so forth for each triennial election pursuant to § 76.64(f).

(3) In addition, the county in which a station's community of license is located will be considered within its market.

(4) A cable system's television market(s) shall be the one or more ADI markets in which the communities it serves are located until January 1, 2000, and the one or more DMA markets in which the communities it serves are located thereafter.

(5) In the absence of any mandatory carriage complaint or market modification petition, cable operators in communities that shift from one market to another, due to the change in 1999–2000 from ADI to DMA, will be permitted to treat their systems as either in the new DMA market, or with respect to the specific stations carried prior to the market change from ADI to DMA, as

in both the old ADI market and the new DMA market.

(6) If the change from the ADI market definition to the DMA market definition in 1999–2000 results in the filing of a mandatory carriage complaint, any affected party may respond to that complaint by filing a market modification request pursuant to § 76.59, and these two actions may be jointly decided by the Commission.

* * * * *

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–19938 Filed 8–4–99; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 64, No. 150

Thursday, August 5, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV99–932–610 REVIEW]

California Olives; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of review and request for comments.

SUMMARY: This action announces the Agricultural Marketing Service (AMS) review of Marketing Order 932 for olives grown in California, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

DATES: Written comments on this notice must be received by October 4, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice of review. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901; Fax: (209) 487–5906; E-mail: Kurt.Kimmel@usda.gov; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698; E-mail: George.Kelhart@usda.gov.

SUPPLEMENTARY INFORMATION: Marketing Order No. 932, as amended (7 CFR Part 932), regulates the handling of olives grown in California. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674).

AMS published in the **Federal Register** (63 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Order No. 932, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review. The February 18 notice stated that AMS would list the regulations to be reviewed in AMS' regulatory agenda which is published in the **Federal Register** as part of the Unified Agenda. However, after further consideration, AMS has decided to announce the reviews in the **Federal Register** separate from the Unified Agenda. Accordingly, this notice and request for comments is made for California olives.

The purpose of the review will be to determine whether the California marketing order for olives should be continued without change, amended, or rescinded (consistent with the objectives of the AMAA) to minimize the impacts on small entities. In conducting this review, AMS will consider the following factors: (1) The continued need for the marketing order; (2) the nature of complaints or comments received from the public concerning the marketing order; (3) the complexity of the marketing order; (4) the extent to which the marketing order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

Written comments, views, opinions, and other information regarding the olive marketing order's impact on small businesses are invited.

Dated: July 27, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–20169 Filed 8–4–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–36–AD]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. ALF502R and LF507 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would require revisions to Chapter 5, Airworthiness Limitations section, of the AlliedSignal Inc. ALF502R and LF507 series Engine Manuals to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This proposal would also require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. Air carriers with an approved continuous airworthiness maintenance program would be allowed to either maintain the records showing the current status of the inspections using the record keeping system specified in the air carrier's maintenance manual, or establish an acceptable alternate method of record keeping. This proposal is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

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DATES: Comments must be received by November 3, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-36-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712-4137; telephone (562) 627-5262, fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NE-36-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-36-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

A recent Federal Aviation Administration (FAA) study analyzing 15 years of accident data for transport category airplanes identified several failure mode root causes that can result in serious safety hazards to transport category airplanes. This study identified uncontained failure of critical life-limited rotating engine parts as the leading engine-related safety hazard to airplanes. Uncontained engine failures have resulted from undetected cracks in rotating parts that initiated and propagated to failure. Cracks can originate from causes such as unintended excessive stress from the original design, or they may initiate from stresses induced from material flaws, handling damage, or damage from machining operations. The failure of rotating parts can present a significant safety hazard to the airplanes by release of high energy fragments that could injure passengers or crew by penetration of the cabin, damage flight control surfaces, sever flammable fluid lines, or otherwise compromise the airworthiness of the airplane.

Accordingly, the FAA has developed an intervention strategy to significantly reduce uncontained engine failures. This intervention strategy was developed after consultation with industry and will be used as a model for future initiatives. This intervention strategy is to conduct enhanced, nondestructive inspections of fan disks which could most likely result in a safety hazard to the airplane in the event of a disk fracture. The FAA is also considering the need for additional rule making. Future ADs may be issued introducing additional intervention strategies to further reduce or eliminate uncontained engine failures.

Properly focused enhanced inspections require identification of the parts whose failure presents the highest safety hazard to the airplane, identifying the most critical features to inspect on these parts, and utilizing inspection procedures and techniques that improve crack detection. The FAA, with close cooperation of the engine manufacturers, has completed a detailed analysis that identifies the most safety significant parts and features, and the most appropriate inspection methods.

Critical life-limited high-energy rotating parts are currently subject to some form of recommended crack inspection when exposed during engine maintenance or disassembly. As a result of this AD, the inspections currently recommended by the manufacturer will become mandatory for those parts listed in the compliance section. Furthermore, the FAA intends that additional mandatory enhanced inspections resulting from this AD serve as an adjunct to the existing inspections. The FAA has determined that the enhanced inspections will significantly improve the probability of crack detection while the parts are disassembled during maintenance. All mandatory inspections must be conducted in accordance with detailed inspection procedures prescribed in the manufacturer's Engine Manuals.

Additionally, this AD allows for air carriers operating under the provisions of 14 CFR part 121 with an FAA-approved continuous airworthiness maintenance program, and entities with whom those air carriers make arrangements to perform this maintenance, to verify performance of the enhanced inspections by retaining the maintenance records that include the inspections resulting from this AD, provided that the records include the date and signature of the person performing the maintenance action. These records must be retained with the maintenance records of the part, engine module, or engine until the task is repeated. This will establish a method of record preservation and retrieval typical to those in existing continuous airworthiness maintenance programs. Instructions must be included in an air carrier's maintenance manual providing procedures on how this record preservation and retrieval system will be implemented and integrated into the air carrier's record keeping system.

This proposal would require, within the next 30 days after the effective date of this AD, revisions to Chapter 5, Airworthiness Limitations section, of the AlliedSignal Inc. ALF502R and LF507 series Engine Manuals and, for air carriers, the approved continuous airworthiness maintenance program. AlliedSignal Inc., the manufacturer of ALF502R and LF507 series turbofan engines, used on 14 CFR part 25 airplanes, has provided the FAA with a detailed proposal that identifies and prioritizes the critical life-limited rotating engine parts with the highest potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. The enhanced inspections resulting from this AD will be conducted at piece-part opportunity, as defined below in the compliance section, rather than specific time inspection intervals.

The FAA estimates that 200 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 56 work hours per engine to accomplish the proposed actions. The average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $672,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AlliedSignal Inc.: Docket 99-NE-36-AD.

Applicability: AlliedSignal Inc. (formerly Textron Lycoming and Avco Lycoming) ALF502R and LF507 series turbofan engines, installed on but not limited to British Aerospace BAe 146-100A, BAe 146-200A, BAe 146-300A, AVRO 146-RJ70A, AVRO 146-RJ85A, and AVRO 146-100A series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise Chapter 5, Airworthiness Limitations section, of the AlliedSignal Inc. ALF502R and LF507 Engine Manuals, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"Chapter 5, Airworthiness Limitations Section, Mandatory Inspections:

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part nomenclature	Part number (P/N)	Inspect per engine manual chapter
For ALF502R series turbofan engines:		
Fan Disc	All	72-31-07 Inspection/Check.
First Turbine Disc	All	72-51-12 Inspection/Check.
Second Turbine Disc	All	72-51-21 Inspection/Check.
Impeller	All	72-34-38 Inspection/Check.
Low Pressure Turbine Shaft:		
(Third Turbine)	All	72-52-03 Inspection/Check.
Fourth Turbine Disc	All	72-52-06 Inspection/Check.
For LF507 series turbofan engines:		
Fan Disc	All	72-31-08 Inspection/Check.
First Turbine Disc	All	72-51-11 Inspection/Check.
Second Turbine Disc	All	72-51-20 Inspection/Check.
Impeller	All	72-34-20 Inspection/Check.
Low Pressure Turbine Shaft:		
(Third Turbine)	All	72-52-24 Inspection/Check.
Fourth Turbine Disc	All	72-52-03 Inspection/Check.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is completely disassembled when done in accordance with the disassembly instructions in the engine manufacturer's Engine Manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine."

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with Chapter 5, Airworthiness Limitations section, of the AlliedSignal Inc. ALF502R and LF507 Engine Manuals.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)] of this chapter must maintain records of the mandatory inspections that result from revising the Engine Manual's Chapter 5, Airworthiness Limitations section, and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a) (2) (vi) of the Federal Aviation Regulations [14 CFR 121.380 (a) (2) (vi)]. All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the Engine Manuals.

Issued in Burlington, Massachusetts, on July 30, 1999.

Jorge A. Fernandez,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–20184 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–15–AD]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company, Inc. AE 3007A and AE 3007C Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Allison Engine Company, Inc. AE 3007A and AE 3007C series turbofan engines. This proposal would require removing certain turbine wheels from service before exceeding new, reduced cyclic life limits. This proposal is prompted by a refined life analysis that was performed by the manufacturer. The actions specified by the proposed AD are intended to prevent an uncontained turbine wheel failure, which could result in damage to the airplane.

DATES: Comments must be received by October 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–15–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov." Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rolls-Royce Allison, P.O. Box 420, Speed Code U–15, Indianapolis, IN 46206–0420, telephone (317) 230–6674. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–8180, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–15–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–15–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

Allison Engine Company, Inc., also known as Rolls-Royce Allison, the manufacturer of AE 3007A and AE 3007C series turbofan engines, suspects that certain turbine wheels may have tungsten contamination. The suspect turbine wheels were manufactured between January 26, 1993, and August 27, 1993. The manufacturer has also re-evaluated the effect of a surface treatment on the service life of a wheel. A refined life analysis, which took into account both the possibility of tungsten inclusions and the surface treatment, revealed new maximum service lives that are significantly lower than those previously published. This condition, if not corrected, could result in an uncontained turbine wheel failure, which could result in damage to the airplane.

The FAA has reviewed and approved the technical contents of Rolls-Royce Alert Service Bulletin (ASB) AE 3007A–A–72–105 and AE 3007C–A–72–105, dated January 29,1999, that lists new, reduced engine cyclic life limits for affected turbine wheels. Rolls-Royce Allison produces and distributes the service documents that cover the Allison Engine Co. AE3007A and AE3007C turbofan engines. Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, the proposed AD would require removing affected turbine wheels from service before exceeding new, reduced cyclic life limits. The actions would be required to be accomplished in accordance with the ASB described previously.

There are approximately 325 engines of the affected design in the worldwide fleet. The FAA estimates that 260 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 63 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The estimated cost of the lost cycles due to the reduction of the engine cycle life limit is $57,800 per engine. Required parts would cost approximately $54,020 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $15,028,000. The manufacturer of the affected turbine wheels has advised the FAA that it may defray the cost of the reduced life limits, thus reducing the overall cost to operators.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Allison Engine Company, Inc.: Docket No. 99–NE–15–AD.

Applicability: Allison Engine Company, Inc. AE 3007A and AE 3007C series turbofan engines, installed on, but not limited to Cessna Aircraft Company 750 series airplanes and Empresa Brasileira de Aeronautica S.A. (Embraer) EMB–145 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained turbine wheel failure, which could result in damage to the airplane, accomplish the following:

(a) Remove stage 1 turbine wheels, part numbers (P/N's) 23065891 and 23062373, and replace with new or serviceable parts as follows:

(1) For stage 1 turbine wheels with serial numbers (SN's) listed in table 5 of Rolls-Royce Alert Service Bulletin (ASB) AE 3007A–A–72–105 and AE 3007C–A–72–105, dated January 29, 1999, replace before accumulating 9,000 engine cycles since new (CSN).

(2) For all other stage 1 turbine wheels SN's, replace before accumulating 13,100 engine CSN.

(b) Remove stage 2 turbine wheels, P/N's 23065892 and 23063462, and replace with new or serviceable parts as follows:

(1) For stage 2 turbine wheels with SN's listed in table 6 of Rolls-Royce ASB AE 3007A–A–72–105 and AE 3007C–A–72–105, dated January 29,1999, replace before accumulating 7,800 engine CSN.

(2) For all other stage 2 turbine wheels SN's, replace before accumulating 8,400 engine CSN.

(c) This AD establishes new cyclic life limits for the turbine wheels identified in paragraphs (a) and (b) of this AD. Except in accordance with paragraph (d) of this AD, no alternative life limits may be approved for the turbine wheels identified in paragraphs (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

Issued in Burlington, Massachusetts, on July 30, 1999.

Jorge A. Fernandez,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–20183 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Rregulatory Commission

18 CFR Part 357

[Docket No. RM99–10–000]

Revision of FERC Form No. 6: Annual Report of Oil Pipeline Companies; Notice Of Technical Conference and Request For Comments

July 30, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Technical Conference and Request for Comments on Revisions to FERC Form No. 6: Annual Report of Oil Pipeline Companies (FERC Form No. 6).

SUMMARY: The Federal Energy Regulatory Commission (Commission) Staff will conduct a technical conference to solicit comments and discuss potential changes to the FERC Form No. 6 to better meet current and future regulatory requirements and industry needs. The technical conference is intended to be an informal working session so participants can freely discuss their views on issues related to FERC Form No. 6. The Commission is interested in discussing and obtaining specific comments on the need to: delete, add, revise, consolidate, and clarify FERC Form No. 6 schedules and instructions. The Commission is also seeking comments on the related regulations contained in 18 CFR Part 357; and procedures to implement electronic filing for FERC Form No. 6.

The Commission is inviting interested parties to submit written comments addressing issues outlined in Appendix A of the notice prior to the technical conference and is requesting parties to notify the Commission if they wish to attend.

DATES: The technical conference will be held on Wednesday, September 8, 1999.

Notification of persons who wish to attend the conference must be filed on or before Friday, August 20, 1999.

Written comments must be filed on or before Friday, August 20, 1999.

ADDRESSES: The technical conference will be held at the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Submit written comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Persons who wish to attend the conference must notify:

Michael Oliva, (202)219–2597, FAX: (202)219–0125, E–Mail: michael.oliva@ferc.fed.us
or
Donna Culbertson, (202)219–1102, FAX: (202)219–0125, E–Mail: donna.culbertson@ferc.fed.us

FOR FURTHER INFORMATION CONTACT:

Donna Culbertson (Technical Issues), Office of Finance, Accounting and Operations, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–1102

Andrew Lyon (Legal Issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0637

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994 to the present. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1 format. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Notice of Technical Conference and Request for Comments

The Federal Energy Regulatory Commission Staff (Staff) will convene a technical conference to solicit comments and discuss potential changes to the FERC Form No. 6: Annual Report of Oil Pipeline Companies (FERC Form No. 6) filing requirements and related regulations contained in 18 CFR Part 357 to better meet current and future regulatory requirements and industry needs. The technical conference will be held on Wednesday, September 8, 1999, at 9:00 A.M. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The conference is intended to be an informal working session so participants can freely discuss their views on issues related to FERC Form No. 6. The conference is open to shippers, trade associations, oil pipeline companies, federal and state agencies, users of the information reported in the FERC Form No. 6, and other interested parties. Appendix A contains a list of suggested subjects for discussion at the technical conference. The discussion is not limited to these topics but can cover other FERC Form No. 6 topics as well.

The Commission's oil pipeline regulations require each oil pipeline company, subject to the provisions of the Interstate Commerce Act, and having jurisdictional operating revenues exceeding $350,000 in each of the three immediately preceding calendar years, to submit the FERC Form No. 6. Oil pipeline companies exempt from filing the FERC Form No. 6 prepare and file only pages 1 and 700 of the Form 6.

FERC Form No. 6 is filed by March 31st of each year for the previous calendar year. This report collects financial and operational information from oil pipeline companies subject to FERC's jurisdiction through various schedules including: general corporate information, financial statements, balance sheet supporting schedules, income account supporting schedules, and plant statistical data.

Staff is convening the conference to solicit comments from the industry and the public and discuss potential changes to the schedules listed above and the Commission's regulations. The Commission is interested in obtaining specific comments on the need to: delete, add, revise, consolidate, and clarify FERC Form No. 6 schedules and instructions. The Commission is also seeking comments on the related regulations contained in 18 CFR Part 357; and procedures to implement electronic filing for FERC Form No. 6.

Persons who wish to attend the conference should notify Michael Oliva or Donna Culbertson by August 20, 1999, either by telephone, facsimile, or by E-Mail.

Michael Oliva, (202) 219–2597, FAX: (202) 219–0125, *michael.oliva@ferc.fed.us*
or
Donna Culbertson, (202) 219–1102, FAX: (202) 219–0125 *donna.culbertson@ferc.fed.us*

Please provide your name, title, affiliation, mailing address, voice and fax telephone numbers, and your Internet E-Mail address if you have one. Companies or organizations with more than one representative may consolidate the notifications if they provide the Companies are encouraged to coordinate with their respective industry associations to consolidate discussions as much as possible.

The Commission Staff also invites interested persons to submit written comments addressing the issues outlined in Appendix A prior to the technical conference to help focus the discussion. Interested persons should come prepared to discuss these issues at the technical conference. Based on the comments received, Commission Staff will determine the best way to structure the conference to efficiently obtain the information needed.

The original and 14 copies of such comments must be received by the Commission before 5:00 P.M., Friday, August 20, 1999. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426 and should refer to Docket No. RM99–10–000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 8.0 or below, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM99–10–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to "*comment.rm@ferc.fed.us*" in the following format. On the subject line, specify Docket No. RM99–10–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426, during regular business hours. Additionally, comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS or CIPS links. RIMS contains all comments but only those comments submitted in electronic format are available on CIPS. User assistance is available at 202–208–2222, or by E-Mail to *rimsmaster@ferc.fed.us*.

David P. Boergers,

Secretary.

Appendix A—Topics for Discussion at Form 6 Technical Conference September 8, 1999

Form 6 General Information, Instructions, and Definitions (Pages i—iii)

- What information, instructions, and definitions should be included, eliminated, revised, and consolidated?

Form 6 Instructions

- Where are there interpretation problems with the Form 6 instructions? For example, categorizing expenses between operations and maintenance expense, defining system property, defining Statement of Cash Flows line item requirements, and calculating cost of service.

—Identify by schedule and instruction where more clarification is needed.
—Define type and detail of instruction needed.

Form 6 Schedules

- What GAAP updates should be made? For example, updating the "Analysis of Federal Income and Other Taxes Deferred" Schedule from APB 11 to FASB 109.
- Are there items that should be included, eliminated, revised, and consolidated in each Form 6 schedule?

—Identify by schedule, column, and line item where changes are needed.
—Define type and detail of change needed.

Conforming Form 6 Changes to the Oil Regulations

- What changes need to be made to conform the instruction and schedule changes outlined above to the oil regulations?

—Identify the part and section of the regulations that need to be changed.
—Define type and detail of change needed.

Form 6 Alternatives

- Are there other alternatives to filing the Form 6? For example, filing GAAP financial statements certified by the external accountants and supplemental schedules containing the information FERC needs to regulate its jurisdictional companies.

Form 6 Electronic Filing

- What format should be used to prepare the Form 6 (e.g., use the same format used to prepare the Form 1 or Form 2)?
- How should the electronic Form 6 be tested?

[FR Doc. 99–20110 Filed 8–4–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket Nos. 99N–0193 and 99D–0529]

Changes to an Approved NDA or ANDA; Proposed Rule and Draft Companion Guidance; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Announcement of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss proposed amendments to its regulations on postapproval changes to the chemistry, manufacturing, and controls of approved drugs, and a draft companion guidance. FDA is inviting interested parties, including industry, health professionals, patients, and patient advocacy groups to present their perspectives on the proposed amendments and the draft companion guidance.

DATES: The meeting will be held on Thursday, August 19, 1999, from 9 a.m. to 5 p.m. Registration and requests to make an oral presentation should be received by Monday, August 13, 1999.

ADDRESSES: The meeting will be held at the Hilton Hotel, 620 Perry Pkwy., Gaithersburg, MD. To register and request time for an oral presentation, send or fax written material to the listed contact person.

FOR FURTHER INFORMATION CONTACT: Susan C. Lange, Office of New Drug Chemistry (HFD–800), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5918, FAX 301–594–0746.

SUPPLEMENTARY INFORMATION: Section 116 of the Food and Drug Administration Modernization Act of 1997 provides for the revision of § 314.70 (21 CFR 314.70) of FDA regulations concerning postapproval changes to the chemistry, manufacturing, and controls of approved drugs. In the **Federal Register** of June 28, 1999 (64 FR 34608), the agency published a proposed rule entitled "Supplements and Other Changes to an Approved Application," proposing amendments to § 314.70. The comment period for the proposed rule closes on September 13, 1999 (Docket No. 99N–0193). In the same issue of the **Federal Register** (64 FR 34660), the agency announced the availability of a draft guidance for industry entitled "Changes to an Approved NDA or ANDA." The comment period for the draft guidance closes on August 27, 1999 (Docket No. 99D–0529). To ensure broad public input on the proposed rule and the draft guidance, the agency is holding a public meeting on the proposed amendments to § 314.70 and the draft guidance for industry.

To provide a framework for presentations, discussions of revisions to § 314.70 will be organized according to the following sections in the proposed regulation: (1) Section 314.70(a)—Changes to an approved application; (2) § 314.70(b)—Changes requiring a prior approval supplement; (3) § 314.70(c)—Changes being effected supplement; (4) § 314.70(d)—Changes for description in an annual report; and (5) § 314.70(e)—Protocols.

The presentation topics for the draft guidance will be organized as follows: (1) Assessing the effect of manufacturing changes; (2) components and composition; (3) sites; (4) manufacturing process; (5) specifications; (6) package; (7) labeling; (8) miscellaneous changes; and (9) multiple changes.

When submitting a request for an oral presentation at the August 19, 1999, meeting, please specify your

presentation topic. The time allowed for each presenter will depend on the number of presentation requests.

Registration information (including name, title, firm name, address, telephone, and fax number) and requests for presentation (including specific topic) should be submitted to the listed contact person by Friday, August 13, 1999. Space is limited, therefore, interested parties are encouraged to register early. Special accommodations due to disability should be submitted at least 7 days in advance.

Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: July 28, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–20088 Filed 8–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 375

Marketable Treasury Securities Redemption Operations

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury ("Treasury", "We", or "Us") is publishing for comment proposed rules setting out the terms and conditions by which we may redeem outstanding, unmatured marketable Treasury securities. While we have not decided to conduct redemption operations, we are publishing this proposed rule to obtain comments on the mechanism by which we might conduct such operations. By establishing the mechanism in advance, we would be able to conduct redemption operations in a more timely and efficient way should such a decision be made.

We would establish a new part in the Code of Federal Regulations for this purpose. The proposed rules describe a process by which an entity may submit competitive offers to sell us securities. The proposed rules also describe how we would announce the redemption operation results and the requirements for delivering securities to us and receiving payment.

Redemption operations would help us better manage our financing needs, promote more efficient capital markets, and may lower financing costs for taxpayers.

DATES: Submit comments on or before October 4, 1999.

ADDRESSES: You may send us hardcopy comments at: Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street NW., Room 315, Washington, DC 20239–0001. You may also send us comments by e-mail at govsecreg@bpd.treas.gov. When sending comments by e-mail, please use an ASCII file format and provide your full name and mailing address. Comments received will be available for public inspection and downloading from the Internet and for public inspection and copying at the Treasury Department Library, FOIA Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

This proposed amendment is also available for downloading from Public Debt's web site at the following address: www.publicdebt.treas.gov.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Acting Executive Director) or Chuck Andreatta (Senior Financial Advisor), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691–3632.

SUPPLEMENTARY INFORMATION:

I. Background

The government's improved fiscal position has caused Treasury's borrowing needs to decline significantly, and we have been adjusting the government's borrowing program accordingly. Our adjustments to date have distributed the required cuts in borrowing across various maturities and sectors of the federal debt. In this environment, we began examining the concept of purchasing outstanding Treasury securities in the market. No decisions have been made to use a debt buy-back program, but having the infrastructure available to be able to use this tool would provide Treasury additional flexibility.

Debt buy-backs could provide us with greater flexibility to manage the government's debt and to respond to our improved fiscal condition. First, buy-backs could enhance market liquidity by allowing us to maintain regular issuance of new benchmark securities across the maturity spectrum, in greater volume than otherwise. Over the long term, this enhanced liquidity could reduce the government's interest expense and promote more efficient capital markets.

Second, buy-backs could enhance our ability to exert control over the maturity structure of the debt. Without a debt buy-back program, further reductions in Treasury new issue sizes and frequencies could be necessary. A buy-back program, however, would provide us the option of managing the maturity structure of the debt by selectively targeting the maturities of debt to be repurchased.

Third, buy-backs could be used as a cash management tool, absorbing excess cash in periods such as late April when tax revenues greatly exceed immediate spending needs.

In addition, although not a primary reason for conducting buy-backs, we may occasionally be able to reduce the government's interest expense by purchasing "off-the-run" debt and replacing it with lower-yield "on-the-run" debt.;[1]

II. Analysis

In a buy-back operation (a "redemption operation" in the proposed rule), we would redeem securities by purchasing them from current owners. The most equitable method for determining redemption prices is through a process in which market participants submit competitive offers to sell particular Treasury securities to the Treasury. We welcome comments about this proposed methodology.

Under the proposal, we would announce our intention to purchase specified Treasury securities, including the approximate total amount that we want to buy, and the deadlines for offers and settlement. We would accept offers on a multiple-price basis—that is, we would determine and accept the most attractive offers and each successful offeror would receive the price at which it offered securities. We could decide to buy back less than the announced amount if market conditions warranted.

For the reasons set forth below, we propose that the entities that have a trading relationship with the Federal Reserve Bank of New York (primary dealers) be eligible to submit offers. Other entities could submit offers through the primary dealers or an intermediary that has a relationship with a primary dealer.

Restricting direct offers to primary dealers would permit us to use the Federal Reserve Bank of New York's existing electronic systems for executing open market transactions and facilitate transfers of securities to Treasury at settlement. No customer lists would be required under these proposed rules.

Redemption operation announcements would be in the form of an official Treasury press release, supplemented by a posting on the Bureau of the Public Debt's website (www.publicdebt.treas.gov) and on-line broadcast messages over the Federal Reserve's Fedline OM (Open Market) system. The Treasury securities eligible for redemption and the privately held amount of each security would be included in the redemption operation announcement.

To expedite tender processing and calculation and announcement of redemption operation results, we would accept competitive offers only. Price-based offers would be most convenient for redemption operation participants since the eligible securities already would be trading in the secondary market on a price basis.

The price format would be consistent with that already used by the Federal Reserve's open market operations. See § 375.13(b). The only limitation on the dollar amount of offers is that the total amount of offers from a submitter for any particular security could not exceed the total outstanding privately held amount of that security.

Calculation of redemption operation results would occur at the Federal Reserve Bank of New York, acting as Treasury's fiscal agent, using a methodology determined by Treasury. There would be no limitation on the number of offers for each security. We also would not limit the aggregate amount of offers for securities that Treasury would accept from any one submitter.[2]

It is possible that, in a particular redemption operation, the calculations could result in our redeeming only one security. We also would not set any limits on the amount or percentage of the outstanding amount of a security that could be redeemed. It is possible, therefore, that following a redemption operation or redemption operations, the privately held amount still outstanding of a particular security could be very small.

Once the redemption operation calculations have been completed, Treasury would announce the results through an official press release, including a listing of the amount of each security we accept for redemption. We would also post the results to Public Debt's website and other on-line broadcast messages. The Federal Reserve Bank of New York would transmit results messages to the submitters who participated in the redemption operation. A results message would inform a submitter only of the acceptance or rejection of the offers it submitted. Submitters would in turn notify customers of successful offers in the redemption operation.

Settlement would occur on the business day after the deadline for submission of offers (tenders). Successful submitters would transfer the securities they submitted offers for in the redemption operation to Treasury, via the Federal Reserve Bank of New York. This next-day delivery requirement follows current market convention for other Treasury securities transactions. The settlement amount would include any accrued interest payable by Treasury through the settlement date. We request specific comment on this proposed requirement or any other settlement-related issues.

The securities delivered may be in either book-entry (electronic) or definitive (paper) form. Those delivering book-entry securities would transfer via Fedwire the correct par amount of securities against payment for the correct settlement amount to the account specified on the redemption operation announcement. A submitter planning to deliver definitive securities would be required to contact the Federal Reserve Bank of New York within two hours of the announcement of the redemption operation results and make arrangements for delivery.

We encourage comments on any aspect of this proposed rule to ensure that we address the concerns of market participants and Treasury. In addition, this proposed rule has been drafted using plain language. We specifically request comment on the clarity of this rule and how we can make it easier to understand.

III. Procedural Requirements

This proposed rule is not a "significant regulatory action" under Executive Order 12866. Although we are issuing this proposed rule in proposed form to benefit from public comment, the notice and public procedures requirements of the Administrative Procedure Act do not apply, under 5 U.S.C. 553(a)(2).

Since no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

[1] A Treasury security is "on-the-run" when it is the newest security issue of its maturity (*e.g.*, in October the two-year note issued September 30 would be "on-the-run" while the two-year note issued August 31 would be "off-the-run"). An on-the-run security is normally the most liquid issue for that maturity.

[2] In other words, there is no limitation similar to the "35-percent limit" on awards in the auction process. See 31 CFR 356.22(b).

List of Subjects in 31 CFR Part 375

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons stated in the preamble, the Treasury proposes to amend 31 CFR chapter II, subchapter B, by adding new part 375 to read as follows:

PART 375—MARKETABLE TREASURY SECURITIES REDEMPTION OPERATIONS

Subpart A—General Information

Sec.
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375.31 What could happen if someone does not fully comply with the redemption operation rules or fails to deliver securities?

Authority: 5 U.S.C. 301; 31 U.S.C. 3111; 12 U.S.C. 391.

Subpart A—General Information

§ 375.0 What authority does the Treasury have to redeem its securities?

Section 3111 of Title 31 of the United States Code authorizes the Secretary of the Treasury to use money received from the sale of an obligation and other money in the general fund of the Treasury to buy, redeem, or refund, at or before maturity, outstanding bonds, notes, certificates of indebtedness, Treasury bills, or savings certificates of

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the United States Government. For the purposes of this part, we will refer to these outstanding obligations as "securities."

§ 375.1 Where are the rules for the redemption operation located?

The provisions in this part and the redemption operation announcement govern the redemption of marketable Treasury securities under 31 U.S.C. 3111. (See § 375.10.)

§ 375.2 What special definitions apply to this rule?

The definitions in 31 CFR part 356 govern this part except as follows:

Accrued interest means an amount payable by the Treasury as part of the settlement amount for the interest income earned between the last interest payment date and the settlement date.

Bank means the Federal Reserve Bank of New York.

Customer means a person or entity on whose behalf a submitter has been directed to submit an offer of a specified amount of securities in a specific redemption operation.

Definitive security means a security that is issued and maintained as a certificate. Definitive securities are in either registered or bearer form.

Minimum offer amount means the smallest par amount of a security that may be offered to the Treasury. We will state the minimum offer amount in the redemption operation announcement.

Multiple means the smallest additional par amount of a security that may be offered to the Treasury. We will state the multiple in the redemption operation announcement.

Offer means an offer to deliver for redemption a stated par amount of a specific security to the Treasury at a stated price.

Price means the price of a security as offered by a submitter or its customer and excludes accrued interest.

Privately held amount means the total amount outstanding of a security eligible for redemption less holdings of the Federal Reserve System and Federal Government accounts.

Redemption amount means the maximum par amount of securities that we are planning to redeem through a redemption operation. We will state the redemption amount in the redemption operation announcement.

Redemption operation means a competitive process by which the Treasury accepts offers of marketable Treasury securities that by their terms are not immediately payable.

Security means an outstanding unmatured obligation of the United States Government that the Secretary is authorized to buy, redeem or refund under section 3111 of Title 31 of the United States Code.

Settlement means full and complete delivery of and payment for securities redeemed.

Settlement amount means the par amount of each security that we redeem, multiplied by the price we accept in a redemption operation, plus any accrued interest.

Settlement date means the date specified in the redemption operation announcement on which you must deliver a security to the Treasury for payment.

Submitter means an entity submitting offers directly to the Treasury for its own account, for the account of others, or both. (See § 375.11(a).)

Tender means a computer transmission or document submitted in a redemption operation that contains one or more offers.

We ("us") means the Secretary of the Treasury and his or her delegates, including the Treasury Department, Bureau of the Public Debt, and their representatives. The term also includes the Federal Reserve Bank of New York, acting as fiscal agent of the United States.

You means a prospective submitter in a redemption operation.

§ 375.3 What is the role of the Federal Reserve Bank of New York in this process?

As fiscal agent of the United States, the Federal Reserve Bank of New York performs various activities necessary to conduct a redemption operation under this part. These activities include but are not limited to:

(a) Accepting and reviewing tenders;

(b) Calculating redemption operation results;

(c) Issuing notices of redemptions;

(d) Accepting deliveries of Treasury securities at settlement; and

(e) Processing the Treasury payment for securities delivered at settlement.

Subpart B—Offering, Certifications, and Delivery

§ 375.10 What is the purpose of the redemption operation announcement?

We provide public notice that we are redeeming Treasury securities by issuing a redemption operation announcement. This announcement lists the details of each proposed redemption operation, including the total redemption amount, the eligible securities, the total privately held amount of each eligible security, and the redemption operation and settlement dates. The redemption operation announcement and this part specify the terms and conditions of a redemption operation. If anything in the redemption operation announcement differs from anything in this part, the redemption operation announcement will apply. Accordingly, you should read the applicable redemption operation announcement along with this part.

§ 375.11 Who may participate in a redemption operation?

(a) *Submitters.* To be a submitter, you must be an institution that the Federal Reserve Bank of New York has approved to conduct open market transactions with the Bank.

(b) *Others.* A person or entity other than a submitter may participate only if it arranges to have an offer or offers submitted on its behalf by a submitter.

§ 375.12 How do I submit an offer?

As a submitter, you must submit an offer in a tender to the Treasury via the Federal Reserve Bank of New York through its Trading Room Automated Processing System (TRAPS). You must submit any tenders in an approved format and the Bank must receive them prior to the closing time in the redemption operation announcement. If we do not receive your tenders timely, we will reject them. Tenders are binding on their submitter after the closing time specified in the redemption operation announcement. You are responsible for ensuring that the Federal Reserve Bank of New York receives your tenders on time. We will not be responsible in any way for any unauthorized tender submissions or for any delays, errors, or omissions in submitting tenders.

§ 375.13 What requirements apply to offers?

(a) *General.* You may only submit competitive offers (specifying a price). All offers must state the CUSIP number or security description, par amount, and price of each security offered. All offers must equal or exceed the minimum offer amount, and be in the multiple, stated in the redemption operation announcement.

(b) *Price format.* You must express offered prices in terms of price per $100 of par with three decimals, *e.g.*, 102.172. The first two decimals represent fractional 32nds of a dollar. The third decimal represents eighths of a 32nd of a dollar, and must be a 0, 2, 4, or 6. For example, an offer of 102.172 means one hundred two and seventeen 32nds and two eighths of a 32nd, or in decimals, 102.5390625.

(c) *Maximum amount offered.* The total amount of your offers for any individual security may not exceed the total privately held amount of the security. If it does, we will recognize only your lowest-priced offer, through successively higher-priced offers, until we reach the total privately held amount. A list of the privately held amount of each eligible security will appear in the redemption operation announcement.

(d) *Maximum number of offers.* There is no limit on the number of offers you may make of each eligible security. There is also no limit on the number of eligible securities you may offer.

§ 375.14 Do I have to make any certifications?

By submitting a tender offering a security or securities for sale, you certify that you are in compliance with this part and the redemption operation announcement.

§ 375.15 Who is responsible for delivering securities?

As a submitter, you are responsible for delivering any securities we accept in the redemption operation. (See § 375.23.) All securities you deliver must be free and clear of all liens, charges, claims, and any other restrictions.

Subpart C—Determination of Redemption Operation Results; Settlement

§ 375.20 When will the Treasury decide on which offers to accept?

We will determine which offers or portions of offers to accept after the closing time for receipt of tenders. All such determinations will be final.

§ 375.21 When and how will the Treasury announce the redemption operation results?

We will make an official announcement of the redemption operation results through a press release. For each security we redeem, the press release will include such information as the amounts offered and accepted, the highest price accepted, and the remaining privately held amount outstanding.

§ 375.22 Will I receive any additional information and, if I am submitting offers for others, do I have to provide confirmations?

(a) *Confirmations to submitters.* We will provide a confirmation of acceptance or rejection in the form of a results message to submitters of offers by the close of the business day of the redemption operation.

(b) *Confirmation of customer offers.* If you submit a successful offer for a customer, you are responsible for notifying that customer of the impending redemption.

§ 375.23 How does the securities delivery process work?

(a) *Deliveries of book-entry securities.* If any of the offers you submitted are accepted and you are delivering book-entry securities, you must transfer them in the correct par amount against the correct settlement amount on the settlement date. You must deliver the securities to the account specified in the redemption operation announcement.

(b) *Deliveries of definitive securities.* If any of the offers you submitted are accepted and you are delivering definitive securities, you must notify the Federal Reserve Bank of New York within two hours of the announcement of the redemption operation results. You must deliver them in the correct par amount on the settlement date. Registered securities must be properly assigned. Unless otherwise specified in the offering announcement, bearer securities must have all of their unmatured coupons attached. Deliver them to us at the address for the Federal Reserve Bank of New York provided in the redemption operation announcement. On the day the Bank receives them, it will credit the settlement amount to the depository institution's funds account you specified when you notified the Bank of your intention to deliver definitive securities.

Subpart D—Miscellaneous Provisions

§ 375.30 Does the Treasury have any discretion in this process?

(a) We have the discretion to:

(1) Accept or reject any offers or tenders submitted in a redemption operation;

(2) Redeem less than the amount of securities specified in the redemption operation announcement;

(3) Add to, change, or waive any provision of this part; or

(4) Change the terms and conditions of a redemption operation.

(b) Our decisions under this part are final. We will provide a public notice if we change any redemption operation provisions, terms or conditions.

§ 375.31 What could happen if someone does not fully comply with the redemption operation rules or fails to deliver securities?

(a) *General.* If a person or entity fails to comply with any of the redemption operation rules in this part, we will consider the circumstances and take appropriate action. This could include barring the person or entity from participating in future redemption operations under this part and future auctions under 31 CFR part 356. We also may refer the matter to an appropriate regulatory agency.

(b) *Liquidated damages.* If you fail to deliver securities on time, we may require you to pay liquidated damages of up to 1% of your settlement amount.

Dated: July 29, 1999.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 99–19957 Filed 8–4–99; 8:45 am]

BILLING CODE 4810–39–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC25–2018b; FRL–6412–4]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; 15 Percent Plan for the Metropolitan Washington, D.C. Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to convert our conditional approval of the District of Columbia's State Implementation Plan (SIP) revision to achieve a 15 percent reduction in volatile organic compound emissions (15% plan SIP revision) in the Metropolitan Washington, D.C. ozone nonattainment area to a full approval. In the "Rules and Regulations" section of this **Federal Register**, we are converting our conditional approval of the District's 15% plan SIP revision to a full approval as a direct final rule because we view this as a noncontroversial amendment and because we anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments, we will not undertake further action on this proposed rule. If we receive adverse comments, we will withdraw the direct final rule, and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Anyone interested in providing comments on this action should do so at this time.

DATES: Comments must be received in writing by September 7, 1999.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant

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to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the District of Columbia Department of Public Health, Air Quality Division, 2100 Martin Luther King Avenue, S.E., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, at the EPA Region III address above, or by e-mail at cripps.christopher@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: July 23, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–19904 Filed 8–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6410–2]

Wisconsin: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant final authorization to the hazardous waste program revisions submitted by Wisconsin. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule and it will not take effect. EPA will then address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: Written comments must be received on or before September 7, 1999.

ADDRESSES: Mail written comments referring to Docket Number ARA 6 to Mr. Daniel F. Chachakis, U.S. EPA Region 5 Waste, Pesticides and Toxics Division, Waste Management Branch (DM–7J), 77 W. Jackson Blvd., Chicago, IL 60604. You can examine copies of the materials submitted by Wisconsin during normal business hours at the following locations: EPA Region 5 Waste, Pesticides and Toxics Division, Waste Management Branch, State Programs and Authorization Section, 7th Floor, 77 West Jackson Blvd., Chicago, IL 60604, phone number (312) 886–2022; or Wisconsin Department of Natural Resources, 101 South Webster Street, Madison, WI 53707–7921, phone number (608) 267–2761.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel F. Chachakis, Environmental Protection Specialist, at the above address and phone number.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

David A. Ullrich,

Acting, Regional Administrator, Region 5.

[FR Doc. 99–19735 Filed 8–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6412–6]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Kassouf-Kimerling Superfund Site from the National Priorities List (NPL): request for comments.

SUMMARY: The United States Environmental Protection Agency (EPA) Region 4 announces its intent to delete the Kassouf-Kimerling Superfund Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the Florida Department of Environmental Protection (FDEP) have determined that the site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning the proposed deletion of this site from the NPL may be submitted on or before September 7, 1999.

ADDRESSES: Comments may be mailed to: Richard D. Green, Director, Waste Management Division, United States Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303–8909.

Comprehensive information on this site is available through the EPA Region 4 public docket, which is available for viewing at the information repositories at two locations. Locations, contacts, phone numbers and viewing hours are: Record Center, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303–8909, (404) 562–9530, hours: 8:00 a.m. to 4:00 p.m., Monday through Friday by appointment only; Tampa/Hillsborough County Public Library/Special Collections, 900 North Ashley, Tampa, Florida 33602, (813) 273–3652, hours: 9:00 a.m. to 9:00 p.m., Monday through Thursday, 9:00 a.m. to 5:00 p.m., Friday through Saturday.

FOR FURTHER INFORMATION CONTACT: Randa Chichakli, U.S. EPA Region 4, Waste Management Division, 61 Forsyth Street, Atlanta, Georgia 30303–8909, (404) 562–8928.

SUPPLEMENTARY INFORMATION:

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I. Introduction.
II. NPL Deletion Criteria.
III. Deletion Procedures.
IV. Basis for Intended Site Deletion.

I. Introduction

EPA Region 4 announces its intent to delete the Kassouf-Kimerling Superfund Site, Hillsborough County, Tampa, Florida, from the National Priorities List (NPL), Appendix B of the National Contingency Plan (NCP) and requests comments on this deletion. The EPA identifies sites on the NPL that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Trust Fund. Pursuant to 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this site from the NPL for thirty calendar days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how this site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425 (e), sites maybe deleted from or re-categorized on the NPL where no further response is appropriate. In making this determination, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

1. Responsible parties or other persons have implemented all appropriate response actions required;
2. ALL appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
3. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

If a site is deleted from the NPL where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazardous Ranking System.

III. Deletion Procedures

EPA will accept and evaluate public comments before making a final decision on deletion from the NPL. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Site:

1. EPA has recommended deletion and has prepared the relevant documents;
2. FDEP has concurred with the deletion decision;
3. Concurrently with this Notice of Intent to Delete, notices have been published in local newspapers and have been distributed to appropriate federal, state and local officials and other interested parties announcing a 30-day public comment period on the proposed deletion from the NPL;
4. EPA has made all relevant documents available at the information repositories;
5. EPA will respond to significant comments, if any, submitted during the public comment period.

Deletion of the site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management. EPA will prepare a Responsiveness Summary, if necessary, which will address the comments received during the public comment period.

A deletion occurs when the Regional Administrator places a Notice of Deletion in the **Federal Register**. Any deletions from the NPL will be reflected in the next NPL update. Public notices and copies of the Responsiveness Summary, if necessary, will be made available to local residents by the Regional office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the intention to delete this Site from the National Priorities List.

The Kassouf-Kimerling Superfund Site (also referred to as the 58th Street Landfill or the Site) is located in Hillsborough County, just north of Columbus Drive on the east side of 58th in Tampa, Florida. The Site is approximately 60 feet wide by 700 feet long and lies just east of 58th Street and west of the marsh separating the Site from Peninsular Fisheries. A canal was cut through the landfill in the late 1970's and connects a marsh located west of 58th Street to the marsh just east of the Site.

Prior to 1978, the soil and sediment at the Site were excavated and sold for their peat content. The excavation was then backfilled with refuse from a local battery-cracking and lead recovery facility. The landfill material consisted of rubber and plastic lead-acid battery casings covered by a thin layer of sand. The depth of the landfill material varied from 6 to 12 feet, with an estimated total fill volume of 11,350 cubic yards.

The initial evaluation of the Kassouf-Kimerling Site was conducted by Florida Department of Environmental Regulation in 1981, along with several regulatory agencies, including EPA. Considering the possible threats the Site was proposed for inclusion on the National Priorities List ("NPL") in October 1981. The Site appeared on the National Priorities List in EPA's first **Federal Register** citation in 1982. EPA and FDEP then conducted the Remedial Investigation (RI). The detailed study of the nature and extent of contamination was conducted from September 1985 to June 1988. The RI included geophysical investigations, soil borings, soil sampling, sediment sampling, groundwater sampling, and surface water sampling. These investigations identified lead contamination in soil and groundwater at the landfill as well as in the surface water and sediment of the adjacent marsh. The final RI report, Feasibility Study (FS), and Post FS Wetlands Impact Study were completed in 1989. The contaminants of concern are arsenic, cadmium, and lead. The cleanup levels for groundwater are outlined by the Florida Administrative Code for each contaminant of concern. For the soil and sediment, the Extraction Procedure (EP) Toxicity Test and the Toxicity Characteristic Leaching Procedure (TCLP) were used to establish acceptable concentrations.

EPA issued two Records of Decision (RODs) to document the cleanup remedies selected for the Site. The first ROD, which was designated Operable Unit 1–OU1, addressed the source of contamination in the landfill area. The OU1 ROD was signed in 1989. The second ROD (Operable Unit 2–OU2), which was signed in 1990, addressed contamination found in the marsh/wetlands.

The selected remedy for the OU1 ROD included the following components:

- Excavation of approximately 11,356 cubic yards of contaminated materials;
- Contaminated materials were excavated at a maximum depth of 12 feet;
- Solidification/stabilization of excavated materials;
- Placement of solidified material on-site in the landfill area.
- The selected remedy for the OU2 ROD included the following components:
- Excavation and solidification of the upper two feet of marsh sediments near the landfill and in the canal east of the Site;
- Placement of solidified marsh waste on-site with treated landfill wastes. Backfill the marsh area and re-vegetate with grass and plants;
- Redesign the canal area so that the marsh will be flooded year round; and
- Initiate mitigation to components for wetlands impacted by the Site.

The McKay Bay Nature Park was initially proposed to be the mitigation site, but EPA and FDEP determined that it was unacceptable since the portions of the bay were found to be contaminated.

EPA decided to designate Mobbly Bay as the location for the wetlands mitigation and formalized this substitution with the March 1997 Explanation of Significant Differences.

In a Consent Decree (CD) signed with EPA, Gulf Coast Recycling (GCR) agreed to perform the Remedial Design/Remedial Action (RD/RA) as well as reimburse EPA for past costs and the cost for wetlands mitigation. Under the CD with EPA, GCR established a trust fund to ensure that the Site would have sufficient funds to conduct the Remedial Action, including the wetlands mitigation project.

To date, all construction outlined in the OU1 ROD has been completed. The requirements of the OU2 ROD have also been completed. Annual groundwater and surface water monitoring will continue to confirm that groundwater levels remain below cleanup standards. The remedies selected for the OU1 and OU2 at the Kassouf-Kimerling Site are still effective and continue to protect human health, welfare and the environment.

EPA conducted a five-year review on June 18, 1999 and concluded that the Remedial Action Objectives have been achieved, the remedy is effective and functioning as designed, and continues to remain protective of human health and the environment. EPA, has consulted with the Florida Department of Environmental Protection in evaluating the Site for deletion, and has determined that all appropriate actions at the Kassouf-Kimerling Superfund Site have been completed in accordance with the site Records of Decision, and that no further remedial action is necessary. Therefore, EPA is proposing deletion of the site from the NPL.

Dated: July 26, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–20039 Filed 8–4–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AD02

National Flood Insurance Program (NFIP); Insurance Coverage and Rates

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: We, FEMA, are proposing to apply full-risk premium rates under the National Flood Insurance Program to structures that have suffered multiple flood losses and whose owners decline an offer of funding to eliminate or reduce future flood damage.

DATES: Please send your comments on the proposal on or before September 7, 1999.

ADDRESSES: Please send your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Howard Leikin, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, 202–646–2784, (facsimile) 202–646–7970, (email) *Howard.Leikin@fema.gov*.

SUPPLEMENTARY INFORMATION:

Definition

One of our (FEMA's) highest priorities is to correct the problem of multiple flood losses to older structures insured under the National Flood Insurance Program (NFIP). For the purpose of this proposal, we call a sub-category of these structures "target repetitive loss" buildings and define a "target repetitive loss building" as a "building with four or more losses, or with two or more flood losses cumulatively greater than the building's value." This definition is more specific than the broader category of buildings with multiple flood losses which many stakeholders of the NFIP may be more familiar with and which we have used frequently in the past to describe this national problem.

Scope of the Problem

The broader definition of a building with multiple losses, which we commonly use in the NFIP, is a building that has suffered within a ten-year period two or more losses, each resulting in at least a $1,000 claim payment. We know that there are about 87,000 such buildings in the country, and the total amount of claims paid by the NFIP since its inception for multiple loss buildings is $3.5 billion. Multiple loss buildings have accounted for 36 percent of all claims dollars paid under the program.

About half of those buildings, however, are no longer in the NFIP's book of business for a variety of reasons. Some property owners have dropped their policies because we have imposed limitations on flood insurance coverage, such as not insuring personal property in basements. FEMA's mitigation projects have reduced the flood risk of a number of properties with repetitive losses through elevation or flood-proofing. In addition, some of these properties are now protected by flood control projects and storm water management projects. Also, the enforcement by State and local governments of the NFIP's flood plain management standards for elevating or flood-proofing substantially damaged properties has had a positive effect in reducing the exposure to flood loss of a number of these properties.

In spite of this, the NFIP still insures about 43,000 multiple loss buildings. We have already paid $2 billion in flood insurance claims on these currently insured buildings, and we estimate that the continuing cost to the NFIP for these properties insured under the NFIP will average $200 million each year.

Target Buildings

Of the 43,000 multiple loss buildings insured under the NFIP, about 8,800 have had four or more losses. In addition to these, there are another 1,300 insured buildings that have had two or three losses that cumulatively exceed the building's value. We have concluded from our actuarial studies that employing mitigation strategies for these roughly 10,000 buildings, such as relocating or elevating them, will be cost effective. These buildings will be the "target repetitive loss buildings" of this proposal.

Repetitive Loss Strategy: Objectives

We are aware that there are some multiple loss properties that demand immediate attention where the residents are at a high personal risk because of their exposure to flooding. There are other properties—often celebrated in the media—where we have made claims payments under the NFIP that exceed the value of the building, and where it makes good business sense to reduce their exposure to loss. We cannot merely shift the costs of the NFIP to other programs. So we must adopt a comprehensive approach under the NFIP that uses both mitigation, such as relocating buildings out of harm's way or elevating above estimated flood elevations, and insurance such as an adjustment of premium rates.

Insurance for Pre-FIRM Properties

The National Flood Insurance Act of 1968, as amended, authorizes us to offer flood insurance at less than full-risk premiums for older structures in return for a community's enforcement of flood plain management requirements. Congress recognized that in authorizing the flood insurance program there would be a trade-off: federally-backed flood insurance would be available for structures at a high flood risk built without the benefit of detailed flood risk information. In return, the local government would adopt and enforce flood mitigation standards that make future construction resistant to future flood loss. To make such efforts effective, we have worked with more than 19,000 communities and their state governments to develop the kind of detailed flood risk information needed for flood mitigation efforts.

Properties built *before* the publication of the Flood Insurance Rate Map (FIRM) have been eligible for less than full risk premiums. (For this proposed rule, we call buildings constructed before the effective date of the FIRM "pre-FIRM" buildings.) Our actuarial studies show that the owners of repetitively flooded buildings insured under the NFIP do not pay premiums that truly reflect the risk. What that means is that property owners who have collected claims payments have been paying and continue to pay less than full-risk premiums.

Insurance Component of the Repetitive Loss Strategy

This proposed rule would apply full-risk premiums for flood insurance coverage to the "target repetitive loss buildings" whose owners declined an offer of mitigation funding authorized by FEMA. Under this proposal, if the owner of a target repetitive flood loss building declines such an offer of mitigation funding to relocate, elevate, or flood-proof the structure, then that owner would upon the next policy renewal have to pay full-risk premiums for flood insurance coverage under the NFIP. To allow us to consistently track and to minimize the burden on companies writing flood insurance under the Write Your Own program, we plan for companies to begin referring on May 1, 2000, all renewals for coverage of target repetitive loss buildings and new policy applications for such buildings to the NFIP Servicing Facility. In this way, we can centralize the processing and data collection needed to implement this strategy.

National Environmental Policy Act

Pursuant to section 102 (2) (C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4371 *et seq.*, and the implementing regulations of the Council on Environmental Quality, 40 CFR parts 1500–150, FEMA is conducting an environmental assessment of this proposed rule. This assessment will be available for inspection through the Rules Docket Clerk, Federal Emergency Management Agency, room 840, 500 C St. SW., Washington, DC 20472.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of sec. 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and has not been reviewed by the Office of Management and Budget. Nevertheless, this proposed rule adheres to the regulatory principles set forth in E.O. 12866.

Paperwork Reduction Act

This proposed rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 61

Claims, Flood insurance.

Accordingly, we propose to amend 44 CFR part 61 as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. In § 61.8, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added, reading as follows:

§61.8 Applicability of risk premium rates.

* * * * *

(b) Any target repetitive loss building whose owner has declined an offer of mitigation assistance authorized under any FEMA mitigation program. (A target repetitive loss building is one that has had within a ten-year period two or more losses, each resulting in at least a $1,000 claim payment. In addition, the building has suffered four or more insured flood losses or two insured flood losses cumulatively greater than the building's value.)

* * * * *

Dated: July 27, 1999.

Jo Ann Howard,

Administrator, Federal Insurance Administration.

[FR Doc. 99–20171 Filed 8–4–99; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AC95

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: We (the Federal Insurance Administration of FEMA) are proposing changes to the Financial Control Plan (Appendix B of 44 CFR Part 62) that sets standards for evaluating the performance of private insurance companies participating in the Write Your Own program. These changes are to streamline and simplify the regulations of the National Flood Insurance Program. This proposal is part of an agency-wide initiative by the Federal Emergency Management Agency to simplify regulations for easier use by our customers. The proposed changes would also be consistent with the approach we adopted several years ago to streamline the arrangement for the WYO program and to place operational details in a technical operations manual rather than in the agreement itself between the Government and WYO companies.

DATES: Please send your comments on the proposal on or before September 7, 1999.

ADDRESSES: Please send your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Edward L. Connor, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, 202–646–3429, (facsimile) 202–646–3445, (email) *Edward.Connor@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA is streamlining and simplifying the materials used by the customers of each of its programs. As part of that initiative, we (the Federal Insurance Administration) believe that we can serve our customers and partners better by producing and revising the guidance documents and regulations of the National Flood Insurance Program so that they are easier to read and easier to use. The effort involves rendering any new rule—proposed and final—in plain language and eliminating sections or parts of our regulations that fit better in guidance documents and technical manuals, which we reference in the regulations.

This proposed rule would streamline the Financial Control Plan that private insurance companies must follow as part of their financial assistance arrangement under the Write Your Own component of the National Flood Insurance Program. The proposed streamlining involves eliminating operational details from the text of the Financial Control Plan. This would allow the Government and its industry partners the flexibility to make operational adjustments and corrections more efficiently and more quickly while retaining the broad framework necessary for sound financial controls.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. We have not prepared an environmental assessment.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and the Office of Management and Budget has not reviewed it. Nevertheless, this proposed rule adheres to the regulatory principles set forth in E.O. 12866.

Paperwork Reduction Act

This proposed rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 62

Claims, Flood insurance.

Accordingly, we propose to amend 44 CFR Part 62 as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. We amend § 62.23(j) by redesignating paragraphs (j)(2) through (j)(6) as paragraphs (j)(3) through (j)(7), and by revising paragraph (j)(1) and adding new paragraph (j)(2) to read as follows:

§ 62.23 WYO Companies authorized.

* * * * *

(j) * * *

(1) Have a biennial audit of the flood insurance financial statements conducted by an independent Certified Public Accountant (CPA) firm at the Company's expense to ensure that the financial data reported to us accurately represents the flood insurance activities of the Company. The CPA firm must conduct its audits in accordance with the generally accepted auditing standards (GAAS) and Government Auditing Standards issued by the Comptroller General of the United States (commonly known as "yellow book" requirements). The Company must file with us (the Federal Insurance Administration) a report of the CPA firm's detailed biennial audit, and, after our review of the audit report, we will convey our determination to the Standards Committee.

(2) Participate in a WYO Company/FIA Operation review. We will conduct a review of the WYO Company's flood insurance claims, underwriting, customer service, marketing, and litigation activities at least once every three (3) years. As part of these reviews, we will reconcile specific files with a listing of transactions submitted by the Company under the Transaction Record Reporting and Processing (TRPP) Plan (Part 5). We will file a report of the Operation Review with the Standards Committee.

* * * * *

3. We revise Appendix B to Part 62—National Flood Insurance Program to read as follows:

Appendix B to Part 62—National Flood Insurance Program

A Plan To Maintain Financial Control for Business Written Under the Write Your Own Program

(a) *In general.* Under the Write Your Own (WYO) Program, we (the Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA)) may enter into an arrangement with individual private sector insurance companies licensed to engage in the business of property insurance. The arrangement allows these companies—using their customary business practices—to offer flood insurance coverage to eligible property owners. To assist companies in marketing flood insurance coverage, the Federal Government will be a guarantor of flood insurance coverage for WYO policies issued under the WYO Arrangement. To account for and ensure appropriate spending of any taxpayer funds, the WYO companies and we will implement this Financial Control Plan (Plan). Only the Administrator may approve any departures from the requirements of this Plan.

(b) *Financial Control Plan.* 1. The WYO Companies are subject to audit, examination, and regulatory controls of the various States. Additionally, the operating department of an insurance company is customarily subject to examinations and audits performed by the company's internal audit or quality control departments, or both, and independent Certified Public Accountant (CPA) firms. This Plan will use to the extent possible the findings of these examinations and audits as they pertain to business written under the WYO Program

2. This Plan contains several checks and balances that can, if properly implemented by the WYO Company, significantly reduce the need for extensive on-site reviews of the Company's files by us or our designee. Furthermore, we believe that this process is consistent with customary reinsurance practices and avoids duplication of examinations performed under the auspices of individual State Insurance Departments, NAIC Zone examinations, and independent CPA firms.

(c) *Standards Committee established.* 1. We establish in this Plan a Standards Committee for the WYO Program to oversee the performance of WYO companies under this Plan and to recommend appropriate remedial actions to the Administrator. The Standards Committee will review and recommend to the Administrator remedies for any adverse action arising from the implementation of the Financial Control Plan. Adverse actions include, but are not limited to, not renewing a particular company's WYO Arrangement.

2. The Administrator appoints the members of the Standards Committee, which consists of five (5) members from FIA, one (1) member from FEMA's Office of Financial Management, and one (1) member from each of the six (6) designated WYO Companies, pools, or other entities.

3. A WYO company must—

A. Have a biennial audit of the flood insurance financial statements conducted by a CPA firm at the Company's expense to ensure that the financial data reported to us accurately represents the flood insurance activities of the Company. The CPA firm must conduct its audits in accordance with generally accepted auditing standards (GAAS) and the Government Auditing Standards issued by the Comptroller General of the United States (commonly known as "yellow book" requirements). The Company must file with us a report of the CPA firm's detailed biennial audit, and, after our review of the audit report, we will convey our determination to the Standards Committee.

B. Participate in a WYO Company/FIA Operation review. We will conduct a review of the WYO Company's flood insurance claims, underwriting, customer service, marketing, and litigation activities at least once every three (3) years. As part of these reviews, we will reconcile specific files with a listing of transactions submitted by the Company under the Transaction Record Reporting and Processing Plan (Part 5). We will file a report of the Operation Review with the Standards Committee (Part 7).

C. Meet the recording and reporting requirements of the WYO Transaction Record Reporting and Processing (TRRP) Plan and the WYO Accounting Procedures Manual. The National Flood Insurance Program's (NFIP) Bureau and Statistical Agent will analyze the transactions reported under the TRRP Plan and submit a monthly report to the WYO company and to us. The analysis will cover the timeliness of the WYO submissions, the disposition of transactions that do not pass systems edits, and the reconciliation of the totals generated from transaction reports with those submitted on the WYO Company's reports. (Parts 2 and 6).

D. Cooperate with FEMA's Office of Financial Management on Letter of Credit matters.

E. Cooperate with us in the implementation of a claims reinspection program (Part 3).

F. Cooperate with us in the verification of risk rating information.

G. Cooperate with FEMA's Office of Inspector General on matters pertaining to fraud.

(d) This Plan references a separate document, "The Write Your Own Program Financial Control Plan Requirements and Procedures," that contains the following parts and is applicable to the Financial Control Plan:

1. Part 1—Financial Audits, Audits for Cause, and State Insurance Department Audits;

2. Part 2—Transaction Record Reporting and Processing Plan Reconciliation Procedures;

3. Part 3—Claims Reinspection Program;

4. Part 4—Report Certifications and Signature Authorization;

5. Part 5—Transaction Record Reporting and Processing Plan;

6. Part 6—Write Your Own (WYO) Accounting Procedures Manual; and

7. Part 7—Operation Review Procedures.

(e) We will distribute copies of the "The Write Your Own Program Financial Control Plan Requirements and Procedures" to companies participating in the Write Your Own Program by October 1st of the Arrangement year. Interested members of the public may obtain a copy by contacting the FEMA Distribution Center, P.O. Box 2012, Jessup, MD 20794.

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 9, 1999.

Jo Ann Howard,

Administrator, Federal Insurance Administration.

[FR Doc. 99–19764 Filed 8–4–99; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 99–249; FCC 99–168]

Low-Volume Long-Distance Users

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This document seeks comment on the impact of certain flat-rated charges on single-line residential and business customers who make few, or no, interstate long-distance calls. The inquiry focuses on flat-rated charges attributable to universal service and access charge reform, but recognizes that other pro-competitive reforms also have resulted directly or indirectly in charges on consumers' bills.

DATES: Interested parties may file comments no later than September 20, 1999, and reply comments no later than October 20, 1999.

ADDRESSES: Submit written comments or replies to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Counter TWA 325, Washington, DC 20554. For detailed filing instructions, including electronic filing, see **SUPPLEMENTARY INFORMATION.**

The entire file is available for inspection and copying weekdays from 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 Twelfth Street SW, Washington, DC 20554. Copies may be purchased from the Commission's duplicating contractor, ITS Inc., 1231 Twentieth St., NW, Washington, DC 20036, (202) 857–3800.

FOR FURTHER INFORMATION CONTACT: Neil Fried, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1530; TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION:

Background

In May 1997 the Commission adopted for price cap local exchange carriers (price cap LECs) a new common line rate structure to align cost recovery with the manner in which costs are incurred. That structure, when fully implemented, will recover all interstate-allocated common line costs through flat subscriber line charges (SLCs) assessed on end users, and flat presubscribed interexchange carrier charges (PICCs) assessed on interexchange carriers (IXCs).

Discussion

The Commission recognized when it changed the common line rate structure in 1997 that it was reducing, and gradually eliminating, support flows that had previously run from high-volume to low-volume end users. For two reasons, however, the Commission did not anticipate that these changes would have immediate, significant effects on the telephone bills of those low-volume users. First, the Commission initially set the primary residential and single-line business PICCs at levels approximately equal to a universal service charge that the Commission eliminated when it adopted the PICC. Second, IXCs had not previously imposed flat charges on end users to recover that universal service charge. In any case, the Commission believed that, even if IXCs did pass on the modest initial PICCs as flat charges, most consumers would enjoy benefits in the form of lower long-distance rates, and that those benefits would outweigh the burden of a small, flat monthly charge. That belief has proven correct for some consumers, in that long-distance rates overall have continued to decline.

Some customers of long-distance service, however, are now paying additional flat charges that IXCs claim recover some of the costs that the customers were previously paying in per-minute charges under the old access charge regime. A number of factors the Commission did not anticipate have affected consumers who make few interstate long-distance calls.

First, AT&T, MCI, and Sprint each charge their residential customers with a single presubscribed line a flat, averaged, monthly PICC pass-through charge of $1.51, $1.07, and 85 cents, respectively. The Commission has not prohibited IXCs from using such charges to recover their PICC costs. The Commission did, however, take steps

intended to make it more likely that any such charges would be modest in size. Specifically, as discussed above, the Commission decided to phase the PICC in gradually, setting the initial price-cap LEC ceiling for the charge on primary residential lines at 53 cents. Notwithstanding these prudent steps, the Commission recognizes that access reform requires the Commission to unravel and rationalize an entrenched, complex web of implicit subsidies, all at a time when competition and technological innovation are making unprecedented changes to the industry. Reforms of this magnitude and complexity will sometimes yield unanticipated effects, regardless of how careful the Commission is to avoid them. Second, AT&T and MCI have initiated monthly minimum usage charges for their basic-rate residential customers, which their customers must pay even if they make no long-distance calls in a month. AT&T residential customers are subject to a $3.00 minimum. Residential customers who subscribed to an MCI calling plan before January 3, 1998, are subject to a $5.00 minimum; thereafter, customers who subscribed to any MCI residential service are subject to a $3.00 minimum. Third, AT&T also has chosen to recover some of its contribution to the Universal Service Fund through a flat charge of 99 cents per month on its residential customers, even though its contributions are not calculated as a flat charge. Thus, a residential customer with a single telephone line who selects AT&T as her presubscribed carrier, but who makes no interstate long-distance telephone calls in a particular month, may pay $5.50 to AT&T that month. An MCI customer with the same calling pattern will pay $6.07 or $4.07, depending on how recently the customer signed up for service. Previously, such customers would have paid nothing to their presubscribed IXCs in a month in which they made no long-distance calls.

In light of these significant developments, the Commission wishes to inquire whether the flat charges imposed on consumers who make few long-distance calls are appropriate. Commenters should address whether the introduction of flat rate charges or minimum usage requirements is the result of competitive market dynamics, and whether it is reasonable to assume that implicit subsidies could be eliminated and competition introduced into previously regulated markets without some customers (those previously subsidized) paying more.

The Commission also seeks comment on the extent to which the Commission should rely on competition to provide services suitable to the needs of low-volume residential customers. The Commission notes that a telephone customer is not required to have a presubscribed interexchange carrier in order to place long-distance calls. A customer who chooses not to presubscribe will pay the PICC directly to the LEC, but may not have to pay marked up, minimum-usage, or universal-service charges. That customer will not be able to make a long-distance call simply by dialing "1+area code+number," but will be able to "dial around" by first dialing a seven digit code (typically "10–10–XXX"). Dial-around carriers advertise heavily, and some have plans that feature favorable per-minute rates without additional monthly or per-call charges. The Commission seeks comment on whether the availability of dial-around services means that the Commission does not need to take special measures to protect low-volume users. The Commission also seeks comment on what evidence of consumer choice would be sufficient to indicate that customers have adequate alternatives to calling plans that include these types of non-usage sensitive charges.

The Commission also observes that, as mentioned above, some of the costs presubscribed IXCs claim users impose on them even when they make no calls may be attributable to account and billing maintenance. The customers' LECs, on the other hand, already incur that kind of cost in providing local exchange service to the customers, and would presumably experience little incremental costs if they became the customers' presubscribed IXCs as well. The Commission seeks comment, therefore, on whether the entry of Bell Operating Companies (BOCs) into the long-distance market will mitigate the problems currently experienced by low-volume long-distance users.

In the event the Commission determines based on the record that regulatory intervention is warranted to protect consumers from some of the actions described above, the Commission seeks comment on the scope, method, and its jurisdiction for such intervention. Are there measures the Commission can take that do not require direct regulation of IXCs, but that would give this Commission greater control over the manner in which access charges and universal service assessments are passed on to consumers? The Commission also seeks comment on whether efforts by the Commission, states, and consumer groups to educate consumers regarding choices they can exercise in the marketplace—choices which could minimize the impacts on consumers of these sorts of actions by carriers—could be used to reduce or eliminate the need for additional regulation to accomplish the same purpose. The Commission also seeks comment on the relationship between the impact of access reform and universal service charges on low volume consumers and its universal service obligations pursuant to section 254 of the Act. As the Commission has stated, in addition to seeking comment on the consumer impact of charges associated with access and universal service reform, the Commission also would like suggestions on how best to understand and manage the impact on consumers of charges attributable to pro-competitive actions other than access and universal service reform.

Filing Requirements

Interested parties may file comments no later than September 20, 1999, and reply comments no later than October 20, 1999. Interested parties may file using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998). All filings should reference the CC Docket No. 99–249.

Parties submitting pleadings through the ECFS can send their comments and replies as electronic files via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, interested parties need to file only one copy of an electronic submission. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, interested parties must transmit one electronic copy of the pleading to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, interested parties should include their full name, postal service mailing address, and the applicable docket or rulemaking number. Interested parties may also file by Internet e-mail. To get filing instructions for e-mail submission, interested parties should send an e-mail message to ecfs@fcc.gov, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply.

Interested parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, interested parties must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's

Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Counter TWA 325, Washington, DC 20554.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–20128 Filed 8–4–99; 8:45 am]

BILLING CODE 6712–01–P

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Notices

Federal Register
Vol. 64, No. 150
Thursday, August 5, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Forest Industries Data Collection System

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to request a reinstatement of a previously approved information collection. The Forest Service will survey wood-using mills to determine the volume of logs (roundwood) and wood chips the mills received. This information will enable the agency to assess the trends in the use of logs and wood chips as required by statute.

DATES: Comments must be received in writing on or before October 4, 1999.

ADDRESSES: All comments should be addressed to: Eric Wharton, Forest Inventory and Analysis, Northeastern Research Station, 5 Radnor Corporate Center, Suite 200, Forest Service, USDA, Radnor, PA 19087–4585.

Comments also may be submitted via facsimile to (610) 975–4200 or by email to: ewharton/ne_fia@fs.fed.us.

The public may inspect comments received at the Northeastern Research Station, 5 Radnor Corporate Center, Suite 200, Radnor, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Eric Wharton, Northeastern Research Station, at (610) 975–4052; or Bruce Hansen, Northeastern Research Station, at (304) 431–2727.

SUPPLEMENTARY INFORMATION:

Background

The Forest and Range Renewable Resources Planning Act of 1974 and the Forest and Rangeland Renewable Resources Research Act of 1978 require the Forest Service to evaluate trends in the use of logs and wood chips, to forecast anticipated levels of logs and wood chips, and to analyze changes in the harvest of these resources. The information will be collected by Forest Service personnel at the following Forest Service research stations: Northeastern Research Station (Radnor, PA), North Central Research Station (St. Paul, MN), Southern Research Station (Asheville, NC), Rocky Mountain Research Station (Ogden, UT), and Pacific Northwest Research Station (Portland, OR).

Upon reinstatement of this information collection, the Forest Service will collect information from primary wood-using mills, which includes small, part-time mills, as well as large corporate entities. Primary wood-using mills are facilities that use harvested wood in log or chip form, such as sawlogs, veneer logs, pulpwood, and pulp chips, to manufacture a secondary product, such as lumber or paper.

To collect the information, Forest Service personnel will use the following questionnaires: Pulpwood Received, [State, Year] and Logs and Other Roundwood Received, [State, Year]. The questionnaires will be mailed to mills in a number of different States. The title of each questionnaire includes the State and the calendar year for which information will be collected. Respondents will return the completed questionnaires by mail in self-addressed, postage-paid envelopes.

Respondents will answer questions that include the type of logs or wood chips that have been h vested, the volume of logs or wood chips that have been received by the mill, the geographic locations from which the logs or wood chips have been harvested, the variety of tree species that have been harvested and received by the mill, the prices the mill has paid for the logs or wood chips, and the volume of byproducts that have been produced as a result of the manufacturing process, such as bark, sawdust, and slabs.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: Pulpwood Received.

OMB Number: 0596–0010.

Expiration Date of Approval: December 31, 1998.

Type of Request: Request for reinstatement of a previously approved information collection.

Abstract: Questionnaires will be mailed to large paper companies, as well as to a few smaller pulping companies. Forest Service personnel will evaluate the information collected from the pulp mills to monitor the volume, types, species, sources, and prices of timber products harvested throughout the Nation. The data collected will be used to provide essential information about the current drain on the Nation's timber resources for pulpwood industrial products.

Data from this collection of information is not available from other sources.

Estimate of Burden: 0.5 hours.

Type of Respondents: Primary users of industrial pulpwood and wood chips.

Estimated Annual Number of Respondents: 222.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 111 hours.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: Logs and Other Roundwood Received.

OMB Number: 0596–0010.

Expiration Date of Approval: December 31, 1998.

Type of Request: Request for reinstatement of a previously approved information collection.

Abstract: Questionnaires will be mailed to primary wood-using mills, which include small, part-time mills as well as large corporate entities. The collected information will be evaluated by Forest Service personnel to monitor the volume, types, species, sources, and prices of timber products harvested throughout the Nation. The data collected is used to provide essential information about the current drain on the Nation's timber resources for use as industrial products, other than pulpwood products.

Data from this collection of information is not available from other sources.

Estimate of Burden: .84 hour.

Type of Respondents: Primary users of industrial roundwood products.

Estimated Number of Respondents: 2,687.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,257 hours.

Comment Is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes or the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments, including names and addresses when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval.

Dated: July 23, 1999.

Robert Lewis, Jr.,

Deputy Chief for Research & Development.

[FR Doc. 99–20178 Filed 8–4–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Quartzite Watershed Management Project, Colville National Forest, Stevens County, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service, USDA, as lead agency, will prepare an environmental impact statement (EIS) on a proposal to conduct vegetation and road management, and implement riparian and wetland management. The Proposed Action will be in compliance with the 1988 Colville National Forest Land and Resource Management Plan (Forest Plan) as amended, which provides the overall guidance for management of this area. The Proposed Action is within portions of the Thomason Creek, Sherwood Creek, and Upper Cottonwood Creek drainages on the Colville Ranger District and is scheduled for implementation in fiscal year 2001. The Forest Service invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may be able to participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis should be postmarked by September 3, 1999.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Catherine H. Lay, Acting District Ranger, 255 West 11th Kettle Falls, Washington, 99141.

FOR FURTHER INFORMATION CONTACT: Questions about the Proposed Action and EIS should be directed to Catherine H. Lay, Acting District Ranger, or to Ed Shaw, Planner, 755 S. Main Street, Colville, Washington 99114 (phone: 509–684–7000).

SUPPLEMENTARY INFORMATION: As a result of ecosystem analysis, the Colville National Forest is proposing watershed management activities in the Quartzite Watershed. We recently completed the Quartzite Ecosystem Analysis, an analysis that considered all lands within the Thomason, Sherwood, and Upper Cottonwood drainages. One of the key findings of the analysis is that fire exclusion has changed forest vegetation. These changes in upland forest density, understory composition, and tree species have increased forest susceptibility to insects, disease, drought and atypical fire. The objective of vegetation management proposals is to improve ecosystem integrity by moving the vegetation toward the natural range of variation; by developing forest matrix, patches and corridors that are consistent with fire landscapes; and by improving the landscape patterns of native species habitats. A second ecosystem analysis finding is that vegetation diversity and in-stream fish habitat in low elevation riparian areas has deteriorated. The objective of riparian and wetland management is to improve ecosystem integrity by increasing the diversity of vegetation, and by improving in-stream fish habitat in low elevation riparian areas. A third ecosystem analysis finding concerns roads. Forest roads provide access to conduct needed management. The benefits of forest roads are many. However, the ecosystem analysis notes that road corridors create habitat for noxious weeds that displace native plants. They also have introduced change to a variety of wildlife habitats. The connectiveity of wildlife travel corridors has been disrupted in many places where roads cross riparian areas. In addition, road access has fragmented seclusion habitat for large home range vertebrates. Objectives for road management proposals are to upgrade, maintain and develop those roads which are necessary for long-term land management and important to public access, and to eliminate unneeded roads.

The Proposed Action includes vegetation management using pre-commercial and commercial thinning and harvest on about 4,600 acres. Prescribed Fire would be used on up to 6,500 acres. A variety of road management activities are included. To increase vegetation management feasibility the proposed action includes 11.5 miles of new road construction. (The National Forest will develop alternatives to the proposed action that do not construct new roads.) To improve wildlife habitat and water quality, 1.25 miles of road will be closed in the Woodward Meadows area. And to improve public safety, a steep section (0.25 miles) of the Jay Gould Ridge Road will be closed. In addition, the proposed action would improve fisheries by applying gravel to roads and improving road drainage at seven stream crossings. The Proposed Action also includes 100 acres of riparian and wetland improvement activities in Woodward Meadows, which is located in the Upper Cottonwood Creek drainage. These activities include dechanneling previously channeled streams through the meadow (roughly 2000 feet), creating pot holes and planting native riparian plants to improve wildlife habitat.

The projects would be located approximately 2 to 10 miles east of U.S. Highway 395 near Chewelah, Washington. The Quartzite Watershed Management Projects are proposed within the Thomason Creek, Sherwood Creek, and Upper Cottonwood Creek drainages on the Colville Ranger District. This analysis will evaluate a range of alternatives for implementation of the project activities. The area being analyzed is approximately 23,300 acres, of which 10,600 acres are National Forest System lands. The other ownership areas are included only for analysis of effects. The breakdown of management emphasis on the National Forest System Lands is as follows: 2% is for old growth dependent species habitat; 3% is for recreation; 18% is for big game winter range; 20% is for scenic/winter range; 20% is for wood/forage; and 37% is for scenic/timber. The project area does not include any wilderness, RARE II, or inventoried roadless areas.

Some of the preliminary issues that were identified include: scenery, water

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quality, road construction, road closures, and timber commodities.

A range of alternatives will be considered, including a no-action alternative. Based on issues identified to date, alternatives to date, alternatives to be considered include: (1) The number, sizes, and locations of areas considered for treatment; (2) the amount of road constructed for access; (3) the type of harvest and post-harvest treatments prescribed; and (4) the number, types, and locations of other integrated resource projects.

Initial scoping began in May, 1999. The scoping process will include the following: identify and clarify issues; identify key issues to be analyzed in depth; explore alternatives based on themes which will be derived from issues recognized during scoping activities; and identify potential environmental effects of the proposed Action and alternatives.

A public meeting is planned to be held at the Chewelah Municipal Building on July 28th 1999, at 5:00 pm. The Forest Service is seeking information, comments, and assistance from other agencies, organizations, Indian Tribes, and individuals who may be interested in or affected by the Proposed Action. This input will be used in preparation of the draft EIS. Your comments are appreciated throughout the analysis process.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS is to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March, 2000. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, Indian Tribes, and members of the public for their review and comment. The EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is important that those interested in the management of the Colville National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage, of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is scheduled to be available by August, 2000. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The responsible official is Colville National Forest Supervisor, Robert L. Vaught. The responsible official will decide which, if any, of the alternatives will be implemented. His decision and rationale for the decision will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: July 26, 1999.

Robert L. Vaught,

Forest Supervisor.

[FR Doc. 99–20115 Filed 8–4–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service's (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by October 4, 1999.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034, South Building, Washington, DC 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: Mergers and Consolidations of Electric Borrowers.

OMB Control Number: 0572–0114.

Type of Request: Extension of a previously approved collection.

Abstract: The Rural Electrification Act of 1936, as amended, authorizes the Rural Utilities Service (RUS) to make and guarantee loans for rural electrification. Due to deregulation and restructuring activities in the electric industry, RUS borrowers find it advantageous to merge or consolidate to meet the challenges of industry change. This information collection addresses the requirements of RUS polices and procedures for mergers and consolidations of electric program borrowers and affects three aspects of merger activities.

The first is documentation required to do business with a successor. Most mergers do not require RUS approval. However, RUS as a secured lender needs documentation to legally advance loan funds and conduct other business activities with the new or surviving entity. The specific documents required vary according to state law and the particular circumstances of the merger. Most of the information required by RUS consists of copies of documents that the borrower must file with state and local authorities.

The second concerns transitional assistance. Short-term financial stress can follow mergers and consolidations that will in the long term benefit rural America and enhance government loan security. Title 7 CFR part 1717, subpart D, offers transitional assistance to mitigate these stresses. This information collection includes documentation from borrowers requesting such assistance.

Third are the unusual situations where RUS approval of a merger is required. This collection includes the list of documents that RUS needs to approve a merger. Except for a formal transmittal letter and board resolution from each of the companies involved, RUS believes that the information required is prepared by any prudent business attempting to enter into a merger.

RUS may not require borrower to either merge or to study the possibility of merger. The provisions of the rule may be utilized only at the borrower's request. This collection of information encompasses the procedures for borrowers who wish to enter into mergers or who request transitional assistance.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 hour per response.

Respondents: Small cooperatives or similar organizations.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1.

Estimate Total Annual Burden on Respondents: 249 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, at (202) 720–0812.

Comments are invited on (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW, Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 30, 1999.

Blaine D. Stockton, Jr.

Acting Administrator, Rural Utilities Service.

[FR Doc. 99–20173 Filed 8–4–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of the Secretary.

Title: Survey of Business Leaders Accompanying the Secretary on Trade Missions.

Agency Form Number: None.

OMB Approval Number: 0690–0017.

Type of Request: Reinstatement of a collection previously approved.

Burden: 5 hours.

Number of Respondents: 100 (approximately 20 per trade mission).

Average Hours Per Response: 3 minutes.

Needs and Uses: Trade missions are one of the most visible means for the Secretary to provide support to the business community in expanding exports. When he leads a mission, a quick survey of business leaders who accompany him on the trip is made. Its purpose is to assess their opinions on the market area they are visiting. The information is used to stimulate discussions during the trip.

Affected Public: Businesses or other for profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection program can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: July 30, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–20138 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No.: 97–BXA–20]

Re: Aluminum Company of America

On Friday, February 26, 1999, the **Federal Register** published the Decision and Order issued by the Under Secretary for Export Administration, Bureau of Export Administration, United States Department of Commerce (BXA) on February 19, 1999 (64 FR 9471). However, the Recommended Decision and Order of the Administration Law Judge (ALJ) was inadvertently not included with the Order of the Under Secretary. This notice is to hereby publish the December 21, 1998, Recommended and Decision Order of the ALJ.

Dated: July 21, 1999.

William A. Reinsch,

Under Secretary for Export Administration.

Recommended Decision and Order

Appearance for Respondents: Edward L. Rubinoff, Esq, Samuel C. Straight, Esq., of Akin, Gump, Strauss, Hauer & Feld, L.L.P., Michael D. Scott, Aluminum Company of America.

Appearance for Agency: Jeffrey E.M. Joyner, Esq., Office of the Chief Counsel for Export Administration, U.S. Department of Commerce.

Before: Hon. Parlen L. McKenna, United States Administrative Law Judge.

Preliminary Statement

This is a civil penalty proceeding initiated pursuant to the legal authority contained under the Export Administration Act of 1979, as amended (50. U.S.C.A. §§ 2401–2420 (1991 & Supp. 1997) (hereinafter known as the "ACT"). It was conducted in accordance with the procedural requirements as found in 15 CFR Parts 768–799 (1991–1995). Those

Regulations were reorganized and restructured in 1997. The current Regulations are found at 15 CFR Parts 730–744 (1997) which govern these proceedings.

On December 12, 1997, Aluminum Company of America ("ALCOA") was issued a charging letter by the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce ("BXA") alleging that ALCOA committed 100 violations of the Export Administration Regulations ("EAR") between 1991 and 1995.[1] The alleged violations are as follows:

CHARGES 1–50: On 50 separate occasions between June 14, 1991, and December 7, 1995, ALCOA exported potassium fluoride and sodium fluoride from the United States to Jamaica and Suriniam, without obtaining from BXA the validated export licenses required by Section 772.1(b) of the former regulations. By exporting U.S.—origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act or any regulation, order, or license issued thereunder, ALCOA violated Section 7878.6 of the former Regulations on 50 separate occasions, for a total of 50 violations.

CHARGES 51–100: In connection with the exports described in Charges 1–50 above, on 50 separate occasions between June 14, 1991, and December 7, 1995, ALCOA used Shipper's Export Declarations, as defined in Section 770.2 of the former regulations, on which it represented, potassium fluoride and sodium fluoride, qualified for exports from the United States to Jamaica and Surinam under general license G–DEST. These chemicals required a validated license for export from the United States to both of those destinations. By making false or misleading statements of material fact, directly or indirectly, to a United States agency in connection with the use of export control documents to effect exports from the United States, ALCOA violated Section 787.5(a) of the former Regulations in connection with each of the 50 exports, for a total of 50 additional violations.

The maximum civil penalty assessment for each violation is $10,000 (*See* 15 CFR § 764.3(a) (1)). In addition to the penalty assessment, a denial of export privileges could be imposed (see Section 764.3(a) (2)) and the exclusion from practice (*See* Section 764.3(a) (3)). BXA proposed a civil penalty assessment of $7,500 for each of the 50 violations of Section 787.6 of the former Regulations and $7,500 for each of the 50 violations of Section 787.5(a) of the former Regulations, for a total civil penalty of $750,000.

On February 9, 1998, a telephonic pre-hearing conference was held which included both parties and the undersigned. As a result of that conference, it was agreed by the parties that no hearing would be required since the facts of the case were not in dispute. Accordingly, a schedule was established for the submission of joint stipulations of fact and the filing of initial and reply briefs. Joint Stipulations were filed on March 27, 1998. ALCOA had previously filed its Answer to the Charging Letter on January 20, 1998. BXA Replied to ALCOA's Answer on May 1, 1998. On May 7, 1998, the undersigned issued on order permitting ALCOA to submit a response to BXA's Reply which was filed on May 13, 1998. In that Reply, Counsel for ALCOA took exception to BXA's assertion that the parties agreed during the February 9, 1998 prehearing conference that this matter could be resolved without a hearing because the facts were not in dispute. Subsequently, another telephonic conference was heard between the parties and the undersigned. At that time, after listening to the arguments of counsel for ALCOA, it became clear to me that Mr. Rubinoff was only asking for Oral Argument and not an evidentiary hearing. Given the complex nature of this case and my desire to insure that ALCOA's due process rights were fully protected, I granted Oral Argument. Oral Argument in this matter was held in Washington, DC on Monday, July 20, 1998. A transcript of the Oral Argument was released thereafter and the matter is now ripe for decision.

The findings of fact and conclusions of law which follow are prepared upon my analysis of the entire record, and applicable regulations, statutes, and case law. Each submission of the parties, although perhaps not specifically mentioned in this decision, has been carefully reviewed and given thoughtful consideration.[1]

Law and Regulation[2]

The United States, like many other industrialized nations, restricts the export of goods and services for reasons of national security. The United States Congress, under the President's signature, statutorily defined the penalties for violating such restrictions in Title 50 of the United States Code—"War and National Defense" as follows:

§ 2410 Violations

(a) In general

Except as provided in subsection (b) of this section, whoever knowingly violates or conspires to or attempts to violate any provision of this Act [section 2401 to 2420 of this Appendix] or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or imprisoned not more than 5 years, or both.

(b) Willful violations

(1) Whoever willfully violates or conspires to or attempts to violate any provision of this Act [sections 2401 to 2420 of this Appendix] for any regulation, order, or license issued thereunder, with knowledge that the exports involved will be used for the benefit of, or that the destination or intended destination of the goods or technology involved is, any controlled country or any country to which exports are controlled for foreign policy purposes—

(A) Except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) In the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(2) Any person who is issued a validated license under this Act [sections 2401 to 2420 of this Appendix] for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense—

(A) Except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and

(B) In the case of an individual, shall be fined not more that $250,000, or imprisoned not more than 5 years, or both.

(3) Any person who possesses any goods or technology—

(A) With the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of this Act [section 2404 or 2405 of this Appendix] or any regulation, order, or license issued with respect to such control, or

(B) Knowing or reason to believe that the goods or technology would be so exported,

Shall, in the case of a violation of an export control imposed under section 5 [section 2404 of this Appendix] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (1) of this subsection and shall, in the case of a violation of an export control imposed under section 6 [section 2405 of this Appendix] (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in subsection (a).

(4) Any person who takes any action with the intent to evade the provisions of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix] shall be subject to the penalties set for in subsection (a), except that in the case of an evasion of an export control imposed under section 5 or 6 of this Act [section 2404 or 2405 of this Appendix] (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (1) of this subsection.

(5) Nothing in this subsection or subsection (a) shall limit the power of the Secretary to define by regulations violations under this Act [sections 2401 to 2420 of this Appendix].

(c) Civil penalties; administrative sanctions

(1) The Secretary (and officers and employees of the Department of Commerce specifically designated by the Secretary) may impose a civil penalty not to exceed $10,000 for each violation of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order or license issued under this Act [sections 2401 to 2420 of this Appendix], either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each such violation involving national security controls imposed under section 5 of this Act [section 2404 of this Appendix] or controls imposed on the export of defense articles and defense services under section 38 of the Arms Export Control Act [22 U.S.C.A. § 2778] may not exceed $100,000.

(2)(A) The authority under this Act [sections 2401 to 2420 of this Appendix] to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of the Act [section 2407(a) of the Appendix].

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act [sections 2401 to 2420 of this Appendix] for a violation of the regulations issued pursuant to section 8(a) of this Act [section 2407(a) of this Appendix] may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code [5 U.S.C.A. §§ 554 to 557].

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of the Act [section 2407(a) of the Appendix] shall be made available for public inspection and copying.

(3) An exception may not be made to any order issued under this Act [sections 2401 to 2420 of this Appendix] which revokes the authority of a United States person to export goods or technology unless the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate are first consulted concerning the exception.

(4) The President may by regulation provide standards for establishing levels of civil penalty provided in this subsection based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation.

United States Department of Commerce Regulations

15 CFR 787—Enforcement

§ 787.1 Sanctions

(a) Criminal (1) Violations of Export Administrative Act (i) General. Except as provided in paragraph (a)(1)(ii) of this section, whoever knowingly violates or conspires to or attempts to violate the Export Administration Act ("the Act") or any regulation, order, or license issued under the Act is punishable for each violation by a fine of not more than five times the value of the exports involved or $50,000, whichever is greater, or by imprisonment for not more than five years, or both.

(ii) Willful violations. (A) Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, license issued thereunder, with knowledge that the exports involved will be used for the benefit of or that the destination or intended destination of the goods or technology involved is any controlled country or any country to which exports are controlled for foreign policy purposes, except in the case of an individual, shall be fined not more than five times the value of the export involved or $1,000,000 whichever is greater; and in the case of an individual shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(B) Any person who is issued a validated license under this Act for the export of any goods or technology to a controlled country and who with the knowledge that such export is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense, except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than five years, or both.

(C) Any person who possesses any goods or technology with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of the Act or any regulation, order, or license issued with respect to such control, or knowing or having reason to believe that the goods or technology would be so exported, shall, in the case of a violation of an export control imposed under section 5 of the Act (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (a)(1)(ii)(A) of this section and shall, in the case of a violation of an export control imposed under section 6 of the Act (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (a)(1)(I) of this section.

(D) Any person who takes any action with the intent to evade the provisions of this Act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in paragraph (a)(1)(i) of this section, except that in the case of an evasion of an export control imposed under section 5 or 6 of the Act (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (a)(1)(ii)(A) of this section.

(2) Violations of False Statements Act. The submission of false or misleading information or the concealment of material facts, whether in connection with license applications, boycott reports, Shipper's Export Declarations, Investigations, compliance proceedings, appeals, or otherwise, is also punishable by a fine of not more than $10,000 or by imprisonment for not more than five years, or both, for each violation (18 U.S.C. 1001).

(b) Administrative [1]—(1) Denial of export privileges. Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is also subject to administrative action which may result in suspension, revocation, or denial of export privileges conferred under the Export Administration Act (*See* § 788.3 et seq).

(2) Exclusion from practice. Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is further subject to administrative action which may result in exclusion from practice before the Bureau of Export Administration (*See* § 790.2(a)).

(3) Civil penalty. A civil penalty may be imposed for each violation of the Export Administration Act or any regulation, order or license issued under the Act either in addition to, or instead of, any other liability or penalty which may be imposed. The civil penalty may not exceed $10,000 for each violation except that the civil penalty for each violation involving national security controls imposed under section 5 of the Act may not exceed $100,000. The payment of such penalty may be deferred or suspended, in whole or in part, for a period of time that may exceed one year. Deferral or suspension shall not operate as a bar in the collection of the penalty in the event that the conditions of the suspension or deferral are not fulfilled. When any person fails to pay a penalty imposed under this paragraph (b)(3), civil action for the recovery of the penalty may be brought in the name of the United States, in which action the court shall determine *de novo* all issues necessary to establish liability. Once a penalty has been paid, no action for its refund may be maintained in any court.[1]

(4) Seizure. Commodities or technical data which have been, are being, or are intended to be, exported or shipped from or taken out of the United States in violation of the Export

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[1] Each of these alleged violations were the result of separate and distinct shipments over a desperate four and one-half year period and were not based upon a continuing violation concept. The alleged violations are defined in the charging letter with reference to the EAR that were in effect at the time of the alleged incidents (*See* 15 CFR Parts 768–799 (1991–1995). These Regulations were issued pursuant to the Export Administration Act of 1979 and define the violations that BXA alleges occurred and are referred to hereinafter as the former regulations. Since that time, the regulations have been reorganized and restructured; the restructured regulations establish the procedures that apply to this matter. The Act expired on August 20, 1994. Executive Order 12924 (3 F.R.R. 1994 Comp. 917 (1995)), August 14, 1996 (3 CFR 1996 Comp. 298 (1997)), and August 13, 1997 (62 *FR* 43629. August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701–1706 (1991 and Supp. 1998)).

[1] A list of the record evidence in this case is set forth in Appendix A, attached hereto.

[2] Because an evidentiary hearing was not held in this matter, a record was not developed which included exhibits that contained copies of each of the applicable laws and regulations. In order to aid the readers of this opinion, all applicable laws and regulations are set forth herein.

[1] Violations of the Act or regulations, or any order or license issued under the Act, may result in the imposition of administrative sanctions, and also or alternatively of a fine or imprisonment as described in paragraph (a) of this section, seizure or forfeiture of property under section 11(g) of this Act or 22 U.S.C. 401, or any other liability or penalty imposed by law. The U.S. Department of Commerce may compromise and settle any administrative proceeding brought with respect to such violations.

[1] The U.S. Department of Commerce may refund the penalty at any time within two years of payment if it is found that there was a material error of fact or of law.

Administration Act or of any regulation, order, or license issued the Act are subject to being seized and detained, as are the vessels, vehicles, and aircraft carrying such commodities or technical data are subject to forfeiture (50 U.S.C. app. 2411(g)) (22 U.S.C. 401, see § 786.8(b)(6)).

15 CFR 772.1(b)—Exports Requiring Validated Licenses

No commodity or technical data subject to the Export Administration Regulations may be exported to any destination without a validated license issued by the Office of Export Licensing, except where the export is authorized by a general license or other authorization by the Office of Export Licensing.

15 CFR 787.5—Misrepresentation and Concealment of Facts; Evasion

(A)(1) Misrepresentation and Concealment. No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, whether directly to the Bureau of Export Administration, any Customs Office, or any official of any other United States agency, or indirectly to any of the foregoing through any other person or foreign government agency or official * * *

15 CFR 787.6—Export, Diversion, Reexport, Transshipment

Except as specifically authorized by the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may export, dispose of, divert, direct, mail or otherwise ship, transship, or reexport commodities or technical data to any person or destination or for any use in violation of or contrary to the terms, provisions, or conditions of any export control document, any prior representation, any form of notification a prohibition against such action, or any provision of the Export Administration Act or any regulation, order, or license issued under the Act.

15 CFR 774.1—Reexport of U.S.-Made Equipment

Unless the reexport of a commodity previously exported from the United States has been specifically authorized in writing by the Office of Export, Licensing prior to its reexport * * *, no person in a foreign country (including Canada) or in the United States may;

(a) Reexport such commodity * * * from the authorized country(ies) of ultimate destination * * *.

Joint Stipulations of Fact

Aluminum Company of America (ALCOA) and the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA) stipulated to the following facts:

1. ALCOA is a corporation organized under the laws of Pennsylvania with its principal offices located at 425 Sixth Avenue, ALCOA Building, Pittsburgh, Pennsylvania 15219.

2. ALCOA is one of the world's leading producers of aluminum and a primary participant in all segments of the industry mining, refining, smelting, fabricating, and recycling.

3. ALCOA is one of the world's largest producers of alumina, which is both an intermediate product in the production of aluminum and an important chemical product in itself.

4. During the period June 14, 1991 through December 7, 1995 ("the review period"), ALCOA, through its subsidiary ALCOA Minerals of Jamaica ("AMJ"), and the Government of Jamaica, through its subsidiary Clarendon Alumina Productions ("CAP"), owned an alumina refinery in Clarendon Parish, Jamaica. CAP and AMJ each owned a 50% interest in the alumina refinery.

5. Jamalco is a joint operation, located in Kingston, Jamaica, governed by a Joint Venture Agreement between AMJ and CAP dated March 1, 1988. The joint venture is governed by an eight member Executive Committee, four members each from CAP and AMJ. Article 5 of the Joint Venture Agreement provides that the Executive Committee will appoint a manager who will have full rights and responsibilities to manage and control the day to day conduct of the operations of the joint venture. Article 5 further requires that AMJ be appointed as the Manager. AMJ has acted as Manager at all times since 1988.

6. Prior to December 30, 1994, ALCOA operated mining, refining, and smelting operations in Suriname (Suralco). As of December 30, 1994, all of ALCOA's bauxite, alumina and alumina-based chemicals businesses, including Suralco, were restructured and combined into ALCOA Alumina and Chemicals, L.L.C. Subsequently, Suralco has been owned 98% by ALCOA Alumina and Chemicals, L.L.C., and 2% by ALCOA Caribbean Alumina Holdings, L.L.C., each of which is owned 60% by ALCOA and 40% by WMC Limited, an Australian corporation.

7. Since 1984, the alumina refinery in Paranarn, Suriname has been co-owned by Suralco and an affiliate of Billiton N.V., a Dutch corporation, and has been operated pursuant to a Refining Joint Venture Operating Agreement dated March 14, 1984, as amended. In accordance with Article 5.02 of the Refining Joint Venture Operating Agreement, Suralco was in 1984 appointed, and has since then acted as Manager of the Paranam refinery.

8. During the review period, the refineries in Jamaica and Suriname used potassium fluoride as the key reagent for refining alumina from bauxite, the raw ore for aluminum.

9. During the review period, the water treatment facility in Suriname used sodium fluoride to treat drinking water. Suralco's water treatment facility was located in the powerhouse which supplied electricity to and was located at Suralco's bauxite mine in Moengo, Suriname. In March 1994, Suralco sold its Moengo powerhouse and water treatment facility to Energie Bedrijven Suriname (EBS), a utility company owned by the government of Suriname. In conjunction with the sale of the powerhouse and water treatment facility, Suralco agreed to continue operating the water treatment facility for one year. Consequently, Suralco personnel were on-site at the water treatment facility at all times when ALCOA's Export Supply Division shipped sodium fluoride to Suralco. Also as part of the powerhouse sale agreement, Suralco agreed to provide the chemicals used in the water treatment facility for a period of two years following the sale.

10. During the review period, logistical support for Jamalco and Suralco was provided by ALCOA's Export Supply Division ("ESD"), located in New Orleans, Louisiana.

11. During the review period, Jamalco and Suralco purchased certain items from a scheduled buying list, while other times were purchased only as required in specific instances.

12. During the review period, ESD received requisitions from Jamalco and Suralco, located suppliers, purchased products, and shipped the requested items to Jamalco and Suralco.

13. During the review period, ESD prepared all export and shipping documentation for shipments to Jamalco and Suralco.

14. ESD was responsible for determining the applicable export licensing requirements for items ordered by Jamalco and Suralco during the review period.

15. For each shipment of specially-ordered items to Jamalco and Suralco during the review period, the export compliance procedures in place provided that ESD was to review the Export Administration Regulations to determine the applicable export licensing requirement.

16. On several occasions during the review period, ESD obtained validated licenses from BXA to export specially-ordered items, such as computers, to Jamalco and Suralco.

17. By contrast, once ESD made an initial determination of the export licensing requirements for items on the scheduled buying list, ESD did not thereafter review the Export Administration Regulations for each subsequent shipment of "scheduled buying lists" goods to Jamalco and Suralco.

18. Both potassium fluoride and sodium fluoride were on ESD's scheduled buying list for Jamalco and Suralco both before and during the review period.

19. Both potassium fluoride and sodium fluoride were routinely purchased against periodic requisitions regularly submitted by Jamalco and Suralco both before and during the review period.

20. Under the export compliance procedures in place during the review period, ESD did not perform a complete export compliance check for each shipment of potassium fluoride and sodium fluoride to Jamalco and Suralco.

21. Prior to March 13, 1991, exporters were not required to obtain from BXA a validated license to export potassium fluoride and sodium fluoride from the United States to Jamalco and Suralco.

22. Prior to March 13, 1991, ESD lawfully exported potassium fluoride and sodium fluoride on a regular basis to Jamalco and Suralco under general license authority.

23. On March 13, 1991, through a notice published in the Federal Register, entitled Expansion of Foreign policy Controls on Chemical Weapons Precursors (56 Fed. Reg 10756), the Department of Commerce amended the Commerce Control List of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730–774 (1997)),[2] "by expanding the number of countries for which a validated license is required for 39 precursor chemicals. Under the rule, the 39 chemicals will require a validated license for export to all destinations except NATO member countries, Australia, Austria, Ireland, Japan, New Zealand, and Switzerland." Potassium fluoride and sodium fluoride were included on the list of 39 chemicals subject to the regulatory change.

24. As potassium fluoride and sodium fluoride were routinely ordered by Jamalco and Suralco, ESD failed to attach any significance to the March 1991 amendment, missed the regulatory change, and continued to export these commodities to the refineries during review period without first obtaining from BXA the validated export license required under the Regulations.

25. During the review period, ESD made 47 shipments of potassium fluoride to Jamalco and Suralco without validated license. The total value of these shipments was $104,637.00.

26. During the review period, ESD made three shipments of sodium fluoride to Suralco without validated licenses. The total value of these shipments was $6.603.00.

27. During the review period, ESD used Shippers Export Declarations ("SEDs"), an export control document as defined in the Export Administration Regulations, to effect the export of potassium fluoride and sodium fluoride from the United States to Jamaica and Suriname.

28. With eight exceptions, ALCOA identified the chemicals shipped to Jamalco and Suralco on the SEDs by their specific nomenclature.

29. As a result of missing the March 1991 regulatory amendment, ALCOA, during the review period, indicated on each SED used for the export of the chemicals from the United States to Jamaica and Suriname that the goods qualified for export from the United States to Jamaica and Suriname under general license G–DEST, when in fact the chemicals required a validated license for export from the United States to both destinations.

30. ESD had no intent to make any false or misleading statements on the SEDs accompanying the shipments of potassium fluoride and sodium fluoride to Jamalco and Suralco during the review period.

31. The exports of potassium fluoride and sodium fluoride during the review period were made to countries that are not suspected of engaging in illicit weapons development.

32. All of the potassium fluoride and sodium fluoride shipped by ESD to Jamalco and Suralco during the review period was completely consumed on the premises of the refinery and water treatment facilities in Jamaica and Suriname.

[2] At the time BXA promulgated this rule, the Export Administration Regulations were found at 15 CFR Parts 768–799 (1991). Since that time, the Regulations have been reorganized and restructured.

33. Once BXA informed ALCOA that ESD had shipped potassium fluoride and sodium fluoride to Jamaica and Suriname during the review period without the required validated export license, ALCOA cooperated fully with BXA in its investigation.

34. After BXA brought to ALCOA's attention the regulatory change imposing a validated licensing requirements on exports of potassium fluoride and sodium fluoride to Jamaica and Suriname, ALCOA applied for, and BXA granted, validated license for shipments of potassium fluoride to Jamaica and Suriname made after the review period.

35. During the review period, there was a presumption of approval, on a case-by-case basis, for license to export potassium fluoride and sodium fluoride from the United States to Jamaica and Suriname.

36. Prior to the initiation of the investigation by BXA, ALCOA retained outside counsel and experts to assist in improving and strengthening ALCOA's export compliance procedures.

37. As a result of these efforts, ALCOA developed and implemented a new export compliance program that includes an export compliance manual (with specific procedures and policies applicable to all exports by ALCOA), training seminars, instructional videos, and other measures.

38. 15 CFR 787.4(a) provides:

(a) No person may order, buy, receive, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any commodity or technical data exported or to be exported from the United States or which is otherwise subject to the Export Administration Regulations, with knowledge or reason to know that a violation of the Export Administration Act or any regulation, order, or license has occurred, is about to occur, or is intended to occur with respect to any transaction.

The parties stipulated at the Oral Argument that this regulation does not have a strict liability trigger since it contains a knowledge element (TR–33).

39. 15 CFR § 787.4(b) provides:

(b) No person may possess any commodities or technical data, controlled for national security or foreign policy reasons under section 5 or 6 of the Act:

(1) With the intent to export such commodities or technical data in violation of the Export Administration Act or any regulation, order, license or other authorization under the Act, or;

(2) Knowing or having reason to believe that the commodities or technical data would be so exported.

The parties stipulated at the Oral Argument that this regulation does not have a strict liability trigger since it contains a knowledge or intent element (TR–33).

40. 15 CFR 787.5(b) provides:

(b) Evasion. No person may engage in any transaction or take any other action, either independently or through any other person, with intent to evade the provision of the Act, or any regulation, order, license or other authorization issued under the Act.

The parties stipulated at the Oral Argument that this regulation does not have a strict liability trigger since it contains a knowledge or intent element (TR–33).

Findings of Fact [1]

1. The Respondent and BXA entered into forty (40) Joint Stipulations of Fact which are set forth above. Each and every one of those Joint Stipulations of Fact are hereby accepted by the undersigned and adopted as a Finding of Fact in this proceeding.

2. Aluminum Company of America (ALCOA), the Respondent, was at all times herein a Corporation authorized to and doing business in the United States. As such, the Respondent clearly fails within the definition of "person" set forth in 15 CFR 770.2; currently codified at 15 Code of Federal Regulations, Parts 730–774 (1997), issued the Regulations 768–799) hereinafter known as the former Regulations (*see* Joint Stipulations of Fact Nos. 1, 2, and 3).

3. Potassium fluoride is the key reagent used during the refining of alumina from its bauxite ore. Bauxite is crushed and mixed with a caustic soda solution. This solution dissolves the alumina present in the bauxite. Potassium fluoride is used to determine the level of dissolved alumina in the caustic solution. Only a small amount of potassium fluoride is used per metric ton of bauxite processed (*see* Respondent's Answer dated January 20, 1998, page 2).

4. Sodium fluoride was used by the ALCOA facility in Suriname to treat drinking water for people living in the Suralco refinery area. All of the sodium fluoride exported from the United States to Suriname was used by this ALCOA subsidiary facility and was fully consumed in the water treatment process. ALCOA sold the water treatment facility to the government of Suriname in July 1994. Therefore, Suralco no longer uses any sodium fluoride (*See* Respondent's Answer dated January 20, 1998, page 3).

5. All of the potassium fluoride and Sodium Fluoride exports at issue in this case were sent to ALCOA's refinery operations in Jamaica (Jamalco) and Suriname (Suralco). These refineries are located near bauxite mines. Bauxite is the raw ore for aluminum. The refineries process the bauxite so as to extract aluminum oride (alumina), which becomes the basic feedstock for ALCOA's metal and chemical businesses. Both refineries were directly controlled by ALCOA during the period June 14, 1991 through December 7, 1995 (*See* Respondent's Answer dated January 20, 1998, page 2).

6. Prior to March 13, 1991, validated licenses were not required under the EAR for exports of potassium fluoride and sodium fluoride either to Jamaica or Suriname. Therefore, prior to that date, ESD had lawfully exported these products to the refineries under the EAR general license authority. However, on March 13, 1991, the Department of Commerce amended the Commerce Control List of the EAR by expanding the number of countries for which a validated license was required for exports of thirty-nine (39) commodities.

7. Logistical support for the ALCOA refineries in Jamaica and Suriname was provided by ALCOA's Export Supply

[1] Neither Respondent nor Agency submitted Proposed Findings of Fact. As a result, no rulings are made thereon.

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Division ("ESD"), located in New Orleans, LA. Through ESD, the refineries regularly purchased certain items from a scheduled buying list, while other items were purchased only as required in specific instances. In this capacity, ESD purchased everything from office surplus and repaired parts to replacements for equipment and operating supplies. ESD received requisitions from the refineries, located U.S. suppliers for the requested product, purchased the products, and shipped them to the refineries. ESD prepared all export and shipping documentation for shipments to the refineries (See Respondent's Answer dated January 20, 1998, page 3).

8. ESD's sole function was to support the Jamalco and Suralco refineries. It annually handled approximately 25,000 transactions involving 100,000 different items, with a total value of over $125 million. Before, during and after the time periods in question, ESD was aware of the EAR, and sought and obtained validated export licenses for a variety of products, including computer systems and related equipment (*See* Respondent's Answer dated January 20, 1998, page 3).

9. Both potassium fluoride and sodium fluoride were ESD's scheduled buying list for the refineries both before and during the time periods in question and were, in fact, purchased against requisitions submitted by Jamalco and Suralco. Indeed, during the time period in question, ESD made forty-seven (47) shipments of potassium fluoride to the Jamalco and Suralco refineries, and three (3) shipments of sodium fluoride to the Suralco refinery (*See* Respondent's Answer dated January 20, 1998, page 3).

10. On 50 separate occasions between June 14, 1991, and December 7, 1995, ALCOA exported potassium fluoride and sodium fluoride from the United States to Jamaica and Surinam, without obtaining from BXA the validated export licenses required by Section 772.1(b) of the former regulations. By exporting U.S.—origin commodities to any person or to any destination as set forth in Section 772.1(b) of the former regulations, ALCOA violated Section 787.6 of the former regulations on 50 separate occasions, for a total of 50 separate violations (See Respondent's plea of "Admit" to charges 1–50 in its January 1998 Answer, page 5).

11. On 50 separate occasions between June 14, 1991, and December 7, 1995, ALCOA used Shipper's Export Declarations as defined in Section 770.2 of the former Regulations, on which it represented that potassium fluoride and sodium fluoride, qualified for export from the United States to Jamaica and Surinam under general license G–DEST. Contrary to ALCOA's Shippers Export Declarations, the export of potassium fluoride and sodium fluoride to Jamaica and Surinam required a validated license to both of those destinations and did not qualify for export under general license G–DEST (*See* Respondent's plea of "Admit" to finding of Fact No. 9, above; and Joint Stipulation of Fact No. 29, above).

12. Based on the Respondent's admitted actions set forth in Finding of Fact No. 10 above, ALCOA violated 15 CFR 787.5(a) of the former regulations by making "false or misleading representations[s], statement[s], or certification[s]" of material fact to a United States agency in connection with the use of export control documents required under 15 CFR 772.1(b) to effectuate the export of potassium fluoride and sodium fluoride from the United States to Jamaica and Suriname (*See*, legal discussion below).

Conclusions of Law

1. That 15 CFR 787.5(a) of the former regulations does not require "knowledge" or "intent" in order for a finding that the Respondent violated said regulation. Liability and administrative sanctions are imposed on a strict liability basis once the Respondent commits the proscribed act;

2. That the Respondent, Aluminum Company of America, committed 50 violations of 15 CFR 787.5(a) during the period from June 14, 1991 through December 7, 1995 when potassium fluoride and sodium fluoride were exported from the United States to Jamaica and Suriname without obtaining validated export licenses required by 15 CFR 772.1(b);

3. That the Respondent, Aluminum Company of America, committed 50 violations of 15 CFR 787.6 during the period of June 14, 1991 through December 7, 1995 by making false and misleading statements of material fact to a United States agency in connection with the use of export control documents;

4. That based upon the entire record in this matter, the appropriate civil penalty for each of the 100 violations is $10,000 for a total of $1,000,000. The record does not support the suspension of part of the civil penalty assessment on probation.

Discussion

Based upon the stipulations of the parties, there are only two questions to be answered in this proceeding:

(I) Is "knowledge" or "intent" a necessary element of a violation of § 787.5(a) of the former regulations? and

(II) What is the appropriate level of sanctions in this case?

I. *SECTION 787.5(a) OF THE FORMER REGULATIONS DOES NOT REQUIRE "KNOWLEDGE" OR "INTENT" IN ORDER FOR A FINDING THAT THE RESPONDANT VIOLATED SAID REGULATION. LIABILITY AND ADMINISTRATIVE SANCTIONS ARE IMPOSED ON A STRICT LIABILITY BASIS ONCE THE RESPONDANT COMMITS THE PROSCRIBED ACT.*

Contrary to the arguments of the Respondent, the answer to this issue is clearly set forth in *Iran air* v. *Kugelman*, 996 F.2d 1253 (D.C. Cir. 1993). In that case, then-Judge Ruth Bader Ginsburg found that the "essential question is whether the agency, in its reading of the current regulations, reasonably construed the statute, 50 U.S.C.A. App. § 2410, to allow the imposition of civil sanctions on a strict liability basis." The answer in *Iran Air* was clearly yes. Therein, the Acting Under Secretary of Commerce for Export Administration determined that an exporter's knowledge need not be shown as a prerequisite to the imposition of civil penalties under the Export Administration Act of 1979, § 11(c), 50 U.S.C.A. App. § 2410(c).[1]

The court in the *Iran Air* case stated:

It is not unusual for Congress to provide for both criminal and administrative penalties in the same statute and to permit the imposition of civil sanctions without proof of the violator's knowledge. Here, the agency maintains, Congress has allowed for an array of penalties for violations of the Export Act: criminal fine and/or imprisonment for the knowing violator; more severe criminal fine and/or longer prison terms for the willful violator; and civil penalties against any violator. Supporting the agency's position that subsection (a)'s knowledge requirement need not be read into subsection (c), Congress expressly provided that nothing in subsection (a) or (b) "limits the power of the Secretary to define by regulations violations under this Act." 50 U.S.C. App. § 2410(b)(5). Furthermore, Congress specifically authorized the executive to establish "levels of civil penalty * * * based upon the seriousness of the violation, the culpability of the violator, and the violator's record of cooperation with the Government in disclosing the violation." *Id.* At 2420(c)(4). The provisions appear to leave room for civil penalty regulations that include a knowledge requirement * * * or that allow * * * the imposition of strict liability. *Id.* At 1258.

Therefore, there can be no question that the United States Congress authorized the Secretary of Commerce to promulgate regulations on a strict liability basis pursuant to § 2410 of the Export Administration Act. In order to determine if the Secretary intended to impose a civil sanction for an unwitting violation of the Act (*i.e.*, strict liability), we must look at the regulation that ALCOA was charged with violating:

15 CFR 787.5 Misrepresentation and Concealment of Facts; Evasion

(a)(1) Misrepresentation and Concealment. No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, whether directly to the Bureau of Export Administration, any Bureau of Export Administration, any Customs Office, or an official of any other United States agency, or indirectly to any of the foregoing through any other person or foreign government agency or official. * * *

The drafting of agency regulations has evolved into an art form since the passage of the Administrative Procedure Act (5 U.S.C. § 551 *et seq.*) in 1946. As the Court noted in the *Iran Air* case, *Id.* at 1256, the answer to whether a regulation has a strict liability trigger is determined by whether the Secretary, in drafting the regulation, included a "state of mind" requirement. A clear and unbiased reading of this regulation reveals no such requirement and therefore liability attaches on a strict liability basis.

The Respondent acknowledges that this regulation does not contain a "state of mind" element such as "knowledge to cause" (§ 787.2), with "knowledge or reason to know" (§ 787.4(a)), "with intent" or "knowing or having reason to believe" (§ 787.4(b)), and "with intent to evade" (§ 787.5(b) (*See* Joint Stipulations of Fact Nos. 38, 39 and 40). However, the Respondent argues that since neither the statute nor the regulations define "false or misleading statements", the judge must use the "accumulated settled meaning" of these terms as defined in Black's Law Dictionary and the legal precedent applicable thereto. The Respondent argues that Black's Law Dictionary defines a "false statement" as one that is made with *knowedge* that it is false. The word "misleading" is defined as delusive—*calculated* to lead astray or lead into error. The Respondent cites *Feld* v. *Mans*, 116 S. Ct. 437, 445–46 (1995) for the proposition that it is established practice to find meaning in the generally shared common-law when common-law terms are used without further specification.[1]

The government disagrees with what it calls the Respondent's "attenuated lexicographical-based arguments". The government argues that as to the federal statute issue, had the Congress intended to include a "knowledge" element in the civil penalty provision, it would have explicitly done so (*See e.g.*, False Claims Act, 31 U.S.C. § 3729(a). I agree. 50 U.S.C. App. § 2410(c)(1) does not include a "knowledge" element and it is clear in the *Iran Air* case, *Id* at 1258, that Congress explicitly left the issue of strict liability vs. knowledge/intent with the Secretary of Commerce. Indeed, the Secretary promulgated a regulatory scheme that included both types of regulations. Thus, where the Secretary intended that a regulation include a "knowledge" or "intent" element, the regulation contained explicit language (*See e.g.*, §§ 787.4(a), 787.4(b), 787.5(b), § 387.2 (1980) and joint stipulations of fact Nos. 38, 39, and 40). Conversely, where the Secretary intended no such "knowledge" or "intent" element, the regulations did not include such a trigger (*See e.g.* §§ 774.1(a), 787.2. 787.5(a)).

The case of *People* v. *Chevron Chemical Co.*, 191 Cal.Rptr 537 (App. 1983) is very informative on the issue at hand. The fact that it is a California criminal case rather than a federal civil penalty case is even more compelling. In that case, the state brought an action against Chevron, charging it with violating the Fish and Game Code for depositing substances deleterious to fish, plant or bird life into state waters—a criminal misdemeanor penalty. The sole issue presented in that case was whether the offense should be construed as a strict liability offense, or one that requires proof of criminal negligence or criminal intent.[1] In ruling on that issue, the Court stated;

In more recent times, the California Supreme Court found *mens rea* unnecessary and upheld the conviction of a meat market proprietor for "short-weighting" in the sale of meat by his employee. The court noted that "where qualifying words such as knowingly, intentionally, or fraudulently are omitted from provisions creating the offense, it is held that guilty knowledge and intent are not elements of the offense". The court went on to quote from an Ohio case which stated the basic principle: 'There are many acts that are so destructive of the social order, or where the ability of the state to establish the element of criminal intent would be so extremely difficult if not impossible of proof, that in the interest of justice the legislature has provided that the doing of the act constitutes a crime, regardless of knowledge or criminal intent on the part of the defendant'. (*In re Marley* (1946) 29 Cal.2d 525, 529, 175 P. 2d 832).

In the *Chevron* case, *supra* at 539, the court discusses the well recognized public welfare offenses exception to the *mens rea* requirement in criminal prosecution. While not a criminal case, nor the traditional public welfare offense (*e.g.*, water pollution, use of unlicensed poison, sale of improperly branded motor oil, and liability of pharmacist for compounding of prescriptions by unlicensed persons), the regulatory violation herein involves materials that could be used for weapons of mass destruction and the injury or death of untold numbers of people. Accordingly, since these regulations deal with the most profound public welfare/national defense issues, the public interest demands that they be strictly construed in the absence of express "knowledge" or "intent" language.

The Respondent asserts that the case of *Ceasar Electronics, Inc.*, 55 Fed. Reg. 53016 (Dept Commerce 1990) supports it's position that 15 CFR § 787.5(a) requires that liability is imposed only when there exists a relatively high level of knowledge and intent to make false statements. I disagree. The factual circumstances involved therein proceeded on two tracks—a criminal indictment and conviction for violating 15 CFR § 787.5(a)(3) of the Regulations by one of the Respondent's Vice-Presidents and a subsequent administrative proceeding against the Corporation for violation of 15 CFR § 787.5(a)(1)(ii)(1984). The Order from the United States District Court in criminal case served as the underlying factual basis for the joint stipulations of the parties in the administrative case against the corporation. Thus, while the decision and order in the administrative case discussed knowledge and intent in relation to a § 787.5(a) violation, such predicates were not necessary to a finding of a violation. Indeed, both counsel stipulated at the oral argument in this case that the issue of strict liability for § 787.5(a) has never been decided (TR–36, lines 15–19).[1]

The Respondent cities Section 523(a)(2)(A) of the Bankruptcy Code as support for its position that knowledge and intent to deceive is a prerequisite to any violation of § 787.5(a). I disagree. The *Iran Air* case, *supra*, clearly spells out that Congress authorized the Secretary of Commerce to promulgate strict liability and knowledge/intent based regulations. The Secretary differentiated between the two types of regulations by using "state of mind" language for violations which were not intended to employ a strict liability standard and eliminated such triggering language where strict liability was intended. Under this circumstance, any caselaw dealing with § 523(a)(2)(A) requiring knowledge and intent to deceive as a predicate to liability where the regulation is silent as to the issue of "state of mind" is simply inapplicable. Moreover, the legislative history, purpose, and construction of the Bankruptcy Code concerns a fresh start for the debtor while the Export Administration Act concerns regulations exports for reasons of national security and foreign policy.

Importantly, an agency has the power to authoritatively interpret its own regulations as a component of it's delegated rulemaking powers (See *Martin* v. *OSHRC*, 499 U.S. 144, 113 L.Ed. 2d 117, 11 S. Ct. 1171.) This delegation of interpretive authority is ordinarily subject to full judicial review. However, because of the national security and/or foreign policy issues involved in regulations exports that could become component parts of weapons, the United States Congress made these Secretarial determinations final and only subject to limited judicial review (*See*, 50 U.S.C. App. § 2412(c)(1) and (3).

II What Is the Appropriate Level of Sanctions in This Case?

The Respondent has been found to have 50 separate violations of 15 CFR 787.6 of the former Regulations and 50 separate violations of 15 CFR 787.5(a) of the former regulations for a total of 100 violations.

Congress has provided for an array of penalties for violations of the Export Administration Act and the regulations promulgated thereunder. These penalties include a criminal fine and/or imprisonment for knowing violators, more severe criminal fines and/or longer prison terms for willful violators and civil penalties against any violator. Since the government apparently did not have proof of willful or intentional acts by the Respondent, criminal charges were not filed (TR–47). Thus, the government commenced this civil penalty action against the Respondent.

The maximum civil penalty assessment for each violation is $10,000 (*See* 15 CFR 764.3(a)(1)). In addition to the penalty assessment, the government could have requested a denial of export privileges (§ 764.3(a)(2)) and/or the exclusion from

[1] In the *Iran Air*, case, *Id.*, the court specifically found that 15 CFR §774.1 of the regulations had a strict liability trigger.

[1] In support of its argument, the Respondent cites *NLRB* v. *Amax Coal Co.*, 453 U.S. 322, 329 (1981). In that case, the court held that "where Congress uses terms that have accumulated settled meaning under either equity or the common law, a court must infer, unless the statute otherwise dictates, that Congress meant to incorporate the established meaning of these terms."

[1] Fish and Game Code § 5650(f) provides that "It is unlawful to deposit in, permit to pass into or place where it can pass into waters of this State any of the following: * * * (f) any substances or material deleterious to fish, plant life or bird life."

[1] 50 U.S.C. App.§ 2412(c). (*Also see, Sparvr Optical Research, Inc.* v. *Baldrige*, 649 Supp. 1366 (D.C. Cir. 1986). This case was reversed, in part, in the *Iran Air* case, note No. 8 finding that a civil penalty may be imposed absent knowledge.); *Dart* v. *United States*, 848 F.2d 217 (D.C. Cir. 1988); and *Harrisiades* v. *Shavgnessy*, 342 U.S. 580, 589, 725. Ct. 512, 519, 96 L.Ed. 586 (1952). *The William A. Roessel, d/b/a Enigma Industries*, 62 Fed. Reg 4031 (Dep't Commerce 1997) and *Herman Kluever*, 56 FR 14916 (Dep't Commerce 1991) are similarly not dispositive of the issue since both cases also involved the aggravating factor of "knowledge" or "intentional conduct".

practice (§ 764.3(a)(3)). However, after investigating this case, the government determined that it would only seek $7,500 per violation and would not seek the denial of its export privileges or its exclusion from practice.

15 CFR 766.17(b)(2) requires that the presiding judge, after a *de novo* review of the entire record, recommend the appropriate administrative sanction or such other action as he or she deems appropriate.[1] 15 CFR 766.17(c) provides that any such penalty, or part thereof, may be suspended for a reasonable period of probation and remitted if no further violations occur during said probationary period. The Respondent argues that no administrative sanctions be imposed in this case or alternatively, that only a modest civil penalty be levied. ALCOA further argues that if the judge decides on the latter approach, that said penalty be suspended on probation.

In support of its position, the Respondent argues that any violations that occurred were not intentional or willful, that said violations resulted from its failure to comprehend the fact that the March 1991 **Federal Register** Notice added thirty-nine (39) chemicals to the list of chemicals that were identified as precursors for chemical weapons; that there was no risk that the chemicals would be diverted to chemical weapons use; that had the Respondent applied to BXA for the necessary validated licenses, they surely would have been granted; that the exports were entirely consumed at the refineries of the Respondent's subsidiary companies in Jamaica and Suriname; [1] that prior to the initiation of the government's investigation of this matter, the Respondent began developing and implementing an expanded and more comprehensive export compliance program, and that the Respondent has fully cooperated with the government in it's investigation of this matter.

In the government's reply to the Respondent's Answer, it argues that the retaining of outside counsel and experts to assist in improving its export compliance procedures prior to the initiation of the investigation is an aggravating rather than a mitigating factor; that the violations alleged herein are derived from errors that go to the very core of ALCOA's export compliance procedures; that ALCOA's methodology did not involve a periodic review of the Regulations for shipment of "scheduled buying list goods" after an initial determination was made concerning the export licensing of items on that list or a thorough monitoring of pertinent regulatory amendments published in the **Federal Register**; that outside counsel and experts retained by ALCOA should have revamped this system immediately upon being retained; that such changes in procedures were not implemented until after the commencement of the investigation; that this investigation did not arise in the context of a voluntary self-disclosure pursuant to § 764.4 of the Regulations; and that given this, the favorable weight accorded such self-disclosures in determining appropriate sanctions is not a factor to be considered.

The government goes on to argue that an "exporter cannot reasonably 'fail to attach significance' to a regulatory change, bemoan the fact that he/she has been 'tripped-up' by changes in the law, and them argue that, by some stretch of the imagination, he/she should not be penalized for 'inadvertently' violating the law"; that ignorance of the law is no excuse; that the fact that the total value of the 50 shipments was under $112,000 is of no consequence in determining the proper amount of the civil penalty; and that the lack of intent to make false or misleading statements is irrelevant since liability attaches on a strict liability basis. Finally, the government notes that since the March 13, 1991 amendments were properly published in The **Federal Register**, the Respondent was charged with notice of the contents of the changes (*See* 44 U.S.C.A. § 1507 (1991)).

In ALCOA's response to the government's arguments, it states that there are numerous undisputed mitigating circumstances in this case and no aggravating factors; that under the circumstances, it is appropriated to waive or suspend sanctions; that included within the mitigating factors are that the Respondent has no prior violations; that the chemicals were shipped to countries that are not suspected of illegal weapons development; that there was a presumption of approval, on a case by case basis, for licenses to export these chemicals from the United States to Jamaica and Suriname; that the failure of the Respondent to obtain validated licenses should be viewed as technical violations; that the government's logic is distorted since it implies that it is somehow more appropriate to impose a civil penalty on the Respondent because its compliance program was imperfect rather than if ALCOA had had no export compliance program at all; that while the Act and Regulations may not mention the value of exports as a standard for Administrative sanctions, the Judge may consider that issue as a factor in his determination; that the government's proposed penalties are nearly seven (7) times larger than the value of the shipments in this case; that given the lack of harm to U.S. national security or foreign policy interests as a result of these exports, this huge multiple illustrates that the proposed penalty is excessive and overly punitive; that recent government settlement agreements in other cases demonstrate that the proposed penalty is unreasonable; that the Respondent has no prior violations; and that there are numerous cases with similar or even more egregious facts in which the settlement proposal ranged from $2,000 to $5,000 per violation, large portions of which were suspended.

After fully considering the arguments of the parties as to the appropriate sanction in this case, I find that the Respondent's civil penalty shall be $10,000 for each of the 100 violations for a total of $1,000,000. While this assessment exceeds that requested by the government, I find that it is warranted under the facts of this case. The passage of the Export Administration Act of 1979 had one main purpose—to control exports from the United States to other countries. As was noted in the Legislative history of this Act referring to S 737:

> Exports contribute significantly to U.S. production and employment, and improved export performance helps pay for expanding U.S. imports of oil and other commodities. There are circumstances, however, in which the economic benefits and the presumption against government interference with participation in international commerce by United States citizens are outweighed by the potential adverse effect of particular exports on the national security * * * of the United States.[1]

By **Federal Register** Notice (Volume 56, No. 49, dated March 13, 1991), the Department of Commerce expanded export control of certain chemical weapons precursors (*i.e.*, chemicals that can be used in the manufacture of chemical weapons). The Notice amended the extant Commodity Control List, by expanding the number of countries for which a validated license was required for 39 precursor chemicals. In issuing this Notice, the Department of Commerce underscored its concern about chemical and biological weapons indicating that serious consideration is being given to eliminating the then-existing contract sanctity provisions of the regulations (*See* Respondent's July 27, 1998 submission, Tab 6). Thus, as the world was becoming a more dangerous place subject to terrorist attacks, the United States Government responded by significantly increasing its regulation of specific chemicals and biological precursors.

In this regard, the government noted in it's May 1, 1998 Reply at page 10:

> International trade has been regulated from the earliest days of the republic. While particular aspects or areas of regulations have varied, the fact of the matter is that those engaged in an industry in which government regulation is likely must be presumed to be aware of, and practitioners in the industry are charged with knowledge of as well as the responsibility to comply with, the duly promulgated regulations. [Citing *United States* v. *International Minerals and Chemical Corporation*, 402 U.S. 558 at 563 & 565, 29 L.Ed. 178(1971)].

[1] Importantly, BXA does not have a standard table of orders which lists offenses with a recommended penalty range (*e.g.*, misconduct: 1–3 month suspension) which provides guidance to the judge such as in United States Coast Guard license suspension and revocation cases (46 CFR § 5.569) or a penalty schedule for United States Department of Commerce, National Oceanic and Atmospheric Administration cases where the proposed penalty is based on a published penalty schedule promulgated by the NOAA general counsel and which carries a presumption as to reasonableness (*See In the Matter of William J. Verna*, 4 O.R.W. 64 (NOAA App. 1985)). In that case, the Acting Administrator of NOAA found that the published penalty schedule represents a reasonable starting point and if the judge substantially increases or decreases the amount, good reason for such departures should be stated (*Also see, In the Matter of Kuhnle*, 5 O.R.W. 514, (NOAA App. 1989).

[1] The Respondent notes that neither of these designations were included in Court Group D: 3, which identifies those designations of particular concern with respect to chemical weapons proliferation (*i.e.*, Iran, Syria, Libya, North Korea, and Cuba) *See* CFR ¶799.1, Supp. 1 (*See* 15 CFR § 799.1, Supp.1 (1995)).

[1] *See* Export Administrative Act, P.L. 96–92, 93 Stat. 503, Legislative History at 1148 (Purpose of the Legislation) which is part of the record herein.

In *the Matter of Core Laboratories, Inc.*, ITA–AB–2–80, Initial Decision and Order on Remand of Administrative Law Judge Huge J. Dolan (May 4, 1982) aff'd, *In the Matter of Core Laboratories, Inc.*, ITA–AB–2–80, Decision on Appeal and Order (March 14, 1983), remanded on other grounds, *United States* v. *Core Laboratories, Inc.*, 759 F.2d 480 (5th Cir. 1985).

Of all the aggravating factors in this case, one is particularly damming—*that the Respondent, over a period of four and one-half (4.5) years, made 50 separate exports of potassium fluoride and/or sodium fluoride in violation of the Export Administration Regulations (emphasis added)*. Importantly, ALCOA is not a new or small company that doesn't understand the foreign export regulatory process. Quite to the contrary, the Respondent is a large multinational corporation which had a separate division (Export Supply Division) specifically dedicated to receiving requisitions, locating suppliers, purchasing products, and shipping the requested items in accordance with applicable export licensing requirements. Thus, ALCOA's conduct, under this backdrop, was flatly inexcusable and the fact that the violations were not intentional or willful is only relevant to the fact that a federal criminal indictment was not handed down. Respondent's failure to comprehend the change in the Federal Register Notice, given the existence of its Export Supply Division, is also particularly troubling.[1] Moreover, the fact that the unlawful shipments consisted of precursors for chemical weapons, regardless of the lack of any potential diversion in these instances, is not something that should be viewed as a technical oversight and is clearly an aggravating factor.

In mitigation, ALCOA argues that had it applied for the necessary validated licenses, they would have been presumptively granted. This argument misses the point. Over the past 20 years, a terrorist threat has developed to our Republic and our interests aboard. In order to protect our country and our interests, laws and regulations were passed/implemented to allow the government to monitor and regulate the export of precursor chemicals and if necessary, prevent any such exports that pose a clear and present danger. Given the huge number of exports from the United States, how is the government suppose to monitor the export of precursor chemicals if it doesn't know that the shipments were being made over a four and one-half year period? ALCOA responds that it filed under general license G–DEST and implies that the government was aware of these 50 separate exports over a four and one-half year period (*See* Respondent's Answer dated January 20, 1998, page 8). I disagree. The Respondent did not submit any evidence to support this position. The Respondent cannot shift its responsibility to the government to do that which it is legally required to do. Given the volume of such exports and the limited public resources to regulate these shipments, the government placed a legal duty on the exporter to file the specific applications with the office charged with such oversight responsibility. The Respondent breached that duty and in so doing, deprived the government of the opportunity to monitor its export of precursor chemicals.

The Respondent also argues that all of the precursor chemicals were entirely consumed at the refineries of the Respondent's subsidiary companies in Jamaica and Suriname. Once again, ALCOA misses the point. The crucial point here is that the government was deprived of possible vital information in its fight to control terrorism. In other words, if the world-wide export of chemicals/biological agents were a puzzle being put together by a U.S. Department of Commerce security team, this information constituted 50 pieces of that puzzle that the government did not have. While it turned out that there was no problem, the fact remains that the government did not have the whole picture. Without the whole picture, or in this case, all of the information about precursor chemical exports, catastrophic errors in preventative decision-making could have occurred.

The Respondent argues that prior to the initiation of the investigation into this matter, it began developing and implementing an expanded and more comprehensive export compliance program. The Respondent notes that it developed export control matrices for each U.S. business unit to identify export control issues on a product-by-product basis; produced a video to increase awareness of export control requirements to be used in conjunction with on-site training for each business unit; appointed export liaison's for each of its business units including the . Export Supply Division, who is responsible for disseminating export compliance information; that it's legal department now monitors the **Federal Register** daily for changes to the EAR effecting the Respondent's products and operations, and disseminates this information to the export liaisons; that the Respondent is also developing a Denial List search application on its new company-wide intranet; and that all key Exports Supply Division employees have attended export compliance training seminars.

While the Respondent's January 20, 1998 Answer details the above-recited improvements to its export compliance program, there is no record evidence submitted by the Respondent in Tab 2 of its January 20, 1998 Answer specifying when these improvements were implemented. The EAR amendment occurred on March 13, 1991. The violations occurred between June 14, 1991 and December 7, 1995. During this period of time, the Respondent's export compliance procedures did not involve a periodic review of the requirements for shipments of "scheduled buying list goods" or a through monitoring of pertinent regulatory amendments published in the **Federal Register** (*See* Stipulation of Fact No. 17). Thus, the record is void of any meaningful evidence as to what policies and procedures were in effect between March 13, 1991 and December 7, 1995.

Moreover, subsequent to December 7, 1995, the record does not indicate when the above-recited improvements were implemented and in what form those improvements were made. Indeed, the first memorandum from the Legal Department to the Export Supply Division is dated May 9, 1996. Interestingly, the only time this issue is discussed during this time period is set forth in the Joint Stipulations. However, as one can see from reading joint Stipulation of Fact Nos. 17, 20, 27, and 29, these factual recitations only recite what the Respondent *did not do* as opposed to what program it had in effect and what changes were made.

The Respondent states that anything more than a nominal fine in this case is unreasonable. In support of this position, ALCOA argues that recent BXA enforcement orders based on settlement agreements establish a range from $2,000 per violation to $5,000 per violation, large portions of which were suspended. The Respondent cites the following settlements in support of it's argument that the government's proposed $7,500 per violation is excessive and inconsistent with past BXA practice:

1. *Gateway 2000* case—This case involved the unlawful export of U.S.—origin computer equipment without a license in violation of § 787.4(a), § 787.5(a) and § 787.6 for a total of 87 violations. The agreed upon fine was $402,000 or $4,620 per violation.

2. *Allergan, Inc.* case—The Respondent was charged with 412 violations of § 787.6 for violating export controls on biological agents, the fine was $824,000 or $2,000 per violation.

3. *Sierra Rutil America, Inc.* case—The Respondent was charged with eight unlicensed exports of sodium fluoride to Sierra Leone over a two year period in violation of § 787.6. The settlement resulted in a $30,000 fine or $3,750 per violation with half of the fine remitted on probation. This case did not involve exports to controlled or affiliated entities.

4. *Herb Kimiatck and Kimson Chemical Inc.* case—The Respondent was charged with two counts of exporting sodium cyanide without a validated license in violation of § 787.6 and § 787.4(a) of the regulations. The fine was $20,000 or $10,000 per violation.

5. *Snytex* case—The Respondent was charged with 13 violations of unlawfully exporting hydrogen fluoride in violation of § 787.2. The fine was $65,000 or $5,000 per violation. One half of the fine was remitted for 2 years and then waived if there were no further violations.

6. *Palmeros Forwarding* case—The Respondent was charged with 10 violations wherein it used export control documents which represented that the Syntex hydrogen fluoride did not need export licenses. The fine was $50,000 or $5,000 per violation with a two year denial of export privileges. The fine was export privilege denial were suspended on probation.

7. *Villasana* case—This case also arose out of the *Syntex* case. The Respondent was charged with one count and fined $2500 and the denial of export privileges. The fine and export privilege denial were suspended on probation.

8. *Chemicals Export Company of Boston* case—The Respondent was charged with four counts of exporting sodium cyanide without

[1] As noted above, 44 U.S.C.A. § 1507 (1991) imputes knowledge of these changes to the Respondent.

a valid export permit in violation of § 787.6. The fine was $16,000 or $4,000 per violation.

9. *Southern Information Systems* case—The Respondent was charged with five counts for the unlawful export of digital microwave systems in violation of § 787.6. The fine was $25,000 or $5,000 per violation.

10. *Advanced Technology* case—The Respondent was charged with two counts of re-exporting electronic equipment from Belgium to Russia without a permit in violation of § 787.6. The fine was $10,000 or $5,000 per violation.

11. *LEP Profit International, Inc.*—The Respondent were charged with twelve counts of preparing shipping documents that contained false information in violation of § 0787.5(a). The fine was $60,000 or $5,000 per violation. A portion of the penalty, $15,000, was suspended for two years, then waived so long as LEP complies with the export control regulations.

12. *NF&M International Inc.*—The Respondent were charged with thirty-three violations for exporting titanium alloy products without the necessary export licenses in violation of § 787.6. The fine was $82,500 or $42,500 per violation. The Department agreed to suspend payment of $42,500 for one year and then to waive that payment provided NF&M complies with export control regulations.

13. *DATRAC AG*—The Respondent was charged with one count for re-exporting U.S.-origin data communications equipment from Switzerland to Singapore without obtaining the required export license in violation of § 787.6. The fine was $2,500.

14. *Lasertechnics Inc.*—The Respondent in this case was charged with thirty-six violations for exporting U.S.-origin thyratrons from the United States to Hong Kong, Ireland, Malaysia, and Singapore without obtaining the individual validated export licenses in violation of § 787.6. The fine was $180,000 or $5,000 per violation. Pursuant to § 766.18(c), the remaining balance of $80,000 was suspended for three years and shall thereafter be waived, provided that, during the period of suspension, the Respondent has committed no violation of the Act, or any regulation, order, or license issued thereunder.

15. *President Titanium*—The Respondent was charged with twenty-five violations for exporting U.S.-origin titanium bars to various countries without obtaining the required validate licenses in violation of 787.6. The fine was $125,000 or $5,000 per violation. Pursuant to § 766.18(c), the remaining balance of $50,000 was suspended for one year provided that, during the period of suspension, the Respondent commit no violation of the Act, or any regulation, order, or license issued thereunder.

16. *Allvac*—The Respondent was charged with forty-eight counts for exporting titanium alloy solid cylindrical forms with diameters greater than three inches from the United States to various countries and exported maraging steel to Germany without the required validated license in violation of § 787.6. The fine was $122,500 or $2,552 per violation. Pursuant to § 766.18(c) payment of the remaining balance of $47,500 was suspended for one year provided that, during the period of suspension, the Respondent commit no violation of the Act, or any regulation, order, or license issued thereunder.

17. *EC Company*—The Respondent was charged with four violations of making false or misleading statements on an export control document; exported U.S.—origin spare parts from the United States to Vietnam without validated license in violation of § 787.6; and two counts for exporting spare parts from the United States to Singapore that Respondent knew would be re-exported from Singapore to Vietnam in violation of § 787.4(a). The fine was $8,000 or $2,000 per violation.

I find the Respondent's argument regarding the previous settlement of cases by BXA with lower civil penalty assessments to be unpersuasive. Settlements are reached based upon the facts of each case. These facts include the relative strengths and weaknesses of each party's case; the desires of one or both sides to extricate themselves from the litigation for whatever reason; and a determination that such a settlement is a good business decision in the case of a Respondent or satisfies the public interest in the case of the government. Moreover, the reasons behind each party's decision to enter into a settlement are rarely, if ever, made public where foreign policy and/or national security issues are involved. As the government points out, this phenomenon is especially true in export cases (TR. 42).

During the Oral Argument in this matter, Counsel for the government stated:

All parties in this courtroom know that citing a series of case names and corresponding settlement figures knowing nothing of the details of what actually transpired during the settlement negotiations, much less any internal discussions of litigation strategy or what not, is really not particularly helpful.

BXA does not maintain a rubric. It does not have a penalty matrix or a cookie cutter into which to force every case it prosecutes. Rather, each case is individually evaluated, and considerations that apply in one, may not apply in another, or may not be given the same impact depending on the facts of each case.

The Respondent argues in mitigation that it has no prior record of violations. I find this argument is entitled to little or no weight given the fact that for four and one-half years, the Respondent committed one hundred violations of the EAR. Indeed, It is not the prior record that is important here, but the aggravating factor of 100 violations and the continuing course of conduct over such a long period. Under this circumstance, I find that the Respondent's actions constitute a gross and long standing neglect of it's undisputed legal duty which totally outweighs the lack of a prior record of violations.

As noted above, the government recommends a $7,500 civil penalty assessment for each of the 100 violations. The Respondent argues for a zero level of civil penalty. However, the Respondent states that it would accept a nominal fine per violation under the suspension on probation procedures. The Respondent also states that the government's recommended sanction is close to the $10,000 maximum and is therefore unreasonable. Indeed, it argues that if you look at the cited cases that were settled, the maximum range should not exceed $2,000 to $5,000. I disagree. Congress established a statutory scheme which provided for a full panoply of penalties ranging from federal prison time and/or severe monetary fines to mere administrative action which could involve civil penalties, denial of export privileges, exclusion from practice or any combination thereof. When viewed in this context, it becomes readily apparent that the government has recommended *an unreasonably low sanction* (*emphasis added*).

Indeed, the government might well have opted to argue in a criminal forum that ALCOA's conduct was so grossly negligent as to constitute a willful disregard of federal law. In this case, the amount of care demanded by the standard of reasonable conduct on the part of the Respondent must be in proportion to the apparent risk. As the danger becomes greater, the Respondent is required to exercise caution commensurate with that increased risk. Since the Respondent was dealing with precursors for chemical weapons, the March 13, 1991 Federal Register Notice constructively put it on notice that it must exercise a great amount of care because the risk is great. It failed to do so.

Importantly, the government voluntarily lowered the sanction bar all the way down to the level of an administrative civil penalty in this case. That having been done, the Respondent argues that the government is being harsh and should lower the bar further. In effect, the Respondent is attempting to have the government negotiate with itself. This is wrong. Based upon the detailed discussion set forth above, I find the appropriate sanction for each of these unlawful shipments is $10,000. The Respondent is a huge multi-national corporation. As such, a $10,000 penalty per violation is minuscule for ALCOA who describes itself as "one of the world's leading producers of aluminum.* * *". At no time during this proceeding, did ALCOA's counsel raise financial hardships for mitigating any civil penalty. At some point, ALCOA has to stand up and take responsibility for it's gross and long-standing breach of legal duty. Conversely, the United States government must set its civil penalties at a high enough level to insure that large multi-national corporations don't ignore the law and if they get caught, merely consider the fine as a cost of doing business.

Accordingly, it is ordered that Aluminum Company of America, having been found by preponderant evidence to have one hundred violations of the Export Administration Regulations, pay a civil penalty in the amount of $10,000 per violation for a total of $1,000,000. [1]

[1] In addition to the arguments made herein as to the appropriate amount of the monetary penalty for each violation in this case, I hereby accept the arguments of the government as reasonable to the extent they are not inconsistent with the rational set forth in Section II, above. To the extent that the Respondent's arguments as to sanction are inconsistent with the Recommended Decision and Order, they are specifically rejected.

It is Further Ordered that a copy of this Recommended Decision and Order shall be served on Aluminum Company of America and the Department of Commerce in accordance with § 778.16(b)(2) of the Regulations.

Done and Dated on this 21sth day of December 1998, Alameda, California.

Hon. Parlen L. McKenna,

United States Administrative Law Judge.

To be considered in the thirty (30) day statutory review process which is mandated by 50 U.S.C.A. § 2412(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room H–3898, Washington, DC 20230, within twelve (12) days. Replies to the other party's submission are to be made within the following eight (8) days (*See* 15 CFR 766.22(b) and 50 Fed. Reg. 53134 (1985)). Pursuant to 50 U.S.C.A. § 2412(c)(3) of the Act and 15 CFR 766.22(e) of the Final Order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within fifteen (15) days of its issuance.

[FR Doc. 99–19095 Filed 8–4–99; 8:45 am]

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DEPARTMENT OF COMMERCE

Under Secretary for Export Administration

[Docket Number 98–BXA–10]

In the Matter of: TIC LTD. Suite C, Regent Centre, Explorers Way, Freeport, Bahamas, Respondent; Decision and Order

On August 12, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), issued a charging letter initiating an administrative proceeding against TIC Ltd. (hereinafter "TIC"). The charging letter alleged that TIC committed 112 violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730–774 (1999)) (hereinafter the "Regulations"),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. sections 2401–2420 (1991 & Supp. 1999)) (hereinafter the "Act").[2]

Specifically, the charging letter alleged that, beginning in June 1994 and continuing through about July 1996, TIC conspired with Thane-Coat, Inc., Jerry Vernon Ford, Preston John Engebretson, and TIC Ltd. to bring about acts that constituted violations of the Act, or any regulation, order, or license issued thereunder. The purpose of the conspiracy was for TIC and the others to export U.S.-origin commodities to Libya, a country subject to a comprehensive economic sanctions program. To accomplish their purpose, the conspirators devised and employed a scheme to export U.S.-origin items from the United States through the United Kingdom to Libya, without applying for and obtaining the export authorizations that the conspirators knew or had reason to know were required under U.S. law, including the Regulations. *See* 15 CFR 764.4, previously codified at 15 CFR 785.7 of the former Regulations, and 15 CFR 772.1 of the former Regulations. BXA alleged that, by conspiring or acting in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the Act, or any regulation, order or license issued thereunder, TIC violated Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996) of the former Regulations.

BXA alleged that, in furtherance of the conspiracy described above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, TIC, as a co-conspirator, exported polyurethane (isocyanate/polyol) and polyether polyurethane (hereinafter collectively referred to as "pipe coating materials") from the United States to Libya, without obtaining from the Department the validated export licenses that TIC knew or had reason to know were required under Section 772.1(b) (redesignated as Section 772A.1(b) on March 25, 1996) of the former Regulations. BXA alleged that, by exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act, or any regulation, order, or license issued thereunder. TIC, as a co-conspirator, violated Section 787.6 or Section 787A.6 of the former Regulations in connection with each shipment. Specifically, BXA alleged that TIC, as a co-conspirator, committed 32 violations of Section 787.6 and five violations of Section 787A.6 of the former Regulations, for a total of 37 violations.

BXA also alleged that, by selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended to occur with respect to the transactions, TIC, as a co-conspirator, violated Section 787.4(a) or Section 787A.4(a) of the former Regulations in connection with each shipment. Specifically, BXA alleged that TIC committed 32 violations of Section 787.4(a) and five violations of Section 787A.4(a) of the former Regulations, for a total of 37 violations.

Finally, BXA also alleged that, in furtherance of the conspiracy described above and to effect the 37 exports described above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, TIC used Shipper's Export Declarations or Bills of Lading, export control documents as defined in Section 770.2 (redesignated as Section 770A.2 on March 25, 1996) of the former Regulations, on which it represented that the commodities described thereon, pipe coating materials, were destined for ultimate end-use in the United Kingdom. In fact, the pipe coating materials were ultimately destined for Libya. BXA alleged that, by making false or misleading statements of material fact directly and indirectly to a United States agency in connection with the use of export control documents to effect exports from the United States, TIC, as a co-conspirator, violated Section 787.5(a) or Section 787A.5(a) of the former Regulations in connection with each shipment. Specifically, BXA alleged that TIC committed 32 violations of Section 787.5(a) and five violations of Section 787A.5(a) [3] of the former Regulations, for a total of 37 violations.

Thus, BXA alleged that TIC committed one violation of Section

[1] The alleged violations occurred during 1994, 1995, and 1996. The Regulations governing the violations at issue are found in the 1994, 1995 and 1996 versions of the Code of Federal Regulations (15 C.F.R. Parts 768–799 (1994 and 1995) and 15 C.F.R. Parts 768–799 (1996), as amended (61 *Fed Reg.* 12714, March 25, 1996)) (hereinafter the "former Regulations"). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the existing Regulations as 15 C.F.C. Parts 768A–799A. In addition, the March 25, 1996 **Federal Register** publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730–774, effective April 24, 1996. The former Regulations define the violations that BXA alleges occurred. The reorganized and restructured Regulations establish the procedures that apply to this matter.

[2] The Act expired on August 20, 1994. Executive order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), and August 13, 1998 (3 C.F.R., 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1999)).

[3] BXA noted in its motion that, because of a typographical error, the charging letter incorrectly cites to Section 785A4(a) and requested that the ALJ authorize an amendment to the charging letter to provide the correct citation to the regulatory provision that spells out the false statement violation, Section 787A.5(a). The ALJ granted BXA's request and amended the charging letter to correct the citation to Section 787A.5(a).

787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996); 32 violations of Section 787.4(a); five violations of Section 787A.4(a); 32 violations of Section 787.5(a); five violations of Section 787A.5(a); 32 violations of Section 787.6, and five violations of Section 787A.6, for a total of 112 violations of the former Regulations.

Section 766.3(b)(1) of the Regulations provides that notice of issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at his last known address. In accordance with that section, on August 12, 1998, BXA sent to TIC, at its last known address, notice that it had issued a charging letter against it. Although not required by the Regulations, BXA also sent a copy of the letter to TIC's last-known agent in the Bahamas.

By letter dated September 24, 1998, counsel for TIC submitted a letter to Mark D. Menefee, Director of the Office of Export Enforcement (OEE), responding to the charging letter. On September 29, 1998, BXA filed a copy of that letter, together with a response to several assertions made by TIC in the letter, with the U.S. Coast Guard ALJ Docketing Center.[4]

On October 8, 1998, the ALJ issued an Order in which he found that TIC's September 24, 1998 letter was, in essence, a motion to dismiss the charging letter. For the reasons set forth in the ALJ's October 8, 1998 Order, the ALJ denied TIC's motion to dismiss and gave TIC additional time, until November 9, 1998, to respond to the allegations set forth in the charging letter. On October 20, 1998, the ALJ amended the October 8, 1998 Order to give TIC still more time, until November 20, 1998, to file its answer. TIC did not file an answer to the charging letter. Accordingly, because TIC did not answer the charging letter within the time established by the ALJ's Order, as required by and in the manner set forth in Section 766.6 of the Regulations, BXA moved for issuance of a default order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be alleged in the charging letter, and concluded that those facts constitute one violation of Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996); 32 violations of Section 787.4(a); five violations of Section 787A.4(a); 32 violations of Section 787.5(a); five violations of Section 787A.5(a); 32 violations of Section 787.6, and five violations of Section 787A.6, for a total of 112 violations of the former Regulations by TIC, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for that violation is a denial, for a period of 20 years, of all of TIC's export privileges. As provided by Section 766.22 of the Regulations, the Recommended Decision and Order has been referred to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

Accordingly, it is therefore ordered,

First, that, for a period of 20 years from the date of this Order, TIC Ltd., Suite C, Regent Centre, Explorers Way, P.O. Box F–40775, Freeport, the Bahamas, and all of its successors or assigns, officers, representatives, agents, and employees when acting for or on behalf of TIC may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any items exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on TIC and on BXA, and shall be published in the **Federal Register.**

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: July 12, 1999.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 99–19927 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–M

[4] Although the charging letter advised TIC that a formal proceeding had been initiated against it and included the address for the U.S. Coast Guard ALJ Docketing Center so that TIC could file an answer to the charging letter with that Office, TIC addressed its response to the Director of OEE without providing a copy of that response to the U.S. Coast Guard ALJ Docketing Center.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1046]

Grant of Authority for Subzone Status CN Biosciences, Inc. Distribution and Processing Facility (Life Science Chemicals) San Diego, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the City of San Diego, California, grantee of Foreign-Trade Zone 153, has made application to the Board for authority to establish special-purpose subzone status at the life science chemical distribution and processing facility of CN Biosciences, Inc., located in San Diego, California (FTZ Docket 17–95, filed 4/26/95);

Whereas, notice inviting public comment has been given in the **Federal Register** (60 FR 24830, 5/10/95); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest if subject to restriction;

Now, therefore, the Board hereby grants authority for subzone status at the life science chemical distribution and processing facility of CN Biosciences, Inc., located in San Diego, California, (Subzone 153A), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and further subject to a special restriction requiring that manufacturing/processing activity conducted under zone procedures and resulting in a change of HTSUS classification shall be limited to the level indicated in the application (5%), and further, all such activity shall be reported to the Board annually.

Signed at Washington, DC, this 27th day of July 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 99–20211 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1048]

Grant of Authority for Subzone Status Buffalo China, Inc.; (Dinnerware/Table Top Products), Buffalo, NY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the County of Erie, New York, grantee of Foreign-Trade Zone 23, has made application to the Board for authority to establish special-purpose subzone status at the dinnerware/table top products finishing and distribution (non-manufacturing) facility of Buffalo China, Inc., located in Buffalo, New York (FTZ Docket 29–98, filed 5/22/98);

Whereas, notice inviting public comment has been given in the **Federal Register** (63 FR 31717, 6/10/98); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the dinnerware/table top products finishing and distribution facility of Buffalo China, Inc., located in Buffalo, New York, (Subzone 23C), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 27th day of July 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 99–20212 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Continuation of Antidumping Duty Order: Barbed Wire and Barbless Fencing Wire From Argentina

[A–357–405]

International Trade Administration

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty order: barbed wire and barbless fencing wire from Argentina

SUMMARY: On April 7, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on barbed wire and barbless fencing wire from Argentina would be likely to lead to continuation or recurrence of dumping (64 FR 16899 (April 7, 1999)). On May 5, 1999, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on barbed wire and barbless fencing wire from Argentina would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 24171 (May 5, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on barbed wire and barbless fencing wire from Argentina.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: May 12, 1999.

Background

On December 2, 1998, the Department initiated, and the Commission

instituted, a sunset review (63 FR 66527 and 63 FR 66563, respectively) of the antidumping duty order on barbed wire and barbless fencing wire from Argentina pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Barbed Wire and Barbless Fencing Wire from Argentina*, 64 FR 16899 (April 7, 1999)).

On May 5, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on barbed wire and barbless fencing wire from Argentina would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Barbed Wire and Barbless Fencing wire from Argentina*, 64 FR 24171 (May 5, 1999) and USITC Pub. 3187, Inv. No. 731–TA–208 (Review) (May 1999)).

Scope

The merchandise covered by this antidumping duty orders is barbed wire and barbless fencing wire from Argentina, which is currently classifiable under Harmonized Tariff Schedule (HTS) item number 7313.00.00. The HTS item number is provided for convenience and customs purposes. The written product description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on barbed wire and barbless fencing wire from Argentina. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this order is seven days after the date of publication in the **Federal Register** of the Commission's determination or, in this case, May 12, 1999. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than April 2004.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20216 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–007]

Continuation of Antidumping Duty Order: Barium Chloride From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty order: barium chloride from the People's Republic of China.

SUMMARY: On February 4, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on barium chloride from the People's Republic of China would be likely to lead to continuation or recurrence of dumping (64 FR 5633 (February 4, 1999)). On March 3, 1999, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on barium chloride from the People's Republic of China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 10317 (March 3, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on barium chloride from the People's Republic of China.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: March 10, 1999.

Background

On October 1, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 52683 and 63 FR 52750, respectively) of the antidumping duty order on barium chloride from the People's Republic of China pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Barium Chloride from the People's Republic of China*, 64 FR 5633 (February 4, 1999)).

On March 3, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on barium chloride from the People's Republic of China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Barium Chloride from the People's Republic of China*, 64 FR 10317 (March 3, 1999) and USITC Pub. 3163, Inv. No. 731–TA–149 (Review) (March 1999)).

Scope

The merchandise covered by this antidumping duty order is barium chloride, a chemical compound having the formula BaCl2 or BaCl2-2H2 0, from the People's Republic of China, currently classifiable under item 2827.38.00 of the Harmonized Tariff Schedules (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on barium chloride from the People's Republic of China. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this finding is March 10, 1999, seven days after the date of publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than February 2004.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20219 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–002]

Continuation of Antidumping Duty Order: Chloropicrin From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of continuation of antidumping duty order: chloropicrin from the People's Republic of China.

SUMMARY: On March 9, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on chloropicrin from the People's Republic of China would be likely to lead to continuation or recurrence of dumping (64 FR 11440 (March 9, 1999)). On April 7, 1999, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on chloropicrin from the People's Republic of China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 16998 (April 7, 1999)). Therefore, pursuant to 19 CFR 351.218(e)(4), the Department is publishing notice of the continuation of the antidumping duty order on chloropicrin from the People's Republic of China.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482-1560, respectively.

EFFECTIVE DATE: April 14, 1999.

Background

On November 2, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 58709 and 63 FR 58761, respectively) of the antidumping duty order on chloropicrin from the People's Republic of China pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Chloropicrin from the People's Republic of China*, 64 FR 11440 (March 9, 1999)).

On April 7, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on chloropicrin from the People's Republic of China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Chloropicrin from the People's Republic of China*, 64 FR 16998 (April 7, 1999), and USITC Pub. 3175, Inv. No. 731–TA–130 (Review) (April 1999)).

Scope

The merchandise covered by this antidumping duty order is chloropicrin, also known as trichloronitromethane from the People's Republic of China. A major use of the product is as a pre-plant soil fumigant. Chloropicrin is currently classifiable under Harmonized Tariff Schedule (HTS) item number 2904.90.50. The HTS item number is provided for convenience and customs purposes. The written product description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on chloropicrin from the People's Republic of China. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(e)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case,

however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this order is April 14, 1999, seven days after the date of publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than March 2004.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20215 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–003]

Final Results of Expedited Sunset Review: Cotton Shop Towels From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: cotton shop towels from the People's Republic of China.

SUMMARY: On January 4, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on cotton shop towels from the People's Republic of China (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 5, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping duty order is cotton shop towels from the People's Republic of China. Shop towels are absorbent industrial wiping cloths made from a loosely woven fabric. The fabric may be either 100-percent cotton or a blend of materials. Shop towels are currently classifiable under item numbers 6307.10.2005 and 6307.10.2015 of the Harmonized Tariff Schedules of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.[1]

This review covers imports from all manufacturers and exporters of Chinese shop towels.

History of the Order

On August 16, 1983, the Department issued its amended final determination of sales at less than fair value in the investigation of cotton shop towels from the People's Republic of China (48 FR 37055). The Department published weighted average dumping margins of 30.1 percent for China National Textile Import & Export Corporation and 37.2 percent for China National Arts & Crafts Import & Export Corporation. The Department also published a weighted average dumping margin of 36.2 percent for all other Chinese manufacturers/exporters.

[1] The Department determined that certain 18"x30" dish towels (02/19/93) are within the scope of the order. Pursuant to court remand, the Department determined that certain cotton shop towels, hemmed or cut and hemmed in Honduras, are within the scope of the order (1/18/94). The Department determined that the following products are outside the scope of the order: towels assembled in Canada from cotton grey fabric from the People's Republic of China (8/21/90).

The antidumping duty order on cotton shop towels from the People's Republic of China was published in the **Federal Register** on October 4, 1983 (48 FR 45277). Since that time, the Department has conducted six administrative reviews.[2] The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On January 4, 1999, the Department initiated a sunset review of the antidumping duty order on cotton shop towels from the People's Republic of China (64 FR 364), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Milliken & Company ("Milliken") on January 19, 1999, within the deadline specified in § 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response from Milliken on February 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under § 351.218(d)(3)(i). Milliken claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of shop towels. In addition, Milliken stated that it was the petitioner in the original investigation. We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

The Department determined that the sunset review of the antidumping duty order on cotton shop towels from the People's Republic of China is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). Therefore, on May 3, 1999, the Department extended the time limit for

[2] *See Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 50 FR 26020 (June 24, 1985); *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 55 FR 7756 (March 5, 1990); *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 56 FR 4040 (February 1, 1991); *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 56 FR 60969 (November 29, 1991); *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 57 FR 30466 (July 9, 1992); *and Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 57 FR 43695 (September 22, 1992).

completion of the final results of this review until not later than August 2, 1999, in accordance with section 751(c)(5)(B) of the Act.[3]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, Milliken's comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes of the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to § 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In its substantive response, Milliken argues that the history of the case and the actions taken by Chinese producers and exporters of shop towels prior to and during the pendency of this proceeding clearly demonstrate that revocation likely would result in a recurrence of dumping of shop towels in the United States. Specifically, Milliken, citing *The World Trade Atlas* (Nov. 1998), asserts that Chinese producers and exporters significantly reduced their shipments to the United States and ultimately ceased exportation after the Department calculated extremely high dumping margins in subsequent reviews (*see* February 3, 1999, Substantive Response of Milliken at 4).

In conclusion, Milliken argues that the Department should determine that there is a likelihood that dumping would continue or recur were the order revoked because imports of the subject merchandise decreased significantly after the imposition of the order and continue to be virtually non-existent.

The Department agrees with Milliken that imports of the subject merchandise decreased substantially over the 16-year period from the imposition of the order in 1983 to the present. However, we disagree with Milliken's assertion that the Department should rest its decision on the basis that imports of subject merchandise have ceased. Despite a two-year cessation of imports between 1996 and 1997, shipments of the subject merchandise from the People's Republic of China continue.

With respect to dumping margins, an examination of the final results of administrative reviews confirms that dumping margins above *de minimis* levels have continued throughout the life of the order.[4] As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates above *de minimis* levels continue in effect for exports of the subject merchandise by all known Chinese manufacturers/exporters. Therefore, given that dumping has continued over the life of the order, imports of subject merchandise declined significantly, and respondent interested parties have waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published weighted-average

[3] *See Steel Wire Rope From Japan, Shop Towels From the People's Republic of China, Shop Towels From Bangladesh, Candles From the People's Republic of China, Steel Wire Rope From Mexico, Shop Towels From Pakistan, Steel Wire Rope From South Korea, Malleable Cast Iron Pipe Fittings From South Korea, Malleable Cast Iron Pipe Fittings From Taiwan, Malleable Cast Iron Pipe Fittings From Japan: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 24573 (May 7, 1999).

[4] *See Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 50 FR 26020 (June 24, 1985); *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 55 FR 7756 (March 5, 1990); *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 56 FR 4040 (February 1, 1991); *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 56 FR 60969 (November 29, 1991); *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 57 FR 30466 (July 9, 1992); and *Shop Towels of Cotton From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 57 FR 43695 (September 22, 1992).

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dumping margins for two producers/exporters of cotton shop towels from the People's Republic of China (48 FR 37055, August 16, 1983).[5] The Department also published an "all others" rate in its determination. We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, citing to the final results of the 1990/1991 administrative review, Milliken asserts that the margins found in the original investigation are far below the most recently calculated margins. Accordingly, Milliken argues that, consistent with the *Sunset Policy Bulletin* and legislative history, the Department should inform the Commission that the margins likely to prevail are the more recently calculated rates of 72.14 percent for Tianjin Arts & Crafts Import & Export Corporation and 122.81 percent for all other companies. Milliken notes that its suggested margins, from the 1990/1991 administrative review, reflect the most likely U.S. pricing levels for Chinese shop towels if the order were revoked (*see* February 3, 1999 Substantive Response of Milliken at 6).

The Department disagrees with Milliken's argument concerning the choice of the margins to report to the Commission. The Department finds the existence of higher margins after the initial investigation, as a sole criterion, provides insufficient reason for the Department to deviate from its stated policy.[6] Milliken has not presented any argument or evidence to suggest that such increases in margins have been coupled with increases in import volumes and, thus, increased dumping in an attempt to gain, or even maintain, market share. Absent such argument and evidence, the Department finds that the margins calculated in the original investigation are probative of the behavior of Chinese producers and/or exporters if the order were revoked as they are the only margins which reflect their actions absent the discipline of the order. As such, the Department will report to the Commission the company-specific and "all others" rates from the original investigation as contained in the Final Results of Review section of this notice.

[5] The dumping margins from this determination were subsequently amended. *See Cotton Shop Towels From the People's Republic of China; Amended Final Determination of Sales at Less Than Fair Value*, 48 FR 37055 (August 16, 1983).

[6] The Department recognizes that where a more recent dumping margin is "more representative of a company's behavior in the absence of an order," such margin should be reported to the Commission (*see Sunset Policy Bulletin*). The "more representative" standard may be satisfied if the Department finds an "increase in imports * * * corresponding to the increase in the dumping margin" (*see Final Results of Expedited Sunset Review: Barium Chloride From the People's Republic of China*, 64 FR 5633 (February 4, 1999)).

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
China National Textile Import & Export Corp.	30.1
China National Arts & Crafts Import & Export Corp.	37.2
All Other Chinese Manufacturers/Exporters	36.2

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20222 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–538–802]

Final Results of Expedited Sunset Review: Cotton Shop Towels From Bangladesh

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: cotton shop towels from Bangladesh.

SUMMARY: On January 4, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on cotton shop towels from Bangladesh (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 5, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping duty order is cotton shop towels from Bangladesh. Shop towels are absorbent industrial wiping cloths made from a loosely woven fabric. The fabric may be either 100-percent cotton or a blend of materials. Shop towels are currently classifiable under item numbers 6307.10.2005 and 6307.10.2015 of the Harmonized Tariff Schedules of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

This review covers imports from all manufacturers and exporters of shop towels from Bangladesh.

History of the Order:

On February 3, 1992, the Department issued its final determination of sales at less than fair value in the investigation of cotton shop towels from Bangladesh (57 FR 3996). The Department published weighted average dumping margins of 42.31 percent for Eagle Star Textile Mills, Ltd., and 2.72 percent for Sonar Cotton Mills, Ltd. The Department also published a weighted average dumping margin of 4.60 percent for all other Bangladeshi manufacturers and/or exporters of the subject merchandise.

The antidumping duty order on cotton shop towels from Bangladesh was published in the **Federal Register** on March 20, 1992 (57 FR 9688). Since that time, the Department has conducted four administrative reviews.[1] We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On January 4, 1999, the Department initiated a sunset review of the antidumping duty order on cotton shop towels from Bangladesh (64 FR 364), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Milliken & Company ("Milliken") on January 19, 1999, within the deadline specified in § 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response from Milliken on February 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Milliken claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of shop towels. In addition, Milliken stated that it was the petitioner in the original investigation. We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

[1] *See Shop Towels of Cotton From Bangladesh; Final Results of Antidumping Duty Administrative Review*, 62 FR 12600 (March 17, 1997); *Shop Towels of Cotton From Bangladesh; Amendment to Final Results of Antidumping Duty Administrative Review*, 62 FR 4253 (January 29, 1997); *Shop Towels of Cotton From Bangladesh; Final Results of Antidumping Duty Administrative Review*, 61 FR 55957 (October 30, 1996); *Shop Towels of Cotton From Bangladesh; Final Results of Antidumping Duty Administrative Review*, 61 FR 5377 (February 12, 1996); and *Shop Towels of Cotton From Bangladesh; Final Results of Antidumping Duty Administrative Review*, 60 FR 48966 (September 21, 1995).

The Department determined that the sunset review of the antidumping duty order on cotton shop towels from Bangladesh is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on May 3, 1999, the Department extended the time limit for completion of the final results of this review until not later than August 2, 1999, in accordance with section 751(c)(5)(B) of the Act.[2]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, Milliken's comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to § 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In its substantive response, Milliken argues that the history of the case and the actions taken by Bangladeshi producers and exporters of shop towels prior to and during the pendency of this proceeding demonstrate clearly that revocation likely would result in a recurrence of dumping shop towels in the United States. With respect to whether dumping continued after the issuance of the order, Milliken, citing the Department's final results of several administrative reviews, asserts that a number of manufacturers/exporters continued dumping above a *de minimis* level during the pendency of this proceeding. Further, Milliken argues that although certain manufacturers received zero or *de minimis* dumping margins in administrative reviews, these findings are due to the peculiarity of the Department's constructed value calculation.

With respect to whether imports of the subject merchandise ceased after the issuance of the order, Milliken asserts that, faced with continuing antidumping duties, two known Bangladeshi producers, Sonar Cotton, Ltd. ("Sonar"), and Eagle Star Textile Mills, Ltd. ("Eagle Star"), ceased exporting to the United States since the issuance of the order (*see* February 3, 1999, Substantive Response of Milliken at 5, 6).

[2] *See Steel Wire Rope From Japan, Shop Towels From the People's Republic of China, Shop Towels From Bangladesh, Candles From the People's Republic of China, Steel Wire Rope From Mexico, Shop Towels From Pakistan, Steel Wire Rope From South Korea, Malleable Cast Iron Pipe Fittings From South Korea, Malleable Cast Iron Pipe Fittings From Taiwan, Malleable Cast Iron Pipe Fittings From Japan: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 24573 (May 7, 1999).

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In conclusion, Milliken argues that the Department should determine that there is a likelihood that dumping would continue or recur were the order revoked because (1) dumping margins above *de minimis* levels continued after the issuance of the order and (2) imports of the subject merchandise ceased after the imposition of the order (for some companies).

We agree with Milliken that dumping margins continued above *de minimis* levels after the issuance of the order. The Department, after examining the final results of the four administrative reviews, finds that dumping margins above *de minimis* levels continue for at least two of the six known Bangladeshi producers/exporters. As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed.

The Department, utilizing U.S. Census Bureau IM146 Reports and U.S. Department of Commerce trade statistics, finds that imports of the subject merchandise have continued, and generally increased, over the life of the order. With respect to Milliken's assertion that imports from Sonar and Eagle Star have ceased, although the Department agrees that Eagle Star had no shipments during the 1993/1994 administrative review (61 FR 5377 (February 12, 1996)), the Department cannot conclude from the **Federal Register** notices of results of administrative reviews that Sonar ceased exporting or that there continue to be no shipments from these two companies.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates above *de minimis* levels continue in effect for exports of the subject merchandise by two of the six known Bangladeshi producers/exporters. Therefore, given that dumping has continued over the life of the order and respondent interested parties have waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published weighted-average dumping margins for two producers/exporters of cotton shop towels from Bangladesh (57 FR 3996, February 3, 1992). The Department also published an "all others" rate in this determination. We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, Milliken, citing the *Sunset Policy Bulletin*, suggests that the Department report to the Commission the two company-specific margins and the "all others" rates established in the investigation because those are the only calculated rates that reflect the behavior of exporters without the discipline of the order in place.

The Department agrees with Milliken. Absent argument and evidence to the contrary, the Department finds that the margins calculated in the original investigation are probative of the behavior of Bangladeshi producers/exporters if the order were revoked as they are the only margins which reflect their actions absent the discipline of the order. As such, the Department will report to the Commission the company-specific and all others rates from the original investigation as contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Eagle Star Textile Mills, Ltd.	42.31
Sonar Cotton Mills, Ltd.	2.72
All Others	4.60

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20223 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Continuation of Antidumping Duty Order: Frozen Concentrated Orange Juice From Brazil.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty order: frozen concentrated orange juice from Brazil.

SUMMARY: On April 7, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on frozen concentrated orange juice from Brazil would be likely to lead to continuation or recurrence of dumping (64 FR 16901 (April 7, 1999)). On May 21, 1999, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on frozen concentrated orange juice from Brazil would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 27806 (May 21, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on frozen concentrated orange juice from Brazil.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: May 28, 1999.

Background

On December 2, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 66527 and 63 FR 66527, respectively) of the antidumping duty order on frozen concentrated orange juice from Brazil pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Frozen Concentrated Orange Juice from Brazil, 64 FR 16901 (April 7, 1999)*).

On May 21, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on frozen concentrated orange juice from Brazil would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Frozen Concentrated Orange Juice from Brazil*, 64 FR 27806 (May 21, 1999) and USITC Pub. 3195, Inv. No. 731–TA–326 (Review) (May 1999)).

Scope

The merchandise covered by this antidumping duty orders is frozen concentrated orange juice from Brazil. The merchandise is currently classifiable under subheading 2009.11.00 of the Harmonized Tarriff Schedule (HTS). The HTS subheading is provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on frozen concentrated orange juice from Brazil. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this order is May 28, 1999, seven days after the date of publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than April 2004.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20213 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–101]

Continuation of Antidumping Duty Order: Greige Polyester Cotton Printcloth From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty order: Greige polyester cotton printcloth from the People's Republic of China.

SUMMARY: On March 18, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act from 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on greige polyester cotton printcloth from the People's Republic of China ("China") would be likely to lead to continuation or recurrence of dumping (64 FR 13399 (March 18, 1999)). On April 19, 1999, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on greige polyester cotton printcloth from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 19195 (April 19, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on greige polyester cotton printcloth from China.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: April 26, 1999.

Background

On November 2, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 58709 and 63 FR 58763, respectively) of the antidumping duty order on greige polyester cotton printcloth from China pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Greige Polyester Cotton Printcloth from China*, 64 FR 13399 (March 18, 1999)).

On April 19, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on greige polyester cotton printcloth from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Greige Polyester Cotton Printcloth from China*, (64 FR 19195 (April 19, 1999) and USITC Pub. 3184, Inv. No. 731–TA–101 (Review) (April 1999)).

Scope

The merchandise covered by this antidumping duty order is shipments of greige greige polyester/cotton printcloth, other than 80 x 80 type, from China. Greige polyester/cotton printcloth is unbleached and uncolored printcloth.

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The term "printcloth" refers to plain woven fabric, not napped, not fancy or figured, of single yarn, not combed, of average yarn number 26 to 40, weighing not more than 6 ounces per square yard, of a total count of more than 85 yarns per square inch, of which the total count of the warp yarns per inch and the total count of the filling yarns per inch are each less than 62 percent of the total count of the warp and filling yarns per square inch. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item 52.10.11.60. The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on greige polyester cotton printcloth. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this finding is April 26, 1999, seven days after the date of publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than March 2004.

Dated: July 30, 1999.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20221 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Final Results of Expedited Sunset Review: Internal-Combustion, Industrial Forklift Trucks From Japan [A–588–703]

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: certain internal-combustion, industrial forklift trucks from Japan.

SUMMARY: On April 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on industrial forklift trucks from Japan (64 FR 15727) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 5, 1999.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and in CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping duty order is internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 5,000 pounds, from Japan. The products covered are described as follows: assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles [1]. Less than complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order. Imports of these products were classified under items 692.4025, 692.4030 and 692.4070 of the Tariff Schedules of the United States Annotated ("TSUSA"), and are currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") item numbers 8427.20.00, 8427.90.00, and 8431.20.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

History of the Order

On April 15, 1988, the Department published a final affirmative determination of sales at less than fair value with respect to certain internal-combustion, industrial forklift trucks from Japan (53 FR 12552). The order resulted in the following company margins:

Manufacturer/Exporter	Margin (percent)
Toyota Motor Corp	17.29
Nissan Motor Corp	51.33
Komatsu Forklift Co., Ltd	47.50
Sumitomo-Yale Co., Ltd	51.33
Toyo Umpaki Co. Ltd	51.33
Sanki Industrial Co	13.65
Kasagi Forklift, Inc	56.81

[1] *See Certain Internal-Combustion Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 62 FR 5592 (February 6, 1997).

Manufacturer/Exporter	Margin (percent)
All Other Japanese Manufacturers/Exporters	39.45

Since the imposition of the order, there have been four administrative reviews, [2] in which all the respondents subject to these reviews were found to have continued dumping. There were two scope rulings: first, at the request of Mitsubishi Heavy Industries to clarify whether a particular model forklift truck, the Mitsubishi FD–70, was within the scope of this antidumping duty order, the Department, by letter dated October 12, 1989, advised petitioner's counsel that it had determined that the Mitsubishi FD–70 internal-combustion, industrial forklift truck, was excluded from the scope of the order. Second, the Department published notice that it had determined that a particular model forklift truck produced by Nissan Motor Co., Ltd. and Nissan Forklift Truck Corporation, the Nissan F05–70, was not within the scope of this antidumping duty order (63 FR 6722, February 10, 1998).

At the request of the domestic industry, during the 1989–1990 administrative review period, the Department conducted an anticircumvention investigation of four groups of manufacturers of certain internal-combustion, industrial forklift trucks from Japan (55 FR 6028). The petitioners alleged that four groups of forklift truck manufacturers were circumventing the antidumping duty order on forklift trucks by exporting forklift truck parts to the United States for assembly. In its final anticircumvention determination, the Department concluded, pursuant to section 781(b) of the Act, as amended,19 U.S.C. § 1677j(b) (1988), that the difference in value between the parts imported into the United States and the trucks sold in the United States was not small, as required by the statute (55 FR 6028, February 21, 1990). Based on this conclusion, the Department determined that the manufacturers were not circumventing the antidumping duty order.

[2] *See Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 57 FR 3167 (January, 28, 1992); *Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 59 FR 1374 (January 10, 1994); *Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 62 FR 34216 (June 25, 1997); *Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 62 FR 5592 (February 6, 1997).

Background

On April 1, 1999, the Department initiated a sunset review of the antidumping order on certain internal-combustion, industrial forklift trucks from Japan (64 FR 15727), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of NACCO Materials Handling Group, Inc. ("NMHG") and Clark Material Handling Company ("Clark") within the applicable deadline (April 16, 1998) specified in section 351.218(d)(1)(i) of the Sunset Regulations. Clark and NMHG claimed interested party status under section 771(9)(C) of the Act as U.S. manufacturers of a domestic like product. We received their complete substantive responses to the notice of initiation on April 29, 1999 and May 3, 1999, respectively. Without a substantive response from respondent parties, the Department, pursuant to 19 CFR 351.218 (e)(1)(ii)(C), determined to conduct an expedited, 120-day review of this order.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission (the Commission) the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, domestic interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) Dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section I I.A.3).

In addition to consideration of the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In its substantive response, NMHG argues that actions taken by the manufacturers and exporters of Japanese internal-combustion, industrial forklift trucks during the life of the order, including the dramatic decline in imports from Japan consequent to the antidumping duty order and subsequent administrative reviews, particularly in combination with the fact that Japanese manufacturers and exporters continued to dump after the order was issued, are a strong indication that dumping in the United States is likely to recur should the order be revoked (*see* May 3, 1999 Substantive Response of NMHG at 8). With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, NMHG and Clark assert that during the four administrative reviews since the 1989 imposition of the order, all respondents subject to the reviews were found to have continued dumping at substantial margins (*see* May 3, 1999 Substantive Response of NMHG at 10 and April 30, 1999 Substantive Response of Clark at 3).

With respect to whether imports of the subject merchandise ceased after the issuance of the order, or dumping was eliminated after the issuance of the

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order and import volumes for the subject merchandise declined significantly, Clark asserts that two of the exporters initially assessed antidumping duties and subject to reviews, ceased importing after 1992 (see April 30, 1999 Substantive Response of Clark at 3). Both Clark and NMHG note a significant decline in the volume of imports of subject merchandise since the order was imposed. Citing U.S. Department of Commerce statistics, NMHG asserts that imports of the subject merchandise have decreased from 25,663 units in 1986, the year immediately preceding the filing of the petition, to 9,522 units in 1998 (*see* May 3, 1999 Substantive Response of NMHG at 20). Further, NMHG argues that recent data do not reflect imports of the subject merchandise, and should in fact be estimated to be lower, as the Japanese Industrial Vehicles Association ("JIVA") reported only 384 internal-combustion trucks were shipped to the United States in 1998, many of which were over 15,000 lbs. capacity (*see* May 3, 1999 Substantive Response of NMHG at 20), and thus outside the scope of the order.

Additionally, Clark argues that there are other factors, such as Japan's domestic recession during the past three years, which support a finding that dumping would recur if the order were revoked. Clark argues that despite declining prices in the U.S. market during the past nine months, Japanese manufacturers are desperate to make export sales even at prices below costs (*see* April 30, 1999 Substantive Response of Clark at 4). Furthermore, if the dumping order were revoked, Japanese manufacturers would increase exports from their severely underutilized factories and, where they also own U.S. production factories, substitute imports for U.S. production (*see* April 30, 1999 Substantive Response of Clark at 4).

In conclusion, the domestic parties argue that the Department should determine that there is a likelihood that dumping would continue were the order revoked because (1) Dumping margins above *de minimis* levels have continued throughout the life of the order, (2) imports of subject merchandise have continued since the issuance of the order, but are significantly below pre-order levels, or ceased altogether, as in the case of two exporters subject to the original investigation and administrative reviews, (3) recent U.S. Department of Commerce data on imports of the subject merchandise are in fact overestimated, and (4) Japanese manufacturers, desperate to make export sales even at prices below costs, would increase exports from their severely underutilized factories and, where they also own U.S. production factories, substitute imports for U.S. production.

As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. Dumping margins above *de minimis* levels continue to exist for shipments of the subject merchandise from all Japanese manufacturers/exporters (62 FR 5592, February 6, 1997).

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. By examining U.S. Census Bureau IM146 reports and the margins in the original investigation and subsequent administrative reviews, the Department finds imports of the subject merchandise decreased sharply following the imposition of the order. Moreover, although some imports continued throughout the life of the order, margins increased.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates for exports of the subject merchandise by all known Japanese manufacturers and exporters exceed *de minimis* levels. Therefore, given that dumping has continued over the life of the order, respondent interested parties have waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation (*see* section II.B.1 of the *Sunset Policy Bulletin*). Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations (*see* sections II.B.2 and 3 of the *Sunset Policy Bulletin*).

The Department, in its notice of the antidumping duty order on internal-combustion industrial forklift trucks from Japan, identified company-specific margins for imports of the subject merchandise from Japan as established in the original investigation (53 FR 20882, June 7, 1988). As noted above, the Department has conducted four administrative reviews of this order. Further, we note that, to date, the Department has not issued any duty absorption findings in this case.

Both Clark and NMHG argue that, with the exception of Toyota, the margins in the original investigation are probative of the behavior of Japanese forklift truck producers/exporters. NMHG asserts that Toyota's dumping at an even higher rate after the imposition of the order is compelling evidence that this respondent would dump at least to the same degree without the discipline of the antidumping duty order if revocation were to be granted (*see* May 3, 1999 Substantive Response of NMHG at 13). In its substantive response NMHG argues that the Department should therefore use, in its report to the Commission, Toyota's 47.79 percent margin calculated in the most recent administrative review (62 FR 5592 (February 6, 1997)) instead of the 17.29 percent margin from the original investigation.

With respect to the behavior of Japanese forklift truck producers/exporters other than Toyota, the Department finds that the margins in the original investigation are probative of their behavior if the order were to be revoked.

With respect to Toyota, we disagree with the domestic interested parties' assertion that we should use the most recently calculated margin for Toyota simply because it is higher than the original margin. However, we have reviewed the level of imports and Toyota's dumping margins over the life of the order. Since Toyota is not participating in this review and, therefore, we do not have company-specific export volume and value data, we relied on publicly available U.S. customs value data. Specifically, we found that import volumes decreased after the issuance of the order through 1992 (based on import statistics provided by NMHG). Further, we found that imports began increasing in 1993, and then increased significantly from 1993 to 1994, and again, from 1994 to 1995. During these same time periods, Toyota's dumping margin increased from a low of 6.87 percent to 31.58 percent and again to 47.79 percent. In addition, we note that the two other Japanese producers/exporters subject to the administrative reviews covering these periods were found not to have made any shipments. Therefore, we view the order-wide data as an appropriate surrogate for Toyota.

According to the *Sunset Policy Bulletin*, "a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order" (*see* section II.B.2 of the *Sunset Policy Bulletin*). In addition, *the Sunset Policy Bulletin* notes that the Department will normally consider market share. However, absent information on market share, and absent argument or evidence to the contrary, we have relied on import values in the present case. Therefore, in light of the correlation between an increase in imports and an increase in Toyota's dumping margins, the Department finds Toyota's more recent rate from the last administrative review [3] (62 FR 5592 February 6, 1997)) to be the most probative of Toyota's behavior if the order were revoked. For all companies other than Toyota, the Department will report to the Commission the rate from the original investigation (53 FR 12552 April 15, 1988) as contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margin listed below:

Manufacturer/exporter	Margin (percent)
Toyota Motor Corp	47.79
Nissan Motor Corp	51.33
Komatsu Forklift Co., Ltd	47.50
Sumitomo-Yale Co., Ltd	51.33
Toyo Umpaki Co. Ltd	51.33
Sanki Industrial Co	13.65
Kasagi Forklift, Inc	56.81
All Other Japanese Manufacturers/Exporters	39.45

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20217 Filed 8–4–99; 8:45 am]

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[3] *See Certain Internal-Combustion Industrial Forklift Trucks from Japan: Amended Final Results of Antidumping Duty Administrative Review*, 62 FR 12598 (March 17, 1997).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–605, A–580–507, and A–583–507]

Final Results of Expedited Sunset Reviews: Malleable Cast Iron Pipe Fittings From Japan, South Korea, and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset reviews: Malleable cast iron pipe fittings from Japan, South Korea, and Taiwan.

SUMMARY: On January 4, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on malleable cast iron pipe fittings from Japan, South Korea, and Taiwan (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of notices of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate responses (in these cases, no response) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, US Department of Commerce, 14th & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 5, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and 19 CFR 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

Imports covered by these orders are shipments of certain malleable cast iron pipe fittings, other than grooved, from Japan, South Korea, and Taiwan. In the original orders, these products were classified in the Tariff Schedules of the United States, Annotated (TSUSA), under item numbers 610.7000 and 610.7400. These products are currently classifiable under item numbers 7307.19.90.30, 7307.19.90.60, and 7307.19.90.80 of the Harmonized Tariff Schedule of the United States (HTSUS). By letter of February 8, 1989, the Department clarified that union heads, tails, and nuts fell within the scope of the antidumping duty order on malleable cast iron pipe fittings from South Korea.[1] The HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

These orders apply to all imports of certain malleable cast iron pipe fittings from Japan, South Korea, and Taiwan.

History of the Orders

Japan

The Department issued the antidumping duty order on malleable cast iron pipe fittings from Japan on July 6, 1987 (52 FR 25281). The order identified weighted-average margins of dumping of 57.79 percent for Hitachi Metals Ltd. and all others. The Department has not conducted an administrative review of the order.

South Korea

The Department issued the antidumping duty order on malleable cast iron pipe fittings from South Korea on May 23, 1986 (51 FR 18917). The order applied a weighted-average dumping margin of 12.48 percent to all producers/exporters. Although not

[1] *See* Letter to Thomas J. Lindmeier from Joseph A. Spetrini, February 8, 1989.

specified in the order, the investigation covered Mijin Metal Industrial Co., Ltd. ("Mijin"). The Department conducted one administrative review of the order, covering the period May 1, 1987, through April 30, 1988, and two Korean manufacturers; Mijin and Shin Han Cast Iron Co., Ltd. (*see* 54 FR 13090 (March 30, 1989)).

Taiwan

The Department issued the antidumping duty order on malleable cast iron pipe fittings from Taiwan on May 23, 1986 (51 FR 18918), as amended (53 FR 784 (January 13, 1988)). The order applied weighted-average dumping margins to five Taiwanese producers/exporters as well as to all others. The Department conducted two administrative reviews of the order covering the periods January 14, 1986, through April 30, 1987, and May 1, 1987, through April 30, 1988 (*see* 53 FR 16179 (May 5, 1988) and 54 FR 38713 (September 20, 1989)).

Background

On January 4, 1999, the Department initiated sunset reviews of the antidumping duty orders on malleable cast iron pipe fittings from Japan, South Korea, and Taiwan (64 FR 364) pursuant to section 751(c) of the Act. On January 19, 1999, the Department received Notices of Intent to Participate on behalf of the Cast Iron Pipe Fittings Committee and its members, Grinnell Corporation and Ward Manufacturing (collectively "CIPFC"), within the applicable deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The CIPFC claimed interested-party status under section 771(9)(F) of the Act as an *ad hoc* trade association consisting entirely of U.S. manufacturers of malleable cast iron pipe fittings.

We received complete substantive responses to the notice of initiation on February 3, 1999, on behalf of CIPFC. In its substantive responses, CIPFC stated that it and its two current members have been participants in these proceedings since the Department's original investigations. We did not receive a substantive response from any respondent interested party in any of the reviews.

The Department determined that the sunset reviews of the antidumping duty orders on malleable cast iron pipe fittings from Japan, South Korea, and Taiwan are extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on May 7, 1999, the Department extended the time limit for completion of the final results of these reviews until not later than August 2, 1999, in accordance with section 751(c)(5)(B) of the Act.[2]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the original investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the Commission the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin likely to prevail are discussed below. In addition, CIPFC's comments with respect to continuation or recurrence of dumping and the magnitude of the margin likely to prevail are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of Dumping where (a) Dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3.a of the *Sunset Policy Bulletin*).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In these reviews, the Department did not receive a substantive response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In its substantive responses, CIPFC argues that revocation of the antidumping duty orders would likely result in the continuation or resumption of dumping of malleable cast iron pipe fittings from Japan, South Korea, and Taiwan. CIPFC asserts that, in accordance with the *Sunset Policy Bulletin*, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where dumping continued at any level above *de minimis* after the issuance of the order. Further, CIPFC cites to the SAA and comments that continuation of dumping at any level above *de minimis* after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. CIPFC notes that a deposit rate based on the weighted-average dumping margin of 57.39 percent, as established in the antidumping duty order covering Japan, has remained unchanged over the life of the order. With respect to the margins established in the orders on South Korea and Taiwan, CIPFC asserts that the margins have increased as a result of administrative reviews. Specifically, CIPFC asserts that, as a result of an administrative review on the order covering imports from Korea, undertaken by the Department in 1989, company-specific margins for two Korean producers increased from 12.48 percent to 25.59 percent. Additionally, CIPFC asserts that, as a result of reviews on the order covering imports from Taiwan, the margins increased from a range of 7.95–80 percent to 37.09–138.81 percent.

Additionally, CIPFC asserts that the volume of imports of subject merchandise from all three countries declined after the issuance of the orders. CIPFC provided import statistics demonstrating that, in fact, imports from each country decreased substantially after the imposition of the orders and never achieved pre-order levels. Based on these policies, CIPFC asserts that dumping of malleable cast iron pipe fittings from Japan, South Korea, and Taiwan would continue or recur if the orders were to be revoked.

Finally, in further support of the likelihood of continuation or recurrence of dumping, in its substantive responses, CIPFC asserts that malleable cast iron pipe fittings are standardized products. Thus, imports and domestically manufactured pipe fittings are essentially interchangeable. CIPFC argues that, as a result, the domestic industry is vulnerable to unfairly priced imports.

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, the existence of dumping margins after the order is highly probative of the likelihood of the continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were revoked.

Deposit rates above *de minimis* remain in effect for all exports of malleable cast iron pipe fittings from Japan, South Korea, and Taiwan. Therefore, since dumping margins have continued over the life of the order, import volumes declined significantly after the imposition of the orders, respondent interested parties waived participation, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue or recur if the orders were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department normally will provide to the Commission a margin from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. *See* Section II.B.1 of the *Sunset Policy Bulletin*. Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations.

As noted above, the Department has not conducted an administrative review of the antidumping duty order on malleable cast iron pipe fittings from Japan. The Department conducted one administrative review of the antidumping duty order covering South Korea and two administrative reviews of the antidumping duty order covering Taiwan. The Department has not issued a duty absorption determination with respect to any of these orders.

In its substantive response in the review on Japan, CIPFC argues that, consistent with the provisions of the statute, SAA, and *Sunset Policy Bulletin*, the Department should determine that the margin likely to prevail if the antidumping duty order on Japan were revoked is the margin from the original investigation, as that is the only calculation margin available to the Department.

In its substantive response in the review on South Korea, CIPFC refers to the *Sunset Policy Bulletin* and argues that increasing margins may be more representative of a company's behavior absent the discipline of the order. CIPFC asserts further that no company-specific rate was published by the Department in the original investigation. Therefore, consistent with the Department's practice related to findings issued by the Treasury Department where no company-specific rate is published, CIPFC urges the Department to rely on the company-specific rates from the first administrative review, as these are the only company-specific rates available to the Department. Therefore, CIPFC asserts that the 25.59 percent margins applied to Mijin and Shin Han Cast Iron Co., Ltd., as a result of the administrative review are the rates likely to prevail were the order revoked.

With respect to the order on Taiwan, CIPFC cites to the *Sunset Policy Bulletin* and argues that the more recently calculated margins resulting from the administrative review in 1989 are more representative of Taiwanese producer's likely behavior if the order were to be revoked than are the original rates. CIPFC asserts that the Department should provide the highest company-specific dumping margins available to the Commission as this is representative of the magnitude of the margin likely to prevail.

We agree with CIPFC with respect to the selection of the margin likely to prevail were the order on Japan revoked. The Department finds that the margin from the original investigation is the only calculated rate that reflects the behavior of exporters without the discipline of the order and, thus, is probative of the behavior of Japanese producers/exporters.

With respect to CIPFC's argument that no company-specific margin was issued in the order on South Korea, we disagree. While the order and final and preliminary determinations of sales at less than fair value specify that the estimated weighted-average dumping margin applies to all imports, review of the notices of preliminary and final determinations makes clear that the margin was calculated on the basis of the response of Mijin.[3] Therefore, the 12.48 percent margin from the original investigation applied to Mijin and all others.

We disagree with CIPFC's suggestion that we should select the highest rates from the administrative reviews of the orders on South Korea and Taiwan as the margins likely to prevail if the orders were revoked. The *Sunset Policy Bulletin* refers to the selection of a recently calculated rate in cases where companies choose to increase dumping to maintain or increase market share. Based on the import statistics provided by CIPFC, this is clearly not the case with respect to these orders. Rather, as CIPFC argues, imports decreased after the issuance of the orders. There is no evidence that Korean or Taiwanese exporters increased dumping in order to maintain or increase market share.

Based on the above analysis, we find no reason to deviate from our policy of selecting the margins from the original investigation as probative of the behavior of the producers/exporters absent the discipline of the order. Therefore, the Department will report to the Commission the company-specific and the all others margins from the original investigations as contained in the "Final Results of Reviews" section of this notice.

Final Results of Review

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to the continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Japan:	
Hitachi Metals, Ltd. (HML)	57.39
All Others	57.39
Korea:	
Mijin Metal Industrial Co., Ltd	12.48
All Others	12.48

[2] *See Steel Wire Rope From Japan, et. al.: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 24573 (May 7, 1999).

[3] *See Malleable Cast Iron Pipe Fittings, Other than Grooved, From Korea*, 51 FR 1546 (January 14, 1986) and 51 FR 10900 (March 31, 1986).

Manufacturer/exporter	Margin (percent)
Taiwan:	-
San Yan Metal Industries Co., Ltd	27.90
De Ho	13.12
Tai Yang	37.09
Kwang Yu	7.93
Young Shieng	80.00
All Others	28.27

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing the determination and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20225 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–706]

Final Results of Expedited Sunset Review: Nitrile Rubber From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Nitrile rubber from Japan.

SUMMARY: On April 1, 1999, the Department of Commerce (the "Department") initiated a sunset review of the antidumping order on nitrile rubber from Japan (64 FR 15727) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Result of Review" section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 5, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The subject merchandise under consideration is butadiene acrylonitrile copolymer synthetic rubber ("nitrile rubber") not containing fillers, pigments, or rubber-processing chemicals from Japan. Nitrile rubber refers to the synthetic rubber that is made from the polymerization of butadiene and acrylonitrile, and that does not contain any type of additive or compounding ingredient having a function in processing, vulcanization, or end use of the product. Latex rubber is excluded from this order.

Nitrile rubber is currently classifiable under item number 4002.59.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item number is provided for convenience and Customs purposes only. The written product description of the scope of this order remains dispositive.

History of the Order

The antidumping duty order on nitrile rubber from Japan was published in the **Federal Register** on June 16, 1988 (53 FR 22553). In that order, the Department estimated that the weighted-average dumping margins for Nippon Zeon Co., Ltd. ("Nippon") as well as for "all-others" were 146.50 percent. The Department has not conducted any administrative review since that time.[1] The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On April 1, 1999, the Department initiated a sunset review of the antidumping duty order on nitrile rubber from Japan (64 FR 15727) pursuant to section 751(c)(6)(A)(i) of the Act. The Department received a Notice of Intent to Participate on behalf of Zeon Chemicals, L.P. ("Zeon") on April 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Zeon claimed interest party status under section 771(9)(C) of the Act as a domestic producer of nitrile rubber.

We received a complete substantive response from Zeon on May 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Zeon noted that although Zeon did not exist at the time of the original antidumping determination, from which the present proceeding is derived, Zeon is currently the largest producer of nitrile rubber in the United States (*see* May 3, 1999, Substantive Response of Zeon at 3). Zeon further noted that the parent company of Zeon, the Japanese firm Nippon, had participated in the original investigation as a respondent interested party (*see id.*). Also, Zeon indicated that Zeon previously changed its name from "Zeon Chemicals Incorporated" to "Zeon Chemicals, L.P." (*See id.*). We did not receive a substantive response from any respondent interested parties to this proceeding. Consequently, pursuant to section 351.218(e)(1)(ii)(C) of the *Sunset Regulations*, the Department determined to conduct an expedited, 120-day, review of this order.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, Zeon's comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) Dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In its substantive response, Zeon argues that dumping of the subject merchandise would resume if the antidumping duty order were revoked (*see*, May 3, 1999 Substantive Response of Zeon at 3). In support of its assertion, Zeon notes that the volume of imports of the subject merchandise immediately and dramatically decreased after the discipline of the antidumping order was put into effect. In addition, Zeon points to the existence of continued dumping above the *de minimis* level throughout the life of the order.

In addition to argument related to previously calculated dumping margins and the volume of imports before and after the issuance of the order, Zeon asserts that there are other facts that support a determination that revocation would result in resumption of dumping. Zeon notes that Japanese companies continue to manufacture the subject merchandise for export. Furthermore, Zeon asserts that the U.S. market has proven highly penetrable to imports of nitrile rubber. In conclusion, Zeon asserts that because nitrile rubber is highly fungible (and, therefore, U.S. purchasers quickly switch suppliers based on a small price changes), Japanese producers could easily regain customers by resuming dumping were the order revoked.

The Department agrees with Zeon's argument that imports have declined significantly since imposition of the order. Statistics drawn from U.S. Census Bureau IM146 reports ("IM146"), Import Special Information Service of the Journal of Commerce ("ISIS"), and Trade Information On-Line Service ("TIOS") support Zeon's assertion that there was a substantial decrease of imports of the subject merchandise immediately after the issuance of the antidumping duty order. For instance, between 1987 and 1988 the imports of the subject merchandise fell 61 percent.[2] Moreover, between 1988 and 1998, the average volume of imports of the subject merchandise is a mere 18 percent of the pre-order level, some variations notwithstanding.[3]

With respect to the weighted-average dumping margins, as noted above, there has not been any administrative review with respect to the antidumping order under consideration. Consequently, the only weighted-average dumping margin available to the Department is the one that was determined in the original investigation: 146.50 percent. As a result, the Department finds that since the issuance of the antidumping duty order, imports of nitrile rubber from Japan have continued to be assessed the weighted-average dumping margin of 146.50 percent, which is significantly above *de minimis*.

In conclusion, considering the facts that respondent parties waived their right to participate in instant review, that dumping margins above *de minimis* level continued since the issuance of the order, and that import volumes substantially decreased after the issuance of the order, the Department finds that continuation or recurrence of dumping is likely if the antidumping duty order is revoked.

Since the Department based this determination on the facts that the import volume of the subject merchandise decreased substantially and that dumping continued at levels above *de minimis*, it is not necessary to address Zeon's additional arguments.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its notice of the antidumping duty order on nitrile rubber from Japan, established both company-specific and country-wide weighted-average dumping margins of 146.50 percent for all imports of the subject merchandise from Japan (53 FR 22553, June 16, 1988). We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, Zeon asserts that revocation of the antidumping duty order would result in a resumption of dumping order at 146.50 percent, which is the weighted-average margin found in the investigation. Zeon argues that this is consistent with the SAA and *Sunset Policy Bulletin*, particularly in a case such as this where no administrative review has been conducted. In conclusion, Zeon argues that the decline in imports following the issuance of the order coupled with the fact that there

[1] There has been only a single review requested by a Japanese firm, Japan Synthetic Rubber Co., Ltd. That request, however, was timely withdrawn by the same firm. Consequently, the Department terminated the review. *See Termination of Antidumping Duty Administrative Review*, 62 FR 54822 (October 22, 1997).

[2] As noted above, the antidumping duty order was issued on June, 1988.

[3] For example, in 1989, imports of the subject merchandise increased 28 percent compared to the reduced 1988 imports volume; however, this is still less than 50 percent of the pre-order level. More significantly, during the period from 1994 to 1998, the annual average import volume of the subject merchandise has fallen to 12 percent of the pre-order import volume.

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have been no administrative reviews further suggests that the margins from the order accurately reflect the minimum level of dumping that Japanese companies must maintain to sell nitrile rubber in the U.S. market.

The Department agrees with the Zeon. Absent argument and evidence to the contrary, the Department finds the margins calculated in the original investigation are probative of the behavior of Japanese producers/exporters if the order were revoked, as they are the only margins which reflect their behavior absent the discipline of the order. Therefore, the Department will report to the Commission the company-specific and all other margins reported in the "Final Results of Review" section of this notice.

Final Results of Review

Based on the above analysis, the Department finds that the revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Nippon Zeon Co. Ltd	146.50
All others	146.50

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20218 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet and Strip From Korea: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper review.

SUMMARY: On May 10, 1999, the Department of Commerce (the Department) published the preliminary results of the new shipper review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea (64 FR 25014). The review covers one manufacturer/exporter of the subject merchandise to the United States and the period June 1, 1997 through May 31, 1998. We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

We have determined that HSI Industries (HSI) made no U.S. sales below normal value, and we will instruct the U.S. Customs Service to assess no antidumping duties for HSI for the period covered by this new shipper review.

EFFECTIVE DATE: August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4475/0649.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On May 10, 1999, the Department published in the **Federal Register** the preliminary results of its new shipper review of the antidumping duty order on PET film from Korea. We received no comments on our preliminary results. Therefore, we have only changed our preliminary results with respect to the currency conversion methodology discussed below.

Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The review covers the period June 1, 1997 through May 31, 1998. The Department is conducting this review in accordance wit section 751(a)(2)(B) of the Act.

Currency Conversion

As previously stated by the Department, we have determined that the decline in the won at the end of 1997 was so precipitous an large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.*, as having experienced only a momentary drop in value. *See* Emulsion Styrene Butadiene Rubber form the Republic of Korea: Notice of Final Determination of Sales at Less Than Fair Value, 64 FR 14865, 14867 (March 29, 1999). Therefore, the Department used daily rates exclusively for currency conversion purposes for home market sales matched to U.S. sales occurring between November 1 and December 31, 1997, and the standard exchange rate model with a modified benchmark for sales occurring between January 1, 1998 and February 28, 1998. The modified benchmark consisted of an average of the daily rates over the period January 1, 1998 through February 28, 1998. This methodology enabled us to use an up-to-date (post-precipitous drop) benchmark, but avoided undue day-to-day exchange rate fluctuations.

Final Results of Review

We determine that a margin of 0.00 percent exists for HSI for the period June 1, 1997 through May 31, 1998. We will disclose calculations performed in connection with these final results of review within 5 days after the date of any public announcement, or, if there is no public announcement, within 5 days of publication of this notice.

We will instruct the U.S. Customs Service not to assess antidumping duties on entries of the subject merchandise from HSI for the period of review.

Furthermore, the following deposit requirements shall be required for all shipments of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this new shipper review, as provided by section 751(a)(1) of the Act: (1) No cash deposit shall be required for HSI; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is, a firm covered in this or any previous reviews, the cash deposit rate will be 21.5%, the "all others" rate established in the LTFV investigation.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.305(a). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This new shipper review and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d).

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20226 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–028]

Revocation of Antidumping Finding: Roller Chain From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping finding: roller chain from Japan.

SUMMARY: Pursuant to section 751(c) of the Tariff Act from 1930, as amended ("the Act"), the United States International Trade Commission ("the Commission") determined that revocation of the antidumping finding on roller chain from Japan is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 36920 (July 8, 1999)). Therefore, pursuant to 19 CFR 351.222(i)(1), the Department of Commerce ("the Department") is revoking the antidumping finding on roller chain from Japan. Pursuant to section 751(c)(6)(A)(iv) of the Act, the effective date of revocation is January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, US Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: January 1, 2000.

Background

On July 6, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 26389 and 63 FR 36440, respectively) of the antidumping finding on roller chain from Japan pursuant to section 751(c) of the Act. As a result of the review, the Department found that revocation of the antidumping finding would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the finding to be revoked (*see Final Results of Expedited Sunset Review: Roller Chain from Japan*, 63 FR 63026 (November 10, 1998), as amended 63 FR 69262 (December 16, 1998)).

On July 8, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping finding on roller chain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Roller Chain from Japan*, 64 FR 36920 (July 8, 1999) and USITC Pub. 3203, Inv. No. AA1921–111 (Review) (July 1999)).

Scope

The merchandise covered by this determination is roller chain, other than bicycle, from Japan. The term "roller chain; other than bicycle," includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmissions and/or conveyance. This chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside from the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center-plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain. This order also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. Roller chain is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7315.11.00 through 7619.90.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

Determination

As a result of the determination by the Commission that revocation of this antidumping finding is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to

section 751(d)(2) of the Act, will revoke the antidumping finding on roller chain from Japan. Pursuant to section 751(c)(6)(A)(iv) of the Act, this revocation is effective January 1, 2000. The Department will instruct the U.S. Customs Service to discontinue suspension of liquidation and collection of cash deposit rates on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20214 Filed 8–4–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–054, A–437–601, A–485–602, A–588–604, A–427–801, A–427–801, A–427–801, A–428–801, A–428–801, A–428–801, A–475–801, A–475–601, A–588–804, A–588–804, A–588–804, A–485–801, A–559–801, A–401–801, A–401–601, A–412–801, A–412–801]

Tapered Roller Bearings, 4 Inches and Under From Japan, et al.; Extension of Time Limit for Final Results of Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of five-year ("Sunset") reviews.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the sunset reviews on the antidumping duty orders on tapered roller bearings, 4 inches and under form Japan, tapered roller bearings from Hungary, tapered roller bearings from Romania, tapered roller bearings, over 4 inches from Japan, cylindrical roller bearings from France, ball bearings from France, spherical plain bearings from France, spherical plain bearings from Germany, cylindrical roller bearings from Germany, ball bearings from Germany, ball bearings from Italy, cylindrical roller bearings from Italy, cylindrical roller bearings from Japan, spherical plain bearings from Japan, ball bearings from Japan, ball bearings from Romania, ball bearings from Singapore, ball bearings from Sweden, cylindrical roller bearings form Sweden, cylindrical roller bearings from the United Kingdom, ball bearings from the United Kingdom. Based on adequate responses from domestic interested parties and inadequate responses from respondent interested parties, the Department is conducting expedited sunset reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. As a result of this extension, the Department intends to issue its final results not later than October 28, 1999.

EFFECTIVE DATE: August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith, Martha V. Douthit or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; telephone: (202) 482–6397, (202) 482–3207 or (202) 482–1560 respectively.

Extension of Final Results

The Department has determined that the sunset reviews of the antidumping duty orders on tapered roller bearings, 4 inches and under from Japan, tapered roller bearings from Hungary, tapered roller bearings from Romania, tapered roller bearings, over 4 inches from Japan, cylindrical roller bearings from France, ball bearings from France, spherical plain bearings from France, spherical plain bearings from Germany, cylindrical roller bearings from Germany, ball bearings from Germany, ball bearings from Italy, cylindrical roller bearings from Italy, cylindrical roller bearings from Japan, spherical plain bearings from Japan, ball bearings from Japan, ball bearings from Romania, ball bearings from Singapore, ball bearings from Sweden, cylindrical roller bearings form Sweden, cylindrical roller bearings from the United Kingdom, ball bearings from the United Kingdom are extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). *See* section 751(c)(6)(C) of the Act. The Department is extending the time limit for completion of the final results of these reviews until not later than October 28, 1999, in accordance with section 751(c)(5)(B) of the Act.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistance Secretary for Import Administration.

[FR Doc. 99–20220 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–535–001]

Final Results of Expedited Sunset Review: Cotton Shop Towels From Pakistan

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results of expedited sunset review: cotton shop towels from Pakistan.

SUMMARY: On January 4, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on cotton shop towels from Pakistan pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic party, and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailing subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the Final Results of Review section to this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230; telephone (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 5, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The subject merchandise is cotton shop towels from Pakistan. This merchandise is classifiable under item number 6307.10.20 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

History of the Order

On January 11, 1984, the Department issued a final affirmative countervailing duty determination on cotton shop towels from Pakistan.[1] The Department found a country-wide estimated net subsidy rate of 12.67 percent *ad valorem* based on seven programs: 7.5 percent under the compensatory rebate program, 3.8 percent under the excise tax program, 0.11 percent under the sales tax rebate program, 0.37 percent under the customs duty rebate program, 0.013 percent under the income tax reduction program, 0.08 percent under the export financing program, and 0.8 percent under the export credit insurance program. Receipt of benefits under each of these programs was contingent upon exports. The Department also found that the import duty rebate program was not used.[2]

On March 9, 1984, the Department issued a countervailing duty order which confirmed the subsidy rates found in the original investigation.[3] Since the issuance of the order, the Department has conducted eight administrative reviews covering the eight programs investigated in the original investigation.[4]

During the administrative reviews covering April 1, 1984 through December 31, 1984 and January through December 1985, the Department determined that the compensatory rebate scheme had been repealed. In addition, during these same reviews, the Department found that Pakistan producers/exporters received countervailable benefits under the import duty rebate program at a rate of zero percent in 1984 and 0.000028 percent in 1985.

In the final results of the administrative review of the period January 1, 1993 through December 31, 1993, the Department, for the first time, issued company-specific rates in addition to a country-wide rate. Net subsidies of 11.50 percent and 11.54 percent were determined for Eastern Textiles, Ltd., and Creation (Pvt.) Ltd., respectively.

This review covers all producers and exporters of cotton shop towels from Pakistan.

Background

On January 4, 1999, the Department initiated a sunset review of the countervailing duty order on cotton shop towels from Pakistan pursuant to section 751(c) of the Act. On January 19, 1999, the Department received a Notice of Intent to Participate from Milliken & Company ("Milliken"), within the deadline specified in § 351.218(d)(1)(i) of the *Sunset Regulations*. Milliken claimed interested party status under § 771(9)(C) of the Act, as a domestic producer of cotton shop towels. Milliken asserted that it was the petitioner in the original countervailing duty investigation and has participated as a domestic interested party since that time. On February 3, 1999, the Department received Milliken's substantive response to the Department's notice of initiation, within the 30-day deadline specified in the *Sunset Regulations* in § 351.218(d)(3)(i). We did not receive a response from any respondent interested party, including the Government of Pakistan. As a result, pursuant to section 751(c)(3)(B) of the Act and our regulations (19 CFR 351.218(e)(1)(ii)(C)(2)), we determined to conduct an expedited review.

The Department determined that the sunset review of the countervailing duty order on cotton shop towels from Pakistan is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on May 7, 1999, the Department extended the time limit for completion of the final results of this review until not later than August 2, 1999, in accordance with section 751(c)(5)(B) of the Act.[5]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("the ITC") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide the ITC information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement").

The Department's determination concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and the nature of the subsidy are discussed below. In addition, Milliken's comments with respect to each of these issues are addressed within the respective sections.

Continuation or Recurrence of a Countervailable Subsidy

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreement Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No.103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the

[1] *Cotton Shop Towels From Pakistan; Final Affirmative Countervailing Duty Determination*, 49 FR 1408, (January 11, 1984).

[2] *Id.*

[3] *Cotton Shop Towels From Pakistan, Countervailing Duty Order*, 49 FR 8974 (March 9, 1984).

[4] *Cotton Shop Towels From Pakistan; Final Results of Administrative Review of Countervailing Duty Order*, 51 FR 5219 (February 12, 1986); *Cotton Shop Towels From Pakistan; Final Results of Countervailing Duty Administrative Review*, 54 FR 14671 (April 12, 1989); *Cotton Shop Towels From Pakistan; Final Results of Countervailing Duty Administrative Review*, 56 FR 28740 (June 24, 1991); *Cotton Shop Towels From Pakistan; Final Results of Countervailing Duty Administrative Review*, 57 FR 12475 (April 10, 1992); *Cotton Shop Towels From Pakistan; Final Results of Countervailing Duty Administrative Review*, 58 FR 48038, (September 14, 1993); and *Cotton Shop Towels From Pakistan; Final Results of Countervailing Duty Administrative Reviews*, 62 FR 24082 (May 2, 1997).

[5] *See Steel Wire Rope from Japan, et. al.: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 24573 (May 7, 1999).

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Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy when (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the *Sunset Policy Bulletin*). Exceptions to this policy are provided when a company has a long record of not using a program (*see* section III.A.3.b of the *Sunset Policy Bulletin*).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of a countervailable subsidy when a respondent interested party waives its participation in the sunset review. Pursuant to the SAA, at 881, in a review of a countervailing duty order, when the foreign government has waived participation, the Department shall conclude that revocation of the order would be likely to lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.[6] In the instant review, the Department did not receive a response from the foreign government or from any other respondent interested party. Pursuant to § 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In its substantive response, Milliken asserted that revocation of the countervailing duty order on cotton shop towels from Pakistan would likely result in the recurrence of countervailable subsidies. Milliken asserted that in the original investigation and in the subsequent administrative reviews, the Department found several programs to confer countervailable subsidies. Further, Milliken asserted that the Government of Pakistan's recent withdrawal of its administrative review request strongly suggests that there has been no change in the programs giving rise to countervailing subsidies.[7] In its substantive response, Milliken asserted that, with the exception of the compensatory rebate program, to the best of its knowledge, there is no evidence that the programs giving rise to the subsidies have been suspended or terminated, or that the respondent exporters have renounced the countervailable subsidies under these programs.[8]

In conclusion, Milliken argued that, based on the history of this case, the Department must determine that revocation of the countervailing duty order would likely lead to the recurrence of subsidized imports of cotton shop towels from Pakistan.

The *Sunset Policy Bulletin*, at section III.A.3, states that, consistent with the SAA at 888, continuation of a program will be probative of the likelihood of continuation or recurrence of countervailable subsidies. Temporary suspension or partial termination of a subsidy program also will be probative of continuation or recurrence of countervailable subsidies, absent significant evidence to the contrary. Additionally, the *Sunset Policy Bulletin* provides that, when a program has been officially terminated by the foreign government, this will be probative of the fact that the program will not continue or recur if the order is revoked (*see Sunset Policy Bulletin* at section III.A.5).

We agree with Milliken that Pakistan producers/exporters continue to benefit from several countervailable subsidy programs. The Department, in the most recent administrative review, determined that producers/exporters received countervailable benefits under the export financing program, the excise tax, sales tax, and customs duty rebate programs, and the income tax reduction program. The Department also listed two programs found not to be used that had previously been found countervailable.

As stated above, the continued use of a program is highly probative of the likelihood of continuation or recurrence of countervailable subsidies if the order were revoked. Additionally, the presence of programs that have not been used, but that also have not been terminated, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy. Therefore, because there are countervailable programs that are currently being used and others that remain in existence, the foreign government and other respondent interested parties waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that it is likely that a countervailable subsidy will continue if the order is revoked.

Net Countervailable Subsidy

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. The Department went on to clarify that this rate may not be the most appropriate rate if, for example, the rate was derived (in whole or in part) from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review. Additionally, when the Department determined company-specific countervailing duty rates in the original investigation, the Department normally will report to the Commission those company-specific rates from the original investigation, or where no company-specific rate was determined for a company, the Department normally will provide to the Commission the country-wide or "all others" rate. (*See Sunset Policy Bulletin* at section III.B.2.)

Milliken suggested that the Department select the original subsidy rate of 12.67 percent as the net countervailable subsidy rate likely to prevail if the order is revoked. Milliken argued that, should the Department decide that adjustments to the original subsidy rate are warranted, the Department should provide the Commission the rates from the final results of the most recent administrative review: Eastern Textiles, Ltd., 11.50 percent *ad valorem*, and Creation (Pvt), Ltd., 11.54 percent *ad valorem*, and for all other producers/exporters of cotton shop towels from Pakistan, 8.49 percent *ad valorem;* the rates from the final results of the most recent administrative review (*see* Milliken's February 3, 1999, Substantive Response, at 9.)

We disagree with Milliken's arguments that we use either the unadjusted rate from the original investigation or the rates from the most recent administrative review. As stated above, the Department normally will select the rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of the order in place. However, the *Sunset Policy Bulletin* (in section III.B.3.) also provides that adjustments may be made to the original net countervailable subsidy when programs have been terminated or when new programs have been added.

As Milliken noted in its substantive response, the compensatory rebate scheme was found to have been terminated. Additionally, over the life of this order, the Department found that producers/exporters received countervailable benefits under the import duty rebate program—a program found not used in the original investigation.

As a result of changes in programs since the imposition of the order, the Department determines that using the net countervailable subsidy rate as determined in the original investigation is no longer appropriate. Rather, we have adjusted the net countervailable subsidy from the original investigation by adding in the rate from the import duty rebate program (first used in the review covering April 1984 through December 1984) and subtracting out the subsidy from the compensatory rebate scheme which was terminated on May 29, 1986. (*See* calculation memo.)

Nature of the Subsidy

In the *Sunset Policy Bulletin*, the Department stated that, consistent with section 752(a)(6) of the Act, the Department will provide information to the Commission concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. In this case, Milliken did not address this issue.

Because receipt of benefits under each of the countervailable programs is contingent upon exports, these programs fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement. Each of the countervailable programs is described below.

Customs Duty Rebate

The government provides a 2% customs duty rebate on exported goods. The program, is in effect, a duty drawback. The government pays this rebate on items not physically incorporated into the exported product.

Rebates On Exportation

The government of Pakistan provides exporters of shop towels with cash rebates which are calculated as a percentage of the f.o.b. value of the exported product.

Income Tax Reduction

The government of Pakistan provides a 55% reduction of taxes attributable to income generated by products made for export.

Preferential Export Financing

The government permits short-term export financing to be provided to exporters at rates considerably lower than those otherwise charged on short-term loans in Pakistan.

Excise Tax and Sales Tax Rebate

The government of Pakistan provides an excise tax rebate and sales tax rebate on exports of shop towels.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rate listed below.

Manufacturers/exporters	Margin (percent)
All manufacturers/exporters	5.17

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with § 351.305 of the Department's regulation (19 CFR 351.305).

Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: July 30, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–20224 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–DS–P

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[6] *See* 19 CFR 351.218(d)(2)(iv).

[7] *See* Milliken Substantive Response (February 3, 1999) at 4, and *Cotton Shop Towels From Pakistan; Termination of Countervailing Duty Administrative Review*, 62 FR 34046 (June 24, 1997).

[8] *See* Milliken Substantive Response (February 3, 1999) at 6.

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 990302059–9206–03]

RIN ZA07

Public Telecommunications Facilities Program (PTFP)

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of applications received.

SUMMARY: The National Telecommunications and Information Administration (NTIA) previously announced the solicitation of grant applications for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program to compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account. This notice announces the list of applications received and notifies any interested party that it may file comments with the Agency supporting or opposing an application.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Acting Director, Public Telecommunications Facilities Program, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via Internet (send inquiries to http://www.ntia.doc.gov).

SUPPLEMENTARY INFORMATION: By **Federal Register** notice dated March 16, 1999, the NTIA, within the Department of Commerce, announced that it was soliciting grant applications for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program to compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account. NTIA announced that the closing date for receipt of PTFP applications was 5 p.m. EST, April 15, 1999. By **Federal Register** Notice dated April 13, 1999, the closing date was revised to 5 p.m. April 22, 1999.

Notice is hereby given that the PTFP received one application from the following organization. Identification of any application only indicates its receipt. It does not indicate that it has been accepted for review, has been determined to be eligible for funding, or that an application will receive an award.

Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. PTFP will forward a copy of any opposing comments to the applicant. Comments must be sent to PTFP at the following address: NTIA/PTFP, Room 4625, 1401 Constitution Ave., NW, Washington, DC 20230.

The Agency will incorporate all comments from the public and any replies from the applicant in the applicant's official file.

File No. 99253 University of Hawaii, Social Science Research Institute, 2530 Dole St., Sakamaki Hall D–200, Honolulu, HI 96822. Contact: Dr. Norman Okamura, Telecommunications

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Specialist, (808) 956–2909. Funds Requested: $598,442. Total Project Cost: $715,041. To support public service and development telecommunications services in the Pacific Island region, including the expansion of new digital services.

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 99–20069 Filed 8–4–99; 8:45 am]

BILLING CODE 3510–60–P

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments to the Chicago Board of Trade Oats Futures Contract To Provide That Minneapolis/St. Paul Deliveries Will Be at Par With Chicago Deliveries

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has proposed amendments to its oats futures contract that will change the locational price differential for oats delivered at regular warehouses in Minneapolis/St. Paul, Minnesota to par from the current 7½ cents per bushel discount. The proposed amendments will apply only to oats futures contract months beginning with the July 2000 contract month. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provide that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on September 13, 1999—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before August 20, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov*. Reference should be made to the CBT oats Minneapolis/St. Paul par delivery amendments.

FOR FURTHER INFORMATION CONTACT: Martin Murray of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC, (202) 418–5276. Electronic mail: *mmurray@cftc.gov*.

SUPPLEMENTARY INFORMATION: The CBT oats futures contract calls for the delivery of 5,000 bushels of oats in regular warehouses located at Chicago, Illinois (including Burns Harbor, Indiana) and Minneapolis/St. Paul, Minnesota. Under current contract terms, delivery in Chicago is at par, and in Minneapolis/St. Paul is at a 7½ cents per bushel discount. Under the proposed amendments, delivery in Minneapolis/St. Paul would be made at par, along with delivery in Chicago.

The Exchange states that its proposal reflects the fact that Minneapolis/St. Paul is the leading cash market for oats and that most futures deliveries are made from this location.

The Commission particularly requests that commenters address the extent to which a zero price differential between Minneapolis/St. Paul and Chicago (that is, par delivery for both points) falls within the range of normal commercial price differences between these locations, and the extent to which the proposed amendments will affect economically deliverable supplies for the oats futures contract.

Copies of the proposed amendments are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet on the CFTC website at *www.cftc.gov* under "What's New & Pending.".

Other materials submitted by the CBT in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 45.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on July 30, 1999.

John Mielke,

Acting Director.

[FR Doc. 99–20149 Filed 8–4–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments to Chicago Board of Trade Rough Rice Futures Contract Regarding Locational Price Differentials

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to contract terms and conditions.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has proposed amendments to Chicago Board of Trade rough rice futures contract that would remove the discount for deliveries at non-mill site warehouses. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provides that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on September 10, 1999—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before August 20, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the CBT rough rice futures contract.

FOR FURTHER INFORMATION, CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov.

SUPPLEMENTARY INFORMATION: The existing terms of the rough rice futures contract provide for the delivery of rough rice in store at exchange-designated warehouses located in specified counties of central and eastern Arkansas. Regular delivery facilities are either co-located with mills and thus are known as "mill site warehouses," or they are not co-located with mills and thus are known as "non-mill site warehouses." Deliveries made at mill site warehouses are made at the contract price (par) while deliveries made at non-mill site warehouses are subject to a discount of 15 cents per hundredweight.

The proposed amendments will remove the current discount applicable to deliveries at non-mill site warehouses. Thus, rough rice at all regular warehouses would be deliverable at par. The CBT intends to apply the proposed amendments to the September 2000 contract month and all subsequently listed contract months following its receipt of notice of Commission approval.

In support of the proposed amendments, the CBT stated that:

> The 15-cent price differential at non-mill site warehouses was specified to reflect a supposed price differential that existed in the cash market between mill site and non-mill site warehouses. The theoretical reason for the price differential was that holders of warehouse receipts at a mill site could have the rice milled by the owner of the mill, a process known as "toll milling." According to several participants in the rice industry, toll milling no longer takes place to any significant extent, and mills will not mill rice that they do not own. On June 9, 1999, a consensus was reached by a rice industry group assembled by the Chicago Board of Trade that toll milling indeed no longer takes place. The group also agreed that because toll milling no longer takes place, no differential exists in the cash-market price between rice at mill sites and non-mill sites. Therefore, the 15-cent per hundredweight discount for delivery at non-mill site warehouses is no longer appropriate.

The Commission requests that commenters address the extent to which the proposed amendment would reflect the relative value of rough rice stored at mill site warehouses versus rough rice stored at non-mill site warehouses and the potential effects of the proposed amendment on the supply of rough rice likely to be economically available for delivery on the contract as well.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet on the CFTC website at www.cftc.gov under "What's New & Pending".

Other materials submitted by the CBT in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitted written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on July 20, 1999.

John R. Mielke,

Acting Director.

[FR Doc 99–20150 Filed 8–4–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent as been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: A High Output Acoustic Signal Device, A Microwave Powered Vehicle Stopper and a thermal Battery With Reduced Self-Discharge.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

Title: Thermal Battery With Reduced Self-Discharge.

Inventor: Frank C. Krieger.

Patent Numbers: 5,900,331.

Issued Date: May 4, 1999.

Title: Multiple Plasma Channel High Output Variable Electro-Acoustic Pulse Source.

Inventor: Bruce Benwell, Dave, DeTroye, Harold E. Boesch and Vincent Ellis.

Patent Numbers: 5,903,518.

Issued Date: May 11, 1999.

Title: In-Road Microwave Vehicle Stopper.

Inventor: Todd M. Turner, Mark D. Berry and Edward P. Scannell.

Patent Numbers: 5,907,290.

Issued Date: May 25, 1999.

FOR FURTHER INFORMATION CONTACT: Norma Cammaratta, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Adelphi, MD 20783–1197 tel: (301) 394–2952; fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–20198 Filed 8–4–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: An Optical

Alignment Sensor, an Optical Based pressure Sensor and a Device to Detect NO and NO_2.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99-502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

Title: Device and Process For Detecting And Discriminating NO and NO_2 From Other Nitrocompounds In Real-Time And In Situ.

Inventors: Rosario C. Sausa and Robert Pastel.

Patent Number: 5,906,946.

Issued Date: May 25, 1999.

Title: G-Hardened Optical Alignment Sensor.

Inventors: David J. Hepner and Michael S.L. Hollis.

Patent Number: 5,909,275.

Issued Date: June 1, 1999.

Title: Optically-Based Pressure Sensor Having Temperature Compensation.

Inventor: Michael McQuaid.

Patent Number: 5,912,457.

Issued Date: June 15, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, MD 21005–5055 tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–20193 Filed 8–4–99; 8:45]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Revised Draft Environmental Impact Statement for Proposed Open-Water Placement of Dredged Material at Site 104, Queen Anne's County, Maryland

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: Reference previous **Federal Register** notice, Volume 64, Number 126, page 35634, dated July 1, 1999, announcing the Baltimore District's extension of comment period to July 31, 1999. the Baltimore District is announcing that it will prepare a revised Draft Environmental Impact Statement (DEIS) for the proposed open-water placement of dredged material at Site 104, Queen Anne's County, Maryland. The public is encouraged to continue to submit its comments during this revision process. The revised DEIS will be made available to the public for 45 days once it's completed. The Baltimore District will consider all public comments received on the February 1999 DEIS, the revised DEIS, and the Final Environmental Impact Statement (FEIS) before making a decision.

DATES: The District expects to release the revised DEIS to the public in December 1999. The District expects to release the FEIS to the public in April 2000.

ADDRESSES: Questions and comments should continue to be directed to Mr. Wesley E. Coleman, Jr. at the Corps of Engineers Baltimore District (ATTN: CENAB–PL–P), P.O. Box 1715, Baltimore, MD 21203–1715 or by e-mail at wesley.e.coleman@usace.army.mil.

FOR FURTHER INFORMATION CONTACT: Mr. Wesley E. Coleman, Jr. at 1–800–295–1610 or by facsimile at (410) 962–4698.

SUPPLEMENTARY INFORMATION: A Notice of Availability (NOA) and a summary of the proposed action was published in the **Federal Register** (64 FR 9480) on February 26, 1999. The U.S. Army Corps of Engineers, Baltimore's District is evaluating the potential use of Site 104 as an open-water placement area. Site 104 is located in the Chesapeake Bay one-half mile north of the Chesapeake Bay Bridge and one mile west of Kent Island. Open-water placement is proposed for approximately 18 million cubic yards of dredged material from the mainstem Chesapeake Bay channels leading to the port of Baltimore. This does not include material from the channels in the Patapsco River. The Maryland Port Administration has recommended the use of Site 104 for open-water placement of clean sediment. No decision has been made to use the site. The Baltimore District will consider all public comments received on the February 1999 DEIS, the revised DEIS, and the FEIS before making a decision.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–20195 Filed 8–4–99; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF DEFENSE

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Navigation Improvements at Akutan, AK

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Engineer District, Alaska, intends to prepare a DEIS for the construction of a boat harbor at Akutan, Alaska. The village of Akutan is an isolated, subsistence-based, Alaska Native community in the Aleutian Island chain. Although the Aleut population of the local village remains at 90–100, the fish processing activity in the area brings the total year-round population in Akutan to over 500, peaking during certain fisheries seasons at about 1,000. The village has no roads or airport. The harbor would serve local commercial and subsistence fishing vessels, and moor commercial and recreational transient vessels.

FOR FURTHER INFORMATION CONTACT: Wayne M. Crayton (907) 753–2672, Alaska District, Corps of Engineers, Environmental Resources Section (CEOPA–EN–CW–ER), P.O. Box 898, Anchorage, Alaska 99506–0898. E-mail *Wayne.M.Crayton@usace.army.mil*

SUPPLEMENTARY INFORMATION: This General Investigation feasibility study will consider structural alternatives including the construction of a breakwater, a dredged basin, and harbor related infrastructure. The initial evaluation identified two harbor locations. One alternative is at the head of Akutan Harbor and would require extensive excavation and fill in coastal wetlands. The second alternative is near the village and seafood processing plant, but in deeper water that would require a large breakwater and might require blasting. Both alternatives would require the construction of an access road. Other harbor locations and non-structural alternatives identified during the scoping process will be evaluated.

Issues

The DEIS will consider the needs of the village and commercial vessel operations, impacts to marine intertidal and subtidal communities, fish and wildlife, wetlands, threatened and endangered species, essential fish habitant, water quality, cultural resources, socio-economic resources, and other resources and concerns identified through scoping, public involvement, and interagency coordination.

Scoping

A copy of this notice and additional public information will be sent to interested parties to initiate scoping. All parties are invited to participate in the scoping process by identifying any additional concerns, issues, studies, and alternatives that should be considered. A scoping meeting will be announced. Project effects on wetlands and their importance to the ecology of the area and the potential for the project and project road to induce development have been identified as significant issues. The DEIS is scheduled for release in January 2001.

Guy R. McConnell,

Chief, Environmental Resources Section.

[FR Doc. 99–20194 Filed 8–4–99; 8:45 am]

BILLING CODE 3710–NL–M

DEPARTMENT OF DEFENSE

Corps of Engineers; Department of the Army

Notice of Intent and Notice of Preparation for an Environmental Impact Statement and Environmental Impact Report for a Proposed Ecosystem Restoration of Middle Creek in Lake County, CA

AGENCY: U.S. Army Corps of Engineers (Corps), Sacramento District (Federal); California Department of Water Resources, Division of Flood Management (State); Lake County, California (local).

ACTION: Notice.

SUMMARY: The objectives of this project are to restore wetland habitat and enhance wildlife and fish habitat. Secondary objectives include preserving existing resources, improving lake water quality, enhancing recreation and tourism, reducing flood risk, and reducing maintenance cost and responsibility for Middle Creek along Rodman Slough. The intent of this project is to restore the ecosystem functions of a historic wetland at the mouth of Middle Creek.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS/EIR can be answered by Jerry Fuentes at (916) 557–6706 or by mail at U.S. Army Corps of Engineers, Planning Division, ATTN: CESPK–PD–R, 1325 J Street, Sacramento, California 95814–2922.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The Corps, in cooperation with the state (California Department of Water Resources and the local sponsor (Lake County), is conducting a feasibility investigation on the ecosystem restoration measures identified during the reconnaissance phase and described in the Middle Creek Ecosystem Restoration Study dated May, 1997. This ecosystem restoration investigation proposes to restore the wetland ecosystem functions associated with the historical wetland that existed at the mouth of Middle Creek.

2. Alternatives

The feasibility report will address an array of alternatives. Alternatives analyzed during the feasibility investigation will be a combination of one or more ecosystem restoration measures identified during the reconnaissance phase; additional measures may be considered. These alternative measures include expanding the natural floodplain, restoring open water and marsh habitat, restoring seasonal wetland and riparian habitat, enhancing upland habitat, plant marsh and riparian vegetation, planting marsh and riparian vegetation, excavating sloughs, channels, ponds, expanding lake shoreline and shallow aquatic habitat, and reducing height of levees no longer used for flood control.

a. No Action. There will be no ecosystem restoration measures implemented for Middle Creek, Lake County.

b. Expand the Natural Floodplain.

c. Restore Robinson Lake from Bloody Island to Clear Lake.

d. Restore Robinson Lake from Reclamation Road to Clear Lake.

3. Scoping Process

a. The project study plan provides for public scoping meeting and comment. The Corps has initiated a process of involving concerned individuals, local, state, and Federal agencies.

b. Significant issues to be analyzed in depth in the EIS/EIR include appropriate levels of the flood damaged reduction, adverse affects on vegetation and wildlife resources, special-status species, esthetics, cultural resources, recreation, and cumulative impacts of related projects in the study area.

c. The Corps will consult with the State Historic Preservation Officer and the U.S. Fish and Wildlife Service to provide a Fish and Wildlife Coordination Act Report an as appendix to the EIS/EIS.

d. A 45-day public review period will be provided for individuals and agencies to review and comment on the EIS/EIR. All interested parties should respond to this notice and provide a current address if they wish to be notified of the EIS/EIR circulation.

4. Public Meetings

The first of a series of public scoping meetings will be held on August 12, 1999, from 6:30 p.m. to 9:00 p.m. at Robinson Rancheria, Tribal Community Hall, 1545 East Highway 20, Upper Lake, California.

5. Availability

The EIS/EIR is scheduled to be available for public review and comment late in calendar year 2001.

Dated: July 29, 1999.

Michael J. Walsh,

COL, EN, Commanding.

[FR Doc. 99–20197 Filed 8–4–99; 8:45 am]

BILLING CODE 3710–EZ–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.019A, 84.021A, 84.022A]

Office of Postsecondary Education: Fulbright-Hays Faculty Research Abroad Fellowship Program, Fulbright-Hays Group Projects Abroad Program, and Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Programs

(a) The Faculty Research Abroad Fellowship Program offers opportunities to faculty members of institutions of higher education for research and study in modern foreign languages and area studies.

(b) The Group Projects Abroad Program provides grants to support overseas projects in training, research, and curriculum development in modern foreign languages and area studies for groups of teachers, students, and faculty engaged in a common endeavor. Projects may include short-term seminars, curriculum development or group research or study. The program does not support advanced intensive language projects under this competition.

(c) The Doctoral Dissertation Research Abroad Fellowship Program provides opportunities for graduate students to engage in full-time dissertation research abroad in modern foreign languages and area studies.

Eligible Applicants

(a) Institutions of higher education are eligible to participate in the Faculty Research Abroad Fellowship Program

and the Doctoral Dissertation Research Abroad Fellowship Program.

(b) Institutions of higher education, State departments of education, nonprofit private educational organizations, and consortia of these entities are eligible to participate in the Group Projects Abroad Program.

Deadline for Transmittal of Applications

The dates of availability of applications and the deadlines for the transmittal of applications under each of these competitions are indicated in the chart contained in this notice.

Available Funds

The estimated amount of funds available for new awards under these competitions, as shown in the chart below, is based on the Administration's request for these programs for FY 2000. The actual level of funding, if any, is contingent on final congressional action.

CFDA number and name of program	Applications available	Deadline for transmittal of applications	Estimated range of awards	Estimated average size of awards	Estimated number of award	Project period
84.019A—Fulbright-Hays Faculty Research Abroad Fellowship Program.	August 25, 1999	October 25, 1999.	$20,800–$75,000	$43,000	23 fellowships ...	3–12 months.
84.021A—Fulbright-Hays Group Projects Abroad Program.	August 16, 1999	October 25, 1999.	30,000–65,000	55,000	28	4–6 weeks for short-term seminars and curriculum development projects. 2–12 months for group research or study projects.
84.022A—Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program.	August 25, 1999	October 25, 1999.	10,000–70,000	23,800	87 fellowships ...	6–12 months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for these programs as follows: 34 CFR part 662 governing the Doctoral Dissertation Research Abroad Fellowship Program; 34 CFR part 663 governing the Faculty Research Abroad Fellowship Program; and 34 CFR part 664 governing the Group Projects Abroad Program.

Priorities

Fulbright-Hays Faculty Research Abroad Fellowship Program and Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program

Absolute Priority: Under 34 CFR 105(c)(3) and 34 CFR 662.21(d) governing the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program and 34 CFR 105(c)(3) and 34 CFR 663.21(d) governing the Fulbright-Hays Faculty Research Abroad Fellowship Program, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds only applications that meet this absolute priority:

A research project funded under this priority must focus on one or more of the following areas: Africa, East Asia, Southeast Asia and the Pacific, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (Canada, Central and South America, Mexico, and the Caribbean). Please note that applications that propose projects focused on Western Europe will not be funded.

Group Projects Abroad Program

Absolute Priority: Under 34 CFR 105(c)(3) and 34 CFR 664.34 governing the Fulbright-Hays Group Projects Abroad Program, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds only applications that this absolute priority:

A group project funded under this priority must propose to focus on one or more of the following areas: Africa, East Asia, South Asia, Southeast Asia and the Pacific, the Western Hemisphere (Central and South America, Mexico, and the Caribbean), East Central Europe and Eurasia, and the Near East. Please note that applications that propose projects focused on Australia, Canada or Western Europe will not be funded.

Competitive Priority: Within the absolute priority specified in this notice for the Group Projects Abroad Program, the Secretary gives preference to applications that meet the following competitive priority. Under 34 CFR 75.105(c)(2)(i) and 34 CFR 664.30(b), the Secretary awards up to five points to an application depending upon how well the application meets the priority. These points are in addition to any points the application earns under the selection criteria for the program.

Short-term seminars that develop and improve foreign language and area studies at elementary and secondary schools.

FOR APPLICATIONS OR INFORMATION CONTACT:

Faculty Research Abroad Program: Eliza Washington, U.S. Department of Education, International Education and Graduate Programs Service, 400 Maryland Avenue, SW., Suite 600 Portals Building, Washington, DC 20202–5331. Telephone: (202) 401–9777. The e-mail address for Ms. Washington is eliza__washington@ed.gov.

Group Projects Abroad: Lungching Chiao, U.S. Department of Education, International Education and Graduate Programs Service, 400 Maryland Avenue, SW., Suite 600 Portals Building, Washington, DC 20202–5332. Telephone: (202) 401–9772. The e-mail address for Ms. Chiao is lungching__chiao@ed.gov.

Doctoral Dissertation Research Abroad Program: Karla Ver Bryck Block, U.S. Department of Education, International Education and Graduate Programs Service, 400 Maryland Avenue, SW., Suite 600 Portals Building Washington, DC 20202–5331. Telephone: (202) 401–9774. The e-mail address for Ms. Ver Bryck Block is karla__verbryckblock@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the appropriate contact persons listed in the preceding paragraphs. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have any questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, D.C. area, at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 22 U.S.C. 2452(b)(6).

Dated: July 30, 1999.

Claudio R. Prieto,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 99–20155 Filed 8–4–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Supplemental Environmental Impact Statement for the Programmatic Environmental Impact Statement for Stockpile Stewardship and Management

AGENCY: Department of Energy.

ACTION: Amended notice of intent.

SUMMARY: The Department of Energy (DOE) is announcing a revised schedule for its preparation of a Draft Supplemental Environmental Impact Statement (SEIS) for the National Ignition Facility portion (Volume III, Appendix I) of the Programmatic Environmental Impact Statement for Stockpile Stewardship and Management (DOE/EIS–0236; September, 1997). This Draft SEIS is being prepared pursuant to a Joint Stipulation and Order approved and entered as an order of the court on October 27, 1997, in partial settlement of the lawsuit *NRDC* v. *Richardson*, Civ. No. 97–936 (SS) (D.D.C.).

FOR FURTHER INFORMATION CONTACT: For further information about this SEIS or to be placed on the document distribution list, please call, toll-free, (877) 388–4930, or call or write to Richard A. Scott, Document Manager, U.S. Department of Energy, L–293, P.O. Box 808, Livermore, CA 94550, Phone (925) 423–3022, Facsimile (925) 424–3755. For information about the DOE National Environmental Policy Act (NEPA) process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Ave, SW, Washington, DC 20585–0119, Phone: (202) 586–4600, Messages: (800) 472–2756, Facsimile: (202) 586–7031.

SUPPLEMENTARY INFORMATION: In a September 25, 1998, **Federal Register** notice (63 FR 51341), DOE announced that it expected to publish a Notice of Availability for the Draft SEIS in the **Federal Register** in December 1998. DOE now intends to publish the Notice of Availability no later than November 30, 1999. DOE has delayed the issuance of the Draft SEIS pending completion of a new investigation that was initiated in December 1998, in response to the discovery of contamination by polychlorinated biphenyls (PCBs) in soil that had been excavated from the Lawrence Livermore National Laboratory's East Traffic Circle, which is one of the areas covered by the Joint Stipulation and Order. After the discovery of the contaminated soil, DOE on December 23, 1998, notified the court and the plaintiffs in *NRDC* v. *Richardson* of the discovery; stated that the contaminated soil was being removed in accordance with applicable laws and regulations; and explained that a new investigation would be conducted into the extent of the contamination, and that DOE would delay issuance of the Draft SEIS pending the results of the new investigation.

Since then, DOE has filed two Quarterly Reports with the court, on March 24 and June 22, 1999, describing the progress that it has made in conducting the investigation and in analyzing its results for incorporation into the environmental impact analyses that will be included in the Draft SEIS. Copies of those Quarterly Reports, and of DOE's December 23, 1998 notice mentioned above, are available at the DOE Oakland Operations Office Public Reading Room on the first floor of the Federal Building, 1301 Clay Street, Oakland, CA; at the Lawrence Livermore National Laboratory Environmental Repository Public Reading Room, East Gate Visitors Center, Greenville Road, Livermore, CA; at the DOE Freedom of Information Act Public Reading Room, 1000 Independence Ave, SW, Washington, DC; or by calling Richard A. Scott at the telephone number provided above.

Issued in Washington, DC on July 30, 1999.

Jonathan S. Ventura,

Acting Executive Assistant, Office of Defense Programs.

[FR Doc. 99–20143 Filed 8–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EG99–206–000]

Federal Energy Regulatory Commission

Astoria Generating Company, L.P.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

July 30, 1999.

Take notice that on July 28, 1999, Astoria Generating Company, L.P. (Applicant), with its principal office at c/o Orion Holdings, Inc., 7 E. Redwood Street, 10th Floor, Baltimore, Maryland 21201, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant will be engaged in owning and operating certain facilities located in New York State. The eligible facilities consist of approximately of the Astoria Bundle sold by Consolidated Edison of New York, with a total summer net capacity of 1,855 MW. The Applicant will sell electric energy exclusively at wholesale. Electric energy produced by the eligible facilities is sold exclusively at wholesale.

Any person desiring to be heard concerning the application for exempt

wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before August 12, 1999, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–20104 Filed 8–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–590–000]

McDay Energy Partners, Ltd.; Notice of Petition for Declaratory Order

July 30, 1999.

Take notice that on July 22, 1999, McDay Energy Partners, Ltd. (McDay Energy), filed in Docket No. CP99–590–000 an application pursuant to Section 16 of the Natural Gas Act (NGA) and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207 (a)(2)), for a declaratory order disclaiming Commission jurisdiction under Section 1(b) of the NGA over certain facilities to be acquired from Northern Natural Gas Company (Northern) in a companion filing in Docket No. CP99–552–000, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, McDay Energy seeks a declaratory order from the Commission finding that the approximately 26 miles of 12-inch pipeline and appurtenant facilities located in Zavala and Dimmitt Counties, Texas, once acquired and integrated into McDay Energy's existing gathering lines, will perform a gathering function as defined under the Commission's modified primary function test, and therefore, should be exempt from Commission jurisdiction under Section 1(b) of the NGA.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 20, 1999, file with the Federal Energy Regulatory Commission, Washington, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Secretary.

[FR Doc. 99–20105 Filed 8–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–589–000]

National Fuel Gas Supply Corporation; Notice of Application

July 30, 1999.

Take notice that on July 22, 1999, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203 filed, in Docket No. CP99–589–000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment of certain facilities in Venango, Clarion, and Forest Counties, Pennsylvania, in connection with the sale of certain nonjurisdictional facilities to Van Hampton Gas & Oil Company, Inc. (Van Hampton), as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Specifically, National Fuel proposes to abandon by sale to Van Hampton approximately 31 miles of 2-inch to 8-inch diameter gathering pipelines, including five receipt points and seven points of delivery located along the gathering pipelines. National Fuel states that the gathering pipelines, receipt points and points of delivery will perform a gathering function for Van Hampton and requests that the Commission determine that such facilities will not be subject to the Commission's jurisdiction after the sale.

National Fuel's application states that it has agreed to sell the nonjurisdictional gathering pipelines and metering facilities located at the receipt points, to Van Hampton for $1.00. National Fuel indicates that service will not be terminated to any of its shippers.

Any questions regarding this application should be directed to David W. Reitz, Assistant General Counsel for National Fuel, 10 Lafayette Square, Buffalo, New York 14203 at (716) 857–7949, or George L. Weber, Esq., Weber & Associates, P.C., 727 Fifteenth Street, NW, Washington, DC 20005 at (202) 628–0200.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 20, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no protest or motion to intervene is filed within the time required herein. At that time, the Commission on its own review of the matter will determine whether granting permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National Fuel to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–20106 Filed 8–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–593–000]

Williston Basin Interstate Pipeline Company; Notice of Application To Abandon

July 30, 1999.

Take notice that on July 26, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), 1250 West Century Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP99–593–000 an abbreviated application to amend the Certificate of Public Convenience and Necessity issued March 30, 1992 in Docket No. CP91–1897–000 pursuant to Sections 7(b) and 7(c) of the Natural Gas Act all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

The name, address, and telephone number of the person to whom correspondence and communications concerning this application should be addressed is: Keith A. Tiggelaar, Manager, Regulatory Affairs, Williston Basin Interstate Pipeline Company, P.O. Box 5601, Bismarck, North Dakota 58506–5601, (701) 530–1560.

Williston Basin requests authorization to remove the Many Islands Pipe Line-Portal receipt point and to add the Baker Area Mainline receipt point to the transportation service provided to Northern States Power Company under Rate Schedule X–13 of Williston Basin's FERC Gas Tariff, Original Volume No. 2.

Any person desiring to be heard or to make any protest with reference to said application should, on or before August 20, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed certificate and abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williston Basin to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–20107 Filed 8–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2918–004, et al.]

Energy PM, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 28, 1999.

Take notice that the following filings have been made with the Commission:

1. Energy PM, Inc.

[Docket No. ER98–2918–004]

Take notice that on July 23, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

2. IGI Resources, Inc., TransCanada Power Marketing Ltd. and Con Edison Energy, Inc.

[Docket No. ER95–1034–016, Docket No. ER98–564–004 and Docket No. ER98–2491–004]

Take notice that on July 22, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Duquesne Light Company

[Docket Nos. ER97–1165–001 and OA97–221–001]

Take notice that on July 7, 1999, Duquesne Light Company (Duquesne) tendered for filing with the Federal Energy Regulatory Commission (Commission) its compliance filing required by the Commission's June 22, 1999 Order in the above-referenced dockets.

Comment date: August 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Company

[Docket No. ER99–2738–002]

Take notice that on July 21, 1999, Northeast Utilities Service Company made a filing in compliance with the Commission's June 21, 1999, Order Conditionally Accepting for Filing Revised Service Agreement in Docket No. ER99–2738–000.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Power, a division of Duke Energy Corporation, Jersey Central Power & Light Company, et al., Kansas City Power & Light Company, Minnesota Agri-Power L.L.C. and Kincaid Generation L.L.C.

[Docket No. ER99–3624–000, Docket No. ER99–3625–000, Docket No. ER99–3630–000, Docket No. ER99–3639–000 and Docket No. ER99–3640–000]

Take notice that on July 19, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending June 30, 1999.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

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6. Hardee Power Partners Limited, Tampa Electric Company and Great Bay Power Corporation

[Docket No. ER99–3647–000, Docket No. ER99–3648–000 and Docket No. ER99–3649–000]

Take notice that on July 20, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending June 30, 1999.

Comment date: August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Occidental Power Marketing, L.P.

[Docket No. ER99–3665–000]

Take notice that on July 21, 1999, Occidental Power Marketing, L.P. (Occidental), petitions the Commission for acceptance of Occidental Power Marketing, L.P. FERC Electric Rate Schedule No. 1; the granting of certain blanket authorizations, including authorization to sell electric capacity and energy at market-based rates; and the waiver of certain Commission Regulations.

Occidental intends to engage in wholesale electric capacity and energy purchases and sales as an electric power marketer. Occidental is not in the business of electric power generation or transmission. Occidental is affiliated, however, with a few "qualifying facilities" under PURPA and proposes to market some affiliate-generated electric power. Occidental is a wholly owned subsidiary of Occidental Petroleum Corporation, which, through affiliates, explores for, develops, produces and markets crude oil and natural gas and manufactures and markets a variety of basic chemicals as well as specialty chemicals.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Southwest Power Pool

[Docket No. ER99–3666–000]

Take notice that on July 21, 1999, Southwest Power Pool (SPP), tendered for filing an executed service agreement for firm point-to-point transmission service under the SPP Tariff with ONEOK Power Marketing Company.

SPP requests an effective date of July 1, 1999 for this agreement.

Copies of this filing were served upon ONEOK.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Deseret Generation & Transmission Co-operative

[Docket No. ER99–3667–000]

Take notice that on July 21, 1999, Deseret Generation & Transmission Co-operative (Deseret), tendered for filing an executed umbrella non-firm point-to-point service agreement with British Columbia Power Exchange Corporation under its open access transmission tariff. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

Deseret requests a waiver of the Commission's notice requirements for an effective date of June 23, 1999.

British Columbia Power Exchange Corporation has been provided a copy of this filing.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Energy Merchants, L.L.C.

[Docket No. ER99–3668–000]

Take notice that on July 21, 1999, Duke Energy Merchants, L.L.C. (DEM), tendered for filing an application requesting acceptance of its proposed market-based rate tariff, waiver of certain regulations and blanket approvals.

Comment date; August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER99–3670–000]

Take notice that on July 21, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and Constellation Power Source, Inc. (CON), dated July 13, 1999. This Service Agreement specifies that CON has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and CON to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of July 13, 1999, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy)

[Docket No. ER99–3671–000]

Take notice that on July 21, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy), tendered for filing Amendment Nos. 1 and 2 to Supplement No. 34 to the Standard Generation Service Tariff to incorporate Netting Agreements with Horizon Energy Company into the tariff provisions.

Allegheny Power and Allegheny Energy request a waiver of notice requirements to make the Amendments effective as of the effective dates therein, June 23, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Idaho Power Company

[Docket No. ER99–3674–000]

Take notice that on July 21, 1999, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Non-Firm Point-to-Point Transmission Service and Firm Point-to-Point Transmission Service between Idaho Power Company and The Montana Power Trading & Marketing Company.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy)

[Docket No. ER99–3675–000]

Take notice that on July 21, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) and West Penn Power Company (Allegheny Energy), tendered for filing Amendment Nos. 1 and 2 to Supplement No. 4 to the Standard Generation Service Tariff to incorporate Netting Agreements with Tennessee Power Company into the tariff provisions.

Allegheny Power and Allegheny Energy request a waiver of notice requirements to make the Amendments effective as of the effective dates therein, June 25, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER99–3676–000]

Take notice that on July 21, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Mississippi, Inc. (EMI), tendered for filing a Letter Agreement between Entergy Services, as agent for EMI, and the South Mississippi Electric Power Association providing for certain modifications to the Monticello GP Substation.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. CMS Generation Michigan Power, L.L.C.

[Docket No. ER99–3677–000]

Take notice that on July 21, 1999, CMS Generation Michigan Power, L.L.C. (Michigan Power), tendered for filing, pursuant to Rule 205, 18 CFR 385.205, petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 2, to be effective at the earliest possible time, but no later than 60 days from the date of its filing.

Michigan Power intends to engage in electric power and energy purchases and sales. In transactions where Michigan Power sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. As outlined in Michigan Power's petition, Michigan Power is an affiliate of CMS Energy, a public utility holding company and the parent company of Consumers Energy.

Comment date: August 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Smarr EMC

[Docket No. ES99–49–000]

Take notice that on July 22, 1999, Smarr EMC submitted an application seeking authorization under Section 204 of the Federal Power Act to borrow up to $5 million under a line of credit agreement, or replacements therefor or renewals thereof, with the National Rural Utilities Cooperative Finance Corporation over a two-year period. Proceeds of the line of credit will be used to finance the continued operation of Smarr EMC's generating facility, and for other lawful corporate purposes. Smarr EMC requests that the Commission grant the requested authorization for such borrowing no later than August 26, 1999.

Comment date: August 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–20111 Filed 8–4–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Request for Motions To Intervene and Protests

July 30, 1999.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11769–000.

c. *Date filed:* June 21, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Mississippi Lock and Dam #9.

f. *Location:* At the existing U.S. Army Corps of Engineers' Lock and Dam #9 on the Mississippi River, near the town of Harpers Ferry, Crawford County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Jack Duckworth (202) 219–2808 or E-mail to: Jack.Duckworth@FERC.fed.us

j. *Comment Date:* 60 days from the issuance date of this notice.

k. *Description of Project:* The proposed project would use water from the existing U.S. Army Corps of Engineers' Mississippi River Lock and Dam #9, and would consist of the following facilities: (1) 5 steel penstock about 80 feet long and 114 inches in diameter from the outlet works to; (2) a new powerhouse, with exhaust apron, to be constructed on the downstream side of the dam below the outlet works, having an installed capacity of 10,000 kilowatts; (3) a new 200-foot-long, 14.7-kilovolt transmission line from the powerhouse to an existing transmission line to the east; and (4) appurtenant facilities. The project's proposed average annual energy generation is estimated to be 61 gigawatthours. The cost of the studies under the permit is estimated to be about $2,000,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE,

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Room 2–A, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–20108 Filed 8–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Request for Motions To Intervene and Protests

July 30, 1999.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11770–000.

c. *Dated filed:* June 21, 1999.

d. *Applicant:* Universal Electronic Power Corp.

e. *Name of Project:* Mississippi Lock and Dam #7.

f. *Location:* At the existing U.S. Army Corps of Engineers' Lock and Dam #7 on the Mississippi River, near the town of La Crescent, Winona County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Jack Duckworth (202) 219–2808 or E-mail to: Jack.Duckworth@FERC.fed.us

j. *Comment Date:* 60 days from the issuance date of this notice.

k. *Description Project:* The proposed project would use water from the existing U.S. Army Corps of Engineers' Mississippi River Lock and Dam #7, and would consist of the following facilities: (1) 8 steel penstock about 80 feet long and 96 inches in diameter from the outlet works to; (2) a new powerhouse, with exhaust apron, to be constructed on the downstream side of the dam below the outlet works, having an installed capacity of 23,700 kilowatts; (3) a new 200-foot-long, 14.7-kilovolt transmission line from the powerhouse to an existing transmission line to the west; and (4) appurtenant facilities. The project's proposed average annual energy generation is estimated to be 78 gigawatthours. The cost of the studies under the permit is estimated to be about $2,000,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commissions's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, by calling (202) 208–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-name documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–20109 Filed 8–4–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6413–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Emergency Planning and Release Notification Requirements under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Emergency Planning and Release Notification Requirements under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304, EPA ICR Number 1395.04. This ICR renews a previously approved ICR No. 1395.03 (expires January 31, 2000, OMB Control Number 2050–0092). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 4, 1999.

ADDRESSES: Chemical Emergency Preparedness and Prevention Office, SW, Washington DC 20460. Interested persons may obtain a copy of the ICR without charge by contacting the person in FOR FURTHER INFORMATION CONTACT section.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, 202–260–7249, fax no. 202–260–0927, or e-mail: Jacob.Sicy@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which have a threshold planning quantity of an extremely hazardous substance (EHS) listed in 40 CFR Part 355, Appendix A and those which have a release of any of the EHS above a reportable quantity. Entities more likely to be affected by this action may include chemical, non-chemical manufac-turers, retailers, petroleum refineries, utilities, etc.

Title: Emergency Planning and Release Notification Requirements under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304, OMB Control No. 2050–0092, EPA ICR No. 1395.04.

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Abstract: The authority for these requirements is sections 302, 303, and 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. § 11002, 11003, and 11004). EPCRA established broad emergency planning and facility reporting requirements. Section 302 requires facilities to notify their state emergency response commission (SERC) that the facility is subject to emergency planning. This activity has been completed; only new facilities are subject to this requirement. Section 303 requires the local emergency planning committees (LEPCs) to prepare emergency plans for facilities that are subject to section 302. This activity has been also completed; this ICR only covers any updates needed for these emergency response plans. Section 304 requires facilities to report to SERCs and LEPCs releases in excess of the reportable quantities listed for each extremely hazardous substance (EHS). This ICR also covers the notification and the written follow-up required under this section.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average reporting burden for emergency planning under 40 CFR 355.30 is 17.65 hours for new and newly regulated facilities and 12.5 hours for existing facilities. For new and newly regulated facilities, this burden includes the time required to read and understand the regulations, to determine reporting status, notify the SERC that the facility is subject to emergency planning, designate a facility representative and otherwise participate in initial planning activities. For certain existing facilities, this burden includes the time required to inform the LEPC of any changes at a facility that may affect emergency planning, and provide information to the LEPC for planning purposes. The average reporting burden for facilities reporting releases under 40 CFR 355.40 is estimated to average approximately 5 hours per release, including the time for determining if the release is a reportable quantity, notifying the LEPC and SERC, or the 911 operator, and developing and submitting a written follow-up notice. There are no recordkeeping requirements for facilities under EPCRA Sections 302–304.

The average burden for emergency planning activities under 40 CFR 300.215 is 21 hours per plan for LEPCs, 16 hours per plan for SERCs. Each SERC and LEPC is also estimated to incur an annual recordkeeping burden of 10 hours. The total burden to facilities over the three-year information collection period is estimated to be 266,000 hours, at a cost of $7.8 million. The total burden for SERCs and LEPCs over the three-year information collection period is estimated to be 486,000 hours at a cost of $11.6 million.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 30, 1999.

David Speights,

Acting Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 99–20201 Filed 8–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6413–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Community Right-to-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Community Right-to-Know Reporting Requirements under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), EPA ICR Number 1352.07. This ICR renews a previously approved ICR No. 1352.04 (expires January 31, 2000, OMB Control Number 2050-0072). On February 11, 1999 (64 FR 7031), EPA revised sections 311 and 312 of EPCRA and amended the ICR (see ICR No. 1356.06). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 4, 1999.

ADDRESSES: Chemical Emergency Preparedness and Prevention Office, SW, Washington DC 20460. Interested persons may obtain a copy of the ICR without charge by contacting the person in **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, 202–260–7249, fax no. 202–260–0927, or e-mail: Jacob.Sicy@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those facilities required to prepare or have available an MSDS for a hazardous chemical under the Hazard Communication Standard (HCS) of the Occupational Safety and Health Administration. Entities more likely to be affected by this action may include chemical, non-chemical manufacturers, retailers, petroleum refineries, utilities, etc.

Title: Community Right-to-Know Reporting Requirements under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), EPA ICR Number 1352.07.

Abstract: The authority for these requirements is sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. 11011, 11012). EPCRA Section 311 requires owners and operators of facilities subject to OSHA HCS to submit a list of chemicals or MSDSs (for those chemicals that exceed thresholds, specified in 40 CFR Part 370) to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC) and the local fire department (LFD) with jurisdiction over their facility. This is a one-time requirement unless a new facility becomes subject to the regulations or updating the information by facilities that are already covered by the regulations. EPCRA Section 312 requires owners and operators of facilities subject to OSHA HCS to submit an inventory form for those chemicals that exceed the thresholds to the SERC, LEPC, and LFD with jurisdiction over their facility. This activity is to be completed on March 1 of each year, on the inventory of chemicals in the previous calendar year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average burden for MSDS reporting under 40 CFR 370.21 is estimated at 1.6 hours for new and newly regulated facilities and approximately 0.6 hours for those existing facilities that obtain new or revised MSDSs or receive requests for MSDSs from local governments. For new and newly regulated facilities, this burden includes the time required to read and understand the regulations, to determine which chemicals meet or exceed reporting thresholds, and to submit MSDSs or lists of chemicals to SERC, LEPCs, and local fire departments. For existing facilities, this burden includes the time required to submit revised MSDSs and new MSDSs to local officials. The average reporting burden for facilities to perform Tier I or Tier II inventory reporting under 40 CFR 370.25 is estimated to be approximately 3.1 hours per facility, including the time to develop and submit the information. There are no recordkeeping requirements for facilities under EPCRA sections 311 and 312.

The average burden for state and local governments to respond to requests for MSDSs or Tier II information under 40 CFR 370.30 is estimated to be 0.17 hours per request. The average burden for state and local governments for managing and maintaining the reports is estimated to be 32.25 hours. The average burden for maintaining and updating the 312 database is 320 hours. The total burden to facilities over the three-year information collection period is estimated to be 5,182,000 hours, at a cost of $164 million, with an associated state and local burden of 439,000 hours at a cost of $8.4 million.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 30, 1999.

David Speights,

Acting Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 99–20203 Filed 8–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–6414–3]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption—Notice of Waiver Decision and Within the Scope Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice regarding waiver of federal preemption and within the scope determinations.

SUMMARY: EPA is granting California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act, as amended. 42 U.S.C. 7543(b) (Act), for 1996 to 1998 model year motor vehicle evaporative emission standards and test procedures. Additionally, EPA today has determined that California's amendments to its evaporative emission standards and test procedures for 1995 model year motor vehicles and California's amendments regarding ultra-small volume manufacturers in 1998 model year are within the scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Act and today's waiver decision.

DATES: Any objections to the findings in this document regarding EPA's determination that California's amendments to its evaporative emission standards and test procedures for 1995 model year or the requirements applicable to ultra-small volume manufacturers for 1998 model year are within the scope of both previous waivers and today's waiver of Federal preemption must be filed by September 7, 1999. Otherwise, at the end of this 30-day period, these findings will become final. Upon receipt of any timely objection, EPA will consider scheduling a public hearing to reconsider these findings in a subsequent **Federal Register** document.

ADDRESSES: Any objections to the within the scope findings described above should be filed with Mr. David J. Dickinson at the address noted below. The Agency's decisions as well as all documents relied upon in reaching these decisions, including those submitted by the California Air Resources Board (CARB), are available for public inspection in the Air and Radiation Docket and Information Center during the working hours of 8:00 a.m. to 4:00 p.m. at the Environmental Protection Agency, Air Docket (6102), Room M–1500, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. All documents submitted in the

evaporative emission standards and test procedures waiver request, as well as the within the scope waiver requests noted above, can be found in Docket A–95–39. Copies of the Decision Document (which discusses both the waiver and the within the scope determinations) can be obtained from EPA's Vehicle Programs and Compliance Division by contacting David J. Dickinson, as noted below, or can be accessed on the EPA Office of Mobile Sources Internet Home Page, also noted below.

FOR FURTHER INFORMATION CONTACT: David J. Dickinson, Manager, Vehicles Programs and Compliance Division (6405J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Telephone: (202) 564–9256, FAX: (202) 565–2057, E-Mail: Dickinson.David@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Obtaining Electronic Copies of Documents

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Mobile Sources (OMS) Home Page (http://www.epa.gov/OMSWWW/). Users can find these documents by accessing the OMS Home Page and looking at the path entitled "Regulations." This service is free of charge, except for any cost you already incur for Internet connectivity. The official **Federal Register** version of the Notice is made available on the day of publication on the primary Web site (http://www.epa.gov/docs/fedrgstr/EPA–AIR/).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc. may occur.

II. Enhanced Evaporative Emission Standards and Test Procedures for 1996 to 1998 Model Year Waiver Request

I have decided to grant California a waiver of Federal preemption pursuant to section 209(b) of the Act for amendments to its motor vehicle pollution control program which will (1) establish a supplemental evaporative emission test procedure;(2) align California's evaporative emission enhanced test procedure (enhanced test procedure) with federal test procedures;(3) apply the enhanced test procedure to the complete heavy medium-duty vehicle class (8,501–14,000 lbs. gross weight vehicle rating (GVWR)), and (4) establish an amendment to the evaporative emission standard for the hot soak plus diurnal emissions test for medium-duty vehicles that have a GVWR of 6,001–8,500 lbs. and fuel tanks equal to or greater than 30 gallons from 2.0 to 2.5 grams per test. A comprehensive description of the California evaporative emission standards and accompanying program can be found in the Decision Document for this waiver and in materials submitted to the Docket by California and other parties.

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

CARB determined that these standards and accompanying enforcement procedures do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. Information presented to me by a party opposing California's waiver request did not demonstrate that California arbitrarily or capriciously reached this protectiveness determination. Therefore, I cannot find California's determination to be arbitrary or capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject standards and procedures. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its emission standards and test procedures are technologically feasible and present no inconsistency with Federal requirements and are, therefore, consistent with section 202(a) of the Act. Information presented to me by a party opposing California's waiver request did not satisfy the burden of persuading EPA that the standards are not technologically feasible within the available lead time, considering costs. Thus, I cannot find that California's amendments will be inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by October 4, 1999. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver decisions, this action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 12, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Nor is a Regulatory Impact Analysis being prepared under Executive Order 12291 for this determination, since it is not a rule.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

III. 1995 Model Year Enhanced Evaporative Standards and Test Procedures Amendments Within the Scope Request

I have determined that California's amendments to its 1995 model year enhanced evaporative standards and test procedures are within the scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Act. The substantive amendments to the enhanced evaporative standards and test procedures emission which are applicable under California state law to 1995 model year passenger cars, light duty trucks, medium-duty vehicles, and

heavy-duty vehicles creates the following:

(1) A supplemental test procedure (similar to the federal supplemental test procedure) which consists of vehicle preconditioning (including canister loading), the federal test procedure (FTP) exhaust test, a hot soak, and a two-day diurnal test.

(2) A change to the evaporative emission standards for the hot soak and the diurnal emissions test for medium-duty vehicles (6,001–8,5000 lbs. GVWR) with fuel tanks greater than 30 gallons from 2.0 to 2,5 grams.

(3) An allowance for manufacturers to carry over 1995 model year enhanced certification data as long as the supplemental test data are provided and specified conditions are met.

In an August 21, 1995 letter to EPA, CARB notified EPA of the above-described amendments to its evaporative emission regulations affecting 1995 model year vehicles, and requested that EPA confirm that these amendments are within the scope of existing waivers of Federal preemption.[1] The Executive Officer stated that "[t]he regulatory amendments approved herein will not cause California motor vehicle emissions standards, in the aggregate, to be less protective of public health and welfare as applicable Federal standards."[2]

In its August 1991 request, CARB explains why it limited its earlier request for a waiver of federal preemption to the 1995 model year. CARB desired to have a consistent set of evaporative emission test procedures for manufacturers and understood that EPA would be promulgating a supplemental test procedure that would be applicable to 1996 model year and thereafter. Therefore, CARB received an earlier waiver from EPA for its 1995 model year evaporative emission standards and test procedures on September 13, 1994.[3] By today's decision EPA is finding that CARB's amendments as they apply to the 1995 model year do not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards.

As stated in CARB's letter, CARB's amendments do not affect the consistency of California's requirements with section 202(a) as they are merely meant to more closely align the California and federal requirements.[4] EPA agrees with this representation. As noted above, EPA has previously granted a waiver of federal preemption for CARB's 1995 model year evaporative emission standards and test procedures, therefore, EPA now has determined that these amendments do not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards, are not inconsistent with section 202(a) of the Act, and raise no new issues affecting the Environmental Protection Agency's (EPA) previous waiver determination. Thus these amendments are within the scope of previous waivers determinations. A full explanation of EPA's decision is contained in a determination document which may be obtained from EPA as noted above.

IV. 1998 Model Year Enhanced Evaporative Standards and Test Procedures for Ultra-Small Volume Manufacturers Within the Scope Request

I have determined that California's amendments to its 1998 model year enhanced evaporative standards and test procedures applicable to ultra-small volume manufacturers (USVMs) are within the scope of today's waiver (for 1996 through 1998 model year evaporative emission standards and test procedures) of Federal preemption granted pursuant to section 209(b) of the Act. California had originally exempted USVMs from the phase-in requirements of the evaporative emission requirements and instead required USVMs to achieve 100 percent compliance in the 1998 model year. California's amendments postpone the implementation of the 100 percent compliance of USVMs from 1998 to the 1999 model year.

As discussed above, EPA may consider an amendment to be within the scope of a previously granted waiver if the amendment does not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards, does not affect the consistency of California's requirements with section 202(a) of the Act, and does not raise new issues affecting EPA's previous waiver determination.

On December 24, 1997, CARB requested that EPA find CARB's amendments to enhanced evaporative emission regulations applicable to USVMs to be within the scope of CARB's previously submitted waiver request of August 21, 1995 (this previous request is addressed by EPA in the full waiver of federal preemption noted above and also announced today). Because California's amendments for USVMs now more closely align with federal requirements (federal requirements for small volume manufacturers does not apply until the 1999 model year), and because of the small number of vehicles involved, EPA does not believe that CARB's protectiveness determination has been undermined. Additionally, the postponement of the requirement for USVMs does not pose any consistency issue with section 202(a) because lead time has now been extended for these manufacturers and CARB will allow such manufacturers to conduct their testing with federal fuel and test temperatures, thus eliminating and test procedure consistency concern. Thus, these amendments do not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards, are not inconsistent with section 202(a) of the Act, and raise no new issues affecting EPA's previous waiver determination. A full explanation of EPA's decision is contained in a determination document which may be obtained from EPA as noted above.

Because these amendments are within the scope of previous waivers, a public hearing to consider them is not necessary. However, if any party asserts an objection to these findings by September 7, 1999, EPA will consider holding a public hearing to provide interested parties an opportunity to present testimony and evidence to show that there are issues to be addressed through a section 209(b) waiver determination and that EPA should reconsider its findings. Otherwise, these findings shall become final on September 7, 1999.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by October 4, 1999. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 12, 1981).

[1] Letter from James D. Boyd, Executive Officer, CARB, to Carol M. Browner, Administrator, EPA, dated August 21, 1995, at 2 (hereinafter "CARB letter").

[2] CARB letter at 7.

[3] 59 FR 46978 (September 13, 1994).

[4] CARB letter at 9.

Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Nor is a Regulatory Impact Analysis being prepared under Executive Order 12291 for this determination, since it is not a rule.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: July 28, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–20200 Filed 8–4–99; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6413–7]

National Drinking Water Advisory Council; Small Systems Implementation Working Group, Notice of Conference Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a conference call of the Small Systems Implementation Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on August 24, 1999, from 1:00 p.m. to 3:00 p.m. EDT. The call will be held at the U.S. Environmental Protection Agency, 401 M Street S.W., Room 1132 East Tower, Washington, D.C. The meeting is open to the public to observe, but seating will be limited.

The purpose of this meeting is to review draft papers on seven policy issues related to small systems. These papers are an initial step towards formulating the working group's recommendations to the National Drinking Water Advisory Council.

For more information, please contact Peter E. Shanaghan, Designated Federal Officer, Small Systems Implementation Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4606), 401 M Street, S.W., Washington, D.C. 20460. The telephone number is 202–260–5813 and the email address is shanaghan.peter@epa.gov.

Dated: July 29, 1999.

Elizabeth J. Fellows,

Acting Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 99–20202 Filed 8–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6415–5]

Proposed Settlement Under Section 122 (h) (1) of the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement agreement and opportunity for public comment—Pijak Farm and Spence Farm Superfund sites.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve certain claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). Notice is being published to inform the public of the proposed settlement and the opportunity to comment. This settlement concerns the Pijak Farm and Spence Farm Superfund Sites in Plumsted Township, Ocean County, New Jersey and is intended to resolve the recovery of certain past costs incurred by EPA.

DATES: Comments must be provided by September 7, 1999.

ADDRESSES: Comments should be addressed to the United States Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007, and should refer to: In the Matter of the Pijak Farm and Spence Farm Superfund Sites, Agreement for Recovery of Past Response Costs, U.S. EPA Index No. II–CERCLA–02–99–2018.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007; Attention: Damaris Urdaz Cristiano, Esq. Ms. Cristiano can be reached at (212) 637–3140.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Pijak Farm and Spence Farm Superfund Sites located in Plumsted Township, Ocean County, New Jersey. Section 122(h)(1) of CERCLA provides EPA with authority to settle certain claims for response costs incurred by the United States when the settlement has received the approval of the Attorney General of the United States of America. The settling parties will pay $16,526.72 to reimburse EPA for past response costs incurred at the Pijak Farm and Spence Farm Superfund Sites.

Dated: July 26, 1999.

John S. Frisco,

Acting Director, Emergency and Remedial Response Division.

[FR Doc. 99–20204 Filed 8–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42190B; FRL–6090–6]

Dibasic Esters; Final Enforceable Consent Agreement and Testing Consent Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under section 4 of the Toxic Substances Control Act (TSCA), EPA has issued a testing consent order (Order) that incorporates an enforceable consent agreement (ECA) with the Aceto Corporation, E.I. du Pont de Nemours and Company, and Solutia Inc. (the "Companies"). The Companies have agreed to perform toxicity and dermal penetration rate testing on dimethyl adipate (CAS No. 627–93–0) (DMA), dimethyl glutarate (CAS No. 1119–40–0)(DMG), and dimethyl succinate (CAS No. 106–65–0)(DMS), known collectively as dibasic esters (DBEs). This notice announces the ECA and Order for DBEs and summarizes the terms of the ECA.

DATES: The effective date of the ECA and Order is August 5, 1999.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: George Semeniuk, Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (202) 260–2134; fax number: (202) 260–8168; e-mail address: semeniuk.george@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply To Me?

The ECA and Order announced in this notice only affect those companies that signed the ECA for DBEs: the Aceto Corporation, E.I. du Pont de Nemours and Company, and Solutia Inc. However, as a result of the ECA and Order, EPA has initiated a rulemaking under TSCA section 12(b)(1) which, when finalized, will require all persons who export or intend to export DBEs to comply with the Agency's export notification regulations at 40 CFR part 707, subpart D.

B. How Can I Get Additional Information, Including Copies Of This Document Or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page, select "Laws and Regulations" and then look up the entry for this document under "**Federal Register**—Environmental Documents" (http://www.epa.gov/fedrgstr/EPA-TOX/1999/). You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–42190B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm.B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number is (202) 260–7099.

II. Background

A. What Are DBEs?

DBEs are component chemicals of solvent mixtures used in paint stripping formulations that are sold to the general public. Consumers can be significantly exposed to DBEs during use of these formulations. Three chemicals make up the class of chemicals known as DBEs: Dimethyl adipate (DMA), dimethyl glutarate (DMG), and dimethyl succinate (DMS). The Chemical Abstract Service (CAS) registry number for DMA is 627–93–0; for DMG, 1119–40–0; and for DMS, 106–65–0.

B. Why Is EPA Requiring Health Effects Testing On DBEs?

The potential for consumers to be exposed significantly while using DBE paint stripping formulations, a reported adverse human effect—blurred vision—that resulted from the use of DBE paint strippers, and the results of limited toxicity testing of DBEs on rats has formed the foundation for the Agency's concern for the potential health risk that may be posed to consumers by DBE paint strippers.

III. ECA Development and Conclusion

A. How Is EPA Going To Obtain Health Effects Testing On DBEs?

EPA uses ECAs to accomplish testing where a consensus exists among EPA, affected manufacturers and/or processors, and interested members of the public concerning the need for and scope of testing (40 CFR 790.1(c)). In the March 22, 1995, **Federal Register** (see VI.A.2.a. of this document), EPA invited manufacturers and processors of DBEs that are used in paint strippers to develop and submit to EPA specific toxicity testing proposals for DBEs for the purpose of negotiating an ECA to conduct testing under Section 4 of TSCA.

The procedures for ECA negotiations are described at 40 CFR 790.22(b).

In response to EPA's request for proposals for ECAs, the Dibasic Esters Group (the DBE Group) submitted a proposal for a testing program on August 7, 1995 (Ref. 1). EPA responded to the DBE Group in a letter dated March 6, 1996, noting that while their proposal had potential merit and would expand the knowledge base of toxicity testing results on DBEs, the proposal did not constitute an adequate basis for proceeding with negotiation of an ECA (Ref. 2). EPA encouraged the DBE Group to consider EPA's comments on their proposal and submit a revised proposal. On October 22, 1996, the DBE Group submitted a revised testing proposal (Ref. 3). The Agency concluded that the revised proposal offered sufficient merit to proceed with ECA negotiations. Consequently, EPA published a document soliciting interested parties to monitor or participate in these negotiations (see VI.A.2.b. of this document).

EPA held a public meeting to negotiate an ECA for DBEs on January 29, 1997. Representatives of the Companies and other interested parties attended this meeting. The participants reached partial consensus on the testing to be required under the ECA at this meeting (Ref. 4) and complete consensus during a teleconference held on June 23, 1998 (Ref. 5). The Agency, the Companies, and an interested party participated in the telephone conference. On February 22, 1999, EPA received the ECA signed by the Companies. On July 28, 1999, EPA signed the ECA and accompanying Order.

B. What Testing Does The ECA For DBEs Require?

This ECA requires toxicity testing by inhalation and dermal exposure and dermal penetration rate testing, as described in this unit and in Table 1 of this unit. This testing will allow EPA to characterize the potential hazards resulting from exposure to DBEs and to determine if additional toxicity testing is needed. Table 1 of this unit sets forth the required testing, test standards, and reporting requirements under the ECA for DBEs.

The testing program has three segments as follows: Initial Base Toxicity Testing; Program Review Testing; and, if deemed necessary following a Program Review, *In Vivo* Dermal Penetration Rate Testing. For more information about the testing that will be conducted under the ECA, copies of the ECA are available from sources described in Unit I.B. of this document.

Testing shall be conducted in accordance with the Test Standards listed in Table 1 of this unit.

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TABLE 1.—REQUIRED TESTING, TEST STANDARDS, AND REPORTING REQUIREMENTS FOR DEBs

Description of Test	Test Standard (40 CFR citation and/or study protocol)	Deadline for final report (months)	Interim reports required (number)
90-day Subchronic Inhalation Toxicity Study with examination of special endpoints (in rats) [for each DBE; dose response determined using DMG]	Protocol (based on 799.9346, 799.9380, 799.9620, and incorporating a cell proliferation study)	16[1]	2[2]
Dermal (14-day) Toxicity Study (in rats) [for each DBE and for a 3:1:1 mixture of DMG, DMA, and DMS, respectively]	Protocol	12[1]	1[2]
Mutagenicity: *in vivo* rat bone micronucleus assay (via inhalation) [for DMG and DMA]	Protocol (based on 799.9539)	16[1]	2[2]
Mutagenicity: gene mutations in hamster ovary [for DMG]	Protocol (based on 799.9530)	10[1]	1[2]
Developmental Toxicity (in rabbits via inhalation) [for one DBE, selected by the EPA initial review process) after completion of Mutagenicity, 90-day Subchronic Inhalation Toxicity and 14-day Dermal Toxicity studies]	Protocol (based on 799.9370)	12[3]	1[4]
In Vitro Dermal Penetration Rate Study [for DBEs or DBE mixtures, selected by the EPA initial review process]	Protocol based on draft OECD Guideline for *In Vitro* Dermal Penetration	12[3]	1[4]
In Vivo Dermal Penetration Rate Study [for DBEs or DBE mixtures, selected by the EPA Program Review process]	870.7485	12[5]	1[6]

[1] Number of months following the effective date of the Order.
[2] Interim reports are required every 6 months from the effective date of the ECA, unless otherwise noted, until the final report is submitted. This number indicates the number of interim reports required for each test based on the deadline set forth in the preceding column.
[3] Number of months beginning 60 days after the date of the EPA letter containing the decisions resulting from EPA's Initial Review (see VI.B. of the ECA).
[4] Interim reports are required every 6 months beginning 60 days after the date of the EPA letter containing decisions of the initial review, until the final report is submitted. This column shows the number of interim reports required for each test based on the deadlines set forth in the preceding column.
[5] Number of months beginning 60 days after the date of the EPA letter containing the decisions of the Program Review for *in vivo* testing, if needed (see VI.D. of the ECA).
[6] Interim reports are required every 6 months beginning 60 days after the date of the EPA letter containing decisions of the program review, until the final report is submitted. This column shows the number of interim reports required for the test based on the deadline set forth in the preceding column.

C. What Are The Uses For The Test Data For DBEs?

EPA would use the data obtained from testing to obtain a more complete toxicity profile of DBEs. Such a profile will be used in comparing the hazards of paint strippers based on DBEs to those of consumer paint strippers that are based on methylene chloride, *N*-methylpyrrolidone, or other common paint stripping solvents.

D. What If EPA Should Require Additional Toxicity Testing On DBEs?

If EPA decides in the future that it requires additional toxicity data on DBEs, the Agency will initiate a separate action.

IV. Other Impacts Of The ECA For DBEs

The issuance of the ECA and Order under TSCA section 4 subjects the Companies that signed the ECA to export notification requirements under TSCA section 12(b)(1), as set forth at 40 CFR part 707, subpart D, if they export or intend to export any of the three DBEs.

On October 13, 1998, in the **Federal Register** (63 FR 54646, October 13, 1998) (FRL–6029–8), EPA proposed to amend 40 CFR 799.5000 by adding DMA, DMG, and DMS to the list of chemicals subject to testing consent orders. The listing of a chemical substance at 40 CFR 799.5000 serves as notification to all persons who export or intend to export any of these three chemical substances that:

1. The chemical substances are the subject of an ECA and Order; and

2. EPA's export notification regulations at 40 CFR part 707, subpart D, apply to those exporters who have signed the ECA, as well as those exporters who have not signed the ECA (40 CFR 799.19).

When a final rule based on the October 13, 1998, proposed rule is published in the **Federal Register**, all persons who export or who intend to export any of the DBEs will be subject to export notification requirements.

V. Paperwork Reduction Act

The ECA and Order announced in this notice do not contain any information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The information collection requirements related to test rules and ECAs issued under TSCA section 4 have already been approved by OMB under OMB control number 2070–0033 (EPA ICR No. 1139). The one-time public burden for this collection of information is estimated to be approximately 5,407 hours total. Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review instructions; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the final rule, are listed in 40 CFR part 9. EPA will issue a final rule related to export notification requirements for DBEs. That rule will amend the listing at 40 CFR part 799, as well as the table at 40 CFR part 9.

VI. Public Record

A. Supporting Documentation

The record for this proceeding contains the basic information considered in developing this ECA and Order and includes the following information.

1. Testing Consent Order for Dibasic Esters, with incorporated Enforceable Consent Agreement and associated testing protocols attached as appendices.

2. **Federal Register** notices pertaining to this notice, the Testing Consent Order and the Enforceable Consent Agreement, consisting of:

a. Notice of Solicitation of Testing Proposals for Negotiation of TSCA Section 4 Enforceable Consent Agreements (60 FR 15143, March 22, 1995) (FRL–4943–6).

b. Notice of Public Meeting; Dibasic Esters—Paint Stripper Chemicals (61 FR 67332, December 20, 1996) (FRL–5578–9).

3. Communications consisting of:

a. Written letters.

b. Meeting and teleconference summaries.

4. Reports—published and unpublished factual materials.

B. References

1. Dibasic Esters Group. Letter from Jorge C. Olguin to Charles M. Auer, EPA, Re: Solicitation of TSCA Section 4 Consent Agreements for Dibasic Esters, with attachment entitled "Toxicity Literature Reviews From the DuPont Haskell Laboratory." Washington, DC. (August 7, 1995).

2. U.S. Environmental Protection Agency (USEPA). Letter from Charles M. Auer to Jorge C. Olguin, Dibasic Esters Group Re: toxicity testing proposal submitted by Dibasic Esters Group. Washington, DC. (March 6, 1996).

3. Dibasic Esters Group. Letter from Richard E. Opatick to Charles M. Auer, EPA, Re: Data Development on Dibasic Esters. Washington, DC. (October 22, 1996).

4. USEPA. Summary of EPA Public Meeting on DBEs Enforceable Consent Agreement. Washington, DC. (January 29, 1997).

5. USEPA. Summary of Teleconference on DBEs Enforceable Consent Agreement. Washington, DC. (June 23, 1998).

List of Subjects

Environmental protection, Hazardous chemicals.

Dated: July 28, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–20205 Filed 8–4–99; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 99–1526]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On August 2, 1999, the Commission released a public notice announcing the August 24 and August 25, 1999, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its Agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes, at (202) 418–2313 or via the Internet at jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: August 2, 1999.

The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, August 24, from 8:30 a.m., until 5:00 p.m., and on Wednesday, August 25, 1998, from 8:30 a.m., until 12 Noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, S.W., Room TW-C305, Washington, D.C.

This meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. Admittance, however will be limited to the seating available. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before each meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Proposed Agenda

The proposed agenda for the August 24–25, 1999, is as follows:

1. Approval of the July 20–21, 1999 meeting minutes.

2. Local Number Portability Administration (LNPA) Working Group Report. Update on attempt to lower the failure rate of service provider failures to receive broadcasts. Further discussion of the *Second Report on Wireline Wireless Integration*. Update on finalization of methods and scope, forms and process flows relating to LNP problem identification (PIM).

3. Industry Numbering Committee (INC) Report. Discussion regarding Central Office Utilization Survey (COCUS) report of utilization and forecasting data by resellers. TRA Reseller Association to provide recommendation for discussion.

4. Number Resource Optimization Working Group Report. NANC to take final action on definition of reserved telephone number and use of the term "legally enforceable written agreement." Working Group will address need to include in the recommended practice the need for service providers to notify end user customers of changes in the reserved number practice.

5. Review and finalize NANC letter to FCC regarding NANC's position and recommendation concerning the splitting of rate centers as part of a NPA relief plan.

6. NANC obligations under the *Notice of Proposed Rulemaking*, CC Docket 99–200, (rel. June 2, 1999): Issue Management Group (IMG) report on recommendation in response to paragraph 38, which administrative measures should be adopted as FCC rules. Issue Management Group report regarding conclusions and recommendations in response to paragraph 165, examination of number pooling on NANP exhaust.

7. North American Number Plan Administration (NANPA) Oversight Working Group Report.

Wednesday, August 25, 1999

8. Cost Recovery Working Group Report. NECA report regarding service provider revenue reporting for NANPA cost recovery under FCC 98–71.

9. Audit Issue Management Group (IMG) report on Lockheed Martin responsibility with regard to "show cause" audits. Review and finalization

of report to FCC in response to paragraph 90, under CC Docket 99–200.

10. Steering Group Report.

11. Establishment of meeting dates for the first half of the year 2000.

12. Other Business.

Federal Communications Commission.

Blaise A. Scinto,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–20266 Filed 8–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 1999–16]

Filing Dates for the California Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: California has scheduled a special election on September 21, 1999, to fill the U.S. House seat in the Forty-second Congressional District vacated by the late Congressman George E. Brown, Jr. Under California law, a majority winner in a non-partisan special election is declared elected. Should no candidate achieve a majority vote, a Special Runoff Election will be held on November 16, 1999, among the top vote-getters of each qualified political party, including independent candidates.

Committees participating in the California special elections are required to file pre- and post-election reports. Filing dates for these reports are affected by whether one or two elections are held.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Zarin, Information Division, 999 E Street, NW, Washington, DC 20463. Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the California Special General and Special Runoff Elections and all other political committees not filing monthly which support candidates in these elections shall file a 12-day Pre-General Report on September 9, 1999, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through September 1, 1999; a Pre-Runoff Report on November 4, 1999, with coverage dates from September 2 through October 27, 1999; and a Post-Runoff Report on December 16, 1999, with coverage dates from October 28 through December 6, 1999.

All principal campaign committees of candidates in the Special General Election *only* and all other political committees not filing monthly which support candidates in the Special General Election shall file a 12-day Pre-General Report on September 9, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through September 1, and a Post General Report on October 21, with coverage dates from September 2 through October 11, 1999.

All political committees not filing monthly which support candidates in the Special Runoff *only* shall file a 12-day Pre-Runoff Report on November 4, with coverage dates from the last report filed or the date of the committee's first activity, whichever is later, through October 27, and a Post-Runoff Report on December 16, with coverage dates from October 28 through December 6, 1999.

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTIONS

Report	Close of books[1]	Reg./cert. mailing date[2]	Filing date
IF ONLY THE SPECIAL GENERAL IS HELD (09/21/99), COMMITTEES MUST FILE:			
Pre-General	09/01/99	[3]09/07/99	09/09/99
Post-General	10/11/99	10/21/99	10/21/99
IF TWO ELECTIONS ARE HELD, BUT A COMMITTEE IS INVOLVED ONLY IN THE SPECIAL GENERAL (09/21/99):			
Pre-General	09/01/99	[3]09/07/99	09/09/99
Year End	12/31/99	01/31/00	01/31/00
FOR COMMITTEES INVOLVED IN THE SPECIAL GENERAL (09/21/99) AND SPECIAL RUNOFF (11/16/99):			
Pre-General	09/01/99	[3]09/07/99	09/09/99
Pre-Runoff	10/27/99	11/01/99	11/04/99
Post-Runoff	12/06/99	12/16/99	12/16/99
COMMITTEES INVOLVED ONLY IN THE SPECIAL RUNOFF (11/16/99) MUST FILE:			
Pre-Runoff	10/27/99	11/01/99	11/04/99
Post-Runoff	12/06/99	12/16/99	12/16/99

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

[3] The mailing date has been adjusted because the computed mail date would have fallen on a federal holiday.

Dated: July 30, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–20101 Filed 8–4–99; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Guidance for Developing State, Tribal, and Local Radiological Emergency Response Planning and Preparedness for Transportation Accidents

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of availability.

SUMMARY: FEMA announces the availability of the document "Guidance for Developing State, Tribal, and Local Radiological Emergency Response Planning and Preparedness for Transportation Accidents, FEMA–REP–5, Revision 2," and requests comments.

DATES: Comments and responses should be sent no later than November 3, 1999.

ADDRESSES: Comments on "FEMA–REP–5, Rev. 2" should be sent to the Rules Docket Clerk, Office of the General Counsel, room 840, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (facsimile) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: William F. McNutt, Senior Policy Advisor, Chemical and Radiological Preparedness Division, Preparedness, Training, and Exercises Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2857, (facsimile) (202) 646–3508.

SUPPLEMENTARY INFORMATION: FEMA–REP–5 was prepared by the Transportation Accidents Subcommittee of the Federal Radiological Preparedness Coordinating Committee. It represents the efforts of several federal agencies, state organizations, and a Native American organization. The intended use of FEMA–REP–5 is to provide guidance to State, Tribal and local government officials who must prepare or revise emergency response plans for transportation accidents involving radioactive materials. Although use of the guidance is not mandatory, it is recommended for use to develop a hazard specific plan, as part of an all-hazards emergency response plan, at all levels of government.

Published first in March 1983, this guidance document was revised and published in June 1992 as Revision 1. The current revision is intended to supersede all previous issues. When the defined objectives are applied, planning will include all aspects of preparedness from pre-accident coordination and assignment of responsibilities, to post-accident operations, cleanup, and site restoration. The State, Tribal or local government office that adheres to the expressed concepts and recommendations found in FEMA–REP–5, Rev. 2, will be able to prepare an emergency operations plan that satisfies the need to protect both workers and citizens while safely responding to a radioactive materials transportation accident. The plan can be appended to the overall emergency operations plan for the jurisdiction.

Our goal is to provide guidance by means of a useful document that enables officials at all levels of government to plan for possible hazardous accidents. We welcome your comments on this document. All comments will be considered.

Dated: July 30, 1999.

Kay C. Goss,

Associate Director for Preparedness, Training, and Exercises.

[FR Doc. 99–20172 Filed 8–4–99; 8:45 am]

BILLING CODE 6718–06–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 19, 1999.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. James Lawrence Matteucci, Roswell, New Mexico, and Anna Maria Matteucci, Roswell, New Mexico; each to acquire additional voting shares of New Mexico National Financial, Inc., Roswell, New Mexico, and thereby indirectly acquire additional voting shares of Bank of the Southwest, Roswell, New Mexico.

Board of Governors of the Federal Reserve System, July 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20096 Filed 8–4–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 30, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Bank On It, Inc., Stockton, California; to become a bank holding company by acquiring up to 100 percent of the voting shares of Community Bank of San Joaquin, Stockton, California.

Board of Governors of the Federal Reserve System, July 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20094 Filed 8–4–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 19, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Citigroup, Inc., and Citicorp, both of New York, New York; to acquire through Citicorp Strategic Technology Corporation, New York, New York, an investment in GlobeSet, Inc., Austin, Texas, and engage in the development, manufacture, and distribution of software designed to provide electronic banking services to consumer and business customers, pursuant to § 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, July 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–20095 Filed 8–4–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–19–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Application for Training for the CDC Distance Learning Program, Laboratory Training, and Other Training—(0920–0017)—Reinstatement—The Public Health Practice Program Office (PHPPO) is requesting an emergency clearance to resume data collection for the training forms associated with this clearance. We also plan on modifying/revising segments of the application forms. PHPPO in conjunction with the Public Health Training Network (PHTN) and the National Laboratory Training Network (NLTN) at CDC includes the Distance Learning Program which offers self-study, computer-based training, satellite broadcast, video courses, instructor-led field courses, and lab courses related to public health professionals worldwide. Employees of hospitals, universities, medical centers, laboratories, state and federal agencies, and state and local health departments apply for training in an effort to learn up-to-date public health procedures. The "Application for Training" forms are the official applications used for all training activities conducted by the CDC.

The Continuing Education (CE) Program, which includes CDCs accreditation to provide Continuing Medical Education (CME), Continuing Nurse Education (CNE) and Continuing Education Unit (CEU) for almost all training activities, requires a unique identifying number, preferably the respondent's Social Security Number (SSN), to positively identify and track individuals who have been awarded CE credit. It is often necessary to identify individuals currently enrolled in courses, or to retrieve historical information as to when a particular individual completed a course or several courses over a time period. This information provides the basis for producing a requested transcript or determining if a person is enrolled in more than one course. The use of the SSN is the only positive way of assigning a unique number to a unique individual for this purpose. However, the use of the SSN is voluntary; if a student chooses not to submit a SSN, CDC assigns a unique identifier. The reason the SSN, rather than an arbitrary assigned number is preferred, is because students are not likely to remember an arbitrary number. A student's participation in the curriculum of self-study courses sometimes spans a number of years. The SSN is necessary for eliminating duplicate enrollments; for properly crediting students with completed course work who have similar names or have changed addresses; for generating transcripts of previous completed course work on a cumulative basis. Due to the volume of enrollments, CDC Form 36.5 has been previously approved and used for years as an optical mark scan form. Use of this form, along with the use of the Social Security Number, greatly enhances CDC's capability to process a much greater volume of enrollments in less time with much greater accuracy. The total burden hours are 8,025.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)
Application for Training—CDC 0.759A	6,300	1	0.0833
Application for Laboratory Training—CDC 32.1	10,000	1	0.0833
Application for Distance Learning Program—CDC 36.5	40,000	†	10/60

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–20117 Filed 8–4–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Implementation of the Fertility Clinic Success Rate and Certification Act of 1992–A Model Program for the Certification of Embryo Laboratories; Correction

In notice document beginning on page 39374, in the **Federal Register** issue of Wednesday, July 21, 1999, make the following date corrections:

1. On page 39380, second column, line 14, change date "July 20" to "July 21"
2. On page 39386, second column, line 23, change date "July 20" to "July 21"
3. On page 39387, first column, section c. fourth line, change date "July 20" to "July 21"; same page, in the second column, section c. fourth line, change date "July 20" to "July 21"

Dated: July 30, 1999.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention.

[FR Doc. 99–20116 Filed 8–4–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2533]

Hercules, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hercules, Inc., has filed a petition proposing that the food additive regulations be amended to permit a change in the softening point specifications of currently listed gum or wood rosin derivatives and provide for their safe use as plasticizing materials (softeners) in chewing gum base.

DATES: Written comments on the petitioner's environmental assessment by September 7, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3072.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9A4655) has been filed by Hercules, Inc., c/o 1001 G St. NW., Washington, DC 20001. The petition proposes to amend the food additive regulations in § 172.615 *Chewing gum base* (21 CFR 172.615) to permit a change in the softening point specifications of currently listed gum or wood rosin derivatives and provide for their safe use as plasticizing materials (softeners) in chewing gum base. More specifically, the petition proposes to eliminate the upper limits on the permissible softening point ranges for these gum or wood rosin derivatives.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 7, 1999, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 9, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–20090 Filed 8–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F–0328]

Yoshitomi Fine Chemicals, Ltd.; Withdrawal of A Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of the food additive petition (FAP 1B4275) proposing that the food additive regulations be amended to provide for the safe use of 4,5-dichloro-1,2-dithiol-3-one as a slimicide in the manufacture of paper and paperboard articles intended to contact food.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 19, 1991 (56 FR 47478), FDA announced that food additive petition (FAP 1B4275) had been filed by Yoshitomi Pharmaceutical Industries, Ltd., now Yoshitomi Fine Chemicals, Ltd., c/o suite 1000, 1625 K St. NW., Washington, DC 20006–1604. The petition proposed to amend the food additive regulations in § 176.300 *Slimicides* (21 CFR 176.300) to provide for the safe use of 4,5-dichloro-1,2-dithiol-3-one as a slimicide in the manufacture of paper and paperboard articles intended to contact food. Yoshitomi Fine Chemicals, Ltd. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: July 20, 1999.

Laura M. Tarantino,

Deputy Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–20139 Filed 8–4–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2167]

Medical Devices; Draft Guidance on the Likelihood of Facilities Inspections When Modifying Devices Subject to Premarket Approval; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Draft Guidance on the Likelihood of Facilities Inspections When Modifying Devices Subject to Premarket Approval." The industry has experienced difficulties in planning the implementation of manufacturing and/or other changes involving a device with an approved premarket approval application (PMA), product development protocol (PDP), or humanitarian device exemption (HDE), when an FDA inspection may or may not be necessary. This draft guidance will help firms determine whether an FDA inspection is needed and more easily manage the timeframes associated with implementing changes in manufacturing while maintaining necessary safeguards. This guidance is not final nor is it in effect at this time.

DATES: Written comments concerning this draft guidance must be submitted by November 3, 1999.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5" diskette of the guidance entitled "Draft Guidance on the Likelihood of Facilities Inspections When Modifying Devices Subject to Premarket Approval" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Walter W. Morgenstern, Center for Devices and Radiological Health (HFZ–305), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4699.

SUPPLEMENTARY INFORMATION:

I. Background

During recent FDA/medical device industry grassroots forums, industry representatives discussed difficulties they have experienced in planning for changes related to devices with applications approved through the premarket approval (PMA), product development protocol (PDP) or humanitarian device exemption (HDE) processes. The industry representatives indicated that much of the difficulty was caused by uncertainty about FDA policies on what circumstances require submission of a PMA supplement, when a PMA inspection may be required, or when documenting the change in the firm's files may be adequate.

FDA, with input from interested parties, developed this draft guidance in an effort to help firms manage the timeframes associated with implementing changes in manufacturing facilities, manufacturing methods or procedures, labeling or performance.

This draft guidance identifies factors that are involved in determining the following: (1) Whether a change in manufacturing methods or procedures can be implemented and the device can be distributed without prior notice to FDA without any delay except that necessary to achieve compliance with the requirements of the Quality System/GMP regulation (21 CFR part 820); (2) whether a change in manufacturing methods or procedures can be implemented and the device can be distributed 30 days after prior written notice has been filed with FDA (30-Day Notice) in accordance with section 515(d)(6)(A)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(6)(A)(i)) and 21 CFR 814.39, unless FDA notifies the holder of the PMA that the notice is inadequate; or (3) whether a change in facilities can be accelerated when a firm meets the prerequisite conditions for an Express PMA Supplement for Facilities Change.

The guidance is intended to reduce the regulatory burdens and concomitant delays in the implementation of a manufacturing change while maintaining necessary safeguards. The factors that an applicant and/or FDA should take into consideration when determining the need for submission of a supplement and the likelihood of an inspection are presented in a model decision procedure.

This draft guidance represents the agency's current thinking on changes to devices with approved PMA's, PDP's or HDE's. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulation, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This document is issued as a Level 1 draft guidance consistent with GGP's.

II. Electronic Access

In order to receive the "Draft Guidance on the Likelihood of Facilities Inspections When Modifying Devices Subject to Premarket Approval" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts. At the second voice prompt press 2, and then enter the document number (1269) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes the draft guidance on device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh".

III. Comments

Interested persons may, on or before November 3, 1999, submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 27, 1999

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–20089 Filed 8–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N092075]

Global Harmonization Task Force; Draft Document on Proposal for Reporting of Use Errors with Medical Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a Global Harmonization Task Force (GHTF) draft document entitled "Proposal for Reporting of Use Errors with Medical Devices." The draft guidance includes information for regulatory authorities about reporting of adverse events that result in death or serious injury or certain types of near incidents. This draft document has been prepared by members of the GHTF Study Group 2 (SG2) on Medical Devices Vigilance/Postmarket Surveillance Reporting Systems. The draft document represents a harmonized proposal. Elements of the approach set forth in this draft document may not be consistent with current U.S. regulatory requirements. FDA is requesting comments on this draft document.

DATES: Written comments by September 7, 1999. After the close of the comment period, written comments may be submitted at any time to Deborah Y. Blum (address below).

ADDRESSES: Submit written comments on the draft document to the Dockets Management Branch (HFA09305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. If you do not have access to the World Wide Web (WWW), submit a written request for a 3.5" diskette of the draft document entitled "Proposal for Reporting of Use Errors with Medical Devices" to the Division of Small Manufacturers Assistance (HFZ09220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 30109443098818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft document.

FOR FURTHER INFORMATION CONTACT: Deborah Y. Blum, Office of Surveillance and Biometrics (HFZ09520), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 30109594092985.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has participated in a number of activities to promote the international harmonization of regulatory requirements, as described in an FDA notice on these activities published in the **Federal Register** of October 11, 1995 (60 FR 53078). As part of this effort, FDA has been actively involved since 1992 with GHTF. GHTF has formed four study groups, each tasked with assignments to draft documents and carry on other activities, designed to facilitate global harmonization. The purpose of this notice is to seek public comments on a draft document that has been prepared by one of the GHTF study groups.

SG2 was formed by GHTF in February 1996 and tasked with the responsibility to examine the requirements for the reporting of adverse incidents involving medical devices; consider postmarket surveillance and other forms of vigilance; and recommend ways of harmonizing these requirements. SG2 was also requested to promote the dissemination of relevant information concerning these matters. SG2 helps to improve protection of the health and safety to patients, users, and others; evaluate reports and disseminate information which may reduce the likelihood of or prevent repetitions of adverse events, or alleviate consequences of such repetitions; and define postmarket medical device reporting and surveillance requirements and guidelines on an international basis.

Reporting of adverse events involving medical devices is an important element in any good postmarketing surveillance system and can be achieved only through mutual confidence among all parties concerned. The obligation to report adverse events differs widely among countries. Some systems are voluntary, while others are mandatory. The common thread that could tie all of the worldwide reporting systems together is the obligation for manufacturers to report adverse events or incidents of which they are aware that involve medical devices.

It is the premise of the work of GHTF SG2 that an international system for reporting adverse events can be developed to handle information provided by the manufacturer to the authorities.

FDA is announcing the availability of a draft document entitled "Proposal for Reporting of Use Errors with Medical Devices." The GHTF SG2 has developed a reference for manufacturers regarding adverse event reporting. This draft document is referenced as SG2 N21R8. It includes information for regulatory authorities about reporting of adverse events that result in death or serious injury or certain types of near incidents. It includes the consideration that certain types of failures may be exempt from reporting under regulatory vigilance procedures, but does not include a specific proposal on reporting of use errors. "Proposal for Reporting of Use Errors with Medical Devices" gives an overview on emerging process standards which are streamlining the handling of use errors by industry and makes a proposal to regulatory authorities on how to handle use errors under adverse event reporting procedures.

II. Electronic Access

Persons interested in obtaining a copy of the draft document may also do so using the WWW. CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes the the draft document entitled "Proposal for Reporting of Use Errors with Medical Devices," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on videoconferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh".

III. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

After September 7, 1999, written comments regarding the draft document may be submitted at any time to the contact person (address above).

Dated: July 20, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–20140 Filed 8–4–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–205 & HCFA–R–206]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

ACTION: Comment request; notice.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: Information Collection Requirements Referenced in HIPAA for the Individual Market and Supporting Regulations in 45 CFR section 148;

Form No.: HCFA–R–205 (OMB# 0938–0703);

Use: These information collection requirements help ensure access to the individual insurance market for certain individuals and allows the States to implement their own program to meet the HIPAA requirements for access to the individual market. The information collection requirements outlined in this document are necessary for issuers and States to ensure individuals receive protection under section 111 of HIPAA.

Frequency: On occasion;

Affected Public: Business or other for-profit, Individuals or Households, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government;

Number of Respondents: 1,040;

Total Annual Responses: 3,230,000;

Total Annual Hours: 921,000.

(2) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Information Collection Requirements Referenced in HIPAA for the Group Market and Supporting Regulations in 45 CFR Section 146;

Form No.: HCFA–R–206 (OMB# 0938–0702);

Use: This regulation and related information collection requirements will ensure that group health plans provide individuals with documentation necessary to demonstrate prior creditable coverage, and the group health plans notify individuals of their special enrollment rights in the group health insurance market.

Frequency: On occasion;

Affected Public: Business or other for-profit, Individuals or Households, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government;

Number of Respondents: 2,030;

Total Annual Responses: 43,000,000;

Total Annual Hours: 2,700,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 29, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–20098 Filed 8–4–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–291]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

ACTION: Comment request; notice.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Multi-State Evaluation of Dual Eligibles Demonstrations: Wisconsin Partnership Program;

Form No.: HCFA–R–291 (OMB# 0938–NEW);

Use: This survey provides information needed to evaluate dual eligible demonstrations on issues of satisfaction and gathers health and functional status to be used in other analyses. Dual eligible demonstrations are designed to create alternative delivery services for acute and long-term care services to elderly and disabled persons which provide increased coordination, improve access to quality services and control or more appropriately allocate future costs. Respondents to the survey include demonstration enrollees both living in the community and in institutions, their families, disenrollees and corresponding comparison groups. Information collected will pertain to description of the person, information regarding enrollment/disenrollment, quality of life, satisfaction, general health, functional status, access to services, and informal care giving. This data will be combined with secondary data on utilization of services to analyze the coordination of care, utilization, outcomes, and cost of providing services.;

Frequency: Other: One-time;

Affected Public: Individuals or Households;

Number of Respondents: 5,945;

Total Annual Responses: 5,945;

Total Annual Hours: 3,830.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 29, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–20100 Filed 8–4–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: National Fetal and Infant Mortality Review (FIMR) Program Evaluation—New

The Johns Hopkins Women's and Children's Health Policy Center, under a cooperative agreement with the Maternal and Child Health Bureau (MCHB) of the Health Resources and Services Administration (HRSA) is conducting a national evaluation of the Fetal and Infant Mortality Review Program. FIMR is community based, aimed at guiding communities to identify and solve problems contributing to poor reproductive outcomes and infant health by using the sentinel event of an infant death to systematically examine a wide array of factors that are related to infant mortality. FIMR findings are used to stimulate policy development and quality improvement efforts. The purpose of this evaluation is to look at the effect of FIMRs and other community-level perinatal systems initiatives on health systems, with an eye toward characterizing the unique contributions of the FIMR model and process.

The main objectives of the FIMR evaluation are: (1) to compare the impact of FIMR on the health and related service systems for women, infants, and families with infants with that of other perinatal systems related initiatives, and (2) to compare the implementation of public health functions related to policies, programs, and practices for women, infants, and families with infants across a number of community systems initiatives. The study will utilize three survey instruments for data collection.

The estimated response burden is as follows:

Survey	Number of respondents	Responses per respondent	Total respondents	Hours per response	Total burden hours
FIMR	80	1	80	1.75	140
Local Health Dept	80	1	80	1.5	120
Perinatal Initiatives	160	1	160	1.25	200
Total			320		460

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 29, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–20091 Filed 8–4–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: October 14, 1999.

Open: 8:00 am to 9:00 pm.

Agenda: To discuss program planning and program accomplishments.

Place: Holiday Inn Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Closed: 9:00 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: D.G. Patel, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, Bethesda, MD 20892, 301–435–0824.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: July 28, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–20080 Filed 8–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: September 16–17, 1999.

Open: September 16, 1999, 8:30 am to 3:00 pm.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockvile Pike, Bethesda MD 20892.

Closed: September 16, 1999, 3:00 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Robert Carlsen, Acting Director, Division of Extramural Affairs, Nat. Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260.

(Catalogue of Federal Domestic Assistance Program Nos. 93–233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–20079 Filed 8–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions sets forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel: Determinants of Thiopurine Response in Children.

Date: August 10, 1999.

Time: 11:30 am to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child, Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–20077 Filed 8–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions sets forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel: RFP No. NIH–NIDCR–12–99–3.

Date: July 30, 1999.

Time: 10:30 am to 12:30 pm.

Agenda: To review and evaluate contract proposals.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel: 99–62, Review of R44.

Date: August 17, 1999.

Time: 10:00 am to 11:30 am.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel: 99–73, Review of R03, K23, K24.

Date: August 25, 1999.

Time: 10:00 am to 11:30 am.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J. Gartland, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel: 99–79, Review of F32 & K24.

Date: September 2, 1999.

Time: 11:30 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J. Gartland, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel: 99–57, Review of R44.

Date: September 14, 1999.

Time: 10:00 am to 11:30 am.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel: 99–69, P01 Review.

Date: September 14, 1999.

Time: 11:55 am to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: July 29, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–20078 Filed 8–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant application and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 2, 1999.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 3, 1999.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anita Miller Sostek, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–0910.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 9, 1999.

Time: 10:30 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David Monsees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7770, Bethesda, MD 20892, (301) 435–0684, monseesd@drg.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 9, 1999.

Time: 11:00 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sami A. Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel: General Medicine A–1 Study Section.

Date: August 9, 1999.

Time: 3:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

VOL 64 ISS 150 AG 5 999 JMI

Date: August 9, 1999.
Time: 4:00 pm to 4:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 10, 1999.
Time: 10:00 am to 1:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel: ZRG1–IFCN8–05.
Date: August 10, 1999.
Time: 11:30 am to 1:30 pm.
Agenda: To review and evaluate grant application.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Samuel Rawlings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 10, 1999.
Time: 2:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892, (301) 435–1249.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 10, 1999.
Time: 12:00 pm to 1:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Martin Slater, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 11, 1999.
Time: 8:00 am to 12:00 pm.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@csr.nih.gov
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 11, 1999.
Time: 1:00 pm to 6:00 pm.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Dive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@csr.nih.gov
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 11, 1999.
Time: 1:00 pm to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 10892 (Telephone Conference Call).
Contact Person: Ronald Dubois, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, dubois@drg.nih.gov
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 11, 1999.
Time: 12:00 pm to 2:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel: Visual Sciences A.
Date: August 12, 1999.
Time: 10:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hilton Philadelphia Airport, 4509 Island Ave, Philadelphia, PA 19153.
Contact Person: Luigi Giacometti, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel: ZRG1–IFCN7–05.
Date: August 12, 1999.
Time: 2:00 pm to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review and Special Emphasis Panel.
Date: August 13, 1999.
Time: 2:00 pm to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93–306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HSS).

Dated: July 29, 1999.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 99–20081 Filed 8–4–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program, National Institute of Environmental Health Sciences, Center for the Evaluation of Risks to Human Reproduction; Announces an Expert Panel Review of Phthalates, August 17–19, 1999 in Alexandria, VA

Background

The National Toxicology Program (NTP) and the National Institute of Environmental Health Sciences have established the NTP Center for the Evaluation of Risks to Human Reproduction (63 FR 68782, No 239). The purpose of the Center is to provide timely and unbiased, scientifically sound evaluations of human and experimental evidence for adverse effects on reproduction, including development, caused by agents to which humans may be exposed. The evaluations produced through the Center will be published as monographs in Environmental Health Perspectives; a special effort will be made to summarize the reports in terms that can be understood by those who are not scientifically trained.

Expert Panel Review of Phthalates

Seven phthalate esters will be evaluated by an expert panel under the auspices of the NTP Center (64 FR 18921–18922, No 73). These were selected based on their high production volume, extent of human exposures, use in children's products, or published evidence of reproductive or developmental toxicity. The chemicals to be evaluated are listed below with their Chemical Abstract Service registry numbers.

butyl benzyl phthalate (85–68–7)
di(2-ethylhexyl) phthalate (117–81–7)
di-isodecyl phthalate (26761–40–0, 68515–49–1)
di-isononyl phthalate (28553–12–0, 68515–48–0)
di-n-butyl phthalate (84–74–2)
di-n-hexyl phthalate (84–75–3)
di-n-octyl phthalate (117–84–0)

Review Panel and Charge to Panel

To date, a panel of 14 scientists have been selected for their expertise in various aspects of reproductive toxicology and other relevant areas to conduct the review. The roster of these experts follows:

Phthalates Expert Panel

Name and Affiliation

Kim Boekelheide, MD, PhD—Brown University, Providence, RI
Bob Chapin, PhD—NIEHS, Research Triangle Park, NC
Mike Cunningham, PhD—NIEHS, Research Triangle Park, NC
Elaine Faustman, PhD—University of Washington, Seattle, WA
Paul Foster, PhD—Chemical Industry Institute of Toxicology, Research Triangle Park, NC
Mari Golub, PhD—Cal/EPA, Davis, CA
Rogene Henderson, PhD—Inhalation Toxicology Research Institute, Albuquerque, NM
Irwin Hinberg, PhD—Health Canada, Ottawa, Ontario, Canada
Bob Kavlock, PhD—EPA/ORD, Research Triangle Park, NC
Jennifer Seed, PhD—EPA/OPPT, Washington, DC
Katherine Shea, MD—North Carolina State University, Raleigh, NC
Shelly Tyl, PhD—Research Triangle Institute, Research Triangle Park, NC
Paige Williams, PhD—Harvard University, Cambridge, MA
Tim Zacharewski, PhD—Michigan State University, East Lansing, MI

Charge to Expert Panel

Rigorously evaluate all relevant data and reach a conclusion regarding the strength of scientific evidence that exposure to a chemical may or may not present a risk to human reproduction or development.

1. Evaluate all reproductive and developmental toxicity studies—in humans and animals—for quality, completeness, and sufficiency. Determine consistency of reported effects within and among species. Briefly summarize relevant individual studies.

2. Review and summarize related studies paying particular attention to studies of general toxicity, pharmacokinetics, genetic toxicity, and mechanisms of toxicity, within and across species. Both *in vivo* and *in vitro* studies will be included.

3. Determine, to the extent possible, patterns of use (such as timing, duration) and exposure (such as dose, route) to humans.

4. Integrate this information, using a weight of evidence approach. Determine how human, animal and other data can reasonably be used to predict reproductive or developmental effects in humans under particular exposure conditions.

5. Provide judgments, including qualitative statements of the certainty of the judgments, that an agent presents a potential risk to human reproduction and/or development.

Describe the major factors that contributed to these judgments. State the exposure circumstances under which such risk might be expected to exist.

6. Identify specific areas of uncertainty (such as inadequate pharmacokinetic data in a given species) that would prevent a more definitive assessment of human risk.

7. Identify research and testing needs that, if met, would significantly reduce the uncertainty inherent in the stated judgments of risk.

Meeting Open to the Public

The preliminary agenda for the panel meeting follows:

August 17 (Beginning at 8:30 a.m.)

Opening remarks by Dr. Michael Shelby, NIEHS and Director of the Center, Dr. George Lucier, Director of the NIEHS' Environmental Toxicology Program, and Dr. Robert Kavlock, EPA, and Chair of the Expert Panel.

Panel members will present summaries of the literature they will have individually reviewed in advance of the meeting.

The Phthalate Esters Panel of the Chemical Manufacturers Association, Health Care Without Harm, and the American Council on Science and Health will summarize the deliberations of their recent literature reviews of the possible reproductive and developmental health risks of phthalate exposures.

Panel discussion will follow to identify areas where there is broad panel agreement as well as issues requiring further discussion by workgroups of the panel.

Time will be available to members of the public for comment.

August 17 (PM)—18–19

The remainder of the meeting will be an iterative series of workgroup discussions and plenary sessions. Significant conclusions and judgments reached by the panel workgroups will be presented, discussed, and agreed to by the entire expert panel in plenary sessions. Definitive judgments will be made for each of the seven phthalates.

August 19, 11:00 a.m. (Tentatively)

Closing plenary session, review of panel conclusions.

The review will take place from August 17–19 at the Embassy Suites Hotel, 1900 Diagonal Road, Alexandria,

VA with some workgroup sessions at Sciences, International, Inc., 1800 Diagonal Road, Suite 500, Alexandria, VA (limited seating availability). The meeting will commence at 8:30 AM on August 17 in the Virginia Ballroom of the Embassy Suites Hotel.

The review will be open to the public with an opportunity scheduled for oral public comment. Attendance will be limited only by the availability of space. For registration information please contact: Ms. Peggy Sheren, CERHR, 1800 Diagonal Road, Suite 500, Alexandria, VA 22314–2808, Phone: (703) 838–9440.

Dated: July 28, 1999.

Samuel H. Wilson,

Deputy Director, NIEHS.

[FR Doc. 99–20076 Filed 8–4–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

[PRT–15453]

Applicant: Oakhill Center for Rare & Endangered Species, Luther, OK.

The applicant requests a permit to export 2 captive born white tigers (*Panthera tigris*) to Itozu Zoological Park, Japan, for the purpose of propagation and public display.

[PRT–15452]

Applicant: Oakhill Center for Rare & Endangered Species, Luther, OK.

The applicant requests a permit to export 1 captive born white tiger (*Panthera tigris*) to Shirotori Zoological Gardens, Japan, for the purpose of propagation and public display.

[PRT–14251]

Applicant: Henry Doorly Zoo, Omaha, Nebraska.

The applicant requests a permit to import DNA samples collected from wild geometric tortoises (*Psammobates geometricus*) from South Africa, for the purpose of scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, and must be received by the Director within 30 days of the date of this publication.

The following applicants have applied for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR 18).

[PRT–015311]

Applicant: Larry Smith, West Harrison, IN.

The applicant requests a permit to import a polar bear (*Ursus maritimus*), sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358–2281).

Dated: July 30, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–20112 Filed 8–4–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On April 16, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 73, Page 18926, that an application had been filed with the Fish and Wildlife Service by Joseph Jerry Wright for a permit (PRT–009689) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Dan S. Meske for a permit (PRT–010369) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 28, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Normand Berube for a permit (PRT–010432) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Raymond N. Berube for a permit (PRT–010433) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Donald D. Meske for a permit (PRT–010367) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish

and Wildlife Service by Roger Berube for a permit (PRT–010434) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Raymond N. Berube for a permit (PRT–010433) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Donald D. Meske for a permit (PRT–010367) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Roger Berube for a permit (PRT–010434) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Carl W. Reinsel for a permit (PRT–010430) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on June 24, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Otto Cerni Jr. for a permit (PRT–010657) to import one polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on July 1, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 13, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 92, Page 25899, that an application had been filed with the Fish and Wildlife Service by John Gall for a permit (PRT–011392) to import one polar bear (*Ursus maritimus*) trophy taken from the Northern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on July 1, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 20, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 97, Page 27596, that an application had been filed with the Fish and Wildlife Service by Gilbert Kostelec for a permit (PRT–011658) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on July 7, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23095, that an application had been filed with the Fish and Wildlife Service by Edward Belkin for a permit (PRT–010653) to import one polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on July 14,1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On April 29, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 82, Page 23096, that an application had been filed with the Fish and Wildlife Service by Leslie Barnhart for a permit (PRT–010662) to import one polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on July 13, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 20, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 97, Page 27595, that an application had been filed with the Fish and Wildlife Service by Louis Rupp for a permit (PRT–011855) to import one polar bear (*Ursus maritimus*) trophy taken from the McClintock Channell population, Canada for personal use.

Notice is hereby given that on July 19, 1999, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 20, 1999, a notice was published in the **Federal Register**, Vol. 64, No. 97, Page 27595, that an application had been filed with the Fish and Wildlife Service by Edward Turowski for a permit (PRT–011713) to import one polar bear (*Ursus maritimus*) trophy taken from the Northern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on July 20, 1999, as authorized by the provisions of

the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: July 30, 1999.

Pamela Hall,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–20121 Filed 8–4–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Paperwork Reduction Act Requests to Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Requests for the Tribal Colleges and Universities Annual Report Form, OMB No. 1076–0105, the Tribal Colleges and Universities Grant Application Form, OMB No. 1076–0018, and Higher Education Grant Program Annual Report Form, OMB No. 1076–0106 have been submitted to the Office of Management and Budget for approval under the provision of the Paperwork Reduction Act (44 U.S.C., Chapter 25).

DATES: Submit your comments and suggestions on or before September 7, 1999.

ADDRESSES: Written comments should be sent directly to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, Room 10102, 7225 17th Street, NW, Washington, DC 20503. Send a copy of your comments to: Garry R. Martin, Bureau of Indian Affairs, Office of Indian Education Programs, 1849 C Street, NW, Washington, DC 20240–0001.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection may be obtained by contacting Garry R. Martin at 202–208–3478.

SUPPLEMENTARY INFORMATION:

Abstract

The information collection is necessary to assess the need for tribally controlled community college programs and the Higher Education Grant Program in accordance with 25 CFR part 41. A request for comments regarding the information collection forms for 1076–0018 and 1076–0105 was published in the **Federal Register** on January 22, 1998 (63 FR 3333–3341). The request for comments for 1076–0106 was published in the **Federal Register** on February 24, 1998 (63 FR 9241–9242).

No comments were received pertaining to the Tribally Controlled Community College Grant Application, OMB No. 1076–0018. One response from tribal organization representing tribal colleges and universities contained six responses from various tribal institutions. After careful consideration of the responses, specific changes in the collection of information were made to eliminate duplication of information and to reduce the burden of reporting by the institutions. Specific changes regarding section 1 were rewritten and placed in section 5 entitled, "Current Funds Revenue By Source." Data tables involving the collection of revenue by sources and grant expenditures tables were reformatted for easier use. A total of three respondents provided six comments during the comment period for the higher education programs, 1076–0106. One comment was favorable to the streamlined annual report form and remarked that it will make reporting a more efficient process. One respondent observed that part-time student data was utilized in the collection of information and that it was misleading as funding is for full time students. The Bureau considered this comment and has decided to remove the reference to part-time students from the data collection. The respondent also commented that the information requested in the Graduate Listing portion has never been utilized by employment agencies which negates the need to maintain such a specific database. The Bureau will continue requesting the number of graduates but will no longer request specific information concerning the individual graduate. The respondent also commented that there is no need for the Financial Profile as it may be detrimental to higher education funding. The Bureau considered this comment and will retain this section for comparing specific educational funding programs to financial aid programs frequently used by most college students applying for educational grants and loans. One respondent commented that the reporting period should be based upon the fiscal year of each individual contract; also that the length of time to gather and maintain data for completion is more than three hours. The Bureau considered these comments and contend that the time frame in reporting data reflects an academic period instead of a specific fiscal year and will continue using a reporting period that is consistent with institutional enrollments. The Bureau acknowledges that in some extenuating circumstances the data gathering may exceed the time as estimated; however, because of changes to the form and the lack of other comments concerning time, the Bureau will maintain the estimated burden of three hours to compile this information.

Request for Comments

Comments are invited on (a) Whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, comments submitted in response to this notice should be submitted to that office within 30 days in order to assure their maximum consideration.

Title: Tribally Controlled Community College Grant Application Form.
OMB approval number: 1076–018.
Frequency: Annual.
Description of respondents: Tribal colleges and universities.
Estimated completion time: 3 hours.
Annual responses: 25.
Annual burden hours: 75.

Title: Tribally Controlled Community College Annual Report Form.
OMB approval number: 1076–0105.
Frequency: Annual.
Description of respondents: Tribal college and universities.
Estimated completion time: 3 hours.
Annual responses: 25.
Annual burden hours: 75.

Title: Bureau of Indian Affairs Higher Education Grant Program Annual Report Form.
OMB approval number: 1076–0106.
Frequency: Annual.
Description of respondents: Higher Education Grant program contractors.
Estimated completion time: 3 hours.
Annual responses: 125.
Annual burden hours: 375.

Dated: July 9, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–20151 Filed 8–4–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–020–1220–00–0208]

Seasonal Closure of Public Land in the Bald Ridge Area, Park, County, Wyoming, Cody Field Office, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of seasonal closure.

SUMMARY: Notice is hereby given to extend the emergency seasonal closure of the Bald Ridge area that was published in the **Federal Register** Vol. 61 No. 62 on Friday, March 29, 1996. The Bald Ridge area located south of the Clarks Fork of the Yellowstone River and west and north of Hogan Reservoir of Park County, Wyoming on public land administered by the Bureau of Land Management (BLM), Cody Field Office, is closed from December 15 through April 30 of each winter and spring season to all use (such as hiking, horseback riding, mountain bike riding, crosscountry skiing, and all motorized use) except specifically authorized activities. This action is being taken for resource protection of essential wintering habitat for elk and mule deer. No access into this area will be allowed unless permitted by the Authorized Officer (BLM Cody Field Manager).

EFFECTIVE DATES: This emergency seasonal closure was effective March 18, 1996 and will remain in effect until modified or rescinded by the Authorized Officer.

FOR FURTHER INFORMATION CONTACT: Dennis Saville, Wildlife Biologist or Michael Blymyer, Field Manager, Cody Field Officer, P.O. Box 518, 1002 Blackburn Avenue, Cody, Wyoming 82414–0518. Telephone (307)-587–2216.

SUPPLEMENTARY INFORMATION: The Cody Field Office is responsible for the management of essential wildlife habitat in the Bald Ridge area of the Absaroka Front and other crucial habitat areas located throughout the Bighorn Basin. These essential habitat areas and management thereof are covered under the Cody Resource Management Plan (RMP), which was signed on November 8, 1990. "Seasonal restrictions will be applied as appropriate to surface-disturbing and disruptive activities and land uses on big game crucial habitat, including winter ranges and elk calving areas." (Cody RMP, p. 40).

The Bald Ridge area is crucial wintering habitat for big game. Increasing visitor activity, such as horseback riding, hiking and antler hunting has caused unacceptable impacts to the wintering elk and deer herds. These activities are stressing game animals during a period when the animals are most susceptible to stress-related health affects that could cause death. These activities also force the herds to be displaced from their crucial winter habitat. The Cody Field Office has completed the Travel Management Environmental Assessment for the Bald Ridge area and has determined that this closure is necessary to address these concerns.

The following described BLM-administered lands south of the Clarks Fork of the Yellowstone River and west of Hogan Reservoir are included in this seasonal closure: T. 56 N., R. 103 W., sections 7, 8, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, and 33 from the west end of Hogan Reservoir. Hogan Reservoir remains open for fishing and nonmotorized travel within 100 yards of the reservoir's high-water line. Authority for closure and restriction orders is provided under 43 CFR subpart 8341.2 (a and b), 8364.1, 8372.0–7, 8372.1–2. Violations of this closure are punishable by a fine not to exceed $1,000 and (or) imprisonment not to exceed 12 months.

Dated: July 21, 1999.

Michael Blymyer,

Cody Field Manager.

[FR Doc. 99–20164 Filed 8–4–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–020–1220–00–0208]

Closure of Certain Roads and Trails on Public Land in the Rattlesnake Mountain Area, Park County, Wyoming, Cody Field Office, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure.

SUMMARY: Notice is hereby given that effective July 20, 1999, some roads and trails on public land administered by the Bureau of Land Management (BLM), Cody Field Office, will be closed to all motorized travel. These roads and trails are located in the Rattlesnake Mountain area south and west of Trail Creek. As of the effective date, only designated roads are available for use. All roads and trails not designated are closed to motorized use. Designated access roads include the main trunk road on top of Rattlesnake Mountain (BLM #1207) and the BLM portion of the existing trail on the southeast face of Rattlesnake Mountain. Access to the Rattlesnake main trunk road from Monument Hill road (County 7UH) is subject to an easement through private lands which provides public access for timber related purposes only (such as firewood removal or timber harvest). A BLM firewood cutting permit allows motorized vehicle access to this area for firewood removal only. Motorized travel on the southeast face trail is restricted to All Terrain Vehicles (ATVs) with wheelbase lengths less than 60 inches, 6 inches or more tread width on each tire, and 5 pounds or less air pressure in each tire. All other roads and trails are open to foot and horseback travel and other forms of nonmotorized travel (such as mountain bike riding). Additional roads and trails may be temporarily opened to motorized travel for timber and firewood sales. This motorized vehicle use will be managed as stated in 43 CFR 8341.1(a–h). Limited motorized use of nondesignated roads may be allowed for certain permitted uses (such as Right-of-Way [ROW] holders and grazing permittees). Travel by snow machines will be allowed whenever there is adequate snow cover. This applies to all public land administered by the BLM on Rattlesnake Mountain, unless administratively restricted for the protection of wintering big game herds. As stated in the decision record of the Rattlesnake Mountain Travel Management Environmental Assessment (WY–017–EA6–038). "This decision can be modified within the original scope of this analysis, without further notice if determined by the authorized officer that changes in adjacent land ownership, new data acquisition, or public access needs dictate a revision of this decision."

EFFECTIVE DATES: This closure will be effective July 20, 1999 and will remain in effect until modified or rescinded by the Authorized Officer.

FOR FURTHER INFORMATION CONTACT: Tom Hare, Cody Assistant Field Manager or Michael Blymyer, Cody Field Manager, P.O. Box 518, 1002 Blackburn Avenue,

Cody, Wyoming 82414–0518. Telephone (307) 587–2216.

SUPPLEMENTARY INFORMATION: The Cody Field Office is responsible for off-road vehicle management which includes designation of roads for vehicular use and seasonal travel restrictions as described in the Cody Resource Management Plan (RMP), signed November 8, 1990. The Rattlesnake Mountain area has suffered resource damage due to uncontrolled motorized vehicle use of temporary logging roads. The purpose of this closure is to reduce resource damage to both public and private lands in the area. This order will aid in the rehabilitation of the logging roads and reduce resource damage caused by motorized vehicles.

The Rattlesnake Mountain area provides habitat for both summering and wintering deer and elk. Unrestricted motorized vehicle use has historically pushed both species onto the steeper side slopes of the mountain. Motorized vehicle use limited to designated roads will reduce the negative impacts on the wildlife.

The main trunk road on Rattlesnake Mountain (BLM #1207) passes through the following described BLM-administered public lands south and west of Trail Creek: Sixth Principal Meridian, Township 53 North, Range 103 West, sections 8, 9, 17, 21, 22, 23, 26, 35, and 36. The trail on the southeast face of Rattlesnake Mountain passes through Township 53 North, Range 102 West, sections 32, 33 and also Township 52 North, Range 102 West, West section 6. Authority to close roads and trails to motorized vehicle use is provided under 43 CFR 8341.2 (a and b), and 8364.1. Violations are punishable by a fine not to exceed $1,000 and (or) imprisonment not to exceed 12 months.

Dated: July 21, 1999.

Michael Blymyer,

Cody Field Manager.

[FR Doc. 99–20165 Filed 8–4–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–1610–00]

Public Hearing on the Red Rock Canyon National Conservation Area Proposed General Management Plan and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management.

ACTION: The Las Vegas Field Office of the Bureau of Land Management announces the scheduling of a Public Hearing on the Proposed General Management Plan (GMP) and Draft Environmental Impact Statement (DEIS) for the Red Rock Canyon National Conservation Area (NCA). The hearing is scheduled for August 23, 1999 from 4 PM to 8:30 PM at the West Sahara Library, 9600 West Sahara, Las Vegas, NV.

SUMMARY: A formal Public Hearing for the purpose of recording public testimony on the Proposed General Management Plan and Draft Environmental Impact Statement (GMP/DEIS) for the Red Rock Canyon National Conservation Area will be held on August 23, 1999 at the time and location listed above. Each individual wishing to testify will be allowed three (3) minutes. Individuals wanting more time may be granted additional time after all other persons have been heard. Testimony will be taken on a first-come basis. To reserve a time to testify in advance call the BLM Las Vegas Field Office, 702–647–5000.

DATES: The Public Hearing is scheduled for August 23, 1999 at the West Sahara Library, 9600 West Sahara, Las Vegas NV.

ADDRESSES: Written testimony and comments should be sent to Bureau of Land Management, Attention: Red Rock GMP, 4765 W. Vegas Drive., Las Vegas, NV 89108. Comments may also be hand delivered to the same address.

FOR FURTHER INFORMATION CONTACT: Gene Arnesen, GMP Team Leader, at (702)–647–5000.

SUPPLEMENTARY INFORMATION: Written testimony may be submitted in place of or in addition to verbal testimony. Written and verbal testimony will be given the same weight when all comments on the GMP/DEIS are reviewed. Written comments do not have to be turned in at the hearing but may be submitted by simply sending them to the address listed above prior to September 30, 1999. Copies of the GMP/DEIS may be acquired by calling (702) 647–5000 or writing the address listed above. The GMP/DEIS may also be found on the U.S. Department of the Interior, Bureau of Land Management, Nevada web site.

Dated: July 23, 1999.

Michael F. Dwyer,

Field Office Manager, Las Vegas.

[FR Doc. 99–20168 Filed 8–4–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–00; GP9–0266]

Notice of Meeting of John Day-Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Prineville District Office, Interior.

ACTION: Meeting of John Day-Snake Resource Advisory Council: Pendleton, Oregon; September 8 and 9, 1999.

SUMMARY: A meeting of the John Day-Snake Resource Advisory Council will be held on September 8 from 10 a.m. to 5 p.m. and on September 9 from 8 a.m. to 3 p.m. at the Doubletree Inn, 304 SE Nye Avenue, Pendleton, Oregon. The meeting is open to the public. Public comments will be received at 1 p.m. on September 8. Topics to be discussed by the Council will include: John Day River Plan review and Hells Canyon NRA subgroup update; threatened and endangered species effects on public land grazing; forest health update; Standards and Guidelines update; ICBEMP update; and a 15 minute round table for general issues.

FOR FURTHER INFORMATION CONTACT: James L. Hancock, Bureau of Land Management, Prineville District Office, 3050 NE Third Street, P.O. Box 550, Prineville, Oregon 97754, or call 541–416–6700.

Dated: July 27, 1999.

James L. Hancock,

District Manager and Designated Federal Official, John Day-Snake Resource Advisory Council.

[FR Doc. 99–20166 Filed 8–4–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–200–09–1020–00]

Science Advisory Board; Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Land Management (BLM) announces a public meeting of the Science Advisory Board to examine the use of science for improving the management of the Nation's public lands and resources. Topics of discussion will include the BLM's National Applied Resources Science Center, and research associated with population management of wild horses and burros.

DATES: BLM will hold the public meeting on Tuesday, September 7, 1999, from 9:00 a.m. to 4:00 p.m. local time.

ADDRESSES: BLM will hold the public meeting in Room 7000 B of the Main Interior Building, 1849 C Street, N.W., Washington, D.C. 20240

FOR FURTHER INFORMATION CONTACT: Christine Jauhola, Bureau of Land Management, 1849 C Street, N.W., LSB–204, Washington, D.C. 20240, (202) 452–7761.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463).

I. The Agenda for the Public Meeting Is as Follows

9:00 a.m.
- Welcome, introductions
- Review Minutes of Previous Meeting
- Report from Deputy Assistant Secretary for Land and Minerals Management
- Report from the Bureau of Land Management

9:45 a.m. USGS Review of Fertility Control for Wild Horse and Burro Program
11:30 a.m. Lunch
1:00 p.m. Executive Order on Weeds
2:30 p.m. National Applied Resources Science Center
3:30 p.m. Public Comments
3:45 p.m. Next Meeting and Other Items
4:00 p.m. Adjourn

II. Public Comment Procedures

Participation in the public meeting is not a prerequisite for submittal of written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on BLM's use of science are those that are either supported by quantitative information or studies, or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, commenters should submit two copies of their written comments, where practicable. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, we intend to make them available in their entirety, including your name and address (or your e-mail address if you file electronically). However, if you do not want us to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. We will honor your wish to the extent allowed by the law. All submissions from organizations or business, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be in their entirety, including names and addresses (or e-mail addresses).

Electronic Access and Filing Address: Commenters may transmit comments electronically via the Internet to: Chris_Jauhola@blm.gov. Please include the identifier "Science4" in the subject of your message and your name and address in the body of your message.

III. Accessibility

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the hearing, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled hearing date. Although BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Dated: July 30, 1999.

Peggy Olwell,

Acting Group Manager, Fish, Wildlife, and Forest Group.

[FR Doc. 99–20152 Filed 8–4–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–1310; WYW144602]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

July 27, 1999.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW144602 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administration fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW144602 effective April 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 99–20158 Filed 8–4–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

National Park Service

Pictured Rocks National Lakeshore

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare a general management plan and environmental impact statement for Pictured Rocks National Lakeshore, Michigan.

SUMMARY: The National Park Service (NPS) will prepare a general management plan (GMP) and an associated environmental impact statement (EIS) for Pictured Rocks National Lakeshore, Michigan, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

Participation in the planning process will be encouraged and facilitated by various means, including newsletters and open houses. The NPS will conduct a series of public scoping meetings to explain the planning process and to solicit opinion about issues to address in the GMP/EIS. Notification of all such meetings will be announced in the local press and in NPS newsletters or other mailings. Current GMP information also will be provided on the park's web site, http://www.nps.gov/piro/

DATES: Public open houses will be held from Friday, August 27, through

Wednesday, September 1. All open houses are tentatively scheduled for afternoon or evening hours. Open houses will be held in the following cities: August 27—Detroit, Michigan; August 28—Grand Rapids, Michigan; August 30—Grand Marais, Michigan; August 31—Marquette, Michigan; and September 1—Green Bay, Wisconsin. The specific locations for the open houses have not been finalized. More information about the open houses is available from the Superintendent, Pictured Rocks National Lakeshore, at the address and telephone number below.

ADDRESSES: Written comments and information concerning the scope of the EIS and other matters, or requests to be added to the project mailing list should be directed to: Mr. Grant Petersen, Superintendent, Pictured Rocks National Lakeshore, P.O. Box 40, Munising, Michigan 49862. Telephone: 906–387–2607, E-mail: piro__superintendent@nps.gov

FOR FURTHER INFORMATION CONTACT: Superintendent, Pictured Rocks National Lakeshore, at the address and telephone number above.

SUPPLEMENTARY INFORMATION: Pictured Rocks is nationally recognized for the geographic and scientifically significant Lake Superior shoreline and related features it encompasses. The area became the first of America's authorized national lakeshores on October 15, 1966. The national lakeshore today encompasses 71,405 acres of land and water. A GMP prepared approved in 1981 currently guides management and development of the national lakeshore. Many provisions of that plan have now been accomplished. A revised GMP is necessary to address changes in resource conditions, knowledge about resources, policies, and laws that have occurred since 1981.

In accordance with NPS Park Planning policy, the GMP will ensure the Memorial has a clearly defined direction for resource preservation and visitor use. It will be developed in consultation with Servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts, and costs of alternative courses of action.

The environmental review of the GMP/EIS for historic site will be conducted in accordance with requirements of the NEPA (42 U.S.C. 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and National Park Service procedures and policies for compliance with those regulations.

Dated: July 27, 1999.

William W. Schenk,

Regional Director.

[FR Doc. 99–20209 Filed 8–4–99; 8:45 am]

BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

National Park Service

Sleeping Bear Dunes National Lakeshore

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare a general management plan and environmental impact statement for Sleeping Bear Dunes National Lakeshore, Michigan.

SUMMARY: Management plan (GMP) and an associated environmental impact statement (EIS) for Sleeping Bear Dunes National Lakeshore, Michigan, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

Participation in the planning process will be encouraged and facilitated by various means, including newsletters and open houses. The NPS will conduct a series of public scoping meetings to explain the planning process and to solicit opinion about issues to address in the GMP/EIS. Notification of all such meetings will be announced in the local press and in NPS newsletters or other mailings.

ADDRESSES: Written comments and information concerning the scope of the EIS and other matters, or requests to be added to the project mailing list should be directed to the Superintendent, Sleeping Bear Dunes National Lakeshore, 9922 Front Street, Empire, Michigan 49630. Telephone: 616–326–5134, E-mail: slbe__superintendent@nps.gov

FOR FURTHER INFORMATION CONTACT: Superintendent, Sleeping Bear Dunes National Lakeshore, at the address and telephone number above.

SUPPLEMENTARY INFORMATION: Sleeping Bear Dunes National Lakeshore is an essential and major component of the Great Lakes ecosystem with over 100 km of Lake Michigan shoreline, inland lakes and rivers, glacial landforms (kettles, bogs, moraines, massive perched sand dunes), and old growth forest remnants. About 50 percent of the Lakeshore is designated for potential wilderness. The Lakeshore is a destination recreation resource accessible to residents of major population centers (Chicago and Detroit). The Lakeshore has extensive evidence of human history including archeological resources of prehistoric Indian occupation, early European settlement, agriculture and logging, and Lake Michigan maritime development including transportation, fishing, and lifesaving.

In accordance with NPS park planning policy, the GMP will ensure the lakeshore has a clearly defined direction for resource preservation and visitor use. It will be developed in consultation with Servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts, and costs of alternative courses of action.

The environmental review of the GMP/EIS for the historic site will be conducted in accordance with requirements of the NEPA (42 U.S.C. 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and NPS procedures and policies for compliance with those regulations.

Dated: July 27, 1999.

William W. Schenk,

Regional Director.

[FR Doc. 99–20210 Filed 8–4–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Bassett Furniture Industries, Inc.*, C.A. No. 4:99–CV–0044, was lodged on July 21, 1999, with the United States District Court for the Western District of Virginia. The consent decree resolves violations of the visible emission limit and the particulate mass emission regulation provisions of the Commonwealth of Virginia's State Implementation Plan ("State SIP"). The violations occurred at several Bassett facilities located in Virginia. The subject provisions of the State Sip are federally-enforceable pursuant to the Clean Air Act ("CAA") and 40 CFR part 52.

Under the consent decree, Bassett agreed to and has implemented remedial measures that have brought its facilities into compliance with the CAA and the State SIP. These measures include, but are not limited to, mailing specified repairs to boilers and installing new equipment on boilers at several of its Virginia facilities. Bassett has also agreed to perform two Supplemental Environmental Projects, which include installation and operation of pollution reduction equipment at several of its Virginia facilities and performance of a Pollution Prevention Assessment at four of its Virginia facilities. Further, Bassett has agreed to pay a civil penalty in the amount of $575,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Bassett Furniture Industries, Inc.*, DOJ Reference No. 90–5–2–1–2210.

The proposed consent decree may be examined at the office of the United States Attorney, Suite One, Thomas B. Mason Building, 105 Franklin Road, SW, Roanoke, Virginia 24011–2305; the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; and the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 2005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $15.25 (.25 cents per page production costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–20161 Filed 8–4–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *Cordova Chemical Company of Michigan, et al., CA No. G89–0961–CA and CPC International, Inc.* v. *Aeroject-General Corporation, et.al. CA No. G89–10503–CA* (W.D. Michigan) was lodged on July 20, 1999, with the United States District Court for the Western District of Michigan. With regard to the Defendants, Aerojet-General Corporation, Cordova Chemical Company of California and Cordova Chemcial Company of Michigan, ("Settling Defendants"), the Consent Decree resolves a claim filed by the United States on behalf of the United States Environmental Protection Agency ("EPA") purusuant to the Comprehensive Environmental Response, Compensation and Liability Act, *as amended* 42 U.S.C. 9601, *et seq.*

The United States entered into the Consent Decree in connection with the Ott/Story/ Cordova Site located in Muskegon, Michigan. The Consent Decree provides that the Settling Defendants will be responsible for implementing injunctive relief related to contaminated soil at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Settlement Order. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *Cordova Chemical Company of Michigan, et al., and CPC International, Inc.* v. *Aerojet-General Corporation, et al.*, DOJ Ref. #90–11–2–481.

The proposed Consent Decree may be examined at the office of the United States Attorney, 330 Ionia Avenue, NW., Suite 301, Grand Rapids, Michigan 49503; the Region 57 office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Ill 60604; and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy refer to the referenced case and enclose a check in the amount of $49.50 (25 cents per page reproduction costs), payable to the Consent Decree Library:

Joel M. Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 99–20159 Filed 8–4–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Suiza Foods Corp. and Broughton Foods Co.; Public Comments and Response

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that Public Comments and Plaintiff's Response have been filed with the United States District Court for the Eastern District of Kentucky, London Division, in *United States* v. *Suiza Foods Corporation and Broughton Foods Company*, Dkt. No. 99–CV–130.

On March 18, 1999, the United States filed a civil antitrust Complaint in the United States District Court for the Eastern District of Kentucky, London Division, alleging that the proposed acquisition of Broughton Foods Company ("Broughton") by Suiza Foods Corporation ("Suiza") would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Suiza and Broughton compete to sell milk to school districts, that in 55 school districts located in South Central Kentucky the acquisition is likely to substantially lessen competition in the sale of school milk, and that therefore school districts and students would likely pay higher school milk prices or experience lower school milk quality and service.

A proposed Final Judgment embodying the settlement of this case was filed with the Court on April 28, 1999, along with a Competitive Impact Statement describing the Complaint and proposed Final Judgment. The Competitive Impact Statement and invitation for public comments were published in the **Federal Register** on May 17, 1999. Such comments, and the response thereto, are hereby published in the **Federal Register** and filed with the Court.

Copies of the Complaint, Stipulation, proposed Final Judgment, Competitive Impact Statement, Public Comments and Plaintiff's Response also may be inspected in Room 3233 of the Antitrust Division, Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202/633–2481) and at the office of the Clerk of the United States District Court for

the Eastern District of Kentucky, London Division, 300 South Main Street, London, Kentucky 40741.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement.

United States District Court Eastern District of Kentucky, London Division

[Civil Action No. 99–CV–130]

United States of America, Plaintiff, vs. Suiza Foods Corporation, d/b/a Louis Trauth Dairy, Land O'Sun Dairy, and Flav-O-Rich Dairy, and Broughton Foods Company, d/b/a Southern Belle Dairy, Defendants.

Plaintiff's Response to Public Comments

Plaintiff, the United States of America, pursuant to the Antitrust Procedures and Penalties Act ("Tunney Act"), 15 U.S.C. 16(b)–(h), hereby files the Response to Public Comments relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Plaintiff filed a civil antitrust Complaint on March 18, 1999, in United States District Court for the Eastern District of Kentucky, London Division, alleging that the proposed acquisition of Broughton Foods Company ("Broughton") by Suiza Foods Corporation ("Suiza") would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Suiza and Broughton compete to sell milk to school districts, that in 55 school districts located in South Central Kentucky the acquisition is likely to substantially lessen competition in the sale of school milk, and that therefore school districts and students would likely pay higher school milk prices or experience lower school milk quality and service.

The prayer for relief seeks: (a) An adjudication that the transaction described in the Complaint would violate section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the transaction; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

After this suit was filed, a proposed settlement was reached that permits Suiza to complete its acquisition of Broughton while preserving competition in the sale of milk in South Central Kentucky school districts where the transaction has raised competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed with the Court on April 28, 1999, along with a Competitive Impact Statement describing the Complaint and proposed Final Judgment. The Competitive Impact Statement and invitation for public comments were published in the **Federal Register** on May 17, 1999.

If entered by the Court, the proposed Final Judgment would order Suiza to divest the entire operations of one of Broughton's dairy plants, Southern Belle Dairy, based in Pulsaki County, Kentucky, and all its related assets. Southern Belle dairy is the one Broughton entity that competes for the sale of milk in all of the school districts alleged in the Complaint to be affected by the merger. Unless the plaintiff grants a time extension, Suiza must divest Southern Belle Dairy and related assets within six (6) months after the filing of the proposed Final Judgment in this action or within five (5) business days after notice of entry of the Final Judgment, whichever is later. If Suiza does not divest Southern Belle Dairy and related assets within that period, the Court, upon plaintiff's application, is to appoint a trustee to sell it. The proposed Final Judgment also requires that, until divestiture has been accomplished, Suiza and Broughton shall take all steps necessary to maintain and operate Southern Belle Dairy as an active competitor such that the sale and marketing of its products shall be conducted separate from, and in competition with, all of Suiza's products, shall maintain sufficient management and staffing,and shall maintain Southern Belle Dairy in operable condition at current capacity configurations.

The 60-day period to submit public comments expired on July 16, 1999. As of the date of the filing of this Response, the United States had received only one public comment. This came from the Food Service Director of Lincoln County Public Schools in Stanford, Kentucky. Lincoln County is one of the 55 school districts alleged in the Complaint to be impacted by the proposed acquisition.

II. Plaintiff's Response to Public Comments

The one public comment received in this matter is essentially an expression of gratitude to the United States Department of Justice staff for intervening in the proposed acquisition and for helping to preserve Southern Belle Dairy as an independent competitor. The Department staff appreciates this comment and has no other response. The single comment reflects the consistent concerns about the acquisition that the Department staff heard from many school food services directors during its investigation. The plaintiff also notes that the lack of any negative public comments indicates generally that there is no sector of the public likely to be dissatisfied with the proposed settlement.

The Court's responsibility under the Tunney Act is to determine whether entry of the proposed Final Judgment is "within the reaches of the public interest." *United States* v. *Western Elec. Co.*, 993 F.2d 1572 (D.C. Cir. 1993). After due consideration of the public comment received, the plaintiff concludes that entry of the proposed Final Judgment as written will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is therefore in the public interest. The plaintiff intends to move the Court to enter the proposed Final Judgment after the public comments and this Response have been published in the **Federal Register**, as required by the Tunney Act, 15 U.S.C. 16(d).

Dated: July 29, 1999.

Respectfully submitted,

James K. Foster,

Litigation II Section, U.S. Department of Justice, 1401 H Street, NW, Suite 4000, Washington, DC 20530, (202) 307–0001.

By Facsimile:

Lincoln County Board of Education, 305 Danville Ave., Stanford, Kentucky 40104, USA.

To: U.S. Department of Justice—Antitrust
Attn: Craig Conrath

Dear Sir,

Thank you for your intervention in the proposed merger between Flav-O-Rich and Southern Belle Dairy. We were concerned that we would have only one choice and the prices would go out of sight.

We appreciate what you did for our food service program.

Sincerely,

Carolyn Spangler,

Food Service Director, April 29, 1999.

Certificate of Service

I, James K. Foster, hereby certify that, on July 29, 1999, I caused the foregoing document to be served on defendants Suiza Foods Corporation and Broughton Foods Company, by fasimile and first-class mail, postage pre-paid, to:

Paul Denis, Esq., Swidler Berlin Shereff Friedman, LLP, 3000 K Street, NW., Suite 300, Washington, DC 20007, facsimile: 202/424–7645

William Kolasky, Esq., Wilmer, Cutler & Pickering, 2445 M Street, NW., Washington, DC 20037, facsimile: 202/663–6363

James K. Foster,

[FR Doc. 99–20162 Filed 8–4–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; ERISA Procedure 76–1, Advisory Opinion Procedure

AGENCY: Pension and Welfare Benefits Administration, DOL.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information included in ERISA Procedure 76–1, Advisory Opinion Procedure. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted on or before October 4, 1999.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–4782, FAX (202) 219–4745 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Under the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (ERISA), the Secretary of Labor has responsibilities for administering reporting, disclosure, fiduciary and other standards for pension and welfare benefit plans. ERISA Procedure 76–1, Advisory Opinion Procedure (ERISA Procedure) sets forth the administrative procedures to be used by the public (*e.g.*, plan administrators) when requesting a legal interpretation from the Department regarding specific facts and circumstances (an advisory opinion). The ERISA Procedure informs individuals, organizations, and their authorized representatives of the procedures to be followed when requesting an advisory opinion. The ERISA Procedure promotes efficient handling of these requests. The information required by the ERISA Procedure is used by the Department to determine the substance of the response and to determine whether the Department's response should be in the form of an advisory opinion or information letter. Advisory opinions and information letters issued under this ERISA Procedure help fiduciaries, employers, and other interested parties understand a particular provision of the law and promote compliance with ERISA. Advisory opinions are also useful to the Department as a means of clarifying Departmental policy on certain issues.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's approval of this ICR will expire on November 30, 1999. The existing collection of information should be continued because the individuals or organizations affected directly or indirectly by ERISA from time to time need legal interpretations from the Department as to their status under ERISA and as to the effect of certain actions and transactions. Requests for advisory opinions are voluntary. The information is used by the Department to determine the substance of the response and to determine whether the Department's response should be in the form of an advisory opinion or information letter.

Agency: Department of Labor, pension and Welfare Benefits Administration.

Title: ERISA Procedure 76–1, Advisory Opinion Procedure.

Type of Review: Extension of a currently approved collection.

OMB Number: 1210–0066.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Total Respondents: 83.

Total Responses: 83.

Frequency of Response: On occasion.

Average Time Per Response: 12⅔ hours.

Estimated Total Burden Hours: 101 hours.

Total Burden Cost (Operating and Maintenance): $87,883.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 29, 1999.

Gerald B. Lindrew,

Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.

[FR Doc. 99–20120 Filed 8–4–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–32; Exemption Application No.D–09708, et al.]

Grant of Individual Exemptions; RREEF America L.L.C. (RREEF), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at

the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

RREEF America L.L.C. (RREEF) Located in San Francisco, California

[Prohibited Transaction Exemption 99–32; Exemption Application No. D–09708]

Exemption

The Department is granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.)

Part I—Exemption for Payment of Certain Fees to RREEF

The restrictions of sections 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply, effective as of (i) May 16, 1994, with respect to a single client, separate account established on behalf of the Shell Pension Trust (the Shell Account), and (ii) the date this final exemption is published in the **Federal Register**, with respect to any single client, separate account (Single Client Account) or any multiple client account (Multiple Client Account) formed on, or after, such a date, to the payment of certain initial investment fees (the Investment Fee), annual management fees based upon net operating income (the Asset Management Fee), and performance fees (the Performance Fee) to RREEF by employee benefit plans for which RREEF provides investment management services (the Client Plans) [1] pursuant to an investment management agreement (the Agreement) entered into between RREEF and the Client Plans either individually, through an establishment (or amendment) of a Single Client Account, or collectively as participants in a newly established Multiple Client Account (collectively, the Accounts), provided that the conditions set forth below in Part III are satisfied.

Part II—Exemption for Investments in a Multiple Client Account

The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(c)(1)(A) through (D) of the Code, shall not apply to any investment by a Client Plan in a Multiple Client Account managed by RREEF formed on, or after, the date the final exemption is published in the **Federal Register**, provided that the conditions set forth below in Part III are satisfied.

Part III—General Conditions

(a)(1) The investment of plan assets in a Single or Multiple Client Account, including the terms and payment of any Investment Fee, Asset Management Fee and Performance Fee (collectively; the Fees), shall be approved in writing by a fiduciary of a Client Plan which is independent of RREEF and its affiliates (the Independent Fiduciary).

(2) For purposes of the Fees, the fair market value of the Accounts' real property assets (other than in the case of actual sales) will be based on appraisals prepared by independent qualified appraisers that are Members of the Appraisal Institute (MAI Appraisers). In this regard, every agreement by which an appraiser is retained will include the appraiser's representation that: (1) Its ultimate client is the Account and its underlying Client Plan (and non-Plan) investors, and (2) it will perform its duties in the interest of such Account (and investors). In addition, following the date this final exemption is published in the **Federal Register**, every agreement shall advise the appraiser that it owes a professional obligation to the Account when making an appraisal for properties held by the Account.

(b) The terms of any investment in an Account and of the Fees, shall be at least as favorable to the Client Plans as those obtainable in arm's-length transactions between unrelated parties.

(c) At the time any Account is established (or amended) and at the time of any subsequent investment of assets (including the reinvestment of assets) in such Account:

(1) Each Client Plan in a Single Client Account shall have total net assets with a value in excess of $100 million, and each Client Plan that is an investor in a Multiple Client Account shall have total net assets with a value in excess of $50 million; and provided that seventy-five percent (75%) or more of the units of beneficial interests in a Multiple Client Account are held by Client Plans or other investors having total assets of at least $100 million. In addition, 50 percent (50%) or more of the Client Plans investing in a Multiple Client Account shall have assets of at least $100 million. A group of Client Plans maintained by a single employer or controlled group of employers, any of which individually has assets of less than $100 million, will be counted as a single Client Plan if the decision to invest in the Account (or the decision to make investments in the Account available as an option for an individually directed account) is made by a fiduciary other than RREEF, who exercises such discretion with respect to Client Plan assets in excess of $100 million.

(2) No Client Plan shall invest, in the aggregate, more than 5% of its total assets in any Account or more than 10% of its total assets in all Accounts established by RREEF.

(d) Prior to making an investment in any Account (or amending an existing Account), the Independent Fiduciary of each Client Plan investing in an Account shall have received offering materials from RREEF which disclose all material facts concerning the purpose, structure, and operation of the Account, including any Fee arrangements (provided that, in the case of an amendment to the Fee arrangements, such materials need address only the amended fees and any other material change to the Account's original offering materials).

[1] The Client Plans (including employee benefit plans that may become Client Plans in the future) consist of various pension plans as defined in section 3(2) of the Act and other plans as defined in section 4975(e)(1) of the Code with respect to which RREEF serves as a trustee or an investment manager.

(e) With respect to its ongoing participation in an Account, each Client Plan shall receive the following written information from RREEF:

(1) Audited financial statements of the Account prepared by independent public accountants selected by RREEF no later than 90 days after the end of the fiscal year of the Account;

(2) Quarterly and annual reports prepared by RREEF relating to the overall financial position and operating results of the Account and, in the case of a Multiple Client Account, the value of each Client Plan's interest in the Account. Each such report shall include a statement regarding the amount of fees paid to RREEF during the period covered by such report;

(3) Periodic appraisals (as agreed upon with the Client Plans) indicating the fair market value of the Account's assets as established by an MAI appraiser independent of RREEF and its affiliates. In the case of any appraisal that will serve as the basis for any "deemed sale" of such property for purposes of calculating the Performance Fee payable to RREEF (as discussed in paragraph (j) below), then:

(i) In the case of any Single Client Account, such MAI appraiser shall be either (A) selected by the Independent Fiduciary of the Client Plan subject to the affirmative approval of RREEF, or (B) selected by RREEF subject to approval by the Independent Fiduciary of the Client Plan;

(ii) In the case of any Multiple Client Account, such MAI appraiser shall be approved in advance by the Responsible Independent Fiduciaries (as defined in Part IV(e) below) owning a majority of the interests in the Accounts, determined according to the latest valuation of the Account's assets performed no more than 12 months prior to such appraisal, which approval may be by written notice and deemed consent by such Fiduciaries' failure to object to the appraiser within 30 days of such notice; and

(iii) In either case, the selected MAI appraiser shall acknowledge in writing that the Client Plan(s) and other investors (in the case of a Multiple Client Account), rather than RREEF, is (are) its clients, and that in performing its services for the Account it shall act in the sole interest of such Client Plan(s) and other investors. In addition, following the date this final exemption is published in the **Federal Register**, every appraiser selected shall acknowledge that it owes a professional obligation to the Client Plan(s) and other investors in the Account in performing its services as an appraiser for properties in the Account. If an MAI appraiser selected by RREEF, or an appraisal performed by a previously approved appraiser, is rejected by the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for the Multiple Client Account, determined according to the latest valuation of the Account's assets performed no more than 12 months prior to such appraisal, the fair market value of the assets for any "deemed sale", relating to the payment of a Performance Fee (as described in paragraphs (i) and (j) below) shall be determined as follows: (A) the Client Plans shall appoint a second appraiser and, if the value established for the property does not deviate by more than 10% (or such lesser amount as may be agreed upon between RREEF and the Client Plan(s)), then the two appraisals shall be averaged; (B) if the values differ by more than 10%, then the two appraisers shall select a third appraiser, that is independent of RREEF and its affiliates, who will attempt to mediate the difference; (C) if the third appraiser can cause the first two to reach an agreement on a value, that figure shall be used; however, (D) if no agreement can be reached, the third appraiser shall determine the value based on procedures set out in the governing agreements of the Account or, if no such procedures are established, shall conduct its own appraisal and the two closest of the three shall be averaged;

(4) In the case of any Multiple Client Account, a list of all other investors in the Account;

(5) Annual operating and capital budgets with respect to the Account, to be distributed to a Client Plan within 60 days prior to the beginning of the fiscal year to which such budgets relate; and

(6) An explanation of any material deviation from the budgets previously provided to such Client Plan for the prior year.

(f) The total fees paid to RREEF shall constitute no more than "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(g) The Investment Fee shall be equal to a specified percentage of the net value of the Client Plan assets allocated to the Account which shall be payable either:

(1) At the time assets are deposited (or deemed deposited in the case of reinvestment of assets) in the Account; or

(2) In periodic installments, the amount (as a percentage of the aggregate Investment Fee) and timing of which have been specified in advance based on the percentage of the Client Plan's assets invested in real property as of the payment date; provided that (i) the installment period is no less than three months, and (ii) if the percentage of the Client Plan assets which have actually been invested by a payment date is less than the percentage required for the aggregate Investment Fee to be paid in full through that date (both determined on a cumulative basis), the Investment Fee paid on such a date shall be reduced by the amount necessary to cause the percentage of the aggregate Investment Fee paid to equal only the percentage of the Client Plan assets actually invested by that date. The unpaid portion of such Investment Fee shall be deferred to and payable on a cumulative basis on the next scheduled payment date (subject to the percentage limitation described in the preceding sentence).

(h) The Asset Management Fee shall be payable for each quarter from the net operating income (NOI) of the Account. The amount of the Asset Management Fee, expressed as a percentage of the NOI of the Account, shall be established by the Agreement and agreed to by the Independent Fiduciaries of the Client Plans:

(1) The Asset Management Fee for any Account will be calculated as follows. The Asset Management Fee for a specific Account real property will be based solely on items of operating income and expense that are identified as line items on an operating budget for such property disclosed to each Client Plan that participates in the Account. The disclosures have to be made at least 30 days in advance of the fiscal year to which the budget relates, and approved in the manner described in (2) below;

(2) Each Client Plan must provide affirmative approval of the operating budget. Specifically, when the proposed budget (or any material deviation therefrom) is sent to a Client Plan, it will be accompanied by a written notice that the Client Plan may object to the budget or any specific line item therein, for purposes of calculating the Asset Management Fees for the next fiscal year. The written notice will contain a statement that affirmative approval of the budget is required prior to the end of the 30-day period following such disclosure. In the case of a Multiple Client Account, affirmative approval by a majority of investors (by interest) will constitute approval of the proposed budget (or deviation); and

(3) In the event of any subsequent decrease in previously approved budgeted operating expenses for the fiscal year in excess of the limits previously described (*i.e.*, no more than 15% for any line item or 5% overall), then the resulting increase in NOI (*i.e.*, over and above the allowable deviation)

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will not be taken into account in calculating RREEF's management fee *unless* affirmative approval for the payment of such fee is obtained in writing from the Independent Fiduciary for the Client Plan in the Single Client Account or the Responsible Independent Fiduciaries for the Multiple Client Account.

(i) In the case of any Multiple Client Account, the Performance Fee shall be payable after the Client Plan has received distributions from the Account in excess of an amount equal to 100% of its invested capital plus a pre-specified annual compounded cumulative rate of return (the Threshold Amount or Hurdle Rate). However, in the case of RREEF's removal or resignation, RREEF shall be entitled to receive a Performance Fee payable either at the time of removal or, in the event of RREEF's resignation, upon sale of the assets to which the Performance Fee is allocable or upon termination of the Account as the case may be, subject to the requirements of paragraph (l) below, as determined by a deemed distribution of the assets of the Account based on an assumed sale of such assets at their fair market value (in accordance with independent appraisals), only to the extent that the Client Plan would receive deemed distributions from the Account in excess of an amount equal to the Threshold Amount at the time of RREEF's removal or resignation. Both the Threshold Amount and the amount of the Performance Fee, expressed as a percentage of the net proceeds from a capital event distributed (or deemed distributed) from the Account in excess of the Threshold Amount, shall be established by the Agreement and agreed to by the Independent Fiduciaries of the Client Plans.

(j) In the case of any Single Client Account, the Performance Fee shall be determined and paid either: (1) in the same manner as in the case of a Multiple Client Account, as described in paragraph (i) above; or (2) at the end of any pre-specified period of not less than one year, provided that such Fee is based upon the sum of all actual distributions from the Account during such period, plus deemed distributions of the assets of the Account based on an assumed sale of all such assets at their fair market value as of the end of such period (in accordance with independent appraisals performed within 12 months of the calculation) which are calculated to be in excess of the Threshold Amount or the Hurdle Rate through the end of such period. For this purpose, the Performance Fee measuring period shall be established by the Agreement and agreed to by the Independent Fiduciary of the Client Plan, provided that such period is not less than one year. In addition, RREEF shall provide notice to the Client Plan within 60 days of each Performance Fee calculation for a Single Client Account that the Independent Fiduciary of the Client Plan has the right to request updated appraisals of the properties held by the Account if such Fiduciary determines that the existing independent appraisals (performed within 12 months of the calculation) are no longer sufficient.

(k) The Threshold Amount for any Performance Fee shall include as least a minimum rate of return to the Client Plan, as defined below in Part IV, paragraph (f).

(l) In the event RREEF resigns as investment manager for an Account, the Performance Fee shall be calculated at the time of resignation as described above in paragraph (i) and allocated among each property, based on the appraised value of such property in relationship to the total appraised value of the Account. Each amount arrived at through this calculation shall be multiplied by a fraction, the numerator of which will be the actual sales price received by the Account on subsequent disposition of the property (or in the case of a property which has not been sold prior to the termination of a Multiple Client Account, the appraised value of the property as of the termination date), and the denominator of which will be the appraised value of the property which was used in connection with determining the Performance Fee at the time of resignation, provided that this fraction shall never exceed 1.0. The resulting amount for each property shall be the Performance Fee payable to RREEF upon the sale of such property or termination of the Multiple Client Account, as the case may be.

(m) In cases where RREEF does have discretion to reinvest proceeds from capital events, the reinvested amount shall not be treated as a new contribution of capital by the Client Plan for purposes of the Investment Fee, as described above in paragraph (g), or having been distributed for purposes of the payment of Performance Fee as described above in paragraphs (i) and (j);

(n) RREEF or its affiliates shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this Part III to determine whether the conditions of this exemption have been met, except that: (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of RREEF or its affiliates, the records are lost or destroyed prior to the end of the six year period; and (2) no party in interest, other than RREEF, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (o) below.

(o)(1) Except as provided in paragraph (o)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (n) of this Part III shall be unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of a Client Plan or any duly authorized employee or representative of such fiduciary;

(iii) Any contributing employer to a Client Plan or any duly authorized employee or representative of such employer; and

(iv) Any participant or beneficiary of a Client Plan or any duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described above in paragraph (o)(1)(ii)–(iv) shall be authorized to examine the trade secrets of RREEF and its affiliates or any commercial or financial information which is privileged or confidential.

(p) RREEF shall provide a copy of the proposed exemption and a copy of the final exemption to all Client Plans that invest in any Single Client Account or any Multiple Client Account formed on, or after, the date the final exemption is published in the **Federal Register**.

Part IV—Definitions

(a) An "affiliate" of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "management services" means:

(1) Development of an investment strategy for the Account and identification of suitable real estate-related investments;

(2) Directing the investments of the assets of the Account, including the determination of the structure of each investment, the negotiation of its terms and conditions and the performance of all requisite due diligence;

(3) Determination of the timing of, and directing, the disposition of assets of the Account and directing the liquidation of the Account upon termination;

(4) Administration of the overall operation of the investments of the Account, including all applicable leasing, management, financing and capital improvement decisions;

(5) Establishing and maintaining accounting records of the Account and distributing reports to Client Plans as described in Part III; and

(6) Selecting and directing all service providers of ancillary services as defined in this Part IV; provided, however, that some or all of the foregoing management services may be subject to the final discretion of the Independent Fiduciary(ies) for the Client Plan(s).

(d) The term "ancillary services" means:

(1) Legal services;

(2) Services of architects, designers, engineers, construction managers, hazardous materials consultants, contractors, leasing agents, real estate brokers, and others in connection with the acquisition, construction, improvement, management and disposition of investments in real property;

(3) Insurance brokerage and consultation services;

(4) Services of independent auditors and accountants in connection with auditing the books and records of the Accounts and preparing tax returns;

(5) Appraisal and mortgage brokerage services; and

(6) Services for the development of income-producing real property.

(e) The term "Independent Fiduciary" with respect to any Client Plan means a fiduciary (including an in-house fiduciary) independent of RREEF and its affiliates. With respect to a Multiple Client Account, the terms "Independent Fiduciary" or "Responsible Independent Fiduciaries" mean the Independent Fiduciaries of the Client Plans invested in the Account and other authorized persons acting for investors in the Account which are not employee benefit plans as defined under section 3(3) of ERISA (such as governmental plans, university endowment funds, etc.) that are independent of RREEF and its affiliates, and that collectively hold more than 50% of the interests in the Account.

(f) The terms "Threshold Amount" or "Hurdle Rate" mean, with respect to any Performance Fee, an amount which equals all of a Client Plan's capital invested in an Account plus a pre-specified annual compounded cumulative rate of return that is at least a minimum rate of return determined as follows:

(1) A "floating" or non-fixed rate which is at least equal to the lesser of seven percent, or the rate of change in the consumer price index (CPI), during the period from the deposit of the Client Plan's assets into the Account until the determination date; or

(2) A fixed rate which is at least equal to the lesser of seven percent or the average rate of change in the CPI over some period of time specified in the Agreement, which shall not exceed 10 years.

(g) The terms "Net Operating Income" or "NOI" means all operating income of the Account (i.e., rents, interest, and other income from day-to-day investment activities of the Account) less operating expenses, determined on an accrual basis in accordance with generally accepted accounting principles, but without regard to depreciation (or other non-cash) expense and capital expenditures and without regard to payments of interest and principal with respect to any acquisition indebtedness relating to the property.

(h) The term "Net Proceeds of a Capital Event" means all proceeds from capital events of an Account (i.e., sales or non-recourse refinances of real property investments owned by the Account) less repayment of debt with respect to such property, closing expenses paid, and reasonable reserves established in connection therewith, whether such reserves are for repayment of existing or anticipated obligations or for contingent liabilities.

EFFECTIVE DATE: This exemption is effective as of (i) May 16, 1994, with respect to the Shell Account, and (ii) the date this final exemption is published in the **Federal Register**, with respect to any Single Client Account and any Multiple Client Account formed on, or after, such date.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on June 3, 1999 at 64 FR 29896.

Written Comments

The Department received one written comment (the Comment) with respect to the Notice and no requests for a public hearing. The Comment was filed by RREEF and generally requests clarifications and modifications to the Notice. Set forth below in section I is RREEF's discussion concerning RREEF's notification of interested parties. Section II discusses those aspects of the Comment which relate to the language of the final exemption (the Exemption). In addition, section III below discusses those aspects of the Comment which relate to the Summary of Facts and Representations (the Summary) contained in the Notice.

I. Discussion Concerning Notification of Interested Persons

RREEF represents that RREEF notified all interested parties of the Notice by First Class Mail on June 8, 1999, and informed such persons that they would have thirty-one (31) days from the date of mailing (i.e., 36 days from the date of the Notice's publication in the **Federal Register**) to file comments with the Department. Although the Notice stated that the comment period would be sixty (60) days from the date of publication in the **Federal Register**, it is RREEF's understanding that the Department's purpose in establishing the 60-day period was to give RREEF up to 30 days to mail the Notices and to give interested parties at least thirty (30) days after such mailing to comment. RREEF, however, did not require the initial 30-day period to mail the Notices and, after discussion with the Department staff, shortened the overall time period to reflect the actual date of mailing. All interested parties retained the 30-day comment period and were advised by RREEF that the correct comment deadline date would be July 9, 1999.

Notwithstanding the foregoing, RREEF also had an understanding with the Department that if comments from the general public were received within a reasonable time after July 9, 1999, the Department would require RREEF to respond. However, no such comments were received.

The Department acknowledges RREEF's modification of the notification of interested persons, and, based upon the representations made by RREEF's counsel, has determined that the notice requirements contained in the Department's exemption procedures (see 29 CFR 2570.43) have been met.

II. Discussion Concerning the Exemption

1. Part I of the Exemption states, in relevant part, that the restrictions of section 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section

4975(c)(1)(E) of the Code, shall not apply, as of the date the final exemption is published in the **Federal Register**, to the subject transactions "* * * with respect to any single client, separate account (Single Client Account) or any multiple Client account (Multiple Client Account) formed on, or after, such a date * * *" (see (ii) of Part I). RREEF wishes to confirm that the phrase "* * * formed on, or after, such a date * * *" refers only to Multiple Client Accounts.

The Department confirms RREEF's understanding of this phrase.

2. Under Part III(i) of the Exemption, a Performance Fee shall be payable to RREEF after the Client Plan has received distributions from the Account in excess of the applicable Threshold Amount. Part III(i) also discusses the possible payment of a Performance Fee to RREEF in the case of RREEF's removal or resignation, as determined by a deemed distribution of the assets of the Account based on an assumed sale of such assets at their market value, but only to the extent that the Client Plan would receive distributions from the Account in excess of an amount equal to the Threshold Amount at the time of RREEF's removal or resignation. In this regard, the Comment relates to the phrase in Part III(i) which states, in relevant part, that "* * * the Client Plan would receive distributions from the Account in excess of an amount equal to the Threshold Amount at the time of RREEF's removal or resignation." RREEF suggests adding the word "deemed" to this phrase so that Part III(i) reads, in relevant part, "* * * the Client Plan would receive *deemed* distributions from the Account * * *" [Emphasis added].

The Department acknowledges RREEF's clarification, and has modified the language of Part III(i) of the Exemption accordingly.

3. Part IV(f) of the Exemption states, in relevant part, that "the terms "Threshold Amount" or "Hurdle Rate" mean, with respect to any Performance Fee, an amount which equals all of a Client Plan's capital invested in an Account plus a pre-specified annual compounded cumulative rate of return * * *" RREEF wishes to confirm that it may use a Hurdle Rate that is compounded more frequently than annually, e.g., quarterly or monthly, if so negotiated with the Client Plans. [2]

The Department acknowledges RREEF's confirmation.

[2] RREEF also notes references to annual compounding in Paragraphs 5 and 12 of the Summary.

III. Discussion Concerning the Summary

In the Comment, RREEF wishes to clarify the description of the Performance Fees in the Summary as applied to Single Client Accounts. RREEF notes that there is a substantial difference between the proposed Performance Fee calculation as applied to Multiple Client Accounts (described in Part III(i) of the Notice) and the Fee calculation applicable to Single Client Accounts (described in Part III(j) of the Notice). RREEF states that Part III(i) clearly reflects that although distributions from operations serve to reduce the Threshold Amount with respect to Multiple Client Accounts, once the Threshold Amount is reduced to zero the Performance Fee for Multiple Client Accounts is payable only with respect to subsequent distributions from capital events. However, Part III(j) of the Exemption provides that the Performance Fee for Single Client Accounts may be paid "* * * based on the sum of all actual distributions from the Account during such period, plus deemed distributions * * *."

RREEF represents that the difference in the language was intentional. In the case of a Multiple Client Account, since periodic Performance Fees are not available under the Exemption, RREEF states that it is highly unlikely that any Performance Fee will be calculated and paid until the Account has reached the end of its term and is in liquidation.

In contrast, RREEF states that distributions from any source, including operating revenues, would continue to enter into the Performance Fee calculation for Single Client Accounts even after the Threshold Amount is reduced to zero (as reflected in the language of Part III(j) of the Exemption).

Accordingly, RREEF wishes to make several clarifications to the information contained in the Summary.

1. Paragraph 5(iii) of the Summary contains a description of the Performance Fee. RREEF requests that the word "*certain*" be inserted into Paragraph 5(iii) and that the words "* * * of capital proceeds" be deleted such that it reads, in relevant part, "* * * the Performance Fee, a fee charged upon *certain* actual or deemed distributions from the Account in excess of a Client Plan's invested capital * * *." [Emphasis added].

2. RREEF requests that the phrase "* * * will not be payable until" be substituted for "will be payable with respect to" in the third section of Paragraph 13 of the Notice, such that the sentence reads, in relevant part, "Because the Threshold Amount has been reduced to $0 at year 6, an additional Performance Fee *will not be payable until* any subsequent distribution of cash from a capital event * * *." [Emphasis added].

3. RREEF requests that the word "the" be deleted in the last sentence of Paragraph 14 of the Notice, and that the sentence should read "* * * Such proceeds, net of these expenses and reserves, generally will be distributable net proceeds of capital events upon which the Performance Fee may be payable."

4. RREEF states it wishes to clarify for the record that because the calculation of the Shell Account's Performance Fee will be done retroactively, such Fee will be based solely on actual property sales. Accordingly, all references in the Summary to appraisals and appraisers with respect to the Shell Account are irrelevant.

5. RREEF notes that the second section of Paragraph 1 of the Summary requires certain clarifications. RREEF wishes to clarify this information as follows (RREEF's modifications are in italic):

"On January 27, 1998, *substantially all of the assets of* RREEF America L.L.C. and its affiliate, RREEF Corporation (collectively, RREEF), were acquired by RoProperty Services, B.V. (RoProperty), a major Dutch investment advisory firm, *now known as RoProperty Investment Management, N.V.* As a result, the *assets of* RREEF's *advisory* entities were combined into a newly created Delaware limited liability company, which continues to use the name "RREEF America L.L.C." RREEF operates as an autonomous entity which continues to provide investment management services, and its affiliate, RREEF Management Company, continues to provide property management services." [Emphasis added].

6. Paragraph 3 of the Summary contains footnote 2 which states:

"* * * The applicant represents that in some instances a Client Plan's investment in a Multiple Client Account that is a common or collective trust fund maintained by a bank would be exempt from the restrictions of section 406(a) of the Act by reason of section 408(b)(8). The Department expresses no opinion herein whether all the conditions of section 408(b)(8) will be satisfied in such transactions."

RREEF states that this footnote, while legally accurate, should be deleted because it is inapplicable to RREEF since RREEF is not a bank.

7. RREEF requests that in paragraph 3(f) of the Summary, the phrase "also has" be changed to "also may have" such that the modified paragraph 3(f) reads as follows:

"RREEF also *may have* complete discretion in the selection and direction of the ancillary services (Ancillary Services) defined in Part IV, paragraph (d) above." [Emphasis added].

8. RREEF wishes to clarify certain information contained in Paragraph 7 of the Summary, which discusses the services for which RREEF receives an Asset Management Fee. Specifically, RREEF makes the following points:

(a) The Asset Management Fee is not intended to compensate RREEF for selection of properties and other assets for acquisition by an Account; this service is effectively covered by the Investment Fee.

(b) The Asset Management Fee does not compensate RREEF for "performance" (as stated therein) of property management and leasing services, because such services are provided by separate parties for separate compensation. However, this Fee does compensate RREEF for "supervising and overseeing the performance" of such services, including the hiring of those separate parties.

(c) RREEF states that the phrase "* * * and maintaining" should be added to section (v) of paragraph 7 so that the modified section reads as follows: "establishing *and maintaining* tax-exempt title-holding corporations under section 501(a) of the Code for the properties". [Emphasis added].

(d) RREEF also states that the Asset Management Fee also covers supervising the preparation and filing of tax (and other) reports.

9. RREEF also notes that paragraph 8 of the Summary states that RREEF's current property management agreements permit no more than a 15% variance in individual budget line items and 5% overall. However, RREEF states that these figures were used as an example and were not intended to be fixed at such percentages for all property management agreements. In this regard, it is possible that a Client Plan may negotiate a lesser variance in the future, or a lesser variance for a single line item.

RREEF also notes that at the end of the second paragraph in paragraph 8 of the Summary, the last two sentences should be deleted and following two sentences substituted in their place:

"Property management agreements used by RREEF permit no more than a 15% variance between any individual line item expense in the operating budget *and actual expenditures, without the Client's approval.* In addition, *without the Client's approval, actual expenditures for any year typically may not exceed* budgeted expenses by more than 5% in the aggregate." [Emphasis added].

In this regard, the Department has also modified the language of paragraph (h)(3) of Part III as follows:

"* * * (3) In the event of any subsequent decrease in previously approved budgeted operating expenses for the fiscal year in excess of the limits previously described (i.e., no more than 15% for any line item, or 5% overall), then the resulting increase in NOI * * *." [Emphasis added].

10. RREEF also requests that in the last sentence of Paragraph 12 of the Summary, the word "by" be replaced by the word "to" so that the sentence reads, in relevant part: * * * the Threshold Amount would be increased to the full amount of the deemed distribution * * *" [Emphasis added.]

11. RREEF also requests that the phrase "* * * either the Client Plan(s) or" be added at the beginning of last sentence of paragraph 16 of the Summary to clarify that the discretion used by the appropriate fiduciaries for an Account, as discussed therein, will be exercised by someone other than RREEF. Therefore, the revised sentence should have read as follows:

"*Either the Client Plan(s) or* the replacement investment manager of the Account (unrelated to RREEF) will have discretion as to when the property is sold or when the Account is terminated." [Emphasis added].

The Department acknowledges all of RREEF's clarifications to the information contained in the Summary, as discussed above, as well as certain other minor discussions and information contained in the Comment.

Accordingly, after giving full consideration to the entire record, including the Comment, the Department has decided to grant the exemption subject as modified herein. The Comment has been included as part of the public record of the exemption application.

Interested persons are invited to review the complete exemption file, which is available for public inspection in the Public Disclosure Room of the Pension and Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Motors Hourly Rate Employees Pension Plan, General Motors Retirement Program for Salaried Employees, Saturn Individual Retirement Plan for Represented Team Members, Saturn Personal Choices Retirement Plan for Non-Represented Team Members, Employees' Retirement Plan for GMAC Mortgage Corporation, Delphi Automotive Systems Hourly Rate Employees Pension Plan, Delphi Automotive Systems Retirement Program for Salaried Employees (collectively, the Plans) Located in New York, New York

[Prohibited Transaction Exemption 99–33; Exemption Application Nos. D–10473 through D–10476]

Exemption

Part I—Covered Transactions

The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply effective December 11, 1998, to a transaction between AEW Industrial, L.L.C. (the LLC), an entity which currently holds "plan assets" of the Plans, or any subsidiary of the LLC (as defined in Part IV(d) below) which may hold "plan assets" of the Plans in the future, as a result of investments made by the Plans in the LLC or any subsidiary through the First Plaza Group Trust (the Trust), and a party in interest with respect to any of the Plans, provided that the Specific Conditions set forth below in Part II and the General Conditions set forth in Part III are met:

Part II—Specific Conditions

(a) In the case of a transaction by the LLC or any subsidiary that involves the acquisition, financing, or disposition of any real property asset, the terms of the transaction are negotiated on behalf of the Plan by AEW Capital Management, L.P. or a successor thereto (AEW), under the authority and general direction of General Motors Investment Management Corporation (GMIMCo), a wholly-owned subsidiary of General Motors Corporation (GM), and GMIMCo makes the decision on behalf of the Plan to enter into the transaction.

Notwithstanding the foregoing, a transaction involving an amount of $5 million or more, which has been negotiated on behalf of the Plans by AEW and approved by GMIMCo in the manner described above, will not fail to meet the requirements of this Part II(a) solely because GM or its designee retains the right to veto or approve such transaction;

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(b) In the case of any transaction by the LLC or any subsidiary that does not involve acquisitions, financings or dispositions of real property assets, the terms of the transaction are negotiated on behalf of the Plans by AEW, under the authority and general direction of GMIMCo, and either AEW or a property manager acting in accordance with written guidelines or business plans (including budgets), adopted with the approval of GMIMCo, makes the decision on behalf of the Plans to enter into the transaction. Notwithstanding the foregoing, a transaction involving an amount of $5 million or more, which has been negotiated on behalf of the Plans in accordance with the foregoing, will not fail to meet the requirements of this Part II(b) solely because GM or its designee retains the right to veto or approve such transaction;

(c) The transaction is not described in—

(1) Prohibited Transaction Exemption 81–6 (46 FR 7527, January 23, 1981), relating to securities lending arrangements,

(2) Prohibited Transaction Exemption 83–1 (48 FR 895, January 7, 1983), relating to acquisitions by plans of interests in mortgage pools, or

(3) Prohibited Transaction Exemption 88–59 (53 FR 24811; June 30, 1988), relating to certain mortgage financing arrangements;

(d) The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest with respect to any of the Plans;

(e) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of GMIMCo, GM, or AEW the terms of the transaction are at least as favorable to the Plans as the terms generally available in arm's-length transactions between unrelated parties;

(f) The party in interest dealing with the LLC: (1) is a party in interest with respect to a Plan (including a fiduciary) solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F),(G),(H) or (I) of the Act; and (2) does not have discretionary authority or control with respect to the investment of the Plan's assets in the Trust or the LLC, and does not render investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to the investment of those assets in the Trust or the LLC;

(g) The party in interest dealing with the LLC is neither GMIMCo or AEW nor a person "related" to GMIMCo or AEW within the meaning of Part IV(c) below;

(h) GMIMCo adopts written policies and procedures that are designed to assure compliance with the conditions of this exemption; and

(i) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act, and who so represents in writing, conducts an exemption audit, as defined in Part IV(f) below, on an annual basis. Following completion of the exemption audit, the auditor issues a written report to each Plan representing its specific findings regarding the level of compliance with the policies and procedure adopted by GMIMCo in accordance with Part II(h) above.

Part III—General Conditions

(a) At all times during the term of this exemption (if granted), GMIMCo shall be—

(1) A direct or indirect wholly owned subsidiary of GM, and

(2) An investment adviser registered under the Investment Advisers Act of 1940 that, as of the last day of its most recent fiscal year, has under its management and control total assets attributable to Plans maintained by GM or its affiliates (as defined in Part IV(a) of this exemption) in excess of $50 million. In addition, Plans maintained by affiliates of GMIMCo must have, as of the last day of each plan's reporting year, aggregate assets of at least $250 million;

(b) AEW or any successor, as investment manager for assets held by the LLC, meets the conditions for a "qualified professional asset manager" (QPAM) as set forth in section V(a) of Prohibited Transaction Class Exemption 84–14 (49 FR 9494, March 13, 1984);

(c) AEW and GMIMCo, or their affiliates, shall maintain, for a period of six years from the date of each transaction described above, the records necessary to enable the persons described below in Part III(d)(1) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of AEW or GMIMCo, or their affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest, other than AEW or GMIMCo, shall be subject to the civil penalty which may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975 (a) and (b) of the Code, if the records are not available for examination as required by section (d) below; and

(d)(1) Except as provided in subsection (2) of this section (d), and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in section (c) of this Part III shall be made unconditionally available by GMIMCo or AEW, at the customary location for the maintenance and/or retention of such records, for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service;

(B) The persons described in Part II(i) of this exemption (relating to an independent audit of covered transactions as discussed therein); and

(C) Any fiduciary of the Plans or the Trust;

(2) None of the persons described in subsections (1)(B) and (C) of this section (d) shall be authorized to examine trade secrets of AEW or GMIMCo, or commercial or financial information which is privileged or confidential in nature.

Part IV—Definitions

For purposes of this exemption:

(a) "Affiliate" of GM means a member of either (1) a controlled group of corporations (as defined in section 414(b) of the Code) of which GM is a member, or (2) a group of trades or businesses under common control (as defined in section 414(c) of the Code) of which GM is a member; provided that "50 percent" shall be substituted for "80 percent" wherever "80 percent" appears in Code section 414(b) or 414(c) or the regulations thereunder.

(b) "Party in interest" means a person described in section 3(14) of the Act and includes a "disqualified person" as defined in section 4975(e)(2) of the Code.

(c) GMIMCo or AEW are "related" to a party in interest with respect to a Plan for purposes of this exemption if the party in interest (or a person controlling or controlled by the party in interest) owns a five percent (5%) or more interest in GMIMCo or AEW, or if GMIMCo or AEW (or a person controlling or controlled by GMIMCo or AEW) owns a five percent (5%) or more interest in the party in interest. For purposes of this definition:

(1) "Interest" means with respect to ownership of an entity:

(A) The combined voting power of all classes of stock entitled to vote, or the total value of the shares of all classes of stock of the entity, if the entity is a corporation;

(B) The capital interest, or the profits interest of the entity, if the entity is a partnership; or

(C) The beneficial interest of the entity, if the entity is a trust or unincorporated enterprise;

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest; and

(3) "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) "Subsidiary" means any limited liability company or other entity organized by the LLC, through which it acquires and holds title to its real property investments.

(e) An "exemption audit" of each Plan's interest in the LLC must consist of the following:

(1) A review of the written policies and procedures adopted by GMIMCo pursuant to Part II(h) for consistency with each of the objective requirements of this exemption (as described herein);

(2) A test of a representative sample of the Plan's transactions through investments made by the LLC, as described in Part I, in order to make findings regarding whether GMIMCo is in compliance with both: (i) the written policies and procedures adopted by GMIMCo pursuant to Part II(i) of this exemption; and (ii) the objective requirements of this exemption; and

(3) Issuance of a written report describing the steps performed by the independent auditor during the course of its review and the independent auditor's findings regarding the Plan's interest in the LLC.

(f) For purposes of Part IV(e), the written policies and procedures must describe the following objective requirements of Part II of the exemption and the steps adopted by GMIMCo to assure compliance with each of these requirements:

(1) The requirements of Part III;

(2) The requirements of sections (a) and (b) of Part II regarding the discretionary authority or control of GMIMCo with respect to the Plan assets involved in each transaction, in negotiating the terms of the transaction, and with regard to the decision made on behalf of the Plan, as an investor in the LLC, to enter into the transaction;

(3) The requirements of sections (a) and (b) of Part II with respect to any procedure for approval or veto of the transaction;

(4) That:

(A) The transaction is not entered into with any person who is excluded from relief under sections (f) or (g) of Part II; and

(B) The transaction is not described in any of the class exemptions listed in section (c) of Part II.

(g) "Plan" means an employee benefit plan established and maintained by GM or an Affiliate, as well as the Delphi Automotive Systems Hourly Rate Employees Pension Plan, and the Delphi Automotive Systems Retirement Program for Salaried Employees.

EFFECTIVE DATE: This exemption is effective as of December 11, 1998.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on June 3, 1999 at 64 FR 29914.

Written Comments

The Department received one written comment (the Comment) with respect to the Notice and no requests for a public hearing. The Comment was filed by AEW and suggests that certain clarifications and modifications be made to the Notice. Set forth below in section I is AEW's discussion concerning the language of the final exemption (the Exemption). Section II discusses those aspects of the Comment which relate to the Summary of Facts and Representations (the Summary) contained in the Notice.

I. Discussion of the Comment Regarding the Exemption

1. AEW states that Delphi Automotive Systems Corporation (Delphi) was spun-off by General Motors on May 28, 1999. Delphi maintained two plans, the Delphi Automotive Systems Hourly Rate Employees Pension Plan and the Delphi Automotive Systems Retirement Program for Salaried Employees. The assets of both of these plans are still held in the First Plaza Group Trust and still managed by GMIMCo. Therefore, AEW requests that the Delphi Automotive Systems Hourly Rate Employees Pension Plan and the Delphi Automotive Systems Retirement Program for Salaried Employees be added to the caption of the Exemption, so that the revised caption reads as follows:

"General Motors Hourly Rate Employees Pension Plan, General Motors Retirement Program for Salaried Employees, Saturn Individual Retirement Plan for Represented Team Members, Saturn Personal Choices Retirement Plan for Non-Represented Team Members, Employees' Retirement Plan for GMAC Mortgage Corporation, *Delphi Automotive Systems Hourly Rate Employees Pension Plan, Delphi Automotive Systems Retirement Program for Salaried Employees* (collectively, the Plans)." [Emphasis added].

The Department acknowledges AEW's request and has modified the caption of the Exemption accordingly. In addition, the Department has modified the definition of the term "Plan" in Part IV(g) of the Exemption to include the Delphi Automotive Systems Hourly Rate Employees Pension Plan, and the Delphi Automotive Systems Retirement Program for Salaried Employees.

2. AEW also notes that Part I of the Notice states, in relevant part, that the restrictions of section 406(a)(1)(A) through (D) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, shall not apply to "* * * a transaction between AEW Industrial, L.L.C. (the LLC), an entity which currently holds "plan assets" of the Plans, or any subsidiary of the LLC (as defined in Part IV(d) below) * * *" Since Part I refers to transactions by the LLC or any subsidiary, AEW requests that the phrase "* * * or any subsidiary * * *" also be added immediately after the reference to the LLC in the first sentence of Part II(a) of the Exemption and the first sentence of Part II(b) of the Exemption in order to be consistent with Part I.

Thus, Part II(a) should read, in relevant part, "In the case of transaction by the LLC *or any subsidiary* * * *." [Emphasis added]. Furthermore, Part II(b) should read, in relevant part, "In the case of transaction by the LLC *or any subsidiary* * * *." [Emphasis added].

The Department acknowledges AEW's request and has modified the language of Part II(a) and Part II(b) of the Exemption accordingly.

II. Discussion of the Comment Regarding the Summary

1. For the same reasons discussed in the Comment at Section I(1) above, AEW states that the following sentence should be added after the first sentence in paragraph 2 of the Summary, so that the paragraph reads, in relevant part:

"For a portion of their assets, the Plans make investments through an entity known as the First Plaza Group Trust (i.e., the Trust), which is a group trust established pursuant to IRS Revenue Ruling 81–100. *In addition, the Delphi Automotive Systems Hourly Rate Employees Pension Plan and the Delphi Automotive Systems Retirement Program for Salaried Employees (hereinafter these two plans are included in all references to the Plans), which are plans sponsored by a former GM affiliate, make investments through the Trust.*" [Emphasis added].

2. AEW requests that the word "billion" replace the word "million" in the last sentence of paragraph 1 of the Summary so that the sentence reads, in

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relevant part, "* * * the Plans had total assets of approximately $73.2 billion, of which approximately $4.39 *billion* were invested in private real estate assets." [Emphasis added].

3. AEW also requests that the word "billion" replace the word "million" in the third sentence of paragraph 5 of the Summary so that the sentence reads, in relevant part, "* * * [New England Investment Companies] NEIC is a publicly-traded holding company with approximately $90 *billion* in assets under management * * *." [Emphasis added].

The Department acknowledges all of AEW's clarifications to the information contained in the Summary.

Accordingly, after giving full consideration to the entire record, including the Comment, the Department has decided to grant the exemption subject as modified herein.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 2nd day of August, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–20191 Filed 8–4–99; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional Nixon presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act ("PRMPA", 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR Part 1275), the agency has identified, inventoried, and prepared for public access approximately 445 hours of Nixon White House tape recordings among the Nixon Presidential historical materials.

DATES: The National Archives and Records Administration (NARA) intends to make the materials described in this notice available to the public beginning October 5, 1999. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense on or before September 7, 1999.

ADDRESSES: The materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland, beginning at 8:45 a.m.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Karl Weissenbach, Director, Nixon Presidential Materials Staff, 301–713–6950.

SUPPLEMENTARY INFORMATION: NARA is proposing to open approximately 3650 conversations which were recorded at the Nixon White House from February 1971 to July 1971. These tape segments total approximately 445 hours of listening time.

This is the seventh opening of Nixon White House tapes since 1980. Previous releases included conversations constituting "abuses of governmental power" and conversations recorded in the Cabinet Room of the Nixon White House. The tapes now being proposed for opening consist of the first of five segments comprising the remaining hours of conversations, processed for release in chronological order starting with February 1971.

There are no transcripts for these tapes. Tape logs, prepared by NARA, are offered for public access as a finding aid to the tape segments and a guide for the listener. There is a separate tape log entry for each segment of conversation released. Each tape log entry includes the names of participants; date, time, and location of the conversation; and an outline of the content of the conversation.

The tape recordings will be made available to the general public in the research room at 8601 Adelphi Road, College Park, Maryland, Monday through Friday between 8:45 a.m. and 4:30 p.m. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facility. Listening stations will be available for public use on a first come, first served basis. NARA reserves the right to limit listening time in response to heavy demand. No copies of the tape recordings will be sold or otherwise provided at this time. No sound recording devices will be allowed in the listening area. Researchers may take notes. Copies of the tape log will be available for a fee in accordance with 36 CFR 1258.12.

Dated: July 30, 1999.

John W. Carlin,

Archivist of the United States.

[FR Doc. 99–20154 Filed 8–4–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Extend and Revise a Current Information Collection

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; Comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for pubic comment; the first was published in the **Federal Register** at 64 FR 29920 (June 3, 1999), and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW, Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov.

DATES: Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–306–1125 X2017.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 306–1125 X2017 or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Survey of Graduate Students and Postdoctorates in Science and Engineering.

OMB Approval Number: 3145–0062.

Proposed Project

Graduate students in science, engineering, and health fields in U.S. colleges and universities, by source and mechanism of support and by demographic characteristics. An electronic/mail survey, the Survey of Graduate Students and Postdoctorates in Science and Engineering originated in 1966 and has been conducted annually since 1972. The survey is the academic graduate enrollment component of the NSF statistical program that seeks to "provide a central clearinghouse for the collection, interpretation, and analysis of data on the availability of, and the current and projected need for, scientific and technical resources in the United States, and to provide a source of information for policy formulation by other agencies of the Federal government" as mandated in the National Science Foundation Act of 1950.

The proposed project will continue the current survey cycle for three to five years. The annual Fall surveys for 1999 through 2003 will survey the universe of approximately 725 reporting units at approximately 600 institutions offering accredited graduate programs in science, engineering, or health. The survey has provided continuity of statistics on graduate school enrollment and support for graduate students in all science & engineering (S&E) and health fields, with separate data requested on demographic characteristics (race/ethnicity and gender by full-time and part-time enrollment status). Statistics from the survey are published in NSF's annual publication series *Graduate Students and Postdoctorates in Science and Engineering,* in NSF publications *Science and Engineering Indicators, Women, Minorities, and Persons with Disabilities in Science and Engineering,* and are available electronically on the World Wide Web.

NSF proposes to revise the questionnaire in 1999 to include the Department of energy as a source of funding of graduate students and to ask for the number of first-time full-time graduate students by race/ethnicity. These changes are being proposed for purposes of planning, policy formulation, and program evaluation and to provide consistency with other NSF surveys (e.g., on R&D expenditures). Two redundant items will be deleted from the questionnaire: the number of part-time students and the number of women part-time students. In addition, the names of the race/ethnicity categories will be changed to comply with the new OMB guidelines. The new categories will be: Black or African American; American Indian or Alaska Native; Asian; Native Hawaiian or Other Pacific Islander; Hispanic or Latino; and White. These changes are expected to result in minimal change in burden. Overall burden is expected to be reduced from 1999 to 2003 due to expansion of the Web-based data collection.

The survey will be sent primarily to the administrators at the Institutional Research Offices. To minimize burden, NSF instituted a Web-based survey in 1998 through which institutions can enter data directly or upload preformatted files. The Web-based survey includes a complete program for editing and trend checking and allows institutions to receive their previous year's data for comparison. Respondents will be encouraged to participate in this Web-based survey should they so wish. Traditional paper questionnaires will also be available, with editing and trend checking performed as part of the survey processing.

In Fall 1997, the survey achieved a total response rate of 98.5% for institutions and 98.3% for departments.

Estimate of Burden

Burden estimates are as follows:

	Total number of institutions	Departments	Burden hours
FY 1995	722	11,598	1.87

	Total number of institutions	Departments	Burden hours
FY 1996	722	11,592	1.95
FY 1997	723	11,597	2.23

Description of Respondents: Individuals.

Estimated Number of Responses: 11,597 (from the 1997 collection).

Estimated Total Annual Burden on Respondents: 23,690 hours (from the 1997 collection).

Frequency of Responses: Annually.

Dated: August 2, 1999.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 99–20147 Filed 8–4–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Number 40–9048]

International Uranium (USA) Corporation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of withdrawal of license application, Reno Creek In Situ Leach (ISL) Uranium Extraction Project, Campbell County, Wyoming; notice of withdrawal.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated July 22, 1999, a request from International Uranium (USA) Corporation that the NRC terminate all review activities for the Reno Creek In Situ Leach (ISL) Uranium Extraction Project in Campbell County, Wyoming.

FOR FURTHER INFORMATION CONTACT: Harold Lefevre, Uranium Recovery and Low Level Waste Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6678. E-mail *HEL@NRC.GOV*.

SUPPLEMENTARY INFORMATION: The NRC noticed the receipt of an Application for Licensing for the Reno Creek In Situ Leach (ISL) Uranium Extraction Project in Campbell County, Wyoming, in the **Federal Register** (59 FR 16246, April 6, 1994). A Notice for Opportunity for Hearing was also issued in that **Federal Register** Notice. The application was submitted by Energy Fuels Nuclear, Incorporated, a predecessor of International Uranium (USA) Corporation.

The NRC received a letter dated July 22, 1999, from International Uranium (USA) Corporation requesting that NRC, "immediately terminate all review work on the Reno Creek ISL Project Source Materials License Application." The NRC considers this request a withdrawal of the License Application in accordance with 10 CFR 2.107. As stated in 10 CFR 2.107(b), the withdrawal of an application does not authorize the removal of any document from the files of the Commission. If it desires to do so, International Uranium (USA) Corporation may again apply for a specific license for the Reno Creek ISL Project at some time in the future by submitting a license application in accordance with 10 CFR 40.31.

Dated at Rockville, Maryland, this 29th Day of July 1999.

For the Nuclear Regulatory Commission.

John J. Surmeier,

Chief, Uranium Recovery and Low Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–20123 Filed 8–4–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

PECO Energy Company, Public Service Electric and Gas Company, and Peach Bottom Atomic Power Station, Units Nos. 2 and 3; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Issuance of Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. DPR–70 and DPR–75 for the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, to the extent currently held by Public Service Electric and Gas Company (PSE&G), as a non-operating co-owner of Peach Bottom Units 2 and 3. The transfer would be to PSEG Nuclear, LLC. PSE&G currently owns 42.5 percent of each Peach Bottom unit. The proposed transfers do not involve any change with respect to the ownership interests held by PECO Energy Company, Delmarva Power and Light Company, and Atlantic City Electric Company. The Commission is also considering amending the licenses to reflect the proposed transfer.

According to the application for approval, PSE&G's interest in both units of the facility would be transferred to PSEG Nuclear, LLC, following approval of the proposed transfer of the licenses. PSEG Nuclear, LLC, will be a wholly owned subsidiary of the current parent of PSE&G, Public Service Enterprise Group Incorporated. The transfers of the licenses will not affect PECO Energy Company's current responsibility and authority to operate the units. No physical changes to the Peach Bottom facility or operational changes are being proposed in the application.

The proposed amendments would replace references to PSE&G in the licenses with references to PSEG Nuclear, LLC, to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By August 25, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Jeffrie J. Keenan, Esquire, Public Service Electric and Gas Company, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038 (tel: 609–339–5429, fax: 609–339–1234, and e-mail: JKeenan@PSEG.com); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held, and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by September 7, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the applications dated July 1 and 23, 1999, and a related application dated June 4, 1999, pertaining to the Hope Creek and Salem facilities, incorporated by reference in the July 23, 1999, submittal, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Dated at Rockville, Maryland this 30th day of July 1999.

For the Nuclear Regulatory Commission.

Bartholomew C. Buckley,

Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–20122 Filed 8–4–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7001]

Notice of Amendment to Certificate of Compliance GDP–1 for the U.S. Enrichment Corporation, Paducah Gaseous Diffusion Plant, Paducah, KY

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) there is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22(c)(19). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need to be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) the interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after

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publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: March 1, 1999.

Brief description of amendment: The amendment proposes to revise the Technical Safety Requirements (TSRs) related to the audibility requirements for the criticality accident alarm system (CAAS) at PGDP. It is related to the CAAS audibility upgrade modifications. The revision is necessary to ensure adequate TSR coverage during the modification and system changeover. This amendment also revises related sections in the Safety Analysis Report (SAR).

Basis for finding of no significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed change to the TSRs improves the performance and reliability of the CAAS at PGDP, and it does not involve any process which would change or increase the amounts of any effluents that may be released offsite. Therefore, the proposed change will not result in an increase in the amounts of effluents that may be released offsite or result in any impact to the environment.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The CAAS system does not prevent criticality, thus the possibility of a criticality occurring is not increased. The proposed change to the TSRs improves the performance and reliability of the CAAS which minimizes the consequences of a criticality accident. Therefore, the proposed change does not increase individual or cumulative occupational radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed change to the TSRs reflects modifications associated with the CAAS upgrade, which has been planned as a part of Compliance Plan Issues 46 and 50. The proposed change does not change the scope or expand the planned construction. Therefore, it does not result in a significant construction impact.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed change to the TSRs improves the performance and reliability of the CAAS which minimizes the consequences of a criticality accident. The CAAS does not change any previously analyzed accidents and does not affect the possibility of occurrence of a criticality accident. Therefore, the proposed change does not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The CAAS is an alarm system to warn people of criticality events. It does not initiate or contribute to an accident, and it is intended to mitigate the consequences of a criticality accident. The proposed change to the TSRs improves the performance and reliability of the CAAS. Therefore, this change will not result in the possibility of a new or different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed change to the TSRs improves the performance and reliability of the CAAS which minimizes the consequences of a criticality accident. Therefore, the proposed change does not represent a reduction in any margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

The proposed change to the TSRs improves the performance and reliability of the CAAS which minimizes the consequences of a criticality accident. Therefore, the overall effectiveness of the safety, safeguards, and security programs is not decreased.

Effective date: The amendment to Certificate of Compliance GDP–1 will become effective no later than 30 days after being signed by the Director, Office of Nuclear Material Safety and Safeguards.

Certificate of Compliance No. GDP–1: This amendment will revise the TSRs related to the audibility requirements for the criticality accident alarm system at PGDP and related sections in the SAR.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 28th day of July 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–20125 Filed 8–4–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–89 and 50–163]

General Atomics TRIGA Mark I and Mark F Research Reactors; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a license amendment to Amended Facility License No. R–38 and Facility License No. R–67, issued to General Atomics (GA or the licensee), for decommissioning of the GA TRIGA Mark I and TRIGA Mark F Research Reactors, located at General Atomics in San Diego, San Diego county, California.

Environmental Assessment

Identification of Proposed Action

The proposed action would approve the licensee's decommissioning plan. GA submitted their decommissioning plan in accordance with 10 CFR 50.82(b) for the GA TRIGA Mark I and TRIGA Mark F Research Reactors which occupy parts of the TRIGA Reactor Facility within GA's Torrey Mesa site. The TRIGA Mark I license was amended on October 29, 1997, and the TRIGA Mark F license was amended on March 22, 1995, to remove authority to operate the reactors. Fuel from both reactors have been placed in the TRIGA Mark F fuel storage canal which is in the same pool as the TRIGA Mark F reactor. The proposed decommissioning plan would authorize immediate dismantlement of the TRIGA Mark I Research Reactor. To protect the stored fuel from potential damage due to decommissioning activities, only limited dismantlement of the TRIGA Mark F Research Reactor will occur with fuel in the TRIGA Mark F fuel storage canal. This would be followed by a period of fuel storage. After fuel is removed from the TRIGA Mark F fuel storage canal, dismantling will be completed on the TRIGA Mark F Research Reactor. The soonest that the Department of Energy can accept fuel from GA is 2003. Domestic spent nuclear fuel receipts at the Idaho National Engineering and Environmental Laboratory have been severely constrained because of a settlement agreement of a lawsuit concerning spent nuclear fuel and nuclear waste. The site will be decontaminated to meet unrestricted release criteria. After the Commission verifies that the release criteria have been met, the reactor license will be terminated.

The licensee will continue with their health physics program, and approved emergency and security plan during the decommissioning and their operator requalification plan until fuel is removed from the facility.

A "Notice of Application for Decommissioning Amendment" was published in the **Federal Register** on December 11, 1997 (62 FR 65288), in accordance with the requirements of 10 CFR 50.82(b)(5).

The proposed action is in accordance with the licensee's application for amendment dated April 18, 1997, as supplemented on November 20, 1998, and January 28 and 29, February 3, April 22, May 3 and 12, and June 15, 16, and 22, 1999.

The Need for the Proposed Action

The proposed action is needed because of GA's decision to cease reactor operations permanently at the Torrey Mesa site. As specified in 10 CFR 50.82, any licensee may apply to the NRC for authority to surrender a license voluntarily and to decommission the affected facility. Once the licensee permanently ceases operation, 10 CFR 50.82(b)(1) requires the licensee to make application for license termination within two years following permanent cessation of operations, and in no case later than one year prior to expiration of the operating license. GA is planning to use the area that would be released for unrestricted use for other purposes.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the radiological effects of decommissioning the TRIGA Mark I and Mark F Research Reactors will be minimal. The licensee will continue with their health physics program, and approved emergency and security plans. Until fuel is removed from the site, the licensee will also continue to meet the requirements of their operator requalification plan.

All proposed operations in connection with decommissioning and decontaminating of the GA reactors will be carefully planned and controlled, all contaminated components will be removed, packaged, and shipped offsite in accordance with the regulations, and radiological control procedures will be in place and implemented to ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as reasonably achievable (ALARA).

All decontamination will be performed by trained personnel in accordance with previously reviewed procedures and will be overseen by experienced health physics staff. No new postulated accidents have been identified during decommissioning activities or storage of the reactor fuel that would have greater radiological impact than previously evaluated accidents. The GA staff has calculated that the total dose to workers for the decommissioning project will be about 20 person-rem over the period 1999 to 2004 (assuming fuel is removed from the facility in 2003). The GA staff estimates that the dose to members of the public from decommissioning activities will be negligible. These doses are consistent with those given in NUREG–0586, "Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities," for the reference research reactor.

While on site, fuel will be stored in approved storage locations under the restrictions of the facility license. The license will continue to maintain systems necessary for safe storage of the fuel.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. Hazardous materials such as lead and asbestos will be handled and disposed of in accordance with all applicable regulations and, therefore, will not result in any significant release of non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

The alternatives to the proposed action for the GA TRIGA research reactors are SAFSTOR, ENTOMB and no action. ENTOMB is the alternative in which radioactive contaminates are encased in a structurally long-lived material, such as concrete, the entombed structure is appropriately maintained and continued surveillance is carried out until the radioactivity decays to a level permitting release of the property for unrestricted use. SAFSTOR is the alternative in which the facility is placed and maintained in a condition that allows the facility to be safely stored and subsequently decontaminated to levels that permit release for unrestricted use.

The ENTOMB alterative could not be put into place until the fuel was removed from the facility and would require the facility to remain on site for an extended period of time. Likewise, the SAFSTOR alternative would require continued surveillance for an extended period of time. However, GA wants to use the space that will become available for other purposes and wants to enter into the decommissioning activities as soon as possible. The alternative of not decommissioning reactors was rejected in NUREG–0586. The no action alternative would leave the facility in its present configuration. Denial of the application would result in no significant change in current environmental impacts.

The environmental impacts of the proposed action and the alternative actions are similar.

Alternative Use of Resources

The action does not involve the use of resources different from previously committed for construction and operation of the GA TRIGA reactors.

Agencies and Persons Consulted

In accordance with its stated policy, on July 20, 1999, the staff consulted with the State of California official, R. Lupo of the Radiologic Health Branch of the California Department of Health Services regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have

a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this proposed action, see the licensee's letter dated April 18, 1997, as supplemented by letter dated November 20, 1998, and January 28 and 29, February 3, April 22, May 3 and 12, and June 15, 16, and 22, 1999. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C. 20003–1527.

Dated at Rockville, Maryland, this 29th day of July 1999.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Chief, Events Assessment, Generic Communications and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 99–20124 Filed 8–4–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: SF 2803 and SF 3108

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. SF 2803, Application to Make Deposit or Redeposit (CSRS), and SF 3108, Application to Make Service Credit Payment for Civilian Service (FERS), are applications to make payment used by persons who are eligible to pay for Federal service which was not subject to retirement deductions and/or for Federal service which was subject to retirement deductions which were subsequently refunded to the applicant.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

In addition to the current Federal employees who will use these forms, we expect to receive approximately 75 filings of each form from former Federal employees per year. Each form takes approximately 30 minutes to complete. The annual burden is 75 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before October 4, 1999.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–19981 Filed 8–4–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Reclearance of Information Collection: RI 38–107

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for reclearance of the following information collection. RI 38–107, Verification of Who is Getting Payments, is used to verify that the entitled person is indeed receiving the monies payable. Failure to collect this information would cause OPM to pay monies absent the assurance of a correct payee.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

We estimate 25,400 RI 38–107 forms are completed annually. Each form takes approximately 10 minutes to complete. The annual estimated burden is 4,234 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before October 4, 1999.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–19982 Filed 8–4–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 30–9

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 30–9, Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, informs former disability annuitants of their right to request restoration under title 5, U.S.C., Section 8337. It also specifies the conditions to be met and the documentation required for a person to request reinstatement.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 200 forms are completed annually. The form takes approximately 60 minutes to respond, including a medical examination. The annual estimated burden is 200 hours. Burden may vary depending on the time required for a medical examination.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before October 4, 1999.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst Budget & Administrative Services Division (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–19983 Filed 8–4–99; 8:45 am]

BILLING CODE 6325–01–P

POSTAL SERVICE

Privacy Act of 1974; Computer Matching Program

AGENCY: Postal Service.

ACTION: Notice of computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish advance notice of any proposed or revised computer matching program for comment. The United States Postal Service (USPS) is issuing notice of its intent to conduct a computer matching program with the state of Texas Department of Human Services (TDHS). The matching program will identify Postal Service employees receiving benefits to which they are not entitled under the Temporary Assistance to Needy Families (TANF), the Food Stamp program, and Medicaid program administered by the state of Texas.

DATES: Comments must be received no later than September 7, 1999. Unless comments are received that result in a contrary determination, the matching program covered by this notice will begin as stated in the paragraph "Dates of the Matching Program" in the "Supplementary Information" section of this notice.

ADDRESSES: Comments may be mailed to the FOIA/PA Officer, United States Postal Service, 475 L'Enfant Plaza SW, Room 8141, Washington, DC 20260–5202, or delivered to Room 8141 at the above address between 8 a.m. and 4:30 p.m., Monday through Friday. Comments received may also be inspected during the above hours in Room 8141.

FOR FURTHER INFORMATION CONTACT: Alberta McKay, (202) 268–4048.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the USPS and TDHS will enter into an agreement to conduct a computer matching program, as described below, in accordance with paragraph 4d of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (61 FR 6427).

a. *Participating Agencies:* USPS (recipient agency) and TDHS.

b. *Purpose of the Matching Program:* To identify Postal Service employees who are receiving benefits to which they are not entitled under public assistance programs (TANF, Food Stamp, and Medicaid) administered by the state of Texas; to recoup monies for improperly received benefits; to adjust or terminate benefits as appropriate; and to take appropriate action against those persons fraudulently receiving benefits.

c. *Legal Authorities Authorizing Operation of the Match:* 39 U.S.C. 404 (Postal Reorganization Act).

d. *Categories of Individuals Matched and Identification of Records Used:* Postal Service employee data records within Privacy Act system USPS 050.020 identified as Finance Records-Payroll System (57 FR 57515) and state of Texas' file of recipients of benefits under TANF, Food Stamp, and Medicaid programs administered by the TDHS.

e. *Dates of the Matching Program:* This matching program is expected to begin in September 1999 and to continue in effect for 18 months unless terminated earlier by either party. Matching activity under this program will begin no sooner than 40 days after the last of the following to occur: (1) Publication of this notice; (2) transmittal of this matching agreement to Congress; or (3) report of the matching program to OMB and to Congress.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–20187 Filed 8–4–99; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are Invited on

(a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Evidence of Marital Relationship, Living with Requirements; OMB 3220–0021.

To support an application for a spouse or widow(er)'s annuity under Sections 2(c) or 2(d) of the Railroad Retirement Act, an applicant must submit proof of a valid marriage to a railroad employee. In some cases, the existence of a marital relationship is not formalized by a civil or religious ceremony. In other cases, questions may arise about the legal termination of a prior marriage of an employee, spouse, or widow(er). In these instances, the RRB must secure additional information to resolve questionable marital relationships. The circumstances requiring an applicant to submit documentary evidence of marriage are prescribed in 20 CFR 219.30.

In the absence of documentary evidence to support the existence of a valid marriage between a spouse or widow(er) annuity applicant and a railroad employee, the RRB needs to obtain information to determine if a valid marriage existed. The RRB utilizes Forms G–124, Statement of Marital Relationship; G–124a, Statement Regarding Marriage; G–237, Statement Regarding Marital Status; G–238, Statement of Residence; and G–238a, Statement Regarding Divorce or Annulment to secure the needed information. One response is requested of each respondent. Completion is required to obtain benefits. The RRB proposes minor non-burden impacting cosmetic, editorial and formatting changes to all of the forms in the collection.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form Nos.	Annual responses	Time (min)	Burden (hrs)
G–124 (In person)	125	15	31
G–124 (By mail)	75	20	25
G–124a	300	10	50
G–237 (In person)	75	15	19
G–237 (By mail)	75	20	25
G–238 (In person)	150	3	8
G–238 (By mail)	150	5	13
G–238a	150	10	25
Total	1,100		196

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–20097 Filed 8–4–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41668; File No. 4–208]

Intermarket Trading System; Order Approving Fourteenth Amendment to the Restated ITS Plan Linking the Pacific Exchange's Application of the OptiMark System to the Intermarket Trading System

July 29, 1999.

I. Introduction and Summary

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule aaAa3–2 thereunder,[2] on March 29, 1999, the Intermarket Trading System ("ITS") submitted to the Securities and Exchange Commission ("Commission") an amendment ("Fourteenth Amendment") to the Restated ITS Plan ("Plan")[3] ITS is a communications and order routing network linking eight national securities exchanges and the electronic over-the-counter market operated by the NASD. ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. The purpose of the Fourteenth Amendment is to link the PCX Application of the OptiMark system ("PCX Application") to ITS.

On April 12, 1999, the proposed plan amendment was published for comment and made summarily effective on a temporary basis.[4] No comments were received on the proposal. For the reasons discussed below, the Commission is approving the proposal on a permanent basis.

II. Background to the Amendment

On January 26, 1999, the Commission granted the ITS participants a temporary exemption from the ITS Plan provision requiring a Plan amendment to reflect the PCX Application's interface with ITS.[5] The Commission granted this exemption to the participants, in part, because the PCX Application was scheduled to begin operating on January 29, and there was insufficient time to obtain authorization from each of the authorizing bodied of the participants before the date.[6] The PCX Application began operating pursuant to the temporary exemption on January 29, 1999. The exemption expired on April 2, 1999, but was extended until publication of the notice.[7] The Commission made the proposed amendment summarily effective on a temporary basis not to extend beyond August 10, 1999.[8]

III. Description

The purpose of the Fourteenth Amendment is to link the PCX Application to ITS.[9] The PCX Application is a facility of the PCX that receives orders generated by the OptiMark System—an electronic matching system that, on a periodic "call" basis, processes certain qualifying expressions of trading interest (called "profiles"). Profiles may include those created from the published quotations disseminated by the other participants in ITS at the commencement of the OptiMark System call reflecting the best bid and offer prices and associated sizes ("CQS profiles").[10] The orders received by the PCX Application are processed by the PCX to permit: (a) in the case of those orders reflecting a match between non-CQS profiles, appropriate execution on the PCX and reporting thereafter in accordance with the applicable PCX rules; and (b) in the case of those orders reflecting a match between an non-CQS profile and a CQS profile: (i) processing pursuant to Section 6(a)(ii)(A), or (ii) transmission to ITS pursuant to Section 6(a)(ii)(B) of the ITS Plan,[11] whichever is applicable.

The Fourteenth Amendment adds subsections (33(A)) and (33(B)) to Section 1 of the ITS Plan to define and include the terms "PCX Application" and "PCX application Module." The proposal also amends existing definitions set forth in subsections (11), (23), (34(A)) and (34(B)) to recognize the use of the PCX Application and the PCX Application Module.

The proposed amendment adds to Section 6(a)(ii) a description of the operation of the PCX Application and how PCX accesses other participants' markets through ITS. The amendment also authorizes PCX to computer-generate ITS commitments.

In addition, the proposed amendment adds Section 8(h), which sets forth the parameters of the PCX Application's automated linkage to ITS. This section establishes the "PCX Application Formula" ("Formula"), which sets a ceiling on the volume of trade-at commitments[12] generated by the PCX Application, relative to the total volume of transactions resulting from the PCX Application. Specifically, the Formula has as it numerator the number of shares computer-generated by the PCX Application as ITS trade-at commitments that are executed in other ITS participant markets, and as its denominator the same shares as in the numerator plus all shares executed on the PCX received from the PCX Application and reported to the Consolidated Tape Association. The Formula results in the PCX Application Percentage. Section (h) provides that PCX may computer-generate trade-at commitments if the PCX Application Percentage does not exceed the agreed upon ceiling as calculated over rolling calendar quarters, as defined in the Plan.[13] The ceiling starts at 15% and will be reduced to 10% when the NYSE and PCX jointly request that the percentage be reduced. Section (h) provides that if the PCX Application Percentage exceeds the ceiling, then PCX must cease computer-generating trade-at commitments for a three-month period. During the first 24 calendar months following implementation of the PCX Application, however, the PCX retains the right to notify the ITSOC in writing, as specified in the new Section (h)(iv), that it will implement system adjustments to the PCX Application in an effort to ensure furture compliance with the PCX Application ceiling. In the event of such notification, the PCX has, at a minimum, nine calendar months from the date of such notice (or such longer period as may be approved by all members of the ITSOC upon a showing of reasonable cause), to implement its proposed system adjustments. During this nine month period, the restrictions do not apply. Notwithstanding other provisions, if, for any rolling calendar quarter, the PCX Application Percentage exceeds 30%, the PCX must cease computer-generating trade-at commitments for three calendar months beginning the first business day of the second month following the end of such rolling calendar quarter.

Finally, Section 8(h)(vi) provides that the PCX will furnish the ITSOC with a report each month showing the number of shares for each component of the PCX Application Formula, as well as the number of executed shares resulting from "trade-through" commitments.[14]

IV. Discussion

The Commission finds that the proposed Fourteenth Amendment is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national market system plan, and, in particular, with the requirements of Section 11A.[15] The Commission believes the proposal is consistent with the requirements of Sections 11A(a)(1)(C)(i), (ii) and (iv), and (D),[16] which provide for the economically efficient execution of securities transactions and fair competition among the ITS participants and their markets. These sections also promote means to ensure that brokers execute investors' orders in the best market, and all markets for qualified securities are linked through communications and data processing facilities that foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, and contribute to the best execution of such orders. The Commission also finds that the amendment is consistent with Rule 11Aa3–2(c)(2),[17] which requires the Commission to determine that the amendment is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

The Commission notes that the PCX Application has been linked to ITS since January 29, 1999, under the same terms now being approved.[18] The Commission further notes that the amendment now being approved was agreed to by the ITS participants after extensive discussions.[19] Furthermore, no comments were received on the proposed amendment.

Overall, the Commission believes that linking the PCX Application to ITS has provided, and potentially will continue to provide, a new and more efficient way to match and execute trading interest. Absent this linkage, the PCX would not be able to operate the PCX Application without major changes that would cripple the PCX Application, thereby reducing market innovation and competition.

The ITS Plan states that ITS is not meant to be used to route routinely all or a substantial portion of a market's orders to another market. The Commission agrees that automated order routing of a substantial share of a

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[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] The ITS Plan is a National Market System plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1999).

Participants to the Plan include the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc., the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc.

[4] *See* Exchange Act Release No. 41246 (April 2, 1999), 64 FR 17700 (April 12, 1999).

[5] The Commission has authority under Exchange Act Rule 11Aa3–2(f) to exempt participants in a national market system plan from the requirements of that plan. Exchange Act Rule 11Aa3–2(f) provides:

The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

The Division of Market Regulation has delegated authority to grant an exemption in this instance pursuant to 17 CFR 200.30–3(a)(29). *See* Letter from Richard R. Lindsey, Director, Division of Market Regulation, Commission, to Allan A. Bretzer, Committee Chairman, ITS Operating Committee ("ITSOC"), dated January 27, 1999.

[6] In general, to amend the ITS Plan, the ITS participants vote on a particular amendment and, assuming unanimous approval, each participant goes back to its respective authorizing body, such as its Board of Directors or executive Committee. Following ratification by each of the participants' authorizing bodies, the ITSOC submits a proposed amendment to the Commission, which publishes it for comment. An amendment to the ITS Plan is generally not effective until approved by the Commission. On January 21, 1999, the ITSOC unanimously voted to recommend to the participants' authorizing bodies an amendment to the Plan that would allow the PCX Application to link with ITS.

[7] *See* Letter from Belinda Blaine, Associate Director, Division of Market Regulation, Commission, to Allan A. Bretzer, Chairman, ITSOC, dated April 1, 1999.

[8] Pursuant to Exchange Act Rule 11Aa3–2(c)(4), the Commission may summarily put into effect on a temporary basis a Plan amendment.

[9] The Fourteenth Amendment is identical to the amendment approved by the ITSOC on January 21, 1999.

[10] For further discussion of the PCX Application, *see* Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997) (order approving the PCX Application).

[11] Section 6 of the ITS Plan describes various interfaces between ITS and the participants.

[12] "Trade-at" commitments are those commitments sent from the PCX Application when there is no match of non-CQS profiles, or a partial execution of a non-CQS profile, with the balance filled by another participant market.

[13] "Rolling Calendar Quarter" means any three consecutive calendar months, with the first Rolling Calendar Quarter ending on the last business day of the first three full calendar months following the month in which the PCX Application commences operation, *i.e.*, April 30, 1999.

[14] A trade-through occurs when a transaction is effected at a price below the best prevailing bid, or above the best prevailing offer. The ITS Plan requires price continuity among the various markets by ensuring that the best national bids and offers are provided opportunities to trade with other markets effecting trades outside the best national quote.

[15] 15 U.S.C. 78k–1.

[16] 15 U.S.C. 78k–1(a)(1)(C)(i), (ii) and (iv) and (D).

[17] 17 CFR 240.11Aa3–2(c)(2).

[18] The Commission notes that the PCX and NYSE reached an agreement whereby, on or about June 1, 1999, the PCX Application began sending its trade-at volume to the NYSE through SuperDot, rather than through ITS. *See* Letter from John C. Katovich, Senior Vice President and General Counsel, OptiMark Technologies, Inc., to Allan A. Bretzer, Chairman, ITSOC, dated May 28, 1999.

[19] The participants agreed upon these amendments after the Commission published a proposal to amend the ITS Plan. *See* Exchange Act Release No. 40204 (July 15, 1998), 63 FR 39306 (July 22, 1998). The Commission received 30 comment letters on the Proposing Release, generally favoring linking the PCX Application to ITS.

market's orders to ITS would violate the Plan and would be inconsistent with the Plan's intention.

The adoption of a formula is reasonable in this instance to address the participants' concerns. The Fourteenth Amendment should prevent the PCX Application from being used as an automated order delivery device to obtain cost-free, non-member access to other market centers, while at the same time giving OptiMark an opportunity to offer an innovative new service to investors.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 11A(a)(3)(B) of the Act,[20] that the amendment be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41658; File No. SR–CBOE–97–67]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to Proposed Rule Change Revising the Exchange's Margin Rules

July 27, 1999.

I. Introduction

On December 29, 1997, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise and restructure the Exchange's margin requirements for stock options, stock index options, and other securities, as currently set forth in CBOE Rule 12.3, "Margin Requirements." The proposed rule change was published for comment in the **Federal Register** on May 4, 1998.[3] The Commission received 4 comment letters with respect to the proposal.[4]

The Exchange submitted Amendment No. 1 to the proposal on January 7, 1999,[5] and Amendment No. 2 on May 26, 1999.[6] This order approves the proposed rule change and accelerates approval of Amendment Nos. 1 and 2.

II. Description of the Proposal

A. Background

Until several years ago, the margin requirements governing listed options were set forth in Regulation T, "Credit by Brokers and Dealers."[7] However, Federal Reserve Board amendments to Regulation T that became effective June 1, 1997, modified or deleted certain margin requirements regarding options transactions in favor of rules to be adopted by the options exchanges, subject to approval by the Commission.[8] In a CBOE rule filing approved by the Commission in 1997, the Exchange adopted certain options-related margin requirements that were dropped from Regulation T by the Federal Reserve Board.[9]

At the present time, the Exchange seeks to further revise its margin rules to implement enhancements long desired by Exchange members and member firms, public investors, and the Exchange staff. The Exchange believes that certain multiple options position strategies and other strategies that combine stock with option positions warrant more equitable margin requirements. The Exchange further believes that the offset in risk that results if the stock and options position are viewed collectively is not reflected in the current maintenance margin requirements. In addition, the Exchange believes it is appropriate for member firms to extend credit on certain types of long term options.

In sum, the proposed revisions to the Exchange's margin rules would: (i) Permit the extension of credit on certain long term options and certain long box spread; (ii) recognize butterfly and box spreads as strategies for purposes of margin treatment and establish appropriate margin requirements; (iii) recognize various strategies involving stocks (or other underlying instruments) paired with long options, and provide for lower maintenance margin requirements on such hedged stock positions; (iv) expand the types of short positions that would be considered "covered" in a cash account, specifically, certain short positions that are components of limited-risk spread strategies (*e.g.,* butterfly and box spreads); (v) allow a bank-issued escrow agreement to serve as cover in lieu of cash for certain spread positions held in a cash account; (vi) consolidate in one chapter, the various margin requirements that presently are dispersed throughout the Exchange's rules; and (vii) revise and update, as necessary, other Exchange rules impacted by the proposal.

[20] 15 U.S.C. 78k–1(a)(3)(B).

[21] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 39925 (April 27, 1998), 63 FR 24580.

[4] *See* Letter from Robert C. Sheehan, President, Robert C. Sheehan and Associates, to Jonathan Katz, Secretary, Commission, dated March 26, 1999 ("Sheehan Letter"); Letter from Alvin Wilkinson to Jonathan Katz, Secretary, Commission, dated March 25, 1999 ("Wilkinson Letter"); Letter from William C. Floersch, President and CEO, O'Connor & Company, to Jonathan G. Katz, Secretary, Commission, dated April 5, 1999 ("O'Connor Letter"); and Letter from Lon Gorman, Executive Vice President, Charles Schwab & Co., to Jonathan G. Katz, Secretary, Commission, dated April 13, 1999 ("Schwab Letter").

[5] With respect to options that are not proposed to be marginable, Amendment No. 1 specifies that margin must be deposited and maintained equal to at least 100% of the current market value, rather than 100% of the purchase price. Amendment No. 1 also incorporates into the proposed rule text a definition of "OTC margin bond," which has been eliminated from Regulation T by the Board of Governors of the Federal Reserve System as of April 1, 1998. Finally, Amendment No. 1 deletes from the proposal the provision that would have allowed the use of unit investment trusts ("UITs") or open-end mutual funds ("mutual funds") as offsets, or cover, for short index option positions held in customer margin or cash accounts, provided that the UIT or mutual fund replicated the index underlying the option, and the Exchange had specifically approved such UIT or mutual fund. As a replacement, the Exchange proposes to allow customers to use underlying open-end index mutual funds of sufficient aggregate market value as cover for short S&P 500 call options held in customer margin or cash accounts, provided the mutual funds have been specifically designated by the Exchange. *See* Letter from Mary L. Bender, Senior Vice President, Division of Regulatory Services, Exchange, to Michael A. Walinskas, Associate Director, Division of Market Regulation ("Division"), Commission, dated December 23, 1998 ("Amendment No. 1").

[6] Amendment No. 2 revises the proposal by limiting loan value to long term stock options, stock index options, and stock index warrants. The Exchange had originally proposed to allow loan value on any long term option, regardless of the underlying instrument (*e.g.,* foreign currency options and options on interest rate composites would be marginable). Amendment No. 2 also corrects an error in the Exchange's purpose statement regarding the net credit received for selling a box spread. *See* Letter from Mary L. Bender, Senior Vice President, Division of Regulatory Services, Exchange, to Michael A. Walinskas, Associate Director, Division, Commission, dated May 14, 1999 ("Amendment No. 2").

[7] 12 CFR 220 *et seq.* The Board of Governors of the Federal Reserve System ("Federal Reserve Board") issued Regulation T pursuant to the Act.

[8] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 24, 1996), 61 FR 20386 (May 6, 1996) (permitting the adoption of margin requirements "deemed appropriate by the exchange that trades the option, subject to the approval of the Securities and Exchange Commission").

[9] *See* Securities Exchange Act Release No. 38709 (June 2, 1997), 62 FR 31643 (June 10, 1997).

B. Definitions

Presently, the Exchange's definition of "current market value" is equivalent to the definition found in Regulation T.[10] Instead of repeating the Regulation T definition, the proposal would revise the definition found in the Exchange's rules to note that the meaning of the term "current market value" is as defined in Regulation T.

The Exchange also seeks to establish definitions for "butterfly spread"[11] and "box spread"[12] options strategies. The definitions are important elements of the Exchange's proposal to recognize and specify cash and margin account requirements for butterfly and box spread. The definitions will specify what multiple option positions, if held together, qualify for classification as butterfly or box spreads, and consequently are eligible for the proposed cash and margin treatment.

The proposal also would define the term "OTC martin bond."[13] The definition is necessary because the Exchange's margin rules currently cross-reference the Regulation T definition of "OTC margin bond," which was eliminated by the Federal Reserve Board as of April 1, 1998.[14]

Finally, the proposal would define the term "listed,"[15] Because "listed" is frequently used in the Exchange's margin rules, the Exchange believes it would be more efficient to define the term once rather than specifying the meaning each time the term is utilized.

C. Extensions of Credit on Long Term Options and Warrants

The proposal would allow extensions of credit on certain listed, long options (*i.e.,* listed put or call options on a stock or stock index) and warrant products (*i.e.,* listed stock index warrants, but not traditional stock warrants issued by a corporation on its own stock.[16] Only those options or warrants that are more than 9 months from expiration ("long term") would be eligible for credit extension.[17] The proposal requires initial and maintenance margin of not less than 75% of the current market value of a long term listed option or warrant. Therefore, an Exchange member firm would be able to loan up to 25% of the current market value of a long term listed option or warrant.[18]

The proposal also would permit the extension of credit on certain long term options and warrants not listed or traded on a registered national securities exchange or a registered securities association ("OTC options and warrants"). Specifically, a member firm could extend credit on an OTC put or call option on a stock or stock index, and an OTC stock index warrant. In addition to being more than 9 months from expiration, a marginable OTC option or warrant must: (i) Be in-the-money;[19] (ii) be guaranteed by the carrying broker-dealer; and (iii) have an American-style exercise provision.[20] The proposal requires initial and maintenance margin of not less than 75% of the long term OTC option's or warrant's in-the-money amount (*i.e.,* intrinsic value), plus 100% of the amount, if any, by which the current market value of the OTC option or warrant exceeds the in-the-money amount.

When the time remaining until expiration for an option or warrant (listed and OTC) on which credit has been extended reaches nine months, the maintenance margin requirement would become 100% of the current market value. Thus, options or warrants expiring in less than 9 months would have no loan value under the proposal.

D. Extensions of Credit on Long Box Spread in European-Style Options

The proposal would allow the extension of credit on a long box spread comprised entirely of European-style options[21] that are listed or guaranteed by the carrying broker-dealer. A long box spread is a strategy composed of four option positions that is designed to lock in the ability to buy and sell the

[10] Regulation T defines "current market value" of a security to be:

(i) Throughout the day of the purchase or sale of a security, the security's total cost of purchase or the net proceeds of its sale including any commissions charged; or (ii) At any other time, the closing sale price of the security on the preceding business day, as shown by any regularly published reporting or quotation service. If there is no closing sale price, the creditor may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day.

See 12 CFR 220.2.

[11] The proposal defines "butterfly spread" as:

[A]n aggregation of positions in three series of either put or call options all having the same underlying component or index and time of expiration, and based on the same aggregate current underlying value, where the interval between the exercise price of each series is equal, which positions are structured as either (A) a "long butterfly spread" in which two short options in the same series are offset by one long option with a higher exercise price and one long option with a lower exercise price, or (B) a "short butterfly spread" in which two long options in the same series offset one short option with a higher exercise price and one short option with a lower exercise price.

[12] The proposal defines "box spread" as:

[A]n aggregation of positions in a long call option and short put option with the same exercise price ("buy side") coupled with a long put option and short call option with the same exercise price ("sell side") all of which have the same underlying component or index and time of expiration, and are based on the same aggregate current underlying value, and are structured as either: (A) A "long box spread" in which the sell side exercise price exceeds the buy side exercise price, or (B) a "short box spread" in which the buy side exercise price exceeds the sell side exercise price.

[13] The proposal defines "OTC margin bond" as:

(1) Any debt securities not traded on a national securities exchange that meet all of the following requirements (a) at the time of the original issued, a principal amount of not less than $25,000,000 of the issue was outstanding; (b) the issue was registered under Section 5 of the Securities Act of 1933 and the issuer either files periodic reports pursuant to the Act or is an insurance company under Section 12(g)(2)(G) of the Act; or (c) at the time of the extension of credit the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; or (2) any private pass-through securities (not guaranteed by a U.S. Government agency) that meet all of the following requirements: (a) An aggregate principal amount of not less than $25,000,000 was issued pursuant to a registration statement filed with the Commission; and (b) current reports relating to the issue have been filed with the Commission; and (c) at the time of the credit extension, the creditor has a reasonable basis for believing that mortgage interest, principal payments and other distributions are being-passed through as required and that the servicing agent is meeting its material obligations under the terms of the offering.

[14] *See* Board of Governors of the Federal Reserve System Docket Nos. R–0905, R–0923, and R–0944 (Jan. 8, 1998), 63 FR 2806 (Jan. 16, 1998).

[15] Under the proposal, the term "listed" means "a security traded on a registered national securities exchange or automated facility of a registered national securities association."

[16] Throughout the remainder of this approval order, the term "warrant" means this type of warrant.

[17] In the case of any stock option, stock index option, or stock index warrant, which expires in 9 months or less, initial margin must be deposited and maintained equal to at least 100% of the current market value of the option or warrant.

[18] For example, if an investor purchased an Exchange-listed call option on stock XYZ that expired in January 2001 for approximately $100 (excluding commissions), the investor would be required to deposit and maintain at least $75. The investor could borrow the remaining $25 from its broker. Under the Exchange's current margin rules, the investor would be required to pay the entire $100.

[19] The Exchange stated that it proposes to restrict loan value to long term OTC options and warrants that are in-the-money because "a liquid secondary market for an over-the-counter option or warrant does not generally exist. Therefore, a current bid or offer price, or last sale price, is not readily available." In addition, the Exchange noted that because OTC options are not obligations of the AAA-rated Options Clearing Corporation, their value may varv depending upon the creditworthiness of the issuer. The Exchange concluded that "loaning on over-the-counter options without intrinsic value posed too much uncertainty to the creditor as to the value of the collateral" As a result, the only OTC options that would be deemed eligible for credit are in-the-money options, because "their value can reasonably be expected to be at least equal to their intrinsic value." *See* Letter to Michael Walinskas, Associate Director, Division, Commission, from Mary L. Bender, Senior Vice President, Division of Regulatory Services, Exchange, dated May 21, 1998.

[20] Exchange Rule 1.1(vv), "American-style Option," states that an American-style option is an option contract that "can be exercised on any business day prior to its expiration date and on its expiration date."

[21] Exchange Rule 1.1(uu), "European-style Option," states that a European-style option is an option contract that "can be exercised only on its expiration date."

underlying component or index for a profit, even after netting the cost of establishing the long box spread. The two exercise prices embedded in the strategy determine the buy and the sell price.[22]

For long box spreads made up of European-style options, the proposed margin requirement would equal 50% of the aggregate difference in the two exercise prices (buy and sell), which results in a requirement slightly higher than 50% of the debit typically incurred.[23] The 50% margin requirement is both an initial and maintenance margin requirement. The proposal would afford a long box spread a market value for margin equity purposes of not more than 100% of the aggregate difference in exercise prices.

E. Cash Account Treatment of Butterfly and Box Spreads, Other Spreads, and Short Options

The proposal would make butterfly spreads and box spreads in cash-settled, European-style options eligible for the cash account. A butterfly spread is a pairing of two standard spreads, one bullish and one bearish. To qualify for carrying in the cash account, the butterfly spreads and box spreads must meet the specifications contained in the proposed definition section,[24] and must be comprised of options that are listed or guaranteed by the carrying broker-dealer. In addition, the long options must be held in, or purchased for, the account on the same day.

For long butterfly spreads and long box spreads, the proposal would require full payment of the net debit that is incurred when the spread strategy is established.[25]

Short butterfly spreads generate a credit balance when established (*i.e.*, the proceeds from the sale of short option components exceed the cost of purchasing long option components). However, in the worst case scenario where all options are exercised, a debit (loss) greater than the initial credit balance received would accrue to the account. To eliminate the risk to the broker-dealer carrying the short butterfly spread, the proposal would require that an amount equal to the maximum risk be held or deposited in the account in the form of cash or cash equivalents.[26] The maximum risk potential in a short butterfly spread comprised of call options is the aggregate difference between the two lowest exercise prices.[27] With respect to short butterfly spreads comprised of put options, the maximum risk potential is the aggregate difference between the two highest exercise prices. The net credit received from the sale of the short option components could be applied towards the requirement.

Short box spreads also generate a credit balance when established. This credit is nearly equal to the total debit (loss) that, in the case of a short box spread, will accrue to the account if held to expiration. The proposal would require that cash or cash equivalents covering the maximum risk, which is equal to the aggregate difference in the two exercise prices involved, be held or deposited.[28] The net credit received from the sale of the short option components may be applied towards the requirement; if applied, only a small fraction of the total requirement need be held or deposited.[29]

In addition to butterfly spreads and box spreads, the proposal would permit investors to hold in their cash accounts other spreads made up of European-style, cash-settled index options, stock index warrants, or currency index warrants. A short position would be considered covered, and thus eligible for the cash account, if a long position in the same European-style, cash-settled index option, stock index warrant, or currency index warrant was held in, or purchased for, the account on the same day.[30] The long and short positions making up the spread must expire concurrently, and the long position must be paid in full. Lastly, the cash account must contain cash, cash equivalents, or an escrow agreement equal to at least the aggregate exercise price differential.

The proposal also would establish requirements for the following types of options and warrants carried short in the cash account: equity options, index options, capped-style index options, packaged vertical spread options, packaged butterfly spread options, stock index warrants, and currency index warrants. For each of these securities, the proposal specifies certain criteria that must be satisfied for the short position to be deemed a covered position, and thus considered eligible for the cash account. For example, a short put warrant on a market index would be deemed covered if, at the time the put warrant is sold or promptly thereafter, the cash account holds cash, cash equivalents, or an escrow agreement equal to the aggregate exercise price.

[22] For example, an investor might be long 1 XYZ Jan 50 Call @ 7 and short 1 XYZ Jan 50 Put @ 1 ("buy side"), and short 1 XYZ Jan 60 Call @ 2 and long 1 XYZ Jan 60 Put @ 5½ ("sell side"). As required by the Exchange's proposed definition of "long box spread" (*supra* note 12), the sell side exercise price exceeds the buy side exercise price. In this example, the long box spread is a riskless position because the net debit ((2+1) − (7+5½)= net debit of 9½) is less than the exercise price differential (60 − 50=10). Thus, the investor has locked in a profit of $50 (½× 100).

[23] In the example appearing in the preceding footnote, the margin required (50% × (60 − 50) = 5) would be slightly higher than 50% of the net debit (50% × 9½ = 4¾).

[24] *See supra* notes 11 and 12.

[25] To create a long butterfly spread, which is comprised of call options, an investor may be long 1 XYZ Jan 45 Call @ 6, short 2 XYZ Jan 50 Calls @ 3 each, and long 1 XYZ Jan 55 Call @ 1. The maximum risk for this long butterfly spread is the net debit incurred to establish the strategy ((3+3) − (6+1)= net debit of 1). Under the proposal, therefore, the investor would be required to pay the net debit, or $100 (1 × 100).

[26] An escrow agreement could be used as a substitute for cash or cash equivalents if the agreement satisfies certain criteria. For short butterfly spreads, the escrow agreement must certify that the bank holds for the account of the customer as security for the agreement (1) cash, (2) cash equivalents, or (3) a combination thereof having an aggregate market value at the time the positions are established of not less than the amount of the aggregate difference between the two lowest exercise prices with respect to short butterfly spreads comprised of call options or the aggregate difference between the two highest exercise prices with respect to short butterfly spreads comprised of put options and that the bank will promptly pay the member organization such amount in the event the account is assigned an exercise notice on the call (put) with the lowest (highest) exercise price.

[27] For example, an investor may be short 1 XYZ Jan 45 Call @ 6, long 2 XYZ Jan 50 Calls @ 3 each, and short 1 XYZ Jan 55 Call @ 1. Under the proposal, the maximum risk for this short butterfly spread, which is comprised of call options, is equal to the difference between the two lowest exercise prices (50 − 45=5). If the net credit received from the sale of short option components ((6+1) − (3+3)= net credit of 1) is applied, the investor is required to deposit an additional $400 (4 × 100). Otherwise, the investor would be required to deposit $500 (5 × 100).

[28] As a substitute for cash or cash equivalents, an escrow agreement could be used if it satisfies certain criteria. For short box spreads, the escrow agreement must certify that the bank holds for the account of the customer as security for the agreement (1) cash, (2) cash equivalents, or (3) a combination thereof having an aggregate market value at the time the positions are established of not less than the amount of the aggregate difference between the exercise prices and that the bank will promptly pay the member organization such amount in the event the account is assigned an exercise notice on either short option.

[29] To create a short box spread, an investor may be short 1 XYZ Jan 60 Put @ 5½ and long 1 XYZ Jan 60 Call @ 2 ("buy side"), and short 1 XYZ Jan 50 Call @ 7 and long 1 XYZ Jan 50 Put @ 1 ("sell side"). As required by the Exchange's proposed definition of "short box spread" (*supra* note 12), the buy side exercise price exceeds the sell side exercise price. In this example, the maximum risk for the short box spread is equal to the difference between the two exercise prices (60 − 50=10). If the net credit received from the sale of short option components ((5½+7) − (2+1)=net credit of 9½) is applied, the investor is required to deposit an additional $50 (½ × 100). Otherwise, the investor would be required to deposit $1,000 (10 × 100).

[30] Under the proposal, a long warrant may offset a short option contract and a long option contract may offset a short warrant provided they have the same underlying component or index and equivalent aggregate current underlying value.

F. Margin Account Treatment of Butterfly Spreads and Box Spreads

The Exchange's margin rules presently do not recognize butterfly spreads for margin purposes. Under the Exchange's current margin rules, the two spreads (bullish and bearish) that make up a butterfly spread each must be margined separately. The Exchange believes that the two spreads should be viewed in combination, and that commensurate with the lower combined risk, investors should receive the benefit of lower margin requirements.

The Exchange's proposal would recognize as a distinct strategy butterfly spreads held in margin accounts, and specify requirements that are the same as the cash account requirements for butterfly spreads.[31] Specifically, in the case of a long butterfly spread, the net debit must be paid in full. For short butterfly spreads comprised of call options, the initial and maintenance margin must equal at least the aggregate difference between the two lowest exercise prices. For short butterfly spreads comprised of put options, the initial and maintenance margin must equal at least the aggregate difference between the two highest exercise prices. The net credit received from the sale of the short option components may be applied towards the margin requirement for short butterfly spreads.

The proposed requirements for box spreads held in a margin account, where all option positions making up the box spread are listed or guaranteed by the carrying broker-dealer, also are the same as those applied to the cash account. With respect to long box spreads, where the component options are not European-style, the proposal would require full payment of the net debit that is incurred when the spread strategy is established.[32] For short box spreads held in the margin account, the proposal would require that cash or cash equivalents covering the maximum risk, which is equal to the aggregate difference in the two exercise prices involved, be deposited and maintained. The net credit received from the sale of the short option components may be applied towards the requirement. Generally, long and short box spreads would not be recognized for margin equity purposes; however, the proposal would allow loan value for one type of long box spread where all component options have a European-style exercise provision and are listed or guaranteed by the carrying broker-dealer.

G. Maintenance Margin Requirements for Stock Positions Held With Options Positions

The Exchange proposes to recognize, and establish reduced maintenance margin requirements for, five options strategies designed to limit the risk of a position in the underlying component. The strategies are: (1) Long Put/Long Stock: (2) Long Call/Short Stock; (3) Conversion; (4) Reverse Conversion; and (5) Collar. Although the five strategies are summarized below in terms of a stock position held in conjunction with an overlying option (or options), the proposal is structured to also apply to components that underlie index options and warrants. For example, these same maintenance margin requirements will apply when these strategies are utilized with a stock basket underlying index options or warrants. Proposed Exchange Rule 12.3(c)(5)(C)(3), "Exceptions," would define the five strategies and set forth the respective maintenance margin requirements for the stock component for each strategy.[33]

1. Long Put/Long Stock

The Long Put/Long Stock strategy requires an investor to carry in an account a long position in the component underlying the put option, and a long put option specifying equivalent units of the underlying component. The maintenance margin requirement for the Long Put/Long Stock combination would be the lesser of: (i) 10% of the put option exercise price, plus 100% of any amount by which the put option is out-of-the-money; or (ii) 25% of the current market value of the long stock position.[34]

2. Long Call/Short Stock

The Long Call/Short Stock strategy requires an investor to carry in an account a short position in the component underlying the call option, and a long call option specifying equivalent units of the underlying components. For a Long Call/Short Stock combination, the maintenance margin requirement would be the lesser of: (i) 10% of the call option exercise price, plus 100% of any amount by which the call option is out-of-the-money; or (ii) the maintenance margin requirement on the short stock position as specified in CBOE rule 12.3(b).[35]

3. Conversion

A "Conversion" is a long stock position held in conjunction with a long put and a short call. The long put and short call must have the same expiration date and exercise price. The short call is covered by the long stock and the long put is a right to sell the stock at a predetermined price—the exercise price of the long put. Regardless of any decline in market value, the stock, in effect, is worth no less than the long put exercise price.

The Exchange's current margin regulations specify that no maintenance margin would be required on the short call option because it is covered, but the underlying long stock position would be margined according to the present maintenance margin requirement (*i.e.*, 25% of current market value).[36] Under the proposal, the maintenance for a

[31] *See supra*, Section II(E), "Cash Account Treatment of Butterfly and Box Spreads, Other Spreads, and Short Options." The margin requirements would apply to butterfly spreads where all option positions are listed or guaranteed by the carrying broker-dealer.

[32] As discussed above in Section II(D), "Extension of Credit on Long Box Spread in European-style Options," the margin requirement for a long box spread made up of European-style options is 50% of the aggregate difference in the two exercise prices.

[33] The Exchange's proposal provides maintenance margin relief for the stock component (or other underlying instrument) of the five identified strategies. The Exchange believes that a reduction in the initial margin for the stock component of these strategies is not currently possible because the 50% initial margin requirement under Regulation T continues to apply, and the Exchange does not possess the independent authority to lower the initial margin requirement for stock. However, the Exchange noted that the Federal Reserve Board is considering recognizing the reduced risk afforded stock by these option strategies for the purpose of lowering initial stock margin requirements and is also considering other changes that would facilitate risk-based margins.

[34] Suppose an investor is long 100 shares of XYZ @ 52 and long 1 XYZ Jan 50 Put @ 2. The margin would be the lesser of ((10% × 50) + (100% × 2) = 7) or (25% × 52 = 13). Therefore, the investor would be required to maintain margin equal to at least $700 (7 × 100).

[35] For each stock carried short that has a current market value of less than $5 per share, the maintenance margin is $2.50 per share or 100% of the current market value, whichever is greater. For each stock carried short that has a current market value of $5 per share or more, the maintenance margin is $5 per share or 30% of the current market value, whichever is greater. *See* Exchange Rule 12.3(b)(2), "Short Positions."

Suppose an investor is short 100 shares of XYZ @ 48 and long 1 XYZ Jan 50 Call @ 1. The margin would be the lesser of ((10% of 50) =7) or 30% × 48 = 14.4). Therefore, the investor would be required to maintain margin equal to at least $700 (7 × 100).

[36] Suppose an investor is long 100 shares of XYZ @ 48, long 1 XYZ Jan 50 Put at 2, and short 1 XYZ Jan 50 Call @ 1. The present maintenance margin on the long stock position would be $1,200 ((25% × 48) × 100). However, if the price of the stock increased to 60, current Exchange Rule 12.3(c)(5)(B)(2) specifies that the stock may not be valued at more than the short call exercise price. Thus, the maintenance margin on the long stock position would be $1,250 ((25% × 50) × 100). The writer of the call option cannot receive the benefit (*i.e.*, greater loan value) of a market value that is above the call exercise price because, if assigned an exercise, the underlying component would be sold at the exercise price, not the market price of the long position.

Conversion would be 10% of the exercise price.[37]

4. Reverse Conversion

A "Reverse Conversion" is a short stock position held in conjunction with a short put and a long call. As with the Conversion, the short put and long call must have the same expiration date and exercise price. The short put is covered by the short stock and the long call is a right to buy the right stock at a predetermined price—the call exercise price. Regardless of any rise in market value, the stock can be acquired for the call exercise price, in effect, the short position is valued at no more than the call exercise price. The maintenance margin requirement for a Reverse Conversion would be 10% of the exercise price, plus any in-the-money amount (*i.e.*, the amount by which the exercise price of the short put exceeds the current market value of the underlying stock position).[38]

5. Collar

A "Collar" is a long stock position held in conjunction with a long put and a short call. A Collar differs from a Conversion in that the exercise price of the long put is lower than the exercise price of the short call. Therefore, the options positions in a Collar do not constitute a pure synthetic short stock position. The maintenance margin for a Collar would be the lesser of: (i) 10% of the long put exercise price, plus 100% of any amount by which the long put is out-of-the-money; or (ii) 25% of the short call exercise price.[39] Under the Exchange's current margin regulations, the stock may not be valued at more than the call exercise price.

[37] For example in the preceding footnote, where the investor was long 100 shares of XYZ @ 48, long 1 XYZ Jan 50 Put @ 2, and short 1 XYZ Jan 50 Call @ 1, the proposed maintenance margin requirement for the Conversion strategy would be $500 ((10% × 50) × 100).

[38] The seller of a put option has an obligation to buy the underlying component at the put exercise price. If assigned an exercise, the underlying component would be purchased (the short position in the Reverse Conversion effectively closed) at the exercise price, even if the current market price is lower. To recognize the lower market value of a component, the short put in-the-money amount is added to the requirement. For example, an investor holding a Reverse Conversion may be short 100 shares of XYZ @ 52, long 1 XYZ Jan 50 Call @ 2½, and short 1 XYZ Jan 50 Put @ 1½. If the current market value of XYZ stock drops to 30, the maintenance margin would be $2,500 ((10% × 50) + (50–30)) × 100.

[39] To create a Collar, an investor may be long 100 shares of XYZ @ 48, long 1 XYZ Jan 45 Put @ 4, and short 1 XYZ Jan 50 Call @ 3. The maintenance margin requirement would be the lesser of ((10% × 45) + 3 = 7½) or (25% × 50 = 12½). Therefore, the investor would need to maintain at least $750 (7½ × 100) in margin.

H. Restructuring

The proposal would replace the present margin requirement for uncovered short listed options, which appears as CBOE Rule 12.3(c)(5)(A), "Short Listed Equity Options: General Rule," with current Interpretation and Policy .01 to Exchange Rule 12.3 ("Interpretation"). The Interpretation contains a table that includes: (i) Different types of listed option and warrant products; (ii) the underlying component value; (iii) the percentage used in the basic formula for calculating the margin requirement for positions carried short; and (iv) the percentage used in the alternative formula for calculating the minimum margin requirement, which becomes operative whenever the basic formula results in a lower requirement.[40] The Interpretation has been modified slightly to incorporate the margin requirements for narrow-based stock index warrants, which are currently located in Chapter 30 of the Exchange's rules.

Under the proposal, the margin requirements for uncovered short positions in OTC options would be relocated from Exchange Rule 12.3(c)(5)(B)(5) to Exchange Rule 12.3(c)(5)(B). The current text of the Exchange rule that sets forth the margin requirements for short OTC options differs from the proposed text of the rule that contains the margin requirements for short listed options (*i.e.*, the Interpretation). To establish greater consistency, the proposal would revise the rule text of the margin requirements for both listed and OTC short options to make them more similar. The methodology of calculating margin requirements for short listed and OTC options is essentially the same, only different percentages are applies.[41]

[40] For example, if an investor writes an uncovered equity option, such as 1 XYZ Jan 25 Put @ 1, the investor's position would be subject to the Exchange's short option margin requirements. If the current market value of XYZ stock is $30, under the basic formula the investor would be required to deposit and maintain margin equal to at least $200 (*i.e.*, $100 (100% of the current market value of the option) + $600 (20% × $3,000 ◆ the current market value of the XYZ stock underlying the short option) − $500 (the out-of-the-money amount)). However, the alternative formula becomes operative because it requires a minimum margin that exceeds the amount required under the basic formula. Under the alternative formula, the investor would be required to deposit and maintain margin equal to at least $350 (*i.e.*, $100 (100% of the current market value of the option) + $250 (10% × $2,500 ◆ the aggregate exercise price amount of the short put option)). Therefore, the investor would be required to comply with the higher margin requirement of $350.

[41] For example, the percentage used in the basic formula for calculating the margin requirement for short listed stock options is 20%. In contrast, the percentage used with respect to short OTC stock options is 30%.

The proposal also would combine the margin requirements pertaining to long position offsets for short OTC options with those pertaining to long position offsets for short listed options. The combined margin requirements would appear in proposed Exchange Rule 12.3(c)(5)(C), "Related Securities Position" and would apply to listed and OTC option positions where: (i) a short call is covered by a convertible security; (ii) a short call is covered by a warrant; and (iii) a short call or short put is covered.[42] As a result, two sets of relatively identical requirements that now exist separately would be consolidated into one section.

The proposed restructuring would ensure that the margin requirements for short options and warrants are organized in one section. The restructuring also would allow the deletion of the margin requirements applicable to short options and warrants that are now dispersed among several other chapters: Chapter 23 (interest rate options), Chapter 24 (index options), and Chapter 30 (warrants). In addition, the proposal would restructure Exchange Rule 12.3 to generically cover the margin requirements for spread positions in options/warrants of the types currently addressed in other chapters.[43] Margin requirements located elsewhere that are not amenable to such generic treatment, have been incorporated into Exchange Rule 12.3 as necessary.

I. Time Margin Must Be Obtained

The proposal would clarify the time in which initial margin is due. Exchange Rule 12.2, "Time Margin Must Be Obtained," was adopted at a time when the Exchange had authority only to set maintenance margin levels, and currently requires that margin be obtained as promptly as possible. Because the Exchange now has additional rulemaking responsibility for the initial margin requirements for options, the proposal specifies that initial margin requirements would be due in one "payment period" as defined in Regulation T.[44] The proposal also would revise Exchange Rule 12.2 to specify that maintenance margin must be obtained as promptly as possible, but in any event within 15 days. The current standard is "within a reasonable time."

[42] In the case of short call, the position must be covered by a long position in equivalent units of the underlying security, and in the case of a short put, the position must be covered by a short position in equivalent units of the underlying security. With respect to short calls options on the S&P 500 stock index, the Exchange proposes to allow the use of long positions in underlying open-end index mutual funds as cover for short S&P 500 call options held in customer margin or cash accounts, provided the mutual funds have sufficient aggregate market value and have been specifically designated by the Exchange.

[43] For example, the margin requirements for capped-style (CAPS and Q–CAPS) index option spreads, packaged vertical spreads, and packaged butterfly spreads were moved from Chapter 24 and updated to reflect the proposed margin requirements for spreads.

J. Effect of Mergers and Acquisitions on the Margin Required for Short Options

The proposal would implement, as Interpretation and Policy .13 of Exchange Rule 12.3, an exception to the margin requirement for short options if trading in the underlying security ceases due to a merger or acquisition. The exception currently exists as part of an Exchange Regulatory Bulletin.[45] Under the proposed exception, if an underlying security ceases to trade due to a merger or acquisition, and a cash settlement price has been announced by the issuer of the option, margin would be required only for in-the-money options and would be set at 100% of the in-the-money amount.

K. Determination of Value for Margin Purposes

The proposal would revise Exchange rules 12.5, "Determination of Value for Margin Purposes," to make it consistent with that portion of the Exchange's proposal that allows the extension of credit on certain long-term options and warrants (*i.e*, stock options, stock index options, and stock index warrants that are more than 9 months from expiration). Currently, Exchange Rule 12.5 does not allow the market value of long term options to be considered for margin equity purposes. The revision would allow options and warrants eligible for loan value under proposed Rule 12.3 to be valued at current market prices for margin purposes. This change is designed to ensure that the value of the marginable option or warrant (the collateral) is sufficient to cover the debit carried in conjunction with the purchase.

[44] Regulation T defines payment period as "the number of business days in the standard securities settlement cycle in the United States, as defined in paragraph (a) of SEC Rule 15c6–1, plus two business days." *See* 12 CFR 220.2.

[45] Exchange Regulatory Bulletin No. 91–29, "Customer Margin Requirements," specifies the margin requirements for uncovered, short equity options that have been delisted by the Exchange due to a merger or acquisition. For out-of-the-money options, no margin is required. For in-the-money options, margin must equal the difference between the underlying stock value set by the registered clearing corporation and the strike price of the option. *See* Exchange Regulatory Bulletin Number 91–29 (April 10, 1991).

L. Exempted Securities

Currently, the Exchange's maintenance margin requirement for non-convertible debt securities is found in Exchange Rule 12.3(c)(1), "Exempted Securities." However, the term "non-convertible debt security" refers to corporate bonds, which are not considered exempt securities under the Act. The Exchange seeks to rectify this misnomer by removing the margin requirement for non-convertible debt securities from the "Exempted Securities" section and redesignating it as a separate provision, Exchange Rule 12.3(c)(2).

III. Summary of Comments

The Commission received 4 comment letters regarding the proposed rule change, all of which supported the proposal.[46] One commenter, a registered broker-dealer, stated that its clients complained that the margin requirements on certain index options positions are "much higher than the overall risk of the position[s] would indicate."[47] Another commenter, who acts as a market maker in S&P 500 index options at the CBOE and also serves as a member of the CBOE's Board of Directors, reported that some market participants believe that the margin requirements for offsetting spread positions are onerous, and that present margin requirements are a "major barrier to more customer business."[48] This commenter stated that in some instances customers have shifted their options trades to the OTC and futures markets because the margin requirements at the CBOE are higher.[49]

One commenter believed that the proposed margin requirements will benefit investors by recognizing the limited risk of many hedged positions.[50] Another commenter believed that the current margin requirements for listed options positions, particularly hedged strategies using multiple positions, do not "adequately recognize the defined risk of these positions."[51] This commenter believed that reducing the margin requirements for options strategies with defined risk will benefit customers by providing increased flexibility and lowering costs, and will better align the level of margin with the risk of the positions. This commenter also believed that the proposal would serve to "increase the viability of listed options and the competitiveness of the options markets generally."[52]

In addition, all four commenters advocated the adoption of a risk-based methodology for margining options positions. One commenter believed that in terms of margin treatment, listed options are often at a disadvantage compared to similar derivative products traded on the futures exchanges (*i.e.*, the futures exchanges employ risk-based margin).[53] Another commenter believed that the availability of risk-based margin for listed options could help the options exchanges to serve more customers.[54]

IV. Discussion

For the reasons discussed below, the Commission finds that the proposed rule changes is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5)[55] requirements that the rules of an exchange be designed to promote just the equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest. The Commission also finds that the proposal may serve to remove impediments to and perfect the mechanism of a free and open market by revising the Exchange's margin requirements to better reflect the risk of certain hedged options trategies.

The Commission believes t at it is appropriate for the Exchange to allow member firms to extend credit on certain long term options and warrants, and that such practice is consistent with Regulation T. In 1996, the Federal Reserve Board amended Regulation T to enable the self-regulatory organizations ("SROs") to adopt rules permitting the margining of options.[56] The CBOE rules approved in this order are the first SRO rules that will permit the margining of options under the grant of authority from the Federal Reserve Board.

The Commission believes that it is reasonable for the Exchange to restrict the extension of credit to long term options and warrants. The Commission believes that by limiting loan value to long term options and warrants, the proposal will help to ensure that the extension of credit is backed by

[46] *See* Sheehan Letter, Wilkinson Letter, O'Connor Letter, and Schwab Letter *supra* note 4.

[47] *See* Sheehan Letter *supra* note 4.

[48] *See* Wilkinson Letter *supra* note 4.

[49] The commenter alleged that margin requirements for certain S&P 500 index options traded on the CBOE can be as much as 2 to 16 times greater than options on S&P 500 index futures traded on the Chicago Mercantile Exchange. *Id.*

[50] *See* O'Conner Letter *supra* note 4.

[51] *See* Schwab Letter *supra* note 4.

[52] *Id.*

[53] *Id.*

[54] *See* Wilkinson Letter *supra* note 4.

[55] 15 U.S.C. 78f(b)(5).

[56] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 24, 1996), 61 FR 20386 (May 6, 1996), and 12 CFR 220.12(f).

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collateral (*i.e.*, the long term option or warrant) that has sufficient value.[57] Because the expiration dates attached to options and warrants make such securities wasting assets by nature, it is important that the Exchange restrict the extension of credit to only those options and warrants that have adequate value at the time of the purchase, and during the term of the margin loan.[58]

The Commission believes that the proposed margin requirements for eligible long term options and warrants are reasonable. For long term listed options and warrants, the proposal requires that an investor deposit and maintain margin of not less than 75% of the current market value of the option or warrant. For long term OTC options and warrants, an investor must deposit and maintain margin of not less than 75% of the long term OTC option's or warrant's-in-the-money amount (*i.e.*, intrinsic value), plus 100% of the amount, if any, by which the current market value of the OTC option or warrant exceeds the in-the-money amount. The Commission observes that the proposed margin requirements are more stringent than the current Regulation T margin requirements for equity securities (*i.e.*, 50% initial margin and 25% maintenance margin).

The Commission recognizes that because current Exchange rules prohibit loan value for options, increases in the value of long term options cannot contribute to margin equity (*i.e.*, appreciated long term options cannot be used to offset losses in other positions held in a margin account). Consequently, some customers may face a margin call or liquidation for a particular position even though they concurrently hold a long term option that has appreciated sufficiently in value to obviate the need for additional margin equity. The Exchange's proposal would address this situation by allowing loan value for long term options and warrants.

The Commission believes that it is reasonable for the Exchange to afford long term options and warrants loan value because mathematical models for pricing options and evaluating their worth as loan collateral are widely recognized and understood.[59] Moreover, some creditors, such as the Options Clearing Corporation, extend credit on options as part of their current business.[60] The Commission believes that because options market participants possess significant experience in assessing the value of options, including the use of sophisticated models, it is appropriate for them to extend credit on long term options and warrants.

Furthermore, since 1998, lenders other than broker-dealers have been permitted to extend 50% loan value against long, listed options under Regulation U.[61] The Commission understands that the current bar preventing broker-dealers from extending credit on options may place some CBOE member firms at a competitive disadvantage relative to other financial service firms. By permitting Exchange members to extend credit on long term options and warrants, the proposal should enable Exchange members to better serve customers and offer additional financing alternatives.

The Commission believes that it is appropriate for the Exchange to recognize the hedged nature of certain combined options strategies and prescribe margin and cash account requirements that better reflect the true risk of the strategy. Under current Exchange rules, the multiple positions comprising an option strategy such as a butterfly spread must be margined separately. In the case of a butterfly spread, the two component spreads (bull spread and bear spread) are margined without regard to the risk profile of the entire strategy. The net debit incurred on the bullish spread must be paid in full, and margin equal to the exercise price differential must be deposited for the bearish spread.

The Commission believes that the revised margin and cash account requirements for butterfly spread and box spread strategies are reasonable measures that will better reflect the risk of the combined positions. Rather than view the butterfly and box spread strategies in terms of their individual option components, the Exchange's proposal would take a broader approach and require margin that is commensurate with the risk of the entire, hedged position. For long butterfly spreads and long box spreads, the proposal would require full payment of the net debit that is incurred when the spread strategy is established.[62] For short butterfly spreads and short box spreads, the initial and maintenance margin required would be equal to the maximum risk potential. Thus, for short butterfly spreads comprised of call options, the margin must equal the aggregate difference between the two lowest exercise prices. For short butterfly spreads comprised of put options, the margin must equal the aggregate difference between the two highest exercise prices. For short box spreads, the margin must equal the aggregate difference in the two exercise prices involved. In each of these instances, the net credit received from the sale of the short option components may be applied towards the requirement.

The Commission believes that the proposed margin and cash account requirements for butterfly spreads and box spreads are appropriate because the component option positions serve to offset each other with respect to risk.

[57] The value of an option contract is made up of two components: Intrinsic value and time value. Intrinsic value, or the in-the-money-accounts, is an option contract's arithmetically determinable value based on the strike price of the option contract and the market value of the underlying security. Time value is the portion of the option contract's value that is attributable to the amount of time remaining until the expiration of the option contract. The more time remaining until the expiration of the option contract, the greater the time value component.

[58] For similar reasons, the Commission believes that it is appropriate for the Exchange to permit the extension of credit on long box spread comprised entirely of European-style options that are listed or guaranteed by the carrying broker-dealer. Because the European-style long box spread locks in the ability to buy and sell the underlying component or index for a profit, and all of the component options must be exercised on the same expiration day, the Commission believes that the combined positions have adequate value to support an extension of credit.

[59] For example, the Black-Scholes model and the Cox Ross Rubinstein model are often used to price options. *See* F. Black and M. Scholes, *The Pricing of Options and Corporate Liabilities*, 81 Journal of Political Economy 637 (1973), and J.C. Cox, S. A. Ross, and M. Rubinstein, *Option Pricing: A Simplified Approach*, 7 Journal of Financial Economics 229 (1979).

[60] The Exchange stated, "[t]he fact that market-maker clearing firms and the Options Clearing Corporation extend credit on long options demonstrates that long options are acceptable collateral to lenders. In addition, banks have for some time loaned funds to market-maker clearing firms through the Options Clearing Corporation's Market Maker Pledge Program." *See* Letter to Michael Walinskas, Associate Director, Division, Commission, from Mary L. Bender, Senior Vice President, Division of Regulatory Services, Exchange, dated May 21, 1998.

[61] *See* Board of Governors of the Federal Reserve System Docket Nos. R–0905, R–0923, and R–0944 (Jan. 8, 1998), 63 FR 2806 (Jan. 16, 1998). In adopting the final rules that permitted non-broker-dealer lenders to extend credit on listed options, the Federal Reserve Board states that it was:

[A]mending the Supplement to Regulation U to allow lenders other than broker-dealers to extend 50 percent loan value against listed options. Unlisted options continue to have no loan value when used as part of a mixed-collateral loan. However, banks and other lenders can extend credit against unlisted options if the loan is not subject to Regulation U [12 CFR 221 *et seq.*].

The Board first proposed margining listed options in 1995. *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (June 21, 1995), 60 FR 33763 (June 29, 1995) ("[T]he Board is proposing to treat long positions in exchange-traded options the same as other registered equity securities for margin purposes.").

[62] However, the long box spreads made up of European-style options, the margin requirements is 50% of the aggregate difference in the two exercise prices.

The proposal takes into account the defined risk of these strategies and sets margin requirements that better reflect the economic reality of each strategy. As a result, the margin requirements are tailored to the overall risk of the combined positions.

For similar reasons, the Commission approves of the proposed cash account requirements for spreads made up of European-style cash-Settled index options, stock index warrants, or currency index warrants. Under the proposal, a short position would be considered covered, and thus eligible for the cash account, if a long position in the same European-style cash-settled index option, stock index warrant, or currency index warrant was held in, or purchased for, the account on the same day. In addition, the long and short positions must expire concurrently, and the cash account must contain cash, cash equivalents, or an escrow agreement equal to at least the aggregate exercise price differential.

The Commission believes that it is reasonable for the Exchange to specify cash account requirements for certain options and warrants carried short. The proposed requirements clearly identify the criteria that must be satisfied before a short position will be deemed covered. By codifying the criteria in its margin rules, the Exchange will assist CBOE members in determining whether a short position is eligible for the cash account.

The Commission believes that is appropriate for the Exchange to revise the maintenance margin requirements for several hedging strategies that combine stock positions with options positions. The Commission recognizes that hedging strategies such as the Long Put/Long Stock, Long Call/Short Stock, Conversion, Reverse Conversion and Reverse Conversion, and Collar are designed to limit the exposure of the investor holding the combined stock and option positions. The proposal would modify the maintenance margin required for the stock component of a hedging strategy. For example, the stock component of a Long Put/Long Stock combination currently is margined without regard to the hedge provided by the long put position (*i.e.*, the 25% maintenance margin requirement for the stock component is applied in full). Under the proposal, the maintenance margin requirement for the stock component of a Long Put/Long Stock strategy would be the lesser of: (i) 10% of the put option exercise price, plus 100% of any amount by which the put option is out-of-the-money; or (ii) 25% of the current market value of the long stock position. Although for some market values the proposed margin requirement would be the same as the current requirement, in many other cases it would be lower.[63] The Commission believes that reduced maintenance margin requirements for the stock components of hedging strategies are reasonable given the limited risk profile of the strategies.

The Commission believes that the Exchange's proposal is a carefully crafted measure that draws on the Exchange's experience in monitoring the credit exposures of options strategies. In particular, the Exchange regularly examines the coverage of options margin as it relates to price movements in the underlying securities and index components. Furthermore, many of the proposed margin requirements were thoroughly reviewed by the New York Stock Exchange ("NYSE") Rule 431 Review Committee,[64] which is made up of industry participants who have extensive experience in margin and credit matters. Therefore, the Commission is confident that the proposed margin requirements are consistent with investor protection and properly reflect the risks of the underlying options positions.

The Commission notes that the margin requirements approved in this order are mandatory minimums. Therefore, an Exchange member may freely implement margin requirements that exceed the margin requirements adopted by the Exchange.[65] The Commission recognizes that the Exchange's margin requirements serve as non-binding benchmarks, and that Exchange members often establish different margin requirements for their customers based on a number of factors, including market volatility. The Commission encourages Exchange numbers to continue to perform independent and rigorous analyses when determining prudent levels of margin for customers.

The Commission believes that it is appropriate for the Exchange to revise Exchange Rule 12.5, "Determination of Value for Margin Purposes." to allow the market value of certain long term stock options, stock index options, and stock index warrants to be considered for margin equity purposes. Under the current terms of Exchange Rule 12.5, options contracts are not deemed to have market value. Because the Exchange's proposal will allow extensions of credit on certain long term options and warrants, Exchange Rule 12.5 must be revised to permit such marginable options and warrants to be valued at current market prices for margin purposes. The Commission notes that unless Rule 12.5 is revised to recognize the market value of the marginable options and warrants, the Exchange's loan value proposal will be ineffective (*i.e.*, the market value of an appreciated marginable security would not be recognized or allowed to offset any loss in value of other securities held in the margin account).

The Commission believes that is reasonable for the Exchange to codify as part of its rules the current margin requirements for short options on securities that have been delisted due to a merger or acquisition. Under the provision, if any underlying security ceases to trade due to a merger or acquisition. Under the provision, if an underlying security ceases to trade due to a merger or acquisition, and a cash settlement price has been announced by the issuer of the option, margin would be required only for in-the-money options and would be set at 100% of the in-the-money amount. The Commission believes that it is appropriate for the Exchange to not require margin for out-of-the-money short options. Given that a fixed settlement price will have been announced by the issuer of the option (*e.g.*, Options Clearing Corporation) and trading in the delisted security will have stopped, the Commission believes that margin for the out-of-the-money short option contract is unnecessary because the intrinsic value of the option contract will not appreciate or vary such that the seller risks assignment (*i.e.*, the intrinsic value will remain nil). The Commission believes that because the intrinsic value of short-in-the-money options will similarly remain fixed, it is reasonable to require margin that corresponds to 100% of the aggregate in-the-money amount.

The Commission believes that is appropriate for the Exchange to clarify the time in which initial and maintenance margin requirements are due. This revision should help avoid confusion as to when margin payments must be made. By specifying that initial margin requirements are due in one payment period—five business days as currently defined in Regulation T—the

[63] Suppose an investor is long 100 shares of XYZ @ 52 and long 1 XYZ Jan 50 Put @ 2. Under the proposal, the required margin would be $700—the lesser of ((10% × 50) + (100% × 2) = 7) or (25% × 52 = 13). In contrast, the current margin requirement would be $1,300, a difference of $600.

[64] NYSE Rule 431 contains the margin requirements that NYSE members must observe. *See* NYSE Rule 431, "Margin Requirements."

[65] Exchange Rule 12.3(c), "Customer Margin Account—Exception," states that nothing in the provision addressing customer margin accounts "shall prevent a broker-dealer from requiring margin from any account in excess of the amounts specified in these provisions.

Exchange will help to facilitate the prompt collection of initial margin. In addition, the proposal revises the time-frame for the collection of maintenance margin by replacing the phrase "within a reasonable time" with "as promptly as possible," and establishing an objective cut-off date of 15 days. The Commission believes that these changes will provide clear and definite guidelines concerning the collection of margin.

The Commission believes that it is appropriate for the Exchange to revise the definition of "current market value" by making it correspond to the same definition found in Regulation T. A linkage to the Regulation T definition should keep the Exchange's definition equivalent without requiring a rule filing if there are future changes to the Regulation T definition. The Commission also believes that it is reasonable for the Exchange to define "butterfly spread" and "box spread." These definitions will specify which multiple option positions, if held together, qualify for classification as buttlerfly or box spreads, and consequently are eligible for the proposed cash and margin treatment. The Commission believes that it is important for the Exchange to clearly define which options strategies are eligible for the proposed margin treatment.

The Commission believes that it is reasonable for the Exchange to reorganize its margin provisions and consolidate them into a single section—Chapter 12 of the Exchange's Rules. As currently structured, the Exchange's margin rules are widely dispersed, appearing in Chapters 12, 23, 24, and 30. The Commission believes that Exchange members and other market participants will find the consolidated margin provisions easier to locate and use.

The Commission also believes that it is reasonable for the Exchange to rephrase and update some of the margin provisions that have been relocated and consolidated. The revisions are designed to ensure consistency among the Exchange's margin provisions. In some instances, changes proposed to one particular margin requirement impacted the requirements for other positions and products. In other instances, the Exchange simply revised language to clarify the meaning of the provision.[66] In addition, the Commission believes that it is appropriate for the Exchange to correct the misnomer in Exchange Rule 12.3(c)(1) that erroneously characterizes nonconvertible debt securities as exempted securities.

The revisions to the Exchange's margin rules will significantly impact the way Exchange members calculate margin for options customers. The Commission believes that it is important for the Exchange to be adequately prepared to implement and monitor the revised margin requirements. To best accommodate the transition, the Commission believes that a phase-in period is appropriate. Therefore, the approved margin requirements shall not become effective until the earlier of November 3, 1999 or such date the Exchange represents in writing to the Commission that the Exchange is prepared to fully implement and monitor the approved margin requirements.

The Commission expects the Exchange to issue a regulatory circular to members that discusses the revised margin provisions and provides guidance to members regarding their regulatory responsibilities. The Commission also believes that it would be helpful for the Exchange to publicly disseminate (*i.e.*, via web site posting) a summary of the most significant aspects of the new margin rules and provide clear examples of how various options positions will be margined under the new provisions.

The Commission finds good cause for approving proposed Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 clarified that the margin requirement for non-marginable options and warrants is 100% of current market value, rather than 100% of purchase price. Unless this revision was made, the margin required for some long term options that had wound down to 9 months would have been inappropriate.[67] By linking the margin requirement to current market value, rather than purchase price, Amendment No. 1 ensures that appropriate margin will be required.

Amendment No. 1 also revised the provision concerning the use of UITs and open-end mutual funds as cover for short index options. The revision conformed the Exchange's proposal to the narrower change that was recommended by the NYSE Rule 431 Committee. As a result, the Exchange's proposal limits the use of mutual funds as cover to short S&P 500 call options held in a margin or cash account.[68] Amendment No. 1 also incorporated into the proposal the definition of "OTC margin bond," which had been eliminated from Regulation T by the Federal Reserve Board as of April 1, 1998. These changes will strengthen the proposal by making it consistent with the margin requirements supported by the NYSE Rule 431 Committee, and by defining an important term that was dropped from Regulation T.

Amendment No. 2 revised the proposal by limiting loan value to long term stock options, stock index options, and stock index warrants. The Exchange had originally proposed to allow loan value on any long term option, regardless of the underlying instrument (*e.g.*, foreign currency options and options on interest rate composites would be marginable): This change conforms the Exchange's proposal to the measures supported by the NYSE Rule 431 Committee and the companion margin filing submitted by the NYSE.[69] Amendment No. 2 will ensure consistency among the national securities exchanges regarding the types of securities on which credit may be extended.

Based on the above, the Commission finds that good cause exists, consistent with Section 19(b) of the Act,[70] to accelerate approval of Amendment Nos. 1 and 2 to the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2 to the proposed rule change, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed

[66] For example, the Exchange revised the rule language regarding straddles comprised of OTC options, but left intact the specific margin requirements. *See* Proposed Exchange Rule 12.3(c)(5)(C)(5)(B).

[67] For example, suppose that a long term option, which had significantly appreciated in value, reached nine months until expiration. A margin requirement of 100% of the purchase price would be insufficient given the increase in value. A requirement of 100% of the current market value, in contrast, is more appropriate.

[68] In accordance with an interpretation that the Federal Reserve Board provided to the American Stock Exchange, the Exchange will continue to permit members to use certain UITs as cover for short index option positions in a margin account. For example, the Exchange allows members to use S&P 500 Depository Receipts ("SPDRs") as cover for short S&P 500 index options. The Federal Reserve Board deemed such practice consistent with Regulation T in 1993. *See* Letter from Michael J. Shoenfeld, Federal Reserve Board, to James McNeil, American Stock Exchange, dated February 1, 1993.

[69] *See* Securities and Exchange Act Release (No. 41168 Mar. 12, 1999), 64 FR 13620 (Mar. 19, 1999) (notice of filing of SR–NYSE–99–03).

[70] 15 U.S.C. 78s(b).

rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 25049. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–67 and should be submitted by August 26, 1999.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[71] that the proposed rule change (SR–CBOE–97–67), as amended, is approved. The approved margin requirements shall become effective the earlier of November 3, 1999 or such date the Exchange represents in writing to the Commission that the Exchange is prepared to fully implement and monitor the approved margin requirements.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[72]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20174 Filed 8–4–99; 8:45 am]

BILLING CODE 8010–01–M

[71] 15 U.S.C. 78s(b)(2).

[72] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41671; File No. SR–EMCC–99–8]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Extension of Interim Margin and Loss Allocation Procedures

July 29, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 21, 1999, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by EMCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will extend EMCC's interim margin and loss allocation procedures until the earlier of (i) September 30, 1999, or (ii) the date on which Daiwa Securities America Inc. ceases to perform clearing functions for interdealer brokers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On July 31, 1998, the Commission temporarily approved EMCC's interim margin and loss allocation procedures ("Addendum G") for a period of one year. Addendum G applies to interdealer brokers and U.S. Firms whose only business with EMCC consists of clearing for interdealer brokers.[3] The only EMCC clearing member affected by Addendum G is Daiwa Securities America Inc. ("Daiwa").

EMCC has been advised that Daiwa intends to cease performing clearing functions for interdealer brokers by the end of September 1999. Because Addendum G expires on July 31, 1999, EMCC is requesting that the Commission extend the temporary approval of addendum G until the earlier of (i) September 30, 1999, (ii) the date on which Daiwa ceases to perform clearing functions for interdealer brokers.

EMCC believes that the proposed rule change is consistent with the requirements Section 17A of the Act[4] and the rules and regulations thereunder because extension of the temporary approval will avoid any potential disruption of EMCC's clearing services during this limited time period.

B. Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. In light of the fact that the Commission has previously found that Addendum G should provide EMCC with margin that is adequate to protect EMCC from financial exposure if an interdealer broker experiences financial difficulty, the Commission finds that the brief extension of the effectiveness of Addendum G is consistent with EMCC's safeguarding obligations under the Act.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because such approval will allow the protections of Addendum G to remain in effect without interruption until Daiwa ceases its interdealer clearing operations at EMCC.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] For a complete description of Addendum G, refer to Securities Exchange Act Release No. 40288 (July 31, 1998), 63 FR 42087.

[4] 15 U.S.C. 78q-1.

[5] 15 U.S.C. 78q–1(b)(3)(F)

Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–99–8 and should be submitted by August 26, 1999.

V. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–EMCC–99–8) be and hereby is approved until September 30, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20177 Filed 8–4–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41670; File No. SR–SCCP–99–02]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees

July 29, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 25, 1999, Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, SCCP will adopt fees for trade recording of transactions conducted through the Volume Weighted Average Price ("VWAP"®)[2] Trading System ("VTS"™).[3] SCCP is not proposing to adopt a transaction value charge on VTS transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission approved VTS on March 24, 1999.[5] VTS will provide a daily preopening matching session for the execution of large-sized stock orders at the VWAP. Philadelphia Stock Exchange ("Phlx") Rule 237 governs the operation of VTS. During the session, VTS will electronically match orders for execution at the VWAP according to the algorithm developed by UTTC. The matched and executed orders will be assigned a final VWAP after the close of regular trading. VTS will operate as a facility of the Phlx under Section 3(a)(2) of the Act.[6] Specifically, the System will involve some Phlx equipment and personnel, allow floor trader participation, and rely upon SCCP to process system trades. Matches performed during the session will be regulated and reported as Phlx trades.[7] SCCP will process VTS trades just like any other Phlx equity trade.

SCCP proposes to charge $0.30 per side for trade confirmation services performed by SCCP. VTS trades are processed for clearing through SCCP just like a Phlx equity floor trade and will be recorded and confirmed like any other trade pursuant to SCCP Rule 6. Therefore, SCCP believes that it is reasonable to charge recording fee of $.30 per side for the confirmation and recording of trades conducted through VTS. This is the current trade recording fee applicable to Phlx Automated Communication and Execution System ("PACE") trades.[8]

Second, SCCP proposes that it will not charge a transaction value charge (value fee) for trades conducted through VTS in order to encourage the use of VTS for large value transactions. This is also similar to SCCP's fees for PACE trades where no value fee is charged.

For these reasons, SCCP believes that the proposal constitutes a equitable allocation of reasonable dues, fees and other charges, pursuant to Section 17A(b)(3)(D) of the Act.[9]

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[10] of the Act and Rule 19b–4(f)(2)[11] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by SCCP. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary to appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] VWAP is a registered trademark of the Universal Trading Technologies Corporation ("UTTC").

[3] The VTS trademark is the property of UTTC.

[4] The Commission has modified the text of the summaries prepared by SCCP.

[5] Securities Exchange Act Release No. 41210 (March 24, 1999), 64 FR 15857 [SR–Phlx–96–14].

[6] 15 U.S.C. 78c(a)(2).

[7] Matches performed by VTS will be subject to fees established in Phlx's fee schedule. Securities Exchange Act Release No. 41646 (July 23, 1999([SR–Phlx–99–21].

[8] *See* Phlx Rule 229.

[9] 15 U.S.C. 78q–1(b)(3)(D).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commissions' Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–SCCP–99–02 and should be submitted by August 26, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–20175 Filed 8–4–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Zero Stage Capital VI, L.P.; (License No. 01/71–0372); Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital VI, L.P., 101 Main Street Cambridge, MA 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the proposed financing of a small concern is seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730 (1998)). An exemption may not be granted by SBA until Notices of this transaction have been published. Zero Stage Capital VI, L.P., proposes to provide a convertible bank guarantee financing to Newcomb Communications, Inc., 1050 Perimeter Road, Manchester, NH 03103. The financing is contemplated for funding growth.

The financing is brought within the purview of section 107.730 (a) (1) of the Regulations because Zero Stage Capital V, L.P., an Associate of Zero Stage Capital VI, L.P., owns greater than 10 percent of Newcomb Communications, Inc. and therefore Newcomb Communications, Inc. is considered an Associate of Zero Stage Capital VI, L.P. as defined in section 107.50 of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

A copy of this Notice shall be published, in accordance with section 107.730 (g), in the Boston Herald by Zero Stage Capital VI, L.P.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: July 27, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–20170 Filed 8–4–99; 8:45 am]

BILLING CODE 8025–01–P

[12] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Workers' Compensation/Public Disability Benefit Questionnaire—0960–0247. Form SSA–546 is used by the Social Security Administration (SSA) whenever an applicant for Title II (Disability Insurance Benefits (DIB)) indicates he or she has filed for, or intends to file for Workmen's Compensation/Public Disability Benefits (WC/PDB). The form consolidates all the information necessary to identify the WC/PDB applied for and/or received, determines whether offset is applicable under the statute and, when applicable, computes the offset. The respondents are applicants for Title II benefits (DIB)

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 25,000 hours.

2. Statement of Marital Relationship (by One of the Parties)—0960–0038. SSA uses the information collected on Form SSA–754 to determine whether the conditions for establishing a common-law marriage under state law are met. The respondents are applicants for spouse's benefits.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 15,000 hours.

3. Student Reporting Form—0960–0088. Form SSA–1383 is used by Social Security student beneficiaries to report events or changes that may affect continuing entitlement to these benefits. The respondents are Social Security Student Beneficiaries.

Number of Respondents: 75,000.

Frequency of Response: 1.

Average Burden Per Response: 6 minutes.

Estimated Annual Burden: 7,500 hours.

4. Reporting Changes that Affect Your Social Security Payment-0960–0073. SSA uses the information collected on form SSA–1425 to determine continuing entitlement to Social Security Benefits and to determine the proper benefit amount. The respondents are Social Security beneficiaries who need to report an event which could affect payments.

Number of Respondents: 70,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 5,833 hours.

5. Black Lung Student's Statement Regarding Resumption of School Attendance and Report of Black Lung Student Beneficiary at End of School Year (two forms)—0960–0314. The information collected on forms SSA–2602 and SSA–2613 is used by SSA to determine whether or not an entitled student beneficiary will resume (or has resumed) full-time school attendance at an approved educational institution. If so, the student will be continuously entitled to benefits. The respondents are children of disabled or deceased coal miners and officials of schools they attend.

	SSA–2602	SSA–2613
Number of Respondents	50	100
Frequency of Response	1	1
Average Burden Per Response (minutes)	5	7½
Estimated Annual Burden (hours)	4	12

II. The information collection listed below has been submitted to OMB for clearance. Written comments and recommendations on the information collection would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Report on Individual with Mental Impairment—0960–0058. Form SSA–824 is used by the Social Security Administration to determine the claimant's medical status prior to making a disability determination. The respondents are physicians, medical directors, medical record librarians and other health professionals.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 36 minutes.

Estimated Annual Burden: 30,000 hours.

2. Report of Student Beneficiary at End of School Year—0960–0089. The information collected on Form SSA–1388 is used by SSA to verify a student's full-time attendance at an approved educational institution. The respondents are secondary school student beneficiaries or claimants who are enrolled full time.

Number of Respondents: 200,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 33,333 hours.

3. Request for Claimant Conference—0960–NEW. As part of SSA's disability redesign effort, SSA is testing modifications to the disability determination procedures. One aspect of the tests includes notifying claimants when the initial determination of disability by the State agency will be less than fully favorable. The State agency making the determination must send a written notice to the claimant offering him or her the opportunity to have a conference with the Disability Adjudicator and to provide an opportunity to submit additional evidence. The claimant can respond by either completing and returning the form (SSA–378) enclosed with the notice or by telephoning the Disability Adjudicator. Based on the reply, the Disability Adjudicator can schedule a conference, request additional medical evidence, and/or await the receipt of additional evidence or complete the processing of the claim. The respondents are claimants for title II and title XVI disability benefits whose claims will receive a less than fully favorable determination.

Number of Respondents: 163,000.

Frequency of Response: 1.

Average Burden Per Response: 1.5 minutes.

Estimated Annual Burden: 4,075 hours.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

(OMB Address)

Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503

Dated: July 30, 1999.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–20153 Filed 8–4–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No.: 3082]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 "C" Street NW, Washington, D.C., September 13–14, 1999, in Conference Room 1107. Prior notification and a valid photo are mandatory for entrance into the building. One week before the meeting the public must notify Gloria Walker, Office of Historian (202–663–1124) providing their date of birth, social security number and telephone number.

The Committee will meet in open session from 1:30 p.m. through 4:30 p.m. on the afternoon of Monday, September 13, 1999. The remainder of the Committee's sessions from 9:00 a.m. until 5:00 p.m. on Tuesday, September 14, 1999 will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (P.L. 92–463). The agenda calls for discussions involving consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail *pahistoff@panet.us-state.gov*).

Dated: July 29, 1999.

William Z. Slany,

Executive Secretary.

[FR Doc. 99–20188 Filed 8–4–99; 8:45 am]

BILLING CODE 4710–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity To Participate, Criteria Requirements and Change of Application Procedure for Participation in the Military Airport Program (MAP)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of criteria and application procedure for designation or re-designation, for the Fiscal year 1999 and 2000 Military Airport Program (MAP), based on current and proposed legislation.

SUMMARY: This notice announces the criteria, application procedures and schedule to be applied by the Secretary of Transportation in designating, re-designating, and funding capital development for currently up to 12 and potentially more airports in the MAP. Pending re-authorizing legislation may permit more airports to be designated and funded in future fiscal years. Once an authorization is enacted, the FAA may, if necessary, issue a new notice clarifying any change in the program including criteria and eligibility.

The MAP allows the Secretary to designate current or former military airports for which grants may be made under the Airport Improvement Program (AIP) and which airports, when at least partly converted to civilian commercial or reliever airports as part of the national air transportation system, will enhance airport and air traffic control system capacity in major metropolitan areas or reduce current and projected flight delays. The Secretary is authorized to designate an airport only if:

(1) the airport is a former military installation closed or realigned under—

(A) Title 10 U.S.C. 2687.

(B) Section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note); or

(C) Section 2905 of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); or

(2) the Secretary determines that AIP grants at such airport would—

(A) reduce delays at an airport with more than 20,000 hours of annual delays in a commercial passenger aircraft takeoffs and landings; or

(B) enhance airport and air traffic control system capacity in a metropolitan area or reduce current and projected flight delays.

49 U.S.C. 47118

DATES: Airport sponsors should address written applications for new designation and re-designation in the Military Airport Program to the Federal Aviation Administration Regional Airports Division or Airports District Office that serves the airport. That office of the FAA must receive applications on or before September 7, 1999.

ADDRESSES: Send an original and two copies of Standard Form (SF) 424, "Application for Federal Assistance,", http://www.whitehouse.OMB/grants/index.html, and supporting and justifying documentation specifically requesting to be considered for designation or re-designation to participate in the Military Airport Program, to the Regional FAA Airports Division or Airports District Office that serves the airport. Applicants may find the proper office on the FAA website http://www.faa.gov/arp/arphome.htm or contact the office below.

FOR FURTHER INFORMATION CONTACT: Mr. James V. Mottley (jim.mottley@faa.gov) or Leonard C. Sandelli (len.sandelli@faa.gov), Military Airport Program Branch (APP–420), Office of Airport Planning and Programming, Federal Aviation Administration (FAA), 800 Independence Avenue, SW, Washington, DC 20591, (202) 267–8780, or (202) 267–8785, respectively.

SUPPLEMENTARY INFORMATION:

General Description of the Program

The Military Airport Program provides capital development assistance to civil airport sponsors at designated current (joint-use) military airfields or former military airports in converting to civil use. Airports designated under the program may obtain funds from a set-aside (currently four percent) of AIP discretionary funds to undertake eligible airport development, including certain types of projects not otherwise eligible for AIP assistance.

Once an authorization is enacted by Congress, the FAA may, if necessary, issue a new notice clarifying any change in the program including criteria and eligibility and solicit applicants.

Number of Airports

Currently, a maximum of 12 airports can participate in the MAP. There are eleven airports currently designated and the Secretary can designate one more under the current FAA authorization. Future FAA authorization legislation may permit additional designations from applications submitted pursuant to this notice. If increased, the Secretary may designate additional airports based on applications submitted pursuant to this notice, or subsequent notices.

Amount of MAP Funds

Currently all of the 1999 MAP funds have been allocated to the participating airports. Any airport designated to MAP during FY 1999 will not be funded until FY 2000, pending FAA authorizing legislation. Funding after FY 1999 will be based on FY 2000 authorization and obligation authority levels.

Term of Designation

Five years is the maximum period of eligibility, unless modified by legislation, for any airport to participate in the MAP unless an airport sponsor reapplies and is re-designated. Periods of redesignation for periods of less than five years are being considered in authorizing legislation.

Reapplication

49 U.S.C. 47118(d) permits previously designated airports to apply for re-designation. The airport must have MAP eligible projects and must continue to satisfy the designation criteria for the MAP.

Eligible Projects

In addition to other eligible AIP projects, terminals, fuel farms, utility systems, surface parking lots and hangars are eligible to be funded from the MAP. Cargo facilities up to 50,000 square feet are being considered in proposed FAA authorizing legislation. Airports requiring these facilities should consider including any cargo building requirements in project justifications and airport capital development plan (ACIP) portions of the application.

New Designation and Re-designation Considerations

In making designations of new candidate airports, the Secretary of Transportation will consider the following general requirements:

1. The airport is a Department of Defense (DOD) Base Realignment and Closure (BRAC) closing military airfield or 10 USC 2687 closure or realignment, classified as a commercial service or reliever airport in the National Plan of Integrated Airport Systems (NPIAS). Pending FAA authorizing legislation may allow DOD BRAC or 10 USC 2687 closing and realignment airports classified as general aviation (GA) in the NPIAS to participate in the MAP, so airports meeting other eligibility requirements and categorized as GA, should apply; or

2. The airport and grants issued for projects at the airport would reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings. Airports with 20,000 or more hours of delay and their associated metropolitan areas are identified in the FAA's Aviation Capacity Enhancement Plan DOT/FAA, Office of System Capacity, 1998 Aviation Capacity Enhancement Plan; or

3. The airport would enhance airport and air traffic control, system capacity in a metropolitan area or reduce current or projected flight delays.

The application will be evaluated on how the proposed airport and associated projects would make these contributions to congestion relief and/or how the airport would enhance air traffic or airport system capacity, and provide adequate user services.

Project Evaluation

Recently approved BRAC or Title 10 U.S.C. 2678 closing or realigned bases or active bases with new joint use agreements will be the locations with the greatest conversion needs, necessary to achieve a successful civil airport operation. New joint use locations and newly converting airports frequently have minimum capital development resources and will receive priority consideration for designation and MAP funding. The FAA will evaluate the need for the eligible projects in the candidate airport's five year ACIP, and whether these projects are related to development of that airport and/or air traffic system. It is the intent of the Secretary of Transportation to fund those airports where the benefits to the capacity of the air traffic control or airport system can be maximized, and/or the contribution to reducing congestion can be maximized.

1. The FAA will evaluate the candidate airports and/or the airports such candidates would relieve based on the following factors:

- Compatibility of airport roles, and the ability of the airport to provide an adequate airport facility;
- The capability of the candidate airport and its airside and landside complex to serve aircraft that otherwise must use the relieved airport;
- Landside surface access;
- Airport operational capability, including peak hour and annual throughput capacities of the candidate airport;
- Potential of other metropolitan area airports to relieve the congested airport;
- Ability to satisfy, relieve or meet air cargo demand within the metropolitan area;
- Forecasted aircraft and passenger levels, type of air carrier service anticipated, i.e., scheduled and/or charter air carrier service;
- Type and capacity of aircraft projected to serve the airport and level of operation at the relieved airport and the candidate airport;
- The potential for the candidate airport to be served by aircraft or users, including the airlines, serving the congested airport;
- Ability to replace an existing commercial service or reliever airport serving the area; and
- Any other documentation to support the FAA designation of the candidate airport.

2. The FAA will evaluate the development needs, which, if funded, would make the airport a viable civil airport that will enhance system capacity or reduce delays. Newly closing installations or airport sponsors with new joint use agreements with existing military aviation facilities will be strongly considered for designation since they tend to have the greatest conversion needs.

Application Procedures and Required Documentation

Airport sponsors applying for consideration for designation or Redesignation must complete a Standard Form 424, "Application for Federal Assistance," and submit documentation to the appropriate FAA office as outlined below. They must submit an Application for Federal Assistance, SF 424, to the Airports District Office or FAA Regional Airports Division which serves that airport. The SF 424 must indicate that this is an initial application or reapplication for the MAP, and must be accompanied by the documentation and justification indicated below to request designation by the Secretary of Transportation to participate in the Military Airport Program.

New Candidate Airports and Airports Applying for Redesignation

This information must identify the airport as either a current or former military airport and identify whether it was:

1. Closed or realigned under Section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act, and/or Section 2905 of the Defense Base Closure and Realignment Act of 1990 (Installations Approved for Closure by the Defense Base Realignment and Closure Commissions),

2. 10 U.S.C. 2687 (bases closed by DOD and reported to the General Services Administration) or

3. A joint use of an active military airfield.

A. Qualifications

For (1) through (6) below the applicant does not need to resubmit any unchanged documentation that has been previously submitted to the regional Airports division or Airports district office.

(1) Documentation that the airport meets the definition of a "public airport" as defined in 49 U.S.C. § 47102(16).

(2) Documentation that the required environmental review process for civil reuse or joint-use of the military airfield has been completed. This is not the environmental review for the projects under this program, but the environmental review necessary, usually done by the military department, for conveyance of airport property, a long-term lease, or a joint use agreement. The environmental reviews and approvals must indicate that the airport would be able to have sufficient property rights to meet AIP requirements.

(3) In the case of a former military airport, documentation that the local or State airport sponsor holds or will hold satisfactory title, a long term lease in furtherance of conveyance of property for airport purposes, or a long term interim lease for 25 years or more, to the property on which the civil airport is being located. An application for airport property accepted by the Government is sufficient, unless there is reason to believe that a long term lease or conveyance would be delayed for a long time. The capital development project needs to be in place for 20 years. In the case of a current military airport, documentation that the airport sponsor has an existing joint-use agreement with the military department having jurisdiction over the airport. This is necessary so the FAA can legally issue grants to the sponsor.

(4) Documentation that the service level at the airport is expected to provide is a "commercial service airport" or a "reliever airport" as defined in 49 U.S.C. 47102(7) and 47102(18), respectively, and is included in the current NPIAS. Pending FAA authorization legislation may permit designation of some general aviation airports in the NPIAS.

(5) Documentation that the airport has an eligible airport "sponsor" as defined in 49 U.S.C. 47102(19).

(6) Documentation that the airport has an approved airport layout plan (ALP) and a five-year ACIP indicating all eligible grant projects either seeking to be funded from the MAP or other portions of the AIP. The five-year plan must also specifically identify the safety, capacity and conversion related projects, associated costs and projected five-year schedule of project construction, including those requested for consideration for MAP funding.

(7) Information identifying the existing and potential levels of visual or instrument operations and aeronautical activity at the current or former military airport and, if applicable, the relieved airport. Also, if applicable, information on how the airport contributes to air traffic system or airport system capacity. If served by commercial air carriers, the revenue passenger and cargo levels should be provided.

(8) A description of the projected civil role and development needs for transitioning from use as a military airfield to a civil airport and how

development projects would serve to convert the airport to civil use and/or reduce delays at an airport with more than 20,000 hours of annual delay in commercial passenger aircraft takeoffs and landings and/or how the projects would contribute to the airport and air traffic control system capacity in a metropolitan area or reduce current or projected flight delays.

(9) A description of the existing airspace capacity. Describe how anticipated new operations would affect the surrounding airspace and air traffic flow patterns in the metropolitan area in or near which a current or former military airport is located. Include a discussion of the level to which operations at this airport create airspace conflicts that may cause congestion or whether air traffic works into the flow of other air traffic in the area.

(10) A description of the five-year ACIP, including a discussion of major projects, their priorities, projected schedule for project accomplishment, and estimated costs. Eligible MAP safety, capacity related and/or conversion related projects should be specifically identified, that are proposes for funding under the MAP.

(11) A description of projects, that are consistent with the role of the airport and effectively contribute to joint use or convert the airfield to a civil airport. Projects can be related to various improvement categories depending on the need to convert from military to civil airport use, to meet required civil airport standards, and/or required to provide capacity to the airport and/or airport system. The projects selected, i.e., safety related, conversion-related, and capacity-related, must be identified and fully explained based on the airport's planned use. The sponsor needs to submit the airport layout plan (ALP) and other maps or charts that clearly identify and help clarify the eligible projects and designate them as safety-related, conversion-related, or capacity-related. It should be cross-referenced with the project costs and project descriptions. Projects that could be eligible under MAP, if needed for conversion-related or capacity-related purposes, must be clearly indicated, and include:

Airside

- Modification of airport or military airfield for safety purposes or airport pavements (including widths), marking, lighting or strengthening, and of structures or other features in the airport environs to meet civil standards for airport imaginary surfaces.
- Facilities or support facilities such as passenger terminal gates, aprons for passenger terminals, taxiways to new terminal facilities, aircraft parking, and cargo facilities to accommodate civil use.
- Modification of airport or military utilities (electrical distribution systems, communications lines, water, sewer, storm drainage) to meet civil standards. Also, modifications that allow utilities on the civil airport to operate independently, if other portions of the base are conveyed to entities other than the airport sponsor or retained by the Government.
- Purchase, rehabilitation, or modification of airport and support facilities, including aircraft rescue and fire fighting buildings and equipment, airport security requirements, lighting vaults, and reconfiguration or relocation of buildings for more efficient civil airport operations, and snow removal equipment.
- Modification of airport or military airfield fuel systems and fuel farms to accommodate civil aviation use.
- Acquisition of additional land for runway protection zones, other approach protection, or airport development.
- Cargo facility requirements.

Landside

- Construction of surface parking areas and access roads to accommodate automobiles in the airport terminal area and provide an adequate level of access to the airport.
- Construction or relocation of access roads to provide efficient and convenient movement of vehicular traffic to, on and from the airport, including access to passenger, air cargo, fixed base operations, and aircraft maintenance areas.
- Modification or construction of facilities such as passenger terminals, surface automobile parking, hangars, and access to cargo facilities to accommodate civil use.

(12) An evaluation of the ability of surface transportation facilities (road, rail, high speed rail, maritime) to provide intermodal connections.

(13) A description of the type and level of aviation and community interest in the civil use of a current or former military airport.

(14) One copy of the FAA-approved ALP for each copy of the application. The ALP or supporting information should clearly show capacity and conversion related projects. Also, other information such as project costs, schedule, project justification, other maps and drawings showing the project locations, and any other supporting documentation that would make the application easier to understand should be included.

Redesignation of Airports Previously Designated and Applying for up to an Additional Five Years in the Program

Airports applying for redesignation to the Military Airport Program need to submit the information required by new candidate airports applying for a new designation. On the SF (SF) 424 those airports need to indicate that this is an application for redesignation to the MAP. In addition to the above information, they need to explain:

(1) Why a redesignation and additional MAP eligible project funding is needed to accomplish the conversion to meet the civil role of the airport.

(2) Why an additional designation is necessary and funding of eligible work under other categories of AIP or other sources of funding would not accomplish the development needs of the airport,

(3) Based on the previously funded MAP projects, state why these projects and funding level were insufficient to accomplish the airport conversion needs and development goals.

Pending legislation may provide that the airport may be designated for a term less than five years.

This notice is issued pursuant to Title 49 U.S.C. 47118.

Issued at Washington, DC, on July 30, 1999.

Catherine M. Lang,

Acting Director, Office of Airport Planning and Programming.

[FR Doc. 99–20142 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Quad City International Airport, Moline, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from PFC at Quad City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 7, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA Great Lakes Region, Chicago, Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce E. Carter, Director of Aviation, of the Metropolitan Airport Authority of Rock Island County at the following address: Metropolitan Airport Authority of Rock Island County, Quad City International Airport, P.O. Box 9009, Moline, Illinois 61265.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Airport Authority of Rock Island County under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Pur, Airports Engineer, FAA Great Lakes Region, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018, 847/294–7527. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Quad City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 15, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Metropolitan Airport Authority of Rock Island County was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 13, 1999.

The following is a brief overview of the application.

PFC Application Number: 99–03–C–00–MLI.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 2009.

Proposed charge expiration date: July 1, 2023.

Total estimated PFC revenue: $12,879,837.00.

Brief description of proposed projects: Expansion of Terminal/Concourse; Runway 9–27 Rejuvenation.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Part 135 air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Airport Authority of Rock Island County.

Issued in Des Plaines, Illinois on July 28, 1999.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 99–20084 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at San Jose International Airport, San Jose, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on Application.

SUMMARY: The FAA proposes to rule and invites public comments on the application to impose and use a FPC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comment's must be received on or before September 7, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ralph G. Tonseth, Director of Aviation, city of San Jose, Airport Department, at the following address: 1732 N. First Street, San Jose, CA 95112. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Jan Jose under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comments on the application to impose and use the revenue from a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of Federal Aviation Regulations (14 CFR Part 158).

On July 15, 1999 the FAA determined that the application to impose and use a PFC submitted by the city of San Jose was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 28, 1999.

The following is a brief overview of the impose and use application No. 99–07–C–00–SJC:

Level of proposed PFC: $3.00.

Proposed charge effective date: October 1, 2001.

Proposed charge expiration date: July 1, 2002.

Total estimated PFC revenue: $12,976,000.

Brief description of the proposed projects: Aircraft Noise and Operations Management System, Emergency Command Post Relocation/Equipment, Airfield Lighting Control System, Police Building Improvement/Canine Unit, Ewert Road Improvements, Skyport Access to Airport Boulevard, Taxiway Y Pavement Reconstruction, Transportation Access Plan/Terminal Concept/Terminal C Upgrade Studies, Terminal C Ramp Lighting Improvements and Acoustical Treatment of Four Eligible Schools.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of San Jose.

Issued in Hawthorne, California, on July 15, 1999.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 99–20085 Filed 8–4–99; 8:45 am]

BILLING CODE 4310–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Rail Corridor-Washington, DC to Charlotte, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tiered Environmental Impact Statement will be prepared for the Southeast High Speed Rail Corridor from Washington, DC to Charlotte, North Carolina, by way of Richmond, Virginia and Raleigh, North Carolina.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Batey, Planning & Program Development Engineer, Federal Highway Administration, 310 New Bern Ave., Suite 410, Raleigh, NC 27601, Telephone # (919) 856–4330 x 115: and Mr. David Valenstein, Transportation & Environmental Specialist, Federal Railroad Administration (FRA), 400 Seventh Street, SW, MS 20, Washington, DC 20590, Telephone # (202) 493–6368.

SUPPLEMENTARY INFORMATION: The FHWA and the FRA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare a Tiered Environmental Impact Statement to examine the concept of a high speed rail system from Washington, DC through Richmond, Virginia and Raleigh, North Carolina, on to Charlotte, North Carolina. This concept represents a 477 mile long extension of the Northeast Rail Corridor, and encompasses over 1000 miles of existing rail rights-of-way that are potentially useable.

This action has four basic goals: (1) Establish the purpose and need of the project concept; (2) examine the regional implications of the project concept; (3) assess the modal and technology alternatives within the broad corridor and determine a preferred modal alternative; and (4) determine the feasible study area(s) to be carried forward for the appropriate second tier of environmental documentation.

It is anticipated that a joint scoping meeting will be held in South Hill, Virginia during late September or early October of this year. Letters describing the proposed action and soliciting comments are being sent appropriate Federal, State, and local agencies (in North Carolina, Virginia, and the District of Columbia). An iterative public involvement/information program will support the process. The program will involve public workshops, newsletters, fact sheets, a public opinion survey, and a project hotline along with other methods to solicit and incorporate public input throughout the planning process.

To ensure that the full range of issues relating to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA or the FRA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 29, 1999.

Nicholas L. Graf,

Division Administrator, Raleigh, North Carolina.

[FR Doc. 99–20167 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 11, 1999 [64 FR 25391].

DATES: Comments must be submitted on or before September 7, 1999.

FOR FURTHER INFORMATION CONTACT: William W. Dean, Office of Ports and Domestic Shipping, Maritime Administration, MAR–831, Room 7201, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone 202–366–5477 or FAX 202–366–6988. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD)

Title: Port Facilities Inventory.

OMB Control Number: 2133–0023.

Type of Request: Extension of currently approved collection.

Affected Public: Port terminal owners.

Form (S): MA–400.

Abstract: The collection of port facility data from terminal owners allows MARAD to maintain information, at the proper level of accuracy and currency, on those essential port facilities that are required for emergency use. The surveys would be used only in the event the data contained on these facilities fell below a level of currency deemed adequate for emergency planning purposes.

Annual Estimated Burden Hours: 40 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention MARAD Desk Officer.

COMMENTS ARE INVITED ON: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, D.C. on August 2, 1999.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99–20186 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–81–P

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Support Seat Belt Enforcement With State Associations of Chiefs of Police

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of Cooperative Agreements in conjunction with the *Buckle Up America Campaign* to increase seat belt enforcement with the State Associations of Chiefs of Police.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a cooperative agreement program to solicit support for the Buckle Up America (BUA) campaign. NHTSA solicits applications from the State Associations of Chiefs of Police to participate in the *BUA* campaign, by mobilizing law enforcement agencies to increase the use of seat belts and child safety seats, the most effective safety devices for reducing injuries and fatalities in traffic crashes. Only applications submitted by the State Association of Chiefs of Police will be considered. The State Associations of Chiefs of Police will take a leadership role in involving their State law enforcement agencies in increasing enforcement of seat belt and child safety seat laws by participating in the mobilization periods, high visibility enforcement, training officers and public information and education.

DATES: Applications must be received no later than September 7, 1999.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, SW, Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. NTS–01–9–05154.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Rose Watson, Office of Contracts and Procurement at (202) 366–9557. Programmatic questions should be directed to Sandy Richardson, Traffic Law Enforcement Division, NTS–13, NHTSA, 400 7th Street, SW, Washington DC 20590 by e-mail *srichardson@nhtsa.dot.gov* or by phone (202) 366–4294. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

It's a fact: On America's roads, someone is killed every 13 minutes and someone is injured every nine seconds in traffic crashes. It takes only a few seconds to fasten a seat belt. Yet this simple action, repeated every time you get into a motor vehicle, may be the most significant driving-related behavior change you can make to extend your life. Wearing a seat belt dramatically increases your chance of surviving a crash.

Each year, approximately 42,000 Americans die in traffic crashes and another three million are injured. Sadly, many of these deaths and injuries could have been prevented if the victims had been wearing seat belts or were properly restrained in child safety seats.

Seat belts, when properly used, are 45 percent effective in preventing deaths in potentially fatal crashes and 50 percent effective in preventing serious injuries. No other safety device has as much potential for immediately preventing deaths and injuries in motor vehicle crashes. The current level of seat belt use across the nation prevents more than 9,500 deaths and well over 200,000 injuries annually. Through 1997, more than 100,000 deaths and an estimated 2.5 million serious injuries have been prevented by seat belt use.

But, seat belt use rates and the resulting savings could be much higher. As of 1998, the average use rate among States in the U.S. was still well below the goal of 85 percent announced by the President for the year 2000 and at least a dozen States have use rates below 60 percent. On the other hand, use rates of 85–95 percent are a reality in most developed nations with seat belt use laws, and at least six States and the District of Columbia achieved use rates greater than 80 percent in 1998. A national use rate of 90 percent, among front seat occupants of all passenger vehicles, would result in prevention of an additional 5,500 deaths and 13,000 serious injuries annually. This would translate into a $9 billion reduction in societal costs, including 356 million for Medicare and Medicaid.

In April 1997, the *Buckle Up America* (*BUA*) campaign established ambitious national goals: (a) To increase seat belt use to 85 percent and reduce child fatalities (0–4 years) by 15 percent by the year 2000; and (b) to increase seat belt use to 90 percent and reduce child fatalities by 25 percent by the year 2005. This campaign advocates a four part strategy: (1) Building public-private partnerships; (2) enacting strong legislation; (3) maintaining high visibility law enforcement; (4) and conducting effective public education. Central to this Campaign's successes is the implementation of two major enforcement mobilizations each year (Memorial Day and Thanksgiving holidays).

Objectives

To help achieve the new national seat belt goals, NHTSA seeks to establish cooperative efforts between NHTSA and State Associations of Chiefs of Police to increase the use of seat belts and child safety seats. Specific objectives for this cooperative agreement program will be to support the Buckle Up America campaign by increasing periodic waves of high visibility enforcement and by promoting participation in Operation ABC's national mobilizations (May and November).

1. Periodic "Waves" of High Visibility Enforcement

The history of efforts to increase seat belt use in the U.S. and Canada suggests that highly visible enforcement of seat belt laws must be the core of any successful program to increase seat belt use. No State has ever achieved a high seat belt use rate without such a component.

Canada currently has a national seat belt use rate well above 90 percent. Nearly every province first attempted to increase seat belt use through voluntary approaches involving public information and education. These efforts were effective in achieving only very modest usage rates (no higher than 30 percent). By 1985, it became obvious to Canadian and provincial officials that additional efforts would be needed to achieve levels of 80 percent or greater. These efforts, mounted from 1985 to 1995, centered around highly publicized "waves" of enforcement, a technique that had already been shown to increase seat belt use in Elmira, New York. When these procedures were implemented in the Canadian provinces, seat belt use generally increased from about 60 percent to well over 80 percent, within a period of 3–5 years.

The Canadian successes using periodic, highly visible "waves" of enforcement, as well as successes of such efforts implemented in local jurisdictions in the U.S., prompted NHTSA to implement Operation Buckle Down (also called the "70 by "92" Program) in 1991. This two-year program focused on Special Traffic Enforcement Programs (sTEPs) to increase seat belt use. It was followed by a national usage rate increase from about 53 percent in 1990 to 62 percent by the end of 1992 (as measured by a weighted aggregate of State surveys).

Neither the level of enforcement nor its public visibility was uniform in every State. Had these "waves" of enforcement been implemented in a more uniform fashion in every state, the impact would likely have been much greater.

In order to demonstrate the potential of periodic, highly visible enforcement in a more controlled environment, the State of North Carolina implemented its Click-It or Ticket program in 1993. In this program, waves of coordinated and highly publicized enforcement efforts (i.e., checkpoints) were implemented in every county. As a result, seat belt use increased statewide, from 65 percent to over 80 percent, in just a few months. This program provided the clearest possible evidence to demonstrate the potential of highly visible enforcement to increase seat belt use in a large jurisdiction.

2. National Mobilizations

National law enforcement mobilizations have also proven effective in increasing seat belt use. The BUA campaign supports two national mobilizations each year (Memorial Day and Thanksgiving holidays). During the 1998 mobilizations conducted throughout the week surrounding Memorial Day and the week surrounding Thanksgiving, between 4,000 and 5,000 law enforcement agencies participated in Operation ABC. Their efforts were covered by several hundred national and local television organizations in all major media markets. More than 1,500 print articles were written in response to each mobilization. As a result of the May mobilization, seat belt use increased significantly nationwide as more than 6,000,000 motorists were convinced to buckle up. Since that time, seat belt use has continued to increase significantly.

Period of Support

Cooperative agreements may be awarded for a period of support for (1) year. The application for the funding period (12 months) should address what is proposed and can be accomplished during that period. Subject to the availability of funds, the agency anticipates awarding up to 5 cooperative agreements in the amount of $50,000 each, totaling $250,000. Federal funds should be viewed as seed money to assist the Associations in working with local law enforcement agencies in the development of traffic safety initiatives. NHTSA may choose to extend the period of performance under this agreement for an additional 12 months, subject to the availability of funds. If NHTSA elects to do so, it will notify the recipients within 60 days prior to the expiration of this agreement and the recipients will submit a proposal for an aditional 12 months of performance.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, an applicant must be a State Association of Chiefs of Police, and must meet the following requirements:

—Have ability to provide funding to law enforcement agencies in the state.
—Have written support and approval from the applicant's chief executive officer to conduct seat belt enforcement programs to participate in and encourage local law enforcement participation in the Operation ABC Campaign and in other seat belt enforcement programs. (Include copy with proposal.)
—Obtain written support from the Governor's Representative or his/her designee in the State Highway Safety Office (SHSO) demonstrating that the applicant's proposal is consistent with the State's overall plan. (Include copy with proposal.)

Application Procedure

Each applicant must submit one original and two copies of their application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, S.W., Room 5301, Washington, D.C. 20590. Applications are due no later than September 7, 1999. Only complete application packages received by the due date will be considered. Submission of four additional copies will expedite processing, but is not required. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Cooperative Agreement Program No. NTS–01–9–05154. The applicant shall specifically identify any information in the application for which confidential treatment is requested, in accordance with the procedures of 49 CFR part 512, Confidential Business Information.

Application Contents

The application package must be submitted with OMB Standard Form 424 (Rev. 4–88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and the certified assurances included. While the Form 424–A deals with budget information, and section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort. The budget should be a 1-year plan. Also included shall be a program narrative statement which addresses the following:

1. A description of the project to be pursued which provides:

a. A detailed explanation of the proposed strategy to support the enforcement efforts, including methods for gaining support (both within the community and law enforcement leadership) for "waves" of highly publicized seat belt enforcement and for mobilization efforts. In addition, an explanation of the strategies to fund local law enforcement agencies to participate in the national mobilizations, and to conduct "waves" of highly publicized seat belt enforcement. A description of efforts to address training needs (e.g., differential enforcement or diversity sensitivity) of law enforcement jurisdictions and how training will be marketed to these jurisdictions.

b. The goals, objectives, and the anticipated results and benefits of the project (supporting documentation from concerned interests other than the applicant can be used.)

c. Written evidence of approval by the applicant's Chief Executive Officer.

d. An explanation demonstrating the need for assistance.

e. Description of any extraordinary social/community involvement.

f. A discussion of the criteria to be used to evaluate the results (e.g. number of citations, number of officers trained, seat belt use surveys, level of earned media coverage, etc.).

2. A list of the proposed activities in chronological order to show the schedule or accomplishments and their target dates.

3. Identification of the proposed program coordinator for participation in the proposed project effort.

4. A description of the applicant's previous experience related to this proposed program effort (i.e. past participation in highly publicized enforcement or participation in the Operation ABC national seat belt mobilizations).

5. A statement of any technical assistance which the applicant may require of NHTSA in order to successfully complete the proposed project.

Application Review Process and Evaluation Factors

Initially, each application will be reviewed to confirm that the applicant

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meets the eligibility requirements and that the application contains all of the information required by the Applications Contents section of this notice. Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated using the following criteria:

1. The potential of the proposed project effort to increase seat belt use. (40%)

The likeliness and feasibility of the applicant's projects to increase enforcement efforts by law enforcement jurisdictions of proper seat belt and child safety set use. The degree to which the applicant has identified jurisdictions that might benefit from training opportunities concerning proper seat belt and child safety seat use, and effectiveness of the applicant's plan for providing that training. The overall soundness and feasibility of the applicant's approach to participating and successfully seeking law enforcement participation in mobilization efforts, public information campaigns concerning seat belt and child safety seat use, and child safety seat clinics.

2. The applicant's proposed strategy for participating and seeking the participation of local law enforcement agencies in the Buckle Up America national seat belt mobilizations. 40%

The likeliness and feasibility of the Association's proposal, as described in its innovative project plan, to assist smaller law enforcement agencies in participating in the Buckle Up America national seat belt mobilizations. The degree to which the applicant has demonstrated a complete understanding of the requirements for successful participation in the Operation ABC national seat belt mobilizations. The overall soundness and feasibility of the applicant's proposed strategy and demonstrated ability to involve and coordinate this project with smaller law enforcement agencies.

3. The applicant's ability to demonstrate support and coordination with local government and the State Highway Safety Office. 15%

The degree to which the proposal describes efforts and commitment to obtain the support from local government officials throughout the State. The likeliness and feasibility of the applicant's proposal for reaching local and state government executives throughout the state, including suggested methods for generating interest, making initial contacts and reasons for taking this approach as opposed to others.

4. The adequacy of the organizational plan for accomplishing the proposed project effort through the experience and technical expertise of the proposed personnel. 5%

Program management and technical expertise will be estimated by reviewing the qualifications and experience of the proposed personnel, and the relative level of effort of the staff. Consideration will be given to the adequacy of the organizational plan for accomplishing the proposed project effort. Consideration will also be given to the Association's resources and how it will provide the program management capability and personnel expertise to successfully perform the activities in its plan.

NHTSA Involvement

The NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the cooperative agreement and to coordinate activities between the selected State Associations of Chiefs of Police and NHTSA;

2. Provide information and technical assistance from government sources, within available resources and as determined appropriate by the COTR;

3. Provide liaison between the selected State Associations of Chiefs of Police and other government and private agencies as appropriate; and

4. Stimulate the exchange of ideas and information among cooperative agreement recipients through periodic meetings.

Terms and Conditions of Award

1. Prior to award, the recipient must comply with the certification requirements of 49 CFR part 29—Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)

2. During the effective period of the cooperative agreement(s) awarded as a result of this notice, the agreement(s) shall be subject to NHTSA's General Provisions for Assistance Agreements (7–95).

Reporting Requirements

1. The recipient shall submit brief quarterly reports documenting project effort to date which will include information on accomplishments, obstacles and problems encountered, noteworthy activities. The report shall be due 15 days after the end of each quarter, and a final report summarizing the project effort within 30 days after the completion of the project. An original and three copies of each of these reports shall be submitted to the COTR.

2. The recipient may be requested to conduct an oral presentation of project activities for the COTR and other interested NHTSA personnel. For planning purposes, assume that these presentations will be conducted at the NHTSA Office of Traffic and Injury Control Programs, Washington, D.C. An original and three copies of briefing materials shall be submitted to the COTR.

Issued on: July 28, 1999.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 99–20148 Filed 8–4–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6039]

Notice of Receipt of Petition for Decision That Nonconforming 1998–1999 Audi A6 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1998–1999 Audi A6 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1998–1999 Audi A6 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 7, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 1998–1999 Audi A6 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1998–1999 Audi A6 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1998–1999 Audi A6 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1998–1999 Audi A6 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1998–1999 Audi A6 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1998–1999 Audi A6 passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of a U.S.-model high mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer and [redacted] warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a safety belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags, control units, sensors, seat belts and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front and rear outboard seating positions with combination lap and shoulder belts that are self tensioning and capable of being released by means of a single red push-button, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of U.S.-model doorbars in vehicles that are not already so equipped.

Additionally, the petitioner states that all vehicles will be inspected prior to importation to ensure that they are equipped with anti-theft devices in compliance with the Theft Prevention Standard found in 49 CFR Part 541.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 2, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–20179 Filed 8–4–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6039]

Notice of Receipt of Petition for Decision That Nonconforming 1994–1999 Mercedes-Benz C Class Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994–1999 Mercedes-Benz C Class passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994–1999 Mercedes-Benz C Class passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 7, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 1994–1999 Mercedes-Benz C Class passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1994–1999 Mercedes-Benz C Class passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1994–1999 Mercedes-Benz C Class passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1994–1999 Mercedes-Benz C Class passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994–1999 Mercedes-Benz C Class passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1994–1999 Mercedes-Benz C Class passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of a U.S.-model high mounted stop lamp on vehicles that are not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a safety belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags, control units, sensors, seat belts and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front and rear outboard seating positions with combination lap and shoulder belts that are self tensioning and capable of being released by means of a single red push-button, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of U.S.-model doorbars in vehicles that are not already so equipped.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 2, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–20180 Filed 8–4–99; 8:45 am]

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UNITED STATES INFORMATION AGENCY

Congress-Bundestag Youth Exchange Program; Request for Proposals

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division (E/PY), of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for the Congress-Bundestag Youth Exchange Program (CBYX). For applicants' information, on October 1, 1999, the Bureau will become part of the U.S. Department of State. The integration will not affect the content of this announcement or nature of the program described. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501c may submit proposals to facilitate academic exchanges between American and German high school students and young professionals.

Program Information

Overview

The CBYX program supports the exchange of American and German young people in order to sustain and strengthen German-American friendship based on common values of democracy and to convey lasting personal and institutional relationships to the successor generation. The primary objective of the program is to encourage American and German youth to learn about each other's society and culture through educational exchange. Additional goals for this competition include a renewed effort to promote the participants' roles as young ambassadors and the impact they can have on US-German relations, and to enhance Congressional involvement in the program and strengthen the linkages between US Representatives and their Bundestag counterparts. The program provides a full scholarship for an academic year experience of living and studying in the host country. CBYX is administered by the U.S. Information Agency and the German Bundestag Administrative Office, PB4. Known in Germany as the Parlamentarisches Patenschafts-Programm (PPP), the CBYX program was inaugurated in 1983 through a bilateral agreement between the U.S. Congress and the German Bundestag. Each government provides funding to exchange organizations through assistance awards for the costs of participant recruitment and selection, international airfare, orientation and debriefing, and hosting support for the respective exchange participants. The U.S.-German agreement calls for an open grants competition every four years, and PB4 is holding a simultaneous open competition to select the German counterpart organizations that will manage the program in Germany. High school organizations that are successful in this competition will be awarded start-up grants in FY2000 to administer the recruitment and selection of participants for academic year 2001–02. Organizations for each component will be eligible for renewal grants in FY2001, 2002, 2003 and 2004.

The actual number of participants exchanged each year is dependent on the amount of funding made available by the U.S. Congress and the German Bundestag. Though Congress has not yet determined the budget level for FY2000, the competition for program year 2001–02 will be based on approximately 400 American and approximately 400 German participants. Throughout the four-year grant cycle, representatives of both governments will hold annual discussions to determine the final participant numbers for each academic year. Participants are chosen according to procedures and criteria established by each government. In the U.S. the CBYX program has four components.

1. High School Component

This component provides 300 scholarships for a one-year educational and cultural homestay experience to American high school students ages 15–18. (A reciprocal exchange of approximately 300 American and 300 German high school students will take place annually.) In lieu of the traditional nationwide high-school participant competition, organizations are invited to bid on conducting merit-based competitions in one or more of five designated regions of the United States, as follows:

Northeast: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Ohio, Pennsylvania, Washington, DC, Delaware, Maryland.

Southeast: Arkansas, Louisiana, Mississippi, Alabama, Kentucky, Tennessee, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Puerto Rico.

Central States: Indiana, Illinois, Michigan, Minnesota, Wisconsin, Iowa, Missouri, Nebraska.

Southwest: Kansas, Texas, Oklahoma, Colorado, New Mexico, Utah, Arizona, Southern California * (* the northern border of this region includes the counties of Monterey, San Benito, Fresno, and Inyo).

Pacific/Northwest: Alaska, Hawaii, Washington, Oregon, Idaho, Montana, Wyoming, Nevada, North Dakota, South Dakota, Northern California * (* the southern border of this region includes the counties of Santa Cruz, Santa Clara, Merced, Madera, and Mono).

Organizations may bid on more than one region, indicating the most preferred area(s) in priority order. A maximum of five organizations will be selected to conduct all aspects of the competition in one of each of the five regions for 60 American participants. Organizations that are awarded a grant will conduct advertising, recruitment, processing of applications, screening, selection, pre-departure orientations and debriefings, and management of all administrative and logistical matters including domestic and international travel.

In the host country, American and German partner organizations will coordinate arrival and re-entry orientation for the respective exchange students, placement of the students in host families and schools (nationwide), arrange program enrichment activities, conduct the recruitment, screening, selection and orientation of host families, provide program monitoring,

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supervision and counseling to students and host families, and manage all administrative and logistical matters including in-country travel and health and accident insurance. Organizations should secure all host family and school placements at least two weeks prior to the German students' arrival in the U.S. Grantees will be required to submit to USIA a list of these placements one week prior to the students' arrival.

2. Vocational Component

This component provides approximately 20 scholarships to graduating American high-school seniors with a vocational specialization for a one-year professional study and training experience in their fields of interest. One organization will be selected to conduct all aspects of the nationwide competition and programming, including advertising, recruitment, processing of applications, screening, selection, pre-departure orientations and debriefings, and management of all administrative and logistical matters including domestic and international travel. (During the selection process the grantee is encouraged to work with vocational educational offices at the state level, as well as administrators of secondary schools with vocational education in their curriculum.)

The German partner organization chosen for a grant will coordinate arrival and re-entry orientation for the students and their placement in host families and schools, arrange a practicum in the participants' field of study, arrange program enrichment activities, and conduct the recruitment, screening, selection and orientation of host families, provide program monitoring, supervision and counseling to students and host families, and manage all administrative and logistical matters including in-country travel and health and accident insurance.

3. Young Professional Component

This component provides approximately 80 scholarships for a one-year professional study and training experience in business, technical, vocational and agricultural fields to young Americans, ages 18–24. (A reciprocal exchange of approximately 80 Americans and 100 Germans will take place annually.) One organization will be selected to conduct all aspects of the nationwide competition and programming, including advertising, recruitment, processing of applications, screening, selection, pre-departure orientations and debriefings, and management of all administrative and logistical matters including domestic and international travel.

In the host country, the American and German partner organizations will coordinate arrival and re-entry orientation for the students, the placement of the students in host families (or other suitable living quarters) and schools (colleges/universities), arrange a practicum in the participants' field of study, arrange program enrichment activities, and conduct the recruitment, screening, selection and orientation of host families, provide program monitoring, supervision and counseling to students and host families, and management all administrative and logistical matters including in-country travel and health and accident insurance.

In the U.S. each German participant will be placed in a two or four-year college for one semester of full-time study or a minimum of 12 credit hours (which may include an English class) throughout the academic year. The organization is encouraged to seek tuition waivers and cost sharing with cooperating colleges. The organization will coordinate with each participant to assure that his/her practicum is based on a prospectus of the specific skills and functions that will be mastered and that there is a structured learning component that enables the participant to gain a perspective on the overall operation of the business. The organization will also coordinate a six-week Congressional internship on Capitol Hill for three to five young professionals. A stipend for some meals, incidentals and reasonable local transportation expenses may be included in the budget, but it is anticipated that the stipend would be substantially reduced or eliminated during the second half of the program when the participants receive allowances for living expenses from the firms or agencies hosting their practicums. The current stipend range is $250 to $300 per the regional cost of living. Where possible, hosting arrangements should be found that do not require subsidization.

4. Administrative Component

One organization will be awarded an administrative grant to produce materials for program advertisement, recruitment and orientation for the high school component, to set up and maintain an alumni database for all CBYX participants, and procure and administer a special health and accident insurance plan required by the German Government for all German CBYX participants.

The organization will produce program specific informational materials for the high school component. Each organization selected for the high school component will distribute the materials to a wide audience within its appointed region, including public and private secondary schools, the media, and key networks such as the American Association of Teachers of German. (Innovative methods of publicizing the program are welcome, within funding limitations. Organizations are encouraged to utilize their volunteer networks and alumni to promote the program.) The organization will coordinate information and input from the high school organizations for the production of general briefing and orientation materials for American high school participants. The organization will set up and maintain a master database listing of all CBYX participants with a corresponding list of the Congressional Representatives from whose districts the students are selected and a similar list of German participants and the Congressional districts in which they are hosted. The organization will also be responsible for securing and distributing to all CBYX organizations the special health and accident insurance for the German students.

Please see the POGI (Project Objectives, Goals, and Implementation) for further details and guidance regarding each of the four program components.

Guidelines

Prior German language skills are not required. The German partner organizations will provide up to two months of intensive language training, which is covered by German Government funds, to American participants upon their arrival in Germany. German participants are expected to be sufficiently proficient in English and therefore will not require (but may elect) an English language course as part of their regular studies. (No USIA grant funding will be provided for English training under this program.) The pre-departure orientation for American students and the debriefing for German students should take place in Washington, DC and include CBYX students only. The Washington programs, which are designed to introduce the participants to the federal government and issues in the U.S.-German relationship, may be subcontracted out by the grantee organizations.

Organizations may include other program elements such as mid-year enrichment and follow-on activities in their proposals, but should bear in mind that funding is limited. Mid-year enrichment activities may include informal local or regional gatherings, volunteer community projects, and volunteer internships in local congressional offices. For follow-on activities organizations are encouraged to involve former participants in the organization's alumni activities as well as CBYX-specific activities by volunteering in various capacities such as promoting the program in their communities and/or serving on the selection committees or as local or regional representatives. Organizations should also utilize their individual web sites and newsletters to track and/or keep in touch with alumni. To be eligible for consideration in this competition an organization must:

1. Be legally incorporated and identify a legally incorporated affiliate in Germany and/or indicate its willingness to be partnered with a German organization approved by PB4 and USIA.

2. Have a not-for-profit status, as determined by the Internal Revenue Service; the German affiliate must also be not-for-profit (gemeinneutzige).

3. Be financially solvent, have a demonstrated track record of responsible fiscal management and be able to meet the accounting and reporting requirements for Agency grants.

4. Have a minimum of four years of experience in conducting long-term exchange programs (of at least nine months duration) between the United States and Germany.

5. Have well-established volunteer and host family networks to carry out various aspects of the program; regional representatives must be situated in such a way to handle expeditiously any problems that arise regarding host family accommodations, schooling and language problems, or difficulties concerning internships.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Costs for U.S. and German students are to be listed separately. Organizations should be familiar with grant regulations described in OMB circulars A110, A122, and A133.

Cost sharing is encouraged. Cost sharing may be in the form of allowable direct or indirect costs. The grant recipient must maintain written records to support all allowable costs which are claimed as being in contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A100, Attachment E. Cost Sharing and Matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution. The recipient's proposal shall include the cost of an audit that: (1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions; (2) complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and (3) complies with AICPA Codification of Statements on Auditing Standards AU Section 551, "Reporting on Information Accompanying the Basic Financial Statements in Auditor-Submitted Documents," where applicable. When USIA is the largest direct source of Federal financial assistance—i.e. the cognizant Federal Agency—and indirect costs are charged to Federal grants, a supplemental schedule of indirect cost computation is required. The audit costs shall be identified separately for: (1) Audit of the basic financial statements, and (2) supplemental reports and schedules required by A–133.

USIA's Office of Inspector General has provided supplemental guidance for conducting A–133 audits and recovery of related audit costs in a separate "Dear Colleague" letter dated January 24, 1995.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with USIA concerning this RFP should reference the above title and number *E/P–00–03.*

For Further Information Contact: The Office of Citizen Exchanges, Youth Programs Division, E/PY, Room 568, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547, (202) 619–6299, fax: 619–5311 to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Program Officer Shalita Jones on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on *Friday, September 17, 1999.* Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline. Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: *E/P–00–3,* Office of Grants Management, E/XE, Room 336, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly

encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the POGI for specific suggestions on incorporating diversity into the total proposal.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal Requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www/itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA area office and the USIA post overseas, where appropriate. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Education and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to their conformance with the objectives and guidelines stated above and the review criteria stated in the POGI.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

All applicants will be notified on the results of the review process on or before December 31, 1999. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: July 30, 1999.

William Kiehl,

Acting Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–20144 Filed 8–4–99; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0353]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine if a student is eligible for work-study benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 4, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0353" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certification of Lessons Completed, VA Forms 22–6553b and 22–6553b-1.

OMB Control Number: 2900–0353.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 22–6553b and 22–6553b-1 are used to determine the number of lessons completed by the student and serviced by the correspondence school, and if necessary to determine the date of completion or termination of correspondence training. Without this information, the VA would be unable to determine the proper payment or the student?s training status. These forms are considered to be one and the same.

Affected Public: Individuals or households, Business or other for-profit.

Estimated Annual Burden: 2,031 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,036.

Dated: July 20, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–20073 Filed 8–4–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0379]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 7, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0379."

SUPPLEMENTARY INFORMATION:

Title: Time Record (Work-Study Program), VA Form 22–8690.

OMB Control Number: 2900–0379.

Type of Review: Revision of a currently approved collection.

Abstract: The information collected is used to ensure that the amount of benefits payable to a student who is pursuing work-study is correct. Without the information, VA would not have a basis upon which to make payment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 1999 at pages 13470–13471.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Governments.

Estimated Annual Burden: 10,000 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Four times per year.

Estimated Number of Respondents: 30,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0379" in any correspondence.

Dated: July 20, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–20074 Filed 8–4–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0405]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 7, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0405."

SUPPLEMENTARY INFORMATION:

Title: REPS Annual Eligibility Report, VA Form 21–8941.

OMB Control Number: 2900–0405.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used to confirm the continued entitlement of a beneficiary under the REPS program.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 29, 1999 at page 4747.

Affected Public: Individuals or households.

Estimated Annual Burden: 550 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 2,200.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0405" in any correspondence.

Dated: July 20, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–20075 Filed 8–4–99; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 64, No. 150
Thursday, August 5, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Correction

In notice document 99–19391, beginning on page 41108, in the issue of Thursday, July 29, 1999, make the following correction:

On page 41108, in the third column, paragraph b., The *Project No.* is corrected to read "11786-000".

[FR Doc. C9–19391 Filed 8–4–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Order Granting Rehearing for Purpose of Further Consideration, Granting Late Motions To Intervene and Establishing Procedures for Additional Late Motions To Intervene and Answers

Correction

In notice document 99–19527, appearing on page 41407, in the issue of Friday, July 30, 1999, make the following correction:

On page 41407, in the first column, in the 17th line, "ER98-1005-006" should read "ER98-1055-006".

[FR Doc. C9–19527 Filed 8–4–99; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-6366-8]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Pima County Department of Environmental Quality

Correction

In rule document 99–16231 beginning on page 34560 in the issue of Monday, June 28, 1999, make the following correction(s):

§ 63.99 [Corrected]

On page 34563, in § 63.99(a)(3), in the table, in the entries for subparts U and DD, remove the "X" symbol in the corresponding column of "PDEQ3".

[FR Doc. C9–16231 Filed 8–4–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23858; File No. 812-11518]

First Defined Portfolio Fund LLC

Correction

In notice document 99–14757, beginning on page 31326, in the issue of Thursday, June 10, 1999, make the following correction:

On page 31326, in the second column, the docket number is corrected to read as set forth above.

[FR Doc. C9–14757 Filed 8–4–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Thursday
August 5, 1999

Part II

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning On or After October 1, 1999 and Portions of Cost Reporting Periods Beginning Before October 1, 2000; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1060–NC]

RIN 0938–AJ57

Medicare Program; Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning on or After October 1, 1999 and Portions of Cost Reporting Periods Beginning Before October 1, 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period sets forth revised schedules of limitations on home health agency costs that may be paid under the Medicare program for cost reporting periods beginning on or after October 1, 1999 and portions of cost reporting periods beginning before October 1, 2000. These limitations replace the limitations that were set forth in our August 11, 1998 notice with comment period (63 FR 42912).

DATES: *Effective Date:* These schedules of limitations are effective for cost reporting periods beginning on or after October 1, 1999 and portions of cost reporting periods beginning before October 1, 2000.

Comment Date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p. m. on October 4, 1999.

ADDRESSES: Mail written comments (one original and three copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1060–NC, P.O. Box 31850, Baltimore, Maryland 21207–8850

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or

Room C5–16–03, Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Comments may also be submitted electronically to the following E-mail address: HCFA1060NC@hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the E-mail message because we may not be able to access attachments.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1060–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443/G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Michael Bussacca, (410) 786–4602.

SUPPLEMENTARY INFORMATION: *Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your VISA or MasterCard number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you may view and photocopy the **Federal Register** document at most libraries designated as Federal Deposit Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then log in as guest (no password required). Dial-in users would use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

I. Background

Section 1861(v)(1)(A) of the Social Security Act (the Act) authorizes the Secretary to establish limitations on allowable costs incurred by a provider of services that may be paid under the Medicare program, based on estimates of the costs necessary for the efficient delivery of needed health services. Under this authority, we have maintained limitations on home health agency (HHA) costs since 1979. Additional statutory provisions specifically governing the limitations applicable to HHAs are contained at section 1861(v)(1)(L) of the Act.

On October 21, 1998, the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA), 1999 (Public Law 105–277) was signed into law. Section 5101 of OCESAA amended section 1861(v)(1)(L) of the Act by providing for adjustments to the per-beneficiary and per-visit limitations for cost reporting periods beginning on or after October 1, 1998. Program Memoranda (Transmittal) Nos. A–98–38 and A–99–1 were issued in November 1998 and January 1999, respectively, outlining the specific provisions affecting the Interim Payment System (IPS). We had published a notice with comment period establishing the cost limitations for cost reporting periods beginning on or after October 1, 1998 in the **Federal Register** that was entitled "Medicare Program; Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning On or After October 1, 1998" (HCFA–1035–NC) on August 11, 1998 (63 FR 42912). OCESAA made the following adjustments to these limitations:

Providers with a 12-month cost reporting period ending during Fiscal Year (FY) 1994, whose per-beneficiary limitations were less than the national median, which is to be set at 100 percent for comparison purposes, will get their current per-beneficiary limitation plus ⅓ of the difference between their rate and the adjusted national median per-beneficiary limitation. New providers or providers without a 12-month cost reporting period ending in Federal Fiscal Year (Federal FY) 1994 whose first cost reporting period begins before October 1, 1998 will receive 100 percent of the national median per-beneficiary limitation.

New providers whose first cost reporting periods begin during Federal FY 1999 will receive 75 percent of the national median per-beneficiary limitation as published in the August 11, 1998 notice. In the case of a new provider or a provider that did not have a 12-month cost reporting period ending during Federal FY 1994 that filed an application for HHA provider status before September 15, 1998 or that was approved as a branch of its parent agency before that date and becomes a subunit of the parent agency or a separate freestanding agency on or after that date, the per-beneficiary limitation will be set at 100 percent of the national median. The per-visit limitation effective for costreporting periods beginning on or after October 1, 1998 is set at 106 percent of the median instead of 105 percent of the median, as previously required in the Balanced Budget Act of 1997 (BBA) (Public Law 105–33), enacted on August 5, 1997.

There is contingency language for the home health prospective payment system (PPS) provided in the BBA that was also amended by section 5101 of OCESAA. If the Secretary for any reason does not establish and implement the PPS for home health services, the Secretary will provide for a reduction by 15 percent to the per-visit cost limits and per-beneficiary limits, as those limits would otherwise be in effect on September 30, 2000.

Section 1861(v)(1)(L)(i)(V) of the Act specifies that the per-visit limits shall not exceed 106 percent of the median of the labor-related and nonlabor per-visit costs for freestanding HHAs. The reasonable costs used in the per-visit calculations will be updated by the home health market basket reduced by 1.1 percentage points as required by section 1861(v)(1)(L)(ix) of the Act and excluding any change in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by section 1861(v)(1)(L)(iv) of the Act.

Section 1861(v)(1)(L)(v)(I) of the Act requires the per-beneficiary annual limitation be a blend of (1) an agency-specific per-beneficiary limitation based on 75 percent of 98 percent of the reasonable costs (including nonroutine medical supplies) for the agency's 12-month cost reporting period ending during Federal FY 1994, and (2) a census region division per-beneficiary limitation based on 25 percent of 98 percent of the regional average of these costs for the agency's census division for cost reporting periods ending during FY 1994, standardized by the hospital wage index. However, section 1861(v)(1)(L)(viii)(I) of the Act provides that if the per-beneficiary limitation imposed under this section of the Act is less than the median described under section 1861(v)(1)(L)(vi)(I) of the Act (but determined as if any reference under section 1861(v)(1)(L)(v) of the Act to "98 percent" were a reference to "100 percent"), the per-beneficiary limitation imposed under section 1861(v)(1)(L)(v) will be increased by ⅓ of this difference. The reasonable costs used in the per-beneficiary limitation calculations in (1) and (2) above will be updated by the home health market basket reduced by 1.1 percentage points and excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by sections 1861(v)(1)(L)(ix) and (iv) of the Act respectively. This per-beneficiary limitation based on the blend of the agency-specific and census region division per-beneficiary limitations will then be multiplied by the agency's unduplicated census count of beneficiaries (entitled to benefits under Medicare) to calculate the HHA's aggregate per-beneficiary limitation for the cost reporting period or portion of cost reporting period subject to the limitation.

Section 1861(v)(1)(L)(viii)(II) provides that for new providers and providers without a 12-month cost reporting period ending in Federal FY 1994 but for which the first cost reporting period begins before Federal FY 1999, the per-beneficiary limitation will be a national per-beneficiary limitation that will be determined as if any reference to 98 percent were a reference to 100 percent. The national per-beneficiary limitation is defined in section 1861(v)(1)(L)(vi) of the Act.

For new providers for which the first cost reporting period begins during or after Federal FY 1999 as defined in section 1861(v)(1)(L)(viii)(III) of the Act, the per-beneficiary limitation will be equal to 75 percent of the national per-beneficiary limitation.

In the case of a new provider or a provider without a 12-month cost reporting period ending in FY 1994, section 1861(v)(1)(L)(viii)(II) shall apply to an HHA that filed an application for HHA provider status under Medicare before September 15, 1998 or that was approved as a branch of its parent agency before that date and becomes a subunit of the parent agency or a separate agency on or after that date.

Payments by Medicare under this system of payment limitations must be the lower of an HHA's actual reasonable allowable costs, per-visit limitations in the aggregate, or a per-beneficiary limitation in the aggregate.

Section 1895(a) of the Act, as amended by OCESAA, requires the Secretary to provide for payments for home health services in accordance with a PPS for cost reporting periods and portions of cost reporting periods beginning on or after October 1, 2000. This, in effect, will result in a dual payment system for agencies with cost reporting periods spanning both Federal FY 2000 and Federal FY 2001. Section 5101(e) of OCESAA also amended the contingency clause in section 4603(e) of the BBA, whereby, if the Secretary does not establish and implement the home health PPS, the per-visit and per-beneficiary limitations in effect on September 30, 2000 will be reduced by 15 percent and applied to portions of cost reporting periods beginning on or after October 1, 2000.

Whether there is a home health PPS or a continuation of the IPS on or after October 1, 2000, agencies will need to separately aggregate visits and the unduplicated census count for services furnished before and after October 1, 2000. These statistics will be needed in order to recalculate the appropriate Medicare liability on the Medicare cost report. The visits and unduplicated census counts for home health services furnished on or after October 1, 1999 and before October 1, 2000 will have the per-visit and per-beneficiary limitations updated to the end of the agency's cost reporting period applied. For services furnished after October 1, 2000, the agency will be paid either under the home health PPS or the per-visit and per-beneficiary limitations set forth in this notice less 15 percent. We will be modifying our Provider Statistical and Reimbursement Report (PS & R), which is used by our contractors for verifying statistical data used for the payment of Medicare services, to accommodate the change from IPS to PPS or IPS to a reduced IPS effective October 1, 2000.

This notice with comment period sets forth cost limitations for cost reporting periods beginning on or after October 1, 1999 and portions of cost reporting periods beginning before October 1, 2000. As required by section 1861(v)(1)(L)(iii) of the Act, we are using the area wage index applicable under section 1886(d)(3)(E) of the Act determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health service is furnished. For purposes of this notice, the HHA wage index is based on the most recent available final hospital wage index, that is, the preclassified hospital wage index effective for hospital discharges on or after March 1, 1999, which uses data from Medicare cost reports for cost reporting periods beginning in FY 1995. As the statute also specifies, in applying the hospital wage index to HHAs, no adjustments are to be made to account for hospital reclassifications under section 1886(d)(8)(B) of the Act, decisions of the Medicare Geographic Classification Board (MGCRB) under section 1886(d)(10) of the Act, or decisions by the Secretary.

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II. Analysis of and Responses to Public Comments to the August 11, 1998 Per-Visit and Per-Beneficiary Limitations Notice

We received nine items of timely correspondence on the August 11, 1998 notice. The comments pertaining to the per-visit and per-beneficiary limitations and our responses are discussed below.

Comment: Commenters recommended that we explain specifically and provide an example of how we envision prorating the unduplicated census count between agencies for a beneficiary that receives services from multiple agencies with different fiscal year ends.

Response: In the final rule with comment period entitled "Schedule of Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning on or After October 1, 1997" published in the **Federal Register** on March 31, 1998 (63 FR 15718), we specifically stated, "The per-beneficiary limitation will be prorated based on a ratio of the number of visits furnished to the individual beneficiary by the HHA during its cost reporting period to the total number of visits furnished by all HHAs to that individual beneficiary during the same period." (63 FR 15727) The number of agencies providing visits to the beneficiary is irrelevant. It is the total number of visits the beneficiary receives by all agencies during the specified agency's cost reporting period that triggers whether proration is required. What point the other agencies are in their cost reporting period does not enter into the computation. However, the total number of visits could be different for each agency because of their individual cost reporting periods.

Comment: Commenters encouraged us to explain how the data needed for proration will be gathered and made available to intermediaries and providers.

Response: The requirement to prorate the per-beneficiary limitation when a beneficiary receives home health services from multiple agencies is statutory. Due to other systems priorities for compliance with Y2K, we are unable to make the necessary changes in our systems to accommodate the data needed to do proration at a national level. That does not, however, preclude contractors from making the necessary adjustments for proration within their current operating systems.

Comment: Commenters stated that it is unclear in the **Federal Register** when and under what circumstances the intermediaries are to apply the Offset Adjustment for the Implementation of the Home Health Outcome Assessment Information (OASIS) adjustment factor. Commenters questioned whether the intermediaries should apply the adjustment factor immediately and across the board to all agencies that request the adjustment factor, or upon instructions from HCFA.

Response: In the August 11, 1998 **Federal Register** (63 FR 42916), we specifically state that the OASIS adjustment will only apply to the labor component of the specified per-visit limitations in the first year of implementation of a new assessment tool. See section III.F of this notice with comment period regarding our overall application of the OASIS adjustment.

Comment: Commenters recommended that we clarify whether the option for being classified as an "old" or "new" provider applies to merged providers whose per-beneficiary limitation is based on a weight-average. Commenters also recommend that we clarify whether the option will be extended to HHAs that undergo similar mergers or consolidations, including changes in status and ownership, after the October 1, 1998 notification deadline.

Response: Agencies that experienced certain changes in status were given the option to apply the provisions in the March 31, 1998 **Federal Register** or the provisions in the August 11, 1998 **Federal Register** up to the October 1, 1998 notification deadline. The option mainly impacted those agencies that may have been classified as new providers subject to the national per-beneficiary limitation. However, old providers that merged after the cost reporting period ending during Federal FY 1994 will be treated the same under this August 11, 1998 provision. That is, the surviving provider number will dictate the per-beneficiary limitation that will be applied to the merged agencies for all mergers after October 1, 1998.

Comment: Commenters stated that some intermediaries for hospital-based agencies have yet to notify providers of their per-beneficiary amounts or unduplicated census counts. The per-beneficiary amount and unduplicated census count are important factors that enable providers to make informed decisions regarding the providers' requests to change their provider status. Therefore, commenters recommended that we consider extending the deadline for HCFA notifying providers of their decision to its end of the comment period (October 13, 1998).

Response: We do not believe it is necessary to extend the notification deadline. Considering the importance of the per-beneficiary limitations on an agency's financial needs, the notification deadline of October 1, 1998 provided agencies adequate time to assess the impact of the earlier provisions relating to new provider status and make the election if warranted.

Comment: Commenters disagreed with our position that providers may not request exceptions to their per-beneficiary amounts. Commenters believed that we acknowledge that there will be valid circumstances not anticipated by the per-visit limitation methodology that will cause an agency to incur cost in excess of that allowed by the per-visit limitation. Commenters stated that we provide "atypical" home health service exceptions for those unique situations through 42 CFR 413.30(f)(1). Therefore, it appears that, since the statute is silent on the matter of exceptions, we have the discretion to extend authorization for exceptions of the per-beneficiary limitations.

Response: We do not agree. Section 1861(v)(1)(L)(ii) of the Act specifically provides for exemptions and exceptions to the per-visit limitations so deemed by the Secretary. As we stated in the March 31, 1998 **Federal Register**, we do not believe that the Congress intended the general rules at § 413.30 to apply to the establishment of the per-beneficiary limitations. The statute does not provide any such exceptions or exemptions to the per-beneficiary limitations.

Comment: A commenter stated that the limits as published used the wrong wage indices. Section 1861(v)(1)(L)(iii) of the Act requires the use of the most recently published hospital wage index, which would be the hospital wage indices published in the final rule entitled "Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1999 Rates" **Federal Register** on July 31, 1998 (63 FR 40954).

Response: The statute requires us to use the most recent available area wage indices applicable under section 1886(d)(3)(E) of the Act to establish the limitations, which will be those indices that have been published and in effect for hospitals. The wage indices published in the **Federal Register** on July 31, 1998 were not effective under section 1886(d)(3)(E) of the Act until October 1, 1998. Therefore, when the home health limitations were published, the wage indices in effect for hospitals were those published in August, 1997 and effective October 1, 1997. Therefore, we believe the wage indices published for HHAs are in accordance with the statute.

Comment: Commenters recommended that the Medicare cost report and the Payment Statistical and Reimbursement report should be changed to accommodate the requirement to use the wage index that corresponds to the location where the home health service is furnished.

Response: Both the Medicare cost report and the Payment Statistical and Reimbursement report have been modified to accommodate the site-of-service requirement for applying the wage index.

Comment: Commenters believed it is our intent to allow retroactive application of the August 11, 1998 new and old agency provisions to both Federal FY 1998 and 1999 cost reports.

Response: Before October 1, 1998, providers will have the option of being paid as either an "old" or "new" agency when the surviving provider number had a 12-month cost reporting period ending in Federal FY 1994. After October 1, 1998, providers will be paid on the basis of being an "old" provider only if the surviving provider number had a 12-month cost reporting period ending in Federal FY 1994. Providers will no longer have the option of being "old" or "new" after October 1, 1998.

Comment: Commenters stated that the failure to consider the effects of proration on the calculation on the per-beneficiary limitations is questionable. If proration of the per-beneficiary limitation is to be applied to cost reporting periods covered by the interim payment system, proration must be considered in the calculation of the per-beneficiary limitation.

Response: During the period used for establishing the per-beneficiary limitations, proration of the unduplicated census count was not required. As we stated in the August 11, 1998 **Federal Register**, the proration as specified in the statute applies to the application of the per-beneficiary limitation and not the calculation of the per-beneficiary limitation. The methodology for establishing the per-beneficiary limitations in the statute could have specifically incorporated a proration provision in the methodology, but it did not.

Comment: Commenters stated that an HHA that was required to file two partial year cost reports during Federal FY 1994 solely due to the fact that it was located in a State where it was forced to change fiscal intermediaries should be considered an "old clause v" provider. For example, an HHA operating for several years as a hospital-based HHA has the hospital cease operations during Federal FY 1994. The HHA continues operations under the same ownership as a freestanding entity and later experiences a change in ownership. Due to the State where the HHA is located, the HHA was required to change to a new fiscal intermediary and the partial year cost reports were required to be filed. If the HHA were located in a different State, a change in fiscal intermediary would not have occurred.

Response: Section 1861(v)(1)(L)(vi)(I) of the Act requires that for new providers and those providers without a 12-month cost reporting period ending in FY 1994, the per-beneficiary shall equal the median of those limitations applied to old providers. The situation described in the comment is a provider with less than a 12-month cost reporting period. The provider does not meet the statutory requirements for treatment as an "old clause v" provider.

Comment: Commenters believed that the OASIS adjustment should not be phased out after 1 year. They recommended that we should clarify the start and end dates for the OASIS adjustment and consider extending the adjustment until cost limits can adequately account for the costs associated with complying with OASIS requirements.

Response: We recognize there are various costs associated with complying with OASIS reporting requirements. There are one-time costs as described in the August 11, 1998 **Federal Register** that include training of data entry staff, telephone installation, and other costs associated with setting up OASIS. There are also ongoing OASIS costs that include audits to ensure data accuracy, data entry, editing and auditing, supplies, and telephone costs. We have broken these costs down to the various elements and have grouped the costs into various categories. See section III. F of this notice on how these costs are broken down and the various time frames associated with adjusting the per-visit limitations for these costs.

Comment: The commenters believed that the OASIS adjustment should encompass the full range of costs associated with OASIS implementation.

Response: We agree that any adjustment derived for OASIS should encompass the full range of reasonable costs associated with each necessary expenditure. Section III. F of this notice, fully explains the adjustments to the per-visit limitations for the costs associated with the OASIS requirement.

Comment: The commenters believed that the OASIS adjustment should apply to both the per-visit and per-beneficiary limitations. This adjustment could possibly be included in the market basket index used to update the per-beneficiary limitations for new and old providers.

Response: As we stated in the **Federal Register** dated August 11, 1998 (63 FR 42920), the statute requires the per-beneficiary limitations to be based upon the costs incurred during a particular base year, the Federal FY 1994, and does not contemplate adjustments due to costs incurred subsequent to the base year.

III. Update of Per-Visit Limitations

The methodology used to develop the schedule of per-visit limitations in this notice is the same as that used in setting the limitations effective October 1, 1998. We are using the latest settled cost report data from freestanding HHAs to develop the per-visit cost limitations. We have updated the per-visit cost limitations to reflect the expected cost increases between the cost reporting periods in the database and September 30, 2000 by the home health market basket reduced by 1.1 percentage points as required by section 1861(v)(1)(L)(ix) of the Act, and excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by section 1861(v)(1)(L)(iv) of the Act.

A. Data Used

To develop the schedule of per-visit limitations effective for cost reporting periods beginning on or after October 1, 1999, we extracted actual cost per-visit data from the most recent settled Medicare cost reports for periods beginning on or after October 1, 1994 and settled by March 1999. The majority of the cost reports were from Federal FY 1996. We then adjusted the data using the latest available market basket indices to reflect expected cost increases occurring between the cost reporting periods contained in our database and September 30, 2000, reduced by 1.1 percentage points as required by section 1861(v)(1)(L)(ix) of the Act and excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by section 1861(v)(1)(L)(iv) of the Act.

B. Wage Index

A wage index is used to adjust the labor-related portion of the per-visit limitation to reflect differing wage levels among areas. In establishing the per-visit limitation, we used the FY 1999 hospital wage index effective for hospital discharges on or after March 1, 1999, which is based on 1995 hospital wage data.

Each HHA's labor market area is determined based on the definitions of

Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). Section 1861(v)(1)(L)(iii) of the Act requires us to use the most recently published hospital wage index (that is, the FY 1999 hospital wage index, which was published in the **Federal Register** on February 25, 1999 (63 FR 9378)) without regard to whether those hospitals have been reclassified to a new geographic area, to establish the HHA cost limitations. Therefore, the schedule of per-visit limitations reflects the MSA definitions that are currently in effect under the hospital PPS.

We are continuing to incorporate exceptions to the MSA classification system for certain New England counties that were identified in the July 1, 1992 notice entitled "Schedule of Limits on Home Health Agency Costs Per Visit" (57 FR 29410). These exceptions have been recognized in setting hospital cost limitations for cost reporting periods beginning on and after July 1, 1979 (45 FR 41218) and were authorized under section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21). Section 601(g) of Public Law 98–21 requires that any hospital in New England that was classified as being in an urban area under the classification system in effect in 1979 will be considered urban for purposes of the hospital PPS. This provision is intended to ensure equitable treatment under the hospital PPS. Under this authority, the following counties have been deemed to be urban areas for purposes of payment under the inpatient hospital prospective system:

- Litchfield County, CT in the Hartford, CT MSA.
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Boston-Brockton-Nashua, MA–NH MSA.
- Newport County, RI in the Providence Fall-Warwick, RI MSA

We are continuing to grant these urban exceptions for the purpose of applying the Medicare hospital wage index to the HHA per-visit limitations. These exceptions result in the same New England County Metropolitan Area (NECMA) definitions for hospitals, skilled nursing facilities, and HHAs. In New England, MSAs are defined on town boundaries rather than on county lines but exclude parts of the four counties cited above that would be considered urban under the MSA definition. Under this notice, these four counties are urban under either definition, NECMA or MSA.

Section 1861(v)(1)(L)(iii) requires the use of the area wage index applicable under section 1886(d)(3)(E) of the Act and determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health service is furnished without regard to whether these hospitals have been reclassified to a new geographic area under section 1886(d)(8)(B) of the Act. The wage-index, as applied to the labor portion of the per-visit limitation, must be based on the geographic location in which the home health service is actually furnished rather than the physical location of the HHA itself.

C. Standardization for Wage Levels

After adjustment by the market basket index reduced by 1.1 percentage points, as required by section 1861(v)(1)(L)(ix) of the Act, and excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996, as required by section 1861(v)(1)(L)(iv) of the Act, we divided each HHA's per-visit costs into labor and nonlabor portions. The labor portion of cost (77.668 percent as determined by the market basket) represents the employee wage and benefit factor plus the contract services factor from the market basket. We then divided the labor portion of per-visit cost by the wage index applicable to the HHA's location to arrive at an adjusted labor cost.

D. Adjustment for "Outliers"

We transformed all per-visit cost data into their natural logarithms and grouped them by type of service and MSA, NECMA, or non-MSA location, in order to determine the median cost and standard deviation for each group. We then eliminated all "outlier" costs, which were all per-visit costs less than $10 and per-visit costs more than $800, retaining only those per-visit costs within two standard deviations of the median in each service.

E. Basic Service Limitation

We calculate a basic service limitation to 106 percent of the median labor and nonlabor portions of the per-visit costs of freestanding HHAs for each type of service. (See Table 6a in section VIII.)

F. Offset Adjustment for the Implementation of the Home Health Outcome Assessment Information

In the August 11, 1998 per-visit and per-beneficiary limitations notice (63 FR 42912), we discussed a proposed adjustment for HHAs for the agency collection of OASIS data. Collecting and reporting OASIS is a condition of participation for HHAs who bill Medicare. As we stated in the August 11, 1998 notice, we believe there will be no permanent ongoing incremental costs associated with OASIS collection. We do, however, believe both one-time and ongoing costs are associated with reporting OASIS data. Our proposed OASIS adjustment is based on information from the Medicare Quality and Improvement Demonstration as well as OASIS demonstration data. We assume, for purposes of deriving the OASIS proposed adjustment, that the typical HHA has 486 admissions and 30,000 visits per year and an 18-person staff. OASIS reporting adjustments are unlike the one-time OASIS collection adjustments published in the August 11, 1998 **Federal Register**, which were based only on the number of skilled visits. These reporting adjustments are based on total Medicare visits. This adjustment factor was calculated by including the estimated OASIS costs in the baseline costs used to determine the median of the per-visit costs. The per-beneficiary limitation cannot be adjusted for OASIS.

The three tables below reflect our estimates of the costs to an HHA for OASIS reporting for a typical agency and form the basis for the per-visit OASIS reporting adjustment. Those agencies that exceed the per-visit limit may use the tables in this notice and in our August 11, 1998 notice to calculate an additional adjustment, over the limit, to account for their recurring and nonrecurring costs for OASIS collection and reporting. No adjustment is available for the per-beneficiary limit, which is set explicitly in the statute. Once the OASIS reporting system is fully implemented and we have gathered sufficient data, we plan to review the ongoing cost and time components that constitute the tables below.

TABLE 1.—CONTINUOUS OASIS ADJUSTMENT: BASE

[For data reporting]

Type of adjustment	Source	Formula	Cost per visit
Audits to ensure data accuracy	University of Colorado (CHPR), BLS Occupational Employment Survey (1996), 1994 & 1995 HCFA Cost Report Data.	(((((10 records per month * 12 months)) * .25 hrs) * $25.42)/30,000 avg visits)...professional staff.	$.02542
Data entry, editing, & auditing	University of Colorado(CHPR), Estimated average salary for clerical staff 1994 & 1995 HCFA Cost Report Data.	((((8.5 hrs per month * 12) + (5 hrs per month * 12) + (1 hr per month * 12) + (5 hrs per year)) * $10 per hour) / 30,000 avg visits).	.06
Supplies	HCFA–3006–IFC OASIS Reporting (64 FR 3748), 1994 & 1995 HCFA Cost Report Data.	$250 avg cost/30,000 avg visits	.008333
Ongoing telephone costs	Bell Atlantic 1994 & 1995 HCFA Cost Report Data (for average size HHA).	((($13.14 per month, per line) + ($ 6.38 per month subscriber fee)) * 12 months)/30,000 avg visits).	.007808
Total			$.101561

TABLE 2.—CONTINUOUS OASIS ADJUSTMENT: 5-YEAR DEPRECIATION AVERAGING

[For data reporting]

Type of adjustment	Source	Formula	Cost per visit
Computer Hardware	American Hospital Association's Health Data & Coding Standards Group's "Estimated Useful Lives of Depreciable Hospital Assets {revised 1998}		
—Computer	Average cost for PC with minimal acceptable standards 1994 & 1995 HCFA Cost Report Data	$2050 computer depreciated over 3 years (($2050/3)/30,000 avg visits	$.022777
—Printer	Average cost for printer with minimal acceptable standards 1994 & 1995 HCFA Cost Report Data	$600 printer cost depreciated over 5 years (($600/5)/30,000 avg visits	.004
	First 3 Year's Adjustment	*Note: computer & printer depreciation	.026777
	Next 2 Year's Adjustment	*Note: printer ONLY depreciation	.004
	5-Year Average Adjustment	(((.026777 * 3) + (.004 * 2))/5)	.01766

PERSONAL COMPUTER MINIMAL SPECIFICATIONS

Description	Minimal specifications
Warranty	Minimum 3 year.
Processor	Pentium II Processor running at 400Mhz w/512 Cache.
Operating System	32-bit operating system with Graphical User Interface.
Hard Drive	3 Gb Hard drive minimum.
Memory	32Mb minimum.
CD ROM	14–32X, IDE, integrated sound.
Floppy Drive	3.5" 1.44Mb diskette drive.
Fax Modem	56K v.90 Data/Fax.
Monitor	17" Color Monitor.
Graphics	8Mb AGP.
Mouse	Wheel mouse.
Keyboard	104 key ergonomic keyboard.
Anti Virus	Anti Virus Software.
Management Software	System management client software/license.
Printer	600 dpi Laser printer with cable.

TABLE 3.—OASIS ADJUSTMENT: "ONE-TIME"

[For data reporting]

Type of adjustment	Source	Formula	Cost per visit
Training of Data Entry Staff	BLS Employer Provided Training (Hrs of Training [1995] & an estimated average salary for clerical personnel 1994 & 1995 HCFA Cost Report Data.	(24 hrs * $10)/30,000 avg visits	$.008

TABLE 3.—OASIS ADJUSTMENT: "ONE-TIME"—Continued

[For data reporting]

Type of adjustment	Source	Formula	Cost per visit
Telephone installation	1994 & 1995 HCFA Cost Report Data	($28 processing fee) + ($40 per line connect fee)/30,000 avg visits.	.002266
Total One Time Adjustment			$.010266

Discussion of OASIS Adjustment Tables

These tables reflect our estimates of the costs to an HHA for complying with the requirement to report data using the OASIS data set. We are using three tables based on time parameters. Table 1 shows the continuous OASIS costs for an HHA that include labor costs for the audits that are conducted to ensure data accuracy, labor costs for data entry and the editing and auditing costs associated with it, costs of supplies, and telephone costs. We estimate these continuous OASIS costs to total $.101561 per visit. Table 2 shows the OASIS personal computer costs for those HHAs that are unable to run OASIS because they lack the requisite hardware needed to support automation of it. We estimate this percentage to be 50 percent as explained in the OASIS reporting regulation (HCFA–3006–IFC 64 FR 3748). These costs consist of a personal computer and printer as described in Table 2. For years 1 through 3, HHAs are able to depreciate both their personal computer and printer. We estimate this OASIS cost to be $.0267 per visit. For years 4 and 5, HHAs can only depreciate their printer. We estimate this OASIS cost to be $.004 per visit.

In order for HHAs to keep pace with ever evolving computing standards, to include enhancements to computer hardware and software, as well as future versions of HAVEN's OASIS software, this process of the depreciation of computer hardware is one that would repeat itself every 5 years. In that vein, a yearly average computer hardware depreciation adjustment was computed so as to yield a continuous OASIS adjustment for each year. This was accomplished by multiplying the first 3 years' computer hardware depreciation adjustment of $.026777 by 3, multiplying the following 2 years' computer hardware depreciation adjustment of $.004 by 2, summing those two factors, and dividing that sum by the total number of depreciable years (5) to get a yearly average for the computer hardware depreciation adjustment of $.01766. This yearly average computer hardware depreciation adjustments ($.01766), when added to the base continuous OASIS adjustment ($.10156), results in a total continuous OASIS adjustment of $.11916.

Table 3 shows one-time OASIS costs (year 1) for an HHA that include training of data entry staff and telephone installation. We estimate these one-time OASIS costs to total $.0103 per visit. Any OASIS costs recognized under the revised per-visit limits established by this notice will be reflected in the budget neutral baseline for computing HHA prospective rates when we convert to that payment system.

IV. Updating the Wage Index on a Budget-Neutral Basis

Section 4207(d)(2) of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Public Law 101–508) requires that, in updating the wage index, aggregate payments to HHAs will remain the same as they would have been if the wage index had not been updated. Therefore, overall payments to HHAs are not affected by changes in the wage index values.

To comply with the requirements of section 4207(d)(2) of OBRA '90 that updating the wage indices be budget neutral, we determined that it is necessary to apply a budget neutrality adjustment factor of 1.039 to the labor-related portions of the per-visit and per-beneficiary limitations for cost reporting periods beginning on or after October 1, 1999. This is the first year for which the per-beneficiary limitations have been in place long enough to be affected by an update in the wage indices. Because aggregate payments to HHAs encompass both the per-visit and the per-beneficiary limitations, the budget neutrality adjustment factor had to be determined using both per-visit and per-beneficiary limitations in order to comply with the OBRA '90 budget neutrality requirement. Therefore, overall payments to HHAs are not affected by changes in the wage index values as applied to the labor-related portions of both limitations.

To determine the budget neutrality adjustment factor, we used the data obtained from the 574 providers in the audited cost report data set developed for home health prospective payment. This sample was extrapolated to reflect a national total of HHAs. We believe this is the most current and accurate data we can obtain to reflect the effects of both the per-visit limits and the per-beneficiary limits. This data set includes a count of the number of beneficiaries served by each agency. This information is not available on the data set used to calculate the per-visit limitations. For each agency in the per-visit limitation database, we replaced its current wage index with the one corresponding to the 1982 hospital wage index. For each agency in the per-beneficiary limitation database, we replaced their current wage index with one corresponding to the 1994 hospital wage index. Some MSAs that currently exist did not exist at the time this index was created and therefore have no matching 1982 or 1994 wage index. Since the unmatchable MSAs represented a small percentage of the total visits in the databases, we deleted these agencies from the analysis. We then determined what Medicare program payments would be using the 1982 and 1994 wage indices. We determined payments using the new wage index and adjusted the labor portion of the payment by the factor necessary to match program payments if the 1982 and 1994 wage indices were used with respect to both limitations. (See the examples in section VIII. of this notice regarding the adjustment of the per-visit and per-beneficiary limitations by the wage index and the budget neutrality adjustment factor.)

V. Update of the Per-Beneficiary Limitations

The methodologies and data used to develop the schedule of per-beneficiary limitations set forth in this notice are the same as those used in setting the per-beneficiary limitations that were effective for cost reporting periods beginning on or after October 1, 1998. We have updated the per-beneficiary limitations to reflect the expected cost increases occurring between the cost reporting periods ended during FY 1994 and September 30, 2000, reduced by 1.1 percentage points and excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996.

A. Data Used

The cost report data used to develop the schedule of per-beneficiary limitations set forth in this notice are for cost reporting periods ending in Federal FY 1994, as required by section 1861(v)(1)(L) of the Act. We have updated the per-beneficiary limitations to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 2000 reduced by 1.1 percentage points and excluding any changes in the home health market basket for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996.

The interim payment system sets limitations according to two different methodologies. For agencies with cost reporting periods ending during FY 1994, the limitation is based on 75 percent of 98 percent of the agencies' own reasonable costs and 25 percent of 98 percent of the average census region division costs. At the end of the agency's cost reporting period subject to the per-beneficiary limitations, the labor component of the census region division per-beneficiary limitation is adjusted by a wage index based on where the home health services are furnished.

For new providers and providers without a cost reporting period ending during FY 1994, the per-beneficiary limitation is based on the standardized national median of the blended agency-specific and census region division per-beneficiary limitations described above. See section C. below, which further defines how these limitations are effectuated for new providers and providers without a 12-month cost reporting period ending during FY 1994. This is done by arraying the agencies' per-beneficiary limitations and selecting the median case. The national per-beneficiary limitation is then standardized for the effect of the wage index. The wage index is applied to the labor component of the national per-beneficiary limitation at the end of the cost reporting period beginning on or after October 1, 1999 and is based on where the home health services are furnished.

B. Wage Index

A wage index is used to adjust the labor-related portion of the standardized regional average per-beneficiary limitation and the national per-beneficiary limitation to reflect differing wage levels among areas. In establishing the regional average per-beneficiary limitation and national per-beneficiary limitation, we used the FY 1999 hospital wage index effective with discharges on or after March 1, 1999, which is based on 1995 hospital wage data.

Each HHA's labor market area is determined based on the definitions of MSAs issued by OMB. Section 1861(v)(1)(L)(iii) of the Act requires us to use the current hospital wage index (that is, the FY 1999 hospital wage index, which was published in the **Federal Register** on February 25, 1999 (63 FR 9378)), without regard to whether these hospitals have been reclassified to a new geographic area, to establish the HHA cost limitations. Therefore, the schedules of standardized regional average per-beneficiary limitations and the national per-beneficiary limitation reflect the MSA definitions that are currently in effect under the hospital PPS.

As we did for the per-visit limitations, we are continuing to incorporate exceptions to the MSA classification system for certain New England counties that were identified in the July 1, 1992 notice (57 FR 29410). These exceptions have been recognized in setting hospital cost limitations for cost reporting periods beginning on and after July 1, 1979 (45 FR 41218), and were authorized under section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21). Section 601(g) of Public Law 98–21 requires that any hospital in New England that was classified as being in an urban area under the classification system in effect in 1979 will be considered urban for purposes of the hospital PPS. This provision is intended to ensure equitable treatment under the hospital PPS. Under this authority, the following counties have been deemed to be urban areas for purposes of payment under the inpatient hospital prospective system:

- Litchfield County, CT in the Hartford, CT MSA.
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Boston-Brockton-Nashua, MA–NH MSA.
- Newport County, RI in the Providence Fall-Warwick, RI MSA.

We are continuing to grant these urban exceptions for the purpose of applying the Medicare hospital wage index to the HHA standardized regional average per-beneficiary limitations and the national per-beneficiary limitation. These exceptions result in the same NECMA definitions for hospitals, skilled nursing facilities, and HHAs. In New England, MSAs are defined on town boundaries rather than on county lines but exclude parts of the four counties cited above that would be considered urban under the MSA definition. Under this notice, these four counties are urban under either definition, NECMA or MSA.

Section 1861(v)(1)(L)(iii) of the Act requires the use of the area wage index applicable under section 1886(d)(3)(E) of the Act and determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health service is furnished without regard to whether these hospitals have been reclassified to a new geographic area under section 1886(d)(8)(B) of the Act. The wage index, as applied to the labor portion of the regional per-beneficiary limitation and the labor portion of the national per-beneficiary limitation, must be based on the geographic location in which the home health service is actually furnished.

C. New Providers and Providers Without a 12-Month Cost Reporting Period Ending During Federal Fiscal Year 1994

For a new provider or a provider without a 12-month cost reporting period ending in FY 1994 but for which the first cost reporting period began before October 1, 1998, the per-beneficiary limitation will be a national per-beneficiary limitation, that will be equal to the median of these limitations applied to other HHAs without the 2 percent reduction.

For a new provider whose first cost reporting period begins on or after October 1, 1998, the per-beneficiary limitation will be 75 percent of the national per-beneficiary limitation including the 2 percent reduction.

A new provider or a provider without a 12-month cost reporting period ending in FY 1994, which filed an application for HHA provider status before September 15, 1998, or which was approved as a branch of its parent agency before that date and becomes a subunit of the parent agency or a separate agency on or after that date, will be subject to the national per-beneficiary limitation (without the 2 percent reduction).

VI. Market Basket

The 1993-based cost categories and weights are listed in Table 4 below.

TABLE 4.—1993-BASED COST CATEGORIES, BASKET WEIGHTS, AND PRICE PROXIES

Compensation including allocated Contract Services' Labor	77.668	
Wages and Salaries including allocated Contract Services' Labor.	64.226	HHA Occupational Wage Index.
Employee benefits, including allocated Contract Services' Labor.	13.442	HHA Occupational Benefits Index.
Operations & Maintenance	0.832	CPI-U Fuel & Other Utilities.
Administrative & General, including allocated Contract Services' Non-labor.	9.569	
Telephone	0.725	CPI–U Telephone.
Paper & Printing	0.529	CPI–U Household Paper, Paper Products & Stationery Supplies.
Postage	0.724	CPI–U Postage.
Other Administrative & General, including allocated Contract Services Non-Labor.	7.591	CPI-Services.
Transportation	3.405	CPI–U Private Transportation.
Capital-Related	3.204	
Insurance	0.560	CPI–U Household Insurance.
Fixed Capital	1.764	CPI–U Owner's Equivalent.
Movable Capital	0.880	PPI Machinery & Equipment.
Other Expenses, including allocated Contract Services[1] Non-Labor.	5.322	CPI–U All Items Less Food & Energy.
Total	100.000	

VII. Update of Database

The data used to develop the cost per-visit limitations, the census region per-beneficiary limitations, and the national per-beneficiary limitation were adjusted using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods contained in our database and September 30, 2000, reduced by 1.1 percentage points as required by section 1861(v)(1)(L)(ix) of the Act and excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by section 1861(v)(1)(L)(iv) of the Act. The following inflation factors were used in calculating the per-visit limitations, the census region per-beneficiary limitations, and national per-beneficiary limitations:

TABLE 5.—FACTORS FOR INFLATING DATABASE DOLLARS TO SEPTEMBER 30, 1999

[Inflation adjustment factors[1]]

FY end	1993	1994	1995	1996	1997	1998
October 31	1.13775	1.10901	1.10487	1.10291	1.07843	1.04734
November 30	1.13492	1.10771	1.10487	1.10193	1.07571	1.04500
December 31	1.13210	1.10652	1.10487	1.10076	1.07305	1.04272
January 31	.....	1.12929	1.10568	1.10487	1.09935	1.07042
February 28	.....	1.12650	1.10519	1.10487	1.09771	1.06782
March 31	.....	1.12374	1.10503	1.10487	1.09585	1.06524
April 30	.....	1.12107	1.10492	1.10487	1.09381	1.06263
May 31	.....	1.11850	1.10487	1.10487	1.09162	1.05999
June 30	.....	1.11604	1.10487	1.10487	1.08926	1.05732
July 31	.....	1.11388	1.10487	1.10468	1.08674	1.05472
August 31	.....	1.11202	1.10487	1.10428	1.08405	1.05219
September 30	.....	1.11045	1.10487	1.10369	1.08121	1.04974

[1] Source: The HHA Price Index, produced by HCFA. The forecasts are from Standard and Poor's DRI HCC 1st QTR 1999;@USSIM/TREND25YR0299@CISSIM/Control 1991 forecast exercise which has historical data through 1999:1.

Multiplying nominal dollars for a given FY end by their respective inflation adjustment factor will express those dollars in the dollar levels for the FY ending September 30, 1999.

The procedure followed to develop these tables, based on requirements from BBA, was to hold the June 1994 level for input price index constant through June 1996. From July 1996 forward, we trended the revised index forward using the percentage gain each month from the HCFA Home Health Agency Input Price Index reduced by 1.1 percentage points for cost reporting periods beginning in Federal FY 2000.

A. Short Period Adjustment Factors for Cost Reporting Periods Consisting of Less Than 12 Months

HHAs with cost reporting periods beginning on or after October 1, 1999 may have cost reporting periods that are less than 12 months in length. This may happen, for example, when a new provider enters the Medicare program after its selected FY has already begun or when a provider experiences a change of ownership before the end of the cost reporting period. The data used in calculating the limitations were updated to September 30, 2000. Therefore, the cost limitations published in this notice are for a 12-month cost reporting period beginning October 1, 1999 and ending September 30, 2000. For 12-month cost reporting periods beginning after October 1, 1999 and before October 1, 2000, cost reporting period adjustment factors are provided in Addendum 2. However, when a cost reporting period consists of fewer than 12 months, adjustments must be made to the data that have been developed for use with 12-month cost reporting periods. To promote the efficient dissemination of cost limitations to agencies with cost reporting periods of fewer than 12 months, we are publishing an example and tables to enable intermediaries to calculate the applicable adjustment factors.

Cost reporting periods of fewer than 12 months may not necessarily begin on the first of the month or end on the last day of the month. In order to simplify the process in calculating "short period" adjustment factors, if the short cost reporting period begins before the 16th of the month, we will consider the period to have begun on the 1st of that month. If the start of the cost reporting period begins on or after the 16th of the month, it will be considered to have begun at the beginning of the next month. Also, if the short period ends before the 16th of the month, we will consider the period to have ended at the end of the preceding month; if the short period ends on or after the 16th of the month, it will be considered to have ended at the end of that month.

Example: 1. After approval by its intermediary, an HHA that had a 1994 base year changed its FY end from June 30 to December 31. Due to this change, the HHA had a short cost reporting period beginning on July 1, 2000 and ending on December 31, 2000. The cost reporting period ending during FY 1994 was the cost reporting period ending on June 30, 1994. The limitations that apply to this short period must be adjusted as follows:

Step 1—From Addendum 3, sum the index levels for the months of July 2000 through December 2000: 6.89916

Step 2—Divide the results from Step 1 by the number of months in short period: 6.89916÷6=1.14986

Step 3—From Addendum 3, sum the index levels for the months in the common period of October 1999 through September 2000: 13.6905

Step 4—Divide the results in Step 3 by the number of months in the common period: 13.6905 × 12 = 1.140875

Step 5—Divide the results from Step 2 by the results from Step 4. This is the adjustment factor to be applied to the published per-visit and per-beneficiary limitations: 1.14986 × 1.140875 = 1.00788

Step 6—Apply the results from Step 5 to the published limitations. For example:

a. Urban skilled nursing per-visit labor portion

$78.07 × 1.00788 = $78.69

b. Urban skilled nursing per-visit nonlabor portion

$22.45 × 1.00788 = $22.63

c. West South Central Census region division labor portion per-beneficiary limitation

$4,667.91 × 1.00788 = $4,704.69

d. West South Central Census region division nonlabor portion per-beneficiary limitation

$1,342.17 × 1.0788 = $1,447.93

Step 7—Also apply the results from Step 5 to the calculated agency-specific per-beneficiary amount that has been updated to September 30, 2000 using Table 2.

B. Adjustment Factor for Reporting Year Beginning After October 1, 1999 and Before October 1, 2000

If an HHA has a 12-month cost reporting period beginning on or after November 1, 1999, the per-visit limitation and the adjusted census region division per-beneficiary limitation and the agency-specific per-beneficiary limitation or the adjusted national per-beneficiary limitations are again revised by an adjustment factor from Addendum 2 that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index reduced by 1.1 percentage points as required by section 1861(v)(1)(L)(ix) of the Act and excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by section 1861(v)(1)(L)(iv) of the Act and is used to account for inflation in costs that will occur after the date on which the per-beneficiary limitations become effective.

In adjusting the agency-specific per-beneficiary limitation for the market basket increases since the end of the cost reporting period ending during Federal FY 1994, the intermediary will increase the agency-specific per-beneficiary limitation to September 30, 2000. That way when the limitations need to be further adjusted for the cost reporting period, all elements of the limitation calculations can be adjusted by the same factor. For example, if an HHA is providing services in the Dallas MSA only and has a cost reporting period beginning January 1, 2000, its occupational therapy per-visit limitation and its per-beneficiary limitation would be further adjusted as follows:

COMPUTATION OF REVISED PER-VISIT LIMITATIONS FOR OCCUPATIONAL THERAPY

Adjusted per-visit limitation	$113.24
Adjustment factor from Addendum 2	1.00394
Revised per-visit limitation	$113.69

[1] Adjusted by appropriate wage index applicable to the Dallas MSA and the budget neutrality adjustment factor of 1.039.

COMPUTATION OF REVISED PER-BENEFICIARY LIMITATIONS FOR AN HHA WITH A 1994 BASE PERIOD

Agency-specific component inflated through December 31, 2000: $5,560.00 × .98 × .75	$4,086.60
West south central division component: $5,886.10[1] × .98 × .25	[1] $1,442.091
Blended per-beneficiary limitation for Dallas-MSA	$5,528.69
Adjustment factor from Addendum 2	1.00394
Adjusted blended per-beneficiary limitation for Dallas MSA	$5,550.47

[1] Adjusted by the appropriate wage index applicable to the Dallas MSA and the budget neutrality factor of 1.039.

COMPUTATION OF REVISED PER-BENEFICIARY LIMITATION FOR A NEW PROVIDER WHOSE FIRST COST REPORTING PERIOD BEGAN BEFORE OCTOBER 1, 1997 IN THE DALLAS MSA

National per-beneficiary limitation for Dallas MSA[1]	[1] $3,513.73
Adjustment factor from Addendum 2	1.00394
Adjusted national per-beneficiary limitation	$3,527.57

[1] From Table 6C Adjusted by the appropriate wage index applicable to the Dallas MSA and the budget neutrality factor of 1.039.

VIII. Schedules of Per-Visit and Per-Beneficiary Limitations

The schedules of limitations set forth below apply to cost reporting periods beginning on or after October 1, 1999. The intermediaries will compute the adjusted limitations using the wage indicies published in Addenda 1a and 1b for each MSA and non-MSA for which the HHA provides services to Medicare beneficiaries. The intermediary will notify each HHA it services of its applicable limitations for the area(s) where the HHA furnishes HHA services to Medicare beneficiaries. Each HHA's aggregate limitations cannot be determined prospectively but depend on each HHA's Medicare utilization (visits and unduplicated

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census count) by location of the HHA services furnished for the cost reporting periods subject to this document.

Section 1861(v)(1)(L)(vi)(II) of the Act requires the per-beneficiary limitations to be prorated among HHAs for Medicare beneficiaries who use services furnished by more than one HHA. The per-beneficiary limitation will be prorated based on a ratio of the number of visits furnished to the individual beneficiary by the HHA during its cost reporting period to the total number of visits furnished by all HHAs to that individual beneficiary during the same period.

The proration of the per-beneficiary limitation will be done based on the fraction of services the beneficiary received from the HHA. For example, if an HHA furnished 100 visits to an individual beneficiary during its cost reporting period ending September 30, 2000, and that same individual received a total of 400 visits during that same period from that and other agencies, the HHA would count the beneficiary as a .25 unduplicated census count of Medicare patients for the cost reporting period ending September 30, 2000.

The HHA costs that are subject to the per-visit limitations include the cost of medical supplies routinely furnished in conjunction with patient care. Durable medical equipment, orthotic, prosthetic, and other medical supplies directly identifiable as services to an individual patient are excluded from the per-visit costs and are paid without regard to the per-visit schedule of limitations. (See Chapter IV of the Home Health Agency Manual (HCFA Pub. II).)

The HHA costs that are subject to the per-beneficiary limitations include the costs of medical supplies routinely furnished and nonroutine medical supplies furnished in conjunction with patient care. Durable medical equipment directly identifiable as services to an individual patient is excluded from the per-beneficiary limitations and is paid without regard to this schedule of per-beneficiary limitations.

The intermediary will determine the aggregate limitations for each HHA according to the location where the services are furnished by the HHA. Medicare payment is based on the lower of the HHA's total allowable Medicare costs plus the allowable Medicare costs of nonroutine medical supplies, the aggregate per-visit limitation plus the allowable Medicare costs of nonroutine medical supplies, or the aggregate per-beneficiary limitation. An example of how the aggregate limitations are computed for an HHA providing HHA service to Medicare beneficiaries in both Dallas, Texas, and rural Texas is as follows:

Example: HHA X, an HHA located in Dallas, TX, has 11,550 skilled nursing visits, 4,300 physical therapy visits, 8,900 home health aide visits and an unduplicated census count of 400 Medicare beneficiaries in the Dallas MSA and 5,000 skilled nursing visits, 2,300 physical therapy visits, 4,300 home health aide visits, and an unduplicated census count of 200 Medicare beneficiaries in rural Texas during its 12-month cost reporting period ending September 30, 2000. The unadjusted agency-specific per-beneficiary amount for the base period (cost reporting period ending September 30, 1994) is $4,825.00. The aggregate limitations are calculated as follows:

DETERMINING THE AGGREGATE PER-BENEFICIARY LIMITATION

MSA/Non-MSA area	Per-beneficiary limitation	Unduplicated census count of Medicare beneficiaries	Total per-beneficiary limitation
Dallas, TX	($4,825.00 × 1.11045 × .98 ×.75) plus (($4,667.91 × .9369 × 1.039) plus $1,342.17)) × .98 × .25.	400	$2,152,064
Rural, TX	($4,825.00 × 1.11045 .98 × .75) plus (($4,667.91 × .7565 × 1.039) plus 1,342.17)) × .98 × .25.	200	1,033,162
Aggregate Limitation			3,185,226

DETERMINING THE AGGREGATE PER-VISIT LIMITATION

Area/Type of visit	Number of visits	Per-visit limit [1]	Total limit
Dallas-MSA:			
Skilled nursing	11,550	$ 98.45	$1,137,098
Physical therapy	4,300	112.84	485,212
Home health aide	8,900	45.36	403,704
Rural Texas:			
Skilled nursing	5,000	92.33	461,650
Physical therapy	2,300	105.71	243,133
Home health aide	4,300	38.80	166,840
Aggregate limitation			$2,897,637

[1] The per-visit has been adjusted by the appropriate wage index and the budget neutrality adjustment factor of 1.039.

For the cost reporting period ending September 30, 2000, the HHA incurred $2,935,500 in Medicare costs for the discipline services and $335,000 for the costs of Medicare nonroutine medical supplies. Medicare reimbursement for this HHA would be $3,185,226, which is the lesser of the actual costs of $2,935,500 plus the costs of nonroutine medical supplies of $335,000 or the aggregate per-visit limitation of $2,897,637 plus the costs of nonroutine medical supplies of $335,000 or the aggregate per-beneficiary limitation of $3,185,226.

Before the limitations are applied during settlement of the cost report, the HHA's actual costs are reduced by the amount of individual items of costs (for example, administrative compensation and contract services) that are found to be excessive under the Medicare principles of provider payment. That is, the intermediary reviews the various reported costs, taking into account all the Medicare payment principles, for example, the cost guidelines for physical therapy furnished under arrangements (see § 413.106) and the limitation on costs that are substantially out of line with those of comparable HHAs (see § 413.9).

TABLE 6A.—PER-VISIT LIMITATIONS

Type of visit	Per-Visit limitation	Labor portion	Nonlabor Portion [1]
MSA (NECMA) location:			
Skilled nursing care	$100.52	$78.07	$22.45
Physical therapy	115.22	89.49	25.73
Speech therapy	116.71	90.65	26.06
Occupational therapy	115.63	89.81	25.82
Medical social services	140.99	109.51	31.49
Home health aide	46.32	35.98	10.34
NonMSA location:			
Skilled nursing care	110.74	86.01	24.73
Physical therapy	126.78	98.47	28.31
Speech therapy	132.64	103.02	29.62
Occupational therapy	132.12	102.61	29.50
Medical social services	173.67	134.89	38.78
Home health aides	46.53	36.14	10.39

[1] Nonlabor portion of per-visit limitations for HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands is increased by multiplying it by the following cost-of-living adjustment factors.

Location	Adjustment factor
Alaska	1.250
Hawaii:	
County of Honolulu	1.250
County of Hawaii	1.150
County of Kauai	1.225
County of Maui	1.225
County of Kalawao	1.225
Puerto Rico	1.100
Virgin Islands	1.200

TABLE 6B.—STANDARDIZED PER-BENEFICIARY LIMITATION BY CENSUS REGION DIVISION, LABOR/NONLABOR

Census region division	Labor component	Nonlabor component
New England (CT, ME, MA, NH, RI, VT)	$2,797.47	$804.37
Middle Atlantic (NJ, NY, PA)	2,073.06	596.06
South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	3,127.39	899.23
East North Central (IL, IN, MI, OH, WI)	2,535.84	729.14
East South Central (AL, KY, MS, TN)	4,808.31	1,382.55
West North Central (IA, KS, MN, MO, NE, ND, SD)	2,435.65	700.32
West South Central (AR, LA, OK, TX)	4,667.91	1,342.17
Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	3,076.15	884.49
Pacific (AK, CA, HI, OR, WA)	2,383.02	685.20

TABLE 6C.[1]—STANDARDIZED PER-BENEFICIARY LIMITATION FOR NEW AGENCIES AND AGENCIES WITHOUT A 12-MONTH COST REPORT ENDING DURING FY 1994 FOR WHICH THE FIRST COST REPORTING BEGAN BEFORE OCTOBER 1, 1998

	Labor component	Nonlabor component
National	$2,786.53	$801.21

[1] This is the national rate set at 100 percent.

TABLE 6D.[2]—STANDARDIZED PER-BENEFICIARY LIMITATIONS FOR NEW PROVIDERS FOR WHICH THE FIRST COST REPORTING PERIOD BEGINS ON OR AFTER OCTOBER 1, 1998

	Labor component	Nonlabor component
National	$2,048.10	$588.89

[2] This is the national rate set at 75 percent of 98 percent of Table 6c.

TABLE 6E.—STANDARDIZED PER-BENEFICIARY LIMITATIONS FOR PUERTO RICO AND GUAM

	Labor component	Nonlabor component
Puerto Rico	$2,030.66	$583.88
Guam	1,962.40	564.25

IX. Regulatory Impact Statement

A. Introduction

We have examined the impacts of this notice with comment as required by Executive Order 12866, the Regulatory Flexibility Act (RFA) (Pub. L. 96–354), and the Unfunded Mandates Reform Act

of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity).

For purposes of the RFA, small entities include small business as defined under the Small Business Administration, nonprofit organizations, and small governmental jurisdictions. Most HHAs are considered small entities either by nonprofit status or by meeting the Small Business Administration's standard for a small business (annual revenues of $5 million or less) .

Table 7 illustrates the Distribution of HHAs by type participating in Medicare as of April 13, 1999.

TABLE 7.—NUMBER OF HHAS BY PROVIDER TYPE

HHA provider type	Number
Visiting Nurse Association	484
Combination Gov't and Voluntary	34
Official Health Agency	1067
Rehab Facility-Based	2
Hospital-Based	2486
Skilled Nursing Facility-Based	174
Other	4612
Total	8859

Source: HCFA—On Line Survey Certification and Reporting System Standard Report 10—4/13/99

The following RFA analysis, together with the rest of this preamble, explains the rationale for and purposes of this notice, analyzes alternatives, and presents the measures we propose to minimize the burden on small entities.

We anticipate this notice, in total, will not have a significant impact on a substantial number of small entities. The policies set forth in this notice are consistent with those set forth in the "Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning On or After October 1, 1998" (63 FR 42912) as subsequently amended by section 5101 of OCESAA '99, and the financial effect os this notice on HHAs is confined to our rebasing of the per-visit limitations. We estimate that the financial effect of this notice will be a cost to the Medicare program of approximately $40 million in Federal FY 2000, which amount does not meet the $100 million RFA threshold for an economically significant rule.

In addition, we have examined the options for lessening the burden on small entities; however, the statute does not allow for any exceptions to these limitations based on size of entity. Therefore, there are no options to lessen the regulatory burden that are consistent with the statute. Although this notice does not meet the $100 million threshold for an RFA analysis, we are preparing a voluntary one because this notice with comment is an integral part of the HHA IPS.

Section 202 of the Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of $100 million (adjusted annually for inflation). We believe that there are no costs associated with this notice with comment that apply to these governmental and private sectors. Therefore, the law does not apply.

This notice with comment is not a major rule as defined in title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866. However, we are preparing a regulatory impact statement because this notice with comment is an integral part of the HHA IPS.

1. Background

This notice with comment period sets forth revised schedules of limitations on HHA costs that may be paid under the Medicare program for cost reporting periods beginning on or after October 1, 1999 and portions of cost reporting periods beginning before October 1, 2000. These limitations replace the limitations that were set forth in our August 11, 1998 notice with comment period (63 FR 42912).

The methodology used to develop the schedule of per-visit limitations in this notice is the same as that used in setting the limitations effective October 1, 1998. We are using the latest settled cost report data from freestanding HHAs to develop the per-visit cost limitations. We have updated the per-visit cost limitations to reflect the expected cost increases between the cost reporting periods in the database and September 30, 2000 reduced by 1.1 percentage points as required by section 1861(v)(1)(L)(ix) of the Act and excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by section 1861(v)(1)(l)(iv) of the Act.

To develop the schedule of per-visit limitations effective for cost reporting periods beginning on or after October 1, 1999, we extracted actual cost per-visit data from the most recent settled Medicare cost reports for periods beginning on or after October 1, 1994 and settled by March 1999. The majority of the cost reports were from Federal FY 1996. We then adjusted the data using the latest available market basket indices to reflect expected cost increases occurring between the cost reporting periods contained in our database and September 30, 2000, reduced by 1.1 percentage points as required by section 1861(v)(1)(L)(ix) of the Act and excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by section 1861(v)(1)(L)(iv) of the Act.

A wage index is used to adjust the labor-related portion of the per-visit limitation to reflect differing wage levels among areas. In establishing the per-visit limitation, we used the FY 1999 hospital wage index, which is based on 1995 hospital wage data.

The methodologies and data used to develop the schedule of per-beneficiary limitations set forth in this notice are the same as those used in setting the per-beneficiary limitations that were effective for cost reporting periods beginning on or after October 1, 1998. We have updated the per-beneficiary limitations to reflect the expected cost increases occurring between the cost reporting periods ended during Federal FY 1994 and September 30, 2000, excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by law.

The cost report data used to develop the schedule of per-beneficiary limitations set forth in this notice are for cost reporting periods ending in Federal FY 1994, as required by section 1861(v)(1)(L) of the Act. We have updated the per-beneficiary limitations to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 2000 (excluding, as required by statute, any changes in the home health market basket for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996).

A wage index is used to adjust the labor-related portion of the standardized regional average per-beneficiary limitation and the national per-beneficiary limitation to reflect differing wage levels among areas. In establishing the regional average per-beneficiary limitation and national per-beneficiary limitation, we used the FY 1999 hospital wage index effective with discharges on or after March 1, 1999, which is based on 1995 hospital wage data.

For new providers and providers without a 12-month cost reporting period ending in Federal FY 1994 but for which the first cost reporting period began before October 1, 1998, the per-beneficiary limitation will be a national per-beneficiary limitation that will be equal to the median of these limitations applied to other HHAs without the two percent reduction required in the original BBA legislation.

For new providers for which the first cost reporting period begins on or after October 1, 1998, the per-beneficiary limitation will be the 75 percent of the national per-beneficiary limitations with the 2 percent reduction.

A new provider or a provider without a 12-month cost reporting period in Federal FY 1994 that filed an application for home HHA provider status before September 15, 1998, or that was approved as a branch of its parent agency before that date and becomes a subunit of the parent agency or a separate agency on or after that date will be subject to the national per-beneficiary limitation without the 2 percent reduction.

The requirements for the per-visit and per-beneficiary limitations are set forth in Section 1861(v)(1)(L) of the Act. (See Section I of this notice for an expanded discussion.) These requirements are numerically explicit and allow us no administrative latitude. Thus, it is not possible to consider other alternatives for these limitations.

2. Effects of This Notice With Comment on HHAs

This notice updates the HHA IPS for Federal FY 2000. As we mentioned earlier in this regulatory impact analysis, we estimate that there will be a cost to the Medicare program of approximately $40 million in Federal FY 2000. Payments by Medicare under this system of payment limitations must be the lower of an HHA's actual reasonable allowable costs, per-visit limitations in the aggregate, or a per-beneficiary limitation in the aggregate. The settled cost report data that we are using have been adjusted by the most recent market basket factors, reduced by 1.1 percentage points as required by section 1861(v)(1)((l)(ix) of the Act, and excluding market basket increases for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996, as required by section 1861(v)(1)(L)(iv) of the Act to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 2000.

The following quantitative analysis presents the projected effects of the statutory changes effective for Federal FY 2000. We are unable to identify the effects of the changes to the cost limits on individual HHAs. However, Table ■ below illustrates the proportion of HHAs that are likely to be affected by the limits. This table is a model of our estimate of the revision in the schedule of the per-visit and per-beneficiary limitations.

Table 8 represents the projected effects of the HHA IPS and is based on the 574 providers in the audited cost report sample developed for HHA PPS extrapolated into a national weighted total of 7,161 HHAs. This sample has been adjusted by the most recent market basket factors to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 2001. Table 8 reflects cost reporting periods beginning Federal FY 2000 and those portions of cost reporting periods after October 1, 2000 that have a cost reporting period beginning in Federal FY 2000. These portions will be subject to the limits in this notice minus 15 percent.

Column one of this table divides HHAs by a number of characteristics including provider type, region, and urban versus rural location. For purposes of this impact table four regions have been defined: Northeast, South, Midwest, and West. The Northeast Region consists of Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands. The South Region consists of Alabama, Arkansas, the District of Columbia, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The Midwest Region consists of Iowa, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, North Dakota, Nebraska, Ohio, South Dakota, and Wisconsin. The West Region consists of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming.

This table takes into account the behaviors that we believe HHAs will engage in to reduce the adverse effects of section 4602 of the BBA on their allowable costs. We believe these behavioral offsets might include an increase in the number of low-cost beneficiaries served, a general decrease in the number of visits provided, and earlier discharge of patients who are not eligible for Medicare home health benefits because they no longer need skilled services but have only chronic, custodial care needs. We believe that, on average, these behavioral offsets will result in a 65 percent reduction in the effects these limits might otherwise have on an individual HHA for the per-beneficiary limitations and a 50 percent reduction for the per-visit limitations.

Column one of this table divides HHAs by a number of characteristics including their ownership, whether they are old or new agencies, whether they are located in an urban or rural area, and the region in which they are located. Column two shows the number of agencies that fall within each characteristic or group of characteristics. For example, there are 2,549 rural freestanding HHAs in our database. Column three shows the percent of HHAs within a group that are projected to exceed the per-visit limitation (and therefore will not be affected by the per-beneficiary limitation) before the behavioral offsets are taken into account. Column four shows the average percent of costs over the per-visit limitation for an agency in that cell, including behavioral offsets. Column five shows the percent of HHAs within a group that are projected to exceed the per-beneficiary limitation (and therefore will not be affected by the per-visit limitation) before the behavioral offsets are taken into account. Column six shows the average percent of costs over the per-beneficiary limitation for an agency in that category, including behavioral offsets. It is important to note that in determining the expected percentage of an agency's costs exceeding the cost limitations, column four (percent of costs exceeding visit limits) and column six (percent of costs exceeding beneficiary limits) are not to be added together. Either the per-visit limitation or the per-beneficiary limitation is exceeded, but not both.

IMPACT OF TABLE 8.—THE IPS HHA LIMITS, EFFECTIVE 10/1/99

	Number of agencies	Percent of agencies exceeding visit limits	Percent of costs exceeding visit limits	Percent of agencies exceeding beneficiary limits	Percent of costs exceeding beneficiary limits
GEOGRAPHIC AREA					
ALL AGENCIES	7161	14.9	1.3	78.6	12.1
FREESTANDING	4703	6.8	0.3	86.0	14.1
HOSPITAL-BASED	2458	30.4	2.8	64.3	9.1
OLD AGENCIES	4467	17.2	1.6	78.2	10.3
FREESTANDING	2467	7.9	0.4	87.6	11.5
HOSPITAL-BASED	2000	28.8	2.7	66.7	9.1
NEW AGENCIES*	2693	10.9	0.7	79.2	17.2
FREESTANDING	2235	5.5	0.3	84.3	18.4
HOSPITAL-BASED	458	37.2	4.1	54.3	9.4
ALL URBAN	4612	15.2	1.5	79.1	12.0
FREESTANDING	3397	7.1	0.4	85.7	14.0
HOSPITAL BASED	1215	38.0	3.0	60.4	9.1
OLD AGENCIES	2574	16.0	1.7	82.0	10.2
FREESTANDING	1611	8.9	0.5	88.3	11.4
HOSPITAL-BASED	963	37.6	2.9	62.4	9.1
NEW AGENCIES	2038	12.2	0.9	74.8	16.9
FREESTANDING	1786	5.5	0.3	83.4	18.0
HOSPITAL-BASED	252	39.3	4.0	52.9	8.8
ALL RURAL	2549	14.2	0.8	77.7	12.4
FREESTANDING	1306	5.9	0.1	86.7	14.3
HOSPITAL-BASED	1243	23.0	2.1	68.2	9.3
OLD AGENCIES	1894	10.1	1.0	80.2	10.5
FREESTANDING	857	6.0	0.1	86.1	11.6
HOSPITAL-BASED	1037	20.6	2.1	70.6	9.1
NEW AGENCIES	655	10.9	0.2	80.4	18.9
FREESTANDING	449	5.7	0.0	88.0	20.3
HOSPITAL-BASED	206	34.7	1.4	55.9	11.6
BY: REGION					
OLD AGENCIES	4467	17.2	1.6	78.2	10.3
MIDWEST	1298	16.9	2.6	78.6	6.8
NORTHEAST	649	7.4	0.3	89.2	10.3
SOUTH	1857	17.0	1.2	80.1	12.0
WEST	662	28.4	4.1	61.4	8.4
NEW AGENCIES	2693	10.9	0.7	79.2	17.2
MIDWEST	607	15.2	1.0	73.1	10.9
NORTHEAST	247	19.6	2.4	60.2	9.9
SOUTH	1316	7.2	0.4	83.5	21.4
WEST	524	11.3	0.3	84.4	16.2

*New Agencies Are Those Without a 12-Month Cost Reporting Period Beginning in Federal FY 1994.

B. Percent of Costs Exceeding Per-Visit Limitations (Column Four)

Results from this column indicate that, for an HHA that reaches the per-visit limitation first, the average percent of the agency's costs exceeding the per-visit limitation for an HHA in the "all agencies" category is 1.3 percent after the behavioral offset. This relatively low number should not be surprising since the intent of section 4602 of the BBA is to control the soaring expenditures of the Medicare home health benefit that have been driven largely by increased utilization rather than the price per visit. For the all agencies category sorted by provider type, the average percent of freestanding HHAs exceeding the per-visit limitation is 0.3 percent; for hospital-based HHAs, it is 2.8 percent. This also should not be surprising as hospital-based HHAs have historically had higher overhead costs. All discussion of the analysis of the per-visit limitation is based on the fact that HHAs in these categories reached the per-visit limitation and therefore are not affected by the per-beneficiary limitation. For the overall old agencies category (HHAs that filed a 12-month cost report that ended during Federal FY 1994), the average percent of the agency's costs exceeding the per-visit limitation is 1.6 percent; for freestanding HHAs, it is 0.4 percent; and for hospital-based HHAs, it is 2.7 percent. For the overall new agencies category (such as HHAs that did not have a 12-month cost reporting period ended in Federal FY 1994 or that entered the Medicare program after Federal FY 1994), the average percent of the agency's costs exceeding the per-visit limitation is 0.7 percent, for freestanding HHAs, it is 0.3 percent; and for hospital-based HHAs, it is 4.1 percent.

For the urban areas HHA category, the average percent of the agency's costs exceeding the per-visit limitation is 1.5 percent. For freestanding HHAs, it is 0.4 percent; and for hospital-based HHAs, it is 3.0 percent. For the rural areas HHA category, the average percent of such agency's cost exceeding the per-visit limitation is 0.8 percent; for freestanding HHAs, it is 0.1 percent; and for hospital-based HHAs, it is 2.1 percent.

For the old agencies urban provider type category, the average percent of the agency's costs exceeding the per-visit limitation for freestanding HHAs is 0.5 percent; and for hospital-based HHAs, it is 2.9 percent. For the old agencies rural provider type, the average percent of the agency's costs exceeding the per-visit limitation for freestanding HHAs is 0.1 percent; and for hospital-based HHAs, is 2.1 percent. For the old agencies region category, the average percent of the agency's costs exceeding the per-visit limitation ranges from a low of 0.3 percent in the Northeast region to a high of 4.1 percent in the West region. The other regions range between 1.2 and 2.6 percent.

For the new agencies urban provider type category, the average percent of the agency's costs exceeding the per-visit limitation for freestanding HHAs is 0.3 percent while for hospital-based HHAs it is 4.0 percent. For the new agencies rural provider type category the average percent; of the agency's costs exceeding the per-visit limitation for freestanding HHAs is 0.0 percent and for hospital based HHAs is 1.4 percent. For the new agencies region category, the average percent of the agency's costs exceeding the per-visit limitation ranges from a low of 0.3 percent in the West region to a high of 2.4 percent in the Northeast region. The other regions range between 0.4 percent and 1.0 percent.

C. Percent of Costs Exceeding Per-Beneficiary Limitation (Column Six)

Results from this column indicate that, for an HHA that reaches the per-beneficiary limitation first, the average percent of the agency's costs exceeding the per-beneficiary limitation for an HHA in the "all agencies" category is 12.1 percent after the behavioral offset; for freestanding HHAs, it is 14.1 percent; and for hospital-based HHAs, it is 9.1 percent. All discussion of the analysis of the per-beneficiary limitation is based on the fact that HHAs in these categories reached the per-beneficiary limitation and therefore are not affected by the per-visit limitation.

For the overall old agencies category (HHAs that filed a 12-month cost report that ended during Federal FY 1994), the average percent of the agency's costs exceeding the per-beneficiary limitation is 10.3 percent; for freestanding HHAs, it is 11.5 percent; and for hospital-based HHAs it is 9.1 percent. For the overall new agencies category (including HHAs that did not have a 12-month cost reporting period ended in Federal FY 1994 or that entered the Medicare program after Federal FY 1994), the average percent of the agency's costs exceeding the per-beneficiary limitation is 17.2 percent; for freestanding HHAs, it is 18.4 percent; and for hospital-based HHAs, it is 9.4 percent. Old agencies will not be affected as much by the per-beneficiary limitations as the new agencies, on average, because the new agencies have, in general, reported higher costs per patient related to higher levels of utilization. Moreover, the statutory provision for old providers that bases 75 percent of the limitation on their own cost experience would implicitly result in less of an impact than experienced by the new providers whose limitations are based on a national median that may be higher or lower than their previous costs. Also, we believe the differing impacts of these limits is an inherent result of beginning to draw unexplained variation among providers utilization and cost closer to national norms that existed before the rapid increase in home health expenditures of the post '93 to '94 period.

For the urban areas HHA category, the average percent of the agency's costs exceeding the per-beneficiary limitation is 12.0 percent; for freestanding HHAs, it is 14.0 percent; and for hospital-based HHAs, it is 9.1 percent. For the rural areas HHA category, the average percent of the agency's costs exceeding the per-beneficiary limitation is 12.4 percent; for freestanding HHAs, it is 14.3 percent; and for hospital-based HHAs, it is 9.3 percent. For the old agencies urban provider type category, the average percent of the agency's costs exceeding the per-beneficiary limitation for freestanding HHAs is 11.4 percent; and for hospital-based HHAs is 9.1 percent. For the old agencies rural provider type category, the average percent of the agency's costs exceeding the per-beneficiary limitation for freestanding HHAs is 11.6 percent; and for hospital-based HHAs is 9.1 percent. For the old agencies region category, the average percent of the agency's costs exceeding the per-beneficiary limitation ranges from a low of 6.8 percent in the Midwest region to a high of 12.0 percent in the South region. The other regions range between 8.4 percent and 10.3 percent. The differences between regions reflect the pattern of highly disparate costs that have been reported historically between geographic areas that cannot be explained by differences in patient characteristics but appear more related to patterns of HHA business practices. The impact tracks the pre-HH IPS pattern of regions with highest costs.

For the new agencies urban provider type category, the average percent of the agency's costs exceeding the per-beneficiary limitation for freestanding HHAs is 18.0 percent; and for hospital based HHAs, it is 8.8 percent. For the new agencies rural provider type category the average percent of the agency's costs exceeding the per-beneficiary limitation for freestanding HHAs is 20.3 percent; and for hospital-based HHAs is 11.6 percent. For the new agencies region category, the average percent of the agency's costs exceeding the per-beneficiary limitation ranges from a low of 9.9 percent in the Northeast region to a high of 21.4 percent in the South region. The other regions range from 10.9 percent to 16.2 percent. In general, newer agencies in regions that have exceptionally high cost histories experience a bigger impact due to their being limited to the national median.

Although there is considerable variation in these limitations, we believe this is a reflection of the wide variation in payments that have been recognized under the present cost reimbursement system. Moreover, we believe the differing impacts of these limitations is an inherent result of beginning to draw unexplained variation among providers closer to which existed before the rapid increase in home health expenditures of the post '93 to '94 period. Because this rule limits payments to HHAs to the lesser of actual cost, the per-visit limitations, or the per-beneficiary limitation, we have estimated the combined impact of these limitations in terms of the number of agencies affected to a greater or lesser extent by both limits.

We estimate that in Federal FY 2000, 15 percent of the HHAs will be limited by the per-visit limitation while 79 percent will be limited to the per-beneficiary limitation. It is important to note again that an HHA is affected either by the per-visit limitation or the per-beneficiary. They will not be affected by both.

Medicare payments to managed care plans are based on fee-for-service Medicare benefits. Although we do not know what home health services are supplied for these payments, we know how much we pay the plans as a result of fee-for-service home health payments. Thus, managed care payments are figured in as part of our cost/savings estimates. Managed care plans are not expected to reduce home health services as a result of this notice. For Federal FY 2000, we estimate that 20 percent of the Medicare cost will be for payments to managed care plans, our estimate for Federal FY 2003 is 26 percent.

We believe that the effect of this notice on State Medicaid programs overall will be small. However, because of the flexibility and variation in State Medicaid policies and service delivery systems as well as differences in provider behavior in reaction to these limits, it is impossible to predict which States will be affected or the magnitude of the impact.

We have reviewed this notice under the threshold criteria of Executive Order 12612. We have determined that it does

not significantly affect the rights, roles, and responsibilities of States.

X. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comments before a collection of information requirement is submitted to the Office of Management and Budget for review and approval. This document does not impose information collection and record keeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

XI. Other Required Information

A. Waiver of Proposed Notice

In adopting notices such as this, we ordinarily publish a proposed notice in the **Federal Register** to provide a period for public comment before the provisions of the notice take effect. However, we may waive this procedure if for good cause we find that prior notice and comment are impracticable, unnecessary, or contrary to public interest. (5 USC section 553(b)(B)).

Section 1861(v)(1)(L) of the Act requires that the Secretary establish revised HHA cost limits for cost reporting periods beginning on or after July 1, 1991 and annually thereafter (except for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996). In accordance with the statute, we have used the same methodology to develop the schedules of limits that were used in setting the limits effective for cost reporting periods beginning on or after October 1, 1997. These cost limits have been updated by the appropriate market basket adjustment factor to reflect the cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 2000 as required by section 1861(v)(1)(L)(ix) of the Act excluding market basket increases, reduced by 1.1 percentage points with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996 as required by section 1861(v)(1)(L)(iv) of the Act. In addition, as required under section 1861(v)(1)(L) of the Act, we have used the most recently published hospital wage index.

Therefore, for good cause we find that it was unnecessary to undertake notice and comment procedures. Generally, the methodology used to develop these schedules of limits is dictated by statute and does not require the exercise of discretion. These methodologies have also been previously published for public comment. It was also necessary to inform HHAs of their new cost limitations in a timely manner so that HHAs could benefit from the most recently published wage index and updated market basket adjustment factor.

Accordingly, for good cause, we waive prior notice and comment procedures. However, we are providing a 60-day comment period for public comment, as indicated at the beginning of this notice.

B. Public Comments

Because of the large number of items of correspondence we normally receive on a notice with comment period, we are not able to acknowledge or respond to them individually. However, we will consider all comments concerning the provisions of this notice that we receive by the date and time specified in the "**DATES**" section of this notice, and we will respond to those comments in a subsequent document.

Authority: Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)); section 4207(d) of Pub. L. 101–508 (42 U.S.C. 1395x (note)).
(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance)

Dated: June 16, 1999.

Nancy-Ann Min DeParle,
Administrator, Health Care Financing Administration.

Dated: June 29, 1999.

Donna E. Shalala,
Secretary.

ADDENDUM 1A.—WAGE INDEX FOR URBAN AREAS

Urban area (Constituent counties)	Wage index
0040 Abilene, TX	0.7981
Taylor, TX	
0060 Aguadilla, PR	0.4727
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9900
Portage, OH	
Summit, OH	
0120 Albany, GA	0.7975
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8610
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.8613
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.8526
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	1.0204
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9335
Blair, PA	
0320 Amarillo, TX.	0.8474
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2818
Anchorage, AK	
0440 Ann Arbor, MI	1.1033
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8658
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.8825
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4867
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.8940
Buncombe, NC	
Madison, NC	
0500Athens, GA	0.8673
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	0.9915
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
DeKalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic-Cape May, NJ	1.1536
Atlantic, NJ	
Cape May, NJ	
0600 Augusta-Aiken, GA–SC	0.9233
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.8782
Bastrop, TX	

ADDENDUM 1A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	0.9531
Kern, CA	
0720 Baltimore, MD	0.9642
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Anne's, MD	
0733 Bangor, ME	0.9474
Penobscot, ME	
0743Barnstable-Yarmouth, MA	1.5382
Barnstable, MA	
0760 Baton Rouge, LA	0.8872
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8659
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1434
Whatcom, WA	
0870 Benton Harbor, MI	0.8531
Berrien, MI	
0875 Bergen-Passaic, NJ	1.2186
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9143
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8276
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.9059
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9073
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.8025
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8965
Monroe, IN	
1040 Bloomington-Normal, IL	0.8851
McLean, IL	
1080 Boise City, ID	0.9160
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1269
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	1.0038
Boulder, CO	
1145 Brazoria, TX	0.8906
Brazoria, TX	
1150 Bremerton, WA	1.1055
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8237
Cameron, TX	
1260 Bryan-College Station, TX	0.7820
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9587
Erie, NY	
Niagara, NY	
1303 Burlington, VT	0.9577
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4400
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8813
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.8701
Natrona, WY	
1360 Cedar Rapids, IA	0.8814
Linn, IA	
1400 Champaign-Urbana, IL	0.8723
Champaign, IL	
1440 Charleston-North Charleston, SC	0.9114
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.8990
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC–SC	0.9686
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0272
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN–GA	0.9074
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.8149
Laramie, WY	
1600 Chicago, IL	1.0461
Cook, IL	
DeKalb, IL	
DuPage, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	1.0145
Butte, CA	
1640 Cincinnati, OH–KY–IN	0.9595
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN–KY	0.8040
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9886
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9390
El Paso, CO	
1740 Columbia, MO	0.8942
Boone, MO	
1760 Columbia, SC	0.9290
Lexington, SC	
Richland, SC	
1800 Columbus, GA–AL	0.8511
Russell, AL	
Chattahoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9781
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8513
Nueces, TX	
San Patricio, TX	
1900 Cumberland, MD–WV	0.8242
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9369
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.9045
Danville City, VA	
Pittsylvania, VA	

ADDENDUM 1A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index
1960 Davenport-Moline-Rock. Island, IA–IL	0.8413
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9605
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9134
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8233
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8035
Macon, IL	
2080 Denver, CO	1.0331
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8448
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0544
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7892
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9363
Kent, DE	
2200 Dubuque, IA	0.8222
Dubuque, IA	
2240 Duluth-Superior, MN–WI	0.9962
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0530
Dutchess, NY	
2290 Eau Claire, WI	0.8573
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9215
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9305
Elkhart, IN	
2335 Elmira, NY	0.8440
Chemung, NY	
2340Enid, OK	0.7983
Garfield, OK	
2360 Erie, PA	0.9271
Erie, PA	
2400 Eugene-Springfield, OR	1.1193
Lane, OR	
2440 Evansville-Henderson, IN–KY	0.8528
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND–MN	0.9520
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8389
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.8614
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ–UT	0.9483
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1031
Genesee, MI	
2650 Florence, AL	0.7676
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8501
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0770
Larimer, CO	
2680 Ft. Lauderdale, FL	0.9807
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.8942
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	1.0241
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR–OK	0.7623
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.8615
Okaloosa, FL	
2760 Fort Wayne, IN	0.9047
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX	0.9719
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0700
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8779
Etowah, AL	
2900 Gainesville, FL	0.9453
Alachua, FL	
2920 Galveston-Texas City, TX	1.0894
Galveston, TX	
2960 Gary, IN	0.9435
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8490
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8530
Wayne, NC	
2985 Grand Forks, ND–MN	0.8836
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.8279
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	0.9971
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8872
Cascade, MT	
3060 Greeley, CO	0.9457
Weld, CO	
3080 Green Bay, WI	0.9156
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9547
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NCGuilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9434
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9222
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	1.0183
Washington, MD	
3200 Hamilton-Middletown, OH	0.9233
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	1.0060
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT[1 2]	1.1831
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7261
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.8904
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1510
Honolulu, HI	
3350 Houma, LA	0.8197
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9889
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV–KY–OH	0.9647
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8385
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9831
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9481
Johnson, IA	
3520 Jackson, MI	0.9224
Jackson, MI	
3560 Jackson, MS	0.8292
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8560
Madison, TN	
Chester, TN	
3600 Jacksonville, FL	0.8900
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.7556
Onslow, NC	
3610 Jamestown, NY	0.7660
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.9051
Rock, WI	
3640 Jersey City, NJ	1.1598
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8773
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8619
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7407
Craighead, AR	
3710 Joplin, MO	0.7873
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.1331
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.9418
Kankakee, IL	
3760 Kansas City, KS–MO	0.9645
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9129
Kenosha, WI	
3810 Killeen-Temple, TX	1.0109
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8918
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.9275
Howard, IN	
Tipton, IN	
3870 La Crosse, WI–MN	0.8913
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8255
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.8841
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7674
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.8939
Polk, FL	
4000 Lancaster, PA	0.9561
Lancaster, PA	
4040 Lansing-East Lansing, MI	1.0090
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.7343
Webb, TX	
4100 Las Cruces, NM	0.8870
Dona Ana, NM	
4120 Las Vegas, NV–AZ	1.1413
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8655
Douglas, KS	
4200 Lawton, OK	0.8697
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9149
Androscoggin, ME	
4280 Lexington, KY	0.8506
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.8949
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9303
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8503
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8698
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.2085
Los Angeles, CA	
4520 Louisville, KY–IN	0.9093
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8496
Lubbock, TX	
4640 Lynchburg, VA	0.8900
Amherst, VA	
Bedford, VA	
Bedford City, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.8980
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0018
Dane, WI	
4800 Mansfield, OH	0.8534
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4401
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8893
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0020
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9216
Brevard, FL	
4920 Memphis, TN–AR–MS	0.8361
Crittenden, AR	
DeSoto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	1.0033
Merced, CA	
5000 Miami, FL	1.0017
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1152
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9356
Milwaukee, WI	
Ozaukee, WI	

ADDENDUM 1A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St. Paul, MN–WI	1.0854
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.9189
Missoula, MT	
5160 Mobile, AL	0.8377
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0346
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.1317
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8219
Ouachita, LA	
5240 Montgomery, AL	0.7821
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9414
Delaware, IN	
5330 Myrtle Beach, SC	0.8179
Horry, SC	
5345 Naples, FL	1.0177
Collier, FL	
5360 Nashville, TN	0.9480
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3593
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2328
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.1616
New London, CT	
5560 New Orleans, LA	0.9310
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.4461
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1866
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY–PA	1.1155
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA–NC	0.8275
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.4993
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9152
Marion, FL	
5800 Odessa-Midland, TX	0.8656
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8708
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.1522
Thurston, WA	
5920 Omaha, NE–IA	0.9972
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1522
Orange, CA	
5960 Orlando, FL	0.9813
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.7771
Daviess, KY	
6015 Panama City, FL	0.8507
Bay, FL	
6020 Parkersburg-Marietta, WV–OH	0.8016
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8246
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8058
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA–NJ	1.1370
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9591
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7912
Jefferson, AR	
6280 Pittsburgh, PA	0.9789
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0819
Berkshire, MA	
6340 Pocatello, ID	0.8792
Bannock, ID	
6360 Ponce, PR	0.4788
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9561
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR–WA	1.1178
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0801
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	0.9885
Utah, UT	
6560 Pueblo, CO	0.8712
Pueblo, CO	
6580 Punta Gorda, FL	0.9031
Charlotte, FL	
6600 Racine, WI	0.9130
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9812
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8208
Pennington, SD	
6680 Reading, PA	0.9234
Berks, PA	
6690 Redding, CA	1.1858
Shasta, CA	
6720 Reno, NV	1.1095
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.0287
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9211
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.0757
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8509
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.1698
Olmsted, MN	
6840 Rochester, NY	0.9657
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.8615
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9012
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.1962
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9487
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9586
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.9889
Andrew, MO	
Buchanan, MO	
7040 St. Louis, MO–IL	0.9151
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR	0.9904
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.5142
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9398
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.7646
Tom Green, TX	
7240 San Antonio, TX	0.8100
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.2265
San Diego, CA	
7360 San Francisco, CA	1.3957
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.3827
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4623
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1264
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.1194
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.3981
Santa Cruz, CA	
7490 Santa Fe, NM	0.9652
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.3597
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9532
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	1.0060
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8299
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1526
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.8847
Mercer, PA	
7620 Sheboygan, WI	0.8225
Sheboygan, WI	
7640 Sherman-Denison, TX	0.8570
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.9386
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA–NE	0.8481
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.8912
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9859
St. Joseph, IN	
7840 Spokane, WA	1.0928
Spokane, WA	
7880 Springfield, IL	0.8720
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8071
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0990
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.9449
Centre, PA	
8080 Steubenville-Weirton, OH–WV	0.8428
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.1075
San Joaquin, CA	

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ADDENDUM 1A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties)	Wage index
8140 Sumter, SC	0.8127
Sumter, SC	
8160 Syracuse, NY	0.9400
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.0380
Pierce, WA	
8240 Tallahassee, FL	0.8449
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.9113
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8991
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8506
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9991
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9812
Shawnee, KS	
8480 Trenton, NJ	1.0509
Mercer, NJ	
8520 Tucson, AZ	0.9028
Pima, AZ	
8560 Tulsa, OK	0.8463
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.7641
Tuscaloosa, AL	
8640 Tyler, TX	0.8818
Smith, TX	
8680 Utica-Rome, NY	0.8418
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3413
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1014
Ventura, CA	
8750 Victoria, TX	0.8381
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0440
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	1.0083
Tulare, CA	
8800 Waco, TX	0.8371
McLennan, TX	
8840 Washington, DC–MD–VA–WV	1.0807
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
8880 New York, NY	1.1750
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
8920 Waterloo-Cedar Falls, IA	0.7958
Black Hawk, IA	
8940 Wausau, WI	0.9733
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	1.0219
Palm Beach, FL	
9000 Wheeling, WV–OH	0.7627
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.8898
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.7830
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8556
Lycoming, PA	
9160 Wilmington-Newark, DE–MD	1.1868
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9343
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0318
Yakima, WA	
9270 Yolo, CA	1.1233
Yolo, CA	
9280 York, PA	0.9410
York, PA	
9320 Youngstown-Warren, OH	0.9815
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0865
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	1.0058
Yuma, AZ	

ADDENDUM 1B.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7294
Alaska	1.2430
Arizona	0.7989
Arkansas	0.7250
California	0.9979
Colorado	0.8436
Connecticut	1.2074
Delaware	0.8807
Florida	0.8877
Georgia	0.7888
Guam	0.6516
Hawaii	1.0910
Idaho	0.8477
Illinois	0.7916
Indiana	0.8380
Iowa	0.7777
Kansas	0.7319
Kentucky	0.7844
Louisiana	0.7454
Maine	0.8467
Maryland	0.8555
Massachusetts	1.0834
Michigan	0.8875
Minnesota	0.8595
Mississippi	0.7312
Missouri	0.7452
Montana	0.8398
Nebraska	0.7674
Nevada	0.9256
New Hampshire	1.0240
New Jersey [1]	.....
New Mexico	0.8269
New York	0.8588
North Carolina	0.8112
North Dakota	0.7497
Ohio	0.8519
Oklahoma	0.7124
Oregon	0.9910
Pennsylvania	0.8664
Puerto Rico	0.4080
Rhode Island [1]	.....
South Carolina	0.8046
South Dakota	0.7508
Tennessee	0.7492
Texas	0.7565
Utah	0.8859
Vermont	0.9416
Virginia	0.7857
Virgin Islands	0.4588
Washington	1.0489
West Virginia	0.7875
Wisconsin	0.8711
Wyoming	0.8768

[1] All counties within the State are classified as urban.

ADDENDUM 2.—COST REPORTING YEAR—ADJUSTMENT FACTOR [1]

If the HHA cost reporting period begins	The adjustment factor is
November 1, 1999	1.00113
December 1, 1999	1.00244
January 1, 2000	1.00394
February 1, 2000	1.00544
March 1, 2000	1.00696
April 1, 2000	1.00850

ADDENDUM 2.—COST REPORTING YEAR—ADJUSTMENT FACTOR [1]—Continued

If the HHA cost reporting period begins	The adjustment factor is
May 1, 2000	1.01013
June 1, 2000	1.01186
July 1, 2000	1.01369
August 1, 2000	1.01558
September 1, 2000	1.01753

[1] Based on compounded projected market basket inflation rates.

Source: The Home Health Agency Input Price Index, produced by HCFA for the period between 1983:1 and 2008:4. The forecasts are from Standard and Poor's DRI 3rd QTR 1997: @USSIM/TREND25YR0897@CISSIM/Control973 forecast exercise which has historical data through 1997:2.

ADDENDUM 3.—MONTHLY INDEX LEVELS FOR CALCULATING INFLATION FACTORS TO BE APPLIED TO HOME HEALTH AGENCY PER-BENEFICIARY LIMITATIONS

Month	Index level
October 1992	.98672
November 1992	.98800
December 1992	.98928
January 1993	.99313
February 1993	.99700
March 1993	1.00088
April 1993	1.00244
May 1993	1.00400
June 1993	1.00556
July 1993	1.00878
August 1993	1.01200
September 1993	1.01523
October 1993	1.01662
November 1993	1.01800
December 1993	1.01939
January 1994	1.02318
February 1994	1.02700
March 1994	1.03083
April 1994	1.03141
May 1994	1.03200
June 1994	1.03259
July 1994	1.03259
August 1994	1.03259
September 1994	1.03259
October 1994	1.03259
November 1994	1.03259
December 1994	1.03259
January 1995	1.03259
February 1995	1.03259
March 1995	1.03259
April 1995	1.03259
May 1995	1.03259
June 1995	1.03259
July 1995	1.03259
August 1995	1.03259
September 1995	1.03259
October 1995	1.03259
November 1995	1.03259
December 1995	1.03259
January 1996	1.03259
February 1996	1.03259
March 1996	1.03259
April 1996	1.03259
May 1996	1.03259
June 1996	1.03259
July 1996	1.03479
August 1996	1.03700
September 1996	1.03921
October 1996	1.04141
November 1996	1.04361
December 1996	1.04582
January 1997	1.04849
February 1997	1.05117
March 1997	1.05385
April 1997	1.05581
May 1997	1.05778
June 1997	1.05974
July 1997	1.06395
August 1997	1.06817
September 1997	1.07317
October 1997	1.07406
November 1997	1.07572
December 1997	1.07738
January 1998	1.07986
February 1998	1.08233
March 1998	1.08481
April 1998	1.08735
May 1998	1.08989
June 1998	1.09243
July 1998	1.09588
August 1998	1.09933
September 1998	1.10280
October 1998	1.10390
November 1998	1.10500
December 1998	1.10610
January 1999	1.10979
February 1999	1.11350
March 1999	1.11722
April 1999	1.11960
May 1999	1.12200
June 1999	1.12440
July 1999	1.12791
August 1999	1.13144
September 1999	1.13498
October 1999	1.13509
November 1999	1.13520
December 1999	1.13531
January 2000	1.13714
February 2000	1.13898
March 2000	1.14081
April 2000	1.14179
May 2000	1.14276
June 2000	1.14374
July 2000	1.14515
August 2000	1.14656
September 2000	1.14797
October 2000	1.15056
November 2000	1.15316
December 2000	1.15576
January 2001	1.15778
February 2001	1.15980
March 2001	1.16182
April 2001	1.16414
May 2001	1.16647
June 2001	1.16881
July 2001	1.17100
August 2001	1.17319
September 2001	1.17539
October 2001	1.17655

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federal register

Thursday
August 5, 1999

Part III

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Parts 2520, 2560 and 2570
Removal of Superseded Regulations Relating to Plan Descriptions and Summary Plan Descriptions; Proposed Rule

Furnishing Documents to the Secretary of Labor on Request Under ERISA Section 104(a)(6) and Assessment of Civil Penalties Under ERISA Section 502(c)(6); Proposed Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2520 and 2560

RIN 1210–AA66

Removal of Superseded Regulations Relating to Plan Descriptions and Summary Plan Descriptions, and Other Technical Conforming Amendments

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document sets forth a proposed rule that would remove certain provisions from the Code of Federal Regulations (CFR) that were superseded, in whole or in part, by amendments of the Employee Retirement Income Security Act of 1974 (ERISA) enacted as part of the Taxpayer Relief Act of 1997 (TRA '97). These TRA '97 amendments eliminated the requirements that plan administrators file summary plan descriptions (SPDs) and summaries of material modifications (SMMs) with the Department of Labor (Department). The amendments also eliminated all requirements pertaining to plan descriptions. In addition to removing superseded regulations from the CFR, this proposed rule would make miscellaneous technical amendments to the CFR designed to correct affected cross-references.

DATES: Written comments concerning the proposed regulation must be received by October 4, 1999.

ADDRESSES: Written comments (preferably three copies) should be sent to: Office of Regulations and Interpretations, Room N–5669, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; Attention: Proposed SPD/Plan Description Regulations. All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, Room N–5638, 200 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Turner, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 219–8671 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

1. Overview

TRA '97 amended sections 101(b), 102, and 104(a)(1) of ERISA to eliminate the requirements that plan administrators file SPDs, SMMs, and plan descriptions with the Department.[1] TRA '97 also amended section 104(b) of ERISA to eliminate the requirement that plan administrators furnish plan descriptions to participants and beneficiaries. These statutory amendments superseded, in whole or in part, the Department's regulations that implemented the SPD, SMM, and plan description filing requirements. This proposed rule would remove those superseded regulations from the CFR.[2] This proposed rule also would make several technical conforming amendments to reflect the fact that regulatory relief from certain plan description, SPD, and SMM requirements is no longer needed in light of TRA '97 and to correct affected regulatory and statutory cross-references in parts 2520 and 2560 of Chapter XXV of Title 29 of the CFR. A chart identifying each regulation that would be changed by this proposed rule is printed below.

2. Removal of Superseded Regulations

This proposed rule would remove, in whole or in part, the following superseded regulations from 29 CFR part 2520, which pertain to reporting and disclosure under ERISA. This proposed rule also would reserve certain removed sections of the CFR to preserve the continuity of codification in the CFR.

A. Regulations Superseded in Whole

This proposed rule would remove and reserve §§ 2520.102–1 and 2520.104a–2. These sections require plan administrators to file a plan description with the Department in accordance with §§ 101(b)(2) and 104(a)(1)(B) of ERISA.[3] They were superseded by paragraphs (a) and (c) of § 1503 of TRA '97, which eliminated §§ 101(b)(2) and 104(a)(1)(B) of ERISA.

This proposed rule would remove and reserve § 2520.104a–3. This section implements sections 101(b)(1) and 104(a)(1)(C) of ERISA, which require plan administrators to file with the Department a copy of any SPD that is required to be furnished to participants covered under the plan and beneficiaries receiving benefits under the plan. Section 2520.104a–3 was superseded by paragraphs (a) and (c) of section 1503 of TRA '97, which eliminated sections 101(b)(1) and 104(a)(1)(C) of ERISA.

This proposed rule would remove and reserve §§ 2520.104a–4 and 2520.104a–7. These sections implement §§ 101(b)(3), 102(a)(2), and 104(a)(1)(D) of ERISA, which require plan administrators to file with the Department a copy of summaries of material modifications in the terms of the plan and summaries of any changes in the information required to be in the SPD. Sections 2520.104a–4 and 2520.104a–7 were superseded by paragraphs (a) and (c) of § 1503 of TRA '97, which eliminated §§ 101(b)(3), 102(a)(2), and 104(a)(1)(D) of ERISA.

B. Regulations Superseded in Part

This proposed rule would amend § 2520.104–20 to reflect the fact that certain of the reporting relief granted by that regulation is no longer needed in light of TRA '97. Specifically, § 2520.104–20 exempts certain unfunded or insured welfare plans with fewer than 100 participants from, among others, the requirements to file plan descriptions, SPDs, and SMMs with the Department. Inasmuch as plan descriptions, SPDs, and SMMs are no longer required to be filed under ERISA as amended by TRA '97, this proposed rule would amend § 2520.104–20(a) to remove the provisions that grant relief from such filing requirements. The amendments made by this proposed rule would not otherwise change the relief available in § 2520.104–20.

This proposed rule would similarly amend § 2520.104–21 to reflect the fact that the SPD, SMM, and plan description filing relief granted by that regulation is no longer needed in light of the TRA '97 elimination of those filing requirements. Specifically, § 2520.104–21 provides a limited exemption from, among others, the requirements to file SPDs, SMMs, and plan descriptions with the Department for welfare benefit plans that cover fewer than 100 participants at the beginning of the plan year, are part of a group insurance arrangement, and that otherwise satisfy the conditions of § 2520.104–21(b). This proposed rule would amend § 2520.104–21(a) by removing the provisions on SPDs, SMMs, and plan descriptions because these documents are no longer required to be filed under ERISA as amended by TRA '97. The amendments made by this proposed rule would not otherwise change the relief available in § 2520.104–21.[4]

This proposed rule would further amend §§ 2520.104–20 and 2520.104–21 to reflect the fact that the need for relief under ERISA from the requirement to disclose plan descriptions was eliminated by TRA '97. These section exempt eligible welfare plans from the requirement to: (1) Furnish upon written request of any participant or beneficiary a copy of the plan description, and (2) make copies of the plan description available in the principle office of the administrator and such other places as may be necessary for examination by any participant or beneficiary. This proposed rule would amend §§ 2520.104–20(a)(2) and (3) and 2520.104–21(a)(1) and (2) by removing the provisions on disclosing plan descriptions because plan descriptions are nolonger required to be furnished or made available under ERISA as amended by TRA '97.

This proposed rule would amend §§ 2520.104–26 and 2520.104–27 to reflect the fact that the need for relief under ERISA from the requirement to file plan descriptions, SPDs, and SMMs was eliminated by TRA '97. These regulations provide certain unfunded dues financed welfare and pension plans maintained by employee organizations with a limited exemption from, among others, the requirement to file plan descriptions and a simplified option for complying with the filing and disclosure requirements applicable to SPDs. This proposed rule would amend §§ 2520.104–26 and 2520.104–27 by removing the provisions on plan descriptions and would further amend §§ 2520.104–26 and 2520.104–27 to remove the simplified option provisions for filing SPDs because plan descriptions and SPDs are no longer required to be filed with the Department under ERISA as amended by TRA '97. The proposal is not otherwise intended to change the relief available under these sections.

3. Technical Conforming Amendments

This proposal also would make technical changes that are needed to conform certain cross references in the CFR to sections of ERISA as amended by TRA '97. For example, § 2520.104a–5 refers to section 104(a)(1)(A) of ERISA as the authority for the requirement to file annual reports with the Department. After TRA '97, the correct citation is to § 104(a)(1) of ERISA. Similar technical changes are also being made to conform internal CFR cross references.

4. Effective Date

This regulation is proposed to be effective 60 days after publication of a final rule in the **Federal Register**. If adopted, the proposed amendments implementing TRA '97 would be applicable as of the August 5, 1997, effective date of section 1503 of TRA '97.

5. Quick Reference Chart

The chart below lists each section of 29 CFR parts 2520 and 2560 that would be affected by this proposed rule and includes a brief description of the proposed change.

QUICK REFERENCE CHART

CFR section(s)	Remove	Add	Reason(s)
2520.102–1	The whole section	"Reserved"	All "plan description" requirements eliminated from ERISA.
2520.102–4	The last sentence	Nothing	SPD filing requirement eliminated.
2520.103–1(a)	"section 104(a)(1)(A)"	"section 104(a)(1)"	Cross reference correction.
2520.103–5(a), (c)(1)(i), (c)(1)(iii), (c)(2)(ii), (c)(2)(iii), and (c)(3).	"section 104(a)(1)(A)"	"section 104(a)(1)"	Cross reference correction.
2520.103–12(a)	"section 104(a)(1)(A)"	"section 104(a)(1)"	Cross reference correction.
2520.104–4(a)	Last sentence	Nothing	SPD filing requirement eliminated.
2520.104–20(a) (introductory text)	"any of the following documents: Plan description, copy of summary plan description, description of material modification in the terms of a plan or change in the information required to be included in the plan description,".	Nothing	All "plan description" requirements eliminated from ERISA. SPD filing requirement eliminated, and SMM filing requirement eliminated.
2520.104–20(a)(2)	"plan description,"	Nothing	All "plan description" requirements eliminated from ERISA.
2520.104–20(a)(3)	"plan description and"	Nothing	All "plan description" requirements eliminated from ERISA.
2520.104–20(c)	"(section 104(a)(1))"	"(section 104(a)(6))"	Requirement to furnish documents to the Department upon request—moved to different paragraph of ERISA section 104.

[1] Prior to 1979, the administrator of an employee benefit plan subject to the provisions of Part 1 of Title I of ERISA was required to file with the Department a plan description (Form EBS–1) to satisfy the statutory filing requirements of section 104(a) and 29 CFR 2520.104a–2. *See* 41 FR 16957 (April 23, 1976). In 1979, the Department amended 29 CFR 2520.104a–2 (44 FR 31639 (June 1, 1979)), to provide that the administrator of an employee benefit plan would satisfy the plan description filing requirements of section 104(a)(1)(B) by filing with the Department a SPD and an updated SPD in accordance with section 104(a)(1)(C) and the regulations thereunder.

[2] Under a separate notice, the Department will promulgate proposed regulations to implement new sections 502(c)(6) and 104(a)(6) of ERISA. Section 502(c)(6) provides that if, within 30 days of a request by the Department to a plan administrator for documents under section 104(a)(6), the plan administrator fails to furnish the material requested to the Department, the Department may assess a civil penalty against the plan administrator of up to $100 a day from the date of such failure, but in no event in excess of $1,000 per request. Section 104(a)(6) provides that the administrator of any employee benefit plan must furnish to the Department, upon request, any documents relating to the employee benefit plan, including but not limited to, the latest SPD, and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.

[3] *See supra* note 1.

[4] *See* 63 FR 68370, 68388 (Dec. 10, 1998) (eliminating references to requirements to file plan descriptions, SPDs, and SMMs in § 2520.104–21–(d)(3) as part of proposed amendments to annual reporting regulations).

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QUICK REFERENCE CHART—Continued

CFR section(s)	Remove	Add	Reason(s)
2520.104–21(a) (introductory text)	"with the Secretary any of the following documents: Plan description, copy of summary plan description, description of material modification in the terms of a plan or change in the information required to be included in the plan description, and terminal report. In addition, the administrator of a plan exempted under this section:".	After the word file, add: "with the Secretary a terminal report or furnish upon written request of any participant or beneficiary a copy of any terminal report as required by section 104(b)(4) of the Act.".	All "plan description" requirements eliminated from ERISA, SPD filing requirement eliminated, and SMM filing requirement eliminated.
2520.104–21(a)(1)	All of (a)(1)	Nothing	All "plan description" requirements eliminated from ERISA.
2520.104–21(a)(2)	All of (a)(2)	Nothing	All "plan description" requirements eliminated from ERISA.
2520.104–21(c) (second parenthetical).	"section 104(a)(1)(A)"	"section 104(a)(1)"	Cross reference correction.
2520.104–21(c) (third parenthetical).	"section 104(a)(1)"	"section 104(a)(6)"	Requirement to furnish documents to the Department upon request—moved to different paragraph of ERISA section 104.
2520.104–23(b)(2)	"104(a)(1)"	"104(a)(6)"	Requirement to furnish documents to the Department upon request—moved to different paragraph of ERISA section 104.
2520.104–24(b)	"104(a)(1)"	104(a)(6)"	Requirement to furnish documents to the Department upon request—moved to different paragraph of ERISA section 104.
2520.104–25	"104(a)(1)"	"104(a)(6)"	Requirement to furnish documents to the Department upon request—moved to different paragraph of ERISA section 104.
2520.104–26(a)	All of paragraph (a), (a)(1), (a)(2), and (a)(3).	New paragraph (a), (a)(1), and (a)(2).	Paragraph (a) needed to be restructured to reflect the fact that all "plan description" requirements and the SPD filing requirement were eliminated from ERISA.
2520.104–27(a)	All of paragraph (a), (a)(1), (a)(2), and (a)(3).	New paragraph (a), (a)(1), and (a)(2).	Paragraph (a) needed to be restructured to reflect the fact that all "plan description" requirements and the SPD filing requirement were eliminated from ERISA.
2520.104–41(b)	"section 104(a)(1)(A)"	"section 104(a)(1)"	Cross reference correction.
2520.104–43(a)	"section 104(a)(1)(A)"	"section 104(a)(1)"	Cross reference correction.
2520.104–44(d)	"section 104(a)(1)(A)"	"section 104(a)(1)"	Cross reference correction.
2520.104a–2	Whole section	"Reserved"	All "plan description" requirements eliminated from ERISA.
2520.104a–3	Whole section	"Reserved"	SPD filing requirement eliminated.
2520.104a–4	Whole section	"Reserved"	SMM filing requirement eliminated.
2520.104a–5(a)	"section 104(a)(1)(A)"	"section 104(a)(1)"	Cross reference correction.
2520.104a–5(a)(1)	All text in paragraph (a)(1)	"Reserved"	Provision obsolete.
2520.104a–7	Whole section	"Reserved"	SMM filing requirement eliminated.
2520.104b–1(b)(3)	"plan description"	Nothing	All "plan description" requirements eliminated from ERISA.
2520.104b–3(f)	All of para. (f)	Nothing	Part of paragraph (f) was superseded by TRA '97 and the rest of the paragraph has become obsolete as a result of the removal of §2520.104a–3 by this rule.

QUICK REFERENCE CHART—Continued

CFR section(s)	Remove	Add	Reason(s)
2520.104b–3(g)	All of para. (g)	Nothing	Paragraph (g) was superseded by TRA '97 and as a result of the removal of §2520.104a–3 by this rule.
2560.502c–2(a)	"section 101(b)(4)"	"section 101(b)(1)"	Cross reference correction.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is not significant within the meaning of the Executive Order.

Paperwork Reduction Act

The rule being issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain an "information collection request" as defined in 44 U.S.C. 3502(3).

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires each Federal agency to perform an initial regulatory flexibility analysis for all proposed rules unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions. Because this proposed rule would remove certain provisions of the CFR and make a number of technical amendments to the CFR designed to correct cross-references affected by amendments to ERISA enacted as part of TRA '97, the proposed rule would have no impact, independent of the statutory change eliminating the SPD and SMM filing requirements, on small plans. As a result, the undersigned certifies that this proposed rule, if promulgated, would not have a significant impact on a substantial number of small entities. The factual basis for this certification is the same regardless of whether one uses the definition of small entity found in regulations issued by the Small Business Administration (13 CFR 121.201) or one defines small entity, on the basis of section 104(a)(2) of ERISA, as an employee benefit plan with fewer than 100 participants.

Small Business Regulatory Enforcement Fairness Act

The proposed rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this proposed rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of $100 million or more on the private sector.

Statutory Authority

This proposed rule is promulgated pursuant to the authority contained in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1135) and sections 101(b) and 104(a)(1) of ERISA, as amended, and under the Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

List of Subjects

29 CFR Part 2520

Employee benefit plans, Employee Retirement Income Security Act, Group health plans, Pension plans, Welfare benefit plans.

29 CFR Part 2560

Claims, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

For the reasons set forth above, parts 2520 and 2560 of Chapter XXV of Title 29 of the Code of Federal Regulations are amended as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for Part 2520 continues to read as follows:

Authority: Secs. 101, 102, 103, 104, 105, 109, 110, 111 (b)(2), 111(c), and 505, Pub. L. 93–406, 88 Stat. 840–52 and 894 (29 U.S.C. 1021–1025, 1029–31, and 1135); Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order 2–6.

Sections 2520.102–3, 2520.104b–1 and 2520.104b–3 also are issued under sec. 101(a), (c) and (g)(4) of Pub. L. 104–191, 110 Stat. 1936, 1939, 1951 and 1955 and, sec. 603 of Pub. L. 104–204, 110 Stat. 2935 (29 U.S.C. 1185 and 1191(c)).

2. Section 2520.102–1 is removed and reserved.

3. Revise section 2520.102–4 to read as follows:

§ 2520.102–4 Option for different summary plan descriptions.

In some cases an employee benefit plan may provide different benefits for various classes of participants and beneficiaries. For example, a plan amendment altering benefits may apply to only those participants who are employees of an employer when the

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amendment is adopted and to employees who later become participants, but not to participants who no longer are employees when the amendment is adopted. (See § 2520.104b–4). Similarly, a plan may provide for different benefits for participants employed at different plants of the employer, or for different classes of participants in the same plant. In such cases the plan administrator may fulfill the requirement to furnish a summary plan description to participants covered under the plan and beneficiaries receiving benefits under the plan by furnishing to each member of each class of participants and beneficiaries a copy of a summary plan description appropriate to that class. Each summary plan description so prepared shall follow the style and format prescribed in § 2520.102–2, and shall contain all information which is required to be contained in the summary plan description under § 2520.102–3. It may omit information which is not applicable to the class of participants or beneficiaries to which it is furnished. It should also clearly identify on the first page of the text the class of participants and beneficiaries for which it has been prepared and the plan's coverage of other classes. If the classes which the employee benefit plan covers are too numerous to be listed adequately on the first page of the text of the summary plan description, they may be listed elsewhere in the text so long as the first page of the text contains a reference to the page or pages in the text which contain this information.

4. Section 2520.103–1(a), introductory text, is amended by removing the term "section 104(a)(1)(A)" and adding, in its place, the term "section 104(a)(1)".

5. Section 2520.103–5 is amended by removing the term "section 104(a)(1)(A)" from paragraphs (a), introductory text, (c)(1)(i), (c)(1)(iii), (c)(2)(ii), (c)(2)(iii) and (c)(3) and adding, in their place, the term "section 104(a)(1)".

6. Section 2520.103–12 is amended by removing from paragraph (a) the term "section 104(a)(1)(A)" and adding, in its place, the term "section 104(a)(1)".

7. Revise paragraph (a) of § 2520.104–4 to read as follows:

§ 2520.104–4 Alternative method of compliance for certain successor pension plans.

(a) *General.* Under the authority of section 110 of the Act, this section sets forth an alternative method of compliance for certain successor pension plans in which some participants and beneficiaries not only have their rights set out in the plan, but also retain eligibility for certain benefits under the terms of a former plan which has been merged into the successor. This section is applicable only to plan mergers which occur after the issuance by the successor plan of the initial summary plan description under the Act. Under the alternative method, the plan administrator of the successor plan is not required to describe relevant provisions of merged plans in summary plan descriptions of the successor plan furnished after the merger to that class of participants and beneficiaries still affected by the terms of the merged plans.

* * * * *

8. Revise the introductory text in paragraph (a) and paragraphs (a)(2), (a)(3), and (c) of § 2520.104–20 to read as follows:

§ 2520.104–20 Limited exemption for certain small welfare plans.

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, the administrator of any employee welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and which meets the requirements of paragraph (b) of this section is exempted from certain reporting and disclosure provisions of the Act. Specifically, the administrator of such plan is not required to file with the Secretary an annual or terminal report. In addition, the administrator of a plan exempted under this section—

* * * * *

(2) Is not required to furnish upon written request of any participant or beneficiary a copy of the annual report and any terminal report, as required by section 104(b)(4) of the Act;

(3) Is not required to make copies of the annual report available for examination by any participant or beneficiary in the principal office of the administrator and such other places as may be necessary, as required by section 104(b)(2) of the Act.

(b) * * *

(c) *Limitations.* This exemption does not exempt the administrator of an employee benefit plan from any other requirement of Title I of the Act, including the provisions which require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (section 104(b)(1)) and furnish certain documents to the Secretary of Labor upon request (section 104(a)(6)), and which authorize the Secretary of Labor to collect information and data from employee benefit plans for research and analysis (section 513).

* * * * *

9. Amend § 2520.104–21 by revising paragraphs (a) and (c) to read as follows:

§ 2520.104–21 Limited exemption for certain group insurance arrangements.

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, the administrator of any employee welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and which meets the requirements of paragraph (b) of this section is exempted from certain reporting and disclosure provisions of the Act. Specifically, the administrator of such plan is not required to file with the Secretary a terminal report or furnish upon written request of any participant or beneficiary a copy of any terminal report as required by section 104(b)(4) of the Act.

* * * * *

(c) *Limitations.* This exemption does not exempt the administrator of an employee benefit plan from any other requirement of title I of the Act, including the provisions which require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (section 104(b)(1)), file an annual report with the Secretary of Labor (section 104(a)(1)) and furnish certain documents to the Secretary of Labor upon request (section 104(a)(6)), and authorize the Secretary of Labor to collect information and data from employee benefit plans for research and analysis (section 513).

* * * * *

10. Section 2520.104–23 is amended by removing from paragraph (b)(2) the term "104(a)(1)" and adding, in its place, the term "104(a)(6)".

11. Section 2520.104–24 is amended by removing from paragraph (b) the term "104(a)(1)" and adding, in its place, the term "104(a)(6)".

12. Section 2520.104–25 is amended by removing the term "104(a)(1)" and adding, in its place, the term "104(a)(6)".

13. In § 2520.104–26, revise paragraph (a) to read as follows:

§ 2520.104–26 Limited exemption for certain unfunded dues financed welfare plans maintained by employee organizations.

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, a welfare benefit plan that meets the requirements of paragraph (b) of this section is exempted from the provisions of the Act that require filing with the Secretary an annual report and furnishing a summary annual report to participants and beneficiaries. Such plans may use a simplified method of reporting and disclosure to comply with the requirement to furnish a summary plan description to participants and beneficiaries, as follows:

(1) In lieu of filing an annual report with the Secretary or distributing a summary annual report, a filing is made of Report Form LM–2 or LM–3, pursuant to the LMRDA and regulations thereunder, and

(2) In lieu of a summary plan description, the employee organization constitution or by-laws may be furnished in accordance with § 2520.104b–2 to participants and beneficiaries together with any supplement to such document necessary to meet the requirements of §§ 2520.102–2 and 2520.102–3.

* * * * *

14. In § 2520.104–27, revise paragraph (a) to read as follows:

§ 2520.104–27 Alternative method of compliance for certain unfunded dues financed pension plans maintained by employee organizations.

(a) *Scope.* Under the authority of section 110 of the Act, a pension benefit plan that meets the requirements of paragraph (b) of this section is exempted from the provisions of the Act that require filing with the Secretary an annual report and furnishing a summary annual report to participants and beneficiaries. Such plans may use a simplified method of reporting and disclosure to comply with the requirement to furnish a summary plan description to participants and beneficiaries, as follows:

(1) In lieu of filing an annual report with the Secretary or distributing a summary annual report, a filing is made of Report Form LM–2 or LM–3, pursuant to the LMRDA and regulations thereunder, and

(2) In lieu of a summary plan description, the employee organization constitution or by-laws may be furnished in accordance with § 2520.104b–2 to participants and beneficiaries together with any supplement to such document necessary to meet the requirements of §§ 2520.102–2 and 2520.102–3.

* * * * *

15. Section 2520.104–41 is amended by removing from paragraph (b) the term "section 104(a)(1)(A)" and adding, in its place, the term "section 104(a)(1)".

16. Section 2520.104–43 is amended by removing from paragraph (a) the term "section 104(a)(1)(A)" and adding, in its place, "section 104(a)(1)".

17. Section 2520.104–44 is amended by removing from paragraph (d) the term "section 104(a)(1)(A)" and adding, in its place, "section 104(a)(1)".

18. Section 2520.104a–2 is removed and reserved.

19. Section 2520.104a–3 is removed and reserved.

20. Section 2520.104a–4 is removed and reserved.

21. Section 2520.104a–5 is amended by removing the term "section 104(a)(1)(A)" and adding, in its place, the term "section 104(a)(1)".

22. Section 2520.104a–5 is amended by removing and reserving paragraph (a)(1).

23. Section 2520.104a–7 is removed and reserved.

24. Section 2520.104b–1 is amended by removing from the second sentence of paragraph (b)(3) the term "plan description,".

25. In § 2520.104b–3 paragraphs (f) and (g) are removed and reserved.

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

26. The authority citation for part 2560 continues to read as follows:

Authority: Secs. 502, 505 of ERISA, 29 U.S.C. 1132, 1135, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

Section 2560.502–1 also issued under sec. 502(b)(2), 29 U.S.C. 1132(b)(2).

Section 2560.502i–1 also issued under sec. 502(i), 29 U.S.C. 1132(i).

Section 2560.503–1 also issued under sec. 503, 29 U.S.C. 1133.

§ 2560.502c–21 [Amended]

27. Section 2560.502c–2 is amended by removing from paragraph (a)(1) and (a)(2) the term "section 101(b)(4)" each time it appears and adding, in its place, the term "section 101(b)(1)".

Signed at Washington, D.C., this 28th day of July 1999.

Richard M. McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–19860 Filed 8–4–99; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2520, 2560 and 2570

RIN 1210–AA67 and RIN 1210–AA68

Furnishing Documents to the Secretary of Labor on Request Under ERISA Section 104(a)(6) and Assessment of Civil Penalties Under ERISA Section 502(c)(6)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed rulemaking under the Employee Retirement Income Security Act of 1974 (ERISA) that would implement certain amendments to ERISA added as part of the Taxpayer Relief Act of 1997. Specifically, the proposed rule would implement the requirement that the administrator of any employee benefit plan subject to Part 1 of Title I of ERISA furnish to the Department, on request, any documents relating to the employee benefit plan. The proposed rule also would establish procedures relating to the assessment of civil penalties for failures or refusals by administrators to furnish requested documents and procedures relating to administrative hearings in connection with the assessment of such civil penalties.

DATES: Written comments concerning the proposed regulation must be received by October 4, 1999.

ADDRESSES: Written comments (preferably three copies) should be sent to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm. N–5669, 200 Constitution Avenue, NW, Washington DC, 20210, Attention: "ERISA 502(c)(6) Project." All submissions will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Ave, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Turner, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 219–8671, or Paul D. Mannina, Plan Benefits Security Division, Office of the Solicitor, (202) 219–9141 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Part I—Background

The Taxpayer Relief Act of 1997 (TRA '97) eliminated the requirement under ERISA that employee benefit plan administrators file with the Department copies of the summary plan descriptions (SPDs) and summaries of material plan modifications (SMMs) that are required to be furnished to plan participants and beneficiaries. TRA '97 added paragraph (6) to section 104(a) of ERISA which provides that the administrator of any employee benefit plan subject to Part 1 of Title I of ERISA is required to furnish to the Department, on request, any documents relating to the employee benefit plan, including but not limited

to, the latest SPD (including any summaries of plan changes not contained in the SPD), and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.[1] TRA '97 also added section 502(c)(6) of ERISA which provides that if, within 30 days of a request by the Department to a plan administrator for documents under section 104(a)(6), the plan administrator fails to furnish the material requested to the Department, the Department may assess a civil penalty against the plan administrator of up to $100 a day from the date of such failure (but in no event in excess of $1,000 per request). Section 502(c)(6) of ERISA also provides that no penalty shall be imposed under that paragraph for any failure resulting from matters reasonably beyond the control of the plan administrator.

Prior to these TRA '97 amendments, Congress provided in ERISA for the filing of SPDs and SMMs with the Department in order to ensure that participants and beneficiaries would have a means by which to obtain a copy of these documents without having to request them from the plan or plan sponsor. The elimination of the SPD/SMM filing requirement taken together with the amendments establishing ERISA section 104(a)(6) and the civil penalty provision in section 502(c)(6) clearly evidence Congress' intent that the Department would exercise its authority under ERISA section 104(a)(6) to obtain a copy of a plan's SPD in response to requests from participants or beneficiaries. Consistent with that intent, the Department will request copies of SPDs from plan administrators on behalf of a requesting participant or beneficiary. The Department generally will not request SPDs on behalf of persons other than participants and beneficiaries of the plan for which the SPD is requested. For this purpose, the Department will treat as a participant or beneficiary any individual who is: a participant or beneficiary within the meaning of ERISA sections 3(7) and 3(8), respectively; an alternate payee under a qualified domestic relations order (see ERISA section 206(d)(3)(K)) or prospective alternate payee (spouses, former spouses, children or other dependents), a qualified beneficiary under COBRA (see ERISA section 607(3)) or prospective qualified beneficiary (spouse or dependent child); an alternate recipient under a qualified medical child support order (see ERISA section 609(a)(2)(C)) or a prospective alternate recipient; or a representative of any of the foregoing.

The proposed rules described below are intended to implement the substantive requirements in section 104(a)(6) of ERISA as well as the related penalty provisions in section 502(c)(6) of ERISA. They would, if promulgated as a final rules, become effective 60 days after publication as final rules in the **Federal Register**.

Part II—Furnishing Documents to the Department on Request Under Section 104(a)(6)

Proposed § 2520.104a–8 implements the requirements of section 104(a)(6) of ERISA. Paragraph (a)(1) provides that the administrator (within the meaning of section 3(16)(A) of ERISA) of any employee benefit plan has an obligation to furnish to the Department, upon request, any documents relating to the plan. Paragraph (a)(2) clarifies that multiple requests under section 104(a)(6) and § 2520.104a–8(a) for the same or similar document or documents shall be considered separate requests for purposes of penalties under section 502(c)(6) and § 2560.502c–6(a). For example, if the Department were to receive a series of requests from several participants for a particular plan's SPD, the Department could make separate requests for that document on behalf of each participant to ensure that the participants each receive the latest updated version of the SPD. A failure by the plan administrator to comply with any such requests may result in the assessment of penalties with respect to each such failure. Paragraph (b) adopts the service of notice rules in proposed § 2560.502c–6(i) (which adopts the service of notice rules already in effect under § 2560.502c–2(i)) for purposes of serving the plan administrator with a request under section 104(a)(6). Paragraph (c) provides that a document is not considered furnished to the Department until the date on which such document is received by the Department of Labor at the address specified in the request.

Part III—Authority to Assess Civil Penalties for Violations of Section 104(a)(6) of ERISA

In general, proposed regulation § 2560.502c–6 addresses the: circumstances under which a penalty may be assessed for a failure or refusal to provide documents requested under section 104(a)(6) of ERISA (§ 2560.502c–6(a)); amount of the penalty (§ 2560.502c–6(b)); notice required to be given to the plan administrator of the Department's intent to assess a penalty (§ 2560.502c–6(c)); the Department's authority to waive the penalty (§ 2560.502c–6(d)) upon a showing that the failure or refusal was the result of matters reasonably beyond the control of the plan administrator (§ 2560.502c–6(e)); effect of a failure to file a statement under § 2560.502c–6(e) alleging matters reasonably beyond the administrator's control (§ 2560.502c–6(f)); notice required to be given to the administrator which sets forth the Department's findings as to the statement of matters reasonably beyond the control of the plan administrator (§ 2560.503c–6(g)); right to hearings before an administrative law judge (§ 2560.502c–6(h)); service of notices (§ 2560.502c–6(i)); and the liability of the administrator or administrators for assessed penalties (§ 2560.502c–6(j)).

a. *General Rule.* Proposed § 2560.502c–6(a) addresses the general application of section 502(c)(6) of ERISA. Paragraph (a)(1) provides that the administrator, as defined in ERISA section 3(16)(A), of an employee benefit plan is liable for the civil penalties assessed under section 502(c)(6) in each case in which there is a failure or refusal to furnish to the Department any document requested under section 104(a)(6) of ERISA and § 2520.104a–8. Paragraph (a)(2) defines such a failure or refusal as a failure or refusal, in whole or in part, to furnish documents at the time and in the manner prescribed in the request.

b. *Amount Assessed.* Proposed § 2560.502c–6(b) sets forth the amount of penalties that may be assessed under section 502(c)(6) of ERISA. Consistent with the terms of section 502(c)(6) of ERISA, paragraph (b)(1) provides that the Department may assess a penalty of up to $100 per day, but not in excess of $1,000 per request.

c. *Notice of Intent to Assess a Penalty.* Proposed § 2560.502c–6(c) provides that, prior to the assessment of any penalty under section 502(c)(6) of ERISA, the Department shall provide the administrator with written notice indicating the Department's intent to assess a penalty, the amount of the penalty, the period to which the penalty applies, and the reason(s) for the penalty. The notice would be served in accordance with § 2560.502c–6(i) of this proposed regulation (service of notice provision). Under § 2560.502c–6(f) of this proposed regulation, the notice would become a final order of the Department, within the meaning of proposed regulation § 2570.111(g) (also published as part of this rulemaking), within 30 days of the service of the notice, unless a statement described in § 2560.502c–6(e) is filed with the Department.

d. *Waiver of Penalty.* Paragraphs (d), (e), (f), (g), and (h) of this proposal generally relate to the waiver of penalties under section 502(c)(6) of ERISA. Paragraph (d) provides that the Department may waive all or part of the penalty to be assessed under section 502(c)(6) upon a showing by the administrator, under paragraph (e), that the failure or refusal to comply with a request under section 104(a)(6) and § 2520.104a–8 was due to matters reasonably beyond the control of the plan administrator. Under paragraph (e), the administrator has 30 days from receipt of the notice required under § 2560.502c–6(c) within which to make such a showing or offer other reasons why the penalty, as calculated, should not be assessed.[2]

Paragraph (f) provides that a failure to file a timely statement under (e) will constitute a waiver of the right to appear and contest the facts alleged in the notice (§ 2560.502c–(6)(c)) for purposes of any adjudicatory proceeding involving the assessment of a penalty under section 502(c)(6) of ERISA.

Paragraph (g)(1) provides that, following a review of the facts alleged in the statement under (e), the Department shall notify the administrator of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty. Under paragraph (g)(2), this notice becomes a final order 30 days after the date of service of the notice, except as provided in paragraph (h). Paragraph (h) provides in general that the notice described in paragraph (g) shall not become a final order if, within 30 days of the date of service of that notice, the administrator initiates an adjudicatory proceeding under part 18 of Title 29, as modified by proposed regulations §§ 2570.110 through 2570.121 (also published as part of this rulemaking). Specifically, the administrator would be required to file, within 30 days of the date of service of the notice under (g), an answer, as defined in proposed § 2570.111(c), in accordance with proposed § 2570.112.

e. *Service of Notices.* Proposed § 2560.502c–6(i) describes the rules on service of the (1) Department's notice of intent to assess a penalty (§ 2560.502c–6(c)), and (2) Department's notice of determination on the statement of matters reasonably beyond the control of the plan administrator (§ 2560.502c–6(g)).[3] Paragraph (i) provides that service shall be made in one of three ways: (1) By delivering a copy at the principal office, place of business, or residence of the administrator or representative thereof, (2) by leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof, or (3) by mailing a copy to the last known address of the administrator or representative thereof.

f. *Liability.* Proposed § 2560.502c–6(j) is intended to clarify the liability of the parties for penalties assessed under section 502(c)(6) of ERISA. Paragraph (1) provides that, if more than one person is responsible as administrator for the failure to furnish document(s) requested by the Department, all such persons shall be jointly and severally liable for such failure. Paragraph (2) provides that any person against whom a penalty is assessed under section 502(c)(6) of ERISA is personally liable for the payment of such penalty. Paragraph (2) is intended to make clear that liability for the payment of penalties assessed under section 502(c)(6) of ERISA is a personal liability of the person against whom the penalty is assessed and not a liability of the plan. Accordingly, the payment of penalties assessed under section 502(c)(6) of ERISA from assets of the plan would not constitute a reasonable expense of the plan for purposes of ERISA sections 403 and 404.

Part IV—Administrative Law Procedures for the Assessment of Civil Penalties Under Section 502(c)(6) of ERISA

The proposed regulation contained in this Notice would establish procedures for hearings before an Administrative Law Judge (ALJ) with respect to an assessment by the Department of a civility penalty under section 502(c)(6) and appealing an ALJ decision to the Secretary or her delegate. In this regard, the Secretary has established the Pension and Welfare Benefits Administration (PWBA) within the Department for purposes of carrying out most of the Secretary's responsibilities under ERISA. *See* Secretary's Order 1–87, 52 FR 13139 (April 27, 1987).

As noted above, the Department has already published rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR part 18 (48 FR 32538 (1983)). As explained in 29 CFR 18.1, those provisions generally govern administrative hearings before ALJs assigned to the Department and are intended to provide maximum uniformity in the conduct of administrative hearings. However, in the event of an inconsistency or conflict between the provisions of 29 CFR part 18 and a rule or procedure required by statute, executive order or regulation, the latter controls.

The Department has reviewed the applicability of the provisions of 29 CFR part 18 to the assessment of civil penalties under ERISA section 502(c)(6) and has decided to adopt many, though not all, of the provisions thereunder for ERISA 502(c)(6) proceedings. Accordingly, adjudications relating to civil penalties under ERISA section 502(c)(6) will be governed by the following sections of 29 CFR part 18:

Sec.
18.4 Time Computations.
18.5 (c)–(e) Responsive Pleading; answer and request for hearing.
18.6 Motions and requests.
18.7 Pre-hearing statements.
18.8 Pre-hearing conferences.
18.11 Consolidation of hearings.
18.12 Amicus Curiae.
18.13 Discovery Methods.
18.15 Protective orders.
18.16 Supplementation of responses.
18.17 Stipulations regarding discovery.
18.18 Written interrogatories to parties.
18.19 Production of documents and other evidence.
18.20 Admissions.
18.21 Motion to compel discovery.
18.22 Depositions.
18.23 Use of depositions at hearings.
18.24 Subpoenas.
18.25 Designation of administrative law judge.
18.27 Notice of hearing.
18.28 Continuances.
18.29 Authority of administrative law judges.
18.30 Unavailability of administrative law judge.
18.31 Disqualification.
18.32 Separation of functions.
18.33 Expedition.
18.34 Representation.
18.35 Legal assistance.
18.36 Standards of conduct.
18.37 Hearing room conduct.
18.38 Ex parte communications.
18.39 Waiver of right to appear and failure to participate or to appear.
18.40 Motion for summary decision.

[1] Prior to TRA '97, this authority was in section 104(a)(1) of ERISA, which stated that "the administrator shall also furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated."

[2] In the event that another fiduciary of the plan has custody of a document requested under section 104(a)(6) and § 2520.104a–8, or if the administrator of a plan engages a third party to perform services for the plan and pursuant to the engagement the third party has custody of documents related to the plan, the administrator's lack of custody would not be considered by the Department to be a matter reasonably beyond the administrator's control.

[3] As noted above, under proposed § 2520.104a–8(b) these service rules would also apply to the Department's initial request for documents under section 104(a)(6) and § 2520.104a–8.

18.43 Formal hearings.
18.44 Evidence.
18.45 Official notice.
18.46 In camera and protective orders.
18.47 Exhibits.
18.48 Records in other proceedings.
18.49 Designation of parts of documents.
18.50 Authenticity.
18.51 Stipulations.
18.52 Record of hearings.
18.53 Closing of hearings.
18.54 Closing of record.
18.55 Receipt of documents after hearing.
18.56 Restricted access.
18.59 Certification of official record.

The regulations proposed herein relate specifically to procedures for assessing civil penalties under section 502(c)(6) of ERISA and are controlling to the extent they are inconsistent with any portion of 29 CFR part 18. The proposed regulations are designed to maintain the rules set forth at 29 CFR part 18 consistent with the need for an expedited procedure, while recognizing the special characteristics of proceedings under ERISA section 502(c)(6). For purposes of clarity, where a particular section of the existing procedural rules would be affected by the proposed rules the entire section (with appropriate modifications) has been set out in this document. Thus, only a portion of the provisions of the procedural regulations set forth below involve changes from, or additions to, the rules in 29 CFR part 18. The specific modifications to the rules in 29 CFR part 18, and their relationship to the conduct of these proceedings generally, are outlined below.

The general applicability of these procedural rules under section 502(c)(6) is set forth in § 2570.110. Proposed § 2560.502c–6, also being published today in this Notice, sets forth the procedures relating to the issuance by PWBA of notices of intent to assess a penalty under ERISA section 502(c)(6) as well as procedures for agency determination on statements of matters reasonably beyond the control of plan administrators filed by persons against whom a penalty would be assessed. Under the proposed procedural rules contained in this Notice, an adjudicatory proceeding before an ALJ is commenced only when a person against whom the Department intends to assess a penalty under section 502(c)(6) files an "answer" to a notice of the agency determination on a statement of matters reasonably beyond the control of the plan administrator. *See* § 2570.111(c) and (d) below, and proposed regulation § 2560.502c–6(h).

The definition section (§ 2570.111) incorporates the basic adjudicatory principles set forth at 29 CFR part 18, but includes terms and concepts of specific relevance to proceedings under ERISA section 502(c)(6). In this respect it differs from its more general counterpart at § 18.2 of Title 29 of the CFR. In particular, § 2570.111 states that the term "Secretary" means the Secretary of Labor and includes various individuals to whom the Secretary may delegate authority. The Department contemplates that the duties assigned to the Secretary under the procedural regulation will in fact be discharged by the Assistant Secretary for Pension and Welfare Benefits.

In general, the burden to initiate adjudicatory proceedings before an ALJ will be on the party (respondent) against whom the Department is seeking to assess a civil penalty under ERISA section 502(c)(6). However, a respondent must comply with the procedures relating to agency review set forth in proposed regulation § 2560.502c–6 before initiating adjudicatory proceedings. In this regard, it should be noted that both the notice of intent to assess a penalty, as described in proposed regulation § 2560.502c–6(c) and the notice of determination on a statement of reasonable cause as described in proposed regulation § 2560.502c–6(g), will be issued by PWBA, the agency responsible for administration and enforcement of section 502(c)(6) of ERISA, in accordance with the service of notice provisions described in proposed § 2560.502c–6(i). Proposed regulation § 2570.111(c) and (d), together with proposed regulation § 2560.502c–6(h), contemplate that adjudicatory proceedings will be initiated with the filing of an answer to a notice of the agency's determination on a statement of matters reasonably beyond the control of the plan administrator.

The service of documents by the parties to an adjudicatory proceeding, as well as by the ALJ, will be governed by proposed regulation § 2570.112.

A section on the consequences of default (§ 2570.114) has been included in these proposed rules to indicate that if the respondent fails to file an answer to the Department's notice of determination (§ 2560.502c–6(g)) within the 30-day period provided by proposed § 2560.502c–6(h), such failure shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice and an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6). Proposed regulation § 2570.114 makes clear that in the event of such failure, the assessment of penalty becomes final.

A section on consent orders or settlements (§ 2570.115) states that the ALJ's decision shall include the terms and conditions of any consent order or settlement which has been agreed to by the parties. That section also provides that the decision of the ALJ which incorporates such consent order shall become a final agency action within the meaning of 5 U.S.C. 704.

The rules in 29 CFR part 18 concerning the computation of time, pleadings, prehearing conferences and statements, and settlements are adopted in these procedures for adjudications under ERISA section 502(c)(6). The section on the designation of parties (§ 2570.113) differs from its counterpart under § 18.10 of this title in that it specifies that the respondent in these proceedings will, as indicated above, be the party against whom the Department seeks to assess a civil penalty under ERISA section 502(c)(6).

29 CFR 2570.116 states that discovery may be ordered by the ALJ only upon a showing of good cause by the party seeking discovery. This differs from the more liberal standard for discovery contained in 29 CFR 18.14. In cases in which discovery is ordered by the ALJ, the order shall expressly limit the scope and terms of discovery to that for which good cause has been shown. To the extent that the order of the ALJ does not specify rules for the conduct of the discovery permitted by such order, the rules governing the conduct of discovery from 29 CFR part 18 are to be applied in any proceeding under section 502(c)(6) of ERISA. For example, if the order of the ALJ states only that interrogatories on certain subjects may be permitted, the rules under 29 CFR part 18 concerning the service and answering of such interrogatories shall apply. The procedures under 29 CFR part 18 for the submission of facts to the ALJ during the hearing are also to be applied in proceedings under ERISA section 502(c)(6).

The section on summary decisions (§ 2570.117) provides for requisite authorization for an ALJ to issue a summary decision which may become final when there are no genuine issues of material fact in a case arising under ERISA section 502(c)(6). The section concerning the decision of the ALJ (§ 2570.118) differs from its counterpart at § 18.57 of this title in that it states that the decision of the ALJ in an ERISA section 502(c)(6) case shall become the final decision of the Secretary unless a timely appeal is filed.

The procedures for appeals of ALJ decisions under ERISA section 502(c)(6) of ERISA would be governed solely by the proposed rules set forth in

§§ 2570.119 through 2570.121, and without any reference to the appellate procedures contained in 29 CFR part 18. Proposed § 2570.119 would establish the time limit within which such appeals must be filed and the manner in which the issues for appeal are determined and the procedure for making the entire record before the ALJ available to the Secretary. Proposed § 2570.120 provides that review of the Secretary shall not be on a de novo basis, but rather on the basis of the record before the ALJ and without an opportunity for oral argument. Proposed § 2570.121 sets forth the procedure for establishing a briefing schedule for such appeals and states that the decision of the Secretary on such an appeal shall be a final agency action within the meaning of 5 U.S.C. 714. As noted above, the authority of the Secretary with respect to the appellate procedures has been delegated to the Assistant Secretary for Pension and Welfare Benefits. As required by the Administrative Procedure Act (5 U.S.C. 552(a)(2)(A)) all final decisions of the Department under section 502(c)(6) of ERISA shall be compiled in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, the Department has determined that this regulatory action is not significant within the meaning of the Executive Order.

The costs of the proposed regulation would be borne by the plan when responding to requests from the Department for copies of the latest SPD (including any summaries of plan changes not contained in the SPD) as well as other documents relating to the plan. It is expected that most of the costs will be attendant to furnishing SPDs to the Department to enable the Department to respond to requests from participants.[4] The individual cost of each such request is estimated to be minimal because each administrator of an employee pension or welfare benefit plan covered under Title I of ERISA is required by section 101(a)(1) to furnish a SPD to each participant covered under the plan and each beneficiary who is receiving benefits under the plan, and to update the SPD on a regular basis in accordance with section 104(b)(1). Moreover, many documents other than SPDs that may be requested are required to be made available to participants and beneficiaries pursuant to section 104(b)(2). Thus, administrators are not expected to incur costs in preparing or obtaining these documents in response to a request from the Department.

The proposed regulation is expected to benefit plan participants and beneficiaries who may have been unable to obtain a current SPD or other document relating to the plan, and who might otherwise not have an alternative means of obtaining such documents in the absence of the requirement for the plan administrator to file such documents with the Department. The provisions implementing the penalty for failure to furnish such documents on request may serve to ensure timely compliance with such requests.

Paperwork Reduction Act

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed information collection request (ICR) included in the proposal with respect to Furnishing Documents To The Secretary of Labor on Request Under ERISA section 104(a)(6) And Assessment Of Civil Penalties Under ERISA section 502(c)(6). A copy of the ICR may be obtained by contacting the office listed in the addressee section of this proposed regulation. This proposed regulation would implement the provisions of ERISA section 104(a)(6), which requires plan administrators to provide certain documents to the Department on request, and section 502(c)(6) of ERISA, which implements procedures for assessment of civil penalties for failure to provide the documents requested pursuant to section 104(a)(6).

The Department has submitted a copy of the proposed information collection to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration. Although comments may be submitted through October 4, 1999, OMB requests that comments be received within 30

[4] The Department's authority to request documents under section 104(a)(6) of ERISA was, prior to TRA '97, codified in section 104(a)(1) of ERISA. TRA '97 re-codified this authority in section 104(a)(6) of ERISA and simultaneously eliminated the requirement to file SPDs/SMMs. It is anticipated that the vast majority of requests under section 104(a)(6) will stem from responding to participants' requests for SPDs/SMMs that, in the absence of TRA '97, would have been filed with Department and available to the public.

days of publication of the Notice of Proposed Rulemaking to ensure their consideration.

ADDRESSEE (PRA 95): Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

The ICR included in the proposal involves the gathering and mailing of plan documents requested by the Department to an address specified in the request. These requests are expected to be made of plan administrators as needed to satisfy requests for SPDs and other documents received from plan participants and beneficiaries. These requests may be received by the Public Disclosure Room of the Pension and Welfare Benefits Administration or by the national office and field offices in the course of providing technical assistance to the public. The estimate of the number of requests by participants and beneficiaries is based on the actual rate of requests to the Public Disclosure Room during the last two years, adjusted for requests expected to be made with other offices.

It is assumed that approximately 5 minutes of time at non-professional hourly rates will be required to respond to the Department's document request within 30 days. Some administrators may be expected to respond only after receiving notice of the Department's intent to assess a penalty, and/or to provide additional information concerning matters reasonably beyond their control which would prevent or delay the satisfaction of the request. Each of these events would increase the anticipated burden of providing documents requested by the Department. The burden estimated here has been adjusted to account for a portion of plans which by choice or for reasons beyond their control will satisfy the request in a more burdensome fashion. Mailing costs are assumed to total $1.00 per request.

The penalty assessment provisions of § 2560.502c–6, and the procedures for hearings before ALJs and appeals to the Secretary or her delegate of §§ 2570.110 through 2570.121, do not contain an "information collection request" as defined in 44 U.S.C. 3502(3).

Type of Review: New.

Agency: Pension and Welfare Benefits Administration.

Title: Furnishing Documents To The Secretary of Labor on Document Request Under ERISA section 104(a)(6) And Assessment of Civil Penalties Under ERISA section 502(c)(6).

OMB Number: 1210–NEW.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Frequency of Response: On occasion.

Total Respondents: 1,000.

Total Responses: 1,000.

Estimated Burden Hours: 95.

Estimated Annual Costs (Operating and Maintenance): $1,000.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. If an agency determines that a proposed rule is likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities, and seeking public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, PWBA proposes to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for simplified annual reporting and disclosure if the statutory requirements of Part 1 of Title I of ERISA would otherwise be inappropriate for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at §§ 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and which satisfy certain other requirements.

Further, while some large employers may have small plans, in general, most small plans are maintained by small employers. Thus, PWBA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business which is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (5 U.S.C. 631 *et seq.*). PWBA therefore requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities.

On this basis, however, PWBA has preliminarily determined that this proposed regulation will not have a significant economic impact on a substantial number of small entities. In support of this determination, and in an effort to provide a sound basis for this conclusion, PWBA has considered the elements of an initial regulatory flexibility analysis in the discussion which follows.

This proposed regulation would apply to all small employee benefit plans covered by Title I of ERISA. Employee benefit plans with fewer than 100 participants include 631,000 pension plans, 2.6 million health plans, and 3.4 million non-health welfare plans (mainly life and disability insurance plans).

The Department believes that responding to a request for a SPD or other plan document primarily requires clerical skills, although a professional may read the request and direct others to respond. The documents to be mailed in response to the request are expected to be readily available.

The Department does not have information concerning whether the participants and beneficiaries who request its assistance in obtaining plan documents are participants in small plans. However, even if it is assumed that all plans which receive requests for documents pursuant to section 104(a)(6) are small plans, the number affected in any year is very small (*i.e.*, 1,000 of approximately 6.6 million plans). The mailing cost per request satisfied, or per letter exchanged in providing reasonable cause, is expected to amount to approximately $1.00, and accumulating the documents is expected to require about 5 minutes. If it is assumed that a cost is incurred for this time at a rate of $11 per hour, the total cost per request is estimated at about $2.00. This is not expected to constitute a significant impact for any plan.

Further, the proposed regulation is intended to provide sufficient information to small entities such that they may understand the request, provide information as to a reasonable cause for failure to comply if necessary, and receive notice before assessment of a penalty is initiated.

The Department invites interested persons to submit comments regarding its preliminary determination that the proposal will not have a significant economic impact on a substantial number of small entities. The Department also requests comments from small entities regarding what, if any, special problems they might encounter if the proposal were to be adopted, and what changes, if any, could be made to minimize those problems.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this proposed rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, nor does it include mandates which may impose an annual burden of $100 million or more on the private sector.

Statutory Authority

These regulations are proposed pursuant to the authority contained in sections 505, 104(a), and 502(c)(6) of ERISA (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1024, 1132, and 1135).

List of Subjects

29 CFR Part 2520

Accountants, Disclosure requirements, Employee benefit plans, Employee Retirement Income Security Act, Pension plans, and Reporting and recordkeeping requirements.

29 CFR Part 2560

Claims, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

29 CFR Part 2570

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Party in interest, Law enforcement, Pensions, Prohibited transactions.

Proposed Regulations

In view of the foregoing, the Department proposes to amend parts 2520, 2560, and 2570 of Chapter XXV of title 29 of the Code of Federal Regulations as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for part 2520 continues to read as follows:

Authority: Secs. 101, 102, 103, 104, 105, 109, 110, 111 (b)(2), 111 (c), and 505, Pub. L. 93–406, 88 Stat. 840–52 and 894 (29 U.S.C. 1021–1025, 1029–31, and 1135); Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order 2–6.

Sections 2520.102–3, 2520.104b-1, and 2520.104b-3 also are issued under sec. 101(a), (c), and (g)(4) of Pub. L. 104–191, 110 Stat. 1936, 1939, 1951 and 1955 and, sec. 603 of Pub. L. 104–204, 110 Stat. 2935 (29 U.S.C. 1185 and 1191c).

2. By adding a new § 2520.104a-8 to read as follows:

§ 2520.104a-8 Requirement to furnish documents to the Secretary of Labor on request.

(a) *In general.* (1) Under section 104(a)(6) of the Act, the administrator of any employee benefit plan subject to the provisions of Part 1 of Title I of the Act shall furnish to the Secretary, upon service of a written request, any documents relating to the employee benefit plan.

(2) *Multiple requests for document(s).* Multiple requests under this section for the same or similar document or documents shall be considered separate requests for purposes of § 2560.502c-6(a) of this chapter.

(b) *Service of request.* Requests under this section shall be served in accordance with § 2560.502c-6(i) of this chapter.

(c) *Furnishing documents.* A document is not considered furnished to the Secretary until the date on which such document is received by the Department of Labor at the address specified in the request.

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

3. The authority citation for part 2560 continues to read as follows:

Section 2560.502–1 also issued under sec. 502(b)(2), 29 U.S.C. 1132(b)(2).

Section 2560.502i–1 also issued under sec. 502(i), 29 U.S.C. 1132(i).

Section 2560.503–1 also issued under sec. 503, 29 U.S.C. 1133.

Authority: Secs. 502, 505 of ERISA, 29 U.S.C. 1132, 1135, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

4. By adding a new § 2560.502c–6 in the appropriate place to read as follows:

§ 2560.502c–6 Civil Penalties Under section 502(c)(6).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(6) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A)) of an employee benefit plan (within the meaning of section 3(3) and § 2510.3–1 of this chapter) shall be liable for civil penalties assessed by the Secretary under section 502(c)(6) of the Act in each case in which there is a failure or refusal to furnish to the Secretary documents requested under section 104(a)(6) of the Act and § 2520.104a–8 of this chapter.

(2) For purposes of this section, a failure or refusal to furnish documents shall mean a failure or refusal to furnish, in whole or in part, the documents requested under section 104(a)(6) of the Act and § 2520.104a–8 of this chapter at the time and in the manner prescribed in the request.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(6) shall be an amount up to $100 a day determined by the Department of Labor, taking into consideration the amount of willfulness of the failure or refusal to furnish the documents requested under section 104(a)(6), but in no event in excess of $1,000 per request. Subject to paragraph (b)(2) of this section, the amount shall be computed from the date of the administrator's failure or refusal to furnish any document or documents requested by the Department.

(2) For purposes calculating the amount to be assessed under this section, the date of a failure or refusal to furnish documents shall not be earlier than the 30th day after service of the

request under section 104(a)(6) of ERISA and § 2520.104a–8 of this chapter.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(6), the Department shall provide to the administrator of the plan a written notice that indicates the Department's intent to assess a penalty under section 502(c)(6), the amount of the penalty, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Waiver of assessed penalty.* The Department may waive all or part of the penalty to be assessed under section 502(c)(6) on a showing by the administrator that the failure or refusal to furnish a document or documents requested by the Secretary was the result of matters reasonably beyond the administrator's control.

(e) *Statement showing matters reasonably beyond the control of the plan administrator.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have 30 days from the date of the service of the notice, as described in paragraph (i) of this section, to file a statement that the failure resulted from matters reasonably beyond the control of the administrator or that the penalty, as calculated, should not be assessed. The statement must be in writing and set forth all the facts alleged as matters reasonably beyond the control of the administrator. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of matters reasonably beyond the control of the plan administrator.* Failure to file a statement of matters reasonably beyond the control of the administrator within the 30 day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6). Such notice shall then become a final order of the Secretary, within the meaning of § 2570.111(g) of this chapter.

(g) *Notice of determination on statement of matters reasonably beyond the control of the plan administrator.* (1) The Department, following a review of all of the facts alleged in support of a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its intention to waive the penalty, in whole or in part, and/or assess a penalty. If it is the intention of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section. This notice is a "pleading" for purposes of § 2570.111(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section indicating the Department's intention to assess a penalty shall become a final order, within the meaning of § 2570.111(g) of this chapter, 30 days after the date of service of the notice.

(h) *Administrative hearings.* A notice issued pursuant to paragraph (g)(1) of this section will not become a final order, within the meaning of § 2570.111(g) of this chapter, if, within 30 days from the date of service of the notice, an answer, as defined in § 2570.111(c) of this chapter, is filed in accordance with § 2570.112 of this chapter.

(i) *Service of notice.* (1) Service of notice under this section shall be made by:

(i) Delivering a copy to the administrator or representative thereof;

(ii) Leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or (iii) Mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by the addressee.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to furnish the document or documents requested under section 104(a)(6) and its implementing regulations (§ 2520.104a–8 of this chapter), all such persons shall be jointly and severally liable with respect to such failure.

(2) Any person, or persons under paragraph (j)(1), against whom a civil penalty has been assessed under section 502(c)(6) pursuant to a final order, within the meaning of § 2570.111(g) of this chapter, shall be personally liable for the payment of such penalty.

(k) *Cross reference.* See §§ 2570.110 through 2570–121 of this chapter for procedural rules relating to administrative hearings under section 502(c)(6) of the Act.

PART 2570—PROCEDURAL REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

5. Revise the authority citation for part 2570 to read as follow:

Authority: 29 U.S.C. 1108 (a), 1132 (c), 1132 (i), 1135; 5 U.S.C. 8477 (c) (3); Reorganization Plan no. 4 of 1978; Secretary of Labor's Order 1–87.

Subpart A is also issued under 29 U.S.C. 1132(c)(1).

Subpart F is also issued under sec. 4, Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by sec. 31001(s)(1), Pub. L. 104–134, 110 Stat. 1321–373.

6. Part 2570 is amended by adding new subpart F to read as follows:

Subpart F—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(6)

Sec.

2570.110 Scope of rules.
2570.111 Definitions.
2570.112 Service: Copies of documents and pleadings.
2570.113 Parties, how designated.
2570.114 Consequences of default.
2570.115 Consent order or settlement.
2570.116 Scope of discovery.
2570.117 Summary Decisions.
2570.118 Decision of the administrative law judge.
2570.119 Review by the Secretary.
2570.120 Scope of review.
2570.121 Procedures for review by the Secretary.

Subpart F—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(6)

§ 2570.110 Scope of rules.

The rules of practice set forth in this subpart are applicable to "502(c)(6) civil penalty proceedings" (as defined in § 2570.111(n) of this subpart) under section 502(c)(6) of the Employee Retirement Income Security Act of 1974. The rules of procedure for administrative hearings published by the Department's Office of Law Judges at part 18 of this title will apply to matters arising under ERISA section 502(c)(6) except as modified by this section. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

§ 2570.111 Definitions.

For section 502(c)(6) civil penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title:

(a) *Adjudicatory proceeding* means a judicial-type proceeding before an administrative law judge leading to the formulation of a final order;

(b) *Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *Answer* is defined for these proceedings as set forth in § 18.5(d)(1) of this title;

(d) *Commencement of proceeding* is the filing of an answer by the respondent;

(e) *Consent agreement* means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) *ERISA* means the Employee Retirement Income Security Act of 1974, as amended;

(g) *Final order* means the final decision or action of the Department of Labor concerning the assessment of a civil penalty under ERISA section 502(c)(6) against a particular party. Such final order may result from a decision of an administrative law judge or the Secretary, the failure of a party to file a statement of matters reasonably beyond the control of the plan administrator described in § 2560.502c-6(e) of this chapter within the prescribed time limits, or the failure of a party to invoke the procedures for hearings or appeals under this title within the prescribed time limits. Such a final order shall constitute final agency action within the meaning of 5 U.S.C. 704;

(h) *Hearing* means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission, to the administrative law judge;

(i) *Order* means the whole or any part of a final procedural or substantive disposition of a matter under ERISA section 502(c)(6);

(j) *Party* includes a person or agency named or admitted as a party to a proceeding;

(k) *Person* includes an individual, partnership, corporation, employee benefit plan, association, exchange or other entity or organization;

(l) *Petition* means a written request, made by a person or party, for some affirmative action;

(m) *Pleading* means the notice as defined in § 2560.502c–6(g) of this chapter, the answer to the notice, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(n) *502(c)(6) civil penalty proceeding* means an adjudicatory proceeding relating to the assessment of a civil penalty provided for in section 502(c)(6) of ERISA;

(o) *Respondent* means the party against whom the Department is seeking to assess a civil sanction under ERISA section 502(c)(6);

(p) *Secretary* means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, any assistant secretary (including the Assistant Secretary for Pension and Welfare Benefits), administrator, commissioner, appellate body, board, or other official; and

(q) *Solicitor* means the Solicitor of Labor or his or her delegate.

§ 2570.112 Service: Copies of documents and pleadings.

For 502(c)(6) penalty proceedings, this section shall apply in lieu of § 18.3 of this title.

(a) *General.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, 800 K Street, NW, Suite 400, Washington, DC 20001–8002, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs, or other documents shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties or record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Department shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA section 502(c)(6) Proceeding, PO Box 1914, Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions and all other documents shall be made by regular mail to the last known address.

(d) *Form of pleadings.* (1) Every pleading shall contain information indicating the name of the Pension and Welfare Benefits Administration (PWBA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (*e.g.*, notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½ x 11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopies, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

§ 2570.113 Parties, how designated.

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.10 of this title.

(a) The term "party" wherever used in these rules shall include any natural person, corporation, employee benefit plan, association, firm, partnership, trustee, receiver, agency, public or private organization, or government agency. A party against whom a civil penalty is sought shall be designated as "respondent." The Department shall be designated as the "complainant."

(b) Other persons or organizations shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the proceedings and their interest is not adequately represented by existing parties, and that in the discretion of the administrative law judge the participation of such persons or organizations would be appropriate.

(c) A person or organization not named as a respondent wishing to participate as a party under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person or organization has knowledge of or should have known about the proceeding. The petition shall be filed with the administrative law judge and served on each person or organization who has been made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioners have the requisite interest to be a party in the proceedings, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may request all such petitioners to designate a single representative, or he or she may

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recognize one or more of such petitioners. The administrative law judge shall give each such petitioner, as well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide a brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae.

§ 2570.114 Consequences of default.

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.5 (a) and (b) of this title. Failure of the respondent to file an answer to the notice of determination described in § 2560.502c–6(g) of this chapter within the 30-day period provided by § 2560.502c–6(h) of this chapter shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the notice of determination, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6) of the Act. Such notice shall then become the final order of the Secretary.

§ 2570.115 Consent order or settlement.

For 502(c)(6) civil penalty proceedings, the following shall apply in lieu of § 18.9 of this title.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days prior to the date set for hearing, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such a deferral and the duration thereof shall be in the discretion of the administrative law judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties and the probability of reaching an agreement which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge;

(4) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(5) That the order and decision of the administrative law judge shall be final agency action.

(c) *Submission.* On or before the expiration of the time granted for negotiations, but, in any case, at least five (5) days prior to the date set for hearing, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order to the administrative law judge; or

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action subject to compliance with the terms of the settlement; or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing consent findings and an order is submitted within the time allowed therefore, the administrative law judge shall issue a decision incorporating such findings and agreement within thirty (30) days of his receipt of such document. The decision of the administrative law judge shall incorporate all of the findings, terms, and conditions of the settlement agreement and consent order of the parties. Such decision shall become final agency action within the meaning of 5 U.S.C. 704.

(e) *Settlement without consent of all parties.* In cases in which some, but not all, of the parties to a proceeding submit a consent agreement to the administrative law judge, the following procedure shall apply:

(1) If all of the parties have not consented to the proposed settlement submitted to the administrative law judge, then such non-consenting parties must receive notice, and a copy, of the proposed settlement at the time it is submitted to the administrative law judge;

(2) Any non-consenting party shall have fifteen (15) days to file any objections to the proposed settlement with the administrative law judge and all other parties;

(3) If any party submits an objection to the proposed settlement, the administrative law judge shall decide within thirty (30) days after receipt of such objections whether he shall sign or reject the proposed settlement. Where the record lacks substantial evidence upon which to base a decision or there is a genuine issue of material fact, then the administrative law judge may establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issues may reasonably be based;

(4) If there are no objections to the proposed settlement, or if the administrative law judge decides to sign the proposed settlement after reviewing any such objections, the administrative law judge shall incorporate the consent agreement into a decision meeting the requirements of paragraph (d) of this section.

§ 2570.116 Scope of discovery.

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.14 of this title.

(a) A party may file a motion to conduct discovery with the administrative law judge. The motion for discovery shall be granted by the administrative law judge only upon a showing of good cause. In order to establish "good cause" for the purposes of this section, a party must show that the discovery requested relates to a genuine issue as to a material fact that is relevant to the proceeding. The order of the administrative law judge shall expressly limit the scope and terms of discovery to that for which "good cause" has been shown, as provided in this paragraph.

(b) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon showing that the party seeking discovery has substantial need of the materials or information in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials or information by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representatives of a party concerning the proceeding.

§ 2570.117 Summary decision.

For 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.41 of this title.

(a) *No genuine issue of material fact.* (1) Where no issue of a material fact is found to have been raised, the administrative law judge may issue a decision which, in the absence of an appeal pursuant to §§ 2570.119 through 2570.121 of this subpart, shall become a final order.

(2) A decision made under this paragraph shall include a statement of:

(i) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(ii) Any terms and conditions of the rule or order.

(3) A copy of any decision under this paragraph shall be served on each party.

(b) *Hearings on issues of fact.* Where a genuine question of a material fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing.

§ 2570.118 Decision of the administrative law judge.

For section 502(c)(6) civil penalty proceedings, this section shall apply in lieu of § 18.57 of this title.

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of the filing of the transcript of the testimony, or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion, proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administrative law judge.* Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law with reasons therefor upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. In a contested case in which the Department and the Respondent have presented their positions to the administrative law judge pursuant to the procedures for 502(c)(6) civil penalty proceedings as set forth in this subpart, the penalty (if any) which may be included in the decision of the administrative law judge shall be limited to the penalty expressly provided for in section 502(c)(6) of ERISA. It shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in §§ 2570.119 through 2570.121.

§ 2570.119 Review by the Secretary.

(a) The Secretary may review a decision of an administrative law judge. Such a review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to him or her a copy of the entire record before the administrative law judge.

§ 2570.120 Scope of review.

The review of the Secretary shall not be *de novo* proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

§ 2570.121 Procedures for review by the Secretary.

(a) Upon receipt of the notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his or her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

Signed at Washington, DC, this 28th day of July 1999.

Richard M. McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–19861 Filed 8–4–99; 8:45 am]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 65, 66, and 147
Revision of Certification Requirements: Mechanics and Repairmen; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 65, 66, and 147

[Docket No. 27863; Notice No. 98–5]

RIN 2120–AF22

Revision of Certification Requirements: Mechanics and Repairmen

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing a previously published NPRM (July 9, 1998, 63 FR 37172) that proposed to amend the certification and training requirements for mechanics and repairmen. The NPRM was the result of the completion of the review of the certification requirements for mechanics and repairmen by the Aviation Rulemaking Advisory Committee (ARAC). Proposals made in the NPRM were based on the ARAC recommendation forwarded to the FAA in the form of a draft NPRM. During the comment period for the NPRM, more than 1,500 members of the aviation industry submitted comments. The majority of the comments received, including those submitted by ARAC, indicated opposition to the proposal. In light of this opposition, the FAA has decided to withdraw the NPRM in its entirety for further internal study.

FOR FURTHER INFORMATION CONTACT: Leslie K. Vipond, Manager, Airworthiness System and Air Agencies Branch, (AFS–350), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3269; facsimile (202) 267–5115.

SUPPLEMENTARY INFORMATION:

Background

In 1991, the FAA chartered the ARAC. At its first meeting on Air Carrier General Aviation Maintenance Issues ARAC established the part 65 Working Group (working group) (56 FR 20492, May 3, 1991). The working group was composed of representatives from several aviation associations, including the European Association of Aerospace Manufacturers, the Aeronautical Repair Station Association (ARSA), the Aerospace Industries Association, the Air Freight Association, the Air Line Pilots Association (ALPA), the Air Transport Association (ATA), the Aircraft Electronics Association, the Aircraft Owners and Pilots Association (AOPA), the Airline Dispatchers Federation, the Allied Pilots Association, the American Helicopter Society, the Aviation Consumer Action Project, the Aviation Insurance Association, the Aviation Technician Education Council (ATEC), the Equipment Leasing Association of America, the Experimental Aircraft Association, Flight Dispatchers, the General Aviation Manufacturers Association, the Helicopter Association International (HAI), the Independent Pilots Association, the International Association of Machinists and Aerospace Workers (IAM), the Joint Aviation Authorities (JAA), the Light Aircraft Manufacturers Association, the National Air Carrier Association, the National Air Transportation Association (NATA), the National Business Aircraft Association (NBAA), the Parachute Industry Association, the Professional Aviation Maintenance Association (PAMA), the Regional Airline Association (RAA), the Small Aircraft Manufacturers Association, the Teamsters Airline Division, Transport Canada, the University Aviation Association, and the Used Aircraft Certification Conformity Committee. The working group was chaired by NATA.

The ARAC tasked this working group to conduct a review of the certification requirements for mechanics, mechanics holding inspection authorizations, and repairmen. At that time, these requirements were in part 65, subparts D and E. After the ARAC analysis of the working group's extensive efforts, the ARAC submitted to the FAA its recommendation in the form of a draft NPRM, which would establish part 66. Based on this draft NPRM, the FAA issued an NPRM (Notice No. 98–5) proposing to revise the certification requirements for mechanics and repairmen (63 FR 37172, July 9, 1998).

Reason for Withdrawal

As previously noted, the proposals in Notice No. 98–5 were based on the work performed by the working group and the recommendation of ARAC. Because the ARAC forwarded the document to the FAA, the FAA assumed, for the most part, the ARAC and the aviation community generally would support Notice No. 98–5. However, of the more than 1,500 commenters who submitted comments on Notice No. 98–5, most opposed the NPRM, either in part or in full. Commenters especially opposed the creation of the Aviation Maintenance Technician and Aviation Maintenance Technician (Transport) certificates. Several working group member associations, including AOPA, ARSA, NATA, PAMA, and RAA, opposed the NPRM and some asked the FAA to withdraw Notice No. 98–5.

Decision

Because of the overwhelming opposition to Notice No. 98–5, the FAA has decided to withdraw Notice No. 98–5. The FAA will study the issue internally, and, if the FAA decides to make any changes to the regulations concerning the certification and training requirements for mechanics and repairmen, the FAA may later issue an NPRM for public comment.

Accordingly, Notice No. 98–5, published on July 9, 1998 (63 FR 37172), is hereby withdrawn.

Issued in Washington, DC, on July 28, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 99–20023 Filed 8–4–99; 8:45 am]

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August 5, 1999

Part V

Department of Transportation

Coast Guard

46 CFR Parts 10 and 12

User Fees for Licenses, Certificates of Registry, and Merchant Mariner Documents; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 12

[USCG–1997–2799]

RIN 2115–AF49

User Fees for Licenses, Certificates of Registry, and Merchant Mariner Documents

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard revises the user fees for its services relating to the issuance of merchant mariner licenses, certificates of registry, and merchant mariner documents. We based the revisions on the most recent recalculation of program costs. We have changed the format of the two CFR sections in which the fees are published from narrative text to tables that are easier to use.

DATES: This final rule is effective October 4, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. You may also electronically access the public docket for this rulemaking on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For information concerning the final rule provisions, contact CDR Mark McEwen, Project Manager, U.S. Coast Guard Headquarters, Office of Planning and Resources (G–MRP), telephone 202–267–0785. For questions on viewing material in the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Background

Regulatory History

The Coast Guard published a final rule entitled "User Fees for Marine Licensing, Certification of Registry and Merchant Mariner Documentation" in the **Federal Register** on March 19, 1993 (59 FR 15228). That rule established marine license, certificate of registry, and merchant mariner document user fees in 46 CFR parts 10 and 12.

On September 27, 1994, we added user fees for renewals of certificates of registry and MMDs to these fee schedules.

On April 1, 1998, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "User Fees for Licenses, Certificates of Registry, and Merchant Mariner Documents" in the **Federal Register** (63 FR 16024) [corrected April 20, 1998 at 63 FR 19580]. The NPRM proposed revised fees based on our latest cost recalculations.

We allowed 180 days for mariners to review the NPRM and submit written comments. During this time, we received 22 comments on a variety of issues including one request for a series of public meetings. Since the written comments addressed a wide variety of issues, the Coast Guard did not find that public meetings were needed to provide additional helpful information for the rulemaking and determined that a public meeting would not be helpful to develop the final rule.

Discussion of Comments and Changes

The following paragraphs discuss the comments received and explain the changes we have made in the final rule.

Opposition to User Fees

Thirteen comments objected to all user fees in general, and specifically to the user fees we proposed for merchant mariner licenses and documents. Some comments agreed that the fees were necessary, but objected to the amount of the proposed fees. Some comments stated that the fee for the service exceeded the value of the service to the recipient.

The Omnibus Budget Reconciliation Act of 1990 (the Act) amended 46 U.S.C. 2110 to require that the Coast Guard establish and collect fees for Coast Guard services. Our fees are based on the cost to the Coast Guard of providing the service.

Improve Service at RECs

We received four comments discussing the quality of service at the 17 Regional Examination Centers (REC). The comments suggested that the Coast Guard lower costs and fees by reducing procedures and increasing productivity at the RECs, and by allowing a third party to process merchant mariner document (MMD) applications and certify merchant mariners.

This rule does not include general changes to REC procedures or to the licensing and documentation system. However, we have forwarded these comments to the program managers and to the licensing reengineering team for their consideration.

Five comments stated that they would prefer that the fees that were paid would be used to improve service to the customer. Fees paid for merchant mariner licensing and documentation (MMLD) services are deposited in the general fund of the U.S. Treasury as offsetting receipts of the Department of Transportation and ascribed to Coast Guard activities. The Coast Guard cannot use fee receipts for any purpose unless specifically authorized by Congress.

$17 Fee for Criminal Record Check

One comment stated that we should not charge the mariner a $17 fee for a Federal Bureau of Investigation (FBI) criminal record check because the mariner does not benefit from this service.

The United States Court of Appeals upheld the Coast Guard's authority to charge the $17 fee for an FBI criminal record check (Seafarers International Union of North America, *et al.* v. the United States Coast Guard, 81 F.3d 185–186, (DC Cir. 1996)). We will start collection of the $17 FBI criminal record check fee when this rule becomes effective. The fee is included in the evaluation phase fee for original documents.

Schedule for Recalculation and Implementation of Fees

One comment suggested that we should not recalculate the fees now because we are considering privatizing certain licensing functions. Another comment recommended that we increase the fees once every 10 years and "adjust the fees for inflation only." One comment recommended that we gradually implement the new fee schedule over a 4-year period.

We must review and, if necessary, recalculate the licensing and documentation user fees every 2 years as required by OMB Circular A–25. Based on the recalculated costs, we may adjust the fees to recover the costs of providing services. The Coast Guard's settlement with Seafarers International Union (SIU) dated September 17, 1997, obligates the Coast Guard to "going forward with notice and comment rulemaking as to its MMLD program and further commits that this rulemaking will include the recalculation of its costs and reassessment of its fees." A phased implementation of fees is not practical because the fee reviews required by OMB are too frequent to allow phased implementation.

Four comments stated that the user fees are unfair because they are an additional burden to mariners who must already pay other costs to maintain their licenses or advance their careers such as required courses, travel to required courses, and travel to the RECs.

The Coast Guard is aware of these other professional costs and we discussed them in the rulemaking that established the original fees on March 19, 1993 (58 FR 15228). We have not increased the fees since that time. This rulemaking is the first adjustment of the MMLD fees based on a recalculation of the costs of providing MMLD services.

Paying for Multiple Transactions

Three comments suggested that multiple license, MMD, and endorsement renewals for one individual should all expire simultaneously at 5-year intervals. This would consolidate all licensing fees into a single payment for multiple transactions once every 5 years. Mariners have the option to simplify their renewal process by renewing all their documents at the same time, putting them all on the same 5-year expiration schedule. The fee schedule provides savings to mariners when more than one document is processed using a single application.

Recalculation

One comment stated that the "recalculation is not a true cost analysis or an economic time test study, but an exercise in justifying the Congressional mandate to impose user fees."

We did the recalculation to comply with a court order resulting from litigation initiated by SIU. That case was settled after we completed the recalculation. The court ordered the Coast Guard to reassess its fees based on that recalculation. This rulemaking does so.

Regulatory Assessment

One comment criticized the draft regulatory assessment because the same user fee would represent a greater percentage of the average annual income for an able seaman than that of a third mate.

The fees in this rule are based only on the costs of providing each type of licensing and documentation service.

The same comment stated that "Coast Guard fees are also significantly higher than fees imposed by the government for similar federally mandated licenses and documents" such as by the Federal Aviation Administration and the Federal Communications Commission.

Unless the licensing systems of other agencies are the same as the Coast Guard's licensing system, the fees for licensing services will be different in each agency. Each agency has different direct and indirect costs for providing the service and their fees are related to those costs. Comparisons with other government or professional organizations are useful for evaluating the potential cumulative impacts on affected persons, but each agency's or organization's system is unique and each agency's license has different requirements for obtaining certification.

Estimate of Uninspected Small Passenger Vessels

One comment disagreed with the Coast Guard's estimate of only 480 uninspected small passenger vessels and stated that the number should be much higher.

The Coast Guard agrees with the comment that the 480 figure is incorrect and, upon further research, the Coast Guard estimates there are approximately 30,000 uninspected passenger vessels that could have license holders both owning and operating their vessels as small businesses.

STCW

One comment suggested that the proposed fees, in addition to the requirements of the implementation of the International Convention on Standards, Training, Certification and Watchkeeping (STCW), "* * * would place an unacceptable financial burden upon individual mariners and upon vessel operators."

The June 26, 1997, STCW final rule (62 FR 34525) discussed the costs associated with implementation of that rule. However, the costs of providing STCW services were not part of our recalculation used for merchant mariner license and documentation fees in this rule. The Coast Guard has not charged fees for STCW certification services and this rule does not establish fees for these services. We have added new entries to tables 10.109 and 12.02–18 for processing STCW forms, and we clearly state there is no fee charged for this activity.

Other Changes

We have changed §§ 10.110 and 12.02–18 to allow for payment of fees for all phases at the time of application or for payment at each phase.

We are also adding language to both sections permitting RECs, as they become equipped, to accept payment by credit card.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979). A separate regulatory assessment document, however, has been prepared for this rule and is available in the docket for inspection or copying where indicated under ADDRESSES.

The total annual revenues from direct user fees under subtitle II of 46 U.S.C. 2110 does not exceed $23.1 million and the merchant marine licensing and documentation (MMLD) revenues for fiscal year 1996 were only $4.6 million. The revised fees will increase these revenues to an estimated $9.3 million. This represents the maximum amount of revenue that could be collected based on recalculated data and transaction figures. The total revenue of direct user fees under subtitle II of 46 U.S.C. 2110 for fiscal year 1997 did not exceed $23.1 million, well below the $100 million threshold that makes a rulemaking economically significant.

This final rule will affect all mariners required to hold a license or certificate of registry (COR) in accordance with 46 CFR part 10 or a merchant mariner document (MMD) in accordance with 46 CFR part 12. Data from the RECs (1994) indicate a grand total of 57,529 transactions, including new license issuances as well as renewals.

The impact of the fees on the individual merchant mariner will occur at the time fees are paid. At all other times during the validity of the license, document, or certificate, if there are no document transactions, no payments are made. The relative economic impact of the fees on each mariner would vary depending upon the number and type of documents held by the mariner and the mariner's ability to pay.

To assess the impact of the fees on the individual mariner, the Coast Guard annualized fees over the period the documents were valid. We determined that the document transactions a typical mariner may require over the first 10 years he or she holds a license or document will include renewals as well as raises in grade or endorsements. Our analysis of the costs borne by the mariner covers a 10-year period.

Based on these assumptions, the annualized fee differences range from a low of $0.80 for Upper Level Licenses to a high of $16.30 for a Merchant Mariner's Document with qualified rating.

Summary

The Coast Guard found that the impact of the revisions will vary with the financial situation of each individual mariner. However, the data suggested the financial impact of the fee

revisions are not significantly different from the user and licensing fees of other professions, both in terms of actual fees and as a percent of salary. The impact of the fee revisions to the individual merchant mariner occurs over the phases of the document transactions at the time a fee is paid for each transaction phase. Absent further transactions during the document's 5-year period of validity, no other payments would be necessary until the renewal of the document.

The Coast Guard understands that the fee revisions may represent only one of several expenses incurred by the individual mariner when acquiring a Coast Guard license, COR, or MMD. Within the marine professions and trades, the fees for MMLD transactions have essentially become part of the overall cost associated with working in the industry.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. *Small entities* include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The fee revisions in this final rule will impact the individual mariner. However, some license holders both own and operate their vessels as small businesses. For those individuals, this final rule has small entity implications. The annual impact of these fee revisions on any sole proprietor will be less than $20. The Coast Guard estimates that few sole proprietors work as towing vessel operators, offshore supply vessel operators, and mobile offshore drilling unit operators. However, we believe that there are a number of sole proprietors in the small passenger vessel industry. As a business, sole proprietors can claim their licensing and documentation user fees as a business expense for tax purposes and many can pass along the expense of the licensing fees to the consumer in the form of higher rates. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement action of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, 109 Stat. 48) requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. The UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule will not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(a) of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Other Executive Orders on the Regulatory Process

In addition to the statutes and executive orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions—

E.O. 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership

This rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform

This rule meets the applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects

46 CFR Part 10

Fees, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Fees, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 10 and 12 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for part 10 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701; 49 CFR 1.45, 1.46.

Section 10.107 is also issued under the authority of 44 U.S.C. 3507.

2. Revise § 10.109 to read as follows:

§ 10.109 Fees.

Use table 10.109 to determine the fees that you must pay for license and certificate of registry activities in this part.

TABLE 10.109—FEES

If you apply for...	And you need... Evaluation Then the fee is:	Examination Then the fee is:	Issuance Then the fee is:
License:			
Original upper level	$115	$110	$45
Original lower level	115	95	45
Raise of grade	100	45	45
Modification or removal of limitation or scope	50	45	45
Endorsement	50	45	45
Renewal	50	45	45
Renewal for continuity purposes	n/a	n/a	45
Reissue, Replacement, and Duplicate	n/a	n/a	[1] 45
Radio Officer License:			
Original	65	n/a	45
Endorsement	50	45	45
Renewal	50	n/a	45
Renewal for continuity purposes	n/a	n/a	45
Reissue, Replacement, and Duplicate	n/a	n/a	[1] 45
Certificate of Registry.			
Original (MMD holder)	105	n/a	45
Original (MMD applicant)	120	n/a	45
Renewal	50	n/a	45
Renewal for continuity purposes	n/a	n/a	45
Endorsement	n/a	n/a	45
Reissue, Replacement, and Duplicate	n/a	n/a	[1] 45
STCW Certification:			
Original	[2]	[2]	[2]
Renewal	[2]	[2]	[2]

[1] Duplicate for document lost as result of marine casualty—No Fee.
[2] No fee.

3. Revise § 10.110 to read as follows:

§ 10.110 Fee payment procedures.

(a) You may pay—

(1) All fees required by this section when you submit your application; or

(2) A fee for each phase at the following times:

(i) An evaluation fee when you submit your application.

(ii) An examination fee before you take the first examination section.

(iii) An issuance fee before you receive your license or certificate of registry.

(b) If you take your examination someplace other than a Regional Examination Center (REC), you must pay the examination fee to the REC at least one week before your scheduled examination date.

(c) Unless the REC provides additional payment options, your fees may be paid as follows:

(1) Your fee payment must be for the exact amount.

(2) Make your check or money order payable to the U.S. Coast Guard, and write your social security number on the front of each check or money order.

(3) If you pay by mail, you must use either a check or money order.

(4) If you pay in person, you may pay with cash, check, or money order at Coast Guard units where Regional Examination Centers are located.

(d) Unless otherwise specified in this part, when two or more documents are processed on the same application—

(1) *Evaluation fees.* If a certificate of registry transaction is processed on the same application as a license transaction, only the license evaluation fee will be charged; and

(2) *Issuance fees.* A separate issuance fee will be charged for each document issued.

§ 10.209 [Amended]

4. In § 10.209(e)(4), remove the symbols "§§ " and add, in their place, "the tables in §§".

§§ 10.205, 10.207, 10.209, 10.217, and 10.219 [Amended]

5. In addition to the amendments set forth above, in 46 CFR part 10, remove the word "§ 10.109" and add, in its place, the words "table 10.109 in § 10.109" in the following places:

(a) Section 10.205(a);

(b) Section 10.207(a);

(c) Section 10.209(a)(1), (e)(3)(i)(A), and (f)(1);

(d) Section 10.217(a)(1) and (a)(2); and

(e) Section 10.219(c).

PART 12—CERTIFICATION OF SEAMEN

6. The authority citation for part 12 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; 49 CFR 1.46.

7. Revise § 12.02–18 to read as follows:

§ 12.02–18 Fees.

(a) Use table 12.02–18 to determine the fees that you must pay for merchant mariner document activities in this part.

(b) Unless otherwise specified in this part, when two documents are processed on the same application—

(1) *Evaluation fees.* If a merchant mariner document transaction is processed on the same application as a license or certificate of registry transaction, only the license or certificate of registry evaluation fee will be charged;

(2) *Examination fees.* If a license examination under part 10 also fulfills the examination requirements in this part for a merchant mariner document, only the fee for the license examination is charged; and

(3) *Issuance fees.* A separate issuance fee will be charged for each document issued.

(c) You may pay—

(1) All fees required by this section when you submit your application; or

(2) A fee for each phase at the following times:

(i) An evaluation fee when you submit your application.

(ii) An examination fee before you take the first examination section.

(iii) An issuance fee before you receive your merchant mariner document.

(d) If you take your examination someplace other than a Regional Examination Center (REC), you must pay the examination fee to the REC at least one week before your scheduled examination date.

(e) Unless the REC provides additional payment options, your fees may be paid as follows:

(1) Your fee payment must be for the exact amount.

(2) Make your check or money order payable to the U.S. Coast Guard, and write your social security number on the front of each check or money order.

(3) If you pay by mail, you must use either a check or money order.

(4) If you pay in person, you may pay with cash, check, or money order at Coast Guard units where Regional Examination Centers are located.

(f) The Coast Guard may assess charges for collecting delinquent payments or returned checks. The Coast Guard will not provide documentation services to a mariner who owes money for documentation services previously provided.

TABLE 12.02–18—FEES

If you apply for...	And you need... Evaluation Then the fee is:	Examination Then the fee is:	Issuance Then the fee is:
Merchant Mariner Document:			
Original without endorsement	$110	n/a	$45
Original with endorsement	110	140	45
Endorsement for qualified rating	95	140	45
Upgrade or Raise in Grade	95	140	45
Renewal without endorsement for qualified rating	50	n/a	45
Renewal with endorsement for qualified rating	50	45	45
Renewal for continuity purposes	n/a	n/a	45
Reissue, Replacement, and Duplicate	n/a	n/a	[1] 45
STCW Certification:			
Original	[2]	[2]	[2]
Renewal	[2]	[2]	[2]
Other Transactions:			
Duplicate Continuous Discharge Book	n/a	n/a	10
Duplicate record of sea service	n/a	n/a	10
Copy of certificate of discharge	n/a	n/a	10

[1] Duplicate for document lost as result of marine casualty—No Fee.
[2] No Fee.

§ 12.02–27 [Amended]

7. In § 12.02–27(e)(4) and (f), remove the symbols "§§ " and add, in their place, "tables in §§".

§§ 12.02–23 and 12.02–27 [Amended]

8. In addition to the amendments set forth above, in 46 CFR part 12, remove the word "§ 12.02–18" and add, in its place, the words "table 12.02–18 in § 12.02–18" in the following places:

(a) Section 12.02–23(b) and (c)(2); and

(b) Section 12.02–27(a)(1) and (e)(3)(i)(A).

Dated: July 27, 1999.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–20037 Filed 8–4–99; 8:45 am]

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federal register

Thursday
August 5, 1999

Part VI

Department of Labor

Employment and Training Administration

Consultation Papers on Performance Accountability Under Title I of the Workforce Investment Act of 1998 (WIA); Notice

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DEPARTMENT OF LABOR

Employment and Training Administration, Labor

Consultation Papers on Performance Accountability Under Title I of the Workforce Investment Act of 1998 (WIA)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The purpose of this notice is to disseminate consultation papers for interested parties on the performance accountability system for title I of the Workforce Investment Act. There are two papers. The first paper provides a framework regarding the approach and processes for continuous improvement under title I of the Workforce Investment Act of 1998. The second paper provides a framework for the approach and processes for customer satisfaction measures under title I of the Workforce Investment Act. Interested parties have 30 days to provide comments on these papers.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Johnson, Workforce Implementation Taskforce Office, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–5513, Washington, D.C., Telephone: (202) 219–0316 (voice) (This is not a toll free number), or 1–800–326–2577 (TDD). Information may also be found, or comments provided, at the website—http://usworkforce.org.

SUPPLEMENTARY INFORMATION: The Workforce Investment Act (WIA or Act) Pub. L. 105–220 (August 7, 1998) provides the framework for a reformed national workforce investment system designed to meet the needs of the nation's employers, job seekers and those who want to further their careers. One of the key reforms contained in the Act is the establishment of a comprehensive accountability system to assess the effectiveness of State and local areas in providing employment and training services. The Act requires:

- A focus on results defined by core indicators of performance;
- Measures of customer satisfaction with programs and services;
- A strong emphasis on continuous improvement;
- Annual performance levels developed as a result of negotiations among Federal, State and local partners;
- Incentive awards and financial sanctions based on State performance; and
- Reporting and dissemination of performance results.

The two papers contained in this notice focus on two of these requirements—continuous improvement and customer satisfaction.

The Department is approaching the development of this new performance accountability system on two tracks. First, definitions of the core measures of performance and temporary reporting instructions have been developed and disseminated for those States who are implementing WIA in Program Year (PY) 1999. Second, the Department is working with States and local governments to develop definitions and reporting requirements for use in PY 2000 and beyond. Part of this process will include using the lessons learned from the early implementing States and working with the Department of Education and other Federal agencies to develop common definitions for performance measures across programs. In general, the Department is considering PY 1999 to be a transition year. The comments received on these two papers will be used in developing the performance accountability system for PY 2000 and beyond.

Comments are solicited on the overall framework and approaches being proposed for customer satisfaction and continuous improvement under title I of WIA.

Signed at Washington, D.C., this 30th day of July 1999.

Raymond L. Bramucci,

Assistant Secretary of Labor, Employment and Training Administration.

Attachment 1—Continuous Improvement Under Title I of the Workforce Investment Act of 1998

I. Introduction

A. Legal Framework

The Workforce Investment Act of 1998 envisions a high performance workforce investment system in this country—a system that is customer-driven, results-oriented, flexible, and continuously improving. The Act's purpose is clearly stated as: To provide workforce investment activities that increase participants' employment, retention, earnings, and skill attainment and as a result:

- Improve the quality of the workforce;
- Reduce welfare dependency; and
- Enhance the productivity and competitiveness of the nation.

The Act envisions a workforce investment system that strives for high performance rather than settling for compliance levels of performance, and that delivers unparalleled levels of services to customers—job seekers, workers, and employers. Although WIA has numerous references to continuous improvement, this consultation paper focuses on three major provisions contained in Section 136 of the legislation:

- A comprehensive performance accountability system will include an assessment of the effectiveness of state and local areas in achieving continuous improvement of workforce investment activities. Section 136(a).
- The Governor/Secretary agreement on State adjusted levels of performance must take into account the extent to which those levels promote continuous improvement in performance. Section 136(b)(3)(A)(iv)(III).
- States must conduct ongoing evaluations of workforce investment activities to promote and implement methods for continuously improving them. Section 136(e)(1).

B. Guiding Principles

The U.S. Department of Labor (DOL) is using the following as guiding principles in designing a system-wide approach for continuous improvement.

- DOL's role in continuous improvement is primarily one of leadership carried out through an effective technical assistance effort.
- For the workforce investment system to strive toward performance excellence, continuous improvement practices must be embraced at all levels—local, State, and DOL Regional and National Offices.
- DOL will integrate existing quality initiatives to drive continuous improvement through a technical assistance strategy that includes award and recognition efforts, access to information on best practices, and the availability of a variety of tools.
- The Malcolm Baldrige Criteria for Performance Excellence will be used as the framework for continuously improving performance in the workforce investment system.

C. Malcolm Baldrige Criteria

The Malcolm Baldrige Criteria for Performance Excellence and the Baldrige Scoring Guidelines are proposed as the framework for enabling organizations within the workforce investment system to advance toward high performance. This framework is widely accepted as the standard for defining performance excellence in public and private organizations. The Criteria and Scoring Guidelines are excellent diagnostic instruments that can help leaders identify organizational strengths and key areas for improvement and work to achieve higher levels of performance. DOL will provide resources and technical assistance to state and local organizations that are interested in using the Baldrige Criteria to help improve performance. The following is excerpted from the 1999 "Criteria for Performance Excellence," and includes for informational purposes the relative point value assigned to each category:

Award category	Point value
Leadership	125
Strategic Planning	85
Customer and Market Focus	85
Information and Analysis	85
Human Resource Focus	85
Process Management	85
Business Results	450
Total	1,000

II. Approach to Continuous Improvement

A. Overview of the Approach

According to leading Baldrige experts, continuous improvement is the systematic and ongoing improvement of products, programs, services and processes by small increments and major breakthroughs. Continuous improvement is the process of building dynamic, high achieving systems within every organization, and becomes embedded in the way the organization conducts its daily activities.

DOL's role in the continuous improvement process is primarily based on providing leadership and technical assistance. In striving to improve performance as measured by the performance and customer satisfaction indicators, states and localities will need resources, information and technical assistance to help them continuously improve organizational effectiveness. The approach to continuous improvement proposed in this consultation paper envisions that DOL will play a strong, proactive role in providing States and localities with information, resources, tools, training and technical assistance to help them enhance their performance. DOL will also apply these tools to continuously improve the effectiveness of ETA National and Regional Offices.

DOL's Continuous Improvement Strategy is aimed at improving outcomes for the customers of the workforce investment system by enhancing system-wide performance. The objectives of the strategy are to:

- Effectively align system-wide resources to achieve performance excellence.
- Recognize and award top performers within the system.
- Provide organizations and individuals with learning opportunities to acquire the skills needed to operate in a high performance mode.

B. Continuous Improvement in State Workforce Investment Plans

A rigorous approach to continuous improvement must be applied at all levels of the workforce investment system in order for that system to achieve the high levels of performance envisioned in the Workforce Investment Act. For States to develop a Statewide workforce investment system that incorporates a rigorous approach to continuous improvement, each State needs to start with a snapshot or baseline of its system capacity—its "as is" capacity at the point in time when the State Plan is developed. Ideally, States would establish both an "as is" state for each organization's capability to become a high performance organization (organizational effectiveness), as well as the "as is" state for each organization's current program results and outcomes.

In the spirit of partnership and shared accountability, State officials and DOL officials would have this data before them as the basis for establishing the baseline. From the State's perspective, the baseline or starting point for continuous improvement is simply defined as, "where you are now." (This process has been further defined in the consultation paper on Reaching Agreement on State Adjusted Levels of Performance.)

The State's continuous improvement strategy becomes its approach for closing the gap between the current "as is" capacity and a time-sensitive "desired state" set forth in the State's plan. This approach addresses both the voluntary "organizational improvement" strategy and the more traditional compliance-oriented strategies for meeting minimum WIA specified performance measures. This offers states the opportunity to propose a rigorous and comprehensive approach to continuous improvement—one that establishes an effort to develop and improve organizational capacity (systems and processes) thus enabling committed organizations to deliver high performance, customer-focused services, as well as meeting all other requirements of the Act.

C. Voluntary Approach to Assessment and Benchmarking

DOL's role is to make available to States the resources, tools and services that will help them advance toward high performance through a rigorous continuous improvement strategy. The basic tools and services would include organizational assessment tools, resources to aid in the development of improvement plans, best practices, and benchmarking for continuous improvement services. "Benchmarking" is the use of information and data on processes and results that represent best practices and the highest levels of performance.

As part of its continuous improvement strategy, DOL would gather and make easily accessible to States and local organization benchmarks of the highest levels of performance both in processes and results within the workforce investment system, and for similar processes and results for organizations outside the system. Benchmarks represent the very essence of high performance business practices—comparing your organization to the very best in class and striving continuously to attain that level of performance. It is a voluntary practice carried out by the best organizations as a fundamental component of their continuous improvement strategy.

D. Supporting Continuous Improvement Activities

Under WIA, States are to ensure that the principle of continuous improvement is embedded in Statewide workforce investment activities. Again, this would represent the regimen for achieving the systematic and ongoing improvement of workforce investment programs, services, and processes by small increments and major breakthroughs. This continuous improvement regimen will foster enhancements in performance levels desired by each level of the system.

The State's Workforce Investment Plan must include a description of the State's strategy for developing and operating this continuous improvement approach. While each State has latitude to use a range of resources, tools and approaches for accomplishing this, the States are encouraged to work with the Employment and Training Administration (ETA) Regional Office to take advantage of resources available from or brokered through ETA's Continuous Improvement Strategy.

Generally, DOL is seeking comment on the following strategy to support the local, State, Regional and National organizations in continuous improvement—

- Establish a system of organizational and individual learning to acquire skills needed to support high performance within the workforce investment system.
- Utilize the Malcolm Baldrige Criteria for Performance Excellence as a

proven and rigorous methodology to transform local, State, and National workforce investment organizations.

• Establish an award and recognition system in support of high performing organizations at all levels.

• Work closely with early implementing States as partners to begin the system-wide transformation process toward performance excellence.

• Provide local and State organizations, Regional Offices and National Office with easily accessible information on benchmarks and best practices, as well as affordable and effective assessment tools.

Attachment II: Customer Satisfaction Under Title I of the Workforce Investment Act of 1998

I. Introduction

A. Legal Framework

In addition to the core measures, the Workforce Investment Act of 1998 [WIA Section 136(b)(2)(B)] states that "the customer satisfaction indicator of performance shall consist of customer satisfaction of employers and participants with services received from the workforce investment activities authorized under this subtitle." The Act [Section 136(b)(3)(A)(i)] also requires that there be State-adjusted levels of performance for customer satisfaction and that "the levels of performance established * * * shall, at a minimum—

(1) Be expressed in an objective, quantifiable, and measurable form; and

(2) Show the progress of the State toward continuously improving in performance."

WIA draws a clear link between the core indicators of performance and customer satisfaction. The levels of performance attained for the core indicators must "assist the State in attaining a high level of customer satisfaction" (WIA Section 136(b)(3)(a)(iv)(I)). WIA further states that "customer satisfaction may be measured through surveys conducted after the conclusion of participation in workforce investment activities" (WIA Section 136(b)(2)(B)).

Effective high performance organizations listen to their customers and build their organization around meeting their customers' expectations. Determining a customer's expectations and satisfaction is an integral part of a continuous improvement strategy. Under the Workforce Investment Act, customer satisfaction is both a process of identifying and listening to customers, as well as an outcome for measuring program success.

WIA emphasizes the importance of a customer-driven workforce system by including customer satisfaction as a required measure, along with the core indicators of performance. Customer satisfaction measures provide feedback to supervisors and staff about how their actions affect customers, giving them critical information to motivate and guide continuous improvement. Customer satisfaction feedback also sends a clear message to staff, management, and customers that customers matter.

B. Guiding Principles

DOL is using the following guiding principles in designing a system-wide approach for measurement of customer satisfaction:

• Customer satisfaction is the foundation of an organization's strategy for continuous improvement.

• Customer satisfaction should be measured after completion of the service and should be quantifiable.

• Customer satisfaction surveys need to contain a set of required questions to form a customer satisfaction indicator.

• Comparability is an important element in negotiating customer satisfaction performance levels and in providing opportunities for benchmarking and sharing best practices.

• States and local organizations are encouraged to add customized questions to inform their efforts to align resources or redesign processes to achieve better results.

II. Approach

A. Overview of the Approach

The Act, in requiring a customer satisfaction indicator for employers and participants, presents a general framework for developing a national approach. Customer satisfaction indicators are a specific part of the performance accountability system and are the foundation of an organization's strategy for continuous improvement. They provide a guide to achieving the vision and goals of the Act, and provide a focused and structured process for listening to and learning from customers.

To meet the customer satisfaction requirements for Title I, DOL proposes the use of customer satisfaction surveys. There are two purposes for surveying customers. The first is to produce an outcome measure for each State as part of the performance accountability system. This will be accomplished by a small set of required questions that will form a customer satisfaction index. The second purpose is to gain customer feedback to help in improving processes and services. This will be accomplished through a set of recommended questions addressing each service component and any additional questions that the State and local areas choose to ask, depending on their particular needs and service mix.

DOL will provide guidelines for collecting customer satisfaction data that will lay out the strategy and standards (e.g., sample size, response rate) for implementing the survey while providing as much flexibility for the states and localities as possible. The survey will contain the required questions that form the indicator. In addition, to cover many of the most commonly delivered services, the guidelines will suggest sets of questions that States may choose to use along with the indicator questions. The advantage of using these questions will be that they provide additional opportunities for benchmarking and learning from the best practices of others.

B. Proposed Customer Satisfaction Strategy

Consistent with the Workforce Investment Act, measures of customer satisfaction:

• Must address participants and employers;

• Must be quantifiable;

• Must be able to track progress toward improvement;

• Must be comparable across states;

• May be measured at the conclusion of participation; and

• Must promote continuous improvement in performance along with the core measures.

The Act calls for assessment of two customer categories: (1) participants, and (2) employers. Consistent with the approach taken for core measures, two options are presented. The first option is to report the participant indicator for each of the four groups:

• Adults

• Dislocated Workers

• Youth 19–21 served with youth funds, and

• Youth 14–18.

The second option is to aggregate the four groups to provide a single indicator of participant satisfaction.

The advantages of reporting each of the four groups separately are to:

1. Allow for a more comprehensive analysis of results. An analysis by group will provide an assessment of the degree to which core indicator performance contributes to customer satisfaction.

2. Allow program managers to evaluate the degree to which they are satisfying different customer segments.

The advantage of the second option is that it will simplify customer surveying and reporting, and will emphasize high expectations for all of the groups. It should be noted that, under both options, the four groups identified above would also include those participating in incumbent worker training. Customer surveying for other services that are not covered under Title I would be at the discretion of other one-stop partner programs.

For employers, it is proposed that services to employers be grouped into the following three service categories: (1) informational, (2) labor exchange, and (3) special services such as rapid response. Capturing customer satisfaction within each of these three categories will allow a clearer picture of service to employers and is one way to expand the system's ability to be accountable for services to a significant customer base. While States would not be required to report the three customer indicators for employers at a National level, they may utilize this method as a way to better understand their employer customers.

C. Collecting Customer Satisfaction Information

There are a number of different methods to collect customer satisfaction information.

• The simplest approach is to train staff to listen to the customers they serve and to ask questions that elicit customer needs while they are providing service.

• Focus groups and group interviews are another strategy.

• A trained manager or staff person can circulate in the resource center where people are waiting and ask questions informally to gain a better understanding of customer needs and concerns.

• Suggestion boxes are also a way of gathering information.

• Telephone surveys of customers are used to gather specific information.

To meet the WIA customer satisfaction requirements for Title I, the method proposed in this paper is customer satisfaction surveys. This is the most effective method that allows state and national aggregation of comparable, quantifiable data.

As part of a comprehensive continuous improvement strategy, organizations will use a combination of strategies in addition to the proposed surveys, since each serves a somewhat different purpose and provides different types of information.

D. Proposed Measures

The customer satisfaction indicator will be derived from surveys that must have a minimum set of common questions asked in a common format to assure comparability. These common questions are used to form an index, which is a single score. An index has the advantage of addressing different dimensions of the customer's experience, and is more reliable than a single question. The creation of an index provides a proven methodology to capture common customer satisfaction information across programs and organizations that can be aggregated to a State and National level. The responses of the embedded questions will be rolled up to the State level and reported annually at a specified time. This approach will continue to be modified as the Department receives feedback and validation through consultation with the workforce investment system.

Satisfaction for all customers in all service categories will be measured through a set of 3–5 questions that together form the indicator. We propose that the surveys include these three questions:

• "Overall, how satisfied were you with the services received?" (Ranging from 1—Very Dissatisfied to 10—Very Satisfied)

• "How likely would you be to refer others to these services?" (Ranging from 1—Not Very Likely to 10—Very Likely)

• "If you were in a similar situation again, how likely would you be to use these services?" (Ranging from 1—Not Very Likely to 10—Very Likely)

The above questions provide an indicator sensitive enough to record change but less prone to random fluctuations common to indicators that are composed of a single question. [This protects States from being sanctioned when random error depresses the indicator's performance level and prevents states from being rewarded for high performance resulting solely from random error.] The satisfaction score will be reported on a 0–100 scale. To simplify reporting to the Federal level, scores for each service category can be aggregated into two satisfaction indices, one for participants and one for employers.

E. Comparability Across States

Comparability is important for several reasons. First, customer satisfaction performance levels are negotiated along with the core measures. One of the factors affecting those negotiations are "how the levels compare with state adjusted levels of performance established for other States * * *."

Comparability also provides for fairness in determining incentives and sanctions. Additionally, comparability contributes to continuous improvement across the system. Having comparable measures will allow benchmarks to be developed to promote continuous improvement. Comparability will also facilitate the sharing of best practices within and among the States.

F. When To Measure

Consistent with WIA, it is proposed that customer satisfaction be measured at completion of the service. For continuous improvement purposes, it is particularly important to measure customer satisfaction as close to the point of service for the following reasons:

• The immediacy of a person's impression makes a significant difference in terms of what he/she will remember;

• The highest response rate is obtained at point of service;

• Due to the time delay to track outcome-related data (e.g., the core indicators), this immediate customer feedback provides much needed real time data for staff and program managers.

The point in time will vary based on the type of customer and level of service received.

Participant Customers

For self-help/information and core services, the survey will be conducted at the point of contact, immediately after the service is provided. For intensive and training services, the participant will be surveyed after the completion of services (this does not mean necessarily that they have "exited" or been "terminated" from a program). Additional surveying may be conducted as part of follow-up to determine other aspects of satisfaction. Such surveys are proposed to be optional, given the additional reporting burden they would create.

Employer Customers

For informational services, the survey will be conducted at the point of contact, immediately after the service is provided. For labor exchange and special services, the employer will be surveyed after the completion of services.

G. Using Customer Satisfaction in a Continuous Improvement Process

The customer satisfaction indicators, in addition to being a specific part of the performance accountability system, are also the foundation of an organization's strategy for continuous improvement. The indicators provide a guide to achieving the vision and goals of the Act. Additional questions of local importance to customers, program

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operators and service providers deepen the understanding of how to reach these goals.

By adding customized questions, organizations can use customer satisfaction as part of an integrated continuous improvement approach. They can determine where to focus more resources, or redesign programs or sequences of services in order to achieve better results. This use of customer satisfaction will not be federally mandated in order to maintain local flexibility, and to recognize differing approaches in program designs that vary depending upon the service mix and each area's economic and demographic conditions.

H. Definition of Measures

Measurement of Participant Customers

The degree to which participant customers are satisfied with the core, intensive and training services provided by the workforce investment system.

Measurement of Employer Customers

The degree to which employer customers are satisfied with the informational, labor exchange, and special services provided by the workforce investment system.

I. Pilot Testing

DOL will work with a number of pilot sites to better determine the range of customer satisfaction levels (i.e., baseline data), and to explore technical issues of survey timing, methodology, and questionnaire construction. The sites will be selected based on interest and previous experience with customer satisfaction surveys. DOL will use the results of the pilot testing and the feedback from this consultation paper to issue guidance or technical standards for the survey methodology.

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Reader Aids

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 4/P.L. 106–38

National Missile Defense Act of 1999 (July 22, 1999; 113 Stat. 205)

H.R. 2035/P.L. 106–39

To correct errors in the authorizations of certain programs administered by the National Highway Traffic Safety Administration. (July 28, 1999; 113 Stat. 206)

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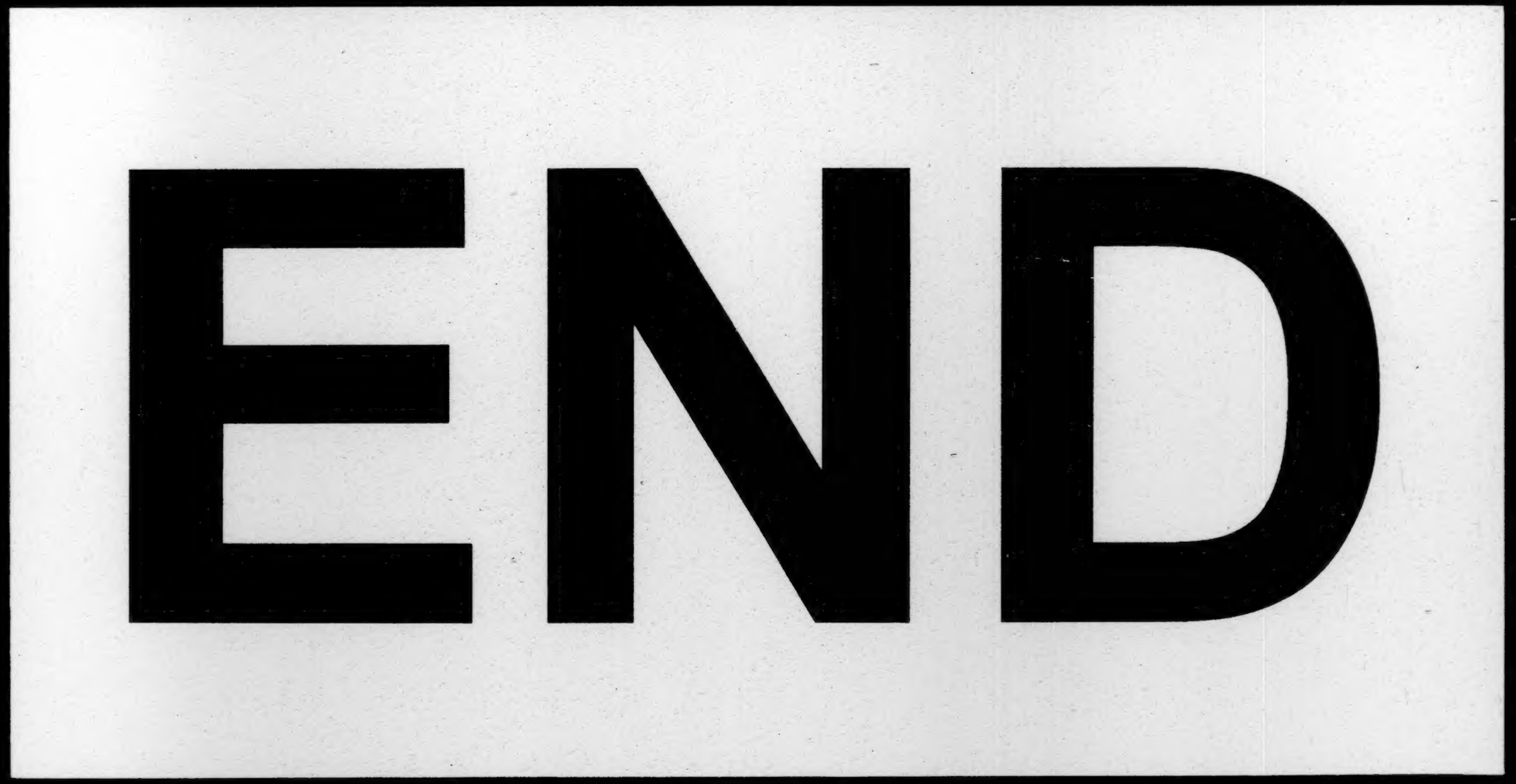
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